START

Title: FEDERAL REGISTER.

Volume: 68 Issues: 57-68
PAGES 14309-17528

Date: MARCH 25 - APRIL 9, 2003

UMI Number: 2575.00

Notes: THE PAPER AND INK USED IN THE ORIGINAL MATERIAL AFFECT THE QUALITY OF THE MICRO-EDITION. THIS REPRODUCTION IS MADE FROM THE BEST COPY AVAILABLE.
REEL NO: 5 OF 11
LSA (JANUARY, FEBRUARY AND MARCH 2003)

UMI®
ProQuest Information and Learning Company
300 North Zeeb Road
P.O. Box 1346
Ann Arbor, MI 48106-1346

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION

Federal Register

3–25–03 Tuesday
Vol. 68 No. 57 Mar. 25, 2003

United States Government Printing Office
SUPERINTENDENT OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

3–25–03
Vol. 68 No. 57
Pages 14307–14526

Tuesday
Mar. 25, 2003

Federal Register

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 202–512–1806

General online information 202–512–1530; 1–888–293–6498

Single copies/back copies:
Paper or fiche 202–512–1800
Assistance with public single copies 1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES

Subscriptions:
Paper or fiche 202–741–6005
Assistance with Federal agency subscriptions 202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 57
Tuesday, March 25, 2003

Agriculture Department
See Foreign Agricultural Service
See Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14390–14393

Army Department
See Engineers Corps

Bonneville Power Administration
NOTICES
Environmental statements; availability, etc.:
Schultz-Hanford Area Transmission Line Project, WA, 14412–14413

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14420–14422

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Vermont, 14394

Coast Guard
RULES
Ports and waterways safety:
Cook Inlet, AK; security zone, 14326–14328
Tampa Bay et al., FL; security zones, 14328–14332
PROPOSED RULES
Drawbridge operations:
Minnesota and Wisconsin, 14364
NOTICES
Environmental statements; notice of intent:
Lake Washington Ship Canal and Duwamish River, WA; bridge project; meeting, 14422

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14394

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
India, 14408
Mexico, 14408–14409
Oman, 14409
Turkey, 14409–14410
United Arab Emirates, 14410–14411

Corporation for National and Community Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Challenge grants, 14411–14412

Customs Service
RULES
Andean Trade Promotion and Drug Eradication Act; implementation, 14477–14500
Vessels in foreign and domestic trades:
Large yachts imported for sale; duty deferral Correction, 14476

Defense Department
See Engineers Corps
See Navy Department

Energy Department
See Bonneville Power Administration
See Energy Information Administration
See Federal Energy Regulatory Commission
See Southeastern Power Administration

Energy Information Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14413–14414

Engineers Corps
PROPOSED RULES
Danger zones and restricted areas:
Manchester, Washington; Manchester Fuel Depot, 14364–14365
NOTICES
Grants and cooperative agreements; availability, etc.:
Fort Ritchie Military Reservation, Cascade, MD; surplus property, 14412

Environmental Protection Agency
RULES
Superfund program:
National oil and hazardous substances contingency plan—
Small Business Liability Relief and Brownfields Revitalization Act; innocent landowners; standards and practices for all appropriate inquiry; withdrawn, 14339–14340
Water supply:
National primary drinking water regulations—
Arsenic standard; clarification, 14501–14507
PROPOSED RULES
Air quality implementation plans; approval and promulgation: various States; air quality planning purposes; designation of areas:
California, 14382–14388
Air quality implementation plans; approval and promulgation; various States:
Utah, 14379–14382

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 14310–14311
Bombardier, 14309–14310

CFM International, 14312–14314
Hartzell Propeller Inc., 14311–14312
Class E airspace, 14314–14315
PROPOSED RULES
Airworthiness directives:
Israel Aircraft Industries, Ltd., 14353–14355
Pratt & Whitney, 14351–14353
Rolls-Royce plc, 14355–14359
Textron Lycoming, 14350–14351
Class E airspace, 14359–14360
NOTICES
Aviation insurance:
Third party war risk liability insurance, 14472
Exemption petitions; summary and disposition, 14472–14473
Passenger facility charges; applications, etc.:
Delta County Airport, MI, 14473

Federal Communications Commission
RULES
Television broadcasting:
Satellite Home Viewer Improvement Act of 1999; implementation—
Satellite retransmissions of broadcast signals; network nonduplication, syndicated exclusivity, and sports blackout rules, 14340
Satellite retransmissions of broadcast signals; network nonduplication, syndicated exclusivity, and sports blackout rules; correction, 14340–14341

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Sithe Edgar LLC et al., 14418
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 14414–14415
Black Marlin Pipeline Co., 14415
Colorado Interstate Gas Co., 14415–14416
Discovery Gas Transmission, LLC, 14416
Eastern Shore Natural Gas Co., 14416
National Fuel Gas Supply Corp., 14416–14417
Northern Natural Gas Co., 14417
Tennessee Gas Pipeline Co., 14417
Texas Eastern Transmission, LP, 14417–14418

Federal Reserve System
RULES
Equal credit opportunity (Regulation B):
Nonmortgage credit transactions, etc.
Correction, 14476
NOTICES
Meetings; Sunshine Act, 14419

Food and Drug Administration
PROPOSED RULES
Food for human consumption:
Dietary supplements containing ephedrine alkaloids
Correction, 14360
NOTICES
Meetings:
Pharmaceutical Science Advisory Committee, 14422

Foreign Agricultural Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Agricultural Policy Advisory Committee for Trade et al.; correction, 14476

Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency designation areas:
Oregon, 14393–14394

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
PROPOSED RULES
Energy Employees Occupational Illness Compensation Program Act; implementation:
Special Exposure Cohort; classes of employees designated as members; procedures, 14388
NOTICES
Grants and cooperative agreements; availability, etc.:
President's Challenge Physical Activity and Fitness Awards Program; cosponsorship opportunity, 14419–14420

Homeland Security Department
See Coast Guard
See Customs Service

Interior Department
See Land Management Bureau
See Minerals Management Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Procedure and administration:
Damages caused by unlawful tax collection actions; civil cause of action, 14316–14322

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 14394–14400

Labor Department
See Occupational Safety and Health Administration
See Workers' Compensation Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14429–14430

Land Management Bureau
NOTICES
Protraction diagram plat filings:
Montana, 14423

Minerals Management Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14423–14425
Outer Continental Shelf operations:
Alaska Region—
Oil and gas lease sales, 14425–14429

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 14434

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies, 14347–14348

PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies, 14388–14389
NOTICES
Coastal zone management programs and estuarine sanctuaries:
Consistency appeals—
Islander East Pipeline Co., 14400–14401
Marine mammals:
Incidental taking; authorization letters, etc.—
ConocoPhillips Alaska Inc.; Beaufort Sea, AK; on-ice seismic activities; ringed and bearded seals, 14401–14408

National Science Foundation
NOTICES
Meetings:
NSF-NASA National Astronomy and Astrophysics Advisory Committee, 14434

Navy Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Radiant Images Inc., 14412

Nuclear Regulatory Commission
RULES
Radiation protection standards:
Radiation exposure reports; personal information labeling, 14307–14309
PROPOSED RULES
Radiation protection standards:
Radiation exposure reports; personal information labeling, 14349–14350
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14434–14435

Occupational Safety and Health Administration
NOTICES
Meetings:
Occupational Safety and Health Federal Advisory Council, 14430
Nationally recognized testing laboratories, etc.:
Intertek Testing Services NA, Inc., 14430–14432
Underwriters Laboratories Inc., 14432–14434

Overseas Private Investment Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14435

Patent and Trademark Office
RULES
Organization, functions, and authority delegations:
Correspondence; address and nomenclature changes, 14332–14339
PROPOSED RULES
Patent cases:
Official patent application records; electronic maintenance implementation, 14365–14379

Postal Rate Commission
NOTICES
Domestic rates, fees, and mail classifications:
Customized Market Mail, 14435–14437
Nonpostal offerings; rulemaking petition; internal review report, 14437–14439

Postal Service
NOTICES
Meetings; Sunshine Act, 14439

Presidential Documents
EXECUTIVE ORDERS
Government agencies and employees:
Rates of pay; adjustment (EO 13291), 14523–14526

Research and Special Programs Administration
RULES
Hazardous materials:
Hazardous materials transportation—
Materials transported by aircraft; information availability, 14341–14347
Offerors and transporters; security requirements, 14509–14521

Securities and Exchange Commission
RULES
Securities:
Lost securityholders; transfer agent requirements; technical amendment, 14315–14316
NOTICES
Meetings:
Securities laws uniformity; annual conference, 14439–14444
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 14444–14446
National Association of Securities Dealers, Inc., 14446–14456
Philadelphia Stock Exchange, Inc., 14456–14471

Small Business Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14471

Southeastern Power Administration
NOTICES
Power rate adjustments:
Cumberland System of Projects, 14418–14419

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Kansas, 14322–14326
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Maryland, 14360–14364

Surface Transportation Board
NOTICES
Railroad services abandonment:
New York Central Lines, LLC, 14473–14474

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Research and Special Programs Administration

See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed, weekly receipts, 14471
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 14471–14472
Hearings, etc.—
Westward Airways, Inc., 14472

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Meetings:
Capital Asset Realignment for Enhanced Services Commission, 14474
President's Task Force To Improve Health Care Delivery for Our Nation's Veterans, 14474–14475
Voluntary Service National Advisory Committee, 14475

Workers' Compensation Programs Office
RULES
Energy Employees Occupational Illness Compensation Program Act:
Reporting and recordkeeping requirements, 14316

Separate Parts In This Issue

Part II
Homeland Security Department, Customs Service, 14477–14500

Part III
Environmental Protection Agency, 14501–14507

Part IV
Transportation Department, Research and Special Programs Administration, 14509–14521

Part V
Executive Office of the President, Presidential Documents, 14523–14526

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
13282 (Amended by 13291)....14525
13291....14525
10 CFR
20....14307
Proposed Rules:
20....14349
12 CFR
202....14476
14 CFR
39 (4 documents)....14309, 14310, 14311, 14312
71 (2 documents)....14314, 14315
Proposed Rules:
39 (4 documents)....14350, 14351, 14353, 14355
71....14359
17 CFR
240....14315
19 CFR
4....14476
113....14476
178....14476
Proposed Rules:
10....14478
163....14478
20 CFR
1....14316
30....14316
21 CFR
Proposed Rules:
111....14360
26 CFR
301....14316
30 CFR
916....14322
Proposed Rules:
920....14360
33 CFR
165 (2 documents)....14326, 14328
Proposed Rules:
117....14364
334....14364
37 CFR
1....14332
2....14332
3....14332
4....14332
5....14332
102....14332
104....14332
150....14332
Proposed Rules:
1....14365
40 CFR
141....14502
312....14339
Proposed Rules:
52 (2 documents)....14379, 14382
81....14382
42 CFR
Proposed Rules:
83....14388
47 CFR
76 (2 documents)....14340
49 CFR
171....14341
172....14510
175....14341
50 CFR
648....14347
Proposed Rules:
648....14388

Rules and Regulations

Federal Register
Vol. 68, No. 57
Tuesday, March 25, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

RIN 3150–AH07

Radiation Exposure Reports: Labeling Personal Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its filing requirements for written event reports submitted to the NRC concerning individuals occupationally overexposed to radiation and radioactive materials. Licensees will be required to clearly label any section of the event report containing personal information "Privacy Act Information: Not for Public Disclosure." This action is necessary to ensure that personal information filed with the NRC is segregated from the event report and maintained in a separate, non-public document.

EFFECTIVE DATE: The final rule is effective June 9, 2003, unless significant adverse comments are received by April 24, 2003. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–8126, e-mail *mlh1@nrc.gov*.

SUPPLEMENTARY INFORMATION: The NRC requires licensees to file written reports within 30 days after learning of any occupational exposure to radiation or radioactive materials that exceeds the constraints or limits set out in §§ 20.2202 and 20.2203. These records contain personal information that is protected from public disclosure by the Privacy Act of 1974, Public Law 93–579, 5 U.S.C. 552a, and the Commission's regulations in 10 CFR part 9.

Currently, each report is required to be prepared so that personal information such as an individual's name, social security number, and date of birth is contained in a separate and detachable part of the report. However, the regulations do not require that the report be marked in any way to indicate the information should be protected as privacy information. The intent of the separate report was to keep the sensitive personal information out of the publically accessible environment. Documents received by the NRC are placed directly into the Agency-Wide Documents Access and Management System (ADAMS) unless they are marked as sensitive or controlled. In order for the Agency's document control personnel to properly process this section of the report as a non-public document, licensees will be required to clearly label this section with the following notation: "Privacy Act Information: Not for Public Disclosure." This labeling will ensure that personal information filed with exposure event reports will not be accessible by the public through the NRC's document control system, ADAMS.

Procedural Background

Because this amendment involves only a minor amendment to existing regulations and it is not expected to be controversial, the NRC is using the direct final rule process for this rule. The amendments to the rule will become effective on June 9, 2003. However, if the NRC receives significant adverse comments on this direct final rule by April 24, 2003, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive

response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this direct final rule is classified as compatibility "C." Category C means the provisions affect a program element, the essential objectives of which should be adopted by the State to avoid conflicts, duplications, or gaps in the national program. The manner in which the essential objectives are addressed need not be the same as NRC, provided the essential objectives are met. This amendment is not expected to impact existing Agreement States regulations. The content of the event report is not being changed by this rule and each State has its own method for protecting privacy information.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing" directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC is adding a labeling requirement to protect privacy information. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This direct final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0014.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this regulation. The rule imposes an insignificant regulatory burden on licensees by requiring that privacy information contained in event reports be labeled. The information is already required to be in a separate, detachable section of the event report. The labeling will ensure that personal information filed with exposure event reports will not be inadvertently released to the public through ADAMS. Many licensees already label the privacy information.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is necessary to reflect the nuclear non-proliferation policies of the Executive branch and U.S. Government obligations under nuclear agreements for cooperation. This rule will only affect licensees when filing Radiation Exposure Reports for occupationally overexposed individuals. Affected licensees will be required to label the portion of the report containing personal information to indicate that such information should not be made available to the public. This final rule has a minimal impact on licensee filing procedures and imposes no additional economic burden on affected licensees.

Backfit Analysis

The NRC has determined that the backfit rule as defined in 10 CFR Chapter I does not apply to reporting requirements such as those reporting requirements contained in this final rule. Since this final rule does not involve any provisions that would impose backfits as defined in the backfit rule, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR Part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. In § 20.2203, paragraph (b)(2) is revised to read as follows:

§ 20.2203 Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits.

* * * * *

(b) * * *

(2) Each report filed pursuant to paragraph (a) of this section must include for each occupationally overexposed [1] individual: the name, Social Security account number, and

[1] With respect to the limit for the embryo/fetus (§ 20.1208), the identifiers should be those of the declared pregnant woman.

date of birth. The report must be prepared so that this information is stated in a separate and detachable part of the report and must be clearly labeled "Privacy Act Information: Not for Public Disclosure."

* * * * *

Dated at Rockville, Maryland, this 11th day of March, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–7030 Filed 3–24–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–100–AD; Amendment 39–13070; AD 2003–04–21 R1]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to certain Bombardier Model CL–600–2B19 (Regional Jet Series 440) series airplanes. That AD currently requires replacement of the overwing emergency exit placards, door weight placards, and no baggage placards with new placards. This document corrects the applicability of AD 2003–04–21 to identify affected model designations as published in the most recent type certificate data sheet. This correction is necessary to ensure that operators of all affected airplanes accomplish the requirements of this AD.

DATES: Effective April 4, 2003.

The incorporation by reference of a certain publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 4, 2003 (68 FR 9509, February 28, 2003).

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On February 19, 2003, the Federal Aviation Administration (FAA) issued AD 2003–04–21, amendment 39–13070 (68 FR 9509, February 28, 2003), which applies to certain Bombardier Model CL–600–2B19 (Regional Jet Series 440) series airplanes. That AD requires replacement of the overwing emergency exit placards, door weight placards, and no baggage placards with new placards. That AD was prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions required by that AD are intended to prevent the inability of a passenger to open and dispose of the overwing emergency exit door during an emergency evacuation due to incorrect placards.

Need for the Correction

In the preamble of AD 2003–04–21 under the heading "Explanation of Change to Applicability," it states, "[The FAA has] revised the applicability of the final rule to identify model designations as published in the most recent type certificate data sheet for the affected models." We revised the applicability of the final rule to include the parenthetical "(Regional Jet Series 440)." However, we inadvertently omitted Regional Jet Series "100," which is specified on the type certificate data sheet. In addition, both of these airplane models were identified by serial numbers in the applicability. Therefore, the correct applicability of this AD is "Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes."

We have determined that a correction to AD 2003–04–21 is necessary. We have clarified the applicability of this AD by identifying the affected model designations as published in the most recent type certificate data sheet.

Correction of Publication

This document corrects the error and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains April 4, 2003.

Since this action only corrects the applicability of AD 2003–04–21 to identify affected model designations as published in the most recent type certificate data sheet, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2003–04–21 R1 Bombardier, Inc. (Formerly Canadair): Amendment 39–13070. Docket 2002–NM–100–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, having the serial numbers listed in the following table:

TABLE—SERIAL NUMBERS

Serial Nos.
7003 through 7434 inclusive.
7436 through 7442 inclusive.
7444 through 7452 inclusive.
7454 through 7458 inclusive.
7460 through 7497 inclusive.
7499 through 7504 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of a passenger to open and dispose of the overwing emergency exit door during an emergency evacuation due to incorrect placards, accomplish the following:

Replacement of Placards

(a) Within 12 months after the effective date of this AD, replace the overwing emergency exit placards, door weight

placards, and no baggage placards with new placards (including cleaning of the applicable surface), as applicable, per Bombardier Alert Service Bulletin A601R–11–077, Revision 'A,' dated December 11, 2001, excluding Service Bulletin Comment Sheet-Facsimile Reply Sheet and CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet.

(b) Replacement accomplished before the effective date of this AD per Bombardier Alert Service Bulletin A601R–11–077, dated July 12, 2001, is considered acceptable for compliance with the replacement specified in paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Bombardier Alert Service Bulletin A601R–11–077, Revision 'A,' dated December 11, 2001, excluding Service Bulletin Comment Sheet-Facsimile Reply Sheet and CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet. This incorporation by reference was approved previously by the Director of the Federal Register as of April 4, 2003 (68 FR 9509, February 28, 2003). Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–12, dated February 4, 2002.

Effective Date

(f) The effective date of this amendment remains April 4, 2003.

Issued in Renton, Washington, on March 17, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6992 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–31–AD; Amendment 39–12694; AD 2002–06–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 Airplanes That Have Been Modified in Accordance With Supplemental Type Certificate (STC) ST00973WI–D

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 2002–06–16 that was published in the **Federal Register** on April 2, 2002 (67 FR 15468). The typographical error resulted in reference to an incorrect STC number. This AD is applicable to certain Boeing Model 767–300 airplanes. This AD requires removing each sidewall-mounted reading light in the attendant crew rest compartment, installing cover plates in place of the existing reading lights, removing each reading light switch, and installing a new reading light in place of the existing light switch.

DATES: Effective April 17, 2002.

FOR FURTHER INFORMATION CONTACT: Gary D. Park, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4123; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2002–06–16, amendment 39–12594, applicable to certain Boeing Model 767–300 airplanes, was published in the **Federal Register** on April 2, 2002 (67 FR 15468). That AD requires removing each sidewall-mounted reading light in the attendant crew rest compartment, installing cover plates in place of the existing reading lights, removing each reading light switch, and installing a new reading light in place of the existing light switch.

As published, that AD specifies that the referenced STC number is STC00973WI–D in the Subject Heading (Airworthiness Directives) and Supplementary Information section of the preamble of the AD, as well as in the regulatory text of the Applicability section of the AD. The FAA finds that correction of a typographical error in that STC number is necessary. Where the existing AD specifies the STC number as STC00973WI–D, this AD replaces that incorrect STC number with the correct STC number, ST00973WI–D.

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register**.

The effective date of this AD remains April 17, 2002.

Nonregulatory text:

On page 15468 in the first column under the subject heading, "Airworthiness Directives," reference to "STC00973WI–D" is corrected to "ST00973WI–D" and reads as follows:

* * * * *

Airworthiness Directives; Boeing Model 767–300 Airplanes That Have Been Modified in Accordance with Supplemental Type Certificate (STC) ST00973WI–D

* * * * *

On page 15468 in the second column under the heading, **SUPPLEMENTARY INFORMATION,** in the second sentence, reference to "STC00973WI–D" is corrected to "ST00973WI–D" and reads as follows:

* * * * *

The sidewall-mounted reading lights in the attendant crew rest compartment of those airplanes have been modified in accordance with Supplemental Type Certificate (STC) ST00973WI–D.

* * * * *

Regulatory text:

PART 39—AIRWORTHINESS DIRECTIVES

§ 39.13 [Corrected]

On page 15469 under the "Applicability" section of AD 2002–06–16, reference to "STC00973WI–D" is corrected to "ST00973WI–D" and reads as follows:

* * * * *

Applicability: Model 767–300 airplanes that have been modified in accordance with Supplemental Type Certificate ST00973WI–D; certificated in any category.

* * * * *

Issued in Renton, Washington, on March 17, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6993 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–47–AD; Amendment 39–13089; AD 2003–06–02]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Model HC–C2Y(K,R)–1BF/F8477–4 Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to certain Hartzell Propeller Inc. model HC–C2Y(K,R)–1BF/F8477–4 propellers with TKS (Aircraft De-icing) Ltd. anti-ice boots that were installed by SOCATA–Groupe AEROSPATIALE, the aircraft manufacturer, using TKS Ltd. Procedure P232, Specification for the Attachment of Propeller Overshoes. This amendment requires removal of the anti-ice boots, inspection and rework of the anti-ice boot area of the propeller blades, and installation of new anti-ice boots. This amendment is prompted by a report of TKS (Aircraft De-icing) Ltd. anti-ice boots on the blades of a model HC–C2Y(K,R)–1BF/F8477–4 propeller that were installed by SOCATA–Groupe AEROSPATIALE using processes that could lead to blade corrosion and failure. The actions specified by this AD are intended to prevent propeller blade separation, damage to the airplane, and possible loss of the airplane.

DATES: Effective April 29, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 29, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7031; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to certain Hartzell Propeller Inc. model HC–C2Y(K,R)–1BF/F8477–4 propellers with TKS (Aircraft De-icing) Ltd. anti-ice boots that were installed by SOCATA–Groupe AEROSPATIALE, the aircraft manufacturer, using TKS Ltd. Procedure P232, Specification for the Attachment of Propeller Overshoes was published in the **Federal Register** on November 21, 2002 (67 FR 70185). That action proposed to require removal of the anti-ice boots, inspection and rework of the anti-ice boot area of the propeller blades, and installation of new anti-ice boots in accordance with Hartzell Propeller Inc. Alert Service Bulletin (ASB) HC–ASB–61–251, dated April 10, 2001.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 750 Hartzell Propeller Inc. model HC–C2Y(K,R)–1BF/F8477–4 propellers with TKS (Aircraft De-icing) Ltd. anti-ice boots installed by SOCATA–Groupe AEROSPATIALE, the aircraft manufacturer, using TKS Ltd. Procedure P232, Specification for the Attachment of Propeller Overshoes. The FAA estimates that 230 propellers installed on airplanes of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 10 work hours per propeller to accomplish the actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $900 per propeller. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $345,000.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–06–02 Hartzell Propeller Inc.: Amendment 39–13089. Docket No. 2001–NE–47–AD.

Applicability: This airworthiness directive (AD) is applicable to Hartzell Propeller Inc. model HC–C2Y(K,R)–1BF/F8477–4 propellers with TKS (Aircraft De-icing) Ltd. anti-ice boots that were installed by SOCATA-Groupe AEROSPATIALE, the aircraft manufacturer, using TKS Ltd. Procedure P232, Specification for the Attachment of Propeller Overshoes. These propellers are installed on, but not limited to American Champion 8GCBC, Cessna 170 series, 172 series, 175 series, Piper PA–18 series, Sky International Inc. (Husky) A–1 (previous owners were Christen Industries; Aviat, Inc.; White International, LTD.), and

SOCATA–Groupe AEROSPATIALE TB–20 and TB–21 airplanes.

Note 1: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent propeller blade separation, damage to the airplane, and possible loss of the airplane, do the following:

(a) For propellers that have been overhauled after the installation of TKS (Aircraft De-icing) Ltd. Anti-ice boots, and have had the anti-ice boots re-installed using Hartzell Manual 133C (ATA 61–13–33) "Aluminum Blade Overhaul", AS&T Procedure 4700INS, or other approved procedures (excluding TKS Procedure P232) no further action is required.

(b) For propellers that have had the anti-ice boots installed using the TKS Procedure P232, but have not had anti-ice boots re-installed using Hartzell Manual 133C (ATA 61–13–33) "Aluminum Blade Overhaul", AS&T Procedure 4700INS, or other approved procedures (excluding TKS Procedure P232), remove anti-ice boots, inspect and rework anti-ice boot areas of propeller blades, and install new anti-ice boots in accordance with paragraph 3 of the Accomplishment Instructions of Hartzell Propeller Inc. Alert Service Bulletin (ASB) HC–ASB–61–251, dated April 10, 2001 using the compliance schedule in Table 1 as follows:

TABLE 1.—COMPLIANCE SCHEDULE

For propellers with:	Replace anti-ice boots:
(1) Fewer than 500 hours time-in-service (TIS) and less than 3 years time-since-new (TSN).	Within 200 hours TIS from the effective date of this AD, not to exceed 600 hours TSN, or prior to accumulating 4 years TSN, whichever occurs first.
(2) Five hundred or more hours TIS, or 3 years or more TSN but less than 6 years TSN.	Within 100 hours TIS, or 1 year from the effective date of this AD, whichever occurs first.
(3) Six years or more TSN	Within 50 hours TIS, or within 6 months from the effective date of this AD, whichever occurs first.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Certification Office. Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Certification Office.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(e) The actions must be done in accordance with Hartzell Propeller Inc. Alert Service Bulletin HC–ASB–61–251, dated April 10, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on April 29, 2003.

Issued in Burlington, Massachusetts, on March 12, 2003.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–6676 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–64–AD; Amendment 39–13094; AD 97–09–02R2]

RIN 2120–AA64

Airworthiness Directives; CFM International (CFMI) CFM56–5C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD) that is applicable to CFMI CFM56–5C series turbofan engines. That AD currently establishes new life limits for certain low pressure turbine rotor (LPTR) stage 3 disks and certain high pressure turbine rotor (HPTR) disks. This action removes the LPTR stage 3 disks and the HPTR disks from the parts listed with lowered life limits in the existing AD. This amendment is prompted by the results of an extensive life management program completed by the manufacturer, which no longer requires lower life limits for the LPTR stage 3 disks and HPTR disks listed in the existing AD. The actions specified in this AD are intended to prevent low-cycle-fatigue (LCF) failure of certain HPTR front shafts, HPTR front air seals, and booster spools, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective April 29, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 27, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–ANE–64–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate,12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7152; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On August 29, 2002, the FAA issued AD 97–09–02R1, Amendment 39–12876 (67 FR 57146, September 9, 2002), applicable to CFMI CFM56–5C series turbofan engines, to reduce the LCF retirement lives of certain HPTR front shafts, HPTR front air seals, HPTR disks, booster spools, and LPTR stage 3 disks. Since AD 97–09–02R1 was issued, the manufacturer conducted an extensive life management program for the LPTR stage 3 disks and HPTR disks listed in the AD. The results indicated higher LCF retirement lives for those LPTR stage 3 disks and HPTR disks than the lives published in AD 97–09–02R1. Those LCF retirement lives are now the same as originally calculated and are in accordance with the current airworthiness limitations section of Chapter 05 of the CFM56–5C Engine Shop Manual, CFMI–TP.SM.8. Therefore, this AD revision removes LPT stage 3 disks, part numbers (P/Ns) 337–001–602–0 and 337–001–605–0, and HPTR disks, P/N 1498M43P04, from the parts listed with lower LCF retirement lives. The LCF retirement lives of the HPTR front air seals P/N 1523M34P02 and P/N 1523M34P03, and HPT front shafts P/N 1498M40P03, 1498M40P05, and 1498M40P06, and booster spools P/N 337–005–210–0, remain unchanged.

FAA's Determination of an Unsafe Condition and Required Actions

Although these affected engine models are not used on any airplanes that are registered in the United States, the possibility exists these engine models could be used on airplanes that are registered in the United States in the future. This AD requires the LCF retirement lives of HPTR front air seals P/N 1523M34P02 and P/N 1523M34P03, and HPT front shafts P/N 1498M40P03, 1498M40P05, and 1498M40P06, and booster spools P/N 337–005–210–0 to remain as they were published in AD 97–09–02R1.

Immediate Adoption of This AD

Since there are currently no domestic operators of CFM56–5C series turbofan engines, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–64–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12876 (67 FR 57146, September 9, 2002) and by adding the following new airworthiness directive:

97–09–02R2 CFM International: Amendment 39–13094. Docket No. 95–ANE–64–AD.

Applicability: This airworthiness directive (AD) is applicable to CFM International (CFMI) CFM56–5C2/G, –5C3/G, and –5C4 series turbofan engines. These engines are installed on, but not limited to, Airbus Industrie A340 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent low cycle fatigue (LCF) failure of the high pressure turbine rotor (HPTR) front shaft, HPTR front air seal, and booster spool, which could result in an uncontained failure and damage to the airplane, do the following:

(a) Remove from service HPTR front shafts, part numbers (P/Ns) 1498M40P03, 1498M40P05, and 1498M40P06, before accumulating 8,400 cycles-since-new (CSN), and replace with a serviceable part.

(b) Remove from service HPTR front air seals, P/Ns 1523M34P02 and 1523M34P03, before accumulating 4,000 CSN, and replace with a serviceable part.

(c) LCF retirement lives for HPTR disks P/N 1498M43P04 are now the same as originally calculated and are in accordance with the current airworthiness limitations section of Chapter 05 of the CFM56–5C Engine Shop Manual, CFMI–TP.SM.8.

(d) Remove from service booster spools, P/N 337–005–210–0, before accumulating 13,000 CSN, and replace with a serviceable part.

(e) For CFM56–5C4 engines, LCF retirement lives for low pressure turbine rotor (LPTR) stage 3 disks, P/Ns 337–001–602–0 and 337–001–605–0 are now the same as originally calculated and are in accordance with the current airworthiness limitations section of Chapter 05 of the CFM56–5C Engine Shop Manual, CFMI–TP.SM.8.

(f) For CFM56–5C2/G and –5C3/G engines, LCF retirement lives for LPTR stage 3 disks, P/Ns 337–001–602–0 and 337–001–605–0 are now the same as originally calculated and are in accordance with the current airworthiness limitations section of Chapter 05 of the CFM56–5C Engine Shop Manual, CFMI–TP.SM.8.

(g) This action establishes the new LCF retirement lives stated in paragraphs (a) through (f) of this AD, which are published in Chapter 05 of the CFM56–5C Engine Shop Manual, CFMI–TP.SM.8.

(h) For the purpose of this AD, a serviceable part is one that has not exceeded its respective new life limit as set out in this AD.

Alternative Methods of Compliance

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(j) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Effective Date

(k) This amendment becomes effective on April 29, 2003.

Issued in Burlington, Massachusetts, on March 19, 2003.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–7003 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14596; Airspace Docket No. 03–ACE–19]

Modification of Class E Airspace; Greenfield, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Class E airspace at Greenfield, IA. An examination of controlled airspace for Greenfield, IA revealed discrepancies in the Greenfield Municipal Airport, IA airport reference point used in the legal description for the Greenfield, IA Class E airspace area. This action corrects the discrepancies by modifying the Greenfield, IA Class E airspace area. It also incorporates the revised Greenfield Municipal Airport, IA airport reference point in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14596/Airspace Docket No. 03–ACE–19, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Greenfield, IA. An examination of controlled airspace for Greenfield, IA revealed discrepancies in the Greenfield Municipal Airport, IA airport reference point used in the legal description for this airspace area. This amendment incorporates the revised Greenfield Municipal Airport, IA airport reference point and brings the legal description of the Greenfield, IA Class E airspace area into compliance with the FAA Order 7400.2E, Procedures for Handling Airspace Matters. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above.

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14596/Airspace Docket No. 03–ACE–19." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, CFR 1959, 1963, Comp. p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Greenfield, IA

Greenfield Municipal Airport, IA
Lat. 41°19'37" N., long. 94°26'45" W.)
Greenfield NDB
Lat. 41°19'32" N., long. 94°26'40" W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Greenfield Muncipal Airport and within 2.6 miles each side of the 142° bearing from the Greenfield NDB extending from the 6-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on March 11, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–7074 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14129; Airspace Docket No. 02–ACE–14]

Establishment of Class E Surface Area Airspace and Modification of Class E Airspace; Jefferson City, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule that was published in the **Federal Register** on Wednesday, March 12, 2003, (68 FR 11738). It corrects an error in the legal description of Class E5 airspace at Jefferson City, MO.

EFFECTIVE DATE: This direct final rule is effective on 0901 UTC, April 17, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 03–5927 published on Wednesday, March 12, 2003, (68 FR 11738) established a Class E surface area and modified the Class E4 and Class E5 airspace areas at Jefferson City, MO. The Class E5 airspace area extension designed to protect aircraft on instrument approaches from the southeast was incorrectly identified as extending to the southwest of the airport.

Accordingly, pursuant to the authority delegated to me, the Class E5 airspace at Jefferson City, MO, as published in the **Federal Register** on Wednesday, March 12, 2003, (68 FR 11738), (FR Doc. 03–5927), is corrected as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

§ 71.1 [Corrected]

On page 11739, Column 3, first paragraph, last line change "11.8 miles southwest of the airport." to read "11.8 miles southeast of the airport."

Issued in Kansas City, MO, on March 12, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–7072 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39176A; File No. S7–21–96]

RIN 3235–AG99

Lost Securityholders; Technical Amendment

AGENCY: Securities and Exchange Commission.

ACTION: Technical amendment.

SUMMARY: This document contains a technical amendment to the final regulation which was published on Tuesday, October 7, 1997, (62 FR 52229). This regulation addresses the problem of "lost securityholders" contained in § 270.17Ad–17.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Lori R. Bucci, Special Counsel, at 202/942–4187, Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 1997, the Commission adopted Rule 17Ad–17 which requires transfer agents to conduct searches in an

effort to locate lost securityholders.[1] Rule 17Ad–17(b)(1)(i) contains an error. In the document published in the **Federal Register**, the clause "contains the names of at least 50% of the United States geographic area," was added to the rule language containing the definition of "information data base service." That language was not approved by the Commission and did not appear in the adopting release. This correction restores the language of paragraph (b)(1)(i) to that adopted by the Commission.

As published, the final regulation contains an error which needs to be corrected.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities, Transfer agents.

Accordingly, Title 17 CFR Part 240 is corrected by making the following technical amendment:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. In § 240.17Ad–17(b)(1)(i), the phrase "contains the names of at least 50% of the United States geographic area," is removed.

Dated: March 18, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6986 Filed 3–24–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 17 CFR 240.17Ad–17, Securities Exchange Act Release No. 39176 (October 1, 1997), 62 FR 52229 (October 7, 1997).

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Parts 1 and 30

RIN 1215–AB32

Performance of Functions Under This Chapter; Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act of 2000, as Amended

AGENCY: Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

ACTION: Final rule; compliance with information collection requirements.

SUMMARY: The Office of Workers' Compensation Programs (OWCP) is announcing that a revision of a currently approved collection of information has been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995, for the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended. This notice announces both the OMB approval number and expiration date.

DATES: *Effective Date:* The final rule published at 67 FR 78874 continues to be effective as of February 24, 2003.

Compliance Date: As of March 25, 2003, affected parties must comply with the new information collection requirements in §§ 30.112 and 30.213 of the final rule, which have been approved as a revision of a currently approved collection by OMB under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

FOR FURTHER INFORMATION CONTACT: Shelby Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–693–0036 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On December 26, 2002, OWCP published a final rule governing its administration of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA), 42 U.S.C. 7384 *et seq.*, and requested OMB approval under the PRA of a revision of a currently approved collection for the EEOICPA. The new information collection requirements that needed OMB approval are in §§ 30.112 and 30.213 of the final rule.

On March 17, 2003, OMB approved the requested revision to a currently approved collection for the EEOICPA. This particular collection now consists of the following forms/reporting requirements: EE–1, Claim for Benefits Under Energy Employees Occupational Illness Compensation Program Act; EE–2, Claim for Survivor Benefits Under Energy Employees Occupational Illness Compensation Program Act; EE–3, Employment History for Claim Under Energy Employees Occupational Illness Compensation Program Act; EE–4, Employment History Affidavit for Claim Under the Energy Employees Occupational Illness Compensation Program Act; EE–7, Medical Requirements Under the Energy Employees Occupational Illness Compensation Program Act; EE/EN–8, letter to claimant requesting information for lung cancer claim; EE/EN–9, letter to claimant requesting information for skin cancer claim; EE/EN–20, Acceptance of Payment Under the Energy Employees Occupational Illness Compensation Program Act; EE–915, Claim for Medical Reimbursement Under the Energy Employees Occupational Illness Compensation Program Act; 20 CFR 30.112, supplemental employment evidence required when an alleged employment history cannot be verified; and 20 CFR 30.214, supplemental medical evidence required when an injury, illness or disability is allegedly sustained as a consequence of a covered occupational illness.

The control number assigned to this information collection by OMB is 1215–0197. The approval for this information collection will expire on July 31, 2004.

Signed at Washington, DC, this 18th day of March, 2003.

Shelby Hallmark,

Director, Office of Workers' Compensation Programs, Employment Standards Administration.

[FR Doc. 03–7013 Filed 3–24–03; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF THE TREASURY

26 CFR Part 301

[TD 9050]

RIN 1545–AY08

Civil Cause of Action for Damages Caused by Unlawful Tax Collection Actions, Including Actions Taken in Violation of Section 362 or 524 of the Bankruptcy Code

AGENCY: Internal Revenue Service (IRS); Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to civil causes of action for damages caused by unlawful collection actions of officers and employees of the IRS and the awarding of costs and certain fees. The regulations reflect amendments made by the Taxpayer Bill of Rights 2 and the Internal Revenue Service Restructuring and Reform Act of 1998. The regulations affect all persons who suffer damages caused by unlawful collection actions of officers or employees of the IRS.

EFFECTIVE DATE: These regulations are effective March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, (202) 622–3630 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to civil actions for damages caused by unlawful collection actions of officers or employees of the IRS. The Taxpayer Bill of Rights 2 (TBOR2), Public Law 104–168 (110 Stat. 1465), amended section 7433 of the Internal Revenue Code of 1986 (Code) by increasing the maximum amount of damages a taxpayer may be awarded for unlawful collection actions from $100,000 to $1,000,000. TBOR2 also eliminated the jurisdictional requirement that administrative remedies be exhausted before a court may award damages; TBOR2 authorized the court, however, to reduce damages if it determined that the plaintiff did not exhaust administrative remedies. These TBOR2 provisions were effective for actions of IRS officers or employees after July 30, 1996. The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685), although retaining the pre-existing authorization for an award of damages in the case of reckless or intentional disregard of the Code or regulations, amended section 7433(a) by providing that taxpayers may file actions for damages caused by the negligent disregard of the Code or regulations. RRA 1998 also added subsection (e) to section 7433. This amendment provides that an action for damages could be brought for the IRS's willful violation of section 362 (relating to the automatic stay) or section 524 (relating to the effect of discharge) of the Bankruptcy Code. Actions for damages caused by the violation of section 362 or 524 of the Bankruptcy Code are limited to willful violations. The maximum amount of damages that may be awarded for negligent disregard under section 7433(a) is $100,000. The maximum amount of damages that may be awarded for reckless or intentional disregard under subsection (a) or for willful violations of section 362 or 524 of the Bankruptcy Code under subsection (e) is $1,000,000. RRA 1998 also reinstated the requirement under section 7433 that the plaintiff must exhaust administrative remedies before a court may award damages. These RRA 1998 provisions apply to actions of IRS officers or employees after July 22, 1998.

RRA 1998 also added section 7426(h), which authorizes persons who bring wrongful levy actions under section 7426 to sue for damages caused by the reckless or intentional, or negligent, disregard of any provision of the Code, plus costs of the action. Consistent with section 7433, damages awarded under section 7426(h) are limited to $1,000,000 for reckless or intentional disregard and $100,000 for negligent disregard. In addition, a plaintiff must exhaust administrative remedies before a court may award damages under section 7426(h). The provisions of section 7433 relating to mitigation and the period for bringing an action also apply to actions brought under section 7426(h). IRS published a notice of proposed rulemaking reflecting these changes in the **Federal Register** on March 5, 2002. (67 FR 9929). No written comments on the proposed regulations were received. No public hearing was held.

Explanation of Provisions

Section 301.7426–2

RRA 1998 added subsection (h) to section 7426. Subsection (h) authorizes persons to sue the United States in Federal district court for damages due to a wrongful levy caused by the reckless or intentional, or negligent, disregard of a provision of the Code. Plaintiffs may recover the lesser of actual direct economic damages and costs of the action or $1,000,000 ($100,000 in the case of negligence). The amendment also provided that the rules of section 7433(d) relating to exhaustion of administrative remedies, mitigation of damages, and the period for bringing an action shall apply. The regulations thus adopt rules like those promulgated under section 7433. Plaintiffs must mitigate damages and no damages may be awarded unless the court determines that the plaintiff has exhausted administrative remedies available within the IRS, *e.g.*, by filing an administrative claim for damages. The regulations provide that any action for damages under this section must be brought within two years after the date the action accrues. This two-year limitations period is independent of the nine-month period following the wrongful levy during which the third party may make a claim for wrongfully levied property.

Section 301.7430–8

Section 7430 provides that reasonable administrative costs may be awarded to the prevailing party in an administrative proceeding brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under Title 26 of the United States Code. Prior to the amendments in RRA 1998, taxpayers generally were not entitled to recover costs for administrative proceedings in connection with collection matters. Accordingly, the current regulations exclude such collection matters, including proceedings under sections 7432 and 7433, from the definition of administrative proceedings. To reflect the RRA 1998 amendments, the regulations expand the definition of an administrative proceeding to include any administrative action for damages under section 7433(e) and any procedure or action brought before the IRS seeking relief with respect to a violation by the IRS of section 362 or 524 of the Bankruptcy Code.

The regulations provide that the prevailing party is a party who establishes that, in connection with the collection of his or her federal tax, the IRS has willfully violated a provision of section 362 or 524 of the Bankruptcy Code. The only administrative costs that may be awarded are those incurred after the date of the bankruptcy petition that gave rise to the section 362 stay or section 524 discharge injunction.

A claim with the IRS for administrative costs must be filed within 90 days after the date the IRS mails its decision on the taxpayer's administrative claim for damages under § 301.7433–2(e) or claim for relief from a violation of section 362 or 524 of the Bankruptcy Code.

Section 301.7433–1

Section 3102 of RRA 1998 amended section 7433(a) of the Code by providing that a taxpayer may sue the United States in a district court of the United States for damages caused by the negligent disregard of the Code or regulations in connection with the collection of the taxpayer's tax liability. Section 801 of TBOR2 amended section 7433(b) by increasing the maximum amount of damages that a taxpayer may recover for damages caused by the reckless or intentional disregard of the Code or regulations from $100,000 to

$1,000,000. Section 3102 of RRA 1998 caps the amount of damages that a taxpayer may recover for negligent disregard at $100,000. The regulations under § 301.7433–1 reflect these changes.

Section 301.7433–2

RRA 1998 also amended section 7433 by adding subsection (e). Subsection (e) gives taxpayers the right to petition the bankruptcy court to recover damages if, in connection with the collection of a Federal tax, any officer or employee of the IRS willfully violates section 362 or 524 of the Bankruptcy Code or any regulation promulgated thereunder. Damages in connection with a claim under section 7433(e) for willful violations of section 362 or 524 are recoverable under section 7433(b) and are subject to the limitations imposed by section 7433(d). Under section 7433(b), if the IRS is found liable, the plaintiff may recover an amount equal to the lesser of $1,000,000 or the actual, direct economic damages sustained by the plaintiff as a proximate result of the IRS's willful action plus costs of the action. A plaintiff may not recover damages for the mere negligent violation of section 362 or 524 of the Bankruptcy Code.

Section 362 relates to the automatic stay, which arises by operation of law when a debtor files a bankruptcy petition. The stay prohibits certain collection actions against the debtor, the debtor's property, and the property of the bankruptcy estate. Prior to enactment of section 7433(e), individuals injured by the IRS's willful violation of the automatic stay could only sue to recover actual damages, including costs and attorneys' fees, under Bankruptcy Code section 362(h). Section 7433(e) provides an alternative cause of action to recover damages, but still permits an individual to recover damages under section 362(h) of the Bankruptcy Code, in lieu of an action under section 7433(e). However, section 7433(e) explicitly provides that administrative and litigation costs incurred in pressing a claim under section 362(h) of the Bankruptcy Code may only be paid pursuant to, and subject to the conditions described in, section 7430 of the Code. Section 7430 authorizes the payment of administrative and litigation costs only if a taxpayer exhausts administrative remedies. The regulations provide that in order to qualify for an award of administrative and litigation costs in an action under section 362(h) of the Bankruptcy Code, a taxpayer must (as in the case of damages actions under section 7433(e)) file an administrative claim with the IRS relating to the violation of the automatic stay.

Section 524 sets forth the effect of a discharge under the Bankruptcy Code. A discharge operates as an injunction against the commencement or continuation of any action to collect a discharged debt as a personal liability of the debtor. Prior to enactment of section 7433(e), a debtor who believed the IRS had willfully violated the discharge injunction could request the Bankruptcy Court under Bankruptcy Code section 105 to hold the IRS in contempt and seek to recover damages under that Bankruptcy Code provision. Section 7433(e) now provides the exclusive remedy for the IRS's willful violation of the discharge injunction.

The regulations set forth procedures relating to these claim and damage allowance provisions. Damages recoverable under section 7433(e) for a violation of the automatic stay or the discharge injunction are limited to (1) the actual, direct economic damages sustained by the taxpayer (and the taxpayer has a duty to mitigate those damages), plus (2) costs of the action. The maximum damage award is $1,000,000. No petition for damages under section 7433(e) may be filed in a bankruptcy court unless the taxpayer first exhausts administrative remedies within the IRS.

Similar to rules previously adopted with respect to other wrongful collection actions, the regulations define direct, economic damages as actual, pecuniary damages sustained by the taxpayer as a result of the willful violation of section 362 or 524 of the Bankruptcy Code. Injuries such as inconvenience, loss of reputation, and emotional distress, are not compensable except to the extent they result in actual pecuniary loss.

The regulations define costs of the action that are recoverable as damages under section 7433(e) as: (1) Fees of the clerk and marshal; (2) fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and copies of paper necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court appointed experts and interpreters. Costs of the action do not include any costs other than those enumerated in this paragraph.

Reasonable administrative and litigation costs, including attorneys fees, are not recoverable as direct economic damages. These costs are recoverable, if at all, under section 7430. The taxpayer generally will be entitled to reasonable administrative and litigation costs under section 7430 if the taxpayer (1) files an administrative claim with the IRS, (2) establishes that the IRS willfully violated either the automatic stay under Bankruptcy Code section 362 or the discharge injunction under section 524, (3) substantially prevails with respect to the amount of damages or the most significant issue in controversy, and (4) meets the requirements of sections 7430(c)(4)(A)(ii) regarding net worth.

A petition for damages under section 7433 may not be filed in a bankruptcy court unless the taxpayer first files an administrative claim for damages with the IRS. The claim must be made in writing to the Chief, Local Insolvency Unit, for the judicial district in which the taxpayer filed the underlying bankruptcy case giving rise to the alleged violation. The claim must include: (1) The claimant taxpayer's name, taxpayer identification number, current address, current home and work telephone numbers and any convenient times to be contacted; (2) the court and case number of the bankruptcy case in which the violation occurred; (3) a description, in reasonable detail, of the violation (with copies of any available substantiating documentation or correspondence with the IRS); (4) a description of the injuries incurred by the taxpayer filing the claim (with copies of any available substantiating documentation or evidence); (5) the dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (along with any available substantiating documentation or evidence); and (6) the signature of the taxpayer or any duly authorized representative.

The regulations provide that, after an administrative claim for damages has been filed, a petition for damages under section 7433 may not be filed in a bankruptcy court until the earlier of (1) the time a decision is rendered on the claim or (2) six months from the date the administrative claim is filed. Because a taxpayer must petition the bankruptcy court for damages within two years after the cause of action accrues, the regulations contain an exception for claims filed in the last six months before the two-year limitation period expires. In those circumstances, taxpayers may file petitions for damages at any time after they file their administrative claims and before the period of limitations expires. A cause of action accrues under this section when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

Special Analyses

It has been determined that this final regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy & Summonses Division, CC:PA:CBS, IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7426–2 is added to read as follows:

§ 301.7426–2 Recovery of damages in certain cases.

(a) *In general.* In addition to remedies related to wrongful levy set forth in § 301.7426–1(b), if a district court of the United States finds in any action brought under section 7426 that any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregarded any provision of this title, the United States shall be liable to the plaintiff for damages. The plaintiff has a duty to mitigate damages. The total amount of damages recoverable under this section is the lesser of $1,000,000 ($100,000 in the case of negligence), or the sum of—

(1) Actual, direct economic damages as defined in § 301.7433–1(b) sustained as a proximate result of the reckless, intentional, or negligent actions of the officer or employee, reduced by the amount of any damages awarded under § 301.7426–1(b); and

(2) Costs of the action as defined in § 301.7433–1(c).

(b) *Administrative remedies must be exhausted.* The court may not award a judgment for damages under paragraph (a) of this section unless the court determines that the plaintiff has filed an administrative claim pursuant to paragraph (d) of this section, and has satisfied the requirements of paragraph (c) of this section.

(c) *No request for damages in a district court of the United States prior to filing an administrative claim.* (1) Except as provided in paragraph (c)(2) of this section, no request for damages under paragraph (a) of this section shall be maintained in any district court of the United States before the earlier of the following dates—

(i) The date the decision is rendered on a claim filed in accordance with paragraph (d) of this section; or

(ii) The date that is six months after the date an administrative claim is filed in accordance with paragraph (d) of this section.

(2) If an administrative claim is filed in accordance with paragraph (d) of this section during the last six months of the period of limitations described in paragraph (f) of this section, the claimant may file an action in a district court of the United States any time after the administrative claim is filed and before the expiration of the period of limitations.

(d) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for the lesser of $1,000,000 ($100,000 in the case of negligence) or actual, direct economic damages as defined in § 301.7433–1(b) shall be sent in writing to the Area Director, Attn: Compliance Technical Support Manager of the area in which the taxpayer currently resides.

(2) *Form.* The administrative claim shall include—

(i) The name, taxpayer identification number, current address and current home and work telephone numbers (indicating any convenient times to be contacted) of the person making the claim;

(ii) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iii) A description of the damages incurred by the claimant filing the claim (include copies of any available substantiating documentation or evidence);

(iv) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and

(v) The signature of the claimant or duly authorized representative.

(3) *Duly authorized representative.* For purposes of this paragraph (d), a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the claimant before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed to the claimant.

(e) *No liability for damages for any sum in excess of the dollar amount sought in the administrative claim. See* § 301.7433–1(f).

(f) *Period of limitations*—(1) *Time for filing.* A civil action under paragraph (a) of this section must be brought in a district court of the United States within two years after the date the cause of action accrues.

(2) *Right of action accrues.* A cause of action under paragraph (a) of this section accrues when the plaintiff has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(g) *Recovery of costs under section 7430. See* § 301.7433–1(h).

(h) *Effective date.* This section is applicable March 25, 2003.

Par. 3. Section 301.7430–1 is amended by redesignating paragraphs (e), (f) and (g) as paragraphs (f), (g) and (h), respectively, revising the phrase "paragraph (e)(1), (e)(2), (e)(3), or (e)(4) of this section" to read "paragraph (f)(1), (f)(2), (f)(3), or (f)(4) of this section", and adding a new paragraph (e) to read as follows:

§ 301.7430–1 Exhaustion of administrative remedies.

* * * * *

(e) *Actions involving willful violations of the automatic stay under section 362 or the discharge provisions under section 524 of the Bankruptcy Code*—(1) *Section 7433 claims.* A party has not exhausted administrative remedies within the Internal Revenue Service with respect to asserted violations of the automatic stay under section 362 of the Bankruptcy Code or the discharge

provisions under section 524 of the Bankruptcy Code unless it files an administrative claim for damages or for relief from a violation of section 362 or 524 of the Bankruptcy Code with the Chief, Local Insolvency Unit, for the judicial district in which the bankruptcy petition that is the basis for the asserted automatic stay or discharge violation was filed pursuant to § 301.7433–2(e) and satisfies the other conditions set forth in § 301.7433–2(d) prior to filing a petition under section 7433.

(2) *Section 362(h) claims.* A party has not exhausted administrative remedies within the Internal Revenue Service with respect to asserted violations of the automatic stay under section 362 of the Bankruptcy Code unless it files an administrative claim for relief from a violation of section 362 of the Bankruptcy Code with the Chief, Local Insolvency Unit, for the judicial district in which the bankruptcy petition that is the basis for the asserted automatic stay violation was filed pursuant to § 301.7433–2(e) and satisfies the other conditions set forth in § 301.7433–2(d) prior to filing a petition under section 362(h) of the Bankruptcy Code.

* * * * *

§ 301.7430–2 [Amended]

Par. 4. In § 301.7430–2, paragraph (c)(2) is amended by:

1. Adding the language ", except that requests with respect to administrative proceedings defined by § 301.7430–8(c) should be made to the Chief, Local Insolvency Unit" at the end of the first sentence.

2. Removing the language "District Director for the district" and adding "Internal Revenue Service office" in its place in the second sentence.

Par. 5. Section 301.7430–3 is amended by:

1. Revising paragraph (a)(4).

2. Paragraph (b) is amended by adding the language ", except those collection actions described by section 7433(e)" at the end of the penultimate sentence.

The revision reads as follows:

§ 301.7430–3 Administrative proceeding and administrative proceeding date.

(a) * * *

(4) Proceedings in connection with collection actions (as defined in paragraph (b) of this section), including proceedings under section 7432 or 7433, except proceedings brought under section 7433(e) and § 301.7433–2 or proceedings otherwise described in § 301.7430–8(c). See § 301.7430–8.

* * * * *

Par. 6. Section 301.7430–6 is amended by adding a sentence at the end of the section to read as follows:

§ 301.7430–6 Effective dates.

* * * Sections 301.7430–1(e), 301.7430–2(c)(2), 7430–3(a)(4) and (b) are applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998.

Par. 7. Section 301.7430–8 is added to read as follows:

§ 301.7430–8 Administrative costs incurred in damage actions for violations of section 362 or 524 of the Bankruptcy Code.

(a) *In general.* The Internal Revenue Service may grant a taxpayer's request for recovery of reasonable administrative costs incurred in connection with the administrative proceeding before the Internal Revenue Service relating to the willful violation of section 362 or 524 of the Bankruptcy Code only if the taxpayer is a prevailing party.

(b) *Prevailing party.* A taxpayer is a prevailing party for purposes of this section only if—

(1) The taxpayer satisfies the net worth and size limitations in paragraph (f) of § 301.7430–5;

(2) The taxpayer establishes that in connection with the collection of his or her federal tax an officer or employee of the Internal Revenue Service has willfully violated a provision of section 362 or 524 of the Bankruptcy Code; and

(3) The position of the Internal Revenue Service in the proceeding was not substantially justified.

(c) *Administrative proceeding.* For purposes of this section, an administrative proceeding is a proceeding related to an administrative claim presented to the Internal Revenue Service seeking relief from a violation of section 362 or 524 of the Bankruptcy Code by the Internal Revenue Service or recovery of damages from the Internal Revenue Service under § 301.7433–2(e).

(d) *Costs incurred after filing of bankruptcy petition.* Administrative costs may be recovered only if incurred on or after the date of filing of the bankruptcy petition that formed the basis for the stay on collection under Bankruptcy Code section 362 or the discharge injunction under Bankruptcy Code section 524, as the case might be.

(e) *Time for filing claim for administrative costs.* (1) For purposes of this section, the taxpayer must file a claim for administrative costs before the Internal Revenue Service not later than 90 days after the date the Internal Revenue Service mails to the taxpayer, or otherwise notifies the taxpayer of, the decision regarding the claim for relief from or damages relating to a violation of the collection stay or the discharge injunction.

(2) If the Internal Revenue Service denies the claim for administrative costs in whole or in part, the taxpayer must file a petition with the Bankruptcy Court for administrative costs no later than 90 days after the date on which the denial of the claim for administrative costs is mailed, or otherwise furnished, to the taxpayer. If the Internal Revenue Service does not respond on the merits to a request by the taxpayer for an award of reasonable administrative costs within six months after such request is filed, the Internal Revenue Service's failure to respond may be considered by the taxpayer as a denial of an award of reasonable administrative costs.

(3) For purposes of paragraphs (e)(1) and (2) of this section; if the 90th day falls on a Saturday, Sunday, or a legal holiday, the 90-day period shall end on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. The term legal holiday means a legal holiday in the District of Columbia. If the request for costs is to be filed with the Internal Revenue Service at an office of the Internal Revenue Service located outside the District of Columbia, the term legal holiday also means a statewide legal holiday in the state where such office is located.

(f) *Effective date.* This section is applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998.

Par. 8. Section 301.7433–1 is amended as follows:

1. In paragraph (a) introductory text, in the first sentence, the language ", or by reason of negligence," is added after the language "recklessly or intentionally". In addition, the language "$100,000" in the third sentence is removed and "$1,000,000 ($100,000 in the case of negligence)" is added in its place.

2. In paragraph (b)(1), in the first sentence, the language ", or negligent," is added after the language "reckless or intentional".

3. In paragraph (e)(1), in the first sentence, the language "$100,000" is removed and "$1,000,000 ($100,000 in the case of negligence)" is added in its place. In addition, the language "district director (marked for the attention of the Chief, Special Procedures Function) of the district" is removed and "Area Director, Attn: Compliance Technical Support Manager of the area" is added in its place.

4. In paragraph (h), in the penultimate sentence, the language "7432(a)" is removed and "7433(a)" is added in its place.

5. Revising paragraph (i).

The revision reads as follows:

§ 301.7433–1 Civil cause of action for certain unauthorized collection actions.

* * * * *

(i) *Effective dates.* The portions of this section relating to reckless or intentional acts are applicable to actions taken by Internal Revenue Service officials after July 30, 1996. The portions of this section relating to negligent acts are applicable to actions taken by the Internal Revenue Service officials after July 22, 1998.

Par. 9. Section 301.7433–2 is added to read as follows:

§ 301.7433–2 Civil cause of action for violation of section 362 or 524 of the Bankruptcy Code.

(a) *In general.* (1) If, in connection with the collection of a federal tax with respect to a taxpayer, an officer or employee of the Internal Revenue Service willfully violates any provision of section 362 (relating to the automatic stay) or section 524 (relating to discharge) of title 11, United States Code, or any regulation promulgated under such provision, the taxpayer may file a petition for damages against the United States in Federal bankruptcy court. The taxpayer has a duty to mitigate damages. The total amount of damages recoverable under this section is the lesser of $1,000,000, or the sum of—

(i) Actual, direct economic damages sustained as a proximate result of the willful actions of the officer or employee; and

(ii) Costs of the action.

(2) An action under this section constitutes the exclusive remedy under the Internal Revenue Code for violations of sections 362 and 524 of the Bankruptcy Code. In addition, taxpayers injured by violations of section 362 of the Bankruptcy Code may maintain actions under section 362(h) of the Bankruptcy Code (relating to an individual injured by a willful violation of the stay). However, any administrative or litigation costs in connection with an action under section 362(h) may be awarded, if at all, only under section 7430 of the Internal Revenue Code.

(b) *Actual, direct economic damages*—(1) *Definition.* See § 301.7433–1(b)(1).

(2) *Litigation costs and administrative costs not recoverable as actual, direct economic damages.* Litigation costs and administrative costs are not recoverable as actual, direct economic damages. These costs may be recoverable under section 7430 (see paragraph (h) of this section), or, solely to the extent described in paragraph (c) of this section, as costs of the action.

(c) *Costs of the action.* Costs of the action recoverable as damages under this section are limited to the costs set forth in § 301.7433–1(c).

(d) *No civil action in federal bankruptcy court prior to filing an administrative claim*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, no action under paragraph (a)(1) of this section shall be maintained in any bankruptcy court before the earlier of the following dates—

(i) The date the decision is rendered on a claim filed in accordance with paragraph (e) of this section; or

(ii) The date that is six months after the date an administrative claim is filed in accordance with paragraph (e) of this section.

(2) *When administrative claim filed in last six months of period of limitations.* If an administrative claim is filed in accordance with paragraph (e) of this section during the last six months of the period of limitations described in paragraph (g) of this section, the taxpayer may petition the bankruptcy court any time after the administrative claim is filed and before the expiration of the period of limitations.

(e) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for the lesser of $1,000,000 or actual, direct economic damages as defined in paragraph (b) of this section shall be sent in writing to the Chief, Local Insolvency Unit, for the judicial district in which the taxpayer filed the underlying bankruptcy case giving rise to the alleged violation.

(2) *Form.* The administrative claim shall include—

(i) The name, taxpayer identification number, current address, and current home and work telephone numbers (with an identification of any convenient times to be contacted) of the taxpayer making the claim;

(ii) The location of the bankruptcy court in which the underlying bankruptcy case was filed and the case number of the case in which the violation occurred;

(iii) A description, in reasonable detail, of the violation (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iv) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(v) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available documentation or evidence); and

(vi) The signature of the taxpayer or duly authorized representative.

(3) *Duly authorized representative defined.* For purposes of this paragraph (e), a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(f) *No action in bankruptcy court for any sum in excess of the dollar amount sought in the administrative claim.* No action for actual, direct economic damages under paragraph (a) of this section may be instituted in federal bankruptcy court for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (e) of this section, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(g) *Period of limitations*—(1) *Time for filing.* A petition for damages under paragraph (a) of this section must be filed in bankruptcy court within two years after the date the cause of action accrues.

(2) *Right of action accrues.* A cause of action under paragraph (a) of this section accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(h) *Recovery of litigation costs and administrative costs under section 7430*—(1) *In general.* Litigation costs, as defined in § 301.7433–1(b)(2)(i), including attorneys fees, not recoverable under this section may be recoverable under section 7430 if a taxpayer challenges in whole or in part an Internal Revenue Service denial of an administrative claim for damages by filing a petition in the bankruptcy court. If, following the Internal Revenue Service's denial of an administrative claim for damages, a taxpayer files a petition in the bankruptcy court challenging that denial in whole or in part, substantially prevails with respect to the amount of damages in controversy, and meets the requirements of section 7430(c)(4)(A)(ii) (relating to net worth and size requirements), the taxpayer will be considered a prevailing party for purposes of section 7430, unless the Internal Revenue Service establishes that the position of the

Internal Revenue Service in the proceeding was substantially justified. Such taxpayer will generally be entitled to attorneys' fees and other reasonable litigation costs not recoverable under this section. For purposes of this paragraph (h), if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond will be considered a denial of the claim on the grounds that the Internal Revenue Service did not willfully violate Bankruptcy Code section 362 or 524.

(2) *Administrative costs*—(i) *In general.* Administrative costs, as defined in § 301.7433–1(b)(2)(ii), including attorneys' fees, not recoverable under this section may be recoverable under section 7430. *See* § 301.7430–8.

(ii) *Limitation regarding recoverable administrative costs.* Administrative costs may be awarded only if incurred on or after the date of filing of the bankruptcy petition that formed the basis for the stay on collection under Bankruptcy Code section 362 or the discharge injunction under Bankruptcy Code section 524, as the case might be.

(i) *Effective date.* This section is applicable to actions taken by the Internal Revenue Service officials after July 22, 1998.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: March 5, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–6597 Filed 3–24–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

[KS–023–FOR]

Kansas Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Kansas regulatory program and abandoned mine land reclamation (AMLR) plan (Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kansas proposed to revise its regulatory program by updating its adoption by reference of applicable portions of 30 CFR part 700 to End from the July 1, 1995, version to the July 1, 2001, version. Kansas also revised its regulation concerning permit reviews. Finally, Kansas revised its AMLR plan by adding a new regulation concerning abandoned mine land (AML) agency procedures for reclamation projects receiving less than 50 percent government funding. Kansas revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: March 25, 2003.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet address: *jcoleman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Kansas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal, and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kansas regulatory program on January 21, 1981. You can find background information on the Kansas regulatory program and program amendments, including the Secretary's findings, the disposition of comments, and conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5892). You can also find later actions concerning the Kansas regulatory program and program amendments at 30 CFR 916.10, 916.12, 916.15, and 916.16.

The AMLR program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Kansas AMLR plan on February 1, 1982. You can find background information on the Kansas AMLR plan, including the Secretary's findings and the disposition of comments in the February 1, 1982, **Federal Register** (47 FR 4513). You can find later actions concerning the Kansas AMLR plan and amendments to the plan at 30 CFR 916.20 and 916.25.

II. Submission of the Amendment

By electronic mail (e-mail) dated July 24, 2002 (Administrative Record No. KS–623), Kansas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kansas sent the amendment in response to an August 23, 2000, letter that we sent to Kansas in accordance with 30 CFR 732.17(c), concerning valid existing rights (Administrative Record No. KS–618). Kansas also included changes made at its own initiative. Kansas proposed to revise its regulatory program by updating its adoption by reference of applicable portions of 30 CFR part 700 to End from the July 1, 1995, version to the July 1, 2001, version. Kansas also revised its regulation concerning permit reviews. Kansas revised its AMLR plan by adding a new regulation concerning abandoned mine land (AML) agency procedures for reclamation projects receiving less than 50 percent government funding.

We announced receipt of the amendment in the September 23, 2002, **Federal Register** (67 FR 59484). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on October 23, 2002. We received comments from one Federal agency and one State agency.

During our review of the amendment, we identified concerns about editorial errors. We notified Kansas of these concerns by letter dated October 31, 2002, and by e-mail dated November 6, 2002 (Administrative Record Nos. KS–623.05 and KS–623.06, respectively).

During a telephone conference on January 15, 2003, Kansas notified us that it had made the editorial changes required by our letter dated October 31, 2002, and e-mail dated November 6, 2002 (Administrative Record No. KS–623.07).

After further review of the amendment, we realized that we had not announced receipt of Kansas' proposed regulation at K.A.R. 47–16–12 in the proposed rule published on September 23, 2002. This proposed regulation concerns AML agency procedures for reclamation projects receiving less than 50 percent government funding. Therefore, we reopened the comment period in the January 16, 2003, **Federal Register** (68 FR 2265). The public comment period ended on January 31, 2003. We did not receive any comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15, 732.17, 884.14, and 884.15. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

A. Adoptions by Reference of 30 CFR Part 700 to End

1. Updated Adoptions by Reference

Kansas updated its adoptions by reference of applicable sections of 30 CFR part 700 to End from those in effect as of July 1, 1995, to those in effect as of July 1, 2001. Kansas also revised terms and cross-references to the Federal regulations, as necessary. The Kansas regulations that were updated, along with the applicable sections of the Federal regulations, are shown in the table below.

Kansas administrative regulations (K.A.R.)	Topic	Federal regulations adopted by reference (30 CFR)
47–2–75	Definitions	700.5, 701.5, and 705.5.
47–3–2	Application for mining permit	Part 777.
47–3–42	Application for mining permit	Parts 773, 778, 779, 780, 785, and 701.11(e).
47–5–5a	Civil penalties	Parts 845 and 846.
47–6–3	Permit renewals	774.15.
47–6–4	Permit transfers, assignments, and sales	774.17.
47–6–6	Permit conditions	773.17.
47–6–8	Termination of jurisdiction	700.11.
47–6–9	Exemption for coal extraction incident to government-financed highway or other construction.	Part 707.
47–6–10	Exemption for coal extraction incidental to the extraction of other minerals.	Part 702.
47–7–2	Coal exploration	Part 772.
47–8–9	Bonding procedures	Part 800.
47–9–1	Permanent program performance standards	Parts 810, 815, 816, 817, 819, 823, 827, and 828.
47–9–4	Interim performance standards	Parts 710, 715, and 716.7.
47–10–1	Underground mining permit applications	Parts 783 and 784.
47–11–8	Small operator assistance program	Part 795.
47–12–4	Lands unsuitable for surface mining	Parts 761, 762, and 764.
47–13–4	Training and certification of blasters	Part 850.
47–14–7	Employee financial interest	Part 705.
47–15–1a	Inspection and enforcement	Parts 840, 842, and 843.

We find that Kansas' revised regulations are no less effective than the counterpart Federal regulations, and we are approving the adoptions by reference.

2. *New Adoptions by Reference.*

a. *Alternate Enforcement.*

At K.A.R. 47–5–17(a), Kansas adopted by reference 30 CFR 847.2(a), (b), and (d); 847.11; and 847.16, as in effect on July 1, 2001. At K.A.R. 47–5–17(b), Kansas replaced Federal terms and cross-references with State terms and cross-references, as needed.

We find that Kansas' new regulation at K.A.R. 47–5–17 is no less effective than the counterpart Federal regulations at 30 CFR 847.2, 847.11, and 847.16, concerning alternative enforcement. Therefore, we are approving this adoption by reference.

b. *Post-Permit Issuance Requirements.*

At K.A.R. 47–6–11(a), Kansas adopted by reference 30 CFR 774.11 and 774.12, as in effect on July 1, 2001. At K.A.R. 47–6–11(b), Kansas replaced Federal terms and cross-references with State terms and cross-references, as needed.

We find that Kansas' new regulation at K.A.R. 47–6–11 is no less effective than the counterpart Federal regulations at 30 CFR 774.11 and 774.12, concerning post-permit issuance requirements and post-permit issuance information requirements, respectively. Therefore, we are approving this adoption by reference.

B. Substantive Revisions to Kansas' Regulations.

1. K.A.R. 47–6–1 Permit review.

Kansas proposed to designate the existing paragraph as paragraph (a) and to add new paragraphs (b) through (f) to read as follows:

(b) Permits with variances granted in accordance with K.A.R. 47–3–42(a)(41), variances for delay in contemporaneous reclamation requirement in combined surface and underground mining activities, shall be reviewed no later than 3 years from the date of issuance.

(c) Permits containing experimental practices issued in accordance with K.A.R. 47–3–42(a)(39) shall be reviewed as set forth in the permit or at least every 2½ years from the date of issuance as required by the regulatory authority, in accordance with K.A.R. 47–3–42(a)(39), adopting by reference 30 CFR 785.13(g).

(d) After the review required by this section, or at any time, the Kansas department of health and environment may, by order, require reasonable revision of a permit in accordance with K.A.R. 47–6–2 to ensure compliance with the state act and the regulatory program.

(e) Any order of the Kansas department of health and environment requiring revision of a permit shall be based upon written findings and shall be subject to the provisions of administrative and judicial review in K.S.A. 49–407(d), 49–416a, 49–422a, and article 4 of

chapter 47 of the Kansas administrative regulations. Copies of the order shall be sent to the permittee.

(f) Permits may be suspended or revoked in accordance with articles 5 and 15 of chapter 47 of the Kansas administrative regulations.

We find that Kansas' new regulations at K.A.R. 47–6–1(b), (c), (d), (e), and (f) are substantively the same as the counterpart Federal regulations at 30 CFR 774.10(a)(2), (a)(3), (b), (c), and (d), respectively. Therefore, we are approving them.

2. K.A.R. 47–16–12 AML Agency Procedures for Reclamation Projects Receiving Less Than 50 Percent Government Funding

Kansas added K.A.R. 47–16–12 to its regulations to provide procedures for certain eligible abandoned mine land reclamation projects approved under Title IV of SMCRA. These projects must receive government funding that is less than 50 percent of the project cost, and any coal removal associated with the project must be incidental to it. As shown below, the procedures include specific consultations and concurrences with the Title V regulatory authority for each project, documentation of the consultations and concurrences, special requirements for each project, and a contractor limitation on coal extraction.

AML agency procedures for reclamation projects receiving less than 50 percent government funding. This section only applies if the level of funding for the construction will be less than 50 percent of the total cost because of planned coal extraction.

(a) Consultation with the active coal mining portion of the regulatory authority. In consultation with the active mining portion of the regulatory authority, the surface mining section must make the following determinations:

(1) They must determine the likelihood of the coal being mined under an active coal mining permit. This determination must take into account available information such as:

(i) Coal reserves from existing mine maps or other sources;

(ii) Existing environmental conditions;

(iii) All prior mining activity on or adjacent to the site;

(iv) Current and historic coal production in the area; and

(v) Any known or anticipated interest in mining the site.

(2) They must determine the likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

(3) They must determine the likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

(b) Concurrence with the active mining portion of the regulatory authority. If, after consulting with the active mining portion of the regulatory authority, it has been decided to proceed with the reclamation project, then the abandoned mine land and active mining portions of the regulatory authority must concur in the following determinations:

(1) They must concur in a determination of the limits on any coal refuse, coal waste, or other coal deposits which can be extracted under K.A.R. 47–6–9.

(2) They must concur in the delineation of the boundaries of the AML project.

(c) Documentation. The surface mining section must include in the AML case file:

(1) The determinations made under paragraphs (a) and (b) of this section;

(2) The information taken into account in making the determinations; and

(3) The names of the parties making the determinations.

(d) Special requirements. For each project, the surface mining section must:

(1) Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, hydrologic balance, and other AML hazards associated with the project;

(2) Ensure that the reclamation project is conducted in accordance with the provisions of K.A.R 47–16–1 *et seq.*;

(3) Develop specific-site reclamation requirements, including performance bonds when appropriate in accordance with state procedures; and

(4) Require the contractor conducting the reclamation to provide, prior to the time reclamation begins, applicable documents that clearly authorize the extraction of coal and payment of royalties.

(e) Limitation. If the reclamation contractor extracts coal beyond the limits of the incidental coal specified in paragraph (b)(1) of this section, the contractor must obtain a permit under 49–401 *et seq.* and K.A.R. 47–1–1 *et seq.* for such coal.

We find that K.A.R. 47–16–12 contains substantively the same requirements as the counterpart Federal regulation at 30 CFR 874.17. Therefore, we are approving it.

C. Minor Revisions to Kansas' Regulations.

1. K.A.R. 47–2–75 Definitions; Adoption by Reference.

K.A.R. 47–2–75(a) adopts by reference the definitions at 30 CFR 700.5, with exceptions. The exceptions include entire definitions, portions of definitions, and the meaning of terms in specific cases. At paragraph (a)(4), Kansas revised its previously approved exception for the definition of "anthracite" by adding the address of the Federal Register Library in Washington, DC.

We find that Kansas' addition of the address is consistent with the Federal definition language, and we are approving it.

2. K.A.R. 47–4–14a(c) Administrative Hearing Procedure—Rules of Procedure.

In paragraph (c)(2), Kansas proposed to update the address of the administrative appeals section of the Kansas Department of Health and Environment.

We find that this revision will not make Kansas' regulations at K.A.R. 47–4–14a(c) less effective than the Federal regulations at 43 CFR 4.1104 through 4.1116, concerning general rules relating to procedure and practice.

3. Updated State Citation References and Cross-references to Federal Citations.

Kansas updated State citation references and cross-references to the Federal citations in the following sections of its regulations: K.A.R. 47–6–2, permit revision; K.A.R. 47–16–9, contractor responsibility; and K.A.R. 47–16–10, exclusion of certain noncoal reclamation sites.

Because these changes are minor, we find that they will not make Kansas' regulations less effective than the corresponding Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On August 5, 2002, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Kansas program (Administrative Record No. KS–623.1). The U.S. Fish and Wildlife Service responded on August 15, 2002, that it had reviewed the amendment and had no comments to offer (Administrative Record No. KS–623.02).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the changes that Kansas proposed to make in this amendment revised air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On August 5, 2002, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. KS–623.01). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 5, 2002, we requested comments on Kansas' amendment (Administrative Record No. KS–623.01). The SHPO responded on August 28, 2002, that it did not foresee any negative effects from the proposed amendment (Administrative Record No. KS–623.03).

V. OSM's Decision

Based on the above findings, we approve the amendment Kansas sent us on July 24, 2002, and as revised on January 15, 2003.

We approve the regulations proposed by Kansas with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 916, which codify decisions concerning the Kansas program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Section 405(d) of SMCRA requires that the State have a program that is in compliance with the procedures, guidelines, and requirements established under the Act. Making this final rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is proposing valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E of the preamble to that rule. *See* 64 FR 70766, 70822–27, December 17, 1999. The provisions in the rule based on other counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met. These standards are also not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and plan amendments because each plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan amendments submitted by a State or Tribe are based solely on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR part 884 of the Federal regulations.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA. Section 405(d) of SMCRA requires State abandoned mine reclamation programs to be in compliance with the procedures, guidelines, and requirements established under SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Kansas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Kansas program has no effect on Federally recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C). Also agency decisions on proposed State and Tribal abandoned mine land reclamation plans and plan amendments are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that

require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 7, 2003.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 916 is amended as set forth below:

PART 916—KANSAS

1. The authority citation for part 916 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 916.12 is amended by revising the section heading to read as follows:

§ 916.12 State regulatory program and proposed program amendment provisions not approved.

3. Section 916.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 916.15 Approval of Kansas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
July 24, 2002	March 25, 2003	K.A.R. 47–2–75; 47–3–2, 42; 47–4–14a(c)(2);47–5–5a, 17; 47–6–1, 2(d)(2), 3, 4, 6, 8, 9, 10, 11; 47–7–2; 47–8–9; 47–9–1, 4; 47–10–1; 47–11–8; 47–12–4; 47–13–4; 47–14–7; 47–15–1a.

4. Section 916.25 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 916.25 Approval of Kansas abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
July 24, 2002	March 25, 2003	K.A.R. 47–16–9(a), 47–16–10(b), and 47–16–12.

[FR Doc. 03–7024 Filed 3–24–03; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Western Alaska 02–001]

RIN 1625–AA00 (Formerly 2115–AA97)

Security Zone; Liquefied Natural Gas Tankers, Cook Inlet, AK

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard adopts, as final, the interim rule published in July 2002 that established security zones for Liquefied Natural Gas (LNG) tankers in Cook Inlet, AK, within the Western Alaska Marine Inspection Zone and Captain of the Port Zone. This final rule includes an effective information collection requirement calling for vessel and crew information from the owners or operators of commercial fishing vessels desiring to fish within the security zone.

DATES: On September 4, 2002, OMB approved the collection of information required by 33 CFR 165.1709(b)(1)(ii) as published on July 1, 2002. This final rule is effective April 24, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (COTP Western Alaska 02–001) and are available for inspection or copying at Coast Guard Marine Safety Office Anchorage, AK between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mark McManus, USCG Marine Safety Detachment Kenai, at (907) 283–3292 or Lieutenant Commander Chris Woodley, USCG Marine Safety Office Anchorage, at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 1, 2002 we published an interim rule with requests for comments entitled "Security Zone, Liquefied Natural Gas Tankers, Cook Inlet, AK" in the **Federal Register** (67 FR 44057). We received no comments. No public hearing was requested, and none was held.

Background and Purpose

In its July 2002 interim rule, the Coast Guard established 1000-yard security zones around LNG tankers to safeguard the tankers, Nikiski marine terminals, the community of Nikiski, and the maritime community from sabotage or subversive acts and incidents of a similar nature. Paragraph 33 CFR 165.1709(b)(1)(ii) of that interim rule was not made effective because the Office of Management and Budget had not yet approved the collection of information called for by that paragraph. On September 4, 2002, OMB approved the collection of information. We are therefore adopting the interim rule as final and making paragraph 33 CFR 165.1709(b)(1)(ii) effective.

You can find more detailed background information in the preamble of the interim rule (67 FR 44057) under **SUPPLEMENTARY INFORMATION.**

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12886, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through the waters of Cook Inlet and dock at other Nikiski marine terminals.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the vicinity of the Phillips Petroleum LNG Pier during the time this zone is activated; and the owners or operators of fishing vessels operating their nets in the vicinity of the Phillips Petroleum LNG Pier during the months of July through August.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons. Marine traffic will still be able to transit through Cook Inlet during the zones' activation. Additionally, vessels with cargo to load or unload from other Nikiski marine terminals in the vicinity of the zone will not be precluded from mooring at or getting underway from the terminals. The owners of fishing vessels that typically fish in the vicinity of the LNG pier during the summer months will not be prohibited from operating if they notify and provide information to the Coast Guard Marine Safety Detachment in Kenai before fishing in the security zone. The Coast Guard will collect information from them that is essential to keeping the pier secure from sabotage or subversive activities.

Collection of Information

The Captain of the Port, Western Alaska requires information on fishing vessel owners and operators, and their vessels and crew, desiring to fish in the security zone around the Phillips Petroleum LNG Pier. This information is required to ensure port and vessel safety and security, to ensure uninterrupted fishing industry openings, to control vessel traffic, develop contingency plans, and enforce regulations. This collection of information is controlled by the Office of Management and Budget (OMB) under OMB control no. 1625–0043 (Formerly 2115–0540).

Recently, security zones were established for LNG tankers in Cook Inlet, AK through an interim rule published in the **Federal Register** on July 1, 2002 (67 FR 44057). A copy is available in the docket [COTP Western Alaska 02–001] under **ADDRESSES** or electronically through a Web site at *http://www.archives.gov/federal_register/.*

It became effective on July 6, 2002, with the exception of one paragraph, 33 CFR 165.1709(b)(1)(ii), which contains collection of information requirements. This rule modified an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

As required by 44 U.S.C. 3507(d), we submitted a copy of the interim rule (which we have adopted as the final rule without change) to the Office of Management and Budget (OMB) for its review of the collection of information. On September 4, 2002, after reviewing the rule and the overall collection of information burden under OMB Control Number 1625–0043 (Formerly 2115–0540), OMB approved the collection of information required under this rule. The section number is 33 CFR 165.1709, and the corresponding approval number from OMB is OMB Control Number 1625–0043, which expires on September 30, 2005.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the

effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a security zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

Accordingly, the interim rule amending 33 CFR part 165 that was published at 67 FR 44059 on July 1, 2002, is adopted as a final rule without change.

Dated: February 26, 2003.

H. Mark Hamilton,

Commander, Coast Guard, Acting Captain of the Port, Western Alaska.

[FR Doc. 03–6981 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Tampa 03–006]

RIN 1625–AA00

Security Zones; Tampa Bay, Port of Tampa, Port of Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa, Big Bend, Weedon Island, and Crystal River, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing security zones in Tampa Bay, Port of Tampa, Port of Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa, Big Bend, Weedon Island, and Crystal River, Florida. These zones are needed to ensure public safety and security in the greater Tampa Bay area. Entry into these zones would be prohibited unless authorized by the Captain of the Port, or their designated representative.

DATES: This rule is effective from March 7, 2003 through June 30, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP Tampa 03–006] and are available for inspection or copying at Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR David McClellan, Coast Guard Marine Safety Office Tampa, at (813) 228–2189 extension 102.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM and delaying the effective date of this rule would be contrary to the public interest since immediate action is needed to continue to protect the public, ports and waterways of the United States. The Coast Guard will issue a broadcast notice to mariners and place Coast Guard vessels in the vicinity of these zones to advise mariners of the restriction.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction. The Coast Guard will publish a NPRM proposing a permanent rule for security zones in these same locations and requesting public comment.

Background and Purpose

The terrorist attacks of September 11, 2001, killed thousands of people and heightened the need for development of various security measures throughout the seaports of the United States, particularly those vessels and facilities which are frequented by foreign nationals and are of interest to national security. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. The Captain of the Port of Tampa has determined that these security zones are necessary to protect the public, ports, and waterways of the United States from potential subversive acts.

These security zones are similar to the existing temporary security zones established for vessels, waterfront facilities and bridges that will soon expire. The following seven existing temporary final rules were published in the **Federal Register**:

Security Zone for Crystal River, FL (66 FR 62940, December 4, 2001). This temporary rule created a fixed security zone around the Florida Power Crystal River nuclear power plant located at the end of the Florida Power Corporation Channel and the Demory Gap Channel, Crystal River, Florida.

Security Zone for Sunshine Skyway Bridge, Tampa, FL (66 FR 65838, December 21, 2001). This temporary rule created temporary fixed security zones 100 feet around all bridge supports and rocky outcroppings at the base of the supports for the Sunshine Skyway Bridge in Tampa Bay.

Security Zone Tampa, FL (67 FR 8196, February 22, 2002). This temporary rule created security zones 100 yards around moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade "A" and "B" flammable liquid cargo.

Security Zone Cruise Ships Tampa, FL (67 FR 10618, March 8, 2002). This temporary rule created security zones 100 yards around cruise ships moored in the Port of Tampa.

Security Zone St. Petersburg Harbor, FL (67 FR 36098, May 23, 2002). This temporary rule established fixed security zones 100 feet around seawalls, moorings, and vessels at Coast Guard and waterfront facilities and moorings in St. Petersburg Harbor, FL.

Security Zone, Port of Tampa, Tampa, FL (67 FR 40861; June 14, 2002). This temporary zone created a security zone 50 yards from the shore or seawall and encompassing all piers around facilities in the following locations: Port Sutton, East Bay, Hooker's Point, Sparkman Channel, Ybor Channel and portions of Garrison Channel. Also, Port Sutton Channel is closed.

Security Zones Tampa Bay and Crystal River, FL (67 FR 42483, June 24, 2002). This temporary rule established 10 security zones in Tampa Bay, Tampa, Florida, and Crystal River, Florida until October 31, 2002.

On October 30, 2002, the Captain of the Port issued a temporary final rule [COTP TAMPA–02–131] continuing security zones in these areas until 11:59 p.m. February 28, 2003. And on January 10, 2003, the COTP published a notice of proposed rulemaking for permanent security zones in these and other areas (68 FR 7093). The comment period on that proposed rule is open until April 14, 2003.

Discussion of Rule

This temporary rule establishes security zones in areas covered by past temporary rules to ensure consistent security of facilities, vessels, and infrastructure throughout the Tampa Captain of the Port Zone. There are changes, however, from previous security zones:

The coordinates of the security zone for Crystal River, FL have been changed because the original coordinates did not accurately match the intended security zone.

The scope of the security zone around the Sunshine Skyway Bridge, Tampa, FL, has been reduced to allow for fishing in portions of the zone. The zone extends from pier 88 to 135 and out 100 feet from bridge supports or rocky outcroppings at the base of the bridge.

The security zones for moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade "A" and "B" flammable liquid cargo requires any vessel transiting within 200 yards of moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade "A" and "B" cargo must proceed through the area at the minimum speed necessary to maintain safe navigation. These security zones exclude entry within 100 yards of tank vessels carrying the specified cargoes moored in Port Tampa.

The security zones around moored cruise ships in Tampa, FL have been expanded to include moored cruise ships in Port Manatee and Port Saint Petersburg. Additionally, the Coast Guard intends to change this security zone by adding that any vessel transiting within 200 yards of a moored cruise ship must proceed through the area at the minimum speed necessary to maintain safe navigation. These security zones exclude entry within 100 yards of moored cruise ships in Port Tampa, located in Ybor Channel, Ybor Turning Basin, and East Bay, ships in Port Manatee, or Saint Petersburg Harbor (Bayboro Harbor).

The security zone in St. Petersburg Harbor, FL has been extended from 100 feet from seawalls, moorings, and moored vessels to 50 yards to be the same as other security zones in the bay protecting similar infrastructure. The security zone has also been expanded on its northern boundary to the west to include Port of Saint Petersburg Cruise Ship Terminal. The coordinates of the security zone for St. Petersburg Harbor, FL have also been corrected because the original coordinates did not accurately match the intended security zone. This zone covers north and south Coast Guard moorings and facilities and Saint Peterburg Cruise Ship Terminals.

The 50 yard zones around piers and facilities in Port Tampa, Port Sutton, East Bay, Hooker's Point, Hillsborough Bay Cut "C", Sparkman Channel, Ybor Turning Basin, and Ybor Channel have been extended to include northern reaches of Ybor Channel and Cruise Terminals 3 and 6. The coordinates of the security zone have also been changed because the original coordinates did not accurately match the intended security zone.

The security zone around moving cruise ships, Tampa, FL, has been expanded to 200 yards, allowing vessels to transit the outer 100 yards of the zone but requiring transiting vessels to proceed at minimum speed to maintain safe navigation. This change matches safety zone requirements for moored cruise ships. These zones will be in place from the "T" Sea Buoy to berth on an inbound transit and from berth to the "T" Sea Buoy on outbound transits.

A new security zone has been created restricting entrance to the immediate area surrounding the LPG facility and the pier at Rattlesnake, Tampa, FL. The security zone commences at position 27°53.32′ N, 082°32.05′ W and extends north to 27°53.36′ N, 082°32.05′ W encompassing all waters east and south of this line in Rattlesnake, Tampa, Florida.

A new security zone has been created restricting entrance to the channel servicing the petroleum facilities and piers at Old Port Tampa, FL. The security zone is bounded by the following points: 27°51.62′ N, 082°33.14′ W east to 27°51.71′ N, 082°32.5′ W north to 27°51.76′ N, 082°32.5′ W west to 27°51.73′ N, 082°33.16′ W and south to 27°51.62′ N, 082°33.14′ W closing off the Old Port Tampa channel.

A new security zone has been created restricting access to the Big Bend Power Facility. The security zone extends 50 yards from the shore or seawall and from all piers around facilities. The security zone is bounded by the following points: 27°47.85′ N, 082°25.02′ W then east and south along the shore and pile to 27°47.63′ N, 082°24.70′ W then north along the shore to 27°48.17′ N, 082°24.70′ W then north and west along a straight line to 27°48.12′ N, 082°24.88′ W, then south along the shore and pile to 27°47.85′ N, 082°25.02′ W closing off the entrance to the Big Bend Power Facility.

A new security zone has been created restricting access to the Power Facility at Weedon Island. The security zone extends 50 yards from the shore or seawall and from all piers around facilities. The security zone is bounded by the following points: 27°51.52′ N, 082°35.82′ W then north and east along the shore to 27°51.54′ N, 082°35.78′ W then north to 27°51:68′ N, 082°35.78′ W then north to 27°51.75′ N, 082°35.78′ W closing off entrance to the canal then north to 27°51.89′ N, 082°35.82′ W then east along the shore to 27°51.89′ N,

082°36.10′ W then east to 27°51.89′ N, 082°36.14′ W closing off entrance to the canal.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary because there is ample room for vessels to navigate around the security zones and the Captain of the Port may allow vessels to enter the zones, on a case-by-case basis with the express permission of the Captain of the Port of Tampa or their designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities because the majority of the zones are limited in size and leave ample room for vessels to navigate around the zones. The zones will not significantly impact commuter and passenger vessel traffic patterns, and vessels may be allowed to enter the zones, on a case-by-case basis, with the express permission of the Captain of the Port of Tampa or their designated representative.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically effect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would effect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately effect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Effect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 is revised to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

2. Add § 165.T07–006 to read as follows:

§ 165.T07–006 Security Zones; Tampa Bay, Port of Tampa, Port of Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa, Big Bend, Weedon Island, and Crystal River, Florida.

(a) *Location.* The following areas, denoted by coordinates fixed using the North American Datum of 1983 (World Geodetic System 1984), are security zones:

(1) *Rattlesnake, Tampa, FL.* All waters, from surface to bottom, in Old Tampa Bay east and south of a line commencing at position 27°53.32′ N, 08°32.05′ W north to 27°53.36′ N, 082°32.05′ W.

(2) *Old Port Tampa, Tampa, FL.* All waters, from surface to bottom, in Old Tampa Bay encompassed by a line connecting the following points: 27°51.62′ N, 082°33.14′ W east to 27°51.71′ N, 082°32.5′ W north to 27°51.76′ N, 082°32.5′ W west to 27°51.73′ N, 082°33.16′ W and south to 27°51.62′ N, 082°33.14′ W, closing off the Old Port Tampa channel.

(3) *Sunshine Skyway Bridge, Tampa, FL.* All waters in Tampa Bay, from surface to bottom, 100-foot around all bridge supports, dolphins and rocky outcroppings bounded on the northern side of the bridge at pier 135, (24 N), 27°37.85′ N, 082°39.78′ W, running south under the bridge to pier 88, (24 S) 27°36.59′ N, 082°38.86′ W. Visual identification of the zone can be defined as to the areas to the north and south where the bridge structure begins a distinct vertical rise.

(4) *Vessels Carrying Hazardous Cargo, Tampa, FL.* All waters, from surface to bottom, 200 yards around vessels moored in Tampa Bay carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade "A" and "B" flammable liquid cargo. Any vessel transiting within the outer 100 yards of the zone for moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade "A" and "B" cargo may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100-yard portion of the security zone closest to the vessel.

(5) *Piers, Seawalls, and Facilities, Port of Tampa, Port Sutton and East Bay.* All waters, from surface to bottom, extending 50 yards from the shore, seawall and piers around facilities in Port Sutton and East Bay within the Port of Tampa encompassed by a line connecting the following points: 27°54.15′ N, 082°26.11′ W, east northeast to 27°54.19′ N, 082°26.00′ W, then northeast to 27°54.37′ N, 082°25.72′ W, then northerly to 27°54.48′ N, 082°25.70′ W, then northeast and closing off waters east of a line between 27°54.52′ N, 082°25.57′ W, and 27°54.57′ N, 082°25.53′ W then northeasterly and terminating at point 27°55.27′ N, 082°25.17′ W, closing off all of Port Sutton Channel.

(6) *Piers, Seawalls, and Facilities, Port of Tampa, East Bay and the eastern side of Hooker's Point.* All waters, from surface to bottom, extending 50 yards from the shore, seawall and piers around facilities on East Bay and on the East Bay Channel within the Port of Tampa encompassed by a line connecting the following points: 27°56.05′ N, 082°25.95′ W, southwesterly to 27°56.00′ N, 082°26.07′ W, then southerly to 27°55.83′ N, 082°26.07′ W, then southeasterly to 27°55.55′ N, 082°25.75′ W, then south to 27°54.75′ N, 082°25.75′ W, then southwesterly and terminating at point 27°54.57′ N, 082°25.86′ W.

(7) *Piers, Seawalls, and Facilities, Port of Tampa, on the western side of Hooker's Point.* All waters, from surface to bottom, extending 50 yards from the shore, seawall and piers around facilities on Hillsborough Bay Cut "D" Channel, Sparkman Channel, Ybor Turning Basin, and Ybor Channel within the Port of Tampa encompassed by a line connecting the following points: 27°54.74′ N, 082°26.47′ W, northwest to 27°55.25′ N, 082°26.73′ W, then north-northwest to 27°55.60′ N, 082°26.80′ W, then north-northeast to 27°56.00′ N, 082°26.75′ W, then northeast 27°56.58′ N, 082°26.53′ W, and north to 27°57.29′ N, 082°26.51′ W, west to 27°57.29′ N, 082°26.61′ W, then southerly to 27°56.65′ N, 082°26.63′ W, southwesterly to 27°56.58′ N, 082°26.69′ W, then southwesterly and terminating at 27°56.53′ N, 082°26.90′ W.

(8) *Piers, Seawalls, and Facilities, Port of Manatee.* All waters, from surface to bottom, within the Port of Manatee extending 50 yards from the shore, seawall and piers around facilities. This security zone encompasses all piers and seawalls of the cruise terminal berths 9 and 10 in Port Manatee, Florida beginning at 27°38.00′ N, 082°33.81′ W continuing east to 27°38.00′ N, 082°33.53′ W.

(9) *Moving Cruise Ships in the Port of Tampa, Port of Saint Petersburg, and Port Manatee, Florida.* All waters, from surface to bottom, extending 200 yards around all cruise ships entering or departing Port of Tampa, Port of Saint Petersburg, or Port Manatee, Florida. These temporary security zones are activated on the inbound transit when a cruise ship passes the Tampa Lighted Whistle Buoy "T", located at 27°35.35′ N, 083°00.71′ W and terminate when the vessel is moored at a cruise ship terminal. The security zones are activated on the outbound transit when a cruise ship gets underway from a terminal and terminates when the cruise ship passes the Tampa Lighted Whistle Buoy "T", located at 27°35.35′ N, 083°00.71′ W. Any vessel transiting within the outer 100 yards of the zone for a cruise ship may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100-yard portion of the security zone closest to the vessel.

(10) *Moored Cruise Ships in the Port of Tampa, Port of Saint Petersburg, and Port Manatee, Florida.* All waters, from surface to bottom, extending 200 yards around moored cruise ships in the Ports of Tampa, Saint Petersburg, or Port Manatee, Florida. Any vessel transiting within the outer 100 yards of the zone of moored cruise ships may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100-yard portion of the security zone closest to the vessel.

(11) *Saint Petersburg Harbor, FL.* All waters, from surface to bottom, extending 50 yards from the seawall and around all moorings and vessels in Saint Petersburg Harbor (Bayboro Harbor), commencing on the north side of the channel at dayboard "10" in approximate position 27°45.56′ N, 082°37.55′ W, and westward along the seawall to the end of the cruise terminal in approximate position 27°45.72′ N, 082°37.97′ W. The zone will also include the Coast Guard south moorings in Saint Petersburg Harbor. The zone will extend 50 yards around the piers commencing from approximate position 27°45.51′ N, 082°37.99′ W to 27°45.52′ N, 082°37.57′ W. The southern boundary of the zone is shoreward of a

line between the entrance to Salt Creek easterly to Green Daybeacon 11 (LLN 2500).

(12) *Crystal River Nuclear Power Plant.* All waters, from surface to bottom, around the Florida Power Crystal River nuclear power plant located at the end of the Florida Power Corporation Channel, Crystal River, Florida, encompassed by a line connecting the following points: 28°56.87′ N, 082°45.17′ W (Northwest corner), 28°57.37′ N, 082°41.92′ W (Northeast corner), 28°56.81′ N, 082°45.17′ W (Southwest corner), and 28°57.32′ N, 082°41.92′ W (Southeast corner).

(13) *Crystal River Demory Gap Channel.* All waters, from surface to bottom, in the Demory Gap Channel in Crystal River, Florida, encompassed by a line connecting the following points: 28°57.61′ N, 082°43.42′ W (Northwest corner), 28°57.53′ N, 082°41.88′ W (Northeast corner), 28°57.60′ N, 082°43.42′ W (Southwest corner), 28°57.51′ N, 082°41.88′ W (Southeast corner).

(14) *Big Bend, Tampa Bay, Florida.* All waters of Tampa Bay, from surface to bottom, extending 50 yards from the shore, seawalls and piers around the Big Bend Power Facility, encompassed by a line connecting the following points: 27°47.85′ N, 082°25.02′ W then east and south along the shore and pile to 27°47.63′ N, 082°24.70′ W then north along the shore to 27°48.17′ N, 082°24.70′ W then north and west along a straight line to 27°48.12′ N, 082°24.88′ W then south along the shore and pile to 27°47.85′ N, 082°25.02′ W, closing off entrance to the Big Bend Power Facility.

(15) *Weedon Island, Tampa Bay, Florida.* All waters of Tampa Bay, from surface to bottom, extending 50 yards from the shore, seawall and piers around the Power Facility at Weedon Island encompassed by a line connecting the following points: 27°51.52′ N, 082°35.82′ W then north and east along the shore to 27°51.54′ N, 082°35.78′ W then north to 27°51.68′ N, 082°35.78′ W then north to 27°51.75′ N, 082°35.78′ W closing off entrance to the canal then north to 27°51.89′ N, 082°35.82′ W then east along the shore to 27°51.89′ N, 082°36.10′ W then east to 27°51.89′ N, 082°36.14′ W closing off entrance to the canal.

(b) *Regulations.* (1) Entry into or remaining within these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Tampa, Florida or their designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 813–228–2189/91 or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or their designated representative.

(c) *Definition.* As used in this section, "cruise ship" means a vessel required to comply with Title 33 Code of Federal Regulations Part 120.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: March 7, 2003.

James M. Farley,

Captain, Coast Guard, Captain of The Port, Tampa, Florida.

[FR Doc. 03–6982 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1, 2, 3, 4, 5, 102, 104, and 150

[Docket No.: 2003–P–011]

Correspondence With the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule; Nomenclature change.

SUMMARY: The United States Patent and Trademark Office (Office) is revising the rules of practice to change the address for certain correspondence with the Office. The Office is preparing to move to Alexandria, Virginia. The Office is changing certain correspondence addresses so that all correspondence with the Office will now be routed through a United States Postal Service (USPS) facility that is more conveniently located to the Office. In addition, the Office is also changing the titles of Office officials as set forth in the rules of practice for consistency with the titles provided in the American Inventors Protection Act of 1999.

EFFECTIVE DATE: The changes in this final rule are effective May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Darnell M. Jayne, Legal Advisor, Office of Patent Legal Administration, by telephone at (703) 308–6906, or by facsimile at (703) 746–3580.

SUPPLEMENTARY INFORMATION: The Office changed the address for trademark-related correspondence in December of 1996. *See Communications with the Patent and Trademark Office,* 61 FR 56439 (Nov. 1, 1996), 1192 *Off. Gaz. Pat. Office* 95 (Nov. 26, 1996) (final rule). With this change, trademark-related correspondence with the Office was routed through a USPS facility in Virginia, and most other correspondence with the Office was routed through a USPS facility in the District of Columbia. The Office is currently in the process of moving its principal office from Arlington, Virginia to Alexandria, Virginia. Since a USPS facility in Virginia is more conveniently located to the site of the Office's future principal office in Alexandria, Virginia, the Office is changing its correspondence addresses (other than for trademark-related correspondence) so that all correspondence with the Office will now be routed through a USPS facility in Virginia. In addition, selection of a USPS facility in Virginia as the new correspondence address is appropriate because the Office maintains and will continue to maintain its principal office in Northern Virginia.

General Mailing Addresses: The Office's three separate general mailing addresses are now as follows: (1) For correspondence processed by the organizations reporting to the Commissioner for Patents: Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313–1450; (2) For correspondence processed by the organizations reporting to the Commissioner for Trademarks or the Trademark Trial and Appeal Board: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513; and (3) For other correspondence (including patent and trademark documents sent to the Assignment Division for recordation and requests for certified or uncertified copies of patent or trademark documents): Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

The above addresses are the Office's three general mailing addresses. The Office has separate mailing addresses for certain correspondence: *e.g.*, (1) Certain court-related correspondence (*e.g.*, a summons and complaint) being delivered to the Office via the USPS must be addressed: General Counsel, United States Patent and Trademark Office, PO Box 15667, Arlington, Virginia 22215 (§ 104.2); (2) correspondence directed to the counsel for the Office of Enrollment and Discipline (OED) Director relating to disciplinary proceedings pending before an Administrative Law Judge or the Director must be addressed: Office of the Solicitor, PO Box 16116, Arlington, Virginia 22215; (3) payments of maintenance fees in patents being

delivered to the Office via the USPS should be addressed: United States Patent and Trademark Office, PO Box 371611, Pittsburgh, Pennsylvania 15250–1611; and (4) a deposit account replenishment being delivered to the Office via the USPS should be addressed: Director of the United States Patent and Trademark Office, PO Box 70541, Chicago, Illinois 60673. Persons filing correspondence with the Office should check the rules of practice, the *Official Gazette,* or the Office's Internet Web site (*http://www.uspto.gov*) to determine the appropriate mailing address for such correspondence.

The Office appreciates that it will take some period of time before all persons filing correspondence with the Office become accustomed to these address changes. The Office plans to arrange for continued delivery of correspondence addressed to the Office's former Washington, DC 20231 address as a courtesy for a limited period of time. The Office, however, has been experiencing delays and other problems with correspondence routed through the USPS facility at Brentwood. *See Processing of, and Requirements for, the Filing of Duplicate Applications and Papers in Patent Applications in view of USPS Mail Delays,* 1254 *Off. Gaz. Pat. Office* 92 (Jan. 15, 2002). Any correspondence addressed to the Office's former Washington, DC 20231 address that is delivered to the Office will still be subject to the delays and other problems associated with correspondence that is routed through the USPS facility at Brentwood.

In November of 2001, the Office also established a Post Office Box in Arlington, Virginia (PO Box 2327, Arlington, Virginia 22202) for use on an emergency basis, and indicated that it would continue to accept patent-related correspondence at this Arlington, Virginia Post Office Box and treat such correspondence as if it were addressed as set forth in 37 CFR 1.1 for purposes of 37 CFR 1.8 and 1.10 until further notice. *See Termination of the Suspension of the "Express Mail" Service of United States Postal Service for mail addressed to ZIP Codes 202xx through 205xx,* 1254 *Off. Gaz. Pat. Office* 33 (Jan. 1, 2002). The Office is hereby providing notice that persons submitting correspondence to the Office should no longer use this Arlington, Virginia Post Office Box for any correspondence (including sequence listings in electronic format) after May 1, 2003.

In addition, the Office is changing the various special Box designations to corresponding Mail Stop designations (*e.g.*, "Box 4" will now be "Mail Stop 4"). Since the address for certain correspondence includes a Post Office Box number, the continued use of special Box designations in the address might have resulted in confusion between the Post Office Box number and the special Box designation (especially when the special Box designation is a box number).

Finally, the titles "Commissioner of Patents and Trademarks," "Assistant Commissioner for Patents," and "Assistant Commissioner for Trademarks" were changed to "Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office," "Commissioner for Patents," and "Commissioner for Trademarks," respectively, in § 4713 of the American Inventors Protection Act of 1999 (AIPA). *See* Pub. L. 106–113, 113 Stat. 1501, 1501A–575 through 1501A–577 (1999).

This final rule also revises the rules of practice (with the exception of 37 CFR part 10) to reflect the current titles of Office officials as provided for in the AIPA.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, is amended as follows:

Part 1: Part 1 is amended to: (1) Change each reference to "Commissioner" to read "Director"; and (2) change each reference to "Commissioner's" to read "Director's".

Section 1.1 is amended to: (1) Change the address for general correspondence to: Director of the United States Patent and Trademark Office, PO. Box 1450, Alexandria, Virginia 22313–1450 (with Mail Stop designations as appropriate); (2) change the address for patent-related correspondence to: Commissioner for Patents, PO. Box 1450, Alexandria, Virginia 22313–1450; and (3) add paragraph headings.

Section 1.1(a) is also amended to: (1) Place the mailing address for all Office of Public Records correspondence concerning both patents and trademarks (documents to be recorded by Assignment Services Division and requests for certified or uncertified copies of patent or trademark documents) in a new § 1.1(a)(4); and (2) eliminate the reference to the coupon orders as coupon practice was abolished in November of 2000 (*see Changes to Implement Eighteen-Month Publication of Patent Applications,* 65 FR 57023, 57030 (Sept. 20, 2000), 1239 *Off. Gaz. Pat. Office* 63, 69 (Oct. 10, 2000) (final rule)).

Section 1.1(a) is also amended to provide that all correspondence in an application involved in an appeal to the Board of Patent Appeals and Interferences (Board) during the period from when an appeal docketing notice is issued until a decision has been rendered by the Board as well as any request for rehearing of a decision by the Board should be mailed to: Board of Patent Appeals and Interferences, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450. An appeal docketing notice is issued by the Board to notify the applicant that an appeal is ready for docketing at the Board. *See Revised Docketing Procedures for Appeals Arriving at the Board of Patent Appeals and Interferences,* 1260 *Off. Gaz. Pat. Office* 18 (July 2, 2002). Section 1.1(a) is also amended to provide that notices of appeal, appeal briefs, reply briefs, requests for oral hearing, as well as all other correspondence in an application involved in an appeal to the Board not otherwise provided for should be addressed as set out in § 1.1(a)(1)(i) (*i.e.*, Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313–1450). Section 1.1(a) is also amended to include the provisions formerly located in § 1.1(e) concerning patent interference correspondence, namely that except as an administrative patent judge or the Board may otherwise direct, all correspondence relating to patent interferences, or relating to patent applications or patents involved in an interference, should be mailed to: Mail Stop INTERFERENCE, Board of Patent Appeals and Interferences, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

Sections 1.1(f) and 1.1(i) are redesignated as §§ 1.1(e) and 1.19(f), respectively. As discussed above, the provisions of § 1.1(e) are now located in § 1.1(a)(1)(iii). Section 1.1(g) was formerly reserved and § 1.1(h) is now deleted. Section 1.1(h) provided that an applicant should use "Box ITU" as part of the address when an applicant or the applicant's representative submits a statement of use under § 2.88, or a request for extension of time to file a statement of use under § 2.89. With this change, a statement of use and a request for an extension of time to file a statement of use will be considered properly filed if addressed to the general address for trademark documents in compliance with § 1.1(a)(2)(i): Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513. The Office is eliminating Box ITU because the Office's experience has been that the use of that box is not helpful in sorting mail.

Section 1.6(b) is removed and reserved. The USPS no longer maintains

a "pouch" for correspondence addressed to the United States Patent and Trademark Office, and the USPS does not segregate correspondence addressed to the United States Patent and Trademark Office on the basis of the date of its receipt by the USPS.

Section 1.9 is amended to add a paragraph (j) to define Director as used in 37 CFR chapter I, except for 37 CFR part 10, as meaning the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. 37 CFR part 10 currently defines "Director" as meaning the Director of the Office of Enrollment and Discipline. The Office plans to propose changes to part 10 in a separate rule making, and also plans to change the use of "Director" in part 10 for consistency with the remaining provisions of 37 CFR chapter I as part of that rule making (at which time the phrase "except for part 10" will be deleted from § 1.9(j)).

Section 1.15 is removed and reserved as its provisions have been supplanted by the provisions of part 102.

Section 1.25 is amended by adding a paragraph (c), which specifies how a deposit account holder may submit a payment to the Office to replenish the deposit account. A payment to replenish a deposit account may be submitted by making the payment by electronic funds transfer through the Federal Reserve Fedwire System. Deposit account holders who want to use the Federal Reserve Fedwire System must provide the following information to their bank or financial institution: (1) Name of the Bank, which is Treas NYC (Treasury New York City); (2) Bank Routing Code, which is 021030004; (3) United States Patent and Trademark Office account number with the Department of the Treasury, which is 13100001; and (4) the deposit account holder's company name and deposit account number. The deposit account holder should inform his or her bank or financial institution to use due care to ensure that all pertinent account numbers are listed on the transaction because the failure to include the proper deposit account number will delay the processing of the replenishment. A second method of making a payment to replenish a deposit account is by credit card or electronic funds transfer over the Office's Internet Web site (*www.uspto.gov*). Specifically, from the Office's Web site homepage (*www.uspto.gov*), click on the "Online Business" tab, and then click the "Revenue Accounting & Management" tab, and then click the "Maintain USPTO Deposit Accounts" tab. A third method of making a payment to replenish a deposit account is by mailing the payment with the USPS to: Director of the United States Patent and Trademark Office, PO Box 70541, Chicago, Illinois 60673. Finally, a fourth method of making a payment to replenish a deposit account is by mailing the payment with a private delivery service or hand-carrying the payment to: Director of the United States Patent and Trademark Office, Deposit Accounts, One Crystal Park, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

Further information on deposit account replenishment may be obtained from the Office's Internet Web site (*http://www.uspto.gov/web/offices/ac/comp/fin/electron.htm*), or by contacting the Deposit Account Division at 703–305–4631.

Section 1.51(a) is amended to change "Commissioner of Patents and Trademarks" to "Director of the United States Patent and Trademark Office" for consistency with the change in nomenclature.

Sections 1.53(d)(9), 1.417, and 1.434(a) are amended to change their special Box designations to corresponding Mail Stop designations.

Section 1.302(c) is amended to provide that notices of appeal directed to the Director shall be mailed to or served by hand on the General Counsel as provided in § 104.2.

Section 1.434(d)(2) is amended to correct a grammatical error.

Section 1.480(b) is amended to change its special Box designation to a corresponding Mail Stop designation. Section 1.480(b) is also amended to add a reference to PCT Rule 53 (which provides for Demands under the PCT).

Section 1.627(a) is amended to change the reference to § 1.1(e) to a reference to § 1.1(a)(1)(iii) for consistency with the changes to § 1.1.

Section 1.676(d) is amended to change the address to the correspondence address set out in § 1.1(a)(1)(iii).

Section 1.740(a)(13) is amended to change "Commissioner of Patents and Trademarks" to "Director of the United States Patent and Trademark Office" for consistency with the change in nomenclature.

Part 2: Part 2 is amended to change each reference to "Commissioner" to read "Director".

Section 2.123(f)(2) is amended to change "address the package, and forward the same to the Commissioner of Patents and Trademarks' to "promptly forward the package to the address set out in § 1.1(a)(2)(i)".

Section 2.145(b)(3) is amended to provide that notices of appeal directed to the Director shall be mailed to or served by hand on the General Counsel as provided in § 104.2.

Part 3: Part 3 is amended to change each reference to "Commissioner of Patents and Trademarks" or "Commissioner" to read "Director".

Section 3.27 is amended to change the address to: Mail Stop Assignment Recordation Services, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

Part 4: Section 4.3(c) is amended to change the address for complaints concerning invention promoters to: Mail Stop 24, Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313–1450.

Section 4.6 is amended to change the address for complaints concerning registered patent attorneys or agents to: Mail Stop OED, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

Part 5: Part 5 is amended to change each reference to "Commissioner of Patents and Trademarks" or "Commissioner" to read "Commissioner for Patents". Section 4732(a)(10)(B) of the AIPA amended 35 U.S.C. chapter 17 to change "Commissioner" to "Commissioner of Patents" (*sic*) rather than "Director". *See* 113 Stat. at 1501A–582. Therefore, the Office is amending part 5 to change each reference to "Commissioner of Patents and Trademarks" or "Commissioner" to read "Commissioner for Patents" (rather than "Director") for consistency with section 4732(a)(10)(B) of the AIPA.

Section 5.1(a) is amended to change the address to: Commissioner for Patents (Attention Licensing and Review), PO Box 1450, Alexandria, Virginia 22313–1450.

Part 102: Sections 102.1(b), 102.4(a), 102.10(b), 102.23(a), 102.24(a), and 102.29(b) are amended to change the address to: United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450 (with headings as appropriate). Sections 102.1(b), 102.23(a), and 102.24(a) are also amended to indicate that correspondence being delivered by hand should be delivered to Two Crystal Park, 2121 Crystal Drive, Suite 905, Arlington, Virginia.

Part 104: Section 104.1 is amended to define "Director" as meaning the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office for consistency with § 1.9(j).

Part 150: Part 150 is amended to change each reference to "Commissioner" to read "Director'.

Section 150.1 is amended to define "Director" as meaning the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office for consistency with § 1.9(j).

Section 150.6 is amended to change the address to: Mail Stop 4, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

Classification

Administrative Procedure Act: Since this final rule is directed to changing the address for filing certain correspondence with the Office and changes in the titles of Office officials for consistency with the titles as provided in the AIPA, this final rule merely involves rules of agency organization, procedure, or practice within the meaning of 5 U.S.C. 553(b)(A). Accordingly, this final rule may be adopted without prior notice and opportunity for public comment under 5 U.S.C. 553(b) and (c), or thirty-day advance publication under 5 U.S.C. 553(d).

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. *See* 5 U.S.C. 603.

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This rule making does not create any information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

CFR Part 3

Administrative practice and procedure, Inventions and patents, Reporting and record keeping requirements.

CFR Part 4

Administrative practice and procedure, Inventions and patents.

CFR Part 5

Classified information, Foreign relations, Inventions and patents.

CFR Part 102

Administrative practice and procedure, Freedom of information, Privacy, Public information.

CFR Part 104

Administrative practice and procedure, Claims, Courts, Freedom of information, Inventions and patents, Tort claims, Trademarks.

CFR Part 150

Administrative practice and procedure, Authority delegations, Semiconductor chips, Mask works.

For the reasons set forth in the preamble, 37 CFR parts 1, 2, 3, 4, 5, 102, 104, and 150 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. In 37 CFR part 1, except for § 1.23, revise all references to "Commissioner" to read "Director".

3. In 37 CFR part 1, revise all references to "Commissioner's" to read "Director's".

4. Section 1.1 is revised to read as follows:

§ 1.1 Addresses for correspondence with the United States Patent and Trademark Office.

(a) *In general.* Except as provided in paragraphs (a)(3)(i), (a)(3)(ii) and (d)(1) of this section, all correspondence intended for the United States Patent and Trademark Office must be addressed to either "Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450" or to specific areas within the Office as set out in paragraphs (a)(1), (a)(2) and (a)(3)(iii) of this section. When appropriate, correspondence should also be marked for the attention of a particular office or individual.

(1) *Patent correspondence.* (i) *In general.* All correspondence concerning patent matters processed by organizations reporting to the Commissioner for Patents should be addressed to: Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313–1450.

(ii) *Board of Patent Appeals and Interferences: Appeals.* All correspondence in an application involved in an appeal to the Board of Patent Appeals and Interferences during the period beginning when an appeal docketing notice is issued and ending when a decision has been rendered by the Board of Patent Appeals and Interferences, as well as any request for rehearing of a decision by the Board of Patent Appeals and Interferences, should be mailed to: Board of Patent Appeals and Interferences, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450. Notices of appeal, appeal briefs, reply briefs, requests for oral hearing, as well as all other correspondence in an application involved in an appeal to the Board of Patent Appeals and Interferences for which an address is not otherwise specified, should be addressed as set out in paragraph (a)(1)(i) of this section.

(iii) *Board of Patent Appeals and Interferences: Interferences.* Except as an administrative patent judge or the Board may otherwise direct, all correspondence relating to patent interferences, or relating to patent applications or patents involved in an interference, should be mailed to: Mail Stop INTERFERENCE, Board of Patent Appeals and Interferences, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

(2) *Trademark correspondence.*—(i) *In general.* All trademark-related documents filed on paper, except documents sent to the Assignment Services Division for recordation and requests for copies of trademark documents, should be addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513.

(ii) *Electronic applications.* An applicant may transmit an application for trademark registration electronically, but only if the applicant uses the Office's electronic form.

(3) *Office of General Counsel correspondence.*—(i) *Litigation and service.* Correspondence relating to pending litigation or otherwise within the scope of part 104 of this title shall be addressed as provided in § 104.2.

(ii) *Disciplinary proceedings.* Correspondence to counsel for the Director of the Office of Enrollment and Discipline relating to disciplinary proceedings pending before an Administrative Law Judge or the Director shall be mailed to: Office of the Solicitor, PO Box 16116, Arlington, Virginia 22215.

(iii) *Solicitor, in general.* Correspondence to the Office of the Solicitor not otherwise provided for shall be addressed to: Mail Stop 8, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

(iv) *General Counsel.* Correspondence to the Office of the General Counsel not otherwise provided for, including correspondence to the General Counsel relating to disciplinary proceedings, shall be addressed to: General Counsel, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

(v) *Improper correspondence.* Correspondence improperly addressed to a Post Office Box specified in paragraphs (a)(3)(i) and(a)(3)(ii) of this section will not be filed elsewhere in the United States Patent and Trademark Office, and may be returned.

(4) *Office of Public Records correspondence.*—(i) *Assignments.* All patent-related or trademark-related documents to be recorded by Assignment Services Division, except for documents filed together with a new application or under § 3.81 of this chapter, should be addressed to: Mail Stop Assignment Recordation Services, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450. See § 3.27.

(ii) *Documents.* All requests for certified or uncertified copies of patent or trademark documents should be addressed to: Mail Stop Document Services, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

(b) *Patent Cooperation Treaty.* Letters and other communications relating to international applications during the international stage and prior to the assignment of a national serial number should be additionally marked "Mail Stop PCT."

(c) *Reexamination.* Requests for reexamination should be additionally marked "Mail Stop Reexam."

(d) *Maintenance fee correspondence.*—(1) *Payments.* Payments of maintenance fees in patents not submitted electronically should be mailed to: United States Patent and Trademark Office, P.O. Box 371611, Pittsburgh, Pennsylvania 15250–1611.

(2) *Other correspondence.* Correspondence related to maintenance fees other than payments of maintenance fees in patents is not to be mailed to P.O. Box 371611, Pittsburgh, Pennsylvania 15250–1611, but must be mailed to: Mail Stop M Correspondence, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

(e) *Patent term extension.* All applications for extension of patent term under 35 U.S.C. 156 and any communications relating thereto intended for the United States Patent and Trademark Office should be additionally marked "Mail Stop Patent Ext." When appropriate, the communication should also be marked to the attention of a particular individual, as where a decision has been rendered.

(f) *Provisional applications.* The filing of all provisional applications and any communications relating thereto should be additionally marked "Mail Stop Provisional Patent Application."

Note: Sections 1.1 to 1.26 are applicable to trademark cases as well as to national and international patent cases except for provisions specifically directed to patent cases. See § 1.9 for definitions of "national application" and "international application."

5. Section 1.6 is amended by removing and reserving paragraph (b):

§ 1.6 Receipt of correspondence.

* * * * *

(b) [Reserved]

* * * * *

6. Section 1.9 is amended by adding a new paragraph (j) to read as follows:

§ 1.9 Definitions.

* * * * *

(j) Director as used in this chapter, except for part 10 of this section, means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

§ 1.15 [Removed and Reserved]

7. Section 1.15 is removed and reserved.

8. Section 1.25 is amended by adding paragraph (c) to read as follows:

§ 1.25 Deposit accounts.

* * * * *

(c) A deposit account holder may replenish the deposit account by submitting a payment to the United States Patent and Trademark Office. A payment to replenish a deposit account must be submitted by one of the methods set forth in paragraphs (c)(1), (c)(2), (c)(3), or (c)(4) of this section.

(1) A payment to replenish a deposit account may be submitted by electronic funds transfer through the Federal Reserve Fedwire System, which requires that the following information be provided to the deposit account holder's bank or financial institution:

(i) Name of the Bank, which is Treas NYC (Treasury New York City);

(ii) Bank Routing Code, which is 021030004;

(iii) United States Patent and Trademark Office account number with the Department of the Treasury, which is 13100001; and

(iv) The deposit account holder's company name and deposit account number.

(2) A payment to replenish a deposit account may be submitted by credit card or electronic funds transfer over the Office's Internet Web site (www.uspto.gov).

(3) A payment to replenish a deposit account may be submitted by mail with the USPS to: Director of the United States Patent and Trademark Office, P.O. Box 70541, Chicago, Illinois 60673.

(4) A payment to replenish a deposit account may be submitted by mail with a private delivery service or hand-carrying the payment to: Director of the United States Patent and Trademark Office, Deposit Accounts, One Crystal Park, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

9. Section 1.51 is amended by revising paragraph (a) to read as follows:

§ 1.51 General requisites of an application.

(a) Applications for patents must be made to the Director of the United States Patent and Trademark Office.

* * * * *

10. Section 1.53 is amended by revising paragraph (d)(9) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(d) * * *

(9) Envelopes containing only requests and fees for filing an application under this paragraph should be marked "Mail Stop CPA." Requests for an application under this paragraph filed by facsimile transmission should be clearly marked "Mail Stop CPA."

* * * * *

11. The undesignated center heading in Subpart B immediately before § 1.181 is revised to read as follows:

Petitions and Action by the Director

12. Section 1.302 is amended by revising paragraph (c) to read as follows:

§ 1.302 Notice of appeal.

* * * * *

(c) Notices of appeal directed to the Director shall be mailed to or served by hand on the General Counsel as provided in § 104.2.

13. Section 1.417 is revised to read as follows:

§ 1.417 Submission of translation of international publication.

The submission of the international publication or an English language translation of an international application pursuant to 35 U.S.C. 154(d)(4) must clearly identify the international application to which it pertains (§ 1.5(a)) and, unless it is being submitted pursuant to § 1.495, be clearly identified as a submission pursuant to 35 U.S.C. 154(d)(4). Otherwise, the submission will be treated as a filing under 35 U.S.C. 111(a). Such submissions should be marked "Mail Stop PCT."

14. Section 1.434 is amended by revising paragraphs (a) and (d)(2) to read as follows:

§ 1.434 The request.

(a) The request shall be made on a standardized form (PCT Rules 3 and 4). Copies of printed Request forms are available from the United States Patent and Trademark Office. Letters requesting printed forms should be marked "Mail Stop PCT."

* * * * *

(d) * * *

(2) Shall include a reference to any prior-filed national application or international application designating the United States of America, if the benefit of the filing date for the prior-filed application is to be claimed; and

* * * * *

15. Section 1.480 is amended by revising paragraph (b) to read as follows:

§ 1.480 Demand for international preliminary examination.

* * * * *

(b) The Demand shall be made on a standardized form (PCT Rule 53). Copies of the printed Demand forms are available from the United States Patent and Trademark Office. Letters requesting printed Demand forms should be marked "Mail Stop PCT."

* * * * *

16. Section 1.627 is amended by revising paragraph (a) to read as follows:

§ 1.627 Preliminary statement, sealing before filing, opening of statement.

(a) The preliminary statement and copies of any drawing or written description shall be filed in a sealed envelope bearing only the name of the party filing the statement and the style (*e.g.*, Jones v. Smith) and number of the interference. The sealed envelope should contain only the preliminary statement and copies of any drawing or written description. If the preliminary statement is filed through the mail, the sealed envelope should be enclosed in an outer envelope addressed in accordance with § 1.1(a)(1)(iii).

* * * * *

17. Section 1.676 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 1.676 Certification and filing by officer, marking exhibits.

* * * * *

(d) Unless the parties agree otherwise in writing or on the record at the deposition, the officer shall securely seal the certified transcript in an envelope endorsed with the style of the interference (*e.g.*, Smith v. Jones), the interference number, the name of the witness, and the date of sealing and shall promptly forward the envelope to the address set out in § 1.1(a)(1)(iii). Documents and things produced for inspection during the examination of a witness, shall, upon request of a party, be marked for identification and annexed to the certified transcript, and may be inspected and copied by any party, except that if the person producing the documents and things desires to retain them, the person may:

* * * * *

18. Section 1.740 is amended by revising paragraph (a)(13) to read as follows:

§ 1.740 Formal requirements for application for extension of patent term; correction of informalities.

(a) * * *

(13) A statement that applicant acknowledges a duty to disclose to the Director of the United States Patent and Trademark Office and the Secretary of Health and Human Services or the Secretary of Agriculture any information which is material to the determination of entitlement to the extension sought (*see* § 1.765);

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

19. The authority citation for 37 CFR part 2 is revised to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 2(b)(2).

20. In 37 CFR part 2, revise all references to "Commissioner" to read "Director'.

21. Section 2.123 is amended by revising paragraph (f)(2) to read as follows:

2.123 Trial testimony in inter partes cases.

* * * * *

(f) * * *

(2) If any of the foregoing requirements in paragraph (f)(1) of this section are waived, the certificate shall so state. The officer shall sign the certificate and affix thereto his seal of office, if he has such a seal. Unless waived on the record by an agreement, he shall then securely seal in an envelope all the evidence, notices, and paper exhibits, inscribe upon the envelope a certificate giving the number and title of the case, the name of each witness, and the date of sealing. The officer or the party taking the deposition, or its attorney or other authorized representative, shall then promptly forward the package to the address set out in § 1.1(a)(2)(i). If the weight or bulk of an exhibit shall exclude it from the envelope, it shall, unless waived on the record by agreement of all parties, be authenticated by the officer and transmitted by the officer or the party taking the deposition, or its attorney or other authorized representative, in a separate package marked and addressed as provided in this section.

* * * * *

22. Section 2.145 is amended by revising paragraph (b)(3) to read as follows:

§ 2.145 Appeal to court and civil action.

* * * * *

(b) * * *

(3) Notices of appeal directed to the Director shall be mailed to or served by hand on the General Counsel as provided in § 104.2.

* * * * *

23. The undesignated center heading immediately before § 2.146 is revised to read as follows:

Petitions and Action by the Director

PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

24. The authority citation for 37 CFR part 3 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 2(b)(2).

25. In 37 CFR part 3, revise all references to "Commissioner" or "Commissioner of Patents and Trademarks" to read "Director".

26. Section 3.27 is revised to read as follows:

§ 3.27 Mailing address for submitting documents to be recorded.

Documents and cover sheets to be recorded should be addressed to Mail Stop Assignment Recordation Services, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450, unless they are filed together with new applications or with a request under § 3.81.

PART 4—COMPLAINTS REGARDING INVENTION PROMOTERS

27. The authority citation for 37 CFR part 4 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2) and 297.

28. Section 4.3 is amended by revising paragraph (c) to read as follows:

§ 4.3 Submitting Complaints.

* * * * *

(c) The complaint should fairly summarize the action of the invention promoter about which the person complains. Additionally, the complaint should include names and addresses of persons believed to be associated with the invention promoter. Complaints, and any replies, must be addressed to: Mail Stop 24, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313–1450.

* * * * *

29. Section 4.6 is revised to read as follows:

§ 4.6 Attorneys and Agents.

Complaints against registered patent attorneys and agents will not be treated under this section, unless a complaint fairly demonstrates that invention promotion services are involved. Persons having complaints about registered patent attorneys or agents should contact the Office of Enrollment and Discipline at Mail Stop OED, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450, and the attorney discipline section of the attorney's state licensing bar if an attorney is involved.

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

30. The authority citation for 37 CFR Part 5 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), 41, 181–188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Pub. L. 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.*; the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; the Nuclear Non Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.*; and the delegations in the regulations under these Acts to the Director (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7].

31. In 37 CFR part 5, revise all references to "Commissioner" or "Commissioner of Patents and Trademarks" to read "Commissioner for Patents'.

32. Section 5.1 is amended by revising paragraph (a) to read as follows:

§ 5.1 Applications and correspondence involving national security.

(a) All correspondence in connection with this part, including petitions, should be addressed to: Commissioner for Patents (Attention Licensing and Review), P.O. Box 1450, Alexandria, Virginia 22313–1450.

* * * * *

PART 102—DISCLOSURE OF GOVERNMENT INFORMATION

33. The authority citation for 37 CFR part 102 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 35 U.S.C. 2(b)(2), 21, 41, 42, 122; 44 U.S.C. 3101..

34. Section 102.1 is amended by revising paragraph (b) to read as follows:

§ 102.1 General.

* * * * *

(b) As used in this subpart, *FOIA Officer* means the USPTO employee designated to administer FOIA for USPTO. To ensure prompt processing of a request, correspondence should be addressed to the FOIA Officer, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450, or delivered by hand to Two Crystal Park, 2121 Crystal Drive, Suite 905, Arlington, Virginia.

35. Section 102.4 is amended by revising paragraph (a) to read as follows:

§ 102.4 Requirements for making requests.

(a) A request for USPTO records that are not customarily made available to the public as part of USPTO's regular informational services must be in writing, and shall be processed under FOIA, regardless of whether FOIA is mentioned in the request. Requests should be sent to the USPTO FOIA Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450 (records FOIA requires to be made regularly available for public inspection and copying are addressed in § 102.2(c)). For the quickest handling, the request letter and envelope should be marked "Freedom of Information Act Request." For requests for records about oneself, § 102.24 contains additional requirements. For requests for records about another individual, either a written authorization signed by that individual permitting disclosure of those records to the requester or proof that individual is deceased (for example, a copy of a death certificate or an obituary) facilitates processing the request.

* * * * *

36. Section 102.10 is amended by revising paragraph (b) to read as follows:

§ 102.10 Appeals from initial determinations or untimely delays.

* * * * *

(b) Appeals shall be decided by a Deputy General Counsel. Appeals should be addressed to the General Counsel, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450. Both the letter and the appeal envelope should be clearly marked "Freedom of Information Appeal". The appeal must include a copy of the original request and the initial denial, if any, and may include a statement of the reasons why the records requested should be made available and why the initial denial, if any, was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided.

* * * * *

37. Section 102.23 is amended by revising paragraph (a) to read as follows:

§ 102.23 Procedures for making inquiries.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit an inquiry to USPTO. The inquiry should be made either in person at Two Crystal Park, 2121 Crystal Drive, Suite 905, Arlington, Virginia, or by mail addressed to the Privacy Officer, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450, or to the official identified in the notification procedures paragraph of the systems of records notice published in the **Federal Register**. If an individual believes USPTO maintains a record pertaining to that individual but does not know which system of records might contain such a record, the USPTO Privacy Officer will provide assistance in person or by mail.

* * * * *

38. Section 102.24 is amended by revising paragraph (a) to read as follows:

§ 102.24 Procedures for making requests for records.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request for access to records to USPTO. The request should be made either in person at Two Crystal Park, 2121 Crystal Drive, Suite 905, Arlington, Virginia, or by mail addressed to the Privacy Officer, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

* * * * *

39. Section 102.29 is amended by revising paragraph (b) to read as follows:

§ 102.29 Appeal of initial adverse determination on correction or amendment.

* * * * *

(b) An appeal should be addressed to the General Counsel, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450. An appeal should include the words "PRIVACY APPEAL" in capital letters at the top of the letter and on the face of the envelope. An appeal not addressed and marked as provided herein will be so marked by USPTO personnel when it is so identified and will be forwarded immediately to the General Counsel. An appeal which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring the time periods in this section until actual receipt by the General Counsel. In each instance when an appeal so forwarded is received, the General Counsel shall notify the individual that his or her appeal was improperly addressed and the date when the appeal was received at the proper address.

* * * * *

PART 104—LEGAL PROCESSES

40. The authority citation for 37 CFR part 104 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 10, 23, 25; 44 U.S.C. 3101.

41. Section 104.1 is amended by revising the second sentence to read as follows:

§ 104.1 Definitions.

* * * * *

Director means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (*see* § 1.9(j)).

* * * * *

PART 150—REQUESTS FOR PRESIDENTIAL PROCLAMATIONS PURSUANT TO 17 U.S.C. 902(a)(2)

42. The authority citation for 37 CFR part 150 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2); E.O. 12504, 50 FR 4849; 3 CFR, 1985 Comp., p. 335.

43. In 37 CFR part 150, revise all references to "Commissioner" to read "Director".

44. Section 150.1 is amended by revising paragraph (a) to read as follows:

§ 150.1 Definitions.

(a) *Director* means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (*see* § 1.9(j)).

* * * * *

45. Section 150.6 is revised to read as follows:

§ 150.6 Mailing address.

Requests and all correspondence pursuant to these guidelines shall be addressed to: Mail Stop 4, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

Dated: March 19, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–6971 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[FRL–7472–3]

RIN 2050–AF05

Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA and Notice of Future Rulemaking Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On January 24, 2003, we published a direct final rule entitled "Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA and Notice of Future Rulemaking Action" (68 FR 3430). We published the direct final rule to clarify a provision included in recent amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Specifically, the direct final rule addressed the interim standard set by Congress in the Small Business Liability Relief and Brownfields Revitalization Act ("the Brownfields Law") for conducting "all appropriate inquiry." We stated in the direct final rule that if we received adverse comment by February 24, 2003, we would publish a timely withdrawal in the **Federal Register**. We subsequently received adverse comment on the direct final rule, and therefore are withdrawing the direct final rule. We will address those comments in a subsequent final action on the parallel proposed rule also published on January 24, 2003 (68 FR 3478). As stated in the parallel proposed rule, we will not institute a second comment period on this action.

DATES: As of March 25, 2003, EPA withdraws the direct final rule "Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA and Notice of Future Rulemaking Action" published at 68 FR 3430, on January 24, 2003.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of this rule, contact Patricia Overmeyer, Office of Brownfields Clean up and Redevelopment (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, 202–566–2774, *overmeyer.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

EPA established an official public docket for the direct final rule and its companion proposed rule under Docket ID No. SFUND–2002–0007. The official public docket consists of the documents specifically referenced in the direct final rule, the comments received by the Agency in response to the proposed rule, and other information related to the proposed and direct final rules. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center located at 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday

through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 566–0276. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

Summary of Today's Action

EPA published a direct final rule on January 24, 2003, clarifying the interim standard for all appropriate inquiry established in the Small Business Liability Relief and Brownfields Revitalization Act for *bona fide* prospective purchasers, contiguous property owners, and those parties wishing to establish an innocent landowner defense under CERCLA. The direct final rule stated that such property owners or prospective purchasers could use the current version of ASTM standard E1527 (*i.e.*, E1527–00) for conducting all appropriate inquiry as provided in CERCLA section 101(35)(B) for properties purchased on or after May 31, 1997. In addition, the direct final rule stated that ASTM's previous standard, E1527–97, could be used for conducting all appropriate inquiry. ASTM's E1527–97 standard, entitled "Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process," is the interim standard included by Congress in the Small Business Liability Relief and Brownfields Revitalization Act.

The companion proposed rule, also published on January 24, 2003, invited comment on the direct final rule and stated that if adverse comment was received by February 24, 2003, the direct final rule would not become effective and a notice would be published in the **Federal Register** to withdraw the direct final rule before the March 25, 2003, effective date. EPA subsequently received adverse comment on the direct final rule. EPA plans to address those comments in a subsequent action. Today's action withdraws the direct final rule "Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA and Notice of Future Rulemaking Action."

List of Subjects in 40 CFR Part 312

Environmental protection, Administrative practice and procedure, Hazardous substances.

Dated: March 18, 2003.

Christine Todd Whitman,

Administrator.

[FR Doc. 03–7050 Filed 3–24–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 00–2; FCC 02–287]

Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions of Broadcast Signals

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of certain sections of the Commission's network non-duplication protection, syndicated exclusivity and sports blackout protection rules. Certain sections of the rule contained information collection requirements that required the approval of the Office of Management and Budget ("OMB") before they could become effective. Those sections of the network non-duplication protection, syndicated exclusivity and sports blackout protection rules have been approved by OMB.

DATES: The amendments to 47 CFR 76.122(c)(2) and 76.127(c), published at 67 FR 68944, November 14, 2002, will become effective on March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Peter Corea of the Policy Division, Media Bureau at (202) 418–7200, TTY (202) 418–7172, or via Internet at *pcorea@fcc.gov*.

SUPPLEMENTARY INFORMATION: On October 17, 2002, the Commission released an Order on Reconsideration in CS Docket No. 00–2, pertaining to the Commission's network non-duplication, syndicated exclusivity and sports blackout rules as applied to satellite retransmission of broadcast signals. A summary of the Order on Reconsideration was published in the **Federal Register** at 67 FR 68944, November 14, 2002. The Order on Reconsideration made revisions to conform the satellite rules to the cable rules and amended a rule to permit sports rights holders with a discernable season to submit blackout notifications for an entire season, but also to establish a date certain by when those notifications must be received by satellite carriers. Sections 76.122(c)(2) and 76.127(c) of the rules contained new or modified information collection requirements that required OMB approval before they could become effective. The Commission received OMB approval for the information collection requirements on March 10, 2003. *See* OMB No. 3060–0960, 67 FR 5291, February 3, 2003. Accordingly, §§ 76.122(c)(2) and 76.127(c) of the rules will become effective on March 25, 2003. This document constitutes publication of the effective date of those sections.

Pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511, an agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Les Smith, Federal Communications Commission, (202) 418–0217.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–6969 Filed 3–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 00–2; FCC 02–287]

Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions of Broadcast Signals; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of November 14, 2002, a document concerning application of network non-duplication, syndicated exclusivity, and sports blackout rules to satellite retransmissions of broadcast signals. Inadvertently, the instruction that notifications given pursuant to § 76.127 must be received by the satellite carrier was inserted incorrectly. This document corrects that error.

DATES: Effective March 25, 2003. An announcement of effective date is published elsewhere in this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Peter Corea of the Policy Division, Media Bureau at (202) 418–7200, TTY (202) 418–7172, or via Internet at *pcorea@fcc.gov*.

SUPPLEMENTARY INFORMATION:

Correction

In rule FR Doc. 02–28894 published on November 14, 2002 (67 FR 68944), make the following corrections. On page 68951 in the second column, in the amendment to § 76.127, revise paragraph (c) as follows:

* * * * *

(c) Notifications given pursuant to this section must be received by the satellite carrier:

(1) With respect to regularly scheduled events, within forty-eight (48) hours after the time of the telecast to be deleted is known; or, for events that comprise a season or pre-season period, fifteen (15) days prior to the first event of the season or pre-season, respectively; and no later than the Monday preceding the calendar week (Sunday-Saturday) during which the program deletion is to be made.

(2) As to events not regularly scheduled and revisions of notices previously submitted, within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

* * * * *

List of Subjects in 47 CFR Part 76

Cable television, Satellite carriers, Television broadcast stations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–6970 Filed 3–24–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 175

[Docket No. RSPA–00–7762 (HM–206C)]

RIN 2137–AD29

Hazardous Materials: Availability of Information for Hazardous Materials Transported by Aircraft

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations to require an aircraft operator transporting a hazardous material to: Place a telephone number, on the notification of pilot-in-command or in the cockpit of the aircraft, that can be contacted during an in-flight emergency to obtain information about any hazardous materials aboard the aircraft; retain and provide upon request a copy of the notification of pilot-in-command, or the information contained in it, at the aircraft operator's principal place of business, or the airport of departure, for 90 days, and at the airport of departure until the flight leg is completed; and make readily accessible, and provide upon request, a copy of the notification of pilot-in-command, or the information contained in it, at the planned airport of arrival until the flight leg is completed. The intent of these amendments is to increase the level of safety associated with the transportation of hazardous materials aboard aircraft.

DATES: Effective Date: The effective date of these amendments is October 1, 2003.

Delayed Compliance Date: Compliance with the amendments adopted in this final rule is required beginning on October 1, 2004.

FOR FURTHER INFORMATION CONTACT: John A. Gale or Gigi Corbin, Office of Hazardous Materials Standards, telephone (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), an offeror of a hazardous material must prepare a signed shipping paper containing the quantity and a basic shipping description of the material being offered for transportation (*i.e.*, proper shipping name, hazard class, UN or NA identification number, and packing group); certain emergency response information; and a 24-hour emergency response telephone number. (49 CFR part 172, Subparts C and G). Additional information may be required depending on the specific hazardous material being shipped. (49 CFR 172.203).

When hazardous material is transported by air, a copy of the shipping paper must accompany the shipment during transportation, and the aircraft operator must provide the pilot-in-command of the aircraft written information relative to the hazardous materials on board the aircraft. (49 CFR 175.33 and 175.35). For each hazardous materials shipment, the information in the notification of pilot-in-command (NOPC) must include:

(1) Proper shipping name, hazard class, and identification number;

(2) technical and chemical group name, if applicable;

(3) any additional shipping description requirements applicable to specific types or shipments of hazardous materials or to materials shipped under International Civil Aviation Organization (ICAO) requirements;

(4) total number of packages;

(5) net quantity or gross weight, as appropriate, for each package;

(6) the location of each package on the aircraft;

(7) for Class 7 (radioactive) materials, the number of packages, overpacks or freight containers, their transport index, and their location on the aircraft; and

(8) an indication, if applicable, that a hazardous material is being transported under terms of an exemption.

This information must be readily available to the pilot-in-command during flight. In essence, the NOPC provides the same information to emergency response personnel as a shipping paper for transportation by public highway. In addition, emergency response information applicable to the specific hazardous materials being transported by aircraft must be available for use at all times the materials are present on the aircraft, and must be maintained on board in the same manner as the NOPC. (*See* Subpart G of part 172 for requirements relating to emergency response information.) In an emergency situation, the flight crew may be able to transmit information concerning the hazardous materials aboard the aircraft to air traffic control, or emergency responders may be able to retrieve the information from the aircraft after it lands. However, retrieval of the information from the flight crew may not be practical during an in-flight emergency because the flight crew may be attending to more pressing tasks. Also, in many emergencies the aircraft is damaged or destroyed, making retrieval of this information from the aircraft difficult or impossible.

On February 13, 2002, RSPA issued a notice of proposed rulemaking (NPRM) to amend the HMR to assure that information on the hazardous materials carried aboard the aircraft is available to emergency responders through sources other than the flight crew (67 FR 6669). The NPRM proposed to amend the HMR to require an aircraft operator to: Place a telephone number on the notification of pilot-in-command that can be contacted during an in-flight emergency to obtain information about any

hazardous materials aboard the aircraft; retain a copy of the notification of pilot-in-command at the aircraft operator's principal place of business for one year; retain and make readily accessible a copy of the notification of pilot-in-command, or the information contained in it, at the airport of departure until the flight leg is completed; and make readily accessible a copy of the notification of pilot-in-command, or the information contained in it, at the planned airport of arrival until the flight leg is completed.

The amendments adopted in this final rule respond to a recommendation of the National Transportation Safety Board (NTSB) and are consistent with recent changes to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). The NTSB recommends that RSPA:

> Require, within two years, that air carriers transporting hazardous materials have the means, 24 hours per day, to quickly retrieve and provide consolidated specific information about the identity (including proper shipping name), hazard class, quantity, number of packages, and location of all hazardous material on an airplane in a timely manner to emergency responders. (A–98–80).

This recommendation is contained in NTSB's August 12, 1998, letter to RSPA, which has been placed in the public docket.

The ICAO Dangerous Goods Panel also considered additional steps that could be taken to improve the availability of information in the event of an aircraft incident. As a result, the Panel revised the ICAO Technical Instructions to: (1) Require the NOPC to be readily accessible at the airports of departure and arrival; and (2) allow an aircraft operator to provide a phone number where a copy of the NOPC could be obtained. In an emergency, the pilot would relay the phone number instead of the specific hazardous materials aboard the aircraft to an air traffic controller (see ICAO Technical Instructions 7;4.3). For informational purposes, we placed in the Docket an excerpt from the reports of the ICAO Dangerous Goods Panel reflecting discussions on this topic and relevant changes for inclusion in the 2001–2002 and 2003–2004 editions of the ICAO Technical Instructions.

On August 15, 2000, we issued an advance notice of proposed rulemaking (ANPRM) requesting comments and suggestions on ways to implement the NTSB recommendation and the need for this or other changes to the HMR (65 FR 49777). The ANPRM solicited comments on past incidents; practices and procedures currently in use and their costs; information needed by emergency responders; and the benefit, feasibility, and funding of a centralized reporting system (CRS).

II. Discussion of Comments

A. Place a Telephone Number on the NOPC

Two commenters supported our proposal to place a telephone number on the NOPC that can be contacted during an in-flight emergency to obtain information about any hazardous materials aboard the aircraft. Emery Forwarding stated that it is reasonable to provide such a telephone number on the NOPC, and aircraft operators should have a single point of control that could be contacted for hazmat information. Emery went on to say the telephone number would take little space on the NOPC and the primary cost would be in the modification of internal computer systems. The International Pilots Association (IPA) stated that, in an emergency, the telephone number relieves the crew from having to "read off a lot of information at a time when they probably have more urgent matters to attend to". The commenter pointed out that providing a telephone number instead of detailed information about the hazardous materials is consistent with ICAO Technical Instructions 7;4.3. At the same time, IPA questioned who would be staffing this telephone number. IPA stated that the point of contact at United Parcel Services (UPS) is the Dispatcher. IPA opposed the Dispatcher as the contact point and suggested the telephone number should be another department in order to allow the dispatcher to work with the crew to resolve the immediate situation.

The Air Line Pilots Association (ALPA) commented that the requirement for a telephone number on the NOPC that could be contacted during an in-flight emergency to obtain information about any hazardous materials aboard the aircraft would have limited safety benefits. Due to the nature of most in-flight emergencies, the flight crew may have insufficient time to transmit any information from the NOPC. Even if the crew had time to transmit information from the NOPC to Air Traffic Control (ATC), the presence of two telephone numbers (emergency response and hazmat information) could be potentially confusing. ALPA conceded that the addition of the phone number is a slight improvement over the present system, but the situation addressed by the telephone number would be better addressed by a more robust hazardous materials tracking system.

Two commenters disagreed with the proposal. FedEx contended that it should be sufficient for the flight crew to inform ATC whether or not hazardous material is aboard the aircraft as it would allow the crew to continue with the more pressing tasks of the emergency. FedEx stated that ATC would contact the aircraft operator with the flight number and obtain the required hazardous materials information from a single contact of the operator. The Air Transport Association (ATA) also stated that the flight crew should be able to contact a single telephone contact known to flight crews and that many air carriers have already identified a single location to become responsible for this function, and airlines should be permitted to designate the location.

RSPA continues to believe that each airline that is transporting hazardous materials should maintain a phone number that is monitored at all times the aircraft is in flight by a person from whom the information in the NOPC can be obtained. In the NPRM, RSPA stated that one of the problems faced by emergency responders in an aviation emergency is that a flight crew may not have time or otherwise be able to provide information on the hazardous material aboard an aircraft. A phone number that is monitored by a person from whom the information in the NOPC can be obtained could be used in those incidents where a pilot does not have time to provide an air traffic controller the information on the NOPC. However, RSPA does agree with the commenter who requested that the telephone number be allowed to be placed in a centralized location on the aircraft and not the NOPC. Therefore, RSPA is adopting the proposal to require aircraft operators to monitor a telephone number while the aircraft is in flight by a person whom the information in the NOPC can be obtained, but is allowing the phone number to be placed on the NOPC or in a location on the aircraft that is known to the flight crew.

B. Retention of NOPC During Flight

In the NPRM, we proposed to require aircraft operators to retain and make readily accessible a copy of the NOPC, or the information contained in it, at the airport of departure until the flight leg is completed and make readily accessible a copy of the NOPC, or the information contained in it, at the airport of arrival until the flight leg is complete. Most commenters supported retaining and making readily accessible

"the information contained in the NOPC" at the airport of departure. They agreed that the hazardous material information must be readily available and in a format that is easily understood by emergency personnel.

While the commenters generally agreed with the proposal that the information contained in the NOPC must be retained and readily accessible at the airport of departure, several of them pointed out that in an emergency, the aircraft most likely will not land at the planned destination airport. The commenters stated that having copies of the NOPC at the planned airport of arrival would not be useful. ATA stated that in all likelihood, the flight will divert "to the nearest suitable airport". The information would have to be obtained from the last departure airport.

The ATA stated that air carriers may have no choice but to automate in order to comply with the requirements in this rulemaking and that it is unrealistic to expect large-scale air carriers to duplicate the NOPC, file the copied form, and transmit it by fax. ATA stated that if carriers did utilize a fax system to manage this information, it is reasonable to assume that these requirements will add 10 minutes of additional work to each flight. ATA went on to say that if we estimate that one-third of the 19,000 daily flights carry hazardous materials, utilizing the $18 per hour labor rate yields a total cost of almost $7,000,000 per year.

ALPA questioned when the required hazardous materials information must be accessible at the destination airport. ALPA asked if the departure of a flight from Chicago to Tokyo would need to be delayed if station personnel in Tokyo had not yet received the required information. ALPA stated that with long transcontinental or international flights, the destination airport may not be staffed at the time of departure from the originating station. Requiring personnel to remain at an otherwise closed station for the purpose of accessing hazardous material information appears to create significant expense with very little, if any, safety benefit.

ALPA stated the best way to make improvements in the availability of the hazardous material information is through a tracking system based around an airline's dispatch or operations control center, not the airports of departure or arrival. ALPA pointed out that in the U.S. all airline flight operations must maintain a flight following system capable of tracking an airplane through its entire flight, including intermediate stops and diversions. The dispatcher and pilot-in-command share operational authority for the flight. ALPA stated that the dispatch or operations control center is the natural location for the hazardous material information. The dispatcher is required to monitor the flight and would most likely be the first person within the airline to be aware of a flight diversion due to an emergency. Dispatchers would work closely with corporate emergency response to an accident. ALPA pointed out that dispatchers are certificated, highly trained individuals, and often have access to a multitude of advanced communications equipment and contact information for a variety of emergency response situation.

NTSB stated the NPRM fails to ensure that the air carrier has the ability to quickly provide emergency responders with a consolidated list that not only identifies each hazardous material on board the aircraft but also the quantity and location of each hazardous materials package on the aircraft. Maintaining the NOPC at the departure and arrival points of an aircraft does not ensure that air carriers will provide the consolidated list in a timely manner. If an aircraft diverts, the aircraft operator would still have to transmit a copy of the NOPC or assemble a list and then transmit it. Neither is timely. If the air carrier has the consolidated list prior to the departure of each flight, the air carrier could easily transmit a consolidated list to emergency responders at the scene.

NTSB pointed out that for many carriers the NOPC is a multi-part form with the hazardous materials information on the individual shipping papers. In an emergency, when the onboard NOPC is not available or accessible, the carrier must retrieve a copy of the NOPC at the point of origin and collect the shipping papers for the individual hazardous material shipments. The carrier must then transmit copies of the individual shipping papers or consolidate the information into a list before transmitting to emergency responders. The NTSB stated that this unnecessarily delays the accurate transmission of the hazardous materials information. NTSB stated that the final rule under this docket should include an explicit requirement that an air carrier must have the capability to provide emergency responders with a consolidated list of hazardous materials on any of its aircraft and appropriate information about those materials.

Several commenters stated that the requirements in the NPRM are only manageable with an automated tracking system. FedEx agreed with the proposal to have the NOPC accessible at the airports of departure and arrival until the flight leg is completed, but only if RSPA requires aircraft operators to fully automate or computerize the required hazmat information. FedEx emphasized how burdensome the task would be if not automated. FedEx cited its Memphis hub with 160 flights departing within a matter of hours and stated that, without an automated system, the company would be required to fax paper copies to the destination airports so that the information would be available prior to the scheduled arrival time.

As we stated in the NPRM, emergencies involving hazardous materials transported by aircraft provide difficulties to emergency responders not usually encountered in other modes of transportation. The flight crew may not have time or otherwise be able to provide information during or immediately after the emergency. An aircraft involved in an accident may be damaged to such an extent the information cannot be retrieved from it. In such instances, emergency responders may not know what, if any, hazardous materials are aboard the aircraft. These difficulties cause us to shift our focus away from retrieving hazardous materials information aboard the aircraft or from air crew members. We continue to believe that these problems support a requirement for information to be accessible from a source other than the aircraft flight crew. We also agree with the comment to the ANPRM that stated that the additional risk posed during an emergency by properly prepared hazardous materials shipments may not be significant considering the standard fuel capacity of commercial aircraft. A system that utilizes the information contained in the NOPC can appropriately address these problems without the need for costly new computer or paper tracking systems.

Therefore, as proposed, we are amending the HMR to require an aircraft operator to: (1) Retain and make readily accessible a copy of the NOPC, or the information contained in it, at the airport of departure until the flight leg is completed; and (2) make readily accessible a copy of the NOPC, or the information contained in it, at the planned airport of arrival until the flight leg is completed. Nothing in the rule requires, however, that an aircraft operator has to fax every NOPC to its final destination before a flight takes-off or lands. The airport of arrival must only have the means available to retrieve the NOPC. With facsimile machines and email capabilities, companies can easily store the information at the airport of departure

and then, when necessary, transmit it to the airport of arrival very quickly. Therefore, a flight would not have to be held on the ground to wait for a NOPC to be faxed to its airport of arrival. In addition, we are not mandating that airlines retain staff at both airports of arrival and destination while an aircraft is in flight. However, the airport of departure and arrival must be able to receive and transmit the information to appropriate government personnel in such a timely manner that emergency responders can make response mitigation decisions. It is our belief that the act of filing and maintaining this information in a manner that is readily available should impose a marginal cost on each flight since (1) the NOPC is already being created at the airport of departure; and (2) the airport of arrival only requires the information be readily available, which should permit the faxing of the information when requested by appropriate authorities, not after each flight.

In response to commenters who concluded that a computerized tracking system is the only opportunity to comply with this NPRM, we agree that a computer tracking system would enhance the transmission of the hazmat information on the NOPC and believe that it is an acceptable method for complying with the amendments. However, we disagree with the conclusion that it is the only method for compliance. We believe that the hazmat information contained on the NOPC can be managed without a computerized tracking system. Mandating all aircraft operators to install such a system would greatly disadvantage smaller air carriers. Air carriers who already have a computerized tracking system or are in the process of developing such a system, may use or modify their existing system to have the capability to transmit the hazmat information to other locations as required by this final rule.

We agree with the commenter that stated that an air carrier should have the capability to provide emergency responders with a consolidated list of hazardous materials aboard their aircraft, however, we did not propose such a requirement and, therefore, is beyond the scope of this rulemaking. We note that in order to provide emergency responders the required information without any undue delay it may be necessary for some carriers to use a consolidated list.

We are also revising the HMR to clarify that the NOPC must identify all hazardous materials carried on the plane, even those loaded at earlier departure points. These changes to the HMR will provide emergency responders with timely and consolidated information about the identity (including proper shipping name, hazard class, quantity, and number of packages), and location of all hazardous material on an airplane.

C. Retention of NOPC After Completion of the Flight

Most commenters objected to the proposal to retain a copy of the NOPC or an electronic image thereof for one year after completion of the flight. Two commenters (UPS and ATA) suggested that "the information contained in" the NOPC is important, not the form itself. The commenters stated an aircraft operator should be allowed to retain the "information contained in" the NOPC rather than the actual NOPC and went on to say that for emergency responders, the essential information consists of the hazardous materials shipping description for each material loaded on the aircraft, the amount of hazardous material in the shipment, and its location on the aircraft. These elements should be available away from the aircraft and presented to emergency responders. The commenters stated that the other information on the NOPC will not provide an emergency responder with information necessary to respond to an incident and could in fact easily distract from the emergency response. The ATA commented that if RSPA requires the retention and provision of copies of the NOPC itself, emergency responders will criticize the results as distracting. RSPA should not require an operator to retain and transmit superfluous information. The less complicated the information, the easier the retrieval in an emergency.

UPS stated that RSPA lacks justification for permitting an operator to make the information contained in an NOPC accessible at the airports of departure and arrival, but require the actual written NOPC for all other purposes specified in the proposed § 175.33(c). UPS went on to request that RSPA should specify what information, contained in the NOPC must be retained.

FedEx stated that the information currently required is redundant, confusing and in some cases encumbers the very process it was intended to support and improve. Fed Ex urged RSPA to consider using a summary of the total hazardous materials by hazard class on board the aircraft in lieu of the current and proposed NOPC. British Airways stated that we should not require NOPCs to be stored at the principal place of business. The commenter went on to say that they retain their NOPCs at each of its stations and that no safety benefit would result from requiring that notification be transferred to a central repository.

The majority of commenters objected to the proposed one year retention period. Three commenters (UPS, ALPA and IPA) supported a 90-day retention period, two commenters (FedEx and ATA) a 30-day period, while another (Emery) favored a retention period in the 30–90 day range. ATA conceded that in the event of an incident the NOPC should be retained for 90 days. Two commenters (IPA and ALPA) who favor a 90-day period pointed out that this is consistent with the current requirements to retain shipping papers for 90 days in 49 CFR 175 as well as in the ICAO Technical Instructions. Other commenters (ATA, Emery) stated that requiring an aircraft operator to retain the NOPC for one year has no bearing on the ability of first responders to react to an accident.

Several commenters objected to the proposal to require retention of the NOPC at the operators' principal place of business. Three commenters (ATA, UPS and FedEx) commented that RSPA should allow the aircraft operator to designate the location. ALPA expressed concern over the requirement to retain a copy of the NOPC (not just the information contained in it) at the operator's principal place of business for one year and stated that the only apparent benefit of retaining a copy of the NOPC at the principal place of business appears to be for enforcement opportunities, and as such, has no place within the context of this rulemaking.

Several commenters (UPS, FedEx, ATA) objected to the proposal to require aircraft operators to make the NOPC available, upon request, to any representative of a Federal, State, or local government agency. The commenters stated RSPA should limit the scope of § 175.33 to a government representative who is either responding to a hazardous material incident or is conducting an investigation which involves a hazardous material, consistent with the requirements in § 172.600(c)(2). Without such limitation, an agency at any level of government could request sensitive information concerning an operator's business, customer base or transportation of hazardous materials. ATA stated that the proposal empowers such a variety of authorities to demand and receive NOPC information that unmanageable circumstances might arise. The ATA urged RSPA to restrict access of this information, in an emergency, to an incident commander or other duly empowered representative of an agency.

In 1994, Congress amended the Federal hazardous material transportation law (Federal hazmat law) to require that, after a hazardous material "is no longer in transportation," each offeror and carrier of a hazardous material must retain the shipping paper "or an electronic image thereof for a period of one year to be accessible through their respective principal places of business." 49 U.S.C. 5110(e), added by Pub. L. 103–311, Title I, § 115, 108 Stat. 1678 (Aug. 26, 1994). That section also provides that the offeror and carrier "shall, upon request, make the shipping paper available to a Federal, State, or local government agency at reasonable times and locations." On July 12, 2002, RSPA issued a final rule under Docket HM–207B amending the HMR to conform with § 5110(e) (67 FR 46124). As stated in the NPRM, the NOPC provides the same information to emergency response personnel as the shipping paper for transportation by rail or public highway. RSPA believes, therefore, that it is consistent with the statutory intent of Congress to require aircraft operators to maintain a copy of the NOPC, or the information contained in it for a reasonable period of time. RSPA does agree, however, with those commenters indicating that 90 days is a sufficient period of time for the NOPC to be maintained; operators should be allowed the option of maintaining the information in the NOPC and not just a copy of the NOPC itself; and, the NOPC should be allowed to be stored at their stations (*i.e.*, airport of departure). Therefore, RSPA is amending § 175.33 to require aircraft operators to maintain a copy of the NOPC, or the information contained in it, for 90 days at the airport of departure or principal place of business. The information required to be maintained is the information required on the NOPC as specified in § 175.33(a), including confirmation that no damage or leaking packages have been loaded on the aircraft. However, information on the NOPC that is pertaining to non-hazardous material is not required to be maintained. In addition, if the NOPC is also the shipping paper, as provided by § 175.35(b), a copy of the NOPC (*i.e.*, the shipping paper), or an electronic image thereof, must be retained for 375 days.

Consistent with changes to the shipping paper retention requirements published under the response to appeals to Docket HM–207B (July 12, 2002; 67 FR 46123) and comments received to the NPRM issued under Docket HM–206C, RSPA is also modifying proposed § 175.33(c). Except when requests are from government representatives responding to an incident, RSPA is not requiring that the NOPC be provided "immediately" to an authorized official of a Federal, State, or local government agency. RSPA has revised § 175.33 to require that the information be provided "at reasonable times and locations." Because of the appeals received in response to Docket HM–207B, RSPA also reevaluated the terminology of "immediately available" with regard to providing the NOPC, or the information contained therein, to government personnel responding to an incident. RSPA believes that government personnel, such as emergency response personnel, that are responding to an incident involving an aircraft must receive information regarding the hazardous materials aboard the aircraft in such a time and manner that will allow them to take appropriate emergency response actions. RSPA believes that, for the time being, the term "immediately available" best describes this need. The term is intended to indicate that the information must be provided to an emergency responder with no undue delay. Though a few minutes may elapse between the request and the information being transmitted, the NOPC information must be transmitted to the responder as quickly as possible. By providing this information in as quick, legible and consolidated fashion as possible emergency response personnel may be able to take adequate action to minimize loss of the content within the aircraft versus losing the aircraft and its contents in its entirety. RSPA may propose in a future rulemaking an alternative phrase for "immediately available" in order to define how quickly an aircraft operator must provide this information to government personnel responding to an aviation incident.

The revisions contained in this final rule are consistent with the changes recently adopted into the ICAO Technical Instructions, with one exception. Our amendments require an aircraft operator to provide a phone number for where a copy of the NOPC can be obtained. The ICAO Technical Instructions do not contain this requirement.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to formal review by the Office of Management and Budget (OMB). This final rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the docket.

B. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts State, local, and Indian tribe requirements, but does not adopt any regulation with substantial direct effects on: the States; the relationship between the national government and the States; or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on certain subjects. These subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses subject item (3) above and preempts State, local, and Indian tribe requirements not meeting the "substantively the same" standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that, if RSPA issues a regulation concerning any of the subjects, RSPA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of preemption is 90 days from publication of this final rule in the **Federal Register**.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications, and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act. However, if an agency determines a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides the head of the agency may so certify, and an RFA is not required.

The Small Business Administration criterion specifies an air carrier is "small" if it has 1,500 or fewer employees. For this rule, small entities are part 121 and part 135 air carriers, approved to carry hazardous materials, with 1,500 or fewer employees. We identified 729 air carriers meeting this standard.

As mentioned in the Paperwork Reduction Act section of this preamble, it is estimated that the cost to the airline industry of this final rule will be $450,000 per year. This estimate comes from an examination of the data in the U.S. Department of Transportation's Air Carrier Traffic Statistic Monthly. From that data we also were able to estimate that small business airlines undertake no more than 25% of all aircraft departures, and thus 25% of the total cost. The average small business is expected to incur a cost of no more than $150 per year. Therefore, I certify this final rule does not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

F. Paperwork Reduction Act

This rule results in an increase in the annual paperwork burden and costs. We currently have an approved information collection under OMB No. 2137–0034, "Hazardous Materials Shipping Papers & Emergency Response Information". These revisions regarding the maintenance of copies of notification of pilot-in-command were submitted under the NPRM to OMB for review and approval.

Section 1320.8(d), Title 5, Code of Federal Regulations required that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. The NPRM identified a new information collection requirement that RSPA submitted to OMB for approval. RSPA estimated that the new total information collection and recordkeeping burden for OMB No. 2137–034 would be as follows:

"Hazardous Materials Shipping Papers & Emergency Response Information"
OMB No. 2137–0034

Total Annual Number of Respondents: 250,000.

Total Annual Responses: 260,000,000.

Total Annual Burden Hours: 6,523,611.

Total Annual Burden Cost: $6,925,000.

RSPA specifically requested comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements. We received three comments regarding this information collection. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. OMB approved the revised information collection requirement on February 27, 2003.

G. Environmental Assessment

This final rule will improve emergency response to hazardous materials incidents involving aircraft by ensuring information on the hazardous materials involved in an emergency is readily available. By improving emergency response to aircraft incidents, this should help lessen environmental damage associated with such incidents. We find there are no significant environmental impacts associated with this rule.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.14, paragraph (f) is added to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

* * * * *

(f) 49 CFR 175.33 sets out requirements regarding the availability of information for hazardous materials transported by aircraft. Until October 1, 2004, a person may elect to comply with either the applicable requirements of 49 CFR 175.33 in effect on September 30, 2003, and contained in 49 CFR Part 175 revised as of October 1, 2002, or the requirements of that section contained in 49 CFR Part 175 revised as of October 1, 2003. On October 1,2004, all applicable regulatory requirements in 49 CFR 175.33 in effect on October 1, 2003 must be met.

PART 175—CARRIAGE BY AIRCRAFT

3. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. In § 175.33, paragraph (a)(1) introductory text is revised, paragraphs (a)(7) and (a)(8) are redesignated as paragraphs (a)(9) and (a)(10), respectively, and new paragraphs (a)(7), (a)(8), (c) and (d) are added to read as follows:

§ 175.33 Notification of pilot-in-command.

(a) * * *

(1) The proper shipping name, hazard class, and identification number of the material, including any remaining aboard from prior stops, as specified in § 172.101 of this subchapter or the ICAO Technical Instructions. In the case of Class 1 materials, the compatibility group letter also must be shown. If a hazardous material is described by the proper shipping name, hazard class, and identification number appearing in:

* * * * *

(7) The date of the flight;

(8) The telephone number of a person not aboard the aircraft from whom the information contained in the notification of pilot-in-command can be obtained. The aircraft operator must ensure the telephone number is monitored at all times the aircraft is in flight. The telephone number is not required to be placed on the notification of pilot-in-command if the phone number is in a location in the cockpit available and known to the flight crew.

* * * * *

(c) The aircraft operator must retain at the airport of departure or the operator's principal place of business a copy of each notification of pilot-in-command, an electronic image thereof, or the information contained therein for 90 days. Except as provided in paragraph (d) of this section, the aircraft operator must make this information available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations.

(d) The aircraft operator must have the information required to be retained under paragraph (c) of this section readily accessible at the airport of departure and the intended airport of arrival for the duration of the flight leg and, upon request, must make the information immediately available, in an accurate and legible format, to any representative of a Federal, State, or local government agency (including an emergency responder) who is responding to an incident involving the flight.

Issued in Washington, DC on March 20, 2003 under the authority delegated in 49 CFR part 1.

Ellen G. Engleman,

Administrator.

[FR Doc. 03–7070 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020409080–3061–08; I.D. 031003C]

RIN 0648–AP78

Fisheries of the Northeastern United States; Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule; amendment to an interim final rule.

SUMMARY: NMFS announces a correction to the August 1, 2002, interim final rule implementing restrictions specified in the Settlement Agreement Among Certain Parties (Settlement Agreement), which was ordered to be implemented by the U.S. District Court for the District of Columbia (Court) in a Remedial Order (Order) issued on May 23, 2002. The Interim Final Rule contained an inadvertent error in the coordinates defining the seasonal Gulf of Maine (GOM) Rolling Closure Area II under the Northeast (NE) Multispecies Fishery Management Plan (FMP). The intent of this action is to correct the inadvertent error to the GOM Rolling Closure Area II coordinates. This action is being taken by NMFS under the authority of section 305(c) and (d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Management Specialist, 978–281–9141.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the seasonal (April) GOM Rolling Closure Area II were published on May 5, 1999 (64 FR 24066), as part of the final rule implementing regulations in Framework Adjustment 27 of the NE Multispecies FMP. Since that time, no formal adjustments to this area have been approved by NMFS.

On May 23, 2002, the Court issued an Order in the case of *Conservation Law Foundation, et al.* v. *Evans et al.* (Case No. 001134 GK)(D.D.C. May 23, 2002) that the Settlement Agreement be implemented according to its terms to reduce overfishing, until the implementation of Amendment 13 to the FMP.

On August 1, 2002, NMFS published an interim final rule implementing the additional restrictions specified in the Settlement Agreement. These restrictions were intended to reduce overfishing and bycatch on species managed under the FMP, under the authority of section 305(c) of the Magnuson-Stevens Act. The August 1, 2002, interim final rule contained an inadvertent error in the coordinates defining the GOM Rolling Closure Area II at § 648.81(g)(1)(ii). The final two coordinate points for the GOM Rolling Closure Area II were erroneously defined as GM6, at 42°30' N. lat. and 68°30' W. long.; and GM9, at 42°30' N. lat. and the intersection with the Massachusetts shoreline. The correct coordinate points are GM13, at 43°00' N. lat, and 68°30' W. long.; and GM10, at 43°00' N. lat. and the intersection with the New Hampshire shoreline.

The text of the Settlement Agreement, as well as the preamble to the August 1, 2002, interim final rule, stated that all measures that were in effect prior to May 1, 2002, and that were not amended by the August 1, 2002, interim final rule, would remain in effect. The Settlement Agreement identified several measures to be undertaken to reduce fishing mortality in the NE multispecies fishery, including additional inshore closure areas during the months of May and June. However, the Settlement Agreement did not specify any changes to the April closure area as defined in Framework Adjustment 27 to the FMP. Accordingly, the August 1, 2002, interim final rule only specified that changes were made to the GOM Rolling Closure Areas III and IV, for the months of May and June, respectively. The inadvertent error regarding the GOM Rolling Closure Area II occurred in the drafting of the section of the proposed rule to implement the changes to Areas III and IV. In the proposed rule, the subparagraph relating to Area II was included merely to provide the full context of the changes to Areas III and IV. In the process of including the Area II subparagraph, the incorrect coordinates were inadvertently specified.

Accordingly, this rule amends the interim final rule by correcting the erroneous coordinate points by replacing points GM6 and GM9 with points GM13 and GM10. Advisory letters that were sent to current NE multispecies permit holders explaining the changes to the regulations based upon the August 1, 2002, interim final rule included a map that correctly depicted the GOM Rolling Closure Area II.

Classification

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause to waive the requirement to provide prior notice and the opportunity for public comment on this amendment to an interim final rule to correct the coordinates defining the GOM Rolling Closure Area II as published in the August 1, 2002, interim final rule, pursuant to authority set forth at 5 U.S.C. 553(b)(B), because such procedures would be impracticable and contrary to the public interest. This action is necessary to protect groundfish, in particular, GOM cod, during the April season within the GOM Rolling Closure Area II, as initially intended in Framework Adjustment 27.

NMFS is required pursuant to a Settlement Agreement that was subsequently ordered to be implemented by the U.S. District Court for the District of Columbia to ensure that certain status quo measures are implemented through the August 1, 2002, interim final rule. Rolling Closure Area II is one of the status quo measures reflected in the Settlement Agreement and is expected to take effect on April 1, 2003. Because NMFS must adhere to the Settlement Agreement, it is impracticable for NMFS to provide prior notice and opportunity for public comment.

In addition, it would be contrary to the public interest to provide prior notice and opportunity for public comment because the Rolling Closure Areas serve to provide protection to a number of groundfish stocks. This closure area (i.e. Rolling Closure Area II) was originally established to protect groundfish stocks based upon the results of the 27th Annual Stock Assessment Workshop (SAW 27) of 1998. SAW 27 indicated that the GOM cod stock was collapsing. The report specified that GOM cod were overexploited, that recruitment continued to remain at record low levels, and that spawning stock biomass was projected to decline to the lowest level ever observed. Due to the critical condition of GOM cod, the New England Fishery Management Council (Council) voted to adopt management measures in Framework Adjustment 27 to reduce fishing mortality in order to prevent overfishing. Based on analyses in Framework Adjustment 27, the measures in that framework, including area closures, would meet the conservative mortality reduction needed for groundfish species. Framework Adjustment 27 was published on May 5, 1999. Rolling Closure Area II which is scheduled to take effect on April 1, 2003, serves to insure the conservation of vulnerable and depleted GOM cod stocks by reducing fishing mortality in specific inshore areas and during specific time periods considered important to the rebuilding of the species.

Moreover, the management measures contained in this amendment to an interim final rule received prior notice and public comment through the Council's framework process and the publication of a proposed rule for Framework Adjustment 27 on March 29, 1999. NMFS responded to these comments in the final rule published on May 5, 1999. Additionally, NMFS did not receive any comments on the Rolling Closure Areas in the August 1, 2002, Interim Final Rule.

Because this final rule must be made effective by April 1, 2003, consistent with the Settlement Agreement and, because of the need to maintain the conservation potential of this closure area, the AA finds good cause to waive the 30–day delay in effective date under 5 U.S.C. 553(d)(3).

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The analytical requirements of the Regulatory Flexibility Act do not apply because this rule is not subject to prior notice and opportunity for public comment.

List of Subjects in 50 CFR part 648

Fisheries, Fishing, Reporting and recordkeeping.

Dated: March 19, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.81, paragraph (g)(1)(ii) is revised to read as follows:

§ 648.81 Closed areas.

* * * * *

(g) * * *

(1) * * *

(ii) *Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA II

[April 1–April 30]

Point	N. Lat.	W. Long.
GM1	42°00'	(1)
GM2	42°00'	(2)
GM3	42°00'	(3)
GM5	42°00'	68°30'
GM13	43°00'	68°30'
GM10	43°00'	(4)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] New Hampshire shoreline.

* * * * *

[FR Doc. 03–7062 Filed 3–20–03; 4:09 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 57
Tuesday, March 25, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

RIN 3150–AH07

Radiation Exposure Reports: Labeling Personal Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing an amendment to its filing requirements for written event reports submitted to the NRC concerning individuals occupationally overexposed to radiation and radioactive materials. Licensees will be required to clearly label any section of the event report containing personal information "Privacy Act Information: Not for Public Disclosure." This action is necessary to ensure that personal information filed with the NRC is segregated from the event report and maintained in a separate, non-public document.

DATES: Comments on the proposed rule must be received on or before April 24, 2003.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. You may also provide comments via this Web site by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*..

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–8126; e-mail *mlh1@nrc.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

Procedural Background

Because the NRC considers this action to be noncontroversial, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on June 9, 2003. However, if the NRC receives significant adverse comments on this proposed rule by April 24, 2003, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

List of Subjects in 10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. In § 20.2203, paragraph (b)(2) is revised to read as follows:

§ 20.2203 Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits.

* * * * *

(b) * * *

(2) Each report filed pursuant to paragraph (a) of this section must include for each occupationally overexposed [1] individual: the name, Social Security account number, and date of birth. The report must be prepared so that this information is stated in a separate and detachable part of the report and must be clearly labeled "Privacy Act Information: Not for Public Disclosure".

* * * * *

Dated at Rockville, Maryland, this 11th day of March, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–7031 Filed 3–24–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–ANE–10–AD]

Airworthiness Directives; Textron Lycoming, Direct-Drive Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), applicable to Textron Lycoming, direct-drive reciprocating engines (except O–145, O–320H, O–360E, LO–360E, LTO–360E, O–435, and TIO–541 series engines). That AD currently requires inspection of the crankshaft gear installation and rework or replacement of the gears where necessary after a propeller strike, sudden stoppage, at overhaul, or whenever gear train repair is required. This proposal would revise the definitions for sudden stoppage and propeller strike. This proposal is prompted by a change to the definition of a propeller strike or sudden stoppage. The actions specified in the proposed AD are intended to prevent loosening or failure of the crankshaft gear retaining bolt, which may cause sudden engine failure.

DATES: Comments must be received by May 27, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 89–ANE–10–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Textron Lycoming, 652 Oliver Street, Williamsport, PA 17701, U.S.A. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth Street, 3rd floor, Valley Stream, NY 11581–1200; telephone (516) 256–7537; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 89–ANE–10–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 89–ANE–10–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On July 12, 1991, the FAA issued AD 91–14–22, Amendment 39–6916 (56 FR 33205, July 19, 1991), to require inspection of the crankshaft gear installation and rework or replacement of the gears where necessary during overhaul, after a propeller strike, sudden stoppage, or whenever gear train repair is required. That action was prompted by reports of loosening and disengagement of the gear retaining bolt which could result in loss of the main camshaft drive train and critical engine accessories. That condition, if not corrected, could result in loosening or failure of the crankshaft gear retaining bolt, which may cause sudden engine failure.

Since AD 91–14–22 was issued, Textron Lycoming has issued mandatory Service Bulletin (SB) No. 475C, dated January 30, 2003, and the definition of a propeller strike has been expanded to include:

- Any incident, whether or not the engine is operating, that requires repair to the propeller beyond minor dressing of the blades.
- A sudden drop in engine revolutions per minute (RPM) while impacting water, tall grass, or similar yielding medium where propeller damage is not normally incurred.

Textron Lycoming has also included instructions in the maintenance manuals for inspections at overhaul and whenever repair of the gear train is required.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Textron Lycoming Mandatory Service Bulletin (MSB) No. 475C, dated January 30, 2003, that describes procedures for inspection and repair of the crankshaft and gear assembly.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Textron Lycoming direct-drive reciprocating engines of this same type design, the proposed AD would supersede AD 91–14–22 to revise the definitions of a propeller strike and sudden engine stoppage. The actions must be done in accordance with the service information described previously.

Economic Analysis

There are approximately 175,000 Textron Lycoming, direct-drive reciprocating engines of the affected design in the worldwide fleet. The FAA estimates that 125,000 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 7 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $420 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $52,500,000.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6916 (56 FR 33205, July 19, 1991), and by adding a new airworthiness directive, to read as follows:

Textron Lycoming: Docket No. 89–ANE–10–AD. Supersedes AD 91–14–22, Amendment 39–6916.

Applicability: This airworthiness directive (AD) is applicable to all Textron Lycoming direct-drive reciprocating engines except O–145, O–320H, O–360E, LO–360E, LTO–360E, TO–360E, O–435, and TIO–541 series engines.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated before further flight if the engine has experienced a propeller strike as defined in paragraph (b) of this AD, unless already done.

To prevent loosening or failure of the crankshaft gear retaining bolt, which may cause sudden engine failure, do the following:

(a) Inspect, and if necessary repair, the crankshaft counterbored recess, the alignment dowel, the retaining bolt and lock plate, the bolt hole threads, and the crankshaft gear for wear, galling, corrosion, and fretting in accordance with steps 1 through 7 of Textron Lycoming Mandatory Service Bulletin No. 475C, dated January 30, 2003.

Definition of Propeller Strike

(b) For the purposes of this AD, a propeller strike is defined as follows:

(1) Any incident, whether or not the engine is operating, that requires repair to the propeller other than minor dressing of the blades.

(2) Any incident during engine operation in which the propeller impacts a solid object that causes a drop in revolutions per minute (RPM) and also requires structural repair of the propeller (incidents requiring only paint touch-up are not included). This is not restricted to propeller strikes against the ground.

(3) A sudden RPM drop while impacting water, tall grass, or similar yielding medium, where propeller damage is not normally incurred.

(c) The preceding definitions include situations where an aircraft is stationary and the landing gear collapses causing one or more blades to be substantially bent, or where a hanger door (or other object) strikes the propeller blade. These cases should be handled as sudden stoppages because of potentially severe side loading on the crankshaft flange, front bearing, and seal.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (NYACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, NYACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the NYACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on March 17, 2003.

Robert G. Mann,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–6998 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–41–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines. This proposal would require removal and replacement of protective coating of the

7th and 9th through 12th stage high pressure compressor (HPC) disks and the 8th stage HPC hub, initial and repetitive inspections for corrosion pits and cracks, and removal from service as required. This proposal is prompted by reports from operators of cracks observed in JT8D engine steel HPC disks. The actions specified by the proposed AD are intended to prevent fracture of the 7th and 9th through 12th stage HPC disks and 8th stage HPC hub, resulting in uncontained engine failure and damage to the airplane.

DATES: Comments must be received by May 27, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–41–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–41–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–41–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The FAA has received reports of cracks observed in steel HPC disks on PW JT8D–209, –217, –217A, –217C, and –219 series turbofan engines. Investigation has revealed that four of these disks cracked as the result of corrosion pits originating in the disk dovetail slots and one disk cracked as the result of corrosion pits in the tierod hole area.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of PW alert service bulletin (ASB) A6435, Revision 1, dated March 7, 2003, that describes procedures for initial and repetitive inspections to detect corrosion and cracks in 7th and 9th through 12th stage HPC disks and 8th stage HPC hubs, and removal from service of those HPC disks and hubs corroded beyond serviceable limits or cracked.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Pratt & Whitney JT8D–200 series turbofan engines of the same type design, the proposed AD would require removal and replacement of protective coating of the 7th and 9th through 12th stage high pressure compressor (HPC) disks and the 8th stage HPC hub, initial and repetitive inspections for corrosion pits and cracks, and removal from service as required. The actions would be required to be done in accordance with the alert service bulletin described previously.

Economic Analysis

There are approximately 2,200 JT8D–200 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 1,470 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 96 work hours per engine to perform the proposed actions, and that the average labor rate is $60 per work hour. The FAA estimates that 60% of the inspected disks will require replacement at a prorated cost $29,090 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $51,229,500.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 2002–NE–41–AD.

Applicability: This airworthiness directive (AD) is applicable to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines. These engines are installed on, but not limited to McDonnell Douglas MD–80 and series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent fracture of the 7th and 9th through 12th stage high pressure compressor (HPC) disks and 8th stage HPC hub, resulting in uncontained engine failure and damage to the airplane, do the following:

(a) Perform initial and repetitive inspections of 7th and 9th through 12th stage HPC disks and 8th stage HPC hubs for corrosion pits and cracks after stripping the protective coating in accordance with the intervals specified in the compliance section and procedures specified in the accomplishment instructions of PW alert service bulletin (ASB) A6435, Revision 1, dated March 7, 2003.

(b) Before further flight, replace 7th and 9th through 12th stage HPC disks and 8th stage HPC hubs found with corrosion pits or cracks beyond serviceable limits as defined by PW ASB A6435, Revision 1, dated March 7, 2003.

(c) For the purposes of this AD, use the effective date of this AD for computing compliance intervals whenever PW ASB A6435, Revision 1, dated March 7, 2003, refers to the release date of the ASB.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on March 18, 2003.

Robert G. Mann,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–6997 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–01–AD]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model 1124 and 1124A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Israel Aircraft Industries, Ltd., Model 1124 and 1124A series airplanes. This proposal would require revising the airplane flight manual to advise the flightcrew to don oxygen masks as a first and immediate step following a cabin altitude alert. This action is necessary to prevent incapacitation of the flightcrew due to lack of oxygen. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 24, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–01–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–01–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following

statement is made: "Comments to Docket Number 2003–NM–01–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–01–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 25, 1999, a Learjet Model 35 series airplane operating under 14 CFR 135 departed Orlando International Airport *en route* to Dallas, Texas. Air traffic control lost communication with the airplane near Gainesville, Florida. Air Force and National Guard airplanes intercepted the airplane, but the flightcrews of the chase airplanes reported that the windows of the Model 35 series airplane were apparently frosted over, which prevented the flightcrews of the chase airplanes from observing the interior of the Model 35 series airplane. The flightcrews of the chase airplanes reported that they did not observe any damage to the airplane. Subsequently, the Model 35 series airplane ran out of fuel and crashed in South Dakota. To date, causal factors of the accident have not been determined. However, lack of the Learjet flightcrew's response to air traffic control poses the possibility of flightcrew incapacitation and raises concerns with the pressurization and oxygen systems.

Recognizing these concerns, the FAA initiated a special certification review (SCR) to determine if pressurization and oxygen systems on Model 35 series airplanes were certificated properly, and to determine if any unsafe design features exist in the pressurization and oxygen systems.

The SCR team found that there have been several accidents and incidents that may have involved incapacitation of the flightcrews during flight. In one case, the airplane flightcrew did not activate the pressurization system or don their oxygen masks and the airplane flew in excess of 35,000 feet altitude. In another case, the airplane flightcrews did not don their oxygen masks when the cabin altitude aural warning was activated. Further review by the SCR team indicates that the Airplane Flight Manual (AFM) of Learjet Model 35/36 series airplanes does not have an emergency procedure that requires donning the flightcrew oxygen masks when the cabin altitude aural warning is activated. Additional review has found that the AFMs of Model 35A and 36A series airplanes also do not contain appropriate flightcrew actions when the cabin altitude aural warning is activated. However, the AFMs do contain an abnormal procedure that allows the flightcrew to troubleshoot the pressurization system prior to donning the oxygen masks after the cabin altitude warning sounds. Troubleshooting may delay donning of the oxygen masks to the point that flightcrews may become incapable of donning their oxygen masks.

The SCR findings indicated that the most likely cause for incapacitation was hypoxia (lack of oxygen). The only other plausible cause of incapacitation is exposure to toxic substances. However, no evidence was found to support the existence of toxic substances.

Delayed response of the flightcrew in donning oxygen masks as a first and immediate action upon the activation of the cabin altitude warning horn could lead to incapacitation of the flightcrew.

A review of the emergency procedures in the AFM for Model 1124 and 1124A series airplanes revealed that the procedures for the flightcrew to don emergency oxygen masks is not the first and immediate step, but rather the second step when the warning horn sounds. Time spent troubleshooting the pressurization system following a cabin altitude alert may result in the flightcrew's incapacitation and consequent inability to continue to control the airplane before they are able to don oxygen masks. Therefore, these airplanes may be subject to the identified unsafe condition.

Explanation of Relevant Service Information

Israel Aircraft Industries has issued Temporary Revision (TR) No. 3 to the 1124 Westwind Airplane Flight Manual (AFM) and TR No. 5 to the 1124A Westwind AFM. Both TRs are dated January 16, 2001. The TRs advise the flightcrew to don oxygen masks as a first and immediate step following a cabin altitude alert to prevent incapacitation of the flightcrew due to lack of oxygen. (Previously the AFMs advised the flightcrew to check the cabin altitude and differential pressure gauge before donning oxygen masks.) Accomplishment of the AFM revision is intended to adequately address the identified unsafe condition. The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, approved these TRs and issued Israeli airworthiness directive 21–02–07–01, dated July 22, 2002, which mandates compliance with the TRs to ensure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

These airplane models are manufactured in Israel and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require an AFM revision to advise the flightcrew to don oxygen masks as a first and immediate step following a cabin altitude alert.

Cost Impact

The FAA estimates that 198 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $11,880, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Israel Aircraft Industries, LTD.: Docket 2003–NM–01–AD.

Applicability: All Model 1124 and 1124A series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew due to lack of oxygen, accomplish the following:

Revision to Airplane Flight Manual (AFM)

(a) Within 1 month after the effective date of this AD, revise the Emergency Procedures section of the FAA-approved AFM, as specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model 1124 series airplanes: Insert TR 3, dated January 16, 2001, into the 1124 Westwind AFM.

(2) For Model 1124A series airplanes: Insert TR 5, dated January 16, 2001, into the 1124A Westwind AFM.

(b) When the information in the TRs identified in paragraph (a) of this AD has been incorporated into the general revisions of the respective AFM, the general revisions may be incorporated into the AFMs, and these TRs may be removed from the AFM.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 2: The subject of this AD is addressed in Israeli airworthiness directive 21–02–07–01, dated July 22, 2002.

Issued in Renton, Washington, on March 18, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6996 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–16–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc. RB211–535 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), applicable to Rolls-Royce plc. (RR) models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines, with certain part number (P/N) low pressure (LP) turbine stage 2 discs installed. That AD currently requires establishing new reduced LP turbine stage 2 disc cyclic limits. That AD also requires removing from service affected discs that already exceed the new reduced cyclic limit, and removing other affected discs before exceeding their cyclic limits, using a drawdown schedule. This proposal would require changing certain cyclic limits, changing the effective date of certain disc cyclic lives, and would allow intermix of Flight Plan A and Flight Plan B intermix calculations. This proposal is prompted by a reassessment of the thermal and stress data from recent operational experience and comments received from operators on the current AD. The actions specified by the proposed AD are intended to prevent LP turbine stage 2 disc failure, which could result in uncontained engine failure and possible loss of the airplane.

DATES: Comments must be received by May 27, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–16–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected, by appointment, at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Rolls-Royce plc, P.O. Box 31 Derby, DE24 8BJ, United Kingdom; telephone 011–44–1332–242424; fax 011–44–1332–249936. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–16–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–16–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On November 8, 2002, the FAA issued AD 2002–23–08, Amendment 39–12952 (67 FR 71094, November 29, 2002), to require establishing new reduced LP turbine stage 2 disc cyclic limits, to require removing from service affected discs that already exceed the new reduced cyclic limit, and to remove other affected discs before exceeding their cyclic limits, using a drawdown schedule. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), had notified the FAA that an unsafe condition may exist on RR models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines. The CAA advised that the manufacturer had performed a reassessment of the safe cyclic limits of LP turbine stage 2 discs, P/Ns UL11508, UL17141, UL18947, UL29029, and UL37352. The cyclic limits of these discs were reduced based on more recent thermal and stress data obtained from operational experience. This condition, if not corrected, could result in uncontained engine failure and possible loss of the airplane.

Since AD 2002–23–08 was issued, another reassessment of the thermal and stress data obtained through operational experience was made, and comments were received from operators on the current AD.

Comments

Interested persons have been afforded an opportunity to comment on final rule; request for comments AD 2002–23–08. Due consideration has been given to the comments received.

Request To Change Table 1 Life Limit

Two commenters request that the Flight Plan A life limit for item (1) December 31, 2001, listed in Table 1, be changed from 22,500 cycles-since-new (CSN) to the value of 23,200 CSN. The commenters state that the 22,500 CSN value does not agree with the corresponding table value in mandatory service bulletin (MSB) RB.211–72–D181, Revision 3, dated August 16, 2002.

The FAA agrees. We have changed item (1) of Table 1 of this proposed rule to 23,200 CSN.

Request To Change Effective Date of Disc Cyclic Life

Nine commenters request that the effective date of the disc cyclic life in Table 2 and Table 3 be changed from "On the effective date of this AD" to agree with the corresponding table value of "As of December 31, 2000" in MSB RB.211–72–D181, Revision 3, dated August 16, 2002.

The FAA agrees. We have changed the first columns of Table 2 and Table 3.

Request To Change Drawdown Schedule

Six commenters request the drawdown schedule in the AD be changed to coincide with the schedule in MSB RB.211–72–D181, Revision 3. The commenters have identified differences in various drawdown schedule cyclic limits between the AD and the MSB, and state the AD limits are more restrictive.

The FAA agrees. We have changed this proposed rule to coincide as much as possible with the drawdown schedule in the MSB.

Request for an Allowance for Flight Plan Intermix

One commenter states that the AD does not allow for Flight Plan A and Flight Plan B intermix count conditions and that this could result in a lower cyclic limit than required by the MSB.

The FAA agrees. We have incorporated the intermix note from the MSB into this proposed rule.

Request To Incorporate Four Tables from the MSB Versus the Three Tables in AD

One commenter states that the drawdown requirements and inspection were provided in four tables in MSB RB.211–72–D181, Revision 3, and that the AD should adopt the same tabular format. The commenter believes this would reduce the potential for confusion among the operators, eliminate contradiction between the MSB and AD, and ensure the original safety issues will be addressed.

The FAA partially agrees. It is unclear which four tables the commenter is referring to since they are not numbered in the MSB. However, in an effort to clarify this information, we have added additional levels of detail to Table 2 and Table 3.

Manufacturer's Service Information

Rolls-Royce plc. issued MSB RB.211–72–D181, Revision 3, dated August 16, 2002, that specifies a drawdown schedule for removing from service affected LP turbine stage 2 discs, using new Time Limits Manual (TLM) cyclic limits. This MSB provides a scheduled reduction, by engine and flight plan, of LP turbine stage 2 disc lives until the full life-cycle reduction on December 31, 2005.

This MSB also provides instructions for performing a one-time on-wing eddy current inspection for cracks of affected LP turbine stage 2 discs to allow a disc to remain in service for an additional 3,000 cycles, if it does not exceed the new, lower TLM cyclic limit. The CAA has classified this service bulletin as mandatory and issued AD 006–05–2001 in order to assure the airworthiness of these Rolls-Royce plc. turbofan engines in the U.K.

Bilateral Agreement Information

This engine model is manufactured in the U.K. and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other RR models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines of the same type design, the proposed AD would require:

- Reducing the LP turbine stage 2 disc life-cyclic limits; AND
- Removing from service affected discs that already exceed the new reduced cyclic limits; AND
- Removing other affected discs before exceeding their cyclic limits, using a drawdown schedule.

The actions would be required to be done in accordance with the MSB described previously.

Economic Analysis

There are approximately 1,253 engines of the affected design in the worldwide fleet. The FAA estimates that 788 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 12 work hours per engine to perform each of the proposed inspections and 300 work hours per engine to perform the proposed disc removals. The average labor rate is $60 per work hour. Required parts would cost approximately $60,190 per engine. Based on these figures, the total cost of the proposed AD for performing one inspection per engine and removing all 788 discs, to U.S. operators is estimated to be $62,181,080.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g). 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12952 (67 FR 71094, November 29, 2002), and by adding a new airworthiness directive, to read as follows:

Rolls-Royce plc.: Docket No. 2002–NE–16–AD. Supersedes AD 2002–23–08, Amendment 39–12952.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce plc. (RR) models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines, with low pressure (LP) turbine stage 2 discs part numbers (P/N's) UL11508, UL17141, UL18947, UL29029, and UL37352 installed. These engines are installed on, but not limited to, Boeing 757 and Tupolev Tu204 airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent LP turbine stage 2 disc failure, which could result in an uncontained engine failure and possible loss of the airplane, do the following:

Cycle Limits

(a) Change the RR Time Limits Manual cyclic limits for LP turbine stage 2 discs as specified in the following Table 1:

TABLE 1.—TIME LIMITS MANUAL (TLM) CYCLIC LIMITS

Date of reduced life limit	Life limits for RB211–535E4 engines operating in flight plan A, and RB211–535E4–B engines	Life limits for RB211–535E4 engines operating in flight plan B
(1) December 31, 2001	23,200 cycles-since new (CSN)	19,700 CSN.
(2) December 31, 2002	22,500 cycles-since-new (CSN)	19,000 CSN.
(3) December 31, 2003	21,500 CSN	18,000 CSN.
(4) December 31, 2004	20,000 CSN	16,500 CSN.
(5) December 31, 2005	18,100 CSN	14,600 CSN.

RB211–535E4 Engines Operating to Flight Plan A, and RB211–535E4–B Engines

(b) For RB211–535E4 engines operating to flight plan A, and RB211–535E4–B engines, remove the LP turbine stage 2 disc from service using the CSN and Action times listed in the following Table 2.

TABLE 2.—DRAWDOWN SCHEDULE FOR RB211–535E4 ENGINES OPERATING TO FLIGHT PLAN A AND RB211–535E4–B ENGINES

Disc CSN	Action	Replace disc	
		Without eddy current inspection	With eddy current inspection
(1) 20,001 CSN or greater on December 31, 2000.	Remove disc from service or perform optional on-wing eddy current disc inspection within 21 days after the effective date of this AD.	Within 21 days after the effective date of this AD.	Within 3,000 cycles-in-service (CIS) after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(2) 18,100 to 20,000 CSN on December 31, 2000.	Remove disc from service or perform optional on-wing eddy current disc inspection.	Before accumulating 21,000 CSN or within 21 days after the effective date of this AD, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(3) Fewer than 18,100 CSN on December 31, 2000 and greater than 20,000 CSN on December 31, 2004.	Remove disc from service or perform optional on-wing eddy current disc inspection.	Before accumulating 20,500 CSN or by December 31, 2004, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(4) Fewer than 18,100 CSN on December 31, 2000 and greater than 18,100 CSN on December 31, 2005.	Remove disc from service or perform on-wing eddy current disc inspection.	Before accumulating 20,000 CSN or by December 31, 2005, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(5) Fewer than 18,100 CSN on December 31, 2000 and fewer than 18,100 CSN on December 31, 2005.	No action required	N/A.	N/A

(c) Information regarding disc removal may be found in 3.A. of the Accomplishment Instructions of Mandatory Service Bulletin (MSB) RB.211–72–D181, Revision 3, dated August 16, 2002.

(d) The optional on-wing eddy current disc inspection noted in Table 2 of this AD must be performed in accordance with 3.C.(1) through 3.C.(6) of the Accomplishment Instructions of MSB RB.211–72–D181, Revision 3, dated August 16, 2002.

RB211–535E4 Engines Operating to Flight Plan B

(e) For RB211–535E4 engines operating to flight plan B, remove the LP turbine stage 2 disc from service using the CSN and Action times listed in the following Table 3.

TABLE 3.—DRAWDOWN SCHEDULE FOR RB211–535E4 ENGINES OPERATING TO FLIGHT PLAN B

Disc CSN	Action	Replace disc	
		Without eddy current inspection	With eddy current inspection
(1) 16,501 CSN or greater on December 31, 2000.	Remove disc from service or perform optional on-wing eddy current disc inspection within 21 days after the effective date of this AD.	Within 21 days after the effective date of this AD.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(2) Greater than 14,600 CSN on December 31, 2000.	Remove disc from service or perform optional on-wing eddy current disc inspection.	Before accumulating 17,500 CSN or within 21 days after the effective date of this AD, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(3) Fewer than 14,600 CSN on December 31, 2000 and greater than 16,500 CSN on December 31, 2004.	Remove disc from service or perform optional on-wing eddy current disc inspection.	Before accumulating 17,000 CSN or by December 31, 2004, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(4) Fewer than 14,600 CSN on December 31, 2000 and greater than 14,600 CSN on December 31, 2005.	Remove disc from service or perform on-wing eddy current disc inspection.	Before accumulating 16,500 CSN or by December 31, 2005, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(5) Fewer than 14,600 CSN on December 31, 2000 and fewer than 14,600 CSN on December 31, 2005.	No action required	NA	NA.

(f) Information regarding disc removal may be found in 3.A. of the Accomplishment Instructions of MSB RB.211–72–D181, Revision 3, dated August 16, 2002.

(g) The optional on-wing eddy current disc inspection must be performed in accordance with 3.C.(1) through 3.C.(6) of the Accomplishment Instructions of MSB RB.211–72–D181, Revision 3, dated August 16, 2002.

Note 2: For engines moving from Flight Plans A to B or B to A, the intermix calculations found in MSB RB.211–72–D181, Revision 3, dated August 16, 2002, may be applied to the life limits.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, ECO. Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office (ECO).

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Note 4: The subject of this AD is addressed in CAA airworthiness directive 006–05–2001, dated August 3, 2001.

Issued in Burlington, Massachusetts, on March 19, 2003.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–7004 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14658; Airspace Docket No. 03–ACE–27]

Proposed modification of Class E airspace; Fort Leonard Wood, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace areas at Fort Leonard, MO. An examination of controlled airspace at Fort Leonard, MO revealed discrepancies in the dimensions of the Fort Leonard, MC Class E4 and Class E5 airspace areas. This action corrects the discrepancies by modifying the airspace areas.

The intended effect of this proposal is to provide controlled Class E airspace for aircraft executing instrument approach procedures to Waynesville Regional Airport at Forney Field and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: Comments for inclusion in the Rules Docket must be received on or before April 25, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14658/Airspace Docket No. 03–ACE–27, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented that particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14658/Airspace Docket No. 03–ACE–27." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electric copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov*. or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independent Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This notice proposes to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying the Class E airspace area designated as an extension to the Class D airspace and the Class E airspace area extending upward from 700 feet or more above the surface at Fort Leonard Wood, MO. An examination of controlled airspace at Fort Leonard, MO revealed the dimensions of these airspace areas were not in compliance with FAA Order 8260.19, Flight Procedures and Airspace. This proposed rule making would decrease the size of the Fort Leonard Wood, MO Class E airspace area designated as an extension to the Class D airspace by relocating the southeastern boundary of this area from 16 miles to 7 miles southeast of the Buckhorn Nondirectional Radio Beacon (NDB). It would also increase the dimensions of the Class E airspace area extending upward from 700 feet or more above the surface to approximately the current dimensions of the Class E airspace area designated as an extension to the Class D airspace. These actions would correct the discrepancies in the controlled airspace at Fort Leonard Wood, MO and bring them into compliance with FAA Order 8260.19. These areas would be depicted on appropriate aeronautical charts.

Class E airspace areas designated as an extension to a Class D area are published in Paragraph 6004 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant

preparation of a Regulatory Evaluation as they anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to Class D or Class E surface area.

* * * * *

ACE MO E4 Fort Leonard Wood, MO

Waynesville Regional Airport at Forney Field, MO
(Lat. 37°44′30″ N., long. 92°08′27″ W.)
Forney VOR
(Lat. 37°44′33″ N., long. 92°08′20″ W.)
Buckhorn NDB
(Lat. 37°41′51″ N., long. 92°06′14″ W.)

That airspace extending upward from the surface within 2.4 miles each side of the Forney VOR 318° radial extending from the 4-mile radius of Waynesville Regional Airport at Forney field to 7 miles northwest of the VOR and within 4 miles southwest and 8 miles northeast of the 147° bearing from the Buckhorn NDB extending from the 4-mile radius of the airport to 7 miles southeast of the Buckhorn NBD, excluding that airspace within the R–4501 Fort Leonard Wood Restricted Areas, during the specific times they are in effect. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Fort Leonard Wood, MO

Waynesville Regional Airport at Forney Field, MO
(Lat. 37°44′30″ N., long. 92°08′27″ W.)
Forney VOR
(Lat. 37°44′33″ N., long. 92°08′20″ W.)
Buckhorn NDB
(Lat. 37°41′51″ N., long. 92°06′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Waynesville Regional Airport at Forney Field and within 2.4 miles each side of the Forney VOR 318° radial extending from the 6.5-mile radius of the airport to 7 miles northwest of the VOR and within 4 miles southwest and 8 miles northeast of the 147° bearing from the Buckhorn NDB extending from the 6.5-mile radius of the airport to 16 miles southeast of the Buckhorn NDB; excluding that airspace within the R–4501 Fort Leonard Wood, MO, Restricted Areas during the specific times they are in effect.

* * * * *

Issued in Kansas City, MO, on March 11, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–7073 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 111

[Docket No. 95N–0304]

RIN 0910–AC51

Dietary Supplements Containing Ephedrine Alkaloids; Reopening of the Comment Period; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration is correcting a proposed rule that appeared in the **Federal Register** of March 5, 2003 (68 FR 10417). The document reopened for 30 days the comment period for a proposed rule entitled "Dietary Supplements Containing Ephedrine Alkaloids" (June 4, 1997, 62 FR 30678). The former document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–5072, appearing on page 10417 in the **Federal Register** of Wednesday, March 5, 2003, the following correction is made:

1. On page 10420, in the second column, reference 7 is corrected to read:

7. Shekelle, P., S. Morton, M. Maglione, et al., "Ephedra and Ephedrine for Weight Loss and Athletic Performance Enhancement: Clinical Efficacy and Side Effects," Evidence Report/Technology Assessment No. 76 (Prepared by Southern California Evidence-based Practice Center, RAND, under Contract No. 290–97–0001, Task Order No. 9), Agency for Healthcare Research and Quality, February 2003, Publication No. 03–E022, Rockville, MD.

Dated: March 17, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–6963 Filed 3–24–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–048–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, OSM, are announcing receipt of a proposed amendment to the Maryland regulatory program (the "Maryland program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Maryland proposes revisions to and additions of rules about descriptions of proposed mining operations, impoundments, and inspection and certification of impoundments.

This document gives the times and locations that the Maryland program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t. April 24, 2003. If requested, we will hold a public hearing on the amendment on April 21, 2003. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on April 9, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to George Rieger at the address listed below.

You may review copies of the Maryland program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Oversight and Inspection Office: Mr. George Rieger, Oversight and Inspection Office, Office of Surface Mining Reclamation and Enforcement, Three Parkway Center, Pittsburgh, PA 15220, 412–937–2153, *grieger@osmre.gov;* and C. Edmon Larrimore, Program Administrator, Mining Program, Maryland Department of the Environment, 1800 Washington Blvd., Baltimore, MD 21230, 410–537–3573.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: 412–937–2153. Internet: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Maryland Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Maryland program on February 18, 1982. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Maryland program in the February 18, 1982, **Federal Register** (47 FR 7214). You can also find later actions concerning Maryland's program and program amendments at 30 CFR 920.15, 920.16, 920.20, and 920.25.

II. Description of the Proposed Amendment

By letter dated November 25, 2002, Maryland sent us a proposed amendment to its program (Administrative Record No. MD–577–21) under SMCRA (30 U.S.C. 1201 *et seq.*). Specifically, Maryland proposes to amend several sections of the Code of Maryland Regulations (COMAR) including sections 26.20.02.13, 26.20.21.01, 26.20.21.08, and 26.20.21.09 as they relate to impoundments. The proposed amendments to each section are outlined below. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

Maryland's proposed amendment contains various references to both the Soil Conservation Service (SCS) and the Natural Resources Conservation Service (NRCS). To prevent any confusion, it should be noted that the NRCS is an agency of the U.S. Department of Agriculture (USDA) and was formally known as the SCS. Therefore, any documents released before the SCS became the NRCS and referenced in Maryland's proposed amendment are referenced as SCS documents.

26.20.02.13 Description of Proposed Mining Operations

Maryland proposes changes to COMAR section 26.20.02.13 subsections U, V, and AA. Subsection U currently requires "[a] general plan for each proposed sedimentation pond, water impoundment, excess spoil disposal structure, and coal processing waste bank, dam, or embankment within the proposed mine plan area," which meet certain enumerated criteria. Maryland proposes to change this regulation by removing the phrase "excess spoil disposal structure," and by adding "siltation structures," before the term "sedimentation pond." Therefore, if we approve the proposed changes, the new rule would read as follows:

U. A general plan for each proposed siltation structures, sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed mine plan area. * * *

The enumerated criteria would remain unchanged.

Maryland proposes the same changes to subsection V(1), which currently requires a "detailed design plan for each proposed sedimentation pond, water impoundment, excess spoil disposal structure, and coal processing waste bank, dam, or embankment within the proposed permit area," which meet certain enumerated criteria. Maryland also proposes an addition to the enumerated criteria. A new subsection V(1)(a) is proposed, reading as follows:

(a) Is designed in compliance with the requirements of COMAR 26.20.21.06 and .08;

If we approve the proposed changes, the current subsections (a)–(d) would therefore become subsections (b)–(e), respectively. Maryland also proposes changes to subsection v(3). The current subsection reads:

(3) If a sedimentation pond, water impoundment, or coal processing waste dam or embankment is 20 feet or higher or impounds more than 20 acre-feet, the plan shall contain a stability analysis of each structure. The stability analysis shall include but not be limited to strength parameters, pore pressures, and long-term seepage conditions.

The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Maryland proposes to replace the language, "or embankment is 20 feet or higher or impounds more than 20 acre-feet" with "or siltation structure meets the Class (b) or (c) criteria for dams in the USDA, Soil Conservation Service Technical Release No. 60, (October 1985), as incorporated by reference in COMAR 26.20.21.01–1 or meets the size or other criteria of 30 CFR 77.216(a)."

Finally, Maryland proposes changes to subsection AA(1). Subsection AA requires descriptions of excess spoil disposal sites. Subsection AA(1) currently states:

Descriptions, including appropriate maps and cross-section drawings, of any proposed excess spoil disposal site and design of the spoil disposal structures.

These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the site and structures.

If we approve the proposed changes, the first paragraph of subsection AA(1) would read:

Each application shall contain descriptions including appropriate maps and cross-section drawings, of any proposed excess spoil disposal site and design of the spoil structures in accordance with COMAR 26.20.26.

No amendments are proposed to the remaining provisions of subsection AA.

26.20.21

Maryland proposes a new COMAR subsection 26.20.21.01–1:

.01–1 Incorporation by Reference

The U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, October, 1985), "Earth Dams and Reservoirs," Technical Release No. 60 (TR–60) is incorporated by reference.

26.20.21.08

Maryland proposes several changes to COMAR subsection 26.20.21.08. First, Maryland proposes changes to subsection 26.20.21.08A, which lists the general requirements for impoundments. Under the current regulations, the first requirement is that impoundments be designed and constructed to ensure:

(1) Compliance with USDA, Soil Conservation Service, Standards and Specifications for Ponds (Code 378), July, 1981, as incorporated by reference in COMAR 26.17.05.05B(3), if impoundments do not meet the size or other criteria of 30 CFR § 77.216(a) and are located where failure would not be expected to cause loss of life or serious property damage;"

If we approve the proposed changes, COMAR 26.20.21.08A(1) would read as follows:

(1) Compliance with USDA, Natural Resources Conservation Service, Maryland Conservation Practice, Standard Pond 378 (January 2000), as incorporated by reference in COMAR 26.17.02.01–1B(2).

Maryland also proposes to change the second requirement of subsection A. The current requirement reads as follows:

(2) Compliance with requirements of COMAR 26.17.05.05 if the embankment is more than 15 feet in height as measured from the upstream toe of the embankment to the crest of the emergency spillway;

Maryland proposes changing the reference to COMAR 26.17.05.05 to COMAR 26.17.04.05.

A new subsection (3) is also proposed:

(3) Impoundments meeting the Class (b) or (c) criteria for dams in Earth Dams and Reservoirs, TR–60 shall comply with "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60 and the requirements of this regulation;"

Should we approve the proposed changes, the current requirements (3)–(15) would therefore be changed to (4)–(16), respectively, but would otherwise remain unchanged.

Second, Maryland proposes changes to subsection B of COMAR section 26.20.21.08, which addresses the stability of impoundments. COMAR section 26.20.21.08B(1) currently requires that:

(1) Impoundments meeting the size or other criteria of 30 CFR 77.216(a), located where failure would be expected to cause loss of life or serious property damage, or a coal mine waste impounding structure, shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least 1.2.

If we approve Maryland's proposed changes, the above language would read:

(1) Impoundments meeting the Class (b) or (c) criteria for dams contained in "Earth Dams and Reservoirs", TR–60 or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least 1.2.

COMAR section 26.20.21.08B(2) currently requires that:

(2) Except for coal mine waste impounding structures and impoundments located where failure would be expected to cause loss of life or serious property damage, impoundments not meeting the size or other criteria of 30 CFR 77.216(a) shall be constructed to achieve a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.

Should we approve the proposed changes, section 26.20.21.08B(2) would read:

(2) Impoundments not included in § B(1) of this regulation, except for coal mine waste impounding structures shall be constructed to achieve a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.

No changes are proposed for subsections (3)–(5) of section 26.20.21.08B.

Maryland also proposes to add a new COMAR section 26.20.21.08C. The proposed subsection is quoted below:

C. Freeboard.

(1) Impoundments shall have adequate freeboard to resist overtopping by waves and sudden increases in storage volume.

(2) Impoundments meeting the Class (b) or (c) criteria for dams in "Earth Dams and Reservoirs", TR–60 shall comply with the freeboard hydrograph criteria in "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60.

Should we approve the proposed amendments, the current subsections C and D would therefore become subsections D and E, respectively, and further amended as follows. The current subsection C(2) now reads:

(2) For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

If we approve the proposed changes, subsection C(2) would become D(2) and read:

(2) For an impoundment meeting the Class (b) or (c) criteria for dams contained in "Earth Dams and Reservoirs", TR–60 or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

Finally, Maryland proposes changes to COMAR 26.20.21.08D. As noted above, the proposed addition of a new subsection C would change the current subsection D to E should we approve the proposed changes. Further, the State proposes changes to the current subsection D(3). Currently subsection D(3) contains subsections (a) and (b), which contain the required design precipitation event for impoundments meeting the spillway requirements of the section. The State proposes to add a new subsection D(3)(c):

(c) For impoundments meeting the Class (b) or (c) criteria for dams in "Earth Dams and Reservoirs", TR–60, in accordance with the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60, or larger event specified by the Department.

Because a new subsection D(3)(c) is proposed, the State proposes to change subsection D(3)(b) by removing the period at the end of the sentence and adding a semicolon followed by the word "or." If we approve the proposed changes, subsections E through I would be changed to F through J, respectively, but would otherwise remain unchanged.

26.20.21.09

Maryland proposes changes to COMAR 26.20.21.09D, which relates to the examination of impoundments. Subsection D(1) currently states:

(1) Impoundments subject to 30 CFR 77.216 shall be examined in accordance with 30 CFR 77.21–3. Other impoundments shall be examined at least quarterly by a qualified person for appearance of structural weakness and other hazardous conditions.

If we approve the proposed changes, COMAR section 26.20.21.09D(1) will read:

(1) Impoundments meeting the Class (b) or (c) criteria for dams in "Earth Dams and Reservoirs", TR–60 or the size or other criteria of 30 CFR 77.216 shall be examined in accordance with 30 CFR 77.216–3. Other impoundments not meeting the Class (b) or (c) criteria for dams in "Earth Dams and Reservoirs", TR–60 or subject to 30 CFR 77.216 shall be examined at least quarterly by a qualified person for appearance of structural weakness and other hazardous conditions.

Maryland proposes no other changes to the remainder of COMAR 26.20.21.09.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Oversight and Inspection Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. MD–048–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Oversight and Inspection Office at 412–937–2153.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on April 9, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian tribes.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 5, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–7023 Filed 3–24–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–02–035]

RIN 1626–AA09

Drawbridge Operation Regulation Change; St. Croix River, Minnesota and Wisconsin

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Coast Guard published a notice of proposed rulemaking (NPRM) on April 16, 2002, proposing to change the regulations governing four drawbridges across the St. Croix River. The NPRM contained a statement regarding the S36 Bridge, mile 23.4, at Stillwater that might have confused the public. The Coast Guard is further explaining the statement and reopening the comment period for 30 days.

DATES: Comments must be received by April 24, 2003.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD08–02–035 and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (314) 539–3900, extension 2378. The Bridge Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Eighth Coast Guard District Bridge Branch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** on April, 16, 2002, (67 FR 18521), proposing to amend the operating regulations governing four bridges across the St. Croix River. The NPRM stated that the existing regulation for the S36 Bridge in Stillwater, Minnesota, 33 CFR 117.667(b), contained a 24-hour notice requirement for openings beginning on October 16. In fact, operation of the S36 Bridge is currently regulated by 33 CFR 117.5 which requires that the bridge open on signal at all times. The NPRM proposed to add a new paragraph to the existing S36 Bridge regulation, § 117.667(b)(3), to require 24-hour notice for the opening of the S36 Bridge between October 16 and May 14. The Coast Guard is reopening the comment period for 30 days to take additional comments regarding this explanation.

Comments that have already been received as of the date of publication of this notice will remain part of the docket for this proposed rule. Those comments, and any new comments received before the expiration of the additional comment period, will be considered in developing a final rule.

Dated: March 12, 2003.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–7079 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

United States Naval Restricted Area, Manchester Fuel Depot, Manchester, WA

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U. S. Army Corps of Engineers is proposing to establish a new restricted area in the waters of Rich Passage and Puget Sound surrounding the Manchester Fuel Depot at Manchester, Washington. The designation would ensure public safety and satisfy the Navy's security, safety, and operational requirements as they pertain to vessels at the Manchester Fuel Depot by establishing an area into which unauthorized vessels and persons may not enter.

DATES: Comments must be submitted on or before April 24, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch at (202) 761–4618 or Mr. Jack Kennedy, Corps Seattle District, at (206) 764–6907.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriation Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps proposes to amend the regulations in 33 CFR Part 334 by establishing a new restricted area at § 334.1244, in the waters of Rich Passage and Puget Sound surrounding the Manchester Fuel Depot at Manchester, Washington. The points defining the proposed restricted area were selected to avoid interference with ferryboats and other users of the adjacent traffic lanes of Rich Passage, and to minimize the restricted area's interference with nearby fish pens in Clam Bay and Rich Passage. In addition to the publication of this proposed rule, the Seattle District Engineer is concurrently soliciting public comment on these proposed rules by distribution of a public notice to all known interested parties.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of the establishment of this restricted area would have no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic, and accordingly, certifies that this proposal, if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

The Seattle District has prepared a preliminary Environmental Assessment (EA) for this action. The preliminary EA concluded that this action will not have a significant impact on the human environment. After receipt and analysis of comments from this **Federal Register** posting and the Seattle District's concurrent Public Notice, the Corps will prepare a final environmental document detailing the scale of impacts this action will have upon the human environment. The EA will be be available for review at the Seattle District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** paragraph above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, we propose to amend 33 CFR Part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.1244 is added to read as follows:

§ 334.1244 Rich Passage, Manchester Fuel Depot, Manchester, Washington; Naval Restricted Area.

(a) *The area.* The waters of Rich Passage and Puget Sound surrounding the Manchester Fuel Depot Point A, a point along the northern shore of the fuel depot at latitude 47°34′ 03″ North, longitude 122°32′ 17″ West; thence to latitude 47°34′ 00″ North, longitude 122°31′ 50″ West (Point B); thence to latitude 47°33′ 37″ North, longitude 122°31′ 50″ West (Point C); thence to latitude 47°33′ 32″ North, longitude 122°32′ 06″ West (Point D); thence to latitude 47°33′ 45″ North, longitude 122°32′ 20″ West (Point E), a point in Puget Sound on the southern shoreline of the Manchester Fuel Depot.

(b) *The regulation.* (1) All persons and vessels are prohibited from entering the waters within the restricted area for any reason without prior written permission from the Officer in Charge of the Manchester Fuel Depot.

(2) Mooring, anchoring, fishing, transit and/or swimming shall not be allowed within the restricted area without prior written permission from the Officer in Charge of the Manchester Fuel Depot.

(c) *Enforcement.* The regulation in this section shall be enforced by the Officer in Charge of the Manchester Fuel Depot, and such agencies and persons as he/she shall designate.

Approved: February 20, 2003.

Lawrence A. Lang,

Acting Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 03–6967 Filed 3–24–03; 8:45 am]

BILLING CODE 3710–GM–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 2003–P–007]

RIN 0651–AB59

Changes To Implement Electronic Maintenance of Official Patent Application Records

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rule making.

SUMMARY: The United States Patent and Trademark Office (Office) has established a 21st Century Strategic Plan to transform the Office into a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system. One priority of the 21st Century Strategic Plan is the beginning-to-end electronic processing of patent applications. The Office is proposing changes to the rules of practice in this notice to adapt to a patent electronic image management system. Specifically, the changes proposed in this notice facilitate electronic data capture and processing, streamline the patent application process, and simplify and clarify the pertinent provisions of the rules of practice.

DATES: To be ensured of consideration, written comments must be received on or before April 24, 2003. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *PatentEFW.comments@uspto.gov*. Comments may also be submitted by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231; or by facsimile

to (703) 872–9411, marked to the attention of Robert Clarke. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted 3 ½ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, located at Room 3D65 of Crystal Plaza ¾, 2201 South Clark Place, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: *http://www.uspto.gov*). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Robert A. Clarke ((703) 305–9177), Senior Legal Advisor, or Robert J. Spar ((703) 308–5107), Director, Office of Patent Legal Administration (OPLA), directly by phone, or by facsimile to (703) 305–1013, marked to the attention of Mr. Clarke, or by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The Office is increasing the integrity of its internal patent application record maintenance by adopting a new electronic data processing system for the storage and maintenance of all the records associated with patent applications. Because the system is consistent with the data processing system used by the European Patent Office (EPO), it will also improve information exchange among the Intellectual Property Offices.

The system will use image technology to replace the standard paper processing of patent applications currently used in the Office. The paper document application file contents (including the specification, oath or declaration, drawings, information disclosure statements, amendments, Office actions, and file jacket notations) of pending applications will be scanned into electronic image files. All processing and examination will be performed with the electronic image files, instead of the paper source documents, by all Office personnel.

The system will affect applicants minimally during the patent application process, because the program affects internal operations and not external communications. Applicants will continue to send and receive Office correspondence in paper form, although the Office encourages use of the existing alternative electronic filing system resources for application filings and certain information disclosure statement submissions. The proposed changes to the rules of practice in title 37 of the Code of Federal Regulations (CFR) are designed to improve internal operations' use of the electronic format, primarily by easing the requirements upon applicants in amendment practice and information disclosure statement submissions. The electronic nature of patent records permits their viewing by the public through the Patent Application Information Retrieval (PAIR) system, which has a number of advantages: it provides notice to applicants of certain examination processing activities (*e.g.*, mailing of Office actions); it assures confidence in the integrity of the Office records; it reduces the handling of the records; and it allows parallel processing of the application by various parts of the Office.

The technology and procedures for the new system are similar to those used at the EPO, but adapted to the Office's legal requirements and existing computer systems. The Office has incorporated the experience and lessons learned from the previously announced prototype program (*USPTO Announces Prototype of Image Processing*, 1265 *Off. Gaz. Pat. Office* 87 (December 17,2002)) into a production system for all patent applications.

The electronic format of applications will reduce delays in moving information within the Office and between the Office, the applicant, other Intellectual Property (IP) Offices and other parties having authority to view the records. It will also reduce the potential for loss of records and misfiling, provide the capacity for multiple parties to access the records simultaneously, improve the efficiency of the publication process, and set the Office up for subsequent improvements in electronic communication related to applications between the Office, the applicant, and other parties.

It is also anticipated that the system will facilitate the sharing of information between the Office and other IP Offices. The Office anticipates that agreements to electronically transmit priority documents to certain other IP Offices as well as search results and other application information will be negotiated shortly. Transmission of priority documents electronically directly to the other IP Offices on request of the applicant is anticipated to reduce the overall costs to the applicant and to the other IP Offices (which would receive the certified copy in a format that is easily stored and retrieved on demand). In tandem with this effort is a parallel effort to promote the sharing of information (*e.g.*, search results) concerning related applications by the various IP Offices in order to reduce duplication of efforts, improve the efficiency and quality of examination efforts, and decrease workload. Thus, it is anticipated that the Office's migration to an electronic environment together with international negotiations will improve the efficiency and work quality of the Office.

Discussion of Specific Rules

Section 1.3: Section 1.3 is proposed to be amended to provide that papers presented in violation of the decorum and courtesy requirement will not be entered. The Office is capturing electronic images of all documents (papers) that will be the official records of certain applications. If the Office has captured the image as an electronic sheet(s), the Office would electronically remove the document from the Official file (the collection of documents related to a patent application or patent and which would be in this instance an electronic file) and from the Office computer systems. If the Office has not captured the image, the paper would not be entered in the Official file (which would in this instance be a paper file). In either event, the Office would provide notice in the Official file that the paper will not be available to the public. If the paper is intended as a reply to an Office action, the reply will not be considered a *bona fide* reply under § 1.135(c) and the period set in the prior Office action will continue to run. Similarly, a paper submitted in violation of § 10.10(b) that is intended as a reply will not be entered in the Official file and will not be treated as an unsigned reply (nor as a signed reply). Therefore, the reply will not toll the time period set in a prior Office action.

Section 1.9: Section 1.9 is proposed to be amended to clarify that the word "paper" and "papers" refer to a document or documents, which may be electronic records or physical paper sheet(s).

Section 1.14: Section 1.14 explains that applications for patents are generally preserved in confidence, and sets forth the special circumstances (35 U.S.C. 122(a)) under which a member of the public may have information about, copies of, or access to a patent application. Section 1.14 is proposed to be revised to clarify the rule and to expand the rule to provide for electronic files and electronic exchange of documents.

Paragraph (a)(1) has been rewritten to list the records that are available. The term "file wrapper and contents" has been replaced with the term "file contents" to avoid confusion with the paper (non-electronic) file jacket and its contents. Paragraph (a)(1) rephrases the provisions of current §§ 1.14(c) and (e) to assist the public in understanding what applications are available to the public. Accordingly, paragraph (a)(1), as rewritten, is divided into paragraphs (a)(1)(i) through (a)(1)(vi) listing different types of application files and explaining whether any part of the file content is available to the public. For example, paragraph (a)(1)(iii) explains that published pending applications are available to the public, upon written request, and payment of the appropriate fee, and that the original paper file of the pending application that was published as a patent application publication is not available to the public. In addition, it is proposed in the new paragraphs (a)(1)(iv) and (a)(1)(v) that where the benefit of an application is relied upon pursuant to 35 U.S.C. 119(e), 120, 121 or 365 in certain applications, the application will be available in the same manner that the application would have been had the application been referenced in a U.S. patent or U.S. patent application publication. As a result of this proposed rule change if an application is filed as a continuation of an earlier application, and the USPTO publishes the continuation as a patent application publication without a reference to the earlier application, the earlier-filed application will still be available to the public (either the originally filed application or the entire application file, depending upon whether the earlier-filed application is abandoned).

Paragraph (a)(2) is proposed to be revised to combine and restate current §§ 1.14(a)(1) and (b). The application number of any application that claims the benefit of the filing date of a patent or an application that has been published may be obtained from the Patent Application Information Retrieval (PAIR) system on the Office's web site at: *http://pair.uspto.gov.*

Section 1.14 is also proposed to be amended to have a new paragraph (b), to explain that electronic access may be provided to all or part of certain applications. Following migration to an electronic image file as the Official file of patent applications, access will be provided solely to the electronic Official file and not to the original paper document sheets used to create electronic images within the Official file.

Proposed § 1.14(c) is the same as current § 1.14(d). Paragraph (d) of current § 1.14 is proposed to be redesignated as § 1.14(c).

Proposed § 1.14(d) is the same as current § 1.14(f). Paragraph (f) of current § 1.14 is proposed to be redesignated as § 1.14(d).

Section 1.14 is also proposed to be amended to have a new paragraph (e), to provide that the Office may share its electronic application files that have not been published or otherwise made available to the public with another Intellectual Property (IP) Office pursuant to an agreement between the Office and another IP Office and if the applicant expressly consents. The written consent must be filed in the Office for the Office to transmit, or allow access by the other IP Office, to the application or other records associated with the application. The migration to an electronic environment will allow the Office to participate with other IP Offices in more rapid exchange of information, such as priority documents, between IP Offices. It should be noted that following publication, or where the application is otherwise available to the public, the written consent of applicant is not required before access to the application file is provided.

Paragraph (f) of § 1.14 corresponds to paragraph (g) of current § 1.14, which is proposed to be amended to move the text from (g) and of paragraph (g)(1) to paragraph (2), and to provide in the new paragraph (1) that any action of the Board of Patent Appeals and Interferences (BPAI), or any decision on petition, may be published or made available for public inspection without applicant's or patent owner's permission if rendered in a file open to the public pursuant to § 1.11 or available pursuant to § 1.14(e)(2), an application that has been published in accordance with §§ 1.211 through 1.221, or in an application claiming priority to, or the benefit of, an earlier filing date under 35 U.S.C. 119(a)–(d), 120, 121 or 365 of an application that has been published or patented. In paragraph (2), the rule would provide that an action of the BPAI, or any decision on petition, not publishable under paragraph (1) of this section, may be published or made available for public inspection if the Director believes the action or decision involves an interpretation of patent laws or regulations that would be of important precedential value; and the applicant, or any party involved in the interference, does not within two months after being notified of the intention to make the action or decision public, object in writing on the ground that the decision discloses a trade secret or other confidential information and states that such information is not otherwise publicly available. If an action or decision discloses such information, the applicant or party shall identify the deletions in the text of the action or decision considered necessary to protect the information. If the applicant or the party considers that the entire action or decision must be withheld from the public to protect such information, the applicant or party must explain why. Applicants or parties will be given time, not less than twenty days, to request reconsideration and seek court review before any portions of actions or decisions are made public over their objection. This procedure is the same as that of current paragraph (g)(2), but has been reworded for clarity and also to use the terminology "any action" of the BPAI or "decision on petition" would be publishable, whereas the current rule uses the terminology "decision by the Director or the BPAI".

Generally, patent applications are maintained in confidence unless the Director finds "special circumstances" due to which information about an application or the application itself may be released. See 35 U.S.C. 122(a). Section 1.14 sets forth when some such "special circumstances" have been found, and specifies when release of information about an application or access to all or part of an application may be provided without a petition. Accordingly, as one example of a "special circumstance," as proposed to be amended with new paragraph (f)(1), a BPAI decision would be published, even if the decision does not involve an interpretation of patent laws or regulations that would be precedential so long as the application claims priority to or the benefit of an earlier application that has been published or patented (*e.g.*, a Japanese patent application). The BPAI decision would be published even if the application in which the decision was made requests nonpublication of the application, and the application is not itself patented.

Proposed § 1.14(g) is the same as current § 1.14(h), which is proposed to be redesignated as § 1.14(g).

Proposed paragraph (h) of § 1.14 corresponds to current § 1.14(i), and is further proposed to be amended to explain the meaning of the terms "Home Copy," "Search Copy," and "Examination Copy," and by inserting "of the publication" after "English language translation" in paragraph (b)(2). Section 13204 of Public Law 107–273 made a technical change to the provisional rights provisions of the

patent statute as to international applications to clarify that a translation of the international publication, as opposed to the international application, is required to be filed in order for a patent owner to obtain provisional rights pursuant to 35 U.S.C. 154(d). In view of this change to the statute, the corresponding reference to the translation in § 1.14 is proposed to be changed to add "a publication of an international patent application" after "English language translation of." In addition, it is proposed that the parenthetical phrase at the end of paragraph (h)(1), referencing the fee for a copy of an international application file, or a copy of a document in a file, be changed from a reference to § 1.19(b) rather than § 1.19(b)(2) or § 1.19(b)(3), the fees for the contents of a file or a CD, and the parenthetical phrase at the end of paragraph (h)(2), referencing the fee for a copy of an English language translation in a file, be corrected to refer to § 1.19(b)(4), the fee for a document, rather than § 1.19(b)(2) or § 1.19(b)(3).

Proposed § 1.14(i) is the same as current § 1.14(j), which is proposed to be redesignated as § 1.14(i)

As proposed to be amended, § 1.14 will apply to all patent applications filed before, on, or after the date that the amendment to § 1.14 becomes final.

Section 1.17: Section 1.17 is proposed to be amended to eliminate the reference to returning information in paragraph (h) because expunged information will not be returned under § 1.59 as proposed to be amended.

Section 1.19: Section 1.19 is proposed to be amended by revising paragraph (b)(1) to eliminate the fee for providing an electronic copy of an application as filed to another IP Office if applicant consents in writing by filing an authorization under 35 U.S.C. 122(a) to permit the Office to exchange information related to the entire file record of the application with the other IP Office. The electronic transmission would serve as the certified copies of applications as filed that can be required by the other IP Offices under Article 4(D)(3) of the Paris Convention.

Section 1.52: Section 1.52 is proposed to be amended to clarify the requirement for proper paper sizes in paper communications submitted to the Office and to set forth the analogous requirements for electronic communications.

The Office plans to capture electronic images of all documents that form the record of patent examination. These images will form the Official file of the application. Applicants will have the option of submitting application documents and other communications to the Office on paper, by facsimile transmission, or via the Office's electronic filing system (EFS). The existing requirements for paper and facsimile submissions (as well as the prohibition against filing patent applications by facsimile, see § 1.6(d)(3)) are retained, and the requirements for electronic submissions are added. One newly added requirement for paper submissions requires that the papers not be permanently bound because the papers must be readily separable for scanned entry into the image system. The use of binder clips or standard office staples will generally be acceptable. The detailed requirements for electronic submissions are provided in the Office's EFS documentation (available electronically at www.uspto.gov) and the proposed amendments direct the affected party's attention to those requirements.

Paragraph (a)(1) of § 1.52 is proposed to be amended to clarify that it pertains to paper and facsimile submissions, and that such submissions not be permanently bound together.

Paragraph (a)(2) of § 1.52 is proposed to be amended to clarify that it pertains to paper and facsimile submissions.

Paragraph (a)(3) of § 1.52 is proposed to be amended to clarify that it pertains to paper and facsimile submissions.

Paragraph (a)(5) of § 1.52 is proposed to be amended to clarify that it pertains to paper and facsimile submissions.

Paragraph (a) of § 1.52 is also proposed to be amended by adding paragraphs (a)(6) and (a)(7) to set forth that papers submitted electronically must comply with the Office's EFS requirements and that failure to comply will result in a requirement for correction.

Paragraphs (b)(3) and (b)(4) of § 1.52 are proposed to be amended to clarify that the requirements for the abstract and claims to begin on a separate sheet on physical paper are similarly required to begin on a separate electronic page in an electronic submission.

Paragraph (b)(7) of § 1.52 is proposed to be amended to explain the consequences of a failure to provide compliant papers within the set time period. That is, as proposed to be amended, the rule will provide that compliant papers must be provided within the set time period in order to avoid abandonment of the application in the case of an applicant for patent, termination of proceedings in the case of a patent owner in a reexamination proceeding, or refusal of consideration of the papers in the case of a third party requester in a reexamination proceeding.

Section 1.59: Section 1.59 is proposed to be amended to eliminate references to returning documents that have been expunged to recognize that, with electronic Official files, there will be nothing to return when a paper is expunged. The Office is capturing electronic images of all documents that form the Official file. Where the image is generated from a physical source document, the originating document may be disposed of once the electronic image accuracy is verified. Therefore, if a document is to be expunged from the record, the only operation that will be required will be removal of the image from the Official file. Paragraph (a)(1) of § 1.59 is proposed to be amended by deleting the phrase "and returned" from the first sentence, and deleting the second sentence. Paragraph (b) of § 1.59 is proposed to be amended by deleting the phrase "and return" from each of the first and second sentences.

Section 1.71: Section 1.71 is proposed to be amended by adding a new paragraph (f) to require that the first page of a specification commence on a new sheet and to require that no sheet including part of the text of the specification include any other material. Claims must also commence on a new sheet and in accordance with the proposed changes to § 1.75, must not include other parts of the application.

Section 1.72: Paragraph (b) of § 1.72 is proposed to be amended to prohibit the paper presenting the abstract to include any other portions of the application or other material. Presentation of material other than the abstract on the same page as the abstract makes the electronic indexing of the application more difficult. In addition, it is proposed to remove the last sentence of paragraph (b) to eliminate the prohibition on using the abstract to be used to interpret the claims to conform the rule to be consistent with Federal Circuit case law. *See Hill-Rom Co. v. Kinetic Concepts, Inc.*, 209 F.3d 1337, 1341 n.*, 54 USPQ2d 1437, 1440 n.1 (Fed. Cir. 2000).

Section 1.75: Paragraph (h) of § 1.75 is proposed to be amended to prohibit a paper presenting claims from including any other portions of the application or other material. Presentation of material other than the claims on the same page as one or more claims makes the electronic indexing of the application more difficult.

Section 1.97: Section 1.97 is proposed to be amended to move the last date on which an information disclosure statement (IDS) may be filed to the day prior to the mailing of the next Office action from the Office.

Sections 1.97(b) and (c) are proposed to be amended to move the last date on

which an IDS may be filed from the day of mailing of an Office action to the day before the mailing of an Office action.

Section 1.97(b)(3) is proposed to be amended to require filing of an IDS before the day of the mailing of the first Office action.

Section 1.97(b)(4) is proposed to be amended to require filing of an IDS before the day of the mailing of the first Office action after the filing of a request for continued examination under § 1.114.

Section 1.97(c) is proposed to be amended to require filing of an IDS before the day of the mailing of any of a final action under § 1.113, a notice of allowance under § 1.311, or an action that otherwise closes prosecution in the application, provided it is accompanied by one of: (1) The statement specified in § 1.97(e); or (2) the fee set forth in § 1.17(p).

With PAIR, applicants can easily determine when Office actions are mailed by reviewing the change of status information for an application that is available over the Internet. Unless applicants are required to submit an IDS before Office actions are mailed, applicants may unfairly delay prosecution to meet their short-term needs by mailing an IDS on the same day as Office actions are mailed upon seeing that a mailing occurred through PAIR. Therefore, in order to promote efficient processing and provide the benefits of PAIR, a change in the "mailing rule" is being proposed.

Section 1.98: Section 1.98 is proposed to be amended by adding a new paragraph (e), which provides that the requirement in § 1.98(a)(2)(i) for a copy of all listed U.S. patents and U.S. patent application publications does not apply to any IDS submitted in compliance with the Office's electronic filing system. Thus, for any IDS submitted to the Office via the Office's EFS, paper copies of U.S. patents and U.S. application publications cited in the IDS would no longer have to be supplied by applicants.

An EFS software upgrade has added an IDS, submitted under the provisions of §§ 1.97 and 1.98, as a type of electronic submission that may be made via the Office's EFS. Currently, the EFS may only be used to submit: (1) Certain non-provisional utility patent applications; (2) provisional applications; (3) biotechnology sequence listings; (4) copies of patent applications for purposes of having the copies of the patent application published (redacted publication, republication as amended, or voluntary publication); (5) assignments of patents and applications; and (6) Information Disclosure Statements. *See Legal Framework for the Use of the Electronic Filing System*, 1263 *Off. Gaz. Pat. Office* 60, 61 (Oct. 8, 2002). With the EFS software upgrade, an applicant is able to electronically transmit an IDS with the filing of a new utility patent application, or as a subsequent filing. This EFS software upgrade is NOT usable for third party information disclosure submissions under § 1.99. The IDS submission via EFS is the only electronic substitute for a paper IDS submission contemplated. EFS has been available to the general public for limited electronic filing since October 2000. *See Electronic Filing System Available to Public*, 1240 *Off. Gaz. Pat. Office 45* (Nov. 14, 2000).

Applicants may file an IDS via EFS by (1) entering the references' citation information in a fillable electronic form, equivalent to the paper PTO–1449 form (or revised form PTO/SB/08A and 08B) by using EFS software; and (2) transmitting the fillable electronic form data to the Office via EFS. This electronic EFS form currently allows only citations for U.S. patents and U.S. patent application publications. If any references to foreign patent documents or non-patent literature documents or unpublished U.S. applications are to be cited, then applicants will continue to submit those citations on a separate, conventional paper PTO–1449 form (or equivalent form) delivered with a printed copy of each cited foreign patent document, non-patent literature document and unpublished U.S. application via mail, facsimile transmission, or hand delivery. Applicants need not send the Office copies of any U.S. patent or U.S. application publication documents cited on a fillable electronic IDS form that is electronically transmitted to the Office via EFS. In those instances in which an applicant sends an IDS on the same day by EFS and by conventional delivery, and a fee under § 1.97 is due, only one fee will be due if the applicant informs the Office in the conventional submission that such a submission is associated with an electronic submission on the same day in which the fee was paid.

The EFS software provides a fillable electronic IDS form equivalent to a paper PTO–1449, Information Disclosure Statement form, in which citations for up to 50 U.S. patents and up to 50 U.S. patent application publications may be entered. This EFS fillable form has fields where statements of relevance and where notifications that the documents were cited in a communication from a foreign patent Office in accordance with § 1.97(e) may be given. The EFS upgrade validates the format of data entered into the fillable electronic IDS form and provides the means to specify whether this fillable EFS IDS form is to be linked to an accompanying new application filing or is being filed in a previously filed application, and transmit the XML formatted IDS data on the fillable electronic form to the Office. The EFS software also provides fields to enter required fee payment information under §§ 1.97(c)(2) and (d)(2).

The fillable, EFS IDS form will be entered as a paper (but will actually be part of an electronic database) into the application file contents indicating that it was received on the date the complete transmission containing the form was received in the Office via EFS. This is the date the Office will refer to in considering compliance with § 1.97.

Examiners will consider the U.S. patents and U.S. application publications cited on an EFS transmitted IDS form provided the remaining requirements of §§ 1.97 and 1.98 are met, by reviewing electronic or printed copies produced from the Office's electronic databases. It will be most important that the cited patent and application publication numbers be accurate and devoid of transcription error. There will be no applicant-provided copies of the disclosed documents in the application file for the examiner to review. Instead, because the Office will electronically retrieve the patents and application publications so identified by those numbers, the examiner will only be able to consider the documents so identified. As a corollary, examiners will only consider what is actually cited. Where, for example, an error is made in transcribing a U.S. patent number, and the examiner, after retrieving the patent associated with the number as entered in the IDS, determines that the patent associated with the number as entered in the IDS is not the correct number, because the inventor's name and issue date entered in the IDS does not match the corresponding data on the patent associated with the patent number entered in the IDS, the examiner will follow the procedure regarding the handling of non-complying information disclosure statements set forth in section 609 III(C)(1) of the *Manual of Patent Examination Procedure* (8th ed. 2001) (MPEP). The examiner may either initial the paper copy printed from the electronic IDS to indicate that the erroneously cited patent has been reviewed or line through the citation as not in compliance with § 1.98.

The only procedure for having such documents considered when an

erroneous patent or application publication number is cited in an eIDS will be by citing the correct document identifying number in a subsequent IDS, either paper or electronic, that conforms to the requirements of §§ 1.97 and 1.98, as specified in MPEP 609 III(C)(1) regarding corrections of the information in non-complying information disclosure statements.

The IDS may be submitted as part of an EFS electronic application filing, or subsequent to an application filing, either in paper or via EFS. The ePAVE program will prompt the filer to associate an IDS file with a new application file and to provide payment information, where either is appropriate. As with the other types of electronic submissions, ePAVE will validate the format, display it to the filer, prompt for the filer's electronic signature, use the filer's digital certificate (a digital certificate may be obtained from the Office's Electronic Business Center), to encrypt the whole package, and transmit the submission to the Office. Upon receipt, the Office will send to the filer an electronic post card "Acknowledgement Receipt", including a server date stamp, a unique server number, the application number, and confirmation of the number of the files received by the Office. If the IDS submission is subsequent to the application filing, the filer will be required to enter both an application number and a confirmation number. A confirmation number is an additional four-digit identifier assigned to an application, and can be found in the upper left-hand corner of the official filing receipt. A filer will be required to have a customer number, obtained from the Office's Electronic Business Center, and an Office provided digital certificate to use EFS as with current practice.

Section 1.99: Section 1.99 is proposed to be amended to provide that the Office will not enter any explanation of the patents or publications, or any other information (that is not limited to patents or publications) included in a submission. The Office will also not enter a submission that is not in compliance with the requirements of this section. The Office is capturing electronic images of all documents that form the Official file of certain applications and the original paper documents, if stored, will be stored off-site and will not be easily accessible, and if destroyed, will not be available. Therefore, any submission, or part of the submission, that is not in compliance with this section would not be captured as electronic images and, if such documents have been entered into the Official file, the Office will electronically remove the documents from the Official file.

Paragraph (d) of § 1.99 is proposed to be amended by deleting the word "dispose of" and replacing it with "not enter." Paragraph (e) of § 1.99 is proposed to be amended by deleting the phase "returned or discarded" and replacing it with "will not be entered'.

Section 1.121: The manner of making amendments to the specification, claims and drawings is being revised with proposed changes to § 1.121. While the process of making amendments would generally remain the same, relying on the use of replacement versions of the specification, claims and drawing figures, the process for submitting amendments is simplified: The submission of two versions (clean and marked-up) of amended subject matter, and the attendant editorial difficulties associated with this practice, will no longer be required other than for substitute specifications. For amending the specification (§ 1.121(b)(1) and (b)(2)), applicants would be required to submit a replacement paragraph or section marked-up to show changes relative to the immediate prior version. No clean version of replacement paragraphs or sections would be required. When the specification is to be amended extensively, a substitute specification marked-up to show changes relative to the immediate prior version would be submitted, as per § 1.125 which is invoked by § 1.121(b)(3). In this situation, a clean version of the specification would also be required, as per current § 1.125(c). For amending the claims (§ 1.121(c)), applicants would be required to provide replacement claims (marked-up to show changes relative to the immediate prior version) as part of a complete listing of all the claims in the application each time a claim is amended, which listing would include the status of each claim, and the text of each pending claim under examination. No separate clean version would be required at the time a claim is amended. For amending drawing figures (§ 1.121(d)), applicants would be required to submit a replacement figure with the changes made. No pre-approval of proposed changes in red ink will be required. In each situation, an explanation of the changes must be supplied.

This proposed revised process for amending the specification, claims and drawing figures of pending patent applications will further facilitate the advent of electronic examination in the Office. The principal feature of this proposal, and the one which would most significantly impact the examination process, would require that a complete listing of claims (which includes the status of all claims and the text of pending claims under examination) be submitted as part of each amendment document that includes any amendments to the claims, with the complete listing totally replacing any and all previous versions of claims throughout an application. The conversion of all paper-based application files into electronic image format, together with the proposed changes to amendment practice, will enable the complete listing of all of the claims to be conveniently located and easily accessed on a computer screen for review by a patent examiner or the applicant, or where the application is open to the public.

In order to promote uniformity and consistency of practice, the Office, in the proposed changes to § 1.121, would require applicants to utilize only strike-through for deleted subject matter and underlining for added subject matter as markings to show changes made. No other method of markings will be permitted.

As a result of the adoption of the proposed changes to § 1.121, applicants will, in most cases, no longer be required to reproduce lengthy segments of the specification in both clean and marked-up versions. Only a marked-up version of a replacement paragraph or section will be required. Where a substitute specification has been provided because of extensive amendments, the substitute specification should be supplied as a clean replacement version, which will be entered. A marked-up version is also necessary to the examination process to show the examiner the changes that were made. These requirements are the same as the current requirements of § 1.125(b) and (c) for submitting a substitute specification. With respect to the claims, the proposed changes will result in the filing of a complete listing of all of the claims in the application, and the status of each claim (in the listing), in a single amendment document each time an amendment to the claims is made. The status of every claim will be indicated in a parenthetical expression following each claim number, using the identifiers "(original)", "(previously amended)", "(currently amended)", etc. Only the claims being changed at the time an amendment is filed will include the markings to show the changes. Claims not currently amended will be presented in the same amendment document in clean version. Applicants will no longer be required to submit both a clean version and a separate marked-up version of claims being changed. Further, the submission of a clean version in addition to a marked-up version is strongly discouraged. Dual versions (clean and marked-up) may get confused and the wrong version may get entered into the application file. In such an event, an incorrect message would be given, as providing any claim text in clean version will be taken to be an assertion by applicants that no changes have been made relative to the immediate prior version. The burden of ensuring accuracy between the most recent and the prior versions would be borne by applicants.

Amendments to a drawing figure will be made by submitting the actual changes in a replacement drawing sheet which is in compliance with § 1.84. If multiple drawing figures are on a single drawing sheet, the replacement drawing sheet should include the figures which have not been revised as well as the revised drawing figure(s). A detailed explanation of each of the changes made to a drawing figure must also be provided in a separate section of the amendment document. If the changes are not acceptable to or approved by the examiner, the applicant would be notified and given a requirement for corrective action in the next Office action. In the absence of an objection to the drawings, no further drawing submission by applicant will be required.

The proposed changes to amendment practice, if adopted in the final rule, will provide amendments ready for scanning and indexing into an electronic image format and incorporated into an electronic file wrapper that will be available and accessible to examiners on their individual PCs for further examination. Due to the large backfile of pending applications in the Office, the implementation of the scanning system and the creation of electronic file wrappers will be phased into the technology centers over a period of time. The proposed changes to the rule will require applicants to consolidate all of the claims of any currently pending application into a single amendment document each time any claim is amended, or a new claim is added. In the final rule, if it is adopted as proposed, all amendment documents will be required to include the full text of all pending claims (except for withdrawn claims) with their status in parentheses after the claim numbers, as well as an indication of the status of any claims which have been currently or previously canceled or withdrawn.

Section 1.121(b) is proposed to be amended to clarify that applicants must make amendments to the specification by use of (1) replacement paragraph, or (2) replacement section. Provisions for submitting a substitute specification have been cross-referenced to § 1.125. Provisions for amending claims are provided for in other sections of this rule (paragraph (c)).

It is proposed that paragraphs (b)(1)(ii), (b)(2)(ii) and (b)(3)(ii) be changed to require that the amendment include a version of the amended paragraph, section or substitute specification (by reference to § 1.125) marked-up to show the changes by using "strike-through" as the method for showing deletions of subject matter in the specification. Similarly the Office proposes to require underlining to show additions of subject matter. Only strike-through and underlining should be used as the method to show changes.

It is further proposed to eliminate current paragraphs (b)(1)(iii), (b)(2)(iii) and (b)(3)(iii).

It is proposed to add new paragraph (b)(5) to indicate that precise instructions as to location of the changes must be provided for entry of amendments to the specification. Deletion of a paragraph or section may be made by instruction to cancel only; no actual text to be canceled should be submitted. Once an amended paragraph, section, or substitute specification is presented in an amendment document, there is no further need for the applicant to re-present the amended submission in a subsequently filed amendment document.

It is proposed to replace current paragraphs (c)(1) through (c)(3) with revised paragraphs (c) and (c)(1) through (c)(5). Paragraph (c) as revised would provide for a total rewriting of a claim each time the claim is amended, including markings to show the changes being made relative to the immediate prior version of the claim. This section would also require submitting a complete listing of all pending claims in the application, including the status of each and every claim in every amendment document that includes an amendment to the claims. This listing would replace all prior versions of the claims (except for any withdrawn claims), and listings of the claims in the application. The claim status required with each amendment document would be indicated in a parenthetical expression following the claim number. The status of all claims in the application, even those previously canceled or withdrawn, would be indicated with each amendment document.

In order to promote uniformity and consistency, only the following defined identifiers should be used to indicate the status of the claims (in parentheses after the claim number):

(Original): Claim filed with the application
(Currently amended): Claim being amended in the current amendment document
(Previously amended): Claim not being currently amended, but which was amended in a previous amendment document
(Canceled): Claim deleted from the application
(Withdrawn): Claim still in the application, but in a nonelected status
(Previously added): Claim added in an earlier amendment document
(New): Claim being added in the current amendment document
(Reinstated—formerly claim # _): Claim deleted in an earlier amendment document, but represented with a new claim number in current amendment
(Previously reinstated): Claim deleted in an earlier amendment and reinstated in an earlier amendment document
(Re-presented " formerly dependent claim # _):Dependent claim re-presented in independent form in current amendment document
(Previously re-presented): Dependent claim re-presented in independent form in an earlier amendment, but not currently amended

As a result of this proposed change, each amendment document would be self-contained, *i.e.*, it would include a complete set of claims for examination and would provide the status of all of the claims in one location in the file.

An example of how the claims, and the status of the claims, would be presented is as follows (use of the word "claim" before the claim number is optional):

Claims 1–5 (canceled) (Note: consecutive canceled or withdrawn claims may be aggregated)
Claim 6 (withdrawn)
Claim 7 (previously amended): A bucket with a handle
Claim 8 (currently amended): A bucket with a green blue handle
Claim 9 (withdrawn)
Claim 10 (original): A bucket with a wooden handle
Claim 11: (new): A bucket with plastic sides and bottom

Paragraph (c)(1) would require the use of strike-through (for deletions) and underlining (for additions) to indicate how an amended claim differs from its immediate prior version. The proposed amendment to this section eliminates the previously accepted use of equivalent marking systems. No other

method of markings or comparison (other than strike-through and underlining) would be permitted. Only claims of the status "currently amended" would include markings showing changes made.

Paragraph (c)(2) would require that the current amendment document include not only the marked-up version of claims being currently amended, but also the submission of a clean version of pending claims not being amended in the current amendment document. The presentation of clean text (not underlined) in any claim would constitute an assertion that no changes have been made from the immediate prior version of the same claim. This would relieve the Office of the burden of cross-reading various versions of the same claim to ensure accuracy of rewritten claims. The text of canceled or withdrawn claims should not be presented in each amendment document; these claims should be indicated as being in the status of "(canceled)" or "(withdrawn)".

Paragraph (c)(3) would provide for the cancellation of any claim by mere instructions to cancel. If no instructions to cancel a specific claim were submitted in an amendment paper, listing the claim as canceled in the claim status would constitute an instruction to cancel the claim; no other instruction would be necessary. Any added claims (in the current amendment document) should be merely identified in the status parenthetical expression as "(new)" and should not be underlined.

As proposed in paragraph (c)(4), the claims should be presented in ascending numerical order. This would prevent the grouping of claims by status (all new claims together, all amended claims together, etc.), and ensure a complete set of claims in numerical order, regardless of status. Consecutive claims of the same status, however, could be aggregated (*e.g.*, "Claims 1–5 (previously canceled)"). Further, it is proposed to revise paragraph (c)(4) to require that any sheet of an amendment paper including part of the text of a claim shall not include material directed to any other part of the amendment or any remarks concerning the claims. This requirement will facilitate indexing of the application papers.

Paragraph (c)(5) would require that a claim canceled in its entirety could only be reinstated if presented as a new claim with a new claim number.

Paragraph (d) would require that any drawing changes be submitted in compliance with § 1.84 on replacement sheets in an attachment to an amendment document. An accompanying detailed explanation of all of the changes would be provided on a separate sheet in the drawing amendments or remarks section of the amendment document. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant would be notified and informed of any required corrective action in the next Office action. No further drawing submission of the amended drawing figure(s) by applicant would be required, unless applicant is so notified.

As proposed in paragraph (d)(1), the applicant would be permitted to provide a marked-up copy of any figure being amended with the amendment document. This mark-up would be used by the Office to determine the changes being made in the drawings.

As proposed in paragraph (d)(2), examiners would be permitted to require a marked-up copy of a figure that has been or is required to be revised. The examiner may make the requirement in an Office action requiring a drawing correction, or after a drawing amendment has been made.

A change is proposed to the last line of paragraph (g) in order to bring it into conformity with earlier changes, "(c)(1)" is changed to "(c) and (c)(1) through (c)(5)".

It is proposed that paragraph (h) be added to require that each section of an amendment (*e.g.*, amendments to the claims, amendments to the specification, replacement drawings, remarks) begin on a separate sheet of the amendment paper.

Paragraphs (h), (i), and (j) have been renamed as (i), (j), and (k), respectively.

Section 1.125: Paragraph (b) is proposed to be revised to add a cross-reference to § 1.312 to remind applicants that for submissions of substitute specifications filed after the notice of allowance has been mailed and up to the time of payment of the issue fee, entry of the substitute specification is not a matter of right.

Paragraphs (c) of § 1.125 is proposed to be revised to require the presentation by applicant of both a marked-up version of the specification (using strike-through to indicate deleted subject matter and underlining to indicate added subject matter) and a clean version without markings.

Section 1.823: Section 1.823 is proposed to be amended by revising paragraph (a)(1) to require that any sheet including a part of a sequence listing not include material other than part of a sequence listing. This change is to facilitate indexing of the specification.

Rule Making Considerations

Administrative Procedure Act: This notice proposes changes to the rules of practice that facilitate electronic image record management of patent application files to support the beginning-to-end electronic processing of patent applications. The changes proposed in this notice are limited to the format for and the manner of making amendments to patent applications, the handling of patent applications and other papers within the Office, the manner of filing information disclosure statements, and the procedures for electronic exchange of priority documents with other intellectual property offices. Therefore, these changes involve rules of agency practice and procedure under 5 U.S.C. 553(b)(A). *See Bachow Communications Inc.* v. *FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001). Therefore, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). Nevertheless, the Office is providing this opportunity for public comment on the changes proposed in this notice because the Office desires the benefit of public comment on these proposed changes.

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), an initial regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. *See* 5 U.S.C. 603.

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This proposed rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this proposed rule have been reviewed and previously approved by OMB under the following control numbers 0651–0021, 0651–0031, 0651–0032 and 0651–0033. The United States Patent and Trademark Office is not resubmitting an information collection package to OMB for its review and approval because the changes in this proposed rule would not affect the information collection requirements associated with the information collection under OMB control numbers 0651–0021, 0651–0031, 0651–0032 and 0651–0033.

The title, description and respondent description of each of the information collections is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impacts of the changes in this proposed rule are to (1) expressly provide for the electronic submission of an information disclosure statement; (2) provide for a slight change in the format of an application being filed in order to accommodate for the scanning and indexing of different sections of the application file; and (3) provide for a change in the manner of making amendments to an application consistent with the Office's efforts to establish a patent electronic image management system.

OMB Number: 0651–0021.
Title: Patent Cooperation Treaty.
Form Numbers: PCT/RO/101,ANNEX/134/144, PTO–1382, PCT/IPEA/401, PCT/IB/328, PTO/SB/61/PCT, PTO/SB/64/PCT.
Type of Review: Approved through December of 2003.
Affected Public: Individuals or Households, Business or Other For-Profit, Federal Agencies or Employees, Not-for-Profit Institutions, Small Businesses or Organizations, farms, and State, Local or Tribal Government.
Estimated Number of Respondents: 331,407.
Estimated Time Per Response: 0.25 (15 minutes) to 4.0 (4 hours).
Estimated Total Annual Burden Hours: 401,202 hours.
Needs and Uses: The information collected is required by the Patent Cooperation Treaty (PCT). The general purpose of the PCT is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

OMB Number: 0651–0031.
Title: Patent Processing (Updating).
Form Numbers: PTO/SB//08A/08B/21/22/23/24/25/26/27/30/31/32/35/37/36/ 42/43/61 61/PCT/62/63/64 64/PCT/67/68/91/92/96/97 PTO–2053-A/B PTO–2054–A/B PTO–2055–A/B.
Type of Review: Approved through April of 2003.
Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.
Estimated Number of Respondents: 2,247,270.
Estimated Time Per Response: 1 minute 48 seconds to 4 hours.
Estimated Total Annual Burden Hours: 1,021,822 hours.
Needs and Uses: During the processing for an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Submission of priority documents and Amendments.

OMB Number: 0651–0032.
Title: Initial Patent Application.
Form Number: PTO/SB/01–07/13PCT/16–19/29/101–110.
Type of Review: Approved through April of 2003.
Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, farms, Federal Government, and State, Local, or Tribal Governments.
Estimated Number of Respondents: 319,350.
Estimated Time Per Response: 24 minutes to 10 hours and 75 minutes.
Estimated Total Annual Burden Hours: 2,984,360 hours.
Needs and Uses: The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, Provisional Application Coversheet, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in processing and examination of the application.

OMB Number: 0651–0033.
Title: Post Allowance and Refiling.
Form Numbers: PTO/SB/44/50/51, 51S/52/53/55/56/57/58, PTOL–85B.
Type of Review: Approved through January of 2004.
Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, farms, State, Local and Tribal Governments, and Federal Government.
Estimated Number of Respondents: 205,480.
Estimated Time Per Response: 0.03 (2 minutes) to 2.0 (2 hours).
Estimated Total Annual Burden Hours: 63,640 hours.
Needs and Uses: This collection of information is required to administer the patent laws pursuant to Title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, Washington, DC 20231, or to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503, (Attn: PTO Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents,

Reporting and record keeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.3 is revised to read as follows:

§ 1.3 Business to be conducted with decorum and courtesy.

Applicants and their attorneys or agents are required to conduct their business with the United States Patent and Trademark Office with decorum and courtesy. Papers presented in violation of this requirement will be submitted to the Director and will not be entered. Complaints against examiners and other employees must be made in correspondence separate from other papers.

3. Section 1.9 is amended by adding paragraph (R) to read as follows:

§ 1.9 Definitions.

* * * * *

(R) Paper as used in this Chapter means a document that may exist in electronic, computer readable form or in physical form, and therefore does not necessarily imply physical sheets of paper.

* * * * *

4. Section 1.14 is revised to read as follows:

§ 1.14 Patent applications preserved in confidence.

(a) *Confidentiality of patent application information.* Patent applications that have not been published under 35 U.S.C. 122(b) are generally preserved in confidence pursuant to 35 U.S.C. 122(a). Information concerning the filing, pendency, or subject matter of an application for patent, including status information, and access to the application, will only be given to the public as set forth in § 1.11 or in this section.

(1) Records associated with patent applications other than international applications (see paragraph (h) of this section for international applications) shall be available in the following situations:

(i) *Patented applications and Statutory Invention Registrations.* The file of an application that has issued as a patent or published as a statutory invention registration is available to the public as set forth in § 1.11(a). A copy of the patent application-as-filed, the file contents of the application, or a specific document in the file of such an application shall be provided upon request and payment of the appropriate fee set forth in § 1.19(b).

(ii) *Published abandoned applications.* The file of an abandoned application that has been published as a patent application publication is available to the public as set forth in § 1.11(a). A copy of the application-as-filed, the file contents of the published application, or a specific document in the file of the published application shall be provided to any person upon request, and payment of the appropriate fee set forth in § 1.19(b).

(iii) *Published pending applications.* A copy of the application-as-filed, the file contents of the published application, or a specific document in the file of a pending application that has been published as a patent application publication shall be provided to any person upon request, and payment of the appropriate fee set forth in § 1.19(b). If a redacted copy of the application was used for the patent application publication, the copy of the specification, drawings, and papers may be limited to a redacted copy. The Office will not provide access to the paper file of a pending application that has been published, except as provided in paragraph (c) or (i) of this section.

(iv) *Unpublished abandoned applications (including provisional applications) that are referenced in certain documents.* The file contents of an abandoned application that is referenced in a U.S. patent, Statutory Invention Registration, a U.S. patent application publication, or an international patent application publication of an international application that was published in accordance with PCT Article 21(2) are available to the public, if a written request is submitted. Also, the file contents of an abandoned application that is relied upon under 35 U.S.C. 119(e), 120, 121, or 365 by an application that has issued as a U.S. patent, or in an application that has published as a Statutory Invention Registration, U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2) are available to the public, if a written request is submitted. A copy of the application-as-filed, the file contents of the application, or a specific document in the file of the application shall be provided to any person upon written request, and payment of the appropriate fee (§ 1.19(b)).

(v) *Unpublished pending applications that are referenced in certain documents.* A copy of the application-as-filed of a pending application that is referenced in a U.S. patent, Statutory Invention Registration, a U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2) shall be provided to any person upon written request, including the fee set forth in § 1.19(b)(1). Also, a copy of the application-as-filed of a pending application that is relied upon under 35 U.S.C. 119(e), 120, 121, or 365 by an application that has issued as a U.S. patent, or in an application that has published as a Statutory Invention Registration, a U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2) shall be provided to any person upon written request, including the fee set forth in § 1.19(b)(1). Until the application is abandoned, patented, or published as a Statutory Invention Registration or a U.S. patent application publication, a granted petition for access (see paragraph (i) of this section), or a power to inspect (see paragraph (c) of this section) is necessary to obtain the file of the application.

(vi) *Applications that were not published or patented, and are not referenced in a U.S. patent, a Statutory Invention Registration, a U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2), or relied upon under 35 U.S.C. 119(e), 120, 121, or 365 in an application that has issued as a U.S. patent, or been published as a Statutory Invention Registration, a U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2).* Applications that were not published or patented, and are not referenced in a U.S. patent, a Statutory Invention Registration, a U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2) are not available to the public, unless the application that issued as the U.S. patent or was published as the Statutory Invention Registration, U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2) claims the benefit of the application under 35 U.S.C. 119(e), 120, 121, or 365.

A granted petition for access (see paragraph (i) of this section), or a power to inspect (see paragraph (c) of this section) is necessary to obtain the application, or a copy of the application.

(2) Information concerning a patent application may be communicated to the public if the patent application is identified in paragraphs (a)(1)(i) through (a)(1)(v) of this section. The information that may be communicated to the public (*i.e.*, status information) includes:

(i) Whether the application is pending, abandoned, or patented;

(ii) Whether the application has been published under 35 U.S.C. 122(b);

(iii) The application "numerical identifier" which may be:

(A) The eight-digit application number (the two-digit series code plus the six-digit serial number); or

(B) The six-digit serial number plus any one of the filing date of the national application, the international filing date, or date of entry into the national stage; and

(iv) Whether an application claims the benefit of the application (*i.e.*, whether there are any applications that claim the benefit of the filing date under 35 U.S.C. 119(e), 120, 121 or 365 of the application), and if there are any such applications, the numerical identifier of the application, the specified relationship between the applications (*e.g.*, continuation), whether the application is pending, abandoned or patented, and whether the application has been published under 35 U.S.C. 122(b).

(b) *Electronic access to an application.* Where a copy of the application papers or access to the application is available pursuant to paragraphs (a)(1)(i) through (a)(1)(v) of this section, the Office may at its discretion provide access only to an electronic copy of the specification, drawings, and file contents of the application.

(c) *Power to inspect a pending or abandoned application.* Access to an application shall be provided to any person if the application file is available, and the application contains written authority (*e.g.*, a power to inspect) granting access to such person. The written authority must be signed by:

(1) An applicant;

(2) An attorney or agent of record;

(3) An authorized official of an assignee of record (made of record pursuant to § 3.71 of this chapter); or

(4) A registered attorney or agent named in the papers accompanying the application papers filed under § 1.53 or the national stage documents filed under § 1.495, if an executed oath or declaration pursuant to § 1.63 or § 1.497 has not been filed.

(d) *Applications reported to Department of Energy.* Applications for patents which appear to disclose, purport to disclose or do disclose inventions or discoveries relating to atomic energy are reported to the Department of Energy, which Department will be given access to the applications. Such reporting does not constitute a determination that the subject matter of each application so reported is in fact useful or is an invention or discovery, or that such application in fact discloses subject matter in categories specified by 42 U.S.C. 2181(c) and (d).

(e) *Unpublished applications provided to other Intellectual Property Offices.* Before a patent application is published or otherwise becomes available to the public pursuant to paragraphs (a)(1)(i) through (a)(1)(iv) of this section, the Office may, pursuant to an agreement between the Office and another Intellectual Property (IP) Office, provide the other IP Office with access to the electronic record of the application without charge to applicant, if applicant consents. After an application has been published, such consent is not required.

(f) *Decisions by the Director or the Board of Patent Appeals and Interferences.*

(1) Any action of the Board of Patent Appeals and Interferences, or any decision on petition, may be published or made available for public inspection without applicant's or patent owner's permission if rendered in a file open to the public pursuant to § 1.11 or available pursuant to § 1.14(e)(2), in an application that has been published in accordance with §§ 1.211 through 1.221, or in an application claiming benefit of an earlier filing date under 35 U.S.C. 119(a)–(d), 120, 121 or 365 of an application that has been published or patented.

(2) Any action of the Board of Patent Appeals and Interferences, or any decision on petition not publishable under paragraph (f)(1) of this section, may be published or made available for public inspection if the Director believes the action or decision involves an interpretation of patent laws or regulations that would be of important precedential value; and the applicant, or any party involved in the interference, does not within two months after being notified of the intention to make the action or decision public, object in writing on the ground that the decision discloses a trade secret or other confidential information and states that such information is not otherwise publicly available. If an action or decision discloses such information, the applicant or party shall identify the deletions in the text of the action or decision considered necessary to protect the information. If the applicant or the party considers that the entire action or decision must be withheld from the public to protect such information, the applicant or party must explain why. Applicants or parties will be given time, not less than twenty days, to request reconsideration and seek court review before any portions of actions or decisions are made public over their objection. *See* § 2.27 for trademark applications.

(g) *Publication pursuant to § 1.47.* Information as to the filing of an application will be published in the Official Gazette in accordance with § 1.47(c).

(h) *International applications.* (1) Copies of international application files for international applications which designate the U.S. and which have been published in accordance with PCT Article 21(2), or copies of a document in such application files, will be furnished in accordance with PCT Articles 30 and 38 and PCT Rules 94.2 and 94.3, upon written request including a showing that the publication of the application has occurred and that the U.S. was designated, and upon payment of the appropriate fee (*see* § 1.19(b)), if:

(i) With respect to the Home Copy (the copy of the international application kept by the Office in its capacity as the Receiving Office, see PCT Article 12(1)), the international application was filed with the U.S. Receiving Office;

(ii) With respect to the Search Copy (the copy of the international application kept by the Office in its capacity as the International Preliminary Searching Authority, see PCT Article 12(1)), the U.S. acted as the International Searching Authority; or

(iii) With respect to the Examination Copy (the copy of an international application kept by the Office in its capacity as the International Preliminary Examining Authority), the United States acted as the International Preliminary Examining Authority, an International Preliminary Examination Report has issued, and the United States was elected.

(2) A copy of an English language translation of a publication of an international patent application which has been filed in the United States Patent and Trademark Office pursuant to 35 U.S.C. 154(2)(d)(4) will be furnished upon written request including a showing that the publication of the application in

accordance with PCT Article 21(2) has occurred and that the U.S. was designated, and upon payment of the appropriate fee (§ 1.19(b)(4)).

(3) Access to international application files for international applications which designate the U.S. and which have been published in accordance with PCT Article 21(2), or copies of a document in such application files, will be furnished in accordance with PCT Articles 30 and 38 and PCT Rules 94.2 and 94.3, upon written request including a showing that the publication of the application has occurred and that the U.S. was designated.

(4) In accordance with PCT Article 30, copies of an international application-as-filed under paragraph (a) of this section will not be provided prior to the international publication of the application pursuant to PCT Article 21(2).

(5) Access to international application files under paragraphs (a)(1)(i)–(iv) and (h)(3) of this section will not be permitted with respect to the Examination Copy in accordance with PCT Article 38.

(i) *Access or copies in other circumstances.* The Office, either *sua sponte* or on petition, may also provide access or copies of all or part of an application if necessary to carry out an Act of Congress or if warranted by other special circumstances. Any petition by a member of the public seeking access to, or copies of, all or part of any pending or abandoned application preserved in confidence pursuant to paragraph (a) of this section, or any related papers, must include:

(1) The fee set forth in § 1.17(h); and

(2) A showing that access to the application is necessary to carry out an Act of Congress or that special circumstances exist which warrant petitioner being granted access to all or part of the application.

5. Section 1.17 is amended by revising paragraph (h) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(h) For filing a petition under one of the following sections which refers to this paragraph—$130.00

§ 1.12—for access to an assignment record
§ 1.14—for access to an application
§ 1.47—for filing by other than all the inventors or a person not the inventor
§ 1.53(e)—to accord a filing date
§ 1.59—for expungement of information
§ 1.84—for accepting color drawings or photographs
§ 1.91—for entry of a model or exhibit
§ 1.102—to make an application special
§ 1.103(a)—to suspend action in an application
§ 1.138(c)—to expressly abandon an application to avoid publication
§ 1.182—for decision on a question not specifically provided for
§ 1.183—to suspend the rules
§ 1.295—for review of refusal to publish a statutory invention registration
§ 1.313—to withdraw an application from issue
§ 1.314—to defer issuance of a patent
§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent
§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent
§ 1.644(e)—for petition in an interference
§ 1.644(f)—for request for reconsideration of a decision on petition in an interference
§ 1.666(b)—for access to an interference settlement agreement
§ 1.666(c)—for late filing of interference settlement agreement
§ 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term
§ 5.12—for expedited handling of a foreign filing license
§ 5.15—for changing the scope of a license
§ 5.25—for retroactive license

* * * * *

6. Section 1.19 is amended by revising paragraph (b)(1) to read as follows:

§ 1.19 Document supply fees.

* * * * *

(b) * * *

(1) Certified or uncertified copy of the paper portion of patent application as filed, except for a certified copy provided pursuant to an agreement between the Office and another Intellectual Property (IP) Office when the certified copy is provided to the other IP Office in electronic form and when written authorization under 35 U.S.C. 122(a) to permit access to file information by the other IP Office receiving the priority document is given by applicant for which there is no fee:

(i) Regular service—$15.00

(ii) Expedited regular service—$30.00

* * * * *

7. Section 1.52 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.52 Language, paper, writing, margins, compact disc specifications.

(a) Papers that are to become a part of the permanent United States Patent and Trademark Office records in the file of a patent application or a reexamination proceeding.

(1) All papers, other than drawings, that are submitted on paper or by facsimile transmission; and are to become a part of the permanent United States Patent and Trademark Office records in the file of a patent application or reexamination proceeding, must be on sheets of paper that are the same size, not permanently bound together, and:

(i) Flexible, strong, smooth, non-shiny, durable, and white;

(ii) Either 21.0 cm by 29.7 cm (DIN size A4) or 21.6 cm by 27.9 cm (8½ by 11 inches), with each sheet including a top margin of at least 2.0 cm (¾ inch), a left side margin of at least 2.5 cm (1 inch), a right side margin of at least 2.0 cm (¾ inch), and a bottom margin of at least 2.0 cm (¾ inch);

(iii) Written on only one side in portrait orientation;

(iv) Plainly and legibly written either by a typewriter or machine printer in permanent dark ink or its equivalent; and

(v) Presented in a form having sufficient clarity and contrast between the paper and the writing thereon to permit the direct reproduction of readily legible copies in any number by use of photographic, electrostatic, photo-offset, and microfilming processes and electronic capture by use of digital imaging and optical character recognition.

(2) All papers that are submitted on paper or by facsimile transmission and are to become a part of the permanent records of the United States Patent and Trademark Office should have no holes in the sheets as submitted.

(3) The provisions of this paragraph and paragraph (b) of this section do not apply to the pre-printed information on paper forms provided by the Office, or to the copy of the patent submitted on paper in double column format as the specification in a reissue application or request for reexamination.

(4) See § 1.58 for chemical and mathematical formulae and tables, and § 1.84 for drawings.

(5) If papers that are submitted on paper or by facsimile transmission do not comply with paragraph (a)(1) of this section and are submitted as part of the permanent record, other than the drawings, applicant, or the patent owner, or the requester in a reexamination proceeding, will be notified and given a period of time within which to provide substitute papers that comply with paragraph (a)(1) of this section in order to avoid abandonment of the application in the case of an applicant for patent, termination of proceedings in the case of a patent owner in a reexamination proceeding, or refusal of consideration of the papers in the case of a third party requester in a reexamination proceeding.

(6) Papers that are submitted electronically to the Office must be formatted and transmitted in compliance with the Office's electronic filing system requirements.

(7) If the papers that are submitted electronically to the Office do not comply with paragraph (a)(6) of this section, the applicant, or the patent owner, or the requester in a reexamination proceeding, will be notified and given a period of time within which to provide substitute papers that comply with paragraph (a)(6) of this section in order to avoid abandonment of the application in the case of an applicant for patent, termination of proceedings in the case of a patent owner in a reexamination proceeding, or refusal of consideration of the papers in the case of a third party requester in a reexamination proceeding.

(b) The application (specification, including the claims, drawings, and oath or declaration) or reexamination proceeding and any amendments or corrections to the application or reexamination proceeding.

(1) The application or proceeding and any amendments or corrections to the application (including any translation submitted pursuant to paragraph (d) of this section) or proceeding, except as provided for in § 1.69 and paragraph (d) of this section, must:

(i) Comply with the requirements of paragraph (a) of this section; and

(ii) Be in the English language or be accompanied by a translation of the application and a translation of any corrections or amendments into the English language together with a statement that the translation is accurate.

(2) The specification (including the abstract and claims) for other than reissue applications and reexamination proceedings, and any amendments for applications (including reissue applications) and reexamination proceedings to the specification, except as provided for in §§ 1.821 through 1.825, must have:

(i) Lines that are 1½ or double spaced;

(ii) Text written in a nonscript type font (*e.g.*, Arial, Times Roman, or Courier) lettering style having capital letters which are at least 0.21 cm (0.08 inch) high; and

(iii) Only a single column of text.

(3) The claim or claims must commence on a separate physical sheet or electronic page (§ 1.75(h)).

(4) The abstract must commence on a separate physical sheet or electronic page or be submitted as the first page of the patent in a reissue application or reexamination proceeding (§ 1.72(b)).

(5) Other than in a reissue application or reexamination proceeding, the pages of the specification including claims and abstract must be numbered consecutively, starting with 1, the numbers being centrally located above or preferably, below, the text.

(6) Other than in a reissue application or reexamination proceeding, the paragraphs of the specification, other than in the claims or abstract, may be numbered at the time the application is filed, and should be individually and consecutively numbered using Arabic numerals, so as to unambiguously identify each paragraph. The number should consist of at least four numerals enclosed in square brackets, including leading zeros (*e.g.*, [0001]). The numbers and enclosing brackets should appear to the right of the left margin as the first item in each paragraph, before the first word of the paragraph, and should be highlighted in bold. A gap, equivalent to approximately four spaces, should follow the number. Nontext elements (*e.g.*, tables, mathematical or chemical formulae, chemical structures, and sequence data) are considered part of the numbered paragraph around or above the elements, and should not be independently numbered. If a nontext element extends to the left margin, it should not be numbered as a separate and independent paragraph. A list is also treated as part of the paragraph around or above the list, and should not be independently numbered. Paragraph or section headers (titles), whether abutting the left margin or centered on the page, are not considered paragraphs and should not be numbered.

(7) If papers that do not comply with paragraphs (b)(1) through (b)(5) of this section are submitted as part of the application, the applicant, or patent owner, or requester in a reexamination proceeding, the applicant, patent owner or requester in a reexamination proceeding will be notified and given a period of time within which to provide substitute papers that comply with paragraphs (b)(1) through (b)(5) of this section in order to avoid abandonment of the application in the case of an applicant for patent, termination of proceedings in the case of a patent owner in a reexamination proceeding, or refusal of consideration of the papers in the case of a third party requester in a reexamination proceeding.

* * * * *

8. Section 1.59 is revised to read as follows:

§ 1.59 Expungement of information or copy of papers in application file.

(a)(1) Information in an application will not be expunged, except as provided in paragraph (b) of this section.

(2) Information forming part of the original disclosure (*i.e.*, written specification including the claims, drawings, and any preliminary amendment specifically incorporated into an executed oath or declaration under §§ 1.63 and 1.175) will not be expunged from the application file.

(b) An applicant may request that the Office expunge information, other than what is excluded by paragraph (a)(2) of this section, by filing a petition under this paragraph. Any petition to expunge information from an application must include the fee set forth in § 1.17(h) and establish to the satisfaction of the Director that the expungement of the information is appropriate.

(c) Upon request by an applicant and payment of the fee specified in § 1.19(b), the Office will furnish copies of an application, unless the application has been disposed of (see §§ 1.53(e), (f) and (g)). The Office cannot provide or certify copies of an application that has been disposed of.

9. Section 1.71 is amended by adding paragraph (f) to read as follows:

§ 1.71 Detailed description and specification of the invention.

* * * * *

(f) The specification must commence on a separate sheet and each sheet including part of the specification may not include other parts of the application.

10. Section 1.72 is amended by revising paragraph (b) to read as follows:

§ 1.72 Title and abstract.

* * * * *

(b) A brief abstract of the technical disclosure in the specification must commence on a separate sheet, preferably following the claims, under the heading "Abstract" or "Abstract of the Disclosure." The sheet or sheets presenting the abstract may not include other parts of the application. The abstract in an application filed under 35 U.S.C. 111 may not exceed 150 words in length. The purpose of the abstract is to enable the United States Patent and Trademark Office and the public generally to determine quickly from a

cursory inspection the nature and gist of the technical disclosure.

* * * * *

11. Section 1.75 is amended by revising paragraph (h) to read as follows:

§ 1.75 Claim(s).

* * * * *

(h) The claim or claims must commence on a separate sheet and any sheet including a claim or portion of a claim may not contain any other parts of the application.

* * * * *

12. Section 1.97 is amended by revising paragraphs (b)(3), (b)(4) and (c) to read as follows:

§ 1.97 Filing of information disclosure statement.

* * * * *

(b) * * *

(3) Before the day of the mailing of a first Office action on the merits; or

(4) Before the day of the mailing of a first Office action after the filing of a request for continued examination under § 1.114.

(c) An information disclosure statement shall be considered by the Office if filed after the period specified in paragraph (b) of this section, provided that the information disclosure statement is filed before the day of the mailing date of any of a final action under § 1.113, a notice of allowance under § 1.311, or an action that otherwise closes prosecution in the application, and it is accompanied by either:

(1) The statement specified in paragraph (e) of this section; or

(2) The fee set forth in § 1.17(p).

* * * * *

13. Section 1.98 is amended by adding paragraph (e) to read as follows:

§ 1.98 Content of information disclosure statement.

* * * * *

(e) The requirement in paragraph (a)(2)(i) of this section for a copy of all listed U.S. patents and U.S. patent application publications does not apply to any information disclosure statement submitted in compliance with the Office's electronic filing system.

14. Section 1.99 is amended by revising paragraphs (d) and (e) to read as follows:

§ 1.99 Third-party submission in published application.

* * * * *

(d) A submission under this section shall not include any explanation of the patents or publications, or any other information. The Office will not enter such explanation or information if included in a submission under this section. A submission under this section is also limited to ten total patents or publications.

(e) A submission under this section must be filed within two months from the date of publication of the application (§ 1.215(a)) or prior to the mailing of a notice of allowance (§ 1.311), whichever is earlier. Any submission under this section not filed within this period is permitted only when the patents or publications could not have been submitted to the Office earlier, and must also be accompanied by the processing fee set forth in § 1.17(i). A submission by a member of the public to a pending published application that does not comply with the requirements of this section will not be entered.

* * * * *

15. Section 1.121 is revised to read as follows:

§ 1.121 Manner of making amendments in applications.

(a) *Amendments in applications, other than reissue applications.* Amendments in applications, other than reissue applications, are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made.

(b) *Specification.* Amendments to the specification other than the claims and computer listings (§ 1.96) and sequence listings (§ 1.825) must be made by replacement paragraph, replacement section or substitute specification in the manner specified in this section.

(1) *Amendment by instruction to delete, replace, or add a paragraph. Amendments to the specification may be made by submitting:*

(i) An instruction, which unambiguously identifies the location, to delete one or more paragraphs of the specification, replace a deleted paragraph with one or more replacement paragraphs, or add one or more paragraphs; and

(ii) Any replacement or added paragraph(s) marked-up to show all the changes relative to the previous version of the paragraph(s). The changes must be shown by strike-through (for deleted matter) or underlining (for added matter).

(2) *Amendment by replacement section.* If the sections of the specification contain section headings as provided in § 1.77(b), § 1.154(b), or § 1.163(c), amendments to the specification, other than the claims, may be made by submitting:

(i) A reference to the section heading along with an instruction to delete that section of the specification and to replace such deleted section with a replacement section; and

(ii) A replacement section marked-up to show all changes relative to the previous version of the section. The changes must be shown by strike-through (for deleted matter) or underlining (for added matter).

(3) *Amendment by substitute specification.* The specification, other than the claims, may also be amended by submitting:

(i) An instruction to replace the specification; and

(ii) A substitute specification in compliance with § 1.125(c).

(4) *Reinstatement:* Deleted matter may be reinstated only by a subsequent amendment presenting the previously deleted matter.

(5) Presentation: Instructions for entry of replacement paragraphs or sections must be provided with an unambiguous and precise location. Deletion of a paragraph or section is permitted by instruction only; no text to be canceled should be presented. Once a paragraph, section, or specification is amended in a first amendment document, the paragraph, section or specification shall not be re-presented in successive amendment documents unless it is amended again or a substitute specification is provided.

(c) *Claims.* Amendments to a claim must be made by rewriting the entire claim with all changes (*e.g.*, additions, deletions, modifications) as indicated in this section. Each amendment document that includes a change to an existing claim, or submission of a new claim, must include a complete listing of all claims in the application. The listing will serve to replace all prior versions of the text of the claims (except for withdrawn claims) in the application. The text of all pending claims (except for withdrawn claims) must be submitted in a single amendment document each time any claim is amended. The status of each of the claims in the application, including any previously canceled or withdrawn claims, must be indicated in each amendment document. Status is indicated by a parenthetical expression following the claim number and should be indicated by use of one of the following identifiers: (Original), (Currently amended), (Previously amended), (Canceled), (Withdrawn), (Previously added), (New), (Reinstated—formerly claim #__), (Previously reinstated), (Re-presented—formerly dependent claim # __), or (Previously re-presented). Only claims of status "currently amended" shall include markings.

(1) Currently amended claims: All claims being currently amended in an amendment paper shall be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The changes in any amended claim shall be shown by strike-through (for deleted matter) or underlining (for added matter). Only claims of status "currently amended" shall include markings.

(2) Original, previously amended, or previously added claims: The text of pending claims not being currently amended shall be presented in each amendment document in clean version, *i.e.*, without any markings in the presentation of clean text. The presentation of clean text in any claim will constitute an assertion that it has not been changed relative to the immediate prior version. The text of canceled and withdrawn claims shall not be presented, but must be indicated by only claim number and status.

(3) Cancelled and new (added) claims: A claim is canceled by providing an instruction to cancel the claim by claim number. No markup shall be presented. Listing a claim as canceled will constitute an instruction to cancel the claim. Any claims added by amendment must be indicated as (new), and shall not be underlined.

(4) When one or more claims are amended or added in an amendment document, all of the claims shall be presented in a listing in ascending numerical order. Consecutive canceled or withdrawn claims may be aggregated into one statement (*e.g.*, Claims 1–5 (canceled)). The text of the claims shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment.

(5) A claim canceled by amendment (deleted in its entirety) may be reinstated only by a subsequent amendment presenting the claim as a new claim with a new claim number.

(d) *Drawings.* Application drawings are amended in the following manner: Any changes to the application drawings must be in compliance with § 1.84 and must be submitted as replacement sheets as an attachment to the amendment document. Any replacement sheets shall include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is amended. Applicant shall explain in detail the changes made beginning on a separate sheet in the drawing amendments or remarks section of the amendment paper.

(1) The applicant may include a marked-up copy of one or more of the figures being amended indicating the changes being made.

(2) The applicant shall include a marked-up copy of any figure that has been amended indicating the changes being made when required by the examiner.

(e) *Disclosure consistency.* The disclosure must be amended, when required by the Office, to correct inaccuracies of description and definition, and to secure substantial correspondence between the claims, the remainder of the specification, and the drawings.

(f) *No new matter.* No amendment may introduce new matter into the disclosure of an application.

(g) *Exception for examiner's amendments.* Changes to the specification, including the claims, of an application made by the Office in an examiner's amendment may be made by specific instructions to insert or delete subject matter set forth in the examiner's amendment by identifying the precise point in the specification or the claim(s) where the insertion or deletion is to be made. Compliance with paragraphs (b)(1), (b)(2), (c) or (c)(1) to (c)(5) is not required.

(h) *Amendment sections.* Each section of an amendment document must begin on a separate sheet.

(i) *Amendments in reissue applications.* Any amendment to the description and claims in reissue applications must be made in accordance with § 1.173.

(j) *Amendments in reexaminotion proceedings.* Any proposed amendment to the description and claims in patents involved in reexamination proceedings must be made in accordance with § 1.530.

(k) *Amendments in provisional applications.* Amendments in provisional applications are not normally made. If an amendment is made to a provisional application, however, it must comply with the provisions of this section. Any amendments to a provisional application shall be placed in the provisional application file but may not be entered.

16. Section 1.125 is proposed to be amended by revising paragraphs (b) and (c) to read as follows;

§ 1.125 Substitute specification.

* * * * *

(b) Subject to § 1.312, a substitute specification, excluding the claims, may be filed at any point up to payment of the issue fee if it is accompanied by a statement that the substitute specification includes no new matter.

(c) A substitute specification submitted under this section must be submitted with markings showing all the changes (underlining to indicate subject matter being added and strike-through indicating subject matter being deleted) relative to the immediate prior version of the specification of record. An accompanying clean version (without markings) must also be supplied. Numbering the paragraphs of the specification of record is not considered a change that must be shown pursuant to this paragraph.

* * * * *

17. Section 1.823 is proposed to be amended by revising paragraph (a)(1) to read as follows:

§ 1.823 Requirements for nucleotide and/or amino acid sequences as part of the application.

(a)(1) If the "Sequence Listing" required by § 1.821(c) is submitted on paper: The "Sequence Listing," setting forth the nucleotide and/or amino acid sequence and associated information in accordance with paragraph (b) of this section, must begin on a new page and must be titled "Sequence Listing." The pages of the "Sequence Listing" preferably should be numbered independently of the numbering of the remainder of the application. Each page of the "Sequence Listing" shall contain no more than 66 lines and each line shall contain no more than 72 characters. The sheet or sheets presenting a sequence listing may not include other parts of the application. A fixed-width font should be used exclusively throughout the "Sequence Listing."

* * * * *

Dated: March 19, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and, Director of the United States Patent and Trademark Office.

[FR Doc. 03–6972 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP No. UT–001–0048, UT–001–0049; FRL–7472–4]

Approval and Promulgation of Air Quality Implementation Plans; Utah; SIP Renumbering

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Governor of Utah on June 27, 1994 and April 28, 2000. EPA is also proposing to approve Supplemental Administrative Documentation submitted on December 31, 2002. The June 27, 1994 submittal revises the numbering and format of Utah's State Implementation Plan (SIP). The April 28, 2000 submittal contains non-substantive changes to correct minor errors in the June 27, 1994 submittal. The December 31, 2002 submittal also contains non-substantive changes to the June 27, 1994 submittal. The intended effect of this action is to make these provisions federally enforceable. In addition, we will be acting on parts of these submittals at a later date. This action is being taken under section 110 of the Clean Air Act.

DATES: Written comments must be received on or before April 24, 2003.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA, Region 8, (303) 312–6144.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we" or "our" is used means EPA.

I. Evaluation of State's June 27, 1994, April 28, 2000 and December 31, 2002 Submittals

In this document we are proposing to approve two SIP revisions submitted by the Governor of Utah on June 27, 1994 and April 28, 2000. Also, we are proposing to approve Supplemental Administrative Documentation submitted by the State on December 31, 2002. The June 27, 1994 submittal revises the numbering and format of Utah's SIP. The renumbering of the Utah SIP allows for a consistent numbering system. The April 28, 2000 and December 31, 2002 submittals contain non-substantive changes to correct minor errors in the June 27, 1994 submittal. In addition, on October 3, 2002, the State submitted a letter from Richard W. Sprott, Director, Division of Air Quality, correcting other non-substantive changes to the June 27, 1994 submittal. The October 3, 2002 letter was submitted to address typographical errors and missing pages in the January 27, 1994 submittal.

In this notice, we are putting sections of the SIP into categories based on the action we are taking on that section of the SIP. The first category contains sections that have been renumbered and contain no substantive changes to the text of the section. We are proposing to approve these sections into the SIP. The second category includes sections of the SIP that have been renumbered and that we are proposing to take no action on because they have never been approved into the SIP or they have been superceded by later submittals that have been approved into the SIP. The third category consists of sections on which we propose to take action on in a separate notice.

A. Category 1

Based on the June 27, 1994, April 28, 2000 and December 31, 2002 submittals, we are proposing to approve the following sections of the Utah SIP because they have only been renumbered and contain no substantive changes to the text of the rule. We are proposing that the following renumbered SIP sections replace the prior numbered SIP sections in the federally approved SIP along with any nonsubstantive changes: Section I—Legal Authority; Section II—Review of New and Modified Air Pollution Sources; Section III—Source Surveillance; Section IV; Section V—Resources; Section VI—Intergovernmental Relations; Section VII—Prevention of Air Pollution Emergency Episodes; Section VIII—Prevention of Significant Deterioration; Section IX—Control Measures for Area and Point Sources (except for Part A, Part D and Part H); Section XI—Appendix 1; Section XI—Appendix 2; Section XII—Involvement; Section XIII—Analysis of Plan Impact; Section XIV—Emission Inventory Development; Section XV—Title 19, Chapter 2 Utah Code Annotated, 1993; Section XVI—Public Notification; Section XVII—Visibility Protection; Section XVIII—Demonstration of GEP Stack Height; and Section XIX—Small Business Assistance Program.

The following table cross references the renumbered and prior numbered SIP sections. The table identifies the renumbered SIP sections we are proposing to approve as replacing the prior numbered SIP sections.

STATE IMPLEMENTATION PLAN

[Table of Corresponding Sections]

Title	Renumbered SIP Section	Prior numbered SIP Section
Legal Authority	Section I	Section 1.
Review of New and Modified Air Pollution Sources	Section II	Section 2.
Source Surveillance	Section III	Section 3.
Ambient Air Monitoring Program	Section IV	Section 4.
Resources	Section V	Section 5.
Intergovernmental Cooperation	Section VI	Section 6.
Prevention of Air Pollution Emergency Episodes	Section VII	Section 7.
Prevention of Significant Deterioration	Section VIII	Section 8.
Control Measures for Area and Point Sources	Section IX	Section 9.
Sulfur Dioxide	Part B	Part B.
Carbon Monoxide	Part C	Part C.
Nitrogen Dioxide	Part E	Part E.
Lead	Part F	Part F.
Fluoride	Part G	Part G.
Mountainlands Association of Governments	XI, App. 1	Section 9, App. A.
Wasatch Front Regional Council	XI, App. 2	Section 9, App. B.
Involvement	Section XII	Section 10.

STATE IMPLEMENTATION PLAN—Continued

[Table of Corresponding Sections]

Title	Renumbered SIP Section	Prior numbered SIP Section
July 27, 1978 contract: Utah Dept. of Social Services and Mountainlands Assoc. of Govt.	XII, App. 1	Exhibit 10.1a.
July 21, 1978 contract: Utah Dept. of Social Services and Wasatch Front Regional Council.	XII, App. 2	Exhibit 10.1b.
Analysis of Plan Impact	Section XIII	Section 11.
Comprehensive Emission Inventory	Section XIV	Section 12.
Utah Code Title 19, Chapter 2	Section XV	Section 13.
Public Notification	Section XVI	Section 14.
Visibility Protection	Section XVII	Section 15.
Demonstration of GEP Stack Height	Section XVIII	Section 16.
Small Business Assistance Program	Section XIX	Section 17.

B. Category 2

Category 2 consists of sections that we are proposing to take no action on because the sections have never been approved into the SIP or the sections have been superceded by later submittals that EPA has already approved into the SIP.

1. Section XX—Committal SIP

Section XX has never been approved into the SIP. Section XX committed the State to adopt certain measures to control ozone, but the committal SIP is irrelevant since the State subsequently submitted the Utah Ozone Maintenance Plan and the EPA approved it at (July 17, 1997, 62 FR 38213). Additionally, on June 17, 1998, the State submitted a SIP revision requesting the repeal of the Committal SIP. In a **Federal Register** notice, the EPA states that it will not take any action on repeal of the Committal SIP since it was never approved into the SIP (May 20, 2002, 67 FR 35442).

2. Sections That Have Been Superceded

Since the State's June 27, 1994 submittal, the State has made changes to portions of the SIP which EPA has approved. Since we have already approved these provisions, the approved sections supercede the June 27, 1994 submittal. The sections that we are proposing to take no action on because they supercede the June 27, 1994 submittal and have already been approved into the SIP are Section IX, Part D (approved on July 17, 1997, 62 FR 38213); Section X (approved on July 17, 1997, 62 FR 38213 and September 12, 2002, 67 FR 57744); and Section XI (approved on June 14, 2000, 65 FR 37286). However, we are approving Appendix 1 and Appendix 2 for Section XI, as stated above.

C. Category 3

Category 3 consists of those sections that we will act on at a later date.

1. January 27, 1994 Submittal

EPA will be acting on Section IX, Parts A and H at a later time due to the fact that there have been submittals that supercede these parts. EPA will act on Section IX, Parts A and H when it acts on the subsequent submittals related to these parts.[1]

2. April 28, 2000 Submittal

The April 28, 2000 submittal contains non-substantive changes to Section IX, Parts A and H. Since we are not acting on Section IX, Parts A and H in this notice, we will act on the April 28, 2000 non-substantive changes to Section IX, Parts A and H at a later date. The April 28, 2000 submittal also contains revisions to Utah's rules for definitions and inventories which we will be acting on in a separate action.

3. December 31, 2002 Submittal

The December 31, 2002 submittal contains non-substantive changes to Section IX, Parts A and H. Since we are not acting on Section IX, Parts A and H in this action, we will act on the December 31, 2002 non-substantive changes to Section IX, Parts A and H at a later date. The December 31, 2002 submittal also contains non-substantive changes to Section IX, Parts C.1–C.6. The non-substantive changes to Section IX, Parts C.1–C.6 are based on SIP changes that the EPA has not approved. We are proposing to act on the non-substantive changes to Section IX, Parts C.1–C.6 at a later time.

[1] The January 27, 1994 submittal contain references to Section IX Part A and Section IX Part H. We are not acting on Section IX Part A or Section IX Part H at this time. We are interpreting that when the State refers to Section IX Part A in its SIP, it is referring to Section 9.A of the prior numbered SIP, and when the State refers to Section IX Part H in its SIP, it is referring to Section 9.A, Appendix A, A1 and A2 of the prior numbered SIP, except for parts of Section IX, Part A and Part H that were approved into the SIP subsequent to the January 27, 1994 submittal (see 67 FR 78181, December 23, 2002).

D. Category—Other

1. December 31, 2002 Submittal

We are proposing to approve the non-substantive changes contained in the December 31, 2002 submittal to Section IX, Part C.7 and C.8, Section IX, Part D, Section XXI and Section XXII. SIP Section IX, Part C.7 and Part C.8, Section IX, Part D, Section XXI and Section XXII were not part of the January 27, 1994 submittal but were new sections adopted and approved subsequent to the January 27, 1994 submittal. These changes differ from the sections in I.B.2 of this notice that we are proposing to take no action on. Sections in I.B.2 were included as part of the January 27, 1994 submittal, but were replaced by subsequent approved SIP submittals.

II. Proposed Action

Based on the June 27, 1994, April 28, 2000 and December 31, 2002 submittals, we are proposing to approve the following sections of the Utah SIP because they have only been renumbered and contain no substantive changes to the text of the rule. We are proposing that the following renumbered SIP sections replace the prior numbered SIP sections in the federally approved SIP along with any non-substantive changes: Section I, Section II, Section III, Section IV, Section V and Section VI, effective 11/12/93; Section VII, effective 11/12/93, except VII.D, effective January 1, 2003; Section VIII, effective January 1, 2003; Section IX, Part B, effective 11/12/93, except the title and IX.B.3.d, effective 2/25/2000, and IX.B.3.a, IX.B.3.e, and IX.B.4, effective January 1, 2003; Section IX, Part C, effective 11/12/93, except the title, effective 2/25/2000; Section IX, Parts E, F and G, effective 11/12/93, except the titles, effective 2/25/2000; Section XI, Appendix 1 and Appendix 2, effective 11/12/93; Section XII and Section XIII, effective 11/12/93; Section

XIV, effective 11/12/93, except Table XIV.9, effective 2/25/2000; Section XV and Section XVI, effective 11/12/93; Section XVII, effective 11/12/93, except XVII.A, XVII.D and XVII.E, effective 2/25/2000; Section XVIII, effective 11/12/93, except XVIII.B, effective 2/25/2000; and Section XIX, effective 11/12/93.

We are also proposing to approve non-substantive changes to Section IX, Part C.7 and C.8, Section IX, Part D, Section XXI and Section XXII, effective January 1, 2003.

In addition, we are taking no action on certain portions of the submittals because they have never been part of the SIP or they have been superceded by other submittals approved by the EPA into the SIP. The portions of the submittals that we are taking no action on are Section XX, Section IX, Part D, Section X and Section XI.

Also, we will propose to take action on portions of the submittals in separate notices. We propose to take action on Section IX, Part A and Part H and non-substantive changes to Section IX, Parts C.1–C.6 in separate notices.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

III. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 13, 2003.

Kerrigan G. Clough,

Deputy Regional Administrator, Region 8.

[FR Doc. 03–7055 Filed 3–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–283–0392; FRL–7472–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; 1-Hour Ozone Standard for Santa Barbara, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to redesignate the Santa Barbara County area to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is also proposing to approve a 1-hour ozone maintenance plan and motor vehicle emissions budgets as revisions to the Santa Barbara portion of the California State Implementation Plan (SIP).

DATES: Comments on this proposed action must be received by April 24, 2003.

ADDRESSES: Please address your comments to: Dave Jesson, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the docket for this action at EPA's Region 9 office during normal business hours. You can also inspect copies of the submitted SIP revision at the following locations:

California Air Resources Board, 1001 I Street, Sacramento, CA 95814;

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, EPA Region 9,(415) 972–3957, or *Jesson.David@epa.gov*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

I. Background

A. Santa Barbara Designation, Classification, SIPs, and Attainment

When the Clean Air Act (CAA) was amended in 1990, each area of the country that was designated nonattainment for the 1-hour ozone NAAQS, including the Santa Barbara area, was classified by operation of law as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality problem. The Santa Barbara County nonattainment area ("Santa Barbara") was designated under CAA section 107 as nonattainment, and classified under CAA section 181 as moderate for the 1-hour ozone NAAQS. See 40 CFR 81.305 and 56 FR 56694 (November 6, 1991).

The Santa Barbara County Air Pollution Control District (SBCAPCD) adopted a moderate area plan, intended to demonstrate attainment by the applicable deadline of November 15, 1996. The California Air Resources Board (CARB) timely submitted the plan in 1994, but later withdrew the attainment demonstration portion, since the area continued to violate the standard in 1996. We approved the remaining portion of the plan on January 8, 1997 (62 FR 1187).

On December 10, 1997 (62 FR 65025), we determined that the area had not attained the 1-hour ozone standard by the 1996 deadline. As a result of that finding, Santa Barbara was reclassified to serious by operation of law under CAA section 181(b)(1)(A).

Upon the area's reclassification to serious, CAA sections 181(a)(1) and 182(c)(2)(A) required the State to submit a revised plan demonstrating attainment as expeditiously as practicable but no later than November 15, 1999. In response, SBCAPCD adopted and CARB submitted a plan addressing the serious area requirements. EPA fully approved this plan on August 14, 2000 (65 FR 49499).

Santa Barbara attained the 1-hour ozone NAAQS in 1999 and SBCAPCD adopted a 2001 Clean Air Plan ("2001 CAP") on November 15, 2001, to address the Clean Air Act (CAA) section 175A provisions relating to 1-hour ozone maintenance plans. On May 29, 2002, CARB submitted the 2001 CAP, and requested that we make a finding of attainment for Santa Barbara and approve the contingency measures in the maintenance plan for the area. CARB indicated that the State would ask that we act on the remainder of the maintenance plan and redesignate the area to attainment when CARB requests our approval of an updated vehicle emissions factor model for use statewide in SIPs and transportation conformity analyses.

On August 27, 2002 (67 FR 54963), we found that the Santa Barbara County nonattainment area ("Santa Barbara area") had attained the 1-hour ozone national ambient air quality standard (NAAQS) by the applicable deadline of November 15, 1999. In the same action, we also approved contingency measures in Santa Barbara's 2001 CAP under CAA section 110(k)(3). The proposed action contains more information on the finding of attainment and the contingency measures. 67 FR 44128, July 1, 2002.

On December 20, 2002, CARB transmitted for approval the State's latest update to the California-specific motor vehicle emissions model, known as EMFAC2002 (letter from Michael P. Kenny, CARB Executive Officer, to Jack Broadbent, Director, Air Division, EPA Region 9). On December 19, 2002, SBCAPCD adopted a minor revision to the 2001 CAP ("Final 2001 CAP"), amending the emissions inventory, maintenance demonstration, and motor vehicle emissions budgets to reflect EMFAC2002. On February 21, 2003, CARB submitted the Final 2001 CAP, as amended by the SBCAPCD, with a request that we approve the plan as meeting the CAA maintenance plan provisions and redesignate Santa Barbara to attainment for the 1-hour ozone NAAQS (letter from Catherine Witherspoon, CARB Executive Officer, to Wayne Nastri, Regional Administrator, EPA Region 9).

B. Clean Air Act Provisions for Maintenance Plans

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must provide for continued maintenance of the applicable NAAQS for at least 10 years after the area is redesignated to attainment (CAA section 175A(a)). To address the possibility of future NAAQS violations, the maintenance plan must contain contingency provisions that are adequate to assure prompt correction of a violation, and must include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area (CAA section 175A(d)).

We have issued maintenance plan and redesignation guidance, primarily in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" ("General Preamble," 57 FR 13498, April 16, 1992); a September 4, 1992 memo from John Calcagni titled "Procedures for Processing Requests to Redesignate Areas to Attainment" ("Calcagni memo"); a September 17, 1993 memo from Michael H. Shapiro titled "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992"; and a November 30, 1993 memo from D. Kent Berry titled "Use of Actual Emissions in the Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas."

The Calcagni memo provides that an ozone maintenance plan should address five elements: an attainment year emissions inventory (*i.e.*, an inventory reflecting actual emissions when the area recorded attainment, and thus a level of emissions sufficient to attain the 1-hour ozone NAAQS), a maintenance demonstration, provisions for continued operation of an appropriate air quality monitoring network, verification of continued maintenance, and contingency measures.

C. Clean Air Act Provisions for Redesignation

CAA section 107(d)(3)(E) allows for redesignation providing that: (1) We determine, at the time of redesignation, that the area has attained the NAAQS; (2) we have fully approved the applicable implementation plan for the area under section 110(k); (3) we determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal regulations, and other permanent and enforceable reductions; (4) we fully approve a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the State containing such area has met all nonattainment area requirements applicable to the area under section 110 and part D. We have provided guidance on redesignation in the General Preamble and in the guidance memos cited above.

II. EPA Review of the Santa Barbara Maintenance Plan and Redesignation Request

A. Maintenance Plan

As discussed above in section I.A., the 2001 CAP was initially submitted on May 29, 2002. SBCAPCD amended the plan on December 19, 2002, by updating the motor vehicle emissions inventory portion, and CARB submitted the revised plan, known as the Final 2001 CAP, on February 21, 2003.[1] The plan consists of 4 volumes, the plan itself and the following 3 appendices: Appendix A—Emission Inventory and Forecasting Documentation; Appendix

[1] On February 25, 2003, we found that this submittal met the completeness criteria in 40 CFR part 51, appendix V, including the requirement for proper public notice and adoption.

B—Stationary Source Control Measure Documentation; Appendix C—Transportation Control Measures & On-Road Mobile Source Emissions Analysis.

On December 20, 2002, CARB also submitted the new CARB motor vehicle emissions factor model, EMFAC2002.[2] EMFAC2002 is used to prepare the on-road emission inventories in the plan. In early 2003, we expect to issue our conclusions regarding whether or not the EMFAC2002 emission factor element is acceptable and would thus be required to be used in the future for purposes of SIP development and transportation conformity. CARB has provided us with information about the EMFAC2002 revisions as they were being prepared and finalized, and we have preliminarily concluded for purposes of this proposed action that the emission factor element of EMFAC2002 is an improved and acceptable methodology for determining motor vehicle emissions. Assuming that we find that the updated emission factor model is acceptable, we propose to approve fully the emissions inventory, maintenance demonstration, motor vehicle emissions budgets in the Final 2002 CAP, and redesignation request, as discussed below. If we fail to find that the emission factor element is acceptable, we will not finalize these actions.

1. Attainment Emissions Inventory

The Final 2001 CAP includes 1999 attainment emissions inventories for Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X), which are used to forecast emissions for 2005, 2010, and 2015, taking into account future growth and changes in control factors.[3] Four emissions inventories are presented for the attainment year and for the projected years: annual inventories for the onshore and for the Outer Continental Shelf (OCS), and planning (typical summer day) inventories for the onshore and for the OCS. The primary difference between the annual emissions inventories and the planning emissions inventories lies in the adjustment of annual emissions in the planning inventories to reflect summer seasonal variations, and the planning inventories' exclusion of natural sources (such as biogenics, oil and gas seeps, and wildfires), since those sources are not regulated.

The inventories use current and accurate methodologies, emissions factors, and survey information. The inventories represent actual emissions, with certain exceptions that are documented in the maintenance plan.[4] For example, the projected emissions inventories include emission reduction credits (ERCs) in the SBCAPCD's Source Register (2001 CAP, page 6–2) and a projected growth conformity allowance for the Vandenberg Air Force Base (2001 CAP, page 6–5).[5]

The 2001 Plan projects no growth in emissions from OCS oil and gas production activities, noting that any increased production would be permitted under the New Source Review (NSR) or Prevention of Significant Deterioration (PSD) regulations, and therefore any potential increase in emissions would need to be offset to provide a net emission benefit from the new OCS activity.

The onroad emissions inventories employ the new CARB motor vehicle emissions factor model, EMFAC2002. The motor vehicle inventories use the latest planning activity levels, including data generated by the Santa Barbara County Association of Government's Santa Barbara Travel Model, and updated county-specific vehicle data from the California Department of Motor Vehicles.

As discussed above, we expect to issue our conclusions regarding whether or not the emission factor element of EMFAC2002 is acceptable in the near future. Assuming that we find that the updated element is acceptable, we propose to approve fully the emissions inventories under CAA sections 172(c)(3) and 175A, since the inventories are complete, consistent with our most recent guidance, and reflect the latest information available at the time of plan preparation. However, if we fail to find that the emission factor element of the model is adequate, we will not finalize this proposed approval.

2. Maintenance Demonstration

Original maintenance plans must show how the NAAQS will be maintained for the next 10 years following redesignation to attainment. This is generally performed by assuming that the emissions levels at the time attainment is achieved constitute a limit on the emissions that can be accommodated without violating the NAAQS. In the case of this plan, projected VOC and NO_X emissions for 2010 and 2015 show continued attainment, since emissions levels of both of the ozone precursors are below 1999 levels. Table 1 below shows baseline and projected summer day emissions levels from both onshore and OCS sources.

TABLE 1.—SANTA BARBARA COUNTY MAINTENANCE DEMONSTRATION SUMMER DAY EMISSIONS IN TONS PER DAY

[Source: Santa Barbara Final 2001 Clean Air Plan]

Year	VOC	NO_X
1999	43.69	77.64
2005	35.52	75.23
2010	30.97	74.04
2015	29.54	77.55

Maintenance is demonstrated since emissions of both ozone precursors decline from the 1999 attainment year inventory: VOC emissions are reduced by 14 tpd (approximately 32 percent) from 1999 to 2015, and NO_X emissions are reduced by 3.6 tpd by 2010 (approximately 5 percent), but are essentially unchanged (a decrease of 0.09 tpd or less than 1 percent) by 2015. Increasingly stringent California and Federal motor vehicle emissions standards and fleet turnover account for the bulk of the inventory reductions, and the remaining emissions reductions come from fully adopted, permanent, and enforceable State, local, and Federal regulations.

NO_X emissions are predicted to decline only slightly (less than 1 percent) by 2015, since the onshore reductions are almost eliminated by the 68 percent increase in OCS emissions associated with growth in international marine vessel activities. The SBCAPCD notes that additional actions by the federal government and EPA will be required to reduce the marine vessel emission increases. Final 2001 CAP, pages 7–9 through 7–11. While the plan does demonstrate maintenance despite projected growth in ship emissions, we are working with SBCAPCD, CARB, and other stakeholders to identify and implement programs that can reduce emissions from marine vessels.

Assuming that we find that the emission factor element of EMFAC2002 is adequate, we propose to approve the maintenance demonstration under CAA section 175A(a), since the plan shows that emissions will remain below attainment levels due to the projected impact of fully adopted, permanent, and enforceable regulations. If we fail to find that the EMFAC2002 emission factor element is acceptable, we will not finalize this proposed action.

3. Continued Ambient Monitoring

The maintenance plan needs to contain provisions for continued operation of an air quality monitoring network that meets the provisions of 40 CFR part 58 and will verify continued attainment. The maintenance plan indicates that SBCAPCD will use air quality data from all monitoring stations in the County to track attainment status, and that the District will prepare annual design value summaries to verify maintenance of the NAAQS. Final 2001 CAP, page 7–11. This SBCAPCD commitment meets the continued monitoring provision.

4. Verification of Continued Attainment

The maintenance plan needs to show how the responsible agencies will track progress, and the plan should specifically provide for periodic inventory updates. The Santa Barbara maintenance plan indicates that SBCAPCD will meet this obligation through triennial updates to the area's attainment plan for the more protective State 1-hour ozone standard, which are mandated by the California Clean Air Act. These updates include assessments of the effectiveness of the control strategy, corrections for deficiencies in meeting progress requirements under State law, and new emissions inventory data or projections. We agree with the SBCAPCD that the triennial updates will meet our provisions for verification of continued attainment.

5. Contingency Provisions

CAA section 175A(d) provides that maintenance plans include contingency provisions "necessary to assure that the State will promptly correct any violation of the standard * * *. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area."

As noted above in Section I.A., we have already approved and made federally enforceable the contingency measures in Santa Barbara's 2001 CAP on August 27, 2002 (67 FR 54963). In that rulemaking, we approved 8 contingency measures under CAA section 110(k)(3) because these measures strengthened the existing SIP. These measures are listed below in Table 2, "Contingency Measures."

TABLE 2.—CONTINGENCY MEASURES

[Source: Final 2001 Clean Air Plan, Table 4–3]

Rule	CAP control measure ID	Description	Adoption schedule	Emission reductions in tons per day (with full implementation)	
				VOC	NO_X
323	R–SC–1	Architectural Coatings (Revision)	2001–2003	0.0998	0
333	N–IC–1 N–IC–3	Stationary IC Engines	2002–2003	0.0008	0.0128
360	N–XC–2	Large Water Heaters & Small Boilers, Steam Generators, Process Heaters (75,000 Btu/hr to <2 MMBtu/hr).	2001–2003	0	[1]0.0133
321	R–SL–1	Solvent Degreasers (Revision)	2004–2006	0.0562	0
362	R–SL–2	Solvent cleaning operations	2004–2006	1.0103	0
363	N–IC–2	Gas Turbines	2004–2006	0	0
358	R–SL–4	Electronic Industry—Semiconductor Manufacturing	2007–2009	[2]0.0026	0
361	N–XC–4	Small Industrial and Commercial Boilers, Steam Generators, and Process Heaters (2 MMBtu/hr to <5 MMBtu/hr).	2007–2009	0	[3]0.0028

[1] This is with 15% implementation, the highest implementation figure available from the District's analysis.
[2] The data shown are for source classification code (SCC) number 3–13–065–06 only. The emission data for the SCC numbers and the category of emission source (CES) numbers subject to Rule 358 are included in the Rule 321 or Rule 361 emission reduction summaries.
[3] The emission reductions shown are based on Rule 361 being a point-of-sale type rule.

When we approved these measures, the State had not yet submitted the Final 2001 CAP for approval under CAA section 175A, and so we did not rule on whether the contingency measures and other contingency provisions met the specific requirements of CAA section 175A(d).

The CAA and EPA's guidance on contingency provisions in maintenance plans do not require that the contingency measures be fully adopted (unlike the requirement for contingency measures in attainment plans), but that the maintenance plan should have a clear trigger and should provide for expedient adoption of measures sufficient to correct the violation promptly.

The Santa Barbara maintenance plan includes schedules for adopting the contingency measures as shown in Table 2, and the plan also includes a commitment by the SBCAPCD to evaluate and expedite rule adoption process in coordination with USEPA if the area experiences a violation of the Federal 1-hour ozone NAAQS prior to 2015 (Final 2001 CAP, page 7–12). Moreover, SBCAPCD has committed to take expeditious action following a violation to ensure that measures are implemented promptly to correct the violation (SBCAPCD Resolution No. 02–18, December 19, 2002).

6. Motor Vehicle Emissions Budgets

Maintenance plan submittals must specify the maximum emissions of transportation-related precursors of ozone allowed in the last year of the maintenance period. The submittals must also demonstrate that these emissions levels, when considered with emissions from all other sources, are

[2] The EMFAC model is the California equivalent to EPA's national motor vehicle emissions model, the most recent version of which is MOBILE6. EMFAC2002 reflects new vehicle test data and quantification techniques to update and enhance the information in the most recent prior versions. For example, EMFAC2002 accounts for heavy-duty vehicle emissions during extended idling and during off-cycle operation.

[3] The Santa Barbara 2001 CAP uses the term Reactive Organic Compounds (ROC) in place of the Federal terminology, VOC. The terms are essentially synonymous. Because VOC is the more common term, we use it in this notice.

[4] Documentation on the emissions inventories appears in Appendix A of the Final 2001 CAP, which presents growth and control factors by source category and fuel type, and displays the impact of rules and control measures on each affected source category.

[5] Emissions added to the plan to accommodate the Airborne Laser (ABL) Mission are as follows: 2005–0.0552 tpd VOC, 0 tpd NO_X; 2010 and 2015–0.0656 tpd VOC, 0.3602 tpd NO_X. The 2001 CAP notes that the NO_X growth allowance covers emissions increases from the ABL project that remain after application of 0.1265 emission reduction credits from the Source Register.

consistent with maintenance of the NAAQS. In order for us to find these emissions levels or "budgets" adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5), and be approvable under all pertinent SIP requirements.

The budgets defined by this and other plans when they are approved into the SIP or, in some cases, when the budgets are found to be adequate, are then used to determine the conformity of transportation plans, programs, and projects to the SIP, as described by CAA section 176(c)(3)(A). For more detail on this part of the conformity requirements, see 40 CFR 93.118. For transportation conformity purposes, the cap on emissions of transportation-related ozone precursors is known as the motor vehicle emissions budget. The budget must reflect all of the motor vehicle control measures contained in the maintenance demonstration (40 CFR 93.118(e)(4)(v)).

The motor vehicle emissions budgets are presented in Table 3 below, entitled "Santa Barbara Revised 2001 Clean Air Plan Motor Vehicle Emissions Budgets," which is taken from section 5.4 of the Final 2001 CAP.

TABLE 3.—SANTA BARBARA FINAL 2001 CLEAN AIR PLAN MOTOR VEHICLE EMISSIONS BUDGETS

[Emissions are shown in tons per day]

Year	NO_x	VOC
2005 Budget	19.59	11.91
2015 Budget	9.75 ...	5.90

As discussed above, the motor vehicle emissions portion of these budgets (*i.e.*, the evaporative and tailpipe emissions) was developed using EMFAC2002 and updated county-specific vehicle data, including the latest Santa Barbara County planning assumptions on vehicle fleet and age distribution and activity levels. Assuming that we find the EMFAC2002 emission factor model is acceptable, we propose to approve the motor vehicle emission budgets as consistent with the criteria of 40 CFR 93.118(e)(4) and (5), including consistency with the baseline emissions inventories and the motor vehicle emissions used in the maintenance demonstration. If we do not find that the EMFAC2002 emission factor model is acceptable, we would not finalize the proposed approval of the budgets.

B. Redesignation Provisions

1. Attainment of the 1–Hour Ozone NAAQS

On August 27, 2002 (67 FR 54963), EPA issued a final determination that Santa Barbara County had attained the 1-hour ozone NAAQS by the CAA deadline of November 15, 1999. This finding was based on our conclusion that the design value for each monitor in the County for the period 1997–1999 was equal to or less than 0.12 ppm, and the average number of expected exceedance days per year was 1.0 or less for each monitor during that period. We also concluded that the ozone monitoring network for the area continued to meet or exceed applicable requirements. See the discussion in our proposed determination of attainment published on July 1, 2002 (67 FR 44128).

We have now looked at exceedance days and design values for each monitor for more recent 3-year periods, 1999–2001 and 2000–2002. These data are presented in Table 4, entitled Average Number of Ozone Exceedance Days per Year and Design Values by Monitor in Santa Barbara County, 1999–2001 and 2000–2002." As noted, not all data for the 4th quarter of 2002 have yet been quality assured and entered into EPA's Aerometric Information Retrieval System-Air Quality Subsystem (AIRS–AQS) database.

TABLE 4.—AVERAGE NUMBER OF OZONE EXCEEDANCE DAYS PER YEAR AND DESIGN VALUES BY MONITOR IN SANTA BARBARA COUNTY, 1999–2001 AND 2000–2002

Site [1]	1999–2001		2000–2002	
	Average number of exceedance days per year	Site design value (ppm)	Average number of exceedance days per year	Site design value (ppm)
El Capitan St (SLAMS)	0	0.088	0	0.087
Goleta (SLAMS)	0	0.080	0	0.079
Lompoc H Street (SLAMS)	0	0.076	0	0.074
Santa Barbara [2] (SLAMS)	0	0.081	0	0.080
Santa Maria (SLAMS)	0	0.064	0	0.064
Santa Ynez (SLAMS)	0	0.079	0	0.082
Santa Rosa Island (Nat. Park)	0	0.086	0	0.079
Carpinteria (SPM)	0	0.094	0	0.088
GTC B (SPM)	0	0.085	0	0.085
Lompoc HS&P (SPM)	0	0.083	0	0.081
Paradise Road (SPM)	0	0.101	0	0.101
Las Flores Canyon (Site 1) (SPM)	0.7	0.098	0.3	0.097
Vandenburg AFB STS (SPM)	0	0.081	0	0.079

Note 1: State or Local Air Monitoring Stations (SLAMS) are operated by SBCAPCD or CARB, while special purpose monitors (SPMs) are operated independently by certain permitted stationary sources in the county under the oversight of the SBCAPCD. All data produced by these SPMs are submitted to EPA's Aerometric Information Retrieval System-Air Quality Subsystem (AIRS–AQS) database.

Note 2: The Santa Barbara monitor (at 3 W. Carrillo Street) was shut down from 11/1/00 through 5/23/01, and from 2/1/02 through 5/1/02. The monitor recorded essentially complete data for the period 1997–1999 and during this period the peak concentration was 0.098 ppm. No exceedances have been recorded at the monitor since 1992.

As shown in Table 4, the highest design value at any monitor for 1999–2001 and for 2000–2002, and thus the design value for the Santa Barbara area for those periods, is below 0.12 ppm. No monitor in the Santa Barbara area recorded an average of more than 1 exceedance of the 1-hour ozone standard per year during the 1999–2001 and 2000–2002 periods.

Because the area's design value is below the 1-hour ozone standard of 0.12 ppm and the area has averaged less than 1 exceedance per year at each monitor for the 1999–2001 and 2001–2002 periods, we propose to conclude that the Santa Barbara area has met this prerequisite to redesignation because the area has attained and continues to attain the 1-hour ozone standard.

2. Fully Approved Implementation Plan Under CAA Section 110(k)

Following adoption of the CAA of 1970, California has adopted and submitted and we have fully approved at various times provisions addressing the various SIP elements applicable in Santa Barbara County. No Santa Barbara SIP provisions are currently disapproved, conditionally approved, or partially approved.

3. Improvement in Air Quality Due to Permanent and Enforceable Measures

Section 7.4 of the Final 2001 CAP includes analyses demonstrating that the reductions in ozone concentrations cannot be attributed to reduced activity levels or favorable meteorology, but are rather due to permanent and enforceable measures, such as those discussed in Chapters 4 and 5 of the Final 2001 CAP. The plan shows a steady increase in vehicle miles traveled from 1995 through 1999, reflective of continued activity growth in the area. The plan also lists mean temperature during April to October for each year from 1990 through 2000, and compares these values with the 74-year April to October average. There were a variety of weather conditions during the period when the County had attained the NAAQS, suggesting that anomalous weather does not account for attainment.

4. Fully Approved Maintenance Plan

In section II.A., above, we are proposing to approve fully the Final 2001 CAP as meeting the CAA section 175A provisions for maintenance plans, assuming that we find that the EMFAC2002 emission factor element is adequate.

5. CAA Section 110 and Part D Provisions Satisfied

We approved Santa Barbara's 1994 ozone SIP on January 8, 1997 (62 FR 1187) with respect to CAA section 110 and Part D provisions applicable to a moderate nonattainment area, with the exception of the attainment demonstration, which the State had withdrawn. Following our reclassification of Santa Barbara to serious, Santa Barbara adopted and the State submitted a plan addressing CAA section 110 and Part D provisions applicable to a serious nonattainment area, including the demonstration of attainment. We fully approved this plan on August 14, 2000 (65 FR 49499).

III. EPA Action

We are proposing to approve the Santa Barbara Final 2001 CAP under CAA sections 175A and 110(k)(3). As discussed above in section I.A., we have previously approved the contingency measures under CAA section 110(k)(3); we are now proposing to approve them as meeting the requirements of CAA section 175A(d). We are proposing to approve the 2005 and 2015 VOC and NO_x motor vehicle emissions budgets in Table 5–5 under CAA sections 176(c) as adequate for maintenance of the 1-hour ozone NAAQS and for transportation conformity purposes. Finally, we are proposing to redesignate Santa Barbara to attainment for the 1-hour ozone standard under CAA section 107(d)(3)(E). As we have discussed, however, we would not finalize these actions if we fail to conclude that the emission factor element of EMFAC2002 is acceptable.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 6, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–7058 Filed 3–24–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 83

RIN 0920–ZA00

Procedure for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000

AGENCY: Department of Health and Human Services.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Department of Health and Human Services (HHS) is extending the comment period for the proposed rule on procedures for designating classes of employees as members of the Special Exposure Cohort under the Energy Employees Occupational Illness Program Act (EEOICPA) that was published in the **Federal Register** on Friday, March 7, 2003.

DATES: Any public written comments on the proposed rule must be received on or before May 6, 2003.

ADDRESSES: Address written on the notice of proposed rulemaking to the NIOSH Docket Officer. Electronically e-mail comments to: *NIOCINDOCKET@CDC.GOV*. Alternatively, submit printed comments to NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–841–4498 (this is not a toll free number). Information requests may also be submitted by e-mail to *OCAS@CDC.GOV*.

SUPPLEMENTARY INFORMATION: On March 7, 2003, HHS published a notice of proposed rulemaking proposing a procedure for designating classes of employees as members of the Special Exposure Cohort under EEOICPA, (*See* FR Vol. 68, No. 45, 11294). The notice included a public comment period that was to end on April 7, 2003. On March 7, 2003, NIOSH convened the Advisory Board on Radiation and Worker Health to review the proposed rule. The Board recommended that the comment period be extended by 15 days, for a total of 45 days, to ensure the public has adequate time to review and comment on the proposal. HHS agrees with the Board that a longer comment period is desirable, and is now providing for a 60-day comment period.

To provide the public with additional time to review and comment on the proposed rule, HHS is extending the public comment period to May 6, 2003.

Dated: March 21, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–7243 Filed 3–21–03; 2:52 pm]

BILLING CODE 4160–17–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030314059–3059–01; I.D. 030603B]

RIN: 0648–AQ48

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Small Mesh Multispecies Fishery; Northeast Multispecies Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; notice of a new control date for the purpose of controlling entry in the small-mesh multispecies fishery.

SUMMARY: NMFS announces that it is considering, and is seeking public comment on, proposed rulemaking to control future access to the small mesh multispecies (silver hake, *Merluccius bilinearis*; red hake, *Urophycis chuss*; offshore hake, *Merluccius albidus*) resources if a management regime is developed and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that limits the number of participants in the fishery. This announcement is intended, in part, to promote awareness of potential eligibility criteria for future access to the small mesh multispecies fishery and to discourage speculative entry into the fishery while the New England Fishery Management Council (Council) and NMFS consider whether and how access to the small-mesh multispecies fishery should be controlled. The date of publication of this document, March 25, 2003, shall be known as the "control date" and may be used for establishing eligibility criteria for determining levels of future access to the small mesh multispecies fishery subject to Federal authority. Participants who enter the small mesh multispecies fishery on or after March 25, 2003 may be treated differently than those with a history in the fishery before this date. The establishment of this control date does not prevent any other control date for eligibility in the fishery or another method of controlling access and/or fishing effort on small mesh multispecies from being proposed and implemented by the Council and NMFS.

DATES: Written comments must be received on or before 5:00 p.m., local time, April 24, 2003.

ADDRESSES: Written comments should be sent to Paul Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Mark the outside of the envelope, "Comments on Small Mesh Multispecies Control Date." Comments also may be sent via facsimile (fax) to (978) 465–3116. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION: A control date for the silver hake, offshore hake, and red hake fisheries was established on September 9, 1996 (61 FR 47473), to promote awareness of potential eligibility criteria for future access to the small mesh fishery and to discourage new entry into the fishery. The Council used this control date to develop a proposed limited access program for this fishery included in Amendment 12 to the Northeast Multispecies Fishery Management Plan (FMP), a management program for small mesh multispecies that was implemented on April 28, 2000. The Amendment 12 limited access program for small mesh multispecies was later disapproved by NMFS because it was found to be inconsistent with some of the requirements of the Magnuson-Stevens Act. As a result, the small mesh multispecies fishery remains an open-access fishery.

The Council intends to develop a new amendment to address limited access in the small- mesh multispecies fishery. The Council is concerned that conditions have changed sufficiently in this fishery to make the September 1996 control date an unreliable indicator of current participation. A new control date would reflect current participation levels, should the Council require such a benchmark when developing a new limited access program.

The Whiting Monitoring Committee (WMC) recommended that the Council consider establishing a new control date for small mesh multispecies because circumstances in Northeast fisheries have changed since the establishment of the September 1996 control date. Amendment 5 to the FMP prevented fishing with small mesh in the northern stock area until exempted fisheries could be established that reduce the bycatch of regulated multispecies to less than 5 percent. Since implementation of Amendment 5 in 1994, experimental and exempted fisheries for small mesh multispecies in the northern stock area have evolved through cooperative experimentation, gear research, and gear technologies that significantly reduce bycatch of non-target species, especially regulated multispecies. Many of these technologies took years to develop and, as a result, the 1996 control date does not capture current levels of participation or fishing practices in the small mesh multispecies fishery, especially in the northern stock area. Therefore, it is unlikely that the Council would utilize a dated control date in the development of a new limited access program for small mesh multispecies. A new control date is more likely to be utilized in a limited access program because it would capture current participation in the small mesh multispecies fishery and provide a more suitable benchmark.

This notice establishes March 25, 2003 as the new control date for potential use in determining historical or traditional participation in the small mesh multispecies fishery. Consideration of a control date does not commit the Council or NMFS to develop any particular management regime or criteria for participation in this fishery. The Council or NMFS may choose a different control date, or may choose a management program that does not make use of such a date.

Fishermen who have not participated in the small mesh multispecies fishery or change their level of participation in this fishery are notified that entering this fishery or changing their level of participation after this control date may not qualify them as previous participants, should such a criterion be the basis for future access to the small mesh multispecies resources. Fishermen are not guaranteed future participation in the fishery, regardless of their entry dates or intensity of participation in this fishery before or after the control date. The Council and NMFS may choose to give variably weighted consideration to fishermen active in the fishery before and after the control date. The Council and NMFS may also choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded. Any action by the Council or NMFS will be taken pursuant to the requirements for FMP development established under the Magnuson-Stevens Act.

Establishing a new control date for the small mesh multispecies fishery may help to discourage an influx of new participants as a short-term response to the restrictions expected to be implemented under Amendment 13 to the FMP. This could aid in preventing rapid stock declines and help keep the fishery viable for current and historical participants. The 2002 Stock Assessment and Fishery Evaluation Report, prepared by the WMC, expressed concern that effort may increase in the small mesh multispecies fishery as a result of increasing restrictions in other fisheries, such as the large mesh multispecies (groundfish) fishery, which are currently under development by the Council.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the small mesh multispecies fishery in Federal waters.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 19, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Morine Fisheries Service.

[FR Doc. 03–7068 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 57
Tuesday, March 25, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 19, 2003.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Offier for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Foreign Agricultural Service

Title: Export Assistance and Services.
OMB Control Number: 0551–0031.
Summary of Collection: The Ag Export Services Division of the Foreign Agricultural Service (FAS) facilities trade contacts between U.S. exporters and foreign buyers seeking U.S. food and agricultural products. Authority for this program falls under 7 U.S.C. part 1761, 7 U.S.C. part 5693 and 7 U.S.C. part 1765B. All of the assistance and services offered by the Division are designed to promote U.S. agricultural exports; help U.S. firms make contact with export agents, trading companies, importers and foreign buyers and create an opportunity to sell their products in overseas markets. This service provides the U.S. firm an opportunity to have a data record providing basic information about the company and the products its exports put into a USDA maintained database. FAS will collect information using a combination of forms and telephone interviews.
Need and Use of the Information: FAS will collect information on contact names, mailing addresses, telephones, fax, e-mail, and websites. The main purpose for collecting the information is to foster trade contacts in an effort to facilitate greater export of U.S. agriculture food, forestry, and fishery products. The databases are used to recruit U.S. exporters, importers, and buyers to participate in market development activities sponsored by USDA. These databases must be updated periodically to maintain the integrity and usefulness to the trade community.
Description of Respondents: Business or other for-profit.
Number of Respondents: 57,110.
Frequency of Responses: Reporting: annually; on occasion; quarterly.
Total Burden Hours: 10,476.

Farm Service Agency

Title: Report of Acreage.
OMB Control Number: 0560–0004.
Summary of Collection: Land and crop information is the basic foundation upon which many of Farm Service Agency (FSA) programs operate. The report of acreage is conducted on an annual basis and is used by FSA's county offices to determine eligibility for benefits that are available to producers on the farm. The actual number of producers who must supply information varies depending on: (1) The type of farming operation, and (2) the mix of crops planted (which has a direct relationship to the type of program the producer is eligible to participate in). In order to establish eligibility annually for these programs, a minimal amount of land and crop data about a producer's farming operation is required. The information is subsequently used to ensure compliance with program provisions, to determine actual production histories, and when disaster occurs, to verify crop loss. Producers must provide the information each year because variables such as previous year experience, weather projections, market demand, new farming techniques and personal preferences affect the amount of land being farmed, the mix of crops planted, and the projected harvest.
Need and Use of the Information: FSA will collect information verbally from the producers during visits to the county offices. FSA will collect one or more of the following data elements, as required: crop planted, planting date, crop's intended use, type or variety, practice (irrigated or non-irrigated), acres, location of the crop (tract and field), and the producer's percent share in the crop along with the names of other producers having an interest in the crop. Once the information is collected and eligibility established, the information is used throughout the crop year to ensure the producer remains complaint with program provisions. Without a certain level of information provided each crop year by the producer, a significant misuse of public funds could occur.
Description of Respondents: Farms; individuals or households; State, local, or tribal government.
Number of Respondents: 514,800.
Frequency of Responses: Reporting; annually.
Total Burden Hours: 755,325.

Farm Service Agency

Title: Farm Reconstitutions (7 CFR part 718).
OMB Control Number: 0560–0025.
Summary of Collection: The Agricultural Act of 1938, as amended, provides for the reconstitution of farms. A reconstitution is a change in the land constituting a farm as a result of combining or dividing tracts of land or farms. The reconstitution process ensures that the farm and tract records in the County FSA Office are correct and up to date. A reconstitution is a required procedure when a producer wishes to increase or decrease acreage attributed to the farm from leases, sale of land, or purchase of land. Form FSA–155, Request for Reconstitution, is used as the request for a farm reconstitution initiated by the producer.
Need and Use of the Information: FSA will collect information to determine farm and tract numbers, farmland, cropland, agricultural use land, distribution of tobacco quota and allotments, peanut quota, and production flexibility contract acres resulting from combination or division of the farming operation. The information is used by the County Office employees to document farm owners and operators, farmland, cropland, crop acreages, and whether land is being purchased or sold. Failure to collect the information required by FSA–155 would result in inaccurate farm records.
Description of Respondents: Farms.
Number of Respondents: 7,154.
Frequency of Responses: Reporting: on occasion.
Total Burden Hours: 12,519.

Farm Service Agency

Title: Payer's Request for Identifying Number.
OMB Control Number: 0560–0121.
Summary of Collection: Under section 6109 of the Internal Revenue Code, recipients of dividends, interest, or other payments are required to furnish identifying numbers to payers who must report such payments to the Internal Revenue Service. producers who receive Farm Service Agency (FSA) payments must provide a social security, employer, or IRS identifying number before any payment is made. FSA will collect information using form CCC–343, payer's Request for Identifying Number.
Need and Use of the Information: FSA will prepare a CCC–343 for each producer who cannot furnish a producer ID number. The information on the form is used to obtain a producer identifying number so program payments can be made. If the information is not collected a penalty can be imposed and FSA will not make program payments to producers without an identifying number.
Description of Respondent: Individuals or households; business or other for-profit; not-for-profit institutions; state, local or tribal government.
Number of Respondents: 1000.
Frequency of Responses: Reporting; other (when necessary).
Total Burden Hours: 83.

Farm Service Agency

Title: Importer Assessments (7 CFR part 1464, subpart B).
OMB Control Number: 0560–0148.
Summary of Collection: The Omnibus Budget Reconciliation Act of 1993 (the 1993 Act) imposes assessments on importers of unmanufactured tobacco, which enters into the commerce of the United States. The 1993 Act amended sections 106, 106A, and 106B of the Agricultural Act of 1949 (the 1994 Act) to require that each importer of such tobacco shall remit to Commodity Credit corporation (CCC) a no-net cost assessment fee on every pound of un-manufactured flue-cured or burley tobacco imported. The Farm Service Agency (FSA) will collect information using form CCC–100, Importer Entry and Assessment Worksheet.
Need and Use of the Information: FSA will collect information on the importers' name, import date, port of entry, and quantity imported to calculate the marketing assessment amount and the import assessment fee. The information collected is used by FSA to ensure that the marketing assessment fees and the importers no-net cost assessment fees are timely and accurately remitted by importers of unmanufactured tobacco that enters into the commerce of the United States.
Description of Respondent: Business or other for-profits; Federal government.
Number of Respondents: 19.
Frequency of Responses: Recordkeeping; reporting; other (import date).
Total Burden Hours: 257.

Farm Service Agency

Title: Tobacco Marketing Quota: Referenda Ballot, Receiving Station and Other Purchases.
OMB Control Number: 0560–0182.
Summary of Collection: The Agricultural Adjustment Act of 1938, as amended, (1938 Act) requires the proclamation of national marketing quotas for tobacco and requires the Secretary of Agriculture to conduct referenda to determine whether producers favor or oppose marketing quotas. Section 312 of the 1938 Act requires the Secretary of Agriculture to proclaim national marketing quotas for tobacco and to conduct a referendum of the farmers who are engaged in the production of the crop of tobacco harvested immediately prior to the referendum to determine whether such farmers are in favor of, or opposed to, national marketing quotas for the next succeeding marketing years. The Farm Service Agency (FSA) will collect information using several FSA forms.
Need and Use of the Information: FSA will collect information to determine whether marketing quotas will be in effect for certain kinds of tobacco and voters eligibility. Without conducting a referendum, the Secretary would be unable to administer statutory requirements regarding tobacco-marketing quotas. If no referendum were held and approved by eligible voters, tobacco producers would not have the benefits of a marketing quota and thereby a price support program.
Description of Respondents: Business or other for-profit; individuals or households; Federal government.
Number of Respondents: 327,537.
Frequency of Responses: Reporting: weekly; other (daily/every 3 yr.).
Total Burden Hours: 29,556.

Farm Service Agency

Title: Assignments of Payments and Joint Payment Authorization.
OMB Control Number: 0560–0183.
Summary of Collection: When the recipient of a Commodity Credit Corporation (CCC) or a Farm Service Agency (FSA) payment chooses to assign a payment to another party or have the payment made jointly with another party, the other party must be identified. This is a free service that is available upon request by the program payee. The regulations for assignment of payments are at 7 CFR part 1404. FSA will collect information using various forms.
Need and Use of the Information: FSA employee to record payment or contract being assigned, the amount of the assignment, the date, and the name and address of the assignee and the assignor will use the information collected on the forms. This is to enable FSA employee to pay the proper party when payments become due. FSA will also use the information to terminate joint payments at the request of both the producer and joint payee. If the information is not collected, there would be no payment to third party at the request of the respondents.
Description of Respondent: Farms; individuals or households.
Number of Respondents: 69,325.
Frequency of Responses: Reporting; on occasion.
Total Burden Hours: 11,778.

Farm Service Agency

Title: Lamb Meat Adjustment Assistance Program (LMAAP).
OMB Control Number: 0560–0205.
Summary of Collection: The Lamb Meat Adjustment Assistance Program

(LMAAP) is administered and implemented under the general direction and supervision of the Farm Service Agency (FSA) through its State and County Committees. Authorizing legislation for LMAAP provides for the re-establishment of farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption. The objective of the LMAAP program is to make direct payments to producers of sheep and lamb operations to help them weather the current economic crisis, as well as, help improve their production efficiencies and the marketability of lamb meat during the period from July 21, 1999, through July 31, 2003.

Need and Use of the Information: FSA will collect information using form FSA 383 for program years 2–4 for the sheep and lamb operations. The information obtained from the form is needed to verify commodity and producer eligibility and calculate payment amounts. Without the information from the producers, FSA would be unable to administer the program to provide direct payments to the sheep and lamb operations.

Description of Respondents: Farm; individuals or households; business or other-for-profit.

Number of Respondents: 63,100.

Frequency of Responses: Reporting: annually.

Total Burden Hours: 351,257.

Farm Service Agency

Title: Bioenergy Program.

OMB Control Number: 0560–0207.

Summary of Collection: To encourage bioenergy producers to expand agricultural markets by promoting increased bioenergy production, the Commodity Credit Corporation (CCC), in accordance with the 2002 Act, will make incentive cash payments for FY 2003 through FY 2006 to bioenergy producers who increase their production of bioenergy (fuel grade ethanol and biodiesel) from eligible commodities over previous fiscal year bioenergy production. CCC will use its authority under section 5 of the CCC Charter Act, 15 U.S.C. 714c, to make biodiesel production eligible for the Program that would not be eligible solely under the bioenergy provisions of the 2002 Act to support the biodiesel industry. Bioenergy producers will enter into an agreement with CCC establishing their eligibility to receive program payments. The information will be collected by either mail or fax.

Need and Use of the Information: CCC will collect information from bioenergy producers that request payments under the Bioenergy Program to ensure the benefits are paid only to eligible bioenergy producers for eligible commodities. Failure to collect this information as outlined would make it difficult to ensure that payments to producers are made in accordance with the provisions of the regulations.

Description of Respondents: Business or other for-profit.

Number of Respondents: 100.

Frequency of Responses: Recordkeeping; reporting: annually; quarterly; other (850 multi-year).

Total Burden Hours: 1,100.

Farm Service Agency

Title: Designation of Burley Tobacco Sales & Annual Waiver To Release Information Restricted by the Privacy Act.

OMB Control Number: 0560–0217.

Summary of Collection: The Agricultural Adjustment Act of 1938, as amended (1938 Act) states a primary purpose of the Federal tobacco program will be "* * *. to control effectively the orderly marketing * * *" of tobacco and "* * *. to promote, foster, and maintain an orderly flow of such supply * * *." Historically, 99 percent of all burley tobacco was marketed at auction warehouses. The large majority of burley tobacco is now being sold non-auction directly to manufacturers. Without the collection of designation information for burley tobacco, the Farm Service Agency (FSA) would not know where the tobacco would be sold or how many pounds would be sold outside the traditional auction market system. FSA will collect information using FSA–808, Designation of Burley Tobacco Sales and Request for Marketing Cards and MQ–60, Annual Waiver to Release Information Restricted by the Privacy Act.

Need and Use of the Information: FSA will collect the pounds, locations, and marketing cards information from the forms. FSA will also collect information to assign tobacco graders as needed to auction warehouses in order to grade tobacco that is delivered for sale.

Description of Respondent: Individuals or households; Federal Government.

Number of Respondents: 150,000.

Frequency of Responses: Reporting; annually.

Total Burden Hours: 187,504.

Rural Utilities Service

Title: Telecommunications System Construction Polices and Procedures.

OMB Control Number: 0572–0059.

Summary of Collection: The Rural Electrification Act of 1936 (RE Act), 7 U.S.C. 901 *et seq.*, was amended in 2002 by title IV, Rural Broadband Access, by Farm Security and Rural Investment Act, which authorizes Rural Utilities Service (RUS) to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition for facilities and equipment for the provision of broadband service in eligible rural communities in the States and territories of the United States. Title VI of the RE Act requires that loans are granted only to borrowers who demonstrated that they will be able to repay in full within the time agreed. RUS has established certain standards and specification for materials, equipment and construction to assure that standards are maintained; loans are not adversely affected, and loans are used for intended purposes.

Need and Use of the Information: RUS has developed specific forms for borrowers to use when entering into contracts for goods of services. The information collected is use to implement certain provisions of loan documents about the borrower's purchase of materials and equipment and the construction of its broadband system and is provided on and as needed basis or when the individual borrower undertakes certain projects. The standardization of the forms has resulted in substantial savings to borrowers by reducing preparation of the documentation and the costly review by the government.

Description of Respondents: Business or other for-profit; not-for-profit.

Number of Respondents: 238.

Frequency of Responses: Reporting: quarterly.

Total Burden Hours: 3,123.

Rural Utilities Service

Title: 7 CFR 1728, Electric Standards and Specifications for Materials and Construction.

OMB Control Number: 0572–New.

Summary of Collection: The Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*, as amended, (RE Act) in sec. 4 (7 U.S.C. 904) authorizes and empowers the Administrator of the Rural Utilities Service (RUS) to make loans in several States and Territories of the United States for rural electrification and the furnishing and improving of electric energy to persons in rural areas. RUS' Administrator is authorized to provide financial assistance to borrowers for purposes provided in the RE Act by guaranteeing loans made by the National Rural Utilities Cooperative Finance Corporation, the Federal Financing Bank, and other lending agencies. These loans are for a term of up to 35 years and are secured by a first mortgage on the borrower's electric system. Manufacturers wishing to sell their products to RUS electric borrowers request RUS consideration for acceptance of their products and submit letters of request with certifications as to the origin of manufacture of the products and include certified data demonstrating their products' compliance with RUS specifications.

Need and Use of the Information: RUS will collect information to evaluate the data to determine that the quality of the products is acceptable and that their use will not jeopardize loan security. The information is closely reviewed to be certain that test data; product dimensions and product material compositions fully comply with RUS technical standards and specifications that have been established for the particular product. Without this information, RUS has no means of determining the acceptability of products for use in the rural environment.

Description of Respondents: Business or other for-profit.

Number of Respondents: 38.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 1,760.

Rural Housing Service

Title: 7 CFR 1944–B, Housing Applications Packaging Grants.

OMB Control Number: 0575–0157.

Summary of Collection: Section 509 of the Housing Act of 1949, as amended, authorizes the Rural Housing Service (RHS) to make grants to private and public nonprofit organizations and State and local governments to package housing applications for Section 502, 504, 514/515 and 533 to colonias and designated counties. Eligible organizations aid very low and low-income individuals and families in obtaining benefits from RHS housing programs. Various forms are used to confirm income verification for loan applicants, as a checklist to obtain a loan, and to check credit information about the applicants.

Need and Use of the Information: RHS field personnel will use this information to verify program eligibility requirements, to secure grant assistance, and for approval of housing application-packaging grants. The information will ensure that the program is administered in a manner consistent with legislative and administrative requirements. Without this information, RHS would be unable to determine if a grantee qualifies for grant assistance.

Description of Respondents: Not-for-profit institutions.

Number of respondents: 300.

Frequency of responses: Recordkeeping; reporting: on occasion.

Total Burden Hours: 1,350.

Animal Plant and Health Inspection Service

Title: Recognizing the Animal Disease Status of Regions in the European Union.

OMB Control Number: 0579-New.

Summary of Collection: title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as brucellosis, as well as to take actions to prevent and to manage exotic diseases such as hog cholera and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal Plant and health Inspection service (APHIS) ability to compete in exporting animal and animal products. APHIS published a rule that would recognize Greece as a region free of foot-and-mouth disease; recognize Greece and nine regions in northern Italy as free of swine vesicular disease; and recognize Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, and Spain as a region free of hog cholera. Recognizing the new animal health status of these regions will allow them to import swine, pork and pork products, and swine semen into the United States under less stringent conditions, and will be regarded by the international community as a lowering of trade barriers. APHIS will collect information using certificates.

Need and use of the Information: APHIS will collect information concerning the origin and history of the items destined for importation into the United States. APHIS will also collect information to ensure that swine, pork and pork products, and swine semen pose a negligible risk of introducing exotic swine diseases into the United States. if the information is not collected it would cripple APHIS' ability to ensure that swine, pork and pork products, and swine semen pose a minimal risk of introducing hog cholera and other exotic animal disease into the United States.

Description of Respondents: Business or other for profit; State, local and tribal government.

Number of Respondents: 30.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 300.

Agricultural Marketing Service

Title: Specified Commodities Imported into the United States Exempt from Import Requirements, 7 CFR Part 944, 980, and 999.

OMB Control Number: 0581–0167.

Summary of Collection: Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674) provides that when certain domestically produced commodities are regulated under a Federal marketing order; imports of the commodity must meet the same or comparable requirements. Import regulations apply only during those periods when domestic marketing order regulations are in effect. No person may import products for processing or other exempt purposes unless an executed Importers Exempt Commodity Form (FV–6) accompanies the shipment. The Civil Penalty Stipulation Agreement (FV–7) is a "volunteer" form that provides the Agricultural Marketing Service (AMS) with an additional tool to obtain resolution of certain cases without the cost of going to a hearing.

Need and Use of the Information: AMS utilizes the information to ensure that imported goods destined for exempt outlets are given no less favorable treatment than that afforded to domestic goods destined for such exempt outlets. The importers wishing to import commodities will use form FV–6, "Importer's Exempt Commodity", which requires a minimum amount of information.

Description of Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 324.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 2550.

Sondra A. Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 03–6974 Filed 3–24–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[02–b–s]

Designation for the Oregon Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces the designation of Lewiston

Grain Inspection Service, Inc. (Lewiston) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: May 1, 2003.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the November 22, 2002, **Federal Register** (67 FR 70397), GIPSA announced that the Oregon Department of Agriculture was ceasing official inspection services, effective November 27, 2002, and asked persons interested in providing official services in the Oregon geographic area to submit an application for designation. Applications were due by December 23, 2002.

Lewiston was the sole applicant for designation to provide official services in the area specified in the November 22, 2002 **Federal Register**. GIPSA asked for comments on Lewiston in the January 29, 2003, **Federal Register** (68 FR 4445). No comments were received by the closing date, February 28, 2003.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Lewiston, main office in Lewiston, Idaho, is able to provide official services in the geographic area specified in the November 22, 2002, **Federal Register**, for which they applied, in addition to their currently assigned area. Interested persons may obtain official services by calling Lewiston at 208–746–0451.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: March 20, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–7021 Filed 3–24–03; 8:45 am]

BILLING CODE 3410–EN–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Vermont Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 11:15 a.m. on March 31, 2003. The purpose of the conference call is to discuss the Completion of planning for the upcoming April 9, 2003, town hall meeting in Montpelier. The conference call is available to the public through the following call-in number: 1–800–659–8304, access code 15920877. Any interested member of the public may call this number and listen to the meeting.

To ensure that the Commission secures an appropriate number of lines, persons are asked to register with USCCR by calling Marc Pentino of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116), by 4 p.m. on March 28, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC., March 17, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–7032 Filed 3–24–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

AGENCY: National Institute of Standards and Technology (NIST).

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Summer Undergraduate Research Fellowship (SURF) Program Student Applicant Information.

Form Number(s): None.

OMB Approval Number: None.

Type of Review: Regular submission.

Burden Hours: 400.

Number of Respondents: 200.

Average Hours Per Response: 2 hours.

Needs and Uses: The purpose of this collection is to gather information needed for the SURF (Summer Undergraduate Research Fellowship) Program. The information will be provided by student applicants and was described in the Proposal Review Process and Evaluation Criteria sections of the **Federal Register** Notice for the SURF Program published in the **Federal Register** on February 20, 2003. The information will be used by the Program Directors and technical evaluators and is needed to determine eligible students, select students for the program using the Evaluation Criteria, and place selected students in appropriate research projects that match their needs, interests, and academic preparation. The information includes: student name, host institution, e-mail address, home address, class standing, first- and second-choice NIST laboratories they wish to apply to, academic major and minor, current overall GPA, gender (for housing purposes only), availability dates, resume, personal statement of commitment and research interests, two letters of recommendation, academic transcripts, verification of U.S. citizenship or permanent legal residency, and verification of health coverage.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Jacqueline Zeiher, (202) 395–4638.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jacqueline Zeiher, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: March 19, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–7000 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received requests to revoke four antidumping duty orders in part.

EFFECTIVE DATE: March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Ccnstitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on Stainless Steel Bar from India, Stainless Steel Flanges from India, Mechanical Transfer Presses from Japan and Heavy Forged Hand Tools (bars/wedges, and hammers/sledges) from the People's Republic of China.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than February 28, 2004.

	Period to be reviewed
Antidumping Duty Proceedings	
France: Low Enriched Uranium—A–427–818	7/13/01–1/31/03
Eurodif S.A.	
India: Certain Preserved Mushrooms—A–533–813	2/1/02–1/31/03
Agro Dutch Foods, Ltd.	
Alpine Biotech, Ltd.	
Dinesh Argo Products Ltd.	
Flex Foods, Ltd.	
Himalaya International, Ltd.	
Mandeep Mushrooms, Ltd.	
Premier Mushroom Farms	
Saptarishi Agro Industries, Ltd.	
Weikfield Agro Products, Ltd.	
India: Forged Stainless Steel Flanges—A–533–809	2/1/02–1/31/03
Chandan Steel Ltd.	
Isibars, Ltd.	
Shree Ganesh Forging	
Viraj Group	
India: Stainless Steel Bar—A–533–810	2/1/02–1/31/03
Chandan Steel Ltd.	
FACOR	
Isibars Limited	
Jyoti Steel Industries	
Mukand	
Venus Wire Industries Limited	
Viraj Group	
Japan: Mechanical Transfer Presses—A–588–810	2/1/02–1/31/03
Hitachi Zosen Corporation and Hitachi Zosen Fukui Corporation d/b/a/ H&F Corporation	
Malaysia: Stainless Steel Butt-Weld Pipe Fittings—A–557–809	2/1/02–1/31/03
Schulz (Mfg.) Sdn. Bhd.	
Republic of Korea: Certain Cut-to-Length Carbon-Quality Steel Plate—A–580–836	2/1/02–1/31/03
Dongkuk Steel Mill Co., Ltd.	
KISCO—Korea Iron & Steel Co., Ltd.	
Union Steel Manufacturing Co.	
Republic of Korea: Stainless Steel Butt-Weld Pipe Fittings—A–580–813	2/1/02–1/31/03
TK Corporation	
SungKwang Bend Co., Ltd.	
Sam Sung Stainless Commerce & Ind. Co., Ltd.	
The People's Republic of China: Axes/adzes*—A–570–803	2/1/02–1/31/03
Adamant	
Baogui South/North Tools Shop	
BND Co., Ltd.	
Changlu Hardware Goods Factory	
Changzhou Light Industrial Tools Works	
Changzhou Satellite Metal Products Co., Ltd.	
Changzhou Xinhua Metal Factory	
China Hunan Jiahe General Forging Factory	
China National Import and Export Corp. (CMC)	
Dawn International Trade Co., ltd.	
Easyuse Tools Industrial Co., Ltd.	
Feixian Harewaretool Factory	
Ferly Pacific Trading (Ningbo) Co., Ltd.	
Fujian Machinery and Equipment Import and Export Corp. (FMEC)	

	Period to be reviewed
G & M Hardware Tools Co., Ltd.	
Handysmart Enterprises	
Hangzhou Donghua Power Transmission Import & Export Co., Ltd.	
Huanyu Hardware Tools Factory	
Hebei Huatai Import & Export Corp.	
Hebei Machinery Import & Export Corp.	
Henan Jiaozuo Foreign Trade Corp.	
Henan Jinan Agriculture Production Corp.	
Hua Guang Hoe Factory of Jiahe Hunan Province	
Huadu Light Industry Co., Ltd.	
Huanyu Hardware Tools Factory	
Hubei Province Manufactory of Export Agricultural Tools	
Hunan Xinyu Native Produce and Animal By-Products Import & Export Ltd.	
JY International Corp.	
JB International Trading Co., Ltd.	
Jiangsu Guotai International Group HUATAI Imp. & Exp. Co., Ltd.	
Jiangsu Hongbao Group Co., Ltd.	
Jiangsu Jurong Tools Factory	
Jiangsu Tongrun M & E Group Import & Export Co., Ltd.	
Jinhua Runua Foreign Trade Co., Ltd.	
Jinhua Twin Star Tools Corporation Limited	
Liawu	
Laoling Pangu Tools	
Laoling Zhengtai	
Liaoning Machinery Import and Export Corp. (LMC)	
LIMAC	
Linshu Goldstar Group Co., Ltd.	
Linshu Jinrun Ironware & Tools Co., Ltd.	
Linyi Guoxin Tools Co., Ltd.	
Longcheng Tools Group	
Longway Tools Company, Ltd.	
Maofa	
Ningbo Feiyuan International Trade Co., Ltd.	
Ningbo Tiangong Tools Company, Ltd.	
Ningbo Tiger Handware Manufacture Co.	
Pangu Tools Co., Ltd.	
Remein	
Saintly International Group Jiangsu Machinery Import & Export Corp., Ltd.	
Shaanxi Machinery I/E Corp Sunway Engineering Supply Co.	
Shandong Furun Co., Ltd.	
Shandong Huarong General Group Corp (Huarong)	
Shandong Jinma Industrial Group Company (Jinma)	
Shandong Junan Jinli Tool Co.	
Shandong Laoling Tools Factory	
Shandong Linyi Huanyu Hartware Tools	
Shandong Machinery Import & Export Corp Hangzhou Office	
Shandong Machinery Import and Export Corporation (SMC)	
Shandong Pangu Tools Co., Ltd. (Laoling Pangu)	
Shandong Rizhao Import & Export Corp.	
Shandong Technical Import and Export Corporation	
Shanghai Founder Co., Ltd.	
Shanghai J.E. Tools	
Shanghai Tongrun Import & Export Co., Ltd.	
Shenzhen Orbit Industrial Development Co., Ltd.	
Shenzhen Sino-Tech Enterprise Development Co., Ltd.	
Stanley (Zhongshan) Hardware Co., Ltd.	
Sun-Rain Stationery & Gifts Co., Ltd.	
Taian Foreign Trading General Corp.	
Technology Import & Export Corp.	
Tianjin Machinery Imp. & Exp. Group	
Tianjin Machinery Import and Export Corporation (TMC)	
TRTOOLS	
Wuxi Honghong Trade Co.	
Xian Zenith	
Xuzhou Golden Tiger Tools Making Co., Ltd.	
Yansheng International Trade Co., Ltd.	
Yee Hing Industry Co.	
Yongkang Tianfang Trade & Industry Co., Ltd.	
Yongkang Zhiying Xindong Stainless Steel Appliance Factory	
Zhangjiagang Free Trade Zone Tianrui Int'l Trade Co., Ltd.	
Zhejian Yongkang Bugao Hardware Tools Manufacture Co., Ltd.	
Zhejiang Shaoxing Hardware's Tools Factory	
Zhejiang Yongkang Bugao Hardware & Tools Manufacture Co.	
Zhejiang Yongkang Jinchui Tools Co., Ltd.	

	Period to be reviewed
Zhejiang Yongkang Steel Magnesium Co., Ltd.	
Zhejiang Yongkang Zhengfa Mechanical Manufacturing Company	
Zhenkiang All Joy Light Industrial Products & Textiles Import & Export Co., Ltd.	
Zhenjiang Foreign Trade Group Corp.	
Zibo International Economic and Technical Coop. Corp.	
The People's Republic of China: Bars/wedges*—A–570–803	2/1/02–1/31/03
Adamant	
Baogui South/North Tools Shop	
BND Co., Ltd.	
Changlu Hardware Goods Factory	
Changzhou Light Industrial Tools Works	
Changzhou Satellite Metal Products Co., Ltd.	
Changzhou Xinhua Metal Factory	
China Hunan Jiahe General Forging Factory	
China National Import and Export Corp. (CMC)	
Dawn International Trade Co., Ltd.	
Easyuse Tools Industrial Co., Ltd.	
Feixian Harewaretool Factory	
Ferly Pacific Trading (Ningbo) Co., Ltd.	
Fujian Machinery and Equipment Import and Export Corp. (FMEC)	
G & M Hardware Tools Co., Ltd.	
Handysmart Enterprises	
Hangzhou Donghua Power Transmission Import & Export Co., Ltd.	
Huanyu Hardware Tools Factory	
Hebei Huatai Import & Export Corp.	
Hebei Machinery Import & Export Corp.	
Henan Jiaozuo Foreign Trade Corp.	
Henan Jinan Agriculture Production Corp.	
Hua Guang Hoe Factory of Jiahe Hunan Province	
Huadu Light Industry Co., Ltd.	
Huanyu Hardware Tools Factory	
Hubei Province Manufactory of Export Agricultural Tools	
Hunan Xinyu Native Produce and Animal By-Products Import & Export Ltd.	
JY International Corp.	
JB International Trading Co., Ltd.	
Jiangsu Guotai International Group HUATAI Imp. & Exp. Co., Ltd.	
Jiangsu Hongbao Group Co., Ltd.	
Jiangsu Jurong Tools Factory	
Jiangsu Tongrun M & E Group Import & Export Co., Ltd.	
Jinhua Runua Foreign Trade Co., Ltd.	
Jinhua Twin Star Tools Corporation Limited	
Liawu	
Laoling Pangu Tools	
Laoling Zhengtai	
Liaoning Machinery Import and Export Corp. (LMC)	
LIMAC	
Linshu Goldstar Group Co., Ltd.	
Linshu Jinrun Ironware & Tools Co., Ltd.	
Linyi Guoxin Tools Co., Ltd.	
Longcheng Tools Group	
Longway Tools Company, Ltd.	
Maofa	
Ningbo Feiyuan International Trade Co., Ltd.	
Ningbo Tiangong Tools Company, Ltd.	
Ningbo Tiger Handware Manufacture Co.	
Pangu Tools Co., Ltd.	
Remein	
Saintly International Group Jiangsu Machinery Import & Export Corp., Ltd.	
Shaanxi Machinery I/E Corp Sunway Engineering Supply Co.	
Shandong Furun Co., Ltd.	
Shandong Huarong General Group Corp (Huarong)	
Shandong Jinma Industrial Group Company (Jinma)	
Shandong Junan Jinli Tool Co.	
Shandong Laoling Tools Factory	
Shandong Linyi Huanyu Hartware Tools	
Shandong Machinery Import & Export Corp Hangzhou Office	
Shandong Machinery Import and Export Corporation (SMC)	
Shandong Pangu Tools Co., Ltd. (Laoling Pangu)	
Shandong Rizhao Import & Export Corp.	
Shandong Technical Import and Export Corporation	
Shanghai Founder Co., Ltd.	
Shanghai J.E. Tools	
Shanghai Tongrun Import & Export Co., Ltd.	
Shenzhen Orbit Industrial Development Co., Ltd.	

	Period to be reviewed
Shenzhen Sino-Tech Enterprise Development Co., Ltd.	
Stanley (Zhongshan) Hardware Co., Ltd.	
Sun-Rain Stationery & Gifts Co., Ltd.	
Taian Foreign Trading General Corp.	
Technology Import & Export Corp.	
Tianjin Machinery Imp & Exp Group	
Tianjin Machinery Import and Export Corporation (TMC)	
TRTOOLS	
Wuxi Honghong Trade Co.	
Xian Zenith	
Xuzhou Golden Tiger Tools Making Co., Ltd.	
Yansheng International Trade Co., Ltd.	
Yee Hing Industry Co.	
Yongkang Tianfang Trade & Industry Co., Ltd.	
Yongkang Zhiying Xindong Stainless Steel Appliance Factory	
Zhangjiagang Free Trade Zone Tianrui Int'l Trade Co., Ltd.	
Zhejian Yongkang Bugao Hardware Tools Manufacture Co., Ltd.	
Zhejiang Shaoxing Hardware's Tools Factory	
Zhejiang Yongkang Bugao Hardware & Tools Manufacture Co.	
Zhejiang Yongkang Jinchui Tools Co., Ltd.	
Zhejiang Yongkang Steel Magnesium Co., Ltd.	
Zhejiang Yongkang Zhengfa Mechanical Manufacturing Company	
Zhenkiang All Joy Light Industrial Products & Textiles Import & Export Co., Ltd.	
Zhenjiang Foreign Trade Group Corp.	
Zibo International Economic and Technical Coop. Corp.	
The People's Republic of China: Hammers/sledges*—A–570–803	2/1/02–1/31/03
Adamant	
Baogui South/North Tools Shop	
BND Co., Ltd.	
Changlu Hardware Goods Factory	
Changzhou Light Industrial Tools Works	
Changzhou Satellite Metal Products Co., Ltd.	
Changzhou Xinhua Metal Factory	
China Hunan Jiahe General Forging Factory	
China National Import and Export Corp. (CMC)	
Dawn International Trade Co., Ltd.	
Easyuse Tools Industrial Co., Ltd.	
Feixian Harewaretool Factory	
Ferly Pacific Trading (Ningbo) Co., Ltd.	
Fujian Machinery and Equipment Import and Export Corp. (FMEC)	
G & M Hardware Tools Co., Ltd.	
Handysmart Enterprises	
Hangzhou Donghua Power Transmission Import & Export Co., Ltd.	
Huanyu Hardware Tools Factory	
Hebei Huatai Import & Export Corp.	
Hebei Machinery Import & Export Corp.	
Henan Jiaozuo Foreign Trade Corp.	
Henan Jinan Agriculture Production Corp.	
Hua Guang Hoe Factory of Jiahe Hunan Province	
Huadu Light Industry Co., Ltd.	
Huanyu Hardware Tools Factory	
Hubei Province Manufactory of Export Agricultural Tools	
Hunan Xinyu Native Produce and Animal By-Products Import & Export Ltd.	
JY International Corp.	
JB International Trading Co., Ltd.	
Jiangsu Guotai International Group HUATAI Imp. & Exp. Co., Ltd.	
Jiangsu Hongbao Group Co., Ltd.	
Jiangsu Jurong Tools Factory	
Jiangsu Tongrun M & E Group Import & Export Co., Ltd.	
Jinhua Runua Foreign Trade Co., Ltd.	
Jinhua Twin Star Tools Corporation Limited	
Liawu	
Laoling Pangu Tools	
Laoling Zhengtai	
Liaoning Machinery Import and Export Corp. (LMC)	
LIMAC	
Linshu Goldstar Group Co., Ltd.	
Linshu Jinrun Ironware & Tools Co., Ltd.	
Linyi Guoxin Tools Co., Ltd.	
Longcheng Tools Group	
Longway Tools Company, Ltd.	
Maofa	
Ningbo Feiyuan International Trade Co., Ltd.	
Ningbo Tiangong Tools Company, Ltd.	

	Period to be reviewed
Ningbo Tiger Handware Manufacture Co.	
Pangu Tools Co., Ltd.	
Remein	
Saintly International Group Jiangsu Machinery Import & Export Corp., Ltd.	
Shaanxi Machinery I/E Corp Sunway Engineering Supply Co.	
Shandong Furun Co., Ltd.	
Shandong Huarong General Group Corp (Huarong)	
Shandong Jinma Industrial Group Company (Jinma)	
Shandong Junan Jinli Tool Co.	
Shandong Laoling Tools Factory	
Shandong Linyi Huanyu Hartware Tools	
Shandong Machinery Import & Export Corp Hangzhou Office	
Shandong Machinery Import and Export Corporation (SMC)	
Shandong Pangu Tools Co, Ltd. (Laoling Pangu)	
Shandong Rizhao Import & Export Corp.	
Shandong Technical Import and Export Corporation	
Shanghai Founder Co., Ltd.	
Shanghai J.E. Tools	
Shanghai Tongrun Import & Export Co., Ltd.	
Shenzhen Orbit Industrial Development Co., Ltd.	
Shenzhen Sino-Tech Enterprise Development Co., Ltd.	
Stanley (Zhongshan) Hardware Co., Ltd.	
Sun-Rain Stationery & Gifts Co., Ltd.	
Taian Foreign Trading General Corp.	
Technology Import & Export Corp.	
Tianjin Machinery Imp & Exp Group	
Tianjin Machinery Import and Export Corporation (TMC)	
TRTOOLS	
Wuxi Honghong Trade Co.	
Xian Zenith	
Xuzhou Golden Tiger Tools Making Co., Ltd.	
Yansheng International Trade Co., Ltd.	
Yee Hing Industry Co.	
Yongkang Tianfang Trade & Industry Co., Ltd.	
Yongkang Zhiying Xindong Stainless Steel Appliance Factory	
Zhangjiagang Free Trade Zone Tianrui Int'l Trade Co., Ltd.	
Zhejian Yongkang Bugao Hardware Tools Manufacture Co., Ltd.	
Zhejiang Shaoxing Hardware's Tools Factory	
Zhejiang Yongkang Bugao Hardware & Tools Manufacture Co.	
Zhejiang Yongkang Jinchui Tools Co., Ltd.	
Zhejiang Yongkang Steel Magnesium Co., Ltd.	
Zhejiang Yongkang Zhengfa Mechanical Manufacturing Company	
Zhenkiang All Joy Light Industrial Products & Textiles Import & Export Co., Ltd.	
Zhenjiang Foreign Trade Group Corp.	
Zibo International Economic and Technical Coop. Corp.	
The People's Republic of China: Picks/mattocks*—A–570–803	2/1/02–1/31/03
Fujian Machinery & Equipment Import & Export Corp.	
Liaoning Machinery Import & Export Corp.	
Shandong Huarong General Group Corp	
Shandong Jinma Industrial Group Company	
Shandong Machinery Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	

* If one of the above named companies does not qualify for a separate rate, all other exporters of certain heavy forged hand tools from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity of which the named exporters are a part.

The People's Republic of China: Certain Preserved Mushrooms [1]—A–570–851	2/1/02–2/31/03
China Processed Food Import & Export Co.	
Gerber Food (Yunnan) Co., Ltd.	
Green Fresh Foods (Zhangzhou) Co., Ltd.	
Guangxi Yulin Oriental Food Co., Ltd.	
Raoping Xingyu Foods Co., Ltd.	
Shantou Hongda Industrial General Corporation	
Shenxian Dongxing Foods Co., Ltd.	
Shenzhen Qunxingyuan Trading Co., Ltd.	
Xiamen Zhongjia Imp. & Exp. Co., Ltd.	
Zhangzhou Jingxiang Foods Co., Ltd.	
Zhangzhou Longhai Minhui Industry and Trade Co., Ltd.	
The People's Republic of China: Creatine [2]—A–570–852	2/1/02–1/31/03
Suzhou Sanjian Nutrient & Health Products Co., Ltd.	
The People's Republic of China: Potassium Permanganate [3]—A–570–001	1/1/02–12/31/02
Groupstars Chemicals Co., Ltd. (Shandong) **	
Groupstars Chemicals Co., Ltd. (Yunnan) **	

	Period to be reviewed
Yunnan Jianshui County Chemical Industry Factory** Jianshui Chemical Plant (also translated as Jianshui Chemical Factory and Jianshui General Chemical Plant)**	

** Inadvertently omitted from previous notice.

Countervailing Duty Proceedings	
France: Low Enriched Uranium—C–427–819 Eurodif S.A.	5/14/01–12/31/02
Germany: Low Enriched Uranium— C–428–829 Urenco Deutdschland GmbH	5/14/01–12/31/02
Republic of Korea: Certain Cut-to-Length Carbon-Quality Steel Plate—C–580–837 Dongkuk Steel Mill Co., Ltd. KISCO—Korea Iron & Steel Co., Ltd. Union Steel Manufacturing Co.	1/1/02–12/31/02
The Netherlands: Low Enriched Uranium—C–421–809 Urenco Nederland BV	5/14/01–12/31/02
United Kingdom: Low Enriched Uranium— C–412–821 Urenco (Capenhurst) Ltd.	5/14/01–12/31/02
Suspension Agreements	
None.	

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of certain preserved mushrooms from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If the above named company does not qualify for a separate rate, all other exporters of creatirle from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of potassium permanganate from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211 or a determination under § 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: March 18, 2003.

Thomas F. Futtner,

Acting Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 03–7059 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Islander East Pipeline Company From an Objection by the Connecticut Department on Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of stay of appeal proceedings.

SUMMARY: This notice: (1) Announces that processing of Islander East's administrative appeal (Consistency Appeal of Islander East Pipeline Company, L.L.C.) has been suspended, at the request of Islander East Pipeline Company and the State of Connecticut, through May 1, 2003; and (2) provides information about procedural aspects of the appeal that are affected by the stay of appeal proceedings.

DATES: The stay of appeal proceedings extends through May 1, 2003. The public comment period ends on May 8, 2003, but will extended assuming processing of the appeal resumes. The federal agency comment period has been extended to run through May 1, 2003, and will be further extended after the appeal has recommended.

ADDRESSES: All e-mail comments on issues relevant to the Secretary's decision of this appeal may be submitted to *IslanderEast.comments@noaa.gov*. Comments may also be sent by mail to the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910. Materials from the appeal record are available at the Internet site *http://www.ogc.doc.gov/czma.htm* and at the Office of the General Counsel for Ocean Services. Also, public filings made by the parties of the appeal are to be available for review at the Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, CT.

FOR ADDITIONAL INFORMATION CONTACT: Branden Blum, Senior Counselor, NOAA Office of the General Counsel, via e-mail at *GCOS.inquiries@noaa.gov*, or at 301–713–2967, extension 186.

SUPPLEMENTARY INFORMATION: In November 2002, the Islander East Pipeline Company, L.L.C. (Islander East) filed a notice of appeal with the Department of Commerce, pursuant to the Coastal Zone Management Act of 1972 (CZMA), as amended, asking that the Secretary of Commerce override the State of Connecticut's objection to Islander East's proposed natural gas pipeline. The pipeline would extend from near North Haven, Connecicut, across the Long Island Sound to a terminus in Suffolk County (Long Island), New York. Connecticut's objection is based on the project's potential effects on the natural resources or land and water uses of Connecticut's coastal zone.

On March 14, 2003, Islander East requested, on behalf of itself and the State of Connecticut, that the Department's processing of the appeal be stayed in order to allow settlement negotiations to occur between the parties. The requested stay on March 17, 2003.

In addition to announcing the stay, this **Federal Register** notice provides information concerning procedural aspects of the Islander East appeal that are affected by the stay. The public comment period, which runs through May 8, 2003, will remain open during the stay. The federal agency comment period, which is scheduled to close on April 14, 2003, will remain open and be extended through May 1, 2003. After processing of the appeal resumes, both comment periods will be extended for a period generally commensurate with the length of the stay, taking into account the filing date for the State of Connecticut's initial brief. (The State's brief had been due on March 24, 2003. In light of the stay, the State's brief is now due 45 days after the appeal has recommenced.)

The scheduling of a public hearing on the appeal will be delayed until after processing of the appeal resumes, consistent with the request of Islander East and the State. A previous **Federal Register** notice indicated the location and date for the hearing would be announced in early March 2003. *See* 68 FR 5620.

A summary of relevant issues as well as additional background on the appeal appears in a January 24, 2003 **Federal Register** announcement, 68 FR 3513, a copy of which can be found at the Department of Commerce CZMA appeals Web site, *http://www.ogc.doc.gov/czma/htm*. The Web site also provides access to documents from the appeal record, such as the request to stay the proceedings of Islander East's appeal, and general information concerning the appeal process.

Questions about the stay for the Islander East appeal may be sent to NOAA via e-mail (*GCOS.inquiries@noaa.gov*)or made by telephone (301–713–2967, extension 186).

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: March 19, 2003.

James R. Walpole,

General Counsel.

[FR Doc. 03–7016 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030403B]

Small Takes of Marine Mammals Incidental to Specified Activities; Taking of Ringed and Bearded Seals Incidental to On-ice Seismic Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to ConocoPhillips Alaska Inc. (CPA) to take small numbers of ringed and bearded seals, by harassment, incidental to conducting on-ice seismic operations in the Beaufort Sea during oil and gas exploration activities.

DATES: This authorization is effective from March 19, 2003, through July 1, 2003.

ADDRESSES: A copy of the application and/or a list of references used in this document may be obtained by writing to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, ext 128, or Bradley Smith, Alaska Region (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing IHAs under section 101(a)(5)(D) of the MMPA for activities in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer either to that document or to 50 CFR 216.107.

Description of the Activity

Background

Deep seismic surveys use the "reflection" method of data acquisition. Reflection seismic exploration is the process of gathering information about the subsurface of the earth by measuring acoustic (sound or seismic) waves, which are generated on or near the surface. Acoustic waves reflect at boundaries in the earth that are characterized by acoustic impedance contrasts. The acoustic impedance of a rock layer is its density multiplied by its acoustic velocity. Geologists and geophysicists commonly attribute different acoustic impedances to different rock characteristics. Seismic exploration uses a controlled energy source to generate acoustic waves that travel through the earth (including sea ice and water, as well as subsea geologic formations), and then uses ground sensors to record the reflected energy transmitted back to the surface. Energy that is directed into the ground takes on numerous forms. When acoustic energy is generated, compression (p) and shear (s) waves form and travel in and on the earth. The compression and shear waves are affected by the geological formations

of the earth as they travel in it and may be reflected, refracted, diffracted or transmitted when they reach a boundary represented by an acoustic impedance contrast.

The basic components of a seismic survey include an energy source (either acoustic or vibratory), which generates a seismic signal; hydrophones or geophones, which receive the reflected signal; and electronic equipment to amplify and record the signal. The number and placement of sensors, the energy sources, the spacing and placement of energy input locations, and the specific techniques of recording reflected energy are broadly grouped as "parameters" of a given exploration program.

In modern reflection seismology, many sensors are used to record each energy input event. The number of sensors in use for each event varies widely according to the type of survey being conducted and the recording equipment available. Common numbers of groups of sensors are 240, 480, and 1040, and some new recording instruments may use as many as 4000 groups of sensors at the same time. The sensors are normally placed in one or more long lines at specified intervals. In North America the common group placement intervals are multiples of 55 ft (17 m), 110 ft (33.5 m) and 220 ft (67 m).

Vibroseis

Vibroseis seismic operations use large trucks with vibrators that systematically put variable frequency energy into the earth. At least 1.2 m (4 ft) of sea ice is required to support heavy vehicles used to transport equipment offshore for exploration activities. These ice conditions generally exist from 1 January until 31 May in the Beaufort Sea. The exploration techniques are most commonly used on landfast ice, but they can be used in areas of stable offshore ice. Several vehicles are normally associated with a typical vibroseis operation. One or two vehicles with survey crews move ahead of the operation and mark the energy input points. Crews with rubber-tire or rubber-track vehicles often require trail clearance with bulldozers for adequate access to and within the site. Crews with rubber-tracked vehicles are typically limited by heavy snow cover, and may require trail clearance beforehand.

A typical wintertime exploration seismic crew consists of 40–110 personnel. Roughly 75 percent of the personnel routinely work on the active seismic crew, with approximately 50 percent of those working in vehicles and the remainder outside laying and retrieving geophones and cable. A camp unit is usually associated with a seismic survey project and will consist of 4–5 sleeper/office trailers, a kitchen/diner trailer, two shop/generator trailers, fuel sleighs and a small survival trailer (BP, 1997). Camp trailers are usually mounted on wide-pad sleighs. It is common to survey and plow "communication" roads on sea ice for vehicles to travel to and from the camp.

With the vibroseis technique, activity on the surveyed seismic line begins with the placement of sensors. All sensors are connected to the recording vehicle by multi-pair cable sections. The vibrators move to the beginning of the line, and recording begins. The vibrators move along a source line, which will be at some angle to a sensor line. The vibrators begin vibrating in synchrony via a simultaneous radio signal to all vehicles.

In a typical survey, each vibrator will vibrate four times at each location. The entire formation of vibrators subsequently moves forward to the next energy input point (e.g., 67 m (220 ft) in most applications) and repeat the process. In a typical 16- to 18–hour day, 4 to 10 linear mi (6 to 16 km) in 2D-seismic operations and 15 to 40 linear mi (24 to 64 km) in a 3D-seismic operation are conducted. A detailed description of the work proposed for 2003 is contained in this document and in the application which is available upon request (see **ADDRESSES**).

Summary of the Request

On October 3, 2002, CPA submitted an application to NMFS for an IHA for the taking of ringed seals (*Phoca hispida*) and bearded seals (*Erignathus barbatus*) for a period of 5 months beginning January 1 (upon the expiration of the existing regulations covering the Alaskan North Slope on 31 December 2002 (63 FR 5277, February 2, 1998)) and ending on about May 31, 2003. On-ice seismic operations are ordinarily confined to this 5–month period since this is the period when ice is sufficiently thick (4 - 5 ft; 1.2 - 1.5 m) to safely support the equipment.

The geographic region of activity in 2003 encompasses an 846–square mile (2,190 km^2) area extending from approximately Cape Halkett on the west to Oliktok Point on the east and to approximately 4–20 nm (7.4 – 37 km) offshore the coast. Water depths in most (> 60 percent) of the area are less than 10 ft (3 m), but drop to 30 ft (9 m) along the northern fringe of the region of activity. Few seals inhabit water less than 10 ft (3 m) during winter, since water typically freezes to or near the bottom at this depth or what water is available supports few food resources (Miller *et al.*, 1998 and Link *et al.*, 1999).

Comments and Responses

A notice of receipt of the application and proposed authorization was published on December 31, 2002 (67 FR 79565), and a 30–day public comment period was provided on the application and proposed authorization. Comments were received from the Marine Mammal Commission (MMC) and the Alaska Eskimo Whaling Commission (AEWC).

Comment 1: The AEWC disagrees with NMFS' statement in its notice of receipt and proposed authorization that Nuiqsut hunters are most likely to take ringed seals during the open water season. The AEWC notes that this conclusion is based on two studies and harvest data collected in one year, 1992. They state, "While many events, including the availability of seasonal construction work, may affect subsistence patterns from year to year, NMFS certainly is aware of the fact that subsistence hunting is an opportunistic activity. Ignoring this fact for even a seemingly low impact activity sets a dangerous precedent for subsistence hunters."

Response: NMFS is required to incorporate the best scientific and commercial information (including traditional knowledge) currently available when making a determination that an activity will not have more than a negligible impact on affected marine mammal species nor have an unmitigable adverse impact on subsistence needs for marine mammals. In 50 CFR 216.103, NMFS provides its definition for what is an "unmitigable adverse impact."

The study cited by NMFS in the **Federal Register** and by the commenter was a 1996 analysis conducted by the North Slope Borough (NSB), presumably based on 1992 harvest data. While this is only a single year of harvest data, that information is consistent with previous statements made by NMFS as several small take applicants for wintertime activities in the Beaufort Sea have provided subsistence harvest data used by NMFS in previous authorizations (NMFS, 1998; 62 FR 5564 (October 27, 1997), and this document). NMFS would therefore appreciate any updated information for use in future small take authorizations.

Comment 2: The AEWC recommends a reasonable mitigation measure. As NMFS notes, the Nuiqsut hunters take ringed seals primarily in the Colville River Delta. As more daylight becomes available during the spring, subsistence hunting of all types tends to increase. Therefore, a reasonable compromise between CPA's seismic work and ringed seal hunting by Nuiqsut hunters would be for CPA to begin their work in the eastern portion of Harrison Bay and work westward. This will reduce the probability that ringed seal hunters who have an opportunity to hunt during the spring will encounter seismic operations that might interfere with their seal hunting.

Response: NMFS has included this recommendation in the subject IHA and will suggest such a strategy for future vibroseis activities in Harrison Bay. However, such a recommendation is contingent upon favorable ice conditions permitting an east-to-west mapping strategy. As a result, NMFS has made this a recommendation, not a requirement in the IHA. NMFS notes however, that the IHA requires CPA to communicate with the village of Nuiqsut as to location and timing of activities.

Comment 3: The AEWC also recommends a refinement of the previous mitigation measure might also reduce the chance that this seismic work could affect migrating bowhead whales. The AEWC recommends that CPA be required to first complete all work in waters where the depth is greater than three m (9.8 ft) (moving east to west), then go on to their work in waters where the depth is less than 3 m (9.8 ft).

Response: In general, NMFS believes that ice conditions would preclude working from deeper water landward early in the season. Vibroseis activities require a minimum ice depth of 3 to 4 ft (0.9 to 1.2 m) to support the equipment, therefore, standard operations are to move from shore onto grounded ice first, then moving offshore as conditions permit. However, because ringed seals are not normally found in water depths less than 3 m (0.9 ft), and because after about March 20, neonatal ringed seal pups may be exposed to vibroseis sounds, this recommendation has merit to mitigate impacts to adult ringed seals and pups. As a result, NMFS has added this recommendation to the IHA, recognizing that such a strategy would depend upon ice conditions and seismic survey objectives.

The effective source level of vibroseis sounds for horizontal propagation in shallow under ice waters, while uncertain, may at times be as high as 212 dB re (Malme *et al.*, 1989). Received levels would be expected to diminish below 180 dB within 100 m (328 ft)(BP, 1997). Holliday *et al.* (1984) as cited in Richardson *et al.* (1995) estimated that in-water vibroseis sounds would diminish to the ambient noise level (about 70 dB) at distances of 3.5 to 5 km (2.2 to 3.1 mi). Since the spring leads tend north and east of Pt. Barrow, NMFS believes that Harrison Bay would be well south of any such lead, even during unusually open conditions. As a result, NMFS does not believe that vibroseis sounds would reach the offshore leads and influence bowhead whale behavior.

Comment 4: The AEWC recommends that CPA should be required to work out a Conflict Avoidance Agreement (CAA) with the AEWC to ensure that there is no impact to the bowhead migration. The issues that the AEWC will focus on are timing and location of the late-season activities.

Response: Based on the response to comment 3, NMFS does not believe that there will be any impact to bowhead whales because of the distance between vibroseis operations and the offshore leads used by bowheads during their eastward migration. Generally, CAAs are limited to activities that have the potential to disturb bowheads just prior to, and during the bowhead subsistence hunt and therefore, would be subject for discussion and resolution during the CAA negotiations. Therefore, because the CAA is intended to reduce impacts to the subsistence harvest of bowhead whales, if bowhead whales are unlikely to be taken, a CAA is not warranted. Finally, NMFS is unaware that there is a spring harvest of bowhead whales in the offshore waters of Harrison Bay that would warrant NMFS encouraging CPA to seek resolution of impacts on the bowhead harvest. It should be noted that a CAA is a formal agreement between the activity's participants and the AEWC. NMFS does not play a role in its development or implementation.

Comment 5: The MMC believes that the preliminary determinations made by NMFS seem reasonable provided that, prior to commencing on-ice seismic surveys after mid-March, a survey using experienced field personnel and trained dogs be conducted to identify potential seal structures along the planned on-ice seismic transmission routes. As noted in previous MMC correspondence, the MMC believes that the use of trained dogs is the only reliable method for locating seal lairs and other structures.

Response: As noted in CPA's application, and confirmed by CPA during the October 30, 2002, CPA will utilize trained dogs for any offshore vibroseis work that takes place after March 20, 2003, in waters ≥ 3 m (9.8 ft).

Comment 6: The MMC believes that in the event that trained dogs are not available, NMFS should not accept monitoring by humans as an alternative until it has been demonstrated that such monitoring is as effective as that carried out using dogs.

Response: NMFS does not agree with the recommendation of the MMC. There are only one or two individuals available in Alaska that have dogs trained to locate ringed seal lairs. These individuals may also have work, such as conducting scientific research, that would make them unavailable for monitoring at the precise time they might be needed. NMFS believes that, if necessary, trained dogs should be available first to activities that have the greatest potential for injury or mortality to ringed seals and/or their young, such as construction of ice roads.

Comment 7: The MMC also notes that CPA is planning to conduct surveys to a distance of 150 m (492 ft) on each side of all transit routes and recommends that such surveys be made a requirement of the IHA.

Response: This mitigation measure was proposed by CPA and has been incorporated by NMFS into CPA's IHA.

Comment 8: The MMC recommends that should a mortality or serious injury of a seal occur, the authorization specify that operations be suspended while NMFS determines whether steps can be taken to avoid further injuries or mortalities or whether an incidental take authorization under section 101(a)(5)(A) of the MMPA to cover such taking is needed.

Response: Since the taking by serious injury or mortality of ringed seals, or any taking of any other species of marine mammals is prohibited under this IHA, any incidents must be reported to the Regional Administrator, NMFS, or his designee, immediately. As stated in the IHA, takings in violation of the IHA may result in the modification, suspension or revocation of the IHA, depending upon the initial determination of the Regional Administrator.

Comment 9: Even though the effects of the activities proposed by the applicant, by themselves, are likely to be negligible, the MMC is concerned that the cumulative impacts of such activities in combination with similar activities being carried out elsewhere in the Beaufort Sea may, at some point, have more than negligible impacts on marine mammal populations. As such, the MMC recommends that the monitoring programs for such activities be expanded to enable NMFS to assess whether and, if so, to what extent long-term, cumulative effects may be occurring. Such information is essential for ensuring that subtle changes occurring over short periods of time (i.e., seasonally or annually) do not have

more than negligible impacts over longer time periods.

Response: Under section 101(a)(5)(D) of the MMPA, an applicant is responsible for conducting a monitoring program to provide information on whether its activity is having more than a negligible impact on affected species and stocks of marine mammals. There is no requirement for conducting monitoring to determine whether all activities in the Beaufort Sea might some day have a significant cumulative impact on marine mammals, a term recognized under the National Environmental Policy Act (NEPA).

As required by regulations and MMPA, on October 30, 2002, CPA's proposed monitoring plan was peer-reviewed and accepted by the participants at the peer-review workshop held in Anchorage, AK (Angliss (ed), 2002). This workshop was the fourth in recent years to discuss impacts of on-ice activities on marine mammals. At this meeting, NMFS recommended that the industry set up a research fund through an independent organization, such as the National Fish and Wildlife Federation or NOAA Sea Grant. A competitive process for directed funds might encourage marine mammal scientists to develop creative ways to get a better handle on site-specific and cumulative impacts on seals resulting from winter-time activities. The industry suggested that this should be a cooperative undertaking between government and industry. Participants indicated that they would continue to discuss this concept at future meetings.

It should be recognized that research and monitoring of Beaufort Sea marine mammals are also conducted by government agencies, or through government agency funding. This includes, for example, MMS' aerial bowhead whale surveys, an annual population assessment survey for bowhead whales, a study on contaminant levels in bowhead whale tissue, and a bowhead whale health assessment study. These latter three studies are funded by or through NMFS. Information on these projects has been provided in the past to the MMC by NMFS. Based on this multi-faceted monitoring program, NMFS has determined that the monitoring programs for both open-water and wintertime are adequate to identify impacts on marine mammals, both singly from the project and cumulatively throughout the industry.

Comment 10: The MMC believes that important types of long-term information should be gathered as part of the required monitoring plan including data on potential changes in density and abundance of potentially affected marine mammals, reproductive rates, foraging patterns, distribution, and contamination levels where oil and gas exploration, development, and production occurs.

Response: See response to comment 7. NMFS would welcome the participation of the MMC and/or its scientific advisors at its twice-annual peer-review meetings held to discuss monitoring proposed to be undertaken by Arctic-activity applicants for authorizations under section 101(a)(5) of the MMPA. In addition, NMFS would welcome suggestions from the MMC on future methodology to economically assess the suggested parameters for ice-seals during the Arctic winter.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Beaufort Sea ecosystem can be found in several documents (Corps of Engineers, 1999; NMFS, 1999; Minerals Management Service (MMS), 1992, 1996, 2001) and is not repeated here.

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), beluga (*Delphinapterus leucas*), ringed seals, spotted seals (*Phoca largha*) and bearded seals. Descriptions of the biology and distribution of these species and of others can be found in NMFS (1998, 1999), Western Geophysical (2000) and several other documents (Corps of Engineers, 1999; Lentfer, 1988; MMS, 1992, 1996; Angliss *et al.* (2001)). Angliss et al. (2001) is available online at:*http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html#Stock Assessment Reports.*

Ringed and, to a lesser degree, bearded seals could be affected by on-ice seismic activities. These species as well as other marine mammal species in the Beaufort Sea appear to have stable to increasing populations, which is a condition indicative of a healthy ecosystem. Polar bears, which prey on these species, are believed to be stable or increasing in numbers in the Beaufort Sea (U.S. Fish and Wildlife Service (USFWS), 2000 a, b). Similarly, the most recent estimate of bowhead whales shows the population has steadily increased annually at a growth rate of 3.2–3.3 percent to 9,860 (7,700–12,600) animals (International Whaling Commission, 2002). These increases are occurring in concert with subsistence harvest of these species including a 5-year harvest quota of 255 bowheads. The status of these marine mammal populations reflects the high quality of the habitat, which supports abundant and diverse prey populations.

Ringed seals are year-round residents in the Beaufort Sea. They are the most abundant and widely distributed species of marine mammal in the Beaufort Sea (Frost *et al.*, 1988). The world-wide population is estimated at 6 to 7 million (Stirling and Calvert, 1979). The Alaska stock of the Bering-Chukchi-Beaufort Sea area is roughly estimated at between 1 to 1.5 (Frost, 1985) to 3.3 to 3.6 million seals (Frost *et al.*, 1988). Although there are no recent population estimates in the Beaufort Sea, Bengston *et al.* (2000) estimated ringed seal abundance from Barrow south to Shismaref in a portion of the Chukchi Sea to be 245,048 animals from aerial surveys flown in 1999. In Angliss *et al.* (2001), marine mammal scientists state that there are at least that many ringed seals in the Beaufort Sea. Frost *et al.* (1999) reported that observed densities within the area of industrial activity along the Beaufort Sea coast were generally similar between 1985–87 and 1996–98, suggesting that the regional population has been relatively stable during this 13–year period of industrial activity.

During winter and spring, ringed seals inhabit landfast ice and offshore pack ice. Seal densities are highest on stable landfast ice but significant numbers of ringed seals also occur in pack ice (Wiig *et al.*, 1999). Seals congregate at holes and along cracks or deformations in the ice (Frost *et al.*, 1999). Breathing holes are established in landfast ice as the ice forms in autumn and maintained by seals throughout the winter. Adult ringed seals maintain an average of 3.4 holes per seal (Hammill and Smith, 1989). Some holes may be abandoned as winter advances, probably in order for seals to conserve energy by maintaining fewer holes (Brueggeman and Grialou, 2001). As snow accumulates, ringed seals excavate lairs in snowdrifts surrounding their breathing holes, which they use for resting and for the birth and nursing of their single pups in late March to May (McLaren, 1958; Smith and Stirling, 1975; Kelly and Quakenbush, 1990). Pups have been observed to enter the water, dive to over 10 m (32.8 ft), and return to the lair as early as 10 days after birth (Brendan Kelly, personal communication, June 2002), suggesting pups can survive the cold water temperatures at a very early age. Mating occurs in late April and May. From mid-May through July, ringed seals haul out in the open air at holes and along cracks to bask in the sun and molt.

The seasonal distribution of ringed seals in the Beaufort Sea is affected by a number of factors, but a consistent pattern of seal use has been documented since monitoring began over 20 years ago by using aerial surveys. Seal densities have historically been substantially lower in the western than the eastern part of the Beaufort Sea (Burns and Kelly, 1982; Kelly, 1988). Frost *et al.* (1999) reported consistently lower ringed seal densities in the western versus eastern sectors they surveyed in the Beaufort Sea during 1996, 1997, and 1998. The relatively low densities appear to be related to much of the area occurring between the shore and the barrier islands, which is generally shallow. This area of historically low ringed seal density is also the focus for much of the recent on-ice seismic surveys.

The estimated number of ringed seals likely to be in the 846–mi² (2,190–km²) activity area is less than 3,900 animals. This estimate is based on a density of 1.73 seals per km², which was derived from the most current aerial surveys of the region. Frost and Lowry (1999) reported an observed density of 0.61 ringed seals per km² on the fast ice from aerial surveys conducted in spring 1997 of an area (Sector B2) overlapping the activity area, which is in the range of densities (0.28–0.66) reported for the Northstar project from 1997 to 2001 (Moulton *et al.*, 2001). This value (0.61) was adjusted to account for seals hauled out but not sighted by observers (x 1.22, based on Frost *et al.* (1988)) and seals not hauled out during the surveys (x 2.33, based on Kelly and Quakenbush (1990)) to obtain the density of 1.73 seals/km2. This estimate covered an area from the coast to about 2–20 miles beyond the activity area, and it assumed that habitat conditions were uniform and, therefore, it was not adjusted for water depth. Since a high proportion (≤ 60 percent) of the activity area is within water less than 3 m (9.8 ft) deep, which Moulton *et al.* (2001) reported for Northstar supported about five times fewer seals (0.12–0.13 seals/km²) than the 0.61 seals reported by Frost and Lowry, the actual number of ringed seals is probably closer to slightly more than half of the 3,900 seals or about 2,000 seals. This estimate is calculated as follows: (1) 1,314 km*2* x 0.13 x 1.22 x 2.33 = 486 seals in area having water depths of 0–3 meter (60 percent) in activity area; (2) 876 km*2* x 0.61 x 1.22 x 2.33 = 1,519 seals in area having water depths over 3 meters (40 percent) in activity area; and (3) combining the two numbers gives an estimate of 2,005 seals or approximately 2,000 for the entire activity area. Observed densities of ringed seals reported over 15 years ago in the region of the activity area from 1985 through 1987 (0.85, 1.09, and 1.11 seals per km2) were not used in this analysis, since an estimate was available within the last five years (Frost and Lowry, 1999).

The bearded seal inhabits the Bering, Chukchi, and Beaufort seas (Burns and Frost, 1979). Numbers are considerably higher in the Bering and Chukchi seas, particularly during winter and early spring. Early estimates of bearded seals in the Bering and Chukchi seas range from 250,000 to 300,000 (Popov, 1976; Burns, 1981). Reliable estimates of bearded seal abundance in Alaska waters are unavailable. Since there is no evidence of a decline in the population, the population is presumed to be healthy. Bearded seals are generally associated with pack ice and only rarely use shorefast ice (Burns and Harbo, 1972). Bearded seals occasionally have been observed maintaining breathing holes in annual ice and even hauling out from holes used by ringed seals (Mansfield, 1967; Stirling and Smith, 1977). However, since bearded seals are normally found in broken ice that is unstable for on-ice seismic operation, bearded seals will be rarely encountered during seismic operations.

There are no reliable estimates for bearded seals in the Beaufort Sea or in the activity area (Angliss *et al.*, 2001), but recent surveys show that few bearded seals inhabit the activity area during December through May. An indication of their low numbers is provided by the results of aerial surveys conducted east of the activity area near the Northstar and Liberty development sites. Three to 18 bearded seals were observed in these areas compared to 1,911 to 2,251 ringed seals in the spring of 1999 through 2001 (Moulton *et al.*, 2001; Moulton and Elliott 2000; Moulton *et al.*, 2000). Similarly small numbers of bearded seals would be expected to occur in the activity area, where habitat is even less favorable because of the high proportion of shallow water area.

Potential Effects on Marine Mammals

NMFS and CPA anticipate that only small numbers of ringed seals and, if encountered, very small numbers of bearded seals will be affected. Any takes that occur would result from short-term disturbances by noise and physical activity associated with on-ice seismic operations. While operations have the potential to disturb and temporarily displace some seals, any impacts will likely be confined to small numbers of seals in the immediate vicinity of the activities.

Burns and Kelly (1982) concluded that displacement of ringed seals in close proximity (within 150 m (492 ft)) to seismic lines does occur, and ringed seal pupping in shorefast ice habitats within this distance of an on-ice shot line in favorable ringed seal habitat are likely to be disturbed by vibroseis operations. However, considering (1) the limited area of seismic surveys, (2) the non-random distribution of ringed seals, (3) avoidance by seismic operator of optimal seal habitat (i.e., areas of extensive pressure ridging and snow accumulation) due to safety and operational constraints,(4) occurrence of most of the on-ice seismic surveys in shallow and near shore waters where ringed seal densities are low, (5) the relatively large size of the ringed seal population in the Beaufort Sea and throughout Alaska, and (6) the lack of evidence of on-ice seismic activity negatively affecting the reproductive viability or distribution of the ringed seal population, the disturbance is not likely to have any effect on the ringed or bearded seal populations as a whole.

Aerial survey data collected from 1985 to 1987 and 1997 indicate that ringed seal densities in the fast ice of the region of the activity area as well as among different section of the Beaufort Sea are highly variable among years (Frost *et al.*, 1999). The reported inter-annual variability in overall average density during these years in the region of the activity area was 0.61 to 1.11 seals per km². Based on an estimated rate of temporary displacement determined by Burns (1981) of 0.6 ringed seals per nm² (0.52 per mile) of area subjected to seismic activity, a maximum of 832 seals could be displaced from 1,600 mi (2,575 km) of seismic surveys assuming a uniform distribution. However, since the distribution is not uniform and most of the activity area is marginal habitat for ringed seals, considerably fewer seals would likely be temporarily displaced by the seismic operations. Furthermore, the proposed seismic operations will be concentrated in 143 mi² (378 km²) or about 17 percent of the 846 mi² (2,190 km²) activity area. Consequently, a more accurate maximum limit of the potential take of ringed seals by the proposed seismic operations is 340 (17 percent x 2000) seals, which would be considerably higher than any incidental take of seals in birthing lairs.

Pup mortality could occur if any of these animals were nursing and displacement was protracted. However, due to mitigation measures undertaken by the industry and because it is highly

unlikely that a nursing female would abandon her pup given the normal levels of disturbance from the proposed activities and the typical movement patterns of ringed seal pups among different holes as reported by Lydersen and Hammill (1993), pup mortality is unlikely. Similarly, Kelly and Quakenbush (1990) observed that radio-tagged seals used as many as four lairs spaced as far as 3,437 m (11,276 ft) apart, with mean distances for males equaling 1,997 m (6,552 ft) and for females 634 m (2,080 ft). In addition, seals have multiple breathing holes. Pups may use more holes than adults (mean 8.7), but the holes are generally closer together (Lydersen and Hammill, 1993). Holes have been found as far apart as 0.9 km (0.56 mi). This pattern of use indicates that adult seals and pups can move away from seismic activities, particularly since the seismic equipment does not remain in any specific area for a prolonged time. Given the small proportion (<1 percent) of the population potentially disturbed by the proposed activity, impacts are expected to be negligible for the overall ringed and also bearded seal populations.

Masking effects on pinniped vocalizations and other natural sounds are expected to be limited. Although pulse repetition rates will be high during vibroseis surveys, the source levels of those pulses will be considerably lower than during open-water seismic surveys. This will considerably reduce the potential for masking.

Potential Effects on Subsistence

Residents of the village of Nuiqsut are the primary subsistence users in the activity area. The subsistence harvest during winter and spring is primarily ringed seals, but during the open-water period both ringed and bearded seals are taken. Nuiqsut hunters may hunt year round; however, in more recent years most of the harvest has been in open water instead of the more difficult hunting of seals at holes and lairs (McLaren, 1958; Nelson, 1969). The most important area for Nuiqsut hunters is off the Colville River Delta, between Fish Creek and Pingok Island, which corresponds to approximately the eastern half to the activity area. Seal hunting occurs in this area by snow machine before spring break-up and by boat during summer. Subsistence patterns may be reflected through the harvest data collected in 1992 where Nuiqsut hunters harvested 22 of 24 ringed seals and all 16 bearded seals during the open water season from July to October (Fuller and George, 1997). Only a small number of ringed seals was harvested during the winter to early spring period, which corresponds to the time of the proposed on-ice seismic operations.

Based on harvest patterns and other factors, on-ice seismic operations in the activity area are not expected to have an unmitigable adverse impact on subsistence uses of ringed and bearded seals because:

(1) Operations would end before spring breakup, after which subsistence hunters harvest most of their seals.

(2) Operations would temporarily displace relatively few seals, since most of the habitat in the activity area is marginal to poor and supports relatively low densities of seals during winter. Displaced seals would likely move a short distance and remain in the area for potential harvest by native hunters (Frost and Lowry, 1988; Kelly *et al.*, 1988).

(3) The area where seismic operations would be conducted is small compared to the large Beaufort Sea subsistence hunting area associated with the extremely wide distribution of ringed seals.

In order to ensure the least practicable adverse impact on the species and the subsistence use of ringed seals, all activities will be conducted as far as practicable from any observed ringed seal structure, and crews will be required to avoid hunters and the locations of any seals being hunted in the activity area, whenever possible. Finally, the applicant will consult with subsistence hunters of Nuiqsut and provide the community, the North Slope Borough, and the Inupiat Community of the North Slope with information about its planned activities (timing and extent) before initiating any on-ice seismic activities.

Mitigation

Similar to work in previous years, NMFS expects the following mitigation will be undertaken by the applicant to ensure that any taking will be at the lowest level practicable. All activities will be required to be conducted in a manner that minimizes adverse effects on ringed and bearded seals and their habitat. Activities must be conducted as far as practicable from any observed ringed seals or ringed seal lair. For example, no energy source may be placed over an observed ringed seal lair and only vibrator-type energy-source equipment will be used. Seismic crews will receive training so that they can recognize potential ringed seal lairs and adjust their seismic operations. Furthermore, if seismic operations go beyond March 20, 2003 in waters ≥ 3 m (9.8 ft), a survey using trained dogs will be completed in all areas where surface blading will be conducted. This survey will identify all active seal holes/birthing lairs or hole/lair habitats so they can be avoided by seismic and camp operations to the greatest extent practicable. If trained dogs are not available, then the NMFS Regional Administrator or his designee will be promptly notified to determine possible alternative monitoring that would identify potential ringed seal habitat by trained marine mammal biologists based on the characteristics of the ice (i.e., deformation, cracks, etc.).

Monitoring and Reporting

Ringed seal pupping occurs in lairs from late March to mid-to-late April (Smith and Hammill, 1981). Prior to commencing on-ice seismic surveys after March 20th, a survey using experienced field personnel and trained dogs will be conducted to identify potential seal structures along the planned on-ice seismic transmission routes. The seal structure survey will be conducted before selection of precise transit routes to ensure that seals, particularly pups, are not injured by equipment. The locations of all seal structures will be recorded by Global Positioning System (GPS), staked, and flagged with surveyor's tape. Surveys will be conducted 150 m (492 ft) to each side of the transit routes. Actual width of route may vary depending on wind speed and direction, which strongly influence the efficiency and effectiveness of dogs locating seal structures. Survey will only be conducted in the portions of the activity area where water depths exceed 3 m (9.8 ft). Few, if any, seals inhabit ice-covered waters below 3 m (9.8 ft) due to water freezing to the bottom or poor prey availability caused by the limited amount of ice-free water.

The level of take, while anticipated to be negligible, will be assessed by conducting a second seal structure survey immediately after the end of the seismic surveys. A single on-ice survey will be conducted by biologists on snowmachines using a GPS to relocate and determine the status of seal structures located during the initial survey. The status (active vs. inactive) of each structure will be determined to assess the level of incidental take by seismic operations. The number of active seal structures abandoned between the initial survey and the final survey will be the basis for enumerating take. If dogs are not available for the initial survey, take will be determined by using observed densities of seal on ice reported by Moulton *et al.* (2001) for the Northstar project, which is approximately 20 nm (37 km) from the eastern edge of the proposed activity area.

In the event that seismic surveys can be completed in that portion of the activity area ≥ 3 m (9.8 ft) before mid-March, no field surveys would be conducted of seal structures. Under this scenario, surveys would be completed before pups are born and disturbance would be negligible. Therefore, take estimates would be determined for only that portion of the activity area exposed to seismic surveys after March 20, which would be in water 3 m (9.8 ft) or less deep. Take for this area would be estimated by using the observed density (13/100 km^2) reported by Moulton *et al.* (2001) for water depths between 0 to 3 m (0 to 9.8 ft) in the Northstar project area, which is the only source of a density estimate stratified by water depth for the Beaufort Sea. This would be an overestimation requiring a substantial downward adjustment to reflect the actual take of seals using lairs, since few if any of the structures in these water depths would be used for birthing, and Moulton et al. (2001) estimate includes all seals. This monitoring program was reviewed at the fall 2002 on-ice meeting sponsored by the National Marine Mammal Laboratory, NMFS, in Seattle and found acceptable.

An annual report must be submitted to NMFS within 90 days of completing the year's activities.

National Environmental Policy Act (NEPA)

As a result of the information provided in EAs prepared in 1993 and 1998 for winter seismic activities, NOAA concluded that implementation of either the preferred alternative or other alternatives identified in the EA would not have a significant impact on the human environment. Therefore, an Environmental Impact Statement was not prepared. Accordingly, because the proposed action discussed in this document is not substantially different from the 1992 and 1998 actions, and because a reference search has indicated that no significant new scientific information or analyses have been developed in the past several years significant enough to warrant new NEPA documentation, this action is categorically excluded from further review under NOAA Administrative Order 216–6.

Endangered Species Act (ESA)

NMFS has determined that no species listed as threatened or endangered under the ESA will be affected by issuing an authorization under section 101(a)(5)(D) of the MMPA.

Conclusions

The anticipated impact of winter seismic activities on the species or stock of ringed and bearded seals is expected to be negligible for the following reasons:

(1) The activity area supports a small proportion (<1 percent) of the ringed seal populations in the Beaufort Sea;

(2) Most of the winter-run seismic lines will be on ice over shallow water where ringed seals are absent or present in very low abundance. Over 60 percent of the activity area is near shore and/or in water less than 3 m (9.8 ft) deep, which is generally considered poor seal habitat. Moulton *et al.* (2001) reported that only 6 percent of 660 ringed seals observed on ice in the Northstar project area were in water between 0 to 3 m (0 to 9.8 ft)deep.

(3) Seismic operators will avoid moderate and large pressure ridges, where seal and pupping lairs are likely to be most numerous, for reasons of safety and because of normal operational constraints;

(4) Many of the on-ice seismic lines and connecting ice roads will be laid out and explored during January and February, when many ringed seals are still transient, and considerably before the spring pupping season;

(5) The sounds from energy produced by vibrators used during on-ice seismic programs typically are at frequencies well below those used by ringed seals to communicate (1000 Hz). Thus, ringed seal hearing is not likely to be very good at those frequencies and seismic sounds are not likely to have strong masking effects on ringed seal calls. This effect is further moderated by the quiet intervals between seismic energy transmissions.

(6) There has been no major displacement of seals away from on-ice seismic operations (Frost and Lowry, 1988). Further confirmation of this lack of major response to industrial activity is illustrated by the fact that there has been no major displacement of seals near the Northstar Project. Studies at Northstar have shown a continued presence of ringed seals throughout winter and creation of new seal structures (Williams *et al.*, 2001).

(7) Although seals may abandon structures near seismic activity, studies have not demonstrated a cause and effect relationship between abandonment and seismic activity or biologically significant impact on ringed seals. Studies by Williams *et al.* (2001), Kelley *et al.* (1986, 1988) and Kelly and Quakenbush (1990) have shown that abandonment of holes and lairs and establishment or re-occupancy of new ones is an ongoing natural occurrence, with or without human presence. Link *et al.* (1999) compared ringed seal densities between areas with and without vibroseis activity and found densities were highly variable within each area and inconsistent between areas (densities were lower for 5 days, equal for 1 day, and higher for 1 day in vibroseis area), suggesting other factors beyond the seismic activity likely influenced seal use patterns. Consequently, a wide variety of natural factors influence this patterns of seal use including time of day, weather, season, ice deformation, ice thickness, accumulation of snow, food availability and predators as well as ring seal behavior and populations dynamics.

In winter, bearded seals are restricted to cracks, broken ice, and other openings in the ice. On-ice seismic operations avoid those areas for safety reasons. Therefore, any exposure of bearded seals to on-ice seismic operations would be limited to distant and transient exposure. Bearded seals exposed to a distant on-ice seismic operation might dive into the water. Consequently, no significant effects on individual bearded seals or their population are expected, and the number of individuals that might be temporarily disturbed would be very low.

As a result, CPA believes the effects of on-ice seismic are expected to be limited to short-term and localized behavioral changes involving relatively small numbers of seals. As NMFS came to a similar finding in the EA prepared in 1998 for on-ice seismic activity in the Beaufort Sea, NMFS has determined that these changes in behavior are expected to be negligible (NMFS, 1998). Therefore, the potential effects of the proposed on-ice seismic operations during 2003 are unlikely to result in more than small numbers of seals being affected, will have no more than a negligible impact on ringed and bearded seal stocks and will not have an unmitigable adverse impact on subsistence uses of these two species.

Authorization

For the reasons described previously in this document, NMFS has issued an IHA to CPA for a 5–month period, provided the mitigation, monitoring, and reporting requirements described in this document and the IHA are undertaken.

Dated: March 19, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–7069 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

March 19, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68569, published on November 12, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 19, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on March 25, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
338/339	5,077,832 dozen.
340/640	2,774,622 dozen.
341	5,712,802 dozen of which not more than 3,463,684 dozen shall be in Category 341–Y [2].
347/348	992,420 dozen.
351/651	402,569 dozen.
363	72,105,608 numbers.
Group II	
200, 201, 220, 224–227, 237, 239pt. [3], 300, 301, 331pt. [4], 332, 333, 352, 359pt. [5], 360–362, 603, 604, 611–620, 624–629, 631pt. [6], 633, 638, 639, 643–646, 652, 659pt. [7], 666pt. [8], 845, 846 and 852, as a group	152,929,380 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[4] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[5] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[6] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[7] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[8] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–6976 Filed 3–24–03 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Designated Consultation Level for Certain Wool Textile Products Produced or Manufactured in Mexico

March 19, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection increasing a designated consultation level.

EFFECTIVE DATE: March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The unused portion of the 2002 special increase in Category 433 is being recredited to the 2003 limit.

The level does not apply to NAFTA (North American Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the agreement. In addition, this consultation level does not apply to textile and apparel goods, assembled in Mexico, in which all fabric components were wholly formed and cut in the United States, entered under the United States Harmonized Tariff Schedule heading 9802.00.90.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 57408, published on September 10, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

The Committee for the Implementation of Textile Agreements

March 19, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 3, 2002 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the period which began on January 1, 2003 and extends through December 31, 2003. The levels established in that directive do not apply to NAFTA (North American Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of NAFTA or to textile and apparel goods, assembled in Mexico, in which all fabric components were wholly formed and cut in the United States, entered under the United States Harmonized Tariff Schedule heading 9802.00.90.

Effective on March 25, 2003, you are directed to increase the current designated consultation level for Category 433 to 10,794 dozen [1], pursuant to the provisions of the NAFTA.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–6977 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2002.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

March 19, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: March 26, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68572, published on November 12, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 19, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003.

Effective on March 26, 2003, you are directed to increase the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
334/634	201,544 dozen.
335/635	407,676 dozen.
338/339	845,930 dozen.
340/640	407,676 dozen.
341/641	305,756 dozen.
647/648	576,362 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–6978 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

March 19, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854);

Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used, swing, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 57411, published on September 10, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 19, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 3, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Turkey and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on March 25, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Fabric Group 219, 313–O [2], 314–O [3], 315–O [4], 317–O [5], 326–O [6], 617, 625/626/627/628/629, as a group	262,848,802 square meters of which not more than 63,646,891 square meters shall be in Category 219; not more than 77,790,644 square meters shall be in Category 313–O; not more than 45,260,011 square meters shall be in Category 314–O; not more than 60,818,144 square meters shall be in Category 315–O; not more than 63,646,891 square meters shall be in Category 317–O; not more than 7,071,875 square meters shall be in Category 326–O, and not more than 42,431,264 square meters shall be in Category 617; Sublevel in Fabric Group 625/626/627/628/629: 28,651,713 square meters of which not more than 11,460,683 square meters shall be in Category 625; not more than 11,460,683 square meters shall be in Category 626; not more than 11,460,683 square meters shall be in Category 627; not more than 11,460,683 square meters shall be in Category 628; and not more than 11,460,683 square meters shall be in Category 629..
Limits not in a group	
338/339/638/639	9,356,676 dozen of which not more than 8,421,009 dozen shall be in Categories 338–S/339–S/638–S/639–S [7].
347/348	8,054,420 dozen of which not more than 3,014,519 dozen shall be in Categories 347–T/348–T [8].
351/651	1,444,386 dozen.
361	3,037,261 numbers.
448	44,822 dozen.
604	3,630,786 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 317–O: all HTS numbers except 5208.59.2085.

[6] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[7] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[8] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–6979 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in the United Arab Emirates

March 19, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://www.otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63899, published on October 16, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 19, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 9, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on March 25, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
338/339	1,037,432 dozen of which not more than 654,601 dozen shall be in Categories 338–S/339–S [2].
347/348	770,664 dozen of which not more than 387,826 dozen shall be in Categories 347–T/348–T [3].

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–6980 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–DR–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Availability of Funds for Challenge Grants

AGENCY: Corporation for National and Community Service.

ACTION: Notice of funding availability.

SUMMARY: The Corporation for National and Community Service (hereinafter "the Corporation") announces the availability of approximately $6,000,000 in fiscal year 2003 funds for eligible nonprofit organizations for challenge grants. The purpose of these challenge grants is to assist nonprofit organizations in securing previously untapped sources of private funds to build sustainable service and volunteer programs. Organizations receiving funds under this notice must either greatly expand services by engaging citizens in meeting community needs or offer new services through expanded citizen engagement. The funds are available for these challenge grants under authority provided of Public Law 108–7, the Omnibus Appropriations Act for Fiscal Year 2003. The Corporation anticipates making between 2 and 12 challenge grants under this announcement, with the minimum grant level of $500,000 and the maximum grant level of $3,000,000. Applicants must provide at least two dollars in private funding for every Federal dollar. Matching funds must be cash. The Corporation will make awards covering a period not to exceed one year. Eligible nonprofit organizations, including those that have not applied for federal assistance from the Corporation in the past, as well as interested faith-based and community-based organizations, are encouraged to apply. The Corporation requires applicants to apply through its eGrant electronic system.

DATES: The deadline for applications is 11:59 p.m. Eastern Daylight Time on April 10, 2003. However, if for some legitimate reason it is necessary for you to submit a paper application, we must receive it by 5 p.m. on April 10, 2003. We anticipate announcing selections under this Notice no later than June 9, 2003.

ADDRESSES: You may access eGrants, the integrated, secure, Web-based system that we require for applications, through our Web site at *http://www.cns.gov/egrants/index.html*. If you cannot submit an application electronically, then you must obtain the Corporation's approval to submit a paper application. Submit paper application to the following address: Corporation for National and Community Service, 1201 New York Avenue NW., Box C.G., Washington, DC 20525. Due to delays in delivery of regular mail to government offices, there is no guarantee that a paper application sent by regular mail will arrive in time to be considered. We therefore suggest that, if submitting a paper application, you use U.S.P.S. priority mail or a commercial overnight delivery service to make sure that you meet the deadline. We will not accept an application that is submitted via facsimile.

FOR FURTHER INFORMATION CONTACT: Thea Kachoris at (312) 353–5056 (*tkachoris@cns.gov*). This Notice, with the complete program application guidelines included, is available on the Corporation's Web site, at: *http://www.cns.gov/whatshot/notices.html*. For a printed copy of any of these materials, please contact Thea Kachoris at (312) 353–5056 (*tkachoris@cns.gov*). The TDD number is 202–565–2799. Upon request, this information will be made available in alternate formats for people with disabilities.

Dated: March 19, 2003.

Marlene Zakai,

Manager, Challenge Grants.

[FR Doc. 03–6968 Filed 3–24–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of Surplus Land and Buildings in Accordance With Public Law 103–421 Located at Fort Ritchie Military Reservation, Cascade, MD

AGENCY: Corps of Engineers, DoD.

ACTION: Public notice of availability.

SUMMARY: This notice identifies the surplus real property located at the Fort Ritchie Military Reservation, Cascade, MD. The property is located in Washington County, Northeast of Hagerstown in the community of Cascade, MD at the intersection of routes 550 and 491.

SUPPLEMENTARY INFORMATION: This surplus is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notices of interest should be forwarded to Mr. Richard Rook, Executive Director, PenMar Development Corporation, P.O. Box 699, Cascade, MD 21719, telephone (301) 241–4050, fax (301) 241–4141. A copy of Notices of Interest should be sent to Mr. Gerry Bresee at the address below.

For more information regarding the particular property identified in this Notice (*i.e.*, acreage, floor plans, existing sanitary facilities, exact location), contact Mr. Gerry Bresee, Real Estate Division, Army Corps of Engineers, P.O. Box 1715, Baltimore, MD 21203 (telephone 410–962–5173, fax 410–962–0866).

Parties qualifying for Public Benefit Conveyances are invited to contact the following offices to find out more about each agency's Public Benefit Conveyance Program and to discuss with the Agency the Party's potential for qualifying for a conveyance of property:

For Park and Recreation Uses

Mr. Bill Huie, Recreation Grants Division, Southeast Regional Office, National Park Service, 100 Alabama Street, SW., Atlanta Georgia, GA 30303, 404–562–3175.

For Educational Uses

Mr. Peter Wieczorek, Director, Eastern Zone, Federal Real Property Assistance Program, U.S. Department of Education, J.W. McCormack PO & Courthouse, Room 536, Boston, MA 02109, 617–223–9321.

For Health Conveyances

Chief, Real Property Branch, Division of Health Facilities Planning, Room 5B17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–2265.

For Prison Uses

Chief, Site Selection and Environmental Review, Bureau of Prisons, 320 First Street, NW, Washington, DC 20534, 202–514–6470.

The surplus real property totals approximately 591 acres and contains 252 buildings totaling 1,384,000 square feet of space. Current range of uses include administrative, residential, open recreation and special purpose space. Future uses may include generally the same types of uses.

James S. Turkel,

Chief Real Estate Division, Corps of Engineers, United States of America.

[FR Doc. 03–7001 Filed 3–24–03; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Radiant Images Incorporated

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of it's intent to grant to Radiant Images Incorporated, a revocable, nonassignable, exclusive license in the United States to practice the Government-owned invention described in U.S. Patent No. 6,521,950 entitled "Ultra-high Resolution Liquid Crystal Display on Silicon-On-Sapphire."

DATES: Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Patent Counsel, Space and Naval Warfare Systems Center, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Ward, Space and Naval Warfare Systems Center, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765, telephone (619) 553–3823.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.7(a))

Dated: March 12, 2003.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 03–7064 Filed 3–24–03; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Schultz-Hanford Area Transmission Line Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to construct the proposed Schultz-Hanford Area Transmission Line Project in Douglas, Grant, Lincoln, and Spokane Counties, Washington, based on the Final Environmental Impact Statement for this project (DOE/EIS–0325, January 2003). The proposed action consists of constructing a new 500-kilovolt (kV) transmission line between the Schultz Substation north of Ellensburg, Washington, and a new substation, Wautoma Substation, 2 miles south of Highway 24 in Benton County, Washington, a distance of about 64 miles.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA toll-free at 1–888–276–7790. The ROD and EIS Summary are also available on the Transmission Business Line Web site at *http://www.transmission.bpa.gov/projects.*

FOR FURTHER INFORMATION CONTACT: Nancy A. Wittpenn, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; or e-mail *nawittpenn@bpa.gov.*

SUPPLEMENTARY INFORMATION: BPA has decided to implement the Agency Preferred Alternative identified in the Schultz-Hanford Area Transmission Line Project Final EIS, with the exception of Option 1 of the Sickler-Schultz Reroute. Due to landowner concerns, BPA will now implement Option 2 of the Sickler-Schultz Reroute. The Agency Preferred Alternative will primarily use 500-kV single-circuit steel lattice structures. Through an agricultural area near Mattawa, for approximately 9 miles, 500-kV double-circuit lattice structures will be used to hold the new 500-kV line and the existing Midway-Vantage 230-kV line. New right-of-way of 150 to 180 feet will be needed for the new line. As part of the Agency Preferred Alternative, BPA has decided to construct new and upgrade existing access roads; construct a new bay within the existing fenced yard of the Schultz Substation; re-route the existing Sickler-Schultz 500-kV transmission line; construct a new substation called Wautoma Substation, in Benton County; loop the existing Hanford-Ostrander 500-kV and Hanford-John Day 500-kV transmission lines through the Wautoma Substation; and install fiber optic cable between the Vantage Substation and the new Wautoma Substation, and the Vantage Substation and the Columbia Substation. All mitigation measures have been adopted and included with the ROD. A Mitigation Action Plan will be prepared to be included in the construction specifications to ensure mitigation measures are implemented.

Issued in Portland, Oregon, on March 17, 2003.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 03–7025 Filed 3–24–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed three-year extension to the petroleum survey forms listed below:

EIA–14, "Refiners'/ Monthly Cost Report";
EIA–182, "Domestic Crude Oil First Purchase Report";
EIA–782A, "Refiners'/Gas Plant Operators" Monthly Petroleum Product Sales Report";
EIA–782B, "Resellers'/Retailers" Monthly Petroleum Product Sales Report";
EIA–782C, "Monthly Report of Petroleum Products Sold Into States for Consumption";
EIA–821, "Annual Fuel Oil and Kerosene Sales Report";
EIA–856, "Monthly Foreign Crude Oil Acquisition Report";
EIA–863, "Petroleum Product Sales Identification Survey";
EIA–877, "Winter Heating Fuels Telephone Survey";
EIA–878, "Motor Gasoline Price Survey";
EIA–888, "On-Highway Diesel Fuel Price Survey."

DATES: Comments must be filed by May 27, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Jacob Bournazian, EI–42, Energy Information Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585–0650. To ensure receipt of the comments by the due date, submission by FAX (202) 586–4913 or e-mail (*jacob.bournazian@eia.doe.gov*) is recommended. The mailing address is Petroleum Division, EI–42, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Jacob Bournazian may be contacted by telephone at (202) 586–1256.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Jacob Bournazian at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

The petroleum marketing survey forms collect volumetric and price information needed for determining the supply of and demand for crude oil and refined petroleum products. These surveys provide a basic set of data pertaining to the structure, efficiency, and behavior of petroleum markets. These data are published by the EIA on its Web site, *http://www.eia.doe.gov*, as well as in publications such as the *Monthly Energy Review, Annual Energy Review, Petroleum Marketing Monthly, Petroleum Marketing Annual, Weekly Petroleum Status Report*, and the *International Energy Outlook*. EIA also maintains a 24-hour telephone hotline number, (202) 586–6966, for the public to obtain retail price estimates for on-highway diesel fuel and motor gasoline.

II. Current Actions

EIA will be requesting a three-year extension of approval to its petroleum marketing surveys with the following survey changes. The Form EIA–14 currently collects, at the national level, the weighted cost of crude oil as it is booked into the refinery. EIA proposes to collect this same price data at the Petroleum Administration for Defense District (PADD) level for more accurate measurement of refiner costs at the regional level.

Form EIA–182 collects data on the weighted average wellhead prices paid by the first purchasers to the crude oil producers. EIA proposes to consolidate low volume crude streams and begin publishing new crude streams which are supported by data. The smaller volume crude streams that EIA proposes to delete are not publishable at the state level. Proposed changes to the following states and areas are described below:

California: Delete the data collection elements for Huntington Beach, San Ardo, and Ventura crude streams and begin collection of the following new crude streams: Coalinga, Cymric, and Lost Hills.

California Outer Continental Shelf: Begin data collection on the Pescado crude stream.

Gulf Coast: Delete the data collection elements for Texas Gulf Refugio and Louisiana South Mix crude streams and begin collection on the following six (6) new streams: Louisiana Light Sweet, Heavy Louisiana Sweet, Mars Blend, Eugene Island, HOOPS blend, and High Island.

Oklahoma: Delete the data collection elements for Oklahoma Cement and Oklahoma Garber and begin collection of the Oklahoma Sweet crude stream.

Texas: Delete the data collection elements for Texas Hawkins crude stream and begin collection of the following four (4) crude streams: Panhandle, North Texas Sweet, and South Texas Sweet, and West Central Texas.

Form EIA–782C collects data on the sales of various refined petroleum products into states where the product is ultimately used. EIA proposes to delete naphtha-type jet fuel as a data element to Form EIA–782C based on the declining sales for this product over the past 10 years.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. Please indicate to which form(s) your comments apply. Your comments should address your use of data and how the proposed changes impact your data needs.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average:

EIA–14, "Refiners" Monthly Cost Report" (1.6 hours per response);
EIA–182, "Domestic Crude Oil First Purchase Report" (4.3 hours per response);
EIA–782A, "Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report" (15 hours per response);
EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (2.5 hours per response);
EIA–782C, "Monthly Report of Petroleum Products Sold Into States for Consumption" (2.1 hours per response);
EIA–821, "Annual Fuel Oil and Kerosene Sales Report" (3.2 hours per response);
EIA–856, "Monthly Foreign Crude Oil Acquisition Report" (6.1 hours per response);
EIA–863, "Petroleum Product Sales Identification survey" (1 hour per response);
EIA–877, "Winter Heating Fuels Telephone Survey" (.1 hour per response);
EIA–878, "Motor Gasoline Price Survey" (.05 hours per response);
EIA–888, "On-Highway Diesel Fuel Price Survey" (.05 hours per response).

The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information to be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

Issued in Washington, DC, March 19, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–7026 Filed 3–24–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–533–006]

Algonquin Gas Transmission Company; Notice of Compliance Filing

March 18, 2003.

Take notice that on March 14, 2003, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the revised tariff sheets listed in appendix A of the filing, effective March 4, 2003.

Algonquin states that the purpose of this filing is to comply with the Order on Compliance Filing issued by the Commission in Docket Nos. RP00–533–004 and RP03–193–000 on March 4, 2003 ("March 4 Order") [102 FERC ¶ 61,264 (2003)].

Algonquin states that copies of its filing have been mailed to all affected customers of Algonquin and interested state commissions, as well as to all parties listed on the Official Service List compiled by the Secretary of the Commission in Docket No. RP00–533.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7041 Filed 3–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–335–003 and RP03–167–001]

Black Marlin Pipeline Company; Notice of Compliance Filing

March 18, 2003.

Take notice that on March 13, 2003, Black Marlin Pipeline Company (Black Marlin) tendered for filing in its FERC Gas Tariff, First Revised Volume No. 1, the following tariffs sheets in compliance with the Commission's letter order issued February 27, 2003:

Second Revised Sheet No. 109.
First Revised Sheet No. 110.
Third Revised Sheet No. 111.
First Revised Sheet No. 133.
Second Revised Sheet No. 134.
Third Revised Sheet No. 135.
Fifth Revised Sheet No. 200.
Fifth Revised Sheet No. 212.
Sixth Revised Sheet No. 213.
Second Revised Sheet No. 213.01.
Original Revised Sheet No. 225.
Original Revised Sheet No. 226.
Original Revised Sheet No. 227.
Original Revised Sheet No. 228.
Reserved Sheet Nos. 229–299.

Black Marlin further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7040 Filed 3–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–302–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

March 18, 2003.

Take notice that on March 14, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective April 15, 2003:

Thirteenth Revised Sheet No. 239.
First Revised Sheet No. 322A.
Third Revised Sheet No. 323.
Original Sheet No. 323A.
Third Revised Sheet No. 324.
Fourth Revised Sheet No. 325.
First Revised Sheet No. 325A.

CIG states that these tariff sheets revise the system-wide gas quality specifications to make them more flexible and to state certain area specific qualifications.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: March 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7045 Filed 3–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–023]

Colorado Interstate Gas Company; Notice of Negotiated Rates

March 18, 2003.

Take notice that on March 14, 2003, Colorado Interstate Gas Company (CIG) tendered for filing the following tariff sheets to its FERC Gas Tariff and a revised Firm Transportation Service Agreement (FTSA).

First Revised Volume No. 1.
First Revised Sheet No. 11C.
First Revised Sheet No. 11J.
First Revised Sheet No. 11K.
First Revised Sheet No. 11L.

CIG states that the tendered tariff sheets and FTSA are submitted to update or remove certain previously filed negotiated rate transactions. The tariff sheets and the FTSA are proposed to become effective on March 15, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: March 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7046 Filed 3–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG03–2–000]

Discovery Gas Transmission, LLC; Notice of Filing

March 17, 2003.

Take notice that on February 28, 2003, Discovery Gas Transmission, LLC filed standards of conduct under part 161 of the Commission's regulations, 18 CFR part 161.

Discovery Gas Transmission, LLC states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: April 1, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7039 Filed 3–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–301–000]

Eastern Shore Natural Gas Company; Notice of Tariff Filing

March 18, 2003.

Take notice that on March 12, 2003, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Forty-Fifth Revised Sheet No. 7 and Forty-Fifth Revised Sheet No. 8, effective April 1, 2003.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Transcontinental Gas Pipe Line Corporation (Transco) under its Rate Schedules GSS and LSS. The costs of the above referenced storage services comprises the rates and charges payable under ESNG's Rate Schedules GSS and LSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS and LSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: March 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7044 Filed 3–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–5–001]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

March 18, 2003.

Take notice that on March 13, 2003, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Third Revised Sheet No. 46 and Second Revised Sheet No. 55, with a proposed effective date of April 12, 2003.

National Fuel states that the filing is made to modify its Operating Protocol for EFT service to reflect the impact of the abandonment of Line C in Docket No. CP03–5–000, which occurred on March 1, 2003.

National Fuel states that copies of this filing were served upon its customers, interested state commissions and the parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 25, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7037 Filed 3–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–38–002]

Northern Natural Gas Company; Notice of Compliance Filing

March 18, 2003.

Take notice that on March 13, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet proposed to be effective on February 26, 2003:

Fifth Revised Volume No. 1.
9 Revised Sheet No. 4.
Original Volume No. 2.
33 Revised Sheet No. 1A.
First Revised Sheet No. 1407.

Northern states that the above referenced sheets represent cancellation of Rate Schedule X–82 from Northern's Original Volume No. 2 FERC Gas Tariff, and the associated deletions from the Table of Contents in Northern's Volume Nos. 1 and 2 tariffs.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 25, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7036 Filed 3–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–229–001]

Tennessee Gas Pipeline Company; Notice of Compliance Tariff Filing

March 18, 2003.

Take notice that on March 12, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Compliance Tariff Filing in the above-referenced docket.

Tennessee states that its filing revises the requirement for the posting of a notice of tap or connecting facilities subsidies on Tennessee's PASSKEY system. The submitted tariff provision would require posting of such a notice for thirty days after Tennessee enters into any such subsidy agreement. Tennessee requests that the Commission grant approval of the submitted tariff revision effective March 1, 2003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7043 Filed 3–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–535–006]

Texas Eastern Transmission, LP; Notice of Compliance Filing

March 18, 2003.

Take notice that on March 14, 2003, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the revised tariff sheets listed in Appendix A of the filing, effective March 4, 2003.

Texas Eastern states that the purpose of this filing is to comply with the Order on Compliance Filing issued by the Commission in Docket Nos. RP00–535–004 and RP03–194–000 on March 4, 2003 (March 4 Order) [102 FERC ¶61,262 (2003)].

Texas Eastern states that copies of its filing have been mailed to all affected customers of Texas Eastern and interested state commissions, as well as to all parties listed on the Official Service List compiled by the Secretary of the Commission in Docket No. RP00–535.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available

for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7042 Filed 3–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–513–004, et al.]

Sithe Edgar LLC, et al.; Electric Rate and Corporate Filings

March 18, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Sithe Edgar LLC., Sithe Framingham LLC., Sithe Mystic LLC., Sithe New Boston LLC., Sithe West Medway LLC., Sithe Wyman LLC., AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., and Sterling Power Partners, L.P.

[Docket No. ER01–513–004]

Take notice that on March 12, 2003, Sithe Edgar LLC, Sithe Framingham LLC, Sithe Mystic LLC, Sithe New Boston LLC, Sithe West Medway LLC, Sithe Wyman LLC, AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P., (the Project Companies) submitted revised tariff sheets to conform the rate schedule designations with the requirements of Order No. 614, and to reflect the changes in ownership and the changes in names of certain of these entities.

Comment Date: April 2, 2003.

2. Virginia Electric and Power Company

[Docket No. ER03–383–002]

Take notice that on March 14, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a First Substitute First Revised Generator Interconnection and Operating Agreement (Revised Interconnection Agreement) with Old Dominion Electric Cooperative (ODEC) revising certain provisions.

Dominion Virginia Power respectfully requests that the Commission allow the Revised Interconnection Agreement to become effective February 1, 2003, as previously requested.

Virginia Electric and Power Company states that copies of the filing were served upon ODEC and the Virginia State Corporation Commission.

Comment Date: April 4, 2003.

3. Oklahoma Gas & Electric Company

[Docket No. ER03–480–001]

Take notice that on March 14, 2003, Oklahoma Gas & Electric Company (OGE), submitted for filing, cost support for the charges outlined in the Delivery Point and Transmission Interconnection Agreement (Agreement) between OGE and the City of Paris, Arkansas filed on January 31, 2003. In addition, OGE provided further background regarding the Agreement.

Comment Date: April 4, 2003]

4. Virginia Electric and Power Company

[Docket No. ER03–554–001]

Take notice that on March 14, 2003, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing a Substitute Generator Interconnection and Operating Agreement between Dominion Virginia Power and Industrial Power Generating Corporation (Ingenco) revising certain provisions.

Dominion Virginia Power requests that the Commission waive its notice of filing requirements and accept this filing to make the Interconnection Agreement effective on February 25, 2003, as previously requested.

Dominion Virginia Power states that copies of the filing were served upon Ingenco and the Virginia State Corporation Commission.

Comment Date: April 4, 2003.

5. Wisconsin Public Service Corporation

[Docket No. ER03–612–000]

Take notice that on March 12, 2003, Wisconsin Public Service Corporation (WPSC) tendered for filing Third Revised Service Agreement No. 11 (Revised Service Agreement) between WPSC and Upper Peninsula Power Company (UPPCo) under WPSC's FERC Electric Tariff, Third Revised Volume No. 1.

WPSC requests that the Commission allow the Service Agreement to become effective as of May 12, 2003, which is 60 days after filing.

WPSC states that a copy of the filing was served upon UPPCo , the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

Comment Date: April 2, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7038 Filed 3–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Proposed Rate Adjustment, Public Forum, and Opportunities for Public Review and Comment for Cumberland System of Projects

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of proposed rates.

SUMMARY: Southeastern Power Administration (Southeastern) proposes to replace Rate Schedules SJ–1–A, CBR–1–D, CSI–1–D, CK–1–D, CC–1–E, CM–1–D, CEK–1–D, and CTV–1–D applicable to the sale of power from the Cumberland System of Projects and seeks approval of Rate Schedules SJ–1–B, CBR–1–E, CSI–1–E, CK–1–E, CC–1–F, CM–1–E, CEK–1–E, and CTV–1–E. The new rate schedules are to be effective for a 5-year period, October 1, 2003, through September 30, 2008. Additionally, opportunities will be available for interested persons to review the present rates, the proposed rates and supporting studies, to participate in a forum and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before June 23, 2003. A public information and comment forum will be held in Nashville, Tennessee on May 1, 2003, at 10 a.m. Persons desiring to speak at a forum should notify Southeastern at least three days before the forum is scheduled, so that a list of forum participants can be prepared. Others may speak if time permits.

ADDRESSES: Written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia, 30635–6711. The public information and comment forum will be held at the Doubletree Hotel, 315 Fourth Avenue, North, Nashville, TN, (615) 244–8200.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance and Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia, 30635–6711, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (FERC) by order issued March 17, 2000, in Docket No. EF99–3021–000, confirmed and approved Wholesale Power Rate Schedules SJ–1–A, CBR–1–D, CSI–1–D, CK–1–D, CC–1–E, CM–1–D, CEK–1–D, and CTV–1–D applicable to Cumberland System power for a period ending June 30, 2004. On May 12, 2000, FERC issued an order granting rehearing for further consideration. On June 15, 2000, FERC issued an order denying rehearing.

Discussion: Existing rate schedules are predicated upon a May 1999 repayment study and other supporting data contained in FERC Docket No. EF99–3021–000. The current repayment study, dated March 2003, shows that existing rates are not adequate to recover all costs required by present repayment criteria.

A revised repayment study with a revenue increase of $8,063,000 over the current repayment study demonstrates that rates would be adequate to meet repayment criteria. The additional revenue requirement amounts to a 20 per cent increase in revenues. Existing rates have been in effect since July 1, 1999. The Cumberland System region has incurred a severe drought since that time. This has impacted repayment in two ways. First, revenues have been reduced because Southeastern has had less energy available for sale. Second, expenses have increased because it has been necessary for Southeastern to purchase replacement energy to meet its minimum energy obligations.

The Corps of Engineers has provided Southeastern with a plan of capital expenditures necessary to rehabilitate the projects in the Cumberland System. These costs are included in the proposed rates. It is proposed that the revised rate schedules contain the following unit rates:

CUMBERLAND SYSTEM RATES

TVA Rate Schedule:	
Capacity	$2.04 per kw/ month.
Additional Energy	9.313 mills per kwh.
Outside Preference Customers Rate Schedule (Excluding Customers served through Carolina Power & Light Company):	
Capacity	$3.506 per kw/ month.
Additional Energy	9.313 mills per kwh.
Customers Served through Carolina Power & Light Company, Western Division	
Capacity	$3.991 per kw/ month.
Transmission	$1.2493 per kw/ month.
Monongahela Power Company:	
Energy	The lower of 39.2 mills or Monongahela Power Company's avoided cost.

The referenced repayment studies are available for examination at 1166 Athens Tech Road, Elberton, Georgia 30635–6711. Proposed Rate Schedules SJ–1–B, CBR–1–E, CSI–1–E, CK–1–E, CC–1–F, CM–1–E, CEK–1–E, and CTV–1–E are also available.

Dated: March 6, 2003.

Charles A. Borchardt,

Administrator.

[FR Doc. 03–7027 Filed 3–24–03; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, March 31, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 21, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–7283 Filed 3–21–03; 3:20 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Opportunity for Cosponsorship of the President's Challenge Physical Activity and Fitness Awards Program

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of the President's Council on Physical Fitness and Sports.

ACTION: Notice.

SUMMARY: The Office of the President's Council on Physical Fitness and Sports

(PCPFS) announces the opportunity for both non-Federal public and private sector entities to cosponsor activities related to the President's Challenge Physical Activity and Fitness Awards Program. Potential cosponsors must have a demonstrated interest in physical activity/fitness and/or sports and be willing to participate substantively in the cosponsored activity.

DATES: To receive consideration, a request to participate as a cosponsor must be received by the close of business on April 7, 2003, at the address listed. Requests will meet the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date. Private metered postmarks will not be acceptable as proof of timely mailing. Hand-delivered requests must be received by 5 p.m. Requests that are received after the deadline date will be returned to the sender.

ADDRESSES: Notifications of interest in a cosponsorship should be sent to Christine Spain, Director of Research, Planning and Special Projects, Office of the President's Council on Physical Fitness and Sports, Hubert H. Humphrey Building, Room 738-H, 200 Independence Avenue, SW., Washington, DC 20201; Ph: (202) 690–5148, Fax: (202) 690–5211. Notifications may also be submitted by electronic mail to *cspain@osophs.dhhs.gov*.

FOR FURTHER INFORMATION CONTACT: Christine Spain, Director of Research, Planning and Special Projects, Office of the President's Council on Physical Fitness and Sports, Hubert H. Humphrey Building, Room 738-H, 200 Independence Avenue, SW., Washington, DC 20201; Ph: (202) 690–5148, Fax: (202) 690–5211, Email: *cspain@osophs.dhhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The PCPFS was established by the President of the United States and operates under Executive Order No. 13265. The Secretary, through the Office of the PCPFS, receives recommendations from the Council and is developing and coordinating a national program to enhance physical activity and sports programs. Section (1)(b) of the Executive Order (EO) provides that the Office of the PCPFS will "enhance coordination of programs within and among the private and public sectors that promote the participation in, and safe and easy access to, physical activity/fitness and sports." In addition, the Office of the PCPFS is directed by section (1)(c) of the EO to "expand availability of quality information and guidance regarding physical activity and sports participation." Through the authority of section 1704 of the Public Health Service Act, the Office of PCPFS may support and "encourage others to support" activities related to health information and promotion, including the publication of information and securing the cooperation of communication media.

The purpose of the President's Challenge Physical Activity and Fitness Awards Program (the Program) is to motivate individuals six years and older to begin and continue an active lifestyle leading to enhanced physical fitness. It has reached over 70 million children and youth since its inception in 1966. The Program now focuses on three distinct program areas: physical fitness, health fitness and active lifestyle. Adults can now participate with their children or log activities by themselves to earn the Presidential Active Lifestyle Award (PALA) and the Presidential Adult Active Lifestyle Award (PAAL). Program materials are available in both English and Spanish.

Requirements of Cosponsorship

The Office of the PCPFS is seeking a cosponsor(s) to partner in ways that accord with its particular circumstances. For example, an entity might offer to cosponsor the following proposed Program activities with the Office of PCPFS:

- A nationwide advertising campaign or public service announcement (print, TV, or radio) that would alert all individuals, including diverse media markets, to the dangers of a sedentary lifestyle and the benefits of the Program;
- A nationwide sequence of activities that would celebrate National Physical Fitness and Sports Month (including sensitivity to diverse cultures and traditions) incorporating the Program activities;
- Educational clinics and/or development and distribution of physical activity publications incorporating the Program goals and activities along with a "Challenge Tool Kit;"
- A promotion of the Program by employers to their employees;
- A Program "Road Show" celebrating physical activity and fitness by providing demonstrations and coaching lessons for all ages, focusing on Program activities; and
- The translation of Program printed and website materials to encourage increased participation.

Availability of Funds

There are no Federal funds available for this cosponsorship.

Eligibility for Cosponsorship

To be eligible, a requester must: (1) Have a demonstrated interest and understanding of physical fitness and/or sports; (2) participate substantively in the cosponsored activity (not just provide funding or logistical support); (3) have an organizational or corporate mission that is not inconsistent with the public health and safety mission of the Department; and (4) agree to sign a cosponsorship agreement with the Office of the PCPFS which will set forth the details of the cosponsored activity.

Content of Request for Cosponsorship

Each request for cosponsorship should contain a description of: (1) The entity or organization; (2) its background in promoting physical activity/fitness or sports; (3) its proposed involvement in the cosponsored activity; and (4) plan for implementation with timeline.

Evaluation Criteria

The cosponsor(s) will be selected by the Office of the PCPFS using the following evaluation criteria:

(1) Requester's qualifications and capability to fulfill cosponsorship responsibilities;

(2) Requester's creativity for enhancing the medium for program messages; and

(3) Requester's potential for reaching underserved/special populations.

Dated: March 18, 2003.

CDR Penelope Royall,

Acting Executive Director, President's Council on Physical Fitness and Sports, Department of Health and Human Services.

[FR Doc. 03–7033 Filed 3–24–03; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: National Child Abuse and Neglect Data System.

OMB No.: 0980–0229.

Description: The Administration on Children, Youth and Families established the National Child Abuse and Neglect Data System (NCANDS) to respond to the 1988 and 1992 amendments (Pub. L. 100–294 and Pub. L. 102–295) to the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 *et seq.*), as amended, which called for the creation of a coordinated national data collection and analysis program, both universal and case specific in scope, to examine standardized data on false, unfounded, or unsubstantiated reports. In 1988, ACYF embarked on a collaborative effort with the State to develop a voluntary national data collection and analysis program, to collect, compile, and make available State child abuse and neglect reporting information from child protective services agencies in the 50 States, the District of Columbia, and the territories. The first request for annual data was in July 1991. Data collection has continued on an annual basis. The Children's Bureau is currently preparing the 12th annual report based on the NCANDS data.

In 1996, the Child Abuse Prevention and Treatment Act was amended by Public Law 104–235 to require that any State receiving the Basic State Grant work with the Secretary of the Department of Health and Human Services (HHS) to provide specific data on child maltreatment to the extent practicable. The legislation specified the following data elements.

(1) The number of children who were reported to the State during the year as abused or neglected.

(2) Of the number of children described in paragraph (1), the number with respect to whom such reports were—

(A) Substantiated;

(B) Unsubstantiated; or

(C) Determined to be false.

(3) Of the number of children described in paragraph (2)—

(A) The number that did not receive services during the year under the State program funded under this section or an equivalent State program;

(B) The number that received services during the year under the State program funded under this section or an equivalent State program; and

(C) The number that were removed from their families during the year by disposition of the case.

(4) The number of families that received preventive services from the State during the year.

(5) The number of deaths in the State during the year resulting from child abuse or neglect.

(6) Of the number of children described in paragraph (5), the number of such children who were in foster care.

(7) The number of child protective services workers responsible for the intake and screening of reports filed in the previous year.

(8) The agency response time with respect to each such report with respect to initial investigation of reports of child abuse or neglect.

(9) The response time with respect to the provision of services to families and children where an allegation of abuse or neglect has been made.

(10) The number of children protective services workers responsible for intake, assessment, and investigation of child abuse and neglect reports relative to the number of reports investigated in the previous year.

(11) The number of children reunited with their families or receiving family preservation services that, within five years, result in subsequent substantial reports of child abuse and neglect, including the death of a child.

(12) The number of children for whom individuals were appointed by the court to represent the best interests of such children and the average number of out-of-court contracts between such individuals and children.

States that receive the Basic State Grant meet this information requirement by submitting the NCANDS data.

The Children's Bureau proposes to continue collecting the NCANDS data through the two files of the Detailed Case Data Component, the Child File (the case-level component of NCANDS) and the Agency Field (additional aggregate data that cannot be collected at a case level). It also proposes to continue to accept the Summary Data Component Survey from States that are unable to submit the Child File for another 2 years (FFY 2003 and FFY 2004). Technical assistance will be provided to States so that all States can provide the Child File and Agency File for FFY 2005 data.

In order to improve the ability to integrate the data from NCANDS with the Adoption and Foster Care Analysis and Reporting system (AFCARS) data, the Children's Bureau proposes to change the reporting period for submitting NCANDS data from calendar year reporting to a Federal Fiscal Year (FFY) basis starting with FFY 2003. These data will be requested in December 2003 to be submitted by March 2004.

The Children's Bureau also proposes to modify the Child File in order to better meet the data needs of the Child and Family Services Review process and to provide additional data for the Children's Bureau. Two new fields, AFCARS ID and Family Structure, are being proposed. No changes to the Agency File or the Summary Data Component Survey are proposed.

The information collected by NCANDS will be used to understand better the experiences of children and families served by CPS and to guide policy and program development at the national and local levels. An annual report, entitled *Child Maltreatment*, will continue to be published. Data collected through the NCANDS will also be used to support the Department in responding to the requirements of the Government Performance and Results Act; publishing State data in the annual report to Congress on child welfare outcomes; and monitoring States through the Child and Family and Services Review process.

Respondents: State governments, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Detailed Case Data Component (Child Field and Agency File by 46 States for first two years)	52	1	113	5876
Summary Data Component Survey (by 6 States for only 2 years)	6	1	32	192
Estimated Total Annual Burden Hours				6068

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and

comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 19, 2003.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 03–7017 Filed 3–24–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is cancelling the meeting of the Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science scheduled for March 21, 2003. This meeting was announced in the **Federal Register** of February 12, 2003 (68 FR 7128).

FOR FURTHER INFORMATION CONTACT: Kathleen Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539.

Dated: March 19, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–7085 Filed 3–20–03; 3:48 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD13–03–011]

Draft Environmental Impact Statement; Proposed Bridge across the Lake Washington Ship Canal and Duwamish River in Seattle, Washington

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; notice of public meeting.

SUMMARY: The U.S. Coast Guard, as the lead federal agency, and in cooperation with the Seattle Monorail Project, intends to prepare and circulate a Draft Environmental Impact Statement (DEIS) for a proposed bridge across the Lake Washington Ship Canal and Duwamish River in Seattle, Washington. A Coast Guard bridge permit is required for approval of the location and plans for the bridge project before construction can begin. The U.S. Army Corps of Engineers will be a cooperating agency.

DATES: Comments must be received on or before April 24, 2003.

The public scoping meeting will be held on Wednesday, April 9, 2003 from 10 a.m. to 12 noon.

ADDRESSES: Comments may be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle WA 98174–1067.

The public scoping meeting will be held at the Seattle Monorail Project, 1904 3rd Avenue, Suite 525, Seattle WA 98101.

FOR FURTHER INFORMATION CONTACT: Mr. Austin Pratt, Bridge Administration, Telephone: (206) 220–7282.

SUPPLEMENTARY INFORMATION: This notice of intent is published as required by regulations of the Council on Environmental Quality at 40 CFR 1501.7.

The proposed project would construct a new, fixed monorail bridge over the Lake Washington Ship Canal near the existing Ballard Bridge (15th Avenue NW) in Seattle, Washington as part of the construction project for a 14-mile elevated monorail line along the route approved and required by the City of Seattle voters in the November 5, 2002, general election in Seattle, Washington.

The Seattle Monorail Project has already conducted a number of state scoping meetings with the public and affected federal, state, regional and local agencies pursuant to the Washington State Environmental Policy Act. The comments from that scoping process will be available to the Coast Guard, in addition to the comments from agencies and the public submitted during the Coast Guard's scoping process. Consultation with federal resource agencies including National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service will be conducted pursuant to the Endangered Species Act. Consultation with the Washington State Historic Preservation Officer will be conducted pursuant to section 106 of the National Historical Preservation Act.

The Coast Guard intends to enter into an agreement with the Seattle Monorail Project to produce and issue a joint EIS document that satisfies the requirements of both the National Environmental Policy Act and the Washington State Environmental Policy Act.

Alternatives will include no action and alternatives that comply with the purpose and need for the Green Line route as set out in the Seattle Popular Monorail Plan specified by the Seattle voters. Copies of the Seattle Popular Monorail Plan and additional information on the proposed Green Line route are available from the Seattle Monorail Project Web site at *http://www.elevated.org.*

Significant issues to be evaluated include threatened and endangered species, and critical habitat, and impacts on historic properties and navigation.

A public scoping meeting will be held on Wednesday, April 9, 2003 from 10 a.m. to 12 noon at the Seattle Monorail Project, 1904 3rd Avenue, Suite 525, Seattle WA 98101. Interested and affected parties are invited to attend. Written comments are invited from all interested parties to assure that all significant issues are identified and that the full range of alternatives and impacts of the proposed project are addressed. A public hearing will be held after the Draft EIS is issued for public and agency review and comment.

Dated: March 7, 2003.

Erroll Brown,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 03–7077 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–03–1420–BJ]

Montana: Filing of Plat of Amended Protraction Diagram

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plat of amended protraction diagram.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of the amended protraction diagram of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert L. Brockie, Cadastral Surveyor, Branch of Cadastral Surveyor, Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5125 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: The amended protraction diagram was prepared at the request of the U.S. Forest Service and was necessary to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center. The lands for the prepared amended protraction diagram are:

Principal Meridian, Montana

Tps. 8, 9, and 10 S., Rs. 2, 3, 4, 5, 6, and 7 E.

The plat, representing the Amended Protraction Diagram 2 Index of unsurveyed Townships 8, 9, and 10 South, Ranges 2, 3, 4, 5, 6, and 7 East, Principal Meridian, Montana, was accepted March 11, 2003.

T. 8 S., R. 7 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 8 South, Range 7 East, Principal Meridian, Montana, was accepted August 2, 2002.

T. 9 S., R. 2 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 9 South, Range 2 East, Principal Meridian, Montana, was accepted August 2, 2002.

T. 9 S., R. 4 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 9 South, Range 4 East, Principal Meridian, Montana, was accepted March 11, 2003.

T. 9 S., R. 5 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 9 South, Range 5 East, Principal Meridian, Montana, was accepted August 2, 2002.

T. 9 S., R. 6 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 9 South, Range 6 East, Principal Meridian, Montana, was accepted August 2, 2002.

T. 9 S., R. 7 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 9 South, Range 7 East, Principal Meridian, Montana, was accepted August 2, 2002.

T. 10 S., R. 2 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 10 South, Range 2 East, Principal Meridian, Montana, was accepted August 2, 2002.

T. 10 S., R. 3 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 10 South, Range 3 East, Principal Meridian, Montana, was accepted August 2, 2002.

T. 10 S., R. 4 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 10 South, Range 4 East, Principal Meridian, Montana, was accepted August 2, 2002.

T. 10 S., R. 5 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 10 South, Range 5 East, Principal Meridian, Montana, was accepted March 11, 2003.

We will place a copy of the plat of the amended protraction diagram we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this amended protraction diagram, as shown on this plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat of the amended protraction diagram until the day after we have accepted or dismissed all protests and it becomes final, including decisions or appeals.

Dated: March 17, 2003.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 03–6991 Filed 3–24–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (1010–0049).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, subpart B, "Exploration and Development and Production Plans."

DATES: Submit written comments by May 27, 2003.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the address is: *rules.comments@mms.gov.* Reference "Information Collection 1010–0049" in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations and forms that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart B, Exploration and Development and Production Plans.

OMB Control Number: 1010–0049.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Sections 11 and 25 of the amended OCS Lands Act require the holders of OCS oil and gas and sulphur leases to submit exploration plans (EPs) and development and production plans (DPPs) for approval before starting these activities. The implementing regulations and associated information collection

requirements are contained in 30 CFR 250, subpart B, Exploration and Development and Production Plans. In addition, MMS has issued Notices to Lessees and Operators (NTLs) that provide supplementary guidance and procedures as applicable to each Region or nationally. These NTLs address the various surveys, reports, plans (including deep water operations plans and conservation information), etc., that are necessary for MMS to approve the exploration or development and production activities.

With this submission, we are requesting renewal of the currently approved information collection requirements of subpart B, and related NTLs, and are revising form MMS–137, OCS Plan Information Form. The revised form has been redesigned and includes additional information on schedule and description of proposed activities and associated anchors with no change to the burden.

The MMS engineers, geologists, geophysicists, and environmental scientists use the information collected under subpart B, and related NTLs, to analyze and evaluate the planned operations to ensure that they will not adversely affect the marine, coastal, or human environment and that they conserve the resources of the OCS. It would be impossible for the Regional Supervisor to make an informed decision on whether to approve the proposed plans, or whether modifications are necessary, without the analysis and evaluation of the required information. The affected States also review the information collected for consistency with approved Coastal Zone Management plans.

We will protect information respondents submit that is considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and 30 CFR 250.196. No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil, gas, and sulphur lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting and recordkeeping burden for this collection is 257,470 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart B and related NTLs	Reporting and recordkeeping requirement	Average burden (hours)
201	Notify MMS and others of preliminary activities and submit follow-up information	10
202	Submit conservation information documents.	300
203	Submit initial exploration plan, including surveys, reports, studies, GOM Region forms MMS–137, MMS–138, MMS–139, etc., including notification requirements.	580
203(i), (j), (k), (l), (n), (q)	Submit revised/modified exploration plan, including surveys, reports, studies, departures, etc.	80
203(o); 204(s)	Conduct surveys or monitoring programs and submit results; form MMS–141	2
203(p); 204(t)	Submit Application for Permit to Drill. (Burden covered under 1010–0044.)	0
204	Submit initial development and production plan (or DOCD used in western GOM), including surveys, reports, studies, GOM Region forms MMS–137, MMS–138, MMS–139, etc., including notification requirements.	580
204	Submit deepwater operations plans for projects in GOM water depths greater than 1,000 feet and projects utilizing subsea production technology.	580
204(k)	Submit preliminary plans for tracts in vicinity of a DPP that requires NEPA procedures	2
204(l), (m), (n), (o), (q), (u)	Submit revised/modified development and production plan (or DOCD), including surveys, reports, studies, departures, etc.	82
250.200–250.204	General departure and alternative compliance requests not specifically covered elsewhere in subpart B.	1
Supplemental NTLs	Retain original copies of surveys, studies, reports, etc. (Note: Respondents would retain these as part of usual and customary business activities. The burden is to make them available to MMS if needed.)	2

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no non-hour cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *".

Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: March 14, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–7008 Filed 3–24–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Alaska Region, Chukchi Sea/Hope Basin

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Call for information and nominations (Call).

SUMMARY: The Secretary's decision to consider offering the Chukchi Sea/Hope Basin planning area in the OCS Oil and Gas Leasing Program for 2002–2007 provides for an 18-month "special-interest" process beginning with publication of this Call. Based on the information and specific nominations received as a result of this Call, a decision will be made whether to proceed with a sale.

DATES: Nominations and comments on the Call must be received no later than 90 days after publication of this document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Please call Tom Warren at (907) 271–6691 in MMS's Alaska OCS Region.

SUMMARY INFORMATION: The objective of this "special-interest" leasing option is to foster exploration in a frontier OCS area of potential, but high economic cost, without investment of the considerable time and effort required for holding a typical lease sale. The general approach is to query industry regarding the level of interest in proceeding with a sale in the Chukchi Sea/Hope Basin where we would expect to offer focused areas of specific interest for exploration and to request nominations of such areas. However, we will proceed based on the comments and information we do receive. The lease sale is proposed to pursue the high resource potential of the Chukchi Sea area in conjunction with potential natural gas resources that may extend into the adjacent Hope Basin area. Comments are also being requested from the general public on this special-interest leasing process, including the terms and conditions of a sale. The MMS will consider all comments and nominations in the decision on whether and where within the Chukchi Sea/Hope Basin to proceed with leasing and on the terms and conditions of a lease sale proposal. A decision to offer a nominated area for leasing will be conditioned on an informal commitment from industry to explore the area leased within a specific time period.

This Call does not indicate a preliminary decision to lease in the area described below. If MMS decides to proceed with the sale process, MMS will make the final decision on the specific areas for possible leasing at a later date in the presale process and in compliance with the 5-year program and with applicable laws including all requirements of the National Environmental Policy Act (NEPA) and OCS Lands Act (OCSLA). The MMS may adjust the dimensions of a nominated area after discussions with the nominating company.

Call for Information and Nominations

1. Authority

This Call is published pursuant to the OCSLA, as amended (43 U.S.C. 1331–1356, (1994)), and the regulations issued thereunder (30 CFR part 256 and 30 CFR part 260); and in accordance with the OCS Oil and Gas Leasing Program 2002–2007, approved June 27, 2002.

2. Purpose of Call

The purpose of the Call is to gather preliminary information, to request nomination of specific areas of interest to industry, and to request comments on the terms and conditions of offering these special interest lands. The Call also serves to initiate public outreach to assist in preparation of the NEPA analysis for this proposal. This proposal is in keeping with section 102(9) of the OCSLA Amendments of 1978, which states as a purpose of the statute, "to insure that the extent of oil and natural gas resources of the Outer Continental Shelf is assessed at the earliest practicable time." The objective of the "special-interest" leasing process is to encourage exploration in a frontier OCS area for the discovery of oil and gas. This area might contain natural gas for potential use in local communities, as well as oil to meet national energy needs. The sale would offer for lease both oil and gas.

Comments, information, and nominations on oil and gas leasing, exploration, and development and production within the Chukchi Sea/Hope Basin are sought from all interested parties. Comments are also being sought on the terms, conditions, and economic incentives of a sale in the Chukchi Sea/Hope Basin. Industry and other interested parties are strongly encouraged to contact the Alaska OCS Region with questions or to discuss interest in the area. This early planning and consultation step is particularly important to this special interest process. The MMS will base its decision on whether to proceed with the presale process and the terms and conditions of a sale on the nominations and other information received in response to this Call. This process will ensure a decision that considers the concerns of all respondents in future decisions in this leasing process pursuant to the OCSLA and regulations at 30 CFR parts 256 and 30 CFR part 260. Commenters are also encouraged to submit comments and suggestions on the "special-interest" leasing process in general.

This Call is being issued in accordance with the OCS Oil and Gas Leasing Program 2002–2007, approved June 27, 2002. The program offers two sales in the Chukchi Sea/Hope Basin during the 5-year program. If no interest is expressed in response to this first Call, MMS will defer the sale for one year and reissue the Call the following year. This process will continue throughout the 5-year program until there is sufficient interest to proceed

with the planning steps toward a sale. No more than two rounds of lease issuance in the Chukchi Sea/Hope Basin would occur during this 5-year program.

3. Description of Area

The area subject to this Call is located offshore the State of Alaska in the Chukchi Sea, between Cape Krusenstern and Point Barrow. The Chukchi Sea area consists of approximately 6,155 whole and partial blocks (about 13.8 million hectares or 34 million acres). It extends offshore from about 10 to approximately 200 miles in water depths from about 32 feet to approximately 230 feet. A small portion of the northeast corner of the area drops to approximately 3,000 feet. The Hope Basin area consists of approximately 1,243 whole and partial blocks (about 2.6 million hectares or 6.5 million acres). It extends offshore from about 3 to approximately 110 miles in water depths from about 32 feet to approximately 230 feet.

A page size map of the area accompanies this Notice. A large scale Call map showing the boundaries of the area on a block-by-block basis is available without charge from the Public Information Office at the address given below, or by telephone request at (907) 271–6438 or 1–800–764–2627. Copies of Official Protraction Diagrams (OPDs) are also available for $2 each.

Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302, *akwebmaster@mms.gov.*

4. Instructions on Call

The Call for Information map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, at the above address.

The Call map delineates the area that is the subject of this Call. Respondents are requested to indicate very specific areas of interest in and comment on the Federal acreage within the boundaries of the Call area that they wish to have included in a proposed sale in the Chukchi Sea/Hope Basin.

If you wish to comment, you may submit your comments by any one the following methods:

- You may mail comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302.
- Comments may be submitted directly from the Internet at *http://www.mms.gov/alaska.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: Comments on Call for Information and Nominations for Proposed 2004 Lease Sale in the Chukchi Sea/Hope Basin" and your name and return address in your Internet message.
- Finally, you may hand-deliver comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the rulemaking record, which we will honor to the extent allowable by law. Under certain circumstances we can withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

A. *Areas of Interest to the Oil and Gas Industry.* Industry must be candid and very specific regarding the areas they nominate if this process is to succeed. The purpose of this process is to identify focused areas where industry has a significant interest in exploration. Nominations covering large-scale areas will not be helpful in defining these areas.

Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Nominators are asked to submit a list of whole and partial blocks nominated (by OPD and block number) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information and will not be released to the public. The telephone number and name of a person to contact in the nominator's organization for additional information should be included in the response. This person will be contacted to set up a mutually agreeable time and place for a meeting with the Alaska OCS Regional Office to present their views regarding the company's nominations.

B. *Terms, Conditions, and Economic Incentives Pertaining to Lease Issuance.* Respondents are requested to comment on the terms, conditions, and economic incentives pertaining to lease issuance for any leases that may be issued as a result of a sale in the Chukchi Sea/Hope Basin. The MMS is aware of the lack of infrastructure and distance from shore to some of the blocks in this area and will consider these factors in designing any incentives. The following are being considered for use in this sale:

—Lease term of 10 years
—Submission of an exploration plan within 8 years of lease issuance
—Economic incentives structured similar in form to those contained in the Proposed Notice of Sale for Beaufort Sea Sale 186 (68 FR 8306, February 20, 2003). Incentives proposed for Beaufort Sea Sale 186 are:
—Royalty suspension volumes (RSV) for oil production (with possible consideration for gas)
—Subject to a price floor per barrel below which oil production that is royalty free does not count against the RSV
—Price ceiling per barrel above which production must bear full royalties

C. *Relation to Coastal Management Plans.* Comments also are sought on potential conflicts with approved local coastal management plans (CMP) that may result from the proposed sale and future OCS oil and gas activities. These comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Commenters are requested to list block numbers or outline the subject area on the large-scale Call map.

5. Use of Information From Call

Information submitted in response to this Call will be used for several purposes. We will use responses to:

—Determine whether to proceed with a competitive oil and gas lease sale in the Chukchi Sea/Hope Basin
—Identify specific areas of interest for oil and/or gas exploration and development
—Identify environmental effects and potential use conflicts
—Assist in the public outreach for the environmental analysis
—Develop possible alternatives to the proposed action
—Develop lease terms and conditions and mitigating measures
—Identify potential conflicts between oil and gas activities and the Alaska CMP

6. Existing Information

An extensive environmental, social, and economic studies program has been underway in the Alaska OCS Region since 1976, including studies in this area. The emphasis has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological and socio-cultural effects of oil and gas activities.

The MMS has had two past sales in the Chukchi Sea area. In May 1998, Sale 109 was held and resulted in 350 leases being issued. In August 1991, Sale 126 was held and resulted in 28 leases being issued. There were four exploratory wells drilled, but all have been permanently plugged and abandoned. All 378 leases have since been relinquished or have expired. For the Chukchi Sea Planning Area, it is estimated that undiscovered conventionally recoverable resources are 15.46 billion barrels of oil and 60.11 trillion cubic feet of gas. No lease sales have been held in the Hope Basin area. For the Hope Basin Planning Area, it is estimated that undiscovered conventionally recoverable resources are 0.09 billion barrels of oil and 3.38 trillion cubic feet of gas.

Information on the studies program, completed studies, and a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, by telephone request at (907) 271–6577, or by written request at the address stated under Description of Area. A request may also be made via the Alaska Region Web site at *akwebmaster@mms.gov.*

7. Tentative Schedule

If MMS receives specific nominations from industry in response to this Call and decides to proceed with the pre-sale process, the following is a list of tentative milestone dates applicable to a Chukchi Sea/Hope Basin sale in 2004:

	Tentative process milestones for proposed 2004 Chukchi Sea/Hope Basin Sale
Call published/public outreach initiated	March 2003.
Comments due on Call	June 2003.
Decision whether to proceed/Area Identification	July 2003.
NEPA analysis	January 2004.
Consistency Determination/Proposed Notice of Sale	April 2004.
Governor's Comments due	June 2004.
Final Notice of Sale published	August 2004.
Sale	September 2004.

Dated: March 19, 2003.

R.M. "Johnnie" Burton,

Director, Minerals Management Service.

[FR Doc. 03–7009 Filed 3–24–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Mangement Service

Outer Continental Shelf (OCS), Alaska Region, Norton Basin

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Call for information and nominations (Call).

SUMMARY: The Secretary's decision to consider offering the Norton Basin planning area in the OCS Oil and Gas Leasing Program for 2002–2007 provides for an 18-month "special-interest" process beginning with publication of this Call. Based on the information and specific nominations received as a result of this Call, a decision will be made whether to proceed with a sale.

DATES: Nominations and comments on the Call must be received no later than 90 days after publication of this document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Please call Tom Warren at (907) 271–6691 in MMS's Alaska OCS Region.

SUPPLEMENTARY INFORMATION: The objective of this "special-interest" leasing option is to foster exploration in a high-cost frontier OCS area remote from oil and gas infrastructure without investment of the considerable time and effort required for holding a typical lease sale. The general approach is to query industry regarding the level of interest in proceeding with a sale in the Norton Basin where we would expect to offer focused areas of specific interest for exploration and to request nominations of such areas. However, we will proceed based on the comments and information we do receive. Norton Basin may contain quantities of natural gas, which might be used for western Alaska communities if economically feasible. Comments are also being requested from the general public on this special-interest leasing process, including the terms and conditions of a sale. The MMS will consider all comments and nominations in the decision on whether and where within the Norton Basin to proceed with leasing and on the terms and conditions of a lease sale proposal. A decision to offer a nominated area for leasing will be conditioned on an informal commitment from industry to explore the area leased within a specific time period.

This is the second Call issued for the Norton Basin for this 5-year program. The first Call was published in the **Federal Register** on January 22, 2002. No interest was expressed; therefore, the process was stopped and deferred to this year. If no interest is expressed in response to this second Call, MMS will defer the sale for one year and reissue the Call the following year. This process will continue throughout the 5-year program until there is sufficient interest to proceed with the planning steps toward a sale. Only one round of lease issuance in Norton Basin would occur during this 5-year program.

This Call does not indicate a preliminary decision to lease in the area described below. If no interest is expressed, MMS will defer the sale for one year and reissue the Call the following year. If MMS decides to proceed with the sale process, MMS will make the final decision on the specific areas for possible leasing at a later date in the presale process and in compliance with the 5-year program and with applicable laws including all requirements of the National Environmental Policy Act (NEPA) and the OCS Lands Act (OCSLA). The MMS may adjust the dimensions of a nominated area after discussions with the nominating company(ies).

Call for Information and Nominations

1. Authority

This Call is published pursuant to the OCSLA, as amended (43 U.S.C. 1331–1356, (1994)), and the regulations issued thereunder (30 CFR part 256 and 30 CFR part 260); and in accordance with the OCS Oil and Gas Leasing Program 2002–2007, approved June 27, 2002.

2. Purpose of Call

The purpose of the Call is to gather preliminary information, to request nomination of specific areas of interest to industry, and to request comments on the terms and conditions of offering these special interest lands. The Call also serves to initiate public outreach to assist in preparation of the NEPA analysis for this proposal. This proposal is in keeping with section 102(9) of the OCSLA Amendments of 1978, which states as a purpose of the statute, "to insure that the extent of oil and natural gas resources of the OCS is assessed at the earliest practicable time." The objective of the "special-interest" leasing process is to encourage exploration in a frontier OCS area for the discovery of oil and gas. This area might contain natural gas for potential use in local communities. The sale would offer for lease both oil and gas.

Comments, information, and nominations on oil and gas leasing, exploration, and development and production within the Norton Basin are sought from all interested parties. Comments are also being sought on the terms, conditions, and economic incentives of a sale in the Norton Basin. Industry and other interested parties are strongly encouraged to contact the Alaska OCS Region with questions or to discuss interest in the area. This early planning and consultation step is particularly important to this special interest process. The MMS will base its decision on whether to proceed with the presale process and the terms and conditions of a sale on the nominations and other information received in response to this Call. This process will ensure a decision that considers the concerns of all respondents in future decisions in this leasing process pursuant to the OCSLA and regulations at 30 CFR part 256 and 30 CFR part 260. Commenters are also encouraged to submit comments and suggestions on the "special-interest" leasing process in general.

This Call is being issued in accordance with the OCS Oil and Gas Leasing Program 2002–2007, approved June 27, 2002. The program offers one sale in the Norton Basin during the 5-year program. This is the second Call issued for the Norton Basin Program Area. The first Call was published in the **Federal Register** on January 22, 2002, and no interest was expressed.

3. Description of Area

The area subject to this Call is located offshore the State of Alaska in the northern Bering Sea, west and south off the coast of the Seward Peninsula. It consists of approximately 4,742 whole and partial blocks (about 10.1 million hectares or 25 million acres). It extends offshore from about 3 to approximately 320 miles in water depths from about 25 feet to approximately 650 feet.

A page size map of the area accompanies this Notice. A large scale Call map showing the boundaries of the area on a block-by-block basis is available without charge from the Public Information Office at the address given below, or by telephone request at (907) 271–6438 or 1–800–764–2627. Copies of Official Protraction Diagrams (OPDs) are also available for $2 each. Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska, 99508–4302, *akwebmaster@mms.gov*.

4. Instructions on Call

The Call for Information map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, at the above address.

The Call map delineates the area that is the subject of this Call. Respondents are requested to indicate very specific areas of interest in and comment on the Federal acreage within the boundaries of the Call area that they wish to have included in a proposed sale in the Norton Basin.

If you wish to comment, you may submit your comments by any one the following methods:

- You may mail comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302.
- Comments may be submitted directly from the Internet at *http://www.mms.gov/alaska*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: Comments on Call for Information and Nominations for Proposed 2004 Lease Sale in Norton Basin" and your name and return address in your Internet message.

Finally, you may hand-deliver comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the rulemaking record, which we will honor to the extent allowable by law. Under certain circumstances we can withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

A. *Areas of Interest to the Oil and Gas Industry*. Industry must be candid and very specific regarding the areas they nominate if this process is to succeed. The purpose of this process is to identify and expect to offer only small, focused areas where industry has a significant interest in exploration. Nominations covering large-scale areas will not be helpful in defining these areas.

Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Nominators are asked to submit a list of whole and partial blocks nominated (by OPD and block number) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information and will not be released to the public. The telephone number and name of a person to contact in the nominator's organization for additional information should be included in the response. This person will be contacted to set up a mutually agreeable time and place for a meeting with the Alaska OCS Regional Office to present their views regarding the company's nominations.

B. *Terms, Conditions, and Economic Incentives Pertaining to Lease Issuance*. Respondents are requested to comment on the terms, conditions, and economic incentives pertaining to lease issuance for any leases that may be issued as a result of a sale in the Norton Basin. The MMS is aware of the lack of infrastructure and distance from shore to some of the blocks in this area and will consider these factors in designing any incentives. The following are being considered for use in this sale:

—Lease term of 10 years
—Submission of an exploration plan within 8 years of lease issuance
—Economic incentives structured similar in form to those contained in the Proposed Notice of Sale for Beaufort Sea Sale 186 (68 FR 8306, February 20, 2003).

Incentives proposed for Beaufort Sea Sale 186 are:

—Royalty suspension volumes (RSV) for oil production (with possible consideration for gas)
—Subject to a price floor per barrel below which oil production that is royalty free does not count against the RSV
—Price ceiling per barrel above which production must bear full royalties

C. *Relation to Coastal Management Plans*. Comments also are sought on potential conflicts with approved local coastal management plans (CMP) that may result from the proposed sale and future OCS oil and gas activities. These comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Commenters are requested to list block numbers or outline the subject area on the large-scale Call map.

5. Use of Information from Call

Information submitted in response to this Call will be used for several purposes. We will use responses to:

—Determine whether to proceed with a competitive oil and gas lease sale in Norton Basin
—Identify specific areas of interest for oil and/or gas exploration and development
—Identify environmental effects and potential use conflicts
—Assist in the public outreach for the environmental analysis
—Develop possible alternatives to the proposed action
—Develop lease terms and conditions and mitigating measures
—Identify potential conflicts between oil and gas activities and the Alaska CMP

6. Existing Information

An extensive environmental, social, and economic studies program has been underway in the Alaska OCS Region since 1976, including studies in this area. The emphasis has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological and socio-cultural effects of oil and gas activities.

The MMS has had one past sale in the Norton Basin area. In March 1983, Sale 57 was held and resulted in 59 leases being issued. There were six exploratory wells drilled, but all have been permanently plugged and abandoned. All 59 leases have since been relinquished or have expired. For the Norton Basin Planning Area, it is estimated that undiscovered conventionally recoverable resources are 0.05 billion barrels of oil and 2.71 trillion cubic feet of gas.

Information on the studies program, completed studies, and a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, by telephone request at (907) 271–6577, or by written request at the address stated under Description of Area. A request may also be made via the Alaska Region Web site at *akwebmaster@mms.gov*.

7. Tentative Schedule

If MMS receives specific nominations from industry in response to this Call and decides to proceed with the pre-sale process, the following is a list of tentative milestone dates applicable to a Norton Basin sale in 2004:

	Tentative Process milestones for proposed 2004 Norton Basin Sale
Call published/public outreach initiated.	March 2003.
Comments due on Call	June 2003.
Decision whether to proceed/Area Identification.	July 2003.
NEPA analysis	January 2004.
Consistency Determination/Proposed Notice of Sale.	April 2004.
Governor's Comments due	June 2004.
Final Notice of Sale published.	August 2004.
Sale	September 2004.

Dated: March 19, 2003.

R. M. "Johnnie" Burton,

Director, Minerals Management Service.

[FR Doc. 03–7010 Filed 3–24–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 18, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E-Mail: *King.Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Claims and Payment Activities.

OMB Number: 1205–0010.

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Frequency: Monthly.

Number of Respondents: 53.

Report	Annual responses	Average response time (hours)	Annual burden hours
Regular Report	636	2	1,272
Extended Benefits Report	12	1.75	21
Reported Time Compensation Report	66	1	66
Total	714		1,359

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Claims and Payment Activities report (Form ETA–5159) provides important program information on claims taking and benefit payment activities under state/federal unemployment insurance laws. These data are needed for budget preparation and control, program planning and evaluation, personnel assignment, actuarial and program research, and for accounting to Congress and the public.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 03–7012 Filed 3–24–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the Federal Advisory Council on Occupational Safety and Health (FACOSH), established under Section 1–5 of Executive Order 12196 on February 6, 1980, published in the **Federal Register**, February 27, 1980 (45 FR 1279).

FACOSH will meet on April 10, 2003, starting at 1:30 p.m., in Room N–3437 A/B/C/ of the Department of Labor Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. The meeting will adjourn at approximately 4:30 p.m., and will be open to the public. All persons wishing to attend this meeting must exhibit photo identification to security personnel upon entering the building.

Agenda will include:

1. Call to Order
2. Old Business
   - Update on Federal Recordkeeping proposed change
   - 58th Annual Federal Safety and Health Awards Ceremony and Training
   - Update on Federal Executive Institute Training Initiative
   - SHARE '04 Initiative
   - Federal Worker 2000 Initiative
   - Webpage for FACOSH and FSHC
3. New business
4. Adjournment

Written data, views, or comments may be submitted, preferably with 20 copies, to the Office of Federal Agency Programs at the address provided below. All such submissions, received by April 2, 2003, will be provided to the Federal Advisory Council members and will be included in the meeting record. Anyone wishing to make an oral presentation should notify the Office of Federal Agency Programs by the close of business on April 7, 2003. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Persons who request the opportunity to address the Federal Advisory Council may be allowed to speak, as time permits, at the discretion of the Chairperson. Individuals with disabilities who wish to attend the meeting should contact Tom Marple at the address indicated below, if special accommodations are needed.

For additional information, please contact Thomas K. Marple, Director, Office of Federal Agency Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3622, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 693–2122. An official record of the meeting will be available for public inspection at the Office of Federal Agency Programs.

Signed at Washington, DC, this 18 day of March 2003.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 03–7011 Filed 3–24–03; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–89]

Intertek Testing Services NA, Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of Intertek Testing Services NA, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on March 25, 2003, and, unless modified in accordance with 29 CFR 1910.7, continues in effect while ITSNA remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Sherrey Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of Intertek Testing Services NA, Inc. (ITSNA), as a Nationally Recognized Testing Laboratory (NRTL). ITSNA's expansion covers the use of an additional testing site and additional test standards. OSHA's current scope of recognition for ITSNA may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/its.html*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in section 1910.7 of title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

ITSNA submitted its application to expand its recognition to use additional test standards and an additional site located in Lexington, Kentucky, on February 16, 2001 (*see* Exhibit 39). The NRTL Program staff performed the on-site review (assessment) of the facility on October 15–17, 2001, and provided a positive recommendation on the expansion in their report (*see* Exhibit 40). However, the Agency delayed processing of the applications pending resolution of certain findings made by OSHA during its audits of other ITSNA sites already recognized. The NRTL Program staff obtained information in October 2002, which resolved these findings, and determined that OSHA could proceed with processing the applications. OSHA published the notice of its preliminary findings on the expansion request in the **Federal Register** on January 6, 2003 (68 FR 583). The notice requested submission of any public comments by January 21, 2003. OSHA received one comment from the American National Standards Institute (ANSI), which corrected our reference to a link on their web site that provides information about ANSI-approved standards. That correction is reflected in this current notice.

The previous notice published by OSHA for ITSNA's recognition covered an expansion of recognition to include an additional site, which became effective on January 28, 2002 (67 FR 3912).

The current addresses of the ITSNA facilities already recognized by OSHA are:

ITSNA Antioch, 2200 Wymore Way, Antioch, California 94509;
ITSNA Atlanta, 1950 Evergreen Blvd., Suite 100, Duluth, Georgia 30096;
ITSNA Boxborough, 70 Codman Hill Road, Boxborough, Massachusetts 01719;
ITSNA Cortland, 3933 U.S. Route 11, Cortland, New York 13045;
ITSNA Los Angeles, 27611 LaPaz Road, Suite C, Laguna Niguel, California 92677;
ITSNA Madison, 8431 Murphy Drive, Middleton, Wisconsin 53562;
ITSNA Minneapolis, 7250 Hudson Blvd., Suite 100, Oakdale, Minnesota 55128;
ITSNA San Francisco, 1365 Adams Court, Menlo Park, CA 94025;
ITSNA Sweden AB, Box 1103, S–164 #22, Kista, Stockholm, Sweden;
ITSNA Totowa, 40 Commerce Way, Unit B, Totowa, New Jersey 07512;
ITSNA Vancouver, 211 Schoolhouse Street, Coquitlam, British Columbia, V3K 4X9 Canada;
ITSNA Hong Kong, 2/F., Garment Centre, 576 Castle Peak Road, Kowloon, Hong Kong;
ITSNA Taiwan, 14/F., Huei Fung Building, 27, Chung Shan North Road, Sec. 3, Taipei 10451, Taiwan.

The current address of the additional ITSNA testing site covered by the expansion is:

ITSNA Lexington, 731 Enterprise Drive, Lexington, Kentucky 40510.

Existing Conditions

Currently, OSHA imposes conditions listed at the end of this notice on its recognition of ITSNA. These conditions would apply also to the recognition of the Lexington site. As mentioned in previous notices, these conditions apply solely to ITSNA's NRTL operations and are in addition to any other condition that OSHA normally imposes in its recognition of any organization as an NRTL.

Final Decision and Order

The NRTL Program staff has examined the applications, the assessor's report, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that Intertek Testing Services NA, Inc., has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include the additional standards and the additional site subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of ITSNA, subject to these limitations and conditions.

Limitations

Recognition of Facilities

The application contains sufficient information demonstrating the testing capabilities of the Lexington, Kentucky, site listed above. Also, the application information shows that Lexington is wholly-owned and operated by ITSNA. OSHA's recognition of the additional site would not be limited to any particular test standards. However, recognition of this site would be limited to performing product testing only to the test standards for which the site has the proper capability and programs, and for which OSHA has recognized ITSNA. This treatment is consistent with the recognition that OSHA has granted to other NRTLs that operate multiple sites. The Agency would not recognize the site to issue certifications under ITSNA's operations as an NRTL. Currently, ITSNA issues such certifications only at specific sites listed above, and OSHA must review and accept the Lexington site before ITSNA issues certifications there. In addition, OSHA would permit the site to use of all eight of the "supplemental" programs. OSHA has already recognized ITSNA for these programs and, as a result, we are not listing them again in this notice.

OSHA developed the programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under the programs only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Expansion for Additional Standards

OSHA limits the expansion to testing and certification of products for demonstration of conformance to the following 41 test standards, and OSHA has determined the standards are "appropriate," within the meaning of 29 CFR 1910.7(c).

ANSI A17.5 Elevators and Escalator Electrical Equipment;
ANSI C37.23* Metal Enclosed Bus and Calculating Losses in Isolated-Phase Bus;
ANSI ICS 2 Industrial Control Devices, Controllers and Assemblies;
ANSI S82.02.02 Electrical Equipment for Measurement, Control, and Laboratory Use;
ANSI Z8.1 Commercial Laundry and Dry-cleaning Operations-Safety Requirements;
ANSI Z21.1b Household Cooking Gas Appliances;
ANSI Z21.19 Refrigerators Using Gas Fuel;
ANSI Z21.22 Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply Systems;
ANSI Z21.41 Quick-Disconnect Devices for Use with Gas Fuel;
ANSI Z21.42 Gas-Fired Illuminating Appliances;
ANSI Z21.45 Flexible Connectors of Other Than All-Metal Construction for Gas Appliances;
ANSI Z21.54 Gas Hose Connectors for Portable Outdoor Gas-Fired Appliances;

ANSI Z21.61 Gas-Fired Toilets;
ANSI Z21.66 Automatic Vent Damper Devices for Use With Gas-Fired Appliances Electrically Operated;
ANSI Z21.69 Connectors for Movable Gas Appliances;
ANSI Z21.73 Portable Type Gas Camp Lights;
ANSI Z21.74 Portable Refrigerators for Use With HD–5 Propane Gas;
ANSI Z21.76 Gas-Fired Unvented Catalytic Room Heaters for Use With Liquefied Petroleum (LP) Gases;
UL 14B Sliding Hardware for Standard, Horizontally Mounted Tin-Clad Fire Doors;
UL 14C Swinging Hardware for Standard Tin-Clad Fire Doors Mounted Singly or In Pairs;
UL 142 Steel Aboveground Tanks for Flammable and Combustible Liquids;
UL 147 Hand-Held Torches for Fuel Gases;
UL 155 Tests of Fire Resistance of Vault and File Room Doors;
UL 305 Panic Hardware;
UL 331 Strainers for Flammable Fluids and Anhydrous Ammonia;
UL 555 Fire Dampers*;
UL 636 Holdup Alarm Units and Systems;
UL 746A Polymeric Materials—Short Term Property Evaluations;
UL 746B Polymeric Materials—Long Term Property Evaluations;
UL 746E Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed Wiring Boards;
UL 896 Oil-Burning Stoves;
UL 1010 Receptacle-Plug Combinations for Use in Hazardous (Classified) Locations;
UL 1034 Burglary Resistant Electric Locking Mechanisms;
UL 1088 Temporary Lighting Strings;
UL 1241 Junction Boxes for Swimming Pool Lighting Fixtures;
UL 1242 Intermediate Metal Conduit;
UL 1610 Central-Station Burglar-Alarm Units;
UL 1637 Home Health Care Signaling Equipment;
UL 2200 Stationary Engine Generator Assemblies;
FMRC3260 Flame Radiation Detectors for Automatic Fire Alarm Signaling;
UL 60335–1 Safety of Household and Similar Electrical Appliances, Part 1: General Requirements.

*This standard is approved for equipment or materials intended for use in commercial and industrial power system applications. This standard is not approved for equipment or materials intended for use in installations that are excluded from the provisions of subpart S in 29 CFR 1910 by 1910.302(a)(2).

Many of the test standards listed above are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we often use the designation of the standards developing organization (*e.g.*, UL 1012) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 1012). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact "NSSN" (*http://www.nssn.org*), an organization partially sponsored by ANSI, to find out whether or not a test standard is currently ANSI-approved.

Conditions

ITSNA must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

ITSNA may perform safety testing for hazardous location products only at the specific ITSNA sites that OSHA has recognized, and that have been pre-qualified for such testing by the ITSNA Chief Engineer. In addition, all safety test reports for hazardous location products must undergo a documented review and approval at the Cortland testing facility by a test engineer qualified in hazardous location safety testing, prior to ITSNA's initial or continued authorization of the certifications covered by these reports.

ITSNA may not test and certify any products for a client that is a manufacturer or vendor that is either owned in excess of 2% by ITSLtd or affiliated organizationally with ITSNA.

OSHA must be allowed access to ITSNA's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ITSNA has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ITSNA must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ITSNA agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ITSNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

ITSNA will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

ITSNA will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed in Washington, DC, this 25th day of February, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–7014 Filed 3–24–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL4–93]

Underwriters Laboratories Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the applications of Underwriters Laboratories Inc. for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on March 25, 2003, and, unless modified in accordance with 29 CFR 1910.7, continues in effect while UL remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Sherrey Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of Underwriters Laboratories Inc. (UL) as a Nationally Recognized Testing Laboratory (NRTL). UL's expansion covers the use of three additional testing sites. OSHA's current scope of recognition for UL may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/ul.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in section 1910.7 of title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

UL submitted an application, dated November 8, 2001 (*see* Exhibit 27), to expand its recognition to include a site in Seoul, Korea, and another application, dated March 15, 2002 (*see* Exhibit 27–1), to expand its recognition to include a site in Neu-Isenburg, Germany, and a site in Veenendaal, Netherlands. The NRTL Program staff performed an on-site review (assessment) of the Korea facility on March 11–14, 2002. In the on-site review report, dated May 23, 2002 (*see* Exhibit 28), the program staff recommended a "positive finding," which means a positive recommendation on the recognition to the Assistant Secretary. However, the Agency delayed consideration of the application in order to combine it for processing purposes with the application that had by then been received for the two additional sites listed above. The NRTL Program staff performed an on-site review (assessment) of the Netherlands facility on June 11–14, 2002, and an on-site review (assessment) of the Germany facility on June 18–21, 2002. In each on-site review report, dated September 27 and 30, 2002 (see Exhibits 28 and 28–1), respectively, the program staff recommended a "positive finding." OSHA published the notice of its preliminary findings on the expansion request in the **Federal Register** on January 6, 2003 (68 FR 583). The notice requested submission of any public comments by January 21, 2003. OSHA did not receive any comments pertaining to the application.

The previous notice published by OSHA for UL's recognition covered a renewal and expansion of recognition, which became effective on May 8, 2002 (67 FR 30966).

The current addresses of the UL facilities (sites) already recognized by OSHA are:

Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.
Underwriters Laboratories Inc., 1285 Walt Whitman Road, Melville, Long Island, New York11747.
Underwriters Laboratories Inc., 1655 Scott Boulevard, Santa Clara, California 95050.
Underwriters Laboratories Inc., 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709.
Underwriters Laboratories Inc., 2600 NW. Lake Road, Camas, Washington, 98607.
UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor, 34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong.
UL International Services, Ltd., Taiwan Branch, 4th Floor, 260 Da-Yeh Road, Pei Tou DistrictTaipei City, Taiwan.
UL International Demko A/S, Lyskaer 8, P.O. Box 514, DK–2730, Herlev, Denmark.
Underwriters Laboratory International (U.K.) Ltd., Wonersh House, The Guildway, Old Portsmouth RoadGuildford, Surrey GU3 1LR, United Kingdom.
Underwriters Laboratory International Italia S.r.l., Via Archimede 42, 1–20041 Agrate Brianza, Milan, Italy. Testing facility: Z.I. Predda Niedda st. 18, I–07100, Sassari, Italy.
Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada MIR 3A9.
UL Japan Co., Ltd., Shimbashi Ekimae Bldg.—1 Gohkan, 4th floor, Room 402, 2–20–15 Shimbashi Minato Ku, Tokyo 105–0004, Japan.

The current addresses of the three additional UL sites covered by the expansion are:

UL Korea, Ltd., #805, Manhattan Building 36–2, Yeoui-dong, Yeoungdeungpo-gu, Seoul 150–010, Korea.
UL International Germany GmbH, Frankfurter Strasse 229, D–63263 Neu-Isenburg, Germany.
UL International (Netherlands) B.V., Landjuweel 52, NL–3905 PH Veenendaal, Netherlands.

Final Decision and Order

The NRTL Program staff has examined the applications, the assessor's reports, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that Underwriters Laboratories Inc. has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include the above additional sites subject to the limitation and conditions, listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of UL, subject to this limitation and these conditions.

Limitation

Recognition of Facilities

The applications contain sufficient information demonstrating the testing capabilities of the Korean, German, and Netherlands sites listed above. OSHA's recognition of the additional sites would not be limited to any particular test standards. However, recognition of these sites would be limited to performing product testing only to the test standards for which each site has the proper capability and programs, and for which OSHA has recognized UL. This treatment is consistent with the recognition that OSHA has granted to other NRTLs that operate multiple sites. In addition, OSHA would permit the sites to use all eight of the "supplemental" programs, although not all programs would necessarily be used in the near future. UL's scope of recognition already includes these programs.

OSHA developed the programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under the programs only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Conditions

UL must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to UL's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If UL has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

UL must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, UL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

UL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

UL will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

UL will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed in Washington, DC, this 25th day of February, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–7015 Filed 3–24–03; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting; Sunshine Act

TIME AND DATE: 2 p.m., Thursday, March 27, 2003.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests from Three (3) Federal Credit Unions to Convert to Community Charters.
2. *Proposed Rule:* Parts 702, 704, 712, and 723 of NCUA's Rules and Regulations, Member Business Loans.
3. *Final Rule:* Interpretive Ruling and Policy Statement (IRPS) 03–1, Section 701.1 of NCUA's Rules and Regulations, Amendments to NCUA's Chartering and Field of Membership Policies.

RECESS: 3:15 p.m.

TIME AND DATE: 3:30 p.m., Thursday, March 27, 2003.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Revision to Delegations of Authority. Closed pursuant to Exemptions (2) and (6).
2. One (1) Insurance Appeal. Closed pursuant to Exemption (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone: 703–518–6304

Becky Baker,

Secretary of the Board.

[FR Doc. 03–7118 Filed 3–20–03; 4:11 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

NSF–NASA National Astronomy & Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: NSF–NASA National Astronomy & Astrophysics Advisory Committee (13883).

Date and Time: April 8–9, 2003, 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. G. Wayne Van Citters, Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4908.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF) and the National Aeronautics and Space Administration (NASA) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the two agencies.

Agenda: To hear presentations of current programming by representatives from NSF and NASA; to discuss current and potential areas of cooperation between the two agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: March 19, 2003.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 03–6965 Filed 3–24–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Application/Permit for Use of the Two White Flint (TWFN) Auditorium.
2. *Current OMB approval number:* 3150–0181.
3. *How often the collection is required:* Each time public use of the NRC auditorium is requested.
4. *Who is required or asked to report:* Members of the public requesting use of the NRC Auditorium.
5. *The number of annual respondents:* 5.
6. *The number of hours needed annually to complete the requirement or request:* 1.25 hours (15 minutes per request).
7. *Abstract:* In accordance with the Public Buildings Act of 1959, an agreement was reached between the Maryland-National Capital Park and Planning Commission (MPPC), the General Services Administration (GSA) and the NRC, that the NRC auditorium will be made available for public use. Public users of the auditorium will be required to complete NRC Form 590, Application/Permit for Use of Two White Flint North (TWFN) Auditorium. The information is needed to allow for administrative and security review, scheduling, and to make a determination that there are no anticipated problems with the requester prior to utilization of the facility.

Submit, by May 27, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC world wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *infocollects@nrc.gov.*

Dated in Rockville, Maryland, this 19th day of March, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–7029 Filed 3–24–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** Notice on this information collection request on January 15, 2003, in 66 FR 10331, at which time a 60-calendar day comment period was announced. This comment period ended March 17, 2003. No comments were received in response to this notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 30-calendar days of this Notice.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Bruce I. Campbell, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

OMB Reviewer: David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, (202) 395–3897.

Summary of Form Under Review

Type of Request: Reinstatement, with change, of a previously approved collection for which approval is expiring.

Title: Sponsor Disclosure Report.

Form Number: OPIC–129.

Frequency of Use: Once per major sponsor, per project.

Type of Respondents: Business or other institutions.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies sponsoring projects overseas.

Reporting Hours: 5 hours per project.

Number of Responses: 150 per year.

Federal Cost: $12,730 per year.

Authority for Information Collection: Sections 231 and 234(b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The OPIC 129 form is the principal document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: March 18, 2003.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 03–6973 Filed 3–24–03; 8:45 am]

BILLING CODE 3210–01–M

POSTAL RATE COMMISSION 39 U.S.C. 3623

[Docket No. MC2003–1; Order No. 1365]

Customized Market Mail

AGENCY: Postal Rate Commission.

ACTION: Notice and order instituting mail classification case.

SUMMARY: This document informs the public that the Postal Service has requested an expedited Commission decision on Customized Market Mail (CMM). CMM would allow non-rectangular pieces of Standard Mail, which currently are prohibited because of their shape, to be mailed under certain conditions. The document identifies key deadlines for various filings, authorizes settlement proceedings, and makes other preliminary procedural rulings.

DATES: 1. April 3, 2003—preferred date for participant's submission of notices of intervention, requests for hearing, and responses to expedition request and waiver motion.

2. April 9, 2003—prehearing conference; final date for intervention, requests for hearing, and responses to expedition request and waiver motion.

ADDRESSES: Submit responsive filings, electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

SUPPLEMENTARY INFORMATION:

I. Introduction

Notice is hereby given that on March 14, 2003, the United States Postal Service filed a formal request with the Postal Rate Commission, pursuant to 39 U.S.C. 3623, seeking a recommended decision on a proposed minor classification change for a new Standard Mail option referred to as Customized Market Mail (CMM). The Service's designation of its request as a minor classification change signals its interest in application of procedural rules that allow for expedited consideration and issuance of a Commission decision, if no hearing is required, within 90 days. Request of the United States Postal Service for a Recommended Decision on Customized Market Mail Minor Classification Changes, March 14, 2003 (Request).

The proposal relaxes Standard Mail's longstanding restriction to rectangular pieces. It would allow certain non-rectangular or other nonstandard-shaped pieces to be sent as Standard Mail, subject to certain conditions. These include complying with packaging and other preparation requirements and shipping CMM directly to the destination delivery unit, thereby bypassing intermediate handlings.

The proposal entails minor changes to the Domestic Mail Classification Schedule (DMCS) and the addition of new footnotes to Standard Mail Rate Schedules 321A and 323A. The Service asserts that the changes would not have a significant effect on the Postal

Service's overall volumes, revenues and costs. *Id.* at 1.

Rates, Surcharges, Permits

Qualifying CMM pieces would pay the basic nonletter rate for Standard Mail Regular or Nonprofit subclass mail, plus the residual shape charge. CMM would not be eligible for the destination entry rate, the parcel barcode discount or for ancillary services. Ineligibility for the destination entry rate is based, in part, on the assumption that most CMM mailings would not meet the minimum volume threshold. No additional permit would be required.

Contents; Availability

The Request includes four attachments. Attachments A and B, respectively, present requested changes in the Domestic Mail Classification Schedule and Rate Schedules. Attachment C is an index of testimony. Attachment D addresses compliance with 39 CFR 3001.64 and 3001.69a. Contemporaneous submissions include the testimony of witnesses Ashe (USPS–T–1) and Hope (USPS–T–2); two library references; a request for expedition and establishment of settlement procedures; and a motion for waiver of several rules related to data and information. United States Postal Service Request for Expedition and Establishment of Settlement Procedures, March 14, 2003; Motion of United States Postal Service for Waiver, March 14, 2003 (Postal Service Motion).

The Request and other referenced material are on file in the Commission's docket room and are available for inspection during the Commission's regular business hours. This material can also be accessed via the Commission's Web site at *http://www.prc.gov*.[1]

II. Grounds for Service's Designation of Docket No. MC2003–1 as a Minor Classification Change

Commission rules tie eligibility for treatment as an expedited minor classification change to satisfaction of three criteria. Specifically, the proposal (1) must not involve a change in any existing rate or fee; (2) must not impose any restriction in addition to pre-existing conditions of eligibility for entry of mail in an existing subclass or category of service, or for an existing rate element or worksharing discount; and (3) must not significantly increase or decrease the estimated institutional cost contribution of the affected subclass or category of service. 39 CFR 3001.69 through 3001.69c.

The Service asserts that its proposal meets all three criteria. It states that CMM will be subject to the existing Standard Mail Regular and Nonprofit nonletter basic category mail rates and the residual shape surcharge, and therefore will not entail new rates, fees or surcharges. It says eligibility standards will not be restricted, because for pieces less than ¼-inch in thickness, the proposed classification changes will make existing classifications more inclusive. For pieces greater than ¼-inch but less than or equal to "-inch in thickness, the proposed classification changes will establish optional entry and handling procedures. In addition, the Service says CMM will not cause a significant impact on the contribution of Standard Mail toward institutional costs. Id. at 4. The Service also states that the requested amendments to the DMCS will further the general policies of the Postal Reorganization Act to plan, promote and provide adequate and efficient postal services at fair and reasonable rates and fees, and are consistent with applicable statutory criteria.

III. Testimony

Witness Ashe (USPS–T–1). Witness Ashe describes the Service's proposal and related market research.[2] He identifies the anticipated customer base, reviews related postal operating plans for handling CMM, and addresses mailing requirements. Ashe also addresses why the proposal satisfies the criteria for consideration of a minor classification change. USPS–T–1 at 13. Ashe explains that existing DMCS 6020 and DMM C010.1.1 require, as a basic condition for mailability, that all mail pieces ¼-inch thick or less must be rectangular in shape. He notes that administrative rulings interpreting this requirement have held that mail pieces do not meet the definition of "rectangular" if they do not have four right-angle corners and four straight and regular edges, or if they have any holes or other voids with their dimensions. Id. at 1. Ashe characterizes CMM as a response to customer interest in using more creative advertising, and describes it as a "niche" piece whose characteristics and costs for preparation and mailing make it suitable only for targeted, carefully developed promotional messages to a selected audience. Id. at 4. He expects that CMM, at least for the foreseeable future, will remain a low-volume form of mail that generates proportionally small revenues, used in situations where a message of this sort makes financial and commercial sense. *Id.* at 6–7.

Witness Hope (USPS–T–2). Witness Hope provides an overview of classification changes; a description of how CMM fits into the current Standard Mail rate design and DMCS; and a review of the proposal's consistency with statutory classification criteria. She also provides a summary of benefits and explains why the proposal qualifies as a minor classification change. USPS–T–2 at 1. Witness Hope says no volume estimate is available, and anticipates that the CMM's overall impact on the affected subclasses will be minimal. She expects the effect on coverage of institutional costs to be negligible. Id. at 9.

IV. Service's Position on Expedited Procedures and Settlement Potential

A. Expedited Procedures

The Service seeks expedition of this proceeding under §§ 21 and 69 of the Commission's rules of practice. It proposes that the Commission issue the requisite finding on the threshold question of eligibility as a minor classification change well before the end of the prescribed 28-day period. It also suggests that the Commission schedule a settlement conference as soon as possible following the deadline for intervention and make several adjustments in the area of discovery. These include shortening the time for discovery on the Service's case (should discovery be found necessary); limiting discovery to matters bearing directly on the proposed classification changes; and shortening time limits for responses to discovery requests and to related objections and motions. Request at 3. The Service also urges the Commission to require parties opting to request oral cross-examination to state not only "the issues of material fact that require a hearing for resolution," as required under § 69b(h), but also to make a compelling case that oral cross-examination could not otherwise be obtained through written discovery.

Rationale for Expedition

The Service believes expedition is reasonable because the proposed classification changes are straightforward and of limited scope. Id. at 1. The proposal expands eligibility for certain types of non-rectangular shapes that are currently not mailable under existing provisions of the DMCS. These pieces would be limited to the basic nonletter rate categories in the Standard Regular and Nonprofit subclasses. No new rates or surcharges are proposed for this matter. The proposal entails minor changes to the DMCS and the addition of new footnotes to Standard Mail Rate Schedules 321A and 323A. The changes would not have a significant effect on the Postal Service's overall volumes, revenues and costs. Id. at 1. Moreover, the Service asserts that there is a strong possibility of settlement, given indications from potential participants. *Id.* at 2. It also notes that because the proposal is likely to appeal to highly targeted mailings, it should have no adverse effect on other mailers or competitors. Ibid.

B. Motion for Waiver

The Postal Service seeks waiver, in whole or part, of several rules that call for detailed data and information. 39 CFR 3001.64(b)(3); 39 CFR 3001.64(d) and 39 CFR 3001.69a(a)(3).[3] In general, it asserts that waivers are appropriate, in the public interest, and not prejudicial to the interests of any participant because the classification changes in issue are minor in nature and will not have a substantial effect on the volume, revenue and cost estimates, or on the relationships of mail. Moreover, the Service says production of the information would be unduly burdensome. Motion of United States Postal Service for Waiver, (Postal Service Waiver Motion), March 14, 2003, at 1 and 3.

Rule 64(b)(3)—information on the economic substitutability between various classes and subclasses of mail, including a description of cross-elasticity of demand between various classes of mail.

The Service notes that economic substitutability of demand would not be expected to change under this proposal, particularly since potential users would only be able to enter CMM into the basic nonletter category tier in Standard Mail. Accordingly, it asserts the data this section seeks are not necessary or useful in considering the Service's proposal, and waiver will not impair the ability of the Commission or any participant to evaluate the Request. Postal Service Waiver Motion at 2.

Rule 64(d)—effects on cost assignments, total costs, and total revenues and 69a(a)(3)—a detailed estimate of the overall impact of the requested change in mail classification on postal costs and revenues, mail users, and competitors of the Postal Service.

The Service invokes the explanations provided in the testimony of its two witnesses as to why the proposal will not result in significant changes to postal cost and revenue relationships. Id. at 3. It says the cost of conducting detailed analyses is not justified by the limited scope of the proposal and the small number of users likely to avail themselves of these new classification provisions. Ibid. It also says that given the expected insignificant near-term effect on costs and revenue, waiver of section 64(d) will not impair the ability of the Commission or prospective participants to evaluate the Service's presentation. Ibid.

V. Initial Procedural Steps

Although some aspects of the Service's proposal necessarily await an opportunity for interested parties to assess the filing, the Commission agrees with the Service that several steps can be taken now to expedite this case.

Dates for Intervention, Statements, and Responses

The Commission prefers that those wishing to be heard in this matter submit a notice of intervention on or before April 3, 2003. Notices should indicate whether participation will be on a full or limited basis and state whether a hearing is requested. The Commission also prefers that responses to the Service's Request for Expedition and to the Postal Service Waiver Motion be filed no later than April 3, 2003.[4]

Settlement Matters and Prehearing Conference

Subject to reconsideration if responses from participants so warrant, the Commission authorizes settlement proceedings in this case. It appoints Postal Service counsel to serve as settlement coordinator and to schedule settlement conferences as deemed appropriate. A settlement conference held before the prehearing conference would facilitate prompt action on the Request. Participants and the Commission are to be provided reasonable notice of such conferences. The Postal Service is also directed to file periodic status reports with the Commission. A prehearing conference is scheduled for April 9, 2003, at 10 a.m. in the Commission's hearing room. Participants should be prepared to discuss matters pertinent to the Service's proposal, especially the need for a hearing, and the request for expedition, including the Service's suggestions related to discovery.

Representation of the General Public

In conformance with 39 U.S.C. 3624(a), the Commission designates Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, when requested, shall provide their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. Service of documents on the OCA shall conform to Commission rules.

Ordering Paragraphs

It is ordered:

1. The Commission will sit *en banc* in this proceeding.
2. Participants are encouraged to file notices of intervention, respond to the Request for Expedition and Establishment of Settlement Procedures, respond to the Postal Service's Motion for Waiver, and submit a request for a hearing no later than April 3, 2003.
3. Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.
4. The Commission authorizes settlement discussions in this proceeding.
5. Postal Service counsel is appointed to act as settlement coordinator in this proceeding, subject to reconsideration.
6. Settlement conferences are authorized to be held at time, dates and places arranged by the settlement coordinator.
7. The settlement coordinator shall file periodic status reports with the Commission.
8. A prehearing conference is scheduled for April 9, 2003, at 10 a.m. in the Commission's hearing room.
9. The Secretary shall cause this notice and order to be published in the **Federal Register**.

By the Commission.

Issued: March 19, 2003.

Steven W. Williams,

Secretary.

[FR Doc. 03–7022 Filed 3–24–03; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL RATE COMMISSION

[Order No. 1364]

Petition Seeking a Proceeding—Additional Comments

AGENCY: Postal Rate Commission.

[1] This is the case except for USPS–LR–1, which consists of physical examples of CMM. Facsimiles of these pieces appear in USPS–T–1, Exhibit USPS–1.

[2] The market research has been filed as USPS–LR–2.

[3] The Service seeks partial waiver for rule 69a(a)(3).

[4] Interventions as of right, requests for a hearing and responses to the Service's request for expedition will be accepted until the April 9, 2003, prehearing conference.

ACTION: Notice and order allowing comments.

SUMMARY: This document informs the public that the Postal Service has filed a report on an internal review of certain nonpostal offerings. This report is relevant to a Consumer Action petition for a rulemaking. The document also reviews initial comments and authorizes a further round of comments.

DATES: Submit comments by April 18, 2003.

ADDRESSES: Submit responsive documents electronically via the Commission's Filing Online system, which may be accessed at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharmfan, General Counsel, 202–789–6818.

SUPPLEMENTARY INFORMATION:

Regulatory History

67 FR 71843 (December 3, 2002).

Background

In Order No. 1353, issued November 21, 2002, the Commission gave notice of a petition filed by Consumer Action requesting that proceedings be instituted to review the jurisdictional status of 14 specified services and to establish rules to require a full accounting of all non-jurisdictional domestic services. The order noted that while the Commission was considering the petition, the Chairman received a letter from the Chairman of the Board of Governors indicating that the Postal Service was conducting an internal review of its "non-postal service offerings." [1] Chairman Rider expressed the hope that, prior to addressing the request for a formal proceeding, the Commission would afford the Postal Service an opportunity to comment on the issues and further that it first be able to complete its internal review.[2] Among other things, Chairman Rider indicated that "[t]he results of this review will also bear substantially on the representations in the petition." [3] It was anticipated that this review would be completed in early January 2003.

Concluding that a brief deferral would not prejudice the petitioner, the Commission deferred action on the petition pending completion of the Postal Service's internal review. Accordingly, the Commission set January 30, 2003 as the due date for comments from interested persons to advise the Commission on the most appropriate way to proceed. PRC Order No. 1353, November 21, 2002, at 3.

Summary of Initial Comments

Six sets of comments were received. Each is identified below, along with a brief summary of that commenter's recommendation of how the Commission should proceed.

- Association for Postal Commerce (PostCom)—PostCom takes no position on the Commission's jurisdiction over the 14 services identified in the petition, but urges the Commission to initiate a rulemaking to examine establishing accounting conventions applicable to Postal Service offerings that are not subject to regulated rates.[4]
- Computer & Communications Industry Association (CCIA)—CCIA endorses the petition and urges the Commission to initiate the proceeding requested.[5]
- Council for Citizens Against Government Waste (CCAGW)—CCAGW endorses the petition and urges the Commission to initiate the proceeding requested.[6]
- Pitney Bowes, Inc.—Pitney Bowes, while expressing some general concerns, noted that at the time its comments were filed no person had an opportunity to review the results of the Postal Service's internal evaluation. Thus, Pitney Bowes requests that the Commission provide interested persons an opportunity to comment on "the appropriate scope and manner of proceeding" after having time to consider the results of the Postal Service's internal review.[7]
- Washington Legal Foundation (WLF)—WLF supports the petition and urges the Commission to act favorably on it.[8] Among other things, WLF also requests that interested persons be afforded an opportunity to comment on the results of the Postal Service's internal review. *Id.* at 5.
- Postal Service—The Postal Service opposes the petition and requests that the Commission decline to adopt the proposals contained in the petition and accompanying joint letter.[9]

Postal Service Report

On March 10, 2003, the Postal Service submitted a report that generally describes the results of its internal review.[10] The report briefly summarizes the business review process, including the procedures used to monitor the various services offered by the Postal Service. In addition, the report discusses each of the services identified in the Petition. The report and comments are available on the Commission's Web site, *http://www.prc.gov*.[11]

Additional Round of Comments

The requests by Pitney Bowes and WLF that interested persons be afforded an opportunity to comment on the report are well taken. The report provides information not available to commenters at the time initial comments were filed. Providing interested persons an opportunity to comment on the report will assist the record. Comments on the report are due April 18, 2003. In addition to addressing the substantive aspects of the report, interested persons may also respond to positions and arguments contained in the initial comments of any commenter.

Ordering Paragraphs

It is ordered:

1. Notice is hereby given that interested persons may submit comments, as more fully described in the body of this order, concerning the Postal Service's "Report on Nonpostal Initiatives," filed March 10, 2003.

2. Comments from interested persons authorized by this order are due no later than April 18, 2003.

[1] Letter to the Honorable George A. Omas from the Honorable Robert F. Rider, Chairman of the Board of Governors, November 14, 2002, at 1 (Rider Letter). Effective January 2003, S. David Fineman succeeded Mr. Rider as Chairman of the Board of Governors.

[2] Rider Letter at 2.

[3] Id. at 1.

[4] Comments of PostCom, January 30, 2003, at 1–2.

[5] Comments of the Computer & Communications Industry Association on the Motion of the Office of the Consumer Advocate to Request that the Commission Institute a Proceeding to Consider the Postal/Nonpostal Character of Specified Services and the Establishment of Rules to Require a Full Accounting of the Costs and Revenues of Nonpostal Services, January 28, 2003, at 1 and 9.

[6] Comments of the Council for Citizens Against Government Waste on the Motion of the Office of the Consumer Advocate to Request that the Commission Institute a Proceeding to Consider the Postal/Nonpostal Character of Specified Services and the Establishment of Rules to Require a Full Accounting of the Costs and Revenues of Nonpostal Services, January 30, 2003, at 1.

[7] Comments of Pitney Bowes, Inc., January 30, 2003, at 2.

[8] WLF letter addressed to the Commission's Secretary, Steven W. Williams, January 30, 2003, at 1.

[9] Comments of United States Postal Service on Consumer Action Petition, January 30, 2003, at 45; see also *id.* at 20 *et seq.* Concurrently with the filing of its Comments, the Postal Service requested leave to file a report summarizing the internal review referenced by Chairman Rider. United States Postal Service Request for Leave to File Report, January 30, 2003. At that time, the Postal Service anticipated filing the report in early February. The request to file the report is granted.

[10] See Notice of United States Postal Service of Filing Report, March 10, 2003. Attached to the notice is the "Report on Nonpostal Initiatives."

[11] On the Commission's homepage, this material can be accessed by clicking on "Contents" and then either on "Docketed Cases & Matters," or on "Pending Cases & Matters." It can be found under "Other Matters," where it is listed separately.

3. The Postal Service's request, dated January 30, 2003, for leave to file the report is granted.

4. The Secretary shall arrange for publication of this notice in the **Federal Register.**

By the Commission.

Issued: March 19, 2003.

Steven W. Williams,

Secretary.

[FR Doc. 03–6999 Filed 3–24–03; 8:45 am]

BILLING CODE 7710–FW–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1 p.m., Monday, March 31, 2003; 8:30 a.m., Tuesday, April 1, 2003.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: March 31—1 p.m. (Closed); April 1—8:30 a.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, March 31—1 p.m. (Closed)

1. Strategic Planning.
2. Amendment to Board of Governors Bylaws.
3. Financial Performance.
4. Rate Case Planning.
5. Capital Investment for Ventilation and Filtration System (VFS) for Mail Processing Equipment.
6. Unresolved Audit Recommendation.
7. Personal Matters and Compensation Issues.

Tuesday, April 1—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, March 3–4, 2003.
2. Remarks of the Postmaster General and CEO.
3. Quarterly Report on Service Performance.
4. Quarterly Report on Financial Performance.
5. Fiscal Year 2003 Supplemental Appropriation Request for Emergency Preparedness Costs.
6. Capital Investments.
   a. Self Service Platform.
   b. Advanced Funding Request for the James A. Farley Processing and Distribution Center Sale Transition and Redevelopment.
7. Tentative Agenda for the May 5–6, 2003, meeting in Chicago, Illinois.

CONTACT PERSON FOR MORE INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 03–7257 Filed 3–21–03; 2:28 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–8207, File No. S7–05–03]

Securities Uniformity; Annual Conference on Uniformity of Securities Laws

AGENCY: Securities and Exchange Commission.

ACTION: Notice of conference; request for comments.

SUMMARY: The Commission and the North American Securities Administrators Association, Inc. are requesting comments on the proposed agenda for their annual conference to be held on April 7, 2003. The purpose of the conference is to further the objectives of section 19(d) of the Securities Act of 1933, principally to increase cooperation between the Commission and state securities regulatory authorities in order to maximize the efficiency and effectiveness of securities regulation.

DATES: The conference will be held on April 7, 2003. We must receive comments by April 3, 2003 in order to consider them for discussion at the conference.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only. Please send three copies of written comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments may also be sent electronically to the following e-mail address: *rule-comments@sec.gov*. Comment letters should refer to File No. S7–05–03; if e-mail is used, please include this file number on the subject line. Anyone can inspect and copy the comment letters in our Public Reference Room, 450 5th Street, NW., Washington, DC 20549–0102. All electronic comment letters will be posted on the Commission's internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Marva Simpson, Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0310, (202) 942–2950.

SUPPLEMENTARY INFORMATION:

I. Discussion

The Federal government and the states have jointly regulated securities offerings and the securities industry in the United States since the adoption of the first federal securities statute, the Securities Act of 1933 (the "Securities Act").[2] Companies trying to raise capital in our securities markets, as well as participants in the secondary trading markets, must comply with all applicable federal and state securities laws and regulations. Parties involved in the securities markets have long recognized the need to increase cooperation between the federal and state regulatory systems to facilitate capital formation while retaining necessary investor protections.

Congress endorsed more uniformity in securities regulation with the enactment of section 19(d) of the Securities Act [3] in the Small Business Investment Incentive Act of 1980.[4] Section 19(d) authorizes the Commission to cooperate with an association of state securities regulators that can assist in achieving such uniformity. The North American Securities Administrators Association ("NASAA") fulfills that function.[5] Section 19(d) requires the Commission to cooperate with NASAA to:

- maximize the effectiveness of regulation;
- maximize uniformity in federal and state regulatory standards;
- minimize interference with the capital formation;
- reduce the cost and paperwork burdens of raising investment capital, particularly by small business; and
- reduce administration costs of the government programs involved.

The Commission is required under Section 19(d) to conduct an annual conference to establish ways to achieve these goals.

[1] We do not edit personal identifying information, such as names and e-mail addresses, from electronic submissions. Therefore, you should submit only information you wish to make publicly available.

[2] 15 U.S.C. 77a *et seq.*

[3] 15 U.S.C. 77s(d). Section 19(d) was enacted originally as section 19(c) of the Securities Act but was renumbered by section 108 of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (July 30, 2002).

[4] Pub. L. 96–477, 94 Stat. 2275 (Oct. 21, 1980).

[5] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, Mexico and 12 Canadian provinces and territories.

II. 2003 Conference

The Commission and NASAA are planning the 2003 Conference on Federal-State Securities Regulation, scheduled be held on April 7, 2003 in Washington, DC. The 2003 conference will be the twentieth such conference to be held pursuant to the directive in section 19(d) of the Securities Act. At the conference, Commission and NASAA representatives will divide into working groups in the areas of corporation finance, market regulation and oversight, investment management, investor education, and enforcement. Each group will discuss methods to enhance cooperation in securities matters and improve the efficiency and effectiveness of federal and state securities regulation. Generally, to encourage open and frank discussion, only Commission and NASAA representatives may attend the conference. Each working group, however, in its discretion may invite specific self-regulatory organizations ("SROs") to attend and participate in certain sessions.

The Commission and NASAA are preparing the conference agenda. We invite the public, securities associations, SROs, agencies, and private organizations to participate by submitting written comments on the issues set forth below. In addition, we request comment on other appropriate subjects. We will make the comments available to all conference attendees.

III. Tentative Agenda and Request for Comments

The tentative agenda for the conference includes the topics discussed below in the areas of corporation finance, market regulation, investment management, investor education and assistance, and enforcement.

(1) Corporation Finance Issues

A. Commission Rules Implementing the Sarbanes-Oxley Act and other Recent Rulemaking; Impact on Smaller Companies

In the wake of a series of corporate and accounting scandals, President George W. Bush signed into law the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") on July 30, 2002.[6] Among other things, the Act directs the Commission to promulgate rules and regulations that will improve the quality of corporate disclosure and financial reporting, strengthen the independence of auditing firms, and increase the responsibility of management for corporate disclosures and financial statements.

The Sarbanes-Oxley Act specified that many of the new rules had to be effective within 180 days of enactment. We have already issued a number of final rules under the Sarbanes-Oxley Act and intend to issue the remaining final rules within the mandated time frames.

The final rules relevant to the 19(d) conference include the following:[7]

- Release 34–46421—August 27, 2002—Ownership Reports and Trading by Officers, Directors, and Principal Security Holders.
- Release 33–8124—August 28, 2002—Certification of Disclosure in Companies' Quarterly and Annual Reports.
- Release No. 33–8176—January 22, 2003—Conditions for Use of Non-GAAP Financial Measures.
- Release No. 34–47225—January 22, 2003—Insider Trades During Pension Fund Blackout Periods.
- Release No. 33–8177—January 23, 2003—Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002.
- Release No. 33–8182—January 28, 2003—Disclosure in Management's Discussion and Analysis about Off-Balance Sheet Arrangements and Aggregate Contractual Obligations.
- Release No. 33–8183—January 28, 2003—Strengthening the Commission's Requirements Regarding Auditor Independence.
- Release 33–8185—January 28, 2003—Implementation of Standards of Professional Conduct for Attorneys.

Smaller companies have expressed concerns with respect to several of the Commission's recent proposed and final rules, including:

- The ability of smaller companies to meet the evaluation and reporting requirements for a company's internal controls and procedures for financial reporting and its disclosure controls and procedures with respect to annual and quarterly reports.
- The requirement relating to including an audit committee financial expert on a company's audit committee, given the difficulty small companies have in finding qualified board members.
- The increase in Form 8–K filings that would result from adoption of the Commission's proposed release on Form 8–K disclosure requirements, which would add 11 new items to the current list of items requiring the filing of a Form 8–K, accelerate the filing requirement to two days, move two disclosure items currently required to be included in companies' annual and quarterly reports to Form 8–K and amend several of the existing Form 8–K disclosure items.[8]
- The additional audit costs that may result from adoption of the Commission's proposed rules on disclosure of critical accounting policies.[9]
- The additional costs and obligations imposed under the Commission's new rule on auditor independence and proposed rule on standards relating to listed company audit committees.[10]

Since many of these concerns result from recent actions, their cumulative effects on smaller public companies are difficult to assess. We expect the agenda for the conference to include a discussion of the impact of the Sarbanes-Oxley Act and other recent corporate governance and disclosure reforms on smaller public companies and whether accommodations are necessary or desirable. Conferees are encouraged to discuss initiatives aimed at improving the financial reporting and disclosure system. The Division may take the information developed in these discussions into account in determining whether and how to consider the impact of the Sarbanes-Oxley Act on smaller companies.

B. Transactions Involving "Qualified Purchasers"

Under section 18 of the Securities Act, transactions involving "qualified purchasers" are subject to registration under the federal securities laws only and not under state securities laws.[11] The term "qualified purchaser" is not defined in the statute and must be defined by the Commission. On December 19, 2001, we published a release proposing a definition for the term "qualified purchaser." The release proposed to add the definition as an amendment to Rule 146 under the Securities Act.[12] As proposed, "qualified purchaser" would be defined to have the same meaning as the term "accredited investor" under Rule 501 of Regulation D.[13] If adopted, securities offered or sold to a qualified purchaser would not be subject to state registration requirements but only to federal requirements. The public comment period on the proposal closed on February 25, 2002. The Commission staff is in the process of reviewing all the comments. The agenda for the meeting will include a discussion of the proposal by the participants.

C. Regulation A

The agenda for the meeting will include consideration of possible revisions to the Commission's Regulation A exemption from the registration requirements of the Securities Act.[14] As presently constituted, Regulation A permits the offer and sale of up to $5 million worth of securities in a 12-month period. An offering circular must be prepared for delivery before sale. Offering materials are subject to Commission staff review. Regulation A permits the use of unaudited financial statements. However, because the offering must be registered in most cases under state laws, issuers may be required to provide audited financial statements. Further, the current limit on the amount of securities that may be offered may be too low to provide professional underwriting assistance in these offerings. The conferees will consider possible changes to make the Regulation A exemption more useful to small businesses, consistent with investor protection.

Regulation A also permits the offering of securities in the manner of "testing the waters" to see whether or not any potential offering of an issuer's securities would be favorably received by the investing public. The provision has not been widely used. The conferees will discuss the provision with a view to determining whether greater federal/state uniformity is an issue and can be achieved or whether other matters have caused the apparent lack of attractiveness in this provision.

D. Form D

We adopted Regulation D in 1982 as the result of a cooperative effort between NASAA and the Commission. Regulation D was intended to facilitate uniformity for limited offering exemptions at the state and federal level. Form D was adopted in conjunction with Regulation D. Form D serves as a notice of sales for use in exempt offerings under Regulation D and section 4(6) of the Securities Act at the federal level. Rule 503 requires issuers seeking an exemption under Regulation D to file Form D with the Commission within 15 days after the first sale.[15] Issuers must also file a Form D for sales of securities in states that have adopted the Uniform Limited Offering Exemption ("ULOE")[16] and Form D. Currently, the Commission and some states receive paper filings. With the advent of electronic filing and advances in technology, it may be more timely and cost-effective to file the Form D, at least at the federal level, using the Commission's EDGAR system. The conferees will discuss simplifying Form D and filing the form electronically.

E. Securities of Blank Check Companies

A blank check company is a company in the development stage with no specific business plan or purpose, or a company that indicates that its plan is to engage in a merger or acquisition with an unidentified company or companies.[17] In 1990, the U.S. Congress found that offerings by these kinds of companies were common vehicles for fraud and manipulation. We have adopted several rules, as Congress directed, to deter fraud in connection with these offerings.[18] The group will discuss matters of mutual concern relating to the offerings of securities by blank check companies, including recent developments and possible new rules and revisions of existing rules.

(2) Market Regulation Issues

A. Description of Bank Dealer Exceptions After the Gramm-Leach-Bliley Act[19]

The participants will discuss the Commission's rules pertaining to banks' dealer activities. We adopted amendments to the bank dealer rules on February 6, 2003.[20] These rules provide banks with a new exemption for their securities lending transactions. They also implement the specific exceptions for banks from the definition of "dealer" that were enacted as a part of the Gramm-Leach-Bliley Act ("GLBA") in late 1999. Among other things, the GLBA provided for functional regulation of securities activities by eliminating the complete exception for banks from the definitions of "broker" and "dealer" and replacing them with specific transaction and activity-based exceptions.

B. Possible Revisions to Form BD

Under the regulatory scheme of the Securities Exchange Act of 1934[21] (the "Exchange Act"), broker-dealers must register with the Commission, as well as with at least one statutory SRO. Broker-dealers apply for registration by filing Form BD (17 CFR 249.501), the uniform application for broker-dealer registration. The state securities regulators also use this form. Form BD requires the applicant filing the form to provide certain information concerning the nature of its business and the background of its principals, controlling persons, and employees. Form BD[22] is designed to permit regulators to determine whether the applicant meets the statutory requirements to engage in the securities business.

We amended Form BD on July 2, 1999 to support electronic filing in the Internet-based Central Registration Depository system.[23] Since the July 1999 amendments, the GLBA, the Commodity Futures Modernization Act of 2000, and, more recently, the Sarbanes-Oxley Act have all been enacted. Among other things, the Sarbanes-Oxley Act expands the definition of "statutory disqualification" under the Exchange Act.[24] These and other developments may indicate the need for possible further amendments to Form BD.

C. Research Analyst Conflicts of Interest

We have taken a number of actions in the past year to address analyst conflicts of interest. On February 6, 2003, we adopted Regulation Analyst Certification, which requires that analysts certify that the views expressed in research reports accurately reflect their personal views and that research reports disclose whether analysts received compensation for their recommendations or views.[25] On May 10, 2002, we approved rule changes by the National Association of Securities Dealers ("NASD") and the New York Stock Exchange ("NYSE") that establish standards governing broker-dealer communications with the public to address analyst conflicts of interest.[26] Late last year, we released for comment additional rule amendments filed by the

---

[6] Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (July 30, 2002).

[7] The Commission also adopted rules that would accelerate the periodic reporting filing dates and require disclosure concerning Web site access to reports. Release No. 33–8128 (Sept. 5, 2002) [67 FR 58480].

[8] Release No. 33–8106 (June 17, 2002) [67 FR 42914].

[9] Release No. 33–8098 (May 10, 2002) [67 FR 35620].

[10] Release Nos. 34–47137 (January 8, 2003) [68 FR 2638], 33–8183 (January 28, 2003) [68 FR 6006].

[11] 15 U.S.C. 77r.

[12] Release No. 33–8041 (Dec. 19, 2001) [66 FR 66839].

[13] 17 CFR 230.501.

[14] 17 CFR 230.251 through 263.

[15] 17 CFR 230.503.

[16] The ULOE provides a uniform exemption from state registration for offerings complying with Regulation D.

[17] Securities Act section 7(b)(3), 15 U.S.C. 77g(b)(3).

[18] 17 CFR 230.419 and 17 CFR 240.15g–8.

[19] Pub. L. 106–102, 113 Stat. 1338 (1999).

[20] Release No. 34–47364 (Feb. 13, 2003) [68 FR 8685].

[21] 15 U.S.C. 78a *et seq.*

[22] 17 CFR 249.501.

[23] Release No. 34–41594 (July 2, 1999) [64 FR 37586].

[24] 15 U.S.C. 78c(39).

[25] Release No. 33–8193 (Feb. 20, 2003) [68 FR 9482].

[26] Release No. 34–45908 (May 10, 2002) [67 FR 34968].

NYSE and NASD that would require a compensation committee to review and approve analyst compensation; prohibit firms from issuing reports by a research analyst who participated in solicitation meetings with prospective investment-banking clients; require notification to customers when a member or member organization terminates research coverage of a subject company and require that the final report include a final recommendation or rating; and amend the definition of "public appearance" to include research analysts' making a recommendation in a newspaper article or similar public medium.

We are working with NASAA and its members, as well as the NYSE, NASD, and New York State Attorney General, on a joint formal inquiry into market practices concerning research analysts and the conflicts that can arise from the relationships between research and investment banking. On December 20, 2002, the Commission announced an agreement in principle that, if approved by the Commission, would result in a settlement with the nation's largest investment banking firms to address issues of conflicts of interest with respect to their brokerage departments, and would conclude the joint inquiry.[27]

D. Shorter Settlement Cycles, Straight-Through Processing, and Immobilization and Dematerialization of Stock Certificates

Over the past year, the securities industry has undertaken an initiative to achieve several straight-through processing goals. In order to reach these goals, the industry, through the Securities Industry Association ("SIA"), has proposed that we promulgate a number of regulatory changes. One of the more controversial of the proposed changes is adding rules to discourage the issuance and use of physical certificates. According to an SIA study, the costs of processing physical securities and the risks inherent with the use of physical securities are significant to the industry and ultimately their customers. Therefore, the industry is proposing that new securities be issued in book-entry form only. Although such a requirement could be imposed at the federal level, another possibility would be to implement a book-entry-only standard through exchange listing standards and issuer action. One issue is that several states' corporate laws still require that an issuer make physical securities available to shareholders who request them. The Commission staff hopes to explore with NASAA ways in which to discourage the issuance and use of physical certificates, restrictions imposed by certain state corporate laws, and exchange listing standards regarding the issuance of physical certificates.

E. IPO Underwriting and Allocation Process

The initial public offering underwriting process has come under a lot of scrutiny lately—especially with regard to perceived abuses in the pricing and allocation of IPO shares. We are currently reviewing industry practices regarding the roles of issuers and underwriters in the price setting and the allocation of IPO shares as well as the offering process in general. Moreover, the NYSE and NASD have convened a panel of business and academic leaders to conduct a broad review of the IPO process and to recommend ways to address the problems so as to improve the underwriting process and restore investor confidence. The panel hopes to report by the end of March. The Commission has also brought at least one enforcement action, the Robertson Stephens case, relating to underwriting activities in connection with a number of IPOs.[28] In addition, the NASD recently sought comment from its members on proposed new rules regarding the regulation of IPO allocations and distributions.[29] According to the NASD, the rules will better ensure that members avoid unacceptable conduct when they engage in the allocation and distribution of IPOs.

F. Possible Changes to SRO Rules

1. *Branch Office Definition.* The NYSE recently filed a proposed rule change, SR–NYSE–2002–34, which proposes to amend NYSE Rule 342, Offices—Approval, Supervision, and Control, to provide for a new definition of the term "branch office." The proposed amendment to the rule would limit the requirement to register certain business locations as "branch offices—to account for advances in technology used to conduct and monitor business and changes in the structure of broker-dealers and in the lifestyles and work habits of broker-dealers. On December 4, 2002, the Commission published the proposed rule change for public comment.[30]

2. CRD—Expungement. The NASD recently filed a proposed rule change, SR–NASD–2002–168, which proposes to establish procedures for expunging customer dispute information from the Central Registration Depository system. The proposed rule would require all arbitral directives to expunge customer dispute information from the CRD system to be confirmed or ordered by a court of competent jurisdiction. The proposed rule also would require member firms and associated persons seeking expungement to name the NASD as an additional party in any judicial proceeding seeking expungement relief or confirming an arbitration award containing expungement relief. The proposed rule would state that the NASD will participate in such judicial proceedings and will oppose expunging dispute information in the proceedings unless specific findings have been made that the subject matter of the claim or the information in the CRD system: (1) Is without factual basis (*i.e.*, is factually impossible or clearly erroneous); (2) fails to state a claim upon which relief can be granted; (3) is frivolous; or (4) is defamatory in nature. The proposed rule would also permit member firms and associated persons to ask the NASD to waive the requirement to name the NASD as a party on the basis that the expungement order meets at least one of the standards for expungement articulated in the proposed rule. The Division of Market Regulation is preparing to recommend release of the proposal for public comment and anticipates extensive public commentary.

3. NYSE and NASD Proposals to Amend Rules Relating to Supervisory Control Over Customer Accounts. Adequate supervisory systems are integral to investor protection and to the integrity of the securities market. Operational and sales practice abuses can stem from ineffective supervisory control procedures. The recent Gruttadauria case,[31] which involved the alleged misappropriation of customer funds, highlighted the ongoing problem of operational and sales practice abuses at firms and the importance of firms effectively monitoring their employees.

The NYSE and NASD have submitted proposals to amend their rules relating to supervisory control over customer accounts.[32] Specifically, the proposed rules would: (1) Require members to develop general and specific supervisory control procedures that independently test, verify, and modify, where necessary, the members' supervisory procedures; (2) require that office inspections be conducted by independent persons and include, at a minimum, the testing and verification of certain supervisory procedures; (3) expand upon a member's supervisory and recordkeeping requirements with respect to changes in customer account name or designation in connection with order executions; and (4) clarify the time limit on time-and-price discretionary authority. The comment period expired on January 17, 2003. We have received numerous comment letters, which Commission staff and SRO staff are currently reviewing.

G. Amendments to Broker-Dealer Recordkeeping Rules

The participants will discuss the Commission's recent amendments to its broker-dealer recordkeeping rules, Exchange Act Rules 17a–3 and 17a–4, in light of certain interpretive questions regarding the amendments.[33]

H. Examination Issues

State and federal regulators also will discuss various examination-related issues of mutual interest, including examination priorities, summits and examinations.

(3) Investment Management Issues

A. Electronic Filing and the Investment Adviser Registration Depository ("IARD")

Investment advisers applying for registration, or already registered, with the Commission file their registration statements and amendments electronically through the IARD. Most states also permit investment advisers and investment adviser representatives to register by filing through the IARD. The agenda for the conference is expected to include a discussion of the operations and finances of the IARD during 2002. The participants also are expected to discuss issues related to future plans for the IARD and for the public disclosure website for investment adviser information, the IAPD.

B. Current Issues and Rulemaking Initiatives

The participants are expected to discuss recent rulemaking initiatives under the Investment Advisers Act of 1940[34] that deal with enhanced public disclosure of proxy votes, compliance issues, updated custody requirements, and advisers giving investment advice over the Internet. Developments in the model state law area and competency tests for investment adviser representatives also may be discussed. The participants may consider the continuing education needs of investment advisers and discuss approaches for enhancing an adviser's understanding of relevant state and federal regulatory responsibilities.

C. Examination of Advisers

The agenda for the meeting will include a discussion of examination protocols used by states and the Commission as well as the sharing of information among regulators. Recent enforcement matters of particular relevance also may be discussed.

(4) Investor Education and Assistance Issues

The Commission and NASAA currently sponsor a number of programs to educate investors on how to invest wisely and to protect themselves from fraud and abuse. The states and NASAA have a long-standing commitment to investor education, and we intend to complement those efforts to the greatest extent possible. During the investor education working group session, participants at the conference are expected to discuss the following investor education initiatives and potential joint projects:

A. Facts on Saving and Investing Campaign

Five years ago, in the spring of 1998, the Commission and NASAA in conjunction with the Council of Securities Regulators of the Americas ("COSRA") launched the Facts on Saving and Investing Campaign. Led primarily by individual states and Canadian provincial securities regulators, the campaign is an ongoing, grassroots effort to educate individuals about saving, investing, and avoiding financial fraud. During the working group session, participants will discuss this year's campaign.

B. Youth Initiatives

During the working group session, NASAA will brief the Commission staff on the progress of "Financial Literacy 2010," an unprecedented financial literacy program launched in the spring of 1998 by NASAA, the NASD, and the Investor Protection Trust. FL2010 aims to encourage—and make it easier for—teachers in every state to teach the basics on saving and investing to high school students. Representatives from individual states and the Commission also will share information concerning other financial literacy efforts targeted toward youth.

C. Education on Troubling Trends and "Top 10" Scams

From time to time, NASAA publishes a list of the top 10 investment scams that state securities regulators have been combating. This list not only raises public awareness about potential investment scams, but also helps to shape investor education initiatives.

Representatives from NASAA and the Commission will discuss troubling trends they have noted recently and will explore ways in which NASAA and the Commission can work together to warn the investing public about problematic products.

D. Online Investor Protection

NASAA will discuss ongoing state initiatives to enhance investor protection online, including the status of the Investing Online Resource Center. Similarly, the Commission staff will discuss its continuing efforts to educate investors on how to use the Internet to invest wisely.

E. Senior Educational Outreach Efforts

NASAA members and the Commission staff will discuss ongoing educational programs aimed at educating seniors. Since seniors are a large segment of the population that are targeted for scams, many individual states have set up educational outreach programs aimed toward seniors. Representatives from individual states will share information concerning these outreach programs.

F. New Programs on Investor Education

Participants in the working group session will brainstorm ideas for new investor education programs, including joint NASAA and Commission initiatives.

G. Investor Education Resources

Participants will discuss the most efficient and effective ways to provide educational resources to individuals at both a national and a grassroots level.

(5) Enforcement Issues

In addition to the above topics, state and federal regulators will talk about various enforcement-related issues of mutual interest. As in the past, it is anticipated that representatives of the SROs and the Justice Department will participate in this meeting. Included on the agenda for their session will be identification of the current enforcement priorities of the organizations present and a discussion of the more important investment scams

---

[27] Securities and Exchange Commission, Press Release 2002–179, December 20, 2002.

[28] Litigation Release No. 17923 (Jan. 9, 2003).

[29] NASD Notice 02–55, "NASD Requests Comments on Proposed New Rule 2712 and Amendments to Rule 2710," August 2002.

[30] Release No. 34–46888 (Dec. 4, 2002) [67 FR 72257].

[31] Litigation Release No. 17590 (June 27, 2002).

[32] NYSE 2002–36, Release No. 34–46858 (Nov. 20, 2002) [67 FR 72661]; NASD 2002–162, Release No. 34–46859 (Nov. 20, 2002) [67 FR 70990].

[33] 17 CFR 240.17a–3, and 240.17a–4.

[34] 15 U.S.C. 80b–1 *et seq.*

being uncovered in different parts of the country. Ways to further enhance the level of communication and coordination in the enforcement context will also be covered. State and federal regulators may discuss various other enforcement-related issues of mutual interest.

(6) General

The participants may also discuss matters that are applicable to all, or to a number, of the areas noted above. These include EDGAR (the Commission's electronic disclosure system), rulemaking procedures, training and education of staff examiners and analysts, and information sharing.

Discussions may also cover the new 2002 version of the Uniform Securities Act ("USA 2002"), which recently has been finalized by a committee of the National Conference of Commissioners on Uniform State Laws. The USA 2002 is a model uniform state securities law statute. The new version modernizes the Uniform Securities Act of 1956 and the Revised Uniform Securities Act of 1985. The USA 2002 updates the law to reflect many changes including, for example, the National Securities Market Improvement Act of 1996[35], technology advances, and internationalization of securities trading. In January, 2003, NASAA endorsed the USA 2002.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also discuss or comment on other proposals that would enhance uniformity in the existing scheme of state and federal securities regulation, while helping to maintain high standards of investor protection.

By the Commission.

Dated: March 17, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6983 Filed 3–24–03; 8:45 am]

BILLING CODE 8010–01–P

[35] Pub. L. 104–290, 110 Stat. 3416 (Oct. 11, 1996).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47523; File No. SR–CBOE–2002–69]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to Broker-Dealer Orders on RAES

March 18, 2003.

On November 26, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow the appropriate Floor Procedure Committee to determine, on a class and/or series basis, to prohibit access to RAES for broker-dealer orders after 3 p.m. The Exchange submitted Amendment No. 1 to the proposed rule change on January 21, 2003.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on February 14, 2003.[4] The Commission received no comments on the proposed rule change.

The Commission has reviewed carefully the CBOE's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[5] and with the requirements of section 6(b).[6] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[7] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that currently, the appropriate Floor Procedure Committee ("FPC") may permit broker-dealer orders on RAES during the trading day for options by class and/or series. The CBOE is proposing to allow an FPC to determine, on a class and/or series basis, to prohibit access to RAES for broker-dealer orders after 3 p.m.

In support of this proposal, the CBOE has represented that the options pricing models used by its members to generate the autoquote on CBOE use the price of underlying securities on the appropriate securities exchange,[8] and explained that once the underlying stock stops trading, there is no price feed from the underlying securities to automatically update the options pricing models and the options series must be updated manually. The CBOE believes that adding broker-dealers orders to those eligible to be executed on RAES could potentially increase the number of automatically executed orders significantly. The CBOE is concerned that if broker-dealer orders are permitted on RAES during times when manual updating is required, this could create additional difficulties in updating the option pricing models in a timely manner.

CBOE has represented that that it would like to permit RAES access in more classes and/or series for broker-dealer orders if the appropriate FPC were permitted to limit the access in classes or series, where appropriate, to the time period when the exchanges for the underlying securities are open for their regular trading session, *i.e.*, until 3 p.m.

The Commission believes that the proposed rule change will permit broker-dealers to have access to RAES for the vast majority of the trading day. At the same time, the proposed rule change should minimize stress to the options pricing models when they are manually updated. The Commission further believes that the proposed rule change should provide the CBOE with sufficient flexibility to operate RAES in an efficient manner, while at the same time permitting increased competition for electronic orders and increasing liquidity in affected series or classes.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–2002–69) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6984 Filed 3–24–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jaime Galvan, Attorney, CBOE, to Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, dated January 17, 2003 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 47332 (February 10, 2003), 68 FR 7633.

[5] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] For purposes of this discussion securities exchanges includes NASDAQ.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47515; File No. SR–CBOE–2003–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Linkage Fees

March 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 12, 2003 the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to provide that its linkage fee structure operate as a pilot program for one year. The text of the proposed rule change is below; proposed language is italicized.[3]

* * * * *

CHICAGO BOARD OPTIONS EXCHANGE, INC.—FEE SCHEDULE, JANUARY 31, 2003

	Per contract
1. Option Transaction Fees [1 2 3 4 7]:	
Equity & QQQ Options	
VI. Non-Member Market Maker (not eligible for Prospective Fee Reduction Program) [8]	$.19
Index Options	
V. Non-Member Market Maker [8]:	
• S & P 100 (including OEF), PREMIUM > OR = $1	.30
• S & P 100 (including OEF), PREMIUM < $1	.15
2. Trade Match Fee [1 4 7]:	
• All Other Equity, QQQ and Index Orders [8]	.05
3. Floor Brokerage Fee [1 5]:	
• All Other Equity, QQQ and Index Options [8]	.04
4. Raes Access Fee (Retail Automatic Execution System) [1 4]:	
• Non-Customer Transactions (Origin Code Other Than "C") [8]	.30

Notes:

[8] Includes, *on a pilot basis until January 31, 2004*, orders from members of other exchanges executing Linkage transactions, except for Satisfaction Orders, which are not assessed Exchange fees per Linkage rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] At the request of the CBOE, nonsubstantive modifications were made to the proposed rule text as filed with the Commission to indicate omitted language. Telephone call between Angelo Evangelou, Senior Attorney, Legal Division, CBOE, and Jennifer Lewis, Attorney, Division of Market Regulation, Commission, on March 17, 2003.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 31, 2003, the Commission approved a CBOE proposal adding rules concerning the intermarket options linkage.[4] As part of that filing, CBOE submitted an amendment making minor changes to the text of the proposed linkage rules and modifying CBOE's fee schedule to make clear that CBOE fees for linkage orders would be the same as CBOE fees for non-linkage orders from the same originating source (market makers on other exchanges). This filing merely proposes to establish that CBOE's fees for linkage orders will operate under a pilot program to allow the Commission and CBOE to gauge the suitability of the current linkage fees. The pilot would last until January 31, 2004.

Because all linkage orders received by CBOE are for the account of a broker-dealer market maker on another exchange, CBOE proposes that the fees applicable to such orders to be the same as fees applicable to market makers on other exchanges that submit orders to CBOE outside of the linkage taking into account how those orders are handled at CBOE. More specifically, the "regular" transaction fee applicable to non-member market makers would apply to linkage orders (currently $.19 per contract for equity options and QQQ options, and $.30 or $.15 per contract for OEF options depending on premium). Further, a $.05 per contract

[4] *See* Securities Exchange Act Release No. 47294 (January 31, 2003), 68 FR 6527 (February 7, 2003) approving SR–CBOE–2002–61.

trade match fee would also apply to each linkage order. Lastly, if a linkage order is executed in whole or in part on RAES,[5] a $.30 per contract RAES fee would apply, and if any portion of a linkage order is manually handled, a $.04 per contract floor brokerage fee is assessed.

2. Statutory Basis

The Exchange believes that the proposed rule change meets the requirement of section 6(b)(5) under the Act[6] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[5] RAES is the automated execution system feature of the Exchange's order routing system that is owned and operated by the Exchange and that provides automated order execution and reporting services for options. *See* Exchange rule 6.8.

[6] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2003–11 and should be submitted by April 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6989 Filed 3–24–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47517; File No. SR–NASD–2002–158]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Establishment of a Nasdaq Official Closing Price and a Trade Report Modifier With Which To Identify That Price to the Public

March 18, 2003.

I. Introduction

On November 1, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a Nasdaq Official Closing Price ("NOCP"), and a trade report modifier with which to identify that price to the public. The proposed rule change was published for comment in the **Federal Register** on December 26, 2002.[3] The Commission received seven comment letters regarding the proposal.[4] Nasdaq responded to the commenters in an amendment which Nasdaq filed with the Commission on January 28, 2003[5] and in a second response letter that Nasdaq filed with the Commission on March 7, 2003.[6] This order approves the proposed rule change, and approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposed Rule Change

A. Background

Nasdaq is proposing to establish an NOCP, and a trade report modifier with which to identify that price to the public. Nasdaq would program its proprietary systems to append the new modifier—".M" for Market Close—to one trade report message in each Nasdaq National Market and SmallCap security to identify it as the NOCP in that security. The dissemination of the NOCP would not affect the consolidated last sale price disseminated pursuant to the national market system plan governing trading of Nasdaq securities ("Nasdaq UTP Plan") or the last sale price of any exchange that is a member of that plan.

Currently, Nasdaq does not have an official closing price. Instead, market participants generally use a last sale price that vendors identify from among the last sale prices that Nasdaq disseminates in its role as the Exclusive Securities Information Process ("ESIP") for the Nasdaq UTP Plan. As the ESIP, Nasdaq currently disseminates a consolidated last sale price ("Consolidated Close"), which is the price of the last trade reported to the ESIP by any UTP Participant prior to 4:01:30 p.m. In addition, Nasdaq disseminates the last sale price of each individual participant in the Nasdaq UTP Plan ("Individual Market Close"), including Nasdaq, which is the price of the last trade reported by each individual participant market center prior to 4:01:30 p.m. Nasdaq market participants rely on either the Consolidated Close or Nasdaq's Individual Market Close for many post-close activities, including pricing indices, large institutional orders (commonly called "market-on-close orders"), and mutual fund values. The Consolidated Close is the primary measure of the market for a variety of constituents, including sell-side and buy-side institutions, market indexers, securities issuers, and individual investors.

Nasdaq believes that, despite their widespread acceptance, the Consolidated Close and Nasdaq Individual Market Close are imperfect measures of the value of Nasdaq issues at the close of normal market hours. For instance, the Consolidated Close is somewhat arbitrary in that it is simply the price of the final unmodified trade to be reported to Nasdaq prior to 4:01:30 p.m. by any Nasdaq member or UTP Exchange. Due to wide disparities in the speed at which market participants report trades within Nasdaq's 90-second trade reporting window, trades reported at 4:01:30 p.m. can be significantly away from the market when it closes at 4:00:00 p.m. As a result, Nasdaq is concerned that the Consolidated Close may no longer reliably and accurately reflect each security's value at the close of the market.

B. Mechanics of the Proposal

Nasdaq proposes to replace the methodology currently used to calculate Nasdaq's Individual Market Close with the NOCP methodology described below. The NOCP would be based on the price of the last unmodified trade reported to Nasdaq's proprietary trade reporting system—Automated Confirmation Transaction System or "ACT"—at or before 4:00:02 p.m. (the "Predicate Trade"). Nasdaq systems would "normalize" the price of the Predicate Trade by comparing it to Nasdaq's best bid and ask prices (*i.e.*, the best prices displayed by all SuperMontage participants) at the time the Predicate Trade was reported, or by comparing it to the Nasdaq best bid and offer at 4:00:00 p.m. for trades reported after that time ("Predicate BBO").[7] If the price of the Predicate Trade falls at either side of or within the Predicate BBO, that price becomes the NOCP. If the price of the Predicate Trade falls outside the Predicate BBO, Nasdaq would adjust it up to the Predicate BBO bid if it is below the bid price or down to the Predicate BBO ask if it is above the ask price. The NOCP methodology would only impact the Individual Market Close for Nasdaq; it would not impact the Consolidated Close or Individual Market Closes of the UTP Exchanges that are disseminated by the ESIP.

The Predicate Trade can be any trade that currently updates the Individual Market Close for Nasdaq, subject to certain limitations. First, Nasdaq would only consider trades submitted with the Nasdaq market center identifier. Specifically, Nasdaq would only consider trade reports submitted to ACT, either by NASD members or by UTP Exchanges that use Nasdaq's proprietary execution systems. Nasdaq would not consider trades reported by NASD members to any venue outside of Nasdaq, including the NASD Alternative Display Facility or other UTP Exchanges, nor would it consider any trades reported by UTP Exchanges not executed through Nasdaq proprietary systems. Thus, if no NASD member reports a trade in a given security to Nasdaq prior to 4:00:02 p.m., Nasdaq would report no NOCP in that security.

Second, Nasdaq would only consider unmodified trades reported at or before 4:00:02 p.m. Nasdaq chose 4:00:02 p.m. as the proper reference point to provide every trade type a reasonable chance to set the close. The current close disadvantages certain trade types that are reported too quickly to set the closing price, such as trades reported via Nasdaq execution systems or by market participants' own automated systems, which often report trades almost instantly. In fact, NASD members report over 90 percent of trades to Nasdaq within two seconds of execution, despite Nasdaq's 90-second trade reporting window. Nasdaq believes that unmodified trades would more accurately reflect the true state of the market at the close of normal market hours. Thus, Nasdaq would not consider trade reports submitted after 4:00:02 p.m. and, with one exception, it would not consider any trades reported with a modifier, such as a .T (after normal market hours), .OR (out of range), or .PRP (prior reference price).[8]

Third, in its original filing, Nasdaq proposed to adjust the NOCP only if the Predicate Trade is cancelled or corrected by 4:30:00 p.m., even though Nasdaq would continue to accept trade cancel and correction messages via ACT until 5:15:00 p.m. If, between 4:00:02 p.m. and 4:30:00 p.m., a market participant enters a cancel or correct message regarding the Predicate Trade, Nasdaq would process that message, and recalculate the NOCP. Nasdaq would not consider in the NOCP calculation any cancel or correct message that arrives after 4:30:00 p.m. However, as discussed more fully below, Nasdaq has revised its proposal in Amendment No. 1 to consider cancelled or corrected trades submitted until 5:15:00 p.m. rather than 4:30:00 p.m. for the calculation of the NOCP.[9]

C. Impact on the Consolidated Last Sale Calculation

The NOCP would not be eligible to set the Consolidated Close under the Nasdaq UTP Plan, although the Predicate Trade would be eligible as are all unmodified trade reports. While the NOCP is based on an actual trade, it is not necessarily an actual trade price. Therefore, Nasdaq believes that including it in the Consolidated Close is not consistent with the Nasdaq UTP Plan. It would also give Nasdaq an unfair advantage by providing an additional opportunity for Nasdaq to set the Consolidated Close. To avoid that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47022 (December 18, 2002), 67 FR 78840.

[4] *See* letter from Brett W. Redfearn, Senior Vice President, Business Strategy and Equity Order Flow, American Stock Exchange LLC, to Jonathan G. Katz, Secretary, Commission, dated January 29, 2003 ("Amex Letter"); letter from Jeffrey T. Brown, Senior Vice President, Secretary and General Counsel, the Cincinnati Stock Exchange, Inc., to Mr. Jonathan G. Katz, Secretary, Commission, dated January 24, 2003 ("CSE Letter"); letter from Jon Kroeper, First Vice President and Associate General Counsel, Instinet Group Incorporated, to Mr. Jonathan G. Katz, Secretary, Commission, dated February 13, 2003 ("Instinet Letter"); letter from Donald J. Boteler, Vice President-Operations, Investment Company Institute, to Mr. Jonathan G. Katz, Secretary, Commission, dated January 15, 2003 ("Institute Letter"); letter from C. Thomas Richardson, Managing Director, Nasdaq Trading, and David Weisberger, Managing Director, U.S. Equities Models Trading, Salomon Smith Barney, to Mr. Jonathan Katz, Secretary, Commission, dated January 15, 2003 ("SSB Letter"); letter from Hendrik J. Kranenburg, Executive Vice President, Standard & Poor's, to Secretary, Commission, dated January 17, 2003 ("S&P Letter"); and letter from Scott W. Anderson, Associate Director and Counsel, Region Americas Legal, UBS Warburg LLC, to Jonathan G. Katz, Secretary, Commission, dated January 15, 2003 ("UBSW Letter").

[5] *See* letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Alton S. Harvey, Office Head, Division of Market Regulation ("Division"), Commission, dated January 27, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq addresses the positive comments submitted with respect to the proposed rule change and proposes, in response to comments, to revise its original proposal to consider canceled or corrected trades submitted until 5:15:00 PM rather than 4:30:00 PM for the calculation of the NOCP.

[6] *See* letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Alton S. Harvey, Office Head, Division, Commission, dated March 7, 2003 ("Second Response Letter").

[7] Nasdaq Market participants would not have the ability to append the new modifier to trade reports; only Nasdaq trade reporting systems would append this modifier, and only for transactions in Nasdaq National Market and SmallCap Market securities.

[8] Nasdaq would consider a trade submitted to Nasdaq with a .SLD modifier (reported more than 90 seconds after execution) or a .PRP modifier to be the Predicate Trade if, and only if, it is the only trade of the day by any market participant. In that case, the Predicate BBO would be the BBO at the time the trade was reported.

[9] *See* Amendment No. 1, *supra* note 5.

result, Nasdaq would append the .M modifier and publish it with a trade size of zero to signal to the ESIP and vendors not to include it in the Consolidated Close calculation. The NOCP would, on the other hand, be used to populate the Nasdaq Individual Market Close field that the ESIP currently disseminates. The Predicate Trade would be reported to the ESIP according to Nasdaq's existing trade reporting rules and it would be eligible to set the Consolidated Close, as it would be today.

Nasdaq recognizes that it must educate investors and vendors about its new NOCP and the .M modifier to avoid creating confusion. Currently, the Nasdaq ESIP disseminates a Closing Trade Summary Report that includes the Consolidated Close as well as the Individual Market Closes for Nasdaq and for each UTP Exchange that trades Nasdaq securities. If this proposal is approved, the Individual Market Close field for Nasdaq in the Closing Trade Summary Report would contain the NOCP in place of its last sale price. Neither the Consolidated Close nor any of the Individual Market Closes for any UTP Exchange would be affected by this proposal.

The Nasdaq ESIP is engaged in a development effort to accommodate the new trade modifier and its treatment in the consolidated data streams. Nasdaq has also discussed the addition of the new .M trade modifier with the UTP Operating Committee, and has made it clear that any UTP participant can use the new trade modifier if it chooses.

III. Summary of Comments and Nasdaq's Responses

As noted above, the Commission received seven comment letters regarding the original proposal.[10] Nasdaq filed Amendment No. 1 to the proposal [11] to respond to the positive comments received by four of the commenters [12] and also filed the Second Response Letter [13] to address further concerns raised by three of the commenters.[14]

A. Amendment No. 1

Three of the commenters addressed in Amendment No. 1 fully supported Nasdaq's proposed rule change.[15] One commenter believed that the institution of an official closing price for the Nasdaq market would greatly enhance the overall integrity of the market and that the proposed methodology for calculating the NOCP appeared sensible and reasonably impervious to manipulation.[16] Another commenter stated that the implementation of Nasdaq's proposal would result in the determination of closing values that accurately and consistently reflect market conditions at the close and is an improvement that would provide greater financial market transparency.[17] The third commenter believed that the proposal would provide tremendous benefits to the marketplace and improve stability and predictability across the Nasdaq market and enthusiastically supported each of the three components of the proposal: (1) Reducing the consideration time for inclusion in the closing price from 4:01:30 to 4:00:02 p.m.; (2) restricting the closing price to trades effected on Nasdaq; and (3) "normalizing" closing prices based upon the closing inside market.[18]

Furthermore, under the proposal, Nasdaq would adjust the NOCP only if the Predicate Trade is cancelled or corrected by 4:30:00 p.m., even though Nasdaq would continue to accept trade cancel and correction messages via its ACT until 5:15:00 p.m. Although supporting the proposed rule change, one commenter questioned Nasdaq's willingness to accept trade cancel and correction messages via ACT until 5:15:00 p.m., inasmuch as this would result in a disconnect between the NOCP and ACT.[19] While Nasdaq asserted that it receives over 99 percent of cancel or corrections before 4:30:00 p.m., this commenter believed that material changes consistently occur after 4:30:00 p.m. The commenter also believed that a failure to synchronize these two events would very likely result in mutual funds being compelled to disregard the NOCP at 4:30:00 p.m.[20] Similarly, another commenter indicated that the 4:30:00 p.m. deadline would be 45 minutes prior to the time that other markets continue to accept adjustments.[21] In response to comments, Nasdaq revised its proposal in Amendment No. 1 to extend the calculation of the NOCP to 5:15:00 p.m.[22] Nasdaq believed that the 5:15:00 p.m. cut-off would permit flexibility to review and correct trades that occur during the busiest trading of the day, while fulfilling the equally important need for finality in the closing price calculation.

B. Second Response Letter

As noted above, the Commission received three comment letters that raised procedural, competitive, and methodological concerns with respect to the proposed rule change.[23] Nasdaq filed the Second Response Letter to specifically address these comments.[24]

1. Procedural Issues

Because Nasdaq would be replacing the Nasdaq UTP Plan's methodology in calculating its close with the NOCP methodology, proposing that the Predicate Trade be "normalized," and introducing new cut off times for calculating its individual close and disseminating that info through the ESIP facilities and thus changing the closing reports disseminated by the ESIP to display the NOCP instead of the Nasdaq UTP Plan's standard calculation, three of the commenters believed that Nasdaq should not be permitted to bypass the UTP Operating Committee or the terms of the Nasdaq UTP Plan, but instead should seek UTP Operating Committee interpretation or Nasdaq UTP Plan amendment to accommodate the NOCP.[25] The commenters also criticized Nasdaq for not involving other interested Nasdaq UTP Plan participants in developing the specifications for the SIP system changes before starting development work [26] and that Nasdaq designed the .M modifier accommodated by the ESIP in a fashion that is suited to its own particular system needs.[27] Furthermore, one of the commenters questioned Nasdaq's stated purpose for proposing the rule change, stating that if Nasdaq had a legitimate concern about the methodology specified in the Nasdaq UTP Plan for calculating the consolidated close, the appropriate forum to address that issue would be the UTP Operating Committee.[28] Moreover, this commenter believed that Nasdaq was baselessly questioning the integrity of the consolidated close and the surveillance conducted by the Nasdaq UTP Plan participants and argued that the quality of a market's surveillance procedures should be evaluated by the Commission and not by competing markets.

In the Second Response Letter, Nasdaq indicated that on March 4, 2003, the UTP Operating Committee unanimously approved a resolution that was designed to address the commentors' procedural concerns.[29] Nasdaq introduced this resolution to the UTP Operating Committee to address the concerns expressed by two of the commenters.[30] According to Nasdaq, the UTP Operating Committee discussed Nasdaq's proposal during several meetings in January and February, and, on March 4, 2003, unanimously voted that the establishment and use of the .M modifier would be consistent with the terms of the Nasdaq UTP Plan. The Operating Committee also approved the modifications to the SIP that are needed to implement the proposed establishment and use of the .M modifier.

Furthermore, Nasdaq agreed to delay the implementation of the proposal until April 14, 2003 to provide members of the UTP Operating Committee with additional time to consider the technical specifications prior to implementing the proposed trade message modifier in their own markets. Nasdaq believes that the approval of this resolution and the agreed-upon delay in implementation clearly address the commentors' procedural objections regarding compliance with the Nasdaq UTP Plan.

2. Competitive Issues

Two commenters believed that Nasdaq did not comply with its obligations as ESIP to operate independently of its associated order matching facility and that the apparent circumstances surrounding the exclusive SIP's engagement in system development work to accommodate the NOCP, without any apparent joint decisions by the UTP Operating Committee, raises serious competitive concerns.[31] Such circumstances may indicate that Nasdaq has undue influence over Nasdaq UTP Plan systems development priorities.

Two commenters expressed concern that Nasdaq may be disrupting the established system for calculating the consolidated close for its own anticompetitive reasons or may be receiving preferential treatment from the SIP and thus would frustrate the requirements for a national market system [32] in section 11A and section 11A(a)(1)(C)(ii) of the Act.[33] One commenter urged the Commission to examine whether the SIP is being operated in a truly market-neutral manner, is not unduly influenced by Nasdaq, and is not providing Nasdaq with any competitive advantages over other participant markets.[34] Similarly, the other commenter did not view Nasdaq's proposal as an example of the fair competition and regulatory harmony contemplated under the Act because Nasdaq appeared to be: disregarding the Nasdaq UTP Plan requirements and inappropriately using its position as ESIP to establish parallel dissemination practices applicable only to its market data for its own competitive advantage; dictating the introduction of earlier dissemination times without necessity of UTP Operating Committee vote, and unilaterally modifying the calculation of the consolidated close.[35] Furthermore, because the calculations and displays would no longer be based on a single standardized methodology and would introduce factors other than an actual reported trade in the determination of a closing price, both commenters believed that Nasdaq's proposal would afford the opportunity for investor confusion as it would eliminate the "apples-to-apples" comparison of individual market prices.[36] Due to the significant value of retaining consistent methodologies in a market like that for Nasdaq-quoted securities, where trading activity is widely dispersed among different trading venues, these commenters suggested that existing reports should continue to contain the same calculations as necessary to maintain the integrity and clarity of the closing price information across the markets.[37]

Finally, one commenter expressed the view that Nasdaq's actions were inconsistent with (b)(6) and (b)(9) of section 15A [38] which require that Nasdaq not design rules intended to discourage cooperation and coordination among regulators, regulate matters not related to the purposes of the administration of its markets, and impose unnecessary and inappropriate burdens on competition.[39]

In response to comments, Nasdaq stated that it is not attempting to disrupt the calculation of the consolidated close, but rather has avoided interfering with the existing consolidated close, which would be calculated and disseminated exactly as it has been regardless of this proposal.[40] Furthermore, every trade that currently is eligible to set the consolidated close would continue to be eligible if this proposal is approved, and no trade that is currently not eligible would become so. Similarly, Nasdaq clarified that the Predicate Trade that forms the basis of the NOCP would be eligible to set the consolidated close, as it is today, while the NOCP message itself, which is new, would not be eligible. Nasdaq also noted, in response to the comments, that use of the NOCP is completely voluntary on the part of industry participants; Nasdaq's proposal would simply create one alternative closing price for industry participants to use. Moreover, Nasdaq's proposal would not preclude the use of other closing prices, such as the consolidated close or market specific closing prices that exist today. In fact, Nasdaq believes that its proposal explicitly invites other markets to establish a competing market-centric closing price, and to use the .M modifier to designate their own official closing price to market participants.

Furthermore, Nasdaq does not believe that the commenters presented a credible argument that Nasdaq was operating anti-competitively. Specifically, Nasdaq believes that it has not abused its role as the SIP. Because Nasdaq is aware of its unique role as the processor for the Nasdaq UTP Plan and to avoid the appearance of bias, Nasdaq agreed to delay the implementation of its proposal until April 14, 2003 from the original, scheduled implementation date of March 24, 2003. According to Nasdaq, this extension would permit Nasdaq UTP Plan participants, including the commentors, extra time to program their systems to use the .M modifier or to develop a proposal that would better serve their needs.

3. Methodological Issues

Although one commenter supported reducing the inclusion time for calculating the NOCP at 4:00:02 p.m.

---

[10] *See supra* note 4.

[11] *See* Amendment No. 1, *supra* note 5.

[12] *See* Institute Letter, SSB Letter, S&P Letter and UBSW Letter, *supra* note 4.

[13] *See* Second Response Letter, *supra* note 6.

[14] *See* Amex Letter, CSE Letter and Instinet Letter, *supra* note 4.

[15] *See* SSB Letter, S&P Letter and UBSW Letter, *supra* note 4.

[16] *See* UBSW Letter, *supra* note 4.

[17] *See* S&P Letter, *supra* note 4.

[18] *See* SSB Letter, *supra* note 4.

[19] *See* Institute Letter, *supra* note 4.

[20] This commenter also suggested that the deadline for cancel and correction messages for both the NOCP and for ACT be set at 5:00:00 p.m. rather than 5:15:00 to provide mutual funds an additional 15 minutes to calculate daily closing prices. *See* Institute Letter, *supra* note 4. In response, Nasdaq stated that, while it cannot implement that recommendation via this proposal, it understands the logic of the commenter's recommendation and commits to continue discussions on this proposal with the commenter and with Nasdaq's membership. *See* Amendment No. 1, *supra* note 5.

[21] *See* CSE Letter, *supra* note 4.

[22] *See* Amendment No. 1, *supra* note 5.

[23] *See* Amex Letter, CSE Letter and Instinet Letter, *supra* note 4.

[24] *See* Second Response Letter, *supra* note 6.

[25] *See* Amex Letter, CSE Letter and Instinet Letter, *supra* note 4.

[26] *See* Amex Letter and CSE Letter, *supra* note 4.

[27] *See* CSE Letter and Instinet Letter, *supra* note 4.

[28] *See* CSE Letter, *supra* note 4.

[29] *See* Second Response Letter, *supra* note 6.

[30] *See* Amex Letter and CSE Letter, *supra* note 4.

[31] *See* Amex Letter and Instinet Letter, *supra* note 4.

[32] *See* CSE Letter and Instinet Letter, *supra* note 4.

[33] 15 U.S.C 78k and 15 U.S.C. 78k–1(a)(1)(C)(ii).

[34] *See* Instinet Letter, *supra* note 4.

[35] This commenter was also concerned with the precedential impact this proposal would have on future proposals by any market participant. *See* CSE Letter, *supra* note 4.

[36] *See* CSE Letter and Instinet Letter, *supra* note 4.

[37] *See* CSE Letter and Instinet Letter, *supra* note 4.

[38] 15 U.S.C. 78o–3(b)(6) and 15 U.S.C. 78o–3(b)(9).

[39] *See* CSE Letter, *supra* note 4.

[40] *See* Second Response Letter, *supra* note 6.

because it would eliminate the incentive and opportunity for gamesmanship,[41] another commenter believed that the earlier cut off and dissemination aspect of the proposal has competitive effects on the Consolidated Close that is disseminated 88 seconds later, and excludes legitimate trades from consideration for Nasdaq's individual market closing price (*i.e.* those trades reported after 4:00:02 PM).[42] Three of the commenters also stated that the timing is materially different and contrary to the Nasdaq UTP Plan and thus would undermine the Nasdaq UTP Plan's methodology used to calculate its close.[43]

With respect to Nasdaq only considering trade reports submitted to ACT, either by NASD members or by UTP Exchanges that use Nasdaq's proprietary execution systems, two commenters stated that Nasdaq, as the primary market for Nasdaq securities, would clearly be in the best position to function in the capacity of determining the closing price.[44] In contrast, one commenter believed that other markets' trades should be measured separate from the Nasdaq market close,[45] and another commenter similarly questioned whether it would be appropriate to use UTP Exchange information in the "normalization" process for determining a Nasdaq market-specific close, or whether it would it be more appropriate for Nasdaq to filter out UTP Exchange information from the Nasdaq BBO used in the "normalization" process.[46]

Furthermore, some of the commenters indicated that the potential anti-competitive impact of Nasdaq's proposed methodology for calculating and disseminating the NOCP require that Nasdaq not use the term "official" to describe any value that it may disseminate according to the proposed methodology.[47] The commenters considered this to be misleading to vendors and market participants as well as encourages consumers of closing price information (*i.e.* issuers, mutual funds, and the media) to use the NOCP to the exclusion of other closing price data. Furthermore, they believed that Nasdaq should not be permitted to characterize the price that it proposes to disseminate as the "official" price in view of its exclusion of so much Nasdaq volume from its calculation (*i.e.* transactions of Nasdaq UTP Plan participants not using ACT).[48]

Finally, although one commenter favored Nasdaq's proposed process of "normalization" in calculating the NOCP,[49] two commenters believed that the "normalization" process could exacerbate the issue of inaccurate closing prices and create an incentive for Nasdaq market makers to manipulate quotes in order to set the closing price or potentially expose the NOCP to greater risk of manipulation than the current process, particularly in lower-volume securities.[50] One of these commenters further questioned whether the NOCP, through "normalizing" a Predicate Trade, would produce a better measurement of the closing price than the Predicate or the Nasdaq individual market close under the existing Nasdaq UTP Plan methodology.[51]

In its Second Response Letter, Nasdaq expressed the view that each market should be free to determine its own closing price methodology, provided its chosen method is consistent with the Act.[52] Nasdaq indicated that it had carefully considered the aspects of the NOCP methodology and does not believe that its proposal raises any statutory basis for rejecting the proposal. Nasdaq also noted that the commentors failed to identify a way in which Nasdaq's proposal would be inconsistent with the Act.[53]

With respect to the objections raised against Nasdaq's use of the term "official" in describing the NOCP, Nasdaq believes these arguments rely on the faulty premise that market participants are statutorily required to utilize the consolidated closing price established in the Nasdaq UTP Plan, when they are not. Nasdaq indicated that market participants are free to use myriad closing prices, each of which is consistent with the Act. Nasdaq believed that the consolidated closes, the individual closing price of the NYSE, and the NOCP, if approved, are constructs used to assess the value of a given security at the close of regular trading, leaving investors free to determine which closing price to use.

In response to issues raised by the commenters, Nasdaq indicated that ultimately it would be competition, rather than anti-competition, that would determine whether market participants consider the NOCP meaningful. Nasdaq argued that if Nasdaq's method for determining its own closing price is flawed, as some commenters claimed, then market participants would not utilize the NOCP and Nasdaq's attempt to compete would fail. However, based upon the overwhelmingly positive comments by disinterested market participants that would be using a closing price, Nasdaq is confident that its chosen methodology is valid and likely to be accepted in the marketplace. In either case, Nasdaq believes that competition would have occurred as contemplated by the Act.

Furthermore, Nasdaq acknowledged that no closing price methodology, the NOCP included, would produce a perfect closing price in every stock every day. In response, Nasdaq would like to ensure market participants that Nasdaq MarketWatch would continue its intensive, real-time surveillance of quoting and trading activity in Nasdaq at the close of trading. Just as Nasdaq MarketWatch has the authority to suppress trades that could improperly affect the closing price today, it would retain the same authority with respect to the NOCP.

IV. Discussion

After careful review of the proposed rule change, the comment letters, and Nasdaq's response to comments, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[54] Specifically, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 15A of the Act in general,[55] and section 15A(b)(6) of the Act in particular,[56] which provides that the rules of the association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the establishment of an NOCP and a trade report modifier with which to identify that price to the public may be a reasonable alternative closing price that industry participants may choose to use. The Commission also notes that Nasdaq has represented that the NOCP methodology would only impact the Individual Market Close for Nasdaq and would not impact the Consolidated Close or Individual Market Closes of the Nasdaq UTP Plan exchanges that are disseminated by the ESIP. While the NOCP is based on an actual trade, it is not necessarily an actual trade report. Therefore, the Commission believes that the NOCP may provide benefits to the marketplace and investors so long as investors are aware of the nature of the NOCP and its calculation. The Commission also believes that the elements of Nasdaq's proposal appear to be a reasonable attempt at increasing transparency and providing stability and predictability to the closing prices in Nasdaq securities.

Furthermore, in response to the procedural objections against Nasdaq for not consulting with and receiving approval from the UTP Operating Committee prior to filing the proposed rule change, the Commission notes that Nasdaq received a unanimous approval for the establishment and use of the .M modifier from the UTP Operating Committee and has also agreed to delay its implementation of the NOCP until April 14, 2003 in order to provide members of the UTP Operating Committee with additional time to consider the technical specifications prior to implementing the proposed modifier in their own markets.[57]

With regard to the other issues raised by commenters, the Commission is satisfied that Nasdaq has reasonably addressed the commenters' concerns.

Furthermore, the Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.[58] Nasdaq filed Amendment No. 1 in response to comments it received after the publication of the notice of filing of the proposed rule change to address certain commenters' concerns.[59] Because Amendment No. 1 is responsive to these commenters' concerns, the Commission finds good cause for accelerating approval of Amendment No. 1.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 1 that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–158 and should be submitted by April 15, 2003.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[60] that the proposed rule change (SR–NASD–2002–158) be, and it hereby is, approved, and that Amendment No. 1 to the proposed rule change be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[61]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6985 Filed 3–24–03; 8:45 am]

BILLING CODE 8010–01–P

[41] *See* SSB Letter, *supra* note 4.

[42] *See* CSE Letter, *supra* note 4.

[43] *See* Amex Letter, CSE Letter and Instinet Letter, *supra* note 4.

[44] *See* SSB Letter and UBSW Letter, *supra* note 4. The SSB Letter indicated that designating the closing process to Nasdaq and the establishment of a uniform, consistent system would have infrequent but important positive marketplace impact over the current environment. The UBSW Letter noted that this is similar to the New York Stock Exchange, Inc.'s ("NYSE") long-established practice of disseminating an NYSE Closing Price based upon the last NYSE-only regular way trade in each NYSE-listed security. *Id.*

[45] *See* CSE Letter, *supra* note 4.

[46] *See* Instinet Letter, *supra* note 4.

[47] *See* Amex Letter and Instinet Letter, *supra* note 4. The Amex Letter stated that any Nasdaq closing information designated as "official" should be as agreed to by all Nasdaq UTP Plan participants. *Id.*

[48] *See* Amex Letter and Instinet Letter, *supra* note 4. As the NOCP calculations would not take into account quotation and trade reporting activity occurring outside of Nasdaq, the Instinet Letter expressed the view that the NOCP would not be an acceptable surrogate for a consolidated closing price, and using it would not appear to present the complete view of the overall market required to ensure the accuracy and integrity of closing values and thus serve investors' interests. *Id.*

[49] *See* SSB Letter (noting that the process helps eliminate outlying inconsistencies and exclude from the closing price trades that are clearly unrelated to contemporaneous closing inside markets), *supra* note 4. *See also* S&P Letter (indicating that the proposal would reduce the risk of an outlier setting the closing price for a given equity security), *supra* note 4.

[50] *See* CSE Letter and Instinet Letter, *supra* note 4.

[51] *See* Instinet Letter, *supra* note 4.

[52] *See* Second Response Letter, *supra* note 6.

[53] Nasdaq also corrected the comment in the CSE Letter which inaccurately stated that Nasdaq would separately disseminate its NOCP information at 4:00:02 p.m., when, in fact, that information would be disseminated at 4:01:30 p.m. *See* Second Response Letter, *supra* note 6.

[54] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[55] 15 U.S.C. 78o–3.

[56] 15 U.S.C. 78o–3(b)(6).

[57] *See* Second Response Letter, *supra* note 6.

[58] 15 U.S.C. 78s(b)(2).

[59] Certain commenters objected to Nasdaq's proposal to adjust the NOCP only if the Predicate Trade is cancelled or corrected by 4:30:00 PM, even though Nasdaq would continue to accept trade cancel and correction messages via ACT until 5:15:00 p.m. *See* CSE Letter and Institute Letter, *supra* note 4. However, in response to comments, Nasdaq revised its proposal in Amendment No. 1 to consider cancelled or corrected trades submitted until 5:15:00 PM rather than 4:30:00 PM for the calculation of the NOCP. *See* Amendment No. 1, *supra* note 5.

[60] 15 U.S.C. 78s(b)(2).

[61] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47516; File No. SR–NASD–2002–141]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments to NASD Rules 4200 and 4350 Regarding Board Independence and Independent Committees

March 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 9, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On March 11, 2003, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes amendments to NASD Rules 4200 and 4350 to modify the definition of the term "independent director."

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 11, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq proposed revisions to (1) the definition of "independent director" and (2) Nasdaq's listing standards with respect to provisions governing independent directors and audit committees. Amendment No. 1 supersedes and replaces in its entirety the original proposed rule change that Nasdaq filed with the Commission on October 9, 2002.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.[4]

* * * * *

Rule 4200. Definitions

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)–(13) No change.

(14) *"Family Member" means any person who is a relative by blood, marriage or adoption or who has the same residence.*

(15) "Independent director" means a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship, which, in the opinion of the company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The following persons shall not be considered independent:

(A) a director who is, *or during the past three years was,* employed by the [corporation] *company* or *by any parent or subsidiary of the company* [any of its affiliates for the current year or any of the past three years];

(B) a director who accepts *or who has a Family Member who accepts* any [compensation] *payments* from the [corporation] *company* or any [of its affiliates] *parent or subsidiary of the company* in excess of $60,000 during the *current fiscal year or any of the past three fiscal years* [previous fiscal year], other than compensation for board service, *payments arising solely from investments in the company's securities, compensation paid to a Family Member who is an employee of the company or a parent or subsidiary of the company (but not if such person is an executive officer of the company or any parent or subsidiary of the company),* benefits under a tax-qualified retirement plan, or non-discretionary compensation *(provided, however, that audit committee members are subject to heightened requirements under Rule 4350(d));*

(C) a director who is a [member of the immediate] [f]*F*amily *M*ember of an individual who is, or [has been in any of] *during* the past three years *was,* employed by the [corporation] *company* or *by* any [of its affiliates] *parent or subsidiary of the company* as an executive officer[. Immediate family includes a person's spouse, parents, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and anyone who resides in such person's home];

(D) a director who is a partner in, or a controlling shareholder or an executive officer of, any [for-profit business] organization to which the [corporation] *company* made, or from which the [corporation] *company* received, payments [other than those arising solely from investments in the [corporation's] *company's* securities] that exceed 5% of the *recipient's* [corporation's or business organization's] consolidated gross revenues for that year, or $200,000, whichever is more, in *the current fiscal year or* any of the past three *fiscal* years;

(E) a director *of the listed company* who is employed as an executive *officer* of another entity where any of the [company's] executive[s] *officers of the listed company* serve on [that entity's] *the* compensation committee *of such other entity, or if such relationship existed during the past three years; or*

(F) a director who is or was a partner or employee of the company's outside auditor, and worked on the company's audit, during the past three years.

Former (15)–(37) renumbered as (16)–(38).

IM—4200 Definition of Independence—Rule 4200(a)(15)

It is important for investors to have confidence that individuals serving as independent directors do not have a relationship with the listed company that would impair their independence. The board has a responsibility to make an affirmative determination that no such relationships exist through the application of Rule 4200. Rule 4200 also provides a list of certain relationships that preclude a board finding of independence. These objective measures provide transparency to investors and companies, facilitate uniform application of the rules, and ease administration. Because Nasdaq does not believe that ownership of company stock by itself would preclude a board finding of independence, it is not included in the aforementioned objective factors. The Rule's reference to a "parent or subsidiary" is intended to cover entities that are consolidated with the issuer's financial statements. It should also be noted that there are additional, more stringent requirements that apply to audit committees, as specified in Rule 4350.

Rule 4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq Small Cap Market Issuers Except for Limited Partnerships

(a)–(b) No change.

(c) Independent Directors

[Each issuer shall maintain a sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule 4350(d)(2).]

(1) A majority of the board of directors must be comprised of independent directors as defined in Rule 4200.

(2) Independent directors must have regularly scheduled meetings at which only independent directors are present ("executive sessions").

(3) Compensation of Officers

(A) Compensation of the chief executive officer of the company will be determined either by:

(i) a majority of the independent directors meeting in executive session, or

(ii) a compensation committee comprised solely of independent directors meeting in executive session.

(B) Compensation of all other officers, as that term is defined in section 16 of the Act and Rule 16a–1 thereunder, will be determined either by:

(i) a majority of the independent directors, or

(ii) a compensation committee comprised solely of independent directors.

The chief executive officer may be present during deliberations, but may not vote.

(C) Notwithstanding paragraphs (3)(A)(ii) and (3)(B)(ii) above, if the compensation committee is comprised of at least three members, one director who is not independent as defined in Rule 4200 and is not a current officer or employee or a Family Member of such person, may be appointed to the compensation committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the next annual meeting proxy statement subsequent to such determination, the nature of the relationship and the reasons for the determination. A member appointed under this exception may not serve longer than two years.

(4) Nomination of Directors

(A) The nomination of company directors will be determined either by:

(i) a majority of the independent directors, or

(ii) a nominations committee comprised solely of independent directors.

(B) Notwithstanding paragraph (4)(A)(ii) above, if the nominations committee is comprised of at least three members, one director, who is not independent as defined in Rule 4200 and is not a current officer or employee or a Family Member of such person, may be appointed to the nominations committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the next annual meeting proxy statement subsequent to such determination, the nature of the relationship and the reasons for the determination. A member appointed under this exception may not serve longer than two years.

(C) Notwithstanding paragraph (4)(A)(ii) above, if the nominations committee is comprised of at least three members, and if the exception described in paragraph (4)(B) is not relied upon, one director who owns 20% or more of the company's common stock or voting power outstanding, and is not independent as defined in Rule 4200 because that director is also an officer, may be appointed to the nominations committee if the board determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the next annual meeting proxy statement subsequent to such determination, the nature of the relationship, and the reasons for the determination.

(5) A Controlled Company is exempt from the requirements of this subsection (c). A Controlled Company is a company of which more than 50% of the voting power is held by an individual, a group or another company. A Controlled Company relying upon this exemption must disclose in its annual meeting proxy statement that it is a Controlled Company and the basis for that determination.

(d) Audit Committee

(1) Audit Committee Charter

Each issuer must certify that it has adopted a formal written audit committee charter and that the audit committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify [the following]:

(A)–(B) No change.

(C) [the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement)] *the committee's purpose of overseeing the accounting and financial reporting processes of the issuer and the audits of the financial statements of the issuer;*

(D) *the following specific audit committee responsibilities and authority:*

(i) the pre-approval of all audit services and permissible non-audit services as set forth in section 10A(i) of the Act;

(ii) the sole authority to appoint, determine funding for and oversee the outside auditors as set forth in section 10A(m)(2) of the Act;

(iii) the responsibility to establish procedures for complaints as set forth in section 10A(m)(4) of the Act; and

(iv) the authority to engage and determine funding for independent counsel and other advisors as set forth in section 10A(m)(5) of the Act.

(2) Audit Committee Composition

(A) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, [comprised solely of independent directors] each of whom [is]:

(i) must: (a) be independent as defined under Rule 4200, (b) meet the criteria for independence set forth in section 10A(m)(3) of the Act, and (c) not own or control 20% or more of the issuer's voting securities (or such lower measurement as may be established by the SEC in rulemaking under section 10A(m) of the Act); and

(ii) must be able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement [or will become able to do so within a reasonable period of time after his or her appointment to the audit committee]. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee [that] *who* has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(B) Notwithstanding paragraph *(2)*(A)*(i)*, one director who: (*i*) Is not independent as defined in Rule 4200, [and] *(ii) meets the criteria set forth in section 10A(m)(3) of the Act and the rules thereunder, (iii) does not own or control 20% or more of the issuer's voting securities (or such lower measurement as may be established by the SEC in rulemaking under section 10A(m)(3) of the Act), and (iv)* is not a current *officer or* employee or a[n immediate] F[f]amily *M*[m]ember of such [employee] *person,* may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination. *A member appointed under this exception may not serve longer than two years and may not chair the audit committee.*

[(C) Exception for Small Business Filers—Paragraphs (2)(A) and (2)(B) do not apply to issuers that file reports under SEC Regulation S–B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.]

(e)–(l) No change.

IM–4350–4 Board Independence and Independent Committees

Independent Directors and Independent Committees—Rule 4350(c)

Majority Independent Board. Independent directors (as defined in Rule 4200(A)(15)) play an important role in assuring investor confidence. Through the exercise of independent judgment, they act on behalf of investors to maximize shareholder value in the companies they oversee and guard against conflicts of interest. Requiring that the board be comprised of a majority of independent directors will empower such directors to more effectively carry out these responsibilities.

Executive Sessions of Independent Directors. Regularly scheduled executive sessions will encourage and enhance communication among independent directors. It is contemplated that executive sessions will occur at least twice a year, and perhaps more frequently, in conjunction with regularly scheduled board meetings.

[4] At Nasdaq's request, a few nonsubstantive changes were made to the proposed rule text as filed with the Commission to correct formatting errors. Telephone calls between Sara Bloom, Office of General Counsel, Nasdaq, and Jennifer Lewis, Attorney, Division of Market Regulation ("Division"), Commission, on March 14, 2003 and Eleni Constantine, Office of General Counsel, Nasdaq, and Jennifer Lewis, Attorney, Division, Commission, on March 17, 2003.

Independent Director Oversight of Executive Compensation. Independent director oversight of executive officer compensation will help assure that appropriate incentives are in place, consistent with the board's responsibility to maximize shareholder value. The Rule is intended to provide flexibility for an issuer to choose an appropriate 3 board structure and to reduce resource burdens, while ensuring independent director control of compensation decisions.

Independent Director Oversight of Director Nominations. Independent director oversight of nominations enhances investor confidence in the selection of well-qualified director nominees, as well as independent nominees as required by the Rules. This Rule is also intended to provide flexibility for a company to choose an appropriate board structure and reduce resource burdens, while ensuring that independent directors approve all nominations.

This Rule will not apply in cases where the right to nominate a director legally belongs to a third party. For example, investors may negotiate the right to appoint directors in connection with an investment in the company, holders of preferred stock may be permitted to nominate or appoint directors upon certain defaults, or the company may be a party to a shareholder's agreement that allocates the right to nominate some directors. Because the right to nominate directors in these cases does not reside with the company, independent director approval would not be required.

Controlled Company Exception. This exception recognizes that majority shareholders, including parent companies, have the right to select directors and control certain key decisions, such as executive officer compensation, by virtue of their ownership rights. In order for a group to exist for purposes of this Rule, the shareholders must have publicly filed a notice that they are acting as a group (*e.g., a Schedule 13D). It should be emphasized that this controlled company exception does not extend to the audit committee requirements under Rule 4350.*

Audit Committees—Rule 4350(d)

Audit Committee Charter. A company's audit committee is required to adopt a formal written charter that specifies the scope of its responsibilities and the means by which it carries out those responsibilities; the outside auditor's accountability to the audit committee; and the audit committee's responsibility to ensure the independence of the outside auditor. Consistent with this, the charter must specify all audit committee responsibilities set forth in section 10A of the Act. The rights and responsibilities as articulated in the audit committee charter empower the audit committee and enhance its effectiveness in carrying out its responsibilities. While the audit committee is empowered to retain outside consultants, it is not expected to do so routinely. Rather, it is expected that such authority would be exercised in response to specific circumstances giving rise to an audit committee determination that such action is in the best interest of the company and its shareholders.

Audit Committee Composition. Audit committees are required to have a minimum of three members and be comprised only of independent directors. In addition to satisfying the independent director requirements under Rule 4200, audit committee members must satisfy the heightened independence standards provided in section 10A(m)(3) of the Act: they must not accept any consulting, advisory, or other compensatory fee from the company other than for board service, and they must not be an affiliated person of the company. For purposes of determining whether a person is an affiliate solely by virtue of stock ownership, an audit committee member will be considered an affiliated person of the issuer if such member owns or controls, directly or indirectly, 20% or more of the company's voting stock, or such other lower threshold as the SEC may establish. Nasdaq would also consider the employee of an entity that owns or controls such securities as an affiliated person.

All audit committee members must be able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement at the time they join the board. In addition, at least one audit committee member must have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

It should be noted that, under exceptional and limited circumstances, one director who is not considered independent under Rule 4200, but meets the independence requirements of section 10A(m)(3) of the Act, may serve on the audit committee, provided that the board determines it to be in the best interests of the company and its shareholders, and the board discloses the reasons for the determination in the company's next annual proxy statement.

* * * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing a comprehensive package of corporate governance reforms relating to NASD Rules 4200 and 4350, in order to provide greater transparency as to certain relationships that would preclude a board of directors finding that an individual can serve as an independent director and to increase the role of independent directors on board committees, in order to enhance investor confidence in the companies that list on Nasdaq.

The Definition of Independence

Nasdaq believes that it is important for investors to have confidence that individuals serving as independent directors do not have a relationship with the issuer that would impair their independence. Proposed interpretive material to NASD Rule 4200 states that the board has a responsibility to make an affirmative determination that no such relationships exist through the application of this rule. The rule also would specify specific relationships that would preclude a board finding of independence. The proposed rule change would expand and clarify this list of relationships. Nasdaq believes that these objectively measured relationships would provide transparency to investors and companies, facilitate uniform application of the rules, and ease administration. The rule's reference to parent or subsidiary is intended to cover

entities that are consolidated with the issuer's financial statements.

It should also be noted that additional, more stringent requirements for audit committees would be provided in NASD Rule 4350.

Independent Board Committees

The proposed rule would require a majority of independent directors on the issuer's board. Nasdaq believes that independent directors play an important role in assuring investor confidence. Through the exercise of independent judgment, they act on behalf of investors to maximize shareholder value in the companies they oversee, and guard against conflicts of interest. Requiring that the board be comprised of a majority of independent directors would empower such directors to more effectively carry out these responsibilities.

The proposed rule also would require regularly convened executive sessions of the independent directors. Nasdaq believes that regularly scheduled executive sessions would encourage and enhance communication among independent directors. Nasdaq contemplates that executive sessions would occur at least twice a year, and perhaps more frequently, in conjunction with regularly scheduled board meetings.

Independent director approval of executive officer compensation would also be required. This oversight would help assure that appropriate incentives are in place, consistent with the board's responsibility to maximize shareholder value. The proposed rule is intended to provide flexibility for an issuer to choose an appropriate board structure and to reduce resource burdens, while ensuring independent director control of compensation decisions.

Independent director approval would also be required for director nominations. Independent director oversight of nominations enhances investor confidence in the selection of well-qualified director nominees, as well as independent nominees as required by the rules. This rule is also intended to provide flexibility for an issuer to choose an appropriate board structure and reduce resource burdens, while ensuring that independent directors approve all nominations.

This rule would not apply in cases where the right to nominate a director legally belongs to a third party. For example, investors may negotiate the right to appoint directors in connection with an investment in the company, holders of preferred stock may be permitted to nominate or appoint directors upon certain defaults, or the issuer may be a party to a shareholder's agreement that allocates the right to nominate some directors. Because the right to nominate directors in these cases does not reside with the Company, independent director approval would not be required.

A Controlled Company would be exempt from the requirements of proposed NASD Rule 4350(c). A Controlled Company is defined in proposed NASD Rule 4350(c) as a company of which more than 50% of the voting power is held by an individual, a group or another company. A Controlled Company relying upon this exemption would be required to disclose in its annual meeting proxy statement that it is a Controlled Company and the basis for that determination. This exception recognizes that majority shareholders, including parent companies, have the right to select directors and control certain key decisions, such as executive officer compensation, by virtue of their ownership rights. In order for a group to exist for purposes of this rule, the shareholders would be required to publicly file a notice that they are acting as a group (*e.g.*, a Schedule 13D). Nasdaq emphasizes that this Controlled Company exemption would not extend to the audit committee requirements under Rule 4350.

Audit Committee Requirements

The proposed rule would expand the items that must be specified in the charter of the issuer's audit committee. In particular, the charter would be required to specify all audit committee responsibilities required under the Act. The rights and responsibilities as articulated in the audit committee charter empower the audit committee and enhance its effectiveness in carrying out its responsibilities. Proposed interpretive material to NASD Rule 4350 states that while the audit committee would be empowered to retain outside consultants, it would not be expected to do so routinely. Rather, it would be expected that such authority would be exercised in response to specific circumstances giving rise to an audit committee determination that such action was in the best interest of the company and its shareholders.

The proposal also would expand and tighten audit committee composition requirements. In addition to satisfying the independent director requirements under NASD Rule 4200, the proposal would require audit committee members to satisfy the heightened independence standards provided in section 10A(m)(3) of the Act, which provides that an audit committee member may not accept any consulting, advisory, or other compensatory fee from the issuer other than for board service, and may not be an affiliated person of the issuer. For purposes of determining whether a person would be an affiliate solely by virtue of stock ownership, proposed revisions to NASD Rule 4350 provide that an audit committee member would be considered an affiliated person of the issuer if such member owns or controls, directly or indirectly, 20% or more of the issuer's voting stock, or such other lower threshold as the Commission may establish.

The proposal would also tighten the current requirement that all audit committee members must be able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement within a reasonable time of joining the board, by providing that they must meet these qualifications at the time they join the board. Finally, the proposal would remove the exception applicable to Small Business filers in order to further strengthen the rule.

Timing for Effectiveness of Proposal

Nasdaq proposes to make the proposed rule change effective as follows: Requirements that may call for an adjustment to the composition of the company's board or committees ("board composition requirements") would be required to be implemented by the company's next annual meeting occurring after January 1, 2004. These include: NASD Rule 4200(a)(15), relating to the definition of independence; NASD Rule 4350(c)(1), requiring a majority of independent board members; NASD Rule 4350(c)(3), relating to independent director approval of executive compensation; NASD Rule 4350(c)(4), relating to independent approval of director nominations; and NASD Rule 4350(d)(2), relating to audit committee composition. This would allow companies to make necessary adjustments in the course of their regular annual meeting schedule. All other independence-related corporate governance requirements, including NASD Rule 4350(c)(2), relating to executive sessions and NASD Rule 4350(d)(1), relating to audit committee charters, would be required to be implemented six months after Commission approval.

Following Commission approval of the proposed rule change, newly listed companies would be afforded two years to comply with all board composition requirements and also would be

afforded any remaining balance of the six month grace period for compliance with all other requirements. Companies transferring from other markets with substantially similar requirements would be afforded the balance of any grace period afforded by the other market.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[5] in general, and with section 15A(b)(6) of the Act,[6] in particular, in that the proposed rules are designed to prevent fraudulent and manipulative acts and *practices, to promote just and equitable* principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. *Copies of such filing will also be* available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–141 and should be submitted by April 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 03–6987 Filed 3–24–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47500; File No. SR–Phlx–2001–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange Relating to Who Allocates Options Trades

March 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On January 31, May 17, July 8, 2002, and March 12, 2003, the Phlx filed Amendment Nos. 1, 2, 3, and 4 to the proposed rule change, respectively.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to proposes to amend Option Floor Procedure Advice F–2 ("Advice F–2"), "Allocation, Time Stamping, Matching and Access to Matched Trades." The Phlx further proposes to codify paragraph (a) of Advice F–2, as amended—regarding who allocates options trades—in the Exchange's rules, as new paragraph (vi) of Phlx rule 1014(g).

The Phlx also proposes to amend the fine schedule associated with Advice F–2, and thereby to amend its minor rule violation enforcement and reporting plan ("minor rule plan")[4] and the Exchange's sanctioning guidelines[5] accordingly.

Finally, the Exchange is proposing corresponding amendments to Option Floor Procedure Advice F–12 ("Advice F–12"), "Responsibility for Assigning Participation," to replace the term "largest participant" with "Allocating Participant" and to cross-reference that new term to new rule 1014(g)(vi). The Exchange is also proposing to change Advice F–12 by correcting the fine schedule so that it does not apply a minor rule plan fine to paragraph (d), dealing with disputes, which is a process-oriented provision, and not one which could give rise to a violation.

Below is the text of the proposed amendments to Advice F–2 and Advice F–12. Paragraph (a) of Advice F–2, as amended, would also be codified in the Phlx's rules as rule 1014(g)(vi). Deleted language is in brackets. Proposed new language is *italicized*.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 30, 2002 (Amendment No. 1); and letters from Richard S. Rudolph, Director and Counsel, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 16, 2002, July 5, 2002, and March 12, 2003 (Amendment Nos. 2, 3, and 4). The changes made by these amendments have been incorporated into this notice.

[4] The Phlx's minor rule plan, codified in rule 970, consists of advices, such as Advice F–2, with accompanying fine schedules. Rule 19d–1 under the Act authorizes national securities exchanges to adopt minor rule plans for summary discipline and abbreviated reporting. Rule 19d–1 requires prompt filing with the Commission of any final disciplinary actions. However, minor rule plan violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting. *See also* Securities Exchange Act Release No. 44537 (July 11, 2001), 66 FR 37511 (July 18, 2001) (SR–Phlx–2001–36).

[5] *See* Securities Exchange Act Release No. 45569 (March 15, 2002), 67 FR 13397 (March 22, 2002) (SR–Phlx–2001–60).

Option Floor Procedure Advices

F–2 Allocation, Time Stamping, Matching and Access to Matched Trades

(a) In order to facilitate timely tape reporting of executed trades, it is the duty of the *persons identified below* [largest participant in a trade] to allocate, match and time stamp manually executed trades as well as to submit the matched trade to the appropriate person at the respective specialist post immediately upon execution:

(i) in a trade involving a floor broker, the floor broker shall do so, provided that a floor broker may delegate this responsibility to the specialist (or an assistant to the specialist under the specialist's direct supervision) if the specialist agrees to accept such responsibility, and, in the event of such delegation, the specialist (or an assistant to the specialist under the specialist's direct supervision) shall do so;

(ii) in all other cases where the speciolist is a participant (i.e., where there is no floor broker), the specialist (or an assistant to the specialist under the specialist's direct supervision) shall do so;

(iii) in any other case (i.e., where there is no floor broker and no specialist is involved), the largest participant shall do so (for example, where several Registered Options Traders are involved); and

(iv) if there is only one seller and one buyer (no floor broker and no specialist is involved), the seller shall do so (for example, where only two Registered Options Traders are involved).

The person responsible for trade allocation (the "Allocating Participant") shall, for each trade allocated by such Allocating Participant, circle his or her badge identification number on the trade tickets, identifying himself/herself as the Allocating Participant in the particular trade. If the Allocating Participant is not a participant in the trade to be allocated, he/she shall identify himself/herself by initialing the trade tickets.

(b) A member or member organization initiating an options transaction whether acting as principal or agent, must report or ensure that the transaction is reported within 90 seconds of the execution to the tape. Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with just and equitable principles of trade.

[If there is only one seller and one buyer, the seller is responsible.]

(c) Execution times must be recorded on the reverse side of one or more of the tickets to a matched trade.

([b]*d*) Once a trade has been matched and submitted for reporting at the post, the respective Specialist Unit must preserve the matched tickets for a period of not less than three years.

([c]*e*) Member access to tickets comprising a matched trade is available to any participant of that trade, as well as the respective Specialist and any Floor Official acting in his capacity as a Floor Official. Requests to review trade matches must be made with the Specialist Unit.

FINE SCHEDULE

[Implemented on a three year running calendar basis][6]

F–2 [(a–c)] *(a, c–e):*	
1st Occurrence	[$100] *$500*
2nd Occurrence	[$250] *$1,000*
3rd Occurrence	[$500] *$2,000*
4th and Thereafter	Sanction is discretionary with Business Conduct Committee.
F–2 (b):	
1st Occurrence	*$500*
2nd Occurrence	*$1,000*
3rd Occurrence	*$2,500*
4th and Thereafter	*Sanction is discretionary with Business Conduct Committee.*

F–12 Responsibility for Assigning Participation

(a) In each instance where a member/participant effects a transaction on the options or foreign currency options floor, he must make reasonable efforts to ensure that a meeting of the minds occurred with the contra-side as to confirming the contra-side's participation in the trade. In trades where more than one contra-side is involved, each contra-side must immediately make known to the [largest participant] *Allocating Participant (See Advice F–2 and Rule 1014(g))* his understanding as to his respective level of participation in the trade.

(b) No such contra-side who has participated in the trade shall leave the crowd until the level of his participation in the trade has been confirmed by the [largest participant] *Allocating Participant (See Advice F–2 and Rule 1014(g)).*

(c) No person in the crowd shall submit a ticket for matching on a trade when that person is not due participation in the trade.

(d) Disputes as to participation on a trade shall be resolved by a majority vote of those persons present in the crowd during the relevant time or, if not so settled, then by a Floor Official.

FINE SCHEDULE

[Implemented on a one year running calendar basis]

F–12 (a–[d]c):	
1st Occurrence	$500
2nd Occurrence	$1,000
3rd Occurrence	$2,000
4th and Thereafter	Sanction is discretionary with Business Conduct Committee.

Obligations and Restrictions Applicable to Specialists and Registered Options Traders

Rule 1014. (a)–(e) No change.

(g) (i)–(iv) No change.

(v) RESERVED.

(vi) In order to facilitate timely tape reporting of executed trades, it is the duty of the persons identified below to allocate, match and time stamp manually executed trades as well as to submit the matched trade to the appropriate person at the respective specialist post immediately upon execution:

(i) in a trade involving a floor broker, the floor broker shall do so, provided that a floor broker may delegate this responsibility to the specialist (or an assistant to the specialist under the specialist's direct supervision) if the specialist agrees to accept such responsibility, and, in the event of such delegation, the specialist (or an assistant to the specialist under the specialist's direct supervision) shall do so;

(ii) in all other cases where the specialist is a participant (i.e., where there is no floor broker), the specialist (or an assistant to the specialist under the specialist's direct supervision) shall do so;

(iii) in any other case (i.e., where there is no floor broker and no specialist is involved), the largest participant shall do so (for example, where several Registered Options Traders are involved); and

(iv) if there is only one seller and one buyer (no floor broker and no specialist is involved), the seller shall do so (for example, where only two Registered Options Traders are involved).

The person responsible for trade allocation (the "Allocating Participant") shall, for each trade allocated by such Allocating Participant, circle his or her

[6] See Securities Exchange Act Release No. 44537 (July 11, 2001), 66 FR 37511 (July 18, 2001) (SR–Phlx–2001–36).

badge identification number on the trade tickets, identifying himself/herself as the Allocating participant in the particular trade. If the Allocating Participant is not a participant in the trade to be allocated, he/she shall identify himself/herself by initialing the trade tickets.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to change the responsibility for options trade allocation to permit floor brokers to delegate this responsibility to the specialist.[7] The Exchange believes that this amendment should render the process of trade allocation more efficient, which in turn facilitates trade reporting. Trade allocation means, in this context, determining who is considered to be bidding or offering at a particular price, who participates in a trade, and for what size.[8]

Currently, Advice F–2 provides that in order to facilitate timely tape reporting of executed trades, it is the duty of the largest participant in a trade to allocate, match, and time stamp manually executed trades,[9] as well as to submit the matched trade to the appropriate person at the respective specialist post immediately upon execution. Further, under the current rule, if there is only one seller and one buyer, the seller is responsible.

Advice F–2 was amended in 1998 to add a trade allocation provision and to specifically place that responsibility upon the largest participant involved in the trade, who is normally the floor broker representing the original order in the trading crowd.[10] At the time of this amendment, the Exchange noted that the practice in most options crowds was for the specialist to announce trade splits. The Exchange also noted that the practice differed throughout the floor, especially when the specialist was not involved in a trade, or where a great deal of trading and quoting activity rendered specialist allocation impractical. In these situations, floor brokers assisted in allocating trades, along with their other duties respecting trade tickets. Thus, the 1998 amendment was intended to both establish who is responsible for trade allocation as well as to select the largest participant (normally, the floor broker) as a logical extension of the then-existing responsibilities for matching and time stamping.

The proposed amendment to Advice F–2 would facilitate a voluntary shift in the responsibility for allocating trades from the floor broker to, generally (subject to delegation), the specialist. The proposal would require the floor broker to allocate trades (where a floor broker is a participant to a trade), recognizing the floor broker's unique position in asking for the market and hearing the responses. At the same time, it would allow the floor broker to delegate such responsibility to the specialist (if the specialist agrees to do so), recognizing the floor broker's desire to proceed to the next trade.

That delegation, which could also be made to someone assisting the specialist under the specialist's direct supervision,[11] also acknowledges the specialist's general obligation to be present and aware of who is on what market. The Exchange anticipates that, generally, the delegation would be done across-the-board in a particular crowd, but understands that there are situations where the delegation may occur trade-by-trade, and even after a trade, in order to be responsive to the needs and relative activity level of particular specialists and floor brokers.

Since the 1998 amendment, for reasons relating to both business practices and technology, some floor brokers have found the responsibilities under the current version of Advice F–2 burdensome and impractical in many instances. Due to the changed role and reduced number of floor brokers, it may no longer make sense for floor brokers to have the sole responsibility to allocate trades on the Exchange floor. The number of orders received through the AUTOM System (not requiring a floor broker) has risen steadily, causing a declining role for floor brokers. The maximum size of orders eligible for AUTOM delivery has risen from 500 to 1,000 contracts, in response to competitive pressures.[12] At the same time, the number of options listed on the Exchange and overall volume have skyrocketed. Overall technological enhancements and changes in the operation and economics of the trading floor seem to indicate it would be more realistic for specialists, who are always present in the trading crowd, to assume this responsibility.

In trades not involving a floor broker or the specialist, the largest participant would continue to be responsible for trade allocation. For instance, where two Registered Options Traders sell to one Registered Options Trader, that one buyer would be the largest participant, and thus the allocating participant. Similarly, where there is one buyer and one seller (neither of whom is the specialist or floor broker), the seller would continue to be responsible for trade allocation. An example of this situation would be two Registered Options Traders trading with each other.

[7] On September 11, 2000, the Commission issued an Order Instituting Public Administrative Proceedings Pursuant to section 19(h) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, which requires the Exchange (among other respondent options exchanges) to implement certain undertakings. *See* Securities Exchange Act Release No. 43268 (September 11, 2000)("Order"). One such undertaking, set forth in section IV.B.j. of the Order, requires each respondent exchange to adopt new, or amend existing, rules to include any practice or procedure, not currently authorized by rule, whereby market makers determine by agreement the spreads or option prices at which they will trade any option, or the allocation of orders in that option. Describing accurately who allocates trades is intended by the Phlx to capture in a rule activity that can be viewed as allocating trades.

[8] In a related proposal (File No. SR–Phlx–2001–39), the Phlx proposes to codify other practices relating to the allocation of trades that have developed on the Exchange's options floor, and relating to the Exchange's parity and priority rules. *See* Securities Exchange Act Release No. 47499 (March 13, 2003).

[9] Manually executed trades refers to trades other than AUTO–X trades (which are automatically executed by the AUTO–X feature of the AUTOM System, pursuant to Phlx rule 1080), which includes orders delivered by AUTOM, by the Floor Broker Order Entry System, as well as manually to the specialist. (AUTOM, an acronym for Automated Options Market, is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor.)

[10] *See* Securities Exchange Act Release No. 39889 (April 20, 1998), 63 FR 23331 (August 28, 1998) (SR–Phlx–97–51).

[11] *See* Option Floor Procedure Advice F–23, which provides in pertinent part that a specialist clerk, under the supervision of a specialist, may request the crowd's market in order to update disseminated markets or ascertain parity/priority splits in relation to the execution of an order. *See* Securities Exchange Act Release No. 33125 (November 1, 1993), 58 FR 59286 (November 8, 1993), (SR–Phlx–93–17). *See also* Phlx rule 748, which requires all employees to be supervised.

[12] *See* Securities Exchange Act Release No. 43115 (August 10, 2000), 65 FR 50262 (August 17, 2000) (File No. SR–Phlx–00–35).

The proposed rule change also would require the person responsible for trade allocation in each trade (the "Allocating Participant") to circle his or her badge identification number on the trade tickets, thereby identifying him or herself as the Allocating Participant in the particular trade.[13] If the Allocating Participant is not a participant in the trade (such as where a Floor Broker delegated responsibility for allocation to the specialist), the Allocating Participant would be required to identify him or herself by initialing the trade tickets.[14]

The purpose of adopting new sub-paragraph (vi) of rule 1014(g) is to codify Advice F–2 expressly into Exchange rules. Certain advices are merely restatements of Phlx rules, codified into Floor Procedure Advices, not just because they may have an associated fine schedule as part of the minor rule plan, but also for the convenience of members on the trading floor.[15]

The Exchange believes that the proposed fine schedule is appropriate, in light of the low level of the existing fines (with a first violation resulting in a fine of merely $100), and the importance of the trade allocation function. The Exchange has recently increased most of its minor rule plan fine schedules.[16] The Exchange is also proposing to adopt a separate fine schedule for paragraph (b) of Advice F–2, which deals with trade reporting, because the Exchange intends to administer its surveillance and enforcement of that provision separately.[17]

2. Statutory Basis

For these reasons, the Exchange believes that its proposal is consistent with section 6(b) of the Act [18] in general and section 6(b)(5) [19] in particular in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices and protect investors and the public interest by establishing a structure for determining who allocates options trades that permits the floor broker, who would generally perform the allocation, to delegate this responsibility to the specialist. Thus, the provision should promote prompt and accurate trade allocations, which in turn facilitates prompt trade reporting.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Phlx. All submissions should refer to File No. SR–Phlx–2001–28 and should be submitted by April 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6988 Filed 3–24–03; 8:45 am]

BILLING CODE 8010–01–P

[13] *See* Amendment No. 2.

[14] *See* Amendment No. 3.

[15] The advices were historically printed in pocket-sized versions for trading floor use. *See, e.g.*, Advice B–6 and Phlx rule 1014(g)(ii) and Advice A–11 and Phlx rule 1015.

[16] *See* Securities Exchange Act Release No. 44537 (July 11, 2001), 66 FR 37511 (July 18, 2001) (SR–Phlx–2001–36).

[17] The Commission notes that the proposed fine for a third violation of paragraph (b) of Advice F–2 would be $2,500, in contrast to the proposed fine of $2,000 for a third violation of other provisions of Advice F–2.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47499; File No. SR–Phlx–2001–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, 4, 5, and 6 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Allocation of Trades

March 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 12, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Phlx. On May 11, 2001, February 19, 2002, May 22, 2002, November 19, 2002, December 16, 2002, and February 25, 2003, Phlx submitted Amendment Nos. 1, 2, 3, 4, 5, and 6 to the proposed rule change, respectively.[3] The Commission is publishing this

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letters from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 10, 2001 (Amendment No. 1), February 15, 2002 (Amendment No. 2), May 21, 2002 (Amendment No. 3), November 18, 2002 (Amendment No. 4), December 12, 2002 (Amendment No. 5), and February 24, 2003 (Amendment No. 6). The proposal, File No. SR–Phlx–2001–39, originally was filed to be immediately effective pursuant to section 19(b)(3)(A) of the Act. 15 U.S.C. 78s(b)(3)(A). In Amendment No. 1, Phlx amended the status of the proposed rule change to be filed pursuant to section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), and requested accelerated effectiveness. In Amendment No. 2, Phlx consolidated a companion proposal, File No. SR–Phlx–2001–29, with the instant proposal to become a single proposed rule change and made several modifications. Phlx made additional changes to the rule text in Amendment No. 3 and, in Amendment No. 4, Phlx amended and restated the proposed rule change in its entirety. In Amendment No. 5, Phlx made revisions to clarify that all customer orders would be executed prior to the participation of the specialist and to delete references to Phlx rule 1064. In Amendment No. 6, Phlx made minor corrections to the rule text and narrative section of the proposal.

notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend various provisions of Phlx rule 1014, "Obligations And Restrictions Applicable To Specialists And Registered Options Traders," and to make conforming changes to Options Floor Procedure Advice ("Advice") B–6 relating to the allocation of trades on the Exchange's Options Floor.

The text of the proposed rule change, as amended, follows.[4] Additions are italicized, and deletions are enclosed in brackets.

* * * * *

Rule 1014. Obligations and Restrictions Applicable to Specialists and Registered Options Traders

(a)–(f)No change.

(g) Equity Option and Index Option Priority and Parity

(i) (A) Exchange Rules 119 and 120 direct members in the establishment of priority of orders on the floor. In addition, equity option and index option orders of controlled accounts are required to yield priority to customer orders when competing at the same price, as described below.

For the purpose of paragraph (g) of this Rule, *"Initiating Order" means an incoming contra-side order. "Remainder of the Order" means the portion of an Initiating Order that remains following the allocation of contracts to customers that are on parity, in accordance with this Rule 1014(g)(i). The Remainder of the Order shall be allocated pursuant to this Rule 1014.* [a]An account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a broker-dealer. [Specialist accounts of PHLX Option Specialists, however, are not subject to yielding requirements placed upon controlled accounts by this Rule.] Customer accounts are all other accounts.

Orders of controlled accounts must yield priority to customer orders[, except that, PHLX ROTs closing in-person are not required to yield priority to orders of customer accounts].

Orders of controlled accounts are not required to yield priority to other controlled account orders[, except that when both an order of a PHLX ROT closing in-person and some other order of a controlled account are established in the crowd at the same price, and then a customer order is established at that price, the order of the controlled account must yield to the customer order while the order of the PHLX ROT closing in-person does not have to so yield].

Orders of controlled accounts, other than ROTs and Specialists market making in person, must be (1) verbally communicated as for a controlled account when placed on the floor and when represented to the trading crowd and (2) recorded as for a controlled account by appropriately circling the "yield" field on the floor ticket of any such order.

Several programs described below provide an Enhanced Specialist Participation to specialists, which refers to the portion of an options trade available for allocation to the specialist on parity, including a 30% (which may actually result in a 40% or 60%) Enhanced Specialist Participation, New Unit/New Option Enhanced Specialist Participation, and New Product Enhanced Specialist Participation.

The Enhanced Specialist Participation is a percentage of the Remainder of the Order to which the specialist is entitled, depending upon whether (g)(ii), (iii), or (iv) applies.

(B) No change.

(ii) Enhanced Specialist Participation—In equity and index option classes, when the registered specialist is on parity with a controlled account as defined in subparagraph (i) above, in accordance with Exchange Rules 119 and 120 and the number of contracts to be bought or sold is greater than five, the specialist is entitled to receive an enhanced participation of 30% of the [initiating order] *Remainder of the Order* ("Enhanced Specialist Participation"), except in the following circumstances: (1) where there is one controlled account on parity, the specialist *is entitled to* receive[s] 60% of the [initiating order] *Remainder of the Order;* or (2) where there are two controlled accounts on parity, in which case, the specialist is entitled to *receive* 40% of the [initiating order] *Remainder of the Order.* [Further, no customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist.] Enhanced Specialist Participation will be effective for: (a) all newly listed issues, (b) all index options and (c) such issues selected by the specialist and approved by the Allocation, Evaluation and Securities Committee pursuant to section (A) below.

(A) The Allocation, Evaluation and Securities Committee shall divide each equity and index option specialist's registered issues into trading volume quartiles based upon the most recent quarterly customer contract volume. Each specialist may then select 50% of the issues in each quartile to receive Enhanced Specialist Participation, rounded so that no more than 50% of the total number of such specialists' registered issues are selected. The Allocation, Evaluation and Securities Committee shall approve all specialist selections.

(B) Pursuant to Exchange Rule 509, the Allocation, Evaluation and Securities Committee shall reduce the level of Enhanced Specialist Participation authorized under this Rule to a parity level of participation in accordance with Rules 119 and 120 with respect to any options class if the specialist in such class is determined to be performing below any minimum standards or not satisfying any conditions that the Exchange may establish with respect to any options class subject to Enhanced Specialist Participation. The Committee may reinstate Enhanced Specialist Participation for a particular options class if it determines that the specialist in such class is performing at or above all established minimum standards and is satisfying all established conditions.

(C) New specialist units trading new options classes shall *be entitled to* receive an [e]*E*nhanced [parity split] *Specialist Participation* in accordance with subparagraph (iii) of this Rule. Once the specialist unit is no longer eligible to receive an [e]*E*nhanced [parity split] *Specialist Participation* in accordance with subparagraph (iii), the unit is automatically entitled to an Enhanced Specialist [p]*P*articipation in accordance with this subparagraph (ii).

(iii) New Unit/New Option Enhanced Specialist Participation—To encourage the establishment of new specialist units to trade equity and index option classes that heretofore have never been listed on the Exchange ("New Options Classes"), when such units are on parity with controlled accounts in such classes, the new specialist units will be entitled, for a period of six months following commencement of trading in New Option Classes, to the following [e]*E*nhanced [s]*S*pecialist [p]*P*articipation in a any such parity trade: (1) Fifty percent (50%) where there is one controlled account on parity and (2) Forty percent (40%) where there are two or more controlled accounts on parity[, except that no customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist]. The Allocation, Evaluation and Securities Committee may extend such [e]*E*nhanced [parity split] *Specialist Participation* for each applicable option beyond the initial six month period for one additional six month period upon petition by the specialist unit and a determination by the Committee that such extension is consistent with the promotion of just and equitable principles of trade and the public interest. Additionally, the Committee after granting such extension may at any time terminate such [e]*Enhanced* [parity split] *Specialist Participation* for any particular options class if the Committee determines that such action is consistent with the promotion of just and equitable principles of trade and the public interest.

(A)–(B) No change.

(C) a new specialist unit may receive the [e]*E*nhanced [s]*S*pecialist [p]*P*articipation in a New Options Class at the time that the New Options Class commences trading.

(D) a new specialist unit will be entitled to receive the [e]*E*nhanced [s]*S*pecialist [p]*P*articipation for any additional New Options Classes so long as such options classes commence trading at a time when the unit is still entitled to receive the [e]*E*nhanced [s]*S*pecialist [p]*P*articipation on the first New Options Class it commenced trading.

(iv) New Product Enhanced Specialist Participation—When a specialist unit develops and trades a new product, such specialist [will] *is entitled to* receive an [e]*E*nhanced [split] *Specialist Participation* in that option such that when the specialist is on parity with three or more controlled accounts in the crowd, the specialist *is entitled to* receive[s] 40% of the contracts and the controlled accounts are entitled to receive the remaining 60%; when the specialist is on parity with less than three controlled accounts in the crowd, the specialist *is entitled to* receive[s] 60% of the contracts and the controlled accounts *are entitled to* receive the remaining 40%. [In either of these situations, if a customer is on parity, the customer may not receive a lesser allotment than any other crowd participant, including the specialist.] In order for the [enhancement] *Enhanced Specialist Participation* to apply, the specialist must both develop and trade a new product. If one specialist unit develops a new product idea and another specialist is allocated specialist privileges in the product, the specialist unit trading the product would not be entitled to [this split] *receive an Enhanced Specialist Participation.* The Options Committee will determine whether a specialist "developed" a new product.

(v) Allocation of the Remainder of the Order Among Specialist and ROTs on Parity. After the application of Rule 1014(g)(i) to an Initiating Order, the Remainder of the Order shall be allocated by the Allocating Participant (as defined in Rule 1014(g)(vi)) as follows:

(A) Entitlement. ROTs and specialists on parity are entitled to their Defined Participation (as described below), subject to: (1) any Waiver, as described below; and (2) rounding, as described below.

(B) Size. The term "stated size" in relation to a crowd participant and in respect of an order shall mean:

(1) in the case of orders handled manually by the specialist:

(a) if a crowd participant (including the specialist) has actually stated a size ("Actual Size"), such crowd participant's stated size shall be his or her Actual Size;

(b) unless the specialist has an Actual Size, the stated size of the specialist shall be the amount (if any) by which the disseminated size exceeds the sum of (x) the aggregate size of limit orders included in the disseminated size and (y) the aggregate sizes of all ROTs who have Actual Sizes;

(c) the stated size of an ROT who does not have an Actual Size is zero.

(2) in the case of floor brokered orders, each crowd participant's stated size shall be his or her Actual Size.

(C) Defined Participation. Defined Participation is the portion of the Remainder of the Order to which a crowd participant is entitled. Defined Participation is determined as follows:

(1) in the case of a specialist entitled to an Enhanced Specialist Participation, the Enhanced Specialist Participation, up to the specialist's stated size, as set forth in sub-paragraphs (g)(ii), (iii), or (iv) of this Rule, as applicable. The specialist may decline to receive the Enhanced Specialist Participation, in which case the specialist shall be entitled to participate as one crowd participant, up to the specialist's stated size.

(2) except as provided in (1) above, the Defined Participation of the specialist and ROTs on parity is determined as follows:

(a) where all participants have equal stated sizes, their Defined Participations shall be equal;

(b) where participants have unequal stated sizes, the Defined Participations shall equal their Base Participations (as defined below) plus their Supplemental Participations (as defined below):

(i) the "Base Participations" of all of the participants shall equal the stated size of the smallest participant; to the extent that there remains any excess to be allocated after all participants have been allocated their Base Participations, the smallest participant shall have no Supplemental Participation, and the other participants shall have "Supplemental Participations" as determined under (ii) and (iii) below;

(ii) if the remaining stated sizes (i.e., after taking into account Base Participations) of all participants having Supplemental Participations is equal, then their Supplemental Participations shall be equal; otherwise the initial Supplemental Participations of such participants shall equal the remaining stated size of the smallest such participant; to the extent that there remains any excess to be allocated after all participants have been allocated their initial Supplemental Participations, the smallest participant shall have no further Supplemental Participation, and the other participants shall have further "Supplemental Participations" as determined under (iii) below; and (iii) if the remaining stated sizes (i.e., after taking into account Base Participations and prior Supplemental Participations) of all participants having further Supplemental Participations is equal, then their further Supplemental Participations shall be equal; otherwise the next Supplemental Participations of such participants shall equal the remaining stated size of the smallest such participant; to the extent that there remains any excess to be allocated after all participants have been allocated the next Supplemental Participations, the smallest participant shall have no further Supplemental Participation, and the other participants shall have successive further Supplemental Participations determined in the same manner as provided in this clause (iii).

The process described in clause (iii) shall be followed to determine successive further Supplemental Participations until the sum of the Defined Participations equals the amount of the Remainder of the Order.

(iv) (a) If the sum of the Base Participations pursuant to sub-paragraph (i) above exceeds the number of contracts remaining to be allocated, such contracts shall be divided equally among crowd participants who are entitled to receive Base Participations, subject to rounding.

(b) If the sum of the Supplemental Participations pursuant to sub-paragraph (ii) above exceeds the

[4] The proposed changes are set forth below as they would appear in the text of Phlx rule 1014 and in the text of Options Floor Procedure Advice B–6.

number of contracts remaining to be allocated, such contracts shall be divided equally among crowd participants who are entitled to receive Supplemental Participations, subject to rounding.

(c) If the sum of the further Supplemental Participations pursuant to sub-paragraph (iii) above exceeds the number of contracts remaining to be allocated, such contracts shall be divided equally among crowd participants who are entitled to receive further Supplemental Participations, subject to rounding.

(3) Participation in additional contracts in excess of the Exchange's disseminated size among willing crowd participants shall be allocated under the applicable provisions of this Rule 1014. Notwithstanding the limitation set forth in sub-paragraph (C)(1) thot limits the specialist's entitlement to his/her stated size, for all contracts executed in excess of the disseminated size, the specialist shall be entitled to receive the Enhanced Specialist Participation as set forth in sub-paragraphs (g)(ii), (iii), or (iv) of this Rule, as applicable, but not to exceed the specialist's Actual Size (if the specialist has an Actual Size) in such excess contracts.

(D) Waiver. (1) Any ROT or specialist may, in his or her sole discretion, offer to waive, in whole or in part, any part of a trade to which they were entitled to be allocated (an "Offer to Waive").

(a) Any Offer to Waive shall be made by stating it in a loud and audible voice to the other members of the trading crowd and the Allocating Participant.

(b) If the Allocating Participant has determined that the other crowd participant(s) then on parity is willing to take the number of contracts that are subject to the Offer to Waive, the Allocating Participant may (but shall not be required to), accept such Offer to Waive by (i) allocating the Remainder of the Order in accordance with this rule 1014(g)(v), taking into account the Offer to Waive; or (ii) otherwise indicating, following the execution of the Remainder of the Order, that such Offer to Waive will be accepted (in which case, it shall be referred to as a "Waiver"). No Offer to Waive shall be an effective Waiver until the Allocating Participant has allocated the order or otherwise indicated that it is accepted.

(c)(i) In the case of an option which is not subject to an Enhanced Specialist Participation, as set forth in sub-paragraphs (g)(ii)–(iv) of this Rule, if the specialist or an ROT effects a Waiver in the manner provided above, the number of contracts to which such specialist or ROT is entitled under this Rule 1014(g)(v) shall be reduced by the number of contracts waived, and the entitlements of the other participants on parity shall be determined by redistributing the waived number of contracts to willing participants (including the specialist) in accordance with this Rule 1014(g)(v).

(ii) In the case of an option which is subject to an Enhanced Specialist Participation, as set forth in sub-paragraphs (g)(ii)–(iv) of this Rule, and one or more ROTs effect Waivers of their entire entitlements ("Total Waivers"), the number of ROTs with whom the specialist is deemed to be on parity for purposes of determining the Enhanced Specialist Participation shall be reduced by the number of ROTs effecting Total Waivers and the following additional rules shall apply:

(A) in the event that one or more ROTs on parity with the specialist effect a Total Waiver of their respective entitlements such that the specialist is on parity with three or more ROTs, the number of contracts to be allocated to each crowd participant shall be determined as provided in sub-paragraph (c)(i) above, provided that the maximum number of contracts to be allocated to the specialist shall be that which the specialist would be entitled to receive under Rule 1014(g)(ii)–(iv), as if the specialist had been on parity with three ROTs.

(B) in the event that one or more ROTs on parity with the specialist effect a Total Waiver of their respective entitlements such that the specialist is on parity with two ROTs, the number of contracts to be allocated to each crowd participant shall be determined as provided in sub-paragraph (c)(i) above, provided that the maximum number of contracts to be allocated to the specialist shall be that which the specialist would be entitled to receive under Rule 1014(g)(ii)–(iv) as if the specialist had been on parity with two ROTs.

(C) In the event that one or more ROTs on parity with the specialist effect a Total Waiver of their respective entitlements such that the specialist is on parity with one ROT, the number of contracts to be allocated to each crowd participant shall be determined as provided in sub-paragraph (c)(i) above, provided that the maximum number of contracts to be allocated to the specialist shall be that which the specialist would be entitled to receive under Rule 1014(g)(ii)–(iv) as if the specialist had been on parity with one ROT. In no event shall any non-waiving ROT be required to participate in fewer contracts than he/she would have received absent the Waiver(s).

(iii) Partial Waiver. In the case of an option which is subject to an Enhanced Specialist Participation, in the event that one or more ROTs effect a Waiver of a portion of their respective entitlements, but not a Total Waiver, in the manner provided above (a "Partial Waiver"), the number of contracts to be allocated to each crowd participant shall be determined as provided in sub-paragraph (c)(i) above, provided that the specialist shall not be entitled to receive a number of contracts that is greater than 40% of the Remainder of the Order except in the situation referred to in the following sentence, unless all remaining crowd participants on parity have waived their entitlements or have been satisfied. In the case of the specialist being on parity with only one ROT, the specialist shall not be entitled to receive a number of contracts that is greater than 60% of the Remainder of the Order unless all remaining crowd participants on parity have waived their entitlements or have been satisfied.

In no event shall any non-waiving ROT be required participate in fewer contracts than he/she would have received absent the Partial Waiver(s).

(iv) In no event shall two or more crowd participants enter into any agreement regarding the number of contracts to be waived by any crowd participant (i.e., subject to the provisions of subparagraph (D)(1)(b) above, any decision by a crowd participant to waive all or a portion of such crowd participant's entitlement must be an individual decision, and not the subject of an agreement among crowd participants).

(E) Rounding. In situations where the allocation of contracts pursuant to this Rule result in fractional amounts of contracts to be allocated to crowd participants, the number of contracts to be allocated shall be rounded in a fair and equitable manner.

(F) Just and Equitable Principles of Trade. (1) It shall be considered conduct inconsistent with just and equitable principles of trade for a member: (a) to allocate initiating orders other than in accordance with this rule 1014; (b) to enter into any agreement with another member concerning allocation of trades; or (c) to harass, intimidate or coerce any member to enter into any Waiver, or to make or refrain from making any complaint or appeal.

(2) A pattern or practice of waiving all or a portion of a crowd participant's entitlement, with the result that such crowd participant receives no allocation or a lesser allocation than he or she would otherwise have been entitled to, may be considered conduct inconsistent with just and equitable principles of trade.

(G) Notwithstanding the first sentence of Rule 1014(g)(i), neither Rule 119(b) and (c) concerning precedence based on the size of bids on parity, nor Rule 120 (insofar as it incorporates those provisions by reference) shall apply to the allocation of orders covered by this Rule 1014(g)(v).

* * * * *

B–6 Priority of Options Orders for Equity Options and Index Options by Account Type (Equity Option and Index Option Only)

(i) Exchange Rules 119 and 120 direct members in the establishment of priority of orders on the floor. In addition, equity option and index option orders of controlled accounts are required to yield priority to customer orders when competing at the same price, as described below.

For the purposes of this Advice, *"Initiating Order" means an incoming contra-side order. "Remainder of the Order" means the portion of an Initiating Order that remains following the allocation of contracts to customers that are on parity, in accordance with this Rule 1014(g)(i). The Remainder of the Order shall be allocated pursuant to this Rule 1014.* [a]An account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a broker-dealer. [Specialist accounts of PHLX Option Specialists, however, are not subject to yielding requirements placed upon controlled accounts by this Rule.] Customer accounts are all other accounts.

Section A

(i) Orders of controlled accounts must yield priority to customer orders[, except that, PHLX ROTs closing in-person are not required to yield priority to orders of customer accounts].

(ii) Orders of controlled accounts are not required to yield priority to other controlled account orders[, except that when both an order of a PHLX ROT closing in-person and some other order of a controlled account are established in the crowd at the same price, and then a customer order is established at that price, the order of the controlled account must yield to the customer order while the order of the PHLX ROT closing in-person does not have to so yield].

Section B

Orders of controlled accounts, other than ROTs and Specialists market making in-person, must be—

(1) verbally communicated as for a controlled account when placed on the floor and when represented to the trading crowd and

(2) recorded as for a controlled account by appropriately circling the "yield" field on the floor ticket of any such order.

In any instance where an order is misrepresented in this fashion due to factors which give rise to the concern that it was the result of anything other than an inadvertent error, the Exchange may determine to bypass the fine schedule below and refer the incident to the Business Conduct Committee for possible disciplinary proceedings in accordance with those procedures set forth under the Exchange's Disciplinary Rule 960.

Section C

Several programs described below provide an Enhanced Specialist Participation to specialists, which refers to the portion of an options trade available for allocation to the specialist on parity, including a 30% (which may actually result in a 40% or 60%) Enhanced Specialist Participation, New Unit/New Option Enhanced Specialist Participation, and New Product Enhanced Specialist Participation.

The Enhanced Specialist Participation is a percentage of the Remainder of the Order to which the specialist is entitled, depending upon whether (g)(ii), (iii), or (iv) applies.

Enhanced Specialist Participation—In equity and index option classes, when the registered specialist is on parity with a controlled account as defined in subparagraph (i) above, in accordance with Exchange Rules 119 and 120 and the number of contracts to be bought or sold is greater than five, the specialist is entitled to receive an enhanced participation of 30% of the [initiating order] *Remainder of the Order* ("Enhanced Specialist Participation"), except in the following circumstances: (1) where there is one controlled account on parity, the specialist *is entitled* to receive[s] 60% of the [initiating order] *Remainder of the Order*; or (2) where there are two controlled accounts on parity, in which case, the specialist is entitled to *receive* 40% of the [initiating order] *Remainder of the Order*. [Further, no customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist.] Enhanced Specialist Participation will be effective for: (a) all newly listed issues, (b) all index options and (c) such issues selected by the specialist and approved by the Allocation, Evaluation and Securities Committee pursuant to section (A) below.

Section D

New Product Enhanced Specialist Participation " When a specialist unit develops and trades a new product, such specialist [will] *is entitled* to receive an[e]Enhanced [split] *Specialist Participation* in that option such that when the specialist is on parity with three or more controlled accounts in the crowd, the specialist *is entitled* to receive[s] 40% of the contracts and the controlled accounts *are entitled* to receive the remaining 60%; when the specialist is on parity with less than three controlled accounts in the crowd, the specialist *is entitled* to receive[s] 60% of the contracts and the controlled accounts *are entitled* to receive the remaining 40%. [In either of these situations, if a customer is on parity, the customer may not receive a lesser allotment than any other crowd participant, including the specialist.] In order for the [enhancement] *Enhanced Specialist Participation* to apply, the specialist must both develop and trade a new product. If one specialist unit develops a new product idea and another specialist is allocated specialist privileges in the product, the specialist unit trading the product would not be entitled to [this split] *receive an Enhanced Specialist Participation*. [The Options Committee will determine whether a specialist split.] The Options Committee will determine whether a specialist "developed" a new product.

Section E

Allocation of the Remainder of the Order Among Specialist and ROTs on Parity. After the application of this Advice to an Initiating Order, the Remainder of the Order shall be allocated by the Allocating Participant (as defined in Rule 1014(g)(vi)) as follows:

(A) Entitlement. ROTs and specialists on parity are entitled to their Defined Participation (as described below), subject to: (1) any Waiver, as described below; and (2) rounding, as described below.

(B) Size. The term "stated size" in relation to a crowd participant and in respect of an order shall mean:

(1) In the case of orders handled manually by the specialist:

(a) if a crowd participant (including the specialist) has actually stated a size ("Actual Size"), such crowd participant's stated size shall be his or her Actual Size;

(b) unless the specialist has an Actual Size, the stated size of the specialist shall be the amount (if any) by which

the disseminated size exceeds the sum of (x) the aggregate size of limit orders included in the disseminated size and (y) the aggregate sizes of all ROTs who have Actual Sizes;

(c) the stated size of an ROT who does not have an Actual Size is zero.

(2) in the case of floor brokered orders, each crowd participant's stated size shall be his or her Actual Size.

(C) Defined Participation. Defined Participation is the portion of the Remainder of the Order to which a crowd participant is entitled. Defined Participation is determined as follows:

(1) in the case of a specialist entitled to an Enhanced Specialist Participation, the Enhanced Specialist Participation, up to the specialist's stated size, as set forth in C and D of this Advice, as applicable. The specialist may decline to receive the Enhanced Specialist Participation, in which case the specialist shall be entitled to participate as one crowd participant, up to the specialist's stated size.

(2) except as provided in (1) above, the Defined Participation of the specialist and ROTs on parity is determined as follows:

(a) where all participants have equal stated sizes, their Defined Participations shall be equal;

(b) where participants have unequal stated sizes, the Defined Participations shall equal their Base Participations (as defined below) plus their Supplemental Participations (as defined below):

(i) the "Base Participations" of all of the participants shall equal the stated size of the smallest participant; to the extent that there remains any excess to be allocated after all participants have been allocated their Base Participations, the smallest participant shall have no Supplemental Participation, and the other participants shall have "Supplemental Participations" as determined under (ii) and (iii) below;

(ii) if the remaining stated sizes (i.e., after taking into account Base Participations) of all participants having Supplemental Participations is equal, then their Supplemental Participations shall be equal; otherwise the initial Supplemental Participations of such participants shall equal the remaining stated size of the smallest such participant; to the extent that there remains any excess to be allocated after all participants have been allocated their initial Supplemental Participations, the smallest participant shall have no further Supplemental Participation, and the other participants shall have further "Supplemental Participations" as determined under (iii) below; and (iii) if the remaining stated sizes (i.e., after taking into account Base Participations and prior Supplemental Participations) of all participants having further Supplemental Participations is equal, then their further Supplemental Participations shall be equal; otherwise the next Supplemental Participations of such participants shall equal the remaining stated size of the smallest such participant; to the extent that there remains any excess to be allocated after all participants have been allocated the next Supplemental Participations, the smallest participant shall have no further Supplemental Participation, and the other participants shall have successive further Supplemental Participations determined in the same manner as provided in this clause (iii).

The process described in clause (iii) shall be followed to determine successive further Supplemental Participations until the sum of the Defined Participations equals the amount of the Remainder of the Order.

(iv) (a) If the sum of the Base Participations pursuant to sub-paragraph (i) above exceeds the number of contracts remaining to be allocated, such contracts shall be divided equally among crowd participants who are entitled to receive Base Participations, subject to rounding.

(b) If the sum of the Supplemental Participations pursuant to sub-paragraph (ii) above exceeds the number of contracts remaining to be allocated, such contracts shall be divided equally among crowd participants who are entitled to receive Supplemental Participations, subject to rounding.

(c) If the sum of the further Supplemental Participations pursuant to sub-paragraph (iii) above exceeds the number of contracts remaining to be allocated, such contracts shall be divided equally among crowd participants who are entitled to receive further Supplemental Participations, subject to rounding.

(3) Participation in additional contracts in excess of the Exchange's disseminated size among willing crowd participants shall be allocated under the applicable provisions of this Advice. Notwithstanding the limitation set forth in sub-paragraph (C)(1) that limits the specialist's entitlement to his/her stated size, for all contracts executed in excess of the disseminated size, the specialist shall be entitled to receive the Enhanced Specialist Participation as set forth in sections C and D of this Advice, as applicable, but not to exceed the specialist's Actual Size (if the specialist has an Actual Size) in such excess contracts.

(D) Waiver. (1) Any ROT or specialist may, in his or her sole discretion, offer to waive, in whole or in part, any part of a trade to which they were entitled to be allocated (an "Offer to Waive").

(a) Any Offer to Waive shall be made by stating it in a loud and audible voice to the other members of the trading crowd and the Allocating Participant.

(b) If the Allocating Participant has determined that the other crowd participant(s) then on parity is willing to take the number of contracts that are subject to the Offer to Waive, the Allocating Participant may (but shall not be required to), accept such Offer to Waive by (i) allocating the Remainder of the Order in accordance with this Advice, taking into account the Offer to Waive; or (ii) otherwise indicating, following the execution of the Remainder of the Order, that such Offer to Waive will be accepted (in which case, it shall be referred to as a "Waiver"). No Offer to Waive shall be an effective Waiver until the Allocating Participant has allocated the order or otherwise indicated that it is accepted.

(c) (i) In the case of an option which is not subject to an Enhanced Specialist Participation, as set forth in sections C and D of this Advice, if the specialist or an ROT effects a Waiver in the manner provided above, the number of contracts to which such specialist or ROT is entitled under this Advice shall be reduced by the number of contracts waived, and the entitlements of the other participants on parity shall be determined by redistributing the waived number of contracts to willing participants (including the specialist) in accordance with this Advice.

(ii) In the case of an option which is subject to an Enhanced Specialist Participation, as set forth in sections C and D of this Advice, and one or more ROTs effect Waivers of their entire entitlements ("Total Waivers"), the number of ROTs with whom the specialist is deemed to be on parity for purposes of determining the Enhanced Specialist Participation shall be reduced by the number of ROTs effecting Total Waivers and the following additional rules shall apply:

(A) In the event that one or more ROTs on parity with the specialist effect a Total Waiver of their respective entitlements such that the specialist is on parity with three or more ROTs, the number of contracts to be allocated to each crowd participant shall be determined as provided in sub-paragraph (c)(i) above, provided that the maximum number of contracts to be allocated to the specialist shall be that which the specialist would be entitled to receive under this Advice, as if the specialist had been on parity with three ROTs.

(B) In the event that one or more ROTs on parity with the specialist effect a Total Waiver of their respective entitlements such that the specialist is on parity with two ROTs, the number of contracts to be allocated to each crowd participant shall be determined as provided in sub-paragraph (c)(i) above, provided that the maximum number of contracts to be allocated to the specialist shall be that which the specialist would be entitled to receive under this Advice as if the specialist had been on parity with two ROTs.

(C) In the event that one or more ROTs on parity with the specialist effect a Total Waiver of their respective entitlements such that the specialist is on parity with one ROT, the number of contracts to be allocated to each crowd participant shall be determined as provided in sub-paragraph (c)(i) above, provided that the maximum number of contracts to be allocated to the specialist shall be that which the specialist would be entitled to receive under this Advice as if the specialist had been on parity with one ROT. In no event shall any non-waiving ROT be required to participate in fewer contracts than he/she would have received absent the Waiver(s).

(iii) Partial Waiver. In the case of an option which is subject to an Enhanced Specialist Participation, in the event that one or more ROTs effect a Waiver of a portion of their respective entitlements, but not a Total Waiver, in the manner provided above (a "Partial Waiver"), the number of contracts to be allocated to each crowd participant shall be determined as provided in sub-paragraph (c)(i) above, provided that the specialist shall not be entitled to receive a number of contracts that is greater than 40% of the Remainder of the Order except in the situation referred to in the following sentence, unless all remaining crowd participants on parity have waived their entitlements or have been satisfied. In the case of the specialist being on parity with only one ROT, the specialist shall not be entitled to receive a number of contracts that is greater than 60% of the Remainder of the Order unless all remaining crowd participants on parity have waived their entitlements or have been satisfied.

In no event shall any non-waiving ROT be required participate in fewer contracts than he/she would have received absent the Partial Waiver(s).

(iv) In no event shall two or more crowd participants enter into any agreement regarding the number of contracts to be waived by any crowd participant (i.e., subject to the provisions of sub-paragraph (D)(1)(b) above, any decision by a crowd participant to waive all or a portion of such crowd participant's entitlement must be an individual decision, and not the subject of an agreement among crowd participants).

(E) Rounding. In situations where the allocation of contracts pursuant to this Rule result in fractional amounts of contracts to be allocated to crowd participants, the number of contracts to be allocated shall be rounded in a fair and equitable manner.

(F) Just and Equitable Principles of Trade. (1) It shall be considered conduct inconsistent with just and equitable principles of trade for a member: (a) to allocate initiating orders other than in accordance with this Advice; (b) to enter into any agreement with another member concerning allocation of trades; or (c) to harass, intimidate or coerce any member to enter into any Waiver, or to make or refrain from making any complaint or appeal.

(2) A pattern or practice of waiving all or a portion of a crowd participant's entitlement, with the result that such crowd participant receives no allocation or a lesser allocation than he or she would otherwise have been entitled to, may be considered conduct inconsistent with just and equitable principles of trade.

(G) Notwithstanding the first sentence of this Advice, neither Rule 119(b) and (c) concerning precedence based on the size of bids on parity, nor Rule 120 (insofar as it incorporates those provisions by reference) shall apply to the allocation of orders covered by this Advice.

Fine Schedule (Implemented on a Two-Year Running Calendar Basis) B–6

Section A:

No fine applicable. Matters subject for review by the Business Conduct Committee.

Section B:

1st Occurrence—$500.00

2nd Occurrence—$1,000.00

3rd Occurrence—$2,000.00

4th Occurrence and thereafter—Sanction is discretionary with Business Conduct Committee.

Section C:

Fine not applicable.

Section D:

Fine not applicable.

Section E:

Fine not applicable.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to codify certain practices that have developed respecting the allocation of trades on the Exchange's options floor and the Exchange's parity and priority rule, Phlx rule 1014, "Obligations And Restrictions Applicable To Specialists And Registered Options Traders." The proposed rule change also would make certain other changes to Phlx rule 1014 that would generally clarify option trade allocation procedures and make them easier to apply.[5]

As a general principle, in an auction market for standardized options like Phlx and other national securities exchanges operating a floor-based options marketplace, the first participant to quote the best price (highest bid or lowest offer) is entitled to priority, which refers to the right to participate fully in a contra-side order before anyone else. Phlx rules 119 and 120 and rule 1014(g) are the general rules concerning establishment of parity and priority in the execution of orders

[5] On September 11, 2000, the Commission issued an order in relation to settling *In the Matter of Certain Activities of Options Exchanges*, which requires the Exchange (among other respondent options exchanges) to implement certain undertakings. Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) ("Order"). One such undertaking is to adopt new or amend existing rules to include any practice or procedure, not currently authorized by rule, whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option, or the allocation of orders in that option class. The proposed rule change, as amended, is intended to respond to this undertaking.

on the options floor.[6] In addition to addressing time priority, these rules provide that when bids or offers at the same price are made simultaneously, or when the order of time in which bids or offers were made cannot be determined, all such bids and offers will be on parity. Thus, parity means that none of the market participants bidding or offering at the best price has rights over the other members at that price in terms of trade participation. Although not specifically stated in Phlx rules currently, members on parity are generally entitled to receive equal shares of the contra-side participation.[7]

An "Enhanced Specialist Participation" is one type of exception to the general parity rules, allocating to the specialist a greater than equal share of the portion of an order that is divided among the specialist and any "controlled accounts" that are on parity.[8] The Exchange currently has several Enhanced Specialist Participation programs, embodied in Phlx rule 1014(g) and described below. These programs establish specified percentages as the Enhanced Specialist Participation, depending on the category of option.

i. *Enhanced Specialist Participation Programs.* The Enhanced Specialist Participation provided under rule 1014(g)(ii) currently entitles the specialist to 30% of the portion of the initiating order,[9] divided among the specialist and controlled accounts when three or more controlled accounts are on parity with the specialist and more than five contracts are to be bought or sold.[10] This is generally known as the "30% Enhanced Specialist Participation" or the "30% split." If two controlled accounts are on parity with the specialist, the specialist is entitled to receive 40%, and if only one controlled account is on parity with the specialist, the specialist is entitled to receive 60%.

Another Enhanced Specialist Participation program on Phlx, originally adopted in May 1994 and embodied in current Phlx rule 1014(g)(iii), is designed to encourage the establishment of new specialist units to trade options classes that have never been listed on the Exchange. For a period of six months following the commencement of trading in such a new options class, the new specialist unit is entitled to 50% of an order when one controlled account is on parity with the specialist, and 40% when two or more controlled accounts are on parity with the specialist.[11]

On July 1, 1999, still another enhanced participation program, the "New Product Enhanced Specialist Participation," was adopted.[12] Under Phlx rule 1014(g)(iv), a specialist who develops and trades a new product is entitled to receive an Enhanced Specialist Participation of 40% when three or more controlled accounts are on parity, and 60% if fewer than three controlled accounts are on parity. Currently, in either of these situations, if a customer is on parity, the customer may not receive a smaller participation than any other crowd participant, including the specialist.[13]

The Exchange represents that the purpose of these programs is to attract and retain highly capitalized specialist units who can capture order flow for the Exchange. Because the specialist unit is currently the key party responsible for marketing to attract order flow in particular options, the Exchange seeks to provide the appropriate encouragement to specialists to plan, invest in, and effect marketing strategies. Therefore, the Exchange believes that these programs provide specialists with the appropriate incentive to create more depth and liquidity. Phlx states that the Commission has regularly acknowledged the need for well-capitalized specialist units, burdens and costs borne by specialists, and how the Enhanced Specialist Participation is intended to compensate specialists for these costs and burdens.[14]

(ii) *Clarifying Amendments.* The Exchange proposes to make clarifying amendments to Phlx rule 1014(g) to state what portion of a trade a specialist on parity with other crowd participants "is entitled to" throughout the Enhanced Specialist Participation portions of the rule. Most of the provisions in Phlx rule 1014(g)(ii) state the Enhanced Specialist Participation in the form of an entitlement, but the provisions that erroneously do not are proposed to be corrected. Specifically, the Exchange proposes to state in Phlx rule 1014(g)(ii) that where there is one controlled account on parity, the specialist is entitled[15] to receive 60% of the Remainder of the Order after customer orders that are on parity at the Exchange's best bid/offer, in accordance with rule 1014(g)(i).

In Phlx rule 1014(g)(ii)(C), which cross-references another Enhanced Specialist Participation program (discussed in the next sentence), the Exchange proposes to state that new specialist units trading new options classes shall *be entitled to* receive an Enhanced Specialist Participation. Lastly, in the New Product Enhanced Specialist Participation provisions of Phlx rule 1014(g)(iv), the proposal would correct that entire provision to state that when a specialist unit develops and trades a new product, such specialist *is entitled to* receive an Enhanced Specialist Participation in that option such that, when the specialist is on parity with three or more controlled accounts in the crowd, the specialist *is entitled to* receive 40% of the contracts and the controlled accounts *are entitled to* receive the remaining 60%; when the specialist is on parity with less than three controlled accounts in the crowd, the specialist *is entitled to* receive 60% of the contracts and the controlled accounts *are entitled to* receive the remaining 40%.[16] The Exchange represents that all of these provisions were originally intended to be written in the permissive form, as evidenced by other types of Enhanced Specialist Participation programs.[17] Thus, Phlx states, the "entitlement" is not mandatory.

Second, the Exchange proposes to add a reference to the Enhanced Specialist Participation programs and an explanation of how the Enhanced Specialist Participation is calculated. Specifically, the Exchange proposes to expressly state in Phlx rule 1014(g)(i) that several programs provide an Enhanced Specialist Participation to specialists. These programs include a 30% (or, in certain situations, 40% or 60%) Enhanced Specialist Participation, New Unit/New Option Enhanced Specialist Participation,[18] and New Product Enhanced Specialist Participation.[19] The purpose of expressly listing these programs in Phlx rule 1014(g)(i) is to provide an introduction for ease of reference.

The Exchange also proposes to better define how the Enhanced Specialist Participation would be calculated by stating that the Enhanced Specialist Participation is a percentage of the Remainder of the Order to which the specialist is entitled, depending upon whether Phlx rule 1014 (g)(ii), (iii), or (iv) applies. "Remainder of the Order" is proposed to be defined in order to be clear as to which portion of an "Initiating Order" (which is also proposed to be defined) the proposed trade allocation rules would apply.

(iii) *Customer Priority.* Under the current structure of Phlx rule 1014(g), in applying the Enhanced Specialist Participation, when an incoming order arrives on the floor and only the specialist and controlled accounts are on parity, the specialist is entitled to the specified percentage of the order before the controlled accounts divide the rest. However, when a customer order also is being represented in the crowd at the same bid or offer as the specialist and controlled accounts, other rules currently must be taken into account. Specifically, Phlx rule 1014(g)(i) currently provides that orders of controlled accounts must yield priority to customer orders, but that specialists and ROTs closing in person are currently not required to yield priority to customer orders. Thus, currently, a specialist and a ROT closing in person are not required to yield to a customer order represented in the trading crowd while other controlled accounts are. Nonetheless, pursuant to the Enhanced Specialist Participation provisions, currently a customer may not receive a smaller participation than any trading crowd participant, including an ROT closing in person.[20]

The Exchange is proposing to delete the clause in Phlx rule 1014(g)(i) that allows specialists and ROTs closing in-person to be on parity with customer orders, and to make conforming changes to Phlx rules 1014(g)(ii), (iii), and (iv). The instant proposal would thus require the accounts of specialists and ROTs closing in-person to yield priority to all customer accounts. The purpose of this provision is to make the Exchange more attractive to customer orders.[21]

(iv) *Proposed New Rule 1014(g)(v).* At this time, Phlx proposes to adopt new paragraph (g)(v) to Phlx rule 1014 to codify and detail how trade allocation functions for non-AUTO–X orders[22] subject to allocation under Phlx rule 1014(g).[23]

In order to explain how options trade allocation functions, it is necessary first to define and discuss the concepts of "stated size" and "Defined Participation."

a. *Stated Size.* Currently, in situations in which the specialist handles AUTOM-delivered[24] orders manually, the individual crowd participants do not in all cases quote a specific size prior to the execution of such an order, but rather the entire crowd is responsible for the disseminated price up to the disseminated size. The proposed rule change would, with one exception[25] require, on a trade-by-trade

---

[6] Phlx rule 1067, which states that the highest bid and the lowest offer shall have precedence in all cases, does not address parity situations, nor does it address size precedence; thus, it is consistent with the proposal. Other Exchange rules, including Phlx rules 1017 and 1019, as well as Advices A–12 and A–14, deal with priority/parity on the opening.

[7] The Exchange notes that option orders that are automatically executed by the Exchange's AUTO-X system are generally subject to a separate allocation system known as the "Wheel." Therefore, the Enhanced Specialist Participation programs described in this section apply only to non-AUTO-X trades. Non-AUTO-X trades include manually executed trades such as orders delivered by the AUTOM System, by the Floor Broker Order Entry ("FBOE") System as well as manually to the specialist. *See infra* note 26 and Securities Exchange Act Release No. 41524 (June 14, 1999), 64 FR 33127 (June 21, 1999) (SR–Phlx–99–11) (adopting the FBOE). *See also* Securities Exchange Act Release No. 45927 (May 15, 2002), 67 FR 36289 (May 23, 2002) (SR–Phlx–2001–24).

The Exchange further notes that rules relating to its "ROT Access" system, in which specialists and Registered Options Traders ("ROTs") may place price improving limit orders and matching orders directly onto the limit order book via electronic interface with AUTOM, contain Special Allocation rules particular to orders executed against such price improving and matching orders. *See* Securities Exchange Act Release No. 46763 (November 1, 2002), 67 FR 68898 (November 13, 2002) (SR–Phlx–2002–04).

[8] A controlled account is currently defined as "any account controlled by or under common control with a broker-dealer." *See* Phlx rule 1014(g)(i). Thus, the definition of controlled account includes the account of an ROT. *See also* Securities Exchange Act Release No. 45114 (November 28, 2001), 66 FR 63277 (December 5, 2001) (SR–Phlx–2001–38) (re-defining "controlled account"). For other examples of exceptions to the general parity principle, see Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778 (SR–Phlx–00–01) at IV.B.2.

[9] The proposal would specify that the specialist is entitled to receive an Enhanced Specialist Participation as a percentage of the "Remainder of the Order."

[10] The 30% enhanced participation when three or more controlled accounts are on parity was approved by the Commission on April 18, 2000. *See* Securities Exchange Act Release No. 42700 (April 18, 2000), 65 FR 24246 (April 25, 2000) (SR–Phlx–99–39). The Enhanced Specialist Participation in Phlx rule 1014(g)(ii) was originally approved by the Commission as a one-year pilot program for equity options. *See* Securities Exchange Act Release No. 34606 (August 26, 1994), 59 FR 45741 (September 2, 1994) (SR–Phlx–94–12). It was later expanded to include index options. *See* Securities Exchange Act Release No. 35028 (November 30, 1994), 59 FR 63151 (December 7, 1994) (SR–Phlx–94–57). The pilot rule provided for a "two-for-one" split when the specialist was on parity with any number of controlled accounts, allocating to the specialist two contracts for every one allocated to a controlled account. The program was later revised to provide for the current 40% allocation when two controlled accounts are on parity and 60% allocation when one is on parity. *See* Securities Exchange Act Release No. 35429 (March 1, 1995), 60 FR 12802 (March 8, 1995) (SR–Phlx–94–59). The pilot was renewed unaltered on three occasions. *See* Securities Exchange Act Release Nos. 36122 (August 18, 1995), 60 FR 44530 (August 28, 1995) (SR–Phlx–95–54); 37254 (August 5, 1996), 61 FR 42080 (August 13, 1996) (SR–Phlx–96–29); and 38924 (August 11, 1997), 62 FR 44160 (August 19, 1997) (SR–Phlx–97–36). It was thereafter extended for another period with certain modifications. *See* Securities Exchange Act Release No. 39401 (December 4, 1997), 62 FR 65300 (December 11, 1997) (SR–Phlx–97–48). The pilot was approved as a permanent program on July 1, 1999. *See* Securities Exchange Act Release No. 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999) (SR–Phlx–98–56).

[11] *See* Securities Exchange Act Release No. 34109 (May 25, 1994), 59 FR 28570 (June 2, 1994) (SR–Phlx–93–29).

[12] *See* Securities Exchange Act Release No. 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999) (SR–Phlx–98–56).

[13] The instant proposal would afford the customer absolute priority over all controlled accounts by requiring controlled accounts (that would otherwise have priority or be on parity) to yield to customer accounts. *See infra* Section A.(iii). Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Ira L. Brandriss, Division, Commission, on December 30, 2002 ("Telephone conversation with Phlx").

[14] *See, e.g.*, Securities Exchange Act Release No. 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999) (SR–Phlx–98–56).

[15] The current rule text uses the phrase, "the specialist is entitled to" when referring to the 30% Enhanced Specialist Participation when three or more controlled accounts are on parity, and to the 40% Enhanced Specialist Participation when two controlled accounts are on parity. The Exchange represents that originally in the rule text submitted as File No. SR–Phlx–97–48, the portion of the text concerning the case where one controlled account is on parity also used the phrase, "the specialist is entitled to 60%"; and in SR–Phlx–98–56, the text of the rule was inadvertently changed to "receives 60%." Cf. Securities Exchange Act Release Nos. 39401 (December 4, 1997), 62 FR 65300 (December 11, 1997) (SR–Phlx–97–48); and 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999) (SR–Phlx–98–56). Telephone conversation with Phlx.

[16] *See* Securities Exchange Act Release No. 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999) (SR–Phlx–98–56).

[17] The Exchange states that even Enhanced Specialist Participation programs proposed after the new product enhanced specialist participation used the language "is entitled to." *See* Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) (SR–Phlx–2001–01) at Exhibit A, proposing to adopt a 50% Enhanced Specialist Participation and an 80% Enhanced Specialist Participation).

[18] *See* Securities Exchange Act Release No. 34109 (May 25, 1994), 59 FR 28570 (June 2, 1994) (SR–Phlx–93–29).

[19] Enhanced specialist participation programs, which determine the portion of an options trade available for allocation to the specialist on parity with controlled accounts, including the mechanical operation of all existing enhanced specialist programs, are described more fully in Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) (SR–Phlx–00–01). In that proposal, Phlx attempted to codify a similar introductory provision, but that proposed rule change was withdrawn.

[20] *See* Phlx rule 1014(g)(ii).

[21] *See* Amendment No. 5.

[22] For a discussion of situations in which incoming orders would not be eligible for automatic execution via AUTO–X, *see* Securities Exchange Act Release No. 45927 (May 15, 2002), 67 FR 36289 (May 23, 2002) (SR–Phlx–2001–24).

[23] *See supra* note 7.

[24] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[25] Proposed Phlx rule 1014(g)(v)(C)(3) would entitle the specialist to receive the Enhanced Specialist Participation for contracts executed in excess of the Exchange's disseminated size if the specialist does not state a size regarding such excess

Continued

basis, each crowd participant to state a size for which they are firm at any time prior to an execution.

In the context of this proposed rule change, "stated size" means, in the case of orders handled manually by the specialist (for example, in the case of an order that is delivered via AUTOM but is not eligible for execution via AUTO–X [26]) if a crowd participant (including the specialist) has actually stated a size ("Actual Size"), such crowd participant's stated size shall be his or her Actual Size.

Unless the specialist has an Actual Size, the stated size of the specialist shall be the amount (if any) by which the disseminated size [27] exceeds the sum of (x) the aggregate size of limit orders included in the disseminated size and (y) the aggregate sizes of the quotations at the disseminated price of all ROTs who have Actual Sizes.

The proposal further would provide that the stated size of an ROT who does not have an Actual Size is zero. Therefore, in the case of an order handled manually by the specialist and that is subject to allocation under Phlx rule 1014(g), if an ROT does not actually state the size for which he or she is firm at the disseminated price, such ROT would not be entitled to receive any contracts in such an order.

The proposed rule would also provide that, in the case of floor-brokered orders, each crowd participant's stated size shall be his or her Actual Size. Thus, when a floor broker enters a crowd and asks for a market, the specialist and ROTs would be required to state, along with the price for which they are firm, an Actual Size for which they are firm in order to be entitled to be allocated contracts resulting from the execution of the order. Again, in the case of orders represented in the crowd by a floor broker, if a crowd participant does not have an Actual Size, such crowd participant would not be entitled to receive any contracts.

Once the stated size of the specialist and ROTs has been established under proposed Phlx rule 1014(g)(v)(B), the allocation of contracts would take place in accordance proposed sub-paragraph (g)(v)(C), "Defined Participation."

b. *Defined Participation.* Under the proposal, "Defined Participation" would mean the portion of the Remainder of the Order to which a crowd participant is entitled.

In the case of a specialist entitled to an Enhanced Specialist Participation, the Defined Participation would mean the Enhanced Specialist Participation, up to the specialist's stated size. This means that if the specialist's stated size is for a number of contracts that is less than the size of the Enhanced Specialist Participation, the specialist would be entitled to receive a number of contracts that is limited to the specialist's stated size, and not the full Enhanced Specialist Participation *unless* the situation described in Phlx rule 1014(g)(v)(C)(3) applies.[28]

The Defined Participation for other crowd participants on parity would mean, where all participants have equal stated sizes, an equal share of the Remainder of the Order to be allocated after the specialist receives the Enhanced Specialist Participation, if applicable. Where participants have unequal stated sizes, the Defined Participations would equal their "Base Participations," defined as the stated size of the smallest participant (provided that, if the sum of all Base Participations would exceed the number of contracts in the Remainder of the Order, then the Remainder of the Order would be divided equally among crowd participants on parity, subject to rounding) plus their "Supplemental Participations." After the allocation of the Base Participation, the smallest participant would not be entitled to receive a Supplemental Participation, since that participant would have been allocated contracts equaling such participant's stated size. The other crowd participants who are on parity and who would be entitled to receive additional contracts would be entitled to receive Supplemental Participations.

Supplemental Participations would be equal to the remaining stated size, after the allocation of the Base Participation, of the smallest remaining participant entitled to receive such a Supplemental Participation (provided that, if the sum of all initial Supplemental Participations would exceed the number of contracts remaining to be allocated, then such contracts would be divided equally among crowd participants on parity, subject to rounding). If the remaining stated sizes of all participants entitled to receive initial Supplemental Participations is equal, then their initial Supplemental Participations would be equal. The allocation of the Supplemental Participations would continue in this manner until the number of contracts to be allocated is exhausted.

The proposed rule would provide that the specialist may decline to receive the Enhanced Specialist Participation, in which case the specialist would be entitled to participate as one crowd participant, up to (*i.e.*, limited by) the specialist's stated size. The Exchange believes that this limitation should provide incentives for specialists to bid for and offer options contracts reflecting their true size, resulting in greater transparency in the Exchange's markets.

When a market or marketable limit order is received with a size greater than the Exchange's disseminated size, some crowd participants may be willing to execute a larger size than the disseminated size.[29] Where the Remainder of the Order is greater than the portion of the disseminated size that is attributable to the specialists and ROTs,[30] the proposed rule change would provide that participation in additional contracts in excess of such size among willing crowd participants shall be allocated under the otherwise applicable provisions of Phlx rule 1014.[31]

Specifically, once the disseminated size is executed and allocated among crowd participants on parity, any crowd participants who wish to execute additional contracts in excess of the disseminated size may participate in a "second round" of bidding for or offering additional contracts in excess of the disseminated size (the "excess contracts"). This subset of willing crowd participants would be entitled to participate under the same rules applicable to the Remainder of the Order. Once all crowd participants have been satisfied in the original allocation up to the disseminated size, the "second round" would constitute a new parity situation respecting the willing crowd participants in the excess contracts. The excess contracts would be allocated among those crowd participants who wish to participate in additional contracts, in accordance with the proposed rule. Therefore, if the specialist is a willing participant in the excess contracts, the specialist would be entitled to receive an Enhanced Specialist Participation in such excess contracts.

Proposed Phlx rule 1014(g)(v)(C)(3) is intended to address this situation where an order is received via AUTOM and handled manually by the specialist for a number of contracts greater than the Exchange's disseminated size, and the specialist executes the entire order manually prior to stating a size. The proposed rule would provide that, if the specialist has no Actual Size, the specialist would nonetheless be entitled to receive the Enhanced Specialist Participation for all contracts executed in excess of the disseminated size. The proposed rule limits the specialist's entitlement if the specialist has an Actual Size. In such a situation, the specialist would be entitled to receive the Enhanced Specialist Participation, but not to exceed the specialist's Actual Size in such excess contracts.

c. *Waiver.* The proposal is not intended to require, without exception, that crowd participants be allocated the number of contracts to which they would be entitled.[32] The proposal would allow crowd participants, in their sole discretion, to offer to waive, in whole or in part, any part of a trade to which they were entitled to be allocated (an "Offer to Waive"), by stating so in a loud and audible voice to the other members of the trading crowd and the Allocating Participant.[33] In structuring the waiver provisions, the Exchange represents that it has incorporated basic contract principles,[34] including communication of an offer, acceptance, and revocation.[35]

For example, a crowd participant may make an Offer to Waive in situations in which hedging transactions become difficult or cumbersome due to lack of availability or liquidity in the underlying stock; additionally, a crowd participant may make an Offer to Waive to accommodate the execution of a particularly large sized order on the Exchange by larger crowd participants, or to accommodate a crowd participant closing out a position. At the same time, the proposed rule change would provide that a pattern or practice of waiving all or a portion of a crowd participant's entitlement may be considered conduct inconsistent with just and equitable principles of trade.[36]

If the Allocating Participant determines that the other crowd participant(s) then on parity is (are) willing to take the number of contracts that are subject to the Offer to Waive, the Allocating Participant may (but would not be required to), accept such Offer to Waive by (i) allocating the Remainder of the Order, taking into account the Offer to Waive, in accordance with proposed Phlx rule 1014(g)(v), or (ii) otherwise indicating, following the execution of the Initiating Order, that such Offer to Waive will be accepted.

The proposed rule addresses both a Total Waiver, in which a crowd participant effects a Waiver of his or her entire entitlement, and a Partial Waiver, in which a crowd participant effects a Waiver of a portion of his or her respective entitlement but not a Total Waiver. If a crowd participant effects a Total Waiver or a Partial Waiver, the number of contracts to which such participant would otherwise be entitled would be reduced by the number of contracts waived. The entitlements of the other participants on parity (and who have not effected a Total or Partial Waiver) would be determined by redistributing the waived number of contracts to willing participants (including the specialist) based on the Defined Participation.[37]

d. *Waiver and the Enhanced Specialist Participation.* The proposed rule would provide that, in the case of an option which is subject to an Enhanced Specialist Participation, and one or more ROTs effect Total Waivers leaving the specialist on parity (after giving effect to such Total Waivers) with three or more ROTs, the Enhanced Specialist Participation to which the specialist would be entitled is as if the specialist had been on parity with three ROTs; similarly, if one or more ROTs effect Total Waivers leaving the specialist on parity (after giving effect to such Total Waivers) with two or more ROTs, the Enhanced Specialist Participation to which the specialist would be entitled is as if the specialist had been on parity with two ROTs, and if one or more ROTs effect Total Waivers leaving the specialist on parity (after giving effect to such Total Waivers) with one ROT, the Enhanced Specialist Participation to which the specialist would be entitled is as if the specialist had been on parity with one ROT. In no event, however, would a specialist that is on parity with one ROT be entitled to receive a number of contracts that is greater than the Enhanced Specialist Participation, unless the one ROT has waived his entitlement or has been satisfied.

The proposed rule would make clear that, in no event would any non-waiving ROT be required to participate in fewer contracts than he/she would have received absent the Waiver(s). The purpose of this provision is to ensure that the ROT that remains on parity with the specialist does not receive fewer contracts than such ROT would have received if not for the Waivers.

e. *Partial Waiver.* The proposed rule would provide that, respecting options subject to the Enhanced Specialist Participation, in the event that one or more ROTs on parity with the specialist effect a Partial Waiver, the specialist would not be entitled to receive a number of contracts that is greater than 40% of the Remainder of the Order or, in the case of the specialist being on

---

contracts. If the specialist states a size prior to the execution of such excess contracts, the specialist's entitlement would be limited by that size. *See* subparagraph b. below.

[26] Phlx represents that other examples of orders handled manually by the specialist include orders delivered by the Floor Broker Order Entry system and orders placed manually on the limit order book.

[27] Currently, Phlx rule 1082(a)(ii) defines "disseminated size" as, respecting options subject to new technology (the "new Auto-Quote") and options subject to a proprietary quoting system provided for in Phlx rule 1080.02 ("Specialized Quote Feed"), at least the sum of limit orders at the Exchange's disseminated price. The specialist and crowd may determine to disseminate a size greater than the sum of limit orders. For instance, the disseminated size may include additional size disseminated by the specialist, one or more ROTs, or the total crowd size.

[28] *See* discussion, *infra* page 16.

[29] Phlx rule 1082(e), Firm Quotations, provides that, if responsible brokers or dealers receive an order to buy or sell a listed option at the disseminated price in an amount greater than the disseminated size (for customer orders) or the quotation size (for broker-dealer orders), such responsible broker or dealer shall, within thirty (30) seconds of receipt of the order, (i) execute the entire order at the disseminated price (or better), or (ii) execute that portion of the order equal to the disseminated size (in the case of a customer order) or the quotation size (in the case of a broker-dealer order) at the disseminated price (or better), and revise its bid or offer. The Exchange filed with the Commission on October 4, 2002, a proposed rule change to codify the situation in which responsible brokers or dealers elect to execute a number of contracts greater than the disseminated size but not necessarily the size of the entire order. *See* File No. SR–Phlx–2002–60.

[30] Phlx defines disseminated size as, with respect to the disseminated price for any quoted options series, at least the sum of limit orders; however, the proposal would permit the specialist and crowd to disseminate a size greater than the sum of the limit orders. *See* Securities Exchange Act Release No. 46325, (August 8, 2002), 67 FR 53376 (August 15, 2002) (approving File No. SR–Phlx–2002–15).

[31] Telephone conversation with Phlx.

[32] Telephone conversation with Phlx.

[33] Options Floor Procedure Advice ("Advice") F–2 currently provides that, generally, the largest participant allocates the trade. The Exchange has proposed to modify Phlx rule 1014(g) and Advice F–2 governing who allocates trades. *See* Securities Exchange Act Release No. 47500 (March 13, 2003) (notice of File No. SR–Phlx–2001–28).

[34] *See* Corbin, Contracts section 1515 and 13 Pa. C.S.A. section 1102 (corresponding to section 1–102 of the Uniform Commercial Code) regarding variation by agreement, stating the basic principles of commercial and contract law that parties may generally waive rights or benefits to which they would otherwise be entitled. In order to ensure that no waiver is coerced, the Exchange is proposing to codify that it would be inconsistent with "just and equitable principles of trade" for a participant to harass, coerce or intimidate another participant to waive any rights.

[35] The Exchange notes that waiver also appears in disciplinary and membership rules, as well as in the Act. Under the disciplinary processes of the exchanges, there is a right to a hearing, which can be waived. *See, e.g.*, Amex rule 590(f) and Chicago Stock Exchange Article XII, rule 9. *See also* CBOE rule 3.9(b) permitting clearing firms to waive the membership posting period. The proposed provisions do not implicate the anti-waiver provisions of section 29(a) of the Act, 15 U.S.C. 78cc(a), which aims to prevent the waiver of the application of U.S. securities laws in certain situations where fraud is involved.

[36] *See* proposed rule 1014(g)(v)(F)(2).

[37] The proposal does not contemplate, and would not allow, a crowd participant to waive his/her entitlement to receive a given number of contracts to designate that the contracts subject to the Waiver be allocated to any other specific crowd participant or participants.

parity with only one ROT, 60%, unless all other ROTs on parity have waived their entitlements or have received a number of contracts equal to their remaining size after the Partial Waiver(s). The proposal would provide, however, for the reasons stated above, that in no event shall a ROT be required to participate in fewer contracts than he/she would have received absent the Partial Waiver(s).

f. *Other Provisions.* The proposal would provide that, in situations where the allocation of contracts result in fractional amounts of contracts to be allocated to crowd participants, the number of contracts to be allocated would be rounded in a fair and equitable manner.

The proposal would also provide that it shall be considered conduct inconsistent with just and equitable principles of trade for a member: (a) To allocate initiating orders other than in accordance with Phlx rule 1014; (b) to enter into any agreement with another member concerning allocation of trades; or (c) to harass, intimidate or coerce any member to enter into or revoke any Waiver, or to make or refrain from making any complaint or appeal. A pattern or practice of waiving all or a portion of a crowd participant's entitlement, with the result that such crowd participant receives no allocation or a lesser allocation than he or she would otherwise have been entitled to, may be considered conduct inconsistent with just and equitable principles of trade. The Exchange notes that although it is proposing to expressly reference "just and equitable principles of trade" [38] in this proposed rule,[39] it does not intend to create an inference, with respect to other Exchange rules that do not contain such an express reference, that violations of such rules could not in appropriate instances also violate just and equitable principles of trade. The Exchange may, in the case of other Exchange rules where there is no express reference to "just and equitable principles of trade," nonetheless determine that a violation of such other rules also constitutes conduct inconsistent with just and equitable principles of trade.[40] The Exchange believes that this provision of the proposed rule is consistent with the requirement in the Order to promptly stop any practice or procedure relating to the allocation of orders if neither it nor a related practice or procedure that would supercede the existing practice or procedure has been submitted for approval or is not already authorized by rule.

Finally, the proposal would provide that, notwithstanding the first sentence of Phlx rule 1014(g)(i), neither Phlx rule 119(b) and (c) concerning precedence based on the size of bids at parity, nor Phlx rule 120 (insofar as it incorporates those provisions by reference) shall apply to the allocation of orders covered by this Phlx rule 1014(g)(v).

2. Statutory Basis

The Exchange believes that the proposed rule change would codify existing practices concerning options trade allocation where ROTs and specialists are on parity, and would provide a fair process for trade allocation among floor traders (specialists and ROTs). It would provide for the waiver of minimum trade allocation entitlements where appropriate while establishing a process that would help ensure fair and equitable trade allocation in such case.[41] This process would include, for instance, the requirement that Offers to Waive be vocalized and accepted. Further, the Exchange believes that trade allocation is, in part, a process in the functioning of an auction market. In its role as a facility for options trading, the Exchange believes that the approach proposed herein is appropriate and consistent with the Act.[42] The Exchange believes that the approach represents a codification of practices that have developed as the options markets have evolved and changed.

In addition to being necessary and appropriate, the Exchange believes that its approach has certain benefits and results that would foster and achieve the objectives of section 6(b)(5) of the Act.[43] Specifically, proposed Phlx rule 1014(g)(v) expressly would provide a fair and equitable mechanism to allocate trades among floor traders on parity.[44] Such a mechanism is necessary to the functioning of a trading crowd in an auction market and, thus, to the maintenance of deep, liquid and orderly options markets.

The Exchange states that its ability to attract order flow hinges to a great extent on its ability to execute a large number of trades of various sizes, including very large trades, efficiently and expeditiously. The Exchange states that trading crowds facilitate those executions far better than could individual market makers, because a trading crowd usually represents much more liquidity than an individual market maker. The proposed rule would codify certain trade allocation entitlements, and the ability of crowd participants to waive such entitlements where appropriate, but not to the extent that such waiver becomes a pattern or practice. This, in turn, would maximize smooth functioning of trading crowds and efficient executions.[45]

Phlx believes that the proposed rule should promote fair and orderly markets by: (1) Establishing clear trade allocation rules; and (2) specifying when and how floor traders may decline to receive any part of a trade to which they otherwise would have been entitled.

For these reasons, the Exchange believes that its proposal is consistent with section 6(b) of the Act,[46] in general, and section 6(b)(5) of the Act,[47] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by codifying a trade allocation approach that best facilitates fair and orderly markets.

[38] *See* Phlx rule 707.

[39] Other Exchange rules expressly reference just and equitable principles of trade. *See, e.g.*, Phlx rules 1015(b), 1042.02 and 1051(a).

[40] The lack of express reference in other Phlx rules should not be construed as waiving the ability to make a violation of Phlx rule 707 co-exist with any other violation, depending on the facts and circumstances of the case. The Exchange believes that a violation of the existing parity/priority provisions of its rules could be a violation of just and equitable principles of trade and could be subject to disciplinary action as such. In addition, a violation of Phlx rule 1014(g)(v), for instance, can be in and of itself a stand-alone violation.

[41] Telephone conversation with Phlx.

[42] The Exchange notes that the Commission has previously acknowledged that granting benefits like the Enhanced Specialist Participation is within the business judgment of the Exchange, as long as such advantages do not restrain competition and do not harm investors. *See* Securities Exchange Act Release No. 42700 (April 18, 2000), 65 FR 24246 (April 25, 2000) (SR–Phlx–99–39); see also Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) (publishing for notice and comment File No. SR–Phlx–00–01).

[43] 15 U.S.C. 78f(b)(5).

[44] The Exchange believes that self-regulatory organizations ("SROs") should be afforded the broadest latitude to adopt trading rules that its governing bodies determine are most appropriate to the needs of the marketplace and its competitive position, and notes that, in its recent proposal to promulgate new rule 19b–6 under the Act, SROs would be permitted to file "trading rules" as effective upon filing, without staff review or Commission order, unless such a trading rule would "make fundamental structural changes to the market." For purposes of the proposed rule, the term "trading rule" includes rules governing member trading * * * such as rules governing * * * priority of orders, bids and offers *See* proposed rule 19b–6(b)(6) and (g)(1) at Securities Exchange Act Release No. 43860 (January 19, 2001), 65 FR 8912 (February 5, 2001). The Commission notes that it has not taken final action on proposed rule 19b–6.

[45] Telephone conversation with Phlx.

[46] 15 U.S.C. 78f(b).

[47] 15 U.S.C. 78f(b)(5)

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–Phlx–2001–39 and should be submitted by April 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[48]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6990 Filed 3–24–03; 8:45 am]

BILLING CODE 8010–01–P

[48] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before May 27, 2003.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Carol Fendler, Director, Office of Licensing and Program Standards, Small Business Administration, 409 3rd Street SW., Suite 6300, Washington, DC 20416

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Director, 202–205–7559 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: Licenses Application.
Form No's: 2181, 2182 & 2183.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 210.
Annual Burden: 12,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–6962 Filed 3–24–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending March 14, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–14685.
Date Filed: March 11, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR 0497 dated March 11, 2003.
Mail Vote 273—TC2 Europe.
Resolution 010S—TC2 Within Europe Special Passenger Amending Resolution.
Intended effective date: March 22, 2003.

Docket Number: OST–2003–14703.
Date Filed: March 13, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR 0499 dated March 14, 2003.
Mail Vote 282—Resolution 010v. TC2 Within Europe Special Passenger Amending Resolution from France to Europe. Intended effective date: March 28, 2003.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–7082 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 14, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1996–1642.
Date Filed: March 12, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 2, 2003.
Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. 41102 and subpart B, requesting renewal of its Route 729

certificate authorizing it to provide scheduled foreign air transportation of persons, property, and mail between Cleveland, OH and London, England, and to combine this authority with its other certificate and exemption authority.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–7081 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–02–14071]

Application of Westward Airways, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 2003–3–10).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Westward Airways, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property and mail using aircraft having 9 passenger seats or less.

DATES: Persons wishing to file objections should do so no later than April 1, 2003.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–02–14071 and addressed to the Department of Transportation Dockets (M–30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Serig, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4822.

Dated: March 19, 2003.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–7083 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Third Party War Risk Liability Insurance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of extension of aviation insurance.

SUMMARY: This notice contains the text of a memo from the Secretary of Transportation to the President regarding the extension of the provision of aviation insurance coverage for U.S. flag commercial air carrier service in domestic and international operations.

DATES: Dates of extension from December 16, 2002 through February 13, 2003.

FOR FURTHER INFORMATION CONTACT: Helen Kish, Program Analyst, APO–3, or Eric Nelson, Program Analyst, APO–3, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone 202–267–9943 or 202–267–3090. Or online at the FAA Insurance Web site: *http://insurance.faa.gov.*

SUPPLEMENTARY INFORMATION: On February 13, 2003, the Secretary of Transportation authorized a 60-day extension of aviation insurance provided by the Federal Aviation Administration as follows:

Memorandum To the President

Pursuant to the authority delegated to me in paragraph (3) of Presidential Determination No. 01–29 of September 23, 2001, I have extended that determination to allow for the provision of aviation insurance and reinsurance coverage for U.S. flag commercial air carrier service in domestic and international operations for an additional 60 days.

Pursuant to section 44306(b) of Chapter 443 of 49 U.S.C., Aviation Insurance, the period for provision of insurance shall be extended from February 14, 2003, through April 14, 2003.

/s/Norman Y. Mineta

Affected Public: Air Carriers who currently have Third Party War-Risk Liability Insurance with the Federal Aviation Administration.

Issued in Washington, DC, on March 18, 2003.

Nan Shellabarger,

Deputy Director, Office of Aviation Policy and Plans.

[FR Doc. 03–7075 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–12]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 14, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14566 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Jan Thor ((425) 227–2127), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Vanessa Wilkins ((202) 267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on March 19, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–14566.

Petitioner: Boeing Netjets Charter Company, L. L. C.

Section of 14 CFR Affected: 14 CFR 25.813(c).

Description of Relief Sought: Boeing Netjets Charter Company, L. L. C. (BNJC, L. L. C.), an on-demand 14 CFR part 135 charter operator, which also conducts operations under 14 CFR part 91, has requested that it be allowed to engage in for-hire charter operations with a door between passenger compartments on the BBJ airplane (Boeing Model 737–700IGW) equipped with an executive interior with 19 or less passenger seats. This relief is similar to relief previously granted to the Boeing Company under Exemption Nos. 6820 and 6820A for airplanes not operated for hire or common carriage.

[FR Doc. 03–7071 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–07–C–00–ESC To Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Delta County Airport, Escanaba, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Delta County Airport under the provisions of the 49 U.S.C. 401176 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 24, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road Belleville, Michigan 48111. The application may be reviewed in person at this location.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard Severson, Airport Manager, Delta County Airport at the following address: Delta County Airport, 3300 Airport Road, Escanaba, Michigan 49829.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Delta County under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Arlene B. Draper, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7282). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Delta County Airport under the provisions of the 49 U.S.C. 401117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 5, 2003, the FAA determined that the application to impose and use the revenue form a PFC submitted by Delta County was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, not later than June 27, 2003.

The following is a brief overview of the application.

Proposed charge effective date: March 1, 2004.

Proposed charge expiration date: December 31, 2006.

Level of the proposed PFC for new impose/use: $4.50.

Total estimated PFC revenue: $54,500.

Brief description of proposed projects:

Impose and Use at the $4.50: Expand Terminal Parking Lot and Relocate Airport Access Road.

Use Only at the $3.00 Level: Construct Runway Safety Area for Runway 9.

Class or classes of air carriers, which the public agency has requested to be required to collect PFCs: Air Taxi and Charters.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Delta County.

Issued in Des Plaines, Illinois, on March 17, 2003.

Mark McClardy,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region

[FR Doc. 03–7076 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–565 (Sub–No. 14X) and AB–55 (Sub–No. 629X)]

New York Central Lines, LLC—Abandonment Exemption and CSX Transportation, Inc.—Discontinuance of Service Exemption—in Montgomery and Schenectady Counties, NY

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuance of Service* for NYC to abandon and CSXT to discontinue service over approximately 6.3 miles of railroad from milepost QGW 159.6 to milepost QGW 165.9, between South Amsterdam in Montgomery County and Rotterdam Junction in Schenectady County, NY. The line traverses United States Postal Service Zip Codes 12010 and 12150.

NYC and CSXT have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on April 24, 2003, unless

stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 4, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 14, 2003, with: Surface Transportation Board, 1925 K Street NW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representative: Natalie S. Rosenberg, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemptions are void *ab initio*.

NYC and CSXT have filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 28, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NYC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NYC's filing of a notice of consummation by March 25, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. See 49 CFR 1002.2(f)(25).

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: March 18, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–6923 Filed 3–24–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Capital Asset Realignment for Enhanced Services (CARES) Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Capital Asset Realignment for Enhanced Services (CARES) Commission will meet on April 2–4, 2003, at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202. The sessions on April 2–4 will begin at 8:30 a.m. each day and end by 4 p.m. on April 2, by 5 p.m. on April 3, and by 12 noon on April 4. The meetings are open to the public.

The purpose of the Commission is to conduct an external assessment of VA's capital asset needs and to assure that stakeholder and beneficiary concerns are fully addressed. The Commission will consider recommendations prepared by VA's Under Secretary for Health, veterans service organizations, individual veterans, Congress, medical school affiliates, VA employees, local government entities, community groups and others. Following its assessment, the Commission will make specific recommendations to the Secretary of Veterans Affairs regarding the realignment and allocation of capital assets necessary to meet the demands for veterans health care services over the next 20 years.

The April meeting is the third meeting of the Commission. On the morning of April 2, there will be a detailed briefing and discussion of how the Market Planning Template was applied in the solution planning process. On the afternoon of April 2, a status report on the reviews of the CARES Model will be presented. Also, on the afternoon of April 2 and continued on April 3, there will be briefings on the issues facing nursing and medical school affiliations with VA facilities, such as the impact of changes in resident work hour requirements, and the interplay with VA Community Based Outpatient Clinics. On April 3, there will also be a briefing and discussion of the CARES Planning Initiatives and adherence to Planning Guidance. On April 4, the Commission will receive briefings from stakeholders and other governmental offices.

No time will be allocated at these meetings for receiving oral presentations from the public. However, interested persons may either attend or file statements with the Commission. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to: Department of Veterans Affairs, CARES Commission (OOCARES), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing additional information should contact Mr. Richard E. Larson, Executive Director, CARES Commission, at (202) 501–2000.

Dated: March 18, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–7005 Filed 3–24–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

President's Task Force To Improve Health Care Delivery for Our Nation's Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is scheduled for Wednesday, April 9, 2003, beginning at 9 a.m. and adjourning at 5 p.m. The meeting will be held in the Horizon Ballroom of the Ronald Reagan Building International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is open to the public.

The purpose of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is to:

(a) Identify ways to improve benefits and services for Department of Veterans Affairs (VA) beneficiaries and Department of Defense (DoD) military retirees who are also eligible for benefits from VA, through better coordination of the activities of the two departments;

(b) Identify opportunities to remove barriers that impede VA and DoD coordination, including budgeting processes, timely billing, cost accounting, information technology, and reimbursement; and

(c) Identify opportunities through partnership between VA and DoD, to maximize the use of resources and infrastructure, including buildings, information technology and data sharing systems, procurement of supplies, equipment and services.

The morning and afternoon sessions will be a discussion of format and issues for the Final Report to the President.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties can provide written comments to Mr. Dan Amon, Communications Director, President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, 1401 Wilson Boulevard, 4th Floor, Arlington, Virginia 22209.

Dated: March 18, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–7006 Filed 3–24–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the annual meeting of the Department of Veterans Affairs Voluntary Service National Advisory Committee (NAC) will be held at the Radisson Hotel City Centre, 31 West Ohio Street, Indianapolis, Indiana, on April 30–May 3, 2003. The meeting sessions are scheduled from 6 p.m. until 8 p.m. on April 30; from 8:30 a.m. until 4:30 p.m. on May 1 and 2; and from 9 a.m. until 4 p.m. on May 3, with a closing program at 6 p.m. that day. The meeting is open to the public.

The committee, comprised of 61 national voluntary organizations advises the Secretary, through the Under Secretary for Health, on the coordination and promotion of volunteer activities within VA health care facilities. The primary purposes of this meeting are: To provide for committee review of volunteer policies and procedures; to accommodate full and open communications between the organizations, representatives and the Voluntary Service Office and field staff; to provide educational opportunities geared towards improving volunteer programs with special emphasis on methods to recruit, retain, motivate and recognize volunteers; and to approve committee recommendations.

The April 30 session will involve opening ceremonies, remarks by several VA and local officials and a keynote address by the VA Deputy Secretary. The May 1 session will feature presentations on the VA Voluntary Service and Veterans Canteen Service and four educational workshops on the Stories of Service with Digital Clubhouse Network, Tampa VAMC Junior Intern Program, Student Volunteers Making A Difference and Recruitment—Back to the Basics and Resolving Conflict. On May 2, the business session will include voting on recommendations, a keynote address from the Acting Under Secretary for Memorial Affairs, several awards recognizing exceptional volunteer service and a continuation of the educational workshops. The James H. Parke Memorial Scholarship Luncheon will be held to honor an outstanding youth volunteer, with Lt. General Carol A. Mutter, U.S. Marine Corps (Retired) serving as keynote speaker. The May 3 session will conclude with remarks from the National Executive Committee Vice Chairman and Chairman of the National Advisory Committee during a Volunteer Recognition Dinner.

No time will be allocated at this meeting for receiving oral presentations from the public. However, interested persons may either attend or file statements with the Committee. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to: Ms. Laura Balun, Administrative Officer, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420. Individuals interested in attending are encouraged to contact Ms. Balun at (202) 273–8952.

Dated: March 18, 2003

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–7007 Filed 3–24–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 68, No. 57
Tuesday, March 25, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Agricultural Policy Advisory Committee for Trade and the Agricultural Technical Advisory Committees for Trade; Reestablishment, Establishment, and Nominations

Correction

In notice document 03–6794 beginning on page 13665 in the issue of Thursday, March 20, 2003, make the following correction:

On page 13665, in the first column, under **FOR FURTHER INFORMATION CONTACT**, in the ninth line, "7829" should read, "6829".

[FR Doc. C3–6794 Filed 3–24–03; 8:45 am]
BILLING CODE 1505–01–D

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1008]

Equal Credit Opportunity

Correction

In rule document 03–5666 beginning on page 13144 in the issue of Tuesday, March 18, 2003 make the following correction:

PART 202—[CORRECTED]

On page 13184, in appendix C to part 202, in the first column, the heading **Notification Forms** is corrected to read as follows:

Appendix C to Part 202—Sample Notification Forms

[FR Doc. C3–5666 Filed 3–24–03; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 113, and 178

[T.D. 03–14]

RIN 1515–AC58

Deferral of Duty on Large Yachts Imported for Sale

Correction

In rule document 03–6759 beginning on page 13623 in the issue of Thursday, March 20, 2003, make the following corrections:

1. On page 13624, in the third column, in the first full paragraph, in the sixth line from the bottom, "and" should read, ""and".

2. On the same page, in the same column, in the same paragraph, in the second line from the bottom, "section" should read, "section"".

[FR Doc. C3–6759 Filed 3–24–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
March 25, 2003

Part II

Department of the Treasury

Customs Service

19 CFR Parts 10 and 163
Implementation of the Andean Trade Promotion and Drug Eradication Act; Proposed Rule

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10 and 163

[T.D. 03–16]

RIN 1515–AD19

Implementation of the Andean Trade Promotion and Drug Eradication Act

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to the Customs Regulations to implement the trade benefit provisions for Andean countries contained in Title XXXI of the Trade Act of 2002. The trade benefits under Title XXXI, also referred to as the Andean Trade Promotion and Drug Eradication Act (the ATPDEA), apply to Andean countries specifically designated by the President for ATPDEA purposes. The ATPDEA trade benefits involve the entry of specific apparel and other textile articles free of duty and free of any quantitative restrictions, limitations, or consultation levels, the extension of duty-free treatment to specified non-textile articles normally excluded from duty-free treatment under the Andean Trade Preference Act (ATPA) program if the President finds those articles to be not import-sensitive in the context of the ATPDEA, and the entry of certain imports of tuna free of duty and free of any quantitative restrictions. The regulatory amendments contained in this document reflect and clarify the statutory standards for the trade benefits under the ATPDEA and also include specific documentary, procedural and other related requirements that must be met in order to obtain those benefits.

DATES: Interim rule effective March 25, 2003; comments must be submitted by May 27, 2003.

ADDRESSES: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Operational issues regarding textiles:* Robert Abels, Office of Field Operations (202–927–1959).

Other operational issues: Leon Hayward, Office of Field Operations (202–927–3271). Legal issues regarding textiles: Cynthia Reese, Office of Regulations and Rulings (202–572–8790).

Other legal issues: Craig Walker, Office of Regulations and Rulings (202–572–8810).

SUPPLEMENTARY INFORMATION:

Background

Andean Trade Promotion and Drug Eradication Act

On August 6, 2002, the President signed into law the Trade Act of 2002 (the "Act"), Pub. L. 107–210, 116 Stat. 933. Title XXXI of the Act concerns trade benefits for Andean countries, is referred to in the Act as the "Andean Trade Promotion and Drug Eradication Act" (the "ATPDEA"), and consists of sections 3101 through 3108. This document specifically concerns the trade benefit provisions of section 3103 of the Act which is headed "articles eligible for preferential treatment."

Subsection (a) of section 3103 of the Act amends section 204 of the Andean Trade Preference Act (the ATPA, codified at 19 U.S.C. 3201–3206). The ATPA is a duty preference program that applies to exports from those Andean region countries that have been designated by the President as program beneficiaries. The origin and related rules for eligibility for duty-free treatment under the ATPA are similar to those under the older Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI, statute, codified at 19 U.S.C. 2701–2707), and, as in the case of the CBI, all articles are eligible for duty-free treatment under the ATPA (that is, they do not have to be specially designated as eligible by the President) except those articles that are specifically excluded under the statute.

The changes to section 204 of the ATPA made by subsection (a) of section 3103 of the Act involve the following: (1) The removal of section 204(c) which provided for the application of reduced duty rates (rather than duty-free treatment) for certain handbags, luggage, flat goods, work gloves, and leather wearing apparel, with a consequential redesignation of subsections (d) through (g) as (c) through (f), respectively; and (2) a revision of section 204(b). Prior to the amendment effected by subsection (a) of section 3103 of the Act, section 204(b) of the ATPA was headed "exceptions to duty-free treatment" and consisted only of a list of eight specific products or groups of products excluded from ATPA duty-free treatment.

As a result of the amendment made by subsection (a) of section 3103 of the Act, section 204(b) of the ATPA now is headed "exceptions and special rules" and consists of six principal paragraphs. These six paragraphs are discussed below.

Paragraphs (1) and (2): Articles That Are Not Import-Sensitive and Excluded Articles

Paragraph (1) of amended section 204(b) is headed "certain articles that are not import-sensitive" and provides that the President may proclaim duty-free treatment under the ATPA for any article described in subparagraph (A), (B), (C), or (D) that is the growth, product, or manufacture of an ATPDEA beneficiary country, that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country, and that meets the requirements of section 204, if the President determines that the article is not import-sensitive in the context of imports from ATPDEA beneficiary countries. Subparagraphs (A), (B), (C), and (D) cover, respectively:

1. Footwear not designated at the time of the effective date of the ATPA (that is, December 4, 1991) as eligible articles for the purpose of the Generalized System of Preferences (the GSP, Title V of the Trade Act of 1974, codified at 19 U.S.C. 2461–2467);

2. Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the Harmonized Tariff Schedule of the United States (HTSUS);

3. Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

4. Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the GSP.

Paragraph (2) of amended section 204(b) is headed "exclusions" and provides that, subject to paragraph (3), duty-free treatment under the ATPA may not be extended to the following:

1. Textile and apparel articles which were not eligible articles for purposes of the ATPA on January 1, 1994, as the ATPA was in effect on that date;

2. Rum and tafia classified in subheading 2208.40 of the HTSUS;

3. Sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas; and

4. Tuna prepared or preserved in any manner in airtight containers, except as provided in paragraph (4).

The effect of new paragraphs (1) and (2) is to divide the former section 204(b) list of eight types of products excluded from ATPA duty-free treatment into two groups of four each. The four types of products covered by paragraph (1) would no longer be excluded from ATPA duty-free treatment but rather would be eligible for that treatment, provided that the President makes the appropriate negative import sensitivity determination. For these products (which include the handbags, luggage, flat goods, work gloves, and leather wearing apparel to which reduced duty rates previously applied under removed section 204(c)), the country of origin and value-content and related requirements under section 204(a) of the ATPA and the regulations thereunder would apply. The four types of products covered by paragraph (2) would remain as exclusions from duty-free treatment except as otherwise provided in paragraph (3) in the case of certain apparel and textile articles and paragraph (4) in the case of certain tuna products, and the exclusion in the case of sugar and sugar products has been reworded to refer to tariff-rate quota applicability rather than HTSUS classification. Paragraphs (3) through (6) of amended section 204(b), as discussed below, are entirely new provisions.

Paragraph (3): Preferential Treatment of Textile Articles

Paragraph (3) of amended section 204(b) is headed "apparel articles and certain textile articles." Paragraph (3)(A) provides that apparel articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country shall enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels, but only if those articles are described in subparagraph (B), which states that the apparel articles referred to in subparagraph (A) are the following:

1. Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or the United States, or both, exclusively from any one or any combination of the following [clause (i)]:

a. Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in the United States). Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States [subclause (I)];

b. Fabrics or fabric components formed or components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in one or more ATPDEA beneficiary countries, if those fabrics (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, or vicuna [subclause (II)];

c. Fabrics or yarns, to the extent that apparel articles of those fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the North American Free Trade Agreement (NAFTA) [subclause (III)]; and

d. Fabrics or yarns, to the extent that the President has determined that the fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the treatment provided under clause (i)(III) [clause (ii)];

2. Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape in one or more ATPDEA beneficiary countries from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries), whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i)). For these articles, preferential treatment starts on October 1, 2002, and extends for each of the four succeeding 1-year periods, subject to the application of annual quantitative limits expressed in square meter equivalents and with an equal percentage increase in the limit for each succeeding year [clause (iii)];

3. A handloomed, handmade, or folklore textile or apparel article of an ATPDEA beneficiary country that the President and representatives of the ATPDEA beneficiary country concerned mutually agree upon as being a handloomed, handmade, or folklore good of a kind described in section 2.3(a), (b), or (c) or Appendix 3.1.B.11 of Annex 300–B of the NAFTA and that is certified as such by the competent authority of the beneficiary country [clause (iv)]; and

4. Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or one or more ATPDEA beneficiary countries, or both, but excluding articles entered under clause (i), (ii), (iii), or (iv) [clause (v)(I)]. However, during each of four 1-year periods starting on October 1, 2003, the articles in question are eligible for preferential treatment under paragraph (3) only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of a producer or an entity controlling production that are entered and eligible under clause (v)(I) during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under clause (v)(I) during the preceding 1-year period [clause (v)(II)]; the 75 percent standard rises to 85 percent for a producer or entity controlling production whose articles are found by Customs to have not met the clause (v)(II) 75 percent standard in the preceding year [clause (v)(III)].

In addition to the articles described above, paragraph (3)(B) provides for preferential treatment of the following non-apparel textile articles:

1. Textile luggage assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS [clause (vii)(I)]; and

2. Textile luggage assembled from fabric cut in an ATPDEA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States [clause (vii)(II)].

Clause (vi) under paragraph (3) sets forth special rules that apply for purposes of determining the eligibility of articles for preferential treatment

under paragraph (3). These special rules are as follows:

1. Clause (vi)(I) sets forth a rule regarding the treatment of findings and trimmings. It provides that an article otherwise eligible for preferential treatment under paragraph (3) will not be ineligible for that treatment because the article contains findings or trimmings of foreign origin, if those findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. This provision specifies the following as examples of findings and trimmings: sewing thread, hooks and eyes, snaps, buttons, "bow buds," decorative lace trim, elastic strips, zippers (including zipper tapes), and labels.

2. Clause (vi)(II) sets forth a rule regarding the treatment of specific interlinings, that is, a chest type plate, "hymo" piece, or "sleeve header," of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments. Under this rule, an article otherwise eligible for preferential treatment under paragraph (3) will not be ineligible for that treatment because the article contains interlinings of foreign origin, if the value of those interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article. This provision also provides for the termination of this treatment of interlinings if the President makes a determination that United States manufacturers are producing those interlinings in the United States in commercial quantities.

3. Clause (vi)(III) sets forth a *de minimis* rule which provides that an article that would otherwise be ineligible for preferential treatment under paragraph (3) because the article contains yarns not wholly formed in the United States or in one or more APTDEA beneficiary countries will not be ineligible for that treatment if the total weight of all those yarns is not more than 7 percent of the total weight of the good.

4. Finally, clause (vi)(IV) sets forth a special origin rule that provides that an article otherwise eligible for preferential treatment under clause (i) or clause (iii) will not be ineligible for that treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

Paragraph (4): Preferential Treatment of Tuna

Paragraph (4) of amended section 204(b) concerns the preferential treatment of tuna. Paragraph (4)(A) provides for the entry in the United States, free of duty and free of any quantitative restrictions, of tuna that is harvested by United States vessels or ATPDEA beneficiary country vessels, that is prepared or preserved in any manner, in an ATPDEA beneficiary country, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kilograms each, and that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country. Paragraph (4)(B)(i) defines a "United States vessel" for purposes of paragraph (4)(A) as a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46 of the United States Code. Paragraph (4)(B)(ii) defines an "ATPDEA vessel" for purposes of paragraph (4)(A) as a vessel (1) which is registered or recorded in an ATPDEA beneficiary country, (2) which sails under the flag of an ATPDEA beneficiary country, (3) which is at least 75 percent owned by nationals of an ATPDEA beneficiary country or by a company having its principal place of business in an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of those boards are nationals of an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country, (4) of which the master and officers are nationals of an ATPDEA beneficiary country, and (5) of which at least 75 percent of the crew are nationals of an ATPDEA beneficiary country.

Paragraph (5): Customs Procedures

Paragraph (5) of amended section 204(b) is entitled "Customs procedures" and sets forth regulatory standards for purposes of preferential treatment under paragraph (1), (3), or (4). It includes provisions relating to import procedures, prescribes a specific factual determination that the President must make regarding the implementation of certain procedures and requirements by each ATPDEA beneficiary country, and sets forth the responsibility of Customs regarding the study of, and reporting to Congress on, cooperative and other actions taken by each ATPDEA beneficiary country to prevent transshipment and circumvention in the case of textile and apparel goods. The specific provisions under paragraph (5) that require regulatory treatment in this document are the following:

1. Paragraph (5)(A)(i) provides that any importer that claims preferential treatment under paragraph (1), (3), or (4) must comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury. The NAFTA provision referred to in paragraph (5)(A)(i) concerns the use of a Certificate of Origin and specifically requires that the importer (1) make a written declaration, based on a valid Certificate of Origin, that the imported good qualifies as an originating good, (2) have the Certificate in its possession at the time the declaration is made, (3) provide the Certificate to Customs on request, and (4) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct.

2. Paragraph (5)(B) provides that the Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (5)(A)(i) will not be required in the case of an article imported under paragraph (1), (3), or (4) if that Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico. Article 503 of the NAFTA sets forth, with one general exception, three specific circumstances in which a NAFTA country may not require a Certificate of Origin.

Paragraph (6): Definitions

Paragraph (6) of amended section 204(b) sets forth a number of definitions that apply for purposes of section 204(b). These definitions include, in paragraph (6)(B), a definition of "ATPDEA beneficiary country" as any "beneficiary country," as defined in section 203(a)(1) of the ATPA, which the President designates as an ATPDEA beneficiary country, taking into account the criteria contained in sections 203(c) and (d) and other appropriate criteria, including those specified under new paragraph (6)(B) of amended section 204(b).

On October 31, 2002, the President signed Proclamation 7616 (published in the **Federal Register** at 67 FR 67283 on November 5, 2002) to implement the new trade benefit provisions of section 3103 of the Act. The Annex to that Proclamation set forth a number of modifications to the HTSUS to accommodate the ATPDEA program, and those HTSUS changes were also the subject of a technical corrections document prepared by the Office of the United States Trade Representative and published in the **Federal Register** (67 FR 79954) on December 31, 2002.

This document sets forth, on an interim basis, amendments to the Customs Regulations to implement those new trade benefit provisions and to conform the existing ATPA implementing regulations to those statutory changes. These regulatory changes are discussed below.

Section-by-Section Discussion of Interim Amendments

Sections 10.201 and 10.202 and Removal of § 10.208

In the existing ATPA implementing regulations, § 10.208 is removed in order to reflect the removal of paragraph (c) from section 204 of the ATPA, the cross-reference in the introductory text of § 10.202 is modified to reflect that removal, and § 10.201 is revised to reflect the removal of that reduced-duty provision and to refer to new §§ 10.241–10.248 and 10.251–10.257 discussed below. In addition, paragraph (b) of § 10.202 is amended by recasting the list of articles excluded from the ATPA to reflect the terms of paragraph (2) of amended section 204(b); the articles listed in paragraph (1) of amended section 204(b) are dealt with in new §§ 10.251–10.257.

New §§ 10.241 Through 10.248

New §§ 10.241 through 10.248 are intended to implement those apparel and other textile article preferential treatment provisions within paragraphs (3), (5) and (6) of amended section 204(b) of the ATPA statute that relate to U.S. import procedures.

Section 10.241 outlines the statutory context for the new sections and is self-explanatory.

Section 10.242 sets forth definitions for various terms used in the new regulatory provisions. The following points are noted regarding these definitions:

1. The definition of "apparel articles," by referring to goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99.15 and 6505.90 of the HTSUS, is intended to reflect the scope of apparel under the Agreement on Textiles and Clothing annexed to the WTO Agreement and referred to in 19 U.S.C. 3511(d)(4).

2. The definition of "assembled" and "sewn or otherwise assembled" in the context of production in one or more ATPDEA beneficiary countries is based in part on the definition of "wholly assembled" in § 102.21(b)(6) of the Customs Regulations (19 CFR 102.21(b)(6)). However, the definition also allows a prior partial assembly in the United States, consistent with the overall structure of the ATPDEA as reflected in the types of operations allowed under the program.

3. The definition of "ATPDEA beneficiary country" is an adaptation of, and for purposes of this context is consistent with, the definition contained in section 204(b)(6)(B).

4. The definition of "chief value" is based in part on a definition of that term which appeared in the General Headnotes to the Tariff Schedules of the United States (TSUS), the predecessor to the HTSUS, and also relies on the concept of "value" used for purposes of the finding, trimmings, and interlinings provisions discussed below in connection with § 10.243(c).

5. The definition of "cut" in the context of production in one or more ATPDEA beneficiary countries provides that all fabric components used in the assembly of an article must be cut in ATPDEA beneficiary countries except where cutting and partial assembly takes place in the United States prior to cutting and assembly in the beneficiary countries. The exception in the case of the United States was included to ensure consistency with the definition of "assembled" and "sewn and assembled" discussed above (which, by allowing a partial assembly in the United States, implies that some cutting also will take place in the United States prior to the partial assembly).

6. The definition of "luggage" is based on the definition contained in the headnotes of Subpart D of Schedule 7 of the TSUS (the current HTSUS contains no definition of luggage).

7. The definition of "NAFTA" reflects the definition contained in section 204(b)(6)(C) of the ATPA.

8. The expression "wholly formed" is dealt with in three definitions, one with reference to yarns and another with reference to fabrics and the third with reference to fabric components, because each of these terms is modified by "wholly formed" in one or more provisions of the statute that specify production processes that must be performed in the United States or ATPDEA beneficiary countries. These definitions are intended to ensure that all processes essential for yarn, fabric, and fabric component formation are performed in the United States or ATPDEA beneficiary countries. The following additional points are noted regarding these three definitions:

a. The definition that relates to fabric(s) is based in part on the definition of "fabric-making process" in § 102.21(b)(2) of the Customs Regulations (19 CFR 102.21(b)(2)), and a similar approach is used in the definition that relates to yarns. The definition that relates to fabric components requires both formation of the fabric and formation of the component from that fabric.

b. The definition of "wholly formed" yarns includes references to "drawing to fully orient a filament" and to ending with a yarn or "plied yarn." The first reference concerns a production process, draw-texturing, that is applied to partially oriented yarn (POY) in order to fully orient the filament yarn and thus render it suitable for use as a yarn; Customs believes that a filament that requires draw-texturing cannot be considered to be "wholly formed" until that process is completed. The reference to ending with a "plied yarn" reflects the position of Customs that a yarn is completed, that is, "wholly formed," only when it is in the form in which it will be used as a yarn to produce a textile product (for example, a fabric or a knit-to-shape component); thus, a single ply yarn that will be joined with other single ply yarns to create a plied yarn is not wholly formed until the plying procedure is completed.

c. Except in the case of yarns, each definition refers to various production processes that "took place in a single country." A different approach is taken in the case of yarns because in several instances the article descriptions in the ATPDEA statutory and regulatory texts expressly refer to yarns wholly formed *in one or more ATPDEA beneficiary countries*. Thus, the "wholly formed yarns" definition refers to production processes that took place "in the United States or in one or more ATPDEA beneficiary countries" in order to allow for the sharing of yarn production processes among multiple beneficiary countries. For example, in the case of a single yarn formed in one beneficiary country and plied with other yarns in a second beneficiary country, or in the case of POY extruded in one beneficiary country and draw-textured in a second beneficiary country, the plied yarn and the draw-textured yarn would meet the "wholly formed" standard for yarns under the ATPDEA program.

Section 10.243 identifies the articles to which preferential treatment applies under paragraph (3) of amended section

204(b). Paragraph (a) identifies the various groups of apparel and other textile articles described under paragraph (3)(B) of the statute and includes in the introductory text an "imported directly" requirement, consistent with the terms of the statute. Paragraph (b) sets forth rules regarding dyeing, printing, finishing, and other operations. Paragraph (c) covers the special rules contained in paragraph (3)(B)(vi) of the statute involving findings and trimmings and interlinings of foreign origin, the *de minimis* rule for yarns, and the rule for nylon filament yarn. Paragraph (d) explains what is meant by "imported directly." The following specific points are noted regarding these regulatory texts:

1. Paragraph (a)(1) covers the various groups of apparel articles specified in paragraphs (3)(B)(i) and (3)(B)(ii) of the statute for preferential treatment individually (rather than in combination). Paragraph (a)(1)(i) corresponds to paragraph (3)(B)(i)(I) of the statute; paragraph (a)(1)(ii) corresponds to paragraph (3)(B)(i)(II) of the statute; paragraph (a)(1)(iii) corresponds to paragraph (3)(B)(i)(III) of the statute; and paragraph (a)(1)(iv) corresponds to paragraph (3)(B)(ii) of the statute. The following additional points are noted regarding these paragraph (a)(1) texts:

a. The regulatory text in paragraph (a)(1)(i) includes the provision in paragraph (3)(B)(i)(I) of the statute that any dyeing, printing, or finishing of knit or woven fabrics must take place in the United States. However, the regulatory text in this context refers to knitted "or crocheted" fabrics, in order to reflect tariff and trade usage, and also includes a reference to "fabric components produced from fabric" in order to (1) reflect the fact that apparel articles are most often assembled from apparel components rather than from fabrics and (2) clarify the Customs position that knitting to shape does not create a fabric but rather results in the creation of a component that is ready for assembly without having gone through a fabric stage.

b. The regulatory text in paragraph (a)(1)(ii) refers to llama, alpaca, "and/or" vicuña in order to ensure, consistent with what Customs believes is the intent, that these three materials may be present either singly or in combination with each other (for example, as a blend) for purposes of the chief value concept. It should also be noted that imported products containing vicuña are subject to specific admissibility requirements under regulations administered by the Fish and Wildlife Service of the U.S. Department of the Interior; those regulations, set forth in 50 CFR part 17, were recently amended by a final rule document published in the **Federal Register** (67 FR 37695) on May 30, 2002, and questions regarding the admissibility of vicuña products under those regulations should be directed to the Fish and Wildlife Service.

c. Paragraph (a)(1)(iii) covers fabrics and yarns that are considered to be in "short supply" for purposes of Annex 401 of the NAFTA (that is, the fabrics or yarns are not required to be originating within the meaning of the NAFTA, if those fabrics or yarns undergo the specified tariff shift for that article and that article meets all other applicable requirements for an originating good). For example, sweaters of wool classified under subheading 6110.11.00 of the HTSUS that are knit to shape in a NAFTA country from 40 percent non-originating silk yarn and 60 percent originating wool yarn may qualify as originating goods because a tariff shift from silk yarn is allowed by the applicable tariff shift rule, but sweaters knit to shape from 40 percent originating silk yarn and 60 percent non-originating wool yarn will not qualify as originating goods because the non-originating wool yarn is classified under a heading (5106) from which a tariff shift is not allowed. The paragraph (a)(1)(iii) text also includes a parenthetical exclusion reference regarding articles classifiable under subheading 6212.10 of the HTSUS (that is, brassieres, which are specially treated in paragraph (3)(B)(v)(I) of the statute and paragraph (a)(4) of § 10.243 as discussed below). This exclusion language is necessary in order to avoid rendering meaningless the additional requirements that apply to brassieres under the statute (which are covered by § 10.248 as discussed below). Customs notes in this regard that the NAFTA Annex 401 rule for articles classified in subheading 6212.10 of the HTSUS requires only the performance of certain specified production processes (that is, "both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties") and includes no requirements regarding the source of the fabrics or yarns. There is little logic in applying the short supply provision to a product where the NAFTA rule makes no mention of excluded materials. Thus, Customs believes that brassieres of subheading 6212.10, HTSUS, are not covered by paragraph (3)(B)(i)(III) of the statute and § 10.243(a)(1)(iii) of the regulations.

2. Paragraph (a)(2) covers combinations of two or more of the various groups of apparel articles specified in paragraphs (3)(B)(i) and (3)(B)(ii) of the statute. The regulatory text uses the words "*exclusively* from a combination of * * *" in order to clarify the distinction between the combinations allowed under this provision and those allowed under the paragraph (a)(7) text discussed below.

3. Paragraph (a)(3) covers the handloomed, handmade, and folklore articles specified in paragraph (3)(B)(iv) of the statute.

4. Paragraph (a)(4) covers the apparel articles referred to in paragraph (3)(B)(v) of the statute and refers specifically to "brassieres" in order to explain the coverage of the HTSUS provision referred to in the statute. The regulatory text here reflects only the general product description of subclause (I) of paragraph (3)(B)(v) of the statute but also includes a cross-reference to new § 10.248, discussed below, which treats in detail the 75 and 85 percent U.S.-formed fabric requirements of subclauses (II) and (III).

5. Paragraphs (a)(5) and (a)(6) cover the two types of textile luggage referred to in paragraphs (3)(B)(vii)(I) and (3)(B)(vii)(II) of the statute.

6. Paragraph (a)(7) covers the apparel articles specified in paragraph (3)(B)(iii) of the statute. The text includes a reference to articles assembled "in part but not exclusively" from any of the fabrics or components described in paragraph (a)(1). This language is intended, in combination with the use of the word "exclusively" in paragraph (a)(1), to clarify the effect of the statutory limitation in paragraph (3)(B)(iii) regarding the use of fabrics or components described in paragraph (3)(B)(i), the intent of which appears to be to ensure that there is no overlap (that is, conflict) in product coverage between the two statutory provisions at issue.

7. Paragraph (b)(1) clarifies the Customs position regarding dyeing, printing, and finishing operations. In view of the specific mention of these processes in regard to knit and woven fabrics in paragraph (3)(B)(i)(I) of the statute and § 10.243(a)(1)(i) of the regulations, Customs believes that this clarification is necessary to explain the status of these processes in other contexts under the statute and regulations. The paragraph (b)(1) text provides that these processes may be performed on any yarn or fabric or component without affecting the eligibility of an article for preferential treatment, provided that the dyeing, printing, or finishing is performed only in the United States or in an ATPDEA beneficiary country, and subject to two conditions. As regards the general

limitation of these processes to the United States and ATPDEA beneficiary countries, Customs believes that this is consistent with the overall structure and intent of the ATPDEA which is to benefit U.S. and Andean textile producers. The first condition, set forth in paragraph (b)(1)(i), reflects the U.S. dyeing, printing, and finishing requirement of paragraph (3)(B)(i)(I) of the statute and paragraph (a)(1)(i) of the regulatory text as discussed above. The second condition, set forth in paragraph (b)(1)(ii), reflects the principle that in the case of assembled luggage described in paragraph (a)(5) of the regulatory text (paragraph (3)(B)(vii)(I) of the statute), an operation that is incidental to the assembly process may be performed in an ATPDEA beneficiary country. This provision reflects the terms of subheading 9802.00.80, HTSUS, and the regulations under that HTSUS provision which include, in 19 CFR 10.16(c), a list of operations not considered incidental to assembly.

8. Paragraph (b)(2) covers post-assembly and other operations (for example, embroidering, stone-washing, perma-pressing, garment-dyeing). The paragraph provides that these operations will not disqualify an otherwise eligible article from preferential treatment, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and provided that, in the case of assembled luggage described in paragraph (a)(5), the operation is incidental to the assembly process in an ATPDEA beneficiary country. This paragraph is intended to have the same clarifying effect as paragraph (b)(1) discussed above.

9. Paragraph (c)(1) is divided into three parts: Paragraph (c)(1)(i) reflects the basic findings, trimmings, interlinings, and *de minimis* rules of paragraphs (3)(B)(vi)(I)–(III) of the statute; paragraph (c)(I)(ii) sets forth definitions of the terms "cost" and "value" as used in these provisions; and paragraph (c)(1)(iii) is intended to clarify the relationship between findings and trimmings on the one hand and yarns on the other hand for purposes of applying the 25 percent by value and 7 percent by weight limitations under the statute. The following additional points are noted regarding these paragraph (c)(1) texts:

a. In the first sentence of paragraph (c)(1)(i)(A), the words "the value of" have been added after the word "if" to clarify that it is the value of the findings and trimmings that must not exceed the 25 percent level. In addition, in the second sentence of paragraph (c)(1)(i)(A), the comma appearing in the statutory text between "decorative lace" and "trim" has been removed to avoid an ambiguity between the meanings of "trimmings" and "trim." Also in the second sentence of paragraph (c)(1)(i)(A), the words "zippers, including zipper tapes and labels" in paragraph (3)(B)(vi)(I) of the statute have been replaced with the words "zippers (including zipper tapes), and labels" because there is no such thing as a "zipper label" and to ensure proper treatment of labels as findings and trimmings in their own right.

b. A separate paragraph (c)(1)(i)(C) has been included to allow a combination of findings and trimmings and interlinings up to a total of 25 percent of the cost of the components of the assembled article, because Customs believes that was the result intended by Congress by the inclusion of the words "(and any findings and trimmings)" in paragraph (3)(B)(vi)(II)(aa) of the statute.

c. The definitions of "cost" and "value" in paragraph (c)(1)(ii) are derived primarily from the regulations that apply to components and materials under subheading 9802.00.80, HTSUS (in particular, 19 CFR 10.17), and under the ATPA regulations (in particular, 19 CFR 10.206(d)(3)).

d. As regards paragraph (c)(1)(iii), Customs believes that some clarification is appropriate in this context because sometimes a yarn may be used in an article as a finding or trimming. The statute is ambiguous as to whether an article is ineligible if the total weight of all foreign yarns exceeds the 7 percent limit but the value of all foreign findings and trimmings does not exceed the 25 percent limit. Thus, the question arises as to which limitation should apply. In the absence of any guidance on this point in the relevant legislative history, Customs has concluded that the best approach is to give precedence to the findings and trimmings limitation. Thus, under paragraph (c)(1)(iii) a foreign yarn that is used in an article as a finding or trimming would be subject to the 25 percent by value limitation rather than the 7 percent by weight limitation.

10. In paragraph (c)(2), which sets forth the special rule for nylon filament yarn of paragraph (3)(B)(vi)(IV) of the statute, specific reference is made to Canada, Mexico, and Israel because those are the only countries with which the United States had a free trade agreement that entered into force before January 1, 1995.

11. The explanation of "imported directly" in paragraph (d) follows the text used in § 10.204 of the ATPA implementing regulations (19 CFR 10.204) but incorporates editorial changes to reflect an ATPDEA context.

Section 10.244 prescribes the use of a Certificate of Origin and thus reflects the regulatory mandate contained in paragraph (5)(A)(i) of amended section 204(b). Paragraph (a) of the regulatory text contains a general statement regarding the purpose and preparation of the Certificate of Origin and is based in part on § 181.11 of the implementing NAFTA regulations (19 CFR 181.11). Paragraph (b) sets forth the form for the Certificate of Origin, which is directed toward the specific groups of articles described under paragraph (3)(B) of amended section 204(b) and thus bears no substantive relationship to the Certificate of Origin used under the NAFTA (which involves different country of origin standards for preferential duty treatment). Paragraph (c) sets forth instructions for preparation of this Certificate of Origin. It should be noted that the Certificate of Origin prescribed under this section has no effect on the textile declaration prescribed under § 12.130 of the Customs Regulations (19 CFR 12.130) which still must be submitted to Customs in accordance with that section even in the case of textile products that are entitled to preferential treatment under the ATPDEA program.

Section 10.245 sets forth the procedures for filing a claim for preferential treatment. Consistent with the mandate in paragraph (5)(A)(i) of amended section 204(b) for procedures "similar in all material respects to the requirements of Article 502(1) of the NAFTA," this regulatory text is based on the NAFTA regulatory text contained in 19 CFR 181.21, but includes appropriate changes to conform to the current context.

Section 10.246 concerns the maintenance of records and submission of the Certificate of Origin by the importer and follows the NAFTA regulatory text contained in 19 CFR 181.22 but, again, with appropriate changes to conform to the current context. The following points are noted regarding the regulatory text:

1. In paragraph (a) which concerns the maintenance of records, specific reference is made to "the provisions of part 163" which set forth the basic Customs recordkeeping requirements that apply to importers and other persons involved in customs transactions. This requirement parallels the NAFTA recordkeeping requirement in § 181.22.

2. Paragraph (b) concerns submission of the Certificate of Origin to Customs and thus also relates directly to a requirement contained in Article 502(1)

of the NAFTA. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(b) but differs from the NAFTA text by not specifying a 4-year period for acceptance of the Certificate by Customs, because that 4-year period is only relevant in a NAFTA context.

3. Paragraph (c) concerns the correction of defective Certificates of Origin and the nonacceptance of blanket Certificates in certain circumstances. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(c) but is simplified and does not include any reference to NAFTA-type origin verifications which do not apply for ATPDEA purposes.

4. Paragraph (d) sets forth the circumstances in which a Certificate of Origin is not required. Consistent with the terms of paragraph (5)(B) of amended section 204(b), this regulatory text follows the terms of Article 503 of the NAFTA and the NAFTA regulatory text contained in 19 CFR 181.22(d).

Section 10.247 concerns the verification and justification of claims for preferential treatment. Paragraph (a) concerns the verification of claims by Customs and paragraph (b) prescribes steps that a U.S. importer should take in order to support a claim for preferential treatment. Although paragraph (a) is derived from provisions contained in the GSP regulations (19 CFR 10.173(c)), in the CBI regulations (19 CFR 10.198(c)), and in the ATPA regulations (19 CFR 10.207(e)), the text expands on the GSP/CBI/ATPA approach in the following respects:

1. In paragraph (a)(1), specific reference is made to the review of import-related documents required to be made, kept, and made available by importers and other persons under Part 163 of the regulations.

2. Paragraph (a)(2) sets forth examples of documents and information relating to production Customs may need to review for purposes of verifying a claim for preferential treatment.

3. Paragraph (a)(3) refers to evidence to document the use of U.S. or ATPDEA beneficiary country materials in an article, because the presence of those materials is a key element for some of the articles to which preferential treatment applies under the ATPDEA. Accordingly, U.S. importers must be aware of the fact that their ability to successfully claim preferential treatment on their imports may be a function of the nature of the records maintained, for example by an ATPDEA beneficiary country producer, not only with regard to the production process but also with regard to the source of the materials used in that production.

Section 10.248 sets forth additional requirements for preferential treatment of brassieres described in paragraph (a)(4) of § 10.243 and is directed specifically to the 75 and 85 percent U.S.-formed fabric requirements of subclauses (II) and (III) of paragraph (3)(B)(v) of amended section 204(b). The following points are noted regarding this regulatory text:

1. The definitions of "cost" and "declared customs value" in paragraphs (a)(4) and (a)(5) are based in part on principles reflected in the Customs Regulations provisions that apply for purposes of subheading 9802.00.80, HTSUS (see, in particular, 19 CFR 10.17) and under the ATPA see, in particular, 19 CFR 10.206(d)(3)). Moreover, as regards the definition of "declared customs value" in paragraph (a)(5), Customs notes that because the circumstance in which this terminology appears in the statute does not relate to a point at which a value is normally declared to U.S. Customs, the text includes multiple factual circumstances that reflect all conditions under which a value of fabric could exist for purposes of comparison to the "cost" (of fabrics formed in the United States) defined in paragraph (a)(4).

2. Paragraph (b)(1) reflects the 75 and 85 percent U.S. fabric content requirements of paragraphs (3)(B)(v)(II) and (III) of the statute and also requires the U.S. importer to include a specific documentation identifier assigned by Customs (see the discussion of paragraph (c) below) when filing the claim for preferential treatment. Customs considers a specific documentation identifier necessary. The following points are noted regarding this paragraph:

a. Paragraph (b)(1)(i), which concerns the 75 percent requirement of paragraph (3)(B)(v)(II) of the statute, refers to articles that are "entered as articles described in § 10.243(a)(4)," whereas paragraph (b)(1)(ii), which concerns the 85 percent requirement of paragraph (3)(B)(v)(III) of the statute, refers to articles that "conform to the production standards set forth in § 10.243(a)(4)." The difference in wording is necessary in order to enable the 85 percent standard to operate. Customs notes in this regard that if the universe of articles that are looked at for purposes of assessing compliance with the 85 percent standard is the same as that used for purposes of the 75 percent standard (that is, articles that were entered under the HTSUS subheading that applies to articles described in paragraph (3)(B)(v)(I) of the statute and § 10.243(a)(4)), it would be impossible after the end of the first year of the program (that is, after September 30, 2003) for a new producer or entity to enter the program, or for a producer or entity that failed to meet the 75 percent standard in the previous year to reenter the program. This is because application of the 85 percent standard presupposes a failure to have met the 75 percent standard in the preceding year, in which case there could not be any entries in the next year under the HTSUS subheading that applies to articles described in paragraph (3)(B)(v)(I) of the statute and § 10.243(a)(4) against which compliance with the 85 percent standard can be determined. The wording in paragraph (b)(1)(ii) of the regulatory text, by referring to articles that meet the U.S./Andean cutting and assembly production requirement (regardless of the HTSUS subheading under which they are entered), is intended to avoid this anomalous result.

b. The specific identifier, which is to be noted on the entry summary or warehouse withdrawal, will serve both the importer and Customs. The identifier serves the importer as it is a method to indicate that the importer has at the time of entry a specific basis for claiming preferential treatment—that either the 75 or the 85 percent requirement has been met in the preceding year—for the brassieres being entered and thus will facilitate the entry and clearance process. The identifier serves Customs as it is a means by which Customs can tie a particular entry to the fact that a producer of brassieres or an entity controlling production of brassieres has met the 75 or 85 percent requirement. This is essential in view of the fact that compliance with the 75 or 85 percent requirement must be established by a producer or by an entity controlling production who might not be the U.S. importer.

3. Paragraph (b)(2) sets forth a number of general rules that Customs believes apply under paragraphs (b)(1)(i) and (b)(1)(ii) and for purposes of preparing and filing the documentation prescribed under paragraph (c) by the producer or entity controlling production. Paragraph (b)(2) also includes some examples to illustrate the application of those rules.

4. Paragraph (c) provides that, in order for an importer to be able to include the distinct and unique identifier on the entry summary or warehouse withdrawal as required under paragraph (b)(1)(iii), the producer or entity controlling production must have filed with Customs a declaration of compliance with the applicable 75 or 85 percent requirement. Paragraph (c) further provides that Customs will advise the filer of the identifier assigned to that declaration of compliance so that the filer may provide that number to the appropriate U.S. importers for inclusion on current entry summaries or warehouse withdrawals covering articles of the producer or entity controlling production in question. So that each affected importer might know what the appropriate identifier is prior to the arrival of the goods in the United States, paragraph (c) provides that the declaration of compliance should be filed at least 10 days prior to the date of the first shipment of the goods to the United States; Customs believes that this 10-day period should afford sufficient time for Customs to assign the identifier to the declaration of compliance and provide the identifier to the producer or entity controlling production and for the producer or entity to then provide it to the appropriate U.S. importer(s). Paragraph (c) also provides for the filing of an amended declaration of compliance or for following other appropriate procedures if the initial filing was based on an estimate because information for the whole year was not available at the time of the initial filing and the final data differs from the estimate, or if the producer or entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information. Finally, paragraph (c) identifies the specific Customs office at which the filing must take place and prescribes the form the declaration of compliance must take and includes instructions for its completion.

5. Paragraph (d) sets forth standards regarding the verification of a declaration of compliance and is similar to the rules that apply for purposes of verification of ATPDEA preferential treatment claims under § 10.247 but with changes to reflect the current context. Paragraph (d) also specifies the nature of the accounting books and documents that Customs expects to see when verifying the statements made on a declaration of compliance. Finally, so that affected U.S. importers will know when Customs, after performing a verification of a declaration of compliance, has determined that articles of the producer or entity controlling production in question failed to meet the applicable 75 or 85 percent requirement, paragraph (d) provides that Customs will publish a notice of that determination in the **Federal Register**.

New §§ 10.251 Through 10.257

New §§ 10.251 through 10.257 are intended to implement those non-textile preferential treatment provisions within paragraphs (1), (4), (5) and (6) of amended section 204(b) of the ATPA

statute that relate to U.S. import procedures. In view of the similarities between paragraphs (1), (3) and (4) under the statute, in particular as regards the use of a Certificate of Origin and related Customs procedures, the structure and content of new §§ 10.251 through 10.257 are based on the structure and content used in this document for the paragraph (3) textile provisions of new §§ 10.241 through 10.247, but with appropriate changes or variations to reflect the paragraphs (1) and (4) statutory context. The following particular points are noted regarding the texts of new §§ 10.251 through 10.257:

1. In § 10.252, the definitions of "ATPDEA beneficiary country vessel" and "United States vessel" (which apply only for purposes of preferential treatment of tuna under paragraph (4) of amended section 204(b)) follow the definitions that appear in paragraph (4)(B) of the statute, except that in the first definition the words "beneficiary country" have been included within the defined term (which in the statute reads simply "ATPDEA vessel") in order to reflect the wording used in the general statutory and regulatory preferential treatment rule for tuna.

2. In § 10.253(a), which identifies the non-textile articles eligible for preferential tariff treatment, an "imported directly" requirement has been included in the introductory text to reflect the inclusion of that requirement as a condition of preferential treatment in paragraphs (1) and (4) of amended section 204(b). The remainder of § 10.253(a) reflects the terms of paragraphs (1)(A)–(D) and (4)(A) of the statute.

3. Section 10.253(b) explains the meaning of "imported directly." As in the case of new § 10.243(d) discussed above, the text here follows the text used in § 10.204 of the ATPA implementing regulations (19 CFR 10.204) but with some editorial changes to reflect an ATPDEA context.

4. Sections 10.253(c) and (d) set forth country of origin criteria and value content requirements that apply for purposes of preferential treatment for all of the non-textile articles covered by paragraph (1) of amended section 204(b), that is, all non-textile articles other than tuna to which different standards apply under paragraph (4) of the statute. Since paragraph (1) of the statute refers to "any article that * * * meets the requirements of *this section*," Customs believes that the country of origin and value content requirements that apply to ATPA beneficiary country goods under section 204(a) of the ATPA must also apply in the present context. Accordingly, the new §§ 10.253(c) and (d) texts are based on §§ 10.205 and 10.206 of the ATPA implementing regulations (19 CFR 10.205 and 10.206).

5. Sections 10.254 through 10.256 follow the basic NAFTA Certificate of Origin and preferential treatment claim filing procedures (but with modifications to reflect the specific rules that apply under amended section 204(b) of the ATPA), including the use of a separate Customs Form for the Certificate of Origin rather than setting it out in the regulatory texts. Therefore, the § 10.254 text is considerably shorter than the text of new § 10.244 discussed above because it does not contain the text of the Certificate and the instructions for its completion.

Appendix to Part 163

Finally, this document amends Part 163 of the Customs Regulations (19 CFR part 163) by adding to the list of entry records in the Appendix (the interim "(a)(1)(A) list") references to the ATPDEA Textile Certificate of Origin prescribed under new § 10.246, the ATPDEA Declaration of Compliance for brassieres prescribed under new § 10.248, and the ATPDEA Certificate of Origin for tuna and other non-textile articles prescribed under new § 10.256.

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.5 of the Treasury Department Regulations (31 CFR 1.5), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Inapplicability of Notice and Delayed Effective Date Requirements and the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes provide trade benefits to the importing public, in some cases implement direct statutory mandates, and are necessary to carry out

the preferential treatment proclaimed by the President under the Andean Trade Promotion and Drug Eradication Act. Presidential Proclamation 7616 made that preferential treatment effective with respect to goods entered, or withdrawn from warehouse for consumption, as of the date of signature, October 31, 2002, and these regulations are needed in order for importers to know how to file their claims for preferential treatment. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0219.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these interim regulations is in §§ 10.244, 10.245, 10.246, 10.248, 10.254, 10.255, and 10.256. This information conforms to requirements in 19 U.S.C. 3203 and is used by Customs to determine whether textile and apparel articles and other products imported from designated beneficiary countries are entitled to preferential treatment under the Andean Trade Promotion and Drug Eradication Act. The likely respondents are business organizations including importers, exporters, and manufacturers.

Estimated annual reporting and/or recordkeeping burden: 8,000 hours.

Estimated average annual burden per respondent/recordkeeper: 4 hours.

Estimated number of respondents and/or recordkeepers: 2,000.

Estimated annual frequency of responses: 24.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the interim regulations.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Andean Trade Preference, Assembly, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth in the preamble, Parts 10 and 163, Customs Regulations (19 CFR Parts 10 and 163), are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read, the specific authority citation for §§ 10.201 through 10.207 is revised to read, and a new specific authority citation for §§ 10.241 through 10.248 and §§ 10.251 through 10.257 is added to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.201 through 10.207 also issued under 19 U.S.C. 3203;

* * * * *

Sections 10.241 through 10.248 and §§ 10.251 through 10.257 also issued under 19 U.S.C. 3203.

2. Section 10.201 is revised to read as follows:

§ 10.201 Applicability.

Title II of Pub. L. 102–182 (105 Stat. 1233), entitled the Andean Trade Preference Act (ATPA) and codified at 19 U.S.C. 3201 through 3206, authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country and to designate countries as beneficiary countries. The provisions of §§ 10.202 through 10.207 set forth the legal requirements and procedures that apply for purposes of obtaining that duty-free treatment for certain articles from a beneficiary country which are identified for purposes of that treatment in General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and in the "Special" rate of duty column of the HTSUS. Provisions regarding preferential treatment of apparel and other textile articles under the ATPA are contained in §§ 10.241 through 10.248, and provisions regarding preferential treatment of tuna and certain other non-textile articles under the ATPA are contained in §§ 10.251 through 10.257.

3. In § 10.202, the introductory text is amended by removing the reference "10.208" and adding, in its place, the reference "10.207", and paragraph (b) is amended by removing paragraphs (b)(1) through (b)(8) and adding, in their place, new paragraphs (b)(1) through (b)(4) to read as follows:

§ 10.202 Definitions.

* * * * *

(b) * * *

(1) Textiles and apparel articles which were not eligible articles for purposes of the ATPA on January 1, 1994, as the ATPA was in effect on that date, except as otherwise provided in §§ 10.241 through 10.248;

(2) Rum and tafia classified in subheading 2208.40, Harmonized Tariff Schedule of the United States;

(3) Sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas; or

(4) Tuna prepared or preserved in any manner in airtight containers, except as otherwise provided in §§ 10.251 through 10.257.

* * * * *

4. Section 10.208 is removed.

5. Part 10 is amended by adding a new center heading followed by new §§ 10.241 through 10.248 to read as follows:

Apparel and Other Textile Articles Under the Andean Trade Promotion and Drug Eradication Act

Sec.

10.241 Applicability.
10.242 Definitions.
10.243 Articles eligible for preferential treatment.
10.244 Certificate of Origin.
10.245 Filing of claim for preferential treatment.
10.246 Maintenance of records and submission of Certificate by importer.
10.247 Verification and justification of claim for preferential treatment.
10.248 Additional requirements for preferential treatment of brassieres.

Apparel and Other Textile Articles Under the Andean Trade Promotion and Drug Eradication Act

§ 10.241 Applicability.

Title XXXI of Public Law 107–210 (116 Stat. 933), entitled the Andean Trade Promotion and Drug Eradication Act (ATPDEA), amended sections 202, 203, 204, and 208 of the Andean Trade Preference Act (the ATPA, 19 U.S.C. 3201–3206) to authorize the President to extend additional trade benefits to countries that are designated as beneficiary countries under the ATPA. Section 204(b)(3) of the ATPA (19 U.S.C. 3203(b)(3)) provides for the preferential treatment of certain apparel and other textile articles from those ATPA beneficiary countries which the President designates as ATPDEA beneficiary countries. The provisions of §§ 10.241 through 10.248 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to ATPA section 204(b)(3) and Subchapter XXI, Chapter 98, HTSUS.

§ 10.242 Definitions.

When used in §§ 10.241 through 10.248, the following terms have the meanings indicated:

Apparel articles. "Apparel articles" means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99.15 and 6505.90 of the HTSUS.

Assembled or sewn or otherwise assembled in one or more ATPDEA beneficiary countries. "Assembled" and "sewn or otherwise assembled" when used in the context of production of an apparel or other textile article in one or more ATPDEA beneficiary countries has reference to a joining together of two or more components that occurred in one or more ATPDEA beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

ATPA. "ATPA" means the Andean Trade Preference Act, 19 U.S.C. 3201–3206.

ATPDEA beneficiary country. "ATPDEA beneficiary country" means a "beneficiary country" as defined in § 10.202(a) for purposes of the ATPA which the President also has designated as a beneficiary country for purposes of preferential treatment of apparel and other textile articles under 19 U.S.C. 3203(b)(3) and which has been the subject of a determination by the President or his designee, published in the **Federal Register**, that the beneficiary country has satisfied the requirements of 19 U.S.C. 3203(b)(5)(A)(ii).

Chief value. "Chief value" when used with reference to llama, alpaca, and vicuña means that the value of those materials exceeds the value of any other single textile material in the fabric or component under consideration, with the value in each case determined by application of the principles set forth in § 10.243(c)(1)(ii).

Cut in one or more ATPDEA beneficiary countries. "Cut" when used in the context of production of textile luggage in one or more ATPDEA beneficiary countries means that all fabric components used in the assembly of the article were cut from fabric in one or more ATPDEA beneficiary countries, or were cut from fabric in the United States and used in a partial assembly operation in the United States prior to cutting of fabric and assembly of the article in one or more ATPDEA beneficiary countries, or both.

Foreign. "Foreign" means of a country other than the United States or an ATPDEA beneficiary country.

HTSUS. "HTSUS" means the Harmonized Tariff Schedule of the United States.

Knit-to-shape components. "Knit-to-shape," when used with reference to textile components, means components that are knitted or crocheted from a yarn directly to a specific shape containing a self-start edge. Minor cutting or trimming will not affect the determination of whether a component is "knit-to-shape."

Luggage. "Luggage" means travel goods (such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel) and brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (for example, physicians' cases, sample cases), and like containers and cases designed to be carried with the person. The term "luggage" does not include handbags (that is, pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls). The term "luggage" also does not include flat goods (that is, small flatware designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change cases, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles).

NAFTA. "NAFTA" means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential treatment. "Preferential treatment" means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels as provided in 19 U.S.C. 3203(b)(3).

Wholly formed fabric components. "Wholly formed," when used with reference to fabric components, means that all of the production processes, starting with the production of wholly formed fabric and ending with a component that is ready for incorporation into an apparel article, took place in a single country.

Wholly formed fabrics. "Wholly formed," when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

Wholly formed yarns. "Wholly formed," when used with reference to yarns, means that all of the production processes, starting with the extrusion of filament, strip, film, or sheet and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a yarn or

plied yarn, took place in the United States or in one or more ATPDEA beneficiary countries.

§ 10.243 Articles eligible for preferential treatment.

(a) *General.* Subject to paragraphs (b) and (c) of this section, preferential treatment applies to the following apparel and other textile articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country:

(1) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from any one of the following:

(i) Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in the United States), provided that, if the apparel article is assembled from knitted or crocheted or woven wholly formed fabrics or from knitted or crocheted or woven wholly formed fabric components produced from fabric, all dyeing, printing, and finishing of that knitted or crocheted or woven fabric or component was carried out in the United States;

(ii) Fabrics or fabric components formed, or components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in one or more ATPDEA beneficiary countries, if those fabrics (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, and/or vicuña;

(iii) Fabrics or yarns, provided that apparel articles (except articles classifiable under subheading 6212.10 of the HTSUS) of those fabrics or yarns would be considered an originating good under General Note 12(t), HTSUS, if the apparel articles had been imported directly from Canada or Mexico; or

(iv) Fabrics or yarns that the President or his designee has designated in the **Federal Register** as fabrics or yarns that cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(2) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from a combination of fabrics, fabric components, knit-to-shape components or yarns described in two or more of paragraphs (a)(1)(i) through (a)(1)(iv) of this section;

(3) A handloomed, handmade, or folklore apparel or other textile article of an ATPDEA beneficiary country that the President or his designee and representatives of the ATPDEA beneficiary country mutually agree is a handloomed, handmade, or folklore article and that is certified as a handloomed, handmade, or folklore article by the competent authority of the ATPDEA beneficiary country;

(4) Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or in one or more ATPDEA beneficiary countries, or in both, other than articles entered as articles described in paragraphs (a)(1) through (a)(3) and (a)(7) of this section, and provided that any applicable additional requirements set forth in § 10.248 are met;

(5) Textile luggage assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS;

(6) Textile luggage assembled in one or more ATPDEA beneficiary countries from fabric cut in one or more ATPDEA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States; and

(7) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed, or from components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries), including apparel articles sewn or otherwise assembled in part but not exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1) of this section.

(b) *Dyeing, printing, finishing and other operations*—(1) *Dyeing, printing and finishing operations.* Dyeing, printing, and finishing operations may be performed on any yarn, fabric, or knit-to-shape or other component used in the production of any article described under paragraph (a) of this section without affecting the eligibility of the article for preferential treatment, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country and subject to the following additional conditions:

(i) In the case of an article described in paragraph (a)(1), (a)(2), or (a)(7) of this section that contains a knitted or crocheted or woven fabric, or a knitted or crocheted or woven fabric component produced from fabric, that was wholly formed in the United States from yarns wholly formed in the United States, any dyeing, printing, or finishing of that knitted or crocheted or woven fabric or component must have been carried out in the United States; and

(ii) In the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country only if that operation is incidental to the assembly process within the meaning of § 10.16.

(2) *Other operations.* An article described under paragraph (a) of this section that is otherwise eligible for preferential treatment will not be disqualified from receiving that treatment by virtue of having undergone one or more operations such as embroidering, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing or screen printing, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country. However, in the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country without affecting the eligibility of the article for preferential treatment only if it is incidental to the assembly process within the meaning of § 10.16.

(c) *Special rules for certain component materials*—(1) *Foreign findings, trimmings, interlinings, and yarns*—(i) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains:

(A) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section "findings and trimmings" include, but are not limited to, sewing thread, hooks and eyes, snaps, buttons, "bow buds," decorative lace trim, elastic strips, zippers (including zipper tapes), and labels;

(B) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section "interlinings" include only a chest type plate, a "hymo" piece, or "sleeve header," of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(C) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(D) Yarns not wholly formed in the United States or in one or more ATPDEA beneficiary countries if the total weight of all those yarns is not more than 7 percent of the total weight of the article.

(ii) *"Cost" and "value" defined.* The "cost" of components and the "value" of findings and trimmings or interlinings referred to in paragraph (c)(1)(i) of this section means:

(A) The price of the components, findings and trimmings, or interlinings when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the components, findings and trimmings, or interlinings to the place of production if included in that price; or

(B) If the price cannot be determined under paragraph (c)(1)(ii)(A) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the components; findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the components, findings and trimmings, or interlinings to the port of exportation.

(iii) *Treatment of yarns as findings or trimmings.* If any yarns not wholly formed in the United States or one or more ATPDEA beneficiary countries are used in an article as a finding or trimming described in paragraph (c)(1)(i)(A) of this section, the yarns will be considered to be a finding or trimming for purposes of paragraph (c)(1)(i) of this section.

(2) *Special rule for nylon filament yarn.* An article otherwise described under paragraph (a)(1)(i) through (iii), (a)(2), or (a)(7) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable in subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS and that is entered free of duty from Canada, Mexico, or Israel.

(d) *Imported directly defined.* For purposes of paragraph (a) of this section, the words "imported directly" mean:

(1) Direct shipment from any ATPDEA beneficiary country to the United States without passing through the territory of any country that is not an ATPDEA beneficiary country;

(2) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not an ATPDEA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.244 Certificate of Origin.

(a) *General.* A Certificate of Origin must be employed to certify that an apparel or other textile article being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.241. The Certificate of Origin must be prepared by the exporter in the ATPDEA beneficiary country in the format specified in paragraph (b) of this section. Where the ATPDEA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(1) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

BILLING CODE 8025-01-P

Andean Trade Promotion and Drug Eradication Act
Textile Certificate of Origin

1. Exporter Name & Address:	3. Importer Name & Address:
2. Producer Name & Address:	
4. Description of Article:	
5. Preference Group:	

Group	*Each description below is only a summary of the cited CFR provision*	19 CFR
A.	Apparel assembled from U.S. formed, dyed, printed and finished fabrics or fabric components, or U.S. formed knit-to-shape components from U.S. or Andean yarns.	10.243(a)(1)(i)
B.	Apparel assembled from Andean chief value llama, alpaca or vicuña fabrics, fabric components, or knit-to-shape components, from Andean yarns	10 243(a)(1)(ii)
C.	Apparel assembled from fabrics or yarns considered as being in short supply in the NAFTA	10.243(a)(1)(iii)
D.	Apparel assembled from fabrics or yarns designated as not available in commercial quantities in the United States.	10.243(a)(1)(iv)
E.	Apparel assembled from a combination of two or more yarns, fabrics, fabric components, or knit-to-shape components described in preference groups A though D.	10.243(a)(2)
F.	Handloomed, handmade, or folklore textile and apparel goods.	10.243(a)(3)
G.	Brassieres assembled in the U.S. and/or one or more Andean beneficiary countries.	10.243(a)(4)
H.	Textile luggage assembled from U.S. formed fabrics from U.S. yarns.	10.243(a)(5)&(6)
I.	Apparel assembled from Andean formed fabrics, fabric components, or knit-to-shape components from U.S. or Andean yarns, whether or not also assembled, in part, from yarns, fabrics and fabric components described in preference groups A through D.	10.243(a)(7)

6. U.S./Andean Fabric Producer Name & Address:	7. U.S./Andean Yarn Producer Name & Address:
8. Handloomed, Handmade, or Folklore Article:	9. Name of Short Supply Fabric or Yarn:

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document. I agree to maintain, and present upon request, documentation necessary to support this certificate.

10. Authorized Signature:	11. Company:
12. Name: (Print or Type)	13. Title:
14. Date: (DD/MM/YY) 15. Blanket Period From: To:	16. Telephone: Facsimile:

BILLING CODE 8025–01–C

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state "available to Customs upon request" in block 2. If the producer and the exporter are the same, state "same" in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) Block 4 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(6) In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(7) Blocks 6 through 9 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the name of the folklore article or should state that the article is handloomed or handmade of handloomed fabric;

(11) Block 9 should be completed if the article described in block 4 incorporates a fabric or yarn described in preference group C or D and should state the name of the fabric or yarn that has been considered as being in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States. Block 9 also should be completed if preference group E or I applies to the article described in block 4 and the article incorporates a fabric or yarn described in preference group C or D;

(12) Block 10 must contain the signature of the exporter or of the exporter's authorized agent having knowledge of the relevant facts;

(13) Block 14 should reflect the date on which the Certificate was completed and signed;

(14) Block 15 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see § 10.246(b)(4)(ii)). The "from" date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 14). The "to" date is the date on which the blanket period expires; and

(15) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

§ 10.245 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for an apparel or other textile article described in § 10.243, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.246(d)(1), the declaration required under this paragraph must be based on a Certificate of Origin that has been completed and properly executed in accordance with § 10.244, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.246 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.245 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include a copy of the Certificate of Origin referred to in § 10.245(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on an apparel or other textile article under § 10.245(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be in writing or must be transmitted electronically through any electronic data interchange system authorized by Customs for that purpose;

(2) If in writing, must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.244(c)(14), "identical articles" means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the ATPDEA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.244 through 10.246, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a "series of importations" means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.247 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs.* A claim for preferential treatment made under § 10.245, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.246, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. or ATPDEA beneficiary country materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under § 10.245, the importer:

(1) Must have records that explain how the importer came to the conclusion that the apparel or other textile article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.243(a). If the importer is claiming that the article incorporates fabric or yarn that was wholly formed in the United States or in an ATPDEA beneficiary country, the importer must have records that identify the producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.244(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificates of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the ATPDEA beneficiary country to the United States. If the imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.243(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

§ 10.248 Additional requirements for preferential treatment of brassieres.

(a) *Definitions.* When used in this section, the following terms have the meanings indicated:

(1) *Producer.* "Producer" means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in an ATPDEA beneficiary country.

(2) *Entity controlling production.* "Entity controlling production" means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in an ATPDEA beneficiary country through a contractual relationship or other indirect means.

(3) *Fabrics formed in the United States.* "Fabrics formed in the United States" means fabrics that were produced by a weaving, knitting, needling, tufting, felting, entangling or other fabric-making process performed in the United States.

(4) *Cost.* "Cost" when used with reference to fabrics formed in the United States means:

(i) The price of the fabrics when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the fabrics to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the fabrics, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in forming the fabrics) and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabrics to the port of exportation.

(5) *Declared customs value.* "Declared customs value" when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabrics formed in the United States that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, exclusive of all findings and trimmings, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price, but less the freight, insurance, packing, and other costs incurred in transporting the fabric to the place of production if included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if Customs finds that cost to be unreasonable, all reasonable expenses incurred in the growth, production, or manufacture of the fabric, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in the growth, production, or manufacture of the fabric), general expenses and embroidering and dyeing, printing, and finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components purchased by the producer or entity controlling production, the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, and less the freight, insurance, packing, and other costs incurred in transporting the fabric components to the place of production if included in that price; and

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(ii)(C) of this section or if Customs finds that cost to be unreasonable: all reasonable expenses incurred in the growth, production, or manufacture of the fabric components, including the cost or value of materials (which does not include the cost of recoverable scrap generated in the growth, production, or manufacture of the fabric components) and general expenses, but excluding the cost or value of any non-textile materials, and excluding expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric components to the port of exportation.

(6) *Year.* "Year" means a 12-month period beginning on October 1 and ending on September 30 but does not include any 12-month period that began prior to October 1, 2002.

(7) *Entered.* "Entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(b) *Limitations on preferential treatment*—(1) *General.* During the year that begins on October 1, 2003, and during any subsequent year, articles of a producer or an entity controlling production that conform to the production standards set forth in § 10.243(a)(4) will be eligible for preferential treatment only if:

(i) The aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.243(a)(4) during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.243(a)(4) during that year; or

(ii) In a case in which the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.243(a)(4) and that were entered during the immediately preceding year was at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.243(a)(4) and that were entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under § 10.245, the importer records on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by Customs to the applicable documentation prescribed under paragraph (c) of this section.

(2) *Rules of application*—(i) *General.* For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must have been produced in the manner specified in § 10.243(a)(4) and the articles in question must be entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Articles that are entered under an HTSUS subheading other than the HTSUS subheading which pertains to articles described in § 10.243(a)(4) are not to be considered in determining compliance with the 75 percent

standard specified in paragraph (b)(1)(i) of this section;

(D) For purposes of determining compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section, all articles that conform to the production standards set forth in § 10.243(a)(4) must be considered, regardless of the HTSUS subheading under which they were entered;

(E) Fabric components and fabrics that constitute findings or trimmings are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(F) Beginning October 1, 2003, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(*1*) Will not be eligible for preferential treatment during the following year;

(*2*) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard specified in paragraph (b)(1)(ii) of this section; and

(*3*) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(G) A new producer or new entity controlling production, that is, a producer or entity controlling production who did not produce or control production of articles that were entered as articles described in § 10.243(a)(4) during the immediately preceding year, must first establish compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(H) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls for the year in question;

(I) A producer would not prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(J) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles of that producer for the year in question, even if some but not all of that production is also covered by a declaration of compliance prepared by an entity controlling production;

(K) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance; and

(L) The exclusion references regarding findings and trimmings in paragraph (b)(1)(i) and paragraph (b)(1)(ii) of this section apply to all findings and trimmings, whether or not they are of foreign origin.

(ii) *Examples.* The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

Example 1. An ATPDEA beneficiary country producer of articles that meet the production standards specified in § 10.243(a)(4) in the first year sends 50 percent of that production to ATPDEA region markets and the other 50 percent to the U.S. market; the cost of the fabrics formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the ATPDEA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabrics formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the articles sent to the United States did not meet the minimum 75 percent standard.

Example 2. A producer sends to the United States in the first year three shipments of articles that meet the description in § 10.243(a)(4); one of those shipments is entered under the HTSUS subheading that covers articles described in § 10.243(a)(4), the second shipment is entered under the HTSUS subheading that covers articles described in § 10.243(a)(7), and the third shipment is entered under subheading 9802.00.80, HTSUS. In determining whether the minimum 75 percent standard has been met in the first year for purposes of entry of articles under the HTSUS subheading that covers articles described in § 10.243(a)(4) during the following (that is, second) year, consideration must be restricted to the articles in the first shipment and therefore must not include the articles in the second and third shipments.

Example 3. A producer in the second year begins production of articles that conform to the production standards specified in § 10.243(a)(4); some of those articles are entered in that year under HTSUS subheading 6212.10 and others under HTSUS subheading 9802.00.80 but none are entered in that year under the HTSUS subheading which pertains to articles described in § 10.243(a)(4) because the 75 percent standard had not been met in the preceding (that is, first) year. In this case the 85 percent standard applies, and all of the articles that were entered under the various HTSUS provisions in the second year must be taken into account in determining whether that 85 percent standard has been met. If the 85 percent was met in the aggregate for all of the articles entered in the second year, in the next (that is, third) year articles of that producer may receive preferential treatment under the HTSUS subheading which pertains to articles described in § 10.243(a)(4).

Example 4. An entity controlling production of articles that meet the description in § 10.243(a)(4) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

Example 5. Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United States where they are held until the following year; during that following year all of the front subassemblies are shipped to an ATPDEA beneficiary country where they are assembled with elastic strips and labels produced in an Asian country and other fabrics, components or materials produced in the ATPDEA beneficiary country to form articles that meet the production standards specified in § 10.243(a)(4) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 or 85 percent standard, the fabric in the elastic strips and labels is to be disregarded entirely because the strips and labels constitute findings or trimmings for purposes of this section, and all of the fabric in the front subassemblies is countable because it was all formed in the United States and used in the production of articles that were entered in the same year.

Example 6. An ATPDEA beneficiary country producer's entire production of articles that meet the description in § 10.243(a)(4) is sent to a U.S. importer in two separate shipments, one in February and the other in June of the same calendar year; the articles shipped in February do not meet the minimum 75 percent standard, the articles shipped in June exceed the 85 percent standard, and the articles in the two shipments, taken together, do meet the 75 percent standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a Customs bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The ATPDEA beneficiary country producer may not prepare a valid declaration of compliance covering the articles in the first shipment because those articles did not meet the minimum 75 percent standard and because those articles cannot be included with the articles of the second shipment on the same declaration of compliance since they were entered in a different year. However, the ATPDEA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the second shipment because those articles did meet the requisite 85 percent standard which would apply for purposes of entry of articles in the following year.

Example 7. A producer in the second year begins production of articles exclusively for the U.S. market that meet the production standards specified in § 10.243(a)(4), but the entered articles do not meet the requisite 85 percent standard until the third year. The producer's articles may not receive preferential treatment during the second year because there was no production (and thus there were no entered articles) in the immediately preceding (that is, first) year on which to assess compliance with the 75 percent standard. The producer's articles also may not receive preferential treatment during the third year because the 85 percent standard was not met in the immediately preceding (that is, second) year. However, the producer's articles are eligible for preferential treatment during the fourth year based on compliance with the 85 percent standard in the immediately preceding (that is, third) year.

Example 8. An entity controlling production (Entity A) uses five ATPDEA beneficiary country producers (Producers 1–5), all of which produce only articles that meet the description in § 10.243(a)(4); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) which sends all of its production to the United States. A declaration of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4 would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that it controls as well as all of the production of Producer 6 because Entity B also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) *Documentation—*(1) *Initial declaration of compliance.* In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with Customs, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable 75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(ii) of this section. After filing of the declaration of compliance has been completed, Customs will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the producer or the entity controlling production should file the declaration of compliance with Customs at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) *Amended declaration of compliance.* If the information on the declaration of compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the Customs office identified in paragraph (c)(4) of this section an amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in writing advise both the Customs office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) *Form and preparation of declaration of compliance—*(i) *Form.* The declaration of compliance referred to in paragraph (c)(1) of this section may be printed and reproduced locally and must be in the following format:

BILLING CODE 8025–01–P

Andean Trade Promotion and Drug Eradication Act Declaration of Compliance for Brassieres (19 CFR 10.243(a)(4) and 10.248)	
1. Year beginning date: October 1, ____. Year ending date: September 30, ____.	Official U.S. Customs Use Only Assigned number: _____ Assignment date: _____
2. Identity of preparer (producer or entity controlling production): Full name and address:	Telephone number: _____ Facsimile number: _____ Importer identification number: _____
3. If the preparer is an entity controlling production, provide the following for each producer: Full name and address:	Telephone number: _____ Facsimile number: _____
4. Aggregate cost of fabrics formed in the United States that were used in the production of brassieres that were entered during the year: _____	
5. Aggregate declared customs value of the fabric contained in brassieres that were entered during the year: _____	
6. I declare that the aggregate cost of fabric formed in the United States was at least 75 percent (or 85 percent, if applicable under 19 CFR 10.248(b)(1)(ii)) of the aggregate declared customs value of the fabric contained in brassieres entered during the year.	
7. Authorized signature: Date:	8. Name and title (print or type):

BILLING CODE 8025–01–C

(ii) *Preparation.* The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3)(i) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer's importer identification number (see § 24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the ATPDEA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were entered during the year identified in block 1; and

(E) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and the date must be the date on which the declaration of compliance was completed and signed.

(4) *Filing of declaration of compliance.* The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a language other than English, the producer or the entity controlling production must provide to Customs upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, U.S. Customs Service, 1 Penn Plaza, New York, New York 10119.

(d) *Verification of declaration of compliance*—(1) *Verification procedure.* A declaration of compliance filed under this section will be subject to whatever verification Customs deems necessary. In the event that Customs for any reason is prevented from verifying the statements made on a declaration of compliance, Customs may deny any claim for preferential treatment made under § 10.245 that is based on that declaration. A verification of a declaration of compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to Customs by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles that meet the production standards specified in § 10.243(a)(4) that were exported to the United States and that were entered during the year in question, whether or not a claim for preferential treatment was made under § 10.245. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric. The headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric. The verification of production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production. The inventory records must reflect the production of the finished article which must be referenced to the original purchase order or lot number covering the fabric used in production. In the inventory production records, the inventory should show the opening balance of the inventory plus the purchases made during the accounting period and the inventory closing balance.

(2) *Notice of determination.* If, based on a verification of a declaration of compliance filed under this section, Customs determines that the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, Customs will publish a notice of that determination in the **Federal Register**.

6. Part 10 is amended by adding a new center heading followed by new §§ 10.251 through 10.257 to read as follows:

Extension of ATPA Benefits to Tuna and Certain Other Non-Textile Articles

Sec.
- 10.251 Applicability.
- 10.252 Definitions.
- 10.253 Articles eligible for preferential treatment.
- 10.254 Certificate of Origin.
- 10.255 Filing of claim for preferential treatment.
- 10.256 Maintenance of records and submission of Certificate by importer.
- 10.257 Verification and justification of claim for preferential treatment.

Extension of ATPA Benefits to Tuna and Certain Other Non-Textile Articles

§ 10.251 Applicability.

Title XXXI of Public Law 107–210 (116 Stat. 933), entitled the Andean Trade Promotion and Drug Eradication Act (ATPDEA), amended sections 202, 203, 204, and 208 of the Andean Trade Preference Act (the ATPA, 19 U.S.C. 3201–3206) to authorize the President to extend additional trade benefits to ATPA beneficiary countries that have been designated as ATPDEA beneficiary countries. Sections 204(b)(1) and (b)(4) of the ATPA (19 U.S.C. 3203(b)(1) and (b)(4)) provide for the preferential treatment of certain non-textile articles that were not entitled to duty-free treatment under the ATPA prior to enactment of the ATPDEA. The provisions of §§ 10.251–10.257 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to ATPA sections 204(b)(1) and (b)(4).

§ 10.252 Definitions.

When used in §§ 10.251 through 10.257, the following terms have the meanings indicated:

ATPA. "ATPA" means the Andean Trade Preference Act, 19 U.S.C. 3201–3206.

ATPDEA beneficiary country. "ATPDEA beneficiary country" means a "beneficiary country" as defined in § 10.202(a) for purposes of the ATPA which the President also has designated as a beneficiary country for purposes of preferential treatment of products under 19 U.S.C. 3203(b)(1) and (b)(4) and which has been the subject of a finding by the President or his designee, published in the **Federal Register**, that the beneficiary country has satisfied the requirements of 19 U.S.C. 3203(b)(5)(A)(ii).

ATPDEA beneficiary country vessel. "ATPDEA beneficiary country vessel" means a vessel:

(a) Which is registered or recorded in an ATPDEA beneficiary country;

(b) Which sails under the flag of an ATPDEA beneficiary country;

(c) Which is at least 75 percent owned by nationals of an ATPDEA beneficiary country or by a company having its principal place of business in an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of those boards are nationals of an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country;

(d) Of which the master and officers are nationals of an ATPDEA beneficiary country; and

(e) Of which at least 75 percent of the crew are nationals of an ATPDEA beneficiary country.

HTSUS. "HTSUS" means the Harmonized Tariff Schedule of the United States.

Preferential treatment. "Preferential treatment" means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions in the case of tuna described in § 10.253(a)(1) and free of duty in the case of any article described in § 10.253(a)(2).

United States vessel. "United States vessel" means a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46 of the United States Code.

§ 10.253 Articles eligible for preferential treatment.

(a) *General.* Preferential treatment applies to any of the following articles, provided that the article in question is imported directly into the customs territory of the United States from an ATPDEA beneficiary country within the meaning of paragraph (b) of this section:

(1) Tuna that is harvested by United States vessels or ATPDEA beneficiary country vessels, that is prepared or preserved in any manner, in an

ATPDEA beneficiary country, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kilograms each; and

(2) Any of the following articles that the President has determined are not import-sensitive in the context of imports from ATPDEA beneficiary countries, provided that the article in question meets the country of origin and value content requirements set forth in paragraphs (c) and (d) of this section:

(i) Footwear not designated on December 4, 1991, as eligible articles for the purpose of the Generalized System of Preferences (GSP) under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467);

(ii) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTSUS;

(iii) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

(iv) Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the GSP.

(b) *Imported directly defined.* For purposes of paragraph (a) of this section, the words "imported directly" mean:

(1) Direct shipment from any ATPDEA beneficiary country to the United States without passing through the territory of any country that is not an ATPDEA beneficiary country;

(2) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not an ATPDEA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

(c) *Country of origin criteria*—(1) *General.* Except as otherwise provided in paragraph (c)(2) of this section, an article described in paragraph (a)(2) of this section may be eligible for preferential treatment if the article is either:

(i) Wholly the growth, product, or manufacture of an ATPDEA beneficiary country; or

(ii) A new or different article of commerce which has been grown, produced, or manufactured in an ATPDEA beneficiary country.

(2) *Exceptions.* No article will be eligible for preferential treatment by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The principles and examples set forth in § 10.195(a)(2) will apply equally for purposes of this paragraph.

(d) *Value content requirement*—(1) *General.* An article may be eligible for preferential treatment only if the sum of the cost or value of the materials produced in an ATPDEA beneficiary country or countries, plus the direct costs of processing operations performed in an ATPDEA beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Commonwealth of Puerto Rico, U.S. Virgin Islands and CBI beneficiary countries.* For the specific purpose of determining the percentage referred to in paragraph (d)(1) of this section, the term "ATPDEA beneficiary country" includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country as defined in § 10.191(b)(1). Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands or any CBI beneficiary country must be included in the article prior to its final exportation to the United States from an ATPDEA beneficiary country as defined in § 10.252.

(3) *Materials produced in the United States.* For purposes of determining the percentage referred to in paragraph (d)(1) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico). The principles set forth in paragraph (d)(4)(i) of this section will apply in determining whether a material is "produced in the customs territory of the United States" for purposes of this paragraph.

(4) *Cost or value of materials*—(i) *"Materials produced in an ATPDEA beneficiary country or countries" defined.* For purposes of paragraph (d)(1) of this section, the words "materials produced in an ATPDEA beneficiary country or countries" refer to those materials incorporated in an article which are either:

(A) Wholly the growth, product, or manufacture of an ATPDEA beneficiary country or two or more ATPDEA beneficiary countries; or

(B) Substantially transformed in any ATPDEA beneficiary country or two or more ATPDEA beneficiary countries into a new or different article of commerce which is then used in any ATPDEA beneficiary country as defined in § 10.252 in the production or manufacture of a new or different article which is imported directly into the United States. For purposes of this paragraph (d)(4)(i)(B), no material will be considered to be substantially transformed into a new or different article of commerce by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The examples set forth in § 10.196(a), and the principles and examples set forth in § 10.195(a)(2), will apply for purposes of the corresponding context under paragraph (d)(4)(i) of this section.

(ii) *Failure to establish origin.* If the importer fails to maintain adequate records to establish the origin of a material, that material may not be considered to have been grown, produced, or manufactured in an ATPDEA beneficiary country or in the customs territory of the United States for purposes of determining the percentage referred to in paragraph (d)(1) of this section.

(iii) *Determination of cost or value of materials.* (A) The cost or value of materials produced in an ATPDEA beneficiary country or countries or in the customs territory of the United States includes:

(*1*) The manufacturer's actual cost for the materials;

(*2*) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(*3*) The actual cost of waste or spoilage, less the value of recoverable scrap; and

(*4*) Taxes and/or duties imposed on the materials by any ATPDEA beneficiary country or by the United States, provided they are not remitted upon exportation.

(B) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value will be determined by computing the sum of:

(*1*) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(*2*) An amount for profit; and

(*3*) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(5) *Direct costs of processing operations*—(i) *Items includable.* For purposes of paragraph (d)(1) of this section, the words "direct costs of processing operations" mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Those costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(A) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(B) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(C) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(D) Costs of inspecting and testing the specific merchandise.

(ii) *Items not included.* For purposes of paragraph (d)(1) of this section, the words "direct costs of processing operations" do not include items which are not directly attributable to the merchandise under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(A) Profit; and

(B) General expenses of doing business which either are not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(6) *Articles wholly the growth, product, or manufacture of an ATPDEA beneficiary country.* Any article which is wholly the growth, product, or manufacture of an ATPDEA beneficiary country as defined in § 10.252, and any article produced or manufactured in an ATPDEA beneficiary country as defined in § 10.252 exclusively from materials which are wholly the growth, product, or manufacture of an ATPDEA beneficiary country or countries, will normally be presumed to meet the requirement set forth in paragraph (d)(1) of this section.

§ 10.254 Certificate of Origin.

A Certificate of Origin as specified in § 10.256 must be employed to certify that an article described in § 10.253(a) being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.251. The Certificate of Origin must be prepared by the exporter in the ATPDEA beneficiary country. Where the ATPDEA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(a) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(b) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

§ 10.255 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for an article described in § 10.253(a), the importer must make a written declaration that the article qualifies for that treatment. The written declaration should be made by including on the entry summary, or equivalent documentation, the symbol "J+" as a prefix to the subheading of the HTSUS in which the article in question is classified. Except in any of the circumstances described in § 10.256(d)(1), the declaration required under this paragraph must be based on a complete and properly executed original Certificate of Origin that covers the article being imported and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.256 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.255 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.255(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on an article under § 10.255(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be on Customs Form 449, including privately-printed copies of that Form, or, as an alternative to Customs Form 449, in an approved computerized format or other medium or format as is approved by the Office of Field Operations, U.S. Customs Service, Washington, DC 20229. An alternative format must contain the same information and certification set forth on Customs Form 449;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph, "identical articles" means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential tariff treatment under the ATPDEA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.254 through 10.256, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a "series of importations" means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.257 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs.* A claim for preferential treatment made under § 10.255, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.256, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. or ATPDEA beneficiary country materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under § 10.255, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it meets the country of origin and value content requirements set forth in § 10.253(c) and (d). A properly completed Certificate of Origin in the form prescribed in § 10.254(b) is a record that would serve this purpose;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the ATPDEA beneficiary country to the United States. If the imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.253(b)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

PART 163—RECORDKEEPING

7. The authority citation for Part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

8. The Appendix to Part 163 is amended by adding three new listings under section IV in numerical order to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

* * * * *

IV. * * *

§ 10.246 ATPDEA Textile Certificate of Origin
§ 10.248 ATPDEA Declaration of Compliance for Brassieres
§ 10.256 ATPDEA Non-textile Certificate of Origin

* * * * *.

Robert C. Bonner,
Commissioner of Customs.

Approved: February 27, 2003.

Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–6867 Filed 3–24–03; 8:45 am]
BILLING CODE 4820–02–P

Federal Register

Tuesday,
March 25, 2003

Part III

Environmental Protection Agency

40 CFR Part 141

Minor Clarification of National Primary Drinking Water Regulation for Arsenic; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–7472–5]

Minor Clarification of National Primary Drinking Water Regulation for Arsenic

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today, EPA is revising the rule text in its January 2001 final rule that established the 10 parts per billion arsenic drinking water standard to express the standard as 0.010 mg/L, in order to clarify the implementation of the original rule.

DATES: This regulation is effective April 24, 2003. For purposes of judicial review, this final rule is promulgated as of 1 p.m. Eastern Time on March 25, 2003.

ADDRESSES: The official public docket for this rule is located at EPA's Water Docket, in the EPA Docket Center (EPA/DC), EPA West, Rm B102, 1301 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For general information contact the EPA Safe Drinking Water Hotline at (800) 426–4791. The Hotline operates Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. ET. For technical information contact, Richard Reding, Office of Ground Water and Drinking Water (MC–4607M), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460, (202) 564–4656, email: *Reding.Richard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Who Is Regulated by This Action?

Entities potentially regulated by this regulation are public water systems (PWSs). All community and non-transient non-community water systems must comply with the revised arsenic drinking water standard beginning on January 23, 2006. A community water system (CWS) means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Non-transient non-community water system (NTNCWS) means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year. Primacy States are required to revise their programs to adopt the new arsenic standard by January 22, 2003 (unless an extension has been granted). Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities
State, Tribal and Local Government	State, Tribal or local government-owned/operated water supply systems using ground water, surface water or mixed ground water and surface water.
Federal Government	Federally owned/operated community water supply systems using ground water, surface water or mixed ground water and surface water.
Industry	Privately owned/operated community water supply systems using ground water, surface water or mixed ground water and surface water.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 141.11 and 141.62 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2002–0057. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. For access to docket material, please call (202) 566–2426 to schedule an appointment.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1. Once in the system, select "search," then key in the appropriate docket identification number.

II. What is EPA's Statutory Authority for This Final Rule?

SDWA section 1412(b)(12)(A) required EPA to publish a revised arsenic standard. On January 22, 2001, EPA published a final rule revising the existing arsenic drinking water standard from 50 parts per billion (ppb) to 10 ppb, with a compliance date of January 23, 2006 (66 FR 6976–7066). Under EPA's regulations at 40 CFR 142.12, States that wish to maintain primary enforcement responsibility for drinking water standards must revise their programs to adopt new or revised Federal regulations. Today's final rule clarifies one issue raised by stakeholders concerning the standard published in January 2001.

III. What Is EPA Doing Today?

Today, EPA is revising the rule text to express the new arsenic maximum contaminant level (MCL) as 0.010 mg/L instead of 0.01 mg/L. EPA is making this minor regulatory amendment in response to a concern raised by a number of States and other stakeholders that State laws adopting the Federal arsenic standard as 0.01 mg/L might allow rounding of monitoring results above 0.01 mg/L so that the effective standard (in consideration of rounding of results) would be 0.014 mg/L (or 14 ppb), not 0.010 mg/L (10 ppb). These States and other stakeholders suggested that the rule text be revised to clarify the rounding issue and avoid the potential for confusion about how to evaluate compliance monitoring results that are greater than 10 ppb. In response, EPA solicited public comment on today's amendment in a proposed rulemaking that was published on December 23, 2002 (67 FR 78203). Although EPA considers this amendment to be a minor clarification of the intent of the January 2001 rule, EPA chose to conduct a formal rulemaking to provide a full opportunity for public comment with respect to the rounding issue.

IV. Summary of Public Comments on Today's Regulatory Change

The comment period on the December 2002 proposed rule closed on January 22, 2003. Most commenters strongly supported today's action; other commenters indicated a concern. A summary of these comments follows. The comments and EPA's responses are included in the Docket for today's final rule.

In expressing support for making today's clarification, some commenters requested extensions of the compliance deadlines that were specified in the January 2001 rule. EPA does not agree that an extension of the compliance deadline is necessary or appropriate. The EPA Administrator is firmly committed to maintaining the January 23, 2006, compliance date for a new arsenic standard (66 FR 20581, April 23, 2001). EPA also has been clear that the 2006 compliance deadline applies to all systems with arsenic levels above 10 ppb. As noted in the December 2002 proposal to clarify the rule text, every aspect of the existing final rule and all analyses supporting the rule establish 10 ppb as the new arsenic standard. In addition, EPA made clear in several contexts that rounding down monitoring results in the range of 11 to 14 ppb to 10 ppb was not allowed under the rule (*e.g.*, in a guidance memorandum (EPA 2002a), in EPA's document "Implementation Guidance for the Arsenic Rule" (EPA 2002b), and in the training conducted by EPA (EPA 2002c) on the rule since its issuance). For systems that may need additional time to come into compliance with the rule for cost or technical reasons, there is an exemption process under SDWA section 1416 under which eligible systems may receive additional time, if necessary. This process was fully addressed in the January 22, 2001, rule (66 FR 6988).

In expressing support for making today's clarification, some commenters also requested extensions of the deadlines to submit revised arsenic primacy packages that were specified in the January 2001 rule. With respect to the deadline for States or Tribes to submit primacy revision packages, because the Agency has been clear that no rounding is permitted under the Federal rule, State programs that allow systems to round compliance monitoring results that are greater than 10 ppb down to 10 ppb will not be approved. The provisions in 40 CFR 142.12, for EPA (at the EPA regional office level) to grant extensions of the two-year period for adoption of the revised arsenic regulation as appropriate on a case-by-case basis, are sufficient to accommodate the commenters' requests for additional time for submission or revision of primacy packages. EPA notes that States routinely request and receive extensions of their primacy deadline.

One commenter believes that State and local governments should have maximum flexibility in implementing Federal regulatory requirements. The commenter does not support today's clarification because it limits the ability of State and local governments to mitigate adverse financial effects of the arsenic standard, especially for rural or low income systems. The commenter suggested States should have the flexibility to use public education at systems where arsenic levels are between 10 and 14 ppb instead of requiring compliance at 10 ppb. However, EPA does not agree that the final arsenic rule, as promulgated in January 2001, would allow the use of public education rather than compliance with the 10 ppb standard at any system where arsenic levels exceed the 10 ppb standard and are between 10 and 14 ppb. As EPA discussed in the January 22, 2001, preamble, EPA is aware of the impact that the new arsenic standard will have on certain systems. As discussed in the January 2001 final rule (67 FR 6992), the Agency is implementing many financial and technical assistance actions to mitigate this impact with an emphasis on assisting small systems. In addition, EPA notes that there are certain flexibilities already built into the statutory and regulatory structure. For example, the final arsenic rule discusses the flexibility for small systems to receive an extension of up to nine years to comply with the new arsenic standard through the exemption process provided in SDWA section 1416.

One commenter submitted comments that were not relevant to the December 2002 proposal to revise the arsenic rule text to express the 10 ppb standard as 0.010 mg/L instead of 0.01 mg/L. EPA is not addressing these comments because, in the December 2002 proposal, EPA clearly informed readers that EPA was not requesting and would not respond to comment on any other issue associated with the arsenic standard or its implementation. As noted in the December 2002 proposal and in the April 17, 2002, (67 FR 19037) announcement of the preliminary results of EPA's review of existing drinking water standards, EPA will continue to evaluate the expert analysis, the public comment received after publication of the final rule, and other relevant information on the arsenic drinking water standard, as part of the next six-year review of drinking water standards, which is to be completed in August of 2008.

V. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et.seq.* This final rule merely clarifies the way the 10 ppb MCL for arsenic is expressed in regulatory text.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)—(5). In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's (SBA's) Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's final rule on small entities, EPA considered small entities to be public water systems serving 10,000 or fewer persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register**, (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration (SBA), and expressed its intention to use the alternative definition for regulatory flexibility assessments under the RFA for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition would be applied to this regulation.

This final rule imposes no cost on any entities over and above those imposed by the final arsenic rule, because that rule was developed, costed, and evaluated as 10 ppb. This final rule merely clarifies the way the 10 ppb MCL is expressed in regulatory text. Therefore, after considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. This final rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. This final rule would not change the costs to State, local, or Tribal governments as estimated in the final arsenic rule, because that rule was developed, costed, and evaluated as 10 ppb, and this final rule merely clarifies the way the 10 ppb MCL is expressed in regulatory text. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. There is no cost to State and local governments, and this final rule does not preempt State law. This final rule imposes no cost on any State, or local governments over and above those imposed by the final arsenic rule because that rule was developed, costed, and evaluated as 10 ppb. This final rule merely clarifies the way the 10 ppb MCL is expressed in regulatory text. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials. EPA received no comment on Federalism issues from State or local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, (November 9, 2000)), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. There is no cost to Tribal governments, and this final rule does not preempt Tribal law. This final rule imposes no cost on any Tribal government over and above those imposed by the final arsenic rule because that rule was developed, costed and evaluated as 10 ppb. This final rule merely clarifies the way the 10 ppb MCL is expressed in regulatory text. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicited comment on the proposed rule from Tribal officials. EPA received no comment from Tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This final rule merely clarifies the way the 10 ppb MCL is expressed in regulatory text.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

As noted in the December 2002 proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on April 24, 2003.

VI. References

EPA 2002a "Calculation of Compliance for the New Arsenic MCL", Cynthia C. Dougherty memorandum, January 25, 2002.

EPA 2002b "Implementation Guidance for the Arsenic Rule", EPA16–K–02–018, August 2002, Section I–A.4, and Figure II–1.

EPA 2002c "Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring", Albuquerque, New Mexico, April 15–16, 2002, pp. 8–9.

List of Subjects for 40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: March 19, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.23 is amended:

a. By revising the entry for arsenic in the table in (a)(4)(i).

b. By revising footnote 15 to the table in (k)(1).

The revisions read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

* * * * *

(a) * * *

(4) * * *

(i) * * *

DETECTION LIMITS FOR INORGANIC CONTAMINANTS

Contaminant	MCL (mg/l)	Methodology	Detection limit (mg/1)
Arsenic	0.010[6]	Atomic Absorption; Furnace	0.001
		Atomic Absorption; Platform—Stabilized Temperature	0.0005[7]
		Atomic Absorption; Gaseous Hydride	0.001
		ICP-Mass Spectrometry	0.0014[8]

[6] The value for arsenic is effective January 23, 2006. Until then, the MCL is 0.05 mg/L.

[7] The MDL reported for EPA Method 200.9 (Atomic Absorption; Platform—Stabilized Temperature) was determined using a 2x concentration step during sample digestion. The MDL determined for samples analyzed using direct analyses (*i.e.*, no sample digestion) will be higher. Using multiple depositions, EPA 200.9 is capable of obtaining MDL of 0.0001 mg/L.

[8] Using selective ion monitoring, EPA Method 200.8 (ICP-MS) is capable of obtaining a MDL of 0.0001 mg/L.

* * * * *

(k) * * *

(1) * * *

[15] Starting January 23, 2006, analytical methods using the ICP–AES technology, may not be used because the detection limits for these methods are 0.008 mg/L or higher. This restriction means that the two ICP–AES methods (EPA Method 200.7 and SM 3120 B) approved for use for the MCL of 0.05 mg/L may not be used for compliance determinations for the revised MCL of 0.010 mg/L. However, prior to January 23, 2006, systems may have compliance samples analyzed with these less sensitive methods.

* * * * *

3. Section 141.62(b) is amended by revising the entry "(16)" for arsenic in the table to read as follows:

§ 141.62 Maximum contaminant levels for inorganic contaminants.

* * * * *

(b) * * *

Contaminant	MCL (mg/l)
(16) Arsenic	0.010

Subpart O—[Amended]

4. Amend § 141.154 by revising paragraphs (b) introductory text and (f) to read as follows:

§ 141.154 Required additional health information.

* * * * *

(b) Ending in the report due by July 1, 2001, a system which detects arsenic at levels above 0.025 mg/L, but below the 0.05 mg/L, and beginning in the report due by July 1, 2002, a system that detects arsenic above 0.005 mg/L and up to and including 0.010 mg/L:

* * * * *

(f) Beginning in the report due by July 1, 2002, and ending January 22, 2006, a community water system that detects arsenic above 0.010 mg/L and up to and including 0.05 mg/L must include the arsenic health effects language prescribed by Appendix A to Subpart O of this part.

5. Amend Appendix A to Subpart O by revising the entry for arsenic under "Inorganic contaminants:" to read as follows:

APPENDIX A TO SUBPART O—REGULATED CONTAMINANTS

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Inorganic contaminants						
Arsenic (ppb)	[1] 0.010	1000	[1] 10.	[1] 0	Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes.	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

[1] These arsenic values are effective January 23, 2006. Until then, the MCL is 0.05 mg/L and there is no MCLG.

Subpart Q—[Amended]

6. Amend Appendix B to Subpart Q by revising entry "9. Arsenic" under "C. Inorganic Chemicals (IOCs)", to read as follows:

APPENDIX B TO SUBPART Q OF PART 141—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION

Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard health effects language for public notification
9. Arsenic[11]	—0	0.010	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

Appendix B—Endnotes

1. MCLG—Maximum contaminant level goal.
2. MCL—Maximum contaminant level.

* * * * *

11. These arsenic values are effective January 23, 2006. Until then, the MCL is 0.05 mg/L and there is no MCLG.

* * * * *

[FR Doc. 03–7048 Filed 3–24–03; 8:45 am]

BILLING CODE 6560–50–P

VOL
68

ISS
57

MR
25

003

MI



Federal Register

Tuesday,
March 25, 2003

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 172

Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. RSPA–02–12064 (HM–232)]

RIN 2137–AD67

Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: The Research and Special Programs Administration is establishing new requirements to enhance the security of hazardous materials transported in commerce. Shippers and carriers of certain highly hazardous materials must develop and implement security plans. In addition, all shippers and carriers of hazardous materials must assure that their employee training includes a security component.

EFFECTIVE DATE: This final rule is effective March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Gorsky, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

I. Background

On May 2, 2002, the Research and Special Programs Administration (RSPA, we) published a notice of proposed rulemaking (NPRM) to enhance the security of hazardous materials in transportation (67 FR 22028). Proposals for amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) included a requirement for motor carriers registered with the agency to maintain a copy of their current registration certificate on each motor vehicle. We further proposed to require shipping papers to include the name and address of the consignor and consignee and the shipper's DOT Hazmat Registration number, if applicable. In addition, we proposed to require shippers and carriers of certain highly hazardous materials to develop and implement security plans. We also proposed to require hazardous materials shippers and carriers to assure that their employee training includes a security component. The NPRM provided a 30-day comment period.

On May 23, 2002, in response to a number of requests, we extended the comment period for the NPRM an additional 30 days (67 FR 36138). The comment period closed July 3, 2002.

In addition, on July 16, 2002, RSPA and the Federal Motor Carrier Safety Administration (FMCSA) published an advance notice of proposed rulemaking (ANPRM) to examine the need for enhanced security requirements for hazardous materials transported by motor carriers (67 FR 46622). The two agencies are seeking comments on the feasibility of specific security enhancements and the potential costs and benefits of deploying such enhancements. Security measures addressed in the ANPRM include escorts, vehicle tracking and monitoring systems, emergency warning systems, remote shut-offs, direct short-range communications, notification to State and local authorities, and operational measures. The comment period for the ANPRM was extended until November 15, 2002. Late-filed comments will be considered to the extent feasible.

In this final rule, we are adopting the following revisions to the HMR to enhance the security of hazardous materials transported in commerce:

—Shippers and carriers subject to the registration requirements in 49 CFR part 107 or who offer or transport select agents and toxins regulated by the Centers for Disease Control and Prevention (CDC) must develop and implement security plans.

—Hazmat employers must provide security training to their hazmat employees. Hazmat employees of companies required to have a security plan under this final rule must be trained in the plan's specifics. All hazmat employees must receive training that provides an awareness of the security issues associated with hazardous materials transportation and possible methods to enhance transportation security. This training must also include a component covering how to recognize and respond to possible security threats.

When conducting inspections at shipper and other facilities, DOT inspectors will be looking for security plans and training records related to security. If violations are found, appropriate penalty action will be initiated. Baseline penalties for these violations will be provided in a civil penalty rulemaking that we expect to issue in the near future.

II. Analysis of Comments

We received over 270 comments on the May 3, 2002, NPRM from hazardous materials shippers, carriers, industry associations, and State and local government agencies. Commenters unanimously support the NPRM's goal of enhancing the secure transportation of hazardous materials. However, most commenters have significant concerns about some or all of the specific proposals in the NPRM. For example, some commenters suggest that the NPRM proposals do not provide an appropriate balance between security and economic goals. In addition, some commenters oppose some or all of the proposed security requirements because they would not have prevented the September 11, 2001, terrorist attacks. Several commenters also suggest that we should defer to the Transportation Security Administration (TSA) or the proposed Department of Homeland Security on security issues. Further, many commenters express reservations about the scope of the NPRM and the applicability of some of its provisions to most shipments of hazardous materials. As well, a significant proportion of commenters oppose some or all of the proposals concerning registration numbers and certificates, shipping documentation requirements, security plans, and security training. Finally, many commenters suggest that we seriously underestimated the potential cost impacts of the proposals in the NPRM. These comments are discussed in detail below.

A. Security Versus Economic Efficiency

Several commenters express concern that the NPRM proposals in the aggregate will result in unacceptable economic burdens on the industry and will adversely affect the efficiency with which hazardous materials are routinely transported. "We also are concerned that the proposed measures will be expensive to implement and will introduce inefficiencies to the manner in which hazardous materials are transported. In responding to the events of September 11th, we must not compromise our ability to move large amounts of hazardous materials in an efficient, cost-effective manner. Introducing inefficiencies to our freight transportation system helps further the terrorists' goals of disrupting the American way of life." (American Trucking Associations)

As we stated in the NPRM, hazardous materials are essential to the economy of the United States and the well-being of its people. Our goal in this rulemaking is to implement security requirements that will be effective in preventing hazardous materials from being used as tools of destruction and terror while permitting continued transportation of these essential products. We applaud those in the industry who have recognized their responsibility for enhanced security for the products they manufacture and transport and have developed and implemented thorough and detailed security programs. We do not agree that the imposition of prudent, common-sense security measures will cause massive disruptions in the movement of hazardous materials. We recognize that the provisions proposed in the NPRM and adopted, with modifications, in this final rule, will impose new costs of doing business on both hazardous materials shippers and carriers. As discussed in the following sections, in this final rule we revised certain proposals in response to comments on the NPRM to increase the effectiveness and reduce potential costs impacts of the new security provisions.

Several commenters note that the security measures proposed in the NPRM would not have prevented the September 11th terrorist attacks, the 1993 attack on the World Trade Center, or the 1995 attack on the Murrah Building in Oklahoma City. Nowhere in the NPRM do we state that the proposed security requirements would have prevented past attacks. Rather, we discussed the September 11th terrorist atrocities to indicate the heightened risk of terrorism with which we all now live and the need to reassess and address security vulnerabilities in all areas of our public and private lives. The discussion of the attack on the Murrah Building was intended as an illustration of the devastating consequences that can result from a criminal or terrorist act involving hazardous materials and to provide an estimate of the economic costs of such an act. We cannot limit our actions on security to efforts to prevent terrorist attacks that have already occurred. It is incumbent on everyone responsible for the safety and security of the United States to proactively assess future terrorist threats and take actions to try to prevent future attacks. We believe that the new requirements in this final rule will enhance the security of hazardous materials in transportation and, thus, help to deter and prevent terrorists from using hazardous materials in the transportation system as weapons of destruction or intimidation.

B. Security Authority

Some commenters question whether RSPA is the appropriate agency to issue transportation security regulations. These commenters suggest that the Transportation Security Agency (TSA) or the proposed Department of Homeland Security would be better suited to issue transportation security-related regulations. One commenter points out that TSA has been given the responsibility for security in all modes of transportation, and that TSA has been authorized to issue, rescind and revise such regulations as are necessary to carry out the functions of the Administration.

The HMR are promulgated under the mandate in § 5103(b) of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*, as amended by § 1711 of the Homeland Security Act of 2002, Pub. L. 107–296) that the Secretary of Transportation "prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce." Section 5103(b)(1)(B) provides that the HMR "shall govern safety aspects, including security, of the transportation of hazardous material the Secretary considers appropriate."

Hazardous materials shippers and carriers should be aware that this final rule is the first step in what may be a series of rulemakings to address the security of hazardous materials shipments. The joint RSPA–FMCSA ANPRM described above may result in one or more proposals to require specific security measures for hazardous materials that pose a significant security risk in transportation. In addition, TSA is developing regulations that are likely to impose additional requirements beyond those established in this final rule. We consult and coordinate with TSA concerning security-related hazardous materials transportation regulations and will continue to do so after TSA becomes part of the new Department of Homeland Security.

C. Industry Consensus Standards

One commenter suggests that we should work with the hazardous materials industry to develop consensus standards for hazardous materials transportation security. "Instead of implementing its proposals, RSPA should hold one or more public meetings to solicit recommendations from shippers, carriers, and other members of the interested public as to security enhancements, and as to regulatory approaches, that will accomplish more, and do so more efficiently." (National Small Shipments Traffic Conference, Inc., and the Health and Personal Care Logistics Conference, Inc.) We appreciate this suggestion; indeed, we are aware that a number of industry associations have developed and disseminated recommendations for enhancing the security of hazardous materials and expect that they will form the basis for many individual company plans. However, we do not agree that a consensus-standards approach is appropriate for this rulemaking. Consensus standards generally are specification standards; that is, they set forth specific requirements for achieving a regulatory goal. One of the goals of this final rule is to establish a performance standard for hazardous materials transportation security plans. Performance standards generally permit a regulated entity to determine the specific measures necessary to achieve compliance with the established performance goal. In the case of hazardous materials transportation security, the flexibility provided by a performance standard permits a company to implement a security plan that is tailored to its specific circumstances and operations.

A consensus-standards process is a lengthy process. It can take many months or even years for the parties developing such a standard to reach consensus on the appropriate measures to be implemented. The security threat is real and ongoing. We do not have the time to spend on development of a consensus standard for hazardous materials transportation security.

D. Registration Certificates

Currently, each motor carrier transporting certain classes or divisions of hazardous materials is required to file with RSPA a registration statement and pay an annual fee (49 CFR part 107). A Certificate of Registration (certificate), which includes a U.S. DOT Hazmat Registration Number, is then issued by RSPA to the carrier. A carrier must display its registration number on a document carried on each motor vehicle, but need not maintain a copy of the certificate itself on each vehicle. The NPRM proposed to require each motor carrier registered with RSPA to maintain a copy of its current registration certificate on each motor vehicle used to transport hazardous materials. We suggested that the actual certificate could assist State and local law enforcement personnel to determine whether a carrier is a legitimate transporter of hazardous materials.

Commenters overwhelmingly oppose this proposal, primarily because the registration system as currently structured is not designed to make determinations as to the legitimacy of registrants. "[A] valid registration certificate is no indication that a transporter is 'legitimate.' It is not an endorsement of regulatory compliance. It is simply proof of payment." (Institute of Makers of Explosives) Commenters also note that the registration system has no relevance to transportation security. "[T]he act of registering and obtaining a DOT registration certificate and number * * * does nothing to ensure that the

registrant is not a potential risk to transport security. * * * In no case is any background investigation conducted before registering an applicant, or even investigation to ensure that the applicant is a bona fide company legitimately engaged in the offering for transport and/or transport of hazardous materials." (The Conference on the Safe Transportation of Hazardous Articles, Inc.) In addition, commenters suggest that a registration certificate can easily be copied or falsified. Even those commenters who support the proposal for motor carriers to maintain a copy of their registration certificates on transport vehicles state that the proposal will not enhance transportation security.

We have reconsidered this issue in light of the overwhelming opposition expressed by commenters to this proposal, and it is not adopted in this final rule. We agree with commenters that, absent significant changes to the current registration system, the mere presence of a registration certificate in a motor vehicle transporting hazardous materials will do little to enhance transportation security or to assist enforcement personnel to verify the legitimacy of hazardous materials carriers.

E. Shipping Papers

Currently, the HMR generally require each person who offers a hazardous material for transportation to describe the material on a shipping paper. However, there is no requirement for a shipping paper to include the name and address of the person offering the shipment or the person to whom the shipment will be delivered. The NPRM proposed to require each shipping paper to include the name of the shipment consignor and the address from which the shipment originates and the name and address of each person to whom the shipment will be delivered. In addition, we proposed to require each shipping paper to include the U.S. DOT Hazmat Registration Number, if applicable, of the person offering the shipment for transportation. The proposal was intended to assure that shipping papers included information to assist law enforcement personnel to promptly ascertain the legitimacy of hazardous materials shipments during routine or random roadside inspections and to identify suspicious or questionable situations where additional investigation may be necessary.

As with the proposal to require motor carriers to maintain copies of registration certificates in vehicles transporting hazardous materials, commenters overwhelmingly oppose the proposal to require shippers to include registration numbers on shipping papers. Commenters say that the registration program is not designed to determine whether shippers are "legitimate" and that the proposed requirement will not enhance shipment security. In addition, commenters suggest that a requirement to include registration numbers on shipping papers would be expensive to implement because many shippers would have to modify computer systems and shipping paper forms to include the new information. "Configuring computer systems to provide new data on shipping documents will cause significant problems for shippers, carriers, freight forwarders, brokers, agents, and others. Available display fields are limited and companies will need to redirect their limited Information Technology (IT) resources to reprogram their information management systems." (Dangerous Goods Advisory Council) While we believe that commenters have overstated the costs that might be incurred to modify information systems to accommodate the proposed registration number requirement, we agree that the paperwork burden is not justified by the limited security benefits that might result. Therefore, the registration number proposal is not adopted in this final rule.

A number of commenters support the proposal to include the names and addresses of consignors and consignees on shipping papers. "This provision, to include the name of the shipment consignor and the address of the person to whom the shipment will be delivered, is already widely in use by most companies that ship hazardous materials and therefore is readily acceptable." (Dow Chemical Company) Similarly, "[i]ndustry routinely prepares thousands of shipping papers each year and the requirement that the addresses of the consignor and consignee appear on such documents should not pose a problem or burden." (Nuclear Energy Institute)

Other commenters, however, express serious reservations about the proposal to require consignor and consignee names and addresses on shipping papers. Most commenters question whether such a requirement would actually make it easier to identify suspicious shipments, as stated in the NPRM, without a system in place to verify the consignor and consignee information provided. "Establishing the legitimacy of any consignor or consignee, and their respective addresses, requires knowledge and information not 'promptly ascertainable' from the roadside more than a thousand miles from the consignor and consignee as indicated in the shipping paper." (The Conference on the Safe Transportation of Hazardous Articles, Inc.) As well, commenters suggest that the proposal is unnecessarily broad and would apply to shipments of hazardous materials that pose little or no security threat. In addition, commenters say that, while the proposed requirement for consignor/consignee names and addresses on shipping papers may have some security benefit for motor carrier operations, it is not appropriate for all modes of transportation. Rail carriers, for example, suggest that the proposal would result in little or no security benefit for rail car transportation. "Adding information to the shipping papers might be useful to a law enforcement officer stopping a truck on the highway * * * but would add nothing to rail security. * * * The carload rail network is a fixed network that serves only those shippers connecting to it. The identity and location of every rail car shipper is known and only specific destinations can be reached by rail. The security issues addressed by the proposed street address requirement are simply not present in rail transportation." (CSX Transportation)

Further, shippers and carriers of specific classes and types of materials cite operational difficulties that they say will make it difficult to comply with the proposed new requirement. Hazardous waste generators suggest that the proposed requirement to include consignor and consignee names and addresses on shipping papers is redundant for hazardous waste shipments because the EPA hazardous waste manifest already includes sufficient information for tracking hazardous wastes from origin to destination. Other commenters are concerned that the NPRM proposal concerning shipping papers did not consider the positive security implications of electronic tracking systems that are utilized by a number of shippers and carriers to monitor shipments. "[There are] superior technology and tracking systems in place that not only track all shipments but also the vehicle or container used to transport the freight. Unfortunately, RSPA does not give indication that it has considered the advanced or enhanced security benefits gained from having such a system in place. RSPA should recognize and waive any proposed requirements for carriers and companies with these type information systems in place * * * " (FedEx Express)

Commenters representing shippers and carriers of hazardous materials used in agricultural applications note that many of the locations to which they deliver do not have street addresses, making it difficult to complete a shipping paper as proposed in the NPRM. "[Agricultural retailers] often deliver their product to farm fields that don't have addresses, or to farms with rural addresses, and in some cases in one State, no addresses. * * * Many applicators intimately know the customer's fields they are delivering to and thus don't need addresses. Some use maps or air photos that show the fields or sections of fields that need the products applied." (Agricultural Retailers Association) Representatives of shippers and carriers of hazardous materials used at construction sites have similar concerns. Shippers and carriers of compressed gas cylinders used in medical care and heating oil, diesel fuel, propane, gasoline, and similar materials that use individual motor vehicles to deliver product to multiple locations point out that drivers frequently make changes to their delivery schedules or make emergency or unscheduled deliveries in the course of a single day, so that a shipping paper with a list of delivery locations completed in the morning would have to be significantly altered by the driver during the course of the day as his delivery schedule is modified. "It is common practice to have multiple deliveries of fuel throughout the day. The shipment locations may be known for some deliveries, but there are numerous instances where the location of a particular delivery is not known until the truck has already begun its route. In other words, not every gallon of petroleum is accounted for when loaded at the bulk plant." (BOC Oil Company and others) Finally, shippers of so-called "blind shipments" of hazardous materials suggest that they would be adversely affected by the proposal. Blind shipments are transported under product trading transactions in which the receiving person is not provided information about the true origin of the shipments delivered to them and the shipper may not know the true destination of the shipment. "Thousands of shipments are made from unnamed locations or from shippers acting as agents for suppliers who do not wish to be identified for business reasons. Perhaps an equal number of shipments are made to unnamed consignees. This NPRM would eliminate this practice resulting in the loss of millions of dollars in revenue annually for shippers with no increase in security." (Compressed Gas Association)

We do not agree with commenters that the proposed requirement for consignor and consignee names on shipping papers would provide little or no security benefit. In the absence of requirements for route plans or electronic tracking, the name and address of the shipment consignor and consignee can help law enforcement personnel determine whether a shipment has been unreasonably diverted and, thus, whether further investigation is warranted. However, having considered the adverse comments received on this proposal, we are not adopting it in this final rule. Instead, we are considering modified procedures for making consignor and consignee information available to law enforcement personnel. A modified procedure may be proposed in a future rulemaking. We note in this regard that the UN Recommendations on the Transport of Dangerous Goods require the name and address of both the shipment consignor and consignee to be included on shipping papers (chapter 5.4.1.3). A similar requirement is also in the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (chapter 4.1.6). Moreover, a provision to require the consignor and consignee name and address has been adopted by the International Maritime Organization for inclusion in Amendment 3.1 of the International Maritime Dangerous Goods Code. We also note that the U.S. Customs Service has issued a final rule to require consignor/consignee information on bills of lading for all cargoes entering the United States (67 FR 66318; October 31, 2002).

F. Security Plans

The NPRM proposed a new subpart I in part 172 to require persons subject to the registration requirements in subpart G of part 107 and persons who offer or transport select agents and toxins regulated by CDC in 42 CFR part 73 to develop and implement written security plans. Those persons required to register under subpart G of part 107 include persons who offer for transportation or transport: (1) A highway route-controlled quantity of a Class 7 (radioactive) material; (2) more than 25 kg (55 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material; (3) more than 1 L (1.06 qt) per package of a material poisonous by inhalation in Hazard Zone A; (4) a shipment in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gal) for liquids or gases or greater than 13.24 cubic meters (468 cubic feet) for solids; (5) a shipment in a non-bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding is required; and (6) a shipment that requires placarding. Select agents and toxins are materials regulated by CDC because they have the potential to pose a severe threat to the public health and safety. We suggested that a security plan should focus not only on the potential threats posed by the material being transported, but on personnel, facility, and en route security issues, as well. The NPRM did not include a prescriptive list of actions that must be included in a security plan. Rather, we proposed that a company should implement a plan that is appropriate to its individual circumstances, considering the types and amounts of hazardous materials shipped or transported and the modes used for transportation.

Commenters generally support the proposed requirement. However, commenters are concerned about certain details of the proposal. A major concern for many commenters is the language used in the NPRM to describe the security plan and its purpose. In the words of one commenter, "The written plan requirement is too strongly worded. [We are] deeply concerned with much of the language in the security plan component of the NPRM. The purpose of any planning, whether for security or safety, is to reduce and mitigate risks. However, the NPRM as worded mandates 'assurance' of 100% risk-free operations. This is not possible." (National Propane Gas Association) Other commenters express similar reservations. "The security plan should 'address' various subjects, but no requirement of the regulations should require that the plan 'assure' that unauthorized or unlawful actions will not take place. The word 'assure' has a strong legal content, and would serve to impose undue strict liability on anyone who had the misfortune to experience a security incident, no matter how unavoidable that incident was." (Sulfur Dioxide Mutual Assistance Response Team) We agree that the term "assure," as used in the NPRM to describe the purposes and goals of a security plan, was inappropriate. No plan, no matter how comprehensive and detailed, can provide absolute assurance that each shipment of hazardous materials to which it applies will be transported without incident. In this final rule, we are modifying subpart I, as suggested by commenters, to more properly

characterize a security plan in terms of addressing and reducing security risks presented by the transportation of certain hazardous materials in commerce.

Related to the liability concern, commenters ask how the proposed security plan requirement would be enforced. "Any measurement of a security plan would be entirely subjective. * * * If our products were somehow involved in a terrorist act, does this mean our security plan failed? And if so, what enforcement action will be taken?" (Airgas, Inc.) Other commenters ask what standard will be used to determine whether security plans comply with regulatory requirements.

Each security plan will differ because each security plan will be based on a company's assessment of the security risks associated with the materials it ships or transports. There is no "one-size-fits-all" security plan that will be appropriate for each company's individual circumstances; similarly, there is no "one-size-fits-all" enforcement standard that can be applied to individual companies. We will examine a company's security plans, including the vulnerability assessment on which the security plan is based, as necessary to ascertain that a company has a plan in place, that it includes the components specified in this final rule, and that its personnel have been trained concerning the plan's specific components.

The fact that a product is used in a terrorist, criminal, or destructive action does not automatically mean that the security plan failed or that Federal security requirements are inadequate. A security plan should represent a company's best, good-faith effort to address identified security risks. However, plans must be updated as new information and technology become available. Compliance with Federal regulatory standards may constitute an effective defense in private litigation. However, failure to comply with those standards can be argued to constitute negligence.

Several commenters suggest that the requirement for security plans should be applied more narrowly than proposed in the NPRM. For example, shipments of bulk packagings that contain residues of certain hazardous materials must be placarded and, thus, would be subject to the proposed security plan requirement. Similarly, shipments of certain corrosive or flammable materials in Packing Groups II or III, such as institutional cleaning products, must be placarded in some circumstances and, thus, would be subject to the proposed security plan requirement. Commenters suggest that "the requirement for an offeror or transporter to develop and implement a security plan should more appropriately be predicated upon the types (in terms of hazard) and/or quantities of hazardous materials offered or transported by the person, rather than on whether that person is required to register. * * * [S]ecurity plans should only be required for offerors and transporters of hazardous materials that have the potential to pose a significant threat from a security perspective if those hazardous materials were to fall into the wrong hands." (Conference on Safe Transportation of Hazardous Articles, Inc.) We agree that a requirement for security plans should apply only to those materials that present significant security threats. The registration and select agent and toxins lists cover the materials that present the most significant security threats in transportation and provide a relatively straightforward way to distinguish materials that may present a significant security threat from materials that do not. Further, the requirements for security plans proposed in the NPRM and adopted in this final rule permit a shipper or carrier to develop a security plan that assesses the specific security risks of the materials to be transported and put into place measures that are commensurate with the assessed risks. If a shipper or carrier determines that the security risks of the materials it handles are relatively small, then its security plan may well be limited in scope and complexity.

One commenter suggests that materials such as propane do not present a security risk sufficient to require development of shipper and carrier security plans. "Propane has an excellent safety record both at the storage site and in transit. Propane's narrow range of flammability, its tendency to disperse rapidly if released, and the robust, Federally-regulated systems used to contain the product all support the assertion that propane should not be considered a weapon of mass destruction." (National Propane Gas Association) We disagree. Propane is among the liquefied compressed gases most commonly transported throughout the nation. When liquid propane is released into the atmosphere, it quickly vaporizes into the gaseous form that is its normal state at atmospheric pressure. This happens very rapidly, and in the process, the propane combines readily with air to form fuel-air mixtures that are ignitable over a range of 2.2 to 9.5 percent propane by volume. If an ignition source is present in the vicinity of a highly flammable mixture, the vapor cloud ignites and burns very rapidly (characterized by some experts as "explosively"). Based on these characteristics and the frequency with which propane is transported in this country, we believe that propane presents a sufficient security risk to warrant the imposition of security plan and security training requirements.

Another commenter requests an exception from the proposed security plan requirements for petroleum marketer transporters "given the already heightened level of security practiced by this unique branch of hazardous materials transporters." (Ohio Petroleum Marketers Association) In support of this request, the commenter cites regulations such as State fire codes, workers compensation laws, and Federal transportation safety laws "that reduce the potential for certain hazardous materials to be targets for terrorists, and that maintain a high level of security awareness for hazardous materials employees." Again, we disagree. The regulations cited by the commenter are focused on safety, not security. Products transported by petroleum marketers, such as fuel oil and motor fuel, can potentially be used as weapons of opportunity or can be combined with other materials to construct weapons of mass destruction. Indeed, trucks loaded with petroleum products have been used in terrorist attacks on at least two occasions in recent months overseas. In addition, on June 21, 2002, the Federal Bureau of Investigation disclosed that it had information that terrorists using fuel tanker trucks might try to attack fuel depots or Jewish schools or synagogues. The warning was based on interviews with captured al Qaeda fighters and other sources. Therefore, we reject the requested exceptions.

A number of commenters note that, as drafted, the NPRM suggests that the proposed security plan requirements apply to every shipment offered for transportation or transported in commerce by a person required to register by subpart G of part 107. For example, one commenter says, "A corporation subject to the hazmat registration requirements may easily have more than one facility—some of which might perform operations that would benefit from a security plan, others of which might not. It would be patently unreasonable to require each facility operated by the same corporation subject to hazmat registration requirements * * * develop and implement a security plan regardless of whether the particular facility transports hazardous materials subject to those requirements." (Utility Solid Waste Activities Group) We agree. Our intention in the NPRM was for those shipments that are listed as triggering the registration requirements in subpart G of part 107 to be subject to security plan requirements, not for every shipment transported by a registered entity or every facility operated by a registered entity. This final rule clarifies that persons who offer for transportation or transport any of the materials listed in subpart G of part 107 or a select agent or toxin regulated by CDC must develop and adhere to security plans applicable to the listed materials.

The NPRM proposed that a security plan address the security of shipments stored incidental to movement in transportation. Several commenters are concerned about the applicability of the security plan requirement to persons that do not offer or transport hazardous materials in commerce, but who may operate facilities at which hazardous materials are stored during transportation. One commenter notes that "[i]n many situations, HAZMAT are delivered to or through facilities operated by entities that are not subject to the security plan requirements because they may not be legally required to register." (Dangerous Goods Advisory Council) We agree that the final rule should clarify responsibility for security plans applicable to hazardous materials stored incidental to movement in transportation. Generally, these hazardous materials will be stored at a shipper or carrier-owned or -operated facilities, and the shipper or carrier will be responsible for developing a security plan. In this final rule, the requirement for developing and adhering to a security plan applies to persons who offer for transportation or transport hazardous materials in commerce, including loading, unloading, or storage operations incidental to the movement of hazardous materials in commerce.

Another commenter proposes that we adopt a definition for "storage incidental to movement" to distinguish storage that is part of transportation, and therefore subject to security plan requirements, from storage that is not part of transportation. For purposes of this final rule, storage incidental to movement of a hazardous material in commerce is storage that takes place between the time that a hazardous material is offered for transportation to a carrier and the time it reaches its destination. This definition is consistent with long-standing administrative determinations and letters of interpretation concerning the applicability of the HMR to materials stored incidental to their movement in commerce. We note in this regard that this agency is currently engaged in a rulemaking to clarify the applicability of the HMR to specific functions and activities, including storage of hazardous materials during transportation (HM–223; RSPA–98–4952). The NPRM issued under HM–223 proposed to define "storage incidental to movement" to mean "storage of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it until the package containing the hazardous material is delivered to the destination indicated on a shipping document, package marking, or other medium, or, in the case of a private motor carrier, between the time that a motor vehicle driver takes physical possession of the hazardous material for the purpose of transporting it until the driver relinquishes possession of the package containing the hazardous material at its destination and is no longer responsible for performing functions subject to the HMR." We are currently in the process of evaluating comments to the HM–223 NPRM. If a final rule issued under docket HM–223 revises the definition of "storage incidental to movement" in a way that affects the applicability to such storage of the security plan requirements in this final rule, we will address such revision, including its implications for security plans and any transition time necessary to implement changes, in the HM–223 final rule.

Most commenters support "the flexibility RSPA provides in [the] proposal to regulated entities in how they go about meeting [the security plan] requirement." (National Association of Chemical Distributors) These commenters agree that "the regulated community needs the flexibility to select those elements [of a security plan] that are consistent with their methods of operation." (Independent Fuel Terminal Operators Association) Other commenters, however, are concerned that the elements suggested in the NPRM for possible inclusion in a security plan are "extremely general. In fact, they are so general as to be either unenforceable, or worse, subject to widely varying interpretations by field inspectors and adjudicators. The security plans and codes that have been developed by industry and are being further refined at the current time are far more specific and useful in addressing the security issues facing the various hazardous materials moving in commerce. If it is RSPA's purpose simply to require security plans for transporters and offerors without specifying the nature or content of those plans, [we] have no objection. If on the other hand, RSPA intends to somehow oversee the substance of such plans, the proposed requirements are too vague to be enforced." (The Chlorine Institute) Similarly, other commenters do not agree with the NPRM approach to list non-mandatory items in the regulatory text for security plans, such as the specific elements listed in the NPRM for possible inclusion in a security plan to address en route shipment security issues. These commenters suggest that recommendations should not be made part of regulatory text because of enforcement and liability concerns. Additionally, commenters are concerned that establishing specific requirements for security plans could be counter-productive. One commenter cites as an example the proposal in the NPRM that a security plan must include a process to verify information provided by job applicants. "While a natural temptation would be to specify exactly the kind of checks to be applied, doing so would merely lay out a road map for the potential terrorist seeking employment with a carrier. If a check of X, Y, and Z is required, the terrorist organization will select operatives who can pass a check of X, Y, and Z, but perhaps not A or B. The essence of security is unpredictability—concept in conflict with regulatory precision." (CSX Transportation)

We carefully considered the comments offered concerning the security plan requirements proposed in the NPRM. We continue to believe that, if it is to be effective, a regulation mandating development and implementation of a security plan must provide sufficient flexibility so that a shipper or carrier can adapt its requirements to individual circumstances. Thus, the requirement for a security plan adopted in this final rule sets forth general requirements for a security plan's components rather than a prescriptive list of specific items that must be included. In this final rule, the proposed security plan requirements are modified as follows:

Applicability. The security plan requirement applies to persons who offer for transportation or transport in commerce one or more of the hazardous materials listed in subpart G of 49 CFR part 107 or a select agent or toxin regulated by CDC. The security plan requirement also applies to persons who operate facilities at which one or more

of the hazardous materials listed in subpart G of 49 CFR part 107 or select agent or toxin regulated by CDC is stored incidental to the movement of the hazardous material(s) in commerce. As indicated above, for purposes of this final rule, "storage incidental to movement" is storage that takes place between the time that a hazardous material is offered for transportation to a carrier and the time it reaches its destination. The security plan requirement applies only to shipments of the specified hazardous materials and to facilities at which the specified hazardous materials are prepared for transportation or stored during transportation.

Security plan components. A security plan must address risks related to the transportation of hazardous materials in commerce. Thus, this final rule requires persons subject to the security plan requirement to perform an assessment of the transportation security risks associated with the materials they handle. As we stated in the preamble to the NPRM, we have developed a security template to illustrate how risk management methodology can be used to identify points in the transportation process where security procedures should be enhanced within the context of an overall risk management strategy. The security template is posted on our website at *http://hazmat.dot.gov/rmsef.htm*. Other risk assessment tools are equally valid, however. This final rule does not require persons subject to the security plan requirement to use a specific risk assessment tool to meet the risk assessment requirement.

Using risk assessment methodology, a company will select an appropriate level of detail for its security plan based on the assessed risks identified for such material or materials. Factors that may be considered are the type or types of materials transported, the quantity of material transported, the area from or to which the material is shipped, and the mode of transportation used.

A security plan must include a method or methods for confirming information provided by applicants for jobs that involve access to or handling of the hazardous materials covered by the plan. In response to commenters' concerns, we revised this aspect of the security plan to substitute the term "confirm" for the term "verify." Commenters are concerned that the standard implied by the term "verify" may be impossible to meet. In addition, this final rule requires employers to confirm information provided by job applicants who are hired to perform jobs that involve access to or handling of the hazardous materials covered by the plan. Read literally, the NPRM language would have required employers to confirm information provided by all job applicants.

Also in response to commenters, we have added language to indicate those persons to whom the requirement applies. Some commenters suggest that we should specify that the requirement applies to hazmat employees, as defined in § 171.8 of the HMR. We do not believe that this is necessary, although an employer may decide to include all hazmat employees. The requirement in this final rule is limited to applicants for hazmat employee positions that involve access to or handling of the hazardous materials covered by the security plan. We do not believe it necessary to include persons whose sole responsibility is preparing shipping documentation, for example, nor do we believe it necessary to include persons who manufacture, maintain, or requalify packagings.

We do not expect companies to confirm all of the information that a job applicant may provide as part of the application process. However, employers should make an effort to check information related to an applicant's recent employment history, references, and citizenship status. In short, we expect companies to take reasonable and prudent measures to address personnel security issues. In response to commenters, in this final rule we added a requirement that efforts to confirm information provided by job applicants must be consistent with applicable Federal and State laws concerning employment practices and individual privacy.

A security plan must also include methods to address the possibility that unauthorized persons may attempt to gain access to hazardous materials or transport vehicles being prepared for transportation. Some commenters suggest that we include a definition of "unauthorized persons" in this final rule. The term "unauthorized persons" as used in this final rule includes persons who are not employed by the company or members of the general public, unless such persons are specifically authorized by the company to have access to hazardous materials or transport vehicles being prepared for transportation. Beyond these persons, however, each entity to whom the security plan requirement applies will need to define the universe of unauthorized persons to account for the nature of the facility and the type of activity that takes place there. An unauthorized person is any person who is not authorized by the shipper or carrier to have access to hazardous materials or transport conveyances being prepared for transportation.

The third element of a security plan is a method or methods to address en route security risks. As noted above, commenters express a number of concerns about this provision of the NPRM. Many commenters address the shared responsibility of shippers and carriers for reducing security risks related to the transportation of hazardous materials in commerce. In particular, some commenters suggest that "[r]esponsibility for the security of a shipment in transit should in the final analysis rest with the transporter. The shipper does not ultimately determine the routes for movement of cargo or the locations for incidental stops or storage. This responsibility appropriately rests with the carrier." (Boeing Company) Other commenters agree that en route security should primarily be the responsibility of the carrier. "[T]o a great extent, shippers must rely on the carriers to generate en route security plans. This may mean that in some cases there would be two separate plans instead of a joint shipper and carrier plan. * * * [We] believe that shippers and carriers should have the flexibility to determine the best way to address en route security." (American Chemistry Council) Other commenters suggest that the proposal places "too much emphasis on the shipper and recipient, and effectively absolves the transporter of responsibility for security. The carrier has control of the HM for the majority of any shipment, and should also bear the responsibility for ensuring an adequate safety plan and implementation of same." (CF Industries)

We agree that a hazardous materials transporter's security plan will address en route security issues in some detail. However, we do not agree that shippers need not address this aspect of transportation security. As one commenter suggests, "[C]arrier 'security plans' must involve considerable input from the shipper community. It is the shipper who has best access to information relative to the hazardous properties of the commodity. It is the shipper who controls: Carrier selection and order entry; loading; time and method of dispatch; and, destination." (National Tank Truck Carriers) At the same time, we recognize that "the carrier has the best information relative to the route taken and the security along that route. This includes driving time, route deviations, and rest stop selection." (American Chemistry Council) We expect shippers to work with carriers to address en route security risks of the materials covered by their security plans. In some cases, a shipper and carrier may have a joint plan; in others, a shipper and carrier may have two separate security plans. This final rule provides shippers and carriers with the flexibility necessary to determine the best methods for addressing en route security issues.

A number of commenters object to the NPRM language that a security plan should include a system for verifying that a carrier has an on-going transportation security program. "In effect, this aspect of the proposal would require that customers of carriers take an active role in ensuring that carriers are in compliance with the security plan requirements proposed by RSPA. In effect, RSPA is deputizing offerors of hazmat to police their carrier's compliance efforts." (International Sanitary Supply Association) We are not requiring shippers to compel compliance by carriers. At a minimum, however, a shipper should satisfy itself that the carrier that will be transporting its material has a security plan in place that adequately addresses the assessed security risks of the material to be transported, including risks related to storage of the material during transportation.

Relationship to other requirements. The NPRM included a provision permitting security plans that conform to regulations of other Federal or international agencies to be used to satisfy the requirement proposed for the HMR. All commenters support this provision. Several suggest that we specify that plans that conform to requirements of the Department of Defense or the Nuclear Regulatory Commission are acceptable. We do not think it is necessary to specifically list in the regulation Federal or international agencies that have now or may in the future impose security plan requirements on persons who handle hazardous materials. A security plan that conforms to regulations issued by any other Federal agency is acceptable, so long as it includes the requirements for security plans in this final rule. Other commenters request that we include plans developed by industry associations, such as the American Chemistry Council or the Association of American Railroads. Certainly, we expect that many companies will develop security plans using guidance and recommendations developed by the industry. In fact, we encourage companies to take advantage of existing guidance, model security plans, and the like when developing security plans tailored to their own operations. This includes industry-developed protocols or guidelines and recommendations issued by other Federal or international agencies. This provision is modified in this final rule to clarify that regulations, protocols, guidelines, or standards developed by other Federal agencies, international organizations, or industry are acceptable, provided such regulations or guidelines address the specific security vulnerabilities of the company.

We note in this regard that, while a security plan developed in conformance with regulations issued by another Federal agency may suffice to meet the requirements of this final rule, the reverse is not necessarily true. For example, air cargo security requirements promulgated by TSA are more stringent than the security requirements in this final rule. Similarly, requirements promulgated by NRC to address the transportation security of radioactive materials may be more stringent than the requirements in this final rule. Shippers and carriers should be aware that they may be subject to additional, more stringent security requirements promulgated by other Federal agencies, depending on the materials they transport and the mode of transportation.

Availability to the public. Several commenters express concern about the possibility that security plans may become publicly available. "It is critical that carrier and shipper plans remain confidential; not subject to public disclosure and Freedom of Information Act requests." (CSX Transportation) Commenters are particularly concerned about plans that may be obtained by enforcement personnel during a compliance inspection.

Generally, RSPA will not collect or retain security plans. With regard to security plans, our enforcement focus during the compliance inspection is to ensure that companies have developed a security plan. Inspectors will review the existing plan on site and generally will not take copies with them or require companies to submit security plans.

In the rare instance that RSPA enforcement personnel identify a need to collect a copy of a security plan, or if a company voluntarily submits a copy of its security plan, we will analyze all applicable laws and Freedom of Information Act exemptions to determine whether the information or portions of information in the security plan can be withheld from release. Prior to submission of a security plan to DOT in these unusual instances, companies should follow the procedures described in 49 CFR 105.30 for requesting confidentiality. Under those procedures, a company should identify and mark the information it believes is confidential and explain why. We will then determine whether the information may be released or protected under the law.

Timing of implementation. Commenters are concerned that the final rule provide sufficient time for development and implementation of security plans. The NPRM did not specify a transition period. We agree that a transition period is necessary. Therefore, in this final rule, we provide persons subject to the security plan requirement 6 months from the effective date of the final rule to develop and implement security plans.

G. Training

The HMR currently require hazmat employees to be trained so they are: (1) Familiar with the general provisions of the HMR and can recognize and identify hazardous materials; (2) knowledgeable about specific HMR requirements applicable to functions performed; and (3) knowledgeable about emergency response information, self-protection measures, and accident prevention methods. A hazmat employee is one who directly affects hazardous materials transportation safety (§ 171.8). Hazmat employers must ensure that their hazmat employees are trained. For new employees, training must be completed within 90 days after employment or a change in job function. All hazmat employees must receive recurrent training every three years.

The safety training provided by hazmat employers may include the physical security of hazardous materials and ways to prevent vandalism and theft. However, such training may not be adequate to meet current threats. Because many hazardous materials transported in commerce may potentially be used as weapons of mass destruction or weapons of convenience, it is critical to the assurance of public safety that training for persons who offer and transport hazardous materials in commerce include a security component. Therefore, in the May 2, 2002 NPRM, we proposed to add a provision to § 172.704 to require the training of each hazmat employee to include a security component. We proposed that hazmat employees of persons required to have a security plan must be trained in the plan's specifics. In addition, we proposed that all hazmat employees must receive training that provides an awareness of the security issues associated with hazardous materials transportation and possible methods to enhance transportation security. As proposed in the NPRM, all hazmat employees would be required to

be trained within three months of issuance of a final rule.

Commenters generally support the proposal to require hazmat employee training to include a security component. However, commenters suggest that three months is not sufficient to implement and conduct training programs, particularly for hazmat employees of companies subject to the requirement for security plans. ARequiring security training for each hazmat employee within three months of the final rule effective date will be very difficult to implement. Once the requirements are published by DOT, companies will then be able to finalize development of their security training by combining components of the final rule with other requirement[s] of the hazmat employer's circumstances. Subsequently, training must be approved, disseminated within the company, trainers educated on the module's requirements, and hazmat employees scheduled for training." (Air Products) Some commenters suggest that security training should be required on a schedule consistent with current 3-year training cycles for hazmat employees. Others request implementation periods ranging from 6 months to one year.

We do not agree with commenters that development and implementation of transportation security awareness training will require a lengthy period for development and implementation. As we stated in the NPRM, to assist hazmat employers to meet any new security training requirements, we are developing a Hazardous Materials Transportation Security Awareness Training Module directed at law enforcement, industry, and hazmat personnel. Imminently, this training module will be available for distribution and use, free of charge. The module takes one hour to complete. This training module or similar training programs that may be developed by commercial vendors or hazmat employers will be sufficient to meet the security awareness training requirement in this final rule. However, we are sympathetic to the industry's concerns about the time required to complete training for all affected hazmat employees. Therefore, this final rule permits hazmat employers to provide security awareness training on the same 3-year schedule as other types of required hazmat training; thus, security awareness training must be provided an at employee's next scheduled retraining at or within the 3-year training cycle. However, we strongly encourage hazmat employers to provide security awareness training to hazmat employees on an accelerated schedule wherever possible.

We agree with commenters that 3 months from the effective date of a final rule does not provide sufficient time for training of hazmat employees by hazmat employers who are subject to the new requirement for security plans. However, once a security plan is implemented, we believe that employee training about its provisions should be completed no later than 3 months after the plan's implementation. Therefore, in this final rule, we are providing up to 9 months (6 months to develop and implement a security plan plus 3 months to train employees) for completion of training for these hazmat employees. As with the new requirement for security awareness training, it is not necessary to test or retain records concerning this new security plan training requirement until an employee's next scheduled retraining at or within the 3-year training cycle.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is a significant regulatory action under Executive Order 12866 and the regulatory policies and procedures of the Department of Transportation (44 FR 11034) because of substantial public interest. The Office of Management and Budget reviewed this final rule.

Compliance costs resulting from this final rule are associated with the new requirements for certain shippers and carriers to implement security plans and for hazmat employee training to include a security component. An analysis of the costs and benefits of this final rule is included in the rulemaking docket. The cost-benefit analysis also addresses comments we received on the estimates included in the May 2, 2002 NPRM.

Costs. We estimate that companies subject to the security plan requirement in this final rule will incur first-year compliance costs totaling about $54.3 million to develop and implement security plans and subsequent-year costs totaling about $11 million/year for annual updates to the plans. Each security plan will be unique; thus, it is difficult to develop cost estimates for the measures that companies may implement to enhance hazardous materials transportation security. Ultimately; we expect each company to make reasonable decisions on measures it can take to improve security. Because companies will set security priorities and factor costs into their decisions, we believe the measures they choose will be cost-effective. Accordingly, we have not attempted separately to cost out or justify these actions as part of this rulemaking.

For the security training mandated in this final rule, we estimate that companies will incur first-year compliance costs totaling about $34 million, with subsequent-year costs totaling about $18 million/year for recurrent training.

Benefits. Safety benefits of regulatory changes frequently can be estimated with some degree of precision. Incident and accident history often provide a basis for estimating fatality, injury, property damage, environmental damage, and similar costs to society that can be avoided by the implementation of new requirements. Models can even estimate the costs to society of high consequence, low probability accidents. Benefit estimates can then be balanced against the estimated costs of new requirements to determine whether the changes are justified.

Estimating the security benefits of new requirements is much more challenging. Accident causation probabilities, based on previous accident histories and analysis, can be estimated in a way that the chances of a criminal or terrorist act cannot. Indeed, the threat of attack is virtually impossible to assess from a quantitative standpoint. That hazardous materials in transportation are a possible target of terrorism or sabotage is undeniable; the probability that hazardous materials in transportation will be targeted is, at best, a guess. Similarly, the projected outcome of a terrorist attack cannot be precisely estimated. Given a decision to attack the system, one must assume that choices will be made to maximize consequences and damage.

It is possible to envision scenarios where hazardous materials in transportation could be used to inflict hundreds or even thousands of fatalities. Direct costs and those attributable to transportation system disruption that would surely result could easily total in the billions of dollars. We are operating under the premise that, in today's environment, it is necessary to take reasonable measures to reduce the likelihood that such events will be successful. The presence of such measures should, in fact, help deter potential attacks. The provisions we are adopting have been crafted with this in mind.

If the measures adopted by this rule have the potential of reducing the likelihood of success of such an attack, we believe they are worthwhile. Moreover, the American public has an expectation that reasonable measures will be taken to help ensure the security of chemicals and substances present in our society so that they are not used for nefarious purposes. We believe many, if not most, companies are taking or have already taken steps to develop systematic security plans and security awareness training. These requirements will help ensure a consistent approach in the area while permitting flexibilities that are important in keeping costs at reasonable levels.

In the end, when security measures are evaluated, an element of judgment is required to determine whether the costs of the measures are justified by the benefits that will accrue. We believe that the relatively small costs imposed on individual companies by the new security requirements in this final rule are more than offset by the potential benefits if there is a finite chance that these measures might avert a successful attack. The new requirements are not onerous. They are prudent, common-sense security measures that are in line with public expectations about the need to take action to protect hazardous materials shipments from terrorist acts.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. A complete analysis of the small business impacts of this final rule is available in the rulemaking docket. I hereby certify that, while the requirements in this final rule apply to a substantial number of small entities, there will not be a significant economic impact on those small entities.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts State, local, and Indian tribe requirements but does not impose any regulation with substantial direct effects on the States, the relationship between the National government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

In the NPRM, we invited comments on whether, and to what extent, State or local governments or Indian tribes should be permitted to impose similar additional requirements to those proposed in the NPRM. Commenters who address this issue unanimously agree that State, local, or tribal governments should not be permitted to impose hazardous materials transportation security requirements that differ from or are in addition to those adopted in this final rule. We agree. Therefore, in the absence of a waiver of preemption by the Secretary under 49 U.S.C. 5125(e) or unless it is authorized by another Federal law, a hazardous materials transportation security requirement of a State, political subdivision of a State, or Indian tribe is explicitly preempted if: (1) Complying with a requirement of the State, political subdivision or Indian tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or (2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in annual costs of $100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector. This rule is the least burdensome alternative to achieve the objective of the rule.

F. Paperwork Reduction Act

We submitted the information collection and recordkeeping requirements contained in this final rule to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995, section 1320.8(d). Title 5, Code of Federal Regulations requires us to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. Under the Paperwork Reduction Act, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number.

The May 2, 2002, NPRM included the following estimate for the information and recordkeeping burden resulting from the development and maintenance of security plans:

Hazardous Materials Security Plans

OMB No. 2137–xxxx

First Year Burden:
Total Annual Number of Respondents: 44,000.
Total Annual Responses: 44,000.
Total Annual Burden Hours: 880,000.
Total Annual Burden Cost: $26,400,000.

Subsequent Year Burden:
Total Annual Number of Respondents: 44,200.
Total Annual Responses: 44,200.
Total Annual Burden Hours: 48,000.
Total Annual Burden Cost: $1,440,000.

In the NPRM, we estimated that most companies would require about 20 hours to develop and implement a security plan conforming to the new regulatory requirements. This estimate was based on our understanding, confirmed by commenters to the NPRM, that many industry groups have developed guidance and model security plans for use by their members. Further, to assist persons to perform the risk management analysis required by this final rule, we designed a security template for the Risk Management Self-Evaluation Framework (RMSEF), developed to assist regulators, shippers, carriers, and emergency response personnel to examine their operations and consider how they assess and manage risk. The security template illustrates how risk management methodology can be used to identify points in the transportation process where security procedures should be enhanced within the context of an overall risk management strategy. Because of the widespread availability of tools to assist persons to develop and implement security plans, we concluded that the cost to an individual company to comply with the security plan requirement would average about $600 per affected entity.

Commenters who address security plan costs disagree with our conclusion. For example, one commenter estimates that, "[f]or the 6000 (15% of the total registrants) large HAZMAT registrants, [we] estimate that it will take a minimum of 200 hours to develop a comprehensive security plan (estimated cost for the 6000 registrants: $100 per hour x 200 hours = $120 million)." (Dangerous Goods Advisory Council) Other commenters offered similar cost estimates.

As commenters themselves point out, a number of industry associations have developed guidelines and model security plans that can be readily adapted to meet a company=s individual circumstances, thereby reducing individual company costs. Indeed, on June 5, 2002, the American Chemistry Council (ACC) made enhanced security activities mandatory for its members, to help assure the public that all member facilities are involved in making their neighbors and America more secure. The ACC Board approved a new Security Code under Responsible Care®, the industry's initiative for improving performance, that consists of increased specific commitments to further safeguard chemical operations from potential terrorist attacks. The Security Code includes measures to enhance chemical transportation security. Over 200 chemical companies are ACC members; in addition, nearly 40 industry associations are Responsible Care® Partner Associations.

Further, the Association of American Railroads has developed a "comprehensive Terrorism Risk Analysis and Security Management Plan. The industry formed a security task force * * * Outside consultants with expertise in intelligence and counter-terrorism were retained to provide advice on best practices. * * * The task force undertook a comprehensive risk analysis which identified critical assets, vulnerabilities, and threats, and assessed the overall risk to people, national security, and the nation's economy. The task force then proceeded to identify over fifty countermeasures. The Terrorism Risk Analysis and Security Management Plan * * * is now in effect. * * *" The Association of American Railroads includes 14 Class I railroads and 10 non-Class I railroads.

Many companies will not need to perform sophisticated analyses or develop complicated security plans in order to comply with the new requirement. Companies that only occasionally transport one of the hazardous materials to which the security plan requirement applies may be able to utilize one of the off-the-shelf security manuals now being marketed by several vendors. These manuals include information and guidelines that assist companies to identify and address areas of concern, including concerns related to personnel safety and security, site security, en route security, and training. One such security manual sells for $165, with regular updates available under an annual subscription costing about $80.

Because there is such a wealth of information and assistance available to companies subject to the security plan requirements of this final rule, we do not agree with commenters who suggest that our cost estimate for developing hazardous materials transportation security plans in the May 2 NPRM was "greatly under-estimated." Actual per-company costs will vary, depending on the nature of the materials transported and the size and complexity of a company's operations. We estimate that the time necessary to develop a security plan will range between our initial estimate of 20 hours per company and the industry estimate of 200 hours per company. For purposes of this analysis, we believe that, on average, a large company, using information available from RSPA, industry associations, or vendors, will require about 50 hours to develop a security plan that meets the requirements of this final rule. A smaller company, on average, will require about 25 hours to develop a security plan that meets the requirements of this final rule. Using Bureau of Labor Statistics information on employee compensation (March 2001), we estimate that the cost per hour of developing a security plan is $45.00 (one professional plus one administrative support staff). Thus, for the large companies subject to the security plan requirements of this final rule, we estimate that the costs to develop a security plan will total $14,512,500 (6,450 large entities × 50 hours/entity × $45/hour) or $2,250 per entity. For the small companies subject to the security plan requirements of this final rule, we estimate that the costs to develop a security plan will total $41,118,750 (36,550 small entities × 25 hours/entity × $45/hour) or $1,125 per entity.

This final rule requires companies to update security plans as necessary to account for changing circumstances. We expect that most companies will update their security plans at least once a year. We estimate the hours required to update a security plan will average 10 hours for a large company and 5 hours for a small entity. Thus, for large companies, we estimate the costs to update a security plan will total $2,902,500/year (6,450 large entities × 10 hours/entity × $45/hour), or $450 per entity. For small companies, we estimate the costs to update a security plan will total $8,223,650/year (36,550 small entities × 5 hours/entity × $45/hour), or $225 per entity.

Our revised estimate of the information collection and recordkeeping burden related to the security plan requirements in this final rule is shown below. This new information collection, "Hazardous Materials Security Plans", will be assigned an OMB control number after review and approval by OMB. We estimate that the new total information collection and recordkeeping burden resulting from the development and maintenance of security plans under this rule is as follows.

Hazardous Materials Security Plans

OMB No. 2137–xxxx

First Year Annual Burden:
Total Annual Number of Respondents: 42,000.
Total Annual Responses: 42,000.
Total Annual Burden Hours: 1,207,500.
Total Annual Burden Cost: $54,337,500.

Subsequent Year Burden:
Total Annual Number of Respondents: 42,200.
Total Annual Responses: 42,200.
Total Annual Burden Hours: 247,250.
Total Annual Burden Cost: $11,126,250.

Requests for a copy of this information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone (202) 366–8553. We will publish a notice advising interested parties of the OMB control number for this information collection when assigned by OMB.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Environmental Assessment

There are no significant environmental impacts associated with this final rule. An environmental assessment is available in the docket for this rulemaking.

List of Subjects in 49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we are amending title 49, chapter I, subchapter C, as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 172.704, paragraph (a) introductory text is revised, paragraphs (a)(4) and (a)(5) are added, and paragraph (b) is revised to read as follows:

§ 172.704 Training requirements.

(a) Hazmat employee training must include the following:

* * * * *

(4) *Security awareness training.* No later than the date of the first scheduled recurrent training after March 25, 2003, and in no case later than March 24, 2006, each hazmat employee must receive training that provides an awareness of security risks associated with hazardous materials transportation and methods designed to enhance transportation security. This training must also include a component covering how to recognize and respond to possible security threats. After March 25, 2003, new hazmat employees must receive the security awareness training required by this paragraph within 90 days after employment.

(5) *In-depth security training.* By December 22, 2003, each hazmat employee of a person required to have a security plan in accordance with subpart I of this part must be trained concerning the security plan and its implementation. Security training must include company security objectives, specific security procedures, employee responsibilities, actions to take in the event of a security breach, and the organizational security structure.

(b) *OSHA, EPA, and other training.* Training conducted by employers to comply with the hazard communication programs required by the Occupational Safety and Health Administration of the Department of Labor (29 CFR 1910.120 or 1910.1200) or the Environmental Protection Agency (40 CFR 311.1), or training conducted by employers to comply with security training programs required by other Federal or international agencies, may be used to satisfy the training requirements in paragraph (a) of this section to the extent that such training addresses the training components specified in paragraph (a) of this section.

* * * * *

3. Subpart I is added to read as follows:

Subpart I—Security Plans

Sec.
172.800 Purpose and applicability.
172.802 Components of a security plan.
172.804 Relationship to other Federal requirements.

172.800 Purpose and applicability.

(a) *Purpose.* This subpart prescribes requirements for development and implementation of plans to address security risks related to the transportation of hazardous materials in commerce.

(b) *Applicability.* By September 25, 2003, each person who offers for transportation in commerce or transports in commerce one or more of the following hazardous materials must develop and adhere to a security plan for hazardous materials that conforms to the requirements of this subpart:

(1) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this subchapter, in a motor vehicle, rail car, or freight container;

(2) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

(3) More than one L (1.06 qt) per package of a material poisonous by inhalation, as defined in § 171.8 of this subchapter, that meets the criteria for Hazard Zone A, as specified in §§ 173.116(a) or 173.133(a) of this subchapter;

(4) A shipment of a quantity of hazardous materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids;

(5) A shipment in other than a bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class under the provisions of subpart F of this part;

(6) A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR part 73; or

(7) A quantity of hazardous material that requires placarding under the provisions of subpart F of this part.

§ 172.802 Components of a security plan.

(a) The security plan must include an assessment of possible transportation security risks for shipments of the hazardous materials listed in § 172.800 and appropriate measures to address the assessed risks. Specific measures put into place by the plan may vary commensurate with the level of threat at a particular time. At a minimum, a security plan must include the following elements:

(1) *Personnel security.* Measures to confirm information provided by job applicants hired for positions that involve access to and handling of the hazardous materials covered by the security plan. Such confirmation system must be consistent with applicable Federal and State laws and requirements concerning employment practices and individual privacy.

(2) *Unauthorized access.* Measures to address the assessed risk that unauthorized persons may gain access to the hazardous materials covered by the security plan or transport conveyances being prepared for transportation of the hazardous materials covered by the security plan.

(3) *En route security.* Measures to address the assessed security risks of shipments of hazardous materials covered by the security plan en route from origin to destination, including shipments stored incidental to movement.

(b) The security plan must be in writing and must be retained for as long as it remains in effect. Copies of the security plan, or portions thereof, must be available to the employees who are responsible for implementing it, consistent with personnel security clearance or background investigation restrictions and a demonstrated need to know. The security plan must be revised and updated as necessary to reflect changing circumstances. When the security plan is updated or revised, all copies of the plan must be maintained as of the date of the most recent revision.

§ 172.804 Relationship to other Federal requirements.

To avoid unnecessary duplication of security requirements, security plans that conform to regulations, standards, protocols, or guidelines issued by other Federal agencies, international organizations, or industry organizations may be used to satisfy the requirements in this subpart, provided such security plans address the requirements specified in this subpart.

Issued in Washington DC on March 19, 2003, under authority delegated in 49 CFR part 1.

Ellen G. Engleman,

Administrator, Research and Special Programs Administration.

[FR Doc. 03–7080 Filed 3–24–03; 8:45 am]
BILLING CODE 4910–60–P

VOL
68

ISS
57

MR
25

003

MI



Federal Register

Tuesday,
March 25, 2003

Part V

The President

Executive Order 13291—Further Adjustment of Certain Rates of Pay

Federal Register
Vol. 68, No. 57
Tuesday, March 25, 2003

Presidential Documents

Title 3—

The President

Executive Order 13291 of March 21, 2003

Further Adjustment of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered that Executive Order 13282 of December 31, 2002, is amended as follows:

Section 1. Section 3(c) of Executive Order 13282 is amended to read as follows:

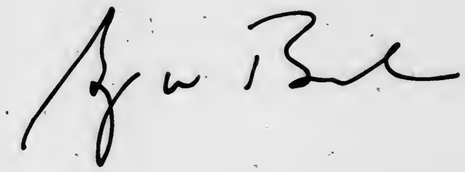
"(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a), section 140 of Public Law 97–92, and Public Law 108–6) at Schedule 7.".

Sec. 2. Section 5(a) of Executive Order 13282 is amended to read as follows:

"(a) Pursuant to section 5304 of title 5, United States Code, and in accordance with section 637 of Division J of Public Law 108–7, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.".

Sec. 3. Executive Order 13282 is amended by striking Schedules 7 and 9 attached thereto and inserting Schedules 7 and 9 attached hereto and made a part hereof.

Sec. 4. The amendments made by this order are effective on the first day of the first applicable pay period beginning on or after January 1, 2003.



THE WHITE HOUSE,
March 21, 2003.

Billing code 3195–01–P

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

Chief Justice of the United States	$198,600
Associate Justices of the Supreme Court	190,100
Circuit Judges	164,000
District Judges	154,700
Judges of the Court of International Trade	154,700

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

Locality Pay Area[1]	Rate
Atlanta, GA	10.85%
Boston-Worcester-Lawrence, MA-NH-ME-CT-RI	15.00%
Chicago-Gary-Kenosha, IL-IN-WI	16.15%
Cincinnati-Hamilton, OH-KY-IN	13.44%
Cleveland-Akron, OH	11.50%
Columbus, OH	11.78%
Dallas-Fort Worth, TX	12.10%
Dayton-Springfield, OH	10.67%
Denver-Boulder-Greeley, CO	14.77%
Detroit-Ann Arbor-Flint, MI	16.27%
Hartford, CT	15.56%
Houston-Galveston-Brazoria, TX	20.53%
Huntsville, AL	10.06%
Indianapolis, IN	9.83%
Kansas City, MO-KS	10.26%
Los Angeles-Riverside-Orange County, CA	17.71%
Miami-Fort Lauderdale, FL	13.81%
Milwaukee-Racine, WI	11.20%
Minneapolis-St. Paul, MN-WI	12.84%
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA	16.83%
Orlando, FL	9.65%
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	13.43%
Pittsburgh, PA	10.52%
Portland-Salem, OR-WA	12.97%
Richmond-Petersburg, VA	10.75%
Sacramento-Yolo, CA	13.29%
St. Louis, MO-IL	9.99%
San Diego, CA	14.07%
San Francisco-Oakland-San Jose, CA	21.08%
Seattle-Tacoma-Bremerton, WA	13.11%
Washington-Baltimore, DC-MD-VA-WV	12.74%
Rest of U.S.	9.62%

[1] Locality Pay Areas are defined in 5 CFR 531.603.

[FR Doc. 03-7313
Filed 3-24-03; 8:58 am]
Billing code 6325-01-C

Reader Aids

Federal Register
Vol. 68, No. 57
Tuesday, March 25, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202-741-6000
Laws	741-6000
Presidential Documents	
Executive orders and proclamations	741-6000
The United States Government Manual	741-6000
Other Services	
Electronic and on-line services (voice)	741-6020
Privacy Act Compilation	741-6064
Public Laws Update Service (numbers, dates, etc.)	741-6043
TTY for the deaf-and-hard-of-hearing	741-6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, GFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MARCH

9851-10140	3
10141-10344	4
10345-10650	5
10651-10952	6
10953-11310	7
11311-11462	10
11463-11732	11
11733-11966	12
11967-12282	13
12283-12568	14
12569-12796	17
12797-13218	18
13219-13614	19
13615-13802	20
13803-14126	21
14127-14306	24
14307-14526	25

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7648 10641
7649 10643
7650 10645
7651 10647
7652 10649
7653 13217
7654 13805

Administrative Orders:
Memorandums:
Memorandum of February 12, 2003 10141
Memorandum of March 11, 2003 12569
Memorandum of March 12, 2003 12281
Presidential Determinations:
No. 2003-15 of February 13, 2003 10651
No. 2003-16 of March 14, 2003 13803
Notices:
Notice of March 12, 2003 12563

Executive Orders:
4601 (Amended by: 13286) 10619
10977 12567
10113 (Amended by: 13286) 10619
10163 (Amended by: 13286) 10619
10179 (Amended by: 13286) 10619
10271 (Amended by: 13286) 10619
10448 (Amended by: 13286) 10619
10499 (Amended by: 13286) 10619
10554 (Amended by: 13286) 10619
10631 (Amended by: 13286) 10619
10637 (Amended by: 13286) 10619
10694 (Amended by: 13286) 10619
10789 (Amended by: 13286) 10619
10977 (Amended by: 13286; See: 13289) 10619, 12567
11016 (Amended by: 13286) 10619
11046 (Amended by: 13286) 10619
11079 (Amended by: 13286) 10619
11139 (Amended by: 13286) 10619
11190 (Amended by: 13286) 10619
11231 (Amended by: 13286) 10619
11239 (Amended by: 13286) 10619
11366 (Amended by: 13286) 10619
11438 (Amended by: 13286) 10619
11446 (Amended by: 13286) 10619
11448 (Amended by: 13286) 10619
11623 (Amended by: 13286) 10619
11645 (Amended by: 13286) 10619
11800 (Amended by: 13286) 10619
11858 (Amended by: 13286) 10619
11926 (Amended by: 13286) 10619
11965 (Amended by: 13286) 10619
12002 (Amended by: 13286) 10619
12146 (Amended by: 13286) 10619
12148 (Amended by: 13286) 10619
12160 (Amended by: 13286) 10619
12188 (Amended by: 13286) 10619
12208 (Amended by: 13286) 10619
12341 (Amended by: 13286) 10619
12382 (Amended by: 13286) 10619
12472 (Amended by: 13286) 10619
12501 (Amended by: 13286) 10619
12555 (Amended by: 13286) 10619
12580 (Amended by: 13286) 10619
12656 (Amended by: 13286) 10619
12657 (Amended by: 13286) 10619
12699 (Amended by: 13286) 10619
12727 (Amended by: 13286) 10619
12728 (Amended by: 13286) 10619
12733 (Amended by: 13286) 10619

12742 (Amended by: 13286).....10619
12743 (Amended by: 13286).....10619
12752 (See Memorandum of March 11, 2003).....12569
12777 (Amended by: 13286).....10619
12788 (Amended by: 13286).....10619
12789 (Amended by: 13286).....10619
12793 (Amended by: 13286).....10619
12807 (Amended by: 13286).....10619
12824 (Amended by: 13286).....10619
12830 (Amended by: 13286).....10619
12835 (Amended by: 13286).....10619
12870 (Amended by: 13286).....10619
12906 (Amended by: 13286).....10619
12919 (Amended by: 13286).....10619
12957 (See Notice of March 12, 2003).....12563
12959 (See Notice of March 12, 2003).....12563
12977 (Amended by: 13286).....10619
12978 (Amended by: 13286).....10619
12982 (Amended by: 13286).....10619
12985 (Amended by: 13286; See: 13289).....10619, 12567
12989 (Amended by: 13286).....10619
13011 (Amended by: 13286).....10619
13059 (See Notice of March 12, 2003).....12563
13076 (Amended by: 13286).....10619
13100 (Amended by: 13286).....10619
13112 (Amended by: 13286).....10619
13120 (Amended by: 13286).....10619
13130 (See: 13286).....10619
13133 (Amended by: 13286).....10619
13154 (Amended by: 13286).....10619
13165 (Amended by: 13286).....10619
13212 (Amended by: 13286).....10619
13223 (Amended by: 13286).....10619
13228 (Amended by: 13286).....10619
13231 (Amended by: 13286).....10619
13254 (Amended by: 13286).....10619
13257 (Amended by: 13286).....10619
13260 (Amended by: 13286; Revoked by: 13286, eff. 3/31/03).....10619
13271 (Amended by: 13286).....10619
13274 (Amended by: 13286).....10619
13276 (Amended by: 13286).....10619
13282 (Amended by: 13291).....14525
13284 (See: 13286).....10619
13286.....10619
13287.....10619
13288.....11457
13289.....12567
13290.....14305
13291.....14525

5 CFR

Ch. XIV.....10953
110.....10666
792.....14127
2416.....10953
2424.....10953
2429.....10953
2471.....10953
2472.....10953

6 CFR

9.....10912
15.....10886
17.....10892
21.....10904

7 CFR

301.....11311
318.....11967
319.....9851
652.....14131
911.....10345
944.....10345
959.....11463
982.....11733
984.....10347
989.....13219, 13615
1000.....13617
1001.....13617
1005.....13617
1006.....13617
1007.....13617
1030.....13617
1032.....13617
1033.....13617
1124.....13617
1126.....13617
1131.....13617
1135.....13617

Proposed Rules:

301.....13859
340.....11337
354.....13861
770.....12309
930.....9944, 13636
932.....11340
985.....11751
1205.....12310
1218.....11756
1219.....12881
1230.....11996
1405.....9944
1470.....13872
1499.....9944

8 CFR

1.....10922
2.....10922
103.....10922
217.....10954
235.....10143
239.....10922
1001.....10349
1003.....10349
1101.....10349
1103.....10349
1205.....10349
1208.....10349
1209.....10349
1212.....10349
1216.....10349
1235.....10349
1236.....10349
1238.....10349
1239.....10349
1240.....10349
1241.....10349
1244.....10349
1245.....10349
1246.....10349
1249.....10349
1270.....10349
1274a.....10349
1292.....10349
1337.....10349

9 CFR

1.....12283
50.....10361
92.....10667
97.....13861
130.....13861

Proposed Rules:

94.....11998
317.....11008
327.....11008

10 CFR

20.....14307
40.....10362
50.....12571
150.....10362
430.....10957

Proposed Rules

20.....14349
40.....10411
150.....10411
430.....11009
490.....10320

11 CFR

111.....12572

12 CFR

202.....13144, 14476

Proposed Rules:

203.....11010
225.....12316
915.....13238

13 CFR

121.....13807

14 CFR

Ch. 1.....10145
25.....9854, 10365, 12581
39.....10147, 10149, 10152, 10154, 10156, 10583, 10653, 11467, 11469, 11967, 11971, 12285, 12797, 12799, 12802, 12806, 12809, 12812, 13221, 13618, 14309, 14310, 14311, 14312
47.....10316
71.....10367, 10369, 10654, 11736, 11738, 12582, 12814, 13225, 13611, 14072, 14314, 14315
91.....12542, 14072
95.....14072
97.....10962, 10963, 13619, 13621
121.....12542, 14072
125.....14072
129.....14072
135.....12542, 14072
145.....12542

Proposed Rules:

21.....11475, 11759
39.....9947, 9950, 9951, 9954, 10185, 10188, 10413, 10416, 11014, 11015, 11342, 11476, 11479, 11760, 11762, 11764, 11999, 12318, 12614, 12615, 12618, 13239, 14350, 14351, 14353, 14355
43.....11475, 11759
71.....12621, 14359
93.....14276
121.....12882
145.....11475, 11759
255.....12622, 12883
399.....12622, 12883

15 CFR

740.....10586
743.....10586
772.....10586
774.....10586
902.....12814

16 CFR

304.....9856

17 CFR

4.....12583
200.....12780
240.....12780, 14315

Proposed Rules:

1.....12319
4.....12001, 12622

18 CFR

284.....13813
375.....9857
388.....9857

Proposed Rules:

4.....13988
5.....13988
16.....13988
385.....13988

19 CFR

4.....13623, 13819, 14476
10.....13820, 13827
12.....13835
113.....13623, 14476
178.....13623, 14476

Proposed Rules:

10.....14478
12.....13636
24.....13636
113.....13638
163.....14478
181.....12011

20 CFR

1.....14316
30.....14316
625.....10932

Proposed Rules:

404.....12639
416.....12639

21 CFR

165.....9873
201.....12584
510.....13225
520.....13626
530.....14134
558.....13839
610.....10157
888.....14134
1308.....14114, 14119
1310.....11471

Proposed Rules:

1.....10668
111.....10418, 12158, 14360
112.....12158
165.....9955
201.....12500
310.....12406
312.....12406
314.....12406
320.....12406
600.....12406
601.....12406
606.....12406, 12500
610.....12500
878.....13639

22 CFR

41.....13627
42.....13627, 13628

Proposed Rules:

211.....9944

23 CFR

655.....14138

24 CFR

25.....12766
28.....12766
30.....12766
81.....12766
92.....10160
180.....12766
207.....12792
906.....11714
3282.....12766
3500.....12766

Proposed Rules:

203.....11730
3285.....11448
3286.....11452

26 CFR

1.....10161, 10655, 11313, 12287, 12815, 12817, 13226
20.....10161
25.....10161
31.....10161
53.....10161
54.....10161
56.....10161
301.....10161, 11739, 14316
602.....10161, 11739, 12287, 12817

Proposed Rules:

1.....10190, 12324, 13242

27 CFR

4.....10076
5.....10076
7.....10076
555.....13768

Proposed Rules:

7.....14291
25.....14191

28 CFR

16.....14139, 14140
540.....10656

Proposed Rules:

28.....11481

29 CFR

1404.....10659
1910.....12301
1979.....14100
4022.....12303
4044.....12303

30 CFR

18.....10965
250.....14274
916.....14322
948.....10178

Proposed Rules:

70.....10784, 12641
72.....10940, 12641
75.....10784, 11770, 12641
90.....10784, 12641
206.....12643
920.....14360
950.....10193

31 CFR

1.....12584
103.....10965
515.....14141
560.....11741
575.....11741

Proposed Rules:

103.....12155

32 CFR

171.....11633
199.....11973

33 CFR

52.....9882
100.....13628
110.....13629
117.....9890, 13226, 13227, 13228, 14149
165.....12304, 13228, 13231, 13233, 14150, 14326, 14328
401.....11974

Proposed Rules:

117.....13242, 13641, 14170, 14364
165.....13244, 13643, 13647, 13649, 14170
334.....14364
402.....12644

34 CFR

Proposed Rules:

200.....13796

36 CFR

704.....11974

Proposed Rules:

7.....11019
219.....10421, 12155

37 CFR

1.....14332
2.....14332
3.....14332
4.....14332
5.....14332
102.....14332
104.....14332
150.....14332

Proposed Rules:

1.....14365
201.....13652

38 CFR

17.....11977, 13590
20.....13235
61.....13590

39 CFR

3001.....12588

40 CFR

9.....13608
52.....9892, 10966, 10969, 11316, 11977, 12590, 12825, 12827, 12829, 12831, 13630, 13840, 13843, 14151, 14154, 14156, 14159, 14161
62.....10659, 10661, 10663, 11472, 11978
63.....11745, 12590
70.....10969, 14163
82.....10370
122.....11325, 13608
123.....13608
124.....13608
125.....14164
130.....13608
141.....14502
180.....10370, 10377, 10972, 10983, 11330, 13845, 14165
228.....12592
271.....11981
300.....13633
312.....14339
439.....12266

Proposed Rules:

Ch. I.....10675, 12013
51.....12014
52.....11022, 11023, 12014, 12886, 12887, 13247, 13653, 13872, 14173, 14174, 14379, 14382
62.....10680, 10681, 11483, 11484, 12015
63.....12645
70.....11023
81.....13653, 14382
125.....13522
136.....11770, 11791
194.....12887
228.....11488
271.....12015
372.....13872
439.....12776

41 CFR

300–2.....12602
Ch. 304.....12602

42 CFR

50.....12306
412.....10987

Proposed Rules:

83.....11924, 14388
412.....10421, 11234

43 CFR

Proposed Rules:

4.....13657
4100.....9964, 11345

44 CFR

61.....9895
64.....9897
152.....12544
206.....9899

45 CFR

162.....11445

47 CFR

0.....11747, 13849
1.....
2.....10179, 11986, 12744
25.....11986
68.....13849
73.....10388, 10664, 10665, 11335, 11993, 12610, 12744, 14166
74.....12744
76.....13236, 13850, 14340
78.....12744
90.....10179
95.....9900
101.....12744

Proposed Rules:

15.....12015
54.....10430, 12020
73.....10681, 10682, 10683, 11345, 12023, 12024
74.....12652

48 CFR

Ch. 1.....13200, 13208
12.....13201, 13202
16.....13201
29.....13204
32.....13202, 13206
47.....13202
52.....13202, 13204, 13206
1817.....13634
1825.....11747

Proposed Rules:

501.....13212
538.....13212
552.....13212

49 CFR

1.....10988, 12833
107.....11748
171.....14341
172.....14510
175.....14341
190.....11748
191.....11748
192.....11748
193.....11748
195.....11748
198.....11748
199.....11748
219.....10108
225.....10108
240.....10108
572.....13856
1540.....9902

Proposed Rules:

192.....9966, 13249
397.....13250
544.....13887

50 CFR

17.....10388, 12611, 12834,

12863, 12982, 13370, 13498
226.....13370
300.....10989, 14167
622.....10180, 11003
635.....14167
648.....9905, 10181, 12612, 12814, 14347
660.....11182, 13857
679.....9902, 9907, 9924, 9942, 11004, 11994, 13635, 13857, 13858, 14168

Proposed Rules:
17.....12326, 12336, 13662, 13663
21.....12653
223.....13662
229.....10195
600.....9967, 11501, 11793
622.....11794
648.....9968, 11023, 11346, 14388
660.....12888, 13891

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 25, 2003

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies; published 3-25-03

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Wisconsin; published 1-24-03
Air quality planning purposes; designation of areas:
District of Columbia, Maryland, and Virginia; published 1-24-03
Superfund program:
Small Business Liability Relief and Brownsfields Revitalization Act; innocent landowners; standards and practices for all appropriate inquiry; published 1-24-03

FEDERAL COMMUNICATIONS COMMISSION
Television broadcasting:
Satellite Home Viewer Improvement Act of 1999; implementation—
Satellite retransmissions of broadcast signals; network nonduplication, sundicated exclusivity, and sports blackout rules; correction; published 3-25-03
Satellite Home Viewer Improvement Act of 1999; implementation—
Satellite retransmissions of broadcast signals; network nonduplication, sundicated exclusivity, and sports blackout rules; published 3-25-03

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicaid:
Managed care organizations; external quality review; published 1-24-03
Medicare and Medicaid:
Hospital conditions of participation; quality assessment and performance improvement program; published 1-24-03

HOMELAND SECURITY DEPARTMENT
Customs Service
Andean Trade Promotion and Drug Eradication Act; implementation; published 3-25-03

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Kansas; published 3-25-03

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
Offerors and transporters; security requirements; published 3-25-03

TRANSPORTATION DEPARTMENT
Saint Lawrence Seaway Development Corporation
Seaway regulations and rules:
Automatic Identification System transponder; published 2-28-03

TREASURY DEPARTMENT
Internal Revenue Service
Procedure and administration:
Unlawful tax collection actions; civil causes of action for damages; published 3-25-03

VETERANS AFFAIRS DEPARTMENT
Medical benefits:
Emergency treatment furnished at non-VA facilities to veterans for nonservice-connected conditions; payment or reimbursement; published 1-24-03

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT
Ocean freight claims administrative appeal process; comments due by 4-2-03; published 3-3-03 [FR 03-04574]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Raisins produced from grapes grown in—
California; comments due by 3-31-03; published 1-28-03 [FR 03-01965]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Raisins produced from grapes grown in California; comments due by 4-3-03; published 3-19-03 [FR 03-06663]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Spearmint oil produced in Far West; comments due by 4-1-03; published 3-12-03 [FR 03-05842]

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Ocean freight claims administrative appeal process; comments due by 4-2-03; published 3-3-03 [FR 03-04574]

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Child nutrition programs:
Women, infants, and children; special supplemental nutrition programs —
Federal financial and participating reporting requirements and information confidentiality; comments due by 4-1-03; published 12-2-02 [FR 02-30223]

AGRICULTURE DEPARTMENT
Forest Service
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Age at which person can receive permits, and Regional Councils membership requirement change; comments due by 4-4-03; published 2-18-03 [FR 03-03742]

AGRICULTURE DEPARTMENT
Grain Inspection, Packers and Stockyards Administration
Fees:
Official inspection and weighing services; comments due by 3-31-03; published 2-28-03 [FR 03-04688]
Rice inspection services; comments due by 3-31-03; published 2-28-03 [FR 03-04689]

AGRICULTURE DEPARTMENT
Natural Resources Conservation Service
Loan and purchase programs:
Conservation Security Program; comments due by 4-3-03; published 3-21-03 [FR 03-06825]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Spiny dogfish; comments due by 4-4-03; published 2-18-03 [FR 03-03845]
Marine mammals:
Commercial fishing authorizations—
Atlantic Large Whale Take Reduction Plan; comments due by 4-3-03; published 3-4-03 [FR 03-04897]
Taking and importing—
Eastern North Pacific Southern Resident killer whales; comments due by 3-31-03; published 1-30-03 [FR 03-02031]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Commercially available off-the-shelf items; comments due by 3-31-03; published 1-30-03 [FR 03-01961]
Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02159]
Depreciation cost principle; comments due by 3-31-03; published 1-30-03 [FR 03-01962]
Insurance and pension costs; comments due by 3-31-03; published 1-30-03 [FR 03-01963]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Virgin Islands; comments due by 3-31-03; published 2-27-03 [FR 03-04517]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Virgin Islands; comments due by 3-31-03; published 2-27-03 [FR 03-04518]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 3-31-03; published 2-27-03 [FR 03-04512]
Maryland; comments due by 3-31-03; published 2-27-03 [FR 03-04515]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
West Virginia; comments due by 3-31-03; published 2-28-03 [FR 03-04629]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
West Virginia; comments due by 3-31-03; published 2-28-03 [FR 03-04630]
ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
4-(Dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane; comments due by 3-31-03; published 1-29-03 [FR 03-01768]
FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Nebraska and Iowa; comments due by 3-31-03; published 2-25-03 [FR 03-04363]
South Carolina; comments due by 3-31-03; published 2-25-03 [FR 03-04364]
GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Commercially available off-the-shelf items; comments due by 3-31-03; published 1-30-03 [FR 03-01961]
Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02159]
Depreciation cost principle; comments due by 3-31-03; published 1-30-03 [FR 03-01962]
Insurance and pension costs; comments due by 3-31-03; published 1-30-03 [FR 03-01963]
HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare and medicaid:
Acute care hospital inpatient prospective payment system; payment methodology for extraordinarily high-cost cases; comments due by 4-4-03; published 3-5-03 [FR 03-05121]
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Public Health Security and Bioterrorism Preparedness and Response Act of 2002; implementation:
Food facilities registration; comments due by 4-4-03; published 2-3-03 [FR 03-02443]
Food importation notice to FDA; comments due by 4-4-03; published 2-3-03 [FR 03-02444]
HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations:
Texas; comments due by 3-31-03; published 1-28-03 [FR 03-01873]
Drawbridge operations:
Florida; comments due by 3-31-03; published 8-28-02 [FR 02-21920]
Ports and waterways safety:
Portland Captain of Port Zone, ME; passenger vessels; security zones; comments due by 3-31-03; published 2-27-03 [FR 03-04635]
HOMELAND SECURITY DEPARTMENT
Immigration and Naturalization Service
Immigration:
Canada and Bermuda; visa and passport waiver removal for certain permanent residents; comments due by 4-1-03; published 1-31-03 [FR 03-02164]
INTERIOR DEPARTMENT
Fish and Wildlife Service
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Age at which person can receive permits, and Regional Councils membership requirement change; comments due by 4-4-03; published 2-18-03 [FR 03-03742]
Endangered and threatened species permit applications; comments due by 4-3-03; published 3-4-03 [FR 03-04987]
INTERIOR DEPARTMENT
National Park Service
Vehicles and traffic safety:
Motor vehicle operation under influence of alcohol or drugs; comments due by 4-1-03; published 1-31-03 [FR 03-02321]
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Wyoming; comments due by 4-3-03; published 3-4-03 [FR 03-04970]
JUSTICE DEPARTMENT
Drug Enforcement Administration
Records, reports, and exports of listed chemicals:
Chemical mixtures containing phosphorus; comments due by 4-1-03; published 1-31-03 [FR 03-02296]
LABOR DEPARTMENT
Occupational Safety and Health Administration
Construction safety and health standards:
Crane and Derrick Negotiated Rulemaking Advisory Committee; intent to establish; comments due by 3-31-03; published 2-27-03 [FR 03-04560]
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Commercially available off-the-shelf items; comments due by 3-31-03; published 1-30-03 [FR 03-01961]
Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02159]
Depreciation cost principle; comments due by 3-31-03; published 1-30-03 [FR 03-01962]
Insurance and pension costs; comments due by 3-31-03; published 1-30-03 [FR 03-01963]
NUCLEAR REGULATORY COMMISSION
Source material; domestic licensing:
Source material holdings; reporting requirements under international agreements; comments due by 4-4-03; published 3-5-03 [FR 03-05168]
NUCLEAR REGULATORY COMMISSION
Source material; domestic licensing:
Source material holdings; reporting requirements under international agreements; comments due by 4-4-03; published 3-5-03 [FR 03-05169]
SMALL BUSINESS ADMINISTRATION
Government contracting programs:
Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02158]
Small business size standards:
Facilities support services (including base maintenance); comments due by 4-4-03; published 2-3-03 [FR 03-02455]
SOCIAL SECURITY ADMINISTRATION
Social security benefits and supplemental security income:
Federal old age, survivors, and disability insurance, and aged, blind, and disabled—
Administrative law judges; video teleconference hearings; comments due by 4-4-03; published 2-3-03 [FR 03-02402]
STATE DEPARTMENT
Visas; nonimmigrant documentation:
Canada and Bermuda; visa and passport waiver removal for certain permanent residents; comments due by 4-1-03; published 1-31-03 [FR 03-02202]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Advisory circulars; availability, etc.:
Corrosion Prevention and Control Programs; development and implementation; comments due by 4-1-03; published 10-3-02 [FR 02-24933]
Air carrier certification and operations:
Corrosion Prevention and Control Programs; comments due by 4-1-03; published 10-3-02 [FR 02-24932]
Airworthiness directives:
BAE Systems (Operations) Ltd.; comments due by 3-31-03; published 2-27-03 [FR 03-04588]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 3-31-03; published 1-28-03 [FR 03-01816]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 3-31-03; published 1-29-03 [FR 03-01815]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 3-31-03; published 1-29-03 [FR 03-01827]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bombardier; comments due by 3-31-03; published 2-28-03 [FR 03-04739]
Dassault; comments due by 4-2-03; published 3-3-03 [FR 03-04839]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 3-31-03; published 2-28-03 [FR 03-04738]
Honeywell; comments due by 3-31-03; published 1-30-03 [FR 03-02094]
Airworthiness standards:
Special conditions—
Learjet Model 24, 24A, 24B, 24B-A, 24C, 24D, 24D-A, 24E, 24F, 24F-A, 25, 25A, 25B, 25C, 25D, and 25F airplanes; comments due by 4-2-03; published 3-3-03 [FR 03-04796]
Learjet Model 24/25 Series airplanes; comments due by 4-4-03; published 3-5-03 [FR 03-05129]
TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
Hazardous liquid transportation—
Gas transmission pipelines; integrity management in high consequence areas; comments due by 3-31-03; published 1-28-03 [FR 03-00603]
TREASURY DEPARTMENT
Foreign Assets Control Office
Reporting and procedures regulations:
Economic Sanctions Enforcement Guidelines; comment request; comments due by 3-31-03; published 1-29-03 [FR 03-01809]
TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Accuracy-related penalty; imposition defenses establishment; comments due by 3-31-03; published 12-31-02 [FR 02-32927]
TREASURY DEPARTMENT
Terrorism Risk Insurance Program; comments due by 3-31-03; published 2-28-03 [FR 03-04831]
TREASURY DEPARTMENT
Terrorism Risk Insurance Program; comments due by 3-31-03; published 2-28-03 [FR 03-04832]
VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
Herbicide exposure, disability or death caused by; effective dates of benefits; disposition of unpaid benefits after death of beneficiary; comments due by 3-31-03; published 1-28-03 [FR 03-01834]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 395/P.L. 108–10

Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

Last List March 10, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

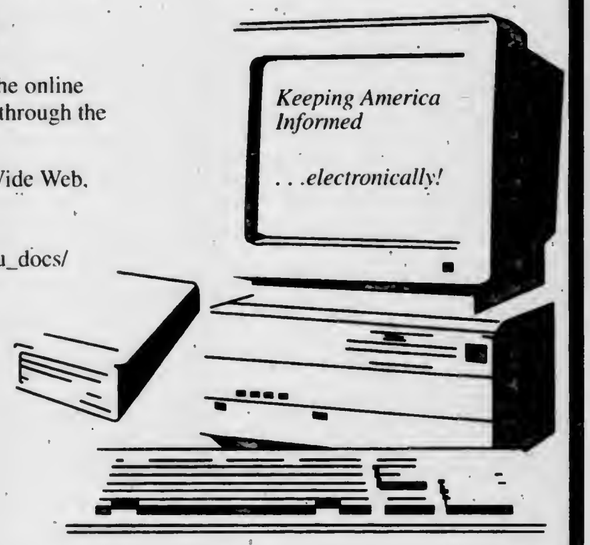
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

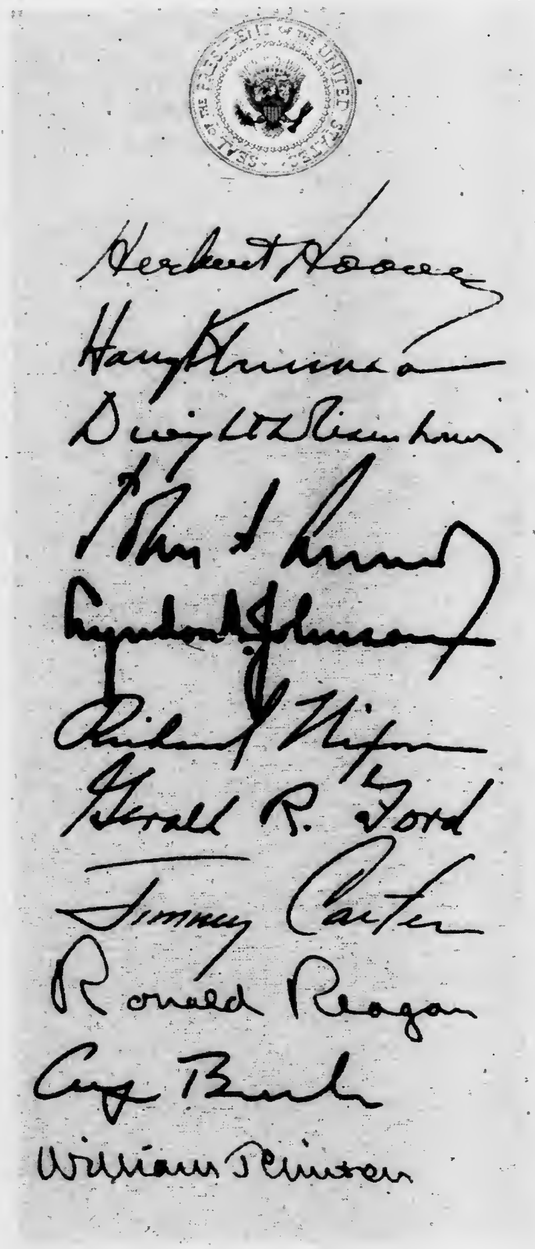
To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)



Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	$51.00
1993 (Book II)	$51.00
1994 (Book I)	$56.00
1994 (Book II)	$52.00
1995 (Book I)	$60.00
1995 (Book II)	$65.00
1996 (Book I)	$66.00
1996 (Book II)	$72.00
1997 (Book I)	$69.00
1997 (Book II)	$78.00
1998 (Book I)	$74.00
1998 (Book II)	$75.00
1999 (Book I)	$71.00
1999 (Book II)	$75.00
2000–2001 (Book I)	$68.50
2000–2001 (Book II)	$63.00
2000–2001 (Book III)	$75.00

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA (Rev. 5/02)

Order Now!

The United States Government Manual 2002/2003

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.



$49 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS • PERIODICALS • ELECTRONIC PRODUCTS

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
***7917**

☐ **YES**, please send me ____ copies of **The United States Government Manual** 2002/2003,
S/N 069–000–00145–9 at $49 ($68.60 foreign) each.

Total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:
☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date) *Thank you for your order!*

Authorizing signature 9/02

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $35 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $30 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.



Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscriptions for one year:

____ **LSA (List of CFR Sections Affected)**, (LCS) for $35 per year.
____ **Federal Register Index** (FRUS) $30 per year.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

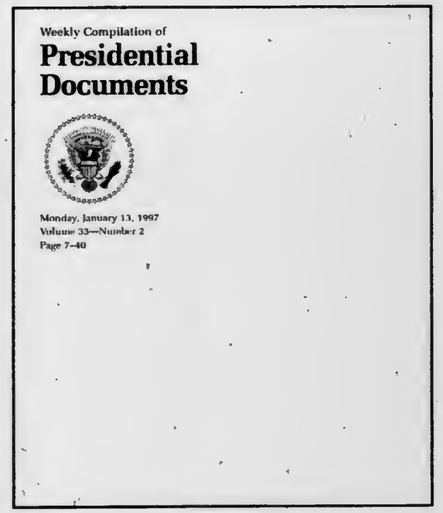
Please Choose Method of Payment:
☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date) *Thank you for your order!*

Authorizing Signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
*** 5420**

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $151.00 First Class Mail ☐ $92.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 4/00

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

OL
68
SS
57
MR
25
03
MI



Printed on recycled paper

VOL
68
ISS
58
MR
26
003
MI

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION



Federal Register

3–26–03 Wednesday
Vol. 68 No. 58 Mar. 26, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
68

ISS
58

MR
26

003

MI



Federal Register

3–26–03 Wednesday
Vol. 68 No. 58 Mar. 26, 2003
Pages 14527–14886

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 202–512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 202–512–1800
Assistance with public single copies 1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES
Subscriptions:
Paper or fiche 202–741–6005
Assistance with Federal agency subscriptions 202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 58
Wednesday, March 26, 2003

Editorial Note: In the **Federal Register** of Monday, March 24, 2003, the final page number is 68 FR 14308. In the issue of Tuesday, March 25, 2003, the first page number inadvertently began on 14307. None of the documents published in Monday's **Federal Register** are duplicated in Tuesday's issue. This pagination anomaly has no effect on the legal status of the material. Readers using the online version of the **Federal Register** available at *http://www.access.gpo.gov/nara* can access the documents using the Text and PDF links available via the appropriate day's Table of Contents, or by using the online search and retrieval tools.

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 14661

Agriculture Department
See Farm Service Agency
See Food Safety and Inspection Service
See Foreign Agricultural Service
See Forest Service
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Provincial Advisory Committees, CA, OR, and WA, 14574

Centers for Disease Control and Prevention
NOTICES
Committees; establishment, renewal, termination, etc.:
Tuberculosis Elimination Advisory Council, 14661–14662
Grants and cooperative agreements; availability, etc.:
Human immunodeficiency virus (HIV)—
China; HIV/AIDS/STD prevention, care and treatment, and surveillance activities, 14662
Meetings:
Children and Terrorism National Advisory Committee, 14662
Radiation and Worker Health Advisory Board, 14662–14663

Centers for Medicare & Medicaid Services
See Inspector General Office, Health and Human Services Department

Coast Guard
RULES
Drawbridge operations:
Illinois, 14536–14537

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Committee for the Implementation of Textile Agreements
NOTICES
Export visa requirements; certification, waivers, etc.:
Pakistan, 14586–14588

Defense Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14588–14589
Arms sales notification; transmittal letter, etc., 14589–14598
Meetings:
Defense Acquisition University Board of Visitors, 14598
Medicare-Eligible Retiree Health Care Board of Actuaries, 14598
Science Board, 14598–14599
Reports and guidance documents; availability, etc.:
Information disseminated by Federal agencies; quality, objectivity, utility, and integrity guidelines, 14599
Travel per diem rates, civilian personnel; changes, 14599–14604

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14604–14605

Employment and Training Administration
NOTICES
Adjustment assistance:
ABM, 14709
Border Apparel, 14709
Cerf Brothers Bag Co., 14709–14710
Gerber Plumbing Fixtures Corp., 14710
Manufacturers Services Ltd., 14710
North American Marine Jet, Inc., 14710
Potlatch Corp., 14710
Precision Twist Drill Co. et al., 14710–14713
Producto Machine Co., 14713
Tordenskjold Marine Mobile, Inc., 14713
Adjustment assistance and NAFTA transitional adjustment assistance:
E.M. Bair et al., 14706–14708
Patterson UTI Drilling et al., 14708–14709

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Electricity export and import authorizations, permits, etc.:
AIG Energy Inc., 14605–14606
USGen New England, Inc., 14606
Grants and cooperative agreements; availability, etc.:
Education Workforce Development Program, 14606–14607
Meetings:
Secretary of Energy Advisory Board, 14607

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Kansas, 14540–14542
Missouri, 14537–14540

Virginia, 14542–14545
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Kansas, 14570
Missouri, 14570
NOTICES
Air programs; State authority delegations:
Pennsylvania, 14617–14619
Pesticide, food, and feed additive petitions:
BASF Corp., 14628–14635
Interregional Research Project (No. 4), 14619–14626
Pesticides; emergency exemptions, etc.:
Quinoxyfen, 14626–14628
Reports and guidance documents; availability, etc.:
Health Effects Test Guideline; Skin Sensitization, 14635–14636
Superfund; response and remedial actions, proposed settlements, etc.:
National Electric Coil Site, KY, 14636–14637
Toxic and hazardous substances control:
New chemicals—
Receipt and status information, 14637–14640

Farm Service Agency
RULES
Program regulations:
Loan and grant program funds; allocation methodology and formulas, 14527–14528

Federal Aviation Administration
RULES
Airworthiness directives:
Raytheon, 14530–14532
Saab, 14533–14534
PROPOSED RULES
Airworthiness directives:
Mitsubishi Heavy Industries, Ltd., 14558–14562

Federal Bureau of Investigation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14698–14699

Federal Communications Commission
NOTICES
Common carrier services:
Wireless telecommunications services—
Lower 700 MHz band; licenses auction; notice and filing requirements, etc., 14640–14656

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Gulf South Pipeline Co. L.P. et al., 14610–14613
Environmental statements; notice of intent:
Algonquin Gas Transmission Co., 14613–14615
Hydroelectric applications, 14615–14617
Applications, hearings, determinations, etc.:
Boundary Gas, Inc., 14607
Colorado Interstate Gas Co., 14608
Iroquois Gas Transmission System, L.P., 14608
Kinder Morgan Interstate Gas Transmission LLC, 14608–14609
Louisiana Intrastate Gas Company, L.L.C., 14609
Paiute Pipeline Co., 14609
Transcontinental Gas Pipe Line Corp., 14609–14610
Williston Basin Interstate Pipeline Co., 14610

Federal Motor Carrier Safety Administration
NOTICES
Motor carrier safety standards:
Driver qualifications—
Adams, Carl W., et al.; vision requirement exemptions; correction, 14749

Federal Reserve System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14657–14658
Banks and bank holding companies:
Change in bank control, 14658
Formations, acquisitions, and mergers, 14658–14659
Permissible nonbanking activities, 14659

Federal Trade Commission
NOTICES
Telemarketing sales rule, 14659–14660

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Mussels in Mobile River Basin, AL, 14751–14832
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Lewis County, WA; Tagshinney Tree Farm conservation plan, 14581–14583

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14663–14665
Human drugs:
Patent extension; regulatory review period determinations—
TEQUIN, 14665–14666
Medical devices:
Premarket approval applications, list; safety and effectiveness summaries availability, 14666–14667
Meetings:
Medical Devices Advisory Committee, 14667

Food Safety and Inspection Service
NOTICES
Meetings:
International Meat and Poultry Food Safety Conference, 14574–14575

Foreign Agricultural Service
PROPOSED RULES
Foreign aid:
McGovern-Dole International Food for Education and Child Nutrition Program, 14546–14558

Forest Service
NOTICES
Environmental statements; notice of intent:
Wasatch-Cache National Forest, UT, 14575–14576
Meetings:
Resource Advisory Committees—
Sierra County, 14577
Tehama County, 14576–14577

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry

See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14660
Meetings:
Vital and Health Statistics National Committee, 14660–14661

Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14667–14668

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Socio-Economic Change in Cities Research, 14833–14866

Inspector General Office, Health and Human Services Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14668–14669

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See Reclamation Bureau

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14743–14748

International Trade Administration
NOTICES
Antidumping:
Petroleum wax candles from—
China, 14578
Silicon metal from—
Russia, 14578–14579
Steel concrete reinforcing bars from—
Turkey, 14579–14580
Countervailing duties:
Cut-to-length carbon steel plate from—
Mexico, 14580
Roasted in-shell pistachios from—
Iran, 14580–14581

International Trade Commission
NOTICES
Import investigations:
Andean Trade Preference Act; effect on U.S. economy and on Andean drug crop eradication, 14697

Justice Department
See Federal Bureau of Investigation
See Juvenile Justice and Delinquency Prevention Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14698

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Strengthening Abuse and Neglect Courts in America; Management Information Systems Project, 14699–14705

Labor Department
See Employment and Training Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14705–14706

Land Management Bureau
NOTICES
Closure of public lands:
Nevada, 14685
Committees; establishment, renewal, termination, etc.:
Resource Advisory Councils—
Eastern Washington, 14685–14686
Northeast California, 14685
Environmental statements; notice of intent:
White River Resource Area, CO, 14686
Meetings:
Resource Advisory Councils—
Alaska, 14686–14687
Realty actions; sales, leases, etc.:
Arizona, 14687–14688
California, 14688–14689
Nevada, 14689–14691
Oregon, 14691–14692
Recreation management restrictions, etc.:
Jackson County, OR; motorized and mechanized vehicle use; supplementary rules, 14692–14694
Resource management plans, etc.:
Lemhi Resource Area, ID, 14694–14696

Minerals Management Service
PROPOSED RULES
Royalty management:
Relief or reduction in rates; deep gas provisions, 14867–14886
NOTICES
Meetings;
Minerals Management Advisory Board, 14696–14697

National Aeronautics and Space Administration
RULES
Grant and Cooperative Agreement Handbook:
Approvals and reviews, 14535–14536

National Archives and Records Administration
NOTICES
Reports and guidance documents; availability, etc.:
Appraisal Policy, 14713

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14669–14671
Meetings:
National Cancer Institute, 14671
National Heart, Lung, and Blood Institute, 14671–14672

National Human Genome Research Institute, 14672
National Institute of Allergy and Infectious Diseases, 14675–14677
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 14678
National Institute of Child Health and Human Development, 14673–14674
National Institute of Dental and Craniofacial Research, 14678
National Institute of Diabetes and Digestive and Kidney Diseases, 14675, 14677
National Institute of Environmental Health Sciences, 14675–14676
National Institute of General Medical Sciences, 14674
National Institute of Mental Health, 14673–14674, 14677
National Institute of Neurological Disorders and Stroke, 14677–14679
National Institute on Deafness and Other Communication Disorders, 14674–14675
National Library of Medicine, 14679
Scientific Review Center, 14679–14681

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish, 14545
PROPOSED RULES
Fishery conservation and management:
Magnuson-Stevens Act provisions—
Domestic fisheries; exempted fishing permit applications, 14570–14571
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish, 14571–14573
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Lewis County, WA; Tagshinney Tree Farm conservation plan, 14581–14583
Grants and cooperative agreements; availability, etc.:
National Sea Grant College Program—
Dean John A. Knauss Marine Policy Fellowship, 14583–14585
Meetings:
New England Fishery Management Council, 14585
Permits:
Marine mammals, 14585–14586

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 14713–14714

Nuclear Regulatory Commission
RULES
Radioactive materials; shipments; filing and advance notification requirements, 14528–14530

Overseas Private Investment Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14714–14715

Patent and Trademark Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14586

Personnel Management Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14715
Meetings:
Federal Prevailing Rate Advisory Committee, 14715

Reclamation Bureau
NOTICES
Meetings:
Glen Canyon Dam Adaptive Management Work Group, 14697

Rural Business-Cooperative Service
RULES
Program regulations:
Loan and grant program funds; allocation methodology and formulas, 14527–14528

Rural Housing Service
RULES
Program regulations:
Loan and grant program funds; allocation methodology and formulas, 14527–14528

Rural Utilities Service
RULES
Program regulations:
Loan and grant program funds; allocation methodology and formulas, 14527–14528
NOTICES
Environmental statements; availability, etc.:
Lawrence County Generation Project, IN, 14577–14578

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14715–14717
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 14717–14723
Chicago Board Options Exchange, Inc., 14723–14727
International Securities Exchange, Inc., 14727–14730
International Securities Exchange LLC, 14728–14729
National Association of Securities Dealers, Inc., 14730–14732
National Futures Association, 14732–14735
Pacific Exchange, Inc., 14735–14737
Philadelphia Stock Exchange, Inc., 14737–14739

Small Business Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14739–14740

Social Security Administration
PROPOSED RULES
Organization and procedures:
Assignment of Social Security numbers for nonwork purposes; evidence requirements, 14563–14567

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14681–14682
Grants and cooperative agreements; availability, etc.:
Methamphetamine and Inhalant Abuse Prevention, 14683–14685

Minority Communities; Substance Abuse and HIV Prevention Services Program, 14682–14683

Surface Transportation Board
NOTICES
Rail carriers:
Cost recovery procedures—
Adjustment factor, 14740
Railroad operation, acquisition, construction, etc.:
Burlington Northern & Santa Fe Railway Co., 14740–14741
Central of Georgia Railroad Co., 14741
Tongue River Railroad Co., 14741–14742

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14742–14743
Organization, functions, and authority delegations:
Director, Foreign Assets Control Office, 14743

Veterans Affairs Department
PROPOSED RULES
Adjudication; pensions, compensation, dependency, etc.:
Chronic lymphocytic leukemia; presumptive service connection, 14567–14570

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 14751–14832

Part III
Housing and Urban Development Department, 14833–14866

Part IV
Interior Department, Minerals Management Service, 14867–14886

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
1940.....14527
Proposed Rules:
1599.....14546

10 CFR
70.....14528
71.....14528
73.....14528

14 CFR
39 (2 documents).....14530, 14533
1260.....14535
1274.....14535
Proposed Rules:
39.....14558

20 CFR
Proposed Rules:
422.....14563

30 CFR
Proposed Rules:
203.....14752

33 CFR
117.....14536

38 CFR
Proposed Rules:
3.....14567

40 CFR
52 (3 documents).....14537, 14540, 14542
Proposed Rules:
52 (2 documents).....14570

50 CFR
648.....14545
Proposed Rules:
17.....14868
600.....14570
648.....14571

Rules and Regulations

Federal Register
Vol. 68, No. 58
Wednesday, March 26, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1940

RIN 0570–AA30

Methodology and Formulas for Allocation of Loan and Grant Program Funds

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is amending the regulations for allocating program funds to its State Offices. This action is needed to add the Rural Business Opportunity Grant (RBOG) Program and update the formulas used for the Rural Business Enterprise Grant (RBEG) and Business and Industry (B&I) Guaranteed and Direct Loan programs. The intended effect of this action is to update the formula used for allocating B&I and RBEG funds among State Offices and provide a regulatory formula for allocating RBOG funds.

EFFECTIVE DATE: April 25, 2003.

FOR FURTHER INFORMATION CONTACT: Diane Berger, Loan Specialist, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, Room 6868, 1400 Independence Ave. SW., Washington, DC 20250–3225, Telephone (202) 720–2383. The TTD number is (800) 877–8339 or (202) 708–9300.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not-significant and has not been reviewed by the Office of Management and Budget.

Programs Affected

The Catalog of Federal Domestic Assistance numbers for the programs impacted by this action are 10.773, Rural Business Opportunity Grants; 10.769, Rural Business Enterprise Grants; and 10.768, Business and Industry loans.

Intergovernmental Consultation

The Programs listed are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Paperwork Reduction Act

There are no reporting and recordkeeping requirements associated with this final rule.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. This rule is intended to foster cooperation between the Federal Government and the states and local governments, and reduces, where possible, any regulatory burden imposed by the Federal Government that impedes the ability of states and local governments to solve pressing economic, social and physical problems in their state.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given this rule; and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule, unless those regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RBS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Thus this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

RBS is amending its regulations for allocating program funds among its State Offices. This action is necessary to provide a regulatory basis for allocating funds for a new program, RBOG. Also, adjustments need to be made in the formulas for allocating RBEG and B&I funds to reflect current policies and to add that one of the factors used for RBEG is the State percentage of national rural population with income below the poverty level.

Discussion of Comments

This rule was published in the **Federal Register** as a proposed rule on

August 3, 2000 (65 FR 47695) with public comments invited through October 2, 2000. No comments were received.

List of Subjects in 7 CFR Part 1940

Administrative practice and procedure, Agriculture, Allocations, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

PART 1940—GENERAL

1. The authority citation for part 1940 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 42 U.S.C. 1480.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

2. Amend section 1940.588 by removing paragraph (k) and revising the heading and paragraphs (d), (g), (h), and (j) to read as follows:

§ 1940.588 Business and Industry Guaranteed and Direct Loans.

* * * * *

(d) *Transition formula.* The transition formula is not used for B&I Guaranteed and Direct Loans.

* * * * *

(g) *Reserve. See* § 1940.552(g). States may request reserve funds from the B&I reserve when all of the state allocation has been obligated or will be obligated to the project for which the request is made.

(h) *Pooling of funds. See* § 1940.552(h). Funds are pooled near fiscal year-end. Pooled funds will be placed in a reserve and made available on a priority basis to all States.

* * * * *

(j) *Suballocation by the State Director.* Suballocation by the State Director is authorized for this program.

3. Amend section 1940.589 by removing paragraph (k) and revising paragraphs (b)(1)(ii), (g), and (h) to read as follows:

§ 1940.589 Rural Business Enterprise Grants.

* * * * *

(b) * * *

(1) * * *

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

* * * * *

(g) *Reserve. See* § 1940.552(g).

(h) *Pooling of funds. See* § 1940.552(h). Funds are pooled near fiscal year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

* * * * *

4. Add section 1940.593 to read as follows:

§ 1940.593 Rural Business Opportunity Grants.

(a) *Amount available for allocations. See* § 1940.552(a).

(b) *Basic formula criteria, data source, and weight. See* § 1940.552(b).

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) The data source for each criterion is based on the latest census data available. The percentage representing each criterion is multiplied by the weight factor and added to arrive at a State Factor (SF). The SF cannot exceed .05.

SF = (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 25 percent) + (criterion (b)(1)(iii) × 25 percent)

(c) *Basic formula allocation. See* § 1940.552(c).

(d) *Transition formula.* The transition formula is not used for Rural Business Opportunity Grants (RBOG).

(e) *Base allocation. See* § 1940.552(e).

(f) *Administrative allocation.* The administrative allocation is not used for RBOG.

(a) *Reserve. See* § 1940.552(g).

(h) *Pooling of funds. See* § 1940.552(h). Funds are pooled near fiscal year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation. See* § 1940.552(i). The allocation of funds is made available to States on an annual basis.

(j) *Suballocation by the State Director.* Suballocation by the State Director is authorized for this program.

Dated: March 17, 2003.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 03–7237 Filed 3–25–03; 8:45 am]

BILLING CODE 3410–XY–U

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 70, 71, and 73

RIN 3150–AH09

Filing and Notification Requirements for the Shipments of Certain Radioactive Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise filing and advance notification requirements for the shipments of certain radioactive materials. These amendments are necessary to reflect the recent organizational and administrative changes within NRC and to inform the public and licensees of these changes.

EFFECTIVE DATE: March 26, 2003.

FOR FURTHER INFORMATION, CONTACT: Kim Karcagi, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6701, e-mail: *kxk2@nrc.gov*, or Philip Brochman, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6557, e-mail: *PGB@nrc.gov*.

SUPPLEMENTARY INFORMATION: In 1995, NRC transferred responsibility for receiving advance notification of shipments of certain licensed radioactive material from the Office of Nuclear Material Safety and Safeguards (NMSS), Division of Industrial and Medical Nuclear Safety, and NRC Regional Administrators, to the Spent Fuel Project Office (SFPO) in NMSS. On January 25, 2002, NRC issued a final rule (67 FR 3584) that amended the regulations in 10 CFR Parts 1, 20, 34, 70, 71, 72, and 73, to reflect these and other changes. On April 2, 2002, the Commission created the Office of Nuclear Security and Incident Response (NSIR). The Division of Nuclear Security (DNS) within NSIR was assigned the responsibility for receiving advance notifications, under Parts 70, 71, and 73, for shipments of certain radioactive materials. Accordingly, licensees should address these advance notifications to the DNS, rather than the SFPO. This final rule will inform licensees and the public of these organizational changes.

Because these minor amendments only reflect organizational changes, the notice and comment provisions of the Administrative Procedures Act do not apply, pursuant to 5 U.S.C. 553(b)(A). These amendments are effective on publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date, pursuant to 5 U.S.C. 553(d)(3), because these amendments are of a minor and administrative nature, dealing with NRC's organization.

Environmental Impact: Categorical Exclusion

NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0009, 3150–0008, and 3150–0002.

Public Protection Notification

The NRC may not conduct nor sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule, because this rule is administrative, in that it amends the regulations to update the filing and advance notification requirements. These are considered minor non-substantive amendments and will not have a significant impact on NRC licensees or the public.

Backfit Analysis

NRC has determined that the backfit rules do not apply to this final rule, because this rule does not involve any provisions that would impose a backfit, as defined in 10 CFR Chapter 1. Therefore, a backfit analysis is not required for this rule.

List of Subjects

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, NRC is adopting the following amendments to 10 CFR Parts 70, 71, and 73.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

§ 70.5 [Amended]

2. Section 70.5 is amended as follows:

a. In paragraphs (a)(1) and (a)(2), after the words "Director, Office of Nuclear Material Safety and Safeguards" add the words "and Director, Office of Nuclear Security and Incident Response,".

b. In paragraph (b), remove the word "five" and add, in its place, the word "four".

§ 70.20b [Amended]

3. Section 70.20b is amended as follows:

a. In paragraphs (f)(1) and (g)(1), remove the words "Director, Spent Fuel Project Office," and add, in their place, the words "Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security,".

b. In paragraphs (f)(2)(ii) and (f)(2)(iii), remove the words "Director, Spent Fuel Project Office has been notified by telephone at (301) 415–8500," and add, in their place, the words "Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security has been notified by telephone at (301) 415–6828,".

§ 70.32 [Amended]

4. Section 70.32 is amended as follows:

a. In paragraph (c)(2), remove the word "five" and add, in its place, the word "four".

b. In paragraph (c)(2), after the words "Director, Office of Nuclear Material Safety and Safeguards," add the words "and Director, Office of Nuclear Security and Incident Response,".

c. In paragraph (e), after the words "Director, Office of Nuclear Material Safety and Safeguards," add the words "and Director, Office of Nuclear Security and Incident Response,".

d. In paragraph (i), after the words "Director, Office of Nuclear Material Safety and Safeguards," add the words "and Director, Office of Nuclear Security and Incident Response,".

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

5. The authority citation for Part 71 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

§ 71.97 [Amended]

6. Section 71.97 is amended as follows:

a. In paragraphs (c)(1) and (f)(1), remove the words "Director, Spent Fuel Project Office." and add, in their place, the words "Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security.".

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

7. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701,

106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

§ 73.4 [Amended]

8. Section 73.4 is amended as follows:

a. In the first sentence, after the words "as appropriate," add the words "and Director, Office of Nuclear Security and Incident Response,".

§ 73.26 [Amended]

9. Section 73.26 is amended as follows:

a. In paragraph (i)(6), remove the words "Director, Spent Fuel Project Office" and add, in their place, the words "Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security".

§ 73.27 [Amended]

10. Section 73.27 is amended as follows:

a. In paragraph (b), in the first, second, third, and fourth sentences, remove the words "Director, Spent Fuel Project Office" and add, in their place, the words "Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security".

§ 73.67 [Amended]

11. Section 73.67 is amended as follows:

a. In paragraph (e)(7)(ii), remove the words "Director, Spent Fuel Project Office" and add, in their place, the words "Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security".

§ 73.71 [Amended]

12. Section 73.71 is amended as follows:

a. In paragraph (a)(4), remove the words "Director, Spent Fuel Project Office." and add, in their place, the words "Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security.".

§ 73.72 [Amended]

13. Section 73.72 is amended as follows:

a. In paragraph (a)(1), remove the words "Director, Spent Fuel Project Office," and add, in their place, the words "Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security,".

b. In paragraphs (a)(4) and (a)(5), remove the words "Director, Spent Fuel Project Office by telephone at (301) 415–8500" and add, in their place, the words "Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security at (301) 415–6828".

§ 73.73 [Amended]

14. Section 73.73 is amended as follows:

a. In paragraph (a)(1), remove the words "Director, Spent Fuel Project Office," and add, in their place, the words "Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security,".

b. In paragraph (b), remove the words "Director, Spent Fuel Project Office at (301) 415–8500." and add, in their place, the words "Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security at (301) 415–6828.".

§ 73.74 [Amended]

15. Section 73.74 is amended as follows:

a. In paragraph (a)(1), remove the words "Director, Spent Fuel Project Office," and add, in their place, the words "Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security,".

b. In paragraph (b), remove the words "Director, Spent Fuel Project Office at (301) 415–8500." and add, in their place, the words "Director, Office of Nuclear Security and Incident Response, Division of Nuclear Security at (301) 415–6828.".

Dated at Rockville, Maryland, this 11th day of March, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–7265 Filed 3–25–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–18–AD; Amendment 39–13093; AD 2003–06–06]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800XP and 800 (Including Variant U–125A) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model Hawker 800XP and 800 (including variant U–125A) airplanes, that requires a one-time inspection to identify the bolts installed at certain locations in the wing or fuselage, and corrective actions if necessary. The actions specified by this AD are intended to prevent failure of certain attachment bolts due to manufacturing discrepancies, which could result in reduced structural integrity of the airplane, and loss of system function for flaps, controls, and landing gear. This action is intended to address the identified unsafe condition.

DATES: Effective April 30, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 30, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Ostrodka, Senior Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4129; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 800XP and 800 (including variant U–125A) airplanes was published in the **Federal Register** on December 2, 2002 (67 FR 71505). That action proposed to require a one-time inspection to identify the bolts installed at certain locations in the wing or fuselage, and corrective actions if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Editorial Changes

In the notice of proposed rulemaking (NPRM) we stated that, for Model Hawker 800 (including variant U–125A) airplanes, the proposed actions should be accomplished in accordance with Raytheon Service Bulletin SB 51–3421, Revision 1, dated November 2001. Both Revision 1 and the original issue of that service bulletin reference Appendix 1, dated December 2000, as an additional source of service information for performing the actions required by this final rule. Therefore, we have changed the service bulletin citation throughout this final rule to include Appendix 1.

We also stated in the NPRM that the proposed actions were to be accomplished per Raytheon Service Bulletins SB 51–3408, dated October 2000; and SB 51–3426, Revision 1, dated November 2001. However, SB 51–3408, SB 51–3426, and SB 51–3421 have an attached form titled Service Bulletin/Kit Drawing Report Fax. Throughout this final rule the citations for these service bulletins have been changed to exclude the form. Although this final rule does include a reporting requirement, it does not require that this form be completed by operators and submitted to the airplane manufacturer.

Conclusion

After careful review of the available data, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 104 airplanes of the affected design in the worldwide fleet. We estimate that 76 airplanes of U.S. registry will be affected by this AD, that it will take approximately 44 or 600 work hours per airplane (depending on configuration) to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $2,640 or $36,000 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–06–06 Raytheon Aircraft Company: Amendment 39–13093. Docket 2001–NM–18–AD.

Applicability: Model Hawker 800XP and 800 (including variant U–125A) airplanes, certificated in any category; serial numbers 258287 through 258390, excluding the following serial numbers:

258289, 258291, 258292, 258293, 258294, 258295, 258301, 258303, 258310, 258312, 258313, 258315, 258321, 258336, 258343

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of certain attachment bolts due to manufacturing discrepancies, which could result in reduced structural integrity of the airplane, and loss of system function for flaps, controls, and landing gear, accomplish the following:

Inspection for Ravenstone Jackson Bolts

(a) Perform a general visual inspection to identify the type of bolts installed at specified locations of the wing and fuselage, in accordance with paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5), as applicable, of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) For Model Hawker 800XP airplanes identified in the effectivity of Raytheon Service Bulletin SB 51–3408, dated October 2000, excluding Service Bulletin/Kit Drawing Report Fax: Inspect within 12 months after the effective date of this AD in accordance with the service bulletin.

(2) For Model Hawker 800XP airplanes identified in the effectivity of Raytheon Service Bulletin SB 51–3426, Revision 1, dated November 2001, excluding Service Bulletin/Kit Drawing Report Fax: Inspect within 18 months after the effective date of this AD in accordance with the service bulletin. Inspection before the effective date of this AD in accordance with Raytheon Service Bulletin SB 51–3426, dated December 2000, excluding Service Bulletin/Kit Drawing Report Fax, is acceptable for compliance with the inspection requirements

only for those locations identified in the original service bulletin; this AD requires inspections at additional locations in accordance with Revision 1 of the service bulletin.

(3) For Model Hawker 800 (including variant U–125A) airplanes identified as Group A airplanes in Raytheon Service Bulletin SB 51–3421, Revision 1, dated November 2001, including Appendix 1, dated December 2000, excluding Service Bulletin/Kit Drawing Report Fax: Inspect within 12 months after the effective date of this AD in accordance with the service bulletin. Inspection before the effective date of this AD in accordance with Raytheon Service Bulletin SB 51–3421, including Appendix 1, dated December 2000, excluding Service Bulletin/Kit Drawing Report Fax, is acceptable for compliance with this inspection requirement for Group A airplanes.

(4) For Model Hawker 800 (including variant U–125A) airplanes identified as Group B airplanes in Raytheon Service Bulletin SB 51–3421, Revision 1, dated November 2001, including Appendix 1, dated December 2000, excluding Service Bulletin/Kit Drawing Report Fax: Inspect within 18 months after the effective date of this AD in accordance with the service bulletin. Inspection before the effective date of this AD in accordance with Raytheon Service Bulletin SB 51–3421, including Appendix 1, dated December 2000, excluding Service Bulletin/Kit Drawing Report Fax, is acceptable for compliance with the inspection requirement only for those locations identified in the original service bulletin; this AD requires inspections at additional locations in accordance with Revision 1 of the service bulletin.

(5) For Model Hawker 800 (including variant U–125A) airplanes identified as Group C airplanes in Raytheon Service Bulletin SB 51–3421, Revision 1, dated November 2001, including Appendix 1, dated December 2000, excluding Service Bulletin/Kit Drawing Report Fax: Inspect within 12 months after the effective date of this AD in accordance with the service bulletin. Inspection before the effective date of this AD in accordance with Raytheon Service Bulletin SB 51–3421, including Appendix 1, dated December 2000, excluding Service Bulletin/Kit Drawing Report Fax, is acceptable for compliance with the inspection requirement only for those locations identified in the original service bulletin; this AD requires inspections at additional locations in accordance with Revision 1 of the service bulletin.

Inspection for Broken Bolts

(b) For any discrepant bolt (any Ravenstone Jackson DHS bolt or any bolt that cannot be identified) found during the inspection required by paragraph (a) of this AD: Before further flight following detection of the discrepant bolt, perform an ultrasonic inspection to determine if the bolt is broken, in accordance with the applicable service bulletin identified in paragraph (a) of this AD. Replace any broken bolt with a new bolt before further flight, in accordance with the applicable service bulletin.

Reporting Requirement

(c) If any broken bolt is found during the inspection specified in paragraph (b) of this AD: Send an inspection report at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD to the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; fax (316) 946–4407. The report must include the inspection results, a description of all discrepancies found, and the airplane serial number. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 30 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

Part Installation

(d) As of the effective date of this AD, no person may install on any airplane a Ravenstone Jackson DHS bolt having a batch number identified in paragraph 3.B. of Raytheon Service Bulletin SB 51–3426, Revision 1, dated November 2001; paragraph 3.A. Raytheon Service Bulletin SB 51–3421, Revision 1, dated November 2001; or paragraph 2.B. of Raytheon Service Bulletin SB 51–3408, dated October 2000.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with Raytheon Service Bulletin SB 51–3408, dated October 2000, excluding Service Bulletin/Kit Drawing Report Fax; Raytheon Service Bulletin SB 51–3426, Revision 1, dated November 2001, excluding Service Bulletin/Kit Drawing Report Fax; or Raytheon Service Bulletin SB 51–3421, Revision 1, dated November 2001, including Appendix 1, dated December 2000, and excluding Service Bulletin/Kit Drawing Report Fax; as applicable. Raytheon Service Bulletin SB 51–3421, Revision 1, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3, 37, 49–51	1	November 2001.
2, 4–36, 38–48, 52–171	Original	December 2000.
	Appendix 1	
1–11	Original	December 2000.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on April 30, 2003.

Issued in Renton, Washington, on March 18, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6966 Filed 3–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–420–AD; Amendment 39–13092; AD 2003–06–05]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A series airplanes, that requires modifying the structure of the air recirculation fan support, and replacing the air recirculation fans with two upgraded air recirculation fans; or replacing the air recirculation fans with two new air recirculation fans with brushless motors. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent incidents of smoke or a burning smell in the cabin during flight, caused by incorrect brush insulation in the motors of the air recirculation fans that provide air to the flight compartment and the passenger compartment.

DATES: Effective April 30, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 30, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 980545–4056; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on April 3, 2002 (67 FR 15758). That action proposed to require modifying the structure of the air recirculation fan support, and replacing the air recirculation fans with two upgraded air recirculation fans; or replacing the air recirculation fans with two new air recirculation fans with brushless motors.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Request to Reference Alternative Part Numbers

One commenter, the airplane manufacturer, states that it has issued Revision 03 of Saab Service Bulletin 340–21–018, dated March 22, 2001. The commenter notes that this service bulletin specifies alternative recirculation fans with brushless motors having part number (P/N) EVCTA465, EVCTA465A, or EVCTA465B. The commenter also states that P/N 9302882–002, as listed in the supplemental NPRM, is an internal Saab Aircraft AB P/N, which should not to be used.

From this comment, the FAA infers that the commenter is requesting that the supplemental NPRM be revised to reference the P/Ns of the alternative recirculation fans, rather than the internal Saab part number. We agree and have revised the final rule accordingly.

Request To Revise Cost Impact

The commenter requests that we revise the Cost Impact figures. The commenter states that, based on 7 work hours with an average labor cost of $60 and $59,360 for a kit with two new fans with brushless motors, the cost of the replacement with new fans with brushless motors should be $59,780 per airplane.

We agree and have revised the Cost Impact estimate in this final rule.

Request for Editorial Changes

The commenter also states that the air recirculation fans are "for" the flight and passenger compartments, and that they are not located in these areas. From this comment, we infer that the commenter is requesting that the supplemental NPRM be revised to clarify that the recirculation fans provide air to the flight and passenger compartments, rather than that the fans are actually located in those compartments. We agree and have revised the phrase "air recirculation fans in the flight compartment and the passenger compartment" to "air recirculation fans that provide air to the flight compartment and the passenger compartment" throughout the final rule.

In addition, the commenter also states that the fans with brushless motors are different types of fans, not "modified" fans. From this comment, we infer that the commenter is requesting that we revise the wording in the supplemental NPRM from "modified" air recirculation fans to "new" air recirculation fans. We agree and have revised the final rule accordingly.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 35 airplanes of U.S. registry will be affected by this AD and that the average labor rate is $60 per work hour.

It will take approximately 4 work hours per airplane to accomplish the required removal of the two air recirculation fans having P/N C209–690B, C209–690B1, or C209–690C, and their replacement with two upgraded air recirculation fans having P/N C209–690D. Based on these figures, the cost impact of the required replacement on U.S. operators is estimated to be $8,400, or $240 per airplane.

It will take approximately another 3 work hours per airplane to accomplish the required modification of the fan support structure. Based on these figures, the cost impact of the required modification on U.S. operators is estimated to be $6,300, or $180 per airplane.

It will take approximately 7 work hours per airplane to accomplish the removal and replacement of the two air recirculation fans with new, brushless motors. The cost of the brushless motors is $59,360 per airplane. Based on these figures, the cost impact of the optional modification on U.S. operators is estimated to be $59,780 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and

that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–06–05 Saab Aircraft AB: Amendment 39–13092. Docket 2000–NM–420–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers –004 through –108 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent incidents of smoke or a burning smell in the cabin during flight caused by incorrect brush insulation in the motors of the air recirculation fans that provide air to the flight compartment and the passenger compartment, accomplish the following:

Replacement

(a) Within 1,000 flight hours after the effective date of this AD: Perform either paragraph (a)(1) or (a)(2) of this AD.

(1) Remove the two air recirculation fans having part number (P/N) C209–690B, C209–690B1, or C209–690C, modify the structure of the fan support, and replace the fans with two upgraded air recirculation fans having P/N C209–690D, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–21–039, Revision 01, dated April 18, 2001.

Note 2: The upgraded fans are larger than the original fans and will interfere with the structure of the fan support. A modification to the structure of the fan support to include a small cutout is contained in Paragraph 2.C. of Saab Service Bulletin 340–21–039, Revision 01.

Note 3: The modification to the structure of the fan support to include a small cutout is also described in Saab Service Bulletin SF340–21–001, Revision 1, dated February 20, 1985. For those airplanes on which the requirements of paragraph (a)(1) have been performed prior to the effective date of this AD, modification of the structure of the fan support to include a small cutout in accordance with that service bulletin is acceptable as a means of compliance with the applicable requirements of paragraph (a)(1) of this AD.

(2) Remove the two air recirculation fans having P/N C209–690B, C209–690B1, or C209–690C, and replace the fans with two new air recirculation fans with brushless motors having P/N EVCTA465, EVCTA465A, or EVCTA465B (these alternative fans could have been previously identified with the internal Saab P/N 9302882–002), in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–21–018, Revision 02, dated June 21, 2000.

Parts Installation

(b) As of the effective date of this AD, no air recirculation fans having P/N C209–690B, C209–690B1, or C209–690C may be installed on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Saab Service Bulletin 340–21–039, Revision 01, dated April 18, 2001; or Saab Service Bulletin 340–21–018, Revision 02, dated June 21, 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Swedish airworthiness directive 1–160 R1, dated June 13, 2001.

Effective Date

(f) This amendment becomes effective on April 30, 2003.

Issued in Renton, Washington, on March 18, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6994 Filed 3–25–03; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1260 and 1274

RIN 2700–AC53

NASA Grant and Cooperative Agreement Handbook—Approvals and Reviews

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule revises the NASA Grant and Cooperative Agreement Handbook by establishing a requirement for the prior approval of the Assistant Administrator for Procurement for the award of all grants and cooperative agreements that will exceed both $5 million and 5 years. This final rule also clarifies the requirement to obtain new proposals, certifications, and technical evaluations for the renewal of cooperative agreements with commercial firms consistent with the current requirement for agreements with nonprofits and educational institutions. This final rule results from NASA's plans for reviews and recompetitions of contracts and partnerships identified in inventories submitted as a result of an agreement entered into with OMB on an action plan regarding the President's Management Agenda Competitive Sourcing element. These changes will establish greater consistency in the approval requirements for contracts, grants, and cooperative agreements with anticipated periods of performance exceeding 5 years, and the procedures used for renewals of grants and cooperative agreements with nonprofits and educational institutions and cooperative agreements with commercial firms.

EFFECTIVE DATE: March 26, 2003.

FOR FURTHER INFORMATION CONTACT: Joseph Le Cren, NASA, Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546–0001, (202) 358–0431, e-mail: *joseph.f.lecren@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

OMB and NASA entered into an agreement on an action plan regarding the President's Management Agenda Competitive Sourcing element. That agreement called for NASA to put in place plans for reviews and recompetitions of contracts and partnerships identified in inventories submitted to OMB in September 2002. NASA's partnerships are primarily established through grants and cooperative agreements with nonprofit organizations, educational institutions, and commercial firms. In developing NASA's plan for reviews and recompetitions, existing guidance pertaining to grants and cooperative agreements was reviewed and areas requiring revision or coverage were identified.

Contracts that are planned to exceed 5 years, inclusive of options, generally require the prior approval of the Assistant Administrator for Procurement. Grants and cooperative agreements are generally limited to 3 years; however, it is not a firm limit as is the case for contracts. This final rule establishes a similar requirement for grants and cooperative agreements that have a significant dollar value.

NASA grants and cooperative agreements with nonprofit organizations and educational institutions currently have a requirement for new proposals, certifications, and technical evaluations for renewals. Renewals provide for continuation of research beyond the original scope, period of performance, and funding levels. While the same requirements are understood to apply to renewals of cooperative agreements with commercial firms, they have not been explicitly stated. This final rule eliminates any possible ambiguity by specifying the requirement to obtain new proposals, certifications, and technical evaluations for renewals of cooperative agreements with commercial firms. This will ensure that consistent treatment is provided for these awards as is done for grants and cooperative agreements with nonprofits and educational institutions.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it only makes changes to internal approval requirements, clarifies existing requirements, and does not impose any new requirements on contractors.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any recordkeeping or information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 14 CFR Parts 1260 and 1274

Grant Programs—Science and Technology.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 14 CFR Parts 1260 and 1274 are amended as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

1. The authority citation for 14 CFR Part 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and OMB Circular A–110.

2. In 1260.13, add the following after the last sentence of paragraph (a)(2) to read as follows:

§ 1260.13 Award procedures.

(a)(1) * * *

(2) * * *. However, grants that will exceed $5 million and have a period of performance in excess of 5 years shall require the approval of the Assistant Administrator for Procurement (Code HS) prior to award. Requests for approval shall include a justification for exceeding 5 years and evidence that the extended years can be reasonably estimated. Requests for approval are not required when the 5-year limitation is exceeded due to a no cost extension.

* * * * *

PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

3. The authority citation for Part 1274 continues to read as follows:

Authority: 31 U.S.C. 6301 to 6308; 42 U.S.C. 2451 *et seq.*

4. Amend § 1274.207 by redesignating paragraph (b) as paragraph (d); and adding new paragraphs (b) and (c) to read as follows:

§ 1274.207 Extended agreements.

* * * * *

(b) Cooperative agreements that will exceed $5 million and have a period of performance in excess of 5 years shall require the approval of the Assistant Administrator for Procurement prior to award. Requests for approval shall include a justification for exceeding 5 years and evidence that the extended years can be reasonably priced. Requests for approval are not required when the 5-year limitation is exceeded due to a no cost extension.

(c) Cooperative agreement renewals provide for the continuation of research beyond the original scope, period of performance and funding levels; therefore, new proposals, certifications, and technical evaluations are required prior to the execution of a cooperative agreement renewal. Renewals will be awarded as new cooperative agreements. Continued performance within a period specified under a multiple year cooperative agreement provision does not constitute a renewal.

* * * * *

[FR Doc. 03–7086 Filed 3–25–03; 8:45 am]
BILLING CODE 7510–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–009]

RIN 1625–AA09

Drawbridge Operation Regulation; Illinois Waterway, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the McDonough Street Bridge, mile 287.3; Jefferson Street Bridge, mile 287.9; Cass Street Bridge, mile 288.1; Jackson Street Bridge, mile 288.4 and the Ruby Street Bridge, mile 288.7, Illinois Waterway. The drawbridges, with the exception of the Ruby Street Bridge, will be allowed to remain closed to navigation from 7:30 a.m. to 9 a.m. and 4 p.m. to 5:30 p.m., Monday through Saturday. The Ruby Street Bridge will remain in the open to navigation position while unscheduled structural steel repairs are made. This temporary rule is issued to facilitate vehicle traffic management and structural steel repairs to the Ruby Street Bridge.

DATES: This temporary rule is effective from March 12, 2003 until 7:30 a.m. on July 18, 2003.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m. Monday through Friday, except Federal holidays. The telephone number is (314) 539–3900, extension 2378. The Bridge Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Structural steel deficiencies were discovered on the Ruby Street Bridge that require immediate repair to keep the bridge in operation. Until such time as the Ruby Street Bridge is repaired, vehicular traffic in the City of Joliet, Illinois must be diverted to other bridges in the area resulting in greater congestion and an increased likelihood of vehicular accidents and injuries. Since the repairs will take approximately five months to complete, it is important that the other bridges in the area immediately modify their hours to allow rush hour traffic to flow efficiently, reducing the likelihood of accident or injury.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same safety reasons cited in the preceding paragraph, the rule should become effective immediately upon publication.

Background and Purpose

Due to routine maintenance to the Ruby Street Bridge, mile 288.7, Illinois Waterway, the bridge must remain in the open to navigation (closed to motor vehicle traffic) position at all times. As a result, the Illinois Department of Transportation requested a temporary change to the current regulations for the remaining four bascule leaf drawbridges within the City of Joliet that carry vehicular traffic across the Illinois Waterway. Increasing the hours that the four remaining bridges are closed to navigation and available for vehicle use during peak traffic periods will reduce traffic jams in the City of Joliet while having minimal impact on vessel traffic on the Illinois Waterway. Repairs to the Ruby Street Bridge are expected to be complete by July 18, 2003.

The current regulations permit the bridges to remain closed to navigation during the commuter hours of 7:30 a.m. to 8:30 a.m. and 4:15 p.m. to 5:15 p.m., Monday through Saturday. By increasing the time the remaining bridges may remain closed to navigation by thirty minutes in the morning and afternoon, traffic buildup in the city will be greatly alleviated. This regulation will result in these bridges, with the exception of the Ruby Street Bridge, being closed to navigation from 7:30 a.m. to 9 a.m. and from 4 p.m. to 5:30 p.m., Monday through Saturday. The Ruby Street Bridge will remain in the open to navigation position for structural steel repairs. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary drawbridge operation regulation has been coordinated with commercial waterway operators. No objections to the proposed temporary rule were raised.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

The Coast Guard expects the economic impact of the temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The temporary rule will have a negligible impact on vessel traffic. The primary users of the Illinois Waterway in Joliet, IL are commercial towboat operators. On average, eight vessels per day transit the affected bridges. Of these, one or two may have to adjust their speed and schedules to arrive at the affected bridges prior to, or after, the times the bridges are closed to navigation.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Any individual that qualifies or, believes he or she qualifies as a small entity and requires assistance with the provisions of this rule, may contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no new collection-of-information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Promulgation of changes to drawbridge regulations has been found not to have significant effect on the human environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard is amending part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Public Law 102–587, 106 Stat. 5039.

2. From March 12, 2003, through 7:30 a.m. on July 18, 2003, paragraph (c) of § 117.393, is suspended and a new paragraph (e) is added to read as follows:

§ 117.393 Illinois Waterway.

* * * * *

(e) The draws of the McDonough Street Bridge, mile 287.3; Jefferson Street Bridge, mile 287.9; Cass Street Bridge, mile 288.1; Jackson Street Bridge, mile 288.4; all of Joliet, shall open on signal, except that they need not open from 7:30 a.m. to 9 a.m. and from 4 p.m. to 5:30 p.m. Monday through Saturday. The Ruby Street Bridge shall remain in the open to navigation position from March 12, 2003, through 7:30 a.m. on July 18, 2003.

Dated: March 12, 2003.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 03–7078 Filed 3–25–03; 8:45 am]
BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 177–1177a; FRL–7471–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP) which pertains to the control of emissions from surface coating operations in the Kansas City, Missouri, area. This revision clarifies an inconsistency between the SIP approved version of the rule and the state adopted version. Approval of this revision will ensure consistency

between the state and federally-approved rules, and ensure Federal enforceability of the current state rule.

DATES: This direct final rule will be effective May 27, 2003, unless EPA receives adverse comments by April 25, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

Missouri rule 10 CSR 10–2.300 relates to the control of emissions from manufacture of surface coating products. The current SIP approved version of this rule, as noted in 40 CFR 52.1320(c), Chapter 2, states that section (1)(A) of this rule is not SIP approved. In the state version of the rule, section (1)(A) identifies the area of applicability. It reads, "This regulation shall apply throughout Clay, Jackson and Platte Counties."

A review of the historical record shows that this section was added to the rule by the state and became effective on August 27, 1987. This rule was meant to apply to the then-existing Kansas City ozone non-attainment area, and the addition of this section makes that clarification.

The state subsequently revised the rule again and this action became effective on December 2, 1987. This version of the rule was submitted to us for approval, and we approved it into the SIP on August 24, 1994 (59 FR 43480). However, the relevant section of the CFR was not revised to reflect that section (1)(A) has been SIP approved. On January 23, 2003, Missouri submitted a request to EPA to correct this error. The purpose of this action is to make the correction to 40 CFR 52.1320(c), to delete the note indicating that section (1)(A) has not been approved.

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are approving as an amendment to the Missouri SIP a revision to rule 10 CSR 10–2.300, Control of Emissions from the Manufacturing of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products, which was state effective November 29, 1991.

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 27, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 13, 2003.

Nat Scurry,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. In § 52.1320(c) the table for Chapter 2 is amended by revising the entry for 10–2.300 to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area				
10–2.300	Control of Emissions from the Manufacturing of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products.	11/29/91	3/26/03 and FR page citation.	4/3/95, 60 FR 16806 (correction).

* * * * *

[FR Doc. 03–7053 Filed 3–25–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 172–1172a; FRL–7471–9]

Approval and Promulgation of Implementation Plans and Approval Under Sections 110 and 112(l); State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to approve a State Implementation Plan (SIP) revision submitted by the state of Kansas. This revision applies to small sources and creates a permit-by-rule that provides an alternative for certain small emission sources which otherwise would be required to apply for an operating permit. Small sources not operating at or above the threshold levels which trigger source-specific operating permit requirements are provided an option to operate under the conditions of this permit-by-rule in lieu of applying for the operating permit. The effect of this approval is to ensure Federal enforceability of the state air program rules and to maintain consistency between the state-adopted rules and the approved SIP.

DATES: This direct final rule will be effective May 27, 2003, unless EPA receives adverse comments by April 25, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. Interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is approval under Section 112(l)?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Approval Under Section 112(l)?

Section 112(l) of the CAA provides authority for EPA to delegate a program to regulate hazardous air pollutants (HAPs) to the states and local agencies. EPA has delegated authority for this program to Kansas and has approved the state's Class II rules as they pertain to HAPs under this authority.

What Is Being Addressed in This Document?

On October 4, 2002, Kansas made revisions to state rule K.A.R. 28–19–564; Class II Operating Permits; Permits-by-Rule; Operating Permits for Sources with Actual Emissions Less Than 50 Percent of Major Source Thresholds.

This rule creates a permit-by-rule that provides an alternative for certain small emission sources which otherwise would be required to apply for a full Class I (major source) or Class II (minor source) operating permit. Small sources which have emissions at 25 percent of the Class I or Class II threshold levels are required to notify the state of their desire to operate under this regulation and to maintain the required records. Small sources which have emissions at 50 percent of the threshold levels are required to apply to the state, pay the appropriate fee and maintain the required records. These provisions reduce the burden associated with the time and effort otherwise required to apply for and obtain a Class I or Class II operating permit.

The exemption is not available for sources which are subject to Title V operating permit requirements for reasons other that their potential to emit at major source levels (*e.g.*, 100 or more tons per year of a criteria pollutant). The exemption only relates to the operating permit program. It requires sources to continue to operate well below the levels which trigger the Class I or Class II permitting requirements and demonstrate, through appropriate recordkeeping as specified in the rule, that they are operating within those levels. Any source which exceeds the 25 or 50 percent actual emissions level must apply for an appropriate operating permit based on potential emissions.

This regulation was adopted by the Kansas Department of Health and Environment on September 9, 2002, and became effective on October 4, 2002.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

EPA is approving as a revision to the Kansas SIP rule K.A.R. 28–19–564; Class II Operating Permits; Permits-by-Rule; Sources With Actual Emissions Less Than 50 Percent of Major Source Thresholds, which was submitted on December 19, 2002.

This rule is also being approved pursuant to section 112(l) of the CAA.

We are processing this action as a final action because it adds noncontroversial regulations to the SIP. We do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 27, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 13, 2003.

Nat Scurry,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R—Kansas

2. In § 52.870 the table in paragraph (c) is amended by adding in numerical order an entry for "K.A.R. 28–19–564" under the table heading "Class II Operating Permits."

The addition reads as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Comments
Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control				
Class II Operating Permits				
K.A.R. 28–19–564	Permit-by-Rule; Sources with Actual Emissions Less Than 50 Percent of Major Source Thresholds.	10/04/02	3/26/03 and FR page citation.	

* * * * *

[FR Doc. 03–7051 Filed 3–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA099–5048; FRL–7472–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of Revision to Opacity Limit for Dryer Stacks at Georgia-Pacific Corporation Softboard Plant in Jarratt, VA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revised opacity limit for dryer zone stacks #1 and #2 associated with the Georgia Pacific Corporation (GP) Plant in Jarratt, Virginia. The new opacity limit is contained in a consent order between the Virginia Department of Environmental Quality (DEQ) and GP. The consent order was submitted by DEQ as a State Implementation Plan (SIP) revision on February 3, 1999.

EFFECTIVE DATE: This final rule is effective on April 25, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 3, 1999, DEQ submitted a SIP revision to revise the opacity limits for dryer zone stacks #1 and #2 at the GP plant in Jarratt, Virginia. The new limits are contained in Consent Order No. 50253 which states that GP shall not exceed 50 percent opacity from the softboard dryer zone stacks except for one six-minute period in any one hour of not more than 60 percent opacity. GP must also perform stack tests every two years to determine compliance with the particulate matter standards in 9 VAC 5–40–260 of the Commonwealths regulations and perform quarterly visible emissions evaluations. The consent order also provides that the source may have a waiver of 60 percent opacity for one six-minute period in any hour during periods of start-up, shutdown and malfunction.

On July 19, 2000 (65 FR 44683), EPA published a direct final rule approving the SIP revision for revised opacity limits for dryer zone stacks #1 and #2, with the exception of the opacity waiver for periods of start-up, shutdown and malfunction. EPA published the final rule without prior proposal because we viewed this as a noncontroversial revision and anticipated no adverse comments. On the same day (65 FR 44709), EPA published a notice of proposed rulemaking (NPR) should adverse comments be filed. Adverse comments were received and the direct final rule was withdrawn on August 30, 2000 (65 FR 52650).

Other specific details on the consent order and EPA's analysis may be found in the direct final rule and will not be restated here.

II. Response to Public Comment

EPA received adverse comments on our proposed approval of the revised opacity limits for the GP facility. A summary of those comments and EPA's responses are provided as follows:

Comment: The commentor notes that GP has asked for relief from an opacity limit that the facility has been subject to for at least ten years and raised the possibility that emissions may have increased due to a modification at the plant.

Response: The Technical Support Document prepared by DEQ in support of the SIP revision indicates that GP is an existing source for which construction, modification or relocation occurred prior to March 17, 1972 and that the dryers, which date back to 1948, have never been modified.

EPA and DEQ conducted a joint inspection of the facility on March 12, May 20 and May 21, 1997 for compliance with the Virginia SIP, including Rule 4–1 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions). These inspections prompted EPA to issue a notice of violation to GP based on the observation of visible emissions from dryer #2 in excess of the SIP limits. On July 1, 1997, EPA issued a Clean Air Act section 114 request for information, testing and monitoring to GP's Jarratt facility. In response to this request, GP performed stack tests for particulate matter emissions on both dryer stacks using EPA Reference Methods 5 and 202 as well as concurrent visible emission testing. These tests confirmed that both stacks were in compliance with the particulate matter standards but that dryer stack #2 had emissions in excess of the opacity limit. GP's request for a waiver is based on the results of this testing. There is nothing in DEQ's Technical Support Document to indicate that the facility has requested the waiver due to increased emissions associated with a modification at the plant or that GP has ever been able to comply with the opacity standard.

Comment: The commentor interprets the opacity limit waiver provision in DEQ's regulations at 9 VAC 5–40–120 to mean that a waiver cannot be granted unless emission test data shows that there is no correlation between particulate matter or volatile organic compound (VOC) emissions and opacity. The commentor further notes that it appears that VOC emissions were not considered in evaluating whether the waiver was appropriate.

Response: The waiver provision in 9 VAC 5–40–120 states that a waiver may be granted provided that "a technical decision is reached that the plume opacity observations * * * are not representative of the pollutant loading of the plume." Opacity observations are generally viewed as a surrogate for monitoring particulate matter emissions. In fact, it is highly unlikely that any source could demonstrate that there is absolutely no correlation between opacity and particulate matter emissions. However, DEQ's regulations appropriately use the term "representative" as a test for whether or not a waiver should be considered. In other words, a waiver would only be appropriate if existing opacity limits are incapable of representing or ensuring compliance with a pollutant loading standard, in this case, the emission standard for particulate matter. Based on the testing conducted by GP, the new opacity standard granted by the waiver will be representative of compliance with Virginia's particulate matter standard.

EPA did not consider VOC emissions in our evaluation of the waiver because opacity has not been generally established as an accurate or appropriate surrogate for VOC emissions.

Comment: The Commentor questioned whether the relaxation of the opacity limit will result in particulate matter or VOC emission increases that could subject the facility to new source review requirements, specifically the prevention of significant deterioration (PSD) program.

Response: As noted elsewhere in this document, the new opacity limit is based on stack testing and visible emissions observations conducted during normal operating conditions for the existing facility. The new opacity limit is being established to accurately reflect the observed visible emissions that correspond to actual measured particulate matter emissions from the dryers. A SIP relaxation would only trigger PSD if the relaxation would have the potential to allow a significant increase in emissions above an actual emissions baseline. Since the new opacity limit is based on actual criteria pollutant emission levels, it does not have the potential to significantly increase emissions above PSD thresholds.

Comment: The commentor questioned whether EPA considered the impact of increased VOC emissions on the Richmond area, which has previously been designated as an ozone nonattainment area.

Response: As discussed previously, the new opacity limit reflects existing operations and pollutant emission levels at the GP facility. Regardless of whether opacity is an appropriate indicator of VOC emissions, the opacity limit is being changed to reflect the visible emissions occurring during actual operating conditions. There is no reason to conclude that making this adjustment would permit the facility to increase its VOC emissions.

Comment: The commentor states that the purpose of the Clean Air Act is to protect and enhance air quality so as to promote the public health and welfare and believes that the new opacity limit fails to do this. He also questions why the facility was not required to install economically reasonable control technology to meet a lower opacity limit.

Response: EPA agrees with the commentor in so far as one of the purposes of subchapter I of the Clean Air Act is to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C.A. 7401(b)(1). This subchapter outlines the specific requirements that EPA and states must do to fulfill this purpose including, but not limited to establishing ambient air quality standards, imposing standards of performance for stationary sources and sources of hazardous air pollutants, adopting permit programs for new and modified sources and state implementation plans for achieving and maintaining ambient air quality standards. In other words, subchapter I of the Clean Air Act establishes specific requirements that apply equally to many emission sources to ensure that its purposes are met. With respect to the GP facility, the Virginia SIP has had an opacity limit waiver in place since the mid-1980s. The waiver provision does not require the source to consider or install reasonably available control technology. Furthermore, there is no indication at this time that any other state or federal requirement established under subchapter I of the CAA would preclude granting the waiver or to require the source to consider economically available control technology. Therefore, EPA believes that approval of this SIP revision is consistent with the purposes and requirements of subchapter I of the Clean Air Act and that it is not within EPA's authority to require an analysis of reasonably economical control technology prior to approving the new opacity limit for GP as a SIP revision.

III. Final Action

EPA is approving Consent Order No. 50253, with the exception of the opacity waiver during periods of start-up, shutdown and malfunction, as a revision to the Virginia SIP. The revision consists of revised opacity limits for dryer zone stack #1 and #2 located at the Georgia-Pacific Softboard Plant in Jarratt, Virginia.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege

law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law, any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity." Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735; October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for one named source.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 27, 2003. Filing a petition for reconsideration by the Administrator of this final rule to approve revised opacity limits for the Georgia Pacific Softboard Plant in Jarratt, Virginia does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 19, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401*et seq.*

Subpart VV—Virginia

2. In § 52.2420, the table in paragraph (d) is amended by adding the entry for Georgia Pacific—Jarratt Softboard Plant at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED VIRGINIA SOURCE—SPECIFIC REQUIREMENTS

Source name	Permit/order or registration No.	State effectivePdate	EPA approval date	40 CFR part 52 citation
Georgia Pacific—Jarratt Softboard Plant.	Registration No. 50253.	9/28/98	[3/26/03 Federal Register cite].	40 FR 52.2420(d); NOTE: In Section E, Provision 1, the portion of the text which reads" * * * and during periods of start-up, shutdown, and malfunction." is not part of the SIP.

[FR Doc. 03–7244 Filed 3–25–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.021017239 2322–02; I.D. 032003B]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Quarter I Fishery for Loligo Squid

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the directed fishery for Loligo squid in the exclusive economic zone (EEZ) will be closed effective March 25, 2003. Vessels issued a Federal permit to harvest Loligo squid may not possess or land more than 2,500 lb (1.13 mt) of Loligo squid per calendar day for the remainder of the quarter (through March 31, 2003). This action is necessary to prevent the fishery from exceeding its Quarter I quota and allow for effective management of this stock.

DATES: Effective 0001 hours, March 25, 2003, through 2400 hours, March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail *paul.h.jones@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Regulations governing the *Loligo* squid fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 2003 specification of DAH for *Loligo* squid was set at 16,872.5 mt (68 FR 57, January 2, 2003). This amount is allocated by quarter, as shown below.

TABLE. 1 *Loligo* SQUID QUARTERLY ALLOCATIONS.

Quarter	Percent	Metric Tons [1]	Research Set-aside
I (Jan-Mar)	33.23	5,606.7	N/A
II(Apr-Jun)	17.61	2,971.3	N/A
III(Jul-Sep)	17.3	2,918.9	N/A
IV (Oct-Dec)	31.86	5,375.6	N/A
Total	100	16,872.5	127.5

[1]Quarterly allocations after 127.5 mt research set-aside deduction.

Section 648.22 requires NMFS to close the directed Loligo squid fishery in the EEZ when 80 percent of the quarterly allocation is harvested in Quarters I, II and III, and when 95 percent of the total annual DAH has been harvested. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 80 percent of the DAH for *Loligo* squid in Quarter I will be harvested. Therefore, effective 0001 hours, March 25, 2003, the directed fishery for *Loligo* squid is closed and vessels issued Federal permits for Loligo squid may not possess or land more than 2,500 lb (1.13 mt) of Loligo. Such vessels may not land more than 2,500 lb (1.13 mt) of *Loligo* during a calendar day. The directed fishery will reopen effective 0001 hours, April 1, 2003, when the Quarter II quota becomes available.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 20, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–7242 Filed 3–21–03; 2:37 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 58
Wednesday, March 26, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1599

RIN 0551–AA64

McGovern-Dole International Food for Education and Child Nutrition Program

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Foreign Agricultural Service proposes to establish rules governing the foreign donation of resources, including agricultural commodities, to implement the McGovern-Dole International Food for Education and Child Nutrition Program. This program would provide agricultural commodities and financial and technical assistance to carry out preschool and school food for education programs and maternal, infant, and child nutrition programs, in foreign countries.

DATES: Submit comments on or before April 25, 2003.

ADDRESSES: Address all comments concerning this proposed rule to William S. Hawkins, Director, Program Administration Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Ave., SW., Stop 1031, Washington, DC 20250–1031; telephone (202) 720–3241.

You may submit comments and data by sending electronic mail (E-mail) to: *Lorie.Jacobs@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Lorie Jacobs, Branch Chief, Financial Analysis Branch, Program Administration Division, Foreign Agricultural Service, U.S. Department of Agriculture (USDA), Ag. Box 1034, Washington, DC 20250–1031; telephone (202) 720–2074; FAX (202) 690–1595. The USDA prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs and marital or familial status. Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 820–5881 (voice) or (202) 720–7808 (TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. It has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget. A cost-benefit assessment has been completed and is available to the public by contacting Lorie Jacobs at (202) 720–2074.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This proposed rule would have preemptive effect with respect to any State or local laws, regulations or policies which conflict with such provisions or which otherwise impede their full implementation; does not have retroactive effect; and does not require administrative proceedings before suit may be filed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (*see* the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because FAS is not required by any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

Paperwork Reduction Act

This proposed rule would add new information collection requirements applicable to the McGovern-Dole International Food for Education and Child Nutrition Program. In accordance with the Paperwork Reduction Act of 1995, the Foreign Agricultural Service (FAS) requests approval of a new information collection in support of the McGovern-Dole International Food for Education and Child Nutrition Program.

Title: McGovern-Dole International Food for Education and Child Nutrition Program.

OMB Control Number: xxxx-xxxx.

Type of Request: Approval of an information collection.

Abstract: This information is needed to administer the McGovern-Dole International Food for Education and Child Nutrition Program. The information will be gathered from applicants desiring to receive grants under the program to determine the viability of requests for resources to implement school feeding and maternal and child nutrition programs in foreign countries and other periodic reports during the course of implementing the activities.

Estimate of Burden: Public reporting burden for this collection of the additional information is estimated to average 74 hours per applicant.

Respondents: Private voluntary organizations, shipping agents, ship owners/brokers, and survey companies.

Estimated Number of Respondents: 156.

Estimated Number of Responses per Respondent: 7.

Estimated Total Annual Burden on Respondents: 11,607 hours.

Copies of the information collection may be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Request for Comments: Send comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to: William S. Hawkins, Director, Program Administration Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Ave., SW., Stop 1031, Washington, DC 20250–1031; telephone (202) 720–3241.

All responses to this notice will be summarized. All comments will also become a matter of public record.

Government Paperwork Elimination Act

FAS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Background

Section 3107 of the Farm Security and Rural Investment Act of 2002, Pub. L. 107–171, authorized the President to establish a program to be known as the McGovern-Dole International Food for Education and Child Nutrition Program. This program would provide agricultural commodities and financial and technical assistance to carry out preschool and school food for education programs and maternal, infant, and child nutrition programs, in foreign countries. By Presidential Memorandum, March 11, 2003, the President delegated the responsibility for implementing this program to the Secretary of Agriculture and it has been further delegated, within the Department of Agriculture, to the Administrator, Foreign Agricultural Service. Congress directed that $100 million of Commodity Credit Corporation (CCC) funds be used for this program in fiscal year 2003. Thereafter, the program is subject to annual appropriations.

In comparison to the pilot Global Food for Education Initiative, there will be an increased emphasis on education and nutrition under the McGovern-Dole International Food for Education and Child Nutrition Program. The Farm Security and Rural Investment Act of 2002 (Farm Act of 2002) indicates that funds should be used in part to improve literacy and primary education, particularly with respect to girls, and to put emphasis on identifying beneficiaries who are malnourished or undernourished. In addition, cooperating sponsors should attempt to coordinate supplementary feeding and nutrition programs with existing programs that provide health-needs interventions.

The McGovern-Dole International Food for Education and Child Nutrition Program is implemented under the authorities of the Foreign Agricultural Service and, therefore, this new program will be subject to regulations that are separate from other foreign assistance commodity grant programs operated under the authority of the Commodity Credit Corporation (CCC), *i.e.*, section 416(b) and Food for Progress. However, because there are many similarities between these programs and it would be advisable to retain the same procedures and rules to the extent practical, this proposed rule would adopt, and repeat in 7 CFR part 1599, most of the regulations currently in 7 CFR part 1499 that are applicable to the section 416(b) and Food for Progress programs. Sections 1599.7 and 1599.8, which cover procedures that apply to procuring ocean transportation, and arranging for entry and handling of commodities in the foreign country, are nearly identical to 7 CFR part 1499. Comments are encouraged regarding whether using this identical language could cause any unforeseen problems under the new program.

The legislation authorizing the new program would require certain additional information to support proposals for funding and authorizes certain expenditures not generally permitted under section 416(b) or Food for Progress. Also, certain department-wide grant regulations not presently applicable to CCC authorized grants would be applicable to the McGovern-Dole International Food for Education and Child Nutrition Program. These department-wide regulations are referenced in the proposed rule. The applicability of these department-wide rules has necessitated certain deviations from the rules applicable to section 416(b) and Food for Progress grants. Of particular note are the provisions on advances, interest earned on advances, changes to Program Budgets, and audit requirements.

Under the McGovern-Dole International Food for Education and Child Nutrition Program, FAS may pay certain costs not permitted under the earlier pilot Global Food for Education Initiative operated under the authority of section 416(b). This includes costs for transportation, storage and handling within the recipient country in non-emergency situations when certain specified findings are met. FAS may also pay administrative expenses of nongovernmental Cooperating Sponsors and other costs of nongovernmental Cooperating sponsors that enhance the effectiveness of program activities. These costs, to the extent FAS agrees to pay them, would be detailed in the Program Operations Budget, which becomes part of the program agreement. The Farm Act of 2002 provides for participation by the Food and Nutrition Service (FNS) under the McGovern-Dole International Food for Education and Child Nutrition Program, wherein FNS may provide technical advice on the establishment and implementation of programs, including providing field expertise in recipient countries.

Costs that "enhance the effectiveness" of activities is a vague concept. FAS is proposing to give priority coverage of these costs to those that would increase the likelihood of meeting the activities objectives. Examples of costs that may enhance the effectiveness of a school feeding program may be the purchase of text books, utensils and food trays, the provision of incentives to teachers, as well as the use of consultancies to provide technical assistance in the educational improvement area when conducting teacher training. While monetization proceeds could also be requested and used to cover any program costs that are necessary to have a successful activity to enhance the effectiveness of a program, organizations need to demonstrate that monetization offers more benefits than a direct cash outlay.

Another significant difference between the McGovern-Dole International Food for Education and Child Nutrition Program and the prior pilot program is that the new authority requires that Cooperating Sponsors demonstrate that the activities undertaken with program resources must be sustainable after FAS assistance ends. Consequently, FAS will require that proposals include sufficient information to allow the Associate Administrator to make a determination that this will be the case.

The development and implementation of the McGovern-Dole International Food for Education and Child Nutrition Program helps to meet the objective of supporting international economic development and trade capacity building set forth in the USDA Strategic Plan for FY 2002–2007. Under that objective USDA provides targeted foreign food assistance to developing countries to foster economic growth and development.

USDA uses an interagency process to review food aid policies and programs to ensure the necessary coordination and management of these programs, and will continue to use this process for the McGovern-Dole International Food for Education and Child Nutrition Program. FAS will cooperate with USAID, FNS and other Federal Agencies in the

development and implementation of the McGovern-Dole International Food for Education and Child Nutrition Program.

The Farm Act of 2002 stipulates that funds may be used to pay for the packaging, enrichment, preservation, and fortification of agricultural commodities under the McGovern-Dole International Food for Education and Child Nutrition Program. This proposed rule contains that information in Section 1599.6 (a) Apportionment of Costs and Advances, in order to emphasize the intent of the Farm Act of 2002 to allow for coverage of these costs.

List of Subjects in 7 CFR Part 1599

Agricultural commodities, Exports, Foreign aid.

Accordingly, the Foreign Agricultural Service proposes that chapter XV of title 7 of the Code of Federal Regulations be amended by adding a new part 1599 to read as follows:

PART 1599—MCGOVERN-DOLE INTERNATIONAL FOOD FOR EDUCATION AND CHILD NUTRITION PROGRAM

1599.1 What special definitions apply?
1599.2 What is the general purpose and scope of the regulations?
1599.3 Are there eligibility requirements for Cooperating Sponsors?
1599.4 How do I apply?
1599.5 When is a usual marketing requirement included?
1599.6 How are costs and advances apportioned?
1599.7 What procedures apply to procuring ocean transportation?
1599.8 Who arranges for entry and handling in the foreign country?
1599.9 What are the restrictions on commodity use and distribution?
1599.10 Are there special requirements for agreements between Cooperating Sponsor and Recipient Agencies?
1599.11 What procedures apply to sales and barter of commodities provided and the use of proceeds?
1599.12 What procedures apply to the processing, packaging and labeling of commodities in the foreign country?
1599.13 How does the Cooperating Sponsor dispose of commodities unfit for authorized use?
1599.14 How is liability established for loss, damage, or improper distribution of commodities?
1599.15 Are there special record keeping and reporting requirements?
1599.16 What are the Cooperating Sponsor's audit requirements?
1599.17 When may FAS suspend a program?
1599.18 Are there sample documents and guidelines available for developing proposals and reports?

Authority: 7 U.S.C. 1736–1; Presidential Memorandum, March 11, 2003 (68 FR 12569).

§ 1599.1 What special definitions apply?

Activity—a Cooperating Sponsor's use of agricultural commodities and financial and technical assistance provided under Program Agreements.

Agricultural Counselor or Attache—the United States Foreign Agricultural Service representative stationed abroad, who has been assigned responsibilities with regard to the country into which the commodities provided are imported, or such representative's designee.

Associate Administrator—Associate Administrator, Foreign Agricultural Service.

CCC—the Commodity Credit Corporation.

Commodities— U.S. agricultural commodities or products.

Deputy Administrator—Deputy Administrator for Export Credits, Foreign Agricultural Service, USDA.

Director, CCC–OD—the Director, CCC Operations Division, Foreign Agricultural Service, USDA.

Director, PAD—the Director, Program Administration Division, Foreign Agricultural Service, USDA.

Director, PPDED—the Director, Program Planning, Development & Evaluation Division, Foreign Agricultural Service, USDA.

FAS—Foreign Agricultural Service, USDA.

Force Majeure—damage caused by perils of the sea or other waters; collisions; wrecks; stranding without the fault of the carrier; jettison; fire from any cause; Act of God; public enemies or pirates; arrest or restraint of princes, princesses, rulers of peoples without the fault of the carrier; wars; public disorders; captures; or detention by public authority in the interest of public safety.

KCCO—Kansas City Commodity Office, Farm Services Agency, USDA, P.O. Box 419205, Kansas City, Missouri, 64141–6205.

KCMO/DMD—Debt Management Division, Kansas City Management Office, Farm Services Agency, USDA, P.O. Box 419205, Kansas City, Missouri, 64141–6205.

Ocean freight differential—the amount, as determined by FAS, by which the cost of ocean transportation is higher than would otherwise be the case by reason of the requirement that the commodities be transported on U.S.-flag vessels.

Program Agreement—an agreement entered into by FAS and Cooperating Sponsors to implement the McGovern-Dole International Food for Education and Child Nutrition Program.

Program income—interest on sale proceeds and money received by the Cooperating Sponsor, other than sales proceeds, as a result of carrying out approved activities.

Recipient agency—an entity located in the importing country which receives commodities or commodity sale proceeds from a Cooperating Sponsor for the purpose of implementing activities.

Sale proceeds—money received by a Cooperating Sponsor from the sale of commodities.

USDA—the United States Department of Agriculture.

§ 1599.2 What is the general purpose and scope of the regulations?

(a) This part establishes the general terms and conditions governing the donation of commodities and financial and technical assistance to Cooperating Sponsors under the McGovern-Dole International Food for Education and Child Nutrition Program. This part does not apply to donations to intergovernmental agencies or organizations (such as the World Food Program) unless FAS and such intergovernmental agency or organization enter into an agreement incorporating this part. Cooperating Sponsors should also familiarize themselves with regulations at 7 CFR part 3019-Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

(b) In addition to the regulations in this part 1599, grants awarded to non-governmental Cooperating Sponsors by FAS are subject to 7 CFR 3015.205, 7 CFR part 3019 and 7 CFR part 3052.

§ 1599.3 Are there eligibility requirements for Cooperating Sponsors?

A Cooperating Sponsor may be either:

(a) A foreign government;

(b) An entity registered with the Agency for International Development (AID) in accordance with AID regulations; or

(c) An entity that demonstrates to FAS" satisfaction:

(1) Organizational experience and resources available to implement and manage the type of program proposed, *i.e.*, targeted food assistance, activities that improve the food security, health and nutrition of women and children, and economic development activities;

(2) Experience working in the targeted country; and

(3) Experience and knowledge on the part of personnel who will be responsible for implementing and managing the program. FAS may require that an entity submit a financial statement demonstrating that it has the financial means to implement an effective donation program.

§ 1599.4 How do I apply?

To apply for this program, a Cooperating Sponsor shall submit an SF–424, a Program Introduction, a Plan of Operation, and a Budget Proposal to the Director, PPDED and to the Agricultural Counselor or Attaché responsible for the country where activities are to be implemented. Electronic submissions of these items are preferred, particularly through the FAS on-line system. If on-line submission is not available, e-mail or hard copy are acceptable.

(a) Submit an SF–424.

(b) Program Introduction shall include the following:

(1) Information about the organization's past food aid activities with particular emphasis on school feeding, maternal child health or other relevant development activities, its experience within the country where the program is proposed, and any other relevant information to demonstrate its capability to implement the program in the country, with particular emphasis on the organizations ability to:

(i) Identify and assess the needs of beneficiaries, especially malnourished or undernourished mothers and their children who are 5 years of age or younger, and school-age children who are malnourished, undernourished, or do not regularly attend school;

(ii) In the case of preschool and school-age children, target low-income areas where children's enrollment and attendance in school is low or girls' enrollment and participation in preschool or school is low;

(iii) Incorporate developmental objectives for improving literacy and primary education (especially with girls); and,

(iv) In the case of maternal and child nutrition activities, coordinate supplementary feeding and nutrition programs with existing or newly established maternal, infant, and child programs that meet maternal, prenatal, postnatal, and newborns health needs;

(2) Reasons for the need for the food aid and in particular a school feeding program in the country. The organization shall include statistics on poverty, food deficits, and related items such as literacy rates for the target population; percentage of school age children attending schools, especially females; malnutrition rates; public expenditures on primary education; country's current school feeding operations, if they exists, along with current funding resources; any information regarding teacher training, community infrastructure (PTAs), health, nutrition, and water and sanitation information; and lastly, other potential donors;

(3) Verification that the national government is committed to or is working toward, through a national action plan, the goals of the World Declaration on Education for All convened in 1990 in Jomtien, Thailand, and the follow-up Dakar Framework for Action of the World Education Forum, convened in 2000;

(4) Steps to graduate the program from food aid and address sustainability, or sustainable program components, which will continue after the end of food aid donations. In addressing graduation or sustainability, address how the program will sustain the benefits of the education, enrollment, and attendance of children in schools in the targeted communities when the provision of commodities and assistance to a recipient country under FFE terminates; and estimate the time required until the recipient country or eligible organizations will be able to provide sufficient assistance without additional assistance under FFE; or in the absence of sustainability explain how the program will provide other long term benefits to targeted populations of the recipient country;

(5) Information on methods used to involve indigenous institutions as well as local communities and governments in the development and implementation of the programs and activities to foster local capacity building and leadership;

(6) An explanation of how each requested expenditure identified in § 1599.6(b)(4)(i) would enhance the effectiveness of the activities implemented under this subpart. For purposes of this section, "expenditures that would enhance the effectiveness of the activities implemented under this subpart" are those expenditures which would increase the likelihood of meeting the objectives of the activities as stated in the Plan of Operation. Examples of costs that may enhance the effectiveness of a school feeding program may be the purchase of utensils and food trays, text books, and incentives for teachers, as well as the use of consultancies to provide technical assistance in the educational improvement area when conducting teacher training. These costs may include a limited amount to procure locally produced foods.

(7) If your proposal includes monetization or barter, demonstrate that monetization or bartering of commodities offers more benefits than a direct cash outlay.

(c) A Plan of Operation shall provide the following information:

(1) Country of donation.

(2) Kind, quantity and delivery schedule of commodities requested.

(3) Activity objectives. Briefly state what the goals to be accomplished for the program are.

(4) Program description shall include the following:

(i) Fully describe the steps involved in program implementation;

(ii) Method for choosing beneficiaries of activities;

(iii) Program administration, including a description of the Cooperating Sponsors plan to develop, implement, monitor, report on, and provide accountability for activities. The Cooperating Sponsor shall also include, as appropriate, plans for administering the distribution or sale of commodities and the expenditure of sale proceeds, and identification of the administrative or technical personnel who will implement the activities;

(iv) Activity budgets, including costs that will be borne by the Cooperating Sponsor, other organizations or local governments. If a nongovernmental Cooperating Sponsor requests FAS to fund costs identified in § 1599.6 (b)(4)(i), the Cooperating Sponsor shall include a detailed description of:

(A) The costs for which funding is requested; and,

(B) The amount of funding requested for each cost;

(v) The recipient agency, if any, that will be involved in the program and a description of each recipient agency's capability to perform its responsibilities as stated in the Plan of Operation;

(vi) Governmental or nongovernmental entities involved in the program and the extent to which the program will strengthen or increase the capabilities of such entities to further economic development in the recipient country. The Cooperating Sponsor shall also include a description of the steps that the government of the host country is taking to improve the preschool and school systems in the country;

(vii) Method of educating consumers as to the source of the provided commodities and, where appropriate, preparation and use of the commodity; and

(viii) Criteria for measuring progress towards achieving the objectives of activities and evaluating program outcome, including health, nutrition and education.

(5) Use of funds or goods and services generated. If the activity involves the use of sale proceeds, the receipt of

goods or services from the barter of commodities, or the use of program income, the cooperating sponsor shall provide the following information:

(i) The quantity and type of commodities to be sold or bartered;

(ii) Extent to which any sale or barter of the agricultural commodities provided would displace or interfere with any sales that may otherwise be made;

(iii) The amount of sale proceeds anticipated to be generated from the sale, the value of the goods or services anticipated to be generated from the barter of the agricultural commodities provided, or the amount of program income expected to be generated;

(iv) The steps taken to use, to the extent possible, the private sector in the process of selling commodities;

(v) The specific uses of sale proceeds or program income and a timetable for their expenditure; and

(vi) Procedures for assuring the receipt and deposit of sale proceeds and program income into a separate special account and procedures for the disbursement of the proceeds and program income from such special account.

(6) Distribution methods:

(i) A description of the transportation and storage system which will be used to move the agricultural commodities from the receiving port to the point at which distribution is made to the recipient;

(ii) A description of any reprocessing or repackaging of the commodities that will take place; and

(iii) A logistics plan that demonstrates the adequacy of port, transportation, storage, and warehouse facilities to handle the flow of commodities to recipients without undue spoilage or waste.

(7) Duty free entry: Documentation indicating that any commodities to be distributed to recipients, rather than sold, will be imported and distributed free from all customs, duties, tolls, and taxes.

(8) Economic impact: Information indicating that the commodities can be imported and distributed without a disruptive impact upon production, prices and marketing of the same or like products within the importing country.

(d) Budget Proposals shall include funds requested, from either cash or monetization resources, to fund administrative, ITSH, technical and financial assistance costs. Budget proposals shall be submitted in a spreadsheet format.

(e) After submission and approval by FAS, a Program Agreement will be developed. The Program Agreement, which will incorporate the terms and conditions set forth in this Part, the commodities provided by FAS, and any packaging, will meet the specifications set forth in such Program Agreement. A Program Agreement may contain special terms or conditions, in addition to or in lieu of, the terms and conditions set forth in the regulations in this part when FAS determines that such special terms or conditions are necessary to effectively carry out the particular Program Agreement. The Plan of Operation, Budget Proposal, and Commodity specifications will be incorporated into the Program Agreement as Attachments.

§ 1599.5 When is a usual marketing requirement included?

(a) A foreign government Cooperating Sponsor shall provide to the Director, PPDED, data showing commercial and non-commercial imports of the types of agricultural commodities requested during the prior five years, by country of origin, and an estimate of imports of such commodities during the current year.

(b) FAS may require that a Program Agreement with a foreign government include a "usual marketing requirement" that establishes a specific level of imports for a specified period. The Program Agreement may also include a prohibition on the export of provided commodities, as well as of other similar commodities specified in the Program Agreement.

§ 1599.6 How are costs and advances apportioned?

(a) FAS will bear the costs of the packaging, enrichment, preservation, and fortification of agricultural commodities, and the processing, transportation, handling and other incidental charges incurred in delivering commodities to Cooperating Sponsors. FAS will deliver bulk grain shipments f.o.b. vessel, and shipments of all other commodities f.a.s. vessel or intermodal points. FAS will choose the point of delivery based on lowest cost to FAS.

(b) When the Associate Administrator approves in advance and in writing, FAS may agree to bear all or a portion of reasonable costs associated with:

(1) Transportation from U.S. ports to designated ports or points of entry abroad;

(2) Maritime survey costs;

(3) Transportation from designated ports or points of entry abroad to designated storage and distribution sites, and reasonable storage and distribution costs if the recipient country is a low income, net food-importing country that:

(i) Meets the poverty criteria established by the International Bank for Reconstruction and Development for Civil Works Preference; and

(ii) Has a national government that is committed to or is working toward, through a national action plan, the goals of the World Declaration on Education for All and the Dakar Framework for Action of the World Education Forum; and

(4) The costs of a nongovernmental Cooperating Sponsor:

(i) In the recipient country that enhance the effectiveness of the activities including packaging, enrichment, preservation and fortification of agricultural commodities; and

(ii) For administrative or monitoring expenses specified in the program agreement.

(5) The administrative expenses of any Federal agency implementing or assisting in the implementation of the McGovern-Dole International Food for Education and Child Nutrition Program, including the administrative costs of the Food and Nutrition Service to provide technical advice on the establishment and implementation of programs, including providing field expertise in recipient countries.

(c) FAS will not pay any costs incurred by the Cooperating Sponsor prior to the date of the Program Agreement.

(d) Except as provided in paragraph (b) of this section, the Cooperating Sponsor shall ordinarily bear all costs incurred subsequent to FAS' delivery of commodities at U.S. ports or intermodal points.

(e) A Cooperating Sponsor seeking agreement by FAS to bear the storage and distribution costs identified in paragraph (b)(3) or the costs identified in paragraph (b)(4) of this section shall submit to the Director, PPDED, a Program Operation Budget detailing such costs. If approved, the Program Operation Budget shall become part of the Program Agreement. The non-governmental Cooperating Sponsor may make adjustments between line items of an approved Program Operation Budget up to 10 percent of the total amount of the budget as last approved without any further approval. Adjustments beyond these limits must be specifically approved by the Director, PPDED.

(f) The Cooperating Sponsor may request advance of up to 100 percent of the amount of an approved Program Operating Budget if FAS determines that the Cooperating Sponsor's financial management system meets the requirements of 7 CFR 3019.21. However, FAS will not approve any request for an advance received earlier than 60 days after the date of a previous advance made in connection with the same Program Agreement.

(g) Funds advanced shall be deposited in an interest bearing account until expended. Interest earned on advance of funds must be returned to FAS.

(h) The Cooperating Sponsor shall return to FAS any funds not obligated as of the 180th day after being advanced, together with interest earned on such unexpended funds. Funds and interest shall be returned within 30 days of such date.

(i) The Cooperating Sponsor shall, not later than 10 days after the end of each calendar quarter, submit a financial statement to the Director, PPDED, accounting for all funds advanced and all interest earned.

(j) FAS will pay all other costs for which it is obligated under the Program Agreement by reimbursement. However, FAS will not pay any cost incurred after the final date specified in the Program Agreement.

(k) Program income may be used to further eligible activity objectives.

§ 1599.7 What procedures apply to procuring ocean transportation?

(a) *Cargo preference.* Shipments of commodities are subject to the requirements of sections 901(b) and 901b of the Merchant Marine Act, 1936, regarding carriage on U.S.-flag vessels. A Cooperating Sponsor shall comply with the instructions of FAS regarding the quantity of commodities that must be carried on U.S. flag vessels.

(b) *Freight procurement requirements.* When FAS is financing any portion of the ocean freight, whether on U.S. flag or non-U.S. flag vessels, and the Cooperating Sponsor arranges ocean transportation:

(1) The Cooperating Sponsor shall arrange ocean transportation through competitive bidding and shall obtain approval of all invitations for bids from the Director, CCC–OD.

(2) Invitations for bids shall be issued through the Transportation News Ticker (TNT), New York, and at least one other comparable means of trade communication.

(3) Freight invitations for bids shall include specified procedures for payment of freight, including the party responsible for the freight payments, and expressly require that:

(i) Offers include a contract canceling date no later than the last contract layday specified in the invitation for bids;

(ii) Offered rates be quoted in U.S. dollars per metric ton;

(iii) If destination bagging or transportation to a point beyond the discharge port is required, the offer separately state the total rate and the portion thereof attributable to the ocean segment of the movement;

(iv) Any non-liner U.S. flag vessel 15 years or older offer, in addition to any other offered rate, a one-way rate applicable in the event the vessel is scrapped or transferred to foreign flag registry prior to the end of the return voyage to the United States;

(v) In the case of packaged commodities, U.S. flag carriers specify whether delivery will be direct breakbulk shipment, container shipment, or breakbulk transshipment and identify whether transshipment (including container relays) will be via U.S. or foreign flag vessel;

(vi) Vessels offered subject to Maritime Administration approval will not be accepted; and

(vii) Offers be received by a specified closing time, which must be the same for both U.S. and non-U.S. flag vessels.

(4) In the case of shipments of bulk commodities and non-liner shipments of packaged commodities, the Cooperating Sponsor shall open offers in public in the United States at the time and place specified in the invitation for bids and consider only offers that are responsive to the invitation for bids without negotiation. Late offers shall not be considered or accepted.

(5) All responsive offers received for both U.S. flag and foreign flag service shall be presented to KCCO which will determine the extent to which U.S.-flag vessels will be used.

(6) The Cooperating Sponsor shall promptly furnish the Director, CCC–OD, or other official specified in the Program Agreement, copies of all offers received with the time of receipt indicated thereon. The Director, CCC–OD, or other official specified in the Program Agreement, will approve all vessel fixtures. The Cooperating Sponsor may fix vessels subject to the required approval; however, the Cooperating Sponsor shall not confirm a vessel fixture until advised of the required approval and the results of the Maritime Administration's guideline rate review. The Cooperating Sponsor shall not request guideline rate advice from the Maritime Administration. The Cooperating Sponsor will, promptly after receipt of vessel approval, issue a public notice of the fixture details on the TNT or other means of communication approved by the Director, CCC–OD.

(7) Non-Vessel Operating Common Carriers may not be employed to carry shipments on either U.S. or foreign-flag vessels.

(8) The Cooperating Sponsor shall promptly furnish the Director CCC–OD, a copy of the signed laytime statement and statement of facts at the discharge port.

(c) *Shipping agents.* (1) The Cooperating Sponsor may appoint a shipping agent to assist in the procurement of ocean transportation. The Cooperating Sponsor shall nominate the shipping agent in writing to the Deputy Administrator, Room 4077-S, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1031, and include a copy of the proposed agency agreement. The Cooperating Sponsor shall specify the time period of the nomination.

(2) The shipping agent so nominated shall submit the information and certifications required by 7 CFR 17.4 to the Deputy Administrator.

(3) A person may not act as a shipping agent for a Cooperating Sponsor unless the Deputy Administrator has notified the Cooperating Sponsor in writing that the nomination is accepted.

(d) *Commissions.* (1) When any portion of the ocean freight is paid by FAS, total commissions earned on U.S. and foreign flag bookings by all parties arranging vessel fixtures, shall not exceed 2–1/2 percent of the total freight costs.

(2) Address commissions are prohibited.

(e) *Contract terms.* When FAS is paying any portion of the ocean freight, charter parties and liner booking contracts must conform to the following requirements, as applicable:

(1) Packaged commodities on liner vessels shall be shipped on the basis of full berth terms with no demurrage or despatch;

(2) Shipments of bulk liquid commodities may be contracted in accordance with trade custom. Other bulk commodities, including shipments that require bagging or stacking for the account of the vessel, shall be shipped on the basis of vessel load, free out, with demurrage and despatch applicable at load and discharge ports; except that, if bulk commodities require further inland distribution, they shall be shipped on the basis of vessel load with demurrage and despatch at load and berth terms discharge, *i.e.*, no demurrage, despatch, or detention at discharge. Demurrage and despatch shall be settled between the ocean carrier and commodity suppliers at load port and between the ocean carrier and charterers at discharge ports. FAS is not responsible for resolving disputes involving the

calculation of laytime or the payment of demurrage or despatch.

(3) If the Program Agreement requires the Cooperating Sponsor to arrange an irrevocable letter of credit for ocean freight, the Cooperating Sponsor shall be liable for detention of the vessel for loading delays attributable solely to the decision of the ocean carrier not to commence loading because of the failure of the Cooperating Sponsor to establish such letter of credit. Charter parties and liner booking contracts may not contain a specified detention rate. The ocean carrier shall be entitled to reimbursement, as damages for detention for all time so lost, for each calendar day or any part of the calendar day, including Saturdays, Sundays and holidays. The period of such delay shall not commence earlier than upon presentation of the vessel at the designated loading port within the laydays specified in the charter party or liner booking contract, and upon notification of the vessel's readiness to load in accordance with the terms of the applicable charter party or liner booking contract. The period of such delay shall end at the time that operable irrevocable letters of credit have been established for ocean freight or the time the vessel begins loading, whichever is earlier. Time calculated as detention shall not count as laytime. Reimbursement for such detention shall be payable no later than upon the vessel's arrival at the first port of discharge.

(4) Charges including, but not limited to charges for inspection, fumigation, and carrying charges, attributable to the failure of the vessel to present before the canceling date will be for the account of the ocean carrier.

(5) Ocean freight is earned under a charter party when the vessel and cargo arrive at the first port of discharge, Provided, That if a force majeure prevents the vessel's arrival at the first port of discharge, 100% of the ocean freight is payable or, if the charter party provides for completing additional requirements after discharge such as bagging, stacking, or inland transportation, not more than 85% of the ocean freight is payable, at the time the Associate Administrator determines that such force majeure was the cause of nonarrival; and

(6) When the ocean carrier offers delivery to destination ports on U.S.-flag vessels, but foreign-flag vessels are used for any part of the voyage to the destination port without first obtaining the approval of the Cooperating Sponsor, KCCO, and any other approval that may be required by the Program Agreement, the ocean freight rate will be reduced to the lowest responsive foreign-flag vessel rate offered in response to the same invitation for bids and the carrier agrees to pay FAS the difference between the contracted ocean freight rate and the freight rate offered by such foreign-flag vessel.

(f) *Coordination between FAS and the Cooperating Sponsor.* When a Program Agreement specifies that the Cooperating Sponsor will arrange ocean transportation:

(1) FAS will provide that KCCO furnishes the Cooperating Sponsor, or its agent, a Notice of Commodity Availability (Form FAS–512) which will specify the receiving country, commodity, quantity, and date at U.S. port or intermodal delivery point.

(2) The Cooperating Sponsor shall complete the Form FAS–512 indicating name of steamship company, vessel name, vessel flag and estimated time of arrival at U.S. port; and shall sign and return the completed form to KCCO, with a copy to the Director, CCC–OD. If FAS agrees to pay any part of the ocean transportation for liner cargoes, the Cooperating Sponsor shall also indicate on the Form FAS–512 the applicable Federal Maritime Commission tariff rate, and tariff identification.

(3) FAS will arrange for KCCO to issue instructions to have the commodity delivered f.a.s. or f.o.b. vessel, U.S. port of export or intermodal delivery point, consigned to the Cooperating Sponsor.

(g) *Documents required for payment of freight*—(1) *General rule.* To receive payment for ocean freight, the Cooperating Sponsor shall submit the following documents to the Director, CCC–OD:

(i) One signed copy of completed Form FAS–512;

(ii) Four copies of the original on-board bills of lading indicating the freight rate and signed by the originating carrier;

(iii) For all non-containerized grain cargoes,

(A) One signed copy of the Federal Grain Inspection Service (FGIS) Official Stowage Examination Certificate (Vessel Hold Certificate);

(B) One signed copy of the National Cargo Bureau Certificate of Readiness (Vessel Hold Inspection Certificate); and

(C) One signed copy of the National Cargo Bureau Certificate of Loading;

(iv) For all containerized grain and grain product cargoes, one copy of the FGIS Container Condition Inspection Certificate;

(v) One signed copy of liner booking note or charter party covering ocean transportation of cargo;

(vi) For charter shipments, a signed notice of arrival at first discharge port submitted by the Cooperating Sponsor;

(vii) For all liner cargoes, a copy of the tariff page;

(viii) Four copies of either:

(A) A request by the Cooperating Sponsor for reimbursement of ocean freight or ocean freight differential indicating the amount due, and accompanied by a certification from the ocean carrier that payment has been received from the Cooperating Sponsor; or

(B) A request for direct payment to the ocean carrier, indicating amount due; or

(C) A request for direct payment of ocean freight differential to the ocean carrier accompanied by a certification from the carrier that payment of the Cooperating Sponsor's portion of the ocean freight has been received.

(ix) Each request to FAS for payment must provide a document, on letterhead and signed by an official or agent of the requester, the name of the entity to receive payment, the bank ABA number to which payment is to be made; the account number for the deposit at the bank; the requester's taxpayer identification number; and the type of the account into which funds will be deposited.

(2) *In cases of force majeure.* To receive payment in cases where the Associate Administrator determines that circumstances of force majeure have prevented the vessel's arrival at the first port of discharge, the Cooperating Sponsor shall submit all documents required by paragraph (g)(1) of this section except for the notice of arrival required by paragraph (g)(1)(vi) of this section.

(h) *FAS payment of ocean freight or ocean freight differential.* (1) *General rule.* FAS will pay, not later than 30 days after receipt in good order of the required documentation, 100 percent of either the ocean freight or the ocean freight differential, whichever is specified in the Program Agreement.

(2) *Additional requirements after discharge.* Where the charter party or liner booking note provide for the completion of additional services after discharge, such as bagging, stacking or inland transportation, FAS will pay, not later than 30 days after receipt in good order of the required documentation, either not more than 85 percent of the total freight charges or 100 percent of the ocean freight differential, whichever is specified in the Program Agreement. FAS will pay the remaining balance, if any, of the freight charges not later than 30 days after receipt of notification from the Cooperating Sponsor that such additional services have been provided; except that FAS will not pay any remaining balance where the Associate Administrator determines that the vessel's arrival at first port of discharge was prevented by force majeure.

(3) *No demurrage.* FAS will not pay demurrage.

§ 1599.8 Who arranges for entry and handling in the foreign country?

(a) The Cooperating Sponsor shall make all necessary arrangements for receiving the commodities in the recipient country, including obtaining appropriate approvals for entry and transit. The Cooperating Sponsor shall store and maintain the commodities from time of delivery at port of entry or point of receipt from originating carrier in good condition until their distribution, sale or barter.

(b) When FAS has agreed to pay costs of transporting, storing, and distributing commodities from designated points of entry or ports of entry, the Cooperating Sponsor shall arrange for such services, by through bill of lading, or by contracting directly with suppliers of services, as FAS may approve. If the Cooperating Sponsor contracts directly with the suppliers of such services, the Cooperating Sponsor may seek reimbursement by submitting documentation to FAS indicating actual costs incurred. All supporting documentation must be sent to the Director, CCC–OD. FAS, at its option, will reimburse the Cooperating Sponsor for the cost of such services in U.S. dollars at the exchange rate in effect on the date of payment by FAS, or in foreign currency.

§ 1599.9 What are the restrictions on commodity use and distribution?

(a) The Cooperating Sponsor may use the commodities provided only in accordance with the terms of the Program Agreement.

(b) In the event that its participation in the program terminates, the nongovernmental Cooperating Sponsor will safeguard any undistributed commodities and sales proceeds and dispose of such commodities and proceeds as directed by FAS.

§ 1599.10 Are there special requirements for agreements between Cooperating Sponsor and Recipient Agencies?

(a) The Cooperating Sponsor shall enter into a written agreement with a recipient agency prior to the transfer of any commodities, sale proceeds or program income to the recipient agency. Copies of such agreements shall be provided to the Agricultural Counselor or Attache, and the Director, PPDED. Such agreements shall require the recipient agency to pay the Cooperating Sponsor the value of any commodities, sale proceeds or program income that are used for purposes not expressly permitted under the Program Agreement, or that are lost, damaged, or misused as a result of the recipient agency's failure to exercise reasonable care;

(b) FAS may waive the requirements of paragraph (a) of this section where it determines that such an agreement is not feasible or appropriate.

§ 1599.11 What procedures apply to sales and barter of commodities provided and the use of proceeds?

(a) Commodities may be sold or bartered without the prior approval of FAS where damage has rendered the commodities unfit for intended program purposes and sale or barter is necessary to mitigate loss of value.

(b) A Cooperating Sponsor may, but is not required to, negotiate an agreement with the host government under which the commodities imported for a sale or barter may be imported, sold, or bartered without assessment of duties or taxes. In such cases and where the commodities are sold, they shall be sold at prices reflecting prevailing local market value.

(c) The Cooperating Sponsor shall deposit all sale proceeds into an interest-bearing account unless prohibited by the laws or customs of the importing country or FAS determines that to do so would constitute an undue burden. Interest earned on such deposits shall only be used for approved activities.

(d) Except as otherwise provided in this part, the Cooperating Sponsor may use sale proceeds and resulting interest only for those purposes approved in the applicable Plan of Operation.

(e) FAS will approve the use of sale proceeds and interest to purchase real and personal property where local law permits the Cooperating Sponsor to retain title to such property, but will not approve the use of sale proceeds or interest to pay for the acquisition, development, construction, alteration or upgrade of real property that is:

(1) Owned or managed by a church or other organization engaged exclusively in religious activity, or

(2) Used in whole or in part for sectarian purposes; except that, a Cooperating Sponsor may use such sale proceeds or interest to pay for repairs or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of provided commodities but only if such structure is not used in whole or in part for any religious or sectarian purposes while the provided commodities are stored in such structure. When not approved in the Plan of Operation, such use may be approved by the Agricultural Counselor or Attache.

(f) The Cooperating Sponsor shall follow commercially reasonable practices in procuring goods and services and when engaging in construction activity in accordance with the approved Plan of Operation. Such practices shall include procedures to prevent fraud, self-dealing and conflicts of interest, and shall foster free and open competition to the maximum extent practicable.

(g) To the extent required by the Program Agreement, the Cooperating Sponsor shall submit to the Director, PPDED, an inventory of all assets acquired with sale proceeds or interest or program income. In the event that its participation in the program terminates, the Cooperating Sponsor shall dispose, at the direction of the Director, PPDED, of any property, real or personal, so acquired.

§ 1599.12 What procedures apply to the processing, packaging and labeling of commodities in the foreign country?

(a) Cooperating Sponsors may arrange for the processing of commodities provided under the Program Agreement, or for packaging or repackaging prior to distribution. When a third party provides such processing, packaging or repackaging, the Cooperating Sponsor shall enter into a written agreement requiring that the provider of such services maintain adequate records to account for all commodities delivered and submit periodic reports to the Cooperating Sponsor. The Cooperating Sponsor shall submit a copy of the executed agreement to the Agricultural Counselor or Attache.

(b) If, prior to distribution, the Cooperating Sponsor arranges for packaging or repackaging commodities, the packaging shall be plainly labeled in the language of the country in which the commodities are to be distributed with the name of the commodity and, except where the commodities are to be sold or bartered after processing, packaging or repackaging, to indicate that the commodity is furnished by the people of the United States of America and not to be sold or exchanged. If the commodities are not packaged, the Cooperating Sponsor shall, to the extent practicable, display banners, posters or other media containing the information prescribed in this paragraph.

(c) FAS will reimburse Cooperating Sponsors that are nonprofit private voluntary organizations or cooperatives for expenses incurred for repackaging if the packages of commodities are

discharged from the vessel in damaged condition, and are repackaged to ensure that the commodities arrive at the distribution point in wholesome condition. No prior approval is required for such expenses equaling $500 or less. If such expense is estimated to exceed $500, the authority to repackage and incur such expense must be approved by the Agricultural Counselor or Attache in advance of repackaging.

§ 1599.13 How does the Cooperating Sponsor dispose of commodities unfit for authorized use?

(a) *Prior to delivery to Cooperating Sponsor at discharge port or point of entry.* If the commodity is damaged prior to delivery to a governmental Cooperating Sponsor at discharge port or point of entry overseas, the Agricultural Counselor or Attache will immediately arrange for inspection by a public health official or other competent authority. If the commodity is damaged prior to delivery to a nongovernmental Cooperating Sponsor at the discharge port or point of entry, the nongovernmental Cooperating Sponsor shall arrange for such inspection. If inspection discloses the commodity to be unfit for the use authorized in the Program Agreement, the Agricultural Counselor or Attache or the nongovernmental Cooperating Sponsor shall dispose of the commodities in accordance with the priority set forth in paragraph (b) of this section. Expenses incidental to the handling and disposition of the damaged commodity will be paid by FAS from the sale proceeds or from an appropriate FAS account designated by FAS. The net proceeds of sales shall be deposited with the U.S. Disbursing Officer, American Embassy, in an account designated by FAS; however, if the commodities are provided for a sales program, the net sale proceeds, net of expenses incidental to handling and disposition of the damaged commodity, shall be deposited to the special account established for sale proceeds. The Cooperating Sponsor shall consult with FAS regarding the inspection and disposition of commodities and accounting for sale proceeds in the event the Cooperating Sponsor executed a sales agreement under which title passed to the purchaser prior to delivery to the Cooperating Sponsor.

(b) *After delivery to Cooperating Sponsor.* (1) If after arrival in a foreign country and after delivery to a Cooperating Sponsor, it appears that the commodity, or any part thereof, may be unfit for the use authorized in the Program Agreement, the Cooperating Sponsor shall immediately arrange for inspection of the commodity by a public health official or other competent authority approved by the Agricultural Counselor or Attache. If no competent local authority is available, the Agricultural Counselor or Attache may determine whether the commodities are unfit for the use authorized in the Program Agreement and, if so, may direct disposal in accordance with this paragraph. The Cooperating Sponsor shall arrange for the recovery of that portion of the commodities designated during the inspection as suitable for authorized use. If, upon inspection, the commodity (or any part thereof) is determined to be unfit for the authorized use, the Cooperating Sponsor shall notify the Agricultural Counselor or Attache of the circumstances pertaining to the loss or damage. With the concurrence of the Agricultural Counselor or Attache, the commodity determined to be unfit for authorized use shall be disposed of in the following order of priority:

(i) By transfer to an approved USDA sponsored program for use as livestock feed. FAS shall be advised promptly of any such transfer so that shipments from the United States to the livestock feeding program can be reduced by an equivalent amount;

(ii) Sale for the most appropriate use, *i.e.*, animal feed, fertilizer, or industrial use, at the highest obtainable price. When the commodity is sold, all U.S. Government markings shall be obliterated or removed;

(iii) By donation to a governmental or charitable organization for use as animal feed or for other non-food use; or

(iv) If the commodity is unfit for any use or if disposal in accordance with paragraph (b)(1)(i), (ii) or (iii) of this section is not possible, the commodity shall be destroyed under the observation of a representative of the Agricultural Counselor or Attache, if practicable, in such manner as to prevent its use for any purpose.

(2) Actual expenses incurred, including third party costs, in effecting any sale may be deducted from the sale proceeds and, if the commodities were intended for direct distribution, the Cooperating Sponsor shall deposit the net proceeds with the U.S. Disbursing Officer, American Embassy, with instructions to credit the deposit to an account as designated by FAS. If the commodities were intended to be sold, the Cooperating Sponsor shall deposit the gross proceeds into the special interest bearing account and, after approved costs related to the handling and disposition of damaged commodities are paid, shall use the remaining funds for purposes of the approved program. The Cooperating Sponsor shall promptly furnish to the Agricultural Counselor or Attache a written report of all circumstances relating to the loss and damage on any commodity loss in excess of $5,000; quarterly reports shall be made on all other losses. If the commodity was inspected by a public health official or other competent authority, the report and any supplemental report shall include a certification by such public health official or other competent authority as to the condition of the commodity and the exact quantity of the damaged commodity disposed. Such certification shall be obtained as soon as possible after the discharge of the cargo. A report must also be provided to the Chief, Debt Management Division, KCMO/DMD, of action taken to dispose of commodities unfit for authorized use.

§ 1599.14 How is liability established for loss, damage, or improper distribution of commodities?

(a) *Fault of Cooperating Sponsor prior to loading on ocean vessel.* The Cooperating Sponsor shall immediately notify KCCO, Chief, Export Operations Division if the Cooperating Sponsor will not have a vessel for loading at the U.S. port of export in accordance with the agreed shipping schedule. FAS will determine whether the commodity will be: moved to another available outlet; stored at the port for delivery to the Cooperating Sponsor when a vessel is available for loading; or disposed of as FAS may deem proper. The Cooperating Sponsor shall take such action as directed by FAS and shall reimburse FAS for expenses incurred if FAS determines that the expenses were incurred because of the fault or negligence of the Cooperating Sponsor.

(b) *Fault of others prior to loading on ocean vessel.* The Cooperating Sponsor shall immediately notify the Chief, Debt Management Office, KCMO/DMD, when any damage or loss to the commodity occurs that is attributable to a warehouseman, carrier, or other person between the time title is transferred to a Cooperating Sponsor and the time the commodity is loaded on board vessel at the designated port of export. The Cooperating Sponsor shall promptly assign to CCC any rights to claims which may arise as a result of such loss or damage and shall promptly forward to CCC all documents pertaining thereto. CCC shall have the right to initiate claims, and retain the proceeds of all claims, for such loss or damage.

(c) *Survey and outturn reports related to claims against ocean carriers.* (1) If the Program Agreement provides that CCC will arrange for an independent cargo surveyor to attend the discharge of the cargo, CCC will require the surveyor to provide a copy of the report to the Cooperating Sponsor.

(2)(i) If the Cooperating Sponsor arranges for an independent cargo surveyor, the Cooperating Sponsor shall forward to the Chief, Debt Management Office, KCMO/DMD, any narrative chronology or other commentary it can provide to assist in the adjudication of ocean transportation claims and shall prepare such a narrative in any case where the loss is estimated to be in excess of $5,000.00. The Cooperating Sponsor may, at its option, also engage the independent surveyor to supervise clearance and delivery of the cargo from customs or port areas to the Cooperating Sponsor or its agent and to issue delivery survey reports thereon.

(ii) In the event of cargo loss and damage, the Cooperating Sponsor shall provide to the Chief, Debt Management Office, KCMO/DMD, the names and addresses of individuals who were present at the time of discharge and during survey and who can verify the quantity lost or damaged. For bulk grain shipments, in those cases where the Cooperating Sponsor is responsible for survey and outturn reports, the Cooperating Sponsor shall obtain the services of an independent surveyor to:

(A) Observe the discharge of the cargo;

(B) Report on discharging methods including scale type, calibrations and any other factor which may affect the accuracy of scale weights, and, if scales are not used, state the reason therefore and describe the actual method used to determine weights;

(C) Estimate the quantity of cargo, if any, lost during discharge through carrier negligence;

(D) Advise on the quality of sweepings;

(E) Obtain copies of port or vessel records, if possible, showing quantity discharged;

(F) Provide immediate notification to the Cooperating Sponsor if additional services are necessary to protect cargo interests or if the surveyor has reason to believe that the correct quantity was not discharged; and

(G) In the case of shipments arriving in container vans, list the container van numbers and seal numbers shown on the container vans, and indicate whether the seals were intact at the time the container vans were opened, and whether the container vans were in any way damaged. To the extent possible, the independent surveyor should observe discharge of container vans from the vessel to ascertain whether any damage to the container van occurred and arrange for surveying as container vans are opened.

(iii) Cooperating Sponsors shall send copies to KCMO/DMD, Chief, Debt Management Office of all reports and documents pertaining to the discharge of commodities.

(iv) FAS will reimburse the Cooperating Sponsor for costs incurred upon receipt of the survey report and the surveyor's invoice or other documents that establish the survey cost. FAS will not reimburse a Cooperating Sponsor for the costs of a delivery survey unless the surveyor also prepares a discharge survey, or for any other survey not taken contemporaneously with the discharge of the vessel, unless FAS determines that such action was justified in the circumstances.

(3) Survey contracts shall be let on a competitive bid basis unless FAS determines that the use of competitive bids would not be practicable. FAS may preclude the use of certain surveyors because of conflicts of interest or lack of demonstrated capability to properly carry out surveying responsibilities.

(4) If practicable, all surveys shall be conducted jointly by the surveyor, the consignee, and the ocean carrier, and the survey report shall be signed by all parties.

(d) *Ocean carrier loss and damage.* (1) Notwithstanding transfer of title, CCC shall have the right to file, pursue, and retain the proceeds of collection from claims arising from ocean transportation cargo loss and damage arising out of shipments of commodities provided to governmental Cooperating Sponsors; however, when the Cooperating Sponsor pays the ocean freight or a portion thereof, it shall be entitled to pro rata reimbursement received from any claims related to ocean freight charged. FAS will pay general average contributions for all valid general average incidents which may arise from the movement of commodity to the destination ports. CCC shall receive and retain all allowances in general average.

(2) Nongovernmental Cooperating Sponsors shall: file notice with the ocean carrier immediately upon discovery of any cargo loss or damage, promptly initiate claims against the ocean carriers for such loss and damage, take all necessary action to obtain restitution for losses, and provide CCC copies of all such claims. Notwithstanding the preceding sentence, the nongovernmental Cooperating Sponsor need not file a claim when the cargo loss is less than $100, or in any case when the loss is between $100 and $300 and the nongovernmental Cooperating Sponsor determines that the cost of filing and collecting the claim will exceed the amount of the claim. The nongovernmental Cooperating Sponsor shall transmit to KCMO/DMD, Chief, Debt Management Office information and documentation on such lost or damaged shipments when no claim is to be filed. In the event of a declaration of General Average:

(i) The Cooperating sponsor shall assign all claim rights to CCC and shall provide CCC all documentation relating to the claim, if applicable;

(ii) CCC shall be responsible for settling general average and marine salvage claims;

(iii) FAS has sole authority to authorize any dispositions of commodities which have not commenced ocean transit or of which the ocean transit is interrupted;

(iv) FAS will receive and retain any monetary proceeds resulting from such disposition;

(v) CCC will initiate, prosecute, and retain all proceeds of cargo loss and damage against ocean carriers and any allowance in general average; and

(vi) FAS will pay any general average or marine salvage claims determined to be due.

(3) Amounts collected by nongovernmental Cooperating Sponsors on claims against ocean carriers which are less than $200 may be retained by the nongovernmental Cooperating Sponsor. On claims involving loss or damage of $200 or more, nongovernmental Cooperating Sponsors may retain from collections received by them, either $200 plus 10 percent of the difference between $200 and the total amount collected on the claim, up to a maximum of $500; or the actual administrative expenses incurred in collection of the claim, provided retention of such administrative expenses is approved by CCC. Allowable collection costs shall not include attorneys fees, fees of collection agencies, and similar costs. In no event will FAS pay collection costs in excess of the amount collected on the claim.

(4) A nongovernmental Cooperating Sponsor also may retain from claim recoveries remaining after allowable deductions for administrative expenses of collection, the amount of any special charges, such as handling and packing costs, which the nongovernmental Cooperating Sponsor has incurred on the lost or damaged commodity and which are included in the claims and paid by the liable party.

(5) A nongovernmental Cooperating Sponsor may redetermine claims on the basis of additional documentation or information not considered when the

claims were originally filed when such documentation or information clearly changes the ocean carrier's liability. Approval of such changes by FAS is not required regardless of amount. However, copies of redetermined claims and supporting documentation or information shall be furnished to FAS.

(6) A nongovernmental Cooperating Sponsor may negotiate compromise settlements of claims of any amount, provided that proposed compromise settlements of claims having a value of $5,000 or more shall require prior approval in writing by FAS. When a claim is compromised, a nongovernmental Cooperating Sponsor may retain from the amount collected, the amounts authorized in paragraph (d)(3) of this section, and in addition, an amount representing such percentage of the special charges described in paragraph (d)(4) of this section as compromised amount is to the full amount of the claim. When a claim is less than $600, a nongovernmental Cooperating Sponsor may terminate collection activity when it is determined that pursuit of such claims will not be economically sound. Approval for such termination by FAS is not required; however, the nongovernmental Cooperating Sponsor shall notify KCMO/DMD, Chief, Debt Management Division when collection activity on a claim is terminated.

(7) All amounts collected in excess of the amounts authorized in this section to be retained shall be remitted to CCC. For the purpose of determining the amount to be retained by a nongovernmental Cooperating Sponsor from the proceeds of claims filed against ocean carriers, the word "claim" shall refer to the loss and damage to commodities which are shipped on the same voyage of the same vessel to the same port destination, irrespective of the kinds of commodities shipped or the number of different bills of lading issued by the carrier.

(8) If a nongovernmental Cooperating Sponsor is unable to effect collection of a claim or negotiate an acceptable compromise settlement within the applicable period of limitation or any extension thereof granted in writing by the party alleged responsible for the damage, the nongovernmental Cooperating Sponsor shall assign its rights to the claim to CCC in sufficient time to permit the filing of legal action prior to the expiration of the period of limitation or any extension thereof. In all cases, a nongovernmental Cooperating Sponsor shall keep CCC informed of the progress of its collection efforts and shall promptly assign their claim rights to CCC upon request. Subsequently, if CCC collects on or settles the claim, CCC shall, except as indicated in this paragraph, pay to a nongovernmental Cooperating Sponsor the amount to which it would have been entitled had it collected on the claim. The additional 10 percent on amounts collected in excess of $200 will be payable, however, only if CCC determines that reasonable efforts were made to collect the claim prior to the assignment, or if payment is determined to be commensurate with the extra efforts exerted in further documenting the claim. If documentation requirements have not been fulfilled and the lack of such documentation has not been justified to the satisfaction of CCC, CCC will deny payment of all allowances to the nongovernmental Cooperating Sponsor.

(9) When a nongovernmental Cooperating Sponsor permits a claim to become time-barred, or fails to take timely actions to insure the right of CCC to assert such claims, and CCC determines that the nongovernmental Cooperating Sponsor failed to properly exercise its responsibilities under the Agreement, the nongovernmental Cooperating Sponsor shall be liable to the United States for the cost and freight value of the commodities lost to the program.

(e) *Fault of Cooperating Sponsor in country of distribution.* If a commodity, sale proceeds or program income is used for a purpose not permitted by the Program Agreement, or if a Cooperating Sponsor causes loss or damage to a commodity, sale proceeds, or program income through any act or omission or failure to provide proper storage, care and handling, FAS may require the Cooperating Sponsor to pay to the United States the value of the commodities, sale proceeds or program income lost, damaged or misused, or undertake other remedies FAS deems appropriate. FAS will consider normal commercial practices in the country of distribution in determining whether there was a proper exercise of the Cooperating Sponsor's responsibility. Payment by the Cooperating Sponsor shall be made in accordance with paragraph (g) of this section.

(f) *Fault of others in country of distribution and in intermediate country.* (1) In addition to survey or outturn reports to determine ocean carrier loss and damage, the Cooperating Sponsor shall, in the case of landlocked countries, arrange for an independent survey at the point of entry into the recipient country and make a report as set forth in paragraph (c)(l) of this section. FAS will reimburse the Cooperating Sponsor for the costs of survey as set forth in paragraph (c)(2)(iv) of this section.

(2) Where any damage to or loss of the commodity or any loss of sale proceeds or program income is attributable to a warehouseman, carrier or other person, the Cooperating Sponsor shall make every reasonable effort to pursue collection of claims for such loss or damage. The Cooperating Sponsor shall furnish a copy of the claim and related documents to the Agricultural Counselor or Attache. Cooperating Sponsors who fail to file or pursue such claims shall be liable to FAS for the value of the commodities or sale proceeds or program income lost, damaged, or misused: Provided, however, that the Cooperating Sponsor may elect not to file a claim if the loss is less than $500. The Cooperating Sponsor may retain $150 of any amount collected on an individual claim. In addition, Cooperating Sponsors may, with the written approval of the Agricultural Counselor or Attache, retain amounts to cover special costs of collection such as legal fees, or pay such collection costs with sale proceeds or program income. Any proposed settlement for less than the full amount of the claim requires prior approval by the Agricultural Counselor or Attache. When the Cooperating Sponsor has exhausted all reasonable attempts to collect a claim, it shall request the Agricultural Counselor or Attache to provide further instructions.

(3) The Cooperating Sponsor shall pursue any claim by initial billings and at least three subsequent demands at not more than 30 day intervals. If these efforts fail to elicit a satisfactory response, the cooperating sponsor shall pursue legal action in the judicial system of country unless otherwise agreed by the Agricultural Counselor or Attache. The Cooperating Sponsors must inform the Agricultural Counselor or Attache in writing of the reasons for not pursuing legal action; and the Agricultural Counselor or Attache may require the Cooperating Sponsor to obtain the opinion of competent legal counsel to support its decision prior to granting approval. If the Agricultural Counselor or Attache approves a Cooperating Sponsor's decision not to take further action on the claim, the Cooperating Sponsor shall assign the claim to CCC and shall forward all documentation relating to the claim to CCC.

(4) As an alternative to legal action in the judicial system of the country with regard to claims against a public entity of the government of the cooperating country, the Cooperating Sponsor and the cooperating country may agree in writing to settle disputed claims by an appropriate administrative procedure or arbitration.

(g) *Determination of value.* The Cooperating Sponsor shall determine the value of commodities misused, lost or damaged on the basis of the domestic market price at the time and place the misuse, loss or damage occurred. When it is not feasible to determine such market price, the value shall be the f.o.b. or f.a.s. commercial export price of the commodity at the time and place of export, plus ocean freight charges and other costs incurred by the U.S. Government in making delivery to the Cooperating Sponsor. When the value is determined on a cost basis, the Cooperating Sponsor may add to the value any provable costs it has incurred prior to delivery by the ocean carrier. In preparing the claim statement, these costs shall be clearly segregated from costs incurred by the Government of the United States. With respect to claims other than ocean carrier loss or damage claims, the Cooperating Sponsor may request the Agricultural Counselor or Attache to approve a commercially reasonable alternative basis to value the claim.

(h) *Reporting losses to the Agricultural Counselor or Attache or FAS designated representative.* (1) The Cooperating Sponsor shall promptly notify the Agricultural Counselor or Attache or FAS designated representative, in writing, of the circumstances pertaining to any loss, damage, or misuse of commodities valued at $500 or more occurring within the country of distribution or intermediate country. The report shall be made as soon as the Cooperating Sponsor has adequately investigated the circumstances, but in no event more than ninety days from the date the loss became known to the Cooperating Sponsor. The report shall identify the party in possession of the commodities and the party responsible for the loss, damage or misuse; the kind and quantities of commodities; the size and type of containers; the time and place of misuse, loss, or damage; the current location of the commodity; the Program Agreement number, the procurement contract numbers, or if unknown, other identifying numbers printed on the commodity containers; the action taken by the Cooperating Sponsor with respect to recovery or disposal; and the estimated value of the commodity. The report shall explain why any of the above-required information can not be provided. The Cooperating Sponsor shall also report the details regarding any loss or misuse of sale proceeds or program income.

(2) The Cooperating Sponsor shall report quarterly to the Agricultural Counselor or Attache any loss, damage to or misuse of commodities resulting in loss of less than $500. The Cooperating Sponsor shall inform the Agricultural Counselor or Attache or FAS designated representative if it has reason to believe there is a pattern or trend in the loss, damage, or misuse of such commodities and submit a report as described in paragraph (h)(1) of this section, together with any other relevant information the Cooperating Sponsor has available to it. The Agricultural Counselor or Attache may require additional information about any commodities lost, damaged or misused.

(i) *Handling claims proceeds.* Claims against ocean carriers shall be collected in U.S. dollars (or in the currency in which freight is paid) and shall be remitted (less amounts authorized to be retained) by Cooperating Sponsors to CCC. Claims against Cooperating Sponsors shall be paid to CCC in U.S. dollars. With respect to commodities lost, damaged or misused, amounts paid by Cooperating Sponsors and third parties in the country of distribution shall be deposited with the U.S. Disbursing Officer, American Embassy, preferably in U.S. dollars with instructions to credit the deposit to an account as determined by FAS, or in local currency at the highest rate of exchange legally obtainable on the date of deposit with instructions to credit the deposit to an FAS account as determined by FAS. With respect to sale proceeds and program income, amounts recovered may be deposited in the same account as the sale proceeds and may be used for purposes of the program.

§ 1599.15 Are there special recordkeeping and reporting requirements?

(a) *Records and reports—general requirements.* The Cooperating Sponsor shall maintain records for a period of three (3) years from the final date specified in the program agreement. FAS may, at reasonable times, inspect the Cooperating Sponsor's records pertaining to the receipt and use of the commodities and proceeds realized from the sale of the commodities, and have access to the Cooperating Sponsor's commodity storage and distribution sites and to locations of activities supported with proceeds realized from the sale of the commodities.

(b) *Evidence of export.* The Cooperating Sponsor's freight forwarder shall, within thirty (30) days after export, submit evidence of export of the agricultural commodities to the Chief, Export Operations Division, KCCO. If export is by sea or air, the Cooperating Sponsor's freight forwarder shall submit five copies of the carrier's on board bill of lading or consignee's receipt authenticated by a representative of the U.S. Customs Service. The evidence of export must show the kind and quantity of agricultural commodities exported, the date of export, and the destination country.

(c) *Reports.* (1) The Cooperating Sponsor shall submit a semiannual logistics report to the Agricultural Counselor or Attache and to the Director, PPDED, FAS/USDA, Washington, DC 20250–1034, covering the receipt of commodities. Cooperating sponsors must submit reports on Form CCC–620 and submit the first report by May 16 for agreements signed during the period, October 1 through March 31, or by November 16 for agreements signed during the period, April 1 through September 30. The first report must cover the time period from the date of signing and subsequent reports must be provided at six months intervals covering the period from the due date of the last report until all commodities have been distributed or sold and such distribution or sale reported to FAS. The report must contain the following data:

(i) Receipts of agricultural commodities including the name of each vessel, discharge port(s) or point(s) of entry, the date discharge was completed; the condition of the commodities on arrival, any significant loss or damage in transit; advice of any claim for, or recovery of, or reduction of freight charges due to loss or damage in transit on U.S. flag vessels;

(ii) Estimated commodity inventory at the end of the reporting period;

(iii) Quantity of commodity on order during the reporting period;

(iv) Status of claims for commodity losses both resolved and unresolved during the reporting period;

(v) Quantity of commodity damaged or declared unfit during the reporting period; and

(vi) Quantity and type of the commodity that has been directly distributed by the Cooperating Sponsor, distribution date, region of distribution, and estimated number of individuals benefitting from the distribution.

(2) Program Agreements will require Cooperating Sponsors to report periodically, against collected, established baseline indicators, on the

number of meals served, enrollment levels, total attendance numbers, including female attendance levels, learning developments, nutrition and health progress of mothers and children, and progress towards sustaining the feeding program.

(3) If the Program Agreement authorizes the sale or barter of commodities by the Cooperating Sponsor, the Cooperating Sponsor shall also submit a semiannual monetization report to the Agricultural Counselor or Attache and to the Director, PPDED, FAS/USDA, Washington, DC 20250–1034, covering the deposits into and disbursements from the special account for the purposes specified in the Program Agreement. Cooperating Sponsors must submit reports on Form CCC–621 and submit the first report by May 16 for agreements signed during the period, October 1 through March 31, or by November 16 for agreements signed during the period, April 1 through September 30. The first report must cover the time period from the date of signing and subsequent reports must be provided at six months intervals covering the period from the due date of the last report until all funds generated from commodity sales have been distributed and such distribution reported to FAS. The report must contain the following information and include both local currency amounts and U.S. dollar equivalents:

(i) Quantity and type of commodities sold;

(ii) Proceeds generated from the sale;

(iii) Proceeds deposited to the special account including the date of deposit;

(iv) Interest earned on the special account;

(v) Disbursements from the special account, including date, amount and purpose of the disbursement; and

(vi) Any balance carried forward in the special account from the previous reporting period.

(4) The Cooperating Sponsor shall furnish FAS such additional information and reports relating to this agreement as FAS may reasonably request.

§ 1599.16 What are the Cooperating Sponsor's audit requirements?

Non-governmental Cooperating Sponsors are subject to the audit requirements of OMB Circular A–133 as implemented in USDA by 7 CFR part 3052, "Audits of States, Local Governments, and Non-Profit Organizations." The Cooperating Sponsor is also responsible for auditing the activities of recipient agencies that receive more than $25,000 of provided commodities or sale proceeds. This responsibility may be satisfied by relying upon independent audits of the recipient agency or upon a review conducted by the Cooperating Sponsor.

§ 1599.17 When may FAS suspend a program?

All or any part of the assistance provided under a Program Agreement, including commodities in transit, may be suspended by FAS if:

(a) The Cooperating Sponsor fails to comply with the provisions of the Program Agreement or this part;

(b) FAS determines that the continuation of such assistance is no longer necessary or desirable; or

(c) FAS determines that storage facilities are inadequate to prevent spoilage or waste, or that distribution of commodities will result in substantial disincentive to, or interference with, domestic production or marketing in the recipient country.

§ 1599.18 Are there sample documents and guidelines available for developing proposals and reports?

FAS has developed guidelines to assist the Cooperating Sponsors with effective reporting on program logistics and commodity sales. Cooperating Sponsors may obtain these guidelines from the Director, PPDED.

Signed March 19th, 2003, in Washington, DC.

Kenneth J. Roberts,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 03–7028 Filed 3–25–03; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–27–AD]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. MU–2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would apply to certain Mitsubishi Heavy Industries, Ltd. (Mitsubishi) MU–2B series airplanes. The earlier NPRM would have required you to repetitively inspect the cockpit windshield and cabin window surfaces for damage (damage would be defined as crazing, scratches, and cracks). If any of the windshield or window surfaces have damage that exceeds certain limits, the proposed AD would have required you to replace the windshield or window. If the damage does not exceed certain limits, then the proposed AD would have allowed you to blend out the damage following maintenance manual procedures. The earlier NPRM resulted from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Japan. The manufacturer has issued revision C to the current service information and issued service information applicable to additional MU–2B model airplanes. The manufacturer has also informed us that they will not provide replacement parts free of charge. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these additional actions.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before May 2, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–27–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 97–CE–27–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from:

—Mitsubishi Heavy Industries America, Inc., 15303 Dallas Parkway, suite 685, LB–77, Dallas, Texas 75248; telephone: (972) 980–5001; facsimile: (972) 980–5091; or

—Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems Works, 10, OYE–CHO, MINATO–KU, Nagoya, Japan, telephone: NAGOYA (611) 2141, telex: 4464561HISI.

You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Direct all questions to:

—For the airplanes manufactured in Japan (Type Certificate A2PC): Mr. Carl Fountain, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California, 90712; telephone: (562) 627–5222; facsimile: (562) 627–5210; and

—For the airplanes manufactured in the United States (Type Certificate A10SW): Mr. Andy McAnaul, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 97–CE–27–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Japanese Civil Airworthiness Bureau (JCAB), which is the airworthiness authority for Japan, notified the FAA that an unsafe condition may exist on certain Mitsubishi MU–2B series airplanes. The JCAB reports that several Mitsubishi MU–2B series airplanes have had windshield or window separation during flight. Separation is defined as shattering glass. Further analysis shows that the separation is happening as a result of repeated cabin pressurization cycles.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in shattering or separation of the cockpit windshield or cabin windows during flight, which could cause loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Mitsubishi MU–2B series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 14, 1998 (63 FR 18151). The NPRM proposed to require you to repetitively inspect the cockpit windshield and cabin window surfaces for damage (damage would be defined as crazing, scratches, and cracks). If any of the windshield or window surfaces have damage that exceeds certain limits, the NPRM proposed to require you to replace the windshield or window. If the damage does not exceed certain limits, then the NPRM proposed to allow blending out the damage following maintenance manual procedures.

Accomplishment of these proposed actions would be in accordance with Mitsubishi MU–2 Service Bulletin (SB) No. 224, dated June 30, 1995, and MU–2 SB No. 224A, dated October 30, 1995.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Add Additional Models to the Applicability of the Proposed AD To Cover the Total MU–2B Fleet

What Is the Commenter's Concern?

The manufacturer states that an identical service bulletin exists which addresses the same condition on airplanes listed on Type Certificate Data Sheet (TCDS) No. A10SW. The manufacturer suggests that those airplane models and the applicable service bulletin be included in the proposed AD.

What Is FAA's Response to the Concern?

We agree with the manufacturer's suggestion and are incorporating the changes in this proposed AD. Because of the additional airplanes being added to the applicability of this proposed AD and the additional burden on the public, we will reopen the comment period for this proposed AD.

Comment Issue No. 2: Exclude Heated Windshields From the Applicability of the Proposed AD

What Is the Commenter's Concern?

The manufacturer states that heated windshields should be excluded from the applicability of this proposed AD, as specified in MU–2 Service Bulletin No. 224A, dated October 30, 1995.

What Is FAA's Response to the Concern?

We agree with the manufacturer's comment and are changing this proposed AD to reflect this change.

Comment Issue No. 3: Correct Part Number Referenced in the Proposed AD

What Is the Commenter's Concern?

The manufacturer states that reference to the cockpit side window, part number 010A–81874–1/–2, is incorrect on MU–2B Service Bulletin No. 224A, dated October 30, 1995. Revision C of MU–2B Service Bulletin will correct this number.

What Is FAA's Response to the Concern?

We agree with the manufacturer's comment and are incorporating the correct part number reference in this proposed AD.

Comment Issue No. 4: Change the Cost Information to Reflect that Mitsubishi Will Not Provide Replacement Parts At No Cost

What is the Commenter's Concern?

The manufacturer states that the cost impact statement in the proposed AD indicates that replacement parts will be provided at no cost. The manufacturer stated that parts will not be provided at no cost and has provided a current price list for replacement parts; therefore, changing the cost impact on the public.

What Is FAA's Response to the Concern?

We agree that the cost impact statement should be changed to reflect the cost for replacement parts. Because this shifts the cost burden from the manufacturer to the owner/operator, we will reopen the comment period for this proposed AD.

The FAA's Determination

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition also exists or could develop on other Mitsubishi MU–2B series airplanes;

—The NPRM should be expanded to include these actions; and

—AD action should be taken in order to correct this unsafe condition.

The Supplemental NPRM

How Will the Changes to the NPRM Impact the Public?

Adding additional airplanes to the applicability section and changing the cost impact to the owner/operator goes beyond the scope of what was already proposed. Therefore, we are issuing a supplemental NPRM and reopening the comment period to allow the public additional time to comment on this proposed AD.

What Are the Provisions of the Supplemental NPRM?

This proposed AD would require you to:

—Repetitively inspect the cockpit windshield and cabin window surfaces for damage (damage would be defined as crazing, scratches, and cracks);

—Blend out the damage if the damage does not exceed certain limits; and

—Replace the windshield or window if damage exceeds certain limits.

What Document Should I Use To Accomplish These Actions?

Accomplishment of the proposed actions would be in accordance with the following, as applicable:

—Mitsubishi MU–2 Service Bulletin No. 224, which incorporates the following pages:

Affected pages	Revision level	Date
3, 5, and 6	Original Issue	June 30, 1995.
2, 4	B	Nov. 11, 1996.
1	C	April 20, 1998.

—Mitsubishi MU–2 Service Bulletin No. 087/56–001B, which incorporates the following pages:

Affected pages	Revision level	Date
3, 5, and 6	Original Issue	June 29, 1995.
2	A	Sept. 26, 1996.
1, 4	B	May 4, 1998.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 315 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection;

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 workhours × $60 = $480	No parts required	$480	$480 × 315 = $151,200.

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
16 workhours X $60 = $960	P/N 010A–31450–1/–2 = $5988. P/N 010A–31451–1/–2 = $4368. P/N 010A–31874–1/–2 = $2432. P/N 010A–31870 = $1673. P/N 010A–31870–11 = $1648. P/N 030A–32402 = $1823.	$960 (workhours) + applicable part(s) = total cost per airplane.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows;

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Mitsubishi Heavy Industries, Ltd: Docket No. 97–CE–27–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are equipped with the following part-numbered windshields and cabin windows and that are certificated in any category:

(1) Windshields

Part No.	Type of windshield
010A–31450–1/–2	Windshield (LH/RH).
010A–31451–1/–2	Cockpit side window (LH/RH).
010A–31874–1/–2	Cockpit side window (LH/RH).
010A–31870	Cabin window.
010A–31870–11	Cabin window (at door).
030A–32402	Long body—small cabin window.

Note 1: The heated windshield is excluded from the inspection and replacement requirements of this AD.

(2) Affected airplanes

(i) The following models and serial numbers as listed on Mitsubishi MU–2 Service Bulletin No. 224C:

Models	Serial Nos.
MU–2B/–10/–15/–20/–25/–26	008 through 347 (except 313 and 321).
MU–2B–30/–35/–36	501 through 696 (except 652 and 661).

(ii) The following models and serial numbers as listed on Mitsubishi MU–2 Service Bulletin No. 087/56–001B:

Models	Serial Nos.
MU–2B–25/–26/–26A/–40	313SA, 321SA, and 348SA through 459SA.
MU–2B–35/–36A/–60	652SA, 661SA, and 697SA through 1569SA.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent cockpit windshield or cabin window separation during flight, which could result in engine ingestion of glass, wing skin damage, or propeller damage, and possible loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the cockpit windshields and cabin windows for scratching, crazing, and cracking (referred to as damage).	Within the next 100 hours time-in-service (TIS) after the effective date of this AD and thereafter at intervals not to exceed 100 hours TIS from the last inspection, repair or replacement.	In accordance with Mitsubishi MU–2 Service Bulletin No. 224 (as specified in paragraph (e) of this AD) and Mitsubishi MU–2 Service Bulletin 087/56–001 (as specified in paragraph (e) of this AD).
(2) Replace any window or windshield if damaged beyond the limits specified in Mitsubishi MU–2 Service Bulletin No. 224 (as specified in paragraph (e) of this AD) and Mitsubishi MU–2 Service Bulletin 087/56–001 (as specified in paragraph (e) of this AD).	Prior to further flight after the inspection in which the damage was found.	In accordance with Mitsubishi MU–2 Service Bulletin No. 224 (as specified in paragraph (e) of this AD) and Mitsubishi MU–2 Service Bulletin 087/56–001 (as specified in paragraph (e) of this AD).
(3) Repair any damaged windshield or window that is within the limits specified in Mitsubishi MU–2 Service Bulletin No. 224 (as specified in paragraph (e) of this AD) and Mitsubishi MU–2 Service Bulletin 087/56–001 (as specified in paragraph (e) of this AD).	Prior to further flight after the inspection in which the damage was found.	In accordance with the applicable Mitsubishi Maintenance Manual.

(e) *Can I utilize different revisions to the affected service bulletins?* The service bulletins required to accomplish these actions incorporate the following pages:

(1) Mitsubishi MU–2 Service Bulletin No. 224:

Affected pages	Revision level	Date
3, 5, and 6	Original Issue	June 30, 1995.
2, 4	B	Nov. 11, 1996.
1	C	April 20, 1998.

(2) Mitsubishi MU–2 Service Bulletin No. 087/56–001B:

Affected pages	Revision level	Date
3, 5, and 6	Original Issue	June 29, 1995.
2	A	Sept. 26, 1996.
1, 4	B	May 4, 1998.

(f) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office, Small Airplane Directorate.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Direct all questions to:

(1) For the airplanes manufactured in Japan (Type Certificate A2PC): Mr. Carl Fountain, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard., Lakewood, California, 90712; telephone: (562) 627–5222; facsimile: (562) 627–5210; and

(2) For the airplanes manufactured in the United States (Type Certificate A10SW): Mr. Andy McAnaul, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Mitsubishi Heavy Industries America, Inc., 15303 Dallas Parkway, suite 685, LB–77, Dallas, Texas 75248; telephone: (972) 980–5001; facsimile: (972) 980–5091; or Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems Works, 10, OYE–CHO, MINATO–KU, Nagoya, Japan, telephone: NAGOYA (611) 2141, telex: 4464561HISI. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Japanese AD No. TCD–4311–95, dated November 15, 1995.

Issued in Kansas City, Missouri, on March 19, 2003.

Sandra J. Campbell,

Acting Manager, Small Airplane Directorate, Aircraft Certificotion Service.

[FR Doc. 03–7187 Filed 3–25–03; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 422

[Reg. No. 22]

RIN 0960–AF05

Evidence Requirements for Assignment of Social Security Numbers (SSNs); Assignment of SSNs for Nonwork Purposes

AGENCY: Social Security Administration (SSA).

ACTION: Proposed rules.

SUMMARY: These proposed rules would further enhance the integrity of SSA's enumeration processes for assigning Social Security Numbers (SSNs). By changing evidence requirements for assignment of SSNs and by defining "valid nonwork reasons," we intend to reduce the opportunity for fraud through misuse and/or improper attainment of SSNs.

We propose to change our rules regarding the age at which a mandatory in-person interview is required for original applications for an SSN. In addition, we propose to eliminate the waiver of evidence of identity for children under age 7 who are applying for an original SSN card. Under these proposals, SSA will require an in-person interview with all individuals age 12 or older who are applying for an original SSN, and SSA will no longer waive the requirement to provide evidence of identity in original applications for a child under age 7. SSA will clarify that evidence of identity must contain sufficient biographical or physical information to identify the individual. Additionally, we propose to eliminate reference to a pilot no longer under consideration by SSA pertaining to the processing of replacement SSN cards for U.S. citizens.

We also propose to clarify our rules regarding when we will assign an SSN to an alien not under authority of law permitting him or her to work in the U.S. We are proposing to define a "valid nonwork purpose" as those instances when a Federal statute or regulation requires an alien to have an SSN in order to receive a federally-funded benefit to which the alien has established entitlement, or when a State or local law requires an alien who is legally in the U.S. to have an SSN in order to receive general public assistance benefits (*i.e.*, a public benefit that is means-tested) to which the alien has established entitlement.

DATES: To be sure that your comments are considered, we must receive them no later than May 27, 2003.

ADDRESSES: You may give us your comments by: using our Internet facility (*i.e.*, Social Security Online) at *http://www.socialsecurity.gov/regulations;* e-mail to *regulations@ssa.gov;* telefax to (410) 966–2830; or letter to the Commissioner of Social Security, PO Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them physically on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.access.gpo.gov/su_docs/aces/aces140.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://www.socialsecurity.gov.*

FOR FURTHER INFORMATION CONTACT: Arthur La Veck or Karen Cool, Social Insurance Specialists, Office of Income Security Programs, 3–R–1 Operations Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, ((410) 966–5665, *arthur.laveck@ssa.gov* or (410) 966–7094, *karen.r.cool@ssa.gov*) or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Current Rules—Mandatory In-Person Interview

Our regulations at 20 CFR 422.107 on evidence requirements for SSN card applications currently state that:

- An in-person interview is required of an applicant who is age 18 or older applying for an original SSN, except for an alien who requests an SSN as part of the immigration process described in 20 CFR 422.103(b)(3).
- An in-person interview may also be required of other applicants.
- An applicant for an original SSN card is required to submit documentary evidence that the Commissioner of Social Security regards as convincing evidence of age, U.S. citizenship or alien status, and true identity.
- An applicant for a duplicate or corrected SSN card may also be required to submit convincing documentary evidence of age, U.S. citizenship or alien status, but is always required to submit convincing documentary evidence of identity.

Furthermore, regarding evidence of identity, our regulations at 20 CFR 422.107(c) currently state that:

- Documentary evidence of identity may consist of a driver's license, identity card, school record, medical record, marriage record, passport, Immigration and Naturalization Service (INS) document, or other similar document serving to identify the individual. It is preferable that the document contain the applicant's signature for comparison with his or her signature on the application for a Social Security number.
- When the applicant is a child under 7 years of age applying for an original SSN card and there is no documentary evidence of identity available, the requirement for evidence of identity will be waived if there is no reason to doubt the validity of the birth record, the SSN application, and the existence of the individual.
- An applicant for a duplicate social security number card who is a U.S. citizen and who resides in an area where we are conducting a pilot project on the issuance of duplicate cards will not be required to submit a signed application or corroborative documentary evidence of identity if we are able to compare information provided by the applicant with information already in our records and, on the basis of this comparison, decide that corroborative documentary evidence is not needed to establish the applicant's identity. These special procedures do not apply to:
- A foreign-born U.S. citizen who has not already submitted evidence of citizenship to us;
- A person applying on behalf of another if the applicant is not a parent applying on behalf of his or her minor child; and
- A person whose address is an in-care-of address, a post office box, general delivery, or a suite.

Current Rules—SSNs for Nonwork Purposes

In implementing section 205(c)(2)(B)(i) of the Social Security Act (the Act) and regulations at 20 CFR 422.104 and 422.107, we currently assign SSNs to aliens who:

- Are lawfully admitted to the U.S. either for permanent residence or under other authority of law permitting them to engage in employment in the U.S.; or
- Are legally in the U.S. but not under authority of law permitting them to engage in employment, but only for a valid nonwork purpose; or

- Cannot provide evidence of alien status, and regardless of residency, are entitled to federally funded benefits for which a Federal statute or regulation requires an SSN.

Examples of these benefits include Social Security benefits, Supplemental Security Income benefits, Medicaid, and Temporary Assistance for Needy Families.

Prior to March 1, 2002, our operational instructions permitted us to assign an SSN for a nonwork purpose to aliens who:

- Cannot provide evidence of alien status and, whether or not they reside in the U.S., are entitled to federally-funded benefits for which a Federal statute or regulation requires an SSN; or
- Are legally in the U.S., if there is a Federal, State, or local statute or regulation that requires them to provide SSNs to get a particular benefit or service.

In the case of such a State or local statute or regulation, the statute or regulation must be related to the administration of taxes, general public assistance, driver licensing, or motor vehicle registration (section 205(c)(2)(C)(i) of the Act). If entitlement to a State or local benefit or service is the alien's sole reason for requesting an SSN, the alien must submit documentation from the applicable government entity. We take great care to ensure that only eligible applicants are assigned SSNs and that our records accurately reflect the basis for assignment of the SSNs. Therefore, documentation must identify the alien, describe the State or local benefit/service for which an SSN is required, and confirm that the alien meets all requirements for the benefit/service except for providing an SSN.

If we issue an SSN to an alien for a nonwork purpose, the SSN card is marked with a nonwork legend that reads "NOT VALID FOR EMPLOYMENT." If earnings are reported to us on an SSN issued for a nonwork purpose, we provide the INS with information regarding the reported earnings pursuant to section 290(c)(2) of the Immigration and Nationality Act.

In July 1996, the Internal Revenue Service (IRS) began assigning Individual Taxpayer Identification Numbers (ITINs) for tax purposes to individuals who are not eligible for SSNs but who need to report income for tax purposes. This change in IRS policy eliminated one of the primary reasons that aliens not authorized to work had sought SSNs for nonwork purposes. On October 22, 1998, we published final rules at 63 FR 56552 that eliminated the references to IRS tax reporting purposes as a valid nonwork reason for assignment of an SSN.

After the July 1996 IRS change, the remaining valid nonwork reasons for assignment of SSNs were generally limited to eligibility for federally-funded benefits and use of the SSNs by State governments to administer statutes governing the issuing of driver's licenses, registering of motor vehicles, and in administering general public assistance programs.

On October 12, 1999, we published an Advance Notice of Proposed Rulemaking (ANPRM) at 64 FR 55217 seeking comments on a proposal to further restrict the issuance to lawfully admitted aliens of SSNs for nonwork purposes. In the ANPRM, we proposed limiting assignment of nonwork SSNs to when there is a federal statute or regulation that requires the alien to furnish an SSN to receive a federally-funded benefit or service and the alien is legally in the U.S. but not under authority of law permitting him or her to work in the U.S.

Additional restrictions on assignment of SSNs for nonwork purposes are needed because available SSA data suggest that some individuals assigned SSNs for nonwork purposes, especially for driver's licensing, misuse those SSNs to work illegally in the U.S. Wages have been reported to us on SSNs assigned for nonwork purposes. SSN misuse can impact all levels of government in the form of illegal employment in the U.S. and fraudulent entitlement to Federal and State benefits and services. We have posted on our Web site a report from SSA's Inspector General entitled "Work Activity for Social Security Numbers Assigned for Nonwork Purposes in the State of Utah." The report can be found at *www.socialsecurity.gov/oig/ADOBEPDF/A-14-01-11048.pdf.*

We have, with the assistance of the American Association of Motor Vehicle Administrators and the support of the U.S. Department of Transportation, combined efforts to assist States that currently require SSNs for driver licensing and motor vehicle registration purposes to develop alternative identifier systems to accommodate individuals not authorized to work in the U.S. We understand that most States, though not all, have now completed arrangements for alternative identifier systems.

Explanation of Proposed Changes

422.107 Evidence Requirements

In-Person Interview

We propose to amend § 422.107 of our regulations to require an individual age 12 or older be present at an in-person interview before assignment of an original SSN. Furthermore, we will attempt to determine if an SSN had been previously assigned by asking additional questions of the applicant and, if a previously assigned SSN cannot be located, why an SSN was not obtained at an earlier time.

We believe that this measure offers necessary additional protection against fraud while minimizing the burden on the public because:

- At age 12, a child may have picture identification, such as a student identification card, which can be used for comparison purposes, or alternatively, a child age 12 or older should have other convincing documentary evidence of identity available.
- Although the parent or another adult will be in attendance, and may be the primary respondent, we believe that requiring SSN applicants age 12 or older to be interviewed in person will significantly reduce opportunities for fraudulent applications.
- A 12-year old may be able to provide answers to some questions without parental assistance.
- This measure will have limited applicability as generally it should be rare for a person to obtain an SSN for the first time as late as 12 years of age.

We believe that the proposed age 12 threshold for in-person interviews provides a balance between allowing us to screen effectively for a prior SSN without being overly burdensome on the children or their parents. When considering the age at which to set the in-person interview, we felt that it was rare for individuals to obtain an SSN for the first time as late as 12 years of age. However, we rejected setting the threshold at a younger age because we felt that requiring the presence of younger children at in-person interviews would be overly burdensome on the children and unproductive for us, even with the parent in attendance.

Section 11111 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) amended the Internal Revenue Code (IRC) section 32 (concerning the earned income credit). The amendment requires individuals filing tax returns after December 31, 1991 to include the taxpayer identification number—usually the SSN—of each qualifying child age 1 or older. The Uruguay Round Agreements Act (Pub. L. 103-465) amended IRC section 6109 to generally require that individuals include the taxpayer identification number of each dependent for whom an exemption is claimed, regardless of age, for taxable years beginning after December 31, 1994. Additionally, SSNs generally are required for the receipt of government aid or assistance. Children who have not been claimed on tax returns or have not received any government assistance, may have needed SSNs for medical insurance purposes, savings accounts or other financial instruments, often within a short time after birth. Because most children generally will have an SSN before their first birthday, we believe that lowering the age for a mandatory interview is in accord with our goals for fraud prevention because an explanation is needed when a child does not obtain an SSN at a very early age.

Furthermore, available SSA data suggest that some individuals assigned SSNs prior to age 18 have obtained those SSNs fraudulently because we sought no additional development and documentation before assigning an SSN. Lowering the age at which additional documentation is required should limit further occurrences of fraudulently attained SSNs for children. This form of SSN misuse can impact all levels of government in the form of illegal employment and fraudulent entitlement to government benefits and services. In addition, an SSN improperly assigned could be used to defraud creditors and other businesses.

Evidence of Identity

Evidence of identity is required for all SSN applicants, regardless of age. We propose to eliminate the provision to waive the requirement for evidence of identity for children under age 7 when an original application for an SSN is filed. Thus, an SSN will not be assigned to a child under age 7 without all the evidentiary requirements being met. Such evidence requirements also have a direct correlation with the prevention of fraud. Through convincing documentary evidence of identity, the individual's continued existence is established in our records, thus limiting opportunities for fraud, such as identity theft.

We intend to clarify that the identity document should contain sufficient biographical or physical information to identify the applicant (*e.g.*, contain the applicant's name plus age, date of birth, or parents' names and/or a photograph or physical description). Identity documents containing biographical or physical data can be used for comparison with data SSA already has or with other documents the applicant may submit in connection with the application for an SSN card. A birth record is not sufficient evidence to establish identity. In a 2000 audit, SSA's Inspector General indicated that SSA assigned SSNs to individuals whose U.S. birth certificates were counterfeit. Individuals typically posed as the mothers of nonexistent children and presented counterfeit birth certificates as evidence. This audit can be found at *http://www.ssa.gov/oig/ADOBEPDF/A-09-98-41009.pdf.* Requiring an identity document other than a birth certificate will make it harder for fraudulent applicants to obtain SSNs under a fictitious identity because they must obtain additional evidence. This requirement should not unduly burden legitimate applicants because sufficient proof of identity, such as a medical record or school record, will normally exist, even for the very young.

The pilot project on providing replacement SSN cards by telephone, which we were conducting on the issuance of duplicate SSN cards for U.S. citizens, has been completed. Therefore, we propose to remove the rules pertaining to this pilot.

422.104 Who Can Be Assigned a Social Security Number

We also propose to amend § 422.104 of our regulations to define what we consider to be a valid "nonwork reason" for assigning an SSN to an alien who does not have evidence of authority permitting him or her to work. This proposal defines the only valid nonwork reasons for assigning an SSN to such an alien as:

- To satisfy a Federal statute or regulation that requires the alien to have an SSN in order to receive a Federally-funded benefit (such as Temporary Assistance to Needy Families) to which the alien has established entitlement; or
- To satisfy a State or local law that requires an alien who is legally in the U.S. to have an SSN in order to receive general public assistance benefits (such as state-funded General Assistance) to which the alien has established entitlement.

Thus, under the clarification that we are proposing, State and local entities would be able to continue to require individuals to disclose their already assigned SSNs for purposes of receiving benefits or services. However, we would no longer assign an SSN to an alien for any nonwork purpose other than to receive Federal, State or local benefits as described in the proposed changes to § 422.104.

Advance Notice of Proposed Rulemaking

We received several comments in response to the ANPRM we published on October 12, 1999 (64 FR 55217) regarding SSNs for nonwork purposes. Most of the commenters expressed general support for the proposed change in regulations contained in the ANPRM. Many of the commenters, however, did recommend revisions in the rule.

The proposed rules in this NPRM incorporate changes made in response to these comments.

Comment: Several commenters expressed concern that the rule change proposed in the ANPRM regarding SSNs for nonwork purposes could have a potential impact on access to public assistance programs.

Response: We agree with these commenters. Hence, the changes that we are now proposing maintain our policy of issuing SSNs when a State or local law requires the alien to have an SSN in order to receive general public assistance benefits to which the alien has established entitlement.

Comment: Some commenters indicated that our proposed change did not go far enough and that SSNs should only be assigned for SSA programmatic purposes.

Response: Limiting assignment of SSNs for only SSA programmatic purposes is not legally permissible. Section 205(c)(2)(B)(i)(II) of the Social Security Act requires us to assign an SSN to any individual who is an applicant for or recipient of a benefit funded in whole or in part with Federal funds.

Furthermore, there are also State laws that require individuals to have SSNs to receive benefits or services. While there is no federal mandate for us to assign SSNs for those purposes, the Social Security Act does permit the States to use the SSN in the administration of their tax, general public assistance, drivers' licenses or motor vehicle laws. In the past, we assigned SSNs for those purposes. Once the IRS began issuing ITINs, the need for SSNs for State tax purposes was eliminated as States accept ITINs in lieu of an SSN. While we could also have decided to stop assigning SSNs for general public assistance benefits, we propose to continue to assign SSNs when required for State public assistance in order to allow States to provide needed assistance to non-citizens and because experience shows that SSNs assigned for such programs have not resulted in significant SSN misuse.

Comment: Several commenters expressed concern that the elimination of drivers' licenses and motor vehicle registration as valid nonwork reasons for assigning an SSN would have a negative impact on the ability of States to track problem drivers.

Response: We recognize that our change in policy may present some challenges to State motor vehicle administrations that identify all drivers

by only the SSN, but this change was not made without consideration of those challenges. As indicated in our 1999 ANPRM related to this matter, we have encouraged States to develop an alternative identifier for several years. As stated above, we have, with the assistance of the American Association of Motor Vehicle Administrators and the support of the U.S. Department of Transportation, combined efforts to assist States that require SSNs for driver licensing and motor vehicle registration purposes in the development of alternative identifier systems to accommodate individuals not authorized to work in the U.S.

Additionally, we must do all we can to protect the integrity of the SSN processes. One aspect of our stewardship responsibilities is to ensure that our enumeration processes prevent those who have lawfully entered this country, but without work authorization, from improperly obtaining an SSN and subsequently committing fraud and misuse. We always try to strike an appropriate balance between minimizing public burden and protecting the public interest, and in this instance we believe that balance is best achieved by eliminating drivers' licensing as a valid nonwork reason for the assignment of SSNs for nonwork purposes.

Clarity of These Regulations

Executive Order 12866 requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866, as Amended by Executive Order 13258

The Office of Management and Budget (OMB) has reviewed these rules in accordance with Executive Order 12866 as amended. We have also determined that these rules meet the plain language requirement of Executive Order 12866.

Regulatory Flexibility Act

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they would affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Federalism

We have reviewed these proposed regulations under the threshold criteria of Executive Order 13132 and have determined that they would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. As noted above, we propose to continue assigning SSNs for State-related purposes when we believe it does not conflict with our stewardship responsibilities. The impact is limited to those States that have not developed an alternative system for identifying individuals not eligible for SSNs and who are seeking drivers' licenses.

Paperwork Reduction Act

These proposed rules contain reporting requirements in section 422.107. We have been collecting this information under Office of Management and Budget (OMB) Number 0960–0066, using form SS–5, Application for SSN Card and from State Bureaus of Vital Statistics (BVS) through the enumeration at birth process. However, the changed reporting requirements in section 422.107, described above, and the revised form will require clearance from OMB under the Paperwork Reduction Act of 1995. Below is the estimated public reporting burden:

	Form SS–5	State BVSs
Number of Respondents	14,000,000	53.
Frequency of Response: (daily/weekly/monthly)	1	Varies.
Average Burden Per Respondent/Cost Per Response	8.5–9.5 minutes	$1.94 per record for 4,096,000 records.
Estimated Annual Burden	1,987,533 hours	$7,951,080.

An Information Collection Request is being submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments may be mailed or faxed to OMB and SSA at the following addresses/fax numbers:

Office of Management and Budget, Attn: OMB Desk Officer, Rm. 10235, New Executive Office Building, 725 17th St., NW., Washington, DC 20503, Fax No. 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, Fax No. 410–965–6400.

Comments can be received between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–0454.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies) Reporting and recordkeeping requirements, Social Security.

Dated: March 17, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend part 422, subpart B, chapter III of title 20, Code of Federal Regulations as follows:

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—[Amended]

1. The authority citation for subpart B of part 422 continues to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b–1, and 1320b–13).

2. Revise § 422.104 to read as follows:

§ 422.104 Who can be assigned a social security number.

(a) *Persons eligible for SSN assignment.* We can assign you a social security number if you meet the evidence requirements in § 422.107 and you are:

(1) A United States citizen; or

(2) An alien lawfully admitted to the United States for permanent residence or under other authority of law permitting you to work in the United States (§ 422.105 describes how we determine if a nonimmigrant alien is permitted to work in the United States); or

(3) An alien who cannot provide the evidence of alien status showing the alien has been lawfully admitted to the U.S., or an alien who has evidence of having been lawfully admitted but who does not have evidence of authority to work in the U.S., as required by § 422.107(e), if the evidence described in that paragraph does not exist, but only for a valid nonwork reason. We consider a valid nonwork reason to be:

(i) You need a social security number to satisfy a Federal statute or regulation that requires you to have a social security number in order to receive a Federally-funded benefit to which you have established entitlement and you reside either in or outside the U. S.; or

(ii) You need a social security number to satisfy a state or local law that requires you to have a social security number in order to receive general public assistance benefits to which you have established entitlement, and you are legally in the United States.

(b) *Annotation for a nonwork purpose.* If we assign you a social security number as an alien for a nonwork purpose, we will indicate in our records that you are not authorized to work. We will also mark your social security card with a legend that reads "NOT VALID FOR EMPLOYMENT." If earnings are reported to us on your number, we will inform the Immigration and Naturalization Service of the reported earnings.

3. Amend § 422.107, to revise paragraphs (a) and (c), to read as follows:

§ 422.107 Evidence requirements.

(a) *General.* An applicant for an original social security number card must submit documentary evidence which the Commissioner of Social Security regards as convincing evidence of age, U.S. citizenship or alien status, and true identity. An applicant for a duplicate or corrected social security number card must submit convincing documentary evidence of identity and may also be required to submit convincing documentary evidence of age and U.S. citizenship or alien status. An applicant for an original, duplicate, or corrected social security number card is also required to submit evidence to assist us in determining the existence and identity of any previously assigned number(s). A social security number will not be assigned, or an original, duplicate, or corrected card issued, unless all the evidence requirements are met. An in-person interview is required of an applicant who is age 12 or older applying for an original social security number except for an alien who requests a social security number as part of the immigration process as described in § 422.103(b)(3). An in-person interview may also be required of other applicants. All documents submitted as evidence must be originals or copies of the original documents certified by the custodians of the original records and are subject to verification.

* * * * *

(c) *Evidence of identity.* An applicant for an original social security number or a duplicate or corrected social security number card is required to submit convincing documentary evidence of identity. Documentary evidence of identity may consist of a driver's license, identity card, school record, medical record, marriage record, passport, Immigration and Naturalization Service document, or other similar document serving to identify the individual. The document must contain sufficient information to identify the applicant, including the applicant's name and the applicant's age, date of birth, or parents' names; and/or a photograph or physical description of the individual. A birth record is not sufficient evidence to establish identity for these purposes.

* * * * *

[FR Doc. 03–7188 Filed 3–25–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AL55

Disease Associated With Exposure to Certain Herbicide Agents: Chronic Lymphocytic Leukemia

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning presumptive service connection for certain diseases for which there is no record during service. This proposed amendment is necessary to implement a decision of the Secretary of Veterans Affairs that there is a positive association between exposure to herbicides used in the Republic of Vietnam during the Vietnam era and the subsequent development of chronic lymphocytic leukemia. The intended effect of this proposed amendment is to establish presumptive service connection for that condition based on herbicide exposure.

DATES: Comments must be received on or before May 27, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *"OGCRegulations@mail.va.gov"*. Comments should indicate that they are submitted in response to "RIN 2900–AL55." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: David Barrans, Staff Attorney (022), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6332.

SUPPLEMENTARY INFORMATION: Section 3 of the Agent Orange Act of 1991, Pub. L. 102–4, 105 Stat. 11, directed the Secretary to seek to enter into an agreement with the National Academy of Sciences (NAS) to review and summarize the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era and each disease suspected to be associated with such exposure. Congress mandated

that NAS determine, to the extent possible: (1) Whether there is a statistical association between the suspect diseases and herbicide exposure, taking into account the strength of the scientific evidence and the appropriateness of the methods used to detect the association; (2) the increased risk of disease among individuals exposed to herbicides during service in the Republic of Vietnam during the Vietnam era; and (3) whether there is a plausible biological mechanism or other evidence of a causal relationship between herbicide exposure and the suspect disease. Section 3 of Pub. L. 102–4 also required that NAS submit reports on its activities every 2 years (as measured from the date of the first report) for a 10-year period.

Section 1116(b) of title 38, United States Code, as enacted by the Agent Orange Act of 1991, Pub. L. 102–4, provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association (*i.e.*, the credible evidence for the association is equal to or outweighs the credible evidence against the association) exists between exposure of humans to an herbicide agent (*i.e.*, a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam era) and a disease, the Secretary will publish regulations establishing presumptive service connection for that disease. If the Secretary determines that a presumption of service connection is not warranted, he is to publish a notice of that determination, including an explanation of the scientific basis for that determination. The Secretary's determination must be based on consideration of the NAS reports and all other sound medical and scientific information and analysis available to the Secretary.

Although 38 U.S.C. 1116(b) does not define "credible," it does instruct the Secretary to "take into consideration whether the results [of any study] are statistically significant, are capable of replication, and withstand peer review." Simply comparing the number of studies which report a positive relative risk to the number of studies which report a negative relative risk for a particular condition is not a valid method for determining whether the weight of evidence overall supports a finding that there is or is not a positive association between herbicide exposure and the subsequent development of the particular condition. Because of differences in statistical significance, confidence levels, control for confounding factors, bias, and other pertinent characteristics, some studies are clearly more credible than others, and the Secretary has given the more credible studies more weight in evaluating the overall weight of the evidence concerning specific diseases.

Section 2 of the Agent Orange Act of 1991, Public Law 102–4, provided that the Secretary's authority to establish presumptions of service connection under 38 U.S.C. 1116(b) would expire 10 years after the first day of the fiscal year in which the NAS transmitted its first report to VA. The first NAS report was transmitted to VA in July 1993, during the fiscal year that began on October 1, 1992. Accordingly, under the Agent Orange Act of 1991, Public Law 102–4, VA's authority to issue regulatory presumptions as specified in section 1116(b) expired on September 30, 2002. In December 2001, however, Congress enacted the Veterans Education and Benefits Expansion Act of 2001 (Benefits Expansion Act), Public Law 107–103. Section 201(d) of that Act extended VA's authority under section 1116(b) through September 30, 2015. Pursuant to the Benefits Expansion Act, Public Law 107–103, VA may issue new regulations between October 1, 2002, and September 30, 2015, establishing additional presumptions of service connection for diseases that are found to be associated with exposure to an herbicide agent.

I. History of Agent Orange Presumptions

Pursuant to 38 U.S.C. 1116 and prior NAS reports received between July 1993 and April 2001, VA regulations contain presumptions of service connection for ten categories of disease based on exposure to an herbicide agent. Those diseases are listed in 38 CFR 3.309(e) as follows: Chloracne or other acneform disease consistent with chloracne, Type 2 diabetes (also known as Type II diabetes mellitus or adult-onset diabetes), Hodgkin's disease, Multiple myeloma, Non-Hodgkin's lymphoma, Acute and subacute peripheral neuropathy, Porphyria cutanea tarda, Prostate cancer, Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea), and Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma).

If a veteran who was exposed to an herbicide agent in service subsequently develops one of the presumptive diseases, VA will presume the disease was caused by the exposure to an herbicide agent in service for purposes of establishing entitlement to service-connected benefits. To qualify for this presumption, chloracne and porphyria cutanea tarda must become manifest to a degree of disability of 10 percent or more within one year after the date of last exposure. The other conditions are presumed service-connected if they are manifest to a degree of disability of ten percent or more at any time after exposure. 38 U.S.C. 1116(a)(2). VA presumes that any veteran who served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, was exposed to an herbicide agent during such service. 38 U.S.C. 1116(f).

II. Prior Actions Concerning Leukemia

In each of its four previous biennial reports under the Agent Orange Act of 1991, the NAS concluded that there was "inadequate/insufficient" evidence to determine whether an association exists between exposure to an herbicide agent and the subsequent occurrence of leukemia in exposed persons. After reviewing each of those reports, the Secretary determined that the credible evidence against an association between exposure to an herbicide agent and the occurrence of leukemia in exposed persons outweighed the credible evidence for such an association, and that a positive association therefore did not exist. 67 FR 42600, 42604 (June 24, 2002); 64 FR 59232, 59238 (Nov. 2, 1999); 61 FR 41442, 41445 (Aug. 8, 1996); 59 FR 341, 344 (Jan. 4, 1994).

III. Latest NAS Review of Chronic Lymphocytic Leukemia

After receiving and reviewing the last prior NAS report in 2001, the Secretary asked that NAS' next report separately review the scientific evidence concerning the association between herbicide exposure and one particular form of leukemia, known as chronic lymphocytic leukemia (CLL). NAS issued its report, "Veterans and Agent Orange: Update 2002," on January 23, 2003. In that report, NAS concluded that "there is sufficient evidence of an association between exposure to at least one of the chemicals of interest (2,4-D, 2,4,5-T or its contaminant TCDD, picloram, or cacodylic acid) and CLL." The term "sufficient evidence of an association," as explained in the NAS report, means that a positive association has been observed between herbicides and the outcome in studies in which chance, bias, and confounding could be ruled out with reasonable confidence.

NAS discussed several studies that reported findings regarding the incidence of CLL as distinguished from other types of leukemia. One study of site-specific cancer incidence among 7,016 males and females in a rural farming community found a standard incidence ratio of 1.8, with a 95% confidence interval (CI) of 0.8–3.2 for CLL. (Waterhouse D *et al.* 1996. Cancer incidence in the rural community of Tecumseh, Michigan: a pattern of increased lymphopoietic neoplasms. Cancer 77(4): 763–770). A population-based case-control study in an agricultural area of Italy noted an increased risk of CLL among farmers (Odds Ratio (OR) = 1.6, CI = 0.5–5.2) and animal breeders (OR = 3.1 CI = 1.1–8.3), although no information was provided on herbicide exposure in the study population. (Amadori D *et al.* 1995. Chronic lymphocytic leukaemias and non-Hodgkin's lymphomas by histological type in farming-animal breeding workers: a population case-control study based on job titles. Occupational and Environmental Medicine 52(6): 374–379). A study of cancer risk in Danish male gardeners reportedly exposed to pesticides and herbicides showed a significant increase in CLL (relative risk = 2.8, CI = 1.0–6.0), although no specific data on herbicide exposure were given. (Hansen ES *et al.* 1992. A cohort study on cancer incidence among Danish gardeners. American Journal of Industrial Medicine 21(5): 651–660). One study showed a significant increase in mortality due to CLL among farmers in Nebraska from 1957–1974 (OR = 1.7), although no data regarding herbicide exposure were given. (Blair A, White DW. 1985. Leukemia cell types and agricultural practices in Nebraska. Archives of Environmental Health 40(4): 211–214).

Two epidemiologic studies reported specifically on herbicide exposure and CLL. In a study of 1,675 white Iowa males who died of leukemia, CLL was significantly increased in farmers (OR = 1.9, CI=1.2–3.1). (Burmeister LF *et al.* 1982. Leukemia and farm practices in Iowa. American Journal of Epidemiology 115(5): 720–728). Further analysis showed a strong relationship of CLL deaths in counties with acres treated with herbicides. In a population-based case-control interview study of 578 white men with leukemia and 1,245 controls, CLL mortality was higher in farmers than nonfarmers. (Brown LM *et al.* Pesticide exposures and other agricultural risk factors for leukemia among men in Iowa and Minnesota. Cancer Research 50(20): 6585–6591). When risk was calculated for CLL subtype, odds ratios were significantly increased for use of any herbicide (OR = 1.4). The risk of CLL in farmers who ever handled 2,4-D was 1.3. The risk of CLL in men who first handled 2,4,5-T at least 20 years before interview was significantly increased (OR = 3.3, CI = 1.2–8.9).

NAS also noted that a recent follow-up study of residents of Seveso, Italy found no increased risk of lymphocytic leukemia. (Bertazzi PA *et al.* 2001. Health effects of dioxin exposure: a 20-year mortality study. American Journal of Epidemiology 153(11): 1031–1044).

NAS stated that the epidemiologic studies indicate that farming occupation is associated with significant risk of CLL, especially when there is exposure to the herbicides 2,4-D and 2,4,5-T. NAS further noted that CLL shares more traits with non-Hodgkin's lymphoma (NHL) than with other types of leukemia and could have a common etiology, and that many studies support the hypothesis that herbicide exposure can contribute to the risk of NHL. NAS also concluded, as in its prior reports, that a connection between exposure to TCDD, a contaminant of 2,4,5-T, and human health effects is considered biologically plausible.

IV. The Secretary's Determination on Chronic Lymphocytic Leukemia

After considering all of the evidence, the Secretary has determined that there is a positive association between the exposure of humans to an herbicide agent and the occurrence of CLL in humans. The studies cited by NAS consistently show an increased risk of CLL among agricultural workers and two of the studies show a significantly increased risk among farmers who were exposed to herbicides. Some of the findings noted by NAS are statistically significant, and the consistency of the findings overall supports the view that an association exists. Under these circumstances, the Secretary concludes that the credible evidence for an association between exposure to an herbicide agent and the occurrence of CLL in humans outweighs the credible evidence against such an association. Accordingly, the Secretary has determined that a presumption of service connection for CLL is warranted pursuant to 38 U.S.C. 1116(b).

This proposed rule does not reflect determinations concerning any disease other than CLL. The Secretary's determinations concerning other diseases discussed in the current NAS report will be addressed in future documents published in the **Federal Register**.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: February 27, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.309, paragraph (e) the listing of diseases is amended by adding "Chronic lymphocytic leukemia" between "Hodgkin's disease" and "Multiple myeloma" to read as follows:

§ 3.309 Diseases subject to presumptive service connection.

* * * * * *

(e) * * *

Chronic lymphocytic leukemia

* * * * *

[FR Doc. 03–7221 Filed 3–25–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 177–1177; FRL–7471–7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Missouri State Implementation Plan (SIP) which pertains to the control of emissions from surface coating operations in the Kansas City, Missouri, area. This revision clarifies an inconsistency between the SIP approved version of the rule and the state adopted version. Approval of this revision will ensure consistency between the state and federally-approved rules, and ensure Federal enforceability of the revised state rule. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by April 25, 2003.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: March 13, 2003.

Nat Scurry,

Acting Regional Administrator, Region 7.

[FR Doc. 03–7054 Filed 3–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 172–1172; FRL–7471–8]

Approval and Promulgation of Implementation Plans and Approval Under Sections 110 and 112(l); State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the state of Kansas. This revision applies to small businesses and creates a permit-by-rule that provides an alternative for certain small emission sources which otherwise would be required to apply for a full Class I or Class II operating permit. Small sources not operating at or above the major source thresholds are provided an option to operate under the conditions of this permit-by-rule in lieu of applying for the operating permit. Small sources which have emissions at 25 percent of the threshold levels are required to notify the state of their desire to operate under this regulation and to maintain the required records. Small sources which have emissions at 50 percent of the threshold levels are required to apply to the state, pay the appropriate fee and maintain the required records.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by April 25, 2003.

ADDRESSES: Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: March 13, 2003.

Nat Scurry,

Acting Regional Administrator, Region 7.

[FR Doc. 03–7052 Filed 3–25–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 031803A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS).

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the days-at-sea (DAS) and Rolling Closure Area IV regulations. The experiment proposes to design and test a baited groundfish pot in a portion of the Gulf of Maine. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before April 10, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on UNH Baited Groundfish Pot EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Susan W. Chinn, Fishery Management Specialist, 978–281–9218.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted on October 28, 2002, by University of New Hampshire (UNH) Cooperative Extension for an experiment funded by the Northeast Consortium to design and test a baited groundfish pot, with a final submission on February 3, 2003. The EFP would facilitate the development of a viable alternative to traditional fishing gear for cod and other groundfish based on examples that are already being used in Alaska, New Zealand, and Australia. This experiment is important because the use of baited pots to harvest groundfish could reduce seabed impact compared to trawling; reduce bycatch due to high selectivity of species and size enabled by the ability to control entrance size, mesh size, escape vents, and type of bait; and increase survivability of discards, because fish would be brought aboard alive and relatively unharmed.

The experiment would commence as soon as possible and extend through October 30, 2003. The field sampling portion of the baited groundfish pot study would require up to 20 days at sea on board one commercial fishing vessel using up to 10 pots per day. The pots would be constructed using wire mesh materials with a poly netting roof. The prototype would be 5 ft x 5 ft x 2.5 ft (1.5 m x 1.5 m x 0.8 m) (length x width x height) with an expandable/collapsible roof of 5–ft (1.5–m) high netting to increase pot volume while keeping the physical size of the pot relatively small while on board. A total of 10 pots would be constructed and tested at sea during the experiment. Each pot would be deployed similarly to the method for lobster pot deployment. Weak links would be used and escape panels installed in accordance with lobster gear requirements.

During the sea trial phase, the first eight data collection trips would have a UNH Cooperative Extension scientist/researcher on board, and the catch would be measured according to NMFS sea sampling methodology and recorded on NMFS logbooks. All experimental activities would be conducted in the area bounded by the lines extending from 43°30′ N. lat., 69°00′ W. long., northward along 69°00′ W. long., and westward along 43°30′ N. lat., to their intersection with the Maine coastline. Estimated total daily landings, including discards for the 20 days, are 500 lb (226.8 kg) of mixed groundfish. Each day's catch would be sampled, measured, and returned to the sea as quickly as possible. It is expected that most fish would be released alive. A small portion of the catch might be retained for tagging and further research at the laboratory.

The EFP would be issued to one federally-permitted commercial multispecies vessel to exempt it from certain requirements of the FMP. Specifically, the vessel would be exempt from the DAS requirements at 50 CFR 648.82(a) and from Rolling Closure Area IV, specified at § 648.81(g)(1)(iv).

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 20, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–7255 Filed 3–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030314060–3060–01; I.D. 021003E]

RIN 0648–AQ57

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid and Butterfish Fisheries; Framework Adjustment 3

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement measures contained in Framework Adjustment 3 (Framework 3) to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). This action would extend the limited entry program for the Illex squid fishery for an additional year. This action is intended to further the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on April 10, 2003.

ADDRESSES: Copies of Framework 3, including the Environmental Assessment (EA), Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) are available upon request from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.noaa.gov/ro/doc/com.htm.*

Comments on Framework 3 should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the envelope, "Comments-SMB Framework Adjustment 3." Comments also may be sent via facsimile (fax) to 978–281–9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail Paul.H.Jones@noaa.gov.

SUPPLEMENTARY INFORMATION: In 1997, Amendment 5 to the FMP established a limited entry program for the Illex squid

fishery in response to a concern that fishing capacity could otherwise expand to overexploit the stock. At the time the program was established, there was a concern that the capacity of the limited entry vessels might prove, over time, to be insufficient to fully exploit the annual quota. In response to this concern, a 5–year sunset provision was placed on the *Illex* squid limited entry program. Framework 2 to the FMP extended the *Illex* squid moratorium for 1 year, and it is currently scheduled to end on July 1, 2003. Since the implementation of the limited entry program, the Illex squid fishery's performance has demonstrated that the current fleet possesses the capacity to harvest the long-term potential yield from this fishery. The Mid-Atlantic Fishery Management Council (Council) must prepare an amendment to the FMP (Amendment 9) to evaluate whether or not the limited entry program should be made permanent. This action would extend the Illex squid moratorium through July 1, 2004, to prevent overcapitalization while Amendment 9 is being prepared and considered by the Council. This extension would comply with the criteria in section 303(b)(6) of the Magnuson-Stevens Act. The extension would allow the Council additional time to consider long-term management for the *Illex* squid fishery, including the limited entry program. Vessels that took small quantities of Illex squid in the past may continue to do so under the incidental catch provision of the FMP.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an IRFA that describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the SUPPLEMENTARY INFORMATION section of the preamble. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. There are 73 vessels that have been issued moratorium permits, all of which would be impacted by this action. Since per vessel costs are not available for vessels participating in the Illex moratorium fishery, individual vessel profitability could not be estimated. Therefore, changes in gross revenue of the aggregate fleet is used as a proxy for changes in individual vessel profitability. Furthermore, assumptions are made that revenue losses and gains are shared equally among these vessels. NMFS' guidelines suggest consideration of disproportionate economic impacts between large and small entities that may result from the proposed regulatory action. Because there are no large entities (vessels) participating in this fishery, small vessels will not be placed at a competitive disadvantage to large vessels, thus rendering the issue of disproportionate impacts between these two classes moot. A copy of the complete analysis can be obtained from the Mid-Atlantic Fishery Management Council (see **ADDRESSES**) or via the Internet at *http://www.nero.noaa.gov/ro/doc/com.htm*. A summary of the analysis follows.

In addition to the preferred alternative 1, the Council considered three non-preferred alternatives. Alternative 2 would extend the moratorium on entry to the *Illex* fishery for an additional 2 years (through July 1, 2005); Alternative 3 would extend the moratorium on entry to the Illex fishery for an additional 3 years (through July 1, 2006); and Alternative 4 would allow the moratorium on entry to the Illex fishery to expire on July 1, 2003 (no action).

The preferred alternative and alternatives 2 and 3 would extend the moratorium on entry of new vessels into the *Illex* fishery; therefore, no impact is expected on vessels in the fishery in 2003 (and the first half of 2004), compared to individual vessel revenues in 2002. The Council assumed that the market and prices would remain stable. Therefore, any changes in individual vessel revenues would be the result of factors outside the scope of the moratorium (e.g., change in fishing practices for individual vessels, or changes in abundance and distribution of *Illex* squid).

Under alternative 4, the no-action alternative, the Illex fishery would revert to open access. This would result in an increase in fishing effort in the Illex fishery. New vessels entering the fishery would limit per vessel share of the Illex squid quota and reduce revenues for the present participants. Computing the total revenue losses for the existing moratorium vessels is impossible due to the unpredictability of redirection of effort into the Illex squid fishery. Therefore, the Council developed a sensitivity analysis to determine the impact of the entry of additional vessels into the fishery on revenues earned by individual vessels already engaged in the fishery. The sensitivity analysis examined three scenarios that presumed revenues derived from landings of Illex squid would be reduced by 75, 50, and 25 percent. The analysis was based on 1998 data because in 1998 the Illex quota was completely harvested. Therefore, those data would allow the greatest impact to be assessed.

Under scenario 1, the review of revenue impacts examined the landings of vessels that landed at least one pound in 1998 and presumed that revenues derived from landing Illex for these vessels would be reduced by 75 percent. The 109 impacted vessels were projected to be impacted by revenue losses that ranged from less than 5 percent for 79 vessels, to a maximum of 40–49 percent for 2 vessels. There were no impacted vessels home-ported in Maryland, New Hampshire, or Virginia; a high of 15 vessels had home ports in New Jersey. Other impacted vessels were home ported in Massachusetts, Maine, Rhode Island, New York, and North Carolina. Presumably, other vessels entering the fishery would experience gains in revenues.

Under scenario 2, the review of revenue impacts presumed that vessel revenues derived from landing Illex would be reduced by 50 percent. The 109 impacted vessels were projected to be impacted by revenue losses that ranged from less than 5 percent for 84 vessels, to a maximum of 30–39 percent for one vessel. There were no impacted vessels home-ported in Maryland, New Hampshire, or Virginia; a high of 11 vessels had home ports in New Jersey. Others were in Massachusetts, Maine, Rhode Island, and North Carolina. Presumably, other vessels entering the fishery would experience gains in revenues.

Under scenario 3, the review of revenue impacts presumed that vessel revenues derived from landing Illex would be reduced by 25 percent. The 109 impacted vessels were projected to be impacted by revenue losses that ranged from less than 5 percent, for 88 vessels, to a maximum of 10–19 percent for 8 vessels. The number of impacted vessels by home state ranged from none in Maryland, New Hampshire, New York, and Virginia, to a high of 11 in New Jersey. Other impacted vessels were home ported in Massachusetts, Maine, Rhode Island, and North Carolina.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 20, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.4, the heading of paragraph (a)(5)(i) is revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(5) * * *

(i) *Loligo squid/butterfish and Illex squid moratorium permits (Illex squid moratorium is applicable from July 1, 1997, until July 1, 2004).* * * *

* * * * *

[FR Doc. 03–7252 Filed 3–25–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 58
Wednesday, March 26, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Provincial Advisory Committees

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of intent to renew Federal Advisory Committee.

SUMMARY: The Department of Agriculture, in consultation with the Department of the Interior, intends to renew the Provincial Advisory Committees (PACs) for the 12 provinces in California, Oregon, and Washington. This renewal is in response to the continued need for the PACs to provide advice on coordinating the implementation of the Record of Decision of April 13, 1994, for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl. The PACs also provide advice and recommendations to promote integration and coordination of forest management activities between Federal and non-Federal entities.

ADDRESSES: Copies of the April 13, 1994, Record of Decision can be obtained electronically at *http://www.reo.gov/library/reports/newsandgo.pdf*. Paper copies can be obtained from the Office of Strategic Planning, P.O. Box 3623, Portland, OR 97208.

FOR FURTHER INFORMATION CONTACT: Geraldine Bower, Planning Specialist, Ecosystem Management Coordination Staff, Forest Service, USDA (202) 205–1022.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Department of Agriculture, in consultation with the Department of the Interior, intends to renew the Provincial Advisory Committees (PACs), which will advise the Provincial Interagency Executive Committee (PIEC). The purpose of the PIEC is to facilitate the coordinated implementation of the Record of Decision (ROD) of April 13, 1994, for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl. The PIEC consists of representatives of some or all of the following Federal agencies: Forest Service, Natural Resources Conservation Service, Bureau of Indian Affairs, Bureau of Land Management, National Marine Fisheries Service, National Park Service, U.S. Fish and Wildlife Service, U.S. Geological Survey Biological Resources Division, Environmental Protection Agency, and U.S. Army Corps of Engineers.

Ecosystem management at the province level requires improved coordination among governmental entities responsible for land management decisions and the public those agencies serve. Each PAC will provide advice and recommendations regarding implementation to promote integration and coordination of forest management activities between Federal and non-Federal entities. Each PAC will provide advice regarding implementation of a comprehensive ecosystem management strategy for Federal land within a province (provinces are defined in the ROD at E19).

The chair of each PAC will alternate annually between representatives of the Forest Service and the Bureau of Land Management. When the Bureau of Land Management is not represented on the PIEC, the Forest Service representative will serve as chair. The chair, or a designated agency employee, will serve as the Designated Federal Officer under sections 10(e) and (f) of the Federal Advisory Committee Act (5 U.S.C. App.). Any vacancies on the committee will be filled in the manner in which the original appointment was made.

A meeting notice will be published in the **Federal Register** within 15 to 45 days before a scheduled meeting date. All meetings are generally open to the public and may include a "public forum" that may offer 5–10 minutes for participants to present comments to the advisory committee. Alternates may choose not to be active during this session on the agenda. The chair of the given committee ultimately makes the decision whether to offer time on the agenda for the public to speak to the general body.

Renewal of the PACs does not require an amendment of Bureau of Land Management or Forest Service planning documents because the renewal does not affect the standards and guidelines or land allocations. The Bureau of Land Management and Forest Service will provide further notice, as needed, for additional actions or adjustments when implementing interagency coordination, public involvement, and other aspects of the ROD.

Equal opportunity practices will be followed in all appointments to the advisory committee. To ensure that the recommendations of the PACs have taken into account the needs of diverse groups served by the Departments, membership will, to the extent practicable, include individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: March 18, 2003.

Clyde Thompson,

Associate Assistant Secretary for Administration.

[FR Doc. 03–7159 Filed 3–25–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–010N]

International Meat and Poultry Food Safety Conference

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Agriculture, Food Safety and Inspection Service (FSIS), will hold an international food safety conference on March 27, 2003. The purpose of the conference is to share perspectives on various food safety issues, discuss strategies to improve food safety worldwide and serve as a forum for fostering relationships to promote food safety.

DATES: The conference is scheduled for Thursday, March 27, 2003, from 8:30 a.m. to 5 p.m.

ADDRESSES: The conference will be held at the Pan American Health Organization, 525 23rd Street, NW., Washington, DC 20037. A tentative agenda will be available in the FSIS Docket Room and on the FSIS Web site at *<http://www.fsis.usda.gov/>*. The official transcript of the meeting, when it becomes available, will be kept in the FSIS Docket Room, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Karen Stuck at (202) 720–3473. Pre-registration for this meeting is suggested but not required. To register for the meeting, please contact Sheila Johnson at (202) 690–6498, fax: (202) 690–6500, or email: *Sheila.johnson@fsis.usda.gov*. You may also register on-site. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Mary Harris, by March 21, 2003, at (202) 690–6497.

SUPPLEMENTARY INFORMATION:

Background

The International Meat and Poultry Food Safety Conference will be an open forum to provide information on challenges faced by the international food safety community and varying approaches to the control of such challenges. Increased international trade in food products presents unique challenges in ensuring food safety. Meeting consumer expectations is a challenge facing food manufacturers and food regulators alike.

Public Meeting

The U.S. Department of Agriculture, Food Safety and Inspection Service will sponsor the International Meat and Poultry Food Safety Conference. This conference will allow experts and stakeholders to engage in an interactive sharing and learning experience, and to gain information and ideas to support the common goal of enhancing global food safety. The conference will be divided into three main sections: regional perspectives, scientific perspectives, and assistance and outreach. Examples of topics include a global perspective on multi-drug resistant pathogens, experiences with assisting small plants in meeting food safety requirements, and biosecurity. Speakers from various countries and international organizations are being invited.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice; FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at *<http://www.fsis.usda.gov/>*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *<http://www.fsis.usda.gov/oa/update/update.htm>*. Click on the Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC, on: March 21, 2003.

William C. Smith,

Acting Administrator.

[FR Doc. 03–7336 Filed 3–24–03; 12:26 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

West Fork Blacks Fork Allotment Management Plan; Wasatch-Cache National Forest, Summit County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Wasatch-Cache National Forest will prepare an environmental impact statement (EIS) on a proposal to authorize continued livestock grazing on the West Fork Blacks Fork allotment encompassing approximately 15,028 acres of National Forest System lands in the West Fork Blacks Fork Watershed in Summit County, Utah. The analysis area is located in portions of the following townships: T2NR11E, T1NR11E, T1NR12E, Salt Lake Meridian, and T5NR7W, Uinta Meridian.

DATES: Comments concerning the scope of the analysis must be received on or before April 18, 2003. The draft environmental impact statement is expected in June 2003 and the final environmental impact statement is expected in September 2003.

ADDRESSES: Send written comments to District Ranger, Evanston Ranger District, P.O. Box 1880, Evanston, Wyoming 82930. E-mail address is *lljohnson01@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: For further information, mail correspondence to or contact Stephen Ryberg, District Ranger, at the Evanston District, 1565 Hwy 150, Suite A, Evanston Wyoming 82930. The telephone number is 307–789–1394.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this action is to authorize livestock grazing within the West Fork Blacks Fork Allotment to achieve the desired future conditions identified in the Wasatch-Cache Forest Plan. The action is needed because some areas (alpine benches) within the allotment do not meet ground cover standards. There is scientific debate about why these areas do not have adequate ground cover and how they should be managed. The allotment management plan developed from this analysis will emphasize management for healthy riparian, upland, and alpine ecosystems. Most of this allotment was incorporated into the High Uintas Wilderness under the Utah Wilderness Act of 1984. This Act incorporated Section 108 of the Colorado Wilderness Act which included House Committee Report Language stating: "* * * there shall be no curtailment of grazing permits or privileges in an area simply because it is designated as wilderness". If approved, the Wasatch-Cache National Forest would authorize grazing through term grazing permits for up to 10 years. The EIS will be designed to satisfy the requirements of the Federal Land Policy and Management Act of 1976 and implementing regulations (43 CFR 2310.1). A number of laws provide direction for grazing on public lands, including the Multiple-Use Sustained Yield Act (1960), the Wilderness Act (1964), the Utah Wilderness Act (1984), the Forest and Rangeland Renewable Resources Planning Act (1974), the Federal Land Policy and Management Act (1976), and the National Forest Management Act (1976). The Wasatch-Cache National Forest LRMP also contains provisions to implement this direction.

Proposed Action

The Forest Service proposes to authorize continued grazing on National Forest Systems lands on the West Fork Blacks Fork sheep allotment within the

West Fork Blacks Fork watershed. Sheep grazing would continue during the period of 7/6 to 9/15 each year under a four pasture deferred grazing system meeting the direction in the Wasatch-Cache Forest Plan. Following an agreement with the grazing permittee in 1999, half of the highest unit has been rested each year with an accompanying reduction in sheep months to compensate for the sheep months of forage not available for grazing in the rested portion. This change allows 1075 sheep to graze 7/6–9/15 under deferred rotation system with planned rest for the alpine area. Half of the alpine unit is rested each year and each half receives rest for two consecutive years. This agreement resulted in a reduction of 175 sheep* from what was allowed under the current West Fork Blacks Fork Allotment Management Plan.

The updated direction will be incorporated into the allotment management plan and the term grazing permit to guide grazing management within the allotment during the coming decade, or until amendments are warranted based on changed conditions or monitoring.

Possible Alternatives

In addition to the proposed action we have tentatively identified two alternatives:

—No Grazing Alternative: Eliminate permitted grazing on the West Fork-Blacks Fork Allotment except for one trail herd that uses the allotment as an access route to the Ashley National Forest.

—Eliminate Grazing on Unit 4 of the Grazing Allotment: Continue to graze sheep under a three pasture deferred grazing system meeting Forest Plan direction. This charge allows 900 sheep to graze 7/6–9/15, a reduction of 300 sheep from the numbers allowed under the current West Fork Blacks Fork Allotment Management Plan

Responsible Official

Thomas L. Tidwell, Forest Supervisor, Wasatch-Cache National Forest, USDA Forest Service, 8236 Federal Building, 125 South State Street, Salt Lake City, UT 84138, is the Responsible Official for any decision to authorize grazing and manage rangelands on the allotment within the West Fork Blacks Fork watershed on National Forest system lands. He will document his decisions and rationale in a Record of Decision.

* The sheep numbers given are the number of mother sheep (ewes). These numbers assume that each ewe will be accompanied with her current year's offspring (lambs).

Nature of Decision To Be Made

Based upon the environmental analysis in the EIS the Forest Supervisor will decide whether or not to authorize sheep grazing on the West Fork Blacks Fork Allotment, and if so under what conditions.

Scoping Process

The public is encouraged to take part in the scoping process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments and assistance from Federal, State and local agencies and other individuals or organizations that may be interested in, or affected by, the proposed action. While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. An informational meeting is scheduled for 1 pm on March 26, 2003 at the Unita County Library, 701 Main, Evanston, Wyoming. Information from the informational meeting will be used in the preparation of the draft and final EIS.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement which be prepared for comment. The comment period on the draft environment impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of a availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement.

Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: March 19, 2003.

Thomas L. Tidwell,

Forest Supervisor.

[FR Doc. 03–7177 Filed 3–25–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman Report, (5) Project Proposals/Possible Action, (6) Update on Approved Projects, (7) General Discussion, (8) Compliance Committee Report.

DATES: The meeting will be held on April 10, 2003 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by April 8, 2003 will have the opportunity to address the committee at those sessions.

Dated: March 20, 2003.

James F. Giachino,

Designated Federal Official.

[FR Doc. 03–7172 Filed 3–25–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra County, CA, Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sierra County Resource Advisory Committee (RAC) will meet on April 2, 2003, near Bassetts, east of Sierra City on Hwy 49, California. The purpose of the meeting is to discuss issues relating to implementing the Secure Rural Schools and Community Self-Determination Act of 2000 (Payments to States) and the expenditure of Title II funds benefiting National Forest System lands on the Humboldt-Toiyabe, Plumas and Tahoe National Forests in Sierra County.

DATES: The meeting will be held Wednesday, April 2, 2003 at 10 a.m.

ADDRESSES: The meeting will be held at the High Country Inn, near Bassetts, east of Sierra City on Hwy 49, CA.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Committee Coordinator, USDA, Tahoe National Forest, 631 Coyote St, Nevada City, CA 95959, (530) 478–6205, e-mail: *awestling@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Welcome and announcements; (2) Status of previously approved projects; and (3) Review of and decisions on new projects proposals for current year. The meeting is open to the public and the public will have an opportunity to comment at the meeting.

Dated: March 20, 2003.

Steven T. Eubanks,

Forest Supervisor.

[FR Doc. 03–7173 Filed 3–25–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Lawrence County Generation Project; Notice of Availability of Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of environmental assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing an environmental assessment (EA) for a project proposed by Hoosier Energy Electric Cooperative, Inc., (Hoosier) located in Bloomington, Indiana, and Wabash Valley Power Association, Inc., (Wabash) located in Indianapolis, Indiana. The project consists of constructing a 258 megawatt (MW) net, natural gas fired simple-cycle combustion turbine, electrical generating facility. The Lawrence County Generation Project (LCGP) is proposed to be located in Lawrence County, Indiana.

FOR FUTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, Rural Utilities Service, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone: (202) 720–1414; e-mail: *nislam@rus.usda.gov.* Information is also available from Ms. Shiela M. Wheeler, Burns & McDonnell Engineering Company, Inc., 9400 Ward Parkway, Kansas City, MO 64114, telephone: (816) 822–3250, Fax: (816) 822–3515, e-mail: *swheele@burnsmcd.com.* All written comments regarding this project should be sent to Mr. Nurul Islam within 30 days of the publication of this notice at the above address.

SUPPLEMENTARY INFORMATION: The joint project proposed by Hoosier and Wabash will consist of six (6) simple-cycle electric combustion turbines. The primary purpose of the LCGP is to meet the increasing power consumption requirements in their respective territories. Hoosier will own four (4) of the proposed turbines and Wabash will own the remaining two (2). The proposed combustion turbines will receive water from a well field that will be drilled near the project site. The project will utilize the existing gas pipeline and electric transmission line located near the proposed site for operating the facility. The LCGP will be fired on natural gas, #2 diesel fuel may be used as backup fuel. Hoosier and Wabash propose to construct the LCGP in Lawrence County, Indiana. The site is located in a rural portion of Lawrence County, approximately 3.5 miles southeast of Bedford, Indiana. The site consists of about 49 acres of pastureland; approximately 25 acres of this site will be dedicated to the turbine generating units and associated facilities.

Alternatives to the proposed project, including the purchase of power, alternative methods of power generation, and alternative site locations, etc., were evaluated by Hoosier and Wabash. RUS, in accordance with its environmental policies and procedures, required that Hoosier and Wabash prepare an environmental report reflecting the potential impacts of the proposed project. The environmental report, which includes input from Federal, State, and local agencies, has been reviewed and accepted as RUS' environmental assessment (EA) for the project in accordance with RUS' Environmental Policies and Procures, § 1794.41. The EA is available for public review at RUS, at the address provided in this notice, or the headquarters of Hoosier and Wabash, and also at the following public libraries:

Hoosier Energy Rural Electric Cooperative, Inc., 7398 N. State Road 37, Bloomington, Indiana 47402. Tel: (812) 876–0374.

Wabash Valley Power Association, Inc., 722 North High School Road, Indianapolis, Indiana 46214. Tel: (317) 581–2842.

Bedford Public Library, 1323 K Street, Bedford, Indiana 47421. Tel: (812) 275–4471.

Mitchell Community Public Library, 804 Man Street, Mitchell, Indiana 47446. Tel: (812) 849–2412.

Questions and comments should be sent to RUS at the address provided in this notice. RUS will accept questions and comments on the EA for 30 days

from the date of publication of this notice.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the 7 CFR part 1794, Environmental Policies and Procedures.

Dated: March 21, 2003.

Mark S. Plank,

Acting Director, Engineering and Environmental Staff. Rural Utilities Service.

[FR Doc. 03–7234 Filed 3–25–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–504]

Notice of Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 26, 2003.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review of petroleum wax candles from the People's Republic of China (PRC) until no later than September 2, 2003. This review covers the period August 1, 2001, through July 31, 2002. The extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Mark Hoadley, Office of AD/CVD Enforcement 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at (202) 482–0162 or (202) 482–3148, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) received a timely request on August 30, 2002, from the National Candle Association (petitioners) for an administrative review of the antidumping duty order on petroleum wax candles from the PRC, with respect to 104 companies. The Department also received timely administrative review requests from Dongguan Fay Candle Co. (Dongguan), Walmart Stores (Walmart), and Qingdao Kingking Applied Chemistry Co., Ltd. (Kingking) on August 30, 2002. On September 25, 2002, the Department published a notice of initiation of this administrative review, covering 108 companies, for the period of August 1, 2001, through July 31, 2002 (67 FR 60210).[1] On November 18, 2002, the Department received a timely withdrawal from Walmart of its request for an administrative review. On January 29, 2003, the Department selected the following top five exporters, by value, of petroleum wax candles to the United States during the period of review as mandatory respondents: Dongguan, Smartcord Int'l Co., Ltd/Rich Talent Trading, Kingking, Amstar Business Co., Ltd., and Jiangsu Holly Corporation. *See Memorandum from Jessica Burdick through Sally C. Gannon to Barbara E. Tillman Regarding Respondent Selection in the 2001–02 Administrative Review of Petroleum Wax Candles from the People's Republic of China* (January 29, 2003) (public version on file in the Department's Central Records Unit, in Room B-099).

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

In light of the complexity of the respondent selection process and of analyzing the numerous questionnaire responses which will be submitted by respondents in this administrative review, it is not practicable to complete the preliminary results of this review by the current deadline of May 3, 2003.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results by 120 days, until no later than August 31, 2003. However, as this date falls on a weekend, the due date will fall on the next business day. Since September 1 is a national holiday, the next business day is September 2, 2003. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is issued and published in accordance to sections 751(a)(1) and 777(I)(1) of the Act.

Dated: March 20, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–7258 Filed 3–25–03; 8:45 am]

BILLING CODE 3510–DS–S

[1] Although there were 109 actual requests for review, one company (Qingdao KingKing Applied Chemistry Co., Ltd.) individually requested a review and was also listed on the National Candle Association's request for review; therefore, there were only 108 companies for which an administrative review was requested.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–817]

Antidumping Duty Order: Silicon Metal From Russia

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of antidumping duty order.

EFFECTIVE DATE: March 26, 2003.

FOR FURTHER INFORMATION CONTACT: Cheryl Werner at (202) 482–2667, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On February 11, 2003, the Department of Commerce ("the Department") published a notice of final determination of sales at less than fair value in the investigation of silicon metal from the Russian Federation ("Russia"). *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation*, 68 FR 6885 (February 11, 2003) ("*Final Determination*"). On March 7, 2003, the Department issued its amended final determination in the antidumping duty investigation of silicon metal from Russia. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Silicon Metal from the Russian Federation*, 68 FR 12037 (March 13, 2003) (*Amended Final Determination*). In the *Amended Final Determination*, the Department amended the weighted-average margins for Bratsk Aluminum Smelter ("Bratsk") and ZAO Kremny ("Kremny")/Sual-Kremny-Ural Ltd. ("SKU").

On March 19, 2003, the International Trade Commission ("ITC") notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of silicon metal from Russia. In addition, the ITC notified the Department of its final determination that critical circumstances do not exist with respect to imports of subject merchandise from Russia that are subject to the Department's affirmative critical circumstances finding.

Scope of the Orders

For purposes of this investigation, the product covered is silicon metal, which generally contains at least 96.00 percent but less than 99.99 percent silicon by weight. The merchandise covered by this investigation also includes silicon metal from Russia containing between 89.00 and 96.00 percent silicon by weight, but containing more aluminum than the silicon metal which contains at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal currently is classifiable under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States ("HTSUS"). This investigation covers all silicon metal meeting the above specification, regardless of tariff classification.

Antidumping Duty Order

In accordance with section 736(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of silicon metal from Russia. The antidumping duties will be assessed on all unliquidated entries of silicon metal entered, or withdrawn from warehouse, for consumption on or after September 20, 2002, the date on which the Department published its notice of preliminary determination in the **Federal Register**.

Regarding the negative critical circumstances determination, we will instruct the Customs service to lift suspension and to release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after June 22, 2002, but before September 20, 2002. June 22, 2002, is 90 days prior to September 20, 2002, the date of publication of the preliminary determination in the **Federal Register**.

Customs must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The "Russia-wide" rates apply to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin
Bratsk Aluminum Smelter	79.42
ZAO Kremny/Sual-Kremny-Ural Ltd.	56.11
Russia-wide	79.42

This notice constitutes the antidumping duty order with respect to silicon metal from Russia, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of Act and 19 CFR 351.211.

Dated: March 20, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–7261 Filed 3–25–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Continuation of Antidumping Duty Order: Certain Concrete Reinforcing Bars from Turkey

[A-489–807]

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Antidumping Duty Order: Certain Concrete Reinforcing Bars from Turkey.

SUMMARY: On July 9, 2002, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on certain concrete reinforcing bars from Turkey would be likely to lead to continuation or recurrence of dumping.[1] On March 3, 2003, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on certain concrete reinforcing bars from Turkey would be likely to lead to continuation or recurrence of material injury to the United States within a reasonably foreseeable time.[2] Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on certain concrete reinforcing bars from Turkey.

EFFECTIVE DATE: March 26, 2003.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Jr., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2002, the Department initiated, and the Commission instituted, a sunset review of the antidumping duty order on certain concrete reinforcing bars from Turkey pursuant to section 751(c) of the Act.[3] As a result of its review, the Department found that revocation of the antidumping duty order would be likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked.[4]

On March 3, 2003, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on certain concrete reinforcing bars from Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope

The product covered by this antidumping duty order is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable

[1] *Final Results of Expedited Sunset Review: Certain Concrete Reinforcing Bars from Turkey*, 67 FR 45457 (July 9, 2002).

[2] *Steel Concrete Reinforcing Bar From Turkey*, 68 FR 10032 (March 3, 2003).

[3] *Antidumping and Countervailing Duties: Five Year Reviews*, 67 FR 9439 (March 1, 2002).

[4] *Final Results of Expedited Sunset Review: Certain Concrete Reinforcing Bars from Turkey*, 67 FR 45457 (July 9, 2002).

[5] *Steel Concrete Reinforcing Bar From Turkey*, 68 FR 10032 (March 3, 2003), and USITC Publication 3577 (February 2003), Investigation No.731-TA-745 (Review).

in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on certain concrete reinforcing bars from Turkey. The Department will instruct Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the Federal Register of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than thirty (30) days before the fifth anniversary of the effective date of this notice.

Dated: March 20, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–7260 Filed 3–25–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–810]

Certain Cut-to-Length Carbon Steel Plate From Mexico: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of countervailing duty administrative review.

EFFECTIVE DATE: March 26, 2003.

FOR FURTHER INFORMATION CONTACT: Lyman G. Armstrong at (202) 482–3601, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results of a review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On September 20, 2002, the Department initiated an administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Mexico. *See* 67 FR 60210. The preliminary results are currently due no later than May 5, 2003.

Extension of Time Limit for Preliminary Results of Review

Petitioners have alleged several new countervailable subsidies and a number of issues and adjustments in this review that require additional consideration and analysis. Therefore, the Department is extending the time limits for completion of the preliminary results until September 2, 2003. *See* the Decision Memorandum from Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, to Gary S. Taverman, Acting Deputy Assistant Secretary for AD/CVD Enforcement Group II, dated concurrent with this notice, which is on file in the Central Records Unit.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 20, 2003.

Gary S. Taverman,

Acting Deputy Assistant Secretary for AD/CVD Enforcement Group II.

[FR Doc. 03–7262 Filed 3–25–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–507–601]

Notice of Rescission of Countervailing Duty Administrative Review: Roasted In-shell Pistachios from the Islamic Republic of Iran

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Countervailing Duty Administrative Review.

SUMMARY: On November 18, 2002, the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on roasted in-shell pistachios (roasted pistachios) from the Islamic Republic of Iran (Iran), covering the period January 1, 2001, through December 31, 2001, and one manufacturer/exporter of the subject merchandise, Tehran Negah Nima Trading Company, Inc. (Nima). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 70402 (November 22, 2002). This review has now been rescinded due to petitioners'[1] withdrawal of their request for an administrative review.

EFFECTIVE DATE: March 26, 2003.

FOR FURTHER INFORMATION CONTACT: Darla Brown or Eric B. Greynolds, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2849 or (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2002, the Department received a letter from the CPC and a letter from Cal Pure requesting an administrative review of the countervailing order on roasted pistachios from Iran. On November 18, 2002, the Department initiated an administrative review of this order for the period January 1, 2001, through December 31, 2001. On March 5, 2003, and March 10, 2003, the CPC and Cal Pure, respectively, submitted letters requesting to withdraw their request for the above-referenced administrative review.

[1] Petitioners include the California Pistachios Commission (CPC) and its members and a domestic interested party, Cal Pure Pistachios, Inc. (Cal Pure).

Scope of the Review

For purposes of this administrative review, the product covered is all roasted in-shell pistachio nuts, whether roasted in Iran or elsewhere, from which the hull has been removed, leaving the inner hard shells and the edible meat, as currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under item number 0802.50.20.00. The HTSUS subheading is provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Rescission of Review

Pursuant to 19 CFR § 351.213(d)(1)(2002), the Department may extend the 90-day time limit for submitting requests to withdraw a request for an administrative review. On March 5, 2003, and March 10, 2003, the CPC and Cal Pure, respectively, submitted letters requesting to withdraw their request for the above-referenced administrative review. *See* letter from the CPC to the Department dated March 5, 2003, and letter from Cal Pure to the Department dated March 10, 2003, on file in the Central Records Unit, Room B-099, Main Building of the Department of Commerce.

In accordance with the Department's regulations, and consistent with its practice, the Department has extended the time within which it will accept requests for withdrawal of the review. Having accepted the CPC and Cal Pure's requests, the Department hereby rescinds the administrative review of roasted pistachios from Iran for the period January 1, 2001, to December 31, 2001. *See* 19 CFR section 351.213(d)(1). The Department will issue appropriate assessment instructions to the U.S. Customs Service within 15 days of publication of this notice.

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended, and section 351.213(d) of the Department's regulations.

Dated: March 20, 2003.

Gary S. Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–7259 Filed 3–25–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Tagshinney Tree Farm Conservation Plan, Lewis County, WA

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

[I.D. 012103G]

ACTION: Notice of availability.

SUMMARY: Tom and Sherry Fox, and the co-owners of the Tagshinney Tree Farm (Applicants), have applied to the U.S. Fish and Wildlife Service and National Marine Fisheries Service (together, the Services) for Enhancement of Survival Permits and an Incidental Take Permit (Permits) pursuant to the Endangered Species Act of 1973, as amended (Act). The permit applications include a proposed Safe Harbor Agreement (SHA) and Candidate Conservation Agreement with Assurances (CCAA) between the Applicants and the U.S. Fish and Wildlife Service (FWS), and a proposed low effect Habitat Conservation Plan (HCP) between the Applicants and the National Marine Fisheries Service (NMFS). These three documents are combined into one document entitled the "Tagshinney Tree Farm Conservation Plan" (Plan). The Permits and Plan would have a duration of 80 years, and would address forest management, timber harvest, and fish and wildlife habitat needs on five separate land parcels that together form the 144–acre Tagshinney Tree Farm in Lewis County, WA. The Services have made a preliminary determination that this proposed action is eligible for categorical exclusion under the National Environmental Policy Act of 1969. The Services explain the basis for this determination in an Environmental Action Statement, which is also available for public review.

The Services are furnishing this notice to allow other agencies and the public an opportunity to review and comment on these documents, including the proposed permit applications, the Plan, and National Environmental Policy Act categorical exclusion documentation. All comments received will become part of the public record and will be available for review pursuant to the Act.

DATES: Written comments from all interested parties must be received on or before April 25, 2003.

ADDRESSES: Requests for documents and comments should be addressed to: Craig Hansen, U.S. Fish and Wildlife Service, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503, telephone (360) 534–9330, fax (360) 753–9518; and/or Mike Parton, National Marine Fisheries Service, 510 Desmond Drive SE, Suite 103, Lacey, WA 98503, telephone (360) 753–4650, fax (360) 753–9517.

FOR FURTHER INFORMATION CONTACT: Craig Hansen or Mike Parton at the above address or telephone number.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term take is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm is defined by the FWS to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3). The NMFS's definition of harm includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, feeding, and sheltering (50 CFR 222.102).

The Services may issue two types of permits under section 10(a) of the Act to non-Federal landowners to take listed species, under certain terms and conditions. FWS's regulations governing permits for threatened and endangered species are promulgated in 50 CFR 17.32 and 50 CFR 17.22; NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

The first of these two types of permits is the Enhancement of Survival Permit, which is authorized under section 10 (a)(1)(A) of the Act. Enhancement of Survival Permits may be issued for activities that enhance the propagation or survival of the affected species that would otherwise be prohibited by section 9 of the Act. To implement this provision of the Act, the Services issued a joint policy for developing SHAs for listed species and CCAAs for unlisted species on June 17, 1999 (64 FR 32726). The FWS simultaneously issued regulations for implementing SHAs and CCAAs on June 17, 1999 (64 FR 32706). A correction to the FWS final rule was

announced on September 30, 1999 (64 FR 52676). On September 13, 2002, NMFS issued regulations to allow transfers of certain incidental take permits and enhancement of survival permits associated with SHAs, and CCAAs.

SHAs provide private landowners that undertake voluntary conservation actions on their land assurances that their future land-use activities will not be restricted further as a result of these proactive conservation efforts. If a landowner voluntarily enters into a SHA to manage his or her lands in a manner that attracts endangered or threatened species or otherwise increases their presence, the Safe Harbor assurances guarantee that no additional regulatory requirements for those lands will be imposed on the landowners as a result of the proactive conservation measures. The purpose of the Safe Harbor approach is to reduce the disincentives (e.g., fear of regulatory restrictions) that often cause landowners to avoid or prevent land use practices that would otherwise benefit endangered species.

CCAAs are intended to help conserve proposed, candidate species, and species likely to become candidates by giving non-Federal landowners incentives to implement conservation measures for declining species. The primary incentive for CCAAs is an assurance that no further land, water, or resource use restrictions would be imposed should the species later become listed under the Act.

The second of these two types of permits is the Incidental Take Permit, which is authorized under section 10(a)(1)(B) of the Act. A proposed Incidental Take Permit must be accompanied by a Habitat Conservation Plan (HCP) that shows: (1) The taking will be incidental; (2) the applicants will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (3) the applicants will ensure that adequate funding for the conservation plan will be provided; (4) the taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild; and (5) such other measures the Services may require as necessary or appropriate for the purposes of the HCP. HCPs can address both listed and currently unlisted species.

Though the names of these three permitting tools are different, the goals are similar, and the strategies for achieving those goals can overlap. Conservation strategies can, therefore, be developed to fulfill SHA, CCAA, and HCP requirements in a single conservation plan.

The Current Proposal

Tom and Sherry Fox, Gary Davis, and Jim and Tricia Murphy, have applied to the Services for Enhancement of Survival Permits and an Incidental Take Permit under sections 10(a)(1)(A) and 10(a)(1)(B), respectively, of the Act. Currently listed species under FWS jurisdiction are addressed in the SHA portion of the Plan for an Enhancement of Survival Permit and include the threatened northern spotted owl (*Strix occidentalis caurina*), marbled murrelet (*Brachyramphus marmaratus*), and bald eagle (*Haliaeetus leucocephalus*).

Currently unlisted species under FWS jurisdiction are addressed in the CCAA portion of the Plan for an Enhancement of Survival Permit and include one species that is a candidate for Federal listing, the Oregon spotted frog (*Rona pretiosa*). Other CCAA species include the coastal cutthroat trout (*Oncorhynchus clarki clarki*), northern goshawk (*Accipiter gentilis*), olive-sided flycatcher (*Contoupus borealis*), long-eared myotis (*Myotis evotis*), long-legged myotis (*Myotis volans*) the Pacific Townsend's big-eared bat (*Corynorthinus townsendii*), Van Dyke's salamander (*Plethodon vandykei*), the northwestern pond turtle (*Clemmys marmorata*), great blue heron (*Ardea herodias*), pileated woodpecker (*Dryocopus pileatus*), and osprey (*Pandion haliaetus*).

Both currently listed and unlisted species under NMFS jurisdiction are addressed in the HCP portion of the plan for an incidental take permit and include the threatened Lower Columbia River steelhead (*Oncorhynchus mykiss*), and a Federal candidate species, the Lower Columbia coho salmon (*Oncorhynchus kisutch*).

The Applicants are proposing to manage their timberlands in Lewis County, WA for a period of 80 years under the Plan. The forest management actions proposed by the applicants will maintain long-term economic viability of the forest management operations. This proposal will also provide better habitat conditions for the covered species than managing under current State Forest Practices Regulations. The conservation provided in this 80–year Plan is intended to improve habitat conditions by maintaining and enhancing habitat, minimize the impacts of forest management activities to species addressed in the plan, contribute to the recovery of the species in the wild and, if undertaken by other property owners similarly situated on the landscape, preclude the need to list the unlisted species in the future. Forest management activities are planned to enhance the health and vigor of the forest, reduce incidence of insect and disease in the forest, and enhance the structural characteristics of the forests to provide functional fish and wildlife habitat for the species addressed in the Plan, and other wildlife species found on the applicants' parcels.

This action would occur in an environment where the lands surrounding the Tagshinney Tree Farm are increasingly being utilized for non-forest management activities. For example, chicken farms, dairy farms and associated pastureland, and housing developments are located within one-half mile of the applicants' parcels. Landowners in Lewis County near the major highways are often solicited to sell their lands for use in developing housing projects. If issued, the Permits would remove the regulatory disincentives associated with providing habitat for listed and declining species. Thus, the Applicants are more likely to keep their property in a forested condition that functions as fish and wildlife habitat, and would be less likely to convert their forest lands to another use such as a housing development.

Permit Evaluation Process

This notice is provided pursuant to section 10(c) of the Act, and National Environmental Policy Act regulations. The Services will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the Endangered Species Act and National Environmental Policy Act. The criteria by which our decisions will be made are listed and discussed in the draft Plan at sections II(B) Regulatory Planning Environment, and II(E) Proposed Action and Decisions Needed. We ask that commenters focus their comments on the merits of the Plan, the permit issuance requirements, and the Environmental Action Statement which will assist us in our decision of whether to issue the permits or not. Comments on issues other than the these will be considered to be beyond the scope of the decision associated with the Plan.

If the Services ultimately determine that the requirements are met, the requested Enhancement of Survival Permits and Incidental Take Permit will be issued. The final permit decisions will be made no sooner than 30 days from the date of this notice.

Dated: March 20, 2003.

Rowan Gould,

Acting Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon

Dated: March 20, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–7256 Filed 3–25–03; 8:45 am]

BILLING CODES 3510–22–S, 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000522149–3063–04]

RIN 0648–ZA

Dean John A. Knauss Marine Policy Fellowship, National Sea Grant College Program

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice and amendment of FRN 000522149–1259–03.

SUMMARY: This notice announces that applications may be submitted for a Fellowship program which was initiated by the National Sea Grant Office (NSGO), National Oceanic and Atmospheric Administration (NOAA), in fulfilling its broad educational responsibilities and legislative mandate of the Sea Grant Act, to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine and aquatic-related fields. This notice also announces that in the **Federal Register** notice published on November 14, 2001 (66 FR 57039), the section on "Stipend and Expenses" (p. 57039) is amended to say "In addition, any remaining funds shall be used during the Fellowship year, first to satisfy academic degree-related activities, and second for Fellowship-related activities." That same provision is included in this notice for the Class of 2004.

DATES: Deadlines vary from program to program, but applications from prospective fellows to Sea Grant Colleges are generally due early to mid-April. Contact your state's Sea Grant program for specific deadlines (see list below). Selected applications from the sponsoring Sea Grant program (one original and two copies) are to be received in the NSGO no later than 5 p.m. e.d.t. on May 14, 2003.

ADDRESSES: Applications should be addressed to your local Sea Grant program. Contact the appropriate state's Sea Grant program from the list below to obtain the mailing address, or the address may be obtained on the Web site *http://www.nsgo.seagrant.org/SGDirectors.html*.

FOR FURTHER INFORMATION CONTACT: Ms. Nikola Garber, Knauss Fellows Program Manager, National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910, Tel. (301) 713–2431 ext. 124; e-mail: *nikola.garber@noaa.gov*. Also call your nearest Sea Grant program or visit the Web site *http://www.nsgo.seagrant.org/Knauss.html*.

Sea Grant Programs

Alabama, Mississippi—Alabama Sea Grant Consortium, (228) 818–8843.

Alaska, University of Alaska, (907) 474–6840.

California, University of California, San Diego, (858) 534–4440.

California, University of Southern California, (213) 821–1335.

Connecticut, University of Connecticut, (860) 405–9128.

Delaware, University of Delaware (302) 831–2841.

Florida, University of Florida, (352) 392–5870.

Georgia, University of Georgia, (706) 542–5954.

Hawaii, University of Hawaii, (808) 956–7031.

Illinois, University of Illinois, (217) 333–6444.

Indiana, University of Illinois (217) 333–6444.

Louisiana, Louisiana Sea Grant, (225) 578–6710.

Maine, University of Maine, (207) 581–1422.

Maryland, University of Maryland, (301) 403–4220 Ext. 10.

Massachusetts, Massachusetts Institute of Technology, (617) 253–7131.

Massachusetts, Woods Hole Oceanographic Institution, (508) 289–2557.

Michigan, University of Michigan, (734) 615–4084.

Minnesota, University of Minnesota, (218) 726–8710.

Mississippi, Mississippi—Alabama Sea Grant Consortium, (228) 818–8843.

New Hampshire, University of New Hampshire, (603) 862–0122.

New Jersey, New Jersey Marine Science Consortium, (732) 872–1300 Ext. 21.

New York, New York Sea Grant Institute, SUNY, (631) 632–6905.

North Carolina, North Carolina State University, (919) 515–2454.

Ohio, Ohio State University, (614) 292–8949.

Oregon, Oregon State University, (541) 737–2714.

Pennsylvania, Pennsylvania State University, (814) 898–6160.

Puerto Rico, University of Puerto Rico, (787) 832–3585.

Rhode Island, University of Rhode Island, (401) 874–6802.

South Carolina, South Carolina Sea Grant Consortium, (843) 727–2078.

Texas, Texas A&M University, (979) 845–3854.

Vermont, University of Vermont, (802) 656–0682.

Virginia, Virginia Graduate Marine Science Consortium, (434) 924–5965.

Washington, University of Washington, (206) 543–6600.

Wisconsin, University of Wisconsin-Madison, (608) 262–0905.

SUPPLEMENTARY INFORMATION:

Dean John A. Knauss Marine Policy Fellowship, National Sea Grant College Program

Purpose of the Fellowship Program

In 1979, the National Sea Grant Office, NOAA, in fulfilling its broad educational responsibilities, initiated a program to provide a unique educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students who have an interest in ocean, coastal and Great Lakes resources and in the national policy decisions affecting these resources. The U.S. Congress recognized the value of this program and, in 1987, Public Law 100–220 stipulated the Sea Grant Federal Fellows Program was to be a formal part of the National Sea Grant College Program Act. The recipients are designated Dean John A. Knauss Marine Policy Fellows pursuant to 33 U.S.C. 1127(b). The National Sea Grant program is listed in the *Catalog of Federal Domestic Assistance* under number 11.417: Sea Grant Support.

Announcement

Following receipt of notice from the NSGO, the local Sea Grant program will send an announcement to all participating Sea Grant institutions and campuses.

Eligibility

Any student who, on April 1, 2003, is in a graduate or professional program in a marine or aquatic-related field at a United States accredited institution of higher education in the United States may apply.

How To Apply

Interested students should discuss this fellowship with their local Sea Grant Program Director. Applicants from states not served by a Sea Grant program should contact the Knauss Fellows Program Manager at the NSGO; subsequently, the applicant will be referred to the appropriate Sea Grant program. Applications must be submitted with signature to the local Sea Grant program by the deadline set in the local Sea Grant announcement (usually early to mid-April). Each Sea Grant program may select and forward to the NSGO no more than five (5) applicants based on the evaluation criteria used by the NSGO in the national competition.

Selected applications (one original and two copies) are to be received in the NSGO from the sponsoring Sea Grant program, no later than 5 p.m. EDT on May 14, 2003. Note that applications arriving after the closing dates given above will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery to the appropriate address (*see* **ADDRESSES**) prior to the specified closing date and time; in any event, applications received by the NSGO later than two business days following the closing date will not be accepted. The competitive selection process and subsequent notification to the Sea Grant programs will be completed by June 25, 2003.

Stipend and Expenses

The local Sea Grant program receives and administers the overall grant of $38,000 per student on behalf of each Fellow selected from their program. Of this amount, the local Sea Grant program provides $32,000 to each Follow for stipend and living expenses (per diem). The additional $6,000 will be used to cover mandatory health insurance for the Fellow and moving expenses. In addition, any remaining funds shall be used during the Fellowship year, first to satisfy academic degree-related activities, and second for Fellowship-related activities. Indirect costs are not allowable for either the Fellowships or for any costs associated with the Fellowships, including placement week. No matching funds are required. During the Fellowship, the host may provide supplemental funds for work-related travel by the Fellow.

Application

An application must include:

(1) Personal and academic curriculum vitae (not to exceed two pages using 12 pt. font, 1 inch margins).

(2) A personal education and career goal statement emphasizing the applicant's abilities and the applicant's expectations from the experience in the way of career development (1000 words or less, 12 pt. font). Placement preference in the Legislative or Executive Branches of the Government may be stated; this preference will be honored to the extent possible.

(3) Two letters of recommendation, including one from the student's major professor; if no major professor exists, the faculty person academically knowing the applicant best may be substituted.

(4) A letter of endorsement from the sponsoring Sea Grant Program Director.

(5) Official copy of all undergraduate and graduate student transcripts.

Applications that are bound or contain staples will not be accepted. However, paperclips are acceptable. All applicants will be evaluated solely on their application package according to the criteria listed below. Therefore, letters of endorsement from members of Congress, friends, relatives and others will not be accepted. Prior contacts/arrangements made with possible host offices will be cause for immediate disqualification from the process.

Evaluation Criteria

The evaluation criteria will include:

(1) Quality of the applicant's personal education and career goal statement.

(2) Endorsement/content of the letter from the applicant's Sea Grant Program Director, the applicant's major professor and second letter of recommendation.

(3) Strength of academic performance and diversity of educational background including extracurricular activities, awards and honors (from the curriculum vitae and transcripts).

(4) Experience in marine or aquatic-related fields, oral and written communication skills, and interpersonal abilities. The four evaluation criteria will be given equal weight.

Selection

Each step in the selection process is based on the evaluation criteria listed. A panel is appointed by the Director of the NSGO with input from the Sea Grant Association and the National Sea Grant Review Panel. The panel will include representation from the Sea Grant Association and the current, and possibly past, class of Fellows. Each panel member is assigned applications to review before the panel meeting. During the panel meeting each application will be individually discussed. Following this discussion, an individual score will be provided by each panel member. Once all applications have been discussed and scored, a numerical ranking will be created by the Knauss program manager or designee. The successful applicants will be in general selected based on the numerical ranking, however, the Knauss program manager may select lower ranking applicants based on the following factors: academic discipline and geographic representation. The successful applicants will then be placed into either the legislative or executive group by the Knauss Program Manger based upon the applicant's stated preference, the application materials submitted, and the individual comments of the panel members. The number of fellows assigned to the Congress will be limited to 10.

Federal Policies and Procedures

Fellows receive funds directly from their sponsoring Sea Grant program and are considered to be subrecipients of Federal assistance. Hence, the Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2000 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Minority Serving Institutions Statement

Pursuant to Executive Orders 12876, 12900, and 13021, DOC/NOAA is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the Nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages applicants from MSIs to participate. Institutions eligible to be considered HBCU/MSIs are listed at the following Internet Web site: *http://www.ed.gov/offices.OCR/minorityinst.html.*

Classification

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts according to 5 U.S.C. 553(a)(2). Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866. This document contains collection-of-information requirements subject to the Paperwork Reduction Act. Application requirements have been approved by OMB under Control Number 0648–0362. Public reporting burden for an application is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Ms. Nikola Garber (*see* **FOR FURTHER INFORMATION CONTACT** above). The use of SF–LLL has been separately approved by OMB under Control Number 0348–0046.

Nothwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Louisa Koch,

Acting Assistant Administrator, Office of Oceanic and Atmospheric Research

[FR Doc. 03–7251 Filed 3–25–03; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031903D]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Essential Fish Habitat Tech Team and Representatives from its Groundfish, Monkfish, Habitat, Sea Scallops, Skate, Whiting and Herring Advisory Panels in April, 2003. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Thursday, April 10, 2003, at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn Taunton,700 Myles Standish Boulevard, Taunton, MA 02780; telephone: (508) 823–0430.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The panels will develop one habitat closed area alternative that will be analyzed and incorporated into both Amendment 10 to the Scallop Fishery Management Plan (FMP) and Amendment 13 to the Multispecies FMP.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: March 20, 2003.

Matteo J. Milazzo,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–7254 Filed 3–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021203B]

Marine Mammals; File No. 763–1534

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for permit amendment

SUMMARY: Notice is hereby given that the Smithsonian Institution, National Zoological Park, Washington, D.C. 20008–2598 (Dr. Daryl Boness, Principal Investigator) has requested an amendment to scientific research permit no. 763–1534.

DATES: Written or telefaxed comments must be received on or before April 25, 2003.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Assistant Regional Administrator for Protected Resources, Northeast Region, NOAA Fisheries, One Blackburn Drive, Gloucester, MA 01930–2298; phone (508)281–9250; fax (508)281–9371.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Jennifer Skidmore, (301)713–2289 or e-mail: *Ruth.Johnson@noaa.gov* or *Jennifer.Skidmore@noaa.gov.*

SUPPLEMENTARY INFORMATION: The subject amendment, to Permit No. 763–1534 issued on March 10, 2000 (65 FR 14947), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 763–1534 authorizes the National Zoological Park to import and export up to 252 Atlantic grey seal (*Halichoerus grypus*) samples from Nova Scotia, Canada. The Permit also authorizes opportunistic collection, import/export of specimen materials from non-endangered pinnipeds and cetaceans. The samples are used for DNA analysis to determine if grey seal alternative mating strategies exist across all ages and provide comaprable rates of reproductive success to the primary strategy.

The permit holder now requests authorization to: (1) Import up to 70 muscle tissue samples and 390 blood samples taken from grey seals on Sable Island, Canada during 2003; (2) import 400 blood plasma samples per year taken from captive hooded seals in Norway; (3) add Dr. Shawn N. Kramer as a co-investigator; and (4) extend the period of the permit through March 2005. The objectives of the studies are: to investigate the relationship between body mass at weaning, rate of mass loss and development of oxygen storage capacity during the post-weaning fast; the time of departure from the breeding grounds; and to conduct a validation study using captive hooded seals to determine details of foraging activity that will allow scientists to estimate body composition and to determine dose-response and kinetics of excretion of biomarkers.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 19, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–7253 Filed 3–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Madrid Protocol.

Form Number(s): PTO–2131, PTO, 2132 and PTO–2133.

Agency Approval Number: 0651–XXXX.

Type of Request: New collection.

Burden: 4,552 hours annually.

Number of Respondents: 22,630 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 15 minutes (0.25 hours) to complete the international trademark application; 3 minutes (0.05 hours) for the subsequent designations; 10 minutes (0.17 hours) for the response to notice of irregularities by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) in connection with international applications; 2 minutes (0.03 hours) for the request that the USPTO replace a U.S. registration with a subsequently registered extension of protection to the United States; 5 minutes (0.08 hours) for the request to record an assignment of restriction of a holder's right to dispose of an international registration, and a request that the USPTO transform a cancelled extension of protection into an application for registration under section 1 or 44 of the Act, depending upon the nature of the particular information being provided. This includes time to gather the necessary information, create the documents, and submit the completed request. Regarding the affidavit of continued use or excusable nonuse under section 71 of the Act, the public won't be able/required to submit this until five years from the date the statute takes effect, at the earliest; hence, no projections are being calculated at this time.

Needs and Uses: The information in this collection is a matter of public record, and is used by the public for a variety business purposes related to establishing and enforcing international trademark rights.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; the federal Government; and state, local or tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by contacting Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Washington, DC 20231, by phone at 703–308–7400, or by e-mail to *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before April 25, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: March 18, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–7248 Filed 3–25–03; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Consolidation and Amendment of Export Visa Requirements to Include the Electronic Visa Information System for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Pakistan

March 20, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection consolidating and amending visa requirements.

EFFECTIVE DATE: April 11, 2003.

FOR FURTHER INFORMATION CONTACT: Shikha Bhatnagar, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

On March 13, 2003, the Governments of the United States and Pakistan signed an agreement amending the existing Visa Arrangement for cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200-239, 300-361, 363-369 (excluding 369-O), 600-670, and 800-899, including part categories and merged categories, but not category 369-O, produced or manufactured in Pakistan. The amended Arrangement consolidates existing provisions and establishes new provisions for the Electronic Visa Information System (ELVIS). The Governments of the United States and Pakistan will implement a 6-month test phase in which, in addition to the ELVIS requirements, shipments must continue to be accompanied by a paper visa. This notice amends, but does not cancel, the notice and letter to the Commissioner of Customs, as amended, published in the Federal Register on June 6, 1983 (see 48 FR 25257).

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 68 FR 1599, published on January 13, 2003).

Goods integrated into GATT 1994 in Stages II and III by the United States will not require a visa or ELVIS transmission (see Federal Register notices 63 FR 53881, published on October 7, 1998 and 66 FR 63225, published on December 5, 2001.

Interested persons are advised to take all necessary steps to ensure that textile products entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner, Bureau of Customs and Border Protection.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 20, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 27, 1983, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and pursuant to the Uruguay Round Agreement on Textiles and Clothing and the Visa, ELVIS and Exempt Certification Arrangement, signed on March 13, 2003, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit entry into the customs territory of the United States (i.e. the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200-239, 300-361, 363-369 (excluding 369-O), 600-670, and 800-899, including part categories and merged categories, but not category 369-O, produced or manufactured in Pakistan and exported on or after April 11, 2003 for which the Government of Pakistan has not issued an appropriate export visa and Electronic Visa Information System (ELVIS) transmission fully described below. Should additional categories, part-categories or merged categories become subject to import quotas, the entire category(s), part-category(s) or merged category(s) shall be included in the coverage of this Arrangement. The original visa in blue ink shall be stamped on the front of the original commercial invoice.

A visa must accompany each shipment of the aforementioned textile products.

Visa Requirements

Each visa stamp will include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha code specified by the International Organization for Standardization (ISO) (The code for Pakistan is PK), and a six digit numerical serial number identifying the shipment; e.g., 3PK123456.

2. The date of issuance. The date of issuance shall be the day, month, and year on which the visa was issued.

3. The original signature of the issuing official authorized by the Government of Pakistan.

4. The correct category(s), merged category(s), part category(s), quantity(s), and units of quantity in the shipment in the units(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States (HTSUS), e.g., "Cat. 340-510 DZ".

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment. (For example, quota Category 347/348 may be visaed as "Cat. 347/348" or if the shipment consists solely of Category 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348").

The Bureau of Customs and Border Protection shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity are missing, incorrect, illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

Quantities shall be those determined by the Bureau of Customs and Border Protection.

If the visa is not acceptable then a new visa must be obtained from the Pakistan Government or a visa waiver issued by the U.S. Department of Commerce at the request of the Pakistan Government and presented to the Bureau of Customs and Border Protection before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement. Visa waivers will only be issued for classification purposes or for one-time special purpose shipments that are not part of an ongoing commercial enterprise.

If the visaed invoice is deficient, the Bureau of Customs and Border Protection will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

Only the actual quantity in the shipment and the correct category will be charged to the restraint level.

ELVIS Requirements:

A. Each ELVIS transmission shall include the following information:

i. The visa number: The visa number shall be in the standard nine digit letter format beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha code specified by the International Organization for Standardization (ISO) (The code for Pakistan is PK), and a six digit numerical serial number identifying the shipment; e.g., 3PK123456.

ii. The date of issuance: The date of issuance shall be the day, month and year on which the visa was issued.

iii. The correct category(s), merged category(s), part category(s), quantity(s), and unit(s) of quantity of the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States. Quantities must be stated in whole numbers. Decimals or fractions will not be accepted.

iv. The quantity of the shipment in the correct units of quantity

v. The manufacturer ID number (MID)

B. Entry of a shipment shall not be permitted:

I. if an ELVIS transmission has not been received for the shipment from the Government of Pakistan;

II. if the ELVIS transmission for that shipment is missing any of the following information:

i) visa number

ii) category, part category, or merged category

iii) quantity

iv) unit of measure

v) date of issuance

vi) manufacturer ID number

III. if the ELVIS transmission for the shipment does not match the information supplied by the importer, or the Customs broker acting as an agent on behalf of the importer, with regard to any of the following:

i) visa number

ii) category, part category, or merged category

iii) unit of measure

IV. If the quantity being entered is greater than the quantity transmitted.

V. If the visa number has previously been used, except in the case of a split shipment, or cancelled, except when entry has already been made using the visa number.

C. A new, correct ELVIS transmission from the Government of Pakistan is required before a shipment that has been denied entry for one the circumstances mentioned above will be released.

D. Visa waivers will only be accepted if the shipment qualifies for a one-time special purpose shipment that is not part of an ongoing commercial enterprise. A visa waiver may be issued by the Department of Commerce at the request of the Pakistan Embassy in Washington, DC. A visa waiver only waives the requirements to present an ELVIS transmission at the time of entry, and doesn't waive any quota requirements.

E. In the event of a systems failure, shipments will not be released for twenty-four hours or 1 calendar day. If system failure exceeds twenty-four hours or 1 calendar day, for the remaining period of the system failure the Bureau of Customs and Border Protection will release shipments on the basis of the visa data provided by the Government of Pakistan. Pakistan will retransmit all data that was affected by the systems failure when the system is functioning normally.

Shipments not requiring visas, ELVIS transmission or exempt certifications:

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $800 or less do not require a visa, an ELVIS transmission or exempt certification for entry and shall not be charged to Agreement levels.

Other Provisions:

An invoice may cover visaed merchandise or exempt certification merchandise but not both.

Goods integrated into GATT 1994 in Stages II and III by the United States will not require a visa or ELVIS transmission (see Federal Register notices 63 FR 53881, published on October 7, 1998 and 66 FR 63225, published on December 5, 2001, respectively). A visa and ELVIS transmission will continue to be required for non-integrated products.

The visa stamp remains unchanged. The Exempt Certification requirements remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action fall with the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–7189 Filed 3–25–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense (Health Affairs) announces a proposed information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received on or before May 27, 2003.

ADDRESSES: Written comments and recommendations on the continuing information collection should be sent to the Senior Investigator, The Millennium Cohort Study, Naval Health Research Center, Emerging Illness Division, PO Box 85122, San Diego CA 92186–5122.

FOR FURTHER INFORMATION CONTACT: To request more information on this information collection, please write to the above address or contact Margaret A. K. Ryan, MD, MPH, by calling (619) 553–8087 or email at Ryan@NHRC.NAVY.MIL.

Title, Associated Form and OMB Number: Prospective Studies of U.S. Military Forces: The Millennium Cohort Study.

Needs and Uses: The Millennium Cohort Study, a prospective study of U.S. military forces, responds to this need and to recent recommendations, from Congress and the Institute of Medicine to perform a study that systematically collects population-based demographic and health data to evaluate the health of service personnel throughout their military careers and after leaving military service.

Affected Public: Individuals.

Annual Burden Hours: 14,445.

Number of Respondents: 19,200.

Responses Per Respondent: 1.

Average Burden Per Response: 45 minutes.

Frequency: Every Three Years.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The purpose of the study is designed to systematically collect population-based demographic and health data to evaluate the health of service personnel throughout their military careers and after leaving military service. The principal objective of the study is to evaluate the impact of military deployments on various measures of health over time, including medically unexplained symptoms and chronic diseases, such as cancer, heart disease, and diabetes. The Millennium Cohort Study will serve as a foundation upon which other routinely captured medical and deployment data may be added to answer future questions regarding the health risks of military deployment, military occupations, and general military service.

Eligible respondents of this survey are individuals who were members of the Armed Forces during the initial study enrollment period conducted in 2000, completed the baseline survey and volunteered to participate in the prospective study and follow-up surveys.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–7090 Filed 3–25–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by April 25, 2003.

Title, Form Number, and OMB Number: DoD Education Loan Repayment Program; DD Form 2475; OMB Number 0704–0152.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 31,000.

Responses per Respondent: 1.

Annual Responses: 31,000.

Average Burden per Response: 10 minutes (average).

Annual Burden Hours: 5,167 hours.

Needs and Uses: Military services are authorized to repay Federal student loans for individuals who meet certain criteria who enlist for active military service or enter the Selected Reserves for a specified obligation period. The DD Form 2475 collects the necessary verification data from the lending institutions.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–7091 Filed 3–25–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–08]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–08 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 50001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 MAR 2003
In reply refer to:
I-03/001109

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-08, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Switzerland for defense articles and services estimated to cost $110 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-08

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Switzerland

(ii) Total Estimated Value:

Major Defense Equipment*	$ 27 million
Other	$ 83 million
TOTAL	$110 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: F/A-18 "Upgrade 21 Program" Fleet Retrofit Kits to include the following: 6 AN/APX-111 Combined Interrogator Transponders, 6 Tactical Aircraft Moving Map Capability Systems, 5 Multi-functional Information Distribution Systems/Low Volume Terminals (Airborne Link-16), 68 Joint Helmet Mounted Cueing Systems, 36 Enhanced Interference Blanking Units and 31 Digital Communications to Wingtips. Also included will be related support and test equipment, engineering technical services, supply support, operation and maintenance training, documentation, and program management support.

(iv) Military Department: Navy (LAC, Amendment 3)

(v) Prior Related Cases, if any:
FMS case LAC, Amendment 2 - $115 million – 24Jan02

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 18 MAR 2003

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Switzerland - F/A-18 Upgrade 21 Program

The Government of Switzerland intends to purchase "Upgrade 21 Program" equipment to enhance survivability and communications connectivity and to extend the useful life of Swiss Air Force (SAF) F/A-18 aircraft. This phase of the F/A-18 "Upgrade 21 Program" will include continued procurement of 34 Fleet Retrofit Kits as follows: 6 AN/APX-111 Combined Interrogator Transponders, 6 Tactical Aircraft Moving Map Capability Systems, 5 Multi-functional Information Distribution Systems/Low Volume Terminals (Airborne Link-16), 68 Joint Helmet Mounted Cueing Systems, 36 Enhanced Interference Blanking Units and 31 Digital Communications to Wingtips. Also included will be related support and test equipment, engineering technical services, supply support, operation and maintenance training, documentation, and program management support. The estimated cost is $110 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Europe.

The SAF has extensive experience operating the F/A-18 aircraft and should have no difficulties incorporating the upgraded capabilities into its forces. The SAF needs this upgrade to keep pace with high tech advances in sensors, weaponry, and communications.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Boeing Military Aircraft and Missile Systems of St. Louis, Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any contractor representatives in-country; however, it is estimated that U.S. Government representatives will be required in Switzerland for approximately four months during the preparation, equipment installation, and equipment test and checkout of the equipment.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-08

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Combined Interrogator Transponder (CIT) AN/APX-111(V) IFF system was specifically designed for the F/A-18. The Interrogator function provides the pilot with capability to identify cooperative or friendly aircraft. The transponder function self-identifies the aircraft to other off-board interrogators in the same way as the APX-100 transponder. CIT combines most of the interrogator, transponder, and crypto computer functions into one unit outline. The electronically scanned interrogator antenna function is performed by a five-blade array and Beam Forming Network (BFN).

2. The configuration requested is compatible for use in F-18 aircraft. The configuration consists of the following equipment: RT-1763A/APX-111(V) interrogator-transponder, KIV-6/TSEC cryptographic computer, C-12481/APX-111(V) beam forming network, (5X) AS-4440/APX-111(V) antenna blade elements, IT-to-BFN cable group, BFN-to-FMA cable group, receiver-transmitter radio, antenna position control, antenna set (upper), battery charge panel, external power monitor, ID light transformer/mount, mounting tray assembly BFN, 3L landing gear control unit bay, LGCU mounting tray assembly and relay panel no. 3. AN/APX-111 CIT is classified as Confidential.

3. The Tactical Aircraft Moving Map Capability (TAMMAC) System will alleviate problems, including parts obsolescence issues, associated with the Digital Video Map Set (DVMS) and the Data Storage Set (DSS) currently installed on the F/A-18. The DVMS does not possess sufficient throughput or database storage capability to support future F/A-18 operational requirements. Additionally, the DVMS cannot use Compressed AC Digitized Raster Graphic, the new digital map database provided by the National Imagery and Mapping Agency (NIMA), without costly preprocessing. The DSS does not provide enough memory capacity to store the desired amount of data recorded by the aircraft during flight.

4. The configuration requested is compatible for use in F-18 aircraft. The configuration consists of the following equipment: advanced memory unit, MU-1129A/A memory unit, digital map set, and CP-2414A/A digital map computer. TAMMAC system is classified as Confidential.

5. The Multifunctional Information Distribution System (MIDS) Low Volume Terminal (LVT) is a secure data and voice communication network using the Link-16 architecture. The system provides enhanced situational awareness, positive identification of participants within the network, secure fighter-to-fighter connectivity, secure voice capability, and ARN-118 TACAN functionality. It provides three major functions: Air Control, Wide Area Surveillance, and Fighter-to-Fighter. The MIDS LVT can be used to transfer data in Air-to-Air, Air-to-Surface, and Air-to-Ground scenarios.

6. The configuration requested is compatible for use in F-18 aircraft. The configuration consists of the following equipment: RT-1765 C/USQ-140(V)C MIDS/LVT and MIDS notch filter set. MIDS/LVT is classified as Confidential.

7. The Joint Helmet Mounted Cueing System (JHMCS) provides an off-boresight visual targeting of sensors and weapons with a head-out display where the pilot is looking. The system improves situational awareness in visual combat while providing off-boresight visual cueing and threat identification. Also, when combined with a high off-boresight missile, aircraft weapon system lethality is improved for short-range air-to-air engagements.

8. The configuration requested is compatible for use in F-18 aircraft. The configuration consists of the following equipment: electronics unit, cockpit unit, magnetic transition unit, seat position sensor, mounting bracket, lower helmet vehicle interface, helmet display unit, visor day, visor night, visor high contrast, oxygen mask, helmet upper interface, JHMCS/ANVIS-9 Night Vision Goggles adapters, and JHMCS helmet bag. The JHMCS is classified as Confidential.

9. The MIDS Enhanced Interference Blanking Units (EIBU) enhances input/output signal capacity of the MIDS LVT and addresses parts obsolescence.

10. The configuration requested is compatible for use in F-18 aircraft. The configuration consists of the following equipment: MX-11741/A interference blanker.

11. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

12. A determination has been made that Switzerland can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03–7099 Filed 3–25–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–09]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–09 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 MAR 2003

In reply refer to:
I-03/001564

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-09, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Thailand for defense articles and services estimated to cost $35 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-09

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Thailand

(ii) Total Estimated Value:

Major Defense Equipment*	$27 million
Other	$ 8 million
TOTAL	$35 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: two UH-60L BLACKHAWK helicopters with T-700-GE-701C engines, two spare T-700-GE-701C engines, M130 chaff dispenser, receivers, spare and repair parts, gun pods, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Team (QAT), contractor engineering and technical support services and other related elements of logistics support.

(iv) Military Department: Army (WEZ)

(v) Prior Related Cases, if any:
FMS case WES - $30 million – 30Aug02
FMS case WEC - $20 million – 27Sep00

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 18 MAR 2003

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Thailand – UH-60L BLACKHAWK Helicopters

The Government of Thailand has requested a possible sale of two UH-60L BLACKHAWK helicopters with T-700 engines, two spare T-700 engines, M130 chaff dispenser, receivers, spare and repair parts, gun pods, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Team (QAT), contractor engineering and technical support services and other related elements of logistics support. The estimated cost is $35 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in South East Asia.

This procurement will upgrade its air mobility capability and provide for the defense of vital installations and close air support for ground forces. Thailand will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractor will be United Technology, Sikorsky Aircraft of Stratford, Connecticut. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will require the assignment of several U.S. Government Quality Assurance Teams for one-week intervals, twice annually, to participate in program management and technical reviews. There will be several U.S. Army National Guard Personnel, for a month, and a contractor field service representative, for two years, in Thailand.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-09

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The UH-60L BLACKHAWK helicopter is Unclassified. The highest level of classified information required to be released for training, operation and maintenance of the BLACKHAWK is Confidential. The highest level which could be revealed through reverse engineering or testing of the end item is Confidential.

2. A determination has been made that Thailand can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03–7100 Filed 3–25–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Defense Acquisition University.

ACTION: Board of Visitors meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at Defense Acquisition University, Capital and Northeast Region, 9820 Belvoir Road, Fort Belvoir, Virginia, from 0900–1500. The purpose of this meeting is to report back to the BoV on continuing items of interest.

DATES: April 16, 2003 from 0900–1500.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Reid at 703–805–5133.

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first-served basis. Persons desiring to attend the meeting should call Ms. Diane Reid at 703–805–5133.

Dated: March 11, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer.

[FR Doc. 03–7096 Filed 3–25–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Medicare-Eligible Retiree Health Care Board of Actuaries; Notice of Meeting

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of Chapter 56, Title 10, United States Code (10 U.S.C. 1114 *et seq.*). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of benefits under DoD retiree health care programs for Medicare-eligible beneficiaries. Persons desiring to: (1) Attend the DoD Medicare-Eligible Retiree Health Care Board of Actuaries meeting or, (2) make an oral presentation or submit a written statement for consideration at the meeting, must notify Bill Klunk at 703–696–7404 by April 25, 2003.

Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: May 2, 2003, 10–1:30.

ADDRESSES: 1400 Key Boulevard, California Room, RAA–125, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Bill Klunk, DoD Office of the Actuary, 1555 Wilson Boulevard, Suite 701, Arlington, VA 22209–2405, (703) 696–7404.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 03–7095 Filed 3–25–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Enduring Freedom Lessons Learned will meet in closed session on April 2, 2003, in Washington, DC; April 8, 2003, location TBD; April 21, 2003, location TBD; May 14–27, 2003, location TBD; and June 4–6, 2003, in Washington, DC. This Task Force will review current activities of Operation Enduring Freedom to determine both near and longer-term technical and operational considerations that could be used to improve this operation and future campaigns initiated in the War Against Terrorism.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will review and evaluate operational policy and procedures, command and control, intelligence, combat support activities, weapon system performance, and science and technology requirements.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Due to scheduling conflicts, there was insufficient time to provide timely notice required by Section 10(a)(2) of the Federal Advisory Committee Act and Subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR Part 101–6, which further requires publication at least 15 calendar days prior to a meeting.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–7092 Filed 3–25–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting cancellation.

SUMMARY: On Friday, January 24, 2003 (67 FR 3516), the Department of Defense announced a closed meeting of the Defense Science Board Task Force on Red Teaming. The meeting scheduled for March 24, 2003, was canceled.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–7093 Filed 3–25–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on the Smallpox Vaccine Down Select Process will in closed session on April 17, 2003, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will perform an independent evaluation of the Department of Defense and Department of Health and Human Services smallpox vaccine candidates.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will evaluate each of the three smallpox vaccine candidates to include the following type of issues: Choice of cell line and viral strain used; preclinical data in appropriate animal models; review of vaccine production methodology to include rates of production and surge capacity; review of protocols for clinical trials to include adverse reaction rates; review of cost issues as they relate to production of the vaccine; review of critical regulatory, legal, and ethical issues associated with the use of the vaccine; and any other issues that the Task Force feels, based on its experience, are relevant.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(4) and that, accordingly, the meeting will be closed to the public.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–7094 Filed 3–25–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting date change.

SUMMARY: The Department of Defense announced a closed meeting of the Defense Science Board Task Force on Missile Defense, Phase III (Modeling and Simulation) for March 18, 2003. That meeting was rescheduled to March 27, 2003, at Strategic Analysis Inc., 3601 Wilson Boulevard, Suite 600, Arlington, VA.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–7097 Filed 3–25–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Deputy Secretary of Defense Policy Memorandum, Subject: Ensuring the Quality of Information Disseminated to the Public by the Department of Defense, Dated February 10, 2003

AGENCY: Assistant Secretary of Defense for Command, Control, and Communications, DoD.

ACTION: Notice of availability.

SUMMARY: The Office of Management and Budget (OMB) has directed all government agencies to publish a notice in the **Federal Register** that their final guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated to the public are available on their public Web sites. The Department of Defense memorandum provides policy and procedural guidance for DoD components in accordance with OMB directions. It also establishes administrative mechanisms that allow affected persons to seek and obtain correction of information maintained and disseminated by DoD components that may not meet the quality standards, assigns responsibilities, and delineates reporting requirements. The Policy Memorandum is available on the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence public Web site, *http://www.dod.mil.c3i/cioindex.html.*

DATES: February 10, 2003.

ADDRESSES: Mr. Harold Heilsnis, OASD(PA), Office of the Assistant Secretary of Defense for Public Affairs, 1400 Defense Pentagon, Washington, DC 20301–1400.

FOR FURTHER INFORMATION CONTACT: Mr. Harold Heilsnis, OASD(PA), 703–325–4470, *hheilsnis@hq.ofis.osd.mil.*

Dated: March 11, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–7098 Filed 3–25–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 229. This bulletin lists revisions in the *per diem* rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 229 8s being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 228. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in *per diem* rates to agencies and establishments outside the Department of Defense. For more information or questions about *per diem* rates, please contact your local travel office. The text of the Bulletin follows:

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 229 ARE UPDATES TO RATES FOR ALASKA.						
ALASKA						
ANCHORAGE [INCL NAV RES]						
05/01 - 09/15	170		66		236	04/01/2003
09/16 - 04/30	85		66		151	04/01/2003
BARROW	159		95		254	05/01/2002
BETHEL	129		66		195	05/01/2002
CLEAR AB	80		55		135	09/01/2001
COLD BAY	90		73		163	05/01/2002
COLDFOOT	135		71		206	10/01/1999
COPPER CENTER	99		63		162	05/01/2002
CORDOVA	90		48		138	04/01/2003
CRAIG	100		53		153	04/01/2003
DEADHORSE	95		67		162	05/01/2002
DELTA JUNCTION	79		60		139	04/01/2003
DENALI NATIONAL PARK						
06/01 - 08/31	115		41		156	04/01/2003
09/01 - 05/31	80		38		118	04/01/2003
DILLINGHAM	95		69		164	05/01/2002
DUTCH HARBOR-UNALASKA	120		86		206	04/01/2003
EARECKSON AIR STATION	80		55		135	09/01/2001
EIELSON AFB						
05/01 - 09/15	149		83		232	04/01/2003
09/16 - 04/30	75		76		151	04/01/2003
ELMENDORF AFB						
05/01 - 09/15	170		66		236	04/01/2003
09/16 - 04/30	85		66		151	04/01/2003
FAIRBANKS						
05/01 - 09/15	149		83		232	04/01/2003
09/16 - 04/30	75		76		151	04/01/2003
FOOTLOOSE	175		18		193	06/01/2002
FT. GREELY	79		60		139	04/01/2003
FT. RICHARDSON						
05/01 - 09/15	170		66		236	04/01/2003
09/16 - 04/30	85		66		151	04/01/2003
FT. WAINWRIGHT						
05/01 - 09/15	149		83		232	04/01/2003
09/16 - 04/30	75		76		151	04/01/2003
GLENNALLEN						
05/01 - 09/30	137		61		198	09/01/2001
10/01 - 04/30	89		56		145	09/01/2001
HEALY						
06/01 - 08/31	115		41		156	04/01/2003
09/01 - 05/31	80		38		118	04/01/2003
HOMER						
05/15 - 09/15	109		72		181	04/01/2003
09/16 - 05/14	76		68		144	04/01/2003
JUNEAU	99		75		174	04/01/2003
KAKTOVIK	165		86		251	05/01/2002

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KAVIK CAMP	150	69	219	05/01/2002
KENAI-SOLDOTNA				
04/01 - 10/31	110	83	193	04/01/2003
11/01 - 03/31	69	75	144	04/01/2003
KENNICOTT	179	81	260	04/01/2003
KETCHIKAN				
05/01 - 09/30	110	82	192	04/01/2003
10/01 - 04/30	89	80	169	04/01/2003
KING SALMON				
05/01 - 10/01	225	91	316	05/01/2002
10/02 - 04/30	125	81	206	05/01/2002
KLAWOCK	100	53	153	04/01/2003
KODIAK	90	83	173	04/01/2003
KOTZEBUE				
05/01 - 08/31	141	91	232	04/01/2003
09/01 - 04/30	125	89	214	04/01/2003
KULIS AGS				
05/01 - 09/15	170	66	236	04/01/2003
09/16 - 04/30	85	66	151	04/01/2003
MCCARTHY	179	81	260	04/01/2003
METLAKATLA				
05/30 - 10/01	98	48	146	05/01/2002
10/02 - 05/29	78	47	125	05/01/2002
MURPHY DOME				
05/01 - 09/15	149	83	232	04/01/2003
09/16 - 04/30	75	76	151	04/01/2003
NOME	115	91	206	04/01/2003
NUIQSUT	180	53	233	05/01/2002
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PORT ALSWORTH	135	88	223	05/01/2002
PRUDHOE BAY	95	67	162	05/01/2002
SEWARD				
05/31 - 09/30	189	67	256	04/01/2003
10/01 - 05/30	79	56	135	04/01/2003
SITKA-MT. EDGECUMBE				
05/16 - 09/16	110	81	191	04/01/2003
09/17 - 05/15	99	80	179	04/01/2003
SKAGWAY				
05/01 - 09/30	110	82	192	04/01/2003
10/01 - 04/30	89	80	169	04/01/2003
SPRUCE CAPE	90	83	173	04/01/2003
ST. GEORGE	105	39	144	07/01/2002
TALKEETNA	100	89	189	07/01/2002
TANANA	115	91	206	04/01/2003
TOGIAK	100	39	139	07/01/2002
TOK				
05/01 - 09/30	81	76	157	04/01/2003
10/01 - 04/30	60	74	134	04/01/2003
UMIAT	150	98	248	04/01/2003

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
UNALAKLEET	79	80	159	04/01/2003
VALDEZ				
05/01 - 10/01	139	91	230	04/01/2003
10/02 - 04/30	79	86	165	04/01/2003
WAINWRIGHT	120	83	203	05/01/2002
WASILLA	99	68	167	04/01/2003
WRANGELL				
05/01 - 09/30	110	82	192	04/01/2003
10/01 - 04/30	89	80	169	04/01/2003
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	55	135	09/01/2001
AMERICAN SAMOA				
AMERICAN SAMOA	85	67	152	03/01/2000
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	76	211	09/01/2002
HAWAII				
CAMP H M SMITH	112	72	184	06/01/2002
EASTPAC NAVAL COMP TELE AREA	112	72	184	06/01/2002
FT. DERUSSEY	112	72	184	06/01/2002
FT. SHAFTER	112	72	184	06/01/2002
HICKAM AFB	112	72	184	06/01/2002
HONOLULU (INCL NAV & MC RES CTR)	112	72	184	06/01/2002
ISLE OF HAWAII: HILO	108	69	177	06/01/2002
ISLE OF HAWAII: OTHER	89	54	143	05/01/2000
ISLE OF KAUAI				
05/01 - 11/30	158	88	246	06/01/2002
12/01 - 04/30	203	93	296	06/01/2002
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	159	89	248	06/01/2002
ISLE OF OAHU	112	72	184	06/01/2002
KEKAHA PACIFIC MISSILE RANGE FAC				
05/01 - 11/30	158	88	246	06/01/2002
12/01 - 04/30	203	93	296	06/01/2002
KILAUEA MILITARY CAMP	108	69	177	06/01/2002
LANAI	299	138	437	09/01/2002
LUALUALEI NAVAL MAGAZINE	112	72	184	06/01/2002
MCB HAWAII	112	72	184	06/01/2002
MOLOKAI	195	111	306	09/01/2002
NAS BARBERS POINT	112	72	184	06/01/2002
PEARL HARBOR [INCL ALL MILITARY]	112	72	184	06/01/2002
SCHOFIELD BARRACKS	112	72	184	06/01/2002
WHEELER ARMY AIRFIELD	112	72	184	06/01/2002
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	0	14	14	05/01/2002
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	150	47	197	02/01/2000
NORTHERN MARIANA ISLANDS				
ROTA	149	72	221	10/01/2002
SAIPAN	150	88	238	10/01/2002

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
TINIAN	85	71	156	10/01/2002
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
CAROLINA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82	54	136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
HUMACAO	82	54	136	01/01/2000
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	93	72	165	01/01/2000
12/15 - 04/14	129	76	205	01/01/2000
ST. JOHN				
04/15 - 12/14	219	84	303	01/01/2000
12/15 - 04/14	382	100	482	01/01/2000
ST. THOMAS				
04/15 - 12/14	163	73	236	01/01/2000
12/15 - 04/14	288	86	374	01/01/2000
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

Civilian Bulletin No. 229

Page 5

[FR Doc. 03–7101 Filed 3–25–03; 8:45 am]

BILLING CODE 5001–08–C

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 27, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 20, 2003.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Talent Search and EOC Programs Annual Performance Report Form.

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary), State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 1. *Burden Hours:* 3690.

Abstract: Talent Search and EOC grantees must submit the report annually. The report provides the Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements and to award prior experience points in accordance with the program regulations. The data collected is also aggregated to provide national information on project participants and program outcomes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2244. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *joe.schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–7124 Filed 3–25–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–277]

Application To Export Electric Energy; AIG Energy Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: AIG Energy Inc. (AIG Energy) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 25, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16U.S.C. § 824a(e)).

On March 17, 2003, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from AIG Energy to transmit electric energy from the United States to Canada. AIG Energy does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.

AIG Energy will purchase the power to be exported from electric utilities and power marketing agencies within the United States. The exported electricity will be delivered to Canada over the existing international transmission facilities currently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities Co., International Transmission Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by AIG Energy, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the NorthPoint application to export electric energy to Canada should be clearly marked with Docket EA–277. Additional copies are to be filed directly with Carl Peterson, Vice President, AIG Energy Inc., One Greenwich Plaza, Greenwich, CT 06830 *AND* Andrew Kaplan, Executive Vice President & General Counsel, AIG Energy Inc., One Greenwich Plaza, Greenwich, CT 06830.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on March 20, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03–7230 Filed 3–25–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–276]

Application to Export Electric Energy; USGen New England, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: USGen New England, Inc. (USGenNE) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 25, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On March 17, 2003, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from USGenNE to transmit electric energy from the United States to Canada. USGenNE proposes to export electric energy from its own generation resources to Canada over the existing international transmission facilities currently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities Co., International Transmission Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by USGenNE, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the USGenNE application to export electric energy to Canada should be clearly marked with Docket EA–276. Additional copies are to be filed directly with Sanford L. Hartman, Chief Counsel, USGen New England, Inc., 7600 Wisconsin Avenue, Bethesda, MD 20814–6161 *AND* James Utt, USGen New England, Inc., 7600 Wisconsin Avenue, Bethesda, MD 20814–6161.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on March 20, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03–7231 Filed 3–25–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Education Workforce Development Program

AGENCY: Golden Field Office, U.S. Department of Energy.

ACTION: Notice of issuance of program solicitation.

SUMMARY: The National Renewable Energy Laboratory (NREL), a DOE-funded laboratory in Golden, Colorado, conducts an annual education program for the workforce development of college students and teachers under the sponsorship of the DOE Office of Science. Each summer, a group of selected students and teachers are brought to the NREL site and assigned to work with an experienced NREL researcher in one of many renewable energy research projects underway. Under this Solicitation, DOE is seeking Applications for a college or university in the Denver, Colorado, metropolitan area to act as a fiscal agent on behalf of the workforce development activities conducted by NREL.

It is anticipated that one financial assistance award will be made under this Solicitation. The award will be a Cooperative Agreement, with a five-year Project Period. Each of the five years will be separately funded by DOE, with the funding during any period dependent on the availability of congressional appropriations. For the first year, it is anticipated that the DOE funding provided to the fiscal agent will be $180,000.

DATES: The program solicitation is anticipated to be posted on the Industry Interactive Procurement System (IIPS) Web site in mid-March, 2003. Applications will be due in early April 2003.

ADDRESSES: To obtain a copy of the solicitation, interested parties should access the DOE Golden Field Office home page at *http://www.golden.doe.gov/businessopportunities.html*, and click on the "Solicitations" button. The Golden Home Page will provide a link to the Solicitation in the IIPS Web site and provide instructions on using IIPS. The Solicitation can also be obtained directly through IIPS at *http://e-center.doe.gov* by browsing opportunities by Contract Activity, for those solicitations issued by the Golden Field Office. DOE will not issue paper copies of the solicitation.

IIPS provides the medium for disseminating solicitations, receiving financial assistance applications, and evaluating the applications in a paperless environment. For questions regarding the operation of IIPS, contact the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Steve Scott, Contracting Officer, DOE Golden Field Office, via facsimile at (303) 275–4788 or electronically to *Steve.Scott@go.doe.gov*.

SUPPLEMENTARY INFORMATION:

Eligibility is restricted to colleges and universities with a primary campus located in the Denver, Colorado, metropolitan area. The metropolitan area includes only the following Colorado counties: Denver, Jefferson, Arapahoe, Douglas, Adams, and Boulder. Institutions located outside of these Colorado counties are not eligible to apply under this Solicitation.

A limit is imposed for the maximum percentage of DOE funding that can be devoted to Applicant expenses. The proposed Applicant expenses to conduct the complete project must be 15% or less of the total DOE funds obligated in order to be considered for an award under this Solicitation (*i.e.*, 85% or greater of the DOE funding is to be provided by the Applicant to students/teachers participating in the program). The Applicant expenses include all direct and indirect charges incurred to conduct the Statement of Objectives. This 15% Applicant expense limit also applies to any future increments of DOE funding that may be obligated to the award during the five-year project period. An Application will not be evaluated if the proposed total Applicant expenses exceed 15% of the DOE funding.

DOE anticipates obligating $180,000 for the first year of the project. The proposed Applicant expenses must be $27,000 or less for this initial period, with $153,000 or more available for direct support of the participants. The total estimated funds anticipated to be available for the five-year project is approximately $950,000, depending on the availability of congressional appropriations.

Issued in Golden, Colorado, on March 12, 2003.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 03–7233 Filed 3–25–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting correction.

On March 17, 2003, the Department of Energy published a notice of open meeting announcing a meeting of the Secretary of Energy Advisory Board on April 1, 2003 at the Hyatt Sainte Claire Hotel, 302 S. Market Street, San Jose, California 95113 (68 FR 12690). In that notice the time of the meeting was announced as 8:30 A.M to 12:30 P.M. Today's notice announces that the time of the meeting has been revised to 9 A.M. to 12:30 P.M. The date and location of the meeting are unchanged.

Issued at Washington, DC, on March 21, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–7232 Filed 3–25–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–303–000]

Boundary Gas, Inc.; Notice of Proposed Changes in FERC Gas Tariff

March 19, 2003.

Take notice that on March 13, 2003, Boundary Gas, Inc. (Boundary) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 1 to become effective January 15, 2003.

Boundary states that the purpose of this filing is to cancel Boundary's tariff to reflect the fact that the Phase 2 Gas Sales Agreement (Sales Agreement), which is incorporated into Boundary's tariff, terminated in accordance with its terms on January 15, 2003, and none of Boundary's current customers have chosen to receive service from Boundary after January 15, 2003. Concurrently with this filing, Boundary is also filing an application to abandon service as of January 15, 2003.

Pursuant to 18 CFR 154.207 and 154.602, Boundary requests a waiver of the notice requirements for such tariff filings in order to make this tariff sheet effective retroactively on January 15, 2003, the date that the Sales Agreement terminated.

Boundary states that copies of this filing were served upon each of Boundary's customers and the state commissions in Connecticut, Massachusetts, New Hampshire, New Jersey, New York and Rhode Island.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: March 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7218 Filed 3–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–350–011]

Colorado Interstate Gas Company; Notice of Filing of Refund Report

March 19, 2003.

Take notice that on March 14, 2003, Colorado Interstate Gas Company (CIG), filed an amendment to its refund report in Docket No. RP01–350–011.

CIG states that the filing and refunds were made to comply with the Commission's Order of August 5, 2002. These corrections will be made by CIG on the March 2003 invoices.

CIG states that the refund report summarizes corrected jurisdictional transportation refund amounts for certain shippers for the period October 1, 2001 through September 30, 2002 pursuant to Article 2.2 of CIG's Stipulation and Agreement as approved in the Commission's August 5, 2002 Order.

CIG states that the copies of CIG's filing are being mailed to all parties of record in this proceeding and interested state regulatory Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 26, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7215 Filed 3–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–304–000]

Iroquois Gas Transmission System, L.P.; Notice of Tariff Filing

March 19, 2003.

Take notice that on March 13, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets proposed to become effective May 1, 2003:

Eleventh Revised Sheet No. 4A
First Revised Sheet No. 47A
Seventh Revised Sheet No. 48
Original Sheet No. 48A

Iroquois asserts that the purpose of this filing is to establish an incremental fuel charge for Iroquois' Eastchester Extension Project (Eastchester Project), as the Commission required in approving that project.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: March 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7219 Filed 3–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–505–003;]

Kinder Morgan Interstate Gas Transmission LLC Notice of Compliance Filing

March 19, 2003.

Take notice that on March 14, 2003 Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1–B, Second Revised Sheet No. 41, to be effective April 13, 2003.

KMIGT states that the purpose of this filing is to comply with the Commission's "Order On Rehearing" issued on February 27, 2003, in Docket No. RP02–505–002.

KMIGT further states that copies of the filing are being served on all parties set out on the Commission's official service list in Docket No. RP02–505, *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7216 Filed 3–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–9–00]

Louisiana Intrastate Gas Company, L.L.C.; Notice for Petition for Rate Approval

March 19, 2003.

Take notice that on March 3, 2003, Louisiana Intrastate Gas Company, L.L.C. (LIG) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve the proposed rates as fair and equitable for transportation services performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

LIG requests that the Commission determine that its current maximum rates of $.1880 per MMBtu for interruptible transportation, a $.0000 per MMBtu commodity charge, a $5.7188 per MMBtu monthly demand charge, and a maximum overrun charge of $.1880 per MMBtu remain fair and equitable at this time. LIG also requests continuation of the maximum fuel retention percentage of 2%.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits I the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Comment Date: April 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7214 Filed 3–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–31–000]

Paiute Pipeline Company; Notice of Site Visit

March 19, 2003.

On March 26, 2003, the staff of the Office of Energy Projects will participate in a site visit to the area proposed for construction of natural gas pipeline facilities by Paiute Pipeline Company for its Carson Lateral Replacement Project, in Lyon, Douglas, Carson City, and Washoe Counties, Nevada.

The site visit will begin at 8 am from the Carson City Field Office of the U.S. Bureau of Land Management, 5665 Morgan Hill Road, Carson City, Nevada. All interested parties may attend the site visit. Those planning to attend must provide their own transportation. Anyone interested in additional information on the site visit may contact the Commission's Office of External Affairs at 1–866–208–FERC.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7211 Filed 3–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP03–271–002 and RP03–273–002]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

March 19, 2003.

Take notice that on March 13, 2003 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fifth Revised Sheet No. 61 and First Revised Sheet No. 61A , effective April 1, 2003.

Transco states that the purpose of Transco's filing is to supplement Transco's Electric Power Tracker filing of February 28, 2003, Transco's Supplemental Electric Power Tracker filing of March 7, 2003, Transco's Fuel Tracker filing of February 28, 2003, and Transco's Supplemental Fuel Tracker filing of March 7, 2003. Transco states that it inadvertently failed to include in these filings the updated tariff sheets that reflect the trading fees and trading fuel retention percentages that are assessed when shippers and OBA parties trade imbalances across zones pursuant to Section 25 of the General Terms and Conditions of Transco's FERC Gas Tariff.

Transco states that it is serving copies of the instant filing to its affected customers, interested State Commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7217 Filed 3–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–37–003]

Williston Basin Interstate Pipeline Company; Notice of Amendment

March 19, 2003.

Take notice that on March 17, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), P.O. Box 5601, Bismarck, North Dakota 58506–5601, filed an amendment to its pending applications filed on November 30, 2001 as amended on September 27, 2002, in Docket Nos. CP02–37–000 and CP02–37–002, respectively, pursuant to Section 7(c) of the Natural Gas Act (NGA), to reflect certain modifications to the Grasslands Project, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Specifically, Williston Basin states that a change in market conditions has resulted in shippers contracting for all 80,000 dekatherms per day of capacity on the Grasslands Project starting in Year 1. As a result, Williston Basin proposes to construct Phases I, II and III of the project, concurrently and have the total project in service on November 1, 2003. Williston Basin states that since shippers will be able to use the full capacity of 80,000 dekatherms per day upon the in-service date of November 1, 2003, it is no longer necessary to defer depreciation expense and withdraws its request to create a regulatory asset.

Any questions regarding the amendment should be directed to Keith A. Tiggelaar, Director of Regulatory Affairs, Williston Basin Interstate Pipeline Company, P.O. Box 5601, Bismarck, North Dakota 58506–5601, at (701) 530–1560, or E-mail: *keith.tiggelaar@wbip.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding. with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the amendment for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

All persons who have heretofore filed need not file again.

Comment Date: March 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7210 Filed 3–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC03–29–000, et al.]

Gulf South Pipeline Co. L.P., et al.; Electric Rate and Corporate Filings

March 19, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Gulf South Pipeline Co., L.P.

[Docket No. AC03–29–000]

Take notice that on March 11, 2003, Gulf South Pipeline Company, L.P. (Gulf South) filed with the Federal Energy Regulatory Commission

(Commission) a letter requesting approval of Pro forma Journal Entries that would be recorded in connection with a sale of gas from volumes included in Account 117.2, System Balancing Gas.

Comment Date: April 1, 2003.

2. TRANSLink Transmission Company, L.L.C.

[Docket Nos. EC01–156–004 and ER01–3154–004]

Take notice that on March 13, 2003, TRANSLink Development Company, L.L.C. (TRANSLink) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing pursuant to the Commission's April 25, 2002 order issued in the above-referenced proceedings (99 FERC ¶ 61,106) and its November 1, 2002 order (101 FERC ¶ 61,140).

Comment Date: April 3, 2003.

3. Allegheny Energy Supply Conemaugh, LLC UGI Development Company

[Docket No. EC03–66–000]

Take notice that on March 13, 2003, Allegheny Energy Supply Conemaugh, LLC (Conemaugh) and UGI Development Company (UGI) (together, the Applicants) filed a joint application for disposition of jurisdictional facilities under Section 203 of the Federal Power Act. The Applicants request Commission approval for Conemaugh to sell and UGI to acquire Conemaugh's 4.86% tenant-in-common share of the Conemaugh generating facility, located in Indiana County, Pennsylvania.

Comment Date: April 3, 2003.

4. TransCanada PipeLines Limited

[Docket No. EC03–67–000]

Take notice that on March 14, 2003, TransCanada PipeLines Limited (TransCanada) filed with the Federal Energy Regulatory Commission (the Commission) an Application pursuant to Section 203 of the Federal Power Act for authorization of the disposition of jurisdictional facilities that may occur from a corporate reorganization implementing a holding company structure for TransCanada.

Comment Date: April 3, 2003.

5. PSEG Power Connecticut LLC

[Docket No. EG03–25–000]

Take notice that on March 14, 2003, PSEG Power Connecticut LLC (Applicant), having its principal place of business at 80 Park Plaza, T–16, Newark, NJ 07102, filed with the Federal Energy Regulatory Commission (FERC or the Commission) a third amendment to its December 4, 2002 application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations. The amendment proposes an alternative to certain activities incidental to the generation of electricity for sale at wholesale.

The Applicant states that it is engaged, directly or indirectly through an affiliate as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (PUHCA), exclusively in owning or owning and operating eligible electric facilities and participating in certain other activities incidental to such eligible electric facilities as authorized under PUHCA. The Applicant further states that it owns and operates eligible facilities located in Connecticut.

Comment Date: April 9, 2003.

6. Reliant Energy Choctaw County, LLC

[Docket No. EG03–45–000]

Take notice that on March 14, 2003, Reliant Energy Choctaw County, LLC (Reliant Choctaw) filed its application for a determination that it will be an exempt wholesale generator within the meaning of Section 32(a)(1) of Public Utility Holding Company Act (Application).

Comment Date: April 9, 2003.

7. Hunterstown Trust

[Docket No. EG03–46–000]

Take notice that on March 14, 2003, Hunterstown Trust filed its application for a determination that it will be an exempt wholesale generator within the meaning of Section 32(a)(1) of Public Utility Holding Company Act (Application).

Comment Date: April 9, 2003.

8. Meyersdale Windpower, LLC

[Docket No. EG03–48–000]

Take notice that on March 13, 2003, Meyersdale Windpower, LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's regulations.

Applicant states that it is developing a wind-powered eligible facility with a capacity of up to 48 megawatts, powered by up to 32 wind turbine generators, which will be located in Somerset County, Pennsylvania.

Comment Date: April 9, 2003.

9. Northern Indiana Public Service Company

[Docket No. ER96–399–003]

Take notice that on March 17, 2003, Northern Indiana Public Service Company (Northern Indiana) filed revised tariff sheets as part of its FERC Electric Tariff, First Revised Volume No. 5. Northern Indiana states that the revised tariff sheets are submitted in compliance with the order issued by the Commission on December 30, 2002 (101 FERC ¶ 61, 397).

Northern Indiana states that copies of this filing have been sent to all parties on the Commission's official service list.

Comment Date: April 7, 2003.

10. Tiverton Power Associates Limited Partnership

[Docket No. ER00–1171–001]

Take notice that on March 17, 2003, Tiverton Power Associates Limited Partnership submitted for filing its triennial market analysis update in compliance with the Commission Order issued in Docket No. ER00–1171–000 on March 16, 2000.

Comment Date: April 7, 2003.

11. Westar Generating, Inc.

[Docket No. ER01–1305–007]

Take notice that on March 17, 2003, Westar Generating, Inc. (WG) submitted for filing a revised Original Substitute Sheet No. 22 of Rate Schedule FERC No. 1, Purchase Power Agreement between WG and Westar Energy, Inc. (WE). WG states that the purpose of this revision is to change certain language with respect to WE's purchase option for WG's ownership interest in the State Line combined-cycle generating project. WG is requesting an effective date of March 17, 2003.

WG states that copies of the filing was served upon WE and the Kansas Corporation Commission.

Comment Date: April 7, 2003.

12. Westar Energy, Inc.

[Docket No. ER03–172–001]

Take notice that on March 17, 2003, Westar Energy, Inc. (Westar) submitted for filing the FERC Electric Tariff, Volume No. 7 in response to the Commission's Order in Docket No. ER03–172–000. This filing submits the previously accepted WRC pricing schedule as an appropriate FERC tariff. The tariff is proposed to be effective on October 31, 2002. Westar also filed a blank conforming service agreement as part of the proposed tariff. Westar states that each of the three customers' contracts, under the proposed tariff, conforms to the service agreement being submitted.

Westar states that a copy of this filing was served upon the Kansas Corporation Commission, Kaw Valley Electric Cooperative, Nemaha-Marshall Electric Cooperative Association, Inc. and Doniphan Electric Cooperative.

Comment Date: April 7, 2003.

13. Arizona Public Service Company

[Docket No. ER03–616–000]

Take notice that on March 14, 2003, Arizona Public Service Company (APS) tendered for filing a revised Contract Demand Exhibit for Southern California Edison (SCE) applicable under the APS–FERC Rate Schedule No. 120.

APS states that copies of this filing have been served on SCE, the California Public Utilities Commission and the Arizona Corporation Commission.

Comment Date: April 4, 2003.

14. California Independent System Operator Corporation

[Docket No. ER03–617–000]

Take notice that on March 14, 2003, the California Independent System Operator Corporation (ISO) filed First Revised Service Agreement No. 445, which is a Participating Generator Agreement (PGA) between the ISO and Energia de Baja California, S. de R.L. de C.V. (EdBC). The PGA has been revised to update Schedule 1 of the PGA. The ISO requests that the PGA be made effective as of February 3, 2003.

The ISO states it has served copies of this filing upon EdBC and all entities that are on the official service list for Docket No. ER02–2009–000.

Comment Date: April 4, 2003.

15. Reliant Energy Choctaw County, LLC

[Docket No. ER03–618–000]

Take notice that on March 14, 2003 Reliant Energy Choctaw County, LLC (Reliant Choctaw) petitioned the Federal Energy Regulatory Commission (Commission) to grant certain blanket authorizations, to waive certain of the Commission's Regulations and to issue an order accepting Reliant Choctaw's FERC Electric Rate Schedule No. 1. Reliant Choctaw requested that the Commission approve its applicant on an expedited basis.

Comment Date: April 1, 2003.

16. PECO Energy Company

[Docket No. ER03–619–000]

Take notice that on March 14, 2003 PECO Energy Company (PECO) submitted for filing: (1) First Revised Sheet Nos. 59 and 60 to the Interconnection Agreement between PECO and Exelon Generation for the Chester Generating Station designated as First Revised Rate Schedules FERC No. 124; (2) First Revised Sheet Nos. 62 and 63 superseding Original Sheet Nos. 62 and 63 to the Interconnection Agreement between PECO and Exelon Generation Company (Exelon Generation) for the Cromby Generating Station designated as First Revised Rate Schedule FERC No. 126; (3) First Revised Sheet Nos. 58, 59, and 60 to the Interconnection Agreement between PECO and Exelon Generation for the Croydon Generating Station designated as First Revised Rate Schedule FERC No. 127; (4) First Revised Sheet Nos. 61 and 62 superseding Original Sheet Nos. 61 and 62 to the Interconnection Agreement between PECO and Exelon Generation for the Delaware Generating Station designated as First Revised Rate Schedule FERC No. 128; and (5) First Revised Sheet Nos. 64 and 65 superseding Original Sheet Nos. 64 and 65 to the Interconnection Agreement between PECO and Exelon Generation for the Schuylkill Generating Station designated as First Revised Rate Schedule FERC No. 137. These pages were revised to address the installation of new metering equipment at the generation stations.

PECO states that copies of this filing were served on Exelon Generation and PJM Interconnection, L.L.C.

Comment Date: April 4, 2003.

17. Florida Power Corporation

[Docket No. ER03–620–000]

Take notice that on March 14, 2003, Florida Power Corporation (FPC) refiled the executed Shady Hills Facility Parallel Operation Agreement between FPC and Florida Power & Light Company. FPC is requesting an effective date of December 18, 2002 for this Rate Schedule.

FPC states that a copy of the filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

Comment Date: April 4, 2003.

18. Inland Power & Light Company

[Docket No. ER03–621–000]

Take notice that on March 14, 2003, Inland Power & Light Company filed a Notice of Cancellation of its Rate Schedule FERC No. 3.

Comment Date: April 4, 2003.

19. Capital Power, Inc.

[Docket No. ER03–622–000]

Take notice that on March 14, 2003, Capital Power, Inc. (Capital), petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Capital Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Comment Date: April 4, 2003.

20. Jamaica Bay Peaking Facility, LLC

[Docket No. ER03–623–000]

Take notice that on March 14, 2003, Jamaica Bay Peaking Facility, LLC (Jamaica Bay) tendered for filing an application for authorization to sell wholesale power at market-based rates, and certain ancillary services at market-based rates into the New York market.

Jamaica Bay states that copies of this filing have been served on the New York State Public Service Commission, the Long Island Power Authority, and the Florida Public Service Commission.

Comment Date: April 4, 2003.

21. Calpine Construction Finance Company, L.P.

[Docket No. ER03–624–000]

Take notice that on March 17, 2003, Calpine Construction Finance Company, L.P., tendered for filing, under section 205 of the Federal Power Act, a rate schedule for Reactive Power from the Ontelaunee Energy Center.

Comment Date: April 7, 2003.

22. Allegheny Power

[Docket No. ER03–625–000]

Take notice that on March 17, 2003, Allegheny Power (Allegheny) submitted for filing an executed Interconnection and Operating Agreement (Agreement) with Industrial Power Generating Corporation (Ingenco). Allegheny requests an effective date of March 15, 2003 for the Agreement and accordingly seeks waiver of the Commission's notice requirements.

Allegheny states that copies of the filing were served on Ingenco and on interested state commissions.

Comment Date: April 7, 2003.

23. Empire District Electric Company

[Docket No. ER03–626–000]

Take notice that on March 17, 2003, The Empire District Electric Company (Empire) filed certain changes to an existing agreement for wholesale requirements service to four municipal utilities customers currently on file with the FERC as Empire Wholesale Electric Service Schedule W–1 (Schedule W–1).

Empire states that copies of this filing were served on all customers under Schedule W–1 and on all affected state commissions.

Comment Date: April 7, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7175 Filed 3–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–5–003]

Algonquin Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Everett Extension Project, Request for Comments on Environmental Issues, and Notice of a Public Scoping Meeting and Site Visit

March 19, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed Everett Extension Project. On February 5, 2003, Algonquin Gas Transmission Company (AGT) filed an application to amend its Certificate of Public Convenience and Necessity for authorization to construct and operate facilities in Suffolk County, Massachusetts. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. A decision whether an environmental impact statement is needed has not been made yet, and will be based on the comments and information received during the scoping process. Agencies listed in Appendix 3 are hereby asked to indicate whether they want to be cooperating agencies for preparing the EA.

The application, and other supplemental filings in this docket are available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). Click on the "FERRIS" link, select "General Search" from the FERRIS menu, and follow the instructions, being sure to input the correct docket number (CP01–5–003).

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain and under certain circumstances the pipeline company could initiate condemnation proceedings in accordance with Florida law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice that AGT provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

AGT would construct 6.64 miles of 24-inch-diameter pipeline, 0.31 miles of 8-inch-diameter pipeline, three meter stations, and appurtenant facilities. The proposal would extend the 24-inch-diameter Deer Island Lateral pipeline (approved on June 4, 2002, in Docket No. CP01–5–002, but unbuilt yet). The proposal would provide 110,000 dekatherms per day of firm transportation service. AGT requests final authorization for the proposed facilities by December 15, 2003, and would construct its facilities in 2004 during the summer and fall, so that it could place the facilities in service by June 1, 2005. The general locations of the project facilities are shown in Appendix 1.[1] If you are interested in obtaining detailed maps of a specific portion of the project, send in your request using the form in Appendix 4.

Land Requirements for Construction

Construction of the Everett Extension Project would temporarily disturb a total of about 72.70 acres of land. This includes about 22.9 acres offshore and 36.2 acres onshore for the pipeline construction right-of-way (ROW), and 13.6 acres for extra workspace and contractor staging areas. The total land requirements for the permanent ROW would be about 14.14 acres, including 1.35 acres of land for operation of the new permanent aboveground facilities. The remaining 58.56 acres of land affected by construction would be restored and allowed to revert to its former use.

Approximately 3.86 miles of the pipeline would be built onshore, and 3.09 miles would be offshore. The offshore construction would include about 2.25 miles of horizontal directional drilling, and about 0.84 miles of shallow water dredging. The offshore disturbance would include about 8.67 acres for trench excavation and 14.22 acres for temporarily storing the side-cast trench spoil. AGT states that most (69%) of the proposed onshore route would not require AGT to obtain a ROW easement, since 60% of the route would be located within existing roads or utility ROW, and 9% would be on property owned by proposed customers. AGT would typically use a 50- to 75-foot-wide construction ROW. Temporary extra workspaces are often needed for waterbody, highway, and railroad crossings; additional topsoil storage; and pipe storage and equipment yards.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the "FERRIS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

public may have about proposals. This is called "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Water resources.
- Wetlands.
- Fisheries and essential fish habitat.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use, recreation, and visual resources.
- Cultural resources.
- Socioeconomics.
- Geologic and soil resources.
- Air and noise quality.
- Reliability and safety.
- System or route alternatives.

Our independent analysis of the issues will be in the EA. The EA will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the EA. We will consider all comments on the EA and revise the document, as necessary, before issuing a Final EA. The Final EA will include our responses to comments received and will be used by the Commission in its decision-making process to determine whether to approve the project.

To ensure your comments are considered, please carefully follow the instructions in the Public Participation and Scoping Meeting section of this Notice of Intent.

Currently Identified Environmental Issues

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues that deserve attention based on a preliminary review of the proposed facilities, the environmental information provided by AGT, and early input from intervenors. Some of these issues are listed below. This list is preliminary and may be changed based on your comments and our analysis.

- Effect of construction on groundwater or surface water supplies;
- Potential failure of the HDD segments, or inadvertent releases of drilling lubricant or hazardous materials during the drilling activities;
- Extent and effects of turbidity and sedimentation that may result from pipeline trenching or directional drilling in shallow waters;
- Potential fuel spills from the pipelay barges and associated vessel traffic;
- Construction and operational effects on marine and estuarine habitats that support commercial or recreational fisheries;
- Potential effects to wildlife and fisheries, including essential fish habitat and other fishery resource of concern, and other biological resources of concern;
- Potential effects on federally endangered and threatened species including the piping plover, northern right whale, humpback whale, fin whale, loggerhead sea turtle, green sea turtle, hawksbill sea turtle, Kemp's ridley sea turtle, and leatherback sea turtle;
- Potential effects to onshore and offshore submerged cultural resources;
- Noise generated as a result of pipeline construction;
- Temporary disruption of local roadways and recreational trails during construction;
- Potential effect of the project on Logan Airport operations;
- Cumulative impacts and temporal loss of habitat function from additive effects of the proposed project with other projects, including natural gas pipelines and other utilities, which have been recently constructed or are proposed to be built in the same region;
- Public Safety in the vicinity of the proposed facilities.

Public Participation and Scoping Meeting

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Gas 2 Branch.
- Reference Docket No. CP01–5–003.
- Mail your comments so that they will be received in Washington, DC on or before April 18, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

In addition to or in lieu of sending written comments, we invite you to attend a public scoping meeting. The FERC will conduct this public meeting together with the Massachusetts Energy Facilities Siting Board, at the time and location listed below:

Time: Wednesday April 9, 2003, at 7 PM, *Location:* Curtis Guild Elementary School, 195 Leyden Street, East Boston, MA 02128.

The public meeting is designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. Prior to the start of the meeting, company representatives will be available to informally discuss the project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the EA. A transcript of the meeting will be made so that your comments will be accurately recorded.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* Appendix 2).[3] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. The deadline for requesting to be an intervenor is April 7, 2003, but you may still request consideration to be an intervenor after that, if you can demonstrate why you should be granted intervenor status. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential ROW grantors. By this notice we are also asking governmental agencies, especially those in Appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC, or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

[3] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7209 Filed 3–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11810–004]

Notice of Intent To Prepare a Multi-Project Environmental Assessment and Notice of Paper Scoping and Soliciting Scoping Comments

March 19, 2003.

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* Original Major License, constructed project.

b. *Project No.:* P–11810–004.

c. *Date filed:* January 30, 2003.

d. *Applicant:* City of Augusta.

e. *Name of Project:* Augusta Canal Project.

f. *Location:* Adjacent to the Savannah River, in Richmond County, Georgia, near the town of Augusta, Georgia. The project does not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Max Hicks, Director, Utilities Department, 360 Bay Street, Suite 180, Augusta, GA 30901, (706) 312–4121

i. *FERC Contact:* Monte TerHaar, (202) 502–6035 or *monte.terhaar@ferc.gov*.

j. *Deadline for filing scoping comments:* 60 days from issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. *Project Description:* The City of Augusta does not propose to construct hydroelectric generation facilities and the project would produce no power. Augusta is proposing to license parts of the Augusta Canal system which pass flows for use by three existing hydroelectric projects located in the Augusta Canal. These projects are the 1.2 megawatt (MW) Enterprise Project (No. 2935), the 2.475 MW Sibley Mill Project (No. 5044), and the 2.05 MW King Mill Project (No. 9988). The proposed project would consist of the following: (1) The 1,666-foot-long stone-masonry Augusta Diversion Dam; (2) the 2,250-foot-long and 190 acre Savannah River impoundment between Steven's Creek Dam and the Augusta Diversion Dam; and (3) the first level of the Augusta Canal, which extends about 7 miles between the Augusta Diversion Dam and the Thirteenth Street gates.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. *Scoping Process:* Scoping is intended to advise all parties regarding the proposed scope of the EA and to seek additional information pertinent to this analysis. The Commission intends to prepare one multi-project Environmental Assessment (EA) for the Augusta Canal Project in combination with the Enterprise Mill Project and the Sibley Mill Project according to the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action. Should substantive comments requiring reanalysis be received on the NEPA document, we would consider preparing a subsequent NEPA document.

At this time, the Commission staff does not anticipate holding formal public or agency scoping meetings near the project site. Instead, staff will conduct paper scoping.

A Scoping Document (SD) outlining the subject areas to be addressed in the EA were distributed to the parties on the

Commission's mailing list. Copies of the SD may be viewed on the web as described in item m, above.

As part of scoping the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from comments all available information, especially quantifiable data, on the resources at issue; (3) encourage comments from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Consequently, interested entities are requested to file with the Commission any data and information concerning environmental resources and land uses in the project area and the subject project's impacts to the aforementioned.

o. The preliminary schedule for preparing the subject EA is as follows:

Milestone Target Date

Scoping Document 1—March 2003
Comments on Scoping Document 1—May 2003
Issue Acceptance Letter/Request Additional Information—May 2003
Additional Information Due—July 2003
Notice of Ready for Environmental Analysis/Notice Soliciting Final Terms and Conditions—July 2003
Deadline for Agency Recommendations—September 2003
Notice of the Availability of the EA—November 2003
Public Comments on EA Due—January 2004
Read for Commission's Decision on the Application—March 2004

Magalie R. Salas,

Secretary.

[FR Doc. 03–7212 Filed 3–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing; and Soliciting Comments, Motions To Intervene, and Protests

March 19, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permi.

b. *Project No.:* 12450–000.

c. *Date filed:* February 28, 2003.

d. *Applicant:* Logansport Municipal Utilities.

e. *Name and Location of Project:* The Tenth Street Dam Hydroelectric Project would be located at an existing dam owned by the Applicant on the Eel River in Cass County, Indiana. No Federal or Tribal lands would be involved.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Sky K. Medors, Lawson-Fisher Associates P.C., 525 West Washington Street, South Bend, IN 46601, (574) 234–3167.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) The existing 410-foot-long, 11-foot-high concrete overflow dam, with a sluice gate at the left abutment, creating a 50-acre impoundment at normal water surface elevation 601.3 feet, (2) a powerhouse, proposed to be built at the site of the sluice gate, containing two generating units with a total installed capacity of 950 kilowatts, (4) a 1,200-foot-long, 13.8-kilovolt transmission line connecting to the Applicant's existing distribution system, and (5) appurtenant facilities. The project would have an average annual generation of 3.4 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7213 Filed 3–25–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7472–7]

Full Delegation of Authority for Prevention of Significant Deterioration of Air Quality; Allegheny County, PA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Information notice.

SUMMARY: Allegheny County, Pennsylvania submitted to EPA a request for delegation of authority to implement and enforce the Federal prevention of significant deterioration of air quality (PSD) permit program regulations. The Clean Air Act authorizes the EPA to delegate its authority to implement and enforce the PSD regulations to any state that has submitted a demonstration that it possesses adequate implementation and enforcement resources and procedures. After thorough review of the request and available information, EPA has determined that such delegation of authority is appropriate consistent with the conditions set forth in the letter reproduced below.

EFFECTIVE DATE: March 26, 2003.

ADDRESSES: Copies of the request for delegation and related documents are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Allegheny County Health Department, Air Quality Program, 301 Thirty-Ninth Street, Pittsburgh, Pennsylvania 15201–1891.

FOR FURTHER INFORMATION CONTACT: David Campbell, U.S. Environmental Protection Agency Region III (3AP11), 1650 Arch Street, Philadelphia, PA 19103 at (215) 814–2196, or by e-mail at *campbell.dave@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On February 13, 2003, the Allegheny County, Pennsylvania Health Department submitted a letter requesting full delegation of authority for the implementation and enforcement of the Federal prevention of significant deterioration of air quality (PSD) permit program regulations as codified at 40 CFR 52.21. The PSD program covers any new construction or any major modification of a major stationary air emission source in an area which has air quality better than the national ambient air quality standards. The program requires the issuance of permits prior to construction or modification of certain sources. Allegheny County's letter requests delegation of the Federal PSD program at 40 CFR 52.21. Allegheny County's delegation request does not reference a specific edition of 40 CFR part 52, and expressly requests delegation of the current version of the PSD regulations and any and all future changes to part 52 with regard to the Federal PSD program.

Since 1983, the Allegheny County Health Department has been delegated the authority to implement and enforce the provisions of 40 CFR 52.21 on behalf of EPA. (*See* 48 FR 55625, December 14, 1983). When EPA granted delegation to Allegheny County in 1983, it specifically delegated to the County the authority to implement and enforce the PSD provisions at 40 CFR part 52, as amended August 7, 1980. The purpose of Allegheny County's February 13, 2003, letter is to request renewal of its existing delegation of authority to include more recent revisions to the PSD regulations at 40 CFR part 52, and to include any and all future revisions of those regulations.

II. Terms of Delegation of Authority

After a thorough review of the request for full PSD program delegation, EPA has determined that such delegation is appropriate subject to the conditions set forth in the following letter to Allegheny County. Therefore, pursuant to 40 CFR 52.21(u), EPA formally notified Allegheny County on March 18, 2003, that the Agency delegates full PSD regulatory authority to Allegheny County, Pennsylvania as of the publication of date of this information notice.

Dr. Roger C. Westman, Manager, Air Quality Program, Allegheny Health Department, 301 Thirty-Ninth Street, Pittsburgh, PA 15201–1891.

Dear Dr. Westman:

Thank you for your February 13, 2003, request to update your existing delegation of authority to implement and enforce the Federal prevention of significant deterioration (PSD) of air quality program. The intent of the request and the following delegation is to update and affirm the existing delegation of authority agreement between Allegheny County and the U.S. Environmental Protection Agency (EPA). As you are aware, EPA granted full delegation of authority for the PSD program to Allegheny County on December 14, 1983. (*See*, 48 FR 55625).

In 1983, EPA reviewed the pertinent laws of the Allegheny County and the rules and regulations thereof and determined that they provided an adequate and effective procedure for the full implementation of all portions of the Federal PSD program. Based on the representations included in your February 13, 2003, letter, as well as the existing County legal authority, EPA has determined that Allegheny County's laws and regulations continue to provide the legal authority for the full implementation and enforcement of all portions of the Federal PSD program. Therefore, pursuant to 40 CFR 52.21(u), we hereby delegate our authority to Allegheny County for all portions of the Federal PSD program, as described in 40 CFR 52.21, as amended December 31, 2002. Additions, revisions, or deletions to 40 CFR 52.21 adopted by EPA after the date of this letter are incorporated into this delegation of authority agreement on the effective date

established by the Federal regulations. The EPA delegates our authority as follows:

1. Authority is delegated for all sources located in Allegheny County subject to review pursuant to the Federal PSD program. This includes all source categories listed in 40 CFR 52.21 for each pollutant regulated by the Clean Air Act.

2. Acceptance of this delegation of authority of the Federal PSD program commits Allegheny County to implement and enforce the Federal PSD program currently promulgated at 40 CFR 52.21 and any additions, revisions, or deletions to 40 CFR 52.21 adopted by EPA after the date of this letter.

3. If at any time there is a conflict between a County regulation and a Federal regulation, the Federal regulation must be applied if it is more stringent than that of the County. If the County does not have the authority to implement a Federal regulation that is more stringent than the applicable County regulation, the pertinent portion of the authority may be revoked.

4. In processing applications for PSD permits pursuant to 40 CFR 52.21, the County shall follow all procedural requirements which the Administrator would be required to follow in processing such applications, whether these procedural requirements are set forth in full in 40 CFR 52.21 or only referenced therein.

5. If EPA determines that the County's procedures for implementing and enforcing any or all of the portions of the PSD program is inadequate, or is not being effectively carried out, the authority granted pursuant to this delegation agreement may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a notice of revocation to Allegheny County.

6. Allegheny County shall ensure through its interstate intergovernmental cooperation procedures that all potential source interactions along County boundaries are properly determined and considered during the PSD permitting process.

7. Enforcement of the PSD program shall be the primary responsibility of Allegheny County. If the County determines that such enforcement is not feasible and so notifies EPA, or where the County acts in a manner inconsistent with the terms of this granted authority, EPA will exercise its concurrent enforcement authority pursuant to sections 113, 167, and 505(b) of the Clean Air Act, 42 U.S.C. 7413, 7477 and 7661b, with respect to sources within Allegheny County subject to PSD requirements. In accordance with 40 CFR 52.21(r) and sections 113, 167, and 505(b) of the Clean Air Act, EPA reserves the right to commence an enforcement action against any entity in violation of the Federal PSD program should Allegheny County fail to take such an enforcement action or, in the opinion of EPA, fail to pursue a timely or appropriate enforcement action. Section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not "conform to the requirements of" the PSD program. Similarly, section 113(a)(5) provides for administrative orders and civil actions whenever EPA finds that the County "is not acting in compliance with" any requirement or prohibition of the Act regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

8. The County and EPA shall continue to implement a system of communication sufficient to guarantee a program that includes the items described below:

a. Each agency is informed of the current compliance status of sources in Allegheny County subject to the PSD program.

b. Allegheny County shall send a copy of preliminary determinations and public comment notices required pursuant to 40 CFR 52.21(g) to EPA Region III at the same time the notice is being forwarded for publication in the newspaper.

c. Allegheny County shall provide to EPA Region III copies of the final PSD permit at the time of issuance.

d. The status of incomplete permit applications shall be provided to EPA Region III on an as needed basis.

9. Prior EPA concurrence is to be obtained on any matter involving the interpretation of sections 160–169 of the Clean Air Act, 42 U.S.C. 7470–7492, or 40 CFR 52.21 to the extent that implementation, review, administration, or enforcement of these sections have not been covered by determinations or guidance available to Allegheny County.

A notice announcing this delegation of authority of the Federal PSD to Allegheny County will be published in the **Federal Register** in the near future. This delegation of authority shall be effective as of the publication date of that notice. This delegation of authority should not be construed as a transfer of PSD responsibility under section 110(a)(2)([]) of the Clean Air Act. Such a transfer involves different procedures and considerations.

There is no requirement that the County notify EPA of its acceptance. Unless EPA receives from the County written notice of objections within 10 days of the date receipt of this letter, the County shall be deemed to have accepted all of the terms as stated herein. Finally, EPA commits to continue to provide training and support assistance as requested by the County. If you have any questions regarding this letter, please contact me or Ms. Judith Katz, Director, Air Protection Division.

Sincerely,
Donald S. Welsh,
Regional Administrator.

III. Conclusion

Effective immediately, Allegheny County is the delegated permitting authority to implement and enforce the Federal PSD program and all applications and other information required pursuant to the PSD permit program at 40 CFR 52.21 from sources located or locating in Allegheny County shall continue to be submitted to the Allegheny County, Pennsylvania Health Department at the following address: Allegheny County Health Department, Air Quality Program, 301 Thirty-Ninth Street, Pittsburgh, Pennsylvania 15201–1891.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this information notice is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this information notice is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This information notice imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this information notice will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this information notice delegates pre-existing requirements under Federal law and does not impose any additional enforceable duty beyond that required by Federal law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This information notice also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This information notice also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This information notice merely delegates the implementation of a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This information notice also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing delegation requests, EPA's role is to approve state capabilities, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a delegation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a delegation request, to use VCS in place of a delegation request that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This information notice granting delegation of the Federal PSD program to Allegheny County issued under the authority of sections 101, 110, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 7601).

Dated: March 18, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–7241 Filed 3–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0070; FRL–7295–8]

Buprofezin; Notice of Filing Pesticide Petitions to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0070, must be received on or before April 25, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0070. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be

scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0070. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2003–0070. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0070.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0070. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 13, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petitions was prepared by the petitioner and represent the views of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number (IR–4)

PP 2E6369, 2E6455, and 2E6493

EPA has received pesticide petitions (2E6369, 2E6455, and 2E6493) from the Interregional Research Project Number (IR–4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902, proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.511 by establishing tolerances for residues of buprofezin in or on the following raw agricultural commodities: Lychee, logan, spanish lime, rambutan, and pulasan at 0.3 parts per million (ppm) (2E6369); bean, snap, succulent at 0.02 ppm (2E6455); and pistachio at 0.05 ppm (2E6493). EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This summary has been prepared by Nichino American, Inc., Wilmington, DE 19808, the registrant.

A. Residue Chemistry

1. *Plant metabolism.* The metabolic profile of buprofezin has been elucidated in a wide range of crops, including tomatoes, lettuce, cotton, and citrus. In tomatoes, lettuce, and cotton unchanged buprofezin was the only significant residue. In citrus, besides buprofezin, the principal polar residue is a hexose conjugate of BF4 (buprofezin hydroxylated in the t-butyl group), which was resistant to enzyme hydrolysis. With acid hydrolysis of the polar fraction, BF26 was released, with minor amounts of BF9 and BF12. The same compounds were observed following acid hydrolysis of a standard of BF4, which clearly indicates that BF4 is the conjugated metabolite existing in citrus. Although only limited metabolism was observed in lettuce and cotton, trace levels of BF4/BF26, BF9, and BF12 were observed indicating that the metabolic pathway does not differ with plant species.

2. *Analytical method.* Metabolism studies on lettuce and tomatoes have shown that the only significant residue in these crops is buprofezin. Development of the analytical method took place in parallel with the metabolism studies and the method was designed to quantify two metabolites (BF9 and BF12) in addition to the parent compound. This method was used for analysis of samples from the field trials on all crops except citrus, but for tolerance enforcement only the parent compound is considered.

3. *Magnitude of residues.* The magnitude of residues is adequately understood and supports the proposed tolerances.

B. Toxicological Profile

1. *Acute toxicity.* An assessment of toxic effects caused by buprofezin is discussed in Unit III.A. and Unit III.B. of the **Federal Register** dated September 5, 2001 (66 FR 46382) (FRL–6796–6).

2. *Animal metabolism.* The metabolism of buprofezin has been extensively studied in various species of animals and fish. Buprofezin has several groups that can metabolize in a variety of ways thus potentially producing a very large number of metabolites. Indeed extensive metabolism to many minor metabolites was observed in all the animal species. Metabolism in fish was, however, much more limited and clearly defined. Although not all metabolic intermediates have been detected in all the species, the major routes of metabolism have been identified in animals and fish and a consistent pattern is observed throughout these species. The proposed metabolic pathway was provided in the tolerance petition, PP 0F6087. For convenience, degradates are referred to by an internal code: BF 1 through 13. Corresponding chemical structures were provided in the tolerance petition, PP 0F6087.

3. *Endocrine disruption.* No special studies have been conducted to investigate the potential of buprofezin to induce estrogenic or other endocrine effects. The standard battery of required toxicity studies has been completed. These studies include an evaluation of the potential effects on reproduction and development and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects. The only effect noted on endocrine organs was an increased incidence of follicular cell hypertrophy and C-cell hyperplasia of the thyroid gland in rats administered buprofezin at dietary concentrations of 2,000 ppm for 24 months. Buprofezin also caused mild to moderate hepatotoxic effects at this dietary concentration. Nichino America, Inc. believes that the effect on the thyroid most likely resulted from increased turnover of T3/T4 in the liver with a resultant rise in TSH secretion (due to the hepatotoxicity). The rat is known to be much more susceptible than humans to these effects due to the very rapid turnover of thyroxine in the blood in rats (12 hours versus about 5 to 9 days in humans). Therefore, the thyroid pathological changes which have been noted following administration of high doses of buprofezin are considered to be of minimal relevance to human risk assessment, particularly considering the low levels of buprofezin to which humans are likely to be exposed.

C. Aggregate Exposure

1. *Dietary exposure—i. Food.* Chronic dietary exposure was estimated using Dietary Exposure Evaluation Model (DEEM™) tolerance levels, and 100% crop treated, except for tomatoes with 40% of the crop treated. The chronic dietary exposure to the U.S. population (total) was estimated as 0.001229 milligrams/kilogram/body weight/day (mg/kg bwt/day), and was 37% of the estimated reference dose (RfD). Exposure to children ages 1 to 6, the highest exposed population subgroup, was 0.002393 mg/kg bwt/day (73% of the estimated RfD).

ii. *Drinking water.* The residue of concern in drinking water was determined to be buprofezin. The potential exposure of buprofezin in drinking water abstracted from surface water was assessed using a Tier 2, modeling approach. EPA's Pesticide Root Zone Model (PRZM) was used to generate potential runoff loads from a standardized agricultural field (10–hectare (ha)) to a standardized aquatic system (1–ha 2–meters (m) deep pond) following application of buprofezin to citrus (the maximum proposed use rate for all crops). Exposure Analysis Modeling Systems (EXAMS) was used to estimate the exposure concentration in surface water. The "once-in-10–year" exceedance probability corresponded to a concentration at 0.52 part per billion (ppb). This value refers to the 56–day average estimated concentration in a farm pond draining agricultural land and must be considered a gross over-estimate of concentrations of buprofezin

at the point of drinking water abstraction.

2. *Non-dietary exposure.* Food uses described in these petitions are strictly agricultural and will not add to any residential non-dietary exposure that may exist.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that the Agency must consider "available information" concerning the cumulative effects of a particular pesticide's residue and "other substances that have a common mechanism of toxicity." Available information in this context include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. At the present time, there are insufficient data available to allow Nichino America, Inc. to properly evaluate the potential for cumulative effects with other pesticides to which an individual may be exposed. For the purposes of this assessment, therefore, Nichino America, Inc. has assumed that buprofezin does not have a common mechanism of toxicity with any other registered pesticides. Therefore, only exposure from buprofezin is being addressed at this time.

E. Safety Determination

1. *U.S. population*—i. *Acute risk.* To estimate acute aggregate exposure risk, the Agency combined the high-end value from food and water and compared it to the acute population adjusted dose (aPAD). Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to buprofezin will occupy 4% of the aPAD for females 13 years and older (no endpoint was identified for the general population including infants and children). In addition, there is potential for acute dietary exposure to buprofezin in drinking water. After calculating drinking water levels of concern (DWLOCs) and comparing them to the estimated environmental concentrations (EECs) for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

ii. *Chronic risk.* Based on the toxicology data base and available information on anticipated residues, chronic dietary exposure to the U.S. population (total) was 37% of the RfD. Exposure to potential residues in drinking water is expected to be negligible, as DWLOCs are substantially higher than modeled acute and long-term EECs. The margin of exposure (MOE) from the limited potential for short-term exposure from residential uses was >1,000. Based on these assessments, it can be concluded that there is reasonable certainty of no harm to the U.S. population or any population subgroup from exposure to buprofezin.

iii. *Aggregate cancer risk for the U.S. population.* In accordance with EPA Guidelines for Carcinogen Risk Assessment (proposed July 1999), the Agency's Cancer Assessment Review Committee has classified buprofezin as having suggestive evidence of carcinogenicity, but not sufficient to assess human carcinogenic potential, and further recommended that no quantification of cancer risk is required.

2. *Infants and children.* The chronic dietary exposure was 29% of the RfD for infants and 72% of the RfD for children ages 1 to 6. Exposure to potential residues in drinking water is expected to be negligible, as DWLOCs are substantially higher than modeled acute and long-term EECs. The MOE from the limited potential for short-term exposure from residential uses was >1,000. Based on these assessments, it can be concluded that there is reasonable certainty of no harm to infants and children from exposure to buprofezin. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population and to infants and children from aggregate exposure to buprofezin residues.

F. International Tolerances

Permanent CODEX maximum residue levels have been established for residues of buprofezin in cucumbers at 1.0 ppm, tomatoes at 1.0 ppm, and citrus at 0.5 ppm.

[FR Doc. 03–6948 Filed 3–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0106; FRL–7299–3]

Azoxystrobin; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0106, must be received on or before April 25, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0106. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electonic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0106. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0106. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0106.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0106. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 18, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number (IR-4)

PP 2E6375, 2E6488, 2E6489, and 2E6495

EPA has received pesticide petitions (2E6375, 2E6488, 2E6489, and 2E6495) from the Interregional Research Project Number (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.507 by establishing tolerances for residues of azoxystrobin, methyl(*E*)-2-(2-(6-(2-cyanophenoxy) pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate and the Z-isomer of azoxystrobin, methyl(*Z*)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3 methoxyacrylate in or on the following raw agricultural commodities: asparagus at 0.02 parts per million (ppm) (2E6375); brassica, head and stem, subgroup 5a at 3.0 ppm (2E6488); artichoke, globe at 4.0 ppm (2E6489); herb subgroup 19A, fresh, except chive at 50 ppm (2E6495); and herb subgroup 19A, dried, except chive at 260 ppm (2E6495). EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on these petitions. This summary has been prepared by Syngenta, the registrant.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of azoxystrobin as well as the nature of the residues is adequately understood for purposes of the tolerances.

2. *Analytical method.* An adequate analytical method, gas chromatography with nitrogen-phosphorus detection (GC-NPD) or in mobile phase by high performance liquid chromatography with ultra-violet detection (HPLC-UV), is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The Analytical Chemistry section of the EPA concluded that the method(s) are adequate for enforcement. Analytical methods are also available for analyzing meat, milk, poultry and eggs which also underwent successful independent laboratory validations.

3. *Magnitude of residues.* Complete residue data for azoxystrobin on artichoke, globe; asparagus, head and stem brassica and herb subgroup 19A have been submitted. The requested tolerances are adequately supported.

B. Toxicological Profile

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR AZOXYSTROBIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (general population including infants and children)	NOAEL=<200 mg/kg/day UF=300 Acute RfD=0.67 mg/kg/day	FQPA SF = 1X aPAD = Acute RfD + FQPA SF = 0.67 mg/kg/day	Acute neurotoxicity study in rats LOAEL = 200 mg/kg/day based on diarrhea and 2 hours post dose at all dose levels up to and including 20 mg/kg/day (the LOAEL)
Chronic dietary (all populations)	NOAEL = 18 mg/kg/day UF=100 Chronic RfD = 0.18 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD + FQPA SF = 0.18 mg/kg/day	Combined chronic toxicity carcinogenicity feeding study in rats LOAEL = 34/117 mg/kg/day in males/females based on reduced body weights in both sexes and bile duct lesions in males.
Short-term (1–7 days) incidental oral (residential)	NOAEL = 25 mg/kg/day UF = 100	FQPA SF = 1X	Prenatal developmental oral toxicity study in rats LOAEL = 100 mg/kg/day based on increased maternal diarrhea, urinary incontinence, and salivation.
Intermediate-term (1 week to several months) incidental oral (residential)	NOAEL = 20 mg/kg/day UF = 100	FQPA SF = 1X	90–Day feeding study in rats LOAEL = 211/223 mg/kg/day in males/females based on decreased body weight gain in both sexes and clinical signs indicative of reduced nutrition.
Short- intermediate-, and long-term dermal (residential)	None	None	21–Day repeated dose dermal study in rats. No dermal or systemic toxicity was seen at the limit does (1,000 mg/kg/day). This risk assessment is not required.
Short-term inhalation (1-7 days) (residential)	Oral Study NOAEL = 25 mg/kg/day (inhalation absorption rate - 100%)	LOC for MOE = 100 (residential)	Prenatal developmental oral toxicity study in rats. LOAEL = 100 mg/kg/day based on increased maternal diarrhea, urinary incontinence and salivation.
Intermediate-term inhalation (1 week to several months) (residential)	Oral Study NOAEL = 20 mg/kg/day (inhalation absorption rate - 100%)	LOC for MOE = 100 (residential)	90–Day feeding study in rats LOAEL = 211/223 mg/kg/day in males/females based on decreased body weight gain in both sexes and clinical signs indicative of reduced nutrition.
Long-term inhalation (>180 days) (residential)	None	None	This risk assessment is not applicable to the use of azoxystrobin
Cancer (oral, dermal, inhalation)	None	None	Azoxystrobin is classified as not likely to be carcinogenic in humans

2. *Metabolite toxicology.* There are no metabolites of concern based on a differential metabolism between plants and animals.

3. *Endocrine disruption.* There is no evidence that azoxystrobin is an endocrine disrupter.

C. Aggregate Exposure

1. *Dietary exposure.* Tolerance values have been established (40 CFR 180.507(a)) for the combined residues of both azoxystrobin and its Z isomer, in or on a variety of raw agricultural commodities including meat, milk and eggs. These established tolerances range from 0.02 ppm on tree nuts to 55 ppm on soybean hay.

i. *Food.* Tier I acute and chronic dietary exposure evaluations were made using the Dietary Exposure Evaluation Model (DEEM®), version 7.76 from Exponent. All processing factors used DEEM® defaults values. All consumption data for these assessments were taken from the USDA's Continuing Survey of Food Intake by individuals (CSFII) with the 1994–1996 consumption data base and the Supplemental CSFII children's survey (1998) consumption data base. These dietary exposure assessments included all registered uses and proposed uses on asparagus (0.02 ppm), brassica, head and stem subgroup 5A (3 ppm), herb subgroup 19A (250 ppm) and artichoke globe (4 ppm).

ii. *Drinking water.* There is no established maximum concentration level (MCL) for residues of azoxystrobin in drinking water. No health advisory levels for azoxystrobin in drinking water have been established. The concentration of azoxystrobin in surface water is based on generic estimated environmental concentration (GENEEC) modeling and in ground water based on screening concentration in ground water (SCI-GROW) modeling.

2. *Non-dietary exposure.* Azoxystrobin is registered for residential use on ornamentals and turf. The Agency evaluated the existing toxicological data base for azoxystrobin and assessed both the appropriate toxicological endpoints and the dose levels of concern. Dermal absorption data indicate that absorption is less than or equal to 4%.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish,

modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." Azoxystrobin is related to the naturally occurring strobilurins. Syngenta concluded that further consideration of a common mechanism of toxicity is not appropriate at this time since there are no data to establish whether a common mechanism exists with any other substances.

E. Safety Determination

1. *Infants and Children.* The chronic dietary exposure (food only) resulting from all established and proposed azoxystrobin uses was 27.6% of the reference dose (RfD) for the most sensitive subpopulation, children 1 and 2 years old. Additionally, for this same subpopulation, the acute dietary exposure (food only) resulting from all established and proposed azoxystrobin uses was 22.3% of the acute reference dose (aRfD). The EPA has determined that there is reliable data support using the standard MOE and uncertainty factor (100X for chronic and 300X for acute) for azoxystrobin and that an additional safety factor of 10 is not necessary to be protective of infants and children.

Syngenta has considered the potential aggregate exposure from food, water and non-occupational exposure routes and concludes that aggregate exposure is not expected to exceed 100% of the chronic reference dose and that there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure to azoxystrobin.

[FR Doc. 03–7056 Filed 3–25–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0053; FRL–7294–6]

Quinoxyfen; Receipt of Application for Emergency Exemption; Solicitation of *Public Comment*

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Idaho Department of Agriculture, the Oregon Department of Agriculture, and the Washington State Department of Agriculture to use the pesticide quinoxyfen (CAS No. 124495–18–7) to treat up to a total of 19,500 acres of hops to control powdery mildew; 3,000 acres in Idaho, 3,500 acres in Oregon, and 13,000 acres in Washington. The Applicants propose the use of a new chemical which has not been registered by EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments, identified by docket ID number OPP–2003–0053, must be received on or before April 10, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; fax number: (703) 308–5433; e-mail address: Sec-18-Mailbox@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a Federal or State government agency involved in administration of environmental quality programs. Potentially affected entities may include, but are not limited to:

Federal or State Government entity, (NAICS 9241), e.g., Department of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0053. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0053. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0053. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0053.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0053. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Idaho

Department of Agriculture, the Oregon Department of Agriculture, and the Washington State Department of Agriculture have requested the Administrator issue specific exemptions for the use of quinoxyfen on hops to control powdery mildew. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicants assert that currently registered products and non-chemical control measures do not provide adequate season long control of powdery mildew on susceptible hops varieties. Powdery mildew (*S. macularis*) is a serious hop disease in many hop growing areas throughout the world. During the early part of this century, a commercial hop production industry in the State of New York was devastated due to what is believed to have been an uncontrolled outbreak of powdery mildew. Before June of 1997, this disease had not been observed in the Pacific Northwest. Quinoxyfen has been shown to be an effective fungicide against hop powdery mildew over the past 4 years of testing. Quinoxyfen has not shown any plant growth regulatory effects or adverse impact to cone size. Additionally, quinoxyfen is a quinoline fungicide, which will provide growers with a new mode of action to control powdery mildew.

The U.S. is the second largest producer of hops in the world. The States estimate that there will be an 8% to 30% loss of gross revenues without the use of quinoxyfen.

The Applicants propose to apply no more than 6 to 8 fluid ounces of formulated product, containing 22.58% quinoxyfen (0.098 to 0.13 pound/active ingredient) per acre per application. No more than four applications per acre per year will be made. A total of 19,500 acres of hops may be treated; up to 3,000 acres of hops in Idaho, 3,500 acres of hops in Oregon, and 13,000 acres of hops in Washington State. Applications will be made from July 1, 2003, through September 15, 2003. Based on the maximum application rate and a total of four applications per acre, up to 10,140 pounds of quinoxyfen could be applied.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing "use of a new chemical (i.e., an active ingredient) which has not been registered by EPA."

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the Idaho Department of Agriculture, the Oregon Department of Agriculture, and the Washington State Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 13, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–6947 Filed 3–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0008; FRL–7289–2]

Vinclozolin; Notice of Filing a Pesticide Petition To Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations to make permanent the tolerances for residues, and to extend existing tolerances for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP– 2003–0008, must be received on or before April 25, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)
- Antimicrobial pesticides (NAICS 32561)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0008. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI of information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0008. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0008. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0008.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0008. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 18, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BASF Corporation

PP 1F6278

EPA has received a pesticide petition (1F6278) from BASF Corporation, Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709–3528 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180.380 by making permanent the tolerances for residues of vinclozolin, 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety in or on the raw agricultural commodities canola at 1.0 parts per million (ppm); eggs, milk, and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and in the meat, fat, and meat byproducts of poultry at 0.1 ppm. In addition, BASF had proposed extending the existing tolerance on succulent beans at 2.0 ppm for an additional 2 years. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* BASF Corporation notes that metabolism in plants is understood, the residues of concern are vinclozolin, 3-(3,5-dichlorophenyl)-5-methyl-5-vinyl-1,3-oxazolidine-2,4-dione) and metabolites containing the 3,5-dichloroanaline moiety.

2. *Analytical method.* The proposed analytical method involves extraction, hydrolysis, distillation, partition, and deriviatization followed by detection of residues by gas chromatograph/electron capture detector (gc/ecd). An enforcement method has been published in FDA's Pesticide Analytical Methods, Volume II pg. 876–887.

3. *Magnitude of residues.* Data previously submitted in support of the tolerances in canola, succulent beans and meat, milk, poultry, and eggs have been reviewed by the Agency and been found adequate to support the tolerances requested.

B. Toxicological Profile

1. *Acute toxicity.* On July 18, 2000, EPA published in the **Federal Register** (65 FR 44453) (FRL–6594–8), time limited tolerances for vinclozolin in canola, succulent beans and meat, milk, poultry and eggs. The toxicological profile as reported in that **Federal Register** is repeated in this Notice. A battery of acute toxicity studies placed technical vinclozolin in toxicity category IV for acute oral toxicity lethal dose (LD_{50} of > 10,000 milligrams/kilograms (mg/kg)), and acute inhalation toxicity (LC_{50} of 29.1 mg/liter (L)); and toxicity category III for acute dermal toxicity (LD_{50} of > 5,000 mg/kg). Technical vinclozolin caused minimal eye and dermal irritation and the technical material is positive for skin sensitization.

2. *Genotoxicity.* Genotoxicity testing showed no evidence of mutagenic activity. (For details see the July 18, 2000 **Federal Register** (65 FR 44453)).

3. *Reproductive and developmental toxicity*—i. In four developmental toxicity studies, vinclozolin was given orally from gestational day (gd) 6 through 19 as follows: Study 4—dose levels of 0, 15, 50, or 150 mg/kg/day; study 5—dose levels of 0, 50, 100, 200 mg/kg/day; study 6—dose levels of 0, 200, 400 mg/kg/day; and study 8—dose levels of 0, 600, and 1,000 mg/kg/day. At the gd 20, the fetuses were evaluated.

The developmental toxicity no observed adverse effect level (NOAEL) was set at 15 mg/kg/day and the developmental lowest observed adverse effect level (LOAEL) was 50 mg/kg/day. The maternal toxicity LOAEL was < 600 mg/kg/day.

ii. A developmental study in rats via dermal exposure for 6 hours/day on intact skin with dosages of 0, 60, 180, and 360 mg/kg/day highest dose tested (HDT) had a developmental NOAEL of 60 mg/kg/day and a maternal NOAEL of 60 mg/kg/day.

iii. A developmental study in rabbits via oral gavage resulted in dosages of 0, 20, 80, and 300 mg/kg/day HDT with a developmental NOAEL of 300 mg/kg/day and a maternal NOAEL of 300 mg/kg/day.

iv. A second developmental study in rabbits via oral gavage resulted in dosages of 0, 50, 200, and 800 mg/kg/day HDT with a development toxicity NOAEL of 200 mg/kg/day and a maternal toxicity NOAEL of 50 mg/kg/day.

A two-generation rat reproduction study (consisting of two studies: Study A—dose levels of 0, 2.0 and 4.1 mg/kg/day; study B—dose levels of 0, 4.9, 29, 100, and 307 mg/kg/day) with a reproductive NOAEL of 4.9 mg/kg/day and pup effects at 29 mg/kg/day; and with a parental NOAEL of 4.9 mg/kg/day. (For a detailed discussion of the results of these studies see the **Federal Register** of July 18, 2000 (65 FR 44453)).

4. *Chronic toxicity*—i. A 1–year chronic feeding study in dogs fed dosages of 0, 1.1, 2.4, 4.9, and 48.7 mg/kg/day with a NOAEL of 2.4 mg/kg/day.

ii. A combination of 2 chronic feeding studies and 1 carcinogenicity study resulted in rats being fed combined dosages of 0, 1.2, 2.4, 7.0, 23, 71, 143, and 221 mg/kg/day (males) and 0, 1.6, 3.1, 7.0, 23, 71, 180, and 221 mg/kg/day (females) with a NOAEL of 1.2 mg/kg/day (males) and 1.6 mg/kg/day (females). An increased incidence of neoplasms occurred at dose levels greater than the maximum tolerated dose (MTD) of greater than or equal to 23 mg/kg/day in the liver, adrenal, pituitary, prostate (males), uterus (females), and ovaries (females) at dose levels greater than or equal to 143 mg/kg/day. In the testes (males), Leydig cell adenomas were seen at the MTD for dose levels greater than or equal to 23.0 mg/kg/day due to the anti-androgenic nature of vinclozolin.

5. *Carcinogenicity.* A carcinogenicity study in mice fed dosages of 0, 2.1, 20.6, 432, and 1,225 HDT mg/kg/day (males) and 0, 2.8, 28.5, 557, and 1,411 (HDT) mg/kg/day (females) with a NOAEL of 20.6 mg/kg/day (males) and 28.5 mg/kg/day.

An increased incidence of neoplasms occurred at dose levels greater than the maximum tolerated dose (> 28.5 mg/kg/day) in the liver of female mice. (For a detailed discussion of the results of these studies see the **Federal Register** of July 18, 2000 (65 FR 44453)).

C. Toxicological Endpoints

EPA determined the following toxicological endpoints as reported in the **Federal Register** Notice of July 18, 2000. That reference provides a complete description of the Agency's rationale for the values assigned.

1. *Acute toxicity.* EPA selected the NOAEL of 6 mg/kg/day. The population subgroup of concern is females (13+) because the endpoint is an *in utero* effect applicable only to females of childbearing age. An uncertainty factor (UF) of 100 was used to account for interspecies extrapolation and intraspecies variation. On this basis, the acute reference dose (aRfD) is 0.06 mg/kg/day. EPA determined that a 10X FQPA safety factor is applicable. The acute population adjusted dose (aPAD) is 0.006 mg/kg/day. An acute dose and endpoint were not identified for other population subgroups.

2. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for vinclozolin at 0.012 mg/kg/day. This RfD is based on a NOAEL of 1.2 mg/kg/day from the combined chronic toxicity/carcinogenicity study in rats. An UF of 100 was used to account for interspecies extrapolation and intraspecies variation. A 10X FQPA safety factor was added resulting in a chronic population adjusted dose (cPAD) of 0.0012 mg/kg/day.

3. *Short- and intermediate-term toxicity.* For short- and intermediate-term dermal and inhalation toxicity, the NOAEL of 3 mg/kg/day from a rat developmental toxicity study was selected for the population subgroup of concern, females (13+). A dermal absorption factor of 25% was used to correct for route-to-route extrapolation (oral to dermal exposure) and a default inhalation absorption factor of 100% was assumed for oral to inhalation exposure. The margin of exposure (MOE) for females (13+), infants and children is 1,000X.

4. *Long-term dermal and inhalation toxicity (cancer and non-cancer).* For chronic non-cancer and cancer dermal and inhalation toxicity, EPA selected the chronic NOAEL of 1.2 mg/kg/day from the combined rat chronic toxicity/carcinogenicity study. The Q^{1*} calculated in a low-dose linear extrapolation is 2.9×10^{-1} (mg/kg/day). A dermal absorption factor of 25% was used to correct for route-to-route extrapolation (oral to dermal exposure) and a default inhalation absorption factor of 100% was assumed for oral to inhalation exposure. The cancer assessment includes not only the adult U.S. population but also infants and children as well.

5. *Carcinogenicity.* Vinclozolin is classified as a Group C carcinogen based on Leydig (interstitial testicular) cell tumors in a perinatal rat developmental toxicity study. A non-linear (MOE) approach was determined to be appropriate based on a weight-of-the-evidence conclusion that tumor induction is via an anti-androgenic mechanism. Use of the PAD for overall anti-androgenic effects (0.0012 mg/kg/day) is also protective of cancer effects because it is protective of the anti-androgenic effects that are, in effect, precursors to tumor formation.

6. *Overall anti-androgenic effects.* The Agency has determined that use of the most sensitive regulatory toxicity endpoint and the highest UF would be protective of the anti-androgenic effects on all population subgroups caused by vinclozolin including developmental/reproductive effects as well as carcinogenic effects. In the case of vinclozolin, the most sensitive toxicity endpoint/dose and UF are derived from the rat oral chronic/carcinogenicity study, i.e., the NOAEL of 1.2 mg/kg/day and an UF of 1,000. The PAD of 0.0012 mg/kg/day was used in assessment of risks resulting from the anti-androgenic activity of vinclozolin.

7. *Endocrine disruption.* A series of mechanistic studies (*in vivo* and *in vitro*) were conducted to define the anti-androgenic properties of vinclozolin. The results of these studies showed that vinclozolin elicits the anti-androgenic effects by binding to androgen sensitive organs.

D. Aggregate Exposure

For a detailed discussion of the results of these exposure calculations see the **Federal Register** of July 18, 2000 (65 FR 44453).

1. *Dietary exposure.* The Agency has previously calculated exposures and risks for the canola green beans, meat, milk, poultry and eggs. The same calculations should be applied to re-establishing these tolerances.

i. *Food—a. acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Agency concluded that acute dietary exposure estimates for the only population subgroup of concern, females (13+), that "The very conservatively estimated acute dietary risk (food only) does not exceed the Agency's level of concern (LOC)."

b. Chronic exposure and risk. The chronic dietary exposure estimates expressed as a percentage of the cPAD (0.0012 mg/kg/day) were 4% for the U.S. population and 7% for the most highly exposed population subgroup, children (1–6 years old). EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risk to human health. Therefore, the chronic dietary risk (food only) does not exceed the Agency's LOC.

ii. *For cancer and anti-androgenic risk assessment.* EPA believes that vinclozolin should be classified as a Group C carcinogen. However, due to the relationship between vinclozolin's anti-androgenic properties and its carcinogenic effects, the Agency believes protecting against the anti-androgenic effects would also be protective against potential carcinogenic effects to all population subgroups (including infants and children).

Accordingly, the cPAD will be protective against potential carcinogenic effects as well as the developmental/reproductive effects. The cPAD already incorporates the full, additional 10x

safety factor for the protection of infants and children (i.e., it is derived from the NOAEL of 1.2 mg/kg/day with an MOE of 1,000 – 10x for intraspecies extrapolation; 10x for interspecies variation; and 10x for FQPA). Since this approach (using the cPAD) would be more protective than the proposed POD for cancer risk assessment of 3 mg/kg/day, and includes an additional 10x factor for the protection of infants and children, a separate non-linear risk assessment for cancer is not necessary.

Exposure estimates expressed as a percentage of the anti-androgenic PAD (0.0012 mg/kg/day) were 4% for the general U.S. population and 7% for the most highly exposed population subgroup, children (1–6 years old). In addition, as a point of comparison, the MOE was calculated to be 75,000 for the general U.S. population and 38,000 for children (1–6 years old).

2. *Drinking water.* In general, available monitoring data are of limited use because metabolite concentration measurements were not performed. For both surface water and ground water, the sum of vinclozolin and its principal metabolites, assumed to degrade completely to 3,5-dichloroaniline (hereinafter referred to as 3,5-DCA), have been used to assess the cancer risk associated with 3,5-DCA whereas vinclozolin per se has been used for the vinclozolin risk assessments.

In the absence of reliable, available monitoring data, EPA uses models to calculate the estimated environmental concentrations (EECs) of pesticides in ground water and surface water. However, EPA does not use these model estimates to quantify risk. Currently, EPA uses drinking water level of concerns (DWLOCs) as a surrogate to capture risk associated with exposure to pesticides in drinking water. A DWLOC represents the concentration of a pesticide in drinking water that would be acceptable as an upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses (if any). A DWLOC will vary depending on the residue level in foods, the toxicity endpoint and the drinking water consumption patterns and body weights for specific population subgroups. The calculated DWLOC is compared to the model estimate (EEC), and if the model estimates are below the DWLOC, the risks are not considered to be of concern.

For estimating ground water concentrations of vinclozolin and 3,5-DCA, EPA used the Screening Concentration in Ground Water (SCI-GROW) model. Using SCI-GROW, the acute and chronic ground water EEC of vinclozolin per se is 0.53 parts per billion (ppb), and the acute and chronic ground water EEC of 3,5-DCA is 2.65 ppb.

For estimating surface water concentrations of vinclozolin and 3,5-DCA, EPA used tier II models, Pesticide Root Zone Model (PRZM) 3.12 and Exposure Analysis Modeling System (EXAMS) 2.975. The acute (peak) surface water EEC for vinclozolin is 5.68 ppb and for 3,5-DCA is 26 ppb. The chronic (annual mean) surface water EEC for vinclozolin is 0.165 ppb and for 3,5-DCA is 3.12 ppb.

i. *Acute exposure and risk.* For the population subgroup of concern, females (13+), the DWLOCs for vinclozolin per se at the various percentiles of exposure are as follows: 0 ppb at the 99.9th percentile; 4 ppb at the 99.85th percentile; 30 ppb at the 99.8th percentile; 47 ppb at the 99.75th percentile; 80 ppb at the 99.6th percentile; and 92 at the 99.5th percentile. At all but the very highest percentiles of exposure (99.85th and above), the DWLOC for vinclozolin per se is higher than the EEC of 5.68 ppb in surface water and 0.53 ppb in ground water. Given the level of refinement in the vinclozolin exposure estimate, using the highest percentiles of exposure in estimating risk would unreasonably overstate risk. Therefore, there is reasonable certainty that exposure to vinclozolin per se in drinking water will result in no harm.

ii. *Chronic exposure and risk.* The following chronic DWLOCs were calculated for vinclozolin per se: General U.S. population, 41 ppb; females (13+) 35 ppb; and children (1–6 years old), 11 ppb. The lowest DWLOC of 11 ppb for children 1–6 years old is higher than the EEC of 0.165 ppb in surface water and 0.53 ppb in ground water. Therefore, there is reasonable certainty that exposure to vinclozolin in drinking water will result in no harm.

3. *Non-dietary exposure.* From non-dietary exposure. There are no vinclozolin pesticide products registered for use by homeowners. Therefore, there is no potential for homeowner handler exposure to vinclozolin pesticide products. Vinclozolin can, however, be occupationally used in a manner that may lead to post-application exposures to the general population, in particular, golfers playing on treated golf courses and homeowners and their families coming into contact with or playing on sod which was previously treated on a sod farm. A chemical-specific turf exposure study was used to measure human exposure as well as residue dissipation over time.

All residential exposures are considered to be short-/intermediate-term duration (i.e., 1 day to 1 week and 1 week to several months, respectively), and the same endpoint applies to both durations of exposure. As the endpoints selected are from oral toxicity studies (NOAEL of 3 mg/kg/day for females (13+)) and NOAEL of 5 mg/kg/day for infants and children, route-to-route exposure was corrected by applying a 25% dermal absorption factor and a 100% default inhalation absorption factor was assumed. A 100% safety factor was used and a 10X FQPA safety factor was added raising the Agency's LOC to 1,000.

Post-application risks to the general population were considered for golfers following treatment of greens, tees, and fairways. Adult golfer exposures, women (13+), were less than the Agency's LOC even on the day of application (MOE = 1,700). Given the magnitude of the MOE for adult women golfers, the Agency does not believe that the risks to child golfers would exceed the Agency LOC either because the skin surface area/body weight ratio of the typical child golfer is similar to that of adults (within 15%). Therefore, the MOE for a child golfer is only slightly less than the MOE for adult golfers.

Since the risk assessment published in the **Federal Register**, of July 18, 2000 (65 FR 44453) establishing the tolerances in canola, BASF has established a 24 day preharvest interval for the harvest of turf for transplant into residential settings. The MOE calculated under this scenario is 1,100 which is below the Agency's LOC.

E. Cumulative Effects

Cumulative exposure to substances with a common mechanism of toxicity. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Vinclozolin, procymidone, and iprodione are members of the imide group of the dicarboximide class of fungicides. Each of these three pesticides can metabolize to 3,5-DCA. FQPA requires EPA to estimate cumulative risk from consumption of food and water containing 3,5-DCA derived from vinclozolin, iprodione, and procymidone.

1. *Acute exposure and risk.* EPA has certain evidence that these compounds induce similar toxic effects but has not yet determined whether or not these compounds modulate androgens by a common mechanism of toxicity. In fact, there is evidence that iprodione does not share a common mechanism of toxicity as it disrupts the endocrine system by inhibiting androgen synthesis rather than competing for the androgen receptor as vinclozolin does. In addition, these three chemicals do not have any known metabolites/degradates in common with the possible exception of 3,5-DCA which is structurally and toxicologically different from the parent compounds and unlikely to be an androgen receptor antagonist.

EPA has, at this time, some data which suggests that vinclozolin and procymidone have a common mechanism of toxicity. An article published in *Toxicology & Industrial Health* (Vol. 15, ISS 1–2, 1999, pg. 80–93) which reports the findings by Dr. Earl Gray, National Health and Environmental Effects Research Laboratory, U.S. EPA, Research Triangle Park, NC, suggests that procymidone alters sexual differentiation in the male rat by acting as an androgen-receptor antagonist *in vivo* and *in vitro*. The Agency has yet to make a conclusion as to whether these data are sufficient to evaluate whether vinclozolin and procymidone have a common mechanism of toxicity.

Even if it is assumed that vinclozolin and procymidone share a common mechanism of toxicity, a finding of reasonable certainty of no harm for vinclozolin can be made because any cumulative risk resulting from adding procymidone residues in wine to vinclozolin exposure is unlikely to differ significantly from the risk of vinclozolin alone. This conclusion is based on a number of factors. The exposure assessment for vinclozolin estimates that vinclozolin exposure through wine grapes contributes < 2% of the total vinclozolin exposure. The percent of imported wine grapes that are treated with procymidone is similar to that of vinclozolin (estimated 10% of wine grapes treated with vinclozolin and 9.4% of wine grapes treated with procymidone), and therefore, the exposure pattern for these chemicals is similar. In addition, the exposure estimates conservatively assume that all wine bearing vinclozolin residues also contain procymidone residues. In all likelihood, wine grapes would be treated with either vinclozolin or procymidone but not both chemicals. Vinclozolin exposure and procymidone exposure through wine grapes would each add < 2% to the "cumulative exposure." As noted above, the acute food-only risk of vinclozolin is 83% of the aPAD at the 99.8th percentile of exposure, and the acute ground water EEC of 0.53 ppb and the acute surface water EEC of 5.68 ppb are lower than the drinking water DWLOC which is 30 ppb at the 99.8th percentile of exposure. There is ultimately enough room in the risk cup to accommodate vinclozolin and procymidone risk, even, if in the future, EPA does determine that procymidone and vinclozolin share a common mechanism of toxicity.

2. *Carcinogenic exposure and risk.* Since 3,5-DCA is not a registered pesticide, there is no FIFRA toxicology data base for this compound. In previous risk assessments, EPA has used the Q_1^* for p-chloroaniline (PCA) to assess the carcinogenicity (only toxicological endpoint identified for 3,5-DCA) for other structurally related chloroanilines. EPA's approach on chloroanilines is to consider chloroaniline metabolites to be toxicologically equivalent to PCA unless there is sufficient evidence that the metabolite is not carcinogenic. A Q_1^* of 6.38×10^{-2} (mg/kg/day) has been calculated for p-chloroaniline based on the spleen sarcoma rate in male rats from a National Toxicology Program bioassay.

Exposure to 3,5-DCA was evaluated from the following sources: Residues of vinclozolin- and iprodione-derived 3,5-DCA in food and wine, residues of procymidone-derived 3,5-DCA in imported wine, and 3,5-DCA residues in water from domestic agricultural uses of iprodione and vinclozolin. There are no U.S. registrations for procymidone. Therefore, an evaluation of exposure to procymidone-derived 3,5-DCA in water is not appropriate.

3. *Food risk*—i. *From vinclozolin-derived 3,5-DCA residues.* Cancer risks were 2.6×10^{-7} for all crops, excluding strawberries and stone fruits. BASF notes that the last day for legal use of vinclozolin in either strawberries or stonefruit was January 2000. In effect neither commodity has been treated with vinclozolin since the 1999 use season. In addition, the last day for legal use of vinclozolin on onions and raspberries was December 15, 2001. As a result the theoretical cancer risk calculated is an overestimation and these risks do not exceed the Agency's LOC.

ii. *From iprodione-derived 3,5-DCA residues.* As stated in the July 1998 Iprodione RED fact sheet, the cancer risk associated with 3,5-DCA derived from iprodione was 6×10^{-9}. This risk does not exceed the Agency's LOC.

iii. *From procymidone-derived 3,5-DCA residues.* The cancer risk associated with 3,5-DCA in imported wine produced from grapes treated with procymidone was estimated to be 3.7×10^{-7}. This risk does not exceed the Agency's LOC.

4. *Drinking water risk*—i. *From vinclozolin derived 3,5-DCA.* Since the use on onions has been eliminated, the carcinogenic DWLOC for 3,5-DCA (based on the commodities currently available for consumption) has been calculated to range from 0.46 ppb to 1.6 ppb. Using Tier II PRZM/EXAMS, the modeled EECs are 0.64 ppb for lettuce and 0.34 ppb for canola. The use site which represents the highest modeled exposure in drinking water is golf courses. Application to golf course turf is currently permitted on grass mowed at 1 inch or less. Using the Tier I generic expected environmental concentration (GENEEC) model, the Agency has calculated a chronic EEC of 0.29 ppb based on application to tees and greens and a chronic EEC of 2.33 ppb assuming application to tees, greens, and fairways. These EECs were the result of refinements to the GENEEC model. These refinements included the incorporation of an 87 percent crop area factor as well as the percentage of the golf course that actually receives pesticide treatment, bringing the resulting PCA factor down to 17%. It was assumed that tees and greens comprise 2.8% of the acreage of a golf course. When fairways are included, an additional 16.7% of the golf course is treated. The EEC of 2.33 ppb exceeds the DWLOC. In evaluating whether this EEC indicated a risk of concern EPA considered the following factors:

ii. *The drinking water assessment on turf is based on GENEEC, a screening-level Tier I model.* At present, PRZM-EXAMS, the Tier II model, does not have the appropriate parameters to accurately model turf runoff. Although GENEEC is not an ideal tool for use in drinking water risk assessments, it can provide high-end estimates of the concentrations that might be found in a confined pond of one hectare. Drinking water from surface water sources does not typically come from this type of scenario, but rather from bodies of water that are substantially larger than such ponds and from diverse watersheds. Unlike a confined pond, there is always some flow (in a river) or turn over (in a lake or reservoir) resulting in an overestimation of the persistence of the chemicals near the drinking water utility intakes. Although a PCA of 17% was used to refine the model, the Agency recognizes that there are still uncertainties in the accuracy of the model to represent drinking water concentrations.

iii. *The GENEEC model uses the 56-day average of pesticide concentrations immediately after an event (application of pesticide).* This short time-period may not adequately characterize a person's average daily exposure over a year, even more so, over a life time of 70 years.

iv. *The GENEEC model assumes that once in every 10 years the EEC will be exceeded.* For the other 9 out of 10 years the level of residue in drinking water is likely to be below the EEC with at least one half of the years falling significantly below by a factor of 5 to 10. Therefore, a person may be exposed to the EEC once in every 10 years or a total of 7 times during a lifetime of 70 years. The Agency believes the potential for such a lifetime exposure is minimal.

v. *Iprodione 3,5-DCA.* As stated in the RED, the DWLOC for 3,5-DCA derived from domestic uses of iprodione was estimated to be 0.55 ppb. The 3,5-DCA EEC in surface water associated with the use of iprodione alone was estimated to be 0.45 ppb. Thus, the iprodione derived 3,5-DCA carcinogenic DWLOC is not exceeded.

vi. *From procymidone 3,5-DCA.* There is no drinking water exposure because procymidone is not registered for use in the United States.

The cumulative, food-only cancer risk associated with 3,5-DCA derived from all three of these imide fungicides is 6.3 x 10^{-7} when stone fruit and strawberries are excluded from consideration. There is uncertainty in the above risk estimates in that a surrogate Q^{1*} is being used for 3,5-DCA. However, due to the structural similarities of 3,5-DCA and p-chloroaniline (PCA), EPA believes that, for 3,5-DCA, the use of the PCA Q^{1*} represents an upper-bound estimate.

The 3,5-DCA DWLOC from all three imide fungicides and those currently registered vinclozolin uses which are not being supported after this use season ranges from 0.26 ppb to 1.4 ppb. The estimated concentration of 3,5-DCA in water from applications of iprodione (1998 iprodione RED) is 0.45 ppb and falls within the range of the aggregated DWLOC cited above. The estimated concentration of 3,5-DCA in water from applications of vinclozolin is estimated to range from 0.29 ppb to 2.33 ppb.

As already stated, this range could potentially present a risk of concern based on the model, however, based on how the model estimates residue concentrations for cancer assessment, it is unlikely that a cancer risk of concern is present.

F. Safety Determination

1. *U.S. population*—i. *Acute risk.* The acute dietary (food only) risk does not exceed the Agency's LOC at the percentiles of exposure up to the 99.8th percentile. Using anticipated residues, PCT data, and PICT data, the population subgroup of concern, females (13+) utilized 83% of the dietary (food only) aPAD at the 99.8th percentile of exposure. For drinking water, the EEC of 5.68 ppb in surface water and the EEC of 0.53 in ground water did not exceed the DWLOC of 30 ppb at the 99.8th percentile of exposure.

ii. *Chronic risk.* Using the exposure assumptions described above, aggregate dietary exposure to the U.S. population will use 4% of the cPAD and exposure to the most highly exposed population subgroup, children (1–6 year old) will use 7% of the cPAD. The chronic DWLOCs for vinclozolin were 41 ppb for the general U.S. population and 35 ppb for the most highly exposed population subgroup, women (13+). The chronic DWLOCs were higher than the chronic EEC of 0.53 ppb in ground water and 0.165 ppb in surface water. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

2. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. All residential exposures are considered to be short- and intermediate-term duration and since the same endpoint applies to both durations of exposures, the dermal and inhalation exposures must be aggregated together with the food and water exposures for each population subgroup of concern, females (13+) and infants and children. Since the risk assessment published in the **Federal Register** of July 18, 2000 (65 FR 44453), establishing the tolerances in canola, BASF has established a 24–day preharvest interval for the harvest of turf for transplant into residential settings. The MOE calculated under this scenario is 1,100 which is below the Agency's LOC.

3. *Aggregate cancer risk for U.S. population.* Because the overall anti-androgenic effects are a prerequisite for hyperplasia and tumor formation, and are considered to be protective of the potential carcinogenic outcome of exposure to the anti-androgenic vinclozolin and its metabolites, the overall anti-androgenic aggregate risk which are identical to the chronic aggregate risk. The chronic aggregate risks are presented. The chronic (non-cancer) aggregate risk was below the Agency's LOC for food and drinking water sources of exposure. Chronic food-source risks were less than or equal to 7% of the cPAD when stone fruit and strawberries are excluded (uses have been canceled). EECs were compared to the chronic DWLOCs. The chronic EEC for residues of vinclozolin per se in ground water (0.53 ppb) was below the chronic DWLOCs for water consumption by adults (41 ppb for the general U.S. population and 35 ppb for females (13+)) and by children (11 ppb).

Cancer risks from vinclozolin derived 3,5-DCA were 2.6 x 10^{-7} for all crops, excluding strawberries and stone fruits. This risk does not exceed the Agency's LOC. The 3,5-DCA DWLOC from all three imide fungicides (including canola, succulent beans, onions, and raspberries) ranges from 0.26 ppb to 1.4 ppb. It should be noted that vinclozolin is no longer used in onions and raspberries. The 3,5-DCA EEC resulting from iprodione use is 0.45 ppb and falls with the range of the aggregated DWLOC cited above. The 3,5-DCA EEC resulting from vinclozolin use is estimated to range from 0.29 ppb to 2.33 ppb. As already stated, this range could potentially present a risk of concern based on the model, however, based on how the model estimates residue concentrations for cancer assessment, it is unlikely that a cancer risk of concern is present.

4. *Determination of safety.* Based on these risk assessments, there is a reasonable certainty that no harm will result from aggregate exposure to vinclozolin residues.

5. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of vinclozolin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation.

Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children.

6. *Prenatal and postnatal sensitivity.* The rationale for retaining the 10X FQPA safety factor is explained below:

i. There is evidence of increased susceptibility of offspring following *in utero* exposure to vinclozolin in the prenatal developmental toxicity study in rats.

ii. A developmental neurotoxicity study in rats with an expanded protocol is required for vinclozolin as a result of concern for the anti-androgenic properties of vinclozolin and its metabolites.

G. Conclusion

Based on the developmental and reproductive data for vinclozolin, EPA determined that an additional 10X safety factor for the protection of infants and children (as required by FQPA) should be retained.

1. *Acute risk.* No study with vinclozolin indicated that acute exposure to vinclozolin is likely to cause an adverse effect of concern on infants or children or the general public with the exception of the *in utero* effects on the developing fetus. Risks to the fetus are estimated by examining exposure to women of child-bearing age.

2. *Chronic risk.* Using the exposure assumptions described in this unit, it is concluded that aggregate exposure to vinclozolin from food will utilize 7% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Since the EEC's for residues of vinclozolin per se are lower than the chronic DWLOC's, aggregate exposure will not exceed 100% of the cPAD.

3. *Short- or intermediate-term risk.* The MOE is greater than or equal to 1,010 for aggregate risks to infants and children resulting from use of vinclozolin. Therefore, the risks do not exceed the Agency's LOC.

4. *Determination of safety.* Based on these risk assessments, there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to vinclozolin residues.

H. International Tolerances

CODEX maximum residue limits (MRLs) for residues of vinclozolin and its metabolites containing the 3,5-DCA moiety have been established in common bean at 2 ppm, rape seed at 1 ppm (no limit for canola), cattle meat and milk at 0.5 ppm, and chicken meat and eggs at 0.05 ppm. No Canadian or Mexican tolerances have been established for vinclozolin residues in succulent beans, rape, canola, meat, milk, poultry, or eggs.

The CODEX MRLs for canola (rapeseed), cattle meat, cattle milk, and poultry eggs are in harmony with the proposed tolerances associated with this petition. The chicken meat MRL (0.05 ppm) is not in harmony with the proposed tolerance in poultry meat (0.1 ppm) due to recovery discrepancies with the analytical method.

[FR Doc. 03–7246 Filed 3–25–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0324; FRL–7282–2]

Revised Final Health Effects Test Guideline; Skin Sensitization; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: With this notice, EPA is announcing the availability of the revised final test guideline for Series 870–Health Effects Test Guidelines, OPPTS 870.2600 Skin Sensitization. EPA has established a unified library for test guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS) for use in testing chemical substances to develop data for submission to EPA under the Toxic Substances Control Act (TSCA), the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These test guidelines represent an Agency effort that began in 1991 to harmonize the test guidelines within OPPTS, as well as to harmonize the OPPTS test guidelines with those of the Organization for Economic Cooperation and Development (OECD). The process for developing and amending these test guidelines includes public participation and the extensive involvement of the scientific community, as warranted, including peer review by the Scientific Advisory Panel (SAP), the Scientific Advisory Board (SAB) and other expert scientific organizations, as well as determination of validation status by the Interagency Coordinating Committee for Validation of Alternative Methods (ICCVAM).

FOR FURTHER INFORMATION CONTACT: *For general information contact:* TSCA information contact: TSCA Hotline at TAIS/7408, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

FIFRA information contact: Communications Services Branch (7506C), Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5017; fax number: (703) 305–5558.

For FIFRA technical information contact: Deborah McCall, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7109 e-mail address: mccall.deborah@epa.gov.

For TSCA technical information contact: Ronald Ward, Ph.D., Risk Assessment Division (7403M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8926; e-mail address: ward.ron@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under TSCA, FFDCA, or FIFRA, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Copies of This Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0324. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is

open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

B. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. You may also obtain copies of test guidelines from the EPA Internet Home Page at http://www.epa.gov/opptsfrs/home/guidelin.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A. Once in the system, select "search," then key in the appropriate docket ID number.

III. What Action is EPA Taking?

EPA is announcing the availability of the revised final test guideline for Series 870–Health Effects Test Guideline, OPPTS 870.2600 Skin Sensitization. In 1996, the SAP reviewed the use of the Local Lymph Node Assay (LLNA) as a screening method in the Agency's harmonized test guideline OPPTS 870.2600 Skin sensitization. The LLNA is a test method for assessing the potential allergic contact dermatitis (skin sensitization) of chemicals and compounds. In January 2001, the assay was found to be scientifically valid by ICCVAM peer review (Ref. 1) as an alternative method, where applicable, to the traditional guinea pig tests (Guinea Pig Maximization Test (GPMT) (Ref. 2) and Buehler tests (Ref. 3)) which are currently accepted by regulatory authorities. This alternative test also provides animal welfare advantages. The Agency has now revised its harmonized test guideline OPPTS 870.2600 Skin Sensitization to incorporate the LLNA for use as an alternative method for assessing skin sensitization under the appropriate circumstances. The availability of the draft revised final test guideline OPPTS 870.2600 was announced in the **Federal Register** on September 12, 2001 (66 FR 47478) (FRL–6801–6). The draft revised guideline was reviewed by EPA's SAP in a public meeting on December 11, 2001, and recommendations of the SAP were incorporated into the revised test protocol. The guideline has been harmonized with OECD test guideline 429 Skin Sensitization: Local Lymph Node Assay which was adopted by OECD on April 24, 2002. It should be recognized that there are certain testing situations that may necessitate the use of traditional guinea pig tests. The LLNA may not be appropriate for all types of test materials, such as certain metallic compounds, high molecular weight proteins, strong dermal irritants and materials that do not sufficiently adhere to the ear for an acceptable period of time during treatment. When using the LLNA, particular care should be taken to ensure that hydrophilic materials are incorporated into a vehicle system that wets the skin and does not immediately run off. Thus, wholly aqueous vehicles or test materials and runny liquids are to be avoided. In all instances, the tester must document that appropriate techniques were used to facilitate adherence to the mouse ear for an adequate exposure duration. It may be possible to use the LLNA to test some of these materials if appropriate techniques are used to facilitate adherence. In situations for test materials where the LLNA is not applicable or may provide unreliable or problematic results, the GPMT tests are recommended. Although the LLNA, GPMT, or Buehler tests are considered to be acceptable tests, it is recognized that other tests may give useful results. If other tests are used, the investigator must provide justification/reasoning for use of other procedures and methods and protocols must be provided. A positive and negative control group must be included in each test.

IV. Are There Any Applicable Voluntary Consensus Standards That EPA Should Consider?

This notice of availability does not involve a proposed regulatory action that would require the Agency to consider voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide an explanation to Congress, through Office of Management and Budget (OMB), when the Agency decides not to use available and applicable voluntary consensus standards when the NTTAA directs the Agency to do so.

V. References

The following references are cited in this document.

(1) *The Murine Local Lymph Node Assay: A Test Method for Assessing the Allergic Contact Dermatitis Potential of Chemicals/Compounds.* Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), National Institutes of Environmental Health Sciences, NIH Publication No. 99–4494 (1999). (Document available at http://iccvam.niehs.nih.gov/methods/llnadocs/llnarep.pdf.)

(2) Magnusson, B. Identification of contact sensitizers by animal assay. *Contact Dermatology* 6:46 (1980).

(3) Buehler, L.V. Occ1usive patch method for skin sensitization in guinea pigs: the Buehler method. *Food and Chemical Toxicology* 32:97101 (1994).

List of Subjects

Environmental protection, Chemical testing, Test guideline.

Dated: March 11, 2003.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–7057 Filed 3–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7473–5]

National Electric Coil Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into an administrative settlement with responsible parties for response costs pursuant to section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the National Electric Coil Superfund Site located in Dayhoit, Harlan County, Kentucky. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, (WMD–CPSB), 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: March 10, 2003.

Archie Lee,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 03–7245 Filed 3–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0014; FRL–7300–7]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 4, 2003 to February 10, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2003–0014 and the specific PMN number or TME number, must be received on or before April 25, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0014. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a

brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select" search," and then key in docket ID number OPPT–2003–0014. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT–2003–0014 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0014 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 4, 2003 to February 10, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time

period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 22 PREMANUFACTURE NOTICES RECEIVED FROM: 02/04/03 TO 02/10/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0318	02/04/03	05/05/03	CBI	(G) Industrial coating binder component	(G) Urethane acrylate polymer, compounds with amine
P–03–0319	02/04/03	05/05/03	CBI	(G) Process intermediate	(G) Disiloxane, 1,1,3,3-tetramethyl-1-(7-octenyl)-3-[(substitutedcyclohepta-3-yl)ethyl]-
P–03–0320	02/04/03	05/05/03	CBI	(G) Component of foam	(G) Polyester polyol
P–03–0321	02/04/03	05/05/03	Cognis Corporation	(S) Coupling agent / hydrotrope for comestics and pharmaceuticals	(S) Glycols, 1,2-, C12–16, ethoxylated propoxylated
P–03–0322	02/04/03	05/05/03	CBI	(G) Optical resin coating	(G) Tektrakis [dimethyl[8-[1,1,3,3,tetramethyl-3-[[epoxycyclohexanol] ethyl]disiloxanyl]octyl]silyloxy] silane
P–03–0323	02/04/03	05/05/03	CBI	(S) Hardener of polyurethane paint	(G) Alkyldiisocyanate polymer, alkyl esters blocked
P–03–0324	02/04/03	05/05/03	CBI	(S) Hardner of polyurethane paint	(G) 2-oxepanone, polymer with alkyldiisocyanate and substituted alkyl diol, alkyl esters blocked
P–03–0325	02/05/03	05/06/03	Schulke and Mayr, Inc.	(S) Metalworking additive	(S) Oxazolidine, 3,3'-methylenebis[5-methyl-
P–03–0326	02/05/03	05/06/03	CBI	(S) Industrial coatings	(S) 2-propenoic acid, 2-methyl-, butyl ester, polymer with butyl 2-propenoate, ethenylbenzene and 2,5-furandione
P–03–0327	02/06/03	05/07/03	Basf corporation	(S) Plasticizer	(S) 1,2-cyclohexanedicarboxylic acid, dinonyl ester, branched and linear
P–03–0328	02/07/03	05/08/03	CBI	(G) An open non-dispersive use	(G) Bisphenol a type epoxy resin
P–03–0329	02/07/03	05/08/03	CBI	(G) Binder resin for ink	(G) Trialkylamine salt of substituted alkyarylpolyurethane
P–03–0330	02/07/03	05/08/03	CBI	(G) Multi-purpose adhesive; open, non-dispersive use.; laminating adhesive, open, non-dispersive use	(G) Polyurethane prepolymer, polyurethane adhesive
P–03–0331	02/07/03	05/08/03	Mitsui Chemicals America, Inc.	(S) Reagents for nucleic acid testing (on farm animal, crops, plants, foods, living entities other than humans)	(S) Thymidine, 5'-o-[bis(4-methoxyphenyl)phenylmethyl]-
P–03–0332	02/07/03	05/08/03	CBI	(G) Co-stabilizer for plastics	(G) Heterocyclic sulfide ester
P–03–0333	02/10/03	05/11/03	CBI	(G) Radiation cured inks.	(G) Amine salt
P–03–0334	02/10/03	05/11/03	CBI	(S) Aqueous dispersion of polymer for leather finishing	(G) Fatty acid polymer with alkyl diols, carbonic acid, isocyanic acid ester, alkoxylated polyether diolsulfonate, 2-oxepanone and alkyl diamine
P–03–0335	02/11/03	05/12/03	Solutia Inc.	(S) Resin for industrial uv coatings	(G) Acrylate and urethane modified polyether
P–03–0336	02/10/03	05/11/03	CBI	(S) Thermoplastic polyester resin for use in the production of fibers, bottles, and/or films	(S) 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 2-methyl-1,3-propanediol
P–03–0337	02/10/03	05/11/03	CBI	(S) Thermoplastic polyester resin for use in the production of fibers, bottles, and/or films	(S) 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,2-ethanediol and 2-methyl-1,3-propanediol
P–03–0338	02/10/03	05/11/03	CBI	(S) Thermoplastic polyester resin for use in the production of fibers, bottles, and/or films	(S) 1,4-benzenedicarboxylic acid, polymer with 2-methyl-1,3-propanediol
P–03–0339	02/10/03	05/11/03	CBI	(S) Thermoplastic polyester resin for use in the production of fibers, bottles, and/or films	(S) 1,4-benzenedicarboxylic acid, polymer with 1,2-ethanediol and 2-methyl-1,3-propanediol

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBi) on the Notices of Commencement to manufacture received:

II. 14 NOTICES OF COMMENCEMENT FROM: 02/04/03 TO 02/10/03

Case No.	Received Date	Commencement/ Import Date	Chemical
P–01–0732	02/11/03	01/16/03	(G) Phosphate methacrylate
P–02–0167	02/05/03	12/19/02	(G) Lithium metal phosphate
P–02–0741	02/11/03	01/21/03	(S) Piperazine, polymer with 1,6-dichlorohexane
P–02–0789	02/04/03	01/26/03	(G) Ultraviolet-curable resin
P–02–0822	02/05/03	01/17/03	(G) Modified polyester of terephthalic acid, ethylene glycol and neopentyl glycol
P–02–0824	02/05/03	01/17/03	(G) Modified polyester of terephthalic acid, ethylene glycol and neopentyl glycol
P–02–0863	02/05/03	01/28/03	(G) Fluoropolymer
P–02–0997	02/11/03	01/24/03	(G) Alkaline epoxide amine adduct
P–02–1026	02/11/03	01/09/03	(G) Modified alkyd resin
P–02–1091	02/10/03	01/16/03	(G) Polymer of methacrylate and acrylate esters, peroxide-initiated
P–03–0036	02/05/03	01/16/03	(G) Acrylic acid co-polymer
P–96–1626	02/11/03	01/10/03	(S) Mix of: 3-hexene, 1-(1-methoxypropoxy)-(e), 3-hexene, 1-(1-methoxypropoxy)-,(z)
P–99–0646	02/11/03	01/28/03	(G) Pentaerythritol, mixed esters with fatty acids, C8–9, branched
P–99–0686	02/07/03	10/04/02	(S) 1,3-dioxolan-2-one, 4-(hydroxymethyl)-

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: March 20, 2003.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–7247 Filed 3–25–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–03–49–C (Auction No. 49); DA 03–567]

Auction of Licenses in the Lower 700 MHz Band Scheduled for May 28, 2003; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payment and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of licenses in the lower 700 MHz band scheduled for May 28, 2003. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 49 is scheduled to begin on May 28, 2003.

FOR FURTHER INFORMATION CONTACT: *Auctions and Industry Analysis Division:* Howard Davenport, Legal Branch, or Lyle Ishida, Auctions Operations Branch, at (202) 418–0660; Linda Sanderson, Auctions Operations Branch, at (717) 338–2888, *Media Contact:* Lauren Kravetz at (202) 418–7944, *Commercial Wireless Division:* Policy and Rules Branch, Amal Abdallah at (202) 418–7307 or Evan Baranoff at (202) 418–7142; Licensing and Technical Analysis Branch, Joanne Epps or Keith Harper, at (202) 418–0620, *Media Bureau:* Engineering Division, Gordon Godfrey at (202) 418–2193.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 49 Procedures Public Notice* released on March 4, 2003. The complete text of the *Auction No. 49 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Auction No. 49 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

I. General Information

A. Introduction

1. By the *Auction No. 49 Procedures Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for the upcoming auction of licenses in the Lower 700 MHz C and D blocks, (the 710–716/740–746 MHz and 716–722 MHz bands) scheduled for May 28, 2003 (Auction No. 49). On December 2, 2002, in accordance with the Balanced Budget Act of 1997, the Bureau released a public notice seeking comment on reserve prices or minimum opening bids and the procedures to be used for the auction of 251 licenses in the Lower 700 MHz band C block. The Bureau received five comments and five reply comments in response to the *Auction No. 49 Comment Public Notice*, 67 FR 72946 (December 9, 2002). On January 29, 2003, the Bureau released a public notice announcing a revised auction inventory to include five licenses in the Lower 700 MHz band D block. In the *Auction No. 49 Revised Comment Public Notice*, 68 FR 6452 (February 7, 2003), the Bureau sought comment on the procedural issues related to the auction of the D block licenses. In the *Auction No. 49 Revised Comment Public Notice*, the Bureau also revised the starting date for Auction No. 49. The Bureau received two comments and two reply comments in response to the *Auction No. 49 Revised Comment Public Notice*.

i. Background of Proceeding

2. On January 18, 2002, the Commission released the *Lower 700 MHz Report & Order*, 67 FR 5491 (February 6, 2002), which adopted allocation and service rules for the Lower 700 MHz Band. Specifically, the Commission reallocated the entire 48 megahertz of spectrum in the Lower 700 MHz band to fixed and mobile services and retained the existing broadcast allocation for both new broadcast services and incumbent broadcast services during their transition to digital television ("DTV"). The Commission established technical criteria designed to protect incumbent television operations in the band during the DTV transition period, allowed low power television ("LPTV") and TV translator stations to retain secondary status and operate in the band after the transition, and set forth a mechanism by which pending broadcast applications may be amended to provide analog or digital service in the core television spectrum or to provide digital service on TV Channels 52–58.

3. In its service rules, the Commission divided the Lower 700 MHz band into three 12-megahertz blocks, with each block consisting of a pair of 6-megahertz segments, and two 6-megahertz blocks of contiguous, unpaired spectrum. The Commission decided to divide the five blocks in the Lower 700 MHz band plan as follows: the two 6-megahertz blocks of contiguous unpaired spectrum, as well as two of the three 12-megahertz blocks of paired spectrum, were assigned over six Economic Area Groupings ("EAGs"); the remaining 12 megahertz block of paired spectrum was assigned over 734 Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs"). All operations in the Lower 700 MHz band are generally regulated under the framework of Part 27's technical, licensing, and operating rules. To permit both wireless services and certain new broadcast operations in the Lower 700 MHz band, however, the Commission has amended the maximum power limits in Part 27 to permit 50 kW effective radiated power ("ERP") transmissions in the Lower 700 MHz band, subject to certain conditions. Finally, the Commission established competitive bidding procedures and voluntary band-clearing mechanisms for the Lower 700 MHz band. On June 14, 2002, the Commission affirmed its decisions in the *Lower 700 MHz Report and Order*.

4. With respect to the MSA and RSA licenses, the Bureau notes that MSAs and RSAs are collectively known as Cellular Market Areas (CMAs). CMAs were created from the Metropolitan Statistical Areas ("MSAs") defined by the Office of Management and Budget (CMA001–CMA305), the Gulf of Mexico (CMA306), and Rural Service Areas ("RSAs") established by the FCC (CMA307–CMA734). These RSAs include parts of Puerto Rico not already in an MSA (CMA723–CMA729), U.S. Virgin Islands (CMA730–CMA731), Guam (CMA732), American Samoa (CMA733), and Northern Mariana Islands (CMA734). The CMA designation, rather than MSA/RSA, is used in the FCC Automated Auction System and in the Universal Licensing System.

ii. Licenses To Be Auctioned

5. Auction No. 49 will offer 256 licenses in the Lower 700 MHz band C block (710–716/740–746 MHz) and D block (716–722 MHz). This auction will include 251 C block and five D block licenses that remained unsold in Auction No. 44, which closed on September 18, 2002. The C block is a 12-megahertz block consisting of a pair of 6-megahertz segments, which is licensed over various MSAs/RSAs. The D block is a 6-megahertz unpaired spectrum block, which is licensed over five 700 MHz Economic Area Groupings ("700 MHz EAGs"). A complete list of licenses available in Auction No. 49 and their descriptions is included in Attachment A of the *Auction No. 49 Procedures Public Notice*.

6. The following table contains the block/frequency cross-reference for the 710–716/740–746 MHz and 716–722 MHz bands:

Block	Frequencies	Bandwidth	Pairing	Geographic area type	Number of licenses
C	710–716, 740–746	12 MHz	2 × 6 MHz	MSA/RSA	251
D	716–722	6 MHz	unpaired	700 MHz EAG	5

Note: For Auction No. 49, licenses are not available in every market for the frequency blocks listed in the table. See Attachment A of the *Auction No. 49 Procedures Public Notice* to determine which licenses will be offered.)

A. Rules and Disclaimers

i. Relevant Authority

7. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the Lower 700 MHz band contained in title 47, part 27 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in the *Auction No. 49 Procedures Public Notice;* the *Auction No. 49 Comment Public Notices;* and the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000), (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures).

8. Auction participants bidding on licenses in the 698–746 MHz spectrum band should also be familiar with the *Lower 700 MHz Notice of Proposed Rulemaking*, 66 FR 19106 (April 13, 2001), the *Lower 700 MHz Report and Order* and the *Lower 700 MHz MO&O*, 67 FR 45380 (July 9, 2002).

9. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions*. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554, or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com. When ordering documents from Qualex, please provide the appropriate FCC document number (for example, FCC 01–364 for the *Lower 700 MHz Report and Order*).

ii. Prohibition of Collusion

10. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Bidders competing for licenses in the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could

occur if an individual acts as the authorized bidder for two or more competing applicants and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

11. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering the same geographic areas. In Auction No. 49, for example, the rule would apply to any applicants bidding for the same MSA/RSA or EAG. Furthermore, the rule would apply to an applicant bidding for an EAG and another applicant bidding for an MSA/RSA within that EAG. In addition, applicants that apply to bid for all markets would be precluded from communicating with all other applicants until after the down payment deadline. However, all applicants may enter into bidding *agreements* before filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for licenses covering the same geographic areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

12. In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, §§ 1.65 and 1.2105 require an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

13. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G of the *Auction No. 49 Procedures Public Notice*.

iii. Interference Protection of Television Services

14. Among other licensing and technical rules, new Lower 700 MHz band licensees must comply with the interference protection requirements set forth in § 27.60 of the Commission's rules. Generally, § 27.60 establishes standards for protection of co- and adjacent-channel analog TV and DTV facilities. Thus, for example, a new licensee seeking to operate on the D block (716–722 MHz) portion of the Lower 700 MHz band must provide co-channel protection to nearby TV and DTV operations on Channel 55 and adjacent-channel protection to stations on Channels 54 and 56. New Lower 700 MHz band licensees should also be aware that incumbent broadcasters may be permitted to make certain changes to their authorized facilities. Such modified facilities may be entitled to interference protection from new Lower 700 MHz band licensees. In addition, Appendix D of the *Lower 700 MHz Report and Order* describes additional adjacent-channel interference considerations that are designed to mitigate the possibility of base-to-base interference that may arise at base receive stations that are in close proximity to high power transmitters operating on adjacent channels. Moreover, licensees intending to operate a facility at a power level of greater than 1 kilowatt must provide advance notice to the Commission and to licensees authorized in their area of operation. New Lower 700 MHz licensees also will have to comply with any additional technical requirements or interference protection requirements that may be adopted in the future as a result of pending and future rulemaking proceedings.

15. Potential bidders should recognize that the interference protection requirements for the Lower 700 MHz band are more stringent in certain respects relative to the interference standards that apply to the Upper 700 MHz band. These interference obligations will remain in force until the end of the DTV transition period at which time analog TV and DTV broadcasters will be required to vacate both the Upper and Lower 700 MHz bands.

16. Potential bidders should be aware that a greater number of broadcast incumbents exist in the Lower 700 MHz band relative to the Upper 700 MHz band. The Commission has also observed that, although there is approximately the same number of analog incumbents in both the Upper and Lower 700 MHz bands, the Lower 700 MHz consists of less spectrum and, therefore, incumbent licensees are more densely situated across the band. Further, there is a significantly greater number of DTV assignments on the eight television channels in the Lower 700 MHz band, including licenses, construction permits, pending applications, and pending allotment petitions, than exist in the Upper 700 MHz band. The Commission may also permit certain Channel 60–69 broadcasters to relocate temporarily into Channels 52–58 pursuant to a voluntary clearing arrangement.

a. Negotiations With Incumbent Broadcast Licenses

17. The Commission has established a policy of facilitating voluntary clearing of the 700 MHz bands to allow for the introduction of new wireless services and to promote the transition of incumbent analog television licensees to DTV service. Generally speaking, this policy provides that the Commission will consider specific regulatory requests needed to implement voluntary agreements between incumbent broadcasters and new licensees to clear the Lower 700 MHz band early, if consistent with the public interest. The fundamentals of the Commission's voluntary clearing policy for the 700 MHz bands were established in a series of decisions beginning with the adoption of the *Upper 700 MHz First Report and Order* in January 2000. However, in light of certain differences between the Upper and Lower 700 MHz bands, the Commission decided not to extend certain aspects of its voluntary clearing policy to the Lower 700 MHz band, including the presumptions that were established in the Upper 700 MHz band for analyzing voluntary band-clearing proposals and the extended DTV construction period that was provided to certain single-channel broadcasters in connection with the arrangements for early clearing of the Upper 700 MHz band. In considering such regulatory requests, the Commission will consider whether grant of the request would result in public interest benefits, such as making new or expanded public safety or other wireless services available to consumers or deploying wireless service to rural or other underserved communities. The Commission intends to weigh these benefits against any likely public interest costs, such as the loss of any of the four stations in the designated market area with the largest audience share, the loss of the sole service licensed to the local community, the loss of a community's sole service on a channel reserved for noncommercial educational broadcast service, or a negative effect on the pace of the DTV transition in the market.

18. Subsequent to the adoption by the Commission of its voluntary clearing policy, the Auction Reform Act of 2002 was enacted. One provision of this legislation restricts the Commission's authority to waive certain broadcast interference standards and the minimum spacing requirements for certain proposals to relocate Channel 52–69 analog operations to a Channel 2–51 DTV allotment, if such waiver "will result in any degradation in or loss of service, or an increased level of interference to any television household except as the Commission's rules would otherwise expressly permit, exclusive of any waivers previously granted."

b. Canadian and Mexican Border Regions

19. The United States has bilateral agreements with both Canada and Mexico setting forth allotment and assignment plans for TV broadcast stations covering the 698–746 MHz band (Channels 52–59). While the U.S. has identified this band for reallocation to new services, neither Canada nor Mexico has done so to date. Pursuant to these agreements, the U.S. must protect the signals of Canadian and Mexican TV broadcast stations located in the border areas, and such operations will therefore affect U.S. non-broadcast use and services in this band. Accordingly, licenses issued for this band will be subject to whatever future agreements the U. S. develops with these two countries. Furthermore, until such time as existing agreements are replaced or modified to reflect the new uses, licensees in the band will be subject to existing agreements and the condition that harmful interference not be caused to, and must be accepted from, television broadcast operations in those countries.

iv. Due Diligence

20. Potential bidders are reminded that there are a number of incumbent broadcast television licensees already licensed and operating in the 710–716/740–746 MHz and 716–722 MHz bands that will be subject to the upcoming auction. As discussed in greater detail, the Commission made clear that geographic area licensees operating on the spectrum associated with Channels 52, 53, 54, 55, 56, 57, 58 and 59 must comply with the co-channel and the adjacent channel provision of § 27.60 of the Commission's rules. These limitations may restrict the ability of such geographic licensees to use certain portions of the electromagnetic spectrum or provide service to certain regions in their geographic license areas.

21. Potential bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 49.

22. To aid potential bidders, the Bureau will issue shortly a Due Diligence Announcement listing incumbent licensees operating in these bands. The Commission makes no representations or guarantees that the matters listed in this Due Diligence Announcement are the only pending matters that could affect spectrum availability in these services.

23. Potential bidders also should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA"), waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensees. In addition, certain judicial proceedings that may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 49, may be commenced, or may be pending, or may be subject to further review. We note that resolution of these matters could have an impact on the availability of spectrum in Auction No. 49. In addition, although the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction. To aid potential bidders, the Bureau will issue shortly a Due Diligence Announcement listing matters pending before the Commission that relate to licenses or applications in these services. The Commission makes no representations or guarantees that the matters listed in the Due Diligence Announcement are the only pending matters that could affect spectrum availability in these services.

24. In addition, potential bidders may research the licensing database for the Media Bureau on the Internet in order to determine which frequencies are already licensed to incumbent licensees. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. *Potential bidders are strongly encouraged to physically inspect any sites located in, or near, the EAG, MSA or RSA for which they plan to bid.*

25. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at http://www.fcc.gov/mb/. Potential bidders may query the database online and download a copy of their search results if desired. Detailed instructions on using Search for Station Information, Search for Ownership Report Information and Search for Application Information and downloading query results are available online by selecting the CDBS Public Access (main) button at the bottom of the Electronic Filing and Public Access list section. The database searches return either station or application data. The application search provides an application link that displays the complete electronically filed application in application format. An AL/TC search under the application search link permits searching for Assignment of License/Transfer of Control groups using the AL/TC group lead application. For further details, click on the Help file.

26. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418–2662, or via e-mail at *mbinfo@fcc.gov*.

v. Bidder Alerts

27. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary

forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

28. *The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.*

29. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 49 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than $25,000.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

30. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 49 may also call the FCC Consumer Center at (888) CALL–FCG ((888) 225–5322).

vi. National Environmental Policy Act ("NEPA") Requirments

31. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

32. The auction will begin on Wednesday, May 28, 2003. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

33. Auction No. 49—Lower 700 MHz Band

iii. Bidding Methodology

34. The bidding methodology for Auction No. 49 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available, and the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

35. Listed are important dates associated with Auction No. 49:

Auction Seminar—April 2, 2003
Short-Form (FCC Form 175) Filing Window Opens—April 2, 2003; 12 p.m. ET
Short-Form (FCC Form 175) Application Deadline—April 11, 2003; 6 p.m. ET
Upfront Payments (via wire transfer)—May 2, 2003; 6 p.m. ET
Mock Auction—May 22, 2003
Auction Begins—May 28, 2003

v. Requirements for Participation

36. One commenter, Banks, requests that the Bureau limit eligibility in Auction No. 49 to parties that qualified to participate in Auction No. 44. Banks argues that such an eligibility limitation is mandated by the Auction Reform Act. Banks bases its argument on language from the Auction Reform Act, which limited the entities eligible to participate in Auction No. 44 to "those entities that were qualified entities, and that submitted applications to participate in auction 44, by May 8, 2002, as part of the original auction 44 short form filing deadline." Banks contends that this restriction on eligibility applies to the *spectrum blocks* identified rather than a specific auction of those spectrum blocks. Thus, Banks concludes that the eligibility limitation extends to any subsequent auction of those same blocks of spectrum. Banks argues that the only other possible interpretation of the Auction Reform Act is that it does not permit further auctions of the C and D block spectrum until the Commission goes forward with the auction of the remainder of the 700 MHz spectrum. Only two commenters, Qualcomm and C&S, address Banks's assertion that the Auction Reform Act limits who is eligible to participate in Auction No. 49. Both Qualcomm and C&S oppose Banks's interpretation of the Auction Reform Act. As we explain, an analysis of the Auction Reform Act establishes that Banks's reading of the statute is incorrect.

37. In the Auction Reform Act, among other things, Congress provided that the Commission not commence or conduct Auction No. 44 on June 19, 2002. In the following subsection, Congress indicated that this prohibition on conducting Auction No. 44 did not apply to the Lower 700 MHz C and D block licenses, established a restriction on the entities eligible to bid in the auction of these licenses, and established a deadline for the auction of such licenses and the deposit of the auction proceeds in the U.S. Treasury. A plain reading of these provisions shows that the limitations on who qualified to bid on the C block and the D block licenses only applied to the conduct of Auction No. 44 and not to any subsequent auction. The restriction on eligible bidders is contained in the same subparagraph as other provisions regarding the timing of Auction No. 44, the conduct of Auction No. 44, and the deposit of the proceeds from Auction No. 44 in the U.S. Treasury. The timing provisions regarding the conduct of the auction and the deposit of the auction proceeds are significant because they indicate that Congress was only referring to one event, the conduct of Auction No. 44. Congress was not providing any instructions regarding the conduct of future auctions including the C and D block spectrum. Further, contrary to Banks's suggestion, nothing in the statute indicates that Congress was precluding in any manner a re-auction of the spectrum. Finally, Banks's interpretation of the Auction Reform Act is contrary to the statutory objectives of section 309(j) of the Communications Act. As Qualcomm notes in its comments, under Banks's interpretation of the Auction Reform Act, bidding on the licenses in Auction No. 49 would be limited to the same bidders that chose not to bid on the licenses when they were offered in Auction No. 44. This is unlikely to result in the licenses being awarded to the parties that value them most highly. Thus, absent explicit statutory language supporting Banks' interpretation, we decline to adopt the eligibility restrictions Banks suggests.

Accordingly, any entity wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. ET, April 11, 2003.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, May 2, 2003.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

38. The following is a list of general contact information relating to Auction No. 49.

General Auction Information: General Auction Questions, Seminar Registration
FCC Auctions Hotline, (888) 225–5322, Press Option #2 or direct (717) 338–2888, Hours of service: 8 a.m.–5:30 p.m. ET
Auction Legal Information: Auction Rules, Policies, Regulations
Auctions and Industry Analysis Division, Legal Branch (202) 418–0660
Licensing Information: Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues
Commercial Wireless Division, (202) 418–0620.
Technical Support: Electronic Filing, FCC Automated Auction System
FCC Auctions Technical Support Hotline, (202) 414–1250(Voice), (202) 414–1255 (TTY, Hours of service: Monday through Friday 8 a.m. to 6 p.m. ET.
Payment Information: Wire Transfers, Refunds
FCC Auctions Accounting Branch, (202) 418–0578 or (202) 418–0496, (202) 418–2843 (Fax)
Telephonic Bidding: Will be furnished only to qualified bidders
FCC Copy Contractor: Additional Copies of Commission Documents
Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, (202) 863–2893, (202) 863–2898 (Fax), qualexint@aol.com (E-mail)
Press Information: Lauren Kravetz (202) 418–7944
FCC Forms: (800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area), *http://www.fcc.gov/formpage.html*
FCC Internet Sites:
http://www.fcc.gov
http://wireless.fcc.gov/auctions
http://wireless.fcc.gov/uls

II. Short-Form (FCC Form 175) Application Requirements

39. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 49 Procedures Public Notice*. The short-form application seeks the applicant's name and address; legal classification; status; bidding credit eligibility; identification of the license(s) sought; and the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed in section II.E (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

A. License Selection

40. In Auction No. 49, Form 175 will include a mechanism that allows an applicant to create customized lists of licenses. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may apply for all the licenses in the customized list (by using the "Save all filtered licenses" option); select and save individual licenses separately from the list; or create a second customized list without selecting any of the licenses from the first list. Applicants also will be able to select licenses from one customized list and then create other customized lists to select additional licenses.

B. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

41. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an "Exhibit A" providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

C. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

42. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. As discussed, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants for the same geographic license area(s) after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC Form 175.

43. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with

which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

D. Eligibility

i. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

44. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests.

45. In the *Lower 700 MHz Report & Order*, the Commission determined that three levels of bidding credits were appropriate for the MSA/RSA licenses in the C block and that the licenses in the D block would be limited to two levels of bidding credits. Aloha and Cavalier urge that the Commission apply three levels of bidding credits to the EAG licenses in the D block. Because the bidding credit levels were adopted by the Commission in its Lower 700 MHz band proceeding, they were not a matter upon which the Bureau sought comment. Accordingly, for Auction No. 49, bidding credits will be available to small and very small businesses and entrepreneurs, or consortia thereof, as defined in 47 CFR 27.702 for the Lower 700 MHz band licenses:

- A bidder with attributed average annual gross revenues of not more than $40 million for the preceding three years ("small business") receives a 15 percent discount on its winning bids for Lower 700 MHz band licenses;
- A bidder with attributed average annual gross revenues of not more than $15 million for the preceding three years ("very small business") receives a 25 percent discount on its winning bids for Lower 700 MHz band licenses;
- A bidder with attributed average annual gross revenues of not more than $3 million for the preceding three years ("entrepreneur") receives a 35 percent discount on its winning bids for the MSA/RSA licenses in the Lower 700 MHz band. This definition applies only with respect to licenses in Block C (710–716 MHz and 740–746 MHz) as specified in 47 CFR 27.5(c)(1).

46. A bidder that qualifies as an entrepreneur may bid on EAG licenses in Block D, but will only receive a 25 percent bidding credit on any EAG license that it wins. Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent, 25 percent, or 35 percent bidding credit on its winning bid, but only one credit per license.

ii. Tribal Land Bidding Credit

47. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. See section V.E. of the *Auction No. 49 Procedures Public Notice*.

iii. Applicability of Part 1 Attribution Rules

48. *Controlling interest standard.* On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, in which the Commission, *inter alia*, adopted a "controlling interest" standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission observed that the rule modifications adopted in the various Part 1 orders would result in discrepancies and/or redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the Part 1 proceeding. Part 1 rules that superseded inconsistent service-specific rules will control in Auction No. 49. *Accordingly, the "controlling interest" standard as set forth in the part 1 rules will be in effect for Auction No. 49.*

49. *Control.* The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

50. *Attribution for small, very small business and entrepreneur eligibility.* In determining which entities qualify as small, very small businesses or entrepreneurs, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

51. A consortium of small businesses, very small businesses or entrepreneurs is a "conglomerate organization formed as a joint venture between or among mutually independent business firms," each of which *individually* must satisfy the definition of small business, very small business or entrepreneur in §§ 1.2110(f), 27.702. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small business, very small business or entrepreneur credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

iv. Supporting Documentation

52. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small, very small businesses or entrepreneurs (or consortia of small, very small businesses or entrepreneurs) for this auction.

53. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

54. *Small business, very small business, or entrepreneur eligibility (Exhibit C).* Entities applying to bid as small or very small businesses or entrepreneurs (or consortia of small or very small businesses or entrepreneurs) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (i) The applicant, (ii) Its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of small, very small businesses or entrepreneurs, this information must be provided for each consortium member.

E. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

55. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*). Applicants must include this statement as Exhibit D of the FCC Form 175. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

56. "Former defaulters"—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 49, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

F. Installment Payments

57. Installment payment plans will not be available in Auction No. 49.

G. Other Information (FCC Form 175 Exhibits E and F)

58. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175.

H. Minor Modifications to Short-Form Applications (FCC Form 175)

59. After the short-form filing deadline (April 11, 2003), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections or proposed service areas, change the certifying official or change control of the applicant or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction49@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 49. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

60. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Howard Davenport of the Auctions and Industry Analysis Division at (202) 418–0660.

I. Maintaining Current Information in Short-Form Applications (FCC Form 175)

61. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

62. On Wednesday, April 2, 2003, the FCC will sponsor a free seminar for Auction No. 49 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, the FCC Automated Auction System, and the lower 700 MHz and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

63. To register, complete the registration form in Attachment B, of the *Auction No. 49 Procedures Public Notice*, and submit it by Friday, March 28, 2003. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Applications (FCC Form 175)—Due April 11, 2003

64. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6:00 p.m. ET on April 11, 2003. Late applications will not be accepted.

65. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* section III.D.

i. Electronic Filing

66. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on April 2, 2003, until 6:00 p.m. ET on April 11, 2003. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic

applications multiple times until the filing deadline on April 11, 2003.

67. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 49 Procedures Public Notice*. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); hours of service Monday through Friday, from 8:00 AM to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded.*

68. Applicants can also contact Technical Support via e-mail. To obtain the address, click the Support tab on the Form 175 Homepage.

ii. Completion of the FCC Form 175

69. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 49 Procedures Public Notice*. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D to the *Auction No. 49 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

70. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. *See* Attachment C of the *Auction No. 49 Procedures Public Notice* for details on accessing the review system.

71. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. **Note:** Applicants should not include sensitive information (*i.e.*, TIN/EIN) on any exhibits to their FCC Form 175 applications.

C. Application Processing and Minor Corrections

72. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

73. As described more fully in the Commission's rules, after the April 11, 2003, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

D. Upfront Payments—Due May 2, 2003

74. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on May 2, 2003.

75. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 49 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the May 2, 2003, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

76. *Wire transfer payments must be received by 6 p.m. ET on May 2, 2003.* To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261.
Receiving Bank: Mellon Pittsburgh.
Beneficiary: FCC/Account # 910–1203.
OBI Field: (Skip one space between each information item) "Auctionpay"
FCC Registration Number (FRN): (same as FCC Form 159, block 11 and/or 21)
Payment Type Code: (same as FCC Form 159, block 24A: A49U)
FCC Code 1: (same as FCC Form 159, block 28A: "49")
Payer Name: (same as FCC Form 159, block 2)
Lockbox No.: # 358425

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

77. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209–6045 *at least one hour before* placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 49." *Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.*

ii. FCC Form 175

78. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 49 Procedures Public Notice*. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

79. In the *Part 1 Order*, 62 FR 13540 (March 21, 1997), the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that "former defaulters," *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-"former defaulters." For purposes of this calculation, the "applicant" includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*).

80. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice* we proposed that the amount of the upfront payment would determine the number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise qualified bidders that applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

81. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, the Bureau proposed upfront payments on a license-by-license basis using the following formula:

$0.005 * MHz * License Area Population with a minimum of $1,000 per license.

82. The Bureau received two comments on this issue. Aloha and Cavalier support the Bureau's proposal. Accordingly, the Bureau adopts its proposed formula for determining upfront payments.

83. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 49 Procedures Public Notice*.

84. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. *Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.*

EXAMPLE: UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

Market No.	Block	Market name	Population	Bidding units	Upfront payment
CMA152	C	Portland, ME	300,826	18,000	$18,000
CMA314	C	Alabama 8—Lee	196,259	12,000	12,000

If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 30,000 bidding units (18,000 + 12,000). If a bidder only wishes to bid on one, but not both, purchasing 18,000 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, *but not both at the same time.* If the bidder purchased only 12,000 bidding units, it would have enough eligibility for the Alabama 8—Lee license but not for the Portland, ME license.

85. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

86. **Note:** An applicant may, on its FCC Form 175, apply for every applicable license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

87. The Commission will use wire transfers for all Auction No. 49 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, Attn: Gail Glasser or Tim Dates, at (202) 418–2843 by May 2, 2003. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418–0578 or Tim Dates at (202) 418–0496.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Taxpayer Identification Number
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.)

Eligibility for refunds is discussed in section V.G.

E. Auction Registration

88. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

89. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) and the other containing the SecurID cards, both of which are required to place bids. *These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.*

90. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Tuesday, May 20, 2003, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

91. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC headquarters, located at 445 12th St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Remote Electronic Bidding

92. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available, and the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid telephonically or electronically, *i.e.*, over the Internet or the FCC's Wide Area Network. In either case, *each authorized bidder* must have its own SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction; therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 49. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175.

93. Please note that the SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction

94. All qualified bidders will be eligible to participate in a mock auction on Thursday, May 22, 2003. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

95. The first round of bidding for Auction No. 49 will begin on Wednesday, May 28, 2003. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

96. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, we proposed to award all licenses in Auction No. 49 in a simultaneous multiple round auction. Aloha and Cavalier agree with the Bureau's proposal. We conclude that it is operationally feasible and appropriate to auction the licenses in the Lower 700 MHz band through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of synergies that exist among licenses and is administratively efficient.

ii. Maximum Eligibility and Activity Rules

97. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. One commenter, Banks, requests that the Bureau modify, or create an exception, to this procedure in conjunction with adopting new procedures that would apply when a high bidder withdraws its bid during the course of the auction. Specifically, Banks suggests that in Auction No. 49, when a bidder withdraws its standing high bid, the next-highest bidder should be offered the licenses at its last bid amount, regardless of whether the next-highest bidder has any bidding eligibility available or is even still in the auction. In support of its proposal, Banks claims that adoption of this procedure will ensure that the party that values the license most highly wins the license. As the Bureau explains, it declines to adopt Banks' proposal because it would undermine the efficacy of the Bureau's activity and eligibility rules, thereby potentially decreasing the likelihood that the license is awarded to the bidder who values it most highly.

98. The Commission's rules do not provide for the procedure suggested by Banks. Pursuant to § 1.2109(b) of the Commission's rules, however, the Bureau retains the discretion to offer licenses to the next-highest bidder if a winning bidder withdraws or defaults "*after* the Commission has declared competitive bidding closed." Although the Bureau has the discretion to award licenses to the next-highest bidder in such cases, the Commission has consistently indicated, "the best course is to re-auction the license." The Commission has also recognized that the circumstances for which a next-highest offer would be appropriate are narrow. Further, the Commission has observed that re-offering a defaulted license to the next highest bidder "may not ensure that the license will be offered to the bidder who values it most highly. In particular, as the license is offered to bidders at that next highest bids, other parties can argue that they would pay more for the license if given the opportunity." Thus, even where the rules provide for a procedure similar to the one suggested by Banks, it is generally disfavored.

99. Perhaps more significantly, Banks's proposal also implicates the activity and eligibility rules that apply to the conduct of the Commission's simultaneous multiple round auctions. A bidder's eligibility at the start of an auction is based upon the upfront payment amount that is converted into bidding units, using an auction-specific dollar to bidding unit ratio. Through the upfront payment, the applicant may purchase as many bidding units as it desires, but it must have sufficient bidding units to be eligible to bid on at least one of the licenses that it selects on the FCC Form 175 ("short-form application"). The activity rules, in turn, require bidder participation throughout the auction. Each bidder must have bidding activity in each round that accounts for a specified fraction of the bidder's current eligibility, as measured in bidding units. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

100. The activity and eligibility rules serve several important functions that are necessary to an efficient auction process. The auction activity and eligibility rules encourage bidders to make early bids in the auction, as opposed to waiting until later rounds to participate. Prompt and early participation by a bidder in the auction reveals useful information to other bidders about its demand and valuations for licenses. This transparent process allows bidders to modify their strategies based on current prices. The activity and eligibility rules also help maintain the pace of the auction, which reduces costs to bidders and the Commission. By promoting an efficient auction process, these rules increase the likelihood that the winning bidder will be the party that most highly values the license. By circumventing the activity and eligibility rules, Banks' proposal to restore eligibility would undermine this efficiency.

101. Furthermore, in contrast with one of the basic principles of our auction design, Banks' proposal would permit the withdrawal of one bidder to directly affect the auction outcome for another bidder by means other than

straightforwardly outbidding it. In essence, this change would allow the withdrawing bidder to turn a license over to the holder of the second-highest bid, without the second highest bidder having to outbid the other bidders who might have an interest in the license. This would create the potential for anti-competitive strategic interaction among auction participants and abuse of the auction rules. Finally, Banks' proposal does not address whether the eligibility of other bidders, that may also have an interest, should also be restored and at what level to allow them to bid for the license. Instead, Banks' proposal makes a questionable assumption that the next highest bidder is the only bidder who would at that stage be interested in submitting a bid. Thus, Banks' proposal does not appear to increase the likelihood that the winning bidder will be the party that most highly values the license.

102. Accordingly, the Bureau rejects Banks' request and adopts its proposal that the amount of the upfront payment submitted by a bidder determines the maximum initial eligibility (in bidding units) for each bidder. Note again that each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 49 Procedures Public Notice* on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids in a round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, prospective bidders are cautioned to calculate their upfront payments carefully. *The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.*

103. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current eligibility during each round of the auction.

104. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits a bid in the current round (*see* "Bid Increments and Minimum Accepted Bids" in section IV.B.iii). The minimum required activity is expressed as a percentage of the bidder's current bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in section IV.A.iii and "Stage Transitions" in section IV.A.iv), we adopt them for Auction No. 49.

iii. Auction Stages

105. In the *Auction No. 49 Comment Public Notice* and *Auction No.49 Revised Comment Public Notice*, the Bureau proposed to conduct the auction in three stages and employ an activity rule. The Bureau further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 90 percent of its current bidding eligibility. Finally, the Bureau proposed that a bidder in Stage Three, in order to maintain its current eligibility, would be required to be active on 98 percent of its current bidding eligibility. The Bureau received no comments on this proposal.

106. The Bureau adopts its proposals for the activity rule and stages. Listed are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

Stage One: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by five-fourths (5/4).

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by ten-ninths (10/9).

Stage Three: During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this final stage, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by fifty-fortyninths (50/49).

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by using the bidding system's bidding module.

107. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, the Bureau adopts them for Auction No. 49.

iv. Stage Transitions

108. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, the Bureau proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 20 percent for three consecutive rounds of bidding in each Stage. The Bureau further proposed that it would retain the discretion to change stages unilaterally by announcement during the auction. This determination, the Bureau proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau received no comments on this subject.

109. The Bureau adopts its proposal. Thus, the auction will start in Stage One

and will generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 20 percent or less of the licenses being auctioned (as measured in bidding units). In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 49.

v. Activity Rule Waivers and Reducing Eligibility

110. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, the Bureau proposed that each bidder in the auction would be provided five activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Aloha and Cavalier support the Bureau's proposal on this issue.

111. Based upon its experience in previous auctions, *the Bureau adopts its proposal that each bidder be provided five activity rule waivers that may be used in any round during the course of the auction.* Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required level. An activity rule waiver applies to an entire round of bidding and not to a particular license. The Bureau is satisfied that our practice of providing five waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders while safeguarding the integrity of the auction.

112. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) there are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

113. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (*see* section IV.A.iii discussion). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

114. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the FCC Automated Auction System) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new bids or withdrawals will not keep the auction open.

Note: Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

vi. Auction Stopping Rules

115. For Auction No. 49, the Bureau proposed to employ a simultaneous stopping rule. The Bureau also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

116. The Bureau further proposed retaining the discretion to keep the auction open even if no new bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

117. In addition, the Bureau proposed that it reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders will be required to maintain a higher level of bidding activity), increasing the number of rounds per day, and/or adjusting the minimum acceptable bids and bid increments for the licenses.

118. Aloha and Cavalier support the Bureau's proposal concerning the auction stopping rules. In light of the foregoing, the Bureau adopts the proposals. Auction No. 49 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. The Bureau believes that these stopping rules are most appropriate for Auction No. 49, because its experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

vii. Auction Delay, Suspension, or Cancellation

119. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding. Aloha and Cavalier support the Bureau's proposal on this issue.

120. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within its discretion, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

121. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

122. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

123. *Background.* The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

124. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 49 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 49, the Bureau proposed the following license-by-license formula for calculating minimum opening bids:

$0.01 * MHz * License Area Population with a minimum of $1,000 per license.

125. In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

126. Two commenters allege that the minimum opening bids are too high and ask that the Bureau revise the proposed formula to reduce the minimum opening bids. Neither commenter proposes a specific reduction to the minimum opening bids nor a specific change to the formula used to compute the minimum opening bid. Further, the commenters provide no evidence that the proposed minimum opening bids are too high.

127. Following consideration of comments received, the Bureau adopts its proposed minimum opening bids for Auction No. 49. The Bureau notes that the minimum opening bids adopted here are approximately 60% less than those used in Auction No. 44. Based on this reduction and other considerations, the Bureau believes the minimum opening bids are well below the levels of the likely winning bids, and are not so high as to discourage competition. Thus, the Bureau is not persuaded that the proposed minimum opening bids are unreasonable.

128. The minimum opening bids adopted for Auction No. 49 are reducible at the discretion of the Bureau. The Bureau emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any requests to reduce the minimum opening bid on specific licenses.

129. The specific minimum opening bids for each license available in Auction No. 49 are set forth in Attachment A of the *Auction No. 49 Procedures Public Notice.*

iii. Minimum Acceptable Bids and Bid Increments

130. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, the Bureau proposed to use a smoothing methodology to calculate minimum acceptable bids. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum percentage based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity on a license, decreasing the time it takes for licenses receiving many bids to reach their final prices. The formula used to calculate this increment is included as Attachment F of the *Auction No. 49 Procedures Public Notice.* The Bureau further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate: Aloha and Cavalier support the Bureau's position concerning minimum acceptable bids and bid increments.

131. In each round, each eligible bidder will be able to place a bid on a particular license for which it applied in any of nine different amounts. The FCC Automated Auction System will list the nine bid amounts for each license.

132. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in Attachment F of the *Auction No. 49 Procedures Public Notice.* The difference between the minimum acceptable bid and the standing high bid for each license will define the *bid increment—i.e.*, bid increment = (minimum acceptable bid) − (standing high bid). The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, *etc.*).

133. At the start of the auction and until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Corresponding additional bid amounts will be calculated using bid increments defined as the difference between the minimum opening bid times one plus the percentage increment, rounded as described in

Attachment F of the *Auction No. 49 Procedures Public Notice*, and the minimum opening bid—*i.e.*, bid increment = (minimum opening bid)(1 + percentage increment) {rounded} − (minimum opening bid). At the start of the auction and until a bid has been placed on a license, the nine acceptable bid amounts for each license consist of the minimum opening bid and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the minimum opening bid plus the bid increment, the third bid amount equals the minimum opening bid plus two times the bid increment, *etc.*)

134. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

135. The Bureau retains the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if they determine circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

iv. High Bids

136. At the end of each bidding round, the high bids will be determined based on the highest gross bid amount received for each license. A high bid from a previous round is sometimes referred to as a "standing high bid." A "standing high bid" will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. Bidders are reminded that standing high bids count towards bidding activity.

137. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, the Bureau proposed to use a random number generator to select a high bid in the event of identical high bids on a license in a given round (*i.e.*, tied bids). Aloha and Cavalier support the Bureau's proposal concerning tie bids. No commenter opposed the Bureau's proposal. Therefore, the Bureau adopts its proposal. A Sybase® SQL pseudo-random number generator based on the Lecuyer algorithm will be used to assign a random number to each bid. The tied bid having the highest random number will become the standing high bid. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the license.

v. Bidding

138. During a round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

139. Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 49.

140. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) The licenses applied for on FCC Form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

141. In order to access the bidding functions of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the passcode generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round *after* they have completed all of their activity for that round.

142. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the FCC Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing bid information.

143. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in section IV.B.iii.

144. Finally, bidders are cautioned in selecting their bid amounts because, as explained in the following section, bidders who withdraw a standing high bid from a previous round, even if mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

145. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal procedures. Aloha and Cavalier agree with the Bureau's proposal concerning bid removal and bid withdrawal. With respect to bid withdrawals, the Bureau proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are used, the Bureau proposed, would be at the bidder's discretion.

146. *Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count towards bidding activity. This procedure will enhance bidder flexibility during the auction, and therefore, the Bureau adopts these procedures for Auction No. 49.

147. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function in the FCC Automated Auction System (assuming that the bidder has not reached its withdrawal limit). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g).

Note: Once a withdrawal is placed during a round, that withdrawal cannot be unsubmitted.

148. In previous auctions, the Bureau has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Bureau continues to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various licenses in combination, the Bureau concludes that, for Auction No. 49, adoption of a limit on the use of withdrawals to two rounds per bidder is appropriate. By doing so the Bureau believes it strikes a reasonable compromise that will allow bidders to use withdrawals. Its decision on this issue is based upon its experience in prior auctions, particularly the PCS D, E and F block and 800 MHz SMR auctions, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this auction.

149. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

150. If a high bid is withdrawn, the minimum acceptable bid will equal the second highest bid received for the license, which may be less than, or equal to, in the case of tied bids, the amount of the withdrawn bid. To set the additional bid amounts, the second highest bid also will be used in place of the standing high bid in the formula used to calculate bid increments. The Commission will serve as a "place holder" high bidder on the license until a new bid is submitted on that license.

151. *Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the high bid in the same or subsequent auction(s). See 47 CFR 1.2104(g)(1). In the case of multiple bid withdrawals on a single license, within the same or subsequent auction(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

152. In the *Part 1 Fifth Report and Order*, the Commission modified § 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

153. Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 49 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

154. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

ix. Maintaining the Accuracy of FCC Form 175 Information

155. As noted in section II.H., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants must make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division at the following address: *auction49@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 49. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

156. *A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850.* Questions about other changes should be directed to Howard Davenport of the Auctions and Industry Analysis Division at (202) 418–0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

157. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying winning bidders, down payments and any withdrawn bid payments due.

158. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 49 to 20 percent of its net winning bids (actual bids less any applicable small, very small business or entrepreneur bidding credits). In addition, by the same deadline all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," section IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability,

before being applied toward down payments.)

B. Auction Discount Voucher

159. On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher ("ADV") in the amount of $125,273,878.00. This ADV may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission's Order. Qualcomm transferred $10,848,000.00 of the ADV to a winning bidder in FCC Auction No. 35 and the transferee used its portion of the ADV to pay a portion of one of its winning bids in Auction No. 35. The remaining portion of Qualcomm's ADV could be used to adjust winning bids in another FCC auction, including Auction No. 49.

C. Long-Form Application (FCC Form 601)

160. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 49. Winning bidders that are small, very small businesses or entrepreneurs must include an exhibit demonstrating their eligibility for small, very small business or entrepreneur bidding credits. *See* 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

D. Ownership Disclosure Information Report (FCC Form 602)

161. At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in 47 CFR 1.913, 1.919, and 1.2112(a). We remind applicants that effective December 10, 2002, electronic filing of the Ownership Disclosure Information Report (FCC Form 602) became mandatory. Accordingly, forms filed manually will not be accepted. Winning bidders without a current Form 602 already on file with the Commission must submit a properly completed Form 602 at the time they submit their long-form applications. Further filing instructions will be provided to auction winners at the close of the auction.

E. Tribal Land Bidding Credit

162. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

163. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit *after* winning the auction when it files its long-form application (FCC Form 601). When filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a tribal land bidding credit, the applicant will have 90 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f).

164. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices. Relevant documents can be viewed on the Commission's Web site by going to *http://wireless.fcc.gov/auctions* and clicking on the *Tribal Land Credits* link.

F. Default and Disqualification

165. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

G. Refund of Remaining Upfront Payment Balance

166. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 49 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

167. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW., Room 1–C863, Washington, DC 20554.

168. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418–0578 or Tim Dates at (202) 418–0496.

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 03–7190 Filed 3–25–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background. On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before May 27, 2003.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

Report title: Recordkeeping and Disclosure Requirements of Regulation Z

Agency form number: Reg Z

OMB control number: 7100–0199

Frequency: Event–generated

Reporters: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.

Annual reporting hours: Open–end credit–initial disclosure 28,463 hours; open–end credit—change in terms notice, 41,250 hours; periodic statement, 125,952 hours; error resolution—credit cards, 22,260 hours; error resolution—other open–end credit, 1,312 hours; credit & charge card accounts–advance disclosure, 29,952 hours; home equity plans—advance disclosure, 13,983 hours; home equity plans—change in terms notice, 354 hours; closed–end credit disclosures, 351,354 hours; advertising, 2,733 hours; and HOEPA pre–closing disclosures, 425 hours.

Estimated average hours per response: Open–end credit—initial disclosure, 1.5 minutes; open–end credit—change in terms notice, 1 minute; periodic statement, 8 hours; error resolution—credit cards, 30 minutes; error resolution—other open–end credit, 30 minutes; credit & charge card accounts—advance disclosure, 8 hours; home equity plans—advance disclosure, 1.5 minutes; home equity plans—change in terms notice, 3 minutes; closed–end credit disclosures, 6.5 minutes; advertising, 25 minutes; and HOEPA pre–closing disclosures, 3 minutes.

Number of respondents: State member banks, 947; branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), 287; commercial lending companies owned or controlled by foreign banks, 3; and organizations operating under section 25 or 25A of the Federal Reserve Act, 75.

Small businesses are affected.

General description of report: This information collection is mandatory (15 U.S.C. 1601, 1604(a)). Since the Federal Reserve does not collect any information, no issue of confidentiality arises. Transaction– or account–specific disclosures and billing error allegations are not publicly available and are confidential between the creditor and the consumer. General disclosures of credit terms that appear in advertisements or take–one applications are available to the public.

Abstract: TILA and Regulation Z require disclosure of the costs and terms of credit to consumers. For open–end credit (revolving credit accounts) creditors are required to disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning billing error

procedures. There are special disclosure requirements for credit and charge card applications and solicitations, as well as for home equity plans. For closed–end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required of certain products, such as reverse mortgages, certain variable rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising.

Recently, the Federal Reserve reevaluated the methodology used to estimate the paperwork burden associated with consumer regulations. As a result of this change, the estimated burden declined.

Board of Governors of the Federal Reserve System, March 20, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–7191 Filed 3–25–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 9, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. The Maurice Family (John M. Maurice, Cedar Rapids, Iowa; Steven P. Maurice, Mt. Vernon, Iowa; Dorothy D. Maurice, Cedar Rapids, Iowa; Jane Bohlin, Park Forest, Illinois; and James R. Maurice, Chicago, Illinois); to retain ownership of M.S.B. Corporation, Central City, Iowa, and thereby indirectly retain voting shares of City State Bank, Central City, Iowa.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Murray H. Edwards, Clyde, Texas; to acquire voting shares of Clyde Financial Corporation, Clyde, Texas, and thereby indirectly acquire voting shares of Peoples State Bank, Clyde, Texas.

Board of Governors of the Federal Reserve System, March 20, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–7193 Filed 3–25–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 18, 2003.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Woori Bank and Woori Finance Holdings Company, Ltd., both of Seoul, Korea; to become a bank holding company by acquiring 100 percent of the voting shares of Panasia Bank, National Association, Fort Lee, New Jersey.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Alabama National BanCorporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of Millennium Bank, Gainesville, Florida.

2. Community Bancshares of Mississippi, Inc., Brandon, Mississippi; to acquire at least 80 percent of the voting shares of First Lucedale Bancorp, Inc., Lucedale, Mississippi, and thereby indirectly acquire voting shares of First National Bank of Lucedale, Lucedale, Mississippi.

3. Sterling BancGroup, Inc., Lantana, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Sterling Bank, Lantana, Florida.

C. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. National Bancshares, Inc., Bettendorf, Iowa; to acquire at least 33.56 percent of the voting shares of Benchmark Bancorp, Inc., Aurora, Illinois, and thereby indirectly acquire voting shares of Benchmark Bank, Aurora, Illinois.

2. PSB Group, Inc., Madison Heights, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples State Bank, Hamtramck, Michigan.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Liberty Bancshares, Inc., Jonesboro, Arkansas; to acquire 100 percent of the voting shares of MSB Shares, Inc., Jonesboro, Arkansas, and thereby indirectly acquire voting shares of MidSouth Bank, Jonesboro, Arkansas.

E. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Central Financial Corporation, Hutchinson, Kansas; to acquire up to 45 percent of the voting shares of Mid–America Bancorp, Inc., and thereby indirectly acquire voting shares of Heartland Bank, both of Jewell, Kansas.

2. Guaranty Corporation, Denver, Colorado; to acquire up to 19.19 percent of the voting shares of Bank Capital Corporation, Phoenix, Arizona, and thereby indirectly acquire The Biltmore Bank of Arizona, Phoenix, Arizona.

3. Steele Street State Bank Corporation, Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Steele Street State Bank, Denver, Colorado.

F. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. American Premier Bancorp, Arcadia, California; to become a bank holding company by acquiring 100 percent of the voting shares of American Premier Bank, Arcadia, California.

Board of Governors of the Federal Reserve System, March 20, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–7194 Filed 3–25–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 9, 2003.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. DNB Holdings ASA, Oslo, Norway; to acquire DnB Asset Management (US), Inc., New York, New York, and thereby engage in certain financial and investment advisory activities, pursuant to section 225.28(b)(6) of Regulation Y.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Standard Bancshares, Inc., Hickory Hills, Illinois; to acquire Security Financial Bancorp, Inc., Saint John, Indiana, and thereby indirectly acquire Security Federal Bank and Trust, St. John, Indiana, and thereby engage in operating a savings association, pursuant to section 228.25(b)(4)(ii) of Regulation Y. Comments regarding this application must be received not later than April 18, 2003.

Board of Governors of the Federal Reserve System, March 20, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–7192 Filed 3–25–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Notice Concerning Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Trade Commission ("FTC" or "Commission") announces that in response to petitions from the Direct Marketing Association ("DMA") and the American Teleservices Association ("ATA"), the Commission has decided to extend the date by which it will require full compliance with § 310.4(b)(4)(iii) of the Amended Telemarketing Sales Rule ("TSR") until October 1, 2003.

DATES: The Commission will require full compliance with § 310.4(b)(4)(iii) on October 1, 2003.

ADDRESSES: Requests for copies of the Amended Rule and this notice should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Catherine Harrington-McBride, (202) 326–2452, Karen Leonard, (202) 326–3597, Michael Goodman, (202) 326–3071, or Carole Danielson, (202) 326–3115, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On January 29, 2003, the Federal Trade Commission published the Amended Telemarketing Sales Rule ("TSR"), 16 CFR part 310, and its Statement of Basis and Purpose in the **Federal Register**.[1] The notice stated that the Amended Rule would become effective March 31, 2003; that full compliance with § 310.4(a)(7), the caller identification transmission provision, would be required by January 29, 2004; and that the Commission would announce at a future time the date by which full compliance with § 310.4(b)(1)(iii)(B), the "do-not-call" registry provision, would be required.

By letter dated February 27, 2003, the Direct Marketing Association ("DMA") petitioned the Commission either to "forebear from enforcing the requirements of § 310.4(b)(1)(iv) * * * and § 310.4(a)(6)(i) of the Telemarketing Sales Rule (TSR) or in the alternative, stay the effectiveness of these sections of the rule * * *." These are the provisions that, respectively, prohibit telemarketers from abandoning calls, and require taping of the entire telemarketing call in any transaction combining the use of preacquired account information and a free-to-pay conversion offer.

Also on February 27, 2003, the American Teleservices Association ("ATA") petitioned the Commission to stay the effective date of the Amended TSR pending resolution of lawsuits initiated by ATA and DMA that challenge the validity of certain provisions of the Amended Rule.[2] ATA seeks, in the alternative, postponement of the March 31, 2003, effective date of the Amended TSR until the FCC has finished its review of its regulations under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. 227.

Based on information submitted by the petitions together with information obtained from other sources, the Commission has determined that full compliance with the recording requirement of the call abandonment safe harbor provision (§ 310.4(b)(4)(iii)) by March 31, 2003, many constitute an undue burden on some telemarketers and sellers, who may need to reprogram or purchase software for their equipment, or replace their current equipment. In some instances, it will be very difficult or impossible to accomplish this by the March 31, 2003,

[1] 68 FR 4580 (Jan. 29, 2003).

[2] *ATA* v. *FTC*, No. 03–N–0184(MJW)(D. Col. filed Jan. 29, 2003); *DMA* v. *FTC*, No. CIV 03–122–W (W.D. Okla. filed Jan. 29, 2003).

effective date. Therefore, the Commission has determined to extend the date by which it will require full compliance with § 310.4(b)(4)(iii) until October 1, 2003. The Commission also stays until October 1, 2003, the date by which it will require full compliance with the safe harbor record retention requirement, § 310.4(b)(4)(iv), to the extent it would require record keeping to document the use of a recorded message in instances of call abandonment. The additional six months should give industry ample time to make the changes in their operations necessary to comply with the recording requirement of the call abandonment safe harbor.

The requirement of full compliance with the prohibition on call abandonment (§ 310.4(b)(1)(iv)) is not stayed, and the requirement of full compliance with the other requirements of the call abandonment safe harbor provision (§§ 310.4(b)(4)(i), (ii) & (iv)) similarly is not stayed.[3] The Commission determined that these provisions are necessary to remedy the abusive practice of call abandonment and the related abusive practice of disconnecting the call after only one or two rings, before the consumer can reach the telephone to answer it.[4] Nothing the petitioners have submitted demonstrates that telemarketers would be unable to comply with these call abandonment provisions.

As the Statement of Basis and Purpose indicates, in the future the Commission will announce the date by which full compliance with the national "do-not-call" registry provisions of the amended Rule will be required. Full compliance with all other provisions of the amended Rule—with the exception of the Caller ID provision (§ 310.4(a)(7))—will be required by the date on which the amended Rule is effective, March 31, 2003. Full compliance with the Caller ID provisions will be required by January 29, 2004.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–7249 Filed 3–25–03; 8:45 am]

BILLING CODE 6750–01–M

[3] The requirement of full compliance with Section 310.4(b)(4)(iv) is not stayed to the extent that it requires record keeping to document compliance with §§ 310.4(b)(4)(i) or (ii).

[4] See the Commission's discussion of these practices and the TSR provisions adopted to remedy them at 68 FR at 4641 (Jan. 29, 2003).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary, Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection.

Title of Information Collection: Waiver of the Two-Year Home-Country Physical Presence Requirement for Physician Exchange Visitors to Deliver Health Care Services in Underserved Areas and Supporting regulations 45 CFR part 50.1 through 50.8; Form No.: OMB# 0938–0001; Use: Section 50.4 of the interim final rule published in the **Federal Register** Vol. 67, No. 244, page 77692, on December 19, 2002 contains information collection requirements currently approved under OMB Control Number 0990–0001. Sections 50.5(e)(4) and (5) of the rule contain disclosure requirements. Section 50.5(e)(4) requires facilities or practices sponsoring an Exchange Visitor waiver request for the delivery of health care to post a notice of the charges for services. On an annual basis it is estimated that it will take 300 practices one hour each to prepare and post such notices. The total annual burden associated with this requirement is 300 hours. Section 50.5(e)(5) of the rules contains the requirements for the submission of evidence that the applicant made unsuccessful efforts to recruit a U.S. physician. The burden associated with these requirements is the time and effort necessary for an applicant to submit the documentation. On an annual basis it is estimated that it will take 300 applicants two hours each to prepare and submit this documentation. The total annual burden associated with this requirement is 600 hours. As a note we are requesting approval of the revised forms that are currently approved under OMB number 0990–0001, which are used by the public to comply with the information collection requirements contained in the interim final rule denoted above.

Frequency: On Occasion.

Affected Public: Individuals, Organizations.

Number of Respondents: 600 (300 facilities/300 applicants).

Total Annual Responses: 600.

Total Annual Hours: 900 (300 facilities/600 applicants).

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, or E-mail your request, including your address, phone number, OS document identifier, to *John.Burke@hhs.gov*, or call the Reports Clearance Office on (202) 690–8356. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt (OMB #0990–0001), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 10, 2003.

John P. Burke, III,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary, Department of Health and Human Services.

[FR Doc. 03–7110 Filed 3–25–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security.

Time and Date: 9 a.m. to 5 p.m., March 25, 2003; 9 a.m. to 1 p.m., March 26, 2003.

Place: Hubert H. Humphrey Building, Room 505A on March 25, Room 705A on March 26, 200 Independence Avenue SW., Washington, DC.

Status: Open.

Purpose: The Subcommittee will continue the process of evaluating PMRI terminologies in order to select and recommend these terminologies as HIPAA PMRI Terminology Standards. The information that will be reviewed was gathered from the NCVHS PMRI Terminology Questionnaire in January and February 2003. Dr. Walter Sujansky, consultant to the Subcommittee, will present an analysis of the results from the questionnaire. The Subcommittee will then consider the issues raised by this analysis and determine whether additional information is needed from PMRI terminology developers. It will also formulate the questions that will be addressed by the users of PMRI terminologies when they testify to the Subcommittee on May 21st.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Karen Trudel, Senior Technical Advisor, Security and Standards Group, Centers for Medicare and Medicaid Services, MS: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: 410–786–9937; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Notice: In the interest of security, HHS has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Persons without a government identification card may need to have the guard call for an escort to the meeting.

Dated: March 14, 2003.

James Scanlon,

Acting Director, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03–7108 Filed 3–25–03; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

Time and Date: 12 p.m.—8 p.m., April 22, 2003.

Place: YWCA of Oak Ridge, 1660 Oak Ridge Turnpike, Oak Ridge, Tennessee 37830. Telephone: (865) 482–9922.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: A Memorandum of Understanding (MOU) was signed in October 1990, and renewed in September 2000, between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List, and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE, and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing the public with a vehicle to express concerns and provide advice and recommendations to CDC and ATSDR. The purpose of this meeting is to receive updates from ATSDR and CDC, and to address other issues and topics, as necessary.

Matters to Be Discussed: The agenda includes a discussion of the ATSDR Public Health Assessment on Y–12 Uranium Releases—U.S. Department of Energy (DOE) Oak Ridge Reservation; updates from the Public Health Assessment, Health Needs Assessment, Guidelines and Procedures, Agenda, and the Outreach and Communications Workgroups. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: La Freta Dalton, Designated Federal Official, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE., M/S E–32, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR(28737), fax 404/498–1744.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–7179 Filed 3–25–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the charter for the Advisory Council for the Elimination of Tuberculosis (ACET) of the Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period, through March 15, 2005.

For further information, contact Ronald O. Valdiserri, M.D., Executive Secretary, Advisory Council for the Elimination of Tuberculosis, CDC, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8002 or fax 404–639–8600.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–7178 Filed 3–25–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03020]

Expansion of HIV/AIDS/STD Prevention, Care and Treatment, and Surveillance Activities in the People's Republic of China; Notice of Intent to Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program to expand and improve the effectiveness of HIV/AIDS prevention, care, and surveillance activities in China. No funding will be provided for research or programming in the area of family planning or reproductive health if the applicant includes coercive measures, abortion, or sterilization in its definition of those terms, or performs those activities directly or indirectly. The Catalog of Federal Domestic Assistance Number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the China Center for Disease Control and Prevention (CCDC) under the guidance of the Ministry of Health of the People's Republic of China. No funding will be provided to the State Family Planning Commission of the People's Republic of China under the terms of this cooperative agreement, whether directly or indirectly. The National Intelligence Council's September 2002 report, "The Next Wave of HIV/AIDS: Nigeria, Ethiopia, Russia, India, and China," highlights the rising HIV/AIDS problem will be driven by the spread of the disease in these five populous countries, where the number of infected people will grow from around 14 to 23 million currently to an estimated number of 50 to 75 million by the year 2010. The Chinese Government has requested the assistance of the United States, and the U.S. Government has agreed to help them respond effectively to the growing HIV/AIDS epidemic. On June 28, 2002, Tommy Thompson, Secretary of the Department of Health and Human Services, pledged CDC to deliver financial and technical assistance to China under a memorandum of understanding with the Chinese Minister of Health. The CCDC is the only governmental entity authorized by China to enter into an agreement with CDC.

C. Funding

Approximately $2,000,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before April 1, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where to Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: R.J. Simonds, M.D., Chief, HIV Prevention Branch, Global AIDS Program, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Rd., Mail Stop E–04, Atlanta, GA 30333, e-mail address: *rxs5@cdc.gov.*

Dated: March 19, 2003.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–7181 Filed 3–25–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Advisory Committee on Children and Terrorism, Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee conference call meeting.

Name: National Advisory Committee on Children and Terrorism (NACCP).

Time and Date: 10:30 a.m.–12 p.m., April 7, 2003.

Place: The conference call will originate at the Office of Terrorism Preparedness and Emergency Response (OTPER), in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The Committee is charged with advising the Secretary, Health and Human Serices, on (a) the preparedness of the health care system to respond to bioterrorism as it relates to children; (b) needed changes to the health care and emergency medical service systems and emergency medical services protocols to meet the special needs of children; and (c) changes, if necessary, to the National Strategic Stockpile under section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 to meet the emergency health security of children.

Matters to Be Discussed: The National Advisory Committee on Children and Terrorism will convene by conference call to discuss the draft report to the Secretary.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the meeting.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 10:30 a.m., Eastern Standard Time. To participate in the conference call, please dial 404–639–4100 or 800–713–1971 and enter conference code 122482. You will then be automatically connected to the call.

Contact Person for More Information: Victor Balaban, Office of Terrorism Preparedness and Emergency Response, CDC, 1600 Clifton Road, NE, (D–44), Atlanta, Georgia 30333, telephone 404/639–7428, fax 404/639–7977.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–7180 Filed 3–25–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Board on Radiation and Worker Health (ABRWH).

Time and Date: 2 p.m.–5 p.m., March 28, 2003.

Place: Teleconference call will originate at the Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health (NIOSH), Atlanta, Georgia. Please see "Supplementary Information" for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by the ports available.

Background: The Advisory Board on Radiation and Worker Health ("the Board") was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a Final Rule, advice on methods of dose reconstruction which have also been promulgated as a Final Rule, evaluation of the scientific validity and quality of dose reconstructions conducted by NIOSH for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001, and in November 2001, the President completed the appointment of members to the Board. The initial tasks of the Board have been to review and provide advice on the proposed, interim, and final rules of HHS.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: The agenda for this meeting will focus on the continuation of discussion and finalization of recommendations regarding the Special Exposure Cohort Notice of Proposed Rule Making.

Agenda items are subject to change as priorities dictate.

Supplementary Information: This conference call is scheduled for 2 p.m. Eastern Time. To access the teleconference you must dial 1–800–311–3437. To be automatically connected to the call, you will need to provide the operator with the participant code "943833," and you will be connected to the call.

This meeting is being published late as the meeting date and time was not confirmed until March 14th, which did not allow the notice to be published in the **Federal Register** at least 15 days before the date of the meeting.

Contact Person for More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 20, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–7182 Filed 3–25–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0084]

Agency Information Collection Activities; Proposed Collection; Comment Request; Electronic Records; Electronic Signatures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection provisions relating to FDA's electronic records and electronic signatures.

DATES: Submit written or electronic comments on the collection of information by May 27, 2003.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Electronic Records; Electronic Signatures—21 CFR Part 11 (OMB Control No. 0910–0303)—Extension

FDA regulations in part 11 (21 CFR part 11) provide criteria for acceptance of electronic records; electronic signatures, and handwritten signatures executed to electronic records as

equivalent to paper records. Under these regulations, records and reports may be submitted to FDA electronically provided the agency has stated its ability to accept the records electronically in an agency-established public docket and that the other requirements of part 11 are met.

The recordkeeping provisions in part 11 (§§ 11.10, 11.30, 11.50, and 11.300) require standard operating procedures to assure appropriate use of, and precautions for, systems using electronic records and signatures: (1) § 11.10 specifies procedures and controls for persons who use closed systems to create, modify, maintain, or transmit electronic records; (2) § 11.30 specifies procedures and controls for persons who use open systems to create, modify, maintain, or transmit electronic records; (3) § 11.50 specifies procedures and controls for persons who use electronic signatures; and (4) § 11.300 specifies controls to ensure the security and integrity of electronic signatures based upon use of identification codes in combination with passwords. The reporting provision (§ 11.100) requires persons to certify in writing to FDA that they will regard electronic signatures used in their systems as the legally binding equivalent of traditional handwritten signatures.

The burden created by the information collection provision of this regulation is a one-time burden associated with the creation of standard operating procedures, validation, and certification. The agency anticipates the use of electronic media will substantially reduce the paperwork burden associated with maintaining FDA required records.

The respondents will be businesses and other for-profit organizations, State or local governments, Federal agencies, and nonprofit institutions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
11.100	4,500	1	4,500	1	4,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
11.10	2,500	1	2,500	20	45,000
11.30	2,500	1	2,500	20	45,000
11.50	4,500	1	4,500	20	90,000
11.300	4,500	1	4,500	20	90,000
Total					270,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 19, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–7087 Filed 3–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0065]

Agency Emergency Processing Under OMB Review; Fiscal Year 2003 MDUFMA Small Business Qualification Certification (Form FDA 3602)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information will permit an applicant to certify that it qualifies as a "small business" within the meaning of the Medical Device User Fee and Modernization Act (MDUFMA), will help the applicant organize the information FDA needs to verify each certification, and will collect contact information to facilitate rapid resolution of any questions FDA may have concerning information the applicant has provided.

DATES: Fax written comments on the information collection provisions by April 25, 2003.

ADDRESSES: Fax written comments on the information collection provisions to the Office of Information and Regulatory Affairs, Attn: Stuart Shapiro, Desk Officer for FDA, FAX 202–395–6974, or electronically mail comments to sshapiro@omb.eop.gov. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j) and 5 CFR 1320.13). This information is needed immediately so that the agency can decide whether an applicant is a "small business" within the meaning of MDUFMA. A small business is eligible for a reduced or waived fee for a medical device application or submission that is subject to a user fee under MDUFMA. If an applicant is not a small business, it must pay the standard (full) fee for any medical device application or submission it submits to FDA. FDA is requesting this emergency processing to implement 21 CFR 738(d)(2)(B) and (e)(2)(B) (§ 738(d)(2)(B) and (e)(2)(B)) of the Federal Food, Drug, and Cosmetic Act (the act); these provisions were added to the act by section 102 of MDUFMA. The use of normal clearance procedures would likely result in the prevention or disruption of this collection of information, thereby subjecting applicants who would otherwise qualify as a small business to the statutory requirement to pay a standard (full) fee rather than a reduced fee.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FY 2003 MDUFMA Small Business Qualification Certification (Form FDA 3602)

MDUFMA (Public Law 107–250) amends the Federal Food, Drug, and Cosmetic Act to provide for user fees for certain medical device applications. The initial fees (for fiscal year (FY) 2003) are set by statute. To avoid harming small businesses, MDUFMA provides for reduced or waived fees for applicants who qualify as a "small business." This means there are two levels of fees, a standard fee, and a reduced or waived small business fee.

Under MDUFMA, a "small business" is an applicant who reported no more than $30 million "gross receipts or sales" on its Federal income tax return for the most recent tax year; the applicant must count the "gross receipts or sales" of all of its affiliates, partners, or parent firms when calculating whether it meets the $30 million threshold.

An applicant must pay the full standard fee unless it provides evidence demonstrating to FDA that it meets the "small business" criteria. The evidence required by MDUFMA is a copy of the most recent Federal income tax return of the applicant, and any affiliate, partner, or parent firm. FDA will review these materials and decide whether an applicant is a "small business" within the meaning of MDUFMA.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of the guidance entitled "FY 2003 MDUFMA Small Business Qualification Worksheet and Certification." The guidance describes the criteria FDA will use to decide whether an entity qualifies as a MDUFMA small business and helps prospective applicants understand what they need to do to meet the criteria for FY 2003.

Respondents will be businesses or other for-profit organizations.

FDA estimates the burden of this information collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Form Number	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3602	100	1	100	1	100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based these estimates on conversations with industry, trade association representatives, and from internal FDA estimates. This represents FDA's estimate on the number of small businesses that will submit a premarket application, a premarket report, a panel track supplement, efficacy supplement, 180-day supplement, or a real time supplement to FDA during FY 2003.

Dated: March 10, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–7088 Filed 3–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0030]

Determination of Regulatory Review Period for Purposes of Patent Extension; TEQUIN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TEQUIN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and

approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product TEQUIN (gatifloxacin). TEQUIN is indicated for the following:

1. Acute bacterial sinusitis,
2. Community acquired pneumonia,
3. Acute bacterial exacerbation chronic bronchitis,
4. Uncomplicated urinary tract infections,
5. Complicated urinary tract infections,
6. Pyelonephritis, and
7. Uncomplicated gonorrhea.

Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TEQUIN (U.S. Patent No. 4,980,470) from Kyorin Pharmaceutical Co. through Bristol Myers Squibb, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 2, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of TEQUIN represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TEQUIN is 1,087 days. Of this time, 732 days occurred during the testing phase of the regulatory review period, while 355 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: December 27, 1996. The applicant claims December 26, 1996, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 27, 1996, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: December 28, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for TEQUIN (NDA 21–061) was initially submitted on December 28, 1998.

3. *The date the application was approved*: December 17, 1999. FDA has verified the applicant's claim that NDA 21–061 was approved on December 17, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 720 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (*see* **ADDRESSES**) written or electronic comments and ask for a redetermination by May 27, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 22, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (*See* H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (*see* **ADDRESSES**). Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 7, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–7280 Filed 3–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 02M–0471, 02M–0487, and 02M–0527]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**, providing instead to post this information on the Internet on FDA's home page at *http://www.fda.gov*. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from October 1, 2002, through December 31, 2002. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE OCTOBER 1, 2002, THROUGH DECEMBER 31, 2002.

PMA Number/Docket No.	Applicant	Trade Name	Approval Date
P010043/02M—0471	Yama, Inc.	LEA'S SHIELD Barrier Contraceptive	March 14, 2002.
P970043(S10)/02M—0487	Alcon Laboratories, Inc.	LADARVISION 4000 Excimer Laser System	October 18, 2002.
P020004/02M—0527	W.L. Gore & Associates, Inc.	EXCLUDER Bifurcated Endoprosthesis	November 6, 2002.

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html*.

Dated: March 13, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–7279 Filed 3–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 10, 2003, from 9 a.m. to 5 p.m.

Location: Hilton DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Geretta Wood, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8320, ext. 143, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for an endovascular graft and delivery system intended for the treatment of patients with abdominal aortic, aortoiliac, or iliac aneurysm. Background information for the topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*. Material will be posted on April 9, 2003.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 3, 2003. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations and for approximately 30 minutes near the end of the deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 3, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley Meeks, Conference Management Staff, at 301–594–1283, ext. 105, at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the April 10, 2003, Circulatory System Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Circulatory System Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 20, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–7278 Filed 3–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Maternal and Child Health Services Title V Block Grant Program—Guidance and Forms for the Title V Application/Annual Report (OMB No. 0915–0172)—Revision

The Health Resources and Services Administration (HRSA) proposes to revise the *Maternal and Child Health Services Title V Block Grant Program—Guidance and Forms for the Application/Annual Report*. The guidance is used annually by the 50 States and 9 jurisdictions in making application for Block Grants under Title V of the Social Security Act, and in preparing the required annual report.

The proposed revisions follow and build on extensive consultation received from a Workgroup convened in 2002 to provide suggestions for improving the guidance and forms. The proposed revisions are editorial and technical revisions in nature, and are based on the experience of the States and jurisdictions using previous versions of the guidance. Changes include consolidating the narrative to reduce redundancy, and reducing the number of Health Status Indicators (HSI) required in the application/annual report.

In addition, HRSA proposes changing the format for electronic submission to direct web entry. Web based data and text entry will provide for automatic calculation of ratios, rates, and percentages, carry data over year-to-year, and assure that data used in multiple tables are entered only once. It will also facilitate the orderly printing of tables, text, and required appendices.

The guidance used annually by the 50 States and 9 jurisdictions had a previous estimated burden of 358 hours. Based on the new revisions and more efficient electronic submission, the estimated burden has been reduced by 5% to 322 hours. The estimated response burden is as follows:

Type of form	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
Application and Annual Report, with needs assessment*:				
States	50	1	428	21,400
Jurisdictions	9	1	228	2,052
Application and Annual Report, without needs assessment*:				
States	50	1	313	15,658
Jurisdictions	9	1	126	1,134

*The Application and Annual Report, with needs assessment, will be submitted in FY 2005. The Application and Annual Report, without needs assessment, will be submitted in FY 2003 and FY 2004. The average annual total burden hours for the next three years is 19,007. The average annual burden per respondent 322 hours.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 19, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–7089 Filed 3–25–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Agency Information Collection Activities: Proposed Collection and Comment Request (OIG–319–N)

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Inspector General (OIG) is publishing for public comment the following summary of proposed collection activities. Interested parties are invited to send comments to the address indicated below regarding this burden estimate or any other aspect of this collection of information, including (1) the necessity and utility of proposed information collection for the proper performance of the OIG's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

SUPPLEMENTARY INFORMATION:

Type of Information Collection Request: Reinstatement of an expired collection.

Title of Information Collection: State Medicaid Fraud Control Units' Recertification Application and Annual Report as required by 42 CFR 1007.15 and 1007.17. (Previously approved by the Office of Management and Budget under control number 0990–0162.)

Use: The information contained in the annual reports and recertification application is required for certification and yearly recertification by the OIG to ensure that federal matching funds are only expended for allowable costs, and to determine if a state unit needs financial assistance.

Frequency: Annually.

Affected Public: State government.

Annual Number of Respondents: 48.

Total Annual Responses: 48.

Average Burden Per Response: 32 hours.

Total Annual Hours: 2,744 hours.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address and phone number, to John Bettac, Office of Investigations (*Jbettac@oig.hhs.gov*), or call (202) 619–3557.

DATE: To assure consideration, public comments must be delivered to address provided below by no later than 5 p.m. on May 27, 2003.

ADDRESSES: Written comments and recommendations for proposed information collections should be mailed or delivered to the following address: Office of Inspector General, Department of Health and Human Services, Attention: John Bettac, Room 5453, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–319–N. Comments received timely will be available for public inspection as they are received beginning approximately 3 weeks after publication of a document in Room 5541 of the Office of Inspector General at 330 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 8:30 a.m. to 4:30 p.m.

Dated: March 20, 2003.

Brian P. Carman,

Chief Information Officer.

[FR Doc. 03–7220 Filed 3–25–03; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Submission for OMB Review; Comment Request, Women's Health Initiative Observational Study

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Director, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 20, 2002, page 59294 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 39 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised or implemented on or after October 1, 1995, unless it displays a current valid OMB control number.

Proposed Collection: Title: Women's Health Initiative (WHI) Observational Study. *Type of Information Collection Request:* Revision: OMB No. 0925–0414, expiration date: 05/31/2003. *Need and Use of Information Collection:* This study will be used by the NIH to evaluate risk factors for chronic disease among older women by developing and following a large cohort of postmenopausal women and relating subsequent disease development to baseline assessments of historical, physical, psychosocial, and physiologic characteristics. In addition, the observational study will complement the clinical trial (which has received clinical exemption) and provide additional information on the common causes of frailty, disability and death for postmenopausal women, namely, coronary heart disease, breast and colorectal cancer, and osteoporotic fractures. *Frequency of Response:* On occasion. *Affected Public:* Individuals and physicians. *Type of Respondents:* Women, next-of-kin, and physician's office staff. The annual reporting burden is as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
OS Participants	86,886	1.4084	0.17042	20,855
Next-of-kin	2,916	1	0.0835	243
Physician's Office Staff	43	1	0.0835	4
Total	89,845			21,102

The annualized cost burden to respondents is estimated at $211,180. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to: The Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plan and instruments, contact: Dr. Linda Pottern, Project Officer, Women's Health Initiative Program Office, 6705 Rockledge Drive, 1 Rockledge Centre, Suite 300, MSC 7966, Bethesda, MD 20892–7966, or call (301) 402–2900 or E-mail your request, including your address to: *Linda_Pottern@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: March 13, 2003.

Jacques E. Rossouw,

Lead Project Officer, Women's Health Initiative.

[FR Doc. 03–7154 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission of OMB Review; Comment Request; Policies of Academic Institutions Regarding Tobacco Industry Research Funding

SUMMARY: Under the provision of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 13, 2002, pages 11347 and 11348 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or

after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Policies of Academic Institutions Regarding Tobacco Industry Research Funding. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This study will assess current administrative policies of U.S. medical schools and schools of public health regarding faculty acceptance of research funding from tobacco manufacturers and trade organizations. The primary objectives of the study are to assess how many institutions have a tobacco-specific research funding policy, their reasons for adopting or not adopting such a policy, and what the requirements of those policies are. The findings will provide valuable information concerning: (1) How academic institutions have responded to concerns about researchers' funding relationships in tobacco research, (2) administrators' attitudes towards research funding policies targeted at tobacco specifically; and (3) what types of requirements have been imposed on academic researchers regarding tobacco funding. *Frequency of Response:* Once. *Affected Public:* Individuals; academic institutions. *Type of Respondents:* Academic administrators. The annual reporting burden is as follows: *Estimated Number of Respondents:* 505; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 75; and *Estimated Total Annual Burden Hours Requested:* 379. The annualized cost to respondents is estimated at: $32,215. There are no capital costs to report. There are no operating or maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office or Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20530, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Mark Parascandola, Cancer Prevention Fellow, OPO, DCP, NCI, NIH, 6130 Executive Boulevard, Suite 3109, Bethesda, MD 20892, or call non-toll-free number (301) 594–1576 or E-mail your request, including your address to: *paramark@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: March 18, 2003

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 03–7155 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; The Impact of a Decade of the Fogarty International Research Collaborative Award (FIRCA)

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Fogarty International Center, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: The impact of a decade of the Fogarty International Research Cooperative Award (FIRCA). Type of Information Collection Request: New. Need and Use of Information Collection: This study will access the outputs, outcomes and impacts of the Fogarty International Research Collaboration Awards (FIRCA). The primary objectives of the study are to determine if FIRCA awards (1) extend and enhance the research interests of the U.S. principle investigator (USPI) and the international research collaborator (IRC), (2) increase the research capacity of the international scientists and institution, and (3) foster discovery and reduce global health disparities through the support of international cooperation across the continuum of basic, clinical and applied biomedical, behavioral and health sciences. The findings will provide valuable information concerning: (1) Specific research advances attributable to FIRCA support; (2) specific capacity and career enhancing advances that are attributable to FIRCA funding; (3) policy implications for the FIRCA program based on USPI and IRC responses. Frequency of Response: Once. Affected Public: none. Type of Respondents: U.S. researchers and their foreign research collaborators. There are no capital costs to report. There are no operating or maintenance costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
US PI	453	1	.55	249.15
IRC	453	1	.55	249.15
Total				598.15

Type respondents	Number of respondents	Frequency of response	Hourly wage rate	Respondent cost
USPI	453	1	$55	$24,915
IRC	453	1	10	4,530
Total Cost				29,445

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Linda Kupfer, Fogarty International Center, National Institutes of Health, 16 Center Drive, Building 16, Bethesda, MD 20892–6705 or call non-toll-free number (301) 496–3288 or E-mail your request, including your address to: *Kupferl@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: March 13, 2003.

H. Richard Miller,

Executive Officer, Fogarty International Center, National Institutes of Health.

[FR Doc. 03–7156 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee D—Clinical Studies.

Date: April 22–23, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Bethesda, MD 20892–8328, 301–496–9767.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7128 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, The Career Enhancement Award (K18).

Date: April 2, 2003.

Time: 1:15 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Robert B. Moore, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7178, MSC 7924, Bethesda, MD 20892. 301/435–0725.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7127 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Clinical Trials Review Committee.

Date: June 23–24, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Valerie L Prenger, PhD, MS, Review Branch, Room 7194, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, (301) 435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7149 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Program Project Review Committee.

Date: June 19, 2003.

Time: 8 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jeffrey H. Hurst, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, (301) 435–0303.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7150 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, SEP—Ancillary Pharmacogenetics Studies in Heart, Lung, Blood and Sleep Disorders.

Date: May 12, 2003.

Time: 8:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Judy S. Hannah, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892. 301/435–0287.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7151 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, DNA Sequencer Review.

Date: April 4, 2003.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Bldg. 31, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, (301) 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7132 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEATH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Roles of NFI Genes in Metazoan Development

Date: April 15, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville Pike, Rockville, MD 20852.

Contact Person: Rita Anand, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7129 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Female Health and Egg Quality.

Date: April 14–15, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7130 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Drug Discovery Panel B.

Date: March 27, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Drug Discovery Panel D.

Date: March 27, 2003.

Time: 2:45 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Drug Discovery Panel E.

Date: March 27, 2003.

Time: 5:15 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Drug Discovery Panel C.

Date: March 27, 2003.

Time: 12:15 p.m. to 2:45 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center,

6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7131 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel MBRS

Date: April 4, 2003.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Room AN–18, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca H. Johnson, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle,

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7133 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Collaborative Programs of Excellence in Autism.

Date: April 11, 2003.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7134 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of General Medical Sciences Special Emphasis Panel, March 24, 2003, 8 a.m. to March 24, 2003, 5 p.m., which was published in the **Federal Register** on March 6, 2003, 68 FR 10739–10740.

This meeting will be held on March 31, 2003, at the National Institutes of Health, Natcher Building, 3AN12B, from 1 p.m. to 5 p.m. as a teleconference. The meeting is closed to the public.

Dated: March 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7135 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: May 16, 2003.

Time: 8:30 a.m. to 11:30 a.m.

Agenda: Staff reports on divisional, programmatic and special activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 11:30 a.m. to adjournment

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD., Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South Room 400C, Bethesda, MD 20892–7180. (301) 496–8683.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center home page: *http://www.nidcd.nih.gov/about/councils/ndcdac/ndcdac.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: March 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7138 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Urology Program Projects.

Date: April 11, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 758, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892. 301–594–7637. *davila-bloomm@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Molecular Endocrinology.

Date: April 18, 2003.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600. (301) 594–7799. *ls38z@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 14, 2003.

LaVerne Y. Strinfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7139 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, T Cell/NK Cell Immunity.

Date: April 8, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 2156, Bethesda, MD 20892–7616. (301) 402–4598. *clapham@niaid.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7140 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Emphasis Panel, Review of Exploratory Development Applications (R21s).

Date: April 13–15, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Radisson Governor's Inn, I–40 at Davis Drive, Exit 280, Research Triangle Park, NC 27709.

Contact Person: Janice B Allen, PhD, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P. O. Box 12233, MD EC–30/Room 3170 B, Research Triangle park, NC 27709. 919/541–7556.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Research Core Center Applications (P30s).

Date: April 21–23, 2003.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Millennium Hotel Durham, 2800 Campus Walk Ave., Durham, NC 27705.

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709. 919/541–0670. *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: March 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7141 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Effective Pulmonary Vaccination Using an Influenza Model.

Date: April 10, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH/NIAD/DHHS, 6700B Rockledge Dr. MSC 7616, 2200, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, Scientific Review Program, NIAID/NIH, 6700B Rockledge Drive, Rm 2220, Bethesda, MD 20892, 301–496–2550, *ec17w@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Diseases Research Opportunities.

Date: April 22, 2003.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications. proposals.

Place: National Institutes of Health, 6700–B Rockledge Drive, Room 3114, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alec Ritchie, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–435–1614, *artchie@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Loan Repayment Program.

Date: May 13, 2003.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gary S. Madonna, PhD, Scientific Review Administrator Scientific Review Program, Division of Extramural Activities, NIAID, HIH, Room 2217, 6700B Rockledge Drive, MSC 7616, Betheada, MD 20892–7616, 301–496–3528, *gm12w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and transplantation Research; 93.856, Microbiology and Infectious diseases Research, National Institutes of Health, HHS)

Dated: March 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7143 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Disease Research Opportunities.

Date: April 15, 2003.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Drive, Rockledge Building, 2223, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, NIH/NIAID, Scientific Review Program, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550. *clapham@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Cooperative Centers for Translational Research on Human Immunology and Biodefense.

Date: April 22–23, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Priti Mehrotra, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 6700–B Rockledge Drive, Room 2100, Bethesda, MD 20892–7616, 301–435–9369, *pm158b@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7144 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Multi-Site Trial of Azathioprine Dosing in Crohn Disease.

Date: April 2, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 751, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798, *muston@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Treatment Affect Cognition in Type 1 Diabetes.

Date: April 28, 2003.

Time: 9:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 758, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, 301–594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7145 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, AIDS Related Research and Training.

Date: April 4, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Richard E. Weise, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC 9606, Bethesda, MD 20892–9606, 301–443–1225, *rweise@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7146 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given on the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Udall Centers of Excellence.

Date: April 10, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hay-Adams, Sixteenth & H Streets, NW., Concorde Room, Washington, DC 20006.

Contact Person: JoAnn Mcconnell, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, N.I.H./NINDS/Neurosciences Building, 6001 Executive Boulevard, Room 3208, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnellj@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Translational Research SEP.

Date: April 22, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: The Westin Grand, 1350 M Street, NW., Washington, DC 20037.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Neuroscience Scholars Program RFA.

Date: April 22, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuoscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: JoAnn McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, N.I.H./NINDS/Neurosciences Building, 6001 Executive Boulevard, Room 3208, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnellj@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7147 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National institute of dental and Craniofacial Research Special Emphasis Panel, 03–41, Review of RFA–03–006.

Date: April 10–11, 2003

Time: 12 p.m. to p.m.

Agenda: To review and evaluate grant applications.

Place: Palace Hotel 2 New Montgomery Street, San Francisco, CA 94105.

Contact Person: H, George Hausch, PhD., Acting director, 4500 Center Drive, Natcher Building, Rm 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Pane, 03–44, Review of R44 application.

Date: May 7, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD. DMD, Scientific review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and disorders Research, National Institutes of Health, HHS)

Dated: March 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7148 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Specialized Research Grants.

Date: April 14, 2003.

Time: 8:30 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892. (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7152 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: March 19, 2003.

Time: 3:15 p.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone conference call.)

Contact Person: Richard C. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–594–0635.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7153 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Application of Use of Advanced Network Infrastructure Technology in a Health Related Environment—Level 2.

Date: May 5–6, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Library of Medicine, Building 38, Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Charles Sneiderman, MD, PhD, Research Medical Officer, Off. of High Performance Computing & Communication, National Library of Medicine, National Institutes of Health, 8600 Rockville Pike, Bethesda, MD 20894. (301) 435–3253.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: March 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7137 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Loan Repayment L–30's.

Date: April 14, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817. (Telephone conference call.)

Contact Person: Merlyn M. Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20994.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7136 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Molecular Pathobiology.

Date: March 20, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892. (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology of NeuroAIDS and Inflammation.

Date: March 21, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Abraham P. Bautista, PhD, Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892. (301) 435–1506. *bautista@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuroscience–SBIR/STTR.

Date: April 1, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn Hotel, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892. (301) 435–1242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Electron Microscopy Program Project.

Date: April 1–2, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn Hotel, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Richard D. Rodewald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142. MSC 7840, Bethesda, MD 20892, (301) 435–1024, *rodewalr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuronal Chemical Genetics.

Date: April 1, 2003.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call.)

Contact Person: Gillian Einstein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20817, (301) 435–4433, *einsteig@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, DNA Repair.

Date: April 1, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call.)

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Oncological Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20814–9692, 301–435–3504, *vf6n@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Lung Carcinogenesis.

Date: April 1, 2003.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call.)

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Therapy.

Date: April 1, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call.)

Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892. (301) 435–1718. *perkinsp@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reviews in Cognitive Development.

Date: April 2, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892. (301) 435–0902. *krausem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Regulatory Mechanisms Underlying Brain Development.

Date: April 2, 2003.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call.)

Contact Person: Gillian Einstein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20817. (301) 435–4433. *einsteig@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 HEM–2 02M: CVA Member Conflict: ION Transport.

Date: April 2, 2003.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 10, 10 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892. (301) 435–1777.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ethical, Legal and Social Issues in Genetics Special Emphasis Panel—Education Review.

Date: April 2, 2003.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, Building 31, Room B2B37, Bethesda, MD 20892–2032. 301 402–0838. *pozzattr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemical Senses: Gustation.

Date: April 3, 2003.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: John Bishop, PhD Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genetic Instability.

Date: April 3, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Victor A. Fung, PhD Scientific Review Administrator, Oncological Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20814–9692. 301–435–3504. *vf6n@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ricin-Shiga Toxin.

Date: April 3, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Jean Hickman, PhD Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892. (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tumorigenesis and RNA stability.

Date: April 3, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892. (301) 435–1741.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pain: Peripheral Systems.

Date: April 3, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN 2 (02) Neuroendocrinology; Neuroimmunology, and Behavior.

Date: April 3, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892. 301–435–1245. *richard.marcus@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Learning and Memory: Neuroimaging Approaches.

Date: April 4, 2003.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 HEM–1 (03)M: Cardiac Physiology.

Date: April 4, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892. (301) 435–1195. *sur@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7142 Filed 3–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project:

Identifying Best Practice Models of Mental Health and Substance Abuse Services for Homeless Adolescents, Runaway, and Throwaway Youth—New—This is a project of SAMHSA's Center for Mental Health Services. The first stage of this study will involve the compilation of a directory of agencies providing services to homeless, runaway and throwaway youth across the nation. The directory will be developed using published information and information on the internet about agencies providing services to these youth. This information will be summarized on one page, which will be emailed/mailed to the agency with a request that they complete or correct information as appropriate. The agency will be asked to email/mail back their completed/revised form; if necessary, agencies may be telephoned to complete or correct information.

From this universe of service providers, a probability sample of approximately 52 providers will be selected to receive a site visit. During the site visit, information will be collected from the facility director or a designee about the staff (*e.g.*, number and training), characteristics of the target service population, and services provided. In addition, at each site a sample of approximately 20 youth (age 12–21 years of age who are homeless, runaway, or thrownaway) will be selected for interview. A site designee will be asked to be present during the administration of the youth informed consents.

Data collection will span the period from August to December of 2003. It is anticipated that study results will be used at the federal, state, and local levels to determine best practices for service provision and to inform funding decisions.

Total response burden for this project is summarized in the following table.

Form name	Number of respondents	Responses/ respondent	Hours/ response	Total burden hours
Directory Questionnaire	500	1	0.25	125
Provider Survey	52	1	1.00	52
Youth Survey	1,040	1	0.75	780
Total	1,540			957

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 20, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–7176 Filed 3–25–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Funding Availability for Targeted Capacity Expansion Initiatives for Substance Abuse Prevention (SAP) and HIV Prevention in Minority Communities: Services Grants (Short Title: Minority SAP and HIV Prevention Services Program).

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Request for Applications (RFA), including Part I, Targeted Capacity Expansion Initiatives for Substance Abuse Prevention (SAP) and HIV Prevention in Minority Communities: Services Grants (SP 03–005) (Short Title: Minority SAP and HIV Prevention Services Program), and Part II, General Policies and Procedures Applicable to All SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2003	Est. No. of awards	Project period
Targeted Capacity Expansion Initiatives for Substance Abuse Prevention (SAP) and HIV Prevention in Minority Communities: Services Grants.	May 23, 2003	$3.8 million	10–14	5 years.

The actual amount available for the award may vary depending on unanticipated program requirements and the number and quantity of applications received. FY 2003 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 108–7. This program is authorized under Section 516 of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: The National Clearinghouse for Alcohol and Drug Information (NCADI): (800) 789–2647 or (800–487–4889 TDD).

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on "Grant Opportunities").

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention (CSAP) is accepting applications for Fiscal Year 2003 grants to help community-based organizations expand their capacity to provide and sustain effective, integrated substance abuse prevention and HIV prevention services in high risk minority communities disproportionately impacted by the HIV/AIDS epidemic.

Eligibility: Eligible applicants are public and domestic private non-profit entities such as:

- Not for profit community based organizations
- National organizations
- Colleges and universities
- Clinics and hospitals
- Faith-based organizations
- Health care delivery organizations
- Tribal government and tribal/urban Indian entities and organizations
- Historically Black colleges and universities (HBCUs)
- Tribal colleges and universities (TCUs)
- Hispanic serving institutions (HSIs)
- Members of the Hispanic Association of Colleges and Universities.

Since the purpose of this RFA is to expand the capacity of community-based organizations, State and local government agencies are not eligible to apply.

Availability of Funds: It is expected that approximately $3.8 million will be available for ten (10) to fourteen (14) awards in FY 2003. The average annual award will range from $250,000 to $300,000 in total costs (direct and indirect). Actual funding levels will depend on the availability of funds. Applications with proposed budgets that exceed $350,000 will be returned without review.

Period of Support: Awards may be requested for up to 5 years.

Criteria for Review and Funding

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions on program issues, contact: Francis C. Johnson, M.S.W., CSAP/SAMHSA, Rockwall II, Suite 950, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2332, [email] *fjohnson@samhsa.gov.*

For questions on grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, e-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-Use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's website under "Assistance with Grant Applications". The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: March 18, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–7281 Filed 3–25–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for Cooperative Agreements to Conduct Targeted Capacity Expansion (TCE) of Methamphetamine and Inhalant Prevention Interventions and/or Infrastructure Development (Short Title: Prevention of Meth and Inhalant Abuse).

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 2003 funds for cooperative agreements for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Request for Applications (RFA), including Part I, Cooperative Agreements to Conduct Targeted Capacity Expansion (TCE) of Methamphetamine and Inhalant Prevention Interventions and/or Infrastructure Development (SP 03–006) (Short Title: Prevention of Meth and Inhalant Abuse), and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2003	Est. number of awards	Project period
Cooperative Agreements to Conduct Targeted Capacity Expansion (TCE) of Methamphetamine and Inhalant Prevention Interventions and/or Infrastructure Development.	May 23, 2003	$4 million	14	3 years

The actual amount available for the award may vary depending on unanticipated program requirements and the number and quantity of applications received. FY 2003 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 108–7 This program is authorized under section 519E of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: The National Clearinghouse for Alcohol and Drug Information (NCADI): (800) 789–2647 or (800–487–4889 TDD).

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov,* (Click on "Grant Opportunities").

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Prevention is accepting applications for fiscal year 2003 for cooperative agreements to conduct targeted capacity expansion of methamphetamine and inhalant prevention interventions and/or infrastructure development.

Eligibility: Eligible applicants are public and domestic private non-profit entities such as:

- Units of State and local governments.
- Indian tribes and tribal organizations.
- Community-based organizations.
- Managed care and other health care delivery systems.
- Universities and colleges.
- Faith-based organizations and,
- Local law enforcement agencies.
- Current grantees as well as entities that are not current grantees.

Availability of Funds: It is expected that approximately $4 million will be available for fourteen (14) awards in FY 2003. The average annual award will range from $300,000 to $350,000 in total costs (direct and indirect). Actual funding levels will depend on the availability of funds. Applications with proposed budgets that exceed $350,000 will be returned without review.

Period of Support

Awards may be requested for up to 3 years.

Criteria for Review and Funding

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions on program issues, contact: Pamela C. Roddy, Ph.D, CSAP/SAMHSA, Rockwall II, Suite 1075, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1001, [email] *proddy@samhsa.gov.*

For questions on grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, E-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's website under "Assistance with Grant Applications". The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: March 18, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–7282 Filed 3–25–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–5700–BX; Closure Notice No. NV–030–03–001]

Temporary Closure of Public Lands: Washoe County, NV

AGENCY: Bureau of Land Management, Nevada.

ACTION: Notice of closure.

SUMMARY: The Carson City Field Office Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the 2003 Pylon Racing Seminar and 2003 Reno National Championship Air Races.

EFFECTIVE DATES: June 19 through June 22, 2003, and September 7 through September 14, 2003.

FOR FURTHER INFORMATION CONTACT: Charles P. Pope, Assistant Manager, Nonrenewable Resources, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Telephone (775) 885–6000.

SUPPLEMENTARY INFORMATION: This closure applies to all the public, on foot or in vehicles. The public lands affected by this closure are described as follows:

Mt. Diablo Meridian

T. 21 N., R. 19 E.,
Sec. 8, N1/2NE1/4, SE1/4NE1/4 and E1/2SE1/4;
Sec. 16, N1/2 and SW1/4.
Aggregating approximately 680 acres.

The above restrictions do not apply to emergency or law enforcement personnel or event officials. The authority for this closure is 43 CFR 8364.1. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

A map of the closed area is posted in the Carson City Field Office of the Bureau of Land Management.

Dated: January 27, 2003.

Charles P. Pope,

Assistant Manager, Nonrenewable Resources, Carson City Field Office.

[FR Doc. 03–7171 Filed 3–25–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–0777–XG]

Notice of Resource Advisory Council Vacancy

AGENCY: Bureau of Land Management, Northeast California Resource Advisory Council, Susanville, California, Interior.

ACTION: Notice of vacancy and call for nominations.

SUMMARY: Pursuant to authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U. S. Bureau of Land Management is seeking nominations to fill a vacant seat on the Northeast California Resource Advisory Council. The person selected to fill the vacancy will complete an unexpired term that ends in September 2004. The appointee will be eligible to compete for the full three-year term when the current term expires.

SUPPLEMENTARY INFORMATION: The council vacancy is in membership category one: persons holding federal livestock grazing permits. The appointment will be made by the Secretary of the Interior, as are all BLM Resource Advisory Council appointments. The person selected must have knowledge or experience in the interest area specified, and must have knowledge of the geographic area under the council's purview (the Northeast portion of California and the Northwest corner of Nevada).

Qualified applicants must have demonstrated a commitment to collaborate with varied interests to solve a broad spectrum of natural resource issues.

Nomination forms are available by contacting BLM Public Affairs Officer Joseph J. Fontana, 2950 Riverside Drive, Susanville, CA 96130; by telephone (530) 252–5332; or e-mail, *jfontana@ca.blm.gov.* Nominations must be returned to: Bureau of Land Management, 2950 Riverside Drive, Susanville, CA 96130, Attention Public Affairs Officer, no later than April 25, 2003. Individuals can nominate themselves, or interest groups can submit nominations. Nominations must include letters of support from the interest groups the nominee will represent.

FOR FURTHER INFORMATION CONTACT: BLM Alturas Field Manager Tim Burke at (530) 233–4666, or Public Affairs Officer Joseph J. Fontana at the above phone or e-mail address.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 03–7161 Filed 3–25–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–PG; GP3–0061]

Call for Nominations for the Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management (BLM).

ACTION: Notice of extended nomination due date for **Federal Register** notice (GP3–0061) regarding Eastern Washington Resource Advisory Council vacancy.

SUMMARY: The purpose of this notice is to extend the due date for accepting public nominations for the Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (RAC) that has an open position to represent environmental and/or conservation interests. This position will expire in 2006. The RAC provides advice and recommendations to the BLM and the USDA Forest Service on

land use planning and management of public lands within their geographic areas. Public nominations will be accepted until April 21, 2003.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM.

Section 309 of FLPMA directs the Secretary to select 10- to 15-member citizen-based advisory councils that are established and authorized consistent with requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, RAC membership must be balanced and representative of the various interests concerned with management of public lands.

Individuals may nominate themselves or others. Nominees for the Eastern Washington RAC must be residents of Washington. Nominees will be evaluated based on their education, training, experience, and their knowledge of the geographical area of the RAC. Nominees should have demonstrated a commitment to collaborative resource decision-making. All nominations submitted must include letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

DATES: All nominations should be received in the Oregon BLM State Office by April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Robbins: (503) 808–6306, *pam_robbins@blm.gov*, BLM State Office, 333 Southwest 1st Avenue, Portland, Oregon 97204.

Dated: March 20, 2003.

Richard E. Hubbard,

Rangeland Management Specialist, Acting District Manager.

[FR Doc. 03–7174 Filed 3–25–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–110–03–1220–PA]

Notice of Intent To Prepare a Plan Amendment and Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a Travel Management Plan Amendment to the White River Resource Management Plan (RMP) for the Wilson Creek area in Rio Blanco, and Moffat Counties, Colorado.

SUMMARY: In accordance with the National Environmental Policy Act, notice is hereby given that the Bureau of Land Management (BLM) is preparing an EA and RMP to address management of roads and trails of the approximate 6,805 acre Wilson Creek area administered by the White River Field Office. The Wilson Creek Area is approximately 10 miles north of Meeker, Colorado. Early participation is encouraged and will help determine the future management of public lands administered by the White River Field Office.

DATES: The official public scoping for this planning effort commences with the publication of this notice. The public is invited to submit scoping comments to the address listed below for 60 days following the date that this notice is published in the **Federal Register**. BLM will publish exact dates, times, and locations for public meetings through media announcements, Internet postings, and mailings at least 15 days in advance of the meetings. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

ADDRESSES: Written comments should be sent to the Bureau of Land Management, White River Field Office, 73544 Highway 64, Meeker, Colorado 81641 or e-mail *Chris_Ham@co.blm.gov*.

FOR FURTHER INFORMATION CONTACT: Chris Ham, Outdoor Recreation Planner, Telephone (970) 878–3845; E-mail—*Chris_Ham@co.blm.gov*.

SUPPLEMENTARY INFORMATION: The use of off-highway vehicles (OHVs), snowmobiles, mountain bikes, and horses has greatly increased in recent years. These are important uses of public lands, especially OHV use in the Wilson Creek Area. They have also created several management concerns:

(1) The proliferation of new, unplanned roads and trails that have or will create unacceptable resource damage.

(2) Existing land use designations that allow cross-country travel within the Wilson Creek area during a portion of the year.

(3) Private land trespass issues created by land ownership patterns.

(4) Effects of OHV use on quality hunting experience.

The White River Field Office has and will continue to consult, communicate and cooperate with local landowners, recreationists, the Northwest Colorado Resource Advisory Committee and other affected interest groups to develop and design a travel system that will provide access for recreation, business and industry needs while sustaining land health standards.

BLM will use an interdisciplinary approach to develop the plan amendment and environmental assessment in order to consider all identified resource issues and concerns. Disciplines involved in the planning process will include specialists with expertise in outdoor recreation, rangeland management, archaeology, wildlife, hydrology, minerals, and soils.

Dated: February 5, 2003.

Kent E. Walter,

Field Manager.

[FR Doc. 03–7166 Filed 3–25–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1410–PG]

Notice of Public Meeting, Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Council will meet as indicated below.

DATES: The meeting will be held April 28–29, 2003, in the Binkley Room at Pike's Waterfront Lodge in Fairbanks, beginning at 8:30 a.m. The public comment period will begin at 1 p.m. April 28.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone (907) 271–3322 or e-mail *Teresa_McPherson@ak.blm.gov*.

SUPPLEMENTARY INFORMATION: The 13-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics we plan to discuss include:

- Outdated withdrawals on federal public lands in Alaska.
- A process for accelerating the Alaska land transfer program.
- Status of planning in the National Petroleum Reserve Alaska (NPR–A).
- Other topics the Council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact BLM.

Dated: March 17, 2003.

Henri R. Bisson,

State Director.

[FR Doc. 03–7183 Filed 3–25–03; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–030–1610–DH; AZA–31733]

Notice of Realty Action and Intent To Amend the Kingman Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action and intent to prepare an Environmental Assessment (EA) to consider amending the Kingman Resource Management Plan (RMP).

SUMMARY: The Bureau of Land Management (BLM) Kingman Field Office (KFO) proposes to amend the Kingman RMP (1995) to allow for classification and disposal of certain public lands (*see* A below), and special designation of certain other public lands (*see* B below), for use as a shooting range and buffer as requested by the Arizona Game & Fish Department (AG&FD). A decision to amend the land use plan would constitute a proposed classification of the land, thirty (30) days after which the land would be classified unless the Secretary exercises jurisdiction pursuant to 43 CFR 2450.5. The lands proposed under A—Shooting Range below are proposed for classification under section 7 of the Taylor Grazing Act, 43 U.S.C. 315f and Executive Order No. 6910, and disposal under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*):

A—Shooting Range

Gila and Salt River Meridian, Mohave County, Arizona

T. 19 N., R. 21 W.,
Sec. 35, S½NE¼NE¼, SE¼NW¼NE¼, E½SW¼NE¼, SE¼NE¼, N½NE¼SE¼, N½SW¼NE¼SE¼, NE¼NW¼SE¼, N½SE¼NW¼SE¼;
Sec. 36, S½NW¼NE¼; N½SW¼NE¼, N½S½SW¼NE¼, S½N½NW¼, S½NW¼, N½NE¼NW¼SW¼, NW¼NW¼SW¼;

Containing approximately 315 acres.

The lands identified under B—Buffer below are being considered through the plan amendment process for special designation for retention and management under a Cooperative Management Plan/Agreement between the AG&FD and the BLM for safety purposes:

B—Buffer

Gila and Salt River Meridian, Mohave County, Arizona

T. 19 N., R. 21 W.,
Sec. 25, SW¼NE¼SE¼, S½NW¼SE¼, S½N½SW¼, S½S½;
Sec. 26, S½NE¼SE¼, SE¼NW¼SE¼, E½SW¼SE¼, SE¼SE¼;
Sec. 35, N½NE¼NE¼, NE¼NW¼NE¼;
Sec. 36, N½N½N½, S½NE¼NE¼, N½SE¼NE¼;

Containing approximately 470 acres.

Upon publication of this notice, the lands described under "A" above are hereby segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the R&PP Act. The segregative effect applies to the Federal surface but only to the Federally-owned minerals in section 36. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

DATES: The public is invited to identify issues and concerns to be addressed in the EA to be prepared for the potential RMP amendment. Submissions should be in writing or by e-mail (see addresses below). Comments must be postmarked no later than 30 days following the date of publication of this notice in the **Federal Register**. Future public involvement activities, opportunities and review/comment periods will be announced at least 15 days in advance through other notices, media releases, or mailings. A public open house will be held on the Mohave Valley Campus of Mohave Community College, Room 210, 3400 Highway 95, Bullhead City, Arizona.

ADDRESSES: Comments on the various aspects of this Notice as identified in the Supplemental Information should be sent to John R. Christensen, Field Manager, Bureau of Land Management, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401. Comments, including names and street addresses of respondents, will be available for public review at the Kingman Field Office during regular business hours, (7:45 a.m. to 4:30 p.m.) Monday through Friday, except legal holidays, and may be published as part of the EA. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Joyce Cook, Realty Specialist, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona, 86401, telephone (928) 692–4428.

SUPPLEMENTARY INFORMATION: The Kingman Resource Management Plan (RMP), approved in 1995, identified land for R&PP uses, *i.e.* churches, schools, parks, fire departments, etc., with a caveat that non-conforming uses may be considered on a case-by-case basis. A shooting range is considered, by most, to be a non-conforming use. A previously proposed location for this action was met with opposition based on its proximity to residential development. Planning criteria include those identified for R&PP in the RMP and project specific criteria developed to aid in location of the shooting range on public land and determine suitability for classification for disposal through R&PP. Other criteria may be developed through public input. The amendment would consider whether restrictions on uses or activities, such as case-by-case approvals, would be needed to ensure public safety within the buffer area. The remainder of public land, not identified above, will continue to be managed as provided for in the approved RMP and actions in the vicinity of the shooting range would be considered on a case-by-

case basis to determine effects to or from the shooting range.

Comments should be written and apply to one or more of the following aspects:

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application, proposed action and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a shooting range. Copies of the application, proposed action and plan of development are available from the BLM address or contact listed above.

Amendment Comments: Interested parties may submit comments regarding the project planning criteria used to determine a location on public lands or provide additional criteria for consideration. Copies of the criteria for this project are available from the BLM address or contact listed above.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a shooting range. Comments on the classification should be limited to whether the land is physically suited for a shooting range, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Following the public open house and end of the period to receive comments, an Environmental Assessment (EA) will be prepared by an interdisciplinary team consisting of BLM and AG&FD personnel to determine the impacts of the proposed plan amendment and classification for disposal.

It is anticipated that the following issues will be analyzed in the EA: Noise, Drainage, Lead Contamination, Visual, Wildlife particularly Desert Tortoise, Mineral Ownership, Safety, Socio-Economics, Access, Cultural and Tribal Consultation.

Following the preparation of the EA there will be further public involvement opportunities to comment on the EA.

Dated: January 27, 2003.

Ruben A. Sanchez,

Acting Field Manager, Kingman Field Office.

[FR Doc. 03–7167 Filed 3–25–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ030–1020–00–241A; AZA 31791]

Notice of Realty Action Recreation and Public Purposes (R&PP) Act Classification

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Mohave County, Arizona have been examined and found suitable for classification for lease or conveyance to Mohave County Board of Supervisors under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Mohave County Board of Supervisors proposes to use the lands for a Maintenance Yard.

Gila and Salt River Meridian, Mohave County, Arizona

Township 21 N., R. 18 W., Sec 8, NE¼NW¼NW¼.

Comprising 1.5 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. The lease/patent, when issued, will be subject to the following terms, conditions, and reservations.

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for road purposes granted to the Mohave County Board of Supervisors by permit number AZA–17931.

5. Subject to other valid existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purpose Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the land to the Kingman Field Manager, 2475 Beverly Avenue, Kingman, Arizona 86401. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: January 29, 2003.

John R. Christensen,

Field Manager.

[FR Doc. 03–7168 Filed 3–25–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–01–1430–EU: CACA–43380]

Notice of Realty Action, Noncompetitive Sale of Public Lands in Siskiyou County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation and sale of public land.

SUMMARY: The following public lands have been found suitable for direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value of $20,000.00. The land will not be offered for sale until at least 60 days after the date of this notice.

Mount Diablo Meridian

T.47N., R.1W.,
Section 14, Lot 3.
Containing 30.14 Acres more or less.

DATES: Submit comments on or before May 12, 2003.

FOR FURTHER INFORMATION CONTACT: Howard Matzat at the Bureau of Land Management, 355 Hemsted Dr., Redding, CA 96002, phone (530) 224–2100. The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale for state purposes to the State of California, consistent with 43 CFR 2711.3–3(a)(1). It has been determined that the public lands contain no mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for the conveyance of the mineral estate. The land is not needed for Federal purposes.

Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions and reservations:

1. A right-of-way for ditches and canals constructed by the authority of the United States.

2. Valid existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Redding Field Office, 355 Hemsted Dr., Redding, California, 96002.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit written comments regarding the proposed sale to Charles M. Schultz, Field Office Manager, Redding Field Office, Bureau of Land Management, 355 Hemsted Dr., Redding, CA 96002. In the absence of timely objections, this proposal shall become the final determination of the Department of Interior.

Dated: February 7, 2003.

Duane Marti,

Acting Chief, Branch of Lands Management (CA–930).

[FR Doc. 03–7165 Filed 3–25–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–EU]

Notice of Realty Action: Competitive Sale of Public Lands In Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: The following lands have been designated for disposal under Public Law 105–263, the Southern Nevada Public Land Management Act of 1998 (112 Stat.2343). They will be sold competitively in accordance with section 203 and section 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719) at not less than the appraised fair market value (FMV).

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 30, W½SE¼NE¼NE¼;
Sec. 32, SE¼NW¼NW¼SE¼, NE¼SW¼NW¼SE¼.
T. 20 S., R. 60 E.,
Sec. 6, W½NE¼NW¼SE¼.
T. 22 S., R. 60 E.,
Sec. 12, E½SW¼SE¼NE¼, SW¼SE¼SE¼NE¼;
Sec. 13, SW¼SE¼SW¼NW¼;
Sec. 15, W½NW¼SW¼NE¼, E½NE¼SE¼NW¼;
Sec. 18, E½SW¼SE¼SW¼;
Sec. 20, NW¼NE¼NE¼NE¼, S½NE¼NE¼NE¼, W½NW¼NE¼NE¼, S½SW¼NE¼NE¼, N½SE¼NE¼NE¼, S½NE¼NW¼NE¼, SE¼NW¼NW¼NE¼, E½SE¼NW¼NE¼, N½SW¼NW¼NE¼, NW¼SE¼NW¼NE¼, NE¼NE¼SW¼NE¼, N½NW¼SW¼NE¼, N½NE¼SE¼NE¼, NW¼NW¼SE¼NE¼, SW¼SW¼NE¼NW¼, SE¼SE¼NE¼NW¼, N½NE¼NW¼NW¼, SW¼NE¼NW¼NW¼, NE¼SE¼NW¼NW¼, NE¼NW¼SW¼NW¼, E½NE¼SE¼NW¼, NW¼NE¼SE¼NW¼, NW¼NE¼SW¼NW¼, N½NW¼SE¼NW¼;
Sec. 21, NE¼NW¼SE¼NE¼, NW¼NE¼SE¼NE¼;
Sec. 22, N½NE¼NE¼NE¼, SE¼NE¼NE¼NE¼, SW¼NW¼SW¼NW¼, N½SW¼SW¼NW¼;
Sec. 23, SE¼NE¼SW¼NW¼, SE¼NW¼SW¼NW¼, NE¼SW¼SW¼NW¼, S½SW¼SW¼NW¼, N½SE¼SW¼NW¼, NW¼NE¼SW¼SW¼, N½NW¼SW¼SW¼, SW¼NW¼SW¼SW¼, NW¼SW¼SW¼SW¼;
Sec. 24, NE¼NW¼SW¼NE¼;
Sec. 26, E½NE¼NW¼NW¼, NW¼NE¼NW¼NW¼, N½SW¼NE¼NW¼NW¼.
T. 22 S., R. 61 E.,
Sec. 29, SE¼SW¼SW¼SW¼, NE¼SW¼SW¼SW¼, NW¼SE¼SW¼SW¼, SW¼NW¼SW¼SW¼, SE¼NW¼SW¼SW¼, NE¼NW¼SW¼SW¼;
Sec. 33, Lot 68;
T. 23 S., R. 61 E.,
Sec. 5, Lots 5, 8, S½SE¼NW¼NE¼.
T. 21 S., R. 62 E.,
Sec. 28, E½SW¼SE¼SW¼, W½SE¼SE¼SW¼.

Assembled Parcels: Mount Diablo Meridian, Nevada

T. 19 S., R. 59 E.,
Sec. 13, W½NW¼NE¼NE¼, E½NE¼NW¼NE¼, W½NE¼NW¼NE¼, E½NW¼NW¼NE¼, W½NW¼NW¼NE¼, E½SW¼NW¼NE¼, W½SW¼NW¼NE¼, E½NE¼SW¼NE¼, E½NW¼SW¼NE¼, W½NW¼SW¼NE¼, E½SW¼SW¼NE¼, W½SW¼SW¼NE¼, E½SE¼SW¼NE¼, W½SE¼SW¼NE¼, E½NE¼NW¼SW¼, W½NE¼NW¼SW¼, E½NW¼NW¼SW¼, W½NW¼NW¼SW¼, E½SW¼NW¼SW¼, W½SW¼NW¼SW¼, E½SE¼NW¼SW¼, W½SE¼NW¼SW¼, E½NE¼NE¼SW¼, W½NE¼NE¼SW¼, E½NW¼NE¼SW¼, W½NW¼NE¼SW¼, E½SW¼NE¼SW¼, W½SW¼NE¼SW¼, E½SE¼NE¼SW¼, W½SE¼NE¼SW¼, E½NE¼NW¼SW¼, W½NE¼NW¼SW¼, E½NW¼NW¼SW¼, W½NW¼NW¼SW¼, E½SW¼NW¼SW¼, W½SW¼NW¼SW¼, E½SE¼NW¼SW¼, W½SE¼NW¼SW¼, E½NE¼NE¼SW¼, W½NE¼NE¼SW¼, E½NW¼NE¼SW¼, W½NW¼NE¼SW¼, E½SW¼NE¼SW¼, W½SW¼NE¼SW¼, E½SE¼NE¼SW¼, W½SE¼NE¼SW¼, E½NE¼NW¼SW¼, W½NE¼NW¼SW¼, E½NW¼NW¼SW¼, W½NW¼NW¼SW¼, E½SW¼NW¼SW¼, W½SW¼NW¼SW¼, E½SE¼NW¼SW¼, W½SE¼NW¼SW¼, E½NE¼NE¼SW¼, W½NE¼NE¼SW¼, E½NW¼NE¼SW¼, W½NW¼NE¼SW¼, E½SW¼NE¼SW¼, W½SW¼NE¼SW¼, E½SE¼NE¼SW¼, W½SE¼NE¼SW¼, E½NE¼NW¼SW¼, W½NE¼NW¼SW¼, E½NW¼NW¼SW¼, W½NW¼NW¼SW¼, E½SW¼NW¼SW¼, W½SW¼NW¼SW¼, E½SE¼NW¼SW¼, W½SE¼NW¼SW¼, E½NE¼NE¼SW¼, W½NE¼NE¼SW¼, E½NW¼NE¼SW¼, W½NW¼NE¼SW¼, E½SW¼NE¼SW¼, W½SW¼NE¼SW¼, E½SE¼NE¼SW¼, W½SE¼NE¼SW¼, E½NE¼NW¼SW¼, W½NE¼NW¼SW¼, E½NW¼NW¼SW¼, W½NW¼NW¼SW¼, E½SW¼NW¼SW¼, W½SW¼NW¼SW¼, E½SE¼NW¼SW¼, W½SE¼NW¼SW¼, E½NE¼NE¼SW¼, W½NE¼NE¼SW¼, E½NW¼NE¼SW¼, W½NW¼NE¼SW¼, E½SW¼NE¼SW¼, W½SW¼NE¼SW¼, E½SE¼NE¼SW¼, W½SE¼NE¼SW¼, E½NE¼NW¼SW¼, W½NE¼NW¼SW¼, E½NW¼NW¼SW¼, W½NW¼NW¼SW¼, E½SW¼NW¼SW¼, W½SW¼NW¼SW¼, E½SE¼NW¼SW¼, W½SE¼NW¼SW¼, E½NE¼NE¼SW¼, W½NE¼NE¼SW¼, E½NW¼NE¼SW¼, W½NW¼NE¼SW¼, E½SW¼NE¼SW¼, W½SW¼NE¼SW¼, E½SE¼NE¼SW¼, W½SE¼NE¼SW¼, E½NE¼NW¼SW¼, W½NE¼NW¼SW¼, E½NW¼NW¼SW¼, W½NW¼NW¼SW¼, E½SW¼NW¼SW¼, W½SW¼NW¼SW¼, E½SE¼NW¼SW¼, W½SE¼NW¼SW¼, E½NE¼NE¼SW¼, W½NE¼NE¼SW¼, E½NW¼NE¼SW¼, W½NW¼NE¼SW¼, E½SW¼NE¼SW¼, W½SW¼NE¼SW¼, E½SE¼NE¼SW¼, W½SE¼NE¼SW¼, E½NE¼NW¼SW¼, W½NE¼NW¼SW¼, E½NW¼NW¼SW¼, W½NW¼NW¼SW¼, E½SW¼NW¼SW¼, W½SW¼NW¼SW¼, E½SE¼NW¼SW¼, W½SE¼NW¼SW¼, E½NE¼NW¼SW¼,

W½NE¼NW¼SW¼,
W½NW¼NW¼SW¼,
W½SW¼NW¼SW¼,
W½NW¼SE¼SW¼,
E½NW¼SW¼SW¼,
W½SW¼SW¼SW¼,
E½SE¼SW¼SW¼;
T. 22 S., R. 60 E.,
Sec. 22, NW¼NE¼NE¼NW¼,
SE¼NW¼NW¼NW¼,
SW¼NE¼NW¼NW¼,
W½SE¼NW¼NW¼,
S½NW¼NE¼NW¼,
NW¼SW¼NE¼NW¼;
Sec. 23, NW¼NW¼NW¼,
NE¼NW¼NW¼,
NW¼SW¼NW¼NW¼,
NW¼SE¼NW¼NW¼,
NW¼SW¼NE¼NW¼,
E½SW¼NE¼NW¼,
NW¼SE¼NE¼NW¼,
SE¼SW¼NW¾NW¼,
NW¼NW¼SW¼NW¼;
Sec. 24, N½NW¼NW¼SW¼,
NW¼NE¼NW¼SW¼,
NW¼NW¼NE¼SW¼,
SE¼NW¼NE¼SW¼,
W½NE¼NE¼SW¼,
NW¼NW¼SW¼SW¼,
SW¼NE¼SE¼SW¼,
N½SW¼SE¼SW¼,
SE¼SW¼SE¼SW¼,
N½SE¼SE¼SW¼,
SW¼SE¼SE¼SW¼,
E½SW¼SW¼SW¼,
NW¼SE¼SW¼SW¼,
SE¼SE¼SW¼SW¼,
NW¼SW¼NW¾SW¼,
SE¼NE¼NW¼SW¼,
N½NE¼SW¼SW¼,
W½SW¼NE¼SW¼,
SE¼SW¼NE¼SW¼,
SW¼SE¼NE¼SW¼;
Sec. 25, W½NW¼NW¼NW¼,
NW¼NE¼NW¼NW¼,
S½NE¼NW¼NW¼,
NE¼SW¼NW¼NW¼,
SW¼SW¼NW¼NW¼,
NW¼NW¼SW¼NW¼,
SW¼SW¼NE¼NW¼,
NW¼NW¼SE¼NW¼,
NE¼SW¼SW¼NW¼,
W½NE¼SW¼NW¼,
SW¼SW¼SW¼NW¼,
S½SW¼NW¼SW¼,
W½SE¼NW¼SW¼,
SE¼NE¼NW¼SW¼,
W½NE¼NE¼SW¼,
NE¼NE¼NE¼SW¼,
SW¼SE¼NE¼SW¼,
NW¼NW¼SW¼SW¼,
NW¼NE¼SW¼SW¼,
SE¼NW¼SW¼SW¼,
N½SE¼SW¼SW¼,
NW¼NE¼SE¼SW¼,
SE¼NW¼SE¼SW¼,
NE¼SW¼SE¼SW¼, NW¼NW¼SE¼,
NE¼SW¼NW¼SE¼,
W½NE¼NW¼SE¼,
NE¼NE¼NW¼SE¼,
NW¼NW¼NE¼SE¼,
E½NW¼NE¼SE¼, E½NE¼SE¼,
NW¼SE¼SE¼, W½NE¼SE¼SE¼,
NE¼NE¼SE¼SE¼,
SE¼NW¼SW¼SW¼,
SE¼SW¼SW¼SW¼,
SE¼SE¼SE¼SW¼,
NE¼NW¼NW¼NE¼,
NE¼NE¼NW¼NE¼,
NW¼NW¼NE¼NE¼, SE¼NE¼NE¼,
NW¼NE¼SE¼NE¼,
SE¼NW¼NE¼NE¼,
NE¼NE¼NE¼NW¼,
NE¼SW¼NE¼NW¼,
N½SW¼NW¼NE¼,
SW¼NE¼NW¼NE¼,
W½SE¼NW¼NE¼,
W½NW¼SE¼NE¼,
SE¼NW¼SE¼NE¼,
W½SW¼SE¼NE¼,
SE¼NE¼SE¼NE¼,
NW¼SE¼SE¼NE¼,
E½SE¼NW¼SE¼,
NW¼SW¼NE¼SE¼, NW¼SW¼SE¼,
W½NE¼SW¼SE¼,
NW¼SW¼SW¼SE¼,
E½SW¼SW¼SE¼, S½SE¼SW¼SE¼,
SE¼SW¼SE¼SE¼,
SW¼SE¼SE¼SE¼.

Consisting of 1,103.76 acres, gross.

In addition to the lands described herein, parcels that have been published in a previous Notice of Realty Action (NORA), and were previously offered but did not sell, may be re-offered at this sale.

When the land is sold, conveyance of the locatable mineral interests will occur simultaneously with the sale of the land. The locatable mineral interests being offered have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50.00 non-refundable filing fee for processing the conveyance of the locatable mineral interests.

The terms and conditions applicable to the sale are as follows:

All Parcels are Subject to the Following

1. All leaseable and saleable mineral deposits are reserved on land sold; permittees, licensees, and lessees retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. All land parcels are subject to all valid existing rights. Parcels may also be subject to applications received prior to publication of this Notice if processing the application would have no adverse affect on the appraised FMV. Encumbrances of record are available for review during business hours, 7:30 a.m. to 4:15 p.m., PDT, Monday through Friday, at the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV.

4. All land parcels are subject to reservations for roads, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, state, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by Federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Maps delineating the individual sale parcels will be available for public review at the BLM Las Vegas Field Office. Appraisals for each parcel will be available for public review at the Las Vegas Field Office on or about April 7, 2003.

Each parcel will be offered by sealed bid, and at oral auction. All sealed bids must be received at the BLM Las Vegas Field Office (LVFO), 4701 N. Torrey Pines Drive, Las Vegas, NV 89130, no later than 4:15 p.m., PDT, June 3, 2003. Sealed bid envelopes must be marked on the lower front left corner with the parcel number and sale date. Bids must be for not less than the appraised FMV and a separate bid must be submitted for each parcel.

Each sealed bid shall be accompanied by a certified check, money order, bank draft, or cashier's check made payable to the Bureau of Land Management, for not less than 10 percent of the amount bid.

The highest qualified sealed bid for each parcel will become the starting bid for oral bidding. If no sealed bids are received, oral bidding will begin at the appraised FMV.

All parcels will be offered for competitive sale by oral auction beginning at 10 a.m. PDT, June 5, 2003, at the Clark County Commission Chambers, Clark County Government Center, 500 S. Grand Central Parkway, LasVegas, Nevada. Registration for oral bidding will begin at 8:30.a.m. the day of sale and will continue throughout the auction. All oral bidders are required to register.

The highest qualifying bid for any parcel, whether sealed or oral, will be declared the high bid. The apparent high bidder, if an oral bidder, must submit the required bid deposit immediately following the close of the sale in the form of cash, personal check, bank draft, cashiers check, money order or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid. If not paid by close of the auction, funds must be delivered no later than 4:15 p.m. the day of the sale to the BLM Las Vegas Field Office. Should the apparent high bidder for parcels N–76401 and N–76406 default, the next high bidder for those parcels will be declared the apparent high bidder.

The remainder of the full bid price, whether sealed or oral, must be paid within 180 calendar days of the sale date. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM.

Unsold parcels, with the exception of parcels N–76401 and N–76406, may be offered on the Internet. Internet auction procedures will be available at *www.auctionrp.com*. If unsold on the Internet, parcels may be offered at future auctions without additional legal notice. Upon publication of this notice and until the completion of the sale, the BLM is no longer accepting land use applications affecting any parcel being offered for sale, including parcels being offered for sale that have been published in a previous Notice of Realty Action. However, land use applications may be considered after the completion of the sale within parcels that are not sold through sealed, oral, or on-line Internet auction procedures.

Federal law requires bidders to be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity including, but not limited to, associations or partnerships capable of holding property or interests therein under the laws of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit.

In order to determine the fair market value of the subject public lands through appraisal, certain assumptions have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale, and conveyance of the subject lands will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, planning and environmental documents is available for review at the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130, or by calling (702) 515–5114. This information will also be available on the Internet at *http://propertydisposal.gsa.gov*. Click on NV for Nevada. It will also be available on the Internet at *http://www.nv.blm.gov*. Click on Southern Nevada Public Land Management Act.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, the general public and interested parties may submit comments to the Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from the sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws or is determined to not be in the public interest. Any comments received during this process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish to have your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentor's request to have their name and/or address withheld from public release will be honored to the extent permissible by law.

Lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mark T. Morse,

Field Manager.

[FR Doc. 03–7162 Filed 3–25–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–025–02–1430–EU: GP0–0086]

Realty Action: Direct Sale of Public Land in Harney County, OR

AGENCY: Bureau of Land Management (BLM), Burns District.

ACTION: Notice of Realty Action, Direct Sale of Public Land, OR–56570.

SUMMARY: The following described public land in Harney County, Oregon, has been examined and found suitable

for sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719), at not less than the appraised market value:

Willamette Meridian

T. 20 S., R. 36 E.,
sec. 3, W½NW¼SW¼NW¼,
S½SW¼NW¼.

The area described contains 25 acres, more or less in Harney County, Oregon. The appraised market value for this parcel has been determined to be $5000.

This land is being considered for direct sale to the adjacent landowners, Tom and Kathleen Turner, to resolve a long-term, inadvertent, unauthorized occupancy of the public land. The encroachment involves outbuildings, fences, equipment storage, and other uses associated with the adjacent Turner Ranch headquarters that were inadvertently placed on public land many years ago prior to the Turner's ownership of the ranch. The parcel is the minimum size possible to ensure that all of the encroachments are included while utilizing an aliquot part description to avoid the need for an expensive land survey.

In accordance with 43 CFR 2710.0–6(c)(3)(iii) direct sale procedures are appropriate to resolve an inadvertent unauthorized occupancy of the land and to protect existing equities in the land.

The Turners will be allowed 30 days from receipt of a written offer to submit a deposit of at least 20 percent of the appraised market value of the parcel, plus administrative costs and 180 days thereafter to submit the balance. Federal regulations describe procedures to address unauthorized use which include provisions to reimburse BLM for administrative costs.

The following rights, reservations, and conditions will be included in the patent conveying the land:

1. A reservation to the United States for a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. A right-of-way for buried communication cable purposes granted to CenturyTel of Oregon, Inc., its successors or assigns, by right-of-way No. OR 54973, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

3. A right-of-way for public road and highway purposes granted to Harney County, its successors or assigns, by right-of-way No. OR 57062, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761), as amended.

The patent would also include a notice and indemnification statement under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9620) holding the United States harmless from any release of hazardous materials that may have occurred as a result of the unauthorized use of the property by other parties.

A successful bid constitutes an application for conveyance of the mineral interests also being offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976. In addition to the full purchase price, a nonrefundable fee of $50 will be required from the prospective purchaser for purchase of the mineral interests to be conveyed simultaneously with the sale of the land.

The land described is segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

DATES: This office has prepared Documentation of Land Use Plan Conformance and National Environmental Policy Act Adequacy to evaluate the proposal. On or before 45 days from the date of publication in the **Federal Register** interested persons may submit written comments. In the absence of any objections, this proposal will become the determination of the Department of the Interior.

ADDRESSES: Written comments should be submitted to the Joan Suther, Three Rivers Resource Area Field Manager, 28910 Hwy 20 West, Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this land sale is available from Skip Renchler, Realty Specialist at the above address, phone (541) 573–4443.

Dated: February 12, 2003.

Joan M. Suther,

Three Rivers Resource Area Field Manager.

[FR Doc. 03–7169 Filed 3–25–03; 8:45 am]
BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–116–2822–JL–P124, OR–116–2822–JL–P158; HAG03–0076]

Temporary Road Closure and Supplementary Rules for Public Lands in Jackson County, Oregon

AGENCY: Medford District Office, Bureau of Land Management, Interior.

ACTION: Closure and Interim Final Supplementary Rules.

SUMMARY: The Bureau of Land Management (BLM) is publishing this closure notice and these interim final supplementary rules regulating motorized and mechanized vehicle use on specific public lands in Jackson County, Oregon. These public lands are within and in the immediate vicinity of the recent fire areas labeled the Squires Peak Fire and the East Antelope Fire. This action is necessary for public safety and to protect fire-damaged watersheds from further degradation.

DATES: The closures and interim final supplementary rules will be effective from March 26, 2003, until June 30, 2006, unless rescinded before that date. You may comment on the closures and interim final supplementary rules. You must submit your comments to BLM at the appropriate address below on or before May 27, 2003. BLM will not necessarily consider any comments received after the above date in making its decisions on the final supplementary rules.

ADDRESSES: Mail or personal delivery: Field Office Manager, Ashland Field Office, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504. Email response: *jhoppe@or.blm.gov.*

FOR FURTHER INFORMATION CONTACT: John Samuelson, Ashland Field Office, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504 or telephone 541–618–2313. Persons who use a telecommunications device for the deaf (TDD) may contact this individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION

I. Public Comment Procedures

II. Background

III. Discussion of Interim Final Supplementary Rules

IV. Procedural Matters

I. Public Comment Procedures

A. How do I comment on the interim final rule?

If you wish to comment, you may submit your comments by any one of several methods.

(1) You may mail comments to: Field Office Manager, Ashland Field Office, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504.

(2) You may deliver comments to: Field Office Manager, Ashland Field Office, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504.

(3) You may email comments to: *jhoppe@or.blm.gov.*

If you do not receive a confirmation that we have received your electronic message, contact us directly at 541–523–1256.

Please make your comments on the supplementary rules as specific as possible, confine them to issues pertinent to the rules, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the supplementary rules that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final supplementary rules comments that BLM receives after May 27, 2003 or comments delivered to an address other than those listed above.

B. May I Review Comments Submitted By Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES:** Mail or personal delivery" during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Background

Notice is hereby given that all motorized and mechanized travel is prohibited on roads, trails, and public lands in two areas recently burned by wildfires. The two areas are: the Squires Peak Fire and the East Antelope Fire. The Squires Peak Fire area is located southwest of Medford, Oregon, in Jackson County. The East Antelope Fire area is located northeast of Ashland, Oregon, also in Jackson County. This action is necessary to insure public safety and to prevent additional resource damage while restoration and rehabilitation activities proceed in the two affected areas.

This rule includes the following roads and public lands within the perimeter of the Squires Peak Fire:

All public lands within the fire perimeter are located in Section 31, T. 38 S., R. 2 W., Sections 35 and 36, T. 38 S., R. 3 W., Sections 5, 6, 7, and 8, T. 39 S., R. 2 W., and Sections 1 and 2, T.39 S., R. 3 W., Willamette Meridian. BLM roads closed are as follows: #39–3–3.0, #39–2–7.1, #38–3–26.2, #38–2–31.0, and #38–2–31.1 including those portions outside of the fire perimeter. BLM roads remaining open include: #38–3–26.1 and #28–2–29.0. This area is further designated on the Map titled "Squires Peak Fire Restricted Area", prepared by the Bureau of Land Management and dated January 31, 2003.

The rule also includes all public lands within the fire perimeter of the East Antelope Fire: These lands are within the fire perimeter as located in Sections 12, 13, and 24, T. 38 S., R. 1 E., and Sections 7, 17, 18, and 19, T. 38 S., R. 2 E., Willamette Meridian. This area is further designated on the Map titled "East Antelope Fire Restricted Area", prepared by the BLM and dated January 31, 2003.

III. Discussion of Rule

Why is this rule being published as interim final?

We are making these closures effective immediately because significant health and safety risks to the public and danger of further damage to fire-damaged and fragile resources require immediate action. The significant loss of ground cover and vegetation in these fire areas has caused accelerated erosion and potential dangers from water run-off and subsequent instability of existing roads, trails, and cross country routes. The BLM needs to take immediate and aggressive action to stop man-caused damage and to begin stabilizing the fire areas.

Because of the immediate and ongoing hazards to the public's health and safety and because of the need to protect natural resources, we find good cause to publish these rules as interim final, effective March 26, 2003, and allowing 60 days for public comment.

IV. Procedural Matters

The principal author of this interim final rule is Richard Drehobl, assisted by John Samuelson of the Ashland Resource Area, Medford District Office, BLM.

Regulatory Planning and Review (E.O. 12866)

This rule is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

The supplementary rules will not affect legal commercial activity, but contain rules of conduct for public use of a limited selection of public lands.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The supplementary rules will not affect legal commercial activity, but contain rules of conduct for public use of a limited selection of public lands.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- Does not have an annual effect on the economy of $100 million or more. (*See* the discussion under Regulatory Planning and Review, above.)
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. (*See* the discussion above under the Regulatory Flexibility Act.)
- Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The closures and supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year. They do not have a significant or unique effect on state, local, or tribal governments or the private sector. The closures and rules have no effect on governmental or tribal entities. A statement containing the information required by the Unfunded Mandates

Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, we find that the closures and supplementary rules do not have significant takings implications. The enforcement provision interim final does not include any language requiring or authorizing forfeiture of personal property or any property rights. E.O. 12630 addresses concerns based on the Fifth Amendment dealing with private property taken for public use without compensation. The two fire areas are both on public land managed by the Bureau of Land Management, and any owners of private inholdings are specifically excluded from the effect of the closures and rules. Therefore no private property is affected. A takings implications assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we find that the closures and supplementary rules do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The closures and rules do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The rules do not preempt state law.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with Executive Order 13175, we have found that this final rule would not include policies that have tribal implications. The rule would not affect lands held for the benefit of Indians, Aleuts, and Eskimos.

Paperwork Reduction Act

The closures and supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The closures and supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required. [EA prepared?? need to refer to it]

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the interim final rule? What else could we do to make the interim final rule easier to understand?

If you have any comments that concern how we could make this rule easier to understand, in addition to sending the original to the address shown in **ADDRESSES**, above, please send a copy to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: Execsec@ios.doi.gov.

The authority for these closures and supplementary rules is found in Authority: 43 U.S.C. 1733; 43 CFR 8364.1; and 43 CFR 8365.1–6.

Sec. 1 Prohibited acts.

a. *Prohibited acts.* Within the closed area you must not:

1. Operate any motorized vehicle.

2. Operate any mechanized vehicle.

b. *Exemptions.* The following are exempt from prosecution under the prohibited acts:

1. Any person operating a motorized vehicle on a publicly maintained State or County road;

2. Any Federal, state or local officers or employees or contractor in the scope of their duties;

3. Members of any organized rescue or fire-fighting force in the performance of official duty;

4. Any private landowners owning property within the fire perimeters and exercising rights of ingress/egress to that property using existing roads; and

5. Any person authorized in writing by BLM.

Sec. 2 Penalties.

On public lands, under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7, any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: February 12, 2003.

Elaine M. Brong,

Oregon State Director.

[FR Doc. 03–7170 Filed 3–25–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–085–03–1430–AA]

Implementation of Off Highway Vehicle (OHV) Management, Upper Columbia-Salmon Clearwater District, ID

AGENCY: Bureau of Land Management, Upper Columbia-Salmon Clearwater District, Idaho, Interior

ACTION: Implementation of Off Highway Vehicle (OHV) management for the Salmon Field Office, Upper Columbia-Salmon Clearwater District, BLM.

SUMMARY: In a **Federal Register** notice dated February 25, 2000, the Salmon Field Office notified the public of the BLM's intent to amend the Lemhi Resource Management Plan (RMP) (BLM 1987) to address several management concerns, including the need for Additional guidance for management of resources, values, and uses on public lands within the (Lewis and Clark National Historic) Trail corridor and its surrounding area, and for other areas where visitor use is increasing substantially." This concern has been addressed through amended off-highway vehicle use (OHV) designations for the approximately 594,837-acre Salmon Field Office area, as well as other management decisions. The Lemhi RMP amendment was approved by the Idaho State Director on August 29, 2001. As stated in 43 CFR 8342.2(b), that approval constituted the formal designation of off-highway vehicle use areas for the Salmon Field Office area. This Notice is published in compliance with 43 CFR 8364.1 Closure and restriction orders. Additional efforts to inform the public of the changes in OHV designations will be made during the next six to twelve months as the Salmon Field Office holds informational meetings, prepares and distributes a Travel Map, installs signs identifying the restricted or closed areas, and contacts public land visitors via the media and in the field.

Changes in OHV designations were primarily made to address existing or potential future impacts to cultural, historic, and scenic resources; fisheries and wildlife habitat; undeveloped and non-motorized recreational opportunities; and native vegetation in the Salmon Field Office area. These designations were developed based on public and tribal input and an environmental analysis of various management alternatives. This closure and restriction order supersedes the OHV designation and closure notices published in the **Federal Register** by the Salmon District Office on September 5, 1986; September 29, 1987; and April 24, 1989.

FOR FURTHER INFORMATION CONTACT: For further information about the amended OHV designations or to obtain a copy of the RMP amendment (which includes maps of the OHV designations), please contact Michael Liner, Outdoor Recreation Planner, by phone at (208) 756–5466, by e-mail at Michael_Liner@blm.gov, or by mail at the Bureau of Land Management, 50 Highway 93 South, Salmon, Idaho 83467.

SUPPLEMENTARY INFORMATION: The majority (about 96.5%) of public lands administered by the Salmon Field Office now have an OHV designation of "limited," which means that motorized vehicle travel within specified areas and/or on designated routes, roads, vehicle ways, or trails is subject to restrictions. The remaining public lands (approximately 3.5%) are designated "closed"; *i.e.*, motorized vehicle travel is prohibited in those areas.

Exceptions for Off-road Vehicle Use—Excluding the Eighteenmile Wilderness Study Area (WSA), located about 15 miles southeast of Leadore, Idaho (see point "(1)" of the Limited and Closed Designation Areas in the following two paragraphs), temporary exceptions to the OHV limitations and closures for the Salmon Field Office area may be authorized for any military, fire, emergency, or law enforcement vehicle while it is being used for emergency purposes, any vehicle in official use, and any vehicle whose use is expressly authorized in writing by the authorized officer.

The following additional exceptions for off-road travel may apply in "Limited" Designation Areas; vehicle use may be allowed:

(a) Within 300 feet of existing roads, vehicle ways, or trails for direct access to campsites, to retrieve downed big game, or to harvest forest products;

(b) Immediately adjacent to existing roads, vehicle ways, and trails for purposes such as parking, turning around, or passing another vehicle;

(c) If the vehicle weighs 1,500 pounds or less gross vehicle weight and is traveling on at least six inches of continuous snow cover; and

(d) Snowmobiles on groomed trails only.

These exceptions (a) through (d) are referenced in the "Limited Designation Areas" section below when they pertain to a given limitation.

"Closed" Designation Areas—The areas designated "closed" to OHV use are as follows. (1) The portion of the Eighteenmile WSA recommended to Congress as suitable for wilderness designation (14,796 acres) is closed to OHV use to maintain the area's suitability for wilderness designation. Temporary exceptions for OHV use are allowed in emergencies and search and rescue operations, for official purposes by the BLM and other Federal, State, and local agencies, and to build or maintain structures or installations, as provided for in the Interim Management Policy and Guidelines for Lands Under Wilderness Review (BLM 1995). (2) The 236-acre Trail Creek Area of Critical Environmental Concern (ACEC), located approximately 12 miles west of Lemhi, Idaho, is closed to OHV use to preserve the unroaded old growth forest and riparian habitat and provide additional protection to high quality elk habitat. (3) About 1,200 acres on the hillside above the Chief Tendoy Cemetery (located about 20 miles southeast of Salmon, Idaho) are closed to OHV use for safety reasons (the area is extremely steep and hazardous). (4) Approximately 1,080 acres in the Birch Creek Springs area located about 35 miles south of Leadore, Idaho, are closed to OHV use to protect the unique wetland, riparian, and vegetative resources of the area.

"Limited" Designation Areas—Specific restrictions within "limited" designation areas are as follows. (1) OHV travel within the portion of the Eighteenmile WSA recommended to Congress as "non suitable" for wilderness designation (10,126 acres) is limited yearlong to one designated route along the northwestern boundary (the Powderhorn Gulch Road) to allow some motorized access to the WSA while still protecting the WSA's suitability for wilderness designation (exception (b) applies). Temporary exceptions for OHV use off of this route are allowed in emergencies and search and rescue operations, for official purposes by the BLM and other Federal, State, and local agencies, and to build or maintain structures or installations, as provided for in the Interim Management Policy and Guidelines for Lands Under Wilderness Review (BLM 1995). (2) OHV use within the Continental Divide National Scenic Trail Special Recreation Management Area (SRMA) (about 4,600 acres located along the eastern boundary of the Field Office area) is limited to designated routes to reduce conflicts between motorized and non-motorized recreation opportunities within the SRMA and to provide habitat security for wintering big game. The following designated routes may be used yearlong: The portion of the Divide Road beginning about six miles south of Lemhi Pass, the Copper Queen Road, the Cow/Yearian Divide Ridge Road, the two branches of the Reese Creek Road, the Reese/Peterson Divide Ridge Road, the Whiskey Springs Ridge Road east of State Highway 29, and the "spur" road off the Whiskey Springs Ridge Road (exceptions (a), (b), and (c) apply). A northern section of the Divide Road (beginning at the Copper Queen Road intersection and continuing about four miles to the Cow/Yearian hydrologic divide) and two spur roads off the Divide Road may be traveled seasonally, from May 1 through December 15 (exceptions (a), (b), and (d) apply). (3) OHV travel within the Chief Tendoy Cemetery is limited yearlong to the designated route to the monument (no exceptions for off-road travel) to ensure protection of the Cemetery and associated Native American burials. This 40-acre parcel in T19N, R24E, B.M.

Section 28: NE¼ SW¼ was reserved for an Indian Cemetery by a Secretarial decree on October 1, 1907. (4) OHV travel within the Lewis and Clark National Historic Trail SRMA (three areas totaling approximately 31,014 acres) is limited to designated routes to protect the historic trail from ground disturbance and to maintain the natural and historical integrity of the trail area. In the River Bluffs area just north of Salmon, Idaho, OHV use is limited yearlong to the Recreation and Public Purposes Act lease site designated use areas (two areas totaling about 74 acres), the River Bluff Road, the Sagehen Flat Road, the Powerline Road, and the road that heads south from the Powerline Road toward Kirtley Creek (no exceptions for off-road use apply). (*Note:* The designated use areas within the Recreation and Public Purposes Act lease site are provided to be consistent with the lease stipulations.) OHV travel within the Agency Creek portion of the

SRMA is limited to the seasonal and yearlong routes listed in section (9) below (exceptions (a), (b), and (d) apply). OHV travel within the Tower Creek portion of the SRMA is limited to the seasonal and yearlong routes listed in section (10) below (exception (b) applies). (5) OHV travel within the 1,060-acre Sevenmile ACEC, located about seven miles south of Salmon, Idaho, is limited yearlong to two designated routes in the upper portion of the ACEC: The route which accesses the Sunset Heights Water District Spring and the route which accesses the upper portion of the Sevenmile watershed (exceptions (a) and (b) apply). This use limitation is implemented to help ensure public safety and resource protection in areas with steep slopes and highly erosive soils, while allowing motorized access in more stable areas.

(6) OHV use within the following recreation sites and use areas is limited to designated routes and use areas yearlong to ensure visitor safety and reduce conflicts between motorized and non-motorized recreation use (no exceptions for off-road use apply): The Shoup Bridge, Morgan Bar, Williams Lake, Tower Creek, Smokey Cubs, McFarland, and Agency Creek Recreation Sites, as well as several access points along the Salmon River: Eightmile River Access, Elevenmile River Access, Lime Creek Trailhead, and Kilpatrick River Access. (7) OHV use on about 29,599 acres in the Hayden, Basin, and Muddy creek areas west of Lemhi, Idaho, is limited to designated routes in order to address erosion concerns and the potential for sedimentation impacts to occupied threatened/endangered fish habitat (exceptions (a), (b), and (c) apply). The Hayden Creek Road and Basin Creek Road may be used by motorized vehicles yearlong. OHV use on the following designated routes is only allowed from June 16 to February 28: Muddy Creek Road, Colson Cutoff, Roostercomb Mountain Road, and several additional unnamed routes between Basin Creek and Muddy Creek. (8) No vehicle travel is allowed on the following roads constructed for previous timber sales, unless specifically authorized by the BLM: Baldy Basin, Sawmill Canyon, Birch Creek, and McDevitt Creek. These restrictions are implemented to reduce water quality impacts. (9) OHV use on about 25,904 acres in the Kenney, Pattee, and Agency creek drainages (located approximately 15 miles southeast of Salmon, Idaho) is limited to designated routes and/or closed seasonally (exceptions (a), (b), and (d) apply). These limitations are implemented to improve habitat security in big game winter range and to protect cultural and scenic resources in the Lewis and Clark Trail SRMA. Motorized travel is allowed yearlong on the Alkali Flat Road, Warm Springs Wood Road, Agency Creek Road, Divide Road (excepting about four miles beginning at the Copper Queen Road intersection south to the Cow/Yearian hydrologic divide), Copper Queen Road, and about four miles of the Pattee Creek Road. OHV use on several routes in the Agency, Pattee, and Warm Springs Creek drainages is only permitted from May 1 through December 15. The following route is designated for snowmobile use: The Divide Road from Lemhi Pass south to the Copper Queen Road to the Agency Creek Road. Vehicle travel is permitted on existing roads, vehicle ways, and trails from May 1 through December 15 on about 1,260 acres south of Kenney Creek and 2,325 acres south of the SRMA boundary (exceptions (a) and (b) apply); the remainder of the year these areas are closed to OHV use to protect wintering big game. (10) OHV use on about 5,192 acres in the Tower Creek area located about 11 miles north of Salmon, Idaho, is limited to designated routes to protect wildlife habitat and cultural and scenic resources along the Lewis and Clark National Historic Trail (exception (b) applies). Travel is allowed yearlong on the Kriley Gulch Road and Tower Creek Road. From May 1 through December 15, travel is also allowed on the ridge route (from U.S. Highway 93 to a point about 2.9 miles from the highway) and the route that bears west off the ridge route about 1.5 miles from the highway. (11) OHV use on about 7,805 acres in the Badger Springs area (located about seven miles north of Salmon, Idaho) is prohibited from December 16 through April 30 to protect big game winter habitat. The remainder of the year vehicle use is limited to existing roads, vehicle ways, and trails. (12) In the Henry Creek area (approximately 4,046 acres) located about nine miles south-southwest of Salmon, Idaho, OHV use is only allowed on existing roads, vehicle ways, and trails from April 11 through September 19; during this time, motorized access is limited to vehicles 48 inches in width or narrower (exception (b) applies). These limitations are implemented to address safety and erosion concerns. (13) OHV use on all remaining public lands not affected by the above limitations or closures (about 402,385 acres) is limited to the existing roads, vehicle ways, and trails visible on 1993–1994 aerial photos and/or 1992 digital orthophotos, as verified through on-the-ground review (exceptions (a), (b), and (c) apply). Vehicle travel on single-track vehicle ways is limited to two-wheeled vehicles and will not promote expansion of those ways into two-track routes. These limitations are implemented to reduce impacts to cultural resources, visual resources, native vegetation, and fisheries and wildlife habitat.

Dated: February 12, 2003.

Jenifer L. Arnold,

Acting District Manager.

[FR Doc. 03–7163 Filed 3–25–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Scientific Committee of the Minerals Management Advisory Board; Announcement of Plenary Session

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Advisory Board OCS Scientific Committee will meet at the Hilton Anchorage Hotel in Anchorage, Alaska.

DATES: Tuesday, April 22, 2003, from 8:30 a.m. to 5 p.m., Wednesday, April 23, from 7:45 a.m. to 3:15 p.m., and Thursday, April 24, from 8:30 a.m. to 5 p.m.

ADDRESSES: Hilton Anchorage Hotel, 500 West Third Avenue, Anchorage, Alaska 99501, telephone (907) 272–7411.

FOR FURTHER INFORMATION CONTACT: A copy of the agenda may be requested from MMS by calling Ms. Carolyn Beamer at (703) 787–1211. Other inquiries concerning the OCS Scientific Committee meeting should be addressed to Dr. James Kendall, Executive Secretary to the OCS Scientific Committee, Minerals Management Service, 381 Elden Street, Mail Stop 4043, Herndon, Virginia 20170–4817 or by calling (703) 787–1656.

SUPPLEMENTARY INFORMATION: The OCS Scientific Committee is an outside group of non-Federal scientists which advises the Director, MMS, on the feasibility, appropriateness, and scientific merit of the MMS OCS Environmental Studies Program as it relates to information needed for informed OCS decisionmaking.

The Committee will meet in plenary session on Tuesday, April 22. Presentations will be made by the Deputy Associate Director for Offshore Minerals Management and the Director, Coastal Marine Institute, University of Alaska Fairbanks. Other presentations and discussions will focus on the draft recommendations of the U.S. Commission on Ocean Policy, a report from the OCS Policy Committee, and updates on the OCS Scientific Committee's Mercury Subcommittee and Sand and Gravel Subcommittee. The remainder of the day will focus on presentations by the MMS OCS Regional Offices on their research priorities and information needs in the context of regional decisionmaking.

On Wednesday, April 23, the Committee will meet in discipline breakout sessions (*i.e.*, physical oceanography, biology, and socioeconomics) to review the specific research plans of the regional offices for Fiscal Years 2004 and 2005.

On Thursday, April 24, the Committee will meet in plenary session for presentations from the Alaska OCS Region's Information Transfer Meeting held March 10–12, 2003, and for reports of the discipline breakout sessions of the previous day. In the afternoon, the plenary session will continue with Committee Business.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session.

Authority: Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget's Circular A–63, Revised.

Dated: March 20, 2003.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 03–7125 Filed 3–25–03; 8:45 am]

BILLING CODE 4043–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Cancellation of public meeting.

SUMMARY: The Bureau of Reclamation is canceling the Adaptive Management Work Group Meeting scheduled for March 28, 2003, in Flagstaff, Arizona. At the AMWG meeting held on January 28, 2003, the Humpback Chub Ad Hoc Group (HBC AHG) was formed to consider actions to implement a comprehensive research and management program for the humpback chub in the Colorado River. As such, the HBC AHG requires additional time to complete various assignments in preparation for presentation to the AMWG.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, telephone (801) 524–3715; faxogram (801) 524–3858; or via e-mail at *dkubly@uc.usbr.gov*.

Dated: March 14, 2003.

Dennis Kubly,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office.

[FR Doc. 03–7184 Filed 3–25–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–352]

Andean Trade Preference Act: Effect on the U.S. Economy and on Andean Drug Crop Eradication

AGENCY: United States International Trade Commission.

ACTION: Notice of opportunity to submit comments in connection with the 2002 ATPA report.

EFFECTIVE DATE: March 19, 2003.

FOR FURTHER INFORMATION CONTACT: Joanne Guth (202–205–3264), Country and Regional Analysis Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background: Section 206 of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3204) requires that the Commission submit annual reports to the Congress regarding the economic impact of the Act on U.S. industries and consumers and, in conjunction with other agencies, the effectiveness of the Act in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries. Section 206(b) of the Act requires that each report include:

(1) The actual effect of ATPA on the U.S. economy generally as well as on specific domestic industries which produce articles that are like, or directly competitive with, articles being imported under the Act;

(2) The probable future effect that ATPA will have on the U.S. economy generally and on domestic industries affected by the Act; and

(3) The estimated effect that ATPA has had on drug-related crop eradication and crop substitution efforts of beneficiary countries.

Notice of institution of the investigation and the schedule for such reports under section 206 of ATPA was published in the **Federal Register** of March 10, 1994 (59 FR 11308). The ninth report, covering calendar year 2002, is to be submitted by September 30, 2003.

Written Submissions: The Commission does not plan to hold a public hearing in connection with the preparation of this ninth report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on June 13, 2003. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules, as amended, 67 FR 68036 (Nov. 8 2002).

Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

Issued: March 21, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–7250 Filed 3–25–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection for which approval will expire: National Crime Victimization Survey (NCVS).

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 27, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Craig A. Perkins, National Crime Victimization Survey (NCVS), (202) 307–0758, Office of Justice Programs, US Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Extension of a Currently Approved Collection

(2) *The title of the form/collection:* National Crime Victimization Survey.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection: Form Number:* NCVS–1, NCVS–1A, NCVS–2, NCVS–500, NCVS–7, NCVS–572(L), NCVS–573(L), NCVS–574(L), NCVS–541, NCVS–545, NCVS–1SP, and NCVS–2SP.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* Individuals or Households. *Other:* None. The National Crime Victimization Survey collects, analyzes, publishes, and disseminates statistics on the amount and type of crime committed against households and individuals in the United States. Respondents include persons age 12 or older living in about 45,650 interviewed households.

(5) *An estimate of the total number of respondents is 110,100 and the amount of time estimated for an average respondent to respond/reply:* It will take the average interviewed respondent an estimated 23 minutes to respond, the average non-interviewed respondent an estimated 7 minutes to respond, the estimated average followup interview is 12 minutes, and the estimated average followup for a non-interview is 1 minute.

(6) An estimate of the total public burden (in hours) associated with the collection is 74,010 hours annual burden.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: March 21, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–7240 Filed 3–25–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

National Instant Criminal Background Check System Section Agency Information Collection Activities: Proposed Collection Comments Requested

ACTION: 30-day notice of information collection under review: Reinstatement, with change, of a previously approved collection for which approval has expired Federal Firearms Licensee (FFL) Enrollment/E-Check Enrollment Form FFL Officer/Employee Acknowledgement of Responsibilities under the National Instant Criminal Background Check System (NICS) Form.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), National Instant Criminal Background Check System (NICS) Section has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (Volume 67, Number 225, Pages 70241–70242 on November 21, 2002), allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 25, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form:* Federal Firearms Licensee (FFL) Enrollment/E-Check Enrollment Form FFL Officer/Employee Acknowledgment of Responsibilities under the National Instant Criminal Background Check System (NICS) Form.

(3) *Agency Form Number, if any, and the applicable component of the department sponsoring the collection: Form Number:* 1110–0026.

Sponsor: Criminal Justice Information (CJIS) Services Division of Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

(4) *Affected Public who will be asked or required to respond, as well as brief abstract: Primary:* Any Federal Firearms Licensee (FFL) or State Point of Contact (POC) requesting access to conduct NICS Checks telephonically or by the Internet through the NICS E-Check.

Brief Abstract: The Brady Handgun Violence Prevention Act of 1993, required the Attorney General to establish a national instant criminal background check system that any Federal Firearms Licensee may contact, by telephone or by other electronic means, such as the NICS E-Check, for information, to be supplied immediately, on whether receipt of a firearm to a prospective purchaser would violate state of federal law. Information pertaining to licensees who may contact the NICS is being collected to manage and control access to the NICS and to the NICS E-Check, to ensure appropriate resources are available to support the NICS, and also to ensure the privacy and security of NICS information.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that enrollment occurs at approximately 500 per month for a total of 6,000 per year.

The average response time for reading the directions for the Federal Firearms License Enrollment/E–Check Enrollment Form is estimated to be two minutes; time to complete the form is estimated to be three minutes; and the time it takes to assemble, mail, or fax the form to the FBI is estimated to be three minutes, for a total of eight minutes.

The average hour burden for this specific form is 6,000 × 8 minutes/60 = 800 hours.

The FFL Officer/Employee Acknowledgment of Responsibilities Form takes approximately three minutes to read the responsibilities and two minutes to complete the form, for a total of five minutes. The average hour burden for this specific form is 6,000 × 5 minutes/60 = 500 hours.

The accompanying letter mailed with the packet takes an additional two minutes to read which would be 6,000 × 2 minutes/60 = 200 hours.

The entire process of reading the letter and completing both forms would take 15 minutes per respondent. The average hour burden for completing both forms and reading the accompanying letter would be 6,000 × 15/60 = 1,500 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The entire process of reading the letter and completing both forms would take 15 minutes per respondent. The average hour burden for completing both forms and reading the accompanying letter would be 6,000 × 15/60 = 1,500 hours.

If additional information is required, contact: Mr. Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: March 20, 2003.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 03–7126 Filed 3–25–03; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1367]

Strengthening Abuse and Neglect Courts in America: Management Information Systems Project

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of solicitation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is requesting applications for the Strengthening Abuse and Neglect Courts in America: Management Information Systems (SANCA MIS) project. The project will help abuse and neglect courts develop, implement, and maintain automated information systems that enhance court compliance with the Adoption and Safe Families Act of 1997, by automating national functional data standards and tracking national performance measures.

DATES: Applicants must begin their online applications by April 25, 2003. Applications must be completed online, and all required letters, signed by the appropriate authorities, must be received in one fax transmission by May 27, 2003. See **SUPPLEMENTARY INFORMATION** below for information on electronic access and specific information on who must submit letters.

FOR FURTHER INFORMATION CONTACT: Kristen Kracke, Program Manager, Child Protection Division, Office of Juvenile Justice and Delinquency Prevention, at 202–616–3649. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

How to Apply: The Office of Justice Programs (OJP) requires that you submit your application for funding electronically through the OJP Grants Management System (GMS). Access through the Internet to this online application system will expedite and streamline the submission, receipt, review, and processing of your request for funding.

To learn how to begin your online application process, go to *www.ojp.usdoj.gov/fundopps.htm.*

All applicants must fax the following letters:

- A letter of designation as the State Court Improvement Project (CIP) applicant, signed by the State CIP coordinator, or a letter of support from the State CIP coordinator, whichever letter applies, as described under the eligibility criteria.
- A letter identifying the applicant's "Eligibility Designation."
- A signed Statement of Collaborative Application.

All three letters must be faxed to 202–354–4147 by May 27, 2003. All three required letters must be signed by the appropriate parties and must have the GMS-assigned application number located on the subject line.

Purpose

The purpose of the Strengthening Abuse and Neglect Courts in America: Management Information Systems

(SANCA MIS) project is to develop, implement, and maintain automated information systems that enable the Nation's abuse and neglect courts to effectively and efficiently meet the intended goals of the Adoption and Safe Families Act (ASFA) of 1997 (Pub. L. 105–89), which seeks to protect children's safety, permanency, and well-being.

Authority: 42 U.S.C. 670 (Strengthening Abuse and Neglect Courts Act).

Background

When ASFA was signed into law in November 1997, it was widely hailed as a milestone in the campaign to improve child welfare practice. Since then, this legislation has substantially influenced courts, child welfare agencies, and others who work to improve the lives of abused and neglected children. ASFA mandates that children's health and safety be considered paramount when courts make decisions about children's welfare. The Act also places important new limitations on the concept of reasonable efforts to return victims of child abuse and neglect to their families. Under the Act, a permanent plan must be established for foster children within 12 months of the date they enter care. In addition, States must seek the termination of parental rights (TPR) of any parent whose child has been in foster care for 15 of the preceding 22 months, except in specified circumstances.

Although they are considered by most as an important step toward improving outcomes for abused and neglected children, these reforms have significantly increased the demands on child welfare agencies and, in particular, the dependency courts that oversee them. ASFA requires new, accelerated timelines for processing abuse and neglect cases. As a result, courts must provide a greater degree of judicial oversight at a time when many are already overburdened and facing significant case backlogs. As noted in a recent study on judicial workload, ASFA has both "increased judicial responsibilities * * * in child abuse and neglect cases and decreased the acceptable period of time within which a case can be resolved" (Dobbin and Gatowski, 2001). New regulations governing mandatory TPR filings have also contributed to demands on court time. The U.S. Department of Health and Human Services (HHS) estimates that in March 1998 as many as one-third of foster children had been in foster care long enough to mandate the filing of TPR proceedings, which typically take several days to conduct (U.S. General Accounting Office, 1999).

ASFA's unprecedented focus on results and accountability has also increased demands made on courts and child welfare agencies. Another of the Act's key provisions requires that Federal outcome measures be developed to assess how well States meet ASFA goals and, subsequently, to inform a performance-based incentive system. These outcome measures, which are used in the new Child and Family Services Reviews, were published by HHS in the **Federal Register** (Vol. 64, No. 161) on August 20, 1999. Careful case tracking and information management is, therefore, critical for State child welfare systems. Early findings from the first 17 Child and Family Services Reviews provide preliminary evidence of the crucial role that courts play in ensuring positive outcomes for children and providing case tracking to meet ASFA guidelines. Specifically, these findings suggest that court oversight during the case review process is needed to ensure that the needs of children and families are accurately assessed and that services are mobilized to address those needs. Review findings also highlight the importance of collaborative relationships between the courts and child welfare agencies. Such relationships foster compliance not only with specific ASFA provisions but also with ASFA's intent to provide a permanent place for children who must be removed from their homes.

Unfortunately, research suggests that the systems used by dependency courts to manage information—particularly, computerized MISs—are largely undeveloped. In a recent study conducted by the National Council of Juvenile and Family Court Judges (NCJFCJ) (Dobbin and Gatowski, 1998), the vast majority of court personnel described their court's MIS as "very problematic." One court improvement specialist noted that "The primary reason for untimely outcomes is bad data. * * * We can't spot check to identify problems, and we don't know how many cases are out of timeframes." In light of this identified need, OJJDP has supported several efforts that improve juvenile court functions. In 2001, OJJDP provided funds to help the National Center for State Courts (NCSC) develop and publish functional standards for juvenile court MISs. The product of this effort—Integrated Juvenile Justice Case Management Standards—provides juvenile courts with detailed guidance regarding the functions that should be included in their MISs. The core functional standards can be viewed online at *www.ncsc.dni.us/NCSC/CTP/HTDocs/Standards.htm*. This effort also identifies design considerations that will improve information sharing with noncourt partners (*e.g.*, child welfare agencies, schools, social services organizations). When completed, these design considerations will help courts communicate with key partner agencies, thereby enhancing the management of juvenile court cases.

In addition, important efforts to identify performance measures specific to the dependency court system are now underway. CIP, supported by the David and Lucile Packard Foundation, has provided funding to the American Bar Association (ABA), NCSC, and NCJFCJ to identify standardized outcome measures for court performance. Such efforts will help track the achievements of courts and child welfare agencies (Flango, 2001).

Although this significant work continues to advance and inform State and local efforts, without funding to increase capacity or improve MIS infrastructure, many courts have found it difficult to meet the new ASFA requirements. In recognition of this need, legislators passed the Strengthening Abuse and Neglect Courts Act (the Act) (Pub. L. 106–314) in October 2000. This law authorizes an appropriation of $25 million, to be administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), to help courts meet ASFA requirements. However, no funds were appropriated. In fiscal year 2002, Congress earmarked $2 million of OJJDP's appropriation to initiate the implementation of the Act. This funding provides for the development of the SANCA MIS project outlined in this solicitation.

Goal

The goal of the SANCA MIS project is to improve the efficiency and effectiveness of abuse and neglect courts nationwide and to increase their ability to meet ASFA requirements.

Objectives

The SANCA MIS project seeks to develop, implement, and maintain MIS improvements by doing the following:

- Implementing national standards to measure the performance of courts responsible for processing child abuse and neglect cases.
- Implementing national functional standards for court automation.
- Establishing key data elements that address the above performance measures and functional standards as they relate to the pilot courts.
- Developing MIS or MIS enhancements that incorporate the above objectives.
- Coordinating the automated data collection and case tracking systems of child welfare and other relevant agencies, courts, or court components (*e.g.*, domestic violence courts).
- Providing courts with timely reports regarding the progress that is being made to improve compliance with ASFA requirements and the processing of child abuse and neglect cases.

Performance Measures

To ensure compliance with the Government Performance and Results Act, Pub. L. 103–62, this solicitation notifies applicants that OJP's performance under this solicitation will be measured by the following performance measure: The number of MIS systems enhanced or developed to achieve safety, permanency, and well-being, for abused and neglected children. Award recipients will be required to collect and report data in support of this measure. Specifically, award recipients will provide the following data on court improvement: (1) The number of new national performance measures tracked, (2) the number of new national functional data standards automated, (3) the number of new data elements collected, (4) the number of new reports generated, and (5) the number of court improvement strategies implemented.

Assistance in obtaining this information will facilitate future program planning and will allow OJP to provide Congress with measurable results of federally funded programs.

Program Strategy

OJJDP will select up to six courts to receive funding through cooperative agreements for a 24-month demonstration period.

Project Phases

Establishing the SANCA MIS project requires a multiphase, collaborative process with national partners and technical advisors. The project will be conducted in three phases.

- Phase I: Planning and Design, approximately 12 months.
- Phase II: Pilot Implementation, approximately 6 months.
- Phase III: Full Implementation and Sustainability, approximately 6 months.

Phase I will involve hiring and/or contracting program and technical staff as needed; engaging a local collaborative to develop the project; surveying and analyzing user needs in the court and existing system capabilities and capacity; collaborating with national partners, technical advisors, and other selected pilot sites to identify and develop the core performance measures and functional standards; tailoring and customizing the national measures and standards to match the needs of the pilot jurisdiction; developing the implementation plan and design specifications; and developing software.

Phase II will involve implementing, entering data for, and testing the design in a pilot stage, followed by retooling and generating initial reports.

Phase III will involve implementing the system for all users, establishing regular maintenance procedures, generating reports at full scale, and identifying and establishing the ongoing court improvements implemented in response to the reports.

All phases will be established in the cooperative agreement as benchmarks, and funding will be directly related to those benchmarks. Applicants are asked to estimate their budget needs for each phase. Funding for subsequent phases will be contingent on the completion of the benchmarks for the previous phase.

Project Design

The SANCA MIS project will establish a set of pilot sites with both a high capacity for collaboration and court improvement and a need for support in building information systems. These sites will develop and enhance MIS and case-tracking systems for proceedings conducted by, or under the supervision of, abuse and neglect courts. The development and enhancement of these systems should substantially increase courts' ability to track cases, identify and eliminate existing backlogs, process abuse and neglect cases in a timely manner, and move children into safe and stable families. Measures for tracking court performance, particularly in regard to the provisions and requirements of ASFA, are a required component of MIS development and enhancement.

The development and enhancement of MISs will be coordinated with work currently in progress at the national level. Selected pilot sites will be required to partner with the national team to (1) incorporate the national performance measures established through CIP by NCSC, NCJFCJ, and ABA, and (2) incorporate the national functional standards developed by NCSC. Data elements for both the measures and the functional standards will be identified by national technical advisors and partners with input from and in consultation with the SANCA MIS pilot site. The project design requires that the national team and the pilot sites work together to develop, test, and implement the national performance measures and functional standards tailored to each pilot court. The SANCA MIS project will pilot the implementation of these tailored measures and standards to demonstrate their effectiveness. These pilot efforts will inform future court developments and help to transfer the capabilities of MIS tracking and measurement to other courts on a broad scale. Applicants must be aware that these national measures and functional standards are preliminary and will be finalized after the grant is awarded; therefore, the challenge to successful applicants will be to develop a plan for planning that is flexible enough to incorporate this developmental national work in Phase I. Successful applicants will contribute to this national development, receive technical support and guidance during the pilot, and test the work.

Copies of the draft performance measures established by CIP and information on the functional standards can be obtained from the Juvenile Justice Clearinghouse (JJC) and NCSC (both are listed in the Contacts section of this solicitation). Examples of the draft performance measures include the following:

- The percentage of children who are the subject of additional allegations of maltreatment while under court jurisdiction.
- The percentage of children who are the subject of additional allegations of maltreatment within 12 months after court jurisdiction has ended.
- The percentage of children who are placed in permanent homes and court jurisdiction is ended within 6, 16, 18, and 24 months from removal.
- The percentage of cases in which both parents receive written service of process within the required time standards or where notice of hearing has been waived by parties.
- The percentage of cases that are adjudicated within 30, 60, and 90 days after the filing of the dependency petition.

The functional standards for managing juvenile cases are intended to help court managers, analysts, designers, and software developers identify the functions of new or enhanced systems during the system definition stage of MIS development. Although the standards identify which tasks the system should perform, the system designer determines how those functions should be accomplished. Courts nationwide can use these standards to develop in-house systems and solicitations for vendor-supplied systems. Each court should customize the standards with appropriate

terminology and specifications that are based on local and State procedures, policies, and customs. The standards include 16 function categories, each of which identifies a full range of functions. Examples of these functions are provided below.

- Case initiation and indexing functions (*e.g.*, assign referral numbers and person identifiers; establish links between each juvenile and his or her family).
- Docketing and related recordkeeping functions (*e.g.*, create docket entry and update case information; maintain history of attorney assignments).
- Scheduling functions (*e.g.*, identify, display, and suggest resolutions to scheduling conflicts; output schedules upon user request).
- Document generation and processing functions (*e.g.*, generate notices to notify parties that petitions and other documents have been received/accepted; produce electronic forms and other documents).
- Calendaring functions (*e.g.*, produce calendars individually—by judge, for example—or in batches; distribute calendars electronically).
- Hearings functions (*e.g.*, provide for minute entry; create and print orders and supporting documents resulting from hearings on line in courtroom).

In addition to using automation to improve court efficiency and track performance, efforts to automate court models and improve strategies for caseflow procedures, case management, representation of children, interagency interfaces, intercourt interface (*e.g.*, dependency and criminal courts), and "best practice" standards can be incorporated, as appropriate, into selected pilot courts.

Grantees will be required to coordinate with child welfare agencies and, when possible and appropriate, with child welfare collection systems, including the statewide automated child welfare information system (SACWIS) and the adoption and foster care analysis and reporting system (AFCARS). Coordinating with other key courts involved in child abuse and neglect cases (such as domestic violence cases) is also encouraged. However, coordination, consultation, and systems integration with the related State court is *required*, particularly with regard to the State court improvement plan funded under section 13712 of the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. 670 note).

Selected pilot courts will be required to establish a collaborative committee to plan and implement the project. The collaborative must include the presiding judge or judges, key court staff (*e.g.*, court administrators, clerks), court MIS staff (including contractors and software developers), representatives from the child welfare agency, prosecuting attorney(s), guardians *ad litem* and attorneys/advocates for children (including CASAs, if appropriate), and other court and community organizations and individuals involved in efforts to improve the manner in which courts handle child welfare cases.

Selected sites will be required to identify key staff, including both lead program staff for coordinating the overall project within the court and its partners and technology staff. Applicants may contract out technology services; however, awardees will be required to establish and maintain control of all project activities (including software development, system implementation, training activities, staff supervision, and report generation). In addition, selected pilot sites must retain the ability and capacity to generate reports on their own, without relying on independent contractors.

Selected pilot courts will be required to develop a plan for MIS development and enhancement efforts. Following the grant award, OJJDP and the national technical advisors for the SANCA MIS project will issue guidance regarding the requirements of the plan. These plans must be reviewed and approved by OJJDP; approval will be based in part on advice and recommendations submitted by the national technical advisors. Once approved, selected pilot sites will be authorized to move to the design phase and then to the pilot implementation phase, with access to corresponding funds. Plans must be developed with both the core partners and stakeholders described above (and identified in the application) and with program and technology staff. Selected pilot courts will be expected to adopt the national performance measures and functional standards and to customize them according to the jurisdiction in which they will be used. The customized measures and standards should then be transferred directly into plans for systems development. Plans also should be based upon and include an assessment of current infrastructure; data and data needs specific to the jurisdiction; issues related to confidentiality, case management, and communications and data sharing across court dockets; and compatibility with, and data needs similar to those of, other courts and the child welfare agency.

Eligibility Requirements

Applications are invited *only* from State and local courts responsible for processing child abuse and neglect cases in jurisdictions where the *following projects* are being implemented: HHS's Court Improvement Program (CIP), OJJDP's Model Dependency Courts, OJJDP's Safe Start Initiative, and OJJDP's Safe Kids/Safe Streets Initiative. In all cases, the child abuse and neglect court must be the lead agency for the SANCA MIS project and must apply on behalf of and with full support from the collaborative partners from the projects listed above.

If a court applies through one of the OJJDP eligible projects, the application must be coordinated and consistent with the State CIP strategic plan. These OJJDP eligible projects are required to provide a letter of support from the State CIP coordinator ensuring that the application is consistent with the State CIP strategic plan and the State CIP efforts. This letter must be provided via fax by the application deadline.

For the HHS CIP, courts that receive a grant from the State CIP are eligible to apply; however, *only one court per State may apply* in this HHS CIP category. Any eligible CIP court interested in applying for the SANCA MIS project must, therefore, first contact their State CIP coordinator to indicate their interest. If more than one CIP-eligible court expresses interest, the State CIP coordinator will then need to make a determination regarding which court should apply as the designated CIP applicant for that State. The State CIP coordinator must fax a letter clearly identifying the application by the assigned GMS number and stating that it is being submitted as the one State-designated CIP applicant. This letter is to be faxed as part of the application deadline.

Note: In cases where the above projects overlap in a single jurisdiction, the court must apply collaboratively with *all* the projects identified above. OJJDP will accept only one application from each of the four projects in a specific jurisdiction. Applicants and jurisdictions that fail to comply with the eligibility requirements by submitting more than one application may disqualify *all applicants* from that State or locality. *Exception:* This requirement will not preclude, however, the State CIP coordinator from offering one State-designated CIP application in addition to the collaborative application. If, for example, a local jurisdiction has a CIP grant, a Safe Kids/Safe Streets project, and a Model Dependency Court project, the local court is required to apply collaboratively with each of the projects or grantees. The State CIP coordinator would be required to provide a letter of support for this collaborative application and would still be able to submit one other State-designated application.

Applicants must fax a letter clearly marked with a subject line entitled "Eligibility Designation for application number ___" and identify the application as eligible under one of the following areas, as determined by the primary lead program or project: (1) HHS's Court Improvement Program, (2) Model Dependency Court, (3) Safe Start Initiative, or (4) Safe Kids/Safe Streets Project. If the application is being submitted in collaboration with other projects, the applicant must indicate the Eligibility Designation for application number __ as follows: "Eligibility Designation: ____ in collaboration with ____ and ____" filling in one or more of the invited projects identified above as eligible. This letter is to be faxed as part of the application deadline.

All applicants must submit a Statement of Collaborative Application via fax, following the same instructions as referenced above. It is imperative that the application be mutually submitted by all of the stakeholders needed to develop this project. Applicants must submit a statement signed by each participating member stating that they are substantially involved in the development of the plan and are committed to participating in the collaborative pilot project. The statement must contain each collaborative member's original signature, typed/printed name, address, telephone number, and affiliation (title and agency or role [in the case of a parent or community representative]). The statement should demonstrate a clear commitment to participate in the national development and pilot implementation of the performance measures and functional standards.

Applicants must identify all the eligible, invited projects in their jurisdiction and apply in collaboration with these projects; therefore, a special section in the Statement of Collaborative Application must be set aside to identify these projects and to affirm that the application has been developed in coordination and collaboration with them. The lead agency for each eligible, invited project must sign the statement. For instance, if a jurisdiction contains both a Model Dependency Court project and a Safe Start Initiative, the projects must submit an application collaboratively, and the lead agencies of each must sign a statement of joint application.

Finally, applicants must also demonstrate a high capacity for collaboration and court improvement while also demonstrating a strong need for support to develop MIS capabilities.

Applicants must comply with *all the requirements* set forth in this solicitation to be eligible for competition under this award. Absence of the required faxed letters, for instance, may result in disqualification.

Selection Criteria

All applications will be evaluated and rated by a peer review panel according to the selection criteria outlined below. Applicants must use these selection criteria headings for their program narrative and must present information in this order. Selection criteria will be used to assess each applicant's responsiveness to application requirements, compliance with eligibility requirements, organizational capability, and thoroughness and innovation in response to strategic issues related to project implementation. Staff and peer reviewer recommendations are advisory only; the final award decision will be made by the OJJDP Administrator, who will consider geographic diversity and other factors.

Problem(s) To Be Addressed (10 Points)

Applicants must provide a preliminary but detailed analysis of the court and organize and provide the information in the following manner:

Section One: Jurisdictional Context and Organizational Structure. Applicants must provide a detailed description of the jurisdiction of the court, the organizational structure of the court, and the court's case-level role in working—both formally and informally—with the child welfare agency. Applicants also must describe how the court is administered with respect to judicial assignments, rotation policies, docket setting, and case assignments.

Section Two: Data Automation and Information Management. Applicants should describe the current level of data automation, information management, infrastructure, and capacity in terms of the jurisdiction's ability to test the national performance measures and functional standards. Applicants should provide a detailed description of the current infrastructure (both human and technological) for data collection, case tracking, and performance measurement, if applicable. Applicants also should describe State-level automation systems and their requirements and system compatibility and current levels of coordination. In addition, applicants should discuss the status of coordination and system compatibility with SACWIS and the child welfare agency.

In addition, applicants should describe what is currently known about cases under their jurisdiction regarding case levels, flow, tracking, and outcomes; case planning and management; and the court and child welfare agency's compliance with ASFA requirements.

This section should demonstrate an understanding of current MISs and a need for improved MIS capability.

Applicants may provide supplemental evidence, documentation, or sample illustrations of information conveyed in this section in the appendix.

Goals and Objectives (10 Points)

Applicants must outline how the SANCA MIS project will improve their court. Applicants should describe how the involved agencies and systems will operate, in terms of improving outcomes for children consistent with ASFA and in terms of improving court function, after implementing the SANCA MIS pilot. Applicants must provide a clear discussion of the proposed project goals and objectives as they logically relate to the SANCA MIS pilot and the project phases. These goals and objectives must be quantifiable, measurable, and attainable within the timeframe of the project (24 months).

Project Design (20 Points): The Plan for Planning

Applicants must describe their strategy for the SANCA MIS project through each of the three phases outlined above. Given the phased approach and the fact that Phase I requires developing a detailed MIS design and implementation plan, applicants should carefully and specifically outline only the process that the pilot court will use to manage the collaborative and to plan the program's overall design. Because the actual planning will occur after the award in coordination with national support and guidance, applicants are instructed to submit a plan for planning.

The strategy should outline who will be involved at the collaborative, staffing, and MIS-user levels. The strategy should discuss how often the planners will meet and what tasks will be completed by when and by whom. This detailed workplan for the planning phase should include the steps for hiring or contracting a designer, steps for customizing the national measures and standards, and a clear commitment to partnering with the national team. (Specific guidance about the national cross-site partnership will be provided after selection and grant award.)

Applicants must also outline specific tasks and a timeline chart for completing Phases II and III, as described above, with responsible staff/collaborative members identified.

Management and Organizational Capability (40 Points)

Applicants should use this section to describe a sound leadership design and an administration and operating structure that is capable of carrying out the proposed initiative. Applicants should demonstrate the following: Organizational and collaborative readiness, an effective team management structure involving the lead court and the collaborative partners, and a strong organizational capability that is commensurate with the scope of work outlined in this solicitation. These elements and their share of the 40 points available under this criterion are discussed below.

Section One: Organizational and Collaborative Readiness (15 Points). Applicants should provide a detailed description of how the court and its partners are ready to engage in the full scope of this project. Applicants should demonstrate a readiness to implement court improvement strategies based on data from automated reports and measurements, which will be generated through the project. In addition, applicants must (1) describe how the proposed vision and project design will build on and complement current collaborative planning processes to achieve the project's objectives; (2) discuss the court and its partners' history of collaboration and planning; (3) include a description of participants, major milestones, and the nature and process of the collaboration; (4) clarify what has been done, what is in process, and what remains to be done; and (5) demonstrate the existence, viability, and accomplishments to date of multidisciplinary arrangements whereby various courts and agencies in a jurisdiction are working cooperatively or collaboratively to improve the lives of children and families, especially those arrangements involving child abuse and neglect and domestic violence.

Applicants should also demonstrate evidence of a climate favorable to children and families by listing current court and agency policies, legislation, cross-agency/cross-court protocols, and interagency agreements that aid collaboration in regard to child welfare issues and cases. Applicants should provide examples of policies or legislation in the appendix.

Section Two: Management (15 Points). Applicants should outline a proposed staffing structure and management plan that includes at least one high-level, experienced lead coordinator. Key technology staff and data specialists should also be identified. Applicants should identify roles and responsibilities for all staff and describe the core management team. In addition, the capabilities and experience of all staff and consultants who will participate in the management team or play lead roles in the effort should be included. Applicants should (1) provide résumés of key personnel and include their job descriptions in the appendix, (2) indicate the percentage of time that each named staff person or consultant will devote to the project, (3) describe the supervision lines and lines of authority, and (4) describe the management structure and practices that will be used to evaluate the staff, take corrective action when needed, and ensure the success of the program.

Section Three: Organizational Capability (10 Points). Applicants should identify members of the collaborative's key leadership and describe their respective roles and responsibilities. Key leadership must include, at a minimum, the presiding judge or judges. (See the Project Design section above for specific membership requirements.) Court administrators also should play a key leadership role. Applicants must have demonstrated expertise in the organizational capabilities necessary to oversee a project of this size and scope. In particular, applicants should provide evidence of specific and detailed experience in leading collaborative and court improvement efforts. Applicants also must clearly demonstrate a commitment to participating collaboratively with OJJDP, the national partners and technical advisors, and other relevant partners in the completion, tailoring, and testing of the yet-to-be finalized national performance measures and functional standards. Furthermore, applicants should demonstrate a willingness and ability to build capacity beyond their own jurisdiction and to transfer knowledge to other courts and related partner agencies.

Budget (10 Points)

Applicants must provide a detailed budget and supporting budget narrative that are complete, detailed, reasonable, allowable, and cost effective in relation to the activities to be performed. The budget narrative should indicate the extent to which resources have been committed for the 24 months of the budget and project period. Applicants may apply for up to $200,000, depending on need and current infrastructure. Budgets must be reasonable and consistent with the infrastructure and project vision described in this solicitation. (Please note the Matching or Cost-Sharing Requirement section, which appears below.)

Additionally, applicants should provide a breakdown of their budgets by phase. Access to and use of funds available at each of the three phases will be contingent on the successful completion of the identified deliverables for each phase (as indicated above). This contingency will ensure that funding is available for all aspects of project implementation and completion.

Appendix (10 Points)

To help reviewers gauge the likelihood of awardee success, applicants must submit the following appendixes as evidence of their readiness and potential.

Applicants are encouraged to submit relevant materials in the appendixes described below:

Appendix A: State of the Court. Applicants may submit materials as evidence to support the State of the Court section of the application.

Appendix B: Evidence of Organizational and Collaborative Capability. Applicants may submit materials demonstrating their capacity to meet the scope of this project—not only from an information systems perspective but from a collaborative, court improvement perspective. Capacity should be demonstrated internally (within the court), across other relevant courts, and with other agencies. Evidence of improvement strategies implemented within and across agencies and courts will demonstrate the strongest support for collaborative efforts.

Applicants must document the existence of a climate favorable to children and families by listing current court and agency policies, legislation, cross-agency/cross-court protocols, and interagency agreements that aid collaboration in regard to child welfare issues and cases. Applicants may provide a bibliography that includes effective date(s) and relevant pages.

Appendix C: Key Staff and Consultant Résumés. Applicants must include résumés and job descriptions for the key staff and consultants named in the Management and Organizational Capability section of the application.

Format

The narrative portion of the application (excluding forms, assurances, and the appendix) must not exceed 20 pages, double-spaced, and must be typed in a standard 12-point font. The double-spacing requirement applies to all parts of the program narrative, including any lists, tables, bulleted items, or quotations. These guidelines are necessary to maintain fair and uniform standards among all applicants. If the narrative does not conform to these standards or any other standards outlined in this solicitation, OJJDP may deem the application ineligible for consideration.

Award Period

The SANCA MIS project will be funded in the form of a cooperative agreement for a 24-month project and budget period.

Award Amount

Applicants may apply for a one-time award of up to $200,000 for the 24-month project and budget period.

Matching or Cost-Sharing Requirement

The Federal law authorizing this project stipulates a cost-sharing requirement: Local and State courts must spend $1 for every $3 spent in Federal funds. Therefore, applicants must provide at least 25 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. For example, a project requesting $200,000 per budget period must include a match of at least $67,000 per budget period. The non-Federal share may be a cash or inkind contribution. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources. Failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Catalog of Federal Domestic Assistance (CFDA) Number

For this program, the CFDA number, which is required on Standard Form 424, Application for Federal Assistance, is 16.542. This form is included in the *OJJDP Application Kit,* which can be obtained by calling JJC at 800–638–8736 or by sending an e-mail request to *puborder@ncjrs.org*. The Application Kit is also available online at *www.ncjrs.org/pdffiles1/ojjdp/s1000480.pdf*.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, DOJ is requesting that applicants provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from DOJ; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose.

"Related efforts" is defined for these purposes as one of the following:

- Efforts for the same purpose (*i.e.*, the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project.
- Services of some kind (*e.g.*, technical assistance, research, or evaluation) for the program or project described in the application.

Contacts

The following organizations may provide resources:

American Bar Association Center on Children and the Law: 202–662–1720; *www.abanet.org/child*.

Juvenile Justice Clearinghouse: 800–638–8736; *www.ojjdp.ncjrs.org*.

National Center for State Courts: 800–616–6109; *www.ncsconline.org*.

National Clearinghouse on Child Abuse and Neglect: 800–394–3366; *www.calib.com/nccanch*.

National Council for Juvenile and Family Court Judges: 775–327–5300; *www.pppncjfcj.org*.

U.S. Department of Health and Human Services, The Administration for Children and Families: *www.acf.dhhs.gov*.

References

Dobbin, S.A., and Gatowski, S.I. 2001. *Judicial Workload Estimates: Redefining the Concept of Judicial Work*. Technical Assistance Bulletin. Reno, NV: National Council of Juvenile and Family Court Judges.

Dobbin, S.A., and Gatowski, S.I. 1998. *Information Management: A Critical Component of Good Practice in Child Abuse and Neglect Cases*. Technical Assistance Bulletin. Reno, NV: National Council of Juvenile and Family Court Judges.

Flango, V.E. 2001. Measuring progress in improving court processing of child abuse and neglect cases. *Family Court Review* 39(2):158–169.

U.S. General Accounting Office. 1999. *Juvenile Courts: Reforms Aim To Better Serve Maltreated Children*. Washington, DC: U.S. General Accounting Office.

Dated: March 20, 2003.

William L. Woodruff,

Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 03–7208 Filed 3–25–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 20, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail *King.Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for EBSA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employee Benefits Security Administration (EBSA).

Type of Review: Extension of a currently approved collection.

Title: ERISA Summary Annual Report Requirement.

OMB Number: 1210–0040.

Affected Public: Business or other for-profit; not-for-profit institutions; and individuals or households.

Frequency: Annually.

Type of Response: Third party disclosure.

Number of Respondents: 815,114.

Number of Annual Responses: 304,195,943.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 421,761.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $188,211,295.

Description: Section 104(b)(3) of the Employee Retirement Income Security Act and regulations at 29 CFR 2520.104b–10 require employee benefit plans to furnish a summary of the plan's annual report to participants and beneficiaries for purposes of disclosing basic easy to understand financial information.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–7195 Filed 3–25–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of March 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,034; E.M. Bair, Canton, OH.

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production o a foreign country) have not been met.

TA–W–50,544; Firestone Tube Co., Russellville, AR.

TA–W–50,514; General Electric Co., Industrial Systems, Mebane, NC.

TA–W–50,531; Hankins Lumber Co., Inc., Grenada, MS.

TA–W–51,056; Fishing Vessel (F/V) Mariam, Dillingham, AK.

TA–W–50,204; Kokusai Semiconductor Equipment Corp., Billerica Facility, Billerica, MA.

TA–W–50,443; Flexcel Manufacturing, a Div. of Kimball International, Danville, KY.

TA–W–50,457; TLC Polyform, Inc., Beaverton, MI.

TA–W–50,505; Newport Steel Corp., Newport, KY.

TA–W–50,578; Cleveland Chair, Madisonville, TN.

TA–W–50,705; Rexam Medical Packaging, Healthcare Flexibles Div., Mt. Holly, NJ.

TA–W–51,086; Fishing Vessel (F/V) Golda June, Dillingham, AK.

TA–W–50,922; Premtec, Inc., Gastonia, NC.

TA–W–51,060; Fishing Vessel (F/V), Jeweline M, Manokotak, AK.

TA–W–50,792; Fishing Vessel (F/V) Hammer Time, Togiak, AK.

TA–W–50,760; Set Net, Alaska Commercial Fisheries Entry Commission, Permit #SO4T58778L, Clark's Point, AK.

TA–W–50,711; Fishing Vessel (F/V) Captain Chris, Nushagak, AK.

TA–W–51,000; Set Net, State of Alaska Commercial Fisheries Entry Commission, Permit #SO4T59937S, Naknek, AK.

TA–W–51,016; Fishing Vessel (F/V) Helen Marg, New Stuy, AK.

TA–W–50.718; Fishing Vessel (F/V) Adrian D., Clarks Point, AK.

TA–W–50,750; Fishing Vessel (F/V) Roeboat, Togiak, AK.

TA–W–51,015; Fishing Vessel (F/V), New Stuy, AK.

TA–W–51,035; Fishing Vessel (F/V) Michelle Dawn, Pilot Point, AK.

TA–W–50,762; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T59580, Dillingham, AK.

TA–W–50,757; Fishing Vessel (F/V) Desiree Marie III, Togiak, AK.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–50,962; Sykes Enterprises, Inc., Eveleth, MN.

TA–W–42,315; Alcatel USA Marketing, Inc., Voice Network Div. (VND), Wireless Switching Group, EMX 5000 Product Group, Plano, TX.

TA–W–50,438; Computer Sciences Corp., Applications Services Div., Somerset, NJ.

TA–W–50,609; Cendant Corp., Elizabethon, TN.

TA–W–50,737; Austin Powder Co., Bend, OR.

The investigation revealed that criteria (2) has not been met. The workers' firm (or subdivision) is not an upstream supplier or components for trade-affected companies.

TA–W–50,458; Smurfit-Stone Container Corp., Corrugated Container Div., Spartanburg, SC.

The investigation revealed that criterion (a)(2)(A) (I.A) (no employment declines) has been met.

TA–W–50,997; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T57783F, South Naknek, AK.

TA–W–51,034; Fishing Vessel (F/V) Tianna Sea, Port Heiden, AK.

TA–W–50,791; Fishing Vessel (F/V) Sally Ann, Manokotak, AK.

TA–W–50,716; Fishing Vessel (F/V) Miss Kristy, Clarks Point, AK.

TA–W–50,998; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T60185R, South Naknek, AK.

The investigation revealed that criterion (a)(2)(A) (I.B) (sales or production, or both did not decline) and (a)(2)(A) (II.B) (no shift in production to a foreign country) have not been met.

TA–W–50,603; F/V Norona, Homer, AK.

The investigation revealed that criterion (a)(2) (I.A.) (No employment declines) and (a)(2)(B) (No shift in production to a foreign country) have been met.

TA–W–50,675; Springfield Wire, Inc., Springfield, MA.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–50,883; BOC Edwards, Fabrication and Machine Shop, Philadelphia, PA: February 11, 2002.

TA–W–50,165; Weyerhaeuser Co., Fine Papers Div., Johnsonburg, PA: November 15, 2001.

TA–W–50,624; Agilent Technologies, Inc., Electronic Product and Solutions Group, World-Wide Materials, Printed Circuit Assembly Group, Loveland, CO: January 16, 2002.

TA–W–50,821; Gold Toe Brands, Inc., Newton, NC: January 22, 2002.

TA–W–50,263; OMG Fidelity, Inc., a wholly owned subsidiary of The OM Group, Inc., Newark, NJ: December 4, 2001.

TA–W–50,538; Dana Corp., Perfect Circle Div., Richmond Liner Foundry, Richmond, IN: January 8, 2002.

TA–W–50,688 & A; Golden Northwest Aluminum, Inc., Northwest Aluminum Co., The Dalles, OR and Goldendale, WA: January 9, 2003.

TA–W–50,725 & A,B,C: Maxtor Corp., Milpitas, CA, Longmont, CO, Shrewsbury, ME and San Jose, CA: January 6, 2002.

TA–W–50,736 & A,B; Isola Laminate Systems Corp., Fremont, CA, Chandler, AZ and Ridgeway, SC: January 27, 2002.

TA–W–50,846; Torque-Traction Manufacturing Technologies, Inc., a Subsidiary of Dana Corp., Jonesboro, AR: January 31, 2002.

TA–W–50,895; Americal Corp., Goldsboro, NC: February 12, 2002.

TA–W–50,966; Acco Chain and Lifting Products, Saltville, VA: February 24, 2002.

TA–W–51,002; Ansell Healthcare, Ansell Golden Needles Div., Wilkesboro, NC: February 26, 2002.

TA–W–50,855; Magna Powertech, Grand Rapids, MI: February 10, 2002.

TA–W–50,150 & A,B; Thomasville Furniture Industries, Inc., Plant B, Thomasville, NC, Plant E, Thomasville, NC and Plant SFD, Thomasville, NC: November 20, 2001.

TA–W–50,208; Marshall Erdman and Associates, Inc., FMG Div., Waunakee, WI: November 27, 2002.

TA–W–50,521; Gorecki Manufacturing, Inc., Milaca, MN: January 3, 2002.

The following certification has been issued. The requirement of upstream supplier to trade certified primary firm has been met.

TA–W–50,034; Plastic Products Co., Inc., Moline, IL:November 8, 2001.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–50,825; LG. Philips Displays, Inc., Ottawa, OH: January 17, 2002.

TA–W–50,126; Johnson Controls, Inc., Fullerton, CA: November 13, 2001.

TA–W–50,158; Alcatel USA Marketing, Inc., Voice Network Div., PB3 Building, Plano, TX: November 19, 2001.

TA–W–50,584; Lockheed Martin Postal Technologies, Inc., Tulsa, OK: January 6, 2002.

TA–W–50,594; Maxcess Technologies, Inc., including leased workers of Alternative Staffing and Innovative Partners, Summerville, SC: January 16, 2002.

TA–W–50,345; Gateway Forest Products, Ward Cove, AK: December 12, 2001.

TA–W–50,490; CCL Container, Inc., Aluminum Production Department, Harrisonburg, VA: January 2, 2002.

TA–W–50,799; LG. Philips Displays, Inc., Ann Arbor, MI: February 3, 2002.

TA–W–50,629; Truth Hardware, West Hazelton, PA: January 20, 2002.

TA–W–50,670; Abitibi Consolidated Corp., Sheldon, TX: January 23, 2002.

TA–W–50,714; Fishing Vessel (F/V) Miss Mary, Manokotak, AK: January 21, 2002.

TA–W–50,726; Accuride International, Inc., Santa Fe Springs, CA: January 29, 2002.

TA–W–50.774; A-Plus Manufacturing, North Andover, MA: January 29, 2002.

TA–W–50,776; North Safety Products, a subsidiary of Norcross Safety Products, Tallmadge, OH: February 3, 2002.

TA–W–50,934; Shadowline, Inc., Morganton, NC: February 11, 2002.

TA–W–50,935; Coe Newness/McGehee Corp., Ukiah, CA: February 7, 2002.

TA–W–51,006; Forecaster of Boston, Fall River, MA: February 5, 2002.

TA–W–51,091; Ingersoll Products Co., Chicago, IL: February 27, 2002.

TA–W–50,797; E.I. DuPont de Nemours & Co., Inc., DuPont Performance Coatings, Rochester, NY: February 6, 2002.

TA–W–50,662; OBC Distribution Co. LLC, Celina, TN: January 10, 2002.

TA–W–50,646; Levelor Kirsch Window Fashions, Athens, GA: January 20, 2002.

TA–W–50,404; Vernay Laboratories, Inc., Yellow Springs, OH: December 11, 2001.

TA–W–50,420; Walbro Engine Management, LLX, Cass City, MI: December 17, 2001.

TA–W–50,589; VF Corp., VF Playwear, Inc., Danville, VA: January 15, 2002.

TA–W–50,596; Reptron Manufacturing Services, a Div. of Reptron Electronics, Inc., Hibbing, MN: January 15, 2002.

Also, pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with section 250(a), subchapter B, chapter 2, title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of March 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from

Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

None.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

None.

Affirmative Determinations NAFTA-TAA

None.

I hereby certify that the aforementioned determinations were issued during the month of March 2003. Copies of these determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 14, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03-7198 Filed 3-25-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of February, 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-41, 777; Patterson UTI Drilling, Snyder, TX.

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a)(2)(B) (II.B) (No shift in production from a foreign country) have not been met.

TA-W-50,253; Johns-Manville, Natchez, MS.
TA-W-50,414; Pacon Corp., Bemiss-Jason Div., Neenah, WI.
TA-W-50,363; Microsemi Corp., Scottsdale, AZ.
TA-W-50,348; Egger Steel Co., Sioux Falls, SD.
TA-W-50,304; Defiance Metal Products, Bedford, PA.
TA-W-50,180A; Dallco Industries, Inc., York Springs, PA.
TA-W-50,330; Bardon Rubber Co., Inc., Union Grove, WI.
TA-W-50,035; Strong Wood Products, Inc., Strong, ME.
TA-W-50,076; Altadis USA, Inc., McAdoo, PA.
TA-W-50,082; Sara Lee Intimate Apparel, Playtex Apparel, Inc., Dover, DE.
TA-W-50,287; Corning Cable Systems, Telecommunications Cable Plant, Hickory, NY.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-50,271; Partminer Information Services, Div. of Partminer, Inc., Englewood, CO.
TA-W-50,469; Supra Telecom, Quincy, IL.
TA-W-50,492; Adventure Travel, Iron Mountain, MI.
TA-W-50,507; Nortel Networks, Research Triangle Park, NC.
TA-W-50,628; Xerox Corp., Telweb Equipment Center, Irving, TX.
TA-W-50,660; Abitibi Consolidated Sales Corp., West Tacoma Div., Stellacoom, WA.
TA-W-50,643; Aran Mold & Die Co., Inc., Elmwood Park, NJ.
TA-W-50,633; Barry of Goldsboro, Goldsboro, NC.
TA-W-50,308; Helicopter Aviation Services Corp., Mount Pleasant, PA.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA-W-42,289; Interlake Material Handling, Inc., Pontiac Manufacturing Plant, Pontiac, IL: February 10, 2001.
TA-W-41,912; ADC Telecommunications, 5655 Eleventh Avenue East, Shakopee, MN: August 5, 2001.
TA-W-42,284; Custom Forest Products, Inc., Grayling, MI: October 8, 2001.
TA-W-42,265; Charles Navasky and Co., Philipsburg, PA: October 2, 2001.
TA-W-42,265A, B; Streamline Fashions, Philipsburg, PA and Northside Manufacturing, Philipsburg, PA: November 3, 2002.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA-W-50,180; Dallco Industries, Inc., York, PA: November 22, 2001.
TA-W-50,128; GE Greenville Gas Turbines, LLC, Greenville, SC: November 15, 2001.
TA-W-50,051; Blue Ridge Sportswear, Palmerton, PA: November 8, 2001.
TA-W-50,499; Marion County Shirt Co., Marshall, AR: January 6, 2002.
TA-W-50,608; A.O. Smith, Electrical Products Co., McMinnville, TN: January 9, 2002.
TA-W-50,261; Advanced Power Technology, Inc., Bend, OR: December 5, 2001.
TA-W-50,707; NWB USA, Inc., Petersburg, VA: January 28, 2002.
TA-W-50,003; Weyerhaeuser Co., Western Lumber Div., Green Mountain/Longview Lumber Operations, Longview, WA: November 4, 2001.

The following certifications have been issued. The requirements of (a)(2)(B) (Shift in production) of Section 222 have been met.

TA-W-50,581; Chapin Manufacturing, Inc., Batavia, NY: January 2, 2002.
TA-W-50,103; K&C Knitting, Inc., Passaic, NJ: November 7, 2001.
TA-W-50,557; Crane Valves North America, Div. of the Crane Corp., Signal Hill, CA: December 14, 2001.
TA-W-50,561; Douglas Furniture of California, LLC, Redondo Beach, CA: January 9, 2002.
TA-W-50,698; Motor Coach Industries, Inc., Div. of Motor Coach Industries International, Inc., Pembina, ND: January 24, 2002.
TA-W-50,156; ITT-Jabsco, Div. of ITT Industries, Costa Mesa, MA: November 19, 2001.
TA-W-50,407; Eaton Corp., Cutler-Hammer Group, Sensors Div., Everett, WA: December 23, 2001.
TA-W-50,413; American Tack and Hardware, Monsey, NY: December 5, 2001.

The following certification has been issued. The requirement of upstream supplier to trade certified primary firm has been met.

TA-W-50,592; Specialty Minerals, Inc., Cloquet, MN: January 15, 2002.

Also, pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with section 250(a), subchaper D, chapter 2, title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of February 2003.

In order for an affirmative determination to be made and a certifiation of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either-----

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely.

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA-TAA-06491; Hoffco\Comet Industries, Inc., Rushville, IN.

NAFTA-TAA-07637; Xerox Corp., (Soho) Small office/Home Office Div., Canadaigue, NY.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-06399; United Plastics Group, Inc., Brooksville Plant, Brooksville, FL: June 26, 2001.

I hereby certify that the aforementioned determinations were issued during the months of February 2003. Copies of these determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 18, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03-7197 Filed 3-25-03; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-50,417]

ABM Brevard, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 2, 2003, in response to a petition filed by a company official on behalf of workers at ABM, Brevard, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 10th day of March, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03-7201 Filed 3-26-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-50,884]

Border Apparel, El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 13, 2003, in response to a worker petition filed on behalf of workers at Border Apparel, El Paso, Texas.

The petition regarding the investigation has been deemed invalid. Consequently, the investigation has been terminated.

Signed at Washington, DC this 11th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03-7205 Filed 3-25-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-42,353 and TA-W-42,353A]

Cerf Brothers Bag Company, New London, MO, Cerf Brothers Bag Company, Vandalia, MO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 2002 in response to a worker petition, which was filed on behalf of workers at Cerf Brothers Bag Company, New London and Vandalia, Missouri.

The petition has been deemed invalid. The investigation revealed that the workers at the subject firm filed for two locations and therefore the submitted petition is invalid. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 10th day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7199 Filed 3–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,937]

Gerber Plumbing Fixtures Corporation, Kokomo, IN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 24, 2003, in response to a worker petition filed by the Glass, Molders, Pottery, Plastics & Allied Workers International Union, AFL–CIO, on behalf of workers at Gerber Plumbing Fixtures Corporation, Kokomo, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 11th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7206 Filed 3–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,494]

Manufacturers Services Limited (MSL), Arden Hills, MN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Manufacturers Services Limited (MSL), Arden Hills, Minnesota. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–50,494; Manufacturers Services Limited (MSL), Arden Hills, Minnesota (March 7, 2003).

Signed in Washington, DC this 18th day of March, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–7202 Filed 3–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,672]

North American Marine Jet, Inc., Benton, AR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 24, 2003, in response to a petition filed by the rapid response specialist on behalf of workers at North American Marine Jet, Inc., Benton, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 7th day of March, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7203 Filed 3–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,323]

Potlatch Corporation, Lewiston, ID; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 12, 2002, in response to a worker petition which was filed by the Trade Act Coordinator of Idaho Department of Labor on behalf of workers at the Potlatch Corporation, Lewiston, Idaho.

The petitioner has requested that the petition be withdrawn. Consequently, and the investigation has been terminated.

Signed in Washington, DC, this 7th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7200 Filed 3–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations begin or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 7, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 7, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 3rd day of March 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 02/04/2003 and 2/14/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
42,360	Precision Twist Drill Co. (USWA)	Rhinelander, WI	02/06/2003	02/16/2002
50,770	Warp Knit Mills, Inc. (Comp)	Lincolnton, NC	02/04/2003	02/04/2003
50,771	Spartech Plastics (IBT)	Conneaut, OH	02/04/2003	02/03/2003
50,772	Symbol Technologies (MI)	Farmington Hill, MI	02/04/2003	01/29/2003
50,773	Crystal Dyeing and Finishing (Comp)	Hickory, NC	02/04/2003	02/03/2003
50,774	A–Plus Manufacturing (Comp)	N. Andover, MA	02/04/2003	01/29/2003
50,775	Harman Wisconsin, Inc. (Comp)	Prairie, du Chie, WI	02/04/2003	01/31/2003
50,776	North Safety Products (Wkrs)	Tallmadge, OH	02/04/2003	02/03/2003
50,777	A.O Smith EPC (Comp)	Ripley, TN	02/04/2003	02/02/2003
50,778	Great Northern Bark Company (Comp)	Columiba Falls, MT	02/04/2003	01/31/2003
50,779	Jacobson Greenhouses, Inc. (Comp)	Spokane, WA	02/04/2003	01/22/2003
50,780	Piedmont Carving Co., Inc. (Comp)	Thomasville, NC	02/04/2003	01/31/2003
50,781	Certifying Service Express (Comp)	Janesville, WI	02/04/2003	01/31/2003
50,782	EMCO Flow Systems (CO)	Longmont, CO	02/04/2003	01/31/2003
50,783	Precise Courtesy Corporation (Wkrs)	Buffalo Grove, IL	02/04/2003	01/23/2003
50,784	Sara Lee Hosiery (Wrks)	Rockingham, NC	02/04/2003	01/28/2003
50,785	RMI Titanium Company (USWA)	Niles, OH	02/04/2003	01/17/2003
50,786	Pure Resources (Wkrs)	Midland, TX	02/04/2003	01/21/2003
50,787	Tinnerman Palnut Engineer Products, LLC (Comp).	Massillon, OH	02/04/2003	01/31/2003
50,788	Republic Engineered Products (USWA)	Canton, OH	02/04/2003	01/30/2003
50,789	Premcor Refining Group, Inc. (TX)	Port Arthur, TX	02/04/2003	01/27/2003
50,790	Dura Automotive Systems, Inc. (Comp)	Livonia, MI	02/04/2003	01/28/2003
50,791	F/V Sally Ann (Comp)	Manokotak, AK	02/04/2003	01/27/2003
50,792	F/V Hammer Time (Comp)	Togiak, AK	02/04/2003	01/23/2003
50,793	Matthew Thomson (Comp)	Dillingham, AR	02/04/2003	02/03/2003
50,794	Santa Rosa, Inc. (Comp)	Kodiak, AK	02/04/2004	02/03/2003
50,795	Purl Knit Fabrics Corporation (Wkrs)	Brooklyn, NY	02/06/2003	12/02/2002
50,796	General Electric (IUE)	Euclid, OH	02/06/2003	01/22/2003
50,797	DuPont (Comp)	Rochester, NY	02/06/2003	01/10/2003
50,798	Overseas Manufacturing Systems of Amer. (W	El Paso, TX	02/06/2003	01/16/2003
50,799	LG Philips Displays (Comp)	Ann Arbor, MI	02/06/2003	02/03/2003
50,800	Flexcel (Comp)	Batesville, MS	02/06/2003	01/16/2003
50,801	Johnston Industries, Inc. (Comp)	Opp, AL	02/06/2003	02/04/2003
50,802	Applied Micro Circuits Corporation (Comp)	San Diego, CA	02/06/2003	01/21/2003
50,803	Rock Tenn (Wkrs)	El Paso, TX	02/06/2003	01/20/2003
50,804	Aetna, Inc. (Wkrs)	Allentown, PA	02/06/2003	01/22/2003
50,805A	Bassett Furniture Industries (Co.)	Dublin, GA	02/06/2003	02/04/2003
50,805	Bassett Furniture Industries (Co.)	Macon, GA	02/06/2003	02/04/2003
50,806	Levolor Kirsch Window Fashions (Comp)	Ogden, UT	02/10/2003	02/05/2003
50,807	MCB Inc. (Wkrs)	Los Angeles, CA	02/10/2003	01/21/2003
50,808	Thomson Industries (Comp)	Port Washington, NY	02/10/2003	12/31/2002
50,809	Eastman Kodak Company (NY)	Rochester, NY	02/10/2003	01/24/2003
50,810	Deltech Polymers Corporation (Comp)	Troy, OH	02/10/2003	01/24/2003
50,811	Penske Truck LSG Administration (Wkrs)	Brea, CA	02/10/2003	01/27/2003
50,812	Federal Mogul (Wkrs)	Blackburg, VA	02/10/2003	01/24/2003
50,813	General Binding Corp. (Wkrs)	DeForest, WI	02/10/2003	01/31/2003
50,814	Caterpillar Paving Products, Inc. (Wkrs)	Brooklyn Park, MN	02/10/2003	02/03/2003
50,815	Nexans Magnet Wire U.S.A. (Wkrs)	Mexico, MO	02/10/2003	02/04/2003
50,816	Nevamar Company (Comp)	Hampton, SC	02/10/2003	02/04/2003
50,817	Diamond Brands (Comp)	Strong, ME	02/10/2003	02/04/2003
50,818	Hitchiner Manufacturing Co, Inc. (NH)	Littleton, NH	02/10/2003	02/05/2003
50,819	Yarway Corporation (Comp)	Blue Bell, PA	02/10/2003	01/22/2003
50,820	Lapp Insulator (Wkrs)	Le Roy, NY	02/10/2003	11/07/2002
50,821	Gold Toe Brands, Inc. (Comp)	Newton, NC	02/10/2003	01/22/2003
50,822	Henlopen Manufacturing Co., Inc. (Comp)	Watertown, CT	02/10/2003	01/30/2003
50,823	Alcoa Compostion Foils (Wkrs)	Pevely, MO	02/10/2003	01/30/2003
50,824	Formtech Enterprises, Inc. (Comp)	Jackson, MI	02/10/2003	02/06/2003
50,825	LG Philips Displays Company (IBEW)	Ottawa, OH	02/10/2003	01/17/2003
50,826	Allegheny Ludlum Steel (USWA)	Massillon, OH	02/10/2003	01/30/2003
50,827	Advanced Mircro Devices (Wkrs)	Austin, TX	02/10/2003	02/05/2003
50,828	Radisys Corporation (Wkrs)	Hillsobro, OR	02/10/2003	01/30/2003
50,829	Engineered Medical Systems (Comp)	Indianapolis, IN	02/10/2003	01/03/2003
50,830	Tyco Plastics (IUE)	Louisville, KY	02/10/2003	01/29/2003
50,831	EIMCO, LLC (USWA)	Bluefield, WV	02/10/2003	02/03/2003
50,832	Ionics, Inc. (Comp)	Bridgeville, PA	02/10/2003	02/05/2003
50,833	Caraustar Industries (Comp)	Fayetteville, NC	02/10/2003	02/01/2003
50,834	TSI Graphics, Inc. (Wkrs)	Effingham, IL	02/10/2003	02/05/2003
50,835	Reliant Fastener (USWA)	Rock Falls, IL	02/10/2003	01/02/2003
50,836	F/V The Fox (Comp)	Metlakatla, AK	02/10/2003	02/05/2003

APPENDIX—Continued

[Petitions instituted between 02/04/2003 and 2/14/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,837	George Wilson (Comp)	Anchorage, AK	02/10/2003	02/07/2003
50,838	F/V Windy Sea (Comp)	Kodiak, AK	02/10/2003	02/04/2003
50,839	F/V Seamaid (Comp)	Manokotak, AK	02/10/2003	01/28/2003
50,840	Elsie M. Bartman (Comp)	Manokotak, AK	02/10/2003	01/30/2003
50,841	F/V Lynn C (Comp)	Port Heiden, AK	02/10/2003	02/02/2003
50,842	F/V Anna Mae (Comp)	Port Heiden, AK	02/10/2003	02/04/2003
50,843	F/V My Girls (Comp)	Port Heiden, AK	02/10/2003	02/04/2003
50,844	F/V Jennifer Lynn (Comp)	Togiak, AK	02/10/2003	01/23/2003
50,845	Vishay Dale Electronics, Inc. (Comp)	Norfolk, NE	02/11/2003	02/07/2003
50,846	Torque-Traction Mfg. Tech., Inc. (AR)	Jonesboro, AR	02/11/2003	01/31/2003
50,847	Elmer's Products, Inc. (IAM)	Bainbridge, NY	02/11/2003	01/31/2003
50,848	Strategic Distribution, Inc. (Comp)	Lenoir, NC	02/11/2003	01/31/2003
50,849	Diamond Brands (Comp)	Wilton, ME	02/11/2003	02/10/2003
50,850	PTC Alliance Midwest Manufacturing (USWA)	Chicago Heights, IL	02/11/2003	02/05/2003
50,851	Sentex Systems (Comp)	Chatsworth, CA	02/11/2003	01/30/2003
50,852	Micro Instrument Company (Comp)	Escondido, CA	02/11/2003	01/31/2003
50,853	OK foods, Inc. (AR)	Ft. Smith, AR	02/11/2003	02/10/2003
50,854	Reitz Tool, Inc. (Comp)	Cochranton, PA	02/11/2003	02/10/2003
50,855	Magna Powertech (MI)	Grand Rapids, MI	02/11/2003	02/10/2003
50,856	Schlumberg Technology Corporation (TX)	Webster, TX	02/11/2003	02/10/2003
50,857	Centre State International Trucks, Inc. (Comp)	West Burlington, IA	02/11/2003	01/09/2003
50,858A	Freedom Plastics, LLC (Comp)	Sheffield, IL	02/11/2003	02/10/2003
50,858	Freedom Plastics, LLC (Comp)	Sheffield, IL	02/11/2003	02/10/2003
50,859	Vishay—Cera Mite (Wkrs)	Oconto Falls, WI	02/11/2003	02/07/2003
50,860	Cannondale Corporation (Comp)	Bedford, PA	02/11/2003	02/10/2003
50,861	Andrew Corporation (Wkrs)	Glen Rock, PA	02/11/2003	01/28/2003
50,862	F/V/ Silver Eagle (Comp)	Dillingham, AK	02/11/2003	02/06/2003
50,863	Eric Slotten (Comp)	Egegik, AK	02/11/2003	02/06/2003
50,864	F/V Jenny O. Daun (Comp)	Naknek, AK	02/11/2003	02/04/2003
50,865	Fibermark (MI)	Rochester, MI	02/12/2003	02/11/2003
50,866	AstenJohnson (Comp)	Jonesboro, GA	02/12/2003	02/06/2003
50,867	Eaton Remanufacturing (MI)	Oshtemo, MI	02/12/2003	02/03/2003
50,868	Ge-Ray Fabrics (Comp)	Morganville, NJ	02/12/2003	02/11/2003
50,869	Lear Corporation (Comp)	Grand Rapids, MI	02/12/2003	02/07/2003
50,870A	Freedom Plastics LLC (Co.)	Shefield, IL	02/12/2003	02/10/2003
50,870	Freedom Plastics, LLC (Comp)	Joliet, IL	02/12/2003	02/10/2003
50,871	Jabil Circuit, Inc. (Comp)	St. Petersburg, FL	02/12/2003	02/10/2003
50,872A	Leslie Fay Marketing, Inc. (Co.)	Pittston, PA	02/12/2003	01/30/2003
50,872	Leslie Fay Marketing, Inc. (Comp)	Laflin, PA	02/12/2003	01/30/2003
50,873	Scantibodies Laboratory, Inc. (Comp)	Santee, CA	02/12/2003	01/29/2003
50,874	Ocwen Federal Bank (Wkrs)	W. Palm Beach, FL	02/12/2003	01/31/2003
50,875	Rockford Powertrain (UAW)	Loves Park, IL	02/12/2003	02/12/2003
50,876	Mechanical Products Company, L.L.C. (UAW)	Jackson, MI	02/12/2003	02/12/2003
50,877	F/V Number One (Comp)	Manokotak, AK	02/12/2003	01/22/2003
50,878	Cannondale Corporation (Comp)	Bedford, PA	02/13/2003	02/10/2003
50,879	Maine Brand Manufacturing, Inc. (ME)	Littleton, ME	02/13/2003	02/12/2003
50,880	Savane International Corporation (Wkrs)	Santa Teresa, NM	02/13/2003	02/01/2003
50,881	Volex, Inc. (Wrks)	Chula Vista, CA	02/13/2003	02/04/2003
50,882	Pirelli Cable (Wkrs)	Colusa, CA	02/13/2003	02/04/2003
50,883	BOC Edwards (Comp)	Philadelphia, PA	02/13/2003	02/11/2003
50,884	Border Apparel (Comp)	El Paso, TX	02/13/2003	02/04/2003
50,885	Flying J. Oil and Gas, Inc. (Comp)	North Salt Lake, UT	02/13/2003	02/07/2003
50,886	Dana Brake Parts, Inc. (Comp)	Litchfield, IL	02/13/2003	02/11/2003
50,887	General Binding Corporation (Wkrs)	De Forest, WI	02/13/2003	02/03/2003
50,888	Go-Dan Industries, Inc. (USWA)	Buffalo, NY	02/13/2003	02/12/2003
50,889	Mega Tech of Oregon (Wkrs)	Corvallis, OR	02/13/2003	02/07/2003
50,890	Calapoois Valley Mushrooms (Comp)	Brownsville, OR	02/13/2003	02/07/2003
50,891	OSRAM Sylvania (Comp)	Lake Zurich, IL	02/13/2003	02/11/2003
50,892	Mastercraft Fabrics, LLC (Comp)	Morganton, NC	02/13/2003	02/24/2003
50,893	Best Manufacturing Gruop, LLC (Comp)	Griffin, GA	02/13/2003	02/10/2003
50,894	Electronic Data Systems (EDS) (Wkrs)	Albuquerque, NM	02/13/2003	02/12/2003
50,895	Americal corporation (Comp)	Goldsboro, NC	02/13/2003	02/12/2003
50,896	Easton Corporation (Comp)	Rochester Hills, MI	02/13/2003	01/15/2003
50,897	Michael Miller (Comp)	Inglis, FL	02/14/2003	01/21/2003
50,898	S/V Scampi (Comp)	Inglis, FL	02/14/2003	01/21/2003
50,899	John Halsey (Comp)	Homosassa, FL	02/14/2003	01/21/2003
50,900	David Beck (Comp)	Homosassa, FL	02/14/2003	01/21/2003
50,901	Holeinthewater Shrimp company (Comp)	Yankeetown, FL	02/14/2003	01/21/2003
50,902	Daniel Blanton (Comp)	Homosassa, FL	02/14/2003	01/20/2003
50,903	Jason Madison (Comp)	Homosassa, FL	02/14/2003	01/20/2003

APPENDIX—Continued

[Petitions instituted between 02/04/2003 and 2/14/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,904	B.J. Everett (Comp)	Old Town, FL	02/14/2003	02/12/2003
50,905	S/V Vagabond (Comp)	Inglis, FL	02/14/2003	01/21/2003
50,906	Arvin Meritor (Comp)	Gordonsville, TN	02/14/2003	02/11/2003
50,907	FCI USA, Inc. (Wkrs)	Etters, PA	02/14/2003	02/04/2003
50,908	Halliburton (Wkrs)	Alvarado, TX	02/14/2003	02/13/2003
50,909	International Foam, Inc. (UNITE)	Carlstadt, NJ	02/14/2003	02/13/2003
50,910	Managed Business Solutions (Comp)	Fort Collins, CO	02/14/2003	02/12/2003
50,911	Benton Veneer Company (AR)	Benton, AR	02/14/2003	02/13/2003
50,912	Kroehler Furniture Mfg. Co., Inc. (Wkrs)	Conover, NC	02/14/2003	02/05/2003

[FR Doc. 03–7196 Filed 3–25–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,684]

Producto Machine Company, Bridgeport, CT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 27, 2003, in response to a worker petition filed by a company official on behalf of workers at Producto Machine Company, Bridgeport, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 10th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7204 Filed 3–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,948]

Tordenskjold Marine Mobile, Inc., Daphne, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 24, 2003, in response to a worker petition filed by the State of Alabama Employment Service on behalf of workers at Tordenskjold Marine Mobile, Daphne, Alabama.

The Department has been unable to locate company officials of the subject firm or to obtain the information necessary to reach a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 12th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7207 Filed 3–25–03; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Appraisal Policy; Request for Comment

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of document; request for comment.

SUMMARY: NARA is seeking public comment on the draft Appraisal Policy. This proposal is part of NARA's series of records management initiatives to examine and redesign, as necessary, its records management policies and procedures. The draft policy is available on the NARA Opportunities for Public Comment web page at: *http://www.archives.gov/about_us/opportunities_for_comment/opportunities_for_comment.html.* For a paper copy of the report, contact the person listed in **FOR FURTHER INFORMATION CONTACT.**

DATES: Comments must be received by April 18, 2003.

ADDRESSES: Please send your comments to Susan Cummings (NPOL) by e-mail to *susan.cummings@nara.gov* or by fax to 301–837–0319 or by mail to NPOL, National Archives at College Park, Room 4100, 8601 Adelphi Rd, College Park, MD 20740–6001

FOR FURTHER INFORMATION CONTACT: Susan Cummings at 301–837–1636.

SUPPLEMENTARY INFORMATION: The Strategic Plan of the National Archives and Records Administration (NARA) states that NARA will ensure ready access to essential evidence that documents the rights of American citizens, the actions of Federal officials, and the national experience. In support of the NARA Strategic Plan, this draft Appraisal Policy sets out the strategic framework, objectives, and guidelines that the National Archives and Records Administration uses to determine whether Federal records have archival value. It also provides more specific guidelines for appraising the continuing historical value of certain categories of records including personal data records, research and development records, scientific observations, and environmental information.

Dated: March 21, 2003.

Nancy Allard,

Federal Register Liaison.

[FR Doc. 03–7333 Filed 3–25–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or

views with respect to this permit application by April 25, 2003. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. Applicant

[Permit Application No. 2004–001]

Werner Stamback, Environmental Officer, Quark Expeditions, Inc., 980 Post Road, Darien, CT 06820.

Activity for Which Permit is Requested

Enter Antarctic Specially Protected Areas. The applicant proposes to conduct educational visits for passengers, staff and crew of the icebreaker, *Kapitan* Khlebnikov, to the following areas in the Ross Sea and McMurdo Sound region of Antarctica: Cape Hallett, Victoria Land (ASPA #106); Cape Evans Historic Site (ASPA #154); Hut and associated artifacts, Backdoor Bay, Cape Royds, Ross Island (ASPA #156); Discovery Hut, Hut Point, Ross Island (ASPA #157); and, Huts and associated artifacts, Cape Adare (ASPA #158). Visits will be conducted in accordance with the relevant Management Plans for each site. Access to the sites may be by zodiac or helicopter as appropriate.

Location

ASPA #106—Cape Hallett, Victoria Land
ASPA #154—Cape Evans Historic Site
ASPA #156—Hut and associated artifacts, Backdoor Bay, Cape Royds, Ross Island
ASPA #157—Discovery Hut, Hut Point, Ross Island
ASPA #158—Huts and associated artifacts, Cape Adare.

Dates

March 15, 2003 to March 15, 2007.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–7266 Filed 3–25–03; 8:45 am]

BILLING CODE 7555–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to publish a Notice in the Federal Register notifying the public that Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission.

At OPIC's request, OMB is reviewing this information collection for emergency processing for 90 days, under OMB control number 3420–0015

Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses for other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 30 calendar days of this notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Bruce Campbell, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202–336–8563.

Summary Form Under Review

Type of Request: Revised form.
Title: Application for Financing.
Form Number: OPIC 115.
Frequency of Use: Once per investor per project.
Type of Respondents: Business or other institution (except farms); individuals.
Standard Industrial Classification Codes: All.
Description Affected Public: U.S. companies or citizens investing overseas.
Reporting Hours: 3.5 hours per project.
Number of Responses: 300 per year.
Federal Cost: $15,750.
Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act. of 1961, as amended.
Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and the project's eligibility for debt financing, assess the environmental impact and developmental effects of the project, measure the economic effects for the U.S. and the host country economy, and collection information for underwriting analysis.

Dated: March 20, 2003.

Eli Landy,

Senior Counsel & FOIA Director.

[FR Doc. 03–7157 Filed 3–25–03; 8:45 am]

BILLING CODE 3210–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission.

At OPIC's request, OMB is reviewing this information collection for emergency processing for 90 days, under OMB control number 3420–0020.

Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 30 calendar days of this notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Bruce Campbell, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20572; 202–336–8563.

Summary Form Under Review

Type of Request: Revised form.
Title: Expedited Screening Questionnaire On-Lending Transactions.
Form Number: OPIC 168.
Frequency of Use: Once per investor per project.
Type of Respondents: Business or other institution (except farms); individuals.
Standard Industrial Classification Codes: All.
Description of Affected Public: U.S. companies investing overseas.
Reporting Hours: 3.5 hours per project.
Number of Responses: 300 per year.
Federal Cost: $15,750.
Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and the project's eligibility for debt financing, assess the environmental impact and developmental effects of the project, measure the economic effects for the U.S. and the host country economy, and collect information for underwriting analysis.

Dated: March 20, 2003.

Eli Landy,

Senior Counsel & FOIA Director.

[FR Doc. 03–7158 Filed 3–25–03; 8:45 am]

BILLING CODE 3210–01–M

submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Bruce Campbell, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20572; 202–336–8563.

Summary Form Under Review

Type of Request: Revised form.
Title: Expedited Screening Questionnaire On-Lending Transactions.
Form Number: OPIC 168.
Frequency of Use: Once per investor per project.
Type of Respondents: Business or other institution (except farms); individuals.
Standard Industrial Classification Codes: All.
Description of Affected Public: U.S. companies investing overseas.
Reporting Hours: 3.5 hours per project.
Number of Responses: 300 per year.
Federal Cost: $15,750.
Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and the project's eligibility for debt financing, assess the environmental impact and developmental effects of the project, measure the economic effects for the U.S. and the host country economy, and collect information for underwriting analysis.

Dated: March 20, 2003.

Eli Landy,

Senior Counsel & FOIA Director.

[FR Doc. 03–7158 Filed 3–25–03; 8:45 am]

BILLING CODE 3210–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 25–41

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 25–41, Initial Certification of Full-Time School Attendance, is used to determine whether a child is unmarried and a full-time student in a recognized school. OPM must determine this in order to pay survivor annuity benefits to children who are age 18 or older.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 1,200 RI 25–41 forms are completed annually. It takes approximately 90 minutes to complete the form. The annual burden is 1,800 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division. (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–7264 Filed 3–25–03; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, April 17, 2003;
Thursday, May 1, 2003;
Thursday, May 15, 2003.

The meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: March 20, 2003.

Mary M. Rose,

Chairperson, Federal Prevailing Rate Advisory Committee.

[FR Doc. 03–7263 Filed 3–25–03; 8:45 am]

BILLING CODE 6325–49–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and

Information Services, Washington, DC 20549.

Extension: Rule 15c2–8; SEC File No. 270–421; OMB Control No. 3235–0481.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 15c2–8 Delivery of Prospectus

Rule 15c2–8 requires broker-dealers to deliver preliminary or final prospectuses to specified persons in association with securities offerings. This requirement ensures that information concerning issuers flows to purchasers of the issuers' securities in a timely fashion. There are approximately 8,000 broker-dealers, any of which potentially may participate in an offering subject to Rule 15c2–8. The Commission estimates that Rule 15c2–8 creates approximately 10,600 burden hours with respect to 120 initial public offerings and 460 other offerings.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 20, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7222 Filed 3–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Request Under Review

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 9b–1; SEC File No. 270–429; OMB Control No. 3235–0480. Rule 15c2–7; SEC File No. 270–420; OMB Control No. 3235–0479.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below.

Rule 9b–1 Options Disclosure Document

Rule 9b–1 (17 CFR 240.9b–1) sets forth the categories of information required to be disclosed in an options disclosure document ("ODD") and requires the options markets to file an ODD with the Commission 60 days prior to the date it is distributed to investors. In addition, Rule 9b–1 provides that the ODD must be amended if the information in the document becomes materially inaccurate or incomplete and that amendments must be filed with the Commission 30 days prior to the distribution to customers. Finally, Rule 9b–1 requires a broker-dealer to furnish to each customer an ODD and any amendments, prior to accepting an order to purchase or sell an option on behalf of that customer.

There are 5 options markets that must comply with Rule 9b–1. These 5 respondents work together to prepare a single ODD covering options traded on each market, as well as amendments to the ODD. These respondents file no more than one amendment per year, which requires approximately 8 hours per year for each respondent. Thus, the total compliance burden for options markets per year is 40 hours. The approximate cost per hour is $100, resulting in a total cost of compliance for these respondents of $4,000 per year (40 hours at $100).

In addition, approximately 2,000 broker-dealers must comply with Rule 9b–1. Each of these respondents will process an average of three new customers for options each week and, therefore, will have to furnish approximately 156 ODDs per year. The postal mailing or electronic delivery of the ODD takes respondents no more than 30 seconds to complete for an annual compliance burden for each of these respondents of 78 minutes, or 1.3 hours. Thus, the total compliance burden per year is 2,600 hours (2,000 broker-dealers × 1.3 hours). The approximate cost per hour to these respondents is $10 per hour, resulting in a total cost of compliance for these respondents of $26,000 per year (2,600 hours at $10).

The total compliance burden for all respondents under this rule (both options markets and broker-dealers) is 2640 hours per year (40 + 2,600), and total compliance costs of $30,000 ($4,000 + $26,000).

Rule 15c2–7 Identification of Quotations

Rule 15c2–7 (17 CFR 240.15c2–7) enumerates the requirements with which brokers and dealers must comply when submitting a quotation for a security (other than a municipal security) to an inter-dealer quotation system.

It is estimated that there are 8,500 brokers and dealers. Industry personnel estimate that approximately 900 notices are filed pursuant to Rule 15c2–7 annually. Based on industry estimates that respondents complying with Rule 15c2–7 spend 30 seconds to add notice of an arrangement and 1 minute to delete notice of an arrangement, the staff estimates that, on an annual basis, respondents spend a total of 11.25 hours to comply with Rule 15c2–7, based upon past submissions. The average cost per hour is approximately $35. Therefore, the total cost of compliance for brokers and dealers is approximately $393.75

The retention period for the recordkeeping requirement under Rule 15c2–7 is three years following the date a quotation is submitted. The recordkeeping requirement under this Rule is mandatory to assist the Commission with monitoring brokers and dealers who submit quotations to an inter-dealer quotation system. This rule does not involve the collection of confidential information.

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 19, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7223 Filed 3–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15g–6; SEC File No. 270–349; OMB Control No. 3235–0395. Rule 17a–8; SEC File No. 270–53; OMB Control No. 3235–0092.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 15g–6—Account statements for penny stock customers

Rule 15g–6 under the Securities Exchange Act of 1934 (the "Act") requires brokers and dealers that sell penny stocks to their customers to provide monthly account statements containing information with regard to the penny stocks held in customer accounts. The information is required to be provided to customers of broker-dealers that effect penny stock transactions in order to provide those customers with information that is not now publicly available. Without this information, investors would be less able to protect themselves from fraud and to make informed investment decisions.

The staff estimates that there are approximately 270 broker-dealers that are subject to the rule. The staff estimates that the firms affected by the rule will, at any one time, have approximately 150 new customers with whom they have effected transactions in penny stocks, each of whom would receive a maximum of 12 account statements per year, for a total of 1,800 account statements annually for each firm (150 customers × 12 account statements/customer). The staff estimates that a broker-dealer would expend approximately three minutes in processing the information required for each account statement. Accordingly, the estimated average annual burden would equal 90 hours (1,800 account statements × 3 minutes/account statement × 1 hour/60 minutes), and the estimated average total burden would equal 24,300 hours (90 hours × 270).

Rule 17a–8—Financial Recordkeeping and Reporting of Currency and Foreign Transactions

Rule 17a–8 under the Act requires brokers and dealers to make and keep certain reports and records concerning their currency and monetary instrument transactions. The requirements allow the Commission to ensure that brokers and dealers are in compliance with the Currency and Foreign Transactions Reporting Act of 1970 ("Bank Secrecy Act") and with the Department of the Treasury regulations under that Act.

The reports and records required under this rule initially are required under Department of the Treasury regulations, and additional burden hours and costs are not imposed by this rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 14, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7224 Filed 3–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47540; File No. SR–Amex–2001–92]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 2 and 3 to Proposed Rule Change by the American Stock Exchange LLC To Simplify the Manner in Which a Contrary Exercise Advice Is Submitted and To Extend by One Hour the Time for Members To Submit Customer's Contrary Exercise Advices

March 19, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change seeking to modify the manner in which Contrary Exercise Advices ("CEAs") are submitted to the Exchange. The Amex amended its proposal on December 17, 2001.[3] The original proposal and Amendment No. 1 were published in the **Federal Register** on January 15, 2002 for notice and comment.[4] The Commission received four comment letters regarding the proposal.[5] The Amex responded to the commenters in Amendment No. 2, which the Amex filed with the Commission on June 19, 2002.[6] On March 6, 2003, the Amex submitted

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer L. Colihan, Special Counsel, Division of Market Regulation ("Division"), Commission, dated December 14, 2001 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 45253 (January 8, 2002), 67 FR 2003.

[5] See letter from Mark R. Mudry, Chairman, the Options Operations Subcommittee of the OCC Roundtable, to Jonathan G. Katz, Secretary, Commission, dated February 22, 2002; letter from Margo R. Topman, Vice President, Assistant General Counsel, Goldman, Sachs & Co., to Jonathan G. Katz, Secretary, Commission, dated February 15, 2002; letter from Thomas N. McManus, Executive Director and Counsel, Morgan Stanley, to Jonathan G. Katz, Secretary, Commission, dated February 11, 2002; and letter from Mark Straubel, Assistant Vice President, Pershing, to Secretary, Commission, dated February 5, 2002.

[6] See letter (with exhibit) from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated June 18, 2002 ("Amendment No. 2"). In Amendment No. 2, the Amex responded to the commenters and proposed to revise its original proposal to extend the one hour for all accounts to submit a CEA, to extend the deadline of 2 hours and 28 minutes following the time announced for the close of trading in equity options on that day instead of 6:30 p.m. (NY time) for all accounts to deliver a CEA or Advice Cancel where the Amex modifies the close of trading at expiration, and to require the Exchange to provide advance notice on the prior business day in order to establish earlier cut-off times for the submission of a CEA due to the Exchange modifying the close of trading or to unusual circumstances. The Exchange also proposed three new Commentaries to Amex Rule 980 to: (1) Clarify that cut-off times for the submission of a CEA may be extended due to operational and/or systems problems at the Exchange; (2) clarify that while option holders are required to make a final decision to exercise by 5:30 p.m. (NY time), member and member organizations will have one hour to process the CEA for delivery to the Exchange by 6:30 p.m. (NY time) if the CEA is expected to be electronically submitted, and 5:30 p.m. (NY time) for manual or physical delivery of a CEA at the Exchange; and (3) require firms that employ an electronic submission method to adopt specific written procedures for the electronic submission of CEAs.

Amendment No. 3 to the proposal.[7] This Amendment completely replaces and supersedes the original filing and Amendment Nos. 1 and 2. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rule 980: (i) To simplify the manner in which a CEA is submitted to the Exchange; (ii) to extend by one hour the cut-off time for members and member organizations to submit CEAs to the Exchange; and (iii) to add new paragraphs (g) and (h) for the purpose of establishing different cut-off times for the decision to exercise or not exercise an expiring option and for the submission of a CEA based on a modified trading session or due to "unusual circumstances." Below is the text of the proposed rule change, as amended. New text is italicized. Deleted text is bracketed.

* * * * *

Rule 980. Exercise of Option Contracts

(a) [Subject to the restrictions established by the Exchange pursuant to Rule 905 and to such other restrictions which may be imposed by the Exchange pursuant to Rules 907 and 909 or by the Options Clearing Corporation ("OCC") pursuant to its rules, an outstanding option contract may be exercised during the time period specified in the rules of OCC by the tender to OCC of an exercise notice in accordance with its rules.] *An outstanding option contract may be exercised by the tender to the Options Clearing Corporation ("OCC") of an exercise notice made during the periods, and using the procedures, specified in OCC rules.* An exercise notice may be tendered to OCC only by the clearing member in whose OCC account the option contract is carried. *Option exercises are also subject to restrictions that are established by or may be imposed by the Exchange in Rules 905, 907 and 909, and in this rule.* Members and member organizations may establish fixed procedures as to the latest [hour at which] *time* they will accept exercise instructions from customers.

(a) [Final decisions by options holders to either exercise or not exercise expiring equity options must be made by members or member organizations not later than 5:30 p.m., New York time on the business day immediately prior to the expiration date ("the exercise cut-off time"). In this regard, members and member organizations must either] *Special procedures apply to the exercise of equity options on the last business day before their expiration ("expiring options"). Unless waived by OCC, expiring options are subject to the Exercise-by-Exception ("Ex-by-Ex") procedure under OCC Rule 805. This rule provides that, unless contrary instructions are given, option contracts that are in-the-money by specified amounts shall be automatically exercised. In addition to OCC rules, the following Exchange requirements apply with respect to expiring options. Option holders desiring to exercise or not exercise expiring options must either:*

[(ii)]*(i)* take no action and allow exercise determinations to be made in accordance with OCC's [Exercise-by-Exception] *Ex-by-Ex* procedure where applicable[.]; *or*

[(i)]*(ii)* submit a "Contrary Exercise Advice" to the Exchange *by the deadline specified in paragraph (c) below.* A Contrary Exercise Advice is a *communication either: (A)* [form prescribed by the Exchange for use by a member or member organization to indicate a final exercise decision committing an options holder] to not exercise an [equity] option[s position which] *that* would *be* automatically [be] exercised [pursuant to] *under* OCC's [Rule 805 Exercise-by-Exception] *Ex-by-Ex* procedure, or *(B)* to exercise an [equity] option [position which] *that* would not *be* automatically [be] exercised [pursuant to] *under* OCC's [Exercise-by-Exception] *Ex-by-Ex* procedure. *A* Contrary Exercise Advice[s can] *may* be submitted by *a* [any] member or member organization *by using the Exchange's Contrary Exercise Advice Form, OCC's Clearing Management and Control System (C/MACS), a Contrary Exercise Advice form of any other* [at a place designated for that purpose by any] national [options] *securities* exchange of which [they are] *the firm is* a member and where the option is listed, or [may be transmitted to the Exchange via OCC in a format prescribed by OCC; or] *such other method as the Exchange may prescribe. A Contrary Exercise Advice may be canceled by filing an "Advice Cancel" with the Exchange or resubmitted at any time up to the submission cut-off times specified below.*

(c) Exercise cut-off time. Option holders have until 5:30 p.m. New York time on the business day immediately prior to the expiration date to make a final decision to exercise or not exercise an expiring option. For customer accounts, members and member organizations may not accept exercise instructions after 5:30 p.m. New York time but have until 6:30 p.m. New York time to submit a Contrary Exercise Advice. For non-customer accounts, members and member organizations may not accept exercise instructions after 5:30 p.m. New York time but have until 6:30 p.m. New York time to submit a Contrary Exercise Advice if such member or member organization employs an electronic submission procedure with time stamp for the submission of exercise instructions by option holders. Consistent with Commentary .04, members and member organizations are required to submit a Contrary Exercise Advice by 5:30 p.m. for non-customer accounts if such Members and/or member organization do not employ an electronic submission procedure with time stamp for the submission of exercise instructions by option holders. [In those instances when OCC has waived the Exercise-by-Exception procedure, a Contrary Exercise Advice is still required to be submitted by members and member organizations wishing to exercise an option that would not have been automatically exercised, or exercise an option that would have been automatically exercised had the Exercise-by-Exception procedure been in effect. The applicable underlying security price in such instances will be as described in OCC Rule 805(1), which is normally the last sale price in the primary market for the underlying security. In cases where the Exercise-by-Exception procedure has been waived for an options class, OCC rules require that members and member organizations wishing to exercise such options must submit an affirmative Exercise Notice to OCC, whether or not a Contrary Exercise Advice has been filed.]

[Each member or member organization which maintains a proprietary or public customer account position in an expiring option is responsible for ensuring that final exercise decisions are indicated to the Exchange Member organizations who have accepted the responsibility to indicate final exercise decisions on behalf of another member or non-member firm and shall take necessary steps to ensure that such decisions are properly indicated to the Exchange. Member organizations may establish a processing cut-off time prior to the Exchange's exercise cut-off time at which they will no longer accept final exercise decisions in expiring options from options holders for which they carry accounts.]

(d) If OCC has waived the Ex-by-Ex procedure for an options class, members and member organizations must either:

(i) submit to the Exchange, a Contrary Exercise Advice, in a manner specified by the Exchange, within the time limits specified in paragraph (c) above if the holder intends to exercise the option, or

(ii) take no action and allow the option to expire without being exercised.

In cases where the Ex-by-Ex procedure has been waived, OCC rules require that members and member organizations wishing to exercise such options must submit an affirmative Exercise Notice to OCC, whether or not a Contrary Exercise Advice has been filed with the Exchange.

(e) An Exchange member organization that has accepted the responsibility to indicate final exercise decisions on behalf of another member or non-member firm shall take the necessary steps to ensure that such decisions are properly indicated to the Exchange. Such member organization may establish a processing cut-off time prior to the Exchange's exercise cut-off time at which it will no longer accept final exercise decisions in expiring options from option holders for whom it indicates final exercise decisions. Each member or member organization that indicates final exercise decisions through another broker-dealer is responsible for ensuring that final exercise decisions for all of its proprietary (including market maker) and public customer account positions are indicated in a timely manner to such broker-dealer.

[(d)] *(f)* Members and member organizations may make final exercise decisions after the exercise cut-off time but prior to expiration without having submitted a Contrary Exercise Advice: (i) In order to remedy mistakes made in good faith; [,] (ii) to take appropriate action as the result of a failure to reconcile unmatched Exchange option transactions; [,] or (iii) where exceptional circumstances have restricted an option holder's ability to inform a member organization of a decision regarding exercise, or a member organization's ability to receive an option holder's decision by the cut-off time. The burden of establishing any of the above exceptions rests solely on the member or member organization seeking to rely on such exceptions.

(g) In the event the Exchange provides advance notice on or before 5:30 p.m. (NY time) on the business day immediately prior to the last business day before the expiration date indicating that a modified time for the close of trading in equity options on such last business day before expiration will occur, then the deadline to make a final decision to exercise or not exercise an expiring option shall be 1 hour 28 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. (NY time) deadline found in Rule 980(c). However, members and member organizations may deliver a Contrary Exercise Advice or Advice Cancel to the Exchange within 2 hours 28 minutes following the time announced for the close of trading in equity options on that day instead of the 6:30 p.m. (N.Y. time) deadline found in Rule 980(c) for customer accounts and non-customer accounts where such member firm employs an electronic submission procedure with time stamp for the submission of exercise instructions. For non-customer accounts, members and member organizations that do not employ an electronic procedure with time stamp for the submission of exercise instructions are required to deliver a Contrary Exercise Advice or Advice Cancel within 1 hour and 28 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. (NY time) deadline found in Rule 980(c).

(h)(1) The Exchange may establish extended cut-off times for decision to exercise or not exercise an expiring option and for the submission of Contrary Exercise Advices on a case by case basis due to unusual circumstances.

(2) The Exchange with at least one (1) business day prior advance notice, by 12 noon on such day, may establish a reduced cut-off time for the decision to exercise or not exercise an expiring option and for the submission of Contrary Exercise Advices on a case-by-case basis due to unusual circumstances; provided, however, that under no circumstances should the exercise cut-off time and the time for submission of a Contrary Exercise Advice be before the close of trading.

Commentary

.01 For purposes of this Rule 980, the terms "customer account" and "non-customer account" have the same meaning as defined in OCC By-Laws Article I(C)(25) and Article I (N)(2), respectively.

.02[.01] Each member organization shall prepare a memorandum of every [final] exercise [decision] *instruction received showing the time when such instruction was so* [for which a Contrary Exercise Advice is required showing the time when such decision was made or] received. Such memoranda shall be subject to the requirements of SEC Rule 17a–4(b).

.03 In the event of an "unusual circumstance," Rule 980(h)(1) provides that the Exchange may extend the cut-off times for exercise instructions and the submission of a Contrary Exercise Advice beyond the normal time frames specified in Rule 980(c). For purposes of subparagraph (h)(1), an "unusual circumstance" includes, but is not limited to, increased market volatility; significant order imbalances; significant volume surges and/or systems capacity constraints; significant spreads between the bid and offer in underlying securities; internal system malfunctions affecting the ability to disseminate or update market quotes and/or deliver orders; or other similar occurrences. Rule 980(h)(2) specifies that the Exchange may also reduce such cut-off times for "unusual circumstances." For purposes of subparagraph (h)(2), an "unusual circumstance" includes, but is not limited to, a significant news announcement concerning the underlying security of an option contract that is scheduled to be released just after the close on the business day immediately prior to expiration.

.04 Although the deadline for all option holders to make a final decision to exercise or not exercise is 5:30 p.m. (NY time), the deadline for the submission of the Contrary Exercise Advice in the case of non-customer accounts will depend on the manner of the decision to exercise or not exercise.

(i) For electronic timestamp submissions of the exercise decision by non-customer option holders, a Contrary Exercise Advice submitted by members and member organizations must be received by the Exchange by 6:30 p.m. (NY time).

(ii) For manual submissions of the exercise decision by non-customer option holders, members and member organizations must submit a Contrary Exercise Advice at the Exchange via the Contrary Exercise Advice Box by 5:30 p.m. (NY time).

.05 Each member organization shall establish fixed procedures to insure secure time stamps in connection with their electronic systems employed for the recording of submissions to exercise or not exercise expiring options.

.06 [.02] In the event a member or member organization makes a final exercise decision after the exercise cut-off time pursuant to an exception set

---

[7] See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated March 5, 2003, replacing Form 19b–4 in its entirety ("Amendment No. 3"). In Amendment No. 3, Amex made changes to its rule text and provided additional discussion in response to comments.

forth in clauses (i), (ii) or (iii) of paragraph [(d)](*f*) of Rule 980, the member or member organization shall maintain a memorandum setting forth the circumstances regarding such exception and shall file a copy of the memorandum with the Exchange's Market Surveillance Department no later than 12 noon on the first business day following the respective expiration.

.07 [.03] The filing of a Contrary Exercise Advice required by this rule does not serve to substitute as the effective notice to OCC for the exercise or non-exercise of expiring options.

* * * * *

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Options Clearing Corporation ("OCC"), the issuer of all Amex-traded options contracts, has an established procedure for options holders wishing to exercise in-the-money options [8] before they expire. Known as Ex-by-Ex, the procedure provides for the automatic exercise at expiration of any equity option contract that is ¾ of a point or more in-the-money for customer accounts or ¼ point or more in-the-money for any other accounts.[9] Option holders who wish to have their contracts exercised in accordance with the Ex-by-Ex procedure need to take no further action; those contracts that are in-the-money by the appropriate amount will be automatically exercised. Option holders who do not wish to have their options automatically exercised or who wish their options to be exercised under different parameters than the Ex-by-Ex procedure, must file a CEA with the Exchange pursuant to Amex rule 980, and instruct OCC of their "contrary" intention.[10] The rule is designed to deter individuals from taking improper advantage of late-breaking news by requiring evidence of an option holder's intention to exercise or not exercise expiring equity options via the submission of a CEA. Members and member organizations satisfy the filing requirement by manually submitting a CEA form or by electronically submitting the CEA through OCC's Clearing Management and Control System (C/MACS).

The principal goal of Amex rule 980 is to maintain a level playing field between persons holding long and short positions in expiring equity options. The Amex believes that after trading has ended on the final trading day before expiration, persons who are short the option have no way to close out their short position. To put option holders on equal footing, Amex Rule 980 attempts to keep to a minimum the time period in which a holder can exercise the option after the close of trading on the last business day prior to expiration, generally known as "Expiration Friday." [11]

The current exercise cut-off time for an option holder to decide whether or not to exercise is 5:30 p.m. (NY time) on the business day immediately prior to the expiration date.[12] Under the proposal, the exercise cut-off time set forth in amended Amex Rule 980(c) will not change except in cases of a modified trading session or due to "unusual circumstances." Current Amex rule 980 imposes a uniform 5:30 p.m. cut-off time for the submission of CEAs for all accounts without differentiating between customer and non-customer accounts.

The proposed rule change was prompted by concerns expressed by clearing firms that the deadline for submitting CEAs is problematic for customer accounts,[13] due to the logistical difficulties of receiving customer exercise instructions and processing them through their retail branch systems and back office areas before submitting them to the Exchange. Therefore, the Exchange proposes to adopt a cut-off time of 6:30 p.m. (NY time) for members and member organizations to submit CEAs for customer accounts. In response to concerns expressed by commenters, the Exchange also proposes to allow members and member organizations to submit CEAs for non-customer accounts [14] by 6:30 p.m. (NY time) provided such member or member organization employs an electronic procedure with time stamp recording for the submission of exercise instructions by options holders. In those cases where members or member organizations do not employ an electronic submission procedure for the submission of exercise instructions, CEAs for non-customer accounts must be submitted to the Exchange by 5:30 p.m. (NY time). The different CEA submission deadlines are set forth in amended Amex Rule 980(c) and new Commentary .04.

Although most firms have electronic submission procedures, the Exchange is concerned that those firms that manually submit CEAs could have an opportunity to improperly extend the 5:30 p.m. (NY time) deadline to exercise or not exercise an option if *all* non-customer accounts were subject to the 6:30 p.m. (NY time) deadline for the submission of CEAs. This concern on the part of the Exchange is based on the difficulty in monitoring a manual procedure that has different times for deciding whether or not to exercise the option and for the submission of the CEA.

Accordingly, in the case of non-customer accounts, the Exchange has proposed to limit the 6:30 p.m. (NY time) deadline for submitting CEAs to those member firms that have an electronic submission procedure for deciding whether to exercise or not exercise an option. In connection with the use of an electronic submission procedure by member firms, the Exchange proposes the addition of new Commentary .05 that requires members and member organizations employing electronic submissions to establish procedures to secure time stamps in connection with their electronic systems employed for the recording of

[8] "In-the-money" for a call option occurs if the current market value of the underlying security is above the exercise price of the option. For put options, "in-the-money" means the current value of the underlying security is below the exercise price of the option.

[9] *See* OCC Rule 805(d).

[10] A CEA may be canceled by filing an "Advice Cancel" with the Exchange at any time up to the submission cut-off deadline specified in proposed amended Amex Rule 980(c).

[11] "Expiration Friday" is generally the last business day prior to the expiration of an option contract.

[12] The "expiration date" of an options contract generally is the Saturday immediately following the third Friday of the expiration month of such option. *See* OCC By-Laws Article I (E)(k).

[13] A "customer account" is defined in OCC By-Laws Article I (C)(25) as an account of a Clearing Member which is confined to Exchange transactions cleared and positions carried by the Clearing Member on behalf of its securities customers, other than those transactions of market-makers which are cleared through a market-makers account. OCC By-Laws define a "securities customer" as a person having a securities account at a broker or dealer other than a non-customer of such broker or dealer. *See* OCC By-Laws Article I (S)(1).

[14] A "non-customer account" generally means a person that is not a customer of a broker or dealer defined in Rule 8c–1 and 15c2–1 under the Act. *See* OCC By-Laws Article I (N)(2).

submissions to exercise or not exercise expiring options.

The OCC on occasion will suspend the use of its Ex-by-Ex procedure, such as when trading in the underlying stock has been halted or if accurate price data is unavailable for the determination of closing prices. When this occurs and there is no automatic exercise, all options contract holders must send an exercise notice to the OCC if they wish to exercise, regardless of whether the option is in or out-of-the-money. Currently, when the OCC suspends its Ex-by-Ex procedure for an option class, Amex rule 980 requires the submission of a CEA. Thus, when the OCC has waived the Ex-by-Ex procedure, option holders must determine what price would have been used, even though the only available price might be a stale last sale price (a price the OCC did not feel comfortable using). Option holders then must determine whether a CEA needs to be submitted to the Exchange evidencing the intention to exercise or not exercise.

In the Amex's view, the options exchanges have long viewed this process as cumbersome and confusing to option holders. Therefore, the Amex proposes to amend Amex rule 980(d) to eliminate the requirement that a CEA be submitted if the holder does not want to exercise the option when OCC has waived its Ex-by-Ex procedure for that options class. As a result, when the Ex-by-Ex procedure has been waived, submission of instructions to the Exchange to exercise will be required only when the options holder wants to exercise the option contract.

The proposed rule change would also permit the Exchange to establish different exercise cut-off time as an exception to amended amex Rule 980(c) to address situations where the Exchange has advanced prior knowledge or warning of a modified trading session at expiration, or in the case of "unusual circumstances."

Specifically, proposed Amex rule 980(g) would be applicable when a different or modified close of trading is announced due to a market-wide event. In such cases, the Exchange would have forewarning of the event and would be required to provide notice of a change in exercise cut-off time by 5:30 p.m. (NY time) on the business day prior to the last trading day before expiration. For example, if the day after Thanksgiving is the last trading day prior to expiration with a close of trading of 1 p.m. (NY time), then the Exchange would, with prior notice up to the Wednesday before Thanksgiving, be able to reduce the cut-off time of the decision to exercise or not exercise expiring options to 1 hour 28 minutes after the close of trading. With respect to the submission of a CEA by members and member organizations, the cut-off time would be reduced to 2 hours and 28 minutes after the close of trading for customer accounts and non-customer accounts where the member firm employs an electronic procedure with time stamp for the submission of exercise instructions. Member firms that do not employ an electronic submission procedure for exercise instructions would be required to submit a CEA within 1 hour and 28 minutes after the close of trading for its non-customer accounts. Accordingly, the normal exercise cut-off time would not apply and, similar to amended Amex Rule 980(c), the deadline for submitting CEAs to the Exchange for non-customer accounts would depend on the use of an electronic submission procedure for the submission of exercise instructions.

Proposed Amex rule 980(h)(1) would permit the Exchange to extend the cut-off time period for the decision to exercise or not exercise expiring options, as well as the submission of a CEA due to unusual circumstances. Situations that may arise that are deemed to be "unusual circumstances" are set forth in revised Commentary .03. An "unusual circumstance" for purposes of proposed paragraph (h)(1) includes, but is not limited to, increased market volatility; significant order imbalances; significant volume surges and/or systems capacity constraints; significant spreads between the bid and offer in underlying securities; internal system malfunctions affecting the ability to disseminate or update market quotes and/or deliver orders; or other similar occurrences.

Proposed Amex Rule 980(h)(2) would permit the Exchange with one (1) business day prior advance notice by 12 noon (NY time) to establish a reduced cut-off time for the decision to exercise or not exercise expiring options as well as the submission of the CEA. The reduced cut-off time under this new paragraph for both the decision to exercise or not exercise and the submission of the CEA may not occur before the close of trading. The primary purpose of this proposed paragraph (h)(2) is to permit the Exchange to reduce cut-off times because of an "unusual circumstance," such as a significant news event occurring after the close. Revised Commentary .03 to Amex Rule 980 provides that for purposes of subparagraph (h)(2), an "unusual circumstance" is a significant news announcement concerning the underlying security of an option contract that is scheduled to be released after the close on the last trading day prior to expiration. For example, a decision on whether a particular merger will be approved or whether a "blockbuster" new product will receive regulatory approval that occurs after the close of trading would justify a reduced cut-off time so that persons holding short positions are not prejudiced by being unable to close out their positions. The Exchange believes that this would maintain a level playing field between persons holding long and short positions in expiring options.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act [15] in general, and furthers the objectives of section 6(b)(5) of the Act [16] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

A. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

B. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange received four comment letters [17] regarding the original proposal and Amendment No. 1. The Exchange believes that it has responded to the comments and concerns raised in these comment letters as reflected in Amendment Nos. 2 and 3.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *See supra* note.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–92 and should be submitted by April 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7113 Filed 3–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47531; File No. SR–Amex–2002–33]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change as Amended by Amendment No. 1 Thereto Relating to Proprietary Order Routing Facilities for Amex Listed Options and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto

March 19, 2003.

I. Introduction

On April 16, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to prohibit members from using facilities that are not owned or operated by the Exchange to transmit orders electronically from the Amex floor to other exchanges through a direct electronic link, and to receive orders transmitted electronically to the Amex floor from other exchanges through a direct electronic link for the purchase or sale of Amex listed options after the complete implementation of the permanent intermarket linkage in the options market ("Options Linkage"). On April 30, 2002, Amex submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published in the **Federal Register** on May 8, 2002.[4] The Commission received one comment letter on the proposed rule change.[5] On May 28, 2002, Amex submitted Amendment No. 2 to the proposed rule change.[6] On September 13, 2002, Amex submitted a response to the ISE Letter.[7] On December 30, 2002, Amex submitted an additional response to the ISE Letter.[8] This order approves the amended proposed rule change, provides notice of filing of Amendment No. 2 and grants accelerated approval to Amendment No. 2.

II. Description of the Proposal and Amendment No. 2

As originally filed, Amex proposed to prohibit members from using facilities that are not owned or operated by the Exchange to transmit orders[9] electronically from the Amex floor to other exchanges through a direct electronic link, and to receive orders transmitted electronically to the Amex floor from other exchanges through a direct electronic link for the purchase or sale of Amex listed options upon the complete implementation of the Options Linkage.[10]

In Amendment No. 2, Amex limited the proposed rule change to apply only to facilities and services of another registered exchange on the Amex floor that provide a direct electronic link to the other exchange. The proposed rule change would not alter the current ability of members and member organizations, with the prior written approval of Amex, to use an electronic order routing facility or service owned and operated by a registered broker-dealer to transmit orders for Amex listed options to another registered exchange for execution.

III. ISE Letter and Amex Responses

ISE Letter

In the ISE Letter, ISE argues that Amex's proposal has significant customer protection and competitive implications because it would require an Amex floor broker that sees an ISE price that is superior to the Amex price to route the order off-floor for transmission to the ISE. ISE believes the delay caused by off-floor transmissions raises serious risks that the ISE market may not be available when the customer order reaches ISE. In addition, ISE believes the Amex floor broker may determine that the delay makes the possibility of ISE execution too risky and may execute the order on the Amex at the inferior price. ISE points out that once the Options Linkage is implemented, the Amex broker could incur trade-through liability if the broker executes the order on the Amex at the inferior price.

ISE argues that in limiting members' ability to send orders electronically to other markets, the Amex impedes competition because, without this limitation, free market forces and price competition would lead to the sending of order flow to exchanges displaying superior prices. ISE stated its view that, under the proposal, market makers could use only the Options Linkage to access competing exchanges electronically, even if there may be more efficient methods of access, and that the Options Linkage will provide only limited access because: (1) Brokers will not have direct access to the Options Linkage; (2) market makers are prohibited from using the Options Linkage as an order delivery system for customer orders; and (3) the number of principal orders market makers may send through the Options Linkage is restricted. ISE claims that Amex wrongly implies that the Options Linkage would render obsolete the need for proprietary access systems.

Amex Initial Response

In the Amex Initial Response, Amex stated that it had addressed ISE's concerns in Amendment No. 2. In Amendment No. 2, Amex clarified that, after the Options Linkage is implemented, Amex members would continue to have electronic access to ISE from the Amex floor through broker-dealer order routing facilities; members would only be precluded from using ISE terminals on the Amex floor.

Amex Supplemental Response

In the Amex Supplemental Response, Amex responded in greater detail to ISE's concerns that the proposal is anti-competitive. Amex argues that it is not required by any applicable law or regulation to permanently maintain on its floor a separate, direct electronic link operated by the ISE to transmit orders in options to that exchange.

In addition, Amex argues that more than adequate alternative means exist for Amex member firms to route orders from the Amex floor to the ISE. Even though its use is restricted, the Options Linkage would be available. Furthermore, Amex's proposal would not alter the ability of Amex member firms to route orders from the floor of Amex to ISE using their own (or third party) proprietary order routing facilities. Amex believes the proprietary routing systems available to most, if not virtually all, Amex members on the Amex's floor are sufficiently fast and efficient that they can essentially function as an exchange-to-exchange system for orders sent from the floor of one exchange. Amex points out that not one Amex member firm has complained that the removal of the direct linkage with ISE when the Options Linkage is implemented would make it difficult for it to route orders to ISE. With respect to broker-dealers, they will have indirect access to the Options Linkage by delivering an order to the Amex specialist, who will have direct access to the Options Linkage.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[11] and, in particular, the requirements of Section 6 of the Act[12] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act[13] because it should remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Specifically, prohibiting Amex members from using the facilities and services of another registered exchange on the floor of the Amex as a direct electronic link to transmit orders electronically to the other exchange for the purchase or sale of listed options once the Options Linkage has been implemented is not an inappropriate burden on competition. The Commission agrees that neither the Act nor Commission rules require Amex to permit its members to have another exchange's terminals on Amex's floor to provide direct electronic access to that exchange. Finally, Amex represents that Amex members will be able to access other exchanges, as they do today, through their own or another registered broker-dealer's electronic order routing facility or service, as well as through the Options Linkage.

The Commission also finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 clarifies and limits the scope of Amex's proposal in response to the ISE Letter. Specifically, Amendment No. 2 addresses the concern raised in the ISE Letter that the proposal would preclude an Amex member from using its own or a third party's proprietary facility to access another exchange. Accordingly, consistent with Section 19(b)(2) of the Act,[14] the Commission is accelerating approval of Amendment No. 2.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 to the proposed rule change, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–33 and should be submitted by April 16, 2003.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–AMEX–2002–33), as amended by Amendment No. 1, is approved, and that Amendment No. 2 to the proposed rule change is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7116 Filed 3–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47548; File No. SR–CBOE–2003–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Governing the Settlement Procedures for Index Options in Certain Unusual Circumstances

March 20, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2003, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. CBOE asserts that this proposal meets the criteria of

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 29, 2002 ("Amendment No. 1"). In Amendment No. 1, Amex included the text of the proposed rule change.

[4] *See* Securities Exchange Act Release No. 45864 (May 2, 2002), 67 FR 30985.

[5] *See* letter from Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc. ("ISE"), to Jonathan Katz, Secretary, Commission, dated May 28, 2002 ("ISE Letter").

[6] *See* letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 24, 2002 ("Amendment No. 2").

[7] *See* letter from Bill Floyd-Jones, Assistant General Counsel, Amex, to Deborah Flynn, Division, Commission, dated September 13, 2002 ("Amex Initial Response").

[8] *See* letter from Bill Floyd-Jones, Assistant General Counsel, Amex, to Deborah Flynn, Division, Commission, dated December 27, 2002 ("Amex Supplemental Response").

[9] These facilities cannot be used for listed equities and Exchange-Traded Funds as the Intermarket Trading System serves as the mechanism for routing trading interest in these securities between exchanges.

[10] The Commission approved the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage ("Linkage Plan") in July 2000. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[11] In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 240.19b–4.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[17] 15 U.S.C. 78s(b)(1).

[18] 17 CFR 240.19b–4.

section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder[4] and is, therefore, immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules governing the settlement procedures for its index options in certain unusual circumstances. Below is the text of the proposed rule change. New language is in italics; deleted language is in brackets.

* * * * *

Rule 24.7—Trading Halts, Suspensions, or Primary Market Closure

Rule 24.7.

(a)–(d) No change.

(e) When the primary market for a security underlying the current index value of an index option does not open for trading, *halts trading prematurely, or otherwise experiences a disruption of normal trading* on a given day, *or if a particular security underlying the current index value of an index option does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading on a given day in its primary market*, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, [based on the opening price of that security on the next day that its primary market is open for trading. This procedure shall not be used if the current index value at expiration is fixed] in accordance with the Rules and By-Laws of The Options Clearing Corporation.

Interpretations and Policies: No change.

* * * * *

Rule 24.9—Terms of Index Option Contracts

Rule 24.9

(a)–(1)–(3) No Change.

(4) A.M.–Settled Index Options. The last day of trading for A.M.-settled index options shall be the business day preceding the last day of trading in the underlying securities prior to expiration. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that [(i) I]in the event that the primary market for an underlying security does not open for trading, *halts trading prematurely, or otherwise experiences a disruption of normal trading* on that day, *or in the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading on that day*, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Rule 24.7(e).[, unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of The Options Clearing Corporation. (ii) In the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security.]

Remainder of Rule: No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The prospect of imminent war with Iraq has again prompted CBOE to review its settlement procedures for index options to ensure that the final settlement value of such options converges with the corresponding values of the underlying stock index or stock index future, in the event of any market disruption. The Exchange believes that ensuring this convergence is vital to eliminating any unplanned arbitrage risk for public customers and other investors, as was set forth in greater detail in a previous CBOE filing (SR–CBOE–2000–02).[5]

SR–CBOE–2000–02 amended CBOE Rules 24.7(e) and 24.9(a)(4) to ensure convergence of the values of options and their underlying securities in the event that a primary market for one or more of the component securities of such indexes failed to open. In making these changes, CBOE noted that it

> recognize[d] the authority of the Options Clearing Corporation ("OCC") to establish a final settlement value for index options in the event of a primary market closure pursuant to its Rules and By-Laws. The rule change proposed here makes clear that such action by the OCC would take precedence in determining any final index settlement value.[6]

The changes that CBOE made to its settlement rules in SR–CBOE–2000–02 were designed to mirror the rules of futures markets like the Chicago Mercantile Exchange ("CME"), which trades some of the index products underlying CBOE's index options. Since the approval of SR–CBOE–2000–02, however, the CME has changed its rules again. Even more importantly, the Commission recently approved changes to the OCC's rules and by-laws in order to give OCC "broad discretionary authority to adjust settlement values for OCC-cleared index options and futures whenever, and in whatever manner, OCC deems appropriate to avoid a disconnect between the futures and options markets or among the futures markets."[7]

In light of these changes, particularly those giving the OCC authority to ensure convergence between the settlement values of OCC-cleared index options and their underlying futures or other securities, the Exchange believes it can best ensure this convergence by amending CBOE Rules 24.7(e) and 24.9(a)(4) to make clear that—in cases where either a primary market for a security underlying the current index value of an index option, or just a particular such security, does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading—the price of that security shall be determined, for the purposes of calculating the current index value at expiration, in accordance with the rules and by-laws of the OCC. This filing implements those changes.

2. Statutory Basis

The Exchange believes that the proposed changes to CBOE Rules 24.7(e) and 24.9(a)(4) are consistent with and in furtherance of the provisions of section 6(b)(5) of the Act.[8] CBOE believes that, by establishing Exchange rules that make clear that current index option settlement values in the event of market disruption shall be determined in accordance with the rules and by-laws of the OCC, this filing will help public customers and market-makers alike to be better able to use stock index options to predictably hedge their transactions in stock index futures and/or the underlying stocks themselves. CBOE further believes that this rule change would improve the efficiency of, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, thus better protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

CBOE asserts that, because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate), it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally would not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. CBOE has requested that the Commission waive the 30-day pre-operative waiting period. The Commission believes that waiving the 30-day period is consistent with the protection of investors and the public interest. The Commission has previously found that allowing OCC to have authority to determine settlement prices for OCC-cleared index options in times of market disruptions is consistent with the Act,[12] and the Exchange's proposal incorporates by reference the OCC's ability to exercise that authority with respect to CBOE-traded index options. The Commission believes that market participants should be able to benefit immediately from this clarification and that no purpose would be served by delaying the operative date of this rule change for 30 days. Accordingly, the Commission hereby determines to waive the 30-day pre-operative period, and the proposed rule change becomes operative immediately.[13]

Rule 19b–4(f)(6) also requires the self-regulatory organization submitting the proposed rule change to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. CBOE has requested that the Commission waive the five-day pre-filing requirement, and the Commission hereby grants that request.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2003–13 and should be submitted by April 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7225 Filed 3–25–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 42857 (May 30, 2000), 65 FR 36185 (June 7, 2000) (notice of filing of and Commission order granting accelerated approval to proposed rule change).

[6] 65 FR at 36186.

[7] *See* Securities Exchange Act Release No. 46561 (September 26, 2002), 67 FR 61943, 61944 (October 2, 2002) (Commission approval of SR–OCC–2002–09).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] *See* 15 U.S.C. 78s(b)(3)(C).

[12] *See* 67 FR at 91944.

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47541; File No. SR–CBOE–2002–67]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Amending Its Margin Rule 12.3 To Incorporate Security Futures

March 20, 2003.

On November 1, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending CBOE Rule 12.3 ("Margin Requirements") to incorporate security futures. On November 21, 2002, the CBOE filed an amendment to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on December 16, 2002.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Madge M. Hamilton, Senior Attorney, CBOE, to Theodore R. Lazo, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated November 20, 2002 ("Amendment No. 1").

[4] Securities and Exchange Act Release No. 46971 (December 9, 2002), 67 FR 77108.

I. Description of the Proposed Rule Change

CBOE has proposed to amend its margin rules, in a manner consistent with the joint margin regulations of the Commission and the Commodity Futures Trading Commission ("CFTC")[5] to incorporate security futures. Specifically, the proposed rule change adds a new provision (k) to CBOE Rule 12.3 to address margin for security futures contracts. Proposed Rule 12.3(k) would: (1) Require the initial and maintenance margin for security futures contracts to be 20 percent unless an offset provision provides for a different margin requirement or the positions are excluded from CBOE Rule 12.3(k); (2) allow for good faith margin of certain positions in security futures contracts; (3) clarify that security futures contracts have no value for margin purposes; (4) make necessary conforming changes to other CBOE margin provisions; and (5) make some non-substantive changes to CBOE margin rules for consistency purposes.

CBOE's proposed margin requirement for security futures contracts would adopt the applicable provisions of the Joint Regulations of the SEC and CFTC ("Joint Regulations").[6] In particular, CBOE Rule 12.3(k) would require compliance with the security futures contract margin requirements of the SEC and CFTC, in addition to the Exchange margin rules and Regulation T of the Federal Reserve Board. Accordingly, under proposed CBOE Rule 12.3(k)(1), the initial and maintenance margin requirement for a security futures contract would be 20 percent of the current market value of the contract unless an offset provision enumerated in 12.3(k) or another rule provided for a different margin requirement.[7]

Proposed CBOE Rules 12.3(k)(2) and 12.3(k)(3) would set a time limit for obtaining required margin by incorporating by reference the same time frame that the SEC's Net Capital Rule[8] permits maintenance margin calls to remain unsatisfied before the member organization must deduct the maintenance margin deficiency in computing its net capital. As a result, if a customer did not satisfy an initial or maintenance margin call on a security futures contract for five days, the proposed rule change would require the broker or dealer carrying that customer's security futures positions would be required to take a deduction for the undermargined customer account when computing its own net capital.

CBOE Rule 12.3(k)(4) would expressly state that day trading rules do not apply to security futures contracts. CBOE has noted that the Joint Regulations do not include a day trading margin requirement.

The proposed rule change includes lower margin requirements for a security futures contract held in conjunction with an offsetting position in another security futures contract, an underlying security, or an option on an underlying security.[9] Specifically, the proposed rule change would incorporate the offsets identified in the **Federal Register** release announcing the adoption of the Joint Regulations, except for the offset involving a broad-based index future (No. 17) because a broad-based index future may not be carried in a securities account. In addition, the proposed rule change includes a definition of the term "underlying basket" as pertains to security futures contracts,[10] which would require that the composition of the basket match the composition of the index being offset.

The proposed rule change also would amend CBOE Rule 12.3(f) ("Market-Maker and Specialist Accounts") to permit options market-makers to receive good faith margin treatment from a CBOE member for certain transactions in security futures contracts that are based on the same underlying security as the options in which they make markets. In addition, the proposed rule change provides that security futures contracts that qualify for the "security futures dealer" exclusion from margin under the Joint Regulations[11] would be subject to margin that is satisfactory to the member and the carrying broker or dealer.

Proposed changes to CBOE Rule 12.5 ("Determination of Value for Margin Purposes") would clarify that security futures contracts have no value for margin purposes. Proposed amendments to CBOE Rule 12.2 ("Time Margin Must Be Obtained") and CBOE Rule 12.9 ("Meeting Margin Calls by Liquidation Prohibited") would clarify that these rules do not apply to security futures contracts. The proposed rule change would also make necessary conforming changes to other margin provisions,[12] and other changes for consistency purposes.

II. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[15] In addition, the Commission believes that the proposed rule change is consistent with section 7(c)(2)(B) of the Act,[16] which provides, among other things, that the margin requirements for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, be consistent with the margin requirements for comparable exchange-traded options, and provides that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option.

The Commission believes that the rule change is generally consistent with the customer margin rules for security futures adopted by the Commission and the CFTC. In particular, the Commission notes that, CBOE's proposed rule change provides that, with respect to security futures contracts, its members must collect proper and adequate margin in accordance with the Joint Regulations. As a result, the proposed rule change requires a minimum margin level of 20% of current market value for positions in security futures, which the Commission believes is the minimum margin level necessary to satisfy the requirements of section 7(c)(2)(B) of the Act.

In addition, Rule 403 under the Act[17] provides that a national securities exchange may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an exchange's margin levels for offsetting positions meet the criteria set forth in Section 7(c)(2)(B) of the Act. The offsets proposed by CBOE are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with section 7(c)(2)(B) of the Act.

Finally, the Commission believes it is consistent with the Act for the CBOE to exclude from its margin requirements positions in security futures contracts carried in a futures account. The Commission believes that by choosing to exclude such positions from the scope of its rules, the CBOE has made compliance by members that are subject to regulatory requirements of several SROs easier.

III. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–CBOE–2002–67), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7228 Filed 3–25–03; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 46292 (August 1, 2002), 67 FR 53146 (August 14, 2002).

[6] 17 CFR 242.400 through 242.406 and 17 CFR 41.42 through 41.49.

[7] The current market value of the contract would be calculated on a market-to-market basis at the conclusion of each trading day. Based on the market-to-market value of a security futures contract, a variation settlement amount could be debited from or credited to a customer's account balance at the conclusion of the trading day. These variation settlement entries represent actual cash withdrawals from, or deposits to, the account that will change its cash balance in the same way as would any other routine cash withdrawal or deposit. When account equity is computed, variation settlement amounts are automatically accounted for in that they can be viewed as integrated into the cash balance, which is a component of the formula for computing equity.

[8] 17 CFR 240.15c3–1(c)(2)(xii).

[9] In some cases only lower maintenance margin levels are proposed.

[10] *See* proposed CBOE Rule 12.3(k)(5)(D).

[11] SEC Rule 400(c)(2)(v); CFTC Rule 41.42(c)(2)(v).

[12] *See* Proposed CBOE Rules 12.3(b), (f)(1)(A) and (D), (2)(A), (3)(A)(i), (A)(ii), (A)(iii) and (A)(iv), (g)(i), (h), and (i)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78f(b)(5).

[15] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78g(c)(2)(B).

[17] 17 CFR 240.403(b)(2).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47536; File No. SR–ISE–2003–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Fee Changes

March 19, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 12, 2003, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to establish a $.10 surcharge for non-public customer transactions in options on certain Select Sector SPDR Funds and exchange traded funds based on indexes developed by the Frank Russell Company.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add to the list of options of Select Sector SPDR Funds and exchange traded funds based on indexes developed by the Frank Russell Company that will be subject to the $.10 surcharge on the Exchange's Schedule of Fees. The Exchange's Schedule of Fees currently lists three (3) Select Sector SPDR Funds and five (5) exchange traded funds based on indexes developed by the Frank Russell Company that are subject to the surcharge.[3] The Exchange is proposing to add options on four (4) more Select Sector SPDR Funds[4] and five (5) more exchange traded funds based on the indexes developed by the Frank Russell Company[5] that will be subject to the surcharge. These additional options are listed in the Schedule of Fees.

The purpose of the fee for trading in these options is to defray the licensing costs. The ISE believes that charging the participants that trade in options on these instruments is the most equitable means of recovering the costs of the license. However, because competitive pressures in the industry have resulted in the waiver of all transaction fees for customers, we propose to exclude Public Customer Orders (as defined in Exchange Rule 100) from this additional fee. This additional fee will only be charged with respect to non-Public Customer Orders.[6]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 47075 (December 20, 2002), 67 FR 79673 (December 30, 2002)(SR–ISE–2002–29) and 47243 (January 23, 2003), 68 FR 5066 (January 31, 2003)(SR–ISE–2003–01).

[4] Pursuant to this proposed rule change, the proposed fee will apply to options on the Health Care Select Sector SPDR Fund, Industrial Select Sector SPDR Fund, Consumer Discretionary Select SPDR Fund and Materials Select Sector SPDR Fund.

[5] Pursuant to this proposed rule change, the proposed fee will apply to options on the following exchange traded funds: Russell Midcap Index Fund iShares, Russell 3000 Value Index Fund iShares, Russell 3000 Growth Index Fund iShares, Russell Midcap Growth Index Fund iShares, and Russell Midcap Value Index Fund iShares.

[6] Under Exchange Rule 100, a "Public Customer" is a person that is not a broker or dealer in securities, and a "Public Customer Order" is an order for the account of a Public Customer. Accordingly, the execution of orders for the account of a "non-broker-dealer" will not be subject to the proposed $.10 surcharge fee. All other orders, *i.e.*, orders for the account of a broker-dealer, will be subject to the proposed $.10 surcharge fee. Telephone conversation between Joseph Ferraro, Assistant General Counsel, ISE, and Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, on March 18, 2003.

[7] 15 U.S.C. 78f(b)(4).

and, therefore, has become effective immediately pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2) thereunder.[9] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer File No. SR–ISE–2003–12 and should be submitted by April 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7117 Filed 3–25–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47532; File No. SR–ISE–2001–15]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the International Securities Exchange LLC Relating to a Pilot Program for Quotation Spreads

March 19, 2003.

I. Introduction

On May 25, 2001, the International Securities Exchange LLC ("ISE" or "Exchange"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Supplementary Material .01 to ISE Rule 803, "Obligations of Market Makers," to establish a six-month pilot program in which the allowable quotation spread for options on up to 50 underlying securities (the "Pilot Options") will be $5, regardless of the price of the bid.[3]

The proposed rule change was published for comment in the **Federal Register** on November 27, 2002.[4] No comments were received regarding the proposal. This order approves the proposed rule change.

II. Description

Currently, the ISE's rules contain maximum quotation spread requirements that generally vary from $.25 to $1, depending on the price of the option. Specifically, ISE Rule 803(b)(4) requires options market makers to bid and offer so as to create differences of no more than $.25 between the bid and offer for each options contract for which the bid is less than $2; no more than $.40 where the bid is at least $2 but does not exceed $5; no more than $.50 where the bid is more than $5 but does not exceed $10; no more than $.80 where the bid is more than $10 but does not exceed $20; and no more than $1 where the bid is $20 or greater. The bid/offer differentials do not apply to in-the-money options series when the spread in the underlying securities market is wider than the differentials set forth above. For such series, ISE Rule 803(b)(4) permits the bid/ask differential to be as wide as the quotation on the primary market of the underlying security.

The ISE proposes to expand the allowable spread to $5 in up to 50 Pilot Options (up to five per each of the ISE's ten options bins). The ISE represents that it will monitor the quotation quality of the Pilot Options for a six-month pilot period and, based on the results, recommend either relaxing the spread requirements for all options, ending the pilot, or adjusting the spread requirements.

III. Discussion

The Commission finds that, due to the ISE's market structure, discussed in greater detail below, the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] Specifically, the Commission finds that the proposal, which will allow ISE market makers to widen their quotations for Pilot Options when they believe that market conditions require wider spreads, is consistent with section 6(b)(5) of the Act[6] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes generally that maximum quotation spread parameters in the options market are important safeguards to ensure that market maker quotes in options are not unnecessarily wide. The Commission nevertheless believes that the ISE provides sufficiently strong incentives for market makers to disseminate competitive quotes without maximum quotation spread parameters. Specifically, each ISE market maker uses an automatic quotation system to quote independently, customers and professional traders can enter limit orders on the ISE's book, and market makers are only allocated trades when they are quoting at the best price. Moreover, the larger the size of a market maker's quote, the larger portion of a trade it is allocated. The Commission believes that these attributes and rules of the ISE provide strong market incentives for market makers to maintain narrow and competitive quotation spreads. Consequently, the Commission believes that the ISE's proposal to establish a $5 maximum spread on a pilot basis in 50 options classes is consistent with the Act.

The ISE is implementing the proposal on a six-month pilot basis. Prior to the conclusion of the pilot program, the ISE has agreed to submit a report to the Commission assessing the operation of the pilot program and, in particular, the quality of the quotations for the Pilot Options.[7] The report will include: (1) The identity of the Pilot Options; (2) information concerning the frequency with which quotations for the Pilot Options were narrower than the current quote spread parameters for options at that price, at the current quote spread parameters for options at that price, and wider than the current quote spread parameters for options at that price; (3) the average quotation spread for each Pilot Option during each month of the pilot program; (4) the widest and narrowest quote spreads for each Pilot Option during each month of the pilot program; (5) any problems that developed during the pilot program and how the ISE addressed those problems; and (6) any additional information that would help the Commission assess the pilot program.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–ISE–2001–15) is approved as a six-month pilot program to expire on September 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7119 Filed 3–25–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ISE's pilot program will include only equity options and not index options. Telephone conversation between Mike Simon, Senior Vice President and General Counsel, ISE, and Yvonne Fraticelli, Special Counsel, Division of Market Regulation ("Division"), Commission, on February 25, 2003.

[4] *See* Securities Exchange Act Release No. 46860 (November 20, 2002), 67 FR 70988.

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] Telephone conversation between Mike Simon, Senior Vice President and General Counsel, ISE, and Yvonne Fraticelli, Special Counsel, Division, Commission, on March 19, 2003.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47538; File No. SR–ISE–2003–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Limiting the Liability of Index Licensors for Options on Fund Shares

March 19, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4[2] thereunder, notice is hereby given that on March 12, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to limit the liability of index licensors who grant the ISE a license to use their underlying indexes or portfolios in connection with the trading of options on Fund Shares. The text of the proposed rule change appears below. Proposed new language is *italicized.*

* * * * *

Rule 507. Limitation on the Liability of Index Licensors for Options on Fund Shares.

(a) The term "index licensor" as used in this Rule refers to any entity that grants the Exchange a license to use one or more indexes or portfolios in connection with the trading of options on Fund Shares (as defined in rule 502(h)).

(b) No index licensor with respect to any index or portfolio underlying an option on Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Fund Shares based thereon or for any other purpose. The index licensor shall obtain information for inclusion in, or for use in the calculation of, such index or portfolio from sources it believes to be reliable, but the index licensor does not guarantee the accuracy or completeness of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or related thereto. The index licensor hereby disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to any such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Fund Shares based thereon. The index licensor shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Fund Shares based thereon, or arising out of any errors or delays in calculating or disseminating such index or portfolio.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ISE proposes to limit the liability of index licensors who grant the ISE a license to use their underlying indexes or portfolios in connection with the trading of options on Fund Shares. The ISE recently entered into a license agreement with an index licensor, and that agreement calls for the ISE to adopt a rule limiting the index licensor's liability. This proposed rule is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

substantially similar to Chicago Board Options Exchange rule 6.15.[3]

2. Statutory Basis

The ISE believes that the proposed rule change is consistent with section 6(b)(5) of the Act[4] in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE has not solicited, and does not intend to solicit, comments in connection with this proposed rule change. The ISE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The ISE has designated the foregoing rule change as effecting a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days from the date of filing. In addition, the ISE provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date.[5] Accordingly, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[6] and rule 19b–4(f)(6) thereunder.[7] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2003–09 and should be submitted by April 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7229 Filed 3–25–03; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 45817 (April 24, 2002), 67 FR 21785 (May 1, 2002) (SR–CBOE–2002–19).

[4] 15 U.S.C. 78f(b)(5).

[5] As required under Securities Exchange Act rule 19b–4(f)(6)(iii), the ISE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission. *See* Prefiling Notice of Proposed Rule Change (SR–ISE–2003–09), dated February 25, 2003.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47530; File No. SR–NASD–2003–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify SuperMontage Fees for NNMS Order Entry Firms

March 19, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 3, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act[3] and rule 19b–4(f)(2) thereunder,[4] which renders the rule effective upon Commission receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify the fees paid by NNMS Order Entry Firms ("OE Firms") for certain order executions through Nasdaq's SuperMontage system. Nasdaq will implement the rule change on the later of: (i) April 1, 2003; or (ii) the date on which Nasdaq implements a change to its SuperMontage system that inhibits automatic matching of OE Firms' orders, as described in SR–NASD–2002–173.[5]

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 7010. System Services

(a) –(h) No change.

(i) Nasdaq National Market Execution System (SuperMontage)

The following charges shall apply to the use of the Nasdaq National Market Execution System (commonly known as SuperMontage) by members:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 47301 (January 31, 2003), 68 FR 6236 (February 6, 2003) (SR–NASD–2002–173).

Order Entry	
Non-Directed Orders (excluding Preferenced Orders)	No charge.
Preferenced Orders:	
Preferenced Orders that access a Quote/Order of the member that entered the Preferenced Order.	No charge.
Other Preferenced Orders	$0.02 per order entry.
Directed Orders	$0.10 per order entry.
Order Execution	
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the NNMS:	
Charge to member entering order	$0.003 per share executed (but no more than $120 per trade for trades in securities executed at $1.00 or less per share).
Credit to member providing liquidity	$0.002 per share executed (but no more than $80 per trade for trades in securities executed at $1.00 or less per share).
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the NNMS.	$0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share).
Directed Order	$0.003 per share executed.
Non-Directed or Preferenced Order entered by a [member] *Nasdaq Quoting Market Participant* that accesses [a] *its own* Quote/Order [of such member].	No charge.
Non-Directed Order entered by an NNMS Order Entry Firm that accesses its own Quote/Order.	*$0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share).*
Order Cancellation	
Non-Directed and Preferenced Orders	No charge.
Directed Orders	$0.10 per order cancelled.

(j)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 31, 2003, the Commission approved a proposed rule change to allow, on a 90-day pilot basis commencing February 10, 2003, OE Firms to enter non-marketable limit orders into SuperMontage using the SIZE Market Participant Identifier ("SIZE").[6] Since the inception of this pilot program, Nasdaq has applied its pre-existing SuperMontage fee schedule to market activity associated with orders entered into SIZE by OE Firms. As a result of Nasdaq's recent decision to eliminate all of the fees that had formerly applied to the cancellation and modification of orders entered into SIZE,[7] OE Firms now have the opportunity to expose these orders to the market without charge.

In addition, under the SuperMontage fee schedule, OE Firms that enter orders into SIZE are eligible to receive the $0.002 per share liquidity provider credit that market makers (and electronic communications networks ("ECNs")) that do not charge access fees) receive when they provide liquidity to support order executions. Thus, when an order entered into SIZE by an OE Firm matches a non-directed order and an execution occurs, the market participant that entered the non-directed order will pay $0.003 per share executed[8] and the OE Firm will receive a credit of $0.002 per share.[9]

As described in the filing to implement the pilot program, OE Firms currently have their orders processed in a manner similar to that of Quoting Market Participants, in that SuperMontage first attempts to match an OE Firm's non-directed orders with orders in SIZE from the same OE Firm. As is true for Quoting Market Participants, moreover, Nasdaq has not assessed a charge (or provided a liquidity provider credit) when an OE Firm's non-directed order executes against the OE Firm's own order in SIZE. Upon the implementation of an upcoming modification to SuperMontage, however, non-directed orders entered by an OE Firm will execute solely based on the algorithm selected by the OE Firm (price/time, price/time with fee consideration, or price/size).[10] Accordingly, although it is possible that an OE Firm's non-directed orders will be matched against its orders in SIZE, the system will no longer give an automatic preference to the OE Firm's orders in SIZE.

In light of this System modification, Nasdaq is proposing that an OE Firm entering a non-directed order that accesses a limit order that the OE Firm itself has posted in SIZE will pay $0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share). The $0.001 per share fee is equivalent to the OE Firm paying the net of the $0.003 order execution fee that it would pay to access the Quote/Order of a market

[6] *Id.* SIZE is the anonymous market participant identified ("MPID") that represents the aggregate size of all Non-Attributable Quotes and Orders entered by market participants in Nasdaq at a particular price level. Non-Attributable Quotes and Orders are not displayed in the Nasdaq Quotation Montage using the market participant's MPID. Instead, the SIZE MPID is displayed when the aggregate trading interest at a particular price level of such Non-Attributable Quotes and Orders falls within the number of levels (currently five) authorized for aggregation and display on either side of the market.

[7] *See* Securities Exchange Act Release No. 47300 (January 31, 2003); 68 FR 6234 (February 6, 2003) (SR–NASD–2003–10). The entry of such orders has been free since the inception of the SuperMontage.

[8] Subject to a $120 per trade cap for trades in securities executed at $1.00 or less per share.

[9] Subject to an $80 per trade cap for trades in securities executed at $1.00 or less per share.

[10] Nasdaq expects to implement this system change on March 17, 2003.

maker and the $0.002 credit that it would receive if its order in SIZE had been accessed by another market participant.[11]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[12] including section 15A(b)(5) of the Act,[13] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective immediately pursuant to section 19(b)(3)(A)(ii) of the Act [14] and rule 19b–4(f)(2) thereunder.[15] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[11] By contrast, when a market maker or ECN enters a non-directed or preferenced order that accesses its own Quote/Order (*i.e.*, its proprietary quote, or a limit order that it has entered into SIZE or posted under its own MPID), it pays no order execution fee (but also receives no credit as a liquidity provider). Nasdaq believes that this added discount is an appropriate mechanism to ensure that market participants who undertake the burdens of continuous liquidity provision are provided benefits commensurate with their activities. Nasdaq also believes that the discount serves to encourage market makers and ECNs to enter orders into SuperMontage and thereby expose them to the full market, rather than internalizing them through their own proprietary crossing systems.

[12] 15 U.S.C. 78o–3.

[13] 15 U.S.C. 78o–3(5).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–30 and should be submitted by April 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7114 Filed 3–25–03; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47539; File No. SR–NFA–2003–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Futures Association Regarding the Interpretive Notice to NFA Compliance Rule 2–9 Concerning Ethics Training Requirements

March 19, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on March 6, 2003, the National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC").

On March 5, 2003, NFA submitted the proposed rule change to the CFTC for approval. The CFTC has not yet given such approval.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

The proposed rule change adopts a new Interpretive Notice to NFA Compliance Rule 2–9 Concerning Ethics Training Requirements. The Interpretive Notice expands on the CFTC's Statement of Acceptable Practices for ethics training and provides additional guidance to firms in meeting their ethics training obligations.

Section 15A(k) of the Act [3] makes NFA a national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products under section 15(b)(11) of the Act.[4] Some of the firms that are affected by this rule change are broker-dealers registered under section 15(b)(11).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

During examinations of its Member firms, NFA asks for feedback on any areas in which Members may need more guidance. One of the areas that has recently required some clarification is ethics training. In 2001, the CFTC issued a Statement of Acceptable Practices ("Statement") for ethics training. This Statement was designed to allow flexibility in the format, frequency and providers of ethics training, giving each firm the freedom to tailor training to suit their own operations. Also, firms are no longer required to submit ethics training information to NFA. Because the CFTC Statement is general in nature, Member firms have indicated that they would like NFA to provide some type of additional guidance.

In response, NFA's Board of Directors ("Board") adopted the proposed Interpretive Notice to assist NFA Members in interpreting the changes to the ethics training rules. The Interpretive Notice outlines these changes and discusses them in more detail than the CFTC's Statement. This guidance comes in the form of an Interpretive Notice because the Board considers ethics training to be an element of a Member's supervisory obligations under NFA Compliance Rule 2–9.

2. Statutory Basis

The rule change is authorized by, and consistent with, section 15A(k)(2)(D) of the Act.[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the Commodity Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA did not publish the rule change to the membership for comment. NFA did not receive comment letters concerning the rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is not effective because the CFTC has not approved the proposed rule change.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's website (*http://www.sec.gov*). All submissions should refer to File No. SR–NFA–2003–02 and should be submitted by April 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7112 Filed 3–25–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78o–3(k).

[4] 15 U.S.C. 78o(b)(11).

[5] 15 U.S.C. 78o–3(k).

[6] 15 U.S.C. 78s(b)(1).

[7] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47533; File No. SR–NFA–2003–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Futures Association Regarding the Interpretive Notice to NFA Compliance Rule 2–9 Concerning Enhanced Supervisory Requirements

March 19, 2003.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on March 6, 2003, the National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in Items I, II, and III below, which Items have been prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC").

On March 5, 2003, NFA requested that the CFTC make a determination that review of the proposed rule change is not necessary. The CFTC made such a determination on March 17, 2003.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

The proposed rule change makes two amendments to NFA's Interpretive Notice to NFA Compliance Rule 2–9 Concerning Enhanced Supervisory Requirements. The first amendment refines the triggering criteria to eliminate associated persons who worked at a Disciplined Firm for less than 60 days more than 10 years ago. The second amendment expands the definition of Disciplined Firm to include firms that are barred by the SEC or NASD because of deceptive sales practices involving security futures contracts.

Section 15A(k) of the Act [3] makes NFA a national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Act.[4] Some of the firms that are affected by this rule change are broker-dealers registered under Section 15(b)(11).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Interpretive Notice entitled "Compliance Rule 2–9: Enhanced Supervisory Requirements" ("Notice") was originally issued in 1993 and has been amended and revised from time to time since then. On February 15, 2001, NFA's Board of Directors ("Board") adopted changes to the Notice to impose enhanced supervisory requirements on

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 15 U.S.C. 78o–3(k).

[4] 15 U.S.C. 78o(b)(11).

firms that had previously been exempted because they had fewer than five APs. The revised Notice also treated FCMs and all of their guaranteed IBs as a single firm for purposes of determining whether the enhanced supervision requirements are triggered. In addition, the definition of a Disciplined Firm was expanded to include firms that have been closed down or permanently barred from the industry solely as a result of promotional material violations.

The Board's 2001 changes to the Notice have achieved their desired effect of adding a number of potentially problematic firms to the group of Members that are required to tape record all conversations with customers and prospects. However, NFA's Telemarketing Procedures Waiver Committee ("Waiver Committee") has granted waiver requests made by several of the newly included firms because the Committee felt that, under their particular circumstances, those firms did not pose a threat to the public and should not be subject to mandatory taping.

Some waivers have been granted in cases where the AP whose prior employment at a Disciplined Firm triggered enhanced supervisory requirements had worked at such a firm for only a short period of time or a long time ago. NFA staff reviewed the employment histories of APs who have worked at Disciplined Firms with regard to their tenure at and the passage of time since such employment to determine if the current triggering criteria can be further refined so as to affect the fewest number of Members while capturing the problem firms that concern the Board.

NFA staff studied a variety of data related to the employment histories of APs who worked for Disciplined Firms. The data was broken down to identify APs with a cumulative tenure of fewer than 60 days with a Disciplined Firm as well as those with fewer than 30 days. Other tables identified APs for whom at least 5, 7 or 10 years had passed since they had last worked at such a firm. Staff also considered the backgrounds of other firms that the APs had worked at and the APs' personal disciplinary histories.

After analyzing this data, it became apparent that when a cumulative tenure of less than 60 days at Disciplined Firms was combined with the passage of more than 10 years since employment with a Disciplined Firm, the resulting group of APs did not have an atypical number of disciplinary actions taken against them and they tended to currently work for firms that did not cause concerns about sales practice training and experience. Currently, 27 active APs fit the profile of those that have been employed for a cumulative total of less than 60 days at a Disciplined Firm more than 10 years ago and of these 27, only 2 have worked at any other firms that have been charged with violations related to sales practices or promotional material. Both of those actions resulted in settlements in which the firm paid a fine. Not one of the active APs has ever personally been the subject of any disciplinary action by NFA, the CFTC or an Exchange.

Based upon this data, the Board felt that the triggering criteria in the Notice can be further refined while still achieving the Board's desire to impose supervisory enhancements on firms that cause concern. Not including these APs for purposes of calculating whether a Member was subject to enhanced supervision would serve the efficiency and fairness of the Waiver Committee's function by altogether removing some non-problematic firms from the waiver process. The Board, therefore, amended the Notice so that APs who have been employed for a cumulative total of less than 60 days at a Disciplined Firm more than 10 years ago would not be included in the triggering criteria.

The Board also amended the term "Disciplined Firm" in the Notice. Currently, the term Disciplined Firm as it is defined in the Notice includes Members that have been barred by NFA or the CFTC for deceptive sales practices or promotional material. With the advent of trading in security futures products and at the request of the Securities and Exchange Commission, the Board amended the definition of a Disciplined Firm set out in the Notice to include broker-dealers that have been barred from doing business by the SEC or NASD because of deceptive sales practices involving security futures. The Board felt that including these firms would promote NFA's mandate of customer protection and is consistent with the Board's reason for establishing enhanced supervisory requirements. Under the proposed expanded definition of a Disciplined Firm, a Member would be required to count individuals who have been trained at and worked for either Member or non-Member broker-dealers that have been barred by the NASD and SEC for using dishonest sales practices to market security futures products when determining whether the composition of the Member's sales force triggers an obligation to tape and to abide by the other enhanced supervisory requirements established in the Notice.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Act.[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the Commodity Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA did not publish the rule changes to the membership for comment. NFA did not receive comment letters concerning the rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(7)(B) of the Act,[6] the proposed rule change became effective on March 17, 2003.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's Web site (http://www.sec.gov). All submissions should refer to File No. SR–NFA–2003–01 and should be submitted by April 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7115 Filed 3–25–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78o–3(k).

[6] 15 U.S.C. 78s(b)(7)(B).

[7] 15 U.S.C. 78s(b)(1).

[8] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47549; File No. SR–PCX–2003–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend its Fee Schedule for Services Provided to ETP Holders and Sponsored Participants That Trade Nasdaq Securities on the Archipelago Exchange

March 20, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on January 30, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On March 19, 2003, the Exchange amended the proposal.[3] The PCX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the PCX under section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through PCXE, proposes to amend its fee schedule for services provided to ETP Holders and Sponsored Participants that trade Nasdaq securities on the Archipelago Exchange, the equities trading facility of PCXE. The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees charged to ETP Holders[5] and Sponsored Participants[6] (collectively "Users") that access the ArcaEx trading facility to include certain fees and credits for Nasdaq securities. ArcaEx is scheduled to begin trading Nasdaq securities pursuant to unlisted trading privileges[7] in the early first quarter of 2003. The Exchange proposes to adopt fees for Nasdaq securities that parallel the Exchange's rate structure for exchange-listed securities.

Trade-Related Charges

(a) Transaction Fees. The PCX currently charges all Users a transaction fee of $0.003 per share for orders in exchange-listed securities that extract liquidity by responding to, and executing against, orders residing in the ArcaEx Book ("Book").[8] The Exchange proposes to charge this same transaction fee to Users for orders in Nasdaq securities. The Exchange believes that this proposed fee will provide incentives for increasing order flow to ArcaEx, and will have the effect of attracting resting limit orders into the Book, which will help promote liquidity, transparency, and in turn, price discovery. The Exchange notes that the following items continue to be excluded from this fee: (i) Directed Orders, regardless of account type, that are matched within the Directed Order Process;[9] (ii) Directed Orders for the account of a retail public customer that are executed partially or in their entirety via the other Order processes;[10] (iii) orders executed in the Opening Auction and the Market Order Auction;[11] (iv) Cross Orders;[12] and (v) participants in the Nasdaq UTP Plan that transmit orders via telephone.[13]

The PCX also proposes to charge a transaction fee of $0.004 per share for any unfilled or residual portion of a User's order in Nasdaq securities (including a retail public customer

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* March 18, 2003 letter from Rhonda Y. Jones, Regulatory Policy, PCX, to Joseph P. Morra, Special Counsel, Division of Market Regulation, SEC, and attachments ("Amendment No. 1"). Amendment No. 1 replaces and supersedes the original proposed rule change in its entirety. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on March 19, 2003, the date the PCX filed Amendment No. 1. *See* section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] *See* PCXE Rule 1.1(n).

[6] A "Sponsored Participant" means "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29." *See* PCXE Rule 1.1(tt).

[7] *See* Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges ("Nasdaq UTP Plan"). The participants in the Nasdaq UTP Plan are the National Association of Securities Dealers, Inc. ("NASD"), the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx"). Eligible securities under the Nasdaq UTP Plan are defined in section III.B.

[8] ArcaEx maintains an electronic file of orders, called the ArcaEx Book, through which orders are displayed and matched. The ArcaEx Book is divided into four components, called processes—the Directed Order Process, the Display Order Process, the Working Order Process, and the Tracking Order Process. *See* PCXE Rules 7.36 and 7.37 for a detailed description of these order execution processes.

[9] The Directed Order Process is the first step in the ArcaEx execution algorithm. Through this Process, Users may direct an order to a Market Maker with whom they have a relationship and the Market Maker may execute the order. To access this process, the User must submit a Directed Order, which is a market or limit order to buy or sell that has been directed to a particular Market Maker by the User. *See* PCXE Rule 7.37(a)(description of "Directed Order Process").

[10] If a retail public customer order has not been executed in its entirety after progressing through the Directed Order, Display Order, Working Order, and Tracking Order processes, the remaining portion of such order, if eligible, will be routed to another market center or participant. Any executed portion of that order will be subject to the proposed transaction fee of $0.004 per share.

[11] *See* PCXE Rules 7.35(b) and (c) for a detailed description of the Opening Auction and the Market Order Auction, respectively.

[12] A Cross Order is defined as a two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the cross price), subject to price improvement requirements. *See* PCXE Rule 7.31(s).

[13] *See* footnote 7, *supra*.

order)[14] that is routed away via ArcaEx and executed by another market center or participant. The proposed transaction fee of $0.004 per share is the same amount that is currently applied to orders in exchange-listed securities that are routed away and executed by another market center or participant. The Exchange believes that this fee is reasonable and is structured to allocate fairly the costs of operating the ArcaEx facility.

(b) Odd and Mixed Lots. The Exchange proposes to charge all odd-lot orders executed in Nasdaq securities (including the odd-lot portion of a mixed lot) a $0.03 per share transaction fee for orders that extract liquidity by responding to, and executing against, orders residing in the ArcaEx Book. In addition, the PCX proposes to adopt a $0.03 per share transaction fee for orders in Nasdaq securities that are routed away and executed by another market center or participant. These proposed transaction fees for Nasdaq securities are of the same amount as currently applied to odd-lot orders in exchange-listed securities. The PCX notes that odd-lot orders that are created as a result of a partial fill of a round lot will be excluded from these fees.

Market Maker Transaction Credits

The Exchange proposes to increase the level of the transaction credit paid to Market Makers who provide liquidity in exchange-listed securities. Currently, Market Makers who enter Q Orders[15] in exchange-listed securities that are subsequently executed against incoming marketable orders, earn a credit of $0.0015 per share.[16] The Exchange proposes to increase the level of the transaction credit for exchange-listed securities from $0.0015 to $0.0025 per share.[17] The Exchange is also proposing to establish a $0.002 credit per share for Nasdaq securities. In addition, $0.02 per share will be credited to any Market Maker that executes against an odd-lot order in a Nasdaq security during the Odd Lot Tracking Process.[18] These credits are intended to provide an additional incentive to firms to become Market Makers in exchange-listed and Nasdaq securities and to build liquidity in the Book, which will foster price competition and order interaction.

Other Fees, Charges and Credits

(a) User Transaction Credit. PCX proposes to establish a transaction credit for Users who provide liquidity in the Book in Nasdaq securities. Under the proposal, a User that enters a resting limit order into the Book that is subsequently executed against an incoming marketable order in a Nasdaq security will receive a credit of $0.002 per share. This credit is designed to enhance market efficiency and fairness by offering incentives to market participants that provide liquidity through ArcaEx. Any credit received by a User will be applied to reduce any charges payable to ArcaEx. Any remaining balance may be paid directly to the User.

(b) "Drop Copy" Processing Fee. The PCX currently charges Market Makers a $0.001 per share fee for processing "drop copies"[19] of their transactions executed on other market centers. The Exchange proposes to broaden the application of this fee to include any ETP Holders that want to receive drop copies of such off-board transactions. The current fee of $0.001 per share will remain in effect and will apply to such off-board transactions in exchange-listed and Nasdaq securities. In addition, the Exchange notes that Market Maker transactions that are subject to this fee will continue to be ineligible to receive the Market Maker Transaction Credit or User Transaction Credit. The Exchange believes that this fee is reasonable and is structured to allocate fairly the costs of operating the ArcaEx facility.

2. Statutory Basis

The Exchange believes the proposal is consistent with section 6(b) of the Act,[20] in general, and section 6(b)(4) of the Act,[21] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[22] and subparagraph (f)(2) of Rule 19b-4 thereunder,[23] because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR-PCX-2003-04 and should be submitted by April 16, 2003.

[14] *See* footnote 10, *supra*.

[15] Q Orders are limit orders that are submitted to ArcaEx by a Market Maker in those securities in which the Market Maker is registered to trade. *See* PCXE Rule 7.31(k).

[16] The transaction credit applied to orders in Exchange-Traded Funds ("ETFs") and American Depositary Receipts ("ADRs") is currently $0.002 per share.

[17] The current $0.02 per share credit that is provided to any Market Maker that executes against an odd-lot order in the Odd Lot Tracking Order Process will remain in effect.

[18] The Tracking Order Process is the fourth step of the ArcaEx execution algorithm. If the unfilled marketable order (or portion of an order) that enters the Tracking Order Process is an odd lot, such order will be executed against a Market Maker that is registered as an Odd Lot Dealer. *See* PCXE Rules 7.31(g) and 7.37(c).

[19] Under the current fee schedule, a "drop copy" is an electronic report of a transaction for a Market Maker's account that is executed on another market center and that has been prepared for informational purposes (*e.g.*, Market Maker inventory tracking, surveillance audit trail). Market Maker transactions that are subject to this fee will not be eligible to receive the Market Maker Transaction Credit or User Transaction Credit.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(4).

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

[23] 17 CFR 240.19b-4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-7227 Filed 3-25-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47543; File No. SR-Phlx-2003-11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Delivery of Immediate or Cancel Orders Via AUTOM and an Increase in the AUTOM Order Delivery Size for Off-Floor Broker-Dealer Orders

March 20, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 10, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b-4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X),[5] to add a new eligible order type, Immediate or Cancel ("IOC"), for delivery by both customers and broker-dealers. The Exchange also proposes to amend Exchange Rule 1080(b)(i)(C) to reflect that the Options Committee has determined to increase the eligible AUTOM order delivery size for off-floor broker dealer orders from 200 contracts to 1,000 contracts for all options.[6]

The text of the proposed rule change is set forth below. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)

Rule 1080. (a) No change.

(b) Eligible Orders

(i) The following types of orders are eligible for entry into AUTOM:

(A) Agency orders up to the maximum number of contracts permitted by the Exchange may be entered. Agency orders up to 1000 contracts, depending on the option, are eligible for AUTOM order delivery, subject to the approval of the Options Committee. The following types of agency orders are eligible for AUTOM: day, GTC, *Immediate or Cancel ("IOC")*, market, limit, stop, stop limit, all or none, or better, simple cancel, simple cancel to reduce size (cancel leaves), cancel to change price, cancel with replacement order, market close, market on opening, limit on opening, limit close, and possible duplicate orders.

(B) No change.

(C) Off-floor broker-dealer limit orders, up to the minimum number of contracts permitted by the Exchange, subject to the restrictions on order entry set forth in Commentary .05 of this Rule. Generally, orders up to [200] *1,000* contracts, depending on the option, are eligible for AUTOM order delivery on an issue-by-issue basis, subject to the approval of the Options Committee. The Options Committee may determine to increase the eligible order delivery size to an amount greater than [200] *1,000* contracts, on an issue-by-issue basis. The following types of broker-dealer limit orders are eligible for AUTOM: day, GTC, *IOC*, simple cancel, simple cancel to reduce size (cancel leaves), cancel to change price, cancel with replacement order.

(ii)-(iii) No change.

(c)-(j) No change.

Commentary: No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx represents that the purpose of the proposed rule change is to increase the automated handling of options orders, and attract additional order flow, by allowing customers and broker-dealers to deliver Immediate or Cancel ("IOC")[7] orders via AUTOM, amending the rule to reflect that the Exchange's Options Committee[8] has determined to increase the eligible AUTOM delivery size of off-floor broker-dealer orders[9] from 200 contracts to 1,000 contracts for all issues.

IOC Orders. Exchange Rule 1080(b)(i)(A) lists the various types of agency orders[10] that are eligible for

[24] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b-4(f)(6).

[5] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Exchange Rule 1080.

[6] The Exchange represents that this proposal will have no impact on AUTO-X. Telephone call among Rick Rudolph, Director and Counsel, CBOE; Terri Evans, Assistant Director, Division of Market Regulation ("Division"), Commission; and Jennifer Lewis, Attorney, Division, Commission, on March 20, 2003.

[7] An "IOC" order means a limit order that is to be executed in whole or in part as soon as such order is received, and the portion not executed, if any, is immediately canceled.

[8] The Exchange's Options Committee has general supervision of the dealings of members on the equity and index options trading floor, and shall make or recommend such rules as it may deem necessary for the convenient and orderly transaction of business upon the equity and index options trading floor. *See* Exchange By-Law Article X, Section 10-19.

[9] In April, 2002, the Commission approved a proposed rule change to allow the delivery of orders for the account(s) of off-floor broker-dealers via AUTOM on a six-month pilot basis (the "pilot"). *See* Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR-Phlx-2001-40). The pilot was approved on a permanent basis in October, 2002. *See* Securities Exchange Act Release No. 46660 (October 15, 2002), 67 FR 64951 (October 22, 2002) (SR-Phlx-2002-50).

[10] The Exchange has defined an agency order as any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. *See, e.g.*, Exchange Rule 229.02. *See also*, Securities

Continued

AUTOM, and Exchange Rule 1080(b)(i)(C) currently lists the various types of off-floor broker-dealers that may be delivered via AUTOM. Currently, neither of these rules allows the delivery of IOC orders via AUTOM. The instant proposal would provide that both agency and off-floor broker dealer IOC orders may be delivered via AUTOM.

The Exchange believes that the addition of this new AUTOM eligible order type should enable the Exchange to better compete for customer and broker-dealer order flow by attracting orders which, if not immediately executed, would be cancelled. Investors would have full, immediate information as to the status of such orders, and would be able to respond immediately to reports (either executions or cancellations) stemming from the delivery of such orders. Particularly in times of high market volatility, such information can be critical to customers and broker-dealers who need to make decisions swiftly in response to such reports. The Exchange believes that this new AUTOM eligible order type should facilitate customers and broker-dealers in making such decisions.

The Exchange expects to deploy the systems necessary for the acceptance of IOC orders via AUTOM by April 25, 2003.

Increase in Off-Floor Broker-Dealer Order Delivery Size. As stated above, the Exchange's Options Committee has determined to increase the eligible AUTOM delivery size of off-floor broker-dealer orders from 200 contracts to 1,000 contracts for all issues.[11] The proposed rule change would amend Rule 1080(b)(i)(C) to reflect this determination, and would provide that the Options Committee may determine, on an issue-by-issue basis, to increase the eligible order delivery size to an amount greater than 1,000 contracts. The purpose of this provision is to make the Exchange's rules consistent with current practices.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[12] in general, and section 6(b)(5),[13] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by: (1) Allowing customers and broker-dealers to deliver IOC orders via AUTOM, which should enable the Exchange to better compete for customer and broker-dealer order flow and enable investors to have immediate information as to the status of IOC orders delivered via AUTOM; and (2) making the Exchange's rules regarding the AUTOM order delivery size for off-floor broker-dealer orders consistent with current practices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)[15] thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)[16] does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designated if such action is consistent with the protection of investors and the public interest. The Phlx has requested, so that the Exchange may remain competitive with other exchanges that have similar rules in effect, that the Commission accelerate the implementation of the proposed rule change so that it may take effect prior to the 30 days specified in Rule 19b–4(f)(6)(iii).[17] The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will permit the Exchange to immediately begin accepting Immediate or Cancel orders from customers and broker-dealers through AUTOM, and, with respect to the increase in the eligible AUTOM order delivery size for off-floor broker-dealer orders, will provide better notice to the public of the Exchange's practices. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[18]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx-2003–11 and should be submitted by April 16, 2003.

Exchange Act Releases Nos. 46763 (November 1, 2002), 67 FR 68898 (November 13, 2002) (SR–Phlx-2002–04); and 40970 (January 25, 1999), 64 FR 4922 (February 1, 1999) (SR–Phlx-98–44).

[11] Currently, Exchange Rule 1080(b)(i)(C) provides that generally, orders up to 200 contracts, depending on the option, are eligible for AUTOM order delivery on an issue-by-issue basis, subject to the approval of the Options Committee, and that the Options Committee may determine to increase the eligible order delivery size to an amount greater than 200 contracts, on an issue-by-issue basis.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] *Id.*

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7226 Filed 3–25–03; 8:45 am]

BILLING CODE 8010–01–P

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before April 25, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: HUBZone Application Data Update.

No: 2227.

Frequency: On Occasion.

Description of Respondents: HUBZone certified Small Business Concerns.

Responses: 6,000.

Annual Burden: 3,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–7120 Filed 3–25–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before April 25, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Small Business Questionnaire (Use of Telecommunication).

No: N/A.

Frequency: On Occasion.

Description of Respondents: Small Businesses.

Responses: 750.

Annual Burden: 63.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–7121 Filed 3–25–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before April 25, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: PRO–Net.

No: N/A.

Frequency: On Occasion.

Description of Respondents: Small Firms.

Responses: 10,000.

Annual Burden: 2,500.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–7122 Filed 3–25–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

AGENCY: Small Business Administration.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before May 27, 2003.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and

enhance the quality of the collection, to Dr. Radwan Saade, Economist, Office of Advocacy, Small Business Administration, 409 3rd Street SW., Suite 7800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Dr. Radwan Saade, Economist, 202–205–6878 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Costs of Litigation to Small Business".

Form No: N/A.

Description of Respondents: Small Businesses.

Annual Responses: 100.

Annual Burden: 50.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–7123 Filed 3–25–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (2003–2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, DOT.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the second quarter 2003 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 2003 RCAF (Unadjusted) is 1.020. The second quarter 2003 RCAF (Adjusted) is 0.522. The second quarter 2003 RCAF–5 is 0.502.

DATES: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā 2 Dā Legal, Suite 405, 1925 K Street, NW., Washington, DC 20006, phone (202) 293–7776. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: March 19, 2003

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–7065 Filed 3–25–03; 8:45 am]

BILLING CODE 4915–00–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34321]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's rail lines between BNSF milepost 143.2 near Los Angeles, CA, and BNSF milepost 10.5 near Riverside, CA,[1] a distance of approximately 57.2 miles.[2]

The transaction was scheduled to be consummated on March 14, 2003 (7 days after the notice was filed). The temporary trackage rights will allow UP to conduct maintenance work on its lines.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34321, must be filed with the Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 18, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–6921 Filed 3–25–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34320]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over a BNSF line of railroad between BNSF milepost 203.0 near Keddie, CA, and BNSF milepost 0.0 near Klamath Falls, OR,[1] a distance of approximately 203.0 miles.[2]

The transaction was scheduled to be consummated on March 16, 2003. The purpose of the temporary trackage rights is to facilitate maintenance work on UP's lines.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34321, must be filed with the Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 18, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–6921 Filed 3–25–03; 8:45 am]

BILLING CODE 4915–00–P

[1] On March 7, 2003, UP concurrently filed a petition for partial revocation of this class exemption in STB Finance Docket No. 34321 (Sub-No. 1), *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, wherein UP and BNSF request that the Board permit the proposed overhead trackage rights arrangement described in the present proceeding to expire on or about May 12, 2003. That petition will be addressed by the Board in a separate decision.

[2] The original notice of exemption stated that the distance involved is 52.2 miles. By letter filed March 12, 2003, UP states that the correct distance for the trackage rights is 57.2 miles. By letter filed March 13, 2003, UP explains that the milepost designations of the trackage rights segment (between BNSF mileposts 143.4 and 10.5) do not reflect the actual length of the segment between Los Angeles and Riverside because the trackage includes portions of two BNSF subdivisions that have noncontiguous milepost designations.

[1] On March 7, 2003, UP and BNSF filed a petition for partial revocation of this class exemption in STB Finance Docket No. 34320 (Sub-No. 1), *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, wherein UP and BNSF request that the Board permit the proposed overhead trackage rights arrangement described in the present proceeding to expire on or about May 22, 2003. That petition will be addressed by the Board in a separate decision.

[2] By amendment filed March 12, 2003, a representative of UP indicates that the correct distance of the involved trackage is 203.0 miles in lieu of 202.5 miles as initially stated.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34320, must be filed with the Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *"http://www.stb.dot.gov."*

Decided: March 18, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–6922 Filed 3–25–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34298]

Chattahoochee & Gulf Railroad Co., Inc.—Acquisition and Operation Exemption—Line of Central of Georgia Railroad Company

Chattahoochee & Gulf Railroad Co., Inc. (CGR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31,[1] to acquire and operate an approximately 24.2-mile line of the Central of Georgia Railroad Company (CGA) extending from approximately milepost J357.8 at the Hilton, GA station to approximately milepost J382.0 at the Dothan, AL station in Early County, GA, and Houston and Henry Counties, AL. In addition, CGR will acquire approximately 2.8 miles of incidental overhead trackage rights over CGA extending from milepost J355.0 to milepost J357.8 at or near Hilton, for the purpose of interchange with the Chattahoochee Industrial Railroad.[2]

CGR certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its annual revenues are not projected to exceed $5 million.

CGR states that it is close to reaching an agreement with CGA, a subsidiary of Norfolk Southern Railway Company, concerning the involved transaction; the transaction was scheduled to be consummated on or after March 7, 2003 (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34298, must be filed with the Surface Transportation Board, 1925 K Street N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on: Troy W. Garris, Weiner Brodsky Sidman Kider PC, 1300 19th Street, NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 19, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–7235 Filed 3–25–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 30186 (Sub–No. 3)]

Tongue River Railroad Co.—Construction and Operation—Western Alignment

AGENCY: Surface Transportation Board, DOT.

ACTION: Amended Notice of Intent to Prepare a Supplement to the Final Environmental Impact Statement and Request for Comments on the Adequacy of the Final Scope of the Supplement Dated February 3, 1999.

SUMMARY: On March 11, 2003, the Surface Transportation Board (Board) issued a decision giving notice that it would allow the Tongue River Railroad Company (TRRC) to supplement the application it filed on April 27, 1998 (*"Tongue River III"*), pursuant to 49 U.S.C. 10901, to construct and operate a 17.3-mile line of railroad known as the "Western Alignment" in Rosebud and Big Horn Counties, Montana, to be built from Decker, Montana to a point 17.3 miles north of Decker. The Western Alignment is an alternative routing for a portion of the 41-mile Ashland to Decker, Montana rail line approved for construction on November 8, 1996 in Finance Docket No. 30186 (Sub-No. 2), and referred to as *"Tongue River II."* The *Tongue River III* proceeding had been held in abeyance at the applicant's request since March 2, 2000, but it is again active. Accordingly, the purpose of this notice is to announce that the environmental review of *Tongue River III* will also resume, and to request comments from the public on its final scope, which was published on February 3, 1999, and on whether there is new environmental information that warrants inclusion in the Supplemental Environmental Impact Statement (SEIS) that will be prepared.

In 1996, in *Tongue River II*, the Board approved TRRC's application to build a 41-mile line of railroad between Ashland and Decker, MT.[1] The line would connect with an 89-mile railroad line between Miles City and two termini located near Ashland that TRRC was previously authorized to construct, but has not yet built.[2] Together, this 130-mile line would provide a new, shorter route than is currently available to transport coal from the Montana Powder River Basin to eastern destinations.

In the *Tongue River II* proceeding, the Board, following issuance of a Final Environmental Impact Statement addressing environmental concerns that had been raised, approved construction and operation of a routing for the southernmost portion of the Ashland to Decker line—the Four Mile Creek Alternative.[3] *Tongue River III* involves a 17.3-mile alternate routing, called the Western Alignment, to the Four Mile Creek Alternative approved in *Tongue River II*.

On July 10, 1998, the Board's Section of Environmental Analysis (SEA) issued a notice of intent to prepare a SEIS to address the proposed new routing. A final scoping notice, published in the **Federal Register** on February 3, 1999

[1] CGR subsequently filed an "Errata Sheet," amending the verified notice.

[2] This proceeding is related to *Gulf & Ohio Railways Holding Co., Inc.; H. Peter Claussen and Linda C. Claussen—Continuance in Control Exemption—Chattahoochee & Gulf Railroad Co., Inc.*, STB Finance Docket No. 34299, wherein Gulf & Ohio Railways Holding Co., Inc., and H. Peter Claussen and Linda C. Claussen, all noncarriers, have concurrently filed a petition for exemption to continue in control of CGR upon CGR's becoming a carrier.

[1] That decision is currently on appeal before the U.S. Court of Appeals for the 9th Circuit, with judicial review held in abeyance pending resolution of the instant *Tongue River III* application. See *Northern Plains Resource Council, Inc., et al.* v. *Surface Transportation Board*, No. 97–70037 (9th Cir. Filed Jan. 7, 1997).

[2] *Tongue River Railroad Company—Rail Construction and Operation—in Custer, Powder River, and Rosebud Counties, Montana*, Finance Docket No. 30186 (Sub-No. 1) (STB served May 9, 1986) (*Tongue River I*).

[3] The authority was subject to extensive environmental conditions.

(*see* 64 FR 53390[4]), specified that the SEIS would evaluate the Western Alignment in full, as well as refinements to alignments previously considered in *Tongue River I* and *Tongue River II*, where significantly changed circumstances suggested that previous work was no longer adequate. On March 2, 2000, before SEA completed its Draft SEIS, TRRC requested that SEA suspend its environmental work. Almost three years later, on December 19, 2002, TRRC advised SEA that it was now in a position to move forward and asked SEA to resume its environmental review of the application.

On January 17, 2003, TRRC filed a request with the Board seeking to update its previously submitted evidence on the transportation merits. TRRC stressed that its updated information would be minimal, and it identified five general areas to be addressed.[5] On March 11, 2003, the Board served its decision allowing TRRC to file its supplemental evidence on the transportation merits. The Board will establish a procedural schedule for replies after TRRC has filed its evidence and the agency has had an opportunity to review it.

SEA is now resuming its environmental review of the application. SEA intends to use the final scope issued in February, 1999, because, based on currently available information, it appears to thoroughly cover environmental issues requiring analysis in the SEIS. However, because of the three-year lapse in action on the *Tongue River III* application, it may be appropriate to update portions of the final scope, or the environmental record that serves as the basis of the SEIS to reflect new environmental circumstances that may differ significantly from when the final scoping notice was published in 1999. SEA is aware of issues related to coal bed methane development in the region, changes in listed Endangered and Threatened species, and that there may be U.S. Army Corps of Engineers jurisdictional changes as a result of the SWANCC case (*Solid Waste Agency of Northern Cook County* v. *Corps of Engineers*, 531 U.S. 159, 51 ERC 1833 (2001)). In addition, information that TRRC will provide on the transportation issues in response to the Board's decision of March 11, 2003, may require modifications to the final scoping notice for *Tongue River III* published on February 3, 1999.

Therefore, SEA requests comments from all interested parties on whether and how the final scope of environmental issues associated with the Western Alignment, as published in the February 1999 final scoping notice, may now require modification. In addition, we invite interested parties to provide us with information, including specific examples, on any significant changes in land use, topography, wetlands or water resources, endangered species, or cultural resources that warrant inclusion in the final scope and consideration in the SEIS. If significant changes have occurred that could affect the final scope as published in February 1999, we should be informed of these changes now so that we can consider such evidence in determining what, if any, changes to the final scope of the SEIS should be made.

All comments should provide specific evidence to support the claims that are made. We want to know with specificity why commenters believe that environmental circumstances have changed significantly, warranting changes to the final scope and further analysis in the SEIS.

SEA will also consult affected Federal, state, and local agencies on any appropriate changes to the final scope of the SEIS. After considering comments filed in response to this Notice, and evaluating whether new information filed on the transportation issues will affect the final scope of the environmental study and all other available information, SEA will publish an amended final scope in the **Federal Register**. SEA will then prepare a draft SEIS including preliminary mitigation recommendations that will be available for a 45-day comment period. Based on comments on the draft SEIS, and any further analysis, SEA will prepare a final SEIS, which will include appropriate environmental mitigation recommendations. The Board will consider the draft and final SEIS, and any comments or other available environmental information, in deciding whether to grant TRRC's application. In its decision, the Board will consider both environmental and transportation-related issues and will impose any environmental conditions it considers appropriate.

DATES: Written comments on the adequacy of the final scope of potential environmental issues dated February 3, 1999, are due 45 days from this Notice, on May 12, 2003. TRRC may reply within 15 days thereafter.

ADDRESSES: Send an original and 10 copies of comments referring to STB Finance Docket No. 30186 (Sub-No. 3) to: Surface Transportation Board, Case Control Unit, Washington, DC 20423–0001, Attention: Kenneth Blodgett, Section of Environmental Analysis.

FOR FURTHER INFORMATION CONTACT: Kenneth Blodgett, (202) 565–1554. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

The Web site for the Surface Transportation Board is *http://www.stb.dot.gov*.

Decided: March 19, 2003.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 03–7066 Filed 3–25–03; 8:45 am]

BILLING CODE 4915–00–P

[4] The February 3, 1999 final scoping notice provides a discussion of prior Tongue River proceedings before the Agency and is available at *http://www.access.gpo.gov/su_docs/*.

[5] TRRC stated that it intends to update the record in the following five areas: (1) Transfer of the Otter Creek Tracts 1, 2, and 3 to the State of Montana; (2) tonnage forecasts, financial forecasts, and estimated construction costs; (3) TRRC's business structure, proposed financial structure, and plan for raising the funds required for construction; (4) supporting statements from Montana officials; and (5) the effects, if any, of the Board's recent approval of the Dakota, Minnesota, and Eastern Railroad's proposed construction of a rail line to serve the southern Powder River Basin in Wyoming. *See Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin*, STB Finance Docket No. 33407 (STB served Jan. 30, 2002), *appeal filed, Mid States Coalition for Progress, et al.*, v. *Surface Transportation Board*, No. 02–1359 *et al.* (8th Cir. filed Feb. 7, 2002). In addition, the Board has indicated that it expects TRRC to provide further insight into its relationship, if any, with The Burlington Northern and Santa Fe Railway Company, with which the proposed line connects.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 17, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 25, 2003 to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0145.

Form Number: None.

Type of Review: Reinstatement.

Title: Cargo Container and Road Vehicle Certification for Transport Under Customs Seal.

Description: This information is used in a voluntary program to received internationally recognized Customs certification that intermodal containers/road vehicles meet construction requirements of international Customs convention.

Respondents: State, Local or Tribal Government, Individual or households, Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 25.

Estimated Burden Hours Per Respondent /Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 10,600 hours.

Clearance Officer: Tracey Denning, (202) 927–1429, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA, Clearance Officer.

[FR Doc. 03–7239 Filed 3–25–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Departmental Offices

Delegation of Authority to the Director, Office of Foreign Assets Control

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

DATES: Treasury Department Order 100–15 became effective on March 20, 2003.

SUMMARY: On March 20, 2003, the Secretary of the Treasury issued Treasury Department Order 100–15 in order to delegate to the Director, Office of Foreign Assets Control, subject to any terms and conditions that the President or Secretary might prescribe, the authority to perform any and all acts incident to the accomplishment or furtherance of an order vesting property as directed in the Executive order signed by the President dated March 20, 2003, "Confiscating and Vesting Certain Iraqi Property," or by the Secretary pursuant to that order.

SUPPLEMENTARY INFORMATION: The text of Treasury Department Order 100–15 follows.

Dated: March 21, 2003.

Richard S. Carro,

Senior Advisor to the General Counsel, (Regulatory Affairs).

Treasury Department Order No. 100–15

Delegation to the Director, Office of Foreign Assets Control, subject to any terms and conditions that the President or Secretary of the Treasury may prescribe, the authority to perform any and all acts incident to the accomplishment or furtherance of an order vesting property as directed in the Executive order signed by the President dated March 20, 2003, "Confiscating and Vesting Certain Iraqi Property," or by the Secretary of the Treasury pursuant to that order.

Treasury Department, Washington, DC, March 20, 2003.

In the Executive order signed by the President dated March 20, 2003, "Confiscating and Vesting Certain Iraqi Property," the President vested in the United States Department of the Treasury all right, title, and interest in blocked funds held in the United States in certain accounts in the name of the Government of Iraq, the Central Bank of Iraq, Rafidain Bank, Rasheed Bank, or the State Organization for Marketing Oil. In that order, the President also authorized me to take additional steps to carry out the purposes of the order.

By virtue of the authority vested in the Secretary of the Treasury, including the authority granted by 31 U.S.C. 321(b) and by the Executive order signed by the President dated March 20, 2003, "Confiscating and Vesting Certain Iraqi Property," I hereby delegate to the Director, Office of Foreign Assets Control, subject to any terms and conditions that the President or I may prescribe, the authority to perform any and all acts incident to the accomplishment or furtherance of an order vesting property as directed in the Executive order signed by the President dated March 20, 2003, "Confiscating and Vesting Certain Iraqi Property," or by me pursuant to that order.

John W. Snow,

Secretary of the Treasury.

[FR Doc. 03–7302 Filed 3–25–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 851

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 851, Affiliations Schedule.

DATES: Written comments should be received on or before May 27, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Affiliations Schedule.

OMB Number: 1545–0025.

Form Number: 851.

Abstract: Form 851 is filed by the parent corporation for an affiliated group of corporations that files a consolidated return (Form 1120). Form 851 provides IRS with information on the names and identification numbers of the members of the affiliated group, the taxes paid by each member of the group, and stock ownership, changes in stock ownership and other information to determine that each corporation is a qualified member of the affiliated group as defined in Internal revenue Code section 1504.

Current Actions: There are no changes being made to Form 851 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and farms.

Estimated Number of Responses: 4,000.

Estimated Time Per Response: 14 hrs., 6 min.

Estimated Total Annual Burden Hours: 56,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 17, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–7268 Filed 3–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8288–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8288–B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.

DATES: Written comments should be received on or before May 27, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.

OMB Number: 1545–1060.

Form Number: 8288–B.

Abstract: Section 1445 of the Internal Revenue Code requires transferees to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests. Code sections 1445(b) and (c) allow the withholding to be reduced or eliminated under certain circumstances. Form 8288–B is used to apply for a withholding certificate from IRS to reduce or eliminate the withholding required by Code section 1445.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 5,079.

Estimated Time Per Respondent: 5 hr., 40 min.

Estimated Total Annual Burden Hours: 28,798.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 17, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–7269 Filed 3–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5754

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5754, Statement by Person(s) Receiving Gambling Winnings.

DATES: Written comments should be received on or before May 27, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6401, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Statement by Person(s) Receiving Gambling Winnings.

OMB Number: 1545–0239.

Form Number: 5754.

Abstract: Section 3402(q)(6) of the Internal Revenue Code requires that a statement be given to the payer of certain gambling winnings by the person receiving the winnings when that person is not the winner or is one of a group of winners. It enables the payer to prepare Form W–2G, Certain Gambling Winnings, for each winner to show the winnings taxable to each and the amount withheld. IRS uses the information on Form W–2G to ensure that recipients are properly reporting their income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Responses: 306,000.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 61,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 17, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–7270 Filed 3–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–119227–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final and temporary regulation, REG–119227–97 (TD 8879), Kerosene Tax; Aviation Fuel Tax; Taxable Fuel Measurement and Reporting; Tax on Heavy Trucks and Trailers; Highway Vehicle Use Tax.

DATES: Written comments should be received on or before May 27, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*) Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Kerosene Tax; Aviation Fuel Tax; Taxable Fuel Measurement and Reporting; Tax on Heavy Trucks and Trailers; Highway Vehicle Use Tax.

OMB Number: 1545–1418.

Regulation Project Number: REG–119227–97 Final and Temporary.

Abstract: The regulation finalizes proposed and temporary regulations relating to the tax on kerosene, the refund for certain aviation fuel producers, and the registration rules for certain truck dealers.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 346,080.

Estimated Time Per Respondent: 17 min.

Estimated Total Annual Burden Hours: 97,583 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 17, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–7271 Filed 3–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–8–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–8–91 (TD 8643), Distributions of Stock and Stock Rights (Section 1.305–5(b)(5)).

DATES: Written comments should be received on or before May 27, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Distributions of Stock and Stock Rights.

OMB Number: 1545–1438.

Regulation Project Number: CO–8–91.

Abstract: The requested information is required to notify the Service that a holder of preferred stock callable at a premium by the issuer has made a determination regarding the likelihood of exercise of the right to call that is different from the issuer's determination.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 333.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 17, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–7272 Filed 3–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–107644–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–107644–97 (TD 8769), Permitted Elimination of Preretirement Optional Forms of Benefit (§ 1.411(d)–4).

DATES: Written comments should be received on or before May 27, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Permitted Elimination of Preretirement Optional Forms of Benefit.

OMB Number: 1545–1545.

Regulation Project Number: REG–107644–97.

Abstract: This regulation permits an amendment of a qualified plan or other employee pension benefit plan that eliminates plan provisions for benefit distributions before retirement age but after age 70½. The regulation affects employers that maintain qualified plans and other employee pension benefit plans, plan administrators of these plans and participants in these plans.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 135,000.

Estimated Average Time Per Respondent: 22 min.

Estimated Total Annual Burden Hours: 48,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 17, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–7273 Filed 3–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13388

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13388, Improving the Accuracy of EITC Returns.

DATES: Written comments should be received on or before May 27, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Improving the Accuracy of EITC Prepared Returns.

OMB Number: 1545–1825.

Form Number: 13388.

Abstract: Form 13388 is a postcard that will be sent to tax preparers that submitted a mixture of paper and electronic returns for their clients. The postcard provides these professionals an opportunity to acquire additional information about the Earned Income Tax Credit (EITC). It is part of a brochure to encourage 100% filing of EITC returns.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 20, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–7274 Filed 3–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8594

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8594, Asset Acquisition Statement.

DATES: Written comments should be received on or before May 27, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, at (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Asset Acquisition Statement.

OMB Number: 1545–1021.

Form Number: 8594.

Abstract: Internal Revenue Code section 1060 requires reporting to the IRS by the buyer and seller of the total consideration paid for assets in an applicable asset acquisition. The information required to be reported includes the amount allocated to goodwill or going concern value. Form 8594 is used to report this information.

Current Actions: There are no changes being made to Form 8594 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 20,000.

Estimated Time Per Response: 16 hrs., 28 minutes.

Estimated Total Annual Burden Hours: 329,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 6, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–7275 Filed 3–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–27–83; LR–54–85]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing temporary regulations, LR–27–83 (TD 7882), Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks (Section 145.4051–1) and LR–54–85 (TD 8050), Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors; Reporting and Recordkeeping Requirements (Section 145.4052–1).

DATES: Written comments should be received on or before May 27, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: (LR–27–83) Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks, and (LR–54–85) Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors; Reporting and Recordkeeping Requirements.

OMB Number: 1545–0745.

Regulation Project Number: LR–27–83; LR–54–85. Abstract: LR–27–83 requires sellers of trucks, trailers and semitrailers, and tractors to maintain records of the gross vehicle weights of articles sold to verify taxability. LR–54–85 requires that if the sale is to be treated as exempt, the seller and the purchaser musts be registered and the purchaser must give the seller a resale certificate.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 4,100.

Estimated Time Per Respondent: 1 hour, 1 minute.

Estimated Total Annual Burden Hours: 4,140.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 17, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–7276 Filed 3–25–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 58

Wednesday, March 26, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–2000–7165, FMCSA–2000–7363, FMCSA–2000–7918, FMCSA–2001–8398]

Qualification of Drivers; Exemption Applications; Vision

Correction

In notice document 03–6627 beginning on page 13360 in the issue of Wednesday, March 19, 2003 make the following correction:

On page 13361, in the second column, under the heading **Exemption Decision**, in the 26th line, "Boy E. Mathews" should read "Roy E. Mathews".

[FR Doc. C3–6627 Filed 3–25–03; 8:45 am]

BILLING CODE 1505–01–D

VOL
68

ISS
58

MR
26

003

MI



Federal Register

Wednesday,
March 26, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Three Threatened Mussels and Eight Endangered Mussels in the Mobile River Basin; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI73

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Three Threatened Mussels and Eight Endangered Mussels in the Mobile River Basin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for three threatened (fine-lined pocketbook, orange-nacre mucket, and Alabama moccasinshell) and eight endangered freshwater mussels (Coosa moccasinshell, ovate clubshell, southern clubshell, dark pigtoe, southern pigtoe, triangular kidneyshell, southern acornshell, and upland combshell), listed in 1993 under the Endangered Species Act of 1973, as amended (Act). We propose to designate 26 river and stream segments (units) in the Mobile River Basin as critical habitat for these 11 mussel species. These units encompass a total of approximately 1,760 kilometers (km) (1,093 miles (mi)) of river and stream channels. Proposed critical habitat includes portions of the Tombigbee River drainage in Mississippi and Alabama; portions of the Black Warrior River drainage in Alabama; portions of the Alabama River drainage in Alabama; portions of the Cahaba River drainage in Alabama; portions of the Tallapoosa River drainage in Alabama and Georgia; and portions of the Coosa River drainage in Alabama, Georgia, and Tennessee.

Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. If this proposal is made final, section 7(a)(2) of the Act requires that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. State or private actions, with no Federal involvement, are not affected.

Section 4 of the Act requires us to consider the economic and other relevant impacts of specifying any area as critical habitat. We hereby solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. That economic analysis will be conducted in a manner that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n v. USFWS*. When the draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register**. With publication of the notice of availability, a comment period will be opened for a minimum of 30 days to allow for public comments on the draft economic analysis and proposed rule concurrently.

DATES: We will consider comments received by June 24, 2003. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by May 12, 2003.

ADDRESSES: If you wish to submit comments and information, you may submit your comments and information by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, MS 39213.

2. You may hand-deliver written comments and information to our Mississippi Fish and Wildlife Office, at the above address, or fax your comments to 601/965–4340.

3. You may send comments by electronic mail (e-mail) to *paul_hartfield@fws.gov*. For directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield at the above address (telephone 601/321–1125, facsimile 601/965–4340).

SUPPLEMENTARY INFORMATION:

Background

This proposed rule addresses 11 bivalve mollusks or mussels (possessing a soft body enclosed by 2 shells) in the family Unionidae that are native to the Mobile River basin. The mussels addressed in this rule are the threatened fine-lined pocketbook (*Lampsilis altilis*), orange-nacre mucket (*Lampsilis perovalis*), and Alabama moccasinshell (*Medionidus acutissimus*), and the endangered Coosa moccasinshell (*Medionidus parvulus*), southern clubshell (*Pleurobema decisum*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), ovate clubshell (*Pleurobema perovatum*), triangular kidneyshell (*Ptychobranchus greeni*), upland combshell (*Epioblasma metastriata*), and southern acornshell (*Epioblasma othcaloogensis*). Unionid mussels, in general, live embedded in the bottom (sand, gravel, and/or cobble substrates) of rivers, streams, and other bodies of water. These mussels siphon water into their shells and across four gills that are specialized for respiration and food collection. Sexes in unionid mussels are usually separate. Males release sperm into the water; the sperm are then taken in by the females through their siphons during feeding and respiration. Eggs are held in the gills of the female where they come into contact with the sperm. Once eggs are fertilized, females retain them in their gills until the larvae (glochidia) fully develop. The change (metamorphosis) of the larvae of most unionid species into juvenile mussels requires that the larvae undergo a stage of parasitism on the fins, gills, or skin of a fish. Mature mussel glochidia are released into the water and they must find and attach to a suitable host fish species in order to develop into a juvenile mussel. Glochidia may be released separately or in masses termed conglutinates. The duration of the parasitic stage varies with water temperature, mussel species, and, perhaps, host fish species. Developed juvenile mussels normally detach from their fish host and sink to the stream bottom, where they continue to develop, provided they land in a suitable substrate with correct water conditions. Because of the dependence on this life stage and transport/dispersal process, unionid mussels usually only parasitize one or a few suitable host fish species that occupy similar habitats as the mussels. Consequently, the presence of suitable host fish species is considered an essential element in the life cycle of unionid mussels.

These 11 mussel species are historically native to portions of the Mobile River Basin (Basin). The Basin is composed of seven major river systems (Mobile, Tombigbee, Black Warrior, Alabama, Cahaba, Coosa, and Tallapoosa) and drains portions of the states of Alabama, Mississippi, Georgia, and Tennessee. Biological factors relevant to these freshwater mussels' habitat requisites are discussed in the Primary Constituent Elements portion of this proposed rule.

Taxonomy, Life History, and Distribution

Fine-Lined Pocketbook (Lampsilis altilis (Conrad 1834))

The fine-lined pocketbook is a medium-sized mussel, suboval in shape, and rarely exceeds 100 millimeters (mm) (4 inches (in)) in length. The ventral margin (bottom) of the shell is often angled posteriorly in females, resulting in a pointed posterior margin. The periostracum (skin of the shell) is yellow-brown to blackish and has fine rays on the posterior half. The nacre (shell interior) is white, becoming iridescent posteriorly.

Gravid females (females with larvae) have been observed March through June. Fine-lined pocketbooks have also been observed releasing glochidia in a single large conglutinate (Haag *et al.*, 1999), termed a superconglutinate (Haag *et al.*, 1995). Redeye bass (*Micropterus coosa*), spotted bass (*M. puctulatus*), largemouth bass (*M. salmoides*), and green sunfish (*Lepomis cyanellus*) have been identified as suitable hosts (Haag *et al.*, 1999).

The fine-lined pocketbook was historically reported from the Tombigbee, Black Warrior, Cahaba, Alabama, Tallapoosa, and Coosa Rivers and many of their tributaries in Alabama, Georgia, Mississippi, and Tennessee. The species has apparently disappeared from the Tombigbee and Alabama River drainages, and possibly from the Black Warrior River drainage. Since publication of the final rule listing the fine-lined pocketbook, this mussel continues to survive in the upper Cahaba River and the Little Cahaba River (Jefferson/Shelby/Bibb Counties, Alabama); Coosa River (Cherokee County, Alabama) and its tributaries, including Duck Creek (Walker County, Georgia), Euharlee Creek (Bartow County, Georgia), Conasauga River (Murray/Whitfield County, Georgia; Polk County, Tennessee), and Holly Creek (Murray County, Georgia), Terrapin Creek, and South Fork Terrapin Creek (Cleburne County, Alabama); Yellowleaf Creek and its tributary Muddy Prong (Shelby County, Alabama); Kelly Creek and its tributary Shoal Creek (Shelby/St. Clair County, Alabama), Choccolocco Creek (Calhoun County, Alabama) and its tributaries Cheaha Creek (Talladega/Clay County, Alabama), Shoal Creek (Cleburne County, Alabama), Hatchet Creek (Coosa/Clay County, Alabama), and Tallasahatchee Creek (Talladega County, Alabama); and the Tallapoosa River and tributaries, including Uphapee Creek (Macon County, Alabama), Choctafaula Creek (Macon/Lee County, Alabama), Chewacla Creek (Macon/Lee County, Alabama), Opintlocco Creek (Macon County, Alabama), Cane and Little Cane Creeks (Cleburne County, Alabama), Muscadine Creek (Cleburne County, Alabama), Big Creek (Haralson County, GA), and McClendon Creek (Paulding County, Georgia). Populations are small and localized within these streams (Dodd *et al.*, 1986; Evans, 2001; Feminella and Gangloff, 2000; Haag *et al.*, 1999; Herod *et al.*, 2001; E. Irwin, U.S. Geological Survey, *in litt.* 2000; Irwin *et al.*, 1998; Johnson and Evans, 2000; L. McDougal, U.S. Forest Service, *in litt.* 1994; McGregor, M. 1993; McGregor *et al.* 2000; Pierson, 1991a, 1992b, 1993; Shepard *et al.*, 1994; Williams and Hughes 1998).

Orange-nacre Mucket (*Lampsilis perovalis* (Conrad 1834))

The orange-nacre mucket is a medium-sized mussel, 50 to 90 mm (2.0 to 3.6 in) in length. The shell is oval in shape, moderately thick, and inflated. The posterior margin of the shell of mature females is obliquely truncate (shortened). The nacre is usually colored orange, rose, pink, or occasionally white. The periostracum varies from yellow to dark reddish brown, and with or without green rays.

The orange-nacre mucket expels mature glochidia in a single superconglutinate (Haag *et al.* 1995). Discharge of superconglutinates has been observed between March and June, with releases appearing concentrated in early April (Hartfield and Butler 1997). Redeye bass, spotted bass, and largemouth bass have been identified as suitable host fish for the orange-nacre mucket (Haag and Warren 1997).

The orange-nacre mucket was historically known from the Alabama, Tombigbee, Black Warrior, and Cahaba Rivers and their tributaries in Alabama and Mississippi. The species has disappeared from the mainstem Tombigbee, Black Warrior, and Alabama Rivers, but continues to survive in Tombigbee tributaries, including the Buttahatchee River (Lowndes/Monroe County, Mississippi; Lamar County, Alabama), and East Fork Tombigbee River (Itawamba/Monroe County, Mississippi), Luxapalila Creek and tributaries Yellow Creek (Monroe County, Mississippi; Lamar County, Alabama) and Cut Bank Creek (Lamar County, Alabama), Sipsey River (Greene/Pickens/Tuscaloosa County, Alabama), Coalfire, Lubbub, and Trussels Creeks (Pickens County, Alabama); Black Warrior River tributaries, including North River (Tuscaloosa/Fayette County, Alabama) and its tributary Clear Creek (Fayette County, Alabama), Locust and Blackburn Forks of the Black Warrior River (Blount County, Alabama), Sipsey Fork of the Black Warrior (Winston/Lawrence County, Alabama) and tributaries Thompson, Flannagin, and Borden Creeks (Lawrence County, Alabama), and Caney, North Fork Caney, Brushy, Capsey, Rush, Brown, and Beech Creeks (Winston/Lawrence County, Alabama); Cahaba River (Bibb/Jefferson/Shelby County, Alabama) and Little Cahaba River (Bibb/Shelby County, Alabama); and Alabama River tributaries Limestone Creek (Monroe County, Alabama) and Bogue Chitto Creek (Dallas County, Alabama). The orange-nacre mucket is locally common in the Sipsey Fork and several of its tributaries. All other populations are small and localized (Alabama Malacological Research Center, *in litt.*, 1996; Dodd *et al.* 1986; Haag and Warren 2001; Hartfield and Bowker 1992; Hartfield and Jones 1989, 1990; Jones 1991; Jones and Majure 1999; McGregor 1992; McGregor *et al.* 1996; McGregor 2000; McGregor *et al.* 2000; McGregor and Pierson 1999; McGregor and Haag *in prep.*; Miller 2000; MS Museum of Natural Science collection records 1989–1999; Pierson 1991a, b, 1992a; Shepard *et al.* 1998; Vittor and Associates 1993; Warren and Haag 1994; Yokley 2001).

Alabama Moccasinshell (*Medionidus acutissimus* (Lea 1831))

The Alabama moccasinshell is a small, delicate species, approximately 30 mm (1.2 in) in length. The shell is narrowly elliptical, and thin, with a well-developed acute posterior ridge that terminates in an acute point on the posterior ventral margin. The posterior slope is finely corrugated. The periostracum is yellow to brownish yellow, with broken green rays across the entire surface of the shell. The thin nacre is translucent along the margins and salmon-colored in the umbos (beak cavity).

Alabama moccasinshell females are gravid from October to June. This species lives completely embedded in stream bottoms for most of the year. Gravid females migrate to the surface of the stream bottom between March and June, anchor themselves to gravel by a bysal thread (protein thread), and lie exposed, displaying a black mantle lure apparently to attract potential host fish (P. Hartfield pers. obs. 1994; Haag and Warren 2001). Blackspotted topminnows (*Fundulus olivaceus*), Tuskaloosa darter (*Etheostoma douglasi*), redfin darter (*E. whipplei*), blackbanded darter (*Percina nigrofaciata*), naked sand darter

(*Ammocrypta beani*), southern sand darter (*A. meridiana*), johnny darter (*E. nigrum*), speckled darter (*E. stigmaeum*), saddleback darter (*Percina vigil*), and logperch (*P. caprodes*) have been identified as suitable host fish (Haag and Warren 1997, 2001).

The Alabama moccasinshell was historically known from the Alabama, Tombigbee, Black Warrior, Cahaba, and Coosa Rivers and their tributaries in Alabama, Mississippi, Georgia, and Tennessee. The species has disappeared from the mainstems of all of these rivers, but continues to survive in Tombigbee River tributaries, including Bull Mountain Creek (Itawamba County, Mississippi), Luxapalila Creek (Lowndes County, Mississippi) and tributary Yellow Creek (Lowndes County, Mississippi; Lamar County, Alabama), Buttahatchee River (Lowndes/Monroe County, Mississippi, Lamar County, Alabama), and tributary Sipsey Creek (Monroe County, Mississippi), Lubbub Creek (Pickens County, Alabama), and Sipsey River (Greene/Pickens County, Alabama); Black Warrior River tributaries, including the Sipsey Fork and tributaries (Winston/Lawrence County, Alabama); and Holly Creek (Murray County, Georgia) in the Coosa River drainage (Dodd *et al.*1986; Evans 2001; Hartfield and Bowker 1992; Hartfield and Jones 1989, 1990; Johnson and Evans 2000; Jones 1991; Jones and Majure 1999; McGregor 1992; McGregor *et al.* 1996; McGregor 2000; McGregor *et al.* 2000; MS Museum of Natural Science collection record 1984–2001; Pierson 1991a, b; Warren and Haag 1994; Yokley 2001). Except for the Sipsey Fork, populations are small and localized. Highest densities observed during field surveys have been from the Sipsey Fork and its headwater tributaries in Bankhead National Forest, where quantitative samples from selected sites estimated Alabama moccasinshells densities from 0 to 2.8/10 m^2 (Warren and Haag 1994).

Coosa Moccasinshell (*Medionidus parvulus* (Lea 1860))

The Coosa moccasinshell is a small species occasionally exceeding 40 mm (1.6 in) in length. The shell is thin and fragile, elongate and elliptical to rhomboidal in outline. The posterior ridge is inflated and smoothly rounded, terminating in a broadly rounded point; the posterior slope is finely corrugated. The periostracum is yellow-brown to dark brown and has fine green rays. The nacre is blue, occasionally with salmon-colored spots.

Coosa moccasinshells are usually completely buried in the stream bottom. Because this species is apparently closely related to the Alabama moccasinshell, gravid females of this species likely migrate to the surface of the stream bottom during spring glochidial release periods, as do gravid Alabama moccasinshell females. Coosa moccasinshell glochidia are known to use blackbanded darters as hosts; however, other species of darters are also likely to be used (P. Johnson, Tennessee Aquarium Research Institute, pers. comm. 2002).

The Coosa moccasinshell has been historically reported from the Cahaba River, the Sipsey Fork of the Black Warrior River, and the Coosa River, and their tributaries, in Alabama, Georgia, and Tennessee. Since the species was listed, its presence has been confirmed only in the Conasauga River (Murray/Whitfield County, Georgia; Bradley County, Tennessee), and its tributary, Holly Creek (Murray County, Georgia) (Johnson and Evans, 2000, Williams and Hughes 1998). It has apparently been eliminated from the Cahaba and Black Warrior River drainages, as well as from the Coosa River and many of its tributaries.

Ovate Clubshell (*Pleurobema perovatum* (Conrad 1834))

The ovate clubshell is a small to medium-sized mussel that rarely exceeds 50 mm (2.0 in) in length. The shell is oval to elliptical in shape, and has nearly terminal, inflated umbos. The posterior ridge is well-developed, broadly rounded, and often concave. The posterior slope is produced well beyond the posterior ridge. Periostracum color varies from yellow to dark brown, and occasionally has broad green rays that may cover most of the umbo and posterior ridge. The nacre is white. Gravid females of this species have been observed in June and July. Glochidia are released in well formed, white conglutinates (W.R. Haag unpublished data). Host fishes for this species are unknown.

The ovate clubshell was historically distributed in the Tombigbee, Black Warrior, Alabama, Cahaba, and Coosa Rivers and their tributaries in Mississippi, Alabama, Georgia, and Tennessee; and in Chewacla, Uphapee and Opintlocco Creeks in the Tallapoosa River drainage, Alabama. It has disappeared from the Black Warrior, Cahaba, and Alabama River drainages, as well as the mainstem Tombigbee River and Uphapee and Opintlocco Creeks. Currently, the species is known to survive in several Tombigbee River tributaries, including Buttahatchee River (Lowndes/Monroe County, Mississippi), Luxapalila Creek and its tributary Yellow Creek (Lowndes County, Mississippi), Sipsey River (Greene/Pickens/Tuscaloosa County, Alabama), Sucarnoochee River (Sumter County, Alabama), and Coalfire Creek (Pickens County, Alabama); and Chewacla Creek (Macon County, Alabama) in the Tallapoosa River drainage; and a short reach of the Coosa River below the mouth of Terrapin Creek (Cherokee County, Alabama) (Dodd *et al.* 1986, Feminella and Gangloff 2000, Hartfield and Bowker 1992, Hartfield and Jones 1990, Jones 1991, McGregor 1992, McGregor 1993, McGregor *et al.* 1996, McGregor 2000, McGregor and Haag *in prep.*, Miller 2000, Pierson, 1991a, b; Yokley 2001). Populations are small and localized.

Southern Clubshell (*Pleurobema decisum* (Lea 1831))

The southern clubshell is a medium sized mussel about 70 mm (2.8 in) long, with a thick shell, and heavy hinge plate and teeth. The shell outline is roughly rectangular, produced posteriorly with the umbos terminal with the anterior margin, or nearly so. The posterior ridge is moderately inflated and ends abruptly with little development of the posterior slope at the dorsum of the shell. The periostracum is yellow to yellow-brown with occasional green rays or spots on the umbo in young specimens.

Gravid southern clubshell females with mature glochidia have been collected in June and July. Glochidia are released in well formed conglutinates orange or white in coloration (Haag and Warren 2001). Blacktail shiner (*Cyprinella venusta*), Alabama shiner (*C. callistia*), and tricolor shiner (*C. trichroistia*) have been identified as fish host (Haag and Warren 2001, P. Johnson pers. comm. 2002).

With the exception of the Tensas/Mobile River, the southern clubshell was formerly known from every major river system in the Mobile River Basin, including the Alabama, Tombigbee, Black Warrior, Cahaba, Tallapoosa, and Coosa Rivers and many of their tributaries in Mississippi, Alabama, Georgia, and Tennessee. This species has disappeared from the Cahaba River drainage, the main channels of the Tombigbee and Black Warrior Rivers, and from a number of tributaries in all of the drainages. Southern clubshell continues to inhabit the East Fork Tombigbee River (Itawamba/Monroe County, Mississippi), Bull Mountain Creek (Itawamba County, Mississippi), Buttahatchee River (Monroe/Lowndes County, Mississippi), Luxapalila and Yellow Creeks (Lowndes County, Mississippi), Lubbub Creek (Pickens County, Alabama), and Sipsey River (Greene/Pickens/Tuscaloosa County, Alabama) in the Tombigbee drainage; a short reach of the Alabama River and Bogue Chitto Creek (Dallas County, Alabama); Chewacla Creek (Macon County, Alabama) in the Tallapoosa drainage; Coosa River (Dead River) below Weiss Dam (Cherokee County, Alabama) and tributaries Kelly Creek (Shelby County, Alabama), Big Canoe Creek (St. Clair County, Alabama), Terrapin Creek (Cherokee County, Alabama), and Conasauga River (Murray/Whitfield County, Georgia) (Alabama Department of Conservation and Natural Resources/U.S. Fish and Wildlife Service collection records, 1998, 1999; Evans 2001; Feminella and Gangloff 2000; Hartfield and Bowker 1992; Hartfield and Jones 1989, 1990; Herod *et al.* 2001; Jones 1991; Jones and Majure 1999; McGregor 1993, 1999; McGregor *et al.* 1996; Miller 2000; Miller and Hartfield, 1988; Pierson, 1991a, b; Yokley 2001). The southern clubshell is relatively common in localized reaches of the Buttahatchee and Sipsey Rivers. Average density at four sites in the Coosa River below Weiss Dam was 0.19/square meter (Herod *et al.* 2001). It is rare to uncommon in other occupied streams.

Dark Pigtoe (*Pleurobema furvum* (Conrad 1834))

The dark pigtoe is a small to medium-sized mussel, occasionally reaching 60 mm (2.4 in) in length. The shell is oval in outline, and moderately inflated. Beaks are located in the anterior portion of the shell. The posterior ridge is abruptly rounded and terminates in a broadly rounded, subcentral, posterior point. The periostracum is dark, reddish brown with numerous and closely spaced, dark growth lines. The hinge plate is wide and the teeth are heavy and large, especially in older specimens. The nacre approaches white in the umbos, and is highly iridescent on the posterior margin. This species is gravid in June and releases glochidia in peach to pink-colored conglutinates (Haag and Warren 1997). The largescale stoneroller (*Campostoma oligolepis*), Alabama shiner, blacktail shiner, creek chub (*Semotilus atromaculatus*), and blackspotted topminnow have been confirmed as suitable hosts (Haag and Warren 1997).

The historic distribution of the dark pigtoe was probably restricted to the Black Warrior River system above the fall line (natural contour that marks a drop in land level). Since listing, the presence of the dark pigtoe has been confirmed in the Black Warrior River drainage from Sipsey Fork and its tributaries Caney, Brown, Rush, and Capsey Creeks (Winston/Lawrence County, Alabama); and from the North River and its tributary Clear Creek (Fayette County, Alabama) (Alabama Malacological Research Center, *in litt.*, 1996; Dodd *et al.* 1986; McGregor 1992; Pierson 1992a; Shepard *et al.* 1998; Vittor and Associates 1993; Warren and Haag 1994). Badly weathered shells have also been found in the Locust Fork of the Black Warrior River near the Jefferson-Blount County line. Populations are small and localized. Highest densities measured during field surveys have been from the Sipsey Fork and its headwater tributaries in Bankhead National Forest, where quantitative samples from selected sites estimated dark pigtoe densities from 0 to 4.8/10 m^2 (Warren and Haag 1994).

Southern Pigtoe (*Pleurobema georgianum* (Lea 1841))

The southern pigtoe is a small to medium-sized mussel occasionally exceeding 60 mm (2.4 in) in length. The shell is elliptical to oval in outline and somewhat compressed. The posterior slope is smoothly rounded. The pseudocardinal teeth (protrusions on the dorsal interior surface of the shell) are small but well-developed, and the nacre is white. The periostracum is yellow to yellow-brown. Growth lines are numerous and may be dark brown. Small specimens may have green spots at the growth lines along the posterior ridge and near the umbo. Host fish are Alabama shiner, blacktail shiner, and tricolor shiner (P. Johnson pers. comm. 2002).

The historic range of the southern pigtoe included the Coosa River and its tributaries in Alabama, Georgia, and Tennessee. The species is currently known to survive in the Conasauga River (Murray/Whitfield County, Georgia, Bradley County, Tennessee), Holly Creek (Murray County, Georgia), Shoal Creek (Cleburne County, Alabama), Big Canoe Creek (St. Clair County, Alabama), and Cheaha Creek (Talladega County, Alabama) (Evans 2001, Feminella and Gangloff 2000, Johnson and Evans, 2000; Pierson 1992b, 1993; Williams and Hughes 1998). Populations are small and localized.

Triangular Kidneyshell (*Ptychobranchus greeni* (Conrad 1834))

The triangular kidneyshell is oval to elliptical in outline, and may approach 100 mm (4.0 in) in length. The shell is generally compressed, and may be flattened ventral to the umbos. The posterior ridge is broadly rounded and terminates in a broad round point post-ventrally. The pseudocardinal teeth are heavy, and the laterals are heavy, gently curved and short. The periostracum is straw-yellow in young specimens, but becomes yellow-brown in older ones. It may have fine and wavy, or wide and broken, green rays anterior to the posterior ridge.

Gravid triangular kidneyshell females were observed in March 1994 and April 1996. Glochidia are packaged into conglutinates that mimic small aquatic fly larvae (Hartfield and Hartfield 1996) or fish eggs (Haag and Warren 1997). Suitable fish hosts have been identified as Warrior darter (*Etheostoma bellator*), Tuskaloosa darter, blackbanded darter and logperch (Haag and Warren 1997).

The historic range of the triangular kidneyshell included the Black Warrior, Cahaba, Alabama, and Coosa Rivers and tributaries in Alabama, Georgia, and Tennessee. The species has disappeared from the Alabama River, and from the primary channels of the Black Warrior and Coosa Rivers. Triangular kidneyshell is currently known to inhabit the Sipsey Fork and tributaries (Winston/Lawrence County, Alabama) and Locust Fork (Blount County, Alabama) of the Black Warrior; Cahaba River (Bibb County, Alabama); and Coosa tributaries Shoal Creek (Cleburne County, Alabama), Kelly Creek (Shelby County, Alabama), Big Canoe Creek (St. Clair County, Alabama), Conasauga River (Murray/Whitfield County, Georgia, Bradley County, Tennessee), Holly Creek (Murray County, Georgia), Coosawattee River (Gordon County, Georgia), and Oostanaula River (Floyd/Gordon County, Georgia). Populations are small and localized (Dodd *et al.* 1986, Evans 2001, Feminella and Gangloff 2000, Haag and Warren 1997, Johnson and Evans 2000, McGregor 1992, McGregor *et al.* 2000, Shepard *et al.* 1994, 1998; Warren and Haag 1994, Williams and Hughes 1998).

Southern Acornshell (*Epioblasma othcaloogensis* (Lea 1857))

The southern acornshell is a small mussel that may grow up to 30 mm (1.2 in) in shell length. The shells are round to oval in outline and sexually dimorphic, with a swollen posterior ridge in females. The periostracum is smooth, shiny, and yellow in color. Life history and host fish are unknown.

Historically, the southern acornshell occurred in the upper Coosa River system and the Cahaba River above the fall line in Alabama, Georgia, and Tennessee. The most recent records for the southern acornshell were from tributaries of the Coosa River in the early 1970s, and the Cahaba in the 1930s (58 FR 14330). It was our determination at the time of listing, with

consensus of the malacological (mollusk research) community, that this species was likely to persist in low numbers in the upper Coosa River drainage, and possibly in the Cahaba River. Surveys of Coosa River tributaries have been conducted by Service biologists, as well as Bogan and Pierson (1993a), Evans (2001), Feminella and Gangloff (2000), Johnson and Evans (2000), Pierson (1993, pers. comm. 1994), Williams and Hughes (1998), and others. Surveys of the Cahaba River have been conducted by Service biologists, Bogan and Pierson (1993b), McGregor *et al.* (2000), Shepard *et al.* (1994, 1998), and others. Despite these repeated surveys of historic habitat in the Coosa and Cahaba River drainages, no living animals or fresh shells of this species have been located in recent years (Evans 2001, Feminella and Gangloff 2000, Johnson and Evans 2000, McGregor *et al.* 2000, Pierson 1993, Shepard *et al.* 1994, 1998, Williams and Hughes 1998). Not withstanding the results of these surveys, this species' historic range includes thousands of miles of river and stream habitat in the Mobile River Basin, and there are many miles of stream which have not been adequately surveyed. Mussels are cryptic species, living buried in the stream bottom under water, and rare mussels are difficult to locate.

Upland Combshell (*Epioblasma metastriata* (Conrad 1838))

The upland combshell is a bivalve mollusk that rarely exceeds 60 mm (2.4 in) in length. The shells are rhomboidal to quadrate in outline and are sexually dimorphic. Males are moderately inflated with a broadly curved posterior ridge. Females are considerably inflated, with a sharply elevated posterior ridge that swells broadly post-ventrally forming a well-developed sulcus (the groove anterior to the posterior ridge). The posterior margin of the female is broadly rounded and comes to a point anterior to the posterior extreme. Periostracum color varies from yellowish-brown to tawny, and may or may not have broken green rays or small green spots. Hinge teeth are well-developed and heavy. This species likely releases glochidia during late spring or early summer (Service 2000). The host fish for this species have not been identified.

The historic range of the upland combshell included portions of the Black Warrior, Cahaba, and Coosa Rivers of the Mobile River Basin and some of their tributaries in Alabama, Georgia, and Tennessee. The most recent records for the upland combshell were from the Conasauga River, Georgia, in 1988, and from the Cahaba River, Alabama, in the early 1970s (58 FR 14330). When listed, the species was believed to be restricted to the Conasauga River in Georgia, and possibly portions of the upper Black Warrior and Cahaba River drainages. Surveys of Coosa River tributaries have been conducted by Service biologists, as well as Bogan and Pierson (1993a), Evans (2001), Feminella and Gangloff (2000), Johnson and Evans (2000), Pierson (1993, pers. comm. 1994), Williams and Hughes (1998), and others. Surveys of the Cahaba River have been conducted by Service biologists, Bogan and Pierson (1993b), McGregor *et al.* (2000), Shepard *et al.* (1994), and others. Surveys in the upper Black Warrior drainage have been done by Service biologists, Alabama Malacological Research Center, (*in litt.* 1996), Sheppard *et al.* (1998), Vittor and Associates (1993), Warren and Haag (1994), and others. However, these surveys of the Conasauga River and other historic habitat in the Coosa, Cahaba, and Black Warrior River drainages since the mussel was listed have failed to locate any evidence of the upland combshell (Evans 2001, Feminella and Gangloff 2000, Johnson and Evans 2000, McGregor 1992, McGregor *et al.* 2000, Pierson 1991a, Shepard *et al.* 1994, 1998, Vittor and Associates 1993, Warren and Haag 1994, Williams and Hughes 1998). Not withstanding the results of these surveys, this species' historic range includes thousands of miles of river and stream habitat in the Mobile River Basin, and there are many miles of stream which have not been adequately surveyed. Mussels are cryptic species, living buried in the stream bottom under water, and rare mussels are difficult to locate.

The summary of these 11 mussel species, presented above, represents our current understanding of their historic and current range and distribution. There has been some confusion in species identification in recent reports. For example, some survey reports have identified mussel populations from Black Warrior River tributaries, Cahaba River, and Bogue Chitto Creek as fine-lined pocketbook, while others have identified the same populations as orange-nacre mucket. Although there may be some overlap in these species' current ranges, we believe that this confusion originated from collectors unfamiliar with one or both species. There is also some confusion surrounding recently rediscovered populations of clubshell in the Coosa River drainage. Some biologists believe these populations may include painted clubshell (*Pleurobema chattanoogaense*), a form that we considered the same as southern clubshell (*Pleurobema decisum*) in the March 17, 1993, final rule listing for these 11 mussels (58 FR 14330). There is some morphological evidence that recognition of painted clubshell as a species may be warranted, however, recent genetic studies were unable to discriminate between the 2 forms. Therefore, at this time, we consider populations of clubshell in the Coosa River drainage to be southern clubshell. The distributions presented above, are based upon shell morphology as described and currently recognized in the scientific literature. Therefore, we will consider these species' current ranges as outlined above, until presented with new information.

Summary of Decline and Threats to Surviving Populations

The disappearance of these 11 mussel species from significant portions of their ranges is primarily due to changes in river and stream channels caused by dams, dredging, or mining, and historic or episodic pollution events (58 FR 14330). More than 1,700 km (1,100 mi) of large and small river habitat in the Basin have been impounded by dams for navigation, flood control, water supply, and/or hydroelectric production purposes. None of the 11 species are known to survive in impounded waters. Riverine mussels are killed during construction of dams, they may be suffocated by sediments that accumulate behind the dams; and the reduced water flow behind dams limits food and oxygen available to mussels. Many fish species that serve as hosts to mussel larvae are also eliminated by dams and impounded waters.

Other forms of habitat modification—such as channelization, channel clearing and desnagging (woody debris removal), and gold and gravel mining—caused stream bed scour and erosion, increased turbidity, reduction of groundwater levels, and sedimentation, often resulting in severe local impacts to, and even extirpation of, mussel species. Sedimentation may also eliminate or reduce recruitment of juvenile mussels (Negus 1966), and suspended sediments can also interfere with feeding (Dennis 1984).

Water pollution from coal mines, carpet mills, fabric dying mills, large industrial plants, inadequately treated sewage, and land surface runoff also contributed to the demise of the species in certain portions of their historic ranges. Freshwater mussels, especially in their early life stages, are extremely sensitive to many pollutants (*e.g.*, chlorine, ammonia, heavy metals, high concentrations of nutrients) commonly found in municipal and industrial wastewater effluents (Havlik and Marking 1987, Goudreau *et al.* 1988, Keller and Zam 1991). Stream discharges from these sources may result in decreased dissolved oxygen concentration, increased acidity and conductivity, and other changes in water chemistry, which may impact mussels or their host fish.

The historic activities discussed above, especially dam construction, had a second major impact on mussel species by isolating surviving populations within limited portions of the Basin's major drainages. The Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service 2000) recognized habitat fragmentation as one of the primary threats to the Basin's imperiled aquatic species. Small isolated mussel populations are more vulnerable to natural random events, such as droughts or floods, as well as to changes in human activities and land use practices that impact aquatic habitats (Neves *et al.* 1997). A number of the Basin's imperiled mussel populations that became restricted to small tributaries or river segments eventually disappeared because of individual or cumulative impacts of land uses such as urbanization, industrialization, mining, and certain agricultural activities and practices that resulted in sedimentation, eutrophication (an aquatic condition in which the increase in mineral and organic nutrients reduces dissolved oxygen producing an environment that favors plant life over animal life), or other negative effects to stream and river habitats (58 FR 14330, U.S. Fish and Wildlife Service 2000).

Human populations and associated needs for housing, commerce, recreation, water, electricity, forest and agricultural products, waste disposal, and mineral exploitation continue to increase in the Basin (U.S. Fish and Wildlife Service 2000). Currently surviving populations of endangered and threatened mussels remain vulnerable to habitat loss, population isolation, and the cumulative effects of these land use activities on aquatic environments (U.S. Fish and Wildlife Service 2000). More detailed information on threats to these species can be found in the March 17, 1993, final listing determination (58 FR 14330) and in the Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service 2000).

Previous Federal Actions

Federal actions began when the orange-nacre mucket was included as a category 2 species (May 22, 1984, 49 FR 21675). We applied category 2 designations to those species for which some evidence of vulnerability existed, but for which we needed additional biological information to support a proposed rule to list as endangered or threatened. In the January 6, 1989, Notice of Review (54 FR 578–579), this species was again included as a category 2 species. In the same Notice of Review, the upland combshell, southern acornshell, and fine-lined pocketbook were additionally included as category 2 species. A status review completed in 1991 for these four species, and seven other mussels endemic to the Basin, recommended listing the upland combshell, southern acornshell, Coosa moccasinshell, southern clubshell, dark pigtoe, southern pigtoe, ovate clubshell, and triangular kidneyshell as endangered species, and the fine-lined pocketbook, orange-nacre mucket, and Alabama moccasinshell as threatened species (Hartfield 1991).

We proposed the 11 mussel species for protection under the Act on November 19, 1991 (56 FR 58339). In that proposed rule, we stated that critical habitat was not prudent because of the threat of illegal commercial harvest. Legal notices announcing the proposal and requesting public comments were published in *The Clarion-Ledger* (Jackson, Mississippi) on December 6, 1991; the *Mobile Press Register* (Mobile, Alabama) on December 7, 1991; and *The Atlanta Constitution* (Atlanta, Georgia), the *Commercial Dispatch* (Columbus, Mississippi), and the *Montgomery Advertiser* (Montgomery, Alabama) on December 8, 1991. We published a final rule on March 17, 1993 (58 FR 14330), listing the fine-lined pocketbook, orange-nacre mucket, and Alabama moccasinshell as threatened species, and the Coosa moccasinshell, ovate clubshell, southern clubshell, dark pigtoe, southern pigtoe, triangular kidneyshell, upland combshell, and southern acornshell as endangered species.

New mussel harvest regulations adopted by the State of Alabama, and other information received in public comments during the open comment period, removed our concerns about illegal commercial harvest, and in the final rule, we determined that critical habitat was prudent but not determinable for the 11 mussel species. The not determinable finding was because of insufficient information on distribution and the biological needs of these species. Section 4(b)(6)(C) of the Act provides that a concurrent critical habitat determination is not required with a final regulation implementing endangered or threatened status and that the final designation may be postponed for 1 additional year beyond the period specified in section 4(b)(6)(A), if a prompt determination of endangered or threatened status is essential to the conservation of the species, or if critical habitat is not then determinable. We found that prompt determination of status was essential to the conservation of these species and stated that we would attempt to evaluate critical habitat needs through research and recovery actions.

In late 1994, a Technical/Agency draft Mobile River Basin Aquatic Ecosystem Recovery Plan that included recovery objectives for the 11 mussels, among other listed species, was released for public review and comment. High levels of interest in details of the plan were expressed by the State of Alabama, certain environmental groups, and a number of water- and timber-related industries. As a result of a series of discussions sponsored by the Alabama Department of Economic and Community Affairs, a Mobile River Basin Coalition composed of various governmental, environmental, and industry representatives was organized for the purpose of reviewing, revising, and eventually implementing the recovery plan. A revised Technical/Agency draft was subsequently released for public review in 1998, and the final Mobile River Basin Aquatic Ecosystem Recovery Plan was published in 2000 (U.S. Fish and Wildlife Service 2000).

On October 12, 2000, the Southern Appalachian Biodiversity Project filed a lawsuit in U.S. District Court for the Eastern District of Tennessee against the Service, the Director of the Service, and the Secretary of the Department of the Interior, challenging our not determinable findings regarding critical habitat for 9 listed mussels. These 9 mussels represent 9 of the 11 Mobile River Basin mussels that were listed in 1993, and are listed as follows: upland combshell, southern acornshell, Coosa moccasinshell, southern clubshell, southern pigtoe, ovate clubshell, triangular kidneyshell, fine-lined pocketbook, and Alabama moccasinshell. On November 8, 2001, the District Court issued an order directing us to make a proposed critical habitat designation for these 11 Mobile River Basin mussels no later than March 17, 2003, and the final designation by March 17, 2004.

This proposal is the product of our reexamination of our 1993 not determinable finding for 11 mussels in the Mobile River drainage. The 2000 lawsuit did not include the dark pigtoe or the orange-nacre mucket, but we are considering them because they were a part of the original 1993 listing, they overlap in range with some of the other 9 species, and they occupy similar habitats within that range. It reflects our interpretation of the recent judicial opinions on critical habitat designation and the standards placed on us for making a prudency determination. If additional information becomes available on these species' biology, distribution, or threats to the species, we may reevaluate this proposal to propose additional critical habitat, propose boundary refinements that substantially changes existing proposed critical habitat, or withdraw our proposal to designate critical habitat. If boundary refinements of existing proposed critical habitat are required for a single unit or on a similar small scale based on additional information, we will allow additional time for public comment within the constraints of our court order.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" is defined in section 3(3) of the Act as the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which listing under the Act is no longer necessary.

In order for habitat to be included in a critical habitat designation, the habitat features must be "essential to the conservation of the species." Such critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of these mussel species, they may not require special management or protection, and, therefore, may not meet the definition of critical habitat in section 3(5)(A)(i) of the Act.

When we designate critical habitat, we may not have the information necessary to identify all habitat areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we consider to be essential, using the best information available to us.

Within the geographic area of the species, we will designate only currently known essential areas. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area will not be included in the critical habitat designation. Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides guidance to ensure that our decisions are based on the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, information that should be considered includes the listing package for the species, the recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys, studies, and biological assessments, unpublished materials, and expert opinion or personal knowledge.

Section 4 of the Act generally requires that we designate critical habitat at the time of listing and based on what we know at the time of designation. If we make a not determinable finding regarding critical habitat at the time of listing, section 4(b)(6)(C) of the Act requires that the Service publish a final regulation by not more than 1 additional year, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat. There are several thousands of miles of perennial streams in the Mobile River Basin. Most of these flow through private property, and may not have been adequately surveyed for mussels. Mussels are cryptic species, living buried in the stream bottom under water, and rare mussels are difficult to locate. We recognize that additional small, limited populations for some of these species could exist in some of these streams and may be discovered over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. Therefore, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the take prohibitions pursuant to section 9 of the Act, as determined on the basis of the best available information at the time of the action. It is possible that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could jeopardize those species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning and recovery efforts if new information available to these planning efforts calls for a different outcome.

Methods Used To Identify Proposed Critical Habitat for 11 Mussel Species

As required by section 4(b)(2) of the Act and implementing regulations (50 CFR 424.12), we used the best scientific and commercial information available to determine critical habitat areas that contain the physical and biological features that are essential for the conservation of the Coosa moccasinshell, southern clubshell, dark pigtoe, southern pigtoe, ovate clubshell, triangular kidneyshell, southern acornshell, upland combshell, fine-lined pocketbook, orange-nacre mucket, and Alabama moccasinshell. We reviewed the available information pertaining to the historic and current distributions, life histories, host fishes, and habitats of, and threats to these species. The information used in the preparation of this proposed designation includes: Our own site-specific species and habitat information; unpublished survey reports, notes, and communications with other qualified biologists or experts; peer reviewed scientific publications; the final listing rule for 11 mussels in the Mobile River Basin (58 FR 14330); and the Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service, 2000). In determining the areas that are essential to the conservation of the 11 mussels we considered all streams currently or historically known to be occupied by one or more of the species (see "Taxonomy, Life History, and Distribution" above). It is likely that other occupied stream or stream segments exist that may be essential to the survival and conservation of these mussels, but we do not currently know where these are, and therefore cannot include them in this proposed critical habitat designation.

Primary Constituent Elements

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available and to focus on those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.

Based on the best available information, primary constituent elements essential for the conservation of these 11 mussel species include the following:

1. Geomorphically stable stream and river channels and banks;
2. A flow regime (*i.e.*, the magnitude, frequency, duration, and seasonality of discharge over time) necessary for normal behavior, growth, and survival of all life stages of mussels and their fish hosts in the river environment;
3. Water quality, including temperature, pH, hardness, turbidity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages;
4. Sand, gravel, and/or cobble substrates with low to moderate amounts of fine sediment, low amounts of attached filamentous algae, and other physical and chemical characteristics necessary for normal behavior, growth, and viability of all life stages;
5. Fish hosts with adequate living, foraging, and spawning areas for them; and,
6. Few or no competitive nonnative species present.

In considering and identifying primary constituent elements, we have taken into account the dynamic nature of riverine systems. We recognize that riparian areas and floodplains are integral parts of the stream ecosystem, important in maintaining channel geomorphology, and providing nutrient input, and buffering from sediments and pollution; and that side channel and backwater habitats may be important in the life cycle of fish that serve as hosts for mussel larvae.

Analysis Used To Delineate Critical Habitat

Currently, the greatest general threat to the survival and recovery of these 11 Mobile River Basin mussel species is the small size, extent, and isolation of their remaining populations. With the exception of the dark pigtoe, which is believed to be naturally restricted to streams and rivers in the Black Warrior drainage, these mussel species were once widespread in the Basin, found in a continuum of small streams to large rivers in 2 or more major drainages. As discussed under the "Summary of Decline and Threats to Surviving Populations," and the Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service 2000), 30 major dams were constructed in the Basin during the 20th century. These dams and their impounded waters present physical barriers to the natural dispersal of mussels (they prevent emigration (dispersal) of host fishes), and effectively isolate surviving mussel populations in limited portions of the Basin's major drainages. Small isolated aquatic populations are subject to natural random events (droughts, floods), and to changes in human activities and land use practices (urbanization, industrialization, mining, certain agricultural activities and practices, etc.), that may severely impact aquatic habitats (Neves *et al.* 1997). Without avenues of emigration to less affected watersheds, mussel populations gradually disappear where land use activities result in deterioration of aquatic habitats. Local random events, and changes in human activities within the Basin's unimpounded watersheds are believed to have caused or contributed to the disappearance of mollusks from significant portions of isolated stream habitats, resulting in the extinction of as many as 13 mussels, as well as a number of freshwater snail species (U.S. Fish and Wildlife Service 2000).

Most of the 11 mussel species considered in this proposed designation are currently represented by one or more small, restricted, and isolated populations. These surviving populations have been isolated from one another by dams and impounded reaches for 20 to 50 years, and remain vulnerable to the progressive degradation of their habitats from land surface runoff or random natural events such as droughts. In many of these surviving populations, there is also evidence of local population decline during the same time period (*e.g.*, Evans 2001, Hartfield and Jones 1990, Williams and Hughes, 1998, McGregor *et al.* 2000).

The Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service 2000), recognized the complexity of conserving the Basin's imperiled species, and considered that downlisting or delisting these 11 mussels was unlikely in the foreseeable future because of the extent of their decline, the fragmentation and isolation of their habitats, and continuing impacts upon their habitats. Compounding these problems is a lack of information on specific habitat and life history requirements of these species, or on the physical threats that confront them (*e.g.*, sediment, nutrient, and other pollutant sensitivities, etc.). Threats compounded by habitat fragmentation and isolation

can be reduced by increasing the number, expanding the range, and increasing the density of populations. Preventing the extinction of those species listed as endangered, and arresting the continued decline of those species listed as threatened are the recovery objectives outlined in the recovery plan for these 11 mussels. The recovery plan emphasizes: (1) Protection of surviving populations of these mussels and their stream and river habitats; (2) enhancement and restoration of habitats; (3) and population management, including augmentation and reintroduction of the 11 mussels into portions of their historic ranges to obtain these recovery objectives. In determining which areas to propose as critical habitat for these 9 mussels, we considered the factors discussed in the recovery plan, as well as the mussels' historical distributions and the extent of current occupied habitats and their management potential.

We began our analysis by considering the historic ranges of the 11 mussel species. A large proportion of the Basin's streams and rivers that historically supported these mussels has been modified by existing dams and their impounded waters. Therefore, extensive portions of the upper Tombigbee River, Black Warrior River, Tallapoosa River, Alabama River, and Coôsa River cannot be considered essential to the conservation of these species because they no longer provide the physical and biological features that are essential for their conservation (see "Primary Constituent Elements" section).

Free-flowing river segments and their tributaries peripheral to the known historic range of the 11 mussels, and without any records of the species also cannot be considered to be essential to the conservation of these species (*e.g.*, Mobile/Tensas River, lower Tombigbee River, etc.) and so were not considered further. Several streams with single site occurrence records of a single species were also not considered essential because of limited habitat availability, isolation, degraded habitat, and/or low management value or potential (*e.g.*, Etowah River, Big Wills Creek, Little River, Armuchee Creek, Euharlee Creek, Limestone Creek, etc.).

We then evaluated streams and rivers within the historic ranges of these 11 species which had evidence that these mussels had occurred there at some point (*i.e.*, collection records). We eliminated from consideration areas from which there have been no collection records for several decades and/or are remote from currently occupied areas (e.g., portions of the lower Alabama River, lower Cahaba River, Mulberry Fork, Noxubee River, Talladega Creek, and others). In evaluating streams for the upland combshell and southern acornshell, specifically, we considered their historic ranges (Black Warrior, Cahaba, and Coosa River drainages). We selected those areas which have the best potential for and we believe are essential to the conservation of these two mussels based on collection history, surviving mussel species assemblages, and habitat conditions.

This analysis resulted in the identification of 25 of the 26 stream or river reaches within the Basin (habitat units) occupied by 1 or more of the 11 species and that contain the primary constituent elements as indicated by the presence and persistence of one or more of the listed mussels (Figure 1, Units 1 to 25). We believe that these areas also support darters, minnows, and other fishes that have been identified as hosts or potential hosts for one or more of the mussels, as evidenced by fish collection records (Mettee *et al.* 1996), the persistence of the mussels over extended periods of time, or field evidence of recruitment (Evans 2001, Hartfield and Jones 1990, and Herod *et al.* 2001, etc.). We consider all of these 25 of the 26 reaches essential for the conservation of these species. As discussed in the Recovery Plan, long-term conservation of these 11 mussels is unlikely in their currently reduced and fragmented state. Therefore, at a minimum, it is essential to include in this designation the reaches within the historic range that still contain mussels and the primary constituent elements of the habitat.

We then considered whether this essential area was adequate for the conservation of each of the 11 mussel species. Given that threats to the species are compounded by their limited distribution and isolation, it is unlikely that currently occupied habitat is adequate for the conservation of all 11 species. Conservation of these species requires expanding their ranges into currently unoccupied portions of their historic habitat because small, isolated, aquatic populations are subject to chance catastrophic events and to changes in human activities and land use practices that may result in their elimination. Larger, more contiguous populations can reduce the threat of extinction due to habitat fragmentation and isolation.

BILLING CODE 4310–55–P

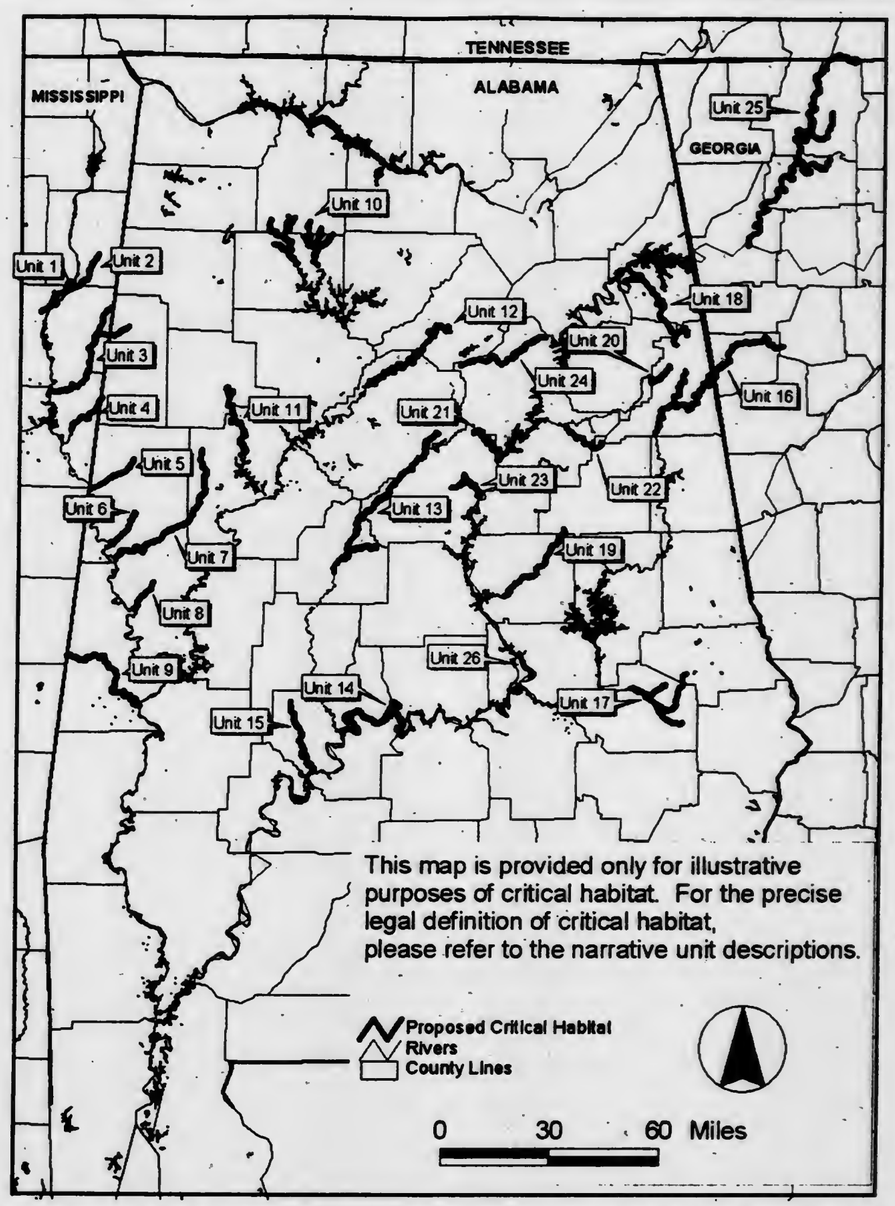


Figure 1: General locations of proposed critical habitat in the Mobile River Basin

BILLING CODE 4310–55–C

Because portions of the historic range of each of the 11 mussels were shared with 4 or more of the other mussel species, there is considerable overlap between species' current and historical distributions within 25 of the 26 habitat units. This offers opportunities to increase each species' current range and number of extant populations into units currently occupied by other listed species included in this designation. For

example, the Alabama moccasinshell historically inhabited 16 of the units, and currently inhabits 7; fine-lined pocketbook was known from 12 of the units, and currently inhabits 10; orange-nacre mucket historically occupied 15 units, and is currently found in 12; and Coosa moccasinshell historically occupied 9 of the units, but is currently found in only 1. Successful reintroduction of the species into units that they historically occupied (and that are currently occupied by 1 or more of the 11 species) would expand the number of populations, thereby reducing threat of extinction. Each of the 25 of the 26 habitat units (Units 1–25) are currently occupied by 1 or more of the listed mussels. Only two occupied habitat units and one unoccupied habitat unit are proposed for the dark pigtoe because its range was naturally restricted to the Black Warrior drainage, and we are unable to identify any other unoccupied habitat units in the drainage that provide constituent elements.

As noted above, conservation of these species requires expanding their ranges into unoccupied portions of historic habitat. Therefore, in addition to these 25 habitat units, we also propose to designate the Coosa River below Jordan Dam (Unit 26) as critical habitat for 9 of the 11 mussel species. Shells of the fine-lined pocketbook were last collected from this reach in 1989 (Pierson 1991a), and it is also within the historic range of 8 other species. This is the only unit currently not occupied by at least 1 of the 11 species (Johnson 2002). This area has recently been identified as presenting high potential for the successful reintroduction of imperiled mussels in the Coosa River drainage (Johnson 2002). In 1990, the Alabama Power Company initiated a 2000 cubic feet per second minimum flow into the Coosa River below Jordan Dam (Federal Energy Regulatory Commission (FERC) 1990), greatly improving aquatic habitat quality. The lower Coosa River not only offers high-quality riverine habitat, but due to local geology it is relatively protected from non-point runoff, a major threat to all existing populations of these species. There are historic records of fine-lined pocketbook and southern clubshell from this 13 km (8 mi) reach of river (Johnson 2002, Pierson 1991a), and it is within the historic range of Alabama moccasinshell, Coosa moccasinshell, ovate clubshell, southern pigtoe, triangular kidneyshell, southern acornshell, and upland combshell. As noted above, threats to these species can be reduced by expanding their current ranges through reintroduction into suitable habitats. Since the Coosa River below Jordan Dam is recognized as presenting the best opportunity for reestablishing populations of 9 of the 11 species and is viewed by experts as a high-quality example of remaining mussel habitat in the Basin, we believe it is also essential for their conservation, and propose to designate it as unoccupied habitat for these 9 mussel species.

As a result, we have defined 26 habitat units encompassing approximately 1,760 km (1,093 mi) of stream and river channels in Alabama, Mississippi, Georgia, and Tennessee, for these 11 mussel species (Figure 1). Although this represents only a small proportion of each species' historic range, these habitat units include a significant proportion of the Basin's remaining, highest quality, free-flowing rivers and streams, and reflect the variety of small stream to large river habitats historically occupied by each species. Because mussels are naturally restricted by certain physical conditions within a stream or river reach (*i.e.*, flow, substrate), they may be unevenly distributed within these habitat units. Uncertainty on upstream and downstream distributional limits of some populations may have resulted in small areas of occupied habitat excluded from, or areas of unoccupied habitat included in the designation.

We recognize that both historic and recent collection records upon which we relied are incomplete, and that there are river segments or small tributaries not included in this proposed designation that may harbor small, limited populations of one or more of the 11 species considered in this proposed designation, or that others may become suitable in the future. The exclusion of such areas does not diminish their potential individual or cumulative importance to the conservation of these species. However, we believe that with proper management each of the 26 habitat units are capable of supporting 1 or more of these 11 species, and will serve as source populations for artificial reintroduction into designated stream units, as well as assisted or natural migration into adjacent undesignated streams within the Basin.

At this time, the habitat areas contained within the units described below constitute our best evaluation of areas needed for the conservation of these species. Proposed critical habitat may be revised for any or all of these species should new information become available prior to the final rule, and existing critical habitat may be revised if new information becomes available after the final rule.

Need for Special Management Consideration or Protection

An area designated as critical habitat contains one or more of the primary constituent elements that are essential to the conservation of the species (see "Primary Constituent Elements" section), and that may require special management considerations or protection. Various activities in or adjacent to each of the critical habitat units described in this proposed rule may affect one or more of the primary constituent elements that are found in the unit. These activities include, but are not limited to, those listed in the "Effects of Critical Habitat" section as "Federal Actions That May Affect Critical Habitat and Require Consultation." None of the proposed critical habitat units is presently under special management or protection provided by a legally operative plan or agreement for the conservation of these mussels. Therefore, we have determined that the proposed units may require special management or protection.

Proposed Critical Habitat Designation

The areas that we are proposing for designation as critical habitat for the 11 mussel species provide one or more of the primary constituent elements described above. In accordance with the Mobile River Aquatic Ecosystem Recovery Plan (2000), protection of the habitat in these units and their surviving populations is essential to the conservation of these 11 mussel species. All of the proposed areas require special management considerations to ensure their contribution to the conservation of these mussels. For each stream reach proposed as a critical habitat unit, the up- and downstream boundaries are described in general detail below; more precise estimates are provided in the Regulation Promulgation of this rule.

Critical Habitat Unit Descriptions

The critical habitat units described below include the stream and river channels within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water line on nontidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. We are proposing the following areas for designation as critical habitat for the 11 mussel species (Refer to Table 1 for the location and extent of proposed critical habitat for each species and more specifically to § 17.95, Critical habitat-fish and wildlife, at the end of this rule).

TABLE 1.—APPROXIMATE RIVER DISTANCES, BY DRAINAGE, FOR OCCUPIED AND UNOCCUPIED PROPOSED CRITICAL HABITAT FOR THE 9 MUSSEL SPECIES*

Species, Status, Critical Habitat Unit, and State	Currently Occupied		Currently Unoccupied	
	Kilometers	Miles	Kilometers	Miles
Alabama moccasinshell				
THREATENED				
1. East Fork Tombigbee River, MS	.....	.....	26	16
2. Bull Mountain Creek, MS	34	21	.....	.....
3. Buttahatchee River, MS, AL	110	68	.....	.....
4. Luxapalila Creek, MS, AL	29	18	.....	.....
5. Coalfire Creek, AL	.....	.....	32	20
6. Lubbub Creek, AL	31	19	.....	.....
7. Sipsey River, AL	90	56	.....	.....
8. Trussels Creek, AL	.....	.....	21	13
9. Sucarnoochee River, AL	.....	.....	90	56
10. Sipsey Fork, AL	147	91	.....	.....
11. North River, AL	.....	.....	47	29
12. Locust Fork, AL	.....	.....	102	63
13. Cahaba River, AL	.....	.....	124	77
15. Bogue Chitto Creek, AL	.....	.....	52	32
25. Oostanuala complex, GA, TN	16	10	191	119
26. Lower Coosa River, AL	.....	.....	13	8
Total	457	283	698	433
Fine-lined pocketbook				
THREATENED				
13. Cahaba River, AL	124	77	.....	.....
16. Tallapoosa River, AL, GA	161	100	.....	.....
17. Uphapee complex, AL	74	46	.....	.....
18. Coosa River, AL	78	48	.....	.....
19. Hatchet Creek, AL	66	41	.....	.....
20. Shoal Creek, AL	26	16	.....	.....
21. Kelly Creek, AL	34	21	.....	.....
22. Cheaha Creek, AL	27	17	.....	.....
23. Yellowleaf Creek, AL	39	24	.....	.....
24. Big Canoe Creek, AL	.....	.....	29	18
25. Oostanaula complex, GA, TN	115	71	92	57
26. Lower Coosa River, AL	.....	.....	13	8
Total	744	461	134	83
Orange-nacre mucket				
THREATENED				
1. East Fork Tombigbee River, MS	26	16	.....	.....
2. Bull Mountain Creek, MS	.....	.....	34	21
3. Buttahatchee River, MS, AL	87	54	23	14
4. Luxapalila Creek, MS, AL	29	18	.....	.....
5. Coalfire Creek, AL	32	20	.....	.....
6. Lubbub Creek, AL	31	19	.....	.....
7. Sipsey River, AL	90	56	.....	.....
8. Trussels Creek, AL	21	13	.....	.....
9. Sucarnoochee River, AL	.....	.....	90	56
10. Sipsey Fork, AL	147	91	.....	.....
11. North River, AL	47	29	.....	.....
12. Locust Fork, AL	102	63	.....	.....
13. Cahaba River, AL	124	77	.....	.....
14. Alabama River, AL	.....	.....	73	45
15. Bogue Chitto Creek, AL	52	32	.....	.....
Total	788	480	220	136
Coosa moccasinshell				
ENDANGERED				
18. Coosa River, AL	.....	.....	78	48
19. Hatchet Creek, AL	.....	.....	66	41
20. Shoal Creek, AL	.....	.....	26	16
21. Kelly Creek, AL	.....	.....	34	21
22. Cheaha Creek, AL	.....	.....	27	17
23. Yellowleaf Creek, AL	.....	.....	39	24

TABLE 1.—APPROXIMATE RIVER DISTANCES, BY DRAINAGE, FOR OCCUPIED AND UNOCCUPIED PROPOSED CRITICAL HABITAT FOR THE 9 MUSSEL SPECIES*—Continued

Species, Status, Critical Habitat Unit, and State	Currently Occupied		Currently Unoccupied	
	Kilometers	Miles	Kilometers	Miles
24. Big Canoe Creek, AL			29	18
25. Oostanaula Complex, GA, TN	115	71	92	57
26. Lower Coosa River, AL			13	8
Total	115	71	404	250
Dark pigtoe ENDANGERED				
10. Sipsey Fork, AL	147	91		
11. North River, AL	47	29		
12. Locust Fork, AL			102	63
Total	194	120	102	63
Ovate clubshell ENDANGERED				
1. East Fork Tombigbee River, MS			26	16
2. Bull Mountain Creek, MS			34	21
3. Buttahatchee River, MS, AL	87	54	23	14
4. Luxapalila Creek,MS, AL	29	18		
5. Coalfire Creek, AL	32	20		
6. Lubbub Creek, AL			31	19
7. Sipsey River, AL	90	56		
8. Trussels Creek, AL			21	13
9. Sucamoochee River, AL	90	56		
10. Sipsey Fork, AL			147	91
11. North River, AL			47	29
12. Locust Fork, AL			102	63
13. Cahaba River, AL			124	77
17. Uphapee complex, AL	74	46		
18. Coosa River, AL	18	11	60	37
19. Hatchet Creek, AL			66	41
21. Kelly Creek, AL			34	21
24. Big Canoe Creek, AL			29	18
25. Oostanaula complex, GA, TN			206	128
26. Lower Coosa River, AL			13	8
Total	420	261	963	596
Southern clubshell ENDANGERED				
1. East Fork Tombigbee River, MS	26	16		
2. Bull Mountain Creek, MS	34	21		
3. Buttahatchee River, MS, AL	87	54	23	14
4. Luxapalila Creek, MS AL	29	18		
5. Coalfire Creek, AL			32	20
6. Lubbub Creek, AL	31	19		
7. Sipsey River, AL	90	56		
8. Trussels Creek, AL			21	13
9. Sucamoochee River, AL			90	56
13. Cahaba River, AL			124	77
14. Alabama River, AL	73	45		
15. Bogue Chitto Creek, AL	52	32		
17. Uphapee Complex, AL	74	46		
18. Coosa River, AL	71	44	7	4
19. Hatchet Creek, AL			66	41
21. Kelly Creek, AL	26	16	8	5
24. Big Canoe Creek, AL	29	18		
25. Oostanaula Complex, GA, TN	15	9	130	120
26. Lower Coosa River, AL			13	8
Total	637	394	577	358
Southern pigtoe ENDANGERED				
18. Coosa River, AL			78	48
19. Hatchet Creek, AL			66	41
20. Shoal Creek, AL	26	16		
21. Kelly Creek, AL			34	21

TABLE 1.—APPROXIMATE RIVER DISTANCES, BY DRAINAGE, FOR OCCUPIED AND UNOCCUPIED PROPOSED CRITICAL HABITAT FOR THE 9 MUSSEL SPECIES*—Continued

Species, Status, Critical Habitat Unit, and State	Currently Occupied		Currently Unoccupied	
	Kilometers	Miles	Kilometers	Miles
22. Cheaha Creek, AL	27	17		
23. Yellowleaf Creek,			39	24
24. Big Canoe Creek, AL	29	18		
25. Oostanaula Complex, GA, TN	115	71	92	57
26. Lower Coosa River, AL			13	8
Total	197	122	322	199
Triangular kidneyshell ENDANGERED				
10. Sipsey Fork, AL	147	91		
11. North River, AL			47	29
12. Locust Fork, AL	102	63		
13. Cahaba River, AL	105	65	19	12
18. Coosa River, AL			78	48
19. Hatchet Creek, AL			66	41
20. Shoal Creek, AL	26	16		
21. Kelly Creek, AL	26	16	8	5
22. Cheaha Creek, AL			27	17
23. Yellowleaf Creek, AL			39	24
24. Big Canoe Creek, AL	29	18		
25. Oostanaula Complex, GA, TN	206	128		
26. Lower Coosa River, AL			13	8
Total	641	397	297	184
Southern acornshell ENDANGERED				
13. Cahaba River, AL			124	77
18. Coosa River, AL			78	48
19. Hatchet Creek, AL			66	41
21. Kelly Creek, AL			34	21
24. Big Canoe Creek, AL			29	18
25. Oostanaula Complex, GA, TN			205	128
26. Lower Coosa River, AL			13	8
Total			549	341
Upland combshell ENDANGERED				
12. Locust Fork, AL			102	63
13. Cahaba River, AL			124	77
18. Coosa River, AL			78	48
19. Hatchet Creek, AL			66	41
21. Kelly Creek, AL			34	21
24. Big Canoe Creek, AL			29	18
25. Oostanaula Complex, GA, TN			205	128
26. Lower Coosa River, AL			13	8
Total			651	404

*Table 1 refers to the location and extent of proposed critical habitat for each species. For more detail, refer to § 17.95. Table 1 will reflect totals on a species level only, because units are listed under each species as appropriate.

Upper Tombigbee River Drainage, Alabama, Mississippi

The Tombigbee River and several of its tributaries above the confluence of the Black Warrior River historically supported robust populations of the orange-nacre mucket, Alabama moccasinshell, southern clubshell, and ovate clubshell. Construction of navigation dams has eliminated these species from the mainstem river, and the dams and impounded waters isolate all surviving tributary populations from each other.

Unit 1. East Fork Tombigbee River, Monroe, Itawamba Counties, Mississippi

Unit 1 encompasses 26 km (16 mi) of the East Fork Tombigbee River channel in Mississippi extending from Mississippi Highway 278, Monroe County, upstream to the confluence of Mill Creek, Itawamba County, Mississippi. This reach of the East Fork Tombigbee River continues to support the southern clubshell and orange-nacre mucket (Hartfield and Jones 1989, Miller and Hartfield 1988, Mississippi Museum of Natural Science (MMNS) mussel collections 1984–2001). This unit is within the historic range of the

Alabama moccassinshell and ovate clubshell.

Unit 2. Bull Mountain Creek, Itawamba County, Mississippi

Unit 2 encompasses 34 km (21 mi) of the Bull Mountain Creek stream channel in Mississippi extending from Mississippi Highway 25, upstream to U.S. Highway 78, Itawamba County, Mississippi. Bull Mountain Creek supports the southern clubshell and Alabama moccasinshell (Jones and Majure 1999). This unit is within the historic range of the orange-nacre mucket (records are from the early 1980's (MMNS mussel collections)) and the ovate clubshell.

Unit 3. Buttahatchee River and Tributary, Lowndes/Monroe County, Mississippi; Lamar County, Alabama

Unit 3 encompasses 110 km (68 mi) of river and stream channel in Mississippi and Alabama, including 87 km (54 mi) of the Buttahatchee River, extending from the confluence with Tombigbee River, Lowndes/Monroe County, Mississippi, upstream to the confluence of Beaver Creek, Lamar County, Alabama; and 23 km (14 mi) of Sipsey Creek, extending from its confluence with the Buttahatchee River, upstream to the Mississippi/Alabama State Line, Monroe County, Mississippi. The Buttahatchee River continues to support and provide habitat for the southern clubshell, orange-nacre mucket, ovate clubshell, and Alabama moccasinshell (Haag and Warren 2001, Hartfield and Jones 1989, Jones 1991, McGregor 2000). The current distribution of the Alabama moccasinshell also extends into its tributary Sipsey Creek (McGregor 2000).

Unit 4. Luxapalila Creek and Tributary, Lowndes County, Mississippi; Lamar County, Alabama

Unit 4 encompasses 29 km (18 mi) of stream channel, including 15 km (9 mi) of Luxapalila Creek, extending from Waterworks Road, Columbus, Mississippi, upstream to approximately 1.0 km (0.6 mi) above Steens Road, Lowndes County, Mississippi; and 15 km (9 mi) of Yellow Creek extending from its confluence with Luxapalila Creek, upstream to the confluence of Cut Bank Creek, Lamar County, Alabama. Luxapalila and Yellow Creeks support and provide habitat for the southern clubshell, orange-nacre mucket, ovate clubshell, and Alabama moccasinshell (Hartfield and Bowker 1992, McGregor 2000, Miller 2000, Yokley 2001).

Unit 5. Coalfire Creek, Pickens County, Alabama

Unit 5 encompasses 32 km (20 mi) of the Coalfire Creek stream channel extending from the confluence with the Aliceville Lake (Tombigbee River), upstream to U.S. Highway 82, Pickens County, Alabama. Coalfire Creek supports the orange-nacre mucket and ovate clubshell (P. Hartfield, Service field records 1991; McGregor 2000). The creek is in the historic range of the southern clubshell and Alabama moccasinshell.

Unit 6. Lubbub Creek, Pickens County, Alabama

Unit 6 encompasses 31 km (19 mi) of the Lubbub Creek stream channel extending from its confluence with the impounded waters of Gainesville Lake (Tombigbee River), upstream to the confluence of Little Lubbub Creek, Pickens County, Alabama. This stream supports the southern clubshell, orange-nacre mucket, and Alabama moccasinshell (P. Hartfield, Service field records 1991, McGregor 2000, Pierson 1991a). It is in the historic range of the ovate clubshell.

Unit 7. Sipsey River, Greene/Pickens, Tuscaloosa Counties, Alabama

Unit 7 encompasses 90 km (56 mi) of the Sipsey River channel from the confluence with Gainesville Lake (Tombigbee River), Greene/Pickens County, upstream to Alabama Highway 171 crossing, Tuscaloosa County, Alabama. This small river supports and provides some of the best remaining habitat for the southern clubshell, orange-nacre mucket, ovate clubshell, and Alabama moccasinshell (Haag and Warren 1997, McCullagh *et al.* in press, McGregor 2000, MMNS Mussel Collection, Pierson, 1991 a, b).

Unit 8. Trussels Creek, Greene County, Alabama

Unit 8 encompasses 21 km (13 mi) of creek channel extending from its confluence with the Tombigbee River, upstream to Alabama Highway 14, Greene County, Alabama. The orange-nacre mucket continues to survive in Trussels Creek, and it is in the historic range of the ovate clubshell, Alabama moccasinshell, and southern clubshell (P. Hartfield field records 1993, McGregor 2000).

Unit 9. Sucarnoochee River, Sumter County, Alabama

Unit 9 encompasses 90 km (56 mi) of the Sucarnoochee River channel in Alabama, extending from its confluence with the Tombigbee River, upstream to the Mississippi/Alabama State Line, Sumter County, Alabama. The ovate clubshell continues to survive in the Sucarnoochee River (McGregor *et al.* 1996). The river is within the historic range of the southern clubshell, orange-nacre mucket, and Alabama moccasinshell.

Black Warrior River Drainage, Alabama

The Black Warrior River and its tributaries historically supported populations of the orange-nacre mucket, Alabama moccasinshell, Coosa moccasinshell, southern clubshell, ovate clubshell, dark pigtoe, triangular kidneyshell, and upland combshell. There are also records of the fine-lined pocketbook from the drainage. Dam construction for navigation and hydropower and episodic water pollution resulted in the extirpation of the Coosa moccasinshell, southern clubshell, ovate clubshell, and upland combshell from this drainage. Three tributary drainages continue to support two or more endangered and threatened mussels. Dams and impounded waters currently isolate these drainages from each other.

Unit 10. Sipsey Fork Drainage, Winston, Lawrence Counties, Alabama

Unit 10 encompasses 147 km (91 mi) of stream channel in Alabama, including: Sipsey Fork, 31 km (19 mi), from section 11/12 line, T10S R8W, Winston County, upstream to the confluence of Hubbard Creek, Lawrence County, Alabama; Thompson Creek, 8 km (5 mi), from confluence with Hubbard Creek, upstream to section 2 line, T8S R9W, Lawrence County, Alabama; Brushy Creek, 35 km (22 mi), from the confluence of Glover Creek, Winston County, Alabama, upstream to section 9, T8S R7W, Lawrence County, Alabama; Capsey Creek, 15 km (9 mi), from confluence with Brushy Creek, Winston County, upstream to the confluence of Turkey Creek, Lawrence County, Alabama; Rush Creek, 10 km (6 mi), from confluence with Brushy Creek, upstream to Winston/Lawrence County Line, Winston County, Alabama; Brown Creek, 5 km (3 mi), from confluence with Rush Creek, Winston County, upstream to section 24 line, T8S R7W Lawrence County, Alabama; Beech Creek, 3 km (2 mi), from confluence with Brushy Creek, to confluence of East and West Forks, Winston County, Alabama; Caney Creek and North Fork Caney Creek, 13 km (8 mi), from confluence with Sipsey Fork, upstream to section 14 line, Winston County, Alabama; Borden Creek, 18 km (11 mi), from confluence with Sipsey Fork, Winston County, Alabama,

upstream to the confluence of Montgomery Creek, Lawrence County, Alabama; Flannagin Creek, 10 km (6 mi), from confluence with Borden Creek, upstream to confluence of Dry Creek, Lawrence County, Alabama. The upper Sipsey Fork drainage currently supports the most robust and extensive populations of the dark pigtoe, orange-nacre mucket, Alabama moccasinshell, and triangular kidneyshell (Haag and Warren 1997; Haag *et al.* 1995; Hartfield 1991; Hartfield and Butler 1997; Hartfield and Hartfield 1996; McGregor 1992, Warren and Haag 1994). Ovate clubshell have been reported from this drainage (Dodd 1986).

Unit 11. North River and Tributary, Tuscaloosa, Fayette Counties, Alabama

Unit 11 encompasses 47 km (29 mi) of river and stream channel in Alabama, including: North River, 42 km (26 mi) extending from Tuscaloosa County Road 38, Tuscaloosa County, upstream to confluence of Ellis Creek, Fayette County, Alabama; Clear Creek, 5 km (3 mi), from its confluence with North River, to Bays Lake Dam, Fayette County, Alabama. Small numbers of the dark pigtoe and orange-nacre mucket continue to survive in the North River and Clear Creek (McGregor and Pierson 1999, Pierson 1992a, Vittor and Associates 1993). This area is in the historic range of the Alabama moccasinshell, triangular kidneyshell, and ovate clubshell.

Unit 12. Locust Fork and Tributary, Jefferson, Blount Counties, Alabama

Unit 12 encompasses 102 km (63 mi) of river and stream channel in Alabama, including: Locust Fork, 94 km (58 mi) extending from U.S. Highway 78, Jefferson County, upstream to the confluence of Little Warrior River, Blount County, Alabama; Little Warrior River, 8 km (5 mi), from its confluence with the Locust Fork, upstream to the confluence of Calvert Prong and Blackburn Fork, Blount County, Alabama. Scattered collections of the orange-nacre mucket and triangular kidneyshell suggest an enduring population of these species in the Locust Fork (P. Johnson pers. comm. 2002, Hartfield 1991, Shepard *et al.* 1988). This stream is also in the historic range of the dark pigtoe, Alabama moccasinshell, ovate clubshell, and upland combshell.

Cahaba River Drainage, Alabama

The Cahaba River and tributaries historically supported the orange-nacre mucket, fine-lined pocketbook, Alabama moccasinshell, southern clubshell, ovate clubshell, triangular kidneyshell, upland combshell, and southern acornshell. Episodic and persistent pollution events have caused the decline of the mussel community throughout the drainage, as well as the extirpation of five of the listed mussels.

Unit 13. Cahaba River and Tributary, Jefferson, Shelby, Bibb Counties, Alabama

Unit 13 encompasses 124 km (77 mi) of river channel in Alabama, including: Cahaba River, 105 km (65 mi) extending from U.S. Highway 82, Centerville, Bibb County, upstream to Jefferson County Road 143, Jefferson County, Alabama; Little Cahaba River, 19 km (12 mi), from its confluence with the Cahaba River, upstream to the confluence of Mahan and Shoal Creeks, Bibb County, Alabama. Scattered individuals of triangular kidneyshell, orange-nacre mucket, and fine-lined pocketbook continue to be collected from the Cahaba drainag (R. Haddock, Cahaba River Society, pers. comm. 2002; McGregor *et al.* 2000, Shepard *et al.* 1994). The river is historic habitat for the Alabama moccasinshell, southern clubshell, ovate clubshell, upland combshell, and southern acornshell.

Alabama River Drainage, Alabama

The Alabama River mollusc community has been reduced due to the effects of historic pollution events and impoundment for navigation. Historical records from this river include the Alabama moccasinshell, orange-nacre mucket, fine-lined pocketbook, triangular kidneyshell, and southern clubshell.

Unit 14. Alabama River, Autauga, Lowndes, Dallas Counties, Alabama

Unit 14 encompasses 73 km (45 mi) of the Alabama River channel, extending from the confluence of the Cahaba River, Dallas County, upstream to the confluence of Big Swamp Creek, Lowndes County, Alabama. The southern clubshell is known to occur within this reach (Hartfield and Garner 1998). This area may become suitable for reintroduction of the orange-nacre mucket.

Unit 15. Bogue Chitto Creek, Dallas County, Alabama

Unit 15 encompasses 52 km (32 mi) of the Bogue Chitto Creek channel in Alabama, extending from its confluence with the Alabama River, Dallas County, upstream to U.S. Highway 80, Dallas County, Alabama. This stream continues to support the southern clubshell and orange-nacre mucket (McGregor *et al.* 1996; P. Hartfield field notes, 1984; Pierson 1991a). The habitat offers potential for the Alabama moccasinshell.

Tallapoosa River Drainage, Alabama, Georgia

Historical and recent records indicate that the Tallapoosa River drainage supported a diverse mussel community, although numbers of all mussel species have apparently always been low in this system. This river drainage currently contains 2 extensive areas of contiguous habitat supporting three of the listed mussel species.

Unit 16. Tallapoosa River and Tributary, Cleburne County, Alabama and Haralson and Paulding Counties, Georgia

Unit 16 encompasses 161 km (100 mi) of river and stream channel in Alabama and Georgia, including: Tallapoosa River, 137 km (85 mi) extending from U.S. Highway 431, Cleburne County, Alabama, upstream to the confluence of McClendon and Mud Creeks, Paulding County, Georgia; and Cane Creek, 24 km (15 mi), from confluence with Tallapoosa River, upstream to Section 33/4 Line (T15S, R11E), Cleburne County, Alabama. This extensive area of main channel and tributary habitat supports scattered, small numbers of the fine-lined pocketbook (Devris 1997, Irwin *et al.* 1998, Irwin pers. comm. 2000). There have been site collections of fine-lined pocketbook in the extreme lowest reaches of several small tributaries to the Tallapoosa Unit, including Little Cane Creek, Big Creek, McClendon Creek, and Muscadine Creek, and there are likely to be others. We believe these small populations are dependent upon the main stem Tallapoosa River for recruitment.

Unit 17. Uphapee/Choctafaula/Chewacla Creeks, Macon, Lee Counties, Alabama

Unit 17 encompasses 74 km (46 mi) of stream channel in Alabama, including: Uphapee Creek, 18 km (11 mi) of river channel extending from Alabama Highway 199, upstream to confluence of Opintlocco and Chewacla Creeks, Macon County, Alabama; Choctafaula Creek, 11 km (7 mi), from confluence with Uphapee Creek, upstream to Macon County Road 54, Macon County, Alabama; Chewacla Creek, 29 km (18 mi), from confluence with Opintlocco Creek, Macon County, Alabama, upstream to Lee County Road 159, Lee County, Alabama; Opintlocco Creek, 16 km (10 mi), from confluence with Chewacla Creek, upstream to Macon County Road 79, Macon County, Alabama. This stream network supports small and localized populations of the

fine-lined pocketbook, ovate clubshell, and southern clubshell (M. Gangloff, Auburn University, *in litt.* 2001; Gangloff 2002, McGregor 1993, Pierson 1991a).

Coosa River Drainage, Alabama, Georgia, Tennessee

Extensive impoundment for hydropower during the 20th century along with episodic pollution events severely reduced one of the most diverse endemic freshwater molluscan communities in the world. Listed mussels in the drainage are now restricted to one small portion of the main channel Coosa River, one large tributary complex, and several small isolated tributaries.

Unit 18. Coosa River (Old River Channel) and tributary, Cherokee, Calhoun, Cleburne Counties, Alabama

Unit 18 encompasses 78 km (48 mi) of river channel in Alabama, including: Coosa River, 18 km (11 mi) extending from the powerline crossing southeast of Maple Grove, Alabama, upstream to Weiss Dam, Cherokee County, Alabama; Terrapin Creek, 53 km (33 mi) extending from its confluence with the Coosa River, Cherokee County, upstream to Cleburne County Road 49, Cleburne County, Alabama; South Fork Terrapin Creek, 7 km (4 mi) from its confluence with Terrapin Creek, upstream to Cleburne County Road 55, Cleburne County, Alabama. The short reach of the Coosa River continues to support a fairly robust population of the southern clubshell, and a few individuals of the ovate clubshell and fine-lined pocketbook (Herod *et al.* 2001). The fine-lined pocketbook and southern clubshell have also been recently collected from Terrapin Creek (Feminella and Gangloff 2000). This area is within the range of the Coosa moccasinshell, southern pigtoe, triangular kidneyshell, upland combshell, and southern acornshell.

Unit 19. Hatchet Creek, Coosa, Clay Counties, Alabama

Unit 19 encompasses 66 km (41 mi) of the Hatchet Creek channel in Alabama, extending from the confluence of Swamp Creek at Coosa County Road 29, Coosa County, Alabama, upstream to Clay County Road 4, Clay County, Alabama. The fine-lined pocketbook occurs within this reach (Feminella and Gangloff 2000, Pierson 1992b). Hatchet Creek is within the historic range of the Coosa moccasinshell, southern pigtoe, ovate clubshell, southern clubshell, triangular kidneyshell, upland combshell, and southern acornshell.

Unit 20. Shoal Creek, Calhoun, Cleburne Counties, Alabama

Unit 20 encompasses 26 km (16 mi) of stream channel in Alabama, extending from the headwater of Whitesides Mill Lake, Calhoun County, Alabama, upstream to the tailwater of Coleman Lake Dam, Cleburne County, Alabama. The fine-lined pocketbook, southern pigtoe, and triangular kidneyshell survive in Shoal Creek (Haag *et al.* 1999, Feminella and Gangloff 2000, Gangloff *in litt.* 2001, Pierson, 1992b). Shoal Creek is within historic range of the Coosa moccasinshell.

Unit 21. Kelly Creek and Tributary, Shelby, St. Clair Counties, Alabama

Unit 21 encompasses 34 km (21 mi) of stream channel in Alabama, including: Kelly Creek, 26 km (16 mi) extending from the confluence with the Coosa River, upstream to the confluence of Shoal Creek, St. Clair County, Alabama; Shoal Creek, 8 km (5 mi), from confluence with Kelly Creek, St. Clair County, Alabama, upstream to St. Clair/Shelby County Line, St. Clair County, Alabama. Kelly/Shoal Creeks continue to support scattered individuals of the fine-lined pocketbook, and the southern clubshell and triangular kidneyshell survive in Kelly Creek (Pierson pers comm. 1995, Feminella and Gangloff 2000, Gangloff in litt. 2001). This stream complex is historic habitat for the southern pigtoe, Coosa moccasinshell, ovate clubshell, upland combshell, and southern acornshell.

Unit 22. Cheaha Creek, Talladega, Clay Counties, Alabama

Unit 22 encompasses 27 km (17 mi) of the Cheaha Creek channel, extending from its confluence with Choccolocco Creek, Talladega County, Alabama, upstream to the tailwater of Chinnabee Lake, Clay County, Alabama. The fine-lined pocketbook and southern pigtoe survive within this reach (Feminella and Gangloff 2000, Gangloff *in litt.* 2001, Pierson 1992b, 1993). Cheaha Creek is in the historic range of the Coosa moccasinshell and triangular kidneyshell.

Unit 23. Yellowleaf Creek and Tributary, Shelby County, Alabama

Unit 23 encompasses 39 km (24 mi) of stream channel, including: Yellowleaf Creek, 32 km (20 mi), extending from Alabama Highway 25, upstream to Shelby County Road 49; Muddy Prong, 7 km (4 mi), extending from confluence with Yellowleaf Creek, upstream to U.S. Highway 280, Shelby County, Alabama. Yellowleaf and Muddy Prong Creeks are currently inhabited by the fine-lined pocketbook (Feminella and Gangloff 2000, Gangloff *in litt.*, 2001, Pierson *in litt.* 2000). Yellowleaf Creek is in the historic range of the Coosa moccasinshell, southern pigtoe, and triangular kidneyshell.

Unit 24. Big Canoe Creek, St. Clair County, Alabama

Unit 24 encompasses 29 km (18 mi) of the Big Canoe Creek channel, extending from its confluence with Little Canoe Creek at the St. Clair/Etowah County line, St. Clair County, upstream to the confluence of Fall Branch, St. Clair County, Alabama. The southern clubshell, southern pigtoe, and triangular kidneyshell are surviving in low numbers in Big Canoe Creek (Feminella and Gangloff 2000, Gangloff *in litt.* 2001). This stream is also historic habitat for the fine-lined pocketbook, ovate clubshell, Coosa moccasinshell, upland combshell, and southern acornshell.

Unit 25. Oostanaula River/Coosawattee River/Conasauga River/Holly Creek, Floyd, Gordon, Whitfield, Murray Counties, Georgia; Bradley, Polk Counties, Tennessee

Unit 25 encompasses 206 km (128 mi) of river and stream channel in Georgia and Tennessee, including: Oostanaula River, 77 km (48 mi) extending from its confluence with the Etowah River, Floyd County, upstream to the confluence of the Conasauga and Coosawattee River, Gordon County, Georgia; Coosawattee River, 15 km (9 mi), from confluence with the Conasauga River, upstream to Georgia State Highway 136, Gordon County, Georgia; Conasauga River, 98 km (61 mi), from confluence with the Coosawattee River, Gordon County, Georgia, upstream through Bradley and Polk Counties, Tennessee, to the Murray County Road 2, Murray County, Georgia; Holly Creek, 16 km (10 mi), from confluence with Conasauga River, upstream to the confluence of Rock Creek, Murray County, Georgia. This extensive riverine reach continues to support small and localized populations of fine-lined pocketbook, southern pigtoe, triangular kidneyshell, Alabama moccasinshell, and Coosa moccasinshell. The triangular kidneyshell survives throughout this unit, while the fine-lined pocketbook, southern pigtoe, and Coosa moccasinshell appear to be currently restricted to the Conasauga River and Holly Creek and the southern clubshell appears restricted to a small 15 km (9 mi) reach of the Conasauga River (Evans 2001, Johnson and Evans, 2000, Pierson *in litt.* 1993, Williams and Hughes 1998). The Alabama moccasinshell is currently known to survive only in the Holly Creek portion of this Unit (Evans 2001, Johnson and Evans 2000). The Oostanaula/Coosawattee/Conasauga Unit also contains historic habitat for the southern clubshell, ovate clubshell, upland combshell, and southern acornshell.

Unit 26. Lower Coosa River, Elmore County, Alabama

Unit 26 encompasses 13 km (8 mi) of the Lower Coosa River channel, extending from Alabama State Highway 111 bridge, upstream to Jordan Dam, Elmore County, Alabama. This river reach is within the historic range of fine-lined pocketbook, southern clubshell, Alabama moccasinshell, Coosa moccasinshell, ovate clubshell, southern pigtoe, triangular kidneyshell, upland combshell, and southern acornshell. (Johnson 2002, Pierson 1991a).

Land Ownership

States were granted ownership of lands beneath navigable waters up to the high water mark upon achieving statehood (Pollard v. Hagan, 44 U.S. (3 How.) 212 (1845)). Prior sovereigns or the States may have made grants to private parties which include lands below mean high waters of some navigable waters included in this proposal. However, we believe that most navigable waters included in this rule are owned by the States of Mississippi, Alabama, Georgia, and Tennessee. Most non-navigable streams and riparian lands bordering navigable streams are in private ownership. Table 2 summarizes primary riparian landowners in each of the proposed critical habitat units by private, State, or Federal ownership. Approximately 82 percent, 1447 km (897 mi), of stream channels proposed as critical habitat are bordered by private lands.

TABLE 2.—ADJACENT RIPARIAN LAND OWNERSHIP (KM/MI) IN PROPOSED CRITICAL HABITAT UNITS FOR THREATENED AND ENDANGERED MUSSELS IN THE MOBILE RIVER BASIN

Critical habitat unit	Private	State	Federal	Total
1. East Fork Tombigbee River	19/12		6/4	26/16
2. Bull Mountain Creek	34/21			34/21
3. Buttahatchee River	110/68			110/68
4. Luxapalila Creek	29/18			29/18
5. Coalfire Creek	32/20			32/20
6. Lubbub Creek	31/19			31/19
7. Sipsey River	74/46	16/10		90/56
8. Trussels Creek	21/13			21/13
9. Sucarnoochee River	90/56			90/56
10. Sipsey Fork	15/9		132/82	147/91
11. North River	47/29			47/29
12. Locust Fork	102/63			102/63
13. Cahaba River	92/57	26/16	6/4	124/77
14. Alabama River	73/45			73/45
15. Bogue Chitto	52/32			52/32
16. Tallapoosa River	161/100			161/100
17. Uphapee complex	56/35		18/11	74/46
18. Coosa River	63/39		15/9	78/48
19. Hatchet Creek	55/34		11/7	66/41
20. Shoal Creek			26/16	26/16
21. Kelly Creek	34/21			34/21
22. Cheaha Creek	16/10		11/7	27/17
23. Yellowleaf Creek	39/24			39/24
24. Big Canoe Creek	29/18			29/18
25. Oostanaula Complex	188/117		18/11	206/128
26. Lower Coosa River	13/8			13/8
Total	1,475/914	42/26	243/151	1,760/1,093

Public lands adjacent to proposed critical habitat units consist of approximately 288 km (179 mi) of riparian lands, including Canal Section Wildlife Management Area in Unit 1 (6 km (4 mi)); Sipsey River Natural Area in Unit 7 (16 km (10 mi)); William B. Bankhead National Forest in Unit 10 (134 km (83 mi)); Cahaba River National Wildlife Refuge (6 km (4 mi)) and Cahaba River Wildlife Management Area (28 km (17 mi)) in Unit 13; Tuskegee National Forest in Unit 17 (16 km (10 mi)); Talladega National Forest in Unit 18 (15 km (9 mi)), Unit 19 (11 km (7 mi)), Unit 20 (27 km (17mi)), and Unit 22 (11 km (7 mi)); and Chattahoochee National Forest in Unit 25 (18 km (11 mi)).

Effects of Critical Habitat Designation

Relationship to Section 7 of the Act

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7 of the Act, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through a consultation under section 7 of the Act. Our regulations define "jeopardize the continued existence" as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a

listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). "Destruction or adverse modification of designated critical habitat" is defined as a direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of the species (50 CFR 402.02). Such alterations include, but are not limited to, adverse changes to the physical or biological features, *i.e.*, the primary constituent elements, that were the basis for determining the habitat to be critical.

The relationship between a species' survival and its recovery has been a source of confusion to some in the past. We believe that a species' ability to recover depends on its ability to survive into the future when its recovery can be achieved; thus, the concepts of long-term survival and recovery are intricately linked. However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434), the Court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Conference for Proposed Critical Habitat

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to result in the destruction or adverse modification of proposed critical habitat. The regulations for interagency cooperation regarding proposed critical habitat are codified at 50 CFR 402.10. During a conference on the effects of a Federal action on proposed critical habitat, we make non-binding recommendations on ways to minimize or avoid adverse effects of the action. We document these recommendations and any conclusions reached in a conference report provided to the Federal agency and to any applicant involved.

If requested by the Federal agency and deemed appropriate by us, the conference may be conducted in accordance with the procedures for formal consultation under 50 CFR 402.14. We may adopt an opinion issued at the conclusion of the conference as our biological opinion when the critical habitat is designated by final rule, but only if new information or changes to the proposed Federal action would not significantly alter the content of the opinion.

Consultation for Designated Critical Habitat

If a Federal action may affect a listed species or its designated critical habitat, the action agency must initiate consultation with us (50 CFR 402.14). Through this consultation, we will advise the agency whether the action would likely jeopardize the continued existence of the species or adversely modify its critical habitat, or both. The Services' Consultation Handbook states that the destruction or adverse modification analysis focuses on the entire critical habitat area designated unless the critical habitat rule identifies another basis for the analysis, such as discrete units or groups of units necessary for different life cycle phases or units representing distinctive habitat characteristics or gene pools, or units fulfilling essential geographic distribution requirements. The extent of the 11 mussels' decline, the fragmentation and isolation of their habitats and continuing impacts upon their habitats, and the importance of every unit to the recovery of the species suggests that individual units or groups of units that are used by populations which fulfill essential geographic distribution requirements are the appropriate scale for the analysis. In accordance with the Mobile River Aquatic Ecosystem Recovery Plan (2000), protection of the habitat in these units and their surviving populations is essential to the conservation of these 11 mussel species. An action occurring only within one unit may appreciably reduce the value of the critical habitat for the recovery of the species and therefore trigger an adverse modification determination.

When we issue a biological opinion that concludes that a specific action is likely to result in the destruction or adverse modification of critical habitat, we must provide reasonable and prudent alternatives to the action, if any are identifiable. Reasonable and prudent alternatives are actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the originally proposed action, are consistent with the scope of the action agency's authority and jurisdiction, are economically and technologically feasible, and would likely avoid the destruction or adverse modification of critical habitat (50 CFR 402.02).

Reinitiation of Prior Consultations

A Federal agency may request a conference with us for any previously reviewed action that is likely to destroy or adversely modify proposed critical habitat and over which the agency retains discretionary involvement or control, as described above under "Conference for Proposed Critical Habitat." Following designation of critical habitat, regulations at 50 CFR 402.16 require a Federal agency to reinitiate consultation for previously reviewed actions that may affect critical habitat and over which the agency has retained discretionary involvement or control.

Federal Actions That May Destroy or Adversely Modify 11 Mussels Critical Habitat

Section 4(b)(8) of the Act requires us, in any proposed or final rule designating critical habitat, to briefly describe and evaluate those activities that may adversely modify such habitat, or that may be affected by such designation.

Federal actions that, when carried out, funded or authorized by a Federal agency, may destroy or adversely modify critical habitat for the 11 mussels include, but are not limited to:

(1) Actions that would alter the minimum flow or the existing flow regime to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are not limited to, impoundment, channelization, water diversion, and hydropower generation.

(2) Actions that would significantly alter water chemistry or temperature to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are not limited to, release of chemicals, biological pollutants, or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (non-point).

(3) Actions that would significantly increase sediment deposition within the stream channel to a degree that appreciably reduces the value of the critical habitat for both the longterm survival and recovery of the species. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances.

(4) Actions that would significantly increase the filamentous algal community within the stream channel to a degree that appreciably reduces the value of the critical habitat for both the longterm survival and recovery of the species. Such activities could include, but are not limited to, release of nutrients into the surface water or connected groundwater at a point source or by dispersed release (non-point).

(5) Actions that would significantly alter channel morphology or geometry to a degree that appreciably reduces the value of the critical habitat for both the longterm survival and recovery of the species. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, mining, destruction of riparian vegetation.

(6) Actions that would introduce, spread, or augment nonnative aquatic species into critical habitat to a degree that appreciably reduces the value of the critical habitat for both the longterm survival and recovery of the species. Such activities could include, but are not limited to, stocking for sport, biological control, or other purposes; aquaculture; and construction and operation of canals.

Previous Section 7 Consultations

Federal actions that we have reviewed since these 11 mussel species received protection under the Act include Federal land management plans, Federal land acquisition and disposal, road and bridge maintenance and construction, water diversion, timber harvest on Federal land, channelization, flood control, channel maintenance, water quality standards, dam construction and operation, and issuance of permits under section 404 of the Clean Water Act. Federal agencies involved with these activities included the Army Corps of Engineers (COE), U.S. Forest Service, Natural Resources Conservation Service, Environmental Protection Agency, and Federal Highway Administration. Since the original listing of these 11 mussel species, seven formal consultations have been conducted. None of these resulted in a finding that the proposed action would jeopardize the continued existence of any of the 11 species.

In each of the biological opinions resulting from these consultations, we included discretionary conservation recommendations to the action agency. Conservation recommendations are activities that would avoid or minimize the adverse effects of a proposed action on a listed species or its critical habitat, help implement recovery plans, or develop information useful to the species' conservation.

Previous biological opinions also included nondiscretionary reasonable and prudent measures, with implementing terms and conditions, which are designed to minimize the proposed action's incidental take of these 11 mussels. Section 3(18) of the Act defines the term take as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct." Harm is further defined in our regulations (50 CFR 17.3) to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

Conservation recommendations and reasonable and prudent measures provided in previous biological opinions for these mussels have included maintaining State water quality standards, maintaining adequate stream flow rates, minimizing work in the wetted channel, restricting riparian clearing, monitoring channel morphology and mussel populations, installing signage, protecting buffer zones, avoiding pollution, using cooperative planning efforts, minimizing ground disturbance, using sediment barriers, relocating recreational trails, using best management practices to minimize erosion, and funding research useful for mussel conservation. In reviewing past formal consultations, we find that only one may need to be reinitiated as a result of this proposed designation.

On October 3, 1994, we presented a Biological Opinion to the COE and Tennessee Valley Authority (TVA) concluding that the proposed construction and operation of the Tom Bevill Reservoir on the North River, Fayette County, Alabama, would not jeopardize the continued existence of the dark pigtoe and orange-nacre mucket (U.S. Fish and Wildlife Service 1994). The dam site lies within proposed critical habitat Unit 11. This dam has not been constructed. If the applicants determine to proceed with, construction plans, this dam may adversely modify critical habitat in the North River (Unit 11), and consultation should be reinitiated.

The designation of critical habitat will have no impact on private landowner activities that do not require Federal funding or permits. Designation of critical habitat is only applicable to activities approved, funded, or carried out by Federal agencies.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, you may contact the following Service offices:

Alabama—Daphne, FWS Ecological Services Office (251/441–5181)
Georgia-Athens, FWS Ecological Services Office (706/613–9493)
Mississippi—Jackson, FWS Ecological Services Office (601/965–4900)
Tennessee-Cookeville, FWS Ecological Services Office (931/528–6481)

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. That economic analysis will be conducted in a manner that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n* v. *USFWS*. When the draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register**. With publication of the notice of availability, a comment period will be opened for a minimum of 30 days to allow for public comments on the draft economic analysis and proposed rule concurrently.

Public Comments Solicited

We intend for any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are particularly interested in comments concerning:

(1) The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of habitat for these 11 mussel species, population numbers, and what habitat is essential to their conservation and why;

(3) Whether areas within proposed critical habitat are currently being managed to address conservation needs of these mussel species;

(4) Current or planned activities in the subject areas and their possible impacts on proposed critical habitats;

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in

particular, any impacts on small entities;

(6) Economic and other values associated with designating critical habitat for these mussels, such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, wildlife-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs).

If you wish to comment on this proposed rule, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES** section). Electronic comments (e-mail) should avoid the use of special characters and encryption. Please also include "Attn: [RIN 1018–AI73]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Mississippi Fish and Wildlife Office (*see* **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Service's Fish and Wildlife in Jackson, Mississippi (*see* **ADDRESSES** section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and should be addressed to the Field Supervisor, Mississippi Fish and Wildlife Office (*see* **ADDRESSES** section). Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (*e.g.*, grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, D.C. 20240. You may e-mail your comments to this address: *Execsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). The Service is preparing a draft economic analysis of this proposed action, and will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of any of these 11 mussel species. This analysis will be made available for public comment before finalizing this designation.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this proposed rule will not have a significant effect on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000.

SBREFA does not explicitly define either "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a "significant economic impact." Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA (*Mid-Tex Electric Co-Op, Inc.* v. *F.E.R.C.* and *America Trucking Associations, Inc.* v. *EPA.*).

To determine if the rule would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, *etc.*). We applied the "substantial number" test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. Federal agencies are already required to consult with the Services under section 7 of the Act on activities that they fund, permit, or implement that may affect the federally listed mussels discussed herein.

If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, in areas where the mussel species are present, we believe this will result in only minimal additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed mussel species. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process and trigger only minimal additional regulatory impacts beyond the duty to avoid jeopardizing the species. In the area below Jordan Dam (lower Coosa River, Unit 26) where the mussel species are not present, we also believe designation of critical habitat will result in only minimal additional regulatory burden on Federal agencies or their applicants because consultations have been required, since 1991, due to the presence of the listed Tulotoma snail (56 FR 797, January 9, 1991).

Since the 11 mussels were listed (March 17, 1993, 58 FR 14330), we have conducted 7 formal consultations involving 1 or more of these 11 species. Four of the formal consultations involved Federal projects, including a flood control project by the COE, a horse trail system on the Talladega National Forest, programmatic activities by the Forest Service, and administration of the Clean Water Act in Alabama by the Environmental Protection Agency (EPA). Another formal consultation involved a COE permit to construct water withdrawal and discharge facilities for a gas powered electrical generating facility. These 5 consultations resulted in non-jeopardy opinions, and had no economic effects on small entities. The other 2 consultations involved COE permits to small entities to construct dams; one on a stream that was occupied habitat of the fine-lined pocketbook, and the other on a river that was occupied by the orange-nacre mucket and dark pigtoe. Biological Opinions prepared by us for these consultations concluded the actions were "not likely to jeopardize" the species, and identified reasonable and prudent measures to reduce take of the species affected by the projects. In reviewing these 2 consultations in light of proposed critical habitat, we recognize that with critical habitat present, our analysis would also include a determination of whether the action would destroy or adversely modify the critical habitat. One of these dams has not been constructed, and reinitiation of consultation may be necessary if construction plans proceed, after this designation is finalized (*see* "Previous Section 7 Consultations" above).

We also reviewed approximately 300 informal consultations that have been conducted since these 11 species were listed involving private businesses and industries, counties, cities, towns, or municipalities. At least 200 of these were with entities that likely met the definition of small entities. These informal consultations concerned activities such as excavation or fill, docking facilities, bridges, transmission lines, pipe lines, quarries, mines, housing developments, road and utility development, etc., authorized by COE, FERC, or EPA, or review of National Pollution Discharge Elimination System permit applications to State water quality agencies by developers, municipalities, mines, businesses, and others. Informal consultations on Federal activities also included campground improvements, burning programs, and southern pine beetle control by the Forest Service. Informal consultations regarding the mussels usually resulted in recommendations to employ Best Management Practices for sediment control, relied on current State water quality standards for protection of water quality, and resulted in little to no modification of the proposed activities. In reviewing these past informal consultations and the activities involved in light of proposed critical habitat, we do not believe the outcomes would have been different in areas designated as critical habitat.

In summary, we have considered whether this proposed designation would result in a significant economic impact on a substantial number of small entities and find that it would not. Informal consultations on approximately 300 activities in the Basin by businesses and governmental jurisdictions that might affect these species and their habitats resulted in little to no economic effect on small entities. In the decade since the 11 mussels were listed, there have been only 2 formal consultations regarding actions by small entities, both of which culminated in findings which allowed the projects to go forward. Our review indicates that even if the outcomes of these 2 formal consultations had been quite different, in light of critical habitat designation, less than 1 percent of small entities affected by a designation would have experienced a significant economic impact. This does not meet the definition of "substantial." In addition, there is no indication that the types of activities we review under section 7 of the Act will change significantly in the future. There would be no additional section 7 consultations resulting from this rule as 25 of the proposed critical habitat units are currently occupied by 1 or more listed mussels, and the lower Coosa River (Unit 26) is currently occupied by the endangered tulotoma snail (*Tulotoma magnifica*), so the consultation requirement has already been triggered. Future consultations are not likely to affect a substantial number of small entities. This rule would result in major project modifications only when proposed activities with a Federal nexus would destroy or adversely modify critical habitat. While this may occur, it is not expected to occur frequently enough to affect a substantial

number of small entities. Therefore, we are certifying that the proposed designation of critical habitat for these 11 mussels will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. This determination will be revisited after the close of the comment period and revised, if necessary, in the final rule.

This discussion is based upon the information regarding potential economic impact that is available to us at this time. This assessment of economic effect may be modified prior to final rulemaking based upon development and review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish and Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2))

In the draft economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) the Service will use the economic analysis to further evaluate this situation.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. Since the proposed critical habitat includes only aquatic areas that are generally held in public trust, we believe that little or no private property is included in the proposed designation. Based on current public knowledge of the species protection and the prohibition against take of the species both within and outside of the designated areas, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, the Service requested information from, and coordinated development of this critical habitat proposal with, appropriate State resource agencies in Mississippi, Alabama, Tennessee, and Georgia, as well as during the listing process. The impact of the proposed designation on State and local governments and their activities is not believed to be significant, but this will be more fully examined in the economic analysis of the proposal, on which we will seek public comment. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of these 11 mussels.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. Information collections associated with certain permits pursuant to the Endangered Species Act are covered by an existing OMB approval, and are assigned clearance No. 1018–0094, with an expiration date of July 31, 2004. Detailed information for Act documentation appears at 50 CFR part 17. The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 (NEPA) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of the 11 mussels. Therefore, designation of critical habitat for the 11 mussels has not been proposed on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Mississippi Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary author of this notice is Paul Hartfield (*see* **ADDRESSES** section), 601/321–1125.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons outlined in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In section 17.11(h), revise each of the entries here listed, in alphabetical order under "CLAMS", to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS							
Acornshell, southern	*Epioblasma othcaloogensis.*	U.S.A. (AL,GA,TN)	NA	E	495	17.95 (f)	NA
Clubshell, ovate	*Pleurobema perovatum.*	U.S.A. (AL,TN,GA,MS)	NA	E	495	17.95 (f)	NA
Clubshell, southern	*Pleurobema decisum*	U.S.A. (AL,TN,GA,MS)	NA	E	495	17.95 (f)	NA
Combshell, upland	*Epioblasma metastriata.*	U.S.A. (AL,GA,TN)	NA	E	495	17.95 (f)	NA
Kidneyshell, triangular	*Ptychobranchus greenii.*	U.S.A. (AL,GA,TN)	NA	E	495	17.95 (f)	NA
Moccasinshell, Alabama.	*Medionidus acutissimus.*	U.S.A. (AL,GA,MS)	NA	T	495	17.95 (f)	NA
Moccasinshell Coosa,	*Medionidus parvulus*	U.S.A. (AL,GA,TN)	NA	E	495	17.95 (f)	NA
Mucket, orange-nacre	*Lampsilis perovalis*	U.S.A. (AL,MS)	NA	T	495	17.95 (f)	NA
Pigtoe, dark	*Pleurobema furvum*	U.S.A. (AL)	NA	E	495	17.95 (f)	NA
Pigtoe, southern	*Pleurobema georgianum.*	U.S.A. (AL,GA,TN)	NA	E	495	17.95 (f)	NA
Pocketbook, fine-lined	*Lampsilis altilis*	U.S.A. (AL,GA)	NA	T	495	17.95 (f)	NA

3. In § 17.95, at the end of paragraph (f), add an entry for 11 Mobile River Basin mussel species to read as follows:

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(f) *Clams and snails.* * * *

Eleven Mobile River Basin mussel species: southern acornshell (*Epioblasma othcaloogensis*), ovate clubshell (*Pleurobema perovatum*), southern clubshell (*Pleurobema decisum*), upland combshell (*Epioblasma metastriata*), triangular kidneyshell (*Ptychobranchus greeni*), Alabama moccasinshell (*Medionidus acutissimus*), Coosa moccasinshell (*Medionidus parvulus*), orange-nacre mucket (*Lampsilis perovalis*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), and fine-lined pocketbook (*Lampsilis altilis*)

(1) The primary constituent elements essential for the conservation of the southern acornshell (*Epioblasma*

othcaloogensis), ovate clubshell (*Pleurobema perovatum*), southern clubshell (*Pleurobema decisum*), upland combshell (*Epioblasma metastriata*); triangular kidneyshell (*Ptychobranchus greeni*), Alabama moccasinshell (*Medionidus acutissimus*), Coosa moccasinshell (*Medionidus parvulus*), orange-nacre mucket (*Lampsilis perovalis*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), and fine-lined pocketbook (*Lampsilis altilis*) are those habitat components that support feeding, sheltering, reproduction, and physical features for maintaining the natural processes that support these habitat components. The primary constituent elements include:

(i) Geomorphically stable stream and river channels and banks;

(ii) A flow regime (*i.e.*, the magnitude, frequency, duration, and seasonality of discharge over time) necessary for normal behavior, growth, and survival of all life stages of mussels and their fish hosts in the river environment;

(iii) Water quality, including temperature, pH, hardness, turbidity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages;

(iv) Sand, gravel, and/or cobble substrates with low to moderate amounts of fine sediment, low amounts of attached filamentous algae, and other physical and chemical characteristics necessary for normal behavior, growth, and viability of all life stages;

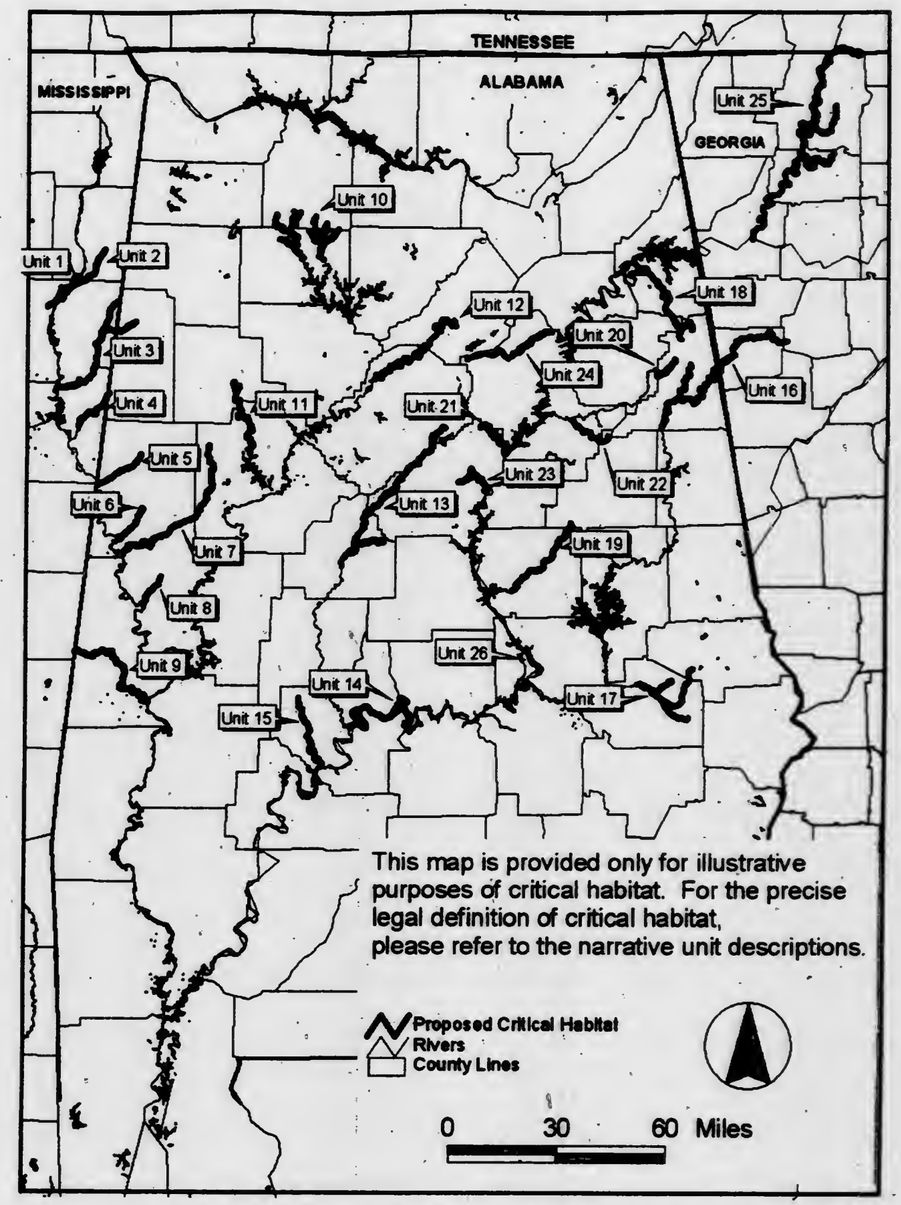
(v) Fish hosts, with adequate living, foraging, and spawning areas for them; and

(vi) Few or no competitive nonnative species present.

(2) Critical habitat unit descriptions and maps.

(i) Index map. The index map showing critical habitat units in the States of Mississippi, Alabama, Georgia, and Tennessee for the 11 Mobile River Basin mussel species follows:

BILLING CODE 4310–55–P



General locations of proposed critical habitat in the Mobile River Basin

(ii) Table of protected species and critical habitat units. A table listing the protected species, their respective critical habitat units, and the States which contain those habitat units follows. Detailed critical habitat unit descriptions and maps appear below the table.

TABLE OF ELEVEN MOBILE RIVER BASIN MUSSEL SPECIES, THEIR CRITICAL HABITAT UNITS, AND STATES CONTAINING THOSE CRITICAL HABITAT UNITS

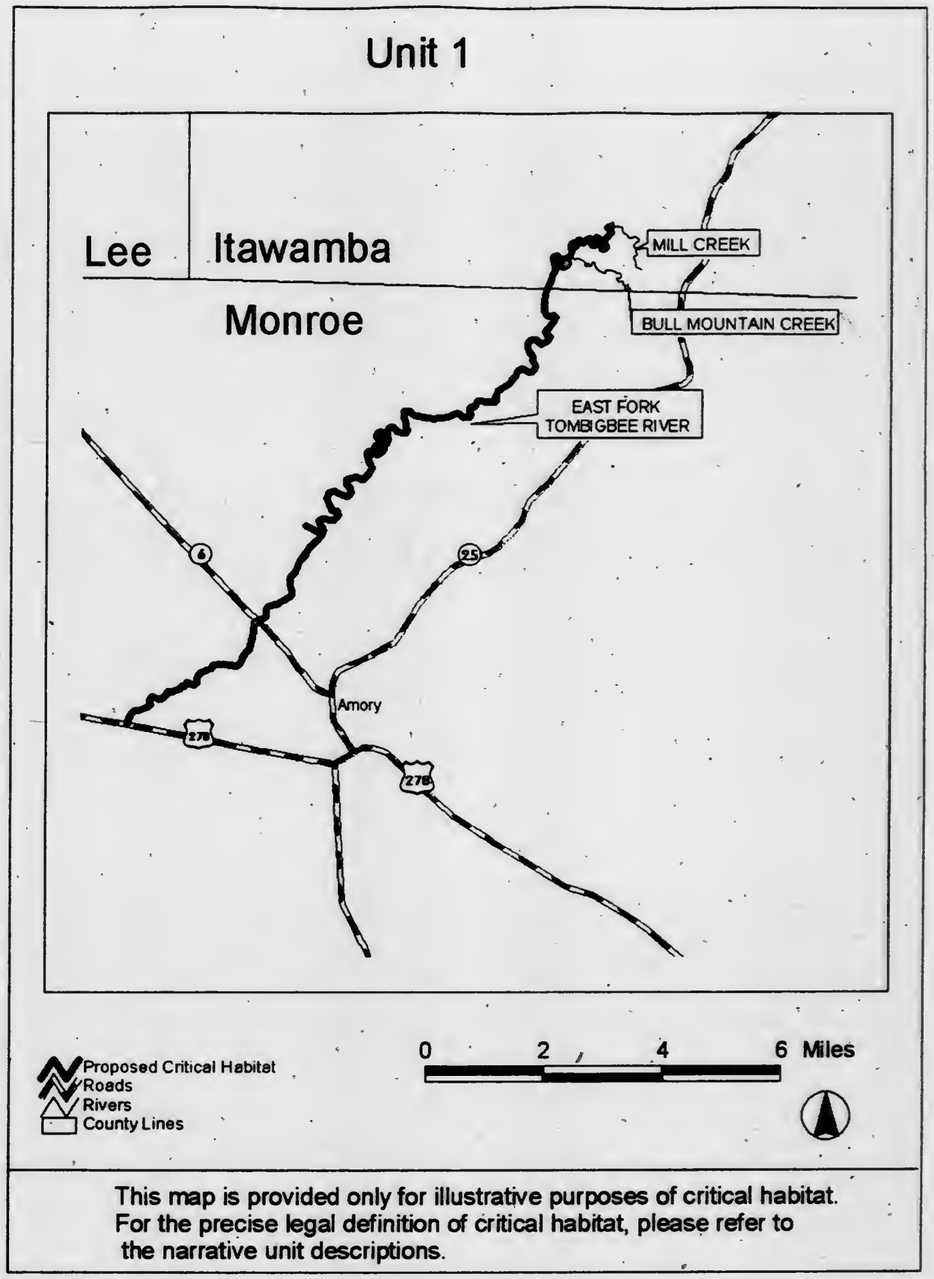
Species	Critical habitat units	States
Southern acornshell (*Epioblasma othcaloogensis*)	Units 13, 18, 19, 21, 24, 25, 26	AL, GA, TN.
Ovate clubshell (*Pleurobema perovatum*)	Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 17, 18, 19, 21, 24, 25, 26.	AL, GA, MS, TN.
Southern clubshell (*Pleurobema decisum*)	Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 14, 15, 17, 18, 19, 21, 24, 25, 26	AL, GA, MS, TN.
Upland combshell (*Epioblasma metastriata*)	Units 12, 13, 18, 19, 21, 24, 25, 26	AL, GA, TN.
Triangular kidneyshell (*Ptychobranchus greeni*)	Units 10, 11, 12, 13, 18, 19, 20, 21, 22, 23, 24, 25, 26	AL, GA, TN.
Alabama moccasinshell (*Medionidus acutissimus*)	Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 25, 26	AL, GA, MS, TN.
Coosa moccasinshell (*Medionidus parvulus*)	Units 18, 19, 20, 21, 22, 23, 24, 25, 26	AL, GA, TN.
Orangenacre mucket (*Lampsilis perovalis*)	Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15	AL; MS
Dark pigtoe (*Pleurobema furvum*)	Units 10, 11, 12	AL
Southern pigtoe (*Pleurobema georgianum*)	Units 18, 19, 20, 21, 22, 23, 24, 25, 26	AL, GA, TN.
Fine-lined pocketbook (*Lampsilis altilis*)	Units 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26	AL, GA, TN.

(iii) Unit 1. East Fork Tombigbee River, Monroe, Itawamba County, Mississippi. This is a critical habitat unit for the ovate clubshell, southern clubshell, Alabama moccasinshell, and orangenacre mucket.

(A) Unit 1 includes the East Fork Tombigbee River main stem from Mississippi Highway 278 (T13S R7E S3), Monroe County, upstream to the confluence of Mill Creek (T11S R8E S24), Itawamba County, Mississippi.

(B) Map of Unit 1 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

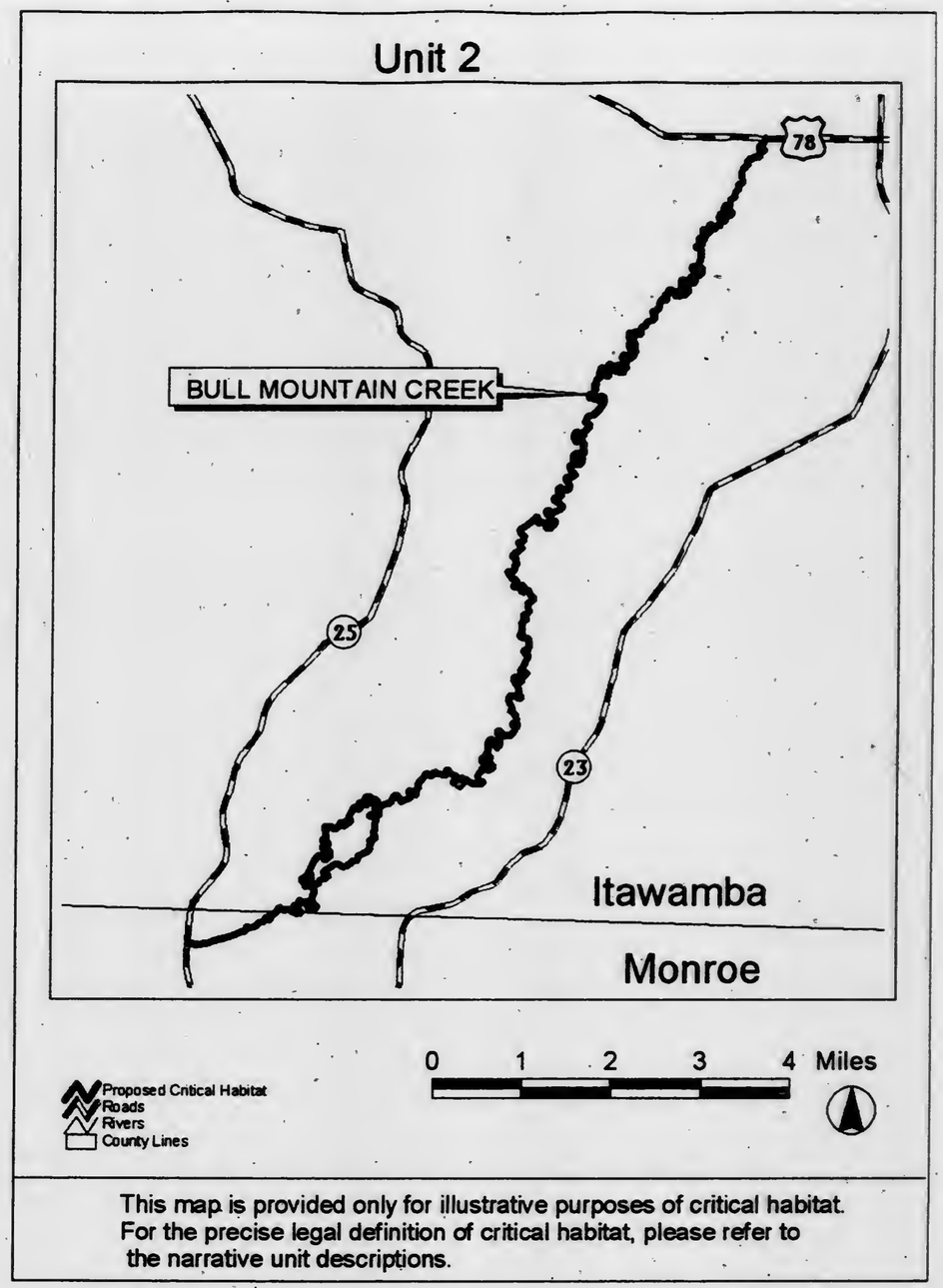
(iv) Unit 2. Bull Mountain Creek, Itawamba County, Mississippi. This is a critical habitat unit for the ovate

clubshell, southern clubshell, Alabama moccasinshell, and orangenacre mucket.

(A) Unit 2 includes the main stem of Bull Mountain Creek from Mississippi Highway 25 (T11S R9E S30), upstream to U.S. Highway 78 (T10S R10E S6), Itawamba County, Mississippi.

(B) Map of Unit 2 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

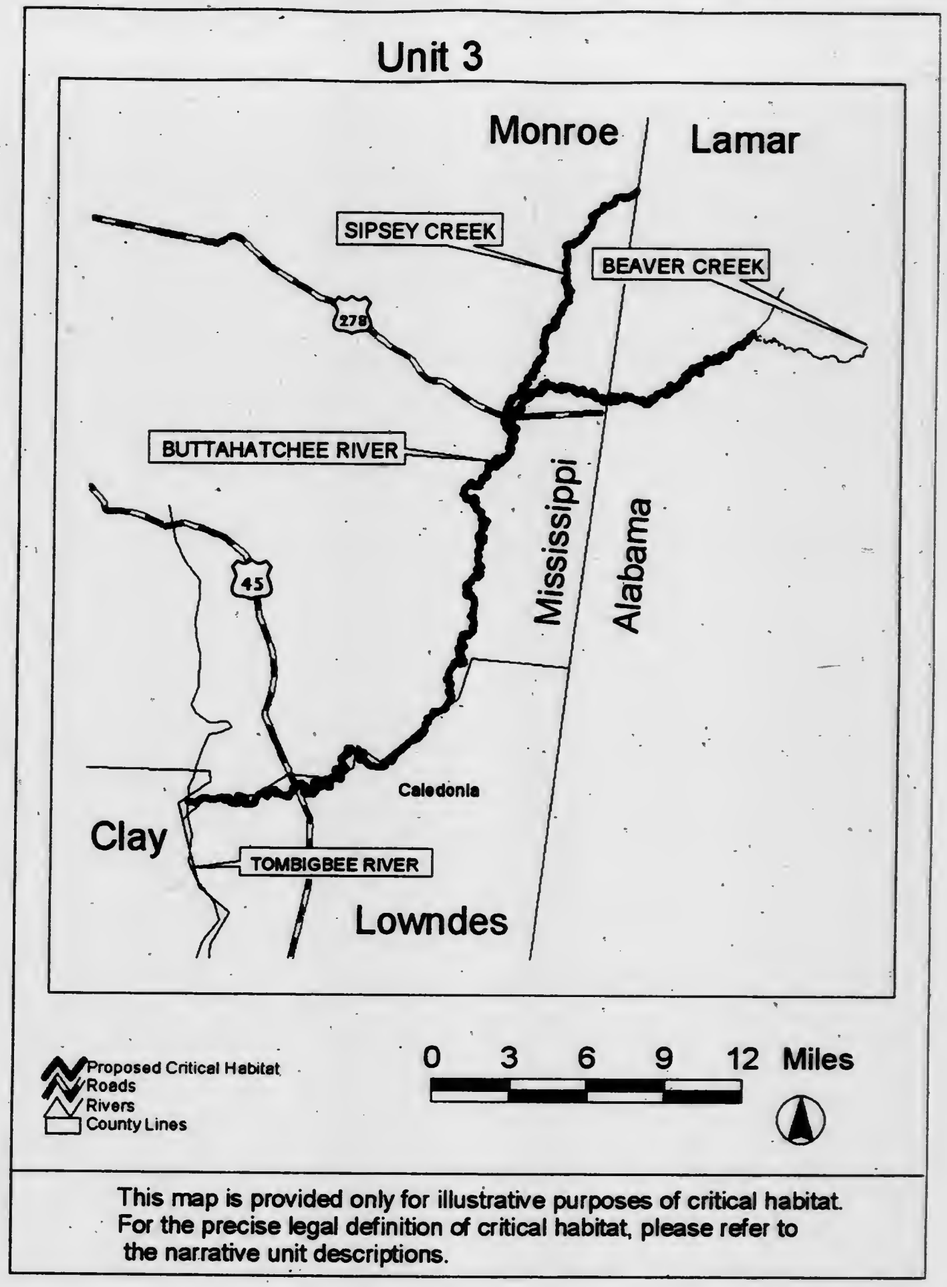
(v) Unit 3. Buttahatchee River and Sipsey Creek, Lowndes/Monroe County, Mississippi; Lamar County, Alabama. This is a critical habitat unit for the

ovate clubshell, southern clubshell, Alabama moccasinshell, and orangenacre mucket.

(A) Unit 3 includes the Buttahatchee River main stem from its confluence with the Tombigbee River (T16S R19W S23), Lowndes/Monroe County, Mississippi, upstream to the confluence of Beaver Creek (T13S R15W S17), Lamar County, Alabama; and Sipsey Creek, from its confluence with the Buttahatchee River (T14S R17W S2), upstream to the Mississippi/Alabama State Line (T12S R10E S21), Monroe County, Mississippi.

(B) Map of Unit 3 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

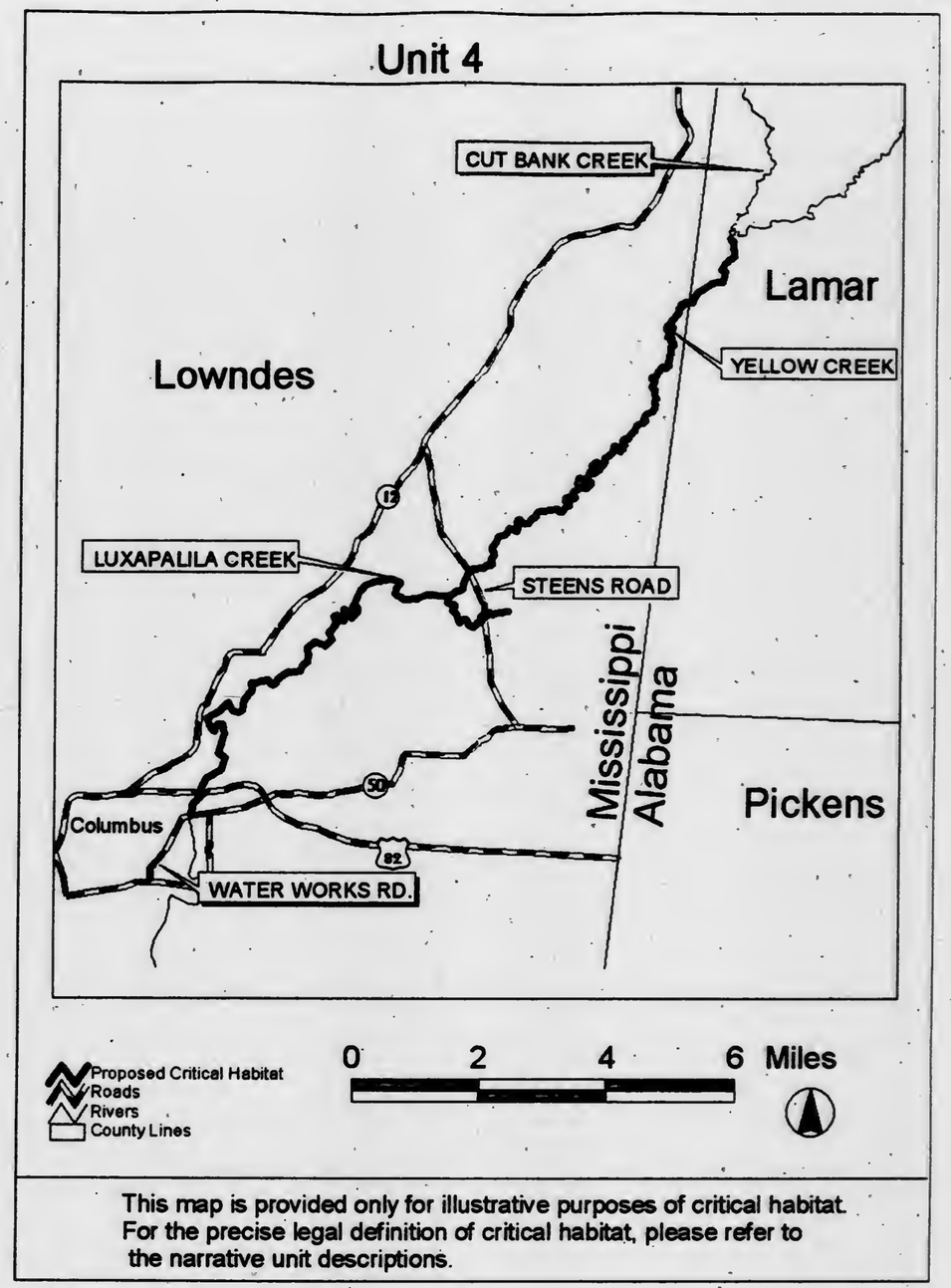
(vi) Unit 4. Luxapalila Creek and Yellow Creek, Lowndes County, Mississippi; Lamar County, Alabama. This is a critical habitat unit for the

ovate clubshell, southern clubshell, Alabama moccasinshell, and orangenacre mucket.

(A) Unit 4 includes the Luxapalila Creek main stem from Waterworks Road (T18S R18W S11), Columbus, Mississippi, upstream to approximately 1.0 km (0.6 mi) above Steens Road (T17S R17W S27), Lowndes County, Mississippi; and the Yellow Creek main stem from its confluence with Luxapalila Creek (T17S R17W S21), Lowndes County, Mississippi, upstream to the confluence of Cut Bank Creek (T16S R16W S30), Lamar County, Alabama.

(B) Map of Unit 4 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

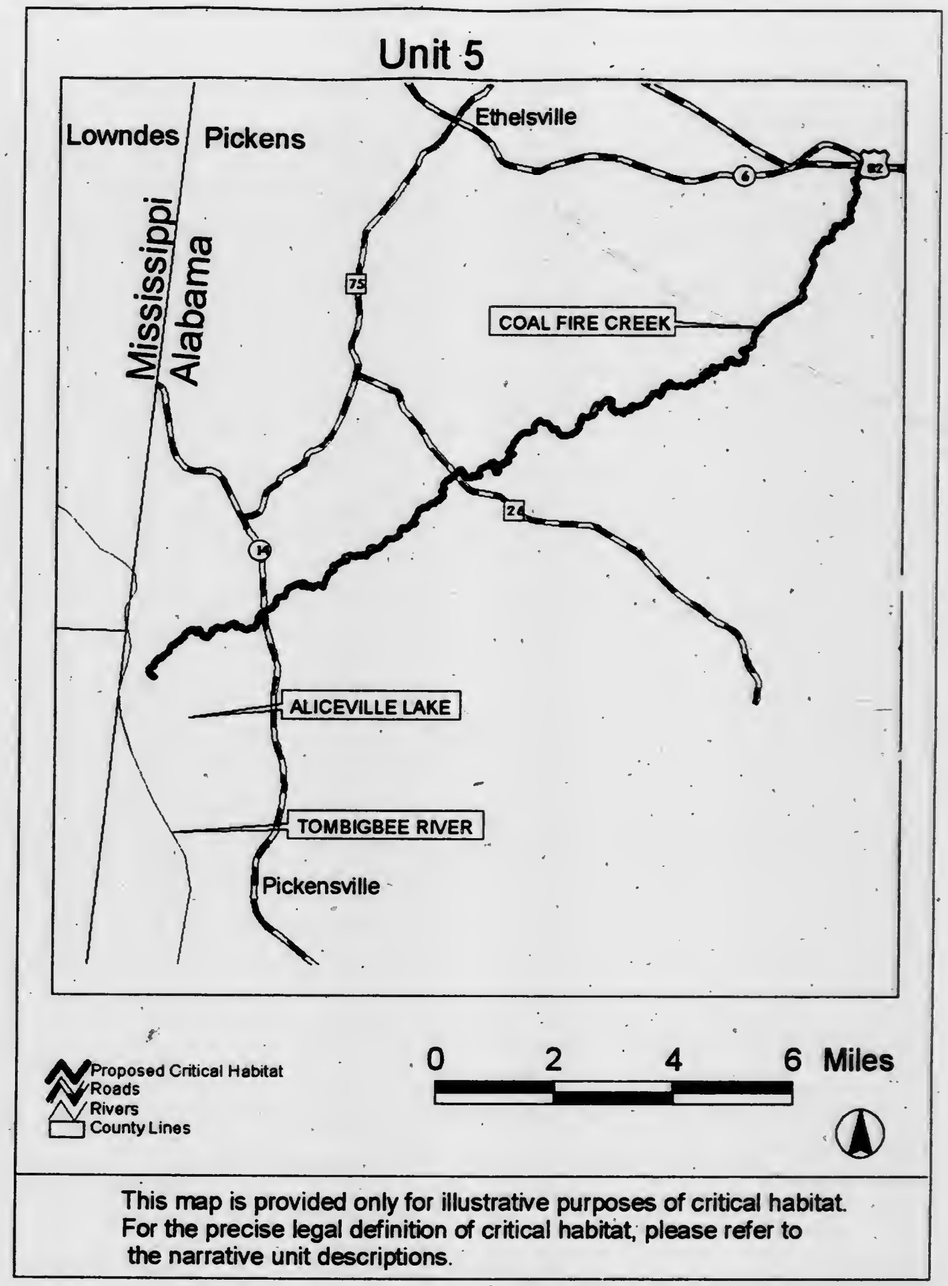
(vii) Unit 5. Coalfire Creek, Pickens County, Alabama. This is a critical habitat unit for the ovate clubshell,

southern clubshell, Alabama moccasinshell, and orangenacre mucket.

(A) Unit 5 includes the Coalfire Creek main stem from its confluence with Aliceville Lake (Tombigbee River, T20S R17W S26), upstream to U.S. Highway 82 (T19S R15W S15), Pickens County, Alabama.

(B) Map of Unit 5 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

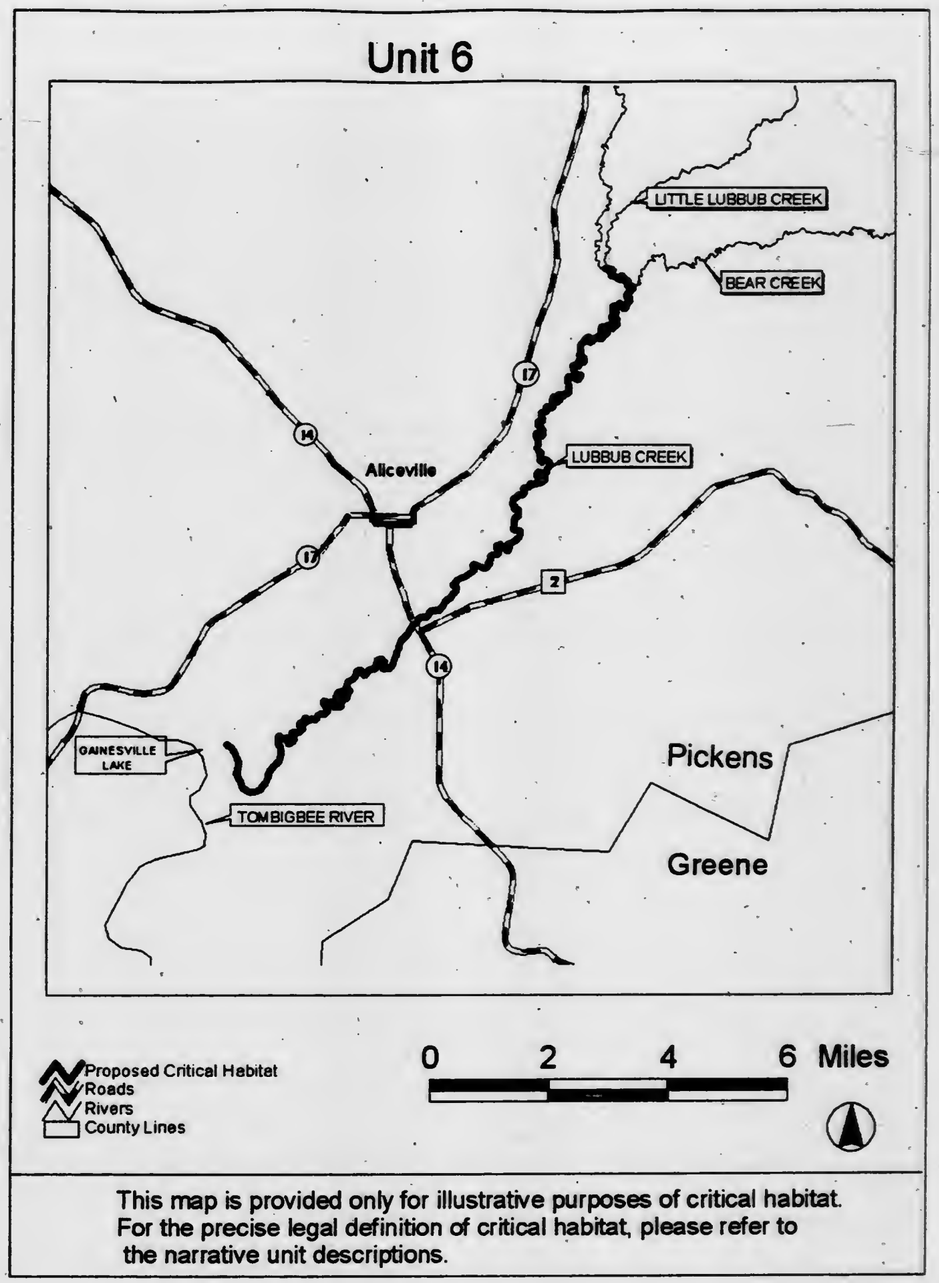
(viii) Unit 6. Lubbub Creek, Pickens County, Alabama. This is a critical habitat unit for the ovate clubshell,

southern clubshell, Alabama moccasinshell, and orangenacre mucket.

(A) Unit 6 includes the main stem of Lubbub Creek from its confluence with Gainesville Lake (Tombigbee River, T24N R2W S11), upstream to the confluence of Little Lubbub Creek (T21S R1W S34), Pickens County, Alabama.

(B) Map of Unit 6 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(ix) Unit 7. Sipsey River, Greene/Pickens, Tuscaloosa Counties, Alabama.

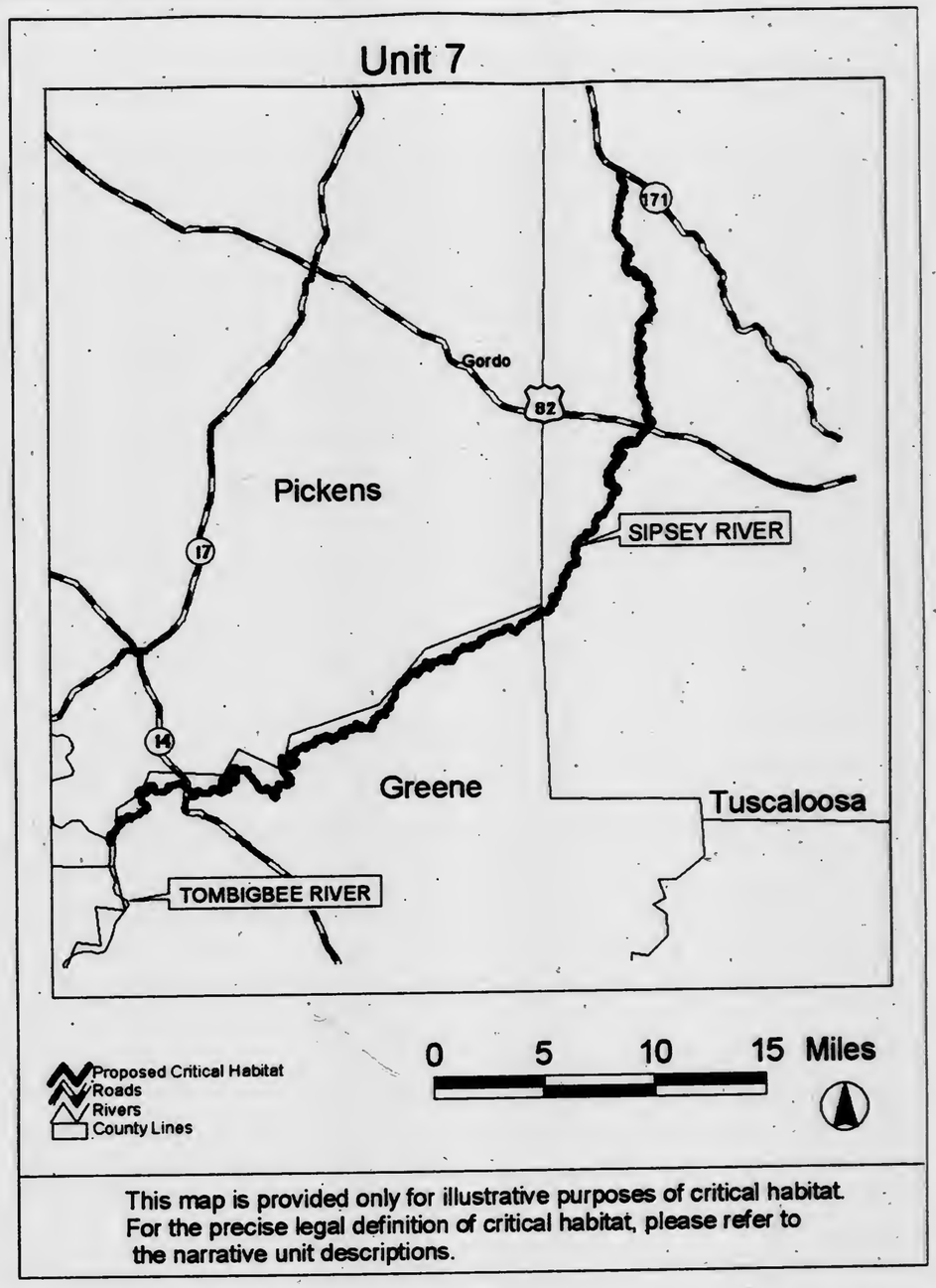
This is a critical habitat unit for the ovate clubshell, southern clubshell,

Alabama moccasinshell, and orangenacre mucket.

(A) Unit 7 includes the Sipsey River main stem from its confluence with Gainesville Lake (Tombigbee River, T24N R1W S30), Greene/Pickens County, upstream to Alabama Highway 171 crossing (T18S R12W S34), Tuscaloosa County, Alabama.

(B) Map of Unit 7 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

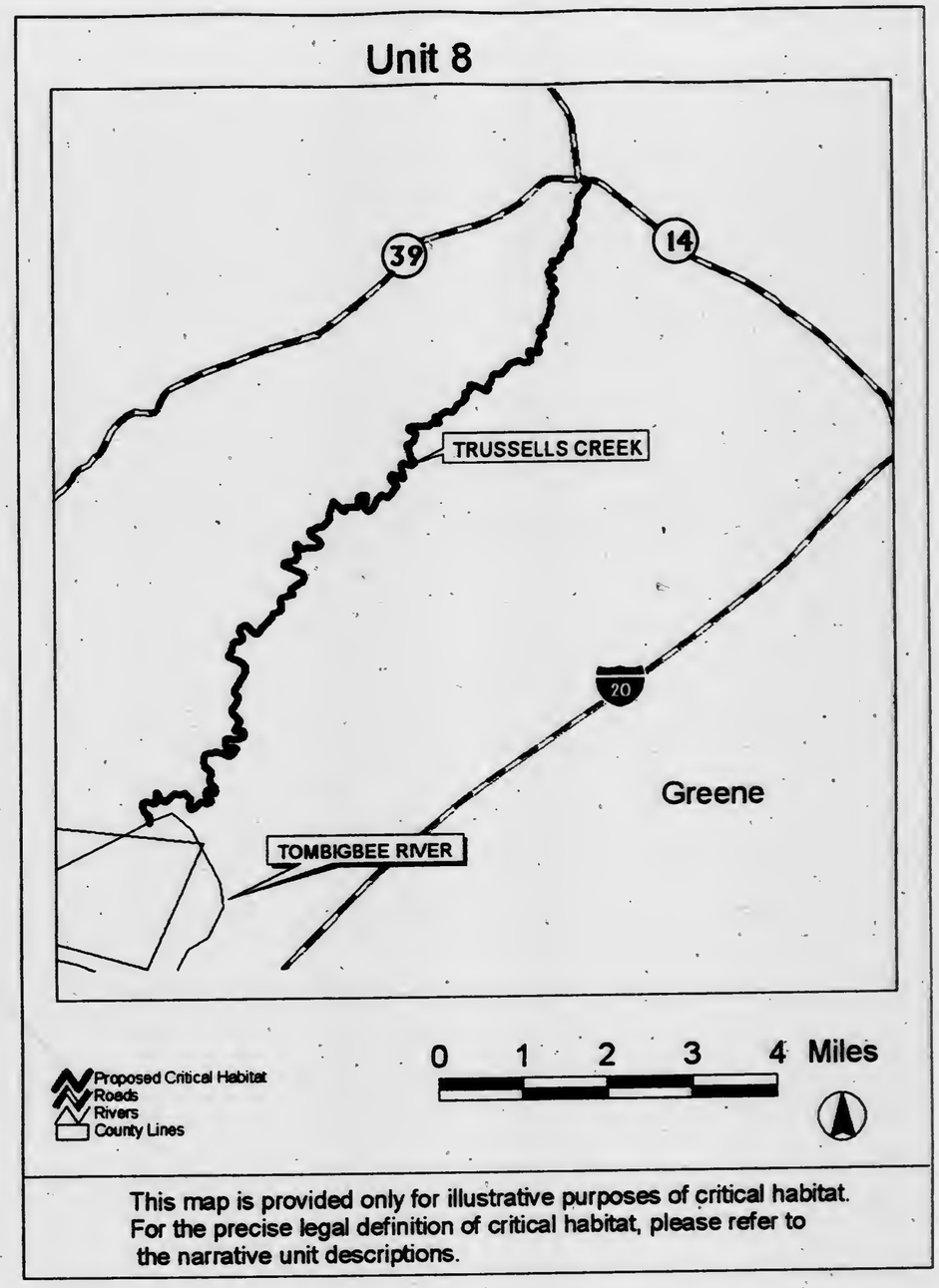
(x) Unit 8. Trussels Creek, Greene County, Alabama. This is a critical habitat unit for the ovate clubshell,

southern clubshell, Alabama moccasinshell, and orangenacre mucket.

(A) Unit 8 includes the Trussels Creek main stem from its confluence with the Tombigbee River (T21N R2W S15), upstream to Alabama Highway 14 (T22N R1E S4), Greene County, Alabama.

(B) Map of Unit 8 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

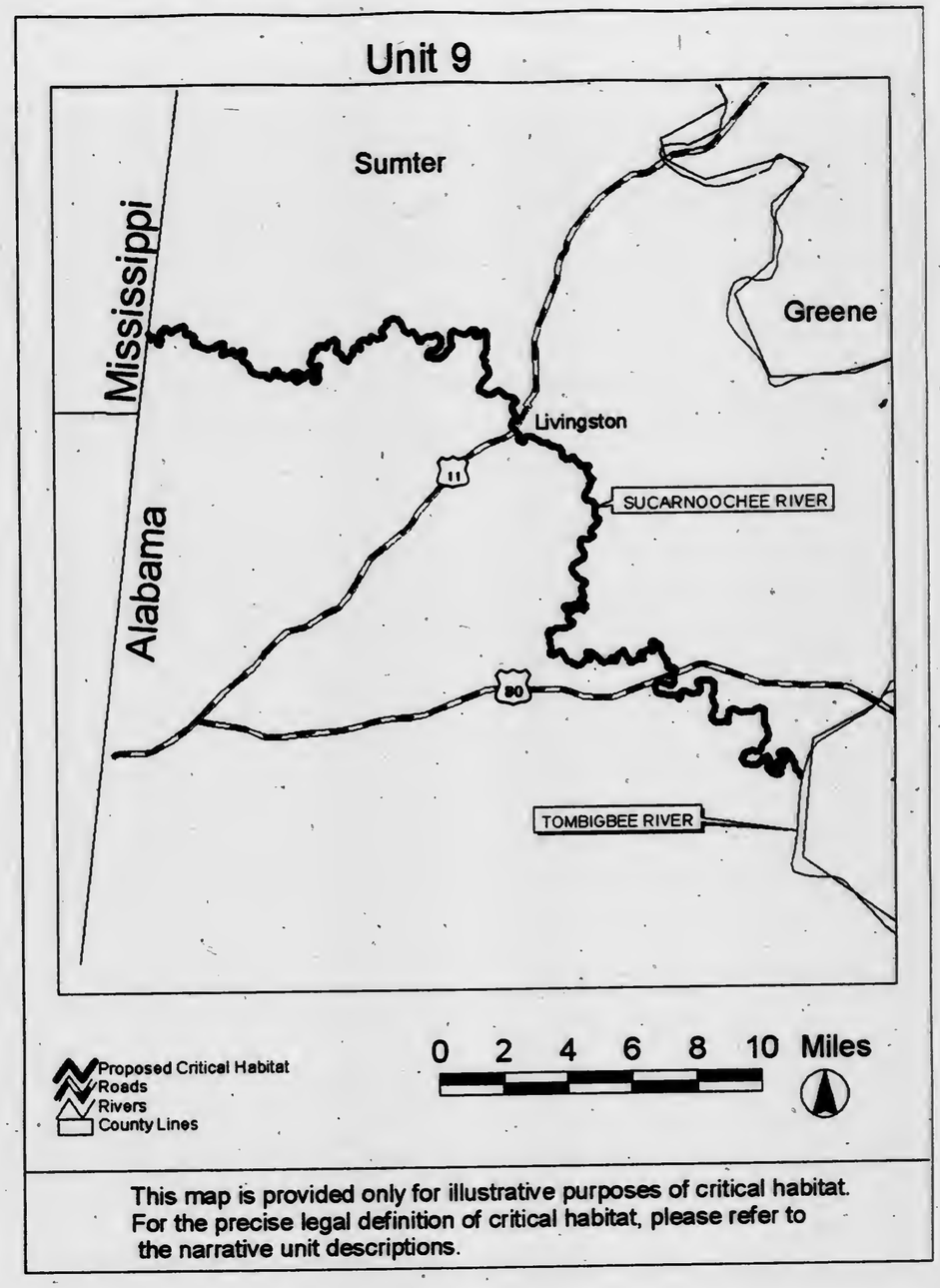
(xi) Unit 9. Sucarnoochee River, Sumter County, Alabama. This is a critical habitat unit for the ovate

clubshell, southern clubshell, Alabama moccasinshell, and orangenacre mucket.

(A) Unit 9 includes the Sucarnoochee River main stem from its confluence with the Tombigbee River (T17N R1W S26), upstream to the Mississippi/Alabama State Line (T19N R4W S15), Sumter County, Alabama.

(B) Map of Unit 9 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

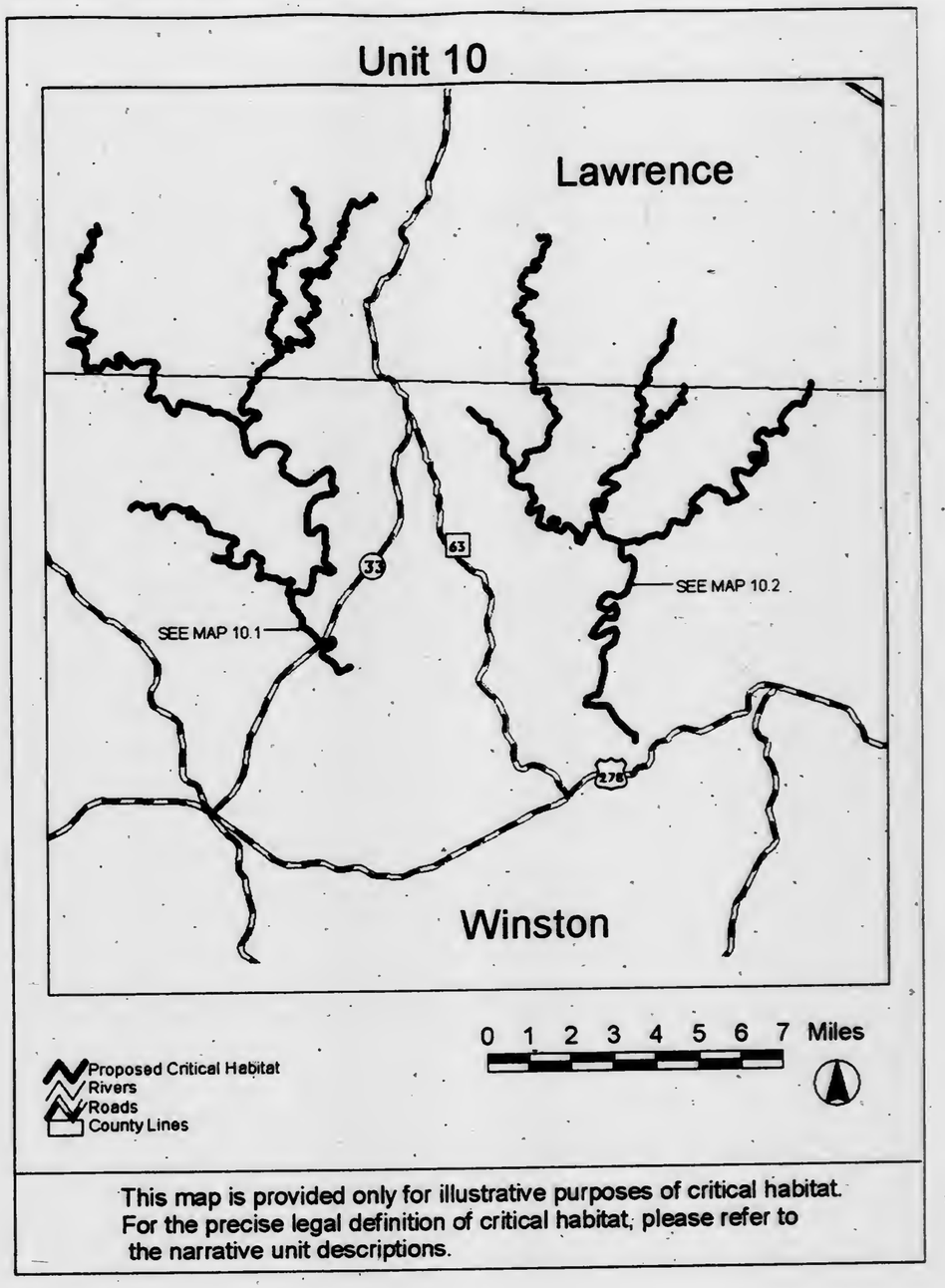
(xii) Unit 10. Sipsey Fork and tributaries, Winston, Lawrence Counties, Alabama. This is a critical habitat unit for the ovate clubshell,

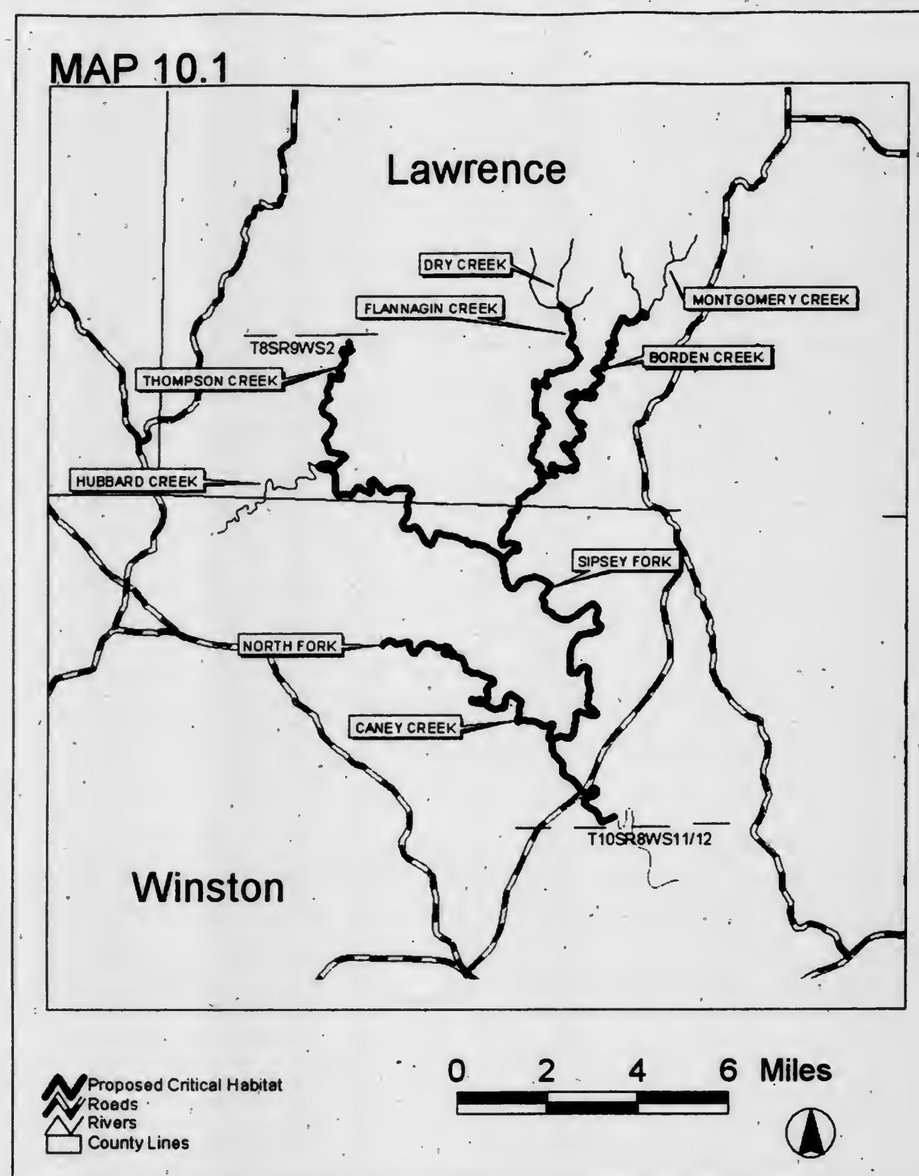
triangular kidneyshell, Alabama moccasinshell, orangenacre mucket, and dark pigtoe.

(A) Unit 10 includes the Sipsey Fork main stem from the section 11/12 line (T10S R8W), Winston County, Alabama, upstream to the confluence of Hubbard Creek (T8S R9W S27), Lawrence County, Alabama; Thompson Creek, from its confluence with Hubbard Creek (T8S R9W S27), upstream to section 2 line (T8S R9W) Lawrence County; Brushy Creek, from the confluence of Glover Creek (T10S R7W S11), Winston County, upstream to section 9 (T8S R7W), Lawrence County; Capsey Creek, from confluence with Brushy Creek (T9S R7W S23), Winston County, upstream to the confluence of Turkey Creek (T8S R6W S33), Lawrence County; Rush Creek, from confluence with Brushy Creek (T9S R7W S15), upstream to Winston/Lawrence County Line (T9S R7W S1), Winston County; Brown Creek, from confluence with Rush Creek (T9S R7W S2), Winston County, upstream to section 24 line (T8S R7W), Lawrence County; Beech Creek, from confluence with Brushy Creek (T9S R7W S8), to confluence of East and West Forks (T9S R7W S6), Winston County; Caney Creek and North Fork Caney Creek, from confluence with Sipsey Fork (T9S R8W S28), upstream to section 14 line (T9S R9W), Winston County; Borden Creek, from confluence with Sipsey Fork (T8S R8W S5), Winston County, upstream to the confluence of Montgomery Creek (T8S R8W S10), Lawrence County; and Flannagin Creek, from confluence with Borden Creek (T8S R8W S28), upstream to confluence of Dry Creek (T8S R8W S4), Lawrence County.

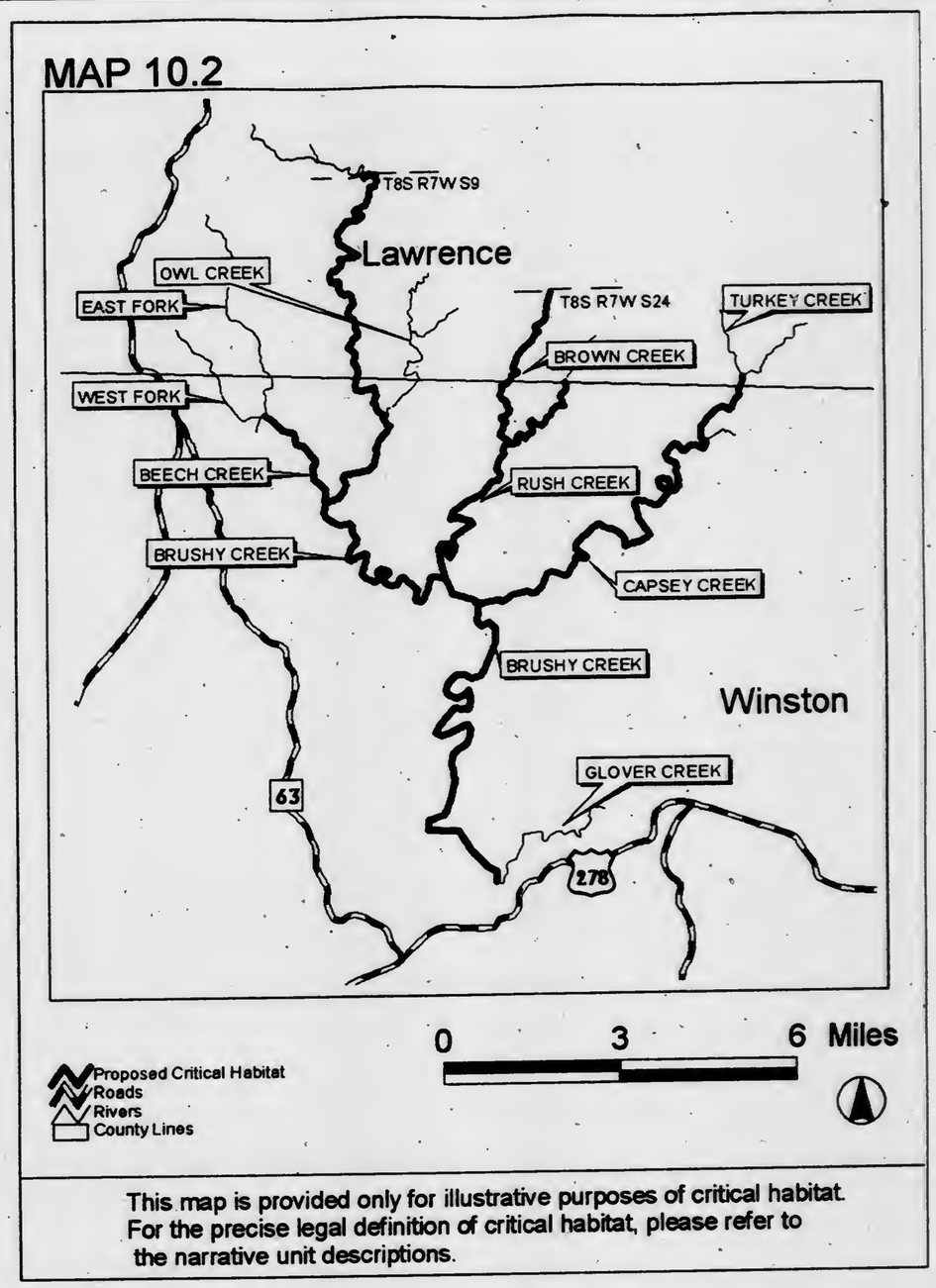
(B) Maps of Unit 10 follows:

BILLING CODE 4310–55–P





This map is provided only for illustrative purposes of critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

BILLING CODE 4310-55-C

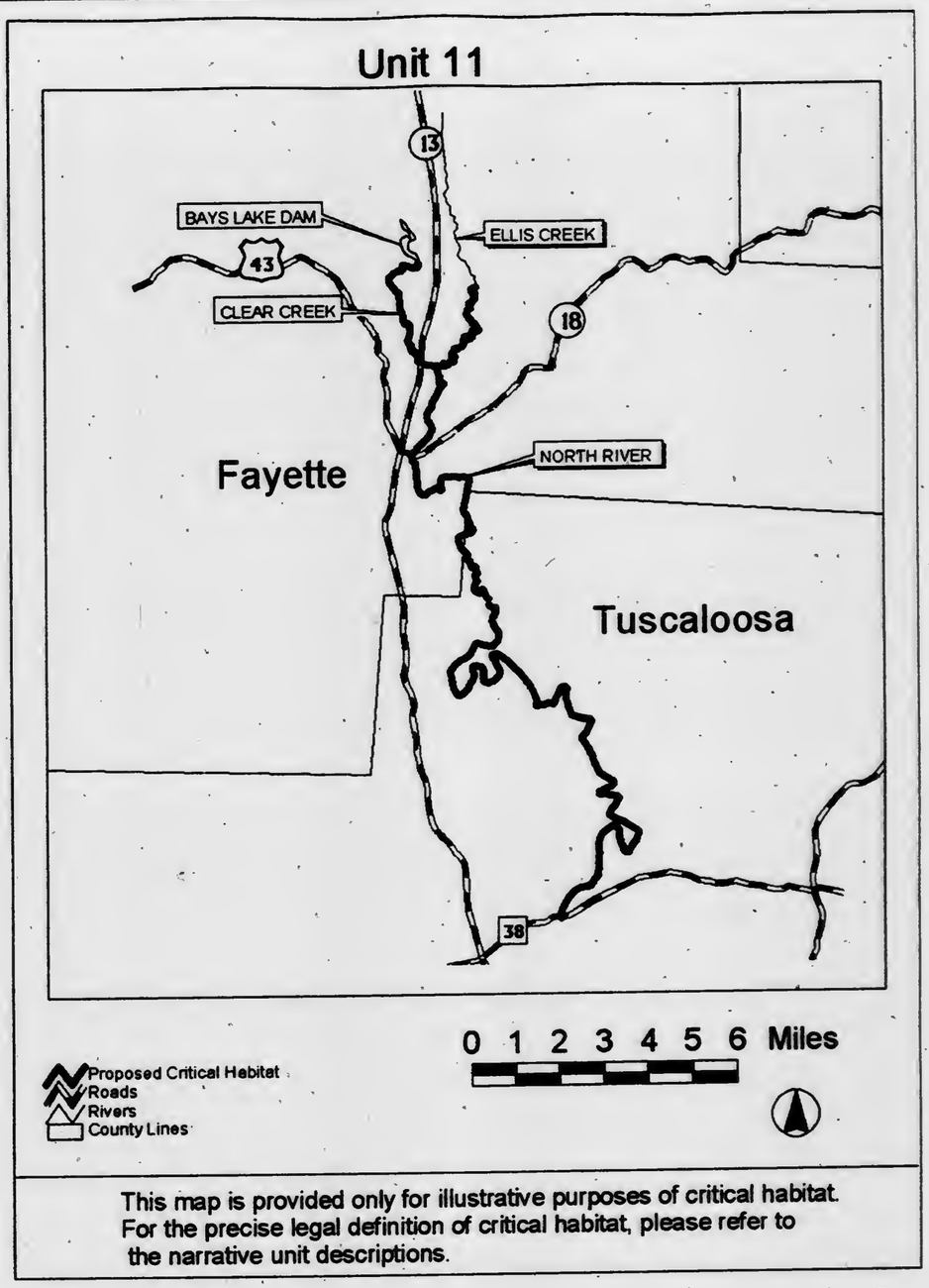
(xiii) Unit 11. North River and Clear Creek, Tuscaloosa, Fayette Counties, Alabama. This is a critical habitat unit for the ovate clubshell, triangular

kidneyshell, Alabama moccasinshell, orangenacre mucket, and dark pigtoe.

(A) Unit 11 includes the main stem of the North River from Tuscaloosa County Road 38 (T18S R10W S16), Tuscaloosa County, upstream to confluence of Ellis Creek (T16S R10W S6), Fayette County, Alabama; and Clear Creek from its confluence with North River (T16S R11W S13) to Bays Lake Dam (T16S R11W S2), Fayette County, Alabama.

(B) Map of Unit 11 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

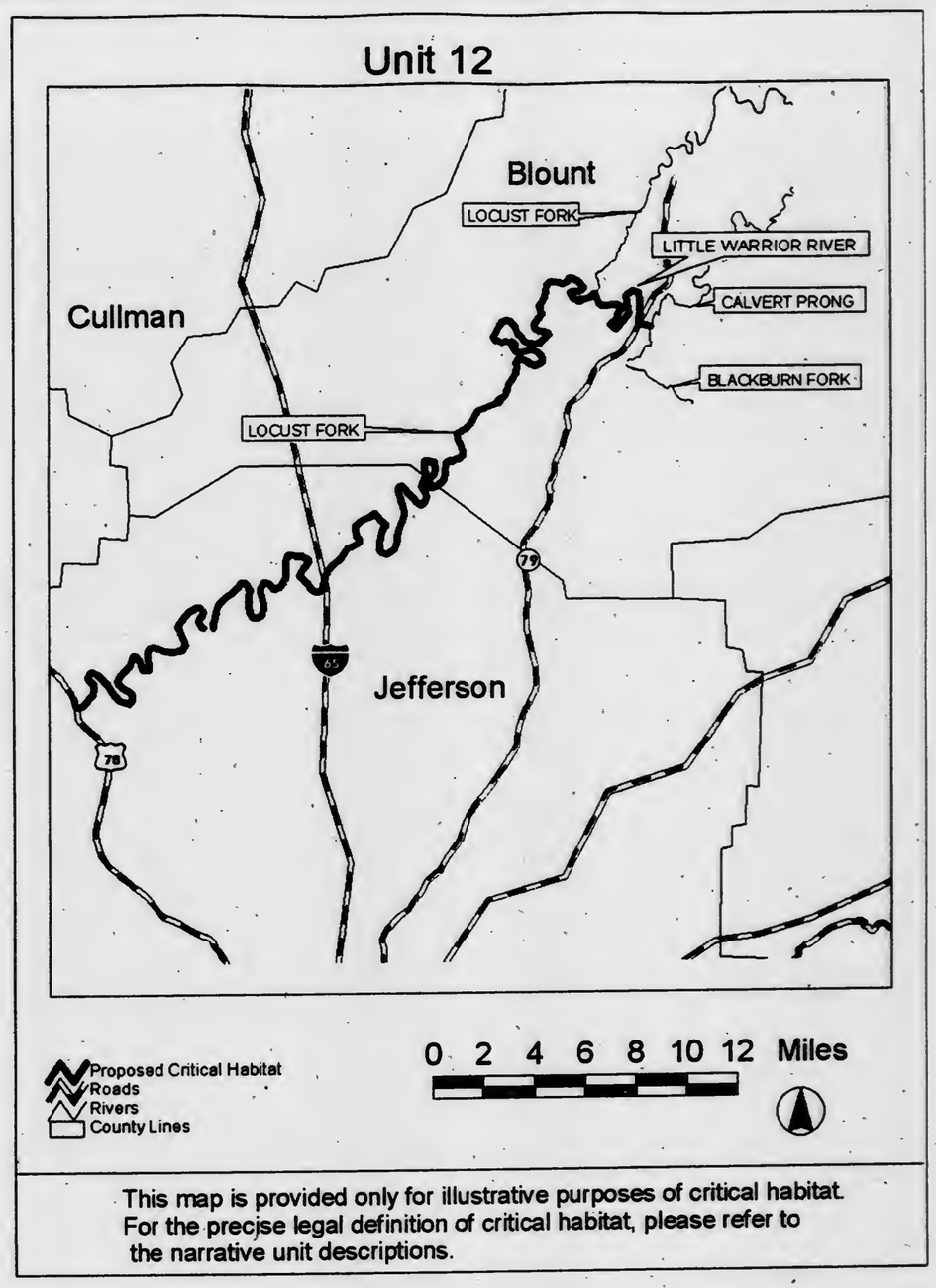
(xiv) Unit 12. Locust Fork and Little Warrior Rivers, Jefferson, Blount Counties, Alabama. This is a critical habitat unit for the ovate clubshell,

upland combshell, triangular kidneyshell, Alabama moccasinshell, orangenacre mucket, and dark pigtoe.

(A) Unit 12 includes the Locust Fork main stem from U.S. Highway 78 (T15S R4W S30), Jefferson County, upstream to the confluence of Little Warrior River (T13S R1W S3), Blount County, Alabama; and Little Warrior River from its confluence with the Locust Fork (T13S R1W S3), upstream to the confluence of Calvert Prong and Blackburn Fork (T13S R1W S12), Blount County, Alabama.

(B) Map of Unit 12 follows:

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

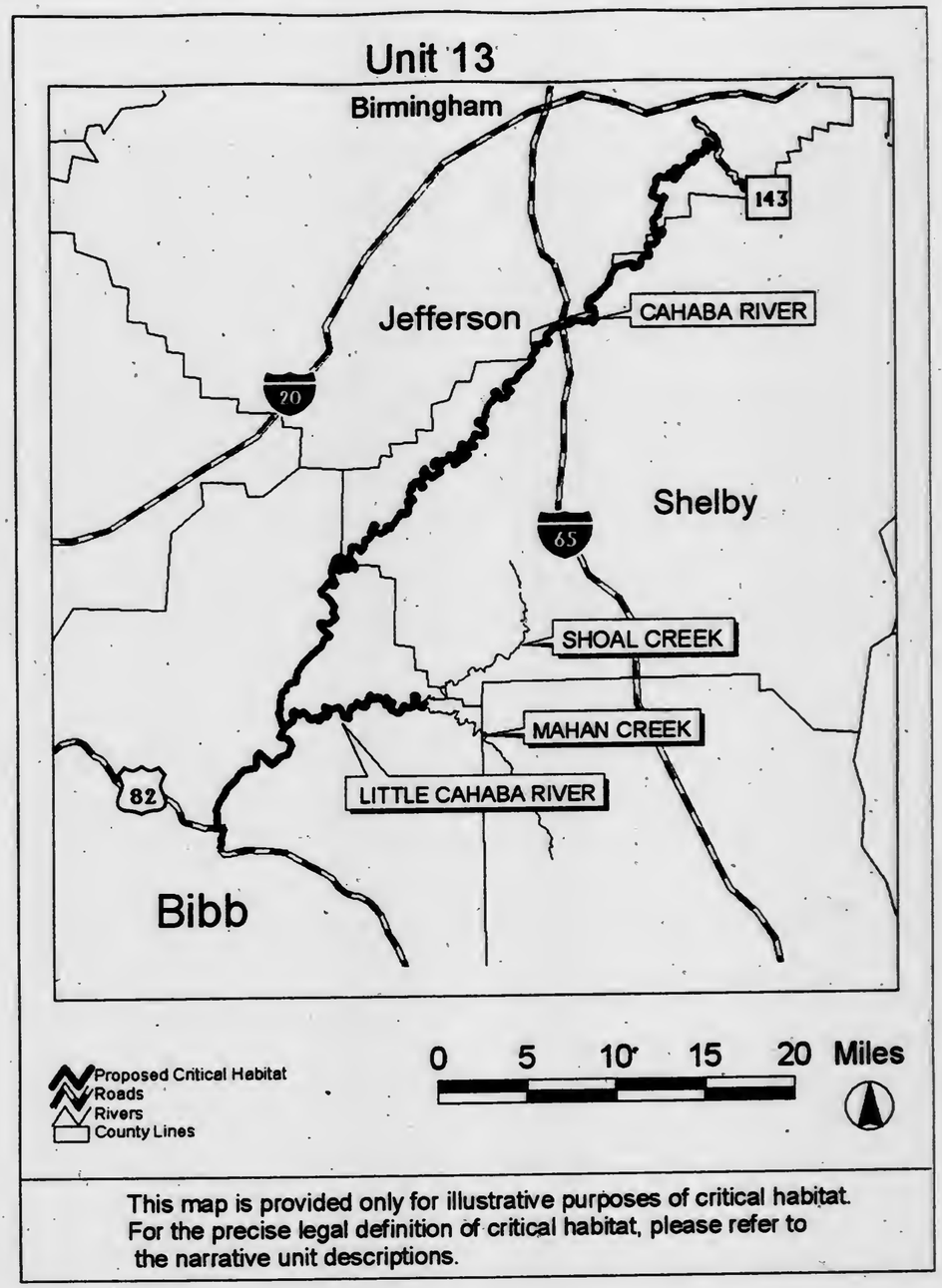
(xv) Unit 13. Cahaba River and Little Cahaba River, Jefferson, Shelby, Bibb Counties, Alabama. This is a critical habitat unit for the southern acornshell,

ovate clubshell, southern clubshell, upland combshell, triangular kidneyshell, Alabama moccasinshell, orangenacre mucket, and fine-lined pocketbook.

(A) Unit 13 includes the Cahaba River from U.S. Highway 82 (T23N R9E S26), Centerville, Bibb County, upstream to Jefferson County Road 143 (T18S R1E S33), Jefferson County, Alabama; and the Little Cahaba River from its confluence with the Cahaba River (T24N R10E S21), upstream to the confluence of Mahan and Shoal Creeks (T24N R11E S14), Bibb County, Alabama.

(B) Map of Unit 13 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

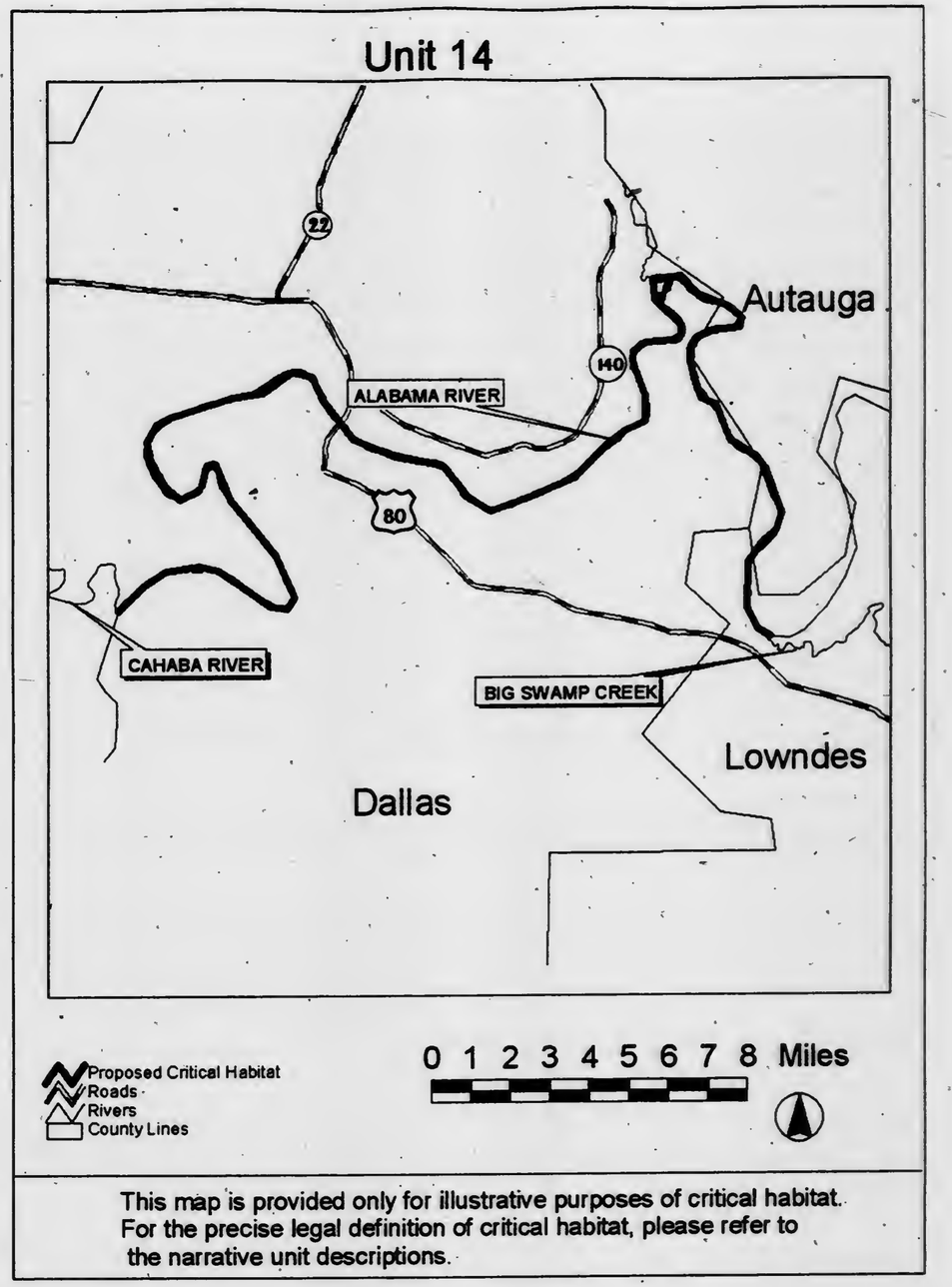
(xvi) Unit 14. Alabama River, Autauga, Lowndes, Dallas Counties, Alabama. This is a critical habitat unit

for the southern clubshell and orangenacre mucket.

(A) Unit 14 includes the Alabama River from the confluence of the Cahaba River (T16N R10E S32), Dallas County, upstream to the confluence of Big Swamp Creek (T15N R12E S1), Lowndes County, Alabama.

(B) Map of Unit 14 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

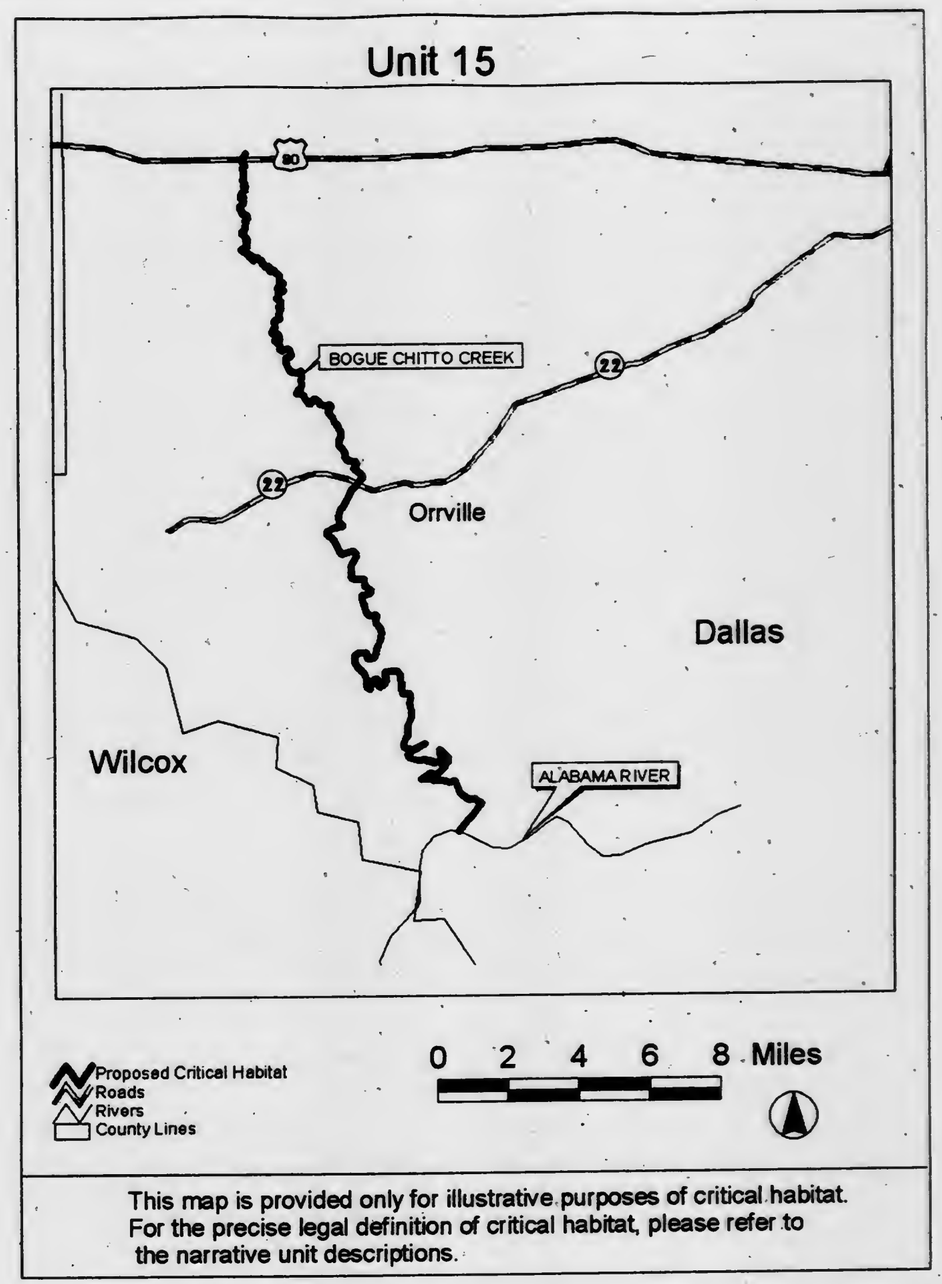
(xvii) Unit 15. Bogue Chitto Creek, Dallas County, Alabama. This is a critical habitat unit for the southern

clubshell, Alabama moccasinshell, and orangenacre mucket.

(A) Unit 15 includes the Bogue Chitto Creek main stem from its confluence with the Alabama River (T14N R8E S24), Dallas County, upstream to U.S. Highway 80 (T17N R7E S24), Dallas County, Alabama.

(B) Map of Unit 15 follows:

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

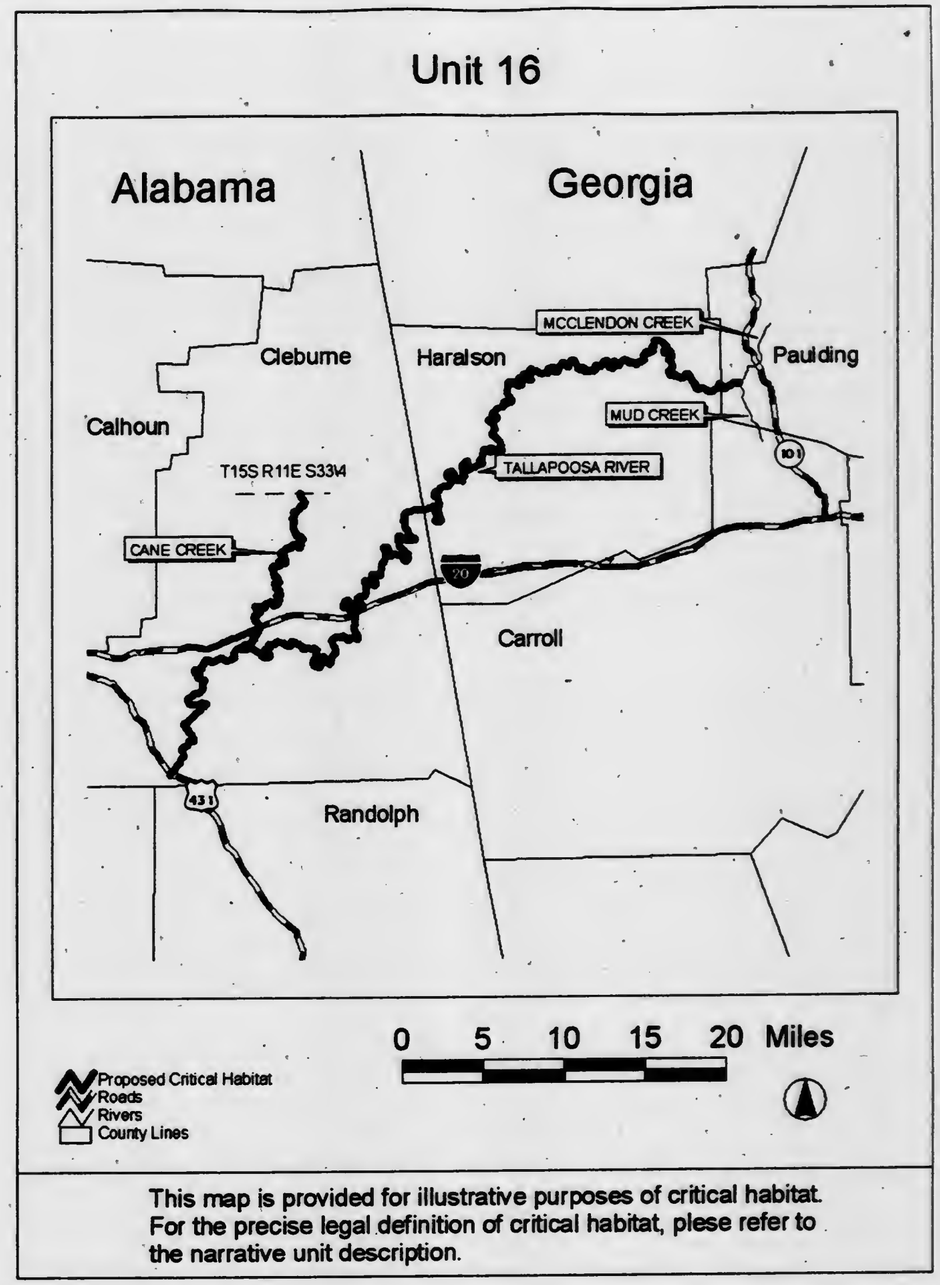
(xviii) Unit 16. Tallapoosa River, Cleburne County, Alabama, and Paulding, Haralson Counties, Georgia; Cane Creek, Cleburne County, Alabama.

This is a critical habitat unit for the fine-lined pocketbook.

(A) Unit 16 includes the main stem Tallapoosa River from U.S. Highway 431 (T17S R10E S31), Cleburne County, Alabama, upstream to the confluence of McClendon and Mud Creeks (33 °50′ 43″N 85 °00′45″ W), Paulding County, Georgia; and Cane Creek from its confluence with Tallapoosa River (T16S R10E S24), upstream to section 33/4 Line (T15S, R11E), Cleburne County, Alabama.

(B) Map of Unit 16 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

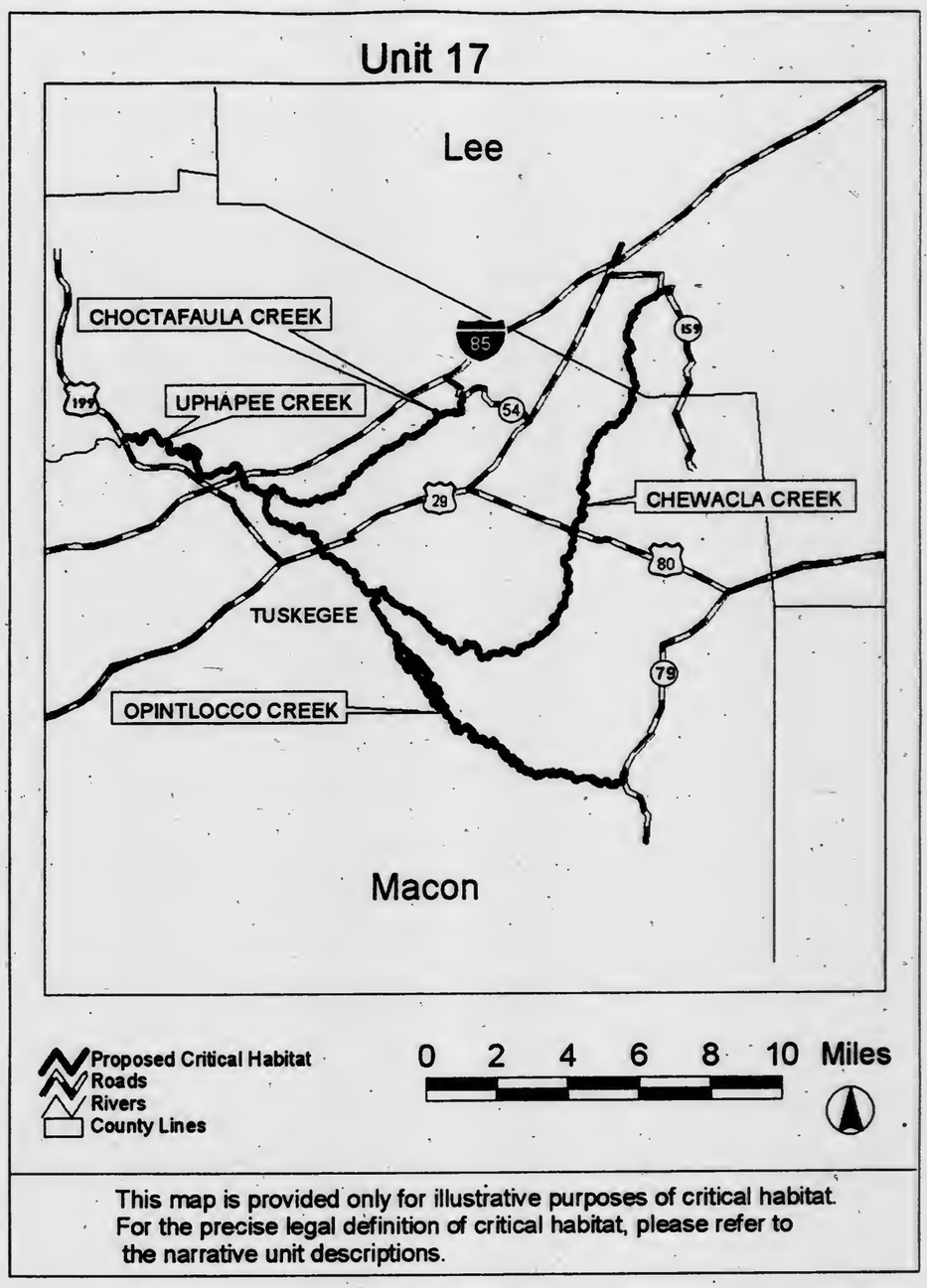
(xix) Unit 17. Uphapee, Choctafaula, and Chewacla Creeks, Macon, Lee Counties, Alabama. This is a critical habitat unit for the ovate clubshell,

southern clubshell, and fine-lined pocketbook.

(A) Unit 17 includes the mainstem of Uphapee Creek from Alabama Highway 199 (T17N R23E S3), upstream to the confluence of Opintlocco and Chewacla Creeks (T17N R24E S26), Macon County, Alabama; Choctafaula Creek, from confluence with Uphapee Creek (T17N R24E S8), upstream to Macon County Road 54 (T18N R 25E S31), Macon County, Alabama; Chewacla Creek, from confluence with Opintlocco Creek (T17N R24E S26), Macon County, Alabama, upstream to Lee County Road 159 (T18N R26E S18), Lee County, Alabama; Opintlocco Creek, from confluence with Chewacla Creek (T17N R24E S26), upstream to Macon County Road 79 (T16N R25E S25) Macon County, Alabama.

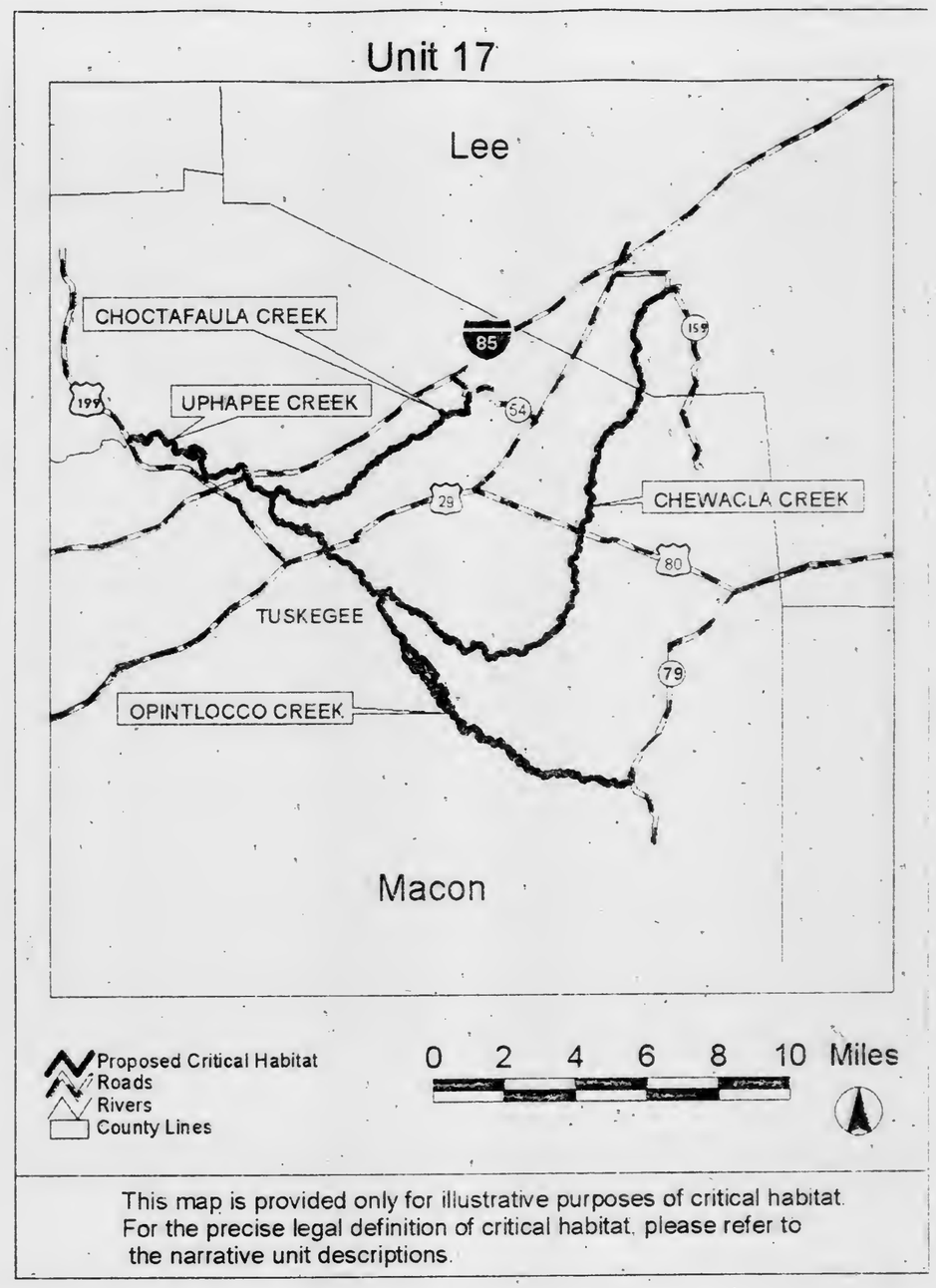
(B) Map of Unit 17 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

* (xx) Unit 18. Coosa River (Old River Channel) and Terrapin Creek, Cherokee, Calhoun, Cleburne Counties, Alabama. This is a critical habitat unit for the



BILLING CODE 4310-55-C

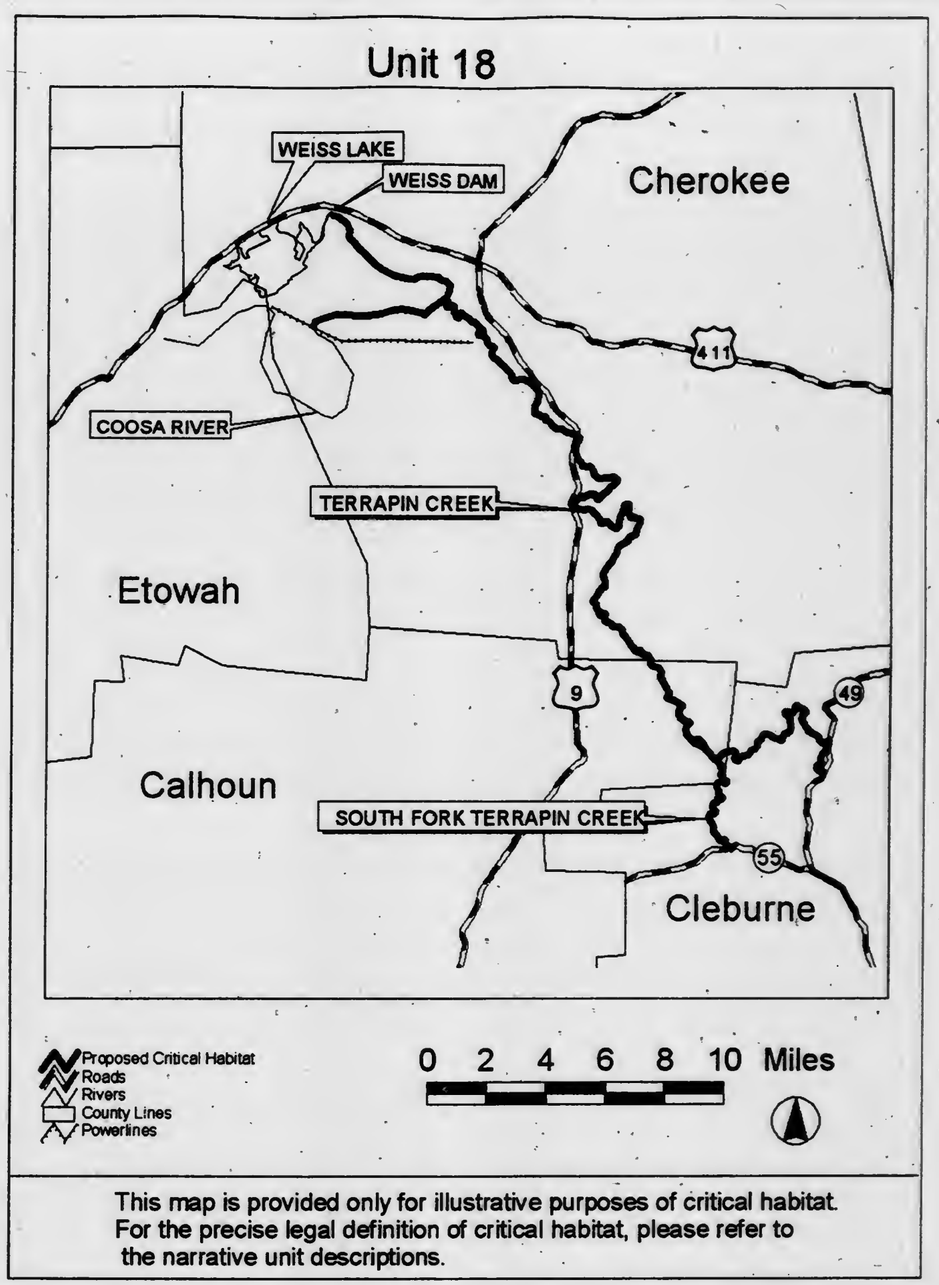
(xx) Unit 18, Coosa River (Old River Channel) and Terrapin Creek, Cherokee, Calhoun, Cleburne Counties, Alabama. This is a critical habitat unit for the

southern acornshell, ovate clubshell, southern clubshell, upland combshell, triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

(A) Unit 18 includes the Coosa River main stem from the power line crossing southeast of Maple Grove, Alabama (T10S R8E S35), upstream to Weiss Dam (T10S R8E S13), Cherokee County, Alabama; Terrapin Creek, 53 km (33 mi) extending from its confluence with the Old Coosa River channel (T10S R9E S28), Cherokee County, upstream to Cleburne County Road 49 (T13S R11E S15), Cleburne County, Alabama; South Fork Terrapin Creek, 7 km (4 mi), from its confluence with Terrapin Creek (T13S R11E S18), upstream to Cleburne County Road 55 (T13S R11E S30), Cleburne County, Alabama.

(B) Map of Unit 18 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

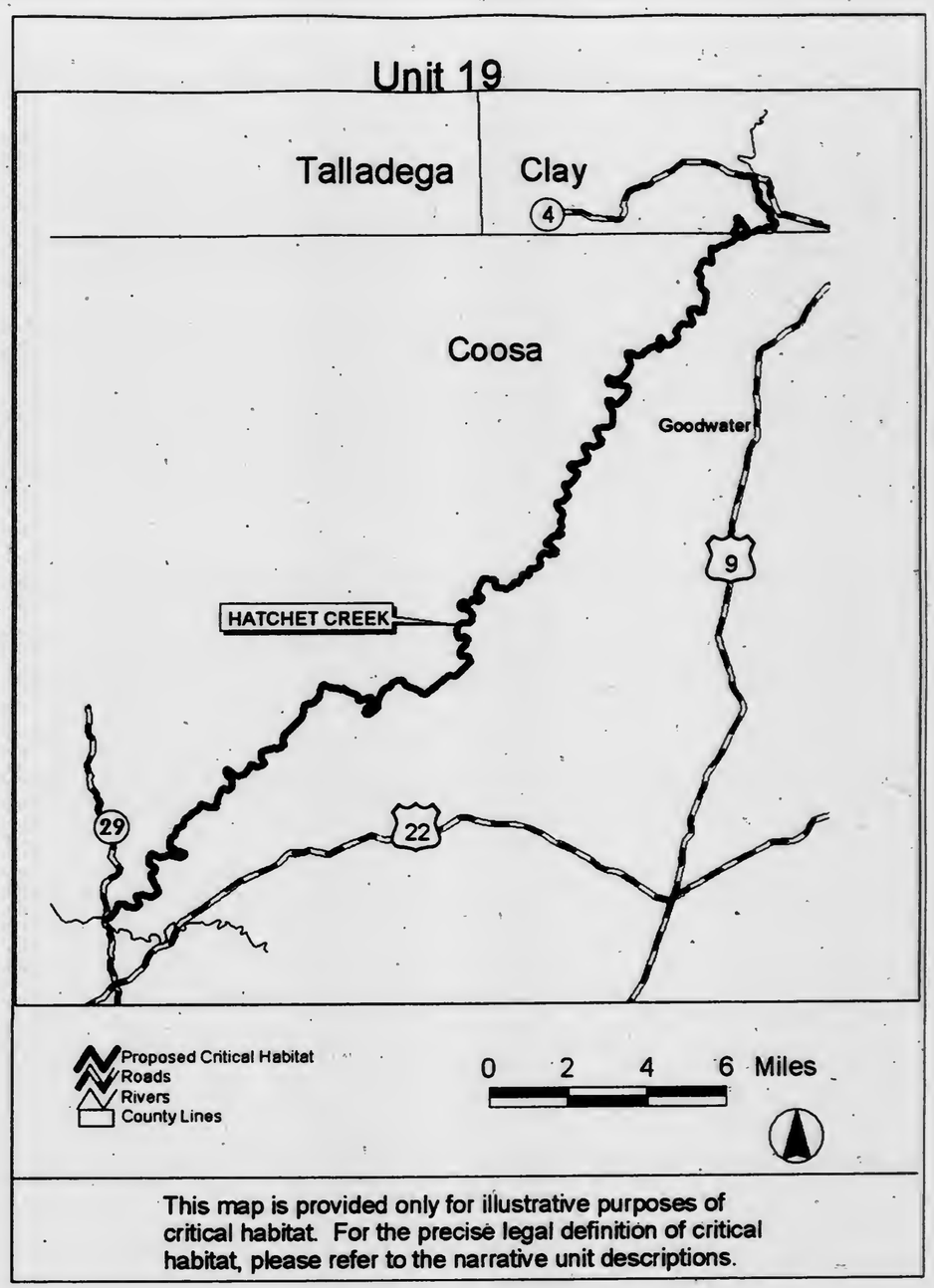
(xxi) Unit 19. Hatchet Creek, Coosa, Clay Counties, Alabama. This is a critical habitat unit for the southern acornshell, ovate clubshell, southern

clubshell, upland combshell, triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

(A) Unit 19 includes the main stem of Hatchet Creek from the confluence of Swamp Creek at Coosa County Road 29 (T22N R17E S26), Coosa County, Alabama, upstream to Clay County Road 4 (T22S R6E S17) Clay County, Alabama.

(B) Map of Unit 19 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

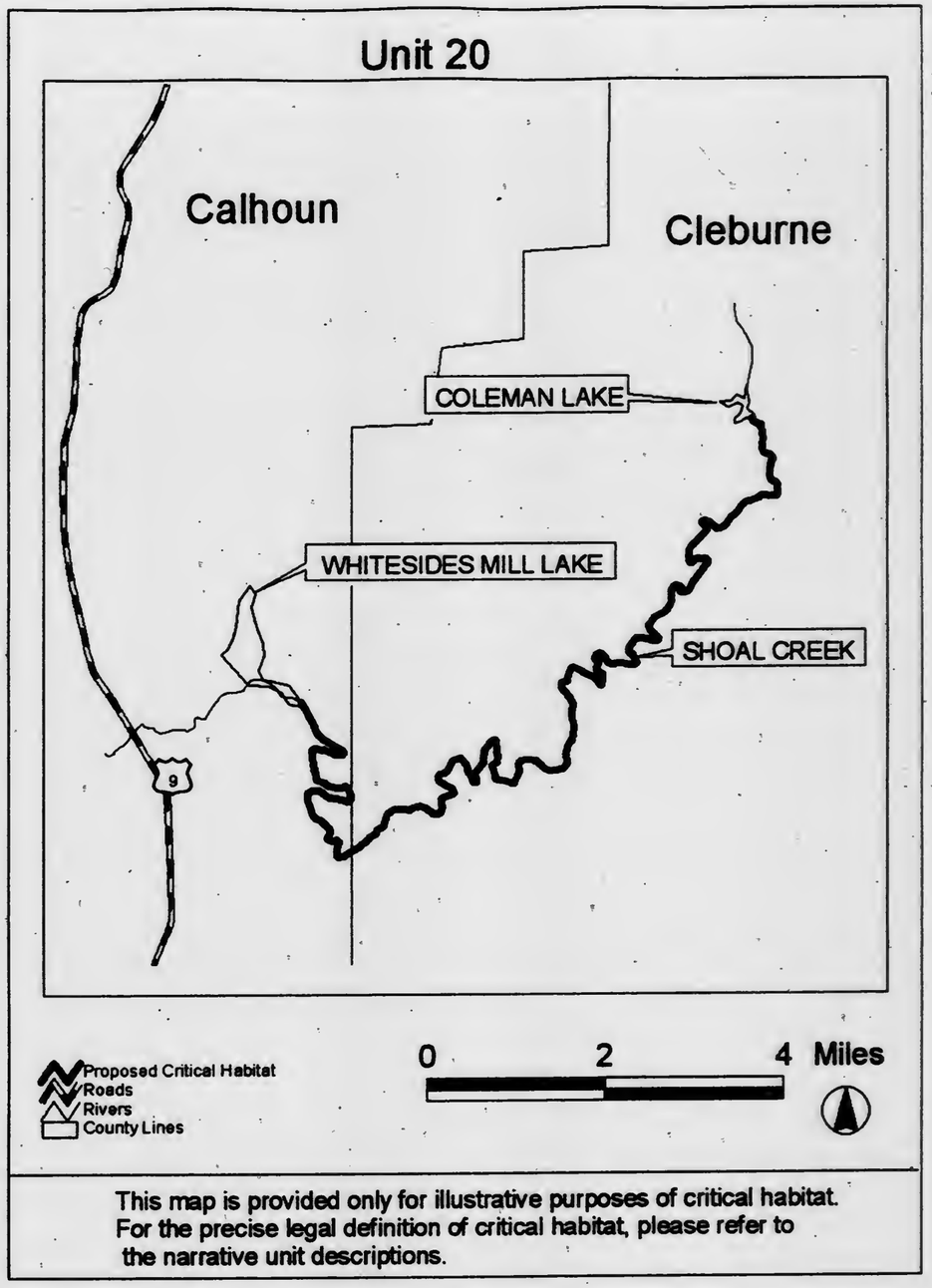
(xxii) Unit 20. Shoal Creek, Calhoun, Cleburne Counties, Alabama. This is a critical habitat unit for the triangular kidneyshell, Coosa moccasinshell,

southern pigtoe, and fine-lined pocketbook.

(A) Unit 20 includes the main stem of Shoal Creek from the headwater of Whitesides Mill Lake (T15S R9E S12), Calhoun County, Alabama, upstream to the tailwater of Coleman Lake Dam (T14S R10E S26), Cleburne County, Alabama.

(B) Map of Unit 20 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

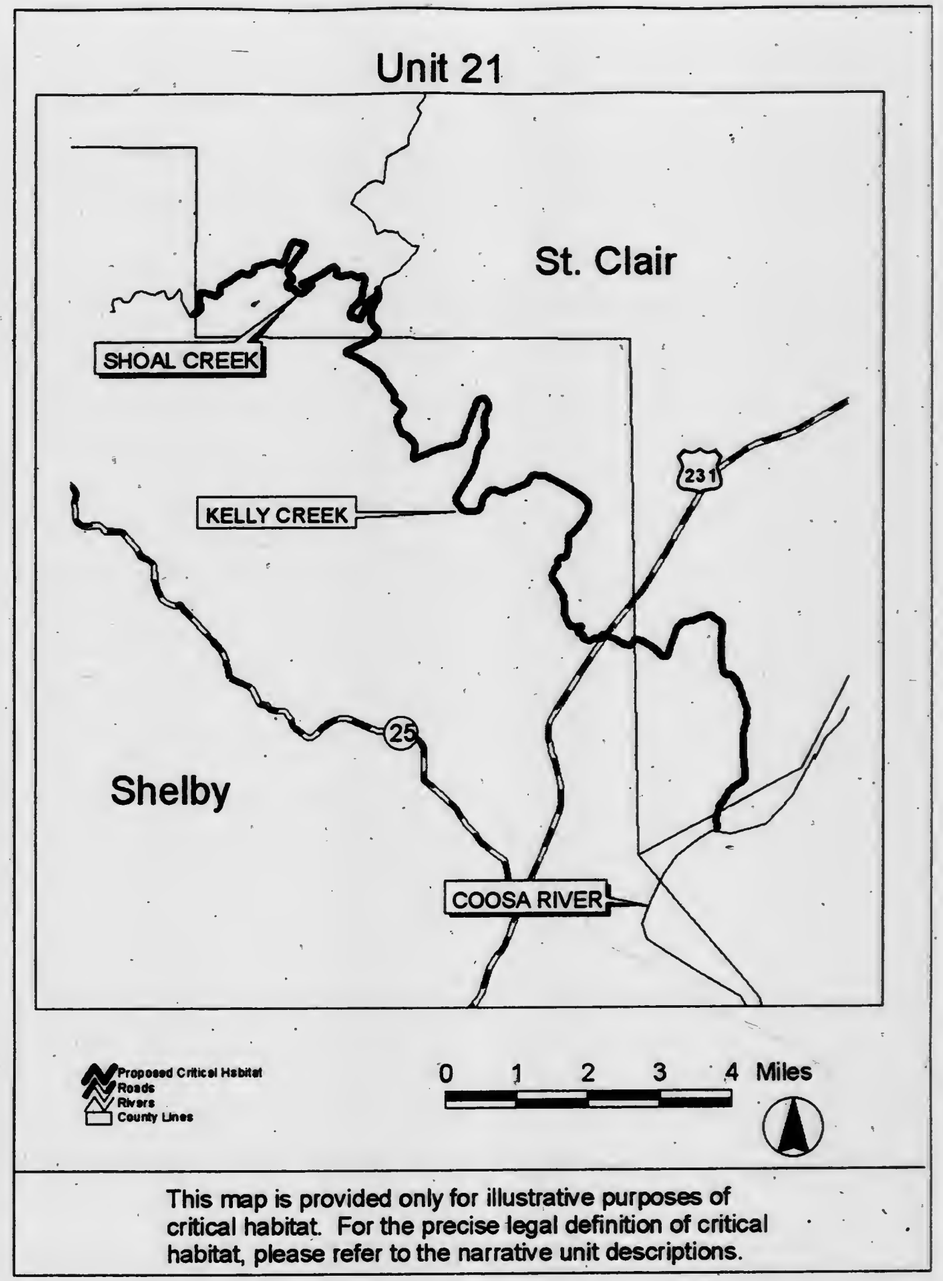
(xxiii) Unit 21. Kelly Creek and Shoal Creek, Shelby, St. Clair Counties, Alabama. This is a critical habitat unit for the southern acornshell, ovate

clubshell, southern clubshell, upland combshell, triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

(A) Unit 21 includes the Kelly Creek main stem extending from the confluence with the Coosa River (T19S R3E S5), upstream to the confluence of Shoal Creek (T17S R2E S28), St. Clair County, Alabama; and the main stem of Shoal Creek from the confluence with Kelly Creek (T17S R2E S28), St. Clair County, Alabama, upstream to the St. Clair/Shelby County Line (T17S R2E S30), St. Clair County, Alabama.

(B) Map of Unit 21 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

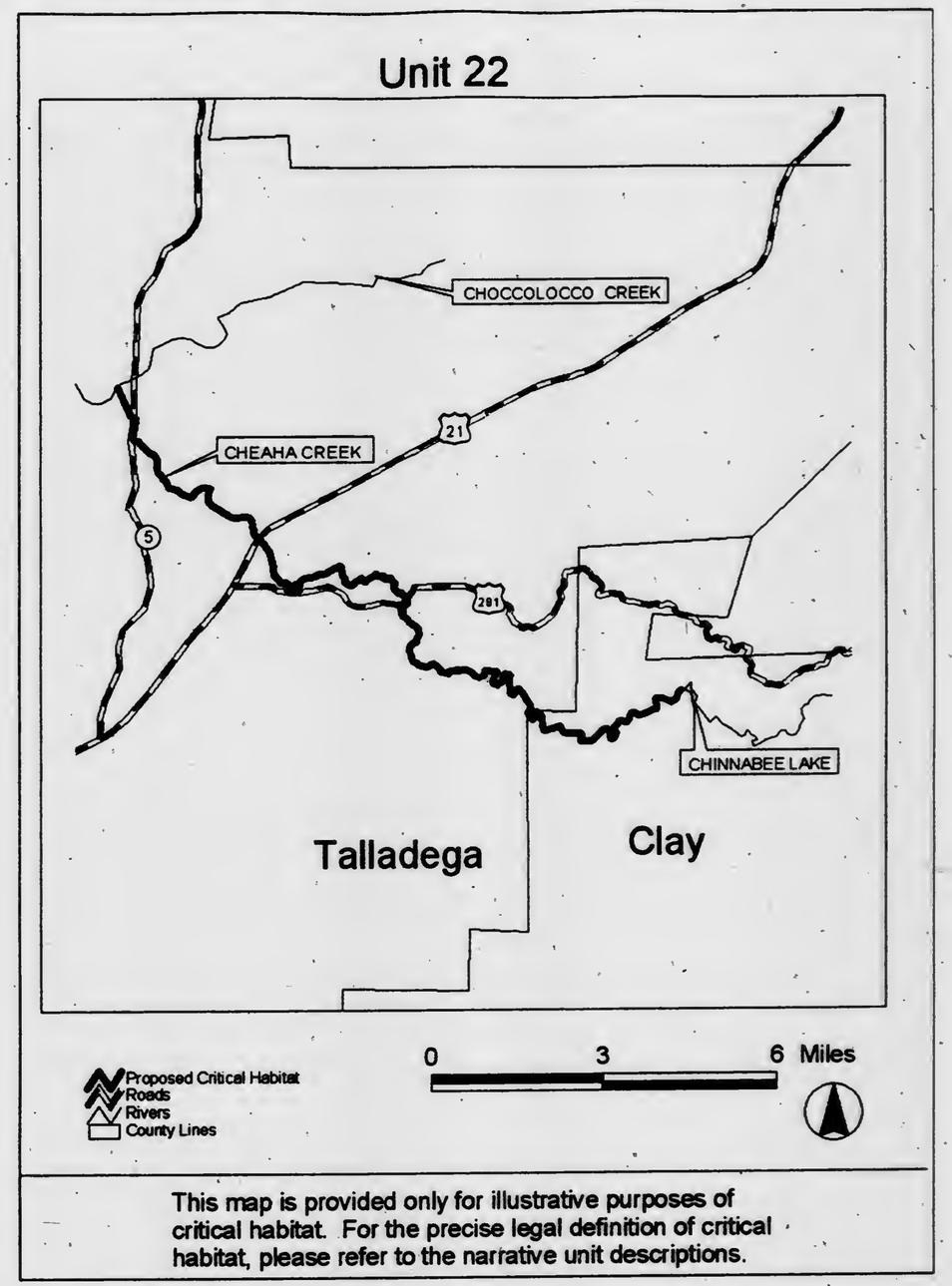
(xxiv) Unit 22. Cheaha Creek, Talladega, Clay Counties, Alabama. This is a critical habitat unit for the triangular kidneyshell, Coosa

moccasinshell, southern pigtoe, and fine-lined pocketbook.

(A) Unit 22 includes the main stem of Cheaha Creek from its confluence with Choccolocco Creek (T17S R6E S19), Talladega County, Alabama, upstream to the tailwater of Chinnabee Lake Dam (T18S R7E S14), Clay County, Alabama.

(B) Map of Unit 22 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(xxv) Unit 23. Yellowleaf Creek and Mud Creek, Shelby County, Alabama.

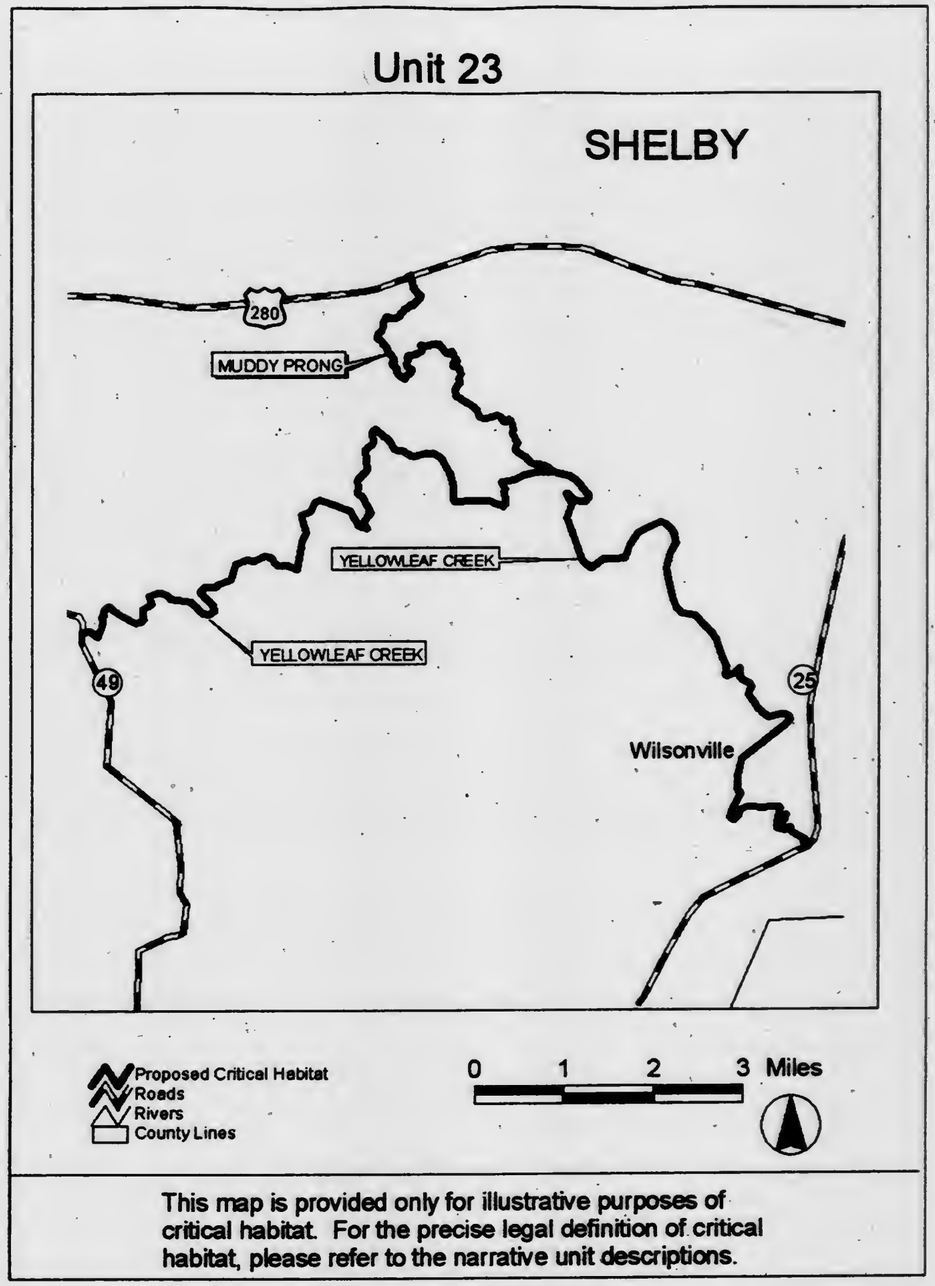
This is a critical habitat unit for the triangular kidneyshell, Coosa

moccasinshell, southern pigtoe, and fine-lined pocketbook.

(A) Unit 23 includes the Yellowleaf Creek main stem from Alabama Highway 25 (T20S R2E S29), upstream to Shelby County Road 49 (T20S R1W S13); and the Muddy Prong main stem extending from its confluence with Yellowleaf Creek (T20S R1E S1), upstream to U.S. Highway 280 (T19S R1E S28), Shelby County, Alabama.

(B) Map of Unit 23 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

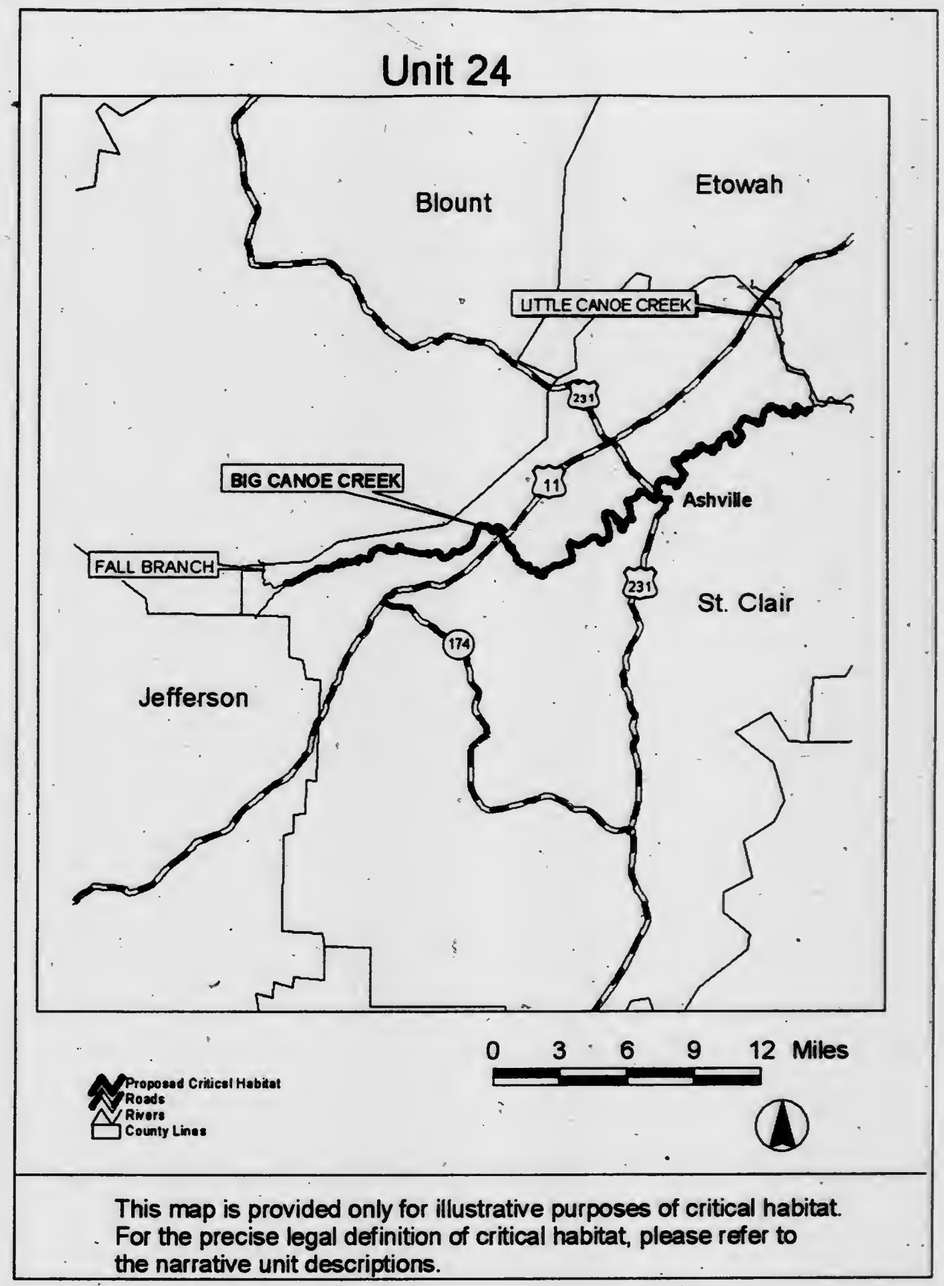
(xxvi) Unit 24. Big Canoe Creek, St. Clair County, Alabama. This is a critical habitat unit for the southern acornshell, ovate clubshell, southern clubshell,

upland combshell, triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

(A) Unit 24 includes the main stem of Big Canoe Creek from its confluence with Little Canoe Creek at the St. Clair/Etowah County line (T13S R5E S17), St. Clair County, upstream to the confluence of Fall Branch (T14S R1E S28) St. Clair County, Alabama.

(B) Map of Unit 24 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

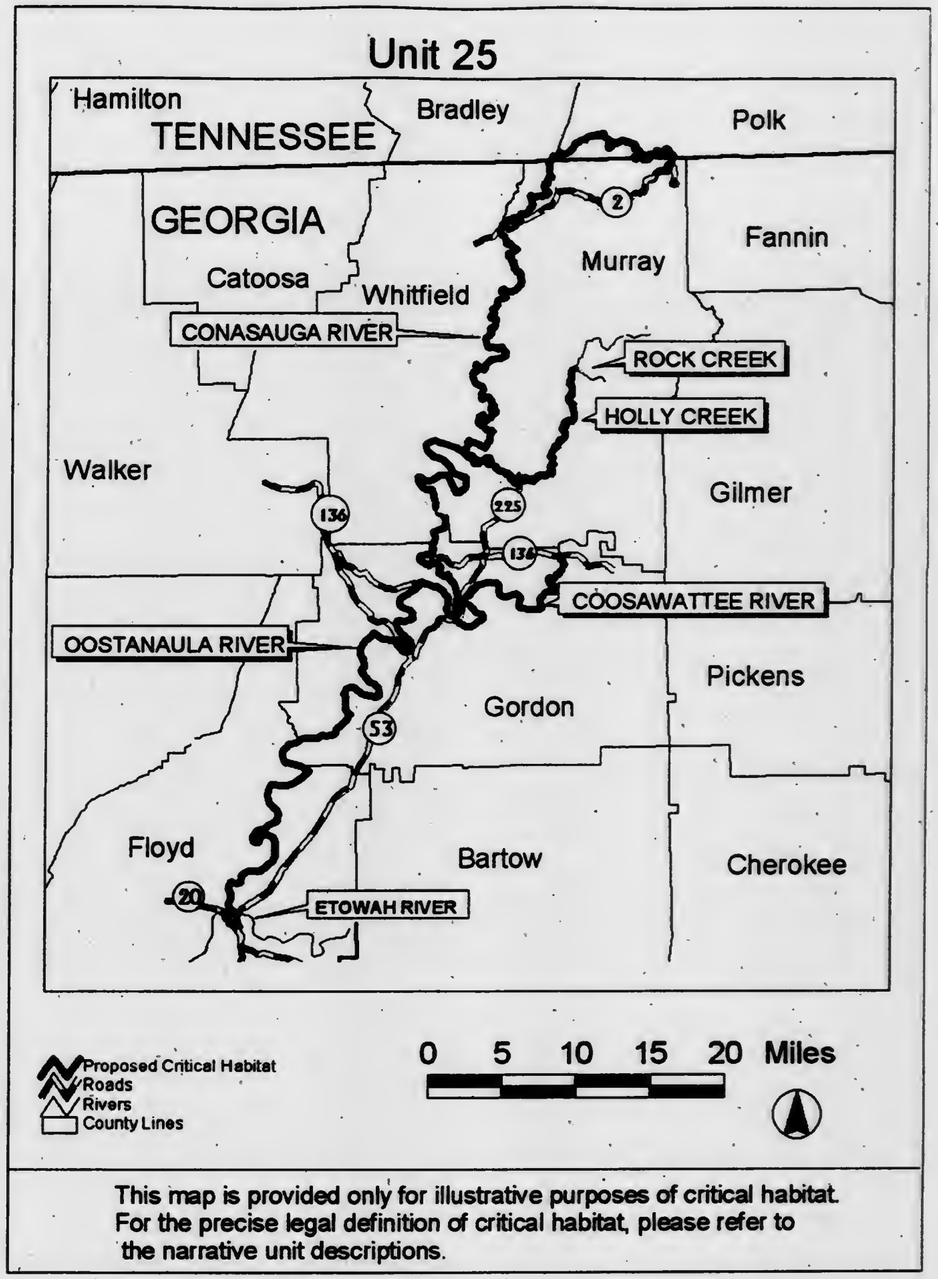
(xxvii) Unit 25. Oostanaula, Coosawattee, and Conasauga Rivers, and Holly Creek, Floyd, Gordon, Whitfield, Murray Counties, Georgia; Bradley, Polk

Counties, Tennessee. This is a critical habitat unit for the southern acornshell, ovate clubshell, southern clubshell, upland combshell, triangular kidneyshell, Alabama moccasinshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

(A) Unit 25 includes the Oostanaula River main stem from its confluence with the Etowah River, Floyd County, Georgia (34°15′13″N, 85°10′35″W), upstream to the confluence of the Conasauga and Coosawattee River, Gordon County, Georgia (34°32′32″N, 84°54′12″W); the Coosawattee River main stem from its confluence with the Conasauga River (34°32′32″N, 84°54′12″W), upstream to Georgia State Highway 136, Gordon County, Georgia (34°36′49″N, 84°46′43″W); the Conasauga River main stem from confluence with the Coosawattee River (34°32′32″N, 84°54′13″W), Gordon County, Georgia, upstream through Bradley and Polk Counties, Tennessee, to Murray County Road 2 (34°58′27″N, 84°38′43″W), Murray County, Georgia; and the main stem of Holly Creek from its confluence with the Conasauga River (34°42′12″N, 84°53′29″W), upstream to its confluence with Rock Creek, Murray County, Georgia (34°46′59″N, 84°45′25″W).

(B) Map of Unit 25 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

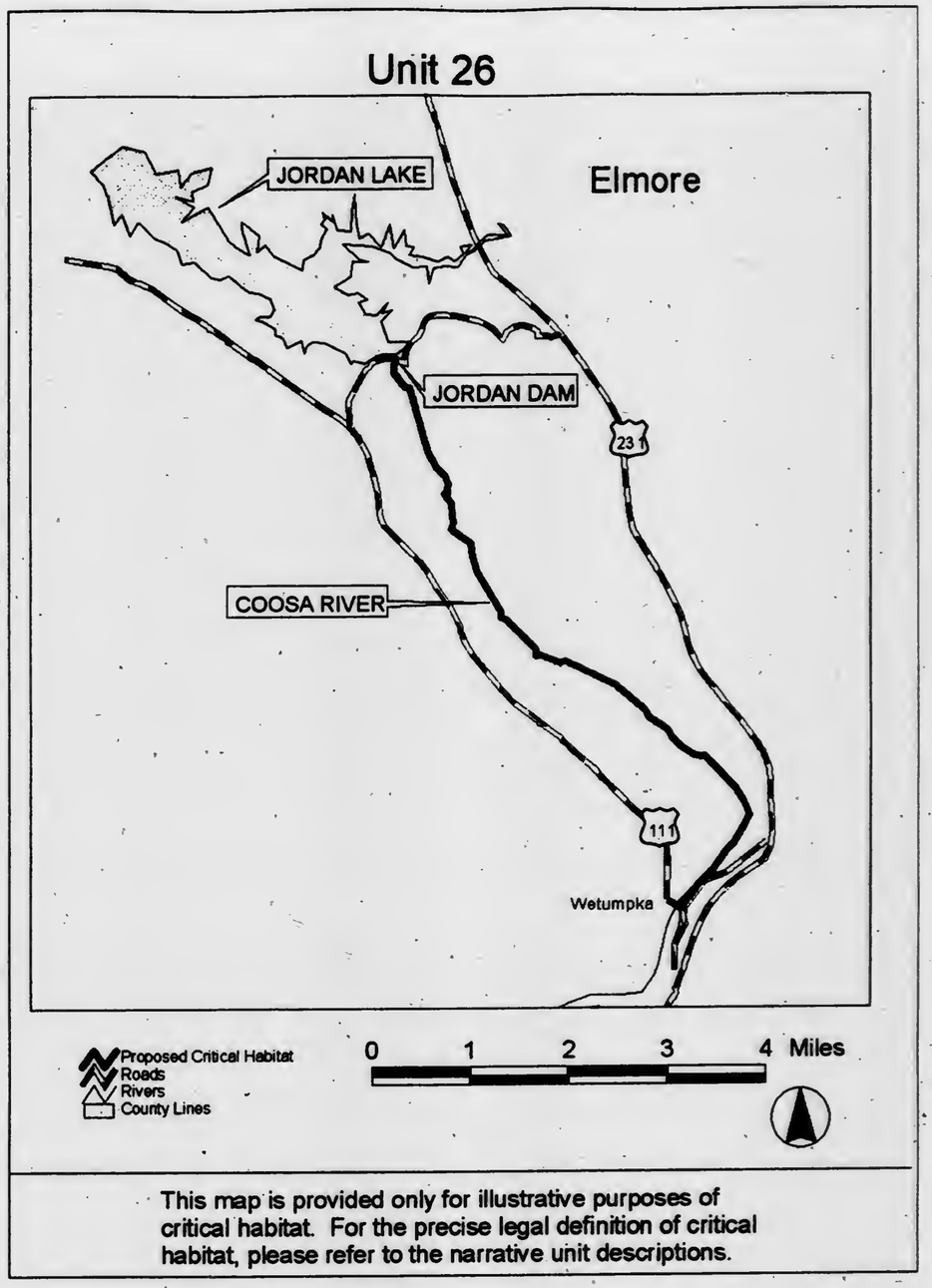
(xxviii) Unit 26. Lower Coosa River, Elmore County, Alabama. This is a critical habitat unit for the southern acornshell, ovate clubshell, southern

clubshell, upland combshell, triangular kidneyshell, Alabama moccasinshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

(A) Unit 26 includes the Coosa River main stem from Alabama State Highway 111 bridge (T18N R18/19E S24/19), upstream to Jordan Dam (T19N R18E S22), Elmore County, Alabama.

(B) Map of Unit 26 follows:

BILLING CODE 4310–55–P



* * * * *

Dated: March 17, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–6903 Filed 3–25–03; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Wednesday,
March 26, 2003

Part III

Department of Housing and Urban Development

Notice of Funding Availability (NOFA) for the Research on the Socio-Economic Change in Cities, Fiscal Year 2002; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4780–N–01]

Notice of Funding Availability (NOFA) for the Research on the Socio-Economic Change in Cities, Fiscal Year 2002

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of funding availability

SUMMARY: *Purpose of the Program.* To fund empirical research projects on trends in urban areas, that is, social, economic, demographic, and fiscal change in cities. Research grants of up to $40,000 each would allow HUD to commission a variety of in-depth and high-quality research projects. For example, the release of the Census 2000 long-form data presents an excellent opportunity to inform us on the long-run dynamics of population, housing, income, and transportation in urban areas. Research using other current data sets, such as the County Business Patterns Special Extracts, FBI Crime Statistics, or Building Permits Data found in the State of the Cities Data Systems [1], or concerning other topics such as the fiscal condition of cities, crime, poverty, or economic development would also be encouraged. These research projects would provide HUD with a basic understanding of how cities are changing, what factors are driving change, and the impact of public policy on change.

Available Funds. $300,000 from HUD's FY 2002 research and technology appropriation. HUD anticipates funding seven to ten studies on these topics; studies will be funded through cooperative agreements, up to a maximum of $40,000.

Eligible Applicants. Academic and not-for-profit institutions located in the U.S., state and local governments, and federally recognized Indian tribes are eligible to apply. For-profit businesses also are eligible; however, they are not allowed to earn a fee (*i.e.*, no profit can be made from the project).

Application Deadline. May 27, 2003.

Match. None required.

[1] This site (*http://socds.huduser.org//index.html*) specializes in data about cities and metropolitan areas. Some of the data is available at other sites, but here it is in a particularly useful interface. The available data include: population data from the 1970, 1980, 1990, and 2000 Censuses; data on employed residents from the Current Employment Statistics; data on jobs from and business establishments from special extracts of the County Business Patterns; data from the FBI's Uniform Crime Report; and data on permits for residential construction from the Census Bureau's Building Permits Survey.

Additional Information:

I. Application Due Date, Further Information, and Technical Assistance

Application Due Date. Your completed application is due May 27, 2003.

Address for Submitting Applications. All applications must be either mailed or sent via overnight/express mail delivery, addressed to: Department of Housing and Urban Development, Economic Development and Public Finance Division, Office of Policy Development and Research, 451 Seventh Street, SW., Room 8234, Washington, DC 20410.

Application Submission Requirements. New Security Procedures. HUD has implemented new security procedures that affect application submission procedures. Please read the following instructions carefully and completely. HUD will not accept hand-delivered applications. Applications may be mailed using the United States Postal Service (USPS) or may be shipped via one of the following delivery services: DHL, Falcon Carrier, FedEx, United Parcel Service (UPS), or United States Postal Service Express Mail. *No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of these carriers.*

Mailed Applications. Your application will be considered timely filed if your application is postmarked on or before 12 midnight of the application due date and received by the designated HUD office on or within fifteen (15) calendar days of the application due date. *All applicants must obtain and save* a Certificate of Mailing showing the date when the application was submitted to the USPS. The Certificate of Mailing (USPS Form 3817) will be your documentary evidence that your application was timely filed.

Applications Sent by Overnight/Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Due to new security measures, you must use either USPS express mail or one of four carrier services that do business with HUD Headquarters regularly. These services are DHL, Falcon Carrier, FedEx, and UPS. Delivery by these services must be made during HUD Headquarters business hours, between 8:30 AM and 5:30 PM Eastern time, Monday through Friday.

Other Transmission Methods. Only applications submitted via mail or one of the express carrier services identified above will be accepted. Facsimile, email, or other types of transmission are not acceptable.

FOR FURTHER INFORMATION CONTACT: You may contact: Dr. Alastair McFarlane, Department of Housing and Urban Development, Economic Development and Public Finance Division, Office of Policy Development and Research, 451 Seventh Street, SW., Room 8234, Washington, DC 20410, telephone (202) 708–0426, extension 5901, or Mr. Patrick Tewey, Grants Officer, (202) 708–1796, extension 4098 (these are not toll-free numbers). Hearing- and speech-impaired persons may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

II. Amount Allocated

Approximately $ 300,000 from HUD's FY 2002 Research and Technology appropriation will be available to fund research study proposals in FY 2002. Cooperative agreements will be awarded on a competitive basis according to the Rating Factors described in Section VII (D). HUD anticipates awarding seven to ten cooperative agreements ranging up to $40,000 each. Applications exceeding this amount (unless the excess is provided through cost-sharing) will be deemed to be non-responsive.

III. Program Description and Eligible Activities

(A) Program Description: Background

Identifying the extent and dimension of change occurring in American cities is an important part of HUD's mission. A better understanding of urban dynamics would support the pursuit of all of HUD's Strategic Goals (see Fiscal Year 2002 Annual Performance Plan, U.S. Department of Housing and Urban Development, May 2001), including Goal 1, "Increase the availability of decent, safe, and affordable housing in American communities," and Goal 4, "Improve community quality of life and economic vitality." Fundamental social science research on urban dynamics is relevant to housing and urban policy for at least three major reasons. First, an understanding of urban socio-economic factors, such as immigration, is critical in the evaluation of the impact of existing urban policy. Second, such research would allow HUD more accurately to predict the impact of a proposed rule or program. Third, innovative research may reveal issues,

about which little is known currently, that merit the attention of the Department. To accomplish these objectives, studies that utilize recently released data, such as the Census 2000 long-form data or other Census products such as County Business Patterns, are needed.

(B) Eligible Activities: Topics in Urban Research

This part lists major topics and questions on which HUD seeks information. HUD is interested in high-quality research that offers a unique contribution to the literature on urban economic and social change. The proposals may include descriptive studies, analytical studies, or both. These studies may identify or measure the factors associated with particular outcomes and the underlying causes of particular outcomes. The impact of existing policies may be described and analyzed. The proposals should highlight the policy implications of the potential findings of the proposed research, particularly with respect to policies that have been successful in urban areas. The methodology to be applied to the studies may include statistical techniques, econometric estimation, application of geographic information systems (GIS) techniques, case studies, a critical review of the present state of knowledge, and meta-analysis of existing studies. In each case, the methodology must reflect the state-of-the-art in the respective discipline. The final report for each empirical study will include a succinct discussion of the scholarly literature related to the issue being analyzed; this literature review will provide background for the methodology of the proposed study and a useful context for identifying the analytical and policy contributions of the study. The Department is interested in a wide variety of research topics. These topics are:

(1) Urban Economy

HUD is interested in research that would help explain the necessary conditions for a thriving urban economy as well as which local and federal policies encourage balanced or sustainable growth. Such research could support, for example, Strategic Objective 4.1, "The number, quality, and accessibility of jobs increase in urban * * * communities," and Strategic Objective 4.2, "Economic conditions in distressed communities improve." Possible topics include but are not limited to the following questions:

- *Economic development:* Are there any particular industries that are key to economic development? What are the implications of different types of agglomeration economies (*i.e.*, scale economies, economies of localization) for urban growth? What is the role of tax incentives in economic development? Are there geographic spillovers of economic development? To what extent does growth in the suburbs lead to growth in center cities? What is the impact of economic development on poverty? What role have faith-based institutions played in effective community development initiatives?
- *Economic change:* What have been the trends in employment, income, and wealth in center cities?
- *Labor markets:* What does recent data tell us about the significance of spatial mismatch between jobs and residents? What are the trends in unemployment among youth in cities? What is the impact of job growth on unemployment in cities? What has been the impact of welfare reform, urban development, and other fiscal policies on urban labor markets?
- *Housing and mortgage markets:* What is the impact of economic growth and other urban trends on the supply of affordable housing? What is the impact of gentrification on the economic welfare of the pre-existing residents of a neighborhood? What is the relationship between housing tenure and other variables such as employment status? What have been the dynamics (construction, rehabilitation, and transformation) of the rental housing stock of cities? What are the long- and short-run relationships between income growth and rents? What is the recent evidence on the causes and consequences of homelessness? What has been the impact on urban economies of the substantial increase in affordable lending during the 1990's? What problems do inner-city residents face in obtaining financing? What role do mainstream lenders play in inner cities?
- *Urban Public Finance:* What is the extent of the fiscal disparities among urban and suburban local governments? What is the impact of fiscal conditions on economic growth and vice-versa? What are some of the determinants of fiscal health? How have some of the fiscal innovations of the last decades affected the public finances of cities?

(2) Urban Demographics

HUD would be interested in research that reveals both the characteristics of cities' populations as well as the spatial patterns of real estate development.

- *Population characteristics:* How has the proportion of elderly, immigrants, minorities, and female-headed households changed over the last ten years and why? What are the demographics of population growth, or decline, in cities? What would be the projections of population growth in cities based on observed trends?
- *Urban growth:* What is the role of migration (both foreign and domestic) in the growth of urban centers? What are the most recent causes and consequences of suburbanization? To what extent are minorities relocating to suburban areas and why? What is the degree of interdependence between suburbs and cities?
- *Patterns of population density:* What has been the change in the spatial distribution of population and why? Is there a significant relationship between the density of population and other variables such as housing affordability, economic growth, or fiscal health? What is the role of subcenters in the urban economy?

(3) Urban Issues

HUD is interested in research concerning social and economic issues that are unique to urban areas as well as social problems that are particularly concentrated in urban areas.

- *Education:* Which policies have been successful in improving inner-city schools? What is the extent of spending inequalities in education? What has been the trend in education levels required for employment in cities? What is the impact of education on poverty? What role do colleges and universities play in the economic development of cities?
- *Crime:* What are some of the social and economic variables that appear to influence crime in cities? What is the cost of crime in terms of metropolitan and urban growth? What are the relative impacts of different social and criminal justice policies on crime rates? How are property crime and violent crime different with respect to all of the above questions? How is crime in cities different from crime in the suburbs?
- *Poverty:* How has the income distribution of urban centers changed? What have been the recent trends in urban poverty, especially in the concentration of poverty in cities? What are the explanations for these changes in urban poverty? What is the trend of gaps between inner city-suburban social indicators?
- *Transportation and commuting patterns:* What have been the recent trends in commuting times and distances in cities? How are these trends related to mode of transport and

automobile ownership? How are trends in transportation affected by characteristics of the urban area? What is the impact of traffic congestion on decentralization?

Many of these research topics could be addressed using the 1990 and 2000 Census data (short- and long-forms).[2] Longer-term comparisons may be made using census data from before 1990 or other socioeconomic databases such as the Panel Study of Income Dynamics. The Census of Population and Housing data may be supplemented with other databases from the Census such as County Business Patterns data, the American Housing Survey data (including the geocoded version of that database), or other national or local databases.

IV. Program Threshold Requirements

(A) Eligible Applicants

Academic and not-for-profit institutions located in the U.S., state and local governments, and federally recognized Indian tribes are eligible to apply under this NOFA. For-profit firms also are eligible; however, they are not allowed to earn a fee (*i.e.*, no profit can be made from the project). Federal agencies and federal employees are not eligible to submit applications.

A particular author or group of co-authors may submit separate research proposals on more than one topic, but no more than one award will be made to any one such author or group of co-authors.

You may address more than one of the technical study topic areas within your proposal or submit separate applications for different topic areas. Projects need not address all of the objectives within a given topic area. While you will not be penalized for not addressing all of the specific objectives for a given topic area, if two applications for technical study in a given topic have equal scores, HUD will select the applicant whose project addresses the most objectives.

(B) Period of Performance

The period of performance may not exceed 18 months from the time of award.

(C) Existing Resources

HUD technical studies funds may not replace existing resources dedicated to any ongoing project.

(D) Protection of Human Subjects

Human research subjects must be protected from research risks in conformance with Federal Policy for the Protection of Human Subjects, codified by HUD at 24 CFR part 60.

(E) Compliance With Fair Housing and Civil Rights Laws

(1) With the exception of federally recognized Indian tribes and their instrumentalities, all applicants and their sub-recipients must comply with all Fair Housing and Civil Rights laws, statutes, regulations, and Executive Orders as enumerated in 24 CFR 5.105(a). If you are a federally recognized Indian tribe, you must comply with the non-discrimination provisions enumerated at 24 CFR 1003.601, as applicable.

(2) If you, the applicant:

- Have been charged with a systemic violation of the Fair Housing Act alleging ongoing discrimination;
- Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an on-going pattern or practice of discrimination; or
- Have received a letter of non-compliance findings under Title VI, Section 504, or Section 109, and if the charge, lawsuit, or letter of findings has not been resolved to HUD's satisfaction before the application deadline stated in this NOFA, you may not apply for assistance under this NOFA. HUD will not rate and rank your application. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of on-going discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(F) Conducting Business In Accordance With Core Values and Ethical Standards

Entities subject to 24 CFR Parts 84 and 85 (most non-profit organizations and state, local and tribal governments or government agencies or instrumentalities who receive federal awards of financial assistance) are required to develop and maintain a written code of conduct (see Sections 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must: Prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, and agents for their personal benefit in excess of minimal value; and, outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this NOFA, you will be required, prior to entering into a cooperative agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your code of conduct.

(G) Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses

HUD is committed to ensuring that small businesses, small disadvantaged businesses, and women-owned businesses participate fully in HUD's direct contracting and in contracting opportunities generated by HUD cooperative agreement funds. Too often, these businesses still experience difficulty accessing information and successfully bidding on federal contracts. State, local, and tribal governments are required by 24 CFR 85.36(e) and non-profit recipients of assistance by 24 CFR 84.44(b), to take all necessary affirmative steps in contracting for purchase of goods or services to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(H) Additional Non-Discrimination Requirements

You, the applicant, and your sub-recipients must comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 1201 *et seq.*) and title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq.*)

V. Application Submission Requirements

(A) Applicant Information

Your application must contain the items listed in this Section V, as follows:

(1) A transmittal letter (limited to one page) which identifies the purpose for which the technical study program funds are requested, the dollar amount requested, and the applicant or applicants submitting the application. If two or more organizations are working together on the project, a primary applicant must be designated;

(2) Checklist and Submission Table of Contents (see Appendix);

(3) Name of primary applicant and any sub-recipients (such as consortium associates, partners, subcontractors, joint venture participants, or others contributing resources to your project), with contact information (*i.e.*, name, mailing address, and telephone number of principal contact person) for each;

(4) An abstract (limited to two pages) containing the following information: The project title, the names and affiliations of all investigators, and a summary of the research problem and study design as described in the project narrative;

(5) A project narrative (limited to a total of 25 pages) which discusses your qualifications and your study plan and addresses the following topics, which correspond to the Rating Factors for award of funding as stated in Section VI (D), below. The narrative statement must be organized in sections numbered in accordance with this outline.

a. Applicant and organizational qualifications, including qualifications of the principal investigator and key personnel, experience in managing similar projects, and past performance in managing project funds. See the discussion of Rating Factor 1 in Section VI (D).

b. The problem to be addressed. See Rating Factor 2.

c. Technical study plan, including study design, quality assurance mechanisms, and project management plan. See Rating Factor 3. Also see discussion of management plan in Section VI (b).

d. Statement of non-HUD resources to be applied, if any. See Rating Factor 4.

e. Statement on coordination, self-sufficiency, and sustainability of your work. See Rating Factor 5. Any pages in excess of the 25-page limit will not be read;

(6) Discussion of desired HUD resources, if applicable. See Section IV (C).

(7) You may provide attachments, appendices, bibliography, or other relevant materials that support your project narrative, but these must not exceed 20 pages in the aggregate. Any pages in excess of the 20 page limit will not be read;

(8) The resumes of the principal investigator and other key personnel. Resumes shall not exceed three pages each and are limited to information that is relevant in assessing the qualifications of key personnel to conduct and/or manage the proposed technical studies; and

(9) Indirect Cost Rate Agreement, if available. Applicants that have established indirect cost rate agreements shall provide a copy of the agreement from their cognizant federal agency. The cognizant agency is the federal agency responsible for negotiating and approving indirect cost rates for the grantee. A grantee that has not previously established an indirect cost rate with a federal agency shall submit its initial indirect cost proposal immediately after the grantee is advised that an award will be made.

(B) Standard Forms, Certifications and Assurances

You, the applicant, are required to submit signed copies of the following forms, certifications, and assurances:

- Application for Federal Assistance (HUD–424);
- Applicant Assurances and Certifications (HUD–424–B);
- Detailed Budget (SF–424–CB);
- Detailed Budget Worksheet (SF–424–CBW); Note that the thoroughness, clarity, and coherence of the budget information that you provide on the Detailed Budget Worksheet will be evaluated under Rating Factor 4. You must thoroughly document and justify all budget categories and costs and all major tasks, for yourself and any sub-recipients contributing resources to the project. Your budget should include the cost of travel to Washington for at least one member of the project team to meet with HUD representatives or participate in a research seminar or symposium;
- If required, the Disclosure Form Regarding Lobbying (SF–LLL). See the first paragraph under "certifications" on page 2 of form HUD–424;
- Disclosure/Update Report (HUD–2880);
- Acknowledgment of Application Receipt (HUD–2993); and
- Client Comments and Suggestions (HUD 2994).

Copies of these standard forms, with instructions as applicable, are appended to this NOFA.

VI. Application Selection Process

(A) Program Threshold Requirements

HUD will review your application to determine whether it meets all of the program threshold requirements described in Section V above. Only applications that meet all of the threshold requirements will be eligible to be rated and ranked.

(B) Rating

Applications that meet all of the threshold requirements will be eligible to be scored and ranked, based on the total number of points allocated for each of the Rating Factors described below. Your application must receive a total score of at least 70 points to remain in consideration for funding.

(C) Ranking and Selection

Selection of award recipients will be based on the ranking of aggregate scores, within the limits of funding availability. In selecting award recipients, HUD will award the highest ranked application in each of the research topics listed in paragraph III (B) above. HUD will then select the second highest ranked application in each research topic and continue this process as long as funding remains available. Awards may be made to two or more recipients proposing work on a particular topic. In order to be funded, applicants must receive a minimum score of 70 points.

(D) Rating Factors

The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points to be awarded is 100.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (30 Points)

Points will be awarded under the following three sub-factors, based on the extent to which your proposal indicates that you have the ability and organizational resources necessary to implement successfully your proposed activities in a timely manner. The rating of you, the "applicant," will include any sub-recipients that will contribute resources to the project. In rating this factor HUD will consider and award points based on the extent to which your application demonstrates:

(a) *That the principal investigator and key personnel are capable and qualified to accomplish the proposed research, based on their education/training and previous completed research* (15 points). Qualifications to carry out the proposed study will be evaluated based on the academic background of personnel, relevant publications, and recent (within the past 10 years) research experience relevant to the type of work proposed. Publications and research experience are considered relevant if they required the acquisition and use of knowledge and skills that can be applied in the planning and execution of the technical study that is proposed.

(b) *That the project manager(s) has demonstrated ability to manage this research, based on past performance in managing similar projects* (10 points). Points will be awarded based on demonstrated ability to successfully manage your study in such areas as personnel management, project management, data management, quality control, community study involvement (if applicable), and report writing, as well as overall success in project completion (*i.e.*, projects completed on time and within budget). You should also demonstrate that your project would have adequate administrative support, including clerical and specialized support in areas such as accounting and equipment maintenance, as relevant.

[2] Applicants should take note of changes in minority categorization, metropolitan area specification, etc. that became effective with the 2000 Census.

(c) *That the primary applicant and any sub-recipients are capable of managing project funds, based on past performance* (5 points). Points will be awarded based on the extent of demonstrated ability to account for funds appropriately and timely use of funds received either from HUD or other federal, state, or local programs, or private programs. HUD may include information at hand or available from public sources such as, but not limited to, newspapers, Inspector General or Government Accounting Office Reports or Findings, and/or hotline complaints that have been proven to have merit.

Rating Factor 2: Need/Extent of the Problem (10 Points)

Points will be awarded based on the extent to which your proposal establishes that your proposed research will address documented problems, target areas or target groups. In responding to this factor, you should document in detail how your project would make a significant contribution toward achieving some or all of HUD's stated goals and objectives for one or more of the topic areas described in Section III (B).

Rating Factor 3: Soundness of Technical Study Approach (50 Points)

Points will be awarded based on the quality of your proposed study plan, under the following four sub-factors, as described in your proposal. Specific components that will be evaluated include the following:

(a) *Soundness of the study design* (30 points). Describe the thoroughness and feasibility of your project and study design, and the extent to which it reflects a comprehensive understanding of the relevant technical literature. It should clearly describe how your study builds upon the current state of knowledge for your focus area. If possible, your study should be designed to address testable hypotheses, which are clearly stated. Your study design should be statistically based, with sufficient data to provide an adequate test of your stated hypotheses. The study design should be presented as a logical sequence of steps or phases, with individual tasks described for each phase. You should identify any important "decision points" in your study plan, and you should discuss plans for data management, analysis and archiving.

(b) *Quality assurance mechanisms* (10 points). Describe the adequacy of quality assurance mechanisms that will be integrated into your project design to ensure the validity and quality of the results. Areas to be addressed include acceptance criteria for data quality, procedures for selection of samples/sample sites, sample handling, measurement and analysis, and any standard/nonstandard quality assurance/control procedures to be followed. Documents (*e.g.*, government reports, peer-reviewed academic literature) that provide the basis for your quality assurance mechanisms should be cited.

(c) *Project management plan* (8 points). The extent to which your schedule for the completion of major activities, tasks and deliverables, and your budget, confirm that there will be adequate resources (*e.g.*, personnel, financial) to carry out your study design successfully within the proposed time frame, taking into account timing requirements stated in section IV, above.

(d) *Budget Proposal* (2 Points). Two points will be awarded if your budget proposal thoroughly estimates all applicable direct and indirect costs and is presented in a clear and coherent format. One point, or no points, will be awarded if your budget proposal is deficient in this regard, based on the degree of deficiency.

Rating Factor 4: Leveraging of Resources (5 Points)

You are encouraged to demonstrate that the effectiveness of HUD's funds will be increased by securing other public and/or private resources or by structuring the project in a cost-effective manner, such as integrating the project into an existing study. Resources may include funding or in-kind contributions (such as services, facilities, or equipment) allocated to the purpose(s) of your project. Staff and in-kind contributions should be given a monetary value. Larger such commitments will be awarded more points under this Rating Factor.

You should provide evidence of leveraging/partnerships by attaching to your application letters of firm commitment, memoranda of understanding, or agreements to participate from those entities identified as partners in the project efforts. Each letter of commitment, memorandum of understanding, or agreement to participate must include the organization's name, proposed level of commitment (with monetary value), and responsibilities as they relate to specific activities or tasks of your proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (5 Points)

(a) The extent to which you have coordinated your activities with other organizations that have or are in the process of conducting similar or related work;

(b) Evidence that your proposed study builds upon the existing body of related work and it does not significantly duplicate work that is currently being conducted, or has been conducted, by other organizations (to the extent that this can be ascertained); and

(c) The extent to which your project will help generate practical solutions that can be implemented on the local or national level for improving the economic vitality and the quality of life in cities.

(E) Negotiations; Amount To Be Awarded

After HUD has rated and ranked all applications and made selections, HUD may require, depending upon the program, that all winners participate in negotiations to determine the specific terms of the cooperative agreement and budget. HUD is not required to approve or fund all proposal activities. In cases where HUD cannot successfully conclude negotiations with a selected applicant or a selected applicant fails to provide HUD with requested information, an award will not be made to that applicant. In this instance, HUD may offer an award, and proceed with negotiations with the next-highest ranking applicant.

(F) Adjustments to Funding

(1) HUD reserves the right to fund less than the full amount requested in your application to ensure the fair distribution of the funds and that the purposes of this program are met.

(2) HUD will not fund any portion of your application that: is not eligible for funding under specific program statutory or regulatory requirements; does not meet the requirements of this NOFA; or may be duplicative of other funded programs or activities from previous years' awards or other selected applicants. Only the eligible portions of your application (including non-duplicative portions) may be funded.

(3) Purchase or lease of equipment having a per unit cost in excess of $5,000 will not be funded unless prior written approval is obtained from HUD.

(4) If funds remain after funding the highest-ranking applications, HUD may fund all or part of the next highest-ranking application in a given program. If you, the applicant, turn down an award offer, HUD will make an offer of funding to the next-highest ranking application.

(5) In the event HUD commits an error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round of this NOFA, HUD may select that applicant when sufficient funds become available.

(G) Audit

Grantees/applicants that expend $300,000 or more in a year in federal awards shall have a single or program-specific audit conducted for that year in accordance with OMB Circular A–133. Grantees/applicants shall ensure that their most recent completed audit has been submitted to the federal Audit Clearinghouse for review by HUD (refer to *www.harvester.census.gov/sac/*). Grantees/applicants that do not have such an audit or are not subject to OMB Circular A–133 will be asked to provide a copy of their organization's most recent audit or other evidence that financial controls are in place before an award can be finalized.

VII. Cooperative Agreement Structure; Publication of Studies

The awards will be structured as cooperative agreements, in order to provide latitude to researchers to proceed independently, but with opportunity for HUD to provide comments at appropriate points in work. HUD's participation will include review and comment on the study design and draft final report and participation in a seminar on the research. If you believe that a greater extent of substantive involvement by HUD personnel in your project would be advantageous for the successful accomplishment of your research objectives, please include in your project description/narrative a discussion of the desired HUD resources and the rationale (this is item 6 in the list of application items provided in Section V (A) above). Formal commitments regarding this aspect of the cooperative agreement would then become a matter for negotiation prior to award (see Section VI (E), above).

Your management plan must provide for the following work steps to be performed by you and by HUD:

- You will submit a detailed study design, comprising identified research issue(s), a technical proposal, and methodological approach. This will be due no later than six weeks from the date of award, unless you indicate a specific rationale for a different schedule. HUD will provide comments to you on the study design;
- You will submit a draft report to HUD no later than twenty (20) weeks prior to the scheduled ending date of the project. HUD will provide comments on the draft report, which may include comments of peer reviewers engaged by HUD;
- At least one investigator will travel to Washington (or another location, as mutually agreed) to present the study, at a time to be arranged with HUD representatives, subsequent to submission of the draft final report; and
- You will submit a final report taking account of the comments.

A cost-reimbursement award based on the negotiated budget is anticipated.

A payment schedule based on the completion of project milestones will be established in negotiation. An amount equal to 20 percent of the total amount of the cooperative agreement will be withheld and paid by HUD only after the final project report has been received and accepted by HUD.

The terms and conditions of the cooperative agreement will include restrictions against the applicant's release of work products, quotation or paraphrasing from work products or disclosures of interim findings prior to 60 days after HUD acceptance of your final report except with HUD approval. Thereafter, recipients are free to publish without HUD approval. The present provisions of OMB-Circular A–110, Subpart C, and HUD regulations at 24 CFR Part 84, Subpart C shall govern the right to intellectual or intangible property developed as a result of a recipient's performance under a cooperative agreement.

VIII. Findings and Certifications

(A) Environmental Impact

This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition leasing, rehabilitation, alteration, demolition or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

(B) Federalism Impact

Executive Order 13132 (captioned "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This NOFA does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

(C) Executive Order 12372, Intergovernmental Review of Federal Programs

Executive Order 12372 was issued to foster intergovernmental partnership and strengthen federalism by relying on state and local processes for the coordination and review of federal financial assistance and direct federal development. The Order allows each state to designate an entity to perform a state review function. The official listing of State Points of Contact (SPOC) for this review process can be found at *http://www.whitehouse.gov/omb/grants/spoc.html*. States not listed on the website have chosen not to participate in the intergovernmental review process and, therefore, do not have a SPOC. If your state has a SPOC, you should contact them to see if they are interested in reviewing your application prior to submission to HUD. Please make sure that you allow ample time for this review process when developing and submitting your applications. If your state does not have a SPOC, or your SPOC declines to review or is unable to review your application in a timely manner, you may send applications directly to HUD.

(D) Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for federal contracts and grants from using appropriated funds to attempt to influence federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will

not make any prohibited payments and, if any payments or agreement to make payments of non-appropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995), which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

(E) Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations in 24 CFR part 4, subpart A contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. HUD will comply with the documentation, public access, and disclosure requirements of section 102 with regard to the assistance awarded under this NOFA, as follows:

(1) *Documentation and Public Access Requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15;

(2) *Disclosures.* HUD will make available for public inspection for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also reported on HUD Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15; and

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR part 4 provide that HUD will publish a Notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 1092(a) of the HUD Reform Act; and/or

(ii) Assistance provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(F) Applicant Debriefing

Beginning not less than 30 days after the awards for assistance are announced in the **Federal Register**, and for at least 120 days after awards for assistance are announced, HUD will provide any requesting applicant with a debriefing on their application. All requests for debriefing must be made by the principal investigator for the proposed study or by the authorized official whose signature appears on the SF–424 or his or her successor in office. Submit your request to Mr. Patrick Tewey at (202) 702–1796, extension 4098. Information provided during your debriefing will include, at a minimum, the final score you received for each Rating Factor, final evaluator comments for each Rating Factor, and the final assessment indicating the basis upon which assistance was provided or denied.

(G) Section 103 HUD Reform Act

HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.)

(H) Paperwork Reduction Act Statement

The information collection requirements in this NOFA have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The OMB number is 2528–0227. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(I) Catalog of Federal Domestic Assistance Numbers

The Federal Domestic Assistance number for this program is 14.506.

IX. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you to clarify an item in your application or to correct technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of your response to any Rating Factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by USPS, return receipt requested. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete and it will not be considered for funding.

X. Authority

These cooperative agreements are authorized under sections 501 and 502 of the Housing and Urban Development Act of 1970.

Dated: December 5, 2002.

Harold Bunce,

Deputy Assistant Secretary for Economic Affairs.

Appendix

Checklist and Submission Table of Contents; Research on the Socioeconomic Change in Cities

The following checklist is provided to ensure you have submitted all required items to receive consideration for funding. You must assemble the application in the order shown below and note the corresponding page number where the response is located. You must include this checklist and submission table of contents with the proposal.

	page number
☐ Transmittal Letter (limited to one page)	cover page
☐ Checklist and submission table of contents (*i.e.*, this page)	_____
☐ Name of primary applicant and any sub-recipients, with contact information for each	_____
☐ Abstract (limited to two pages)	_____
Project narrative (limited to 25 pages total)	
☐ 1. Applicant and organizational qualifications	_____
☐ 2. The problem to be addressed	_____
☐ 3. Technical study plan (study design, quality assurance mechanisms, and project management plan	_____
☐ 4. Non-HUD resources to be applied (if any)	_____
☐ 5. Statement on coordination, self-sufficiency, and sustainability	_____
☐ Discussion of desired HUD resources, if applicable	_____
☐ Conflict of interest disclosure	_____
☐ Attachments, appendices, bibliography; or other relevant materials, if any (limited to 20 pages)	_____
☐ Resumes (limited to three pages per individual)	_____
☐ Indirect cost rate agreement, if available	_____
☐ Application for Federal Assistance (Form HUD–424)	_____
☐ Applicant Assurances and Certifications (Form HUD 424–B)	_____
☐ Detailed Budget (Form HUD–424–CB)	_____
☐ Detailed Budget Worksheet (Form HUD–424–CBW)	_____
☐ Disclosure of Lobbying Activities, if required (Standard Form LLL)	_____
☐ Disclosure/Update Report (Form HUD–2880)	_____
☐ Acknowledgment of Application Receipt (Form HUD–2993)	_____
☐ Client Comments and Suggestions (Form HUD–2994) Forms	_____

Forms

Copies of required forms are attached. Instructions are included where applicable.

BILLING CODE 4210–62–P

Application for Federal Assistance

OMB Approval No. 0348-0043

	2. Date Submitted (mm/dd/yyyy)	Applicant Identifier
1. Type of Submission Application: ☐ Construction ☐ Non-Construction Pre-application: ☐ Construction ☐ Non-Construction	3. Date Received by State (mm/dd/yyyy)	State Application Identifier
	4. Date Received by Federal Agency (mm/dd/yyyy)	Federal Identifier

5. Applicant Information

Legal Name	Organizational Unit
Address (give city, county, State, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. Employer Identification Number (EIN) (xx-yyyyyyy)

7. Type of Applicant (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Inter-municipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N Nonprofit
O Public Housing Agency
P. Other (Specify)

8. Type of Application:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify)

9. Name of Federal Agency

10. Catalog of Federal Domestic Assistance Number (xx-yyy)
Title:

11. Descriptive Title of Applicant's Project

12. Areas Affected by Project (cities, counties, States, etc.)

13. Proposed Project		14. Congressional Districts of	
Start Date (mm/dd/yyyy)	Ending Date (mm/dd/yyyy)	a. Applicant	b. Project

15. Estimated Funding

Complete form HUD-424-M, Funding Matrix

16. Is Application Subject to Review by State Executive Order 12372 Process?
a. **Yes** This pre-application/application was made available to the State Executive Order 12372 Process for review on:
Date (mm/dd/yyyy)_____
b. **No** ☐ Program is not covered by E.O. 12372
or ☐ Program has not been selected by State for review.

17. Is the Applicant Delinquent on Any Federal Debt?
☐ Yes If "Yes," attach an explanation ☐ No

18. To the best of my knowledge and belief, all data in this application/pre-application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number (Include Area Code)
d. Signature of Authorized Representative		e. Date Signed (mm/dd/yyyy)

Previous Edition Usable
Authorized for Local Reproduction

form SF-424 (7/97)
Prescribed by OMB Circular A-102

Instructions for the SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043, Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item — Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For pre-applications, use a separate sheet to provide a summary description of this project.

Item — Entry

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. **Use form HUD-4243-M, Funding Matrix.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Previous Edition Usable
Authorized for Local Reproduction

form SF-424 (7/97)
Prescribed by OMB Circular A-102

Instructions for the HUD-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This form must be used by applicants requesting funding from the Department of Housing and Urban Development. This application form HUD-424 incorporates the Assurances and Certifications (HUD-424-B). You may either (1) attach the Assurances and Certifications to the application or (2) renew the certifications that you previously made on behalf of your organization and submitted to HUD if the legal name of your organization has not changed and you were the authorized representative who signed the Assurances and Certifications.

Item Number Instructions

1. Please indicate whether your application is for a formal application submission or a preliminary application (pre-application). HUD does not accept pre-applications for programs funded through the SuperNOFA.
2. Enter the date you are submitting your application to HUD.
3. This box will be completed by HUD. When received by HUD, your application will be stamped:
   (a) with a date; and
   (b) with the time received.
4. Leave Blank. This will be completed by the HUD program office receiving your application. When HUD accepts electronic applications for the grant program you are applying for, this number will be computer generated.
5. If your application is to renew or continue an existing grant, provide the existing grant number. If a new award, please leave blank.
6. Leave blank if you have not been provided a HUD ID number or user number. If you are a Public Housing Authority, enter your HUD issued Public Housing Authority ID number.
7. Enter the legal name of your organization applying for HUD funding.
8. Enter the name of the primary unit in your organization, if applicable, which will be responsible for the program.
9. Enter the complete address of your organization.
10. Enter the name, title, telephone number, fax number, and E-mail of the person to contact on matters related to your application.
11. Enter your organization's Employer Identification Number (EIN) as assigned by the Internal Revenue Service or if you are applying as an individual, your Social Security Number.
12. Choose from the list and enter the appropriate letter in the space provided. You must be an eligible applicant to apply for assistance. You must read the program information requirements to determine if you are a type of applicant that is eligible to apply for assistance under the program.
13. Enter the type of application you are submitting for funding consideration.

Check the appropriate box.

- [ ] **"New"** means you are applying for a new grant award.
- [ ] **"Continuation"** means you are requesting an extension of an existing award.
- [ ] **"Renewal"** means you are requesting funding for renewal of an existing grant. e.g. Supportive Housing Program (SHP) or Shelter + Care grant.
- [ ] **"Revision"** means you are submitting a revision prior to the application due date in response to HUD's request for clarification or modification to your initial submission.

14. Pre-filled.
15. Enter the Catalog of Federal Domestic Assistance (CFDA) number and title and, if applicable, component title of the program.
16. Enter a brief description of your program and key activities.
17. Identify the location(s) where your activities will take place. If this is the entire state, enter "Entire State".
18a. Enter the proposed start date.
18b. Enter the proposed end date.
19a. List the Congressional District(s) where your organization is located.
19b. List any Congressional District(s) where your program of activities or project sites will be located.
20. You must complete the funding matrix on page 2 of this form. Enter the following information:

Grant Program: The HUD funding program under which you are applying.

HUD Share: Please check the program requirements. Enter the amount of HUD funds you are requesting in your application.

Applicant Match: Enter the amount of funds or cash equivalent of in-kind contributions you are contributing to your project or program of activities.

Other Federal Share: Enter the amount of other Federal funds for your program of activities.

Instructions for the HUD-424 (Continued)

State Share: Enter the amount of funds or cash equivalent of in-kind services the State is providing to your project or program of activities.

Local/Tribal Share: Enter the amount of funds or cash equivalent of in-kind services your local/tribal government is providing to your project or program of activities.

Other: Enter the amount of other sources of private, non-profit, or other funds or cash equivalent of in-kind services being provided to your project or program of activities.

Program Income: Enter the amount of program income you expect to generate over the life of your award.

Total: Please total all columns and fill in the amounts.

21. You should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 or check your application kit to determine whether the State Intergovernmental Review Process is required.
22. This question applies to your applicant organization, not the person signing as your organization's authorized representative. Categories of debt include disallowed costs that requires repayment to HUD.
23. To be signed by the authorized representative of your organization. A copy of your governing body's authorization for you to sign this application must be available in your organization's office.

Applicant Assurances and Certifications	U.S. Department of Housing and Urban Development	OMB Approval No. 2501-0017 (exp. 03/31/2005)

Instructions for the HUD-424-B Assurances and Certifications

As part of your application for HUD funding, you, as the official authorized to sign on behalf of your organization or an an individual must provide the following assurances and certifications. By signing this form, you are stating that to the best of your knowledge and belief, all assertions are true and correct.

As the duly authorized representative of the applicant, I certify that the applicant [Insert below the Name and title of the Authorized Representative, name of Organization and the date of signature]:

Name:_____, Title:_____.

Organization:_____, Date:_____.

1. Has the legal authority to apply for Federal assistance, has the institutional, managerial and financial capability (including funds to pay the non-Federal share of program costs) to plan, manage and complete the program as described in the application and the governing body has duly authorized the submission of the application, including these assurances and certifications, and authorized me as the official representative of the applicant to act in connection with the application and to provide any additional information as may be required.

2. Will administer the grant in compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and implementing regulations (24 CFR Part 1), which provide that no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance OR if the applicant is a Federally recognized Indian tribe or its tribally designated housing entity, is subject to the Indian Civil Rights Act (25 U.S.C. 1301-1303).

3. Will administer the grant in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and implementing regulations at 24 CFR Part 8, and the Age Discrimination Act of 1975 (42 U.S.C. 6101-07), as amended, and implementing regulations at 24 CFR Part 146 which together provide that no person in the United States shall, on the grounds of disability or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance; except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

4. Will comply with the Fair Housing Act (42 U.S.C. 3601-19), as amended, and the implementing regulations at 24 CFR Part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, disability, familial status, or national origin; except an applicant which is an Indian tribe or its instrumentality which is excluded by statue from coverage does not make this certification; and further except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

5. Will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601) and implementing regulations at 49 CFR Part 24 and 24 CFR 42, Subpart A.

6. Will comply with the environmental requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related Federal authorities prior to the commitment or expenditure of funds for property acquisition and physical development activities subject to implementing regulations at 24 CFR parts 50 or 58.

7. Will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about --

(1) The dangers of drug abuse in the workplace;

(2) The applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required in Paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statue occurring in the workplace no later than five calendar days after such conviction;

Applicant Assurances and Certifications (Continued)	U.S. Department of Housing and Urban Development	OMB Approval No. 2501-0017 (exp. 03/31/2005)

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee has worked, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(h). The applicant may insert in the space provided below the site(s) for the performance of work or may provide this information in connection with each application.

(i). Place of Performance (street address, city, county, state, zip code)

8. In accordance with 24 CFR Part 24, and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three year period preceding this proposal, been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in the preceding paragraph of this certification; and

(d) Where the applicant is unable to certify to any of the statements in this certification, an explanation shall be attached.

(e) Will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction, " provided by the HUD without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

These certifications and assurances are material representations of the fact upon which HUD can rely when awarding a grant. If it is later determined that I, the applicant, knowingly made an erroneous certifications or assurance, I may be subject to criminal prosecution. HUD may also terminate the grant and take other available remedies.

Grant Application Detailed Budget
(Applicant should duplicate this first page as necessary)

U.S. Department of Housing and Urban Development

OMB Approval No. 2501-0017 (exp. 03/31/2005)

Name of Project/Activity:	Functional Categories (Year 1)								
	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income	Total
a. Personnel (Direct Labor)	$	$	$	$	$	$	$	$	$
b. Fringe Benefits									
c. Travel									
d. Equipment (Only Items Over $5,000 Depreciated Value)									
e. Supplies (Only Items Over $5,000 Depreciated Value)									
f. Contractual									
g. Other (Direct Costs)									
h. Indirect Costs (% Approved Indirect Cost Rate:___%)									
Subtotal:									
Name of Project/Activity:									
a. Personnel (Direct Labor)	$	$	$	$	$	$	$	$	$
b. Fringe Benefits									
c. Travel									
d. Equipment									
e. Supplies									
f. Contractual									
g. Other (Direct Costs)									
h. Indirect Costs (% Approved Indirect Cost Rate:___%)									
Subtotal:									
Name of Project/Activity:									
a. Personnel (Direct Labor)	$	$	$	$	$	$	$	$	$
b. Fringe Benefits									
c. Travel									
d. Equipment									
e. Supplies									
f. Contractual									
g. Other (Direct Costs)									
h. Indirect Costs (% Approved Indirect Cost Rate:___%)									
Subtotal:									
Grand Total (Year 1):									

Grant Application Detailed Budget
(Applicant should duplicate this first page as necessary)

U.S. Department of Housing and Urban Development

OMB Approval No. 2501-0017 (exp. 03/31/2005)

Name of Project/Activity:	Functional Categories (Year 2)								
	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income	Total
a. Personnel (Direct Labor)	$	$	$	$	$	$	$	$	$
b. Fringe Benefits									
c. Travel									
d. Equipment (Only Items Over $5,000 Depreciated Value)									
e. Supplies (Only Items Over $5,000 Depreciated Value)									
f. Contractual									
g. Other (Direct Costs)									
h. Indirect Costs (% Approved Indirect Cost Rate:___%)									
Subtotal:									
Name of Project/Activity:									
a. Personnel (Direct Labor)	$	$	$	$	$	$	$	$	$
b. Fringe Benefits									
c. Travel									
d. Equipment									
e. Supplies									
f. Contractual									
g. Other (Direct Costs)									
h. Indirect Costs (% Approved Indirect Cost Rate:___%)									
Subtotal:									
Name of Project/Activity:									
a. Personnel (Direct Labor)	$	$	$	$	$	$	$	$	$
b. Fringe Benefits									
c. Travel									
d. Equipment									
e. Supplies									
f. Contractual									
g. Other (Direct Costs)									
h. Indirect Costs (% Approved Indirect Cost Rate:___%)									
Subtotal:									
Grand Total (Year 2):									

Grant Application Detailed Budget

(Applicant should duplicate this first page as necessary)

U.S. Department of Housing and Urban Development

OMB Approval No. 2501-0017 (exp. 03/31/2005)

Name of Project/Activity:	Functional Categories (Year 3)								
	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income	Total
a. Personnel (Direct Labor)	$	$	$	$	$	$	$	$	$
b. Fringe Benefits									
c. Travel									
d. Equipment (Only Items Over $5,000 Depreciated Value)									
e. Supplies (Only Items Over $5,000 Depreciated Value)									
f. Contractual									
g. Other (Direct Costs)									
h. Indirect Costs (% Approved Indirect Cost Rate:___%)									
Subtotal:									
Name of Project/Activity:									
a. Personnel (Direct Labor)	$	$	$	$	$	$	$	$	$
b. Fringe Benefits									
c. Travel									
d. Equipment									
e. Supplies									
f. Contractual									
g. Other (Direct Costs)									
h. Indirect Costs (% Approved Indirect Cost Rate:___%)									
Subtotal:									
Name of Project/Activity:									
a. Personnel (Direct Labor)	$	$	$	$	$	$	$	$	$
b. Fringe Benefits									
c. Travel									
d. Equipment									
e. Supplies									
f. Contractual									
g. Other (Direct Costs)									
h. Indirect Costs (% Approved Indirect Cost Rate:___%)									
Subtotal:									
Grand Total (Year 3):									

Instructions for the HUD Grant Application Detailed Budget Form

Public reporting Burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

General Instructions

This form is designed so that an application can be made for any of HUD's grant programs. Space is provided for 3 separate programs on each sheet per program year. In preparing the budget, adhere to any existing HUD requirements which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, HUD may require budgets to be shown separately by function or activity.

Your budget information should show the entire cost of your proposed program of activities per year. If you are not using funds in any of the line item categories, you should leave the item blank.

NOTE: Not all budget categories on this form are eligible for funding under all programs. Please see eligible activities under the specific program for which you are seeking funding.

Budget Categories

The budget categories identifies how your program funds will be allocated by type of use, e.g., funds going for salaries, travel, contracts, etc. Each of these line items should be broken out under each column.

Lines a-f--Show the totals of Lines a to f in each column.

Line g.--Enter any other direct costs not already addressed above.

Line h.--Show the amount of indirect costs, and indicate the approved indirect rate, if applicable.

Subtotal--Total all the budget categories and place the amounts under each column on this line.

Grand Total (by Year)-- Total all the subtotals for each year and place the amounts under each column on this line.

For each budget category (personnel, fringe benefits, travel, etc) you should identify the amount of funding you plan on using in your grant program. You should complete each column as follows:

Column 1 - Identify the amount of funds that you will need from the HUD grant program for which you are seeking funding.

Column 2 - Identify any matching funds that you are required to include in your proposed program in order to be eligible for assistance.

Column 3 - Identify any other HUD funds that you will be adding to this program either through your formula or competitive grant programs.

Column 4 - Identify any other Federal funds that you will be adding to this program either through your formula or competitive grant programs.

Budget Categories (Continued)

Column 5 - Identify any State funds that you will be adding to this program.

Column 6 - Identify any Local or Tribal Government funds that you will be adding to this program.

Column 7 - Identify any additional funds not previously identified in Columns 1 - 6, that you intend to use for your proposed program.

Column 8 - Identify any program income that you expect to generate under this program.

Column 9 - Add columns 1 - 8 across and place the total in Column 9.

OMB Approval No. 2501-0017

Grant Application Detailed Budget Worksheet

(Exp. 03/31/2005)

Name and Address of Applicant:

Detailed Description of Budget (for full grant period)

Category											
1. Personnel (Direct Labor)	**Estimated Hours**	**Rate per Hour**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Position or Individual											
Total Direct Labor Cost											
2. Fringe Benefits	**Rate (%)**	**Base**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Total Fringe Benefits Cost											
3. Travel											
3a. Transportation - Local Private Vehicle	**Mileage**	**Rate per Mile**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Trans - Local Private Vehicle											

form HUD-424-CBW (02/12/2002)

Grant Application Detailed Budget Worksheet

Detailed Description of Budget

3b. Transportation - Airfare (show destination)	**Trips**	**Fare**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Transportation - Airfare											
3c. Transportation - Other	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Transportation - Other											
3d. Per Diem or Subsistence (indicate location)	**Days**	**Rate per Day**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Per Diem or Subsistence											
Total Travel Cost											
4. Equipment (Only items over $5,000 Depreciated value)	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Total Equipment Cost											

form HUD-424-CBW (03/2002)

Grant Application Detailed Budget Worksheet

Detailed Description of Budget

5. Supplies and Materials (Items under $5,000 Depreciated Value)											
5a. Consumable Supplies	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Consumable Supplies											
5b. Non-Consumable Materials	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Non-Consumable Materials											
Total Supplies and Materials Cost											
6. Consultants (Type)	Days	Rate per Day	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Total Consultants Cost											
7. Contracts and Sub-Grantees (List individually)	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Total Subcontracts Cost											

form HUD-424-CBW (03/2002)

Grant Application Detailed Budget Worksheet

Detailed Description of Budget

8. Other Direct Costs	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Item											
Total Other Direct Costs											
9. Indirect	Rate	Base	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Type											
Total Indirect Costs											
Total Estimated Costs											
Total of Federal Share and Match:											

form HUD-424-CBW (03/2002)

OMB Approval No. 2501-0017
(Exp. 03/31/2005)

Grant Application Detailed Budget Worksheet

Analysis of Total Estimated Budget	Detailed Description of Budget	Estimated Cost	Percent of Total
1 Personnel (Direct Labor)			
2 Fringe Benefits *			
3 Travel			
4 Equipment			
5 Supplies and Materials			
6 Consultants			
7 Contracts and Sub-Grantees			
8 Other Direct Costs			
9 Indirect Costs			
Total:			
Federal Share:			
Match (Expressed as a percentage of the Federal Share):			

form HUD-424-CBW (02/2002)

Instructions for Completing the Grant Application Detailed Budget Worksheet

Item	Discussion
1 - Personnel (Direct Labor)	This section should show the labor costs for all individuals supporting the grant effort (regardless of the source of their salaries). The hours and costs are for the full life of the grant. If an individual is employed by a contractor or sub-grantee, their labor costs should not be shown here. Please include all labor costs which are associated with the proposed grant program, including those costs which will be paid for with in-kind or matching funds. Do not show fringe or other indirect costs in this section. Please use the hourly labor cost for salaried employees (use 2080 hours per year or the value your organization uses to perform this calculation). An employee working less than full time on the grant should show the numbers of hours they will work on the grant.
2 - Fringe Benefits	Use the standard fringe rates used by your organization. You may use a single fringe rate (a percentage of the total direct labor) or list each of the individual fringe charges. The spreadsheet is set up to use the Total Direct Labor Cost as the base for the fringe calculation. If your organization calculates fringe benefits differently, please use a different base and discuss how you calculate fringe as a comment.
3 - Travel	
3a - Transportation - Local Private Vehicle	If you plan on reimbursing staff for the use of privately owned vehicles or if you are required to reimburse your organization for mileage charges, show your mileage and cost estimates in this section.
3b - Transportation - Airfare	Show the estimated cost of airfare required to support the grant program effort. Show the destination and the purpose of the travel as well as the estimated cost of the tickets. Each program NOFA discusses the travel requirements which should be listed here.
3c - Transportation - Other	If you or are charged monthly by your organization for a vehicle for use by the grant program, indicate those costs in this section. Provide estimates for other transportation costs which may be incurred (metro, etc.).

3d - Per Diem or Subsistence	For travel which will require the payment of subsistence or per diem in accordance with your organization's policies. Indicate the location of the travel. Each program NOFA discusses the travel requirements which should be listed here.
4 – Equipment	Equipment is defined by HUD regulations as tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. Each program NOFA describes what equipment may be purchased using grant funding.
5 - Supplies and Materials	Supplies and materials are consumable and non-consumable items which have a depreciated unit value of less than $5,000. Please list the proposed supplies and materials as either Consumable Supplies or as Non-Consumable Materials.
5a - Consumable Supplies	List the consumable supplies you propose to purchase. General office or other common supplies may be estimated using an anticipated consumption rate.
5b - Non-consumable materials	List furniture, computers, printers, and other items which will not be consumed in use. Please list the quantity and unit cost.
6 – Consultants	Please indicate the consultants you will use. Indicate the type of consultant (skills), the number of days you expect to use them, and their daily rate.
7 - Contracts and Sub-Grantees	List the contractors and sub-grantees which will help accomplish the grant effort. Examples of contracts which should be shown here include contracts with Community Based Organizations; liability insurance; and training and certification for contractors and workers. If any contractor, sub-contractor, or sub-grantee is expected to receive over 10% of the total Federal amount requested, a separate Grant Application Detailed Budget (Worksheet) should be developed for that contractor or sub-grantee and the total amount of their proposed effort should be shown as a single entry in this section. Unless your proposed program will perform the primary grant effort with in-house employees (which should be listed in section 1), the costs of performing the primary grant activities should be shown in this section. Types of activities which should be shown in this section: • Contracts for all services • Training for individuals not on staff • Contracts with Community Based Organizations or Other Governmental Organizations (note the 10% requirement discussed above) • Insurance if your program will procure it separately Please provide a short description of the activity the contractor or subgrantee will perform, if not evident.

8 - Other Direct Costs	Other Direct Costs include a number of items that are not appropriate for other sections. Other Direct Costs may include: • Staff training • Telecommunications • Printing and postage • Relocation, if costs are paid directly by your organization (if relocation costs are paid by a subgrantee, it should be reflected in Section 7)
9 - Indirect Costs	OMB Circular A87 defines indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs. The spreadsheet is set up to use the Total Direct Labor plus the Fringe Benefits costs as the base for the indirect cost calculation. If your organization calculates indirect costs differently, please use a different base and discuss how you calculate fringe as a comment.

The eight rightmost columns allow you to identify how the costs will be spread between the HUD Share and other contributors (including Match funds and Program Income). This information will help the reviewers better understand your program and priorities

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	**Congressional District,** *if known:*
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLLA, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLLA, if necessary)

15. Continuation Sheet(s) SF-LLLA attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only

Authorized for Local Reproduction
Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLLA Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLLA Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 3/31/2003)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

Applicant/Recipient Information Indicate whether this is an Initial Report ☐ or an Update Report ☐

1. Applicant/Recipient Name, Address, and Phone (include area code):

( ) -

2. Social Security Number or Employer ID Number:

- -

3. HUD Program Name

4. Amount of HUD Assistance Requested/Received

5. State the name and location (street address, City and State) of the project or activity:

Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).
☐ Yes ☐ No

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9
☐ Yes ☐ No.

If you answered "**No**" to either question 1 or 2, **Stop!** You do not need to complete the remainder of this form.
However, you must sign the certification at the end of the report.

Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(**Note:** Use Additional pages if necessary.)

Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

(**Note:** Use Additional pages if necessary.)

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.
I certify that this information is true and complete.

Signature:	Date: (mm/dd/yyyy)
X	

Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions

Overview.

A. Coverage. You must complete this report if:
(1) You are applying for assistance from HUD for a specific project or activity and you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;
(2) You are updating a prior report as discussed below; or
(3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. **Update reports (filed by "Recipients" of HUD Assistance): General.** All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient Information.
All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

Acknowledgment of Application Receipt

U.S. Department of Housing and Urban Development

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

Type or clearly print the following information:

Name of the Federal Program to which the applicant is applying: _____

To Be Completed by HUD

☐ HUD received your application by the deadline and will consider it for funding. In accordance with Section 103 of the Department of Housing and Urban Development Reform Act of 1989, no information will be released by HUD regarding the relative standing of any applicant until funding announcements are made. However, you may be contacted by HUD after initial screening to permit you to correct certain application deficiencies.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration. Your application is:

- ☐ Enclosed
- ☐ Being sent under separate cover

Processor's Name _____

Date of Receipt _____

Client Comments and Suggestions

U.S. Department of Housing and Urban Development

You are our Client! Your comments and suggestions, please!

The Department of Housing and Urban Development in preparing this Notice of Funding Availability and application forms, has tried to produce a more user friendly, customer driven funding process. Please let us have your comments and recommendations for improvements to this document. You may leave this form attached to your application, or feel free to detach the form and return it to:

The Department of Housing and Urban Development
Office of Grants Management and Compliance
Room 2182
451 7th Street, SW
Washington, DC 20410

Please Provide Comments on HUD's Efforts:

The NOFA (insert title)_____

is: (please check one)

(a) ☐ is clear and easily understandable

(b) ☐ better than before, but still needs improvement (please specify)

(c) other (please specify)

The application form (insert title)_____

is: (please check one)

(a) ☐ is acceptable given the volume of information required by statute and the volume of information required for accountability in selecting and funding projects.

(b) ☐ is simpler and more user-friendly than before, but still needs work (please specify).

(c) other comments (please specify)

Name & Organization (Optional):

Are additional pages attached? ☐ Yes ☐ No

form HUD-2994 (2/2001)

[FR Doc. 03–7277 Filed 3–25–03; 8:45 am]
BILLING CODE 4210–62–C

Federal Register

Wednesday,
March 26, 2003

Part IV

Department of the Interior

Minerals Management Service

30 CFR Part 203

Relief or Reduction in Royalty Rates—Deep Gas Provisions; Proposed Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 203

RIN 1010–AD01

Relief or Reduction in Royalty Rates—Deep Gas Provisions

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: We (MMS) propose provisions for suspension of royalties for leases in shallow water on production associated with deep gas drilling. For a lease in the Gulf of Mexico (GOM), the proposed rule specifies the location, timing and depth of exploration and production that qualifies the lease for royalty suspension in connection with drilling for gas in deep reservoirs. Also, we propose price thresholds above which royalties must be paid even though production may otherwise qualify for royalty suspension.

DATES: MMS will consider all comments we receive by May 27, 2003. We will begin reviewing comments then and may not fully consider comments we receive after May 27, 2003.

ADDRESSES: If you wish to comment, you may mail or hand-carry comments (three copies) to the Department of the Interior, Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team (Comments). If you wish to e-mail your comments, the address is *rules.comments@MMS.gov*. Reference "AD01—Deep Gas Provisions" in your subject line. Include your name and return address in the message and mark it for return receipt.

Mail or hand-carry comments with respect to the information collection burden of the proposed rule to the Office of Information and Regulatory Affairs: Office of Management and Budget; Attention: Desk Officer for the Department of the Interior (OMB control number 1010–NEW); 725 17th Street, NW.; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Chief, Economics Division, at (703) 787–1536. In addition, MMS will hold a workshop in Houston, Texas within the comment period of the rulemaking, to explain various aspects of the rule described in the next several sections. We will announce the workshop location and date on the MMS Web site *http://www.mms.gov*.

SUPPLEMENTARY INFORMATION: Title 30 CFR part 203 regulates the reduction of oil and gas royalty under 42 U.S.C. 1337(a)(3). Under § 1337 (a)(3)(B), we may reduce, modify, or eliminate royalties on certain producing or non-producing leases or categories of leases to promote development or increased production or to encourage production of marginal resources, in the GOM west of 87 degrees, 30 minutes west longitude.

Background

This royalty suspension initiative strives to accelerate natural gas exploration, development, and production from wells drilled to deep depths on existing shallow water (less than 200 meters) leases. We define deep depths either as 15,000 feet or deeper, true vertical depth, below the datum at mean sea level (TVD SS) when a well is completed and produces from a reservoir entirely below that depth, or as 18,000 feet TVD SS when a well without completions penetrates a reservoir target entirely below that deeper depth. To date, less than 5 percent of all wells ever drilled in the 50-year history of OCS production have been to depths 15,000 feet TVD SS or deeper. The historical trend shows a relatively constant rate of recent deep drilling activity:

Number of boreholes drilled TVD SS>15,000 ft in water depths between 0–200 m

Year	1985	1986	1987	1988	1989	1990	1991	1992	1993
Number Wells Drilled	76	32	47	50	41	41	40	34	57
Year	1994	1995	1996	1997	1998	1999	2000	2001	2002
Number Wells Drilled	70	63	67	75	60	59	94	94	74

Natural gas provides about one-fourth of the annual United States energy consumption. Approximately one-fourth of domestic natural gas is produced in Federal waters of the GOM. The National Petroleum Council forecasts that demand for natural gas will increase by 30 percent in the United States over the next 10 years. Yet, since the mid-1980's annual gas production from the OCS has exceeded additions to proven reserves each year. (Four-fifths of OCS production is currently derived from leases located in shallow water). As a result, total proven natural gas reserves on the GOM OCS have declined dramatically from nearly 46 trillion cubic feet (TCF) in 1986 to approximately 24 TCF in 1999. [Estimated Oil & Gas Reserves, Gulf of Mexico Dec. 31, 1999, OCS Report MMS 2002–007].

While the Energy Information Administration (EIA) natural gas price forecast falls below recent levels, supply may be overestimated because EIA assumptions may not fully reflect current projections regarding gas production from deepwater fields and the decline in conventional shelf gas from currently producing leases. Higher prices reflecting market concern in part have already been evident, spiking over $8 per million British thermal units (Btu) on the NYMEX Henry-Hub during the winter of 2000–2001. Such price volatility can result in higher consumer gas expenditures, while uncertain prices could contribute to under-investment in technologies for deep gas development. Although sustained high gas prices could encourage an increase in deep gas investment, the price fluctuations experienced over the last few years (ranging from $2.00-$8.00/mmbtu) contributes to a climate of uncertainty, thereby inhibiting continuing, stable investment in deep gas development. By providing royalty relief, we could dampen these effects through encouraging timely and profitable deep gas production.

Over the past 6 years, we implemented several royalty incentive programs in deep water. However, because of the long lead times associated with deepwater activity, it could be many years until deepwater production becomes a major contributor, resulting in a significant decline in OCS production of natural gas over the next 5 to 10 years. Additionally, deep drilling incentives for shallow water leases issued after 2000 cover only a small portion of the deep gas potential. Production from deep wells on existing leases in shallow water, where significant infrastructure already exists, is the most attractive source on the OCS of additional natural gas to meet the near and mid-term energy needs of the nation.

Summary of the Deep Gas Royalty Relief Program

This summary integrates the various components of our proposed royalty relief provisions for deep gas production in shallow water. On designated leases, we would suspend royalty payments after certain deep drilling activities and outcomes occur. A lease would be eligible to receive this royalty relief if it:

(1) Was issued in a lease sale held before January 1, 2001;

(2) Is located in the GOM entirely in water depths less than 200 meters on a block wholly west of 87 degrees, 30 minutes west longitude; and

(3) Has not produced gas or oil from a well that commenced drilling before the publication date of this proposed rule in the **Federal Register** with a completion 15,000 feet TVD SS or deeper.

A lease could qualify for a royalty suspension volume that may be applied to subsequent deep gas production from the lease, or allocated from other deep wells drilled after the date of this proposed rule in the **Federal Register**, if it:

(1) Has completed a successful well 15,000 feet TVD SS or deeper that commenced drilling after the publication date of this proposed rule in the **Federal Register**; and

(2) Has production of gas from that completed deep well before five years after the effective date of the final rule.

A lease could qualify for a royalty suspension supplement that may be applied to any subsequent gas and oil production from or allocated to the lease if it:

(1) Has an unsuccessful well that targets a reservoir on the lease at a depth of at least 18,000 feet TVD SS, and the drilling commenced after the publication date of this proposed rule in the **Federal Register** but no later than five years after the effective date of the final rule;

(2) Has started drilling that unsuccessful sub-18,000 foot well before producing from a deep well on the lease; and

(3) Receives subsequent confirmation from MMS that the drilling effort was deep enough but unsuccessful. We rely on data that the lessee provides within 60 days after the well reaches its total depth.

The following table shows the royalty suspensions, in BCF, we propose for various categories of leases that have not produced from wells deeper than 15,000 feet TVD SS.

ROYALTY SUSPENSION VOLUMES AND ROYALTY SUSPENSION SUPPLEMENTS FOR DEEP GAS

[0–200 meters water depth]

Reservoir depth (TVD SS)	For a successful qualified deep well, a lease receives	For an unsuccessful certified well, a lease receives
From 15,000 to less than 18,000 feet	15 BCF	None.
18,000 feet or deeper	25 BCF	5 BCF.

In addition, MMS is also soliciting comments on two other RSV levels. Option B would provide 10 BCF for wells 15,000–18,000 ft deep, and 25 BCF for wells >18,000 ft. Option C would provide 10 BCF for wells 15,000–18,000 ft deep, and 20 BCF for wells >18,000 ft. Both options B and C would result in less incremental production and a reduction in lost royalties. For a fuller discussion of the relative merits of these alternatives, please see the section addressing Executive Order 12866.

A lease could obtain up to two royalty suspension supplements plus the royalty suspension volume associated with the first successful qualified deep well to start production. Thus, a lease could earn the right to produce up to as much as 35 BCF of natural gas royalty free, that is, 10 BCF because of two unsuccessful wells and then 25 BCF from a successful well.

A lessee or successor lessee may apply any remaining royalty suspension volume from the lease's successful qualified deep well to any natural gas production from subsequent deep wells drilled and completed on the lease. However, the suspension amount allocated to deep gas wells less than 18,000 feet TVD SS cannot exceed 15 BCF.

Accordingly, a successful qualified deep well must be located on the lease before it may use any royalty suspension volume. Therefore, if a lease is in a unit and is allocated production from a deep well on another lease in the unit, the first lease will receive no royalty suspension volume unless it also has a successful qualified deep well. Further, once production begins from a successful qualified deep well on a lease, the lessee must use the applicable royalty suspension volume for all production from deep wells on or allocated to that lease and drilled after this rule is published in the **Federal Register**. In other words, the lessee cannot delay applying the royalty suspension volume to applicable production.

The royalty suspension supplement would be used against any gas and oil produced from the lease targeted by the unsuccessful certified well, however, the lessee first must file the information we need to confirm the supplement. A lessee would not obtain both a full royalty suspension volume and a full royalty suspension supplement from the same wellbore. If an unsuccessful certified well later produces, then any portion of the royalty suspension supplement taken (plus gas and oil produced during periods when gas prices exceed the price threshold) would have to be subtracted from any royalty suspension volume earned. Also, the lessee could not use any remaining royalty suspension supplement earned from that wellbore.

The deep gas relief provisions for active leases would be subject to a natural gas threshold price of $5 per million Btu, adjusted from year 2000 for inflation. If the average annual NYMEX natural gas price exceeds this adjusted level for that full calendar year, the lessee would have to pay full royalties on any production of natural gas or oil that would otherwise have royalties suspended due to royalty relief from a successful qualified deep well or royalty suspension supplements. Moreover, the volume produced during such a calendar year would count against the eligible royalty suspension volumes and royalty suspension supplements.

A shallow water lease issued in a sale held after January 1, 2001, but before the effective date of this final rule, may substitute the provisions proposed here for the deep gas incentive terms in the lease. If a lease is eligible and the lessee chooses to substitute, then the lessee would have to do so within 180 days of the final rule's effective date.

Details of Proposed Royalty Relief for Deep Gas Production

The Deep Water Royalty Relief Act of 1995 (DWRRA) (Title III of Pub. L. 104–58) provides authority to grant royalty relief to non-producing leases to encourage industry to lease, explore, develop, and produce oil and gas resources west of 87 degrees, 30 minutes west longitude in the GOM. Until now, we have not exercised that royalty relief authority for existing shallow water leases, *i.e.*, those located in water less than 200 meters deep. There have been few financial and technical obstacles on shallow water leases to drilling and initiating production, the large majority of which is from reservoirs less than 15,000 feet TVD SS.

In contrast, reservoirs deeper than 15,000 feet TVD SS are relatively unexplored in the potentially prospective and otherwise extensively explored shallow waters of the GOM. Some 10 TCF of gas have already been discovered in these reservoirs, mostly in drilling depths between 15,000 and 18,000 feet TVD SS. We estimate that another 5 to 20 TCF of gas are technically recoverable in undiscovered deep reservoirs, with the majority being located at depths below 18,000 feet TVD SS. Focused economic incentives can encourage exploration for and recovery of this huge resource potential..

Over 5,000 exploration wells were drilled in shallow water during the past 10 years, but only seven percent reached drilling depths between 15,000 and 18,000 feet TVD SS, and just two percent were deeper than 18,000 feet TVD SS. Less than two percent of all currently active leases in shallow water have had a gas well drilled 18,000 feet TVD SS or deeper. Relatively few deep wells have been drilled, in part because they are expensive due to unconventional rig specifications, the potential for high pressure and temperature conditions, and the presence of corrosive gas, all of which increase the costs of support facilities. Further, deep wells face a high risk of failure and require the discovery of large resource accumulations, with the potential for high flow rates, to be economic.

To accelerate the discovery and production of natural gas to meet the nation's growing energy needs, we propose to suspend some royalty obligations for certain existing GOM leases in shallow water that drill new deep wells and produce natural gas. In case of a directional well, the lease block on which the completion of the new deep well occurs qualifies for the royalty suspension volume. A new well does not utilize an existing wellbore. We chose the royalty suspension volume as our mechanism for royalty relief because of several advantages it has over other systems of relief, such as providing a fixed dollar amount incentive or a reduction in the royalty rate. Royalty volume suspensions have been used extensively in the GOM (deepwater relief and deep gas relief for new leases). Both MMS and industry have experience and practical knowledge with this form of royalty relief. Royalty suspension for a volume rather than a value of production avoids a number of accounting problems and resulting conflict. The royalty suspension volume, rather than a reduction of royalty rate, provides more certainty to the lessee because, to the extent the royalty suspension volume is produced, it is more difficult for the agency to try to take away the royalty relief. In contrast, a decision to reduce the royalty rate might be reversed anytime over the life of production, and hence provides less certainty about receipt of a potentially large part of remaining royalty relief. Additionally, revenues received in the future are generally worth less to industry (i.e., higher private discount rate) than to government (i.e., lower social discount rate). Thus, providing upfront relief can be structured to be more valuable to the lessee and no more costly to the government than would a drawn out system of relief. For these reasons of practicality and efficiency, a royalty suspension volume is our mechanism of choice.

A lease must meet three criteria to be eligible for a royalty suspension under proposed § 203.40.

- The lease must predate the year 2001, when we began issuing new leases with deep gas production incentives, or the lessee must have exercised the option offered under § 203.48.
- The lease must be located in an area for which we have authority to offer royalty relief for new development.
- The lease must not have produced from a well with a perforated interval the top of which is 15,000 feet TVD SS or deeper, if that well commenced drilling before the publication date of this proposed rule in the **Federal Register**.

When deep gas production has previously occurred on the lease, or if drilling of a well that subsequently results in deep gas production began prior to publication of this proposed rule, then there is no reason to provide royalty relief, i.e., a financial incentive to drill and extract deep gas resources. Yet, if deep gas production does not occur before the existing infrastructure is abandoned, then the deep gas resources are less likely to be produced later.

We propose to make the royalty relief available as of the date of this proposed rule so lessees will not delay drilling new deep gas wells between the date we announce the incentives in the proposed rule and the date they would normally become effective with publication of the final rule. Of course, there is no guarantee that we will adopt a final rule for deep gas royalty relief. Moreover, though a lease could qualify for the incentive with a new deep gas well with drilling activity after the date of the proposed rule, the lessee could apply the royalty relief only to production occurring after the effective date of any final rule.

We also propose volume suspension levels that vary according to the drilling depth of the well. The incentive levels we propose for pre-2001 leases differ from the single, deep gas volume suspension with which we have recently offered new leases in shallow water. The variation in incentives across well depth categories for pre-2001 leases reflects the differing costs, risks, and resources that exist at selected well depth levels. Though this feature makes the rule more complicated, we feel it is necessary to adjust incentives to the differing needs for different drilling depths. Also, no bonus bid that reflects the value of the incentive on an individual lease is involved. It is more important to fine-tune incentive levels for these pre-2001 leases than it is for new leases.

Royalty Suspension Volumes for Successful Qualified Deep Wells

In proposed § 203.41, we specify a royalty suspension volume per lease of 25 billion cubic feet (BCF) for natural gas production from new wells on a lease block with completions that are entirely 18,000 feet TVD SS or deeper. This proposed relief level is based on estimates of the minimum reservoir size necessary for exploration and development to be economic at an expected landed price of about $3.50/thousand cubic feet (Mcf), accounting for various costs and risk factors. Our price assumption is based on the recent natural gas price level and in-house forecasts rather than EIA wellhead gas projections. A suspension of the typical 1/6th royalty obligation increases the set of potential drilling targets by reducing the minimum size of an economically recoverable reservoir. To determine the suspension volume amounts, a combination of factors, including minimum economic field sizes, costs, and risks, were balanced to encourage deep gas production at the present time. We estimate that a 25 BCF royalty suspension volume reduces the size of a reservoir worth exploring immediately at these depths by 15 to 20 percent (in a typical case, from 48 to 40 BCF), and an additional 15 to 20 percent when combined with the royalty suspension supplement portion of the program discussed later. Also, this same program of relief would tend to accelerate the search for natural gas by making projects planned for future drilling economic sooner. Therefore, it would encourage earlier exploration of many additional reservoirs. This acceleration effect will make it profitable to drill and produce immediately some reservoirs with relief, rather than to defer these activities for 5–10 years without relief. We expect this incentive will spur earlier exploration activity for reservoirs that are smaller than 90 BCF, which is the level at which prompt exploration is currently optimal without any incentives. Our latest assessments indicate that about 75 percent of all the undiscovered, but technically recoverable deep gas reservoirs are smaller than 90 BCF. Thus, we expect our program to substantially increase the number of wells that will be drilled earlier than they otherwise would be.

We propose a royalty suspension volume per lease of 15 BCF on natural gas production from new wells on a lease block with completions in the interval from 15,000 to less than 18,000 feet TVD SS. The smaller proposed royalty suspension volume for natural gas production from wells drilled in this depth interval is appropriate because the costs of drilling are significantly lower and the chances of success higher than for wells deeper than 18,000 feet TVD SS.

Recent American Petroleum Institute (API) surveys (Joint Association Survey on 1999 and 2000 Drilling Costs, API, Independent Petroleum Association of America, and Mid-Continent Oil & Gas Association) show that typical costs to drill prospects in the 15,000 to 18,000 foot depth interval on the OCS run a little more than one-half as much as drilling deeper than 18,000 feet TVD SS. Moreover, we estimate success rates for future wells drilled in the 15,000 to 18,000 foot depth interval to be two-thirds higher than the success rate for wells drilled deeper than 18,000 feet TVD SS. Thus, the 15 BCF royalty suspension volume is determined to accelerate drilling for reservoirs between 15 and 50 BCF. We estimate reservoirs of the 35 to 50 BCF size can be drilled profitably in the near future with relief, but would be delayed considerably under current conditions without relief. Thus, reservoirs larger than 50 BCF are the current target size that adequately accommodates the economic risks and costs of drilling gas wells in the better-known geologic formations in the 15,000 to 18,000 foot depth interval.

Administratively, production from the first successful qualified deep well would establish the royalty suspension volume for the lease. To qualify, the lessee must notify the MMS Regional Supervisor for Production and Development of intent to commence drilling the deep well and production would have to begin from the deep well no later than five years after the effective date of the final rule, so that the program benefits can be realized sooner rather than later. We require notification of intent to drill deep wells partly because if the lease is participating in the Royalty-in-Kind (RIK) program, we need to be alerted in advance of any activities that could affect the placement of RIK production by the Minerals Revenue Management (MRM) organization of MMS. Under the RIK program, the government accepts royalties in product rather than in cash and sells it under contract as described at *www.mrm.mms.gov/rikweb*.

The royalty suspension volume is applied to deep gas production beginning the day that the lessee notifies MMS that deep gas production has begun. Also, if production begins from a well in the 15,000 to 18,000 foot depth interval, the royalty suspension volume for the lease would not increase above the level applicable to that well, even if the lessee later completes a well deeper than 18,000 feet TVD SS. We propose this stipulation because the initial success of a deep well reduces the risks associated with subsequent deep wells sufficiently to eliminate the need for an added incentive to drill even deeper wells. The incentive is to promote drilling of the primary target, not subsequent secondary ones. We rely on the drilling of a new well (subsequent to the date of the proposed rule), that is completed to a reservoir of certain depth as the indicator of response to the incentive, as opposed to conditioning relief on drilling into a new reservoir. This way we avoid the potential complications associated with delineating the boundaries of the reservoir across multiple leases. These royalty suspension volumes for deep gas production would not override the minimum royalty or rental obligations of the lease and unused portions would be transferable to a successor lessee.

Proposed § 203.42 authorizes application of the royalty suspension volume to gas production from other deep wells on, or allocated under an approved unit agreement to, the lease, subject to several conditions designed to increase deep drilling. The lease to which the production is allocated must have its own successful qualified deep well. Also, drilling of other deep wells from which production is allocated to your lease has to begin after the publication date of this proposed rule in the **Federal Register**. But this allocated production may come from a lease on the unit that does not have or is ineligible for a royalty suspension volume. For example, your neighboring lease within the unit may have drilled a deep well before the qualifying date and therefore disqualifying that lease for relief. Yet, a subsequent well drilled after the qualifying date on that lease does allow royalty-free production to be allocated to your lease. While production from deep wells on the unit can be allocated across leases, the royalty suspension volume from other leases on the unit may not be allocated across leases. Under these conditions, the production to which your royalty suspension would apply includes allocated production from other deep wells within the unit.

The royalty relief, in the form of a royalty suspension volume, may not be applied to production from shallow wells or to hydrocarbons other than gas. The royalty suspension volume applies to the gas production volume as reported on the Oil and Gas Operations Report, Part A (OGOR–A). Note that if the gas is transferred to a gas plant for processing prior to sale, the gas production volume reported on the OGOR–A will be higher than the residue gas volume attributable to the deep gas well.

Notwithstanding a unit agreement, we propose generally to maintain a simple lease-based relief structure by restricting a royalty suspension volume to the lease on which a deep well is completed and the royalty suspension supplement (as described later in this preamble) to the lease on which a deep well is targeted. This approach is consistent with existing administrative designations relating wells to leases. It also avoids the need to regulate decisions about the participating area and the allocation of a royalty suspension volume across a joint operation. We believe that lessees on a unit contemplating drilling a deep well jointly can work out financial arrangements to cover a broad variety of circumstances, e.g., a situation where those unitized leases without a deep well would have to pay royalty on any production allocated to them from the deep well. To help us assess the validity of this inference, we would like

responses to the following question: In comparison to the proposed approach, under what conditions would a royalty suspension volume or supplement allocated among several leases within a unit result in either more deep drilling or less administrative burden?

The royalty relief would end as soon as cumulative qualified production from or allocated to the lease with the successful qualifying deep well reaches the royalty suspension volume. This differs from royalty suspensions in deep water, where the relief lasts through the end of the month when production reaches the royalty suspension volume. We propose this difference because the time duration over which suspension volumes are taken is much shorter for deep gas than for deepwater royalty relief. Taking into account the expected production rates and volume suspension levels, we believe that leases with the proposed deep gas relief would use four times the portion of the applicable royalty suspension volume that a deepwater field would use in a month. This means that in cases where the relief volume for deep gas is reached early in the month, extension of relief throughout the month would provide a much larger proportional increase in that part of a lease's total production that is royalty-free in comparison to the deepwater paradigm. Continuing royalty suspension through the end of the month typically would add over two percent to total deep gas relief, versus only 0.5 percent to total deep water relief, on a lease whose cumulative qualified production reached the prescribed suspension volume on the first day of the month.

Once production commences from a successful qualified deep well, the lessee is to notify us within 30 days to confirm the royalty suspension volume. The confirmation promotes understanding and agreement of royalty terms and helps avoid confusion when a lease has both royalty-bearing and royalty-free production. *See* proposed § 203.43.

Royalty Suspension Supplements

The probability of future drilling success is anticipated to be relatively low in the case of drilling 18,000 feet TVD SS or deeper. To offset this high risk, we propose an incentive for drilling even unsuccessful exploration wells to at least 18,000 feet TVD SS (hereafter sub-18,000 foot well). A small supplemental royalty suspension volume for an unsuccessful well along with a larger royalty suspension volume for a successful well is a more cost-effective incentive than a royalty suspension volume alone. As with the royalty suspension volume, the lease block with the reservoir targeted by the new sub-18,000 foot well qualifies for the royalty suspension volume.

This supplemental royalty suspension is important because providing larger royalty suspension volumes only for successful wells becomes progressively less effective in encouraging new development as the suspension size increases. First, each extra unit of relief is captured later in the production profile and, hence, is less valuable to the operator. Second, the potential to use all the suspension volume declines when it exceeds the expected size of the initially discovered deep reservoir. Less than 10 percent of the leases having a deep-well discovery found more than a single reservoir in the deep depths. Third, it is also possible that some operators value the opportunity to minimize the costs of failure more than enhancing the benefits of success. In proposing to set the royalty suspension volume and royalty suspension supplement levels, our analysis takes into consideration the inter-relationship between royalty relief for successful and unsuccessful drilling efforts on expected lease profitability. Consequently, we would be able to reduce the suspension volume amounts for successful deep well drilling as a result of adding the royalty suspension supplement option, while generating at least as much incremental effect on future drilling activity.

A royalty suspension supplement offers other program benefits by reducing the magnitude of the royalty suspension volumes for successful drilling. Large suspension volumes only for successful wells provide more of the relief to reservoirs that would have been drilled promptly and profitably without any royalty relief. Also, with rapid improvements in technology, smaller suspension volumes for successful drilling could become appropriate. Because we set program parameters years before the program expires, we need to be careful not to promulgate incentives at levels that could become higher than necessary. Accordingly, it is fiscally prudent to accelerate deep gas production with different types of drilling incentives for selected kinds of leases that recognize the variations in drilling costs and risks across drilling depth categories.

Along with volume suspensions on successful deep wells, § 203.44 proposes relief for unsuccessful certified wells, 18,000 feet TVD SS or deeper, in the form of a five BCF royalty suspension supplement. To avoid incentives that would distort reasonable drilling efforts, we propose to share only part of the cost. Thus, we set the value of the royalty suspension supplement for drilling an unsuccessful certified well below the full cost of exploration and below the magnitude of the royalty suspension volume for drilling a successful well. Because of the significantly greater cost and risk for drilling 18,000 feet TVD SS or deeper, we would offer the royalty suspension supplement only for drilling to these very deep reservoir targets.

An unsuccessful certified well is defined in proposed § 203.0 as a well that is:

- Drilled but not completed to a depth of at least 18,000 feet TVD SS;
- Targeting a reservoir identified from seismic and related data, that does not produce or that MMS agrees is not commercially producible (by computing minimum developable reservoir sizes for that drilling depth using geological and geophysical data, resource magnitudes and timing of production, price forecasts, and industry required rates of return); and
- On which drilling begins:

(1) After the publication date of this proposed rule,

(2) Before five years after the effective date of the final rule, and

(3) Before there is any production from a successful qualified deep well on that lease.

Under this proposed provision, MMS would not allow any royalty suspension supplement if the lessee starts drilling the unsuccessful sub-18,000 foot well after gas or oil has been produced from any deep well on the lease. Also, the lessee is to notify the MMS Regional Supervisor for Production and Development of the intent to commence drilling a sub-18,000 foot well. Then, after drilling the well, the lessee is to provide the data necessary to confirm an unsuccessful well within 60 days after the well reaches its Total Depth (TD) deeper than 18,000 feet TVD SS. Such data may include well test data, seismic and economic data that prove the well met the standard of an unsuccessful certified well. We seek notification of intent to drill sub-18,000 foot wells in part because the lease may be participating in the RIK program and MMS will need to have advance notification to manage the RIK oil and gas workload. We would set the 60-day deadline so that our review and concurrence in the non-commerciality of the well occur close to the same time and, thus, with about the same market conditions as when the lessee drilled the well. Shortly after receiving the necessary data, we intend to send a notice confirming or denying that the lease has earned the royalty suspension supplement.

For a well that falls below specified producibility standards or that we agree is non-commercial and which satisfies the post-drilling administrative requirements, we would then grant the lease a royalty suspension supplement. The supplement takes the form of a specified royalty suspension for use against gas or oil production on, or allocated under an approved unit agreement to, the same lease that occurs on or after the date the lessee files the data confirming failure. A lease-specific process for applying the royalty suspension supplement is the broadest we have legal authority to offer. Proposed § 203.44(b) specifies that we would allow royalty suspension supplements for up to two unsuccessful certified wells per lease (so as not to reduce the incentive to try again after an initial failure). Of the 61 leases in our data base that have been drilled to very deep depths, only one lease had more than two failed wells without having a success. We also would not allow more than one royalty suspension supplement from a single wellbore. For these and other reasons explained below, we are confident that the provision for up to two modest size supplements would not create incentives for incurring costs with only remote possibilities of success.

In § 203.45, we propose prompt use of this royalty suspension supplement, beginning the first day of the month the lessee files data with MMS confirming lack of success. We will allow the lease to retain the supplement if the lease has no other production against which to apply it at the time of this filing. In these cases the royalty suspension supplement is to be used beginning on the first day of the month that lease production starts.

Any royalty suspension supplements earned during the qualifying period up to five years after this rule becomes effective would remain available until used, until forfeited under proposed § 203.44(c), or until the lease expires. As is the case with royalty suspension volumes for deep gas production, these royalty suspension supplements would not override the minimum royalty or rental obligations of the lease and unused portions would be transferable to a successor lessee.

Also, the royalty relief would end as soon as the cumulative qualified production reaches the royalty suspension supplement. This procedure is even more critical in the case of an unsuccessful well than for successful drilling. This is because the royalty suspension supplement is applied to all of a lease's production. In cases where the cumulative production reaches the royalty suspension supplement early in the month, most of that month's production should pay royalties. Without this timing provision, the cumulative amount of these smaller royalty suspension supplements may be reached early in a month, and all lease production for the remainder of the month would generate an unintended yet relatively large royalty-free windfall to the lessee.

Bounds on Royalty Suspension Supplements

A lessee could earn the royalty suspension supplement only by starting to drill a sub-18,000 foot well on the lease *before* any deep well on the lease produces. We don't propose to offer the royalty suspension supplements after a successful well because following a deep well discovery, the risk associated with further drilling is reduced substantially. We propose to reserve the combined incentive of royalty relief for both successful and unsuccessful wells to lessees that attempt to deepen significantly their productive horizon. For example, drilling a new well to 19,000 feet involves substantially more uncertainty on a lease that only experienced production from a 12,000-foot well than on a lease that already generated production from a 17,000-foot well. Hence, we believe only the former lease requires additional encouragement to drill deeper than 18,000 feet TVD SS, which we would provide in the form of a royalty suspension supplement.

As proposed in § 203.41(c), any royalty suspension volume a lease earns adds to any royalty suspension supplement the lease already has. However, if drilling on a well that ultimately reaches 18,000 feet TVD SS or deeper starts after the lease produces gas or oil from a deep well 15,000 feet TVD SS or deeper, then the lease would not earn any royalty suspension supplement.

Also, a lease could not obtain both a full royalty suspension volume and a full royalty suspension supplement within a single wellbore, as proposed in § 203.41(c). In this situation, the aggregate royalty suspension is unnecessary because another entire well cost is not involved.

Nevertheless, after a well earns a royalty suspension supplement for unsuccessful drilling, economic conditions may improve resulting in deep gas production from the same wellbore. In this case, the lease would receive a royalty suspension volume if the well meets the criteria for a successful qualified deep well. That means production must begin before five years after the date of the final rule, and the well must be the first deep well to produce gas from the lease. Proposed § 203.44(c)(1) addresses this situation. It is designed to prevent a lessee from "double dipping" in royalty relief. Thus, a lessee would have to subtract any royalty suspension supplement used on other lease production from the royalty suspension volume applied to successful qualified deep gas production from the same wellbore (15 BCF from a 15,000—18,000 feet TVD SS well, and 25 BCF from a well more than 18,000 feet TVD SS). Further, the lessee would forfeit any unused royalty suspension supplement earned from that wellbore.

For example, suppose the lease has used three BCF of a royalty suspension supplement and then produces gas from the same wellbore used to qualify for the royalty suspension supplement under circumstances that qualify the well as a successful qualified deep well. Then, the used three BCF royalty suspension supplement must be subtracted from the royalty suspension volume allowed for the successful qualified deep well and the lease qualifies for a royalty suspension volume of 12 BCF or 22 BCF, depending on the depth of the deep producing well. The remaining unused two BCF of the original royalty suspension supplement is forfeited.

Proposed § 203.44(c)(2) addresses the unusual, though possible, situation in which the following sequence of events occurs:

(1) An unsuccessful certified well earns a royalty suspension supplement,

(2) Production from shallower reservoirs on the lease use the royalty suspension supplement,

(3) A successful qualified deep well through a different wellbore earns a royalty suspension volume,

(4) The royalty suspension volume exceeds the volume produced from that well, and

(5) The wellbore originally used to qualify as an unsuccessful certified well later produces.

In that case, the unused royalty suspension volume from the successful qualified deep well could be applied to production from the originally unsuccessful deep wellbore under proposed §§ 203.41 and 203.42. But in some circumstances, that could result in "double dipping" from the originally unsuccessful wellbore.

For example, assume the lessee drills an unsuccessful certified well, and earns the five BCF royalty suspension supplement. Further assume that the entire royalty suspension supplement is

applied to production from shallower wells. Then assume that the lessee drills a successful qualified deep well to a depth of 19,000 feet TVD SS and thereby earns a royalty suspension volume of 25 BCF. Finally, assume that the successful qualified deep well produces only three BCF of gas. In this situation, the lessee still has 22 BCF of royalty suspension that may be applied to other deep gas production from the lease. Then assume that economic conditions change, resulting in deep gas production through the originally unsuccessful wellbore-the same wellbore originally used to qualify for the royalty suspension supplement. If enough production emerges from that wellbore it could be responsible for the five BCF of royalty suspension supplement already used, plus the 22 BCF of royalty suspension volume remaining from the successful qualified deep well. The total relief of 27 BCF exceeds the amount we allow from a single wellbore drilled to this depth.

Proposed § 203.44(c)(2) is designed to avoid this result. Under this provision, the lessee could use only 20 BCF of the royalty suspension volume remaining from the successful qualified deep well, resulting in a total of 25 BCF of royalty relief derived from that wellbore. This stipulation applies the same principle reflected in proposed § 203.44(c)(1). If the originally unsuccessful wellbore shares the incentive earned by a successful qualified deep well, the lessee subtracts whatever portion of the royalty suspension supplement has been applied to other production from the royalty suspension volume used by the originally unsuccessful well that later produces.

Price Thresholds

Another component of the proposed deep gas provisions is the stipulation of a $5.00 per million Btu price threshold, adjusted from year 2000 for inflation, as described in proposed § 203.47. When average market gas prices remain above this threshold amount for an extended time, which we define as one calendar year, deep gas projects will benefit significantly more from favorable market conditions than generally expected. No royalty relief will typically be necessary during such periods, because market price alone offsets the need for royalty relief and should be sufficient reward for attaining the desired increase in exploration and development activities related to deep depth drilling. In times of prices above the threshold, relief in the form of royalty suspension supplements or volumes would no longer be needed. Lessees would then pay appropriate royalties and that same production would count against the royalty suspension supplements and volumes. If this production were not to count against the royalty suspension volume or supplement, the only offset would be a delay in benefits from royalty relief—hardly enough to justify using a price threshold mechanism.

If the market price of natural gas later falls below the prevailing price threshold, royalty relief would be reinstated, up to the remaining suspension volume. That feature serves to keep marginal fields profitable and to accelerate production of additional gas supplies.

We employ the price threshold specified as a dollar value, escalated for inflation. Other types of price thresholds, such as a sliding scale or a continuous function, were considered but not chosen, primarily to be consistent with past practices. Our relief programs in the GOM region have used the same price threshold approach. When this type of threshold is exceeded, relief is lost only for that year and the lessee more than offsets the loss of relief by the gain in revenues received from the higher market price.

The proposed $5.00 per million Btu price threshold is higher than natural gas thresholds set in other royalty relief programs because the focus of this program is to accelerate deep gas drilling and production. This short-term focus contrasts with inducing investment in new infrastructure such as platforms and pipelines and developing marginal properties, which is the longer-term goal of our deepwater program. The greater volatility of recent gas prices has raised uncertainty about price expectations over the next several years. In light of this increased price uncertainty, we believe it prudent to elevate the price level that would interrupt this royalty relief. Thus, raising the threshold price level would provide greater assurance that royalty relief will be realized and so would encourage timely exploration and earlier production from discoveries.

We found that the anticipated increase and acceleration of drilling induced by the relief program is similar to the effect that would occur without relief if gas prices rose from $3.50 to $5.00 per million Btu. So, during periods when market gas prices reach $5.00 per million Btu, adjusted for inflation, we can safely eliminate royalty relief without adversely affecting the attainment of program goals. In contrast, our deepwater program targets long-term development and infrastructure incentives for which short-term price fluctuations are less likely to affect decisions. The deep gas program is short term—thus economically justifying a higher natural gas price threshold before royalty relief

Transition Option for New Leases Issued in Sales Held after January 1, 2001

In § 203.48, we propose to allow leases issued in sales held after January 1, 2001 (post-2000 leases), but before the effective date of the final rule, to exercise a one-time transition option. The transition option would be the opportunity to replace the royalty relief provided for in the original lease instrument, if any, relating to deep depth drilling with the alternative terms that would be offered to all pre-2001 leases in shallow water under this proposed rule. The leases must be located in the GOM wholly west of 87 degrees, 30 minutes west longitude. This one-time option would have to be exercised within 180 days after the effective date of the final rule. Note that some elements of the deep gas royalty relief, such as the volume suspensions for the 15,000- to 18,000-foot TVD SS wells, are more favorable for at least some post-2000 leases than for pre-2001 leases. Yet other elements, such as price threshold levels and the royalty suspension supplements, are more favorable to pre-2001 leases than to at least some post-2000 leases. Each individual lessee could determine the most favorable set of terms for its particular post-2000 lease. Nevertheless, the option would be irrevocable, and once exercised, the lease would be subject to all the requirements for royalty suspension applicable to a pre-2001 lease. In particular, if the lease produced oil or gas from a well that commenced drilling in deep depths before the publication date of this proposed rule, then no suspension volumes or supplements would be available upon conversion.

While the option to change deep gas incentive terms may give some of the post-2000 leases a benefit for which the lessees did not fully bid, the leases issued before 2001 will receive the full deep gas benefit for which the lessees did not bid at all. Therefore, we feel that, in fairness, those lessees of post-2000 leases who may have paid some premium for the deep gas incentive in their lease terms should have the opportunity to get at least as favorable terms as those lessees who paid nothing for the incentive. Thus, allowing lessees of post-2000 leases with some deep drilling royalty relief to substitute in their lease terms the alternative terms for pre-2001 leases under this proposal would ensure consistency and fairness.

Additionally, if more lessees choose the transition option, the program would benefit through increased deep gas development.

The following table displays the various deep gas lease terms depending upon whether § 203.48 is exercised. Note that lessees of post-2000 leases could replace their royalty relief and deep gas drilling terms with those available to pre-2001 leases, but could not substitute different post-2000 lease terms (that is, lessees of Sale 178 leases cannot choose those terms applicable to Sale 182 leases). Moreover, if a post-2000 lease was issued without any royalty relief for deep drilling in shallow water, the lease could not claim the benefit of the terms for deep drilling associated with pre-2001 leases as described in this proposed rule. If a post-2000 lease already has used some royalty suspension volume and requests this transition option, then we would deduct the used royalty suspension volume from the substituted royalty suspension volume. The supplement is not affected as long as the criteria for royalty relief from drilling an unsuccessful well are met (e.g., drilling starts on the unsuccessful well deeper than 18,000 feet TVD SS after the publication date of this proposed rule). Finally, we do not allow a reverse conversion: lessees cannot replace the terms offered in this proposed regulation to leases in existence on January 1, 2001 with those terms we already made available to post-2000 leases when they were sold.

In summary, if we issued a shallow water lease in a sale held after January 1, 2001, but before the effective date of this final rule, the lessee may substitute the provisions proposed here for the deep gas incentive terms in the lease. If a lease is eligible and the lessee chooses to substitute, then the lessee would have to do so within 180 days of the final rule's effective date. Once this option is selected, the post-2000 lease is treated administratively like a pre-2001 lease for royalty suspension purposes. Accordingly, to obtain the full drilling and production benefits derived from activities undertaken before exercising this option, lessees of post-2000 leases must satisfy the same timing milestones required of pre-2001 leases, including activities undertaken during the period before the effective date of the final rule.

ROYALTY RELIEF FOR EXISTING AND NEW LEASES

Program element	Proposed relief terms for existing leases	Sale 178 lease terms	Sales 180, 182, 184, 185 lease terms
A Successful Qualified Deep Well from 15,000 to less than 18,000 feet TVD SS.	15 BCF	20 BCF	20 BCF
A Successful Qualified Deep Well 18,000 feet TVD SS or deeper	25 BCF	20 BCF	20 BCF
An Unsuccessful certified well 18,000 feet TVD SS or deeper	*5 BCF	0 BCF	0 BCF
Maximum royalty suspension per lease	35 BCF	20 BCF	20 BCF
Price Threshold Above Which Royalties Are Due	$5/MMBTU	$3.50/MMBTU	$5/MMBTU

*5 BCF per unsuccessful certified well may be earned for up to 2 unsuccessful certified wells with a maximum of 10 BCF per lease.

Sidetracks

The royalty suspension volumes we propose apply to deep gas production from new wells. A new well is one that does not use an existing wellbore. Drilling efforts that use a new wellbore to bypass lost tools, etc., or straighten crooked holes would qualify as a new well. We propose to require a new wellbore because inclusion of sidetracks would be complicated to administer and most sidetracks are substantially less costly than a new wellbore. Therefore, we chose the proposed royalty suspension volumes based on the cost of a completely new well.

The complication with sidetracks arises primarily due to the fact that the offset distance (kick off point to total depth) of drilling a sidetrack, and thus the cost, of a sidetrack is generally more variable than for a new well drilled to a given depth interval. While the sidetrack from near the top of an existing well may cost almost as much as a new well, a sidetrack from, for example, 14,000 feet down to a 16,000 foot reservoir should be less costly. Recent API surveys show average drilling costs of a sidetrack are from one-half to two-thirds those of a new well, largely because the average length drilled is half or less.

Though it may appear conceptually desirable to do so, we have not proposed a royalty relief instrument for new deep sidetracks for several reasons. One, providing the same amount of royalty suspension volume for all new deep sidetracks as compared to new deep wells is neither fair nor cost-effective since it would result in a windfall for those fortunate enough to have sidetrack opportunities. Two, the cost data we currently have available on sidetrack drilling are not sufficiently exhaustive on length and drilling depth to allow us to conduct the same in-depth analysis that we undertook for determining the appropriately-sized royalty suspension volumes for new deep wells. With the exception of the prolific Norphlet trend, so little sidetrack drilling has taken place at deep depths that historical evidence alone may not offer a sufficiently reliable guide about these relationships to allow us to determine the proper level of incentives for deep sidetracks. Three, based on the cost data and drilling observations we do have, the expected net cost of a new deep well under the proposed royalty relief is still higher than the expected net cost of a deep sidetrack with no royalty relief in over 90 percent of the reservoir targets drilled to deep depths. For the remaining cases, the differences between the full costs of sidetracks and costs net of royalty relief for new wells is small. So royalty relief only for a new well is generally not large enough to distort investment decisions by reversing the relative economics of a new deep well versus a new deep sidetrack.

To help us evaluate the possible significance of deep sidetracks, we would like responses to the following questions included in comments:

- When and how often is drilling a sidetrack used to explore a new reservoir rather than to supplement an original development or delineation well, and is the situation different by drilling depth?
- How important is sidetracking to a deeper depth in comparison to sidetracking in shallower pay zones, and why?
- Would the proposed relief program distort decisions in favor of more costly new deep wells instead of less expensive deep sidetracks? If so, how serious and/or extensive would this effect be?

If we decide to provide royalty relief for deep sidetracks, we have a range of options for doing so. For example, we could offer the proposed royalty suspension volumes to new deep wells and to a subset of new deep sidetracks that meet certain timing or offset distance considerations. We could offer a lower royalty suspension volume than proposed here to all new wells drilled to a given depth. We could offer one royalty suspension volume for new deep wells and another lower or variable (e.g., based on offset distances) for deep sidetracks.

To help us evaluate these and other options, we would like responses to the following questions included in comments:

- To what extent does the absence of royalty relief for sidetracks adversely affect deep depth drilling and distort the choice between the types of wells drilled?
- If a subset of deep sidetracks were to receive a royalty suspension volume:

—Should we limit the incentive to sidetracks that achieve a minimum offset distance? If so, what is the proper minimum offset distance and why is this offset distance appropriate?

—Should we limit the incentive to a sidetrack from a new well that is drilled after the publication date of this proposed rule? Why?

—Should we limit the incentive to a sidetrack from a deep well as opposed to a shallow well? Why?

—Should a single royalty suspension volume be set based on the relative average costs of sidetracked deep wells in comparison to new deep wells?

- What other elements should we consider in determining the royalty suspension volume if we decide to employ different ones for new deep sidetracks and for new deep wells?

—Should the size of the royalty suspension volume vary with the offset distance of a sidetrack or should there be a single volume for deep sidetracks? Why?

—Does the cost of a sidetrack increase per extra foot drilled relative to that of a straight hole?

—Should the royalty suspension volume for sidetracks apply to only the very deep total depths (18,000 feet TVD SS or deeper)? Why?

- Should sidetracks receive the same, different, or no royalty suspension supplement as new wellbores drilled to very deep total depths (18,000 feet TVD SS or deeper)?
- What size supplement would be effective and efficient in the program for drilling unsuccessful sidetrack wells?
- In addition to the API survey, are there any other publicly available sources that offer data on deep sidetrack drilling costs?

Auction Mechanism Discussion

MMS would like to solicit comments on an alternative mechanism to allocate royalty relief for existing leases. This approach will not be pursued for this rulemaking, but may be pursued for future allocations. MMS would like to solicit comments on the feasibility of this approach, as well as solicit inputs on alternative approaches to make the allocation of royalty relief more efficient. This approach would seek to allocate approximately the same total royalty relief, but would differ in that not all lessees would receive the same relief, with the objective of encouraging greater levels of overall drilling at lower or comparable Federal cost.

Under this alternative, MMS would allocate royalty relief suspension volumes and supplements as soon as practicable after publishing the final rule. Authorized leaseholders, those with leases awarded prior to 2001, would submit to MMS an offer of the volume of royalty relief they would require to undertake deep well drilling. MMS would rank the offers from the least amount of royalty relief to the greatest, taking into consideration the depth of the wells (15,000–18,000 ft or >18,000 ft). MMS would select the best ranked offers according to a process described below. MMS would then renegotiate the terms of existing leases of the selected leaseholders to provide the royalty relief per their individual offers. The remaining offers—those requiring the largest royalty relief—would not be accepted. For any royalty relief awarded, the leaseholder must begin drilling a deep well within a designated time period.

The cutoff for accepting the ranked offers in this approach would be based on the incremental production MMS estimates the relief will produce and the total Federal cost expended. This would include, for example, the total number of wells MMS expects to produce, the volume of royalty relief provided to each well, the expected number of wells that would not be drilled without royalty relief, the number of bids judged to have been offered by authorized lessees who can claim relief from new drilling activities and who actually intend to drill to deep depths, and the likelihood of drilling success. In using those estimates to determine the pool of accepted offers, MMS would seek to allocate approximately the same total royalty relief as the preferred alternative.

The eligibility requirements that MMS would apply to the preferred alternative would also apply under this approach. For example, leaseholders that have already drilled successful deep wells before the proposed rule is published would not be eligible for this program. However, leaseholders who first drill a successful deep well after the proposed rule is published would be eligible to receive royalty relief if their bid for royalty relief was accepted. MMS would ask leaseholders to specify in their offers the depth of wells they would drill, and the volume of royalty relief suspension volume they seek on a successful well. Leaseholders would specify separate royalty relief suspension volumes in their submission, one for 15,000–18,000 ft depth and the other for >18,000 ft depth. Leaseholders can also specify a royalty relief supplement for up to two unsuccessful wells in the >18,000 ft depth. The magnitude of the royalty relief supplement per well should not exceed 5 BCF.

This alternative approach may result in added drilling activity and production for lower or the same Federal forgone royalties compared to the preferred alternative, because it encourages lessees who would drill without relief to accept lower relief amounts than they would receive under a fixed allocation system.

There are some unresolved issues with this approach. MMS would like to specifically solicit comments on the following issues:

(1) What is the risk to the integrity of the auction approach if successful bidders choose not to drill within the specified period and thus inadvertently penalize unsuccessful bidders? What can or should MMS do to minimize this outcome?

(2) What is a reasonable period of time in which to expect operators to commence drilling after their offer is accepted? Is three years too short of a period?

(3) Should MMS accept offers in a single sale at the outset of the program, or allocate the relief in a series of sales held over several years?

(4) How does this approach compare with the preferred alternative in its likelihood of granting relief to those who really need it and those who do not?

(5) What technical considerations arise in ranking the offers and determining the cutoff for the accepted ones?

(6) How much is MMS likely to save and at what cost in terms of drilling delayed or forgone as a result of employing this alternative allocation mechanism?

Procedural Matters

Public Comments Procedures

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Regulatory Planning and Review (Executive Order 12866)

According to the criteria in Executive Order 12866, this rule is a significant regulatory action for which a Regulatory Analysis has been prepared. The Office of Management and Budget (OMB) has made that determination under Executive Order 12866.

(1) This preferred alternative proposed in this rule will have an economic effect of $100 million or more by reducing consumer expenditures on natural gas by about $280 million each year and may have a slightly adverse effect on other units of government. An economic analysis of this regulatory action was prepared and will be available at *http://www.mms.gov/econ*. This proposed rule reduces royalties for lessees that drill and produce natural gas from deep wells in shallow water areas of the GOM. The royalty suspension volumes offered should increase deep drilling activity on existing leases over the period of the program and make additional resources economic. The royalty suspensions will reduce net Federal royalty collections by about $270 million in net present value.

The royalty relief program for deep gas drilling will have two distinct effects, recovery of some otherwise uneconomic gas resources and accelerated recovery of some marginally economic gas resources. Our data indicate that about 10 to 20 percent of the undiscovered gas resources in the most prospective depths, *i.e.*, 18,000 TVD SS or deeper, could be converted from an unprofitable to profitable state by the incentives provided in this rule. We estimate that those resources are located in approximately 20 to 30 percent of undiscovered gas reservoirs.

We estimate that about one-fourth of the economically explorable gas reservoirs at drilling depths 18,000 feet TVD SS or deeper, would be drilled one to five years sooner if we implement the proposed royalty suspension volumes and royalty suspension supplements. These reservoirs are associated with less than 10 percent of the undiscovered resource. We estimate that the aggregate amount of undiscovered gas resources possibly affected at depths 18,000 feet TVD SS or deeper alone amount to over two TCF. Application of our proposed program to reservoirs in the 15,000 to less than 18,000-foot TVD SS range of drilling depth could affect another one to two TCF of gas. The deep drilling program will affect only a part of these resources in any one year.

(2) This rule will not create any inconsistencies with actions by other agencies because royalty relief is confined to leasing in Federal offshore waters that lie outside the coastal jurisdiction of State and other local agencies. Careful review of the lease sale notices along with stringent leasing policies now in force, ensure that the Federal OCS leasing program, of which royalty relief is only a component, does not conflict with the work of other Federal agencies.

(3) This rule may have a small effect on entitlements, grants, user fees, loan programs, or their recipients. The main effect will be to postpone royalty distributions. MMS distributes about one percent ($40 million) of the OCS revenue it collects annually in the GOM to neighboring States under section 8(g) of the OCSLA. Royalty suspensions from the deep gas program could affect up to five percent of the total production from the GOM in any one year. If deep gas production occurs in the 8(g) zone at the same proportion as elsewhere in the GOM, these State grants could be reduced by $1 to $2 million per year for five to ten years. However, extra production that occurs because of the incentive will also provide extra royalties, mostly after the royalty suspension volumes have been produced. Ultimately, the extra royalties could fully offset the initial drop in both Federal and State royalties. This would occur if our program generates 25 percent more incremental gas resources than we estimated would occur in the most likely scenario.

(4) This rule raises a novel legal or policy issue. The royalty suspension supplement for an unsuccessful deep gas well expands the scope of royalty relief to reward efforts for exploration in frontier well depths whether or not they eventually produce. As explained earlier, we believe this creates a more cost-effective royalty relief program in this very risky environment.

In addition, royalty suspension volumes have been used for several years as an incentive to accelerate exploration and production in deep water. Application to deep gas is a logical extension of that policy. A well-defined program for deep-gas drilling is more administratively efficient than the elaborate case-by-case requirements of the application process for deepwater royalty relief. The focus here is on a very straightforward definition of well depth and circumstances to qualify for royalty relief.

An economic analysis of this regulatory action was developed in accordance with requirements associated with a major rule under executive order and statutory criteria. This analysis describes why market forces alone will not increase deep gas development in the short term, considers a range of possible royalty relief alternatives to serve that need, and analyzes the social benefits and costs and related transfer payments associated with several royalty suspension alternatives. Three options provide the highest level of added production and net social benefits. One, option A, is the level of royalty suspension proposed in this rule—15 BCF for successful wells to 15,000—18,000 feet TVD and 25 BCF of successful wells or 5 BCF for unsuccessful wells to 18,000 feet TVD or deeper. The two others provide a reduced level of royalty suspension. The second, option B, offers 10 BCF for successful wells to 15,000—18,000 feet TVD and 25 BCF of successful wells or 5 BCF for unsuccessful wells to 18,000 feet TVD or deeper. The third, option C, offers 10 BCF for successful wells to 15,000—18,000 feet TVD and 20 BCF of successful wells or 5 BCF for unsuccessful wells to 18,000 feet TVD or deeper. These three options performed much better on several criteria than alternatives which include higher suspension levels as a substitute for royalty relief for unsuccessful drilling.

We ranked alternatives based on estimates of their net social benefits. Net social benefits are the sum of the net gains to producers and consumers associated with the additional production attributable to this rule. These gains are measured as changes in

consumer and producer surplus relative to a status quo or baseline amount that would occur in the absence of the incentive. Consumer surplus is the difference between the value consumers place on the additional production and its market value. Producer surplus is the difference between the market price and the cost of additional production (including the cost of drilling unsuccessful wells). Transfer payments, on the other hand, consist primarily of changes resulting from the rule in the amount of Federal royalty payments and domestic expenditures to purchase status quo quantities of gas. This summary reviews the performance of the superior options based on several criteria—added production, forgone royalty, and net social benefits from production that would not have occurred without an incentive for deep gas drilling.

We estimate that option A, the proposed royalty suspension level, would generate a cumulative added production of 2.36 TCF of gas and 0.51 TCFE of condensate over the next 15 years. In contrast, option B would generate added production of 2.15 TCF of gas and 0.46 TCFE of condensate over the same time frame, while option C will generate 1.94 TCF of gas and 0.42 TCFE. Added production consists of production from reservoirs unlikely to be drilled under normal conditions and from a portion of reservoirs only likely to be drilled in the future after information, technology, and costs improve, *i.e.*, accelerated production.

Using assumptions about prices, discount rates, and well flow rates, we estimated the net social benefits to society from increased deep gas production. As discussed above, this primary measure of social welfare effects eliminates the sizeable transfers from producers to consumers associated with reduced prices, and from government to producers in the form of reduced royalty payments. The incremental supply added to domestic stocks as a result of the incentive generates a net gain to society. Under option A, the proposal, we estimate a net social gain of $153 million in present value versus $139 million under option B and $121 million under option C.

Another perspective on the effects of the rule is provided by comparing increased production to forgone royalty-bearing production. We estimate that royalty would be forgone under option A, the proposal, on 2.1 TCF of gas production that would have occurred anyway. That implies a ratio of extra production to foregone royalty bearing production of 1.36 [(2.36 TCF + 0.51 TCFE)/2.1 TCF]. For option B this ratio is 1.50 [(2.15 TCF + 0.46 TCFE)/1.74 TCF], and for option C it is 1.49 [(1.94 TCF + 0.42 TCFE)/1.59 TCF]. Hence, any of the three deep gas incentive options is preferable to no such incentive.

Some of the forgone royalty would be offset by royalty collections on the condensate and on added gas production after the royalty suspensions have been used. Taking those into account and distributing the production over the next 15 years, we estimate a net reduction in present value of royalty receipts of $267 million under the proposal versus $124 million for the second alternative and $114 million for the third alternative. These results suggest that options B and C provide slightly less production effects and somewhat lower net social benefits at more than proportionately lower forgone royalty revenues.

Regulatory Flexibility (RF) Act

Several factors make promulgation of this rule at this time important. U.S. demand for natural gas is expected to rise strongly over the next decade while domestic supplies are dwindling. Imported gas provides only a small share of domestic supplies because of the inherent difficulty and danger of transporting gas. A large and promising source of domestic gas, deep reservoirs on existing OCS leases in the shallow water part of the GOM, has been little explored. This is because the costs and risks of drilling deep reservoirs are high relative to drilling shallow reservoirs on these same leases. Further, these higher costs would rise if much of the extensive infrastructure (platforms and pipelines) developed to support the production of shallow reservoirs gets removed as the shallow reservoirs deplete. That means there is a significant chance these deep resources would never be produced if not encouraged now.

Objectives of, and Legal Basis for, the Proposed Rule

To accelerate and increase drilling into deep reservoirs, this rule proposes to:

(1) Suspend royalty payments for specified volumes of deep production that begins in the 5 years after the rule becomes effective; and

(2) Allow producers to apply designated amounts of royalty suspension supplements to other lease production for deep drilling that fails to encounter producible reserves.

Together, these measures will reduce the royalty costs associated with deep drilling and production below the royalty costs of other production on the same lease.

Title 30 CFR part 203 regulates the reduction of oil and gas royalty under 42 U.S.C. 1337(a)(3). Under section 1337 (a)(3)(B), we may reduce, modify, or eliminate royalties on certain producing or non-producing leases or categories of leases to promote development or increased production or to encourage production of marginal resources, in the GOM west of 87 degrees, 30 minutes west longitude.

Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

Companies that extract oil, gas, or natural gas liquids, or are otherwise in oil and gas exploration and development activities and operate leases on the OCS, will be most affected by this rule. The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $6 million or less for exploration service and field service companies.
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

Under the North American Industry Classification System Code 211111, Crude Petroleum and Natural Gas Extraction, MMS estimates that a total of 1,380 firms drill oil and gas wells onshore and offshore. Of these, approximately 130 companies are active offshore in the GOM. Merger and acquisition activity is constantly adjusting the exact number of operators. Publicly available data (from Compustat, Standard and Poor's, McGraw-Hill, and from Dunn & Bradstreet via Hoovers' sites on the internet) indicate that 39 (30 percent) of these companies active in offshore activities qualify as large firms according to SBA criteria, leaving up to 91 (70 percent) companies that qualify as small firms with fewer than 500 employees. Further breakdown of the small entity operators indicate that 28 percent have between 100 and 500 employees, 53 percent have between 1 and 100 employees, and the rest have no employees as they are fully staffed by contractors. As explained in the next section, compliance costs are minimal for small as well as large entities.

Reporting, Recordkeeping and Other Compliance Requirements

The proposed rule requires reporting within the meaning of the Paperwork Reduction Act in four situations. These situations are:

(1) Notify the Production and Development Division of MMS in the GOM region (MMS–PD) of intent to commence drilling a deep well;

(2) Notify MMS–PD that production has commenced from the deep well and request confirmation of the size of royalty suspension volume;

(3) Provide MMS–PD with data from the deep well to confirm that the well drilled was an unsuccessful certified well and request supplement; and

(4) Notify MMS–PD of a decision to exercise an option to replace the deep gas royalty suspension terms in the lease document with the terms in the proposed rule.

The frequency of reporting is on occasion. Responses are voluntary but are required to obtain or retain a benefit. We will protect information considered proprietary according to 30 CFR 203.63(b) and 30 CFR 250.196.

Because this program is administered on a categorical rather than a lease-by-lease basis, minimal administrative time and cost is needed to qualify for royalty relief. The notifications in items (1) and (2) above only entail sending a letter affirming that an action which is a normal part of business operations has occurred. Item (3) involves sharing data from well logs and seismic surveys that the company would develop even in the absence of this rule as a normal part of its exploration business. The notification in item (4) involves making a business decision about which of two alternative incentives best fit the prospects faced by the individual lease. The professional skills involved include those normally used in the operation of all OCS leases—geologists, geophysicists, engineers, and economists. Since no special analysis or independent review would be necessary to accomplish these compliance activities, we see very little burden on normal operations of either small or large companies. Beyond the paperwork notifications, there are no other compliance costs associated with this proposed rule.

The following passages and table are derived from our Paperwork Reduction Analysis. The proposed rule would increase the total paperwork hour burden of the 30 CFR part 203 regulations by 361 hours annually, spread across the entire industry. Based on a cost factor of $50 per hour, the burden of the new paperwork requirements would be $18,050 for the entire industry. This cost pales in comparison to the $10 to $20 million that it costs to drill a single well on the OCS to the deep depths covered by this proposed rule. As explained in the detailed economic analysis of this regulation, we estimate profits to both large and small entities will increase an average of over $33 million per year. The small business proportional share would be $23 million. So, even if small businesses were to bear 100 percent of this compliance costs, it would represent less than 1/10th of one percent of the average annual gross benefits obtained by small business in the form of their proportional share of added industry profits. The last sub-section of this Regulatory Flexibility section mentions two reasons, *i.e.*, risk sharing and location advantages, to think that small OCS entities could get a disproportionate share of the large benefits of this rule, so small entities could get significant positive net benefits from this rule as well. Furthermore, choosing to engage in this program, and hence incurring the nominal compliance cost, is voluntary. Non-participation is not detrimental, since companies that choose not to participate are no worse off than they would be in the absence of the rule.

Except for the row associated with § 48(b), these annual measures of burden costs cover the 5 to 6 years in which the incentive would be effective. The switch option of § 48(b) is only available for 6 months after the rule becomes effective. We assume the small business share of compliance costs is proportional to the maximum small business presence in offshore activities, *i.e.*, 70 percent. This means that small business would incur up to 253 burden hours in year 1 and 204 burden hours in years 2 through 6.

INDUSTRY BURDEN BREAKDOWN

30 CFR 203 section	Reporting requirement	Hour burden	Annual number	Annual burden hours
43(a), 46(a)	Notify MMS of intent to commence drilling	1	[1] 89	89
43(b)(1)(2)	Notify MMS that production has commenced and request confirmation of the size of royalty suspension volume.	2	[1] 25	50
46(b)(1)(2)	Provide data from well to confirm and attest well drilled was an unsuccessful certified well and request supplement.	8	[2] 19	152
48(b)	Notify MMS of decision to exercise option to replace one set of deep gas royalty suspension terms for another set of such terms.	2	[1] 35	70
Total reporting burden—1 year			[3] 168	361
Total reporting burden—2–6 years			[3] 133	291

[1] Notices.
[2] Submissions
[3] Responses.

Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

We are not aware of any Federal rules that conflict with the proposed rule. Two other kinds of royalty relief apply to OCS leases, but do not overlap this proposed rule. Deep water royalty relief has been granted to leases in water at least 200 meters deep in the GOM since 1996, but no leases covered by this proposed rule are eligible for deep water royalty relief. Also, any OCS lease may apply for royalty reduction when it nears the end of its economic life, but this form of relief is only relevant to mature production on a lease, not to development of new reservoirs covered by this proposed rule.

A different royalty relief incentive for deep gas drilling has been included for newly issued leases in the five OCS lease sales held since the beginning of 2001. This incentive is not available to older leases issued before 2001, so they do not overlap the main set of leases targeted by this rule. However, a provision of this proposed rule allows newly issued leases a one-time option to switch to the incentives in this proposed rule. This switching provision is included to be fair and is voluntary. Lessees paid a premium in their bid for

the new leases because their lease terms included deep gas royalty relief. Lessees of older leases had no expectation of royalty relief so their lease bids included no such premium. Allowing new lessees to switch lets those who paid for deep gas royalty relief in their bonus bid choose the more favorable of the two incentives. This switching provision also optimizes the incentive effects of the proposed rule because it will promote more deep gas development by those lessees that choose to switch. Finally, switching enables administrative simplifications when lessees on the same unit choose the same incentive terms. We estimate the aggregate small entity share of the one-time paperwork cost to be proportional to their presence in offshore activity, *i.e.*, 70 percent of $3500, or about $2500.

The proposed rule slightly overlaps two regulations applicable to OCS leases. OCS lessees must submit an application for permit to drill (30 CFR 250.414) to the local MMS district office for review, processing, and eventual entry into an agency-wide data base. This application is a more involved submission than the letter required in the proposed rule notifying MMS-PD of intent to commence drilling. We propose to require the simplified but duplicate version of this application because it is a minimal action that provides important lead time for coordinating other MMS actions that may concern the lease. For example, a potential royalty suspension requires adjustment if the subject lease participates in our royalty-in-kind program. OCS lessees must also notify the local MMS district office when production begins on the lease (30 CFR 250.180). If the deep well is not the first production on the lease, the notice required under this rule would not be duplicative. It, also, would be vital to help avoid confusion when a lease has both royalty-bearing and now royalty-free production. Most of the older leases in shallow water have to be in production already as a condition of holding their lease. The proposed notification would be redundant only when the deep well is the first production on the lease. We believe it is simply easier to set this minimal notice burden on the start of all deep production than to create separate notice rules depending on whether a lease has prior production or not. Even when redundant, the notice serves as a useful check on a long-standing routine report.

Significant Alternatives to the Proposed Rule

The Regulatory Flexibility Act requires the agency to consider alternatives to the proposed rule. The paperwork costs are only 1/10th of 1 percent of these benefits and are the minimal necessary to allow the monitoring essential to a consistent administration of a categorical relief program across all participants. The alternative of a case-by-case relief program, where each operator would apply to participate would enormously increase the paperwork burden and associated costs for all participating lessees, both small and large entities. While case-by-case review might reduce forgone royalty, it would add uncertainty about approval and thus discourage new drilling relative to the categorical program. Also, an application process would discourage participation especially by small operators who are unlikely to have the staff needed to assemble and defend an appropriate application.

Alternative forms of the categorical deep gas incentive we considered included: (1) Reduction of royalty rates for production emerging from new deep wells, (2) suspending royalty for a fixed value rather than a volume of new deep production, (3) a royalty suspension volume only for successful deep wells, (4) different royalty suspension volumes, and (5) no incentives. These alternatives are fully discussed in the detailed economic analysis of this regulation and will be available at www.mms.gov/econ. The administrative costs are the same for all the categorical incentive alternatives. Only the benefits are different. The alternative we chose results in the largest benefit to producers and to the small entity share of producers.

A summary discussion of the alternatives is included in the section titled "Details of Proposed Royalty Relief for Deep Gas Production" of this preamble. We chose the incentive form that combines a royalty suspension volume for successful deep gas wells and a royalty suspension supplement for unsuccessful deep wells for three reasons:

(1) It is large enough to generate substantial deep drilling activity;

(2) It is the most cost-effective incentive structure for the Government because it does not waste as much relief as alternatives on prospects that will be drilled anyway; and

(3) It concentrates most of the incentive on the very deep (18,000 feet or deeper subsurface) zones where we believe most of the undiscovered potential is to be found.

A more detailed explanation of these findings is contained in the economic analysis of this regulatory action. Additionally, this proposed incentive structure also may especially benefit small operators more than the alternative categorical incentive structures mentioned above.

The royalty suspension supplement feature improves the ability of small companies with limited drilling programs to spread their risk. Success on one or two of many deep wells that a large operator drills in a given period can pay the costs incurred for the unsuccessful wells. Small operators may be able to drill only one or two deep wells in a given period. The royalty suspension supplement can reduce the net cost of unsuccessful deep wells immediately, so the small operator does not necessarily have to wait for a deep well success in a later period to offset at least some unsuccessful exploration costs. This is a feature not found in any of the alternative categorical incentive structures which confer royalty relief only on successful wells.

Because of the risk, high cost, and technical complexity, we expect most lessees/operators involved in exploration and development in deep drilling depths of the GOM to be large companies. However, the location eligible for deep gas royalty relief is in shallow water, where we find relatively more small operators compared to those found in deep water. Thus, relatively more of those OCS operators who will benefit from the deep gas incentive in this rule may be in the small business category than those who benefit from deep water royalty relief.

For these reasons we believe this proposed rule is likely to provide at least a proportionate share of its benefits to small businesses. Nevertheless, MMS seeks to understand and address unforeseen impacts of this proposed rule on small businesses. Please provide comment on any or all provision in the proposed rule with respect to its effect on small entities. In particular, pay specific attention to the following sections of the proposed rule and assumptions discussed above:

- The overlapping notice of intent to commence drilling, §§ 203.43(a) and 203.46(a);
- The possibly overlapping notice that deep production has commenced § 203.43(b);
- The requirement to provide seismic and well test information to confirm drilling an unsuccessful well § 203.46(b);

- The one-time notice of a switch to the proposed deep gas incentive terms § 203.48(b); and
- Our assumptions that:

(1) Small entities are more prevalent in the shallow water than the deep water GOM;

(2) The risk, cost, and technical complexity of deep drilling is more like that found in deep water development than in traditional shallow water development; and

(3) The royalty suspension supplement tends to be more valuable to small entities with fewer deep drilling opportunities than large entities that have more deep drilling opportunities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

(1) Does have an annual effect on the economy of $100 million or more. This rule introduces a royalty relief program for deep gas that will save consumers $200 million annually for about a decade. Based on the EIA price projections, the reduction in royalty collected by the Federal government under the revised rulemaking would exceed the $100 million per year threshold in five out of 16 years in which meaningful amounts of program related production are generated. The benefits of the rule on the economy more than offset the royalty losses. A comparison of two types of production provides a proxy measure of this net social benefit. We estimate the magnitude of new gas production that ultimately occurs because of the incentive in the rule is about 1.4 times the size of gas production on which the government forgoes royalty. The government only forgoes royalty on production that would have occurred anyway without the incentive. Moreover, consumers of natural gas will benefit from additional domestic gas supplies and have lower market prices.

More lessees may take advantage of the proposed new deep gas royalty relief provisions over the next few years than have ever applied for end-of-life or deepwater royalty relief. However, the incremental drilling and production induced by this royalty relief will be small relative to total gas drilling and production in the GOM. The main thrust of the initiative is to increase and help accelerate new gas production to promote timely production otherwise inhibited. Even a small moderation of prices due to added deep gas production would result in a significant savings in gas expenditures and dampen natural gas prices in the market. Further, the proposed rule would impose no costs on any local or private entity, but may initially impose some small costs ($1 to $2 million per year) on Gulf coast States in the form of reduced payments under Section 8(g) of the OCSLA. However, production that otherwise would not occur will result from these incentives. That production will produce extra royalty payments, mostly after the royalty suspension volumes have been produced. Participation in the program by lessees is voluntary.

We consider the key adverse economic effect of this program with regard to the $100 million dollar annual benchmark to be forgone Federal royalties on deep gas production that would have been generated without this program. Since lower royalties mean more taxable income to companies, we measure the effect on forgone Federal revenues net of tax increases, assuming a 25 percent tax rate. Note that this is a transfer payment so that the government loss is also an operator gain from pursuing a socially desirable activity—deep gas production.

We forecast that without the proposed deep gas royalty relief program, 37 wells would be drilled annually to depths of 15,000 to 18,000 feet TVD SS and 11 wells to drilling depths below 18,000 feet TVD SS. Based on trends in drilling deep depths during the past 10 years in shallow water, we expect 12 successful wells in the 15,000 to 18,000 feet TVD SS drilling depth and 3 successful wells at deep drilling depths below 18,000 feet TVD SS without the incentive. We assume all these new successful deep wells are on different leases. With the incentive, we estimate there would be 35 wells drilled to depths below 18,000 feet TVD SS, of which 28 would be unsuccessful, and 19 of them on leases having other production to which the royalty suspension supplement could be used.

Annually over the 2003 through 2009 period, the absence of our deep gas royalty relief program could thereby save the government about 350 BCF in new royalty suspension volumes (12 * 15 + 3 * 25 + 19 * 5) awarded for drilling activities that would have occurred anyway. These savings may decline before the program ends in about 2009 because of the availability of less prospective reservoirs in later years of the program. Further, in any one year, only about 20 to 25 percent of the accrued amount of royalty suspension volumes could actually be used.

Offsetting most of these initial royalty losses are the extra royalties in later years on production beyond the royalty suspension volume from additional reserves discovered because of the incentive. Along with the incremental 24 wells (35–11) annually to drilling depths below 18,000 feet TVD SS, we expect 17 incremental wells (54–37) would be drilled annually to depths of 15,000 to 18,000 feet TVD SS. We estimate these incremental wells ultimately will lead to production of about 2.3 TCF, of which 0.7 would be royalty-free and 1.6 TCF would be royalty-bearing. We anticipate that the royalties on this 1.6 TCF of production will begin in about 2010 and continue until about 2025. Further offsetting benefit also comes from extra profits from production that would otherwise not occur.

A detailed economic analysis of this regulatory action was prepared and will be available at *http://www.mms.gov/econ*. This economic analysis explains our monetary calculations.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The deep gas incentive should materially moderate expected gas prices by adding to the overall supply.

(3) Does not have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Companies eligible for the proposed deep gas royalty relief should produce more natural gas and earn more income, while encountering no negative effects.

Paperwork Reduction Act (PRA) of 1995

The proposed rule requires information collection (IC), and an IC request (form OMB 83–I) has been submitted to OMB for review and approval under section 3507(d) of the PRA. The title of the collection of information is "Proposed Rulemaking-30 CFR 203, Deep Gas Provisions." Respondents include approximately 130 Federal OCS oil and gas lessees. The frequency of reporting is on occasion. Responses are required to obtain or retain a benefit. The IC does not include questions of a sensitive nature. We will protect information considered proprietary according to 30 CFR 203.63(b) and 30 CFR 250.196.

OMB approved the information collection requirements in the current 30 CFR 203 regulations under control number 1010–0071, with a current expiration date of September 30, 2003. The following table lists the proposed new IC requirements and respective burdens. The proposed rule would increase the total paperwork hour burden of the 30 CFR part 203 regulations by 361 hours. Based on a

cost factor of $50 per hour, the hour burden of the new paperwork requirements would be $18,050.

BURDEN BREAKDOWN

30 CFR 203 section	Reporting requirement	Hour burden	Annual number	Annual burden hours
43(a), 46(a)	Notify MMS of intent to commence drilling	1	[1]89	89
43(b)(1)(2)	Notify MMS that production has commenced and request confirmation of the size of royalty suspension volume.	2	25	50
46(b)(1)(2)	Provide data from well to confirm and attest well drilled was an unsuccessful certified well and request supplement.	8	[2]19	152
48(b)	Notify MMS of decision to exercise option to replace one set of deep gas royalty suspension terms for another set of such terms.	2	35	70
Total reporting burden			[3]168	361

[1] Notices. [2] Submissions. [3] Responses.

MMS would use the information collected to determine whether a lessee is qualified to receive the relief offered in this proposed program.

As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden in the proposed rule.

(1) We specifically solicit comments on the following questions:

(a) Is the proposed collection of information necessary for MMS to properly perform its functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping "non-hour" cost burden resulting from the collection of information. We have not identified any and solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (a) The total capital and startup cost component, and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased: before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practice.

You may submit your comments directly to the Office of Information and Regulatory Affairs, OMB. Please send a copy of your comments to MMS so that we can summarize all written comments and address them in the final rule preamble. Refer to the "Addresses" section for mailing instructions. OMB is required to make its decision on the information collection aspects of this proposed rule between 30 to 60 days after publication in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by April 25, 2003. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves the collection of information and assigns an OMB control number, you are not obligated to respond.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have meaningful Federalism implications. As noted above it may initially impose some small costs ($1 to $2 million a year) on Gulf coast States in the form of reduced payments under Section 8g of the OCSLA. However, additional resources discovered under this incentive will make up for these initial reductions from production that otherwise would not occur. Largely after the royalty suspension volumes have been produced, extra royalties for Federal and Gulf coast States will result from this extra production. Also, the added economic activity in those States associated with new deep drilling will generate new tax revenues. Therefore, a Federalism assessment is not required because the proposed rule would not have a direct or substantive effect on the relationship between the Federal and State Governments, nor does it impose responsibilities or costs on States or localities.

Takings Implication Assessment (Executive Order 12630)

According to Executive Order 12630, the rule does not have significant Takings implications. A Takings Implication Assessment is not required. This rule has no Takings effect, because it only specifies circumstances under which royalty payments to the Federal Government by OCS lessees might be reduced. The lessee of such a lease would be better off financially under this rule.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is a significant rule and is subject to review by OMB under Executive Order 12866. This rule does not have a significant adverse effect on energy supply, distribution, or use. This rule increases and accelerates the production of gas from deep wells on the OCS shelf by providing for a royalty suspension volume for successful deep production and a royalty suspension supplement for unsuccessful deep drilling efforts, so it has a positive effect on energy supply based on our regulatory analysis.

Unfunded Mandates Reform Act (UMRA) of 1995

This proposed rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule does not have any Federal mandates nor does the proposed rule have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA) of 1969

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Government-to-Government Relationship with Tribes

According to the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951) and 512 DM 2, we have determined that there are no effects on federally recognized Indian tribes.

Clarity of this Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Is the description of the rule in the "Supplementary Information" section of this preamble helpful in understanding the rule? What else can we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

List of Subjects in 30 CFR Parts 203

Continental shelf, Government contracts, Indian lands, Minerals royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Sulphur.

Dated: March 20, 2003.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR part 203 as follows:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

1. The authority citation for part 203 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq;* 30 U.S.C. 1001 *et seq;* 30 U.S.C. 1701 *et seq;* 31 U.S.C. 9701 *et seq;* 43 U.S.C. 1301 *et seq;* 43 U.S.C. 1331 *et seq;* and 43 U.S.C. 1801 *et seq.*

2. Section 203.0 is amended by adding definitions for "deep well", "new well," "participating area", "reservoir", "royalty suspension supplement," "successful qualified deep well," and "unsuccessful certified well" in alphabetical order to read as follows:

§ 203.0 What definitions apply to this part?

* * * * *

Deep well means either a well drilled and completed with a perforated interval, the top of which is at least 15,000 feet true vertical depth below the datum at mean sea level (TVD SS), or a well drilled but not completed to a target reservoir deeper than 18,000 feet TVD SS.

* * * * *

New well means a well that results from drilling that does not utilize an existing wellbore.

* * * * *

Participating area means that part of the unit area that is reasonably proven by drilling and completion of producible wells, geological and geophysical information, and engineering data to be capable of producing hydrocarbons in paying quantities.

* * * * *

Reservoir means an underground accumulation of oil or natural gas or both characterized by a single pressure system and segregated from other such accumulations.

* * * * *

Royalty suspension supplement means a royalty suspension volume generated from drilling an unsuccessful certified well and applied to royalties due on future royalty-bearing natural gas and oil production on, or allocated to, the same lease.

* * * * *

Successful qualified deep well means a new deep well completed on your lease:

(1) That begins drilling after March 26, 2003, and

(2) That begins producing natural gas, including gas associated with oil production before [DATE THAT IS FIVE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

* * * * *

Unsuccessful certified well means a new well drilled on your lease:

(1) Beginning after March 26, 2003;

(2) Beginning before [DATE THAT IS FIVE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE];

(3) Beginning before your lease produces from a successful qualified deep well;

(4) To a depth of at least 18,000 feet true vertical depth below the datum at mean sea level (TVD SS);

(5) That targeted a reservoir identified from seismic and related data deeper than 18,000 feet TVD SS; and

(6) That fails to meet the producibility requirements of 30 CFR Part 250, subpart A, and does not produce, or that MMS agrees is not commercially producible. (Any well producing from a reservoir 15,000 feet TVD SS or deeper is deemed a successful well, though not necessarily a successful qualified deep well).

* * * * *

3. A new undesignated heading and new §§ 203.40 through 203.48 are added to Subpart B to read as follows:

Royalty Relief for Drilling Deep Gas Wells

§ 203.40 Which leases are eligible for royalty relief as a result of drilling deep wells?

Your lease may receive a royalty suspension volume under §§ 203.41 through 203.43 and may receive a royalty suspension supplement under §§ 203.44 through 203.46 if it:

(a) Was issued in an OCS lease sale held before January 1, 2001, or in a lease sale held on or after that date and the lessee has exercised the option under § 203.48;

(b) Is located in the Gulf of Mexico, wholly west of 87 degrees, 30 minutes West longitude entirely in water less than 200 meters deep; and

(c) Has not produced gas or oil from a deep well that commenced drilling before March 26, 2003. Production

before that date from a deep well on another lease on your unit does not make your lease ineligible for royalty relief.

§ 203.41 If I drill a successful qualified deep well, what royalty relief could I receive?

(a) Subject to the administrative requirements of § 203.43 and the price conditions in § 203.47, we will suspend royalties for the produced gas volumes, as reported in accordance with 30 CFR 216.53 (Oil and Gas Operations Report, Part A or OGOR–A), shown in the following table (in billions of cubic feet or BCF):

If you have a successful qualified deep well . . .	Then, we suspend royalties on this volume of deep gas production from or allocated to your lease as prescribed in this section and § 203.42:
(1) From 15,000 to less than 18,000 feet TVD SS.	15 BCF
(2) 18,000 feet TVD SS or deeper.	25 BCF

(b)(1) The royalty suspension volume determined under paragraph (a) for the first successful qualified deep well on your lease establishes the total royalty suspension volume available for that lease. You will not receive an additional royalty suspension volume if you drill more successful qualified deep wells on your lease or if you later drill and complete a deeper well that would have qualified for a higher royalty suspension volume. For example, if you drill a successful qualified deep well to 16,000 feet TVD SS and later drill a second successful qualified deep well on the lease to 19,000 feet TVD SS, your total royalty suspension volume is limited to 15 BCF. If your lease is within an MMS-approved unit, *see* subparagraph (b)(3) of this section.

(2) After you receive a royalty suspension volume for your first successful qualified deep well, if you later begin production from another successful qualified deep well on the lease, you must notify MMS of that production under § 203.43.

(3) This paragraph applies if your lease is within an MMS-approved unit.

(i) If the first successful qualified deep well on your lease is a well within a unit participating area, 100 percent of the royalty suspension volume available for that well under paragraph (b)(1) of this section applies only to your allocated share of production from that well. No other lease in the unit is entitled to any of the royalty suspension volume under this section or § 203.42, even though another lessee may be entitled to a share of the production from the successful qualified deep well on your lease. Your royalty suspension volume for the lease will not increase if your lease is entitled to an allocated share of production under the unit agreement from another deep well either on your lease or another lease in the unit.

(ii) If the first successful qualified deep well located on your lease was not a unit well, and if your lease is entitled to an allocated share of production under an MMS-approved unit agreement from another deep well within the unit participating area either on your lease or on another lease, that allocated share of production will not increase the volume of royalty suspension you qualify for under this section based on the first successful qualified deep well on your lease.

(iii) If you do not have a successful qualified deep well located on your lease, then you are not entitled to any royalty suspension volume for production allocated to your lease under the unit agreement from a successful qualified deep well on another lease in the unit.

(c) Any royalty relief allowed under paragraph (a) of this section is in addition to any royalty suspension supplement for your lease under § 203.44 that results from a different wellbore.

(d) You must pay minimum royalties in accordance with your lease terms notwithstanding any royalty suspension volumes allowed under paragraph (a) of this section.

§ 203.42 To which production do I apply the royalty suspension volume from drilling a successful qualified deep well on my lease?

(a) This paragraph applies to any lease that is not within an MMS-approved unit. Subject to the requirements of §§ 203.40, 203.41, 203.43, 203.44, and 203.47, beginning the day that you provide MMS the notice required under § 203.43, you must apply the royalty suspension volume to production from all successful qualified deep wells on your lease for which you have given notice. Apply the royalty suspension volume applicable to your lease to that production each month until you use all of your royalty suspension volume.

(b) This paragraph applies to any lease all or part of which is within an MMS-approved unit and that has at least one successful qualified deep well located on the lease. Subject to the requirements of §§ 203.40, 203.41, 203.43, 203.44, and 203.47, beginning the day that you provide MMS the notice required under § 203.43, you must apply the royalty suspension volume to your share of production from all successful qualified deep wells on your lease for which you have given notice, and to production volumes allocated to your lease from deep wells on other unit leases drilled after March 26 2003. Apply the royalty suspension volume applicable to your lease to that production each month until you use all of your royalty suspension volume.

(c) Unused royalty suspension volume transfers to a successor lessee and expires with the lease.

(d) You may not apply the royalty suspension volume allowed under § 203.41;

(1) To production from a deep well drilled before March 26 2003;

(2) To production from wells less than 15,000 feet TVD SS;

(3) To deep production from any other lease, except as provided in paragraph (b) of this section.

(e) You must begin paying royalties when the cumulative royalty-free production of gas from or allocated to your lease reaches the applicable royalty suspension volume allowed under § 203.41. For the month in which cumulative production reaches this royalty suspension volume, you owe royalties on the portion of gas production that exceeds the royalty suspension volume remaining at the beginning of that month.

(f) All liquid hydrocarbon volumes are subject to royalty. This includes condensate recovered at separation facilities without processing. If you sell your gas before it is processed, the royalty suspension volumes apply to the gas production reported on the OGOR–A. If your gas is processed before you sell it, the royalty suspension volumes apply only to residue gas generated after processing and not to any natural gas liquids.

§ 203.43 What administrative steps must I take to use the royalty suspension volume?

(a) You must provide written notification to the MMS Regional Supervisor for Production and Development of your intent to commence drilling operations on deep wells; and

(b) Within 30 days of commencement of production that qualifies for royalty suspension, you must:

(1) Notify the MMS Regional Supervisor for Production and Development that production has commenced; and

(2) Request confirmation of the size of the royalty suspension volume that applies to your lease.

(c) You must meet any special production measuring requirements that the Regional Supervisor for Production and Development has determined are necessary under 30 CFR 250, subpart L.

(d) If you commenced drilling a successful qualified deep well after March 26, 2003, and produced it before [EFFECTIVE DATE OF THE FINAL RULE], you must provide the information required by paragraph (b) of this section on or after [EFFECTIVE DATE OF THE FINAL RULE] and no later than [DATE 30 DAYS AFTER THE EFECTIVE DATE OF THE FINAL RULE].

§ 203.44 If I drill an unsuccessful certified well, what royalty relief could I receive?

(a) If you drill an unsuccessful certified well, and satisfy the administrative requirements of § 203.46, you will receive a royalty suspension supplement of five BCF for your lease, to be applied to subsequent production of gas and oil, as reported in accordance with 30 CFR 216.53 (OGOR–A), on or allocated to your lease as provided in § 203.45. The conversion from oil to gas for using the royalty suspension supplement is specified in § 203.73.

(b) You may receive royalty suspension supplements for up to two unsuccessful certified wells per lease. You may not receive more than one royalty suspension supplement from a single wellbore.

(c)(1) If the same wellbore used to qualify for a royalty suspension supplement later produces from a perforated interval the top of which is 15,000 feet TVD SS or deeper no later than [DATE FIVE YEARS AFTER THE EFECTIVE DATE OF THE FINAL RULE], it will become a successful qualified deep well. If the completion of this successful qualified deep well is on your lease, then you must subtract that portion of the royalty suspension supplement that has been applied to other production from the lease from the royalty suspension volume remaining for the lease. The difference represents the maximum royalty suspension volume for which you are eligible on the lease. If the completion of this successful qualified deep well is on another lease, then the royalty suspension volume earned by this other lease must be reduced by the full amount of the royalty suspension supplement applied on your lease. You may not use any remaining unused portion of the royalty suspension supplement earned for that wellbore.

(2) Notwithstanding any other provision of this part, the total amount of royalty relief earned from or applied to production from a single wellbore that originally qualified as an unsuccessful certified well, but that later produces, cannot exceed 25 BCF.

(d) You must pay minimum royalties in accordance with your lease terms notwithstanding any royalty suspension supplements under this section.

§ 203.45 To which production do I apply the royalty suspension supplements from drilling one or two unsuccessful certified wells on my lease?

(a) Subject to the requirements of §§ 203.40, 203.42, 203.44, and 203.47 and beginning the first day of the month that you file the data and request under § 203.46, you must apply royalty suspension supplements stipulated in § 203.44 to production from, or allocated under an approved unit agreement to, the lease that was the target of your drilling, without restriction on the drilling depth of the well producing the gas or oil.

(b) If you have a royalty suspension volume for the lease under § 203.41, you must exhaust the royalty suspension volume before applying any unused royalty suspension supplement to deep gas production.

(c) If you have no production on which to apply the royalty suspension supplement allowed under § 203.44 when it is earned, your royalty suspension supplement applies to the earliest subsequent production on your lease. Unused royalty suspension supplements transfer to a successor lessee and expire with the lease.

(d) You may not apply the royalty suspension supplement allowed under § 203.44 to production from any other lease, except for production allocated to your lease from an approved unit agreement. If the unsuccessful certified well is on a lease subject to an MMS-approved unit agreement, the lessees of other leases in the unit may not use any portion of your royalty suspension supplement.

(e) You must begin or resume paying royalties when cumulative oil and gas production from or allocated to your lease (excluding any deep gas produced subject to a royalty suspension volume allowed under § 203.41) reaches the applicable royalty suspension supplement. For the month in which the cumulative production reaches this royalty suspension supplement, you owe royalties on the portion of gas or oil production that exceeds the amount of the royalty suspension supplement remaining at the beginning of that month.

§ 203.46 What administrative steps must I take to obtain and use the royalty suspension supplement?

(a) Before a deep well targeted to a reservoir on your lease commences drilling, you must notify, in writing, the MMS Regional Supervisor for Production and Development of your intent to begin drilling operations; and

(b) After drilling the well you must:

(1) Provide MMS with data, including any well test data, that allows MMS to confirm that you drilled an unsuccessful certified well as defined under § 203.0. You must submit this data within 60 days after reaching the Total Depth (TD) in your well to be eligible for the royalty suspension supplement under § 203.45; and

(2) Request confirmation that the royalty suspension supplement applies to your lease.

(c) If you commenced drilling an unsuccessful certified well after March 26, 2003, and finished it before [EFFECTIVE DATE OF THE FINAL RULE], you must provide the information required by paragraph (b) on or after [EFFECTIVE DATE OF THE FINAL RULE] and no later than [DATE 60 DAYS AFTER THE EFECTIVE DATE OF THE FINAL RULE].

§ 203.47 Do I keep royalty relief if prices rise significantly?

(a) You must pay royalties on all gas and oil production for which royalty suspension otherwise would be allowed under §§ 203.40 through 203.46 in any calendar year when the average NYMEX natural gas price exceeds the threshold of $5 per million British thermal units (Btu), adjusted annually from year 2000 for inflation. The threshold price is adjusted by the percentage that the implicit price deflator for the gross domestic product changed during the preceding calendar year.

(b) You must pay any royalty due under this section, plus late payment interest under 30 CFR 218.54, no later than 90 days after the end of the calendar year for which you owe royalty.

(c) Production volumes on which you must pay royalty under this section count as part of your royalty suspension volume and royalty suspension supplements.

§ 203.48 May I substitute the deep gas drilling provisions in § 203.0 and §§ 203.40 through 203.47 for the deep gas royalty relief provided in my lease terms?

(a) You may exercise an option to replace the applicable lease terms for relief related to deep gas drilling with those in § 203.0 and §§ 203.40 through 203.47 if you have a lease issued:

(1) From a lease sale held after January 1, 2001, and before [EFFECTIVE DATE OF THE FINAL RULE]; and

(2) Wholly west of 87 degrees, 30 minutes West longitude in the Gulf of

Mexico entirely in water less than 200 meters deep, with royalty relief provisions for deep gas drilling.

(b) You may exercise this option by notifying the MMS Regional Supervisor for Production and Development of your decision before [DATE 180 DAYS AFTER THE EFFECTIVE DATE OF THE FINAL RULE] and specifying the lease and block number.

(c) Once the option is exercised, you must meet all the activity and administrative requirements pertaining to royalty relief for leases eligible for deep gas royalty relief that were issued in an OCS lease sale held before January 1, 2001.

(d) Exercising the option under paragraph (a) of this section is irrevocable. If you do not exercise this option, your original lease terms apply.

[FR Doc. 03–7353 Filed 3–25–03; 8:45 am]
BILLING CODE 4310–MR–P

Reader Aids

Federal Register
Vol. 68, No. 58
Wednesday, March 26, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MARCH

9851–10140	3
10141–10344	4
10345–10650	5
10651–10952	6
10953–11310	7
11311–11462	10
11463–11732	11
11733–11966	12
11967–12282	13
12283–12568	14
12569–12796	17
12797–13218	18
13219–13614	19
13615–13802	20
13803–14126	21
14127–14306	24
14307–14526	25
14527–14886	26

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
7648	10641
7649	10643
7650	10645
7651	10647
7652	10649
7653	13217
7654	13805
Administrative Orders:	
Memorandums:	
Memorandum of February 12, 2003	10141
Memorandum of March 11, 2003	12569
Memorandum of March 12, 2003	12281
Presidential Determinations:	
No. 2003–15 of February 13, 2003	10651
No. 2003–16 of March 14, 2003	13803
Notices:	
Notice of March 12, 2003	12563
Executive Orders:	
4601 (Amended by: 13286)	10619
10977	12567
10113 (Amended by: 13286)	10619
10163 (Amended by: 13286)	10619
10179 (Amended by: 13286)	10619
10271 (Amended by: 13286)	10619
10448 (Amended by: 13286)	10619
10499 (Amended by: 13286)	10619
10554 (Amended by: 13286)	10619
10631 (Amended by: 13286)	10619
10637 (Amended by: 13286)	10619
10694 (Amended by: 13286)	10619
10789 (Amended by: 13286)	10619
10977 (Amended by: 13286; See: 13289)	10619, 12567
11016 (Amended by: 13286)	10619
11046 (Amended by: 13286)	10619
11079 (Amended by: 13286)	10619
11139 (Amended by: 13286)	10619
11190 (Amended by: 13286)	10619
11231 (Amended by: 13286)	10619
11239 (Amended by: 13286)	10619
11366 (Amended by: 13286)	10619
11438 (Amended by: 13286)	10619
11446 (Amended by: 13286)	10619
11448 (Amended by: 13286)	10619
11623 (Amended by: 13286)	10619
11645 (Amended by: 13286)	10619
11800 (Amended by: 13286)	10619
11858 (Amended by: 13286)	10619
11926 (Amended by: 13286)	10619
11965 (Amended by: 13286)	10619
12002 (Amended by: 13286)	10619
12146 (Amended by: 13286)	10619
12148 (Amended by: 13286)	10619
12160 (Amended by: 13286)	10619
12188 (Amended by: 13286)	10619
12208 (Amended by: 13286)	10619
12341 (Amended by: 13286)	10619
12382 (Amended by: 13286)	10619
12472 (Amended by: 13286)	10619
12501 (Amended by: 13286)	10619
12555 (Amended by: 13286)	10619
12580 (Amended by: 13286)	10619
12656 (Amended by: 13286)	10619
12657 (Amended by: 13286)	10619
12699 (Amended by: 13286)	10619
12727 (Amended by: 13286)	10619
12728 (Amended by: 13286)	10619
12733 (Amended by: 13286)	10619

12742 (Amended by: 13286).....10619
12743 (Amended by: 13286).....10619
12752 (See Memorandum of March 11, 2003).....12569
12777 (Amended by: 13286).....10619
12788 (Amended by: 13286).....10619
12789 (Amended by: 13286).....10619
12793 (Amended by: 13286).....10619
12807 (Amended by: 13286).....10619
12824 (Amended by: 13286).....10619
12830 (Amended by: 13286).....10619
12835 (Amended by: 13286).....10619
12870 (Amended by: 13286).....10619
12906 (Amended by: 13286).....10619
12919 (Amended by: 13286).....10619
12957 (See Notice of March 12, 2003).....12563
12959 (See Notice of March 12, 2003).....12563
12977 (Amended by: 13286).....10619
12978 (Amended by: 13286).....10619
12982 (Amended by: 13286).....10619
12985 (Amended by: 13286; See: 13289).....10619, 12567
12989 (Amended by: 13286).....10619
13011 (Amended by: 13286).....10619
13059 (See Notice of March 12, 2003).....12563
13076 (Amended by: 13286).....10619
13100 (Amended by: 13286).....10619
13112 (Amended by: 13286).....10619
13120 (Amended by: 13286).....10619
13130 (See: 13286).....10619
13133 (Amended by: 13286).....10619
13154 (Amended by: 13286).....10619
13165 (Amended by: 13286).....10619
13212 (Amended by: 13286).....10619
13223 (Amended by: 13286).....10619
13228 (Amended by: 13286).....10619
13231 (Amended by: 13286).....10619
13254 (Amended by: 13286).....10619
13257 (Amended by: 13286).....10619
13260 (Amended by: 13286; Revoked by: 13286, eff. 3/31/03).....10619
13271 (Amended by: 13286).....10619
13274 (Amended by: 13286).....10619
13276 (Amended by: 13286).....10619
13282 (Amended by: 13291).....14525
13284 (See: 13286).....10619
13286.....10619
13287.....10619
13288.....11457
13289.....12567
13290.....14305
13291.....14525

5 CFR

110.....10666
792.....14127
Ch. XIV.....10953
2416.....10953
2424.....10953
2429.....10953
2471.....10953
2472.....10953

6 CFR

9.....10912
15.....10886
17.....10892
21.....10904

7 CFR

301.....11311
318.....11967
319.....9851
652.....14131
911.....10345
944.....10345
959.....11463
982.....11733
984.....10347
989.....13219, 13615
1000.....13617
1001.....13617
1005.....13617
1006.....13617
1007.....13617
1030.....13617
1032.....13617
1033.....13617
1124.....13617
1126.....13617
1131.....13617
1135.....13617
1940.....14527

Proposed Rules:

301.....13859
340.....11337
354.....13861
770.....12309
930.....9944, 13636
932.....11340
985.....11751
1205.....12310
1218.....11756
1219.....12881
1230.....11996
1405.....9944
1470.....13872
1499.....9944
1599.....14546

8 CFR

1.....10922
2.....10922
103.....10922
217.....10954
235.....10143
239.....10922
1001.....10349
1003.....10349
1101.....10349
1103.....10349
1205.....10349
1208.....10349
1209.....10349
1212.....10349
1216.....10349
1235.....10349
1236.....10349
1238.....10349
1239.....10349
1240.....10349
1241.....10349
1244.....10349
1245.....10349
1246.....10349
1249.....10349
1270.....10349
1274a.....10349
1292.....10349
1337.....10349

9 CFR

1.....12283
50.....10361
92.....10667
97.....13861
130.....13861

Proposed Rules:

94.....11998
317.....11008
327.....11008

10 CFR

20.....14307
40.....10362
50.....12571
70.....14528
71.....14528
73.....14528
150.....10362
430.....10957

Proposed Rules

20.....14349
40.....10411
150.....10411
430.....11009
490.....10320

11 CFR

111.....12572

12 CFR

202.....13144, 14476

Proposed Rules:

203.....11010
225.....12316
915.....13238

13 CFR

121.....13807

14 CFR

Ch. 1.....10145
25.....9854, 10365, 12581
39.....10147, 10149, 10152, 10154, 10156, 10583, 10653, 11467, 11469, 11967, 11971, 12285, 12797, 12799, 12802, 12806, 12809, 12812, 13221, 13618, 14309, 14310, 14311, 14312, 14530, 14533
47.....10316
71.....10367, 10369, 10654, 11736, 11738, 12582, 12814, 13225, 13811, 14072, 14314, 14315
91.....12542, 14072
95.....14072
97.....10962, 10963, 13619, 13621
121.....12542, 14072
125.....14072
129.....14072
135.....12542, 14072
145.....12542
1260.....14535
1274.....14535

Proposed Rules:

21.....11475, 11759
39.....9947, 9950, 9951, 9954, 10185, 10188, 10413, 10416, 11014, 11015, 11342, 11476, 11479, 11760, 11762, 11764, 11999, 12318, 12614, 12615, 12618, 13239, 14350, 14351, 14353, 14355, 14558
43.....11475, 11759
71.....12621, 14359
93.....14276
121.....12882
145.....11475, 11759
255.....12622, 12883
399.....12622, 12883

15 CFR

740.....10586
743.....10586
772.....10586
774.....10586
902.....12814

16 CFR

304.....9856

17 CFR

4.....12583
200.....12780
240.....12780, 14315

Proposed Rules:

1.....12319
4.....12001, 12622

18 CFR

284.....13813
375.....9857
388.....9857

Proposed Rules:

4.....13988
5.....13988
16.....13988
385.....13988

19 CFR

4.....13623, 13819, 14476
10.....13820, 13827
12.....13835
113.....13623, 14476
178.....13623, 14476

Proposed Rules:

10.....14478
12.....13636
24.....13636
113.....13638
163.....14478
181.....12011

20 CFR

1.....14316
30.....14316
625.....10932

Proposed Rules:

404.....12639
416.....12639
422.....14563

21 CFR

165.....9873
201.....12584
510.....13225
520.....13626
530.....14134
558.....13839
610.....10157
888.....14134
1308.....14114, 14119
1310.....11471

Proposed Rules:

1.....10668
111.....10418, 12158, 14360
112.....12158
165.....9955
201.....12500
310.....12406
312.....12406
314.....12406
320.....12406
600.....12406
601.....12406
606.....12406, 12500
610.....12500
878.....13639

22 CFR

41.....13627
42.....13627, 13628

Proposed Rules:

211.....9944

23 CFR

655.....14138

24 CFR

25.....12766
28.....12766
30.....12766
81.....12766
92.....10160
180.....12766
207.....12792
906.....11714
3282.....12766
3500.....12766

Proposed Rules:

203.....11730
3285.....11448
3286.....11452

26 CFR

1.....10161, 10655, 11313, 12287, 12815, 12817, 13226
20.....10161
25.....10161
31.....10161
53.....10161
54.....10161
56.....10161
301.....10161, 11739, 14316
602.....10161, 11739, 12287, 12817

Proposed Rules:

1.....10190, 12324, 13242

27 CFR

4.....10076
5.....10076
7.....10076
555.....13768

Proposed Rules:

7.....14291
25.....14191

28 CFR

16.....14139, 14140
540.....10656

Proposed Rules:

28.....11481

29 CFR

1404.....10659
1910.....12301
1979.....14100
4022.....12303
4044.....12303

30 CFR

18.....10965
250.....14274
916.....14322
948.....10178

Proposed Rules:

70.....10784, 12641
72.....10940, 12641
75.....10784, 11770, 12641
90.....10784, 12641
203.....14752
206.....12643
920.....14360
950.....10193

31 CFR

1.....12584
103.....10965
515.....14141
560.....11741
575.....11741

Proposed Rules:

103.....12155

32 CFR

171.....11633
199.....11973

33 CFR

52.....9882
100.....13628
110.....13629
117.....9890, 13226, 13227, 13228, 14149, 14536
165.....12304, 13228, 13231, 13233, 14150, 14326, 14328
401.....11974

Proposed Rules:

117.....13242, 13641, 14170, 14364
165.....13244, 13643, 13647, 13649, 14170
334.....14364
402.....12644

34 CFR

Proposed Rules:

200.....13796

36 CFR

704.....11974

Proposed Rules:

7.....11019
219.....10421, 12155

37 CFR

1.....14332
2.....14332
3.....14332
4.....14332
5.....14332
102.....14332
104.....14332
150.....14332

Proposed Rules:

1.....14365
201.....13652

38 CFR

17.....11977, 13590
20.....13235
61.....13590

Proposed Rules:

3.....14567

39 CFR

3001.....12588

40 CFR

9.....13608
52.....9892, 10966, 10969, 11316, 11977, 12590, 12825, 12827, 12829, 12831, 13630, 13840, 13843, 14151, 14154, 14156, 14159, 14161, 14537, 14540, 14542
62.....10659, 10661, 10663, 11472, 11978
63.....11745, 12590
70.....10969, 14163
82.....10370
122.....11325, 13608
123.....13608
124.....13608
125.....14164
130.....13608
141.....14502
180.....10370, 10377, 10972, 10983, 11330, 13845, 14165
228.....12592
271.....11981
300.....13633
312.....14339
439.....12266

Proposed Rules:

Ch. I.....10675, 12013
51.....12014
52.....11022, 11023, 12014, 12886, 12887, 13247, 13653, 13872, 14173, 14174, 14379, 14382, 14570
62.....10680, 10681, 11483, 11484, 12015
63.....12645
70.....11023
81.....13653, 14382
125.....13522
136.....11770, 11791
194.....12887
228.....11488
271.....12015
372.....13872
439.....12776

41 CFR

300–2.....12602
Ch. 304.....12602

42 CFR

50.....12306
412.....10987

Proposed Rules:

83.....11924, 14388
412.....10421, 11234

43 CFR

Proposed Rules:

4.....13657
4100.....9964, 11345

44 CFR

61.....9895
64.....9897
152.....12544
206.....9899

45 CFR

162.....11445

47 CFR

0.....11747, 13849
1.....
2.....10179, 11986, 12744
25.....11986
68.....13849
73.....10388, 10664, 10665, 11335, 11993, 12610, 12744, 14166
74.....12744
76.....13236, 13850, 14340
78.....12744
90.....10179
95.....9900
101.....12744

Proposed Rules:

15.....12015
54.....10430, 12020
73.....10681, 10682, 10683, 11345, 12023, 12024
74.....12652

48 CFR

Ch. 1.....13200, 13208
12.....13201, 13202
16.....13201
29.....13204
32.....13202, 13206
47.....13202
52.....13202, 13204, 13206
1817.....13634
1825.....11747

Proposed Rules:

501.....13212
538.....13212
552.....13212

49 CFR

1.....10988, 12833
107.....11748
171.....14341
172.....14510
175.....14341
190.....11748
191.....11748
192.....11748
193.....11748
195.....11748
198.....11748
199.....11748

219.....10108
225.....10108
240.....10108
572.....13856
1540.....9902

Proposed Rules:
192.....9966, 13249
397.....13250
544.....13887

50 CFR

17 .....10388, 12611, 12834, 12863, 12982, 13370, 13498
226.....13370
300.....10989, 14167
622.....10180, 11003
635.....14167
648 .....9905, 10181, 12612, 12814, 14347, 14545
660.....11182, 13857
679 .....9902, 9907, 9924, 9942, 11004, 11994, 13635, 13857, 13858, 14168

Proposed Rules:
17 .....12326, 12336, 13662, 13663, 14868
21.....12653
223.....13662
229.....10195
600 .....9967, 11501, 11793, 14570
622.....11794
648 .....9968, 11023, 11346, 14388, 14571
660.....12888, 13891

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 26, 2003

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Urea; published 12-26-02
Water pollution control:
National Pollutant Discharge Elimination System—
Cooling water intake structures for new facilities; published 12-26-02

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare:
Supplementary medical insurance premium surcharge agreements; published 9-27-02

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Grants and cooperative agreement handbook; published 3-26-03

NUCLEAR REGULATORY COMMISSION
Practice and procedure:
Filing and advance notification requirements; revisions; shipments of certain radioactive materials; published 3-26-03

SECURITIES AND EXCHANGE COMMISSION
Securities:
Banks, savings associations, and savings banks; definition of terms and specific exemptions; published 2-24-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Robinson Helicopter Co.; published 2-19-03
Rolls-Royce Deutschland Ltd. & Co. KG; published 3-11-03

VETERANS AFFAIRS DEPARTMENT
Fisher Houses and other temporary lodging; veterans use; published 2-24-03

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT
Ocean freight claims administrative appeal process; comments due by 4-2-03; published 3-3-03 [FR 03-04574]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Raisins produced from grapes grown in—
California; comments due by 3-31-03; published 1-28-03 [FR 03-01965]
Rasins produced from grapes grown in California; comments due by 4-3-03; published 3-19-03 [FR 03-06663]
Spearmint oil produced in Far West; comments due by 4-1-03; published 3-12-03 [FR 03-05842]

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Ocean freight claims administrative appeal process; comments due by 4-2-03; published 3-3-03 [FR 03-04574]

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Child nutrition programs:
Women, infants, and children; special supplemental nutrition programs —
Federal financial and participating reporting requirements and information confidentiality; comments due by 4-1-03; published 12-2-02 [FR 02-30223]

AGRICULTURE DEPARTMENT
Forest Service
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Age at which person can receive permits, and Regional Councils membership requirement change; comments due by 4-4-03; published 2-18-03 [FR 03-03742]

AGRICULTURE DEPARTMENT
Grain Inspection, Packers and Stockyards Administration
Fees:
Official inspection and weighing services; comments due by 3-31-03; published 2-28-03 [FR 03-04688]
Rice inspection services; comments due by 3-31-03; published 2-28-03 [FR 03-04689]

AGRICULTURE DEPARTMENT
Natural Resources Conservation Service
Loan and purchase programs:
Conservation Security Program; comments due by 4-3-03; published 3-21-03 [FR 03-06825]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Spiny dogfish; comments due by 4-4-03; published 2-18-03 [FR 03-03845]
Marine mammals:
Commercial fishing authorizations—
Atlantic Large Whale Take Reduction Plan; comments due by 4-3-03; published 3-4-03 [FR 03-04897]
Taking and importing—
Eastern North Pacific Southern Resident killer whales; comments due by 3-31-03; published 1-30-03 [FR 03-02031]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Commercially available off-the-shelf items; comments due by 3-31-03; published 1-30-03 [FR 03-01961]
Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02159]
Depreciation cost principle; comments due by 3-31-03; published 1-30-03 [FR 03-01962]
Insurance and pension costs; comments due by 3-31-03; published 1-30-03 [FR 03-01963]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Virgin Islands; comments due by 3-31-03; published 2-27-03 [FR 03-04517]
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 3-31-03; published 2-27-03 [FR 03-04512]
Maryland; comments due by 3-31-03; published 2-27-03 [FR 03-04515]
West Virginia; comments due by 3-31-03; published 2-28-03 [FR 03-04629]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
4-(Dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane; comments due by 3-31-03; published 1-29-03 [FR 03-01768]

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Nebraska and Iowa; comments due by 3-31-03; published 2-25-03 [FR 03-04363]
South Carolina; comments due by 3-31-03; published 2-25-03 [FR 03-04364]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Commercially available off-the-shelf items; comments due by 3-31-03; published 1-30-03 [FR 03-01961]
Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02159]
Depreciation cost principle; comments due by 3-31-03; published 1-30-03 [FR 03-01962]
Insurance and pension costs; comments due by 3-31-03; published 1-30-03 [FR 03-01963]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare and medicaid:
Acute care hospital inpatient prospective payment system; payment methodology for extraordinarily high-cost cases; comments due by 4-4-03; published 3-5-03 [FR 03-05121]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Public Health Security and Bioterrorism Preparedness and Response Act of 2002; implementation:
Food facilities registration; comments due by 4-4-03; published 2-3-03 [FR 03-02443]
Food importation notice to FDA; comments due by 4-4-03; published 2-3-03 [FR 03-02444]
HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations:
Texas; comments due by 3-31-03; published 1-28-03 [FR 03-01873]
Drawbridge operations:
Florida; comments due by 3-31-03; published 8-28-02 [FR 02-21920]
Ports and waterways safety:
Portland Captain of Port Zone, ME; passenger vessels; security zones; comments due by 3-31-03; published 2-27-03 [FR 03-04635]
HOMELAND SECURITY DEPARTMENT
Immigration and Naturalization Service
Immigration:
Canada and Bermuda; visa and passport waiver removal for certain permanent residents; comments due by 4-1-03; published 1-31-03 [FR 03-02164]
INTERIOR DEPARTMENT
Fish and Wildlife Service
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Age at which person can receive permits, and Regional Councils membership requirement change; comments due by 4-4-03; published 2-18-03 [FR 03-03742]
Endangered and threatened species permit applications; comments due by 4-3-03; published 3-4-03 [FR 03-04987]
INTERIOR DEPARTMENT
National Park Service
Vehicles and traffic safety:
Motor vehicle operation under influence of alcohol or drugs; comments due by 4-1-03; published 1-31-03 [FR 03-02321]
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Wyoming; comments due by 4-3-03; published 3-4-03 [FR 03-04970]
JUSTICE DEPARTMENT
Drug Enforcement Administration
Records, reports, and exports of listed chemicals:
Chemical mixtures containing phosphorus; comments due by 4-1-03; published 1-31-03 [FR 03-02296]
LABOR DEPARTMENT
Occupational Safety and Health Administration
Construction safety and health standards:
Crane and Derrick Negotiated Rulemaking Advisory Committee; intent to establish; comments due by 3-31-03; published 2-27-03 [FR 03-04560]
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Commercially available off-the-shelf items; comments due by 3-31-03; published 1-30-03 [FR 03-01961]
Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02159]
Depreciation cost principle; comments due by 3-31-03; published 1-30-03 [FR 03-01962]
Insurance and pension costs; comments due by 3-31-03; published 1-30-03 [FR 03-01963]
NUCLEAR REGULATORY COMMISSION
Source material; domestic licensing:
Source material holdings; reporting requirements under international agreements; comments due by 4-4-03; published 3-5-03 [FR 03-05168]
SMALL BUSINESS ADMINISTRATION
Government contracting programs:
Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02158]
Small business size standards:
Facilities support services (including base maintenance); comments due by 4-4-03; published 2-3-03 [FR 03-02455]
SOCIAL SECURITY ADMINISTRATION
Social security benefits and supplemental security income:
Federal old age, survivors, and disability insurance, and aged, blind, and disabled—
Administrative law judges; video teleconference hearings; comments due by 4-4-03; published 2-3-03 [FR 03-02402]
STATE DEPARTMENT
Visas; nonimmigrant documentation:
Canada and Bermuda; visa and passport waiver removal for certain permanent residents; comments due by 4-1-03; published 1-31-03 [FR 03-02202]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Advisory circulars; availability, etc.:
Corrosion Prevention and Control Programs; development and implementation; comments due by 4-1-03; published 10-3-02 [FR 02-24933]
Air carrier certification and operations:
Corrosion Prevention and Control Programs; comments due by 4-1-03; published 10-3-02 [FR 02-24932]
Airworthiness directives:
BAE Systems (Operations) Ltd.; comments due by 3-31-03; published 2-27-03 [FR 03-04588]
Boeing; comments due by 3-31-03; published 1-28-03 [FR 03-01816]
Bombardier; comments due by 3-31-03; published 2-28-03 [FR 03-04739]
Dassault; comments due by 4-2-03; published 3-3-03 [FR 03-04839]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 3-31-03; published 2-28-03 [FR 03-04738]
Honeywell; comments due by 3-31-03; published 1-30-03 [FR 03-02094]
Airworthiness standards:
Special conditions—
Learjet Model 24, 24A, 24B, 24B-A, 24C, 24D, 24D-A, 24E, 24F, 24F-A, 25, 25A, 25B, 25C, 25D, and 25F airplanes; comments due by 4-2-03; published 3-3-03 [FR 03-04796]
Learjet Model 24/25 Series airplanes; comments due by 4-4-03; published 3-5-03 [FR 03-05129]
TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
Hazardous liquid transportation—
Gas transmission pipelines; integrity management in high consequence areas; comments due by 3-31-03; published 1-28-03 [FR 03-00603]
TREASURY DEPARTMENT
Foreign Assets Control Office
Reporting and procedures regulations:
Economic Sanctions Enforcement Guidelines; comment request; comments due by 3-31-03; published 1-29-03 [FR 03-01809]
TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Accuracy-related penalty; imposition defenses establishment; comments due by 3-31-03; published 12-31-02 [FR 02-32927]
TREASURY DEPARTMENT
Terrorism Risk Insurance Program; comments due by 3-31-03; published 2-28-03 [FR 03-04831]
VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
Herbicide exposure, disability or death caused by; effective dates of benefits; disposition of unpaid benefits after death of beneficiary; comments due by 3-31-03; published 1-28-03 [FR 03-01834]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html.* Some laws may not yet be available.

H.R. 395/P.L. 108–10
Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)
Last List March 10, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice.* You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFR SMITH212J                      DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFRDO SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy! VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $764 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $699 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VOL
68
ISS
58
MR
26
2003
UMI



Printed on recycled paper

VOL
68
ISS
59
MR
27
2003
MI

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION

Federal Register

3–27–03 Thursday
Vol. 68 No. 59 - Mar. 27, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
68

ISS
59

MR

27

003

MI



Federal Register

3–27–03 Thursday
Vol. 68 No. 59 Mar. 27, 2003
Pages 14887–15042

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 202–512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 202–512–1800
Assistance with public single copies 1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES
Subscriptions:
Paper or fiche 202–741–6005
Assistance with Federal agency subscriptions 202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 59
Thursday, March 27, 2003

Agriculture Department
See Forest Service
See Rural Housing Service

Air Force Department
NOTICES
Privacy Act:
Systems of records, 14951–14954

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Gemstar-TV Guide International, Inc., et al., 14996–15004
National cooperative research notifications:
IMS Global Learning Consortium, Inc., 15004–15005

Army Department
NOTICES
Privacy Act:
Systems of records, 14954–14967

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Health Promotion and Disease Prevention Research Centers Program, 14984–14990
Health Promotion of People with Disabilities; correction, 14990–14991

Centers for Medicare & Medicaid Services
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14991–14992

Coast Guard
RULES
Ports and waterways safety:
Oceanside Harbor, CA; safety zone, 14899–14901
PROPOSED RULES
Ports and waterways safety:
Portland Captain of Port Zone, OR; safety zones, 14933–14935
Port Valdez and Valdez Narrows, AK; security zone, 14935–14939

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Oceanic and Atmospheric Administration

Corporation for National and Community Service
RULES
Organization, functions, and authority delegations:
ACTION; CFR parts removed, 14901

Defense Department
See Air Force Department
See Army Department
See Navy Department
NOTICES
Privacy Act:
Systems of records, 14950–14951

Economic Development Administration
NOTICES
Trade adjustment assistance eligibility determination petitions:
SORB Technology, Inc., et al., 14940–14941

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14967–14969

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14972–14976
Air pollution control:
Citizens suits; proposed settlements—
Sierra Club, 14976–14977
Grants and cooperative agreements; availability, etc.:
Water Quality Allocation Program; correction, 14977

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 14894–14898
Dornier, 14889–14891
SOCATA-Groupe AEROSPATIALE, 14892–14894

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Interstate pay-per-call and other information services; toll-free numbers caller charges, etc., 14939
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14977–14978
Common carrier services:
In-region interLATA services—
Verizon Maryland Inc. et al.; application to provide services in Maryland, Washington, D.C., and West Virginia, 14978–14980

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 14981

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Rhinelander Paper Co. et al., 14971
Hydroelectric applications, 14971–14972

Reports and guidance documents; availability, etc.:
North Fork Nooksack River, WA; navigation status report, 14972
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 14969
Choctaw County Trust, 14969
Gulf South Pipeline Co., LP, 14969–14970
Midwestern Gas Transmission Co., 14970
Southern Gas Co., 14970
Transwestern Pipeline Co., 14970–14971

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Otter Tail and Wadena Counties, MN, 15036–15037

Federal Maritime Commission
NOTICES
Agreements filed, etc., 14981
Ocean transportation intermediary licenses:
A-P-A World Transport Corp. et al., 14981–14982
Maritime Express, Inc., et al., 14982
Speedy International, LLC, et al., 14982–14983

Federal Motor Carrier Safety Administration
NOTICES
Motor carrier safety standards:
Driver qualifications—
Arnold, Joe F., et al.; vision requirement exemptions, 15037–15038

Federal Railroad Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15038–15039

Federal Reserve System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 14983–14984
Banks and bank holding companies:
Formations, acquisitions, and mergers, 14984

Food and Drug Administration
NOTICES
Reports and guidance documents; availability, etc.:
Medical devices—
2003 FY medical device user fee and 2002 Modernization Act small business qualification worksheet and certification, 14992–14994

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
Modoc County, 14940
Shasta County, 14940

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration

Homeland Security Department
See Coast Guard

International Trade Administration
NOTICES
Antidumping:
Canned pineapple fruit from—
Thailand, 14941–14942
Cased pencils from—
China, 14942–14943
Heavy forged hand tools from—
China, 14943–14945
Pasta from—
Italy, 14945
Sebacic acid from—
China, 14945–14947
Softwood lumber products from—
Canada, 14947–14948
Stainless steel sheet and strip in coils from—
France, 14948–14949

Justice Department
See Antitrust Division
RULES
Organization, functions, and authority delegations:
Drug Enforcement Administration, 14899
NOTICES
Pollution control; consent judgments:
Archer Daniels et al., 14994
GPU, Inc., et al., 14994
Marine Shale Processors, Inc., et al., 14995
Toyota Motor Corp. et al., 14995–14996

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Leadership Initiatives Advisory Panel, 15005

National Highway Traffic Safety Administration
NOTICES
Health Insurance Portability and Accountability Act; implementation:
Public health authority status notification; medical privacy requirements, 15039

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish; correction, 14902
Atlantic coastal fisheries cooperative management—
American lobster, 14902–14932
NOTICES
Permits:
Endangered and threatened species, 14949
Vessel monitoring systems; approved mobile transmitting units and communications service providers; list; correction, 14949–14950

Navy Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
American BioHealth Group, LLC, 14967

Nuclear Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15005
Applications, hearings, determinations, etc.:
Indiana Michigan Power Co., 15006–15007

Westinghouse Electric Co. LLC, 15007–15008

Overseas Private Investment Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15008

Postal Rate Commission
NOTICES
Meetings:
Industry mail innovations and emerging mail strategies; presentation, 15008

Presidential Documents
PROCLAMATIONS
Special observances:
Cancer Control Month (Proc. 7655), 14887–14888

Railroad Retirement Board
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15008–15009

Rural Housing Service
RULES
Direct final rulemaking; policy statement, 14889

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Exemption applications—
iShares Trust et al., 15010–15013
SAFECO Common Stock Trust et al., 15013–15015
Meetings; Sunshine Act, 15015
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 15015–15027
New York Stock Exchange, Inc., 15027–15031
Applications, hearings, determinations, etc.:
Banco Nacional De Comercio Exterior, S.N.C., 15009–15010

Small Business Administration
NOTICES
Applications, hearings, determinations, etc.:
Toucan Capital Fund II, L.P., 15031–15032

State Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15032
Grants and cooperative agreements; availability, etc.:
Azerbaijan; middle school social studies pre-service education curriculum development project, 15032–15035

Tennessee Valley Authority
NOTICES
Privacy Act:
Systems of records, 15035–15036

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration

Treasury Department
NOTICES
Reports and guidance documents; availability, etc.:
Terrorism Risk Insurance Program; insurer control presumption rebuttal procedure, 15039–15041

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7655.....14887

7 CFR
Ch. XVIII.....14889
Ch. XXXV.....14889

14 CFR
39 (3 documents).....14889, 14892, 14894

28 CFR
0.....14899

33 CFR
165.....14899
Proposed Rules:
165 (2 documents).....14933, 14935

45 CFR
1204.....14901
1206.....14901
1213.....14901
1229.....14901
1234.....14901

47 CFR
Proposed Rules:
64.....14939

50 CFR
679.....14902
697.....14902

Federal Register
Vol. 68, No. 59
Thursday, March 27, 2003

Presidential Documents

Title 3—

The President

Proclamation 7655 of March 24, 2003

Cancer Control Month, 2003

By the President of the United States of America

A Proclamation

Millions of Americans are winning the fight against cancer, but much work remains. More than 3,500 Americans are diagnosed with cancer each day, and more than 45,000 will die from the disease this month. Yet, experts believe that half of all cancer deaths are preventable. With exercise, nutrition, and healthy behavior, we can help prevent this deadly disease and save lives. During Cancer Control Month, we renew our commitment to over coming cancer by learning more about its prevention and early detection.

To protect against disease, Americans can make smart choices that will lead to longer, healthier lives. A critical step that Americans can take to improve their health and reduce the risk of cancer is to avoid the use of tobacco. Also, avoiding excessive drinking and sun exposure can help guard against cancer and help ensure better health.

Improvements in diet and fitness can help prevent many serious health problems. A diet rich in fruits and vegetables and regular physical activity help protect us from illness and can add years to our lives. Research suggests that we can decrease the number of cancer deaths in America by one-third simply by changing our diets and getting more exercise.

Preventative health screening is vital to early detection and treatment of cancer. Regular screening can save lives and enhances the well-being of our Nation. Screening can detect many forms of cancer at earlier, less dangerous stages, allowing patients to seek treatment and defeat the cancer before it spreads. I urge all Americans to talk to their doctors about when to start preventative screening and how often to schedule appointments.

Our Nation's investment in cancer prevention and research is making a difference, and recent medical discoveries offer hope to many Americans. The National Cancer Institute (NCI) is currently sponsoring more than 60 clinical trials on cancer prevention and screening. One major clinical trial for men and women at risk for lung cancer began this year, and is investigating the most effective method of detecting lung cancer in order to reduce deaths from this devastating disease.

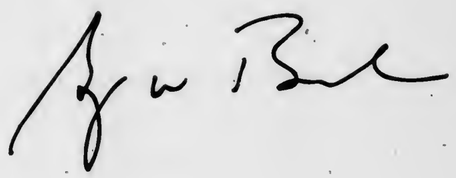
As part of my HealthierUS Initiative and my Administration's ongoing commitment to helping the American people live healthier lives, I encourage all Americans to eat right, get more exercise, and take advantage of preventative screening. To learn more about ways to prevent cancer, you can talk to your doctor or contact the NCI's Cancer Information Service at 1–800–4–CANCER or visit its Internet address at http://www.cancer.gov. Through healthy lifestyles, a better understanding of this disease, and new technology, I believe we will achieve a victory over cancer.

In 1938, the Congress of the United States passed a joint resolution (52 Stat. 148; 36 U.S.C. 103) as amended, requesting the President to issue an annual proclamation declaring April as "Cancer Control Month."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim April 2003 as Cancer Control Month. I

encourage concerned citizens, government agencies, private businesses, non-profit organizations, and other interested groups to join in activities that will increase awareness of measures all Americans can take to prevent and control cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of March, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03-07532
Filed 3-26-03; 8:45 am]
Billing code 3195-01-P

Rules and Regulations

Federal Register
Vol. 68, No. 59
Thursday, March 27, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Chapters XVIII and XXXV

Policy Statement for Direct Final Rulemaking

AGENCY: Rural Housing Service, USDA.

ACTION: Policy statement.

SUMMARY: The Rural Housing Service (RHS) is implementing a new rulemaking procedure to expedite making noncontroversial changes to its regulations. Rules that RHS determines to be noncontroversial and unlikely to result in adverse comments will be published as "direct final" rules. "Adverse comments" are those comments that suggest a rule should not be adopted or that a change should be made to the rule. Each direct final rule will advise the public that no adverse comments are anticipated and, that unless written adverse comments or written notice of intent to submit adverse comments are received within 60 days from the date the direct final rule is published in the **Federal Register**, the rule will be effective 75 days from the date the direct final rule is published in the **Federal Register**.

DATES: Effective March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Dan Riggs, Community Programs, Direct Loan and Grant Processing Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0787, 1400 Independence Ave. SW., Washington, DC 20250–0787. Telephone: 202–720–1490, FAX: 202–690–0471, E-mail: *Dan.Riggs@USDA.gov*.

SUPPLEMENTARY INFORMATION: RHS is committed to improving the efficiency of its regulatory process. In pursuit of this goal, we plan to employ the rulemaking procedure known as direct final rulemaking to promulgate some RHS rules.

The Direct Final Rule Process

Rules that RHS determines to be noncontroversial and unlikely to result in adverse comments will be published in the **Federal Register** as direct final rules. Each direct final rule will advise the public that no adverse comments are anticipated and, that unless any adverse comments are received within 60 days, the direct final rule will be effective 75 days from the date the direct final rule is published in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that a change should be made to the rule. A comment expressing support for the rule, as published, will not be considered adverse. Further, a comment suggesting that requirements in the rule should, or should not, be employed by RHS in other programs or situations outside the scope of the direct final rule will not be considered adverse.

If RHS receives written adverse comments or written notice of intent to submit adverse comments within 60 days of the publication of a direct final rule, a document withdrawing the direct final rule prior to its effective date will be published in the **Federal Register** stating that adverse comments were received.

In accordance with rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), the direct final rulemaking procedure gives the public general notice of RHS's intent to adopt a new rule and gives interested persons an opportunity to participate in the rulemaking process through submission of comments for consideration by RHS. The major feature of the direct final rulemaking process is that if RHS receives no written adverse comments and no written notice of intent to submit adverse comments within the comment period specified, the RHS will publish a document in the **Federal Register** stating that no adverse comments were received regarding the direct final rule and confirming that the direct final rule is effective on the date specified in the direct final rule.

Determining When To Use Direct Final Rulemaking

Not all RHS rules are good candidates for the direct final rulemaking. RHS intends to use the direct final rulemaking procedure only for rules that we consider to be noncontroversial and unlikely to generate adverse comments. The decision whether to use the direct final rulemaking process for a particular action will be based on RHS experience with similar actions.

Dated: March 19, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–7238 Filed 3–26–03; 8:45 am]
BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–55–AD; Amendment 39–13096; AD 2003–06–08]

RIN 2120–AA64

Airworthiness Directives; Dornier-Werke G.m.b.H. Model Do 27 Q–6 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Dornier-Werke G.m.b.H. (Dornier) Model Do 27 Q–6 airplanes. This AD requires you to inspect the aileron and flap control cables for proper clearance from the fuel lines in the fuselage and make necessary adjustments; and inspect the fuel lines for damage and correct routing. This AD also requires you to replace all damaged fuel lines and reroute incorrectly routed fuel lines. After all other corrective action is taken, this AD also requires you to install protective sleeves on the fuel lines. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to detect and correct damaged fuel lines and prevent the potential for further damage occurring to the fuel lines in the fuselage. Damage to the fuel lines could result in fuel leaking into the fuselage, which could cause a fire or explosion.

DATES: This AD becomes effective on May 16, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 16, 2003.

ADDRESSES: You may get the service information referenced in this AD from Fairchild Dornier GmbH, PO Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (011) 49 81 53–30 1; facsimile: (011) 49 81 53–30 29 01. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–55–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4143; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all Dornier Model Do 27 Q–6 airplanes. The LBA reports that, during an annual maintenance inspection, a damaged fuel line was found in the area between the firewall and the instrument panel in the fuselage.

Further inspection revealed that the damaged fuel line was incorrectly routed and not properly secured. Incorrect installation of the fuel line allowed the aileron control cable to chafe the fuel line, which caused the fuel line to leak.

What Is the Potential Impact if FAA Took No Action?

This condition, if not detected, corrected, and prevented, could result in fuel leaking into the fuselage. This could cause a fire or explosion.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Dornier Model Do 27 Q–6 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 6, 2003 (68 FR 516). The NPRM proposed to require you to inspect the aileron and flap control cables in the fuselage for proper clearance from the fuel lines and make any necessary adjustments; and inspect the fuel lines for damage and correct routing. The NPRM also proposed to require you to replace all damaged fuel lines and reroute incorrectly routed fuel lines. After all other corrective action is taken, the NPRM also proposed to require you to install protective sleeves on the fuel lines.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

What Is the Difference Between This AD, the LBA AD, and the Service Information?

The LBA AD and the service information requires (on German-registered airplanes) inspection and, if necessary, adjustments and/or replacement within the next 10 hours time-in-service (TIS) after the effective date of the AD. We require that you inspect and, if necessary, adjust and/or replace within the next 55 hours TIS after the effective date of this AD. We do not have justification to require this action within the next 10 hours TIS.

We use compliance times such as 10 hours TIS when we have identified an urgent safety of flight situation. We believe that 55 hours TIS will give the owners or operators of the affected airplanes enough time to have the actions accomplished without compromising the safety of the airplanes.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 2 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	Not applicable	$60	$60 × 2 = $120.

We estimate the following costs to reroute any fuel line that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such rerouting:

Labor cost	Parts cost	Total cost per airplane
2 workhours × $60 = $120	No parts required	$120

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacements:

Labor cost	Parts cost	Total cost per airplane
6 workhours × $60 = $360	$140	$360 + $140 = $500.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–06–08 Dornier-Werke G.m.b.H.: Amendment 39–13096; Docket No. 2002–CE–55–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model Do 27 Q–6 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damaged fuel lines and prevent the potential for further damage occurring to the fuel lines in the fuselage. Damage to the fuel lines could result in fuel leaking into the fuselage, which could cause a fire or explosion.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the following: (i) The aileron and flap control cable for proper clearance from the fuel lines in the fuselage; and (ii) The fuel lines between the firewall and instrument panel for damage and correct routing	Within the next 55 hours time-in-service (TIS) after May 16, 2003 (the effective date of this AD).	In accordance with Fairchild Dornier Do 27 Service Bulletin No. SB–1141–0000, dated June 12, 2002.
(2) Make adjustments and/or replacements if: (i) Improper clearance is detected between the aileron and control cable and the fuel lines; (ii) Any fuel line is found damaged; or (iii) Any fuel line is incorrectly routed.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD and if any of the conditions specified in paragraph (d)(2) of this AD are met.	In accordance with Fairchild Dornier Do 27 Service Bulletin No. SB–1141–0000, dated June 12, 2002.
(3) Install a protective sleeve around the fuel lines	Prior to further flight after the inspection required in paragraph (d)(1) of this AD and when all corrective actions have been accomplished.	In accordance with Fairchild Dornier Do 27 Service Bulletin No. SB–1141–0000, dated June 12, 2002.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Fairchild Dornier Do 27 Service Bulletin No. SB–1141–0000, dated June 12, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Dornier GmbH, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (011) 49 81 53–30 1; facsimile: (011) 49 81 53–30 29 01. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in German AD 2002–240, dated July 26, 2002.

(i) *When does this amendment become effective?* This amendment becomes effective on May 16, 2003.

Issued in Kansas City, Missouri, on March 19, 2003.

Sandra J. Campbell,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7186 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–49–AD; Amendment 39–13095; AD 2003–06–07]

RIN 2120–AA64

Airworthiness Directives; Socata—Groupe Aerospatiale Models MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 150T, and Rallye 150ST Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 2002–05–04, which applies to certain Socata—Groupe Aerospatiale (Socata) Models MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 150T, and Rallye 150ST airplanes. AD 2002–05–04 requires you to repetitively inspect any engine mount assembly that is not part number 892–51–0–035–0 (or FAA-approved equivalent part number) for cracks; repair cracks that do not exceed a certain length; and replace the engine mount when the cracks exceed a certain length and cracks are found on an engine mount that already has been repaired twice. This AD is the result of the French airworthiness authority's determination that airplanes equipped with an engine mount assembly part number 892–51–0–035–0 also display the unsafe condition. This AD retains the repetitive inspection and repair requirements of AD 2002–05–04, changes the applicability section, removes the terminating action, and requires replacement of all part number 892–51–0–035–0 engine mount assemblies. The actions specified by this AD are intended to prevent failure of the engine mount assembly. Such failure could result in loss of control of the airplane.

DATES: This AD becomes effective on May 16, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 16, 2003.

ADDRESSES: You may get the service information referenced in this AD from Socata Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, Socata—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894–1160; facsimile: (954) 964–4141. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE–49-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA Taken Any Action to This Point?

Fatigue cracks found on the engine mount assemblies of certain Socata Models MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 150T, and Rallye 150ST airplanes caused us to issue AD 2002–05–04, Amendment 39–12672 (67 FR 10831, March 11, 2002). This AD requires the following on affected airplane models and serial numbers that are certificated in any category and do not have a part number 892–51–0–035–0 engine mount assembly (or FAA-approved equivalent part number) installed:

- Repetitively inspecting any engine mount assembly that is not part number 892–51–0–035–0 (or FAA-approved equivalent part number) for cracks;
- Repairing cracks that do not exceed a certain length;
- Replacing the engine mount when the cracks exceed a certain length and cracks are found on an engine mount that already has two repairs; and
- Terminating repetitive inspections after installing a part number 892–51–0–035–0 engine mount assembly, (or FAA-approved equivalent part number).

AD 2002–05–04 superseded AD 77–15–06, Amendment 39–2975, which required accomplishing the following:

- Inspecting the engine mount assembly for cracks at repetitive intervals;
- Repairing any cracks found; and
- Modifying the brackets on airplanes with right angle engine mounts.

AD 2002–05–04 incorporated new manufacturer service information to address the unsafe condition, added additional airplane models to the applicability; and changed the initial compliance time for all airplanes.

Accomplishment of these actions is required in accordance with Socata Service Bulletin SB 156–71, dated May 2001.

What Has Happened Since AD 2002–05–04 to Initiate This Action?

The Direction Génénrale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA of the need to change AD 2002–05–04. The DGAC reports that affected airplanes equipped with an engine mount assembly part number 892–51–0–035–0 are also affected by fatigue cracking and should be included in the applicability section of AD 2002–05–04. Installing part number 892–51–0–035–0 is no longer considered a terminating action for the repetitive inspections and should be removed from all affected airplanes.

What Is the Potential Impact if FAA Took No Action?

This condition, if not detected and corrected, could cause the engine mount assembly to fail. Such failure could result in loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Socata Models MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 150T, and Rallye 150ST airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 24, 2002 (67 FR 78394). The NPRM proposed to supersede AD 2002–05–04 with a new AD that would:

- Retain the repetitive inspection and repair requirements of AD 2002–05–04;
- Remove the terminating action;
- Change the applicability section; and
- Require replacement of all part number 892–51–0–035–0 engine mount assemblies with an FAA-approved equivalent part number.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 81 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish each inspections:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	No parts required	$60	$60 × 81 = $4,860.

We estimate the following costs to accomplish any necessary repairs that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such repair:

Labor cost	Parts cost	Total cost per airplane
3 workhours × $60 = $180	No parts required	$180.

We estimate the following costs to accomplish the replacement. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
20 workhours × $60 = $1,200	Approximately $3,360	$1,200 + 3,360 = $4,560.

What Is the Difference Between the Cost Impact of This AD and the Cost Impact of AD 2002–05–04?

The differences between this AD and AD 2002–05–04 are the correction to the applicability section, removal of the terminating action, and the addition of replacing all part number 892–51–0–035–0 engine mount assemblies. We have determined that this AD action does increase the cost impact over that required by AD 2002–05–04.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–05–04, Amendment 39–12672 (67 FR 10831, March 11, 2002), and by adding a new AD to read as follows:

2003–06–07 Socata—Groupe Aerospatiale: Amendment 39–13095; Docket No. 2002-CE–49–AD; Supersedes AD 2002–05–04, Amendment 39–12672.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
MS 892A–150	All serial numbers.
MS 892E–150	All serial numbers.
MS 893A	All serial numbers.
MS 893E	All serial numbers.
MS 894A	1005 through 2204 equipped with kit OPT8098 9037.
MS 894E	1005 through 2204 equipped with kit OPT8098 9037.
Rallye 150T	All serial numbers.
Rallye 150ST	All serial numbers.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the engine mount assembly. Such a condition could cause the engine mount assembly to fail, which could result in loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Replace any part number 892–51–0–035–0 engine mount assembly with an FAA-approved assembly that is not part number 892–51–0–035–0.	Within the next 50 hours time-in-service (TIS) after May 16, 2003 (the effective date of this AD).	In accordance with the applicable maintenance manual.
(2) Inspect the engine mount assembly for cracks.	*Initially inspect at whichever of the following occurs later:* after accumulating 50 hours TIS after engine mount assembly installation; within the next 20 hours TIS after May 16, 2003 (the effective date of this AD); or at the next inspection required by AD 2002–05–04. *Repetitively inspect thereafter at intervals not to exceed 50 hours TIS.*	In accordance with the Accomplishment Instructions section of Socata Service Bulletin SB 156–71, dated May 2001.
(3) If any crack is found during any inspection required by paragraph (d)(2) of this AD that is less than 0.24 inches (6 mm) in length, repair the engine mount assembly. If two repairs on the engine mount have already been performed, repair in accordance with paragraph (d)(4) of this AD.	Prior to further flight after the inspection in which the crack is found.	In accordance with the Accomplishment Instructions section of Socata Service Bulletin SB 156–71, dated May 2001.
(4) If any crack is found during any inspection required by this AD that is 0.24 inches (6 mm) or longer in length, or if any crack is found and two repairs on the engine mount have already been performed: (i) Obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD; and (ii) Incorporate this repair scheme.	Prior to further flight after the inspection in which the crack is found.	In accordance with the repair scheme obtained from Socata Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; or the Product Support Manager, Socata—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.
(5) Do not install on any airplane engine mount assembly part number 892–51–0–035–0.	As of May 16, 2003 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office.

(2) Alternative methods of compliance approved in accordance with AD 2002–05–04, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Socata Service Bulletin SB 156–71, dated May 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Socata Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, Socata—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894–1160; facsimile: (954) 964–4141. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in French AD 2001–400(A), dated September 19, 2001; and French AD 1978–205(A) R1, dated September 19, 2001.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2002–05–04, Amendment 39–12672.

(j) *When does this amendment become effective?* This amendment becomes effective on May 16, 2003.

Issued in Kansas City, Missouri, on March 19, 2003.

Sandra J. Campbell,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7185 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–378–AD; Amendment 39–13091; AD 2003–06–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; and A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes, that currently requires repetitive inspections to detect cracking of the upper radius of the forward fitting of frame 47, and repair if necessary. This amendment retains those requirements but shortens the initial compliance time and the repetitive inspection intervals. This amendment also expands the applicability to include additional airplanes. This amendment is prompted by issuance of mandatory continuing airworthiness information by a civil airworthiness authority. The actions specified by this AD are intended to detect and correct such fatigue cracking, which could result in propagation of the cracking to the rear fitting and reduced structural integrity of fuselage frame 47.

DATES: Effective May 1, 2003.

The incorporation by reference of Airbus Service Bulletins A300–53–6029, Revision 05, including Appendix 01, and A300–53–0246, Revision 03, including Appendix 03, both dated April 11, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of May 1, 2003.

The incorporation by reference of Airbus Service Bulletin A300–53–6029, Revision 02, dated November 7, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 16, 1996 (61 FR 47808, September 11, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Jacques Leborgne, Airbus Industrie Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–18–18, amendment 39–9744 (61 FR 47808, September 11, 1996), which is applicable to all Airbus Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes, was published in the **Federal Register** on June 11, 2002 (67 FR 39900). That action proposed to retain the requirements of the existing AD but shorten the initial compliance time and repetitive inspection intervals. That action also proposed to expand the applicability to include additional airplanes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed AD

The commenters generally support the proposed AD, with the following recommended changes.

Request To Revise Compliance Time of Paragraph (b)(1)

Several commenters request that the compliance time of paragraph (b)(1) (applicable to Model A300–600 series airplanes) of the proposed AD be revised. The commenters state that the proposed wording would effect a compliance time more restrictive than that mandated in the corresponding French airworthiness directive. The commenters add that such a compliance time would penalize airlines for inspections done in compliance with the new proposed requirements that were accomplished before the effective date of the AD by requiring reinspection in 60 days.

Paragraph (b)(1) of the proposed AD is incorrect. The FAA had intended to match the compliance time of AD 96–18–18 with that mandated by the parallel French airworthiness directive 2001–355(B), dated August 8, 2001. Therefore, the compliance time in paragraph (b)(1) of this final rule has been revised to 6,100 flight cycles, with a grace period of 750 flight cycles/1,900 flight hours (whichever occurs first). This change does not result in a more restrictive inspection schedule than that of the proposed AD, and consequently does not impose an additional burden on any operator.

Request To Allow Flight With Cracks

Several commenters request that paragraphs (c) and (d) of the proposed AD be revised to allow temporary continued flight with cracks under certain conditions found during inspection. The commenters state that such a provision would provide the FAA with data to monitor airplanes with cracks and still allow a level of safety equivalent to that of the proposed AD. One commenter describes an inspection schedule based on crack length, agreed to by the FAA and the manufacturer.

The FAA partially agrees, but does not concur with the request to allow flight with known cracking in a major frame in a primary structure. The FAA finds it necessary to evaluate each crack finding on a case-by-case basis, and to require repair procedures or repetitive inspections based on that evaluation. The FAA may consider allowing flight with known cracks as an alternative method of compliance (AMOC), based on the configuration of the cracks and the operator's ability to safely monitor the cracks by inspection until a repair can be implemented. Given the expertise required to adequately monitor cracking conditions in a manner that ensures the safety of the public, the FAA would consider such a provision only as an AMOC. No change to the final rule is necessary regarding this issue. However, after operators' inspection findings have been validated, the FAA may consider issuing an AMOC with general applicability to all affected airplanes, provided Airbus can specify a comprehensive crack-monitoring program that reduces the need for direct FAA engineering involvement in individual crack-monitoring programs.

Request To Extend Compliance Time of Paragraph (a)(2)(ii)

Two commenters request that paragraph (a)(2)(ii) of the proposed AD be revised to reflect a compliance time of "750 flight cycles or 1,500 flight hours, whichever occurs first." According to the commenters, the proposed 60-day grace period would result in economic hardship to operators. The commenters request the same grace period as that for Model A300 B2 and B4 series airplanes.

The FAA agrees. The grace period, inadvertently written in paragraph (a)(2)(ii) in the proposed AD as 60 days, has been revised in this final rule to 750 flight cycles/1,900 flight hours (whichever occurs first).

Request To Coordinate Compliance Times of Related ADs

Two commenters request that the proposed AD be revised to consider the effects of existing ADs that involve work in the same area. The commenters refer to three related ADs: AD 95–24–04, amendment 39–9436 (60 FR 58213, November 27, 1995); AD 97–16–06, amendment 39–10097 (62 FR 41257, August 1, 1997), as corrected (62 FR 44888, August 25, 1997); and AD 2002–11–04, amendment 39–12765 (67 FR 38193, June 3, 2002). The commenters propose a harmonized inspection threshold to take advantage of access,

down time, and maintenance costs associated with the referenced ADs.

The FAA recognizes the potential value of a harmonized approach to address multiple inspections of the same general area based on other ADs, and will take the commenters' suggestion under advisement for future rulemaking actions. However, in this case the identified unsafe condition is an immediate concern properly addressed in a unique AD. Coordinating a comprehensive review of related ADs would further delay issuance of this AD, which, in any event, is not the proper forum to address such a review. No change to the final rule is necessary regarding this issue.

Request To Consider Repair Interference

Two commenters state that the proposed AD does not address the effect of any impingement of repairs (in case of a crack finding) on the inspection areas of various ADs in this area and/or interference between repairs. The FAA infers that the commenters are requesting that the proposed AD be revised to account for the potential effects of repairs that may have been done in the inspection area of this AD.

The details of the effect of other repairs relative to this AD are unknown, so the FAA cannot address the comment other than to state that this subject is discussed in Note 1 of the AD. Note 1 explains the implications and consequences of previous repairs in the subject area relative to compliance with the requirements of this AD. The FAA suggests that, for any deviations due to repairs in the affected area, each operator combine its compliance proposals into a single request for approval of an AMOC to reduce the number of requests for AMOCs this AD may generate. No change to the final rule is necessary regarding this issue.

Request To Allow New Repairs Based on Prior Approved Repairs

Two commenters request that the proposed AD be revised to "take credit for corrective actions (repairs/rework, etc.) in the subject area, approved by either [the FAA] or the DGAC" to "minimize the AMOC process and aircraft return to service." The FAA infers that the commenters request approval for repair of newly discovered cracks based on previously approved repairs.

The FAA does not agree. Because of the nature of the cracking and the complexity of the area subject to the cracking, the FAA finds that a repair method that is appropriate for one crack configuration may not adequately address all possible crack configurations. The manufacturer has not issued a service bulletin that provides instructions for repair procedures. If such service information is developed and released, the FAA may issue further rulemaking to allow or require crack repair in accordance with that service bulletin. Until then, however, repairs must be approved through the AMOC process, as provided in paragraph (f)(1) of this AD. No change to the final rule is necessary regarding this issue.

Request To Add Service Information

Two commenters request that the proposed AD be revised to incorporate Airbus All Operators Telex (AOT) A300–53–6135, Revision 01, dated February 2002. The commenters state that the AOT provides information such as new reporting procedures, crack length clarification, and nondestructive test methods.

The FAA finds that the AOT would not add any significant meaningful information regarding the requirements of this AD. This AD has discussed reporting procedures and crack length clarification at some length. This AD generally prohibits continued flight with a known crack (unless certain conditions are met, as determined and approved by the FAA or the DGAC). As a result, the AOT provisions are not applicable or necessary. No change to the final rule is necessary regarding this issue.

Request To Cite Latest Service Bulletin Version

Two commenters request that the proposed AD be revised to cite the latest revision of Airbus Service Bulletin A300–53–6029 (which was cited in AD 96–18–18, at Revision 02, and in the proposed AD, at Revision 05, as the appropriate source of inspection information for Model A300–600 series airplanes). The commenters report that Revisions 06 and 07 (which have not been issued) of the service bulletin will include repair procedures. The commenters suggest that reference in the AD to a service bulletin repair will expedite affected airplanes' return to service and reduce the number of requests for AMOCs. One of the commenters requests that the proposed AD be revised to authorize repairs as terminating action for the repetitive inspections.

The FAA does not agree. As stated previously, the service bulletins do not contain repair instructions. Requiring accomplishment of any action in accordance with an as-yet unpublished service bulletin violates Office of the Federal Register regulations regarding approval of materials that are incorporated by reference. However, affected operators may request approval to use a later revision of the referenced service bulletin (if issued) as an AMOC, under the provisions of paragraph (f)(1) of the AD. If repair instructions are included in a revised service bulletin, the FAA may then consider issuing further rulemaking or an AMOC with general applicability to all affected airplanes. Further, terminating action will not be routinely granted as a part of each AMOC because of the complexity of the procedures required for inspection, measurement, and repair in the subject area. No change to the final rule is necessary regarding this issue.

Request To Clarify Paragraph (c) Requirements

One commenter requests clarification of the requirements of paragraph (c) of the proposed AD. The commenter finds the phrase "reinspect the airplane" nonspecific and potentially misleading, and recommends that the AD clearly identify the area of the airplane that is to be reinspected and the type of reinspection required if discrepancies are found.

The FAA agrees that clarification of the reinspection language would be helpful. Paragraphs (c) and (d) have been revised in this final rule to indicate that, as an option to repair, the FAA may approve reinspection—in accordance with the applicable service bulletin—within specific intervals.

Request To Include Repetitive Inspections in Reporting Requirement

One commenter requests that reports be required following each repetitive inspection specified in paragraph (b) of the proposed AD. The added data from the additional reports would increase the flow of valuable data to Airbus for better and more detailed understanding of the structural behavior and actual crack propagation.

It was the FAA's intent in paragraph (e) of the proposed AD to require a report following each repetitive inspection, as indicated by the phrase, "after each inspection required by paragraphs (a) and (d) of this AD." Paragraph (b) of this AD merely sets forth the conditions and time interval for repeating the inspections of paragraph (a) of this AD. However, for clarification, paragraph (e) has been revised in this final rule to require a report following any inspection required specifically by paragraphs (a), (b), and (d) of this AD.

Request To Revise Reporting Requirement Compliance Time

One commenter requests that the proposed compliance time for submitting reports be extended. The commenter states that Airbus will be contacted for repair information immediately if cracks are found, and finds no advantage of requiring a report within 10 days if no cracks are found. The commenter suggests that a reporting compliance time of 30 days after any inspection would allow operators to process interval paper work and provide reports in the most organized and qualified manner.

The FAA concurs with the request and has revised paragraph (e) in this final rule to extend the reporting compliance time to 30 days. This compliance time represents an appropriate interval in which reports can be submitted in a timely manner within the fleet and still maintain an adequate level of safety.

Additional Change to Proposed AD

Because the language in Note 2 of the proposed AD is regulatory in nature, that note has been included in paragraph (a) of this final rule.

Interim Action

This is considered to be interim action. The manufacturer has advised that it is currently developing repair procedures that will address the identified unsafe condition and terminate the repetitive inspections. Once these procedures are developed, approved, and made available, the FAA may consider additional rulemaking.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

Approximately 127 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 96–18–18, and retained in this AD, takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $240 per airplane, per inspection cycle.

The new actions will take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $38,100, or $300 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–9744 (61 FR 47808, September 11, 1996), and by adding a new airworthiness directive (AD), amendment 39–13091, to read as follows:

2003–06–04 Airbus: Amendment 39–13091. Docket 2001–NM–378–AD. Supersedes AD 96–18–18, Amendment 39–9744.

Applicability: All Model A300 B2 and B4 series airplanes; and all Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the upper radius of the forward fitting of fuselage frame 47, which could result in propagation of the cracking to the rear fitting and reduced structural integrity of frame 47, accomplish the following:

Model A300–600: Inspection

(a) For Model A300–600 series airplanes: At the earlier of the times specified by paragraphs (a)(1) and (a)(2) of this AD, perform an eddy current inspection to detect cracking of the upper radius of the left and right forward fitting of frame 47, in accordance with Airbus Service Bulletin A300–53–6029, Revision 02, dated November 7, 1994; or Revision 05, dated April 11, 2001. After the effective date of this AD, only Revision 05 of the service bulletin may be used. Accomplishment of an inspection before the effective date of this AD in accordance with Airbus Service Bulletin A300–53–6029, Revision 03, dated October 7, 1997, or Revision 04, dated October 25, 1999, is acceptable for compliance with the initial inspection requirements of paragraph (a) of this AD.

(1) Before the accumulation of 17,300 total flight cycles, or within one year after October 16, 1996 (the effective date of AD 96–18–18, amendment 39–9744), whichever occurs later.

(2) At the later of the times specified by paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Before the accumulation of 10,000 total flight cycles or 26,000 total flight hours, whichever occurs first.

(ii) Within 750 flight cycles or 1,900 flight hours, whichever occurs first after the effective date of this AD.

Model A300–600: Follow-On Inspections

(b) For Model A300–600 series airplanes on which no cracking is found during any inspection required by paragraph (a) of this AD:

(1) If the initial inspection was accomplished before the effective date of this AD, repeat the inspection at the later of the times specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this AD. Thereafter, repeat the inspection at least every 6,100 flight cycles or 15,600 flight hours, whichever occurs first.

(i) Reinspect within 6,100 flight cycles after the initial inspection.

(ii) Reinspect within 750 flight cycles or 1,900 flight hours, whichever occurs first after the effective date of this AD.

(2) If the initial inspection was not accomplished before the effective date of this AD, repeat the inspection thereafter at least every 6,100 flight cycles or 15,600 flight hours, whichever occurs first.

Model A300–600: Corrective Action

(c) For Model A300–600 series airplanes on which any cracking is found during any inspection required by this AD: Before further flight, contact the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated representative); for instructions regarding repair or for an applicable reinspection interval in accordance with Airbus Service Bulletin A300–52–6029, Revision 05, dated April 11, 2001. Repair and/or reinspection accomplished before the effective date of this AD in accordance with a method approved by the Manager, International Branch, ANM–116, is acceptable for compliance with the requirements of paragraph (c) of this AD.

Model A300 B2 and B4: Inspection and Follow-On Actions

(d) For Model A300 B2 and B4 series airplanes: At the applicable time specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD, perform repetitive eddy current inspections to detect cracking of the upper radius of the forward fitting of frame 47, left and right sides, per Airbus Service Bulletin A300–53–0246, Revision 03, dated April 11, 2001. If any cracking is found: Before further flight, contact the Manager, International Branch, ANM–116, or the DGAC (or its delegated representative), for instructions regarding repair, or for an applicable reinspection interval in accordance with the service bulletin. This requirement terminates the corresponding inspection requirement of the A300 Supplemental Structural Inspection Document (SSID) for Model A300 B2 and B4 series airplanes. That SSID is mandated by AD 96–13–11, amendment 39–9679.

(1) For Model A300 B2 series airplanes: Perform the initial inspection at the later of the times specified by paragraphs (d)(1)(i) and (d)(1)(ii) of this AD. Repeat the inspection thereafter at least every 10,400 flight cycles or 13,300 flight hours, whichever occurs first.

(i) Before the accumulation of 16,500 total flight cycles or 21,000 total flight hours, whichever occurs first.

(ii) Within 1,000 flight cycles or 1,300 flight hours after the effective date of this AD, whichever occurs first.

(2) For Model A300 B4–100 series airplanes: Perform the initial inspection at the later of the times specified by paragraphs (d)(2)(i) and (d)(2)(ii) of this AD. Repeat the inspection thereafter at least every 8,500 flight cycles or 16,400 flight hours, whichever occurs first.

(i) Before the accumulation of 10,300 total flight cycles or 19,800 total flight hours, whichever occurs first.

(ii) Within 750 flight cycles or 1,500 flight hours after the effective date of this AD, whichever occurs first.

(3) For Model A300 B4–200 series airplanes: Perform the initial inspection at the later of the times specified by paragraphs (d)(3)(i) and (d)(3)(ii) of this AD. Repeat the inspection thereafter at least every 7,000 flight cycles or 13,600 flight hours, whichever occurs first.

(i) Before the accumulation of 11,000 total flight cycles or 21,200 total flight hours, whichever occurs first.

(ii) Within 750 flight cycles or 1,500 flight hours after the effective date of this AD, whichever occurs first.

Reporting Requirement

(e) At the applicable time specified in paragraph (e)(1) or (e)(2) of this AD: Submit a report of all results of each inspection required by paragraphs (a), (b), and (d) of this AD to Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, Attention Jacques Leborgne, fax 33–5–61–93–36–14. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 30 days after performing the inspection.

(2) For airplanes on which the inspection has been accomplished before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 96–18–18, amendment 39–9744, and AD 96–13–11, amendment 39–9679, are approved as alternative methods of compliance with the requirements of paragraphs (c) and (d) of this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as otherwise required by this AD, the actions must be done in accordance with Airbus Service Bulletin A300–53–0246, Revision 03, including Appendix 01, dated April 11, 2001; Airbus Service Bulletin A300–53–6029, Revision 05, including Appendix 01, dated April 11, 2001; and Airbus Service Bulletin A300–53–6029, Revision 02, dated November 7, 1994.

(1) The incorporation by reference of Airbus Service Bulletin A300–53–6029, Revision 05, including Appendix 01, dated April 11, 2001; and Airbus Service Bulletin A300–53–0246, Revision 03, including Appendix 01, dated April 11, 2001; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Service Bulletin A300–53–6029, Revision 02, dated November 7, 1994, was approved previously by the Director of the Federal Register, as of October 16, 1996 (61 FR 47808, September 11, 1996).

(3) Copies of these service bulletins may be obtained from Jacques Leborgne, Airbus Industrie Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax (+33) 5 61 93 36 14. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 2001–355(B), dated August 8, 2001.

Effective Date

(i) This amendment becomes effective on May 1, 2003.

Issued in Renton, Washington, on March 18, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6995 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[A.G. Order No. 2666–2003]

Organization; Drug Enforcement Administration

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the delegation to the Drug Enforcement Administration (DEA) of the Attorney General's authority under the Comprehensive Drug Abuse and Prevention Act of 1970, as amended. The amendment would make clear that the delegation of the Attorney General's authority to the DEA to assign law enforcement duties to itself and to state and local law enforcement officers extends only to matters relating to, arising from, or supplementing investigations of matters concerning drugs.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Robert T. Richardson, Deputy Chief Counsel, Drug Enforcement Administration, U.S. Department of Justice, Washington, DC 20530, (202) 307–7322.

SUPPLEMENTARY INFORMATION: Under 21 U.S.C. 878(a)(5), the Attorney General may designate any officer or employee of DEA or any state or local law enforcement officer to "perform such other law enforcement duties as the Attorney General may designate." The Attorney General has delegated this authority to DEA. The amendment would make clear that this delegation of authority extends only to matters relating to drug investigations.

Administrative Procedure Act

This rule relates to a matter of agency management or personnel, and is therefore exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. *See* 5 U.S.C. 553(a)(2).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department.

Executive Order 12866

This rule is limited to agency organization, management and personnel as described by Executive Order 12866 section (3)(d)(3) and, therefore, is not a "regulation" or "rule" as defined by that Executive Order. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. Moreover, this action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a "rule" for purposes of the reporting requirement of 5 U.S.C. 801.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (government agencies), Whistleblowing.

■ Accordingly, by virtue of the authority vested in me as Attorney General, including 21 U.S.C. 878, 5 U.S.C. 301, and 28 U.S.C. 509 and 510, Part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

■ 2. In § 0.100 revise the first sentence of paragraph (b) to read as follows:

§ 0.100 General functions.

* * * * *

(b) Except where the Attorney General has delegated authority to another Department of Justice official to exercise such functions, and except where functions under 21 U.S.C. 878(a)(5) do not relate to, arise from, or supplement investigations of matters concerning drugs, functions vested in the Attorney General by the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. * * *

* * * * *

Dated: March 20, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–7355 Filed 3–26–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–003]

RIN 1625–AA00

Safety Zone; Oceanside Harbor, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard establishes a temporary safety zone within the navigable waters of the Pacific Ocean in Oceanside Harbor, California for the California Half Ironman Triathlon. This temporary safety zone is necessary to provide for the safety of the participants (swimmers) and spectators of the race, to protect the participating vessels, and to protect other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 5:30 a.m. (p.s.t.) to 10 a.m. (p.s.t.) on April 5, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (COTP San Diego 03–012) and are available for inspection or copying at Marine Safety Office San Diego; 2716 N. Harbor Drive, San Diego, CA 92101–

1064 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the complex planning for this event many details were not finalized in time to publish a notice of proposed rulemaking. Publishing a NPRM and delaying the effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In addition to the reasons stated above, it would be contrary to the public interest since action is needed to ensure the protection of the public during the California Half Ironman Triathlon.

Background and Purpose

The California Half Ironman Triathlon is an up and coming event located in Oceanside, California. Parts of this event are located on the waters defined as Oceanside Harbor, including the entrance channel. This event includes participant swimmers and staff members of the race.

In order to provide a safe environment for the California Half Ironman Triathlon, the COTP is placing the waters of the harbor and the entrance channel under a safety zone. This zone will provide for the safety of all participants, staff, spectators and other users of the waterways.

Discussion of Rule

Ironman North America is sponsoring the California Half Ironman Triathlon in Oceanside, CA. The water portion of the triathlon will occur in the navigable waters of Oceanside Harbor, including the channel entrance.

In order to provide for the safety of the swimmers, the Triathlon Support Staff, the spectators and other users of the waterways, the COTP will be issuing a safety zone for Oceanside Harbor and the entrance channel.

Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

Due to the temporary safety zone's short duration of four and one half (4½) hours for just one day, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of size.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Austin Murai, Marine Safety Office San Diego at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation because we are proposing to establish a safety zone. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

■ 2. From 5:30 a.m. on April 5, 2003 to 10 a.m. on April 5, 2003, add a new § 165.T11–039 to read as follows:

§ 165.T11–039 Safety Zone; Oceanside Harbor, CA

(a) *Location.* The area described as follows is a safety zone: the waters of Oceanside Harbor, CA, including the entrance channel.

(b) *Effective dates.* This safety zone will be enforced from 5:30 a.m. (PST) to 10 a.m. (PST) on April 5, 2003. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander, who will be designated by the COTP. The Patrol Commander may be contacted by VHF–FM Channel 16.

Dated: March 17, 2003.

Stephen P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–7298 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–15–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 1204, 1206, 1213, 1229, and 1234

Removal of Regulations for the Former ACTION Agency

AGENCY: Corporation for National and Community Service,

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service is removing regulations related to programs of its predecessor agency, the ACTION Agency as being obsolete.

DATES: The removal of these regulations is effective as of March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Hudson, (202) 606–5000, ext. 265.

SUPPLEMENTARY INFORMATION: The National and Community Service Trust Act of 1993, Public Law 103–82, 107 Stat. 785, which amended the National and Community Service Act of 1990, created the Corporation for National and Community Service. This law authorized programs to provide Federal financial assistance to organizations that conducts national service programs, and authorized the transfer of all functions and personnel of the ACTION Agency to the Corporation. Since then, the Corporation has published its own regulations implementing national service programs as authorized under the 1993 amendments to the 1990 Act. Therefore, the Corporation removes these regulations.

List of Regulations

§ 1204 Official Seal.
§ 1206 Grants and contracts-suspension and termination and denial of application for refunding.
§ 1213 ACTION Cooperative Volunteer Program.
§ 1229 Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for a drug-free workplace (grants).
§ 1234 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

PARTS 1204, 1206, 1213, 1229 AND 1234—[REMOVED]

For the reasons stated in the preamble, the Corporation for National and Community Service, under the authority of 42 U.S.C. 12501 *et. seq*, hereby amends 45 CFR Chapter XII by removing parts 1204, 1206, 1213, 1229, and 1234.

Dated: March 21, 2003.

Frank R. Trinity,

General Counsel.

[FR Doc. 03–7335 Filed 3–26–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 110602C]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Final 2003 Harvest Specifications for Groundfish; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; Correction.

SUMMARY: This document corrects a typographical error in the docket number of the final rule published in the **Federal Register** on March 3, 2003. This rule implements the final specifications for the groundfish fishery of the Bering Sea and Aleutian Islands management area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 25, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, 301–713–2341.

SUPPLEMENTARY INFORMATION:

Need for Correction

An incorrect docket number (No.) was published under the Docket No. heading of the final rule, FR Doc. 03–4815, on March 3, 2003 (68 FR 9907). It is corrected as follows:

On page 9907, column 2, line 5 from the top of the document, the text, "Docket No. 021212307–3037–3037–02;" is corrected to read "Docket No. 021212307–3037–02".

Dated: March 21, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–7366 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No.010918229–3033–02;I. D.022301A]

RIN 0648–AP15

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA Fisheries amends regulations to modify the management measures applicable to the American lobster fishery. This action responds to the following recommendations made by the Atlantic States Marine Fisheries Commission (Commission):To control fishing effort as determined by historical participation in the American lobster trap fisheries conducted in the offshore Lobster Conservation Management Area (LCMA) 3 (Area 3) and in the nearshore LCMAs of the Exclusive Economic Zone (EEZ) from New York through North Carolina (Areas 4 and 5); to implement a mechanism for conservation equivalency and associated trap limits for owners of vessels in possession of a Federal lobster permit (permit holders) fishing in New Hampshire state waters; and to clarify lobster management area boundaries in Massachusetts waters. NOAA Fisheries includes in this final rule a mechanism for Federal consideration of future Commission requests to implement conservation equivalent measures and a technical amendment to the regulations clarifying that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any management area (whether in state or Federal waters). This requirement is not new, but was not previously clearly specified in the regulatory text, and this announcement is intended to make the regulations easier to understand.

DATES: This rule is effective April 28, 2003.

ADDRESSES: Copies of a Final Supplemental Environmental Impact Statement/Regulatory Impact Review/ Final Regulatory Flexibility Analysis (FSEIS/RIR/FRFA) can be obtained from Harold Mears, Director, State, Federal and Constituent Programs Office, NOAA Fisheries, One Blackburn Drive, Gloucester, MA 01930. Comments regarding the collection-of-information requirements should be sent to Harold Mears at the above address, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN:NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Robert Ross, NOAA Fisheries, Northeast Region, 978–281–9234.

SUPPLEMENTARY INFORMATION:

Statutory Authority

These final regulations modify Federal lobster conservation management measures in the EEZ under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. 5101 *et seq.*, which states that, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U. S. C. 1801 *et seq.*) and after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nautical miles (nm) offshore. These regulations must be (1) compatible with the effective implementation of an Interstate Fishery Management Plan (ISFMP) developed by the Commission and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

Purpose and Need for Management

American lobster experience very high fishing mortality rates throughout their range, from Canada to Cape Hatteras. In 2000, the Commission issued a peer reviewed American lobster stock assessment report that concluded that the resource is overfished. The review concluded that fishing rates are unacceptably high and that a precautionary approach in management of the resource is warranted to sustain future viability of the lobster fishery. The report recommended that reductions in fishing mortality could be achieved through reductions in fishing effort. The 2001 Annual State and Federal Trawl Survey Update to the 2000 lobster stock assessment indicated that resource conditions have not improved since the stock assessment in 2000. For pre-recruit lobsters, which are those lobsters within one-half inch (1.2 cm) of the current Federal legal minimum carapace size of 3–1/4 inches (8.26 cm), the mean number per tow generally declined throughout all stock areas for both sexes. Although harvest and population abundance are near record levels due to high recent

recruitment and favorable environmental conditions, revenue from the 2001 lobster harvest decreased 21.1 percent as compared to 1999. Concerns over the condition of the resource continued into 2003, with reports of a dramatic decline in abundance in Area 2 surrounding Block Island Sound and the state waters of Rhode Island in 2002. A significant decline would have serious implications for the American lobster fishery, which is the most valuable fishery in the northeastern United States. In 2001, approximately 74 million pounds (33,439 metric tons (mt)) of American lobster were landed with an ex-vessel value of approximately 255 million dollars. Additional background information on the status of the stocks was presented in the FSEIS/RIR/FRFA prepared by NOAA Fisheries for this final rule and is not repeated here (see **ADDRESSES**).

The Commission ISFMP Recommendations for Effort Control in Areas 3, 4, and 5

The Commission approved Addendum I on August 3, 1999. The Addendum is principally an effort control measure that determines trap limits based upon historical participation (as opposed to fixed trap limits) in Lobster Management Area 3 (offshore EEZ), and Areas 4 and 5 (inshore EEZ areas south of New York).

Based upon its approval of selected management measures proposed by the Area 3, 4, and 5 LCMTs, the Commission recommended to NOAA Fisheries that access to, and levels of effort in, the lobster trap fishery in EEZ Offshore Area 3 and Nearshore EEZ waters of Areas 4 and 5 be based on historical participation. The Commission recommendations for qualification based on historical participation addressed qualification criteria, allocation of fishing effort, and limitations on vessel upgrades. Qualification criteria are different among the areas and include demonstration of active involvement in the fishery during a specified qualification period through provision of certain documents. The Commission plan for Area 3 proposes that potential participants must meet or exceed both a landing and a fishery intensity threshold in order to qualify and specifically defines that threshold. The Commission plans for Areas 4 and 5 however, although similar, only generally prescribe that qualification and trap limits be based on "historical levels" without providing further definition.

The Commission ISFMP Recommendations for New Hampshire Conservation Equivalency

In October 1998, the Commission approved a proposal from the State of New Hampshire for conservation equivalent lobster trap limits that vary from the 800 lobster trap limit in Area 1 (see subsequent text for details on the state program). In keeping with ISFMP procedures, this conservation equivalent proposal was submitted by the State of New Hampshire to the Board with supporting documentation to support the state's contention that the state lobster fishing effort control program would, in fact, be equivalent to the fixed trap limits for LCMA 1. The state proposal and supporting documentation was submitted to the Commission's Lobster Technical Committee ("TC"), composed of lobster scientists from several states and NOAA Fisheries, and following a review of the conservation equivalency proposal and supporting documentation, the TC concurred with the State of New Hampshire that the state's program would be equivalent to the LCMA 1 fixed trap limit of 800 traps. Following the TC review, and the Commission approval, the Commission recommended that NOAA Fisheries implement compatible measures for impacted Federal lobster permit holders.

The State of New Hampshire's lobster management program provides for a two-tier lobster license system:State fishermen who provide documentation of landing more than 12,000 lb (5,443 kg) of lobster in at least 2 years, from 1994 to 1998, receive a full commercial lobster license issued by the State of New Hampshire; those who cannot provide this documentation are issued a limited commercial lobster license. Those fishermen who qualify for a full license may fish up to 1,200 lobster traps in state waters, and those in the limited category may fish a maximum of 600 lobster traps in state waters. Following approval of the New Hampshire proposal under the ISFMP, the Commission recommended that NOAA Fisheries modify Federal regulations to maintain the biological and socio-economic basis of New Hampshire's lobster management program. The Commission requested that NOAA Fisheries modify Federal regulations to allow Federal permit holders who elect to fish in Area 1 and also possess a New Hampshire full commercial lobster license to fish 400 lobster traps in New Hampshire state waters in addition to the 800 lobster traps they may fish in state and Federal waters of Area 1 under current Federal regulations. However, these fishermen would not be allowed to fish more than 800 lobster traps in the Federal waters of Area 1.

The Commission ISFMP Recommendations for Revisions to Area Boundaries

In Addendum I to Amendment 3 of the American Lobster ISFMP, the Commission revised the boundary lines for three of the LCMAs adjacent to Massachusetts, including Area 1, Area 2, and the Outer Cape Area, to bring the area boundaries more in line with traditional fishing practices in those areas and to correct an oversight in the specification of an Area 1 boundary line in Amendment 3 to the ISFMP. Following approval of Addendum I, the Commission recommended that NOAA Fisheries modify Federal regulations to maintain compatible boundary lines in Federal regulations. A copy of charts showing the affected American lobster EEZ management areas is available from NOAA Fisheries (see **ADDRESSES**).

Discussion of the selected management actions includes reference to other recommendations made by the Commission, but not extensively analyzed for this action. These include upgrade limitations for vessels participating in the LCMA 3 trap fishery, an increase in the minimum gauge size in Federal waters, and "closed areas" which would prohibit harvest of lobsters taken by trap gear in selected portions of LCMA 4. See subheading "Commission recommendations considered but rejected" in this Summary Information section of this final rule for additional information on recommendations considered but rejected. The selected management actions also include a discussion of concerns raised by NOAA Fisheries in two areas relative to the ability of Federal permit holders to compile and provide documentation which will be required to certify historical participation on the basis of the qualification criteria, and the ability of NOAA Fisheries to accommodate recommendations from the Commission for Federal rulemaking responding to conservation-equivalent management measures specific to state jurisdictional waters. See subheading "Historic participation implementation analysis" in this Summary Information section of this final rule for additional discussion of documentation requirements for measures specified in this final rule.

Federal Rulemaking for Compatible Measures to the ISFMP

The current Federal lobster management program implemented

with regulations in the Final Rule on December 6, 1999 (64 FR 68228), uses a fishing effort limitation strategy, among other measures, to control lobster fishing mortality. Fishing effort is currently limited by restricting the access of new vessels to the fishery and by limiting the number and size of traps that may be fished by each vessel. The Commission's Addendum I recommendations to NOAA Fisheries were the first attempt in the lobster ISFMP to begin controlling effort through trap limits based on historic participation. To support the Commission, and as a result of the Commission's recommending compatible measures in Federal waters, NOAA Fisheries published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** on September 1, 1999 (64 FR 47756), to seek public comment on whether there is a need under the Atlantic Coastal Act to restrict access of Federal permit holders in the lobster EEZ fishery on the basis of historical participation. The ANPR also notified the public that NOAA Fisheries established September 1, 1999, the publication date of the ANPR, as a potential control date, or cut-off date, to be used to determine eligibility for future access to lobster management areas, and to discourage shifts into new areas by lobster trap vessels subject to Federal lobster regulations.

NOAA Fisheries subsequently published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) in the **Federal Register** on December 10, 1999 (64 FR 69227). NOAA Fisheries later published a notice of availability for a Draft Supplemental Environmental Impact Statement (DSEIS) on November 24, 2000 (65 FR 70567). The DSEIS responded to recommendations made by the Commission, and considered the biological, economic, and social impacts of several alternative actions for waters under Federal jurisdiction. The preferred alternatives in the DSEIS included:implementation of a historical participation management regime to control lobster fishing effort and preserve the socio-economic character of the associated lobster fisheries in Lobster Management Areas 3, 4 and 5; modification of trap limit restrictions for Federal Lobster permit holders who also hold a New Hampshire state lobster license, to be consistent with New Hampshire regulations, which were determined by the Commission to be conservation equivalent to the ISFMP; and modifications to the coordinates of lobster management areas in Massachusetts state waters, for clarity, and to be consistent with past fishing practices. In November and December 2000, NOAA Fisheries held public meetings in Maine, Rhode Island, New York, and New Jersey, to receive comments on the biological, economic and social impacts addressed in the DSEIS. A total of 153 individuals attended the public meetings, which were held in November and December 2000, and 225 written comments were received by January 9, 2001, the closing date for public comment on the DSEIS.

NOAA Fisheries published its Proposed Rule in the **Federal Register** on January 3, 2002 (67 FR 282). The Proposed Rule addressed management measures identified in the DSEIS, and included a technical amendment to the regulations to clarify that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any management area (whether in state or Federal waters). NOAA Fisheries received 190 comments on the American lobster proposed rule during the comment period which ran from January 3–February 28, 2002. The comment period on the proposed rule was extended from February 19, 2002, to February 28, 2002, to ensure all interested parties adequate time for review of the document, and, in part, to allow the Commission opportunity to discuss during the Commission American Lobster Board Meeting held February 20, 2002, in Washington, D. C. All of the public comments were carefully considered and a summary of comments and NOAA Fisheries responses are provided later in this document. On November 8, 2002, NOAA Fisheriespublished a notice of availability for a Final Supplemental Environmental Impact Statement (67 FR 68128). The deadline for acceptance of public comment in response to the biological, economic, and social impacts addressed in the FSEIS was December 9, 2002. NOAA Fisheries received 82 comments on the FSEIS.

Alternatives Evaluated

The DSEIS and FSEIS presented several alternatives for each of the major measures addressed by this regulatory action, within the parameters of the Atlantic Coastal Act and Magnuson-Stevens Act requirements. Four of these (Alternatives 1A - 1D) address alternatives relating to implementation of historical participation as a means to control lobster fishing effort in LCMAs 3, 4, and 5. The preamble and classification section of this final rule summarize the impacts and the cost effectiveness of the selected management actions on small entities and the economy. The FSEIS for this action thoroughly discusses and evaluates the effectiveness of each of the four historic participation alternatives to achieve the ISFMP and Atlantic Coastal Act objectives (see **ADDRESSES**).

Effort Control Alternatives in Areas 3, 4, and 5

Final Measures Selected

NOAA Fisheries will implement measures aligned with alternatives identified in theFSEIS for this action. Note that most measures will apply to Federal permit holders who fish only in specific management areas. The following is a summary of the major actions, each action will be discussed in further detail later in this document.

1. NOAA Fisheries will implement measures to control fishing effort as determined by historical participation in the American lobster trap fisheries conducted in the offshore Area 3 and in the nearshore Areas 4 and 5, but will also establish a maximum trap limit of 1,440 traps for vessels qualifying to fish with traps in LCMA 4 and 5 as outlined in the DSEIS selected Alternative 1D. Although not recommended by the Commission, NOAA Fisheries will implement the trap limit to preclude excessive trap fishing effort to the lobster resource and comment received during this rulemaking. NOAA Fisheries believes the removal of existing trap limits in Areas 4 and 5 (800 lobster traps per vessel under current Federal regulations), without implementation of an alternative trap limit, would likely result in excessive lobster fishing mortality. Implementation of a maximum trap limit in Areas 4 and 5 of 1,440 lobster traps per vessel, in combination with the proposed qualification criteria for participation in the Areas 4 and 5 trap fishery, may preclude excessive trap fishing effort and corresponding levels of lobster fishing mortality. A maximum trap limit in Areas 4 and 5 may also alleviate marine mammal and endangered species interactions with lobster trap gear.

There were three other significant alternative solutions considered for this action in addition to the selected alternative 1D. With non-selected alternative 1A, there would be a maximum trap limit and a sliding scale trap reduction schedule associated with each vessel qualifying to fish with traps in LCMA 3, but this non-selected alternative would not establish a maximum trap limit of 1,440 traps for vessels qualifying to fish with traps in LCMA 4 and 5. Under the No Action non-selected alternative 1B, American lobster would continue to be managed in Federal waters under the current fixed trap limit provisions of existing regulations of the Atlantic Coastal Act (50 CFR part 697). Under existing regulations (50 CFR 697.4(a)(7)), qualified vessels may elect to fish with traps in any or all LCMAs, and trap allocations are based on this election. If a permit holder elects to fish in any Nearshore LCMA, or any Nearshore LCMA and LCMA 3, the vessel is restricted to a maximum of 800 traps. If a vessel elects to fish only in LCMA 3, or in LCMA 3 and the LCMA 2/3 overlap, the vessel is restricted to a maximum of 1,800 traps. Non-selected alternative 1C, similar in part to the DSEIS alternatives 1A, and 1D, would also require evidence of a history ofactive trap fishing for each elected area (LCMA 3, 4, and/or 5) during the same qualification period, and also includes the Area 3 requirement to demonstrate that at least 25,000 lb (11,340 kg) of lobster were harvested throughout the range of the resource during the qualifying year, however under non-selected alternative 1C, there would be fixedtrap limits of 800 and 1800, the same as those described in the no-action/status quo non-selected alternative 1B.

2. NOAA Fisheries will implement a mechanism for conservation equivalency and associated trap limits for owners of vessels in possession of a Federal lobster permit (permit holders) fishing in New Hampshire State waters. This regulatory action will modify Federal regulations to allow Federal permit holders who elect to fish in Area 1 and also possess a New Hampshire full commercial lobster license to fish 400 additional lobster traps in New Hampshire state waters in addition to the 800 lobster traps they may fish in state and Federal waters of Area 1 under current Federal regulations. However, these fishermen would not be allowed to fish more than 800 lobster traps in the Federal waters of Area 1.

Two alternatives to address LCMA 1 trap limits for Federal lobster permit holders fishing in New Hampshire waters were presented for this action in the SEIS. Under the Atlantic Coastal Act, The selected DSEIS alternative 2A, implement measures to allow Federal permit holders who fish for lobster in LCMA1 and who also possess a New Hampshire full commercial lobster fishing license to fish a maximum of 400 additional traps only in the state waters of New Hampshire as specified in New Hampshire state regulations to complement the ISFMP; or continue the no action/status quo non-selected DSEIS alternative 2B that, under current Federal regulations, restrict Federal permit holders who elect to fish in LCMA 1, or any other Nearshore LCMA and LCMA 3, to a maximum of 800 traps, regardless of whether they fish in state or Federal waters. The selected DSEIS alternative 2A, will allow Federal permit holders who fish for lobster in LCMA1 and who also possess a New Hampshire full commercial lobster fishing license to fish a maximum of 400 additional traps only in the state waters of New Hampshire as specified in New Hampshire state regulations.

3. NOAA Fisheries will clarify lobster management area boundaries in Massachusetts waters. With this action, NOAA Fisheries will implement compatible boundary lines for Area 1, Area 2, and the Outer Cape Area that are compatible to the Commission's American lobster ISFMP.

Due to the unique nature of the alternatives relating to the regulatory actions to address LCMA boundary clarifications, only two alternatives were presented for this action in the SEIS:Implement measures to complement the ISFMP, the selected DSEIS alternative 3A and revise the boundary lines for three of the LCMAs adjacent to Massachusetts, including Area 1, Area 2, and the Outer Cape Area,; or continue the no action/status quo alternative, the non-selected DSEIS alternative 3B and maintain the existing Federal boundary lines for all LCMAs including the three LCMAs adjacent to Massachusetts:LCMA 1, LCMA 2, and the Outer Cape LCMA. NOAA Fisheries selected the DSEIS alternative 3A in keeping with the intention of the Atlantic Coastal Act to implement complementary regulations to maintain consistency with the Commission's American lobster ISFMP and to avoid confusion if the Federal and Commission area boundaries and their associated lobster management measures differ.

4. NOAA Fisheries includes a technical amendment to the regulations clarifying that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any management area (whether in state or Federal waters). This requirement is not new, but was not previously clearly specified in the regulatory text, and this technical amendment is intended to make the regulations easier to understand.

Area 3, 4, and 5 Fishing Effort Control Program

The Lobster Management Areas are defined at 50 CFR 697.18. A copy of a map showing the American lobster EEZ management areas is available upon request from the Director of the State, Federal and Constituent Programs Office (see **ADDRESSES**).

Area 3—Qualification Criteria

In order to qualify to fish for lobster with traps in Area 3, Federal lobster permit holders will need to meet or exceed both a landing and fishery intensity threshold. With this action, NOAA Fisheries will limit the number of traps fished in Area 3 based on proof of historical participation in the Area 3 fishery and the number of traps fished by a vessel during a qualifying period from March 25, 1991, through September 1, 1999. Qualification criteria for Area 3 are specified in § 697.4(a)(7)(vi) of this rule. Extensive discussion regarding selection of the Area 3 qualification criteria, qualification period, and the landing and fishery intensity threshold, was presented in the FSEIS prepared by NOAA Fisheries for this rule and is not repeated here (see **ADDRESSES**).

Area 3—Trap Allocation Criteria

A maximum allocation of 2,656 lobster traps with the associated sliding scale reductions over a 4–year period was recommended by the Commission to NOAA Fisheries as a result of Addendum II to Amendment 3 of the ISFMP. The selection of 2,656 traps and the corresponding matrix of trap allocations as identified in Table 1 specified in § 697.19(b)(2) of this final rule were developed by the Area 3 LCMT. Discussion of the matrix of initial maximum trap allocations was provided in the FSEIS/RIR/FRFA prepared by NOAA Fisheries for this final rule and is not repeated here (see **ADDRESSES**).

Areas 4/5 Fishing Effort Control Program with a Maximum Trap Limit

In order to qualify to fish for lobster with traps in Area 4 or Area 5, Federal lobster permit holders will need to meet or exceed a fishery participation threshold. NOAA Fisheries will limit the number of traps fished in Area 4 and/or Area 5 based on proof of historical participation in the Area 4 and Area 5 fishery and the numbers of traps fished by a vessel during a qualifying period from March 25, 1991, through September 1, 1999. This particular threshold for Area 4 and 5 is identical to the Area 3 qualification threshold specified in § 697.4(a)(7)(vi) of this final rule.

Although establishment of criteria based on a specific minimum number of traps fished by a vessel during the qualifying period was not specifically

recommended by the Commission, the criteria certainly fall within the general recommendation that individuals must prove historical participation. In leaving the details to the Federal Government, the Commission gave NOAA Fisheries the ability to achieve some standardization in its management regime, not only an important practical consideration, but also a relevant consideration under the National Standards, particularly National Standards 3 and 8. Note that this same deliberative process resulted in NOAA Fisheries failing to include a landing requirement in Area 4 or Area 5 as it did in Area 3. NOAA Fisheries received commentary that 25,000 lb (11,340 kg) landed might not, in all circumstances, be a reasonable indicator of historical participation, particularly the further south one fished in the area. Accordingly, NOAA Fisheries did not use that criterion in this area.

Commission recommendations for the Areas 4 and 5 fisheries, unlike those for the Area 3 fishery, do not contain either trap limits or trap reduction schedules. Although not recommended by the Commission, NOAA Fisheries is imposing a trap limit not to exceed 1,440 lobster traps per vessel to preclude excessive trap fishing effort on the lobster resource, and in response to public comment on this action.

Area 3, 4 and/or 5—Qualification and Trap Allotment Process

After an analysis of landings, vessel trip report records, and permit histories, NOAA Fisheries may notify permit holders by letter of information NOAA Fisheries has regarding one or more of the historic participation criteria specified in this final rule. That is, if NOAA Fisheries has its own clear and convincing documentation relating to an element of a vessel's historical participation, the agency may in its discretion relieve the potential applicant of the need to document that element in its initial notice. However, NOAA Fisheries will not automatically issue any pre-qualification permits; any person or entity wishing to receive a historical participation allocation to fish with traps in Areas 3, 4, and/or 5, must submit a signed application and furnish the appropriate documentation necessary to demonstrate eligibility. Potential qualifiers must provide credible documentation as proof of each of the qualifying elements. At the same time, the potential qualifiers must also credibly document the number of traps fished at any one time in Areas 3, 4, and/or 5 during the qualifying year. The documentation and eligibility criteria for Areas 3, 4, and 5 are specified in § 697.4(a)(7)(vi through viii) of this final rule. Discussion concerning selection of appropriate documentation and eligibility criteria was provided in the FSEIS/RIR/FRFA prepared by NOAA Fisheries for this final rule and is not repeated here (see **ADDRESSES**).

NOAA Fisheries anticipates that the submitted documentation will vary in form, content and legibility. However, this documentation must be dated, created on or about the date of the activity described in the document, and must be clearly attributable to the qualifying vessel. A clear relationship may include a vessel name, state or Federal permit number, Coast Guard documentation number, or the name of the owner of the vessel at the time being used as the qualification period. NOAA Fisheries will require that each potential qualifier explain his or her proof in a cover letter to be included along with the submitted documents. Illegible documents will not be considered by NOAA Fisheries. Further, submission of falsified information would subject the applicant both to general sanction, including revocation of his or her federal lobster permit as well as to prosecution under the applicable law.

Area 3/4/5—Qualifying for More Than One Lobster Management Area

Any Federal lobster permit holder applying for access to more than one of the 3 areas (Areas 3, 4, or 5) must use the same qualifying year for all areas in order to avoid a combined allocation greater than the number of traps that the permit holder ever fished with any one vessel at any one time during any one year. In addition, the current requirement that Federal permit holders who elect to fish in multiple areas must abide at all times by the most restrictive regulations, including trap allocations, in any one elected area regardless of the area being fished, will remain in effect. The Commission Lobster Management Board, in consultation with the states and LCMTs, is evaluating alternative options to the most restrictive regulations concerning trap allocations for vessels fishing in multiple Areas. However, no recommendation has been made at this time, and there is no clear consensus on a preferable alternative to the current measures in place. NOAA Fisheries may evaluate this issue further in future rulemaking at such time as the Commission reaches a consensus and provides a recommendation to NOAA Fisheries concerning a waiver of the most restrictive trap allocation.

Areas 3, 4, and/or 5 Appeals.

If NOAA Fisheries denies an Area(s) 3, 4, and/or 5 permit after the potential qualifier undergoes the application process specified in this final rule, that person may appeal the denial to the NOAA Fisheries Regional Administrator. There will only be two grounds for appeal. The first is that NOAA Fisheries erred in concluding that the vessel did not meet the stated criteria for the Area in question. This basis for appeal would provide a mechanism for correcting an improper finding based upon NOAA Fisheries clerical error. The second basis of appeal is that of documentary hardship. In order to appeal on this basis, the appellant must have first applied in the manner set forth in the application for historic participation specified in this final rule and been denied by the NOAA Fisheries Regional Administrator because of an inability to document the qualifying criteria.

An appeal based on documentary hardship must establish two elements:(1) The appellant must document the nature of the hardship; and (2) the appellant must establish the necessary qualification and trap allocation elements by affidavit.

First, as to documenting the nature of the hardship, it is not enough to simply indicate that the applicant no longer possesses the necessary records. The hardship must have been caused by factors beyond the applicant's control. Such a hardship would need to be corroborated by independent documents, such as by insurance claims forms or police and fire reports. Failure to create the document in the first instance, or simple loss of the document, or the intentional destruction or discarding of the document in the past by the appellant would not constitute grounds for a hardship under this action.

Second, after claiming and documenting hardship beyond his or her control, the appellant would then need to submit to NOAA Fisheries affidavits from current Federal permit holders so that three affidavits corroborate each of the qualification criteria specified for Area 3 in § 697.4(a)(7)(vi), for Area 4 in § 697.4(a)(7)(vii), and/or for Area 5 as indicated in § 697.4(a)(7)(viii). The Federal permit holder need not necessarily be a lobster permit holder, although he or she may be. Each affidavit must clearly specify in separate and specific paragraphs:(1) The name, address,Federal permit number and vessel of the person signing the affidavit; (2)that the person signing the affidavit can attest to by personal first-handknowledge that the qualifying vessel set, allowed to soak, hauled back and re-set at least 200 lobster traps during the 2–month period in the qualifying year in the area being selected by the applicant, identifying those months and that year and further identifying the nature of that knowledge; (3)for Area 3 only, that the person signing the affidavit can attest to by personal first-hand knowledge that the qualifying vessel landed at least 25,000 pounds oflobster during the qualifying year, identifying that year and further identifying the nature of that knowledge; (4) that the person signing the affidavit can attest by personal first-hand knowledge to the total number of traps that the applicant claims his or her vessel fished in the area in question during the qualifying year and further identifying the nature of that knowledge; (5) that the person signing the affidavit also fished in the area being claimed by the applicant during the months in the qualifying year chosen by the applicant; and (6) be signed under the penaltiesof perjury. Further, at least one affidavit must also corroborate the basis for the hardship claimed by the appellant, for example, by a representative of the insurance agency, police, or fire department if the hardship was the result of a flood or fire. The person signing this last affidavit need not be Federalpermit holder, although he or she may be if the individual has personal knowledge of the hardship claimed by the applicant. Hence the potential for four (4) affidavits:if none of the three Federal permit holders can also document the hardship, then the appellant could submit a fourth affidavit from a non-permit holder to do so. Additional affidavits beyond that outlined herein are not necessary and will grant the appellant no advantage. In other words, if three (or four, depending on the circumstances) affidavits establish the required elements, then additional affidavits are superfluous and will be given no extra weight. All affidavits must be signed under the penalties of perjury. As with submissions under the initial qualification process, any person submitting false information, including the permit holders submitting the supporting affidavits, will be subject to general sanction, including revocation of his or her Federal permit and further prosecution under applicable law, including the Magnuson-Stevens Act and the Atlantic Coastal Act.

Historic Participation Implementation Analysis

The stated qualification process for Areas 3, 4, and/or 5 specified by measures in this final rule was the product of considerable deliberation. NOAA Fisheries' challenge was to create a limited access rule in Areas 3, 4, and 5 within the parameters of the Commission's Addendum I historical participation model and consistent with the legal requirements set forth in the Atlantic Coastal Act and other laws. Simply put, NOAA Fisheries' charge was to design a practical process that was flexible enough to qualify permit holders who met the relevant criteria and yet strict enough to keep out those who did not.

Any potential qualification process in the lobster fishery would be complicated by the lack of documentary uniformity in the industry. NOAA Fisheries, in the DSEIS stage of this rulemaking process, noted with concern the lack of uniform mandatory reporting in the industry. The proposed qualification scheme is similar but slightly more rigid in its initial review than that which was identified in the DSEIS for this action. Specifically, the proposed scheme requires specific document types as proof, whereas the DSEIS left the proof open-ended by merely stating that certain types of documents "may be" used and leaving it up to the "discretion" of the applicant to choose the most appropriate type. NOAA Fisheries made this change because it believed that the less specific DSEIS language provided insufficient guidance and definition to both the applicant and the NOAA Fisheries' reviewer.

NOAA Fisheries did, however, consider that some potential qualifiers may be denied access in this more rigid process because they, through no fault of their own, no longer had the documents specifically required under the proposed scheme. To ameliorate the harshness of such an eventuality, NOAA Fisheries considered an appeal on the basis of documentary hardship. The documentary hardship appeal attempts to soften for some the rigidity of the proposed action's strict documentation scheme, while still maintaining standards that would prevent trap fishing access to those who have not historically fished in Areas 3, 4, and/or 5. An appeal based upon documentary hardship for reasons beyond the applicant's control adds flexibility to the process without undermining the rule's effectiveness. The appellate parameters may have harsh impacts for some—e.g., for applicants lacking documents due to inadvertence, carelessness or excusable neglect—but inclusion of individuals who would qualify but for reasons beyond their control appears to be a just, logical, and reasonable place to draw such a line. On balance, NOAA Fisheries considers the proposed documentation and qualification scheme to be both practical and just, and believes that it otherwise supports the Commission's lobster management regime, is compatible with Addendum I and is consistent with the applicable laws. Additional discussion on the proposed documentation and qualification scheme was provided in the FSEIS/RIR/FRFA prepared by NOAA Fisheries for this final rule (see **ADDRESSES**).

Area 1 Trap Limits for NH Lobster License Holders

With this action, NOAA Fisheries will waive the requirement that Federal lobster permit holders must abide by the stricter of either Federal or state lobster management measures with respect to the number of lobster traps for Federal lobster permit holders who elect to fish in Area 1 and who fish 1,200 traps under a valid New Hampshire full commercial lobster license for Area 1. Specifically, NOAA Fisheries will not make any change in the number of traps allowed to be fished in the Federal waters of Area 1. However, a New Hampshire full commercial lobster licensee fishing aboard a federally permitted vessel will be allowed to fish an additional 400 lobster traps in New Hampshire state waters.

Procedures for Consideration of Conservation Equivalency Measures

The ISFMP includes a provision which allows states to request approval, from the Commission, of management measures different from selected measures which otherwise would be required to satisfy state compliance with the plan. The New Hampshire proposal for conservation equivalent trap limits is a case in point. In October 1998, the Commission approved such a proposal from the State of New Hampshire and, as a result, the Commission has requested NOAA Fisheries to modify Federal lobster regulations. While NOAA Fisheries acknowledges the importance of the conservation equivalency, and the flexibility this provision allows to address unique socio-economic situations in state jurisdictions, complications arise when this results in a divergence between state and Federal regulations affecting operations of fishermen who possess both a state and Federal lobster permit. As in the present case, this will necessitate consideration of complementary regulations in the EEZ through lengthy Federal rulemaking and public comment procedures. Consequently, continued approval of conservation equivalent proposals under the ISFMP which necessitate complementary Federal rulemaking, if

left unchecked, could inadvertently increase the complexity of Federal regulatory involvement and undermine the management of a resource which is harvested predominantly in waters under state jurisdiction.

To address this concern, regulatory action will clarify a procedure by which NOAA Fisheries will consider such recommended conservation equivalent modifications to Federal lobster regulations as they may pertain to the activities of Federal lobster permit holders from the affected state(s). Specifically, NOAA Fisheries will only consider future Commission conservation equivalency recommendations that are formally submitted to the agency in writing by the Commission and that contain supporting information deemed necessary to address federal rulemaking requirements. NOAA Fisheries believes that receiving the supporting information and analyses along with a recommendation for Federal implementation of conservation equivalent measures is necessary to enable NOAA Fisheries to respond to recommendations for Federal rulemaking in a more timely and efficient manner. Procedures to address future conservation equivalency recommendations have not changed from procedures identified in the proposed rule (67 FR 287) completed for this action, and are specified in § 697.25(b) of this final rule.

Lobster Management Area boundary clarification

In Addendum I to Amendment 3 to the American Lobster ISFMP, the Commission revised the boundary lines for three of the LCMAs adjacent to Massachusetts, including Area 1, Area 2, and the Outer Cape Area, to bring the area boundaries more in line with traditional fishing practices in those areas and to correct an oversight in the specification of an Area 1 boundary line in Amendment 3 to the ISFMP. There have been no changes in the boundary descriptions from the proposed rule (67 FR 287) completed for this action. Updated boundary coordinates are specified in § 697.18 of this rule.

Summary of Public Comments Received in Response to the American Lobster Proposed Rule Published on January 3, 2002

The Proposed Rule was published in the **Federal Register** on January 3, 2002, and comments were initially solicited until February 19, 2002. Upon request of the Atlantic States Marine Fisheries Commission (Commission) to allow the Commission's Lobster Board to discuss the rule at their previously scheduled meeting on February 17 and allow ample time to submit written comments, NOAA Fisheries extended the comment period until February 28, 2002. Comments were solicited on potential changes to the Federal lobster regulations as described in the Proposed Rule including the proposed implementation of a program to control fishing effort as determined by historical participation in Lobster Conservation Management Areas (LCMAs/Areas) 3, 4 and 5; a mechanism for conservation equivalency and associated trap limits for owners of vessels in possession of a Federal lobster permit fishing in New Hampshire state waters; and clarification of lobster management area boundaries in Massachusetts waters. The Proposed Rule also included a technical amendment to the Federal regulations clarifying that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any management area, including state waters.

A total of 190 comments were received by NOAA Fisheries in response to the Proposed Rule. Twelve of these comments were submitted by six state fisheries agencies, four fishermen's associations, one state senator, and one state governor. The remainder of the comments were received from members of the general public.

Of the 190 total comments, 125 favored either the entire Proposed Rule or, specifically,historical participation as a means of limiting future access to fish with traps in LCMAs 3, 4, or 5. Thirty-one commenters expressed general support for the Proposed Rule with 26 generally opposed to it. Seventeen individuals wrote in general opposition to historical participation as a means of limiting future access to fish with traps in LCMAs 3, 4, or 5, and 35 comments were received in opposition to the historical qualification criteria as presented in the Proposed Rule. Of the total comments, those that specifically related, either pro or con, to a particular lobster conservation management area are as follows. Relative to LCMA 3, 91 comments were received in support of the historical participation recommendations of the Area 3 LCMT and seven were received in opposition to historical participation in LCMA 3. Three respondents support historical participation as a means to limit access to fish with traps for either LCMA 4 or LCMA 5 or both. No comments were received in opposition to historical participation in LCMA 4 and 5. Twenty comments were received in support of the New Hampshire conservation equivalent trap allocations while 13 respondents commented in opposition to this measure. One individual commented in opposition to the proposed area boundary changes.

All comments were carefully considered. Specific questions, concerns, opposition to elements of the Proposed Rule, and comments on measures not presented in the Proposed Rule such as gauge increases, maximum size requirements and v-notching, are more thoroughly addressed in this section.

Historical Participation Comments (HP)

HP *Comment 1:* Ninety-one individuals wrote in support of a historical participation program in Area 3 and 78 additional comments were received in support of the Area 3 trap reduction schedule presented in the Proposed Rule. Three respondents support historical participation for either Area 4 or Area 5 or both.

Response: NOAA Fisheries intends to implement a historical participation effort control program in LCMAs 3, 4 and 5 compatible with that recommended by the Commission and developed by the LCMTs and consistent with the National Standards set forth in the Magnuson-Stevens Act (MSA), with some variation. NOAA Fisheries believes that this management program is a fair and equitable means of implementing the necessary management measures in consideration ofLCMT and Commission recommendations.

HP *Comment 2:* Seven comments were received in opposition to historical participation in LCMA 3.

Response: See response to Comment 1.

HP *Comment 3:* Three supporters of historical participation recommend that historical participation be implemented but that flat trap allocations be maintained.

Response: Historical participation with fixed trap limits was analyzed as non-selected alternative 1C of the FSEIS (see Section 3 of the FSEIS for more detail). This non-selected alternative would impose a greater economic impact, compared to the selected action, on those Federal permit holders who have historically derived a higher income from increased lobster harvest from fishing a number of traps in excess of the fixed trap limits. Also, this non-selected action would impact twice as many Federal permit holders by requiring them to fish a reduced number of traps, than would the proposed action. Historical trap allocations under the proposed action can be effectively enforced through a trap tagging

program, similar to what is currently in place coastwide. The non-selected alternative 1C would impose a lower administrative burden since documentation in support of historical trap levels would not need to be submitted or analyzed. On balance, the proposed action is more compatible with the recommendations of the Commission for Federal management.

HP *Comment 4:* One Commenter suggests that the current Federal trap limits be maintained without historical participation.

Response: This scenario was analyzed and rejected in the FSEIS as non-selected DSEIS alternative 1B. (No Action/Status Quo). By not implementing historical participation in Areas 3, 4 and 5, NOAA Fisheries would not be compliant with the mandate to implement measures compatible with the Commission's ISFMP as mandated in the Atlantic Coastal Fisheries Cooperative Management Act (ACA). Further, the process of analyzing the specific options used the best available data and it is NOAA Fisheries' best estimate that trap reductions are likely under the selected action and that an appropriate reduction in fishing effort will be realized when these measures are implemented. Fixed trap limits without historical participation will not cap trap fishing effort and reduce effort shifts to other management areas and will compromise the ability of the ISFMP to rebuild American lobster stocks and end overfishing of the lobster resource.

HP *Comment 5:* Eight respondents are opposed to the qualification period for determining eligibility under historical participation that would require a vessel to have participated in the lobster trap fishery in Areas 3, 4 or 5 during the period from March 25, 1991, to September 1, 1999.

Response: NOAA Fisheries believes this qualification period is fair and will result in the qualification of a set a vessels that reflects the historical nature of this fishery. The first date, March 25, 1991, was recommended by the Commission and was originally established as a control date by the New England Fishery Management Council to determine eligibility for future access to the Federal lobster fishery. The second date, September 1, 1999, is the date of publication of an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** that informed the public that NOAA Fisheries was considering that date as a potential cut-off date for determining eligibility for future access to LCMAs 3, 4 and 5. Accordingly, NOAA Fisheries believes that all had notice of the potential for limited access, that the period is broad enough to include those whose personal circumstances required unavoidable temporary absence (e.g. illness, etc.), and that it will result in the accurate qualification of permit holders based upon historical participation. If the commenters are suggesting that those who fished in these areas prior to 1991 but abandoned the fishery thereafter, NOAA Fisheries disagrees that these permit holders should qualify based on the historical participation model recommended by the Commission. If, however, these commenters are only referring to those who fished both prior to 1991 as well as currently, then NOAA Fisheries believes that these individuals will, in fact, qualify because they likely fished at least one season during the nine years in between. Certainly, NOAA Fisheries received no comments suggesting that long absences were typical, or that they even occurred at all for those who historically fished in these areas.

HP *Comment 6:* One individual commented that he would support historical participation in Area 3 if the 2,656 maximum trap allocation was reduced to 1,800–traps. Offshore lobstermen have been making a living at the 1,800 trap level since the year 2000 and a return to higher trap allocations will increase the gap between large and small operations and create discontent within the fleet.

Response: If this Commenter is suggesting that historical participation be implemented in Area 3 with a fixed trap limit of 1,800 traps for all qualified vessels, then this concept is the same as the non-selected alternative 1C analyzed in the FSEIS -historical participation with fixed trap limits (see section 3 of the FSEIS for more detail and note the response to HP Comment 3). This non-selected alternative would impose a greater economic impact, compared to the selected action, on those Federal permit holders who have historically derived a higher income from increased lobster harvest from fishing a number of traps in excess of the current fixed trap limits. Also, this non-selected action would impact twice as many Federal permit holders by requiring them to fish a reduced number of traps than would the selected action. On balance, the selected action is more compatible with the recommendations of the Commission for Federal management.

However, the commenter may be suggesting that the maximum trap allocation associated with historical participation in Area 3 in the NOAA Fisheries selected alternative be substituted with an 1,800–trap maximum subject to annual reductions under the Commission's Area 3 trap reduction schedule. In this case, the commenter's scenario is likely even more restrictive than non-selected alternative 1C in the FSEIS, since it would subject qualifying vessels to even lower maximum trap allocations.

HP *Comment 7:* One trawl fisherman, although an advocate of historical participation in the lobster fishery, believes that otter trawl fishermen with a history of catching lobster should also be included in this program and that all gear types be subject to the same possession and access limits.

Response: The LCMTs for Areas 3, 4 and 5 did not develop, and the Commission did not recommend to NOAA Fisheries that non-trap gear be included in the historical participation program. The NOAA Fisheries selected alternative implemented in this final rule is aimed at reducing trap fishing effort in the lobster trap fishery and will not affect Federal lobster vessels that fish with non-trap gear. Under the selected action, non-trap gear lobster vessels will not be required to qualify for access to LCMAs 3, 4 and 5 and will not be excluded from fishing with non-trap gear for lobster in these areas, or any other portion of the EEZ. NOAA Fisheries previously included in the Federal regulations a landing limit of 100 lobster per day/500 lobster per trip of 5 days or more to address lobster fishing effort in the non-trap sector, consistent with the ISFMP.

HP *Comment 8:* Discrimination against certain gear types is not reasonable, as determined by a recent court decision on monkfish concerning differential trip limits. Therefore, allowing a lower possession limit for non-trap lobster vessels violates this principal established by the court. As such, those who fished non-trap gear during the qualification period and had Federal lobster permits should retain their right to fish traps if they so choose.

Response: This final rule is designed to address trap reductions and no specific recommendations were provided by the Commission concerning Federal action with respect to the lobster non-trap gear sector. See previous response.

HP *Comment 9:* Two individuals suggest that NOAA Fisheries allow those who have always had a Federal lobster permit but do not qualify to fish with traps under historical participation (i.e., trawl gear fishermen) to have a limited level of participation initially and then have full participation in Area 3 once the resource is rebuilt.

Response: Allowing a baseline number of traps for non-trap gear vessels or for non-qualifying trap vessels

would compromise the intent of the Addendum I to Amendment 3 of the ISFMP to reduce trap fishing effort in order to decrease lobster fishing mortality. See previous response.

HP *Comment 10:* One state agency that supports historical participation opposes the transfer of historic trap allocations for Areas 4 and 5 because it may make it more difficult to implement trap reductions through regulations in the future if these permits and associated allocations are transferred (sold). The transfer of history-based trap limits may also create discrepancies between state and Federal regulations if a permit holder who qualifies under the NOAA Fisheries for historical participation program in Area 4, for example, does not qualify under the State's plan which used a 1991–1998 qualification period, which differs from the NOAA Fisheries qualification period.

Response: The comment refers to the concept of individual transferrable quotas (ITQs), a highly controversial management tool and the subject of ongoing Congressional, agency and Commission deliberations. The concept of ITQs was not proposed by the Commission as part of this action and public comment has not yet been proposed by the Commission on this issue. NOAA Fisheries would consider ITQs in future rulemaking if recommended by the Commission at a later time.

HP *Comment 11:* One state recommends that NOAA Fisheries allow all vessels that qualify for access under the historical participation program receive a baseline number of traps and then also be eligible for their historical allocation. If the Federal permit is subsequently transferred, the associated trap allocation reverts to the baseline level. The most restrictive of state or Federal regulations can't be enforced because NOAA Fisheries issues 880 tags to everyone regardless of their state historical allocation. Then, a long-term framework such as a total allowable trap allocation program for each management area should be considered. That total allocation could be distributed equitably as active fishermen divest from the fishery.

Response: NOAA Fisheries acknowledges the concerns raised by this state and is confident that such issues can be resolved through more effective state and Federal coordination, including revisiting the trap tag memorandums of understanding that NOAA Fisheries has with the fisheries agencies of the major lobster harvesting states.

The State's concept of a baseline allocation for all lobster permit holders, while interesting, could compromise the long-term effectiveness of historical participation effort reduction measures by not restricting access to only those fishermen who have historically fished in specific management areas. The Commission has created a task force to research and provide recommendations to the Lobster Board concerning the "most restrictive" rule. NOAA Fisheries intends to remain involved in future discussions concerning this and other novel management measures such as total trap allocations and trap transferability as the Commission moves forward in addressing these issues for consideration in the ISFMP. NOAA Fisheries did not extensively analyze the State's proposal because it was largely conceptual and is outside the recommended management regime adopted under Addendum I to Amendment 3 to the ISFMP, the focus of this rulemaking and associated analyses, and is believed to be incompatible with the recommendations made by the Commission.

HP *Comment 12:* One state agency opposed the qualification period for Areas 4 and 5. Since there was no prior notification to the industry prior to the September 1, 1999, control date that a vessel may be restricted from access to certain areas if there was no documented history of fishing in that specific area. Federal lobster permit holders were advised by the New England Fishery Management Council in 1991, that they should purchase a vessel with a documented catch and effort history, could be limited to that history in the future if necessary, and that they could fish anywhere in Federal waters but would be held to the more restrictive of state or Federal regulations.

Response: NOAA Fisheries believes that the qualification period for eligibility under this Final Rule is appropriate and consistent to the Commission's recommendations, to the extent practicable. Even under the State's scenario, a permit holder that followed the Council's recommendation to purchase a vessel with history in a specific area, and if those areas included either one or more of Areas 3, 4 or 5, that vessel would likely qualify for participation under this Final Rule if it actively fished (consistent with the qualification criteria established in this action) in those areas after 1991 and prior to September 1, 1999.

HP *Comment 13:* A state agency commented that with the September 1, 1999, control date vessels with Federal permits that were purchased from an area other than Areas 4 or 5, but are now fishing in those areas may not qualify for access under this final rule. Therefore, NOAA Fisheries should modify the Federal management program to allow any individual who purchased a vessel prior to 1999 and relocated that vessel to a state abutting Area 4 or 5 to qualify for access to those areas based on its fishing and effort history of its previous area. This should not be done for Area 3 since this is a coastwide along the range of the resource and a vessel with an Area 3 fishing history which is relocated to another state at the opposite end of the range and the history would be aptly transferrable to the new state.

Response: NOAA Fisheries believes that the state's suggestion is counter to the intent of the historical participation management regime. The Respondent is stating that vessels that were purchased with a Federal permit with Area 1 history, for example, and began fishing for lobster with traps in Area 4 or 5 after September 1, 1999, be considered eligible for future access in Areas 4 or 5 because they historically fished in Area 1. The historical participation program for lobster in Areas 3, 4 and 5 was crafted by the lobster fishing industry in these areas in response to the need to end overfishing and rebuild stocks of American lobster consistent with the ISFMP and in keeping with the advice of the most current stock assessment. While directed at capping fishing effort to reduce fishing mortality, historical participation is also intended to prevent effort shift into other management areas and allow the historical participants of the fishery in these respective areas to resume fishing their historical trap allocations.

HP *Comment 14:* A commenter referenced information in an industry newspaper regarding NOAA Fisheries' proposed rule. The article indicated that, based on information available to NOAA Fisheries as of June 18, 2001, NOAA Fisheries expected between 53 and 117 vessels to qualify for Area 3, that 769 vessels elected Area 3 as at least one of the areas they desired to fish in, and that 112 vessels selected only Area 3. The commenter interpreted this to mean that only those that designated exclusively Area 3 would qualify since the 112 estimated to qualifyfalls within the expected range of qualifiers (53 - 117), and those electing Area 3 in combination with other areas would not qualify.

Response: The data indicating that 769 vessels had selected Area 3 as at least one of the fishing areas, and the estimate of 112 vessels that elected only Area 3, are derived from actual Federal fishing permit data from the 2001 Federal fishing year, indicating the area designations of Federal lobster permit holders who indicated traps as a gear type. Prior to that fishing year, Federal lobster permit holders were not required to designate the areas they fished in and, therefore, limited data was available on the actual areas that Federally permitted lobster vessels fished in. Consequently, the newly available area designation information proved useful to NOAA Fisheries in determining a basis for analyzing the potential number of qualifying and non-qualifying vessels based on recent activity and the most current data available. Conversely, the estimate of an expected range of 53 to 117 qualifying vessels was initially used in developing the Draft Supplemental Environmental Impact Statement (DSEIS) in 2000. At that time no Federal permit data was available regarding specific lobster management areas fished on a vessel-specific basis since Federal lobster permit holders were not required to designate lobster management areas. Therefore, this data, provided by the Area 3 LCMT, served as the best available data at that time to determine how many vessels might qualify. The two data sets are, therefore, not mutually exclusive; that is, they support one another in that the LCMT data represent actual fishing activity and the permit data represent both actual and potential fishing activity. Further, NOAA Fisheries will not be basing qualification in Area 3 on the permit area designations as this requirement was established after the September 1, 1999, control date. A vessel that historically fished in LCMA 3 and in, for example, Area 1, will be considered for eligibility under the same criteria as a vessel that historically fished in Area 3 exclusively.

HP *Comment 15:* A small boat operator in Area 3 feels the trap limit is biased in favor of large operators who have historically reaped the greatest amount of the resource.

Response: The proposed action is intended neither to punish nor reward past actions, but is a measure directed to ending overfishing henceforth. Additionally, it does not necessarily correlate that those with larger operations (i.e., bigger boats, more traps) harvest a proportionately larger total of the stock than those who fish less traps because of a number of variables relating to gear efficiencies, tending time, area fished, etc. See FSEIS Section V.1. for more detail. To the extent that a vessel historically fished at high trap levels (e.g., more than 3,000 traps) that vessel, may experience greater cut backs than those vessels fishing less traps, albeit at proportional levels. Finally, allowing eligible vessels to fish their historical trap allocations, up to a maximum level, is compatible with the Commission's recommendations for Federal action in the EEZ.

HP *Comment 16:* One individual opposed historical participation because it will force lobster fishermen to downsize their operations.

Response: NOAA Fisheries acknowledges that some fishermen may have to downsize given that this action is an effort reduction measure recommended by the LCMTs and the Commission. However, if a fisher is allocated less traps than currently allowed, then such a reduction will be both proportional and consistent with that vessel's historical effort. Further, downsizing should not be likely unless that fisher increased effort after the control date. See previous response.

HP *Comment 17:* One supporter of historical participation recommends that qualified permits and the associated trap allocations be published in the **Federal Register** to allow any qualified stakeholder to challenge anyone on the list.

Response: NOAA Fisheries considered but rejected the Commission's recommendation to publish a notice that would specify individual trap allocations for each Federal permit holder that qualifies to fish LCMAs 3, 4 and 5 under the historical participation program because this raises privacy issues, would serve no constructive purpose and may give way to a "witch trial" atmosphere. Further, the respondent's comment, if different from that recommended by the Commission in this regard, offers neither protocol for challenging the eligibility of a permit holder nor supporting reasons for incorporating such a measure into the qualification process.

HP *Comment 18:* One commenter believes that all those who qualify for LCMA 3 be subject to the trap reduction schedule, not just those that have allocations above 1,200 traps.

Response: NOAA Fisheries will use the LCMA 3 trap reduction schedule, initially adopted into the ISFMP by the Commission in Addendum I to Amendment 3 and further modified in Addendum II. That schedule did not include provisions for reducing allocations at or below the 1,200–trap mark. This is due to the diminishing utility of returns from such subsequent trap reductions that are not expected to assist in effectively reducing trap fishing effort given the additional economic impacts to qualified fishermen. Further, this measure wasn't recommended by the Commission for Federal action and, therefore, implementation through this final rule would result in inconsistencies with the Commission's approved trap reduction measures.

HP *Comment 19:* One commenter recommended that only logbooks be used as the basis for qualifying permit holders and that no one be admitted based solely on an affidavit to substantiate history.

Response: Due to the varying degree to which certain types of documents were historically used throughout the fishery, the proposed action gives the potential qualifier flexibility in document submission. The use of Federal Vessel Trip Report (VTR) documents to support historical fishing effort (number of traps fished and location) in the lobster fishery will be possible for the majority of the Federal lobster permit holders (e.g., those holding other Federal species permits that, unlike lobster permits, require mandatory reporting). A review by NOAA Fisheries indicates that of 3,153 Federal lobster permit holders in 1997, 1,984 (approximately 62percent) held Federal permits for other fisheries requiring mandatory reporting. The utility of these reports for documenting lobster fishing effort would be further restricted to those permit holders who accurately noted, on the reports, the number of individual lobster traps fished on an area-by-area basis. Similarly, an informal review of the utility of official state reports for determination of lobster trapping effort concludes that such documents may be relevant only to Connecticut and Massachusetts residents (approximately 34 percent of Federal lobster permit holders). Therefore, allowing more than just logbooks to be submitted will provide more flexibility for Federal permit holders given the inconsistencies in logbook reporting requirements, will avoid bias on those who held only a Federal lobster permit during the eligibility period, and will result in a more accurate qualification process.

HP *Comment 20:* Seventy-eight comments were received in support of the accelerated trap reduction schedule for LCMA 3.

Response: NOAA Fisheries incorporated the revised Area 3 trap allocations and the accelerated 4–year sliding scale trap reduction schedule into the final rule to be compatible with the trap reduction schedule as updated in Addendum II to Amendment 3 of the ISFMP. The updated schedule reduces the maximum trap allocation in Year 1 from 2,920 to 2,656 traps and accelerates the sliding scale trap

reduction schedule from five years to four years.

HP *Comment 21:* One supporter of historical participation states that historical trap allocations are needed because uniform trap limits will create latent effort and compromise the conservation benefits of historical participation.

Response: NOAA Fisheries believes that historical participation in Areas 3, 4 and 5 is the best means for controlling trap fishing effort in these management areas since it is expected to, at least, cap and potentially reduce levels of trap fishing in Areas 4 and 5 and reduce trap fishing levels in Area 3. Effort reductions as a consequence of this action are expected to result in decreased lobster fishing mortality, contributing to the fulfillment of the goals of the ISFMP to end overfishing and rebuild American lobster stocks. Further, this management regime is compatible with the recommendations of the Commission in Addendum I to Amendment 3.

HP *Comment 22:* One comment was received expressing concern that the State of New Jersey's rules weren't coordinated with Addendum I and that some who qualified under the State of New Jersey's historical participation eligibility program will be allowed different numbers of traps under the Federal plan which will cause confusion.

Response: NOAA Fisheries will continue to cooperate with state agencies to the extent practicable and legal to determine the eligibility of Federal permit holders to fish in Areas 3, 4 and or 5. However, NOAA Fisheries' determination of eligibility for each applicant will be based on the specific qualifying criteria and documentation as identified in Section III.(2). of the FSEIS, and codified, by way of this final rule, in the Federal regulations at 50 CFR 697.4(a)(7)(vi), (vii) and (viii). These requirements are compatible with those proposed by the LCMTs and recommended for EEZ implementation by the Commission, of which the State of New Jersey is an active participant and voting member.

HP *Comment 23:* One proponent of historical participation in Area 4 recommends a trap cap at 2,400 traps rather than the proposed 1,440 traps.

Response: NOAA Fisheries established a 1,440 maximum trap limit as a safeguard against trap proliferation. NOAA Fisheries believes the removal of existing 800 traps per vessel limit in Areas 4 and 5 without implementation of an alternative maximum trap limit, could result in excessive lobster fishing mortality and limit the ability of historical participation to reduce trap fishing effort. A maximum trap limit in Areas 4 and 5 of 1,440 lobster traps per vessel was selected utilizing data provided by the State of New Jersey that indicated the majority of participants fished less than 1,440 traps (32 of 46 Federal permit holders who responded to New Jersey's lobster industry survey). Additionally, the 1,440–trap limit corresponds proportionately to the relationship between the existing fixed trap limits (800 traps in Areas 4 and 5, and 1,800 traps in Area 3) and the LCMA 3–maximum trap limit proposed by the Area 3 LCMT in Addendum I.

HP *Comment 24:* One person stated that New Jersey fishermen need more traps in general because there are less lobsters spread over a larger area and recommends a 1,500–trap allocation.

Response: The 1,500–trap allocation recommended by this respondent is generally consistent with the maximum trap limit of 1,440 traps per qualified vessel in Areas 4 or 5 implemented with this final rule. NOAA Fisheries believes that establishing a maximum trap cap will prevent a potential escalation of future trap fishing effort and associated lobster fishing mortality in Areas 4 and 5, while allowing qualified vessels to fish their historical trap allocations as evidenced in data provided by the State of New Jersey lobster industry survey. See previous response.

HP *Comment 25:* Two individuals recommend that NOAA Fisheries limit every vessel to 800 traps in Area 4 and 1,200 traps in Area 3.

Response: The scenario suggested by these individuals runs counter to the management recommendations of the Commission and the LCMTs and could result in more traps being fished than would be expected under the selected alternative, if these commenters are suggesting that historical participation not be implemented under this scenario. Further, if these commenters are suggesting that historical participation not be implemented in these management areas, then the potential for effort shift into other lobster management areas could occur. Additionally, it is likely that not all vessels are fishing up to the current allowable fixed trap limits and, while the selected management action would cap effort at historical levels, this suggested action (similar to status quo) could allow vessels fishing below the current fixed trap limits to expand their trap fishing effort.

HP *Comment 26:* One fisherman recommends a 600–trap limit be imposed in the Federal waters off the Maine coast.

Response: Assuming the commenter is referring to Area 1, NOAA Fisheries disagrees. This topic is outside the scope of this rulemaking and Addendum I and inconsistent with the recommendations for lobster management in Area 1 provided by the Area 1 LCMT, the Commission, and the ISFMP.

HP *Comment 27:* One LCMA 2 lobsterman opposes historical participation and recommends that every lobsterman be allocated 500 traps.

Response: The Commission has yet to adopt a historical participation program for LCMA 2 and has not made any recommendations to the Secretary of Commerce that such action be taken in the EEZ portions of LCMA 2. Therefore, this measure was not considered in this rulemaking action and associated analyses.

HP *Comment 28:* A Federal lobster permit holder who has never fished for lobster believes that historical participation is unfair and that all Federal lobster permit holders should have unlimited access to the lobster resource in Federal waters.

Response: This final rule is the result of extensive public comment and is based upon the Commission's ISFMP for American Lobster which also underwent extensive public comment. All have had the opportunity to engage in and influence deliberations on this matter. Ultimately, the LCMTs, comprised of industry representatives, and the Commission, made up of a number of politically accountable members, chose a management plan that would reflect the historical make-up of the fishery. This final rule is based on that decision and conforms with the applicable law. The intent of the historical participation component of this final rule is to implement a system that caps fishing effort at historical levels, likely reduces effort from current levels, and reflects the traditional fishing practices of the offshore fishing fleet. This selected action considers the recommendations of the industry's LCMTs and the Commission aimed at decreasing fishing effort and increasing egg production in accordance with the ISFMP. This selected action intends to limit participation in LCMAs 3, 4 and 5 to those permits with a demonstrated lobster trap fishing history, consistent with the eligibility criteria in this final rule and that recommended by the Commission in Addendum I to Amendment 3 of the ISFMP.

HP *Comment 29:* Three individuals request that NOAA Fisheries execute the plan as fairly as possible so that no single type of business operation benefits over another. Trap allocations for qualifiers into Area 3 should be of a smaller range to avoid a disadvantage to smaller operations that will have to work harder to be competitive against those with larger allocations.

Response: NOAA Fisheries intends to execute the historical participation program fairly and to not give any single type of business an unfair competitive advantage over another. Regarding the commenter's point concerning Area 3 trap allocations, NOAA Fisheries points out that number of traps fished, not necessarily vessel size, is the factor that will determine the initial trap allocation of a qualified vessel. The historical participation program will not discriminate against small vessels. It will allow any vessel with demonstrated participation during the qualification period to fish its historical allocation of traps up to 1,440 in LCMAs 4 and 5, and up to 2,656 (with subsequent reductions) in LCMA 3, in order to most accurately represent the historical aspects of the trap fishery. See previous response. Further, NOAA Fisheries notes that it does not necessarily follow that smaller operators have to work harder to compete against larger operations that may have higher business overhead and other expenses.

HP *Comment 30:* A 25–year lobster diver with a state and Federal lobster permit believes that history in the fishery should be based on participation in general, not just on numbers of traps fished. This fisherman is concerned that as age forces him to move from diving, his opportunityto fish with trap gear may be lost since he has no trap fishing history.

Response: The selected action is intended to cap effort in the lobster trap fishery in LCMAs 3, 4 and 5 in order to rebuild growth-overfished stocks of American lobster, while reflecting the historical make-up of the trap fishery as such occurs. Non-trap fishermen, such as those in the otter trawl and dive fisheries, have been, alternatively, regulated by possession limits and will continue to have access to any or all LCMAs. Further, present information suggests that there is a market for vessels and their accompanying Federal lobster permits. Therefore, non-qualifiers into the trap fishery in Area 3, 4 and 5 still have the option to purchase a permit that has previously qualified to fish trap gear in these areas.

HP *Comment 31:* One individual commented that consideration should be given to permit holders who could not fish during the qualification period due to illness.

Response: Comments received by NOAA Fisheries do not indicate that long absences in the trap fishery, particularly for 8 or more years, were typical. Regardless, the intent of the historical participation management program is to decrease fishing mortality by capping and reducing trap fishing effort, while allowing those permits that currently, and have historically, fished for lobster with trap gear in these areas to continue to do so. NOAA Fisheries believes its qualification period to be quite fair and will result in qualification based upon historical participation in the area fisheries. The first date of the qualification period, March 25, 1991, was recommended by the Commission and was originally established as a control date by the New England Fishery Management Council to determine eligibility for future access to the Federal lobster fishery. The second date, September 1, 1999, is the date of publication of an ANPR in the **Federal Register** that informed the pubic that NOAA Fisheries was considering that date as a potential cut-off date for determining eligibility for future access to LCMAs 3, 4 and 5. Accordingly, NOAA Fisheries believes that all had notice of the potential for limited access, that the period is broad enough to include those whose personal circumstances required unavoidable temporary absence (i.e., illness, etc.), and that it will result in the accurate qualification of permit holders based upon historical participation.

HP *Comment 32:* One individual and a state agency commented that the 25,000 lb (11,340 kg) landing requirement for Area 3 is too high.

Response: The 25,000 lb (11,340 kg) landing requirement is intended to be used as an eligibility requirement for LCMA 3 only, and was specifically recommended as an appropriate measure of economic reliance on lobstering by the industry experts on the Commission's Area 3 LCMT. In opposition, NOAA Fisheries notes that the commenters did not indicate why they disagree with these experts. Under the NOAA Fisheries proposed action, these landings may have occurred from anywhere within the range of the lobster resource, not just LCMA 3. NOAA Fisheries has not included a landing requirement for determining eligibility in LCMAs 4 and 5. Available information indicates that LCMA 4 and 5 fishermen generally participate in a directed trap fishery for lobster on a seasonal basis and rely on other fisheries throughout the year in addition to lobster. For example, only a relatively small percentage of the lobster resource has been historically harvested from LCMAs 4 and 5, which is consistent with seasonal fishing activity. Accordingly, a 25,000 lb (11,340 kg) landing threshold may unnecessarily restrict and not accurately reflect the historical nature of the fishery in those areas. Such is not the case, generally, for historical participants of the Area 3 offshore fishery who tend to fish directly for lobster on a more full-time basis throughout the year.

HP *Comment 33:* An Area 6 Federal permit holder opposes historical participation because it will prevent him from being able to shift into Federal waters especially now after Long Island Sound lobster die-off has substantially reduced lobster abundance in that area. Other gear types can move freely, and lobster trappers should be able to do the same.

Response: NOAA Fisheries sympathizes with all those affected by the Long Island Sound lobster die-off and notes that it helped administer Federal funds to assist those affected who sought assistance. However, NOAA Fisheries intends to adhere to the control dates and qualification periods as proposed in the FSEIS to decrease fishing mortality by reducing fishing effort in LCMAs 3, 4 and 5. To do otherwise as the commenters suggest would create an unmanageable exemption incompatible with the lobster ISFMP that could significantly undermine the effectiveness of the proposed action. These control dates provided notice and are, in fact, more liberal than those dates originally proposed by the Commission.

HP *Comment 34:* One commenter states that several fishermen who fished for lobster in Long Island Sound purchased Federal lobster permits in 1999 after the die-off, now will not be able to fish in LCMAs 3, 4 and 5 because they won't meet the eligibility criteria.

Response: NOAA Fisheries believes that the selected action set forth in this final rule is fair, legal and appropriate. Further, depending on when, and the extent to which these individuals began fishing in Areas 3, 4 or 5 in 1999, there still remains the potential to qualify based upon historical participation depending on the individual circumstances. See previous response.

HP *Comment 35:* One state agency (New Jersey) recommends an extension of the NMFS September 1, 1999, control date and disagrees with the proof of fishing 200 lobster traps over a 2–consecutive month period as an eligibility criterion for historical participation and recommends documentation by annual landings instead.

Response: As to the control date, see response to HP Comment 31. With regard to the 200 lobster traps fished over a 2–consecutive month period

criterion, the LCMTs recommended, and the Commission adopted this criterion as part of Addendum I. NOAA Fisheries is required to implement regulations that are compatible with the Commission's ISFMP. Third, the State of New Jersey offers no evidence to suggest that landings would be a more accurate indicator of trap fishing effort, which is the focus of New Jersey's criterion. See responses to HP Comments 12, 13 and 31.

HP *Comment 36:* A state recommends that NOAA Fisheries replace the 1,440–maximum trap allocation in Areas 4 and 5 with 3,250–maximum trap allocation since many vessels that historically fished in those areas had fished more than 1,440 lobster traps.

Response: See responses to HP Comments 23 and 24.

HP *Comment 37:* Historical participation will negatively affect value of vessels and permits for those who don't qualify and will benefit only the few fishermen that have access to the resource in certain areas.

Response: This comment is hypothetical and engages in characterizations, although NOAA Fisheries acknowledges that any limited access program could, in certain instances, negatively affect the value of non-qualifying permits and positively affect the value of qualifying permits. However, the commenter is implying an element of unfairness, which NOAA Fisheries disagrees with (see HP Comments 28 and 29).

HP *Comment 38:* One commenter stated that current fixed trap limits are working and only more effective enforcement of the trap limits is needed.

Response: Fixed trap limits in the EEZ portions of Areas 3, 4 and 5 were implemented as an interim measure by NOAA Fisheries to cap effort in these areas until the concept of historical participation could be adequately analyzed and to allow for public comments on the issue. The latest stock assessment information indicates that the lobster resource is overfished and the measures adopted in the ISFMP, including historical participation in Areas 3, 4 and 5, were adopted to end overfishing and rebuild the lobster resource. Further, the Commission has adopted a trap tagging requirement to enforce trap limits coastwide. NOAA Fisheries has implemented this measure and will carry this forward as a means of enforcing historical trap allocations, with effective results expected. NOAA Enforcement has consistently cooperated with state marine enforcement agencies to enforce the trap limits with commendable results and will continue to do so.

HP *Comment 39:* Two individuals commented that NOAA Fisheries should cooperate more with state agencies in an effort to better enforce trap limits.

Response: As stated in the previous response, NOAA Fisheries intends to continue to cooperate with state and other Federal agencies in enforcing trap limits. NOAA Fisheries has proactively pursued such a relationship by initiating and continuing communications with state agencies and the Commission regarding the implementation and enforcement of trap limits through the coastwide trap tag program. This action has resulted in the development of memorandums of understanding between NOAA Fisheries and several of the lobster producing states to facilitate the issuance and enforcement of trap tags and to promote the exchange of the resulting data between agencies. However, NOAA Fisheries believes that this issue extends beyond the mere state/Federal relationship. The states must also cooperate with each other and with the Commission to ensure that both the stated directives and unstated intents of Amendment 3 and Addenda I-III are carried out.

HP *Comment 40:* The owner of a Federal lobster permit with Area 3 history may not qualify because although history was retained, he does not have the records to document it since he did not own the vessel at that time and previous owner will not authorize NOAA Fisheries to release any related documentation. This permit holder recommends that NOAA Fisheries use data from previous permit holders to qualify vessels while keeping that information confidential, allow affidavits from fishermen and dealers, implement less restrictive documentation requirements for vessels purchased at state or Federal auctions between 1991 to 1999, consider a hardship clause in consideration of years fished, capital investments, and economic impact on the community, use port agent data or sworn statements from Port Agents regarding permit activity during the qualification period.

Response: NOAA Fisheries acknowledges that, due to a lack of mandatory reporting for all Federal lobster vessels and in consideration of confidentiality, some permit holders who should qualify may have difficulty obtaining the necessary documentation. As a preliminary matter, NOAA Fisheries urges permit holders in this situation to work with the permit's previous owners to get the necessary documentation. NOAA Fisheries, however, is developing a moratorium rights qualification system to track the history of a permit that submitted Federal VTR data. That information may be disseminated to the current permit holder without breaching confidentiality and may be used by the current permit holder to substantiate the permit's eligibility. As a result of this final rule, the Federal lobster regulations at 50 CFR 697.4(a)(7)(vi)(vii) and (viii) identify the explicit types of documentation for Areas 3, 4 and 5, respectively, that are acceptable to demonstrate the permit's lobster trap fishing history, and consider the recommendations of the industry and recognize the inconsistent reporting requirements amongst Federally permitted vessels. With respect to consideration of hardship, NOAA Fisheries has addressed this in the Final Rule by implementing a documentary hardship provision as a basis for appeal. This would apply in such cases where a permit holder applies for access to Areas 3, 4 or 5 and is denied because insufficient documentation in support of the qualification criteria is provided. If the necessary documentation no longer exists due to no fault of the permit holder, he/she may submit affidavits from Federal permit holders attesting to the permit's fishing activity and the nature of the loss of the documentation as specified in 50 CFR 697.4(a)(7)(x).

HP *Comment 41:* Two commenters suggest that NOAA Fisheries assure that those who bought a vessel with history but the associated documentation is not available be able to get the vessel's full historical allocation.

Response: NOAA Fisheries devised a qualification program that would consider the potential difficulties that some permit holders may have in locating and compiling existing documents. First, the final rule incorporates flexibility as to the type of documentation allowable, thus increasing the likelihood that an applicant will have one category of document if not another. Second, the final rule establishes a long qualification period (1991–1999), thereby increasing the opportunity that a qualified applicant will have documents for at least one of the years. Third, the application submission and extension timeline is purposefully broad to provide applicants ample time to compile and submit documentation during the application period if they do not have ready access to the necessary information. Additionally, frequent and timely notification has been provided to permit holders and the public since September 1, 1999, that NOAA Fisheries was considering a historical

participation program that would require submission of documentation and given such notice, NOAA Fisheries anticipates that most applicants have already been gathering their application information.

NOAA Fisheries also has been reviewing its own data and has incorporated into this final rule the ability of an applicant to request and use NOAA Fisheries data in the application to the extent that the data can establish a qualification criterion. Further, to the extent that an applicant is seeking qualification based upon vessel history from the activity of a former holder of that permit, NOAA Fisheries may be able to review such confidential data without its release -- NOAA Fisheries cannot release economic information to unrelated entiitles, without consent, due to confidentiality mandates -- in an effort to qualify the vessel if the data clearly establishes a criterion.

If the documentation no longer exists, then NOAA Fisheries believes that the historical participation qualification process established in this final rule aptly addresses this as well. This final rule establishes an appeals measure whereby a Federal lobster permit holder who once possessed the necessary documentation to support historical participation but no longer is in possession of that documentation due to no fault of the permit holder, can appeal under and ultimately qualify under a documentary hardship provision (see previous response and 50 CFR 697.4(a)(7)(x) of the Federal regulations as set forth by this final rule).

HP *Comment 42:* A permit holder whose permit has history in Area 3 bought the vessel after the fishing activity in that area had occurred and had only a lobster permit. Therefore, no Federal vessel trip reports exist. Coast Guard boarding reports and IRS records are only retained for 3 years and are, therefore, no longer available. Catch reports from dealers do not have vessel specific landings and small vessels like his had their landings grouped together. Therefore, NMFS should not be able to take away the right to fish in an area because of unavailable documentation originating from as far back as 10 years ago.

Response: This final rule does not require an applicant to have saved 10 years of documentation to qualify, although in order to provide flexibility, NOAA Fisheries allows that applicant to use 10–year old data if such establishes the necessary criteria. The ability to use 10–year old data should, therefore, be considered a benefit to applicants, not a burden. See Response to HP Comment 41. NOAA Fisheries gave formal notice of the need to retain documents in publishing its control date in the **Federal Register** in September, 1999. Certainly, informal notification was available in advance of that date as the qualification criteria were created in the Commission's earlier public process in developing Addendum I. In any event, if the commenter kept 3 years of Coast Guard boarding reports and IRS records as indicated in the comment, then, as of the control date when participants were formally notified to retain records, the commenter would have already had documentation for 1996, 1997, and 1998 and would reasonably be expected to have saved those documents plus whatever documentation was ultimately created in 1999. Under this final rule, the commenter could potentially use documentation for any one of those years to qualify.

HP *Comment 43:* The years 1999 and 2000 should not be used as qualifying years because the lobsters were on the decline and fishermen were fishing less gear than normal. Trap fishing activity for the years 1994 - 1998 is more indicative of traditional numbers of traps fished by the lobster fleet in LCMA 2.

Response: NOAA Fisheries intends to use the portion of 1999 up to September 1, for qualification purposes. The remainder of the 1999 calendar year and the calendar year 2000, in its entirety, will not be considered valid periods for demonstrating historical participation in LCMAs 3, 4 and 5. The calendar years 1994 through 1998 fall within the qualification period implemented by this final rule, but, the commenter is reminded that historical participation does not pertain, specifically, to LCMA 2 in this action. However, lobster landings in LCMA 2 may be used to establish the 25,000 lb (11,340 kg) of lobster landed during the qualifying year if the vessel is attempting to qualify for access to LCMA 3.

HP *Comment 44:* Eleven individuals recommend that for appeals, NOAA Fisheries require the applicant to provide an affidavit signed by five previously qualified Federal lobster permit holders to document the validity of the applicant's claim for either the location for his traditional fishing grounds and/or the numbers of traps he claims to historically fish.

Response: NOAA Fisheries recognizes that some potential qualifiers may be denied access to the lobster fishery in Areas 3, 4 or 5 due to the rigid, but necessary, qualification scheme because they, due to no fault of their own, no longer possess the documentation necessary to support their eligibility. Accordingly, NOAA Fisheries sought to craft an appeal process that is just and allows flexibility in the process without diminishing the effectiveness of the final rule. Consequently, NOAA Fisheries incorporated a documentary hardship appeal option into this rulemaking, whereby the appellant must provide affidavits from three Federal permit holders and one affidavit from an individual, although not necessarily a Federal permit holder, who can attest to the nature of the loss of the documents (See Section III.(2).(C) of the FSEIS and 50 CFR 697.4(a)(7)(x) of the Federal regulations as set forth by this final rule). The documentary hardship appeals process is intended to soften the qualification requirements without compromising the ability of the historical participation program to effectively allow only historical participants into the Area 3, 4 and 5 lobster trap fishery. NOAA Fisheries is sensitive to the potential use of fraud as a means to exploit the proposed qualification system. In choosing affidavits from three Federal permit holders, NOAA Fisheries sought a balance. Requiring just one or two affidavits would be insufficient while requiring five affidavits as the commenter suggests, may be too difficult to achieve for an appellant from a remote port. NOAA Fisheries also broadened the supporting affidavit requirement by allowing affidavits from Federal permit holders who are not necessarily Federal lobster permit holders, but further defined the requirements by requiring proof and corroboration of the hardship through one of the affidavits, and potential revocation of the appellant's Federal permit in the event of fraud. NOAA Fisheries believes that this is a reasonable just and appellate process.

HP *Comment 45:* One individual is opposed to requiring an appealing applicant to provide affidavits from five qualified permit holders in order to substantiate participation.

Response: See previous response.

Closed Area Comments (CA)

CA *Comment 1:* An individual wrote that offshore lobstermen have depleted the large lobsters and the inshore New Jersey lobster boats no longer catch 5–15 lb (2.3–6.8 kg) lobsters. Therefore, offshore closed areas should be established in the Canyons and a maximum size limit implemented on lobsters of 5 lb (2.3 kg) or more.

Response: NOAA Fisheries' analysis of closed areas in the FSEIS focused on the LCMA 4 closed areas adopted in Addendum I. The Commission did not recommend that NOAA Fisheries

implement closed areas in other LCMAs that contain deep water canyon environments, such as in LCMAs 3 and 5. Therefore, closed areas were not further analyzed as a potential management option outside the scope of the Commission's recommendations in Addendum I and are not incorporated as an element in this Final Rule. Addendum III to Amendment 3 of the ISFMP does contain provisions for a maximum size requirement in LCMAs 4 and 5 if deemed necessary. NOAA Fisheries will analyze these measures under a separate rulemaking action.

New Hampshire Conservation Equivalency Comments (NH)

NH *Comment 1:* Twenty comments were received in support of the New Hampshire conservation equivalent trap allocations and thirteen respondents commented in opposition to this measure.

Response: The best available information supports the Commission's finding that New Hampshire's proposal is a conservation equivalent to current management measures. In fact, available information suggests that it will actually reduce effort. As such, this action satisfies NOAA Fisheries' legal obligations insofar as it is consistent with the National Standards and is supportive of the Commission's ISFMP that allows conservation equivalency. Accordingly, the NOAA Fisheries' final action will allow a New Hampshire full commercial license holder fishing aboard a federally permitted lobster vessel to fish an additional 400 lobster traps in New Hampshire state waters. This action will not result in more traps fished in the Federal waters of LCMA 1.

NH *Comment 2:* Three individuals stated that the New Hampshire two-tiered trap limit that would allow full commercial lobster license holders in New Hampshire to fish up to 1,200 traps in New Hampshire state waters violates National Standard 4 of the Magnuson-Stevens Fishery Conservation and Management Act.

Response: As a preliminary matter, New Hampshire full commercial license holders can fish 1,200 traps irrespective of Federal action because the ASMFC's Lobster Board has already approved New Hampshire's conservation equivalency request and the state has already implemented the program. In any event, National Standard 4 is not triggered because this final rule involves no Federal allocative measures. That is, this final rule does not create New Hampshire's equivalency program, but merely waives the most restrictive Federal regulatory language in order to prevent the potential for trap proliferation that would result if NOAA Fisheries took no action. In other words, this final rule simply reflects the Federal Government's conservation response to a formal conservation equivalency recommendation made by the ASMFC pursuant to the Atlantic Coastal Act. Put another way, this final rule does not endorse or advance the program's measures so much as it deals with them.

The current 800–trap limitation existing in the EEZ in Area 1 remains unchanged and would not allow any additional lobster traps in Federal waters. In fact, analysis of available information suggests an actual decrease in traps fished in Area 1, both in the EEZ and in New Hampshire State waters. As such, the state measure is self-contained and reflects an internal repositioning of traps within New Hampshire borders that is not expected to have any extraterritorial impacts or to impact citizens of other states. In other words, to the extent, if at all, that the increase to 1,200 traps benefits some New Hampshire permit holders (see FSEIS Section V.1. for discussion on economic effects of trap limitations), then that benefit is not excessive and is internally counterbalanced by the New Hampshire permit holders whose trap limits will decrease to 600 traps. Accordingly, the measure does not differentiate among citizens in different states (which could also seek conservation equivalency from the Lobster Board) or advantage the citizens of one state over another. Overall, conservation benefits are expected in furtherance of National Standard 1 with no corresponding degradation of the standards set forth in National Standard 4.

NH *Comment 3:* One commenter opposed the New Hampshire conservation equivalent trap measures because it will benefit only 22 Federal permit holders from New Hampshire and questions its effectiveness in contributing toward rebuilding lobster stocks.

Response: The New Hampshire two-tiered trap allocation program was determined to be conservation equivalent to the fixed trap limits in LCMA 1 by the Commission's Lobster Board. NOAA Fisheries' analysis concurs with this finding. In fact, analysis suggests that the measure will not simply be equivalent, but will actually benefit the resource by decreasing the overall number of traps in the water. As such, those not participating in this program also gain potential relative benefit. The most recent information provided by New Hampshire Fish and Game Department supports this premise:Recent data indicates that this measure is accountable for a reduction in the number of traps fished by New Hampshire fishermen to date, compared to what would currently be allowed under the fixed trap limits in area 1, despite the absence of a cap on limited licenses. Specifically, according to updated information provided by New Hampshire Department of Fish and Game for the period between 2000 and 2002, the number of limited licenses increased by approximately 11 percent, or 30 licenses. However, since these licenses are capped at only 600 traps, it resulted in 1,800 additional traps into the fishery, rather than 2,400 that would otherwise have been allowed if the limited license category was allowed the standard 800 traps. In any event, NOAA Fisheries recognizes that any state can utilize the adaptive management provisions of the ISFMP to present a conservation equivalent alternative to the approved management scenario, as applicable.

NH *Comment 4:* A Maine lobsterman stated that he had to reduce his traps by 400 three years ago when the state of Maine implemented a trap limit and now would not want to see a New Hampshire fisherman be able to fish that extra 400 traps under New Hampshire's conservation equivalent trap allocation program.

Response: The Federal trap limit in Area 1 remains at 800 traps regardless of whether an individual resides in the State of Maine or the State of New Hampshire. Individual states may, however, choose to implement more restrictive measures or conservationally equivalent measures, which is the scenario currently described by the commenter. The New Hampshire measure is a state measure approved by the Commission's Lobster Board of which the State of Maine is a member. In any event, NOAA Fisheries' best information suggests that the measure will result in an overall reduction of traps being fished by New Hampshire lobster fishers. Accordingly, while a very few New Hampshire permit holders may choose to fish 400 extra traps, an overall reduction in traps in the area should result that would benefit Maine lobster fishers. Certainly, if NOAA Fisheries did not approve the measure, New Hampshire's conservation equivalency program would nonetheless exist. That is, the Lobster Board already approved New Hampshire's conservation equivalent measure and the State of New Hampshire already promulgated regulations consistent therewith before issuance of this final rule. As such, disallowance of the measure in this final rule could result in trap proliferation if New Hampshire full license holders retained their 1,200–trap state permit and sold their Federal permit to another.

NH *Comment 5:* A state commented that with the uncertainty surrounding the impact of the proposed New Hampshire trap limit conservation equivalency on the resource, the negative socio-economic impact on Maine and Massachusetts fishermen should become the deciding factor. Allowing this measure to go forward will undermine support for the Area 1 plan and may lead to additional requests for exemptions that may reverse progress to date.

Response: NOAA Fisheries acknowledges the right of New Hampshire or any other state to utilize the process for alternative state management regimes outlined in the law and Amendment 3 of the ISFMP to address specific socio-economic or industry-related situations. Importantly, New Hampshire's conservation equivalency proposal is a self-contained measure that is not expected to create extra-territorial responsibilities for her sister states or the Federal Government, nor is it expected to have any extra-territorial impacts. Overall, if there is an impact as a result of the measure, it should be positive for Maine and Massachusetts fishers since overall trap usage should decrease. However, NOAA Fisheries does note that continued creation and approval of conservation equivalent measures by the Commission could, depending on the measure, unintentionally increase the complexity of the present management system, burdening all parties, including sister states, industry and the Federal Government, and thereby greatly decreasing the efficiency and effectiveness of the overall ISFMP.

NH *Comment 6:* Allowing the New Hampshire conservation equivalency plan would be waiving the most restrictive rule in the ISFMP that requires lobstermen to fish the most restrictive of trap limits regardless of whether they fish in state or Federal waters.

Response: The Commission has created a task force to research and provide recommendations to the Lobster Board concerning the "most restrictive" rule. NOAA Fisheries intends to remain involved in future discussions concerning this and other novel management measures such as total trap allocations and trap transferability as the Commission moves forward in addressing these issues for consideration in the ISFMP. In the meantime, NOAA Fisheries acknowledges the right of New Hampshire to implement an alternative trap allocation system in state waters only, as approved by the Commission's Lobster Management Board, and consistent with the adaptive management measures set forth in the ISFMP.

NH *Comment 7:* The New Hampshire plan has greatly limited the number of traps fished by New Hampshire lobstermen. If it hadn't been implemented there would be about 20,000 traps fished by New Hampshire lobstermen compared to the approximately 10,000 that are currently estimated to be fished.

Response: Recent data from the New Hampshire Fish and Game Department indicate the state's plan reduces the potential number of traps fished in New Hampshire waters. See response to NH Comment 4.

Area Boundary Changes (AB)

AB *Comment 1:* One individual wrote in opposition to the proposed revisions to the Area 1, Area 2, and Outer Cape Area boundary lines as recommended by the Commission.

Response: NOAA Fisheries will implement compatible boundary lines for Area 1. Area 2 and the Outer Cape Area to maintain consistency with the ISFMP and to avoid confusion if the Federal and Commission area boundaries and their associated lobster management measures differ.

Gauge Size Comments (GS)

GS *Comment 1:* Nine individuals support some manner of a gauge increase.

Response: NOAA Fisheries will analyze minimum gauge size increases along with other measures adopted by the Commission in Addenda II and III to Amendment 3 of the ISFMP in a future Federal rulemaking package. The impacts of a gauge increase in Federal waters will require a thorough examination of the biological and socio-economic impacts of such a measure, including the interstate and U. S.-Canada trade implications.

GS *Comment 2:* Three individuals support a maximum carapace size requirement.

Response: The Federal lobster regulations currently do not allow a vessel fishing in or permitted to fish in LCMA 1 to possess lobster larger than 5 inch (13 cm) carapace length. Potential implementation of maximum gauge sizes as they pertain to those measures adopted in Addenda II and III to Amendment 3 of the ISFMP will be addressed by NOAA Fisheries in a separate rulemaking action.

GS *Comment 3:* One individual is opposed to a gauge increase in Area 1.

Response: Currently, the ISFMP does not include a requirement for gauge increases in LCMA 1 so this issue is not addressed in this Final Rule.

Vessel Upgrade Comments (VU)

VU *Comment 1:* One person suggested that NOAA Fisheries allow a 10–20 percent increase in vessel length and horsepower.

Response: NOAA Fisheries does not intend to limit lobster vessel size or horsepower requirements since these parameters are not indicative of fishing effort, as are numbers of traps.

General Comments (GC)

GC *Comment 1:* One commenter suggests a closed lobster season beginning December 1 rather than January 1. Another commenter suggests closed seasons from December 1 through March 1.

Response: Closed seasons were not included in the Commission's recommendations for Federal action in the EEZ in Addendum I and, therefore, were not analyzed as part of this rulemaking action. An annual closed season from January 1 through March 31 was adopted by the Commission in Addendum III to Amendment 3 of the ISFMP for the Outer Cape Management Area only. The Commission has recommended that NOAA Fisheries implement compatible measures into the Federal regulations, however, this will be addressed in future rulemaking.

GC *Comment 2:* Two individuals believe the rule violates the Magnuson-Stevens Act.

Response: NOAA Fisheries notes that the commenters make no specific reference as to how the proposed rule violates the MSA. Federal American lobster management is authorized under the Atlantic Coastal Act which requires that NOAA Fisheries, acting on behalf of the Secretary of Commerce, implement management measures that are compatible with the Commission's ISFMP and consistent with the National Standards set forth in the MSA. The manner in which this final rule addresses all 10 of the National Standards is detailed in the Classification section of this final rule and in section V.(5) of the FSEIS, Relationship to Other Applicable Law.

GC *Comment 3:* One commenter recommends that NOAA Fisheries implement a buy back program to allow industry members a way out of the business.

Response: Under section 312(a) and (b) of the MSA, the Secretary of Commerce may make funds available to

assist the fishing industry, such as a buy back program. This may only occur if the Secretary, at his or her discretion, or at the request of the Governor of an affected state, declares that a commercial fishery failure has occurred as the result of a fishery resource disaster. This was done in 1999 to alleviate impacts to commercial lobster fishermen in Connecticut and New York due to the Long Island Sound lobster fishery disaster (see responses to HP Comments 33 and 34). Although all three stocks of American lobster are overfished, it is not evident that a commercial fishery failure is occurring in the lobster fishery in Areas 3, 4 or 5, which are the subject of this final rule. The Secretary of Commerce may consider such an option if warranted under the requirements of Section 312(a) of the MSA. Regardless, current Federal lobster permits remain transferrable if the permitted vessel is soldto another individual or entity. Therefore, there is nothing that would prohibit, under current Federal regulations, a permit holder from selling his or her vessel and Federal lobster permit and gear to a willing buyer.

GC *Comment 4:* One opponent of historical participation states that the LCMTs don't represent the entire body of lobstermen.

Response: The LCMTs were established under Amendment 3 of the ISFMP, each acting in an advisory role to the Commission's Lobster Management Board. Their participation in the lobster management process is intended to ensure that the industry has a voice in how the resource is managed and allows the diverse nature of individual fishing operations, economic considerations and the unique issues of the specific areas to be addressed in the lobster management program. As mandated by the ISFMP, each LCMT must be comprised of a specific number of members from the associated states that represent the fleet in that particular management area. NOAA Fisheries is obliged under the Atlantic Coastal Act to implement regulations that are compatible with Commission recommendations as they relate to the ISFMP and includes acknowledging the LCMT's as a legitimate advisory body of the Commission. NOAA Fisheries suggests that any member of the lobster industry interested in becoming involved in the LCMT process contact their state fisheries agency or the Commission's American Lobster ISFMP Coordinator to inform them of that interest.

GC *Comment 5:*One individual commented that there is no scientific data to suggest that the lobster stock is depleted .

Response: The latest lobster stock assessment conducted in March 2000 indicates that all three stocks of American lobster are growth overfished and overfished according to the overfishing definition in the ISFMP. A subsequent peer review of that assessment by an external stock assessment peer review panel supported the conclusions of the 2000 stock assessment and determined that additional regulatory measures are necessary. The review panel also , concluded that, although the resource is not recruitment overfished, recruitment overfishing is occurring, which could result in recruitment failure. The panel further noted that shifts in fishing effort from nearshore areas to offshore areas has occurred. Allowing such effort shifts t continue could negatively impact lobster egg production. Refer to FSEIS Section I.1, Science, and Section IV.3.(B)., Stock Assessment. The measures in the Commission's ISFMP, including historical participation for Areas 3, 4 and 5, have been determined to be effective in ending overfishing and rebuilding the lobster resource. Further, more recent anecdotal information and reports from state agencies indicate that lobster catches in southern New England are on the decline and the presence of shell disease is increasing. A massive die-off in Long Island Sound in 1999, although not proven to be directly related to overfishing, has substantially reduced lobster abundance, especially in western Long Island Sound.

Marine Mammal Comment (MM)

MM *Comment 1:* One individual cannot understand why NOAA Fisheries would allow a significant number of vessels to double their trap allocations compared to current allocations, given the increasing concern for protecting right whales.

Response: The selected action is anticipated to at least cap, and potentially reduce, levels of trap fishing in Areas 4 and 5 and reduce trap fishing levels in Area 3. Therefore, this should diminish the effects of trap gear on right whales. Further, the Atlantic Large Whale Take Reduction Plan is a major component of NOAA Fisheries' activities to cetaceans listed under the Endangered Species Act using a multi-faceted approach that includes fishing gear modifications and time-area closures, supplemented by gear research to reduce the risk of entanglement of whales in fixed fishing gear.

V-notching Comments (V-notch)

V-notch *Comment 1:* Six comments were received in favor of v-notching.

Response: Current Federal lobster regulations at 50 CFR 697. 7 prohibiting the retention, landing or possession of any v-notched female American lobster. Based on recommendations by the Commission in Addenda II and III to Amendment 3 of the ISFMP, NOAA Fisheries is in the process of analyzing the mandatory v-notching requirement for Areas 1 and 3, and the zero-tolerance v-notch definition for Area 3, adopted in the ISFMP. These measures will be addressed in a separate rulemaking action.

V-notch *Comment 2:* NOAA Fisheries should rectify the discrepancy between the Maine V-notch regulation and the Federal v-notch regulation. The Federal regulation is too broad and encompassing and only applies to lobsters that have recently been notched.

Response: NOAAFisheries believes that the current Federal definition of v-notch is sufficient and is enforceable since it provides specifics on what is recognized as a v-notch. This definition is consistent with that adopted by the Commission in the ISFMP. NOAA Fisheries may look more closely at this issue in future rulemaking actions when Commission recommended measures such as zero-tolerance v-notching and mandatory v-notch requirements are analyzed.

Changes from the Proposed Rule

Changes were made to several sections of the proposed rule to clarify the qualification and appeals process for determination of historical participation in Areas 3, 4, and 5; to respond to public comments; and to increase the period, from 30 to 45 days, during which appeals may be made subsequent to any associated notice of denial of permits for trap fishing in these lobster management areas. Changes were made as follows:

In § 697.2, definitions are added for "Conservation equivalency" and "Qualifying year."

In § 697.4, paragraph (a)(7)(ii) is revised to describe how qualification for historical participation will impact annual permit renewal procedures for fishing with traps in Lobster Conservation Management Areas 3, 4, and 5.

In § 697.4, paragraphs (a)(7)(vi), (a)(7)(vii), and (a)(7)(viii) were revised to clarify and restrict the type and nature of documentation that is required to meet qualification and trap allocation criteria for participation in the Area 3, Area 4, and Area 5 lobster trap fishery; to extend the timeframe during which applicants can submit associated applications to qualify for trap allocations; to re-align qualification criteria and documentary proof under two major sub-headings; to require the submission of an affidavit (previously proposed to apply only to the certification of the number of traps fished in Area 3, Area 4, and/or Area 5 during the qualifying year) that attests that the applicant meets the qualification and trap allocation criteria for participation in the Area 3, Area 4, and/or Area 5 trap fishery, and that the supporting information being provided is truthful, accurate, and was created contemporaneously in the qualifying year; and to allow the submission of tax returns and sales receipts to the extent that such documents support the requested trap allocation(s) - to help demonstrate the number of traps fished in each lobster management area during the qualifying year.

In § 697.4, a new provision at (a)(7)(vi)(C)(5), (a)(7)(vii)(C)(4) and (a)(7)(viii)(C)(4), was added to require a signed cover letter along with the needed documentation which potential qualifiers must provide for explaining the nature of proof being submitted for qualification in the lobster trap fishery in Area 3, Area 4, and/or Area 5.

In § 697.4, paragraph (a)(7)(x) was deleted, and associated provisions for notification by NMFS were moved to paragraphs (a)(7)(vi)(C)(8), (a)(7)(vii)(C)(7), and (a)(7)(viii)(C)(7).

In § 697.4, paragraph (a)(7)(xi) is redesignated as (a)(7)(x) and revised to modify procedures for appeal of denial of an American lobster limited access request for use of trap gear in Area 3, Area 4 and/or Area 5, to allow only two grounds for appeal and to change the period of appeal from 30 days to 45 days from the date of the notice of denial.

In § 697.19, paragraphs (a) and (b) were revised to change the implementation date for limited access changes in the Area 3, Area 4, and Area 5 lobster trap fishery from May 1, 2002 to August 2, 2003.

In § 697.19, paragraph (b)(2) was revised to change the implementation period for the referenced Area 3 trap reduction schedule from fishing years 2002–2003 to fishing years 2003–2006.

In § 697.19, the cross reference to lobster trap allocations approved by the Regional Administrator for qualifiers in Area 3 in paragraph (b)(2) was changed from 697.4(a)(7)(vii), incorrectly referenced in the proposed rule, to § 697.4 (a)(7)(vi) and the sliding maximum trap limits identified in Table 1.

In § 697.19, paragraphs (e) through (g) were redesignated as paragraphs (f) through (h), respectively, and a new paragraph (e) was added to explain that the Regional Administrator may issue temporary interim permits prior to completion of NMFS review of qualification applications for the Area 3, Area 4, and/or Area 5 lobster trap fishery, and how this may affect allowable levels of trap fishing effort prior and subsequent to the NMFS review.

In § 697.25, the definition for "Conservation equivalency" is moved to § 697.2, and requires that, for consideration by the Regional Administrator of associated recommendations by ASMFC for American lobster, specific supporting information be provided.

Classification

The Assistant Administrator for NOAA Fisheries determined that the measures specified in this final rule are necessary for the conservation and management of the American lobster fishery and that these measures are consistent with the Atlantic Coastal Act, the Magnuson-Stevens Act, and other applicable laws.

The selected management actions in this final rule have been determined to be significant for the purposes of Executive Order 12866.

National Environmental Policy Act

NMFS prepared a Draft Supplemental Environmental Impact Statement, Regulatory Impact Review, and an Initial Regulatory Flexibility Analysis(DSEIS/RIR/IRFA) for this action; a notice of availability was published in the **Federal Register** on November 24, 2000 (65 FR 70567). Public comments on the DSEIS/RIR/IRFA were addressed, and NMFS prepared a Final Supplemental Environmental Impact Statement/ Regulatory Impact Review/Final Regulatory Flexibility Analysis (FSEIS/RIR/FRFA) following publication of a proposed rule on lobster management in Federal waters in the **Federal Register** on January 3, 2002 (67 FR 282). A notice of availability for the FSEIS/RIR was published in the **Federal Register** on November 8, 2002 (67 FR 68128). NOAA Fisheries determined that implementation of this action is environmentally preferable to the status quo. The FSEIS/RIR/FRFA demonstrates that, notwithstanding potential, yet unknown, changes in fishing practices and behavior, this action contains management measures able to mitigate, to the extent possible, overfishing and begin to rebuild stocks of American lobster; protect marine mammals and sea turtles; and provide economic and social benefits to the lobster industry in the long term.

The Final Regulatory Flexibility Analysis (FRFA), prepared in compliance with the Regulatory Flexibility Act, describes the economic impacts of the management measures on small entities. A summary of the FRFA follows. Reasons why the action is considered, as well as the objectivesfor this final rule, are described in the FRFA and the preamble to this final rule and are not repeated here. All participants in the lobster fishery are considered to be small entities. A description of and an estimate of the number of small entities to which this final rule will apply is discussed below.

Public Comments

One hundred and ninety comments were received on the measures contained in the proposed rule. Because all entities affected by this final rule are small entities, all of the comments and responses are considered to pertain to small entities. While none of the comments specifically referred to the IRFA, there are eight comments that discuss economic impacts on small entities in the Comments and Responses portion of this final rule (see commentsnumbered - HP Comment 6, HP Comment 18, HP Comment 32–34, HP Comment 37, NH Comment 2, and NH Comment 5).

In this section, the economic impacts of the selected regulatory action and the non-selected alternatives potential economic effects are examined from the perspective of the individual firm or business. For purposes of this section, a small entity is defined as being any vessel with gross sales not exceeding $3.5 million annually, consistent with that of the size standards of the Small Business Administration. Under this definition, all entities that are permitted to fish and that participate in the American lobster fishery are small. The economic impacts associated with the selected management actions and the non-selected alternatives are described in the FSEIS, and are incorporated herein by reference. The selected regulatory action and the non-selected alternatives would affect only those entities that hold a Federal lobster permit.

Number of Small Entities

Based on permit application records analyzed at the time the environmental impacts of this action were completed, a total of 2,901 vessels held Federal lobster permits. Of these vessels, 18 held only charter or head boat non-trap

commercial permits, 6 held both charter/head boat and non-trap commercial permits, and 2065 vessels held Federal commercial lobster trap permits. Due to a lack of mandatory data collection in the lobster fishery, activity data to discern between vessels that merely hold a permit and vessels that have participated or are currently participating in the fishery cannot be determined with any degree of reliability. All Federal lobster permit holders must be considered as potential industry participants; therefore, a regulatory flexibility analysis was conducted. The regulatory flexibility analysis provides information on the expected economic impacts of the selected regulatory action and the non-selected alternatives on affected small entities, i.e. Federal permit holders engaged in the lobster fishery to the extent possible.

Economic Effects on Historic Participation Qualifiers

Based on data provided by the LCMA 3 participants, at least 64 vessels are expected to qualify for historic participation in LCMA 3. No such data is available for LCMA 4 and 5 nor does the information on the proportion of vessels fishing in each trap category provided by the Area 3 LCMT mean that the number of eventual qualifiers for historic participation will be limited to 64. Due to the lack of any mandatory data collection for Federal lobster permit holders, the actual number of qualifiers will not be known with certainty until after plan implementation. However, using available permit and activity data and adopting some simple decision rules an estimate of the potential number of qualifiers may be figured.

LCMA 3 and LCMA 4 and 5 qualifiers were estimated by matching permit application data to identify all vessels that have a current lobster permit against combined dealer and logbook to estimate qualification based on poundage and trap history requirements (Table 1). In the latter case, trap history was approximated by assuming some minimum poundage that may be expected to be produced from at least 200 traps on a given trip. If, for example, average catch per trap were 2 lb (0.9 kg) and if 200 traps were hauled on a given trip then at least 400 lb (181 kg) would be produced. Any vessel with at least one trip in excess of 400 lb (181 kg) of lobster in two consecutive calendar months in the appropriate LCMA was deemed to meet the trap history requirement for that calendar year.

An upper bound and lower bound estimate of historic participation qualifiers was estimated by using a sensitivity analysis on the catch per trip assumption and by adopting two different delineations for trips taken in the required LCMA. In the latter case, statistical area was used to delineate trips that took place in LCMA 3 and LCMA 4 and 5. Since statistical areas overlap the LCMA boundaries a lower bound estimate of participants was developed by dropping all statistical areas that had any overlap with either LCMA 3 or LCMA 4 and 5 boundaries. An upper bound estimate was developed by including statistical area overlaps. This procedure was necessary due to a lack of more precise latitude and longitude data in dealer data.

TABLE 1.—SUMMARY OF NUMBER OF QUALIFYING VESSELS FOR HISTORIC PARTICIPATION

	Catch-per-trap = 4		Catch-per-trap = 3		Catch-per-trap = 2		Catch-per-trap = 1	
	Upper	Lower	Upper	Lower	Upper	Lower	Upper	Lower
LCMA 3	99	53	106	55	111	55	117	58
LCMA 4 and 5	47	47	50	50	54	54	60	60

The analysis using available data suggests that the number of qualifiers could be as many as 117 vessels for the LCMA 3 fishery and 60 vessels for LCMA 4 and 5. Of the qualified vessels for LCMA 3, the majority had home ports in either Rhode Island or Massachusetts. For LCMA 4 and 5, the majority of qualified vessels were from home ports in the states of New York and New Jersey. These data are consistent with known patterns of participation in both LCMA 3 and LCMA 4 and 5 (Table 1). Nevertheless, given problems with data collection for the lobster fishery these qualification estimates are likely to under-estimate the number of vessels that will qualify for historic participation.

TABLE 2.—SUMMARY OF HOME PORT OF HISTORIC PARTICIPATION QUALIFIERS BY LCMA

Home Port State	LCMA 3		LCMA 4 and 5	
	Lower Bound	Upper Bound	Lower Bound	Upper Bound
DE	1	1	1	1
MA	52	58	2	3
MD	0	0	0	1
NH	1	1	0	0
NJ	7	7	24	31
NY	1	7	14	16
RI	35	41	3	3
VA	0	0	0	1
OTHER	2	2	3	4
Total	99	117	47	60

The effect of limiting access to historic participants will have several economic effects. Limiting access will protect qualifiers from effort expansion in the impacted offshore and nearshore LCMA's of Areas 3 ,4, and 5. The selected management action will result in a closed system, restricting future participation in these areas to a known universe of qualified vessels that fished in these areas prior to the access control date of September 1, 1999. A closed universe of participants will effectively cap effort in Areas 4 and 5 at historic levels and, in Area 3, is intended to result in an estimated 20 percent reduction in gear after a 4–year trap reduction period compared to 1991–1993 estimated fishing. However, due to the ability of fishermen to compensate for a reduction in traps by increased fishing intensity, i.e.; more frequent trips and more frequent trap hauls per trip, landings and revenue are likely to be unaffected. A reduction in participants will also reduce the likelihood of gear conflicts and reduce associated loss of gear, while allowing the remaining trap gear to fish more efficiently since it will be possible to set gear in the more productive lobster grounds. A halt in effort expansion will effectively prevent a shift in effort by non-qualifiers from non-trap to trap gear in the impacted areas, and prevent a geographic shift by non-qualifiers from other areas that may be attracted to participate in the impacted areas for a variety of reasons, including potential financial incentives, localized overcrowding, or a resource decline such as that experienced in Long Island Sound.

A major economic effect of trap allocations based on historical participation will be to preserve the competitive position of fishing businesses in the offshore fishery. Vessels that have historically fished a greater volume of gear will be able to more effectively set gear to hold productive ground or claim seasonally productive lobster territory rather than always setting gear to maximize catch levels. It will also, to some unknown extent, increase the relative share of landings in these LCMAs for those who are able to meet the qualification criteria. However, increased trap usage may correlate into increased costs for qualifiers since increasing the numbers of traps fished brings with it increases in cost in purchasing and maintaining those extra traps, additional costs for bait, as well as the added time and fuel expenses necessary to tend the extra gear.

It is difficult to provide a more concrete statement of benefits associated with implementation of limited access in LCMA 3, 4, and 5, to historic participants for reasons described in this analysis. However, the lobster resource in these LCMAs is overfished and available data evaluated for this action indicates the number of traps will decrease. Notwithstanding data limitations, quantifiable impacts are discussed in greater detail in this regulatory flexibility analysis if possible. Additional benefits are described in the FSEIS (see **ADDRESSES**).

Assuming that the data provided by the Area 3 LCMT on the proportion of vessels fishing in each trap category is representative of the majority of vessels that currently fish and that may eventually qualify for historic participation, the economic effect of the selected regulatory action may be viewed in contrast to the trap caps under the non-selected status quo alternative and that of non-selected Alternative 1C.

Under the fixed trap cap identified in the non-selected status quo alternative and that of non-selected Alternative 1C, nearly half of the 64 vessels reporting trap numbers would be forced to reduce their traps by at least 100 traps and 16 vessels would have to reduce their traps fished by at least 500 traps. By contrast, under the fixed trap cap alternatives, 27 vessels would be able to increase trap numbers by at least 200 traps and 10 vessels would be able to increase trap numbers by at least 600 traps. Under the non-selected status quo and Alternative 1C, the potential for increased trap usage by 27 vessels and possible decreased trap usage by 30 vessels does not necessarily correlate to increased or decreased vessel profits for these respective vessels. That is, increasing the numbers of traps fished brings with it increases in cost in purchasing and maintaining those extra traps, additional costs for bait, as well as the added time and fuel expenses necessary to tend the extra gear. Similarly, decreases in traps usage will result in savings in time and costs. In fact, some have observed that decreases in traps do not result in decreases in harvest. (Acheson, 1997). Reasons for such include increased trap efficiencies—e.g. the same number of lobsters are caught, but concentrated in fewer traps and increased time and ability to more frequently tend the traps existing. Where a lack of data resolution prevents a quantifiable analysis of the potential economic benefits, qualitative benefits are provided. Certainly, based upon available data, many vessels fish below their current cap limit, presumably in order to maximize the economic efficiencies of their own circumstances. NOAA Fisheries anticipates this practice to continue, further ameliorating the expected financial impacts and disparity of the proposed action. In any event, trap allocations based on historical participation is not designed to create new financial positioning so much as it will preserve the historical competitive position and structure of the offshore fishery.

Among the regulatory alternatives considered in this action, the non-selected Alternative 1C would compromise the historic competitive balance of the offshore fishery by allowing vessels that currently fish below the existing fixed trap limits to increase effort and would permit some room for growth among the small entities (in terms of numbers of traps fished). Vessels currently fishing below the current cap may be able to use surplus gear above their current effort level and below the current trap cap to more effectively set gear to hold productive ground or claim seasonally productive lobster territory rather than always setting gear to maximize catch levels. It will also increase the relative share of landings in these LCMAs for vessels fishing below the current cap at the expense of reducing industry share for entities that have historically fished above the trap cap. Vessels that have historically fished above the current trap cap may find increased competition for seasonally productive lobster territory. On balance, however, both the selected regulatory action and the non-selected Alternative 1C would have the same general economic effect among qualifiers. Given the similarities, ultimately the selected actions are intended to implement Federal regulations that are compatible with the Commission's lobster ISFMP.

Economic Effects on Historic Participation Non-qualifiers

Given the relatively small number of historic participation qualifiers there will be a large number of vessels that will not qualify. Note, however, that the number of vessels that have participated in the offshore fishery has historically been low so the selected regulatory action will primarily affect vessels that may currently be actively pursuing entry into the offshore fishery (i.e.; Permit holders who have a vessel under construction or agreement, for example), vessels that began trap fishing effort after the qualification period ended, and other vessels that have participated in the offshore fishery but may not qualify due to one or more of the qualification criteria. However, as explained in detail in the FSEIS/RIR/FRFA (see **ADDRESSES**), NOAA Fisheries believes that potentially displaced fishers, having been given ample notice, are expected to have already diversified prior to the time the measures in this final rule take effect.

Under current Federal regulations, Federal lobster permit holders may elect to fish in any LCMA, but must abide by the most restrictive measures in effect for any LCMA elected. Based on an upper bound estimate of 60 qualifiers in LCMA 4 and 5, there is a total of 2,189 vessels that may not qualify to fish for lobster with traps under the selected regulatory action. This number, however, is potentially misleading because it represents all Federal permit holders across the range of the fishery, from Maine to North Carolina. As such, the number includes permit holders who have never fished in Areas 3, 4 or 5 and who have no intention of ever doing so, but who could potentially put Areas 3, 4 or 5 on their permit because current regulations do not prohibit such. Accordingly, the figure represents a theoretical upper boundary useful for analysis, but not intended to suggest the actual suspected impact set.

More realistic, however, is that of the 2,000 plus potential qualifiers, only 185 vessels designated at least area 4 or area 5 (or both) on their permit application records analyzed at the time the environmental impacts of this actions were completed. These vessels represent the set of permit holders that are most likely to be potentially impacted by historic participation in LCMA 4 and 5 (Table 3). Similarly, of the total theoretical upper boundary set of non-qualifiers for LCMA 3, 566 permit holders elected area 3 on the permit application. This set of 566 can be further reduced because many permit holders declare into an area even if they have no intention of fishing in that area. Reasons for this include maintaining fishing flexibility and the idea that in declaring an area one is preserving his or her right to fish there in the future if access to that area is limited. Certainly commenters have suggested that the number of vessels that actually fish in Area 3 is quite limited. Consistent with the findings for qualifying vessels, the majority of LCMA 4 and 5 non-qualifiers would be from home ports in New York and New Jersey. However, vessels from home ports in Maine would comprise the majority of LCMA 3 non-qualifiers and are believed to be predominantly Area 1 fishers.

To examine the restrictiveness of the qualification criteria, the alternative levels of qualification were developed to determine how many vessels might qualify under less restrictive requirements. Specifically, qualification for LCMA 3 historic participation for alternative poundage qualification levels of 10,000, 15,000 and 20,000 lb (4,536, 6,804, and 9,072 kg) was estimated. The various levels of assumed catch per trap were also retained. Note that since qualification for LCMA 4 and 5 historic participation has no poundage requirement, the number of qualifiers would only be affected by the ability to demonstrate historic levels of trap fishing. The sensitivity for LCMA 4 and 5 qualifiers to the assumed level of catch per trap was reported in Table 1.

The lower bound estimates for the LCMA 3 historic participation program were similarly insensitive to the poundage qualification criteria and were not particularly sensitive to the assumption of average catch per trap. By contrast, the upper bound estimates for LCMA 3 were sensitive to the poundage qualification criterion and this sensitivity increased as the assumed average catch per trap was reduced. Nevertheless, lowering the poundage criterion would result in, at most, a 37 vessel increase in LCMA 3 qualifiers.

TABLE 3.—SUMMARY OF HOME PORT STATE FOR HISTORIC PARTICIPATION NON-QUALIFIERS FOR PERMIT APPLICATIONS SELECTING LCMA 3 OR LCMA 4 AND 5

Home Port State	LCMA 4 and 5 Non-Qualifiers	LCMA 3 Non-Qualifiers
CT	2	0
DE	6	4
MA	29	161
MD	4	4
ME	11	269
NC	1	0
NH	2	18
NJ	49	43
NY	49	21
RI	27	38
OTHER	5	8
Total	185	566

TABLE 4.—SENSITIVITY ANALYSIS OF QUALIFIERS BY POUNDAGE CRITERION

Poundage Requirement(number)	CPU = 4 Pounds (number)	CPU = 3 Pounds (number)	CPU = 2 Pounds (number)	CPU = 1 Pounds (number)
Upper Bound Estimate for Area 3				
25000 lbs	99	106	111	117
20000 lbs	105	114	124	131
15000 lbs	110	121	133	144
10000 lbs	111	127	140	154
Lower Bound Estimate for Area 3				
25000 lbs	53	55	55	58
20000 lbs	55	57	57	59
15000 lbs	57	59	59	62
10000 lbs	57	60	60	64

The results reported in the Table 3 - Sensitivity Analysis of Qualifiers by Poundage Criterion are based upon limited data. Vessel history that may not be fully represented in NOAA Fisheries data may increase the number of qualifiers. Nevertheless, vessels that will not qualify for either LCMA 3 or LCMA 4 and 5 historic participation, will not be able to expand their businesses into these areas. The economic effects will be more severe for those vessels that are currently fishing some portion of their traps but will not qualify for historic participation because they could not meet one or more of the qualification criteria. These vessels will either have to:sell their Federal permit and fish their allowable number of traps in state waters, assuming they qualify under their individual state program; move their trap fishing effort to other management areas not requiring historic participation; or, use their vessel and gear in some alternative fishery. Thus, non-qualifying vessels will likely be able to offset some of their losses by fishing other areas or in other fisheries, but associated operations may not be as profitable as before.

A less obvious economic effect is that the value of the non-qualifier's Federal lobster permit might be eroded while that of qualifying vessels could increase in certain hypothetical situations. Thus, while there may be no distinct operational effect the equity position of the business could be affected. The normal cost associated with baiting and hauling traps may not change but if the value of the lobster permit is capitalized into the value of the vessel, then the value of the owners' business could similarly be reduced. Since owner equity is an important component of obtaining favorable loan conditions non-qualifiers may be put at some competitive disadvantage when seeking business loans. If nothing else, the resale value of the business could be affected in certain circumstances.

Impacts of Historic Participation Alternatives on Small Entities

On balance, the non-selected Alternatives 1A and 1C would not have significant differential impacts on non-qualifiers. Thus, under alternative 1A and 1C, non-qualifiers that are participants in the offshore fishery would still be forced to seek alternative fishing locations. These vessels would suffer some loss in profitability since alternative areas would likely already have been heavily fished. Non-qualifiers might also suffer a decline in the value of their business affecting resale and possibly putting them at a competitive disadvantage when seeking business loans.

Non-selected Alternative lA would have approximately the same impact as that of the selected regulatory action except that vessels in LCMA 4 and 5 might be less negatively affected relative to the selected regulatory action. The possible negative effect of the selected action is due to the imposition of a cap on initial trap allocations. Such a cap would require some portion of qualifying vessels to reduce the number of traps fished proportionally more than vessels that will qualify for initial allocations at or below the cap.

Non-selected Alternative 1C might have mixed effects on qualifying vessels in LCMA 3 and LCMA 4 and 5. Vessels that are operating above the cap would have to reduce traps while vessels below the cap would be able to increase their traps. On balance, approximately the same number of vessels would be forced to reduce as would be able to increase their traps. At an industry level, this non-selected alternative might result in an equalization of competitiveness but would do so by negatively impacting relatively larger businesses.

Rationale for Selecting this Regulatory Action

Based on information available at this time, NOAA Fisheries concludes that the selected regulatory action is the best among the considered alternatives. The reader is referred to the preamble of this final rule and Section III of the FSEIS completed for this action (see **ADDRESSES**) for a detailed description of the selected regulatory action and its rationale and environmental consequences.

Impacts of New Hampshire Conservation Equivalency on Small Entities

Selected Action—New Hampshire Conservation Equivalency

Under New Hampshire conservation equivalency measures contained in this final rule, Federal permit holders with New Hampshire full licenses may be able to increase their relative share of landings compared to New Hampshire limited license holders and other non-New Hampshire LCMA 1 Federal participants because full license holders will be allowed to fish up to 400 more traps in New Hampshire state waters than is allowed under the current trap cap. Gross revenues for New Hampshire full license holders fishing above the current 800 maximum trap limit in the state waters of New Hampshire may be increased. To the extent that revenue increases are offset by equipment expenses (i.e. the procurement, tending, and maintenance of more gear), profits may remain unchanged. New Hampshire full license holders may also be able to more efficiently "hold ground" or claim seasonally productive lobster territory. However, gear conflicts may increase and offset the benefits of increased landings. Limited license holders fishing below the current maximum trap limit may experience reduced landings, and, since prices are expected to remain unchanged, gross revenues may decrease. However, reduced equipment expenses and the ability to increase efficiencies through an increase in the number of trips and more frequent trips may offset revenue losses and profits may remain unchanged. However, the State of New Hampshire has already implemented this conservation equivalency program notwithstanding the coordinated Federal measures contained in this rule. Accordingly, the financial impacts associated with fishing 1,200 traps would be encountered regardless of Federal action (see NH Comment 4).

Non-Selected No Action/Status Quo Alternative 2B—New Hampshire

Under the non-selected status quo alternative, Federal permit holders with New Hampshire full license would be restricted to the current 800–maximum trap limit. This non-selected alternative might result in a variety of responses on the part of impacted Federal permit holders. If NOAA Fisheries did not implement the selected action to allow fishers who qualify to use 1,200 traps in New Hampshire state waters, the impacted fisher could relinquish his Federal permit, sell the vessel and associated Federal permit, or continue to fish for lobster with traps under the existing Area 1 trap limit (800 traps) in both state and Federal waters. Relinquishment of the Federal permit would result in less gear being fished in Federal waters although the 1,200 traps would still be fished, but entirely in state waters, potentially greatly increasing line density in state waters. However, given the economic value of a vessel with an associated Federal limited access lobster permit, it is unlikely that a fisher would simply relinquish the Federal permit. Sale of the vessel and associated Federal limited access lobster permit to a fisher who did not possess a New Hampshire lobster permit would not be expected to result in a reduction in trap gear. It is likely that a sale would result in increased effort under the assumption that the seller would continue to fish the 1,200 traps entirely in state waters, thereby potentially greatly increasing fishing effort, traps, and trap line density in state waters, while the buyer of the vessel and Federal lobster permit could fish up to the maximum trap limit in Federal waters for the area(s) elected. If the impacted fisher were to elect to continue to fish for lobster with traps under the existing Area 1 trap limit (800 traps) in both state and Federal waters, vessels unable to increase efficiencies and make adjustments to fishing practices to compensate for trap reductions might experience a reduction in profits. Not taking action to establish a 600–trap ceiling for Federal limited license holders, a more conservative limit than the 800–trap limit required by the ISFMP, might result in an increase in lobster landings for license holders actually fishing above the 600–trap limit. However, an absence of information on the actual number of traps actively fished by New Hampshire lobstermen makes it impossible to quantify the impact on landings.

Impacts of Compatible Management Area Boundaries

Selected Action 3A

The selected action will implement compatible boundary lines for Area 1, Area 2, and the Outer Cape Area to maintain consistency with the Commission's lobster ISFMP. Impacted vessels will benefit from compatible boundary lines, by the elimination of potential regulatory differences between state and Federal area specific regulations, and the elimination of differential enforcement as interpreted by state and Federal agencies.

Non-selected No Action Status Quo Alternative 3B—Boundaries

This non-selected alternative would result in incompatible boundary lines for Area 1, Area 2, and the Outer Cape Area. Incompatible boundaries could result in differential enforcement of area specific management measures as interpreted by state and Federal agencies as well as confusion on the part of impacted Federal permit holders.

Reporting and Recordkeeping Requirements

Small entities applying under the historic participation application process for LCMAs 3, 4, or 5, would be required to comply with the new collection-of-information requirements described in the Classification section of this final rule under the Paperwork Reduction Act section. No professional skills are necessary to comply with any of the reporting requirements associated with this action.

Paperwork Reduction Act

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The following collection-of-information requirements are being restated and have already been approved by the Office of Management and Budget (OMB) as shown:vessel permit applications approved under OMB control number 0648–0202 with the response times per application of 30 minutes for a new application, and 15 minutes for renewal applications; the Area 5 Waiver program approved under OMB control number 0648–0202 with the response times per application of 15 minutes to initiate a permit category change and select the LCMA 5 Trap Waiver Permit category, 2 minutes per response to return a suspended limited access lobster trap permit, and 15 minutes per response to initiate cancellation of a LCMA 5–Trap Waiver Permit and re-activate a suspended limited access lobster trap permit; and a lobster trap tag requirement approved under OMB control number 0648 0351 with a response time of 1 minute per tag.

This final rule contains new collection-of-information requirements subject to the PRA. The collection of this information has been approved by OMB under OMB control number 0648–0450. These requirements include the compilation of information by Federal permit holders pertaining to historical fishing operations in the lobster fishery, and the submission of one or more affidavits to NOAA Fisheries, certifying the information provided to qualify based on the area specific qualification criteria number in LCMAs 3, 4, and 5. The public reporting burden for each collection of information per response is indicated in the following list of new requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The new requirements are as follows: (1) Provision of a cover letter intended to describe the types of documentation included in the application and the relevance of the documentation to the application process with a response time per application of 15 minutes; (2) Provision of documentation of possession of a current valid Federal lobster permit with a response time per application of 5 minutes; (3) Provision of documentation to demonstrate at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Areas 3, 4, or 5 during a 2–consecutive calendar month period in any calendar year during the qualification periodfrom March 25, 1991, through September 1, 1999 with a response time per application of 15 minutes; (4) (For Area 3 only) Provision of documents pertaining to the sale of lobsters indicating the landing of at least 25,000 lb (11,340 kg) of lobster from any location during the year used as the qualifying year from March 25, 1991, to September 1, 1999 with a response time per application of 10 minutes;(5) Provision of documentation for proof of historical participation in two rather than one lobster management area with a response time per application of an additional 17 minutes if different consecutive two-month periods of trap fishing are used; (6) Provision of documentation for proof of historical participation in three rather than one lobster management area with a response time per application of an additional 34 minutes if three different consecutive 2–month periods are used; (7) Completion of lobster trap fishing area eligibility application form with a response time per application of 2 minutes for each area selected; (8) Provision of affidavit stating total number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Areas 3, 4, or 5 at any one time during the qualifying year with a response time per application of 15 minutes; (9) Provision of a written appeal request to the Regional Administrator by non-qualifying permit holders with a response time per application of 15 minutes; and10. Provision of affidavits in support of documentary hardship written appeal request to the Regional Administrator by non-qualifying permit holders with a response time per application of 3.25 hours if three affidavits are required and 4.25 hours per application if four affidavits are required.

Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to the Director, State, Federal and Constituent Programs Office, NOAA Fisheries, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA)

Section 7(a)(2) of the Endangered Species Act (ESA) (16 U. S. C.1531 *et seq.*) requires that each Federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species. When the action of a Federal agency may affect species listed as threatened or endangered, that agency is required to consult with either the National Marine Fisheries Service (NOAA Fisheries) or the U. S. Fish and Wildlife Service (FWS), depending upon the species that may be affected. In instances where NOAA Fisheries or FWS are themselves proposing an action that may affect listed species, the agency must conduct intra-service consultation. Management measures described in this final rule resulted in the initiation of an informal and a formal intra-service section 7 consultation with NOAA Fisheries' Northeast Region Protected Resources Division.

Informal consultation on the actions described in this final rule concluded on March 1, 2001, that parts of the action, as proposed, were likely to adversely affect ESA-listed right whales, humpback whales, fin whales, sei whales, sperm whales, leatherback sea turtles and loggerhead sea turtles as a result of displacement of lobster trap gear from LCMAs 3, 4, and 5 to nearshore lobster management areas where these species are known to occur.

Formal intra-service ESA section 7 consultation on NOAA Fisheries' implementation of new management measures described in this final rule was initiated on July 11, 2001. The most recent section 7 consultation for this action is based on information developed byNOAA Fisheries' State, Federal and Constituents Programs Office, and other sources of information.

The formal section 7 consultation concluded on October 31, 2002, that the selected management measures described in this final rule are not likely to jeopardize the continued existence of right whales, humpback whales, fin whales, sei whales, or sperm whales, loggerhead or leatherback sea turtles. Critical habitat for right whales has been designated within the action area, but the action is not likely to affect that critical habitat. Therefore, the management measures described in this final rule are not likely to destroy or adversely modify designated critical habitat.

The management measures described in this final rule are expected to result in a reduction of effort as a result of limiting participation in LCMAs 3, 4 and 5 and requiring trap reductions over a 4–year period for LCMA 3. Protected species known to become entangled in lobster trap gear, namely right, humpback, and fin whales as well as leatherback sea turtles, are expected to benefit from trap gear reductions in LCMAs 3, 4, and 5. Historic participation in LCMAs 3, 4, and 5 may also result in a shift in effort to nearshore areas. However, additional entanglements of ESA-listed cetaceans and sea turtles are not expected given that the overall effort in the fishery will decrease and there are management measures in place to reduce the number and severity of large whale entanglements in lobster gear. Some of these management measures are expected to be of benefit to sea turtles as well, such as by reducing the amount of line in the water. Sperm whales, and sei whales are not expected to occur in sufficient numbers in affected nearshore areas such that an increase in lobster gear in these areas will result in the addition of adverse affects to these species.

The management measures described in this final rule for conservation equivalency for New Hampshire, while likely reducing the combined overall number of traps fished by state and Federal permit holders combined, could potentially result in the addition of lobster trap gear fished solely by these few Federal permit holders in New Hampshire state waters. The Biological Opinion for this action has identified that the activity for implementation of conservation equivalency for federal lobster fishers who also possess a full-time commercial New Hampshire lobster license will directly affect leatherback sea turtles as a result of entanglement in lobster trap gear set in New Hampshire waters. NOAA Fisheries has determined that this level of anticipated take is not likely to jeopardize the continued existence of leatherback sea turtles. Reasonable and Prudent Measures and Terms and Conditions are provided with the opinion to minimize the take of sea turtles in the lobster trap fishery.

For additional discussion on the most recent ESA section 7 consultation for this action, a complete administrative record of this consultation is on file at the NOAA Fisheries, Northeast Regional Office, Office of Protected Resources, One Blackburn Drive, Gloucester, Massachusetts, 01930 [Consultation No. F/NER/2001/01263].

List of Subjects in 50 CFR Part 697

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 19, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR chapter VI, part 697, is amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 1. The authority citation for part 697 continues to read as follows:

Authority: 16 U. S. C. 5101 *et seq.*

■ 2. In § 697.2, definitions for "Conservation equivalency" and "Qualifying year" are added in alphabetical order to read as follows:

§ 697.2 Definitions.

* * * * *

Conservation equivalency means a measure adopted by a state that differs from the specific requirements of an interstate fishery management plan, but achieves the same level of conservation for the resource under management.

* * * * *

Qualifying year means any calendar year during the period from March 25, 1991, through September 1, 1999, excluding the time periods in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991 through March 24, 1991, and September 2, 1999, through December 31, 1999), and refers to the specific year selected by the applicant for the purposes of qualifying for access to the lobster trap fishery in Areas 3, 4 and/or 5 under the requirements set forth in 697.4(a)(7)(vi-x).

* * * * *

■ 3. In § 697.4, paragraph (a)(7)(ii) is revised and paragraphs (a)(7)(vi) through (x), and (f)(1)(v) are added to read as follows:

§ 697.4 Vessel permits and trap tags.

(a) * * *

(7) * * *

(ii) Each owner of a fishing vessel that fishes with traps capable of catching American lobster must declare to NMFS in his/her annual application for permit renewal which management areas, as described in § 697.18, the vessel will fish in for lobster with trap gear during that fishing season. The ability to declare into Lobster Conservation Management Areas 3, 4 and/or 5, however, will be first contingent upon a one time initial qualification as set forth in paragraphs (a)(7)(vi) through (a)(7)(viii).

* * * * *

(vi) *Participation requirements for EEZ-Offshore Management Area 3 (Area 3).* To fish for lobster with traps in Area 3, a Federal lobster permit holder must initially qualify into the area. To qualify, the permit holder seeking initial qualification must satisfy the following requirements in an application to the Regional Administrator:

(A) *Qualification criteria.* To initially qualify into Area 3, the applicant must establish with documenting proof the following:

(*1*) That the applicant possesses a current Federal lobster permit;

(*2*) That at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 by the qualifying vessel during a period of two consecutive calendar months in any calendar year during the period from March 25, 1991, through September 1, 1999, excluding the time period in calendar years 1991

and 1999 that are outside the qualification period (i.e., January 1, 1991 through March 24, 1991 and September 2, 1999 through December 31, 1999);

(*3*) That at least 25,000 lb (11,340 kg) of lobster were landed by the qualifying vessel from any location during the qualifying year selected in paragraph (9)(7)(vi)(A)(*2*).

(B) *Trap allocation criteria.* A qualified applicant must also establish with documentary proof the number of lobster traps fished by the qualifying vessel in Area 3 during the qualifying year. To the extent that the documentation so establishes, the Regional Administrator will then allocate a maximum number of lobster traps with which to fish in Area 3 as it relates to the sliding scale set forth in §697.19.

(C) *Documentary proof.* To satisfy the Area 3 Initial Qualification and Trap Allocation Criteria set forth in paragraphs (9)(7)(vi)(A) and (B) of this section, the applicants will be limited to the following documentary proof:

(*1*) As proof of a valid Federal lobster permit, the applicant must provide a copy of the vessel's current Federal lobster permit. The potential qualifier may, in lieu of providing a copy, provide NMFS with such data that would allow NMFS to identify the current permit holder in its data base, which would at a minimum include:the applicant's name and address, vessel name and permit number;

(*2*) As proof of 200 trap/two consecutive month criterion, the applicant must provide - to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation: copies of Federal Fishing Vessel Trip Reports (NOAA Form 88–30), Federal Port Agent Vessel Interview forms (NOAA Form 88–30), Federal Sea Sampling Observer Reports or a Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88–176); personal vessel logbooks; state permit applications; and/or official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. These documents must have been created on or about the time of activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(*3*) As proof that 25,000 lb (11,340 kg) of lobster were landed the applicant must provide - to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation:copies of Federal Fishing Vessel Trip Reports (NOAA Form 88–30), Federal Port Agent Vessel Interview forms (NOAA Form 88–30) or Federal Sea Sampling Observer Reports; personal vessel logbooks; official state reporting documentation showing the pounds of lobster landed, including, but not limited to, state report cards, state vessel interview forms, state sea sampling observer reports, and catch reports; and/or sales receipts or landing slips. These documents must have been created on or about the time of activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(*4*) As proof of the number of traps fished during the qualifying year, NOAA Fisheries will accept to the extent that the document(s) clearly and credibly establishes this criterion one or more of the following types of documentation:copies of Federal Fishing Vessel Trip Reports (NOAA Form 88–30); Federal Port Agent Vessel Interview Forms (NOAA Form 88–30); Federal Sea Sampling Observer Reports; Federal Fishing Vessel and Gear Damage Compensation Fund Reports (NOAA Form 88–176); personal vessel logbooks; tax returns and sales receipts; state permit applications; and/or official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. Documentation may represent the number of traps fished during any point in the qualifying year and does not necessarily need to represent the 2–consecutive month period used in paragraph (a)(7)(vi)(C)(*2*) of this section. These documents must have been created on or about the time of the activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(*5*) All applicants must further provide a signed cover letter that identifies the documents provided and which qualifying and trap allocation criteria the documents are being used to establish;

(*6*) All applicants must further provide an affidavit attesting under the penalties of perjury that each aspect of each of the qualification and trap allocation criteria has been met and the submitted supporting documentation is truthful, accurate and created contemporaneously with the dates identified on the documents. Specifically, each affidavit must attest in separate and specific paragraphs:

(*i*) The name, address, lobster permit number and vessel of the applicant;

(*ii*) That at least 200 lobster traps were set, allowed to soak, hauled back and re-set during the 2–month period in the qualifying year in the area being selected by the applicant, identifying those months and that year and further identifying which documents are being offered as proof of such;

(*iii*) That at least 25,000 lb (11,340 kg) of lobster were landed during the qualifying year by the vessel, identifying that year and further identifying which documents are being offered as proof of such;

(*iv*) The total number of traps set in the qualifying area during the qualifying year, identifying that area and year, and further identifying which documents are being offered as proof of such; and

(*v*) That the submitted documents in support of these claims are truthful, accurate and created during the qualifying year.

(*7*) All documents and submissions must be legible. Illegible documents or submissions will not be considered;

(*8*) The Regional Administrator may, at his or her discretion, waive documentary obligations for certain elements of the qualification criteria for an applicant if NMFS itself has clear and credible evidence that would satisfy that qualification criteria for the applicant;

(*9*) At the discretion of the Regional Administrator, all submitted documentation must be accompanied by a completed NMFS Lobster Historical Participation Application Form.

(*10*) Applicants must retain copies of all the application materials and documentation submitted to NMFS while the application is pending.

(D) *Application period.* The time period for submitting a historical qualification and trap allocation application begins on the date 30 days after publication of this final rule (application period start date) and ends December 31, 2003.

(*1*) *Earlier submissions.* Applicants who submit their applications to the Regional Administrator by July 31, 2003 (or in less than 60 days after the application period start date, whichever is later) will be eligible to receive a temporary interim permit that would allow the vessel to continue fishing with traps in Area 3 at existing levels during the 2003 fishing season while NMFS processes the application. After processing and reaching a decision on this earlier submitted application, the Regional Administrator may then issue a revised permit that will indicate the vessel's Area 3 eligibility and trap allocation. This revised permit will supersede the temporary interim permit and be effective immediately.

(*2*) *Later submissions.* Applicants who submit their applications to the Regional Administrator after July 31, 2003 (or more than 60 days after the application period start date, whichever is later), will not be eligible to receive a temporary interim permit that would allow continued fishing in Area 3 while NMFS processes the application. Even though they may be deemed qualified, applicants submitting applications in this later time period will not be eligible to fish in Area 3 until the 2004 fishing season.

(vii) *Participation requirements for EEZ Nearshore Management Area 4 (Area 4).* To fish for lobster with traps in Area 4, a Federal lobster permit holder must initially qualify into the area. To qualify, the permit holder seeking initial qualification must satisfy the following requirements in an application to the Regional Administrator:

(A) *Qualification criteria.* To initially qualify into Area 4, the applicant must establish with documenting proof the following:

(*1*) That the applicant possesses a current Federal lobster permit;

(*2*) That at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 4 by the qualifying vessel during a period of two consecutive calendar months in any calendar year during the period from March 25, 1991, through September 1, 1999, excluding the time period in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991 through March 24, 1991 and September 2, 1999 through December 31, 1999).

(B) *Trap allocation criteria.* A qualified applicant must also establish with documentary proof the number of lobster traps fished by the qualifying vessel in Area 4 during the qualifying year. To the extent that the documentation so establishes, the Regional Administrator will then allocate a maximum number of lobster traps with which to fish in Area 4, not to exceed 1,440 traps.

(C) *Documentary proof.* To satisfy the Area 4 Initial Qualification and Trap Allocation Criteria set forth in paragraphs (A) and (B) of this section, the applicants will be limited to the following documentary proof:

(*1*) As proof of a valid Federal lobster permit, the applicant must provide a copy of the vessel's current Federal lobster permit. The potential qualifier may, in lieu of providing a copy, provide NMFS with such data that would allow NMFS to identify the current permit holder in its data base, which would at a minimum include: the applicant's name and address, vessel name and permit number;

(*2*) As proof of 200 trap/two consecutive month criterion, the applicant must provide - to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation:Copies of Federal Fishing Vessel Trip Reports (NOAA Form 88–30), Federal Port Agent Vessel Interview forms (NOAA Form 88–30), Federal Sea Sampling Observer Reports or a Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88–176); personal vessel logbooks; state permit applications; and/ or official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. These documents must have been created on or about the time of activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(*3*) As proof of the number of traps fished during the qualifying year, NOAA Fisheries will accept to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation:Copies of Federal Fishing Vessel Trip Reports (NOAA Form 88–30); Federal Port Agent Vessel Interview Forms (NOAA Form 88–30); Federal Sea Sampling Observer Reports; Federal Fishing Vessel and Gear Damage Compensation Fund Reports (NOAA Form 88–176); personal vessel logbooks; tax returns and sales receipts; state permit applications; and/or official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. Documentation may represent the number of traps fished during any point in the qualifying year and does not necessarily need to represent the 2–consecutive month period used in paragraph (a)(7)(vii)(C)(*2*) of this section. These documents must have been created on or about the time of the activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(*4*) All applicants must further provide a signed cover letter that identifies the documents provided and which qualifying and trap allocation criteria the documents are being used to establish;

(*5*) All applicants must further provide an affidavit attesting under the penalties of perjury that each aspect of each of the qualification and trap allocation criteria has been met and the submitted supporting documentation is truthful, accurate and created contemporaneously with the dates identified on the documents. Specifically, each affidavit must attest in separate and specific paragraphs:

(*i*) The name, address, lobster permit number and vessel of the applicant;

(*ii*) That at least 200 lobster traps were set, allowed to soak, hauled back and re-set during the two month period in the qualifying year in the area being selected by the applicant, identifying those months and that year and further identifying which documents are being offered as proof of such;

(*iii*) The total number of traps set in the qualifying area during the qualifying year, identifying that area and year, and further identifying which documents are being offered as proof of such; and

(*iv*) That the submitted documents in support of these claims are truthful, accurate and created during the qualifying year.

(*6*) All documents and submissions must be legible. Illegible documents or submissions will not be considered;

(*7*) The Regional Administrator may, at his or her discretion, waive documentary obligations for certain elements of the qualification criteria for an applicant if NMFS itself has clear and credible evidence that would satisfy that qualification criteria for the applicant;

(*8*) At the discretion of the Regional Administrator, all submitted documentation must be accompanied by a completed NMFS Lobster Historical Participation Application Form.

(*9*) Applicants must retain copies of all the application materials and documentation submitted to NMFS while the application is pending.

(D) *Application period.* The time period for submitting a historical qualification and trap allocation application begins on the date 30 days

after publication of this final rule (application period start date) and ends December 31, 2003.

(*1*) *Earlier submissions.* Applicants who submit their applications to the Regional Administrator by July 31, 2003 (or in less than 60 days after the application period start date, whichever is later) will be eligible to receive a temporary interim permit that would allow the vessel to continue fishing in Area 4 at existing levels during the 2003 fishing season while NMFS processes the application. After processing and reaching a decision on this earlier submitted application, the Regional Administrator may then issue a revised permit that will indicate the vessel's Area 4 eligibility and trap allocation. This revised permit will supercede the temporary interim permit and be effective immediately.

(*2*) *Later submissions.* Applicants who submit their applications to the Regional Administrator after July 31, 2003 (or more than 60 days after the application period start date, whichever is later), will not be eligible to receive a temporary interim permit that would allow continued fishing in Area 4 while NMFS processes the application. Even though they may be deemed qualified, applicants submitting applications in this later time period will not be eligible to fish in Area 4 until the 2004 fishing season.

(viii) Participation requirements for EEZ Nearshore Management Area 5 (Area 5). To fish for lobster with traps in Area 5, a Federal lobster permit holder must initially qualify into the area. To qualify, the permit holder seeking initial qualification must satisfy the following requirements in an application to the Regional Administrator:

(A) *Qualification criteria.* To initially qualify into Area 5, the applicant must establish the following:

(*1*) That the applicant possesses a current Federal lobster permit;

(*2*) That at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 5 by the qualifying vessel during a two consecutive calendar month period in any calendar year during the period from March 25, 1991, through September 1, 1999, excluding the time period in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991 through March 24, 1991 and September 2, 1999 through December 31, 1999).

(B) *Trap allocation criteria.* A qualified applicant must also establish with documentary proof the number of lobster traps fished by the qualifying vessel in Area 5 during the qualifying year. To the extent that the documentation so establishes, the Regional Administrator will then allocate a maximum number of lobster traps with which to fish in Area 5, not to exceed 1,440 traps.

(C) *Documentary proof.* To satisfy the Area 5 Initial Qualification and Trap Allocation Criteria set forth in paragraphs (9)(7)(viii)(A) and (B) of this section, the applicants will be limited to the following documentary proof:

(*1*) As proof of a valid Federal lobster permit, the applicant must provide a copy of the vessel's current Federal lobster permit. The potential qualifier may, in lieu of providing a copy, provide NMFS with such data that would allow NMFS to identify the current permit holder in its data base, which would at a minimum include: the applicant's name and address, vessel name and permit number.

(*2*) As proof of 200–trap/2–consecutive month criterion, the applicant must provide - to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation:copies of Federal Fishing Vessel Trip Reports (NOAA Form 88–30), Federal Port Agent Vessel Interview forms (NOAA Form 88–30), Federal Sea Sampling Observer Reports or a Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88–176); personal vessel logbooks; state permit applications; and/or official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. These documents must have been created on or about the time of activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years.

(*3*) As proof of the number of traps fished during the qualifying year, NOAA Fisheries will accept to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation:copies of Federal Fishing Vessel Trip Reports (NOAA Form 88–30); Federal Port Agent Vessel Interview Forms (NOAA Form 88–30); Federal Sea Sampling Observer Reports; Federal Fishing Vessel and Gear Damage Compensation Fund Reports (NOAA Form 88–176); personal vessel logbooks; tax returns and sales receipts; state permit applications; and/or official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. Documentation may represent the number of traps fished during any point in the qualifying year and does not necessarily need to represent the 2–consecutive month period used in paragraph (a)(7)(viii)(C)(2) of this section. These documents must have been created on or about the time of the activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(*4*) All applicants must further provide a signed cover letter that identifies the documents provided and which qualifying and trap allocation criteria the documents are being used to establish;

(*5*) All applicants must further provide an affidavit attesting under the penalties of perjury that each aspect of each of the qualification and trap allocation criteria has been met and the submitted supporting documentation is truthful, accurate and created contemporaneously with the dates identified on the documents. Specifically, each affidavit must attest in separate and specific paragraphs:

(*i*) The name, address, lobster permit number and vessel of the applicant;

(*ii*) That at least 200 lobster traps were set, allowed to soak, hauled back and re-set during the two month period in the qualifying year in the area being selected by the applicant, identifying those months and that year and further identifying which documents are being offered as proof of such;

(*iii*) The total number of traps set in the qualifying area during the qualifying year, identifying that area and year, and further identifying which documents are being offered as proof of such; and

(*iv*) That the submitted documents in support of these claims are truthful, accurate and created during the qualifying year.

(*6*) All documents and submissions must be legible. Illegible documents or submissions will not be considered;

(*7*) The Regional Administrator may, at his or her discretion, waive documentary obligations for certain elements of the qualification criteria for an applicant if NMFS itself has clear and credible evidence that would satisfy that qualification criteria for the applicant;

(*8*) At the discretion of the Regional Administrator, all submitted documentation must be accompanied by a completed NMFS Lobster Historical Participation Application Form.

(*9*) Applicants must retain copies of all the application materials and documentation submitted to NMFS while the application is pending.

(D) *Application period.* The time period for submitting a historical qualification and trap allocation application begins on the date 30 days after publication of this Final Rule (application period start date) and ends December 31, 2003.

(*1*) *Earlier submissions.* Applicants who submit their applications to the Regional Administrator by July 31, 2003 (or in less than 60 days after the application period start date, whichever is later) will be eligible to receive a temporary interim permit that would allow the vessel to continue fishing in Area 5 at existing levels during the 2003 fishing season while NMFS processes the application. After processing and reaching a decision on this earlier submitted application, the Regional Administrator may then issue a revised permit that will indicate the vessel's Area 5 eligibility and trap allocation. This revised permit will supercede the temporary interim permit and be effective immediately.

(*2*) *Later submissions.* Applicants who submit their applications to the Regional Administrator after July 31, 2003 (or more than 60 days after the application period start date, whichever is later), will not be eligible to receive a temporary interim permit that would allow continued fishing in Area 5 while NMFS processes the application. Even though they may be deemed qualified, applicants submitting applications in this later time period will not be eligible to fish in Area 5 until the 2004 fishing season.

(ix) *Qualifying year for vessels seeking to fish for lobster with traps in more than one area of Areas 3, 4, and 5.* Any Federal lobster permit holder applying for a lobster trap allocation in more than one area amongst Areas 3, 4 and 5 must use the same qualifying year for all areas.

(x) *Appeal of denial of permit.* Any applicant having first applied for initial qualification pursuant to § 6 paragraphs (a)(7)(vi), (a)(7)(vii) and/or (a)(7)(viii) of this section, but having been denied a limited access American lobster permit for Areas 3, 4, and/or 5, may appeal to the Regional Administrator within 45 days of the date indicated on the notice of denial. Any such appeal must be in writing.

(A) *Grounds for appeal.* There shall be two grounds for appeal:

(*1*) *Clerical error.* It shall be grounds for appeal that the Regional Administrator erred clerically in concluding that the vessel did not meet the criteria in paragraphs (a)(7)(vi), (a)(7)(vii), and/or (a)(7)(viii) of this section. Errors arising from oversight or omission such as ministerial, mathematical or typographical mistakes would form the basis of such an appeal. Alleged errors in substance or judgment do not form a sufficient basis of appeal under this paragraph. The appeal must set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error.

(*2*) *Documentary hardship.* It shall be grounds for appeal that an otherwise qualified applicant is unable to produce qualification evidence due to documentary hardship. The hardship must have been caused by factors beyond the applicant's control, such as documents lost in a flood or fire. Failure to create the documents in the first instance, or simple loss of the document, or the intentional destruction or discarding of the document in the past by the appellant, or lacking the appropriate qualification documents due to inadvertence, carelessness or excusable neglect, do not constitute grounds for hardship under this paragraph. Appeals based on documentary hardship must establish the following:

(*i*) *Nature of the hardship.* The appellant must identify the hardship and submit to the Regional Administrator a document corroborating the hardship, such as by insurance claims forms or police and fire reports; and

(*ii*) *Affidavits.* The appellant must submit affidavits from current Federal permit holders so that three affidavits corroborate each of the qualification criteria for Area 3 as indicated in paragraph (a)(7)(vi) of this section, Area 4 as indicated in paragraph (a)(7)(vii) of this section, and/or for Area 5 as indicated in paragraph (a)(7)(viii) of this section. Each affidavit must clearly specify in separate and specific paragraphs:The name, address, Federal permit number and vessel name of the affiant; that the affiant can attest to by personal first-hand knowledge that the qualifying vessel set, allowed to soak, hauled back and re-set at least 200 lobster traps during the 2–month period in the qualifying year in the area being selected by the applicant, identifying those months and that year and further identifying the nature of that knowledge; for Area 3 only, that the affiant can attest to by personal first-hand knowledge that the qualifying vessel landed at least 25,000 lb (11,340 kg) oflobster during the qualifying year, identifying that year and further identifying the nature of that knowledge; that the affiant can attest to by personal first-hand knowledge to the total number of traps that the applicant claims his or her vessel fished in the area in question during the qualifying year and further identifying the nature of that knowledge; that the affiant also fished in the area being claimed by theapplicant during the months in the qualifying year chosen by the applicant; and be signed under the penaltiesof perjury. The requirement that each qualification criteria must be independently affirmed by three Federal permit holders does not restrict the appellant to using the same three affiants for each qualification criterion, although the appellant is encouraged to do so. The term personal first-hand knowledge in this paragraph means information directly gained by the affiant and would not include information gained from word of mouth or hearsay.

(B) *Appellate timing and review.* All appeals must be in writing and must be submitted to the Regional Administrator postmarked no later than 45 days after the date on NMFS' Notice of Denial of Initial Qualification application. Failure to register an appeal within 45 days of the date of the Notice of Denial will preclude any further appeal. The appellant may notify the Regional Administrator of his or her intent to appeal within the 45 days and request a time extension to procure the necessary affidavits and documentation. Time extensions shall be limited to 30 days and shall be calculated as extending 30 days beyond the initial 45–day period that begins on the original date on the Notice of Denial. Appeals submitted beyond the deadlines stated herein will not be accepted. Upon receipt of a complete written appeal with supporting documentation in the time frame allowable, the Regional Administrator will then appoint an appeals officer who will review the appellate documentation. After completing a review of the appeal, the appeals officer will make findings and a recommendation, which shall be advisory only, to the Regional Administrator, who shall make the final agency decision whether to qualify the applicant.

(C) *Status of vessels pending appeal.* The Regional Administrator may authorize a vessel to fish in Areas 3, 4 or 5 during an appeal. The Regional Administrator may do so by issuing a letter authorizing the appellant to fish up to 800 traps in Areas 4 or 5, or up to 1,800 traps in Area 3 during the pendency of the appeal. The Regional

Administrator's letter must be present onboard the vessel while it is engaged in such fishing in order for the vessel to be authorized. If the appeal is ultimately denied, the Regional Administrator's letter authorizing fishing during the appeal will become invalid 5 days after receipt of the notice of appellate denial or 15 days after the date on the notice of appellate denial, whichever occurs first.

* * * * *

(f) * * *

(1) * * *(v) The application is for initial qualification for access to Area 3, 4 or 5 pursuant to the historical participation process in paragraphs(a)(7)(vi)(D), (a)(vii)(D), and (a)(viii)(D) of this section.

* * * * *

■ 4. In § 697.18, paragraphs (a), (b), and (h) are revised to read as follows:

§ 697.18 Lobster management areas.

* * * * *

(a) *EEZ Nearshore Management Area 1.* EEZ Nearshore Management Area 1 is defined by the area, including state and Federal waters that are nearshore in the Gulf of Maine, bounded by straight lines connecting the following points, in the order stated, and the coastline of Maine, New Hampshire, and Massachusetts to the northernmost point of Cape Cod:

Point	Latitude	Longitude
A	43°58′N.	67°22′W.
B	43°41′N.	68°00′N.
C	43°12′N.	69°00′W.
D	42°49′N.	69°40′W.
E	42°15.5′N.	70°40′W.
F	42°10′N.	69°56′W.
G	42°05.5′N.	70°14′W.
G1	42°04.25′N.	70°17.22′W.
G2	42°02.84′N.	70°16.1′W.
G3	42°03.35′N.	70°14.2′W.

(1) From point "G3" along the coastline of Massachusetts, including the southwestern end of the Cape Cod Canal, continuing along the coastlines of Massachusetts, New Hampshire, Maine, and the seaward EEZ boundary back to Point A.

(2) [Reserved]

(b) *EEZ Nearshore Management Area 2.* EEZ Nearshore Management Area 2 is defined by the area, including state and Federal waters that are nearshore in Southern New England, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
H	41°40′N.	70°05′W.
I	41°15′N.	70°05′N.
J	41°21.5′N.	69°16.5′W.
K	41°10′N.	69°06.5′W.
L	40°55′N.	68°54′W.
M	40°27.5′N.	71°14′W.
N	40°45.5′N.	71°34′W.
O	41°07′N.	71°43′W.
P	41°06.5′N.	71°47′W.
Q	41°11.5′N.	71°47.25′W.
R	41°18.5′N.	71°54.5′W

(1) From point "R" along the maritime boundary between Connecticut and Rhode Island to the coastal Connecticut/Rhode Island boundary and then back to point "H" along the Rhode Island and Massachusetts coast, including the northeastern end of the Cape Cod Canal.

(2) [Reserved]

* * * * *

(h) *EEZ Nearshore Outer Cape Lobster Management Area.* EEZ Nearshore Outer Cape Lobster Management Area is defined by the area, including state and Federal waters off Cape Cod, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
F	42°10′N.	69°56′W.
G	42°05.5′N.	70°14′W.
G1	42°04.25′N.	70°17.22′W.
G2	42°02.84′N.	70°16.1′W.
G4	41°52.′N.	70°07.49′W.
G5	41°54.46′N.	70°03.99′W.

(1) From Point "G5" along the outer Cape Cod coast to Point "H":

Point	Latitude	Longitude
H	41°40′N.	70°05′W.
H1	41°18′N.	70°05′W.

(2) From Point "H1" along the eastern coast of Nantucket Island to Point "I":

Point	Latitude	Longitude
I	41°15′N.	70°00′W.
J	41°21.5′N.	69°16′W.

(3) From Point "J" back to Point "F".

* * * * *

■ 5. Section 697.19 is revised to read as follows:

§ 697.19 Trap limits and trap tag requirements for vessels fishing with lobster traps.

(a) *Trap limits for vessels fishing or authorized to fish in any Nearshore Management Area.* (1) Through August 31, 2003, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying one or more EEZ Nearshore Management Area(s), whether or not in combination with the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area more than 800 lobster traps.

(2) Beginning September 1, 2003, vessels fishing in or issued a valid limited access American lobster permit specifying one or more of EEZ Nearshore Management Areas 1, 2, or the Outer Cape Management Area, regardless of whether it is in combination with the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area(s) more than 800 lobster traps, except as noted in paragraph (d) of this section.

(3) Beginning September 1, 2003, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying EEZ Management Area 4 may not fish with, deploy in, possess in, or haul back from such areas more than the number of lobster traps allocated by the Regional Administrator pursuant to the qualification process set forth at § 697.4(a)(7)(vii), which will not exceed 1,440 lobster traps, except as noted in paragraphs (c) and (e) of this section.

(4) Beginning September 1, 2003, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying EEZ Management Area 5 may not fish with, deploy in, possess in, or haul back from such areas more than the number of lobster traps allocated by the Regional Administrator pursuant to the qualification process set forth at § 697.4(a)(7)(viii), which will not exceed 1,440 lobster traps, except as noted in paragraphs (c) and (e) of this section unless the vessel is operating under an Area 5 Trap Waiver permit issued under § 697.26.

(b) *Trap limits for vessels fishing or authorized to fish in the EEZ Offshore Management Area.* (1) Through August 31, 2003, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than 1,800 lobster traps.

(2) Beginning September 1, 2003, for fishing years 2003, 2004, 2005, 2006, and beyond until changed, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more the number of lobster traps allocated by the Regional Administrator pursuant to the qualification process set forth at § 697.4(a)(7)(vi) and the sliding maximum trap limits identified in Table 1 to part 697, except as noted in paragraphs (c) and (e) of this section.

(c) *Lobster trap limits for vessels fishing or authorized to fish in more than one EEZ Management Area.* A vessel owner who elects to fish in more than one EEZ Management Area may not fish with, deploy in, possess in, or haul back from any of those elected management areas more lobster traps than the lowest number of lobster traps allocated to that vessel for any one elected management area.

(d) *Conservation equivalent trap limits in New Hampshire state waters.* Notwithstanding any other provision, any vessel with a Federal lobster permit and a New Hampshire Full Commercial Lobster license may fish up to a maximum of 1,200 lobster traps in New Hampshire state waters, to the extent authorized by New Hampshire lobster fishery regulations. However, such vessel may not fish, possess, deploy, or haul back more than 800 lobster traps in the Federal waters of EEZ Nearshore Management Area 1, and may not fish more than a combined total of 1,200 lobster traps in the Federal and New Hampshire state waters portions of EEZ Nearshore Management Area 1.

(e) *Potential Modifications to Area 3, Area 4, and/or Area 5 Trap Limits in Fishing Year 2003.* The Regional Administrator may issue temporary interim Federal American lobster trap fishing permits pursuant to § 697.4 for Areas 3, 4 and/or 5 prior to completion of NMFS' review of the Area 3, Area 4 and/or Area 5 qualification applications, if the applicant has designated one or more of those areas on their 2003 Federal lobster permit. These temporary permits will become effective on September 1, 2003, for those applicants who have applied in the manner set forth in § 697.4(a)(7)(vi)(D)(*1*), (a)(7)(vii)(D)(*1*), and/or (a)(7)(viii)(D)(*1*). Any vessel issued a temporary trap fishing permit for Area 3 may fish up to 1,800 lobster traps, except as noted in paragraph (c) of this section. Any vessel issued a temporary trap fishing permit for Area 4 and/or 5 shall not fish more than 800 traps. The temporary interim permit will remain valid during fishing year 2003 until such time the Regional Administrator has reviewed and either approved or denied the temporary permitee's historical participation application. If approved, the Regional Administrator may issue a revised permit and/or management area designation certificate, depending on whether the applicant designated that area on his or her 2003 Federal permit at the beginning of the year. Any traps being fished, deployed, or possessed by the qualified Federal permit holder in excess of the number of traps as described in paragraphs (a)(3), (a)(4), and (b)(2) of this section must be removed from the water within 14 days after receipt of the revised permit, or 30 days after the date it is sent, whichever comes first. Revised Federal lobster permits must be retained aboard the fishing vessel at all times.

(f) *Trap tag requirements for vessels fishing with lobster traps.* Any lobster trap fished in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member. Any vessel with a Federal lobster permit may not possess, deploy, or haul back lobster traps in any portion of any management area that do not have a valid, federally recognized lobster trap tag permanently attached to the trap bridge or central cross-member.

(g) *Maximum lobster trap tags authorized for direct purchase.* In any fishing year, the maximum number of tags authorized for direct purchase by each permit holder is the applicable trap limit specified in paragraphs (a) and (b) of this section plus an additional 10 percent to cover trap loss.

(h) *EEZ Management area 5 trap waiver exemption.* Any vessel issued an Area 5 Trap Waiver permit under § 697.4(p) is exempt from the provisions of this section.

■ 6. In § 697.25, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively and new paragraph (b) is added to read as follows:

§ 697.25 Adjustment to management measures.

* * * * *

(b) *Conservation equivalency measures.* The Regional Administrator may consider future recommendations for modifications to Federal regulations based on conservation equivalency for American lobster that are formally submitted to him/her in writing by the ASMFC. These recommendations must, for consideration by the Regional Administrator, contain the following supporting information:

(1) A description of how Federal regulations should be modified;

(2) An explanation of how the recommended measure(s) would achieve a level of conservation benefits for the resource equivalent to the applicable Federal regulations;

(3) An explanation of how Federal implementation of the conservation equivalent measure(s) would achieve ISFMP objectives, be consistent with the Magnuson-Stevens Act national standards, and be compatible with the effective implementation of the ISFMP; and

(4) A detailed analysis of the biological, economic, and social impacts of the recommended conservation equivalent measure(s). After considering the recommendation and the necessary supporting information, NMFS may issue a proposed rule to implement the conservation equivalent measures. After considering public comment, NMFS may issue a final rule to implement such measures.

* * * * *

BILLING CODE 3510-22-S

Table 1 to Part 697 - Area 3 Trap Reduction Schedule

Number of Traps* Approved by the Regional Administrator	Trap Allocation by Fishing Year			
	2003	2004	2005	2006 and beyond
1200- 1299	1200	1200	1200	1200
1300-1399	1200	1200	1200	1200
1400-1499	1290	1251	1213	1200
1500-1599	1388	1337	1297	1276
1600-1699	1467	1423	1380	1352
1700-1799	1548	1498	1452	1417
1800-1899	1628	1573	1523	1482
1900-1999	1705	1644	1589	1549
2000-2099	1782	1715	1654	1616
2100-2199	1856	1782	1715	1674
2200-2299	1930	1849	1776	1732
2300-2399	2003	1905	1836	1789
2400-2499	2076	1981	1896	1845
2500-2599	2197	2034	1952	1897
2600-2699	2218	2107	2008	1949
2700-2799	2288	2169	2063	2000
2800-2899	2357	2230	2117	2050
2900-2999	2425	2291	2171	2100
3000-3099	2493	2351	2225	2150
3100-3199	2575	2422	2288	2209
≥3200	2656	2493	2351	2267
* Trap allocations below 1,200 will not be subject to further reductions.				

[FR Doc. 03–7067 Filed 3–24–03; 4:42 pm]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 68, No. 59
Thursday, March 27, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–008]

RIN 1625–AA00

Safety Zones; Annual Fireworks Events in the Captain of the Port Portland Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing permanent safety zones on the waters located in their Area of Responsibility during fireworks displays. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with these displays. Entry into these safety zones is prohibited unless authorized by the Captain of the Port.

DATES: Comments and related material must reach the Coast Guard on or before May 27, 2003.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office/Group Portland, 6767 N. Basin Ave., Portland, Oregon 97217. U.S. Coast Guard Marine Safety Office/Group Portland maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Portland between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Tad Drozdowski, Operations Department, at (503) 240–9370.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13–03–008), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to U.S. Coast Guard Marine Safety Office/Group Portland at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes establishing permanent safety zones to allow for safe fireworks displays. These events may result in a number of vessels congregating near fireworks launching barges. Safety zones are needed to protect watercraft and their occupants from safety hazards associated with fireworks displays.

Discussion of Proposed Rule

This rule, for safety concerns, would control vessel movements in regulated areas surrounding fireworks launching barges. Entry into these zones would be prohibited unless authorized by the Captain of the Port, Portland or his designated representative. Coast Guard personnel would enforce these safety zones. The Captain of the Port may be assisted by other federal and local agencies.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605–(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the designated areas at the corresponding times as drafted in this proposed rule. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for particular dates, all in the evening when vessel traffic is low. Traffic will be allowed to pass through the zones with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605–(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under Executive Order 13132 and have determined that this final rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. In particular, the Act addresses actions that may result in the expenditure by a state, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion is provided for regulations establishing safety zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Section 165.1315 is added to read as follows:

§ 165.1315 Safety Zones; Annual fireworks events in the Captain of the Port Portland Zone.

(a) *Safety Zones.* The following areas are designated safety zones:

(1) *Cinco de Mayo Fireworks Display, Portland, OR.*

(i) *Location.* Waters on the Willamette River bounded by the Morrison Bridge to the north, Hawthorne Bridge to the south, and the shoreline to the east and west.

(ii) *Expected date.* One day in early May.

(2) *Portland Rose Festival Fireworks Display, Portland, OR.*

(i) *Location.* Waters on the Willamette River bounded by the Morrison Bridge to the north, Hawthorne Bridge to the south, and the shoreline to the east and west.

(ii) *Expected date.* One day in late May or early June.

(3) *Tri-City Chamber of Commerce Fireworks Display, Columbia Park, Kennewick, WA.*

(i) *Location.* Waters on the Columbia River bounded by shoreline to the north and south, Interstate 395 bridge to the east, and 1000 feet of water to the west of the launching barge which is centered at 46–13.380′ N, 119–08.520′ W.

(ii) *Expected date.* Every July 4th.

(4) *Cedco Inc. Fireworks Display, North Bend, OR.*

(i) *Location.* Waters on the Coos River bounded by shoreline to the east and west and 1000 feet of water to the north and south of the launching barge which is centered at 43–23.450′ N, 124–12.500′ W.

(ii) *Expected date.* One day in early July.

(5) *Astoria 4th of July Fireworks, Astoria, OR.*

(i) *Location.* All waters of the Columbia River at Astoria, Oregon enclosed by the following points: North from the Oregon shoreline at 123–50.015′ W to 46–11.505′ N, thence east to 123–49.150′ W, thence south to the Oregon shoreline and finally westerly along the Oregon shoreline to the point of origin.

(ii) *Expected date.* One day in early July.

(6) *Oregon Food Bank Blues Festival Fireworks, Portland, OR.*

(i) *Location.* Waters on the Willamette River bounded by the Hawthorne Bridge to the north, Marquam Bridge to the south, and shoreline to the east and west.

(ii) *Expected date.* One day in early July.

(7) *Oregon Symphony Concert Fireworks Display, Portland, OR.*

(i) *Location.* All waters of the Willamette River bounded by the Hawthorne Bridge to the north, Marquam Bridge to the south, and shoreline to the east and west.

(ii) *Expected date.* One day in late August.

(8) *Fort Vancouver Celebrate America Fireworks Display, Vancouver, WA.*

(i) *Location.* All waters of the Columbia River bounded by 1000 feet of water to the north, shoreline to the south, Interstate Five Bridge to the west and 1000 feet of water to the east of the fireworks launching barge which is centered at 45–36.500′ N, 122–40.220′ W.

(ii) *Expected date.* One day in late October.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

Dated: March 13, 2003.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 03–7300 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 02–011]

RIN 2115–AA97

Security Zone; Port Valdez and Valdez Narrows, Valdez, AK

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The purpose of this supplemental notice of proposed rulemaking (SNPRM) is to amend the Collection of Information (COI) section of the Notice of Proposed Rulemaking (NPRM) preamble for "Security Zone; Port Valdez and Valdez Narrows, Valdez, AK" (NPRM), 67 FR 65074 (Oct. 23, 2002). The original notice proposed new COI requirements that must be included. The original NPRM is reprinted in its entirety for the convenience of the public. The Coast Guard proposes establishing a security zone encompassing the Trans-Alaska Pipeline (TAPS) Valdez Terminal Complex, Valdez, Alaska and TAPS Tank Vessels and a security zone in the Valdez Narrows, Port Valdez, Alaska. The security zones are necessary to protect the Alyeska Marine Terminal and Vessels from damage or injury from sabotage, destruction or other subversive acts. Entry of vessels into these security zones is prohibited unless specifically authorized by the Captain of the Port, Prince William Sound, Alaska.

DATES: Comments on the COI section of this SNPRM and related material must reach the Coast Guard on or before May 27, 2003.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office, P.O. Box 486, Valdez, Alaska 99686. Marine Safety Office Valdez, AK, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Valdez, AK between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lt. Chris Beadle, U.S. Coast Guard Marine Safety Office Valdez, Alaska, at (907) 835–7222.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and material related to the new COI section only. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Prince William Sound 02–011), indicate that you would like to comment on the new COI section, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. During the comment period for the NPRM which expired on December 23, 2002 we received no comments. Comments for this SNPRM should address the revised COI section addressed by this SNPRM.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Valdez at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register.**

Background and Purpose

This rulemaking amends the COI section of the NPRM preamble for "Security Zone; Port Valdez and Valdez Narrows, Valdez, AK" (NPRM), 67 FR 65074 (Oct. 23, 2002). The comment period for 67 FR 65074 (Oct. 23, 2002) has run and the original NPRM is reprinted in its entirety for the convenience of the public and is identical to that in the original NPRM. The preamble is also identical to that found in 67 FR 65074 (Oct. 23, 2002) with the exception of the new COI Section. Accordingly, comment on this SNPRM will be limited to the supplemental information contained in the COI section of the preamble. The Coast Guard is taking this action for the immediate protection of the national security interests in light of terrorist acts perpetrated on September 11, 2001. The port of Valdez is a vital national commercial port, supporting the transfer and transport of a significant percentage of oil used in the United States. As such, it is crucial that actions be taken to protect the flow of commerce from possible terrorist or subversive acts designed to damage maritime facilities and vessels transiting to and from the Port of Valdez. The proposed rule would replace existing regulations in 33 CFR 165.1701 and the temporary rule issued in July, which will expire December 31, 2002, that created temporary § 165.T17–010, entitled "Port Valdez and Valdez Narrows, Valdez, Alaska." The proposed rule would work to safely control the flow of commercial traffic and protect vital maritime facilities by creating security zones and check-in procedures designed to identify threats for response by appropriate law enforcement resources.

On November 7, 2001, we published three temporary final rules in the **Federal Register** (66 FR 56208, 56210, 56212) that created security zones effective through June 1, 2002. The section numbers and titles for these security zone regulations are—

§ 165.T17–003—Security zone; Trans-Alaska Pipeline Valdez Terminal Complex, Valdez, Alaska,

§ 165.T17–004—Security zone; Port Valdez, and

§ 165.T17–005—Security zones; Captain of the Port Zone, Prince William Sound, Alaska.

On June 4, 2002, we published a temporary final rule (67 FR 38389) that established security zones to replace those security zones that expired June 1,

2002. That rule issued in June, which expired July 30, 2002, created temporary § 165.T17–009, entitled "Port Valdez and Valdez Narrows, Valdez, Alaska".

On July 26, 2002, we published a temporary final rule (67 FR 49582–84) that established security zones to replace temporary § 165.T17–009 that expired July 30, 2002. That rule issued in July, which expired December 31, 2002, creating temporary § 165.T17–010, entitled "Port Valdez and Valdez Narrows, Valdez, Alaska". This proposed rule removed the temporary security zones in § 165.T17–010 and added permanent security zones in a new 33 CFR 165.1701.

On October 23, 2002, we published a NPRM (67 FR 65074) designed to permanently add the permanent security zones in a new 33 CFR § 165.1701. This supplemental rule would remove the temporary security zones in § 165.T17–010 and add permanent security zones in a new 33 CFR 165.1701.

During the comment period for the NPRM which expired on December 23, 2002 we received no comments.

Discussion of Proposed Rule

This proposed rule would establish three security zones in new 33 CFR 165.1701(a) and move the current safety zone in existing 33 CFR 165.1701 to new 33 CFR 165.1701(b). This proposed rule also would establish procedures for vessel entry into the security zones for management of the natural resources administered by the Alaska Department of Natural Resources.

The Trans-Alaska Pipeline (TAPS) Valdez Marine Terminal security zone encompasses the waters of Port Valdez between Allison Creek to the east and Sawmill Spit to the west and offshore to marker buoys A and B (approximately 1.5 nautical miles offshore from the TAPS Terminal). The Tanker Moving security zone encompasses the waters within 200 yards of a TAPS Tanker within the Captain of the Port, Prince William Sound Zone. The Valdez Narrows security zone encompasses the waters 200 yards either side of the Tanker Optimum Trackline through Valdez Narrows between Entrance Island and Tongue Point. This zone is enforced only when a TAPS Tanker is in the zone. The TAPS safety zone encompasses all waters within 200 yards of on shore and off shore facilities of the TAPS Terminal and is a safety buffer between potentially hazardous terminal operating areas and areas to which vessels may be permitted entry by the Captain of the Port, Prince William Sound, during State of Alaska managed fisheries openings and/or closings.

The Coast Guard has worked closely with local and regional users of Port Valdez and Valdez Narrows waterways to develop these security zones and the NPRM in order to mitigate the impact on commercial and recreational users. The limited size of the terminal security zone is designed to minimize impact on mariners while ensuring public safety by preventing interference with terminal operations. The Tank Vessel moving vessel security zone and the Valdez Narrows security zone will be enforced only while vessels are transiting the area and are designed to provide a safe operating distance while minimizing threats to tanker operations.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This finding is based on the limited size of the zones and the limited duration of the Tank Vessel moving security and Valdez Narrows security zone. Additionally, vessels will not be precluded from transiting and operating in these areas as The Captain of The Port will consider requests for entry on a case-by-case basis and requests for entry will be approved as appropriate. Those desiring to transit the area of the security zone must contact the Captain of the Port under the provisions of proposed 33 CFR 165.1701(d).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would affect the following entities, some of which might be small entities: The owners and operators of commercial fishing vessels and native subsistence fishermen. Some of the areas that these entities might desire to use for fishing may fall within the security zones. However, The Captain of The Port will consider requests for entry into the security zone on a case-by-case basis and requests for entry will be approved as appropriate; therefore, it is likely that very few, if any, small entities will be impacted by this rule.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lt. Chris Beadle, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7222.

Collection of Information

This proposed rule contains information collection requirements that have not been approved by Office of Management and Budget (OMB). This proposed rule would modify an existing collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Ports and Waterways Safety.

OMB Control Number: 2115–0540.

Summary of the Collection of Information: The Captain of the Port, Prince William Sound Alaska requires information on vessel owners and operators, and their vessels, desiring to enter into the security zone around the Trans Alaska Pipeline (TAPS) Alyeska Valdez Marine Terminal.

Need for Information: To ensure port and vessel safety and security and to ensure the State of Alaska natural resource agencies are able to manage State of Alaska regulated fisheries.

Proposed Use of Information: This information is required to control vessel traffic, develop contingency plans, and enforce regulations.

Description of the Respondents: The respondents are owners, operators, or persons in charge of non TAPS vessels operating in the vicinity of the Trans Alaska Pipeline (TAPS) Alyeska Valdez Marine Terminal.

Number of Respondents: The existing OMB-approved collection number of respondents is 1,339. This proposed rule would increase the number of respondents by 20 to a total of 1,359.

Frequency of Response: The existing OMB-approved collection annual number of responses is 1,339. This rule will increase the number of responses by 20 to a total of 1,359.

Burden of Response: The existing OMB-approved collection burden of response is 2 and ¼ hours. This proposed rule would not change the burden of response because it will take less time for the responders to complete this response. Their vessels and crew are smaller.

Estimate of Total Annual Burden: The existing OMB-approved collection total annual burden is 2,929 hours. This proposed rule would increase the total annual burden by 20 hours to a total of 2,949 hours.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. The existing OMB-approved collection is valid until September 30, 2003.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation since implementation of this action will not result in any inconsistencies with any Federal, State, or Local laws or administrative determinations relating to the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set forth in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

§ 165.T17–013 [Removed]

2. Remove § 165.T17–013

3. Revise § 165.1701 to read as follows:

§ 165.1701 Port Valdez and Valdez Narrows, Valdez, Alaska—security and safety zones.

(a) *Security Zone Locations.* The following areas are security zones:

(1) *Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska and TAPS Tank Vessels.* All waters enclosed within a line beginning on the southern shoreline of Port Valdez at 61°04′57″ N, 146°26′20″ W; thence northerly to 61°06′30″ N, 146°26′20″ W; thence east to 61°06′30″ N, 146°21′15″ W; thence south to 61°05′07″ N, 146°21′15″ W; thence west along the shoreline and including the area 2000 yards inland along the shoreline to the beginning point. This security zone encompasses all waters approximately 1 mile north, east and west of the TAPS Terminal between Allison Creek (61°05′07″ N, 146°21′15″ W) and Sawmill Spit (61°04′57″ N, 146°26′20″ W).

(2) *Tank Vessel Moving Security Zone.* All waters within 200 yards of any TAPS tank vessel maneuvering to approach, moor, unmoor or depart the TAPS Terminal or transiting, maneuvering, laying to or anchored within the boundaries of the Captain of the Port, Prince William Sound Zone described in 33 CFR 3.85(b).

(3) *Valdez Narrows, Port Valdez, Valdez, Alaska.* All waters within 200 yards of the Valdez Narrows Tanker Optimum Track line bounded by a line beginning at 61°05′6.0″ N, 146°37′20.0″ W; thence south west to 61°04′00.0″ N, 146°39′52.0″; W; thence southerly to 61°02′33.5″ N, 146°41′28.0″ W; thence north west to 61°02′40.5″ N, 146°41′47.5″ W; thence north east to 61°04′06.0″ N, 146°40′14.5″ W; thence north east to 61°05′23.0″ N, 146°37′40.0″ W; thence south east back to the starting point at 61°05′16.0″ N, 146°37′20.0″ W.

(i) The Valdez Narrows Tanker Optimum Track line is a line commencing at 61°05′23.0″ N, 146°37′22.5″ W; thence south westerly to 61°04′03.2″ N, 146°40′03.2″ W; thence southerly to 61°03′00″ N, 146°41′12″ W.

(ii) This security zone encompasses all waters approximately 200 yards either side of the Valdez Narrows Optimum Track line.

(b) *The following location is a safety zone:* all waters within 200 yards of the shore and offshore facilities of the TAPS Terminal between Allison Creek (61°05′07″ N, 146°21′15″ W) and Sawmill Spit (61°04′57″ N, 146°26′20″ W).

(c) *Regulations.* (1) Entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Prince William Sound via the request process set out in paragraph (d) of this section.

(2) For the purposes of this section, paragraphs (a), (e), and (f) of §165.33 do not apply to the following vessels or individuals legally on board those vessels:

(i) Public vessels of the United States; and

(ii) Vessels engaged in the movement of oil from the TAPS terminal or fuel to the TAPS terminal and that have reported their movements to the Vessel Traffic Service or vessels that are performing work at the TAPS Terminal including, but not limited to tugs, oil spill response vessels, boom boats, security and safety vessels.

(3) *Enforcement of Valdez Narrows security zone.* Section 165.33(a) will not be enforced in the Valdez Narrows security zone, described in paragraph (a)(3) of this section, except when a tank vessel greater than 20,000 DWT is in the Valdez Narrows security zone. Vessels must stay clear of the Valdez Narrows security zone when a transiting tank vessel approaches the Valdez Narrows VTS Special Area from the vicinity of Entrance Island to the north and Tongue Point to the south of Valdez Narrows. The Valdez Narrows VTS Special Area is depicted as the purple dashed lines on National Oceanic and Atmospheric Administration chart 16707 and is described in § 161.60(b) of this subchapter.

(4) Vessels other than those described in paragraph (c)(2) of this section desiring access to the security and safety zones set out in paragraphs (a) and (b) of this section shall secure permission from the Captain of the Port under the procedures listed in paragraph (d).

(d) *Permits.* (1) The Captain of the Port may allow access to the security and safety zones in order to encourage utilization of natural resources, promote tourism and provide for other reasonable use consistent with the needs of security and safety within Port Valdez and Prince William Sound. Vessels desiring access must obtain a permit from the Captain of the Port in the following manner:

(2) Applicants must submit an application via written request to the Captain of the Port at least 48 hours prior to the desired time of entry into a security or safety zone. Applications submitted less than 48 hours prior to the desired time of entry may be accepted by the Captain of the Port on a case by case basis. The written request must:

(i) Demonstrate good cause for entry into a security or safety zone.

(ii) Describe the vessel(s) entering (including name, visible identifying numbers, markings, etc.) and times/dates of entry.

(iii) Provide certification that all crew members and other persons on board are U.S. citizens or provide names and identifying information on all non-U.S. citizens (passport, etc.) and certification that all other crew and other persons on board are U.S. citizens.

(iv) Provide a name and contact information for the applicant or the applicant's designated point of contact.

(v) If the application is submitted less than 48 hours prior to the desired entry into a security or safety zone it must provide the reason the applicant was unable to meet the 48 hour deadline. The Captain of the Port may consider circumstances beyond the applicant's control as acceptable for relief from the 48 hour deadline. "Beyond the applicant's control" may include, but is not limited to, short notice fishing openers, gear retrieval for short notice fishing closures or other actions by state or federal wildlife or natural resources management agencies. If an application does not meet the 48 hour deadline and is not accepted, the Captain of the Port shall provide the reason(s) why the application is denied in a written response to the applicant.

(vi) Applications may be delivered in person or by mail to Captain of the Port, U.S. Coast Guard Marine Safety Office, P.O. Box 486, 105 Clifton Drive, Valdez, Alaska, 99686–0486.

(3) Upon approval the Captain of the Port shall issue a letter permitting access to a security zone specifying time(s)/date(s) of entry, check-in, check-out and emergency vacate procedures. This letter shall be carried aboard the vessel and presented upon request to any on-scene patrol personnel of the Coast Guard.

(4) The Captain of the Port may require a permit to monitor certain radio frequencies, display special visual signals such as flags or markers, enter and depart at specific locations and undergo a vessel examination prior to entry into any security or safety zone.

(5) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port and the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign, by siren, radio, flashing light, or other means, or by on-scene Coast Guard patrol personnel, the operator of the vessel shall proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws. Coast Guard Auxiliary and local or state agencies and may have on board their vessels Coast Guard patrol personnel.

(e) *Authority.* In addition to 33 U.S.C. 1231 and 49 CFR 1.46, the authority for this section includes 33 U.S.C. 1226.

Dated: March 5, 2003.

Mark A. Swanson,

Commander, U.S. Coast Guard, Captain of the Port, Prince William Sound, Alaska.

[FR Doc. 03–7299 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 96–146; DA 03–807]

The Consumer & Governmental Affairs Bureau Seeks Comments To Refresh Record on Rules Governing Interstate Pay-per-Call and Other Information Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On July 11, 1996, the Commission released a document which amended the Commission's rules governing interstate pay-per-call and other information services to conform with the requirements of the Telecommunications Act of 1996 (1996 Act). Through amendments to section 228, the 1996 Act addressed abusive practices that threatened public confidence in toll-free numbers and left telephone subscribers vulnerable to unexpected charges for calls and information services. The rule amendments were designed to comply with this statutory mandate. 47 CFR 64.1501 *et seq.* The Order and Notice of Proposed Rulemaking proposed new rules to correct abuses involving presubscribed information services and the use of 800 numbers and other toll free numbers to charge subscribers for information services. This document seeks comment to refresh the record regarding issues outlined in the Order and Notice of Proposed Rulemaking issued in 1996.

DATES: Comments are due on or before May 12, 2003 and reply comments are due on or before May 27, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. *See* Supplementary Information for filing instructions.

FOR FURTHER INFORMATION CONTACT: Calvin Osborne, Policy Division, Consumer & Governmental Affairs Bureau, (202) 418–2512.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice released March 17, 2003. On July 11, 1996, the Commission released an Order and Notice of Proposed Rulemaking, 61 FR 39107, July 26, 1996, which, among other things, amended the Commission's rules governing interstate pay-per-call and other information services to conform with the requirements of the Telecommunications Act of 1996 (1996 Act). Through amendments to section 228, the 1996 Act addressed abusive practices that threatened public confidence in toll-free numbers and left telephone subscribers vulnerable to unexpected charges for calls and information services. The rule amendments were designed to comply with this statutory mandate. 47 CFR 64.1501 *et seq.* The Order and Notice of Proposed Rulemaking proposed new rules to correct abuses involving presubscribed information services and the use of 800 numbers and other toll free numbers to charge subscribers for information services. In the Notice of Proposed Rulemaking, the Commission proposed limited modifications to the Commission's rules which contain our presubscription definition, toll-free number limitations, and billing requirements. Order and Notice of Proposed Rulemaking, 11 FCC Rcd at 14752–56, paras. 42–48. We also sought comment on whether additional regulations were necessary to protect consumers from certain practices by common carriers involved in transmitting interstate information services that could be interpreted as not being just and reasonable under section 201(b) of the Communications Act. We now seek comment to refresh the record regarding the issues outlined in the Notice of Proposed Rulemaking. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before May 12, 2003, and reply to comments on or before May 27, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties who choose to file comments by paper must file an original and four copies with the Commission's Secretary, Marlene H. Dortch, Office of the Secretary. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at *http://www.fcc.gov/e-file/ecfs.html*.

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–7319 Filed 3–26–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 68, No. 59
Thursday, March 27, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet on April 9, 2003, in Redding, Calif. The purpose of the meeting will be to discuss committee structure and process.

DATES: The meeting will be held on April 9, 2003, from 8 a.m. to noon.

ADDRESSES: The meeting will be held in the Shasta County Office of Education conference room, 1644 Magnolia Ave., Redding, CA.

FOR FURTHER INFORMATION CONTACT: Sharon Heywood, Designated Federal Official, USDA Shasta-Trinity National Forest, (530) 242–2200. E-mail *sheywood@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Discussion is limited to Forest Service staff and committee members. However, time will be provided for public input, giving individuals the opportunity to address the committee.

Dated: March 17, 2003.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 03–7303 Filed 3–26–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Modoc County RAC Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of Modoc County RAC meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Modoc National Forest's Modoc County Resource Advisory Committee will meet Monday, April 21 and Monday May 12, 2003, in Alturas, California for each business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting April 21, begins at 4 p.m., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of March 10 Minutes, consideration of new projects for funding in 2004, hear a status report on 2002 and 2003 projects, and discuss community outreach for projects for fiscal year 2004 that will improve the maintenance of existing infrastructure; implement stewardship objectives that enhance forest ecosystems, provide economic benefits and restore and improve health and water quality that meet the intent of Public Law 106–393. Time will also be set aside for public comments at the beginning of the meeting.

The business meeting May 12, begins at 4 p.m., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of April 21, 2003 Minutes, reports from subcommittees, and consideration of projects for recommendation to the County Board of Supervisors. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Forest Supervisor Stan Sylva, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Susan M. Wheatley,

Acting Forest Supervisor.

[FR Doc. 03–7318 Filed 3–26–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD FEBRUARY 22, 2003–MARCH 19, 2003

Firm name	Address	Date petition accepted	Product
SORB Technology, Inc	3631 SW 54th Street, Oklahoma City, OK 73119.	02/25/03	Medical parts and accessories for hemodialysis *i.e.*, cartridges, blood tubing sets and dialysates.
Turnkey Technologies, Inc	4650–A East Second Street, Benicia, CA 94510.	02/26/03	Part of measuring apparatus for checking voltage, current and resistance.
City Machine Tool & Die Co., Inc	1302 E. Washington Street, Muncie, IN 47307.	02/26/03	Fixtures for metalworking machine tools.
R. C. Tooling, Inc	1370A Pullman Drive, El Paso, TX 79936.	02/27/03	Tool and die fabrication molds.
Controls Components, Ltd	19722 E. Admiral Place, Catoosa, OK 74015.	03/03/03	Metal fabrication and parts of valves.
Hill Manufacturing, Inc	809 South 12th Street, Broker Arrow, OK 74012.	03/03/03	Oil and Gas field machinery and parts.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD FEBRUARY 22, 2003–MARCH 19, 2003—Continued

Firm name	Address	Date petition accepted	Product
Fiorini Ranch	15472 West Lombardy Avenue, Turlock, CA 95380.	03/03/03	Grapes, peaches and almonds.
Sunset Mold, LLC	727 Commercie Drive, Venice, FL 34292.	03/04/03	Injection molds for Drive rubber and plastic.
Security Locknut, Inc	9650 West Foster Avenue, Chicago, IL 60656.	03/06/03	Locking lugnut fasteners.
OMSAC, Inc dba Newstripe, Inc	1700 Jasper Street, Aurora, CO 80011.	03/07/03	Marking and stripping equipment (dispensers & sprayers), stencils, industrial compactors and parts and accessories and field maintenance equipment.
Paramount Machine Co., Inc	10824 Edison Court, Rancho Cucamonga, CA 91730.	03/07/03	Hydraulic parts for aircraft—landing gear, actuator flaps, and rear stabilizers.
Pentz Design Pattern & Foundry, Inc	14823 Main Street NE., Duvall, WA 98019.	03/08/03	Castings and molds for various industries—electronics, telecommunications, and automotive.
Ivan Kosbruk	7811 Kiana Circle, Anchorage, AK 99507.	03/13/03	Salmon.
W. G. Strohwig Tool & Die Company	3285 Industrial Road, Richfield, WI 53076.	03/19/03	Injection molds for plastics.
Woodbine Alaska Fish Co	P.O. Box 757, Rio Vista, CA 94571	03/19/03	Salmon.
Denman & Davis	1 Broad Street, Clifton, NJ 07015	03/19/03	Stainless steel and hot rolled carbon steel plates used in the dry cleaning and food industry.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

(The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.)

Dated: March 20, 2003.

Anthony J. Meyer,

Coordinator, Trade Adjustment ond Technicol Assistance.

[FR Doc. 03–7317 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549–813]

Canned Pineapple Fruit from Thailand: Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Marin Weaver at (202) 482–2336 or Monica Gallardo at (202) 482–3147, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On August 27, 2002, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on canned pineapple fruit from Thailand, covering the period July 1, 2001, through June 30, 2002 (67 FR 55000). On September 25, 2002, the Department published a correction to the initiation (67 FR 60210). The preliminary results are currently due no later than April 2, 2003.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit for the reasons stated in our memorandum from Charles Riggle, Program Manager, Office 5, to Gary Taverman, Acting Deputy Assistant Secretary for AD/CVD Enforcement II, which is on file in the Central Records Unit, Room B-099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than June 6, 2003. We intend to issue the final results no

later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 20, 2003.

Gary Taverman,

Acting Deputy Assistant Secretary for for AD/CVD Enforcement II.

[FR Doc. 03–7358 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–827]

Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Aantidumping Duty Changed Circumstances Review and Determination to Revoke Order in Part.

SUMMARY: On February 13, 2003, the Department of Commerce (the Department) published a notice of initiation and preliminary results of an antidumping duty changed circumstances review with the intent to revoke, in part, the antidumping duty order on certain cased pencils (pencils) from the People's Republic of China (PRC). *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China*, 68 FR 7344,7345 (February 13, 2003) (*Initiation and Preliminary Results*). We are now revoking this order, in part, with respect to pencils meeting the specifications described below, based on the fact that domestic parties have expressed no interest in the continuation of the order with respect to these particular pencils. The Department will instruct the U.S. Customs Service (Customs) to liquidate, without regard to antidumping duties, all unliquidated entries of pencils meeting the specifications described below. Further, the Department will instruct Customs to refund with interest any estimated antidumping duties collected with respect to unliquidated entries of pencils meeting the specifications described below entered, or withdrawn from warehouse, for consumption after November 30, 2000.[1] In addition, the Department will order the suspension of liquidation ended for the merchandise covered by this partial revocation, effective on the date of publication of this notice.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Michele Mire or Howard Smith, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4711 and 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 23, 2002, The Smencil Company (Smencil Co.) filed a request with the Department to revoke the antidumping duty order on certain cased pencils from the PRC with respect to the patented, scent-infused pencils produced in the PRC that it imports. *See* Smencil Co.'s letter to the Secretary, dated December 10, 2002 (*Smencil Co. Request Letter*).

Specifically, Smencil Co. requested that the Department revoke the antidumping duty order with respect to imports meeting the following description: scent-infused pencils manufactured in the PRC under U.S. patent number 6,217,242,[2] (Patent) that are made from rolled sheets of paper, namely rolled sheets of recycled newspaper, and infused with various scents so as to create scented pencils named Smencils. See Smencil Co. Request Letter at 1–2.

Smencil Co. attached to its request a letter dated December 10, 2002, from the petitioners in the pencils antidumping duty proceeding[3] stating that they are not interested in having the order on pencils from PRC apply to pencils manufactured in the PRC under U.S. patent number 6,217,242 that are made from rolled sheets of recycled newspaper that are infused with various scents, thereby creating products with odors distinct from those that may emanate from pencils made without the scent infusion. The petitioners indicated that the exclusion of the above-described pencils from the order should be narrowly drawn and not encompass pencils manufactured from recycled paper products without the scent infusion or with odors infused by means not covered by the Patent.

Subsequent to Smencil Co.'s request, the petitioners reconfirmed their position stated in their December 10, 2002, letter, as well as informed the Department that they account for more than 90 percent of the production of the domestic like product. See Memorandum to The File from Holly A. Kuga, Senior Office Director, "Telephone Discussion with Counsel for Petitioners," dated January 31, 2003, which is on file in Import Administration's Central Records Unit, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room B-099, Washington, DC 20230.

As noted above, on February 13, 2003, we published the *Initiation and Preliminary Results* and gave interested parties an opportunity to comment. We received no comments from interested parties.

New Scope Based on this Changed Circumstances Review

The products covered by this antidumping duty order are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning pencils meeting the specifications described above constitutes changed circumstances sufficient to warrant partial revocation of this order. Also, no party commented on the *Initiation and Preliminary Results*. Therefore, the Department is partially revoking the order on pencils from the PRC with regard to the pencils meeting the specifications described above, in accordance with sections 751(b), 751(d)(1), and 782(h)(2) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.222(g)(1)(2002).

In accordance with 19 CFR 351.222(g)(4), the Department will order the suspension of liquidation ended for pencils meeting the specifications described above, effective on the date of publication of this notice. The Department will further instruct Customs to refund with interest any estimated antidumping duties collected with respect to unliquidated entries of pencils meeting the specifications described above entered, or withdrawn from warehouse, for consumption after November 30, 2000, (*i.e.*, any entries after the last day of the period covering the last completed administrative review), in accordance with section 778 of the Act. In addition, the Department will instruct Customs to liquidate, without regard to antidumping duties, all unliquidated entries of pencils meeting the specifications described above.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751(b), 751(d)(1), and 782(h)(2) of the Act and sections 351.216(e) and 351.222(g) of the Department's regulations.

Dated: March 20, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–7359 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–DS–S

[1] We inadvertently identified the date as December 1, 2001, in the *Initiation and Preliminary Results*.

[2] Patent number 6,217,242 (April 17, 2001) describes the invention as a "scented writing implement (comprising) . . . a fragrant pencil and a method for making same." (*See Smencil Co. Request Letter* at Appendix 2.) The patent is owned by Evaco, Ltd., doing business as The Smencil Company (*See Smencil Co. Request Letter* at 1).

[3] The petitioners are the Pencil Section of the Writing Instrument Manufacturers Association (WIMA), a trade association comprised of domestic pencil producers, and Sanford Corporation, Dixon-Ticonderoga Corporation, Tennessee Pencil Company, Musgrave Pencil Company, Moon Products, Inc., and Aakron Rule, Inc.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Notice of Amended Final Results of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools From the People's Republic of China (Hammers/Sledges)

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative reviews.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Mark Manning at (202) 482–3936 or (202) 482–5253, respectively, AD/CVD Enforcement Office IV, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUMMARY: On February 13, 2003, the Department of Commerce (the Department) published the amended final results of administrative reviews of the antidumping duty orders on heavy forged hand tools from the People's Republic of China. The period of review is February 1, 2000, through January 31, 2001 (POR). The respondent Shandong Machinery Import & Export Corporation (SMC) submitted comments alleging a ministerial error. After reviewing the allegation, we have determined that the amended final did include a ministerial error, and have amended our calculations accordingly. The final weighted-average margin for SMC is *de minimis*.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 2002, the Department published the final results of review for the tenth review of the orders on heavy forged hand tools (HFHTs) from the People's Republic of China (PRC). *See Heavy Forged Hand Tools From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 67 FR 57789 (September 12, 2002) *(Final Results)*. On September 16, 2002, the petitioner Ames True Temper, and the respondents, SMC, Tianjin Machinery Import & Export Corporation (TMC), Liaoning Machinery Import & Export Corporation (LMC), and Shandong Huarong General Group Corporation (Huarong), timely filed allegations that the Department made several ministerial errors in its final results. On September 23, 2002, the petitioner and respondents filed rebuttal comments. On September 30, 2002, the respondents (*i.e.*, TMC, LMC, Huarong, and SMC) filed a summons and complaint with the U.S. Court of International Trade, which covered "heavy forged hand tools." On October 8, 2002, the respondents amended their complaint to underscore that they had filed ministerial error allegations pertaining to all four classes or kinds of merchandise. The respondents filed a second amended complaint on November 8, 2002, whereby SMC and LMC were removed as party-plaintiffs. The second amended complaint also removed TMC's claims with respect to bars/wedges. On February 13, 2003, we published the *Notice of Amended Final Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools From the People's Republic of China*, 68 FR 7347 (February 13, 2003) (Amended Final), addressing the clerical error allegations pertaining to TMC's and LMC's sales of bars and wedges, and SMC's sales of hammers and sledges. On February 27, 2003, SMC filed a clerical error allegation pertaining to the *Amended Final* for its sales of hammers and sledges.

Scope of Review

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes.

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following

Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the orders is dispositive.

Allegation of Ministerial Errors

In its February 27, 2003, submission, SMC alleged that the Department's calculation of its dumping margin under the order on hammers/sledges contained a ministerial error. Specifically, SMC alleged that the Department used a total weight in pounds instead of kilograms when it amended SMC's marine insurance and ocean freight. *See* Memorandum from Bernard T. Carreau, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary, "Tenth Antidumping Duty Review of Heavy Forged Hand Tools from the People's Republic of China—Amended Final Determination," dated February 6, 2003, at Comments 10 and 11.

A ministerial error is defined under 19 CFR 351.224(f) as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial." According to 19 CFR 351.224(e), "the Secretary will analyze any comments received and, if appropriate . . . correct any significant ministerial error by amending the final determination or the final results of review * * *"

After reviewing SMC's allegation, we have determined, in accordance with 19 CFR 351.224(e), that the *Amended Final* did include a ministerial error regarding our calculation of the net U.S. price of SMC's hammer sales. Specifically, in calculating the marine insurance and ocean freight charges, the Department, consistent with our intended methodology, multiplied the surrogate values for these expenses, in dollars per kilogram, by the weight of a hammer in order to convert the surrogate value into a dollars per hammer value. This per-unit cost must be subtracted from the gross unit price to calculate the U.S. price per unit. However, the Department incorrectly used the weight of each hammer being sold in pounds rather than in kilograms. To correct the error, the Department calculated the weight in kilograms per hammer sold and used this weight in our calculation of the marine insurance and ocean freight charges.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the *Amended Final* to reflect the correction of the ministerial error made in the calculation of net U.S. price for SMC. SMC's revised weighted-average dumping margin is listed in the "Amended Final Results" section, below.

Amended Final Results

We are amending the amended final results of the antidumping duty reviews of HFHTs from the PRC (hammers/sledges) to reflect the correction of the above-cited ministerial error. The revised weighted-average dumping margin is as follows:

Manufacturer/exporter	Time period	Margin (percent)
Shandong Machinery Import & Export Corporation: Hammers/Sledges	2/1/00–1/31/01	0.05 (*de minimis*)

[1] *De minimis.*

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates. Where the importer-specific assessment rate is above *de minimis*, we will instruct the Customs Service to assess antidumping duties on that importer's entries of subject merchandise. Since the entered value of the merchandise was not reported to us, we have divided, where applicable, the total dumping margins (calculated as the difference between NV and EP) for each importer by the total number of units sold to the importer. We will direct Customs to assess the resulting unit dollar amount against each unit of subject merchandise entered by the importer during the POR. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these amended final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of amended final results of administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent, and therefore, *de minimis*, the Department shall require a zero deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies with a separate rate not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates; (4) for all non-PRC exporters of the subject merchandise, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. The current PRC-wide cash deposit rates are 18.72 percent for Axes/Adzes, 47.88 percent for Bars/Wedges, 27.71 percent for Hammers/Sledges and 98.77 percent for Picks/Mattocks. These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: March 21, 2003.

Joseph A. Spetrini,

Assistant Secretary for Import Administration.

[FR Doc. 03–7361 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Extension of Preliminary Results of 2001/2002 Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Alicia Kinsey at (202) 482–4793, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230.

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results of a review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On August 27, 2002, the Department published a notice of initiation of the administrative reviews of the antidumping duty orders on certain pasta from Italy, covering the period July 1, 2001, to June 30, 2002 (67 FR 55002). The preliminary results are currently due no later than April 2, 2003.

Extension of Preliminary Results of Reviews

We determine that it is not practicable to complete the preliminary results of these reviews within the original time limits. Therefore, we are extending the time limits for completion of the preliminary results until no later than July 31, 2003. *See* Extension of Time Limits for the Preliminary Results Memorandum from Melissa Skinner, Director of Office VI, to Gary S. Taverman, Acting Deputy Assistant Secretary, dated March 20, 2003, which is on file in the Central Records Unit, B–099 of the main Commerce Building. We intend to issue the final results no later than 120 days after the publication of the notice of preliminary results of these reviews.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 20, 2003.

Gary S. Taverman,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 03–7362 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid From the People's Republic of China: Notice of Preliminary Results of Changed Circumstances Review and Preliminary Intent Not To Revoke the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Gregory E. Kalbaugh at (202) 482–0629 or (202) 482–3693, respectively, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUMMARY: On January 10, 2003, in response to a request by Moreflex, Inc., a U.S. importer of subject merchandise and an interested party in this proceeding, the Department of Commerce initiated a changed circumstances review to consider revocation of the antidumping duty order on sebacic acid from the People's Republic of China.

We preliminarily determine that there is no reasonable basis to believe that changed circumstances sufficient to warrant revocation exist because interested parties have expressed interest in maintaining the antidumping duty order, and there are no grounds for assuming that revocation of the order is supported by "substantially all" of the domestic producers of the like product. Consequently, we preliminarily do not intend to revoke the order on sebacic acid from the People's Republic of China. Interested parties are invited to comment on these preliminary results.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1994, the Department published in the **Federal Register** the antidumping duty order on sebacic acid from the People's Republic of China (PRC). *See Antidumping Duty Order: Sebacic Acid From the People's Republic of China*, 59 FR 35909 (July 14, 1994). On November 26, 2002, Morflex, Inc. (Morflex), a U.S. importer of subject merchandise and an interested party in this proceeding, requested that the Department revoke the antidumping duty order on sebacic acid from the PRC through a changed circumstances review. According to Morflex, Arizona Chemical Corporation (ACC), a domestic producer of sebacic acid, intended to cease production of sebacic acid in the United States at the end of November 2002. ACC asserts that it is the successor-in-interest to the original petitioner in this proceeding, Union Camp Corporation. In addition, on September 25, 2002, prior to Morflex's request, ACC notified the Department that it intended to cease production of sebacic acid no later than December 31, 2002.

Based on the information submitted by Morflex and ACC, the Department determined that there was sufficient evidence of changed circumstances to warrant a review under section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.222(g) and 351.216, and consequently, we initiated a changed circumstances review on January 10, 2003. *See Sebacic Acid from the People's Republic of China: Notice of Initiation of Changed Circumstances Review and Consideration of Revocation of the Antidumping Duty Order*, 68 FR 2315–01 (January 16, 2003) (*Initiation Notice*). In the *Initiation Notice*, we stated that the Department would consider whether there is interest in

continuing the order on the part of the U.S. industry, and we invited comments from interested parties. We also stated that the Department would publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i), prior to the issuance of the final results.

Since the Department's notice of initiation of this review, the following events have occurred. On January 13, 2003, the Department issued questionnaires to ACC and an additional U.S. producer of sebacic acid, CasChem Inc. (CasChem), seeking to determine whether producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the order.

On January 26, 2003, we received a submission from SST Materials, Inc., doing business as Genesis Chemicals, Inc. (Genesis), a domestic manufacturer and distributor of sebacic acid, which indicated that Genesis opposes revocation of the antidumping duty order. On January 28, 2003, the Department issued a follow-up questionnaire to Genesis.

On January 31, 2003, ACC submitted a response to the Department's questionnaire, in which it indicated that its production of sebacic acid ceased on December 19, 2002. However, ACC noted that it opposes the revocation of the antidumping duty order since it has facilities, employees, and resources in place for the purpose of selling its remaining inventory of sebacic acid.

On February 5, 2003, the Department received comments opposing the revocation of the antidumping duty order from both Genesis and ICC Chemical Corporation (ICC), a U.S. importer of sebacic acid from the PRC.

On February 11, 2003, we received additional information from Genesis in which Genesis indicated that it began domestic production of sebacic acid late in 2002, and currently accounts for all new domestic sebacic acid production. CasChem did not respond to the Department's questionnaire.[1]

Scope of the Review

The products covered by this review are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH2)_8(COOH)_2$, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the *HTSUS* subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis

Pursuant to section 751(d) of the Act, the Department may revoke an antidumping duty order based on a review under section 751(b) of the Act. Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order, in whole or in part, based on changed circumstances if "(p)roducers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) * * * have expressed a lack of interest in the order, in whole or in part * * *" In this context, the Department has interpreted "substantially all" production normally to mean at least 85 percent of domestic production of the like product (*see Oil Country Tubular Goods From Mexico: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 14213, 14214 (March 24, 1999)).

In order to determine whether "substantially all" of the domestic producers supported revocation of the order with respect to the merchandise in question, we solicited comments from all known domestic producers of sebacic acid. *See Initiation Notice.* As noted above, we received objections from ACC and Genesis.[2] We note that because ACC and CasChem no longer produce sebacic acid, they are no longer considered "interested parties" pursuant to section 771(9)(C) of the Act. Nonetheless, Moreflex's submission contains no evidence indicating that at least 85 percent of the domestic industry of the like product has no interest in the continuance of the order with respect to the merchandise in question. Given that Genesis objects to the revocation of the antidumping duty order, and has indicated that it comprises the universe of domestic sebacic acid producers, we have preliminarily determined that there are no grounds for concluding that at least 85 percent of the domestic industry has expressed a lack of interest in maintaining the order.

Notice of Intent Not To Revoke the Antidumping Duty Order

Under the definition of "substantially all," as indicated above, there are no grounds for assuming that revocation of the order is supported by "substantially all" of the domestic producers of the like product. As a result, we preliminarily determine that changed circumstances sufficient to warrant revocation of the antidumping duty order on sebacic acid from the PRC do not exist. The current requirements for the cash deposit of estimated antidumping duties on the subject merchandise will remain in effect until the publication of the final results of this review. Parties wishing to comment on these results must submit briefs to the Department within 30 days after the publication of this notice in the **Federal Register**. Parties will have five days subsequent to this due date to submit rebuttal briefs. Parties who submit comments or rebuttal briefs in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument (no longer than five pages, including footnotes). Any requests for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. In accordance with 19 CFR 351.216(e), the Department will issue its final results of review within 270 days after the date on which the changed circumstances review was initiated (*i.e.*, no later than October 7, 2003).

This notice is published in accordance with sections 751(b)(1) and (d) and 777(i) of the Act, and with 19 CFR 351.221(c)(3).

[1] ACC, ICC, and Genesis each placed on the record an article from the trade journal "Chemical Market Reporter," dated January 20, 2003, which indicated that: (1) ACC and CasChem had been the only domestic producers of sebacic acid but both ceased domestic production of sebacic acid in December 2002; (2) Genesis began producing sebacic acid in December 2002; and (3) Genesis, as of January 2003, was the sole domestic producer of sebacic acid.

[2] While we did receive objections from ICC, pursuant to 782(h)(2) of the Act, only objections from producers of domestic like product are considered when the Department makes a determination of whether there is interest in maintaining the order.

Dated: March 20, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–7363 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Initiation of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 27, 2003.

ACTION: Notice of initiation of changed circumstances review.

SUMMARY: In accordance with 19 CFR 351.216(b) (2002), Monterra Lumber Mills Limited (Monterra), a Canadian producer of softwood lumber products and an interested party in this proceeding, filed a request for a changed circumstances review of the antidumping duty order on certain softwood lumber products from Canada, as described below. In response to this request, the Department of Commerce (the Department) is initiating a changed circumstances review of the antidumping order on certain softwood lumber from Canada.

FOR FURTHER INFORMATION CONTACT: Keith Nickerson or Constance Handley, at (202) 482–3813 or (202) 482–0631, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: As a result of the antidumping duty order issued following the completion of the less-than-fair-value investigation of certain softwood lumber products from Canada, imports of softwood lumber from Monterra, a subsidiary of respondent company Weyerhauser Company Limited (Weyerhauser), became subject to a cash deposit rate of 12.39 percent (*see* Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Order: Certain Softwood Lumber Products from Canada 67 FR 36068 (May 22, 2002)). On February 4, 2003, Monterra notified the Department that effective December 23, 2002, Weyerhauser sold its interest in Monterra to 1554545 Ontario, Inc., a wholly owned subsidiary of Tercamm Corp., a privately owned Canadian investment company. As a result, Monterra is requesting that, effective December 23, 2002, it be subject to the "All Others" cash deposit rate of 8.43 percent, rather than Weyerhauser's 12.39 percent rate.

Scope of the Order

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and U.S. customs purposes, the written description of the merchandise under investigation is dispositive. Preliminary scope exclusions and clarifications were published in three separate **Federal Register** notices.

Softwood lumber products excluded from the scope:

- Trusses and truss kits, properly classified under HTSUS 4418,90
- I-joist beams
- Assembled box spring frames
- Pallets and pallet kits, properly classified under HTSUS 4415.20
- Garage doors.
- Edge-glued wood, properly classified under HTSUS item 4421.90.98.40
- Properly classified complete door frames.
- Properly classified complete window frames.
- Properly classified furniture.

Softwood lumber products excluded from the scope only if they meet certain requirements:

- *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.
- *Box-spring frame kits:* if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.
- *Radius-cut box-spring-frame components*, not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.
- *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1″ or less in actual thickness, up to 8″ wide, 6′ or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.
- *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: (1) The processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and (2) if the importer establishes to Customs' satisfaction that the lumber is of U.S. origin.[1]

[1] As clarified in the Memorandum from Dave Layton, Case Analyst, through Charles Riggle, Program Manager, and Gary Taverman, Office Director, to Bernard Carreau, Deputy Assistant Secretary, concerning the Certain Softweed Lumber from Canada Scope re: Final Scope Ruling in Response to Request by the Coalition for Fair

Continued

• *Softwood lumber products contained in single family home packages or kits,*[2] regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:

1. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

2. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, *subfloor, sheathing, beams, posts,* connectors and if included in purchase contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

3. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

4. The whole package must be imported under a single consolidated entry when permitted by the U.S. customs service, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;

5. The following documentation must be included with the entry documents:

• A copy of the appropriate home design, plan, or blueprint matching the entry;

• A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

• A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

• In the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of this order provided the specified conditions are met. Lumber products that Customs may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. Monterra contends that, because it is no longer owned by Weyerhauser, it should be subject to the "All Others" cash deposit rate. In accordance with 19 CFR 351.216 (c), due to the change in ownership, the Department finds good cause to initiate a changed circumstances review despite the final determination being in existence for fewer than 24 months. Therefore, we are initiating a changed circumstances administrative review pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(c) to determine whether entries naming Monterra as manufacturer and exporter should receive the "All Others" cash deposit rate of 8.43 percent.

With regard to Monterra's request to have the cash deposit rate of 8.43 percent made effective as of December 23, 2002, because cash deposits are only estimates of the amount of antidumping duties that will be due, changes in cash deposit rates are not made retroactive. If Monterra believes that the deposits paid exceed the actual amount of dumping, it is entitled to request an administrative review during the anniversary month of the publication of the order of those entries to determine the proper assessment rate and receive a refund of any excess deposits. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews, 64 FR 66880 (November 30, 1999).

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances antidumping duty administrative review in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the Department's preliminary factual and legal conclusions. The Department will issue its final results of review in accordance with the time limits set forth in 19 CFR 351.216(e).

This notice is in accordance with section 751(b)(1) of the Act.

Dated: March 21, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–7360 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427–814]

Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Cheryl Werner, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–2667.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from France. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 67 FR 44172 (July 1, 2002). On July 31, 2002, Ugine S.A., a French producer of subject merchandise, and petitioners[1] requested the Department conduct an administrative review. On August 27, 2002, the Department published a notice of initiation of an administrative review of the antidumping duty order on subject merchandise, for the period July 1, 2001, through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 67 FR 55000 (August 27, 2002). The preliminary results of this administrative review are currently due no later than April 2, 2003.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the date on which the review was initiated. Due to the complexity of issues present in this administrative review, such as home market affiliated downstream sales, and complicated cost accounting issues, the Department has determined that it is not practicable to complete this review within the original time period provided in section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations.

Therefore, we are extending the due date for the preliminary results by 120 days, until no later than July 31, 2003. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: March 20, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–7357 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022003E]

Endangered Species; File No. 1353

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Steve W. Ross, Ph.D., North Carolina National Estuarine Research Reserve, MCS 5600 Marvin Moss Lane, Wilmington, North Carolina 28409, has been issued a permit to take shortnose sturgeon, Acipenser brevirosturm, for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Gene Nitta, (301)713–2289.

SUPPLEMENTARY INFORMATION: On November 30, 2001, notice was published in the **Federal Register** (66 FR 59780) that a request for a scientific research permit to take shortnose sturgeon had been submitted by Dr. Steve W. Ross. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Due to habitat loss and overfishing, the North Carolina population of shortnose sturgeon are in danger of extinction. This research will sample and track the shortnose sturgeon in North Carolina river systems. Thirty fish annually will be collected by gillnetting, trawling, and electroshocking. The fish will then be measured, tagged with a Peterson tag, and released. A subset of these fish will also receive an internal ultrasonic transmitter.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 21, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–7367 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031903F]

Vessel Monitoring Systems; List of Approved Mobile Transmitting Units and Communications Service Providers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of vessel monitoring systems; approval; correction.

SUMMARY: This document provides a correction to the fax number indicated in a notice published March 11, 2003, regarding vessel monitoring systems (VMS) approved for pelagic longline vessels in the Atlantic Highly Migratory Species fisheries.

DATES: Effective March 27, 2003.

FOR FURTHER INFORMATION CONTACT: For current listing of approved units contact Mark Oswell, Outreach Specialist, phone 301–427–2300, fax 301–427–2055. For questions regarding VMS installation, activation checklists, and status of evaluations, contact Jonathan Pinkerton, National VMS Program Manager, phone 301–427–2300, fax 301–427–2055. For questions regarding the checklist, contact Fred Kyle, Special Agent, NMFS Office for Law Enforcement, Southeast Division, phone 727–570–5344.

The public may acquire this notice, installation checklist, and relevant updates via the "fax-back" service, or at the OLE website *http://www.nmfs.noaa.gov/ole/vms.html.* Telephone requests can be made by calling 301–427–2300.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** issue of March 11, 2003, on page 11534, in the second column, in the **ADDRESSES** section, in the second paragraph, "fax 727–570–5375" is corrected to read "fax 727–570–5575."

Authority: 16 U.S.C. 1801, *et seq.*

Lumber Imports Executive Committee regarding U.S.-origin Lumber Undergoing Additional Processing, dated January 22, 2003.

[2] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

[1] The petitioners in this case are Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union and Zanesville Armco Independent Organization.

Dated: March 21, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–7365 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary is proposing to alter an existing system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The alteration adds a new use for the locator directories, *i.e.*, to notify former and current students of various events that may be of professional interest.

DATES: The changes will be effective on April 28, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on March 11, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME:

Defense Acquisition University Student Files (November 20, 2001, 66 FR 58127).

CHANGE:

* * * * *

PURPOSE(S):

After 'purposes of administration;" add 'locator directories may also be used to notify current and former students of various events that may be of professional interest;'

* * * * *

DSMC 02

SYSTEM NAME:

Defense Acquisition University Student Files.

SYSTEM LOCATION:

Office of the Registrar, Defense Acquisition University, 9820 Belvoir Road, Ft. Belvoir, VA 22060–5565.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current, former, and nominated students of the Defense Acquisition University (DAU).

CATEGORIES OF RECORDS IN THE SYSTEM:

Data includes name, dependent data, Social Security Number, career brief application form, security clearance, college transcripts, correspondence, DAU grades, instructor and advisor evaluations, education reports, official orders, current address, and individual's photograph and other personal and experience historical data on past and present students.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; DoD Directive 5000.57, Defense Acquisition University; and E.O. 9397 (SSN).

PURPOSE(S):

This data is used by college officials to provide for the administration of and a record of academic performance of current, former, and nominated students; to verify attendance and grades; to select instructors; to make decisions to admit students to programs and to release students from programs; to serve as a basis for studies to determine improved criteria for selecting students; to develop statistics relating to duty assignments and qualifications. This data is used by the Registrar in preparing locator directories of current and former students which are disseminated to students, former students and other appropriate individuals and agencies for purposes of administration; locator directories may also be used to notify current and former students of various events that may be of professional interest; by college officials in preparing student biographical booklets, student rosters, and press releases of student graduations and to evaluate quality content of various courses. This data may be transferred to any agency of the Department of Defense having an official requirement for the information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders and computerized databases.

RETRIEVABILITY:

Filed records are sequenced alphabetically by last name, by class, and course. Locator cards are filed alphabetically in two categories, active students (by course) and former students. Computer databases are accessed by name and Social Security Number.

SAFEGUARDS:

Records are maintained in locked cabinets, in an area accessible only to authorized personnel. Building is locked during non-business hours. Only individuals designated as having a need for access to files by the system manager are authorized access to information in the files. Computer records are protected by individual passwords and the system is a security-accredited web based network.

RETENTION AND DISPOSAL:

Records are Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, Defense Acquisition University, ATTN: 9820 Belvoir Road, Ft. Belvoir, VA 22060–5565.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Registrar, Defense Acquisition University, ATTN: HQ–AS–REG, 9820 Belvoir Road, Ft. Belvoir, VA 22060–5565.

Written requests for information should contain full name, Social Security Number, current address and telephone number, and course and class of individual, and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Registrar, Defense Acquisition University, ATTN: HQ–AS–REG, 9820 Belvoir Road, Ft. Belvoir, VA 22060–5565.

Written requests for information should contain full name, Social Security Number, current address and telephone number, and course and class of individual, and must be signed.

For personal visits, the individual must provide acceptable identification, such as an ID card or driver's license.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided by the individual, supervisors, employers, instructors, advisors, examinations, and official military records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–7104 Filed 3–26–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Air Force is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 28, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AETC M

SYSTEM NAME:

Air University Academic Records (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Graduates and students currently or previously enrolled in Air Force Institute of Technology (AFIT), Air University (AU) schools or Air Force Institute of Advanced Distributed Learning (formerly, ECI)."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36–2201, Air Force Training Program; Air Force Instruction 36–2301, Professional Military Education; and E.O. 9397 (SSN)."

* * * * *

STORAGE:

Replace "microform and on computer at Extension Course Institute" with "in file folders, microform, and on computer at Maxwell Air Force Base."

RETENTION AND DISPOSAL:

Replace "ECI" with "Maxwell".

* * * * *

F036 AETC M

SYSTEM NAME:

Air University Academic Records.

SYSTEM LOCATION:

Air University, Maxwell Air Force Base, AL 36112–6337.

Air Force Institute of Technology/RR, Wright-Patterson Air Force Base, OH 45433–7765.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Graduates and students currently or previously enrolled in Air Force Institute of Technology (AFIT), Air University (AU) schools or Air Force Institute of Advanced Distributed Learning (formerly, ECI).

CATEGORIES OF RECORDS IN THE SYSTEM:

Education records which include transcripts; test scores; completion/noncompletion status; training reports; rating of distinguished, outstanding or excellent graduate as appropriate; and other documents associated with academic records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36–2201, Air Force Training Program; Air Force Instruction 36–2301, Professional Military Education; and E.O. 9397 (SSN).

PURPOSE(S):

Individuals seeking academic or certification credit for courses completed may request applicable Registrar to send a record of courses completed to school or activity desired.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Maintained in file folders at Air Force Institute of Technology, and in file folders, microform, and on computer at Maxwell Air Force Base.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties and who are properly screened and cleared for need-to-know. Records are stored in vaults and locked cabinets or rooms and are controlled by personnel screening.

RETENTION AND DISPOSAL:

Retained for 30 years or until no longer required at Maxwell, and master transcripts of resident schools are kept 50 years at AFIT.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, Air Force Institute of Technology, Wright-Patterson Air Force Base, OH 45433–7765; and Air University Registrar, Maxwell Air Force Base, AL 36112–6337.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Registrar, Air Force Institute of Technology, Wright-Patterson Air Force Base, OH 45433–7765; Air University Registrar, Maxwell Air Force Base, AL 36112–6337.

Include full name, Social Security Number and class designation. Individuals may visit Office of the Registrar. Identification is required.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Registrar, Air Force Institute of Technology, Wright-Patterson Air Force Base, OH 45433–7765; Air University Registrar, Maxwell AFB AL 36112–6337.

Include full name, Social Security Number and class designation. Individuals may visit Office of the Registrar. Identification is required.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from educational institutions, source documents such as reports, testing agencies, student, and on-the-job training officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 AETC V

SYSTEM NAME:

Potential Faculty Rating System (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force and Air Force Instruction 36–2301, Professional Military Education.'

STORAGE:

Delete entry and replace with 'Maintained on computers and computer output products.'

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and are secured using password control. The system is protected by the base firewall and database access security.'

RETENTION AND DISPOSAL:

Delete from entry 'tearing into pieces, shredding, pulping, macerating, or burning' and add 'deleting from database.'

* * * * *

F036 AETC V

SYSTEM NAME:

Potential Faculty Rating System.

SYSTEM LOCATION:

Squadron Officer School, 125 Chennault Circle, Maxwell Air Force Base, AL 36112–6430.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former Squadron Officer School students being considered for faculty duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual rating of students.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and Air Force Instruction 36–2301, Professional Military Education.

PURPOSE(S):

Used to evaluate individuals for potential assignment as faculty members.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Maintained on computers and computer output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and are secured using password control. The system is protected by the base firewall and database access security.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by deleting from database.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Student Operations, Squadron Officer School, 125 Chennault Circle, Maxwell Air Force Base, AL 36112–6430.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Director of Student Operations, Squadron Officer School, 125 Chennault Circle, Maxwell Air Force Base, AL 36112–6430.

Requests should include the individual's name and Social Security Number. Individuals may visit office of the system manager and present Military ID Card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Director of Student Operations, Squadron Officer School, 125 Chennault Circle, Maxwell Air Force Base, AL 36112–6430.

Requests should include the individual's name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–7102 Filed 3–26–03; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete and amend systems of records.

SUMMARY: The Department of the Air Force is deleting three systems of records notices from its existing inventory of record systems and amending one notice subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: These proposed actions will be effective without further notice on April 28, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions

F036 AFAA B

SYSTEM NAME:

Air Force Audit Agency Office Training File (June 11, 1997, 62 FR 31793).

Reason: These records are covered under the Inspector General, DoD Privacy Act system of records notice CIG 20, entitled 'Defense Audit Management Information System (DAMIS)' published on November 29, 2002, 67 FR 71151. Therefore, this system of records notice is being deleted.

F036 AFAA C

SYSTEM NAME:

Employee Training and Career Development File (July 19, 1999, 64 FR 38657).

Reason: These records are covered under the Inspector General, DoD Privacy Act system of records notice CIG 20, entitled 'Defense Audit Management Information System (DAMIS)' published on November 29, 2002, 67 FR 71151. Therefore, this system of records notice is being deleted.

F065 AFAA A

SYSTEM NAME:

Air Force Audit Agency Management Information System—Report File (June 11, 1997, 62 FR 31793).

Reason: These records are covered under the Inspector General, DoD Privacy Act system of records notice CIG 20, entitled 'Defense Audit Management Information System (DAMIS)' published on November 29, 2002, 67 FR 71151. Therefore, this system of records notice is being deleted.

Amendment

F090 AF IG B

SYSTEM NAME:

Inspector General Records (January 11, 2002, 67 FR 1444).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Delete from entry 'on matters related to the Department of the Air Force'.

PURPOSE(S):

Delete from entry 'involving matters concerning the Department of the Air Force and in some instances the Department of Defense'.

* * * * *

STORAGE:

Delete 'Automated Complaints Tracking System (ACTS) database' and add 'electronic media'.

* * * * *

SAFEGUARDS:

Delete 'the ACTS database' and add 'electronic media'.

* * * * *

F090 AF IG B

SYSTEM NAME:

Inspector General Records.

SYSTEM LOCATION:

Office of the Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140. Records are also located at the headquarters of major commands, headquarters of combatant commands for which Air Force is Executive Agent, and at all levels down to and including Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All those who have registered a complaint, allegation or query with the Inspector General or Base Inspector. All individuals who are or have been subjects of reviews, inquiries, or investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters/transcriptions of complaints, allegations and queries; letters of appointment; reports of reviews, inquiries and investigations with supporting attachments, exhibits and photographs; record of interviews; witness statements; reports of legal review of case files, congressional responses; memoranda; letters and reports of findings and actions taken; letters to complainants and subjects of investigations; letters of rebuttal from subjects of investigations; finance; personnel; administration; adverse information, and technical reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by, 10 U.S.C. 8020, Inspector General, and E.O. 9397 (SSN).

PURPOSE(S):

Used to insure just, thorough, and timely resolution and response to

complaints, allegations or queries, and a means of improving morale, welfare, and efficiency of organizations, units, and personnel by providing an outlet for redress. Used by the Inspector General and Base Inspectors in the resolution of complaints and allegations and responding to queries. Used in connection with the recommendation/selection/removal or retirement of officers eligible for promotion to or serving in, general officer ranks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on electronic media.

RETRIEVABILITY:

Retrieved by Complainant's name, subject of investigation's name and case number.

SAFEGUARDS:

Records are accessed by custodian of the system of records and by person(s) responsible for maintaining the system of records in the performance of their official duties. These personnel are properly screened and cleared for need-to-know. Records are stored in a locked room protected by cipher lock. Information maintained on electronic media is protected by computer system software and password.

RETENTION AND DISPOSAL:

Retained in office files for two years after year in which case is closed. For senior official case files, retained in office files until two years after the year in which case is closed, or two years after the senior official retires, whichever is later. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

The Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to or visit the Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140 or IG offices at installations.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140 or IG offices at installations.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Complainants, inspectors, members of Congress, witnesses, and subjects of investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws.

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source.

Note: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 03–7106 Filed 3–26–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending four systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The amendments are required to alert the users of these systems of records of the additional requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as implemented by DoD 6025.18–R, DoD Health Information Privacy Regulation. Language being added under the "Routine Use" category is as follows:

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

DATES: This proposed action will be effective without further notice on April 28, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Act Office, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137/DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0040–57a DASG

SYSTEM NAME:

Armed Forces Repository of Specimen Samples for the Identification of Remains (March 2, 1998, 63 FR 10205).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry "**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0040–57a DASG

SYSTEM NAME:

Armed Forces Repository of Specimen Samples for the Identification of Remains.

SYSTEM LOCATION:

Armed Forces Repository of Specimen Samples for the Identification of Remains, Armed Forces Institute of Pathology, 16050 Industrial Drive, Gaithersburg, MD 20877–1414.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense military personnel (Active and reserve).

Civilian family members of Department of Defense military personnel (Active and reserve) who voluntarily provide specimens for DNA typing for purpose of identifying the human remains of family members.

DoD civilian and contractor personnel deploying with the armed forces.

Other individuals may also be included in this system when the Armed Forces Institute of Pathology (AFIP) is requested by Federal, state, local and foreign authorities to identify human remains.

CATEGORIES OF RECORDS IN THE SYSTEM:

Specimen collections from which a DNA typing can be obtained (oral swabs, blood and blood stains, bone, and tissue), and the DNA typing results. Accession number, specimen locator information, collection date, place of collection, individual's name, Social Security Number, right index fingerprint, signature, branch of service, sex, race and ethnic origin, address, place and date of birth, and relevant kindred information, past and present.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 131; 10 U.S.C. 3013, Secretary of Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; E.O. 9397 (SSN); Deputy Secretary of Defense memorandum dated December 16, 1991; and Assistant Secretary of Defense (Health Affairs) memoranda dated January 5, 1993, March 9, 1994, April 2, 1996, and October 11, 1996.

PURPOSE(S):

Information in this system of records will be used for the identification of human remains. The data collected and stored will not be analyzed until needed for the identification of human remains.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, local and foreign authorities when the Armed Forces Institute of Pathology (AFIP) is requested to identify human remains.

TO A PROPER AUTHORITY, AS COMPELLED BY OTHER APPLICABLE LAW, IN A CASE IN WHICH ALL OF THE FOLLOWING CONDITIONS ARE PRESENT:

(1) The responsible DoD official has received a proper judicial order or judicial authorization;

(2) The specimen sample is needed for the investigation or prosecution of a crime punishable by one year or more of confinement;

(3) No reasonable alternative means for obtaining a specimen for DNA profile analysis is available; and

(4) The use is approved by the Assistant Secretary of Defense for Heath Affairs.

The DoD 'Blanket Routine Uses' do not apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually and electronically.

RETRIEVABILITY:

By individual's surname, sponsor's Social Security Number, date of birth, and specimen reference or AFIP accession number.

SAFEGUARDS:

Access to the Armed Forces Institute of Pathology is controlled. Computerized records are maintained in controlled areas accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. All personnel whose duties require access to, or processing and maintenance of personnel information are trained in the proper safeguarding and use of the information. Any DNA typing information obtained will be handled as confidential medical information.

RETENTION AND DISPOSAL:

Records are maintained 50 years and then destroyed by shredding or incineration.

Statistical data used for research and educational projects are destroyed after end of project.

Military personnel, their civilian family members, or others may request early destruction of their individual remains identification specimen samples following the conclusion of the donor's complete military service or other applicable relationship to DoD. For this purpose, complete military service is not limited to active duty service; it includes all service as a member of the Selected Reserves, Individual Ready Reserve, Standby Reserve or Retired Reserve.

In the case of DoD civilians and contractor personnel, early destruction is allowed when the donor is no longer deployed by DoD in a geographic area which requires the maintenance of such

samples. Upon receipt of such requests, the samples will be destroyed within 180 days, and notification of the destruction sent to the donor.

Requests for early destruction may be sent to the Repository Administrator, Armed Forces Repository of Specimen Samples for the Identification of Remains, Armed Forces Institute of Pathology, Washington, DC 20306–6000.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Administrator, Repository and Research Services, ATTN: Armed Forces Repository of Specimen Samples for the Identification of Remains, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Washington, DC 20306–6000.

Requesting individual must submit full name, Social Security Number and date of birth of military member and branch of military service, if applicable, or accession/reference number assigned by the Armed Forces Institute of Pathology, if known. For requests made in person, identification such as military ID card or valid driver's license is required.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves or deceased family members contained in this system should address written inquiries to the Administrator, Repository and Research Services, ATTN: Armed Forces Repository of Specimen Samples for the Identification of Remains, Armed Forces Institute of Pathology, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Washington, DC 20306–6000.

Requesting individual must submit full name, Social Security Number and date of birth of military member and branch of military service, if applicable, or accession/reference number assigned by the Armed Forces Institute of Pathology, if known.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, family member, diagnostic test, other available administrative or medical records obtained from civilian or military sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–66a DASG

SYSTEM NAME:

Medical Staff Credentials File (August 7, 1997, 62 FR 24532).

CHANGES:

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Add a new paragraph to the end of the entry "**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0040–66a DASG

SYSTEM NAME:

Medical Staff Credentials File.

SYSTEM LOCATION:

Medical treatment facilities at Army commands, installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals performing clinical practice in medical treatment facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting delineation of clinical privileges and clinical performance and medical malpractice case files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. Chapter 55, Medical and Dental Care; Army Regulation 40–66, Medical Record Administration and Health Care Documentation; and E.O. 9397 (SSN).

PURPOSE(S):

To determine and assess capability of practitioner's clinical practice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

In specific instances, clinical privileged information from this system of records may be provided to civilian and military medical facilities, Federation of State Medical Boards of the United States, State Licensure Authorities and other appropriate professional regulating bodies for use in assuring high quality health care.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

PAPER RECORDS IN FILE FOLDERS.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to the medical treatment facility commander and credentials committee members.

RETENTION AND DISPOSAL:

Records are retained in medical treatment facility of individual's last assignment. Records of military members are transferred to individual's Military Personnel Records Jacket upon separation or retirement. Records on civilian personnel are destroyed 5 years after employment terminates.

Medical malpractice case files are destroyed after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commander of the medical treatment where practitioner provided clinical service. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, the individual should provide the full name, Social Security Number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander of the medical treatment where practitioner provided clinical service. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, the individual should provide the full name, Social Security Number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Interviewer, individual's application, medical audit results, other administrative or investigative records obtained from civilian or military sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–400 DASG

SYSTEM NAME:

Entrance Medical Examination Files (March 29, 2000, 65 FR 16568).

CHANGES:

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Add a new paragraph to the end of the entry "Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0040–400 DASG

SYSTEM NAME:

Entrance Medical Examination Files.

SYSTEM LOCATION:

Army medical examining facilities; military entrance processing stations (For enlistees); Department of Defense Medical Review Board, U.S. Academy, CO 80840–2200 (except for reservists). Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who enroll in the Reserve Officers Training Corps (nonscholarship) program, enlist or are appointed in the active or reserve units of the Armed Forces.

CATEGORIES OF RECORDS IN THE SYSTEM:

Entrance medical examination and resulting documentation such as SF 88, Report of Medical Examination, and SF 93, Report of Medical History, together with relevant and supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C., Chapter 55; Army Regulation 601–270, Military Entrance Processing Station; and E.O. 9397 (SSN).

PURPOSE(S):

To determine medical acceptance of applicant for military service and thereafter to properly assign and use individual. Management data are derived from and used by Health Services Command to evaluate effectiveness of procurement medical standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; selected management data are stored on word processing or magnetic discs and tapes.

RETRIEVABILITY:

By individual's surname and Social Security Number.

SAFEGUARDS:

Records are maintained in secured buildings, accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Original SF 88 and SF 93 become permanent documents in individual's Health Record: 1 copy of these forms and supporting documentation is retained by the military entrance processing station examining facility for 2 years; 1 copy is forwarded to the Department of Defense Medical Review Board where it is retained until no longer needed then destroyed. Medical records on qualified applicants are retained for 2 years then destroyed. Records of individuals rejected for military service will be maintained until all requirements of Pub. L. 104–201 are met and until a records disposition is obtained from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commander of the medical examining facility where physical examination was given. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, the individual should provide their full name, Social Security Number, home address, approximate date of the examination, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the commander of the medical examining facility where physical examination was given. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, the individual should provide their full name, Social Security Number, home address, approximate date of the examination, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; the physician and other medical personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–407 DASG

SYSTEM NAME:

Army Community Health Nursing Records—Family Records (August 7, 1997, 62 FR 42533).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry 'Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

A0040–407 DASG

SYSTEM NAME:

Army Community Health Nursing Records—Family Records.

SYSTEM LOCATION:

Army Medical Centers and hospitals. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals eligible for Army military medical care.

CATEGORIES OF RECORDS IN THE SYSTEM:

Family Record Form (DA Form 3762) Case Referral Form (DA Form 3763); Medical diagnosis, observations, socioeconomic plans and goals for nursing care, summarization of consultations, and similar relevant documents and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. Chapter 55; Army Regulation 40–407, Nursing Records and Reports; and E.O. 9397 (SSN).

PURPOSE(S):

To identify family members who receive Army community health nursing care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders retained in the Army Community Health Nursing Office; copy of DA Forms 3762 and 3763 is filed in individual's outpatient medical record.

RETRIEVABILITY:

By surname of eligible military member or sponsor.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel having official need therefore. Facilities are locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are destroyed 3 years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Patient Administrator of the Army medical treatment facility which provided the health nursing care. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, the individual should furnish the full name, Social Security Number, name and Social Security Number of sponsor, if applicable, relationship to military member, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Patient Administrator of the Army medical treatment facility which provided the health nursing care. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, the individual should furnish the full name, Social Security Number, name and Social Security Number of sponsor, if applicable, relationship to military member, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, family members, other persons having information relevant to health of family members; educational institutions; civilian health, welfare, and recreational agencies; civilian law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–7103 Filed 3–26–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending eight systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The amendments are required to alert the users of these systems of records of the additional requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as implemented by DoD 6025.18-R, DoD Health Information Privacy Regulation. Language being added under the "Routine Use" category is as follows:

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

DATES: This proposed action will be effective without further notice on April 28, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/ Privacy Act Office, U.S. Army Records Management and Declassification Agency, Attn: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137 DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0040 DASG

SYSTEM NAME:

Medical Facility Administration Records (August 7, 1997, 62 FR 42524).

CHANGES:

* * * * *

CATEGORY OF RECORDS IN THE SYSTEM:

Add to entry "sponsor's and patient's Social Security Number",

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

STORAGE:

Delete entry and replace with "Paper in file folders and electronic storage media."

RETRIEVABILITY:

Delete entry and replace with "By individual"s surname/Social Security Number and sponsor's Social Security Number."

* * * * *

RETENTION AND DISPOSAL:

Change "20 years" to "5 years."

* * * * *

A0040 DASG

SYSTEM NAME:

Medical Facility Administration Records.

SYSTEM LOCATION:

Medical centers, hospitals, and health clinics. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are authorized to use services of an Army medical facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system generally relates to administration at a medical facility, as opposed to an individual's health/care. Typically, records comprise scheduling of appointments, medical history data used to locate medical records, patience's name, Social Security Number, birth, death, sponsor's Social Security Number, accountability of patients (*e.g.*, bad charts; transfer, leave requests, *etc.*); receipts for patients' personal property, prescriptions for medications, eyeglasses, hearing aids, prosthetic devices, diet/special nourishment plans, blood donor records, charges, receipts and accounting, documents of payments for medical/dental services; register number assigned; and similar records/ reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 40–2, Army Medical Facilities General Admission; and E.O. 9397 (SSN).

PURPOSE(S):

To locate medical records and personnel, schedule appointments; provide research and statistical data.

To enhance efficient management practices and effective patient administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Birth records are disclosed to states' Bureau of Vital Statistics and overseas birth records are disclosed to the Department of State to provide the official certificates of birth. Birth records may also be used for statistical purposes.

Death records are disclosed to federal, state and private sector authorities to provide the official certificates of death. Death records may also be used for statistical purposes.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information.

The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper in file folders and electronic storage media.

RETRIEVABILITY:

By individual's surname/Social Security Number and sponsor's Social Security Number.

SAFEGUARDS:

Records are maintained within secured buildings in areas accessible only to persons having official need-to-know, and who are properly trained and screened. Automated segments are protected by controlled system passwords governing access to data.

RETENTION AND DISPOSAL:

Nominal index files, including register numbers assigned, are destroyed after 5 years. Records of transient value (*e.g.*, issuance of spectacles/prosthetics, diet/food plan, etc.) are destroyed within 3 months of patient's release. Other records have varying periods of retention: Record of birth/death 2 years; patient accountability (admission/discharge) 5 years; blood donor 5 years or when no longer needed for medical/legal reasons whichever is longer; record of patient's personal property 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, Attn: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Patient Administrator at the medical facility where service/care was provided. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, individual should provide the full name, Social Security Number, details which will assist in locating record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Patient Administrator at the medical facility where service/care was provided. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices. For verification purposes, individual should provide the full name, Social Security Number, details which will assist in locating record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; medical facility records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–1 DASG

SYSTEM NAME:

Professional Consultant Control Files (November 20, 2001, 66 FR 58128).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry.

"**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

RETRIEVABILITY:

Add to entry "Social Security Number."

* * * * *

A0040 1 DASG

SYSTEM NAME:

Professional Consultant Control Files.

SYSTEM LOCATION:

Office of the Surgeon General, Headquarters, Department of the Army; U.S. Army Medical Command; U.S. Army Medical Command, Europe; U.S. Army Medical Command, Korea. Official mailing addresses are published as an appendix to the Army's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who has been appointed as a professional consultant in the professional medical services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, address, curriculum vitae, appointment, duties, experience, compensation of appointed consultants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C., Chapter 55, Medical and Dental Care; Army Regulation 40–1, Composition, Mission, and Function of The Army Medical Department; and E.O. 9397 (SSN).

PURPOSE(S):

To evaluate and appoint select individuals as professional consultants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name and Social Security Number.

SAFEGUARDS:

Records are maintained in secured areas accessible only to authorized

individuals having official need therefore in the performance of assigned duties.

RETENTION AND DISPOSAL:

Records are destroyed 1 year after termination of consultant's appointment.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

For verification purposes, the individual should provide the full name, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

For verification purposes, the individual should provide the full name, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–3a DASG

SYSTEM NAME:

Medical Review Files (August 7, 1997, 62 FR 42525).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. Chapter 55, Medical and Dental Care; and Army Regulation 40–3, Medical, Dental, and Veterinary Care."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry.

"**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0040–3a DASG

SYSTEM NAME:

Medical Review Files.

SYSTEM LOCATION:

The Surgeon General, U.S. Army Medical Command, Attn: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants and registrants who are being considered for Army service and whose medical fitness is questionable; Army members being considered for continuance in service, promotion, special assignment, or separation whose medical fitness is questioned either by the medical evaluating authority or by the individual.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain documents relating to medical fitness of individuals for appointment, enlistment, retention in service, promotion, special assignment, or separation. Included are reports of medical examination and evaluation, psychological evaluation reports, and similar or related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. Chapter 55, Medical and Dental Care; and Army Regulation 40–3, Medical, Dental, and Veterinary Care.

PURPOSE(S):

To evaluate medical fitness of marginally qualified personnel for Army program with strict regard to established medical standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records are maintained in secured areas accessible only to designated personnel having official need therefor in the performance of assigned duties.

RETENTION AND DISPOSAL:

Destroyed after 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, Attn: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, Attn: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

For verification purposes, the individual should provide the full name, place and date of medical examination, additional details that will facilitate locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, Attn: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

For verification purposes, the individual should provide the full name, place and date of medical examination, additional details that will facilitate locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From clinical records, health records, medical boards, civilian physicians, consultation reports, other Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–3b DASG

SYSTEM NAME:

Medical Evaluation Files (August 7, 1997, 62 FR 42526).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry "individual's name and Social Security Number."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. Chapter 55, Medical and Dental Care; 10 U.S.C. Chapter 61, Retirement or Separation for Physical Disability; and Army Regulation 40–3, Medical, Dental, and Veterinary Care; and E.O. 9397 (SSN)."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add a new paragraph to the end of the entry.

"**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

RETRIEVABILITY:

Add to entry "Social Security Number."

* * * * *

A0040–3b DASG

SYSTEM NAME:

Medical Evaluation Files.

SYSTEM LOCATION:

U.S. Army Physical Evaluation Board, Walter Reed Army Medical Center, 6900 Georgia Avenue, NW, Washington, DC 20307–5001;

Fort Sam Houston Physical Evaluation Board, 1200 Stanley Road, Fort Sam Houston, Texas 78234–5010;

Fort Lewis Physical Evaluation Board, Madigan Army Medical Center, Tacoma, Washington 98431–5303;

U.S. Army Physical Disability Agency, Water Reed Army Medical Enter, 6900 George Avenue, Washington, DC 20307–5001; and any other Army Medical Department medical facilities convening a medical board.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army members whose medical fitness for continued service has been questioned either by the member or his/her commander.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information concerning the member, *i.e.*, individual's name and Social Security Number; certain codes of specific types of injuries for research study purposes; Department of Veterans Affairs Schedule for Rating Disability Diagnostic Codes; documents reflecting determination by an Army board of medical fitness for continued Army active service; board proceedings and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. Chapter 55, Medical and Dental Care; 10 U.S.C. Chapter 61, Retirement or Separation for Physical Disability; and Army Regulation 40–3, Medical, Dental, and Veterinary Care; and E.O. 9397 (SSN).

PURPOSE(S):

Records are used by Medical Boards to determine medical fitness for continued Army active service. They are used by the Physical Evaluation Board to review board findings when required and to determine if the individual should be discharged, temporarily or permanently retired for disability, or retained for active service. The U.S. Physical Disability Agency reviews determinations and dispositions, and responds to inquiries.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened and trained. Operation of data processing equipment and magnetic tapes are limited strictly to authorized personnel. Computer has key look and key is controlled. Magnetic diskettes are stored and controlled to ensure they do not result in unauthorized disclosure of personal information.

RETENTION AND DISPOSAL:

Records of Medical Boards are retained for 5 years and then destroyed. Records of the U.S. Army Physical Evaluation Boards are retained for 2 years or until discontinued, whichever occurs first. Records at the U.S. Army Physical Disability Agency are retained for 5 years and then destroyed. Destruction of all records is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Patient Administration Division, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Fort Sam Houston, TX 78234–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief, Patient Administration Division, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Fort Sam Houston, TX 78234–6000.

For verification purposes, the individual should provide the full name, Social Security Number, details which will assist in locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief, Patient Administration Division, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Fort Sam Houston, TX 78234–6000.

For verification purposes, the individual should provide the full name, Social Security Number, details which will assist in locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; medical records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–3c DASG

SYSTEM NAME:

Medical Regulating Files (August 27, 1999, 64 FR 46887).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry.

"**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0040–3c DASG

SYSTEM NAME:

Medical Regulating Files.

SYSTEM LOCATION:

Primary location: The Surgeon General, U.S. Army Medical Command, Attn: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

Segments exist at Army medical treatment facilities, evacuation units and medical regulating offices. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any patient requiring transfer to another medical treatment facility who is reported to the Global Patient Movement Requirements Center by U.S. Government medical treatment facilities for designation of the receiving medical facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains information reported by the transferring medical treatment facility and includes, but is not limited to, patient identity, service affiliation and grade or status, sex, medical diagnosis, medical condition, special procedures or requirements needed, medical specialties required, administrative considerations, personal considerations, the patient's home town and/or duty station and other information having an impact on the transfer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army and Army Regulation 40–3, Medical, Dental, and Veterinary Care.

PURPOSE(S):

To properly determine the appropriate medical treatment facility to which the reported patient will be transferred; to notify the reporting U.S. Government medical treatment facility of the transfer destination; to notify the receiving medical treatment facility of the transfer; to notify evacuation units, medical regulating offices and other government offices for official reasons; to evaluate the effectiveness of reported information; to establish further the specific needs of the reported patient; for statistical purposes; and when required by law and official purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The Army's 'Blanket Routine Uses' do not apply to these types records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records are maintained in secured areas accessible only to authorized personnel who are properly screened and trained.

RETENTION AND DISPOSAL:

Destroyed 1 year following the end of the calendar year in which the patient was reported to the Global Patient Movement Requirements Center.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Patient Administration Division, Office of the Surgeon General, U.S. Army Medical Command, Attn:

MCHO–CL–P, Room G104, 2050 Worth Road, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief, Patient Administration Division, Office of the Surgeon General, U.S. Army Medical Command, Attn: MCHO–CL–P, Room G104, 2050 Worth Road, Fort Sam Houston, TX 78234–6013 or to the Patient Administrator at the medical treatment facility where service was provided.

Individual should provide full name, rank or status and parent service, approximate date of transfer, medical treatment facility from which transferred, and current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief, Patient Administration Division, Office of the Surgeon General, U.S. Army Medical Command, Attn: MCHO–CL–P, Room G104, 2050 Worth Road, Fort Sam Houston, TX 78234–6013 or to the Patient Administrator at the medical treatment facility where service was provided.

Individual should provide full name, rank or status and parent service, approximate date of transfer, medical treatment facility from which transferred, and current address and telephone number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From transferring and receiving treatment facilities, medical regulating offices, evacuation offices, and other U.S. Government offices, agencies and commands relevant to the patient transfer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–5 DASG

SYSTEM NAME:

Occupational Health Records (March 29, 2002, 67 FR 15185).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry.

"**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0040–5 DASG

SYSTEM NAME:

Occupational Health Records (March 29, 2002, 67 FR 15185).

SYSTEM LOCATION:

U.S. Army Medical Command, 1216 Stanley Road, Suite 25m Fort Sam Houston, TX 78234–5053.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty army, their family members, U.S. Army Reserve, National Guard on active duty or in drill status, U.S. Military Academy and Reserve Officer Training Corps cadets, when engaged in directed training, foreign national military assigned to Army components, Department of the Army civilian and non-appropriated fund personnel employed by the Army for whom specific occupational health examinations have been conducted and/or requested.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, date and place of birth, marital status, dates of medical surveillance tests and their results; documents reflecting the training, experience and certification to work within hazardous environments; including personnel monitoring results and work are monitoring readings. Exposures to chemicals, radiation, physical environment, non-human primates, and similar and related documents; personnel protective equipment and medical programs required to limit exposure to environmental safety and health hazards are also included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 5 U.S.C. 7902, Safety Programs; 29 U.S.C. 668, Programs of Federal Agencies; 29 CFR 1910, Occupational Safety and Health Standards; Army Regulation 40–5, Preventive Medicine; E.O. 12223, Occupational Safety Health Programs for Federal Employees; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a permanent record of work places, training, exposures, medial surveillance, and any medical care provided for eligible individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to appropriate Government agencies whose responsibility falls within the occupational health statutes identified under "Authority" above.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, printouts, magnetic tapes and electronic storage media.

RETRIEVABILITY:

By individual's name and/or Social Security Number.

SAFEGUARDS:

Access to all records is restricted to designated individuals whose official duties dictate an official need to know. Information in automated media are further protected from unauthorized access in locked rooms. All individuals afforded access are given periodic orientations concerning sensitivity of personal information and requirement to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are maintained by employing office until employee is separated at which time records are filed with the individual personnel record for 30 years. GB agent records maintain for 40 years then destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013, or to the Patient Administrator at the appropriate medical treatment facility.

Individual must provide full name, Social Security Number, current address, telephone number, details of last location of record or employment, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013, or to the Patient Administrator at the appropriate medical treatment facility.

Individual must provide full name, Social Security Number, current address, telephone number, details of last location of record or employment, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial determination are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From Army Medical records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–11 DASG

SYSTEM NAME:

Radiation Exposure Records (January 30, 2002, 67 FR 4412).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry.

"**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

STORAGE:

Delete entry and replace with "Papers in file folders; film packets; and electronic storage media."

* * * * *

RETENTION AND DISPOSAL:

Replace second paragraph with "Radiation incident cases are destroyed after 75 years."

* * * * *

A0040–11 DASG

SYSTEM NAME:

Radiation Exposure Records.

CHANGES:

* * * * *

SYSTEM LOCATION:

Army installations, activities, laboratories, *etc.*, which use or store radiation producing devices or radioactive materials or equipment. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices. An automated segment exists at Redstone Arsenal, AL 35898–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active duty Army, Reserve Army National Guard, and persons employed by the Army, to include contractors, who are occupationally exposed to radiation or radioactive materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain individual's name, Social Security Number, date of birth, film badge number, coded cross-reference to place of assignment at time of exposure, dates of exposure and radiation dose, cumulative exposure, type of measuring device, and coded cross-reference to qualifying data regarding exposure readings. Documents reflecting individual's training, external and internal exposure to ionizing radiation, reports of investigation, reports of radiological exposures, and relevant management reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 29 U.S.C. Chapter 15, Occupational Safety and Health; Army Regulation 11–9, The Army Radiation Safety Program; Army Regulation 40–5, Preventive Medicine; Army Regulation 40–13, Medical Support—Nuclear Chemical Accidents and Incidents; Department of the Army Pamphlet 40–18, Personnel Dosimetry Guidance and Dose Recording Procedures for Personnel Occupationally Exposed to Ionizing Radiation; 10 CFR part 19, Nuclear Regulatory Commission and E.O. 9397 (SSN).

PURPOSE(S):

To monitor, evaluate, and control the risks of individual exposure to ionizing radiation or radioactive materials by comparison of test for short and long term exposure. Conduct investigations of occupational health hazards and relevant management studies and ensure efficiency in maintenance of prescribed safety standards. As well as ensure individual qualifications and education in handling radioactive materials are maintained.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the National Cancer Institute for epidemiological studies to assess the effects of occupational radiation exposure.

To the Center for Disease Control for epidemiological studies to assess the effects of occupational radiation exposure.

To the National Council on Radiation Protection and Measurement to research and evaluated radiation exposure levels for use in the development of guidance and recommendations on radiation protections and measurements.

To the Department of Veteran's Affairs to verify occupational radiation exposure for evaluating veterans benefit claims.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most

such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Papers in file folders; film packets; and electronic storage media.

RETRIEVABILITY:

By individual's name and/or Social Security Number.

SAFEGUARDS:

Access to all records is restricted to designated individuals having official need therefore in the performance of assigned duties. In addition, access to automated records is controlled by Card Key System, which requires positive identification and authorization.

RETENTION AND DISPOSAL:

Professional consultant control files destroy 1 year after termination. Clinical and pathological lab reports destroy when no longer needed for conducting business. Personnel dosimetry files destroy after 75 years. Personnel bioassays maintained by safety officers destroy after individual leaves the organizations or is no longer occupationally exposed; all other personnel bioassays are destroyed after 75 years. Ionizing radiation authorized personnel user listings destroy 5 years after transfer or separation of individual. Radiation incident cases are destroyed after 75 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Aviation Missile Command Ionizing Radiation Dosimetry Branch, Building 5417, Redstone Arsenal, AL 35898–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Commander, U.S. Army Aviation Missile Command Ionizing Radiation Dosimetry Branch, Building 5417, Redstone Arsenal, AL 35898–5000.

Individual must furnish full name, Social Security Number, dates and locations at which exposed to radiation or radioactive materials, *etc.*, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Commander, U.S. Army Aviation Missile Command Ionizing Radiation Dosimetry Branch, Building 5417, Redstone Arsenal, AL 35898–5000.

Individual must furnish full name, Social Security Number, dates and locations at which exposed to radiation or radioactive materials, *etc.*, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, dosimetry film, Army and/or DoD records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–31a DASG

SYSTEM NAME:

Pathology Consultation Record Files (August 7, 1997 62 FR 42530).

Changes:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals treated worldwide in military, Federal, or civilian medical service facilities whose cases were reviewed on a consultative, educational, or research basis by Armed Forces Institute of Pathology's staff."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Documents, digital images, microscopic glass slides, paraffin-embedded tissue blocks, formalin-fixed tissue, frozen fresh tissue, x-ray, photographs, and any other material sent in with the case or generated by the Armed Forces Institute of Pathology in reviewing the case or using the case in research of education activities."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add a new paragraph to the end of the entry.

"**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

STORAGE:

Delete entry and replace with "Paper and photographs in file folders, X-rays, electronic storage media, tissue blocks in appropriate storage containers; and microscopic slides in cardboard file folders."

SAFEGUARDS:

Delete entry and replace with "Records are stored in secured rooms protected by cipher locks accessible to personnel having a need-to-know in the performance of their official duties. Access to computerized information is controlled by password and is restricted to personnel having a need-to-know, who are also properly screened and trained in access procedures."

* * * * *

A0040–31a DASG

SYSTEM NAME:

Pathology Consultation Record Files.

SYSTEM LOCATION:

Armed Forces Institute of Pathology, 6825 16th Street, NW., Washington, DC 20306–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals treated worldwide in military, Federal, or civilian medical service facilities whose cases were reviewed on a consultative, educational, or research basis by Armed Forces Institute of Pathology's staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents, digital images, microscopic glass slides, paraffin-embedded tissue blocks, formalin-fixed tissue, frozen fresh tissue, X-ray, photographs, and any other material sent in with the case or generated by the Armed Forces Institute of Pathology in reviewing the case or using the case in research of education activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C., Chapter 55 Medical and Dental Care; and Army Regulation 40–31, Armed Forces Institute of Pathology and Armed Forces Histopathology Centers; and E.O. 9397 (SSN).

PURPOSE(S):

To ensure complete medical data are available to pathologist providing consultative diagnosis to requesting physician in order to improve quality of care provided to individuals; to provide a data base for education of medical personnel; to provide a data base for medical research and statistical purposes and when required by law or for official purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Individual records may be released to referring physician, to physicians treating the individual, to qualified medical researchers and students, and to other Federal agencies and law enforcement personnel when requested for official purposes involving criminal prosecution, civil court action or regulatory orders.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and photographs in file folders, X-rays, electronic storage media, tissue blocks in appropriate storage containers; and microscopic slides in cardboard file folders.

RETRIEVABILITY:

By last name or terminal digit number (Social Security Number) or accession number assigned when case is received for consultation.

SAFEGUARDS:

Records are stored in secured rooms protected by cipher locks accessible to personnel having a need-to-know in the performance of their official duties. Access to computerized information is controlled by password and is restricted to personnel having a need-to-know, who are also properly screened and trained in access procedures.

RETENTION AND DISPOSAL:

Retained as long as case material has value for medical research or education. Individual cases are reviewed periodically and materials no longer of value to the Institute are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Automated Management Services, Armed Forces Institute of Pathology, 6825 16th Street, NW., Washington, DC 20306–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Administrator, Department of Epidemiology, Repository, and Research Services, Armed Forces Institute of Pathology, 6825 16th Street, NW., Washington, DC 20306–6000.

Requesting individual must submit full name, name, Social Security Number or service number of military sponsor and branch of military service, if applicable, or accession number assigned by the Armed Forces Institute of Pathology, if known. For requests made in person, identification such as military ID card or valid driver's license is required.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Administrator, Department of Epidemiology, Repository, and Research Services, Armed Forces Institute of Pathology, 6825 16th Street, NW., Washington, DC 20306–6000.

Requesting individual must submit full name, name, Social Security Number or service number of military sponsor and branch of military service, if applicable, or accession number assigned by the Armed Forces Institute of Pathology, if known. For requests made in person, identification such as military ID card or valid driver's license is required.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Interview, diagnostic test, other available administrative or medical records obtained from civilian or military sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–7105 Filed 3–26–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; American BioHealth Group, LLC

AGENCY: Department of the Navy, DOD

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to American BioHealth Group, LLC, a revocable, nonassignable, exclusive license in the United States to practice, with right to sublicense, the Government-owned invention described in U.S. Patent Application Serial No. 09/766, 625, entitled "Prevention or Reversal of Sensorial Hearing Loss Through Biological Mechanisms," filed January 23, 2001.

DATES: Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave, Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave, Silver Spring, MD 20910–7500, telephone (301) 319–7428, fax (301) 319–7432, or E-Mail: *schlagelc@nmrc.navy.mil.*

Dated: March 14, 2003.

R. E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–7351 Filed 3–26–03; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of proposed information collection requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if

normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 15, 2003. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before May 27, 2003.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: March 21, 2003.

John D. Tressler,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Safe and Drug Free Schools

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: Grants to States for Training Incarcerated Youth Offenders—Eligible Population Date Request Form (KA).

Abstract: States must submit an annual count of "eligible students" in order for Department of Education staff to run a formula and make annual awards under already approved three year operating plans. The data requested from the State is necessary to run the allocation formula.

Additional Information: Fiscal Year 2003 dollars are needed by the State agencies in order to purchase educational services for the coming fall. States would normally be asked to provide their May 1 census figures by June 1, 2003. Emergency approval of this collection is requested because a delay would result in serious disruption of ongoing instructional programs in State correctional education agencies. This disruption would result in significant waste of investments to date in these program services.

Frequency: Other: three year plan.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 500.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2245. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact AXT at () -. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–7308 Filed 3–26–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 26, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 21, 2003.

John D. Tressler,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Electronic Debit Payment Option for Student Loans (JS).

Frequency: Other: One time.

Affected Public: Businesses or other for-profit, Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 2714.

Burden Hours: 2714.

Abstract: The need for an Electronic Debit Account Program will give the borrower another option in which to repay federally funded student loans via automatic debit deductions from their checking accounts.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 1118. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address vivan.reese@ed.gov. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to SCHUBART at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–7309 Filed 3–26–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–290–001]

ANR Pipeline Company; Notice of Tariff Filing

March 20, 2003.

Take notice that, on March 17, 2003, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective April 1, 2003:

Substitute Nineteenth Revised Sheet No. 19

ANR states that this filing corrects a clerical error in the February 28, 2003 filing to redetermine the Transporter's Use Percentage. The revised tariff sheet reflects a reduction in the storage percentage from that filed on February 28, 2003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7329 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–47–000]

Choctaw County Trust; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

March 20, 2003.

Take notice that on March 14, 2003, Choctaw County Trust filed its application for a determination that it will be an exempt wholesale generator within the meaning of Section 32(a)(1) of Public Utility Holding Company Act (Application).

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: April 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7323 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–306–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

March 20, 2003.

Take notice that on March 17, 2003, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fourth Revised Sheet No. 306; First Revised Sheet No. 307; and First Revised Sheet No. 308, to become effective April 17, 2003.

Gulf South is making this filing to combine Second Substitute Second Revised Sheet No. 306 and Third Revised Sheet No. 306 previously

approved by the Commission in Dockets RP02–151–005 and RP03–10–000, respectively.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: March 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7330 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–467–003]

Midwestern Gas Transmission Company; Notice of Compliance Tariff Filing

March 20, 2003.

Take notice that on March 18, 2003, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Substitute Original Sheet No. 246A
Substitute Original Sheet No. 246B
Substitute Original Sheet No. 266B

Midwestern states that the purpose of this filing is to replace certain tariff sheets in Midwestern's February 18, 2003 compliance filing (February 18 Filing) that was filed in compliance with the Commission's Order dated December 19, 2003 in this proceeding (101 FERC ¶ 61,310 (2002). In addition, Midwestern proposes other clarifications and corrections to tariff provisions of the February 18 filing, in accordance with the directives contained in the December 19 Order in this proceeding.

Midwestern states that copies of this filing have been sent to all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7327 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–123–000]

Southern Gas Company; Notice of Technical Conference

March 20, 2003.

In the Commission's order issued on December 30, 2002,[1] the Commission directed that a technical conference be held to address issues raised by Southern's tariff filing, which proposed to reduce its Storage Cost Reconciliation Mechanism (SCRM).

Take notice that the technical conference will be held on Thursday, April 3, 2003, 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7328 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Southern Gas Company, 101 FERC ¶ 61,397 (2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–307–000]

Transwestern Pipeline Company; Notice of Tariff Filing

March 20, 2003.

Take notice that on March 18, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective April 14, 2003:

Fourth Revised Sheet No. 18
Eighth Revised Sheet No. 19
Twelfth Revised Sheet No. 20
Fifth Revised Sheet No. 84
Fifth Revised Sheet No. 95
Eighth Revised Sheet No. 95A
Eighth Revised Sheet No. 95B
Ninth Revised Sheet No. 95B.01
Ninth Revised Sheet No. 95F
Eighth Revised Sheet No. 95H
Fourth Revised Sheet No 95I
Fifth Revised Sheet No. 95J
Seventh Revised Sheet No. 95K
Ninth Revised Sheet No. 95L

Transwestern states that the instant filing is to reflect changes to the ROFR and Capacity Release provisions of its tariff in order to make those provisions consistent with current Commission policies and orders in other recent Transwestern proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: March 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7331 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2161–006 Wisconsin and 2192–008 and 2110–003 Wisconsin]

Rhinelander Paper Company and Consolidated Water Power; Notice of Availability of Final Multiple Project Environmental Assessment

March 20, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the applications for license for the Rhinelander, Stevens Point, and Biron projects, located on the Wisconsin River, in Oneida, Portage, and Wood Counties, Wisconsin, and has prepared a Final Multiple Project Environmental Assessment (FEA) for these projects. There are no federal lands occupied by the project works or located within the project boundaries.

The FEA contains the staff's analysis of the potential environmental effects of the project and concludes that licensing the projects, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Spencer at 202–502–6093.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7325 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

March 20, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 7725–005.

c. *Date filed:* September 27, 2002.

d. *Applicant:* Barton Village Inc.

e. *Name of Project:* Barton Village Hydroelectric Project.

f. *Location:* One the Clyde River in the Town of Charleston, Vermont. No federal lands are affected.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Denis H. Poirier, Village Supervisor, Barton Village, Inc. 17 Village Square, P.O. Box 519, Barton Vermont 05822.

i. *FERC Contact:* Frank Winchell at (202)502–6104 or *frank.winchell@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "FERRIS" link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. *The existing Barton Village Hydroelectric Project consists of:* (1) A 77-foot-long, 24-foot-high masonry and concrete gravity dam; (2) 1.5-foot-high flashboards extending 57 feet across a concrete spillway; (3) a 187-acre impoundment at elevation 1,140.9 feet mean sea level (msl); (4) a 665-foot-long, 7-foot-diameter steel penstock; (5) two 105-foot-long, 5.8-foot-diameter steel penstocks leading to: (6) a powerhouse with two units having a total installed capacity of 1.4 MW; (7) two tailraces; and (8) other appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the

heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7326 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. JR02–1–000]

Arch Ford; Notice of Availability of Draft Navigation Study

March 20, 2003.

Pursuant to section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(1), a non-federal hydroelectric project must (unless it has a still-valid pre-1920 federal permit) be licensed if it is located on a navigable water of the United States; occupies lands of the United States; utilizes surplus water or water power from a government dam; or is located on a body of water over which Congress has Commerce Clause jurisdiction; project construction occurred on or after August 26, 1935, and the project affects the interests of interstate or foreign commerce. The Division of Hydropower Administration and Compliance has reviewed North Fork Nooksack River, location of the unlicensed Nooksack Falls Project, near the town of Glacier, in Whatcom County, Washington, and prepared a draft "Navigation Status Report: North Fork Nooksack River, Washington" (August 2002). This project, owned by Arch Ford, will also utilize federal lands within Mt. Baker-Snoqualmie National Forest.

Copies of the draft navigation report are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number JR02–1, excluding the last three digits in the docket number field, to access the document. For assistance, call toll-free 1–866–208–3676. For TTY, call (202) 502–8659

Any comments (original and eight copies) should be filed within 30 days from the date of this notice and should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the docket number (JR02–1–000) on any comments. For further information, please contact Henry Ecton at (202) 502–8768.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7324 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0010; FRL–7473–8]

Agency Information Collection Activities; Submission of EPA ICR No. 1842.04 (OMB No. 2040–0188) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Notice of Intent for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 28, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jack Faulk, Water Permits Division, Office of Wastewater Management, Mail Code 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–0768; fax number: (202) 564–6431; e-mail address: *faulk.jack@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 6, 2002, (67 FR 72668), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0010, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *OW–Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Notice of Intent for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit (OMB Control Number 2040–0188, EPA ICR Number 1842.04). This is a request to renew an existing approved collection that is scheduled to expire on March 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: This ICR calculates the burden and costs associated with the preparation of the Notice of Intent (NOI) for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit, and the Storm Water Pollution Prevention Plan (SWPPP). EPA uses the data contained in the NOIs to track facilities covered by the storm water general permit and assess permit compliance. EPA has developed a format for construction NOIs. The standardized one-page form is called: Notice of Intent (NOI) for Storm Water Discharges Associated with Construction Activity Under a NPDES General Permit. The construction NOI only requires the respondent to note whether or not a SWPPP has been prepared. The following information is requested:

- —Name, address, phone number of the facility
- —Status of the owner/operator (whether federal, state, public, or private)
- —Name and location of the project (City, State, ZIP, Latitude, Longitude, County)
- —Whether the facility is located on Indian Country Lands
- —Whether a Storm Water Pollution Prevention Plan (SWPPP) has been prepared
- —Optional: location for viewing SWPPP and telephone number for scheduling viewing times: Address, City, State, ZIP
- —The name of the receiving water
- —Estimated construction start date and completion date
- —The estimated area to be disturbed (to nearest acre)
- —An estimate of the likelihood of a discharge
- —Whether any protected species or critical habitat in the project area
- —Which section of the permit through which permit eligibility with regard to protection of endangered species is satisfied

Responses are required to obtain coverage under the NPDES General Permit for storm water discharges associated with construction activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 38.3 hours per response by large construction NPDES permittees in NPDES-authorized states and territories and 40.5 hours per response for construction activities in states and territories where EPA is the permitting authority. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/operators of large construction activities.

Estimated Number of Respondents: 201,259.

Frequency of Response: Once initially, prior to commencement of construction.

Estimated Total Annual Hour Burden: 7,729,696 hours.

Estimated Total Annual Cost: $264,919,148, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 3,166,793 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase in the applicant respondent and NPDES-authorized state burden is due to a technical correction to the methodology used to estimate the number of construction sites covered by a permit. The methodology used in this ICR to estimate of the number of construction sites is consistent with the methodology used to estimate the number of small construction sites, consistent with the *NPDES Storm Water Program Phase II ICR*, OMB Control No. 2040–0211, EPA ICR No. 1820.03.

Dated: March 18, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–7368 Filed 3–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0001; FRL–7473–9]

Agency Information Collection Activities; Submission of EPA ICR No. 1500.05 (OMB No. 2040–0138) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Estuary Program. The ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 28, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Gregory Colianni, Oceans and Coastal Protection Division, Office of Wetlands, Oceans, and Watersheds, mailcode 4504T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–1249; fax number: (202) 566–1336; e-mail address: *colianni.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 29, 2002, (67 FR 65978), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0001, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday

through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go *http://www.epa.gov/edocket*.

Title: National Estuary Program, (OMB Control Number 2040–0138, EPA ICR Number 1500.05). This is a request to renew an existing approved collection that is scheduled to expire on April 30, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Annual Workplans: The NEP involves collecting information from the State or local agency or nongovernmental organizations that receive funds under section 320 of the Clean Water Act. The regulation requiring this information is found at 40 CFR part 35. Prospective grant recipients seek funding to develop or oversee and coordinate implementation of CCMPs for estuaries of national significance. In order to receive funds, grantees must submit an annual workplan to EPA. The workplan consists of two parts: (a) Progress on projects funded previously; and (b) new projects proposed with dollar amounts and completion dates. The workplan is reviewed by EPA and also serves as the scope of work for the grant agreement. EPA also uses these workplans to track performance of each of the 28 estuary programs currently in the NEP.

Implementation Reviews

EPA provides funding to NEPs to support long-term implementation of CCMPs if such programs pass an implementation review process. Implementation reviews are used to determine progress each NEP is making in implementing its CCMP and achieving environmental results. In addition to evaluating progress, the results are used to identify areas of weakness each NEP should address for long-term success in protecting and restoring their estuaries. EPA will also compile successful tools and approaches as well as lessons learned from all implementation reviews to transfer to the NEPs and other watershed programs. For this ICR cycle, implementation reviews will be required for 9 programs in FY2004 and 19 programs in FY2005. No implementation reviews will be required in FY2003.

Government Performance Results Act (GPRA)

EPA requests that each of the 28 NEP receiving section 320 funds reports information that can be used in the GPRA reporting process. This reporting is done on an annual basis and is used to show environmental results that are being achieved within the overall NEP Program. This information is ultimately submitted to Congress along with GPRA information from other EPA programs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 100 hours per response for annual workplans, 250 hours per response for implementation reviews, and 35 hours per response for GPRA reporting. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: state or local governments or nongovernmental organizations.

Estimated Number of Respondents: 28.

Frequency of Response: annual workplans, triennial implementation reviews, annual GPRA reports.

Estimated Total Annual Hour Burden: 6,113 hours.

Estimated Total Annual Cost: $366,800, includes $0 annualized capital or O&M costs.

Changes in the Estimates: An action notice from OMB increased the original burden request for the previous ICR by 40,800 hours.

This cycle will reduce the estimated burden by 40,654 to 6,113 annual respondent hours. These estimated hours are based on the experience of the NEP participants to date.

Dated: March 17, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–7369 Filed 3–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0014, FRL–7473–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Surveys to Determine the Effectiveness of No-Discharge Zones for Vessel Sewage and Marine Sanitation Devices

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Surveys to Determine the Effectiveness of No-Discharge Zones for Vessel Sewage and Marine Sanitation Devices, EPA ICR No. 2107.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 27, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: James Woodley, Oceans and Coastal Protection Division, Office of Water, Environmental Protection Agency, 4504T, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number:

(202) 566–1287; fax number: (202) 566–1546; email address: *woodley.james@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2003–0014, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by email to *ow-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, EPA West, 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov.edocket*.

Affected entities: Entities potentially affected by this action are boat owners and operators, marina owners and operators, State and local governments, marine sanitation device (MSD) manufacturers, U.S. Coast Guard accepted independent laboratories, and other Federal Agencies.

Title: Surveys to Determine the Effectiveness of No-Discharge Zones for Vessel Sewage and Marine Sanitation Devices; EPA ICR Number 2107.01.

Abstract: This ICR requests approval to collect information from boat owners and operators, marina owners and operators, and State and local government officials regarding the effectiveness of no-discharge zones. It also requests approval to collect information regarding the effectiveness of marine sanitation devices (MSDs) in removing harmful pollutants from the waste stream of the device. This information would be gathered from MSD manufacturers and U.S. Coast Guard accepted independent laboratories. Section 312 of the Clean Water Act mandates the use of MSDs on all vessels with installed toilets. There are three types of MSDs. Type I and Type II MSDs provide treatment of sewage that is to be discharged and rely on a variety of different technologies for treatment prior to discharge including maceration, chlorination, heating, filtering, and biological processes. Type III MSDs are holding tanks that provide minimal sewage treatment and can be installed on vessels of any size. Installed toilets on vessels of 65 ft. or less in length may be equipped with any of the three types of MSDs. Type I MSDs, which are only applicable to vessels up to 65 ft. in length, are required to produce an effluent with a fecal coliform bacteria count less than or equal to 1000 bacteria per 100 ml of seawater with no visible floating solids. For vessels greater than 65 ft., all installed toilets must be equipped with either Type II or Type III MSDs. The Type II MSDs are required to produce effluent with a fecal coliform count less than or equal to 200 bacteria per 100 ml of seawater and suspended solids less than or equal to 150 mg/l. Type III MSDs are holding tanks that are designed to prevent overboard discharge of any sewage. Also under section 312 of the Clean Water Act, with EPA's approval, States may designate a portion or all of their waters as no-discharge zones making all vessel sewage discharges illegal. States may designate their waters as no-discharge zones for vessel sewage to achieve any of the following objectives: (1) To protect aquatic habitats; (2) to protect special aquatic habitats or species such as coral reefs and shellfish beds; and (3) to safeguard human health by protecting drinking water intake zones. Under section 312(f)(3), States designate no-discharge zones for aquatic habitats by demonstrating to EPA that safe and adequate pumpout and dump facilities are available. Currently about 95% of the no-discharge zones designated have been done so under this provision. At a State's request, under sections 312(f)(4)(A) and (B), no-discharge zones for special aquatic habitats and drinking water intake zones, respectively, also can be established by regulation by EPA if the State demonstrates that additional protection of the aquatic environment is required. No-discharge zones established by regulations promulgated by EPA do not require the availability of pumpout or dump facilities. Currently, about 5% of the no-discharge zones for

vessel sewage have been designated by regulations promulgated by EPA. This information collection request will focus on the effectiveness of no-discharge zones for vessel sewage designated under Clean Water Act section 312(f)(3) and the effectiveness of current MSD technologies. There would be separate surveys developed for boat owners and operators, marina owners and operators, State and local government officials, MSD manufacturers, and U.S. Coast Guard accepted independent laboratories.

The survey developed for boat owners and operators would address the boater's experience with using pumpout or dump facilities in no-discharge zones. Specifically, the survey would seek information with regards to whether the pumpout or dump facilities were working or not working when the boater attempted to use them. It would address whether the boater would use the facilities if they were available and how often the boaters actually use the facilities. Respondents would be selected from North-Atlantic States, Mid-Atlantic States, California, the Florida Keys, and the Great Lakes. Approximately, 600 respondents from the geographical regions would be selected for response. The information collection would be voluntary and would not include CBI. The survey developed for marina owners and operators would address the downtime of pumpout and dump facilities located in no-discharge zones and the use of those facilities by boaters. Respondents would be selected from North-Atlantic States, Mid-Atlantic States, California, the Florida Keys, and the Great Lakes. Approximately, 80 marina owners or operators from the geographical regions would be selected for response. The information collection would be voluntary and would not include CBI. Also, a survey would be developed for State and local government officials to determine if the designation of no-discharge zones has been effective in addressing water quality issues of the particular water body, and if boaters were in compliance. Respondents would be selected from North-Atlantic States, Mid-Atlantic States, California, the Florida Keys, and the Great Lakes. Approximately, 100 respondents from the geographical regions would be selected for response. The information collection would be voluntary and would not include CBI. The information collected from the surveys would be used to assess the overall effectiveness of no-discharge zones for vessel sewage established under Clean Water Act section 312(f)(3) to determine if modifications to the program are needed.

An additional survey would be developed to review current MSD technology. The information on MSDs that would be requested includes effluent constituents and their concentrations; bacteria eradication processes and suspended solids removal; and cost and installation. This information would be used to help determine the effectiveness of the current MSD technologies. Approximately, 30 MSD manufacturers and 8 U.S. Coast Guard accepted independent laboratories would be selected for response. Responding to the collection of information would be voluntary. The survey would provide instructions on the procedures for making CBI claims, and the respondents would also be informed of the terms and rules governing protection of CBI obtained under the Clean Water Act. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: EPA estimates that 35 marina owners and operators would respond to the survey. It would probably take 20 minutes to complete the survey. Also, EPA estimates that the total burden for marina owners and operators would be 12 hours and $240. EPA estimates that 350 boat owners and operators would respond to the survey, and at a maximum, it would take 20 minutes for each respondent to complete the survey. EPA estimates that the total burden for boat owners and operators would be 117 hours and $1,800. EPA estimates that 70 State and local government officials would respond to the survey, and at a maximum, it would take 2 hours for each respondent to complete the survey. EPA estimates that the total burden for State and local government officials would be 140 hours and $4,900. EPA estimates that 20 MSD manufacturers would respond to the survey, and it would take them approximately 2 hours to complete it. The total burden for MSD manufacturers would be 40 hours, and the total cost would be $800. Lastly, EPA estimates that 7 U.S. Coast Guard accepted independent laboratories would respond to the survey. These laboratories test MSDs to certify that they meet the current MSD standards located at 40 CFR 140.3. It would take each of them approximately 2 hours to complete the survey. The total burden on the U.S. Coast Guard accepted independent laboratories would be 14 hours, and the total cost would be $420. There is no start up or capital cost associated with the surveys described above. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 19, 2003.

Diane C. Regas,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 03–7372 Filed 3–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7474–1]

Proposed Consent Decree

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed partial consent decree, which the United States Environmental Protection Agency ("EPA") lodged with the United States District Court for the District of Columbia on March 21, 2003, in a lawsuit filed by the Sierra Club under section 304(a) of the Act, 42 U.S.C. 7604(a), *Sierra Club* v. *Whitman*, No. 01–01537 (consolidated with cases 01548, 01558, 01569, 01582, and 01597) (D.D.C.).

DATES: Written comments on the proposed consent decree must be received by April 28, 2003.

ADDRESSES: Written comments should be sent to Apple Chapman, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A copy of the proposed consent decree is available from Phyllis Cochran, (202) 564–7606.

FOR FURTHER INFORMATION CONTACT: Apple Chapman at (202) 564–5666.

SUPPLEMENTARY INFORMATION: This lawsuit concerns EPA's alleged failure to meet certain deadlines in the Clean Air Act ("CAA"). The proposed partial consent decree would fully settle four of the above-listed consolidated cases and partially settle two others.

Specifically, the consent decree provides that EPA shall: (1) Promulgate emission standards under CAA section 112(d), 42 U.S.C. 7412(d), for any twelve (12) of the remaining listed categories subject to CAA section 112(e)(1)(E), 42 U.S.C. 7412(e)(1)(E), on or before August 29, 2003 and for the remaining four (4) categories on or before February 27, 2004; (2) promulgate emission standards under CAA section 112(d), 42 U.S.C. 7412(d), for hazardous waste burning industrial boilers on or before June 15, 2005; (3) pursuant to CAA section 129(a)(5), 42 U.S.C. 7429(a)(5), promulgate revisions of the new source performance standards and emission guidelines for large municipal waste combustion units by April 28, 2006; (4) promulgate specified regulations under CAA section 112(d), 42 U.S.C. 7412 (d), pursuant to CAA sections 112(c)(3), 112(k), and 112(c)(6), 42 U.S.C. 7412 (c)(3), (k) and (c)(6) for certain categories of area sources by specified deadlines; (5) promulgate emission standards for "other categories of solid waste incineration units" under CAA section 129(a)(1)(E), 42 U.S.C. 7419(a)(1)(E), by November 30, 2005. Lastly, the consent decree provides that the parties stipulate to a dismissal of the claims in Case No. 01–1582 which alleged EPA's failure to submit the Report to Congress under CAA section 112(s), 42 U.S.C. 7412(s).

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. The EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Clean Air Act. Unless EPA or the Department of Justice determines, following the comment period, that consent is inappropriate, the consent decree will be final.

Dated: March 21, 2003.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 03–7370 Filed 3–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7473–7]

Notice of Request for Initial Proposals (IP) for Projects To Be Funded From the Water Quality Cooperative Agreement Allocation (CFDA 66.463—Water Quality Cooperative Agreements); Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA Region 6 published in the **Federal Register** of March 19, 2003, a notice soliciting Initial Proposals funded from the Regional Water Quality Cooperative Agreement allocation. Inadvertently, the minus was deleted from the points listed under applicant's past performance of the evaluation criteria. Applicant's past performance should be listed as a minus 3 points (-3).

FOR FURTHER INFORMATION CONTACT: Terry Mendiola by telephone at 214–665–7144 or by e-mail at *mendiola.teresita@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA Region 6 published a notice in the **Federal Register** of March 19, 2003, (53 FR 13303) soliciting Initial Proposals for projects to be funded from the Regional Water Quality Cooperative Agreement Allocation. Inadvertently, the minus was deleted from the points listed under applicant's past performance of the evaluation criteria. The evaluation criteria states that points will be taken away for poor past performance if knowledge of applicant's past performance is available to EPA. Therefore, applicant's past performance should be listed as a minus 3 points (−3). This correction adds the minus to indicate points will be taken away. In notice FR Doc. 03–6576 published on March 19, 2003, (53 FR 13303) make the following correction. On page 13305, in the third column, add a minus to (3 points) to read (−3 points) under applicant's past performance of the EPA IP Evaluation Criteria.

Dated: March 20, 2003.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 03–7371 Filed 3–26–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 19, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 28, 2003. If you anticipate that you will be submitting comments, but find it

difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0855.

Title: Telecommunications Reporting Worksheet, CC Docket No. 96–45.

Form No: FCC Forms 499, 499-A and 499-Q.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 5,500 respondents; 15,500 responses.

Estimated Time Per Response: 11.5 hours.

Frequency of Response: On occasion, annual, quarterly and other reporting requirements, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 164,487 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission has revised this information collection to only require contributors to include historical revenues from the prior quarter and project revenues for the upcoming quarter of the FCC Form 499–Q. Accordingly, the Commission seeks to modify the recently approved FCC Form 499–Q so that contributors are no longer required to provide projected collected revenue information for the quarter in which the filing is submitted. The Commission adopted modified reporting requirements to collect information necessary to evaluate individual contributors' contributions to the universal service mechanisms, pursuant to section 254 of the Act.

OMB Control No.: 3060–0910.

Title: Third Report and Order in CC Docket No. 94–102, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 4,000 respondents; 8,000 responses.

Estimated Time Per Response: 1 hour for each report (two reports)

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 8,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission seeks three year OMB approval for this information collection. This information collection is applicable to wireless carriers to permit the use of handset-based solutions, or hybrid solutions that require changes both to handsets and wireless networks in providing caller location information as part of Enhanced 911 services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–7320 Filed 3–26–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

March 19, 2003.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Paul J. Laurenzano, Federal Communications Commission, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov*.

OMB Control No.: 3060–0715.

OMB Approval and Effective Date of Rules: 02/24/2003.

Expiration Date: 02/28/2006.

Title: Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI) and Other Customer Information, CC Docket No. 96–115.

Form No.: N/A.

Estimated Annual Burden: 4,832 responses; 672,808 total annual hours; $229,520,000 cost burden; 139.2 hours per respondent.

Needs and Uses: The requirements implement the statutory obligations of section 222 of the Telecommunications Act of 1996. Among other things, carriers are permitted to use, disclose, or permit access to CPNI, without customer approval, under certain conditions.

Many uses of CPNI require either opt-in or opt-out customer approval, depending upon the entity using the CPNI and the purpose for which it is used.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–7321 Filed 3–26–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–384; FCC 03–57]

Application by Verizon Maryland Inc., Verizon Washington, D.C. Inc., West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Maryland, Washington, DC, and West Virginia

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In the document, the Federal Communications Commission (Commission) grants the section 271 application of Verizon Maryland Inc., Verizon Washington, DC Inc., West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for authority to enter the interLATA telecommunications market in Maryland, Washington, DC, and West Virginia. The Commission grants Verizon's application based on its conclusion that Verizon has satisfied all of the statutory requirements for entry and opened its local exchange markets to full competition.

DATES: Effective March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Gail Cohen, Senior Economist, Wireline Competition Bureau, at (202) 418–0939 or via the Internet at *gcohen@fcc.gov*. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 02–384, FCC 03–57, adopted March 18, 2003, and released March 19, 2003. The full text of this order may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. It is also available on the Commission's Web site at *http://www.fcc.gov/Bureaus/Wireline_Competition/in-region_applications*.

Synopsis of the Order

1. *History of the Application.* On December 19, 2002, Verizon filed an application pursuant to section 271 of the Telecommunications Act of 1996, with the Commission to provide in-region, interLATA service in the states of Maryland, and West Virginia, and the District of Columbia (Washington, DC).

2. *The State Commissions' Evaluations.* The Maryland Public Service Commission (Maryland Commission), the District of Columbia Public Service Commission (DC Commission), and the West Virginia Public Service Commission (West Virginia Commission), following an extensive review process, advised the Commission that Verizon has taken the statutorily required steps to open it local markets in each state to competition. Consequently, the state commissions recommended that the Commission approve Verizon's in-region, interLATA entry in their evaluations and comments in this proceeding.

3. *The Department of Justice's Evaluation.* The Department of Justice filed its evaluation on January 27, 2003, recommending approval of the application, subject to the resolution of questions regarding Verizon's checklist compliance for certain pricing and directory assistance issues. Accordingly, the Department of Justice recommends approval of Verizon's application for section 271 authority in Maryland, Washington, DC, and West Virginia.

Primary Issues in Dispute

4. *Compliance with Section 271(c)(1)(A).* The Commission concludes that Verizon demonstrates that it satisfies the requirements of section 271(c)(1)(A) based on the interconnection agreements it has implemented with competing carriers in Maryland, Washington, DC, and West Virginia. The record shows that Verizon relies on interconnection agreements with AT&T, Comcast, eLEC, FiberNet, Starpower, and StratusWave in support of this showing.

5. *Checklist Item 2—Unbundled Network Elements.* Based on the record, the Commission finds that Verizon has provided "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act in compliance with checklist item 2.

6. *Operating Support Systems (OSS).* Based on the record, the Commission finds that Verizon provides "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act in compliance with checklist item 2. The Commission finds that Verizon provides non-discriminatory access to its OSS—the systems, databases, and personnel necessary to support network elements or services. Nondiscriminatory access to OSS ensures that new entrants have the ability to order service for their customers and communicate effectively with Verizon regarding basic activities such as placing orders and providing maintenance and repair services for customers. The Commission finds that, for each of the primary OSS functions (pre-ordering, ordering, provisioning, maintenance and repair, and billing, as well as change management), Verizon provides access to its OSS in a manner that enables competing carriers to perform the functions in substantially the same time and manner as Verizon does or, if no appropriate retail analogue exists within Verizon's systems, in a manner that permits competitors a meaningful opportunity to compete. In addition, regarding specific areas where the Commission identifies issues with Verizon's OSS performance in the application states, these problems are not sufficient to warrant a finding of checklist noncompliance.

7. *UNE Combinations.* Pursuant to section 271(c)(2)(B)(ii) a BOC must demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already combined elements, except at the specific request of the competing carrier. The Commission concludes, based on the performance data in the record, that Verizon meets its obligation to provide access to UNE combinations in compliance with the Commission's rules.

8. *Pricing of Unbundled Network Elements.* Based on the record, we find that Verizon's UNE rates in Maryland, Washington, DC, and West Virginia are just, reasonable, and nondiscriminatory as required by section 251(c)(3), and are based on cost plus a reasonable profit as required by section 252(d)(1). Thus, Verizon's UNE rates satisfy checklist item 2. The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if either "basic TELRIC principles are violated or the state commission makes clear errors in the actual findings on matters so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce."

9. The Commission finds that, while Verizon's current recurring UNE rates were not established via state rate proceedings that applied TELRIC principles, the recurring UNE rates in all three jurisdictions are TELRIC-compliant based on a benchmark comparison to Verizon's New York UNE rates. The Commission concludes that Verizon's current loop provisioning policy does not preclude us from finding that Verizon's loop rates in these states are TELRIC-compliant based on a benchmark comparison. In addition, the Commission confirms that it performs its benchmark analysis by aggregating non-loop rate elements. Thus, we conclude that Verizon's UNE rates in Maryland, Washington, DC, and West Virginia satisfy the requirements of checklist item 2.

10. *Checklist Item 12—Dialing Parity.* Based on the evidence in the record, the Commission finds that Verizon provides local dialing parity in accordance with the Commission's rules. No commenter challenges Verizon's provision of dialing parity in Maryland or Washington, DC. However, FiberNet claims that in West Virginia local dialing parity is not achieved in certain locations where an extended area service (EAS) crosses LATA and state boundaries. The Commission concludes that Verizon complies with our dialing parity rules and that our rules implementing 251(b)(3) do not require Verizon to develop interconnections arrangements for facilities-based competitive LECs with third-party carriers.

11. *Checklist Item 1—Interconnection.* Based on the evidence in the record, the Commission concludes that Verizon provides access and interconnection on terms and conditions that are just, reasonable and nondiscriminatory, in accordance with the requirements of section 251(c)(2) and as specified in section 271, and applied in the Commission's prior orders. Pursuant to this checklist item, Verizon must allow other carriers to interconnect their networks to its network for the mutual exchange of traffic, using any available method of interconnection at any available point in Verizon's network. Verizon's performance generally satisfies the applicable benchmark or

retail comparison standards for this checklist item. Verizon also demonstrates that it offers interconnection in Maryland, Washington, DC, and West Virginia to other telecommunications carriers at just, reasonable, and nondiscriminatory rates, in compliance with checklist item 1.

Other Items in Dispute

12. *Checklist Item 4—Unbundled Local Loops.* Verizon demonstrates that it provides unbundled local loops in accordance with the requirements of section 271 and our rules, in that it provides "local loop transmission from the central office to the customer's premises, unbundled from local switching or other services." The Commission's conclusions are based on Verizon's performance for all loop types, which include, as in past section 271 orders, voice grade loops, hot cut provisioning, xDSL-capable loops, digital loops, high capacity loops, as well as our review of Verizon's processes for line sharing and line splitting.

13. *Checklist Item 7—911–E911 Access & Directory Assistance/Operator Services.* Section 271(c)(2)(B)(vii)(I), (II), and (III) require a BOC to provide nondiscriminatory access to "911 and E911 services," "directory assistance services to allow the other carrier's customers to obtain telephone numbers" and "operator call completion services," respectively. Additionally, section 251(b)(3) of the 1996 Act imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to "* * * operator services, directory assistance, and directory listing with no unreasonable dialing delays." Based on the evidence in the record, the Commission concludes that Verizon offers nondiscriminatory access to its 911–E911 databases, operator services (OS), and directory assistance (DA).

14. *Checklist Item 8—White Pages.* Section 271(c)(2)(B)(viii) of the Act requires a BOC to provide "[w]hite page directory listings for customers of the other carrier's telephone exchange service." The Commission has previously found that a BOC satisfies the requirements of checklist item 8 by demonstrating that it: (1) Provides nondiscriminatory appearance and integration of white page directory listings to competitive LECs' customers; and (2) provides white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers. Based on the evidence in the record, the Commission concludes that Verizon satisfies checklist item 8.

15. *Checklist Item 10—Databases and Associated Signaling.* Section 271(c)(2)(B)(x) of the Act requires a BOC to provide "nondiscriminatory access to databases and associated signaling necessary for call routing and completion." Based on the evidence in the record, the Commission finds that Verizon provides nondiscriminatory access to databases and signaling networks in the application states.

16. *Checklist Item 11—Local Number Portability.* Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." Based on the evidence in the record, the Commission finds that Verizon complies with the requirements of checklist item 11.

17. *Checklist Item 13—Reciprocal Compensation.* Section 271(c)(2)(B)(xiii) of the Act requires BOCs to enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)." In turn, section 252(d)(2)(A) specifies the conditions necessary for a state commission to find that the terms and conditions for reciprocal compensation are just and reasonable. The Commission concludes that Verizon provides reciprocal compensation as required by checklist item 13.

18. *Checklist Item 14—Resale.* Section 271(c)(2)(B)(xiv) of the Act requires that a BOC make "telecommunications services * * * available for resale in accordance with the requirements of section 251(c)(4) and section 252(d)(3)." Based on the record in this proceeding, the Commission concludes as that Verizon satisfies the requirements of this checklist item. Verizon has demonstrated that it has satisfied its legal obligation to make retail telecommunications services available for resale to competitive LECs at wholesale rates.

19. *Remaining Checklist items (3, 5, 6 and 9).* In addition to showing that it is in compliance with the requirements discussed above, an applicant under section 271 must demonstrate that it complies with checklist item 3 (access to poles, ducts, and conduits), item 5 (unbundled transport), item 6 (local switching unbundled from transport), and item 9 (numbering administration). Based on the evidence in the record, the Commission concludes that Verizon demonstrates that it is in compliance with the requirements of these checklist items. It notes that no party objects to Verizon's compliance with these checklist items (other than checklist item 5, which is addressed as part of checklist item 4).

20. *Section 272 Compliance.* Based on the record, Verizon provides evidence that it maintains the same structural separation and nondiscrimination safeguards in the application states as it does in Virginia, New Jersey, Connecticut, Maine, Pennsylvania, Rhode Island, Vermont, New York, Connecticut, and Massachusetts—where Verizon has already received section 271 authority. Based on the record before us, we conclude that Verizon has demonstrated that it will comply with the requirements of section 272.

21. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. From its extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, we find that barriers to competitive entry in the local exchange markets have been removed and the local exchange markets in Maryland, Washington, DC and West Virginia are open to competition. The Commission further finds that, as noted in prior section 271 orders, BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist. Verizon demonstrates that there is significant local competition in Maryland, Washington, DC and West Virginia and that Verizon's local market will remain open to competition, and that section 271 approval would enhance local and long distance competition in Maryland, Washington, DC and West Virginia.

22. *Section 271(d)(6) Enforcement Authority.* Working with each of the state commissions, the Commission intends to closely monitor Verizon's post-approval compliance to ensure that Verizon continues to meet the conditions required for section 271 approval. It stands ready to exercise its various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in each of the states.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–7332 Filed 3–26–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, March 25, 2003, 10 a.m.
Meeting closed to the public. This meeting was cancelled

DATE AND TIME: Tuesday, April 1, 2003, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:
Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, April 3, 2003, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:
Correction and Approval of Minutes.
Future Meeting Dates.
Draft Advisory Opinion 2003–02: The Socialist Workers Party ("SWP") and the SWP National Campaign Committee by counsel, Michael Krinsky and Jaykumar Menon.
Notice of Proposed Rulemaking on Title 26 and National Convention/Host Committees.
Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–7485 Filed 3–25–03; 11:49 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011786–001.
Title: Zim/Great Western Agreement.
Parties: Zim Israel Navigation Company Ltd. Great Western Steamship Company.
Synopsis: The proposed agreement modification expands the geographic scope to include Singapore, Japan, the U.S. Pacific Northwest, and the U.S. East Coast, revises Articles 5.1 through 5.4 to reflect the restructured cooperation of the parties, and extends the agreement through April 30, 2004. The modification also deletes obsolete language, corrects Great Western's address, and republishes the agreement in a second edition.

Dated: March 21, 2003.

By Order of the Federal Maritime Commission

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–7289 Filed 3–26–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 16230N.
Name: A–P–A World Transport Corp.
Address: 545 Dowd Avenue, Elizabeth, NJ 07201
Date Revoked: February 18, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16357N.
Name : Ace Shipping Corp.
Address: 155 Armstrong Road, Des Plaines, IL 60018
Date Revoked: February 20, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17010F.
Name: Alden International Inc.
Address: 809 Washington, Traverse City, MI 49686
Date Revoked: March 8, 2003.
Reason: Failed to maintain a valid bond.

License Number: 13582N.
Name: Argosy Transport, Inc.
Address: 5572 Lutford Circle, Westminster, CA 92683
Date Revoked: March 5, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4028F.
Name: BNX Shipping Inc.
Address: 2029 E. Cashdan Street, Rancho Dominguez, CA 90220
Date Revoked: February 24, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16660N.
Name: C.F.L. Freight Service, Inc.
Address: 2075 S. Atlantic Blvd., #G, Monterey Park, CA 91754
Date Revoked: February 14, 2003.
Reason: Failed to maintain a valid bond.

License Number: 14519N.
Name: Classic Cargo International, Inc.
Address: 2130–C Ace Worldwide Lane, Cudahy, WI 53110
Date Revoked: February 23, 2003.
Reason: Failed to maintain a valid bond.

License Number: 2764NF.
Name: Daniel H. Cheung dba Ace Container Line dba D. Cheung International
Address: 436 N. Canal Street, Unit 14, P.O. Box 280621, San Francisco, CA 94080
Date Revoked: January 30, 2003.
Reason: Failed to maintain valid bonds.

License Number: 14169N.
Name: Expedited Transportation Services, Inc.
Address: 2169 West Park Court, Suite O, Stone Mountain, GA 30087
Date Revoked: February 17, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17230NF.
Name: FEI Holdings dba Vision Freight Lines dba Vision Logistics Group
Address: 2813 Parkview Terrace, Fairfield, CA 94533
Date Revoked: February 11, 2003.
Reason: Failed to maintain valid bonds.

License Number: 3529F.
Name: Horizon Forwarders, Inc.
Address: One Edgewater Plaza, Suite 214, Staten Island, NY 10305
Date Revoked: January 23, 2003.
Reason: Failed to maintain a valid bond.

License Number: 3252NF.
Name: Intermar Steamship Corporation
Address: 80 Business Park Drive, Suite 104, Armonk, NY 10504
Date Revoked: February 17, 2003.
Reason: Failed to maintain valid bonds.

License Number: 11950N.
Name: Intermodal Logistics Systems, Inc.
Address: 19401 S. Main Street, Unit 302, Gardena, CA 90248
Date Revoked: February 14, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16574F.
Name: International Forwarders, Inc.
Address: 501–C Industrial Street, Lake Worth, FL 33461
Date Revoked: March 5, 2003.
Reason: Failed to maintain a valid bond.

License Number: 784F.
Name: James A. Green, Jr. & Co.

Address: 1311 Minnesota Avenue, Kansas City, KS 66102
Date Revoked: February 27, 2003.
Reason: Failed to maintain a valid bond.
License Number: 17140N.
Name: Meridian Containers (USA) Ltd.
Address: 1345 Woodlane Road, Eastampton, NJ 08060
Date Revoked: February 28, 2003.
Reason: Failed to maintain a valid bond.
License Number: 2037N.
Name: Miller & Thompson Forwarding, Inc.
Address: 1126 So. 70th Street, Suite 215–B, Milwaukee, WI 53214
Date Revoked: February 19, 2003.
Reason: Surrendered license voluntarily.
License Number: 2651F.
Name: Pioneer International Forwarding Co., Inc.
Address: 687 Commercial Street, 2nd Floor, San Francisco, CA 94111
Date Revoked: March 1, 2003.
Reason: Failed to maintain a valid bond.
License Number: 16450N.
Name: Seaspeed Transport LLC
Address: 6826 Somerset Blvd., #7, Paramount, CA 90723
Date Revoked: February 20, 2003.
Reason: Failed to maintain a valid bond.
License Number: 4185N.
Name: Southern Winds International
Address: 1780 Wipple Road, Suite 206, Union City, CA 96587
Date Revoked: February 26, 2003.
Reason: Failed to maintain a valid bond.
License Number: 17631N.
Name: Sunmar Shipping, Inc.
Address: 2615 4th Avenue, Suite 700, Seattle, WA 98121
Date Revoked: February 27, 2003.
Reason: Failed to maintain a valid bond.
License Number: 3863NF.
Name: Tera Trading Group, Inc. dba T.T.G. International Freight Forwarders
Address: 1850 NW 82nd Avenue, Miami, FL 33126
Date Revoked: February 7, 2003.
Reason: Failed to maintain valid bonds.
License Number: 2287NF.
Name: Total Cargo International, Inc.
Address: 7500 NW 25th Street, Suite #257, Miami, FL 33122
Date Revoked: March 5, 2003.
Reason: Failed to maintain valid bonds.
License Number: 8473N.
Name: Total Cargo dba Polar Bear Container Line
Address: 132 S. Cloverdale Blvd., Cloverdale, CA 95425
Date Revoked: February 26, 2003.
Reason: Failed to maintain a valid bond.
License Number: 2681F.
Name: Trans-Border Customs Services, Inc.
Address: One Trans-Border Drive, P.O. Box 800, Champlain, NY 12919
Date Revoked: July 1, 2002.
Reason: Surrendered license voluntarily.
License Number: 17768F.
Name: United Shipping Services, Inc.
Address: 2121 W. Mission Road, #307, Alhambra, CA 91803
Date Revoked: March 1, 2003.
Reason: Surrendered license voluntarily.
License Number: 2813N.
Name: Vital International Freight Services, Inc.
Address: 5200 W. Century Blvd., Suite 290, Los Angeles, CA 90045
Date Revoked: March 1, 2003.
Reason: Failed to maintain a valid bond.
License Number: 4536F.
Name: Worldwide International, Inc.
Address: 5900 Roche Drive, Suite No. LL–20, Columbus, OH 43229
Date Revoked: November 9, 2002.
Reason: Failed to maintain a valid bond.
License Number: 4410F.
Name: Zeal Cargo Corporation
Address: 8525 NW 29th Street, Miami, FL 33122
Date Revoked: February 16, 2003.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 03–7288 Filed 3–26–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
12367N	Maritime Express, Inc., 12613 Executive Drive, #700, Stafford, TX 77477	November 30, 2002.
3813F	Page International, Inc., 109 Minus Avenue, Suite C–7, Garden City, GA 31408	January 31, 2003.
17052N	Sec Sea & Air, Inc., 273 E. Redondo Beach Blvd., Gardena, CA 90248	November 4, 2002.
4306NF	International Transport, Services, Inc., 18747 Sheldon Road, Cleveland, OH 44130	November 3, 2002.
2037F	Miller & Thompson Forwarding, Inc., 1126 South 70th Street, Suite 215B, Milwaukee, WI 53214.	February 19, 2003.
15917N	Golden Jet-L.A., Inc., dba Golden Jet Freight Forwarders, 12333 S. Van Ness Avenue, Suite 201, Hawthorne, CA 90250.	January 29, 2003.
1636F	Packers Enterprises, Inc., dba Packers, Ltd., 100 Broad Avenue, Wilmington, CA 90744	November 23, 2002.
17768N	United Shipping Services, Inc., 2121 W. Mission Road, Suite 307, Alhambra, CA 91803	March 1, 2003.
15688N	Millennium Logistics Services, Inc., 6709 NW 84th Avenue, Miami, FL 33166	December 2, 2002.
2274F	David K. Lindemuth Co., Inc., 154 South Spruce Avenue, South San Francisco, CA 94080	February 11, 2003.
338F	Fred P. Gaskell Company, Inc., 821 W. 21st Street, Norfolk, VA 23517	February 5, 2003.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 03–7291 Filed 3–26–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Speedy International, LLC., 451 Victory Avenue, Suite 6, So. San Francisco, CA 94080, Officers: Hoon Kim, Operations Supervisor (Qualifying Individual), Michael Chan, Manager.
Pudong Prime International Logistics, Inc., 17595 Almahurst Road, #201, City of Industry, CA 91748, Officers: Ying Hu, Secretary (Qualifying Individual), Jian Wang, Director/President.
UIA Worldwide Logistics, Inc., 2100 Huntington Drive, Suite 7, San Marino, CA 91108, Officers: Theodore Wayne Quan, Vice President (Qualifying Individual), Jack Ling, President.
Topocean Consolidation Service (Seattle) Inc., 15215 52nd Avenue So., Suite 21, Tulwila, WA 98188, Officers: Michael C. Owens, Vice President (Qualifying Individual), Vic Cheung, President.
Seoil Agency Co. U.S.A., Inc., 2150 N. 107th Street, Suite 170, Seattle, WA 98133, Officer: Myeongjong Kim, President (Qualifying Individual).
California Freight System, Inc., 601 W. Carob Street, Compton, CA 90220, Officers: Jong Wook Lim, President/CEO (Qualifying Individual), J. H. Chang, Director.
Formerica Consolidation Service, Inc., 144–37 156 Street, 2nd Floor, Jamaica, NY 11434, Officers: Peter C. Chiu, President (Qualifying Individual), Ami Wey, Secretary.
Form Logistics Inc., 20 W. Lincoln Avenue, #302, Valley Stream, NY 11580, Officers: Cheng Hsia, Vice President (Qualifying Individual), Tung Shen Wang, President.
Dimex Consulting, Inc., 118 W. Hazel Street, Suite A, Inglewood, CA 90302, Officer: Diem T. Nguyen, Owner.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Angel's Maritime Services Inc., 6630 Hawin Drive, Suite #108, Houston, TX 77036, Officer: John Ola Coker, President (Qualifying Individual).
United Nation Transportation LLC, 3208 Chico Avenue, El Monte, CA 91733, Officer: Jeff Mangkareth Insixiengmay, President (Qualifying Individual).
ACS Cargo Systems, Inc. dba Expedite America Express, 2688 Coyle Lane, Elk Groove Village, IL 60007, Officers: Steven J. Ellis, Director (Qualifying Individual), Joseph W. Ellis, Treasurer.
Interport Services Corp., 8501 N.W. 17th Street, Miami, FL 33126, Officers: Alberto J. Marino, President (Qualifying Individual), Ivette C. Marino, Secretary.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Logical Solution Services, Inc., 14 Emory Street, Howell, NJ 07731, Officer: Victor Cruz, President (Qualifying Individual).
Global Logistics Freight, Inc., 275 North Central Avenue, Valley Stream, NY 11580, Officer: Maria DeFilippis, President (Qualifying Individual).
Fox Freight Forwarders, Inc., 3727 NW 52nd Street, Miami, FL 33142, Officer: Maria S. Hugues, President (Qualifying Individual).

Dated: March 21, 2003.

Bryant L. VanBrakle,
Secretary.
[FR Doc. 03–7290 Filed 3–26–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background. On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before May 27, 2003.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority to conduct the following survey:

Report title: 2004 Survey of Consumer Finances
Agency form number: FR 3059
OMB Number: 7100–0287
Frequency: One–time survey
Reporters: U.S. families
Annual reporting hours: 7,500 hours
Estimated average hours per response: Pretest and survey, 75 minutes each
Number of respondents: Pretest, 400 families; survey, 5,600 families
Small businesses are not affected.
General description of report: This information collection is voluntary. The Federal Reserve's statutory basis for collecting this information is section 2A of the Federal Reserve Act (12 U.S.C. § 225a); the Bank Merger Act (12 U.S.C. § 1828(c)); and sections 3 and 4 of the Bank Holding Company Act (12 U.S.C. §§ 1842 and 1843) and 12 U.S.C. § 353 and 461. The names and other characteristics that would permit identification of respondents are deemed confidential by the Board and are exempt from disclosure pursuant to exemption 6 in the Freedom of Information Act (5 U.S.C. § 552(b)(6)).

Abstract: For many years, the Board has sponsored consumer surveys to obtain information on the financial behavior of households. The 2004 Survey of Consumer Finance (SCF) will be the latest in a triennial series, which began in 1983, that provides comprehensive data for U.S. families on the distribution of assets and debts, along with related information and other data items necessary for analyzing behavior. These are the only surveys conducted in the United States that provide such financial data for a representative sample of households. Data for the SCF are collected by interviewers using a computer program. While some questions may be deleted and others modified, only minimal changes will be made to the questionnaire in order to preserve the time series properties of the data. The pretest will be conducted during 2003 and survey would be conducted between May and December 2004.

Board of Governors of the Federal Reserve System, March 21, 2003.

Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 03–7286 Filed 3–26–03; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 21, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Financial Investors of the South, Inc., Birmingham, Alabama; to acquire up to 15 percent of the voting shares of Consumer National Bank, Jackson, Mississippi.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. BSA Delaware, Inc., Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Bevans State Bank of Menard, Menard, Texas.

Board of Governors of the Federal Reserve System, March 21, 2003.

Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 03–7287 Filed 3–26–03; 8:45 am]
BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04003]

Health Promotion and Disease Prevention Research Centers; Notice of Availability of Funds

Application Deadline: June 16, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(2) and 1706 (42 U.S.C. 241(a), 247b(k)(2) and 300 u–5) of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.135.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program to fund Health Promotion and Disease Prevention Research Centers (PRCs). This program addresses the Healthy People 2010 focus areas of Access to Quality Health Services, Cancer, Diabetes, Disability and Secondary Conditions, Educational and Community-Based Programs, Health Communications, Nutrition and Overweight, and Physical Activity and Fitness.

In 1984, Congress authorized the Secretary of the Department of Health and Human Services (HHS) to create a network of academic health centers to conduct applied public health research. As the designated administrator of the PRC Program, CDC provides leadership, technical assistance, and oversight.

The purpose of the PRC Program is to support health promotion and disease prevention research that (1) focuses on the major causes of death and disability, (2) improves public health practice within communities, and (3) cultivates effective state and local public health programs. One of the major focuses of the PRCs is to design, test, and disseminate effective prevention research strategies. The program's "Guiding Principles and Policy Statement for Core Research Projects" are available at: *http://www.cdc.gov/prc*.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Chronic Disease Prevention and Health Promotion: to support prevention research to develop sustainable and transferable community-based behavioral interventions.

C. Eligible Applicants

Applications may be submitted by schools of public health, schools of medicine or osteopathy with an accredited Preventive Medicine Residency that have:

1. A multidisciplinary faculty with expertise in public health, and working relationships with relevant groups in such fields as medicine, psychology, nursing, social work, education and business.
2. Graduate training programs relevant to disease prevention.
3. A core faculty in epidemiology, biostatistics, social sciences, behavioral and environmental sciences, and health administration.
4. A demonstrated curriculum in disease prevention.
5. A capability for residency training in public health or preventive medicine.

First Round of Competition

For this round of competition, assistance will be provided only to the universities currently funded under Program Announcements 98047, 00089, and 01101. All three announcements are entitled "Health Promotion and Disease Prevention Research Centers." The eligible universities are as follows: University of Washington, Yale University, Harvard University, Columbia University, The Johns Hopkins University, West Virginia University, University of North Carolina at Chapel Hill, University of South Carolina, University of Alabama at Birmingham, Morehouse School of Medicine, University of South Florida, University of Illinois at Chicago, University of Minnesota, University of Michigan, University of Texas Health Science Center at Houston, University of Oklahoma, University of New Mexico, Tulane University, Saint Louis University, University of Colorado, University of California at Berkeley, University of Arizona, University of California at Los Angeles, University of Kentucky, Boston University, University of Pittsburgh, State University of New York at Albany, and University of Iowa.

Competition is limited to these universities because they are uniquely positioned to perform, oversee, and coordinate community-based participatory research that promotes the field of prevention research, due to their established relationships with community partners. Applications receiving a quality score of 80 or above will be considered for funding. If sufficient applications do not obtain scores of 80 or greater, funding consideration will be given to applications that score 75 or above.

Note: Only one application will be accepted from each university.

Second Round of Competition

Pending the availability of funds, eligible applicants not receiving a fundable quality score during the first round of competition and all other applicants meeting the eligibility requirements listed at the beginning of the Eligible Applicants section will be considered during the second round of competition. Specific guidance with exact due dates for the second round of competition will be announced at a later date.

Additionally, beginning in FY 2005, and for each of the remaining years for this program announcement (September 30, 2005 through September 29, 2009), there will be a competitive application process. Specific guidance will be provided with exact due dates and funding levels each year.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

D. Funding

Availability of Funds

Approximately $14,000,000 will be available in FY 2004 to fund approximately 18 awards. It is expected that the average award will be approximately $750,000 to $850,000 per center. The awards are expected to begin on or about September 15, 2004, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress toward performance measures, as evidenced by required reports, and the availability of funds.

Direct Assistance

You may request Federal personnel in lieu of a portion of financial assistance. (See the Application Content section of this announcement for more information on how to request direct assistance.)

Use of Funds

The applicant should allocate funds to support evaluation activities related to the center. In addition, funds should be allocated to support communication activities, including the input and maintenance of information for the PRC Information System (See Appendix A for a description of the PRC Information System. All appendices referenced in this announcement are posted on the CDC Website with the full announcement.)

Funding Preferences

In the second round of competition, funding preference will be based on selecting applicants in order to maintain an equitable geographic distribution of centers. Funding preference will also be given to applicants that demonstrate a focus on the public health needs of rural populations.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under item 1. Recipient Activities, and CDC will be responsible for the activities under item 2. CDC Activities.

1. Recipient Activities

a. Create a logic model for the prevention research center. This logic model can be adapted from the national PRC Program conceptual framework (See Appendix B for a description) to fit the specific inputs, activities, outputs, and outcomes of the center. Write an accompanying narrative that includes a description of how the center-level components relate to the national PRC framework.

b. Evaluate the center based on the center's logic model, particularly addressing critical components related to the center's stated outcomes. Describe how the center's evaluation will contribute to CDC's national program evaluation, including the core performance indicators. (See Appendix D for a list of the indicators.)

c. Establish or maintain a center community committee. Define the role and composition of the committee, how the center will communicate with the

committee, and how it will link to the CDC PRC National Community Committee (NCC). (See Appendix C for a description of the CDC PRC NCC.)

d. Establish and maintain partnerships (*e.g.*, state and local health departments, community groups and agencies, and academic units), and include these partners, when applicable, in the center activities.

e. Identify national, regional, or local health priorities and health disparities within the defined community. Involve center partners when identifying the health priorities and health disparities, and provide evidence of such involvement.

f. Develop the center's participatory, community-based core research project and the center's five-year research agenda. Ensure the core research project and other proposed research activities are grounded in sound research methods and further the field of prevention research consistent with the purpose of this announcement. Plan the core research project in collaboration with community partners and provide evidence of such collaboration. Each center is required to conduct at least one core research project. (*See* the application content section of this announcement for additional information.)

g. Communicate and disseminate the center's research findings and research products.

h. Establish the appropriate resources for contributing information to the PRC Information System and maintaining the information.

i. Recruit, hire, and retain qualified staff. Develop an organizational chart that illustrates the center's staffing plan.

j. Acquire and maintain the technological capacity, facilities, and university support for the center (*e.g.*, software, space, equipment, etc.).

k. Provide training, technical assistance, or mentoring to health professionals, researchers, students, community members, and other partners, as appropriate.

2. CDC Activities

a. Convene semi-annual meetings of PRCs to facilitate research collaboration and information sharing.

b. Conduct onsite visits of PRCs to provide consultation and technical support and help recipients meet program objectives and cooperative agreement requirements.

c. Provide consultation and other technical assistance to help recipients use the PRC Information System for recording and disseminating research results.

d. Collect, organize, and disseminate information on PRC research pertinent to the PRC Program's Guiding Principles (*http://www.cdc.gov/prc*).

e. Provide support to the PRC National Community Committee to promote capacity-building and community participation in the PRC Program.

f. Guide an external, peer-reviewed funding mechanism to enhance centers' opportunities for prevention research consistent with their mission.

g. Organize information-sharing sessions to guide recipients in developing their center-specific logic models consistent with the national framework.

h. Serve as a scientific and professional resource for projects developed through the PRCs' national committee structure.

i. Inform recipients about the laws and regulations pertaining to human subjects research and conduct inquiries concerning allegations of scientific misconduct.

j. Evaluate and monitor recipients' progress toward meeting program objectives and goals.

F. Content

Letter of Intent

A Letter of Intent (LOI) is required for this program. The Program Announcement title and number must appear in the LOI. The LOI should be no more than three double-spaced pages, printed on one side, with one-inch margins, and 12-point font. The LOI, which will be used in planning for the external peer review panel, should include the following information: (1) The name, address, telephone number, fax number, and E-mail address of a contact person from the applicant's institution; (2) name of the Principal Investigator; (3) center name and location; (4) description of how the center meets the eligibility requirements contained in Section C of this announcement; (5) a brief description of the center's research focus (a 3–4 line description); and (6) a brief description of the center's proposed activities (maximum of one paragraph). Note: Each university may submit only one application per round of competition. Attachments, booklets, or other documents will not be accepted with the LOI.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in the application. The narrative should be no more than 120 double-spaced pages, printed on one side, with one-inch margins, and 12-point font, excluding appendices and PHS Form 398. Appendices must not exceed 50-pages and must be hard copy documents (*i.e.*, no audiovisual materials or posters). Curriculum vitae, letters of support, and memoranda of understanding should be included as appendices; however, these documents will not be counted against the 50-page limit. Instructions contained here regarding font and page length supersede those in the PHS Form 398. The narrative should consist of the following items, in the order listed:

Evaluation

An infrastructure of resources and personnel is required to support center-level evaluation. Applicants should have the capacity to (1) establish a five-year evaluation plan; (2) conduct center-level evaluation; and (3) collaborate with national partners in the planning, implementation, and evaluation of national PRC Program evaluation strategies (*See* Appendix B for a description of Developing an Evaluation Framework: Insuring National Excellence [Project DEFINE].) To assure that applicants have this capacity, applicants should, at a minimum, address the following:

1. Create a center-level logic model specifying the center's health priorities and expected outcomes. Within the logic model, define the inputs, activities, outputs, outcomes, evaluation, and contextual conditions for the center. This logic model can be adapted from the national PRC Program conceptual framework (*See* Appendix B) to fit the specific components of the individual center. In addition to the logic model, a narrative description of each component must be included. Please include the center's mission within the narrative, and limit the mission statement to one to two sentences. Further, within this narrative describe how each component of the center's model is related to the national PRC Program conceptual framework.

2. Document experiences in conducting program evaluations in the past five years. Describe how the center will continue or enhance its evaluation expertise as it relates to the center-level evaluation.

3. Create and describe a five-year plan for evaluating the critical components of the center's logic model. The plan should include evaluation goals and related questions and describe how the

plan was developed in collaboration with the centers' community committee.

4. Address how the center's evaluation will consider the following:

a. The overarching national program evaluation questions: (1) How is the center contributing to changes in public health research, practice, and policy; and (2) What types of partnerships has the center established and what effect have these relationships had on the goal of building community capacity for public health practice and disease prevention?

b. The national performance indicators. The performance indicators will be reported on annually through the PRC information system.

Collaborations/Partnerships

An infrastructure of resources and personnel is required to support collaboration with partners. Collaboration with partners and the defined community in program planning and activities can increase the success of programs and enhance community capacity. Applicants should have the capacity to (1) establish and maintain relationships with partners; (2) facilitate the establishment and maintenance of the center's community committee(s); and (3) collaborate with partners on the planning and implementation of core research. To assure that applicants have this capacity, applicants should, at a minimum, address the following:

1. Define and describe the primary community or communities that the center's activities will serve (*e.g.*, describe population size, geographic boundaries, racial and ethnic makeup, socioeconomic status, etc.).

2. Describe the plan for establishing or maintaining the center's community committee(s). (*See* the glossary for additional information regarding the center community committee.) This plan should include, at a minimum, the following: (a) The intended composition and membership of the committee and how the constituents reflect the community described in item 1 of this section; (b) the proposed mission and role for the committee in the center's planning and activities, consistent with the logic model; (c) the plan for developing or refining guidelines for the community committee over the first year of the funding period; (d) the plan for communication between the community committee and the center staff, and how this plan is linked to the center's overall communication plan; and (e) how the center's community committee members will participate in and communicate with the CDC PRC NCC. (*See* Appendix C for a description of the CDC PRC NCC.) Provide evidence of commitment and cooperation of current and potential members of the center's community committee(s) (*e.g.*, letters of support, memoranda of understanding, or examples of prior collaboration.)

3. Identify and describe other partners such as state and local health departments, community groups and agencies, and academic units. At a minimum, briefly describe: (a) Past partners, new partners, and proposed partners; (b) the proposed methods for establishing and maintaining these partnerships, including how the lessons learned from previous partnerships will be applied to the proposed methods; and (c) the partners involvement in the centers proposed activities. In this section, specifically address the partners' role in developing this proposal and partners' expectations about their roles in the planning and implementation of the center's activities. Provide evidence of commitment and cooperation of current and potential partners (*e.g.*, letters of support, memoranda of understanding, and examples of prior collaborations).

Research

An infrastructure of resources and personnel is required to support research in the center. Applicants should have the capacity to (1) establish a five-year research agenda; (2) conduct core research and other prevention research as described in the research agenda; and (3) effectively collaborate with partners in the planning, implementation, and dissemination of core research. To assure that applicants have this capacity, applicants should, at a minimum, address the following:

1. Provide evidence of having identified national, regional, or local health priorities and health disparities within the community and of having identified them in collaboration with community partners.

2. Document experience in successfully conducting, evaluating, and publishing prevention research in the past five years. In particular, describe community-based research activities and provide evidence of community involvement in those activities.

3. Describe the center's five-year research agenda, including the goals and objectives. Describe how this agenda helps fulfill the center's mission. If the research agenda is also supported by non-PRC Program funding sources, identify the other funders.

4. Provide a detailed description of the center's participatory, community-based core research project and how it will further the field of prevention research. The long-term outcome should be applicable to public health programs and policies. The core research project can address any of the three types of applied research: (1) Determinant research, which examines how risk and protective factors affect health and how this research is essential for developing effective interventions; (2) intervention research, which examines the effectiveness of strategies or programs in reducing disease and promoting health; or (3) dissemination research, which examines strategies for promoting the adoption and maintenance of effective programs.

The applicant should use the following template to describe the core research project:

a. Title of the project

b. Project Director/Lead Investigator for the project

c. Institution(s)/partners involved in the project

d. Categorization of the project as determinant, intervention, or dissemination research

e. Relationship of the project to the center's mission and health priorities

f. Relationship of the project to HHS objectives (*e.g.*, Healthy People 2010)

g. Indication of whether the project is new or ongoing. (If ongoing, describe the prior work on this project.)

h. Detailed summary of the project:

(1) Background

(2) How the project furthers the field of prevention research

(3) Goals and objectives

(4) Proposed timeframe for the project

(5) Methods and measures

(6) Setting and context

(7) Study participants and recruitment strategy

(8) Intervention (if applicable)

(9) Expected outcomes and how the center intends to communication and disseminate these outcomes

i. Evidence of community participation in planning the core project. Describe how the center will collaborate with partners on refining and developing the research methodology, recruiting of research participants, and reporting and disseminating research findings.

j. Describe how the core research project is integrated into the centers five-year research agenda.

Communication/Dissemination Activities

An infrastructure of resources and personnel is required to support communication functions. These functions will help ensure that key research, dissemination, and managerial objectives are met. Applicants should have the capacity to (1) disseminate

research by making its findings, methods, and tools available; (2) keep stakeholders (*i.e.*, researchers, practitioners, community members, and policymakers) abreast of the center's accomplishments; and (3) account for the grant funds dispersed by producing products that reflect research progress and results. To assure that applicants have this capacity, applicants should, at a minimum, address the following:

1. Define and describe how the center's communication and dissemination activities will be integrated into the center's research agenda and activities as described in the logic model narrative. Show how the community's demographic and cultural profile will be taken into consideration. Describe how work with collaborators and other partners will extend the center's reach. Describe how the center intends to affect local, state, or national policy, and other potential outcomes through communication and dissemination efforts related to the research agenda.

2. Describe the methods the center will use to communicate and disseminate its products and other information. At a minimum address the following: a. Plans for publications and distribution of materials such as scientific papers, conference reports, newsletters, educational and training materials. b. Plans for meetings, personal interactions, and sharing of information with collaborators for the development of long-term partnerships. c. Plans for electronic dissemination of products and other information through the PRC Information System and any other means (*e.g.*, Web sites).

d. Plans for media releases and statements or the pursuit of opportunities for media coverage.

3. Describe the center's infrastructure of resources and personnel that will support the identified communication and dissemination activities. At a minimum, describe the following:

a. Ability to understand community-based research in public health and the constituent communities/stakeholders.

b. Ability to translate the content of the center's activities for different audiences.

c. Ability to participate in strategic communication planning and the setting of center-wide standards.

d. Access to personnel and resources as applicable for layout and design, Web site construction, photography, proofreading, other development and production activities, and the maintenance of the PRC Information System.

Infrastructure

An infrastructure of personnel and resources is required to support center functions and processes. This infrastructure will help ensure that adequate personnel, facilities, technology, and university support exist to accomplish the research agenda/activities described in the center's logic model narrative. Applicants should have the capacity to (1) recruit, hire, and retain faculty and staff having the expertise to implement center projects and activities; (2) acquire, manage, and maintain the communications and information systems necessary to operate a PRC; and (3) acquire and maintain university support for the center. To assure that applicants have this capacity, applicants should, at a minimum, address the following:

1. Provide an organizational chart for the center showing all organizational units and functions. The chart should also reflect the activities articulated in the center's logic model.

2. Describe the center's staffing and management plan. Describe each proposed position and discuss how the position provides the scientific and technical expertise needed to carry out both research and non-research activities. Describe the minimum criteria and the required expertise for each position. Describe the qualifications of the proposed staff. Describe how the proposed staff will interact with each other and with the university's leaders to accomplish the center's goals and objectives. This discussion should highlight the center's (a) leadership staff; (b) research staff; (c) evaluation staff; (d) communication and dissemination staff; (e) training staff; (f) information management staff; and (g) fiscal administration staff.

3. Describe how your center will be integrated within the university structure. Describe the facilities in which staff will work and how these facilities enhance the center's ability to complete the proposed activities.

4. Describe the center's plan to enhance its core capacity over the five-year period, including the commitment and capability to obtain the communication, information systems, and other tools necessary to accomplish goals and objectives (*i.e.*, computer equipment, telephones, facsimile machines, scanners, scientific software, etc.).

Training/Education

An infrastructure of resources and personnel is required to support training, technical assistance, or mentoring of practitioners, researchers, students, community members, and other partners, as applicable. Applicants should have the capacity to assess, plan, implement, and evaluate training, technical assistance or mentoring activities. Applicants, at a minimum, should address the following:

1. Describe the center's assets or needs assessment (past, current, or proposed) for training, technical assistance, or mentoring. Explain collaboration with partners in the assets or needs assessment.

2. Describe the center's five-year plan for providing training, technical assistance, or mentoring. This plan should include (a) goals and objectives, (b) partner collaboration, and (c) how the plan reflects the mission of the center and the assets or needs assessment described above. Describe how any lessons learned from prior training, technical assistance, or mentoring activities during the past five years will be applied to the proposed plan. Additionally, describe training facilities and resources (*e.g.*, ability to print materials, use video and computer equipment, and develop websites).

Budget Information

Provide a line-item budget and narrative justification for all requested costs that are consistent with the goals, objectives, and proposed research activities, to include the following:

1. Line-item breakdown and justification for all personnel, *i.e.*, name, position title, annual salary, percentage of time and effort, and amount requested.

2. Line-item breakdown and justification for all contractors and consultants, to include the following:
(a) Name of contractor or consultant
(b) Period of performance
(c) Method of selection (*e.g.*, competitive or sole source)
(d) Scope of work
(e) Method of accountability
(f) Itemized budget

3. To request direct assistance assignees, include:
(a) Number of assignees
(b) Description of the position and proposed duties for each assignee
(c) Justification of inability to hire locally with financial assistance
(d) Justification for request
(e) Name of intended supervisor
(f) Opportunities for training, education, and work experiences for assignees
(g) Description of assignee's access to computer equipment for communication with CDC (*e.g.*, personal computer and location, shared computer at on-site workstation, shared computer at central office).

G. Submission and Deadline

Letter of Intent (LOI) Submission:

First Round of Competition

On or before April 10, 2003, submit a signed original and two copies of the LOI to the Grants Management Specialist identified in the Where to Obtain Additional Information section.

Application Forms

Submit the signed original and two copies of the application PHS Form 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

First Round of Competition

The application must be received by 4 p.m. Eastern Time June 16, 2003. Submit the application to: Technical Information Management-PA# 04003, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, indicating that CDC has received the application.

Deadline

Letters of Intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends an application by the U.S. Postal Service or commercial delivery service must ensure that the carrier can guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will, upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Letter of Intent

The Letter of Intent will be evaluated against the eligibility criteria contained in the Eligible Applicants section of this Program Announcement.

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the objectives identified in the cooperative agreement. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be individually evaluated against the following criteria by an external peer review panel:

Evaluation (20 points)

1. To what extent does the applicant appropriately construct a center-level logic model and provide a narrative description of components of the logic model?

2. To what extent does the applicant sufficiently describe and justify how each component of the center's logic model relates to or differentiates from the national PRC Program conceptual framework?

3. To what extent does the applicant describe relevant evaluation experiences and expertise as it relates to conducting an evaluation of the applicant's center?

4. To what extent does the applicant adequately lay out a five-year evaluation plan for evaluating the critical components of the center's logic model, including the goals and questions?

5. How well does the applicant illustrate how the center's evaluation plan is related to the national PRC Program evaluation activities, which include annual reporting on national performance indicators?

Collaborations/Partnerships (20 points)

1. To what extent does the applicant adequately define and describe the primary community or communities that the center's activities serve?

2. To what extent does the applicant adequately describe the center's community committee, particularly its initial mission, roles, and composition and plans for developing or refining guidelines? Does the applicant provide letters of support or other evidence from these partners of active participation in this collaboration?

3. To what extent does the applicant appropriately describe the center's community committee relationship to the center's communication plan and the CDC PRC NCC?

4. To what extent does the applicant adequately describe the past and newly established partnerships, the roles of these partners, and the methods for establishing and maintaining the partnerships?

5. To what extent does the applicant adequately describe the proposed activities with the identified partners? Does the applicant provide letters of support or other evidence from these partners?

Research (20 points)

1. To what extent does the applicant provide sound evidence of having identified the health priorities and health disparities in the community? Were these priorities identified in collaboration with the center's partners?

2. To what extent has the applicant demonstrated success in conducting, evaluating, and publishing previous prevention research in the past five years? What percentage of these activities could be described as community-based participatory research?

3. To what extent does the applicant specify the goals and objectives for the center's five-year research agenda and relate this agenda to the center's mission?

4. To what extent does the applicant adequately describe the proposed core research project or projects? In particular, how appropriate is the description for the type of project, its linkage to the center's mission and priorities identified in the logic model, its linkage to HHS objectives, and its evidence of community participation in developing and conducting the project? To what extent are the research methods proposed of sound scientific quality and do they further the field of prevention research? To what extent is the core research project integrated into the center's five-year research agenda?

Items 5 and 6 must be addressed but these items will not be scored

5. To what extent does the applicant adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? This component is not scored; however, an application can be disapproved if the perceived research risks are sufficiently serious and the protection against risks is so inadequate as to make the entire application unacceptable.

6. To what extent does the applicant adequately address the CDC policy requirements for the inclusion of women, ethnic, and racial groups in the proposed research? (See Attachment 1, AR–2 for more information). This policy

includes (a) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) the proposed justification when representation is limited or absent; (c) a statement as to whether the design of the study is adequate to measure differences when warranted; and (d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Communication/Dissemination (15 points)

1. To what extent are the applicant's described communications and dissemination activities integrated into the center's goals and objectives? Has the applicant adequately addressed the diversity or special needs of the community or subgroups and described how it will work with its partners. Does the applicant anticipate these activities will have an effect on local, state, or national policy, and other potential outcomes?

2. How well does the applicant describe the proposed methods for the center's communication and dissemination activities? To what extent can these methods help accomplish the center's goals and objectives?

3. To what extent will the applicant's described infrastructure of resources and personnel adequately help support the center's communication and dissemination activities?

Infrastructure (15 points)

1. Does the applicant provide an organizational chart? How well does the chart represent the center's activities? How well does the organizational structure facilitate the center's activities?

2. To what extent does the applicant describe the positions needed to accomplish the center's goals and objectives? How well does the applicant describe the staffing plan, and to what extent does the plan describe the experience, expertise, and percentage of effort required of the center's leadership, research, evaluation, communications, training, information management, and fiscal administration staff? Has the applicant explained how it will increase its capacity over time? Is the staffing plan adequate for the center to accomplish its proposed goals and objectives?

3. How well does the applicant describe the university's commitment to the center (e.g., facilities, technological resources, etc.)? Is the university commitment adequate to establish and maintain an identity for the proposed center?

Training/Education (10 points)

1. To what extent does the applicant sufficiently describe and justify the center's assets or needs assessments for training, technical assistance, or mentoring activities?

2. To what extent does the applicant adequately lay out a five-year training, technical assistance, or mentoring plan, including how the plan reflects the mission of the center and the assets or needs assessment described above?

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Annual progress reports.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Applicants will send all reports to the Grants Management Specialist identified in the Where to Obtain Additional Information section of this announcement.

In addition, the applicant will be responsible for submitting information on program performance through the PRC Information System. This will include, but is not limited to the following: (1) Providing information on all projects (*i.e.*, Core projects, special interest projects, and other funded projects) and products (*i.e.*, interim reports, publications, presentations, surveys, etc.); (2) providing semi-annual updates to the information contained in the system; and (3) collaborate with the national PRC Program on the continued development and improvement of the information system.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 of the program announcement, as posted on the CDC web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

See Appendix E for supplemental information about Research Integrity, Human Subjects Requirements, and Institutional Review Board policy.

J. Where to Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.*

Click on "Funding" then "Grants and Cooperative Agreements."

For general questions about this announcement, contact Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Lucy Picciolo, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2683, E-mail address: *LPicciolo@cdc.gov.*

For program technical assistance, contact: Robert Hancock, Project Officer, Prevention Research Centers Office, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, Northeast, MS K45, Atlanta, GA 30341–3724, Telephone: 770–488–5395, E-mail address: *RHancock@cdc.gov.*

Dated: March 20, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–7315 Filed 3–26–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03029]

Intervention Research Grants To Promote the Health of People With Disabilities; Amendment

A notice announcing the availability of Fiscal Year (FY) 2003 funds for a grant program supporting intervention research to promote the health of people with disabilities was published in the **Federal Register**, March 10, 2003, Volume 68, Number 46, pages 11395–11399. The notice is amended as follows: Page 11395, Section D. Funding, delete paragraph two.

Dated: March 21, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–7316 Filed 3–26–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10042, CMS–10081, CMS–843, CMS–841, 842, 844–853, CMS–484, and CMS–R–13]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Medicare Part A Provider and Durable Medical Equipment Supplier Satisfaction Study; *Form No.:* CMS–10042 (OMB# 0938–NEW); *Use:* This is a request for clearance of a survey questionnaire to conduct a standardized random sample of Part A providers' and DME suppliers' satisfaction of their experience with their Medicare contractor's performance in its administration of the Medicare-fee-for-service program. The purpose of this study is to develop a baseline measure of providers' and suppliers' satisfaction with Medicare contractors by administering a survey to 15,000 providers and suppliers, 5,000 serviced by each of the following contractors: Connecticut General Life Insurance Company (CIGNA)–D, Palmetto Government Business Administrafors (PBGA)–D, and United Government Services, LLC (UGS)-Part A. The data collected will be interpreted to produce indicators of the contractor's quality of performance.; *Frequency:* Annually; *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 4,500; *Total Annual Responses:* 4,500; *Total Annual Hours:* 1,125.

2. *Type of Information Request:* New Collection; *Title of Information Collection:* Data Collection for Administering the Survey for the Evaluation of the Demonstration to Maintain Independence and Employment (DMIE); *Form No.:* CMS–10081 (OMB# 0938–NEW); *Use:* The DMIE Programs, funded by CMS under Title II of the Federal Ticket to Work Legislation, provide Medicaid coverage to low-income working populations, The Survey Evaluation is designed to assess the impact of the Mississippi DMIE program on access to care, health status and quality of life, workforce participation, etc.; *Frequency:* Annually; *Affected Public:* Individuals or Households, and State, Local or Tribal Govt.; *Number of Respondents:* 928; *Total Annual Responses:* 928; *Total Annual Hours:* 253.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Durable Medicare Equipment Regional Carrier, Certificate of Medical Necessity and Supporting Documentation Requirements ; *Form No.:* CMS–843 (OMB# 0938–0875); *Use:* This information is needed to correctly process claims and ensure that claims are properly paid. These forms contain medical information and supporting documentation necessary to make appropriate claims determinations. Suppliers and physicians will complete these forms and as needed supply additional routine supporting documentation necessary to process claims; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Federal Government, Not-for-profit institutions; *Number of Respondents:* 2,700; *Total Annual Responses:* 141,900; *Total Annual Hours:* 30,100.

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Durable Medical Equipment Regional Carrier, Certificate of Medical Necessity and Supporting Documentation Requirements; *Form No.:* CMS–841, 842, 844–853 (OMB# 0938–0679); *Use:* This information is needed to correctly process claims and ensure that claims are properly paid. These forms and supporting documentation contain medical information necessary to make appropriate claims determinations. Suppliers and physicians will complete these forms and as needed supply additional routine supporting documentation necessary to process claims; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government; *Number of Respondents:* 137,300; *Total Annual Responses:* 6.7 million; *Total Annual Hours:* 1.53 million.

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Attending Physician's Certification of Medical Necessity for Home Oxygen Therapy and Supporting Regulations 42 CFR 410.38 and 42 CFR 424.5; *Form No.:* 0938–0534 (CMS–484); *Use:* This form is used to determine if oxygen is reasonable and necessary pursuant to Medicare Statute; Medicare claims for home oxygen therapy must be supported by the treating physician's statement and other information including estimate length of need (# of months), diagnosis codes (ICD–9) etc.; *Frequency:* As needed; *Affected Public:* Business of other for-profit; *Number of Respondents:* 175,000; *Total Annual Responses:* 700,000; *Total Annual Hours:* 116,000.

6. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection; *Title of Information Collection:* Conditions of Coverage for Organ Procurement (OPOs) and Supporting Regulations in 42 CFR, Section 486.301-.325); *Form No.:* CMS–R–13 (0938–0688); *Use:* OPOs are required to submit accurate data to CMS concerning population and information on donors and organs on an annual basis in order to assure maximum effectiveness in the procurement and distribution of organs.; *Frequency:* Annually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 59; *Total Annual Responses:* 59; *Total Annual Hours:* 1.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS

document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 20, 2003.

Dawn Willinghan,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–7305 Filed 3–26–03; 8:45 am]

BILLING CODE 4210–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–901 and CMS–3070]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Qualification Application: Medicare+Choice Application for HMOs, PPOs, and State Licensed PSOs; Medicare+Choice Application for Federally Waived PSOs; Medicare+Choice Application for Medicare Savings Account Entitities; Medicare+Choice Application for Private Fee-for-Service Plans.; *Form No.:* CMS–901 (OMB# 0938–0470); *Use:* Prepaid health plans must meet certain regulatory requirements to be federally qualified health maintenance organizations or to enter into a contract with CMS to provide health benefits to Medicare beneficiaries. The application is the collection form to obtain the information from a health plan that will allow CMS staff to determine compliance with the regulations.; *Frequency:* Other: One-time submission.; *Affected Public:* Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government; *Number of Respondents:* 55; *Total Annual Responses:* 55; *Total Annual Hours:* 5,500.

2. *Type of Information Collection Request:* Extension of a previously approved collection; *Title of Information Collection:* Intermediate Care Facility for the Mentally Retarded or Persons with Related Conditions ICF/MR Survey Report Form (3070G–I) and Supporting Regulations at 42CFR 431.52, 431.151, 435.1009, 440.150, 440.220, 442.1, 442.10–442.16, 442 .30, 442.40, 442.42, 442.100–442.119, 483.400–483.480, 488.332, 488.400, and 498.3–498.5; *Form No.:* CMS–3070 (0938–0062); *Use:* The survey forms are needed to ensure provider compliance. In order to participate in the Medicaid program as an ICF/MR, a providers must meet Federal standards. The survey report form is used to record providers' level of compliance with the individual standard and report it to the Federal government. We are considering revising this collection to properly reflect the burden imposed by implementing regulations; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 6,763; *Total Annual Responses:* 6,763; *Total Annual Hours:* 21,600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 20, 2003.

Dawn Willinghan,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–7306 Filed 3–26–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0063]

Medical Devices: Guidance for Industry and FDA: Fiscal Year 2003 Medical Device User Fee and Modernization Act of 2002 Small Business Qualification Worksheet and Certification; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "FY 2003 MDUFMA Small Business Qualification Worksheet and Certification." This guidance explains how you can certify that you qualify as a "small business" within the meaning of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) and provides a copy of, and instructions for, Form FDA 3602, "FY 2003 MDUFMA Small Business Qualification Certification." If FDA decides that you are a small business, you will be eligible for reduced or waived small business fees for medical device applications that you submit from October 1, 2002, through September 30, 2003.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "FY 2003 MDUFMA Small Business Qualification Worksheet and Certification" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cardamone, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–0806, ext. 117.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is providing guidance on how you may qualify as a "small business" within the meaning of MDUFMA. MDUFMA requires FDA to collect a user fee from each person who submits certain medical device applications for FDA review. MDUFMA user fees range from $2,187 to $154,000, depending on the type of application. The fees for fiscal year (FY) 2003 are summarized in table 1 of this document. A "small business" is eligible for reduced or waived fees.

To qualify as a small business, your "gross receipts or sales," including that of all of your affiliates, partners, and parent firms, cannot exceed $30 million. See section 738(d)(2)(A)(i) and (e)(2)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379j(d)(2)(A)(i) and (e)(2)(A)). When you submit an application that is subject to a MDUFMA user fee, you must pay the standard fee unless you have provided information to FDA that demonstrates that you are a small business.

TABLE 1.—FY 2003 MEDICAL DEVICE REVIEW USER FEES[1]

Application	Standard Fee	Small Business
Premarket application (PMA[1], PDP[1], BLA[1])	$154,000	$58,520
Premarket report (premarket application for a reprocessed single-use device)	$154,000	$58,520
First premarket application by a small business	Not applicable	Fee is waived
Panel-track supplement	$154,000	$58,520
Efficacy supplement	$154,000	$58,520
180-day supplement	$33,100	$12,582
Real-time supplement	$11,088	$4,213
510(k)	$2,187	$2,187[2]

[1]PMA means premarket approval applications, PDP means product development protocol, and BLA means biologics license application
[2]During FY 2003, all 510(k) applicants will pay the standard fee. A reduced small business fee will be available beginning FY 2004.

FDA is making this guidance effective immediately because there is a statutory requirement that requires immediate implementation and guidance is needed to help effect such implementation. As soon as Congress enacts an appropriation authorizing FDA to collect and spend MDUFMA user fees, we will begin to collect those fees. You must pay the full standard fee unless you demonstrate you are a small business (section 738(d)(2)(B) and (e)(2)(B) of the act). You will pay a fee for each application you submit on or after October 1, 2002, if that application is subject to a fee. If you do not pay a fee when MDUFMA requires you to do so, FDA will not file or review your application.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on small entities and MDUFMA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

You may obtain a copy of "FY 2003 MDUFMA Small Business Qualification Worksheet and Certification" via your fax machine by calling the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to enter the system. At the second voice prompt press 1 to order a document, then enter the document number (1204) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

You may also obtain a copy of the guidance through the Internet. FDA provides this guidance and additional information on MDUFMA at http://www.fda.gov/oc/mdufma. FDA periodically updates this site to provide you the most current information and guidance concerning the MDUFMA program.

IV. Paperwork Reduction Act

This draft guidance contains a collection of information that requires clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

V. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this guidance. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Electronic comments may be submitted at http://www.fda.gov/dockets/ecomments. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 12, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–7374 Filed 3–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

Pursuant to 28 CFR 507 notice is hereby given that on March 6, 2003, a proposed Consent Decree in *United States* v. *Archer Daniels, et al.* Civil Action No. 03–CV–1593WJR was lodged with the United States District Court for the Central District of California.

In this action, under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, the United States sought injunctive relief and recovery of response costs to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at the Waste Disposal, Inc. Superfund Site in Santa Fe Springs, California (hereinafter referred to as the "Site").

The defendants in this action are as follows: Archer Daniels Midland Company; Atlantic Oil Company; Atlantic Richfield Company; Chevron USA, Inc.; Conoco, Inc.; Conopco, Inc.; Dilo, Inc.; Exxon Mobil Corporation; Ferro Corporation; FMC Technologies, Inc. (successor in interest to FMC Corporation); Global Santa Fe Corporation; Halliburton Energy Services, Inc.; McDonnell Douglas Corporation; Shell Oil Company; Texaco, Inc.; Union Pacific Railroad Company; and Union Oil Company of California (Hereinafter referred to collectively as "the Settlors")

Under this settlement, the Settlors, which arranged for the disposal of hazardous substances at the Site, have agreed to perform the remedy chosen by EPA to clean up the Site, and pay $1,250,000 of the past response costs of the United States, and pay all of the future response costs of the United States to be incurred at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Archer Daniels, et al.*, D.J. Ref. 90–11–2–1000. At the Consent Decree includes a covenant not to sue under section 7003 of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at U.S. EPA Region IV, 75 Hawthorne Street, San Francisco, CA 94107. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $112.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $28.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section.

[FR Doc. 03–7294 Filed 3–26–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with CERCLA section 122(d)(2), 42 U.S.C. 9622(d)(2), and Departmental policy in 28 CFR 50.7, notice is hereby given that on March 7, 2003, two proposed Consent Decrees in *United States* v. *GPU, Inc.*, et al, consolidated Civil Action Nos. 96–338, and 97–468, were lodged with the United States District Court for the District of Delaware.

In this action, the United States sought: implementation of a unilateral administrative order issued by the U.S. Environmental Protection Agency ("EPA"), civil penalties for failure to comply with that order; and recovery of environmental response costs incurred and to be incurred by the United States, all in connection with the Dover Gas Light Superfund Site, located in Dover, Delaware ("Site"). The first Consent Decree requires General Public Utilities, Inc. ("GPU"), now known as FirstEnergy, to pay $700,000 in response costs, pay a civil penalty of $100,000, perform environmental studies near the Site, and in conjunction with co-plaintiff Chesapeake Utilities Corporation, pay EPA $1,700,000 for any groundwater remedy that may be implemented in the future. A second Consent Decree resolves claims against the State of Delaware. The State of Delaware is required to pay $1,000,000, for reimbursement of response costs incurred by EPA and Chesapeake Utilities, and to perform maintenance work at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *GPU*, et al., D.J. Ref. # 90–11–2–1055. The Consent Decrees may be examined at the Office of the United States Attorney, c/o Patricia Hannigan, Assistant United States Attorney, 1201 Market Street, Wilmington, DE 19801, and at U.S. EPA Region III, c/o Patricia Miller, Senior Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Consent Decrees may be examined on the DOJ Web site: *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decrees may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $11.00 for the *U.S.* v. *Delaware* Consent Decree, and $40.00 for the *U.S.* v. *GPU* Consent Decree (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy of the FirstEnergy Consent Decree exclusive of exhibits and Defendants' signatures, please enclose a check in the amount of $22.25 payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–7295 Filed 3–26–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation of Settlement and Judgment

Notice is hereby given that on March 14, 2003, a proposed Stipulation of Settlement and Judgment ("Stipulation") in *United States of America and State of Louisiana* v. *Marine Shale Processors, Inc., et al.*, Civil Action No CV–90–1240, was lodged with the United States District Court for the Western District of Louisiana.

In this action, the United States and the State of Louisiana sought civil penalties and injunctive relief for violation of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and certain laws of the State of Louisiana, and recovery of response costs under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*, with respect to the Marine Shale Processors, Inc. ("MSP"), and Recycling Park, Inc. ("RPI"), facilities located in or near Amelia, Louisiana. The Stipulation provides for payment of all funds on deposit in the registry of the Court to the Secretary of the Louisiana Department of Environmental Quality ("Secretary"), for deposit by the Secretary in an escrow account, pursuant to La. R.S. 30:2031 B, and expenditure solely for closure and remediation of contamination at the MSP Facility and/or the RPI Facility. The balance of the funds in the Court Registry totaled $5,876,008.11 as of December 5, 2002. The Stipulation also orders MSP to pay the following civil penalties: (1) $3 million for violations of the Resource Conservation and Recovery Act and the Louisiana Hazardous Waste Control Law, to be apportioned 50% to the United States and 50% to the State of Louisiana; (2) $1.2 million for violations of the Clean Air Act, to be apportioned 50% to the United States and 50% to the State of Louisiana; and (3) $1,676,008.11 for violations of the Clean Water Act, to be paid in its entirety to the United States. The Stipulation also contains restrictions on the future participation of John M. Kent, Sr. ("Kent, Sr."), in the waste handling and recycling businesses, requires MSP, RPI and Kent, Sr., to provide access to the MSP and RPI Facilities for the purposes of investigation and cleanup, and provides the United States, the State of Louisiana and Kent, Sr., releases and covenants not to sue regarding specified matters.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Stipulation and Letter. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America and State of Louisiana* v. *Marine Shale Processors, Inc., et al.*, D.J. Ref. 90–11–2–204. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Stipulation and Letter may be examined at the Office of the United States Attorney, Western District of Louisiana, 705 Jefferson Street, Lafayette, Louisiana 70501, and at U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75201. During the public comment period, the Stipulation and Letter, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Stipulation and Letter may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–7292 Filed 3–26–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on March 7, 2003, a proposed Consent Decree in *United States* v. *Toyota Motor Corporation, et al.*, Civil Action No. 99–1888, was lodged with the United States District Court for the District of Columbia.

In this action the United States sought civil penalties and injunctive relief for the alleged failure by Toyota to disclose in its applications for certificates of conformity certain limitations in the operation of that part of its vehicles' on-board diagnostic system that checks for leaks in the vehicles' evaporative emission control system. The allegations concern approximately 2.2 million model year 1996 to 1998 Toyota vehicles. Under the proposed Consent Decree, Toyota will: (a) Extend the warranty on the evaporative emission control systems in the 2.2 million affected vehicles from the current two years or 24,000 miles to 14 years or 150,000 miles; (b) accelerate the timetable on which it will certify to EPA and introduce vehicles in the United States that comply with the EPA near-zero evaporative emissions standards specified in 40 CFR 86.1811–04(e); (c) pay a $500,000 civil penalty; and (d) implement a supplemental environmental project, at a cost of $20 million, that comprises the retrofit of in-service diesel fleet vehicles with emissions control equipment in order to reduce particulate and hydrocarbon emissions from such vehicles and the procurement of ultra low-sulfur diesel fuel for use in the retrofitted diesel vehicles.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Toyota Motor Corporation, et al.*, D.J. Ref. 90–5–2–1–2247.

The Consent Decree may be examined at the Office of the United States Attorney, 555 4th Street, NW., Room 10–120, Washington, DC 20001, and at the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. During the public comment period, the Consent Decree also may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.00 (25 cents per

page reproduction cost) payable to the U.S. Treasury.

Karen Dworkin,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03-7293 Filed 3-26-03; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Gemstar-TV Guide International, Inc. & TV Guide, Inc.

Proposed Final Judgment and Competitive Impact Statement. Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. sections 16(b) through (h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Gemstar-TV Guide International, Inc.*, Civil Action No. 03 CV 000198. On February 6, 2003, the United States filed a Complaint alleging that TV Guide, Inc. and Gemstar International Group Ltd. violated section 1 of the Sherman Act (15 U.S.C. 1) and section 7a of the Clayton Act (15 U.S.C. 18a), commonly known as the Hart-Scott-Rodino ("HSR") Act. The complaint alleges that, prior to the consummation of their merger, the Defendants entered into agreements not to compete, to fix prices and to allocate markets and customers, in violation of the Sherman Act. The complaint also alleges that the Defendants effectively merged their decision-making processes and transferred substantial control over their businesses in violation of the Clayton Act, which prohibits certain asset acquisitions until the expiration or termination of statutory waiting periods. The proposed Final Judgment, filed the same time as the Complaint, enjoins the Defendants from engaging in similar conduct and requires the Defendants to allow rescission of certain contracts entered into during the period before they consummated their merger. The proposed Final Judgment also requires the Defendants to pay a civil penalty of $5,676,000 to resolve the HSR Act violation. The civil penalty component of the proposed Final Judgment is not open to pubic comment. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW., on the Internet at *http://www.usdoj.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James R. Wade, Chief, Litigation III Section, Antitrust Division, Department of Justice, 325 7th St., NW., Suite 300, Washington, DC 20530, (telephone: (202) 616-5935).

Constance K. Robinson,

Director of Operations.

[Civil Action No. 03 0198]

Stipulation and Order

It is hereby stipulated by and between the undersigned parties, through their respective counsel, as follows:

1. The Court has jurisdiction over the subject matter of plaintiff's Complaint alleging defendants Gemstar-TV Guide International, Inc. ("GTV") and TV Guide, Inc. ("TV Guide") violated section 1 of the Sherman Act (15 U.S.C. 1) and section 7A of the Clayton Act (15 U.S.C. 18(a)), and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia. The defendants authorize David T. Beddow, Esq. of O'Melveny & Meyers LLP to accept service of all process in this matter on their behalf.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. GTV and TV Guide shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event that Plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event that the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. The parties' execution of this Stipulation and entry of the Final Judgment settles, discharges, and releases any and all claims of the plaintiff for civil penalties against:

(a) Defendant GTV, its directors, officers, employees, and agents, under § 7A of the Clayton Act, 15 U.S.C. 18(a), arising from the acquisition of TV Guide by GTV; and

(b) Defendant TV Guide, its directors, officers, employees and agents, under § 7A of the Clayton Act, 15 U.S.C. 18(a), arising from the acquisition of TV Guide by GTV.

Respectfully submitted, for Plaintiff United States of America.

Robert Faulkner (D.C. Bar No. 430163),

U.S. Department of Justice, Antitrust Division, Litigation III Section, 325 7th Street, NW., Suite 300, Washington, DC 20530, Tel: (202) 514-0259, Fax: (202) 307-9952.

Dated: February 6, 2003.

For Defendants Gemstar-TV Guide International, Inc. and TV Guide, Inc.

David T. Beddow (D.C. Bar No. 288514),

O'Melveny & Myers LLP, 555 Thirteenth Street, NW., Washington, DC 20004-1109, Tel: (202) 383-5362, Fax: (202) 383-5414.

Order

The Court having considered the parties' Joint Motion for Entry of Stipulation and Order, and upon consent of the parties.

It is hereby ordered that defendants shall abide by and comply with all terms and provisions of the proposed Final Judgment pending compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Parties Entitled To Notice of Entry of Order

Counsel for the United States

James R. Wade, Robert Faulkner, U.S. Department of Justice, Antitrust Division, Litigation III Section, 325 7th Street, NW., Suite 300, Washington, DC 20530, Tel: (202) 514-0259, Fax: (202) 307-9952.

Counsel for Gemstar-TV Guide International, Inc. and TV Guide, Inc.

David T. Beddow, Esq., O'Melveny & Myers LLP, 555 Thirteenth Street, NW., Washington, DC 20004-1109, Tel: (202) 383-5362, Fax: (202) 383-5414.

Final Judgment

Whereas, plaintiff United States of America filed its Complaint on February 6, 2003, alleging that defendants Gemstar-TV Guide International, Inc. ("GTV") and TV Guide, Inc. ("TV Guide") violated section 1 of the Sherman Act, 15 U.S.C. 1, and section 7A of the Clayton Act, 15 U.S.C. 18a, and plaintiff and defendants, by their attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against, or any admission by, any party regarding such issue of fact or law;

And whereas, defendants agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states claims upon which relief may be granted against defendants under section 1 of the Sherman Act (15 U.S.C. 1) and section 7A of the Clayton Act (15 U.S.C. 18a).

II. Definitions

As used in this Final Judgment:

A. "Agreement" and its variants means any agreement, mutual understanding or mutual plan, written or unwritten.

B. "Competing Product" means (i) any product, service or technology offered for sale, license or distribution by any defendant that is primarily used for the same purpose as any product, service or technology offered for sale, license or distribution by any other party to a proposed transaction with any defendant, or (ii) any product, service or technology offered for sale, license or distribution by any other party to a proposed transaction with any defendant that is primarily used for the same purpose as any product, service or technology offered for sale, license or distribution by any defendant.

C. "Defendants" means Gemstar-TV Guide International, Inc. and TV Guide, Inc.

D. "Interactive Program Guide," or "IPG," means the software and/or technology that allows television viewers to access and organize programming information on their television screens and then view a channel corresponding to a selected program.

E. "IPG Agreement" means any agreement to provide or license IPGs.

F. "Negotiation And Interim Period" means the period between the commencement of negotiations with respect to an offer to enter into an Agreement, and the date when negotiations are abandoned or when any resulting Agreement is consummated or abandoned.

G. "Person" means any individual, partnership, firm, corporation, association or other legal or business entity.

H. "Pre-consummation Period" means the period of time between the signing of an Agreement for a transaction that is reportable under section 7A of the Clayton Act and the rules, regulations and interpretations implementing section 7A, and the earlier of the expiration or termination of the waiting period under section 7A or the closing or abandonment of the reportable transaction.

III. Applicability

This Final Judgment applies to Defendants, including each of their directors, officers, managers, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who have received actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited and Required Conduct

A. When any Defendant has entered into a transaction that is reportable under section 7A of the Clayton Act, and the rules, regulations and interpretations implementing section 7A, the Defendants are enjoined and restrained from entering into any Agreement with any other party to the transaction that would, during the Pre-consummation Period, combine, merge, or transfer (in whole or in part) any operational or decision-making control over the marketing or distribution of any to-be-acquired product, service or technology.

B. During the Negotiation And Interim Period of any contemplated Agreement to acquire any voting securities or assets, form a joint venture, settle litigation, or license intellectual property, with any person offering a Competing Product, Defendants are enjoined and restrained from:

1. Entering into any Agreement with that Person to fix, raise, set, stabilize or otherwise establish price or output for any Competing Product offered during the Negotiation And Interim Period;

2. Entering into any Agreement with that Person to delay or suspend during the Negotiation And Interim Period sales efforts with respect to any Competing Product;

3. Entering into any Agreement with that person to allocate any markets or customers during the Negotiation And Interim Period with respect to any Competing Product; or

4. Disclosing or seeking the disclosure of information about current or future prices for, information or projections relating to future prices of, or contract offers related to Competing Products, except as such disclosures may be permitted in subsection V. D., or to the extent that such information is publicly available at the time disclosure occurs.

C. For a period of nine (9) months following the date that this Final Judgment is filed pursuant to 15 U.S.C 16(b), each Defendant shall permit the following service providers, each of which entered into an IPG Agreement with TV Guide between June 10, 1999, and July 12, 2000, or their successors, to terminate, without penalty, said IPG Agreements:

Cameron Communications (Carlyss, LA), Millennium Telcom, LLC (Keller, TX), Sweetwater Cable TV Co., Inc. (Rock Springs, WY), Coast Communications Co. (Ocean Shores, WA), Florida Cable, Inc. (Astor, FL); Pioneer Communications (Ulysses, KA), Standard Tobacco Co. (Maysville, KY), Pine Tree Cablevision (Wayne, PA).

Such termination shall be at the sole option of these service providers, or their successors. GTV or TV Guide shall, within twenty (20) days of the date that this Final Judgment is filed pursuant to 15 U.S.C. 16(b), distribute to each such service provider, or its successor, a letter containing the notice set forth in Exhibit A.

V. Permitted Conduct

Nothing in this Final Judgment shall prohibit Defendants from:

A. agreeing that a party to a transaction shall continue to operate in

the ordinary course of business during the Pre-consummation Period:

B. agreeing that a party to a transaction forego conduct that would cause a material adverse change in the value of to-be acquired assets during the Pre-consummation Period;

C. including a nonexclusive field of use restriction, or reaching an Agreement for a royalty fee, in any intellectual property license Agreement;

D. before closing or abandoning a transaction, conducting or participating in reasonable and customary due diligence, provide however, that no disclosure covered by subsection IV(B)(4) shall be permitted unless (1) the information is reasonably related to a party's understanding of future earnings and prospects; and (2) the disclosure occurs pursuant to a non-disclosure agreement that (a) limits use of the information to conducting due diligence and (b) prohibits disclosure of any such information to any employee of the person receiving the information who is directly responsible for the marketing, pricing or sales of the Competing Product(s); or

E. disclosing confidential business information related to Competing Products, subject to a protective order, in the context of litigation or settlement discussions.

IV. Compliance

A. GTV shall maintain an antitrust compliance program which shall include designating, within thirty (30) days of entry of this order, an Antitrust Compliance Officer with responsibility for achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, or a continuing basis, supervise the review of current and proposed activities to ensure compliance with this Final Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

(1) distributing within forty-five (45) days of entry of this Final Judgment, a copy of this Final Judgment to each current officer and director, and each employee, agent or other person who has responsibility for or authority over mergers and acquisitions;

(2) distributing in a timely manner a copy of this Final Judgment to any officer, director, employee or agent who succeeds to a position described in Section VI(A)(1);

(3) obtaining within sixty (60) days from the entry of this Final Judgment, and annually thereafter, and retaining for the duration of this Final Judgment, a written certification from each person designated in Sections VI(A)(1) & (2) that he or she: (a) Has received, read, understands, and agrees to abide by the terms of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment; and

(4) providing a copy of this Final Judgment to each merger partner before the initial exchange of a letter of intent, definitive agreement or other agreement of merger.

B. Within sixty (60) days of entry of this Final Judgment, GTV shall certify to Plaintiff that it has (1) designated an Antitrust Compliance Officer, specifying his or her name, business address and telephone number; and (2) distributed the Final Judgment in accordance with Section VI(A)(1).

C. For the term of this Final Judgment, on or before its anniversary date, GTV shall file with Plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections IV and VI.

D. If any GTV director or officer or the Antitrust Compliance Officer learns of any violation of this Final Judgment, GTV shall within three (3) business days take appropriate action to terminate or modify the activity so as to assure compliance with this Final Judgment, and shall notify the Plaintiff of any such violation within ten (10) business days.

VII. Plaintiff's Access and Inspection

A. For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the United States Department of Justice shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to GTV, be permitted: (1) Access during GTV's office hours to inspect and copy or at Plaintiff's option, to require GTV to provide copies of all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, GTV's directors, officers, employees, agents or other persons, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by GTV.

B. Upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, GTV shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the Plaintiff to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by GTV to Plaintiff, GTV represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and GTV marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which GTV is not a party.

VIII. Civil Penalty

Judgment is hereby entered in this matter in favor of Plaintiff, United States of America, and against defendants, GTV and TV Guide, and, pursuant to section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104–134, 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461), and Federal Trade Commission Rule 1.98, 16 CFR § 1.98, 61 FR 54549 (Oct. 21. 1996), defendants are hereby ordered jointly and severally to pay a civil penalty in the amount of five million, six hundred and seventy-six thousand United States dollars (U.S. $5,676,000). Payment shall be made by wire transfer of funds to the United States Treasury through the Treasury Financial Communications System or by cashier's check made payable to the Treasurer of the United States and delivered to Chief, FOIA Unit, Antitrust Division. Department of Justice, Liberty Place, 325 7th Street, NW., Suite 200, Washington, DC 20530. Defendants shall pay the full amount of the civil penalties within thirty (30) days of the entry of this Final Judgment. In the event of a default in payment, a reasonable interest rate shall accrue thereon from the date of default to the date of payment. The portion of the Final Judgment requiring the payment of civil penalties for violation of section 7A of the Clayton Act is not subject to the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h)).

IX. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

X. Expiration of Final Judgment

Unless extended by this Court, this Final Judgment shall expire ten years from the date of its entry.

XI. Costs

Each party shall bear its own costs of this action.

XII. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Exhibit A

Notification of Available Option to Rescind Certain Contracts

Gemstar-TV Guide, International Inc. and TV Guide, Inc. ("TV Guide") (collectively "Gemstar") have consented to the entry of the attached proposed Final Judgment to resolve a civil suit brought by the Antitrust Division of the Department of Justice. Under the proposed Final Judgment, Gemstar is required to permit your company to terminate, without penalty, the IPG agreement your company entered into with TV Guide between June 10, 1999 and July 12, 2000. Your company has the sole option to terminate its agreement with Gemstar so long as it makes its election no later than nine calendar months after February 6, 2003, which is the date that the proposed Final Judgment was filed with the Court. Please note that your option to terminate begins immediately and does not require final entry of the proposed Final Judgment.

You may exercise this option to terminate the contract by sending a letter to that effect to Gemstar at the following address:

Stephen H. Kay, Esq., General Counsel, Gemstar-TV Guide International, Inc., 135 North Los Robles Avenue, Suite 800, Pasadena, CA 91101.

Please contact Stephen H. Kay, Esq. at Gemstar 626–792–5700 if you need more information.

[Civil Action No. 03 CV 000198, Filed: March 19, 2003]

Competitive Impact Statement

The United States, pursuant to the Antitrust Process and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement to set forth the information necessary to enable the Court and the public to evaluate the proposed Final Judgment that would terminate this civil antitrust proceeding.[1]

I. Nature and Purpose of This Proceeding

On February 6, 2003, the United States filed a four-count Complaint against Gemstar-TV Guide International, Inc. ("GTV") and its subsidiary TV Guide, Inc. ("TV Guide") related to the conduct of GTV's predecessor Gemstar International Group, Ltd. ("Gemstar") and TV Guide before July 2000, when Gemstar and TV Guide were competitors in the provision of interactive program guides, or "IPGs," to cable, satellite and other multi-channel subscription television service providers ("service providers").

The Complaint alleges that the Defendants entered into various agreements to fix prices and to allocate markets and customers, and that they began jointly conducting their IPG business, eliminating competition between them in violation of section 1 of the Sherman Act. 15 U.S.C. 1. Specifically, the Complaint alleges that, in June 1999, as Gemstar and TV Guide began the negotiations that would ultimately result in a merger agreement, they agreed that they would "slow roll" (*i.e.*, delay on-going contract negotiations with) certain customers. Upon agreeing to merge in October 1999, Gemstar and TV Guide also agreed that Gemstar would phase out its IPG marketing operations to service providers and that they would allocate specific customers between them. Additionally, Gemstar and TV Guide agreed on the prices and material terms that TV Guide would offer to service providers before consummating the proposed merger.

The Complaint also alleges that the Defendants violated section 7A of the Clayton Act, 15 U.S.C. 18a, which requires certain acquiring and acquired parties to file pre-acquisition Notification and Report Forms with the Department of Justice ("DOJ") and the Federal Trade Commission ("FTC") and to observe a statutorily mandated waiting period before consummating the acquisition. The fundamental purpose of the waiting period is to prevent the merging parties from combining during the pendency of an antitrust review and to maintain their identity as separate and independent actors.

In October 1999, Gemstar and TV Guide executed a merger agreement that required the filing of the Notification and Report Forms under section 7A of the Clayton Act. Rather then wait for the expiration of the statutory waiting period, however, Gemstar and TV Guide merged most of their IPG decision-making processes, transferred control over important assets, and acted jointly on numerous business decisions.

The Complaint seeks an adjudication that the Defendants' agreements violate section 1 of the Sherman Act, such other relief as the Court deems appropriate, and a civil penalty for violation of section 7A of the Clayton Act.

The United States and the Defendants have reached a proposed settlement that eliminates the need for a trial in this case. The proposed Final Judgment remedies the Sherman Act violations by enjoining the Defendants from reaching similar anticompetitive agreements with competitors. The proposed Final Judgment also provides that customers that signed IPG agreements with TV Guide between June 10, 1999, and July 12, 2000, may elect to terminate their contracts within nine months of filing of this proposed Final Judgment.

To resolve the Clayton Act violation, the proposed Final Judgment prohibits the Defendants, during the period between executing an agreement subject to section 7A and the expiration of the statutory waiting period, from entering into any agreement with the other contracting parties to combine, merge, or transfer, in whole or in part, any operational or decision-making control over the marketing or distribution of any to-be-acquired product, service, or technology. In addition, GTV has agreed to pay a civil penalty of $5,676,000, which is the maximum civil penalty available to address the section 7A violation.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered into after compliance with the APPA, unless the United States first withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or

[1] On February 6, 2003, the United States filed a civil Complaint, a Stipulation and Order, a proposed Final Judgment, and a Momorandum Regarding Procedures for Entering Judgments. As set forth in the Memorandum, the proposed Final Judgment would settle this case pursuant to the APPA, which applies to civil antitrust cases brought and settled by the United States. The APPA requires that the United States file a competitive impact statement in such proceedings. 15 U.S.C. 16(b).

enforce the provisions of the proposed Final Judgment and punish violations thereof. Entry of this judgment would not constitute evidence against, or an admission by, any party with respect to any issue of fact or law involved in the case and is conditioned upon the Court's finding that entry is in the public interest.

II. Description of the Events Giving Rise to the Alleged Violations of the Antitrust Laws

A. The Defendants and Their Merger

GTV is a Delaware corporation with its principal place of business in Pasadena, California. GTV is, as was its predecessor Gemstar, an international media and communications company that, among other things, develops, markets, and support interactive program guides ("IPGs") and IPG technology to providers of multi-channel subscription television services ("service providers") as well as to manufacturers of consumer electronics ("CE") hardware, such as televisions and video cassette recorders. An IPG is a software application that allows television viewers to display and sort program listings on the TV screen.

TV Guide is a Delaware corporation with its principal place of business in Tulsa, Oklahoma. TV Guide is a leading provider of IPGs to service providers. In addition to its sales of IPGs, TV Guide offers several other television guidance products, including the TV Guide magazine.

In Spring 1999, Gemstar and TV Guide were negotiating a settlement of pending patent infringement and antitrust litigation. By June 1999, settlement discussions focused on the possible formation of a joint venture through which Gemstar and TV Guide would jointly market IPGs to service providers. By early August, the parties found that they could not reach final agreement on the proposed joint venture. By August 12, 1999, negotiations between Gemstar and TV Guide had shifted to the possibility of merging or entering into a cross-license agreement.

On October 4, 1999, Gemstar and TV Guide announced an agreement to merge, pursuant to which Gemstar would acquire substantially all of the outstanding TV Guide stock and the two companies would form a new entity. They also entered into an optional agreement to cross-license their patents (the "Back-Up Cross License"). The Back-Up Cross License would take effect only if the merger failed to close by a certain date and if TV Guide, at its sole option, elected to trigger the agreement.

Gemstar and TV Guide filed the pre-acquisition Notification and Report forms required by section 7A of the Clayton Act in November 1999. After reviewing the parties' filings, the DOJ opened an investigation into the competitive effects of the proposed transaction. The mandatory statutory waiting period expired on June 19, 2000, although the parties voluntarily extended the time for the DOJ to conduct its investigation.

The DOJ ultimately did not file a Complaint seeking to enjoin the merger, and the parties consummated their agreement to merge on or about July 12, 2000. TV Guide is now a wholly owned subsidiary of GTV.

B. Competition in the Relevant Product Markets

A relevant product market defines the boundaries within which competition meaningfully exists. In this instance, one relevant product market consists of the provision of IPGs to service providers for use in providing digital cable and satellite television services in the United States. Service providers offer their subscribers multi-channel packages of television programming. The adoption of digital transmission allowed these providers to offer hundreds of programming options. Service providers considered an IPG—which allows the viewer to sort through these options—a navigational tool for which there was no realistic substitute.

Another relevant market is the market for providing IPGs to cable television service providers with systems committed to the GI/Motorola digital technology platform. In this context, a "platform" consists of hardware installed at various points in the cable television system, including digital set-top boxes deployed in television viewers' homes. Once a service provider has committed a system to a particular platform, it can only use IPGs that are compatible with the chosen platform on that system.

The relevant geographic market is the United States, given the need for close technical cooperation and support between IPG providers and U.S.-based set-top box manufacturers, service providers, and software companies.

Gemstar and TV Guide were direct competitors in these markets. Indeed, during the relevant 1999–2000 period, Gemstar and TV Guide were the only two established providers of IPG technology and services compatible with the GI/Motorola digital platform.

C. Illegal Sherman Act Agreements

1. The "Slow Roll" Agreement

In late Spring 1999, Gemstar was in the final phases of negotiating a long-term IPG agreement with Cox Communications, Inc. ("Cox"), a large service provider. TV Guide was also vying for Cox's business, having sent a draft IPG contract proposal to Cox in April. Similarly, both Gemstar and TV Guide were competing to sign Charter Communications, Inc. ("Charter") to a long-term IPG deal.

On June 10, 1999, Peter C. Boyland III, then President and Chief Operating Officer of TV Guide, met with Henry Yuen, then Chief Executive Officer of Gemstar, to discuss the possibility that the two firms could settle their litigation by forming a joint venture that would market their IPG products and services. in a contemporaneous memorandum summarizing the June 10 meeting, Mr. Boylan stated that Dr. Yuen and Mr. Boylan had "both acknowledged the need to slow roll Charter and Cox." What he meant was to cease or suspend competing for these customers' business until Gemstar and TV Guide could act jointly. Three days later, Dr. Yuen backed away from a draft contract with Cox, and thereafter ceased negotiating with Cox and Charter. TV Guide also stopped competing for their business during the joint venture discussions.

2. Market and Customer Allocation Agreements

At almost the same time that Gemstar and TV Guide announced their agreement to merge, they reached a broad agreement that Gemstar would phase out its marketing operations in the relevant markets in order to focus on sales and licensing of IPGs to consumer electronics ("CE") firms while TV Guide negotiated IPG agreements with most service providers. Pursuant to this agreement, Gemstar stopped actively marketing its IPG to service providers, except for certain very small systems that used technology platforms that were different from those used by traditional cable and satellite television service providers. TV Guide had not previously sought to compete for this business and had not adapted its IPG to the platforms used by these companies.

Gemstar and TV Guide also agreed to allocate specific customers between them, reaching understandings as to whether TV Guide or Gemstar would approach and negotiate with particular customers during the period between the merger agreement and the consummation of the merger (the "interim period"). Specifically, Gemstar and TV Guide agreed that TV Guide would negotiate with most service providers during the interim period.

3. Agreements to Fix Prices and Material Terms to Service Providers

Gemstar and TV Guide also agreed on the prices and terms that they would offer to most service providers during the interim period. To effectuate this agreement, they shared detailed and specific information about offers and counter-offers to service providers and kept each other apprised of individual contacts with customers. TV Guide provided Gemstar with its "rate card," which included both rates and non-price terms, and, on at least two occasions, TV Guide provided Gemstar with full drafts of proposed IPG contracts before they were sent to service providers. On at least two occasions, Gemstar sent to TV Guide red-lined comments on TV Guide's draft IPG contracts. In the course of maintaining regular contact with Gemstar, TV Guide blind-copied or forwarded to Gemstar electronic correspondence between TV Guide and service providers related to negotiations for IPG agreements.

As a result of this agreement, the prices and terms that TV Guide offered during the interim period substantially differed from offers it had made prior to June 1999, when it began coordinating with Gemstar. During this period eight service providers entered into IPG agreements with TV Guide under prices and terms that conformed to the illegal agreement.

C. Pre-Merger Acquisition of Assets

Though their agreements and other actions, Gemstar and TV Guide, in effect, merged their IPG decision-making processes, and each acquired substantial operational and decision-making control over important assets of the other, before the expiration of the statutory waiting period prescribed by Section 7A of the Clayton Act. Gemstar, for example, gained review and veto authority over TV Guide's IPG contract offers, converted TV Guide into its agent in various respects, and gained substantial influence over TV Guide's separate IPG advertising business. TV Guide, for its part, acquired substantial amounts of control over Gemstar's business of providing IPGs to service providers, including Gemstar's business opportunities and customer relationships. In addition, the parties shared confidential business information and made joint decisions regarding various business opportunities.

E. The Defendants' Conduct Violates Antitrust Laws

1. Sherman Act Violations

Section 1 of the Sherman Act prohibits any "contract, combination or conspiracy" in "restraint of trade." In the context of a merger, Section 1 requires competitors that have agreed to merge to maintain their status as independent economic entities throughout the pre-consummation period, i.e., until they can be legally combined. Here, the Complaint alleges three specific anticompetitive agreements that violated Section 1—to cease competing for customers, to allocate markets and customers, and to fix prices and terms. These agreements eliminated competition and foreclosed the possibility that customers could have obtained lower prices and secured better contract terms during the time before the merger could be legally consummated. Stand-alone agreements to fix prices, allocate markets or customers, or otherwise cease competition have long been condemned as per se violations of Section 1 of the Sherman Act. Given their harmful effect on competition and lack of any redeeming virtue, they are conclusively presumed to be unreasonable, without the need for an elaborate inquiry into the harm actually caused or to any potential business justifications for their use.

Here, the Antitrust Division concluded that no special circumstances justified the Defendants' conduct or removed it from the per se illegal category. The "slow roll" agreement, the market and customer allocations, and the fixing of prices and terms were not reasonably necessary to effectuate their merger agreement or the Back-Up Cross License Agreement, and thus were not ancillary to a legitimate business transaction. None of the restraints settled, or were reasonably ancillary to settling, the pending litigation. Similarly, the fact that many of the agreements were reached after the Defendants had agreed to merge did not change the character of the illegal restraints. The extensive coordination on prices and terms to be offered, whether in long-term contracts or otherwise, was not justified as necessary to protect any legitimate interest that Gemstar may have had in preserving TV Guide's business, or in preventing a material change in TV Guide's conduct that might adversely affect the value of the to-be-acquired business.

The Defendants' illegal agreements had the effect of lessening or eliminating competition between Gemstar and TV Guide in the provision of IPG technology and services in violation of Section 1 of the Sherman Act and denied customers the benefits of that competition. During the period when those agreements were in effect, some service providers signed long-term IPG contracts based on the fixed prices and terms. Moreover, but for the illegal agreements, some service providers may have signed long- or short-term IPG agreements on better prices and terms than the Defendants had agreed to offer.

2. Clayton Act Section 7A Violation

Section 7 of the Clayton Act is the principal statute used by the antitrust agencies to challenge anticompetitive mergers and acquisitions. It provides in pertinent part:

> No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.[2]

Prior to the enactment of section 7A of the Clayton Act, the DOJ and FTC often were forced to investigate anticompetitive acquisitions that had already been consummated without public notice. In those situations, the agencies' only recourse was to sue to unwind the parties' merger. The combined entity had the incentive to delay litigation so that years elapsed before adjudication and attempted relief. During this extended time consumers were harmed by the reduction in competition between the acquiring and acquired firms and, if the court ultimately found that the merger was illegal, effective relief was often impossible to achieve.

Congress enacted section 7A as a measure to strengthen and improve antitrust enforcement by giving the enforcement agencies an opportunity to investigate certain large acquisitions before they are consummated. In particular, section 7A prohibits certain acquiring parties from consummating the acquisition before a prescribed waiting period expires or is terminated.[3]

[2] 15 U.S.C. 18.

[3] Section 7A requires that "no person shall acquire, directly or indirectly, any voting securities or assets of person" exceeding certain thresholds until both have made premerger notification filings and the post-filing waiting period has expired. 15 U.S.C. 18a(a). At the time of the Defendants'

Continued

The parties are required to remain separate during the statutory waiting period and to preserve their status as independent economic actors during the antitrust investigation. The legislative history of section 7A underscores Congress' desire that competition existing before the merger should be maintained to the extent possible pending review by the antitrust enforcement agencies and the court.

The Complaint alleges that the Defendants violated section 7A by, in effect, merging their IPG decision-making and by giving Gemstar significant control over TV Guide's IPG business before the expiration of the statutory waiting period, thus accomplishing a defacto acquisition of assets under section 7A. Whether a de facto acquisition has occurred depends on the facts of each particular case. Courts have recognized that the execution of an acquisition agreement, combined with the assumption of significant operational or decision-making influence over the to-be-acquired business, can amount to an "acquisition" under section 7 of the Clayton Act, even if the parties have not formally consummated the transaction. Similarly, once parties have entered into an executory agreement subject to section 7A's requirements, they may not effectuate the acquisition by, for example, merging their operations or otherwise transferring significant operational, management or decision-making control over the to-be-acquired assets. In other words, once section 7A is triggered, parties to a merger agreement must, at a minimum, avoid combining prematurely in a way that would constitute an acquisition under section 7.[4]

Such premature combination of operations and assets significantly undermines the statutory scheme, which is designed to give the antitrust agencies the opportunity to conduct an investigation before the parties have combined their operations or acquired significant assets. It can contaminate the antitrust agencies' investigation by, among other things, providing a skewed picture of the competitive landscape and making it difficult or impossible to obtain meaningful relief should the antitrust agencies successfully enjoin a transaction.

III. Explanation of the proposed Final Judgment

The proposed Final Judgment contains equitable relief designed to prevent future violations of section 1 of the Sherman Act and section 7A of the Clayton Act, addresses the effects of the Defendants' conduct, and secures a monetary civil penalty for Gemstar's and TV Guide's violation of section 7A. The proposed Final Judgment sets forth required and prohibited conduct, a compliance program the Defendants must follow, and procedures available to the United States to determine and ensure compliance with the Final Judgment. Section IX provides that these conditions will expire ten years after the entry of the Final Judgment.

A. Prohibited Conduct

Section IV(A) of the proposed Final Judgment is designed to prevent future Clayton Act violations of the sort alleged in the Complaint. During the "pre-consummation period"—after executing an agreement subject to the reporting requirements of section 7A and until the expiration of the statutory waiting period—the Defendants are prohibited from entering into any agreement with the other contracting parties to combine, merge, or transfer, in whole or in part, any operational or decision-making control over the marketing or distribution of any to-be-acquired product, service, or technology. This injunction applies to all transactions subject to the reporting requirements of section 7A, regardless of the particular products involved or whether the other party to the transaction competes with the Defendants. The injunction also applies to partial assumptions of control over the marketing or distribution of any to-be-acquired asset.

Section IV(B) is designed to prevent future violations of Sherman Act. In enjoins the Defendants from entering into various agreements with competitors between the beginning of negotiations until the consummation or abandonment of certain specified types of transactions. Specifically, this provision covers any agreement between the Defendants and any firm offering a competing product to acquire assets or securities, form a joint venture, settle litigation, or license intellectual property. During this period, the Defendants may not reach agreements with the other party affecting price or output, allocating markets or customers, or eliminating or delaying competition. Section IV(B) also enjoins the Defendants from disclosing, or seeking the disclosure of, competitively sensitive information during this period.

In addition, Section IV(C) of the proposed Final Judgment requires GTV to permit specified service providers, those that signed IPG agreements conforming to the agreed-upon prices and terms during the period between June 10, 1999, and July 12, 2000, the option to terminate, without penalty, those agreements. The decision to terminate those agreements rests solely with the service provider.

B. Permitted Conduct

Section V of the proposed Final Judgment identifies certain agreements and conduct that are permitted by the Judgment. Sections V(A) and V(B) ensure that the decree will not be interpreted to forbid certain "conduct-of-business" covenants that are typically found in merger agreements. Section V(A) permits the use of agreements obligating the to-be-acquired person generally to operate its business in the ordinary course of business consistent with past practices. Section V(B) permits the use of "material adverse change" provisions, which give the acquiring person certain rights to prevent material changes in the way a to-be-acquired firm conducts its business. These are customary provisions found in most merger agreements and are intended to protect the value of the transaction and prevent a to-be-acquired person from wasting assets.

Section V(D) recognizes a narrow exception to the prohibition on the exchange of competitively sensitive information. As a general rule, competitors should not obtain prospective customer-specific price information prior to the consummation of the transaction. Access to such information raises significant antitrust risks, as it could be used to enter into an illegal agreement that would be harmful to competition if the transaction is subsequently abandoned. Notwithstanding, there may be situations during the due diligence process in which an acquiring person may need information regarding pending contacts to value the business properly. Section IV(D) of the proposed Final Judgment permits GTV to obtain such information, subject to appropriate limitations and confidentiality undertakings.

C. Compliance

Sections VI and VII of the proposed Final Judgment set forth various compliance procedures. Section VI sets up an affirmative compliance program directed toward ensuring GTV's compliance with the limitations imposed by the proposed Final Judgment. The compliance program includes the designation of a compliance officer who is required to distribute a copy of the Final Judgment to each present and succeeding director, officer, employee, and agent with the responsibility for mergers and acquisitions, brief each such person regarding compliance with the Final Judgment, and obtain a certification from each such person that he or she has received a copy of the Final Judgment and understand his or her obligations under the judgment. In addition, the compliance officer must provide a copy of the Final Judgment to a merger partner before the initial exchange of a letter of intent, definitive agreement or other agreement of merger. Section VI of the proposed Final Judgment further requires the compliance officer to certify to the United States that GTV is in compliance and to report any violations of the Final Judgment.

To facilitate monitoring GTV's compliance with the Final Judgment, Section VII grants DOJ access, upon reasonable notice, to GTV's records and documents relating to matters contained in the Final Judgment. GTV must also make its personnel available for interviews or depositions regarding such matters. In addition, GTV must, upon request, prepare written reports relating to matters contained in the Final Judgment.

These provisions are adequate to prevent recurrence of the type of illegal conduct alleged in the Complaint. The proposed Final Judgment should ensure that, in future transactions, GTV will not enter into agreements to limit competition during the pre-consummation period. Consequently, customers will receive the benefits of free and open competition.

D. Civil Penalties[5]

Under section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), any person who fails to comply with the Act shall be liable to the United States for a civil penalty of not more than $11,000 for each day during which such person is in violation of the Act.[6] Both Gemstar and TV Guide were in violation of section 7A from the first full day following execution of the merger agreement until the expiration of the statutory waiting period. The Defendants have agreed to pay, within thirty days of the entry of the proposed Final Judgment, civil penalties reflecting $11,000 per day per Defendant (or $5,676,000). This is the maximum civil penalty the Court could impose on the Defendants at trial.

V. Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no effect as prima facie evidence in any subsequent private lawsuit that may be brought against Defendants.

Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the injunction portion of the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Sherman Act injunction contained in the Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to comments. All comments will be given due consideration by the DOJ, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with this Court and published in the **Federal Register**. Written comments should be submitted to: James R. Wade, Chief, Litigation III, United States Department of Justice, Antitrust Division, 325 7th St., NW., Suite 300, Washington, DC 20530.

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VII. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against the Defendants. The United States is satisfied, however, that the proposed injunctive relief and payment of civil penalties are sufficient to address the harm alleged in the Complaint.

---

conduct, the post filing waiting period was either 30 days after filing or if the enforcement agency requested additional information, 20 days after the parties complied with the enforcement agency's request. 15 U.S.C. 18a(b). The enforcement agency may grant early termination of the waiting period. 15 U.S.C. 18a(b)(2), and often does so when a merger poses no competitive problems.

[4] This conclusion accords with the FTC regulations, which define an "acquiring person" as one who will "hold" voting securities or assets directly or indirectly through third parties. 16 CFR 801.2(a). "Hold" is further defined to mean "beneficial ownership." 16 CFR 801.1(c). In its "Statement of Basis and Purpose" ("SBP"), 43 FR 33450 (July 31, 1978), which accompanied the regulations, the FTC stated that the existence of "beneficial ownership" was to be determined "in the context of particular cases" with respect to the person enjoying the "indicia of beneficial ownership." Id. at 33459. The execution of a reportable agreement, combined with the assumption of significant influence over the to-be-acquired securities or assets, transfers sufficient "indicia of beneficial ownership" to amount to "holding" the securities or assets under the regulations. See William J. Baer, Report from the [FTC] Bureau of Competition (April 15, 1999) ("In the jargon of (section 7A), signing the contract transfers some indicia of beneficial ownership. By itself, that transfer is entirely lawful. But the transfer of additional indicia of ownership during the waiting period—such as assuming control through management contracts, integrating operations, joint decision making, or transferring confidential business information for purposes other than due diligence inquiries—are inconsistent with the purposes of (section 7A) and will constitute a violation.")

[5] The United States does not believe that the payment of civil penalties under section 7A is subject to the APPA, and courts in this district have consistently entered consent judgments for civil penalties under section 7A without employing APPA procedures. *See, e.g., United States* v. *Hearst Trust, et al.*, 2001–2 Trade Cases ¶73,451 (D.D.C.); *United States* v. *Input/Output, et al.*, 1999–1 Trade Cas. (CCH) ¶72,528 (D.D.C.); *United States* v. *Blackstone Capitol Partners II Merchant Bonking Fund, et al.*, 1999–1 Trade Cas. (CCH) ¶72,585 (D.D.C.); *United States* v. *Mahle GMBH, et al.*, 1997–2 Trade Cas. (CCH) ¶71,868 (D.D.C.); *United States* v. *Figgie Int'l, Inc.*, 1997–1 Trade Cas. (CCH) ¶71,766 (D.D.C.); *United States* v. *Foodmaker, Inc.*, 1996–2 Trade Cas. (CCH) ¶71,555 (D.D.C.); *United States* v. *Titon Wheel International, Inc.*, 1996–1 Trade Cas. (CCH) ¶71,406 (D.D.C.); *United States* v. *Automatic Data Processing, Inc.*, 1996–1 Trade Case. (CCH) ¶71,361 (D.D.C.); *United States* v. *Trump*, 1988–1 Trade Cas. (CCH) ¶67,968 (D.D.C.). Thus, in consent settlements seeking both equitable relief and civil penalties, courts have not required use of APPA procedures with respect to the civil penalty component of the proposed final judgment. *See United States* v. *ARA Services, Inc.*, 1979–2 Trade Cas. (CCH) ¶62,861 (E.D. Mo.). Consequently, the civil penalties component of the proposed Final Judgment is not open to public comment. The other provisions of the proposed Final Judgment, including the equitable relief to resolve the alleged violations of section 7A, are covered by the APPA and subject to comment.

[6] *Id.*; *see also* Pub. L. 104–134 § 31001(s) (Debt Collection Improvement Act of 1996); 16 CFR 1.98 (increasing maximum penalty to $11,000 per day).

VIII. Standard of Review under the APPA for Proposed Final Judgment

The APPA requires that injunctions of anticompetitive conduct contained in proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment is "in the public interest." In making that determination, the court may consider

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing on the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the Complaint including consideration of the public benefit, if any, to be derived from the determination of the issues at trial.

15 U.S.C. 16(e). As the Court of Appeals for the District of Columbia has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the Government's Complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft*, 56 F.3d 1448–62 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree proceedings.[7] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court in making its public interest findings, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[8]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS Inc.*, 858 F.2d 456, 462–63 (9th Cir. 1988) quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir), cert. denied, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1458. Precedent requires that

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[9]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. A "proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'"[10]

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Since the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.*

IX. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: March 19, 2003.

Respectfully Submitted,

Robert P. Faulkner (D.C. Bar No. 430163), Erika L. Meyers (D.C. Bar No. 465452), Thomas H. Liddle, Scott A. Scheele (D.C. Bar No. 429061),

Attorneys, U.S. Department of Justice, Antitrust Division, Litigation III Section, 325 7th Street, NW., Ste. 300, Washington, DC 50530, 202/514–0259.

[FR Doc. 03–7285 Filed 3–26–03; 8:45 am]

BILLING CODE 4410–11–M

[7] *United States* v. *Gillette Co.*, 406 F.Supp. 713, 715 (D. Mass. 1975) citing 119 Cong. Rec. 24598 (1973). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, these procedures are discretionary. 15 U.S.C. 16(f). A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538–9.

[8] *United States* v. *Mid-America Dairymen, Inc.* 1977–1 Trade Cas. (CCD ¶ 61,508, 71980 (W.D. Mo. 1977); *see also United States* v. *Loew's Inc.*, 783 F.Supp. 211, 214 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Mgmt., Inc.*, 662 F.Supp. 865, 870 (S.D.N.Y. 1987).

[9] *United States* v. *Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F.Supp. 1127, 1142–3 (C.D. Cal. 1978) *United States* v. *Gillette Co.*, 406 F.Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

[10] *Gillette*, 406 F.Supp. at 716; *See also United States* v. *Alcan Aluminum Ltd.*, 605 F.Supp. 619, 622 (W.D. Ky. 1985); *United States* v. *Carrols Dev. Corp.*, 454 F.Supp. 1215, 1222 (N.D.N.Y. 1978).

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on March 5, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Boeing Company, St. Louis, MO; LUVIT AB, Lund, SWEDEN; Campus Pipeline, Salt Lake City, UT; PeopleSoft, Inc., Pleasanton, CA; Eduprise, Morrisville, NC; and R5 Vision Oy, Helsinki, FINLAND have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on December 11, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 13, 2003 (68 FR 1641).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–7284 Filed 3–26–03; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel (Resources for Change: Technology category) to the National Council on the Arts will be held from April 22–23, 2003 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting, from 9 a.m. to 10 a.m. on April 23rd, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5:30 p.m. on April 22nd and from 11 a.m. to 2 p.m. on April 23rd, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY-TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: March 20, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–7354 Filed 3–26–03; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* DOE/NRC Form 742, "Material Balance Report;" NUREG/BR–0007, "Instructions for the Preparation and Distribution of Material Status Reports;" and DOE/NRC Form 742C, "Physical Inventory Listing."

2. *Current OMB approval number:* 3150–0004 and 3150–0058.

3. *How often the collection is required:* DOE/NRC Forms 742 and 742C are submitted annually following a physical inventory of nuclear materials.

4. *Who is required or asked to report:* Persons licensed to possess specified quantities of special nuclear or source material.

5. *The number of annual respondents:*
DOE/NRC Form 742: 200 licensees.
DOE/NRC Form 742C: 180 licensees.

6. *The number of hours needed annually to complete the requirement or request:*
DOE/NRC Form 742: 150 hours.
DOE/NRC Form 742C: 1,080 hours.

7. *Abstract:* Each licensee authorized to possess special nuclear material totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, and any licensee authorized to possess 1,000 kilograms of source material is required to submit DOE/NRC Form 742. Reactor licensees required to submit DOE/NRC Form 742, and facilities subject to 10 CFR part 75, are required to submit DOE/NRC Form 742C. The information is used by NRC to fulfill its responsibilities as a participant in US/IAEA Safeguards Agreement and bilateral agreements with Australia and Canada, and to satisfy its domestic safeguards responsibilities.

Submit, by May 27, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web site *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 21st day of March, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–7338 Filed 3–26–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–316]

Indiana Michigan Power Co., Donald C. Cook Nuclear Plant, Unit 2; Exemption

1.0 Background

Indiana Michigan Power Company (the licensee) is the holder of Facility Operating License No. DPR–74 which authorizes operation of the Donald C. Cook (D. C. Cook) Nuclear Plant, Unit 2. The licensee provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor located in Stevensville, Michigan.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50, appendix G requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, appendix G to 10 CFR part 50 states that "[t]he appropriate requirements on * * * the pressure-temperature limits and minimum permissible temperature must be met for all conditions." Further, Appendix G of 10 CFR part 50 specifies that the requirements for these limits are based on the application of evaluation procedures given in Appendix G to Section XI of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code). In this exemption, consistent with the current provisions of 10 CFR 50.55(a), all references to the ASME Code denote the 1995 Edition through the 1996 Addenda of the ASME Code.

In order to address provisions of amendments to the D. C. Cook Unit 2 Technical Specification (TS) P–T limit curves, the licensee requested in its submittal dated July 23, 2002, that the NRC staff exempt D. C. Cook Unit 2 from application of specific requirements of Appendix G to 10 CFR part 50, and substitute the use of ASME Code Case N–641. ASME Code Case N–641 permits the use of an alternate reference fracture toughness curve for RPV materials and permits the postulation of a circumferentially-oriented flaw for the evaluation of circumferential RPV welds when determining the P–T limits. The proposed exemption request is consistent with, and is needed to support, the D. C. Cook Unit 2 TS amendment that was contained in the same submittal. The proposed D. C. Cook Unit 2 TS amendment will revise the P–T limits for heatup, cooldown, and inservice test limitations for the reactor coolant system (RCS) through 32 effective full power years of operation.

Code Case N–641

The licensee has proposed an exemption to allow the use of ASME Code Case N–641 in conjunction with Appendix G to ASME Section XI, 10 CFR 50.60(a) and 10 CFR part 50, Appendix G, to establish the P–T limits for the D. C. Cook 2 RPV.

The proposed TS amendment to revise the P–T limits for D. C. Cook Unit 2 relies in part, on the requested exemption. These revised P–T limits have been developed using the lower bound K_{IC} fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1, in lieu of the lower bound K_{IA} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1, as the basis fracture toughness curve for defining the D. C. Cook Unit 2 P–T limits. In addition, the revised P–T limits have been developed based on the use of a postulated circumferentially-oriented flaw for the evaluation of RPV circumferential welds in lieu of the axially-oriented flaw which would be required by Appendix G to Section XI of the ASME Code. The other margins involved with the ASME Section XI, Appendix G process of determining P–T limit curves remain unchanged.

Use of the K_{IC} curve as the basis fracture toughness curve for the development of P–T operating limits is more technically correct than use of the K_{IA} curve. The K_{IC} curve appropriately implements the use of a relationship based on static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a RPV, whereas the K_{IA} fracture toughness curve codified into Appendix G to Section XI of the ASME Code was developed from more conservative crack arrest and dynamic fracture toughness test data. The application of the K_{IA} fracture toughness curve was initially codified in Appendix G to Section XI of the ASME Code in 1974 to provide a conservative representation of RPV material fracture toughness. This initial conservatism was necessary due to the limited knowledge of RPV material behavior in 1974. However, additional information has been gained about RPV materials which demonstrates that the lower bound on fracture toughness provided by the K_{IA} fracture toughness curve is well beyond the margin of safety required to protect the public health and safety from potential RPV failure.

Likewise, the use of a postulated circumferentially-oriented flaw in lieu of an axially-oriented one for the evaluation of a circumferential RPV weld is more technically correct. The flaw size required to be postulated for P–T limit determination has a depth of one-quarter of the RPV wall thickness and a length six times the depth. Based on the direction of welding during the fabrication process, the only technically reasonable orientation for such a large flaw is for the plane of the flaw to be circumferentially-oriented (*i.e.*, parallel to the direction of welding). Prior to the development of ASME Code Case N–641 (and the similar ASME Code Case N–588), the required postulation of an axially-oriented flaw for the evaluation of a circumferential RPV weld provided an additional, unnecessary level of conservatism to the overall evaluation.

In addition, P–T limit curves based on the K_{IC} fracture toughness curve and postulation of a circumferentially-oriented flaw for the evaluation of RPV circumferential welds will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations. The operating window through which the operator heats up and cools down the RCS is determined by the difference between the maximum allowable pressure determined by Appendix G of ASME Section XI, and the minimum required pressure for the reactor coolant pump seals adjusted for instrument uncertainties. A narrow operating window could potentially have an adverse safety impact by increasing the possibility of inadvertent overpressure protection system actuation due to pressure surges associated with normal plant evolutions such as RCS pump starts and swapping operating charging pumps with the RCS in a water-solid condition.

Since application of ASME Code Case N–641 provides appropriate procedures to establish maximum postulated defects and to evaluate those defects in the context of establishing RPV P–T limits, this application of the Code Case maintains an adequate margin of safety for protecting RPV materials from brittle failure. Therefore, the licensee concluded that these considerations were special circumstances pursuant to 10 CFR 50.12(a)(2)(ii), "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

In summary, the ASME Section XI, Appendix G, procedure was conservatively developed based on the level of knowledge existing in 1974 concerning reactor coolant pressure boundary materials and the estimated effects of operation. Since 1974, the level of knowledge about the fracture mechanics behavior of RCS materials has been greatly expanded, especially regarding the effects of radiation embrittlement and the understanding of fracture toughness properties under static and dynamic loading conditions. The NRC staff concurs that this increased knowledge permits relaxation of the ASME Section XI, Appendix G requirements by application of ASME Code Case N–641, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety against brittle failure of the RPV.

The NRC staff has reviewed the exemption request submitted by the licensee and has concluded that an exemption should be granted to permit the licensee to utilize the provisions of ASME Code Case N–641 for the purpose of developing D. C. Cook Unit 2 RPV P–T limit curves.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

Special circumstances, pursuant to 10 CFR 50.12(a)(2)(ii), are present in that continued operation of D. C. Cook Unit 2 with the P–T curves developed in accordance with ASME Section XI, Appendix G, without the relief provided by ASME Code Case N–641 is not necessary to achieve the underlying purpose of Appendix G to 10 CFR part 50. Application of ASME Code Case N–641 in lieu of the requirements of ASME Code Section XI, Appendix G provides an acceptable alternative methodology which will continue to meet the underlying purpose of Appendix G to 10 CFR part 50. The underlying purpose of the regulations in Appendix G to 10 CFR part 50 is to provide an acceptable margin of safety against brittle failure of the RCS during any condition of normal operation to which the pressure boundary may be subjected over its service lifetime.

The NRC staff examined the licensee's rationale to support the exemption request, and agrees within the licensee's determination that an exemption would be required to approve the use of Code Case N–641. The NRC staff agree that the use of ASME Code Case N–641 would meet the underlying intent of Appendix G to 10 CFR part 50. The NRC staff concludes that the application of the technical provisions of ASME Code Case N–641 provided sufficient margin in the development of RPV P–T limit curves such that the underlying purpose of the regulations (Appendix G to 10 CFR part 50) continued to be met such that the specific conditions required by the regulations; *i.e.*, use of all provisions in Appendix G to Section XI of the ASME Code, were not necessary. Therefore, the NRC staff concludes that the exemption requested by the licensee is justified based on the special circumstances of 10 CFR part 50(a)(2)(ii), "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of Appendix G to 10 CFR part 50; Appendix G to Section XI of the ASME Code; and Regulatory Guide 1.99, Revision 2; the staff concludes that application of ASME Code Case N–641 as described would provide an adequate margin of safety against brittle failure of the RPV. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. Therefore, the NRC staff concludes that requesting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate, and that the methodology of Code Case N–641 may be used to revise the P–T limits for the D. C. Cook Unit 2 RPV.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.60 and 10 CFR part 50, Appendix G, to allow application of ASME Code Case N–641 in establishing TS requirements for the reactor vessel pressure limits at low temperatures for D. C. Cook Unit 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 13336).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 19th day of March 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–7340 Filed 3–26–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–698; License No. SNM–770]

Westinghouse Electric Company, LLC, Waltz Mill Service Center, Madison, PA; Receipt of Request for Action

Notice is hereby given that by petition dated October 30, 2002, Viacom, Inc. (petitioner) has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the Westinghouse Test Reactor and the Waltz Mill Service Center. The petitioner requests NRC to issue an Order to Westinghouse Electric Company LLC ("Westinghouse"), the holder of license SNM–770 on the Waltz Mill Service Center near Madison, PA, which would require Westinghouse to: (1) Provide certain radiological survey data to NRC which NRC has requested, and (2) accept under SNM–770 certain residual byproduct materials now held under Viacom license TR–2 and located at the former Westinghouse Test Reactor (WTR) facility at the Waltz Mill Site.

As the basis for this request, the petitioner states that Westinghouse's refusal to provide the survey data and to accept the residual byproduct materials now held under license TR–2 constitutes a violation of 10 CFR 50.5, Deliberate misconduct, which causes Viacom to be in violation of a license condition, the approved Decommissioning Plan (DP) for the WTR. The petitioner claims that granting the petition is necessary for compliance with both the DP and other commitments under SNM–770 and is needed to abate the violation of 10 CFR 50.5 to promote public health and safety by providing for safe completion of decommissioning of the WTR under the DP.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's

regulations. The request has been referred to the Director of the Office of Nuclear Material Safety and Safeguards (NMSS). As provided by §2.206, appropriate action will be taken on this petition within a reasonable time. The petitioner met with the NMSS petition review board on February 20, 2003 to discuss the petition. The results of that discussion were considered in the board's determination regarding the petition and the schedule for the review of the petition. A copy of this petition is available in ADAMS for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS public access component on the NRC's Web site, http://www.nrc.gov.

Dated at Rockville, Maryland, this 13th day of March 2003.

For the Nuclear Regulatory Commission.

Martin Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–7339 Filed 3–26–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Submission for OMB review; request for comments.

SUMMARY: Under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a notice in the **Federal Register** notifying the public that agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission.

At OPIC's request, OMB is reviewing this information collection for emergency processing for 90 days, under OMB control number 3420–0019.

Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 30 calendar days of this notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Bruce Campbell, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202–336–8563.

Summary Form Under Review

Type of Request: Revised form.
Title: Self-Monitoring Questionnaire for Insurance and Finance Projects.
Form Number: OPIC–162.
Frequency of Use: Annually for duration of project.
Type of Respondents: Business or other institution (except farms); individuals.
Standard Industrial Classification Codes: All.
Description of Affected Public: U.S. companies or citizens investing overseas.
Reporting Hours: 3 hours per project.
Number of Responses: 325 per year.
Federal Cost: $19,500.
Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act. of 1961, as amended.
Abstract (Needs and Uses): The questionnaire is completed by OPIC-assisted investors annually. The questionnaire allows OPIC's assessment of effects of OPIC-assisted projects on the U.S. economy and employment, as well as on the environment and economic development abroad.

Dated: March 10, 2003.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 03–7349 Filed 3–26–03; 8:45 am]

BILLING CODE 3210–01–M

POSTAL RATE COMMISSION

Industry Presentation

AGENCY: Postal Rate Commission.

ACTION: Notice of presentation.

SUMMARY: Two representatives of United Parcel Service will deliver a presentation on mail innovations and emerging mail strategies to Commissioners, special assistants and senior staff members on Tuesday, March 25, 2003. The presentation will begin at 11 a.m.

DATES: March 25, 2003.

ADDRESSES: 1333 H Street NW., Suite 300 (PRC conference room), Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

Steven W. Williams,

Secretary.

[FR Doc. 03–7356 Filed 3–26–03; 8:45 am]

BILLING CODE 7710–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collection, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose Information Collection

Application for Employee Annuity Under the Railroad Retirement Act; OMB 3220–0002 section 2 of the Railroad Retirement Act (RRA), provides for payment of age and service, disability and supplemental annuities to qualified employees. The basic requirement for a regular employee annuity retirement annuity under the RRA is 120 months (10 years) of creditable railroad service. Benefits then become payable after the employee meets certain other requirements, which depend, in turn, on the type of annuity payable. The requirements relating to the annuities are prescribed in 20 CFR 216, and 220.

The RRB currently uses the electronic AA–1cert, Application Summary and Certification process and the following forms to collect the information needed for determining entitlement to and the amount of, an employee retirement annuity: Form AA–1, Application for Employee annuity Under the Railroad Retirement Act, Form AA–1d, Application for Determination of Employee Disability, and Form G–204, Verification of Workers Compensation/Public Disability Benefit Information.

The AA–1cert process obtains information from an applicant for either an age and service, or disability annuity by means of an interview with an RRB field-office representative. It obtains information about an applicant's marital history, work history, military service, benefits from other governmental agencies and railroad pensions. During the interview, the field-office representative enters the information obtained into an online information system. Upon completion of the interview, the applicant receives Form AA–1cert, Application Summary and Certification, which summarizes the information that war provided by/or verified by the applicant, for review and signature. The RRB also uses a manual version, RRB Form AA–1, in instances where the RRB representative is unable to contact the applicant in-person or by telephone i.e., the applicant lives in another country.

Form AA–1d, Application for Determination of Employee Disability, is completed by an employee who is filing for a disability annuity under the RRA, or a disability freeze under the Social Security Act for early Medicare based on a disability. Form G–204, Verification of Workers Compensation/Public Disability Benefit Information, is used to obtain and verify information concerning worker's compensation or public disability benefits that are or will be paid by a public agency to a disabled railroad employee.

The RRB estimates the burden for the collection as follows:

ESTIMATED BURDEN

Form	Estimated annual responses	Estimated completion time (per response)	Estimated annual burden hours (hours)
AA–1cert (with assistance)	13,300	30	6,650
AA–1 manual (without assistance)	100	62	103
AA–1d (manual without assistance)	50	60	50
AA–1d (manual) (with assistance)	5,600	35	3,296
G–204	50	15	13
Total	19,100		10,112

The RRB proposes no changes to Form AA–1cert, AA–1 and G–204. Minor non-burden impacting, editorial and formatting changes are proposed to Form AA–1d. Completion of an application is required to obtain a benefit. One response is requested of each respondent.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–7307 Filed 3–26–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Banco Nacional De Comercio Exterior, S.N.C. to Withdraw Its 7¼% Global Notes (due 2004) From Listing and Registration on the New York Stock Exchange, Inc. File No. 1–11744

March 21, 2003.

Banco Nacional De Comercio Exterior, S.N.C, a United Mexican States corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 7¼% Global Notes (due 2004) ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

On January 29, 2003, the Board of Directors of the Issuer approved a resolution to withdraw the Issuer's Security from listing on the NYSE. In making its decision to withdraw the Security from the Exchange, the Issuer states that: (i) The Security is not widely held and has a low trading volume; (ii) the Issuer is subject to administrative costs resulting solely from the listing of the Security, including those related to maintaining the listing of the Security on the NYSE and complying with U.S. securities laws reporting requirements. Given the low trading volume of the Security, the Issuer believes that such costs are not justified. The Security is the only outstanding security the Issuer has listed on a national securities exchange.

The Issuer stated in its application that it has met the requirements of the NYSE rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before April 16, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–7342 Filed 3–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25969; 812–12932]

iShares Trust, et al.; Notice of Application

March 21, 2003.

AGENCY: Securities and Exchange Commission ("Commission")

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for exemption from sections 12(d)(1)(A) and (B) and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY: The order would permit certain registered management investment companies and unit investment trusts to acquire shares of other registered open-end management investment companies and unit investment trusts that operate as exchange-traded funds and are outside the same group of investment companies. The order also would amend a condition in two prior orders.

Applicants: iShares Trust ("Trust"), iShares, Inc. ("Corporation") and Barclays Global Fund Advisors ("BGFA").

DATES: The application was filed on February 26, 2003. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and servicing applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 14, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Trust and Corporation, c/o Investors Bank & Trust Company, 200 Clarendon Street, Boston, MA 02116; BGFA, 45 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, and Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust and the Corporation are open-end management investment companies registered under the Act and are comprised of separate series that seek to provide investment results that correspond generally to the performance of specified market indices and that operate as exchange-traded funds ("ETFs"). BGFA is a registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment adviser to each existing iShares Fund (as defined below).

2. Applicants request relief to permit registered management investment companies and unit investment trusts to acquire shares of series of the Trust or the Corporation beyond the limitations in section 12(d)(1)(A) and (B). Applicants request that the relief apply to (i) each registered open-end management investment company or unit investment trust that operates as an ETF, is currently or subsequently part of the same "group of investment companies" as the Trust or the Corporation within the meaning of section 12(d)(1)(G)(ii) of the Act, and is advised or sponsored by BGFA or an entity controlling, controlled by or under common control with BGFA (such open-end ETFs are referred to as "Open-End iShares Funds"; such unit investment trust ETFs are referred to as "UIT iShares Funds" Open-End iShares Funds and UIT iShares Funds are collectively referred to as "iShares Funds"),[1] as well as any broker-dealer selling shares of an iShares Fund to an Investing Fund (as defined below); and (ii) each registered management investment company or unit investment trust that is not part of the same "group of investment companies" as the iShares Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a participation agreement ("Participation Agreement") with an iShares Fund (such management investment companies are referred to as "Investing management Companies"; such unit investment trusts are referred to as "Investing Trusts," and Investing Management Companies and Investing trusts are collectively referred to as "Investing Funds").[2] Each Investing Management Company will be advised by an investment adviser that is registered under the Advisers Act or exempt from registration ("Advisor").

3. Applicants state that the iShares Funds will offer the Investing Funds simple and efficient vehicles to achieve their asset allocation, diversification and other investment objectives, and to implement various investment strategies. Among other purposes, applicants assert that the iShares Funds provide instant and highly liquid exposure to a broad range of markets, sectors or subsectors, geographic regions and industries, and permit investors to achieve such exposure through a single transaction instead of the many transactions that might otherwise be needed to obtain comparable market exposure.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any broker or dealer registered under the Securities Exchange Act of 1934, from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit the Investing Funds to acquire shares of the iShares Funds ("iShares") and the iShares Funds and any broker or dealer to sell iShares to the Investing Funds beyond the limits set forth in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement and conditions will adequately address the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by an Investing Fund or its affiliates over the iShares Funds. To limit the control that an Investing Fund may have over an iShares Fund, applicants propose a condition prohibiting an Advisor, or a sponsor to an Investing Trust ("Sponsor"), and certain affiliates from controlling (individually or in the aggregate) an iShares Fund within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence over the iShares Funds, applicants propose conditions 2, 3, 4, 6, 7 and 8, stated below, to preclude an Investing Fund and its affiliated entities from taking advantage of an iShares Fund with respect to transactions between the entities and to ensure the transactions will be on an arm's length basis.

5. As an additional assurance that an Investing Fund understands the implications of an investment by an Investing Fund in an iShares Fund under the requested order, each Investing Fund and iShares Fund will execute an agreement stating that the board of directors or trustees of, and the investment adviser to, an Investing Management Company, and the trustee and Sponsor of an Investing Trust, as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order.

6. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged to the Investing Management Company are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract of any Open-End iShares Fund in which the Investing Management Company may invest. In addition, an Advisor or a trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it by an Investing Management Company or Investing Trust in an amount at least equal to any compensation received by the Advisor or trustee or Sponsor to the Investing Trust or an affiliated person of the investment adviser, trustee or Sponsor from the iShares Funds in connection with the investment by the Investing Management Company or Investing Trust in the iShares Fund. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the National Association of Securities Dealers, Inc. ("NASD").

7. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that an iShares Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A), except to the extent permitted by an exemptive order allowing the iShares Fund to purchase shares of an affiliated money market fund for short-term cash management purposes. Applicants also represent that the Participation Agreement will require an Investing Fund that exceeds the 5% or 10% limitations in section 12(d)(1)(A)(ii) and (iii) to disclose in its prospectus that it may invest in ETFs and to disclose, in "plain English," in its prospectus the unique characteristics of the Investing Fund investing in ETFs, including, but not limited to, the expense structure and any additional expenses of investing in ETFs.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person.

2. Applicants state that an iShares Fund could become an affiliated person of an Investing Fund if the Investing Fund acquires more than 5% of an iShares Fund's outstanding voting securities. Although applicants believe that most Investing Funds will purchase iShares in the secondary market and not directly from an iShares Fund, an Investing Fund that owns 5% or more of an iShares Fund might seek to transact directly with an iShares Fund.[3] In light of this possible affiliation, section 17(a) could prevent an iShares Fund from selling iShares to and redeeming iShares from an Investing Fund.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (i) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company involved; and (iii) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid for the purchase or redemption of iShares directly from an iShares Funds will be based on the net asset value of the iShares Fund. Applicants state that the proposed arrangement will be consistent with the policies of each Investing Fund and iShares Fund and with the general purposes of the Act. Applicants also believe that the requested exemption is appropriate in the public interest and submit that the exemption is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

---

[5] 17 CFR 200.30–3(a)(1).

[1] All existing iShares Funds are open-end management investment companies.

[2] All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund may rely on the requested order only to invest in iShares Funds and not in any other registered investment company.

[3] iShares are only purchased and redeemed directly from an iShares Fund in large blocks of iShares (generally between 50,000 and 600,000 shares) called "creation units."

C. Prior Orders

Applicants also seek to amend a condition to certain prior exemptive orders ("Prior Orders") so that the condition is consistent with the relief requested from section 12(d)(1).[4] Existing condition 2 to each of the Prior Orders currently provides that each iShares Fund prospectus and Product Description will clearly disclose that, for purposes of the Act, iShares are issued by the iShares Fund and that the acquisition of iShares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.[5] In light of the requested order to permit Investing Funds to invest in IShares Funds in excess of the limits of section 12(d)(1), applicants wish to replace this condition in the Prior Orders with condition 13, as stated below. Under the new condition, Investing Funds will be alerted that they may invest in iShares Funds in excess of the limits of section 12(d)(1) to the extent that they comply with the terms and conditions of the requested order granting relief from section 12(d)(1), including the requirement that they enter into a Participation Agreement with the iShares Fund regarding the terms of the investment.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. An Advisor, a Sponsor, any person controlling, controlled by, or under common control with an Advisor or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised by an Advisor or sponsored by a Sponsor, or any person controlling, controlled by, or under common control with an Advisor or Sponsor (collectively, the "Group") will not control (individually or in the aggregate) an iShares Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an iShares Fund, the Group, in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of an iShares Fund, the Group will vote it shares of the iShares Fund in the same proportion as the vote of all other holders of the iShares Fund's shares.

2. An Investing Fund and its investment adviser, sponsor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each, an "Investing Fund Affiliate") will not cause any existing or potential investment by the Investing Fund in an iShares Fund to influence the terms of any services or transactions between the Investing Fund or Investing Fund Affiliate and the iShares Fund or its investment adviser, promoter, sponsor, principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each, an "iShares Fund Affiliate").

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to assure that the Advisor is conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from an iShares Fund or an iShares Fund Affiliate in connection with any services or transactions.

4. The board of directors/trustees of an Open-End iShares Fund ("Board"), including a majority of the disinterested Board members, will determine that any consideration paid by an Open-End iShares Fund to an Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Open-End iShares Fund; (ii) is within the range of consideration that the Open-End iShares Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned.

5. An Advisor or a trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it by the Investing Management Company or Investing Trust in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Open-End iShares Fund under rule 12b–1 under the Act) received by the Advisor or trustee or Sponsor to the Investing Trust or an affiliated person of the Advisor, trustee or Sponsor from the iShares Funds in connection with the investment by the Investing Management Company or Investing Trust in the iShares Funds.

6. No Investing Fund or Investing Fund Affiliate will cause an iShares Fund to purchase a security from any underwriting or selling syndicate in which a principal underwriter is an officer, director, member of an advisory board, investment adviser, employee or sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, investment adviser, employee or sponsor is an affiliated person (each, an "Underwriting Affiliate"). An offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is considered an "Affiliated Underwriting."

7. The Board, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by an Open-End iShares Fund in an Affiliated Underwriting, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in an Open-End iShares Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Open-End iShares Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Open-End iShares Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities from Affiliated Underwritings are in the best interests of shareholders.

8. Each Open-End iShares Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period not less than six years form the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in an iShares Fund in excess of the limit in section 12(d)(1)(A)(i), each Investing Fund and the iShares Fund will execute an agreement stating, without limitation, that the board of directors or trustees of, and the investment adviser to, an Investing Management Company, and the trustee and Sponsor of an Investing Trust, as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Open-End iShares Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Open-End iShares Fund of the investment. At such time, the Investing Fund will also transmit to the Open-End iShares Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Open-End iShares Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The iShares Fund and the Investing Fund will maintain and preserve a copy of the order, the agreement, and, in the case of an Open-End iShares Fund, the list with any updated information for a period of not less than six years from the end of fiscal year in which any investment occurred, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract of any Open-End iShares Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or services fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the NASD.

12. No iShares Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by an exemptive order that allows the iShares Fund to purchase shares of an affiliated money market fund for short-term cash management purposes.

Amendment to Prior Orders

Applicants agree to replace condition 2 of the Prior Orders with the following condition:

13. Each iShares Fund's prospectus and Product Description will clearly disclose that, for purposes of the Act, the iShares are issued by an iShares Fund, which is an investment company, and that the acquisition of iShares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits investment companies to invest an iShares Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the investment company enter into an agreement with the iShares Fund regarding the terms of the investment.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7341 Filed 3–26–03; 8:45 am]

BILLING CODE 8010–01–M

[4] The Prior Orders are iShares, Inc., *et al.*, Investment Company Act Release Nos. 25595 (May 29, 2002) (notice) and 25623 (June 25, 2002) (order) and Barclays Global Fund Advisors, *et al.*, Investment Company Act Release Nos. 25594 (May 29, 2002) (notice) and 25622 (June 25, 2002) (order).

[5] A "Product Description" is a document that accompanies secondary market trades of iShares and provides a plain English overview of the iShares Fund.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25968; 812–12866]

SAFECO Common Stock Trust and SAFECO Asset Management Co.; Notice of Application

March 21, 2003.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of Application: The requested order would permit certain registered open-end management investment companies to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: SAFECO Common Stock Trust (the "Trust") and SAFECO Asset Management Co. (the "Adviser").

Filing Dates: The application was filed on August 9, 2002, and amended on March 3, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 15, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549–0609. Applicants, 4854 154th PL. NE., Redmond, WA 98052.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634 or Annette Capretta, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust is organized as a series investment company and has multiple series (each series, a "Fund," collectively the "Funds"), each with its own investment objectives, policies, and restrictions. The Adviser, a Washington corporation, serves as the investment adviser to the Funds and is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act").[1]

[1] The applicants also request that any relief granted pursuant to the application apply to future series of the Trust and any other registered open-end management investment companies and their series that: (a) Are advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser; (b) are managed in a manner consistent with the application; and (c) comply with the terms and conditions in the application ("Future Funds," included in the term "Funds"). The Trust is the only existing investment company that currently intends to rely on the requested order. If the name of any Fund contains the name of a Sub-adviser (as defined below), the name of the Adviser or the name of the entity

Continued

2. The Adviser serves as investment adviser to the Funds pursuant to an investment advisory agreement between the Trust, on behalf of each Fund, and the Adviser ("Advisory Agreement") that was approved by the Trust's board of trustees ("Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), and each Fund's shareholder(s). Each Advisory Agreement permits the Adviser to enter into separate investment advisory agreements ("Sub-advisory Agreements") with sub-advisers ("Sub-advisers") to whom the Adviser may delegate responsibility for providing investment advice and making investment decisions for a Fund. Each Sub-adviser is or will be registered under the Advisers Act. The Adviser monitors and evaluates the Sub-advisers and recommends to the Board their hiring, termination, and replacement. The Adviser recommends Sub-advisers based on a number of factors discussed in the application used to evaluate their skills in managing assets pursuant to particular investment objectives. The Adviser compensates the Sub-advisers out of the fee paid to the Adviser by a Fund.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Sub-advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Adviser, other than by reason of serving as a Sub-adviser to one or more of the Funds ("Affiliated Sub-adviser"). None of the current Sub-advisers is an Affiliated Sub-adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

3. Applicants state that the Funds' shareholders rely on the Adviser to select the Sub-advisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Sub-advisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of each Sub-advisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants also note that each Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f-2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing-disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the management structure described in the application. The prospectus with respect to each Fund will prominently disclose that the Adviser has the ultimate responsibility (subject to oversight by the Board) to oversee Sub-advisers and recommend their hiring, termination, and replacement.

3. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

4. The Adviser will not enter into a Sub-advisory Agreement with any Affiliated Sub-adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Sub-adviser change is proposed for a Fund with an Affiliated Sub-adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-adviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Sub-adviser, shareholders will be furnished all information about the new Sub-adviser that would be included in a proxy statement. Each Fund will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934 within 90 days of the hiring of any new Sub-adviser.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will (a) set the Fund's overall investment strategies; (b) evaluate, select, and recommend Sub-advisers to manage all or part of the Fund's assets; (c) when appropriate, allocate and reallocate a Fund's assets among multiple Sub-advisers; (d) monitor and evaluate the performance of the Sub-advisers; and (e) ensure that the Sub-advisers comply with each Fund's investment objectives, policies and restrictions by, among other things, implementing procedures reasonably designed to ensure compliance.

8. No trustee or officer of the Trust, or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-adviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-adviser or an entity that controls, is controlled by, or is under common control with a Sub-adviser.

controlling, controlled by, or under common control with the Adviser that serves as the primary adviser to the Fund will precede the name of the Sub-adviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7343 Filed 3–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [68 FR 12723, March 17, 2003].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, March 18, 2003 at 10 a.m. and Thursday, March 20, 2003 at 10 a.m.

CHANGE IN THE MEETING: Additional Items.

The following items were added to the Closed Meeting held on Tuesday, March 18, 2003 and Thursday, March 20, 2003:

Formal orders of investigation.

Commissioner Goldschmid, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 17, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–7480 Filed 3–25–03; 11:09 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 24, 2003:

Closed meetings will be held on Tuesday, March 25, 2003 at 2:30 p.m., and Thursday, March 27, 2003 at 10 a.m.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meeting scheduled for Tuesday, March 25, 2003 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Settlement of administrative proceedings of an enforcement nature; Opinions; and

Amici consideration.

The subject matter of the closed meeting scheduled for Thursday, March 27, 2003 will be:

Formal orders of investigations;

Institution and settlement of administrative proceedings of an enforcement nature; and

Institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 24, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–7481 Filed 3–25–03; 11:09 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47550; File No. SR–NASD–2003–45]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. To Adopt, on a Permanent Basis, Margin Requirements for Security Futures Contracts Pursuant to NASD Rule 2520

March 20, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2003, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to adopt, on a permanent basis, amendments to NASD Rule 2520 establishing margin requirements for security futures contracts ("SFCs"). The SEC originally approved these amendments on a pilot basis ("the Pilot") until March 6, 2003,[3] and thereafter extended the Pilot until March 20, 2003.[4] NASD believes that the proposed rule change would make its margin rule consistent with margin rules already adopted by the SEC, the Commodity Futures Trading Commission ("CFTC") and other self-regulatory organizations ("SROs") regarding security futures contracts.

Specifically, the proposed rule change would: (1) Permit customer margining of security futures contracts, and establish initial and maintenance margin requirements for security futures contracts; (2) allow for initial and maintenance margin levels for offsetting positions involving security futures contracts and related positions at lower levels than would be required if

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 47244 (January 24, 2003), 68 FR 5317 (February 3, 2003) (SR–NASD–2002–166).

[4] See Securities Exchange Act Release No. 47470 (March 7, 2003), 68 FR 12397 (March 14, 2003) (SR–NASD–2003–31).

margined separately; (3) provide for a Market Maker exclusion for proprietary trades of a "Security Futures Dealer" ("SFD") and allow for "good faith" margin treatment for the accounts of approved options specialists, market makers, and other specialists; (4) provide definitions relative to security futures contracts for application of this rule; (5) provide that security futures contracts transacted in a futures account shall not be subject to any provisions of NASD Rule 2520; (6) provide for money market mutual funds as defined in rule 2a–7 [5] under the Investment Company Act of 1940 (the "ICA"),[6] to be used to satisfy margin requirements for security futures contracts provided certain conditions are met; (7) require that security futures contracts transacted in a securities account be subject to all other provisions of NASD rule 2520, particularly Rule 2520(f)(8)(B) ("Day Trading"); and (8) permit members for which NASD is the Designated Examining Authority ("DEA") to participate in the trading of security futures contracts.

In addition, NASD is proposing non-substantive technical changes to NASD Rule 2520.[7]

Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in brackets.

* * * * *

2520. Margin Requirements

(a) Definitions

For the purposes of this paragraph, the following term shall have the meanings specified below:

(1) The term "basket" shall mean a group of stocks that NASD or any national securities exchange designates as eligible for execution in a single trade through its trading facilities and that consists of stocks whose inclusion and relative representation in the group are determined by the inclusion and relative representation of their current market prices in a widely-disseminated stock index reflecting the stock market as a whole.

(2) The term "current market value" means the total cost or net proceeds of a security on the day it was purchased or sold or at any other time the preceding business day's closing price as shown by any regularly published reporting or quotation service, *except for security futures contracts (see paragraph (f)(11)(C)(ii)).* If there is no closing price, a member may use a reasonable estimate of the market value of the security as of the close of business on the preceding business day.

(3) The term "customer" means any person for whom securities are purchased or sold or to whom securities are purchased or sold whether on a regular way, when issued, delayed or future delivery basis. It will also include any person for whom securities are held or carried and to or for whom a member organization extends, arranges or maintains any credit. The term will not include the following: (a) a broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of the member organization or its customers, or (b) an "exempted borrower" as defined by Regulation T of the Board of Governors of the Federal Reserve System ("Regulation T"), except for the proprietary account of a broker/dealer carried by a member organization pursuant to section (e)(6) of this rule.

(4) The term "designated account" means the account of a bank, trust company, insurance company, investment trust, state or political subdivision thereof, charitable or nonprofit educational institution regulated under the laws of the United States or any state, or pension or profit sharing plan subject to ERISA or of an agency of the United States or of a state or a political subdivision thereof.

(5) The term "equity" means the customer's ownership interest in the account, computed by adding the current market value of all securities "long" and the amount of any credit balance and subtracting the current market value of all securities "short" and the amount of any debit balance. *Any variation settlement received or paid on a security futures contract shall be considered a credit or debit to the account for purposes of equity.*

(6) The term "exempted security" or "exempted securities" has the meaning as in section 3(a)(12) of the Act.

(7) The term "margin" means the amount of equity to be maintained on a security position held or carried in an account.

(8) The term "person" has the meaning as in section 3(a)(9) of the Act.

(b) Initial Margin

For the purpose of effecting new securities transactions and commitments, the customer shall be required to deposit margin in cash and/or securities in the account which shall be at least the greater of:

(1) the amount specified in regulation T, *or rules 400 through 406 under the Act or rules 41.42 through 41.48 under the Commodity Exchange Act ("CEA");* or

(2) the amount specified in section (c)[(3)] of this rule; or

(3) such greater amount as *NASD* [the Association] may from time to time require for specific securities; or

(4) equity of at least $2,000 except that cash need not be deposited in excess of the cost of any security purchased (this equity and cost of purchase provision shall not apply to "when distributed" securities in a cash account). The minimum equity requirement for a "pattern day trader" is $25,000 pursuant to paragraph (f)(8)(B)(iv)a. of this rule.

Withdrawals of cash or securities may be made from any account which has a debit balance, "short" position or commitments, provided it is in compliance with regulation T *and rules 400 through 406 under the Act and rules 41.42 through 41.48 under the CEA,* and after such withdrawal the equity in the account is at least the greater of $2,000 ($25,000 in the case of a "pattern day trader") or an amount sufficient to meet the maintenance margin requirements of this rule.

(c) Maintenance Margin

The margin that must be maintained in all accounts of customers, except for cash accounts subject to other provisions of this rule, shall be as follows:

(1) 25 percent of the current market value of all securities, *except for security futures contracts,* "long" in the account; plus

(2) $2.50 per share or 100 percent of the current market value, whichever amount is greater, of each stock "short" in the account selling at less than $5.00 per share; plus

(3) $5.00 per share or 30 percent of the current market value, whichever amount is greater, of each stock "short" in the account selling at $5.00 per share or above; plus

(4) 5 percent of the principal amount or 30 percent of the current market value, whichever amount is greater, of each bond "short" in the account.

(5) The minimum maintenance margin levels for security futures contracts, long and short, shall be 20 percent of the current market value of such contract. (See paragraph (f) of this rule for other provisions pertaining to security futures contracts.)

(d) No Change.

(e) Exceptions to Rule

The foregoing requirements of this rule are subject to the following exceptions: (1) through (5) No Change.

(6) Broker/Dealer Accounts

(A) A member may carry the proprietary account of another broker/dealer, which is registered with the Commission, upon a margin basis which is satisfactory to both parties, provided the requirements of regulation T *and rules 400 through 406 under the Act and rules 41.42 through 41.48 under the CEA* are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in the account and the haircut requirements pursuant to SEC rule 15c3–1 shall be charged against the member's net capital when computing net capital under SEC rule 15c3–1.

(B) No Change.

(7) Nonpurpose Credit

In a nonsecurities credit account, a member may extend and maintain nonpurpose credit to or for any customer without collateral or on any collateral whatever, provided:

(A) the account is recorded separately and confined to the transactions and relations specifically authorized by regulation T;

(B) the account is not used in any way for the purpose of evading or circumventing any regulation of *NASD* [the Association] or of the Board of Governors of the Federal Reserve System *and rules 400 through 406 under the Act and rules 41.42 through 41.48 under the CEA;* and

(C) the amount of any deficiency between the equity in the account and the margin required by the other provisions of this paragraph shall be charged against the member's net capital as provided in SEC rule 15c3–1.

The term "nonpurpose credit" means an extension of credit other than "purpose credit," as defined in section 220.2 of regulation T.

(8) No Change.[8]

(f) Other Provisions

(1) through (10) No Change.

(11) Customer Margin rules Relating to Security Futures

(A) Applicability

No member may effect a transaction involving, or carry an account containing, a security futures contract with or for a customer in a margin account, without obtaining proper and adequate margin as set forth in this section. (B) Amount of customer margin.

(i) General rule. As set forth in paragraphs (b) and (c) of this rule, the minimum initial and maintenance margin levels for each security futures contract, long and short, shall be twenty (20) percent of the current market value of such contract.

(ii) Excluded from the rule's requirements are arrangements between a member and a customer with respect to the customer's financing of proprietary positions in security futures, based on the member's good faith determination that the customer is an "Exempted Person," as defined in rule 401(a)(9) under the Act, and rule 41.43(a)(9) under the CEA, except for the proprietary account of a broker/dealer carried by a member pursuant to paragraph (e)(6)(A) of this rule. Once a registered broker or dealer, or member of a national securities exchange ceases to qualify as an "Exempted Person,"[8] it shall notify the member of this fact before establishing any new security futures positions. Any new security futures positions will be subject to the provisions of this paragraph.

(iii) Permissible Offsets. Notwithstanding the minimum margin levels specified in paragraph (f)(11)(B)(i) of this rule, customers with offset positions involving security futures and related positions may have initial or maintenance margin levels (pursuant to the offset table below) that are lower than the levels specified in paragraph (f)(11)(B)(i) of this rule.

Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
(1) Long security future (or basket of security futures representing each component of a narrow-based securities index) and long put option on the same underlying security (or index).	Individual stock or narrow-based security index.	20 percent of the current market value of the long security future, plus pay for the long put in full.	The lower of: (1) 10 percent of the aggregate exercise price of the put plus the aggregate put out-of-the-money amount, if any; or (2) 20 percent of the current market value of the long security future.
(2) Short security future (or basket of security futures representing each component of a narrow-based securities index) and short put option on the same underlying security (or index).	Individual stock or narrow-based security index.	20 percent of the current market value of the short security future, plus the aggregate put-in-the-money amount, if any. Proceeds from the put sale may be applied.	20 percent of the current market value of the short security future, plus the aggregate put in-the-money amount, if any.
(3) Long security future and short position in the same security (or securities basket) underlying the security future.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the short stock or stocks.	5 percent of the current market value as defined in Regulation T of the stock or stocks underlying the security future.
(4) Long security future (or basket of security futures representing each component of a narrow-based securities index) and short call option on the same underlying security (or index).	Individual stock or narrow-based security index.	20 percent of the current market value of the long security future, plus the aggregate call-in-the-money amount, if any. Proceeds from the call sale may be applied.	20 percent of the current market value of the long security future, plus the aggregate call in-the-money amount, if any.
(5) Long a basket of narrow-based security futures that together tracks a broad-based index and short a broad-based security index call option contract on the same index.	Narrow-based security index	20 percent of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied.	20 percent of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any.

[5] 17 CFR 270.2a–7.

[6] 15 U.S.C. 80a *et seq.*

[7] *See* NASD Rule 2520(b)(2); (b)(3); (e)(7)(B); and (e)(8). Telephone conversation between Patricia Albrecht, Assistant General Counsel, NASD, and Lisa N. Jones, Attorney, Division of Market Regulation, Commission, dated March 18, 2003.

[8] This provision of the rule text reflects the correction of a typographical error from the rule text that NASD submitted with the proposed rule change.

Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
(6) Short based of narrow-based security futures that together tracks a broad-based security index and short a broad-based security index put option contract on the same index.	Narrow-based security index	20 percent of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any. Proceeds from the put sale may be applied.	20 percent of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any.
(7) Long a basket of narrow-based security futures that together tracks a broad-based security index and long a broad-based security index put option contract on the same index.	Narrow-based security index	20 percent of the current market value of the long basket of narrow-based security futures, plus pay for the long put in full.	The lower of: (1) 10 percent of the aggregate exercise price of the put, plus the aggregate put out-of-the-money amount, if any; or (2) 20 percent of the current market value of the long basket of security futures.
(8) Short a basket of narrow-based security futures that together tracks a broad-based security index and long a broad-based security index call option contract on the same index.	Narrow-based security index	20 percent of the current market value of the short basket of narrow-based security futures, plus pay for the long call in full.	The lower of: (1) 10 percent of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20 percent of the current market value of the short basket of security futures.
(9) Long security future and short security future on the same underlying security (or index).	Individual stock or narrow-based security index.	The greater of: 5 percent of the current market value of the long security future; or (2) 5 percent of the current market value of the short security future.	The greater of: 5 percent of the current market value of the long security future; or (2) 5 percent of the current market value of the short security future.
(10) Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put and call must have the same exercise price (Conversion).	Individual stock or narrow-based security index.	20 percent of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from the call sale may be applied.	10 percent of the aggregate exercise price, plus the aggregate call in-the-money amount, if any.
(11) Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put exercise price must be below the call exercise price (Collar).	Individual stock or narrow-based security index.	20 percent of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from call sale may be applied.	The lower of: (1) 10 percent of the aggregate exercise price of the put plus the aggregate put out-of-the-money amount, if any; or (2) 20 percent of the aggregate exercise price of the call, plus the aggregate call in-the-money amount, if any.
(12) Short security future and long position in the same security (or securities basket) underlying the security future.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the long security or securities.	5 percent of the current market value, as defined in Regulation T, of the long stock or stocks.
(13) Short security future and long position in a security immediately convertible into the same security future, without restriction, including the payment of money.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the long seucrity or securities.	10 percent of the current market value, as defined in Regulation T, of the long stock or stocks.
(14) Short security future (or basket of security futures representing each component of a narrow-based securities index) and long call option or warrant on the same underlying security (or index).	Individual stock or narrow-based security index.	20 percent of the current market value of the short security future, plus pay for the call in full.	The lower of: (1) 10 percent of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20 percent of the current market value of the short security future.
(15) Short security future, short put option and long call option. The short security future, short put and long call must be on the same underlying security and the put and call must have the same exercise price (Reverse Conversion).	Individual stock or narrow-based security index.	20 percent of the current market value of the short security future, plus the aggregate put in-the-money amount, if any, plus pay for the call in full. Proceeds from put sale may be applied.	10 percent of the aggregate exercise price, plus the aggregate put in-the-money amount, if any.
(16) Long (short) a security future and short (long) an identical[9] security future traded on a different market.	Individual stock and narrow-based security index.	The greater of: (1) 3 percent of the current market value of the long security future(s); or (2) 3 percent of the current market value of the short security future(s).	The greater of: (1) 3 percent of the current market value of the long security future(s); or (2) 3 percent of the current market value of the short security future(s).

Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
(17) Long (short) a basket of security futures that together tracks a narrow-based index and short (long) a narrow-based index future.	Individual stock or narrow-based security index.	Threater of: (1) 5 percent of the current market value of the long security future(s); or (2) 5 percent of the current market value of the short security future(s).	The greater of: (1) 5 percent of the current market value of the long security future(s); or (2) 5 percent of the current market value of the short security future(s).

(C) Definitions. For the purposes of paragraph (f)(11) of this rule and the offset table noted above, with respect to the term "security futures contracts," the following terms shall have the meanings specified below:

(i) The term "security futures contract" means a "security future" as defined in section 3(a)(55) of the Act.

(ii) The term "current market value" has the same meaning as defined in rule 401(a)(4) under the Act and rule 41.43(a)(4) under the CEA.

(iii) The term "underlying security" means, in the case of physically settled security futures contracts, the security that is delivered upon expiration of the contract, and, in the case of cash settled security futures contracts, the security or securities index the price or level of which determines the final settlement price for the security futures contract upon its expiration.

(iv) The term "underlying basket" means, in the case of a securities index, a group of security futures contracts where the underlying securities as defined in subparagraph (iii) above include each of the component securities of the applicable index and that meets the following conditions: (1) The quantity of each underlying security is proportional to its representation in the index, (2) the total market value of the underlying securities is equal to the aggregate value of the applicable index, (3) the basket cannot be used to offset more than the number of contracts or warrants represented by its total market value, and (4) the security futures contracts shall be unavailable to support any other contract or warrant transaction in the account.

(v) The term "underlying stock basket" means a group of securities that includes each of the component securities of the applicable index and that meets the following conditions: (1) The quantity of each stock in the basket is proportional to its representation in the index, (2) the total market value of the basket is equal to the underlying index value of the index options or warrants to be covered, (3) the securities in the basket cannot be used to cover more than the number of index options or warrants represented by that value, and (4) the securities in the basket shall be unavailable to support any other option or warrant transaction in the account.

(vi) The term "variation settlement" has the same meaning as defined in rule 401(a) under the Act and rule 41.43(a)(32) under the CEA.

(D) Security Futures Dealers' Accounts

(i) Notwithstanding the other provisions of this paragraph (f)(11), a member may carry and clear the market maker permitted offset positions (as defined below) of one or more security futures dealers in an account that is limited to market maker transactions, upon a "Good Faith" margin basis that is satisfactory to the concerned parties, provided the "Good Faith" margin requirement is not less than the Net Capital haircut deduction of the member carrying the transaction pursuant to rule 15c3–1 under the Act. In lieu of collecting the "Good Faith" margin requirement, a carrying member may elect to deduct in computing its Net Capital the amount of any deficiency between the equity maintained in the account and the "Good Faith" margin required.

For the purpose of this paragraph (f)(11)(D), the term "security futures dealer" means (1) a member or member organization of a national securities exchange or a national securities association registered pursuant to section 15A(a) of the Act; (2) is registered with such exchange or association as a security futures dealer pursuant to rules that are effective in accordance with section 19(b)(2) of the Act and, as applicable section 5c(c) of the CEA, that: (a) Requires such member or member organization to be registered as a floor trader or a floor broker with the CFTC under section 4f(a)(1) of the CEA, or as a dealer with the Commission under section 15(b) of the Act; (b) requires such member or member organization to maintain records sufficient to prove compliance with the rules of the exchange or association of which it is a member; (c) requires such member or member organization to hold itself out as being willing to buy and sell security futures for its own account on a regular and continuous basis; and (d) provides for disciplinary action, including revocation of such member's or member organization's registration as a security futures dealer, for such member's or member organization's failure to comply with rule 400 through 406 of the Act and rules 41.42 through 41.49 of the CEA or the rules of the exchange or association of which the security futures dealer is a member or member organization.

(ii) For purposes of this paragraph (f)(11)(D), a permitted offset position means in the case of a security futures contract in which a security futures dealer makes a market, a position in the underlying asset or other related assets, or positions in options overlying the asset or related assets. Accordingly, a security futures dealer may establish a long or short position in the assets underlying the security futures contracts in which the security futures dealer makes a market, and may purchase or write options overlying those assets if the account holds the following permitted offset positions:

a. A long position in the security futures contract or underlying asset offset by a short option position that is "in or at the money;"

b. A short position in the security futures contract or underlying asset offset by a long option position that is "in or at the money;"

c. A position in the underlying asset resulting from the assignment of a market-maker short option position or making delivery in respect of a short security futures contract;

d. A position in the underlying asset resulting from the assignment of a market-maker long option position or taking delivery in respect of a long security futures contract;

e. A net long position in a security futures contract in which a security futures dealer makes a market or the underlying asset;

f. A net short position in a security futures contract in which a security futures dealer makes a market or the underlying asset; or

[9] Two security futures contracts will be considered "identical" for this purpose if they are issued by the same clearing agency or cleared and guaranteed by the same derivatives clearing organization, have identical specifications, and would offset each other at the clearing level.

g. An offset position as defined in rule 15c3–1 under the Act, including its appendices, or any applicable SEC staff interpretation or no-action position.

(E) Approved Options Specialists' or Market Maker Accounts

(i) Notwithstanding the other provisions of (f)(11) and (f)(2)(J), a member may carry and clear the market maker permitted offset positions (as defined below) of one or more approved options specialists or market makers in an account that is limited to approved options specialist or market maker transactions, upon a "Good Faith" margin basis that is satisfactory to the concerned parties, provided the "Good Faith" margin requirement is not less than the Net Capital haircut deduction of the member carrying the transaction pursuant to rule 15c3–1 under the Act. In lieu of collecting the "Good Faith" margin requirement, a carrying member may elect to deduct in computing its Net Capital the amount of any deficiency between the equity maintained in the account and the "Good Faith" margin required. For the purpose of this paragraph (f)(11)(E), the term "approved options specialist or market maker" means a specialist, market maker, or registered trader in options as referenced in paragraph (f)(2)(J) of this rule, who is deemed a specialist for all purposes under the Act and who is registered pursuant to the rules of a national securities exchange.

(ii) For purposes of this paragraph (f)(11)(E), a permitted offset position means a position in the underlying asset or other related assets. Accordingly, a specialist or market maker may establish a long or short position in the assets underlying the options in which the specialist or market maker makes a market, or a security futures contract thereon, if the account holds the following permitted offset positions:

a. A long position in the underlying instrument or security futures contract offset by a short option position that is "in or at the money;"

b. A short position in the underlying instrument or security futures contract offset by a long option position that is "in or at the money;"

c. A stock position resulting from the assignment of a market-maker short option position or delivery in respect of a short security futures contract;

d. A stock position resulting from the exercise of a market maker long option position or taking delivery in respect of a long security futures contract;

e. A net long position in a security (other than an option) in which the market maker makes a market;

f. A net short position in a security (other than an option) in which the market maker makes a market; or

g. An offset position as defined in rule 15c3–1 under the Act, including its appendices, or any applicable SEC staff interpretation or no-action position.

(iii) For purposes of paragraphs (f)(11)(D) and (E), the term "in or at the money" means that the current market price of the underlying security is not more than two standard exercise intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; the term "in the money" means that the current market price of the underlying asset or index is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; the term "overlying option" means a put option purchased or a call option written against a long position in an underlying asset; or a call option purchased, or a put option written against a short position in an underlying asset.

(iv) Securities, including options and security futures contracts, in such accounts shall be valued conservatively in light of current market prices and the amount that might be realized upon liquidation. Substantial additional margin must be required or excess Net Capital maintained in all cases where the securities carried: (a) Are subject to unusually rapid or violent changes in value including volatility in the expiration months of options or security futures contracts, (b) do not have an active market, or (c) in one or more or all accounts, including proprietary accounts combined, are such that they cannot be liquidated promptly or represent undue concentration of risk in view of the carrying member's Net Capital and its overall exposure to material loss.

(F) Approved Specialists' Accounts—others

(i) Notwithstanding the other provisions of (f)(11) and (f)(2)(J), a member may carry the account of an "approved specialist," which account is limited to specialist transactions including hedge transactions with security futures contracts upon a margin basis that is satisfactory to both parties. The amount of any deficiency between the equity in the account and haircut requirement pursuant to rule 15c3–1 shall be charged against the member's net capital when computing net capital under SEC rule 15c3–1.

(ii) For purposes of this paragraph (f)(11)(F), the term "approved specialist" means a specialist who is deemed a specialist for all purposes under the Act and who is registered pursuant to the rules of a national securities exchange.

(G) Additional Requirements

(i) Money market mutual funds, as defined in rule 2a–7 under the Investment Company Act of 1940, can be used for satisfying margin requirements under this paragraph (f)(11), provided that the requirements of rule 404(b) under the Act and rule 46(b)(2) under the CEA are satisfied.

(ii) Day trading of security futures is subject to the minimum requirements of this rule. If deemed a pattern day-trader, the customer must maintain equity of $25,000. The 20 percent requirement, for security futures contracts, should be calculated based on the greater of the initial or closing transaction and any amount exceeding NASD excess must be collected. The creation of a customer call subjects the account to all the restrictions contained in rule 2520(f)(8)(B).

(iii) The use of the "time and tick" method is based on the member's ability to substantiate the validity of the system used. Lacking this ability dictates the use of the aggregate method.

(iv) Security futures contracts transacted or held in a futures account shall not be subject to any provision of this rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The CFTC and SEC have adopted customer margin requirements for SFCs ("SEC/CFTC Margin Regulations")[10] pursuant to authority delegated to them by the Federal Reserve Board ("FRB") under section 7(c)(2)(B) of the Act.[11] As noted in the adopting release,[12] section 7(c)(2) of the Act provides that the customer margin requirements for SFCs must satisfy four requirements: (1) They must preserve the financial integrity of markets trading SFCs; (2) they must prevent systemic risk; (3) they must (a) be consistent with the margin requirements for comparable options traded on an exchange registered pursuant to section 6(a) of the Act,[13] and (b) provide for initial and maintenance margin that are not lower than the lowest level of margin, exclusive of premium, required for comparable exchange traded options; and (4) they must be and remain consistent with the margin requirements established by the FRB under Regulation T.[14] These margin regulations became effective on September 13, 2002.

Subsequent to the adoption of the SEC/CFTC Margin Regulations, NASD filed proposed amendments to NASD rule 2520.[15] On January 24, 2003, the Commission approved the amendments on a pilot basis until March 6, 2003.[16] On March 5, 2003, the Commission extended the Pilot until March 20, 2003, to allow the Pilot to permit customers to continue trading SFCs on an uninterrupted basis in securities accounts while NASD considered the comments it received on the Pilot.[17]

Among the amendments approved as part of the Pilot was new NASD rule 2520(f)(11) ("Customer Margin Rules Relating to Security Futures"), which provides that SFCs transacted in a securities account be subject to all other provisions of NASD rule 2520, including 2520(f)(8)(B) ("Day Trading"). Also approved as part of the Pilot were NASD rule 2520(f)(11)(D) ("Security Futures Dealers' Accounts"), rule 2520(f)(11)(E) ("Approved Options Specialists' or Market Makers' Accounts"), and rule 2520(f)(11)(F) ("Approved Specialists" Accounts—others"). Under the Pilot, NASD rule 2520 permits "good faith" margin treatment for specified hedged offset positions carried in the accounts noted above.

However, unlike the SFD rules of other SROs,[18] The Pilot permits members to accord offset treatment in accounts carried for such specialists, market makers, and SFDs only when their activity is limited to bona fide specialist or market making transactions. The limitations imposed are consistent with NASD's belief that market makers bear the primary responsibility and obligation to maintain fair and orderly markets, and provide liquidity to the marketplace.

Discussion of Comments Received

NASD received one comment letter on the Pilot from the Chicago Board Options Exchange, Inc. ("CBOE").[19] In its letter, the CBOE requested that the Commission not grant permanent approval of NASD's rule as proposed and approved on a pilot basis, unless NASD amended the rule to exempt SFCs from its day trading provisions and deleted references to the term "bona fide" in connection with market maker or specialist transactions.

Under the proposed rule change, NASD's day trading margin requirements would apply to SFCs carried in securities accounts. The CBOE believes that day trading provisions should not apply to such accounts because it would create a disparity that the CFMA was designed to eliminate. In this regard, CBOE's letter states that the SEC and CFTC did not impose day trading margin requirements on SFCs carried in futures and securities accounts. The CBOE argues that since similar margin rules recently approved by the Commission do not impose day trading margin requirements on SFCs carried in futures accounts, permanent approval of NASD's proposed rule would lead to a regulatory disparity the CFMA was designed to prevent.

NASD states that, in proposing its rule amendment on the application of day trading margin requirements to SFCs carried in securities accounts, it did not intend to create a regulatory disparity with other SRO rules. However, NASD notes that SRO rules can be more stringent than those of the Commission.

While NASD is guided by the Commission's rules in proposing its rules, NASD has latitude to promulgate more stringent rules when it believes they are necessary for the protection of investors. In this regard, NASD believes that the application of day trading margin requirements of NASD rule 2520 to SFCs is consistent with the treatment of all securities transacted in a margin account under this rule. Accordingly, NASD proposes to apply NASD's day trading margin requirements to SFCs carried in securities accounts.

The CBOE also believes that NASD should delete the term "bona fide" in connection with market maker or specialist transactions. The CBOE commented that NASD does not define the term "bona fide" nor does it use the term in relation to the other provisions of its margin rule relating to market maker and specialist transactions.

In response to these comments, NASD is proposing to amend the rule text by deleting the term "bona fide" in connection with specialist or market maker transactions. In proposing such language under the Pilot, it was NASD's intent to permit good faith margin treatment for off-setting positions that were effected by specialists or market makers in discharging the primary responsibilities noted above in its original filing, rather than to permit persons other than qualified market makers to act in such a capacity—hence, the term "bona fide" in connection with specialist and market making transactions. Upon consideration, and in order to be consistent with similar rules proposed by other SROs, NASD will not use the term "bona fide" and instead incorporate the definition of an SFD as referenced in rule 400(c)(2)(v)[20] under the Act to clarify what constitutes a SFD for purposes of the rule. Notwithstanding this amendment, NASD reiterates that good faith margin treatment will be permitted only for transactions effected by SFDs in discharging their responsibilities and obligations to maintain fair and orderly markets, and to provide liquidity to the marketplace.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[21] which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

[10] 17 CFR 242.400 through 406.

[11] 15 U.S.C. 78g(c)(2)(B).

[12] Securities Exchange Act Release No. 46292 (August 1, 2002), 67 FR 53146 (August 14, 2002).

[13] 15 U.S.C. 78f.

[14] 12 CFR 220.

[15] On March 6, 2003, the Commission approved a proposed rule change by the NYSE to adopt, on a permanent basis, margin requirements for security futures contracts pursuant to NYSE Rule 431. *See* Securities Exchange Act Release No. 47460, 68 FR 12123 (March 13, 2003) (SR–NYSE–2003–05).

[16] *See supra* note 3.

[17] *See supra* note 4.

[18] *See e.g.*, Securities Exchange Act Release No. 46555 (September 26, 2002), 67 FR 61707 (October 1, 2002) (SR–OC–2002–01).

[19] *See* letter from Edward J. Joyce, President and Chief Operating Officer ("COO"), CBOE, to Jonathan G. Katz, Secretary, Commission, dated December 20, 2002. CBOE's December 20, 2002 comment letter on NASD's Pilot is a resubmission of its December 9, 2002 comment letter regarding the NYSE's proposed amendments to NYSE Rule 431 relating to margin requirements for security futures contracts. *See* Securities Exchange Act Release No. 46782 (November 7, 2003), 67 FR 69052 (November 14, 2002) (SR–NYSE–2002–53). The CBOE stated that because the proposed amendments were so similar in nature, its comments on the NYSE's proposed amendments were applicable to NASD's proposed rule change. On March 6, 2003, the Commission approved on a permanent basis amendments to NYSE Rule 431 to incorporate security futures contracts. Securities Exchange Act Release No. 47460, 68 FR 12123 (March 13, 2003) (SR–NYSE–2003–05).

[20] 17 CFR 240.400(c)(2)(v).

[21] 15 U.S.C. 78o–3(b)(6).

NASD believes that the proposed rule change is designed to accomplish these goals by permitting customers to trade SFCs in securities accounts.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed rule Change Received from Members, Participants, or Others

NASD received written comments from the CBOE on the original proposed rule change that was filed with the Commission on November 15, 2002 and amended on January 15, 2003. NASD has responded to the CBOE's comments and hereby amends its original rule proposal filed with the Commission on November 15, 2002.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–45 and should be submitted by April 17, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The NASD has asked that the Commission approve the proposed rule change prior to the thirtieth day after publication of notice of the filing in the **Federal Register** to accommodate the continuance of trading of security futures in securities accounts pursuant to NASD rule 2520 on an uninterrupted basis after the Pilot ends on March 20, 2003. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission believes that the proposed rule change is consistent with the requirements of 15A(b)(6) of the Act,[22] which requires, among other things, that the rules of NASD be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[23] In addition, the Commission believes that the proposed rule change is consistent with section 7(c)(2)(B) of the Act,[24] which provides, among other things, that the margin requirements for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, be consistent with the margin requirements for comparable exchange-traded options, and provide that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option.

The Commission believes that the rule change is generally consistent with the customer margin rules for security futures adopted by the Commission and the CFTC. In particular, the Commission notes that, consistent with rule 403 under the Act, the rule change provides for a minimum margin level of 20% of current market value for all positions in security futures carried in a securities account. The Commission believes that 20% is the minimum margin level necessary to satisfy the requirements of section 7(c)(2)(B) of the Act. Rule 403 under the Act[25] also provides that a national securities association may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an association's margin levels for offsetting positions meet the criteria set forth in section 7(c)(2)(B) of the Act. The offsets proposed by NASD are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with section 7(c)(2)(B) of the Act.

In addition, the Commission believes it is consistent with the Act for NASD to exclude from its margin requirements positions in SFCs carried in a futures account. The Commission believes that by choosing to exclude such positions from the scope of rule 2520, NASD's proposal will make compliance by members with the regulatory requirements of several SROs easier. Moreover, as proposed, NASD members will accord "good faith" margin treatment to specified offsetting positions involving security futures, carried in a securities account for an SFD, consistent with the customer margin rules for security futures adopted by the Commission and the CFTC.

After careful consideration of the commenter's concern about applying NASD's day trading margin requirements to SFCs, the Commission believes that it is reasonable for NASD to impose day trading margin requirements on its members with respect to SFCs carried in a securities account. As NASD noted, an SRO may adopt more stringent requirements than those promulgated by the Commission.

The Commission has also carefully considered the commenter's concern of using the term "bona fide" with respect to market maker or specialist transactions. The Commission notes that NASD has deleted the term "bona fide" in reference to market maker or specialist transactions, and instead is incorporating the definition of an SFD in rule 400(c)(2)(v) under the Act. The Commission believes that if it finds, in approving an SRO's rules for SFDs, that such rules are consistent with the definition of SFD in rule 400(c)(2)(v), those rules would also be consistent with NASD rule 2520 (f)(11)(D). Therefore, the Commission believes this amendment should address the commenter's concerns that NASD not impose a higher standard on transactions by market maker and specialist registered pursuant to rules of another SRO to qualify for favorable margin treatment.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposed rule change should enable NASD members to continue to trade SFCs in securities accounts on an uninterrupted basis. In addition, the Commission believes that granting accelerated approval to the proposed rule change should clarify NASD members' obligations under NASD rule 2520 with respect to their trading in SFCs. The Commission notes it approved NASD's original filing as a temporary pilot to give members of the public an opportunity to comment on the substance of the proposed rule change before it requests permanent approval. The NASD has responded to the comments received, as described above. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act, to approve the proposed rule change prior to the thirtieth day after publication of the notice of filing.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[26] that the proposed rule change (File No. SR–NASD–2003–45) be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7311 Filed 3–26–03; 8:45 am]

BILLING CODE 8010–01–P

[22] *Id.*

[23] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78g(c)(2)(B).

[25] 17 CFR 240.403(b)(2).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47558; File No. SR–NASD–2003–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to NASD Rule 2340

March 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 12, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. Pursuant to Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] NASD has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 2340 to eliminate outdated and unnecessary references to Rule 15c3–1 under the Act. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

2200. Transactions with Customers

* * * * *

2340. Customer Account Statements

(a) through (b) No change.

(c) Definitions

For purposes of this Rule, the following terms will have the stated meanings:

(1) No change.

(2) a "general securities member" refers to any member [which] *that* conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3–1(a)[, except for paragraphs (a)(2) and (a)(3)]. Notwithstanding the foregoing definition, a member [which] *that* does not carry customer accounts and does not hold customer funds [and] *or* securities is exempt from the provisions of this section.

(3) through (5) No change.

(d) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD represents that the proposed rule change would eliminate from NASD Rule 2340 outdated and unnecessary references to Rule 15c3–1 under the Act. NASD Rule 2340 requires that a general securities member send quarterly account statements to customers. Rule 2340(c)(2) defines a general securities member as "any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3–1(a), except for paragraphs (a)(2) and (a)(3)." NASD represents that when the SEC amended Rule 15c3–1 to change the net capital requirements of certain broker-dealers, the SEC also moved, with some minor modifications, many of the provisions that were in paragraphs (a)(2) and (a)(3) into new Rule 15c3–1(a)(2)(iv), (v), and (vi) under the Act.[5]

NASD represents that, besides being obsolete, the references to old paragraphs (a)(2) and (3) are unnecessary in light of the broader exemption that already exists in NASD Rule 2340(c)(2). Specifically, the second sentence of NASD Rule 2340(c)(2) excludes from the definition of a general securities member any member that "does not carry customer accounts and does not hold customer funds and securities." Because the broker-dealers described in old paragraphs (a)(2) and (a)(3) of Rule 15c3–1 do not carry customer accounts or hold customer funds or securities, NASD represents that the exemption in NASD Rule 2340(c)(2) automatically excludes them from the definition of general securities member.

NASD represents that it is not proposing new references to the amended provisions of Rule 15c3–1 under the Act because the broker-dealers described in these provisions also do not carry customer accounts or hold customer funds or securities, and therefore, are excluded from the definition of general securities member by the exemption currently provided in NASD Rule 2340(c)(2). In addition, NASD represents that deleting such

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] Specifically, old paragraph (a)(2) described introducing broker-dealers that do not carry customers' accounts, but that occasionally receive customer funds and securities. Old paragraph (a)(2) has been replaced by Rule 15c3–1(a)(2)(iv), which describes broker-dealers that introduce customer accounts and that also receive, but do not hold, customer funds or securities and Rule 15c3–1(a)(2)(vi), which describes broker-dealers that introduce customer accounts but do not receive or hold customer funds or securities or carry customer accounts. Old paragraph (a)(3) described broker-dealers that engage solely in the sale of redeemable shares of registered investment companies and certain other share accounts. These broker-dealers also do not hold customer funds or securities. This category is now described in Rule 15c3–1(a)(2)(v). As a result of these changes, the references to Rule 15c3–1 in NASD Rule 2340 no longer refer to the sections that were intended when NASD Rule 2340 was adopted.

references in NASD Rule 2340 prevents the need to change the rule if the broker-dealers described in paragraphs (a)(2)(iv), (v), and (vi) are moved to other provisions in Rule 15c3–1 under the Act.

In addition, NASD represents that to ensure that Rule 2340(c)(2) more closely reflects the language in Rule 15c3–1 and the NASD staff's long-standing interpretation, the proposed rule change amends the exclusion from the definition of a general securities member for "a member that does not carry customer accounts and does not hold customer funds *and* securities" to state "a member that does not carry customer accounts and does not hold customer funds *or* securities" (emphasis added).

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[6] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD represents that the proposed rule change would amend NASD Rule 2340 to eliminate outdated and unnecessary references to Rule 15c3–1 under the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become immediately effective pursuant to section 19(b)(3)(A)(i) of the Act,[7] and Rule 19b–4(f)(1) thereunder,[8] in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to File No. SR–NASD–2003–36 and should be submitted by April 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7344 Filed 3–26–03; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78o–3(b)(6).
[7] 15 U.S.C. 78s(b)(3)(A)(i).
[8] 17 CFR 240.19b–4(f)(1).
[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47554; File No. SR–NASD–2003–39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Anti-Internalization Qualifier Values

March 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 12, 2003, The National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On March 14, 2003, Nasdaq filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to allow the Quotes/Orders of Nasdaq Quoting Market Participants and NNMS Order Entry Firms in its SuperMontage system to interact with Quotes/Orders entered by that same participant on the other side of the market based strictly on the execution algorithm selected. Nasdaq also proposes to codify the function that precludes the Quotes/Orders of Nasdaq Quoting Market Participant or NNMS Order Entry Firms from interacting with Quotes/Orders entered by the same participant on the other side of the market. The text of the proposed rule change follows.

Proposed new language is *italicized;* proposed deletions are in [brackets].

4710. Participant Obligations in NNMS

(a) No Change.
(b) Non-Directed Orders.
(1) General Provisions—A Quoting Market Participant in an NNMS Security, as well as NNMS Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:
(A) Obligations for each NNMS security in which it is registered, a Quoting Market Participant must accept and execute individual Non-Directed Orders against its quotation, in an amount equal to or smaller than the combination of the Displayed Quote/Order and Reserve Size (if applicable) of such Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq. This obligation shall also apply to the Non-Attributable Quotes/Orders of NNMS Order Entry Firms. Quoting Market Participants, and NNMS Order Entry Firms, shall participate in the NNMS as follows:
(i) NNMS Market Makers, NNMS Auto-Ex ECNs, and NNMS Order Entry Firms to the extent they enter a Non-Attributable Quote/Order shall participate in the automatic-execution functionality of the NNMS, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.
(ii) NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN shall be required to execute the full size of such order (even if the delivered order is a mixed lot or odd lot) unless that interest is no longer available in the ECN, in which case the ECN is required to execute in a size equal to the remaining amount of trading interest available in the ECN.
(iii) UTP Exchanges that choose to participate in the NNMS shall do so as described in subparagraph (f) of this rule and as otherwise described in the NNMS rules and the UTP Plan.
(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant or NNMS Order Entry Firm in queue to receive an order is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B)(i)–(iii) of this rule), and shall deliver an execution to Quoting Market Participants or NNMS Order Entry Firms that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' or NNMS Order Entry Firms' Displayed Quotes/Orders and Reserve Size, in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. Alternatively, an NNMS Market Participant can designate that its Non-Directed Orders be executed based on a price/time priority that considers ECN quote-access fees, as described in subparagraphs (b)(B)(ii) of this rule, or executed based on price/size/time priority, as described in subparagraph (b)(B)(iii) of this rule. The individual time priority of each Quote/Order submitted to NNMS shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry. For purposes of the execution algorithms described in paragraphs (i), (ii) and (iii) below, "Displayed Quotes/Orders" shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the Nasdaq Quotation Montage, remain in system and available for execution.
(i) through (iii) No Change.
(iv) Exceptions—The following exceptions shall apply to the above execution parameters:
(a) If a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq. Effective February 10, 2003, until [April 28, 2003 (or such earlier date as determined by Nasdaq with appropriate notice to the Securities and Exchange Commission and market participants)] *March 17, 2003,* this processing shall also apply to Non-Directed Orders of NNMS Order Entry Firms. Thereafter, this exception shall not apply to Non-Directed Orders Entered by NNMS Order Entry Firms. *Nasdaq Quoting Market Participants may, and NNMS Order Entry Firms must, avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: "Y" or "I", subject to the following restrictions:*

Y—if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of Quoting Market Participants and NNMS Order Entry Firms other than the party entering the AIQ "Y" flagged quote/order. If the only available trading interest is that of the same party that entered the AIQ "Y" flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party.

I—if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the NNMS Order Entry Firm or Nasdaq Quoting Market Participant that entered the AIQ "I" flagged order, based exclusively on the execution algorithm selected when entering the AIQ I flagged quote/order.

The I value described above shall be available for the use of NNMS Order Entry Firms on March 17, 2003, and available for use by Nasdaq Quoting Market Participants on May 12, 2003.

(b) through (c) No Change.
(C) through (D) No Change.
(2) through (8) No Change.
(c) through (e) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 31, 2003, the Commission approved File No. SR–NASD–2002–173 on a 90-pilot basis,[4] to allow NNMS Order Entry Firms to enter non-marketable limit orders into Nasdaq's SuperMontage system using the SIZE MMID.[5] Under new processing set to commence on March 17, 2003, the quotes/orders of NNMS Order Entry Firms on opposite sides of the market will interact with each other only if such interaction would result based on the execution algorithm selected (price/time, price/time with fee consideration, or price/size). This filing seeks to provide this same option to Nasdaq Quoting Market Participants, and codify current SuperMontage functionality related to the use of the Anti-Internalization Qualifier order flag.

Currently, SuperMontage market participants that do not wish to execute against themselves may voluntarily designate individual quotes/orders so that they do not automatically interact

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 14, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq clarified that the Anti-Internalization Qualifier ("AIQ") "I" Value for Nasdaq Quoting Market Participants would be available on May 12, 2003. For the purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on March 14, 2003, the date Nasdaq filed Amendment No. 1.
[4] See Securities Exchange Act Release No. 47301 (January 31, 2003); 68 FR 6236 (February 6, 2003).
[5] The SIZE MMID is the anonymous MMID that represents the aggregate size of all Non-Attributable Quotes and Orders entered by market participants in Nasdaq at a particular price level. Non-Attributable Quotes and Orders are not displayed in the Nasdaq Quotation Montage using the market participant's MMID. Instead, these are displayed next to the SIZE MMID.

in SuperMontage with any quotes/orders entered by that same firm on the other side of the market by attaching an AIQ flag to the quote/order. The AIQ flag is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act ("ERISA") that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. SuperMontage will not cross an AIQ-flagged order with a "Y" value that resides in the system's book, or is entered for immediate execution, with another quote/order from that same market participant. Instead, the system executes against eligible trading interest of other market participants at that same price level. If there is no such interest, SuperMontage allows no execution, does not go the next price level, and rejects back to the entering party the most recently entered of its two interacting quote/orders.

In order to accommodate potential interaction of bid and offer quote/orders of NNMS Order Entry Firms based solely on the execution algorithm selected as contemplated in File No. SR–NASD–2002–173, Nasdaq modified the AIQ flag. In addition to the current AIQ default value of "N" (allow internalization), and the ability to enter, on an order-by-order basis, an AIQ "Y" value (prohibit internalization), a new AIQ value of "I" (allow internalization based solely on execution algorithm) was created.[6] Quotes/Orders designated with an AIQ value of I skip SuperMontage's automatic internalization function and match off against trading interest entered by that same firm on the other side of the market only if such buy and sell interest would naturally meet based on the selected execution algorithm. In short, the AIQ I value neither forces nor prohibits internalization, and on March 17, 2003, will become the default value for NNMS Order Entry Firms.[7]

The following example illustrate how the AIQ I value works:

• MMA enters 1000 share market order to buy with AIQ Y value (prohibit internalization), price/time.

Inside Offer

MMB—$20 × 500
ECN1—$20 × 400
MMA—$20 × 400

Resulting executions: 500 against MMB; 400 against ECN1; 100 rejected back to MMA because it would cross/internalize.

• MMA enters 1000 share market order to buy with AIQ I value (internalize based only on execution algorithm selected), price/time.

Inside Offer

MMB—$20 × 500
ECN1—$20 × 400
MMA—$20 × 400

Resulting executions: 500 against MMB; 400 against ECN1; 100 executed against MMA because the interaction of MMA's buy order and its offer quote occurs naturally based on the price/time execution algorithm selected.

This filing seeks to provide this same "natural" internalization option to Nasdaq Quoting Market Participants. Like the other AIQ values available to Nasdaq Quoting Market Participants, use of the AIQ I value would be purely voluntary and could be used on an order-by-order basis. Nasdaq believes that the AIQ I value provides additional flexibility for Nasdaq Quoting Market Participants to manage the interaction of quotes/orders submitted by them to better serve their customers. In addition, the natural quote/order interaction provided by the AIQ I value may also assist market participants in satisfying certain ERISA regulatory exemptions and thus permit them to interact with orders from otherwise restricted accounts since such executions would occur naturally in the SuperMontage system. Finally, Nasdaq notes that use of AIQ I value simply results in Nasdaq Quoting Market Participants having the option to have their orders execute pursuant to well-recognized and widely-used execution algorithms such as price/time and price/size that have already been approved by the Commission for the SuperMontage system.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[8] in that the proposal is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in processing information with respect to and facilitating transactions in securities, as well as removing impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay.[11] The Commission notes that the proposed AIQ I flag codifies the order interaction contemplated by Nasdaq in File No. SR-NASD–2003–173 for NNMS Order Entry Firms, as well as provides Nasdaq Quoting Market Participants with the same option. Further, the AIQ Y flag codifies the existing function whereby Nasdaq Quoting Market Participants and, now Order Entry Firms, may avoid internalization entirely. The AIQ Y flag exists to assist certain market participants in complying with certain

[6] *See* Nasdaq Head Trader Alert #2003–026 (February 24, 2003).

[7] NNMS Order Entry Firms will continue to be able to use the AIQ Y value on an order-by-order basis, but, in conformity with SR–NASD–2002–173, will not be permitted to use the AIQ N value.

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes of only accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f). As a result of the waiver, the effective and operative date of the filing is March 14, 2003, the date Nasdaq filed Amendment No. 1.

ERISA rules and regulations that preclude and/or limit managing broker-dealers of such accounts from trading as principal.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–2003–39 and should be submitted by April 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7345 Filed 3–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47547; File No. SR–NYSE–2002–41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc. To Amend the Exchange's Specialist Combination Review Policy

March 20, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 29, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On January 27, 2003 the NYSE amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Specialist Combination Review Policy ("Policy"), which was recently codified as NYSE Rule 123E. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 123E—Specialist Combination Review Policy

(a) No specialist organization shall complete a "proposed combination" (defined below) with one or more other specialist organizations unless the combination has been approved pursuant to this policy.

(b) *Except as provided below,* [I]*in* any case where a proposed combination involves or would result in a specialist organization accounting for more than five percent of any of the "concentration measures" (defined below), the Quality of Markets Committee (the "Committee") shall review the proposed combination with the following considerations in mind:

(1) Specialist performance and market quality in the stocks subject to the proposed combination[;], *with a recommendation from the Market Performance Committee on these matters pursuant to paragraph (e) below.*

(2) The effects of the proposed combination in terms of the following criteria:

(i) Strengthening the capital base of the resulting specialist organization;

(ii) Minimizing both the potential for financial failure and the negative consequences of any such failure on the specialist system as a whole; and

(iii) Maintaining or increasing operational efficiencies;

(3) Commitment to the Exchange market, focusing on whether the constituent specialist organizations have worked to support, strengthen and advance the Exchange, its agency/auction market and its competitiveness in relation to other markets; and

(4) The effect of the proposed combination on overall concentration of specialist organizations.

The Committee shall approve or disapprove the proposed combination based on its assessment of these considerations. In the case where a combination involves an organization that is not a specialist organization, consideration (b)(3) shall entail an assessment of whether the organization will work to support, strengthen and advance the Exchange, its agency/auction market and its competitiveness in relation to other markets.

In any case where a specialist unit currently exceeds five percent of any concentration measure, and then proposes a combination that would not result in increasing its concentration measure by more than two percentage points, or not result in the combined unit moving into a higher tier classification, the Quality of Markets Committee shall not review the proposed combination. The Market Performance Committee shall review the proposed combination from the standpoint of assessing specialist performance and market quality with respect to the securities subject to the proposed combination. The Market Performance Committee will approve, or disapprove in writing, such combination, and may impose such conditions as it deems appropriate with respect to specialist performance and market quality.

(c) In any case where a proposed combination involves or would result in a specialist organization accounting for more than ten percent *(a "Tier 2 combination")* of any of the concentration measures, the Committee shall give primary weight to consideration (b)(4). The Committee shall disapprove the proposed combination unless the constituent specialist organizations:

(1)(a) For a proposed combination which involves or would result in a specialist unit accounting for more than ten percent, but less than or equal to 15%, of a concentration measure, prove, by a preponderance of the evidence; or

(b) For a proposed combination that involves or would result in a specialist unit accounting for more than 15% of a concentration measure (a "[15%] *Tier 3* combination") present clear and convincing evidence that, if approved, the proposed combination:

(i) Would not create or foster concentration in the specialist business detrimental to the Exchange and its markets;

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 24, 2003 ("Amendment No. 1"). In Amendment No. 1 the Exchange provided a new Exhibit A that completely replaces and supersedes the proposed rule language in the original filing.

(ii) Would foster competition among specialist organizations; [and]

(iii) Would enhance the performance of the constituent specialist organization and the quality of the markets in the stocks involved; [and]

(iv) Demonstrate that, if approved, the proposed combination is otherwise in the public interest.

(d) The Committee may condition any approval under either paragraph 2 or paragraph 3 upon compliance by the resulting specialist organization with any steps the Committee may specify to address any concerns it may have in regard to considerations 2 (a)–(d).

[With respect to proposed combinations which involve or would result in specialist units accounting for more than five percent, but less than or equal to 10%, of a concentration measure, the Committee shall not grant approval unless the proponents of the combination agree to maintain 1.5 times the capital requirement specified in Rule 104.20 with respect to each of the combined entity's stocks that are component stocks of the Standard and Poor's Stock Price Index.]

In addition, with respect to proposed combinations which involve or would result in specialist units accounting for more than ten percent of a concentration measure, the Committee shall not grant approval unless the proponents of the combination[:] [(i)] submit an acceptable risk management plan with respect to any line of business in which they engage[;], *and* [(ii)] submit an operational certification prepared by an independent, nationally recognized management consulting organization with respect to all aspects of the firm's management and operations.[;]

[(iii) agree to maintain a minimum of 1.5 times (2 times, in the case of a 15 percent combination) the total capital requirement specified in Rule 104.20 with respect to the combined entity's stocks;

(iv) agree to maintain 2 times (2.5 times, in the case of a 15 percent combination) the capital requirement specified in Rule 104.20 with respect to each of the combined entity's stocks that are component stocks of the Standard and Poor's 500 Stock Price Index; and

(v) agree that all capital required to be dedicated to specialist operations be accounted for separate and apart from any other capital of the combined entity, and that such specialist capital may not be used for any other aspect of the combined entity's operations;]

(e)(1) In all situations involving a proposed combination of specialist units, the Market Performance Committee shall assess the impact of the proposal upon specialist performance and market quality with respect to the subject securities. In making such assessment, the Market Performance Committee shall:

(a) review the individual unit's overall performance in various measures of specialist performance, such as ratings on the Specialist Performance Evaluation Questionnaire, SuperDOT turnaround performance and administrative response times, capital utilization, dealer participation rates, stabilization rates, continuity, depth, quote spreads, as well as recent regulatory and disciplinary history; and

(b) review performance specifically with respect to each component stock of the Dow Jones Industrial Average, if applicable, if the combination is a Tier 1 combination (more than five percent, but not more than 10 percent of any concentration measure), and, in addition, performance with respect to each component stock of the S&P 100 Stock Price Index, if applicable, if the combination is a Tier 2 or Tier 3 combination.

(2) Proponents of a specialist unit combination must make a written submission to the Quality of Markets Committee or the Market Performance Committee, as appropriate, discussing all factors relevant under this policy to that Committee's review of the proposal. In addition to addressing the specialist performance and market quality considerations noted above, the proponents of the combination must discuss:

(a) performance in any stocks received through previous combinations or transfers of registrations during the preceding two years; and

(b) *whether existing levels of clerical support will be maintained or increased.*

(3) Proponents of any combination subject to a Tier 2 or Tier 3 review by the Quality of Markets Committee must demonstrate that:

(a) the combined unit will have a separate corporate relations department fully staffed to maintain appropriate relations with each of its listed companies, and that it is capable of keeping listed company officials apprised of market developments on a daily basis. Each unit involved in the combination must demonstrate full compliance with Rule 106, or must submit to the Committee a plan providing specific, tangible steps to come into full compliance; and

(b) the combined units will have a real-time surveillance system that monitors specialist trading and uses exception alerts to detect unusual trades or trading patterns.

(4) In addition, the proponents of a Tier 2 or Tier 3 review must discuss whether it has disaster recovery facilities for its computer network and software, whether it has designated specific individuals to handle unusual situations on the Floor (if so, the names of the individuals), whether the combined unit will employ a "zone" or other management system on the Floor (with identification of the names of the individuals and their specific responsibilities, as applicable), and whether the combined unit will designate a senior specialist to be responsible for reviewing specialist performance data, with specific procedures for correcting any deficiencies identified.

(f) Proponents of a specialist unit combination subject to review by either the Quality of Markets Committee or the Market Performance Committee under this policy must agree that:

(i) the total amount of capital which each unit had separately prior to the proposed combination shall not be reduced, regardless of whether it would exceed the combined unit's new capital requirement; and

(ii) all required specialist capital be accounted for separately from any other capital, and be used solely for the specialist business.

[(e)]*(g)* For purposes of this policy, a "proposed combination" includes:

(1) A merger of specialist organizations or an acquisition of one organization by another;

(2) The formation of a joint account involving two or more existing organizations;

(3) The "split-up" of an existing organization (including an organization operating under a joint account) and recombination with another organization;

(4) An individual specialist leaving an existing organization and proposing to take stocks with him to join another existing organization; and

(5) Any other arrangement that would result in previously separate organizations operating under common control.

[(f)]*(h)* For purposes of this policy, the "concentration measures" are:

(1) The common stocks listed on the Exchange;

(2) The 250 most active common stocks listed on the Exchange;

(3) The total share volume of trading in common stocks on the Exchange; and

(1) The total dollar value of trading in common stocks on the Exchange.

Supplementary Material:

.10 Guidelines for Applying Consideration (b)(3)

Consideration (b)(3) entails the Committee's review of the constituent units' past conduct. For example, the Committee shall assess each constituent unit's:

(*a*) Participation upon request in the Exchange's FACTS program, in its marketing seminars, in sales calls and in other of its marketing initiatives seeking to attract order flow and new listings.

(*b*) Acceptance of innovations in order-routing and other trade-support systems and willingness to make optimal use of the systems once they become fully operational.

(*c*) Willingness to apply for *a broad range of new listings and for* allocations of stocks that are less lucrative from the standpoint of profitability to the specialist.

(*d*) Assistance to other units by providing capital and personnel in unusual market situations, such as "breakouts" and difficult openings.

(*e*) Efforts at customer relations with both listed companies and order providers, as evidenced by personal contact, return of telephone calls, prompt resolution of complaints, assessment of customer needs and anticipation of customer problems.

(*f*) Efforts to streamline the efficiency of its own operations and its competitive posture.

.20 Guidelines for Applying Consideration (c)(1)(a)(iv)

Consideration (c)(1)(a)(iv) requires review of whether a proposed combination is in the public interest. For example, the Committee may consider the unit's efforts to enhance market quality, its capabilities for maintaining ongoing communications with its listed companies and customers in compliance with Rule 106, and its commitment to applying for new listings and other activities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, andStatutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Policy, which was formally codified as NYSE Rule 123E.[4] It has been previously filed with, and approved by, the Commission pursuant to Rule 19b–4.[5]

The Policy requires Exchange approval of proposed specialist unit combinations exceeding five, ten, or fifteen percent of any one of four concentration measures.[6] The Policy provides that the Quality of Markets Committee ("QOMC") review proposed combinations which, by virtue of the size of the resulting unit (as defined by the four concentration measures), may raise concerns as to: (1) Overall concentration in the specialist community and reduced competition among specialist units as an incentive for allocations of newly-listed stocks; (2) the maintenance of market quality in the unit's stocks; and (3) the maintenance of the financial stability of the specialist system.

The QOMC has conducted 40 concentration reviews under the Policy since its adoption in 1987. This includes 24 Tier 1 reviews (any concentration measure exceeding 5%, but less than or equal to 10%), eight Tier 2 reviews (any concentration measure exceeding 10%, but less than or equal to 15%) and eight Tier 3 review (any concentration measure exceeding 15%). 32 of the 40 reviews (and seven of the eight Tier 2 reviews) occurred after 1993. In the concentration reviews, the QOMC examined the proposals on their own merits, and focused principally on whether the combinations would adversely impact market quality (with input from the Market Performance Committee) and the prospects for financial and operational success of the combined entities.

The NYSE believes that the environmental factors that prompted the adoption of the Policy in December 1986 are even more significant today. The Exchange faces increasing competitive pressures in several areas. In addition, market volatility has increased substantially in the last half dozen years. Daily movements in the S&P 500 Stock Price Index of two percent or more are now as frequent as one percent movements were in 1993. This has required specialists to maintain more capital to cushion price movements and to contribute to the maintenance of fair and orderly markets. The Exchange believes that there is general agreement on the need for a policy to review specialist combinations which, on the one hand, enhances competition among specialists, maximizes the quality of Exchange markets and the services provided by specialists, and minimizes the risk of financial failure, while on the other hand, contributes to improved operational efficiencies, enhances risk management capabilities, and ensures that the specialist units are adequately capitalized and staffed to be better equipped to handle active and volatile markets. To this end, the Exchange believes that the current Policy has worked well, and that the combinations reviewed by the QOMC have enhanced the performance of the specialist organizations and the market quality in the stocks involved. However, the Exchange is continuing to evolve toward a smaller community of specialists. Therefore, it is important that the Policy contain specific guidelines to assist the QOMC in determining whether future combinations will strengthen the Exchange market and specialist system.

The Exchange proposes the following amendments to the Policy.

Scope of Quality of Markets Committee Reviews

De Minimis Increase in Concentration Measure

The filing proposes that when a combination of specialist firms results in an increase in any concentration measure of less than two points within a tier level, no review by the QOMC would be required. A review by the QOMC would still be required if a percentage change of less than two points nonetheless resulted in a unit moving into a higher tier classification (*e.g.*, from Tier 1 to Tier 2). If a combination results in a specialist firm's percentage in any of the concentration measures moving from below 5% (where no QOMC review is required) to over 5% (*e.g.*, moving from 4.5% to 6.3%), a QOMC review will be required, regardless of whether the percentage increase is above or below two points.

The Exchange believes that a 2% or more increase is an acceptable level to

[4] See Securities Exchange Act Release No. 46579 (October 1, 2002), 67 FR 63004 (October 9, 2002) (SR–NYSE–2002–31).

[5] It was last approved in Securities Exchange Act Release No. 35343 (February 8, 1995), 60 FR 8437 (February 14, 1995) (SR–NYSE–94–46).

[6] The concentration measures include a specialist unit's share of: (1) common stocks listed on the Exchange; (2) the 250 most active listed common stocks for the last 12 months; (3) total listed common stock share volume for the last 12 months; and (4) total listed common stock dollar volume for the last 12 months.

establish the need for QOMC review of a combination. Combinations below this figure do not usually have a significant impact on specialist operations in terms of capital or manpower. Combinations less than 2% will still require Market Performance Committee review and approval with respect to an assessment of the impact of the proposal on specialist performance and market quality. Requiring QOMC review for combinations greater than 2% is desirable initially to gauge the impact these have on specialist concentration. The Exchange may consider a different *de minimis* level after it gains experience with the 2% level.

The Exchange will explain how the *de minimis* provision of the Concentration Policy will be applied as part of the Information Memo that will be distributed to all members when the proposed rule change is made effective.

Combinations Not Approved

The QOMC has approved each of the proposed combinations presented to the Committee since the adoption of the Policy. The Market Performance Committee has approved all but one of the combinations it has reviewed.

Capital

The Policy currently requires units subject to Tier 1 reviews to maintain a minimum of 1½ times the Rule 104.20 position requirement for each stock that is included in the S&P 500 Stock Price Index ("S&P500"); units subject to Tier 2 reviews to maintain 2 times the position requirement for all S&P 500 stocks, and 1½ times the requirement for all other stocks; and units subject to Tier 3 reviews to maintain 2½ times the requirement for S&P 500 stocks, and 2 times the requirement for all other stocks. These requirements are proposed to be removed from the Policy in light of proposed amendments of other Exchange requirements.

In connection with maintaining more stringent capital requirements for the larger specialist organizations, the formula shown below was approved in changes to Exchange Rule 104.21.[7] In addition, Exchange Rule 104.22 requires any new specialist entities that result from merger, acquisition, consolidation, or other combination of specialist assets to maintain net liquid assets (NLA) equivalent to the greater of either: (1) The aggregate of the NLA of the specialist entities prior to their combination, or (2) the capital requirement prescribed by Rule 104.

Below is a chart that shows the current NLA requirement.[8]

Dow Jones Stocks	$4.0 million per stock
S&P 100 Stocks	$2.0 million per stock
S&P 500 Stocks	$1.0 million per stock
Non-S&P Stocks	$0.5 million per stock
Bond Funds	$0.1 million per stock
Preferred Stocks and Structured Products	$0.1 million per stock
Investment Company Units (Exchange-Traded Funds) ("ETFs")	$0.5 million per ETF[9]

The Exchange also proposes to require that a unit subject to a concentration review must agree that all required specialist unit capital be accounted for separately from any other capital, and be used solely for the specialist business.

Market Performance Committee Assessment

The Market Performance Committee ("MPC" or the "Committee") is charged with the responsibility of reviewing and approving, or disapproving in writing, a specialist combination to see what effect it will have on market quality.[10] The MPC has reviewed specialist combinations since its inception. The Committee receives a summary of the proposal, letters from the specialist firms or individuals involved, information with respect to the stocks involved, historic and proposed capital of the combined units, capital requirements, personnel information, clearing arrangements and operational statistics of the units (*e.g.*, SPEQ ratings, dealer participation rates, stabilization rates, etc.).[11] The proponents of a combination may be asked to appear before the MPC to answer any questions it may have. The MPC then utilizes its expertise and judgment to decide what effect a proposed combination will have on market quality in the stocks involved. If the MPC determines that a proposed combination will significantly erode market quality, it would be required to inform the units of its concerns. If the parties persist in their plans, the MPC can inform them that some or all of the affected stocks will be put up for reallocation.

The MPC's assessment of the impact on market quality in the stocks would include a specific assessment of the performance of each specialist who will be designated to trade a component stock of the Dow Jones Industrial Average (DJIA), if a Tier 1 review; and any S&P 100 stock if a Tier 2 or Tier 3 review. The unit under review must discuss in particular the performance statistics for stocks it received through previous combinations or transfers of registration within the last two years.

Personnel

The Policy is proposed to be amended to require the proponents of the combined units to disclose whether the existing clerical support of the combined units will be maintained or increased. The Policy is also proposed to be amended to provide that specialist units involved in a Tier 2 or Tier 3 combination must have a separate corporate relations department fully staffed to maintain good relations with each listed company and major member organizations, and be capable of keeping listed company officials apprised of market developments on a daily basis. Each unit must show that they have satisfied the listed company and member firm contact requirements of Rule 106, and, if they have not, they must present an acceptable plan to the QOMC that provides specific, tangible steps to improve such contact.

Commitment to the Exchange

Section b(3) of the Policy is proposed to be amended to require that the QOMC assess each constituent unit's willingness to apply for a broad range of new listings and for allocations of stocks that are less lucrative from the standpoint of profitability to the specialist.

Management and Operations

As proposed, the Policy will require that the unit under review in a Tier 2 or Tier 3 review must discuss whether it will:

—Designate a senior specialist to be responsible for reviewing specialist performance data;
—Have procedures for correcting any deficiencies identified;
—Designate specific individuals to handle unusual situations on the Floor and, if so, the names of the individuals;
—Employ a "zone management" system on the Floor and, if so, who will be responsible for overseeing each zone throughout the trading day; and
—Have disaster recovery facilities for its computer network and software.

The Committee will assess these responses in considering the proposed combination.

The Policy is proposed to be amended to require that the unit in a Tier 2 or Tier 3 review must have a real-time surveillance system that monitors specialist trading and uses exception alerts to detect unusual trades or trading patterns.

Public Interest

The Policy (section c(1)(a)(iv)) provides that specialist units that are involved in a Tier 2 or Tier 3 review must "demonstrate that, if approved, the proposed combination is otherwise in the public interest." The Exchange proposes to add to the Policy a guideline outlining what the QOMC may consider under this provision. This includes: (a) The unit's efforts to enhance market quality; (b) its capability of maintaining ongoing communications with their listed companies and customers in compliance with Rule 106; and (c) the unit's commitment to applying for new listings and other activities.

Reasons for a Specialist Combination Review Policy

The Exchange views the Policy as a necessary mechanism for the review of proposed specialist combinations that may lead to a level of concentration within the specialist community that may be of concern to the Exchange and the quality of its markets. The Exchange recognizes that some specialist organizations seek to grow or attract capital through mergers or acquisitions. The Policy offers a structured approach for reviewing proposed combinations that may raise concentration-related issues. The amendments to the Policy proposed in this filing are part of the Exchange's continued effort to see that the Policy addresses these issues. As the Commission noted in its approval of the Exchange's filing first proposing the Policy, "the Commission believes it is appropriate for the NYSE to adopt a policy that authorizes it to monitor specialist combinations to determine their impact upon the competitive environment necessary to maintain an orderly market."[12]

Other Matters

Specialists Ability to Monitor Real Time Trading

The larger specialist units, representing a significant portion of listed stocks and trading volume, have the capability to monitor the unit's trading on a real-time basis, and use exception alerts to identify unusual trading patterns.

Statistical Information

—There are currently 10 specialist firms, including 3 firms that are registered solely in Exchange-Traded Funds ("ETFs").
—There are currently 460 members registered as specialists.
—At the end of June 2002, there were 2,796 companies that had common and preferred issues listed on the NYSE.

1. Statutory Basis

The NYSE believes the proposed rule change is consistent with section 6(b)(5)[13] of the Act, which requires that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The NYSE believes the proposed amendments are consistent with these objectives in that they address concerns about capitalization, and operational efficiency where proposed combinations would result in large-sized specialist units.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2002–41 and should be submitted by April 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7312 Filed 3–26–03; 8:45 am]

BILLING CODE 8010–01–P

---

[7] See Securities Exchange Act Release No. 43098 (July 31, 2000), 65 FR 49044 (August 10, 2000) (SR–NYSE–99–46).

[8] The NYSE requested that the Commission insert this sentence for clarification. Telephone discussion between Jeff Rosenstrock, Senior Special Counsel, NYSE and Mia C. Zur, Attorney, Division, Commission (March 5, 2003).

[9] A unit registered in only one ETF would be subject to the $1m minimum capital requirement of Rule 104.20 *See* SR–NYSE–2001–08 (approved in Securities Exchange Act Release No. 44616)) (July 30, 2001), 66 FR 40761 (August 3, 2001).

[10] In Amendment No. 1, the Exchange added rule language to require that disapprovals be made in writing. The NYSE requested that the Commission modify this sentence to indicate this change. Telephone discussion between Jeff Rosenstrock, Senior Special Counsel, NYSE and Mia C. Zur, Attorney, Division, Commission (March 5, 2003).

[11] *See* Section 5 of the Policy.

[12] *See* Securities Exchange Act Release No. 24411 (April 29, 1987), 52 FR 17870 (May 12, 1987).

[13] 15 U.S.C. 78f(b).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 03/73–0228]

Toucan Capital Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Toucan Capital Fund II, L.P., 7600 Wisconsin Ave, 7th Floor, Bethesda, MD 20814, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and § 107.730, Financings

which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2002)). Toucan Capital Fund II, L.P. proposes to provide preferred equity security financing to Mednav, Inc., 500 Edgewater Drive, Wakefield, MA 01880. The financing is contemplated to provide the company with the necessary working capital.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Toucan Ventures, an Associate of Toucan Capital Fund II, L.P., holds an ownership interest in Mednav, Inc. of greater than 10%. Therefore, this financing is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: March 17, 2003.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 03–7346 Filed 3–26–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4321]

Bureau of Consular Affairs, Office of Overseas Citizens Services (CA/OCS); Notice of Information Collection under Emergency Review: Form DS–3072, Emergency Loan Application and Evacuation Documentation; OMB Control Number 1405–XXXX

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review.

Originating Office: Bureau of Consular Affairs (CA/OCS/PRI).

Title of Information Collection: Emergency Loan Application and Evacuation Documentation.

Frequency: Occasionally.

Form Number: DS–3072.

Respondents: U.S. citizens abroad (and third country nationals, where eligible) who need evacuation, repatriation, or emergency medical and dietary assistance.

Estimated Number of Respondents: Normally, approximately 500 respondents per year. The number of respondents may be much larger in emergency circumstances when lives are endangered by war, civil unrest, or natural disaster, but such circumstances are extraordinary and the number of respondents cannot be predicted.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 83.3 hours in normal circumstances.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB on or before March 30, 2003. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Michael Meszaros, Bureau of Consular Affairs, Office of Policy Review and Interagency Liaison, U.S. Department of State, 1800 G Street NW., Suite 2100, Washington, DC 20006, who may be reached on 202–312–9750.

Dated: March 19, 2003.

Maura Harty,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–7347 Filed 3–26–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4322]

Bureau of Educational and Cultural Affairs Request for Grant Proposal: Middle School Social Studies Pre-Service Education Curriculum Development Project for Azerbaijan

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs in the Department of State announces an open competition for an assistance award to support planning, implementing and evaluating a curriculum development project for the pre-service training of middle school-level social studies teachers in Azerbaijan. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to cooperate with the Bureau in the administration of a three-year project to support the development and implementation of a teacher training curriculum that emphasizes new teaching methods and delivery mechanisms for the pre-service training of middle school-level social studies teachers in Azerbaijan.

Overview and Project Objectives

Program Information

Overview: This project is designed to assist educators in Azerbaijan to develop pre-service teacher training courses that will lead to the improvement of social science teaching at the middle school level in Azerbaijan. The rationale for this project is that by introducing more interactive, student-centered teaching practices tied to relevant social studies coursework in Azerbaijan, educators will be preparing students to participate more actively as citizens in a democratic society. Although prior efforts in Azerbaijan have supported the training of in-service teachers in new approaches to classroom teaching, this project will introduce these approaches to pre-service teachers at an earlier, more formative stage in their careers. As part of the effort to promote cooperative relationships within a democratic society, the project should also prepare future teachers to interact productively with other members of the educational community including parents,

administrators, students, and persons responsible for educational oversight.

Project Objectives

Proposals should outline a practical strategy to assist faculty at pedagogical institutes to develop new curricular and instructional materials for the pre-service training of social studies teachers and to pilot test and disseminate the curriculum in pedagogical institutes and teacher training centers throughout Azerbaijan. (Please see the "Project Objectives, Goals and Implementation" (POGI) for information on the pedagogical institutes in Azerbaijan). Proposals that introduce "standards-based" curriculum development approaches are encouraged. For examples of standards-based curriculum see the National Council for Accreditation of Teacher Education (*http://www.ncate.org*) or the National Council for the Social Studies (*http://www.socialstudies.org*). This project will include the following three phases of activity: Recruiting and selecting Azerbaijan participants; coordinating a U.S.-based training workshop; and testing and publishing the curricular materials. (Full details for each project phase are contained in the POGI).

Selection of Topics

Applicants should suggest in their proposal the process for selecting the specific topics to be developed by the Azerbaijan participants. Final determination of appropriate topics will be made in consultation with the Azerbaijan project participants before the start of the U.S. based curriculum development workshop. Proposals should include a detailed plan for collaboration with local Azerbaijan pedagogical institutes and should include a recruitment plan that encourages participation by faculty from all six major pedagogical institutes.

Proposals should demonstrate an understanding of the issues confronting social studies education in Azerbaijan as well as expertise in pre-service teacher education and curriculum development. The Bureau encourages applicants with the ability to coordinate and to monitor locally the implementation of all Azerbaijan-based, Phase III project activities (pilot testing, teacher training, dissemination and publishing).

Guidelines

Project Planning and Implementation

Grant Duration. Grant activities should begin on or around August 1, 2003 and should last approximately thirty-six months.

Planning. In Phase I, the grantee will undertake work in Azerbaijan over a period of 3–6 months to prepare for the subsequent phases of the project. The U.S. grantee organization will conduct a planning trip to Baku for initial consultations. The planning trip should not exceed two weeks in length. The U.S. grantee organization will communicate with local pre-service educators or representatives of a local NGO active in the education sector and the Public Affairs Section of the U.S. Embassy in Baku to coordinate recruitment and selection of Azerbaijan educators to serve on a curriculum development team. The U.S. applicant should specify in the proposal an NGO or other group of Azerbaijan educators with whom the U.S. applicant proposes to work. After the curriculum team has been selected, in consultation with specialists from the grantee organization and local Azerbaijan pre-service educators, the members of the curriculum development team will assess existing pre-service education curricula, middle school social studies curricula and related teaching materials already used in Azerbaijan, and U.S. materials in the context of the needs of pre-service teachers in Azerbaijan. Based on the analysis of this information, the curriculum development team will select the topics to be covered in the curriculum to be developed.

During the planning stage the grantee organization should consult with representatives of the Azerbaijan Ministry of Education (See POGI for contact information) to negotiate the following assistance to all Azerbaijan participants: (1) Paid leave time for the Azerbaijan participants during their stays in the U.S. and during any subsequent training work in Azerbaijan; and (2) Facilitation of the logistics of training sessions to be conducted in Azerbaijan through appropriate signed agreements with the Ministry of Education or local education authorities.

Project Implementation. In Phase II of this project, members of the curriculum development team will spend approximately 10–12 weeks in the U.S. attending a curriculum development workshop organized by the U.S. grantee; observing relevant aspects of the U.S. educational system; and drafting curriculum and training materials in consultation with U.S. specialists. The grantee organization will develop workshop activities designed to introduce the Azerbaijan team to U.S. education specialists with appropriate expertise in pre-service teacher training, social studies education and curriculum development. Applicants should develop a timetable that incorporates significant time for writing curricular materials. The workshop should include field experiences that are relevant to the materials being produced (such as visits to schools, consultations with U.S. teachers and mentored attendance at professional meetings).

In Phase III of each project, the grantee organization will plan and implement a program for testing, revising and publishing the materials developed in Phase II. Phase III project activities should emphasize outreach and training of local educators by the Azerbaijan curriculum development team members.

Budget Guidelines

The Bureau anticipates awarding one grant in a total amount not to exceed $245,000 to support program and administrative costs required to implement this project. The Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges are limited to $60,000 in Bureau funding. Therefore, organizations with less than four years of experience in conducting international exchanges are ineligible to apply under this competition. Applicants must submit a comprehensive budget for the entire program.

There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. The summary and detailed project and administrative budget should be accompanied by a narrative, which provides justification for the amount needed.

Allowable costs for the program include the following:

(1) Administrative costs, including salaries and benefits, of grantee organization.

(2) Program costs, including general program costs and program costs for each participant from Azerbaijan in the U.S. based curriculum development workshop and the Azerbaijan-based pilot-testing activities. Please refer to the POGI for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/S/U–03–16.*

FOR FURTHER INFORMATION CONTACT: The Humphrey Fellowships and Institutional Linkages Branch, Office of Global Educational Programs, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone: 202–619–5289; Fax: 202–401–1433; or *mwestbro@pd.state.gov,* to request a solicitation package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Marie Westbrook Grant on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received by the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday May 2, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A/S/U–03–16,* Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries."

Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA or the Grantee (program office: please specify which) will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, as well as the Public Affairs Section overseas, where appropriate will review all eligible proposals. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission and responsiveness to the objectives and guidelines stated in this solicitation. Proposals should demonstrate substantive expertise in curriculum development, social studies education and pre-service teacher training.

2. *Creativity and feasibility of program plan:* A detailed agenda and relevant work plan should demonstrate substantive undertaking, logistical capacity, and a creative utilization of resources and relevant professional development opportunities. The agenda and work plan should be consistent with the program overview and guidelines described in this solicitation.

3. *Ability to achieve project objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program

venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). The proposal should demonstrate an understanding of the specific diversity needs in Azerbaijan and strategies for addressing these needs in terms of the project goals.

5. *Institutional capacity and record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the goals of the project. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the grants staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended. Successful applicants will be expected to submit intermediate program and financial reports after each project component is concluded or quarterly, whichever is less frequent.

7. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support), which ensures that Bureau supported programs are not isolated events.

8. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate and should reflect a commitment to pursuing project objectives. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1993 (FREEDOM Support Act). Programs and projects must conform to Bureau requirements and guidelines outlined in the Solicitation Package. Bureau projects and programs are subject to the availability of funds.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding.

Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: March 17, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–7348 Filed 3–26–03; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Privacy Act; System of Records

ACTION: Amendment of system of records to include new routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)), the Tennessee Valley Authority (TVA) is issuing notice of our intent to amend the system of records entitled TVA–31 "OIG Investigative Records—TVA" to include new routine uses. We invite public comment on this publication.

EFFECTIVE DATE: The changes will become effective as proposed on April 28, 2003, unless comments which would warrant our preventing the changes from taking effect are received on or before 30 days from the date of this notice.

ADDRESSES: Interested individuals may comment on this publication by writing to Wilma H. McCauley, Privacy Act Officer, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Wilma H. McCauley at (423) 751–2523.

SUPPLEMENTARY INFORMATION:

Discussion of Proposed Additions to Routine Uses

This publication is in accordance with the Privacy Act requirement that Agencies publish their amended Systems in the **Federal Register** when there is a revision, change or addition. TVA is amending the Routine Uses of Records, TVA–31, OIG Investigative Records—TVA, previously published at 64 FR 29398 (June 1, 1999), specifically to allow the disclosure of names and other information to the public when (1) an investigation has become public knowledge, (2) necessary to preserve confidence in the integrity of the investigative process, (3) necessary to demonstrate the accountability of individuals covered by this system, (4) a legitimate public interest exists, or (5) necessary for protection from imminent threat to life or property. These uses would allow, for example, disclosure of names of indicted or convicted individuals in the OIG Semiannual Report, other reports, and press releases or other forms of communication with the media. TVA's objectives in allowing disclosure of information include enhancing the deterrence of similar crimes against TVA.

In addition, the amended routine uses would allow the disclosure of information to the President's Council on Integrity and Efficiency (PCIE) for the preparation of reports to the President and Congress on the activities of the Inspectors General. Finally, the amendments would allow the disclosure of information to members of the PCIE, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for the purpose of investigative qualitative assessment reviews. The PCIE is establishing a peer review process to, among other things, ensure that adequate internal safeguards and management procedures are maintained.

TVA–31

SYSTEM NAME:

OIG Investigative Records—TVA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities who are or have been the subjects of investigations by the Office of the Inspector General (OIG), or who provide information in connection with such investigations, including but not limited to: Employees; former employees; current or former contractors and subcontractors and their employees; consultants; and other individuals and entities which have or are seeking to obtain business or other relations with TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations, including information provided by known or anonymous complainants; information provided by the subjects of investigations; information provided by individuals or entities with whom the subjects are associated (*e.g.*, coworkers, business associates, relatives); information provided by Federal, State, or local investigatory, law enforcement, or other Government or non-Government agencies; information provided by witnesses and confidential sources; information from public source materials; information from commercial data bases or information resources; investigative notes; summaries of telephone calls; correspondence; investigative reports or prosecutive referrals; and information about referrals for criminal prosecutions, civil proceedings, and administrative actions taken with respect to the subjects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 10450; Executive Order 11222; Hatch Act, 5 U.S.C. 7324–7327; 28 U.S.C. 535; Proposed Plan for the Creation, Structure, Authority, and Function of the Office of Inspector General, Tennessee Valley Authority, approved by the TVA Board of Directors on October 18, 1985; TVA Code XIII INSPECTOR GENERAL, approved by the TVA Board of Directors on February 19, 1987; and Inspector General Act Amendments of 1988, Pub. L. 100–504, 102 Stat. 2515.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the public when: (1) The matter under investigation has become public knowledge, or (2) when the Inspector General determines that such disclosure is necessary (a) to preserve confidence in the integrity of the OIG investigative process, or (b) to demonstrate the accountability of TVA officers, or employees, or other individuals covered by this system; unless the Inspector General determines that disclosure of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

To the news media and public when there exists a legitimate public interest (*e.g.*, to provide information on events in the criminal process, such as indictments), or when necessary for protection from imminent threat to life or property.

To members of the President's Council on Integrity and Efficiency, for the preparation of reports to the President and Congress on the activities of the Inspectors General.

To members of the President's Council on Integrity and Efficiency, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for the purpose of conducting qualitative assessment reviews of the investigative operations of TVA OIG to ensure that adequate internal safeguards and management procedures are maintained.

* * * * *

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 03–7314 Filed 3–26–03; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Otter Tail and Wadena Counties, Minnesota

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed highway improvements to Trunk Highway (TH) 10 from Bluffton to 1.5 miles east of Wadena in Otter Tail and Wadena Counties, Minnesota.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Lori Vanderhider, Project Management Engineer, Minnesota Department of Transportation—District 4, 1000 Trunk Highway 10 West, Detroit Lakes, Minnesota 56501, Telephone (218) 847–1512; (651) 296–9930 TTY.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation, will prepare an EIS on a proposal to improve TH 10 from Bluffton, in Ottertail County, to approximately 1.5 miles east of Wadena, in Wadena County, Minnesota, a distance of approximately 6.5 miles. The proposed action is being considered to address future transportation demand, safety problems, access management, interregional corridor status, and system continuity. Alternatives under consideration include (1) No-Build (2) variations of "Build" alternatives involving reconstruction and/or realignment and new construction of TH 10 (3) "Build" alternative involving improvements along the existing alignment of TH 10.

The "Trunk Highway 10 Scoping Document/Draft Scoping Decision Document" will be published in 2003 and 2004. A press release will be published to inform the public of the document's availability. Copies of the Scoping Document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting.

A Draft EIS will be prepared based on the outcome of the scoping process. The Draft EIS will be available for agency and public review and comment. In addition, a public hearing will be held following completion of the Draft EIS. Public Notice will be given for the time and place of the public hearing on the Draft EIS.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 14, 2003.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration, St. Paul Minnesota.

[FR Doc. 03–7350 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–98–4334]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for seven individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will equal or exceed the level of safety maintained without the exemptions for these commercial motor vehicle drivers.

DATES: This decision is effective April 5, 2003. Comments from interested persons should be submitted by April 28, 2003.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments at *http://dms.dot.gov*. Please include the docket number that appears in the heading of this document in your submission. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles in interstate commerce, for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses seven individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these seven petitions for renewal on their merits and decided to extend each exemption for a renewable 2-year period. They are:

Joe F. Arnold
Richard D. Carlson
David J. Collier
Dexter L. Myhre
Stephanie D. Randels
Duane L. Riendeau
Darrell L. Rohlfs

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the seven applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226, 64 FR 16517, 65 FR 17994). Each of these seven applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 28, 2003.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its

decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: March 20, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. 03–7297 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Notice and Request for Comments

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on January 14, 2003 (68 FR 61884).

DATES: Comments must be submitted on or before April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On January 14, 2003, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. See 68 FR 1884. FRA received no comments after issuing the 60-day notice referenced earlier. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); See also 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: U.S. DOT Crossing Inventory Form.

OMB Control Number: 2130–0017.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Abstract: Form FRA F 6180.71 is a voluntary form and is used by States and railroads to periodically update certain site specific highway-rail crossing information which is then transmitted to FRA for input into the National Inventory File. This information has been collected on the U.S. DOT–AAR Crossing Inventory Form (previous designation of this form) since 1974 and maintained in the National Inventory File database since 1975. The primary purpose of the National Inventory File is to provide for the existence of a uniform database which can be merged with accidents data and used to analyze information for planning and implementation of crossing safety programs by public, private, and governmental agencies responsible for highway-rail crossing safety. Following the official establishment of the National Inventory in 1975, the Federal Railroad Administration (FRA) assumed the principal responsibility as custodian for the maintenance and continued development of the U.S. DOT/AAR National Highway-Rail Crossing Inventory Program. The major goal of the Program is to provide Federal, State, and local governments, as well as the railroad industry, information for the improvement of safety at highway-rail crossings. Good management practices necessitate maintaining the database with current information. The data will continue to be useful only if maintained and updated as inventory changes occur. FRA previously cleared the reporting and recordkeeping burden for this form under Office of Management and Budget (OMB) Clearance Number 2130–0017. OMB approved the burden for this form through March 31, 2003. FRA is requesting a new three year approval from OMB for this information collection.

Annual Estimated Burden Hours: FRA estimates that the revised burden for these ICRs is 1,487 hours. The total recordkeeping and reporting burden for this information collection will actually decline by 1,617 hours from the previous total of 3,104 hours. The reduction in burden is due to a large increase in the estimated number of electronic records which will be kept over the next three years.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on March 21, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–7296 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–06–P

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Public Health Authority Notification

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: NHTSA is publishing this notice to inform hospitals and other health care organizations of its status as a "public health authority" under the medical privacy requirements of the Health Insurance Portability and Accountability Act of 1996.

FOR FURTHER INFORMATION CONTACT: Tyler Bolden, NHTSA, Office of Chief Counsel, 400 7th Street, SW Suite 5219, Washington, DC 20590. 202–366–1834.

SUPPLEMENTARY INFORMATION: The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") was enacted to improve the portability and continuity of health insurance coverage, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes (Pub. L. No. 104–191, 110 Stat. 196 (1996)). The Administrative Simplification subtitle of HIPAA authorized the Department of Health and Human Services ("HHS") to promulgate medical privacy regulations to protect the privacy of individually-identifiable electronic health information. These regulations (the "Privacy Rule") were published by HHS on December 28, 2000 and established the standards to identify the rights of individuals who are the subjects of "protected health information," which is defined as individually-identifiable health information; provide procedures for the exercise of those rights; and define the general rules for permitted and required uses and disclosures of protected health information (45 CFR Parts 160–164).

Beginning April 14, 2003, the Privacy Rule prohibits health plans, health care clearinghouses and selected health care providers from using or disclosing protected health information, except as permitted by certain exceptions (45 CFR 164.502). Under one exception, the Privacy Rule permits the disclosure of protected health information to public health authorities authorized to "collect or receive such information for the purpose of preventing or controlling disease, injury, or disability . . . " (45 CFR 164.512(b)(1)(i)). A "public health authority" includes "an agency or authority of the United States . . . that is responsible for public health matters as part of its official mandate" (45 CFR 164.501). Examples of public health matters include the reporting of disease, injury, or vital events; and public health surveillance, public health investigations or public health interventions (45 CFR 164.512(b)(1)(i)).

Guidance issued by HHS on December 2, 2002 further addressed the issue of disclosures to public health authorities. Specifically, the guidance stated that:

> The HIPAA Privacy Rule recognizes the legitimate need for public health authorities and others responsible for ensuring public health and safety to have access to protected health information to carry out their public health mission . . . the [Privacy] Rule permits covered entities to disclose protected health information without authorization for specified public health purposes.

NHTSA's mission is to prevent and reduce deaths, injuries and economic losses resulting from automotive travel on our nation's roadways. To accomplish this mission, NHTSA has statutory authority to conduct crash injury research and collect relevant data in the interest of public health. Specifically, NHTSA is authorized to: (1) Engage in research on all phases of highway safety and traffic conditions; (2) undertake collaborative research and development projects with non-Federal entities for the purposes of crash data collection and analysis; and (3) conduct research and collect information to determine the relationship between motor vehicles and accidents, and personal injury or deaths resulting from such accidents (See 23 U.S.C. 403(a)(1), 23 U.S.C. 403(f) and 49 U.S.C. 30168(a)). The term "safety" is defined as "highway safety and highway safety-related research and development, including research and development relating to highway and driver characteristics, crash investigations, communications, emergency medical care, and transportation of the injured" (23 U.S.C. 403(a)(3)).

In light of the above-referenced statutory authority, which demonstrates a responsibility for public health matters as part of the agency's mandate, NHTSA has determined that it is a public health authority within the meaning of the Privacy Rule. As a public health authority, NHTSA is entitled to receive protected health information from hospitals and other health care organizations, without written consent or authorization, because disclosures of protected health information to a public health authority are permitted disclosures under the Privacy Rule (45 CFR 164.502(a)(1)(vi)).

Issued on: March 21, 2003.

Jeffrey W. Runge,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 03–7301 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Interim Guidance Providing Procedure for Rebuttal of Presumption of Control of an Insurer for Purposes of the Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: This notice provides interim guidance to insurers that wish to rebut a presumption of control by the Department of Treasury as administrator of the Terrorism Risk Insurance Program.

DATES: This notice is effective immediately and will remain in effect until superceded by regulations or by subsequent notice.

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy 202–622–2730; Martha Ellett, Attorney-Advisor, Office of the Assistant General Counsel (Banking and Finance) 202–622–0480.

SUPPLEMENTARY INFORMATION: This notice provides interim guidance to assist insurers that wish to rebut a presumption of controlling influence for purposes of the Terrorism Risk Insurance Program (the Program) established by Title I of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297) prior to the issuance by the Department of Treasury (Treasury) of regulations incorporating a procedure for rebuttal of a controlling influence presumption. This interim guidance remains in effect until superceded by regulations or subsequent notice.

I. Background

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (the Act). The Act became effective immediately. It establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting

from an "act of terrorism," as defined in the Act. The Program is administered and implemented by Treasury and will sunset on December 31, 2005.

Section 102(3) of the Act sets forth the Act's definition of the term "control." Treasury issued an interim final rule containing Program definitions, including the definition of an "affiliate" of an "insurer." 68 FR 9803 (February 28, 2003). The definition of "affiliate" in the interim final rule incorporates the three categories in the statutory definition of control: (a) If an insurer directly or indirectly owns, controls or has the power to vote 25 percent or more of any class of voting securities of the other insurer; (b) if an insurer controls in any manner the election of a majority of the directors or trustees of the other insurer; or (c) even if there is no control under (a) or (b), if the Secretary determines after notice and opportunity for hearing that an insurer directly or indirectly exercises a controlling influence over the management or policies of the other insurer.

In the interim final rule at 31 CFR 50.5(c)(2), Treasury established several rebuttable presumptions for purposes of a determination of controlling influence, and, therefore, of control by an insurer over another insurer for purposes of the Program. If an insurer controls another insurer, then, for example, their direct earned premiums are consolidated for purposes of calculating the insurer deductible. The rebuttable presumptions of control in the interim final rule apply unless (i) subsequently modified by Treasury by regulation or order, or (ii) an affected insurer or insurers makes a rebuttal submission to Treasury, as set forth below, and Treasury determines that no control relationship exists for purposes of the Program.

II. Interim Guidance

Treasury will be issuing regulations containing a procedure for rebutting presumptions of a controlling influence for purposes of the Program. Treasury is issuing the following procedure as interim guidance for an insurer (as that term is defined by section 102 (6) of the Act and under Treasury's interim final regulations) to follow if such insurer wishes to rebut a presumption of controlling influence prior to the issuance of such regulations. This rebuttal procedure may also be found on Treasury's Terrorism Risk Insurance Program Web site at *http://www.treasury.gov/trip*.

Procedure for Rebutting Presumption of Control

(1) An insurer or insurers may make a written submission to Treasury to rebut a presumption, established under 31 CFR 50.5(c)(2), of a controlling influence by the insurer under the Program. Prior to establishment of a Terrorism Risk Insurance Program Office within Treasury, such rebuttal submissions shall be made to the Office of Financial Institutions Policy, Terrorism Risk Insurance Program, Room 3160 Annex, Department of Treasury, 1500 Pennsylvania Ave, NW., Washington, DC 20220. The submission to rebut a controlling influence presumption should be entitled "Submission to Rebut Control Presumption" and should provide the full name and address of the submitting insurer(s) rebutting control and the name, title, address and telephone number of the designated contact person(s) for such insurer(s).

(2) Following receipt of a rebuttal submission, Treasury will review the submission and determine whether Treasury needs additional written or orally presented information from the submitting insurer in order to determine whether the presumption of controlling influence has been rebutted. In its discretion, Treasury may schedule a date, time and place for an oral presentation by the insurer(s).

(3) A rebuttal submission by an insurer or insurers under the Program shall provide all relevant facts and circumstances concerning the relationship(s) between or among the affected insurers; explain in detail why no controlling influence exists and provide support for why the rebuttable presumption should not apply in light of particular facts and circumstances and the Act's language, structure and purpose.

(a) *General Information for Rebuttal Submission.* The types of information that Treasury may consider in reviewing rebuttal submissions include:

(i) The ownership structure of the insurer that is subject to the presumption of control, such as an organization chart and whether its stock or other capital is widely or closely held;

(ii) The degree to which the ownership or capacity providers of the insurer share in the profits and losses of the insurer;

(iii) The management structure of the insurer, including a description and copies of management contracts and any informal management arrangements;

(iv) Information on financial support provided by the insurer presumed in control to the insurer presumed to be controlled, including the nature and amount of debt instruments held by one insurer in the other and information on financial support provided by companies other than the insurer presumed to be in control;

(v) Information on who makes management, investment or other significant business decisions for the insurer presumed to be controlled and how these are made and similar information; and

(vi) Any other information that may be relevant to the determination of control.

(b) *Information for Rebuttal of Specific Presumptions.* In addition to the general information described above in (a), the types of information Treasury may review in connection with a rebuttal of a specific presumption includes the following:

(i) In rebutting a presumption based on a State determination of control, the insurer's submission must include a copy of the State's determination of control, the name, title and telephone number of the head of the appropriate State agency along with copies of relevant State regulations or rulings and citations to relevant statutes;

(ii) In rebutting a presumption based on provision by one insurer of 25 percent or more of capital, policyholder surplus or corporate capital, the insurer's submission should include financial and accounting statements for the most recent calendar year and copies of relevant financial and control information provided to State regulators; and

(iii) In rebutting a presumption based on the fact that an insurer supplies 25 percent or more of the underwriting capacity for that year to another insurer that is a syndicate consisting of a group including incorporated and individual unincorporated underwriters, the insurer submission shall include financial statements for the most recent calendar year and copies of relevant financial and control information provided to State regulators.

(c) *Confidential Information.* Any confidential business or trade secret information submitted to Treasury in a rebuttal submission should be clearly marked. (4) Treasury shall review and consider the insurer submission and other relevant facts and circumstances, including information provided by the insurer's State regulator. Unless otherwise extended by Treasury, within 60 days after receipt of a complete submission, including any oral presentation, Treasury shall issue a final determination of whether a submitter has rebutted the relevant regulatory presumption of a controlling relationship for purposes of the Program. The determination shall set forth Treasury's basis for its determination.

III . Paperwork Reduction Act

The collection of information contained in this interim guidance has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) under control number 1505—0190. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

This information is required in order for Treasury to determine whether an insurer has rebutted the presumption of control. The collection of information is mandatory with respect to an insurer seeking to rebut the presumption of control. The estimated average burden associated with the collection of information in this final rule is 40 hours per respondent.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Financial Institutions Policy, Terrorism Risk Insurance Program, Room 3160 Annex, Department of Treasury, 1500 Pennsylvania Ave, NW., Washington, DC 20220 and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC, 20503.

Dated: March 21, 2003.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

[FR Doc. 03–7304 Filed 3–26–03; 8:45 am]

BILLING CODE 4810–25–P

Reader Aids

Federal Register

Vol. 68, No. 59

Thursday, March 27, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MARCH

9851–10140	3
10141–10344	4
10345–10650	5
10651–10952	6
10953–11310	7
11311–11462	10
11463–11732	11
11733–11966	12
11967–12282	13
12283–12568	14
12569–12796	17
12797–13218	18
13219–13614	19
13615–13802	20
13803–14126	21
14127–14306	24
14307–14526	25
14527–14886	26
14887–15042	27

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7648 10641
7649 10643
7650 10645
7651 10647
7652 10649
7653 13217
7654 13805
7655 14887

Administrative Orders:
Memorandums:
Memorandum of February 12, 2003 10141
Memorandum of March 11, 2003 12569
Memorandum of March 12, 2003 12281
Presidential Determinations:
No. 2003–15 of February 13, 2003 10651
No. 2003–16 of March 14, 2003 13803
Notices:
Notice of March 12, 2003 12563

Executive Orders:
4601 (Amended by: 13286) 10619
10977 12567
10113 (Amended by: 13286) 10619
10163 (Amended by: 13286) 10619
10179 (Amended by: 13286) 10619
10271 (Amended by: 13286) 10619
10448 (Amended by: 13286) 10619
10499 (Amended by: 13286) 10619
10554 (Amended by: 13286) 10619
10631 (Amended by: 13286) 10619
10637 (Amended by: 13286) 10619
10694 (Amended by: 13286) 10619
10789 (Amended by: 13286) 10619
10977 (Amended by: 13286; See: 13289) 10619, 12567
11016 (Amended by: 13286) 10619
11046 (Amended by: 13286) 10619
11079 (Amended by: 13286) 10619
11139 (Amended by: 13286) 10619
11190 (Amended by: 13286) 10619
11231 (Amended by: 13286) 10619
11239 (Amended by: 13286) 10619
11366 (Amended by: 13286) 10619
11438 (Amended by: 13286) 10619
11446 (Amended by: 13286) 10619
11448 (Amended by: 13286) 10619
11623 (Amended by: 13286) 10619
11645 (Amended by: 13286) 10619
11800 (Amended by: 13286) 10619
11858 (Amended by: 13286) 10619
11926 (Amended by: 13286) 10619
11965 (Amended by: 13286) 10619
12002 (Amended by: 13286) 10619
12146 (Amended by: 13286) 10619
12148 (Amended by: 13286) 10619
12160 (Amended by: 13286) 10619
12188 (Amended by: 13286) 10619
12208 (Amended by: 13286) 10619
12341 (Amended by: 13286) 10619
12382 (Amended by: 13286) 10619
12472 (Amended by: 13286) 10619
12501 (Amended by: 13286) 10619
12555 (Amended by: 13286) 10619
12580 (Amended by: 13286) 10619
12656 (Amended by: 13286) 10619
12657 (Amended by: 13286) 10619
12699 (Amended by: 13286) 10619
12727 (Amended by: 13286) 10619
12728 (Amended by: 13286) 10619
12733 (Amended by:

13286).....10619
12742 (Amended by: 13286).....10619
12743 (Amended by: 13286).....10619
12752 (See Memorandum of March 11, 2003).....12569
12777 (Amended by: 13286).....10619
12788 (Amended by: 13286).....10619
12789 (Amended by: 13286).....10619
12793 (Amended by: 13286).....10619
12807 (Amended by: 13286).....10619
12824 (Amended by: 13286).....10619
12830 (Amended by: 13286).....10619
12835 (Amended by: 13286).....10619
12870 (Amended by: 13286).....10619
12906 (Amended by: 13286).....10619
12919 (Amended by: 13286).....10619
12957 (See Notice of March 12, 2003).....12563
12959 (See Notice of March 12, 2003).....12563
12977 (Amended by: 13286).....10619
12978 (Amended by: 13286).....10619
12982 (Amended by: 13286).....10619
12985 (Amended by: 13286; See: 13289).....10619, 12567
12989 (Amended by: 13286).....10619
13011 (Amended by: 13286).....10619
13059 (See Notice of March 12, 2003).....12563
13076 (Amended by: 13286).....10619
13100 (Amended by: 13286).....10619
13112 (Amended by: 13286).....10619
13120 (Amended by: 13286).....10619
13130 (See: 13286).....10619
13133 (Amended by: 13286).....10619
13154 (Amended by: 13286).....10619
13165 (Amended by: 13286).....10619
13212 (Amended by: 13286).....10619
13223 (Amended by: 13286).....10619
13228 (Amended by: 13286).....10619
13231 (Amended by: 13286).....10619
13254 (Amended by: 13286).....10619
13257 (Amended by: 13286).....10619
13260 (Amended by: 13286; Revoked by: 13286, eff. 3/31/03).....10619
13271 (Amended by: 13286).....10619
13274 (Amended by: 13286).....10619
13276 (Amended by: 13286).....10619
13282 (Amended by: 13291).....14525
13284 (See: 13286).....10619
13286.....10619
13287.....10619
13288.....11457
13289.....12567
13290.....14305
13291.....14525

5 CFR

110.....10666
792.....14127
Ch. XIV.....10953
2416.....10953
2424.....10953
2429.....10953
2471.....10953
2472.....10953

6 CFR

9.....10912
15.....10886
17.....10892
21.....10904

7 CFR

Ch. XVIII.....14889
Ch. XXXV.....14889
301.....11311
318.....11967
319.....9851
652.....14131
911.....10345
944.....10345
959.....11463
982.....11733
984.....10347
989.....13219, 13615
1000.....13617
1001.....13617
1005.....13617
1006.....13617
1007.....13617
1030.....13617
1032.....13617
1033.....13617
1124.....13617
1126.....13617
1131.....13617
1135.....13617
1940.....14527

Proposed Rules:

301.....13859
340.....11337
354.....13861
770.....12309
930.....9944, 13636
932.....11340
985.....11751
1205.....12310
1218.....11756
1219.....12881
1230.....11996
1405.....9944
1470.....13872
1499.....9944
1599.....14546

8 CFR

1.....10922
2.....10922
103.....10922
217.....10954
235.....10143
239.....10922
1001.....10349
1003.....10349
1101.....10349
1103.....10349
1205.....10349
1208.....10349
1209.....10349
1212.....10349
1216.....10349
1235.....10349
1236.....10349
1238.....10349
1239.....10349
1240.....10349
1241.....10349
1244.....10349
1245.....10349
1246.....10349
1249.....10349
1270.....10349
1274a.....10349
1292.....10349
1337.....10349

9 CFR

1.....12283
50.....10361
92.....10667
97.....13861
130.....13861

Proposed Rules:

94.....11998
317.....11008
327.....11008

10 CFR

20.....14307
40.....10362
50.....12571
70.....14528
71.....14528
73.....14528
150.....10362
430.....10957

Proposed Rules

20.....14349
40.....10411
150.....10411
430.....11009
490.....10320

11 CFR

111.....12572

12 CFR

202.....13144, 14476

Proposed Rules:

203.....11010
225.....12316
915.....13238

13 CFR

121.....13807

14 CFR

Ch. 1.....10145
25.....9854, 10365, 12581
39.....10147, 10149, 10152, 10154, 10156, 10583, 10653, 11467, 11469, 11967, 11971, 12285, 12797, 12799, 12802, 12806, 12809, 12812, 13221, 13618, 14309, 14310, 14311, 14312, 14530, 14533, 14889, 14892, 14894
47.....10316
71.....10367, 10369, 10654, 11736, 11738, 12582, 12814, 13225, 13811, 14072, 14314, 14315
91.....12542, 14072
95.....14072
97.....10962, 10963, 13619, 13621
121.....12542, 14072
125.....14072
129.....14072
135.....12542, 14072
145.....12542
1260.....14535
1274.....14535

Proposed Rules:

21.....11475, 11759
39.....9947, 9950, 9951, 9954, 10185, 10188, 10413, 10416, 11014, 11015, 11342, 11476, 11479, 11760, 11762, 11764, 11999, 12318, 12614, 12615, 12618, 13239, 14350, 14351, 14353, 14355, 14558
43.....11475, 11759
71.....12621, 14359
93.....14276
121.....12882
145.....11475, 11759
255.....12622, 12883
399.....12622, 12883

15 CFR

740.....10586
743.....10586
772.....10586
774.....10586
902.....12814

16 CFR

304.....9856

17 CFR

4.....12583
200.....12780
240.....12780, 14315

Proposed Rules:

1.....12319
4.....12001, 12622

18 CFR

284.....13813
375.....9857
388.....9857

Proposed Rules:

4.....13988
5.....13988
16.....13988
385.....13988

19 CFR

4.....13623, 13819, 14476
10.....13820, 13827, 14478
12.....13835
113.....13623, 14476

163.....14478
178.....13623, 14476

Proposed Rules:

10.....14478
12.....13636
24.....13636
113.....13638
181.....12011

20 CFR

1.....14316
30.....14316
625.....10932

Proposed Rules:

404.....12639
416.....12639
422.....14563

21 CFR

165.....9873
201.....12584
510.....13225
520.....13626
530.....14134
558.....13839
610.....10157
888.....14134
1308.....14114, 14119
1310.....11471

Proposed Rules:

1.....10668
111.....10418, 12158, 14360
112.....12158
165.....9955
201.....12500
310.....12406
312.....12406
314.....12406
320.....12406
600.....12406
601.....12406
606.....12406, 12500
610.....12500
878.....13639

22 CFR

41.....13627
42.....13627, 13628

Proposed Rules:

211.....9944

23 CFR

655.....14138

24 CFR

25.....12766
28.....12766
30.....12766
81.....12766
92.....10160
180.....12766
207.....12792
906.....11714
3282.....12766
3500.....12766

Proposed Rules:

203.....11730
3285.....11448
3286.....11452

26 CFR

1.....10161, 10655, 11313, 12287, 12815, 12817, 13226
20.....10161
25.....10161
31.....10161
53.....10161
54.....10161
56.....10161
301.....10161, 11739, 14316
602.....10161, 11739, 12287, 12817

Proposed Rules:

1.....10190, 12324, 13242

27 CFR

4.....10076
5.....10076
7.....10076
555.....13768

Proposed Rules:

7.....14291
25.....14191

28 CFR

0.....14899
16.....14139, 14140
540.....10656

Proposed Rules:

28.....11481

29 CFR

1404.....10659
1910.....12301
1979.....14100
4022.....12303
4044.....12303

30 CFR

18.....10965
250.....14274
916.....14322
948.....10178

Proposed Rules:

70.....10784, 12641
72.....10940, 12641
75.....10784, 11770, 12641
90.....10784, 12641
203.....14752
206.....12643
920.....14360
950.....10193

31 CFR

1.....12584
103.....10965
515.....14141
560.....11741
575.....11741

Proposed Rules:

103.....12155

32 CFR

171.....11633
199.....11973

33 CFR

52.....9882
100.....13628
110.....13629
117.....9890, 13226, 13227, 13228, 14149, 14536
165.....12304, 13228, 13231, 13233, 14150, 14326, 14328, 14899
401.....11974

Proposed Rules:

117.....13242, 13641, 14170, 14364
165.....13244, 13643, 13647, 13649, 14170, 14933, 14935
334.....14364
402.....12644

34 CFR

Proposed Rules:

200.....13796

36 CFR

704.....11974

Proposed Rules:

7.....11019
219.....10421, 12155

37 CFR

1.....14332
2.....14332
3.....14332
4.....14332
5.....14332
102.....14332
104.....14332
150.....14332

Proposed Rules:

1.....14365
201.....13652

38 CFR

17.....11977, 13590
20.....13235
61.....13590

Proposed Rules:

3.....14567

39 CFR

3001.....12588

40 CFR

9.....13608
52.....9892, 10966, 10969, 11316, 11977, 12590, 12825, 12827, 12829, 12831, 13630, 13840, 13843, 14151, 14154, 14156, 14159, 14161, 14537, 14540, 14542
62.....10659, 10661, 10663, 11472, 11978
63.....11745, 12590
70.....10969, 14163
82.....10370
122.....11325, 13608
123.....13608
124.....13608
125.....14164
130.....13608
141.....14502
180.....10370, 10377, 10972, 10983, 11330, 13845, 14165
228.....12592
271.....11981
300.....13633
312.....14339
439.....12266

Proposed Rules:

Ch. I.....10675, 12013
51.....12014
52.....11022, 11023, 12014, 12886, 12887, 13247, 13653, 13872, 14173, 14174, 14379, 14382, 14570
62.....10680, 10681, 11483, 11484, 12015
63.....12645
70.....11023
81.....13653, 14382
125.....13522
136.....11770, 11791
194.....12887
228.....11488
271.....12015
372.....13872
439.....12776

41 CFR

300–2.....12602
Ch. 304.....12602

42 CFR

50.....12306
412.....10987

Proposed Rules:

83.....11924, 14388
412.....10421, 11234

43 CFR

Proposed Rules:

4.....13657
4100.....9964, 11345

44 CFR

61.....9895
64.....9897
152.....12544
206.....9899

45 CFR

162.....11445
1204.....14901
1206.....14901
1213.....14901
1229.....14901
1234.....14901

47 CFR

0.....11747, 13849
1.....12744
2.....10179, 11986, 12744
25.....11986
68.....13849
73.....10388, 10664, 10665, 11335, 11993, 12610, 12744, 14166
74.....12744
76.....13236, 13850, 14340
78.....12744
90.....10179
95.....9900
101.....12744

Proposed Rules:

15.....12015
54.....10430, 12020
64.....14939
73.....10681, 10682, 10683, 11345, 12023, 12024
74.....12652

48 CFR

Ch. 1.....13200, 13208
12.....13201, 13202
16.....13201
29.....13204
32.....13202, 13206
47.....13202
52.....13202, 13204, 13206
1817.....13634
1825.....11747

Proposed Rules:

501.....13212
538.....13212
552.....13212

49 CFR

1.....10988, 12833
107.....11748
171.....14341
172.....14510
175.....14341
190.....11748
191.....11748
192.....11748
193.....11748
195.....11748
198.....11748
199.....11748
219.....10108
225.....10108
240.....10108
572.....13856
1540.....9902

Proposed Rules:

192.....9966, 13249
397.....13250
544.....13887

50 CFR

17.....10388, 12611, 12834, 12863, 12982, 13370, 13498
226.....13370
300.....10989, 14167
622.....10180, 11003
635.....14167
648.....9905, 10181, 12612, 12814, 14347, 14545
660.....11182, 13857
679.....9902, 9907, 9924, 9942, 11004, 11994, 13635, 13857, 13858, 14168, 14902
697.....14902

Proposed Rules:

17.....12326, 12336, 13662, 13663, 14868
21.....12653
223.....13662
229.....10195
600.....9967, 11501, 11793, 14570
622.....11794
648.....9968, 11023, 11346, 14388, 14571
660.....12888, 13891

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 27, 2003

AGRICULTURE DEPARTMENT
Rural Housing Service
Direct final rulemaking; policy statement; published 3-27-03

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
Organization, functions, and authority delegations:
ACTION; CFR parts removed; published 3-27-03

HOMELAND SECURITY DEPARTMENT
Customs Service
Merchandise entry:
Single entry for split shipments; published 2-25-03

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT
Ocean freight claims administrative appeal process; comments due by 4-2-03; published 3-3-03 [FR 03-04574]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Raisins produced from grapes grown in—
California; comments due by 3-31-03; published 1-28-03 [FR 03-01965]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Rasins produced from grapes grown in California; comments due by 4-3-03; published 3-19-03 [FR 03-06663]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Spearmint oil produced in Far West; comments due by 4-1-03; published 3-12-03 [FR 03-05842]

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Ocean freight claims administrative appeal process; comments due by 4-2-03; published 3-3-03 [FR 03-04574]

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Child nutrition programs:
Women, infants, and children; special supplemental nutrition programs —
Federal financial and participating reporting requirements and information confidentiality; comments due by 4-1-03; published 12-2-02 [FR 02-30223]

AGRICULTURE DEPARTMENT
Forest Service
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Age at which person can receive permits, and Regional Councils membership requirement change; comments due by 4-4-03; published 2-18-03 [FR 03-03742]

AGRICULTURE DEPARTMENT
Grain Inspection, Packers and Stockyards Administration
Fees:
Official inspection and weighing services; comments due by 3-31-03; published 2-28-03 [FR 03-04688]
Rice inspection services; comments due by 3-31-03; published 2-28-03 [FR 03-04689]

AGRICULTURE DEPARTMENT
Natural Resources Conservation Service
Loan and purchase programs:
Conservation Security Program; comments due by 4-3-03; published 3-21-03 [FR 03-06825]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Spiny dogfish; comments due by 4-4-03; published 2-18-03 [FR 03-03845]
Marine mammals:
Commercial fishing authorizations—
Atlantic Large Whale Take Reduction Plan; comments due by 4-3-03; published 3-4-03 [FR 03-04897]
Taking and importing—
Eastern North Pacific Southern Resident killer whales; comments due by 3-31-03; published 1-30-03 [FR 03-02031]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Commercially available off-the-shelf items; comments due by 3-31-03; published 1-30-03 [FR 03-01961]
Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02159]
Depreciation cost principle; comments due by 3-31-03; published 1-30-03 [FR 03-01962]
Insurance and pension costs; comments due by 3-31-03; published 1-30-03 [FR 03-01963]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Virgin Islands; comments due by 3-31-03; published 2-27-03 [FR 03-04517]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Virgin Islands; comments due by 3-31-03; published 2-27-03 [FR 03-04518]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 3-31-03; published 2-27-03 [FR 03-04512]
Maryland; comments due by 3-31-03; published 2-27-03 [FR 03-04515]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
West Virginia; comments due by 3-31-03; published 2-28-03 [FR 03-04629]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
West Virginia; comments due by 3-31-03; published 2-28-03 [FR 03-04630]

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
4-(Dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane; comments due by 3-31-03; published 1-29-03 [FR 03-01768]

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Nebraska and Iowa; comments due by 3-31-03; published 2-25-03 [FR 03-04363]
South Carolina; comments due by 3-31-03; published 2-25-03 [FR 03-04364]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Commercially available off-the-shelf items; comments due by 3-31-03; published 1-30-03 [FR 03-01961]
Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02159]
Depreciation cost principle; comments due by 3-31-03; published 1-30-03 [FR 03-01962]
Insurance and pension costs; comments due by 3-31-03; published 1-30-03 [FR 03-01963]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare and medicaid:
Acute care hospital inpatient prospective payment system; payment methodology for extraordinarily high-cost cases; comments due by 4-4-03; published 3-5-03 [FR 03-05121]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Public Health Security and Bioterrorism Preparedness

and Response Act of 2002; implementation:
Food facilities registration; comments due by 4-4-03; published 2-3-03 [FR 03-02443]
Food importation notice to FDA; comments due by 4-4-03; published 2-3-03 [FR 03-02444]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations:
Texas; comments due by 3-31-03; published 1-28-03 [FR 03-01873]
Drawbridge operations:
Florida; comments due by 3-31-03; published 8-28-02 [FR 02-21920]
Ports and waterways safety:
Portland Captain of Port Zone, ME; passenger vessels; security zones; comments due by 3-31-03; published 2-27-03 [FR 03-04635]

HOMELAND SECURITY DEPARTMENT
Immigration and Naturalization Service
Immigration:
Canada and Bermuda; visa and passport waiver removal for certain permanent residents; comments due by 4-1-03; published 1-31-03 [FR 03-02164]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Age at which person can receive permits, and Regional Councils membership requirement change; comments due by 4-4-03; published 2-18-03 [FR 03-03742]
Endangered and threatened species permit applications; comments due by 4-3-03; published 3-4-03 [FR 03-04987]

INTERIOR DEPARTMENT
National Park Service
Vehicles and traffic safety:
Motor vehicle operation under influence of alcohol or drugs; comments due by 4-1-03; published 1-31-03 [FR 03-02321]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Wyoming; comments due by 4-3-03; published 3-4-03 [FR 03-04970]

JUSTICE DEPARTMENT
Drug Enforcement Administration
Records, reports, and exports of listed chemicals:
Chemical mixtures containing phosphorus; comments due by 4-1-03; published 1-31-03 [FR 03-02296]

LABOR DEPARTMENT
Occupational Safety and Health Administration
Construction safety and health standards:
Crane and Derrick Negotiated Rulemaking Advisory Committee; intent to establish; comments due by 3-31-03; published 2-27-03 [FR 03-04560]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Commercially available off-the-shelf items; comments due by 3-31-03; published 1-30-03 [FR 03-01961]
Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02159]
Depreciation cost principle; comments due by 3-31-03; published 1-30-03 [FR 03-01962]
Insurance and pension costs; comments due by 3-31-03; published 1-30-03 [FR 03-01963]

NUCLEAR REGULATORY COMMISSION
Source material; domestic licensing:
Source material holdings; reporting requirements under international agreements; comments due by 4-4-03; published 3-5-03 [FR 03-05168]

NUCLEAR REGULATORY COMMISSION
Source material; domestic licensing:
Source material holdings; reporting requirements under international agreements; comments due by 4-4-03; published 3-5-03 [FR 03-05169]

SMALL BUSINESS ADMINISTRATION
Government contracting programs:
Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02158]
Small business size standards:
Facilities support services (including base maintenance); comments due by 4-4-03; published 2-3-03 [FR 03-02455]

SOCIAL SECURITY ADMINISTRATION
Social security benefits and supplemental security income:
Federal old age, survivors, and disability insurance, and aged, blind, and disabled—
Administrative law judges; video teleconference hearings; comments due by 4-4-03; published 2-3-03 [FR 03-02402]

STATE DEPARTMENT
Visas; nonimmigrant documentation:
Canada and Bermuda; visa and passport waiver removal for certain permanent residents; comments due by 4-1-03; published 1-31-03 [FR 03-02202]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Advisory circulars; availability, etc.:
Corrosion Prevention and Control Programs; development and implementation; comments due by 4-1-03; published 10-3-02 [FR 02-24933]
Air carrier certification and operations:
Corrosion Prevention and Control Programs; comments due by 4-1-03; published 10-3-02 [FR 02-24932]
Airworthiness directives:
BAE Systems (Operations) Ltd.; comments due by 3-31-03; published 2-27-03 [FR 03-04588]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 3-31-03; published 1-28-03 [FR 03-01816]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 3-31-03; published 1-29-03 [FR 03-01815]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 3-31-03; published 1-29-03 [FR 03-01827]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bombardier; comments due by 3-31-03; published 2-28-03 [FR 03-04739]
Dassault; comments due by 4-2-03; published 3-3-03 [FR 03-04839]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 3-31-03; published 2-28-03 [FR 03-04738]
Honeywell; comments due by 3-31-03; published 1-30-03 [FR 03-02094]
Airworthiness standards:
Special conditions—
Learjet Model 24, 24A, 24B, 24B-A, 24C, 24D, 24D-A, 24E, 24F, 24F-A, 25, 25A, 25B, 25C, 25D, and 25F airplanes; comments due by 4-2-03; published 3-3-03 [FR 03-04796]
Learjet Model 24/25 Series airplanes; comments due by 4-4-03; published 3-5-03 [FR 03-05129]

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
Hazardous liquid transportation—
Gas transmission pipelines; integrity management in high consequence areas; comments due by 3-31-03; published 1-28-03 [FR 03-00603]

TREASURY DEPARTMENT
Foreign Assets Control Office
Reporting and procedures regulations:
Economic Sanctions Enforcement Guidelines; comment request; comments due by 3-31-03; published 1-29-03 [FR 03-01809]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Accuracy-related penalty; imposition defenses establishment; comments due by 3-31-03; published 12-31-02 [FR 02-32927]

TREASURY DEPARTMENT
Terrorism Risk Insurance Program; comments due by 3-31-03; published 2-28-03 [FR 03-04831]

TREASURY DEPARTMENT
Terrorism Risk Insurance Program; comments due by 3-31-03; published 2-28-03 [FR 03-04832]

VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
Herbicide exposure, disability or death caused by; effective dates of benefits; disposition of unpaid benefits after death of beneficiary; comments due by 3-31-03; published 1-28-03 [FR 03-01834]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html.* Some laws may not yet be available.

H.R. 395/P.L. 108–10

Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

Last List March 10, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Public Laws

108th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 108th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara1/nara005.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 108th Congress for $285 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 2/03

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $264.00
Six months: $132.00

Code of Federal Regulations:

Current year (as issued): $298.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code
*** 5419**

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ **Federal Register** (MFFR) ☐ One year at $264 each ☐ Six months at $132.00

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $298 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

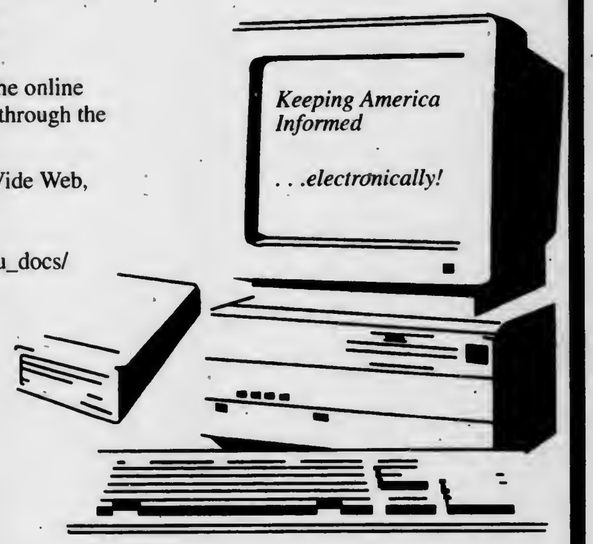
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

Order Now!

The United States Government Manual 2002/2003

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.



$49 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS • PERIODICALS • ELECTRONIC PRODUCTS

Order Processing Code:
***7917**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please send me ____ copies of **The United States Government Manual** 2002/2003, S/N 069–000–00145–9 at $49 ($68.60 foreign) each.

Total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 9/02

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

Weekly Compilation of
Presidential Documents

Monday, January 13, 1997
Volume 33—Number 2
Page 7–40

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5420**

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $151.00 First Class Mail ☐ $92.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 4/00

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Would you like to know. . .

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $35 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $30 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.



Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscriptions for one year:

_____ **LSA (List of CFR Sections Affected)**, (LCS) for $35 per year.
_____ **Federal Register Index** (FRUS) $30 per year.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice.* You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                    /
AFR SMITH212J                  DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                    /
AFRDO SMITH212J                DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $764 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $699 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐

☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

OL
68
SS
59
MR
27
03
MI



Printed on recycled paper

VOL
68
ISS
60
MR
28
2003
MI

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION



Federal Register

3–28–03 Friday
Vol. 68 No. 60 Mar. 28, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
68

ISS
60

MR

28

003

MI



Federal Register

3–28–03 Friday
Vol. 68 No. 60 Mar. 28, 2003
Pages 15043–15334

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	202–512–1806
General online information	202–512–1530; 1–888–293–6498
Single copies/back copies:	
Paper or fiche	202–512–1800
Assistance with public single copies	1–866–512–1800 (Toll-Free)
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	202–741–6005
Assistance with Federal agency subscriptions	202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 60
Friday, March 28, 2003

Agriculture Department
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Forest Service
See Rural Housing Service
See Rural Utilities Service

Alcohol and Tobacco Tax and Trade Bureau
PROPOSED RULES
Alcoholic beverages:
Flavored malt beverages
Correction, 15119

Animal and Plant Health Inspection Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15146

Army Department
See Engineers Corps
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15156
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Infectious JEV cDNA clones that produce highly attenuated recombinant JEV, and vaccines, 15156–15157

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15190–15191
Grant and cooperative agreement awards:
World Health Organization, 15191
Grants and cooperative agreements; availability, etc.:
Communication and Negotiation About Barrier Contraceptive Use Among Young Adults At Risk, 15191–15196

Centers for Medicare & Medicaid Services
RULES
Medicare:
Ambulatory surgical centers; ratesetting methodology, payment rates and policies, and covered surgical procedures list, 15267–15312
PROPOSED RULES
Medicare:
Prosthetics and Certain Custom-Fabricated Orthotics; Special Payment Provisions and Requirements; Negotiated Rulemaking Committee; meetings, 15139–15140
NOTICES
Medicare and medicaid:
Program issuances; quarterly listing, 15196–15206
Meetings:
Medicare—
Inpatient rehabilitation facility prospective payment system; town hall meeting, 15206–15207
New durable medical equipment coding and payment determinations, 15207–15209

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Rhode Island, 15151

Coast Guard
RULES
Drawbridge operations:
Florida, 15051
Ports and waterways safety:
Chesapeake Bay, Calvert County, MD; Calvert Cliffs Nuclear Power Plant; security zone, 15051–15053
Willamette River, Portland, OR; safety zones, 15053–15055
Regattas and marine parades:
U.S. Naval Academy Crew Races, 15050–15051

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
See Patent and Trademark Office

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 15150–15151

Committee for the Implementation of Textile Agreements
NOTICES
African Growth and Opportunity Act; determinations:
Light- and medium-weight dyed warp pile cotton velvet for use in apparel articles; commercial availabilty; comment request, 15154–15155

Defense Department
See Army Department
See Engineers Corps
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 15155–15156

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Genesis 1:29 Corp., 15225–15226
Guerra, Lazaro, M.D., 15226–15227
Leslie, Robert A., M.D., 15227–15231

Education Department
NOTICES
Meetings:
Institutional Quality and Integrity National Advisory Committee, 15159–15161

Employment and Training Administration
NOTICES
Federal-State unemployment compensation program:
Workforce Security Programs; unemployment insurance program letters—
Federal unemployment insurance law; interpretation, 15241–15243

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 15243–15244

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Renewable energy and energy efficiency on tribal lands; strategic and energy resource planning, capacity building, and organizational development, 15161

Energy Efficiency and Renewable Energy Office
NOTICES
Reports and guidance documents; availability, etc.:
Alternative fuel vehicle acquisition, 15161–15162

Engineers Corps
NOTICES
Base realignment and closure:
Surplus Federal property—
Honey Lake, Sierra Army Depot, Herlong, CA, 15157
Environmental statements; notice of intent:
Hendry County, FL; Caloosahatchee River Aquifer Storage and Recovery Project, 15157–15158
Hendry, Glades, Charlotte, or Lee Counties, FL; C-43 Basin Storage Reservoir Project, 15158
Palm Beach County, FL—
Palm Beach Harbor Lake Worth Access Channel Expansion, Section 107 Small Navigation Project; correction, 15159

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 15059–15061
Toxic substances:
Significant new uses—
Alkoxylated alkylpolyol acrylates, etc., 15061–15089
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 15138–15139
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 15166–15167
Weekly receipts, 15165
Grants and cooperative agreements; availability, etc.:
Environmental Compliance Program, 15167–15170
Reports and guidance documents; availability, etc.:
Onsite and Clustered (Decentralized) Wastewater Treatment Systems—
Management Guidelines, 15172–15173
Management Handbook, 15170–15172
Superfund; response and remedial actions, proposed settlements, etc.:
Sealand Restoration Site, NY, 15173
Shenandoah Road Groundwater Contamination Site, NY, 15173–15174

Executive Office of the President
See Presidential Documents

Farm Credit Administration
RULES
Farm credit system:
Funding and fiscal affairs, loan policies and operations, and funding operations—
Asset-backed and mortgage-backed securities investments; capital adequacy, 15045–15047

Federal Aviation Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15259–15260
Meetings:
RTCA, Inc., 15260
Passenger facility charges; applications, etc.:
Palm Beach County, FL, et al., 15260–15263

Federal Communications Commission
RULES
Practice and procedure:
Truthful statements, 15096–15098
Radio stations; table of assignments:
Georgia, 15099–15100
Louisiana, 15099
Texas, 15099
Wisconsin, 15100
PROPOSED RULES
Radio stations; table of assignments:
California, 15142–15143
Oklahoma and Texas, 15143–15144
Texas, 15140–15142
Various States, 15140–15141
NOTICES
Common carrier services:
Wireless telecommunications services—
Narrowband PCS spectrum auction; notice and filing requirements, etc., 15174–15188
Meetings:
Technological Advisory Council, 15188
Privacy Act:
Systems of records, 15188–15190

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
New England Power Pool et al., 15162–15163
Environmental statements; availability, etc.:
FPL Energy Maine Hydro, LLC, 15163
Hydroelectric applications, 15163–15165

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 15190

Formations, acquisitions, and mergers, 15190

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Navigators Insurance Co., 15264

Fish and Wildlife Service
RULES
Endangered Species Act:
Evaluation of conservation efforts when making listing decisions; policy, 15100–15115
NOTICES
Comprehensive conservation plans; availability, etc.:
Alamosa and Monte Vista National Wildlife Refuge Complex, CO, 15221–15224
Environmental statements; availability, etc.:
Double-crested cormorant management, 15224–15225

Food and Drug Administration
PROPOSED RULES
Food for human consumption:
Current good manufacturing practice—
Dietary supplements and dietary supplement ingredients; meetings, 15117–15118
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15209

Food and Nutrition Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15146

Forest Service
NOTICES
Environmental statements; notice of intent:
Sequoia National Forest, CA, 15147–15148
Meetings:
Resource Advisory Committees—
Mineral County, 15148

General Services Administration
RULES
Federal Management Regulation:
Internet GOV Domain, 15089–15092
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 15155–15156

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
RULES
Federal claims collection:
Administrative wage garnishment, 15092–15096

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 15216–15217
Privacy Act:
Systems of records, 15217–15220

Industry and Security Bureau
NOTICES
Export transactions:
List of unverified persons in foreign countries, guidance to exporters as to "red flags" (Supplement No. 3 to 15 CFR 732); revisions, 15151–15152

Interior Department
See Fish and Wildlife Service
NOTICES
Reports and guidance documents; availability, etc.:
Klamath River Basin; Federal agency work plans and reports, 15220–15221

Internal Revenue Service
PROPOSED RULES
Employment taxes and collectionof income taxes at source:
Payment card transactions; information reporting and backup withholding; cross-reference to Taxpayer Identification Number Matching Program rule Correction, 15119
Income taxes:
Partnership; noncompensatory options Correction; 15118–15119
NOTICES
Meetings:
Taxpayer Advocacy Panels, 15264–15265

International Trade Administration
NOTICES
Antidumping:
Preserved mushrooms from—
China, 15152–15153

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Mine Safety and Health Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Morocco, Uganda, Dominican Republic, and Philippines; combating child labor through education, 15231–15241

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Snyder Coal Co. et al., 15244–15246

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 15155–15156

National Institutes of Health
NOTICES
Environmental statements; notice of intent:
Fort Detrick, Frederick, MD; Integrated Research Facility, 15210
Meetings:
Director's Council of Public Representatives, 15210–15211
National Center for Research Resources, 15211
National Institute of Allergy and Infectious Diseases, 15212
National Institute of Mental Health, 15211–15212
National Institute of Nursing Research, 15212
Scientific Review Center, 15212–15215

National Oceanic and Atmospheric Administration
RULES
Endangered Species Act:
Evaluation of conservation efforts when making listing decisions; policy, 15100–15115
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—Pollock, 15115–15116
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—Rock sole and yellowfin sole, 15144–15145
NOTICES
Coastal zone management programs and estuarine sancturaries:
Consistency appeals—
Islander East Pipeline Co.; correction, 15266
Endangered and threatened species:
Anadromous fish take—
Marion County, OR; Routine Road Maintenance Program submission; salmon and steelhead, 15153–15154

National Science Foundation
NOTICES
Meetings:
Biological Sciences Advisory Committee, 15246

National Telecommunications and Information Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Public Telecommunications Facilities Program, 15154

Nuclear Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15246
Environmental statements; availability, etc.:
Novartis Pharmaceuticals Corp., 15247–15249
Applications, hearings, determinations, etc.:
Virginia Electric & Power Co., 15246–15247

Patent and Trademark Office
PROPOSED RULES
Trademarks:
Madrid Protocol Implementation Act; rules of practice—International applications and registrations; trademark-related filings, 15119–15138

Postal Service
RULES
Domestic Mail Manual:
Bound printed matter; flat-size mail co-packaging and co-sacking, 15055–15059

Presidential Documents
EXECUTIVE ORDERS
Government agencies and employees:
Classified national security information; further amendment (EO 13292), 15313–15334
ADMINISTRATIVE ORDERS
Migration and Refugee Assistance Act of 1962; availability of funds (Presidential Determination No. 2003-17 of March 20, 2003), 15043

Public Debt Bureau
See Fiscal Service

Rural Housing Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15148

Rural Utilities Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15148–15150

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15249
Meetings; Sunshine Act, 15249–15250
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 15250–15252
Chicago Board Options Exchange, Inc., 15252–15256
International Securities Exchange, Inc., 15256–15257
Pacific Exchange, Inc., 15257–15258

Small Business Administration
RULES
Small business size standards:
Petroleum refiners, 15047–15050
NOTICES
Disaster loan areas:
Ohio, 15258–15259
Tennessee, 15259

State Department
NOTICES
Art objects; importation for exhibition:
Whistler, Women, and Fashion, 15259

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15215–15216

Surface Transportation Board
NOTICES
Rail carriers:
Non-Class I railroads; calculation of variable costs in rate complaint proceedings, 15263
Railroad operation, acquisition, construction, etc.:
Burlington Northern & Santa Fe Railway Co., 15263
Sunflower Rail Co., LLC, 15263–15264

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Fiscal Service
See Internal Revenue Service

Separate Parts In This Issue

Part II
Health and Human Services Department, Centers for Medicare & Medicaid Services, 15267–15312

Part III
Executive Office of the President, Presidential Documents, 15313–15334

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential
Determinations:
No. 2003-17 of March 20, 2003.....15043
Executive Orders:
12356 (See 13292).....15315
12958 (Amended by 13292).....15315
13292.....15315

12 CFR
615.....15045

13 CFR
121.....15047

21 CFR
Proposed Rules:
111.....15117

26 CFR
Proposed Rules:
1.....15118
31.....15119

27 CFR
Proposed Rules:
7.....15119
25.....15119

33 CFR
100.....15050
117.....15051
165 (2 documents).....15051, 15053

37 CFR
Proposed Rules:
2.....15119
7.....15119

39 CFR
111.....15055

40 CFR
52.....15059
721.....15061
Proposed Rules:
52.....15138

41 CFR
102-173.....15089

42 CFR
416.....15268
Proposed Rules:
Ch. IV.....15139

45 CFR
32.....15092

47 CFR
1.....15096
73 (5 documents).....15096, 15099, 15100
76.....15096
Proposed Rules:
73 (6 documents).....15140, 15141, 15142, 15143

50 CFR
Ch. IV.....15100
679.....15115
Proposed Rules:
679.....15144

Federal Register
Vol. 68, No. 60
Friday, March 28, 2003

Presidential Documents

Title 3—

The President

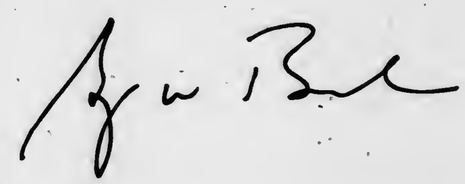
Presidential Determination No. 2003–17 of March 20, 2003

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section (2)(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $22 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet unexpected urgent refugee and migration needs that are anticipated in the event of a future humanitarian emergency in the Middle East, to include contingency planning for such needs. Such an emergency may arise if it becomes necessary for the United States and other nations to use military force to disarm the Iraqi regime of its weapons of mass destruction. These funds may be used, as appropriate, to provide contributions to international, governmental, and nongovernmental organizations, as well as for administrative expenses to manage this response by the Bureau of Population, Refugees, and Migration.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, March 20, 2003.

[FR Doc. 03–7650
Filed 3–27–03; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 68, No. 60
Friday, March 28, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC14

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy—ABS and MBS Investments

AGENCY: Farm Credit Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: The Farm Credit Administration (FCA or agency) is issuing an interim final rule to amend our regulatory capital standards to allow Farm Credit System (FCS or System) institutions to use a lower risk weighting for highly rated investments in non-agency asset-backed securities (ABS) and mortgage-backed securities (MBS) that have reduced exposure to credit risk. We are adopting this rule so that the capital requirements for risk weighting of highly rated non-agency ABS and MBS investments will more closely reflect an institution's relative exposure to credit risk and help achieve a more consistent regulatory capital treatment with the other financial regulatory agencies. This interim rule will be effective until we take final action on planned further amendments to our capital regulations.

DATES: This regulation will become effective 30 days after publication in the **Federal Register** during which either or both houses of Congress are in session. We will publish notice of the effective date in the **Federal Register**. Please send your comments to the FCA by April 28, 2003.

ADDRESSES: Please send comments by electronic mail to "reg-comm@fca.gov" or through the Pending Regulations section of FCA's Web site, *http://www.fca.gov*. You may also send comments to Thomas G. McKenzie, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by fax to (703) 734–5784. You may review copies of all comments at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: Laurie A. Rea, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498; TTY (703) 883–4434; or Jennifer A. Cohn, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our interim final rule are to:

- Ensure FCS institutions maintain capital levels commensurate with their relative exposure to credit risk by allowing them to use a lower risk weighting for highly rated non-agency [1] ABS and MBS investments that have reduced exposure to credit risk;
- Help achieve a more consistent regulatory capital treatment with the other financial regulatory agencies; [2]
- Allow FCS institutions' capital to be used more efficiently in serving agriculture and rural America and support of other System mission activities; and
- Reduce regulatory burden on FCS institutions.

II. Background

Section 615.5210 specifies the risk weightings that FCS institutions must use to calculate capital ratios for meeting our minimum risk-based capital standards. This regulation requires institutions to risk-weight their investments in non-agency ABS and MBS (including commercial MBS) as follows:

Investment type	Current risk weighting (Percent)
Non-agency ABS and MBS with maturities under 1 year	50
Non-agency ABS and MBS with maturities of 1 year or more	100

Section 615.5140 permits System institutions to invest in non-agency ABS and MBS only if these securities are rated in the highest credit rating by a nationally recognized statistical rating organization (NRSRO),[3] are marketable,[4] and satisfy certain other requirements.

In November 2001, the other financial regulatory agencies adopted amendments to their regulatory capital standards that, among other changes, allow banking organizations [5] to apply a lower risk weighting to certain transactions that have reduced exposure to credit risk (including highly rated non-agency ABS and MBS investments).[6] These changes were implemented so that the capital requirements would more closely reflect a banking organization's relative exposure to credit risk and help achieve a consistent regulatory capital treatment among the financial regulatory agencies for transactions involving similar risk. The changes were effective for banking organization transactions settled after January 1, 2002.

In a letter dated August 26, 2002, the Farm Credit Council (Council), on behalf of the FCS banks, asked the FCA to allow FCS banks to apply a lower risk weighting for capital computation purposes to investments in non-agency ABS and MBS that satisfy our criteria for eligible investments. The Council specifically asked the FCA to allow the banks to apply a 20-percent risk weighting to these investments.

Since fiscal year 2001, the FCA Board's regulatory plan has included a rulemaking project that would address many of the changes implemented by

[1] Non-agency securities are securities not issued or guaranteed by the United States Government, a Government agency (as defined in § 615.5201(f)), or a Government-sponsored agency (as defined in § 615.5201(g)).

[2] We refer collectively to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision as the "other financial regulatory agencies."

[3] Section 615.5131 defines NRSRO as a rating organization that the Securities and Exchange Commission recognizes as an NRSRO.

[4] Section 615.5140(c) provides that an investment is marketable if you can sell it quickly at a price that closely reflects its fair value in an active and universally recognized secondary market.

[5] We refer collectively to commercial banks, bank holding companies, and thrifts as "banking organizations."

[6] *See* 66 FR 59614, November 29, 2001.

the other financial regulatory agencies, to the extent appropriate for System institutions. In the interim, the FCA Board has decided to allow FCS institutions to apply the risk-based capital treatment adopted by the other financial regulatory agencies to non-agency ABS and MBS investments the institutions are authorized to purchase and hold under § 615.5140. Accordingly, upon the effective date of this interim final rule, FCS institutions will be authorized to apply a 20-percent risk-weight to highly rated non-agency ABS and MBS investments.

In formulating regulations, we strive continually to maintain approaches consistent with the other financial regulatory agencies. We have indicated in previous rulemakings that we intend to make our risk-based capital requirements generally consistent with the requirements of the other financial regulatory agencies, to the extent appropriate to the System institutions. Lowering the capital requirements on high quality investments would increase the lending capacity of FCS institutions by freeing up capital. The additional lending capacity could be used to serve agriculture and rural America and support other mission activities of the System.

In general, the FCA believes that allowing FCS institutions to apply a 20-percent risk weighting for non-agency ABS and MBS in which the institutions are authorized to invest would not adversely affect the risk-absorbing capacity or overall capitalization of the institutions. To apply the 20-percent risk-weighting treatment, the non-agency ABS and MBS investments must be eligible investments in accordance with § 615.5140. Under § 615.5140, a non-agency ABS or MBS investment is eligible only if it satisfies the following requirements, among others. It must:

- Satisfy the criteria specified for its asset class;
- Be marketable (*i.e.*, it must be able to be sold quickly at a price that closely reflects its fair value in an active and universally recognized secondary market); and
- Be rated at the highest credit rating by an NRSRO.

Investments that become "ineligible" investments under § 615.5140 must be immediately assigned to the 100-percent risk-weight category and disposed of in accordance with § 615.5143. Lastly, FCS institutions' application of the 20-percent risk weighting to eligible non-agency ABS and MBS will be subject to the FCA Board's further consideration and approval of a final rule that would amend the current risk-weighting requirements of our capital regulations or other action.

III. Section Analysis

In the section analysis below, we explain our amendments to the current capital regulations.

Section 615.5210(f)(2)(ii)(L)—New Item Added to the 20-Percent Risk-weight Category

We add a new paragraph (L) to the 20-percent risk-weighting category in § 615.5210(f)(2)(ii) for non-agency ABS and MBS investments. We emphasize that the investment must meet the eligibility requirements of § 615.5140 of our investment regulations to be included in the 20-percent risk-weighting category. As mentioned previously, under § 615.5140, a non-agency ABS or MBS investment must receive the highest credit rating by an NRSRO and must be marketable (*i.e.*, may be able to be quickly sold at a price that closely reflects its fair value in an active and universally recognized secondary market).

IV. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), we find good cause exists for waiving the notice of proposed rulemaking as to this interim final rule because the notice is impracticable, unnecessary, and contrary to the public interest.

The other financial regulatory agencies recently adopted extensive amendments to their regulatory capital standards governing banking organizations so these standards would more closely reflect a banking organization's relative exposure to credit risk. Those amendments, among others, include lowering to 20 percent the risk weighting for highly rated non-agency ABS and MBS investments, which have reduced exposure to credit risk. The changes were effective for transactions settled after January 1, 2002.

In addition, as discussed previously, since fiscal year 2001 the FCA Board's regulatory plan has included a rulemaking project that would address many of the changes implemented by the other financial regulatory agencies and, to the extent appropriate for System institutions, make our risk-based capital requirements generally consistent with the other agencies' requirements. In the interim, we believe good cause exists to allow FCS institutions to risk-weight non-agency ABS and MBS investments at 20 percent. As the other financial regulatory agencies have concluded, these investments have reduced exposure to credit risk. It is appropriate to have consistent regulatory capital treatment for transactions involving similar risk among lenders. Finally, lowering the capital requirements on high quality investments would increase the lending capacity of FCS institutions by freeing up capital. The additional lending capacity can be used to serve agriculture and rural America and support other mission activities.

Accordingly, because this change is narrow and non-controversial, will relieve a regulatory burden, and will immediately further the mission of the System, we find that pre-promulgation comment is impracticable, unnecessary, and contrary to the public interest.

We are issuing these regulations with a request for comments and will consider all comments received (in response to both this request and to our future notice of proposed rulemaking) when adopting the regulations in final form.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

■ For the reasons stated in the preamble, we propose to amend part 615 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

■ 1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart H—Capital Adequacy

2. Add new paragraph (f)(2)(ii)(L) to § 615.5210 to read as follows:

§ 615.5210 Computation of the permanent capital ratio.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(L) Asset- or mortgage-backed securities (not issued or guaranteed by the United States Government, a Government agency, or a Government-sponsored agency).

* * * * *

Dated: March 24, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–7387 Filed 3–27–03; 8:45 am]

BILLING CODE 6705–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE84

Small Business Size Regulations; Petroleum Refiners

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is modifying the small business size standard for petroleum refiners for purposes of Federal government procurement. The modification consists of the following: Increasing the capacity component of the standard from 75,000 barrels per day (bpd) to 125,000 barrels per calendar day (bpcd); defining capacity in bpcd; and measuring a refiner's total Operable Atmospheric Crude Oil Distillation Capacity. This is a better definition of what size a refiner must be to qualify as a small refiner for the Federal government's procurement of refined petroleum products. SBA is not changing the 1,500 employee size standard for this industry.

DATES: This rule is effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Carl J. Jordan, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

Introduction: SBA is modifying the small business size standard for North American Industry Classification System (NAICS) 324110, Petroleum Refineries, for purposes of the Federal Government's procurement of refined petroleum products. The revised size standard replaces current footnote 4 to SBA's Table of Small Business Size Standards, contained in 13 CFR 121.201. The footnote will now read as follows:

NAICS code 324110—For purposes of Government procurement, the petroleum refiner must be a concern that has no more than 1,500 employees nor more than 125,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

Background: On February 12, 2002, SBA proposed in the **Federal Register** (67 FR 6437): (1) To increase the capacity component of the standard from 75,000 bpd to 155,000 bpcd; (2) to clarify that the capacity component is measured in bpcd as defined by the U.S. Department of Energy, Energy Information Administration (EIA); and (3) to clarify that the capacity component is a measure of a refiner's total Operable Atmospheric Crude Oil Distillation Capacity, as used by EIA. The proposed rule included the history of this small business size standard, the reasons for the proposed changes, a description of how SBA establishes and evaluates small business size standards, and alternatives that SBA considered proposing.

Summary of Comments: SBA received 15 comments to the proposed rule, which are discussed below. They were received from the following organizations: one industry association, six small refiners, six-other-than small refiners, one Federal agency, and a United States Senator. The comments reflect no prevailing opinion about the level to which SBA should increase the capacity component, nor even whether or not SBA should increase it at all. Below SBA summarizes the four significant issues raised by the comments and provides SBA's consideration of those comments.

1. Whether SBA Should Retain Refiners' Capacity as a Component of the Size Standard

Comments received: All commenters but one stated that capacity is a valid and meaningful size measure for purposes of the Federal government's procurement of refined petroleum products. One commenter pointed out that other regulations, such as the Clean Air Act and the Emergency Petroleum Allocation Act, define small refiners and small refineries in terms of their capacity. Another commenter supported that point by stating that it "is always helpful to the public for Federal agencies to clarify and standardize their definitions and measures." Another commenter stated that capacity is and has been the historical basis for small business determinations in the refinery industry, and believes that it is the best method for doing so.

SBA's position: SBA concurs with these commenters. Refining capacity is a relevant measure for the petroleum refining industry. Consistency with the historical size standard and with measurements used by other Federal agencies such as EIA and the Environmental Protection Agency (EPA) is important.

2. Whether SBA Should Replace "Barrels Per Day" With "Barrels Per Calendar Day"

Comments received: SBA received eight comments on this subject, four of which support and four of which do not support the change of term. Supporters favored the change as a useful standardization among Federal government agencies. Opponents believed it could allow for "gaming" and permit other than small refiners to qualify as small by reducing output, and that it relies too heavily on representations made to EPA.

SBA's position: SBA does not agree that the use of "barrels per calendar day" (bpcd) would necessarily lead to gaming. Bpcd measures a refiner's present capacity to produce, not its actual production. It is a static amount, that a refiner uses when it self-certifies that it is small to a Federal procuring agency, which is generally when it submits its initial offer including price (13 CFR 121.404). Since it could change, it may or may not be the same as what it stated in its annual certification to EIA. Nor is bpcd a measure of how much a refiner has produced, but rather how much a refiner "can process under usual operating conditions * * *" allowing for a number of limitations, as stated in EIA's definition of "Barrels Per Calendar Day." This term is also consistent with the standard measure that EIA uses to rank U.S. refiners by size, and that other agencies, such as EPA, use when applicable to enforcement of their regulations.

Bpcd, which includes both the refiners' operating and idle capacity, is an estimate (as are bpd and barrels per stream day), taking into consideration anticipated downtime, *etc.* Further, EIA's definition of "Barrels Per Calendar Day" takes into consideration, "* * * the environmental constraints associated with refinery operations"

(see EIA's definition of "Barrels per Calendar Day" in the glossary to Petroleum Supply Annual 2000, Vol. 1).

If a refiner believes that a successful bidder is not small when it self-certifies as such, then that refiner, or any other interested party, may file a size protest with the procuring agency's contracting officer. Provisions and procedures for doing so are set forth in SBA's Small Business Size Regulations, 13 CFR 121.1001–1010, "Procedures for Size Protests and Requests for Formal Size Determinations" and the Federal Acquisition Regulation (FAR) 48 CFR 19.302, "Protesting a small business representation."

SBA believes that standardizing measurement units among Federal agencies is an appropriate justification for this part of the rule, because it is consistent with the type of information refiners furnish EIA and that EIA reports. Additionally, the rule applies only to the Federal government's procurement of refined petroleum products.

3. Whether SBA should increase the capacity component to 155,000 bpcd

Comments received: Eight commenters opposed SBA's proposed increase to 155,000 bpcd. Three, including a national petroleum association, opposed the increase to 155,000 bpcd, and suggested 125,000 bpcd as an acceptable alternative because it would be sufficient to allow small refiners to increase their capacity without affecting their small refiner status. The association maintained that a 155,000 bpcd refiner is not a small business, and that it is well above the level for realizing economies of scale. In addition, noted the association, most small refiners, under the current definition, are not disadvantaged when competing in local and regional markets.

Four of the eight opposed any increase at all. The current size standard is adequate, one argued, to allow expansion, mergers or acquisition among existing small refiners. The commenter maintained that there are economic benefits that accrue to the small refiner that loses its eligibility as a small refiner by merger or acquisition. Accordingly, such growth provides the economies of scale that were not available to the small refiner and that will adequately compensate the small refiner for its loss of small refiner status.

Commenters also had concerns, if SBA were to adopt the proposed rule, with adding additional refiners to the existing universe of small refiners. Since newly eligible refiners would be substantially larger than currently small refiners, the adoption of the proposed rule could adversely affect small refiners' ability to compete for Federal government contracts and undermine their competitiveness. Some stated that SBA's targeted 7.6 percent of domestic production capacity may not be correct in today's economy, and that a smaller share for small refiners may actually be more appropriate in today's competitive environment. Some commenters were particularly concerned with the possible effect on regional markets served by both small refiners and those refineries below 75,000 bpcd that are affiliated with others, and do not qualify as small refiners because of their total refiner capacity.

Another commenter expressed concern that the proposed rule might actually be detrimental to existing small refiners and result in less fuel supply in one or more states, particularly because of the inclusion of refiners that are significantly larger than the current small refiners. The commenter is concerned that newly classified small refiners would be located in geographic areas where there is now significant small refiner participation. The commenter also questioned SBA's targeted 7.6 percent share of domestic petroleum production.

Four commenters supported the increase to 155,000 bpcd as adequate to meet the purposes of the proposed rule, and stated that size standard should be no higher. A fifth, supporting an increase, commented that SBA should increase the size standard more, to about 160,000 bpcd. In the proposed rule, SBA projected that there would be no more than two refiners that would gain small refiner status if it adopted the proposed rule. The commenter stated that, at 155,000 bpcd, due to one refiner's increase in capacity that was not caused by merger, acquisition, *etc.*, there will be only one refiner with 1,500 employees or less that could qualify as a small refiner, not two. That is, there would remain only one U.S. refiner with 1,500 employees or less that would not qualify as a small refiner.

One of the five comments in support an increase in the size standard noted that the reduced number of small refiners is due to closures because small refiners could not compete with larger, integrated refiners. Another stated that 155,000 bpd is consistent with the EPA's definition of a small refiner and that this size standard will restore small refiners' capacity to their historical levels. 155,000 bpd is below the average sized refiner, and allows for some limited expansion by small refiners.

One refiner agreed with SBA that a size standard of 75,000 bpd is too low. The refiner suggested eliminating the capacity requirement, maintaining that it would be more far reaching than retaining a capacity limit.

Commenters suggested other alternatives as well. One would qualify a refiner as small if it has no more than 1,500 employees and/or no refinery larger than 100,000 bpd. Because EPA has granted certain compliance exemptions to refineries below 155,000 bpd and the exemptions can run until 2010, the commenter also suggested that SBA not increase the standard until the 2010 or when refineries have complied, whichever occurs first.

Another commenter was not entirely opposed to the increase, but offered an alternative—retain the 75,000 bpd capacity per refinery and increase the limit to 155,000 bpd for the entire company. The refiner also suggested including in the number of employees only those that are employed in the refining activity of the refiner. This refiner suggested eliminating the 1,500 employee size standard entirely, or counting only those that are engaged in refining operations. The commenter stated that the 1,500 employee size standard lacks meaning when measuring a refiner's resources available for competing for government contracts.

SBA's position: After evaluating all comments, SBA agrees that increasing the capacity component to 155,000 bpcd would not provide the best assistance for small refiners. SBA agrees with the position of the commenters that recommended a smaller increase of 125,000 bpcd. SBA accepts the position that refiners with 155,000 bpcd would be above the level needed to realizing economies of scale that accrue to refiners of that size and suffer no disadvantage when competing in local and regional markets. Further, because SBA recognizes that most if not all currently small refiners produce and market their products regionally, adding significantly larger refineries owned by newly designated small refiners to those regions could adversely affect small refiners' ability to bid for and fulfill Federal government contracts as small refiners. SBA accepts commenters' concerns that additional competition from substantially larger refiners in their competitive areas might adversely affect those refiners that are currently defined as small. From EIA's Form EIA–820, "Annual Refinery Report" as of January 1, 2002, SBA determined that increasing the standard to 125,000 bpcd will not characterize any refiners as small that are not small now. Therefore, increasing the size standard to 125,000 bpcd will not by itself increase the number of small refiners competing for Federal government contracts. At that level, the small refiners' share of total U.S. petroleum refining will not be restored to the 7.6 percent share attained by the 1992 revision to the size standard. In its proposed rule, SBA did not intend to present the attainment of a particular small refiners' share as determinative of an appropriate size standard, but rather as only a reference to prior Agency actions. The data on the industry and the comments received on the proposed size standard taken as a whole serve as the basis for SBA's final decision to adopt 125,000 bpcd as the size standard. Although increasing the size standard to 125,000 bpcd does not create additional small refiners, it provided a significant increase in the size standard to allow current small refiners to realize economies of scale through an expansion of their operations or to merge with other small refiners.

SBA does not agree with the commenter that suggests more than one capacity limit. SBA believes this approach would be overly complex as well as a burdensome measure for Federal agencies to apply. Also, SBA does not agree that employees should either be eliminated from the standard or that only those employees in the refining industry be counted. NAICS classifies petroleum refining as a manufacturing industry, as did the Standard Industrial Classification system. Consistent with section 3(a)(2) of the Small Business Act, SBA has established size standards for all manufacturing concerns in terms of number of employees. Further, to include only those employees involved in refinery operations would conflict with SBA's Small Business Size Regulations, 13 CFR 121.106, "How does SBA calculate number of employees?" The regulation requires that all employees of the concern be used to measure the size of a concern, including those of its domestic and foreign affiliates, no matter how or where they are employed.

SBA does not "phase in" size standards. This is because SBA's size standards do not depend on whether or not a concern is small for another agency's program, or on when it comes into compliance with another agency's regulations. Some Federal agencies, such as EPA, outside of their Federal government procurement activities, use small business size standards mostly for regulatory enforcement. For instance, under EPA's gasoline sulfur regulations at 40 CFR part 80, a refiner is small if it had average crude capacity less than or equal to 155,000 bpcd for 1998. To delay applying a size standard for some companies until they have complied with EPA's regulations, and not delay applying it to others, is inconsistent with SBA's rules and regulations. On a given Federal procurement, it does not treat all bidders equitably. A further reason why delaying application of the size standard until a refiner complies with environmental regulations is not a factor is that a refiner's bpcd capacity takes into effect, as noted above, "* * * the environmental constraints associated with refinery operations" (see EIA's definition of "Barrels per Calendar Day").

Small business size standards have their greatest incidence of applicability in Federal procurement. This 125,000 bpcd size standard relates only to the Federal government's procurement of refined petroleum products, and refiners' participation in the program is voluntary. Size standards for Federal procurement and for all Federal programs apply to every concern in its industry, regardless of the status of their compliance with rules and regulations that have different purposes.

4. Whether SBA Should Incorporate "Total Operable Atmospheric Crude Oil Distillation Capacity" into Its Small Business Definition

Comments received: Two commenters, an association and a refiner, support the added language to standardize the measure within the Federal government. Two other commenters, one a small refiner and the other not, did not see the need for the added clarification. None of the commenters, however, expressed a strong preference of one over the other.

SBA's position: SBA believes that adding "total Operable Atmospheric Crude Oil Distillation Capacity" does in fact add to the specificity of the definition by distinguishing it from refiners' "Downstream Charge Capacity." SBA's definition of a small refiner should, where practical, use terms consistent with those of EIA to avoid confusion among users of the definition. The phrase "total Operable Atmospheric Crude Oil Distillation Capacity" therefore clarifies and specifies the subject of measurement when determining a refiner's small refiner status, because it does not include "Downstream Charge Capacity."

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35.)

The Office of Management and Budget (OMB) has determined that this rule is a "significant" regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For the purpose of the Paperwork Reduction Act, 44 U.S.C. ch. 35, SBA has determined that this rule would not impose new reporting or record keeping requirements, other than those required of SBA. For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

1. Is There a Need for This Regulatory Action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information to the proposed rule explained the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis and on the comments SBA received to the proposed rule, SBA believes an increase is supportable, but to a 125,000 bpcd instead of the proposed 155,000 bpcd.

2. What Are the Potential Benefits and Costs of This Regulatory Action?

The rule affects Federal government agencies purchasing refined petroleum products and small refiners that compete to sell refined petroleum products to the Federal government. Increasing the 75,000 bpcd size standard to 125,000 bpcd will enable small refiners to expand their refining operations or to merge with other small refiners. They can compete for larger Federal petroleum procurements set aside for small businesses or for the 8(a) and HUBZone Empowerment Contracting Programs, as well as those awarded through full and open competition after application of the HUBZone or small disadvantaged

business price evaluation preference or adjustment. Federal agencies will benefit from the higher size standards if more small refiners compete for more set-aside petroleum procurements. This will increase competition and lower the prices on set-aside petroleum procurements. The higher size standard will also likely influence Federal agencies to set aside more petroleum procurements. Price increases associated with set-aside procurements will be minimal because set-asides must be awarded at fair and reasonable prices. The increased size standard will allow, and possibly encourage, small refiners to increase their operational efficiencies without jeopardizing their small business status. Currently small refiners will become more competitive and this could result in lower prices to the Federal government and to private sector customers.

The higher size standard may have distributional effects between large and small refiners. The actual outcome of the gains and loses between small and large refiners cannot be estimated with certainty. Small refiners may obtain petroleum contracts from what would have been awarded to refiners that are not small. Large refiners might lose some Federal petroleum contracts to small refiners if Federal agencies decide to set aside more petroleum procurements for small refiners. The potential loss of contracts to large businesses would be limited to the amount of petroleum that expanding small refiners were willing and able to sell to the Federal government. Small nonmanufacturers can also obtain additional petroleum contracts as a result of a higher petroleum size standard. On set-aside petroleum procurements, a small nonmanufacturer must supply the product of a small petroleum refiner. With an effectively larger base of small refiners, nonmanufacturers would have access to a larger supply of petroleum products from small refiners. The potential gain in contracting opportunities for small nonmanufacturers would be limited to the amount of petroleum the expanded small refiners are willing and able to supply through a third party as opposed to selling directly to the Federal government.

The revision to the current size standard for petroleum refineries is consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administrator's objectives. One of SBA's goals in support of the Administrator's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism to develop their own size standards.

For purposes of the Regulatory Flexibility Act (RFA), SBA has determined that this rule does not have a significant economic effect on a substantial number of small entities. As stated in the **SUPPLEMENTARY INFORMATION** section, SBA estimates that this rule will create no additional small refiners. Accordingly, SBA does not believe there will be significantly increased competition that could harm small refiners. On the contrary, small refiners will be able to bid on and perform more and larger Federal procurements using some of the same business practices as the largest refiners (though on a smaller scale), proportionate to their sizes. In addition, since Federal procurement programs are voluntary, this rule will not impose any significant costs on any small refiners participating in the Federal procurement of petroleum programs. Further, the rule will not affect the amount of refined petroleum purchased by the Federal government. Federal government procurement dollars are expected to remain about the same. In addition, since more small refiners will be able to share resources, they will be eligible for more Federal procurement dollars.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs-business, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons stated in the preamble, SBA amends part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGUALTIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and sec. 304, Pub. L. 103–403,108 Stat. 4175, 4188.

■ 2. In § 121.201, revise footnote 4 at the end of the table titled "Small Business Size Standards by NAICS industry" to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

FOOTNOTES

* * * * *

■ *4. NAICS code 324110*—For purposes of Government procurement, the petroleum refiner must be a concern that has no more than 1,500 employees nor more than 125,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

* * * * *

Dated: February 5, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–7677 Filed 3–27–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–030]

RIN 1625–AA08

Special Local Regulations for Marine Events; Severn River, College Creek, and Weems Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.518 for the U.S. Naval Academy Crew Races, marine events to be held April 26, 2003 and May 25, 2003, on the waters of the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the events. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.518 is effective from 5:30 a.m. to 9:45 a.m. on April 26, 2003 and from 5:30 a.m. to 7:45 a.m. on May 25, 2002.

FOR FURTHER INFORMATION CONTACT: Ron Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, at (410) 576–2674.

SUPPLEMENTARY INFORMATION: The U.S. Naval Academy will sponsor crew races on the waters of the Severn River at Annapolis, Maryland. The events will consist of intercollegiate crew rowing teams racing along a 2000-meter course on the waters of the Severn River. A fleet of spectator vessels is expected to gather near the event site to view the competition. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.518 will be in effect for the duration of the event. Under provisions of 33 CFR 100.518, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will only be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: March 10, 2003.

James D. Hull,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 03–7384 Filed 3–27–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–03–046]

Drawbridge Operation Regulations; Sanibel Causeway Bridge, Okeechobee Waterway, Punta Rassa, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Sanibel Causeway bridge across the Okeechobee Waterway, Punta Rassa, Florida. This temporary deviation allows the owner to facilitate the evacuation of vehicular traffic during the afternoon rush hour, while emergency repairs to the two low level fixed bridges that span a portion of the causeway are underway, by allowing the bascule bridge to open only on the hour, from 2 p.m. until 6 p.m., Monday through Friday, from March 17, 2003 until April 25, 2003.

DATES: This temporary deviation is effective from 2 p.m., March 17, 2003, until 6 p.m., April 25, 2003.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–03–046] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Manager, Seventh Coast Guard District, Bridge Branch at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Sanibel Causeway drawbridge is part of a two-lane narrow, undivided arterial roadway, which is the only roadway on and off Sanibel Island. This roadway also has two low level fixed bridges, which are in need of emergency repairs and has necessitated the owner to provide only one lane of arterial service to vehicular traffic for safety reasons. In order to complete emergency repairs in a safe and timely manner, the owner of all three bridges has requested that the bascule bridge only open on the hour, from 2 p.m. until 6 p.m., Monday through Friday, March 17, 2003 to April 25, 2003, in order to safely allow the rush hour traffic to exit the island via the causeway.

The Commander, Seventh Coast Guard District has granted a temporary deviation from the operating requirements listed in 33 CFR 117.317(j) to allow the Sanibel Causeway drawbridge to only open on the hour from 2 p.m. until 6 p.m., Monday through Friday, March 17, 2003 to April 25, 2003.

Dated: March 13, 2003.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 03–7383 Filed 3–27–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–02–080]

RIN 1625–AA00 (Formerly 2115–AA97)

Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone in the waters of the Chesapeake Bay near the Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, Maryland. This security zone is necessary to help ensure public safety and security. The security zone will prohibit vessels and persons from entering a well-defined area around Calvert Cliffs Nuclear Power Plant.

DATES: This rule is effective at 5 p.m. on March 31, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–080 and are available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226–1791 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2513.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 28, 2002, we published a temporary final rule (TFR) entitled "Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD" in the **Federal Register** (67 FR 9203) that expired on June 15, 2002. On June 17, 2002, we published a change of effective date to a temporary final rule (TFR) entitled "Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD" in the **Federal Register** (67 FR 41177) that expired on September 30, 2002, and on October 1, 2002, we published another change of effective date to a temporary final rule (TFR) entitled "Security Zone; Calvert Cliffs Nuclear

Power Plant, Chesapeake Bay, Calvert County, MD" in the **Federal Register** (67 FR 61494) that expires on March 31, 2003.

On October 18, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD" in the **Federal Register** (67 FR 64345). We received three letters commenting on the proposed rule.

The Captain of the Port has determined that the need for this security zone continues to exist. Accordingly, this rule makes final the proposed rule published in the **Federal Register** on October 18, 2002. The zone is approximately 300 by 500 yards and is marked by white cylindrical buoys in the Chesapeake Bay near the Calvert Cliffs Nuclear Power Plant, in Calvert County, Maryland.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. It is urgently necessary, for public safety and Power Plant security, that a continuous security zone be established at the Calvert Cliffs facility effective at 5 p.m. on March 31, 2003. This rule will become effective upon expiration of the current temporary rule (67 FR 61494, October 1, 2002).

Background and Purpose

Based on the September 11, 2001 terrorist attacks on the World trade Center buildings in New York and the Pentagon building in Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Calvert Cliffs Nuclear Power Plant. On February 28, 2002, the Coast Guard published a temporary rule entitled "Security zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD," in the **Federal Register** (67 FR 9203). The temporary rule established a security zone around the Calvert Cliffs Nuclear Power Plant. Based on a continuing need for the protection of the plant, the effective date of the rule establishing a temporary security zone surrounding the plant was extended until 5 p.m., March 31, 2003. There is no indication that the present rule has been burdensome on the maritime public; users of the areas surrounding the plant are able to pass safely outside the zone. Three letters commenting on the present rule have been received by the public.

Discussion of Comments and Changes

The Coast Guard received three written comments on the proposed rule. Two letters included comments that strongly supported the proposed security zone, one of which requested that Coast Guard increase the size of the zone to provide for additional security. The size and location of the zone was based on a request from the Calvert Cliffs Nuclear Power Plant. The power plant is aware of the issues raised by this comment and feels that the size and location of the security zone is sufficient to provide the desired increase in security.

The third letter included comments from the Canoe Cruisers Association of Greater Washington, DC, Inc. stating that the size of the proposed security zone is reasonable; however, future proposals to expand its dimensions might compromise waterway user safety far from shore and interrupt waterway user access to the shore. The Coast Guard has considered these issues and has determined that no changes to the proposed rule are required. One commenter requested a public meeting. The Coast Guard has considered this request and determined that there is not sufficient public interest to conduct a public meeting.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

We received three letters commenting on the interim rule. Comments from the Canoe Cruisers Association of Greater Washington, DC, Inc. state that the security zone proposal is reasonable; however, future proposals to expand its dimensions might compromise waterway user safety far from shore and interrupt waterway user access to the shore.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34) (g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are establishing a security zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.505 to read as follows:

§ 165.505 Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, Maryland.

(a) *Location.* The following area is a security zone: All waters of the Chesapeake Bay, from surface to bottom, encompassed by lines connecting the following points, beginning at 38°26′06″ N, 076°26′18″ W, thence to 38°26′10″ N, 076°26′12″ W, thence to 38°26′21″ N, 076°26′28″ W, thence to 38°26′14″ N, 076°26′33″ W, thence to beginning at 38°26′06″ N, 076°26′18″ W. These coordinates are based upon North American Datum (NAD) 1983.

(b) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 410–576–2693 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority:* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: March 4, 2003.

Evan Q. Kahler,

Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.

[FR Doc. 03–7385 Filed 3–27–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–004]

RIN 1625 AA00

Safety Zones; Fireworks Displays in the Captain of the Port Portland Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones on the Willamette River during fireworks displays. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with these displays. Entry into these safety zones is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective from 9:30 p.m. (PDT) on May 2, 2003 to 10:20 p.m. (PDT) on May 30, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [CGD13–03–004] and are available for inspection or copying at the U.S. Coast Guard MSO/Group Portland, 6767 N. Basin Ave, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Tad Drozdowski, c/o Captain of the Port, Portland 6767 N. Basin Avenue, Portland, Oregon 97217, at (503) 240–2584.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and spectators gathering in the vicinity of the various fireworks launching barges and displays. If normal notice and comment procedures were followed, this rule would not become effective until after the dates of the events. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest. Permanent safety zones for these events are being submitted through the normal rulemaking process for 2004.

Background and Purpose

The Coast Guard is adopting temporary safety zone regulations for safe fireworks displays. One display is scheduled to start at 9:30 p.m. on May 2 and last for thirty minutes. The other event is scheduled to start at 9:50 p.m. on May 30 and also last for thirty minutes. Both events occur on the Willamette River in Portland, Oregon.

These events may result in a number of vessels congregating near fireworks launching barges. The safety zones are needed to protect watercraft and their occupants from safety hazards associated with fireworks displays. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal and local agencies.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security. The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures act of DHS is unnecessary. This expectation is based on the fact that the regulated areas established by the proposed regulation will encompass less than one-half of a mile of the Willamette River for a period of only 30 minutes in the late evening on two separate dates.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this temporary rule would have a significant economic impact on a substantial number of small entities. The term "small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Willamette River during the times mentioned under *Background and Purpose*. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only thirty minutes during two evenings when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that order and have determined that this final rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is provided for temporary safety zones of less than one week in duration. This rule establishes safety zones with a duration of thirty minutes. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

■ 2. A temporary § 165.T13–003 is added to read as follows:

§ 165.T13–003 Safety Zones; Fireworks displays in the Captain of the Port Portland Zone.

(a) *Safety Zones.* The following areas are designated safety zones:

(1) *Cinco de Mayo Fireworks Display, Portland, OR.*

(i) *Location.* All waters of the Willamette River bounded by the Morrison Bridge to the north, Hawthorne Bridge to the south, and shoreline both to the east and the west.

(ii) *Enforcemnet period.* From 9:30 p.m. to 10 p.m. (PDT) on May 2, 2003.

(2) *Portland Rose Festival Fireworks Display, Portland, OR.*

(i) *Location.* All waters of the Willamette River bounded by the Morrison Bridge to the north, Hawthorne Bridge to the south, and shoreline both to the east and the west.

(ii) *Enforcement period.* From 9:50 p.m. to 10:20 p.m. (PDT) on May 30, 2003.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

Dated: March 13, 2003.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 03–7386 Filed 3–27–03; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 111

Bound Printed Matter: Flat-Size Mail Co-Packaging and Co-Sacking

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: In this final rule, the Postal Service adopts revisions to the *Domestic Mail Manual* (DMM) that will provide new mail preparation standards for the co-packaging and co-sacking of flat-size Bound Printed Matter (BPM) mailpieces.

Co-packaging is an alternate preparation option that allows the combining of Presorted pieces and barcoded pieces within the same package. Co-sacking is a preparation method that allows under specific circumstances the combining of packages of Presorted rate pieces, packages of barcoded pieces, and co-packaged pieces, within the same sack.

Effective April 3, 2003, mailers may begin using the co-packaging standards for BPM flats. Although co-packaging is optional, if a mailer chooses to co-package, then the co-packaged pieces must also be co-sacked. The required use of the co-sacking preparation standards for pieces that are not co-packaged becomes mandatory on September 1, 2003. Regardless of the date presented, all mailings that are co-packaged must also be co-sacked.

EFFECTIVE DATE: April 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jane Stefaniak at (703) 292–3548, Mailing Standards, United States Postal Service.

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on November 19, 2002 (67 FR 69698–69702), the Postal Service proposed to extend the mail preparation standards for co-packaging and co-sacking in DMM M900 to include flat-size BPM mailpieces that are compatible with processing on the automated flat sorting machine (AFSM) 100. Also included as part of the November 19, 2002, proposed rule was a proposal to change the minimum weight for Presorted rate BPM flats claimed at the destination delivery unit (DDU) rates from "more than 1 pound" to "more than 20 ounces." In the November 19, 2002, proposed rule, the Postal Service solicited written comments from interested parties. However, no written comments were received. The Postal Service is therefore adopting the content of the proposed rule with the following two changes:

1. The mandatory effective date for the use of the new co-sacking standards for flat-size BPM pieces is September 1, 2003, rather than June 1, 2003, as stated in the proposed rule.

2. The proposal to increase the minimum weight for Presorted rate BPM flats claimed at the DDU rates will not be adopted at this time.

Background

Through several previous rulemakings published in the **Federal Register** (65 FR 52479–52528, 66 FR 28659–28666, and 66 FR 58944–58952), the Postal Service has established mail preparation standards in DMM M900 for co-packaging and co-traying flat-size First-Class Mail, and for co-packaging and co-sacking nonletter-size Periodicals and flat-size Standard Mail. Extending these requirements to allow the co-packaging and co-sacking of flat-size BPM mailpieces that are compatible with processing on the AFSM 100 is reasonable and in the best interests of both mailers and the Postal Service.

Presorted rate BPM flats (no barcode required) and Presorted rate BPM flats that bear a ZIP+4 or delivery point barcode and claim the barcoded discount are usually both processed by the Postal Service within the same operation. For this reason, allowing packages of flat-size barcoded and nonbarcoded pieces to be combined within the same sack (*i.e.*, co-sacking) can provide operational efficiencies that could reduce costs. Additionally, the need for the Postal Service to receive flat-size barcoded and nonbarcoded pieces in segregated packages no longer exists due to technological advances, such as the optical character reader (OCR) and image lift capabilities of the AFSM 100. Therefore, it would not be operationally beneficial to continue to require the separate preparation of Presorted rate BPM flats that qualify for and claim the barcoded discount and those that do not qualify for the barcoded discount. Continuing to segregate barcoded and nonbarcoded flats would result in more packages and sacks, reduce the average depth of sort, and cause additional workhours for the Postal Service associated with sorting, opening, and preparing flats for processing.

Under the new co-packaging standards for flat-size BPM mailpieces, mailers will have the option to co-package (i.e., sort into the same package) Presorted rate BPM flat-size pieces qualifying for the barcoded discount and Presorted rate BPM flat-size pieces not qualifying for the barcoded discount. Regardless of the date presented for mailing, co-packaged pieces must be co-sacked under DMM M910. Effective September 1, 2003, the new co-sacking standards for flat-size BPM mailpieces will require that mailers co-sack (i.e., sort into the same sack) packages of Presorted rate pieces qualifying for and claiming the barcoded discount with packages of Presorted rate pieces not qualifying for the barcoded discount. The containerization methods permitted for First-Class Mail, Periodicals, and Standard Mail in current DMM M920, M930, and M940 will not be available for BPM.

Co-Packaging Standards (Optional)

The new standards for the optional co-packaging of BPM flats include the following:

- All pieces must weigh 20 ounces or less and meet the AFSM 100 criteria for automation-compatible flat-size mail in DMM C820.
- A separate minimum of 300 Presorted rate pieces qualifying for and claiming the barcoded discount and a

separate minimum of 300 Presorted rate pieces (not qualifying for the barcoded discount) are required. The combined total number of pieces qualifying for and claiming the barcoded discount and the Presorted rate must be used to meet the minimum volume requirements for packages and sacks.

- Each piece in the Presorted rate mailing qualifying for and claiming the barcoded discount must bear a correct and readable ZIP+4 or delivery point barcode (DPBC) under DMM C840. Each piece in the Presorted rate mailing must bear a correct and readable 5-digit barcode under DMM C840.
- Presorted rate pieces qualifying for and claiming the barcoded discount must be sorted together with the Presorted rate pieces, but only one physical package for each logical presort destination is permitted to contain both pieces claiming the barcoded discount and pieces not claiming the discount, unless presented using an approved manifest mailing system under DMM P910.
- Co-packaged pieces must also be co-sacked under DMM M910.

Co-Sacking Standards (Required September 1, 2003)

The new standards for the required co-sacking of BPM flats include the following:

- Packages prepared as part of the Presorted rate mailing qualifying for and claiming the barcoded discount and packages prepared as part of the Presorted rate mailing (not qualifying for the barcoded discount) must be co-sacked, effective September 1, 2003. However, mailers who choose to use the co-packaging standards prior to September 1, 2003, will be required to co-sack.
- Packages of flats qualifying for and claiming the barcoded discount that are co-sacked with packages of Presorted rate flats must be part of the same mailing job.
- Both the Presorted rate mailing qualifying for and claiming the barcoded discount and the Presorted rate mailing must separately meet the applicable rate eligibility and volume requirements.
- Packages that are co-sacked under DMM M910 are not required to be co-packaged.

Documentation Requirements

Standardized documentation as detailed in DMM P012 is required for mailings prepared under the new standards for co-packaging and co-sacking. The following applies:

- Documentation for a co-packaged mailing must indicate by zone (when applicable) for each package sortation level, the number of Presorted rate pieces qualifying for the barcoded discount and the number of Presorted rate pieces (not claiming the barcoded discount) that are contained in each package.
- Documentation for a co-sacked mailing must indicate by zone (when applicable) for each sack sortation level, the number of Presorted rate pieces qualifying for the barcoded discount and the number of Presorted rate pieces (not claiming the barcoded discount) that are contained in each sack.

Effective Dates

Effective April 3, 2003, mailers may begin using the co-packaging standards for BPM flats. The standards for co-packaging are optional. However, if a mailer chooses to co-package under DMM M950, then the co-packaged pieces must be co-sacked under DMM M910. The required use of the co-sacking preparation standards (for pieces that are not co-packaged) becomes mandatory on September 1, 2003. Regardless of the date presented, all mailings that are co-packaged under DMM M950 must be co-sacked under DMM M910.

Based on the reasons presented in the proposed rule and those noted above, and in consideration that no public comments were received, the Postal Service adopts the following changes to the *Domestic Mail Manual*, which is incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.

List of Subjects in 39 CFR Part 111

Administrative Practice and Procedure, Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

Domestic Mail Manual (DMM)

* * * * *

M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 TERMS AND CONDITIONS

* * * * *

1.3 Preparation Instructions

For purposes of preparing mail:

* * * * *

[Revise item ae to read as follows:]

ae. Co-packaging is an alternate preparation method available under M950 for First-Class Mail, Periodicals, and Standard Mail that allows the combining of flat-size automation rate and Presorted rate pieces within the same package under the single minimum package size requirement. Co-packaging is also available for combining within the same package flat-size Bound Printed Matter Presorted rate pieces qualifying for and claiming the barcoded discount and Presorted rate pieces not qualifying for the barcoded discount. Regardless of the class of mail, pieces may not be combined in more than one physical package for each logical presort destination unless presented using an approved manifest mailing system under P910.

1.4 Mailing

Mailings are defined as:

* * * * *

[Revise the first paragraph of item e by adding references to the advanced preparation options for flat-size Bound Printed Matter in M900 to read as follows (the remainder of 1.4 is unchanged):]

e. Package Services. Except for single-piece rate pieces not otherwise subject to a minimum mailing requirement that are presented under an approved manifest mailing system under P910, the types of Package Services listed below may not be part of the same mailing even if in the same processing category. See M910 and M950 for the advanced preparation options available for flat-size Bound Printed Matter.

* * *

* * * * *

M030 Containers

* * * * *

M032 Barcoded Labels

1.0 BASIC STANDARDS—TRAY AND SACK LABELS

* * * * *

Exhibit 1.3a 3-Digit Content Identifier Numbers

[Revise Exhibit 1.3a by adding new categories and content identifier numbers for co-sacked Bound Printed Matter pieces to read as follows:]

Package Services		
BPM Flats—Co-Sacked Barcoded and Presorted:		
5-digits sacks	648	PSVC FLTS 5D BC/NBC
3-digits sacks	661	PSVC FLTS 3D BC/NBC
SCF sacks	667	PSVC FLTS SCF BC/NBC
ADC sacks	668	PSVC FLTS ADC BC/NBC
Mixed ADC sacks	669	PSVC FLTS BC/NBC WKG

* * * * *

M700 Package Services

* * * * *

M720 Bound Printed Matter

* * * * *

M722 Presorted Bound Printed Matter

1.0 BASIC STANDARDS

* * * * *

[Add new 1.5 to read as follows:]

1.5 Co-Sacking Flats With Barcoded Mail

The following standards apply:

a. If the mailing job contains a carrier route mailing, a Presorted rate mailing qualifying for and claiming the barcoded discount, and a Presorted rate mailing, the job must be prepared as follows:

(1) Prior to September 1, 2003, the carrier route mailing must be prepared under M723, the Presorted rate mailing qualifying for and claiming the barcoded discount must be prepared under M820, and the Presorted rate mailing must be prepared under M722.

(2) Effective September 1, 2003, the carrier route mailing must be prepared under M723, and the Presorted rate mailing qualifying for and claiming the barcoded discount and the Presorted rate mailing must be prepared under the co-sacking standards in M910. Presorted rate pieces qualifying for and claiming the barcoded discount may be co-packaged with Presorted rate pieces under M950. Regardless of the date presented for mailing, co-packaged pieces must be co-sacked under M910.

b. If the mailing job contains only a Presorted rate mailing qualifying for and claiming the barcoded discount and a Presorted rate mailing, the job must be prepared as follows:

(1) Prior to September 1, 2003, the Presorted rate mailing qualifying for and claiming the barcoded discount must be prepared under M820, and the Presorted rate mailing must be prepared under M722.

(2) Effective September 1, 2003, the mailing job must be prepared under the co-sacking standards in M910. Presorted rate pieces qualifying for and claiming the barcoded discount may be co-packaged with Presorted rate pieces under M950. Regardless of the date presented for mailing, co-packaged pieces must be co-sacked under M910.

c. If the mailing job contains only a carrier route mailing and a Presorted rate mailing qualifying for and claiming the barcoded discount, the job must be sacked separately under the applicable standards in M723 and M820.

d. If the mailing job contains only a carrier route mailing and a Presorted rate mailing, each mailing must be sacked separately under the applicable standards M722 and M723.

* * * * *

M800 All Automation Mail

* * * * *

M820 Flat-Size Mail

1.0 BASIC STANDARDS

* * * * *

1.10 Co-Traying, Co-Sacking, and Co-Packaging With Presorted Rate Mail

The following standards apply:

* * * * *

[Add new item d for Bound Printed Matter to read as follows:]

d. Bound Printed Matter:

(1) If the mailing job contains a carrier route mailing, a Presorted rate mailing qualifying for and claiming the barcoded discount, and a Presorted rate mailing, the job must be prepared as follows:

(a) Prior to September 1, 2003, the carrier route mailing must be prepared under M723, the Presorted rate mailing qualifying for the barcoded discount must be prepared under M820, and the Presorted rate mailing must be prepared under M722.

(b) Effective September 1, 2003, the carrier route mailing must be prepared under M723, and the Presorted rate mailing qualifying for the barcoded discount and the Presorted rate mailing must be prepared under the co-sacking standards in M910. Presorted rate pieces qualifying for the barcoded discount may be co-packaged with Presorted rate pieces under M950. Regardless of the date presented for mailing, co-packaged pieces must be co-sacked under M910.

(2) If the mailing job contains only a Presorted rate mailing qualifying for and claiming the barcoded discount and a Presorted rate mailing, the job must be prepared as follows:

(a) Prior to September 1, 2003, the Presorted rate mailing qualifying for and claiming the barcoded discount must be prepared under M820 and the Presorted rate mailing must be prepared under M722.

(b) Effective September 1, 2003, the Presorted rate mailing qualifying for and claiming the barcoded discount and the Presorted rate mailing must be prepared under the co-sacking standards in M910. Presorted rate pieces qualifying for and claiming the barcoded discount may be co-packaged with Presorted rate pieces under M950. Regardless of the date presented for mailing, co-packaged pieces must be co-sacked under M910.

(3) If the mailing job contains only a carrier route mailing and a Presorted rate mailing qualifying for and claiming the barcoded discount, each mailing must be prepared separately under the applicable standards in M723 and M820.

* * * * *

6.0 BOUND PRINTED MATTER

* * * * *

6.2 Sack Preparation and Labeling

[Revise 6.2 to read as follows:]

Preparation sequence, sack size, and labeling:

a. 5-digit scheme (optional, containing 5-digit scheme packages only); minimum 20 addressed pieces; labeling:

(1) Line 1: L007.

(2) Line 2: "PSVC FLTS 5D SCH BC."

b. 5-digit (required); minimum 20 addressed pieces; labeling:

(1) Line 1: city, state, and 5-digit ZIP Code on mail, preceded for military mail by correct prefix under M031.

(2) Line 2: "PSVC FLTS 5D BC."

c. 3-digit (required, except for optional packages with 3-digit ZIP Code prefixes indicated by an "N" in L002, when optional SCF sacks are prepared); minimum 20 addressed pieces; labeling:

(1) Line 1: L002, Column A.

(2) Line 2: "PSVC FLTS 3D BC."

d. SCF (optional); minimum 20 addressed pieces; labeling:

(1) Line 1: L005.
(2) Line 2: "PSVC FLTS SCF BC."
e. ADC (required); minimum 20 addressed pieces; labeling:
(1) Line 1: L004.
(2) Line 2: "PSVC FLTS ADC BC."
f. Mixed ADC (required); no minimum; labeling:
(1) Line 1: L803 or, if entered by mailer at an ASF or BMC, L802.
(2) Line 2: "PSVC FLTS BC WKG."

M900 Advanced Preparation Options for Flats

M910 Co-Traying and Co-Sacking Packages of Automation and Presorted Mailings

[Revise the Summary to include the new option for preparing flat-size Bound Printed Matter, to read as follows:]

Summary

M910 describes the requirements for co-traying packages of flat-size automation rate and Presorted rate First-Class Mail. It also describes the requirements for co-sacking packages of nonletter-size automation rate and Presorted rate Periodicals, packages of flat-size automation rate and Presorted rate Standard Mail, and packages of flat-size Presorted rate Bound Printed Matter qualifying for and claiming the barcoded discount and Presorted rate Bound Printed Matter (not qualifying for the barcoded discount).

* * * * *

[Add new 4.0, Bound Printed Matter, to provide preparation requirements for co-sacking flat-size Bound Printed Matter to read as follows:]

4.0 BOUND PRINTED MATTER

4.1 Basic Standards

Effective September 1, 2003, packages of flat-size pieces in a Presorted rate mailing qualifying for and claiming the barcoded discount must be co-sacked with packages of flat-size pieces from a Presorted rate mailing under the following conditions:

a. The Presorted rate pieces qualifying for and claiming the barcoded discount and the Presorted rate pieces must be part of the same mailing job and be reported on the same postage statement.

b. The Presorted rate pieces qualifying for and claiming the barcoded discount must meet the criteria for flat-size mail under C820. Pieces in the Presorted rate mailing must meet the criteria for flat-size mail under C050.

c. The Presorted rate mailing qualifying for and claiming the barcoded discount must meet the eligibility criteria in E712, the mail preparation standards in M820, the sacking requirements in 4.4, and the documentation criteria in 4.1h.

d. The Presorted rate mailing must meet the eligibility criteria in E712, the mail preparation standards in M722, the sacking requirements in 4.4, and the documentation criteria in 4.1h.

e. The rates for pieces in the Presorted rate mailing qualifying for and claiming the barcoded discount are applied based on meeting the sortation requirements in M820, and when applicable, the zone. The rates for pieces in the Presorted rate mailing are based on meeting the sortation requirements in M722, and when applicable, the zone.

f. The pieces must be marked according to M012.

g. The packages prepared from the Presorted rate mailing qualifying for the barcoded discount and the packages prepared from the Presorted rate mailing must be sorted into the same sacks as described in 4.4.

h. A complete, signed postage statement(s), using the correct USPS form or an approved facsimile, must accompany each mailing job prepared under these procedures. In addition to the applicable postage statement, standardized documentation under P012 must be submitted with each co-sacked mailing job that describes for each sack sortation level the number of pieces qualifying for the barcoded discount and the number of pieces qualifying for each applicable Presorted rate.

i. Barcoded sack labels under M032 must be used to label the sacks.

4.2 Package Preparation

Except for mail prepared under the co-packaging option in 4.3, the Presorted rate mailing qualifying for and claiming the barcoded discount must be packaged and labeled under M820, and the Presorted rate mailing must be packaged and labeled under M722.

4.3 Optional Co-Packaging Preparation

As an alternative to the basic packaging requirements in 4.2, flat-size Presorted rate pieces qualifying for and claiming the barcoded discount may be co-packaged with flat-size Presorted rate pieces, subject to M950.

4.4 Sack Preparation and Labeling

Packages of Presorted rate pieces qualifying for and claiming the barcoded discount and Presorted rate pieces prepared under 4.2 or 4.3 must be presorted together into sacks (co-sacked) using the following preparation sequence, sack size, and labeling:

a. 5-digit (required); minimum 20 addressed pieces; labeling:
(1) Line 1: city, state, and 5-digit ZIP Code destination of packages, preceded for military mail by the correct prefix under M031.
(2) Line 2: "PSVC FLTS 5D BC/NBC."
b. 3-digit (required, except for optional packages with 3-digit ZIP Code prefixes indicated by an "N" in L002, when optional SCF sacks are prepared); minimum 20 addressed pieces; labeling:
(1) Line 1: L002, Column A.
(2) Line 2: "PSVC FLTS 3D BC/NBC."
c. SCF (optional); minimum 20 addressed pieces; labeling:
(1) Line 1: L005.
(2) Line 2: "PSVC FLTS SCF BC/NBC."
d. ADC (required); minimum 20 addressed pieces (use L004 to determine ZIP Codes served by each ADC); labeling:
(1) Line 1: L004.
(2) Line 2: "PSVC FLTS ADC BC/NBC."
e. Mixed ADC (required); no minimum; labeling:
(1) Line 1: L803 or, if entered by mailer at an ASF or BMC, L802.
(2) Line 2: "PSVC FLTS BC/NBC WKG."

* * * * *

M950 Co-Packaging Automation Rate and Presorted Rate Pieces

[Revise the Summary to include the new option for preparing flat-size Bound Printed Matter to read as follows:]

Summary

M950 describes the requirements for co-packaging flat-size automation rate and Presorted rate First-Class Mail, nonletter-size automation rate and Presorted rate Periodicals, flat-size automation rate and Presorted rate Standard Mail, and flat-size Presorted rate Bound Printed Matter qualifying for and claiming the barcoded discount and Presorted rate Bound Printed Matter (not qualifying for the barcoded discount).

* * * * *

[Add new 4.0, Bound Printed Matter, to provide co-packaging preparation requirements for flat-size Bound Printed Matter under M950 to read as follows:]

4.0 BOUND PRINTED MATTER

4.1 Basic Standards

Mailers may choose to co-package flat-size Presorted rate pieces qualifying for and claiming the barcoded discount and Presorted rate pieces as an option to the basic packaging requirements in M722 and M820, subject to the following conditions:

a. The pieces in the Presorted rate mailing qualifying for and claiming the barcoded discount and the pieces in the Presorted rate mailing must be part of the same mailing job and must be reported on the same postage statement.

b. The pieces in the mailing job must be flat-size and meet any other size and mailpiece design requirements applicable to the rate category for which they are prepared.

c. Co-packaged pieces must be co-sacked under M910.

d. A separate minimum of 300 Presorted rate pieces qualifying for and claiming the barcoded discount and a separate minimum of 300 Presorted rate pieces are required. The combined total number of pieces qualifying for and claiming the barcoded discount and the Presorted rate must be used to meet the minimum volume requirements for packages and sacks.

e. Presorted rate pieces must contain a 5-digit barcode and be co-packaged with Presorted rate pieces qualifying for and claiming the barcoded discount for the same presort destination. If this optional preparation method is used, all barcoded discount pieces and Presorted rate pieces in the same mailing job and reported on the same postage statement must be co-packaged.

f. All pieces must meet the AFSM 100 requirements in C820.

g. Unless presented using an approved manifest mailing system under P910, Presorted rate pieces qualifying for and claiming the barcoded discount and Presorted rate pieces for each presort destination must be sorted so that only one physical package for each logical presort destination includes both Presorted rate pieces qualifying for the barcoded discount (containing a ZIP+4 or delivery point barcode) and Presorted rate pieces (containing a 5-digit barcode).

4.2 Package Preparation

Preparation sequence, package size, and labeling:

a. 5-digit scheme (optional); minimum 10 addressed pieces or 10 pounds, maximum package weight 20 pounds; optional endorsement line (OEL) required.

b. 5-digit (required); minimum 10 addressed pieces or 10 pounds, maximum package weight 20 pounds; red Label D or optional endorsement line (OEL).

c. 3-digit (required); minimum 10 addressed pieces or 10 pounds, maximum package weight 20 pounds; green Label 3 or OEL.

d. ADC (required); minimum 10 addressed pieces or 10 pounds, maximum package weight 20 pounds; pink Label A or OEL.

e. Mixed ADC (required); no minimum, maximum package weight 20 pounds; tan Label MXD or OEL.

* * * * *

An appropriate amendment to 39 CFR 111 to reflect these changes will be published.

Neva R. Watson,
Attorney, Legislative.

[FR Doc. 03–7337 Filed 3–27–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA202–4400a; FRL–7474–2]

Approval and Promulgation of Air Quality Implementation Plans; Philadelphia County, PA; Construction, Modification and Operation Permit Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Philadelphia County portion of the Pennsylvania State Implementation Plan (SIP). The revision approves Philadelphia County's regulations governing the construction of new and modified sources and the operation of existing sources of air pollution in the County. EPA is approving this SIP revision in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on May 27, 2003 without further notice, unless EPA receives adverse written comment by April 28, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to Makeba Morris, Chief, Permitting and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104.

FOR FURTHER INFORMATION CONTACT: Paul Arnold, (215) 814–2194, or by e-mail at *arnold.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 13, 1999, the Commonwealth of Pennsylvania submitted on behalf of Philadelphia County Air Management Services (AMS) a formal revision to its State Implementation Plan (SIP). The SIP revision consists of Philadelphia Air Management Regulation XIII—"Pertaining to the Construction, Modification, Reactivation, and Operation of Sources."

II. Summary of SIP Revision

Regulation XIII enables Philadelphia County AMS to administer the permit program requirements contained in the Commonwealth of Pennsylvania's 25 Pa. Code Chapter 127, "Construction, Modification, Reactivation, and Operation of Sources." Substantively, Regulation XIII incorporates by reference 25 Pa. Code Chapter 127 in its entirety. Philadelphia County made minor administrative revisions to 25 Pa. Code Chapter 127 to reflect the appropriate officials and administrative procedures relevant to AMS.

Regulation XIII, through incorporation of the various subchapters of 25 Pa. Code Chapter 127, adopts provisions that pertain to a number of distinct permit programs that satisfy a variety of Clean Air Act requirements. Each of the permit program elements contained in 25 Pa. Code Chapter 127 have been previously submitted to EPA for review and approval as part of the SIP for the Commonwealth of Pennsylvania. Since Philadelphia County did not make any substantive changes to 25 Pa. Code Chapter 127 when it incorporated its provisions into its Regulation XIII, the review and analysis performed by EPA when it previously acted on 25 Pa. Code Chapter 127 remains relevant and appropriate. The following table indicates the relevant subchapters of 25 Pa. Code Chapter 127 that have been previously approved by EPA as part of the Pennsylvania SIP.

PREVIOUS EPA SIP ACTION ON 25 PA. CODE CHAPTER 127

25 Pa. Code Chapter 127 Subchapter	Approval date
A. General provisions pertaining to permit program purpose and operational flexibility	July 30, 1996. 61 FR 39597.
B. Plan approval requirements related to construction or modification of minor sources	July 30, 1996. 61 FR 39597.
F. Operating permit requirements related to the ongoing operation of minor and major sources	July 30, 1996. 61 FR 39597.
H. General plan approval and operating permit provisions pertaining to permits for groups or categories of sources	July 30, 1996. 61 FR 39594.
I. Plan approval and operating permit fee provisions	July 30, 1996. 61 FR 39594.
J. General conformity provisions of the Clean Air Act	Sept. 29, 1997. 62 FR 50870.

EPA directs interested parties to review the rulemaking actions detailed above for further analysis in support of this action to approve Regulation XIII as part of Philadelphia County's portion of the Pennsylvania SIP.

Regulation XIII also contains provisions that enable Philadelphia County to implement and enforce the federal prevention of significant deterioration (PSD) of air quality permit program. The PSD program covers any new construction or any major modification of a major stationary air emission source in an area which has air quality better than the national ambient air quality standards. The program requires the issuance of permits prior to construction or modification of certain sources. Regulation XIII adopts the requirements of the Federal PSD program at 40 CFR 52.21 by reference in its entirety. Because Regulation XIII does not reference a specific edition of 40 CFR part 52, all future changes to part 52 with regard to the federal PSD program are automatically incorporated by reference into Regulation XIII.

The Federal PSD program promulgated at 40 CFR part 52 intrinsically meets the minimum requirements of 40 CFR part 51 pertaining to the adoption and implementation of PSD permit programs by state and local air pollution control agencies. Therefore, Regulation XIII, by incorporating the Federal PSD program, meets the minimum requirements of 40 CFR part 51 with regard to PSD programs.

Since 1983, Philadelphia County AMS has been delegated the authority to implement and enforce the provisions of 40 CFR 52.21 on behalf of EPA. (*See* 48 FR 31638, July 11, 1983.) Incorporation of the Federal PSD regulations into Regulation XIII and approval into the Philadelphia County portion of the Pennsylvania SIP effectively eliminates the need for the existing PSD delegation agreement. Upon the effective date of this action, the existing delegation of authority agreement between EPA and Philadelphia County regarding implementation and enforcement of the Federal PSD program will be terminated.

In addition, while EPA is approving Philadelphia County's PSD SIP, EPA recognizes that it has a responsibility to insure that all States properly implement their preconstruction permitting programs. EPA's approval of Philadelphia County's PSD program does not divest the Agency of the duty to continue appropriate oversight to insure that PSD determinations made by Philadelphia County are consistent with the requirements of the Clean Air Act, EPA regulations, and the SIP. EPA's authority to oversee PSD program implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not "conform to the requirements of" the PSD program. Similarly, section 113(a)(5) provides for administrative orders and civil actions whenever EPA finds that a State "is not acting in compliance with" any requirement or prohibition of the Act regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

It should be noted that EPA is not taking action at this time on certain discrete portions of Regulation XIII. Regulation XIII contains provisions that pertain to the County's new source review (NSR) permitting program for the construction or modification of major sources in nonattainment areas. Similarly, Regulation XIII contains provisions that reflect the requirements of the County's operating permit program developed to satisfy title V of the Clean Air Act. The NSR and title V provisions of Regulation XIII may be considered separate and/or additional permitting requirements relative to the other permitting requirements contained in the Regulation XIII. The EPA's inaction on these provisions at this time does not adversely impact the implementation of the portions of Regulation XIII that are being approved as part of the Philadelphia County portion of the Pennsylvania SIP pursuant to this action. The EPA intends to take separate action on the NSR and title V operating permit program portions of Regulation XIII in the future.

III. Final Action

EPA is approving Philadelphia Air Management Regulation XIII of the AMS regulations pertaining to a number of the County's construction and operating permit programs. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment because this rulemaking incorporates the requirements contained in Commonwealth of Pennsylvania's 25 Pa. Code Chapter 127, which was previously reviewed and approved by EPA. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on May 27, 2003 without further notice unless EPA receives adverse comment by April 28, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 27, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Philadelphia County's Air Management Regulation XIII may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 20, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(203) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(203) Revisions to Philadelphia Air Management Regulation XIII—"Pertaining to the Construction, Modification, Reactivation, and Operation of Sources" submitted on May 13, 1999 by the Pennsylvania Department of Environmental Protection on behalf of Philadelphia County Air Management Services:

(i) Incorporation by reference.

(A) Letter of May 13, 1999 from the Pennsylvania Department of Environmental Protection on behalf of Philadelphia County Air Management Services transmitting Regulation XIII governing the construction of new and modified sources and operation of existing sources of air pollution in the County.

(B) Philadelphia Air Management Regulation XIII—"Pertaining to the Construction, Modification, Reactivation, and Operation of Sources", except as it pertains to the new source review permit program and the title V operating permit program, effective October 30, 1995.

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(203)(i) of this section.

[FR Doc. 03–7510 Filed 3–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPT–2002–0060; FRL–6758–7]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 62 chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by this rule as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs to prevent any unreasonable risk of injury to human health or the environment. EPA is promulgating this SNUR using direct final procedures.

DATES: The effective date of this rule is May 27, 2003 without further notice, unless EPA receives adverse comment or notice of intent to submit adverse comment before April 28, 2003. This rule shall be promulgated for purposes of judicial review at 1 p.m. (e.s.t.) on April 11, 2003.

If EPA receives adverse comment or notice before April 28, 2003 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR before the effective date for the substance for which the comment or notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Comments or notice of intent to submit adverse or critical comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8974; e-mail address: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers (NAICS 325), e.g., Manufacturers, importers, processors, and users of chemicals.
- Petroleum and coal product industries (NAICS 324), e.g., Manufacturers, importers, processors, and users of chemicals.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in title 40 of the Code of Federal Regulations (CFR) at 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0060 . The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. The OPPTS harmonized test guidelines referenced in this document are available at http://www.epa.gov/opptsfrs/home/guidelin.htm. A frequently updated electronic version of 40 CFR part 721 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr721_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2002–0060. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT–2002–0060. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0060. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the rule.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing, importing, or processing a substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5 (h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to this Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned for non-confidential chemical identities), basis for the action taken by EPA in the TSCA section 5(e) consent order or as a non-section 5(e) SNUR for the substance (including the statutory citation and specific finding), toxicity concern, and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of this document by reference to 40 CFR part 721, subpart E where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

Where the underlying TSCA section 5(e) consent order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI., the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice (SNUN) at least 90 days in advance. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the TSCA section 5(e) consent order. Descriptions of recommended tests are provided for informational purposes.

Data on potential exposures or releases of the substances, testing other than that specified in the TSCA section 5(e) consent order for the substances, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. Persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs, as stated in 40 CFR 721.1(c), including submission of test data on health and environmental effects as described in 40 CFR 720.50.

EPA is not publishing SNURs for PMNs for P–99–309, P–99–492/493/494/495/496/497, P–99–847, P–99–1106, P–99–1166, and P–99 –1389, which are subject to a final TSCA section 5(e) consent order. The TSCA section 5(e) consent orders for these substances are derived from an exposure finding based solely on substantial production volume and significant or substantial human exposure and/or release to the environment of substantial quantities. For these cases there were limited or no toxicity data available for the PMN substances. In such cases, EPA regulates the new chemical substances under TSCA section 5(e) by requiring certain toxicity tests. For instance, chemical substances with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects. However, for these substances, the short-term toxicity testing required by the TSCA section 5(e) consent order is usually completed within 1 to 2 years of notice of commencement (NOC). EPA's experience with exposure-based SNURs requiring short-term testing is that the SNUR is often revoked within 1 to 2 years when the test results are received. Rather than issue and revoke SNURs in such a short span of time, EPA will defer publication of exposure-based SNURs until either a NOC or data demonstrating risk are received unless the toxicity testing required is long-term. EPA is issuing this explanation and notification as required in 40 CFR 721.160(a)(2) as it has determined that SNURs are not needed at this time for these substances which are subject to a final section 5(e) consent order under TSCA.

PMN Numbers P–98–0082/0083/0084

Chemical names: (generic) (P–98–0082 and P–98–0083) Alkoxylated alkylpolyol acrylates, adduct with alkylamine and (generic) (P–98–0084) Alkoxylated alkylpolyol acrylates.
CAS numbers: Not available.
Basis for action: The PMN substances will be used as binders for UV or electron beam curable coatings for wood, paper, and plastics. Based on structural analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 part per billion (ppb) of the PMN substances in surface waters. Since significant environmental exposure is not expected, as the substances are not released to surface waters, as described in the PMNs, EPA has not determined that the proposed manufacturing, processing, and use of the substances may present an unreasonable risk. EPA has determined, however, that other uses of the substances resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substances. All tests should be conducted with the static methods and nominal concentrations.
CFR citation: 40 CFR 721.465.

PMN Numbers P–98–0497 and P–98–0509

Chemical name: Propanoic acid, 2-methyl-, (1R,2R,4R)-1,7,7-trimethylbicyclo[2.2.1]hept-2-yl ester, rel-.
CAS number: 85586–67–0.
Basis for action: The PMN substances will be used as a fragrance compound for air fresheners, soaps, shampoo, household detergents, and bleach. Toxicity data on structurally similar esters indicate that the PMN substances may cause toxicity to aquatic organisms. Based on these data, EPA is concerned that toxicity to aquatic organisms may occur at a concentration of 10 ppb of the PMN substances in surface waters. Since significant environmental exposure is not expected as the PMN substances are not released to surface waters in significant quantities, EPA has not determined that the proposed processing and use of the substances may present an unreasonable risk. EPA has determined, however, that an increase in production volume may result in releases of the PMN substances to surface waters which may cause significant adverse environmental effects. Based on this information the PMN substances meet the concern criteria at § 721.170 (b)(4)(ii).
Recommended testing: The Agency has determined that an algal toxicity study (OPPTS 850.5400 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)) would help to characterize possible environmental effects of the substances. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations.
CFR citation: 40 CFR 721.4486.

PMN Number P–98–0823

Chemical name: Dodecanoic acid, 12-amino-.
CAS number: 693–57–2.
Effective date of section 5(e) consent order: August 18, 2000.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: This PMN substance will be used as a raw material for Nylon-12. EPA has identified a health concern for carcinogenicity via inhalation exposure based on analogy to 11-aminoundodecanoic acid which caused neoplastic nodules in the liver and transitional cell carcinomas in the urinary bladder of male rats.
Recommended testing: EPA has determined that a carcinogenicity study (OPPTS 870.4200 test guideline) would help to characterize the human health effects.
CFR citation: 40 CFR 721.2584.

PMN Number P–98–1125

Chemical name: (generic) Fatty acid, reaction product with substituted oxirane, formaldehyde-phenol polymer glycidyl ether, substituted propylamine and polythylenepolyamines.
CAS number: Not available.
Basis for action: The PMN substance will be used as a curing agent for epoxy coating systems. Based on structural analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 10 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters above 10 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)); a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), an algal toxicity study (OPPTS 850.5400 test guideline (public draft)), and a fish acute toxicity mitigated by humic acid ('HA') of 10 and 20 mg HA per liter diluent would help to characterize the environmental effects of the PMN substance. All studies should use the static methods and nominal concentrations.
CFR citation: 40 CFR 721.6181.

PMN Number P–98–1262

Chemical name: (generic) Reaction product of alkylene diamine, MD1, substituted carbomonocyclic amine and alkylamine.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on test data on structurally similar neutral organic chemicals, the PMN substance may cause toxicity to aquatic organisms. Based on the data, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that the results of the following testing would help characterize the environmental effects of the PMN substance: a Melting point (OPPTS 830.7200 test guideline), a fish early-life stage toxicity test (OPPTS 850.1400 test guideline (public draft)), and a daphnid chronic toxicity test

(OPPTS 850.1300 test guideline (public draft)). The fish and daphnid tests should be conducted with the flow-through methods and measured concentrations, and hardness of dilution water less than 180 mg/L as $CaCO_3$.
CFR citation: 40 CFR 721.2582.

PMN Number P–99–0044
Chemical name: Formaldehyde, polymer with phenol and 1,2,3-propanetriol, methylated.
CAS number: 209810–57–1.
Basis for action: The PMN substance will be used as a bonding agent for mineral aggregates. Based on structural analogy to phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 3 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface water above 3 ppb may cause adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an activated sludge sorption isotherm test (OPPTS 835.1110 test guideline), a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance. The fish and daphid tests should be performed under flow through methods and measured concentrations. The algal test should be performed under static methods and measured concentrations.
CFR citation: 40 CFR 721.3807.

PMN Number P–99–0510
Chemical name: (generic) Hexamethylenediamine adduct of substituted piperidinyloxy.
CAS number: Not available.
Effective date of section 5(e) consent order: December 24, 1999.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(i) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Based on submitted data on a 28-day subchronic study in rats, the PMN substance has been shown to cause potential liver toxicity, hemolytic effects, and immunotoxicity from inhalation exposure to the PMN substance.
Recommended testing: A 90-day subchronic oral study in rats with emphasis on hematology, the immune system, and male reproductive system (OPPTS 870.3100 test guideline) would help to characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing the 90-day subchronic oral study.
CFR citation: 40 CFR 721.6205.

PMN Number P–99–0669
Chemical name: Oxirane, methyl-, polymer with oxirane, mono(3,5,5,-trimethylhexyl) ether.
CAS number: 204336–40–3.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to nonionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration of 600 ppb in surface waters. Since significant environmental exposure is unlikely, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substances. The fish and daphnid tests should be conducted with the flow-through methods and measured concentrations, and the algal test should be conducted with static methods and measured concentrations.
CFR citation: 40 CFR 721.522.

PMN Number P–99–0848
Chemical name: (generic) Alkenyl carboxylate, metal salt.
CAS number: Not available.
Effective date of section 5(e) consent order: August 2, 2000.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(I) of TSCA based on a finding that this substance is expected to enter the environment in substantial quantities and may present an unreasonable risk of injury to the environment.
Toxicity concern: Based on analogy to anionic surfactants the PMN substance may be toxic to aquatic organisms at concentrations as low as 1 ppb.
Recommended testing: EPA has determined that an algal toxicity study (OPPTS 850.5400 test guideline (public draft)), an daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations and hardness of dilution water with less than 180 mg/L as $CaCO_3$. The algal test should be conducted with static methods and measured concentrations. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.2093.

PMN Number P–99–0873
Chemical name: (generic) Propanetriol polyalkylenepolyolamine aryl aldimine.
CAS number: Not available.
Basis for action: The PMN substance will be used as a binder for industrial coating. Based on additional information and structural analogy to schiff bases and aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an algal toxicity study (OPPTS 850.5400 test guideline (public draft)), a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with the flow-through methods and measured concentrations and the algal test should be conducted with static methods and measured concentrations.

CFR citation: 40 CFR 721.910.

PMN Number P–99–0874
Chemical name: (generic) Modified polymer of vinyl acetate and quaternary ammonium compound.
CAS number: Not available.
Basis for action: The PMN substance will be used as a modified polyvinyl alcohol. Based on submitted toxicity data for other high molecular weight, water swellable polymers, EPA has identified health concerns for inhalation exposure. Since significant inhalation exposure is unlikely when the substance is used as identified in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture of the PMN may lead to inhalation exposure which could cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day inhalation toxicity study with a 60-day holding period (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance. Attention should be given to the lungs, including histopathology of the lungs (inflamation, epithelial hyperplasia, and fibrosis), bronchoalvelar lavage (BAL) analysis for markers of lung injury, and lung burden analysis for clearance of the test material (EPA–748–R–96–001). The neurotoxicity components and examination of organs other than the lungs are not required.
CFR citation: 40 CFR 721.8658.

PMN Number P–99–0965
Chemical name: Furan, octafluorotetrahydro-.
CAS number: 773–14–8.
Basis for action: The PMN substance will be used as heat transfer agent. EPA believes that other uses of the PMN substance are likely and they have the potential for more widespread environmental exposure causing potential atmospheric changes. EPA is concerned that such atmospheric changes may contribute to global warming. Since significant environmental exposure is unlikely, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance may result in significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that infrared absorption, destruction of OH by radical and rate of production of HF for global warming would help to characterize the atmospheric effects of the PMN substance.
CFR citation: 40 CFR 721.3618.

PMN Number P–99–0990
Chemical name: Cobaltate (5-), bis[4-[[6-[(4-amino-6-chloro-1,3,5-triazin-2-yl)amio]-1-hydroxy-3-sulfo-2-naphthalenyl]azo]-3-hydroxy-7-nitro-1-naphthalenesulfonato(4-)]-, pentasodium.
CAS number: 91144–26–2.
Basis for action: Based on structural analogues and submitted test data, EPA has identified health concerns for carcinogenicity and mutagenicity from inhalation exposure to the PMN substance. Since significant worker exposure is unlikely because inhalation exposure is not expected when the substance is used with protective equipment as identified in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that uses of the substance other than as described in the PMN may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(B) and (b)(1)(i)(C).
Recommended testing: EPA has determined that a combined chronic toxicity/carcinogenicity study (OPPTS 870.4300 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.5283.

PMN Number P–99–1167
Chemical name: L-aspartic acid, *N,N'*-[(1E) - 1,2 - ethenediylbis[(3-sulfo-4, 1-phenylene)imino[6-(phenylamino)-1,3,5-triazine-4,2 - diyl]]]bis-, hexasodium salt.
CAS number: 205764–98–3.
Basis for action: The PMN substance will be used as a fluorescent whitener for coated paper. Based on submitted test data, EPA has identified concerns for liver effects. Since significant worker exposure is unlikely because there would not be significant inhalation exposure for the use identified in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance as described in the PMN present an unreasonable risk. EPA has determined, however, that uses of the substance in a powder form or domestic manufacture may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(i).
Recommended testing: EPA has determined that a 90-day subchronic oral toxicity study in rodents (OPPTS 870.3100 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.4575.

PMN Number P–99–1189
Chemical name: 2-propenoic acid, 2-methyl-, C_{11-14}-isoalkyl esters, C_{13}-rich.
CAS number: 85736–97–6.
Basis for action: The PMN substance will be used as a monomer for casting automotive parts adhesives or as an impregnation fluid. Based on analogy to structurally similar methacrylates and esters, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters above 1 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters above 1 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: The Agency has determined that the results of the following testing would help to characterize possible environmental effects of the substance: A ready biodegradability test (OPPTS 835.3110 test guideline); a fish early-life stage toxicity study (OPPTS 850.1400 test guideline (public draft)); a mysid chronic toxicity study (OPPTS 850.1350 test guideline (public draft)) for 21 days, flow-through methods and measured concentrations; and a saltwater algal toxicity study, tiers I and II (OPPTS 850.5400 test guideline (public draft)) with the static methods and measured concentrations.
CFR citation: 40 CFR 721.4792.

PMN Numbers P–99–1191 and P–99–1192
Chemical name: (generic) Rare earth phosphate.
CAS number: Not available.
Basis for action: The PMN substances will be used as phosphors. Based on structural analogy to soluble salts and test data for inorganic phosphates, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substances in surface waters. Since significant environmental exposure is not expected, as the substances are not released to

surface waters above 10 ppb, as described in the PMNs, EPA has not determined that the proposed manufacturing, processing, and use of the substances may present an unreasonable risk. EPA has determined, however, that other uses of the substances resulting in release to surface waters above 10 ppb may cause significant adverse environmental effects. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substances. A flow-through method with measured concentrations of the rare earth metal is recommended for the fish and daphnid study and the static method with measured concentrations for green algae. In addition, the test dilution water and/or test medium should have a measured hardness of less than 180.0 mg/L as $CaCO_3$ and a total organic carbon (TOC) concentration of less than 2.0 mg TOC/L.
CFR citation: 40 CFR 721.6005.

PMN Number P–99–1287
Chemical name: (generic) Alkylaminated polyolefin.
CAS number: Not available.
Basis for action: The PMN substance will be used as a gasoline fuel additive. Based on structural analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 40 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. These tests should be conducted with static methods and nominal concentrations, total organic carbon TOC of dilution water < 2.0 mg TOC/L, hardness of dilution water < 180.0 mg/L as $CaCO_3$, and stock solution adjusted to pH 7.0 with HCl.
CFR citation: 40 CFR 721.6178.

PMN Number P–99–1327
Chemical name: Propane, 1,1,1,3,3-pentachloro-.
CAS number: 23153–23–3.
Basis for action: The PMN substance will be used as an intermediate for hydrofluorocarbon production. Based on submitted test data, EPA has identified health concerns for carcinogenicity, liver and kidney toxicity. Based on submitted data on hexachloropropane, concern for immunotoxicity was identified. Also, the Agency identified concern for neurotoxicity, reproductive toxicity in males and females, and concern for irritation and lesions in nasal passages and respiratory passages based on test data on other structural analogues. Since significant worker exposure is unlikely when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(A), (b)(3)(i), and (b)(3)(ii).
Recommended testing: EPA has determined that a prenatal developmental toxicity study (OPPTS 870.3700 test guideline), carcinogenicity study (OPPTS 870.4200 test guideline), and a reproduction fertility effects study (OPPTS 870.3800 test guideline) by the inhalation route will help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.533.

PMN Number P–99–1346
Chemical name: Silane, triethoxy (3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyl)-.
CAS number: 51851–37–7.
Basis for action: The PMN substance will be used as in anti-graffiti coatings as described in the PMN. Based on structural analogy to alkoxysilanes, EPA has identified health concerns for lung toxicity. Since significant worker exposure is unlikely, when the substance is used with protective equipment as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation toxicity study in rats (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.9504.

PMN Number P–99–1366
Chemical name: (generic) 4,6-Disubstituted pyrimidine.
CAS number: Not available.
Basis for action: The PMN substance will be used as a starting material for synthesis of a chemical intermediate. EPA has identified health concerns for neurotoxicity and immunotoxicity (effects to the spleen) based on test data on an analogous substance, concerns for carcinogenicity and developmental toxicity based on the potential for the PMN substance to act as an arylating agent or as an antimetabolite. Since significant worker exposure is unlikely, when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture could result in exposures which may cause serious chronic and developmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(1)(i)(C).
Recommended testing: EPA has determined that a 90-day subchronic oral toxicity study in rodents (OPPTS 870.3100 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.8920.

PMN Number P–99–1399
Chemical name: (generic) Aromatic epoxide resin.
CAS number: Not available.
Basis for action: The PMN substance will be used as a thermoset resin. EPA has identified health concerns for mutagenicity, carcinogenicity, developmental toxicity, male reproductive effects, liver and kidney toxicity based on the epoxide groups. Since significant worker exposure is unlikely, when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic oral toxicity study in rodents with attention to pathology of the reproductive organs (OPPTS 870.3100 test guideline), a reproduction fertility effects study (OPPTS 870.3800 test guideline), and a combined chronic toxicity/carcinogenicity study (OPPTS 870.4300 test guideline) would help to characterize the health effects of the substance.
CFR citation: 40 CFR 721.2673.

PMN Number P–00–0045
Chemical name: (generic) Benzenediazonium, [[[[(substituted) azo]phenyl]sulfonyl]amino]-, coupled with aminophenol, diazotized aminobenzoic acid, diazotized (substituted) benzenesulfonic acid and naphthalenol.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on submitted test data, EPA has identified health concerns for methemoglobinemia. Since significant worker exposure is unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may cause significant adverse effects. EPA has determined, however, that domestic manufacture may result in serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic oral toxicity study in rodents (OPPTS 870.3100 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.5286.

PMN Number P–00–0067
Chemical name: (generic) Alkyl heteropolycyclic-aniline.
CAS number: Not available.
Basis for action: The PMN substance will be used as an industrial intermediate. Based on test data and on structural analogy to anilines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the substance is not released to surface water above 1 ppb as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface above 1 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).
Recommended testing: EPA has determined that a daphnid chronic toxicity test (OPPTS 850.1300 test guideline (public draft)), a fish early-life stage toxicity test (OPPTS 850.1400 test guideline (public draft)) conducted with flow-through methods and measured concentrations, dilution water hardness < 180.0 mg/L as $CaCO_3$, and a Porous Pot (OPPTS 835.3220 test guideline) would help to characterize the environmental effects.
CFR citation: 40 CFR 721.4136.

PMN Number P–00–0094
Chemical name: (generic) Salt of a substituted sulfonated aryl azo compound.
CAS number: Not available.
Basis for action: The PMN substance will be used as a colorant for coating compositions. EPA has identified health concerns for testicular effects, blood effects, and liver toxicity based on submitted test data. Since significant worker exposure is unlikely, when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined however, that domestic manufacture could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(i).
Recommended testing: EPA has determined that a 90-day subchronic oral toxicity study in rodents (OPPTS 870.3100 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.9597.

PMN Number P–00–0108
Chemical name: (generic) Alkoxyamino-alkyl-coumarin.
CAS number: Not available.
Basis for action: The PMN substance will be used as a chemical tracer. Based on structural analogy to coumarins, EPA has identified health concerns for developmental toxicity and carcinogenicity. Since significant worker exposure is unlikely when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(1)(i)(C).
Recommended testing: EPA has determined that a 90-day subchronic oral study in rodents (OPPTS 870.3100 test guideline) and a prenatal developmental toxicity study (OPPTS 870.3700 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.2155.

PMN Number P–00–0202
Chemical name: (generic) Reaction product of substituted aromatic diol, formaldehyde and alkanolamine, propoxylated.
CAS number: Not available.
Basis for action: The PMN substance will be used as foam insulation. Based on structural analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface water may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. All tests should be conducted with static methods and nominal concentrations, dilution water total organic carbon TOC < 2.0 mg TOC/L dilution water hardness < 180.0 mg/L as $CaCO_3$, and stock solution adjusted to pH 7.0.
CFR citation: 40 CFR 721.8085.

PMN Number P–00–0330
Chemical name: Oxirane, [[[(1R,2S,5R)-5-methyl-2-(1-methylethyl)cyclohexyl]oxy]methyl]-.
CAS number: 249297–16–3.

Basis for action: The PMN substance will be used as a chemical intermediate. Based on data for monoepoxides, EPA has identified health concerns for mutagenicity, carcinogenicity, male reproductive toxicity, developmental toxicity, and liver and kidney toxicity for the epoxide. Also, based on analogy to epoxides, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 30 ppb of the PMN substance in surface waters. Since significant worker and environmental exposure is unlikely when the substance is used as described in the PMN, EPA has not determined that the manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as an intermediate could result in exposures which may cause serious health effects and significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii), (b)(1)(i) (C), and (b)(4)(ii).
Recommended testing: EPA has determined that a 90-day subchronic oral toxicity study in rodents (OPPTS 870.3100 test guideline), with attention to pathology of the reproductive organs, and a carcinogenicity study (OPPTS 870.4200 test guideline) would help to characterize the health effects of the substance. In addition, the following acute aquatic toxicity tests would help to characterize the environmental effects. A fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)). The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations.
CFR citation: 40 CFR 721.5590.

PMN Numbers P–00–0333 and P–00–0334
Chemical name: (generic) Salt of an acrylate copolymer.
CAS number: Not available.
Basis for action: The PMN substances will be used as an additive. EPA has identified concerns for lung toxicity and lung tumors based on data on certain high molecular weight polymers. Since significant worker exposure is unlikely as inhalation exposure is not expected for the uses described in the PMNs, EPA has not determined that the proposed manufacturing, processing, and use of the substances may present an unreasonable risk. EPA has determined, however, that uses of the substances in a solid form may cause serious health effects. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day inhalation toxicity study with a 60-day holding period (OPPTS 870.3465 test guideline) would help characterize the human health effects of the PMN substance. Attention should be given to the lungs, including histopathology of the lungs (inflamation, epithelial hyperplasia, and fibrosis), bronchoalvelar lavage (BAL) analysis for markers of lung injury, and lung burden analysis for clearance of the test material (EPA–748–R–96–001). The neurotoxicity components and examination of organs other than the lungs are not required.
CFR citation: 40 CFR 721.338.

PMN Number P–00–0351
Chemical name: (generic) Amino-hydroxy sulfonaphthylazo-disubstituted phenyl azo benzene carboxylate salt.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on submitted data on a 28-day study in rats with a no observed adverse effect level (NOAEL) of 25 mg/kg/day, EPA has identified concerns for liver and kidney effects. Additionally, based on analogy of the azo reduction product of the PMN substance, EPA has concerns for carcinogenicity, developmental toxicity, and immunotoxicity. Since significant worker exposure is unlikely as inhalation exposure is not expected for the use described in the PMN, EPA has not determined that manufacturing, processing, and use of the substance as described in the PMN may present an unreasonable risk. EPA has determined, however, that use of the substance as a solid may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii), (b)(3)(iii), and (b)(1)(i)(D).
Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two species (OPPTS 870.3700 test guideline) and an Ames assay with the Prival modification and a concurrent positive control (OPPTS 870.5100 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.984.

PMN Number P–00–0353
Chemical name: (generic) Alkoxylated aliphatic diisocyanate allyl ether.
CAS number: Not available.
Basis for action: The PMN substance will be used as an additive for surface coatings and for plastics and plastic surfaces. Based on structural analogy to esters and allylic and vinyl ethers, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 9 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the PMN substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish chronic toxicity study (OPPTS 850.1400 test guideline (public draft)), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations, dilution water hardness less than 180.0 mg/L as $CaCO_3$. The algal test should be conducted with static methods and measured concentrations.
CFR citation: 40 CFR 721.9952.

PMN Numbers P–00–0364 and P–00–0365
Chemical name: (generic) Copper complex of (substituted sulfonaphthyl azo substituted phenyl) disulfonaphthyl azo, amine salt.
CAS number: Not available.
Basis for action: The PMN substances will be used as described in the PMNs. Based on analogy to structurally similar substances, EPA has identified concerns for mutagenicity, carcinogenicity, and developmental toxicity. Since significant worker exposure is unlikely as inhalation exposure is not expected for the uses described in the PMNs, EPA has not determined that the proposed manufacturing, processing, and use of the substances may present an unreasonable risk. EPA has determined, however, that use of the substances as a powder may cause serious health effects. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(3)(ii) and (b)(1)(i)(C).
Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two species (OPPTS 870.3700 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.2577.

PMN Number P–00–0420
Chemical name: (generic) Substituted phenylazophenylazo phenol.
CAS number: Not available.
Basis for action: The PMN substance will be used as a colorant. Based on structural analogy to phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface water may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations. Dilution water hardness less than 180.0 mg/L as $CaCO_3$.
CFR citation: 40 CFR 721.843

PMN Number P–00–0469
Chemical name: Glycine, *N*-(carboxymethyl)-*N*-dodecyl-, monosodium salt.
CAS number: 141321–68–8.
Basis for action: The PMN substance will be used as a surfactant. Based on structural analogy to alkyl amphoteric surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 30 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 30 ppb, as described in the PMN, EPA has not determined that the proposed manu-facturing, processing, and use of the substance may present an unreasonable environmental risk. EPA has determined, however, that other uses of the substance resulting in release to surface water above 30 ppb may cause significant adverse environmental effects. Based on this infor-mation the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that the following acute aquatic toxicity tests would help to characterize the environmental effects: a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)). The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations, dilution water total organic carbon TOC < 2.0 mg TOC/L dilution water hardness < 180.0 mg/L as $CaCO_3$, and stock solution adjusted to pH 7.0.
CFR citation: 40 CFR 721.3848.

PMN Number P–00–0490
Chemical name: (generic) Substituted acrylamides and acrylic acid copolymer.
CAS number: Not available.
Basis for action: The PMN substance will be used as a delivery substrate. EPA has identified concerns for lung toxicity and carcinogenicity if the substance is inhaled based on data for certain high molecular weight polymers. Since significant worker exposure is unlikely as inhalation exposure to worker is not expected for the use described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substances may present an unreasonable risk. EPA has determined, however, that domestic manufacture, or processing and use of the substance in a powder form may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b(1)(i)(C).
Recommended testing: EPA has determined that a 90-day inhalation toxicity study with a 60-day holding period (OPPTS 870.3465 test guideline) would help characterize the human health effects of the PMN substance. Attention should be given to the lungs, including histopathology of the lungs (inflamation, epithelial hyperplasia, and fibrosis), bronchoalvelar lavage (BAL) analysis for markers of lung injury, and lung burden analysis for clearance of the test material (EPA–748–R–96–001). The neurotoxicity components and examination of organs other than the lungs are not required.
CFR citation: 40 CFR 721.321.

PMN Number P–00–0542
Chemical name: (generic) Substituted phenols and formaldehyde polymer, alkylated.
CAS number: Not available.
Basis for action: The PMN substance will be used as a resin for can and tube coatings. Based on structural analogy to polyphenol reaction products, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 4 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may prevent an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentration. The algal test should be conducted with static methods and measured concentration. Dilution water hardness < 180 mg/L as $CaCO_3$.
CFR citation: 40 CFR 721.3812.

PMN Number P–00–0559
Chemical name: (generic) Methylated-para-rosaniline salt of a trisulfonated triarylmethane dye.
CAS number: Not available.
Basis for action: The PMN substance will be used as a colorant for inks. EPA has identified health concerns for carcinogenicity and developmental toxicity based on analogy to gentian violet. Since significant worker exposure is unlikely when the substance is used as described in the PMN, EPA has not determined that the proposed processing and use of the substance may present a unreasonable risk. EPA has determined however, that domestic manufacturing could result in exposures which may cause serious health effects. Also, based on analogy to cationic dyes. EPA is also concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the

PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 2 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable environmental risk. EPA has determined, however, that other uses of the substance resulting in release to surface water above 2 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(ii), and (b)(4)(ii).
Recommended testing: EPA has determined that the following acute aquatic toxicity tests would help to characterize the environmental effects: a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)). The fish and daphnid tests should be conducted with flow-through methods and measured concentrations, dilution water total organic carbon TOC < 2.0 mg TOC/L. The algal test should be conducted with static methods and measured concentration. Dilution water hardness < 180.0 mg/L as $CaCO_3$. EPA has also determined that a prenatal developmental toxicity study by the oral route in two-species (OPPTS 870.3700 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.9520.

PMN Number P–00–0618
Chemical name: (generic) Substituted hydroxyalkane acetate.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. EPA has concerns for liver toxicity, kidney toxicity, and developmental toxicity based on a 28-day subchronic inhalation study in rats and a developmental toxicity study in rats for an analog of the PMN material; EPA identified concerns for neurotoxicity and carcinogenicity based on analog data. Since significant worker exposure is unlikely as inhalation exposure is not expected for the use described in the PMN, EPA has not determined that manufacturing, processing, and use of the substance as described in the PMN may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(3)(i), (b)(3)(ii), and (b)(1)(i)(C).
Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two species (OPPTS 870.3700 test guideline) and a 90-day inhalation toxicity study with a 60-day holding period (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.532.

PMN Number P–00–0626
Chemical name: (generic) Acrylate of polymer based on isophorone diisocyanate.
CAS number: Not available.
Basis for action: The PMN substance will be used as an additive for inks and coatings. Based on structural analogy to acrylates, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 3 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable environmental risk. EPA has determined, however, that other uses of the substance resulting in release to surface water above 3 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that the following acute aquatic toxicity tests would help to characterize the environmental effects: a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)). The fish and daphnid tests should be conducted with flow-through methods and measured concentrations The algal test should be conducted with static methods and measured concentrations. Dilution water hardness < 180.0 mg/L as $CaCO_3$.
CFR citation: 40 CFR 721.463.

PMN Number P–00–0637
Chemical name: Methylium, triphenyl-, tetrakis(pentafluorophenyl)borate (l-).
CAS number: 136040–19–2.
Basis for action: The use of the substance is as described in the PMN. Based on structural analogy to organoborates, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations. Dilution water hardness less than 180.0 mg/L as $CaCO_3$.
CFR citation: 40 CFR 721.5454.

PMN Number P–00–0638
Chemical name: (generic) Alkali metal salt of halogenated organoborate.
CAS number: Not available.
Basis for action: The use of the substance is as described in the PMN. Based on structural analogy to organoborates, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 3 ppb of the PMN substances in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations. Dilution water hardness less than 180.0 mg/L as $CaCO_3$.
CFR citation: 40 CFR 721.5452.

PMN Number P–00–0691
Chemical name: Amides, from ammonium hydroxide - maleic anhydride polymer and hydrogenated tallow alkyl amines, sodium salts, compds. with ethanolamine.
CAS number: 208408–03–1.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to anionic surfactants. EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 80 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 80 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, other uses of the substance resulting in release to surface waters above 80 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that the following acute aquatic toxicity tests would help to characterize the environmental effects: a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)). The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations. Dilution water hardness < 180.0 mg/L as $CaCO_3$.
CFR citation: 40 CFR 721.6183.

PMN Number P–00–0698
Chemical name: (generic) Lithium salt of a sulfophenyl azo phenyl azo disulfostilbene.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on analogy to structurally similar substance, EPA has identified concerns for liver toxicity, developmental toxicity, neurotoxicity, and blood toxicity for the aromatic amine azo reduction product. Since significant worker exposure is unlikely as inhalation exposure is not expected for the uses described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance as a solid may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(iii).
Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two species (OPPTS 870.3700 test guideline) and a 90-day subchronic oral toxicity study in rodents (OPPTS 870.3100 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.9538.

PMN Number P–00–0738
Chemical name: Formaldehyde, reaction products with 1,3-benzenedimethanamine and bisphenol A.
CAS number: 259871–68–6.
Basis for action: The PMN substance will be used as coatings for railcars and marine vessels. Based on structural analogy to phenols and aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 20 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance to aquatic organisms and the results of a sediment biodegradation isotherm test (OPPTS 835.1110 test guideline) would help to characterize the environmental fate of the PMN substance.
CFR citation: 40 CFR 721.3805.

PMN Number P–00–0789
Chemical name: 1,4-Benzedicarboxylic acid, dimethyl ester, polymer with 1,4 - butanediol, cyclized.
CAS number: 263244–54–8.
Basis for action: The PMN substance will be used as a curable thermoplastic resin. EPA has identified health and environmental concerns because the substance is potentially a persistent, bioaccumulative, and toxic (PBT) chemical, EPA estimates that the PMN substance will persist in the environment more than two months and estimates a bioaccumulation factor of greater than or equal to 1,000. Also based on structural analogy to esters, EPA expects toxicity to aquatic organisms at surface water concentrations as low as 9 ppb. Since significant environmental exposure is not expected as the substance is not released to surface waters, described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface water may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that the results of the tiered testing as described in the New Chemicals Program's PBT Policy Statement (63 FR 60194; November 4, 1999) (FRL–6097–7) would help to characterized the properties of the substance. EPA has also determined that the following aquatic toxicity tests: a fish chronic toxicity study (OPPTS 850.1400 test guideline (public draft)), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations, Dilution water hardness < 180.0 mg/L as $CaCO_3$.
CFR citation: 40 CFR 721.990.

PMN Number P–00–0803
Chemical name: (generic) 2,7-Naphthalenedisulfonic acid, 5-[[4-chloro-6-[substituted] amino]-1,3,5-

triazin-2-yl]amino]-4-hydroxy-3-[(1-sulfo-2-naphthalenyl)azo]-, trisodium salt.
CAS number: Not available.
Basis for action: The PMN substance will be used as a textile dye. EPA has identified health concerns for mutagenicity and developmental toxicity based on one of the substituents on an azo reduction product. Since significant worker exposure is unlikely when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(iii).
Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in rats (OPPTS 870.3700 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.5262.

PMN Number P–00–0806
Chemical name: 1,3,6-Naphthalenetrisulfonic acid, 7-[[2-[(aminocarbonyl)amino]-4-[[4-[[2-[2-(ethenylsulfonyl)ethoxy]ethyl]amino]-6-fluoro-1,3,5-triazin-2-yl]amino]phenyl]azo], trisodium salt.
CAS number: 106359–91–5.
Basis for action: The PMN substance will be used as a textile dye. Based on submitted test data, EPA has identified health concerns for mutagenicity, dermal sensitization and possible irreversible cornea staining; developmental toxicity and carcinogenicity based on one of the substituents on an azo reduction product. Since significant worker exposure is unlikely when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(i), (b)(l)(i)(D), and (b)(3)(iii).
Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in rats (OPPTS 870.3700 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.5260.

PMN Number P–00–0816
Chemical name: (generic) Alkyl dialkylamino phenylsulfonyl alkenoate.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on test data for structurally similar compounds, EPA has identified health concerns for kidney and liver toxicity. Since significant worker exposure is unlikely when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(i). Also, based on structural analogy to aliphatic amines, acrylates, and allylic and vinyl sulfones, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a 90-day subchronic oral study in rats (OPPTS 870.3100) would help characterize the human health effects of the PMN substance. Also the following aquatic toxicity test would help characterize the environmental effects of the PMN substance: a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)). The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations, dilution water total organic carbon TOC < 2.0 mg TOC/L dilution water hardness < 180.0 mg/L as $CaCO_3$.
CFR citation: 40 CFR 721.648.

PMN Number P–00–0827
Chemical name: 1-propanol, 3-propoxy-.
CAS number: 4161–22–2.
Basis for action: The PMN substance will be used as described in the PMN. EPA has identified health concerns for liver toxicity based on submitted test data and neurotoxicity based on the solvent properties of the substance. Since significant worker exposure is unlikely, when the substance is used with protective equipment as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN including handling the material without the use of impervious gloves could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(i) and (b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic oral study (OPPTS 870.3100 test guideline), and a prenatal developmental toxicity study (OPPTS 870.3700 test guideline) would help to characterize the health effects of the substance.
CFR citation: 40 CFR 721.525.

PMN Number P–00–0922
Chemical name: Borate(1-), tris(acetato-.kappa.O)hydro-, sodium, (T-4)-.
CAS number: 56553–60–7.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to other boron compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 300 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 300 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface water above 300 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations. Dilution water hardness less than 180.0 mg/L as $CaCO_3$.
CFR citation: 40 CFR 721.1880.

PMN Number P–00–0993
Chemical name: (generic) Substituted 6,6'-(1-methylethylidene)bis[3,4-dihydro-3-phenyl-1,3-benzoxazine].
CAS number: Not available.
Basis for action: The PMN substance will be used as resin for structural composites and electronic laminates. EPA has identified health and environmental concerns because the substance is potentially a PBT chemical. Since significant environmental exposure is not expected, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that the results of the tiered testing as described in the New Chemicals Program's PBT Category (63 FR 60194; November 4, 1999) would help to characterized the properties of the substance. EPA has also determined that the results of the following aquatic toxicity tests: a fish chronic toxicity study (OPPTS 850.1400 test guideline (public draft)), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)), would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations, dilution water hardness < 180.0 mg/L as $CaCO_3$. The algal test should be conducted with static methods and measured concentrations.
CFR citation: 40 CFR 721.1767

PMN Number P–00–1086
Chemical name: (generic) Silyl amine, potassium salt.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface waters as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations, dilution water total organic carbon TOC < 2.0 mg TOC/L dilution water hardness < 180.0 mg/L as $CaCO_3$.
CFR citation: 40 CFR 721.638.

PMN Number P–00–1087
Chemical name: (generic) Di-alkyl borane.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to organoborane compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 200 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 200 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters above 200 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentration. The algal test should be conducted with static methods and measured concentration. Dilution water hardness < 180 mg/L as $CaCO_3$.
CFR citation: 40 CFR 721.1852.

PMN Number P–00–1089
Chemical name: (generic) Alkali metal alkyl borohydride.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to organoborane compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 300 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentration. The algal test should be conducted with static methods and measured concentration. Dilution water hardness < 180 mg/L as $CaCO_3$.
CFR citation: 40 CFR 721.1878.

PMN Number P–00–1132
Chemical name: (generic) Siloxanes and silicones, aminoalkyl, fluorooctyl, hydroxy-terminated salt.
CAS number: Not available.
Basis for action: The PMN substance will be used in anti-graffiti systems as described in the PMN. Based on structural analogy to perfluoro alkyl polycationic polymers, EPA has identified health concerns for lung toxicity from inhalation exposure. Since

significant worker exposure is unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may cause significant adverse effects. EPA has determined, however, that use of the PMN substance other than as described in the PMN could result in exposures which may cause serious health effects. In addition, EPA has identified health concerns for potential incineration products for the PMN substance based on analogy to perfluorinated octane sulfonate (PFOS) and perfluorinated octanoic acid (PFOA). These incineration products are PBT. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that a 90-day inhalation toxicity study in rats with a 60-day holding period (OPPTS 870.3465 test guideline) would help characterize the human health effects of the PMN substance. Special attention should be given to histopathology (inflammation and cell proliferation) of the lung tissues and to various parameters of the bronchoalveolar lavage fluid (BALF), e.g., marker enzyme activities, total protein content, total cell count, cell differential, and cell viability. It is not necessary to look at internal organs. The Agency has also determined that the following tests would help characterize fate and ecotoxicity of the PMN substance: A Decomposition Kinetics by Thermogravimeter (ASTM E1641), a Compositional Analysis by Thermogravimeter (ASTM E1131), and a Laboratory "Burn" test - protocol to be agreed upon by EPA and the Company. The purpose of this test is to determine the disposition of the material and to identify degradates, especially the presence of components that can lead to the formation of perfluofo alkyl carboxylic acid after burning or incineration.

CFR citation: 40 CFR 721.9502.

PMN Number P–00–1195

Chemical name: Xanthylium, 9-(2-(ethoxycarbonyl)phenyl)-3,6-bis(ethylamino)-2,7- dimethyl-, ethyl sulfate.

CAS number: 26694–69–9.

Basis for action: The PMN substance will be used as a dye for complex basic dye pigment manufacture. Based on submitted test data for an analog, EPA has identified health concerns for toxic effects to the liver and heart. Since significant worker exposure is unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture or use of the PMN substance other than as an intermediate could result in serious health effects. Also, based on structural analogy to cationic dyes, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected when the PMN substance is used as described in the PMN, EPA has not determined that the proposed use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(4)(ii).

Recommended testing: EPA has determined that an acute oral toxicity study (40 CFR part 799.9110(d)(1)(i)(A)), a Salmonella typhimurium reverse mutation assay (OPPTS 870.5100 test guideline), a 28-day oral toxicity study Organization for Economic Cooperation and Development (OECD) guideline no. 407 or OPPTS 870.3050 test guideline), and an *in vivo* mammalian cytogenetics test by the intraperitoneal (i.p.) route: micronucleus assay (OPPTS 870.5395 test guideline) would help to characterize the human health effects of the PMN substance. EPA has also determined that a fish acute toxicity study (OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentration. The algal test should be conducted with static methods and measured concentration. Dilution water hardness < 180 mg/L as $CaCO_3$.

CFR citation: 40 CFR 721.2465.

PMN Number P–01–0432

Chemical name: (generic) Bis heterocyclic phenylene derivative.

CAS number: Not available.

Basis for action: The PMN substance will be used as a reactive modifier for polymeric substances. EPA has identified health concerns for neurotoxicity, developmental toxicity, mutagenicity, carcinogenicity, lung and liver toxicity, and sensitization based on test data. Since significant worker exposure is unlikely because there would not be significant inhalation exposure for the use identified in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance as described in the PMN present an unreasonable risk. EPA has determined, however, that an increase in production volume over that described in the PMN could result in significant exposure to human health. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(1)(i)(A).

Recommended testing: EPA has determined that a mouse micronucleus test by the i.p. route (OPPTS 870.5395 test guideline) and a 28-day oral toxicity in rats OECD guideline number 407 or (OPPTS 870.3050) with a Functional Observational Battery (FOB) would help to characterize the health effects of the substance. If the above tests indicate a health concern, then the following tests may be necessary to qualify the potential health effects: a 90-day subchronic oral study in rats (OPPT 870.3100 test guideline), a prenatal development toxicity study by oral route in two species (OPPTS 870.3700 test guideline), a reproduction and fertility effects (OPPTS 870.3800 test guideline), and a carcinogenicity study (OPPTS 870.4200 test guideline).

CFR citation: 40 CFR 721.5925.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for 3 of the 62 substances, regulation was warranted under section 5(e) of TSCA, pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The basis for such findings is outlined in Unit III. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters; the SNUR provisions for these substances designated herein are consistent with the provisions of the TSCA section 5(e) consent orders.

In the other 59 cases for which the proposed uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure that:

1. EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins.

2. EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use.

3. When necessary, to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs.

4. All manufacturers, importers, and processors of the same chemical substance which is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the substance is listed on the TSCA Inventory. Manufacturers, importers, and processors are responsible for ensuring that a new chemical substance subject to a final SNUR is listed on the TSCA Inventory.

V. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), this rule will be effective May 27, 2003, unless EPA receives a written notice by April 28, 2003 that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a document to withdraw the direct final SNUR for the specific substance to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance providing a 30-day comment period.

This action establishes SNURs for a number of chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a TSCA section 5(e) consent order requires or recommends certain testing, Unit III. lists those recommended tests.

However, EPA has established production limits in the TSCA section 5(e) consent orders for several of the substances regulated under this rule, in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier consent orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit III. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on:

1. Human exposure and environmental release that may result from the significant new use of the chemical substances.

2. Potential benefits of the substances.

3. Information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2. EPA is required to keep this information confidential to protect the CBI of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.1725(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus, the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.1725(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. TSCA section 5(e) consent orders have been issued for 3 substances and notice submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received an NOC and the substance has not been

added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 41 of the 62 substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that any of the significant new uses described in the following regulatory text are ongoing.

As discussed in the **Federal Register** of April 24, 1990, EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the official public docket.

X. Statutory and Executive Order Reviews

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that proposed or final SNURs are not a "significant regulatory action" subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive Order.

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a "significant new use." By definition of the word "new," and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN, no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 900 SNURs, the Agency has received fewer than 25 SNUNs. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of a SNUN (see Unit IX.), are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented it's general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

Based on EPA's experience with proposing and finalizing SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

This rule does not have tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), do not apply to this rule.

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a final rule may take effect, the Agency promulgating it must submit a final rule report, which includes a copy of the final rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 17, 2003.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. By adding new § 721.321 to subpart E to read as follows:

§ 721.321 Substituted acrylamides and acrylic acid copolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted acrylamides and acrylic acid copolymer (PMN P–00–0490) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f), (v)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 3. By adding new § 721.338 to subpart E to read as follows:

§ 721.338 Salt of an acrylate copolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as salt of an acrylate copolymer (PMNs P–00–0333 and P–00–0334) are subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(2), (w)(2), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 4. By adding new § 721.463 to subpart E to read as follows:

§ 721.463 Acrylate of polymer based on isophorone diisocyanate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as acrylate of polymer based on isophorone diisocyanate (PMN P–00–0626) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), (c)(4) (N=3 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 5. By adding new § 721.465 to subpart E to read as follows:

§ 721.465 Alkoxylated alkylpolyol acrylates, adduct with alkylamine (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances identified generically as alkoxylated alkylpolyol acrylates, adduct with alkylamine (PMNs P–98–0082, P–98–0083, and P–98–0084 are subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 6. By adding new § 721.522 to subpart E to read as follows:

§ 721.522 Oxirane, methyl-, polymer with oxirane, mono(3,5,5,-trimethylhexyl) ether.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as oxirane, methyl-, polymer with oxirane, mono(3,5,5,-trimethylhexyl) ether (PMN P–99–0669; CAS No. 204336–40–3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 7. By adding new § 721.525 to subpart E to read as follows:

§ 721.525 1-propanol, 3-propoxy-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-propanol, 3-propoxy- (PMN P–00–0827; CAS No. 4161–22–2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(2)(i) and (a)(3).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (j).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 8. By adding new § 721.532 to subpart E to read as follows:

§ 721.532 Substituted hydroxyalkane acetate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted hydroxyalkane acetate (PMN P–00–0618) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 9. By adding new § 721.533 to subpart E to read as follows:

§ 721.533 Propane, 1,1,1,3,3-pentachloro-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as propane, 1,1,1,3,3-pentachloro- (PMN P–99–1327; CAS No. 23153–23–3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 10. By adding new § 721.638 to subpart E to read as follows:

§ 721.638 Silyl amine, potassium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as silyl amine, potassium salt (PMN P–00–1086) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 11. By adding new § 721.648 to subpart E to read as follows:

§ 721.648 Alkyl dialkylamino phenylsulfonyl alkenoate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl dialkylamino phenylsulfonyl alkenoate (PMN P–00–0816) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 12. By adding new § 721.843 to subpart E to read as follows:

§ 721.843 Substituted phenylazophenylazo phenol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted phenylazophenylazo, phenol (PMN P–00–0420) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 13. By adding new § 721.910 to subpart E to read as follows:

§ 721.910 Propanetriol polyalkylenepolyolamine aryl aldimine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as propanetriol polyalkylenepolyolamine aryl aldimine (PMN P–99–0873) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 14. By adding new § 721.984 to subpart E to read as follows:

§ 721.984 Amino-hydroxy sulfonaphthylazo-disubstituted phenyl azo benzene carboxylate salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as amino-hydroxy sulfonaphthylazo-disubstituted phenyl azo benzene carboxylate salt (PMN P–00–0351) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(2), (w)(2), (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 15. By adding new § 721.990 to subpart E to read as follows:

§ 721.990 1,4-Benzedicarboxylic acid, dimethyl ester, polymer with 1,4 - butanediol, cyclized.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,4-benzedicarboxylic acid, dimethyl ester, polymer with 1,4 - butanediol, cyclized (PMN P–00–0789; CAS No. 263244–54–8) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 16. By adding new § 721.1767 to subpart E to read as follows:

§ 721.1767 Substituted 6,6'-(1-methylethylidene)bis[3,4-dihydro-3-phenyl-1,3-benzoxazine] (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted 6,6'-(1-methylethylidene)bis[3,4-dihydro-3-phenyl-1,3-benzoxazine] (PMN P–00–0993) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 17. By adding new § 721.1852 to subpart E to read as follows:

§ 721.1852 Di-alkyl borane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as di-alkyl borane (PMN P–00–1087) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=200 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 18. By adding new § 721.1878 to subpart E to read as follows:

§ 721.1878 Alkali metal alkyl borohydride (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkali metal alkyl borohydride (PMN P–00–1089) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 19. By adding new § 721.1880 to subpart E to read as follows:

§ 721.1880 Borate(1-), tris(acetato-.kappa.O)hydro-, sodium, (T-4)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as borate(1-), tris(acetato-.kappa.O)hydro-, sodium, (T-4)- (PMN P–00–0922; CAS No. 56553–60–7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=300 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 20. By adding new § 721.2093 to subpart E to read as follows:

§ 721.2093 Alkenyl carboxylate, metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkenyl carboxylate, metal salt (PMN P–99–0848) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (an emulsifier for metalworking fluids) and (q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 21. By adding new § 721.2155 to subpart E to read as follows:

§ 721.2155 Alkoxyamino-alkyl-coumarin (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkoxyamino-alkyl-coumarin. (PMN P–00–0108) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 22. By adding new § 721.2465 to subpart E to read as follows:

§ 721.2465 Xanthylium, 9-(2-(ethoxycarbonyl)phenyl)-3,6-bis(ethylamino)-2,7-dimethyl-, ethyl sulfate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as xanthylium, 9-(2-(ethoxycarbonyl)phenyl)-3,6-bis(ethylamino)-2,7-dimethyl-, ethyl sulfate (PMN P–00–1195; CAS No. 26694–69–9) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (j) (a basic dye for complex basic dye pigment manufacture).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 23. By adding new § 721.2577 to subpart E to read as follows:

§ 721.2577 Copper complex of (substituted sulfonaphthyl azo substituted phenyl) disulfonaphthyl azo, amine salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as copper complex of (substituted sulfonaphthyl azo substituted phenyl) disulfonaphthyl azo, amine salt (PMNs P–00–0364 and P–00–0365) are subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (w)(1), (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 24. By adding new § 721.2582 to subpart E to read as follows:

§ 721.2582 Reaction product of alkylene diamine, MDI, substituted carbomonocyclic amine and alkylamine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as reaction product of alkylene diamine, MDI, substituted carbomonocyclic amine and alkylamine (PMN P–98–1262) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 25. By adding new § 721.2584 to subpart E to read as follows:

§ 721.2584 Dodecanoic acid, 12-amino-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as dodecanoic acid, 12-amino- (PMN P–98–0823; CAS No. 693–57–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (b) (concentration set at 0.1 percent), and (g). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the NCEL provision listed in the 5(e) consent order for this substance. The NCEL is 1.0 mg/m^3 as an 8-hour time-weighted average verified by actual monitoring data.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e), (f), (g)(1)(ii), (g)(1)(vii), (g)(2)(ii), and (g)(2)(iv).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (g), (r) (6,000,000 kg.), and a carcinogenicity study (OPPTS 870.4200). A person may not manufacture or import the substance beyond the aggregate production volume limit, unless that person conducts this study on the substance and submits all final reports and underlying data in accordance with the procedures and criteria specified in paragraphs (a)(2)(iii)(A), (a)(2)(iii)(B), (a)(2)(iii)(C), and (a)(2)(iii)(D) of this section.

(A) Each study required to be performed pursuant to this section must be scientifically valid. *Scientifically valid* means that the study was conducted according to:

(*1*) The test guidelines specified in paragraph (a)(2)(iii) of this section.

(*2*) An EPA-approved protocol.

(*3*) TSCA Good Laboratory Practice Standards at 40 CFR part 792.

(*4*) Using methodologies generally accepted at the time the study is initiated.

(*5*) Any deviation from these requirements must be approved in writing by EPA.

(B) Before starting to conduct any of the studies in paragraph (a)(2)(iii) of this section, the person must obtain approval of test protocols from EPA by submitting written protocols. EPA will respond to the person within 4 weeks of receiving the written protocols. Published test guidelines specified in paragraph (a)(2)(iii) of this section (e.g., 40 CFR part 797 or part 798) provide general guidance for development of test protocols, but are not themselves acceptable protocols.

(C) The person shall:

(*1*) Conduct each study in good faith with due care.

(*2*) Promptly furnish to EPA the results of any interim phase of each study.

(*3*) Submit, in triplicate (with an additional sanitized copy, if confidential business information is involved), the final report of each study and all underlying data ("the report and data") to EPA no later than 14 weeks prior to exceeding the applicable production volume limit. The final report shall contain the contents specified in 40 CFR 792.185.

(D)(*1*) Except as described in paragraph (a)(2)(iii)(D)(*2*) of this section, if, within 6 weeks of EPA's receipt of a test report and data, the person receives written notice that EPA finds that the data generated by a study are scientifically invalid, the person is prohibited from further manufacture and import of the PMN substance beyond the applicable production volume limit.

(*2*) The person may continue to manufacture and import the PMN substance beyond the applicable production limit only if so notified, in writing, by EPA in response to the person's compliance with either of the following paragraphs (a)(2)(iii)(D)(*2*)(*i*) or (a)(2)(iii)(D)(*2*)(*ii*) of this section.

(*i*) The person may reconduct the study. If there is sufficient time to reconduct the study and submit the report and data to EPA at least 14 weeks before exceeding the production limit as required by paragraph (a)(2)(iii)(C)(*3*) of this section, the person shall comply with paragraph (a)(2)(iii)(C)(*3*) of this section. If there is insufficient time for the person to comply with paragraph (a)(2)(iii)(C)(*3*) of this section, the person may exceed the production limit and shall submit the report and data in triplicate to EPA within a reasonable period of time, all as specified by EPA in the notice described in paragraph (a)(2)(iii)(D)(*1*) of this section. EPA will respond to the person in writing, within 6 weeks of receiving the person's report and data.

(*ii*) The person may, within 4 weeks of receiving from EPA the notice described in paragraph (a)(2)(iii)(D)(*1*) of this section, submit to EPA a written report refuting EPA's finding. EPA will respond to the person in writing, within 4 weeks of receiving the person's report.

(E) The person is not required to conduct a study specified in paragraph (a)(2)(iii) of this section if notified in writing by EPA that it is unnecessary to conduct that study.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 26. By adding new § 721.2673 to subpart E to read as follows:

§ 721.2673 Aromatic epoxide resin (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aromatic epoxide resin (PMN P–99–1399) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 27. By adding new § 721.3805 to subpart E to read as follows:

§ 721.3805 Formaldehyde, reaction products with 1,3-benzenedimethanamine and bisphenol A.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as formaldehyde, reaction products with 1,3-benzenedimethanamine and bisphenol A (PMN P–00–0738; CAS No. 259871–68–6) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 28. By adding new § 721.3807 to subpart E to read as follows:

§ 721.3807 Formaldehyde, polymer with phenol and 1,2,3-propanetriol, methylated.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as formaldehyde, polymer with phenol and 1,2,3-propanetriol, methylated (PMN P–99–0044; CAS No. 209810–57–1) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=3 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 29. By adding new § 721.3812 to subpart E to read as follows:

§ 721.3812 Substituted phenols and formaldehyde polymer, alkylated (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted phenols and formaldehyde polymer, alkylated (PMN P–00–0542) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (a resin for can and tube coatings).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 30. By adding new § 721.3818 to subpart E to read as follows:

§ 721.3818 Furan, octafluorotetrahydro-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as furan, octafluorotetrahydro- (PMN P–99–0965; CAS No. 773–14–8) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (a heat transfer agent).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 31. By adding new § 721.3848 to subpart E to read as follows:

§ 721.3848 Glycine, N-(carboxymethyl)-N-dodecyl-, monosodium salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as glycine, *N*-(carboxymethyl)-*N*-dodecyl-, monosodium salt (PMN P–00–469; CAS No. 141321–68–8) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), (c)(4) (N=30 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 32. By adding new § 721.4136 to subpart E to read as follows:

§ 721.4136 Alkyl heteropolycyclic-aniline (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl heteropolycyclic-aniline (PMN P–00–0067) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 33. By adding new § 721.4486 to subpart E to read as follows:

§ 721.4486 Propanoic acid, 2-methyl-, (1R,2R,4R)-1,7,7-trimethylbicyclo[2.2.1]hept-2-yl ester, rel-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified as propanoic acid, 2-methyl-, (1R,2R,4R)-1,7,7-trimethylbicyclo[2.2.1]hept-2-yl ester, rel- (PMNs P–98–0497 and P–98–0509; CAS No. 85586–67–0) are subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (15,000 kg/yr).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 34. By adding new § 721.4575 to subpart E to read as follows:

§ 721.4575 L-aspartic acid, N,N'- [(1E) - 1,2 - ethenediylbis[(3-sulfo-4, 1-phenyiene)imino [6-(phenylamino)-1,3,5-triazine- 4,2- diyl]]]bis-, hexasodium salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as l-aspartic acid, *N,N'*- [(1E) - 1,2 - ethenediylbis[(3-sulfo-4, 1-phenylene) imino[6-(phenylamino)-1,3,5-triazine-4,2-diyl]]]bis-, hexasodium salt (PMN P–99–1167; CAS No. 205764–98–3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (w)(1), (x)(1), and (f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 35. By adding new § 721.4792 to subpart E to read as follows:

§ 721.4792 2-propenoic acid, 2-methyl-, C_{11-14}-isoalkyl esters, C_{13}-rich.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propenoic acid, 2-methyl-, C_{11-14}-isoalkyl esters, C_{13}-rich (PMN P–99–1189; CAS No. 85736–97–6) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (a monomer for casting automotive parts adhesives or impregnation fluid).

(ii) *Release to water.* Requirements as specified in § 721.90(c)(4) (N=1 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 36. By adding new § 721.5260 to subpart E to read as follows:

§ 721.5260 1,3,6-Naphthalenetrisulfonic acid, 7-[[2-[(aminocarbonyl)amino]-4-[[4-[[2-[2-(ethenylsulfonyl)ethoxy]ethyl]amino]-6-fluoro-1,3,5-triazin-2-yl]amino]phenyl]azo], trisodium salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,3,6-Naphthalenetrisulfonic acid, 7-[[2-[(aminocarbonyl)amino]-4-[[4-[[2-[2-(ethenylsulfonyl)ethoxy]ethyl]amino]-6-fluoro-1,3,5-triazin-2-yl]amino]phenyl]azo], trisodium salt (PMN P–00–0806; CAS No. 106359–91–5) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 37. By adding new § 721.5262 to subpart E to read as follows:

§ 721.5262 2,7-Naphthalenedisulfonic acid, 5-[[4-chloro-6-[substituted] amino]-1,3,5-triazin-2-yl]amino]-4-hydroxy-3-[(1-sulfo-2-naphthalenyl)azo]-, trisodium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2,7-Naphthalenedisulfonic acid, 5-[[4-chloro-6-[substituted] amino]-1,3,5-triazin-2-yl]amino]-4-hydroxy-3-[(1-sulfo-2-naphthalenyl)azo]-, trisodium salt (PMN P–00–0803) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 38. By adding new § 721.5283 to subpart E to read as follows:

§ 721.5283 Cobaltate (5-), bis[4-[[6-[(4-amino-6-chloro-1,3,5-triazin-2-yl)amio]-1-hydroxy-3-sulfo-2-naphthalenyl]azo]-3-hydroxy-7-nitro-1-naphthalenesulfonato(4-)]-, pentasodium.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as cobaltate (5-), bis[4-[[6-[(4-amino-6-chloro-1,3,5-triazin-2-yl)amio]-1-hydroxy-3-sulfo-2-naphthalenyl]azo]-3-hydroxy-7-nitro-1-naphthalenesulfonato(4-)]-, pentasodium (PMN P–99–0990; CAS No. 91144–26–2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(ii), (a)(5)(xii), and (a)(5)(xiii).

(ii) *Industrial, commercial, and consumer activities.* Requirements as

specified in § 721.80(j) (a spray applied automotive coating).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 39. By adding new § 721.5286 to subpart E to read as follows:

§ 721.5286 Benzenediazonium, [[[[(substituted)azo]phenyl]sulfonyl]amino]-, coupled with aminophenol, diazotized aminobenzoic acid, diazotized (substituted) benzenesulfonic acid and naphthalenol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as benzenediazonium, [[[[(substituted) azo]phenyl]sulfonyl]amino]-, coupled with aminophenol, diazotized aminobenzoic acid, diazotized (substituted) benzenesulfonic acid and naphthalenol (PMN P–00–0045) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 40. By adding new § 721.5452 to subpart E to read as follows:

§ 721.5452 Alkali metal salt of halogenated organoborate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkali metal salt of halogenated organoborate (PMN P–00–0638) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 41. By adding new § 721.5454 to subpart E to read as follows:

§ 721.5454 Methylium, tripohenyl-, tetrakis(pentafluorophenyl) borate (1-).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified as methylium, tripohenyl-, tetrakis(pentafluorophenyl) borate (1-) (PMN P–00–0637; CAS No. 136040–19–2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 42. By adding new § 721.5590 to subpart E to read as follows:

§ 721.5590 Oxirane, [[[(1R,2S,5R)-5-methyl-2-(1-methylethyl)cyclohexyl]oxy]methyl]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as oxirane, [[[(1R,2S,5R)-5-methyl-2-(1-methylethyl)cyclohexyl]oxy]methyl]- (PMN P–00–0330; CAS No. 249297–16–3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) *Release to water.* Requirements as specified § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 43. By adding new § 721.5925 to subpart E to read as follows:

§ 721.5925 Bis heterocyclic phenylene derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as bis heterocyclic phenylene derivative (PMN P–01–0432) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (20,000 kg/yr).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 44. By adding new § 721.6005 to subpart E to read as follows:

§ 721.6005 Rare earth phosphate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as rare earth phophate (PMNs P–99–1191 and P–99–1192) are subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 45. By adding new § 721.6178 to subpart E to read as follows:

§ 721.6178 Alkylaminated polyolefin (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylaminated polyolefin (PMN P–99–1287) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 46. By adding new § 721.6181 to subpart E to read as follows:

§ 721.6181 Fatty acid, reaction product with substituted oxirane, formaldehyde-phenol polymer glycidyl ether, substituted proplyamine and polyethylenepolyamines (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fatty acid, reaction product with substituted oxirane, formaldehyde-phenol polymer glycidyl ether, substituted proplyamine and polyethylenepolyamines (PMN P–98–1125) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=10ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 47. By adding new § 721.6183 to subpart E to read as follows:

§ 721.6183 Amides, from ammonium hydroxide - maleic anhydride polymer and hydrogenated tallow alkyl amines, sodium salts, compds. with ethanolamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as amides, from ammonium hydroxide - maleic anhydride polymer and hydrogenated tallow alkyl amines, sodium salts, compds. with ethanolamine (PMN P–00–0691; CAS No. 208408–03–1) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=80 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 48. By adding new § 721.6205 to subpart E to read as follows:

§ 721.6205 Hexamethylenediamine adduct of substituted piperidinyloxy (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as hexamethylenediamine adduct of substituted piperidinyloxy (PMN P–99–0510) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(i), (a)(2)(i), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(5)(viii), (a)(5)(ix), (a)(5)(x), (a)(5)(xi), (a)(5)(xii), (a)(5)(xiii) (a)(5)(xiv), (a)(5)(xv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), and (a)(6)(vi), (b) (concentration set at 1.0 percent), and (c). The imperviousness of each item pursuant to paragraph (a)(2)(i) must be demonstrated by actual testing under paragraph (a)(3) and not by manufacturer specifications. Permeation testing shall be conducted according to the American Society for Testing and Materials (ASTM) F739 "Standard Test Method for Resistance of Protective Clothing Materials to Permeation by Liquids or Gases" or its equivalent. Results shall be recorded as a cumulative permeation rate as a function of time, and shall be documented in accordance with ASTM F739 using the format specified in ASTM 1194–89 "Guide for Documenting the Results of Chemical Permeation Testing on Protective Clothing Materials" or its equivalent. Gloves may not be used for a time period longer than they are actually tested and must be replaced at the end of each work shift. The manufacturer, importer, or processor must submit all test data to the Agency and must receive written Agency approval for each type of glove tested prior to use of such gloves. The following gloves have been tested in accordance with the ASTM F739 method and found to satisfy the requirements for use by EPA: Latex (at least 14 mils thick), Nitrile (at least 16 mils thick), and Silvershield (at least 3 mils thick). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the NCEL provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.2 ug/m^3 as an 8-hour time weighted average verified by actual monitoring data.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iv), (g)(1)(vi), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 49. By adding new § 721.8085 to subpart E to read as follows:

§ 721.8085 Reaction product of substituted aromatic diol, formaldehyde and alkanolamine, propoxylated (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as reaction product of substituted aromatic diol, formaldehyde and alkanolamine, propoxylated (PMN P–00–0202) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 50. By adding new § 721.8658 to subpart E to read as follows:

§ 721.8658 Modified polymer of vinyl acetate and quaternary ammonium compound (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as modified polymer of vinyl acetate and quaternary ammonium compound (PMN P–99–0874) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 51. By adding new § 721.8920 to subpart E to read as follows:

§ 721.8920 4,6-Disubstituted pyrimidine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 4,6-disubstituted pyrimidine (PMN P–99–1366) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 52. By adding new § 721.9502 to subpart E to read as follows:

§ 721.9502 Siloxanes and silicones, aminoalkyl, fluorooctyl, hydroxy-terminated salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as siloxanes and silicones, aminoalkyl, fluorooctyl, hydroxy-terminated salt (PMN P–00–1132) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (graffiti systems) and (y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 53. By adding new § 721.9504 to subpart E to read as follows:

§ 721.9504 Silane, triethoxy (3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as silane, triethoxy (3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyl)- (PMN P–99–1346; CAS No. 51851–37–7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(ii),((a)(5)(xii), and (a)(5)(xiii).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a),(b), (c), (d), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 54. By adding new § 721.9520 to subpart E to read as follows:

§ 721.9520 Methylated-para-rosaniline salt of a trisulfonated triarylmethane dye (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as methylated-para-rosaniline salt of a trisulfonated triarylmethane dye (PMN P–00–0559) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), (c)(4) (N=2 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 55. By adding new § 721.9538 to subpart E to read as follows:

§ 721.9538 Lithium salt of sulfophenyl azo phenyl azo disulfostilbene (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as lithium salt of sulfophenyl azo phenyl azo disulfostilbene (PMN P–00–0698) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(2), (w)(2), (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 56. By adding new § 721.9597 to subpart E to read as follows:

§ 721.9597 Salt of a substituted sulfonated aryl azo compound (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as salt of a substituted sulfonated aryl azo compound (PMN P–00–0094) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 57. By adding new § 721.9952 to subpart E to read as follows:

§ 721.9952 Alkoxylated aliphatic diisocyanate allyl ether (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkoxylated aliphatic diisocyanate allyl ether (PMN P–00–0353) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 03–7373 Filed 3–27–03; 8:45 am]
BILLING CODE 6560–50–S

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–173

[FMR Amendment 2003–1]

RIN 3090–AH41

Federal Management Regulation; Internet GOV Domain

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is adding coverage on the Internet GOV Domain to the Federal Management Regulation (FMR). The purpose of this final rule is to provide a new policy for registration of domain names. The FMR is written in plain language to provide updated regulatory material that is easy to read and understand.

DATES: *Effective Date:* March 28, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Lee Ellis, Office of Electronic Government and Technology, at (202) 501–0282, *lee.ellis@gsa.gov*. Please cite FMR Amendment 2003–1.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of this final rule is to provide a new policy for the Internet GOV Domain that will be included in the FMR. The final rule is written in a plain language question and answer format. This style uses an active voice, shorter sentences, and pronouns. Unless otherwise indicated in the text, the pronoun "we" refers to the General Services Administration (GSA). A question and its answer combine to establish a rule. You must follow the language contained in both the question and its answer.

This final rule establishes FMR part 102–173, Internet GOV Domain, and provides policy for registration of domain names. A proposed rule was published in the **Federal Register** at 67 FR 34890, May 16, 2002. Public comments were solicited for use in the formulation of the final rule. All comments were consolidated and each one considered through a formal process. Comments received were from private citizens, Federal, State, and local government organizations, information technology standards organizations, and commercial businesses. Particularly worth noting are the comments concerning the cost for dot-gov registration. GSA currently assesses no charge. The rule merely establishes a ceiling for the charges that GSA may assess in the future if circumstances require it. These charges, if established, will be based on the costs of operations and market rates. An earlier regulation was previously located in the Federal Property Management Regulation (FPMR) (41 CFR part 101–35, subpart 101–35.7, Network Address Registration) and expired on August 8, 2001.

Jurisdiction of the Internet GOV (dot-gov) domain was delegated to GSA in 1997 by the Federal Networking Council with guidance in the form of Internet Engineering Task Force Informational RFC 2146. Since then, the U.S. Government use of the Internet has evolved and is rapidly emerging as an electronic government without boundaries. Federal organizations are choosing dot-gov domain names to reflect the type of service being rendered and are collaborating to form portals that cross boundaries of agencies, departments, and other U.S. government entities. GSA reserves the right to make exceptions to the naming conventions described in this subpart on a case-by-case basis in unique and compelling cases.

In addition, there is increasing interest from non-Federal U.S. government entities, such as State and

local governments, and Federally recognized Indian tribes, known in this rule as Native Sovereign Nations (NSNs), to provide service within the dot-gov domain. Many such governmental entities believe that their citizens are likely to associate their government at all levels with the dot-gov domain, and therefore, want the additional option of positioning their governmental portal to the public within this space. GSA has entered into an agreement with the Department of the Interior's Bureau of Indian Affairs to facilitate the registration of NSNs in the dot-gov domain.

B. Executive Order 12866

This is a significant rule and was subject to Office of Management and Budget review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

C. Regulatory Flexibility Act

We certify that the amendments will not have a significant economic impact on a substantial number of small entities, because the registration and renewal fees, and paperwork collection burden will be small.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Congressional Review Act

This final rule is not a major rule under 5 U.S.C. 804.

F. Unfunded Mandates Reform Act of 1995

This final rule does not significantly or uniquely affect small governments or tribal governments. It does not result in expenditures by State, local, or tribal governments, or to the private sector, of $100 million or more in any one year.

G. Executive Order 13132 on Federalism

This final rule does not have Federalism implications.

There are no substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 41 CFR Part 102–173

Archives and records, Computer technology, Federal information processing resources activities, Government procurement, Property management, Records management, Telecommunications.

Dated: March 24, 2003.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR chapter 102 as follows:

CHAPTER 102—[AMENDED]

■ 1. Part 102–173 is added to subchapter F of chapter 102 to read as follows:

PART 102–173—INTERNET GOV DOMAIN

Subpart A—General

Sec.

102–173.5 What is Internet GOV Domain?
102–173.10 What is the authority or jurisdiction of the Internet GOV Domain?
102–173.15 What is the scope of this part?
102–173.20 To whom does this part apply?
102–173.25 What definitions apply to this part?

Subpart B—Registration

102–173.30 Who may register in the dot-gov domain?
102–173.35 Who authorizes domain names?
102–173.40 Who is my Chief Information Officer (CIO)?
102–173.45 Is there a registration charge for domain names?
102–173.50 What is the naming convention for States?
102–173.55 What is the naming convention for Cities and Townships?
102–173.60 What is the naming convention for Counties or Parishes?
102–173.65 What is the naming convention for Native Sovereign Nations?
102–173.70 Where do I register my dot-gov domain name?
102–173.75 How long does the process take?
102–173.80 How will I know if my request is approved?
102–173.85 How long will my application be held, pending approval by the Chief Information Officer (CIO)?
102–173.90 Are there any special restrictions on the use and registration canonical, or category names like recreation.gov?
102–173.95 Are there any restrictions on the use of the dot-gov domain name?

Authority: 40 U.S.C. 486(c).

Subchapter F—Telecommunications

* * * * *

Subpart A—General

§ 102–173.5 What is Internet GOV Domain?

Internet GOV Domain refers to the Internet top-level domain "dot-gov" operated by the General Services Administration for the registration of U.S. government-related domain names. In general, these names reflect the organization names in the Federal Government and non-Federal government entities in the United States. These names are now being used to promote government services and increase the ease of finding these services.

§ 102–173.10 What is the authority or jurisdiction of the Internet GOV Domain?

Jurisdiction of the Internet GOV (dot-gov) domain was delegated to the General Services Administration in 1997 by the Federal Networking Council with guidance in the form of Internet Engineering Task Force (IETF) Informational RFC 2146, which can be obtained on the Internet at: *http://www.ietf.org/rfc/rfc2146.txt?number=2146*.

§ 102–173.15 What is the scope of this part?

This part addresses the registration of second-level domain names used in the Internet GOV Domain. This registration process assures that the assigned domain names are unique worldwide.

§ 102–173.20 To whom does this part apply?

This part applies to Federal, State, and local governments, and Native Sovereign Nations. You do not need to register domain names with the General Services Administration if you will be using some other top-level domain registration, such as dot-us, dot-org, or dot-net.

§ 102–173.25 What definitions apply to this part?

The following definitions apply to this part:

Domain is a region of jurisdiction on the Internet for naming assignment. The General Services Administration (GSA) is responsible for registrations in the dot-gov domain.

Domain name is a name assigned to an Internet server. This is the name that you request from GSA. Typically, you would apply this name to a domain name server. A domain name locates the organization or other entity on the Internet. The dot gov part of the domain name reflects the purpose of the organization or entity. This part is called the Top-Level Domain name. The Second-Level Domain name to the left of the dot gov maps to a readable version of the Internet address. The Domain Name server has a registry of Internet Protocol (IP) address numbers that relate to the readable text name.

Domain name server is the computer that provides pointers from the domain name to the actual computers.

Dot-gov refers to domain names ending with a ".gov" suffix. The Internet GOV domain is another way of expressing the collection of dot-gov domain names.

Native Sovereign Nations (NSN) are federally recognized tribes.

Subpart B—Registration

§ 102–173.30 Who may register in the dot-gov domain?

Registration in the dot-gov domain is available to official governmental organizations in the United States including Federal, State, and local governments, and Native Sovereign Nations.

§ 102–173.35 Who authorizes domain names?

Domain names must be authorized by the Chief Information Officer (CIO) of the requesting or sponsoring governmental organization. For Federal departments and agencies, the General Services Administration (GSA) will accept authorization from the CIO of the department or agency. For independent Federal government agencies, boards, and commissions, GSA will accept authorization from the highest-ranking Information Technology Official. For State and local governments, GSA will accept authorization from appropriate State or local officials, *see* § 102–173.40.

For Native Sovereign Nations, GSA will only accept authorization from the Bureau of Indian Affairs, Department of the Interior. In most cases, GSA will not make determinations on the appropriateness of the selected domain names, but reserves the right to not assign domain names on a case-by-case basis. Non-Federal government domain names must follow the naming conventions described in §§ 102–173.50 through 102–173.65. For other government entities, CIO's may delegate this authority by notification to GSA.

§ 102–173.40 Who is my Chief Information Officer (CIO)?

Your Chief Information Officer (CIO) may vary according to the branch of government. For the Federal Government, the General Services Administration (GSA) recognizes the cabinet level CIOs listed at *http://www.cio.gov*. For States, GSA will accept authorization from the Office of the Governor or highest-ranking Information Technology (IT) official. Other officials include the Mayor (for city or town), County Commissioner (for counties) or highest ranking IT official. Native Sovereign Nations (NSN) must receive authorization from the Bureau of Indian Affairs. CIOs may delegate this authority by notification to GSA.

§ 102–173.45 Is there a registration charge for domain names?

The General Services Administration (GSA) reserves the right to charge for domain names in order to recover cost of operations. For current registration charges, please visit the GSA Web site at *http://www.nic.gov*. GSA does not currently charge a fee. GSA has the authority to employ a system of collection that includes a one-time setup fee for new registrations, which will not exceed $1000, depending on the level of assistance that may be provided by GSA, and a recurring annual charge that will not exceed $500 for all dot-gov domains. The fees are based on anticipated costs for operating the registration service.

§ 102–173.50 What is the naming convention for States?

(a) To register any second-level domain within dot-gov, State government entities must register the full State name or clearly indicate the State postal code within the name. Examples of acceptable names include virginia.gov, tennesseeanytime.gov, wa.gov, nmparks.gov, mysc.gov, emaryland.gov, and ne-taxes.gov. However—

(1) Use of the State postal code should not be embedded within a single word in a way that obscures the postal code. For example, Indiana (IN) should not register for win.gov, or independence.gov; and

(2) Where potential conflicts arise between postal codes and existing domain names, States are encouraged to register URL's that contain the full State name.

(b) There is no limit to the number of domain names for which a State may register.

(c) States are encouraged to make second-level domains available for third-level registration by local governments and State Government departments and programs. For example, the State of North Carolina could register NC.GOV as a second-level domain and develop a system of registration for their local governments. The State would be free to develop policy on how the local government should be registered under NC.GOV. One possibility might be to spell out the city, thus Raleigh.NC.gov could be a resulting domain name.

§ 102–173.55 What is the naming convention for Cities and Townships?

(a) To register any second-level domain within dot-gov, City (town) governments must register the domain name with the city (town) name or abbreviation, and clear reference to the State in which the city (town) is located. However—

(1) Use of the State postal code should not be embedded within a single word in a way that obscures the postal code; and

(2) Inclusion of the word city or town within the domain name is optional and may be used at the discretion of the local government.

(b)(1) The preferred format for city governments is to denote the State postal code after the city name, optionally separated by a dash. Examples of preferred domain names include—

(i) Chicago-il.gov;
(ii) Cityofcharleston-sc.gov;
(iii) Charleston-wv.gov;
(iv) Townofdumfries-va.gov; and
(v) Detroitmi.gov.

(2) GSA reserves the right to make exceptions to the naming conventions described in this subpart on a case-by-case basis in unique and compelling cases.

(c) If third-level domain naming is used, GSA reserves the right to offer exceptions to the third-level domain naming conventions described in this section on a case-by-case basis in unique and compelling cases.

§ 102–173.60 What is the naming convention for Counties or Parishes?

(a) To register any second-level domain within dot-gov, County or Parish governments must register the County's or Parish's name or abbreviation, the word "county" or "parish" (because many counties have the same name as cities within the same State), and a reference to the State in which the county or parish is located. However, the use of the State postal code should not be embedded within a single word in a way that obscures the postal code.

(b) The preferred format for county or parish governments is to denote the State postal code after the county or parish, optionally separated by a dash. Examples of preferred domain names include—

(1) Richmondcounty-ga.gov;
(2) Pwc-county-va.gov; and
(3) Countyofdorchestor-sc.gov.

(c) If third-level domain naming is available from the State government, counties or parishes are encouraged to register for a domain name under a State's registered second-level (*e.g.*, richmondcounty.ga.gov).

§ 102–173.65 What is the naming convention for Native Sovereign Nations?

To register any second-level domain in dot-gov, Native Sovereign Nations (NSN) may register any second-level

domain name provided that it contains the registering NSN name followed by a suffix of "-NSN.gov" (case insensitive).

§ 102–173.70 Where do I register my dot-gov domain name?

Registration is an online process at the General Services Administration's Web site at *http://www.nic.gov*. At the Network Information Site, you will find the instructions and online registration forms for registering your domain name. To register your domain name you will need to provide information such as your desired domain name, sponsoring organization, points of contact, and at least two name server addresses.

§ 102–173.75 How long does the process take?

The process can be completed within 48 hours if all information received is complete and accurate. Most requests take up to thirty (30) days because the registrar is waiting for Chief Information Officer (CIO) approval.

§ 102–173.80 How will I know if my request is approved?

A registration confirmation notice is sent within one business day after you register your domain name, informing you that your registration information was received. If all of your information is accurate and complete, a second notice will be sent to you within one business day, informing you that all of your information is in order. If you are ineligible, or if the information provided is incorrect or incomplete, your registration will be rejected and a notice will be sent to you stating the reason for rejection. Registration requests will be activated within two business days after receiving valid authorization from the appropriate Chief Information Officer (CIO). Once your domain name has been activated, a notice will be sent to you.

§ 102–173.85 How long will my application be held, pending approval by the Chief Information Officer (CIO)?

Registrations will be held in reserve status for sixty (60) days pending Chief Information Officer (CIO) authorization from your sponsoring organization.

§ 102–173.90 Are there any special restrictions on the use and registration of canonical, or category names like recreation.gov?

Yes, canonical names registration request must provide access coverage for the areas conveyed by the name. So the URL recreation.gov would not be approved for the state of Maryland, but the URL recreationMD.gov would be approved if it provides statewide coverage. The logic of the names adds value to the dot gov domain. GSA reserves the right deny use of canonical names that do not provide appropriate coverage and to arbitrate these issues.

§ 102–173.95 Are there any restrictions on the use of the dot-gov domain name?

The General Services Administration approves domain names for a specific term of time, generally two years unless otherwise stated, and under conditions of use. General conditions of registration and are posted at the registration Web site at *http://www.nic.gov* and may be modified over time. Organizations that operate web sites that are not in compliance with the conditions of use may have their domain name terminated.

[FR Doc. 03–7413 Filed 3–27–03; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 32

RIN 0990–AA05

Administrative Wage Garnishment

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This final rule adds new regulations to implement the administrative wage garnishment provisions (AWG) of the Debt Collection Improvement Act of 1996 (DCLA). The rule will allow the Department of Health and Human Services (HHS) to garnish the disposable pay of non-Federal employees to collect delinquent non-tax debts owed to the United States without first obtaining a court order.

EFFECTIVE DATE: These regulations are effective on April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Katherine M. Drews, Associate General Counsel, Office of the General Counsel, Business and Administrative Law Division at 202–619–0150.

SUPPLEMENTARY INFORMATION:

Background

This regulation implements the administrative wage garnishment provisions in section 31001(o) of the Debt Collection Improvement Act of 1996 (DCLA), Public Law 104–134, 110 Stat. 1321–358, codified at 31 U.S.C. 3720D. Under the administrative wage garnishment provisions of the DCIA, Federal agencies may garnish administratively up to 15 percent of the wages of a debtor to satisfy a delinquent non-tax debt owed to the United States. Prior to the enactment of the DCIA, Federal agencies were required to obtain a court judgment before garnishing the wages of non-Federal employees. Section 31001(o) of the DCLA preempts State laws that prohibit wage garnishment or otherwise govern wage garnishment procedures.

As authorized by the DCIA, a Federal agency collecting a delinquent non-tax debt may garnish a delinquent debtors wages in accordance with regulations promulgated by the Secretary of the Treasury. The Financial Management Service (EMS), a bureau of the Department of the Treasury (Treasury), is responsible for promulgating the regulations implementing this and other debt collection tools established by the DCIA. FMS published its final rule at 63 FR 25136, May 6, 1998, (Treasury Final Rule) and published a technical amendment at 64 FR 22901, April 28, 1999. The Treasury Final Rule, as amended, is published in § 285.11 of title 31 of the Code of Federal Regulations. Pursuant to 31 CFR 285.11(f), Federal agencies must either prescribe regulations for the conduct of AWG hearings consistent with the procedural requirements set forth in the Treasury Final Rule or adopt § 285.11 without change by reference.

Basic Provisions

In accordance with the requirements of the DCIA and the implementing regulations at 31 CFR 285.11, the rule establishes the rules and procedures for providing a debtor with written notice at least 30 days before the Department initiates garnishment proceedings, an opportunity to inspect and copy Department records relating to the debt, an opportunity to enter into a repayment agreement, and an opportunity to receive a hearing concerning the existence or amount of the debt and the terms of a repayment schedule. The rule also establishes the employer's responsibilities for carrying out a wage garnishment order issued by the Department.

Rules and Procedures

Except for minor editorial changes to make the provisions agency-specific, the proposed rule is substantially identical to the Treasury Final Rule. In accordance with the substantive and procedural requirements of the DCIA and the Treasury Final Rule, this rule would establish for HHS the following rules and procedures:

1. Providing a debtor with written notice at least 30 days before the Department initiates garnishment proceedings informing the debtor of the nature and amount of the debt, the intention of the Department to collect

the debt through deductions from the debtor's disposable pay, and the debtors rights regarding the proposed action.

2. Providing the debtor with an opportunity to inspect and copy Department records relating to the debt, to enter into a repayment agreement with the Department, and to receive a hearing concerning the existence or amount of the debt and the terms of a repayment schedule.

3. Conducting a hearing prior to the issuance of a withholding order, if the debtors request for a hearing is timely received by HHS. When a debtor's request for a hearing is not received within the time period specified, HHS will not delay issuance of a withholding order prior to conducting the hearing.

4. Sending to the employer of a delinquent debtor a wage garnishment order directing the employer to withhold up to 15% of the debtors disposable pay and remit those amounts to the Federal government.

5. Requiring the debtor's employer to certify certain payment information about the debtor.

Analysis of and Responses to Public Comments

We published a proposed rule on this subject on December 4, 2002 (67 FR 72128–72130).

No public comments were received.

Economic Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980; Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (the Order) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that this rule is consistent with the principles set forth in the Order, and we find this rule would not have an effect on the economy that exceeds $100 million in any one year. In addition, this rule is not a major rule as defined at 5 U.S.C. 804(2). In accordance with the provisions of the Order, this regulation was reviewed by the Office of Management and Budget.

It is hereby certified under the RFA that this regulation, including the certification referenced in this rulemaking (*see* § 32.7), will not have a significant economic impact on a substantial number of small entities. This rule applies only to individuals, as well as employers of such individuals, with delinquent debts owed to the United States. Although a substantial number of small entities will be subject to this regulation and to the certification requirement in this rule, the requirements will not have a significant economic impact on these entities. Employers of delinquent debtors must certify certain information about the debtor such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer is served withholding orders on several employees over the course of a year, the cost imposed on the employer to complete the certifications would not have a significant economic impact on that entity. Employers are not required to vary their normal pay cycles in order to comply with a withholding order issued pursuant to this rule.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. As noted above, we find that this rule would not have an effect of this magnitude on the economy.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. We have reviewed this rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that this rule would not have substantial direct effect on the States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. As there are no federalism implications, a federalism impact statement is not required.

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, this rule will impose no new reporting or record-keeping requirements on employers. As noted above, although an employer of a delinquent debtor must certify certain information about the debtor, the employer's payroll records already contain this information, and, even if an employer receives withholding orders on several employers, the burden of completing the certification would not be significant. Furthermore, we believe that these reporting requirements fall within the "administrative action" exemption in § 1320.4(a)(2) of the Paperwork Reduction Act.

Provisions of the Final Regulations

This final rule incorporates the provisions of the proposed rule. There are no provisions in this final rule that differ from the proposed rule.

List of Subjects in 45 CFR Part 32

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Hearings and appeal procedures, Salaries, Wages.

■ For the reasons set forth in the preamble, HHS amends 45 CFR subtitle A by adding part 32 to read as follows:

PART 32—ADMINISTRATIVE WAGE GARNISHMENT

Sec.

32.1 Purpose and scope.
32.2 Definitions.
32.3 General rule.
32.4 Notice.
32.5 Hearing.
32.6 Withholding order.
32.7 Certification by employer.
32.8 Amounts withheld.
32.9 Financial hardship.
32.10 Refunds.
32.11 Ending garnishment.
32.12 Right of action.

Authority: 31 U.S.C. 3720D, 5 U.S.C. 552, 553, E.O. 12866, 12988, 13808.

§ 32.1 Purpose and scope.

(a) *Purpose.* This part prescribes the standards and procedures for the Department to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent non-tax debts owed to the United States.

(b) Authority. These standards and procedures are authorized under the wage garnishment provisions of the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720D, and the Department of the Treasury Administrative Wage Garnishment Regulations at 31 CFR 285.11.

(c) Scope. (1) This part applies to all Departmental Operating Divisions and Regional Offices that administer a program that gives rise to a delinquent

non-tax debt owed to the United States and to all officers or employees of the Department authorized to collect such debt.

(2) This part shall apply notwithstanding any provision of State law.

(3) Nothing in this part precludes the compromise of a debt or the suspension or termination of collection action in accordance with part 30 of this title, or other applicable law or regulation.

(4) The receipt of payments pursuant to this part does not preclude the Department from pursuing other debt collection remedies, including the offset of Federal payments to satisfy delinquent non-tax debt owed to the United States. The Department may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(5) This part does not apply to the collection of delinquent non-tax debts owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

(6) Nothing in this part requires the Department to duplicate notices or administrative proceedings required by contract or other laws or regulations.

§ 32.2 Definitions.

In this part, unless the context otherwise requires:

Business day means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday, in which case the next business day following the holiday will be considered the last day of the period.

Certificate of service means a certificate signed by an employee of the Department indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom it is being sent.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal legal holiday, in which case the next business day will be considered the last day of the period.

Debt or claim means an amount of money, funds, or property that has been determined by the Secretary to be owed to the United States by an individual, including debt administered by a third party as an agent of the Federal Government. A debt or claim includes, but is not limited to: amounts owed on account of loans made, insured or guaranteed by the Federal Government, including any deficiency or difference between the price obtained by the Federal Government upon selling the property and the amount owed to the Federal Government; overpayments to program beneficiaries; any amount the Federal Government is authorized by statute to collect for the benefit of any person; the unpaid share of any non-Federal partner in a program involving a Federal payment, including a matching or cost-sharing payment of the non-Federal partner; any fine, civil penalty or assessment; and other amounts or money or property owed to the Federal Government.

Debtor means an individual who owes a delinquent non-tax debt to the United States.

Delinquent debt means any non-tax debt that has not been paid by the date specified in the Department's initial written demand for payment, or applicable payment agreement or instrument, unless other satisfactory payment arrangements have been made. For purposes of this part, "delinquent" and "overdue" have the same meaning.

Department means the United States Department of I-lealth and 1—luman Services, including each of its Operating Divisions and Regional Offices.

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this part, "amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

Employer means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government as defined by 31 CFR 285.11(c).

Garnishment means the process of withholding amounts from an employee's disposable pay and paying those amounts to a creditor in satisfaction of a withholding order.

Hearing means a review of the documentary evidence concerning the existence or amount of a debt, or the terms of a repayment schedule, provided such repayment schedule is established other than by a written agreement entered into pursuant to this part. If the hearing official determines that the issues in dispute cannot be resolved solely by review of the written record, such as when the validity of the debt turns on the issue of credibility or veracity, an oral hearing may be provided.

Hearing official means any qualified individual, as determined by the Secretary, including a Departmental Appeals Board administrative law judge.

Secretary means the Secretary of Health and Human Services, or the Secretary's designee within the Department.

Withholding order for purposes of this part means "Wage Garnishment Order (SF329B)." Also for purposes of this part, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

§ 32.3 General rule.

(a) Except as provided in paragraph (b) of this section, whenever a delinquent debt is owed by an individual, the Secretary, or another federal agency collecting a debt on the Department's behalf (*See* 45 CFR part 30), may initiate proceedings administratively to garnish the wages of the delinquent debtor.

(b) The Secretary may not garnish the wages of a debtor who the Secretary knows has been involuntarily separated from employment until the debtor has been re-employed continuously for at least 12 months. The debtor has the burden of informing the Secretary of the circumstances surrounding an involuntary separation from employment.

§ 32.4 Notice.

(a) Notice requirements. At least 30 days before the initiation of garnishment proceedings, the Secretary shall mail, by first class mail, to the debtor's last known address a written notice informing the debtor of:

(1) The nature and amount of the debt;

(2) The intention of the Secretary to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties, and administrative costs are paid in full;

(3) The debtor's right—

(i) To inspect and copy Department records related to the debt;

(ii) To enter into a written repayment agreement with the Department under terms agreeable to the Department;

(iii) To a hearing, in accordance with § 32.5, concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order, except that the debtor is not entitled to a hearing concerning the proposed repayment schedule if the terms were established by written agreement pursuant to paragraph (a)(3)(ii) of this section; and

(4) The time frames within which the debtor may exercise his or her rights.

(b) The Secretary will keep a copy of the dated notice. The notice may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

§ 32.5 Hearing.

(a) *In general.* Upon timely written request of the debtor, the Secretary shall provide a hearing, which at the Department's option may be oral or written, concerning the existence or amount of the debt, or the terms of a repayment schedule established other than by written agreement under § 32.4(a)(3)(ii).

(b) *Request for hearing.* (1) The request for a hearing must be signed by the debtor, state each issue being disputed, and identify and explain with reasonable specificity all facts and evidence that the debtor believes supports the debtor's position. Supporting documentation identified by the debtor should be attached to the request.

(2) Effect of timely request. Subject to paragraph (j) of this section, if the debtor's written request is received on or before the 15th business day following the mailing of the written notice required under this part, a withholding order shall not be issued under § 32.6 until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (g) and (h) of this section has been rendered.

(3) Failure to timely request a hearing. If the debtor's written request is received after the 15th business day following the mailing of the written notice required under this part, the Secretary shall provide a hearing to the debtor. However, the Secretary shall not delay the issuance of a withholding order unless the Secretary determines that the delay in submitting such request was caused by factors beyond the control of the debtor, or the Secretary receives information that the Secretary determines justifies a delay or cancellation of the withholding order.

(c) *Oral hearing.* (1) For purposes of this section, a debtor shall be provided a reasonable opportunity for an oral hearing when the hearing official determines that the issues in dispute cannot be resolved by review of the documentary evidence, such as when the validity of the claim turns on the issue of credibility or veracity.

(2) If the hearing official determines an oral hearing is appropriate, the hearing official will establish the date, time and location of the hearing. At the debtor's option, the oral hearing may be conducted in person or by telephone conference. The hearing official will notify the debtor of the date, time, and in the case of an in-person hearing, the location of the hearing. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor.

(d) *Paper hearing.* (1) If the hearing official determines an oral hearing is not required by this section, the hearing official shall afford the debtor a paper hearing, that is, the issues in dispute will be decided based upon a review of the written record.

(2) The hearing official shall notify the debtor of the deadline for the submission of additional evidence if necessary for a review of the record.

(e) *Burden of proof.* (1) The Secretary has the initial burden of proving the existence or amount of the debt.

(2) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must present by a preponderance of the evidence that no debt exists or that the amount is incorrect. When challenging the terms of a repayment schedule, the debtor must establish by a preponderance of the evidence that the terms of the repayment schedule are unlawful, would cause financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

(f) *Record.* The hearing official shall maintain a summary record of any hearing provided under this part. A hearing is not required to be a formal evidentiary-type hearing, but witnesses who testify in an oral hearing must do so under oath or affirmation.

(g) *Date of decision.* (I) The hearing official shall issue a written decision, as soon as practicable, but no later than sixty (60) days after the date on which the request for the hearing was received by the Department.

(2) If the hearing official is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

(i) A withholding order may not be issued until the hearing is held and a decision is rendered; or

(ii) A withholding order previously issued to the debtor's employer must be suspended beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(h) *Content of decision.* The written decision shall include:

(1) A summary of the facts presented;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedule, if applicable.

(i) *Final agency action.* The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act. 5 U.S.C. 701 *et seq.*

(j) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a hearing will be deemed as not having timely filed a request for a hearing.

§ 32.6 Withholding order.

(a) Unless the Secretary receives information that the Secretary determines justifies a delay or cancellation of a withholding order, the Secretary shall send, by first class mail, an SF–329A "Letter to Employer & Important Notice to Employer," an SF–329B "Wage Garnishment Order," an SF–329C "Wage Garnishment Worksheet," and an SF–329D "Employer Certification," to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing, *i.e.*, within 15 business days after mailing the notice required under this part, or, if the timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the Secretary to proceed with garnishment.

(b) The Secretary shall keep a copy of the dated letter to the employer and a copy of the wage garnishment order. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

§ 32.7 Certification by employer.

The employer must complete and return the SF–329D, "Employer Certification" to the Department within 20 days of receipt.

§ 32.8 Amounts withheld.

(a) After receipt of a withholding order issued under this part, the employer shall deduct from all disposable pay paid to the debtor during each pay period the amount of garnishment described in paragraph (b) of this section. The employer may use the SF–329C "Wage Garnishment Worksheet" to calculate the amount to be deducted from the debtor's disposable pay.

(b) Subject to paragraphs (c) and (d) of this section, the amount of garnishment shall be the lesser of:

(1) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(2) The amount set forth in 15 U.S.C. 1673(a)(2) (Maximum allowable

garnishment). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. *See* 29 CFR 870.10.

(1) Except as provided in paragraph (c)(2) of this section, when a debtor's pay is subject to multiple withholding orders, unless otherwise provided by Federal law, withholding orders issued pursuant to this part shall have priority over other withholding orders that are served later in time.

(2) Notwithstanding the foregoing, withholding orders for family support shall have priority over withholding orders issued under this part.

(3) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this part, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to a withholding order issued under this part shall be the lesser of:

(i) The amount calculated under paragraph (b) of this section, or

(ii) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(d) If the debtor owes more than one debt to the Department, the Secretary may issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (b) of this section.

(e) An amount greater than that set forth in paragraphs (b) or (c) of this section may be withheld upon the written consent of the debtor.

(f) The employer shall promptly pay to the Department all amounts withheld in accordance with the withholding order issued pursuant to this part.

(g) The employer is not required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(h) Any assignment or allotment by an employee shall be void to the extent it interferes with or prohibits execution of the withholding order issued under this part, except for any assignment or allotment made pursuant to a family support judgment or order.

(i) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the Secretary to discontinue wage withholding.

(j) The withholding order, SF–329B "Wage Garnishment Order," sent to the employer under § 32.6, requires the employer to commence wage withholding on the first pay day after the employer receives the order. However, if the first pay day is within 10 days after receipt of the order, the employer may begin deductions on the second pay day.

(k) An employer may not discharge, refuse to employ, or take disciplinary action against an debtor a result of the issuance of a withholding order under this part.

§ 32.9 Financial hardship.

(a) A debtor whose wages are subject to a withholding order may, at any time, request a review by the Department of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(b) A debtor requesting such a review under paragraph (a) of this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation. The Secretary shall consider any information submitted in accordance with this part.

(c) If a financial hardship is found, the Secretary shall downwardly adjust, by an amount and for a period of time established by the Secretary, the amount garnished to reflect the debtor's financial condition. The Secretary will notify the employer of any adjustments to the amount to be withheld.

§ 32.10 Refunds.

(a) If the hearing official, pursuant to a hearing under this part, determines that a debt is not legally due and owing to the United States, the Secretary shall promptly refund any amount collected by means of administrative wage garnishment.

(b) Unless required by Federal law or contract, refunds under this part shall not bear interest.

§ 32.11 Ending garnishment.

(a) Once the Department has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs assessed pursuant to and in accordance with part 30 of this title, the Secretary shall send the debtor's employer notification to discontinue wage withholding.

(b) At least annually, the Secretary shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

§ 32.12 Right of action.

(a) The employer of a debtor subject to wage withholding pursuant to this part shall pay to the Department as directed in a withholding order issued under this part.

(b) The Secretary may bring suit against an employer for any amount that the employer fails to withhold from wages owed and payable to a debtor in accordance with §§ 32.6 and 32.8, plus attorney's fees, costs, and, if applicable, punitive damages.

(c) A suit under this section may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, "termination of collection action" occurs when the Secretary has terminated collection action in accordance with part 30 of this title, or other applicable law or regulation.

(d) Notwithstanding deemed to occur if from a debtor whose paragraph (c) of this section, termination of the collection action will be a period of one (1) year the Department does not receive any payments wages were subject to a garnishment order issued under this part.

Dated: March 21, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–7394 Filed 3–27–03; 8:45 am]

BILLING CODE 4150–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73 and 76

[GC Docket No. 02–37; FCC 03–45]

Truthful Statements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its regulations relating to the submission of truthful information to the Commission. Under the former rule, Commission regulatees were prohibited, in any written statement submitted to the Commission, from making any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission. The new rule provides that specified persons covered by the rule may not, in proceedings covered by the rule, make written or oral statements of fact that are, in material respects, intentionally incorrect or misleading or make written statements of fact without a reasonable basis for believing that the statement is correct and not misleading.

DATES: Effective March 28, 2003.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 418–1720.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O), GC Docket No. 02–37, adopted on March 4, 2003, and released March 10, 2003. The full text of the R&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Copies of filings may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898. Filings may also be viewed on the Commission's Internet Web site using the Electronic Document Filing System (ECFS) at *http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi.*

Summary of Report and Order

1. In our Notice of Proposed Rulemaking, 67 FR 10658, March 8, 2002 we proposed to amend § 1.17 of our rules, 47 CFR 1.17, which relates to the submission of truthful statements to the Commission. The comments that we received were helpful in clarifying the appropriate scope of the rule, and by this Report and Order we amend the rule accordingly. We also make conforming amendments to 47 CFR 73.1015 and 47 CFR 76.939. The new rule is a clearer, more comprehensive, and more focused articulation of the standards for truthful statements than the old rule. The new rule will also enhance the effectiveness of our enforcement efforts.

2. The new rule broadens the category of persons subject to the rule by applying the requirement to: (1) Any holder of any Commission authorization, whether by application or by blanket authorization or other rule; (2) any person performing without Commission authorization an activity that requires Commission authorization; (3) any person that has received a citation or a letter of inquiry from the Commission or its staff, or is otherwise the subject of a Commission or staff investigation, including an informal investigation; (4) in a proceeding to amend the FM or Television Table of Allotments, any person filing an expression of interest, and (5) to the extent not already covered above, any cable operator or common carrier. The rule does not apply to attorneys or engineers who file statements in a representational capacity on behalf of the entities specified. Attorneys and engineers are covered only to the extent that they are themselves the regulated entity.

3. The amended rule applies to investigatory proceedings and adjudicatory proceedings other than declaratory ruling proceedings. It does not apply to rulemakings generally but does apply to expressions of interest in proceedings to amend the FM or Television Table of Allotments and to tariff proceedings. The primary focus of the new rule is to enhance the effectiveness of adjudicatory and investigatory proceedings by providing for an expanded range of sanctions that can be imposed in those contexts. We do not see rulemakings of general applicability and declaratory rulings as raising enforcement issues of the same urgency. Additionally, while we expect parties to be truthful in rulemakings and declaratory ruling proceedings, we are mindful that such proceedings typically involve wide-ranging discussions of general policy rather than specific facts to be weighed in an adjudicatory manner. We do not wish to hinder full and robust public participation in such policymaking proceedings by encouraging collateral wrangling over the truthfulness of the parties' statements. Expressions of interest in proceedings to amend the FM or Television Table of Allotments, and tariff proceedings raise concerns that are distinguishable from those in rulemakings generally and will be subject to the rule.

4. The new rule prohibits written and oral statements of fact that are intentionally incorrect or misleading and written statements that are made without a reasonable basis for believing that the statement is correct and not misleading. With respect to both oral and written statements of fact, we follow our historical definition of misrepresentation and lack of candor, which defined as misconduct incorrect and misleading statements where there was an actual intent to deceive the Commission. We continue to believe that the rule barring such intentional deceptions, whether by affirmative misstatements or by omissions of material facts, should apply, in appropriate contexts, to both oral and written material statements of fact. We believe that in preparing written statements in fact-based adjudications and investigations, regulatees are on heightened notice that they must have a reasonable basis to believe that what they say is correct and not misleading. In these circumstances, we consider it justified to require that parties use due diligence in providing information that is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted. A failure to exercise such reasonable diligence would mean that the party did not have a reasonable basis for believing in the truthfulness of the information.

5. Additionally, we wish to clarify that our reference to "materiality" and "Commission jurisdiction" in the rule is intended only to indicate that the representations and omissions we are concerned about are those material [1] to the issues before the Commission and that we do not intend the rule to apply to representations or omissions that are insignificant or extraneous to the issues.

6. We also take three subsidiary actions. First, our amendment of § 1.17 warrants making conforming amendments to 47 CFR 73.1015 and 47 CFR 76.939. Section 73.1015 is the counterpart of § 1.17 applicable specifically to the broadcast service. Section 76.939 applies specifically to cable operators. We see no purpose in having multiple sections contain redundant provisions. Accordingly, we amend §§ 73.1015 and 76.939 to cross reference § 1.17. Second, our revision of the rule makes unnecessary the language contained in the first paragraph of the former rule. The authority of the Commission to obtain information is set forth in various statutory provisions, for example, 47 U.S.C. 218, 308(b), 403, and does not need to be reiterated in the rule. Third, commenter James A. Kay, Jr. (Kay) attaches to his comments a copy of a petition for rulemaking filed March 5, 2002. In his petition, Kay proposes several modifications to the Commission's investigatory and hearing procedures. We have examined Kay's proposals and find them without merit. Several of Kay's proposals would unduly burden the Commission's investigatory and hearing functions. Other matters are already adequately addressed by existing law and policy. We will therefore deny the petition.

Final Regulatory Flexibility Certification

7. The Regulatory Flexibility Act of 1980, as amended (*see* 5 U.S.C. 601 *et*

[1] "Material" has been defined as "important," "more or less necessary," "having influence or effect." *See McDonald* v. *Murray*, 515 P.2d 151, 152 (Wash. 1973). Additionally, a "material representation" has been defined as one "relating to matter which is so substantial or important as to influence the party to whom it is made." *See In the Matter of Mark E. Wagner*, 744 N.E.2d 418, 421 (Ind. 2001).

seq.)[2] requires a final regulatory flexibility analysis in a notice and comment rulemaking proceeding unless we certify that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). We believe that the rule we adopt today will not have a significant economic impact on a substantial number of small entities.

8. In expanding the scope of 47 CFR 1.17, we are merely requiring persons subject to the Commission's regulatory jurisdiction to submit information that is correct and not misleading. The revised rule thus does not impose any significant compliance burden on persons dealing with the Commission, including small entities, or otherwise affect the rights of persons participating in Commission proceedings. The revised rule simply enables the Commission to impose sanctions more effectively in those instances where people intentionally or negligently submit incorrect or misleading information. There is thus no reason to believe that operation of the revised rule would impose significant costs on parties to Commission proceedings.

9. Accordingly, we certify that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The Commission shall send a copy of this Report and Order, including this certification, to the Chief Counsel for Advocacy of the SBA. 5 U.S.C. 605(b).

10. 47 CFR. 1.17, 73.1015, and 76.939 *are amended* as set forth in the rule changes.

11. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

12. The Petition for Rulemaking, filed March 5, 2002, by James A. Kay. Jr. *is denied.*

List of Subjects in 47 CFR Parts 1, 73, and 76

Administrative practice and procedure, Radio, Telecommunications, Television.

[2] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 73 and 76 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

■ 2. Section 1.17 is revised to read as follows:

§ 1.17 Truthful and accurate statements to the Commission.

(a) In any investigatory or adjudicatory matter within the Commission's jurisdiction (including, but not limited to, any informal adjudication or informal investigation but excluding any declaratory ruling proceeding) and in any proceeding to amend the FM or Television Table of Allotments (with respect to expressions of interest) or any tariff proceeding, no person subject to this rule shall;

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.

(b) For purpose of paragraph (a) of this section, "persons subject to this rule" shall mean the following:

(1) Any applicant for any Commission authorization;

(2) Any holder of any Commission authorization, whether by application or by blanket authorization or other rule;

(3) Any person performing without Commission authorization an activity that requires Commission authorization;

(4) Any person that has received a citation or a letter of inquiry from the Commission or its staff, or is otherwise the subject of a Commission or staff investigation, including an informal investigation;

(5) In a proceeding to amend the FM or Television Table of Allotments, any person filing an expression of interest; and

(6) To the extent not already covered in this paragraph (b), any cable operator or common carrier.

PART 73—RADIO BROADCAST SERVICES

■ 3. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336 unless otherwise noted.

■ 4. Section 73.1015 is revised to read as follows:

§ 73.1015 Truthful written statements and responses to Commission inquiries and correspondence.

The Commission or its representatives may, in writing, require from any applicant, permittee, or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to any other matter within the jurisdiction of the Commission, or, in the case of a proceeding to amend the FM or Television Table of Allotments, require from any person filing an expression of interest, written statements of fact relevant to that allotment proceeding. Any such statements of fact are subject to the provisions of § 1.17 of this chapter.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 5. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303A, 307, 308, 309, 312, 315, 317, 325, 338, 339, 503, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544A, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, AND 573 unless otherwise noted.

■ 6. Section 76.939 is revised to read as follows:

§ 76.939 Truthful written statements and responses to requests of franchising authority.

Cable operators shall comply with franchising authorities' and the Commission's requests for information, orders, and decisions. Any information submitted to a franchising authority or the Commission in making a rate determination pursuant to an FCC Form 393 (and/or FCC Forms 1200/1205) filing or a cost-of-service showing is subject to the provisions of § 1.17 of this chapter.

[FR Doc. 03–7462 Filed 3–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–779; MB Docket No. 02–322, RM–10584]

Radio Broadcasting Services; Opelousas, Louisiana

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Opelousas Radio Broadcasters, allots Channel 279A to Opelousas, Louisiana, as the community's third FM commercial aural transmission service. *See* 67 FR 66377, October 31, 2002. Channel 279A can be allotted to Opelousas in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.3 kilometers (4.6 miles) south of the community. The reference coordinates for Channel 279A at Opelousas are 30–28–18 North Latitude and 92–03–14 West Longitude. A filing window for Channel 279A at Opelousas, Louisiana, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective April 28, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket Nos. 02–322, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Channel 279A at Opelousas.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–7463 Filed 3–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–588; MM Docket No. 01–132; RM–10149]

Radio Broadcasting Services; Junction, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 66 FR 35406 (July 5, 2001) in this proceeding, this Report and Order allots Channel 297A to Junction Texas and provides Junction with its third local aural transmission service. The coordinates for Channel 297A at Junction are 30–27–27 North Latitude and 99–46–07 West Longitude, with a site restriction of 3.5 kilometers (2.2 miles) south of Junction.

DATES: Effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–132, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202 863–2893. facsimile 202 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 297A at Junction.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–7464 Filed 3–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–630; MM Docket No. 01–111; RM–10124, RM–10341]

Radio Broadcasting Services; Alamo and Milan, Georgia

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed* Rule Making, 66 FR 30366 (June 6, 2001) this *Report and Order* allots Channel 287C3 to Alamo, Georgia, and provides Alamo with its first local aural transmission service. This document also denies a mutually exclusive application filed by Tel-Dodge Broadcasting Co.("Tel-Dodge"), licensee of Station WMCG(FM), Milan Georgia to change its transmitter site. The Commission compared the merits of Radio East Corp's rulemaking petition that proposed the allotment of Channel 287C3 to Alamo with those of Tel-Dodge's application, pursuant to the Commission's *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The Commission

preferred the rulemaking petition. The coordinates for Channel 287C3 at Alamo are 32–19–29 North Latitude and 82–43–23 West Longitude. This allotment has a site restriction of 20.4 kilometers (12.7 miles) north of Alamo.

DATES: Effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–111, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202 863–2893. facsimile 202 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Alamo, Channel 287C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division Media Bureau.

[FR Doc. 03–7470 Filed 3–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–629; MB Docket No. 02–120; RM–10442]

Radio Broadcasting Services; Owen, Wisconsin

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Starboard Broadcasting, Inc., allots Channel 242C3 at Owen, Wisconsin, as the community's first local FM service. Channel 242C3 can be allotted to Owen, Wisconsin, in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.9 km (8.0 miles) northeast of Owen. The coordinates for Channel 242C3 at Owen, Wisconsin, are 45–03–08 North Latitude and 90–29–21 West Longitude. A filing window for Channel 242C3 at Owen, WI, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

DATES: Effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–120, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Owen, Channel 242C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–7472 Filed 3–27–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter IV

[Docket No. 000214043–2227–02; I.D. 011603A]

RIN 1018–AF55, 0648–XA48

Policy for Evaluation of Conservation Efforts When Making Listing Decisions

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Announcement of final policy.

SUMMARY: We, the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (the Services), announce a final policy for the evaluation of conservation efforts when making listing decisions (PECE) under the Endangered Species Act of 1973, as amended (Act). While the Act requires us to take into account all conservation efforts being made to protect a species, the policy identifies criteria we will use in determining whether formalized conservation efforts that have yet to be implemented or to show effectiveness contribute to making listing a species as threatened or endangered unnecessary. The policy applies to conservation efforts identified in conservation agreements, conservation plans, management plans, or similar documents developed by Federal agencies, State and local governments, Tribal governments, businesses, organizations, and individuals.

DATES: This policy is effective April 28, 2003.

ADDRESSES: Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203 (Telephone 703/358–2171, Facsimile 703/358–1735); or Chief, Endangered Species Division, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910 (Telephone 301/713–1401, Facsimile 301/713–0376).

FOR FURTHER INFORMATION CONTACT: Chris Nolin, Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service at the above address, telephone 703/358–2171 or facsimile 703/358–1735, or Margaret Lorenz, Endangered Species Division, National Marine Fisheries Service at the above address, telephone 301/713–1401 or facsimile 301/713–0376.

SUPPLEMENTARY INFORMATION:

Background

This policy provides direction to Service personnel in determining how to consider a conservation agreement when making a decision on whether a species warrants listing under the Act. It also provides information to the groups interested in developing agreements or plans that would contribute to making it unnecessary for the Services to list a species under the Act.

On June 13, 2000, we published in the **Federal Register** (65 FR 37102) a draft policy for evaluating conservation efforts that have not yet been implemented or have not yet demonstrated effectiveness when making listing decisions under the Act. The policy establishes two basic criteria: (1) The certainty that the conservation efforts will be implemented and (2) the certainty that the efforts will be effective. The policy provides specific factors under these two basic criteria that we will use to direct our analysis of the conservation effort. At the time of making listing determinations, we will evaluate formalized conservation efforts (i.e., conservation efforts identified in a conservation agreement, conservation plan, management plan, or similar document) to determine if the conservation effort provides certainty of implementation and effectiveness and, thereby, improves the status, as defined by the Act, of the species such that it does not meet the Act's definition of a threatened or endangered species.

When we evaluate the certainty of whether the formalized conservation effort will be implemented, we will consider the following: Do we have a high level of certainty that the resources necessary to carry out the conservation effort are available? Do the parties to the conservation effort have the authority to carry it out? Are the regulatory or procedural mechanisms in place to carry out the efforts? And is there a schedule for completing and evaluating the efforts? If the conservation effort relies on voluntary participation, we will evaluate whether the incentives that are included in the conservation effort will ensure the level of participation necessary to carry out the conservation effort. We will also evaluate the certainty that the conservation effort will be effective. In making this evaluation, we will consider the following: Does the effort describe the nature and extent of the threats to the species to be addressed and how these threats are reduced by the conservation effort? Does the effort establish specific conservation objectives? Does the effort identify the appropriate steps to reduce threats to the species? And does the effort include quantifiable performance measures to monitor for both compliance and effectiveness? Overall, we need to be certain that the formalized conservation effort improves the status of the species at the time we make a listing determination.

This policy is important because it gives us a consistent set of criteria to evaluate formalized conservation efforts. For states and other entities that are developing agreements or plans, this policy informs them of the criteria we will use in evaluating formalized conservation efforts when making listing decisions, and thereby guides States and other entities that wish to develop formalized conservation efforts that may contribute to making listing unnecessary.

In the notice of the draft policy, we specifically requested comments on the criteria that we would use to evaluate the certainty that a formalized conservation effort will be implemented. Also, we requested comments on the timing of the development of conservation agreements or plans. We have learned that timing is the most critical element when developing a successful conservation agreement or plan. Encouraging and facilitating early development of conservation agreements or plans is an important objective of this policy. Last-minute agreements (i.e., those that are developed just before or after a species is proposed for listing) often have little chance of affecting the outcome of a listing decision. Once a species is proposed for listing under the Act, we may have insufficient time to include consideration of a newly developed conservation plan in the public notice and comment process and still meet our statutory deadlines. Last-minute efforts are also less likely to be able to demonstrate that they will be implemented and effective in reducing or removing threats to the species. In addition, there are circumstances in which the threats to a species are so imminent and/or complex that it will be almost impossible to develop an agreement or plan that includes conservation efforts that will result in making the listing unnecessary. Accordingly, we encourage the early development of formalized conservation efforts before the threats become too extreme and imminent and when there is greater flexibility in sufficiently improving a species' status to the point where listing the species as threatened or endangered is unnecessary.

Summary of Comments and Recommendations

In response to our request for comments on the draft policy, we received letters from 44 entities. Thirty-five were in support of the policy and nine were against. We reviewed all comments received and have incorporated accepted suggestions or clarifications into the final policy text. Because most of these letters included similar comments (several were form letters) we grouped the comments according to issues. The following is a summary of the relevant comments and our responses. We also received comments that were not relevant to the policy and, therefore, outside the policy's scope. We responded to some of these comments where doing so would clarify the process for determining whether a species is endangered or threatened (the listing process) or clarify the nature of conservation plans, agreements, and efforts.

Policy Scope Issues

Issue 1: Many commenters felt that this policy should also apply to downlisting species from endangered to threatened status and delisting actions, or else parties to an agreement where the final decision is to list the species would not have any incentives to take action on a listed species until a recovery plan is developed. In addition, one commenter suggested that the policy scope should be expanded to include the process of designating critical habitat.

Response 1: We believe that the immediate need is to develop criteria that will guide consistent and predictable evaluation of conservation efforts at the time of a listing determination. We may consider such a policy for downlisting or delisting actions in the future. However, we note that a recovery plan is the appropriate vehicle to provide guidance on actions necessary to delist a species. Also, we may consider developing a similar policy for critical habitat designations.

Issue 2: Two commenters stated that our estimates of time needed to develop, implement, monitor, and report on conservation efforts are underestimated.

Response 2: We agree that our original estimates were too low. We have increased our estimate to an average of 2,500 person-hours to complete a conservation agreement (with a range of 1,000 to 4,000 person-hours). We also increased our estimate of the average number of person-hours to conduct monitoring and to prepare a report to

320 and 80 hours, respectively. We expect the amount of time will vary depending on several factors including, but not limited to, the number of species addressed, amount of biological information available on the species, and the complexity of the threats. Therefore, we have provided an average to assist interested parties in their planning efforts.

Issue 3: One commenter questioned whether we would evaluate proposed agreements or plans using the stated criteria automatically or only upon request. The commenter also questioned whether we will consider agreements or plans that we previously determined were not sufficient to prevent the need for listing in combination with "new" proposed agreements or plans when we evaluate whether to list a species.

Response 3: If a listing proposal is under review, we will consider any conservation effort. We will evaluate the status of the species in the context of all factors that affect the species' risk of extinction, including all known conservation efforts whether planned, under way, or fully implemented. However, for formalized conservation efforts not fully implemented, or where the results have not been demonstrated, we will consider the PECE criteria in our evaluation of whether, and to what extent, the formalized conservation efforts affect the species' status under the Act.

Issue 4: One commenter asked the length of time for which a plan is approved.

Response 4: The PECE is not a plan-approval process, nor does it establish an alternative to listing. PECE outlines the criteria we will consider when evaluating formalized conservation efforts that have not yet been fully implemented or do not yet have a record of effectiveness at the time we make a listing decision. Should the status of a species decline after we make a decision not to list this species, we would need to reassess our listing decision. For example, there may be situations where the parties to a plan or agreement meet their commitments, but unexpected and/or increased threats (e.g., disease) may occur that threaten the species' status and make it necessary to list the species.

Issue 5: One commenter asked if the "new information" reopener is operative at any time.

Response 5: Yes, because section 4(b)(1) of the Act requires us to use the best available scientific and commercial data whenever making decisions during the listing process. In making a decision whether to list a species, we will take into account all available information, including new information regarding formalized conservation efforts. If we receive new information on a formalized conservation effort that has not yet been implemented or not yet demonstrated effectiveness prior to making a listing decision, we will evaluate the conservation effort in the context of the PECE criteria. If we receive new information on such an effort after we have decided to list a species, then we will consider this new information along with other measures that reduce threats to the species and may use this information in downlisting the species from endangered to threatened status or delisting. However, PECE will not control our analysis of the downlisting of the species.

Issue 6: One commenter stated that it is unrealistic and unreasonable to expect agreements to be in place at the time the conservation effort is evaluated. In addition, the commenter stated that it is particularly unrealistic and unreasonable to expect that conservation agreements or plans be submitted within 60 days of publication of a proposed rule.

Response 6: We strongly encourage parties to initiate formalized conservation efforts prior to publication of a proposal to list a species under the Act. If a formalized conservation effort is submitted during the public comment period for a proposed rule, and may be significant to the listing decision, then we may extend or reopen the comment period to allow time for comment on the new conservation effort. However, we can extend the public comment period only if doing so does not prevent us from completing the final listing action within the statutory timeframe.

Issue 7: One commenter stated that most existing conservation agreements are ineffective, and furthermore that we are unable to determine their effectiveness for several years.

Response 7: We agree that it could take several years for some conservation efforts to demonstrate results. However, the PECE criteria provide the framework for us to evaluate the likely effectiveness of such formalized conservation efforts. Some existing conservation efforts have proven to be very effective and have justifiably influenced our listing decisions.

Issue 8: Several commenters stated that funds are better spent to list species, designate critical habitat, and implement recovery efforts rather than to develop conservation agreements.

Response 8: Conservation agreements can be seen as early recovery efforts. Early conservation efforts to improve the status of a species before listing is necessary may cost less than if the species' status has already been reduced to the point where it needs to be listed. Early conservation of candidate species can reduce threats and stabilize or increase populations sufficiently to allow us to use our resources for species in greater need of the Act's protective measures.

Issue 9: Some commenters questioned the 14 conservation agreements that we cited which contributed to making listing the covered species as threatened or endangered unnecessary. Commenters requested information on each plan to better allow the public to evaluate the adequacy of the agreements.

Response 9: We referenced the 14 conservation agreements in the Paperwork Reduction Act section of the draft policy and used them solely to estimate the information collection and recordkeeping burden that would result from our draft policy if it were made final. Therefore, we do not recommend using these to comment on the new policy.

Biological Issues

Issue 10: One commenter questioned our method for evaluating a conservation plan that addresses only a portion of a species' range.

Response 10: Using the PECE criteria, we will evaluate all formalized conservation efforts that have yet to be implemented or have yet to demonstrate results at the time we make our listing decision. This is true for efforts that are applicable to all or only a portion of the species' range. The PECE does not set standards for how much conservation is needed to make listing unnecessary. The significance of plans that address only a portion of a species' range will be evaluated in the context of the species' overall status. While a formalized conservation effort may be effective in reducing or removing threats in a portion of the species' range, that may or may not be sufficient to remove the need to list the species as threatened or endangered. In some cases, the conservation effort may lead to a determination that a species warrants threatened status rather than endangered.

In addition, parties may have entered into agreements to obtain assurances that no additional commitments or restrictions will be required if the species is listed. A landowner or other non-Federal entity can enter into a Candidate Conservation Agreement with Assurances (CCAA) (64 FR 32726, June 17, 1999), which are formal agreements between us and one or more non-Federal parties that address the conservation needs of proposed or candidate species, or species likely to become candidates. These agreements provide assurances to non-Federal property owners who voluntarily agree to manage their lands or waters to remove threats to candidate or proposed species, or to species likely to become candidates. The assurances are authorized under the CCAA regulations (50 CFR 17. 22(d)(5) and 17.32(d)(5)) and provide non-Federal property owners assurances that their conservation efforts will not result in future regulatory obligations in excess of those they agree to at the time they enter into the Agreement. Should the species eventually be listed under the Act, landowners will not be subjected to increased property use restrictions as long as they conform to the terms of the agreement. While one of these agreements may not remove the need to list, several such agreements, covering a large portion of the species' range, may.

Issue 11: Several commenters suggested that the Services should consider conservation efforts developed for species other than the species for which a listing decision is being made when the species have similar biological requirements and the conservation effort addresses protection of habitat of the species for which a listing decision is being made.

Response 11: We agree. When a decision whether or not to list a species is being made, we will consider all conservation efforts that reduce or remove threats to the species under review, including conservation efforts developed for other species. However, for all formalized conservation efforts that have not yet been implemented or have yet to demonstrate results, we will use the PECE criteria to evaluate the conservation effort for certainty of implementation and effectiveness for the species subject to the listing decision.

Issue 12: One commenter stated the "biology/natural history" of the species should be adequately known and explained in order to evaluate the effectiveness of the effort.

Response 12: When we consider the elements under the effectiveness criterion, we will evaluate whether the formalized conservation effort incorporates the best available information on the species' biology and natural history. However, due to variation in the amount of information available about different species and the threats to their existence, the level of information necessary to provide a high level of certainty that the effort will be effective will vary.

We believe it is important, however, to start conservation efforts as early as possible even if complete biological information is lacking. Regardless of the extent of biological information we have about a species, there will almost always be some uncertainty about threats and the most effective mechanisms for improving the status of a species. We will include the extent of gaps in the available information in our evaluation of the level of certainty that the formalized conservation effort will be effective. One method of addressing uncertainty and accommodating new information is the use of monitoring and the application of adaptive management principles. The PECE criteria note that describing the threats and how those threats will be removed, including the use of monitoring and adaptive management principles, as appropriate, is critical to determining that a conservation effort that has yet to demonstrate results has reduced or removed a particular threat to a species.

Issue 13: Several commenters suggested that affected party(ies) should work with the Services to identify species that will be proposed for listing in the near future to help concentrate and direct efforts to those species that most warrant the protection, and help make the party(ies) aware of when and what actions should be taken to help conserve species in need.

Response 13: We do identify species in need of protection. The FWS publishes a Candidate Notice of Review (CNOR) in which the FWS identifies those species of plants and animals for which they have sufficient information on the species' biological status and threats to propose them as endangered or threatened under the Act, but for which development of a proposed listing regulation is precluded by other higher priority listing activities. NMFS, which has jurisdiction over marine species and some anadromous species, defines candidate species more broadly to include species whose status is of concern but more information is needed before they can be proposed for listing. NMFS candidate species can be found on their web site at *http://www.nmfs.noaa.gov.* The FWS's CNOR is published in the **Federal Register** and can also be found on their web site at *http://endangered.fws.gov.*

We agree that it is important to start developing and implementing conservation efforts and coordinating those efforts with us as early as possible. Early conservation helps preserve management options, minimizes the cost of reducing threats to a species, and reduces the potential for land use restrictions in the future. Addressing the needs of species before the regulatory protections associated with listing under the Act come into play often allows greater management flexibility in the actions necessary to stabilize or restore these species and their habitats. Early implementation of conservation efforts may reduce the risk of extinction for some species, thus eliminating the need for them to be listed as threatened or endangered.

Issue 14: One commenter stated that requiring an implementation schedule/timeline for conservation objectives is not feasible when baseline data on a species is poorly understood. The policy should recognize that variation in patterns of species distribution and land ownership will cause variation in the difficulty of developing conservation efforts. Thus, some conservation efforts should be allotted more time for their completion.

Response 14: Biological uncertainty is a common feature of any conservation effort. Nevertheless, some conservation actions can proceed even when information on the species is incomplete. Implementation schedules are an important element of all formalized conservation planning efforts (e.g., recovery plans). The implementation schedule identified in PECE criterion A.8. establishes a timeframe with incremental completion dates for specific tasks. In light of the information gaps that may exist for some species or actions, schedules for completing certain tasks may require revision in response to new information, changing circumstances, and the application of adaptive management principles. Including an implementation schedule in a formalized conservation effort is critical to determining that the effort will be implemented and effective and has improved the status of the species under the Act at the time we make our listing determination.

We acknowledge that the amount of time required to develop and implement formalized conservation efforts will vary. Therefore, we encourage early development and implementation of conservation efforts for species that have not yet become candidates for listing and for those species that are already candidates. This policy does not dictate timeframes for completing conservation efforts. However, the Act mandates specific timeframes for many listing decisions, and we cannot delay final listing actions to allow for the development and signing of a conservation agreement or plan. We and participants must also acknowledge that, for species that are poorly known, or whose threats are not well understood, it is unlikely that conservation efforts that have not been implemented or that have yet to yield

results will have improved the status of the species sufficiently to play a significant role in the listing decision.

Issue 15: One commenter stated that the Services, when evaluating the certainty of conservation efforts while making listing decisions, should factor into the analysis the Services' ability to open or reopen the listing process at any time, and to list the species on an emergency basis if necessary.

Response 15: We will initiate or revisit a listing decision if information indicates that doing so is warranted, and on an emergency basis if there is an imminent threat to the species' well-being. However, we do not make any listing determinations based on our ability to change our decisions. We base our listing decisions on the status of the species at that time, not on some time in the future.

Criteria Issues

Issue 16: Several commenters requested that we further explain the criteria for both implementation and effectiveness. The commenters claim that our criteria are too vague and are subject to interpretation by the Services. One commenter said that, by stating "this list should not be considered comprehensive evaluation criteria," the policy allows the Services to consider criteria not addressed in the agreement, and allows for too much leeway for the Services to reject conservation efforts of an agreement, even if all criteria listed in the draft policy are satisfied.

Response 16: PECE establishes a set of criteria for us to consider when evaluating formalized conservation efforts that have not yet been implemented or have not yet demonstrated effectiveness to determine if the efforts have improved the status of the species. At the time of the listing decision, we must find, with minimal uncertainty, that a particular formalized conservation effort will be implemented and will be effective, in order to find that the effort has positively affected the conservation status of a species. Meeting these criteria does not create an approval process. Some conservation efforts will address these criteria more thoroughly than others. Because, in part, circumstances vary greatly among species, we must evaluate all conservation efforts on a case-by-case basis at the time of listing, taking into account any and all factors relevant to whether the conservation effort will be implemented and effective.

Similarly, the list of criteria is not comprehensive because the conservation needs of species will vary greatly and depend on species-specific, habitat-specific, location-specific, and action-specific factors. Because conservation needs vary, it is not possible to state all of the factors that might determine the ultimate effectiveness of formalized conservation efforts. The species-specific circumstances will also determine the amount of information necessary to satisfy these criteria. Evaluating the certainty of the effectiveness of a formalized conservation effort necessarily includes an evaluation of the technical adequacy of the effort. For example, the effectiveness of creating a wetland for species conservation will depend on soil texture, hydrology, water chemistry, and other factors. Listing all of the factors that we would appropriately consider in evaluations of technical adequacy is not possible.

Issue 17: One commenter suggested that we consider conservation plans in the development stage rather than waiting until finalized due to the possible benefits that may result from initial efforts.

Response 17: Plans that have not been finalized and, therefore, do not conform to the PECE criteria, may have some conservation value for the species. For example, in the process of developing a plan, participants and the public may become more informed about the species and its conservation needs. We will consider any benefits to a species that have accrued prior to the completion of an agreement or plan in our listing decision, under section 4(b)(1)(A) of the Act. However, the mere existence of a planning process does not provide sufficient certainty to actually improve the status of a species. The criteria of PECE set a rigorous standard for analysis and assure a high level of certainty associated with formalized conservation efforts that have not been implemented, or have yet to yield results, in order to determine that the status of the species has improved.

We encourage parties to involve the appropriate Service during the development stage of all conservation plans, whether or not they are finalized prior to a listing decision. Sharing of the best available information can lead to developing better agreements. In the event that the focus species is listed, these planning efforts can be utilized as the basis for development of Safe Harbor Agreements or Habitat Conservation Plans, through which we can permit incidental take under Section 10(a) of the Act, or provide a basis for a recovery plan.

Issue 18: Several commenters stated that the policy should provide more sufficient, clear criteria by which the implementation and effectiveness of conservation efforts is monitored and assessed. One commenter also suggested that we require a specific reporting format to help show effectiveness of conservation efforts.

Response 18: When evaluating formalized conservation efforts under PECE, we will consider whether the effort contains provisions for monitoring and reporting implementation and effectiveness results (see criterion B.5).

Regarding a standard reporting format, the nature of the formalized conservation efforts we evaluate will probably vary a great deal. Efforts may range from complex to single-threat approaches. Therefore, for us to adopt a one-size-fits-all approach to report on monitoring efforts and results would be inappropriate.

Issue 19: One commenter stated that PECE is too demanding with respect to identification and commitment of resources "up-front," and that these strict requirements and commitments on conservation efforts harm the voluntary nature of agreements.

Response 19: Addressing the resources necessary to carry out a conservation effort is central to establishing certainty of plan implementation and effectiveness. Accordingly, we believe that PECE must establish a minimum standard to assure certainty of implementation and effectiveness. This certainty is necessary in determining whether the conservation effort has improved the status of species.

It is our intention and belief that the PECE criteria will actually increase the voluntary participation in conservation agreements by increasing the likelihood that parties' voluntary efforts and commitments that have yet to be implemented or have yet to demonstrate results will play a role in a listing decision.

Issues Related to Specific Changes

Several commenters recommended specific changes to the evaluation criteria. The recommended additions in language to the criteria are italicized and deletions are shown in strikeout to help the reader identify the proposed changes.

Issue 20: Commenters stated that there is potential confusion between evaluation criteria A.2. (authority) and A.3.(authorization) as they believed some Service staff may have difficulty distinguishing between an "authority," and an "authorization." To help eliminate this potential confusion, commenters requested that criterion A.2. be changed to read: "the legal authority of the party(ies) to the agreement or plan to implement the conservation effort and the legal procedural requirements necessary to implement the effort are described." They also requested that we change criterion A.3. to read: The legal requirements (e.g. permits, environmental review documents) necessary to implement the conservation effort are identified, and an explanation of how the party(ies) to the agreement or plan that will implement the effort will fulfill these requirements is provided."

Response 20: We agree with adding the word "legal" and also have incorporated additional language and separated this criterion (former criterion A.2) into two criteria (A.2. and A.3.). Evaluation Criterion A.2. now reads, "The legal authority of the party(ies) to the agreement or plan to implement the formalized conservation effort, and the commitment to proceed with the conservation effort are described." New evaluation Criterion A.3. reads, "The legal procedural requirements necessary to implement the effort are described, and information is provided indicating that fulfillment of these requirements does not preclude commitment to the effort." In making these changes, we recognize that there may be overlap between new criterion A.3. and the criterion on authorizations (now A.4.), but our intent is to separate a criterion on procedural requirements from substantive authorizations (e.g. permits). We believe that we need to specifically determine that the parties to the agreement will obtain the necessary authorizations. We also recognize that parties may not be able to commit to some conservation efforts until they have fulfilled procedural requirements (e.g. under the National Environmental Policy Act) since some laws preclude commitment to a specific action until certain procedures are completed. Additionally, in creating a new criterion A.3., we find it unnecessary to incorporate the suggested changes to old A.3. (now A.4.).

Issue 21: Commenters requested the following change to Criterion A.4. (now Criterion A.5.): "The level of voluntary participation (e.g., permission to enter private land or other contributions by private landowners) necessary to implement the conservation effort is identified, and an explanation of how the party(ies) to the agreement or plan that will implement the conservation effort will obtain that level of voluntary participation is provided (e.g., an explanation of why incentives to be provided are expected to result in the necessary level of voluntary participation)".

Response 21: We do not believe that including "an explanation of how the party(ies) * * * will obtain that level of voluntary participation * * *" will provide us with enough information in order to determine that necessary voluntary participation will, in fact, be obtained. Evaluation Criterion A.5. (formerly A.4.) now reads: "The type and level of voluntary participation (e.g., number of landowners allowing entry to their land, or number of participants agreeing to change timber management practices and acreage involved) necessary to implement the conservation effort is identified, and a high level of certainty is provided that the party(ies) to the agreement or plan that will implement the conservation effort will obtain that level of voluntary participation (e.g., an explanation of how incentives to be provided will result in the necessary level of voluntary participation)."

Issue 22: Commenters suggested that Evaluation Criterion A.5. (now criterion A.6.) be changed to read as "Any statutory or regulatory deficiency or barrier to implementation of the conservation effort is identified and an explanation of how the party(ies) to the agreement or plan that will implement the effort will resolve the deficiency or barriers is provided."

Response 22: We do not agree with the suggested language change. We believe that all regulatory mechanisms, including statutory authorities, must be in place to ensure a high level of certainty that the conservation effort will be implemented.

Issue 23: The suggested change to Evaluation Criterion A.6. (now A.7.) is "A fiscal schedule and plan is provided for the conservation effort, including a description of the obligations of party(ies) to the agreement or plan that will implement the conservation effort, and an explanation of how they will obtain the necessary funding is provided."

Response 23: We do not agree with the suggested language change since we believe that there must be a high level of certainty that the party(ies) will obtain the necessary funding to implement the effort. While we agree that including a fiscal schedule, a description of the obligations of the party(ies), and an explanation of how they will obtain the funding is important, this information, by itself, does not provide enough certainty for us to consider a formalized conservation effort that has not yet been implemented as contributing to a listing decision. Also see our response to Issue 41.

Issue 24: One commenter suggested that the Services should consider an incremental approach to evaluating implementation dates for the conservation effort.

Response 24: We agree with the commenter's suggested change. Evaluation Criterion A.8. (formerly A.7.) now reads as: "An implementation schedule (including incremental completion dates) for the conservation effort is provided."

Issue 25: Commenters suggested that Criterion A.8. (now A.9.) be revised to read: "The conservation agreement or plan that includes the conservation effort include a commitment by the party(ies) to apply their legal authorities and available resources as provided in the agreement or plan."

Response 25: The participation of the parties through a written agreement or plan establishes each party's commitment to apply their authorities and resources to implementation of each conservation effort. Therefore, it is unnecessary to include the suggested language; criterion A.9. (formerly A.8.) remains unchanged.

Issue 26: A commenter also suggested adding a criterion: "Evidence that other conservation efforts have been implemented for sympatric species within the same ecosystem that may provide benefits to the subject species is provided."

Response 26: We do not think it is necessary to add such a criterion. At the time of listing, we will take into consideration all relevant information, including the effect of other conservation efforts for sympatric species on the status of the species we are considering for listing.

Issue 27: Several commenters recommended that we make specific changes to the Criterion B.1. language to read as: "The nature and extent of threats being addressed by the conservation effort are described, and how the conservation effort will reduce the threats are defined." In addition, commenters suggested we change Criterion B.2. to read as: "Explicit incremental objectives for the conservation effort and dates for achieving them should be stated."

Response 27: We agree that, in addition to identifying threats, the plan should explain how formalized conservation efforts reduce threats to the species. Therefore, Evaluation Criterion B.1. now reads as: "The nature and extent of threats being addressed by the conservation effort are described, and how the conservation effort reduces the threats is described." We agree that conservation efforts should include incremental objectives. This allows the parties to evaluate progress toward the overall goal of a conservation effort, which is essential for adaptive

management. In addition, setting and achieving interim objectives is helpful in maintaining support for the effort. Therefore, Evaluation Criterion B.2. now reads as: "Explicit incremental objectives for the conservation effort and dates for achieving them are stated."

Issue 28: Some commenters recommended that the party's (ies') prior record with respect to development and implementation of conservation efforts be recognized towards their credibility and reliability to implement future conservation efforts. A commenter also suggested adding a criterion to read as: "Demonstrated ability of the party(ies) to develop and implement effective conservation efforts for this or other species and habitats." Another comment suggested that the history and momentum of a program should be taken into account (e.g., watershed council programs) when considering the certainty of effectiveness and implementation. These considerations would help ensure a high level of certainty that regulatory mechanisms, funding authorizations, and voluntary participation will be adopted by a specified date adequate to provide certainty of implementation.

Response 28: Although it would be beneficial for the party(ies) to demonstrate their past abilities to implement effective formalized conservation efforts for the focus species or other species and habitats, we do not believe that this is necessary to demonstrate a high level of certainty that the conservation effort will be implemented. In addition, a criterion that emphasizes previous experience in implementing conservation efforts may limit formalized conservation efforts to only those party(ies) that have a track record and would unjustifiably constrain consideration of efforts by those who do not satisfy this criterion. Such parties can provide certainty in other ways. We agree that a party's (ies') prior record and history with respect to implementation of conservation efforts should be recognized towards their credibility and reliability. Information concerning a party's experience in implementing conservation efforts may be useful in evaluating how their conservation effort satisfies the PECE criteria. The momentum of a project is a good indication of the progress that is being made towards a party's (ies') conservation efforts, but momentum can decrease, and thus cannot be solely relied upon to determine the certainty that a formalized conservation effort will be implemented or effective.

Issue 29: One commenter stated that our use of "must" in meeting the criteria is inappropriate in the context of a policy, and the policy should rather be treated as guidance.

Response 29: The only mandatory statements in the policy refer to findings that we must make. In order for us to find that a particular formalized conservation effort has improved the status of the species, we must be certain that the formalized conservation effort will be implemented and will be effective. No party is required to take any action under this policy. Rather the policy provides us guidance on how we will evaluate formalized conservation efforts that have yet to be implemented or have yet to demonstrate effectiveness at the time of our listing decision.

Legal Issues

Issue 30: Many commenters mentioned past litigation (i.e., decisions on coho salmon and Barton Springs salamander) in which the courts have ruled against the Services in cases that have involved Candidate Conservation Agreements or other conservation efforts, and question how the PECE policy addresses this issue. Commenters question how this policy will keep the Services from relying on speculative conservation efforts.

Response 30: We referenced past adverse decisions when we published the draft policy. The purpose of PECE, in part, is to address situations similar to those in which some courts found past conservation efforts insufficient. We developed the PECE to establish a set of consistent standards for evaluating certain formalized conservation efforts at the time of a listing decision and to ensure with a high level of certainty that formalized conservation efforts will be implemented and effective. We agree that we may not rely on speculative promises of future action when making listing decisions.

Issue 31: Several commenters questioned the legality of considering private party's (ies') input when section 4(b)(1)(A) of the Act states "* * * and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species * * *" In addition, commenters stated that the PECE policy is inconsistent with the plain language and the congressional intent of the Act by allowing agencies to evaluate any private measures. They also stated that this was inconsistent with considering section 4(a)(1)(D), which only permits agencies to evaluate "existing regulatory mechanisms." They also stated that the Services incorrectly conclude that section 4(a)(1)(E), "other natural or manmade factors affecting [the species'] continued existence," allows the Services to consider actions of "any other entity" in making listing determinations. One commenter stated that there are no provisions to authorize the Services to consider voluntary conservation agreements by other Federal agencies. In 1982, the Act omitted 1973 language for listing determinations made with "other interested Federal agencies." In addition, the commenters stated that the Act imposes conservation duties on all Federal agencies only after the Services have taken the initial step in listing the species.

Response 31: Please refer to the Policy Scope section for an explanation of our authority under section 4 of the Act to assess all threats affecting the species status as well as all efforts that reduce threats to the species.

Issue 32: One commenter suggested that we formalize this policy by codifying it in the Code of Federal Regulations. They suggest that by adopting this policy as agency regulation, we can make the policy more binding, provide a basis for judicial deference, and thus hopefully reduce the amount of litigation.

Response 32: We believe that codifying PECE in the Code of Federal Regulations is not necessary because it is intended as a policy to guide how we will evaluate formalized conservation efforts when making listing decisions.

Issue 33: Some commenters believe that all regulatory mechanisms must be in place prior to finalizing a conservation plan, while other commenters feel that this requirement may dissuade voluntary conservation efforts of private landowners. One commenter stated that, based on the amount of time usually needed to enact most regulatory mechanisms, it seems appropriate to set this minimum standard for evaluating formalized conservation efforts. This criterion should prompt more serious political consideration of adopting a regulatory mechanism sooner rather than later. Another commenter suggested that, instead of requiring regulations, we should require cooperators to identify and address any regulatory deficiencies affecting the species.

Response 33: In order for us to determine with a high level of certainty that a formalized conservation effort will be implemented, among other things, all regulatory mechanisms necessary to implement the effort must be in place at the time we make our listing decision. However, there may be situations where regulatory mechanisms are not necessary for implementing the conservation effort due to the nature of the action that removes threats, or there may be situations where necessary regulatory mechanisms are already in place.

Issue 34: One commenter stated that only when an alternative regulatory mechanism provides the same or higher protections than listing can the threat factors be said to be alleviated. A high level of certainty over future funding or voluntary participation might be acceptable if alternative regulatory mechanisms to prevent take in the interim are in place.

Response 34: Determinations to list species under the Act are based solely on whether or not they meet the definitions of threatened or endangered as specified by the Act. Through PECE, we will evaluate, at the time of our listing decision, whether a formalized conservation effort adequately reduces threats and improves the status of the species to make listing unnecessary. Additional alternative regulatory mechanisms to prevent take are not necessary if the threats to the species are reduced to the point that the species does not meet the definitions of threatened or endangered.

Issue 35: One commenter stated concern that the Services would not be able to provide assurances to private landowners because no specific provisions in the Act authorize conservation agreements in lieu of listing, and that third party lawsuits also undermine the Services' assurances. One commenter asked what future protection of their ongoing actions participants would receive.

Response 35: Satisfying the PECE criteria does not provide assurances that we will not decide to list a species. Also, because of the individual nature of species and the circumstances of their status, PECE does not address how much conservation is required to make listing unnecessary. Because of the numerous factors that affect a species' status, we may list a species despite the fact that one or more formalized conservation efforts have satisfied PECE. However, assurances can be provided to non-Federal entities through an approved Candidate Conservation Agreement with Assurances (CCAA) and in an associated enhancement of survival permit issued under section 10(a)(1)(A) of the Act. Many property owners desire certainty with regard to future regulatory restrictions to guarantee continuation of existing land or water uses or to assure allowance for future changes in land use. By facilitating this kind of individual land use planning, assurances provided under the CCAA policy can substantially benefit many property owners. These agreements can have significance in our listing decisions, and we may also evaluate them according to the criteria in the PECE if they are not yet implemented or have not demonstrated results. However, we will make the determination of whether these CCAAs preclude or remove any need to list the covered species on a case-by-case basis in accordance with the listing criteria and procedures under section 4 of the Act.

Issue 36: Several commenters stated that the PECE does not always provide incentives to conserve species and is, therefore, not supported by the Congressional finding of section 2(a)(5) of the Act. The commenters stated that the parties lack incentives to develop conservation programs until after the species is listed (e.g., *Building Industry Association of Southern California* v. *Babbitt*, where listing the coastal California gnatcatcher encouraged enrollment in conservation programs.) In addition, they stated that PECE provides a means for the listing process to be avoided entirely, and, therefore, may often fail to provide incentives that Congress referred to in its findings in section 2(a)(5). They stated that the "system" of incentives to which that Congressional finding refers is already found in incidental take provisions in section 10 of the Act, which will better ensure development and implementation of successful conservation programs.

Response 36: PECE is not "a way to avoid listing" or an "in lieu of listing" policy. This policy outlines guidance on the criteria we will use to evaluate formalized conservation efforts in determining whether to list a species. Knowing how we will evaluate any unimplemented or unmeasured formalized conservation efforts may help parties draft more effective agreements. However, there is a conservation incentive because, if a species becomes listed, these efforts can contribute to recovery and eventual delisting or downlisting of the species. Also, see our response to Issue 35.

Issue 37: Several commenters stated that relying on unimplemented future conservation measures is inconsistent with the definitions of "threatened species" and "endangered species" as provided in section 3 of the Act, and that PECE's evaluation of future, unimplemented conservation efforts in listing determinations is inconsistent with both the plain language of the Act and Congressional intent. Also, the commenters stated that the PECE erroneously claims that the definitions of "threatened species" and "endangered species" connote future status, not present status.

Response 37: We agree that, when we make a listing decision, we must determine the species' present status which includes, in part, an evaluation of current threats. However, deciding or determining whether a species meets the definition of threatened or endangered also requires us to make a prediction about the future persistence of a species. Central to this concept is a prediction of future conditions, including consideration of future negative effects of anticipated human actions. The language of the Act supports this approach. The definitions for both "endangered species" and "threatened species" connote future condition, which indicates that consideration of whether a species should be listed depends in part on identification and evaluation of future actions that will reduce or remove, as well as create or exacerbate, threats to the species. We cannot protect species without taking into account future threats to a species. The Act does not require that, and species conservation would be compromised if, we wait until a threat is actually impacting populations before we list the species as threatened or endangered. Similarly, the magnitude and/or imminence of a threat may be reduced as a result of future positive human actions. Common to the consideration of both the negative and positive effects of future human actions is a determination of the likelihood that the actions will occur and that their effects on the species will be realized. Therefore, we consider both future negative and future positive impacts when assessing the listing status of the species. The first factor in section 4(a)(1)—"the present or threatened destruction, modification, or curtailment of [the species'] habitat or range"—identifies how analysis of both current actions affecting a species' habitat or range and those actions that are sufficiently certain to occur in the future and affect a species' habitat or range are necessary to assess a species' status. However, future Federal, state, local, or private actions that affect a species are not limited to actions that will affect a species' habitat or range. Congress did not intend for us to consider future actions affecting a species' habitat or range, yet ignore future actions that will influence overutilization, disease, predation, regulatory mechanisms, or other natural or manmade factors. Therefore, we construe Congress' intent, as reflected

by the language of the Act, to require us to consider both current actions that affect a species' status and sufficiently certain future actions—either positive or negative—that affect a species' status.

Issue 38: Several commenters stated that PECE's "sufficient certainty" standard is inconsistent with the Act's "best available science" standard. They stated that courts have ruled that any standard other than "best available science" violates the plain language and the Congressional intent of the Act. The commenters also stated that the "sufficient certainty" standard violates Congressional intent because it weakens the standard required by the Act to list species and can result in unnecessary, and potentially harmful, postponement of affirmative listing.

Response 38: We agree that our listing decisions must be based on the best available science. PECE does not address or change the listing criteria and procedures established under section 4 of the Act. Listing analyses include the evaluation of conservation efforts for the species under consideration. PECE is designed to help ensure a consistent and rigorous review of formalized conservation efforts that have yet to be implemented or efforts that have been implemented but have not yet shown effectiveness by establishing a set of standards to evaluate the certainty of implementation and effectiveness of these efforts.

Issue 39: Several commenters stated that PECE reduces or eliminates public comment on proposed rules to list species and is in violation of the Administrative Procedure Act (APA). Further, they stated that PECE violates the APA by allowing submission of formalized conservation measures after the proposed rule is issued to list species as threatened or endangered. Receiving "conservation agreements or plans before the end of the comment period in order to be considered in final listing decision" encourages landowners to submit conservation agreements at the last minute to avoid public scrutiny, and the PECE process could be a potential delay tactic used by landowners to postpone the listing of species. They stated that the Courts agree that failure of the Services to make available to the public conservation agreements on which listing decisions are based violates the public comment provision of the APA.

Response 39: All listing decisions, including those involving formalized conservation agreements, will comply with the requirements of the APA and ESA. If we receive a formalized conservation agreement or plan during an open comment period and it presents significant new information relevant to the listing decision, we would either extend or reopen the public comment period to solicit public comments specifically addressing that plan or agreement. We recognize, however, that there may be situations where APA requirements must be reconciled with the ESA's statutory deadlines.

Issue 40: Several commenters expressed their concern that conservation efforts do not have binding obligations.

Response 40: While PECE does not require participants to have binding obligations, the policy does require a high level of certainty that a conservation effort will be implemented and effective at the time we make our listing decision. Furthermore, any subsequent failure to satisfy one or more PECE criteria would constitute new information and, depending on the significance of the formalized conservation effort to the species' status, may require a reevaluation of whether there is an increased risk of extinction, and whether that increased risk indicates that the species' status is threatened or endangered.

Funding Issues

Issue 41: Several commenters requested that we further specify our criteria stating that "a high level of certainty that the party(ies) to the agreement or plan that will implement the conservation effort will obtain the necessary funding is provided." In addition, one commenter questioned whether "a high level of certainty" for authorizations or funding was really an improvement over the status quo and suggested that we either list the required elements we will use to evaluate completeness of the conservation efforts or quantitatively define an evaluation standard.

Response 41: A high level of certainty of funding does not mean that funding must be in place now for implementation of the entire plan, but rather, it means that we must have convincing information that funding will be provided each year to implement relevant conservation efforts. We believe that at least 1 year of funding should be assured, and we should have documentation that demonstrates a commitment to obtain future funding, e.g., documentation showing funding for the first year is in place and a written commitment from the senior official of a state agency or organization to request or provide necessary funding in subsequent budget cycles, or documentation showing that funds are available through appropriations to existing programs and the implementation of this plan is a priority for these programs. A fiscal schedule or plan showing clear links to the implementation schedule should be provided, as well as an explanation of how the party(ies) will obtain future necessary funding. It is also beneficial for entities to demonstrate that similar funding was requested and obtained in the past since this funding history can show the likelihood that future funding will be obtained.

Issue 42: One commenter suggested that the PECE policy holds qualifying conservation efforts to a higher standard than recovery plans. The commenter quoted several existing recovery plans that included disclaimers about budget commitments associated with specific tasks. Therefore, the commenter concluded that it is unrealistic and unreasonable to mandate that funding be in place when a conservation effort is evaluated.

Response 42: The Act does not require that certainty of implementation be provided for recovery management actions for listed species or conservation efforts for nonlisted species. Likewise, the PECE does not require that certainty of implementation be provided for during development of conservation efforts for nonlisted species. It is inappropriate to consider the PECE as holding conservation plans or agreements to a higher standard than the standard that exists for recovery plans because the PECE does not mandate a standard for conservation plans or agreements at the time of plan development. Rather, the PECE provides us guidance for the evaluation of conservation efforts when making a listing decision for a nonlisted species.

Recovery plans for listed species and conservation plans or agreements for nonlisted species identify needed conservation actions but may or may not provide certainty that the actions will be implemented or effective. However, when making a listing decision for nonlisted species, we must consider the certainty that a conservation effort will be implemented and effective. The PECE establishes criteria for us to use in evaluating conservation efforts when making listing decisions.

It is possible that we would evaluate a management action identified in a recovery plan for a listed species using the PECE. If, for example, a yet-to-be-implemented task identified in a recovery plan for a listed species would also benefit a nonlisted species, we, in making a listing decision for the nonlisted species, would apply the PECE criteria to that task to determine whether it could be considered as contributing to a decision not to list the species or to list the species as threatened rather than endangered. In this situation, we would evaluate the management task identified in a recovery plan using the PECE criteria in the same way as other conservation efforts for the nonlisted species. That is, the recovery plan task would be held to the same evaluation standard in the listing decision as other conservation efforts.

Foreign Species Issues

Issue 43: One commenter asked why the proposed policy excluded conservation efforts by foreign governments, even though section 4(b)(1)(A) of the Act requires the Services to take such efforts into account. This commenter also stated that the proposed policy is contrary to "The Foreign Relations Law of the United States," which he argues requires the United States to defer to other nations when they have a "clearly greater interest" regarding policies or regulations being considered by the United States that could negatively affect their nations.

Response 43: As required by the Act, we have taken and will continue to take into account conservation efforts by foreign countries when considering listing of foreign species (sections 4(b) and 8 of the Act). Furthermore, whenever a species whose range occurs at least in part outside of the United States is proposed for a listing action (listing, change in status, or delisting), we communicate with and solicit the input of the countries within the range of the species. At that time, countries are provided the opportunity to share information on the status of the species, management of the species, and on conservation efforts within the foreign country. We will take those comments and information provided into consideration when evaluating the listing action, which by law must follow the analysis outlined in sections 4(a) and 4(b) of the Act. Thus, all listing decisions for foreign species will continue to comply with the provisions of the Act.

Issues Outside Scope of Policy

We received several comments that were outside of the scope of PECE. Below, we have briefly addressed these comments.

Issue 44: A comment was made that the Services should not list foreign species under the Act when such listing is in conflict with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Response 44: Considerations regarding CITES are outside the scope of the PECE. However, we do not believe there is a conflict with CITES and listing of a foreign species under the Act. When evaluating the status of foreign species under the Act, we take into consideration whether the species is listed under CITES (and if listed, at what level) and all available information regarding the listing. If you have questions regarding CITES, please contact the FWS Division of Scientific Authority at 4401 N. Fairfax Drive, Room 750, Arlington, VA 22203 or by telephone at 703–358–1708.

Issue 45: One commenter stated that all conservation agreements/plans should be subject to independent scientific peer review. This commenter also argued that any conservation agreement or plan for a candidate species should remove all known major threats for the species and convey a reasonably high certainty that the agreement or plan will result in full conservation of the species.

Response 45: We believe that scientific review can help ensure that formalized conservation efforts are comprehensive and effective, and we expect that most or all participants will seek scientific review, but we will not require a formal independent peer review of conservation plans at the time of development. If a formalized conservation plan is presented for a species that has been proposed for listing, all relevant information, including formalized conservation efforts, will be subject to independent scientific review consistent with our policy on peer review (59 FR 34270). We will also solicit public comments on our listing proposals.

The amount or level of conservation proposed in a conservation plan (e.g., removal of all versus some of the major threats) is outside the scope of PECE. Assuming that all of the PECE criteria have been satisfied for the efforts to which they apply, it stands to reason that plans that comprehensively address threats are likely to be more influential in listing decisions than plans that do not thoroughly address the conservation of the species. We believe that by establishing the PECE criteria for certainty of implementation and effectiveness, we are promoting the development of plans that improve the status of species. We expect that in some cases this improvement will reduce the risk of extinction sufficiently to make listing under the Act unnecessary, to result in listing a species as threatened rather than endangered, or to make classifying a species as a candidate for listing unnecessary.

Issue 46: Several commenters questioned the extent of state involvement in the development of conservation efforts. One commenter said that the policy should mandate that States be involved with plan development, and that states approve all conservation efforts.

Response 46: It is outside the scope of PECE to establish standards to determine who participates in the development of conservation efforts and at what level. In many cases, states play a crucial role in the conservation of species. For formalized conservation efforts to be effective, it is logical for the states to play an integral role. To that end, we highly encourage state participation to help ensure the conservation of the species, but we do not believe that states should be mandated to participate in the development of all conservation plans. In some cases, states may not have the resources to participate in these plans, and in other situations, individuals or non-state entities may have the ability to develop an effective and well-implemented plan that does not require state participation, but that contributes to the conservation of a species. Through our listing process, we will work with state conservation agencies, and, if the listing decision involves a public comment period, states have a formal opportunity to comment on any conservation efforts being considered in the listing decision.

Issue 47: Several comments were made regarding the feedback mechanisms to correct a party's (ies') inadequate or ineffective implementation of a conservation effort. It was suggested that the Services specify clearly, and based on scientific information, those factors which the Services believe indicate that a conservation effort is either not being implemented or not being effective. Comments also suggested that party(ies) be given reasonable time (e.g., 90–120 days) to respond to the Service's findings by either implementing actions, achieving objectives, or providing information to respond to the Services.

Response 47: PECE is not a regulatory approval process, and establishing a formal feedback mechanism between the Services and participants is not within the scope of PECE. The final determination whether to list a species under the Act will rest solely upon whether or not the species under consideration meets the definition of threatened or endangered as specified by the Act, which will include consideration of whether formalized

conservation efforts that meet PECE criteria have enhanced the status of the species. We will provide guidance to improve conservation efforts when possible, but we cannot delay listing decisions in order to participate in a corrective review process when the best scientific and commercial data indicate that a species meets the definition of threatened or endangered.

Issue 48: One commenter requested that we clarify how significant the conservation agreement must be to the species, and describe the anticipated overall impact/importance to the species and the estimated extent of the species' overall range that the habitat conservation agreement might cover.

Response 48: PECE does not establish standards for how much or what kind of conservation is required to make listing a species under the Act unnecessary. We believe that high-quality formalized conservation efforts should explain in detail the impact and significance of the effort on the target species. However, at the time of our listing decision, we will evaluate formalized conservation efforts using PECE to determine whether the effort provides certainty of implementation and effectiveness and improves the status of the species. Through our listing process, we will determine whether or not a species meets the definition of threatened or endangered.

Issue 49: Several commenters wrote that states do not have additional resources to be pro-active on candidate conservation efforts, and suggested that funding for conservation plans or efforts should be provided by the Federal Government.

Response 49: This comment is outside the scope of the PECE. This policy establishes a set of standards for evaluating formalized conservation efforts in our listing decisions and does not address funding sources to develop and implement these efforts.

Summary of Changes From the Proposed Policy

We have slightly revised some of the evaluation criteria as written in the proposed policy. We made the following changes to reflect comments that we received during the public comment period. We added the word "legal" to criterion A.2., incorporated additional language ("the commitment to proceed with the conservation effort is described."), and separated this criterion into two criteria (A.2. and A.3.). We revised criterion A.3. (formerly part of A.2.) to recognize that parties cannot commit to completing some legal procedural requirements (e.g. National Environmental Policy Act) since some procedural requirements preclude commitment to a proposed action before the procedures are actually completed. We changed criterion A.5. (formerly A.4.) by adding "type" and "(e.g., number of landowners allowing entry to their land, or number of participants agreeing to change timber management practices and acreage involved)" and by replacing "why" with "how" and "are expected to" with "will." We deleted the word "all" at the beginning of criterion A.6. as we felt it was redundant. We added "(including incremental completion dates)" to criterion A.8. (formerly A.7.). To criterion B.1. we added "and how the conservation effort reduces the threats is described."

Also in the proposed policy we stated that if we make a decision not to list a species, or to list the species as threatened rather than endangered, based in part on the contributions of a formalized conservation effort, we will monitor the status of the species. We have clarified this in the final policy to state that we will monitor the status of the effort, including the progress of implementation of the formalized conservation effort.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant policy and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(a) This policy will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The policy for the evaluation of conservation efforts when making listing decisions does not pertain to commercial products or activities or anything traded in the marketplace.

(b) This policy is not expected to create inconsistencies with other agencies' actions. FWS and NMFS are responsible for carrying out the Act.

(c) This policy is not expected to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) OMB has determined that this policy may raise novel legal or policy issues and, as a result, this action has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions), unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our determination.

We have examined this policy's potential effects on small entities as required by the Regulatory Flexibility Act and have determined that this action will not have a significant economic impact on a substantial number of small entities since the policy will not result in any significant additional expenditures by entities that develop formalized conservation efforts. The criteria in this policy describe how we will evaluate elements that are already included in conservation efforts and do not establish any new implementation burdens. Therefore, we believe that no economic effects on States and other entities will result from compliance with the criteria in this policy.

Pursuant to the Regulatory Flexibility Act, at the proposed policy stage, we certified to the Small Business Administration that this policy would not have a significant economic impact on a substantial number of small entities, since we expect that this policy will not result in any significant additional expenditures by entities that develop formalized conservation efforts. We received no comments regarding the economic impacts of this policy on small entities. Thus, we certify that this final policy will not have a significant adverse impact on a substantial number of small entities and conclude that a regulatory flexibility analysis is not necessary.

We have determined that this policy will not cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographical regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises (see Economic Analysis below).

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this policy is a significant action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This policy will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. We expect that this policy will not result in any significant additional expenditures by entities that develop formalized conservation efforts.

(b) This policy will not produce a Federal mandate on state, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. This policy imposes no obligations on state, local, or tribal governments (see Economic Analysis below).

Takings

In accordance with Executive Order 12630, this policy does not have significant takings implications. While state, local or Tribal governments, or private entities may choose to directly or indirectly implement actions that may have property implications, they would do so as a result of their own decisions, not as a result of this policy. This policy has no provision that would take private property.

Federalism

In accordance with Executive Order 13132, this policy does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Commerce policy, we requested information from and coordinated development of this policy with appropriate resource agencies throughout the United States.

Civil Justice Reform

In accordance with Executive Order 12988, this policy does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. With the guidance provided in the policy, requirements under section 4 of the Endangered Species Act will be clarified to entities that voluntarily develop formalized conservation efforts.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This policy contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by Office of Management and Budget (OMB). The FWS has OMB approval for the collection under OMB Control Number 1018–0119, which expires on December 31, 2005. The NMFS has OMB approval for the collection under OMB Control Number 0648–0466, which expires on December 31, 2005. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Public reporting burden for FWS collections of information is estimated to average 2,500 hours for developing one agreement with the intent to preclude a listing, 320 hours for annual monitoring under one agreement, and 80 hours for one annual report. The FWS expects that six agreements with the intent of making listing unnecessary will be developed in one year and that four of these will be successful in making listing unnecessary, and therefore, the entities who develop these four agreements will carry through with their monitoring and reporting commitments. Public reporting burden for NMFS collections of information is estimated to average 2,500 hours for developing one agreement with the intent to preclude a listing, 320 hours for annual monitoring under one agreement, and 80 hours for one annual report. The NMFS expects that two agreements with the intent of making listing unnecessary will be developed in one year and that one of these will be successful in making listing unnecessary, and therefore, the entities who develop this agreement will carry through with their monitoring and reporting commitments. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the FWS and NMFS (see **ADDRESSES** section of this policy).

National Environmental Policy Act

We have analyzed this policy in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior Manual (318 DM 2.2(g) and 6.3(D)), and National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6. This policy does not constitute a major Federal action significantly affecting the quality of the human environment. The FWS has determined that the issuance of the policy is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1 (1.10) and 516 DM 6, Appendix 1. NOAA has determined that the issuance of this policy qualifies for a categorical exclusion as defined by NOAA Administrative Order 216–6, Environmental Review Procedure.

ESA Section 7 Consultation

We have determined that issuance of this policy will not affect species listed as threatened or endangered under the Endangered Species Act, and, therefore, a section 7 consultation on this policy is not required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and the Department of Interior's 512 DM 2, this policy does not directly affect Tribal resources. The policy may have an indirect effect on Native American Tribes as the policy may influence the type and content of conservation plans and efforts implemented by Tribes, or other entities. The extent of this indirect effect will be determined on a case-by-case basis during our evaluation of individual formalized conservation efforts when we make a listing decision. Under Secretarial Order 3206, we will, at a minimum, share with the entity that developed the formalized conservation effort any information provided by the Tribes, through the public comment period for the listing decision or formal submissions. During the development of conservation plans, we can encourage the incorporation of conservation efforts that will restore or enhance Tribal trust resources. After consultation with the Tribes and the entity that developed the formalized conservation effort and after

careful consideration of the Tribe's concerns, we must clearly state the rationale for the recommended final listing decision and explain how the decision relates to our trust responsibility. Accordingly:

(a) We have not yet consulted with the affected Tribe(s). We will address this requirement when we evaluate formalized conservation efforts that have yet to be implemented or have recently been implemented and have yet to show effectiveness at the time we make a listing decision.

(b) We have not yet worked with Tribes on a government-to-government basis. We will address this requirement when we evaluate formalized conservation efforts that have yet to be implemented or have recently been implemented but have yet to show effectiveness at the time we make a listing decision.

(c) We will consider Tribal views in individual evaluations of formalized conservation efforts.

(d) We have not yet consulted with the appropriate bureaus and offices of the Department about the identified effects of this policy on Tribes. This requirement will be addressed with individual evaluations of formalized conservation efforts.

Information Quality

In Accordance with section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554), OMB directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of Government information disseminated to the public (67 FR 8452). Under our Information Quality guidelines, if we use a conservation plan or agreement as part of our decision to either list or not list a species under the Act, the plan or agreement is considered to be disseminated by us and these guidelines apply to the plan or agreement. The criteria outlined in this policy are consistent with OMB, Department of Commerce, NOAA, and Department of the Interior. FWS information quality guidelines. The Department of the Interior's guidelines can be found at *http://www.doi.gov/ocio/guidelines/515Guides.pdf*, and the FWS's guidelines can be found at *http://irm.fws.gov/infoguidelines/*. The Department of Commerce's guidelines can be found at *http://www.osec.doc.gov/cio/oipr/iqg.html*, and the NOAA/NMFS's guidelines can be found at *http://www.noaanews.noaa.gov/stories/iq.htm*. Under these guidelines, any affected person or organization may request from FWS or NMFS, a correction of information they believe to be incorrect in the plan or agreement. "Affected persons or organizations" are those who may use, be benefitted by, or be harmed by the disseminated information (i.e., the conservation plan or agreement). The process for submitting a request for correction of information is found in the respective FWS and NOAA guidelines.

Economic Analysis

This policy identifies criteria that a formalized conservation effort must satisfy to ensure certainty of implementation and effectiveness and for us to determine that the conservation effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered. We developed this policy to ensure consistent and adequate evaluation of agreements and plans when making listing decisions. The policy will also provide guidance to States and other entities on how we will evaluate certain formalized conservation efforts during the listing process.

The criteria in this policy primarily describe elements that are already included in conservation efforts and that constitute sound conservation planning. For example, the criteria requiring identification of responsible parties, obtaining required authorizations, establishment of objectives, and inclusion of an implementation schedule and monitoring provisions are essential for directing the implementation and affirming the effectiveness of conservation efforts. These kinds of "planning" requirements are generally already included in conservation efforts and do not establish any new implementation burdens. Rather, these requirements will help to ensure that conservation efforts are well planned and, therefore, increase the likelihood that conservation efforts will ultimately be successful in making listing species unnecessary.

The development of an agreement or plan by a state or other entity is completely voluntary. However, when a state or other entity voluntarily decides to develop an agreement or plan with the specific intent of making listing a species unnecessary, the criteria identified in this policy can be construed as requirements placed on the development of such agreements or plans. The state or other entity must satisfy these criteria in order to obtain and retain the benefit they are seeking, which is making listing of a species as threatened or endangered unnecessary.

The criteria in the policy require demonstrating certainty of implementation and effectiveness of formalized conservation efforts. We have always considered the certainty of implementation and effectiveness of conservation efforts when making listing decisions. Therefore, we believe that no economic effects on states and other entities will result from using the criteria in this policy as guidance.

Furthermore, publication of this policy will have positive effects by informing States and other entities of the criteria we will use in evaluating formalized conservation efforts when making listing decisions, and thereby guide states and other entities in developing voluntary formalized conservation efforts that will be successful in making listing unnecessary. Therefore, we believe that informational benefits will result from issuing this policy. We believe these benefits, although important, will be insignificant economically.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Policy for Evaluation of Conservation Efforts When Making Listing Decisions

Policy Purpose

The Fish and Wildlife Service and National Marine Fisheries Service developed this policy to ensure consistent and adequate evaluation of formalized conservation efforts (conservation efforts identified in conservation agreements, conservation plans, management plans, and similar documents) when making listing decisions under the Act. This policy may also guide the development of conservation efforts that sufficiently improve a species' status so as to make listing the species as threatened or endangered unnecessary.

Definitions

"Adaptive management" is a method for examining alternative strategies for meeting measurable biological goals and objectives, and then, if necessary, adjusting future conservation management actions according to what is learned.

"Agreements and plans" include conservation agreements, conservation plans, management plans, or similar documents approved by Federal agencies, State and local governments, Tribal governments, businesses, organizations, or individuals.

"Candidate species," as defined by regulations at 50 CFR 424.02(b), means any species being considered for listing as an endangered or a threatened species, but not yet the subject of a proposed rule. However, the FWS includes as candidate species those species for which the FWS has sufficient information on file relative to status and threats to support issuance of proposed listing rules. The NMFS includes as candidate species those species for which it has information indicating that listing may be warranted, but for which sufficient information to support actual proposed listing rules may be lacking. The term "candidate species" used in this policy refers to those species designated as candidates by either of the Services.

"Conservation efforts," for the purpose of this policy, are specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species. Conservation efforts may involve restoration, enhancement, maintenance, or protection of habitat; reduction of mortality or injury; or other beneficial actions.

"Formalized conservation efforts" are conservation efforts identified in a conservation agreement, conservation plan, management plan, or similar document. An agreement or plan may contain numerous conservation efforts.

Policy Scope

When making listing decisions, the Services will evaluate whether formalized conservation efforts contribute to making it unnecessary to list a species, or to list a species as threatened rather than endangered. This policy applies to those formalized conservation efforts that have not yet been implemented or have been implemented, but have not yet demonstrated whether they are effective at the time of a listing decision. We will make this evaluation based on the certainty of implementing the conservation effort and the certainty that the effort will be effective. This policy identifies the criteria we will use to help determine the certainty of implementation and effectiveness. Listing decisions covered by the policy include findings on petitions to list species, and decisions on whether to assign candidate status, remove candidate status, issue proposed listing rules, and finalize or withdraw proposed listing rules. This policy applies to formalized conservation efforts developed with or without a specific intent to influence a listing decision and with or without the involvement of the Services.

Section 4(a)(1) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533(a)(1)), states that we must determine whether a species is threatened or endangered because of any of the following five factors:(A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Although this language focuses on impacts negatively affecting a species, section 4(b)(1)(A) requires us also to "tak[e] into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas." Read together, sections 4(a)(1) and 4(b)(1)(A), as reflected in our regulations at 50 CFR 424.11(f), require us to take into account any State or local laws, regulations, ordinances, programs, or other specific conservation measures that either positively or negatively affect a species' status (i.e., measures that create, exacerbate, reduce, or remove threats identified through the section 4(a)(1) analysis). The manner in which the section 4(a)(1) factors are framed supports this conclusion. Factor (D) for example—ldquo;the inadequacy of existing regulatory mechanisms"—indicates that overall we might find existing regulatory mechanisms adequate to justify a determination not to list a species.

Factor (E) in section 4(a)(1) (any "manmade factors affecting [the species'] continued existence") requires us to consider the pertinent laws, regulations, programs, and other specific actions of any entity that either positively or negatively affect the species. Thus, the analysis outlined in section 4 of the Act requires us to consider the conservation efforts of not only State and foreign governments but also of Federal agencies, Tribal governments, businesses, organizations, or individuals that positively affect the species' status.

While conservation efforts are often informal, such as when a property owner implements conservation measures for a species simply because of concern for the species or interest in protecting its habitat, and without any specific intent to affect a listing decision, conservation efforts are often formalized in conservation agreements, conservation plans, management plans, or similar documents. The development and implementation of such agreements and plans has been an effective mechanism for conserving declining species and has, in some instances, made listing unnecessary. These efforts are consistent with the Act's finding that "encouraging the States and other interested parties * * * to develop and maintain conservation programs * * * is a key * * * to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants" (16 U.S.C. 1531 (a)(5)).

In some situations, a listing decision must be made before all formalized conservation efforts have been implemented or before an effort has demonstrated effectiveness. We may determine that a formalized conservation effort that has not yet been implemented has reduced or removed a threat to a species when we have sufficient certainty that the effort will be implemented and will be effective.

Determining whether a species meets the definition of threatened or endangered requires us to analyze a species' risk of extinction. Central to this risk analysis is an assessment of the status of the species (i.e., is it in decline or at risk of decline and at what rate is the decline or risk of decline) and consideration of the likelihood that current or future conditions or actions will promote (see section 4(b)(1)(A)) or threaten a species' persistence. This determination requires us to make a prediction about the future persistence of a species, including consideration of both future negative and positive effects of anticipated human actions. The language of the Act supports this approach. The definitions for both "endangered species" and "threatened species" connote future condition, which indicates that consideration of whether a species should be listed depends in part on identification and evaluation of future actions that will reduce or remove, as well as create or exacerbate, threats to the species. The first factor in section 4(a)(1)—"the present or *threatened* destruction, modification, or curtailment of [the species'] habitat or range"—identifies how analysis of both current actions affecting a species' habitat or range and those actions that are sufficiently certain to occur in the future and affect a species' habitat or range are necessary to assess a species' status. However, future Federal, State, local, or private actions that affect a species are not limited to actions that will affect a species' habitat or range. Congress did not intend for us to consider future actions affecting a species' habitat or range, yet ignore future actions that will influence overutilization, disease, predation,

regulatory mechanisms, or other natural or manmade factors. Therefore, we construe Congress' intent, as reflected by the language of the Act, to require us to consider both current actions that affect a species' status and sufficiently certain future actions—either positive or negative—that affect a species' status. As part of our assessment of future conditions, we will determine whether a formalized conservation effort that has yet to be implemented or has recently been implemented but has yet to show effectiveness provides a high level of certainty that the effort will be implemented and/or effective and results in the elimination or adequate reduction of the threats.

For example, if a state recently designed and approved a program to eliminate collection of a reptile being considered for listing, we must assess how this program affects the status of the species. Since the program was just designed, an implementation and effectiveness record may not yet exist. Therefore, we must evaluate the likelihood, or certainty, that it will be implemented and effective, using evidence such as the State's ability to enforce new regulations, educate the public, monitor compliance, and monitor the effects of the program on the species. Consequently, we would determine that the program reduces the threat of overutilization of the species through collecting if we found sufficient certainty that the program would be implemented and effective.

In another example, a state could have a voluntary incentive program for protection and restoration of riparian habitat that includes providing technical and financial assistance for fencing to exclude livestock. Since the state has already implemented the program, the state does not need to provide certainty that it will be implemented. If the program was only recently implemented and no record of the effects of the program on the species' status existed, we would evaluate the effectiveness of this voluntary program at the time of our listing decision. To assess the effectiveness, we would evaluate the level of participation (e.g., number of participating landowners or number of stream-miles fenced), the length of time of the commitment by landowners, and whether the program reduces the threats on the species. We would determine that the program reduces the threat of habitat loss and degradation if we find sufficient certainty that the program is effective.

In addition, we will consider the estimated length of time that it will take for a formalized conservation effort to produce a positive effect on the species. In some cases, the nature, severity, and/or imminence of threats to a species may be such that a formalized conservation effort cannot be expected to produce results quickly enough to make listing unnecessary since we must determine at the time of the listing decision that the conservation effort has improved the status of the species.

Federal agencies, Tribal governments, state and local governments, businesses, organizations, or individuals contemplating development of an agreement or plan should be aware that, because the Act mandates specific timeframes for making listing decisions, we cannot delay the listing process to allow additional time to complete the development of an agreement or plan. Nevertheless, we encourage the development of agreements and plans even if they will not be completed prior to a final listing decision. Such an agreement or plan could serve as the foundation for a special rule under section 4(d) of the Act, which would establish only those prohibitions necessary and advisable for the conservation of a threatened species, or for a recovery plan, and could lead to earlier recovery and delisting.

This policy provides us guidance for evaluating the certainty of implementation and effectiveness of formalized conservation efforts. This policy is not intended to provide guidance for determining the specific level of conservation (e.g., number of populations or individuals) or the types of conservation efforts (e.g., habitat restoration, local regulatory mechanisms) specifically needed to make listing particular species unnecessary and does not provide guidance for determining when parties should enter into agreements. We do encourage early coordination in conservation measures to prevent the species from meeting the definition of endangered or threatened.

If we make a decision not to list a species or to list the species as threatened rather than endangered based in part on the contributions of a formalized conservation effort, we will track the status of the effort including the progress of implementation and effectiveness of the conservation effort. If any of the following occurs: (1) a failure to implement the conservation effort in accordance with the implementation schedule; (2) a failure to achieve objectives; (3) a failure to modify the conservation effort to adequately address an increase in the severity of a threat or to address other new information on threats; or (4) we receive any other new information indicating a possible change in the status of the species, then we will reevaluate the status of the species and consider whether initiating the listing process is necessary. Initiating the listing process may consist of designating the species as a candidate species and assigning a listing priority, issuing a proposed rule to list, issuing a proposed rule to reclassify, or issuing an emergency listing rule. In some cases, even if the parties fully implement all of the conservation efforts outlined in a particular agreement or plan, we may still need to list the species. For example, this may occur if conservation efforts only cover a portion of a species' range where the species needed to be conserved, or a particular threat to a species was not anticipated or addressed at all, or not adequately addressed, in the agreement or plan.

Evaluation Criteria

Conservation agreements, conservation plans, management plans, and similar documents generally identify numerous conservation efforts (i.e., actions, activities, or programs) to benefit the species. In determining whether a formalized conservation effort contributes to forming a basis for not listing a species, or for listing a species as threatened rather than endangered, we must evaluate whether the conservation effort improves the status of the species under the Act. Two factors are key in that evaluation: (1) for those efforts yet to be implemented, the certainty that the conservation effort will be implemented and (2) for those efforts that have not yet demonstrated effectiveness, the certainty that the conservation effort will be effective. Because the certainty of implementation and effectiveness of formalized conservation efforts may vary, we will evaluate each effort individually and use the following criteria to direct our analysis.

A. The certainty that the conservation effort will be implemented:

1. The conservation effort, the party(ies) to the agreement or plan that will implement the effort, and the staffing, funding level, funding source, and other resources necessary to implement the effort are identified. 2. The legal authority of the party(ies) to the agreement or plan to implement the formalized conservation effort, and the commitment to proceed with the conservation effort are described.3. The legal procedural requirements (e.g. environmental review) necessary to implement the effort are described, and information is provided indicating that fulfillment of these requirements does not preclude commitment to the effort. 4. Authorizations (e.g., permits, landowner permission) necessary to implement the conservation effort are identified, and a high level of certainty is provided that the party(ies) to the agreement or plan that will implement the effort will obtain these authorizations. 5. The type and level of voluntary participation (e.g., number of landowners allowing entry to their land, or number of participants agreeing to change timber management practices and acreage involved) necessary to implement the conservation effort is identified, and a high level of certainty is provided that the party(ies) to the agreement or plan that will implement the conservation effort will obtain that level of voluntary participation (e.g., an explanation of how incentives to be provided will result in the necessary level of voluntary participation). 6. Regulatory mechanisms (e.g., laws, regulations, ordinances) necessary to implement the conservation effort are in place. 7. A high level of certainty is provided that the party(ies) to the agreement or plan that will implement the conservation effort will obtain the necessary funding. 8. An implementation schedule (including incremental completion dates) for the conservation effort is provided. 9. The conservation agreement or plan that includes the conservation effort is approved by all parties to the agreement or plan.

B. The certainty that the conservation effort will be effective:

1. The nature and extent of threats being addressed by the conservation effort are described, and how the conservation effort reduces the threats is described. 2. Explicit incremental objectives for the conservation effort and dates for achieving them are stated. 3. The steps necessary to implement the conservation effort are identified in detail. 4. Quantifiable, scientifically valid parameters that will demonstrate achievement of objectives, and standards for these parameters by which progress will be measured, are identified. 5. Provisions for monitoring and reporting progress on implementation (based on compliance with the implementation schedule) and effectiveness (based on evaluation of quantifiable parameters) of the conservation effort are provided.6. Principles of adaptive management are incorporated.

These criteria should not be considered comprehensive evaluation criteria. The certainty of implementation and effectiveness of a formalized conservation effort may also depend on species-specific, habitat-specific, location-specific, and effort-specific factors. We will consider all appropriate factors in evaluating formalized conservation efforts. The specific circumstances will also determine the amount of information necessary to satisfy these criteria.

To consider that a formalized conservation effort(s) contributes to forming a basis for not listing a species or listing a species as threatened rather than endangered, we must find that the conservation effort is sufficiently certain to be implemented and effective so as to have contributed to the elimination or adequate reduction of one or more threats to the species identified through the section 4(a)(1) analysis. The elimination or adequate reduction of section 4(a)(1) threats may lead to a determination that the species does not meet the definition of threatened or endangered, or is threatened rather than endangered. An agreement or plan may contain numerous conservation efforts, not all of which are sufficiently certain to be implemented and effective. Those conservation efforts that are not sufficiently certain to be implemented and effective cannot contribute to a determination that listing is unnecessary or a determination to list as threatened rather than endangered. Regardless of the adoption of a conservation agreement or plan, however, if the best available scientific and commercial data indicate that the species meets the definition of "endangered species" or "threatened species" on the day of the listing decision, then we must proceed with appropriate rule-making activity under section 4 of the Act.

Dated: September 16, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

December 23, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 03–7364 Filed 3–27–03; 8:45 am]

BILLING CODES 4310–55–S and 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306–2306–01; I.D. 032403A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is reopening directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA) for 24 hours. This action is necessary to fully use the B season allowance of the total allowable catch (TAC) of pollock specified for Statistical Area 610.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 26, 2003, through 1200 hrs, A.l.t., March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the B season directed fishery for pollock in Statistical Area 610 of the GOA under § 679.20(d)(1)(iii) on March 19, 2003 (68 FR 13857, March 21, 2003).

NMFS has determined that, approximately 986 mt of pollock remain in the B season directed fishing allowance. Therefore, in accordance with 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the B season allowance of pollock TAC specified for Statistical Area 610, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 610 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 24 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA effective 1200 hrs, A.l.t., March 27, 2003.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the opening of the fishery, not allow the full utilization of the B season allowance of the pollock TAC, and therefore reduce the public's ability to use the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 24, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–7514 Filed 3–26–03; 10:05 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 60

Friday, March 28, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 111

[Docket No. 96N–0417]

Dietary Supplements; Current Good Manufacturing Practice Regulations; Public Meetings

AGENCY: Food and Drug Administration, HHS

ACTION: Notification of public meetings.

SUMMARY: The Food and Drug Administration (FDA) is announcing two public meetings to discuss the proposed rule entitled "Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements" that published in the **Federal Register** of March 13, 2003 (68 FR 12157). These meetings are intended to provide clarification of the proposed rule and to explain how to submit comments on the proposed rule. These meetings will provide stakeholders and interested parties, including small businesses, an opportunity to ask questions about the proposed rule.

DATES: The public meetings will be held on the East coast on Wednesday, April 29, 2003, from 9 a.m. to 12 noon and 1:30 p.m. to 5 p.m. and on the West coast on Monday, May 6, 2003, from 9 a.m. to 12 noon and 1:30 p.m. to 5 p.m. For security and space limitation reasons, you are encouraged to register early. You may preregister via the Internet and fax until close-of-business 2 business days before the meeting and onsite on the day of the meeting, provided that space is available.

ADDRESSES: *East coast meeting*: The first public meeting will be held at the Center for Food Safety and Applied Nutrition, Harvey W. Wiley Auditorium, 5100 Paint Branch Pkwy., College Park, MD 20740.

West coast meeting: The second public meeting will be held at the Ronald V. Dellums Federal Bldg., 3d floor auditorium, North Tower, 1301 Clay St., Oakland, CA 94612–5213.

A written transcript of the meeting and submitted comments will be available for viewing at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and on the FDA Web site (see **III. Electronic Access**).

FOR FURTHER INFORMATION CONTACT:

For the East coast meeting: Kenneth Taylor, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1439, FAX: 301–436–2639, or e-mail: *Kenneth.Taylor@cfsan.fda.gov*.

For the West coast meeting: Janet McDonald, FDA/San Francisco District, 1431 Harbor Bay Pkwy., Alameda, CA 94502–7070, 510–337–6845, FAX: 510–337–6708, or e-mail: *Janet.McDonald@fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In 1994, the Dietary Supplement Health and Education Act (DSHEA) amended the Federal Food, Drug, and Cosmetic Act. DSHEA, among other things, provided FDA with express statutory authority to prescribe current good manufacturing practices (CGMPs) for dietary supplements (21 U.S.C. 342(g)). In the **Federal Register** of March 13, 2003 (68 FR 12157), FDA published a proposed rule entitled "Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements" to establish CGMPs that include provisions on manufacturing, packaging, labeling, testing, quality control, releasing for distribution, and holding of dietary ingredients and dietary supplements. The proposed CGMPs are intended to ensure that manufacturing practices will not result in an adulterated dietary supplement and that dietary supplements are accurately labeled.

These public meetings will provide an opportunity to brief stakeholders on the proposed rule and allow them to ask questions about the proposed rule. They are also intended to fulfill part of the outreach requirement of the Small Business Regulatory Enforcement Fairness Act of 1996.

Agenda: The daylong meetings will have two sessions: The morning session will target interested parties including both small and large firms that manufacture, package, or hold dietary ingredients and dietary supplements; and the afternoon session will target small firms. Small firms are encouraged to attend both sessions.

The morning agenda will include an overview of the proposed rule and the following specific topics: (1) Personnel, (2) physical plant, (3) equipment and utensils, (4) production and process controls, (5) holding and distributing, (6) consumer complaints, and (7) recordkeeping. In addition to explaining the content of the proposed rule, we will instruct participants on the process for submitting comments. We will also discuss the types of information that we are interested in obtaining, i.e., information that would be relevant to developing a final rule and to the economic impact of the rule. Lastly, we will describe how the Small Business Administration can help small firms that might be affected by the proposed rule.

The afternoon session will provide small businesses an opportunity to ask questions about the proposed rule. They can ask about any special implications to small businesses and about any items from the morning presentations that need more clarification. We will provide information on the process for submitting comments and on the types of information that we are interested in obtaining from small businesses, i.e., information that would be relevant to developing a final rule and to the economic impact of the rule. The session will begin with a short presentation on the Federal rulemaking process, including how to effectively comment on rules in general and how to address particular questions that the Government has requested comment on. Following the presentation, participants will be asked to break into smaller groups to facilitate open discussion.

Comments: To submit written comments on the proposed rule, please follow the instructions in the "Request for Comments" section of that document (68 FR 12157, March 13, 2003).

II. Registration

You may preregister for either meeting via the Internet (see **III. Electronic Access**) or by fax (see **FOR FURTHER INFORMATION CONTACT**) until

close-of-business April 24, 2003, for the East coast meeting and May 1, 2003, for the West coast meeting, or you may register onsite on the day of the meeting. Registrations will be accepted on a space-available basis. If you need special accommodations due to a disability, please inform the contact person at least 7 days in advance (see **FOR FURTHER INFORMATION CONTACT**).

There is no registration fee for these public meetings, but early registration is encouraged because space is limited and it will expedite entry into the building and parking area. Because the meeting will be held in a Federal building, you should also bring a photo ID and plan for adequate time to pass through security screening systems. For the West coast meeting, please be aware that the building management enforces the rule that no food or drink, including water, is allowed in the auditorium.

Registration Form Instructions: You may register for either meeting via the Internet (see **III. Electronic Access**). You may also register by faxing the following registration form to the contact person for the meeting that you plan to attend (see **FOR FURTHER INFORMATION CONTACT**).

REGISTRATION FORM
PUBLIC MEETING TO DISCUSS THE PROPOSED RULE TO ESTABLISH CGMP REGULATIONS

Name:

Title:

Company:

Address:

Telephone:

Fax:

E-mail:

Please indicate the type of organization that you represent.
___ Industry
___ Media
___ Education Organization
___ Government
___ Healthcare Professional
___ Other (specify) _____
___ Consumer Organization
___ Law Firm

III. Electronic Access

You may register for either meeting or obtain updates to this announcement and additional related information on the Dietary Supplements home page at *http://www.cfsan.fda.gov/~dms/supplmnt.html*, scroll down the page to "Recent Announcements." Transcripts of the public meetings and submitted comments will be available at *http://www.cfsan.fda.gov/~dms/ds-ind.html* under "Good Manufacturing Practices (GMPS)."

IV. Transcripts

You may request a transcript of the public meeting from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcript of the public meetings and submitted comments will be available for public examination at the Dockets Management Branch (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA Web site (see **III. Electronic Access**).

Dated: March 24, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–7377 Filed 3–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103580–02]

RIN 1545–BA53

Noncompensatory Partnership Options

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking that was published in the **Federal Register** on Wednesday, January 22, 2003 (68 FR 2930) relating to the tax treatment of noncompensatory options and convertible instruments issued by a partnership.

FOR FURTHER INFORMATION CONTACT: Audrey W. Ellis at (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction is under sections 704(b) and 761 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–103580–02), that was the subject of FR Doc. 03–872, is corrected as follows:

§ 1.704–1 [Corrected]

1. On page 2934, paragraph (b)(0), the third entry in the table is corrected to read as follows:

. . . . .	
Adjustments for non-compensatory options.	1.704–1(b)(2)(iv)(*h*)(*2*)
. . . . .	

§ 1.761–3 [Corrected]

2. On page 2941, column 1, § 1.761–3(d)(2), *Example 3.*, paragraph (ii), line 10, the language, "warrant comprise an investment unit with" is corrected to read "warrant comprise an investment unit within".

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–7525 Filed 3–27–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–116641–01]

RIN 1545–BA17

Information Reporting and Backup Withholding for Payment Card Transactions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; and notice of public hearing. (REG–116641–01) which was published in the **Federal Register** on Friday, January 31, 2003 (68 FR 4970). This regulation relates to the IRS Taxpayer Identification Number (TIN) Matching Program. The text of the temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** serves as the text of this portion of the proposed regulations. This document also contains proposed regulations relating to the information reporting requirements, information reporting penalties, and backup withholding requirements for payment card transactions.

FOR FURTHER INFORMATION CONTACT: Donna Welch at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under section 3406 of the Internal Revenue Code.

Need for Correction

As published, this notice of proposed rulemaking contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking, (REG–116641–01), which is the subject of FR. Doc. 03–2208, is corrected as follows:

1. On page 4971, column 1, in the preamble, paragraph 1, line 4, the language "payments. Section 1.6041–3(q)(1)" is corrected to read "payments. Section 1.6041–3(p)(1)".

§ 31.3406(g)–1 [Corrected]

2. On page 4973, column 1, § 31.3406(g)–1(f)(1)(ii), line 7, the language "payee is a not a qualified payee" is corrected to read "payee is not a qualified payee".

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–7267 Filed 3–27–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 7 and 25

[Notice No. 4]

RIN 1512–AC11

Flavored Malt Beverages and Related Proposals (2001R–136P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** on March 24, 2003, regarding flavored malt beverages. We inadvertently published an incorrect telephone number for submitting comments by fax. This correction gives the correct telephone number for submitting comments by fax.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 10 Causeway Street, Room 701, Boston, MA 02222; telephone 617–557–1323.

Correction

In proposed rule FR Doc. 03–6855, beginning on page 14292 in the issue of March 24, 2003, make the following correction in the **SUPPLEMENTARY INFORMATION** section. On page 14300, in the second column, under the heading C. How May I Submit Comments?, correct the second paragraph to read:

"*By fax:* You may submit comments by facsimile transmission to 202–927–8525. We will treat faxed transmissions as originals."

Dated: March 25, 2003.

John J. Manfreda,

Acting Administrator.

[FR Doc. 03–7624 Filed 3–27–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. 2003–T–010]

RIN 0651–AB45

Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking; Notice of hearing.

SUMMARY: The United States Patent and Trademark Office (Office) proposes to amend existing regulations and add new regulations to the rules of practice to implement the Madrid Protocol Implementation Act of 2002 (MPIA). The MPIA provides that: the owner of a U.S. application or registration may seek protection of its mark in any of the 57 countries party to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol) by submitting a single international application through the Office to the International Bureau of the World Intellectual Property Organization (IB); and the owner of an application or registration in a country party to the Madrid Protocol may obtain an international registration from the IB and request an extension of protection of its mark to the United States.

DATES: Comments must be received by May 27, 2003 to ensure consideration. A public hearing will be held at 10 a.m., Friday, May 30, 2003, in the Patent Theater, 2121 Crystal Drive, Room 200, Arlington, Virginia. Submit requests to present oral testimony on or before May 20, 2003.

ADDRESSES: Submit comments by electronic mail (e-mail) to: *madridrules.comments@uspto.gov*. Written comments may also be

submitted by mail or hand delivery to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202, attention Cheryl L. Black. Copies of all comments will be available for public inspection in Suite 10B10, South Tower Building, 10th floor, 2900 Crystal Drive, Arlington, Virginia 22202–3513, from 8:30 a.m. until 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Cheryl L. Black, Office of the Commissioner for Trademarks, by telephone at (703) 308–8910, extension 153, by e-mail to *cheryl.black@uspto.gov*, or by facsimile at (703) 872–9292.

SUPPLEMENTARY INFORMATION: The Madrid Protocol Implementation Act of 2002, Pub. L. 107–273, 116 Stat. 1758, 1913–1921 (MPIA) amends the Trademark Act of 1946 to implement the provisions of the Madrid Protocol in the United States. The Madrid Protocol provides a process of filing an international application with requests for extensions of protection to any of the 57 member countries of the Protocol. The MPIA was enacted on November 2, 2002, and becomes effective on November 2, 2003.

The Madrid Protocol and the Common Regulations Under the Madrid Agreement and the Protocol (Common Regulations) are available online at *http://www.wipo.int/madrid/en/*.

References below to "the Act," "the Trademark Act," or "the statute" refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, as amended by the MPIA.

Filings under Madrid Protocol

Background

The Madrid Protocol provides a system for obtaining an international registration. The IB maintains the system in accordance with the guidelines set forth in the Common Regulations. To apply for an international registration under the Protocol, an applicant for an international application must be a national of, be domiciled in, or have a real and effective business or commercial establishment in one of the countries that are members of the Protocol (Contracting Parties). An international applicant can submit an international application only on the basis of a trademark application or registration in one of the Contracting Parties (basic application or basic registration). The international application must be for the same mark and include a list of goods and/or services identical to or narrower than the list of goods and/or services in the basic application or registration. The international application must designate one or more Contracting Parties in which an extension of protection of the international application is sought.

The international application must be submitted through the trademark office of the Contracting Party in which the basic application or registration is held (office of origin). The office of origin must certify that the information in the international application corresponds with the information in the basic application or registration, and transmit the international application to the IB.

The IB reviews the international application to determine whether the Madrid Protocol filing requirements have been met and the required fees have been paid. If an international application is unacceptable, the IB will notify both the applicant and the office of origin of the "irregularity." If the Madrid Protocol requirements have been met and the fees have been paid, the IB will immediately register the mark, publish the international registration in the WIPO Gazette of International Marks, send a certificate to the holder, and notify the offices of the designated Contracting Parties in which an extension of protection of the international registration is sought.

The holder of an international registration may designate additional Contracting Parties in a subsequent designation. A subsequent designation is a request by the holder of an international registration for an extension of protection of its international registration to additional Contracting Parties. Each Contracting Party designated in an international application or in a subsequent designation will examine the request for extension of protection as a national application under its laws.

Discussion of Specific Rules Changed or Added

The Office proposes to add new rules setting forth the requirements for submitting international applications and subsequent designations through the Office for forwarding to the IB. The Office also proposes to add new rules for processing requests for extension of protection of international registrations designating the United States.

The Office proposes to add rules 7.1, 7.3, 7.4, 7.6, 7.7, 7.11, 7.12, 7.13, 7.14, 7.21, 7.22, 7.23, 7.24, 7.25, 7.26, 7.27, 7.28, 7.29, 7.30, 7.31, 7.36, 7.37, 7.38, 7.39, 7.40, and 7.41; and designate part 7 of 37 CFR as the rules of practice in filings pursuant to the Madrid Protocol.

Proposed § 7.1 defines certain terms used in this part. Terms defined in the MPIA are not included in the list of definitions in § 7.1.

Proposed § 7.3 requires that correspondence relating to international applications and registrations be in English.

Proposed § 7.4 states that correspondence submitted electronically will be accorded the date and time the complete transmission is received in the Office based on Eastern Time.

Fees

The Office proposes to require fees for processing filings under the Madrid Protocol. Proposed § 7.6 sets forth the fees payable to the Office for processing correspondence relating to international applications and registrations. These fees must be paid in U.S. dollars at the time of submission.

The Office proposes to charge a fee: (1) For reviewing and certifying an international application; (2) for transmitting a subsequent designation; (3) for transmitting a request to record an assignment or restriction of a holder's right of disposal of an international registration; (4) for requesting a notice of replacement; and (5) for filing an affidavit of use in commerce or excusable nonuse for a mark in a registered extension of protection to the United States.

In addition to the fees required by the Office, there are international fees for processing international applications and registrations. Proposed § 7.7 sets forth the international fees payable to the IB in connection with international applications and registrations, and the requirements and procedures for submitting these fees through the Office. A schedule of the international fees is posted at *http://www.wipo.int/madrid/en/*. The international applicant or holder may pay the fees directly to the IB, or to the IB through the Office. Fees paid directly to the IB must be paid in Swiss francs, and fees paid through the Office must be paid in U.S. dollars. The fees that may be paid through the Office are listed in proposed § 7.7(b).

Under proposed § 7.7(c), international fees paid through the Office must be paid in U.S. dollars at the time of submission. To pay fees directly to the IB, the international applicant or holder must either: (1) Establish an account with the IB for debiting fees, and set forth the number of that account as proof of payment in its submission to the Office; or (2) pay the fees to the IB using any other method of payment, and include the IB receipt number for payment of the fees as proof of payment in its submission to the Office.

International Applications Originating from the United States

The requirements for granting a date of receipt to an international application submitted through the Office are set forth in proposed § 7.11(a). The Office proposes to require the submission of an international application through the Trademark Electronic Application System (TEAS). An international application must identify at least one basic application or registration. The international application may be based on more than one basic U.S. application and/or registration, provided that the owner and the mark are the same for each basic U.S. application or registration.

Under section 61 of the Act, and proposed § 7.11(a)(10), the international applicant must specify that applicant is a national of, is domiciled in, or has a real and effective industrial or commercial establishment in the United States.

Proposed § 7.11(a)(3) requires a reproduction of the mark in the international application that is identical to the mark in the basic application or registration and that meets the drawing requirements of § 2.52. If the mark in the basic application or registration is depicted in black and white, the reproduction of the mark in the international application must be black and white. If the mark in the basic application or registration is in color, the mark in the international application must be in color. If a mark for which there is a claim of color is depicted in black and white in the basic application or registration, the international application must include both a black and white reproduction of the mark and a color reproduction of the mark.

Under proposed §§ 7.11(a)(4) and 7.12, if color is claimed as a feature of the mark, the same color claim must be made in the international application. If color is not claimed as a feature of the mark in the basic application or registration, the international application may not include a claim of color.

Under proposed § 7.11(a)(6), if the mark in the basic application or registration is a three-dimensional mark, sound mark, collective mark or certification mark, the international application must indicate the type of mark.

Proposed § 7.11(a)(7) requires a list of goods and/or services in the international application that is identical to or narrower than the list of goods and/or services in the basic application or registration, and is classified according to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. The applicant may omit goods and/or services from the international application as long as the omission does not broaden the scope of the goods or services identified in the basic application or registration.

Under proposed § 7.11(a)(8), an international applicant must designate at least one Contracting Party in which it seeks an extension of protection.

Under proposed § 7.11(a)(9), the international applicant must pay the U.S. certification fee and the fees required by the IB for all classes and all designated Contracting Parties at the time of submission.

Proposed § 7.13 sets forth the requirements for certifying and forwarding an international application to the IB. Under proposed § 7.13(a), if an international application meets the requirements of proposed § 7.11(a), the Office will grant a date of receipt and certify that the information contained in the international application corresponds to the basic application or registration. The Office will forward the international application electronically to the IB.

Proposed § 7.13(b), states that if the Office cannot certify that the information contained in the international application corresponds with the information in the basic application or registration, the Office will notify the applicant that the international application cannot be certified. Any IB fees submitted through the Office will be refunded; however, the Office will not refund the certification fee.

Correcting Irregularities in International Application—Proposed § 7.14

The IB will notify both the international applicant and the Office of any irregularities in the international application. The international applicant is responsible for correcting the irregularities before the end of the response period set forth in the IB's notice to avoid abandonment of the international application. Under rule 11 of the Common Regulations, there are some irregularities that must be corrected through the Office and some that must be corrected directly with the IB. Proposed § 7.14 sets forth the types of irregularities that must be corrected through the Office and the procedures for responding to these irregularities through the Office.

Under proposed § 7.14(d), the Office would require that applicants use TEAS to correct irregularities through the Office. To assist the Office in its efforts to timely transmit the response or fee to the IB, applicants should submit their responses or fee as early as possible, at least one month prior to the end of the IB's response period.

Irregularities in Classification and Identification of Goods/Services

Rules 12 and 13 of the Common Regulations provide that the IB will not consider a response to irregularities in classification and identification of goods and/or services that is not submitted through the office of origin. Proposed § 7.14(b) provides that an international applicant must respond to irregularities in classification and identification of goods and/or services through the Office. The Office will forward an applicant's response to the IB; however, the Office will not review the response or respond to an irregularity on behalf of an applicant.

Additional Fees for Correcting Irregularities in an International Application

The IB may require an international applicant to pay additional fees as a result of irregularities in the classification of goods or services, or because the international fees submitted with the application were insufficient. Under proposed § 7.14(c), the applicant may pay the additional fees directly to the IB or through the Office. The international applicant must correct the fee irregularities before the end of the response period set forth in the IB's notice, or the international application will abandon at the IB. Under proposed § 7.14(d), if the international applicant is paying the additional fees through the Office, the fees must be paid through TEAS and should be submitted at least one month before the end of the IB's response period.

Other Irregularities

Under proposed § 7.14(e), all other irregularities in the international application must be corrected directly at the IB. Failure to correct certain irregularities by the end of the IB's response period will result in the abandonment of the international application.

Subsequent Designations—Proposed § 7.21

Section 64 of the Act and proposed § 7.21 permit the holder of an international registration to submit a subsequent designation through the Office, if the holder is a national of, is domiciled in, or has a real and effective industrial or commercial establishment in the United States. The holder also has

the option of filing the subsequent designation directly with the IB.

Under proposed § 7.21, if the subsequent designation is submitted through the Office, it must be submitted through TEAS and include the international registration number, the name and address of the holder of the international registration, one or more Contracting Parties in which an extension of protection is sought, and a list of goods and/or services that is identical to or narrower than the goods and/or services listed in the international registration. The holder can omit goods and/or services listed in the international registration as long as the omission does not broaden the scope of the goods or services identified in the international registration. The holder must include the transmittal fee and all subsequent designation fees required by the IB at the time of submission. The Office is not required to certify the subsequent designation.

The IB will review the subsequent designation for completeness before forwarding the request for extension of protection to the designated Contracting Parties. If there are any irregularities in the subsequent designation, the IB will notify both the holder and the Office. The holder must file any responses to the notice directly with the IB. The Office will not forward any responses to irregularities in a subsequent designation to the IB, even if the subsequent designation was submitted through the Office.

Recording Changes to International Registration

Most changes to international registrations can be recorded directly with the IB. Proposed § 7.22(a) requires that all requests to record changes to an international registration be filed at the IB, except in the limited circumstances in which they must be submitted through the Office, as set forth in proposed §§ 7.23 and 7.24.

Proposed § 7.22(b) provides that assignments or restrictions of a holder's rights of disposal of an international registration must be recorded by the IB, and that section 10 of the Act and part 3 of this chapter are not applicable to such assignments or restrictions.

Proposed § 7.22(c) provides that when the Office is notified by the IB of an assignment or restriction of a holder's right to dispose of an international registration with an extension of protection to the United States, the Office will take note of the assignment or restriction in its records. The Assignment Services Division of the Office will record only assignments and restrictions of extensions of protection to the United States that have been recorded at the IB.

Proposed § 7.23 sets forth the limited circumstances in which a request to record an assignment of an international registration may be submitted through the Office, and the requirements for submitting these requests. Under proposed § 7.23, the Office will forward a request to record an assignment of an international registration to the IB only if: (1) The request is submitted by an assignee who is a national of, is domiciled in or has a real and effective commercial or industrial establishment in the U.S.; and (2) the assignee cannot obtain the assignor's signature for the request to record the assignment.

Proposed § 7.24 sets forth the limited circumstances in which a request to record a restriction of a holder's right to dispose of an international registration may be submitted through the Office, and the requirements for submitting these requests. Under proposed § 7.24, the Office will forward a request to record a restriction of a holder's right of disposal of an international registration (usually a security interest) only if: (1) The restriction is the result of an agreement between the holder of the international registration and the party restricting the holder's right of disposal; (2) the party holding the restriction is a national of, is domiciled in or has a real and effective commercial or industrial establishment in the U.S.; and (3) the signature of the holder of the international registration cannot be obtained for the request to record the restriction. The Office proposes to charge a fee for transmitting a request to record an assignment or restriction to the IB.

Requests for Extension of Protection to the United States

Under section 65 of the Act, the holder of an international registration may request an extension of protection of the international registration to the United States, provided the international registration is not based on a U.S. basic application or registration.

The holder may make a request for extension of protection to the United States either in the international application or in a subsequent designation filed with the IB. Section 66(a) of the Act requires that a request for extension of protection to the United States include a declaration of bona fide intention to use the mark in commerce. The IB will certify that the request for extension of protection contains a declaration of bona fide intention to use the mark in commerce when it forwards the request to the Office. The declaration will remain as part of the international registration on file at the IB.

The IB will forward the request for extension of protection to the Office electronically. The holder cannot file a request for extension of protection to the United States directly with the Office.

Proposed § 7.25 provides that for purposes of examination and opposition, a request for an extension of protection to the United States will be treated as an application for registration based on an extension of protection of an international registration under section 66(a) of the Act; and that references to "applications" and "registrations" in part 2 of this chapter include extensions of protection to the United States. With the exception of §§ 2.130–2.131, 2.160–2.166, 2.168 and 2.181–2.186, all the sections in part 2 apply to a request for extension of protection to the United States.

Under proposed § 7.26, the filing date of a request for extension of protection to the United States for purposes of examination in the Office is: (1) The international registration date, if the request for extension of protection to the United States was made in the international application, or (2) the date the IB recorded the subsequent designation, if the request for extension of protection to the United States was made in a subsequent designation. Under section 66(b) of the Act, the filing date of the extension of protection will be considered the date of constructive notice pursuant to section 7(c) of the Act.

Under section 67 of the Act and proposed § 7.27, the holder of an international registration may claim priority under Article 4 of the Paris Convention for the Protection of Industrial Property if: (1) the request for an extension of protection contains a claim of priority; and (2) the international registration date or the date of recordal of the subsequent designation requesting an extension of protection to the United States is no later than 6 months after the filing date of the application that formed the basis of the claim of priority.

Replacement

Under section 74 of the Act and proposed § 7.28(a), a registered extension of protection to the United States has the same rights as a previously issued U.S. registration if: (1) both registrations are owned by the same person and identify the same mark; and (2) the goods/services in the previously issued U.S. registration are covered by the registered extension of protection. Under proposed § 7.28(b), the holder of a pending or registered extension of protection may request that the Office note in its records replacement of the earlier U.S. registration by the extension of protection. The Office proposes to require a fee to note replacement.

Under proposed § 7.29, the replaced U.S. registration will remain in force, unless cancelled, expired or surrendered, as long as the owner files affidavits or declarations of use or excusable nonuse under section 8 of the Act and renews the registration under section 9 of the Act.

Effect of Cancellation or Expiration of International Registration on Extension of Protection

Under section 70 of the Act and proposed § 7.30, the Office will cancel a pending or registered extension of protection to the United States if the IB notifies the Office of the cancellation or expiration of the corresponding international registration, in whole or in part.

Transformation

Under section 70(c) of the Act and proposed § 7.31(a), if an international registration is cancelled by the IB at the request of the office of origin under Article 6(4) of the Madrid Protocol (due to the cancellation or expiration of the basic application or registration), the holder of the international registration may file a request to transform the corresponding extension of protection to the United States into an application under section 1 or 44 of the Act. The requirements for transformation are set forth in proposed § 7.31(b).

The holder of an international registration must file the request for transformation through TEAS within 3 months of the cancellation date of the international registration. The request must include an application filing fee for at least one class of goods and/or services.

Under proposed § 7.31(c), if a request for transformation contains all the elements in § 7.31(b), the cancelled extension of protection to the United States will be transformed into an application under section 1 or 44 of the Act. The application will be accorded the same filing date and same priority (if any) as the cancelled extension of protection to the United States. The application resulting from the transformation will be examined as a new application under part 2 and, if approved for publication, published for opposition. The application must meet all the requirements of the Act and rules for an application under section 1 or section 44 of the Act.

Under proposed § 7.31(e), if the holder does not meet the requirements of § 7.31(b), the Office will not process the request for transformation.

Maintaining an Extension of Protection to the United States

Section 71 of the Act and proposed § 7.36 require a holder of an international registration with a registered extension of protection to the United States to file an affidavit or declaration of use in commerce or excusable nonuse during the following time periods: (1) between the fifth and sixth year after registration; and (2) within the six-month period before the end of every ten-year period after the date of registration, or upon payment of a grace period surcharge, within the three-month grace period immediately following.

Under proposed § 7.41, renewal of an international registration must be made directly with the IB. A request for renewal of an international registration cannot be submitted through the Office. Renewal of international registrations is governed by Article 7 of the Madrid Protocol and Rules 29–31 of the Common Regulations. The term of an international registration is ten years, and it may be renewed for ten years upon payment of the renewal fee.

Amendment to Part 2 Rules

If an international registration is not renewed, the registration will lapse, and the IB will notify the Office. Pursuant to section 70(b) of the Act, the Office will cancel the extension of protection to the United States.

There is no requirement in the MPIA that the holder of a registered extension of protection to the United States renew the extension of protection in the Office under section 9 of the Act.

In addition to the new rules added as part 7 of 37 CFR, the Office proposes to amend rules and add new rules to part 2 of 37 CFR to bring the rules of practice in trademark cases into conformance with the MPIA and to set forth the requirements for examination of, registration of and proceedings before the Trademark Trial and Appeal Board relating to extensions of protection to the United States.

The Office proposes to amend rules 2.2, 2.11, 2.17, 2.18, 2.19, 2.21, 2.33, 2.34, 2.35, 2.37, 2.47, 2.51, 2.52, 2.65, 2.66, 2.72, 2.73, 2.75, 2.84, 2.101, 2.102, 2.104, 2.105, 2.107, 2.111, 2.112, 2.113, 2.118, 2.123, 2.127, 2.128, 2.130, 2.131, 2.142, 2.145, 2.146, 2.151, and 2.171; and to add rules 2.53, 2.54, and 2.126.

The Office proposes to amend § 2.2 to add definitions of "ESTTA" (Electronic System for Trademark Trials and Appeals), "international application," and "Office."

The Office proposes to revise § 2.11 and its heading to indicate that representation before the Office is governed by § 10.14 of this chapter. It is redundant to have provisions governing representation before the Office in both parts 2 and 10.

The Office proposes to reword § 2.17(b) and to add a reference to § 10.14(b).

The Office proposes to amend § 2.18 to clarify procedures for establishing a correspondence address in trademark cases. The proposed amendment does not change current practice.

The Office proposes to amend § 2.19(a) to clarify procedures for sending correspondence after a power of attorney is revoked, and to amend § 2.19(b) to indicate that the procedures for permissive withdrawal of an attorney are governed by § 10.40.

The Office proposes to amend § 2.21(a) to indicate that § 2.21 sets forth the minimum filing requirements only for applications under sections 1 and 44 of the Act. The filing date of an application under section 66(a) of the Act is governed by section 66(b) of the Act and proposed § 7.26.

The Office proposes to amend § 2.33 by adding a new paragraph (e), stating that in an application under section 66(a) of the Act, the verified statement is part of the international registration on file at the IB.

The Office proposes to remove §§ 2.34(a)(1)(v), 2.34(a)(2)(ii), 2.34(a)(3)(iv) and 2.34(a)(4)(iv), which state that an application may list more than one item of goods or more than one service, provided that the applicant has used or has a bona fide intention to use the mark in commerce on or in connection with all the specified goods or services. This is stated in §§ 2.32(a)(6), 2.33(b)(1) and 2.33(b)(2), and it is unnecessary to repeat it in § 2.34.

The Office proposes to amend § 2.34(a)(4)(i)(A) to require that an application based on section 44(d) of the Act specify the serial number of the foreign application. This incorporates a requirement of Article 4(D)(5) of the Paris Convention, and codifies current practice, as stated in Trademark Manual of Examining Procedure (TMEP) § 1003.

The Office proposes to add a new § 2.34(a)(5), setting forth a request for extension of protection of an international registration under section 66(a) of the Act as a fifth basis for filing a trademark application.

The Office proposes to revise § 2.34(b) to provide that more than one basis can be claimed only in an application under

section 1 or 44 of the Act, and that a basis under section 66(a) of the Act cannot be combined with any other basis.

The Office proposes to revise § 2.35(a) to state that in an application under section 66(a) of the Act, the applicant may not add, substitute or delete a basis, unless the applicant meets the requirements for transformation under section 70(c) of the Act and proposed § 7.31.

The Office proposes to revise § 2.35(b) to set forth the requirements for adding, substituting or deleting a basis in an application under section 1 or section 44 of the Act. This is consistent with current §§ 2.35(a) and 2.35(b).

The Office proposes to redesignate §§ 2.35(c) through 2.35(h) as §§ 2.35(b)(3) through 2.35(b)(8).

The Office proposes to add a new § 2.37(b), requiring that if a mark has color, the applicant must identify the color(s) and describe where they appear on the mark. This is consistent with the requirements for international applications under the Madrid Protocol.

The Office proposes to amend § 2.47 to indicate that an application under section 66(a) of the Act is not eligible for registration on the Supplemental Register. Section 68(a)(4) of the Act provides that registration of an extension of protection of an international registration shall be refused to any mark not eligible for registration on the Principal Register.

The Office proposes to reword § 2.51(d) to simplify the rule and to add a provision that, in an application under section 66(a) of the Act, the drawing of the mark must be a substantially exact representation of the mark that appears in the international registration.

The Office proposes to revise § 2.52 to clarify the types of drawings and format for drawings. There are two types of drawings: (1) Standard character (typed) drawings; and (2) special form drawings. Currently the rules refer to a standard character drawing as a "typed drawing." The Office proposes to use the term "standard character" because this is the term used for international applications under the Madrid Protocol. Proposed § 2.52(a) sets forth the requirements for a standard character drawing, and proposed § 2.52(b) sets forth the requirements for a special form drawing. Additional requirements for drawings filed through TEAS are set forth in proposed § 2.53, and additional requirements for paper drawings are set forth in proposed § 2.54.

Proposed § 2.52(b)(1) requires that if color is claimed as a feature of the mark or if the mark consists only of color, the drawing must show the mark in color. Currently, the Office does not accept color drawings. Under current rules, to show color in a mark, an applicant must submit a black and white drawing, with a statement identifying the color(s) and describing where they appear in the mark. Alternatively, an applicant may show color by using the lining chart set forth in TMEP § 807.09(b).

Effective November 2, 2003, the Office will accept color drawings, and will require that applicants whose marks comprise color submit a drawing that shows color. The Office will no longer accept black and white drawings with a color claim, or drawings that are "lined for color."

Proposed § 2.52(b)(1) requires that an applicant submit a black and white drawing if color is not claimed as a feature of the mark. This is consistent with the requirements for international applications under the Madrid Protocol.

Proposed § 2.52(b)(1) further requires that applicant name the color(s) and describe where they appear on the mark.

The proposed rule does not prohibit the use of gray tones. The Office will process drawings with gray tones as black and white drawings unless the application includes a statement that applicant is claiming the color gray. Thus, an applicant must submit a color claim if applicant wants to show gray in the mark.

The Office proposes to add § 2.53, setting forth the requirements for a drawing filed through TEAS. Proposed § 2.53(b) requires that applicant attach a digitized image of the mark to the electronic submission. The image must be no larger than 3.15 inches (8 cm) high by 3.15 inches (8 cm) wide; must be in .jpg format; and must be scanned at no less than 250 and no more than 350 dots per inch. The image that is scanned must be made with a pen or by a process that will provide high definition when copied. These requirements are necessary to ensure that the Office database contains a clear and accurate reproduction of the mark. The 8 cm by 8 cm size requirement is consistent with the size requirement for an international application.

The Office proposes to add § 2.54, setting forth the requirements for a paper drawing. These requirements are necessary to ensure that the Office receives an image that can be scanned into its database without losing clarity.

The Office proposes to amend § 2.65 to add a new paragraph (d), stating that, if a refusal or requirement is expressly limited to only certain goods/services and the applicant fails to file a complete response to the refusal or requirement, the application shall be abandoned only as to those particular goods/services. This is a change in practice. Currently, failure to respond to a refusal that pertains to fewer than all the goods and services, or fewer than all the classes, in an application will result in abandonment of the entire application. See TMEP § 1403.05. This change will result in fewer abandonments and comports with sections 68(c) and 69(a) of the Act, which provide that an application under section 66(a) of the Act is automatically protected with respect to any goods or services for which the Office has not timely notified the IB of a refusal.

The Office proposes to amend § 2.66(a) to require that a petition to revive an abandoned application based on unintentional delay be filed within two months of the mailing date of the notice of abandonment. The Office proposes to remove § 2.66(a)(2), which provides that such a petition may be filed within two months of actual knowledge of the abandonment if the applicant did not receive the notice of abandonment and the applicant was diligent in checking the status of the application.

Effective October 30, 1999, the standard for reviving abandoned applications was changed from "unavoidable delay" to "unintentional delay." See notices at 64 FR 48900 (Sept. 8, 1999) and 1226 TMOG 103 (Sept. 28, 1999). Since that time, there has been a substantial increase in the number of petitions to revive filed in the Office. Third parties may be harmed by the revival of a pending application many months after its abandonment and removal from the Office database. For example, a third party may have searched the Office database and commenced using a mark because the search showed no earlier-filed conflicting marks. Or an examining attorney may have searched the Office database and approved a later-filed application for a conflicting mark because the database indicated that the earlier-filed application was abandoned. To minimize this problem, the Office proposes to adopt a stricter time limit for filing petitions to revive under § 2.66. Moreover, the strict time limits for issuing refusals to requests for extension of protection under section 66(a) of the Act requires greater accuracy of the Office database.

The Office proposes to add a new § 2.72(d), stating that in an application under section 66(a) of the Act, the applicant may amend the description or drawing of the mark only if the proposed amendment does not materially alter the mark, and that the Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark in the international application on file at the IB.

The Office proposes to amend § 2.73(a) to add references to applications under sections 44 and 66(a) of the Act. Section 2.73 sets forth the requirements for amendment of an application to recite concurrent use under section 2(d) of the Act.

The Office proposes to add a new § 2.75(c), stating that in an application under section 66(a) of the Act, the applicant may not amend the application to the Supplemental Register. As noted above, section 68(a)(4) of the Act provides that registration of an extension of protection of an international registration shall be refused to any mark not eligible for registration on the Principal Register.

The Office proposes to revise §§ 2.84(a) and (b) to add references to the new filing basis under section 66(a) of the Act. The provisions with respect to jurisdiction over published section 66(a) applications are the same as those in applications under sections 1(a) and 44 of the Act.

The Office proposes to amend §§ 2.101(a), 2.111(a), 2.118 and 2.145(c)(4) to refer to the United States Patent and Trademark Office as Office.

The Office proposes to amend § 2.101(b) to substitute "person" for "entity" to track the statutory language; to make the rule gender neutral; to clarify the definitions of "attorney" and "other authorized representative" by reference to §§ 10.1(c) and 10.14(b), respectively; to clarify that an opposition must be signed; and to indicate that electronic signatures are required for electronically filed oppositions.

The Office proposes to add a new § 2.101(b)(1) and a new § 2.101(b)(2) stating that an opposition to an application based on section 1 or 44 of the Act may be filed either on paper or electronically through ESTTA, but that an opposition to an application based on section 66(a) of the Act may be filed only through ESTTA.

The Office proposes to revise § 2.101(d)(1) through § 2.101(d)(3) and to add new § 2.101(d)(3)(i) through § 2.101(d)(3)(iii) to indicate that the Office will not accept an opposition submitted through ESTTA that does not include fees to cover all named party opposers and all classes opposed; that the Office will not institute an opposition proceeding if an opposition submitted on paper does not include a fee sufficient to pay for one person to oppose the registration of a mark in at least one class; and that the Office will no longer correspond with an opposer in an opposition submitted on paper to permit submission of additional fees or designation of party opposers and/or classes where an opposition is submitted with insufficient fees to pay for opposition by all party opposers and/or in all classes. The revision explains how the Office will apply a fee accompanying a paper submission that is insufficient to cover all classes and/or to cover all party opposers.

The Office proposes to amend § 2.102(a) to make the rule gender neutral; to clarify the definitions of "attorney" and "authorized representative" by reference to §§ 10.1(c) and 10.14(b), respectively; to clarify that a request to extend the time for filing an opposition must be signed; and to indicate that electronic signatures are required for electronically filed requests to extend the time for filing oppositions.

The Office proposes to add a new § 2.102(a)(1) and a new § 2.102(a)(2) stating that a written request to extend the time for filing an opposition to an application based on section 1 or 44 of the Act may be filed either on paper or electronically through ESTTA, but stating that a request to extend the time for filing an opposition to an application based on section 66(a) of the Act may be filed only through ESTTA.

The Office proposes to revise § 2.102(c) to set out the time frames for extensions of time to oppose and to indicate that the Trademark Trial and Appeal Board will no longer extend a potential opposer's time to file an opposition beyond 120 days from the date the mark is published for opposition. The Office proposes to add §§ 2.102(c)(1) and (2) to state the requirements concerning the filing of permitted requests to extend the time for filing an opposition.

The Office proposes to remove §2.102(d), which requires submission of extension requests in triplicate.

The Office proposes to revise § 2.104(a) to remove the requirement that a duplicate copy of the opposition, including exhibits, be filed with an opposition.

The Office proposes to reword the heading for § 2.105 to specify that notification of opposition proceedings is to the parties.

The Office proposes to revise § 2.105 to clarify the definitions of "attorney" and "authorized representative" by reference to §§ 10.1(c) and 10.14(b), respectively; and to indicate that, if no attorney or other authorized representative is appointed, notification will be sent to a party's domestic representative, or, if there is no domestic representative, notification will be sent to the party.

The Office proposes to redesignate § 2.107 as § 2.107(a); to limit this paragraph to oppositions against an application filed under section 1 or 44 of the Act; and to state in the rule the Board practice which prohibits an opposer in a proceeding against an application filed under section 1 or 44 of the Act from adding to the goods or services in an opposition after the period for filing the opposition has closed.

The Office proposes to add a new § 2.107(b) to state that pleadings in an opposition proceeding against an application filed under section 66(a) of the Act may be amended in the same manner and to the same extent as in a civil action in a United States district court; except that, once filed, such opposition may not be amended to change or add to the grounds for opposition or to add to the goods or services opposed.

The Office proposes to revise § 2.111(b) to substitute "person" for "entity" to track the statutory language; to make the rule gender neutral; to clarify the definitions of "attorney" and "authorized representative" by reference to §§ 10.1(c) and 10.14(b), respectively; to clarify that an opposition must be signed; and to indicate that electronic signatures are required for electronically filed oppositions.

The Office proposes to revise § 2.111(c) to divide it into four paragraphs; to state that the Office will not accept a petition submitted through ESTTA that does not include fees to cover all named party petitioners and all classes; that the Office will not institute a cancellation proceeding if a petition submitted on paper does not include a fee sufficient to pay for one person for a cancellation in at least one class; and that the Office will no longer correspond with a petitioner in a cancellation submitted on paper to permit submission of additional fees or designation of party petitioners and/or classes where a cancellation is submitted with insufficient fees to pay for cancellation by all party petitioners and/or in all classes. The revision explains how the Office will apply a fee accompanying a paper submission that is insufficient to cover all classes and/or to cover all party petitioners.

The Office proposes to amend § 2.112(a) to substitute "person" for "entity" to track the statutory language; to make the rule gender neutral; and to remove the requirement that a duplicate copy of the petition, including exhibits, be filed with the petition.

The Office proposes to reword the heading for § 2.113 to specify that notification of cancellation proceedings is to the parties.

The Office proposes to revise § 2.113 to divide it into paragraphs (a), (b), (c) and (d) for clarity; to clarify the definitions of "attorney" and "authorized representative" by reference to §§ 10.1(c) and 10.14(b), respectively; and to indicate that, if no attorney or other authorized representative is appointed by a party, notification will be sent to that party's domestic representative, or, if there is no domestic representative for that party, notification will be sent to the party.

The Office proposes to amend § 2.118 to delete reference to a party residing abroad and his representative in the United States in order to clarify that when any notice sent by the Office to a registrant is returned to the Office, notice may be given by publication in the Official Gazette, regardless of whether that registrant resides in the United States or elsewhere.

The Office proposes to amend § 2.123(g)(1) to require that depositions be in written form, but to delete reference to specific requirements that may vary depending upon the media used for submission. Requirements for submissions are specified in proposed § 2.126.

The Office proposes to add new § 2.126, entitled "Form of submissions to the Trademark Trial and Appeal Board," which includes paragraphs (a) through (d). Paragraphs (a) through (c) provide that submissions may be made to the Board on paper, CD-ROM, or electronically, as permitted by the rules contained in this part or Board practice; and specify the requirements for each type of submission. Paragraph (d) specifies the requirements for making a submission to the Board that is confidential in whole or in part.

The Office proposes to amend § 2.127(a) to delete the specifications for filing on paper a brief in support of, or response to, a motion, referring, instead to § 2.126.

The Office proposes to amend § 2.128(b) to require that briefs be in written form; and to delete the specifications for filing a brief on paper, referring, instead to § 2.126.

The Office proposes to amend both the heading and the body of § 2.130 to change "Examiner of Trademarks" to "trademark examining attorney." The Office proposes to revise § 2.130 to provide that, during an inter partes proceeding, only applications under section 1 or section 44 of the Act may be remanded, at the request of the trademark examining attorney, for consideration of facts which appear to render the mark unregistrable.

The Office proposes to amend § 2.131 to change the term "examiner" to "trademark examining attorney"; and to limit the applicability of this section to inter partes proceedings involving applications under sections 1 and 44 of the Act.

The Office proposes to revise § 2.142(a) and (b)(2) to state that notices of appeal and briefs must be filed in written form, as prescribed in § 2.126, and to delete the specifications for filing a brief on paper.

The Office proposes to amend § 2.145(b)(3) to indicate that notices of appeal to the U.S. Court of Appeals for the Federal Circuit be sent to the Office of the General Counsel, with a duplicate copy addressed to the Board.

The Office proposes to amend § 2.145(c)(3) to indicate that any adverse party to an appeal taken to the U.S. Court of Appeals for the Federal Circuit by a defeated party in an inter partes proceeding who files a notice with the Office as provided in section 21(b) of the Act, must address that notice to the Office of the General Counsel.

The Office proposes to amend § 2.145(c)(4) to indicate that, in order to avoid premature termination of a proceeding, a party who commences a civil action, pursuant to section 21(b) of the Act, must file written notice thereof at the Trademark Trial and Appeal Board.

The Office proposes to amend § 2.146(c) to delete reference to a petition to revive as an example of a situation where an affidavit or declaration is required in support of a petition. This is a technical correction to the rule. Effective October 30, 1999, § 2.66 was amended to delete the requirement for an affidavit or declaration in a petition to revive based on unintentional delay. An unverified statement is sufficient. See notices at 64 FR 48900 (Sept. 8, 1999) and 1226 TMOG 103 (Sept. 28, 1999). However, § 2.146(c) still requires a verified statement in other situations where facts are to be proven on petition. For example, if the petition arises from the loss or misplacement of a document submitted to the Office, it should be accompanied by the affidavit or declaration of the person who mailed the document, attesting to the date of submission and identifying the document filed with the petition as a true copy of the document previously filed. TMEP § 1705.03.

The Office proposes to amend § 2.146(i) to change the standard for a showing of due diligence for petitions in which the petitioner seeks to reactivate an application or registration that was abandoned, cancelled or expired due to the loss or mishandling of papers. Currently, the rule requires that to be considered diligent, petitioners must check the status of pending matters within one year of the last filing or receipt of a notice from the Office for which further action by the Office is expected. The Office proposes to shorten the time period from one year to six months. A showing of due diligence would require that a petitioner check the status of a pending application every six months between the filing date of the application and issuance of a registration; check the status of a registration every six months after filing an affidavit of use or excusable nonuse under section 8 or 71 of the Act or a renewal application under section 9 of the Act until the petitioner receives notice that the affidavit or renewal application has been accepted; and request corrective action where necessary.

Third parties are harmed by the removal and later reinsertion of an application or registration in the Office database. To minimize this problem, the Office proposes to adopt stricter time limits for the filing of petitions to revive or reinstate abandoned applications and cancelled or expired registrations.

The Office proposes to revise § 2.151 to add a reference to section 71 of the Act, which requires periodic affidavits of use or excusable nonuse to maintain a registration based on an extension of protection of an international registration.

The Office proposes to add a new § 2.171(b), stating that when ownership of a registration has changed with respect to some but not all of the goods and/or services, the registrant(s) may file a request that the registration be physically divided into two or more separate registrations, upon payment of the required fee for each new separate registration created by the division.

Rule Making Requirements

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined not to be significant for purposes of Executive Order 12866.

Regulatory Flexibility Act: The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule changes will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The main purpose of the proposed rules is to implement legislation that provides an additional means for filing trademark applications. Additionally, the rules provide for some technical and other changes that will simplify the trademark application process. Hence, the rules merely provide all applicants for trademark registration, including small businesses, with additional benefits.

Paperwork Reduction Act: The proposed rules are in conformity with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). Notwithstanding any other provision of law, no person is required to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This proposed rule contains collections of information requirements subject to the PRA. This rule adds provisions allowing parties to (1) file applications for international trademark registration with the IB through the Office; (2) file subsequent designations with the IB through the Office; (3) file responses to notices of irregularities in international applications issued by the IB through the Office; (4) request the Office to note in its records that a registered extension of protection of an international registration to the United States replaces a previously issued U.S. registration; (5) file requests to record assignments or restrictions of a holder's right to dispose of an international registration with the IB through the Office; and (6) file a request that the Office transform an extension of protection that was cancelled by the IB into an application for registration in the United States under section 1 or section 44 of the Act. Additionally, the proposed rule sets forth requirements for submitting an affidavit of continued use or excusable nonuse under section 71 of the Act and discusses changes in the information required from the public to file notices of opposition, petitions to cancel, and requests for extensions of time to oppose.

An information collection package supporting the changes to the above information requirements, as set forth in this rule, has been submitted to the Office of Management and Budget for review and approval. Previously, a separate information package was submitted in support of oppositions, requests for extensions of time to file oppositions, and petitions to cancel. The public reporting burden for this collection of information is estimated to average as follows: fifteen minutes for international trademark applications; three minutes for subsequent designations; ten minutes to respond to notices of irregularities issued by the IB in connection with international applications; two minutes to request that the Office replace a United States registration with a subsequently registered extension of protection to the United States; five minutes for a request to record an assignment or restriction of a holder's right to dispose of an international registration; five minutes for a request that the Office transform a cancelled extension of protection into an application for registration under section 1 or 44 of the Act; fourteen minutes for an affidavit of continued use or excusable nonuse under section 71 of the Act; ten minutes to forty-five minutes for notices of opposition and petitions to cancel, depending on the particular circumstances; and ten minutes for requests for extensions of time to oppose. These time estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202–3513 (Attn: Ari Leifman), and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20230 (Attn: PTO Desk Officer).

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Trademarks.

37 CFR Part 7

Administrative practice and procedure, Trademarks.

For the reasons given in the preamble and under the authority contained in 35 U.S.C. 2 and 15 U.S.C. 1123, as amended, the Office proposes to amend title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

2. Amend § 2.2 to add new paragraphs (c) through (e), to read as follows:

§ 2.2 Definitions.

* * * * *

(c) The acronym ESTTA means the Electronic System for Trademark Trials and Appeals, available at *http://www.uspto.gov.*

(d) The term international application as used in this part means an application for international registration that is filed under the Madrid Protocol.

(e) The term Office means the United States Patent and Trademark Office.

3. Revise § 2.11 and its heading to read as follows:

§ 2.11 Representation before the Office.

Representation before the Office is governed by § 10.14 of this chapter. The Office cannot aid in the selection of an attorney.

4. Amend § 2.17 by revising paragraph (b) to read as follows:

§ 2.17 Recognition for representation.

* * * * *

(b) Before any authorized representative, as specified in § 10.14(b) of this chapter, will be allowed to take action of any kind with respect to an application, registration or proceeding, a written authorization from the applicant, registrant, party to the proceeding, or other person entitled to prosecute such application or proceeding must be filed.

* * * * *

5. Revise § 2.18 to read as follows:

§ 2.18 Correspondence, with whom held.

(a) If documents are transmitted by an attorney, or a written power of attorney is filed, the Office will send correspondence to the attorney transmitting the documents, or to the attorney designated in the power of attorney, provided that the attorney is an attorney as defined in § 10.1(c) of this chapter.

(b) The Office will not undertake double correspondence. If more than one attorney appears or signs a document, the Office's reply will be sent to the address already established in the record until the applicant, registrant or party, or its duly appointed attorney, requests in writing that correspondence be sent to another address.

(c) If an application, registration or proceeding is not being prosecuted by an attorney but a domestic representative has been appointed, the Office will send correspondence to the domestic representative, unless the applicant, registrant or party designates in writing another correspondence address.

(d) If the application, registration or proceeding is not being prosecuted by an attorney and no domestic representative has been appointed, the Office will send correspondence directly to the applicant, registrant or party, unless the applicant, registrant or party designates in writing another correspondence address.

6. Revise § 2.19 and its heading to read as follows:

§ 2.19 Revocation of power of attorney; withdrawal.

(a) Authority to represent an applicant, registrant or a party to a proceeding may be revoked at any stage in the proceedings of a case upon notification to the Director; and when it is revoked, the Office will communicate directly with the applicant, registrant or party to the proceeding, or with the new attorney or domestic representative if one has been appointed. The Office will notify the person affected of the revocation of his or her authorization.

(b) If the requirements of § 10.40 of this chapter are met, an attorney authorized under § 10.14 of this chapter to represent an applicant, registrant or party in a trademark case may withdraw upon application to and approval by the Director.

7. Amend § 2.21 by revising paragraph (a) introductory text to read as follows:

§ 2.21 Requirements for receiving a filing date.

(a) The Office will grant a filing date to an application under section 1 or section 44 of the Act that contains all of the following:

* * * * * *

8. Amend § 2.33 by adding a new paragraph (e) to read as follows:

§ 2.33 Verified statement.

* * * * *

(e) In an application under section 66(a) of the Act, the verified statement is part of the international registration on file at the International Bureau.

9. Amend § 2.34 by removing paragraphs (a)(1)(v), (a)(3)(iv) and (a)(4)(iv), revising paragraphs (a) introductory text, (a)(2), (a)(4)(i)(A), and (b), and adding a new paragraph (a)(5), to read as follows:

§ 2.34 Bases for filing.

(a) The application must include one or more of the following five filing bases:

(1) * * *

(2) Intent-to-use under section 1(b) of the Act. In an application under section 1(b) of the Act, the applicant must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

(3) * * *

(4) * * *

(i) * * *

(A) Specify the filing date, serial number and country of the first regularly filed foreign application; or

* * * * *

(5) Extension of protection of an international registration under section 66(a) of the Act. In an application under section 66(a) of the Act, the international application or subsequent designation requesting an extension of protection to the United States must contain a verified statement that the applicant has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application.

(b)(1) In an application under section 1 or section 44 of the Act, an applicant may claim more than one basis, provided the applicant satisfies all requirements for the bases claimed. However, the applicant may not claim both sections 1(a) and 1(b) for the identical goods or services in the same application.

(2) In an application under section 1 or section 44 of the Act, if an applicant claims more than one basis, the applicant must list each basis, followed by the goods or services to which that basis applies. If some or all of the goods or services are covered by more than one basis, this must be stated.

(3) A basis under section 66(a) of the Act cannot be combined with any other basis.

* * * * *

10. Revise § 2.35 to read as follows:

§ 2.35 Adding, deleting, or substituting bases.

(a) In an application under section 66(a) of the Act, an applicant may not add, substitute or delete a basis, unless the applicant meets the requirements for transformation under section 70(c) of the Act and § 7.31 of this chapter.

(b) In an application under section 1 or section 44 of the Act:

(1) Before publication for opposition, an applicant may add or substitute a basis, if the applicant meets all requirements for the new basis, as stated in § 2.34. The applicant may delete a basis at any time.

(2) After publication, an applicant may add or substitute a basis in an application that is not the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board, but only with the express permission of the Director, after consideration on petition. Republication will be required. The amendment of an application that is the subject of an *inter partes* proceeding before the Board is governed by § 2.133(a).

(3) When an applicant substitutes one basis for another, the Office will presume that there was a continuing valid basis, unless there is contradictory evidence in the record, and the application will retain the original filing date, including a priority filing date under section 44(d), if appropriate.

(4) If an applicant properly claims a section 44(d) basis in addition to another basis, the applicant will retain the priority filing date under section 44(d) no matter which basis the applicant perfects.

(5) The applicant may add or substitute a section 44(d) basis only within the six-month priority period following the filing date of the foreign application.

(6) When the applicant adds or substitutes a basis, the applicant must list each basis, followed by the goods or services to which that basis applies.

(7) When the applicant deletes a basis, the applicant must also delete any goods or services covered solely by the deleted basis.

(8) Once an applicant claims a section 1(b) basis as to any or all of the goods or services, the applicant may not amend the application to seek registration under section 1(a) of the Act for those goods or services unless the applicant files an allegation of use under section 1(c) or section 1(d) of the Act.

11. Revise § 2.37 to read as follows:

§ 2.37 Description of mark.

(a) A description of the mark, which must be acceptable to the trademark examining attorney, may be included in the application, and must be included if required by the examining attorney.

(b) If a mark is displayed in color or a color combination, the applicant must name the color(s), and describe where the color(s) appear on the mark.

12. Amend § 2.47 by redesignating paragraphs (c) and (d) as (d) and (e) and adding a new paragraph (c) to read as follows:

§ 2.47 Supplemental Register.

* * * * *

(c) An application under section 66(a) of the Act is not eligible for registration on the Supplemental Register.

* * * * *

13. Revise § 2.51 to read as follows:

§ 2.51 Drawing required.

(a) In an application under section 1(a) of the Act, the drawing of the mark must be a substantially exact representation of the mark as used on or in connection with the goods and/or services.

(b) In an application under section 1(b) of the Act, the drawing of the mark must be a substantially exact representation of the mark as intended to be used on or in connection with the goods and/or services specified in the application, and once an amendment to allege use under § 2.76 or a statement of use under § 2,88 has been filed, the drawing of the mark must be a substantially exact representation of the mark as used on or in connection with the goods and/or services.

(c) In an application under section 44 of the Act, the drawing of the mark must be a substantially exact representation of the mark as it appears in the drawing in the registration certificate of a mark duly registered in the applicant's country of origin.

(d) In an application under section 66(a) of the Act, the drawing of the mark must be a substantially exact. representation of the mark as it appears in the international registration.

14. Revise § 2.52 to read as follows:

§ 2.52 Types of drawings and format for drawings.

A drawing depicts the mark sought to be registered. The drawing must show only one mark. The applicant must include a clear drawing of the mark when the application is filed. There are two types of drawings:

(a) Standard character (typed) drawing. Applicants who seek to register words, letters, numbers, or any combination thereof without claim to any particular font style must submit a standard character drawing. An applicant may submit a standard character drawing if:

(1) The application includes a statement that the mark is in standard characters and no claim is made to any particular font style;

(2) The mark does not include a design element;

(3) All letters and words in the mark are depicted in Latin characters;

(4) All numerals in the mark are depicted in Roman or Arabic numerals; and

(5) The mark includes only common punctuation or diacritical marks.

(b) Special form drawing. Applicants who seek to register a mark that includes a two or three-dimensional design; or color; or words, letters, or numbers in a particular style of lettering; or a mark that does not meet the requirements of paragraph (a) must submit a special form drawing.

(1) Color marks. When color is claimed as a feature of the mark or if the mark consists only of color, the drawing must show the mark in color, and the applicant must name the color(s), and describe where the color(s) appear on the mark. If color is not claimed as a feature of the mark, the applicant must submit a black and white drawing.

(2) Three dimensional marks. If the mark has three-dimensional features, the drawing must depict a single rendition of the mark, and the applicant must indicate that the mark is three-dimensional.

(3) Motion mark. If the mark has motion, the drawing may depict a single point in the movement, or the drawing may depict up to five freeze frames showing various points in the movement, whichever best depicts the commercial impression of the mark. The applicant must also describe the mark.

(4) If necessary to adequately depict the commercial impression of the mark, the applicant may be required to submit a drawing that shows the placement of the mark by surrounding the mark with a proportionately accurate broken-line representation of the particular goods, packaging, or advertising on which the mark appears. The applicant must also use broken lines to show any other matter not claimed as part of the mark. For any drawing using broken lines to indicate placement of the mark, or matter not claimed as part of the mark, the applicant must describe the mark and explain the purpose of the broken lines.

(5) If a drawing cannot adequately depict all significant features of the mark, the applicant must also describe the mark.

(c) A drawing filed through TEAS must meet the requirements of § 2.53.

(d) A paper drawing must meet the requirements of § 2.54.

(e) Sound, scent, and non-visual marks. An applicant is not required to submit a drawing if the mark consists only of a sound, a scent, or other completely non-visual matter. For these types of marks, the applicant must submit a detailed description of the mark.

15. Add § 2.53 to read as follows:

§ 2.53 Requirements for drawings filed through the Trademark Electronic Application System (TEAS).

The drawing must meet the requirements of § 2.52. In addition, in a TEAS application, the drawing must meet the following requirements:

(a) Standard character drawings: If an applicant is filing a standard character drawing, the applicant must enter the mark in the appropriate box. The applicant must indicate that the mark is in standard characters and that no claim is made to any particular font style.

(b) Special form drawings: If an applicant is filing a special form drawing, the applicant must attach a digitized image of the mark to the electronic submission.

(c) Requirements for digitized images: The image must be no larger than 3.15 inches (8 cm) high by 3.15 inches (8 cm) wide; must be in .jpg format; and must be scanned at no less than 250 and no more than 350 dots per inch. The image that is scanned must be made with a pen or by a process that will provide high definition when copied. A photolithographic, printer's proof copy, or other high quality reproduction of the mark may be used. All lines must be clean, sharp and solid, and must not be fine or crowded.

16. Add § 2.54 to read as follows:

§ 2.54 Requirements for drawings submitted on paper.

The drawing must meet the requirements of § 2.52. In addition, in a paper application, the drawing should:

(a) Be on non-shiny white paper that is separate from the application;

(b) Be on paper that is 8 to 8.5 inches (20.3 to 21.6 cm.) wide and 11 to 11.69 inches (27.9 to 29.7 cm.) long. One of the shorter sides of the sheet should be regarded as its top edge. The image must be no larger than 3.15 inches (8 cm) high by 3.15 inches (8 cm) wide;

(c) Include the caption "DRAWING PAGE" at the top of the drawing beginning one inch (2.5 cm.) from the top edge; and

(d) Depict the mark in black ink, or in color if color is claimed as a feature of the mark.

(e) Drawings must be typed or made with a pen or by a process that will provide high definition when copied. A photolithographic, printer's proof copy, or other high quality reproduction of the mark may be used. All lines must be clean, sharp and solid, and must not be fine or crowded.

17. Amend § 2.65 by revising paragraph (a) to read as follows:

§ 2.65 Abandonment.

(a) If an applicant fails to respond, or to respond completely, within six months after the date an action is mailed, the application shall be deemed abandoned unless the refusal or requirement is expressly limited to only certain goods and/or services. If the refusal or requirement is expressly limited to only certain goods and/or services, the application will be abandoned only as to those particular goods/services. A timely petition to the Director pursuant to §§ 2.63(b) and 2.146, if appropriate, is a response that avoids abandonment of an application.

* * * * *

18. Amend § 2.66 by revising paragraph (a) to read as follows:

§ 2.66 Revival of abandoned applications.

(a) An applicant may file a petition to revive an application abandoned because applicant did not timely respond to an Office action or notice of allowance, if the delay was unintentional. The applicant must file the petition within two months of the mailing date of the notice of abandonment.

* * * * *

19. Amend § 2.72 to add a new paragraph (d) to read as follows:

§ 2.72 Amendments to description or drawing of the mark.

* * * * *

(d) In an application under section 66(a) of the Act, the applicant may amend the description or drawing of the mark only if the proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark in the international registration.

20. Amend § 2.73 by revising paragraph (a) to read as follows:

§ 2.73 Amendment to recite concurrent use.

(a) An application under section 1(a), section 44, or section 66(a) of the Act may be amended to an application for concurrent use registration, provided the application as amended satisfies the requirements of § 2.42. The trademark examining attorney will determine whether the application, as amended, is acceptable.

* * * * *

21. Amend § 2.75 to add a new paragraph (c) to read as follows:

§ 2.75 Amendment to change application to different register.

* * * * *

(c) In an application under section 66(a) of the Act, the applicant may not amend the application to the Supplemental Register.

22. Revise § 2.84 to read as follows:

§ 2.84 Jurisdiction over published applications.

(a) The trademark examining attorney may exercise jurisdiction over an application up to the date the mark is published in the Official Gazette. After publication of an application under section 1(a), 44 or 66(a) of the Act the trademark examining attorney may, with the permission of the Director, exercise jurisdiction over the application. After publication of an application under section 1(b) of the Act, the trademark examining attorney may exercise jurisdiction over the application after the issuance of the notice of allowance under section 13(b)(2) of the Act. After publication, and prior to issuance of a notice of allowance in an application under section 1(b), the trademark examining attorney may, with the permission of the Director, exercise jurisdiction over the application.

(b) After publication, but before the certificate of registration in an application under section 1(a), 44 or 66(a) of the Act is printed, or before the notice of allowance in an application under section 1(b) of the Act is printed, an application that is not the subject of an inter partes proceeding before the Trademark Trial and Appeal Board may be amended if the amendment does not necessitate republication of the mark or issuance of an Office action. Otherwise, an amendment to such an application may be submitted only upon petition to the Director to restore jurisdiction over the application to the trademark examining attorney for consideration of the amendment and further examination. The amendment of an application that is the subject of an inter partes proceeding before the Trademark Trial and Appeal Board is governed by § 2.133.

23. Revise § 2.101 to read as follows:

§ 2.101 Filing an opposition.

(a) An opposition proceeding is commenced by filing a timely opposition, together with the required fee, in the Office.

(b) Any person who believes that he, she or it would be damaged by the registration of a mark on the Principal Register may file an opposition addressed to the Trademark Trial and Appeal Board. The opposition need not be verified, and must be signed by the opposer or the opposer's attorney, as specified in § 10.1(c) of this chapter, or other authorized representative, as specified in § 10.14(b) of this chapter. Electronic signatures pursuant to § 1.4(d)(1)(iii) of this chapter are required for oppositions submitted electronically under paragraphs (b)(1) or (2) of this section.

(1) An opposition to an application based on section 1 or 44 of the Act must be filed either on paper or through ESTTA.

(2) An opposition to an application based on section 66(a) of the Act must be filed through ESTTA.

(c) The opposition must be filed within thirty days after publication (§ 2.80) of the application being opposed or within an extension of time (§ 2.102) for filing an opposition.

(d)(1) The opposition must be accompanied by the required fee for each party joined as opposer for each class in the application for which registration is opposed (see § 2.6).

(2) A timely opposition submitted through ESTTA will not be accepted if it is accompanied by a fee that is insufficient to pay in full for each named party opposer to oppose the registration of a mark in each class specified in the opposition.

(3) If a timely opposition is submitted on paper, the following is applicable if less than all required fees are submitted:

(i) If the opposition is accompanied by no fee or a fee insufficient to pay for one person to oppose the registration of a mark in at least one class, the opposition will be refused.

(ii) If the opposition is accompanied by fees sufficient to pay for one person to oppose registration in at least one class, but fees are insufficient to oppose registration in all the classes in the application, and the particular class or classes against which the opposition is filed are not specified, the opposition will be presumed to be against the class or classes in ascending numerical order, including only the number of classes in the application for which sufficient fees have been submitted.

(iii) If persons are joined as party opposers, each must submit a fee for each class for which opposition is sought. If the fees submitted are sufficient to pay for one person to oppose registration in at least one class, but are insufficient for each named party opposer, the first-named party will be presumed to be the party opposer. Additional parties will be deemed to be party opposers only to the extent that the fees submitted are sufficient to pay the fee due for each party opposer. If persons are joined as party opposers against a multiple class application, the fees submitted are insufficient, and no specification of opposers and classes is made at the time the party is joined, the fees submitted will be applied first on behalf of the first-named opposer against as many of the classes in the application as the submitted fees are sufficient to pay. Any excess will be applied on behalf of the second-named party to the opposition against the classes in the application in ascending numerical order.

24. Revise § 2.102 to read as follows:

§ 2.102 Extension of time for filing an opposition.

(a) Any person who believes that he, she or it would be damaged by the registration of a mark on the Principal Register may file a written request to extend the time for filing an opposition. The written request must be signed by the potential opposer or by the potential opposer's attorney, as specified in § 10.1(c) of this chapter, or authorized representative, as specified in § 10.14(b) of this chapter. Electronic signatures pursuant to § 1.4(d)(1)(iii) of this chapter are required for electronically filed extension requests.

(1) A written request to extend the time for filing an opposition to an application filed under section 1 or 44 of the Act must be filed either on paper or through ESTTA.

(2) A written request to extend the time for filing an opposition to an application filed under section 66(a) of the Act must be filed through ESTTA.

(b) A written request to extend the time for filing an opposition must identify the potential opposer with reasonable certainty. Any opposition filed during an extension of time should be in the name of the person to whom the extension was granted. An opposition may be accepted if the person in whose name the extension was requested was misidentified through mistake or if the opposition is filed in the name of a person in privity with the person who requested and was granted the extension of time.

(c) A person may file no more than two requests to extend the time for filing an opposition. The time for filing an opposition shall not be extended beyond 120 days from the date of publication. A request to extend the time for filing an opposition must be filed in the Office and addressed to the Trademark Trial and Appeal Board.

(1) If two consecutive requests to extend the time for filing an opposition are filed:

(i) A first request for an extension of time for thirty days must be filed before thirty days have expired from the date of publication, and will be granted upon request; and

(ii) A second request for an extension of time for sixty days must be filed before the previously granted thirty-day extension of time has expired, and will be granted by the Board only for good cause shown. No further extensions of time to file an opposition will be granted under any circumstances.

(2) Alternatively, a potential opposer may file a single request for an extension of time for 90 days for good cause shown. Such a request must be filed before thirty days have expired from the date of publication, and will be granted by the Board only for good cause shown. If a potential opposer does not show good cause, the Board will treat the request as a first request for extension of time for thirty days under § 2.102(c)(1).

25. Revise § 2.104(a) to read as follows:

§ 2.104 Contents of opposition.

(a) The opposition must set forth a short and plain statement showing why the opposer believes it would be damaged by the registration of the opposed mark and state the grounds for opposition.

* * * * *

26. Revise § 2.105 and its heading to read as follows:

§ 2.105 Notification to parties of opposition proceeding(s).

When an opposition in proper form has been filed and the correct fee(s) has been submitted, the Trademark Trial and Appeal Board shall prepare a notification, which shall identify the title and number of the proceeding and the application involved and shall designate a time, not less than thirty days from the mailing date of the notification, within which an answer must be filed. A copy of the notification shall be forwarded to opposer's attorney, as defined in § 10.1(c) of this chapter, or other authorized representative, as defined in § 10.14(b) of this chapter, if any, or to opposer's domestic representative, if any, or to opposer. The Board shall forward a copy of the opposition and any exhibits with a copy of the notification to applicant's attorney, other authorized representative, or domestic representative, if any, or to the applicant.

27. Revise § 2.107 to read as follows:

§ 2.107 Amendment of pleadings in an opposition proceeding.

(a) Pleadings in an opposition proceeding against an application filed under sections 1 or 44 of the Act may be amended in the same manner and to the same extent as in a civil action in a United States district court, except that, after the close of the time period for filing an opposition including any extension of time for filing an opposition, an opposition may not be amended to add to the goods or services opposed.

(b) Pleadings in an opposition proceeding against an application filed under section 66(a) of the Act, may be amended in the same manner and to the same extent as in a civil action in a United States district court, except that, once filed, the opposition may not be amended to change or add to the grounds for opposition or to add to the goods or services opposed.

28. Revise § 2.111 to read as follows:

§ 2.111 Filing petition for cancellation.

(a) A cancellation proceeding is commenced by the filing of a timely petition for cancellation, together with the required fee, in the Office.

(b) Any person who believes that he, she or it is or will be damaged by a registration may file a petition, addressed to the Trademark Trial and Appeal Board, to cancel the registration in whole or in part. The petition need not be verified, and must be signed by the petitioner or the petitioner's attorney, as specified in § 10.1(c) of this chapter, or other authorized representative, as specified in § 10.14(b) of this chapter. Electronic signatures pursuant to § 1.4(d)(1)(iii) of this chapter are required for petitions submitted electronically. * * *

(c)(1) The petition must be accompanied by the required fee for each party joined as petitioner for each class in the registration for which cancellation is sought (see § 2.6).

(2) A petition submitted through ESTTA will not be accepted if it is accompanied by a fee that is insufficient to pay in full for each named party petitioner and for each class specified in the petition.

(3) If the petition is submitted on paper, the following is applicable if less than all required fees are submitted:

(i) If the petition is accompanied by no fee or a fee insufficient to pay for one person for a cancellation in at least one class, the cancellation will be refused.

(ii) If the petition is accompanied by fees sufficient to pay for one person for a cancellation in at least one class, but fees are insufficient for a cancellation against all the classes in the registration, and the particular class or classes against which the cancellation is filed are not specified, the cancellation will be presumed to be against the class or classes in ascending numerical order, including only the number of classes in

the registration for which sufficient fees have been submitted.

(iii) If persons are joined as party petitioners, each must submit a fee for each class for which cancellation is sought. If the fees submitted are sufficient to pay for one person to oppose registration in at least one class but are insufficient for each named party petitioner, the first-named party will be presumed to be the party petitioner. Additional parties will be deemed to be party petitioners only to the extent that the fees submitted are sufficient to pay the fee due for each party petitioner. If persons are joined as party petitioners against a multiple class registration, the fees submitted are insufficient, and no specification of parties and classes is made at the time the party is joined, the fees submitted will be applied first on behalf of the first-named petitioner against as many of the classes in the registration as the submitted fees are sufficient to pay. Any excess will be applied on behalf of the second-named party to the cancellation against the classes in the application in ascending numerical order.

(4) The filing date of the petition is the date of receipt in the Office of the petition together with the required fee.

29. Revise § 2.112 to read as follows:

§ 2.112 Contents of petition for cancellation.

(a) The petition must set forth a short and plain statement showing why the petitioner believes he, she or it is or will be damaged by the registration, state the grounds for cancellation, and indicate, to the best of petitioner's knowledge, the name and address of the current owner of the registration.

(b) When appropriate, petitions to cancel different registrations owned by the same party may be joined in a consolidated petition. The required fee must be included for each party joined as a petitioner for each class sought to be cancelled in each registration against which the petition to cancel is filed.

30. Revise § 2.113 and its heading to read as follows:

§ 2.113 Notification to parties of cancellation proceeding.

(a) When a petition for cancellation has been filed in proper form (*see* §§ 2.111 and 2.112), the Trademark Trial and Appeal Board shall prepare a notification which shall identify the title and number of the proceeding and the registration(s) involved and shall designate a time, not less than thirty days from the mailing date of the notification, within which an answer must be filed. A copy of the notification shall be forwarded to petitioner's attorney, as defined in § 10.1(c) of this chapter, or other authorized representative, as defined in § 10.14(b) of this chapter, if any, or to petitioner's domestic representative, if any, or to the petitioner. The Board shall forward a copy of the petition to cancel and any exhibits with a copy of the notification to the respondent (*see* § 2.118).

(b) The respondent shall be the party shown by the records of the Office to be the current owner of the registration(s) sought to be cancelled, except that the Board, in its discretion, may join or substitute as respondent a party who makes a showing of a current ownership interest in such registration(s).

(c) When the party identified by the petitioner, pursuant to § 2.112(a), as the current owner of the registration(s) is not the record owner, a courtesy copy of the petition for cancellation shall be forwarded with a copy of the notification to the alleged current owner. The alleged current owner may file a motion to be joined or substituted as respondent.

(d) If the petition is found to be defective as to form, the party filing the petition shall be advised and allowed reasonable time for correcting the informality.

31. Revise § 2.118 to read as follows:

§ 2.118 Undelivered Office notices.

When a notice sent by the Office to any registrant is returned to the Office undelivered, additional notice may be given by publication in the Official Gazette for the period of time prescribed by the Director.

32. Amend § 2.123 by revising paragraph (g)(1) to read as follows:

§ 2.123 Trial testimony in inter partes cases.

* * * * * *

(g) Form of deposition. (1) The pages of each deposition must be numbered consecutively, and the name of the witness plainly and conspicuously written at the top of each page. A deposition must be in written form. The questions propounded to each witness must be consecutively numbered unless the pages have numbered lines. Each question must be followed by its answer.

* * * * * *

33. Add new § 2.126 to read as follows:

§ 2.126 Form of submissions to the Trademark Trial and Appeal Board.

(a) Submissions may be made to the Trademark Trial and Appeal Board on paper where the rules in this part or Board practice permit. A paper submission, including exhibits and depositions, must meet the following requirements:

(1) A paper submission must be printed in at least 11-point type and double-spaced, with text on one side only of each sheet;

(2) A paper submission must be 8 to 8.5 inches (20.3 to 21.6 cm.) wide and 11 to 11.69 inches (27.9 to 29.7 cm.) long, and contain no tabs or other such devices extending beyond the edges of the paper;

(3) If a paper submission contains dividers, the dividers must not have any extruding tabs or other devices, and must be on the same size and weight paper as the submission;

(4) A paper submission must not be stapled or bound;

(5) All pages of a paper submission must be numbered and exhibits shall be identified in the manner prescribed in § 2.123(g)(2);

(6) Exhibits pertaining to a paper submission must be filed on paper or CD–ROM concurrently therewith, and comply with the requirements for a paper or CD–ROM submission.

(b) Submissions may be made to the Trademark Trial and Appeal Board on CD–ROM where the rules in this part or Board practice permit. A CD–ROM submission must identify the parties and case number and contain a list that clearly identifies the documents and exhibits contained thereon. This information must appear in the data contained in the CD–ROM itself, on a label affixed to the CD–ROM, and on the packaging for the CD–ROM. Text in a CD–ROM submission must be in at least 11-point type and double-spaced. A brief filed on CD–ROM must be accompanied by a single paper copy of the brief. A CD–ROM submission must be accompanied by a transmittal letter on paper that identifies the parties, the case number and the contents of the CD–ROM.

(c) Submissions may be made to the Trademark Trial and Appeal Board electronically via the Internet where the rules in this part or Board practice permit, according to the parameters established by the Board and published at *http://www.uspto.gov*. Text in an electronic submission must be in at least 11-point type and double-spaced. Exhibits pertaining to an electronic submission must be made electronically as an attachment to the submission.

(d) To be handled as confidential, submissions to the Trademark Trial and Appeal Board that are confidential in whole or part pursuant to § 2.125(e), must be submitted under a separate cover. Both the submission and its cover must be marked confidential and identify the case number and the parties. A copy of the submission with the confidential portions redacted must be submitted.

34. Revise § 2.127(a) to read as follows:

§ 2.127 Motions.

(a) Every motion shall be submitted in written form and must meet the requirements prescribed in § 2.126. It shall contain a full statement of the grounds, and shall embody or be accompanied by a brief. Except as provided in paragraph (e)(1) of this section, a brief in response to a motion shall be filed within fifteen days from the date of service of the motion unless another time is specified by the Trademark Trial and Appeal Board, or the time is extended by stipulation of the parties approved by the Board, or upon motion granted by the Board, or upon order of the Board. If a motion for an extension is denied, the time for responding to the motion remains as specified under this section, unless otherwise ordered. The Board may, in its discretion, consider a reply brief. Except as provided in paragraph (e)(1) of this section, a reply brief, if filed, shall be filed within fifteen days from the date of service of the brief in response to the motion. The time for filing a reply brief will not be extended. No further papers in support of or in opposition to a motion will be considered by the Board. The brief in support of a motion and the brief in response to the motion shall not exceed twenty-five pages in length, and a reply brief shall not exceed ten pages in length. Exhibits submitted in support of or in opposition to a motion shall not be deemed to be part of the brief for purposes of determining the length of the brief. When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded. An oral hearing will not be held on a motion except on order by the Board.

* * * * * *

35. Amend § 2.128 by revising paragraph (b) to read as follows:

§ 2.128 Briefs at final hearing.

* * * * * *

(b) Briefs must be submitted in written form and must meet the requirements prescribed in § 2.126. Each brief shall contain an alphabetical index of cited cases. Without prior leave of the Trademark Trial and Appeal Board, a main brief on the case shall not exceed fifty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary; and a reply brief shall not exceed twenty-five pages in its entirety.

36. Revise § 2.130 and its heading to read as follows:

§ 2.130 New matter suggested by the trademark examining attorney.

If, while an inter partes proceeding involving an application under section 1 or 44 of the Act is pending, facts appear which, in the opinion of the trademark examining attorney, render the mark in the application unregistrable, the facts should be called to the attention of the Trademark Trial and Appeal Board. The Board may suspend the proceeding and refer the application to the trademark examining attorney for an ex parte determination of the question of registrability. A copy of the trademark examining attorney's final action will be furnished to the parties to the inter partes proceeding following the final determination of registrability by the trademark examining attorney or the Board on appeal. The Board will consider the application for such further inter partes action as may be appropriate.

37. Revise § 2.131 to read as follows:

§ 2.131 Remand after decision in inter partes proceeding.

If, during an inter partes proceeding involving an application under section 1 or 44 of the Act, facts are disclosed which appear to render the mark unregistrable, but such matter has not been tried under the pleadings as filed by the parties or as they might be deemed to be amended under Rule 15(b) of the Federal Rules of Civil Procedure to conform to the evidence, the Trademark Trial and Appeal Board, in lieu of determining the matter in the decision on the proceeding, may remand the application to the trademark examining attorney for reexamination in the event the applicant ultimately prevails in the inter partes proceeding. Upon remand, the trademark examining attorney shall reexamine the application in light of the reference by the Board. If, upon reexamination, the trademark examining attorney finally refuses registration to the applicant, an appeal may be taken as provided by §§ 2.141 and 2.142.

38. Amend § 2.142 by revising paragraphs (a) and (b)(2) to read as follows:

§ 2.142 Time and manner of ex parte appeals.

(a) Any appeal filed under the provisions of § 2.141 must be filed within six months from the date of the final refusal or the date of the action from which the appeal is taken. An appeal is taken by filing a notice of appeal in written form, as prescribed in § 2.126, and paying the appeal fee.

(b) * * *

(2) Briefs must be submitted in written form and must meet the requirements prescribed in § 2.126. Each brief shall contain an alphabetical index of cited cases. Without prior leave of the Trademark Trial and Appeal Board, a brief shall not exceed twenty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary.

* * * * * *

39. Amend § 2.145 by revising paragraphs (b)(3), (c)(3) and (c)(4) to read as follows:

§ 2.145 Appeal to court and civil action.

* * * * * *

(b) * * *

(3) The notice, if mailed to the Office, shall be addressed as follows: Office of the General Counsel, P.O. Box 15667, Arlington, Virginia 22215, and should include a duplicate copy addressed to the Trademark Trial and Appeal Board.

(c) * * *

(3) Any adverse party to an appeal taken to the U.S. Court of Appeals for the Federal Circuit by a defeated party in an inter partes proceeding may file a notice with the Office, addressed to the Office of the General Counsel, within twenty days after the filing of the defeated party's notice of appeal to the court (paragraph (b) of this section), electing to have all further proceedings conducted as provided in section 21(b) of the Act. The notice of election must be served as provided in § 2.119.

(4) In order to avoid premature termination of a proceeding, a party who commences a civil action, pursuant to section 21(b) of the Act, must file written notice thereof at the Trademark Trial and Appeal Board.

* * * * * *

40. Amend § 2.146 by revising paragraphs (c) and (i) to read as follows:

§ 2.146 Petitions to the Director.

* * * * * *

(c) Every petition to the Director shall include a statement of the facts relevant to the petition, the points to be reviewed, the action or relief that is requested, and the fee required by § 2.6. Any brief in support of the petition shall be embodied in or accompany the petition. When facts are to be proved in *ex parte* cases, proof in the form of affidavits or declarations in accordance with § 2.20, and any exhibits, shall accompany the petition.

* * * * * *

(i) Where a petitioner seeks to reactivate an application or registration that was abandoned, cancelled or expired because papers were lost or mishandled, the Director may deny the petition if the petitioner was not diligent in checking the status of the application or registration. To be considered diligent, a petitioner must:

(1) During the pendency of an application, check the status of the application every six months between the filing date of the application and issuance of a registration;

(2) After filing an affidavit of use or excusable nonuse under section 8 or 71 of the Act, or a renewal application under section 9 of the Act, check the status of the registration every six months until the petitioner receives notice that the affidavit or renewal application has been accepted; and

(3) If the status check reveals that the Office has not received a paper filed by the petitioner, or that the Office has issued an action or notice that the petitioner has not received, the petitioner must request corrective action.

* * * * *

41. Revise § 2.151 to read as follows:

§ 2.151 Certificate.

When the Office determines that a mark is registrable, the Office will issue a certificate stating that the applicant is entitled to registration on the Principal Register or on the Supplemental Register. The certificate will state the application filing date, the act under which the mark is registered, the date of issue, and the number of the registration. A reproduction of the mark and pertinent data from the application will be sent with the certificate. A notice of the requirements of sections 8 and 71 of the Act will accompany the certificate.

42. Revise § 2.171 to read as follows:

§ 2.171 New certificate on change of ownership.

(a) If the ownership of a registered mark changes, the assignee may request that a new certificate of registration be issued in the name of the assignee for the unexpired part of the original period. The assignment must be recorded in the Office, and the request for the new certificate must be signed by the assignee and accompanied by the fee required by § 2.6(a)(8). If available, the original certificate of registration must be submitted.

(b) When ownership of a registration has changed with respect to some, but not all, of the goods and/or services, the registrant(s) may file a request that the registration be physically divided into two or more separate registrations. The fee required by § 2.6(a)(8) must be paid for each new separate registration created by the division, and the change of ownership must be recorded in the Office.

43. Add a new part 7, to read as follows:

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE MADRID PROTOCOL

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

Subpart A—General Information

§ 7.1 Definitions of terms as used in this part.

(a) *The Act* means the Trademark Act of 1946, 60 Stat. 427, as amended, codified in 15 U.S.C. 1051 *et seq.*

(b) *Subsequent designation* means a request for extension of protection of an international registration to a Contracting Party made after international registration.

(c) The acronym *TEAS* means the Trademark Electronic Application System available online through the Office's web site at: *www.uspto.gov.*

(d) The term *Office* means the United States Patent and Trademark Office.

§ 7.3 Correspondence must be in English.

All correspondence relating to international applications and registrations and requests for extension of protection filed in the Office must be in English. The Office will not process correspondence that is in a language other than English.

§ 7.4 Receipt of correspondence.

Correspondence relating to international applications and registrations and requests for extension of protection transmitted electronically will be accorded the date and time on which the complete transmission is received in the Office based on Eastern Time. Eastern Time means eastern standard time or eastern daylight time, as appropriate.

§ 7.6 Schedule of U.S. process fees.

(a) The Office requires the following process fees:

(1) For certifying an international application based on a single basic application or registration, per class—$100.00

(2) For certifying an international application based on more than one basic application or registration, per class—$150.00

(3) For transmitting a request to record an assignment or restriction under § 7.23 or § 7.24+$100.00

(4) For filing a notice of replacement, per class—$100.00

(5) For filing an affidavit under section 71 of the Act, per class—$100.00

(6) Surcharge for filing an affidavit under section 71 of the Act during the grace period, per class—$100.00

(7) For transmitting a subsequent designation—$100.00

(b) The fees required in paragraph (a) of this section must be paid in U.S. dollars at the time of filing. See § 1.23 of this chapter for acceptable forms of payment and § 1.24 of this chapter for payments using a deposit account established in the Office.

§ 7.7 Payments of fees to International Bureau.

(a) The schedule of fees required by the International Bureau and fee calculator may be viewed online at: *http://www.wipo.int/madrid.*

(b) The following fees required by the International Bureau may be paid either directly to the International Bureau or through the Office:

(1) International application fee;

(2) Fee for correcting irregularities in an international application;

(3) Subsequent designation fee; and

(4) Recording fee for an assignment of or restriction to an international registration under § 7.23 or § 7.24.

(c) The fees required in paragraph (b) of this section may be paid as follows:

(1)(i) Directly to the International Bureau by debit to a current account with the International Bureau. As proof of payment in this case, an applicant or holder's submission to the Office must include the International Bureau account number; or

(ii) Directly to the International Bureau using any other method of payment. As proof of payment in this case, an applicant or holder's submission to the Office must include the International Bureau receipt number for payment of the fees; or

(2) Through the Office. Fees paid through the Office must be paid in U.S. dollars at the time of submission. See § 1.23 of this chapter for acceptable forms of payment and § 1.24 of this chapter for payments using a deposit account established in the Office.

Subpart B—International Application Originating From the United States

§ 7.11 Requirements for international application originating from the United States.

(a) The Office will grant a date of receipt to an international application that is submitted through TEAS and contains all of the following:

(1) The filing date and serial number of the basic application and/or the registration date and registration number of the basic registration;

(2) The name and address of the international applicant that are identical to the name and address of the applicant or registrant as they appear in the basic application or basic registration;

(3) A reproduction of the mark that is identical to the mark in the basic application and/or registration and meets the requirements of § 2.52 of this chapter. If the mark in the basic application and/or registration is depicted in black and white, the mark in the international application must be black and white. If the mark in the basic application and/or registration is depicted in color, the mark in the international application must be in color;

(4) A color claim as set out in § 7.12, if appropriate;

(5) A description of the mark that is identical to the description of the mark in the basic application or registration, as appropriate;

(6) An indication of the type of mark if the mark in the basic application and/or registration is a three-dimensional mark, a sound mark, a collective mark or a certification mark;

(7) A list of the goods and/or services that is identical to or narrower than the list of goods and/or services in each claimed basic application or registration and classified according to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks;

(8) A list of the Contracting Parties designated for an extension of protection. If the goods and/or services in the international application are not the same for all Contracting Parties, the application must include a list of the goods and/or services in the international application that pertain to each designated Contracting Party;

(9) The certification fee required by § 7.6, and the international application fees for all classes and designated Contracting Parties identified in the international application (see § 7.7);

(10) A statement that the applicant is entitled to file an international application in the Office, specifying that applicant: is a national of the United States; has a domicile in the United States; or has a real and effective industrial or commercial establishment in the United States. Where an applicant's address is not in the United States, the applicant must provide the address of its U.S. domicile or establishment; and

(11) An e-mail address for receipt of correspondence from the Office.

(b) For requirements for certification, *see* § 7.13.

§ 7.12 Claim of color.

(a) If color is claimed as a feature of the mark in the basic application and/or registration, the international applicant must include a statement that color is claimed as a feature of the mark and set forth the same name(s) of the color(s) claimed in the basic application and/or registration. If the basic application and/or registration claim color as a feature of the mark, but the mark is depicted in black and white, the international application must include both a black and white reproduction of the mark and a color reproduction of the mark that meet the requirements of § 2.52 of this chapter.

(b) If color is not claimed as a feature of the mark in the basic application and/or registration, color may not be claimed as a feature of the mark in the international application.

§ 7.13 Certification of international application.

(a) Where an international application contains all the elements set forth in § 7.11(a), the Office will certify to the International Bureau that the information contained in the international application corresponds to the information contained in the basic application(s) and/or basic registration(s) at the time of certification, and will forward the international application to the International Bureau.

(b) Where an international application does not meet the requirements of § 7.11(a), the Office will not certify or forward the international application. If the international applicant paid the international application fees required by § 7.7 through the Office, the Office will refund the international fees. The Office will not refund the certification fee.

§ 7.14 Correcting irregularities in international application.

(a) Upon receipt of a notice of irregularities in an international application from the International Bureau, the applicant must respond to the International Bureau within the period set forth in the notice. Failure to file a timely response to a notice of irregularities may result in the abandonment of the international application by the International Bureau.

(b) Classification and identification of goods and services. Responses to International Bureau notices of irregularities in the classification or identification of goods or services in an international application must be submitted through the Office for forwarding to the International Bureau. The Office will not review the response or respond to the irregularities on behalf of the international applicant.

(c) Fees. If the International Bureau notifies an international applicant that the fees filed in connection with the international application are insufficient or that irregularities in the classification of goods or services require additional fees, the international applicant must pay the additional fees directly to the International Bureau or through the Office for forwarding to the International Bureau.

(d) An international applicant submitting a response or paying additional fees to the International Bureau through the Office must use TEAS. The International Bureau must receive the response or fees before the end of the response period set forth in the International Bureau notice, even if the response or payment of fees is sent through the Office. To assist the Office in its efforts to timely transmit the response or fees to the International Bureau, the response or fees should be submitted as soon as possible, at least one month before the end of the response period in the International Bureau's notice.

(e) Other Irregularities. Except for irregularities mentioned in paragraphs (b) and (c) of this section, responses to irregularities must be filed directly at the International Bureau.

Subpart C—Subsequent Designation Submitted Through the Office

§ 7.21 Subsequent designation.

(a) A subsequent designation may be filed either directly with the International Bureau or submitted through the Office.

(b) The date of receipt in the Office of a subsequent designation is the date that the subsequent designation is submitted through TEAS and contains all of the following:

(1) The international registration number;

(2) The name and address of the holder of the international registration;

(3) A statement that the holder is entitled to file a subsequent designation in the Office, specifying that holder: is a national of the United States; has a domicile in the United States; or has a real and effective industrial or commercial establishment in the United States. Where a holder's address is not in the United States, the holder must provide the address of its U.S. domicile or establishment;

(4) A list of goods and/or services that is identical to or narrower than the list

of goods and/or services in the international registration;

(5) A list of the Contracting Parties designated for an extension of protection. If the goods and/or services in the subsequent designation are not the same for all the Contracting Parties designated, the holder must include a list of the goods and/or services covered by the subsequent designation that pertain to each designated Contracting Party;

(6) The U.S. transmittal fee required by § 7.6 and the subsequent designation fees required by the International Bureau (§ 7.7); and

(7) An e-mail address for receipt of correspondence from the Office.

(c) If the subsequent designation is accorded a date of receipt, the Office will forward the subsequent designation to the International Bureau.

(d) Correspondence to correct any irregularities in a subsequent designation must be made directly with the International Bureau, even if the subsequent designation is submitted through the Office. If such correspondence is sent to the Office, the Office will not process the correspondence.

Subpart D—Recording Changes to International Registration

§ 7.22 Recording changes to international registration.

(a) All requests to record changes to an international registration must be filed directly with the International Bureau, except for requests to record changes to an international registration under §§ 7.23 and 7.24. If a request to record an assignment or restriction of a holder's right of disposal of an international registration meets the requirements of § 7.23 or 7.24, the Office will forward the request to the International Bureau.

(b) Assignments or restrictions of a holder's rights of disposal of an international registration must be recorded by the International Bureau. Section 10 of the Act and part 3 of this chapter are not applicable to such assignments or restrictions.

(c) When the Office is notified by the International Bureau of an assignment or restriction of a holder's right of disposal of an international registration with an extension of protection to the United States, the Office will take note of the assignment or restriction in its records.

§ 7.23 Request to record assignment submitted through the Office.

(a) In limited circumstances, a request to record an assignment of an international registration may be submitted through the Office for forwarding to the International Bureau. The following conditions must apply:

(1) The assignee cannot obtain the assignor's signature on the request to record an assignment; and

(2) The assignee is a national of the United States, has a domicile in the United States, or has a real and effective industrial or commercial establishment in the United States.

(b) The assignee must submit a request to record an assignment under paragraph (a) of this section through the Office that includes all of the following:

(1) The international registration number;

(2) The name and address of the holder of the international registration;

(3) The name and address of the assignee of the international registration;

(4) A statement that the assignee: is a national of the United States; has a domicile in the United States; or has a real and effective industrial or commercial establishment in the United States. Where an assignee's address is not in the United States, the assignee must provide the address of its U.S. domicile or establishment;

(5) A list of the designated Contracting Parties with respect to which the international registration has been assigned;

(6) A list of the goods and/or services in the international registration that have been assigned and the designated Contracting Parties to which they pertain;

(7) A description of the interest conveyed; and

(8) The U.S. transmittal fee required by § 7.6 and the fees required by the International Bureau to record the assignment (See § 7.7).

(c) If a request to record an assignment contains all the elements set forth in paragraph (b) of this section, the Office will forward the request to the International Bureau. Forwarding the request to the International Bureau is not a determination by the Office of the validity of the assignment or the effect that the assignment has on the title of the international registration.

(d) If the request fails to contain all of the elements set forth in paragraph (b) of this section, the Office will not forward the request. The Office will notify the assignee(s) of the refusal and the reason(s) for the refusal.

(e) Except for those assignments meeting the conditions set forth in paragraph (a) of this section, requests to record assignments may not be submitted through the Office.

§ 7.24 Request to record security interest or other restriction of holder's rights of disposal submitted through the Office.

(a) In limited circumstances, a request to record a security interest or other restriction of a holder's right to dispose of an international registration may be submitted through the Office for forwarding to the International Bureau. The following conditions must apply:

(1) The restriction is the result of an agreement between the holder of the international registration and the party restricting the holder's right of disposal and is not the result of a court order; and

(2) The signature of the holder of the international registration cannot be obtained for the request to record the restriction.

(b) The party who obtained a restriction of the holder's right of disposal must submit a request to record the restriction under paragraph (a) of this section through the Office that includes all the following:

(1) The international registration number;

(2) The name and address of the holder of the international registration;

(3) The name and address of the party who holds the restriction;

(4) A statement that the party who submitted the request: is a national of the United States; has a domicile in the United States; or has a real and effective industrial or commercial establishment in the United States. Where a party's address is not in the United States, the party must provide the address of its U.S. domicile or establishment;

(5) A summary of the main facts concerning the restriction; and

(6) A list of the Contracting Parties designated in the international registration to which the restriction applies.

(c) If a request to record a restriction contains all of the elements set forth in paragraph (b) of this section, the Office will forward the request to the International Bureau. Forwarding the request to the International Bureau is not a determination by the Office of the validity of the restriction or the effect that the restriction has on the holder's right to dispose of the international registration.

(d) If the request fails to contain all the elements set forth in paragraph (b) of this section, the Office will not forward the request. The Office will notify the party who submitted the request of the refusal and the reason(s) for the refusal.

(e) Except for restrictions meeting the conditions set forth in paragraph (a) of this section, restrictions on a holder's right to dispose of an international registration may not be submitted through the Office.

Subpart E—Extension of Protection to the United States

§ 7.25 Applicability of part 2 to extension of protection.

(a) Except for §§ 2.130, 2.131, 2.160 through 2.166, 2.168, and 2.181 through 2.186, all sections in part 2 of this chapter apply to a request for extension of protection of an international registration to the United States, including sections related to proceedings before the Trademark Trial and Appeal Board, unless stated otherwise.

(b) For purposes of examination, a request for an extension of protection to the United States is referred to as an application under section 66(a) of the Act, and references to applications and registrations in part 2 of this chapter include extensions of protection to the United States.

(c) Upon registration, an extension of protection to the United States is referred to as a registration or a registered extension of protection.

§ 7.26 Filing date of extension of protection for purposes of examination in the Office.

(a) If a request for extension of protection of an international registration to the United States is made in an international application and the request includes a declaration of a bona fide intention to use the mark in commerce, the filing date of the extension of protection to the United States is the international registration date.

(b) If a request for extension of protection of an international registration to the United States is made in a subsequent designation and the request includes a declaration of a bona fide intention to use the mark in commerce, the filing date of the extension of protection to the United States is the International Bureau date of recording of the subsequent designation.

§ 7.27 Priority claim of extension of protection for purposes of examination in the Office.

An extension of protection of an international registration to the United States is entitled to a claim of priority under section 67 of the Act if:

(a) The request for extension of protection contains a claim of priority;

(b) The request for extension of protection specifies the filing date, serial number and the country of the application that form the basis for the claim of priority; and

(c) The date of the international registration or the date of recording of the subsequent designation at the International Bureau of the request for extension of protection to the United States is not later than six months after the filing date of the application that forms the basis for the claim of priority.

§ 7.28 Replacement of U.S. registration by registered extension of protection.

(a) A registered extension of protection shall have the same rights accrued to a previously issued U.S. registration if:

(1) Both registrations are owned by the same person and identify the same mark; and

(2) All of the goods and/or services listed in the U.S. registration are also listed in the registered extension of protection.

(b) The holder of an international registration with an extension of protection to the United States may file a request to note replacement of the U.S. registration with the extension of protection. If the request contains all of the following, the Office will take note of the replacement in its automated records:

(1) The serial number or registration number of the extension of protection;

(2) The registration number of the replaced U.S. registration; and

(3) The fee required by § 7.6.

(c) If the request to note replacement is denied, the Office will notify the holder of the reason(s) for refusal.

§ 7.29 Effect of replacement on U.S. registration.

A U.S. registration that has been replaced by a registered extension of protection under section 74 of the Act and § 7.28 will remain in force, unless cancelled, expired or surrendered, as long as:

(a) The owner of the replaced U.S. registration continues to file affidavits or declarations of use in commerce or excusable nonuse under section 8 of the Act; and

(b) The replaced U.S. registration is renewed under section 9 of the Act.

§ 7.30 Effect of cancellation or expiration of international registration.

When the International Bureau notifies the Office of the cancellation or expiration of an international registration, in whole or in part, the Office shall cancel, in whole or in part, the corresponding pending or registered extension of protection to the United States. The date of cancellation of an extension of protection or relevant part shall be the date of cancellation or expiration of the corresponding international registration or relevant part.

§ 7.31 Requirements for transformation of an extension of protection to the United States into a U.S. application.

(a) If the International Bureau cancels an international registration in whole or in part, under Article 6(4) of the Madrid Protocol, the holder of that international registration may file a request to transform the corresponding pending or registered extension of protection to the United States into an application under section 1 or 44 of the Act.

(b) The holder of the international registration must file a request for transformation through TEAS within three months of the date of cancellation of the international registration and include:

(1) The serial number or registration number of the extension of protection to the United States;

(2) The name and address of the holder of the international registration;

(3) The application filing fee for at least one class of goods or services required by § 2.6 of this chapter; and

(4) An e-mail address for receipt of correspondence from the Office.

(c) If the request for transformation contains all of the elements set forth in paragraph (b) of this section, the extension of protection shall be transformed into an application under section 1 or 44 of the Act and accorded the same filing date and the same priority that was accorded to the extension of protection.

(d) The application under section 1 or 44 of the Act that results from a transformed extension of protection will be examined under part 2 of this chapter.

(e) A request for transformation that fails to contain all of the elements set forth in paragraph (b) of this section will not be processed.

Subpart F—Affidavit Under Section 71 of the Act for Extension of Protection to the United States

§ 7.36 Affidavit or declaration of use in commerce or excusable nonuse required to avoid cancellation of an extension of protection to the United States.

(a) Subject to the provisions of section 71 of the Act, a registered extension of protection shall remain in force for the term of the international registration upon which it is based unless the international registration expires or is cancelled by the International Bureau.

(b) During the following time periods, the holder of an international registration must file an affidavit or declaration of use or excusable nonuse,

or the registered extension of protection will be cancelled:

(1) On or after the fifth anniversary and no later than the sixth anniversary after the date of registration; and

(2) Within the six-month period preceding the end of each ten-year period after the date of registration, or the three-month grace period immediately following, with payment of the grace period surcharge required by section 71(a)(2)(B) of the Act and § 7.6.

§ 7.37 Requirements for a complete affidavit or declaration of use in commerce or excusable nonuse.

A complete affidavit or declaration under section 71 of the Act must:

(a) Be filed by the holder of the international registration within the period set forth in § 7.36(a);

(b) Include a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 of this chapter by a person properly authorized to sign on behalf of the holder, attesting to the use in commerce or excusable nonuse of the mark within the period set forth in section 71 of the Act. The verified statement must be executed on or after the beginning of the filing period specified in § 7.36(a). A person who is properly authorized to sign on behalf of the holder is:

(1) A person with legal authority to bind the holder; or

(2) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the holder; or

(3) An attorney as defined in § 10.1(c) of this chapter who has an actual written or verbal power of attorney or an implied power of attorney from the holder.

(c) Include the U.S. registration number;

(d)(1) Include the fee required by § 7.6 for each class of goods or services that the affidavit or declaration covers;

(2) If the affidavit or declaration is filed during the grace period under section 71(a)(2)(B) of the Act, include the grace period surcharge per class required by § 7.6;

(3) If at least one fee is submitted for a multi-class registration, but the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. If the required fee(s) are not submitted within the time period set out in the Office action and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class;

(e)(1) Specify the goods or services for which the mark is in use in commerce, and/or the goods or services for which excusable nonuse is claimed under § 7.37(f)(2);

(2) Specify the goods or services being deleted from the registration, if the affidavit or declaration covers less than all the goods or services or less than all the classes in the registration;

(f)(1) State that the registered mark is in use in commerce on or in connection with the goods or services in the registration; or

(2) If the registered mark is not in use in commerce on or in connection with all the goods or services in the registration, set forth the date when use of the mark in commerce stopped and the approximate date when use is expected to resume and recite facts to show that nonuse as to those goods or services is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark; and

(g) Include a specimen showing current use of the mark for each class of goods or services, unless excusable nonuse is claimed under § 7.37(f)(2). The specimen must meet the requirements of § 2.56 of this chapter.

§ 7.38 Notice to holder of extension of protection.

The registration certificate for an extension of protection to the United States includes a notice of the requirement for filing the affidavit or declaration of use or excusable nonuse under section 71 of the Act. However, the affidavit or declaration must be filed within the time period required by section 71 of the Act regardless of whether this notice is received.

§ 7.39 Acknowledgment of receipt of affidavit or declaration of use in commerce or excusable nonuse.

(a) The Office will issue a notice that states whether an affidavit or declaration of use in commerce or excusable nonuse is acceptable, and if the affidavit or declaration is refused as unacceptable, the reasons for refusal.

(b) A response to the refusal must be filed within six months of the mailing date of the Office action, or before the end of the filing period set forth in section 71(a) of the Act, whichever is later. The Office will cancel the extension of protection if no response is filed within this time period.

§ 7.40 Petition to Director to review refusal.

(a) A response to the examiner's initial refusal to accept an affidavit or declaration is required before filing a petition to the Director, unless the examiner directs otherwise. *See* § 7.39(b) for the deadline for responding to an examiner's Office action.

(b) If the examiner maintains the refusal of the affidavit or declaration, the holder may file a petition to the Director to review the examiner's action. The petition must be filed within six months of the mailing date of the action maintaining the refusal, or the Office will cancel the registration.

(c) A decision by the Director is necessary before filing an appeal or commencing a civil action in any court.

Subpart G—Renewal of International Registration and Extension of Protection

§ 7.41 Renewal of international registration and extension of protection.

(a) Any request to renew an international registration and its extension of protection to the United States must be made at the International Bureau in accordance with Article 7 of the Madrid Protocol.

(b) A request to renew an international registration or extension of protection to the United States submitted through the Office will not be processed.

Dated: March 21, 2003.

Jon W. Dudas,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 03–7392 Filed 3–27–03; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA202–4400b; FRL–7474–3]

Approval and Promulgation of Air Quality Implementation Plans; Philadelphia County, PA; Construction, Modification and Operation Permit Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Philadelphia County portion of the Pennsylvania State Implementation Plan (SIP). The revision approves Philadelphia County's regulations governing the construction of new and modified sources and the operation of existing sources of air pollution in the County. EPA is approving this SIP revision in accordance with the requirements of the Clean Air Act. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 28, 2003.

ADDRESSES: Written comments should be addressed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104.

FOR FURTHER INFORMATION CONTACT: Paul Arnold, (215) 814–2194, or by e-mail at *arnold.paul@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: March 20, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–7511 Filed 3–27–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

[CMS–6012–N5]

RIN 0938–AM40

Medicare Program; Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics; Meeting Announcement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces additional public meetings of the Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics. The Committee was mandated by section 427 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA).

DATES: The next two negotiated rulemaking committee meetings will be held May 19 and 20, 2003 and June 2 and 3, 2003. On May 19 and June 2, the negotiated rulemaking committee will meet from 9 a.m. to 5 p.m. On May 20 and June 3, the negotiated rulemaking committee will meet from 8 a.m. to 4 p.m.

These meetings are open to the public, and subsequent meetings will be announced in the **Federal Register**.

ADDRESSES: The Committee meetings will be held at the Hilton Pikesville at 1726 Reisterstown Road, Baltimore, MD 21208 (Telephone 410–653–1100). Any subsequent meetings will be held at locations to be announced.

FOR FURTHER INFORMATION CONTACT: Theresa Linkowich, (410) 786–9249 (General inquiries concerning prosthetics and custom-fabricated orthotics), Centers for Medicare & Medicaid Services (CMS), 7500 Security Blvd, Baltimore MD 21244; or Lynn Sylvester, 202–606–9140, Federal Mediation and Conciliation Services, 2100 K Street, NW., Washington, DC 20427; or Ira Lobel, 518–431–0130, Federal Mediation and Conciliation Services, 1 Clinton Square, Room 952, Albany, NY 12207.

SUPPLEMENTARY INFORMATION: We published a notice in the **Federal Register** on July 26, 2002 (FR pages 48839–48840) announcing the establishment of the negotiated rulemaking committee to advise us on developing a proposed rule that would establish special payment provisions and requirements for suppliers of prosthetics and certain custom-fabricated orthotics under the Medicare program. The notice also announced dates for the Committee's first two meetings that were held on October 1–3, 2002 and October 29–31, 2002. On November 22, 2002 (FR page 70358), a notice of meetings was published in the **Federal Register** announcing the third meeting that was held January 6 and 7, 2003, and the fourth meeting that was held February 10 and 11, 2003. On January 24, 2003, (FR Page 3482) a notice of meetings was published in the **Federal Register** announcing the fifth meeting that was held March 10 and 11, 2003 and the sixth meeting held April 7 and 8, 2003.

Through face-to-face negotiations, these meetings will help the Committee to reach consensus on the substance of the proposed rule. If consensus is reached, the Committee will transmit to us a report containing required information for developing a proposed rule and we will use the report as the basis for the proposed rule. The Committee is responsible for identifying the key issues, gauging their importance, analyzing the information necessary to resolve the issues, arriving at a consensus, and recommending the text and content of the proposed regulation. Detailed information is available on the CMS Internet Home Page: *http://cms.hhs.gov/faca/prosthetic/* or by calling the Federal Advisory Committee Hotline at (410) 786–9379.

The Agendas for the May 19 and 20 meeting and the June 2 and 3 will cover the following:

1. Review of the April 7 and 8 minutes (May 19 and 20) and review of the May 19 and 20 minutes (June 2 and 3).
2. Continuing discussion of statutory terms to be further defined by regulation.
3. Continuing discussion on L codes.
4. Continuing discussion on qualifications as defined in the statute.
5. Presentation by Physical Therapists and Occupational Therapists on delivery of care.
6. Public comments.

Public Participation

All interested parties are invited to attend these public meetings, but attendance is limited to the space available. No advance registration is

required. Seating will be available on a first-come first'served basis. Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Theresa Linkowich, *tlinkowich@cms.hhs.gov* or call (410) 786–9249 at least 10 days before the meeting. The Committee has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the Committee members or other participants unless the facilitators have specifically approved these questions. The number of oral presentations may be limited by the time available.

Interested parties can file statements with the Committee. Mail written statements to the following address: Federal Mediation and Conciliation Services, 2100 K Street, NW., Washington, DC 20427, Attention: Lynn Sylvester, or call Lynn Sylvester at (202) 606–9140.

Additional Meetings

Meetings will be held as necessary. We will publish notices of future meetings in the **Federal Register**. All future meetings will be open to the public without advance registration.

Authority: Federal Advisory Committee Act (5 U.S.C. App. 2)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 21, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–7494 Filed 3–27–03; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–624, MB Docket No. 03–55, RM–10653]

Radio Broadcasting Services; Estelline, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 263C3 at Estelline, Texas, as that community's first local service. Channel 263C3 can be allotted to Estelline consistent with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 13.7 kilometers (8.5 miles) southwest of the community. The reference coordinates for Channel 263C3 at Estelline are 34–28–41 North Latitude and 100–33–42 West Longitude.

DATES: Comments must be filed on or before May 5, 2003, and reply comments on or before May 20, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–55, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Estelline, Channel 263C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–7465 Filed 3–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–776; MB Docket No. 03–69, RM–10664; MB Docket No. 03–70, RM–10670; MB Docket No. 03–71, RM–10665]

Radio Broadcasting Services; Carrizozo, NM; Knoxville, IL; and Nantucket, MA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes three allotments in Carrizozo, New Mexico, Knoxville, Illinois, and Nantucket, Massachusetts. The Commission requests comment on a petition filed by Douglas Bennett proposing the allotment of Channel 261C2 at Carrizozo, New Mexico, as the community's first local service. Channel 261C2 can be allotted to Carrizozo in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.9 km (13 miles) southeast of Carrizozo. The coordinates for Channel 261C2 at Carrizozo are 33–28–30 North Latitude and 105–46–18 West Longitude. The proposed allotment will require concurrence by Mexico because it is located within 320 kilometers (199 miles) of the Mexican border. *See* Supplementary Information *infra*.

DATES: Comments must be filed on or before May 5, 2003, and reply comments on or before May 20, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Douglas Bennett, 13238 Regency Forest, San Antonio, Texas 78249; and Paul B. Christensen, Law Offices of Paul B. Christensen, P.A., 3749 Southern Hills Drive, Jacksonville, Florida 32225.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 03–69, 03–70, and 03–71; adopted March 12, 2003 and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

The Commission further requests comment on a petition filed by Paul B. Christensen proposing the allotment of Channel 291A at Knoxville, Illinois, as the community's second local FM service. Channel 291A can be allotted to Knoxville in compliance with the Commission's minimum distance separation requirements without site restriction at center city reference coordinates. The coordinates for Channel 291A at Knoxville are 40–54–23 North Latitude and 90–17–08 West Longitude.

The Commission further requests comment on a petition filed by Paul B. Christensen proposing the allotment of Channel 249A at Nantucket, Massachusetts, as the community's second local FM service. Channel 249A can be allotted to Nantucket in compliance with the Commission's minimum distance separation requirements without site restriction at center city reference coordinates. The coordinates for Channel 249A at Nantucket are 41–16–54 North Latitude and 70–06–06 West Longitude.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1.The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Channel 291A at Knoxville.

3. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by adding Channel 249A at Nantucket.

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Carrizozo, Channel 261C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–7466 Filed 3–27–03; 8:45 am]

BILLING CODE 6712–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–777; MB Docket No. 03–68; RM–10654, RM–10656]

Radio Broadcasting Services; Fort Stockton and Sanderson, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two mutually exclusive Petitions for Rule Making. The first proposal, filed by Linda Crawford, requests the allotment of Channel 263C at Fort Stockton, Texas, as that community's second FM commercial service. The second proposal, filed by Katherine Pyeatt, seeks the allotment of Channel 261C3 at Sanderson, Texas, as that community's first FM commercial service. Channel 263C can be allotted to Fort Stockton, Texas, in conformity with the Commission's Rules, provided there is a site restriction of 13.8 kilometers (8.6 miles) southeast of the community. The reference coordinates for Channel 263C at Fort Stockton are 30–50–06 North Latitude and 102–45–06 West Longitude. Alternatively, Channel 261C3 can be allotted to Sanderson, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided there is a site restriction of 12.3 kilometers (7.6 miles) north of the community. The reference coordinates for Channel 261C3 at Sanderson are 30–15–08 North Latitude and 102–22–53 West Longitude.

DATES: Comments must be filed on or before May 5, 2003, and reply comments on or before May 20, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Linda Crawford, 3500 Maple Avenue #1320, Dallas, Texas 75219 and Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–68, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 263C at Fort Stockton and by adding Sanderson, Channel 261C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–7468 Filed 3–27–03; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–625; MB Docket No. 03–56, RM–10662]

Radio Broadcasting Services; George West and Victoria, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Victoria RadioWorks, Ltd. proposing the substitution of Channel 265C3 for Channel 265A at Victoria, Texas, and the modification of Station KEPG(FM)'s license accordingly. To accommodate the upgrade, petitioner also proposes the deletion of vacant Channel 265A at George West, Texas. Channel 265C3 can be allotted to Victoria in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.1 kilometers (4.4 miles) southwest at petitioner's presently licensed site. Since Victoria is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested. The coordinates for Channel 265C3 at Victoria are 28–46–40 North Latitude and 97–04–10 West Longitude.

DATES: Comments must be filed on or before May 5, 2003, and reply comments on or before May 20, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20054. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harry C. Martin, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–56, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended and by removing Channel 265A at George West; by removing Channel 265A and adding Channel 265C3 at Victoria.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–7469 Filed 3–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–766; MB Docket No. 03–64; RM–10672]

Radio Broadcasting Services; Lamont and McFarland, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by Dana J. Puopolo proposing the allotment of Channel 247A to Lamont, California, as that community's first local service. In order to accommodate this allotment, the Petitioner also proposes the substitution of Channel 282A for vacant Channel 247A at McFarland, California. Channel 247A can be allotted to Lamont, California, consistent with the minimum distance separation requirement of the Commission's Rules, provided there is a site restriction of 6.5 kilometers (4.1 miles) southeast of the community. The reference coordinates for Channel 247A at Lamont are 35–12–23 North Latitude and 118–52–51 West Longitude. Channel 282A can also be allotted to McFarland, California, in conformity with Commission's Rules, provided there is a site restriction 10.3 kilometers (6.4 miles) west of the community. The reference coordinates for Channel 282A at McFarland are 35–40–16 North Latitude and 119–20–30 West Longitude.

DATES: Comments must be filed on or before May 5, 2003, and reply comments on or before May 20, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Dana J. Puopolo, 2134 Oak Street, Unit C, Santa Monica, CA 90405.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–64, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Lamont, Channel 247A and by removing Channel 247A and by adding Channel 282A at McFarland.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–7467 Filed 3–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–778; MB Docket No. 03–72, RM–10674; MB Docket No. 03–73, RM–10675; MB Docket No. 03–74, RM–10676; MB Docket No. 03–75, RM–10677]

Radio Broadcasting Services; Eden, TX; Leedey, OK; Memphis, TX; and Silverton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes four allotments in Eden, Texas, Leedey, Oklahoma, Memphis, Texas, and Silverton, Texas. The Commission requests comment on a petition filed by Maurice Salsa proposing the allotment of Channel 252A at Silverton, Texas, as the community's first local service. Channel 252A can be allotted to Silverton in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.2 km (5.1 miles) east of Silverton. The coordinates for Channel 252A at Silverton are 34–28–15 North Latitude and 101–13–09 West Longitude. *See* **SUPPLEMENTARY INFORMATION** *infra*.

DATES: Comments must be filed on or before May 5, 2003, and reply comments on or before May 20, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Maurice Salsa, 5616 Evergreen Valley Drive, Kingwood, Texas 77345; Robert Fabian, 4 Hickory Crossing Lane, Argyle, Texas 76226; and Linda Crawford, 3500 Maple Avenue, #132, Dallas, Texas 75219.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MB Docket Nos. 03–72, 03–73, 03–74, and 03–75; adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

The Commission further requests comment on a petition filed by Robert Fabian proposing the allotment of Channel 297A at Leedey, Oklahoma, as the community's first local service. Channel 297A can be allotted to Leedey in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.4 km (5.8 miles) northwest of Leedey. The coordinates for Channel 297A at Leedey are 35–56–36 North Latitude and 99–23–48 West Longitude.

The Commission further requests comment on a petition filed by Linda Crawford proposing the allotment of Channel 294A at Eden, Texas, as the community's second local FM service. Channel 294A can be allotted to Eden in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.4 km (7.1 miles) southwest of Eden. The coordinates for Channel 294A at Eden are 31–10–00 North Latitude and 99–57–01 West Longitude. Concurrence in this allotment has been received from the Mexican government.

The Commission further requests comment on a petition filed by Maurice Salsa proposing the allotment of Channel 283A at Memphis, Texas, as the community's third local FM service. Channel 283A can be allotted to Memphis in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.7 km (5.4 miles) southeast of Memphis. The coordinates for Channel 283A at Memphis are 34–41–14 North Latitude and 100–27–03 West Longitude.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Leedey, Channel 297A.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 294A at Eden, Channel 283A at Memphis, and Silverton, Channel 252A.

Federal Communications Commission.
John A. Karousos,
Assistant Chief, Audio Division, Media Bureau.
[FR Doc. 03–7471 Filed 3–27–03; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030320066–3066–01; I.D. 022103D]

RIN 0648–AQ78

Fisheries of the Exclusive Economic Zone Off Alaska; Delay of Full Retention and Utilization Requirements for Rock Sole and Yellowfin Sole

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 75 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This amendment would delay the effective date of requirements for 100–percent retention and utilization requirements of rock sole and yellowfin sole from January 1, 2003, until June 1, 2004. The North Pacific Fishery Management Council (Council) submitted Amendment 75 to provide the Council and the affected industry with additional time to develop and assess alternatives to address groundfish discards in the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is designed to be consistent with the the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: Comments on the proposed rule must be received on or before May 12, 2003.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall, or delivered to NMFS, Alaska Region, 709 West 9th Street, Room 453, Juneau, AK, 99801–1668, and marked Attn: Lori Durall. Comments also may be sent via facsimile (fax) to (907) 586–7557. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendment 75 may be obtained from NMFS at the above address or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228 or *kent.lind@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the exclusive economic zone of the BSAI under the FMP. The Council prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council has submitted Amendment 75 for Secretarial review and a Notice of Availability of the FMP amendment was published in the **Federal Register** on February 28, 2003, with comments on the FMP amendment invited through April 29, 2003. Comments may address the FMP amendment, the proposed rule, or both, but must be received by April 29, 2003, to be considered in the approval/disapproval decision on the FMP amendment. All comments received by April 29, 2003, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision on the FMP amendment.

Purpose and Need for Amendment 75

In 1997, the Council adopted a regulatory program to reduce the amount of groundfish discards in the groundfish fisheries off Alaska. This program, known as the Improved Retention/Improved Utilization (IR/IU) Program, was adopted as Amendment 49 to the FMP for the Groundfish Fishery of the BSAI and Amendment 49 to the FMP for Groundfish of the Gulf of Alaska (GOA) (Amendments 49/49). The IR/IU program requires that vessels fishing for groundfish in Alaska retain all pollock and Pacific cod beginning in 1998 when directed fishing for those species is open. On January 1, 2003, the program expanded to include all rock sole and yellowfin sole in the BSAI, and all shallow water flatfish in the GOA.

These requirements were set out in the final rule to implement Amendment 49 for the BSAI (62 FR 63880, December 3, 1997), and the final rule to implement Amendment 49 for the GOA (62 FR 65379, December 12, 1997).

In the EA/RIR/IRFA prepared for BSAI Amendment 49, NMFS assessed the biological, economic and social impacts of improved retention and utilization. This analysis found that the proposed actions could result in significant economic impact on a substantial number of small entities, including a significant number of relatively small catcher/processor vessels that use trawl gear. Because of their size, these vessels are limited to freezing headed and gutted products.

To mitigate some of the effects that IR/IU regulations could have, the Council delayed implementation of the rules on the most negatively affected fisheries (i.e., those groundfish fisheries in which rock sole, yellowfin sole and shallow-water flatfish are caught and discarded) for a period of 5 years.

The Council recognized the need to conduct an assessment of the impacts of IR/IU regulations on small entities to determine whether a modification of the IR/IU regulations would minimize such impacts and continue to meet the Council's objectives. These objectives include ensuring healthy fisheries, reducing bycatch and waste, and improving utilization of fish resources with minimum negative effects of regulations on small entities.

To this end, the Council began an analysis in early 2002, to examine alternative approaches to current 100–percent retention requirements for rock sole and yellowfin sole that could achieve the Council's objectives of reducing bycatch but that would have less negative effects on industry. The analysis concluded that some entities currently participating in the groundfish fisheries of the BSAI might discontinue their participation due to the economic burden the existing rules could place on their operation.

In June 2002, therefore, the Council revised its IR/IU problem statement to state that 100–percent retention of rock sole and yellowfin sole would result in severe economic losses to certain participants in the fishery, while less than 100–percent retention of only those species would not be enforceable. The Council also began an analysis of a variety of alternative regulatory approaches that would provide for reductions in groundfish discards in a less burdensome manner.

In October 2002, the Council concluded that while several alternative proposals under analysis showed merit, they were not sufficiently developed and analyzed in a manner that would allow for implementation on January 1, 2003. Therefore, the Council adopted BSAI Amendment 75 to delay implementing the 100–percent retention requirements for rock sole and yellowfin sole in the BSAI until June 1, 2004, to provide the Council and industry with additional time to develop alternative regulatory proposals. Also in October 2002, the Council considered whether to delay 100–percent retention requirements for shallow water flatfish in the GOA groundfish fisheries. The Council concluded, however, that full retention of shallow water flatfish in the GOA is practicable and would not result in the same economic burden as would the same requirement for rock sole and yellowfin sole in the BSAI groundfish fisheries. Therefore, the Council decided not to delay 100–percent retention requirements for shallow water flatfish in the GOA.

Elements of the Proposed Rule

This proposed rule would delay the effective date for IR/IU retention and utilization requirements for rock sole and yellowfin sole in the BSAI until June 1, 2004. No other regulatory actions are contained in this proposed rule.

Classification

At this time, NMFS has not determined that the FMP amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA that describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUPPLEMENTARY INFORMATION** section of the preamble. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

There are 176 small entities (all catcher vessels) and 34 large entities (6 catcher vessels, 24 head and gut catcher processors, and 4 shrimi catcher processors) active in these fisheries. Since per vessel costs are not available for these vessels, individual vessel profitability could not be estimated. Therefore, changes in gross revenue of the 176 vessels are used as a proxy for changes in individual vessel profitability. Furthermore, assumptions are made that revenues losses and gains are shared equally among these vessels and discards represent a displacement of revenue tonnage if hold space is limited. There are no economic impacts resulting from disproportionate sizes of vessels in the fishery.

A copy of the complete analysis can be obtained from the NMFS (see **ADDRESSES**) or via the Internet at *http://www.fakr.noaa.gov/*.

A summary of the analysis follows:

The preferred alternative would delay implementation of IR/IU flatfish regulations in the BSAI fisheries until June 2004. The economic impact of the preferred alternative on individual vessels is expected to be minimal.

Alternative 1, which represents a 100–percent retention requirement, would lead to decreases in gross revenue for the affected fisheries and could yield substantial decreases in gross revenue associated with rock sole in the Pacific cod fishery. Alternative 2 would allow some discards of the IR/IU flatfish species. The percent retention requirement would be set independently for each species and would range from 50–percent to 90–percent. The analysis of the effects of alternative retention requirements on catcher vessels shows that virtually 100–percent of the catch of rock sole and yellow sole is discarded in all the fisheries in which rock sole and yellow sole are caught. Consequently, any retention requirement for rock sole or yellow sole would be expected to result in adverse economic and operational impacts. A full retention requirement for rock sole would have the greatest effect, and this requirement would result in less than a five percent displacement in revenue tonnage for all catcher vessel classes.

Alternative 3 would delay implementation of IR/IU flatfish rules for up to 3 years. Delaying implementation will postpone the severe economic consequences discussed under Alternatives 1 and 2. Alternative 4 exempts fisheries from IR/IU flatfish regulations if flatfish discards are less than 5 percent of total groundfish catch. Discards exceed 5 percent in most flatfish fisheries and in Pacific cod trawl fisheries in the BSAI. The revenue reductions of this alternative are similar to those of Alternative 1. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 24, 2003.
Rebecca Lent,
Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57.

2. In § 679.27, paragraphs (b)(3) and (b)(4) are revised to read as follows:

§ 679.27 Improved Retention/Improved Utilization Program.

* * * * * *

(b) * * *

(3) Rock sole in the BSAI (beginning June 1, 2004).

(4) Yellowfin sole in the BSAI (beginning June 1, 2004).

* * * * * *

[FR Doc. 03–7516 Filed 3–27–03; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 60
Friday, March 28, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–088–2]

RIN 0579–AB47

Agency Information Collection Activities; OMB Approval Received

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Office of Management and Budget's approval of a collection of information contained in the Animal and Plant Health Inspection Service interim rule establishing the regulations pertaining to possession, use, and transfer of biological agents and toxins.

FOR FURTHER INFORMATION CONTACT: Mrs. Celeste Sickles, APHI' Information Collection Coordinator, MRPBS, APHIS, 4700 River Road Unit 123, Riverdale, MD 20737–1238; (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 2002, we published in the **Federal Register** (67 FR 76908–76938, Docket No. 02–088–1) an interim rule that established the regulations at 7 CFR part 331 and 9 CFR part 121, "Possession, Use, and Transfer of Biological Agents and Toxins." That rule contains information collection requirements. The Office of Management and Budget (OMB) approved the collection of information requirements with respect to that interim rule under OMB control number 0579–0213 (expires August 31, 2003).

Done in Washington, DC, this 21st day of March, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–7493 Filed 3–27–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Supplemental Form for Collecting Taxpayer Identifying Numbers

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the Agency's proposed information collection of taxpayer identifying numbers.

DATES: Written comments must be submitted on or before May 27, 2003.

ADDRESSES: Comments may be mailed to Mark Porter, Grants Management Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methods and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to Mark Porter, Grants Management Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Mark Porter at (703) 305–2847.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Form for Collecting Taxpayer Identifying Numbers, FNS–711.

OMB Number: 0584–0501.

Expiration Date: May 31, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: Section 3100(y) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), codified at 31 U.S.C. 3325(d), requires Federal agencies to include the taxpayer identifying number (TIN) of all persons or organizations they pay whenever a request for payment is submitted to Federal payment officials. Departmental Regulation 2100–2 requires all individuals and entities doing business with USDA to furnish a TIN. The purpose of the Supplemental Form for Collecting Taxpayer Identifying Numbers is to comply with Federal law by enabling the Agency to legally obtain a TIN from all persons and organizations who are entered into a direct payment relationship with FNS.

Affected Public: Individuals and entities who enter into a direct payment agreement with FNS under any of the various nutrition and nutrition education programs administered by FNS.

Estimated Number of Respondents: 800.

Number of Responses per respondent: 1.

Estimated Total annual responses: 800.

Hours per response: 0.0833.

Total Annual Reporting hours: 66.6.

Number of record keepers: 8.

Estimated annual hours per record keeper: 1.0.

Total annual record keeping hours: 8.

Total annual burden hours: 74.6 (annual reporting hours plus annual record keeping hours).

Dated: March 19, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–7414 Filed 3–27–03; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

McNally Fire Roadless Restoration Project

AGENCY: USDA Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service is preparing an environmental impact statement (EIS) to address the impacts of the McNally Fire within the Rincon, Chico, and Cannell Roadless areas. In July and August of 2002, the Sequoia National Forest experienced the largest wildfire in its history. The Sequoia National Forest proposes to begin long-germ ecological restoration on that portion of the fire damaged areas on the Cannell Meadow and Hot Springs Ranger Districts that are inside the inventoried roadless areas with the exclusion of those areas that lie within the Giant Sequoia National Monument. The McNally Fire Roadless Restoration Project would implement restoration measures on those watersheds that burned with a moderate to high intensity leading to heavy tree mortality and/or other adverse effects to forest resources such as soils, riparian areas, and wildlife habitat. The fire also killed hundreds of thousands of trees that if left untreated will contribute to high fuel loading over time and re-create high risks for another catastrophic fire. The goal of the project is to move the burned areas toward the desired conditions described in the Sequoia National Forest Land and Resource Management Plan (Forest Plan) as amended by the Sierra Nevada Forest Plan Amendment (SNFPA).

DATES: The public is asked to submit any issues (points of concern, debate, dispute, or disagreement) regarding potential effects of the proposed action by April 25, 2003. The draft EIS is expected to be available for public comment in August 2003 and the final EIS is expected to be published in November 2003.

ADDRESSES: Send written comments to: McNally Fire Roadless Restoration Project, USDA Forest Service, Sequoia National Forest, 900 W. Grant Avenue, Porterville, CA 93257.

FOR FURTHER INFORMATION CONTACT: Tom Simonson, Ecosystem Manager, Sequoia National Forest, at the address listed above. The phone number is (559) 784–1500.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

In light of desired conditions specified in the Forest Plan and the existing conditions within the project area outlined above, there is an immediate need to:

1. Accelerate the re-establishment of burned conifer stands to provide important habitat for such old forest species as the spotted owl, fisher, marten, and goshawk.

2. Restore ground cover to soils left unprotected by the fire in order to minimize erosion in the short term and to replace organic material over the long term.

3. Reduce existing fuels in order to reduce the risk of another stand-replacing fire, which would damage recovering habitats and riparian condition, thereby setting back the clock on development of old forest habitat and ripaian restoration.

Proposed Action

This project proposes to restore approximately 17,700 acres of conifer habitat and 12,130 acres of Riparian Conservation Areas (RCAs), of which 5,894 acres are within conifer habitat, with a combination of treatment and non-treatment methods. No roads would be constructed within the inventoried roadless areas. All the areas proposed for treatment are to be managed following the land management direction in the Forest Plan as amended.

Treatments that would be applied in a specific area depend upon the specific restoration need, the slope of the terrain, the degree of vegetation mortality, and the land management allocation. Where possible, dead trees that have commercial value and that are not needed to meet resource objectives would be removed from the site primarily by helicopter through a commercial timber sale. Restoration may require the removal of fire-killed trees to facilitate the future management of those stands. Standing dead trees may present safety hazards and physical barriers to the restoration activities and to future uses. Removal may also be needed to reduce future fuels accumulation to help mitigate future uncharacteristic wildfire effects. Other fuel treatments besides removal will include prescribed burning in combination with removal and/or the dropping and leaving of dead trees.

Felling of dead trees across the contour of the slope is proposed to stabilize sediment. Reforestation with conifers (planting and seeding) is proposed to re-establish habitats occupied by late-seral species prior to the fire, to link together suitable remnant habitats, and to restore large expanses of old forest habitat. Large-diameter snags and logs will be retained in sufficient quantity to maintain legacy structures for both the late-seral species and their prey.

Riparian Conservation Areas (RCA) would also be treated to restore riparian values by re-establishing vegetation, reducing excessive fuel loadings, stabilizing stream channels and sediment, and improving ground cover conditions. Contour felling of dead trees is proposed to stabilize sediment. Planting and seeding of native plants, such as conifers and willows, is proposed to re-establish some of the riparian corridors and other special areas.

Responsible Official

The responsible official is Forest Supervisor Arthur L. Gaffrey, Sequoia National Forest, 900 West Grand Avenue, Porterville, California 93257.

Comment Requested

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes that, at this early stage, it is very important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible.

Dated: March 14, 2003.

Arthur L. Gaffrey,

Forest Supervisor, Sequoia National Forest, USDA Forest Service.

[FR Doc. 03–6685 Filed 3–27–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Mineral County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lolo National Forest's Mineral County Resource Advisory Committee will meet on April 8 and April 22 at 6 p.m. until 8 p.m. in Superior, Montana for a business meeting. The meeting is open to the public.

DATES: April 9, 2003 and April 22, 2003.

ADDRESSES: The meeting will be held at the Mineral County Courthouse, 300 River Street, Superior, MT 59872.

FOR FURTHER INFORMATION CONTACT: Robert Harper, Designated Forest Official (DFO), District Ranger, Superior Ranger District, Lolo National Forest, at (406) 822–4233.

SUPPLEMENTARY INFORMATION: Agenda topics for these meetings include the review and selection of project proposals, as authorized under Title II of Pub. L. 106–393. If the meeting location is changed, notice will be posted in local newspapers, including the Mineral Independent and the Missoulian.

Dated: March 24, 2003.

Deborah L.R. Austin,

Designated Federal Official.

[FR Doc. 03–7455 Filed 3–27–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the regulation for Account Servicing Policies.

DATES: Comments on this notice must be received by May 27, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Jim Vollmer, Senior Loan Officer, Multi-Family Housing Portfolio Management Division, Rural Housing Service, STOP 0782, 1400 Independence Avenue, SW., Washington, DC 20250–0782; Telephone: (202) 720–1060.

SUPPLEMENTARY INFORMATION:

Title: Account Servicing Policies.

OMB Number: 0575–0075.

Expiration Date of Approval: June 30, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service provides supervised credit in the form of Multi-Family Housing and Community Facility loans and grants. 7 CFR part 1951, subpart A sets forth the policies and procedures, including the collection and use of information, regarding the application of payments on loans made under the programs administered by the agencies and the return of paid-in-full and satisfied promissory notes.

The programs are administered under the provisions of the Consolidated Farm and Rural Development Act (CONACT), as amended. Section 339(a) of the CONACT authorizes the Secretary of Agriculture to make the rules and regulations necessary to carry out the programs authorized within the Act.

Information collection is submitted by Agency borrowers to the local Agency office servicing the county in which their operation is located and is used by agency servicing officials.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response.

Respondents: Individuals or households and businesses and other for-profits.

Estimated Number of Respondents: 110.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 110.

Estimated Total Annual Burden on Respondents: 28 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 17, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–7393 Filed 3–27–03; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by May 27, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. Fax: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for approval.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Technical Assistance Programs.

OMB Control Number: 0572–0112.

Type of Request: Extension of a currently approved collection.

Abstract: The Rural Utilities Service is authorized by section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, American Indian tribes, and nonprofit corporations to fund the development of drinking water, wastewater, and solid waste disposal facilities in rural areas with populations of up to 10,000 residents. Under the CONACT, 7 U.S.C. 1925(a), as amended, section 306(a)(14)(A) authorizes Technical Assistance and Training grants, and 7 U.S.C. 1932(b), section 310B authorizes Solid Waste Management grants. Grants are made for 100 percent of the cost of assistance. The Technical Assistance and Training Grants and Solid Waste Management Grants programs are administered through 7 CFR part 1775.

Estimate of Burden: Public reporting for this collection of information is estimated to average 3 hours per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 80.

Estimated Number of Responses per Respondent: 17.

Estimated Total Annual Burden on Respondents: 4,168.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 10, 2003.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 03–7402 Filed 3–27–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by May 27, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for reinstatement.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Deferment of RUS Loan Payments for Rural Development Projects.

OMB Control Number: 0572–0097.

Type of Request: Extension of a currently approved collection.

Abstract: The Deferment of RUS Loan Payments for Rural Development Projects program allows RUS electric and telecommunications borrowers to defer the payment of principal and interest on any insured or direct loan made under the Rural Electrification Act (RE Act) of 1936, as amended (7 U.S.C. 912). The purpose of the Deferment program is to encourage borrowers to invest in and promote rural development and rural job creation projects that are based on sound economic and financial analyses. This program is administered through 7 CFR part 1703, subpart H.

Estimate of Burden: Public reporting for this collection of information is estimated to average 3.5 hours per response.

Respondents: Business or other for profit, Not-for-profit institutions.

Estimated Number of Respondents: 4.

Estimated Number of Responses per Respondent: 10.

Estimated Total Annual Burden on Respondents: 140 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 3, 2003.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 03–7403 Filed 3–27–03; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 27, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Aloud Digital Audio Labeling System; 6515–00–NIB–0226.

Product/NSN: Aloud Audio Labels 6515–00–NIB–0227.

NPA: Central Association for the Blind & Visually Impaired, Utica, New York.

Contract Activity: Veterans Affairs National Acquisition Center, Hines, Illinois.

Services:

Service Type/Location: Janitorial/Custodial, Corporate Accounting Office, Overseas Warehouse, and Ship Stores, Norfolk, Virginia.

NPA: Community Alternatives, Incorporated, Virginia Beach, Virginia.

Contract Activity: Navy Exchange Service Command (NEXCOM), Virginia Beach, Virginia.

Service Type/Location: Janitorial/Custodial, NEXCOM Uniform Support Center, Bldg 1545, Chesapeake, Virginia.

NPA: Community Alternatives, Incorporated, Virginia Beach, Virginia.

Contract Activity: Navy Exchange Service Command (NEXCOM), Virginia Beach, Virginia.

Louis R. Bartalot,

Director, Program Analysis and Evaluation.

[FR Doc. 03–7491 Filed 3–27–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 27, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

On December 20, December 27, 2002, January 10, and January 17, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 77962, 79044/79045, 68 FR 1434, and 2498) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

Skilcraft Aerosol Cleaners

Product/NSN: Clean "N" Disinfect/7930–00-NIB–0223.

Product/NSN: Glass Pro/7930–00–NIB–0191.

Product/NSN: Maximum/7930–00–NIB–0192.

Product/NSN: Office Plus/7930–00–NIB–0190.

Product/NSN: X-Spot Carpet Stain Remover/7930–00–NIB–0224.

NPA: Lighthouse for the Blind, St. Louis, Missouri.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Grounds Maintenance, Naval & Marine Corps Reserve Center-Sacramento, Sacramento, California.

NPA: Easter Seal Society of Superior California, Sacramento, California.

Contract Activity: Naval Facilities Engineering Command, Alameda, California.

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Blacklick, Ohio.

NPA: Licking-Knox Goodwill Industries, Inc., Newark, Ohio.

Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota.

Service Type/Location: Janitorial/Custodial, VA Central Iowa Health Care System, Day Care Center, Des Moines, Iowa.

NPA: Goodwill Solutions, Inc., Des Moines, Iowa.

Contract Activity: VA Central Iowa Health Care System, Des Moines, Iowa.

Service Type/Location: Mess Attendant, Willow Grove Naval Air Station Joint Reserve Base, Liberty Dining Hall, Horsham, Pennsylvania.

NPA: Occupational Training Center of Burlington County, Mt. Holly, New Jersey.

Contract Activity: Fleet Industrial Supply Center Norfolk DET Philadelphia, Philadelphia, Pennsylvania.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Louis R. Bartalot,

Director, Program Analysis and Evaluation.

[FR Doc. 03–7492 Filed 3–27–03; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Tuesday, April 1, 2003, at the Providence Marriott Hotel, One Orms Street, Providence, Rhode Island 02904. The purpose of this meeting is to discuss Orientation, briefing, and planning future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, (202) 376–7533 (TDD (202) 376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 19, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–7477 Filed 3–27–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 030319065–3065–01]

Revisions to the Unverified List—Guidance as to "Red Flags" Under Supplement No. 3 to 15 CFR Part 732

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: On June 14, 2002, the Bureau of Industry and Security ("BIS") published a notice in the **Federal Register** that set forth a list of persons in foreign countries who were parties to past export transactions where pre-license checks ("PLC") or post-shipment verifications ("PSV") could not be conducted for reasons outside the control of the U.S. Government ("Unverified List"). The notice also advised exporters that the involvement of a listed person as a party to a proposed transaction constitutes a "red flag" as described in the guidance set forth in Supplement No. 3 to 15 CFR Part 732, requiring heightened scrutiny by the exporter before proceeding with such a transaction. The notice also stated that, when warranted, BIS would add and remove persons from the Unverified List.

This notice adds Brilliant Intervest to the Unverified List and removes Xian XR Aerocomponents Co., Ltd. from the Unverified List.

DATES: This notice is effective March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas W. Andrukonis, Office of Enforcement Analysis, Bureau of Industry and Security, Telephone: (202) 482–4255.

SUPPLEMENTARY INFORMATION: In administering export controls under the Export Administration Regulations (15 CFR parts 730 to 774) ("EAR"), BIS carries out a number of preventive enforcement activities with respect to individual export transactions. Such activities are intended to assess diversion risks, identify potential violations, verify end-uses, and determine the suitability of end-users to receive U.S. commodities or technology. In carrying out these activities, BIS officials, or officials of other Federal agencies acting on BIS's behalf, selectively conduct PLCs to verify the bona fides of the transaction and the suitability of the end-user or ultimate consignee. In addition, such officials sometimes carry out PSVs to ensure that U.S. exports have actually been delivered to the authorized end-user, are being used in a manner consistent with the terms of a license or license exception, and are otherwise consistent with the EAR.

In certain instances BIS officials, or other Federal officials acting on BIS's behalf, have been unable to perform a PLC or PSV with respect to certain export control transactions for reasons outside the control of the U.S. Government (including a lack of cooperation by the host government authority, the end-user, or the ultimate consignee). In a notice issued on June 14, 2002 (67 FR 40910), BIS set forth an Unverified List of certain foreign end-users and consignees involved in such transactions.

The June 14 notice also advised exporters that the participation of a person on the Unverified List in a proposed transaction will be considered by BIS to raise a "red flag" under the "Know Your Customer" guidance set forth in Supplement No. 3 to 15 CFR Part 732 of the EAR. Under that guidance, whenever there is a "red flag," exporters have an affirmative duty to inquire, verify, or otherwise substantiate the proposed transaction to satisfy themselves that the transaction does not involve a proliferation activity set forth in 15 CFR part 744, and does not violate the EAR.

The **Federal Register** notice further stated that persons on the Unverified List would be added and removed from the list when warranted. BIS has attempted, and was unable to conduct, a PSV in transactions involving the following person: Brilliant Intervest, 14–1, Persian 65C, Jalan Pahang Barat, Kuala Lumpur, Malaysia 53000.

This notice advises exporters that Brilliant Intervest is added to the Unverified List, and a "red flag" now exists for transactions involving this person due to its inclusion on the Unverified List. As a result, exporters

have an affirmative duty to inquire, verify, or otherwise substantiate the proposed transaction to satisfy themselves that the transaction does not involve a proliferation activity set forth in 15 CFR part 744, and does not violate the EAR.

In addition, BIS has now conducted a PSV in a transaction involving Xian XR Aerocomponents Co., Ltd., Xujiawen Beijiao, Xian, Shaanxi, People's Republic of China, ("Xian"), a person included on the Unverified List. This notice advises exporters that Xian is removed from the Unverified List, and the "red flag" resulting from Xian's inclusion on the Unverified List is rescinded.

The Unverified List, as modified by this notice, is set forth below.

Dated: March 24, 2003.

Lisa A. Prager,

Acting Assistant Secretary for Export Enforcement.

Unverified List as of March 28, 2003

The Unverified List includes names and countries of foreign persons who in the past were parties to a transaction with respect to which BIS could not conduct a pre-license check ("PLC") or a post-shipment verification ("PSV") for reasons outside of the U.S. Government's control. Any transaction to which a listed person is a party will be deemed by BIS to raise a "red flag" with respect to such transaction within the meaning of the guidance set forth in Supplement No. 3 to 15 CFR part 732. The "red flag" applies to the person on the Unverified List regardless of where the person is located in the country included on the list.

Name	Country	Last known address
Power Test & Research Institute of Guangzhou	People's Republic of China	No. 38 East Huangshi Road, Guangzhou.
Civil Airport Construction Corporation	People's Republic of China	111 Bei Sihuan Str. East, Chao Yang District, Beijing.
Shaanxi Telecom Measuring Station	People's Republic of China	39 Jixiang Road, Yanta District, Xian, Shaanxi.
Beijing San Zhong Electronic Equipment Engineer Co., Ltd.	People's Republic of China	Hai Dian Fu Yuau, Men Hao 1 Hao, Beijing.
Huabei Petroleum, Administration Bureau, Logging Company.	People's Republic of China	South Yanshan Road, Ren Qiu City, Hebei.
Yunma Aircraft Mfg	People's Republic of China	Yaopu, Anshun, Guizhou.
Daqing Production Logging Institute	People's Republic of China	No. 3 Fengshou Village, Sartu District, Daqing City, Heilongjiang.
Dee Communications M SDN.BHD	Malaysia	G5/G6, Ground Floor, Jin Gereja, Johor Bahru.
Brilliant Intervest	Malaysia	14–1, Persian 65C, Jalan Pahang Barat, Kuala Lumpur, 53000.
Arrow Electronics	United Arab Emirates	204 Arbift Tower, Benyas Road, Dubai.

[FR Doc. 03–7484 Filed 3–27–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–851]

Certain Preserved Mushrooms from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received requests to conduct a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China. In accordance with 19 CFR 351.214(d), we are initiating a review for Primera Harvest (Xiangfan) Co., Ltd. and Xiamen International Trade & Industrial Co., Ltd., exporters and producers of certain preserved mushrooms from the People's Republic of China.

EFFECTIVE DATE: March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Davina Hashmi, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1766 and (202) 482–0984, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests from Primera Harvest (Xiangfan) Co., Ltd. ("Primera Harvest") and Xiamen International Trade & Industrial Co., Ltd. ("XITIC"), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC"), which has a February anniversary month.

As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), each company identified above has certified that it did not export certain preserved mushrooms to the United States during the period of investigation ("POI"), and that it has never been affiliated with any exporter or producer which did export certain preserved mushrooms during the POI. The company has further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv)(A), each company submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act, as amended, and 19 CFR 351.214(b), and based on information on the record, we are initiating the new shipper review for Primera Harvest and XITIC.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC. Normally we would issue the preliminary results of this review not later than 180 days after the date on which the review is initiated. However, on March 12, 2003, Primera Harvest and XITIC agreed to waive the time limits in order that the Department, pursuant to 19 CFR 351.214(j)(3), may conduct this review concurrent with the fourth administrative review of this order for the period February 1, 2002- January 31, 2003, which is being conducted pursuant to section 751(a)(1) of the Act. Therefore, we intend to issue the final results of this review not later than 245 days after the last day of the anniversary month.

Antidumping Duty New Shipper Review	Period to be Reviewed
PRC: Certain Preserved Mushrooms, A-570–851:	
Primera Harvest (Xiangfan) Co., Ltd.	02/01/02 - 01/31/03
Xiamen International Trade & Industrial Co., Ltd.	02/01/02 - 01/31/03

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the above-listed companies. Because XITIC and Xiangfan have certified that they both produce and export the subject merchandise, the sale of which was the basis for their new shipper review requests, we will apply the bonding privilege only to entries of the subject merchandise for which they are both the producer and exporter.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: March 21, 2003.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–7520 Filed 3–27–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031403F]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comments.

SUMMARY: Notice is hereby given of the availability of a draft Routine Road Maintenance Program (RMP) that Marion County, Oregon, Department of Public Works, has submitted pursuant to Endangered Species Act (ESA). NOAA Fisheries promulgated a protective rule for 14 threatened salmon and steelhead Evolutionarily Significant Units (ESUs). The RMP would affect four ESUs of threatened salmonids identified in the **SUPPLEMENTARY INFORMATION** section. The 4(d) rule provides for limits on ESA take prohibitions for the various activities set out in the rule. The RMP addresses the limit for routine road maintenance activities of any state, city, county or port. This document serves to notify the public of the availability of the RMP for review and comment before a final approval or disapproval is made by NOAA Fisheries.

DATES: Written comments on the draft RMP must be received no later than 5 p.m. Pacific Standard Time on April 28, 2003.

ADDRESSES: Written comments should be sent to Dr. Nancy Munn, Habitat Conservation Division, National Marine Fisheries Service, 525 NE Oregon Street, Suite 500, Portland, OR 97232.

Comments may also be faxed to 503–231–6893. Copies of the entire RMP are available on the Internet at: *http://publicworks.co.marion.or.us/environment/salmon/Limit10/PDF/Oct2002/02index.htm*, or from the address posted on that site. Comments will not be accepted if submitted via email or the Internet.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Munn at phone number: 503–231–6269, or e-mail: *nancy.munn@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to the following four threatened salmon ESUs:

Chinook salmon (*Oncorhynchus tshawytscha*); threatened Upper Willamette River (UWR) and Lower Columbia River (LCR).

Steelhead (*Oncorhynchus mykiss*); threatened Upper Willamette River (UWR) and Lower Columbia River (LCR).

Background

Marion County submitted the RMP for routine road maintenance activities that might affect certain salmonid ESUs listed as threatened in Marion County. The RMP was designed so that routine road maintenance activities would be protective of salmonids and their habitat.

As specified in the July 10, 2000, ESA 4(d) rule for salmon and steelhead (65 FR 42422) under limit 10(I), take prohibitions to threatened species of salmonids do not apply to routine road maintenance activities of a state, county, city or port that complies with a program that is substantially similar to that contained in the Oregon Department of Transportation (ODOT) Routine Road Maintenance Water Quality and Habitat Guide Best Management Practices (Guide, July 1999), and that is determined to meet or exceed the protections provided in the ODOT Guide. NOAA Fisheries may approve a routine road maintenance program of any state, city, county or port that contains management practices that are equivalent to or better than those in the ODOT Guide. Prior to final approval of a routine road maintenance program, NOAA Fisheries must publish notification in the **Federal Register** announcing the program's availability for public review and comment.

Part 1 of the RMP is a cover letter to D. Robert Lohn, Regional Administrator of NOAA Fisheries and a statement of commitment from Marion County to implement the RMP. In Part 2, the RMP describes the program and provides information on the legal authority for the program. In Part 3, the RMP provides a description of the geographic area to which the program applies, including a list of county roads or locations where maintenance activities may impact streams, the location of salmon habitat in the relevant watersheds, and an analysis of the environmental baseline of those watersheds. Part 3 also includes maps that show fish distributions and other relevant background information. In Part 4 , the RMP describes the listed species distribution and status, and in Part 5, a bibliography of relevant reports are provided. In Part 6, the RMP makes an affirmative conclusion that the program is substantially similar to or better than ODOT's program, and summarizes the training, monitoring, and reporting elements of the RMP.

The RMP also includes four attachments that are fundamental to the

program. Attachment 1 is a table that compares ODOT's and Marion County's best management practices. Attachment 2 describes the best management practices being implemented by Marion County, including their dust abatement activities. Attachment 3 describes and provides documentation for the Salmon Recovery Mapping Project. The Salmon Recovery Mapping Project documents the best available biological and natural resource geospatial data relevant to threatened salmonids in Marion County and directs or limits best management practices where their activities are adjacent to or have the potential to affect threatened salmonids. The end result is two mapping projects: the Sensitive Area Maps that depict the relevant biological and natural resource data at a scale that can be used to direct activities on the ground, and the Environmentally Sensitive Zone Maps that direct or limit best management practices along county roads. The maps are available for review on the Internet at the site identified in **ADDRESSES**. Attachment 4 provides instructions on how to connect the best management practices to the Environmentally Sensitive Zone Maps.

The RMP defines what activities are routine road maintenance. These consist of maintenance activities that are conducted on currently serviceable structures, facilities, and equipment, involve no expansion of or change in use, and do not result in significant negative hydrological impact. The Marion County best management practices (Attachment 2) includes activities beyond routine road maintenance activities as presented in ODOT's Guide (e.g., park maintenance, ferry maintenance and operation, fleet maintenance, service districts) and these specific activities are not eligible for approval at this time. Approval or disapproval or the RMP will depend on NOAA Fisheries' findings after public review and comment.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 424222, July 10, 2000) identifies specific categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activities associated with routine road maintenance provided that a state or local program has been approved by NOAA Fisheries to be in accordance with the salmon and steelhead 4(d) rule (65 FR 424222, July 10, 2000).

Dated: March 18, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–7515 Filed 3–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 000410097–3067–08] [RIN 0660–ZA–11]

Public Telecommunications Facilities Program: Notice of Funds Available

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: On October 17, 2002, the National Telecommunications and Information Administration (NTIA) announced the Notice of Closing Date and Solicitation of Television Applications for the Public Telecommunications Facilities Program (PTFP). On March 5, 2003, the NTIA announced the Notice of Closing Date and Solicitation of Radio and Nonbroadcast Applications for the PTFP. On February 20, 2003, legislation appropriating FY 2003 funds for the PTFP was completed. NTIA is now publishing this Notice of Availability of Funds to announce the funds available for fiscal year 2003 PTFP grants.

ADDRESS: To obtain an application package, submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156. Materials needed to complete an application can be obtained electronically via PTFP's Web site at *http://www.ntia.doc.gov/ptfp*.

SUPPLEMENTARY INFORMATION:

Authority

The Consolidated Appropriations Resolution, 2003, Public Law 108–7.

Funding Availability

On October 17, 2002, the National Telecommunications and Information Administration (NTIA) announced the Notice of Closing Date and Solicitation of Television Applications for the Public Telecommunications Facilities Program (PTFP) (67 FR 64297). On March 5, 2003, the NTIA announced the Notice of Closing Date and Solicitation of Radio and Nonbroadcast Applications for the PTFP (68 FR 10610). The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce announces that approximately $21 million is available for award to applicants submitting applications in response to the Notices of Closing Date published October 17, 2002 and March 5, 2003. Pursuant to Pub. L. 108–7, the Consolidated Appropriations Resolution, 2003, the Congress appropriated $41.1 million for Public Telecommunications Facilities Program grants. NTIA has allocated approximately $20 million from the $41.1 million for funding additional phases of multi-year projects initially funded in FY 2000, FY 2001 and FY 2002.

Dr. Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 03–7522 Filed 3–27–03; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Request under the African Growth and Opportunity Act (AGOA)

March 25, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for a determination that certain light- and medium-weight dyed warp pile cotton velvet, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner.

SUMMARY: On March 21, 2003, the Chairman of CITA received a petition from Crystal Apparel Limited of Hong Kong and Sinotex Mauritius Limited in Mauritius alleging that certain light- and medium-weight dyed warp pile cotton velvet for use in men's and boys' jackets and pants and women's and girls' jackets, dresses; skirts, pants, and shorts, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that such apparel articles of such fabrics be eligible for preferential treatment under the AGOA. CITA hereby solicits public comments on this request, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by April 14, 2003 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

EFFECTIVE DATE: March 28, 2003

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA, Section 1 of Executive Order No. 13191 of January 17, 2001.

Background

The AGOA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The AGOA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country, if it has been determined that such fabric or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures in the Federal Register that it will follow in considering requests (66 FR 13502).

On March 21, 2003, the Chairman of CITA received a petition from Crystal Apparel Limited of Hong Kong and Sinotex Mauritius Limited in Mauritius alleging that certain light- and medium-weight dyed warp pile cotton velvet, classified in subheading 5801.25.00 of the Harmonized Tariff Schedule of the United States (HTSUS), with the following specifications, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the AGOA for certain jackets, dresses, skirts, pants and shorts, that are cut and sewn in one or more beneficiary sub-Saharan African countries from such fabrics.

1. Name: light-weight dyed warp pile velvet
   HTS subheading: 5801.25.00
   Fiber Composition: 100 percent combed cotton
   Yarn: 230 g/m2 to 260 g/m2
   Construction:
   Woven Fabric - 96 x 98
   Weft - 42/2 ply + 42/2 ply
   Warp - 32 single yarn

   Woven Fabric - 96 x 102
   Weft - 42/2 ply + 60/2 ply
   Warp - 32 single yarn

2. Name: medium-weight dyed warp pile velvet
   HTS subheading: 5801.25.00
   Fiber Composition: 97 percent cotton, 3 percent spandex
   Yarn: 280 g/m2 to 330 g/m2
   Construction:
   Woven Fabric - 110 x 84
   Weft - 42/2 ply + 50/2 ply
   Warp - 30 single yarn + 40 denier spandex

   Woven Fabric - 126 x 84
   Weft - 42/2 ply + 50/2 ply
   Warp - 30 single yarn + 40 denier spandex

CITA is soliciting public comments regarding this request, particularly with respect to whether such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other products that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabrics for the purposes of the intended use. Comments must be received no later than April 14, 2003. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

If a comment alleges that such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn or fabric stating that it produces the fabrics that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure for the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–7621 Filed 3–26–03; 11:57 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0147]

Federal Acquisition Regulation; Information Collection; Pollution Prevention and Right-to-Know Information

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0147).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning pollution prevention and right-to-know information. This OMB clearance expires on May 31, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 27, 2003.

ADDRESSES: Submit comments, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Laura Smith, Acquisition Policy Division, GSA, 208–7279.

SUPPLEMENTARY INFORMATION:

A. Purpose

Executive Order 12856 of August 3, 1993, "Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements," requires that Federal facilities comply with the planning and reporting requirements of the Pollution Prevention Act of 1990 and the Emergency Planning Community Right-to-Know Act of 1986. The executive order requires that contracts to be performed on a Federal facility provide for the contractor to supply to the Federal agency all information the Federal agency deems necessary to comply with these reporting requirements.

B. Annual Reporting Burden

Number of Respondents: 2,550.
Responses Per Respondent: 7.647.
Annual Responses: 19,500.
Average Burden Per Response: 45 minutes.
Total Burden Hours: 14,500.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0147, Pollution Prevention and Right-to-Know Information in all correspondence.

Dated: March 25, 2003.

Ralph J. Destefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 03–7473 Filed 3–27–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 27, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Assistant Secretary of the Army (Manpower & Reserve Affairs), ATTN: SAMR–FMMR, (John Anderson), 111 Army Pentagon, Washington, DC 20310–0111. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 695–5509.

Title, OMB Number: The Contractor Manpower Reporting Pilot Study, (To be Determined.)

Needs and Uses: This pilot program will greatly enhance the ability of the Army to identify and track its contractor workforce. Modern systems do not have contractor manpower data that is collected by the Contractor Manpower Reporting System—*i.e.*, Estimated Direct Labor Hours, Estimated Direct Labor dollar and Organization supported. Existing financial and procurement systems have obligation amounts of an unknown mix, and the Department of the Army is not able to trace the funding to the organization supported.

Affected Public: Business or other for profit.

Annual Burden Hours: 80,445.
Number of Respondents: 31,870.
Responses Per Respondent: 55.
Average Burden Per Response: 0.0083.
Frequency: Annually.

SUPPLEMENTARY INFORMATION: Like all other Federal Government agencies, the Army's reliance on service contractor employees has increased significantly over the past few years. Moreover, this trend is likely to continue. Hence, it is more important than ever, that Government agencies have an accurate picture of what is rapidly becoming a "blended workforce" consisting of Federal employees and contractor personnel.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–7496 Filed 3–27–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Infectious JEV cDNA Clones that Produce Highly Attenuated Recombinant JEV, and Vaccines Thereof

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent No. 5,736,148 entitled "Infectious JEV cDNA Clones that Produce Highly Attenuated Recombinant JEV, and Vaccines Thereof," issued April 7, 1998. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: cDNA clones containing the entire genome of Japanese encephalitis virus (JEV) were used to produce infectious, recombinant JEV particles with diverse virulence properties. Certain viruses retained the immunogenicity of JEV, but lacked the ability to cause encephalitis. The mutation associated with this loss of neurovirulence was localized to a nucleotide substitution in the codon encoding the 138th amino acid of the envelop protein, resulting in a mutation of an acidic amino acid to a basic amino acid. Attenuated viruses containing this mutation from the basis of a greatly improved, molecularly defined vaccine for the prevention of Japanese encephalitis in humans.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–7497 Filed 3–27–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of Surplus Land (Honey Lake) Located at Sierra Army Depot, Herlong, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: This notice identified the surplus real property, Honey Lake, which is located at Sierra Army Depot, Herlong, CA (SIAD). SIAD is located mid-way between Reno, NV and Susanville, CA.

DATES: Letters of intent from eligible public agencies must be submitted in writing no later than April 18, 2003, to Ms. Susan Krinks, U.S. Army Corps of Engineers, Sacramento District, 1325 J Street, Sacramento, CA 95814–2922.

FOR FURTHER INFORMATION CONTACT: For more information regarding Honey Lake, contact Ms. Susan Krinks, Realty Specialists, at (916) 557–6815.

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 for public benefit uses, and under 10 U.S.C. 2694a for natural resource conservation uses. Honey Lake is subject to a reversion to the State of California pursuant to California Senate Bill No. 573, Chapter 845. Honey Lake is a shallow, alkaline lake with no outlet. Lake levels fluctuate widely, and during drought years, lake levels are greatly reduced, or the lake may become completely dry. The surrounding area is rural and sparsely populated. Future uses may be limited to those described above.

Marvin D. Fisher,

Chief, Real Estate Division, U.S. Army Engineer District, Sacramento.

[FR Doc. 03–7499 Filed 3–27–03; 8:45 am]

BILLING CODE 3710–EZ–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Caloosahatchee River Aquifer Storage and Recovery Pilot Project Located Southwest of LaBelle on the Berry Groves Property, Hendry County, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps), intends to prepare an integrated Pilot Project Design Report and Draft Environmental Impact Statement (DEIS) for the Caloosahatchee River Aquifer Storage and Recovery (ASR) Pilot Project. The study is a cooperative effort between the Corps and the South Florida Water Management District (SFWMD), which is also a cooperating agency for this DEIS. This project will determine the feasibility of using ASR technology for water storage in the Caloosahatchee River basin as part of the Comprehensive Everglades Restoration Program. It will also collect scientific data to address the uncertainties associated with the ASR technology and for future optimization and design studies.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Conner, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, PO Box 4970, Jacksonville, FL 32232–0019, or by telephone at 904–232–1782.

SUPPLEMENTARY INFORMATION:

a. *Authorization:* The Water Resources Development Act (WRDA) of 2000 (Pub. L. 106–541) was enacted in December 2000. Title VI of WRDA 2000 approved the Comprehensive Plan, provided authorization of an initial suite of projects, and included a number of other provisions including outreach and periodic reports to Congress. The Caloosahatchee ASR pilot project was authorized by Section 601(b)(2)(B) of WRDA 2000.

b. *Project Scope:* The pilot project will determine the feasibility of ASR technology for water storage at the site, the water quality characteristics of source waters, native subsurface waters and recovered waters and appropriate water treatment requirements, and recommend operational goals for a full scale ASR project within the Caloosahatchee River basin. The pilot project includes the construction of one ASR well into the Floridan Aquifer with a capacity of 5 million gallons per day, a source water collection system that will supply water to the ASR system, pre-injection and post recovery water treatment facilities, and other associated piping and treatment systems.

Operational plans for the test pilot are to collect surface water, treat to drinking water standards, and inject water into the Floridan Aquifer System (FAS) for a minimum of two cycle tests. Each cycle test includes a period of water storage followed by a period of recovery and discharge. Recovered water will be monitored and treated prior to discharge into surface water.

c. *Preliminary Alternatives:* Formulation of alternative plans will involve the selection of collection well configuration, water treatment technologies, investigation of intake and discharge sites, and investigation of best configuration of surface facilities of the project.

The Environmental Impact Statement (EIS) evaluation of the pilot project will include an evaluation of adverse environmental impacts, including but not limited to, water quality, socio-economic, archaeological and biological. In addition to adverse impacts, the evaluation will also focus on how well the plans perform with regard to specific technologic performance measure.

d. *Issues:* The EIS will consider impacts on water quality, ecosystem habitat, threatened and endangered species, health and safety, aesthetics and recreation, fish and wildlife resources, cultural resources, water availability, flood protection, and other potential impacts identified through scooping, public involvement, and interagency coordination.

e. *Scoping:* A scoping letter will be issued on March 2003 to interested parties. In addition, all parties are invited to participate in the scoping process by identifying any additional concerns on issues, studies needed, alternatives, procedures, and other matters related to the scoping process. As there have already been meetings held on the ASR technology and the related C–43 Reservoir Project, there is no plan for a public scoping meeting at this time.

f. *Public Involvement:* We invite the participation of affected Federal, State and local agencies, affected Indian tribes, and other interested private organizations and parties.

g. *Coordination:* The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service under Section 7 of the Endangered Species Act, with the FWS under the Fish and

Wildlife Coordination Act, and with the State Historic Preservation Officer.

h. *Other Environmental Review and Consultation:* The proposed action would involve evaluation for compliance with guidelines pursuant to Section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to Section 401 of the Clean Water Act; certification of state lands, easements and right of ways, and determination of Coastal Zone Management Act consistency.

i. *Agency Role:* As cooperation agency, non-Federal sponsor, and leading local expert, SFWMD will provide information and assistance on the resources to be impacted and alternatives.

j. *DEIS Preparation:* The integrated Pilot Project Design Report, including a DEIS, is currently estimated for publication in March 2006.

Dated: March 12, 2003.

James C. Duck,

Chief, Planning Division.

[FR Doc. 03–7501 Filed 3–27–03; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the C–43 Basin Storage Reservoir Project adjacent to the Caloosahatchee River, Hendry, Glades, Charlotte, or Lee County, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps), intends to prepare an integrated Project Implementation Report and Draft Environmental Impact Statement (DEIS) for the C–43 Basin Storage Reservoir Project, part 1. The study is a cooperative effort between the Corps and the South Florida Water Management District (SFWMD), which is also a cooperating agency for this DEIS. One of the recommendations of the final report of the Central & South Florida (C&SF) Comprehensive Review Study (Restudy) was the C–43 Basin Storage Reservoir Project. This project includes the construction of an approximately 160,000 acre-feet storage area within the Caloosahatchee Basin to capture and store stormwater runoff and water releases from Lake Okeechobee. Stored water would be used to meet the environmental demands of the Caloosahatchee River and Estuary and urban and agricultural demand as able.

DATES: A public meeting is cheduled for May 1, 2003, 7 p.m. in Hendry County at the Dallas B. Townsend Agricultural Center, 1085 Pratt Boulevard, LaBelle, FL.

FOR FURTHER INFORMATION CONTACT: Mrs. Susan Conner, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL, 32232–0019, or by telephone at 904–232–1782.

SUPPLEMENTARY INFORMATION:

a. Authorization: Section 601 of the Water Resources Development Act of 2000 authorized a framework and guide for modifications to the C&SF Project to restore the south Florida ecosystem and to provide for the other water-related needs of the region, including the C–43 Basin Storage Reservoir Project.

b. Project Scope: The purpose of this project is to capture C–43 Basin runoff and releases from Lake Okeechobee. These facilities will be designed for water supply benefits, some flood attenuation, to provide environmental water supply deliveries to the Caloosahatchee Estuary, and water quality benefits to reduce salinity and nutrient impacts of runoff to the estuary. It is assumed that, depending upon the location of the facility and pollutant loading conditions in the watershed, the facility could be designed to achieve significant water quality improvements, consistent with appropriate pollution load reduction targets. The project as proposed will include the construction of an above-ground reservoir(s) with a total capacity of approximately 160,000 acre-feet, located in the C–43 Basin in Hendry, Glades, Charlotte, or Lee Counties. Water levels could fluctutate up to 8 feet above grade.

c. Preliminary Alternatives: Formulation of alternative plans will involve the selection of the most suitable site or sites for a reservoir, depth and configurations of the impoundment(s), investigation of intake and discharge sites, and investigation opportunities in configuration designs to provide significant water quality improvements for the project.

The Environmental Impact Statement (EIS) evaluation of the project will include an evaluation of adverse environmental impacts, including but not limited to, water quality, socio-economic, archeological and biological. In addition to adverse impacts, the evaluation will also focus on how well the plans perform with regard to specific ecological and other performance measures.

d. Issues: The EIS will consider impacts on water quality, ecosystem habitat, threatened and endangered species, health and safety, aesthetics and recreation, fish and wildlife resources, culture resources, water availability, flood protection, and other potential impacts identified through scoping, public involvement, and interagency coordination.

e. Scoping: Initial project scoping began in February 2002 at a public meeting in Hendry County. A scooping letter was issued in February 2002 to interested parties inviting all interested parties and government agencies to participate in the scoping process by identifying any additional concerns on issues, studies needed, alternatives, procedures, and other matters related to the scoping process. A NEPA scoping letter will be issued in March 2003, along with this notice. A public meeting is scheduled for May 1, 2003 (see DATES above).

f. Public Involvement. We invite the participation of affected Federal, State and local agencies, affected Indian tribes, and other interested private organizations and parties.

g. Coordination: The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service under section 7 of the Endangered Species Act, with the FWS under the Fish and Wildlife Coordination Act, and with the State Historic Preservation Officer.

h. Other Environmental Review and Consultation: The proposed action would involve evaluation for compliance with guidelines pursuant to section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to section 401 of the Clean Water Act; certification of State lands, easements and right of ways, and determination of Coastal Zone Management Act consistency.

i. Agency Role: As cooperation agency, non-Federal sponsor, and leading local expert, SFWMD will provide information and assistance on the resources to be impacted and alternatives.

j. DEIS Preparation: The integrated Project Implementation Report (PIR) including a DEIS, is currently estimated for publication in September 2004.

Dated: March 17, 2003.

James C. Duck,

Chief, Planning Division.

[FR Doc. 03–7498 Filed 3–27–03; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Palm Beach Harbor Lake Worth Access Channel Expansion, Section 107 Small Navigation Project; Correction

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice; correction.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Jacksonville District published a notice of intent to prepare a Draft Environmental Impact Statement (DEIS) for the Palm Beach Harbor Lake Worth Access Channel Expansion, Section 107 Small Navigation Project on February 25, 2003 (68 FR 8744). Due to a typographical error, the Palm Beach County Department of Environmental Resources was identified as a cooperating agency and local sponsor of the project. The correction states that the preparation of the DEIS will be completed solely by the Corps, and that the local sponsor of the project is Florida Inland Navigation District (FIND).

FOR FURTHER INFORMATION CONTACT: James McAdams, 904–232–2117, Environmental Branch, Planning Division, P.O. Box 4970, Jacksonville FL 32232–0019.

Correction

In the **Federal Register** of February 25, 2003 (68 FR 8744) concerning intent to prepare a DEIS for the Palm Beach Harbor Lake Worth Access Channel Expansion, Section 107 Small Navigation Project on page 8744 third column, under the subheading "Agency Role" the statement should read as follows:

"The DEIS will be completed solely by the Corps of Engineers, Jacksonville District, and that the local sponsor of the project is the Florida Inland Navigation District."

Dated: March 7, 2003.

Loren M. Mason,

Chief, Environmental Branch.

[FR Doc. 03–7500 Filed 3–27–03; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity, (National Advisory Committee); Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to announce the public meeting of the National Advisory Committee and invite third-party oral presentations before the Committee. This notice also presents the proposed agenda and informs the public of its opportunity to attend this meeting. The notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

When and Where Will the Meeting Take Place?

We will hold the public meeting on June 9, 2003 from 8:45 a.m. until 6 p.m., and on June 10, 2003 from 8:30 a.m. until 4:30 p.m. at the Ritz Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, Virginia 22202. You may call the hotel on (703) 415–5000 to inquire about rooms.

What Assistance Will Be Provided to Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Who Is the Contact Person for the Meeting?

Please contact Ms. Bonnie LeBold, the Executive Director of the National Advisory Committee on Institutional Quality and Integrity, if you have questions about the meeting. You may contact her at the U.S. Department of Education, room 7007, MS 7592, 1990 K St., NW., Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: *Bonnie.LeBold@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Is the Authority for the National Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA) as amended, 20 U.S.C. 1011c.

What Are the Functions of the National Advisory Committee?

The Committee advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions to participate in Federally funded programs.
- The relationship between: (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

What Items Will Be on the Agenda for Discussion at the Meeting?

Agenda topics will include the review of agencies that have submitted petitions for initial recognition or renewal of recognition, submitted a progress report, or submitted interim reports. In addition, the National Advisory Committee will discuss its recommendations pertaining to the reauthorization of the Higher Education Act, as amended.

What Agencies Will the Advisory Committee Review at the Meeting?

The Advisory Committee will review the following agencies during its June 9–10, 2003 meeting.

Nationally Recognized Accrediting Agencies

Petition for Initial Recognition

1. Commission on English Language Program Accreditation (Requested scope of recognition: the accreditation of postsecondary English language programs and institutions in the United States.)

2. Council on Naturopathic Medical Education (Requested scope of recognition: the accreditation and pre-accreditation throughout the United States of graduate-level, four-year naturopathic medical educational programs leading to the Doctor of Naturopathic Medicine (N.D. or N.M.D.) or Doctor of Naturopathy (N.D.) degree.)

3. Teacher Education Accreditation Council (Requested scope of recognition: the accreditation throughout the United States of professional education programs in institutions offering baccalaureate and graduate degrees for the preparation of teachers K–12.)

Petitions for Renewal of Recognition

1. Montessori Accreditation Council for Teacher Education (Current scope of recognition: the accreditation of Montessori teacher education institutions and programs throughout the United States evaluated by the following review committees: the American Montessori Society Review Committee and the Independent Review Committee only.)

2. Western Association of Schools and Colleges, Accrediting Commission for Schools (Current scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of adult and postsecondary schools that offer programs below the degree level in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands.)

Interim Reports (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted renewed recognition to the agency.)

1. Accrediting Association of Bible Colleges, Commission on Accreditation.

2. American Academy for Liberal Education.

3. Association for Clinical Pastoral Education, Inc., Accreditation Commission.

4. American Physical Therapy Association, Commission on Accreditation in Physical Therapy Education.

5. American Veterinary Medical Association, Council on Education.

6. Distance Education and Training Council, Accrediting Commission.

7. National League for Nursing Accrediting Commission.

Progress Report: A report on the agency's implementation of its new accreditation process.

1. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities

State Agency Recognized for the Approval of Public Postsecondary Vocational Education

Petition for Renewal of Recognition

1. Missouri State Board of Education

State Agency Recognized for the Approval of Nurse Education

Petition for Renewal of Recognition

1. Missouri State Board of Nursing

Who Can Make Third-Party Oral Presentations at This Meeting?

We invite you to make a third-party oral presentation before the National Advisory Committee concerning the recognition of any agency published in this notice.

How Do I Request to Make an Oral Presentation?

You must submit a written request to make an oral presentation concerning an agency listed in this notice to the contact person *so that the request is received via mail, fax, or e-mail no later than May 16, 2003.* Your request (*no more than 6 pages maximum*) must include:

1. The names, addresses, phone numbers, and fax numbers of all persons seeking an appearance,

2. The organization they represent, and

3. A brief summary of the principal points to be made during the oral presentation.

If you wish, you may attach documents illustrating the main points of your oral testimony. Please keep in mind, however, that *any attachments are included in the 6-page limit.* Please do not send materials directly to Committee members. Only materials submitted by the deadline to the contact person listed in this notice and in accordance with these instructions become part of the official record and are considered by the Committee in its deliberations. Documents received after the May 16, 2003 deadline will not be distributed to the Advisory Committee for their consideration. Individuals making oral presentations may not distribute written materials at the meeting.

If I Cannot Attend the Meeting, Can I Submit Written Comments Regarding an Accrediting Agency in Lieu of Making an Oral Presentation?

This notice requests third-party oral testimony, not written comment. A request for written comments on agencies that are being reviewed during this meeting was published in the **Federal Register** on February 6, 2003. The Advisory Committee will receive and consider only written comments submitted by the deadline specified in that **Federal Register** notice.

How Do I Request to Present Comments Regarding General Issues Rather Than Specific Accrediting Agencies?

At the conclusion of the meeting, the Committee, at its discretion, may invite attendees to address the Committee briefly on issues pertaining to the functions of the Committee, which are listed earlier in this notice. If you are interested in making such comments, you should inform Ms. LeBold before or during the meeting.

How May I Obtain Access to the Records of the Meeting?

We will record the meeting and make a transcript available for public inspection at the U.S. Department of Education, 1990 K St., NW., Washington, DC 20006 between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. It is preferred that an appointment be made in advance of such inspection.

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Authority: 5 U.S.C. Appendix 2.

Dated: March 24, 2003.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 03–7479 Filed 3–27–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Number DE–PS36–03GO93003]

First Steps Toward Developing Renewable Energy and Energy Efficiency on Tribal Lands: Strategic and Energy Resource Planning, Capacity Building, and Organizational Development

AGENCY: Golden Field Office, Department of Energy.

ACTION: Notice of issuance of solicitation for financial assistance applications.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance rules, 10 CFR 600.8, is soliciting applications for financial assistance from Federally-recognized Tribes or Alaskan Native Corporations for strategic planning, energy options analysis or resource planning, human capacity building, and organizational development related to sustainable energy efficiency implementation or renewable energy development.

DATES: Issuance of the solicitation is planned for early March 2003.

ADDRESSES: To obtain a copy of the solicitation, once issued, interested parties should access the DOE Golden Field Office home page at *http://www.golden.doe.gov/businessopportunities.html,* click on "Solicitations," and then access the solicitation number identified above. The DOE Golden Field Office home page will provide a link to the solicitation synopsis in the Industry Interactive Procurement System (IIPS) Web site and provides instructions on using IIPS. The solicitation will be available directly through IIPS at *http://e-center.doe.gov* by browsing opportunities by Contract Activity, for those solicitations issued by the Golden Field Office. To be notified when the solicitation is issued, join the Solicitation Mailing List specific to this notice through IIPS. DOE will not issue paper copies of the solicitation. For questions regarding the operation of IIPS, contact the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Tammie Lawler, Contract Specialist, via facsimile at 303–275–4788 or electronically at *tribalgo93003@go.doe.gov.* Responses to questions will be made by amendment to the solicitation and posted on the DOE Industry Interactive Procurement System (IIPS) Web site.

SUPPLEMENTARY INFORMATION: DOE's Tribal Energy Program promotes tribal energy self-sufficiency and fosters employment and economic development on tribal lands through financial assistance to Federally-recognized Tribes and Alaskan Native Corporations. Under this solicitation, DOE is soliciting applications from Federally-recognized Tribes or Alaskan Native Corporations (hereafter referred to as "tribes") for strategic planning, energy options analysis or resource planning, human capacity building, and organizational development related to sustainable energy efficiency implementation or renewable energy development.

DOE will only consider applications from Federally-recognized tribes on whose tribal lands the project will be located. Applications from a consortium will be accepted but must be submitted by a single tribe representing the consortium. A Statement of Commitment from an authorized representative of the tribe (Chief, Governor, President, Chairperson or other representative authorized to commit the tribe), that includes a Statement of Commitment from each participant, will be required as a part of the application.

Awards under this solicitation are anticipated to be grants with terms of one year. Subject to funding availability, the total DOE funding available under this solicitation will be between $500,000 and $1,000,000. DOE anticipates selecting 5 to 20 applications for negotiation toward award. No cost share is required in order to be considered for awards under this solicitation. Solicitation number DE–PS36–03GO93003 will include complete information including technical aspects, funding, application preparation instructions, evaluation criteria, and other factors that will be considered when selecting applications for funding. Issuance of the solicitation is planned for early March 2003, with applications due approximately 50 days after the solicitation has been issued. Information on Financial Assistance Regulations (10 CFR part 600), proposal forms, award format, or post award forms can be obtained through the DOE Golden Field Office Home Page *http://www.golden.doe.gov/businessopportunities.html.*

Issued in Golden, Colorado, on March 11, 2003.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 03–7518 Filed 3–27–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Department of Energy's Fleet Alternative Fuel Vehicle Acquisition

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of availability of the Department of Energy's annual report on its Alternative Fuel Vehicle Acquisitions for fiscal year 2001.

SUMMARY: In compliance with the Energy Policy Act of 1992 and Executive Order 13149, this notice announces the availability of the 2001 report which summarizes the U.S. Department of Energy's (DOE) compliance with the annual alternative fuel vehicle acquisition requirement for its vehicle fleet. Additionally, this report includes data concerning DOE's efforts to reduce petroleum consumption.

ADDRESSES: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of FreedomCAR and Vehicle Technologies, EE–2G, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

FOR FURTHER INFORMATION CONTACT: Shabnam Fardanesh on (202) 586–7011 or *shabnam.fardanesh@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The Energy Policy Act of 1992 (42 U.S.C. 13211–13219) as amended by the Energy Conservation and Reauthorization Act of 1998 (Pub. L. 105–388, section 310(b)(3)(b)) and Executive Order 13149 (April 2000) were intended to decrease the country's dependence on petroleum for transportation purposes. The Energy Policy Act of 1992 requires Federal fleets to make 75 percent of their new covered vehicles acquisitions alternative fueled vehicles. In fiscal year 2001, DOE acquired 109 percent of its new covered vehicles as alternative fueled vehicles, exceeding the 75 percent requirement by 34 percent. DOE also exceeded its alternative fueled vehicle acquisition requirements in fiscal years 1999 and 2000, and expects a similarly high level of compliance for fiscal years 2002 and 2003.

Pursuant to 42 U.S.C. 13218, DOE and other covered agencies are required annually to submit to Congress reports on their alternative fueled vehicle acquisitions. These reports must also be placed on a publicly available Web site and their availability, including the Web site address, must be published in the **Federal Register**.

The DOE report for 2001 may be accessed on the Vehicle Technology's Federal Fleet Web site at *http://www.ott.doe.gov/epact/fed_fleet_prog.shtml*.

Issued in Washington, DC, on March 25, 2003.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 03–7478 Filed 3–27–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–25–003, et al.]

New England Power Pool, et al.; Electric Rate and Corporate Filings

March 21, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New England Power Pool

[Docket No. EL03–25–003]

Take notice that on March 18, 2003, New England Power Pool (NEPOOL) Participants Committee tendered for filing with the Federal Energy Regulatory Commission (Commission) a supplement to its March 3, 2003 Report of Compliance.

The NEPOOL Participants Committee states that copies of this supplement were sent to all parties in Docket No. EL03–25, the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment Date: April 17, 2003.

2. Alliance Companies, *et al.* and National Grid USA

[Docket No. EL02–65–011]

Take notice that on March 18, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. jointly filed with the Federal Energy Regulatory Commission (Commission), for informational purposes, an implementation progress report in accordance with the Commission's July 31, 2002 order in the above-referenced docket, 100 FERC § 61,137. This is fourth in a series of similar filings to be made on or about every 60 days.

Comment Date: April 17, 2003.

3. SP Newsprint Co.

[Docket No. ER03–432–001]

Take notice that on March 17, 2003, SP Newsprint tendered for filing a Response and Revised Tariff that amends its January 15, 2003, application and addresses concerns raised by the Federal Energy Regulatory Commission (Commission) and Intervenor, Portland General Electric Company. SP Newsprint is requesting that the Commission waive the 60-day notice requirement and asks that the rates be made effective on, or before, April 19, 2003.

Comment Date: April 7, 2003.

4. PPM Energy, Inc.

[Docket No. ER03–478–002]

Take notice that on March 17, 2003, PPM Energy, Inc., (PPM), submitted for filing a revised market-based tariff (Tariff), with the Federal Energy Regulatory Commission (Commission), reflecting its name change from PacifiCorp Power Marketing, Inc., and other changes to conform to prior Commission orders. PPM requests waiver of the 60-day prior notice requirement to allow its revised Tariff to become effective as of January 15, 2003.

Comment Date: April 7, 2003.

5. Entergy Services, Inc.

[Docket No. ER03–599–001]

Take notice that on March 14, 2003, Entergy Services, Inc., (Entergy Services), submitted for filing on behalf of Entergy Arkansas, Inc., (EAI), certain corrections to the transmittal letter accompanying Entergy Services' filing of EAI's 2003 Wholesale Formula Rate Update. Entergy Services states that the corrections replace certain references to the year 2002 within the text of the transmittal letter with corrected references to the year 2003.

Comment Date: April 4, 2003.

6. Maine Public Service Company

[Docket No. ER03–627–000]

Take notice that on March 14, 2003, Maine Public Service Company (MPS), submitted an informational filing setting forth the changed loss factor effective March 1, 2003, together with back-up materials, pursuant to Section 2.7 of the Settlement Agreement filed on February 28, 2001, in Docket No. ER01–1344–000, and accepted by the Federal Energy Regulatory Commission on April 13, 2001.

MPS states that copies of this filing were served on the parties to the Settlement Agreement in Docket No. ER01–1344–000, the Northern Maine Independent System Administrator, Inc., the Maine Public Utilities Commission, Commission Trial Staff, the Maine Public Advocate, and current MPS open access transmission tariff customers.

Comment Date: April 4, 2003.

7. American Electric Power Service Corporation

[Docket No. ER03–628–000]

Take notice that on March 17, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing a Service Agreement under the AEP Companies Power Sales Tariffs (Tariffs). The Tariffs were accepted for filing effective October 10, 1997 and were designated as AEP Operating Companies FERC Electric Tariff Original Volume No. 5 (Wholesale Tariff of the AEP Operating Companies) and FERC Electric Tariff Original Volume No. 8, effective January 8, 1998 in Docket ER 98–542–000 (Market-Based Rate Power Sales Tariff of the CSW Operating Companies). AEPSC respectfully requests waiver of notice to permit the attached Service Agreement to be made effective on or prior to February 16, 2003.

AEPSC states that a copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: April 7, 2003.

8. Southern California Edison Company

[Docket No. ER03–629–000]

Take notice that on March 17, 2003, Southern California Edison Company (SCE) tendered for filing the Amended and Restated Service Agreement for Wholesale Distribution Service (Agreement) between SCE and SCEs Generation Business Unit. SCE states that the Agreement provides the terms and conditions under which SCE provides Distribution Service to SCEs Generation Business Unit under FERC Electric Tariff, First Revised Volume No. 5.

SCE also states that copies of this filing were served upon the Public Utilities Commission of the State of California and SCEs Generation Business Unit.

Comment Date: April 7, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ;"e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7416 Filed 3–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2142–031-Maine]

FPL Energy Maine Hydro, LLC; Notice of Availability of Environmental Assessment

March 21, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new major license for the Indian Pond Hydroelectric Project (P–2142–031), located on the Kennebec River in Somerset and Piscataquis counties, Maine, and has prepared an environmental assessment (EA) for the project. The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for public inspection in the Public Reference Room of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The EA may also be viewed on the Internet at *http://www.ferc.gov* using the "FERRIS" link—select "Docket #" and follow the instructions. For assistance, please contact FERC online support at *FERCOnlineSupport@ferc.gov* or call toll-free 866–208–3676 or (202) 502–8659 (for TTY).

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Indian Pond Project No. 2142–031" to all comments.

Comments may also be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

For further information, contact John Costello at (202) 502–6119.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7418 Filed 3–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

March 21, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12428–000.

c. *Date filed:* December 17, 2002, supplemented February 26, 2003.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Melvern Dam Hydroelectric Project would be located on the Marais Des Cygnes River in Osage County, Kansas. The project would utilize the U.S. Army Corps of Engineers' existing Melvern Dam and Reservoir.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h: *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Melvern Dam and Reservoir, would consist of: (1) An 80-foot-long, 114-inch-diameter steel penstock, (2) a powerhouse containing one generating unit with an installed capacity of 2.0 megawatts, (3) a 1,500-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 12 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing

preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7417 Filed 3–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

March 21, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New license.

b. *Project No.:* 2726–012.

c. *Date filed:* July 29, 2002.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Upper and Lower Malad Hydroelectric Project.

f. *Location:* On the Malad River, in the Town of Hagerman, Gooding County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Robert W. Stahman, Idaho Power Company, 1221 West Idaho Street, Boise, Idaho 83707, (208) 388–2676.

i. *FERC Contact:* John Blair, (202) 502–6092 or *john.blair@FERC.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. The Commission encourages electronic filings.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *Description of the Project:* the project consists of (1) an upper diversion dam consisting of a gated spillway section 100 feet long and a flume section 123 long; (2) a concrete flume 4,635 feet long between the upper diversion dam and the upper intake structure; (3) the upper concrete intake structure 80.5 feet long and approximately 21 feet wide; (4) a steel penstock 10 feet in diameter and approximately 238 feet long connected to the upper powerhouse; (5) the upper reinforced concrete powerhouse containing one generating unit having an installed nameplate capacity of 8.27 megawatts; (6) a lower diversion dam consisting of a gated spillway section 163 feet long and a flume section 136 feet long; (7) a concrete flume 5,318 feet long between the lower diversion dam and the lower intake structure; (8) the lower concrete intake structure 85 feet long and approximately 23 feet wide; (9) a steel penstock 12 feet in diameter and approximately 301 feet long connected to the lower powerhouse; (10) the lower reinforced concrete powerhouse containing one generating unit having an installed capacity of 13.5 megawatts; and (11) other appurtenances.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7419 Filed 3–27–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6638–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed March 17, 2003 through March 21, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030119, Draft Supplement, AFS, MT, Threemile Stewardship Project, Proposed Short-Term and Long-Term Vegetation and Road Management Activities, Ashland Ranger District, Custer National Forest, Powder and Rosebud Counties, MT, Comment Period Ends: May 12, 2003, Contact: Elizabeth McFarland (406) 784–2344. This document is available on the Internet at: *http://www.fs.fed.us/rl/custer/.*

EIS No. 030120, Draft Supplement, AFS, UT, Long Deer Vegetation Management Project, To the South Spruce Ecosystem Rehabilitation Project, Implementation, Dixie National Forest, Cedar City Ranger District, Iron and Kane Counties, UT, Comment Period Ends: May 12, 2003, Contact: Phillip G. Eisenhauer (435) 865–3200.

EIS No. 0230121, Draft EIS, COE, CA, East Cliff Drive Bluff Protection and Parkway Project, Evaluate Alternatives for Coastal Bluff Erosion Protection, City of Santa Cruz, Santa Cruz County, CA, Comment Period Ends: May 12, 2003, Contact: Sarah Cameron (415) 977–8538.

EIS No. 030122, Final EIS, FHW, CA, CA–78/111 Brawley Bypass, Construction of an Expressway from CA–86 to CA–11, City of Brawley, Funding, Imperial County, CA, Wait Period Ends: April 28, 2003, Contact: Jeff Lewis (916) 498–5035.

EIS No. 030123, Final Supplement, JUS, CA, Pinal County Private Detention Facility, Updated Information, Single Contract for 3,000 Beds Possible Sites (1) Undeveloped Parcel of Land in the City of Eloy and the Existing Central Arizona Detention Center Located in Florence, Pinal County, AZ, Wait Period Ends: April 28, 2003, Contact: Charles Coburn (202) 307–9045.

EIS No. 030124, Draft EIS, NPS, DC, Rock Creek Park and the Rock Creek and Potomac Parkway Project, General Management Plan, Implementation, Washington, DC, Comment Period Ends: May 12, 2003, Contact: Adrienna Coleman (202) 282–1063. This document is available on the Internet at: *http://www.nps.gov/rocr.*

EIS No. 030125, Draft EIS, TVA, TN, Rarity Pointe Commercial Recreation and Residential Development on Tellico Reservoir Project, Request for TVA's Land and Approval of Water Use Facilities, Tellico Reservoir, Loudon County, TN, Comment Period Ends: May 12, 2003, Contact: Richard Toennisson (865) 632–8517.

EIS No. 030126, Draft EIS, AFS, UT, Monticello and Blanding Municipal Watershed Improvement Projects, Implementation, Manti-La Sal National Forest, Monticello Ranger District, San Juan County, UT, Comment Period Ends: May 12, 2003, Contact: Greg T. Montgomery (435) 587–2041.

EIS No. 030127, Draft EIS, BLM, WY, West Hay Creek Coal Lease Application, To Lease Federal Coal to the Buckskin Mine in Wyoming Powder River Basin, Campbell County, WY, Comment Period Ends: May 27, 2003, Contact: Patricia Karbs (307) 261–7600. This document is available on the Internet at: *http://www.wy.blm.gov/nepa/.*

EIS No. 030128, Draft EIS, NPS, AZ, Petrified Forest National Park General Management Plan Revision, Implementation, Navajo and Apache Counties, AZ, Comment Period Ends: May 30, 2003, Contact: Suzy Stutzman (303) 987–6671. This document is available on the Internet at: *http://planning.den.nps.gov/plans.cfm.*

EIS No. 030129, Draft EIS, FHW, ND, Liberty Memorial Bridge Replacement Project, Rehabilitate or Reconstruct Due to Poor and Deteriorating Structural, U.S. Coast Guard Permit and U.S. Army COE Section 10 and 404 Permits, Missouri River, Bismarck and Mandan, ND, Comment Period Ends: May 12, 2003, Contact: Mark Schrader Ext.111 (701) 250–4343.

EIS No. 030130, FINAL EIS, BLM, OR, Rogue National Wild and Scenic River Hellgate Recreation Area (Applegate River to Grave Creek) Management Plan, Implementation, Bedford District, Josephine County, OR, Wait Period Ends: April 28, 2003, Contact: Cori Cooper (541) 618–2428.

Amended Notices

EIS No. 030115, Draft EIS, FRC, CA, Pit 3, 4, 5 Hydroelectric Project, (FERC No. 233–081), Application for New License, Pit River, Shasta-Trinity National Forest, Shasta County, CA, Due: May 5, 2003, Contact: John Mudre (202) 502–8902. Revision of FR Notice Published on 3/21/2003: Correction to Document Status from Final to Draft.

Dated: March 25, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–7502 Filed 3–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6638–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–D65025–PA Rating EC1, County Line—Fourmile Project, Management Direction as Outlined in the Allegheny National Forest Land and Resource Management Plan, Implementation, Bradford Ranger District, Warren and McKean Counties, PA.

Summary: EPA expressed environmental concerns with impacts from erosion and sedimentation of streams associated with road construction, harvesting and reforestation treatments in Alternatives 2, 4 and 5. EPA supports Alternative 3 as the preferred alternative and suggested instituting measures to ensure no sediment transport offsite during storm events prior to re-establishment of ground cover after harvesting and reforestation treatments.

ERP No. D–AFS–K65248–CA Rating EC2, North Fork Fire Salvage Project, Harvest Salvage, Merchantable Timber Volume Sale and Sierra National Forest Land and Resource Management Plan, Implementation, Bass Lake Ranger District, Madera County, CA.

Summary: EPA expressed environmental concerns with potential adverse impacts to water quality given the only action alternative does not address consistency with EPA approved water quality standards.

ERP No. D–AFS–K65417–CA Rating LO, Blue Fire Forest Recovery Project, Proposal to Move the Existing Condition Caused by the Blue Fire of 2001 Towards the Desired Condition, Modoc National Forest, Warner Mountain Ranger District, Lassen and Modoc Counties, CA.

*Summary:*EPA has no objections to the proposed action provided full funding for completion of the proposed mitigation measures and monitoring described in the Draft EIS is provided.

ERP No. D–AFS–L65414–ID Rating EC2, Middle Little Salmon Vegetation Management Project, Timber Stands Current Condition Improvements, Payette National Forest, New Meadows Ranger District, Adam County, ID.

Summary: EPA expressed environmental concerns over the short term water quality and habitat impacts. EPA also expressed concerns over the need for additional information on road closure maintenance, enforcement and monitoring plans, and Tribal consultation and public participation.

ERP No. D–BIA–K60034–CA Rating EC2, Jamul Indian Village (Tribe) 101 Acre Fee-to-Trust Transfer and Casino Project, Implementation, San Diego County, CA.

Summary: EPA expressed environmental concerns regarding the project's potential impacts to ground water from effluent disposal and how Best Management Practices and mitigation would ensure compliance with EPA approved water quality standards. EPA also expressed concerns that the DEIS fully evaluated just one action alternative.

ERP No. D–COE–D11035–MD Rating LO, Aberdeen Proving Ground (APG) Project, Research and Development, Test and Evaluation Ordance of Military Equipment and Personnel Training, Chesapeake Bay, Hartford, Baltimore, Kent and Cecil Counties, MD.

Summary: EPA had no objections to the proposed action. EPA requested more information as to how the EIS would be integrated into the decision-making process at the Aberdeen Proving Ground. EPA also requested clarification whether an EIS or EA is being prepared for the Range Management Plan.

ERP No. D–COE–D35060–PA Rating EO2, Alleghany and Ohio Rivers Commercial Sand and Gravel Dredging Operations, Granting and Extending Permits for Continuance of Dredging, and U.S. Army COE Section 10 and 404 Permits Issuance, PA.

Summary: EPA expressed environmental objections because the DEIS did not adequately assess the potentially significant environmental impacts of the applicant's preferred alternative or explore the full range of alternatives available to reduce the adverse environmental impacts associated with this project. EPA also commented on the lack of information regarding specific permit conditions that are being proposed to mitigate resource damage related to the applicant's preferred alternative.

ERP No. D–COE–E01014–FL Rating EC2, Ona Mine Project, Construction and Operation of a Surface Mine for the Recovery of Phosphate Rock, Hardee County, FL.

Summary: EPA expressed environmental concerns for long-term reductions of groundwater reducing surface flows in the Peace River, Charlotte County's principal source of drinking water.

ERP No. D–FHW–G40172–TX Rating LO, TX–121 Highway Construction, I–30 to Farm-to-Market 1187 (FM 1187) Road, Funding, USCG Section 9, U.S. Army COE Section 10 and 404 Permits Issuance, Fort Worth, Tarrant County, TX.

Summary: EPA has no objections to the selection of the preferred alignment. EPA appreciates the opportunity to have participated in the development of the FHWA draft EIS.

ERP No. D–FRC–J03015–00 Rating EC2, Grasslands Pipeline Project, Interstate Natural Gas Pipeline System Construction and Operation, Docket No. CP02–037–000, WY, ND and MT.

Summary: EPA's main environmental concerns relate to potentially adverse impacts from construction to: (1) Wetlands, (2) sediment in streams and other waters, (3) establishment and spread of noxious weeds and (4) wildlife habitat. Additional evaluation, disclosure, and mitigation were requested. Cumulative impacts are associated with the Grassland Pipeline, related to proposed plans to produce coalbed methane gas in the Powder River Basin of Wyoming and Montana.

ERP No. D–FTA–G59000–LA Rating LO, Desire Streetcar Line Project, Restoration of Streetcar Service along North Rampart Street/St. Claude Avenue between Canal Street and Poland Avenue, City of New Orleans, LA.

Summary: EPA has no objections to the selection of the preferred alternative. EPA recommends additional air quality information to further strengthen the Final EIS.

ERP No. D–IBR–L39059–WA Rating NS, Banks Lake Drawdown Project, Proposal to Lower the Water Surface Elevation from 1565 feet to 1560 feet in August of Each Year, Columbia River, Douglas and Grant Counties, WA.

Summary: EPA used a screening tool to conduct a limited review of the draft EIS. Based on the screen, EPA does not foresee having any objections to the proposed project.

Therefore, EPA did not conduct a detailed review of the draft EIS.

ERP No. D–STB–G53008–TX Rating LO, Bayport Loop New Rail Line, Construction and Operation, Finance Docket No. 34079, Houston, Harris County, TX.

Summary: EPA has no objection to the selection of the preferred alternative.

ERP No. DA–FTA–L40205–00 Rating EC2, South Corridor Project a Portion of the South/North Corridor Project, Improvement to the Existing Urban Transportation System, Updated and Additional Information, Clackamas and Multnomah Counties, OR.

Summary: EPA has environmental concerns regarding aquatic resources, threatened and endangered species, community accessibility and potential construction impacts on hazardous waste sites.

ERP No DS–FTA–D40289–VA Rating LO, Norfolk Light Rail Transit Project, 8-Mile Light Rail Transit System Construction from the Western Terminus near Eastern Virginia Medical Center to an Eastern Terminus on Kempsville Road, City of Norfolk, VA.

Summary: EPA lacks objection to the project as proposed but recommends the HRT work with the Norfolk District Corps of Engineers to reduce further the 1.4 acres of wetland impacts during the design phase of the project.

Final EISs

ERP No. F–FHW–E40772–AL, Industrial Parkway Connector Project, Transportation Improvement, Lott Road/AL–217 to U.S. 45, Funding, U.S. Army COE Section 404 Permit and NPDES Permit Issuance, Mobile County, AL.

Summary: EPA continues to express environmental concern for impacts to wetlands and believes the document lacks sufficient information regarding the proposed wetlands mitigation site.

ERP No. F–FHW–F40406–00, Ironton-Russell Bridge Replacement Project, Structurally-Deficient and Functionally-Obsolete Bridge Replacement, Funding, NPDES, U.S. Coast Guard Section 9 Bridge Permits and U.S. Army COE Section 10 and 404 Permits Issuance, Lawrence County, OH and Greenup County, KY.

Summary: EPA has no outstanding environmental concerns and lacks objection to the project as proposed in the Final EIS.

ERP No. F–FHW–F54013–00, Chicago—St. Louis High-Speed Rail Project, Chicago to St. Louis Improvements to Enhance the Passenger Transportation Network, NPDES Permit and COE Section 404 Permit, Cook, Will, Kankakee Grundy, Livington, McLean, Sangemon, Macoupin, Jersey, Madison and St. Louis Counties, IL and St. Louis County, MO.

Summary: EPA has no significant environmental concerns with the proposed action. The concerns previously raised by EPA are not applicable to the preferred alternative selected in the Final EIS.

ERP No. F–FHW–H40174–IA, Avenue G Viaduct and Connecting Corridor, Access Improvement for Local Emergency Services and Safety Through Expanded Capacity across the Trail Corridor, Funding and NPDES Permit, Pottawattamie County, IA.

Summary: EPA lacks objection to the project as proposed in the final EIS but recommends a thorough asbestos inspection for properties to be demolished.

ERP No. F–FHW–L40199–WA, WA–509 Extension/South Access Road Corridor Construction Project, Funding and Possible US Army COE Section 404 Permit, Cities of SeaTac, Des Moines, Kent and Federal Way, King County, WA.

Summary: EPA has environmental concerns with the proposed project, specifically issues related to induced growth and potential impairment of air quality. The final EIS does not adequately discuss indirect and cumulative effects associated with the proposed project.

ERP No. F–FSA–A65173–00, Programmatic EIS—Emergency Conservation Program (ECP), Improvement and Expansion Plan, Emergency Funding to Farmers and Ranchers, Agricultural Lands of the United States.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FTA–E54011–FL, Tampa Rail Transportation Improvements Project, Light Rail Transit (LRT) or Diesel Multiple Unit (DMU) Vehicles, City of Tampa, Hillsborough County, FL.

Summary: EPA lacks objections to the project as described in the final EIS. EPA's previous concerns regarding the preferred alternative have been addressed.

ERP No. FS–COE–L32010–00, Columbia River Channel Improvement Project, Additional Information to Update the Disposal Plan and the Project Economics Plan, Columbia and Lower Williamette River Federal Navigation Channel, OR.

Summary: No formal comment letter was sent to the preparing agency.

Dated: March 25, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–7503 Filed 3–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7474–9]

Notice of Availability for FY 03 Enforcement and Compliance Assurance Multi-Media Assistance Agreements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Compliance (OC), within EPA's Office of Enforcement and Compliance Assurance (OECA), is soliciting proposals for a Environmental Compliance Grant program assistance for States and tribes in two focus areas: environmental enforcement training and supporting improved linkages between EPA and State/tribal systems. Grants will be in the range of $50,000–$200,000. The total number and amount of the awards will depend on the amount of funds made available.

DATES: Pre-proposals should not exceed 5 pages. (12 point font, on 8½ by 11 inch paper.) Pre-proposals must be received electronically or hard copy by May 5, 2003. Funding decisions will be made by late June based on the pre-proposals. Applicants selected to receive funds will be required to submit final proposals to the appropriate EPA Region by September 15, 2003.

ADDRESSES: Copies of Pre-proposals should be sent to David Piantanida (2222A), U.S. EPA—Ariel Rios South Rm 6149D, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, e-mail: *piantanida.david@epa.gov*, Tel: (202) 564–8318, Fax: (202) 564–0034; and simultaneously to the appropriate Regional Enforcement Coordinator. This document will be posted on the EPA's Office of Enforcement and Compliance Assurance Web site at *http://www.epa.gov/compliance/planning/state/grants.html.*

FOR FURTHER INFORMATION CONTACT: David Piantanida at (202) 564–8318.

SUPPLEMENTARY INFORMATION:

Eligibility and Authority

The funds available are from OECA's Multi-Media State and Tribal Assistance Grants (STAG) appropriation. Eligible applicants include States, tribes, inter-tribal consortia, territories, local governments, and multi-jurisdictional organizations. Where a lead State environmental agency exists, applicants should work with and coordinate through the lead State environmental agency.

EPA expects to award these grants under the following grant authorities: Clean Water Act, section 104; Federal Insecticide, Fungicide, and Rodenticide Act, section 20; Clean Air Act, section 103; Solid Waste Disposal Act, section 8001; Safe Drinking Water Act, section 1442 (c); Toxic Substances Control Act, section 10; Marine Protection, Research and Sanctuaries Act, section 203; Comprehensive Environmental Response, Compensation and Liability Act, section 311; National Environmental Policy Act, section 102(2)(F) for international awards; and Indian Environmental General Assistance Program Act. The applicable grant regulations for this grant program are in 40 CFR part 31 for State and local governments and Indian tribes.

Authority to enter into assistance agreements for the purposes described in this notice are delegated to OECA in EPA Delegation 1–47, Assistance Agreements for Economic, Social Science, Statistical, and Other Research, Development, Studies, Surveys, Demonstrations, Investigations, Public Education Programs, Training, and Fellowships.

Funding priorities must be allowable under 66.709 (Capacity Building Grants and Cooperative Agreements for States and Tribes) of the *Catalog of Federal Domestic Assistance* (CFDA).

Desired Projects

OECA will only consider funding projects for the two focus areas described below, and for projects which can be completed in 3 years or less. Projects will be evaluated for potential funding based on the extent to which they address the information below. Please note, applicants should not address both focus areas in their pre-proposals. Each focus area is separate and proposals from each category will be evaluated independently.

Table of Contents

1. Environmental Enforcement Training
2. Support Improved Linkages Between EPA and State/Tribal Systems:
(A) Permit Compliance System (PCS) Modernization
(B) Air Facility System (AFS)—Universal Interface (UI)

1. Environmental Enforcement Training

OECA's Office of Compliance is seeking ways to improve and build capacity among State and tribal personnel in the area of environmental enforcement training. We are looking for States/tribes or organizations to host training workshops or sponsor State and tribal personnel attendance at existing training programs (*e.g.*, inspector, case developer).

Since EPA has discretionary authority to ask States and tribes to conduct inspections on behalf of the Agency under each Federal environmental statute, strengthening enforcement skills through training is important. To ensure that State, local and tribal environmental personnel conduct and perform specific responsibilities appropriately, OECA will consider funding pre-proposals that fall into the following training areas:

—Inspector training and inspector training involving cross-training with other specialities—including cross-media, and criminal investigation,
—Single and multi-media enforcement for case developers,
—Basic and multi-media inspector/compliance training; and,
—Environmental benefits of enforcement cases.

Pre-proposal Criteria: All training pre-proposals will be evaluated and ranked based on the criteria outlined below. The following seven criteria and associated points will be used by EPA to evaluate the pre-proposals.

(a) (*10 points*) Clearly identify intended audience by identifying other States and tribes within an EPA region to host or participate in a workshop that includes training from the areas listed above.

(b) (*10 points*) Explicitly state and describe the training and verify that the particular training can accommodate the number of participants specified in the pre-proposal.

(c) (*25 points*) Description of course outline and content shows consistency with EPA Federal guidelines and is supportive of an authorized program (*e.g.*, training provides information on Federal inspection law and policy). Course content may also provide information on inspection issues that arise under State and tribal laws.

(d) (*10 points*) Pre-proposals that include development of new training must show evidence that existing course materials will be used (*e.g.*, EPA's NETI-West Basic Inspector Training Course materials). Funding should be used to revise/adapt existing training as much as possible and not used to duplicate training that is readily available from other sources.

(e) (*10 points*) All training funding pre-proposals must include payment of full travel and lodging costs for State and tribal training participants.

(f) (*15 points*) Address sharing results. Describe how you will share training materials and products (*e.g.*, archive training materials on CD–ROM; make available on Web site; distribute training materials at conferences).

(g) (*20 points*) Identify output and outcome measures (*i.e.*, identify number/type of personnel to be trained as well as describe how this training will improve skillfulness or job performance). Describe how success will be measured (*e.g.*, use of questionnaires and surveys before and after training).

Applicants are encouraged to consult and utilize EPA's Guide to Compliance Assistance Outcome Measurement. This document is available at *http://es.epa.gov/oeca/perfmeas/full-oec.pdf*. If you do not have access to the Internet, you may request a hard copy by contacting David Piantanida on (202) 564–8318.

2. Support Improved Linkages Between EPA and State/Tribal Systems

It is critical that State or tribal data systems be able to report data to EPA that is consistent with EPA/State data standards and in line with new requirements of media data systems (*e.g.* Permit Compliance System) being modernized as well as consistent with current requirements of legacy media systems. OECA is making funds available to support the provision of quality data to EPA from States and/or tribes through improved system interfaces, data linkages, and data clean-up. States/tribes need to make sure their systems are compatible with EPA's systems and that they can accurately transmit data to EPA. The funds will allow the States/tribes to go out and procure the expertise they need in order to do that.

This notice also solicits projects that assist States/tribes with reporting of consistent streamlined environmental compliance data to EPA including the following:

(A) *Permit Compliance System (PCS) Modernization:* Grant funding would support State efforts to procure technical assistance and technical expertise for State system modifications to ensure the continued flow of nationally required National Pollutant Discharge Elimination System (NPDES) data from State systems to the PCS. This effort would ensure that States will be able to continue to meet delegation and regulatory reporting requirements to EPA. Areas of technical assistance may include: (1) Support for modification of existing State/tribal system interfaces or development of new State/tribal system interfaces to the new modernized system format (IDEF/XML format, revised flat file or batch card format), (2) support to develop capability of State/tribal systems to incorporate new data requirements for new NPDES programs (*i.e.*, biosolids, CAFO, SSO/CSO, storm water), and (3) data clean-up/data migration efforts.

(B) *Air Facility System (AFS) Universal Interface (UI):* Grant funding would support State/tribal efforts to procure technical assistance to incorporate the AFS UI software with their current systems resulting in improved system interfaces, data linkages and data clean-up; and to support State/tribal efforts to build system capability to implement the air compliance monitoring strategy (CMS) data reporting requirements. To support the CMA, grant funding would assist States/tribes to streamline the capture and transmission of nationally required air compliance and enforcement data with special emphasis on reporting of the following data: (a) Stack tests and results; (b) compliance certification due, received, and reviewed dates; and (c) information on compliance certification deviations and certification review results.

Pre-proposal Criteria: All support pre-proposals will be evaluated and ranked based on the criteria outlined below. The following three criteria and associated points will be used by EPA to evaluate the pre-proposals:

(a) (*20 points*) The pre-proposal must describe briefly the existing State/tribal data system;

(b) (*30 points*) The pre-proposal must describe briefly the technical aspects of methods for currently exchanging nationally required NPDES and AFS data with EPA; and,

(c) (*50 points*) Pre-proposal must clearly identify and describe the States/tribes development efforts to support the modernized system formats (*i.e.*, revised IDEF/XML format, revised flat file or batch card format, or AFS UI interface software), to incorporate new data requirements for NPDES programs (*i.e.*, biosolids, CAFO, SSO/CSO, storm water) or the CMS data reporting requirements, and support for data clean-up, linkage, and migration efforts.

Past Performance

In addition to the above criteria, EPA will also be looking at past performance of a grantee under this grant program (*e.g.*, timely and complete quarterly/semi-annual reports, results/outcomes are apparent during the project, final reports are timely and complete). Where there are two pre-proposals that have been ranked equally, the one with a better track record will win based on their past performance. If a grantee should have no record under this program, they will not be unfairly penalized.

Funding

The grants/cooperative agreements should be in the range of $50,000 to $200,000, although proposals below or above that range will be considered. The total number and amount of the awards will depend on the amount of funds made available. The U.S. EPA reserves the right to make no awards under this solicitation.

State and tribal matching funds are not required. However, preference will be given to pre-proposals which also make a commitment of State or tribal resources towards the total project cost. This can be State or tribal personnel salary dedicated to the project, cash contribution to the project budget or other "in kind" contributions. The value of donated or "in-kind" services in the performance of a project should be considered in accordance with OMB Circular A–87, "Cost Principles for State, Local, and Indian Tribal Governments." Lastly, Federal funds cannot generally be used to provide a match or cost-share for other Federal projects.

EPA can not predict that additional funds for these focus areas will be available in future years. Therefore, States and tribes should assume that these funds will be available on a one-time only basis and should not propose projects requiring annual funding.

Process and Schedule

Electronic pre-proposals must be received by EPA by May 2, 2003, and should follow the format below. Pre-proposals should be submitted simultaneously to the appropriate Regional Enforcement Coordinator, and to David Piantanida, OECA, (*see* Contact Information below.) Funding decisions will be made by late June 2003 based on the pre-proposals. Applicants selected to receive funds will be required to submit final proposals electronically by August 29, 2003. Regions will provide application materials to selected applicants.

FOIA, CBI, and Enforcement Screening: Applicants should be aware that pre-proposals submitted under this or any other EPA grant program are subject to the Freedom of Information Act (FOIA). This means that anyone can request and receive copies of all the information submitted in your grant proposal. If your application contains any Confidential Business Information (CBI), be sure to highlight it so the confidentiality can be protected in the event of a FOIA request.

Proposed Milestones for 2003 OECA Multi Media Assistance Agreements

May 5—Electronic Pre-Proposals due simultaneously to the appropriate EPA Regional Enforcement Coordinator, and David Piantanida, OECA. (*See* Contact Information below.)

Late June—EPA notifies all applicants via e-mail of funding decisions.

July 31—Selected recipients receive final application materials from EPA Regional office and name and contact information of Regional Project Officer and Regional Grants Contact.

September 15—Final Proposals/Work Plans due to Regional Project Officers and Regional Grants Contact, and David Piantanida, OECA.

September—Grants awarded.

Format for Pre-Proposals

Pre-proposals should not exceed 5 pages and follow the format below:

I. Project Information

State/Tribe and Department:
Title of Project:
Focus Area: (From Notice of Availability)
Total Funds Requested from EPA:
Total Project Cost: (*Including state/tribe cash and in-kind contributions*)
Contact Person: (Name, title, address, phone, fax, & email)
Preferred Assistance Agreement: (Grants or cooperative agreements)

II. Summary

—Summary of the problem being addressed;
—Summary of project goal(s);
—Summary of project components;
—Summary of how the project components will address the problem & attain the goals.

III. Summary Work Plan

—Proposed activities—List and describe activities and how they relate to the evaluation elements listed under Desired Projects above;
—Measures—How will the success of the project be measured? (*E.g.*, training—return on investment and number trained.) Include both output and outcome measures.
—Sharing results—How will the results of the project be shared across States/tribes? (*E.g.*, training—how will the archived materials be disseminated to other States/tribes?)

IV. Project Milestones

—List project milestones with estimated dates, including estimated duration of project.

V. Project Costs

—Include an itemized budget for all project costs—distinguish the funds

requested from any State/tribe contributions (in kind or other).

Reports

Awardees will be required to submit semi-annual and final progress reports to their project officer and to David Piantanida at the address below. A template reporting form will be provided to all funded grantees. Recipients will also be required to complete annual Financial Status Reports. All reports must be prepared in either Word or Wordperfect formats and delivered electronically to the appropriate project officer and to David Piantanida.

Contact Information

For more information regarding this process, please contact David Piantanida at the address below: David Piantanida (2222A), US EPA—Ariel Rios South Rm 6149D, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. *piantanida.david@epa.gov*. Tel: (202) 564–8318. Fax: (202) 564–0034.

EPA Regional Contacts

EPA Region I

Enforcement Coordinator: Ken Moraff—*moraff.ken@epa.gov*.
Enforcement Division Director: Sam Silverman—*silverman.sam@epa.gov*.

EPA Region II

Enforcement Coordinator: Barbara McGarry—*mcgarry.barbara@epa.gov*.
Enforcement Division Director: Richard Caspe—*caspe.richard@epa.gov*.

EPA Region III

Enforcement Coordinator: Samantha Fairchild—*fairchild.samantha@epa.gov*.

EPA Region IV

Enforcement Coordinators: Sherri Fields—*fields.sherri@epa.gov*. Bruce Miller—*miller.bruce@epa.gov*.
Enforcement Division Director: William Anderson—*anderson.william@epa.gov*.

EPA Region V

Enforcement Coordinator: Tinka Hyde—*hyde.tinka@epa.gov*.

EPA Region VI

Enforcement Coordinator: Walter Biggins—*biggins.walter@epa.gov*.
Enforcement Division Director: Samuel Coleman—*coleman.samuel@epa.gov*.

EPA Region VII

Enforcement Coordinator: Cecilia Tapia—*tapia.cecilia@epa.gov*.

EPA Region VIII

Enforcement Coordinator: Eddie Sierra—*sierra.eddie@epa.gov*.
Enforcement Division Director: Carol Rushin—*rushin.carol@epa.gov*.

EPA Region IX

Enforcement Coordinator: Jim Grove—*grove.jim@epa.gov*.

EPA Region X

Enforcement Coordinator: Lauris Davies—*davies.lauris@epa.gov*.

Dated: March 24, 2003.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 03–7509 Filed 3–27–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7474–5]

Draft Handbook for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is making available the draft *Handbook for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems* (referred to here as the Management Handbook) for public review and comment. The purpose of the Management Handbook is to develop a step-by-step guide for regulators and service providers to implement a voluntary management program for decentralized wastewater treatment systems. The Management Handbook supports EPA's *Voluntary Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems* (referred to here as the Management Guidelines) published elsewhere in today's **Federal Register**.

DATES: Comments are requested by May 27, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in section I.B.

FOR FURTHER INFORMATION CONTACT: Any questions regarding the content of EPA's draft *Handbook for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems* can be addressed to Joyce Hudson by e-mail at *hudson.joyce@epa.gov* or via U.S. mail to Joyce Hudson, U.S. EPA, Office of Wastewater Management (4204M), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies Of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. OW–2002–0017. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.A.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

3. Hardcopy. Copies of the document may also be obtained by downloading the document at *http://www.epa.gov/owm/mtb/decent/*, by calling the USEPA Publications Clearinghouse at 1–800–490–9198 or submitting a request by mail at USEPA Publications Clearinghouse, PO Box 42419, Cincinnati, OH 45242.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OW–2002–0017. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *ow-docket@epa.gov*, Attention Docket ID No. OW–2002–0017. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. Email addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send an original and 3 copies of your comments to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention: Docket ID No. OW–2002–0017.

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention: Docket ID No. OW–2002–0017. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.A.1.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

Decentralized wastewater treatment systems (commonly referred to as septic systems, private sewage systems, individual sewage systems, onsite sewage disposal systems or package plants) include onsite and clustered systems used to collect, treat, and disperse or reclaim wastewater from individual dwellings or businesses, or small communities or service areas. State agencies report that some of these systems have failed because of inappropriate siting or design or inadequate long-term maintenance. Historically high failure rates in some areas indicate a need for better management of these systems to protect public health and water quality. However, when onsite and clustered wastewater treatment systems are properly managed, they may, in many cases, be the most practical and least expensive way to treat household wastewater. In response to the need for improved management, EPA is providing the Management Guidelines to establish a benchmark for effective management. The purpose of the Management Guidelines is to raise the level of performance of onsite and clustered wastewater treatment systems through improved management programs. The draft Management Handbook supports the Voluntary Management Guidelines by providing

details on assessing, developing, implementing, and sustaining a viable management program.

All aspects of a management program are covered, including public education and participation, planning, performance criteria, site evaluation, design, construction, operation and maintenance, residuals management, training and certification/licensing, inspections/monitoring, corrective actions, record keeping/reporting, and financial assistance. To address these elements of comprehensive management programs, the Management Handbook will include the following:

- Public awareness and education tools
- Case studies of management programs
- Options for inventories
- Funding examples
- Model codes and ordinances
- Examples of septage management

The primary audience for the Management Handbook are state, tribal and local regulators and community officials that are responsible for regulating onsite and clustered systems.

Onsite and clustered wastewater treatment systems currently serve about 25 percent of U.S. homes and approximately 33 percent of new development. The vast majority of these systems are conventional onsite wastewater treatment systems (septic systems). States report that these wastewater treatment systems have failed because of inappropriate siting or design or inadequate long-term maintenance and that septic tank systems constitute the third most common source of ground water contamination. Historically high failure rates in some areas indicate a need for better management of these systems to protect public health and water quality. When onsite and clustered wastewater treatment systems are properly managed, they may, in many cases, be the most practical and least expensive way to treat household wastewater.

In April, 1997, EPA prepared its "Response to Congress on the Use of Decentralized Wastewater Treatment Systems." The report concluded that decentralized wastewater treatment technologies offer a cost-effective, long term wastewater treatment solution for many communities. However, the report emphasized that decentralized technologies must be implemented in the context of a responsible management program to consistently achieve water quality and public health goals. The report identified the current lack of management as a barrier to successfully applying these otherwise promising technologies.

In response to the need for improved management, EPA prepared a concept paper in the spring of 1999, which received considerable input from various stakeholders, including other federal agencies, state health agencies, environmental groups, trade associations and public interest groups. Based on comments received, EPA developed the draft Management Guidelines which were published in October 2000, along with an annotated outline of this draft handbook. Comments were once again solicited, resulting in the final Management Guidelines and this draft Management Handbook.

Dated: March 18, 2003.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water.

[FR Doc. 03–7505 Filed 3–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7474–4]

Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is making available the final *Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems* (referred to here as the Management Guidelines). The purpose of the Management Guidelines is to improve the level of performance of decentralized wastewater treatment systems nationally through improved management programs. The Management Guidelines will help improve system performance by raising the quality of management programs, establishing minimum levels of activity, and institutionalizing the concept of management. Implementation of the Management Guidelines will also provide a greater range of options for cost-effectively meeting wastewater treatment needs and meeting water quality and public health goals. The primary audience for the Management Guidelines are state, tribal and local regulators and community officials that are responsible for regulating onsite and clustered systems.

FOR FURTHER INFORMATION CONTACT: Any questions regarding the content of the *Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems* can be addressed to Joyce Hudson by e-mail at *hudson.joyce@epa.gov* or via U.S. mail to Joyce Hudson, U.S. EPA, Office of Wastewater Management (4204M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Decentralized wastewater treatment systems (commonly referred to as septic systems, private sewage systems, individual sewage systems, onsite sewage disposal systems or package plants) include onsite and clustered systems used to collect, treat, and disperse or reclaim wastewater from individual dwellings, businesses, or small communities and service areas. State agencies report that some of these systems have failed because of inappropriate siting or design or inadequate long-term maintenance. Historically high failure rates in some areas indicate a need for better management of these systems to protect public health and water quality. However, when onsite and clustered wastewater treatment systems are properly managed, they may, in many cases, be the most practical and least expensive way to treat household wastewater. In response to the need for improved management programs, EPA has developed the Management Guidelines to establish a benchmark for effective management. The purpose of the Management Guidelines is to raise the level of performance of onsite and clustered wastewater treatment systems through improved management programs. The Management Guidelines will be supplemented with a handbook for state, tribal, and local governments to use in upgrading management programs. The draft *Handbook for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems* is being published elsewhere in today's **Federal Register** for public comment.

The Management Guidelines present a set of five model programs based on a comprehensive approach that relies on coordinating the responsibilities and actions among the state, tribal or local regulatory agency, the management entity or service provider and the system owner. The level of management needed increases as the sensitivity of the environment and/or the degree of technological complexity increases. A program's designation increases progressively from Model Program 1 through Model Program 5, reflecting the increased level of management activities needed to achieve increasing water quality and public health goals. Adoption of the Management Guidelines is voluntary, however, EPA encourages states and communities to consider them as a basis for improving their onsite and clustered wastewater management program.

The guidelines apply to both existing communities and to areas of new development that use onsite and clustered wastewater treatment systems of any size for residential and commercial wastewater treatment and dispersal.

Background. Onsite and clustered wastewater treatment systems currently serve about 25 percent of U.S. homes and approximately 33 percent of new development. States report that these wastewater treatment systems have failed because of inappropriate siting or design or inadequate long-term maintenance and that septic tank systems constitute the third most common source of ground water contamination.

In April, 1997, EPA prepared its *Response to Congress on the Use of Decentralized Wastewater Treatment Systems.* The report concluded that decentralized wastewater treatment technologies offer a cost-effective, long term wastewater solution for many communities. However, the report emphasized that decentralized technologies must be implemented in the context of a responsible management program to consistently achieve water quality and public health goals. The report identified the current lack of management as a barrier to successfully applying these otherwise promising technologies.

In response to the need for improved management, EPA prepared a concept paper in the spring of 1999, which received considerable input from various stakeholders, including other federal agencies, state health agencies, environmental groups, trade associations and public interest groups. The result was a notice of availability of the draft *Guidelines for Management of Onsite/Decentralized Wastewater Treatment Systems* which was published in the **Federal Register** on October 6, 2000 (65 FR 59840–59841) for public comment and included an annotated outline of an accompanying manual/handbook. During follow up outreach efforts conducted by EPA, stakeholders raised several key issues concerning the voluntary nature of the Guidelines, their flexibility, and possible implementation issues. EPA has addressed those issues and has received support from representatives of public and private organizations who believe national guidelines are important.

You can get copies of the Management Guidelines by downloading the document at *http://www.epa.gov/owm/mtb/decent/.* Hard copies may be obtained from USEPA Publications Clearing House, PO Box 42419, Cincinnati, OH 45242. You may access this **Federal Register** notice electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

Dated: March 18, 2003.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water.

[FR Doc. 03–7506 Filed 3–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7474–8]

Proposed Administrative Cost Recovery Agreement under CERCLA Section 122(h) for Recovery of Past Costs at the Sealand Restoration Superfund Site, Lisbon, St. Lawrence County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement, entered into pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of past response costs concerning the Sealand Restoration Superfund Site ("Site") located in Lisbon, St. Lawrence County, New York. The settlement is between the U.S. Environmental Protection Agency ("EPA") and the General Motors Corporation ("GMC"). The settlement requires GMC to pay $430,000.00 to EPA, in reimbursement of past response costs incurred with respect to the Site. The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), for all costs that EPA or the U.S. Department of Justice on behalf of EPA paid at or in connection with the Site through September 30, 2002. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the EPA, Region 2, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before April 28, 2003.

ADDRESSES: The proposed settlement is available for public inspection at the United States Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866. A copy of the proposed settlement may be obtained from James Doyle, Assistant Regional Counsel, Office of Regional Counsel, New York/Caribbean Superfund Branch, EPA, Region 2, 290 Broadway, 17th Floor, New York, New York 10007–1866. Comments should reference the Sealand Restoration Superfund Site located in Lisbon, St. Lawrence County, New York. Requests for a copy of the agreement should reference Docket No. CERCLA–02–2003–2007. Any comments or requests should be addressed to James Doyle at the above address.

FOR FURTHER INFORMATION CONTACT: James Doyle, Assistant Regional Counsel, Office of Regional Counsel, New York/Caribbean Superfund Branch, EPA, Region 2, 290 Broadway, 17th Floor, New York, New York 10007–1866. Telephone: (212) 637–3165.

Dated: March 14, 2003.

William J. Muszynski,

Deputy Regional Administrator, United States Environmental Protection Agency, Region II.

[FR Doc. 03–7508 Filed 3–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL: 7474–7]

Proposed Covenant Not To Sue Under CERCLA Section 122(h) Contained in Administrative Order on Consent, Index No. CERCLA–02–2002–2025, Shenandoah Road Groundwater Contamination Superfund Site, East Fishkill, Dutchess County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42

U.S.C. 9622(i), notice is hereby given of a proposed covenant not to sue under section 122(h) of CERCLA, 42 U.S.C. 9622(h), contained in Administrative Order on Consent, Index No. CERCLA–02–2002–2025 ("Order"), that has been issued in connection with the Shenandoah Road Groundwater Contamination Superfund Site, East Fishkill, Dutchess County, New York ("Site"). The Order was issued on September 27, 2002, by the U.S. Environmental Protection Agency ("EPA" or the "Agency"). Under the Order, International Business Machines Corporation ("IBM") will conduct a remedial investigation and feasibility study ("RI/FS") for the Site and reimburse EPA for the costs of overseeing the work. Pursuant to Paragraph 75 of the Order, EPA is granting IBM a covenant not to sue for $150,000 of EPA's past response costs. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the covenant not to sue. The Agency will consider all comments received and may modify or withdraw its consent to the covenant not to sue if comments received disclose facts or considerations that indicate that the proposed covenant not to sue is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA, Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before April 28, 2003.

ADDRESSES: The Order containing the proposed covenant not to sue is available for public inspection at the United States Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866. A copy of the Order containing the proposed covenant not to sue may also be obtained from Laura Y. McDavid, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, 17th Floor, 290 Broadway, New York, New York 10007–1866. Requests for a copy of the Order should reference Index No. CERCLA–02–2002–2025. Any comments or requests should be addressed to Ms. McDavid and should reference the Shenandoah Road Groundwater Contamination Superfund Site, East Fishkill, Dutchess County, New York.

FOR FURTHER INFORMATION CONTACT: Laura Y. McDavid, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3179.

Dated: March 19, 2003.

William J. Muszynski, P.E.,

Deputy Regional Administrator, U.S. Environmental Protection Agency, Region II.

[FR Doc. 03–7507 Filed 3–27–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–03–50–B (Auction No. 50); DA 03–372]

Narrowband PCS Spectrum Auction Revised Inventory and Start Date for Auction No. 50; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures, minimum opening bids, and revised inventory and start date for the upcoming auction of narrowband PCS licenses. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 50 is scheduled to begin on September 24, 2003.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Christopher M. Shields, Legal Branch, or Jeff Crooks, Auctions Operations Branch, at (202) 418–0660; Lisa Stover, Auctions Operations Branch, at (717) 338–2888, Media Contact: Lauren Kravetz at (202) 418–7944, Commercial Wireless Division: Policy and Rules Branch, Amal Abdallah at (202) 418–7307 or Evan Baranoff at (202) 418–7142; Licensing and Technical Analysis Branch, JoAnn Epps or Dwain Livingston, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 50 Procedures Public Notice* released on February 7, 2003. The complete text of the *Auction No. 50 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. *The Auction No. 50 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. This document is also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/50/*.

I. General Information

A. Introduction

1. By the *Auction No..50 Procedures Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for the upcoming Narrowband PCS Spectrum Auction (Auction No. 50). The Bureau also announces a new date for the start of Auction 50 and a revised license inventory.

2. On November 26, 2002, in accordance with the Balanced Budget Act of 1997, the Bureau released a public notice seeking comment on reserve prices or minimum opening bids and auction procedures to be used in the Narrowband PCS Spectrum Auction (Auction No. 50). The *Auction No. 50 Comment Public Notice*, 67 FR 72417 (December 5, 2002), announced that Auction No. 50 would include regional and MTA licenses. The Bureau received one comment in response to the *Auction No. 50 Comment Public Notice*. No reply comments were submitted.

3. Space Data proposed that the Commission adopt a combinatorial bidding scheme for Auction No. 50. Space Data contends that the regional licenses are uniquely complementary, because in combination, they effectively constitute a nationwide license and will be more highly valued as a combined package by prospective auction participants intending to deploy nationwide service.

4. After consideration of Space Data's comments, the Bureau has concluded that it may be appropriate to use package bidding for the auction of the regional licenses. Accordingly, by this public notice the Commission:

i. Revises the license inventory for Auction No. 50 by removing the regional narrowband PCS licenses from Auction No. 50. Auction No. 50 will include only the MTA licenses.

ii. Revises the starting date for Auction No. 50, which will commence on September 24, 2003.

5. The Bureau notes that the regional narrowband PCS licenses will be included in Auction No. 51. It will announce the dates for Auction No. 51 and seek comment on a package bidding auction design and other auction procedures in a public notice.

i. Background of Proceeding

6. In the *PCS First Report and Order*, 58 FR 42681 (August 11, 1993), the Commission provided for the operation of narrowband PCS in three one-megahertz blocks in the 900 MHz band. The Commission broadly defined PCS as mobile and fixed communications offerings that serve individuals and businesses and that can be integrated with a variety of competing networks. The Commission also adopted a spectrum allocation and channelization plan, licensing rules, and technical standards for narrowband PCS. In the *Competitive Bidding Second Report and Order*, 59 FR 22980 (May 4, 1994), the Commission determined that, pursuant to section 309(j) of the Communications Act of 1934, as amended, PCS is subject to competitive bidding in the case of mutually exclusive applications. In the *Competitive Bidding Third Report and Order*, 59 FR 26741 (May 24, 1994) the Commission established competitive bidding rules specifically for narrowband PCS.

7. Subsequently, in the *Narrowband Second Report and Order and Second Further Notice of Proposed Rule Making*, 65 FR 35843 (June 6, 2000), the Commission adopted modifications to its service rules for narrowband PCS. Specifically, the Commission: (i) Adopted Major Trading Areas ("MTAs") for future licensing of narrowband PCS; (ii) eliminated the restriction, which only applied to 100 kilohertz of the 3 megahertz blocks allocated for narrowband PCS, that limited eligibility for acquiring narrowband PCS response channels to existing paging licensees; (iii) modified the construction and minimum coverage requirement for narrowband PCS spectrum by allowing licensees to meet a "substantial service" alternative; (iv) adopted Subpart Q of Part 1 of the Commission rules to apply to narrowband PCS; and (v) eliminated the narrowband PCS spectrum aggregation limit, finding that it is not necessary to prevent an undue concentration of licenses. In the *Third Narrowband Report and Order and Order on Reconsideration*, 66 FR 29911 (June 4, 2001), the Commission modified its channel band plan to allow for the licensing of narrowband PCS spectrum for eight additional nationwide licenses and seven licenses in each of the 51 MTAs. Further, the Commission channelized and licensed the one megahertz of narrowband spectrum that had been held in reserve and re-channelized 712 kilohertz of previously channelized spectrum for which licenses had not been auctioned. With that action, the Commission resolved the remaining issues concerning narrowband PCS in preparation for auctioning licenses for the remaining narrowband PCS spectrum. In 2001, the Commission conducted an auction of nationwide and MTA narrowband PCS licenses in Auction No. 41.

ii. Licenses to Be Auctioned

8. The licenses available in Auction No. 50 will include 48 Major Trading Area (MTA) Personal Communications Service (PCS) licenses. The spectrum to be auctioned remains unsold from Auction No. 41, which closed on October 16, 2001. A complete list of licenses available for Auction No. 50 is included as Attachment A of the *Auction No. 50 Procedures Public Notice*.

9. The following table describes the licenses that will be auctioned:

Channel number	Channel description	Frequency bands	Bandwidth (kHz)
	MTA Licenses		
26	One 50 kHz unpaired channel	901.35–901.40 MHz	50
27	One 50 kHz unpaired channel	901.40–901.45 MHz	50
29	One 50 kHz/50 kHz paired channel	901.95–902.00, 930.80–930.85 MHz	100
30	One 50 kHz/100 kHz paired channel	901.65–901.70, 930.30–930.40 MHz	150
31	One 50 kHz/150 kHz paired channel	901.70–901.75, 930.85–931.00 MHz	200
32	One 12.5 kHz/100 kHz paired channel	901.8375–901.8500, 940.9–941.0 MHz	112.5
MTA Subtotal			662.5
kHz			

(**Note:** For Auction No. 50, licenses are not available for every channel number listed in the table in every market. See Attachment A of the *Auction No. 50 Procedures Public Notice* to determine which licenses will be offered.)

B. Rules and Disclaimers

i. Relevant Authority

10. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the narrowband services, contained in title 47, part 24 and part 90 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations.

11. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in the *Auction No. 50 Procedures Public Notice;* the *Auction No. 50 Comment Public Notice;* the *Part 1 Fifth Report and Order*, 65 FR 52401 (August 29, 2000), (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures); the *Narrowband PCS R&O/Further Notice;* 62 FR 27507 (May 20, 1997), the *Narrowband Second Report and Order and Second Further Notice of Proposed Rulemaking;* and the *Third Narrowband Report and Order and Order on Reconsideration.*

12. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions.* Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554 or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or

via e-mail qualexint@aol.com. When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 01–135 for the *Third Narrowband Report and Order and Order on Reconsideration*).

ii. Prohibition of Collusion

13. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Bidders competing for licenses in the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

14. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering the same geographic areas. However, all applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for licenses covering the same geographic areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

15. In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, §§ 1.65 and 1.2105 require an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

16. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G of the *Auction No. 50 Procedures Public Notice.*

iii. Due Diligence

17. Potential bidders seeking licenses for MTAs that border Canada or Mexico will be subject to on-going coordination arrangements with those respective countries. Potential bidders are also subject to the Interim Sharing Arrangement with Canada for the Bands 901–902 MHz, 930–931 MHz, and 940–941 MHz and to any restrictions that arise from future agreements with Canada or Mexico.

18. Potential bidders also should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA") waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensees. In addition, certain judicial proceedings that may relate to particular applicants or incumbent licensees or the licenses available in Auction No. 50 may be commenced, may be pending, or may be subject to further review. The Bureau notes that resolution of these matters could have an impact on the availability of spectrum in Auction No. 50. Some of these matters (whether before the Commission or the courts) may not be resolved by the time of the auction.

19. Potential bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 50.

20. Potential bidders may obtain information about licenses available in Auction No. 50 through the Bureau's licensing databases on the World Wide Web at *http://wireless.fcc.gov/uls.* Potential bidders should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414–1250 (voice) or (202) 414–1255 (TTY), or via e-mail at *ulscomm@fcc.gov.* The hotline is available to assist with questions Monday through Friday, from 8 AM to 6 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded.* The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in, or near, the MTA for which they plan to bid.

iv. Bidder Alerts

21. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

22. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

23. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 50 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than $25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

24. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 50 may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

v. National Environmental Policy Act ("NEPA") Requirements

25. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

26. The auction will begin on Wednesday, September 24, 2003. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

27. Auction No. 50—Narrowband PCS.

iii. Bidding Methodology

28. The bidding methodology for Auction No. 50 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

29. The following is a list of important dates related to Auction No. 50:

Auction Seminar	July 30, 2003
Short-Form Application (FCC FORM 175)	August 8, 2003; 6 p.m. e.t.
Upfront Payments (via wire transfer)	August 26, 2003; 6 p.m. e.t.
Mock Auction	September 19, 2003
Auction Begins	September 24, 2003

v. Requirements for Participation

30. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. e.t., August 8, 2003.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. e.t., August 26, 2003.
- Comply with all provisions outlined in the *Auction No. 50 Procedures Public Notice.*

vi. General Contact Information

31. The following is a list of general contact information relating to Auction No. 50.

General Auction Information:	FCC Auctions Hotline, (888) 225–5322, Press Option #2, or direct (717) 338–2888, Hours of service: 8 a.m.–5:30 p.m. ET.
General Auction Questions	
Seminar Registration	
Auction Legal Information:	Auctions and Industry Analysis Division, Legal Branch (202) 418–0660.
Auction Rules, Policies, Regulations	
Licensing Information:	Commercial Wireless Division, (202) 418–0620.
Rules, Policies, Regulations	
Licensing Issues	
Due Diligence	
Incumbency Issues	
Technical Support:	FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY), Hours of service: Monday through Friday 8 a.m. to 6 p.m. E.T.
Electronic Filing	
Automated Auction System	
Payment Information:	FCC Auctions Accounting Branch, (202) 418–0578 or (202) 418–0496, (202) 418–2843 (Fax).
Wire Transfers	
Refunds	
Telephonic Bidding	Will be furnished only to qualified bidders.

FCC Copy Contractor: Additional Copies of Commission Documents	Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, (202) 863–2898 (Fax), *qualexint@aol.com* (E-mail).
Press Information	Lauren Kravetz (202) 418–7944.
FCC Forms	(800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area), *http://www.fcc.gov/formpage.html.*
FCC Internet Sites	*http://www.fcc.gov,* *http://wireless.fcc.gov/auctions* *http://wireless.fcc.gov/uls.*

II. Short-Form (FCC Form 175) Application Requirements

32. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 50 Procedures Public Notice.* The short-form application seeks the applicant's name and address, legal classification, status, small or very small business bidding credit eligibility, identification of the license(s) sought, the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed in section II.E (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

A. License Selection

33. In Auction No. 50, Form 175 will include a mechanism that allows an applicant to create customized lists of licenses. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may apply for all the licenses in the customized list by using the "Save all filtered licenses" option; select and save individual licenses separately from the list; or create a second customized list without selecting any of the licenses from the first list. Applicants also will be able to select licenses from one customized list and then create a second customized list to select additional licenses.

B. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

34. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an "Exhibit A" providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

C. Consortia and Joint Bidding Arrangements (FCC Form 175 (Exhibit B)

35. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. As discussed, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants for the same geographic license area(s) after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC Form 175.

36. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

D. Eligibility

i. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

37. In the *Narrowband Second Report and Order and Second Further Notice of Proposed Rule Making,* the Commission adopted bidding credits to promote and facilitate the participation of small businesses in the competitive bidding for licenses in the narrowband PCS service.

38. Bidding credits are available to small and very small businesses, or consortia thereof, (as defined in 47 CFR 1.2110(c)). A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests:

- A bidder with attributed average annual gross revenues of not more than $40 million for the preceding three years receives a 15 percent discount on its winning bids for narrowband PCS licenses;
- A bidder with attributed average annual gross revenues of not more than $15 million for the preceding three years receives a 25 percent discount on its winning bids for narrowband PCS licenses.

39. Bidding credits are not cumulative. A qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but not both.

ii. Tribal Land Bidding Credit

40. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* section V.D. of the *Auction No. 50 Procedures Public Notice.*

iii. Applicability of Part 1 Attribution Rules

41. *Controlling interest standard.* On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order,* in which the Commission, *inter alia,* adopted a "controlling interest" standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission observed that the rule modifications adopted in the various Part 1 orders would result in discrepancies and/or redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the Part 1 proceeding. Part 1 rules that superseded inconsistent service-specific rules will control in Auction No. 50. *Accordingly, the "controlling interest" standard as set forth in the part 1 rules will be in effect for Auction No. 50.*

42. *Control.* The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto control:*

- the entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- the entity plays an integral role in management decisions.

43. *Attribution for small and very small business eligibility.* In determining which entities qualify as small or very small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

44. A consortium of small or very small businesses is a "conglomerate organization formed as a joint venture between or among mutually independent business firms," each of which *individually* must satisfy the definition of small or very small business in § 1.2110(f). Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. The Bureau notes that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

iv. Supporting Documentation

45. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small or very small businesses (or consortia of small or very small businesses) for this auction.

46. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

47. *Small or very small business eligibility (Exhibit C).* Entities applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate,* the gross revenues for the preceding three years of each of the following: (i) The applicant, (ii) its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of small or very small businesses, this information must be provided for each consortium member.

E. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

48. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interests have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*). Applicants must include this statement as Exhibit D of the FCC Form 175. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

49. "Former defaulters"—*i.e.,* applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 50, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.3, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

F. Installment Payments

50. Installment payment plans will not be available in Auction No. 50.

G. Other Information (FCC Form 175 Exhibits E and F)

51. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the

participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so, on Exhibit F (Miscellaneous Information) to the FCC Form 175.

H. Minor Modifications to Short-Form Applications (FCC Form 175)

52. After the short-form filing deadline (August 8, 2003), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections or proposed service areas, change the certifying official, change control of the applicant or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants must make these modifications to their FCC Form 175 electronically and should submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction50@fcc.gov*. The electronic mail summarizing the changes should include a subject or caption referring to Auction No. 50. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

53. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Christopher Shields of the Auctions and Industry Analysis Division at (202) 418–0660.

I. Maintaining Current Information in Short-Form Applications (FCC Form 175)

54. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

55. On Wednesday, July 30, 2003, the FCC will sponsor a free seminar for Auction No. 50 at the Federal Communications Commission, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC Automated Auction System; and the narrowband PCS and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

56. To register complete the registration form found in Attachment B of the *Auction No. 50 Procedures Public Notice* and submit it by Monday, July 28, 2003. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Application (FCC Form 175)—Due August 8, 2003

57. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. e.t. on August 8, 2003. Late applications will not be accepted.

58. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* section III.D.

i. Electronic Filing

59. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon e.t. on July 30, 2003, until 6 p.m. e.t. on August 8, 2003. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on August 8, 2003.

60. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 50 Procedures Public Notice*. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); hours of service Monday through Friday, from 8 a.m. to 6 p.m e.t. In order to provide better service to the public, *all calls to the hotline are recorded.*

61. Applicants can also contact Technical Support via e-mail. To obtain the address, click the Support tab on the Form 175 Homepage.

ii. Completion of the FCC Form 175

62. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 50 Procedures Public Notice*. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D of the *Auction No. 50 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

63. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications.

Note: Applicants should not include sensitive information (*i.e.*, TIN/EIN) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. *See* Attachment C of the Auction No. 50 Procedures Public Notice for details on accessing the review system.

C. Application Processing and Minor Corrections

64. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

65. As described more fully in the Commission's rules, after the August 8, 2003, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

D. Upfront Payments—Due August 26, 2003

66. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. e.t. on August 26, 2003.

67. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 50 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the August 26, 2003, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

68. Wire transfer payments must be received by 6 p.m. e.t. on August 26, 2003. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information: ABA Routing Number: 043000261, Receiving Bank: Mellon Pittsburgh, BENEFICIARY (BNF): FCC/Account # 910–1174, OBI Field: (Skip one space between each information item), "AUCTIONPAY", FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 11 and/or 21), PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A50U), FCC CODE 1 (same as FCC Form 159, block 28A: "50"), PAYER NAME (same as FCC Form 159, block 2), LOCKBOX NO. # 358405.

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

69. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 50." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

70. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 50 Procedures Public Notice*. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

71. In the *Part 1 Order*, 62 FR 13540 (March 21, 1997), the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that "former defaulters," *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-"former defaulters." For purposes of this calculation, the "applicant" includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*).

72. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed that the amount of the upfront payments would determine the number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise qualified bidders that applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

73. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed upfront payments on a license-by-license basis using the following formula:

$.00001 * kHz * License Area Population with a minimum of $500 per license.

74. The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposed upfront payments. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 50 Procedures Public Notice*.

75. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

EXAMPLE: UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

Market No.	Ch. No.	Market name	Population	Bidding units	Upfront payment
MTA003	31	Chicago	13,220,193	26,000	$26,000
MTA005	31	Detroit	10,658,459	21,000	$21,000

If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 47,000 bidding units (26,000 + 21,000). If a bidder only wishes to bid on one, but not both, purchasing 26,000 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, *but not both at the same time*. If the bidder purchased only 21,000 bidding units, it would have enough eligibility for the Detroit license but not for the Chicago.

76. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

77. An applicant may, on its FCC Form 175, apply for every applicable license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

78. The Commission will use wire transfers for all Auction No. 50 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418–2843 by August 26, 2003. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418–0578 or Tim Dates at (202) 418–0496.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Taxpayer Identification Number
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in section V.F.

E. Auction Registration

79. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

80. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

81. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, September 17, 2003, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

82. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Remote Electronic Bidding

83. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid electronically or telephonically, *i.e.*, over the Internet or the FCC's Wide Area Network. In either case, each authorized bidder must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 50. The telephonic bidding phone number will be supplied in the first overnight mailing, which includes the confidential bidder identification number. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175.

84. Please note that the SecurID cards can be recycled, and the Bureau encourage bidders to return the cards to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction

85. All qualified bidders will be eligible to participate in a mock auction on Friday, September 19, 2003. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

86. The first round of bidding for Auction No. 50 will begin on Wednesday, September 24, 2003. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

87. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed to award all licenses in Auction No. 50 in a simultaneous multiple round auction. Space Data proposes that the Commission use combinatorial bidding for Auction No. 50 or, alternatively, for the regional licenses only. Space Data believes that participants that have, or intend to deploy, nationwide systems, likely would value certain combinations of MTA licenses that would be ideal for filling in coverage areas initially established by licenses won in Auction No. 41. They also believe the regional licenses are uniquely complementary, because, in combination, they effectively constitute a nationwide license and will be more highly valued as a combined package by prospective auction participants intending to deploy nationwide service.

88. As stated previously in the *Auction No. 50 Procedures Public Notice*, the Bureau will conduct Auction No. 50 as a simultaneous multiple round auction *without* package bidding. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction.

89. Also as previously stated, the Bureau has tentatively concluded that it may be appropriate to use package bidding for auctioning the regional licenses. Accordingly, the Bureau has removed the regional licenses from this auction and will include them in Auction No. 51. It will announce the dates for Auction No. 51 and seek comment on a package bidding auction design and other auction procedures in a public notice.

ii. Maximum Eligibility and Activity Rules

90. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. The Bureau received no comments on this issue.

91. For Auction No. 50 the Bureau adopts this proposal. The amount of the upfront payment submitted by a bidder determines the maximum initial eligibility (in bidding units) for each bidder. Note again that each license is assigned a specific number of bidding units equal to the upfront payments listed in Attachment A of the *Auction No. 50 Procedures Public Notice* on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids. As there is no provision for increasing a bidder's eligibility during the course of an auction (as described under "Auction Stages" in section IV.A.3), prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollars a bidder may bid on any given license.

92. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their current eligibility during each round of the auction.

93. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits a bid in the current round (*see* "Bid Increments and Minimum Acceptable Bids" in section IV.B.(iii)). The minimum required activity is expressed as a percentage of the bidder's current bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in section IV.A.iii and "Stage Transitions" in section IV.A.iv), the Bureau adopts them for Auction No. 50.

iii. Auction Stages

94. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed to conduct the auction in three stages and employ an activity rule. It further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 90 percent of its current bidding eligibility. Finally, the Bureau proposed that a bidder in Stage Three, in order to maintain its current eligibility, would be required to be active on 98 percent of its current bidding eligibility. The Bureau received no comments on this proposal.

95. The Bureau adopts its proposals for the activity rules. Listed are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

Stage One: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses that represent at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by five-fourths (5/4).

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by ten-ninths (10/9).

Stage Three: During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this stage, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by fifty-fortyninths (50/49).

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity level at stage transitions. Bidders may check their activity against the required activity level by using the bidding system's bidding module.

96. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, the Bureau adopts them for Auction No. 50.

iv. Stage Transitions

97. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 20 percent for three consecutive rounds of bidding in each Stage. The Bureau further proposed that it retain the discretion to change stages unilaterally by announcement during the auction. This determination, the Bureau proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau received no comments on this subject.

98. The Bureau adopts its proposal. Thus, the auction will start in Stage One and will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 20 percent or less of the licenses being auctioned

(as measured in bidding units). In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 50.

v. Activity Rule Waivers and Reducing Eligibility

99. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed that each bidder in the auction would be provided five activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. The Bureau received no comment on this issue.

100. Based upon the its experience in previous auctions, the Bureau adopts its proposal that each bidder be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required level. An activity rule waiver applies to an entire round of bidding and not to a particular license. The Bureau is satisfied that its practice of providing five waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders, while safeguarding the integrity of the auction.

101. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the required activity level. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

102. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the "reduce eligibility" function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (*see* section IV.A.iii discussion). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

103. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the FCC Automated Auction System) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new bids or withdrawals will not keep the auction open.

Note: Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

vi. Auction Stopping Rules

104. For Auction No. 50, the Bureau proposed to employ a simultaneous stopping rule approach. The Bureau also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on the license for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

105. The Bureau further proposed retaining the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

106. In addition, the Bureau proposed that it reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders will be required to maintain a higher level of bidding activity), increasing the number of rounds per day, and/or adjusting the minimum acceptable bids and bid increments for the licenses.

107. The Bureau received no comments concerning the auction stopping rules; therefore, it adopts the proposals. Auction No. 50 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. The Bureau believes that these stopping rules are most appropriate for Auction No. 50, because its experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

vii. Auction Delay, Suspension, or Cancellation

108. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

109. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

110. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

111. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

112. *Background.* The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

113. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 50 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 50, the Bureau proposed the following license-by-license formula for calculating minimum opening bids:

$.00001 * kHz * License Area Population with a minimum of $500 per license.

114. In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

115. No comments were received. Therefore the Bureau adopts minimum opening bids for Auction No. 50, which are reducible at the discretion of the Bureau. The Bureau emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any requests to reduce the minimum opening bid on specific licenses.

116. The specific minimum opening bids for each license available in Auction No. 50 are set forth in Attachment A of the *Auction No. 50 Procedures Public Notice*.

iii. Minimum Acceptable Bids and Bid Increments

117. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed to use a smoothing methodology to calculate minimum acceptable bids. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment F of the *Auction No. 50 Procedures Public Notice*. The Bureau further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate. The Bureau received no comment on this issue.

118. In each round, each eligible bidder will be able to place a bid on the particular license for which it applied in any of nine different amounts. The FCC Automated Auction System will list the nine acceptable bid amounts for each license.

119. At the start of the auction and until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Corresponding additional bid amounts will be calculated using bid increments defined as the difference between the minimum opening bid times one plus the percentage increment, rounded as described in Attachment F of the *Auction No. 50 Procedures Public Notice*, and the minimum opening bid—*i.e.*, bid increment = (minimum opening bid)(1 + percentage increment) {rounded} − (minimum opening bid). At the start of the auction and until a bid has been placed on a license, the nine acceptable bid amounts for each license consist of the minimum opening bid and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the minimum opening bid plus the bid increment, the third bid amount equals the minimum opening bid plus two times the bid increment, etc).

120. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in Attachment F of the *Auction No. 50 Procedures Public Notice*. The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment—*i.e.*, bid increment = (minimum acceptable bid) − (standing high bid). The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

121. The Bureau retains the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if it determines circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

iv. High Bids

122. At the end of each bidding round, the high bids will be determined based on the highest gross bid amount of the bids received for each license.

123. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed to use a random number generator to select a high bid in the event of identical high bids on a license in a given round (*i.e.*, tied bids). A random number will be assigned to each bid. The tied bid having the highest random number will become the standing high bid. The remaining bidders, as well as the high

bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the license.

v. Bidding

124. During a round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

125. Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 50.

126. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) the licenses applied for on FCC Form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

127. In order to access the bidding functions of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations for each round after they have completed all of the activity for that round.

128. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the FCC Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine acceptable bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing their bid information.

129. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in section IV.B.iii.

130. Finally, bidders are cautioned in selecting their bid amounts because, as explained in the following section, bidders who withdraw a standing high bid from a previous round, even if mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

131. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Bureau proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized would be at the bidder's discretion. The Bureau received no comments on this issue.

132. *Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which the Bureau received no comments, will enhance bidder flexibility during the auction. Therefore, the Bureau adopts these procedures for Auction No. 50.

133. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function in the FCC Automated Auction System (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g).

Note: Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.

134. In previous auctions, the Bureau has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While it continues to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various licenses in combination, the Bureau concludes that, for Auction No. 50, adoption of a limit on their use to two rounds per bidder is the most appropriate outcome. By doing so the Bureau believes it strikes a reasonable compromise that will allow bidders to use withdrawals. The Bureau's decision on this issue is based upon its experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this auction.

135. The Bureau will therefore limit the number of rounds in which each bidder may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

136. If a high bid is withdrawn, the minimum accepted bid will equal the second highest bid received for the license, which may be less than, or equal to, in the case of tied bids, the amount of the withdrawn bid. To set the additional bid amounts, the second highest bid also will be used in place of the standing high bid in the formula used to calculate bid increments. The Commission will serve as a "place holder" high bidder on the license until a new bid is submitted on that license.

137. *Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). *See* 47 CFR 1.2104(g)(1). In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders to allocate their resources most efficiently as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

138. In the *Part 1 Fifth Report and Order*, the Commission modified § 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

139. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 50 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

140. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

ix. Maintaining the Accuracy of FCC Form 175 Information

141. As noted in section II.H., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants must make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division at the following address: *auction50@fcc.gov*. The electronic mail summarizing the changes should include a subject or caption referring to Auction No. 50. The Bureau requests that parties format any attachments to electronic mail as Adobe" Acrobat" (pdf) or Microsoft" Word documents.

142. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Christopher Shields of the Auctions and Industry Analysis Division at (202) 418–0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

143. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying winning bidders, down payments and any withdrawn bid payments due.

144. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable small and very small business bidding credits). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," section IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application (FCC Form 601)

145. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 50. Winning bidders that are small or very small businesses must include an exhibit demonstrating their eligibility for small and very small business bidding credits. *See* 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

C. Ownership Disclosure Information Report (FCC Form 602)

146. At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in 47 CFR 1.913, 1.919, and 1.2112(a). The Bureau reminds applicants that effective December 10, 2002, electronic filing of the Ownership Disclosure Information Report (FCC Form 602) became mandatory. Accordingly, forms filed manually will not be accepted. Winning bidders without a current Form 602 already on file with the Commission must submit a properly completed Form 602 at the time they submit their long-form applications. Further filing instructions will be provided to auction winners at the close of the auction.

D. Tribal Land Bidding Credit

147. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

148. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit *after* winning the auction when it files its long-form application (FCC Form 601). When filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a

tribal land bidding credit, the applicant will have 90 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f).

149. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices. Relevant documents can be viewed on the Commission's Web site by going to *http://wireless.fcc.gov/auctions* and clicking on the *Tribal Land Credits* link.

E. Default and Disqualification

150. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

F. Refund of Remaining Upfront Payment Balance

151. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 50 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

152. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and a Taxpayer Identification Number (TIN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW., Room 1–C863, Washington, DC 20554.

153. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates at (202) 418–0496 or Gail Glasser at (202) 418–0578.

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 03–7459 Filed 3–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the first of the Technological Advisory Council ("Council") under its new charter.

DATES: April 17, 2003, beginning at 10 a.m. and concluding at 3 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room TW–C305 Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for Filing Instructions.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, (202) 418–1096.

SUPPLEMENTARY INFORMATION: Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from different areas such as manufacturing, academia, communications services providers, the research community, etc., can provide advice to the FCC on innovation in the communications industry. At this first meeting under the Council's new charter, the topic of broadband access technologies will be treated using a symposium format. Members of the public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is *jgoldtho@fcc.gov*. Mail delivery address is: Federal Communications Commission, 445 12th Street, SW., Room 7–A325, Washington, DC 20554.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–7523 Filed 3–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice; one altered Privacy Act system of records; deletion of five routine uses; and addition of one new routine use.

SUMMARY: Pursuant to the provisions of the *Privacy Act of 1974*, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), the FCC proposes to change the name and alter one system of records, FCC/Central-2, "Employee Locator System" (formerly "Employee Locator Card Files"). The altered system of records will incorporate changes in what information is maintained and how the information is stored—from a paper file card system to an electronic database; the deletion of five routine uses; the addition of one new routine use; and other edits and revisions as necessary.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (e)(11) of the *Privacy Act of 1974*, as amended, any interested person may submit written comments concerning the routine uses of this system on or before April 28, 2003. Pursuant to Appendix I, 4(e) of OMB Circular A–130, the FCC is asking the Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, to grant a waiver of the 40 day review period by OMB, the House of Representatives, and the Senate for this system of records. The FCC is requesting this waiver because the war emergency and homeland security make it imperative that the Commission has this system of records available so that in case of an emergency that affects FCC employees caused by the war or terrorism, emergency personnel can quickly reach the designated "contacts" of these employees.

The proposed altered system shall be effective on April 28, 2003, unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the *Privacy Act of 1974*, as amended, the FCC has submitted reports on this proposed altered system to OMB and both Houses of Congress.

ADDRESSES: Comments should be sent to Les Smith, Privacy Act Clerk, Performance Evaluation and Records Management (PERM), Room 1–A804, Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554, (202) 418–0217, or via the Internet at *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Les Smith, (202) 418–0217 or via the Internet at *lesmith@fcc.gov*; or Michele Sutton, (202) 418–0137 or via the Internet at *msutton@fcc.gov*.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed altered system of records maintained by the FCC; deletion of five routine uses; and addition of one new routine use. *See* 65 FR 63468, October 23, 2000. The purposes for altering FCC/Central-2, "Personnel Investigation System" are to change the name of the system of records to reflect the change in the way the system is maintained—from a paper file card system to an electronic database; to change the information that is being maintained; to delete five routine uses; to add one new routine use; and otherwise to alter, update, and revise this system of records as necessary.

The FCC proposes to achieve these purposes by altering this system of records, FCC/Central-2, "Personnel Locator System" (formerly "Personnel Locator Card Files") with these changes: A change in the information that is being maintained; the deletion of five routine uses; the addition of one new routine use to address the new and/or revised information that is being maintained: this Routine Use allows disclosure to emergency medical personnel, *i.e.*, doctors, nurses, and/or paramedics, or to law enforcement officials in case of a medical or other emergency involving the FCC employee.

The alteration, revision, or modification of various data elements in FCC/Central-2, including editorial changes to update, simplify, or clarify, as necessary, this system of records.

The Human Resources Office (AMD-HRM) will use the records in FCC/Central-2, "Employee Locator System," to identify the individual(s) to contact, should an emergency of a medical or other nature involving the Commission employee occur while the employee is on the job. Initial collection and requested periodic updates are voluntary, as the employee does not have to provide it. This notice meets the requirement documenting the change in the Commission's system of records, and provides the public, Congress, and the Office of Management and Budget (OMB) an opportunity to comment.

FCC/Central-2

SYSTEM NAME:

Employee Locator System.

SECURITY CLASSIFICATION:

This system of records has not been given a security classification.

SYSTEM LOCATION:

Human Resources Office (AMD-HRM), Bureau and Office Administrative Offices, Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554 and 1270 Fairfield Road, Gettysburg, Pennsylvania 17325.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the Federal Communications Commission (FCC).

CATEGORIES OF RECORDS IN THE SYSTEM:

1. The FCC employee's name, Bureau/Office, floor, room number, work and home telephone numbers; and

2. The name(s), e-mail address(es), and telephone number(s) of the individual(s) to contact in the event of a medical or other emergency involving the FCC employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901 and 44 U.S.C. 3101.

PURPOSE(S):

The records in this system serve to identify the individual(s) to contact, should an emergency of a medical or other nature involving the Commission employee occur while the employee is on the job. Initial collection and requested periodic updates are voluntary, as the employee does not have to provide it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record on an individual in this system of records may be disclosed to emergency medical personnel, *i.e.*, doctors, nurses, and/or paramedics, or to law enforcement officials in case of a medical or other emergency involving the FCC employee.

In each of these cases, the FCC will determine whether disclosure of the record is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are maintained in a network computer database.

RETRIEVABILITY:

Records are retrieved by the employee's name, Bureau/Office, floor, and room number.

SAFEGUARDS:

Electronic records are maintained in a network computer database, which is secured through controlled access and passwords restricted to the employee, Human Resources Office (AMD-HRM) employees, administrative personnel, and emergency relocation site employees.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is a current employee of the Federal Communications Commission. When an employee leaves the Commission, the electronic records are destroyed by electronic erasure.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Office (AMD–HRM), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554 and 1270 Fairfield Road, Gettysburg, Pennsylvania 17325.

NOTIFICATION PROCEDURE:

FCC employees wishing to inquire whether this system contains

information about them should contact the Human Resources Office (AMD–HRM), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554 and 1270 Fairfield Road, Gettysburg, Pennsylvania 17325. Individuals must supply their full name in order for records to be located and identified.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–7554 Filed 3–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 11, 2003.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Harold D. Poland, Clyde, Kansas; to retain control of Elkcorp, Inc., Clyde, Kansas, and thereby indirectly retain control of The Elk State Bank, Clyde, Kansas.

Board of Governors of the Federal Reserve System, March 24, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–7376 Filed 3–27–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 21, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. First American Bancshares, Inc., Iuka, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of First American National Bank, Iuka, Mississippi.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. BSA Bankshares, Inc., Abilene, Texas, and BSA Delaware, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of The Bevans State Bank of Menard, Menard, Texas.

Board of Governors of the Federal Reserve System, March 24, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–7375 Filed 3–27–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–55]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: AIDS Prevention Surveillance Project Reports OMB No. 0920–0208—Extension—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention.

CDC proposes to continue the collection of data for the AIDS Prevention and Surveillance Project Reports, OMB No. 0920–0208, for an additional 3 years. This request is for a 3-year extension. There are currently 65 cooperative agreements for HIV prevention projects (50 states, 6 cities, 7 territories, Washington, DC, and Puerto Rico) and 54 community based organizations to support HIV counseling, testing, and referral programs funded by CDC. Program initiatives such as HIV counseling, testing, and referral services in STD clinics, Women's Health Centers, Drug Treatment Centers, and other health facilities have been described as a primary prevention strategy of the national HIV prevention program. The funded public health departments and community based organizations have increased the provision of HIV counseling, testing, and referral activities to those at increased risk for acquiring or transmitting HIV, as well as minority communities and women of child bearing age.

CDC is responsible for monitoring and evaluating HIV prevention programs conducted under the HIV Prevention cooperative agreements. HIV counseling, testing, and referral services are a major component of HIV prevention programs. Without data to measure the impact of HIV counseling, testing, and referral programs, HIV prevention program priorities cannot be assessed and redirected to prevent further spread of the virus in the general population. CDC needs information from all grantees describing the number of HIV tests completed for at-risk persons and the number HIV-positive test results for at-risk persons. The HIV counseling and testing report form provides a simple yet complete means to collect this information.

Public health departments will be able to use either a summary form, a scan form, or a form unique to their jurisdiction. All reporting to the CDC will take place electronically. Sixteen (16) respondents (public health departments) will use the summary data collection tool. It takes approximately 2 hours to complete the form. The respondents will complete the form 4 times each year for a total burden of 8 hours per year per project area. Thirty (30) respondents (public health departments) will use a scan form provided by CDC. Nineteen (19) respondents (public health departments) will use a form unique to their jurisdiction. It will take approximately 15 minutes for each respondent using either the scan or unique formats to transfer data to CDC electronically on a quarterly basis for a total burden per project area of 1 hour per year. Therefore, the total burden hours for collecting this data will be 49 hours. There is no cost to respondents except for their time.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Manual Form Project Areas	16	4	2	128
Scan or Unique Form Project	49	4	15/60	49
Total				177

Dated: March 21, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–7457 Filed 3–27–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03015]

Unintentional Injury and Violence Prevention and Control Initiatives Related to the World Health Organization (WHO); Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to award fiscal year (FY) 2003 funds for an international grant program to promote surveillance, research, and dissemination of expertise and information related to unintentional injury and violence prevention and control.

B. Eligible Applicant

Assistance will be provided only to the World Health Organization (WHO). WHO is the technical agency for health within the United Nations, they have access to all national health promotion and research sites, and they collaborate with other international organizations to coordinate research initiatives and disseminate violence prevention and control programs.

C. Funding

Approximately $109,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or about March 30, 2003, and will be made for a 12-month budget period within a project period of up to three years.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For technical questions about this program, contact: Richard J. Waxweiler, Ph.D., Associate Director for Extramural Research, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), Mail Stop K–02, 4770 Buford Highway, NE., Atlanta, GA 30341. Telephone: (770) 488–4694. E-mail address: *rwaxweiler@cdc.gov*.

Dated: March 21, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–7456 Filed 3–27–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03037]

Communication and Negotiation About Barrier Contraceptive Use Among Young Adults at Risk; Notice of Availability of Funds

Application Deadline: May 27, 2003.

A. Authority

This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. sections 247b(k)(2)], as amended. The

Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year 2003 funds for a cooperative agreement for Communication and Negotiation About Barrier Contraceptive Use Among Young Adults At Risk. This program addresses the "Healthy People 2010" focus areas family planning, HIV, and sexually transmitted diseases.

The purpose of this program is to investigate the context within which sexually active young adult African American and Latino women and men (ages 18–25) communicate sexual values and negotiate about barrier contraceptive use (use of male condoms, female condoms, or the diaphragm). The program will develop, implement and evaluate case study intervention models to encourage choices and effective negotiation skills for prevention of HIV/STDs and unplanned pregnancies.

In Phase I, support will be provided for multi-method formative approaches toward understanding communication between heterosexual partners about sexual abstinence, monogamy, and barrier contraceptive use and factors influencing implicit expectations (about gender roles; reproductive ambivalence, competing contraceptive alternatives, power, cultural values, social norms, etc.) and explicit negotiation processes. This phase will culminate with the development of a plan for an intervention model.

Phase II will support implementation of case studies of community-based intervention models to facilitate communication about reproductive decision making and barrier contraceptive use among young adult women and men with their partners, using information gathered in Phase I.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP): Support prevention research to develop sustainable and transferable community-based behavioral interventions.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit organizations, community-based organizations, faith-based organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

D. Funding

Availability of Funds

Approximately $800,000 is available in FY 2003 to fund approximately two awards. It is expected that the average award will be $400,000, ranging from $300,000 to $450,000. It is expected that the awards will begin on or about September 1, 2003 and will be made for a 12-month budget period within a total project period of five years; the first phase will be for two-three years and the second phase will occur during the subsequent two-three years. Awards for Phase II will be subject to documented collaboration with community partner(s) and availability of funds. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation

No matching funds are required for this program.

Funding Priority

Priority will be given to projects that demonstrate access to and propose to target young adult women and men at high risk for STDs, including HIV, and unintended pregnancies. Communities in which research is to be conducted, and interventions fielded, should be predominately African American or Latino and disproportionately affected by HIV and other STDs. Priority will be given to communities with rates of chlamydia, gonorrhea, and teen pregnancy that are above national average rates.

Funds may be awarded in such a way as to achieve geographic distribution of funded projects.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities listed under Recipient Activities, and CDC will be responsible for activities listed under CDC Activities.

Recipient Activities

The recipient will be responsible for conducting the research outlined in Phase I, and using the formative research collected during this Phase to develop an intervention plan and case study evaluation for Phase II. Funding for Phase II will be contingent upon satisfactory progress as evidenced by required reports, the intervention plan, the documented establishment of a formal collaboration with a community-based organization equipped to implement the intervention model, and availability of funds. A complete description of the activities required within Phase I and Phase II follows.

Phase I (Years One to Two or One to Three)

This program announcement seeks a multi-method approach toward understanding the complexity of communication between partners: To what extent does negotiation about sexual choices, including monogamy, abstinence, and explicit barrier contraceptive use take place and by whom; the nature of the actual communication processes; and the context within which they lead to different outcomes. In this initial formative phase of the project, applicants are encouraged to propose creative, innovative data collection methods that will yield information about individual, social, and cultural factors that affect contraceptive decision making and behavior that may be used in the Phase II intervention design.

Activities to be conducted are:

1. Clearly identify key research questions to be addressed including, but not limited to:

a. How do young adult men and women make decisions about abstinence, sexual initiation, and monogamy?

b. How do sexually active young adult men and women decide to use barrier contraception and how are these choices negotiated? Or if not directly negotiated, how do social roles, norms, and expectations influence these decisions?

c. How are intimacy and commitment to mutual monogamy assumed, expected, and communicated between partners, and how do couples that perceive themselves as mutually monogamous communicate about barrier methods?

d. Are power differentials between young adult men and women perceived, and if so, how are they communicated (verbally or nonverbally)?

e. What are the tacit assumptions made or the explicit negotiation strategies commonly used by young women and men and how do partners respond to each approach (what contextual factors are important)?

f. Do young adult women and men use hierarchical strategies, if they have multiple contraceptive methods available?

g. What social and cultural factors predict young adult men's receptiveness to safe sex negotiation strategies offered by a female partner? What social and cultural factors predict young adult men's ability or willingness to negotiate?

h. How does marital and childbearing motivation, including cultural expectations, ambivalence about pregnancy and perceptions of each other's desires affect communication?

i. How do young adult men communicate their reproductive values to their partners and what is the context in which this occurs?

j. How does communication about hormonal contraceptive use (e.g., oral contraceptives, implants, injectables, ring, patch) occur and what is the context in which it occurs or what prompts it to occur?

2. Conduct comprehensive literature review related to identified research questions.

3. Identify and recruit sexually active women and men, ages 18–25 from predominantly African American or Latino communities with documented HIV/STD risk characteristics (rates of chlamydia, gonorrhea, and teen pregnancy above national average rates).

4. Conduct formative research activities such as the following, but not limited to:

a. Development of vignettes or scenarios depicting communication of values and barrier negotiation strategies. Presentation of these vignettes to young adult men and women (individually or in groups), and assessment of their qualitative responses, similar experiences, and further development of the situations (for intervention planning).

b. Mixed or same sex focus groups to explore cultural/environmental influences and the role of peers in shaping attitudes toward communication about sexual values and choices, including barrier contraception. If focus groups are conducted, ensure that the appropriate privacy concerns are addressed, as information provided will be sensitive and confidential.

c. In-depth qualitative interviews with young adult men and women who are sexually active. May consider their specific experiences with barrier contraceptive use, including successful communication, avoidance of use or dissuasion of a partner, partner responses, and perceptions of partner attitudes, roles, and monogamy. May explore implicit or explicit reproductive issues along with the context of negotiating hormonal contraceptive use (including newer methods, such as the contraceptive patch, ring, and emergency contraception).

d. Observational study of cohort of sexually active young adult men and women provided with barrier contraceptives (male condom, female condom, or diaphragm), trained in use of coital diaries (possibly a software log), and interviewed at follow-up intervals to assess act-by-act experiences with negotiation and partner communication (including contextual factors).

5. Conduct analyses of data collected using, but not limited to, these methods:

a. Identify the characteristics of different negotiation/communication styles among young adult women and men.

b. Identify key influences on these negotiation and communication styles.

c. Develop or identify existing quantitative measures of key variables that could be used in Phase II and be hypothesized to predict the behavior of women and men with different communication styles.

d. Collaborate with other recipients in the development and measurement of a common core set of variables to permit comparative analyses.

6. Develop a plan for using this formative research in the design of a theory and evidence-based intervention model feasible for implementation in a community-based case study.

a. Present relevant conceptual foundation for the model.

b. Integrate the results of the research with literature on communication interventions and strategies. As part of this synthesis, thoroughly document the intervention models and strategies that already exist.

c. Based on formative research, theory and the review of the intervention research, develop state-of-the-art recommendations on intervention strategies to promote successful negotiation and communication for young adult women and men at risk. These interventions must consider the characteristics of the community and cultural contexts of the participants' lives.

d. Collaborate with other recipients during development of design and protocol.

7. Establish and document formal collaboration with a community-based organization(s) or partner qualified to carry out the work proposed in Phase II.

Phase II (Years Three to Five or Four to Five)

Case Study: Community-Based Intervention Models

Project(s) in this phase would implement and conduct a feasibility assessment of an intervention for facilitating reproductive decision-making and effective barrier contraceptive negotiation by young adult women and men based on the selected intervention plan. Proposed interventions should address the subtle strategies and interpersonal pathways to successful communication, the contextual (social normative, etc.) factors that facilitate or constrain negotiation and communication, and be designed to influence large numbers of young adult men and women in a community. Applicant activities to be conducted are:

1. Collaborate with community partners and members of the target group to plan all phases of the project.

2. Identify a community site for implementation of the case study. A comparison community may be used as part of a case study approach to evaluation that includes extensive process evaluation, documenting all aspects of program design and implementation.

3. Clearly state the objectives of the proposed intervention model.

4. Propose an intervention model that could be replicated in community-based settings (a concept and preliminary approaches proposed in this application must be fully developed based on Phase I: six a–d).

5. Develop and implement community-based intervention strategies that have the potential for broad reach and high impact.

6. The cost effectiveness of the model as a public health intervention must be addressed. Interventions that are costly and logistically difficult for implementation in public health settings, such as couples-based counseling interventions for young adults, will not be supported by this announcement.

7. Collaborate with other recipients during the development and implementation of the project evaluation.

CDC Activities

1. Host meetings each year to facilitate planning of the research program and to promote progress toward meeting national health objectives.

2. Provide technical assistance in the design and development of the

formative research, scientific review and evaluation of measurement strategies and instruments, and development of operational plans for the protocols. Coordinate review of intervention plans and process evaluation strategies.

3. Coordinate plans for data management and analysis of data from Phase I and Phase II; assist with development of plan for, and participation in analysis, preparation, and reporting of results.

4. Assist with development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. Perform site visits to assess program progress and to provide technical assistance.

F. Content

Letter of Intent (LOI)

A LOI is required for this program. The Program Announcement title and number must appear in the LOI. The LOI narrative should be no more than three pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. The LOI will be used to enable CDC to determine the level of interest in the announcement and should include the following information: Target group and site characteristics, experience collaborating with relevant community partner(s) and specific objectives to be addressed in the proposed project.

Applications

Program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The application narrative should be no more than 25 pages single-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of a Background and Significance section, a Plan, Objectives, Methods, a Research and Intervention Capacity section, a Collaboration section, Evaluation, and Budget.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before April 28, 2003. Submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of application form PHS 398. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm* If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time May 27, 2003. Submit the application to: Technical Information Management-PA# 03037, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Atlanta, GA 30341–4146.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your LOI and application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their LOI or application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an LOI or application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any LOI or application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of effectiveness must relate to the performance goal stated in section "B. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria (in order of weight):

1. Methods (30 points)

The extent to which the design, methods, plans for instrument development, data collection, and analysis for Phase I are scientifically sound and capable of producing the intended results. The extent to which the research is innovative and represents a new approach by integrating new literature sources and using sophisticated methodology to identify subtle or complex communication variables. The extent to which the data synthesis process can be clearly used in a timely manner for development of the Phase II intervention plan. The extent to which the proposed intervention approaches for Phase II represent a consideration of appropriate theoretically, empirically, and programmatically justified intervention approaches which could realistically be adapted using Phase I data. The proposed intervention model should be feasible in community-based settings in which many women and men might be influenced. The extent to which the applicant describes a plan for process evaluation to be conducted during Phase II.

2. Background and Significance (15 points)

The extent to which the applicant: Describes the background leading to the application, including the theoretical or conceptual framework; critically evaluates existing knowledge; specifically identifies gaps that the Phase I project is intended to fill; and describes the target population and the potential health impact of the research and intervention.

3. Plan (15 points)

The quality of the justification for the theoretical, empirical and programmatic focus of Phase I research and the approach proposed for the Phase II intervention model (approaches and concepts considered for design of Phase II are expected in the application; the proposed intervention plan may be revised and will be fully developed at the end of Phase I).

The extent to which the applicant describes the proposed research plan for Phase I and the plan for establishing collaboration with a community-based organization/partner qualified to carry out the work proposed in Phase II. In Phase I, linkage between the research questions and the formative research activities should be clearly presented. The extent to which the applicant proposes a feasible case study plan for Phase II.

The applicant must address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research plan. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Objectives (10 points)

The extent to which the applicant describes the broad objectives and the specific research questions this project is intended to address in Phase I and II. The research questions must address multiple levels: individual, partner, social, cultural, and other contextual variables. The objectives must be quantifiable in terms of output and timeline.

5. Research and Intervention Capacity (10 points)

The extent to which the applicant provides an account of the research team members' studies pertinent to the application that will help establish the experience and competence of the team members to pursue both phases of the proposed project. The extent to which the applicant documents access to researchers with experience and training in analysis of qualitative data, demonstrates the capacity to obtain the participation of adequate numbers of male and female participants from the proposed sites, and describes the adequacy of the staff (in each phase) and facilities to feasibly carry out the project. Extent of experience with formative research on this topic, experience conducting community-based interventions addressing sexual risk behavior or reproductive health, and experience implementing process evaluations.

6. Collaboration (10 points)

The extent to which the applicant describes how community partners and members of the target group will be involved in Phase I and potentially Phase II, defines the responsibilities of organizations in the community on this project and highlights past involvement with community-based organizations or partners (provides letters of support).

7. Evaluation (10 points)

The methods by which the applicant proposes to measure progress in meeting goals and objectives, and presents a reasonable plan for collecting data, analyzing data, and reporting the results. Quality assurance plan must be addressed.

8. Budget (reviewed but not scored)

The extent to which the budget and justification are consistent with program objectives and purpose.

9. Human Subjects Involvement (reviewed but not scored)

The extent to which the applicant addresses the requirements of 45 CFR part 46 for the protection of human subjects. Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

10. Performance Goals (reviewed but not scored)

The extent to which the applicant addresses the relevant Performance goals. The relevant goals include (timeline may vary):

Year 1: Design the formative research component, including literature review, methods, sampling frame, data collection instruments, and IRB package.

Year 2: Conduct data collection and prepare a detailed analysis and publication plan.

Year 3: Analyze the data, synthesize data with review of literature on communication interventions and strategies, prepare a report and develop an intervention and evaluation plan.

Year 4: Pending approval and funds, implement the intervention and prepare an interim process evaluation report.

Year 5: Evaluate the intervention and prepare a final report summarizing results of the case study and recommendations for technology transfer.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. An interim progress report. The interim progress report will be due on the 15th of March each year through 2008. This interim progress report will serve as your non-competing continuation application. A second report is due 90 days after the end of each budget period. These reports must include the following elements:

a. A succinct description of the program accomplishments and progress made in meeting each Current Budget Period Activities Objectives during the previous six months of the budget period.

b. A succinct description of the program accomplishments/narrative and progress made in meeting each Current Budget Period Activities Objectives during the previous six months of the budget period.

c. The reason(s) for not meeting established program objectives and strategies to be implemented to achieve unmet objectives.

d. Current Budget Period Financial Progress.

e. New Budget Period Proposed Activities and Objectives.

f. Detailed Line-Item Budget and Justification.

g. For all proposed contracts, provide the name of contractor, method of selection, period of performance, scope of work, and itemized budget and budget justification. If the information is not available, please indicate "To Be Determined" until the information becomes available; it should be submitted to CDC Procurement and Grants Management Office contact identified in this program announcement.

2. Financial status report, no more than 90 days after the end of the budget period. The financial status report should include an attachment that identifies unspent balances for each program component.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement as posted on the CDC Web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.*

Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, in the states, contact: LaKassa Wyatt, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2728, E-mail address: *Lwyatt@cdc.gov.*

For business management and budget assistance in the territories, contact: Charlotte Flitcraft, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2632, E-mail address: *caf5@cdc.gov.*

For program technical assistance, contact: Rebecca Cabral, Ph.D., Division of Reproductive Health, Centers for Disease Control and Prevention, 4770 Buford Hwy, NE., Atlanta, GA 30341, Telephone: 770–488–6399, E-mail address: *Rcabral@cdc.gov.*

Dated: March 24, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–7452 Filed 3–27–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9016–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—October 2002 Through December 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from October 2002 through December 2002, relating to the Medicare and Medicaid programs. This notice also provides information on national coverage determinations affecting specific medical and health care services under Medicare. Additionally, this notice identifies certain devices with investigational device exemption numbers approved by the Food and Drug Administration that potentially may be covered under Medicare.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are also including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. (*See* Section III of this notice for how to obtain listed material.)

Questions concerning items in Addendum III may be addressed to Karen Bowman, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–5252.

Questions concerning national coverage determinations should be directed to Shana Olshan, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–3122.

Questions concerning Investigational Device Exemptions items in Addendum VI may be addressed to Sharon Hippler, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C5–13–27, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–4633.

Questions concerning all other information may be addressed to Margie Teeters, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Centers for Medicare & Medicaid Services, C5–13–18, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–4678.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs. These programs pay for health care and related services for 39 million Medicare beneficiaries and 35 million Medicaid recipients. Administration of these programs involves (1) furnishing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public and (2) maintaining effective communications with regional offices, State governments, State Medicaid agencies, State survey agencies, various providers of health care, fiscal intermediaries and carriers that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act). We also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month time frame.

II. How to Use the Addenda

This notice is organized so that a reader may review the subjects of manual issuances, memoranda, substantive and interpretive regulations, national coverage determinations, and Food and Drug Administration-approved investigational device exemptions published during the timeframe to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) published in 1988, and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555). Those interested in the procedures used in making national coverage determinations may review the April 27, 1999 publication (64 FR 22619). In this publication, the 1989 proposed rule affecting national coverage procedures and decisions (54 FR 4302) was withdrawn, and the procedures for national coverage determinations established.

To aid the reader, we have organized and divided this current listing into six addenda:

- Addendum I lists the publication dates of the most recent quarterly listings of program issuances.
- Addendum II identifies previous **Federal Register** documents that contain a description of all previously published CMS Medicare and Medicaid manuals and memoranda.
- Addendum III lists a unique CMS transmittal number for each instruction in our manuals or Program Memoranda and its subject matter. A transmittal may consist of a single instruction or many. Often, it is necessary to use information in a transmittal in conjunction with information currently in the manuals.
- Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarters covered by this notice. For each item we list the—
  - Date published;
  - **Federal Register** citation;
  - Parts of the Code of Federal Regulations (CFR) that have changed (if applicable);
  - Agency file code number; and
  - Title of the regulation.
- Addendum V includes completed national coverage determinations from the quarter covered by this notice. Completed decisions are identified by title, a brief description, effective date, and section in the appropriate Federal publication.
- Addendum VI includes listings of the Food and Drug Administration-approved investigational device exemption categorizations, using the investigational device exemption numbers the Food and Drug Administration assigns. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B), and identified by the investigational device exemption number.

III. How To Obtain Listed Material

A. Manuals

Those wishing to subscribe to program manuals should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, most manuals are available at the following Internet address: *http://cms.hhs.gov/manuals/default.asp.*

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through *GPO Access*. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is *http://www.access.gpo.gov/nara/index.html*, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. Interested individuals can obtain copies from the nearest CMS Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register**. Rulings, beginning with those released in 1995, are available online, through the CMS Home Page. The Internet address is *http://cms.hhs.gov/rulings.*

D. CMS's Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM and may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- CMS-related regulations.
- CMS manuals and monthly revisions.
- CMS program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1999. (Updated titles of the Social Security Laws are available on the Internet at *http://www.ssa.gov/OP_Home/ssact/comp-toc.htm.*) The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most

Federal Government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

Superintendent of Documents numbers for each CMS publication are shown in Addendum III, along with the CMS publication and transmittal numbers. To help FDLs locate the materials, use the Superintendent of Documents number, plus the transmittal number. For example, to find the Part 3—Claims Process, (CMS Pub. 13–3) transmittal entitled "Hearing Aide Exclusion," use the Superintendent of Documents No. HE 22.8/6 and the transmittal number 1868.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: March 18, 2003.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

August 11, 1998 (63 FR 42857)
September 16, 1998 (63 FR 49598)
December 9, 1998 (63 FR 67899)
May 11, 1999 (64 FR 25351)
November 2, 1999 (64 FR 59185)
December 7, 1999 (64 FR 68357)
January 10, 2000 (65 FR 1400)
May 30, 2000 (65 FR 34481)
June 28, 2002 (67 FR 43762)
September 27, 2002 (67 FR 61130)
December 27, 2002 (67 FR 79109)

Addendum II—Description of Manuals, Memoranda, and CMS Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. (Please note that in this publication the 1989 proposed rule referred to, concerning the criteria for national coverage determinations, was withdrawn (64 FR 22619)). A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992 (57 FR 47468).

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[October 2002 Through December 2002]

Transmittal No.		Manual/Subject/Publication number
		Intermediary Manual Part 3—Claims Process (CMS Pub. 13–3) (Superintendent of Documents No. HE 22.8/6)
1863	•	Prospective Payment System Pricer Program Provider-Specific Payment Data Provider-Specific Data Record Layout and Description
1864	•	Mammography Screening Diagnostic and Screening Mammography Performed With New Technologies
1865	•	Overpayments for Provider Services—General
1866	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
1867	•	Immunosuppressive Drugs Furnished to Transplant Patients
1868	•	Hearing Aide Exclusion
1869	•	Payment for Services Furnished by a Critical Access Hospital
1870	•	Payment for Services Furnished by a Critical Access Hospital
1871	•	Heart Transplants
		Carriers Manual Part 3—Claims Process (CMS Pub. 14–3) (Superintendent of Documents No. HE 22.8/7)
1772	•	Type of Service
1773	•	Durable Medical Equipment Regional Carriers Only—Appeals of Duplicate Claims Introduction to the Appeals Process
1774	•	Home Dialysis Patients' Options for Billing Payment for Method II Home Dialysis Supplies When the Beneficiary is an Inpatient
1775	•	Identifying a Screening Mammography Claim and a Diagnostic Mammography Claim Diagnostic and Screening Mammography Performed With New Technologies
1776	•	Evaluation and Management Services Codes—General.
1777	•	Overpayments—General
1778	•	Healthcare Common Procedure Coding System Coding
1779	•	Coding Physician Specialty Coding Type of Supplier and Non-Physician Practitioners
1780	•	Supervising Physicians in Teaching Settings
1781	•	Hearing Aid Exclusion
1782	•	Mandatory Assignment and Other Requirements for Home Dialysis Supplies and Equipment Paid Under Method II
1783	•	Type of Service
1784	•	Recovery Where Fraud Is Suspected

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October 2002 Through December 2002]

Transmittal No.		Manual/Subject/Publication number
		Carriers Manual Part 4—Professional Relations (CMS Pub. 14–4) (Superintendent of Documents No. HE 22.8/7–4)
27	•	Surrogate Unique Physician Identification Number
		Program Memoranda Intermediaries (CMS Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)
A–02–094	•	Annual Desk Review Program for Hospital Wage Data: Cost Reporting Periods Beginning on or after October 1, 1999, Through September 30, 2000 (Fiscal Year 2004 Wage Index)
A–02–095	•	Production Dates for the Provider Statistical and Reimbursement Report and Extension of Due Date for Filing Provider Cost Reports for Providers Having Their Claims Processed by the Arkansas Part A Standard System and Request for Wage Data for the FY 2004 Wage Index
A–02–096	•	Payment of Skilled Nursing Facility Claims for Beneficiaries Disenrolling from Terminating Medicare+Choice Plans Who Have Not Met the 3-Day Hospital Stay Requirement
A–02–097	•	Special Handling of New "K" Codes K0556, K0557, K0558, and K0559
A–02–098	•	Changes in Transitional Outpatient Payment for 2003
A–02–099	•	Scheduled Release for January Updates to Software Programs and Pricing/Coding Files
A–02–100	•	Installation of Version 27.4 of the Provider Statistical and Reimbursement Report
A–02–101	•	Changes to the Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update as Published in the Federal Register, Fiscal Year 2001 (66 FR 39572, July 31, 2001), and Transmittal A–01–144, December 20, 2001 Hospice Wage Index Fiscal Year 2003, as published in the Federal Register (67 FR 56092, August 30, 2002) Update to the Prospective Payment System for Home Health Agencies for FY 2003; as Published in the FEDERAL REGISTER, (67 FR 43616, June 28, 2002)
A–02–102	•	Medicare Certified Hospices—Clarification of Acceptable Parameters for Some Contractual Arrangements
A–02–103	•	New Electronic Remittance Advice Coding for Home Health Prospective Payment System Adjustments
A–02–104	•	Provider Education Article: Home Health Agencies Responsibilities Regarding Patient Notification
A–02–105	•	Removal of Common Working File Edit on Non-Covered Hospice Claims
A–02–106	•	Provider Education Article: Hospitals Responsibilities Re: Patient Notification at Discharge Planning and Home Health Consolidated Billing
A–02–107	•	Revisions to Common Working File Editing to Accommodate Home Health Partial Episode Payment Claims and Rescheduling of Payment Adjustment Utility
A–02–108	•	Multiple Patient Ambulance Transport
A–02–109	•	Cost Based Payment for Certified Registered Nurse Anesthetists' Services Furnished by Outpatient Prospective Payment System Hospitals
A–02–110	•	Financially Required Changes for the Fiscal Intermediary Standard System Paid Claim File
A–02–111	•	October 2002 Update to the Hospital Outpatient Prospective Payment System—Correction—This instruction replaces PM A–02–076 (CR 2298) issued on August 7, 2002.
A–02–112	•	Program Integrity Management Reporting System for Part A—Phase1
A–02–113	•	Transmittal A–02–113 Has Been Rescinded
A–02–114	•	Revisions to the Outpatient Prospective Payment System Pricer Software and Outpatient Code Editor for Blood Deductible and Technical Charges
A–02–115	•	Medical Nutrition Therapy Services for Beneficiaries With Diabetes or Renal Disease—POLICY CHANGE
A–02–116	•	Long Term Care Hospital Prospective Payment System: Requirements for Provider Education and Training
A–02–117	•	Correction to Updated Instruction on Receipt and Processing on Non-Covered Charges on Other Than Part A Inpatient Claims (Transmittal A–02–071)
A–02–118	•	Annual Update of Healthcare Common Procedure Coding System Codes for Skilled Nursing Facility Consolidated Billing Enforcement, Updated Skilled Nursing Facility Help File
A–02–119	•	0001 Revenue Line Direction for the Health Insurance Portability and Accountability Act Institutional 837 Health Care Claim
A–02–120	•	Change in Requirements for Medicare Payment for Low Osmolar Contrast Material Under the Outpatient Prospective Payment System
A–02–121	•	Skilled Nursing Facility Adjustment Billing: Adjustments to Health Insurance Prospective Payment System Codes Resulting From Minimum Data Set Corrections
A–02–122	•	Notice Regarding Cost-to-Charge Ratios and Inpatient Outlier Payments
A–02–123	•	Hospital Billing for Immunosuppressive Drugs Furnished to Transplant Patients—ACTION
A–02–124	•	Necessary Changes to Implement Special Add-On Payments for New Technologies
A–02–125	•	Installation of Version 29.0 of the Provider Statistical and Reimbursement Reporting System
A–02–126	•	Instructions Regarding Hospital Outlier Payments
A–02–127	•	Indian Health Service Hospital Payment Rates for Calendar Year 2002
		Program Memorandum Carriers (CMS Pub. 60B) (Superintendent of Documents No. HE 22.8/6–5)
B–01–062	•	Payment to Registered Dietitians for Diabetes Outpatient Self-Management Training Services

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[October 2002 Through December 2002]

Transmittal No.		Manual/Subject/Publication number
B–02–063	•	Annual Updating of ICD –9–CM Codes Must Be Date of Services Driven
B–02–064	•	Viable Information Processing System Implementation to Process ICD–9–CM Codes Using Date of Service and Not Date of Receipt
B–02–065	•	Durable Medical Equipment Regional Carriers-Establishment Common Working File Override for Legitimate Duplicate Claims
B–02–066	•	Ambulance Services: Maintaining Point-of-Pickup Zip Code
B–02–067	•	Revision to Messages for Skilled Nursing Facility Consolidated Billing and Implementation of Common Working File Edits for Clinical Social Workers for Skilled Nursing Facility Consolidated Billing
B–02–068	•	Revised X12N 4010 837 Professional Flat File
B–02–069	•	Messages for Use With Drug Claims
B–02–070	•	Reporting of Admission Date and Additional Edit Requirements for the X12N 837 (Version 4010) Coordination of Benefits Transaction
B–02–071	•	Use of the National Drug Code for Drug Claims at the Durable Medical Equipment Regional Carriers
B–02–072	•	Calendar Year 2003 Participation Enrollment and Medicare Participating Physicians and Supplies Directory Procedures
B–02–073	•	Durable Medical Equipment Regional Carriers-Establishment Common Working File Override for Legitimate Duplicate Claims
B–02–074	•	Clarification on System Changes in Change Request 2299
B–02–075	•	Carrier Review of Payment Amounts for Portable X-Ray Transportation Services (HCPCS code R0070)—Request
B–02–076	•	Annual Update for Skilled Nursing Facility Consolidated Billing for the Common Working File and Medicare Carriers
B–02–077	•	Program Integrity Management Reporting System for Part B
B–02–078	•	Medical Review Progressive Corrective Action—ACTION
B–02–079	•	Contractor Reporting of Operational and Workload Data for Electronic Data Interchange and Manual Transactions
B–02–080	•	Medicare Status Code System Standard System Financial Data Report Requirements for the Production Performance Monitoring System, Pulse System
B–02–081	•	Migrate Medicare Carrier Provider/Supplier Enrollment Data From the Existing Carrier Provider Enrollment System into the Provider Enrollment Chain Ownership System
B–02–082	•	Migrate Medicare Carrier Provider/Supplier Enrollment Data From the Existing Carrier Provider Enrollment System into the Provider Enrollment Chain Ownership System and Shut Down All Provider Enrollment Functions in Percutaneous Electrical Nerve Stimulation
B–02–083	•	Create Import/Export Functionality Between the Unique Provider Identification Number System and the Provider Enrollment Chain Ownership System
B–02–084	•	Create Import/Export Functionality Between the Medicare Claims System and the Provider Enrollment Chain Ownership System
B–02–085	•	Process All Medicare Part B Provider Enrollments in the Provider Enrollment Chain Ownership System. Modify the Medicare Claims System to Incorporate All Claim Payment and Provider Correspondence Functionality That Is Included in the Provider Enrollment System But Will Not Be a Part of Provider Enrollment System. Shut Down All Provider Enrollment Functions in Provider Enrollment System
B–02–086	•	Create Import/Export Functionality Between the Viable Medicare System and the Provider Enrollment Chain Ownership System
B–02–087	•	Skilled Nursing Facility Consolidated Billing—New Requirements for Claims for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies
B–02–088	•	Changes to Correct Coding Edits, Version 9.1, Effective April 1, 2003
B–02–089	•	Further Instructions Regarding the Reasonable Charge Update for 2003 for Splints and Casts
B–02–090	•	Implementation of the National Council for Prescription Drug Programs (NCPDP) Telecommunications Standard Version 5.1 and the Equivalent Batch Standard Version 1.1 for Retail Pharmacy Drug Transactions—CORRECTION
B–02–091	•	Provider Education Article: Requirements for Payment of Medicare Claims for Foot and Nail Care Services
B–02–092	•	Electromagnetic Stimulation
		Program Memoranda Intermediaries/Carriers (CMS Pub. 60A/B) (Superintendent of Documents No. HE 22.8/6–5)
AB–02–134	•	Questions and Answers Related to Implementation of National Coverage Determinations for Clinical Diagnostic Laboratory Services
AB–02–135	•	System Networking Electronic Correspondence Referral System 1.3 User and Installation Guides for Testing and Production
AB–02–136	•	Reasonable Charge Update for 2003 for Splints, Casts, Dialysis Supplies, Dialysis Equipment, Therapeutic Shoes, and Certain Intraocular Lenses
AB–02–137	•	Annual Update of Healthcare Common Procedure Coding System Codes Used for Home Health Consolidated Billing Enforcement
AB–02–138	•	Instructions for Fiscal Intermediary Standard System and Multi-Carrier System Healthcare Integrated General Ledger Accounting System Changes
AB–02–139	•	Additional Guidance for Applying the Medicare Self-Administered Drug Exclusion
AB–02–140	•	Data Center Testing and Production—Electronic Correspondence Referral System User Manual 5.1 and Quick Reference Guide Replacement
AB–02–141	•	Charging Fees to Providers for Medicare Education and Training Activities-Program Management
AB–02–142	•	Remittance Advice Coding Update
AB–02–143	•	Provider Education Article: Psychotropic Drug Use in Skilled Nursing Facilities
AB–02–144	•	Virginia Cardiac Surgery Initiative Demonstration

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[October 2002 Through December 2002]

Transmittal No.		Manual/Subject/Publication number
AB–02–145	•	Electronic Patient Records Via Non-Internet Means
AB–02–146	•	Revision to the Healthcare Provider Taxonomy Codes Crosswalk
AB–02–147	•	Promoting Influenza Vaccinations
AB–02–148	•	Remittance Advice Message for Ambulance Services
AB–02–149	•	Update to the Mammography Quality Standard Act File Record Layout for the Food and Drug Administration Certified Digital Mammography Centers
AB–02–150	•	Payment of Physician and Nonphysician Services for Certain Indian Providers
AB–02–151	•	Clarification Regarding Non-physician Practitioners Billing on Behalf of a Diabetes Outpatient Self-Management Training Services Program and the Common Working File Edits for Diabetes Outpatient Self-Management Training Services & Medical Nutrition Therapy. (NOTE: APASS has received a waiver for this Change Request
AB–02–152	•	Fee Schedule Update for 2003 for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies
AB–02–153	•	Claims Processing Instructions for the Medicare Disease Management Demonstration
AB–02–154	•	New Waived Tests—September 27, 2002
AB–02–155	•	Beneficiary Notification of Denials Based on Local Medical Review Policy
AB–02–156	•	Coverage and Billing for Neuromuscular Electrical Stimulation
AB–02–157	•	Codes Billable by Skilled Nursing Facilities and Suppliers for Skilled Nursing Facility Residents—Notice of New File Available via CMS Mainframe Telecommunication System
AB–02–158	•	Common Working File, Fiscal Intermediary, and Carrier Edits and Policy Clarification for Peripheral Neuropathy With Loss of Protective Sensation in People With Diabetes
AB–02–159	•	Medicare Deductible and Premium Rates for Calendar Year 2003
AB–02–160	•	Medicare Telehealth Update
AB–02–161	•	Coverage and Billing Requirements for Electrical Stimulation for the Treatment of Wounds
AB–02–162	•	Deported Medicare Beneficiaries
AB–02–163	•	2003 Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment Method
AB–02–164	•	Carrier, Durable Medical Equipment Regional Carrier, Intermediary and Regional Home Health Intermediary Processing Requirements for Claims Edited by Common Working File for Medicare Beneficiaries in State or Local Custody Under a Penal Authority
AB–02–165	•	Levocarnitine for Use in the Treatment of Carnitine Deficiency in End Stage Renal Disease Patients
AB–02–166	•	Editing of the Healthcare Provider Taxonomy Codes and Use of the Healthcare Provider Taxonomy Codes Crosswalk
AB–02–167	•	Notice of Interest Rate for Medicare Overpayments and Underpayments
AB–02–168	•	Advance Beneficiary Notice and Durable Medical Equipment Prosthetics, Orthotics & Supplies Refund Requirements—Corrections to PM AB–02–114
AB–02–169	•	Notice Requirement Related to Local Medical Review Policies
AB–02–170	•	File Descriptions and Instructions for Retrieving the 2003 Ambulatory Surgical Center Healthcare Common Procedure Code Additions and Deletions
AB–02–171	•	X12N Health Care Eligibility Benefit Inquiry/Response (270/271) Transaction Security and Connectivity Instructions
AB–02–172	•	Next Generation Desktop Data Center Connectivity—Security Information Clarification to Change Request 2079 (AB–02–073) Dated May 16, 2002
AB–02–173	•	Ambulance Fee Schedule Updates for 2003
AB–02–174	•	Single Drug Pricer
AB–02–175	•	Revisions to Common Working File Edits for Skilled Nursing Facility Consolidated Billing to Permit Payment for Certain Diagnostic Services Furnished to Beneficiaries Receiving Treatment for End Stage Renal Disease at an Independent or Provider-Based Dialysis Facility
AB–02–176	•	Prior Approval Requirement for Data Center and Front End Movement
AB–02–177	•	Independent Laboratory Billing for the Technical Component of Physician Pathology Services to Hospital Patients
AB–02–178	•	Clarification of the Comprehensive Error Rate Testing Program Contractor Resolution Process
AB–02–179	•	Complaint Screening
AB–02–180	•	Coverage and Billing for Home Prothrombin Time International Normalized Ratio Monitoring for Anticoagulation Management
AB–02–181	•	Medicare Physician Fee Schedule Update and the 2003 Participation Enrollment Process
AB–03–182	•	Coverage and Billing of Sacral Nerve Stimulation
AB–02–183	•	Coverage of Hyperbaric Oxygen Therapy for the Treatment of Diabetic Wounds of the Lower Extremities
AB–02–184	•	Provider Notification of Denials Based on Local Medical Review Policy
AB–02–185	•	Deletion of Q Codes and Reactivation of CPT Codes for Hepatitis B Vaccine
		Provider Reimbursement Manual—Part 1 (CMS Pub. 15–1) Superintendent of Documents No. HE 22.8/4
423	•	Regional Medicare Swing-Bed Rates
		Hospital Manual (CMS Pub. 10) (Superintendent of Documents No. HE 22.8/2)
791	•	Billing for Mammography Screening Diagnostic Mammography Diagnostic and Screening Mammograms Performed with New Technologies
792	•	Pneumococcal Pneumonia, Influenza Virus, and Hepatitis B Vaccines
793	•	Payment for Services Furnished by a Critical Access Hospital

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[October 2002 Through December 2002]

Transmittal No.		Manual/Subject/Publication number
794	•	Payment for Services Furnished by a Critical Access Hospital
795	•	Heart Transplants
		Skilled Nursing Facility Manual (CMS—Pub. 12) Superintendent of Documents No. HE 22. 8/3
375	•	Coverage and Patient Classification
		Coverage Issues Manual (CMS—Pub. 6) Superintendent of Documents No. HE 22. 8/14
160	•	Neuromuscular Electrical Stimulation for Use by Spinal Cord Injured Patients for Walking
161	•	Electrical Stimulation for the Treatment of Wounds Durable Medical Equipment—Reference List
162	•	Photosensitive Drugs Levocamitine for Use in the Treatment of Carnitine Deficiency in End Stage Renal Disease Patients
163	•	Home Blood Glucose Monitors
164	•	Hyperbaric Oxygen Therapy
165	•	Heart Transplants.
		Financial Management (CMS—Pub. 100–6)
12	•	Bankruptcy Glossary of Acronyms Basic Bankruptcy Terms and Definitions Bankruptcy is Litigation Types of Bankruptcies Filing Bankruptcy Draws a Line in the Sand Bankruptcy Affects Nearly All Medicare Operations Recoupment and Set-off Time is of the Essence Definitions Contractor's Establishment of Relationships to Ensure Effective Actions Regarding Providers in Bankruptcy Contractor Staff Must Establish Relationships to Ensure That the Regional Office and Regional Counsel Receive Prompt Notice of Provider Bankruptcies, So That Medicare Can Take Quick Action Contractors Must Recognize and Advise Regional Office Staff About Potential Provider Bankruptcies Contractor Staff Will Establish a Relationship With the Regional Office That has Jurisdiction Over the Bankruptcy Regional Office Jurisdiction Generally Parallels the Bankruptcy Court Where Case is Filed Contractor and Regional Office Bankruptcy Point of Contact Staff Member Actions to Take When a Provider Files for Bankruptcy Establish Effective Lines of Communication With Partners Respond to Regional Office Requests for Information Immediate Contractor Directives From the Regional Office Tracking Debts/Contract Officer Communications Chain Bankruptcies Chain Providers Single Providers Serviced by a National Contractor Affirmative Recovery Actions Working With the Regional Office and Regional Counsel's Office Assumption of the Medicare Provider Agreement Settlement Agreements or Stipulations Recoupment Administrative Freeze/Set-off Preparing and Filing Proof of Claim Closure of Bankruptcy Cases and Treatment of Overpayment Reporting Systems at End of Bankruptcy Closing the Bankruptcy Case Debt Located at the Debt Collection Center or Department of the Treasury Managing Bankruptcy Debt at the Contractor Location
		Peer Review Organization (CMS—Pub. 100–10) Superintendent of Documents No. HE 22.8/8–15
89	•	Citations and Authority Identification of Potential Violations Meeting With a Practitioner or Other Person Quality Improvement Organization Finding of a Violation Quality Improvement Organization Action on Final Finding of a Violation

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[October 2002 Through December 2002]

Transmittal No.		Manual/Subject/Publication number
		Quality Improvement Organization Report to the Office of Inspector General Imposition and Notification of Sanctions Effect of an Exclusion Sanction on Medicare Payment and Services Reinstatement After Exclusion Appeal Rights of the Excluded Practitioner or Other Person
		End Stage Renal Disease Network (CMS—Pub. 100–14)
14	•	Authority Network's Role Prior to Initiating Sanction Recommendation Project Officer Role in Sanction Procedures Duration and Removal of Alternative Sanction Definitions for the End Stage Renal Disease Complaint and Grievance Process End Stage Renal Disease Complaints and Grievance Role of Network in Handling a Complaint/Grievance End Stage Renal Disease Complaints and Grievance Process Facility Awareness of the Complaint/Grievance Process Use of Facility Complaint/Grievance Process Determination of Your Involvement Receiving a Complaint/Grievance Request of Grievance in Writing Referring Complaints and Grievances Written Acknowledgement of Grievances Investigation of Complaints and Grievances Life-Threatening Situations Challenging Patient Situations Advocating for Patient Rights Addressing a Complaint or Grievance Follow-up of a Grievance Conclusion of a Grievance Investigation Report and Letter to the Grievant Potential Outcomes of Complaint/Grievance Process Improvement Plans Content of Improvement Plans Time Periods for Review and Acceptance/Rejection of Improvement Plans Improvement Plans Tracking System Conclusion of Improvement Plans Non-Compliance With Improvement Plans Confidentiality and Disclosure of Information Identity of Complainant/Grievant Identity of Practitioner Identity of Facility Personal Representative Conflict of Interest End Stage Renal Disease Network Complaint Process End Stage Renal Disease Grievance Process End Stage Renal Disease Inquiry Process Time Table for Complaints and Grievances Model Response Letter of Acknowledgement of a Written Complaint/Grievance Consent to Disclose Identity—Model Form Designation of a Representative—Model Form Final Response to Grievant—Model Letter

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER
[October 2002 through December 2002]

Publication date	FR Vol. 67 page	CFR part(s)	File code *	Regulation title
10/01/2002	61496	42 CFR 413		Principles of Reasonable Cost Reimbursement; Payment for End-Stage Renal Disease Services; Prospectively Determined Payment Rates for Skilled Nursing Facilities: OFR Correction.
10/01/2002	61496	42 CFR 460	CMS–1201–IFC	Medicare and Medicaid Programs; Programs of All-inclusive Care for the Elderly (PACE); Program Revisions.
10/01/2002	61632		CMS–2160–N	State Children's Health Insurance Program; Final Allotments to States, the District of Columbia, and U.S. Territories and Commonwealths for Fiscal Year 2003.

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

[October 2002 through December 2002]

Publication date	FR Vol. 67 page	CFR part(s)	File code *	Regulation title
10/02/2002	61805	42 CFR 482	CMS–3018–N	Medicare and Medicaid Programs; Hospital Conditions of Participation: Clarification of the Regulatory Flexibility Analysis for Patients' Rights.
10/02/2002	61808	42 CFR 482, 483, 484.	CMS–3160–FC	Medicare and Medicaid Programs; Conditions of Participation: Immunization Standards for Hospitals, Long-Term Care Facilities, and Home Health Agencies.
10/02/2002	61956	42 CFR 457	CMS–2127–F	State Children's Health Insurance Program; Eligibility for Prenatal Care and Other Health Services for Unborn Children.
10/07/2002	62478		CMS–4050–NR	Medicare Program; Changes in Medicare Appeals Procedures Based on Section 521 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000.
10/11/2002	63434		CMS–3109–N	Medicare Program; Town Hall Meeting on the Hospital "1-Hour" Rule Related to the Use of Restraint and Seclusion.
10/16/2002	63966		CMS–1201–IFC	Medicare and Medicaid Programs; Programs of All-inclusive Care for the Elderly (PACE); Program Revisions: OFR Correction.
10/21/2002	64641		CMS–8013–N	Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 2003.
10/21/2002	64643		CMS–8014–N	Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 2003.
10/21/2002	64649		CMS–8015–N	Medicare Program; Part A Premiums for 2003 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement.
10/25/2002	65504	42 CFR 431 and 438.	CMS–2104–F2	Medicaid Program; Medicaid Managed Care: New Provisions Correcting Amendment.
10/25/2002	65582		CMS–2087–FN	Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2001.
10/25/2002	65585		CMS–2159–N	Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Continuance of Approval of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) as an Accrediting Organization.
10/25/2002	65588		CMS–4038–N	Medicare Program; Meeting of the Advisory Panel on Medicare Education—November 19, 2002.
10/25/2002	65672	42 CFR 409, 417, 422.	CMS–4041–P	Medicare Program; Modifications to Managed Care Rules.
11/01/2002	66642		CMS–2141–FN	Medicare and Medicaid Programs; Approval of the American Osteopathic Association for Deeming Authority for Ambulatory Surgical Centers.
11/01/2002	66718	42 CFR 405 and 419.	CMS–1206–FC and CMS–1179–F.	Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment Suspension for Unfiled Cost Reports.
11/05/2002	67318	42 CFR 410 and 414.	CMS–1204–N	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2003, Notice of Delay of Final Rule.
11/15/2002	69146	42 CFR 405 and 419.	CMS–1206–CN	Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment Suspension for Unfiled Cost Reports; Correction.
11/15/2002	69182	42 CFR 405	CMS–4004–P	Medicare Program; Changes to the Medicare Claims Appeal Procedures.
11/22/2002	70322	42 CFR 411	CMS–1809–F2	Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships: Extension of Partial Delay of Effective Date.
11/22/2002	70358	42 CFR 412, 413, 476, 484.	CMS–3055–P	Medicare Program; Photocopying Reimbursement Methodology.
11/22/2002	70363	42 CFR 418	CMS–1022–P	Medicare Program; Hospice Care Amendments.
11/22/2002	70373	42 CFR 482	CMS–1224–P	Medicare Program; Nondiscrimination in Posthospital Referral to Home Health Agencies and Other Entities.
11/22/2002	70435		CMS–1241–NC	Medicare and Medicaid Programs; Announcement of Applications From Hospitals Requesting Waivers For Organ Procurement Service Areas.
11/22/2002	70437		CMS–2154–FN	Medicare and Medicaid Programs; Application by the Joint Commission on Accreditation of Healthcare Organizations for Continued Deeming Authority for Ambulatory Surgical Centers.

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

[October 2002 through December 2002]

Publication date	FR Vol. 67 page	CFR part(s)	File code *	Regulation title
11/22/2002	70439		CMS–2155–FN	Medicare and Medicaid Programs; Approval of Application for Deeming Authority for Ambulatory Surgical Centers by the Accreditation Association for Ambulatory Health Care.
11/22/2002	70442		CMS–1220–N	Medicare Program; Fee Schedule for Payment of Ambulance Services' Update for CY 2003.
11/22/2002	70444		CMS–1217–N	Medicare Program; December 16, 2002, Meeting of the Practicing Physicians Advisory Council.
11/22/2002			CMS–6012–N3	Medicare Program; Establishment of the Negotiated Rulemaking Committee on Special Payment Provisions and Requirements For Prosthetics and Certain Custom-Fabricated Orthotics: January 6–7 and February 10–11, 2003 Meetings.
12/13/2002	76684	42 CFR 405	CMS–1908–IFC	Medicare Program; Application of Inherent Reasonableness to All Medicare Part B Services (Other Than Physician Services).
12/27/2002	79107		CMS–1231–N	Medicare Program; Re-Chartering of the Advisory Panel on Ambulatory Payment Classification Groups and Notice of Meeting of the Advisory Panel—January 21, 22, and 23, 2003.
12/27/2002	79109		CMS–3104–N	Medicare Program; Renewal and Amendment of the Charter of the Medicare Coverage Advisory Committee (MCAC).
12/27/2003	79109		CMS–9015–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—July-September 2002.
12/27/2003	79122		CMS–4055–N	Medicare Program; National Medicare+Choice Risk Adjustment Public Meeting—February 3, 2003.
12/27/2002	79123		CMS–1202–CN	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Correction Notice.
12/27/2002	79124		CMS–3105–N	Medicare Program; Meeting of the Medicare Coverage Advisory Committee—February 12, 2003.
12/27/2002	79125		CMS–1234–N	Medicare Program; February 10, 2003, Meeting of the Practicing Physicians Advisory Council.
12/31/2002	79966	42 CFR 410, 414, 485.	CMS–1204–FC	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2003 and Inclusion of Registered Nurses in the Personnel Provision of the Critical Access Hospital Emergency Services Requirement for Frontier Areas and Remote Locations.

Addendum V—National Coverage Determinations [October 2002 through December 2002]

A national coverage determination (NCD) is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Social Security Act, but does not include a determination of what code, if any, is assigned to a particular item or service covered under this title or determination with respect to the amount of payment made for a particular item or service so covered. We include below all of the NCDs that became effective during the quarter covered by this notice. The entries below include information concerning completed decisions as well as sections on program and decision memoranda, which also announce impending decisions or, in some cases, explain why it was not appropriate to issue an NCD. We identify completed decisions by title, effective date, and section of the publication where the decision can be found. Also, please note that in some cases more than one NCD was made affecting a single procedure. Information on completed decisions as well as pending decisions has also been posted on the CMS Web site at *http://cms.hhs.gov/coverage*.

NATIONAL COVERAGE DECISIONS FOR QUARTERLY NOTICES

[Coverage Issues Manual—CMS Pub. 06]

Section	Title	Effective date
35–10	Hyperbaric Oxygen Therapy	April 1, 2003.
35–87	Heart Transplants	April 1, 2003.
60–11	Home Blood Glucose Monitors	not applicable.

Addendum VI—Categorization of Food and Drug Administration-Allowed Investigational Device Exemptions

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c), devices fall into one of three classes. Also, under the new categorization process to assist CMS, the Food and Drug Administration assigns each device with a Food and Drug Administration-approved investigational device exemption to one of two categories. Category A refers to experimental/investigational device exemptions, and Category B refers to nonexperimental/investigational device exemptions. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following information presents the device number and category (A or B) for the third quarter, July through September 2002. (We inadvertently failed to include this information in our December 27, 2002, quarterly issuances notice).

INVESTIGATIONAL DEVICE EXEMPTION NUMBERS, 3RD QUARTER 2002

IDE	Category
G000137	B
G002018	B
G010155	B

INVESTIGATIONAL DEVICE EXEMPTION NUMBERS, 3RD QUARTER 2002—Continued

IDE	Category
G010192	B
G010193	B
G010235	B
G010260	B
G010261	B
G010270	A
G010355	B
G020043	B
G020067	B
G020081	B
G020086	B
G020088	B
G020102	B
G020104	B
G020118	B
G020128	B
G020129	B
G020134	B
G020138	B
G020140	B
G020141	B
G020142	B
G020143	B
G020144	B
G020145	B
G020147	B
G020148	B
G020151	B
G020155	B
G020156	B
G020157	B
G020158	B
G020159	B
G020163	A
G020164	B
G020166	B
G020170	B
G020171	B
G020172	B
G020173	B
G020175	B
G020176	B
G020178	B
G020179	B
G020183	B
G020186	B
G020187	B
G020188	B
G020189	A
G020191	B
G020192	B
G020194	B
G020196	B
G020199	B
G020203	B
G020204	B
G020206	B
G020208	B
G020209	B
G020214	B
G020215	B
G020216	B
G020218	B
G090193	B
G910133	B

The following information presents the device number and category (A or B) for the fourth quarter, October through December 2002.

INVESTIGATIONAL DEVICE EXEMPTION NUMBERS, 4TH QUARTER 2002

IDE	Category
G010035	B
G010268	B
G020020	B
G020035	B
G020053	B
G020064	B
G020160	B
G020182	B
G020185	A
G020193	B
G020211	B
G020223	B
G020224	B
G020227	B
G020228	B
G020229	B
G020230	A
G020232	B
G020233	B
G020234	A
G020238	B
G020241	A
G020244	B
G020249	B
G020250	B
G020254	B
G020255	B
G020258	B
G020260	B
G020263	B
G020269	B
G020270	B
G020271	A
G020272	B
G020275	B
G020276	B
G020277	B
G020281	B
G020283	B
G020284	B
G020285	A
G020287	B
G020288	B
G020289	B
G020291	B
G020295	B
G020296	B
G020297	B
G020300	B
G020303	B
G020304	B
G020309	B
G990155	B

[FR Doc. 03–7063 Filed 3–27–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1474–N]

Medicare Program; Town Hall Meeting on the Inpatient Rehabilitation Facility Prospective Payment System

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a town hall meeting to allow the public to discuss the inpatient rehabilitation facility (IRF) prospective payment system (PPS). Beneficiaries, providers, physicians, inpatient rehabilitation facilities staff, industry representatives, and other interested parties are invited to this meeting to present their views regarding the IRF PPS. The meeting is open to the public, but attendance is limited to space available.

DATES: *Meeting Date:* The town hall meeting announced in this notice will be held on Monday, May 19, 2003, from 10 a.m. to 1 p.m. (eastern daylight saving time).

ADDRESSES: The town hall meeting will be held in the auditorium at the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

FOR FURTHER INFORMATION CONTACT: August Nemec, 410–786–0612. You may also send inquiries about this meeting via e-mail to *ANemec@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 2001, we published a final rule entitled "Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities (CMS–1069–F)" in the **Federal Register** (66 FR 41316), that established a prospective payment system (PPS) for inpatient rehabilitation facilities (IRFs) as authorized under section 1886(j) of the Social Security Act (the Act). The IRF PPS regulations are codified at 42 CFR part 412, subpart P. In the August 7, 2001 final rule, we set forth per discharge Federal prospective payment rates for the fiscal year (FY) 2002 that provided payment for inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IRF PPS. The provisions of that final rule were effective for cost reporting periods beginning on or after January 1, 2002. (On July 1, 2002, we published a correcting amendment to the final rule in the **Federal Register** (67 FR 44073). Any reference to the August 7, 2001 final rule in this proposed rule includes the provisions effective in the correcting amendment.)

Section 1886(j)(5) of the Act and § 412.628 of the regulations requires the Secretary to publish in the **Federal Register**, on or before August 1 of the preceding fiscal year, the classifications and weighting factors for the IRF case-mix groups (CMGs) and a description of the methodology and data used in computing the prospective payment rates for the upcoming fiscal year. On August 1, 2002, we published a notice in the **Federal Register** (67 FR 49928) to update the IRF Federal prospective payment rates from FY 2002 to FY 2003 using the methodology described in § 412.624 of the regulations. As stated in that notice, we used the same classifications and weighting factors for the IRF CMGs that were set forth in the August 7, 2001 final rule to update the IRF Federal prospective payment rates from FY 2002 to FY 2003. The FY 2003 Federal prospective payment rates are effective for discharges on or after October 1, 2002 and before October 1, 2003.

After implementing the IRF PPS on January 1, 2002 and through the first quarter of calendar year 2002, we held conference calls with the IRF industry. These conference calls were beneficial for our staff and the IRF industry to understand and address the issues and concerns of implementing this new PPS. Since the IRF PPS has been implemented for over one year, we believe that this town hall meeting will provide interested parties with the opportunity to discuss issues and concerns regarding the IRF PPS.

In the near future, we anticipate publishing a proposed rule to set forth proposed updated FY 2004 IRF prospective payment rates and to propose other changes to the IRF PPS. It is important to note that if the proposed rule is published before the IRF town hall meeting, statements and comments made or received during the town hall meeting will not be accepted and considered as official comments on the proposed rule. To be considered as official comments, the procedures described in the **DATES, ADDRESSES,** and **SUPPLEMENTARY INFORMATION** sections of the proposed rule must be followed.

II. Meeting Format

The meeting will begin with an overview of the goals of the meeting. The meeting moderator will be introduced along with members of the CMS IRF PPS Panel. After a brief overview of the IRF PPS, the moderator will lead a discussion of the written statements received before the town hall meeting as described below. We have developed an agenda (to be posted on the CMS Web site discussed below) for the meeting consisting of the following aspects of the IRF PPS: (1) The IRF patient classification and payment systems; (2) the IRF patient assessment instrument; and (3) the requirements for a hospital or a unit of a hospital to be classified as an IRF.

Beginning on or about April 28, 2003, information about the IRF PPS town hall meeting will be posted at the following Web site address: *www.cms.hhs.gov/providers/irfpps/default.asp.* At this address, interested parties will find important information on the town hall meeting including an agenda for the meeting and handouts to be used during the discussions.

We will limit the time for participants to make formal statements according to the number of registered participants. Individuals who wish to make formal statements must contact August Nemec as soon as possible. Those individuals must subsequently submit their formal statement in writing so that it is received by CMS no later than 5 p.m., Monday, May 12, 2003. Send written submissions to: August Nemec, Division of Institutional Post Acute Care, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C5–06–27, Baltimore, Maryland 21244 or *ANemec@cms.hhs.gov.* If time permits, statements from individuals not registered to speak will be heard after individuals with scheduled statements.

III. Registration Instructions

The Division of Institutional Post Acute Care is coordinating meeting registration. While there is no registration fee, all individuals must register to attend. Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend this meeting must register by writing or e-mailing the actual names of the attendees to August Nemec at least 72 hours in advance of the meeting date. Attendees must show photographic identification to the Federal Protective Service or Guard Service personnel before they will be permitted to enter the building. Individuals who have not registered in advance will not be allowed to enter the building to attend the meeting. The meeting is limited to registered persons, and seating capacity is limited to the first 250 registrants.

Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact August Nemec at least 10 days before the meeting.

Authority: Section 1886(j) of the Social Security Act (42 U.S.C. 1395ww(j)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 24, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–7495 Filed 3–27–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1230–N]

Medicare Program; Public Meetings in Calendar Year 2003 for New Durable Medical Equipment Coding and Payment Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meetings.

SUMMARY: This notice announces the dates and location of public meetings to be held in calendar year 2003 to discuss our preliminary coding and payment determinations for new durable medical equipment. These meetings provide a forum for interested parties to make oral presentations and/or to submit written comments in response to preliminary coding and pricing recommendations for new durable medical equipment that have been submitted using the Healthcare Common Procedure Coding System coding modification process. Discussion is directed toward response to our specific preliminary recommendations, and will be limited to items on the new durable medical equipment public meeting agenda.

DATES: The public meetings are scheduled for Tuesday, June 24; Wednesday, June 25; and Thursday, June 26, 2003. Each meeting day will begin at 8 a.m. and end at 5 p.m., e.s.t. We have tentatively scheduled Friday, June 27, 2003 as an optional meeting date. A meeting will only be held on June 27 if the number of agenda items cannot be managed in three meeting days.

ADDRESSES: The public meetings will be held in the Centers for Medicare & Medicaid Services (CMS) Auditorium,

located at 7500 Security Boulevard, Baltimore, MD 21244.

Web site: Additional details regarding the public meeting process for new DME, along with information on how to register, and guidelines for an effective presentation will be posted at least one month before the first meeting date on the official HCPCS Web site, and can be accessed at *http://cms.hhs.gov/medicare/hcpcs/default.asp.*

Individuals who intend to provide a presentation at a public meeting for new DME should familiarize themselves with this information. This website also includes a description of the HCPCS coding process, along with a detailed explanation of the procedures used to make coding and payment determinations for DME and other items and services that are coded in the HCPCS.

A summary of each public meeting for new DME will be posted on the above website within one month after the meeting.

FOR FURTHER INFORMATION CONTACT: Jennifer Carver, (410) 786–6610.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Congress passed the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), Pub. L. 106–554. Section 531(b) of BIPA mandated that we establish procedures that permit public consultation for coding and payment determinations for new DME under Medicare Part B of title XVIII of the Social Security Act (the Act). The procedures and public meetings announced in this notice for new DME are in response to the mandate of section 531(b) of BIPA.

Information regarding the establishment of the public meeting process for new durable medical equipment was published in the **Federal Register** at 66 FR 58743 on November 23, 2001.

II. Registration

Registration Procedures: Registration may be completed on-line at *http://cms.hhs.gov/medicare/hcpcs/default.asp*, or you may contact the DME Public Meeting Coordinator, Jennifer Carver at 410–786–6610, to register by phone. The following information must be provided when registering: name, company name and address, telephone and fax numbers, e-mail address and special needs information. Registrants must also indicate whether they are the "Primary Speaker" for an agenda item, designated by the entity that submitted the HCPCS coding request. A CMS staff member will confirm your registration by mail, e-mail or fax.

Registration Deadline: Individuals must register for each date they plan to attend and/or provide a presentation. The deadline for registration for all of the meetings dates is Tuesday, June 10, 2003.

III. Presentations

Primary Speaker Presentations: The entity that submitted the HCPCS coding request for an item that appears on the Public Meeting agenda may designate one person to be the "Primary Speaker" and make a presentation at the meeting. We will post guidelines regarding the amount of time allotted to the speaker, as well as other presentation guidelines, on the official HCPCS website at least a month before the first public meeting in 2003 for new DME. Persons who have been designated to be a Primary Speaker must register to attend the meeting using the registration procedures described above and, at least 15 days before the meeting, contact the DME Public Meeting Coordinator, Jennifer Carver at 410–786–6610. At the time of registration, Primary Speakers must provide a brief, written statement regarding the nature of the information they intend to provide, and advise the meeting coordinator regarding needs for Audio/Visual Support. In order to avoid disruption of the meeting and ensure compatibility with our systems, tapes and disk files are tested and arranged in speaker sequence well in advance of the meeting. We will accommodate tapes and disk files that are received by the DME Public Meeting Coordinator 7 or more calendar days prior to the meeting. In addition, on the day of the meeting, Primary Speakers must provide a written summary of their comments to the DME Public Meeting Coordinator.

"5-Minute" Speaker Presentations: Meeting attendees will be permitted to sign up at the meeting, on a first-come, first-served basis, to make 5-minute presentations on individual agenda items. Based on the number of items on the agenda and the progress of the meeting, a determination will be made at the meeting by the meeting coordinator and the meeting moderator, regarding how many 5-Minute speakers can be accommodated. In order to offer the same opportunity to all attendees, there is no pre-registration for 5-Minute speakers. Attendees may sign-up only on the day of the meeting to do a 5-Minute presentation. They must provide their name, company name and address, contact information as specified on the sign-up sheet, and identify the specific agenda item that will be addressed. On the day of the meeting, 5-Minute speakers must provide a written summary of their comments to the DME Public Meeting Coordinator.

Speaker Declaration: The Primary Speakers and the 5-Minute Speakers must declare, at the meeting as well as in their written summary, whether or not they have any financial involvement with the manufacturers or competitors of any items or services being discussed. This includes any payment, salary, remuneration, or benefit provided to the speaker by the manufacturer.

Written Comments from Meeting Attendees: We welcome written comments from persons in attendance at a public meeting, whether or not they had the opportunity to make an oral presentation. Written comments may be submitted at the meeting, or prior to the meeting via e-mail to *http://www.cms.hhs.gov/medicare/hcpcs* or via regular mail to the HCPCS Coordinator, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C5–08–27, Baltimore, MD 21244.

General Information

The meetings are held in a Federal government building; therefore, Federal measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. In order to gain access to the building and grounds, participants must bring a government issued photo identification and a copy of your confirmation of pre-registration for the meeting. Access may be denied to persons without proper identification.

Security measures also include inspection of vehicles, inside and out, at the entrance to the grounds. In addition, all persons entering the building must pass through a metal detector. All items brought to CMS, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection. CMS cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation.

Special Accommodations: Persons attending a meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance or accommodations, should provide such information upon registering for the meeting.

Each meeting day will begin at 8 a.m. and end at 5 p.m., e.s.t. Because it is impossible to anticipate, in advance of the April 1, 2003 submission deadline, the nature and the number of coding requests that will be submitted for new DME, we can only estimate the amount of meeting time that will be needed, and we are unable to post a final agenda at this time. We may not need three full-day meetings. We will consider each meeting individually, and we may modify the meeting dates and times published in this notice. Final confirmation of meeting dates and times, and agenda items will be posted three weeks in advance of each scheduled meeting, on the official HCPCS Web site and can be accessed at *http://cms.hhs.gov/medicare/hcpcs/default.asp.*

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 42 U.S.C. 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 17, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–7060 Filed 3–27–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0514]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the information collection provisions by April 28, 2003.

ADDRESSES: The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to sshapiro@omb.eop.gov or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Irradiation in the Production, Processing, and Handling of Food—21 CFR Part 179 (OMB Control Number 0910–0186)—Extension

Under sections 201(s) and 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s) and 348), food irradiation is subject to regulation under the food additive premarket approval provisions of the act. The regulations providing for uses of irradiation in the production, processing, and handling of food are found in part 179 (21 CFR part 179). To assure safe use of a radiation source, § 179.21(b)(1) requires that the label of sources bear appropriate and accurate information identifying the source of radiation and the maximum energy of radiation emitted by x-ray tube sources. Section 179.21(b)(2)(i) requires that the label or accompanying labeling bear adequate directions for installation and use. Section 179.25(e) requires that food processors who treat food with radiation make and retain, for 1 year past the expected shelf life of the products up to a maximum of 3 years, specified records relating to the irradiation process (e.g., the food treated, lot identification, scheduled process, etc.). The records required by § 179.25(e) are used by FDA inspectors to assess compliance with the regulation that establishes limits within which radiation may be safely used to treat food. The agency cannot ensure safe use without a method to assess compliance with the dose limits, and there are no practicable methods for analyzing most foods to determine whether they have been treated with ionizing radiation and are within the limitations set forth in part 179. Records inspection is the only way to determine whether firms are complying with the regulations for treatment of foods with ionizing radiation.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
179.25(e)	6	120	720	1	720

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of firms who process food using irradiation is extremely limited. FDA estimates that there are two irradiation plants whose business is devoted primarily (i.e., approximately 100 percent) to irradiation of food and other agricultural products. Four other firms also irradiate small quantities of food. FDA estimates that this irradiation accounts for no more than 10 percent of the business for each of these firms. Therefore, the average estimated burden is based on: Two facilities devoting 100 percent of their business (or 600 hours for recordkeeping annually) to food irradiation; four facilities devoting 10 percent of their business or 120 hours (4 x 30 hours) for recordkeeping annually to food irradiation.

No burden has been estimated for the labeling requirements in §§ 179.21(b)(2)(i) and (b)(2)(ii) and 179.26(c) because the information to be disclosed is information that has been supplied by FDA. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information.

Dated: March 14, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–7476 Filed 3–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Intent To Prepare an Environmental Impact Statement for an Integrated Research Facility at Fort Detrick, Frederick, MD

AGENCY: National Institutes of Health (NIH), DHHS.

ACTION: Notice of intent to prepare an environmental impact statement for an integrated research facility at Fort Detrick, Frederick, Maryland.

SUMMARY: The Department of Health and Human Services (DHHS), National Institutes of Health (NIH), announces its intent to prepare an environmental impact statement (EIS) to evaluate a proposed new Integrated Research Facility for the NIH, at Fort Detrick in Frederick, Maryland. This EIS is being prepared and considered in accordance with requirements of the National Environmental Policy Act (NEPA) of 1969, regulations of the President's Council on Environmental Quality (40 CFR parts 1500–1508), NEPA Compliance Procedures of the DHHS General Administration Manual, Part 30 (Environmental Protection), 25 February 2000, and Army Regulation 200–2, Environmental Analysis of Army Actions (32 CFR 651), 29 March 2002.

COOPERATING AGENCIES: The U.S. Army, as owner of the site of the proposed Integrated Research Facility, is a cooperating agency in this EIS.

SUPPLEMENTARY INFORMATION: The National Institute of Allergies and Infectious Diseases (NIAID), a component of the NIH, conducts and supports research of infectious diseases and the human immune system, with an emphasis on emerging and re-emerging diseases such as HIV/AIDS and other sexually transmitted diseases, tuberculosis, malaria, asthma, and allergies. Its resources and expertise have been applied to studying organisms that might be used as agents of bioterrorism and the response of the human immune system to those organisms. This knowledge will be used to develop new and improved diagnostic tests, vaccines, and therapies to protect civilians.

Since fall 2001, NIAID has greatly accelerated its biodefense research program. Achievement of the research goals requires the construction and certification of biological containment laboratories, with facilities and procedures for handling potentially lethal agents. Equally important is the need to minimize potential threats from infectious agents to laboratory and clinical personnel working within these facilities and to adjacent communities. The Federal Government has approved $105 million to fund a facility for biodefense and emerging infectious diseases research on Fort Detrick in Frederick, Maryland, as a crucial element of this NIH construction initiative.

The proposed action is construction and operation by NIH of a new building comprised of laboratories designed and constructed to Biosafety Levels –2, –3, and –4 standards, that will enable NIAID researchers to study disease-causing microbes that may be used as agents of terrorism. The proposed new facility will have imaging capabilities and will include administrative support offices. It will occupy an approximately 6-acre plot near offices, laboratory facilities, and supporting services of the U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID), in accordance with a Congressional mandate. NIAID and USAMRIID have worked together for many years on developing new vaccines and diagnostic procedures in biodefense, as well as on HIV/AIDS research. Scientists of both agencies have had extensive experience with research in BSL–3 and –4 laboratories.

Significant issues to be analyzed in the EIS will include safety of laboratory operations; public health and safety; handling, collection, treatment, and disposal of biomedical research waste related to the proposal; and analysis of other risks, as well as concerns for pollution prevention and impacts of the proposed action on air quality, biological resources, cultural resources, water resources, land use, and socioeconomic resources. Several alternatives will be considered, including siting the new facility at another location on the grounds of Fort Detrick and a No-Action alternative, under which the new facility would not be built. Additional alternatives may be identified in the Public Scoping process.

Public Participation: The DHHS and the U.S. Army invite full public participation to promote open communication and better decision-making. All interested persons and organizations, including minority, low-income, disadvantaged, and Native American groups, are urged to participate in this NEPA environmental analysis process. Assistance will be provided upon request to anyone having difficulty with learning how to participate.

To ensure that the full range of issues related to this proposed action and the scope of this EIS are addressed, oral and written comments are invited from all interested parties, including appropriate Federal, State, and local agencies, and private organizations and citizens. Pursuant to this, a Public Scoping meeting will be held on Wednesday, April 16, 2003, at 7 p.m. at the Whittier Elementary School, 2400 Whittier Drive, Frederick, Maryland.

Comments on the scope of the EIS for the proposed project should be received no later than April 28, 2003. Comments and questions should be directed to the address listed below. Public comments are welcomed anytime throughout the NEPA process and should be directed to the address listed below. Additional formal opportunities for public participation after the Public Scoping are tentatively scheduled as follows:

Review and Comment on the Draft EIS (including a public meeting): August 2003.

Review of the Final EIS: December 2003.

Notices of availability for the Draft EIS, Final EIS, and Record of Decision will be provided through direct mail, the **Federal Register**, and other media. Notifications also will be sent to Federal, State, and local agencies and persons and organizations that submit comments or questions. Precise schedules and locations for public meetings will be announced in the local news media. Interested individuals and organizations may request to be included on the mailing list for public distribution of meeting announcements and associated documents.

FOR FURTHER INFORMATION CONTACT: Ron Wilson, Office of Facilities Planning, National Institutes of Health, 31 Center Drive, Room 3B44, MSC 2162, Bethesda, MD 20892–2162; by telephone (301) 496–5037; fax (301) 402–0017; or e-mail *wilsoron@ors.od.nih.gov*.

Authority: 42 U.S.C. 4321–4347 (National Environmental Policy Act).

Dated: March 24, 2003.

Stephen A. Ficca,

Associate Director for Research Services, National Institutes of Health.

[FR Doc. 03–7404 Filed 3–25–03; 9:42 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space availale. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Director's Council of Public Representatives.

Date: April 24, 2003.

Time: 8:30 a.m. to 4:30 pm.

Agenda: Among the topics proposed for discussion are: (1) The NIH Director's Report; (2) update on the NIH Director's Road Map Initiative; (3) update on the Government Performance and Results Act (GPRA) implemenation; and (4) update on the NIH Communications Plan.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Jennifer E. Gorman Vetter, NIH Public Liaison/COPR Coordinator, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, (301) 435–4448, *gormanj@od.nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home Page: *http://www.nih.gov/about/publicliaison/index.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Background; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7407 Filed 3–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date: May 15, 2003.

Open: 8:30 a.m. to 2:45 p.m.

Agenda: Report of Center Director and other issues.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 10, Bethesda, MD 20892.

Closed: 2:45 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 10, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, Ph.D., Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

Information is also available on the Institute's/Center's Home Page: *http://www.ncrr.nih.gov/newspub/minutes.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: March 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7410 Filed 3–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, HIV and Aging.

Date: April 11, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Fred Altman, Ph.D., Scientific Review Administrator, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6220, MSC 9621, Bethesda, MD 20892–9621, 301–443–8962.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7405 Filed 3–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Assessment of Depression RFA.

Date: April 15, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Susan M. Matthews, BA, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6134, MSC 9607, Bethesda, MD 20892–9607, 301–443–5047.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7406 Filed 3–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title, 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Research for Biodefense.

Date: April 17–18, 2003.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Terrace Room, Chevy Chase, MD 20815.

Contact Person: Geetha P Bansal, Ph.D., Scientific Review Administrator, National Institute of Allergy and Infectious Disease, National Institute of Health, 6700–B Rockledge Drive, Room 2213, Bethesda, MD 20892–7616, (301) 402–5658, *gbansol@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7409 Filed 3–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, RFA NR–03–003 Research to Improve Care for Dying Children and Their Families.

Date: April 1, 2003.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, 6701 Democracy Plaza, Room 710, Bethesda, MD 20817.

Contact Person: John E. Richters, Ph.D., Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd. Room 715, Bethesda, MD 20817, (301) 594–5971, *jrichters@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: March 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7411 Filed 3–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Center for Scientific Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Committee, Workgroup.

Date: May 12–13, 2003.

Time: 8:30 a.m. to 1 p.m.

Agenda: Discussion of activities to evaluate organization and function of the Center for Scientific Review Process.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 6087, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Deputy Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3016, MSC 7776, Bethesda, MD 20892, (301) 435–1114.

Information is also available on the Institute's/Center's Home Page: *http://www.csr.nih.gov/drgac/drgac.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7408 Filed 3–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Exploratory Method Development.

Date: March 28, 2003.

Time: 8 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Lee S. Mann, Ph.D., JD, Scientific Review Administrator, Center for Scientific Review, national Institutes of Health, 6701 Rockledge Drive, Room 8186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1, VISC (90): The Retinal Nerve Fiber Layer and Glaucoma.

Date: March 28, 2003.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Michael H. Chaitin, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis, Panel, Mother-Infant Interaction Micro-Studies.

Date: April 2, 2003.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone confetence call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, *levin@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Nome of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BDCN 4 04M: Member Conflict: Biology and Expression of Neurotransmitter Receptors.

Date: April 3, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 5184, Bethesda, MD 20892, (telephone conference call).

Contact Person: Jay Joshi, Ph.D., Scientific Review Administrator, Center for Scientific review, national Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, HSP and HSP-Based Therapy.

*Date:*April 3, 2003.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Sharon K. Gubanich, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict.

Date: April 4, 2003.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (telephone conference call).

Contact Person: Eduardo A. Montalvo, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG PBC (4) Glycobiology.

Date: April 4, 2003.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Zakir Bengali, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892. (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Nome of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Family Studies (EDC 1 MESA study member conflict).

Date: April 7, 2003.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Nome of Committee: Center for Scientific Review Special Emphasis Panel, Rehabilitation SBIR Review.

Date: April 7–8, 2003.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology: p53 and EAE.

Date: April 7, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Stephen M. Nigida, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biostatistical Methods Member Conflict.

Date: April 7, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Charles N. Rafferty, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, 301–435–3562, *raffertc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Contact Person: Center for Scientific Review Special Emphasis Panel, AIDS Opportunistic Infections SEP.

Date: April 7, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eduardo A. Montalvo, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Membrane Events-SEP.

Date: April 8, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael A. Lang, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Identification of Biowarfare Agents.

Date: April 8, 2003.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marian Wachtel, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, (301) 435–1148, *wachtelm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Integrative, Functional & Cognitive Neurosciences Fellowships.

Date: April 8, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C. Debbas, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *debbasg@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ECS 50: CVS Bioengineering Research Partnership.

Date: April 9, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SNEM–1 Cancer-Related R21 Applications.

Date: April 9, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681, *schwarte@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Synapse Formation.

Date: April 9, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanne T. Fujii, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, *fujiij@drg.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: American Sign Language.

Date: April 10, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Karen Sirocco, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–0676, *siroccok@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 HEM–1 (04)M: Biomechanics of Heart Development.

Date: April 10, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert T. Su, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195, *sur@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mechanisms of PDT Therapy.

Date: April 10, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon K. Gubanich, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301 435–1767.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Health Services Research (SNEM 4 members).

Date: April 10, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology: Adhesion Molecules.

Date: April 11, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Stephen M. Nigida, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7412 Filed 3–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Opioid Drugs in Maintenance and Detoxification Treatment of Opioid Dependence—42 CFR part 8 (OMB No. 0930–0206; Extension, no change)—This regulation establishes a certification program managed by SAMHSA's Center for Substance Abuse Treatment (CSAT). The regulation requires that Opioid Treatment Programs (OTPs) be certified. "Certification" is the process by which SAMHSA determines that an OTP is qualified to provide opioid treatment under the Federal opioid treatment standards established by the Secretary of Health and Human Services. To become certified, an OTP must be accredited by a SAMHSA-approved accreditation body. The regulation also provides standards for such services as individualized treatment planning, increased medical supervision, and assessment of patient outcomes. This submission seeks continued approval of the information collection requirements in the regulation and of the forms used in implementing the regulation.

SAMHSA currently has approval for the Application for Certification to Use Opioid Drugs in a Treatment Program Under 42 CFR 8.11 (Form SMA–162); the Application for Approval as Accreditation Body Under 42 CFR 8.3(b) (Form SMA–163); and the Exception Request and Record of Justification Under 42 CFR 8.12 (Form SMA–168), which may be used on a voluntary basis by physicians when there is a patient care situation in which the physician must make a treatment decision that differs from the treatment regimen required by the regulation. Form SMA–168 is a simplified, standardized form to facilitate the documentation, request, and approval process for exceptions.

The tables that follow summarize the annual reporting burden associated with the regulation, including burden associated with the forms.

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR ACCREDITATION BODIES

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Hours/ response	Total hours
8.3(b)(1–11)	Initial approval (SMA–163)	2	1	3.0	6.0
8.3(c)	Renewal of approval (SMA–163)	2	1	1.0	2.0
8.3(e)	Relinquishment notification	1	1	0.5	0.5
8.3(f)(2)	Non-renewal notification to accredited OTP's	1	90	0.1	9.0
8.4(b)(1)(ii)	Notification to SAMHSA for seriously noncompliant programs.	2	2	1.0	4.0
8.4 (b)(1)(iii)	Notification to OTP for serious noncompliance	2	2	1.0	4.0
8.4(d)(1)	General documents and information to SAMHSA upon request.	7	4	0.5	14.0
8.4(d)(2)	Accreditation survey to SAMHSA upon request	7	53	0.02	7.42
8.4(d)(3)	List of surveys, surveyors to SAMHSA upon request.	7	6	0.2	8.4
8.4(d)(4)	Report of less than full accreditation to SAMHSA.	7	2.5	0.5	8.75
8.4(d)(5)	Summaries of Inspections	7	50	0.5	175.0
8.4(e)	Notifications of Complaints	7	5	0.5	17.5
8.6(a)(2) and (b)(3)	Revocation notification to Accredited OTP's	1	50	0.3	15.0

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR ACCREDITATION BODIES—Continued

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Hours/ response	Total hours
8.6(b)	Submission of 90-day Corrective plan to SAMHSA.	1	1	10	10.0
8.6(b)(1)	Notification to accredited OTP's of Probationary Status.	1	50	0.3	15.0
Total		7			297

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR OPIOID TREATMENT PROGRAMS

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Hours/ response	Total hours
8.11(b)	New programs approval (SMA–162)	75	1	1.50	112.50
8.11(b)	Renewal of approval (SMA–162)	350	1	1.00	350.00
8.11(b)	Relocation of Program (SMA–162)	35	1	1.17	40.95
8.11(d)	Application for transitional certification (SMA–162)*.	7	1	1.58	11.06
8.11(e)(1)	Application for provisional certification	75	1	1	75.00
8.11(e)(2)	Application for extension of provisional certification.	30	1	.25	7.50
8.11(f)(5)	Notification of sponsor or medical director change (SMA–162).	60	1	.2	12.00
8.11(g)(2)	Documentation to SAMHSA for interim maintenance.	1	1	1	1.00
8.11(h)	Request to SAMHSA for Exemption from 8.11 and 8.12 (SMA–168).	1,100	6	.152	1003.2
8.11(i)(1)	Notification to SAMHSA Before Establishing Medication Units (SMA–162).	10	1	.25	2.5
8.12(j)(2)	Notification to State Health Officer When Patient Begins Interim Maintenance.	1	20	.33	6.6
8.24	Contents of Appellant Request for Review of Suspension.	2	1	.25	.50
8.25(a)	Informal Review Request	2	1	1.00	2.00
8.26(a)	Appellant's Review File and Written Statement	2	1	5.00	10.00
8.28(a)	Appellant's Request for Expedited Review	2	1	1.00	2.00
8.28(c)	Appellant Review File and Written Statement	2	1	5.00	10.00
Total		1,100			1,647

*This is a one-time requirement that will be fully met during the first three years of approval for the final rule.

SAMHSA believes that the recordkeeping requirements in the regulation are customary and usual practices within the medical and rehabilitative communities and has not calculated a response burden for them. The recordkeeping requirements set forth in 42 CFR 8.4, 8.11 and 8.12 include maintenance of the following: 5-year retention by accreditation bodies of certain records pertaining to accreditation; documentation by an OTP of the following: A patient's medical examination when admitted to treatment, A patient's history, a treatment plan, any prenatal support provided the patient, justification of unusually large initial doses, changes in a patient's dosage schedule, justification of unusually large daily doses, the rationale for decreasing a patient's clinic attendance, and documentation of physiologic dependence.

The rule also includes requirements that OTPs and accreditation organizations disclose information. For example, 42 CFR 8.12(e)(1) requires that a physician explain the facts concerning the use of opioid drug treatment to each patient. This type of disclosure is considered to be consistent with the common medical practice and is not considered an additional burden. Further, the rule requires, under § 8.4(i)(1) that accreditation organizations shall make public their fee structure; this type of disclosure is standard business practice and is not considered a burden.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 24, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–7458 Filed 3–27–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–13]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 19, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–7109 Filed 3–27–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–26]

Privacy Act of 1974; Proposed Amendment of Routine Uses Applicable to Systems of Records

AGENCY: Office of Inspector General, HUD.

ACTION: Notification of proposed amendment of routine uses applicable to systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Inspector General (OIG) is giving notice that it proposes to amend the routine uses applicable to its systems of records, which are published at 57 FR 25069 (June 12, 1992) and 65 FR 50904 (August 21, 2000). The OIG proposes to add a new routine use to the routine uses currently applicable to OIG's systems of records to permit disclosure of five systems of records for purposes of internal and external peer reviews of the Office of Audit and Office of Investigations, specifically HUD/OIG–1, Investigative Files of the Office of Inspector General, HUD/OIG–2, Hotline Complaint Files of the Office of Inspector General; HUD/OIG–3, Name Indices System of the Office of Inspector General, HUD/OIG–5, AutoAudit of the Office of Inspector General; and HUD/OIG–6, AutoInvestigation of the Office of Inspector General. This notice also proposes adding a new routine use to the same five systems of records to allow disclosure of theses records to the President's Council on Integrity and Efficiency (PCIE) and other federal agencies, when these entities or the OIG conducts an audit or investigation pursuant to Executive Order 12993.

DATES: *Effective date:* This proposal shall become effective without further notice on April 28, 2003, unless comments are received on or before that date which would result in a contrary determination.

Comment Due Date: April 28, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. *An original and four copies of comments should be submitted.* Facsimile comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For Privacy Act information: Jeanette Smith, Departmental Privacy Act Officer, telephone number (202) 708–2374. For OIG-related information: Bryan Saddler, Counsel to the Inspector General, Office of Inspector General, telephone number (202) 708–1613. (These are not toll free numbers). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services).

SUPPLEMENTARY INFORMATION: The OIG, pursuant to the Privacy Act of 1974, currently maintains six systems of records: (1) Investigative Files of the Office of Inspector General (HUD/OIG–1); (2) Hotline Complaint Files of the Office of Inspector General (HUD/OIG–2); (3) Name Indices System of the Office of Inspector General (HUD/OIG–3); (4) Independent Auditor Monitoring Files of the Office of Inspector General (HUD/OIG–4); (5) AutoAudit of the Office of Inspector General (HUD/OIG–5); and (6) AutoInvestigation of the Office of Inspector General (HUD/OIG–6). The notices for these systems of records were last published on June 12, 1992 (57 FR 25069) and August 21, 2000 (65 FR 50904). The additional two routine uses being proposed will permit disclosure to those persons involved in conducting and reviewing external and internal peer reviews of the Office of Audit and the Office of Investigations, the PCIE, and other authorized Federal agencies when conducting investigations or audits pursuant to Executive Order 12993.

Recent legislation enacted as part of the Department of Homeland Security Act, specifically, subsection (7) of that Act reads as follows: "To ensure the proper exercise of the law enforcement powers authorized by this subsection, the OIG described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that established the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General".

OIG proposes a routine use that will allow the disclosure of information to authorized officials within OIG, the PCIE, the Department of Justice (DOJ), and the Federal Bureau of Investigation, as necessary, for the purpose of conducting qualitative assessment reviews of the OIG's investigative operations to ensure that the adequate internal and management procedures are maintained. A similar routine use is proposed for the Office of Audit records, which is subject to a recurring (every three year) external peer review required by the Government Accounting Standards, para. 3.33, and the PCIE. While these disclosures could be justified otherwise, it is appropriate that formal notice be provided.

An additional new routine use is proposed to enable OIG to assist other OIG's with internal audits or investigations required by the PCIE under Executive Order 12993, which cannot or should not be performed by the staff of a particular OIG that would normally conduct the audit or investigation and to allow reports to be reviewed by the PCIE regarding actions taken with respect to these audits or investigations. This routine use will allow the OIG to conduct assigned audits or investigations under Executive Order 12993 and to report its findings and recommendations and actions taken to the PCIE. It will also allow release of information to other agencies conducting internal audits of OIG.

Again, while such releases may be otherwise justified, it is appropriate that a formal notice be provided.

The texts of the new routine uses are printed below. All other aspects of OIG's systems of records remain unchanged and are as published at 57 FR 25069 and 65 FR 50904.

Section 552a(e)(4) and (11) of title 5, United States Code, provides that the public be afforded a 30-day period in which to comment on these revisions to OIG's existing record systems. Further, a report of the OIG's intention to amend the routine uses applicable to its six existing systems of records has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I of OMB Circular A–130, which is entitled "Federal Agency Responsibilities for Maintaining Records About Individuals" (50 FR 52730 (Dec. 24, 1985)).

HUD/OIG–1

SYSTEM NAME:

Investigative Files of the Office of Inspector General.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, state, or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate state boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate state board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

8. Records may be disclosed to persons engaged in conducting and reviewing internal and external peer reviews of OIG to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization.

9. In the event that these records respond to an audit, investigation or review, which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the PCIE pursuant to Executive Order 12993, the records may be disclosed to the PCIE and other federal agencies, as necessary.

* * * * *

HUD/OIG–2

SYSTEM NAME:

Hotline Complaint Files of the Office of Inspector General.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, state, or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate state boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate state board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

8. Records may be disclosed to persons engaged in conducting and reviewing internal and external peer reviews of OIG to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization.

9. In the event that these records respond to an audit, investigation or review, which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the PCIE pursuant to Executive Order 12993, the records may be disclosed to the PCIE and other federal agencies, as necessary.

* * * * *

HUD/OIG–3

SYSTEM NAME:

Name Indices System of the Office of Inspector General.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, state, or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate state boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate state board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

8. Records may be disclosed to persons engaged in conducting and reviewing internal and external peer reviews of OIG to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization.

9. In the event that these records respond to an audit, investigation or review, which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the PCIE pursuant to Executive Order 12993, the records may be disclosed to the PCIE and other federal agencies, as necessary.

* * * * *

HUD/OIG–5

SYSTEM NAME:

AutoAudit of the Office of Inspector General.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, state, or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate state boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate state board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

8. Records may be disclosed to persons engaged in conducting and reviewing internal and external peer reviews of OIG to ensure auditing standards applicable to Government audits by the Comptroller General of the United States are applied and followed.

9. In the event that these records respond to an audit, investigation or review, which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the PCIE pursuant to Executive Order 12993, the records may be disclosed to the PCIE and other federal agencies, as necessary.

* * * * *

HUD/OIG–6

SYSTEM NAME:

AutoInvestigation of the Office of Inspector General.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, state, or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule, or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the

litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate state boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate state board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

8. Records may be disclosed to persons engaged in conducting and reviewing internal and external peer reviews of OIG to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization.

9. In the event that these records respond to an audit, investigation or review, which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the PCIE pursuant to Executive Order 12993, the records may be disclosed to the PCIE and other federal agencies, as necessary.

Dated: March 21, 2003.

Kenneth M. Donohue, Sr.,

Inspector General.

[FR Doc. 03–7415 Filed 3–27–03; 8:45 am]

BILLING CODE 4210–78–P

DEPARTMENT OF THE INTERIOR

Notice of Availability of Federal Agency Work Plans and Reports for the Klamath River Basin

AGENCY: Klamath River Basin Federal Working Group.

ACTION: Notice of availability.

SUMMARY: The Klamath River Basin Federal Working Group (KRBF) is notifying the public of the availability of Federal agency work plans and reports of the three departments and their respective agencies/bureaus for the Klamath River Basin. These work plans and reports are intended to communicate to the public the scope of work underway by these departments on federal activities in the Klamath River Basin. These documents are not intended to be detailed guidelines, schedules, funding documents, or project descriptions.

Work plans and reports for the Klamath River Basin are available for the following agencies.

- The Department of Agriculture, which includes work under the Natural Resources Conservation Service (NRCS), and the Forest Service (FS);
- The Department of the Interior, which includes work under the Bureau of Reclamation (BOR), Fish and Wildlife Service (FWS), Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and U.S. Geological Survey (USGS); and
- The Department of Commerce, which includes work under the National Marine Fisheries Service (NMFS).

These agency documents are available on the Web and can be accessed from one site: *http://www.doi.gov/klamath*

Further information on each agency work plan or report can be obtained from contacts listed below and listed on the Web sites of each agency.

Agency documents will be modified as changes occur. Each agency will make its modified work plans or reports available on the Web as they become available.

ADDRESSES: Address all requests for information on the work plans to the responsible agency:

- Natural Resources Conservation Service, Attn: State Conservationist—OR, 101 SW Main, Suite 1300, Portland, OR 97204 or State Conservationist—CA 430 G Street, Suite 4164, Davis, CA 95616–2890.
- Forest Service, Fremont-Winema National Forests, Attn: Natural Resources Staff, 1301 South G. St., Lakeview, OR 97630; or Forest Service, Shasta-Trinity, and Six Rivers National Forests, Natural Resources Staff, Attn: Klamath, 1312 Fairlane Road, Yreka, CA 96097.
- National Marine Fisheries Service, Chief, Endangered Species Division, 1315 East-West Hwy, Silver Spring, MD 20910.
- Department of the Interior, Attn: Director, Office of Communications, 1849 C Street, NW., Room 6213, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Eric Ruff, Director, Office of Communications, Department of the Interior, at (202) 208–3752; fax (202) 208–5133, e-mail *Eric_Ruff@ios.doi.gov*.

SUPPLEMENTARY INFORMATION: The President's Klamath River Basin Federal Working Group was established by Presidential Memo on March 1, 2002. The Working Group was created to advise the President on immediate steps and long-term solutions to enhance water quality and quantity and to address other complex issues in the Klamath River Basin. The Working Group consists of: the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, and the Chairman of the Council of Environmental Quality.

The Federal agency work plans and reports are developed in a variety of ways, using a variety of planning and other procedures. Descriptions of these documents and procedures are provided below. Means for receiving copies of each work plan or report are listed below. Copies are available on the Web, by phone and mail, and in public offices.

Department of Agriculture Natural Resources Conservation Service (NRCS)

The Work Plan for Adaptive Management, Klamath River Basin, Oregon & California, is designed to be used by NRCS and conservation partners, state and local field staffs, private consultants, landowners/operators, tribal representatives, and others that will be developing or assisting in the development of a comprehensive basin plan. Building on this basin plan; on-farm individual resource management plans, and other documents will be developed to guide the design and implementation of conservation practices to mitigate the impacts of drought on agriculture in the Klamath River Basin.

The Work Plan is a preliminary estimate of NRCS activities over the next five years in the Klamath Basin. The Work Plan includes an adaptive management approach to allow flexibility to respond to change as more information and resources become available such as funding, scientific assessments, impacts of practices to be used, and land-owner objectives. The Work Plan could change dramatically because of these and many more factors.

This Work Plan is based on a rapid assessment of the basin including its present and future natural resource conditions, conservation practices currently installed, future conservation practices and their costs, practice effects, and sources of funds. The work plan contains estimates of funds to be available in FY 2003 through the Farm Bill and other sources along with estimates of outcomes.

The Work Plan describes recent accomplishments, how progress is measured, basin-wide conservation needs and a planning process, and on-farm planning and implementation using anticipated funds. The rapid assessment of the basin will be completed in June 2003.

The Work Plan will be changed based on a final analysis of the rapid assessment information and after funding allowances have been issued to the NRCS state offices from the FY 2003 appropriations. A more detailed description of NRCS activities over the next five years will be prepared early in Phase 2 of the Work Plan. During Phase 2, a Basin Team will be assembled, information will be analyzed from the sub-basin Rapid Assessments, more precise estimates will be made of land-owner willingness to participate, and a basin-wide planning effort will be established with state and other federal agencies, conservation and irrigation districts, and interested stake holders.

Department of Agriculture Forest Service

The FS Work Plan for the Upper Klamath River Basin, Oregon, and Middle and Lower Klamath River Basin, California, display past, present, and future projects which will enhance and restore the functioning of the basin ecosystem. The plan includes watershed level projects and plans as well local projects designed to achieve the objectives. Web links are included where available that will give the reader additional information for each project.

The Work Plan displays current activities as well as future projects that are in the planning stage. As planning proceeds, changes will be made based on the availability of funds, scientific assessments, and environmental assessments. Similar projects are expected to be implemented in the future.

The Work Plan describes recent accomplishments as well as planned activities. The plan will be changed annually as wider area assessments and plans are developed with specific proposed actions. The planning will involve state and other federal agencies, the affected Tribes, and interested stakeholders.

Department of the Interior

The Department of the Interior has summarized its work on Klamath water, habitat and species issues in two documents. The first of these is titled, "Summary of Ongoing and Planned Work of the Department of the Interior Related to the Klamath River Basin." That document summarizes ongoing and planned work of the five Interior bureaus—FWS, BOR, BIA, BLM, and USGS—primarily involved in such work. The document highlights two key planning efforts underway—the development of a Klamath Basin Conservation Implementation Plan led by the BOR and an aquatic habitat restoration scenario being prepared by the FWS. The summary also discusses Habitat Conservation Plan initiatives, Environmental Impact Statement work underway, the Trinity River restoration initiative, the development of a water bank for the Klamath Irrigation Project, habitat restoration, water leasing, and water storage initiatives in the Wood River valley, work on water-right claims, groundwater studies in the upper Klamath River basin, and participation in the Federal licensing process for PacifiCorp's Klamath River basin hydropower facilities.

The second document is titled, "Klamath Basin—Summary of Recent Federal Government Activities." This document summarizes work that has been conducted over the past several years—much of which is continuing today—dealing with the basin's difficult and interrelated water, habitat and species issues. The summary paper highlights initiatives dealing with water resources, land management practices, salmon enhancement, fish and wildlife habitat restoration, research, monitoring and assessment, Endangered Species Act responsibilities, and community outreach.

Department of Commerce National Oceanic and Atmospheric Administration Fisheries

The report on Past, Present and Future Activities Being Conducted in the Klamath River Basin Related to the Protection and Recovery of Fish and Their Habitat describes NOAA Fisheries involvement in a broad range of activities in the Klamath Basin under the authorities of the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act), and other federal statutes. Through these statutes, NOAA Fisheries endeavors to protect and recover fish populations under their jurisdiction. NOAA Fisheries also administers grants to state, tribal and local entities in the Klamath River basin for salmon restoration and watershed improvement activities. NOAA Fisheries activities in the basin principally occur in the lower Klamath Basin, where anadromous species occur. However, NOAA Fisheries does administer grants to the State of Oregon for watershed improvements in the upper Klamath River basin, which in turn benefit anadromous species in the lower basin. The report summarizes NOAA Fisheries' primary activities in the Klamath Basin that have occurred over the past five years as well as those activities that will occur into the future. It is intended to inform the user of the involvement of NOAA Fisheries in a variety of activities as they relate to anadromous fish in the basin. The report will be updated as projects and funding levels evolve over the next five years.

Signed at Washington, DC, on March 25, 2003.

Gale A. Norton,

Secretary of the Interior and Chairman of the President's Klamath River Basin Federal Working Group.

[FR Doc. 03–7513 Filed 3–27–03; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for the Alamosa and Monte Vista National Wildlife Refuge Complex, Alamosa, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces that a Draft Comprehensive Conservation Plan and Environmental Assessment (CCP/EA) for the Alamosa and Monte Vista National Wildlife Refuge Complex is available for review and comment. This CCP/EA, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997 and the National Environmental Policy Act of 1969, describes how the U.S. Fish and Wildlife Service intends to manage the Complex for the next 15 years. Also available is a Spanish version Summary of the Draft Comprehensive Conservation Plan and Environmental Assessment.

DATES: Please submit comments on the Draft CCP/EA on or before April 28, 2003.

ADDRESSES: Comments on the Draft CCP/EA should be addressed to: Adam Misztal, Planning Team Leader, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486. Comments may also be submitted via electronic mail to: *adam_misztal@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Adam Misztal, Planning Team Leader, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486; (303) 236–8145 ext.

607; fax (303) 236–4792 or Mike Blenden, Complex Manager, Alamosa/Monte Vista National Wildlife Refuge Complex, U.S. Fish and Wildlife Service Admin. Building, 9383 El Rancho Lane, Alamosa, CO 81101; (719) 589–4021; fax (719) 587–0595.

SUPPLEMENTARY INFORMATION:

Availability of Documents: Copies of the Draft CCP/EA or Spanish version Summary may be obtained by writing to: Adam Misztal, Planning Team Leader, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486. The Draft CCP/EA will also be available for viewing and downloading online at *http://mountain-prairie.fws.gov/planning/*.

Background: Alamosa and Monte Vista National Wildlife Refuges were established under the authority of the Migratory Bird Conservation Act "* * * for use as inviolate sanctuaries, or for any other management purpose, for migratory birds." The purpose for managing habitats on the Alamosa and Monte Vista National Wildlife Refuge (the Complex) is to provide a biologically diverse area that complements the San Luis Valley (SLV) ecosystem.

Ten different plant communities/habitat types exist on the Complex: upland shrub, tall-emergent, short-emergent, saltgrass, short grass, shallow seasonal wetland, semipermanent wetland, riparian, riverine, and agriculture. These habitats support a variety of mammals, reptiles, amphibians, and birds. Mammals include coyote, red fox, black bear, mountain lion, bobcat, elk, mule deer, pronghorn, raccoon, mink, American badger, and other small mammals. Birds commonly seen on these Refuges include numerous waterfowl species, including 10 that nest on the Complex: mallard, gadwall, cinnamon, green-winged and blue-winged teal, northern pintail, northern shoveler, American wigeon, redheads, and ruddy ducks, and one species of goose (Canada). The Monte Vista NWR (MVNWR) has one of the highest densities of nesting waterfowl in the continent (Gilbert *et al.* 1996). On average, 15,000 ducks are produced on MVNWR annually, which constitutes a major contribution to the State's population and, subsequently, to the Central Flyway's duck population.

Other birds using the Complex include great blue heron, little blue heron, snowy and cattle egret, sandhill crane, northern harrier, Swainson's hawk, ring-necked pheasant, Ross' goose, black-bellied plover, greater yellowlegs, willet, and Wilson's phalarope. Two endangered species, the whooping crane and southwestern willow flycatcher, and one threatened species, the bald eagle, utilize the Complex. In addition, five species of management concern to the U.S. Fish and Wildlife Service's National Migratory Bird Office also use the Complex: American bittern, black tern, burrowing owl, ferruginous hawk, and white-faced ibis.

The Draft CCP/EA identifies and evaluates two alternatives for managing the Alamosa and Monte Vista National Wildlife Refuges in the San Luis Valley of southwestern Colorado. The alternatives are compared by describing how the habitat management tools, water management, rest, prescribed burning, prescribed grazing, farming, and habitat protection would be used under each alternative. Also described under each alternative are the management of public use, cultural resources, and elk.

Under the No Action (Current management) Alternative the Refuges would continue to be managed as it has been in the recent past:

Water Management: The Complex would continue to use its irrigation systems much like the private landowners who preceded it to produce wet meadow habitat to support wetland-dependent wildlife species. Also water management, on certain portions of the Refuges, would accommodate various situations; for example, to meet the needs of certain species, compliance with State water law, control of noxious weeds, maintenance of water control infrastructure, and specific experiments to alter vegetation.

Rest: Availability of dense stands of wetland vegetation during the early spring months is an important component of waterbird production on both Refuges. Successful production of waterbirds is primarily reliant upon stands of vegetation largely excluded from harvest. Because of this, both Refuges are important islands of nesting cover within the Valley and the Flyway. Stands of dense vegetation are achieved through careful water manipulation and rest from management practices that result in defoliation, such as grazing, fire, herbicide, and mowing. Although the use of rest has tremendous benefits for a wide variety of birds, it is not feasible nor desirable to maintain all of the Complex's wetlands in a constant densely vegetated state.

Prescribed Burning: Burning is primarily used to set back plant succession in wetlands and uplands and to provide a mosaic of vegetation composition and structure for wildlife species with a wide array of nesting and feeding requirements. Habitats are periodically burned to remove excessive litter buildup, stimulate vegetation growth, enhance nutrient cycling, increase soil temperatures, and control weeds. Prescribed burning is also used in some cases to reduce extremely dense or weedy vegetation so that other management tools can be used in that area.

Prescribed Grazing: From 1996 until present, cattle grazing has only occurred on the Complex to meet the needs of research. Grazing occurs during the growing season and animals are moved every 1 to 6 days to a new site. A grazed site is then rested from 25 to 35 days before it is grazed again. Sites may be grazed two to three times during May 15 to September 1.

Farming: The farming program on the Monte Vista NWR is primarily used to provide high energy food for migrating cranes and waterfowl. However, the food and cover provided by farm fields also benefit resident wildlife such as deer, rodents and pheasants. No farming is conducted at Alamosa NWR due to a lack of suitable soils.

Habitat Protection: Acquisition of four inholdings would continue to be pursued as opportunities arise. Easements and fee-title acquisitions would continue to be acquired to prevent uses that degrade wildlife habitat and buffer critical habitats on the Refuge. These efforts would continue as opportunities arise and be concentrated on lands within one-half mile of the current boundaries of the Refuges in order to protect them from the adverse impacts of housing development.

Currently, the U.S. Fish and Wildlife Service is an active partner in the Colorado Wetlands Initiative. It is a large Statewide partnership with the goal of protecting, restoring, and enhancing wetland habitat. This initiative is a voluntary approach to wetland conservation. It is aimed at conserving all biologically significant wetlands of Colorado and associated wildlife including birds, mammals, reptiles, and amphibians.

The Complex staff would continue to assist private landowners to create, protect, and enhance wetlands throughout the SLV through the Partners for Fish and Wildlife Program (PFW). Partnerships would continue to be developed with entities such as the Colorado Division of Wildlife and Ducks Unlimited to supplement Service funding of the program.

Public Use: Public access to the Refuges is provided and would continue. Monte Vista NWR has a larger network of roads open to the public, including several county roads which bisect the Refuge, and a 2.5-mile auto tour route. Alamosa NWR is a larger contiguous land base with fewer public accessible roadways, having only a 3-mile auto tour route and a spur off a county road to the Hansen Bluff overlook. Both auto tour routes are near areas regularly used by waterbirds and other wildlife. Two hiking trails also exist on the Alamosa Refuge; a 2-mile (one way) trail along the Rio Grande and a 1-mile walk along wetland edges near the Bluff Overlook. Visitor numbers are directly related to wildlife activities such as courtship behaviors, crane staging, etc. Uses that are not wildlife-dependent are discouraged or even prohibited.

Hunting: Waterfowl and small game hunting would continue to be supported and encouraged. Camping areas for hunters would be provided. Hunter numbers are not regulated except during the first split of the waterfowl season.

Due to safety concerns, public elk hunting opportunities are managed. An elk hunt coordinator, under contract with the Colorado Division Of Wildlife (CDOW), accompanies the hunter to ensure safety. The hunter is selected from a public list maintained by CDOW. All applicants, for this hunt, must demonstrate a high degree of firearm proficiency and must be available on 24 hours notice.

Fishing: The shallow water in Refuge wetlands does not support a viable fishery. Wetlands either dry up or freeze solid annually which eliminates all fish that have entered the system. Therefore, fishing is not allowed on the Refuges. Creation and management of a viable fishery on the portions of the Rio Grande flowing through the Alamosa NWR will not be pursued for a variety of reasons. The major limiting factor is the inability of this stretch of river to support native fish species due to its ephemeral flows; it is often extremely low to dry during summer months.

Wildlife Observation: The Refuge staff is an active participant in the Monte Vista Crane Festival; providing technical support, as well as providing viewing areas, conducting special tours and assisting in setting a direction for the Festival. The Crane Festival is the largest wildlife related public event in Colorado (estimated 10,000 visitors in 1999).

Wildlife Photography: Photography would continue to be allowed, with no additional Refuge support provided to photographers.

Interpretation: A visitor contact station is part of the Complex's main office at the Alamosa NWR and is usually staffed daily. At Monte Vista NWR, the visitor contact station is only open seasonally and operated by the Friends of the San Luis Valley National Wildlife Refuges or by volunteers. Self-guided auto-tour routes with interpretive signs are available to visitors on both Refuges. Additionally, on the Alamosa NWR, there is a drive to the panoramic "Bluff Overlook" which affords a magnificent view of Refuge wetlands, the Rio Grande, and the Sangre de Cristo mountains to the east.

Environmental Education: Volunteer and/or contractor led environmental education programs for local schools are provided, both as Refuge field trips and classroom presentations.

Universal Access and Design: Although efforts have been undertaken to make the Refuges accessible to all users, the Refuges are still short of this goal. Accessibility issues and needs will be addressed on a project-by-project basis as funding allows.

Cultural Resources: Humans have used the land we now call Alamosa and Monte Vista National Wildlife Refuges for approximately 11,000 years. Fourteen documented prehistoric and historic archaeological sites occur on Monte Vista NWR and eleven on Alamosa NWR. All but four sites (three on Monte Vista and one on Alamosa) have been determined as non-eligible for nomination to the National Register of Historic Places. The remaining four sites require further investigation and data collection before eligibility can be determined. These sites are being protected in accordance with the National Historic Preservation Act of 1996. Extensive archaeological sites exist in the headwaters of Spring Creek on Monte Vista Refuge and along Hansen's Bluff on Alamosa Refuge.

Elk Management: Elk on the Refuge present several problems: Elk trails and bedding areas have an impact on vegetation that could be used, or is being used, by ground-nesting birds; although the elk are easily seen from roads, they are very difficult to harvest in a safe manner; they damage fences and take livestock forage on neighboring, private lands; their movement onto and off the Refuge have resulted in collisions with vehicles on the adjacent public highways.

Current elk management, through a managed public hunt, is conducted in accordance with Colorado Division of Wildlife regulations. Hunts are generally initiated once transient elk numbers exceed 100 on the west end of Monte Vista NWR. The hunts are conducted from August 15 to February 28 and include only cow elk. Hunters are selected from a list of applicants who have demonstrated a high degree of firearm proficiency and are available on 24 hours notice.

Proposed Alternative

Water Management: Under this Alternative, Refuge staff would continue to utilize surface and well water to create wetland habitat on both Refuges as described under the No Action Alternative. Additional efforts would focus on improving efficiency of surface water application, monitoring of water usage, better understanding of water rights, historical processes, subsurface and surface interactions, and improving knowledge of groundwater and its role in maintaining wetlands. Better methods and capabilities for monitoring habitat responses to water application would be developed to facilitate an adaptive habitat management program.

Efforts will be taken to restore meandering streambeds and their associated hydrology and riparian habitats on Refuge lands. Although such actions will not have major impacts on either the unconfined or confined aquifers of the Valley, they can positively impact localized groundwater tables and artesian wells, and increase efficiency of irrigation during the following season.

Under this Alternative, irrigation systems in all Refuge units would be upgraded as funding allows to enact more precise and efficient management of irrigation water. Currently, wetland vegetation is maintained using flood irrigation practices where water is applied at the highest elevation of a unit from a supply ditch or well head and is allowed to flow across the unit to lower elevations.

Rest: Under this Alternative, irrigation systems in all Refuge units would be upgraded as funding allows to enact more precise and efficient management of irrigation water. Currently, wetland vegetation is maintained using flood irrigation practices where water is applied at the highest elevation of a unit from a supply ditch or well head and is allowed to flow across the unit to lower elevations.

Prescribed Burning: In addition to that described under the No Action Alternative, management would implement two new initiatives. First, formation of an interagency fire team would be pursued. This idea has been discussed among the various State and Federal land management agencies, but no action has been taken. This team would be responsible for conducting prescribed burns and suppressing wildfires on member agency lands. Second, Refuge management would pursue the hiring of additional staff to develop a burn monitoring program and

detailed burn criteria in an effort to better understand the impacts of prescribed burning and to better implement its use in meeting management objectives.

Prescribed Grazing: Future use of prescribed grazing on the Refuges will be largely dictated by the results of research currently being conducted. In the future, if and when grazing is used, prescriptions will delineate the location of the site to be grazed and specific objectives and purposes of the tool such as to control weeds, increase new growth, and provide a competitive advantage to certain vegetation. This site-by-site evaluation and planning will allow for maximum control and flexibility of this tool as well as ensuring that only delineated sites are affected by the tool and that all factors and interests are considered.

Farming: Under this Alternative, migrating birds would be provided with the same amount of small grain food from crops currently provided. The existing mixed organic/non-organic farming program operated by Refuge staff would be converted to a cooperative farming program. Farming would continue but Refuge staff would only be responsible for irrigation of the crops. The cooperating farmer would continue the crop rotation of two years of small grains followed by two years of alfalfa and then one year fallow. The cooperating farmer would be allowed to keep all or a portion of the alfalfa crop based on yields of the small grain crops.

Refuge staff would also augment the farming program with a moist soil plant management program to diversify the types of feed available to the birds. The farming and moist soil plant programs would be monitored and managed through the adaptive management concept. Research would be encouraged to help identify the amount and kinds of high energy food sources the Refuge could and should be providing for migrating and wintering avian species.

Habitat Protection: Under the proposed Alternative, current support for the Service's Partners for Wildlife program would continue in order to ensure the program's growth and success. The Refuge would also continue to be an active partner in Colorado Wetlands Initiative Legacy project led by the Colorado Division of Wildlife.

Public Use: Under this Alternative, educating the public as to the nature and value of wetlands will focus on contrasting the intensely managed wetlands of Monte Vista NWR with the more natural aspects on the Alamosa NWR wetlands. To assure compliance with public use minimum standards, money will be targeted for projects through RONS and MMS. Currently, funding proposals are developed for projects that will improve the quality of visitor experiences.

Hunting: Current waterfowl and small game hunting would continue to be supported and encouraged. To the extent feasible, the hunting experience would be further tailored to meet the desires of hunters using the Refuges based on periodic questioning of waterfowl hunters and other public input.

Fishing: Same as that described under the No Action Alternative.

Wildlife Observation: Support for the Crane Festival would continue as described under the No Action Alternative. Under this Alternative, on the Monte Vista NWR, public and scientific input would be sought regarding the seasonal expansion of the auto tour route, development of wildlife observation sites at Parker Pond, and development of wildlife observation decks along County Road 3E. Opinion and information would also be sought regarding the development of an observation deck adjacent to the Refuge Headquarters at the Alamosa NWR and near the proposed visitor center and education facility at the Monte Vista NWR.

Wildlife Photography: Same as that described under the No Action Alternative.

Interpretation: A multi-purpose education and visitor center facility on the Monte Vista NWR is the highest educational priority for the Complex. Also under this Alternative, the Refuge staff would implement an interpretation program centered around the cultural resources found on the Complex and around the Valley. Interpretation of past human use would focus on the theme that humans have always, and still depend upon natural resources for survival.

Environmental Education: Environmental education goals and programs would be the same as those under No Action.

Universal Access and Design: Efforts in this area would be the same as that described under the No Action Alternative with a few additional efforts. Developments would include new rest room facilities and wildlife observation blinds and/or platforms. Universally accessible hunting blinds would be built on both Refuges. All of these projects will follow the Americans with Disabilities Accessibility Guidelines.

Cultural Resources: Archaeological work on the Complex will be expanded to include work needed to determine the eligibility of four documented sites for nomination to the National Register of Historic Places. Management under this Alternative would also include a sample archaeological inventory of Refuge lands over a 15-year period.

Elk Management: Under this Alternative, the resident elk would be managed to discourage their use of Monte Vista NWR in large numbers with the intent to prevent habitat degradation.

Dated: November 25, 2002.

John A. Blankenship,

Acting Regional Director, Region 6, Denver, Colorado.

[FR Doc. 03–7453 Filed 3–27–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Impact Statement on Double-Crested Cormorants; Extension of Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability for public comment; extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is extending the comment period on a Draft Environmental Impact Statement (DEIS) that is available for public review. The DEIS analyzes the potential environmental impacts of alternative strategies to reduce damages associated with double-crested cormorants in the continental United States. The analysis provided in the DEIS is intended to accomplish the following: inform the public of the proposed action and alternatives; address public comment received during the scoping period; and disclose the direct, indirect, and cumulative environmental effects of the proposed actions and each of the alternatives. The Service invites the public to comment on the DEIS.

DATES: Written comments on the DEIS must be received on or before May 16, 2003.

ADDRESSES: Mail requests for copies of the DEIS to Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, MBSP–4107, Arlington, Virginia 22203. You can also download copies of the DEIS from the Division of Migratory Bird Management Web site at *http://migratorybirds.fws.gov/issues/cormorant/deis/deis.html*. Send comments on the DEIS to the above address. Alternatively, you may submit comments electronically to the following address: *cormorants@fws.gov*. The public may inspect comments during normal business hours in Room 4701, 4501 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, or Shauna Hanisch (703) 358–1714.

SUPPLEMENTARY INFORMATION: On December 3, 2001, we published a notice of availability in the **Federal Register** (66 FR 60218) to announce that the DEIS on double-crested cormorant management was available for public comment. On December 19, 2001, we published a **Federal Register** notice of meetings and extension of the comment period (66 FR 65510) to announce the schedule of public hearings to invite further public participation in the DEIS review process.

The DEIS evaluates alternative strategies to reduce damages associated with double-crested cormorants in the continental United States. The DEIS is a comprehensive programmatic plan intended to guide and direct double-crested cormorant management activities. The DEIS examined six management alternatives for addressing conflicts with double-crested cormorants: (A) No action, (B) Nonlethal control, (C) Increased local damage control, (D) Public resource depredation order, (E) Regional population reduction, and (F) Regulated hunting. The proposed action/preferred alternative in the DEIS was alternative D, Public resource depredation order. This alternative entails: revising the existing aquaculture depredation order that applies to commercial freshwater aquaculture facilities and hatcheries to allow winter roost control; establishing a new depredation order to protect public resources from cormorant damages; and revising Director's Order 27 to allow lethal take of double-crested cormorants at public fish hatcheries. Alternative D is intended to enhance the ability of resource agencies to deal with cormorant damages in an effective and timely manner by giving them more regulatory flexibility. In the DEIS, alternatives were analyzed with regard to their potential impacts on double-crested cormorant populations, fish, other birds, vegetation, federally-listed threatened and endangered species, and socioeconomics.

On March 17, 2003 (68 FR 12653), we published a proposed rule in the **Federal Register** that would implement our preferred alternative. Because of the publication of the proposed rule, we have extended the comment period on the DEIS. We note that the proposed rule presents the preferred alternative in a more detailed manner than the DEIS and advise the reader to refer to it. It is available at our Web site *http://migratorybirds.fws.gov*. The Service invites careful consideration by all parties, and welcomes serious scrutiny from those committed to the long-term conservation of migratory birds.

In order to be considered, electronic submission of comments must include your name and postal mailing address; we will not consider anonymous comments. All comments received, including names and addresses, will become part of the public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's National Environmental Policy Act regulations [40 CFR 1506.6(f)]. Our practice is to make comments available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

Dated: March 24, 2003.

Paul R. Schmidt,

Assistant Director, Migratory Birds and State Programs.

[FR Doc. 03–7474 Filed 3–27–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02–15]

Genesis 1:29 Corporation; Denial of Application

On December 13, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Genesis 1:29 Corporation (Respondent) of Petaluma, California, proposing to deny its application for DEA Certificate of Registration as a manufacturer of marijuana and tetrahydrocannaboinois ("THC"), both Schedule I controlled substances. The statutory basis for the Order to Show Cause was Respondent's lack of state authorization to manufacture controlled substances in the State of California. 21 U.S.C. 824(a)(3). In addition, the Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest, as the term is used in 21 U.S.C. 823(a) and 824(a)(4).

By letter dated January 9, 2002, the Respondent, acting *pro se* through its CEO Robert G. Schmidt (Mr. Schmidt), requested a hearing on the issues raised by the Order to Show Cause. The matter was then docketed before Administrative Law Judge Gail A. Randall (Judge Randall). In its request for hearing, Mr. Schmidt on behalf of the Respondent indicated that with respect to medical grade cannabis, the Respondent's interest in the instant proceeding was "to develop a federally approved and federally regulated dispensary model and research facility." The Respondent further indicated that its position on the pending DEA application was "flexible since there are no federally established guidelines for dispensing medical cannabis to patients other than for research purposes."

On January 25, 2002, Judge Randall issued an Order for Prehearing Statements. Following the filing of Prehearing Statements by the respective parties, on April 30, 2002, the Government filed its Request for Stay of Proceedings and Motion for Summary Judgment ("motion"). On May 23, 2002, Respondent filed its response to the Government's motion. On June 26, 2002, Judge Randall issued her Opinion and Recommended Ruling, granting the Government's motion, and recommending that Respondent's application for registration as a manufacturer be denied. Neither party filed exceptions to Judge Randall's Opinion and Recommended Ruling and on August 8, 2002, Judge Randall transmitted the record of these proceedings to the Deputy Administrator. The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

In its motion, the Government asserted that on November 11, 2001, DEA transmitted a series of written questions to the Respondent regarding its method of operations and intended customers. The Government attached to its motion a copy of the Respondent's November 26, 2001 response letter to DEA's questionnaire. In the attached response letter, Respondent indicated that the intended purpose of its bulk manufacture of marijuana was to "supply clinical cannabis to physician's patients operating within California state laws and guidelines established by California Public Health and Safety Code 11362.5 including 11362.7 and 11362.9 * * *" The letter further

outlined that Respondent's intended customers were "Medical Patients" referred under California's Compassionate Use Act of 1996.

The Government argued, *inter alia*, that California law requires the Respondent to obtain state licenses to manufacture marijuana or THC for human consumption, pursuant to the Consumer Product Safety Section, California Department of Health Services, and from the State Board of Pharmacy. In support of its argument, the Government attached to its motion a declaration from Susan Bond, Section Chief of the Consumer Product Safety Section, Department of Health Services, Food and Drug Branch for the State of California. Ms. Bond stated that a state license to manufacture marijuana and THC was required under California Health and Safety Code Section 111615, and according to state records, the Respondent neither held such license, nor submitted an application to obtain such license. Ms. Bond concluded that the Respondent did not possess valid state authority in California to manufacture marijuana or THC for medical use in that state. The Government also attached eight Certifications of Non-Licensure, in which the Executive Officer for the California Board of Pharmacy certified that Respondent was not currently licensed with the California Board of Pharmacy.

In response to the Government's motion, the Respondent highlight its participation in various research projects, specifically in the area of whole plant utilization. However, the Respondent did not dispute that it currently lacks state authorization to manufacture marijuana and THC. The Respondent further argued that the granting of the Government's motion would be premature, impede future research, deny the Respondent the right to a fair trial, and cause irreparable injury to the Respondent's patients and associates.

Pursuant to 21 U.S.C. 823(a), DEA shall register an applicant to manufacture controlled substances in Schedule I or II if it determines that such registration is consistent with the public interest. Included among the six public interest factors is "compliance with applicable State and local law." 21 U.S.C. 823(a)(2). In addition 21 CFR 1307.02 provides that DEA will not authorize any person "to do any act which such person is not authorized or permitted to do under * * * the law of the State in which he/she desires to do such act."

Section 823(a) contains no express threshold requirement of state authorization. Nonetheless, DEA has previously determined that where as here state law requires manufacturers of controlled substances to obtain a state license, it would be pointless to grant a Federal registration when the Respondent lacked state authority. Michael Schumacher, 60 FR 13171 (1995); see also Church of the Living Tree, 63 FR 69,674 (1998).

In her Opinion and Recommended Ruling, Judge Randall agreed with the Government that state licenses are required in California prior to manufacturing marijuana or THC. Judge Randall found that consistent with DEA regulations, as well as the agency's discussions in Michael Schumacher and Church of the Living Tree, DEA will not authorize the Respondent to engage in the manufacture of a Schedule I controlled substance in California since the Respondent lacks authority from that state to conduct such an activity. Therefore, Judge Randall concluded that summary disposition was proper.

The Deputy Administrator concurs with the Administrative Law Judge's grant of the Government's Motion for Summary Judgement. It is well settled, that when no question of material fact is involved, or when the material facts are agreed upon, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. *See* Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1983), *aff'd sub nom Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977).

The Deputy Administrator also finds, and the parties do not dispute, that the State of California requires a manufacturer of marijuana or THC to obtain state licenses before engaging in such activity. It is clear from the record in this proceeding that the Respondent is not licensed as a manufacturer of Schedule I controlled substances in California. Thus, as Judge Randall noted, there is no material question of fact in dispute concerning this aspect of the case. Because the Respondent does not meet a necessary precondition for DEA registration, a hearing in this matter is unnecessary. Therefore, Respondent's pending application for DEA Certificate of Registration must be denied.

In its motion, the Government further argued that the Respondent's application should be denied because marijuana and THC have no accepted medical use under the Controlled Substances Act. However, as noted above, DEA has indicated in previous final orders that an application to manufacture marijuana would be denied if the Respondent lacked state authority for such activity. Because the Respondent is not entitled to a DEA registration due to its lack of state authorization to manufacture Schedule I controlled substances in California, the Deputy Administrator concludes that it is unnecessary to address whether Respondent's application for DEA registration should be denied based upon the other grounds asserted in the Order to Show Cause and the Government's Motion for Summary Judgement. *See* Samuel Silas Jackson, D.D.S., 67 FR 65145 (2002); Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for DEA Certificate of Registration submitted by Genesis 1:29 Corporation, be, and it hereby is, denied. This order is effective April 28, 2003.

Dated: March 13, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03–7389 Filed 3–27–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Lazaro Guerra, M.D.; Denial of Application for Registration

This order serves as a correction of the final order previously issued in this matter and published on November 12, 2002.

On February 25, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lazaro Guerra, M.D. (Dr. Guerra) of Hialeah, Florida, notifying him of an opportunity to show cause as to why DEA should not deny his application for a DEA Certificate of Registration pursuant to 21 U.S.C. 824(a). As a basis for revocation, the Order to Show Cause alleged that Dr. Guerra is not currently authorized to handle controlled substances in Florida, the state in which he practices, and that he has been permanently excluded from the Medicare program. The order also notified Dr. Guerra that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Guerra at both his registered location in Hialeah, Florida and to the Federal Detention Center in Miami, Florida, where Dr. Guerra was incarcerated. DEA received signed receipts indicating that the Order to Show Cause was received on Dr. Guerra's behalf on March 5, 2002, at the Federal Detention Center and on March 4, 2002, at his registered address. DEA has not received a request for hearing or any other reply from Dr. Guerra or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Guerra is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Administrator finds that on March 11, 2001, Dr. Guerra submitted an application for DEA Certificate of Registration as a researcher, seeking authorization to handle controlled substances in Schedule I at a hospital facility in Hialeah, Florida.

On February 10, 2000, Dr. Guerra, along with two other individuals, were charged through a criminal information in the United States District Court, Southern District of Florida with conspiracy to commit mail fraud. Specifically, Dr. Guerra and others were charged with using fraudulent means to obtain approximately $2.7 million from Medicare in the form of reimbursements from 1990 to January 1997. On April 10, 2001, Dr. Guerra entered a guilty plea to one felony count of mail fraud. As part of his plea, he agreed to pay $2.7 million in restitution to the United States Department of Health and Human Services. He was sentenced to forty-eight (48) months imprisonment, and ordered to pay additional fines and assessments. He further agreed to a permanent mandatory exclusion from participation in the Medicare program pursuant to 42 U.S.C. 1320a–7(a). Such exclusion is an independent ground for revoking a DEA registration. 21 U.S.C. 824(a)(5).

Moreover, on July 18, 2001, the Florida Department of Health issued an Order of Emergency Suspension of License with respect to Dr. Guerra's medical license. The suspension of his medical license has not been lifted. Therefore, Dr. Guerra is not currently authorized to handle controlled substances in the State of Florida. Therefore, she is not entitled to a DEA registration in that state. 21 U.S.C. 824(a)(3).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that Dr. Guerra's application for DEA registration be, and hereby is, denied. The Deputy Administrator further orders that any other pending applications from Dr. Guerra be, and hereby are, denied. This order is effective April 28, 2003.

Dated: March 6, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03–7388 Filed 3–27–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 00–24]

Robert A. Leslie, M.D., Revocation of Registration

On May 8, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert A. Leslie, M.D. (Respondent), proposing to deny his application for a DEA Certification of Registration pursuant to 21 U.S.C. 823(f) for reason that such registration would be inconsistent with the public interest. Specifically, the Order to Show Cause alleged the following:

(1) On August 17, 1990, Respondent's DEA Certificate of Registration, ALO033186, was revoked based in part on findings that: (a) On or about October 3, 1986, Respondent was convicted in the Superior Court for the County of Los Angeles, California of eight counts of unlawfully prescribing, administering, furnishing, or dispensing controlled substances; and (b) effective March 23, 1990, the California Board of Medical Quality Assurance suspended Respondent's license to practice medicine for ninety days and placed his medical license on probation for five years.

(2) During February 1992, Respondent submitted a new application for registration. Following a hearing, the then-Administrator of DEA denied Respondent's application, effective March 15, 1995, noting, *inter alia*, that Respondent was either unable or unwilling to discharge the responsibilities inherent in a DEA registration. Respondent's petition for review of this decision was denied by the United States Court of Appeals for the Ninth Circuit on August 5, 1996.

(3) On or about December 13, 1996, Respondent submitted a new application for a DEA registration. The then-Deputy Administrator concluded that the previous administrative proceeding was *res judicata* for the purposes of the then-current proceeding. Effective June 14, 1999, the Deputy Administrator again denied Respondent's application, concluding that other than the passage of time, the circumstances existing at the time of the prior proceeding had not sufficiently changed to warrant issuance of a DEA registration.

Respondent, acting *pro se*, filed a timely request for a hearing on the issues raised in the Order to Show Cause. Following prehearing procedures, a hearing was held on September 21, 2000, and February 8, 2001, in Los Angeles, California before Administrative Law Judge Mary Ellen Bittner (Judge Bittner). At the hearing, the Government called two witnesses to testify and the Respondent testified on his own behalf. Both parties also introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law, and argument.

On August 2, 2001, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision recommending that the Respondent's application be denied. On or around August 17, 2001, the Respondent timely filed exceptions to Judge Bittner's recommended ruling. Thereafter, Judge Bittner transmitted the record of these proceedings to the Administrator of the Drug Enforcement Administration.

On March 4, 2002, the Respondent filed Judge Bittner, a letter (the March 2002 letter) in which he represented, among other things, that a provision under California law allows physician assistants to prescribe certain drugs "with or without preprinted prescriptions from the supervising physician." The Respondent further requested that Judge Bittner transmit the additional document to the Deputy Administrator for consideration. It appears from a review of the record before the Deputy Administrator that matters involving the role of physician assistants and the prescribing of controlled substances were litigated. It is unclear however why the Respondent did not introduce the March 2002 at the hearing or reference its contents in his post-hearing submissions. Therefore, in rendering his decision in this matter, the Deputy Administrator has not considered the Respondent's untimely

submission, as it seeks to introduce evidence not submitted at the hearing in this matter. See Richard S. Wagner, M.D. 63 FR 6771 (1998).

On August 20, 2002, the Deputy Administrator received from Government counsel a letter, with attachments, informing that due to an administrative oversight, DEA Certificate of Registration, BL6652312, was erroneously issued to the Respondent on February 9, 2000. In light of the Respondent's current registration status, the question for resolution now before the Deputy Administrator is whether or not the Respondent's continued registration with DEA is inconsistent with the public interest.

The Deputy Administrator finds that the Respondent previously possessed DEA Certificate of Registration AL0033186. On June 21, 1989, an Order to Show Cause was issued proposing to revoke that Certificate of Registration. Robert A. Leslie, M.D. 64 FR 25908 (1999). The Respondent initially requested a hearing, but later requested the opportunity ot submit a written statement in lieu of a hearing. Based on the Government's investigative file and Respondent's written statement, the then-Acting Administrator revoked Respondent's registration effective August 17, 1990. See 55 FR 29,278 (July 18, 1990).

In February 1992, Respondent applied for a new DEA registration. An Order to Show Cause was issued on May 13, 1993, proposing to deny the application. Following a hearing before Judge Bittner, the then-Deputy Administrator adopted Judge Bittner's recommended ruling and denied the Respondent's application for registration, effective March 15, 1995. See 60 FR 14,004 (1995).

During the 1993 proceeding before Judge Bittner, the record established that on October 9, 1986, after a jury trial, Respondent was found guilty in the Municipal Court of Long Beach, California, of eight misdemeanor counts of unlawfully prescribing, administering, furnishing, or dispensing controlled substances between July 1985 and January 1986. The convictions were affirmed on appeal by the Appellate Department of the Superior Court, State of California, on May 18, 1988. As a result of these convictions, the California Board of Medical Quality Assurance (Board), on a date not specified in the record, revoked the Respondent's medical license. However, the Board stayed the revocation for five years, suspended Respondent from the practice of medicine for ninety days, and placed him on probation subject to various conditions. In response to the Board's decision, the Respondent sued the Board, but was unsuccessful. The court in which Respondent brought the action ultimately fined him $10,000 and found that his appeal was frivolous. In addition, the court found that the Respondent must "accept responsibility for his actions."

As outlined in a prior final order, the then-Deputy Administrator found at the 1993 hearing, the Respondent attacked his criminal convictions. See 64 FR 25908 (May 13, 1999). However, Judge Bittner and the then-Deputy Administrator found that the conviction was *res judicata* and that Respondent was therefore prohibited from relitigating the matter. The agency also found that although he was free to offer evidence that he would never again engage in the sort of conduct that resulted in his conviction, Respondent did not avail himself of that opportunity and offered no evidence of remorse for his misconduct, efforts at rehabilitation, or recognition of the severity of his conduct. Judge Bittner and the then-Deputy Administrator therefore concluded that Respondent was either unwilling or unable to discharge the responsibilities of a DEA registrant and recommended that his application be denied. Respondent filed a petition for review of the 1995 final order in the United States Court of Appeals for the Ninth Circuit. The court denied that petition on August 5, 1996.

On December 13, 1996, Respondent again applied for a DEA registration, and an Order to Show Cause was issued on December 23, 1997, proposing to deny the application. Following a hearing, Administrative Law Judge Gail A. Randall recommended that the application be granted, subject to certain conditions. Judge Randall found that Respondent had been forthcoming on his registration application about his convictions and prior DEA proceedings, there were no new allegations that Respondent had handled controlled substances improperly after his 1986 conviction, and there had been no complaints or adverse actions against his medical license since the 1988 Board proceeding. Judge Randall further found that Respondent had continued to make valuable contributions to the medical profession; participated in continuing medical education; there were no restrictions on his medical license in California; and Respondent had become more conservative in his approach to prescribing controlled substances.

In the May 13, 1999, Final Order, the then-Deputy Administrator found that the final order published on March 15, 1995, was *res judicata* for purposes of the proceeding before him, and adopted that final order in its entirety. 64 FR 25908, supra. While the then-Deputy Administrator adopted the findings of fact and conclusions of law as set forth, he did not adopt the recommended ruling of the Administrative Law Judge. Instead, the Deputy Administrator found that in addition to his criminal conviction and the suspension of his medical license, the Respondent was unrepentant, and continued to blame everyone but himself for his unlawful actions. Therefore, the then-Deputy Administrator concluded that Respondent's registration would not be consistent with the public interest and denied the application.

On June 29, 1999, Respondent again applied for a DEA registration to handle controlled substances. That application and the disposition of the Certificate of Registration that was mistakenly issued to the Respondent, are the subjects of the instant proceedings.

The Deputy Administrator finds that the Respondent's June 1999 application was forwarded to DEA's Los Angeles office for investigation because Respondent had answered "yes" to questions on the form that ask whether the applicant has ever been convicted of a crime in connection with controlled substances, ever surrendered or had adverse action taken on a federal controlled substance registration, or has ever had action taken against a state professional license or controlled substance registration. A DEA Diversion Investigator testified that on November 24, 1999, she spoke with the Respondent and asked him why he believed his application should be granted. According to the investigator, the Respondent attacked the prior DEA and criminal proceedings in which he had been involved, but did not say anything that would suggest that he would act responsibly in the future if his application were granted, nor did he divulge any actions he had taken that would support his application.

Respondent then wrote a ten-page letter dated November 25, 1999, to the Diversion Investigator explaining his position with respect to the 1986 conviction and his efforts first to maintain and then to regain DEA registration. Specifically, the Respondent made various claims regarding the inadequacy of the 1986 criminal proceedings resulting in his conviction, as well as his legal representation during those proceedings. In support of the latter assertion, Respondent offered into evidence in the instant matter a letter from the State Bar of California dated August 3, 1999, indicating that his attorney "resigned from the practice of law with charges pending" in 1994.

Respondent also contended in the aforementioned letter that his applications for habeas corpus, coram nobis, and declarative relief were denied, asserting that he was "unable to submit an adequate habeas corpus petition because defense counsel refused to release [Respondent's] criminal file, although [sic] sued for its return in the legal malpractice suit, until given an ultimatum to do so by the state bar, when [Respondent] was no longer in custody."

With respect to the various DEA proceedings described above, the Respondent asserted in his letter that his registration was initially revoked "without notice or hearing based on false, inadmissible hearsay evidence given to the agency by the medical board." The Respondent recited numerous additional allegations with respect to DEA's action against his previous registration, as well as his applications for registration, which are summarized as follows: DEA took action against the Respondent's registration because he advised the agency of the criminal activities taking place at a clinic in Long Beach; an undercover operative gave false information that Respondent supplied Schedule II drugs for weight control when in fact he used Schedule IV drugs; the then-Administrator did not consider all the pleadings and evidence; no other physician has had a registration revoked based on a misdemeanor conviction for improperly prescribing Schedule III drugs; he had three years of training in pharmacology and was familiar with the drugs he handled; hearsay was improperly admitted; and the then-Administrator's decision conflicted with those of the trial judge, the state administrative law judge for the Board, as well as the Board itself.

The Respondent further contended in his letter that the denial of his 1992 application was based on his purported failure "to take unspecified 'rehabilitative' steps." With respect to the denial of his 1996 application, Respondent asserted, inter alia, that the then-Deputy Administrator's order conflicted with the opinion of the administrative law judge who heard the evidence, and was made on the "incorrect basis that in [Respondent's] administrative hearing he failed to offer any evidence that [he] has been rehabilitated and can handle restricted substances even on a restricted bas[i]s."

The Government also presented the testimony of a second Diversion Investigator from the agency's Los Angeles office. The investigator testified that on July 13, 2000, DEA personnel seized approximately 13,000 prescriptions from Plaza Pharmacy in Hawthorne, California, in the course of an investigation unrelated to Respondent. Three of the seized prescriptions, which were admitted into evidence as Government exhibits appeared to be written by someone on a preprinted prescription pad with a caption that read, "Robert M.D. Clinic." The prescriptions in question also bore the clinic's address as well as the Respondent's name. One of the prescriptions was issued to a patient hereinafter identified by his initials "FU" and dated January 12, 2000, for promethazine with codeine (a Schedule IV controlled substance); prescriptions were also issued to patient "GB" and dated January 19, 2000, for forty cephalexinll (a non-controlled drug) and eight ounces of Phenergan with codeine (a brand name for promethazine); and the third prescription was issued to a "JH" and dated December 27, 1999, for cephalexin and promethazine with codeine. Further review of the third prescription reveals the Respondent's previous DEA registration number, AL0033186, written in the lower left corner of the document. As noted above, the DEA registration number was revoked, effective August 17, 1990.

The second DEA Diversion Investigator further testified at the hearing that the handwriting on each of the Plaza Pharmacy prescriptions appeared to be different, and that the person who signed each prescription appeared to be someone other than the person who wrote the patient's name, the medication to be dispensed, and date. The investigator further testified that the DEA registration number written on these prescriptions did not appear to be in Respondent's handwriting.

Respondent testified that he was retained as a physician in the Robert M.D. Clinic in Hawthorne in December 1999 as a supervisor of physician assistants, that he did not personally see patients or write prescriptions, and that he only went to the clinic once or twice per week to sign charts. The Respondent further testified that he neither wrote the prescriptions at issue nor authorized anyone else to write them, and did not know any of the patients to whom the prescriptions were issued. Respondent also testified that he did not think he signed the prescriptions because he usually wrote out his whole name when signing prescriptions and some letters appeared to be missing from the prescriptions at issue. However, Respondent also acknowledged that "[i]t might be" his signature on the prescription for GB, and if so, he may have signed the prescription in blank, as he would not have issued the prescription as written. With respect to the prescription to JH, Respondent testified that the physician signature, instructions, and the patient's name and address were not in his handwriting.

DEA's investigation did not reveal whether the Respondent actually issued the above referenced prescriptions. The Deputy Administrator concurs with Judge Bittner's finding that the record is not sufficient to determine whether or not Respondent signed the three prescriptions in evidence. However, Respondent testified that his practice was to sign "a bunch of" blank prescriptions preprinted with his name and make them available to the clinic's physician assistants, with a "proviso that they did not prescribe any restricted substances." Respondent further testified that he told the physician assistants not to issue prescriptions for controlled substances, and that a sign posted in the clinic advised patients that the clinic would not issue controlled substances prescriptions.

In addition, a part time physician assistant employed at the Robert M.D. Clinic for two or three months beginning in early August 2000, testified that she had seen blank pads with prescriptions similar in appearance to the prescriptions issued to GB and FU. The physician assistant added that the DEA and license numbers on the prescriptions were those that the owner of the clinic had told her she would need to provide to pharmacists in order to have prescriptions filled. The DEA and license numbers referenced by the physician assistant belonged to the Respondent. The physician assistant further testified that she was told by both the clinic owner and Respondent that she could use the Respondent's DEA number when calling a pharmacy to authorize prescriptions for medications to treat high blood pressure and diabetes.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal for such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See* Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

Regarding factor one, in 1990, the Board revoked the Respondent's medical license, stayed the revocation, but suspended his license for 90 days and then placed it on probation for five years. There is no evidence before the Deputy Administrator demonstrating that Respondent's medical license is currently restricted in any form. Nevertheless, state license is a necessary, but not a sufficient condition for registration, and therefore, this factor is not dispositive. *See e.g.*, Wesley G. Harline, M.D., 65 FR 5665 (2000); James C. LaJevice, D.M.D., 64 FR 55962 (1999).

Factors two and four, Respondent's experience is dispensing controlled substances and compliance with applicable controlled substance laws are relevant in determining whether Respondent's continued registration would be inconsistent with the public interest. Respondent improperly prescribed, administered, or otherwise dispensed controlled substances in 1985 and 1986. Although the Respondent has maintained that he has done nothing wrong, a jury convicted him of eight misdemeanor counts as a result of this conduct, and the judgment was affirmed on appeal.

In the most recent proceeding, the Respondent, by his own admission, signed blank prescriptions and made them available to physician assistants. While there was no evidence presented that Respondent issued or signed any of the three controlled substance prescriptions, his pre-signing prescription forms made it possible for "prescriptions" to be issued in violation of 21 U.S.C. 829, 841, and 843. Therefore, the Deputy Administrator finds that factors two and four weigh in favor of a finding that Respondent's continued registration would be inconsistent with the public interest.

With respect to factor five, the Deputy Administrator concurs with Judge Bittner that the Respondent continues to argue that his convictions were improper, continues to blame others for his misconduct, and refuses to accept responsibility for his actions. In addition, the Respondent made a practice of making pre-signed prescriptions available to physician assistants at the Robert, M.D. Clinic, who were then free to issue those prescriptions with no supervision from Respondent. The Deputy Administrator further concurs with Judge Bittner that Respondent knew or should have known that he would be liable for those prescriptions, but nonetheless appears to think that posting signs in the clinic and advising physician assistants not to issue prescriptions for controlled substances absolve him from liability.

After reviewing the record, Judge Bittner found that based on the Respondent's refusal to take responsibility for past misconduct and his irresponsible pre-signing of prescription pads, he continues to be unwilling or unable to accept the obligations that the Controlled Substances Act and its implementing regulations impose upon DEA registrants. Judge Bittner therefore concluded that a preponderance of the credible evidence in the record established that Respondent's continued registration would be inconsistent with the public interest, and recommended that his application be denied. In light of the subsequent issuance of a Certificate of Registration to the Respondent, the Deputy Administrator must now determine whether or not that registration should be continued.

The Respondent filed exceptions to Judge Bittner's recommended ruling. With respect to findings that he provided blank prescriptions bearing his signature in violation of 21 U.S.C. 829, 841, and 843, the Respondent argued that was simply complying with California law which, according to the Respondent, allows for the establishment of a prescription protocol between physician and physician assistant. With respect to pre-signed prescriptions, Respondent further argued that the protocol he established with his physician assistant did not allow for the prescribing of controlled substances; the physician assistant must account for all prescriptions before receiving more prescription blanks; the Respondent did not put his DEA number on blank prescriptions given to physician assistants; and that such a policy would be violative of the equal protection clause of the United States constitution. The Respondent further argued that "physician assistants are allowed to prescribe Schedule III and IV drugs whether or not the supervising physician has a narcotic registration."

The Deputy Administrator finds that the Respondent's exceptions with respect to pre-signed prescriptions lack merit. First, the Respondent's assertion that he did not place his DEA registration number on blank prescriptions is of no moment. As noted above, testimony was offered at the hearing that the Respondent not only left pre-signed prescriptions with the staff of the Robert M.D. Clinic, but also authorized the use of his previous DEA number by a physician assistant. The unlawful practice of pre-signing prescriptions has been a contributing factor in DEA determinations that a registration is inconsistent with the public interest. *See e.g.*, Christopher E. Castle, M.D., 67 FR 71196–97 (2002); James C. Womack, M.D., 67 FR 35137 (2002); Edward L.C. Broomes, M.D., 61 FR 3946–47 (1996); Jude R. Hayes, M.D., 59 FR 41785 (1994); Veera Sripinyo, M.D. 56 FR 64809 (1991).

Second, the establishment of a prescription protocol with a physician assistant does not absolve the Respondent from liability that arises out of improperly issued prescriptions for controlled substances. The Respondent's conduct in this regard created a situation that allowed unauthorized persons to issue prescriptions without supervision. The Deputy Administrator finds that the Respondent's counter argument regarding his compliance with the terms of a prescription protocol is yet another demonstration of his unwillingness to accept responsibility for his misconduct.

The Deputy Administrator similarly finds no merit in the Respondent's challenge of the applicability of the 21 U.S.C. 829, 841, and 843 as they relate to his providing blank, pre-signed prescriptions to his staff. The referenced statutory provisions address the proper manner in which prescriptions for controlled substances are to be issued (section 829) and/or prohibited acts with respect to the prescribing of controlled substances (sections 841 and 843). Specifically, section 843(a) states in pertinent part:

> It shall be unlawful for any person knowingly or intentionally—(2) to use in the course of the * * * dispensing of a controlled substance * * * a registration number which is fictitious, revoked, suspended, expired, or issued to another person.

The Respondent's action in providing to the staff of the Robert M.D. Clinic, presigned prescriptions, his giving authorization to others to use a revoked DEA number, and the controlled substances ordered under that number, are clearly conduct and circumstance contemplated under sections 829, 841 and 843.

The Respondent's remaining argument regarding the hearsay nature of the presigned prescriptions at issue is similarly without merit. Despite the Respondent's objections to the admissibility of such evidence, it is well established that hearsay is admissible in these proceedings. *See* Nicholas A. Sychak, d/b/a/ Medicap Pharmacy, 65 FR 75959 (2000); Arthur Sklar, R.Ph., d/b/a King Pharmacy, 54 FR 34627 (1989). "Hearsay is both admissible, and may, standing by itself, constitute substantial evidence in support of an administrative decision." *Klinestiver* v. *DEA*, 606 F.2d 1128 (D.C. Cir. 1979).

In the DEA Final Order of May 1999, the then-Deputy Administrator found that any determination regarding the Respondent's fitness to obtain a DEA Certificate of Registration was contingent, not merely upon the passage of time, but whether circumstances existing at the time of the prior proceeding had sufficiently changed to warrant issuance of such registration. With the additional passage of time, and the Respondent having obtained a DEA Certificate of Registration (albeit by way of an administrative error), obviously circumstances have changed with respect to the Respondent's handling of controlled substances. The Deputy Administrator also finds it noteworthy that there is no evidence that Respondent has mishandled controlled substances under his present registration. Nevertheless, the Deputy Administrator remains unconvinced that the Respondent possesses the fitness to maintain that registration.

The Deputy Administrator agrees with Judge Bittner that the Respondent refuses to take responsibility for his past misconduct. In addition, the Respondent demonstrated irresponsible conduct by pre-signing prescription pads and providing his revoked DEA registration number for the use of his staff.

The Deputy Administrator finds the Respondent's recalcitrance puzzling. In the face of DEA's repeated concerns regarding his lack of contrition, the Respondent remains steadfast in his insistence upon denying any previous wrongdoing. Despite previous findings that his criminal convictions were *res judicata*, the Respondent in his support of his most recent application for registration attempted yet again to re-litigate his criminal convictions and attack the quality of his previous legal representation.

In three previous final orders, DEA has essentially provided the Respondent with a roadmap to reacquiring his DEA registration by outlining concerns relating to Respondent's previous misconduct and pointing to his refusal to accept responsibility for such actions. If the Respondent were to satisfactorily address the agency's concerns, and conform his conduct accordingly, he would at the very least, improve his prospects for reacquiring and maintaining a DEA Certificate of Registration. In the absence of such reassurances, the Deputy Administrator is left with the conclusion that the Respondent remains unwilling or unable to accept the obligations that the Controlled Substances Act and its implementing regulations impose upon DEA registrants. Therefore, the Deputy Administrator concludes that the Respondent's continued registration would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.014, hereby orders that DEA Certificate of Registration BL6652312, previously issued to Robert A. Leslie, M.D., be, and it hereby is, revoked. This order is effective April 28, 2003.

Dated: March 6, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03–7390 Filed 3–27–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Combating Child Labor Through Education (Morocco, Uganda, Dominican Republic Timebound and the Philippines Timebound)

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of availability of funds and solicitation for cooperative agreement applications (SGA 03–01).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for cooperative agreement funding. The U.S. Department of Labor, Bureau of International Labor Affairs will award up to U.S. $14 million through one or more cooperative agreement(s) to an organization or organizations to improve access to quality education as a means to combat child labor in Morocco ($3 million), Uganda ($3 million), the Dominican Republic ($3 million) and the Philippines ($5 million). The activities funded will complement and expand upon existing projects and programs to improve basic education in these countries and provide access to basic education to children in areas of high incidence of exploitative child labor. Activities in the Dominican Republic and the Philippines will support and complement Timebound Programs to eliminate child labor being currently implemented in collaboration with the national governments and the International Program on the Elimination of Child Labor of the International Labor Organization (ILO/IPEC). Specific information on Timebound Programs is found in Section III.A of this document.

Applicants must submit a separate application for each country. If applications for countries are combined, they will not be considered.

DATES: The closing date for receipt of application is May 9, 2003. As discussed in Section II.B and C, applications must be received by 4:45 p.m. (Eastern Time) at the address below. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored. Telegram, facsimile (FAX), and e-mail applications will not be honored.

ADDRESSES: Application forms will not be mailed. They are published as part of this **Federal Register** Notice, and in the **Federal Register** which may be obtained from your nearest U.S. Government office or public library or online at *http://www.archives.gov/federal_register/index.html*. Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Reference: SGA 03–01, Washington, DC 20210. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted, however, the applicant bears the responsibility for timely submission.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey-lisa@dol.gov*. All applicants are advised that U.S. mail delivery in the Washington DC area has been slow and erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when

preparing to meet the application deadline. It is recommended that you confirm receipt of your application with your delivery service. See Section II.C for additional information.

SUPPLEMENTARY INFORMATION: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be granted by cooperative agreement (hereafter referred to as "grant") to one or more qualifying organizations for the purpose of promoting school attendance in areas of high and exploitative child labor in Morocco and Uganda, and in areas where Timebound Programs in the Dominican Republic and the Philippines are underway. The grant or grants awarded under this initiative will be managed by ILAB's International Child Labor Program to assure achievement of the stated goals. Applicants are encouraged to be creative in proposing cost-effective interventions that will have a demonstrable impact in promoting school attendance in areas of those countries where children are engaged in or are most at risk of working in the worst forms of child labor.

I. Authority

ILAB is authorized to award and administer this program by Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 2002, Public Law 107–116, 115 Stat. 2177 (2002).

II. Application Process

A. Eligible Applicants

Any commercial, international, educational, or non-profit organization capable of successfully developing and implementing education programs for child laborers or children at risk in the countries of interest is eligible to apply. Partnerships of more than one organization are also eligible, and applicants are strongly encouraged to work with organizations already undertaking projects in the countries of interest, particularly local NGOs and faith based-organizations. In the case of partnerships, a lead organization to sign the agreement must be identified. The capability of an applicant or applicants to perform necessary aspects of this solicitation will be determined under Section V.B Rating Criteria and Selection.

Please note that eligible grant applicants must not be classified under the Internal Revenue Code as a 501(c)(4) entity. See 26 U.S.C. 501(c)(4). According to the Lobbying Disclosure Act of 1995, as amended by 2 U.S.C. 1611, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

B. Submission of Applications

One (1) ink-signed original, complete application in English plus two (2) copies (in English) of the application, must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210, not later than 4:45 p.m. Eastern Time, May 9, 2003. Applicants may submit applications for one or more countries. In the case where an applicant is interested in applying for a grant in more than one country, a separate application must be submitted for each country.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424 "Application for Federal Assistance" and sections A–F of the Budget Information Form SF 424A, available from ILAB's Web site at *http://www.dol.gov/ILAB/grants/education/SGA0301/bkgrdSGA0301.htm*. Copies of these forms are also available online from the GSA Web site at *http://contacts.gsa.gov/webforms.nsf/0/B835648D66D1B8F985256A72004C58C2/$file/sf424.pdf* and *http://contacts.gsa.gov/webforms.nsf/0/5AEB1FA6FB3B832385256A72004C8E77/$file/Sf424a.pdf*. Part II must contain a technical application that demonstrates capabilities in accordance with the Statement of Work (Section IV.A) and Rating Criteria (Section V.B).

To be considered responsive to this solicitation, the application must consist of the above-mentioned separate sections not to exceed 45 single-sided (8½" × 11"), double-spaced, 10 to 12 pitch typed pages for each country, following the format presented in the Statement of Work (Section IV.A) and Rating Criteria (Section V.B). This requirement includes a project document submitted in the format shown in Appendix A. *Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated.* Standard forms and attachments are not included in the page limit. Each application must include a table of contents and an abstract summarizing the application in not more that two (2) pages. These pages are also not included in the page limits.

The individual signing the SF 424 on behalf of the Applicant must be authorized to bind the Applicant.

C. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at Procurement Services Center after 4:45 p.m. Eastern Time, May 9, 2003, will not be considered unless it is received before the award is made and:

1. It is determined by the Government that the late receipt was due solely to mishandling by Government after receipt at the U.S. Department of Labor at the address indicated;

2. It was sent by registered or certified mail not later than the fifth calendar day before May 9, 2003; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 pm at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to May 9, 2003.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Service Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted, however the applicant bears the responsibility for timely submission. Confirmation of receipt can be made with Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: harvey-*lisa@dol.gov*.

D. Funding Levels

Up to U.S. $14 million is available under this solicitation, with up to $3 million each for the Dominican Republic, Morocco, and Uganda, and up to $5 million for the Philippines. USDOL may award one or more grants to one, several, or a partnership of more than one organization which may apply to implement the program. Any subcontractor must be approved by USDOL.

E. Program Duration

The duration of the projects funded by this SGA is for four (4) years. The start date of program activities will be negotiated upon awarding of the grant, but no later than September 30, 2003.

III. Background and Program Scope

A. USDOL Support of Global Elimination of Child Labor

The International Labor Organization (ILO) estimated that 211 million children between the ages of five and 14 were working around the world in 2000. Full-time child workers are generally unable to attend school, and part-time child laborers balance economic survival with schooling from an early age, often to the detriment of their education. Since 1995, the U.S. Congress has provided USDOL with funds to support worldwide technical assistance programs implemented by the ILO. To date, USDOL has contributed U.S. $157 million to ILO/IPEC, making the United States the program's largest donor and a leader in global efforts to combat child labor.

Programs funded by USDOL have evolved from targeted action programs in specific sectors to a more comprehensive approach. In June 2001, at the International Labor Conference in Geneva, new programs were launched to effectively abolish the worst forms of child labor in a five-to-ten year time frame. These programs are called "Timebound Programs" and are a technical assistance modality designed to help countries eliminate the worst forms of child labor in a defined period of time. Timebound Programs provide aid to countries to support implementation of ILO Convention No. 182 on the Worst Forms of Child Labor.

Convention 182 lists four categories of the worst forms of child labor, and calls for immediate elimination of:

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children; debt bondage and serfdom and forced or compulsory labor; including forced or compulsory recruitment of children for use in armed conflict;
- The use, procurement or offering of a child for prostitution, production of pornography or pornographic performances;
- The use, procurement or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- Work which by its nature or by the circumstances by which it is carried out, is likely to harm the health, safety, and morals of children.

In determining the types of work likely to harm the health, safety and morals of children, Convention 182 considers the following: Work which exposes a child to physical, psychological or sexual abuse; work underground, underwater, at dangerous heights or in confined workplaces; work with dangerous machinery, equipment and tools or handling or transporting heavy loads; work in an unhealthy environment including exposure to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to the health; work for long hours or night work where the child is unreasonably confined to the premises.

The Timebound Program is designed to be a country-owned initiative. Participation implies commitment by a country to mobilize and allocate national human and financial resources to combat child labor. USDOL-supported programs assist governments in this process by identifying and supporting projects, measures, interventions, institutional mechanisms, and partnerships required to eliminate the worst forms of child labor.

Between FY 2001 and FY 2003, in addition to U.S. $135 million earmarked for ILO/IPEC efforts, U.S. $111 million was appropriated to USDOL for a Child Labor Education Initiative to fund programs aimed at increasing access to quality, basic education in areas with a high incidence of abusive and exploitative child labor. The grant(s) awarded under this solicitation will be funded through this initiative.

USDOL's Child Labor Education Initiative seeks to nurture the development, health, safety and enhanced future employability of children around the world by increasing access to basic education for children removed from work or at risk of entering into labor. Child labor elimination depends in part on improving access to, quality of, and relevance of education.

The Child Labor Education Initiative has four goals:

1. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;
2. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;
3. Strengthen national institutions and policies on education and child labor; and
4. Ensure the long-term sustainability of these efforts.

B. Barriers to Education for Working Children and Country Background

1. Child Labor and Barriers of Access to Education

Throughout the world there are complex causes to child labor as well as barriers to education for children engaged in or at risk of working. These include:

- Poverty—whereby families need children's income for survival, there is a high opportunity cost to enrolling a child in school, and the direct and indirect costs of schooling are unaffordable.
- Education system barriers—which include low quality and relevance of education and curricula; low teacher training/preparation of school personnel to address education of children with special needs, such as child laborers; poor teaching methods; lack of or weak systems to address reintegration of dropouts, or to provide equivalency and/or bridge programs between non-formal and formal or vocational education.
- Infrastructure barriers—which include distance to school; inadequate school buildings (too small, too few primary, secondary or vocational schools); overcrowded schools; lack of open spaces for physical activity and related facilities; lack of transportation; lack of latrines, water, electricity and other basic infrastructure.
- Legal and policy barriers—which include policies that discourage school enrollment and retention, weak law enforcement, or non-existent, inconsistent or inadequate education policies for working children.
- Resource gaps—which include either overall low level of resources

within the country, or a low allocation of existing resources relative to the needs of working children, or to child labor eradication or education goals set by government policies.

• Institutional barriers—which include weaknesses that hamper an organization's ability to effectively implement programs, and/or limited coordination among social partners (various level of government, NGOs, private sector) to match existing resources to education gaps and needs of working children.

• Informational gaps—which include lack of information on the education needs of child laborers or their educational performance so as to develop relevant and targeted programs; lack of available relevant social indicator data to identify, target and map families with working children; lack of consistent monitoring and evaluation of programs to draw lessons learned, or limited awareness on the part of different actors of the benefits of education for working children.

• Demographic characteristics of children and/or families—which include factors that put a child at higher risk of child labor and lack of access to education, such as belonging to an ethnic group, gender or social class, family composition (*e.g.*, single head of household or polygamous household, multiple siblings, etc.), being overage relative to grade.

• Cultural and traditional practices—which include community attitudes that children should work and help the family, and attitudes and practices towards gender and social roles.

• Weak labor markets and lack of employment for those more educated, which diminish the perceived value of an education, and increase the value of early entry into the labor market.

Although these elements and characteristics tend to exist throughout the world in areas of high child labor, they manifest themselves and/or combine in particular ways in each country of interest in this solicitation. In their response to the solicitation, applicants should be able to identify the specific barriers to education and the education needs of specific children targeted in their project (*e.g.*, children withdrawn from work, children at high risk of drop out into the labor force, children still working in a particular sector, etc.). Short background information on education and child labor in each of the countries of interest is provided below. For additional information on child labor in these countries, applicants are referred to The Department of Labor's 2001 Findings on the Worst Forms of Child Labor available at *http://www.dol.gov/ILAB/media/reports/iclp/tda2001/overview.htm* or in hard copy from Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey-lisa@dol.gov*.

2. Country Background

The Dominican Republic

The Dominican Republic's National Child Labor Survey (*Encuesta Nacional de Trabajo Infantil*), published in 2002, estimated that 18 percent of children between the ages of five and 17 years (428,720) are working. The major sectors where children work are agriculture, services in the informal sector (shoe shiners, street vendors), domestic service, and prostitution. In addition, reports indicate that Haitian children may be found working in the Dominican Republic on sugarcane plantations and in other hazardous occupations, and have documentation and likely language barriers to education. There are also reports that some Haitian children have been trafficked to the Dominican Republic, including for purposes of child labor.

Between 1992 and 2002, the Dominican Secretariat of Education (*Secretaría de Estado de Educacín*) engaged in a ten-year reform program (Plan Decenal) that included goals of increasing educational access, improving quality, implementing curriculum reform, improving the social and economic conditions of teachers, approving a new education law, decentralization, increased community participation, and increased financial resources. The plan, funded by the World Bank and the Inter-American Development Bank, greatly increased educational access for more children, but improvements are still needed in the areas of educational quality, teacher training, teacher living conditions, implementation of the education law, parent/community participation, and budget. Basic education in the Dominican Republic is free and compulsory between the ages of five and 14.

In spite of large investments in the education system, many gaps and challenges remain that hamper efforts to prevent child labor through education, and provide access to education for child laborers. These include a highly centralized education administration, lack of school access in rural areas, lack of vocational schools, and a less than adequate system for measuring and monitoring education results.

Moreover, lack of official identity papers and documentation are serious barriers to school enrollment and affects thousands of children most vulnerable to child labor—rural children, and those of Haitian descent. Several programs have been developed to address the problem of lack of documentation, but none has been broadly successful.

Many Dominican teachers lack motivation to improve their teaching style or to comply with school schedules because of low salaries. Teacher strikes for higher pay are frequent. Time in-class and time spent on learning tasks are lower in the Dominican Republic than in most other Latin American countries. Teachers in rural areas may also miss school because of transportation difficulties. In most Dominican classrooms there is a lack of active, participatory, student-centered pedagogy. Also, teachers are not prepared to deal with children with special needs such as those of working children, and children at risk of or engaged in commercial sexual exploitation.

There are limited alternatives to the public schools since there are few NGOs specializing in education. Also, Dominican NGOs operate under an obsolete law dating from 1920. Furthermore, the high levels of overage students relative to grade discourages many children from continuing altogether, and results in permanent desertion and premature entry into labor.

The Government of the Dominican Republic has committed itself to the implementation of a Timebound Program to eliminate the worst forms of child labor. The funding provided by this award will provide resources for the education component of the Timebound Program funded by USDOL and implemented through the ILO/IPEC.

Morocco

According to a 1999 diagnostic by the Ministry of Employment and the ILO, there are approximately 9.8 million children in Morocco under the age of 15, and approximately 6.5 percent of children in this age group work. About 90 percent of working children are in rural areas in the agriculture sector, often in animal husbandry and other agricultural tasks. Children also work as weavers in the carpet industry; in small family-run workshops that produce ceramics, woodwork, and leather goods; and as mechanics, porters, tourist guides, street vendors, and beggars. Children work as apprentices before they reach 12 years of age, particularly in the informal handicraft industry. In urban areas, girls work as domestic servants, often in situations of unregulated "adoptive servitude," and

teenagers are reported to engage in prostitution. Street children engage in diverse forms of work including selling cigarettes, begging, shining shoes and other miscellaneous occupations. It is estimated that 90 percent of working children are between the ages of 10 and 14, and 50 percent are victims of abuse and work more than 50 hours a week.

Morocco has identified education as a major component of the national and sectoral plans to combat child labor produced by the Ministry of Employment. It has also outlined its strategy for education reform in a national Charter that focuses on increasing educational access, reducing educational disparities, and involving different social sectors in partnerships for education. Education is free and compulsory between the ages of six and 15. The government has targeted universal primary enrollment by 2005–2006, and universal secondary education by 2008–2009.

Despite the progress made in increasing access to basic education in Morocco, the Ministry of National Education estimates that approximately 2 million children between the ages of eight and 16 have either never attended school or dropped out before completing the first level. The ILO/IPEC estimates that 80 percent of working children in Morocco are out of school. Ensuring their access to education will need to be addressed if Morocco is to meet its national goal of enrolling all children aged 12–14 in secondary school by 2008–2009. The Ministry of National Education's Non-Formal Program, working in partnership with an active NGO community, has reached only approximately 113,545 children aged eight to 15 since 1997. Although 70 percent of children who enter the non-formal program complete it, only about 10 percent transition into the formal system. The Government of Morocco has recently created a State Secretariat for Literacy and Non-Formal Education to address many of the issues facing out-of-school children.

The funding provided by this solicitation will contribute to addressing these important challenges. Applicants are strongly encouraged to address their efforts to areas of the highest concentrations of child labor (*i.e.*, agriculture), and sectors in rural and urban areas with the worst forms of child labor.

The Philippines

Child labor in the Philippines is set primarily in the context of poverty, with 31.8 percent of Filipino families living below the poverty line in 1997, compared to 33.7 percent in 2000. The increase in the number of families living in poverty has contributed to the rise in the number of working children. In 2001, the Philippine National Statistics Office estimated that 4 million children between the ages of five and 17 were working, or 16.2 percent of children in this age group. This figure accounts for a 12 percent increase in the number of working children since 1995.

Children work predominantly in rural areas. Almost half of all child workers are engaged in agricultural activities, while other children work in informal footwear production, drug trafficking, pyrotechnics production, deep-sea fishing, mining and quarrying, and pearl farming. In the informal sector children are engaged in scavenging and begging. Children are also engaged as domestic servants and are involved in the commercial sex industry.

Since 1991, the Education for All (EFA) strategy has been a cornerstone of the Philippine's plan of action to improve the public education system, but government plans to address the particular needs of working children are limited. There are numerous gaps in the public education system and other socio-cultural or institutional barriers that may prevent children engaged in or at risk of working in the worst forms of child labor from receiving quality and relevant basic education. While significant achievements have been made in combating child labor and promoting basic education, there is a need to link these efforts and address issues related to the provision of education for children working or at risk of working.

The current National Development Plan for 2001–2004 includes universal primary education as a goal. From 1991 to 1998, primary net enrollment rates in the Philippines increased from 85 percent to 96 percent. The increase in enrollment rates reflects the government's commitment to providing universal primary education, but there are still challenges related to strengthening the quality and relevance of education, which is key to the retention of children in the school system. Currently, an estimated 69 percent of children who enter primary school in the Philippines reach grade 5.

In addition, the impact of education reforms has not yet been fully extended to children vulnerable to child labor. Even though formal education is free and compulsory for six years, families are often expected to shoulder other associated costs such as food, uniforms, school supplies, transportation, and, in some instances, fees for capital outlays or building maintenance (*e.g.*, janitorial services, toilets, and electricity). With many parents' earnings falling below the poverty line, the inability of public schools to subsidize these extra costs places considerable economic strain on families. As a result, high costs to schooling limit access to education, negatively impact school attendance, and may contribute to the increase in the labor supply of children.

The Government of the Philippines is dedicated to the elimination of the worst forms of child labor within a specified period, and has committed to a Timebound Program to combat child labor. USDOL expects the funding provided by this award to address some of the educational challenges within the Timebound Program framework, and the applicant will support education activities undertaken as part of USDOL's funding of the Philippines Timebound Program, which is being implemented through ILO/IPEC. These education activities must complement and reinforce the existing Timebound strategy, but not duplicate efforts already funded by USDOL through ILO/IPEC.

Direct services of the already-funded ILO–IPEC education component of the Timebound Program will concentrate primarily on the provision of non-formal, transitional and vocational education to children withdrawn from work and those at-risk of working in the sectors targeted by the Timebound Program. These activities correspond to gaps identified in the existing system. For example, until very recently, the Department of Education's Bureau of Non-Formal Education only offered non-formal education programs to out-of-school youths aged 15 and above. Although it is currently preparing to offer non-formal education to children ages 6 to 14, the Bureau lacks the funds to develop appropriate curricula and learning modules. An additional challenge to providing transitional education is that children in non-formal programs frequently experience difficulty mainstreaming into formal education, such as passing an equivalency test required for re-entry in formal schooling.

Uganda

An ILO–IPEC child labor report based on the 2000–2001 Uganda Demographic and Health Survey estimated the total number of working children aged 5 to 17 years in the country at 2.9 million, accounting for 34.2 percent of all children in this age group. Furthermore, the report estimated that more than half of all working children in Uganda are aged 10–14 years. The Ministry of Gender, Labour and Social Development (MGLSD) has drafted a national policy

and plan of action to combat the worst forms of child labor, including children engaged in commercial agriculture, fishing, domestic labor, the informal sector, street activities, commercial sexual exploitation, construction sector, and children in armed conflicts.

USDOL has targeted several of these sectors through programs implemented by ILO/IPEC. USDOL has also financed surveys on child labor in Uganda. Recognizing that forced and compulsory recruitment of children in armed conflict is a worst form of child labor as identified in ILO Convention 182, USDOL, through funding provided by this solicitation, seeks to support the education needs of this population in northern Uganda.

In addition to the MGLSD, the Ministry of Education has been engaged in efforts to eliminate the worst forms of child labor. In 1997 this ministry instituted a policy of Universal Primary Education (UPE) to make formal schooling more affordable and thus more available to students in Uganda. Since the implementation of this policy, enrollment has increased dramatically, from 3.4 million in 1996 to 7.2 million in 2002.

Unfortunately, much of the success of this program has been concentrated in the south. Sixteen years of war in northern Uganda has hindered the full implementation of UPE, and has created enormous barriers for young people living in these areas to gain access to and complete quality primary education. Since the birth of the Lord's Resistance Army's (LRA) rebel campaign in 1986, between 10,000–15,000 Ugandan children have been abducted to serve as porters and soldiers for this rebel group. Abducted girls often suffer the added trauma of rape, and are frequently given to rebel commanders as sexual slaves.

In addition, at least half of the population living in areas of conflict in northern Uganda (a majority of whom are adolescents and children) is internally displaced. Escalated LRA attacks since the beginning of 2000 have forced an increasing number of people to seek refuge in Internally Displaced Persons' (IDP) Camps called "Protected Villages," or, alternatively, in the towns of Gulu and Kitgum. According to the World Food Program (WFP), 26.4 percent of the IDPs living in camps are children aged five to 14 years old. The majority of these children have been out of school since the conflict escalated in July 1996. Although national primary enrollment averages 95 percent for all children aged six to 13 years, less than 30 percent of school-age children in IDP camps are currently enrolled on a full-time basis, with young girls especially affected.

According to the Uganda People's Defense Forces (UPDF) Fourth Division Commander in Gulu, over 300,000 children in northern Uganda are unable to go to school at present. Low enrollment and retention in war-affected areas is the result of several complex and interrelated factors. Stress levels among children have dramatically increased because of displacement, separation, death, violence, abduction and sexual abuse. For formerly abducted children and child soldiers this trauma is particularly acute. Girls are especially affected, as they often return from captivity with babies. In addition, both former child soldiers and war-affected children returning to school after a long absence find themselves in the difficult position of being older than their classmates and having missed years of schooling. This situation leads them to either not return to school, or to drop out after they re-enroll.

Despite government incentives to local teachers and a teacher training college located in Gulu, northern Uganda is also suffering from a shortage of educators. The few remaining teachers are often unequipped to accommodate the many special needs of their students. Furthermore, for many children, the cost of purchasing school supplies and the opportunity cost of attending school is too great. Although some young people have expressed an interest in learning skills or a trade, most technical training colleges require a level of academic achievement that former child soldiers and war-affected children have not attained. Furthermore, many young people lack the basic literacy skills needed to succeed in formal training programs.

Nonetheless, the commitment to and desire for education among these young people and their communities is considerable. Education is often the top priority identified by communities immediately following an attack or displacement. The Government of Uganda has responded through the provision of several new policies and programs. The Ministry of Education has drafted strategies for working with children living in areas of conflict in a Basic Education Policy and Costed Framework For Educationally Disadvantaged Children. The policy aims to increase community participation in education; strengthen linkages between formal and non-formal education; improve education quality by ensuring appropriate infrastructure and curriculum content and methodology, and provide appropriate learning materials. The Ministry of Education and the Ministry of Gender, Labour, and Social Development have established a multi-agency working group to address the needs of children who have suffered from armed conflict. Several international and local NGOs have also developed programs focusing on the rehabilitation and reintegration of former child soldiers and war-affected children.

However, there is a great need to expand and improve upon efforts to educate and train former child soldiers and war-affected children. The work undertaken by government entities and international and local NGOs working on the ground provide a solid foundation, but gaps remain in current efforts to provide access to quality education. Areas requiring further development include: (1) Non-formal education, catch-up classes, and basic literacy training (2) skills and vocational training, (3) teacher training and recruitment, (4) the development of appropriate curricula, materials and teaching methods and the provision of school supplies, and (5) community mobilization and sensitization to meet the education needs and psychosocial needs of children and adolescents in northern Uganda. The funding provided by this solicitation encourages applicants to propose solid approaches that will address these needs.

Given the complex unique social situation of these children, USDOL encourages collaboration with programs in northern Uganda working on issues of poverty, health and nutrition, community development, peace and security. USDOL encourages models that work within existing government structures and national plans of action. USDOL seeks to fund sustainable programs that provide for the emerging educational needs of these children as northern Uganda transitions towards peace. Applicants should be ready to adapt services to accommodate the fluidity and constantly changing nature of the security situation, and related migration flows.

IV. Requirements

A. Statement of Work

Taking into account the challenges to educating working children in each country of interest, the applicant shall propose and implement creative and innovative approaches to provide educational opportunities to children engaged in or removed from child labor, particularly the worst forms. The expected outcomes/results of the project are to: (1) Increase educational opportunities (enrollment) for children who are engaged in, at risk of, and/or removed from child labor, particularly its worst forms; (2) encourage retention in, and completion of educational programs; and (3) expand the successful transition of children in non-formal education into formal schools or vocational programs.

In the course of implementation, each project shall promote the goals of USDOL's Child Labor Education Initiative listed in Section III.A above. Because of the limited available resources under this award, applicants should implement programs that complement existing efforts and, where appropriate, replicate or enhance successful models to serve expanded numbers of children and communities. In order to avoid duplication, enhance collaboration, expand impact, and develop synergies, the grant awardee (hereafter referred to as "Grantee") should work cooperatively with national stakeholders in developing project interventions.

Although USDOL is open to all proposals for innovative solutions to address the challenges of providing increased access to education to the children targeted, the applicant must, at a minimum, prepare responses following the outline of a preliminary project document presented in Appendix A. This response will be the foundation for the final project document that will be approved after award of the grant.

Note To Timebound Applicants: In preparing responses for the Dominican Republic and the Philippines, the applicant should be aware that the funding provided by this award is part of USDOL commitments to comprehensive and integrated Timebound Programs to prevent and remove children from the worst forms of child labor. The Grantee will be required to integrate and closely coordinate the project's interventions with the strategies and activities developed by the ILO/IPEC and the Governments of the Dominican Republic and the Philippines.

Achieving seamless integration between program components will require working with the same target groups/number of children, to the greatest degree possible with the same children, and in the same geographical areas identified in the ILO-IPEC Timebound Program documents. Applicants are strongly encouraged to read and become familiar with the design elements of the Timebound Programs funded through ILO/IPEC in the Dominican Republic and the Philippines before preparing a response to this solicitation, and strengthen the quality rather than duplicate activities that are already being funded. Applicants should carefully study the ILO/IPEC Timebound project documents in the Dominican Republic and the Philippines available at *http://www.dol.gov/ILAB/grants/education/SGA0301/bkgrdSGA0301.htm* to become familiar with the education interventions ILO/IPEC will be implementing before proposing their own. Applicants should avoid duplicating activities being carried out by ILO/IPEC, but are highly encouraged to propose approaches that could complement and improve the quality and impact of ILO/IPEC education interventions.

In the Philippines, target children include those at risk of work or working in agriculture, deep-sea fishing, domestic service, commercial sexual exploitation, mining and quarrying, and pyrotechnics. The geographical coverage of the program in the Philippines will include the following regions and provinces: Region III (Bulacan), Region V (Camaranies Norte), Region VI (Ilo Ilo and Negros Occidental), Region VII (Negros Oriental and Cebu), Region XI (Davao), and the National Capital Region (Metro Manila). Applicants are strongly encouraged to focus their major interventions in facilitating mainstreaming into formal education for children withdrawn from work or at risk of working; strengthening formal education to prevent drop out of identified vulnerable children into child labor; and providing an approach to improve quality in non-formal education so as to better transition children removed from child labor to formal education or vocational options.

In the Dominican Republic, the *Consejo Nacional de Trabajo* (The National Committee on the Eradication of Child Labor) has defined specific geographic areas for the Timebound Program: Santo Domingo, Duarte, La Vega, Maria Trinidad Sanchez, Monseñor Nouel, Puerto Plata, Sanchez-Ramirez and Samaná. Also, child labor Timebound Program activities aimed at the worst forms of child labor are already underway in Boca Chica and Constanza. The Committee has defined commercial sexual exploitation, hazardous informal work, and hazardous agricultural activities as the worst forms of child labor. Approaches should address the gaps and barriers to education faced by children in these forms of employment in the Dominican Republic.

In Timebound Programs, key personnel will work closely with the ILO/IPEC's National Program Manager and the Timebound Program Chief Technical Adviser, and as appropriate, with staff of the national government in developing project interventions.

Note to All Applicants: The Grantee is expected to consult with and work cooperatively with stakeholders in the countries, including the Ministries of Education and Labor, NGOs, national steering/advisory committees on child labor education, faith-based organizations, and working children and their families. Where practical, there should be efforts to work with existing projects, particularly those funded by USDOL.

B. Deliverables

In addition to meeting the above requirements, the Grantee will be expected to monitor the implementation of the program, report to USDOL on a quarterly basis, and undergo evaluation of program results. Guidance on USDOL procedures and management requirements will be provided to the Grantee in written Management Procedures and Guidelines (MPG) after award. The project budget must include funds to plan, implement and evaluate programs and activities, conduct various studies pertinent to project implementation, to establish education baselines to measure program results, and travel to meet with USDOL officials in Washington at yearly intervals. Corresponding indicators of performance will also be developed by the Grantee and approved by USDOL. Unless otherwise indicated, the Grantee must submit copies of all required reports to ILAB by the specified due dates. Specific deliverables are the following:

1. Project Design Document

The Grantee will prepare a preliminary project document in the format described in Appendix A, with design elements linked to a logical framework matrix. *See http://www.dol.gov/ILAB/grants/education/SGA0301/bkgrdSGA0301.htm* for a worked example. The project document will include a background/justification section, project strategy (goal, purpose, outputs, activities, indicators, means of verification, assumptions), project implementation timetable and project budget. The narrative will address the criteria/themes described in Section V.B.1 below Program Design/Budget-Cost Effectiveness. The final project design document will be based on the application written in response to this solicitation, but will include the results of additional consultation with stakeholders, partners, and ILAB. The document will also include sections that address coordination strategies, project management and sustainability. The final project document will be delivered three months after the time of the award.

2. Technical and Financial Progress Reports

The format for the technical progress report will be provided in the MPG distributed after the award. The Grantee must furnish a typed technical report to ILAB on a quarterly basis by 31 March, 30 June, 30 September, and 31 December. Technical reports will include:

a. For each project objective, an accurate account of activities carried out under that objective during the reporting period;

b. A description of current problems that may impede performance, and proposed corrective action;

c. Future actions planned in support of each project objective;

d. Aggregate amount of costs incurred during the reporting period relative to each objective; and

e. Progress on common Government Performance and Results Act indicators (to be reported *semi*-annually) to be provided to Grantees after award.

The Grantee must also furnish separate financial reports (SF 272 and 269) to ILAB on the quarterly basis mentioned above.

3. Annual Work Plan

An annual work plan will be developed within three months of project award and approved by ILAB so as to ensure coordination with other relevant social actors in the country. Subsequent annual work plans will be delivered no later than one year after the previous one.

4. Performance Monitoring and Evaluation Plan

A performance monitoring and evaluation plan will be developed, in collaboration with ILAB, including beginning and ending dates for the project, planned and actual dates for mid-term review, and final end of project evaluations. The performance monitoring plan will be developed in conjunction with the logical framework project design and common indicators for GPRA reporting selected by ILAB. Baseline data collection will be tied to the indicators of the project design document and the performance monitoring plan. A draft monitoring and evaluation plan will be submitted to ILAB within four months of project award.

5. Project Evaluation

The Grantee and the Grant Officer's Technical Representative (GOTR) will determine on a case-by-case basis whether mid-term evaluations will be conducted by an internal or external evaluation team. All final evaluations will be external in nature. The Grantee must respond in writing to any comments and recommendations resulting from the review of the mid-term report. The budget must include the projected cost of mid-term and final evaluations.

C. Production of Deliverables

1. Materials Prepared Under the Cooperative Agreement

The Grantee must submit to ILAB all media-related and educational materials developed by it or its sub-contractors before they are reproduced, published, or used. ILAB considers that education materials include brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program. ILAB will review materials for technical accuracy. The Grantee must obtain prior approval from the Grant's Officer Technical Representative for all materials developed or purchased under this grant. All materials produced by the Grantee must be provided to ILAB in digital format for possible publication by ILAB.

2. Acknowledgement of USDOL Funding

In all circumstances, the following must be displayed on printed materials:

"Preparation of this item was funded by the United States Department of Labor under Cooperative Agreement No. E–9–X–X–XXXX."

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all Grantees receiving Federal funds, including State and local governments and recipients of Federal research grants, must clearly state:

a. The percentage of the total costs of the program or project that will be financed with Federal money;

b. The dollar amount of Federal funds for the project or program; and

c. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

In consultation with ILAB, USDOL will be acknowledged in one of the following ways:

a. The USDOL logo may be applied to USDOL-funded material prepared for worldwide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The Grantee must consult with USDOL on whether the logo may be used on any such items prior to final draft or final preparation for distribution. In no event will the USDOL logo be placed on any item until USDOL has given the Grantee written permission to use the logo on the item.

b. If ILAB determines that the use of the logo is not appropriate and written permission is not given, the following notice must appear on the document: "This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

D. Administrative Requirements

1. General

Grantee organizations are subject to applicable U.S. Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable U.S. Federal cost principles. The grantee will also be required to submit to a bi-annual independent audit, and costs for such an audit should be included in direct or indirect costs, whichever is appropriate.

The grant awarded under this SGA is subject to the following administrative standards and provisions, if applicable:

29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

29 CFR Part 93—New Restrictions on Lobbying.

29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

29 CFR Part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

Applicants are reminded to budget for compliance with the administrative requirements set forth. This includes the cost of performing administrative activities such as financial audit, closeout, evaluation, document preparation, as well as compliance with procurement and property standards.

Copies of all regulations referenced in this SGA are available at no cost, on-line, at *www.dol.gov*.

2. Sub-Contracts

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876, as amended, 13230, 12928 and 13021, as amended, the Grantee is strongly encouraged to provide sub-contracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities.

3. Key Personnel

The applicant shall list an individual(s) who has been designated as having primary responsibility for the conduct and completion of all project work. The applicant must submit written proof that key personnel will be available to begin work on the project no later than three weeks after award. The Grantee agrees to inform the GOTR whenever it appears impossible for this individual(s) to continue work on the project as planned. The Grantee may nominate substitute personnel and submit the nominations to the GOTR; however, the Grantee must obtain prior approval from the Grant Officer for all key personnel. If the Grant Officer is unable to approve the personnel change, he/she reserves the right to terminate the grant.

4. Encumbrance of Grant Funds

Grant funds may not be encumbered/obligated by the Grantee before or after the period of performance. Encumbrances/obligations outstanding as of the end of the grant period may be liquidated (paid out) after the end of the grant period. Such encumbrances/obligations shall involve only specified commitments for which a need existed during the grant period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the Grantee's purchasing procedures and incurred within the grant period. All encumbrances/obligations incurred during the grant period shall be liquidated within 90 days after the end of the grant period, if practicable.

5. Site Visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the Grantee or a sub-contractor(s) under this grant, the Grantee shall provide and shall require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of Government representatives in the performance of their duties. All site visits and evaluations shall be performed in a manner that will not unduly delay the work.

V. Review and Selection of Applicants for Award

A. The Review Process

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. Each complete application will be objectively rated by a technical panel against the criteria described in this announcement. Applicants are advised that panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select a Grantee on the basis of the initial application submission; or, the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of applications, the evaluations process described above will be repeated to consider such revisions. The Grant Officer will make final selection determination based on panel findings and consideration of factors that may be most advantageous to the Government, such as geographic distribution of the competitive applications, cost, the availability of funds and other factors. The Grant Officer's determination for award under this SGA is final.

Note: Selection of an organization as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant is awarded, USDOL may enter into negotiations about such items as program components, funding levels, and administrative systems in place to support grant implementation. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application. Award is also contingent upon signature of a letter of agreement between USDOL and relevant ministries in target countries.

B. Rating Criteria and Selection

The technical panel will review applications written in the specified format (see Section III.B and Appendix A) against the various criteria on the basis of 100 points. Five additional points will be given for non-federal or leveraged resources. Applicants are requested to prepare their written response (45 page maximum) on the basis of the following rating factors, which are presented in the order of emphasis that they will receive.

Program Design/Budget-Cost Effectiveness—45 points
Organizational Capacity—30 points
Management Plan/ Key Personnel/ Staffing—25 points
Leveraging—5 extra points

1. Project/Program Design/Budget-Cost Effectiveness (45 points)

This part of the application constitutes the preliminary project document described in section IV.B.1 and outlined in Appendix A. (Note: The supporting logical framework matrix will not count in the 45-page limit but should be included as an annex to the project document. To guide applicants, a sample logical framework matrix for a hypothetical child labor education project is available at *http://www.dol.gov/ILAB/grants/education/SGA0301/bkgrdSGA0301.htm*. The applicant should describe in detail the proposed approach to comply with each requirement in Section IV.A of this solicitation.

This component of the application should demonstrate the applicant's thorough knowledge and understanding of the issues, barriers and challenges involved in providing education to children engaged in or at risk of engaging in child labor, particularly its worst forms; best-practice solutions to address their needs; and the implementing environment in the selected country. When complying with the project document outline, the applicant should at minimum include a description of:

- Children Targeted—The applicant will identify which and how many children will benefit from the project, including the sectors in which they work, geographical location, and other relevant characteristics. Note: Timebound country applicants must target the sectors, geographical areas, and children identified in Timebound Project documents.
- Needs/Gaps/Barriers—The applicant will describe the specific gaps/educational needs of the children targeted that the project will address.
- Proposed Strategy—The applicant will discuss the proposed strategy to address gaps/needs/barriers and its rationale.
- Description of Activities—The applicant will provide a detailed description of proposed activities that relate to the gaps/needs/barriers to be addressed including training and technical assistance to be provided to

project staff, host country nationals, and community groups involved in the project. Ideally, the proposed approach should build upon existing activities, and government policies and plans and avoid needless duplication.

• Work Plan—The applicant will provide a detailed work plan and timeline for the proposed project, preferably with a visual such as a Gantt chart.

• Program Management and Performance Assessment—The applicant will describe: (1) How management will ensure that the goals and objectives will be met; (2) how information and data will be collected and used to demonstrate the impacts of the project; and (3) what systems will be put in place for self-assessment, evaluation and continuous improvement. USDOL has already developed common indicators and a database system for monitoring children's educational progress that can be used and adapted by Grantees after award so that they do not need to set up this type of system from scratch.

• Budget/Cost Effectiveness—The applicant will show how the budget reflects program goals and design in a cost-effective way so as to reflect budget/performance integration. The budget should be linked to the activities and outputs of the implementation plan listed above. This section of the application should explain the costs for performing all of the requirements presented in this solicitation, and for producing all required reports and other deliverables. Costs must include labor, equipment, travel, audits, evaluations, and other related costs. Preference may be given to applicants with low administrative costs, and all costs should be reported as they will become part of the cooperative agreement upon award. This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section III of this solicitation. Applicants are advised that customs and Value Added Tax (VAT) exemptions may not be allowed, and should take into account such costs in budget preparation. If major costs are omitted, the Grantee may not be allowed to include them later.

2. Organizational Capacity (35 points)

The applicant should present the qualifications of the organization(s) implementing the program/project. The evaluation criteria in this category are as follows:

a. International Experience—The organization applying for the award has international experience implementing basic, transitional, non-formal or vocational education programs that address issues of access, quality, and policy reform for vulnerable children including children engaged in or at risk of child labor, preferably in the country of interest or neighboring countries.

b. Country Presence—An applicant must demonstrate a country presence, or the capability to establish a country presence, independently or through a relationship with another organization(s) with country presence, which gives it the capability to work directly with government ministries, educators, civil society leaders, and other local faith-based or community organizations. Applicants without country presence must provide evidence that legal country presence can be established within 90 days of award. For applicants that do not have independent country presence, documentation of the relationship with the organization(s) with such a presence must be provided, or the capacity to establish such a relationship within 90 days of award.

c. Fiscal Oversight—The organization shows evidence of a sound financial system. The results of the most current independent financial audit must accompany the application, and applicants without one will not be considered.

d. Coordination—If two or more organizations are applying for the award in the form of a partnership, they must demonstrate an approach to ensure the successful collaboration including clear delineation of respective roles and responsibilities. The applicants must also identify the lead organization (Grantee) and submit the partnership agreement. Partners of the Grantee will be designated as contractors or sub-contractors.

The application must include information about previous grant or contracts of the applicant and partners that are relevant to this solicitation including:

1. The organizations for which the work was done;

2. A contact person in that organization with their current phone number;

3. The dollar value of the grant, contract, or cooperative agreement for the project;

4. The time frame and professional effort involved in the project;

5. A brief summary of the work performed; and

6. A brief summary of accomplishments.

This information on previous grants and contracts held by the applicant and partners shall be provided in appendices and will not count in the maximum page requirement.

3. Management/Plan/Key Personnel/ Staffing (25 points)

Successful performance of the proposed work depends heavily on the management skills and qualifications of the individuals committed to the project. Accordingly, in its evaluation of each application, USDOL will place emphasis on the applicant's management approach and commitment of personnel qualified for the work involved in accomplishing the assigned tasks. This section of the application must include sufficient information to judge management and staffing plans, and the experience and competence of program staff proposed for the project to assure that they meet the required qualifications. Information provided on the experience and educational background of personnel should include the following:

a. The identity of key personnel assigned to the project. "Key personnel" are staff who are essential to the successful operation of the project and completion of the proposed work and, therefore, may not be replaced or have hours reduced without the approval of the Grant Officer.

b. The educational background and experience of all staff to be assigned to the project.

c. The special capabilities of staff that demonstrate prior experience in organizing, managing and performing similar efforts.

d. The current employment status of staff and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed or is dependent upon planned recruitment or sub-contracting.

Note that management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance are proposed, organizational control should be clearly delineated to ensure responsiveness to the needs of USDOL. Key personnel must sign letters of agreement to serve on the project, and indicate availability to commence work within three weeks of grant award.

In this section, the following information must be furnished:

a. Key personnel—For each country for which an application is submitted, the applicant must designate the key personnel listed below. If key personnel are not designated, the application will not be considered.

i. A Project Director (Key Personnel) to oversee the project and be responsible for implementation of the requirements of the grant. The Program Director must have a minimum of three years of professional experience in a leadership role in implementation of complex basic education programs in developing countries in areas such as education policy; improving educational quality and access; educational assessment of disadvantaged students; development of community participation in the improvement of basic education for disadvantaged children, and monitoring and evaluation of basic education projects. Points will be given for candidates with additional years of experience including experience working with officials of ministries of education and/or labor. Preferred candidates will also have knowledge of child labor issues, and experience in the development of transitional, formal, and vocational education of children removed from child labor and/or victims of the worst forms of child labor. Fluency in English is required and working knowledge of the official language(s) spoken in the target countries is preferred.

ii. An Education Specialist (Key Personnel) who will provide leadership in developing the technical aspects of this project in collaboration with the Project Director. This person must have at least three years experience in basic education projects in developing countries in areas including student assessment, teacher training, educational materials development, educational management, and educational monitoring and information systems. This person must have experience in working successfully with ministries of education, networks of educators, employers' organizations and trade union representatives or comparable entities. Additional experience with child labor/education policy and monitoring and evaluation is an asset. Working knowledge of English preferred, as is a similar knowledge of official language(s) spoken in the target country.

b. Other Personnel—The applicant must identify other program personnel proposed to carry out the requirements of this solicitation.

c. Management Plan—The management plan must include the following:

i. A description of the functional relationship between elements of the project's management structure;

ii. The identity of the individual responsible for project management and the lines of authority between this individual and other elements of the project.

d. Staff Loading Plan—The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimated for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks should be charted to show time required to perform them by months or weeks.

e. Roles and Responsibilities—The applicant must include a resume and description of the roles and responsibilities of all personnel proposed. Resumes must be attached in an appendix. At a minimum, each resume must include: the individual's current employment status and previous work experience, including position title, duties, dates in position, employing organizations, and educational background. Duties must be clearly defined in terms of role performed, e.g., manager, team leader, consultant, etc. Indicate whether the individual is currently employed by the applicant, and (if so) for how long.

4. Leverage of Grant Funding (5 points)

The Department will give up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the dollar amount, size and scope of the application. These programs will not be financed by the project, but can complement and enhance project objectives. Applicants are also encouraged to leverage activities such as micro-credit or income generation projects for adults that are not directly allowable under the grant. To be eligible for the additional points, the applicant must list the source(s) of funds, the nature, and possible activities anticipated with these funds under this grant and any partnerships, linkages or coordination of activities, cooperative funding, etc.

Signed at Washington, DC, this 21st day of March, 2003.

Lawrence J. Kuss,

Grant Officer.

Appendix A: Project Document Format

Executive Summary

1. Background and Justification

2. Target Groups

3. Program Approach and Strategy

3.1 Narrative of Approach and Strategy (and linked to Logical Framework matrix)

3.2 Project Implementation Timeline (Gantt Chart of Activities linked to Logical Framework)

3.3 Budget (with cost of Activities linked to Outputs for Budget Performance Integration)

4. Project Monitoring and Evaluation

4.1 Indicators and Means of Verification *

4.2 Baseline Data Collection Plan

5. Institutional and Management Framework

5.1 Institutional Arrangements for Implementation

5.2 Collaborating and Implementing Institutions (Partners) and Responsibilities

5.3 Other Donor or International Organization Activity and Coordination

5.4 Project Management Organizational Chart

6. Inputs

6.1 Inputs provided by the DOL

6.2 Inputs provided by the Grantee

6.3 National and/or Other Contributions

7. Sustainability

Annex A: Full presentation of the Applicant's Logical Framework matrix

(A worked example of a Logical Framework matrix and other background documentation for this SGA are available from the ILAB Web site at *http://www.dol.gov/ILAB/grants/education/SGA0301/bkgrdSGA0301.htm.*)

[FR Doc. 03–7482 Filed 3–27–03; 8:45 am]

BILLING CODE 4510–28–U

* Initial choice of and justification of indicators and means of verification can be refined and/or adapted after baseline collection and development of Monitoring and Evaluation Plan.

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Security Programs: Unemployment Insurance Program Letter Interpreting Federal Law

The Employment and Training Administration interprets federal law requirements pertaining to unemployment compensation (UC) and public employment services (ES). These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Workforce Agencies. The UIPL described below is

published in the **Federal Register** in order to inform the public.

UIPL 22–87, Change 2

UIPL 22–87, change 2, using a Q and A format, advises states of the Department of Labor's interpretation of federal law relating to the treatment of retirement pay for unemployment compensation (UC) purposes. Specific information regarding the effect of employee contributions to retirement plans and receipt of Social Security is also addressed.

Dated: March 20, 2003.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210

Classification—Retirement Pay
Correspondence Symbol—OWS/DL
DATE—February 3, 2003

Advisory: Unemployment Insurance Program Letter No. 22–87 Change 2.

To: All State Workforce Agencies.

From: Cheryl Atkinson /s/ Administrator, Office of Workforce Security.

Subject: Treatment of Retirement Pay—Employee Contributions.

1. *Purpose.* To answer questions related to the treatment of retirement pay for unemployment compensation (UC) purposes, particularly regarding the effect of employee contributions to retirement plans.

2. *References.* The Internal Revenue Code of 1986 (IRC), including Section 3304(a)(15) of the Federal Unemployment Tax Act (FUTA); and Unemployment Insurance Program Letter (UIPL) No. 22–87 (52 *Fed. Reg.* 22,546 (1987)), and Change 1 (60 *Fed. Reg.* 55,604, 55,606 (1995)).

3. *Background.* Section 3304(a)(15), FUTA, requires, as a condition for employers in a state to receive credit against the federal unemployment tax, that the amount of UC payable to an individual be reduced for any week "which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual * * * ." Two subparagraphs go on to provide the following qualifications to this requirement:

- Under subparagraph (A), states must reduce UC due to receipt of retirement payments only when (i) a base period or chargeable employer maintained or contributed to the plan and (ii) the services performed for that employer affected eligibility for, or increased the amount of, the retirement payment. Subparagraph (A)(ii) does not apply to payments "made under the Social Security Act or the Railroad Retirement Act * *, *."

Rescissions—None
Expiration Date—Continuing

- Under subparagraph (B), states may "take into account" contributions made "by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment" to provide limits on any such reduction. This exception applies to all retirement plans to which the employee has made contributions.

The entire text of Section 3304(a)(15), FUTA, is provided in the Attachment. UIPL 22–87 provides the Department's interpretation of this Section. This Change 2 is issued to respond to questions from states, particularly those related to Subparagraph B.

4. Questions and Answers:

Question 1: How much latitude does a state have in "taking into account" an employee's contributions to set limits on the amount of any reduction in UC?

Answer: Since subparagraph (B) does not specify the degree of offset, states have broad latitude in how an employee's contributions are "taken into account." As a result, a state may disregard part or all of a retirement payment in determining the amount of UC payable "regardless of the relative proportions of employee and employer contributions." Therefore, a state may disregard up to 100 percent of a retirement payment as long as the employee contributed some amount to the retirement plan, and any reduction in the amount of UC payable need not be proportionate to the amount of the employee contribution.

If an employee at one time paid contributions to a plan that was later converted to one in which the employer paid 100% of the contributions, then the employee has made contributions to the plan. Therefore, the state has the option of "taking into account" the employee's contributions before the conversion.

Question 2: Must Social Security retirement benefits be deducted from UC?

Answer: No. As explained in the preceding Question and Answer, states may "take into account" contributions made "by an individual for the pension, retirement or retired pay, annuity, or other similar periodic payment." Since employees make contributions to Social Security, the state may "take into account" the employee's contributions to Social Security.

Confusion apparently exists concerning the treatment of Social Security payments because, as noted in the *Background* section, the qualification found in subparagraph (A)(ii) does not apply to Social Security. However, there is no similar limitation in the "take into account" provision in subparagraph (B).

Question 3: UIPL 22–87 says that, if a state chooses to exercise the "take into account" option, the state's UC law must clearly indicate that the retirement payments are not deducted from UC because of the employee's contribution. (Page 6 of UIPL 22–87.) If a state chooses to exercise the "take into account" option solely for Social Security payments, must the state's law explicitly state that it is "taking into account" the employee's contributions?

Answer: No. The Social Security contribution scheme is governed entirely by federal law, which by its terms provides for employee contributions to the Social Security trust fund based on the employee's work. Because it is clear from a reading of the relevant provisions of the federal law, that a state may exclude these payments from pension offset, there is no need for the state law to explain how it is doing so.

There also is no need for the state law to explain that it is "taking into account" the employee's contribution with regard to other retirement plans with employee contributions that are governed entirely by federal law, such as Railroad Retirement or Civil Service retirement payments. For retirement plans that the state law singles out that are not governed entirely by federal law, the state's law must, to guarantee conformity with federal law, explicitly state that it is "taking into account" the employee's contribution.

Question 4: During a collective bargaining process, employees may give up pay raises or cost of living adjustments in return for an increased employer contribution to the pension plan. May states consider these employer payments to be "contributions made by the individual?"

Answer: No. The controlling factor is whether the individual actually made any direct contributions to the plan. A direct contribution is one made by payroll deduction or otherwise from an employee's personal funds. A wage agreement that results in increased employer contributions to a retirement plan in exchange for a surrender in wages does not constitute a direct contribution to the pension plan by the employees.

This is consistent with other provisions of federal law. The Department of Labor's Pension, Welfare and Benefits Administration (PWBA) considers contributions made by an employer to a pension fund in these cases to be employer contributions for purposes of laws administered by PWBA. (Indeed, the Form 5500, Annual Return/Report of Employment Benefit Plan, filed by the employer, should reflect this.) Also, payments made by an employer to a retirement plan are not considered part of an employee's wages for federal income tax purposes under Section 3401 *et seq.*, of the Internal Revenue Code (IRC). It would be inconsistent to attribute these contributions to employees for purposes of Section 3304(a)(15), FUTA (which is itself part of the IRC), when other provisions of the IRC do not consider them employee contributions.

Question 5: The federal legislative language is very complex. Could you give a simple statement of what retirement payments must cause a reduction in UC?

Answer: UC *must* be reduced only due to receipt of retirement pay that is—

- For a week of unemployment beginning during a period for which the individual is receiving retirement pay;
- Reasonably attributable to such week;
- Based on the previous work of the individual;
- 100% financed by a base period or chargeable employer; AND
- Based on work affecting eligibility for, or increasing the amount of, the retirement payment.

See UIPL 22–87, page 4, for a discussion of the various types of payments that fall under the term "retirement pay" and a more detailed discussion of these criteria.

5. *Action.* State administrators should distribute this advisory to appropriate staff.

6. *Inquiries.* Questions should be addressed to your Regional Office.

7. *Attachment.* [1]

[FR Doc. 03–7450 Filed 3–27–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decision of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statues referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herin, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Davison of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ020003 (Mar. 1, 2002)
NJ020005 (Mar. 1, 2002)
VT020008 (Mar. 1, 2002)
VT020009 (Mar. 1, 2002)

Volume II

Pennsylvania
PA020005 (Mar. 1, 2002)
PA020006 (Mar. 1, 2002)
PA0200026 (Mar. 1, 2002)
West Virginia
WV020001 (Mar. 1, 2002)
WV020002 (Mar. 1, 2002)
WV020003 (Mar. 1, 2002)
WV020010 (Mar. 1, 2002)

Volume III

None

Volume IV

Michigan
MI020001 (Mar. 1, 2002)
MI020002 (Mar. 1, 2002)
MI020003 (Mar. 1, 2002)
MI020004 (Mar. 1, 2002)
MI020005 (Mar. 1, 2002)
MI020007 (Mar. 1, 2002)
MI020008 (Mar. 1, 2002)
MI020010 (Mar. 1, 2002)
MI020011 (Mar. 1, 2002)
MI020012 (Mar. 1, 2002)
MI020013 (Mar. 1, 2002)
MI020015 (Mar. 1, 2002)
MI020016 (Mar. 1, 2002)
MI020017 (Mar. 1, 2002)
MI020019 (Mar. 1, 2002)
MI020020 (Mar. 1, 2002)
MI020027 (Mar. 1, 2002)
MI020030 (Mar. 1, 2002)
MI020031 (Mar. 1, 2002)
MI020034 (Mar. 1, 2002)
MI020035 (Mar. 1, 2002)
MI020036 (Mar. 1, 2002)
MI020050 (Mar. 1, 2002)
MI020052 (Mar. 1, 2002)
MI020060 (Mar. 1, 2002)
MI020062 (Mar. 1, 2002)
MI020063 (Mar. 1, 2002)
MI020064 (Mar. 1, 2002)
MI020065 (Mar. 1, 2002)
MI020066 (Mar. 1, 2002)
MI020067 (Mar. 1, 2002)
MI020068 (Mar. 1, 2002)
MI020069 (Mar. 1, 2002)
MI020070 (Mar. 1, 2002)
MI020071 (Mar. 1, 2002)
MI020072 (Mar. 1, 2002)
MI020073 (Mar. 1, 2002)
MI020074 (Mar. 1, 2002)
MI020075 (Mar. 1, 2002)
MI020076 (Mar. 1, 2002)
MI020077 (Mar. 1, 2002)
MI020078 (Mar. 1, 2002)
MI020079 (Mar. 1, 2002)
MI020080 (Mar. 1, 2002)
MI020081 (Mar. 1, 2002)
MI020082 (Mar. 1, 2002)
MI020083 (Mar. 1, 2002)
MI020084 (Mar. 1, 2002)
MI020085 (Mar. 1, 2002)
MI020086 (Mar. 1, 2002)
MI020087 (Mar. 1, 2002)
MI020088 (Mar. 1, 2002)
MI020089 (Mar. 1, 2002)
MI020090 (Mar. 1, 2002)
MI020091 (Mar. 1, 2002)
MI020092 (Mar. 1, 2002)
MI020093 (Mar. 1, 2002)
MI020094 (Mar. 1, 2002)
MI020095 (Mar. 1, 2002)
MI020096 (Mar. 1, 2002)
MI020097 (Mar. 1, 2002)
MI020099 (Mar. 1, 2002)
MI020100 (Mar. 1, 2002)
MI020101 (Mar. 1, 2002)
MI020105 (Mar. 1, 2002)

Volume V

Missouri

[1] ATTACHMENT I is available in the *www.ows.doleta.gov* Web site under Laws.

MO020001 (Mar. 1, 2002)
MO020002 (Mar. 1, 2002)
MO020003 (Mar. 1, 2002)
MO020005 (Mar. 1, 2002)
MO020006 (Mar. 1, 2002)
MO020007 (Mar. 1, 2002)
MO020009 (Mar. 1, 2002)
MO020010 (Mar. 1, 2002)
MO020011 (Mar. 1, 2002)
MO020014 (Mar. 1, 2002)
MO020015 (Mar. 1, 2002)
MO020016 (Mar. 1, 2002)
MO020019 (Mar. 1, 2002)
MO020020 (Mar. 1, 2002)
MO020041 (Mar. 1, 2002)
MO020043 (Mar. 1, 2002)
MO020044 (Mar. 1, 2002)
MO020045 (Mar. 1, 2002)
MO020047 (Mar. 1, 2002)
MO020049 (Mar. 1, 2002)
MO020050 (Mar. 1, 2002)
MO020051 (Mar. 1, 2002)
MO020052 (Mar. 1, 2002)
MO020053 (Mar. 1, 2002)
MO020056 (Mar. 1, 2002)
MO020057 (Mar. 1, 2002)
MO020059 (Mar. 1, 2002)
MO020061 (Mar. 1, 2002)

Nebraska
NE020001 (Mar. 1, 2002)
NE020003 (Mar. 1, 2002)
NE020011 (Mar. 1, 2002)
NE020019 (Mar. 1, 2002)

Volume VI

Alaska
AK020001 (Mar. 1, 2002)
AK020005 (Mar. 1, 2002)

Idaho
ID020003 (Mar. 1, 2002)

Oregon
OR020001 (Mar. 1, 2002)
OR020002 (Mar. 1, 2002)
OR020004 (Mar. 1, 2002)
OR020007 (Mar. 1, 2002)

Utah
UT020025 (Mar. 1, 2002)

Washington
WA020005 (Mar. 1, 2002)

Volume VII

Nevada
NV020003 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage *determinations Issued Under the Davis-*Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis–Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http:www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)of* the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 20th day of March 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–7084 Filed 3–27–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Snyder Coal Company

[Docket No. M–2003–011–C]

Snyder Coal Company, RD #2 Box 93, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.335 (Construction of seals) to its *N. and L. Slope Mine (MSHA I.D. No.* 36–02203) located in Northumberland County, Pennsylvania. The petitioner proposes to use wooden materials of moderate size and weight for constructing seals due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Snyder Coal Company

[Docket No. M–2003–012–C]

Snyder Coal Company, RD #2 Box 93, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1002–1 now 75.1002 (Installation of electric equipment and conductors; permissibility) to its N. and L. Slope Mine (MSHA I.D. No. 36–02203) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of non-permissible electric equipment within 150 feet of the pillar line in the working section's only intake entry (gangway) that is regularly traveled and examined. The petitioner states that the non-permissible equipment would include drags and battery locomotives due in part to the method of mining used in pitching anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Cannelton Industries, Inc.

[Docket No. M–2003–013–C]

Cannelton Industries, Inc., PO Box 150, Cannelton, West Virginia 25036 has filed a petition to modify the application of 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility) to its Shadrick Mine (MSHA I.D. No. 46–08159) located in Kanawha County, West Virginia. The petitioner proposes to use 2,400-volt electricity to power continuous mining equipment at the Shadrick Mine. The petitioner has listed in this petition specific terms and conditions that would be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Lodestar Energy, Inc.

[Docket No. M–2003–014–C]

Lodestar Energy, Inc., PO Box 448, Clay, Kentucky 42404 has filed a petition to modify the application of 30 CFR 75.1101–1(b) (Deluge-type water spray systems) to its Baker Mine (MSHA I.D. No. 15–14492) located in Webster County, Kentucky. The petitioner requests a modification of the existing standard to allow weekly examinations

and testing of the deluge systems to ensure that nozzles are not blocked. In lieu of using blow-off dust covers, the petitioner proposes to have a trained person conduct a weekly visual examination and a functional test on each deluge-type fire suppression system installed at conveyor belt drives by actuating the water system and observing its performance. The petitioner states that any malfunction or clogged nozzle that is detected as a result of the weekly visual examination or functional test, would be corrected immediately. The petitioner will record the results of the examination and test in a book located on the surface and made available to the authorized representative of the Secretary. The book would be retained at the mine for one year. The petitioner further states that a book with the dates of the examinations and tests would also be kept at the location of each conveyor belt drive. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Mettiki Coal, LLC

[Docket No. M–2003–015–C]

Mettiki Coal, LLC, 293 Table Rock Road, Oakland, Maryland 21550 has filed a petition to modify the application of 30 CFR 75.1325(c)(1) (Firing procedures) to its Mettiki Mine (MSHA I.D. No. 18–00621) located in Garrett County, Maryland. The petitioner requests a modification of the existing standard to permit blasting in certain locations on the longwall face in the Mettiki Mine without always requiring all miners to leave the face to go to an area that is around at least one corner from the blasting area. The petitioner states that the modification would apply to blasting at longwall faces at locations more than 200 feet inby the headgate. The petitioner has listed in this petition specific terms and conditions that would be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Canyon Fuel Company, LLC

[Docket No. M–2003–016–C]

Canyon Fuel Company, LLC, HC 35 Box 380, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.500(d) (Permissible electric equipment) to its Skyline Mine No. 3 (MSHA I.D. No. 42–01566) located in Carbon County, Utah. The petitioner requests a modification of the existing standard to permit the use of low-voltage or battery powered non-permissible electronic testing and diagnostic equipment in or inby the last open crosscut under controlled conditions. The petitioner proposes to use the following low-voltage or battery powered non-permissible electronic testing and diagnostic equipment: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, insulation testers (meggers), voltage, current and power measurement devices and recorders, pressure and flow measurement devices, signal analyzer device, ultrasonic thickness gauges, electronic component testers, and electronic tachometers, other testing and diagnostic equipment that may be approved by the MSHA District Office. The petitioner states that non-permissible electronic testing and diagnostic equipment shall only be used when equivalent permissible equipment does not exist. The petitioner further states that equipment used in or inby the last open crosscut shall be examined by a qualified person as defined in existing 30 CFR 75.153, prior to being used to ensure the equipment is being maintained in a safe operating condition. The examination results will be recorded in a book and made available to an authorized representative of the Secretary and the miners at the mine. The petitioner has listed specific procedures in this petition, including monitoring, that would be followed when using the non-permissible equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. L—Coal Co.

[Docket No. M–2003–017–C]

L—Coal Co., RD #2 Box 630, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1002–1 now 75.1002 (Installation of electric equipment and conductors; permissibility) to its Lenig Tunnel Mine (MSHA I.D. No. 36–08288) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of non-permissible electric equipment within 150 feet of the pillar line. The petitioner states that the non-permissible equipment would include drags and battery locomotives due in part to the method of mining used in pitching anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. Maple Creek Mining, Inc.

[Docket No. M–2003–019–C]

Maple Creek Mining, Inc., 981 Route 917, Bentleyville, Pennsylvania 15314 has filed a petition to modify the application of 30 CFR 75.1400(e) (Hoisting equipment; general) to its High Quality Mine (MSHA I.D. No. 36–08375) located in Washington County, Pennsylvania. The petitioner proposes to use an electric slope hoist to transport miners in and out the mine. The petitioner states that the High Quality Mine is a new underground mine nearing completion of the slope facilities and hoist installation, and there are no miners employed at the mine. The petitioner further states that the High Quality Mine does not employ any miners who have held the position of hoisting engineer for a period of six months prior to opening the mine, and that an alternate method of obtaining qualifications for the position of a Hoisting Engineer is paramount to the operation of the High Quality Mine. The petitioner has listed specific terms and condition in this petition that would be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

9. Highland Mining Company

[Docket No. M–2003–020–C]

Highland Mining Company, has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements) to its Highland 9 Mine (MSHA I.D. No. 15–02709) located in Union County, Kentucky. The petitioner requests a modification of the existing standard to allow the mine to use the Getman diesel grader underground with rear wheel brakes only at the Highland 9 Mine. The petitioner proposes to: (i) Limit the diesel grader speed to 10 miles per hour maximum; (ii) physically block higher ear ratios on the Getman diesel grader in order to *limit the speed to 10 miles* per hour maximum; (iii) provide training to the grader operators on how to drop the grader blade in the event the brakes fail and the machine needs to be stopped. The petitioner states that the modification will provide the same protection that is realized from the current standard in that the grader can be stopped using the blade as a brake system. The petitioner asserts that the proposed alternative method would

provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to comments@msha.gov, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before April 28, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 21st day of March 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–7395 Filed 3–27–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences (BIO); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L., 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (1110).

Date and Time: April 24, 2003; 8:30 a.m.—5 p.m. April 25, 2003, 8:30 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 375.

Type of Meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Tel No.: (703) 292–8400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Planning and Issues Discussion:

- BIO Science Retreat.
- VIO Education Plan.
- NSB Task Force on Infrastructure Report.

Dated: March 25, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–7512 Filed 3–27–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information cv unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 55, "Operators' Licenses".

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* As necessary for NRC to meet its responsibilities to determine the eligibility of applicants for operators' licenses, prepare or review initial operator licensing and requalification examinations, and review applications for and performance of simulation facilities.

5. *Who will be required or asked to report:* Holders of and applicants for facility (*i.e.*, nuclear power, research, and test reactor) operating licenses and individual operators' licenses.

6. *An estimate of the number of annual responses:* 278 (172 responses + 106 recordkeepers).

7. *The estimated number of annual respondents:* 106 (70 power reactor licensees + 36 non-power reactor licensees).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 66,018 (approximately 44,736 hours of reporting burden [averaging 422 hours per respondent] and approximately 21,282 hours of recordkeeping burden [averaging 201 hours per recordkeeper]).

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* N/A.

10. *Abstract:* 10 CFR Part 55, "Operators' Licenses," of the NRC's regulations, specifies information and data to be provided by applicants and facility licenses so that the NRC may make determinations concerning the licensing and requalification of operators for nuclear reactors, as necessary to promote public health and safety. The reporting and recordkeeping requirements contained in 10 CFR Part 55 are mandatory for the licensees and applicants affected.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 28, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0018), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 24th day of March, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–7487 Filed 3–27–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338, 50–339, 50–280, and 50–281]

Virginia Electric and Power Company, North Anna Power Station, Unit Nos. 1 and 2, and Surry Power Station, Unit Nos. 1 and 2; Notice of Issuance of Renewed Facility Operating License Nos. NPF–4, NPF–7, DPR–32, and DPR–37 for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed Facility Operating License Nos. NPF–4, NPF–7, DPR–32, and DPR–37 to Virginia Electric and Power Company (the licensee), the operator of the North Anna Power Station, Unit Nos. 1 and 2 (North Anna, Units 1 and 2), and Surry Power Station, Unit Nos. 1 and 2 (Surry, Units 1 and 2). Renewed Facility Operating License No. NPF–4 authorizes operation of North Anna, Unit 1, by the licensee at reactor core power levels not in excess of 2893 megawatts thermal in accordance with the provisions of the North Anna, Unit 1, renewed license and its Technical Specifications. Renewed Facility Operating License No. NPF–7 authorizes operation of North Anna, Unit 2, by the licensee at reactor core power levels not in excess of 2893 megawatts thermal in accordance with the provisions of the North Anna, Unit 2, renewed license and its Technical Specifications. Renewed Facility Operating License No. DPR–32 authorizes operation of Surry, Unit 1, by the licensee at reactor core power levels not in excess of 2546 megawatts thermal in accordance with the provisions of the Surry, Unit 1, renewed license and its Technical Specifications. Renewed Facility Operating License No. DPR–37 authorizes operation of Surry, Unit 2, by the licensee at reactor core power levels not in excess of 2546 megawatts thermal in accordance with the provisions of the Surry, Unit 2, renewed license and its Technical Specifications.

North Anna, Units 1 and 2, are pressurized water nuclear reactors located in Louisa County, 40 miles northwest of the city of Richmond, Virginia. Surry, Units 1 and 2, are pressurized water nuclear reactors located in Surry County, 14 miles northwest of the city of Newport News, Virginia.

The applications for the renewed licenses complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter I, the Commission has made appropriate findings, which are set forth in each license. Prior public notice of the action involving the proposed issuance of these renewed licenses and of an opportunity for a hearing regarding the proposed issuance of these renewed licenses was published in the **Federal Register** on July 27, 2001 (66 FR 39213).

For further details with respect to this action, see (1) the Virginia Electric and Power Company's license renewal applications for North Anna, Units 1 and 2, and Surry, Units 1 and 2, dated May 29, 2001, as supplemented by letters dated November 30, 2001, January 4 (two letters), January 16, January 17, February 1 (two letters), February 5, May 22 (two letters), June 13, July 11, July 25, August 23, October 1, October 15, November 4, December 2, and December 11, 2002; (2) the Commission's safety evaluation report, dated November 5, 2002, and December 2002 (NUREG–1766); (3) the licensee's updated final safety analysis report; and (4) the Commission's final environmental impact statements (NUREG–1437, Supplement 6, for Surry, Units 1 and 2, and NUREG–1437, Supplement 7, for North Anna, Units 1 and 2), dated November 2002. These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, first floor, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.*

Copies of Renewed Facility Operating License Nos. NPF–4, NPF–7, DPR–32, and DPR–37 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of Regulatory Improvement Programs. Copies of the safety evaluation report (NUREG–1766), and the final environmental impact statements (NUREG–1437, Supplement 6, for Surry, Units 1 and 2, and NUREG–1437, Supplement 7, for North Anna, Units 1 and 2) may be purchased from the National Technical Information Service, Springfield, Virginia 22161–0002 (*http://www.ntis.gov*), 1–800–553–6847, or the Superintendent of Documents, U.S. Government Printing Office, PO Box 371954, Pittsburgh, PA 15250–7954 (*http://www.access.gpo.gov/su_docs*), 202–512–1800. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 20th day of March 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–7486 Filed 3–27–03; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–05357]

Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Environmental Assessment and Finding of No Significant Impact related to license amendment of Byproduct Material License No. 29–08978–02, Novartis Pharmaceuticals Corporation, East Hanover, New Jersey.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Material License No. 29–08978–02 to authorize release of its facility in Summit, New Jersey, for unrestricted use and has prepared an Environmental Assessment in support of this action. Based upon the Environmental Assessment, the NRC has concluded that a Finding of No Significant Impact is appropriate, and, therefore, an Environmental Impact Statement is unnecessary.

FOR FURTHER INFORMATION CONTACT: Donna Janda, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (610) 337–5371 or e-mail *DMJ@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U. S. Nuclear Regulatory Commission (NRC) is considering amending Byproduct Materials License No. 29–08978–02 and authorizing the release of the licensee's facility in Summit, New Jersey, for unrestricted use and has prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) in support of this action.

SUMMARY: The NRC reviewed the results of the decommissioning of the Novartis Pharmaceuticals Corporation (Novartis) facility in Summit, New Jersey. Novartis was formed in 1997 from the merger of Ciga-Geigy Corporation and Sandoz Corporation. From 1963 to 1997, Ciba-Geigy was authorized by NRC under Materials License No. 29–00459–03 to use radioactive materials for research and development purposes at the Summit facility. After the merger, Novartis continued to perform the same activities at the Summit facility under Materials License No. 29–00459–03 until 1998, when the license was terminated and the facility was added to Novartis' Materials License No. 29–08978–02. In January 2003, Novartis ceased operations with licensed materials at the Summit site, and in February 2003, requested that NRC release the facility for unrestricted use. Novartis has conducted surveys of the Summit facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20. The NRC staff has evaluated Novartis' request and results of the surveys, and

has developed an Environmental Assessment (EA) in accordance with the requirements of 10 CFR part 51. Based on the staff evaluation, the conclusion of the EA is a Finding of No Significant Impact (FONSI) on human health and the environment for the proposed licensing action.

Introduction

Novartis requested release for unrestricted use of the entire facility at 556 Morris Avenue, Summit, New Jersey, as authorized by the NRC License No. 29–08978–02. License No. 29–08978–02 was issued in 1968 and amended in March 1998 to include the Summit site. It authorizes Novartis to perform activities in Buildings 130, L, LX, and U at 556 Morris Avenue, Summit, New Jersey. NRC-licensed activities at the Summit site were limited to laboratory procedures typically performed on bench tops and in hoods. A variety of radionuclides were used primarily for research and development. No outdoor areas were affected by the use of licensed materials.

Licensed activities ceased completely in January 2003, and the licensee requested release of the facility for unrestricted use. Based on the licensee's historical knowledge of the site and the conditions of the facility, the licensee determined that only routine decontamination activities, in accordance with the licensee's radiation safety procedures, were required. A decommissioning plan was not required to be submitted to NRC. The licensee surveyed the facility, decontaminated or remediated areas as needed, and provided documentation that the facility meets the license termination criteria, specified in subpart E of 10 CFR part 20, and does not require additional decommissioning activities to be performed. NRC inspectors inspected the decommissioning activities at the Summit facility on November 26, 2002, December 19, 2002, January 10, 2003, and February 12, 2003. The inspectors observed surveys and wipe tests being performed and reviewed the licensee's records related to decommissioning and survey activities. The licensee subsequently requested that the Novartis facility in Summit, New Jersey be released for unrestricted use.

The Proposed Action

The proposed action is to amend Byproduct Materials License No. 29–08978–02 and release the facility at 556 Morris Avenue, Summit, New Jersey for unrestricted use. By letter dated February 6, 2003, Novartis provided survey results which demonstrate that the Summit site is in compliance with the radiological criteria for license termination in subpart E, 10 CFR part 20, "Radiological Criteria for License Termination."

Purpose and Need for the Proposed Action

The purpose of the proposed action is to amend NRC Byproduct Materials License No. 29–08978–02 and release the Novartis site in Summit, New Jersey for unrestricted use. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for release of a facility for unrestricted use that ensures protection of public health and safety and the environment.

Alternative to the Proposed Action

Since the facility at the Summit site has already been surveyed and found acceptable for release for unrestricted use, the only alternative to the proposed action of amendment of the license and release of the Summit site for unrestricted use is no action. The no-action alternative would be to keep the facility on the license, which is not acceptable because the licensee does not plan to perform any activities with licensed materials at this location and does not plan to maintain staff to perform licensed activities. Maintaining the areas under a license would provide negligible, if any, environmental benefit and would reduce options for future use of the property.

The Affected Environment and Environmental Impacts

The NRC staff has reviewed the surveys performed by Novartis to demonstrate compliance with the 10 CFR 20.1402 license termination criteria. Based on its review, the staff has determined that the affected environment and environmental impacts associated with the release for unrestricted use of the Novartis Summit facility are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities' (NUREG–1496). The staff also finds that the proposed release for unrestricted use of the Novartis facility is in compliance with Title 10, Code of Federal Regulations, part 20.1402, "Radiological Criteria for Unrestricted Use." The NRC has found no other activities in the area that could result in cumulative impacts.

Agencies and Persons Consulted, and Sources Used

This EA was prepared entirely by the NRC staff. The State Office of Historical Preservation, the State Fish and Wildlife Service, and the U.S. Fish and Wildlife Service were not contacted because release of the Novartis facility for unrestricted use does not affect historical or cultural resources, nor will it affect threatened or endangered species. No other sources were used beyond those referenced in this EA.

NRC provided a draft of its Environmental Assessment to the State of New Jersey Department of Environmental Protection (NJDEP) for review. On March 10, 2003, the NJDEP responded by letter and agreed with the conclusions of the EA.

Conclusion and Finding of No Significant Impact

Based on its review, the NRC staff has concluded that the completed action complies with 10 CFR part 20. NRC has prepared this EA in support of the proposed license amendment to release the facility at 556 Morris Avenue, Summit, New Jersey, for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

List of Preparers

Donna M. Janda, Health Physicist, Division of Nuclear Materials Safety, Region 1.

List of References

1. NRC License Nos. 29–08978–02 and 29–00459–03 inspection and licensing records.
2. Letter dated December 3, 2001, with attachment from Novartis Pharmaceuticals Corporation. [ADAMS Accession No. ML013550047]
3. Letter dated September 6, 2002, with attachment from Novartis Pharmaceuticals Corporation. [ADAMS Accession No. ML022660406]
4. Letter dated February 6, 2003, with attachment from Novartis Pharmaceuticals Corporation. [ADAMS Accession Nos. ML030510365, ML030510378, and ML030510379]
5. Title 10, Code of Federal Regulations, Part 20, Subpart E, "Radiological Criteria for License Termination."
6. Title 10, Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/ADAMS.html*. Any questions with respect to this action should be referred to Donna Janda, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region 1, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5371, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania this 21st day of March, 2003.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–7488 Filed 3–27–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 12b–1—SEC File No. 270–188, OMB Control No.–3235–0212.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501], the Securities and Exchange Commission ("Commission") is soliciting public comments on the collection of information under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Act") summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 12b–1 [17 CFR 270.12b–1] under Act the permits a registered open-end investment company ("mutual fund") to distribute its own shares and pay the expenses of distribution out of the mutual fund's assets provided, among other things, that the mutual fund adopts a written plan ("rule 12b–1 plan") and has in writing any agreements relating to the implementation of the rule 12b–1 plan. The rule in part requires that (i) the adoption or material amendment of a rule 12b–1 plan be approved by the mutual fund's directors and shareholders; (ii) the board review quarterly reports of amounts spent under the rule 12b–1 plan; and (iii) the board consider continuation of the rule 12b–1 plan at least annually. Rule 12b–1 also requires funds relying on the rule to preserve for six years, the first two years in an easily accessible place, copies of the rule 12b–1 plan, related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for adopting or continuing a rule 12b–1 plan.

The board and shareholder approval requirements of rule 12b–1 are designed to ensure that fund shareholders and directors receive adequate information to evaluate and approve a rule 12b–1 plan. The requirement of quarterly reporting to the board is designed to ensure that the rule 12b–1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule.

Based on information filed with the Commission by funds, Commission staff estimates that there are 6,217 mutual fund portfolios with rule 12b–1 plans. As discussed above, rule 12b–1 requires the board of each fund with a rule 12b–1 plan to (i) review quarterly reports of amounts spent under the plan and (ii) annually consider the plan's continuation (which generally is combined with the fourth quarterly review). This results in a total number of annual responses per fund of four and an estimated total number of industry responses of 24,868 (6,217 fund portfolios × 4 annual responses per fund = 24,868 responses).

Based on conversations with fund industry representatives, Commission staff estimates that for each of the 6,217 mutual fund portfolios that currently have a rule 12b–1 plan, the average annual burden of complying with the rule is 100 hours to maintain the plan. This estimate takes into account the time needed to prepare quarterly reports to the board of directors, the board's consideration of those reports, and the board's annual consideration of the plan's continuation. Commission staff therefore estimates that the total burden of the rule's paperwork requirements for all funds is 621,700 hours (6,217 fund portfolios × 100 hours per fund = 621,700 hours).

The estimate of burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of Commission rules.

If a currently operating fund seeks to (i) adopt a new rule 12b–1 plan or (ii) materially increase the amount it spends for distribution under its rule 12b–1 plan, rule 12b–1 requires that the fund obtain shareholder approval. As a consequence, the fund will incur the cost of a proxy. Commission staff estimates that three funds per year prepare a proxy in connection with the adoption or material amendment of a rule 12b–1 plan. Commission staff further estimates that the cost of each fund's proxy is $15,000. Thus the total annualized cost burden of rule 12b–1 to the fund industry is $45,000 (3 funds requiring a proxy × $15,000 per proxy).

The collections of information required by rule 12b–1 are necessary to obtain the benefits of the rule. Notices to the Commission will not be kept confidential. The Commission is seeking OMB approval because an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are requested on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 20, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7396 Filed 3–27–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 31, 2003:

Open Meetings will be held on Tuesday, April 1, 2003 at 10 a.m., in Room 1C30, the William O. Douglas Room, and Wednesday, April 2, 2003 at 10 a.m., in Room 1C30, the William O. Douglas Room. Closed Meetings will be held on Tuesday, April 1, 2003 at 2:30 p.m., and Wednesday, April 2, 2003 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the

Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Open Meeting scheduled for Tuesday, April 1, 2003 will be:

The Commission will consider whether to adopt new rules and amendments to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements established by the Sarbanes-Oxley Act of 2002. These requirements relate to: The independence of audit committee members; the audit committee's responsibility to select and oversee the issuer's independent accountant; procedures for handling complaints regarding the issuer's accounting practices; the authority of the audit committee to engage advisors; and funding for the independent auditor and any outside advisors engaged by the audit committee. The rule implements the requirements of Section 10A(m)(1) of the Securities Exchange Act of 1934, as added by Section 301 of the Sarbanes-Oxley Act of 2002.

The subject matter of the Closed Meeting scheduled for Tuesday, April 1, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature; Institution and settlement of injunctive actions; and Adjudicatory matters.

The subject matter of the Open Meeting scheduled for Wednesday, April 2, 2003 will be an oral argument:

The Commission will hear oral argument on an appeal by John J. Kenny and Nicholson/Kenny Capital Management, Inc., a registered investment adviser, from the decision of an administrative law judge. Kenny is a former associated person of a broker-dealer and chairman and chief executive officer of Nicholson/Kenny.

The law judge found that Kenny engaged in schemes to defraud, in violation of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, and aided, abetted, and was a cause of violations of those provisions by another person. The law judge further found that Kenny and Nicholson/Kenny violated Section 206 of the Investment Advisers Act of 1940.

The law judge barred Kenny from association with any broker, dealer, or investment adviser; revoked Nicholson/Kenny's registration as an investment adviser; ordered respondents to cease and desist from committing or causing violations or future violations of the antifraud provisions; assessed civil penalties of $700,000 against Kenny and $500,000 against Nicholson/Kenny; and ordered respondents, jointly and severally, to pay disgorgement in the amount of $1,333,000.

Among the issues likely to be argued are:

1. Whether respondents committed the alleged violations; and

2. If so, whether sanctions should be imposed in the public interest.

The subject matter of the Closed Meeting scheduled for Wednesday, April 2, 2003 will be: Post-argument Discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: March 25, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–7569 Filed 3–25–03; 4:31 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47562; File No. SR–Amex–2003–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the American Stock Exchange LLC Relating to a One-Year Pilot Program in Connection With Exchange Fees for Options Intermarket Linkage Orders

March 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On March 7, 2003, Amex submitted Amendment No. 1 to the proposed rule change.[3] On March 19, 2003, Amex submitted Amendment No. 2 to the proposed rule change.[4] On March 21, 2003, Amex submitted Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Fee Schedule in order to clarify that market makers on other exchanges that send orders through the Linkage ("Linkage Orders") to the Amex for execution will be charged the same fees that the Exchange charges Exchange specialists and registered options traders ("ROTs") for the orders these entities execute on the Exchange. Because of the lack of experience in operating the Linkage, however, the Exchange proposes, along with the other options exchanges, a one-year pilot program in connection with the fees applicable to Linkage Orders.

The text of the proposed rule change is below. Proposed language is italicized; deleted language is in brackets.

* * * * *

OPTIONS FEE SCHEDULE

[Options fees]

Type	Firm [2]	Specialist, Market Maker (ROTs) [6][1]	Broker/Dealer	Customer [3]
I Options Transaction Fee [1] [6] (per contract side)				
Equity Options	$0.19	$0.26	$0.19	No Charge
Index Options	$0.15	$0.21	$0.15	$0.15
Options on S&P100 iShares	Same as Equity Options	Same as Equity Options	Same as Equity Options	$0.15
II Options Comparison Fee [1] [6] (per contract side)				
Equity Options	$0.04	$0.05	$0.04	No Charge
Index Options	$0.04	$0.05	$0.04	$0.04
III Options Floor Brokerage Fee [1][6] (per contract side)				
Equity Options	$0.03	$0.05	$0.03	No Charge
Index Options	$0.03	$0.05	$0.03	$0.03
IV Options Marketing Fee [4] (per contract side)				
Equity Options	No Charge	$0.40	No Charge	No Charge
V Options Licensing Fee (per contract side)				
MNX, NDX and QQQ	No Charge	$0.10	No Charge	No Charge
Type:				
OEF	No Charge	$0.05	No Charge	No Charge
LQD	No Charge	$0.10	No Charge	No Charge
ICF	No Charge	$0.09	No Charge	No Charge
VI Options Order Cancellation Fee [5]	$1.00	$1.00	$1.00	$1.00
VII Broker-Dealer Auto-Ex Fees (per contract side)				
Options Transaction Fee				
Equity Options	$0.50	$0.50	$0.50	N/A
Index Options	$0.50	$0.50	$0.50	N/A
Options on S&P100 iShares	$0.50	$0.50	$0.50	N/A
Options Comparison Fee				
Equity Options	$0.04	$ [0.50] *0.05*	$0.04	N/A
Index Options	$0.04	$ [0.50] *0.05*	$0.04	N/A
Options Floor Brokerage Fee				
Equity Options	$0.03	$ [0.50] *0.05*	$0.03	N/A
Index Options	$0.03	$ [0.50] *0.05*	$0.03	N/A

Notes:

(1) The increase of $0.09 in transaction fees, of $0.01 in comparison fees, and of $0.02 floor brokerage fees will not be imposed on contracts executed for the accounts of specialists, registered options traders, and non-member broker dealers as either an accommodation trade (also known as "Cabinet Trades") or part of the following strategies: (a) Reversals and conversions; (b) dividend spreads; and (c) box spreads. A Fee Reimbursement Form must be submitted to the Exchange in order to receive a reimbursement of the fee increases charged.

(2) Customer facilitated orders will continue to be charged a transaction fee of $0.07 per contract side.

(3) Index Options machine delivered < 30 contracts are not assessed a transaction fee.

(4) Excludes options trades between and among Registered Options Traders and Specialists. Effective August 1, 2001, this fee has been suspended.

(5) The executing clearing member is charged $1.00 for every order that it cancels through the Amex Order File in a given month when the total number of orders the executing clearing member canceled through AOF in that month exceeds the total number of orders that same Clearing Member executed through AOF in that same month. This fee will not apply to executing Clearing Members that cancel fewer than 500 orders through AOF in a given month.

(6) *Pursuant to a one-year pilot program, the fees applicable to specialists, market maker (ROTs)* [i]include members of other options exchanges executing Linkage transactions except for Satisfaction Orders.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex proposes to adopt fees applicable to certain Linkage Orders executed on the Exchange. The Plan for

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis, Attorney, Division of Market Regulation ("Division"), Commission, dated March 6, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified that market makers from other options exchanges sending Principal Acting as Agent Orders through the options intermarket linkage ("Linkage") that are executed at the Exchange will pay the same fees that are paid for transactions executed on the Exchange by Exchange specialists and registered options traders. In addition, Amex amended the Options Fee Schedule to reflect that these linkage fees are pursuant to a one-year pilot program.

[4] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis, Attorney, Division, Commission, dated March 18, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange made corrections to its fee schedule.

[5] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis, Attorney, Division, Commission, dated March 20, 2003 ("Amendment No. 3"). In Amendment No. 3, the Exchange marked its fee schedule to show the changes it had made in Amendment No. 2.

the Purpose of Creating and Operating an Intermarket Options Market Linkage ("Linkage Plan" or "Plan") was originally approved by the Commission on July 28, 2000,[6] and subsequently amended on June 27, 2001,[7] May 30, 2002,[8] January 29, 2003,[9] and January 31, 2003.[10] For the purpose of implementing the Linkage Plan, Amex filed and received Commission approval of the Exchange's rules governing the operation of the Intermarket Linkage ("Linkage") on January 31, 2003.[11] The Exchange, with the other options exchanges, launched Phase I of the Linkage on January 31, 2003.

In connection with the launch of the Linkage, the Exchange seeks to clarify that the existing fee amount of $0.36 per contract side [12] for equity options that currently is charged to Exchange specialists and registered options traders ("ROTS") will also apply to executions resulting from Linkage Orders. As a result, market makers from other exchanges sending Principal Acting as Agent Orders ("P/A Orders") or Principal Orders ("P Orders") will pay the same execution fees applicable to Exchange specialists and ROTS. The Exchange believes it is appropriate to charge market makers on other option exchanges the same fees members pay for proprietary transactions when such market makers access the liquidity available on the Amex.

As set forth in Amendment No. 4 of the Plan recently approved by the Commission, fees will not be charged to a member of another options exchange that is seeking to satisfy customer orders (*i.e.*, Satisfaction Orders) on its book that were traded through.[13]

Due to the lack of experience that the options exchanges have in operating the Linkage, the Exchange has proposed that a one-year pilot program be instituted with respect to the application of Linkage Order fees. In this manner, the Amex, as well as the other options exchanges, will be able to monitor the operation of the Linkage during its first year of operation and reassess whether the proposed fees are adequate and reasonable.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act [14] regarding the equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should refer to File No. SR–Amex–2003–14 and should be submitted by April 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7401 Filed 3–27–03; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). On October 19, 1999, the Commission issued an order under section 11A(a)(3)(B) of the Act, directing the options exchanges to file a national market systems plan within 90 days to link the options markets. *See* Securities Exchange Act Release No. 42029 (October 19, 1999), 64 FR 57674 (October 26, 1999). The options exchanges that are participants to the Plan include Amex, Chicago Board Options Exchange, Inc., Pacific Exchange, Inc., Philadelphia Stock Exchange, Inc. and the International Securities Exchange, Inc. ("options exchanges").

[7] *See* Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001).

[8] *See* Securities Exchange Act Release No. 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002).

[9] *See* Securities Exchange Act Release No. 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) ("Amendment No. 4").

[10] *See* Securities Exchange Act Release No. 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003).

[11] *See* Securities Exchange Act Release No. 47297 (January 31, 2003), 68 FR 6526 (February 7, 2003).

[12] The fee amount of $0.36 per contract side consists of a $0.26 options transaction fee, a $0.05 options comparison fee, and a $0.05 options floor brokerage fee.

[13] A trade-through occurs when a broker-dealer executes an order on one exchange at a price inferior to another exchange's disseminated price.

[14] 15 U.S.C. 78f(b)(4).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47559; File No. SR–CBOE–2003–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Suspend on a Pilot Basis an Access Fee for Non-Customer Orders in Equity Options Classes Executed Through the Retail Automatic Execution System

March 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a pilot program to suspend an Access Fee for non-customer orders in equity option classes executed through its Retail Automatic Execution System ("RAES"). The text of the proposed rule change appears below.[3] New text is in italics.

Fee Schedule

March 11, 2003

4. RAES (Retail Automatic Execution System) (1)(4): Per Contract

* * * * *

Non-Customer Transactions (origin code other than "C")(8)—$.30 (*Fee suspended through 6/30/03 in equity option classes only*).

* * * * *

(1) Per contract side, including FLEX options. Transaction and Trade Match Fees are applicable to the CBOEdirect system.

* * * * *

(4) Transaction, trade match and RAES fees are charged to the CBOE executing firm on the input record.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The CBOE previously established a $.30 per contract Access Fee to all non-customer transactions (defined as all transactions with origin codes other than "C") [4] in option classes that are executed by means of the CBOE's RAES.[5]

The CBOE now proposes a pilot program to suspend this Access Fee in all equity option classes, in conjunction with other steps the CBOE is taking to open up equity option classes to more automatic execution of non-customer orders.[6] The CBOE believes that suspending the Access Fee will encourage more non-customer RAES orders to be sent to the CBOE. The suspension will last through the end of the CBOE's fiscal year on June 30, 2003. Prior to that date, the CBOE will examine the effects of suspending the fee and advise the Commission whether CBOE intends to continue or modify the suspension.

(2) Statutory Basis

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(4) of the Act,[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act [9] and Rule 19b–4(f)(2) hereunder.[10] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2003–10 and should be submitted by April 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7398 Filed 3–27–03; 8:45 am]

BILLING CODE 8010–01–P

[3] The text reflects minor, technical corrections to the text that the Exchange submitted with the proposed rule. Telephone conversation between Christopher Hill, Attorney, CBOE, and T.R. Lazo, Senior Special Counsel, Division of Market Regulation, Commission, on March 20, 2003.

[4] Every order entering the CBOE Order Routing System is assigned an origin code to reflect the category (though not the specific identity) of the source of each order: "C" for public customers, "B" for Broker-Dealers, "F" for proprietary accounts of member firms of the Options Clearing Corporation, "M" for CBOE market-makers, "N" for non-CBOE market-makers, and "Y" for specialists in an underlying security. The CBOE adopted a related order identification rule for market maker and specialist orders. *See* Securities Exchange Release Act No. 34–46102 (June 21, 2002), 67 FR 43692 (June 28, 2002) (Notice of Filing and Immediate Effectiveness of SR–CBOE–2002–33).

[5] *See* Securities Exchange Act Release Nos. 46455 (September 3, 2002), 67 FR 57468 (September 10, 2002) (Notice of Filing and Immediate Effectiveness of SR–CBOE–2002–42, which established the $.30 per contract Access Fee for non-customer RAES orders in options on the Nasdaq 100® Index Tracking Stock ("QQQ"), Nasdaq-100® Index Options (NDX), CBOE Mini-NDX Index Options ("MNX℠"), and European style S&P 100® Index options ("XEO®") classes); and 47032 (December 18, 2002), 67 FR 79196 (December 27, 2002) (Notice of Filing and Immediate Effectiveness of SR–CBOE–2002–68, which extended the $.30 per contract access fee to non-customer RAES transactions in equity options, as well as other option classes when non-customer orders in those classes become eligible for execution via RAES.)

[6] *See, e.g.*, Securities Exchange Act Release No. 47492 (March 13, 2003), 68 FR 13350 (March 19, 2003) (Notice of Filing and Immediate Effectiveness of SR–CBOE–2003–09 which proposed to expand the order-types eligible for the Exchange's Large Order Utility).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47553; File No. SR–CBOE–2003–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Clearing Firm Prohibitions From Accepting Certain Third Party Deposits

March 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The CBOE filed Amendment No. 1 to the proposal on March 5, 2003. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to add a rule to Chapter 4 of its rules ("Business Conduct") that would prohibit market-maker clearing firms from accepting certain deposits by third parties. The text of the proposed rule change follows:

Additions are *italicized;* deletions are in [brackets].

Chicago Board Options Exchange, Incorporated

Rules

Chapter IV

Business Conduct

Rule 4.1 through 4.20.—no change.

Third Party Deposits Prohibited

Rule 4.21. Member organizations engaged in the business of clearing and carrying the accounts of options market-makers ("Clearing Firms") registered to conduct business on the Exchange are subject to the following prohibitions:

(1) The acceptance of a check or funds transfer for deposit into any broker-dealer account cleared or carried by a Clearing Firm is prohibited if the name on the account from which the check or transfer is drawn is not the same as that on the account cleared or carried by the Clearing Firm.

(2) The acceptance of securities, either directly or via transfer, for deposit into any broker-dealer account cleared or carried by a Clearing Firm is prohibited if the name on the securities, or the name on the account from which the securities are drawn, is not the same as that on the account cleared or carried by the Clearing Firm.

** * * Interpretations and Policies:*

.01 The foregoing prohibitions do not apply to checks, funds or securities for deposit to a market-maker's account that are drawn on a joint account of which the market-maker is one of the joint owners, and the title of the market-maker's account with the Clearing Firm coincides with the market-maker's designation on the joint account.

.02 The foregoing prohibitions do not apply to checks, funds or securities for deposit into the account of a U.S. broker-dealer business entity if the depositor (i) has an ownership interest disclosed on Schedule A of the broker-dealer's Uniform Application for Broker-Dealer Registration ("Form BD"), or (ii) is a U.S. broker-dealer and has an ownership interest disclosed on Schedule B of Form BD.

.03 If immediate action is required in order for an account of a broker-dealer cleared and carried by a Clearing Firm to (i) establish a positive net liquidating equity or supplement equity when required based upon internal risk control procedures of the Clearing Firm, or (ii) achieve compliance with SEC Rule 15c3–1 (the Net Capital Rule), an officer or partner of a Clearing Firm may grant an exception, which must be in writing, with respect to any transaction prohibited by this Rule 4.21.

.04 Transfers of funds or securities between two accounts cleared and carried by the same Clearing Firm are permitted provided that, if both accounts are not owned by the same person(s) or entity, the transfer must be authorized in writing by the owner of the account from which funds and/or securities would be withdrawn.

.05 Documentation evidencing any exceptions granted pursuant to Interpretation and Policy .03 above, as well as documents authorizing transfers of funds or securities between two accounts pursuant to Interpretation and Policy .04 above, shall be retained by the Clearing Firm for at least three years, the first two years in an easily accessible place for examination by the Exchange. In lieu of having the documents easily accessible, a Clearing Firm may make and keep current a separate central log, index or other file through which the documents can be identified and retrieved.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE proposes to adopt a rule that prohibits a member organization that is engaged in the business of clearing and carrying the accounts of options market-makers (a "Clearing Firm")[3] from accepting for deposit into an account cleared or carried by the Clearing Firm a check or funds transfer drawn on the account of a third party. Under the proposed rule, Clearing Firms would be prohibited (with certain exceptions) from accepting a check or funds transfer if the name on the account from which the funds are drawn is different (*i.e.*, a "third party") from the name on the account cleared or carried by the Clearing Firm. In addition to checks or funds transfers from third parties, the proposed rule would also prohibit (with certain exceptions) Clearing Firms from accepting deposits or transfers of securities in the name of third parties. This rule filing has been undertaken as a result of a recommendation by the CBOE's Financial Regulatory Committee.[4]

The proposed rule would not prohibit a Clearing Firm from transferring funds and/or securities between different name accounts that it carries, although the proposed rule would reaffirm that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule is intended to apply only to Clearing Firms as defined above. Broker-dealers that conduct a public customer business have policies and procedures that either prohibit acceptance of third party checks or require extensive due diligence.

[4] The CBOE's Financial Regulatory Committee is primarily comprised of representatives of market-maker clearing member organizations of the CBOE. The CBOE consults this committee primarily on issues of clearing operations, margin requirements, net capital requirements, and books and records requirements. The committee provides advice, opinions, and recommendations to the CBOE on rules, interpretations, and procedures.

appropriate written authorization is required for such transfers. The discussion herein focuses on the proposal to prohibit third party checks, but applies equally to funds transfers, as well as deposits and transfers of securities.

Currently, there is no prohibition in the CBOE rules or any of the securities regulations on accepting third party checks for deposit into a securities account. A majority of the CBOE's Clearing Firms will accept the check of a third party for deposit to a market-maker account, unless it would be clearly inappropriate. This is done as a convenience to market-maker customers. These checks are made payable either to the market-maker or the Clearing Firm. Before accepting such deposits, the Clearing Firm examines the relationship of the depositor to the market-maker or market-making entity to gain assurance that there is a legitimate reason for the deposit, such as the third party having an ownership interest in the market-maker's business (*e.g.*, a member of the Limited Liability Corporation ("LLC") in the case of a market-making entity organized as an LLC).

However, by accepting third party checks, the Clearing Firm takes a business risk. While Clearing Firms make a reasonable effort to confirm that funds deposited via a third party's check are the property of the market-maker or market-making entity, and the transaction exhibits no obvious improprieties, repercussions can arise later. Some Clearing Firms have, in fact, been named as defendants in legal actions taken by third parties who allege some type of impropriety with respect to funds deposited at the Clearing Firm via their check, and seek a monetary judgment against the firm.[5] These actions are rare, and the allegations raised against the Clearing Firm are usually without merit and ultimately dismissed. However, the legal expenses of defending an arbitration claim or lawsuit are alone a significant financial risk to Clearing Firms.

The practice of Clearing Firms accepting third party checks most likely grew as a service among Clearing Firms. Clearing Firms believe that accepting third party checks has become uneconomical when the business risks are considered, and thus believe the practice should be ended. They argue that their market-maker customers should maintain a bank checking account for their market-making business. Clearing Firms believe that the best business practice in this regard is for Clearing Firms to accept checks from a market-maker's bank checking account, which would allow the Clearing Firm greater control over risks with only minor inconvenience to a market-maker. Market-makers could simply use their bank checking account for making deposits of third-party checks and issue checks or effect transfers to the Clearing Firm from their bank checking account. In this way, Clearing Firms need not provide banking services to their customers that could expose them to litigation risks because they are broker-dealers. The proposed rule would, in effect, allow a Clearing Firm to accept a check, funds transfer or securities transfer only if it is drawn on an account that is in the same person's or business entity's name as the account of deposit at the Clearing Firm.

Interpretations and Policies ("I&P") to the proposed rule would allow certain exceptions to the prohibitions set forth in the rule. Under proposed I&P .01, checks, funds or securities drawn on a joint account of which the market-maker is one of the joint owners are generally excepted from the prohibition. Under proposed I&P .02, if a market-maker whose account is cleared or carried by a Clearing Firm is not a sole proprietor (individual), but is structured as a partnership or corporation, the check of a third party listed as an owner on Schedule A or Schedule B of the market-making entity's Form BD may be accepted by the Clearing Firm for deposit. In order to qualify for this exception, an owner listed on Schedule B of Form BD must be a U.S. broker-dealer. Under proposed I&P .03, if a market-maker is subject to the Commission's Net Capital Rule, an officer or partner of the Clearing Firm may make a written exception to the prohibition if the market-maker's net capital falls below the applicable minimum. In addition, an officer or partner of a Clearing Firm may make a written exception if the equity in the market-maker's account is not sufficient based on the Clearing Firm's internal risk control analysis, or if net liquidating equity becomes negative.

Under proposed I&P .04, transfers of funds and/or securities between different name accounts that are cleared and carried by the same Clearing Firm are permitted if the Clearing Firm obtains written authorization for the transfer from the owner of the account from which the funds and/or securities would be withdrawn. Lastly, proposed I&P .05 sets forth retention requirements for the Clearing Firm documentation evidencing exceptions and authorizations to transfer funds and securities between accounts.

The CBOE believes that the uncertainty surrounding third party deposits justifies prohibition by rule. The CBOE further believes that while each Clearing Firm could make a business decision to refuse to accept third party checks, funds transfers and securities, a rule is needed to establish a uniform, safe practice.

2. Statutory Basis

The proposed rule is intended to eliminate an unnecessary practice and promote a greater level of financial safety and soundness across Clearing Firms. As such, the CBOE believes that the proposed rule change is consistent with and furthers the objectives of section 6(b)(5) of the Act,[6] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[5] In the case of a business relationship between a third party and a market-maker, a claim may arise due to trading losses.

[6] 15 U.S.C. 78(f)(b)(5).

including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2003–05 and should be submitted by April 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7399 Filed 3–27–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47564; File No. SR–ISE–2003–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Fee Changes

March 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 13, 2003, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to add to the list of options on Select Sector SPDR Funds and exchange traded funds ("ETFs") based on indexes developed by the Frank Russell Company ("Russell") that will be subject to the $.10 surcharge for non-public customer transactions on the Exchange's Schedule of Fees. The text of the proposed rule change is available from the Office of the Secretary of the ISE or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has entered into a license agreement to use various indexes and trademarks of Russell in connection with the listing and trading of options on certain ETFs based on Russell indexes. The Exchange has entered into a license agreement to use various indexes and trademarks of Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P"), in connection with the listing and trading of options on certain Select Sector SPDR Funds. The purpose of this proposed rule change is to add to the list of options on Select Sector SPDR Funds and ETFs based on indexes developed by Russell that will be subject to the $.10 surcharge fee for non-public customer transactions on the Exchange's Schedule of Fees. The Exchange's Schedule of Fees currently lists seven (7) Select Sector SPDR Funds and ten (10) exchange-traded funds based on indexes developed by Russell that are subject to the surcharge.[3] The Exchange is proposing to add options on two (2) more Select Sector SPDR Funds and two (2) more exchange-traded funds based on indexes developed by Russell that will be subject to the surcharge.[4] These additional options are listed in the Schedule of Fees. The purpose of the fee for trading in these options is to defray the licensing costs.

The Exchange believes that charging the participants that trade in options on these instruments is the most equitable means of recovering the costs of the license. However, because competitive pressures in the industry have resulted in the waiver of all transaction fees for customers, we propose to exclude Public Customer Orders (as defined in Exchange Rule 100) from this additional fee. This additional fee will only be charged with respect to Non-Public Customer Orders.[5]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(4) of the Act that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[3] *See* Securities Exchange Act Release Nos. 47075 (December 20, 2002), 67 FR 79673 (December 30, 2002) (SR–ISE–2002–29); 47243 (January 24, 2003), 68 FR 5068 (January 31, 2003) (SR–ISE–2003–01); and 47536 (March 19, 2003) (SR–ISE–2003–12).

[4] Pursuant to this proposed rule change, the proposed fee will apply to options on the Energy Select Sector SPDR Fund, Consumer Staples Select Sector SPDR Fund, Russell 1000 Index Fund iShares and Russell 3000 Index Fund iShares.

[5] Under Exchange Rule 100, a "Public Customer" is a person that is not a broker or dealer in securities, and a "Public Customer Order" is an order for the account of a Public Customer. Accordingly the execution of orders for the account of a "non-broker-dealer" will not be subject to the proposed $.10 surcharge fee. All other orders, *i.e.*, orders for the account of a broker-dealer, will be subject to the proposed $.10 surcharge fee. Telephone call between Joseph Ferraro, Assistant General Counsel, ISE, and Jennifer Colihan, Special Counsel, Division of Market Regulation ("Division"), Commission, March 19, 2003.

[6] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee or other charge imposed by the Exchange, has become effective pursuant to section 19(b)(3) of the Act[7] and rule 19b–4(f)(2)[8] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–2003–13 and should be submitted by April 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7397 Filed 3–27–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47560; File No. SR–PCX–2003–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

March 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 21, 2003, PCX submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes to amend its Schedule of Fees and Charges For Exchange Services in order to state that executions resulting from orders routed to the Exchange through the options intermarket linkage ("Linkage Orders"), other than satisfaction orders, will be subject to the same billing treatment as other fees related to broker-dealer executions. The Exchange intends to implement this fee on a one-year pilot basis retroactive to January 31, 2003. The text of the proposed fee schedule is below. Proposed language is italicized; deleted language is in brackets.

* * * * *

SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

PCX Options: Trade-Related Charges

Transactions:	
Customer	$0.00 per contract side
[PCX] Market Maker	$0.21 per contract side
Firm	$0.10 per contract side for customer facilitation
Broker/Dealer	$0.21 per contract side
Ticket Data Entry	$0.25 per firm trade
	$0.50 per market maker trade
On-Line Comparison	$0.05 per contract for firm, broker/dealer, and market maker executions
	No on-line comparison charge is assessed on customer executions.
Broker Dealer Auto-Ex Surcharge	$0.20 per contract
Linkage Fees[1]	*$0.21 per transaction per contract side*
	$0.05 comparison fee
Order Cancellation	$1.00 per MFI order canceled [1][2]

Only applies to orders cancelled through the MFI in any month where the total number of orders cancelled through the MFI exceeds the total number of orders that same firm executed through the MFI in that same month.

Volume Discount Program

449,000 or lower	No reduction
450,000 to 474,999	$0.01
475,000 to 499,999	$0.02
500,000 to 524,999	$0.03
525,000 or higher	$0.04
Marketing Charge	Rates Variable—See separate schedule
Cap on Marketing Charge	$200 per trade

[1] *Executions resulting from Linkage Orders, other than satisfaction orders, will be subject to this fee. This fee is applicable through an Exchange Pilot Program and will expire on January 31, 2004.*

[1][2] Only applies to orders cancelled through the MFI in any month where the total number of orders cancelled through the MFI exceeds the total number of orders that same firm executed through the MFI in that same month.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mai Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 18, 2003 ("Amendment No. 1"). In Amendment No. 1, PCX added a statement to footnote number one of its Schedule of Fees and Charges for Exchange Services limiting the revised linkage fees to a one-year pilot program ending January 31, 2004; and to change the name of the transaction fee from "PCX Market Maker" to "Market Maker."

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an options intermarket linkage ("Linkage Plan" or "Plan")[4] which linkage now includes participation by the five option exchanges ("Participant Exchanges")[5] The Exchange proposed to adopt new rules relating to the operation of the options intermarket linkage on September 26, 2002 and filed an amendment to the proposal on January 30, 2003. The Commission approved the PCX's proposed rules on January 31, 2003.[6] Along with all of the Participant Exchanges, the Exchange launched Phase I of the options intermarket linkage on January 31, 2003.

In connection with the launch of the options intermarket linkage, the Exchange seeks to include in its Schedule of Fees and Charges For Exchange Services a provision that applies to linkage fees stating that executions resulting from Linkage Orders will be subject to the same billing treatment as other broker-dealer executions. Accordingly, with respect to either a Principal Acting as Agent ("P/A") Linkage Order or a Principal Linkage Order that is routed to the Exchange from other market centers, existing transaction fees and on-line comparison fees will apply equally to such Linkage Orders. This proposal specifies that existing PCX fees will not apply to Satisfaction Orders (which result after a trade-through[7]). The Exchange proposes these linkage fees as a pilot that will be effective for one year from January 31, 2003 until January 31, 2004.

The Exchange also seeks to make a conforming change to its Schedule of Fees and Charges in order to change the name of the transaction fee from "PCX Market Maker" to "Market Maker." The Exchange represents that it previously sought to make a distinction between PCX Market Maker fees and non-PCX Market Maker fees. After further consideration, the Exchange chose to abandon any distinction and removed the non-PCX Market Maker item from its proposal. In doing so, it did not eliminate the term "PCX" from the Market Maker transaction fees as it should have and seeks to do so here.

The Exchange does not seek to make any other changes to its Schedule of Fees and Fees and Charges.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[8] in general, and section 6(b)(4),[9] in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other persons using its facilities for the purpose of executing P/A Linkage Orders or Principal Linkage Orders that are routed to the Exchange from other market centers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange requests that the Commission allow the Exchange to apply the rate retroactively as of January 31, 2003, the effective date of permanent linkage.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–08 and should be submitted by April 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7400 Filed 3–27–03; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[5] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000).

[6] *See* Securities Exchange Act Release No. 47295, 68 FR 6242 (February 6, 2003).

[7] Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3481, Amdt. 1]

State of Ohio

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective March 18, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on February 14, 2003 and continuing through March 18, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is May 13, 2003, and for economic injury the deadline is December 15, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 21, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–7461 Filed 3–27–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P007]

State of Tennessee

As a result of the President's major disaster declaration for Public Assistance on March 20, 2003 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Anderson, Bledsoe, Campbell, Cannon, Carter, Claiborne, Cumberland, Decatur, Fentress, Grainger, Hancock, Houston, Humphreys, Jackson, Johnson, Lewis, Loudon, Marion, Meigs, Rhea, Roane, Scott, Sequatchie, Stewart, Union and Van Buren Counties in the State of Tennessee constitute a disaster area due to damages caused by severe storms and flooding occurring from February 14, 2003 and continuing through February 26, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 19, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations Without Credit Available Elsewhere	3.189
Non-Profit Organizations With Credit Available Elsewhere	5.500

The number assigned to this disaster for physical damage is P00711.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: March 21, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–7460 Filed 3–27–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4323]

Culturally Significant Objects Imported for Exhibition Determinations: "Whistler, Women and Fashion"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Whistler, Women and Fashion," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Frick Collection, from on or about April 22, 2003 until on or about July 13, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**. Additionally, notice is hereby given that two objects for which Determinations were previously made, and published in the **Federal Register** on September 24, 2002, are included in this exhibition.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Orde F. Kittrie, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/401–4779). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 24, 2003.

Patricia Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–7490 Filed 3–27–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Four Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on four currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before May 27, 2003.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. *2120–0045:* Bird/Other Wildlife Strike. Wildlife strike data are collected to develop standards and monitor hazards to aviation. Data identify wildlife strike control requirements and provide in-service data on aircraft component failure. The respondents would include the pilot-in-command of an aircraft involved in an aircraft-wildlife collision, ATCT personnel, or other airport or airline personnel who have knowledge of the incident. The current estimated annual reporting burden is 400 hours.

2. *2120–0557:* Passenger Facility Charge (PFC) Application. 49 U.S.C. 40117 authorizes airports to impose passenger facility charges. This program requires public agencies and certain members of the aviation industry to

prepare and submit applications and reports to the FAA. This program provides additional funding for airport development which is needed now and in the future. The current estimated annual reporting burden is 26,292 hours.

3. *2120–0614:* Revised Standards for Cargo or Baggage Compartments in Transport category Airplanes. The information collection from part 121 carriers is necessary to ensure the operator's compliance to the upgrade of the fire safety standards for cargo or baggage compartments in certain transport category airplanes by eliminating Class D compartments. The current estimated annual reporting burden is 720 hours.

4. *2120–0616:* revisions to Digital Flight Data Recorders. This rule requires that certain airplanes be equipped to accommodate additional digital flight data recorder parameters. The revisions require additional information to be collected to enable more thorough accident or incident investigations and to enable the industry to predict certain trends and make necessary modifications before an accident or incident happens. This is a passive information collection activity, and the assigned hourly burden is 1 hour.

Issued in Washington, DC, on March 18, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 03–7380 Filed 3–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172: Future Air-Ground Communications in the Very High Frequency (VHF) Aeronautical Data Band (118–137 MHz)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 172 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 172: Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz).

DATES: The meeting will be held April 8–10, 2003 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, SW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 172 meeting. The agenda will include:

- April 8:
- Opening Plenary Session (Welcome and Introductory Remarks, Review of Agenda, Review Summary of Previous Meeting)
- Convene Working Group—2 (WG), continue development of DO–224B, Minimum Aviation System Performance Standards (MASPS) for Advances VHF Digital Data Communications Including Compatibility with Digital Voice Techniques
- April 9:
- Continue WG–2 development of DO–224B
- Discuss plan for subsequent action in its development
- April 10:
- Reconvene Plenary
- Review relevant activities
- International Civil Aviation Organization (ICAO) AMCP work
- NEXCOM activities
- EUROCAE WG–47 status and issues
- Others as appropriate
- Closing Plenary Session (Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Dated: Issued in Washington, DC, on March 19, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–7379 Filed 3–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In February 2003, there were seven applications approved. This notice also includes information on two applications, one approved in December, 2002, and the other approved in January 2003, inadvertently left off the December 2002 and January 2003 notices, respectively. Additionally, 11 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: Palm Beach County, Department of Airports, West Palm Beach, Florida.

Application Number: 02–07–C–00–PBI.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $22,400,000.

Earliest Charge Effective Date: April 1, 2004.

Estimated Charge Expiration Date: January 1, 2007.

Class of Air Carriers Not Required to Collect PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Palm Beach International Airport.

Brief Description of Projects Approved for Collection and Use:

Construct security facilities.
Demolition of Delta building.

Brief Description of Projects Approved for Collection:

Apron A expansion.
Replace concourse B passenger loading bridges.
Replace concourse C passenger loading bridges.

Brief Description of Projects Approved for Use:

Terminal signage.
Rehabilitate cabin air system.
Acquire noise land within 65–69 DNL.
Expand terminal concourse C

Decision Date: December 13, 2002.

FOR FURTHER INFORMATION CONTACT: Matthew J. Thys, Orlando Airports District Office, (407) 812–6331.

Public Agency: Metropolitan Nashville Airport Authority, Nashville, Tennessee.

Application Number: 03–10–C–00–BNA.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $8,855,000.

Earliest Charge Effective Date: October 1, 2004.

Estimated Charge Expiration Date: April 1, 2007.

Class of Air Carriers Not Required to Collect PFC'S: Part 135 (air taxi) operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Nashville International Airport.

Brief Description of Projects Approved for Collection and Use:

Land acquisition.
Land acquisition.
Public address system.
Airfield pavement rehabilitation.
Widen three taxiway fillets.
Airport vehicle driving simulator.
1500 gallon aircraft rescue and firefighting (ARFF) vehicle.

Brief Description of Project Partially Approved for Collection and Use:

Security enhancements.

Determination: Consistent with standard practice, the FAA consulted with the Transportation Security Administration (TSA) about justification for the individual elements of this project. The TSA found no justification for one element in this project and that element was not approved.

Decision Date: January 14, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia K. Wills, Memphis Airports District Office, (901) 544–3495.

Public Agency: City of Brownsville, Texas.

Application Number: 03–02–C–00–BRO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,421,192.

Earliest Charge Effective Date: May 1, 2003.

Estimated Charge Expiration Date: June 1, 2008.

Class of Air Carriers Not Required To Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Acquire two commercial passenger bridges and a walkway.
Replace ARFF station and acquire two ARFF vehicles.
Upgrade security equipment.
Conduct planning study.
Reconstruct taxiway H.
Reconstruct terminal apron.
Rehabilitate taxiway edge lighting.
Expand cargo apron.
Seal coat taxiways.
Improve airfield drainage.
Acquire land.
PFC application and administrative fees.

Decision Date: February 7, 2003.

FOR FURTHER INFORMATION CONTACT: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: City of Durango and Board of County Commissioners, LaPlata County, Durango, Colorado.

Application Number: 02–04–U–00–DRO.

Application Type: Use PFC revenue.

PFC Level: $3.00

Total PFC Revenue To Be Used in This Decision: $533,333.

Charge Effective Date: August 1, 2000.

Estimated Charge Expiration Date: March 1, 2003.

Class of Air Carriers Not Required To Collect PFC'S. No change from previous approval:

Brief Description of Projects Approved for Use:

Rehabilitate runway 2/20.
Install distance-remaining signs.

Decision Date: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Christopher Schaffer, Denver Airports District Office, (303) 342–1258

Public Agency: Capital Region Airport Commission, Richmond, Virginia.

Application Number: 03–05–C–00–RIC.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $6,032,887.

Earliest Charge Effective Date: September 1, 2016.

Estimated Charge Expiration Date: May 1, 2025.

Class of Air Carriers Not Required To Collect PFC's: Part 135 on-demand air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Richmond International Airport.

Brief Description of Projects Approved for Collection and Use:

Extend taxiway A.
Terminal Drive flyover and access roads.
Renovate existing concourses A, B, and C.

Brief Description of Project Approved for Use: Terminal building addition and modification.

Decision Date: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Arthur Winder, Washington Airports District Office, (703) 661–1363.

Public Agency: City of Thief River Falls, Minnesota.

Application Number: 03–01–C–00–TVF.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $636,828.

Earliest Charge Effective Date: June 1, 2003.

Estimated Charge Expiration Date: June 1, 2023.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled/on-demand carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Thief River Falls Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate runway 13/31.
Install airport signs and miscellaneous taxiway lights.
Overlay parallel taxiway, general aviation taxiway, and the air transport apron.
Acquire ARFF vehicle.
Reconstruct commercial aircraft parking apron.
Construct crosswind runway.
Construct parallel and connecting taxiways.
PFC application.
Rehabilitate apron.
Install deer fence.
Rehabilitate non-revenue automobile parking lot (including airport entrance road).

Decision Date: February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Gordon Nelson, Minneapolis Airports District Office, (612) 713–4358.

Public Agency: County of Humboldt, Arcata, California.

Application Number: 03–05–C–00–ACV.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $93,000.

Earliest Charge Effective Date: June 1, 2003.

Estimated Charge Expiration Date: July 1, 2003.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Project Approved for Collection and Use: Install security/perimeter fence.

Decision Date: February 21, 2003.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: Jacksonville Airport Authority, Jacksonville, Florida.

Application Number: 03–08–C–00–JAX.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $68,357,263.

Earliest Charge Effective Date: May 1, 2003.

Estimated Charge Expiration Date: November 1, 2008.

Class of Air Carriers Not Required To Collect PFC'S: Air taxi operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Jacksonville International Airport.

Brief Description of Project Approved for Collection and Use at a $3.00 PFC Level: Renovation and expansion of landside terminal area, stage 1.

Brief Description of Project Approved for Collection and Use at a $4.50 PFC Level:

Checked baggage explosive detection system (terminal modifications and conveyor system to support explosive detection equipment).

Access control and communication center upgrade.

Centralized security checkpoint west courtyard.

Decision Date: February 26, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Owen, Orlando Airports District Office, (407) 812–6331, extension 19.

Public Agency: City of Chicago, Department of Aviation, Chicago, Illinois.

Application Number: 03–15–C–00–ORD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $233,267,300.

Earliest Charge Effective Date: April 1, 2017.

Estimated Charge Expiration Date: December 1, 2018.

Class of Air Carriers Not Required To Collect PFC'S: Air taxi.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hare International Airport (ORD).

Brief Description of Projects Partially Approved for Collection at ORD and Use at ORD at a $4.50 PFC Level:

Runway formulation.

Determination: Partially approved. After submission of the PFC application, the public agency elected to fund a portion of the project with Airport Improvement Program (AIP) entitlement funds. Therefore, the approved PFC amount is less than what was requested.

School Soundproofing, 2002–2003

Determination: Partially approved. After submission of the PFC application, the public agency deleted two proposed schools from the project. Therefore, the approved PFC amount is less than what was requested.

Brief Description of Project Partially Approved for Collection at ORD and Use at ORD at a $3.00 PFC Level:

Equipment acquisition, 2001–2003.

Determination: Partially approved. The FAA approved 7 of the requested 22 pieces of equipment. The pieces not approved were determined not to be AIP or PFC eligible.

Brief Description of Projects Approved for Collection at ORD and Use at Chicago/Gary Airport at a $3.00 PFC Level:

Acquire snow removal equipment (snow broom).

Expand snow removal equipment building.

Rehabilitate runway 12/30.

Terminal apron expansion and loading bridge installation.

Decision Date: February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas E. Salaman, Chicago Airports District Office, (847) 294–7436.

AMENDMENTS TO PFC APPROVALS

Amendment Number city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
94–01–C–04–TUP, Tupelo, MS*	01/15/03	$457,216	$457,216	06/01/03	01/01/04
92–01–C–01–1YK, Inyokern, CA	02/07/03	127,500	128,874	09/01/95	09/01/95
95–02–C–01–1YK, Inyokern, CA	02/07/03	248,500	166,978	12/01/97	12/01/97
92–01–C–07–SJC, San Jose, CA	02/07/03	70,558,668	70,625,368	08/01/95	08/01/95
92–02–U–01–SJC, San Jose, CA	02/07/03	NA	NA	08/01/95	08/01/95
98–03–C–01–ILM, Wilmington, NC*	02/11/03	8,179,319	8,179,319	05/01/14	05/01/07
99–02–C–01–OKC, Oklahoma City, OK	02/13/03	7,465,206	6,747,457	04/01/01	04/01/01
98–03–C–02–ILM, Wilmington, NC	02/19/03	8,179,319	7,984,994	05/01/07	04/01/07
02–05–C–01–GPT, Gulfport, MS	02/20/03	3,765,993	1,031,474	06/01/05	05/01/03
01–10–C–01–OAK, Oakland, CA*	02/26/03	32,000,000	32,000,000	10/01/03	09/01/03
01–11–C–01–SJC, San Jose, CA	02/28/03	123,736,491	118,161,491	02/01/08	07/01/06

NOTE: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Tupelo, MS, this change is effective on April 1, 2003. For Oakland, CA and Wilmington, NC, this change is effective on May 1, 2003.

Dated: Issued in Washington, DC, on March 20, 2003.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 03–7381 Filed 3–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 589]

Calculation of Variable Costs in Rate Complaint Proceedings Involving Non-Class I Railroads

AGENCY: Surface Transportation Board, Transportation.

ACTION: Policy Statement.

SUMMARY: The Surface Transportation Board concludes that it will determine the variable costs of non-Class I railroads in rail rate reasonableness cases using Class I railroad regional average costs and making appropriate adjustments to those average costs on a case-by-case basis.

EFFECTIVE DATE: This policy is effective April 27, 2003.

FOR FURTHER INFORMATION CONTACT: Rachel D. Campbell (202) 565–1568. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Copies of the Board's decision may be purchased from Dā-2-Dā Legal Copy Service by calling (202) 293–7776 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or visiting Suite 405, 1925 K Street, NW., Washington, DC 20423.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 21, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–7334 Filed 3–27–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34305]

The Burlington Northern and Santa Fe Railway Company—Construction and Operation Exemption—Merced County, CA

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction and operation by The Burlington Northern and Santa Fe Railway Company of an 850-foot line of railroad in Merced County, CA.

DATES: The exemption will not become effective until the environmental review process is completed. Once that process is completed, the Board will issue a further decision addressing the environmental matters and establishing an exemption effective date at that time, if appropriate. Petitions to reopen must be filed by April 17, 2003.

ADDRESSES: An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34305, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioner's representative Erika Z. Jones, Mayer, Brown, Rowe & Maw, 1909 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Copies of the decision may be purchased from Dā 2 Dā Legal Copy Service by calling (202) 293–7776 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or by visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: March 21, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–7521 Filed 3–27–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34210]

Sunflower Rail Company, LLC—Construction and Operation Exemption—Finney County, KS

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction by Sunflower Rail Company, LLC (SRC)[1] of approximately 4.7 miles of railroad line in the vicinity of Garden City in Finney County, KS.[2]

DATES: The exemption will not become effective until the environmental review process is completed. Once that process is completed, the Board will issue a further decision addressing the environmental matters and establishing an exemption effective date at that time, if appropriate. Petitions to reopen must be filed by April 17, 2003.

ADDRESSES: An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34210, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioner's representative David A. Hirsh, Harkins Cunningham, 801 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600 [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Copies of the decision may be purchased from Dā to Dā Legal Copy Service by calling (202) 293–7776 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or by visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

[1] SRC is a subsidiary of Sunflower Electric Power Corporation.

[2] The proposed construction involves a crossing of a line of The Burlington Northern and Santa Fe Railway Company (BNSF). SRC states that while it is hopeful it can reach an agreement with BNSF permitting it to cross BNSF's line, SRC has concurrently filed a related petition in STB Finance Docket No. 34210 (Sub-No. 1), *Sunflower Rail Company, LLC—Petition for Crossing Authority Under 49 U.S.C. 10901(d)*, seeking authority to cross the BNSF track.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: March 21, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–7519 Filed 3–27–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Navigators Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury

ACTION: Notice.

SUMMARY: This is Supplement No. 11 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002, at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–1033.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2002 Revision, on page 44320 to reflect this addition:

Company Name: Navigators Insurance Company. Business Address: One Penn Plaza—55th Floor, New York, NY 10119–0002. Phone: (212) 244–2333. Underwriting Limitation b/: $10,190,000. Surety Licenses c/: AL, AK, AZ, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, LA, MD, MI, MN, MS, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY. Incorporated in: New York.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570*. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: March 13, 2003.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 03–7391 Filed 3–27–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, April 29, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be held Tuesday, April 29, 2003 from 2 p.m. EST to 3 p.m. EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 18, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–7526 Filed 3–27–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self-Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self-Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Thursday, May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self-Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel will be held Thursday, May 1, 2003 from 3 p.m. EST to 4 p.m. EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS.y W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 18, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–7527 Filed 3–27–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the State of California)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, May 12, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Monday, May 12th, 2003 from 12:30 p.m. Pacific Time to 2:30 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6098, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6098.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 18, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–7528 Filed 3–27–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 68, No. 60
Friday, March 28, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Islander East Pipeline Company From an Objection by the Connecticut Department of Environmental Protection

Correction

In notice document 03–7016 beginning on page 14400 in the issue of Tuesday, March 25, 2003, make the following corrections:

1. On page 14400, in the third column, under the heading **DATES**, in the fourth line, "will extended" should read, "will be extended".

2. On the same page, in the same column, under the same heading, in the ninth line, "recommended" should read, "recommenced".

3. On page 14401, in the first column, under the heading **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the seventh line, "stay on" should read, "stay was granted on".

[FR Doc. C3–7016 Filed 3–27–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
March 28, 2003

Part II

Department of Health and Human Services

Centers for Medicare and Medicaid Services

42 CFR Part 416

Medicare Program; Update of Ambulatory Surgical Center List of Covered Procedures Effective July 1, 2003; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 416

[CMS–1885–FC]

RIN 0938–AM02

Medicare Program; Update of Ambulatory Surgical Center List of Covered Procedures Effective July 1, 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period will make additions to and deletions from the current list of Medicare approved ambulatory surgical center (ASCs) procedures. In addition, it responds to comments received on the June 12, 1998 proposed rule (63 FR 32290) that addressed proposed additions to and deletions from the list of ASC covered procedures. This rule also implements requirements of section 1833(i)(1) and (2) of the Social Security Act.

DATES: *Effective date:* These regulations are effective for services furnished on or after July 1, 2003.

Comment date: We will consider comments on new proposed additions to and deletions from the ASC list of covered procedures if we receive them at the appropriate address, as provided below, no later than May 27, 2003.

ADDRESSES: Mail written comments (1 original and 2 copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1885–FC, P.O. Box 8013, Baltimore, MD 21244–8013.

To insure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–1885–FC.

If you prefer, you may deliver (by hand or courier) your written comments (1 original and 2 copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–8013.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Bob Cereghino, 410–786–4675.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 2 weeks after the close of the comment period, at the headquarters of the Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 5 p.m. To schedule an appointment to view public comments, please call (410) 786–7197.

Copies

To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO access, a service of the U.S. Government Printing Office. The Web site address is *http://www.access.gpo.gov/nara/index.html.*

I. Background

A. Legislative History

Specific provisions of the proposed rule are discussed in detail in Section II below.

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) provides that benefits under the Medicare Supplementary Medical Insurance program (Part B) include payment for facility services furnished in connection with surgical procedures we specify and which are performed in an ambulatory surgical center (ASC). We are to review and update the list of ASC procedures biennially. To participate in the Medicare program as an ASC, a facility must meet the standards specified under section 1832(a)(2)(F)(i) of the Act and 42 CFR 416.25, which sets forth general conditions and requirements for ASCs.

Generally, there are two primary elements in the total cost of performing a surgical procedure—the cost of the physician's professional services for performing the procedure and the cost of services furnished by the facility where the procedure is performed (for example, surgical supplies and equipment and nursing services). Section 1833(i)(2)(A) of the Act addresses what the ASC facility fee is intended to represent and how the amount of the Medicare payment for ASC facility services is to be determined. It requires us to review and update ASC payment amounts annually.

The ASC payment rate is to be a standard overhead amount established on the basis of our estimate of a fair fee that takes into account the costs incurred by ASCs generally in providing facility services in connection with performing a specific procedure. The Report of the Conference Committee accompanying section 934 of the Omnibus Budget Reconciliation Act of 1980 (Pub. L. 96–499), which enacted the ASC benefit in December 1980, states that this overhead factor is expected to be calculated on a prospective basis using sample survey and similar techniques to establish reasonable estimated overhead allowances, which take account of volume (within reasonable limits), for each of the listed procedures. (See H.R. Rep. No. 1479, at 134 (1980).) To estimate the amount of those reasonable allowances, we are required by section 1833(i)(2)(A)(i) of the Act to survey the actual audited costs incurred by a representative sample of facilities in connection with a representative sample of procedures. Because payment for ASC facility services is subject to the usual Medicare Part B deductible and coinsurance requirements, Medicare pays participating ASCs 80 percent of the prospectively-determined rate, adjusted for regional wage variations. Section 1833(i)(2)(A)(ii) of the Act requires that the ASC payment rates result in substantially lower Medicare expenditures than would have been paid if the same procedure had been performed on an inpatient basis in a hospital. Section 1833(i)(2)(A)(iii) of the Act requires that payment for insertion of an intraocular lens (IOL) include an allowance for the IOL that is reasonable and related to the cost of acquiring the class of lens involved.

Section 13531 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (Pub. L. 103–66), prohibited us from providing for any inflation update in the payment amounts for ASCs determined under section 1833(i)(2)(A) of the Act for fiscal years (FYs) 1994 and 1995. Section 13533 of OBRA 1993 established $150 as the amount of payment allowed for an IOL inserted during or subsequent to cataract surgery in an ASC on or after January 1, 1994, and before January 1, 1999. Section 141(a)(1) of the Social Security Act Amendments of 1994 (SSAA 1994) (Public Law 103–432) amended section 1833(i)(2)(A)(i) of the Act to require that a quinquennial survey of ASCs be taken beginning not later than January 1, 1995.

Section 141(a)(2) of SSAA 1994 added section 1833(i)(2)(C) to the Act to provide that, beginning with FY 1996, there be an adjustment for inflation during fiscal years when we do not update ASC rates based on actual audited costs determined by surveying a representative sample of facilities. Section 1833(i)(2)(C) of the Act provides that ASC payment rates are to be increased by the percentage increase in the consumer price index for urban consumers (CPI–U), that we estimate for the 12-month period ending with the midpoint of the year involved, beginning with FY 1996. Section 141(a)(3) of SSAA 1994 amended section 1833(i)(1) of the Act to require us to consult with appropriate medical organizations in specifying the procedures that constitute the ASC list.

Section 141(b) of SSAA 1994 requires us to establish a process for reviewing the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act for IOLs with respect to a class of new-technology IOLs. That process was the subject of a separate notice of proposed rulemaking entitled Adjustment in Payment Amounts for New Technology Intraocular Lenses published in the **Federal Register** on September 9, 1997 (62 FR 46698).

Section 4555 of BBA 1997 amended section 1833(i)(2)(C) of the Act to limit the annual adjustment of ASC payment rates provided for in that paragraph to the CPI–U increase reduced by 2.0 percentage points (but not below zero) for fiscal years 1998 through 2002.

B. Extensions of Comment Periods for Proposed Rule

On June 12, 1998, we published in the **Federal Register** a proposed rule that would revise the ratesetting methodology and payment rates and update the list of surgical procedures payable by Medicare for ASCs. The closing date of the comment period for the June 12, 1998 proposed rule was extended several times. The first extension notice was published in the **Federal Register** August 14, 1998 (63 FR 43655). The reason for the extension was that, due to the complexity and scope of the proposed rule, numerous members of the industry and professional associations requested more time to analyze the potential consequences of the rule. The closing date was extended to September 10, 1998.

On September 8, 1998, a proposed rule outlining the provisions of a Medicare prospective payment system (PPS) for hospital outpatient services was published in the **Federal Register** (63 FR 47551). On October 1, 1998 a second extension notice extending the comment period for the June 12, 1998 proposed rule was published in the **Federal Register** (63 FR 52663) with a new closing date of November 9, 1998. This second extension notice was issued because members of trade and professional associations urged us to postpone implementing the changes contained in the June 12, 1998 ASC proposed rule from October 1, 1998 to January 1, 1999 to coincide with implementation of the OPPS. They based their argument for delaying implementation of the ASC changes both on the need for more time for cross-analysis of the ASC proposed rule with the hospital outpatient prospective payment system (OPPS) proposed rule and the overlap and interrelationship between the two payment systems. This second extension notice also explained that there would be no inflationary update of the ASC rates on October 1, 1998 because reducing the fiscal year CPI–U factor of 2.1 percent by 2.0 percent would result in a change of less than $1 for each payment group.

A third notice, which extended the comment period to January 8, 1999, was published in the **Federal Register** on November 15, 1998. This extension was necessary because the OPPS proposed rule comment period was being extended and Medicare payments to ASCs were closely linked to the way Medicare proposed to pay hospitals under the OPPS. A fourth extension notice was published in the **Federal Register** on January 12, 1999 (64 FR 1785). The reason given was the same as the prior extension notice, that is, because the comment period for the OPPS rule was being extended for further examination and because the two proposed payment systems were closely related. The new closing date of March 9, 1999 would run concurrently with the OPPS extension. On March 2, 1999, a fifth extension notice with the same rationale as the fourth notice was published in the **Federal Register** (64 FR 12278) and extended the comment period for an additional 60 days.

The sixth and final extension was published in the **Federal Register** July 6, 1999 (64 FR 36321). On June 30, 1999 we published a correction notice (64 FR 35258) in the **Federal Register** that corrected a number of technical and typographical errors contained in the September 8, 1998 OPPS proposed rule. To provide commenters adequate time to analyze the potential impact of the corrections to the OPPS proposed rule on ASC payments and because of the link between Medicare ASC payments and hospital outpatient payments, we found it appropriate to extend the comment period for the ASC proposed rule to July 30, 1999.

II. Provisions of the Proposed Regulations

In the June 12, 1998, proposed rule, we proposed the following:

- Clarification of the definition of ASC.
- Revision of the basic requirements in § 416.3 and § 416.4.
- Additions to and deletions from the ASC list.
- Revision of the criteria for determining surgical procedures payable in an ASC in § 416.65 and elimination of numeric thresholds.
- Establishment of an ASC Advisory Group.
- Replacement of eight ASC payment groups with ambulatory payment classification (APC) groups that are clinically homogeneous and consist of procedures with similar resource inputs, modeled on the APC groups proposed for the OPPS.
- Redefinition of the ASC ratesetting methodology.
- Rebased payment rates to reflect a survey of ASC costs that was conducted in 1994.

A combination of circumstances has resulted in our delaying publication of a final rule to implement the changes proposed in the June 12, 1998 ASC proposed rule. First, as discussed above, we extended the public comment period to July 30, 1999 in response to requests from the industry to allow adequate opportunity for comparison of the

proposed ASC rates and ratesetting methodology with the proposed OPPS that was published in the **Federal Register** on September 8, 1998, followed by publication of an OPPS correction notice on June 30, 1999.

Notwithstanding the close of the comment period on July 30, 1999, the changes required to implement a new payment system for ASC facility services could not be implemented because our contractors had to prepare Medicare claims processing systems to be Year 2000 ("Y2K") compliant.

On November 29, 1999, the Balanced Budget Refinement Act of 1999 (BBRA)(Pub. L. 106–113) was enacted. Section 226 of BBRA required that full implementation of the proposed ASC rates be delayed over a 3 year period. Specifically, the BBRA stated that if a prospective payment system for ASCs, that is, one involving the June 1998 proposed rates, was implemented prior to incorporating data from a 1999 or subsequent Medicare cost survey, in the first year of implementation no more than ⅓ of the new ASC payment would consist of this new rate and the remainder would consist of the current payment rate. In the following year, no more than ⅔ of the new rate would consist of the June 1998 proposed rate and the remainder would consist of the current rate.

Significant changes in the OPPS were also required as a result of the enactment of the BBRA. Substantial pressures to implement the OPPS combined with the new OPPS requirements resulting from enactment of the BBRA compelled us to focus all available resources on the OPPS, which was implemented on August 1, 2000.

On December 21, 2000, the Medicare, Medicaid and SCHIP Benefit Improvement and Protection Act of 2000 (BIPA)(Pub. L. 106–554) was enacted. Section 424 of BIPA prohibited implementation of a revised prospective payment system for ASC facility services before January 1, 2002, extended the phase-in of the APC system for ASCs to four years and required that by January 1, 2003, ASC rates be rebased using data from a 1999 or later Medicare survey.

The changes mandated by the BBRA and the BIPA, combined with the diversion of resources necessitated by Y2K compliance activities and implementation and start-up issues related to the OPPS have resulted in the delay in issuing a final ASC rule to implement the changes in the June 12, 1998 proposed rule. As stated above, Section 424 of BIPA requires that payment rates effective January 1, 2003 be based on a survey of ASCs conducted after 1999. We have developed an ASC survey instrument, but our experience in collecting ASC cost data in 1994 suggests that completion of the survey instrument, followed by an audit of the data reported by ASCs and the subsequent compilation of cost data upon which to base ASC payment rates, takes at least 2 years. Therefore, rather than delaying further the biennial update of the ASC list mandated by the statute, in this final rule with comment period we are making final only the additions to and deletions from the ASC list that we proposed in the June 12, 1998 proposed rule. We are not implementing at this time any of the other changes proposed in the June 1998 proposed rule. That is, we are not making final the regulatory changes in part 416 that we proposed or the proposed ratesetting methodology based on APC groups and survey data of ASC costs collected in 1994. We recognize that we are not in compliance with the requirements enacted by section 424 of BIPA, that we rebase rates by January 1, 2003 using data from a survey of ASC costs taken in 1999 or later. While we are committed to rebasing and restructuring the ASC payment rates, we are also committed to ensuring that the method we use to rebase ASC payment rates does not inadvertently result in rates that amplify payment differentials across ambulatory sites of service. We are studying approaches to ratesetting, some of which may require legislative change that will provide adequate payments to ASCs for surgical services and that are in line with what Medicare pays under the OPPS and the physician fee schedule for the same service.

In section III of this preamble, we respond to comments that we received timely on our proposed additions to and deletions from the ASC list. In addition, we are proposing to add to the list a limited number of new CPT codes that were added to CPT in 1999, 2000, 2001, 2002, and 2003 and that are similar to procedures on the updated ASC list. These new CPT codes are designated by an "A*" in column 2 of the Addendum. We solicit comments on the addition of these new CPT codes and the payment rates proposed for these new codes.

In the June 1998 proposed rule, we listed codes with corresponding new payment rates based on the 1994 survey of ASC costs. Because we do not have current survey data upon which to base new payment rates, we have assigned the codes being added to the ASC list in this final rule to one of the nine existing payment groups under which payments for ASC facility services are currently made. With the guidance of our medical advisors, we matched additions to the ASC list with codes for procedures already on the ASC list that they most closely resemble in terms of clinical work and resource inputs such as equipment, supplies, and time required in the operating suite. We assigned the additions to the list to the same payment group to which the matching codes are currently assigned. For example, our medical advisors determined that CPT code 24341, Repair tendon or muscle, upper arm or elbow, each tendon or muscle, primary or secondary (excludes rotator cuff), is in the same family of codes as CPT code 24340, Tenodesis of biceps tendon at elbow (separate procedure) and CPT code 24342, Reinsertion of ruptured biceps or triceps tendon, distal, with or without tendon graft. CPT codes 24340 and 24342 are both currently assigned to payment group 3. Because the resource inputs such as supplies, equipment, and time in the operating suite for CPT code 24341 are similar to the resources required to perform CPT codes 24340 and 24342, we assigned CPT code 24341 to group 3 to maintain consistency in payment for this family of closely related codes.

In the case of some codes, such as CPT 47511, Introduction of percutaneous transhepatic stent for biliary drainage, we identified procedures on the current list that they most closely resemble clinically and in terms of resource inputs, but we assigned the code to a higher payment group to take into account expensive equipment or supplies that are required to perform the procedure. Therefore, while CPT code 47511 is similar to CPT code 47510, which is currently on the ASC list and assigned to payment group 2, we assigned CPT code 47511 to payment group 9 to take into account the added cost of expensive supplies required for this procedure.

There are some procedures that we proposed to add to the ASC list in the June 1998 proposed rule that we are not adding to the list at this time. We are not adding to the ASC list procedures that are inconsistent with our current criteria in § 416.65 for determining surgical procedures payable in an ASC. Also, we are not adding to the list procedures that would otherwise have met the criteria for inclusion on the ASC list, except that they would be significantly overpaid in the lowest ASC payment group, which could create an incentive to shift these procedures to an ASC setting. The payment rates proposed for many of these procedures in the June 12, 1998 proposed rule were significantly less than the lowest current ASC payment group because we were proposing a different ratesetting method

using APC groups. We are also eliminating proposed additions to the ASC list that were deleted from CPT after 1998, and there are some codes that we proposed to add but are not adding on the basis of comments. The codes that we are not adding to the ASC list for these reasons are listed in the following table. We recognize that most of the additions and deletions to the ASC list that are being implemented through this final rule were proposed nearly 5 years ago. Our medical advisors have reviewed all of the changes reflected in this final rule and we believe that, taking patient safety into account , the final updated list reasonably reflects contemporary surgery performed in an ASC in the year 2003.

PROCEDURES PROPOSED FOR ADDITION TO THE ASC LIST THAT ARE NOT BEING ADDED

HCPCS	Short descriptor
11752	Remove nail bed/finger tip.
11760	Repair of nail bed.
11762	Reconstruction of nail bed.
11920	Correct skin color defects.
11921	Correct skin color defects.
11922	Correct skin color defects.
11950	Therapy for contour defects.
11951	Therapy for contour defects.
11952	Therapy for contour defects.
11954	Therapy for contour defects.
12001	Repair superficial wound(s).
12002	Repair superficial wound(s).
12004	Repair superficial wound(s).
12011	Repair superficial wound(s).
12013	Repair superficial wound(s).
12014	Repair superficial wound(s).
12015	Repair superficial wound(s).
12031	Layer closure of wound(s).
12032	Layer closure of wound(s).
12041	Layer closure of wound(s).
12042	Layer closure of wound(s).
12051	Layer closure of wound(s).
12052	Layer closure of wound(s).
12053	Layer closure of wound(s).
15819	Plastic surgery, neck.
15836	Excise excessive skin tissue.
15837	Excise excessive skin tissue.
15838	Excise excessive skin tissue.
15839	Excise excessive skin tissue.
15860	Test for blood flow in graft.
16010	Treatment of burn(s).
16040	Deleted by CPT.
16041	Deleted by CPT.
16042	Deleted by CPT.
17106	Destruction of skin lesions.
17107	Destruction of skin lesions.
17108	Destruction of skin lesions.
17304	Chemosurgery of skin lesion.
17305	2nd stage chemosurgery.
17306	3rd stage chemosurgery.
17307	Followup skin lesion therapy.
17310	Extensive skin chemosurgery.
19396	Design custom breast implant.
21030	Removal of face bone lesion.
21031	Remove exostosis, mandible.
21032	Remove exostosis, maxilla.

PROCEDURES PROPOSED FOR ADDITION TO THE ASC LIST THAT ARE NOT BEING ADDED—Continued

HCPCS	Short descriptor
21110	Interdental fixation.
21120	Reconstruction of chin.
21125	Augmentation, lower jaw bone.
21260	Revise eye sockets.
20500	Injection of sinus tract.
20950	Fluid pressure, muscle.
24640	Treat elbow dislocation.
24650	Treat radius fracture.
25500	Treat fracture of radius.
25530	Treat fracture of ulna.
25560	Treat fracture radius & ulna.
25600	Treat fracture radius/ulna.
25622	Treat wrist bone fracture.
25630	Treat wrist bone fracture.
25650	Treat wrist bone fracture.
26600	Treat metacarpal fracture.
26641	Treat thumb dislocation.
26670	Treat hand dislocation.
26700	Treat knuckle dislocation.
26720	Treat finger fracture, each.
26725	Treat finger fracture, each.
26740	Treat finger fracture, each.
26750	Treat finger fracture, each.
26755	Treat finger fracture, each.
26770	Treat finger dislocation.
26775	Treat finger dislocation.
27200	Treat tail bone fracture.
27220	Treat hip socket fracture.
27256	Treat hip dislocation.
27556	Treat knee dislocation.
28001	Drainage of bursa of foot.
28010	Incision of toe tendon.
28108	Removal of toe lesions.
28124	Partial removal of toe.
28220	Release of foot tendon.
28230	Incision of foot tendon(s).
28232	Incision of toe tendon.
28272	Release of toe joint, each.
28360	Reconstruct cleft foot.
28430	Treatment of ankle fracture.
28450	Treat midfoot fracture, each.
28455	Treat midfoot fracture, each.
28470	Treat metatarsal fracture.
28475	Treat metatarsal fracture.
28490	Treat big toe fracture.
28495	Treat big toe fracture.
28510	Treatment of toe fracture.
28515	Treatment of toe fracture.
28530	Treat sesamoid bone fracture.
28540	Treat foot dislocation.
28570	Treat foot dislocation.
28600	Treat foot dislocation.
28630	Treat toe dislocation.
28660	Treat toe dislocation.
30901	Control of nosebleed.
31040	Exploration behind upper jaw.
31502	Change of windpipe airway.
31520	Diagnostic laryngoscopy.
32960	Therapeutic pneumothorax.
36493	Repositioning of cvc.
37618	Ligation of extremity artery.
40702	Repair cleft lip/nasal.
40830	Repair mouth laceration.
41822	Excision of gum lesion.
41823	Excision of gum lesion
42227	Lengthening of palate.
42326	Create salivary cyst drain.
42400	Biopsy of salivary gland
42800	Biopsy of throat.
42842	Extensive surgery of throat

PROCEDURES PROPOSED FOR ADDITION TO THE ASC LIST THAT ARE NOT BEING ADDED—Continued

HCPCS	Short descriptor
42844	Extensive surgery of throat.
42970	Control nose/throat bleeding
43020	Incision of esophagus
43030	Throat muscle surgery
43761	Reposition gastrostomy tube.
45300	Proctosigmoidoscopy dx.
45303	Proctosigmoidoscopy dilate.
45330	Diagnostic sigmoidoscopy
46604	Anoscopy and dilation.
46614	Anoscopy/control bleeding.
46900	Destruction, anal lesion(s).
46910	Destruction, anal lesion(s).
46916	Cryosurgery, anal lesion(s).
49429	Removal of shunt.
50590	Lithotripsy.
51705	Change of bladder tube
52265	Cystoscopy and treatment
52301	Cystoscopy and treatment
52339	Deleted by CPT.
53025	Incision of urethra.
53060	Drainage of urethra abscess.
53852	Prostatic rf thermotx.
54050	Destruction, penis lesion(s).
54055	Destruction, penis lesion(s).
54056	Cryosurgery, penis lesion(s).
54402	Deleted by CPT.
54407	Deleted by CPT.
54409	Deleted by CPT.
55450	Ligation of sperm duct.
56311	Deleted by CPT.
56312	Deleted by CPT.
56313	Deleted by CPT.
56314	Deleted by CPT.
56318	Deleted by CPT.
56320	Deleted by CPT.
56346	Deleted by CPT.
56353	Deleted by CPT.
56355	Deleted by CPT.
56501	Destroy, vulva lesions, simp.
57284	Repair paravaginal defect.
57288	Repair bladder defect.
57460	Cervix excision.
57555	Remove cervix/repair vagina.
58345	Reopen fallopian tube.
58970	Retrieval of oocyte
59300	Episiotomy or vaginal repair.
60100	Biopsy of thyroid.
60210	Partial thyroid excision.
60240	Removal of thyroid
61000	Remove cranial cavity fluid.
61001	Remove cranial cavity fluid.
62292	Injection into disk lesion.
62298	Deleted by CPT
63615	Remove lesion of spinal cord.
64555	Implant neuroelectrodes.
64560	Implant neuroelectrodes.
64565	Implant neuroelectrodes.
64761	Incision of pelvis nerve.
65286	Repair of eye wound.
65450	Treatment of corneal lesion.
65820	Relieve inner eye pressure.
65855	Laser surgery of eye.
65860	Incise inner eye adhesions.
66761	Revision of iris.
66762	Revision of iris.
66770	Removal of inner eye lesion.
66820	Incision, secondary cataract.
67101	Repair detached retina
67110	Repair detached retina.
67208	Treatment of retinal lesion.

PROCEDURES PROPOSED FOR ADDITION TO THE ASC LIST THAT ARE NOT BEING ADDED—Continued

HCPCS	Short descriptor
67343	Release eye tissue.
68100	Biopsy of eyelid lining.
68110	Remove eyelid lining lesion.
68135	Remove eyelid lining lesion.
69433	Create eardrum opening.

We are not adding to the ASC list CPT code 50590 Extracorporeal Shock Wave Lithotripsy (ESWL), for which we had proposed a payment of $2107 in the June 1998 proposed rule. In *American Lithotripsy Society* v. *Sullivan*, 785, F. Supp. 1035 (D.D.C. 1992), the District Court ordered that we "publish the data and other information we are relying on in setting a (lithotripsy) rate and allow time for comment before issuing a final notice * * *". The data and other information that we would rely on in setting a payment rate for ESWL are part of the ratesetting methodology that we proposed in the June 1998 proposed rule. Because we are not making that ratesetting methodology final at this time, we might not be in compliance with the District Court order if we were to add CPT code 50590 to the ASC list in this final rule under the current payment rate structure. In addition, comments submitted by the American Lithotripsy Society opposed the $2,107 payment rate that we proposed in the June 1998 proposed rule. Therefore, we are not including CPT code 50590 among the additions to the ASC list that are implemented by this final rule.

III. Analysis of and Responses to Public Comments

In response to the publication of the June 12, 1998 proposed rule, we received approximately 13,000 comments, many of which were duplicate comments that were resubmitted each time we extended the comment period. We received comments from individual ASCs, physicians, health care workers, professional and trade associations, and medical societies and organizations. The majority of the comments addressed our proposal to adopt ambulatory payment classification (APC) groups as the basis for setting ASC payment rates. In addition, we received numerous comments regarding our proposal to package payment for corneal tissue into the payment rate for corneal transplant surgery. We also received numerous comments regarding proposed reductions in payment for gastroenterological procedures. Those comments will be addressed in a subsequent rule when we implement changes in the ASC ratesetting methodology. In this final rule with comment, we only respond to comments that address additions to and deletions from the list of approved procedures.

Overall, the commenters who addressed our proposed additions to and deletions from the ASC list favored the proposed additions. Most commenters supported expansion of the ASC list to the maximum possible extent to permit Medicare payment to ASCs for procedures that are performed on an outpatient basis in hospitals. We respond below to commenters who recommended the addition or deletion of specific CPT codes. In reviewing the comments regarding our proposed additions to and deletions from the ASC list, we consulted our medical advisors, and we took into account Congressional intent when the ASC benefit was enacted as well as the current standards for the ASC list that are codified in § 416.65.

As we explain above, we do not include in the list of ASC approved procedures, procedures currently performed on an ambulatory basis in a physician's office that do not generally require the more elaborate facilities of an ASC. Also, the ASC list does not include procedures that are appropriately performed in an inpatient hospital setting but would not be safely performed in an ASC, consistent with the criteria in § 416.65(b)(3).

We also recognized that there are some procedures that might be appropriately performed in ASC for the younger patient who is generally healthy. But for the larger number of beneficiaries whose health is more likely to be compromised by age or disability, an ASC may be a questionable setting for those same procedures. Therefore, we are adding to the ASC list only those procedures that can be safely performed in an ASC on the general Medicare population in at least a significant number of cases.

We believe that the ASC list resulting from the additions and deletions that we are implementing in this final rule with comment is an improvement over the existing list. We have updated the ASC list by adding a significant number of the procedures that we proposed to add in the June 1998 proposed rule as well as new CPT codes established since 1998 that are consistent with our criteria for the ASC list. The resulting updated list allows ASCs to furnish to Medicare beneficiaries surgical services that reflect the practice of contemporary surgery without compromising patient safety. We will continue to update the list through notice and comment within the biennial timeframe established under the statute. As part of the next biennial update, we will also consider proposing revised criteria to apply in determining which procedures are appropriate for the ASC list.

Comment: A number of commenters favored elimination of the ASC list. The commenters stated that the decision regarding where to perform a procedure should rest with the physician and the patient, not with CMS.

Response: Section 1833(i)(1) of the Act requires us to determine which surgical procedures are safely and appropriately performed in an ASC. Therefore, we cannot adopt this recommendation.

Comment: A national medical association commented that we should not add certain codes that we proposed to add because these procedures are hospital procedures and are not appropriate for same day surgery in an ASC. These procedures are CPT codes 57284 (paravaginal defect repair), 57288 (stress incontinence), 57555 (cervical stump excision), 58345 (fallopian tube catheter), and 57460 (colposcopy).

Response: After a review of our most recent claims data for site of service and an examination of the clinical nature of the surgical procedures in question, we agree with the commenter, and we are not adding these codes to the list.

Comment: The same commenter agreed with our proposal to add CPT codes 57291 (artificial vagina construction) and 57556 (cervical stump excision) to the ASC list and our proposal to delete CPT codes 56405 (vulva drainage) and 57800 (cervix dilation) from the ASC list.

Response: We agree with the commenter. We are adding CPT codes 57291 and 57556 to the ASC list and deleting CPT codes 56405 and 57800.

Comment: A medical specialty society commented that we should delete from the ASC list CPT codes 15842 (microsurgical muscle graft), 26035 (decompression fingers, injection injury), 26037 (decompressive fasciotomy, hand), 27440 (arthroplasty, knee, tibial plateau), 42225 (palatoplasty w. attached pharyngeal flap), 60220 (total thyroid lobectomy), and 60225 (total thyroid lobectomy). The commenter states that these procedures are hospital procedures and not appropriate for an ASC.

Response: We agree with the commenter and we are deleting these 7 procedures from the current list.

Comment: The same commenter disagreed with our proposal to add to the list the following procedures: CPT codes 42842 (extensive throat surgery), 42844 (extensive throat surgery), 57284 (paravaginal defect repair), 60210 (thyroid partial excision), and 60240 (thyroid removal). The commenter stated that these procedures are hospital procedures and not appropriate for same day surgery performance in an ASC. Another medical organization also recommended not adding CPT code 57284 to the list.

Response: Our medical staff have reviewed these codes and agree with the commenters. Therefore, we are not implementing these proposed additions to the list.

Comment: The same medical specialty society further stated that the following codes should be deleted from the ASC list: 15840 (face nerve palsy graft), 15841 (face nerve palsy graft), 15845 (skin and muscle repair, face), 19318 (large breast reduction), and 19340 (immediate breast prosthesis). The commenter stated these procedures are not appropriate for an ASC setting.

Response: Our medical staff have reviewed the clinical nature of these procedures and have determined that they may appropriately be performed in an ASC. Further, our 2001 claims data show that these procedures are being performed in a significant number of cases in an outpatient setting. Therefore, we are retaining these procedures on the ASC list.

Comment: The same commenter states that we should not add proposed CPT code 40700 (repair cleft lip, nasal), because this procedure is not appropriate for an ASC.

Response: Our 2001 claims data indicate that equal numbers of cases were reported as being performed in a hospital inpatient, hospital outpatient, and ASC setting. Our medical advisors reviewed the clinical nature of this procedure and determined that it is appropriately performed in an ASC setting. Therefore, we will add this code to the list.

Comment: Commenters suggested that we add to the ASC list the following CPT codes: 27096 (injection, sacroiliac joint), 62284 (myelography, injection), 62287 (Aspiration/decompression, nucleus pulposus), 62290 (discography injection, lumbar), 62291 (discography injection, cervical), 62292 (chemonucleolysis injection), 62298 (injection, other than anesthetic), 64640 (destruction by neurolytic agent, peripheral nerve), and 64714 (neuroplasty).

Response: Our medical staff reviewed the clinical nature of these codes and agreed that CPT codes 27096, 62292, and 62298 were appropriate additions to the ASC list. Note that in CY 2000, CPT code 62298 was replaced by code 62310, which we added to the ASC list in 2000 by program memorandum. CPT codes 27096 and 62292, while clinically appropriate for the list, would be significantly overpaid in the lowest ASC payment group, so we are not adding them to the ASC list. CPT code 64714 is already on the ASC list. CPT codes 62284, 62290 and 62291 are codes for injections used in connection with diagnostic imaging procedures that are not payable as ASC services. Therefore, we would not pay separately for these procedures in the ASC setting. According to our Medicare billing data, CPT 64640 is performed 68 percent of the time in a physician's office, so this procedure is not being added to the list. CPT 62287, which we proposed for addition to the list, will be added.

Comment: Some commenters believed that it was appropriate to add CPT codes 42415 (parotoid surgery), 31254 (partial ethmoid endoscopy), 31255 (ethmoid endoscopy), 31256 (nasal endoscopy with antrostomy), 31267 (nasal endoscopy with maxillary endoscopy), and 31276 (nasal endoscopy with frontal endoscopy) to the list. The commenters asserted that all of these procedures are suitable and routinely performed in an ASC setting.

Response: After review by clinical staff, we agree with the commenter and we are adding CPT code 42415 to the list. CPT codes 31254, 31255, 31256, 31267 and 31276 are currently on the ASC list and will remain on the list.

Comment: We received comments stating that certain laproscopic procedures should be added to the ASC list. They are: CPT codes 56340, 56341 and 56342 (laparoscopic cholecystectomy with and without cholangiography and common duct exploration) and CPT code 56348 (laparoscopic assisted vaginal hysterectomy). Commenters stated these procedures are routinely performed in an outpatient setting and would be appropriate for an ASC.

Response: Our medical staff determined that these procedures may be appropriately performed in an ASC for many non-Medicare beneficiaries in the 65-and-under age group. However, these procedures often involve an overnight stay for Medicare beneficiaries and they do not conform to our standard for ASC procedures in § 416.65(b)(ii). Therefore, we are not adding them to the ASC list.

Comment: Some commenters wrote that we should retain the following procedures proposed for deletion: CPT codes 51726 (Complex cystometrogram), 51772 (Urethra pressure profile), 51785 (Anal/urinary pressure study), 50392 (Insert kidney drain), 50393 (Insert ureteral tube), 50395 (Create passage for kidney), 50684 (Injection for ureter x-ray), 50690 (Injection for ureter x-ray), 51600 (Injection for bladder x-ray), 51605 (Preparation for bladder x-ray), and 51610 (Injection for bladder x-ray).

Response: Our medical staff reviewed these codes in light of the commenters' arguments against deleting them, and we agree that CPT codes 51726, 51772, 51785, 50392, 50393, and 50395 should be retained on the ASC list. CPT codes 50684, 50690, 51600, 51605, and 51610 are services that involve injections, which are packaged into imaging procedures that are not payable in an ASC, and we are making final their deletion from the ASC list.

Comment: Some of the same commenters also agreed with our proposal to delete CPT code 51725, Simple Cystometrogram and not add to the list CPT codes 51736 Simple Uroflowmetry and 51741 Complex Uroflowmetry.

Response: In the absence of disagreement from commenters, we are making our proposal regarding these codes final.

Comment: Another commenter recommended that we not remove the following CPT codes from the list: 50970, 50972, 50974, 50976, 50978, and 50980, all of which are ureteral endoscopy codes.

Response: We reviewed these procedures and we agree with the commenter that they are appropriate to the ASC setting and consistent with our criteria for the ASC list. Therefore, we are not removing these codes from the list.

Comment: A few commenters wanted us not to delete CPT codes 51005 (Aspiration of bladder) and 51010 (Aspiration of bladder). These commenters also wanted us to add the following codes to the ASC list: 54450 (Foreskin manipulation), 51000 (Aspiration bladder), 53600 (Dilate urethral stricture), 53601 (Dilate urethral stricture), 53621 (Dilate urethral stricture), 53660 (Dilation female urethra), 53661 (Subsequent dilation female urethra), 53675 (Catheterization, complicated), and 54200 (Injection procedure, Peyronie).

Response: We reviewed our utilization data and agree with the commenters that CPT code 51010 should remain on the ASC list. With the exception of CPT code 53675, all of the other procedures recommended by the commenters are performed more than 50 percent of the time in physicians' offices, some as frequently as 99 percent of the reported cases. Therefore, we are not adding these procedures to the list consistent with our current regulation at § 416.65(a)(2), which requires that the

ASC list not include procedures that are commonly performed or that may be safely performed in physicians' offices. CPT code 53875, Complex catheterization, would be significantly overpaid in the lowest ASC payment group. Therefore, we are not adding this procedure to the list.

Comment: A few commenters opposed our proposal to remove the following codes from the ASC list: CPT codes 50520 (Closure of nephrocutaneous fistula), 50570 (Renal endoscopy), 50572 (Renal endoscopy), 50574 (Renal endoscopy), 50576 (Renal endoscopy), 50578 (Renal endoscopy), and 50580 (Renal endoscopy).

Response: These codes describe procedures that are not consistent with our criteria in section § 416.65(b)(3) and therefore are not appropriate to be performed in an ASC. Therefore, we are making our proposal final and we are deleting these codes from the list.

Comment: In our proposed rule we proposed to delete the following nerve injection CPT codes: 64410, 64415, 64417, 64420, 64421, 64430, 64442, 64443, 64510, 64520, 64530, 64600, 64605, 64610, 64620, 64622, 64623, 64630, and 64680. These proposed deletions prompted numerous comments from ASCs specializing in pain management and from interventional pain physicians. Commenters argued that concerns about patient safety supported retaining these nerve block injection codes on the ASC list. They stated that the minimally acceptable requirements for safe completion of these procedures include continuous monitoring of heart function, lung function and breathing. The placement of injections in the spinal area requires the highest infection control standards. In addition, fluoroscopic guidance is necessary to assure precise needle placement. Injections can provoke severe hypertension, chest pain, cardiac arrythmias, myocardial infarction, severe pain and vasovagal reactions. Risks include seizures, respiratory and cardiac arrest, hypotension, respiratory depression, pneumothorax, total spinal anesthesia, infection, local anesthetic toxicity, paralysis and death. Commenters argued that because of the risks associated with these procedures, they require the health and safety protections assured by the conditions for coverage of ASC services found in part 416 of the regulations.

A few commenters supported deletion of the nerve injection codes from the ASC list. These commenters stated that they are able to perform these nerve injections in their offices. However, these commenters also stated that they operate in environments with resuscitation facilities and radiological guidance, more typically found in an ASC or a hospital outpatient setting than in a physician's office.

Response: The preponderance of comments opposing deletion of these codes from the ASC list stressed that assuring patient safety requires monitoring and special equipment not customarily found in the physician office setting. Even the minority supporting deletion noted the need for special safety measures in their comments. In light of these comments, we have retained these procedures on the ASC list (with the exception of CPT codes 64442 and 64443, which have been deleted by CPT) because as required by the conditions for coverage in §§ 416.41 and 416.44, ASCs are specifically equipped to provide the level of patient care and monitoring needed to ensure patient health and safety when these procedures are performed. In addition, ASCs are required to have in place appropriate procedures to address emergencies should they occur.

IV. Provisions of the Final Regulations

This final rule with comment period makes additions to and deletions from the current list of Medicare approved ASC procedures. In addition, this final rule with comment period responds to comments received from the June 12, 1998 proposed rule (63 FR 32290) that addressed proposed additions to and deletions from the list of ASC approved procedures. This final rule with comment period implements requirements of section 1833(i)(1) and (2) of the Act.

The addendum that follows this preamble contains the complete list of surgical procedures that are approved for an ASC facility fee payment effective for services furnished on or after July 1, 2003. The addendum also designates those CPT codes that are additions to or deletions from the current ASC list. The CPT code for each procedure is listed in column 1. In column 2, the letter "A" indicates a code that is being added to the ASC in this final rule. The letter "A*" (with an asterisk) indicates a code added to CPT since 1998 that we are adding to the list but that we did not propose to add in the June 1998 proposed rule. CPT codes designated with "A*" are those for which we are soliciting comments. The letter "D" in column 2 indicates a code that is being deleted from the ASC list. Column 3 provides the short descriptor for the CPT code in column 1. Column 4 indicates the current payment group to which an approved code is assigned. Column 5 indicates the FY 2003 payment amount for the assigned payment group. We solicit comments on additions to the ASC list designated with "A*" in column 2 and the payment group to which these additions are assigned. The codes designated by "A*" in column 2 are new CPT codes that were added to CPT in 1999, 2000, 2001, 2002, and 2003 that are similar to procedures on the updated ASC list.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Waiver of Proposed Rulemaking

We ordinarily publish a proposed notice in the **Federal Register** and invite public comment when we add to the ASC list HCPCS codes that describe new surgical procedures. The proposed notice includes a reference to the legal authority under which the additions to the list are proposed and a description of the subjects and issues involved. We solicit comment both on the appropriateness of performing the new procedures in an ASC and the payment rate that we propose as the ASC facility fee for the new procedures. This process can be waived, however, if the agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule that is issued.

For reasons that we explain elsewhere in this preamble, we have not previously issued a rule to make final the additions and deletions proposed in the June 12, 1998 proposed rule. For the same reasons, we have not issued proposed notices regarding the addition to the ASC list of new CPT codes that were created during the years since publication of the June 12 proposed rule. This final rule with comment adopts some provisions set forth in the June 12, 1998 proposed rule (63 FR 32290). In this final rule with comment, we are also making certain additions to the ASC list that were not proposed in the June 12 rule and that are subject to comment. Specifically, we are adding new CPT codes for surgical procedures that were added to CPT in 1999, 2000, 2001, 2002, and 2003, and we are assigning those codes to an existing ASC payment group.

We are making the addition of these new CPT codes to the ASC list effective for services furnished on or after July 1, 2003 because we believe that were we not to add them in this final rule, we would limit beneficiary access to surgical procedures that can be appropriately performed in the ASC setting. If these codes are not payable under the ASC benefit, beneficiaries are limited to receiving the services that they describe in a hospital setting. Also, ASCs cannot receive a facility fee for these services under the Medicare ASC benefit if we do not add them to the list. Therefore, delay in adding these new surgical procedures to the ASC list is contrary to the public interest.

Also, it is impracticable not to add the applicable new CPT codes created from 1999 through 2003 until after we have received public comments, analyzed those comments, and issued a final rule. To do so could mean that the new CPT codes would not be made final under the ASC benefit until 2004, at the earliest.

For these reasons, we find good cause to waive the notice of proposed rulemaking and to issue this final rule with comment. We are providing a 60-day public comment period regarding the addition of the new CPT codes, designated by an "A*" in the addendum and the payment group to which these codes are assigned. We will respond to timely comments in the next final notice or final rule that we issue regarding the ASC benefit.

VII. Regulatory Impact Statement

A. Overall Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), Section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). Our Office of the Actuary has prepared a fiscal impact estimate. As shown in the table below, for fiscal years 2003 through 2007, the cost to the Medicare program is estimated to be $5 million per year. Therefore, this is not considered a major rule.

Fiscal year	Cost [1]
2003	$5
2004	5
2005	5
2006	5
2007	5

[1] Cost in millions, rounded to the nearest 5 million.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 to $29 million in any 1 year. According to the small business associations, approximately 73 percent of all ASCs are considered small entities by having revenues of $11.5 million or less. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This rule does not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule will not have an effect on the governments mentioned and the private sector costs will be less than the $110 threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial effect on State or local governments.

B. Anticipated Effects

The entities affected by this final rule with comment period are Medicare certified ASCs and beneficiaries. No other providers are affected. This rule will not affect state or local governments or the private sector other than ASCs. There are more than 3,000 ASCs currently certified by Medicare, nearly three-quarters of which fit the definition of a "small entity."

The result of this rule is to increase the number of ASC procedures approved for Medicare payment by approximately 300, thereby making more surgical services payable by Medicare in an ASC available to beneficiaries. ASCs will benefit from our expanding the list of Medicare approved ASC procedures because the number of services for which Medicare will pay a facility fee will increase as a result. Currently, if ASCs perform these procedures, Medicare does not allow payment of a facility fee. Our adding these codes to the ASC list also enables ASCs to serve a greater number of beneficiaries by being able to offer access to an increased number of surgical services. The number of claims for ASC services would increase. No specific provisions of this final rule have yet been implemented. If this final rule is not issued, beneficiaries would be denied access to approximately 300 surgical procedures in the ASC setting and this would limit beneficiary choice.

Some individuals have advocated the elimination of the ASC list on the basis that the decision regarding where to perform a procedure rests ultimately with the physician. These same individuals support payment of an ASC facility fee for any surgical procedure covered by Medicare in a clinic or hospital outpatient setting. The requirements for an ASC list are imposed by the statute, so we cannot adopt this recommendation.

ASCs that specialize in dermatology, gastroenterology, and orthopedics may object to our not adding certain procedures that we proposed in our June 1998 proposed rule. In particular, we are not adding procedures performed more than 50 percent of the time in a physician's office, procedures that are not appropriately or safely performed in an ambulatory setting, or procedures that would otherwise have met the criteria for inclusion on the ASC list except that they would be significantly overpaid in the lowest ASC payment group. We have determined that the adverse economic impact on the Medicare program that could result from a shift of such services to an ASC setting outweighs the potential negative reaction of these medical specialties.

ASCs that furnish extracorporeal shockwave lithotripsy (ESWL) services may also object to our not adding this procedure to the ASC list. However, as

we explained above, because we are not updating the ASC payment rates and ratesetting methodology in this final rule, we would not be in compliance with the District Court order issued in *American Lithotripsy Society* v. *Sullivan*, 785, F. Supp. 1035 (D.D.C. 1992) if we were to add ESWL to the ASC list without further data and information. Overall, we believe the increased beneficiary access to surgical services and the expansion of the ASC list that will result from this final rule outweighs potential objections to our not including certain additions that were proposed in 1998 to the ASC list.

For the above reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

C. Alternatives Considered

As stated above, we are issuing this final rule with comment to implement additions to and deletions from the ASC list proposed in the June 1998 proposed rule. However, we are not implementing the ratesetting method, rebased payment rates, and changes in the regulations that were also proposed in the June 1998 proposed rule. We considered not updating the ASC list until we completed a survey of ASC costs to use in rebasing the ASC payment rates. However, we decided against this approach because it could have resulted in delaying the update of the list for several years while we conducted the survey and audited and compiled the data upon which to rebase the rates.

We considered basing payment rates for procedures being added to the ASC list in this final rule on the ASC payment group that most closely approximated the payment amount for the same procedures under the hospital outpatient prospective payment system (OPPS). However, the statute requires that payment rates be tied to ASC, not hospital outpatient costs, so we decided, as explained previously in this preamble, to match the additions to the list to procedures already on the list that are similar in terms of clinical work and resource inputs and to assign the new code to the same payment group as the current code. This approach better maintains internal consistency in ASC payment rates among codes on the list that are similar.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 16, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare and Medicaid Services.

Approved: February 14, 2003.

Tommy G. Thompson,

Secretary.

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
10121	A	Remove foreign body	2	446
10180		Complex drainage, wound	2	446
11010	A	Debride skin, fx	2	446
11011	A	Debride skin/muscle, fx	2	446
11012	A	Debride skin/muscle/bone, fx	2	446
11042		Debride skin/tissue	2	446
11043		Debride tissue/muscle	2	446
11044		Debride tissue/muscle/bone	2	446
11404		Removal of skin lesion	1	333
11406		Removal of skin lesion	2	446
11424		Removal of skin lesion	2	446
11426		Removal of skin lesion	2	446
11444		Removal of skin lesion	1	333
11446		Removal of skin lesion	2	446
11450		Removal, sweat gland lesion	2	446
11451		Removal, sweat gland lesion	2	446
11462		Removal, sweat gland lesion	2	446
11463		Removal, sweat gland lesion	2	446
11470		Removal, sweat gland lesion	2	446
11471		Removal, sweat gland lesion	2	446
11604		Removal of skin lesion	2	446
11606		Removal of skin lesion	2	446
11624		Removal of skin lesion	2	446
11626		Removal of skin lesion	2	446
11644		Removal of skin lesion	2	446
11646		Removal of skin lesion	2	446
11770		Removal of pilonidal lesion	3	510
11771		Removal of pilonidal lesion	3	510
11772		Removal of pilonidal lesion	3	510
11960		Insert tissue expander(s)	2	446
11970		Replace tissue expander	3	510
11971		Remove tissue expander(s)	1	333
12005		Repair superficial wound(s)	2	446
12006		Repair superficial wound(s)	2	446
12007		Repair superficial wound(s)	2	446
12016		Repair superficial wound(s)	2	446
12017		Repair superficial wound(s)	2	446
12018		Repair superficial wound(s)	2	446
12020		Closure of split wound	1	333
12021		Closure of split wound	1	333
12034		Layer closure of wound(s)	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
12035		Layer closure of wound(s)	2	446
12036		Layer closure of wound(s)	2	446
12037		Layer closure of wound(s)	2	446
12044		Layer closure of wound(s)	2	446
12045		Layer closure of wound(s)	2	446
12046		Layer closure of wound(s)	2	446
12047		Layer closure of wound(s)	2	446
12054		Layer closure of wound(s)	2	446
12055		Layer closure of wound(s)	2	446
12056		Layer closure of wound(s)	2	446
12057		Layer closure of wound(s)	2	446
13100		Repair of wound or lesion	2	446
13101		Repair of wound or lesion	3	510
13120		Repair of wound or lesion	2	446
13121		Repair of wound or lesion	3	510
13131		Repair of wound or lesion	2	446
13132		Repair of wound or lesion	3	510
13150		Repair of wound or lesion	3	510
13151		Repair of wound or lesion	3	510
13152		Repair of wound or lesion	3	510
13160		Late closure of wound	2	446
14000		Skin tissue rearrangement	2	446
14001		Skin tissue rearrangement	3	510
14020		Skin tissue rearrangement	3	510
14021		Skin tissue rearrangement	3	510
14040		Skin tissue rearrangement	2	446
14041		Skin tissue rearrangement	3	510
14060		Skin tissue rearrangement	3	510
14061		Skin tissue rearrangement	3	510
14300		Skin tissue rearrangement	4	630
14350		Skin tissue rearrangement	3	510
15000		Skin graft	2	446
15050		Skin pinch graft	2	446
15100		Skin split graft	2	446
15101		Skin split graft add-on	3	510
15120		Skin split graft	2	446
15121		Skin split graft add-on	3	510
15200		Skin full graft	3	510
15201		Skin full graft add-on	2	446
15220		Skin full graft	2	446
15221		Skin full graft add-on	2	446
15240		Skin full graft	3	510
15241		Skin full graft add-on	3	510
15260		Skin full graft	2	446
15261		Skin full graft add-on	2	446
15350		Skin homograft	2	446
15351	A*	Skin homograft add-on	2	446
15400		Skin heterograft	2	446
15401	A*	Skin heterograft add-on	2	446
15570		Form Skin pedicle flap	3	510
15572		Form Skin pedicle flap	3	510
15574		Form Skin pedicle flap	3	510
15576		Form Skin pedicle flap	3	510
15600		Skin graft	3	510
15610		Skin graft	3	510
15620		Skin graft	4	630
15630		Skin graft	3	510
15650		Transfer skin pedicle flap	5	717
15732		Muscle-skin graft, head/neck	3	510
15734		Muscle-skin graft, trunk	3	510
15736		Muscle-skin graft, arm	3	510
15738		Muscle-skin graft, leg	3	510
15740		Island pedicle flap graft	2	446
15750		Neurovascular pedicle graft	2	446
15756	D	Free muscle flap, microvasc	3	510
15757	D	Free skin flap, microvasc	3	510
15758	D	Free fascial flap, microvasc	3	510
15760		Composite skin graft	2	446
15770		Derma-fat-fascia graft	3	510
15775	A	Hair transplant punch grafts	3	510
15776	A	Hair transplant punch grafts	3	510
15820	A	Revision of lower eyelid	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
15821	A	Revision of lower eyelid	3	510
15822	A	Revision of upper eyelid	3	510
15823	A	Revision of upper eyelid	5	717
15824	A	Removal of forehead wrinkles	3	510
15825	A	Removal of neck wrinkles	3	510
15826	A	Removal of brow wrinkles	3	510
15828	A	Removal of face wrinkles	3	510
15829	A	Removal of skin wrinkles	5	717
15831	A	Excise excessive skin tissue	3	510
15832	A	Excise excessive skin tissue	3	510
15833	A	Excise excessive skin tissue	3	510
15834	A	Excise excessive skin tissue	3	510
15835	A	Excise excessive skin tissue	3	510
15840		Graft for face nerve palsy	4	630
15841		Graft for face nerve palsy	4	630
15842	D	Flap for face nerve palsy	4	630
15845		Skin and muscle repair, face	4	630
15876	A	Suction assisted lipectomy	3	510
15877	A	Suction assisted lipectomy	3	510
15878	A	Suction assisted lipectomy	3	510
15879	A	Suction assisted lipectomy	3	510
15920		Removal of tail bone ulcer	3	510
15922		Removal of tail bone ulcer	4	630
15931		Remove sacrum pressure sore	3	510
15933		Remove sacrum pressure sore	3	510
15934		Remove sacrum pressure sore	3	510
15935		Remove sacrum pressure sore	4	630
15936		Remove sacrum pressure sore	4	630
15937		Remove sacrum pressure sore	4	630
15940		Remove hip pressure sore	3	510
15941		*Remove hip pressure sore*	3	510
15944		Remove hip pressure sore	3	510
15945		Remove hip pressure sore	4	630
15946		Remove hip pressure sore	4	630
15950		Remove thigh pressure sore	3	510
15951		Remove thigh pressure sore	4	630
15952		Remove thigh pressure sore	3	510
15953		Remove thigh pressure sore	4	630
15956		Remove thigh pressure sore	3	510
15958		Remove thigh pressure sore	4	630
16015		Treatment of burn(s)	2	446
16030	D	Treatment of burn(s)	1	333
16035	D	Incision of burn scab, initi	2	446
19020		Incision of breast lesion	2	446
19100		Bx breast percut w/o image	1	333
19101		Biopsy of breast, open	2	446
19102		Bx breast percut w/image	2	446
19103		Bx breast percut w/device	2	446
19110		Nipple exploration	2	446
19112		Excise breast duct fistula	3	510
19120		Removal of breast lesion	3	510
19125		Excision, breast lesion	3	510
19126		Excision, addl breast lesion	3	510
19140		Removal of breast tissue	4	630
19160		Removal of breast tissue	3	510
19162		Remove breast tissue, nodes	7	995
19180		Removal of breast	4	630
19182		Removal of breast	4	630
19260	D	Removal of chest wall lesion	5	717
19290		Place needle wire, breast	1	333
19291		Place needle wire, breast	1	333
19316	A	Suspension of breast	4	630
19318		Reduction of large breast	4	630
19324	A	Enlarge breast	4	630
19325	A	Enlarge breast with implant	9	1339
19328		Removal of breast implant	1	333
19330		Removal of implant material	1	333
19340		Immediate breast prosthesis	2	446
19342		Delayed breast prosthesis	3	510
19350		Breast reconstruction	4	630
19355	A	Correct inverted nipple(s)	4	630
19357		Breast reconstruction	5	717

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
19364	D	Breast reconstruction	5	717
19366		Breast reconstruction	5	717
19370		Surgery of breast capsule	4	630
19371		Removal of breast capsule	4	630
19380		Revise breast reconstruction	5	717
20005		Incision of deep abscess	2	446
20200		Muscle biopsy	2	446
20205		Deep muscle biopsy	3	510
20206		Needle biopsy, muscle	1	333
20220		Bone biopsy, trocar/needle	1	333
20225		Bone biopsy, trocar/needle	2	446
20240		Bone biopsy, excisional	2	446
20245		Bone biopsy, excisional	3	510
20250		Open bone biopsy	3	510
20251		Open bone biopsy	3	510
20525		Removal of foreign body	3	510
20650		Insert and remove bone pin	3	510
20660	D	Apply, remove fixation device	2	446
20661	D	Application of head brace	3	510
20662	D	Application of pelvis brace	3	510
20663	D	Application of thigh brace	3	510
20665	D	Removal of fixation device	1	333
20670		Removal of support implant	1	333
20680		Removal of support implant	3	510
20690		Apply bone fixation device	2	446
20692	A	Apply bone fixation device	3	510
20693	A	Adjust bone fixation device	3	510
20694		Remove bone fixation device	1	333
20900		Removal of bone for graft	3	510
20902		Removal of bone for graft	4	630
20910		Remove cartilage for graft	3	510
20912		Remove cartilage for graft	3	510
20920		Removal of fascia for graft	4	630
20922		Removal of fascia for graft	3	510
20924		Removal of tendon for graft	4	630
20926		Removal of tissue for graft	4	630
20955	D	Fibula bone graft, microvasc	4	630
20962	D	Other bone graft, microvasc	4	630
20969	D	Bone/skin graft, microvasc	4	630
20970	D	Bone/skin graft, iliac crest	4	630
20972	D	Bone/skin graft, metatarsal	4	630
20973	D	Bone/skin graft, great toe	4	630
20975		Electrical bone stimulation	2	446
21010		Incision of jaw joint	2	446
21015	A	Resection of facial tumor	3	510
21025		Excision of bone, lower jaw	2	446
21026		Excision of facial bone(s)	2	446
21029	A	Contour of face bone lesion	2	446
21034		Removal of face bone lesion	3	510
21040		Removal of jaw bone lesion	2	446
21041	D	Removal of jaw bone lesion	2	446
21044		Removal of jaw bone lesion	2	446
21046	A	Excision, benign tumor, mandible	2	446
21047	A	Excision, benign tumor, mandible	2	446
21050		Removal of jaw joint	3	510
21060		Remove jaw joint cartilage	2	446
21070		Remove coronoid process	3	510
21100		Maxillofacial fixation	2	446
21121	A	Reconstruction of chin	7	995
21122	A	Reconstruction of chin	7	995
21123	A	Reconstruction of chin	7	995
21127	A	Augmentation, lower jaw bone	9	1339
21181	A	Contour cranial bone lesion	7	995
21206		Reconstruct upper jaw bone	5	717
21208		Augmentation of facial bones	7	995
21209		Reduction of facial bones	5	717
21210		Face bone graft	7	995
21215		Lower jaw bone graft	7	995
21230		Rib cartilage graft	7	995
21235		Ear cartilage graft	7	995
21240		Reconstruction of jaw joint	4	630
21242		Reconstruction of jaw joint	5	717

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
21243		Reconstruction of jaw joint	5	717
21244		Reconstruction of lower jaw	7	995
21245		Reconstruction of jaw	7	995
21246		Reconstruction of jaw	7	995
21248		Reconstruction of jaw	7	995
21249		Reconstruction of jaw	7	995
21267		Revise eye sockets	7	995
21270		Augmentation, cheek bone	5	717
21275		Revision, orbitofacial bones	7	995
21280		Revision of eyelid	5	717
21282		Revision of eyelid	5	717
21295	A	Reconst lwr jaw w/o fixation	1	333
21296	A	Reconst lwr jaw w/fixation	1	333
21300		Treatment of skull fracture	2	446
21310		Treatment of nose fracture	2	446
21315		Treatment of nose fracture	2	446
21320		Treatment of nose fracture	2	446
21325		Treatment of nose fracture	4	630
21330		Treatment of nose fracture	5	717
21335		Treatment of nose fracture	7	995
21336	A	Treat nasal septal fracture	4	630
21337		Treat nasal septal fracture	2	446
21338		Treat nasoethmoid fracture	4	630
21339		Treat nasoethmoid fracture	5	717
21340		Treatment of nose fracture	4	630
21343	D	Treatment of sinus fracture	5	717
21345	A	Treat nose/jaw fracture	7	995
21355		Treat cheek bone fracture	3	510
21360	D	Treat cheek bone fracture	4	630
21365		Treat cheek bone fracture	5	717
21385	D	Treat eye socket fracture	5	717
21386	D	Treat eye socket fracture	5	717
21387	D	Treat eye socket fracture	5	717
21390	D	Treat eye socket fracture	7	995
21395	D	Treat eye socket fracture	7	995
21400		Treat eye socket fracture	2	446
21401		Treat eye socket fracture	3	510
21406	D	Treat eye socket fracture	4	630
21407	D	Treat eye socket fracture	5	717
21421		Treat mouth roof fracture	4	630
21422	D	Treat mouth roof fracture	5	717
21440		Treat dental ridge fracture	3	510
21445		Treat dental ridge fracture	4	630
21450		Treat lower jaw fracture	3	510
21451		Treat lower jaw fracture	4	630
21452		Treat lower jaw fracture	2	446
21453		Treat lower jaw fracture	3	510
21454		Treat lower jaw fracture	5	717
21461		Treat lower jaw fracture	4	630
21462		Treat lower jaw fracture	5	717
21465		Treat lower jaw fracture	4	630
21470	D	Treat lower jaw fracture	5	717
21480		Reset dislocated jaw	1	333
21485		Reset dislocated jaw	2	446
21490		Repair dislocated jaw	3	510
21493		Treat hyoid bone fracture	3	510
21494		Treat hyoid bone fracture	4	630
21495	D	Treat hyoid bone fracture	4	630
21497		Interdental wiring	2	446
21501		Drain neck/chest lesion	2	446
21502		Drain chest lesion	2	446
21510	D	Drainage of bone lesion	3	510
21550	D	Biopsy of neck/chest	1	333
21555		Remove lesion, neck/chest	2	446
21556		Remove lesion, neck/chest	2	446
21600		Partial removal of rib	2	446
21610		Partial removal of rib	2	446
21620	D	Partial removal of sternum	2	446
21700		Revision of neck muscle	2	446
21720		Revision of neck muscle	3	510
21725		Revision of neck muscle	3	510
21800		Treatment of rib fracture	1	333

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
21805		Treatment of rib fracture	2	446
21810	D	Treatment of rib fracture(s)	2	446
21820		Treat sternum fracture	1	333
21920	D	Biopsy soft tissue of back	1	333
21925		Biopsy soft tissue of back	2	446
21930		Remove lesion, back or flank	2	446
21935		Remove tumor, back	3	510
22100	D	Remove part of neck vertebra	3	510
22101	D	Remove part, thorax vertebra	3	510
22102	D	Remove part, lumbar vertebra	3	510
22103	D	Remove extra spine segment	3	510
22305		Treat spine process fracture	1	333
22310		Treat spine fracture	1	333
22315		Treat spine fracture	2	446
22325	D	Treat spine fracture	3	510
22326	D	Treat neck spine fracture	3	510
22327	D	Treat thorax spine fracture	3	510
22328	D	Treat each add spine fx	3	510
22505		Manipulation of spine	2	446
22900		Remove abdominal wall lesion	4	630
23000		Removal of calcium deposits	2	446
23020		Release shoulder joint	2	446
23030		Drain shoulder lesion	1	333
23031	A	Drain shoulder bursa	3	510
23035		Drain shoulder bone lesion	3	510
23040		Exploratory shoulder surgery	3	510
23044		Exploratory shoulder surgery	4	630
23065	D	Biopsy shoulder tissues	1	333
23066		Biopsy shoulder tissues	2	446
23075		Removal of shoulder lesion	2	446
23076		Removal of shoulder lesion	2	446
23077		Remove tumor of shoulder	3	510
23100		Biopsy of shoulder joint	2	446
23101		Shoulder joint surgery	7	995
23105		Remove shoulder joint lining	4	630
23106		Incision of collarbone joint	4	630
23107		Explore treat shoulder joint	4	630
23120		Partial removal, collar bone	5	717
23125		Removal of collar bone	5	717
23130		Remove shoulder bone, part	5	717
23140		Removal of bone lesion	4	630
23145		Removal of bone lesion	5	717
23146		Removal of bone lesion	5	717
23150		Removal of humerus lesion	4	630
23155		Removal of humerus lesion	5	717
23156		Removal of humerus lesion	5	717
23170		Remove collar bone lesion	2	446
23172		Remove shoulder blade lesion	2	446
23174		Remove humerus lesion	2	446
23180		Remove collar bone lesion	4	630
23182		Remove shoulder blade lesion	4	630
23184		Remove humerus lesion	4	630
23190		Partial removal of scapula	4	630
23195		Removal of head of humerus	5	717
23330		Remove shoulder foreign body	1	333
23331		Remove shoulder foreign body	1	333
23395		Muscle transfer, shoulder/arm	5	717
23397		Muscle transfers	7	995
23400		Fixation of shoulder blade	7	995
23405		Incision of tendon & muscle	2	446
23406		Incise tendon(s) & muscle(s)	2	446
23410		Repair of tendon(s)	5	717
23412		Repair of tendon(s)	7	995
23415		Release of shoulder ligament	5	717
23420		Repair of shoulder	7	995
23430		Repair biceps tendon	4	630
23440		Remove/transplant tendon	4	630
23450		Repair shoulder capsule	5	717
23455		Repair shoulder capsule	7	995
23460		Repair shoulder capsule	5	717
23462		Repair shoulder capsule	7	995
23465		Repair shoulder capsule	5	717

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
23466		Repair shoulder capsule	7	995
23480		Revision of collar bone	4	630
23485		Revision of collar bone	7	995
23490		Reinforce clavicle	3	510
23491		Reinforce shoulder bones	3	510
23500		Treat clavicle fracture	1	333
23505		Treat clavicle fracture	1	333
23515		Treat clavicle fracture	3	510
23520		Treat clavicle dislocation	1	333
23525		Treat clavicle dislocation	1	333
23530		Treat clavicle dislocation	3	510
23532		Treat clavicle dislocation	4	630
23540		Treat clavicle dislocation	1	333
23545		Treat clavicle dislocation	1	333
23550		Treat clavicle dislocation	3	510
23552		Treat clavicle dislocation	4	630
23570		Treat shoulder blade fx	1	333
23575		Treat shoulder blade fx	1	333
23585		Treat scapula fracture	3	510
23600		Treat humerus fracture	1	333
23605		Treat humerus fracture	2	446
23615		Treat humerus fracture	4	630
23616		Treat humerus fracture	4	630
23620		Treat humerus fracture	1	333
23625		Treat humerus fracture	2	446
23630		Treat humerus fracture	5	717
23650		Treat shoulder dislocation	1	333
23655		Treat shoulder dislocation	1	333
23660		Treat shoulder dislocation	3	510
23665		Treat dislocation/fracture	2	446
23670		Treat dislocation/fracture	3	510
23675		Treat dislocation/fracture	2	446
23680		Treat dislocation/fracture	3	510
23700		Fixation of shoulder	1	333
23800		Fusion of shoulder joint	4	630
23802		Fusion of shoulder joint	7	995
23921		Amputation follow-up surgery	3	510
23930		Drainage of arm lesion	1	333
23931		Drainage of arm bursa	2	446
23935		Drain arm/elbow bone lesion	2	446
24000		Exploratory elbow surgery	4	630
24006	A	Release elbow joint	4	630
24065	D	Biopsy arm/elbow soft tissue	1	333
24066		Biopsy arm/elbow soft tissue	2	446
24075		Remove arm/elbow lesion	2	446
24076		Remove arm/elbow lesion	2	446
24077		Remove tumor of arm/elbow	3	510
24100		Biopsy elbow joint lining	1	333
24101		Explore/treat elbow joint	4	630
24102		Remove elbow joint lining	4	630
24105		Removal of elbow bursa	3	510
24110		Remove humerus lesion	2	446
24115		Remove/graft bone lesion	3	510
24116		Remove/graft bone lesion	3	510
24120		Remove elbow lesion	3	510
24125		Remove/graft bone lesion	3	510
24126		Remove/graft bone lesion	3	510
24130		Removal of head of radius	2	446
24134		Removal of arm bone lesion	2	446
24136		Remove radius bone lesion	2	446
24138		Remove elbow bone lesion	3	510
24140		Partial removal of arm bone	3	510
24145		Partial removal of radius	2	446
24147		Partial removal of elbow	3	510
24150	D	Extensive humerus surgery	4	630
24151	D	Extensive humerus surgery	3	510
24152	D	Extensive radius surgery	4	630
24153	D	Extensive radius surgery	3	510
24155		Removal of elbow joint	2	446
24160		Remove elbow joint implant	3	510
24164		Remove radius head implant	2	446
24201		Removal of arm foreign body		

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
24301		Muscle/tendon transfer	4	630
24305	A	Arm tendon lengthening	4	630
24310		Revision of arm tendon	3	510
24320		Repair of arm tendon	3	510
24330		Revision of arm muscles	3	510
24331		Revision of arm muscles	3	510
24340		Repair of biceps tendon	3	510
24341	A	Repair arm tendon/muscle	3	510
24342		Repair of ruptured tendon	3	510
24345	A*	Repr elbw med ligmnt w/tissu	2	446
24350		Repair of tennis elbow	3	510
24351		Repair of tennis elbow	3	510
24352		Repair of tennis elbow	3	510
24354		Repair of tennis elbow	3	510
24356		Revision of tennis elbow	3	510
24360		Reconstruct elbow joint	5	717
24361		Reconstruct elbow joint	5	717
24362		Reconstruct elbow joint	5	717
24363		Replace elbow joint	7	995
24365		Reconstruct head of radius	5	717
24366		Reconstruct head of radius	5	717
24400		Revision of humerus	4	630
24410		Revision of humerus	4	630
24420		Revision of humerus	3	510
24430		Repair of humerus	3	510
24435		Repair humerus with graft	4	630
24470		Revision of elbow joint	3	510
24495		Decompression of forearm	2	446
24498		Reinforce humerus	3	510
24500		Treat humerus fracture	1	333
24505		Treat humerus fracture	1	333
24515		Treat humerus fracture	4	630
24516		Treat humerus fracture	4	630
24530		Treat humerus fracture	1	333
24535		Treat humerus fracture	1	333
24538		Treat humerus fracture	2	446
24545		Treat humerus fracture	4	630
24546		Treat humerus fracture	5	717
24560		Treat humerus fracture	1	333
24565		Treat humerus fracture	2	446
24566		Treat humerus fracture	2	446
24575		Treat humerus fracture	3	510
24576		Treat humerus fracture	1	333
24577		Treat humerus fracture	1	333
24579		Treat humerus fracture	3	510
24582		Treat humerus fracture	2	446
24586		Treat elbow fracture	4	630
24587		Treat elbow fracture	5	717
24600		Treat elbow dislocation	1	333
24605		Treat elbow dislocation	2	446
24615		Treat elbow dislocation	3	510
24620		Treat elbow fracture	2	446
24635		Treat elbow fracture	3	510
24655		Treat radius fracture	1	333
24665		Treat radius fracture	4	630
24666		Treat radius fracture	4	630
24670		Treat ulnar fracture	1	333
24675		Treat ulnar fracture	1	333
24685		Treat ulnar fracture	3	510
24800		Fusion of elbow joint	4	630
24802		Fusion/graft of elbow joint	5	717
24925		Amputation follow-up surgery	3	510
25000		Incision of tendon sheath	3	510
25020		Decompress forearm 1 space	3	510
25023		Decompress forearm 1 space	3	510
25024		Decompress forearm 2 spaces	3	510
25025		Decompress forearm 2 spaces	3	510
25028		Drainage of forearm lesion	1	333
25031		Drainage of forearm bursa	2	446
25035		Treat forearm bone lesion	2	446
25040		Explore/treat wrist joint	5	717
25065	D	Biopsy forearm soft tissues	1	333

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
25066		Biopsy forearm soft tissues	2	446
25075		Remove forearm lesion subcut	2	446
25076		Remove forearm lesion deep	3	510
25077		Remove tumor, forearm/wrist	3	510
25085		Incision of wrist capsule	3	510
25100		Biopsy of wrist joint	2	446
25101		Explore/treat wrist joint	3	510
25105		Remove wrist joint lining	4	630
25107		Remove wrist joint cartilage	3	510
25110		Remove wrist tendon lesion	3	510
25111		Remove wrist tendon lesion	3	510
25112		Reremove wrist tendon lesion	4	630
25115		Remove wrist/forearm lesion	4	630
25116		Remove wrist/forearm lesion	4	630
25118		Excise wrist tendon sheath	2	446
25119		Partial removal of ulna	3	510
25120		Removal of forearm lesion	3	510
25125		Remove/graft forearm lesion	3	510
25126		Remove/graft forearm lesion	3	510
25130		Removal of wrist lesion	3	510
25135		Remove & graft wrist lesion	3	510
25136		Remove & graft wrist lesion	3	510
25145		Remove forearm bone lesion	2	446
25150		Partial removal of ulna	2	446
25151		Partial removal of radius	2	446
25170	D	Extensive forearm surgery	3	510
25210		Removal of wrist bone	3	510
25215		Removal of wrist bones	4	630
25230		Partial removal of radius	4	630
25240		Partial removal of ulna	4	630
25248		Remove forearm foreign body	2	446
25250		Removal of wrist prosthesis	1	333
25251		Removal of wrist prosthesis	1	333
25260		Repair forearm tendon/muscle	4	630
25263		Repair forearm tendon/muscle	2	446
25265		Repair forearm tendon/muscle	3	510
25270		Repair forearm tendon/muscle	4	630
25272		Repair forearm tendon/muscle	3	510
25274		Repair forearm tendon/muscle	4	630
25275		Repair forearm tendon sheath	4	630
25280		Revise wrist/forearm tendon	4	630
25290		Incise wrist/forearm tendon	3	510
25295		Release wrist/forearm tendon	3	510
25300		Fusion of tendons at wrist	3	510
25301		Fusion of tendons at wrist	3	510
25310		Transplant forearm tendon	3	510
25312		Transplant forearm tendon	4	630
25315		Revise palsy hand tendon(s)	3	510
25316		Revise palsy hand tendon(s)	3	510
25320		Repair/revise wrist joint	3	510
25332		Revise wrist joint	5	717
25335		Realignment of hand	3	510
25337	A	Reconstruct ulna/radioulnar	5	717
25350		Revision of radius	3	510
25355		Revision of radius	3	510
25360		Revision of ulna	3	510
25365		Revise radius & ulna	3	510
25370		Revise radius or ulna	3	510
25375		Revise radius & ulna	4	630
25390		Shorten radius or ulna	3	510
25391		Lengthen radius or ulna	4	630
25392		Shorten radius & ulna	3	510
25393		Lengthen radius & ulna	4	630
25400		Repair radius or ulna	3	510
25405		Repair/graft radius or ulna	4	630
25415		Repair radius & ulna	3	510
25420		Repair/graft radius & ulna	4	630
25425		Repair/graft radius or ulna	3	510
25426		Repair/graft radius & ulna	4	630
25440		Repair/graft wrist bone	4	630
25441		Reconstruct wrist joint	5	717
25442		Reconstruct wrist joint	5	717

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
25443		Reconstruct wrist joint	5	717
25444		Reconstruct wrist joint	5	717
25445		Reconstruct wrist joint	5	717
25446		Wrist replacement	7	995
25447		Repair wrist joint(s)	5	717
25449		Remove wrist joint implant	5	717
25450		Revision of wrist joint	3	510
25455		Revision of wrist joint	3	510
25490		Reinforce radius	3	510
25491		Reinforce ulna	3	510
25492		Reinforce radius and ulna	3	510
25505		Treat fracture of radius	1	333
25515		Treat fracture of radius	3	510
25520		Treat fracture of radius	1	333
25525		Treat fracture of radius	4	630
25526		Treat fracture of radius	5	717
25535		Treat fracture of ulna	1	333
25545		Treat fracture of ulna	3	510
25565		Treat fracture radius & ulna	2	446
25574		Treat fracture radius & ulna	3	510
25575		Treat fracture radius/ulna	3	510
25605		Treat fracture radius/ulna	3	510
25611		Treat fracture radius/ulna	3	510
25620		Treat fracture radius/ulna	5	717
25624		Treat wrist bone fracture	2	446
25628		Treat wrist bone fracture	3	510
25635		Treat wrist bone fracture	1	333
25645		Treat wrist bone fracture	3	510
25660		Treat wrist dislocation	1	333
25670		Treat wrist dislocation	3	510
25671		Pin radioulnar dislocation	1	333
25675		Treat wrist dislocation	1	333
25676		Treat wrist dislocation	2	446
25680		Treat wrist fracture	2	446
25685		Treat wrist fracture	3	510
25690		Treat wrist dislocation	1	333
25695		Treat wrist dislocation	2	446
25800		Fusion of wrist joint	4	630
25805		Fusion/graft of wrist joint	5	717
25810		Fusion/graft of wrist joint	5	717
25820		Fusion of hand bones	4	630
25825		Fuse hand bones with graft	5	717
25830	A	Fusion, radioulnar jnt/ulna	5	717
25907		Amputation follow-up surgery	3	510
25922		Amputate hand at wrist	3	510
25929		Amputation follow-up surgery	3	510
26011		Drainage of finger abscess	1	333
26020		Drain hand tendon sheath	2	446
26025		Drainage of palm bursa	1	333
26030		Drainage of palm bursa(s)	2	446
26034		Treat hand bone lesion	2	446
26035	D	Decompress fingers/hand	4	630
26037	D	Decompress fingers/hand	4	630
26040		Release palm contracture	4	630
26045		Release palm contracture	3	510
26055		Incise finger tendon sheath	2	446
26060		Incision of finger tendon	2	446
26070		Explore/treat hand joint	2	446
26075		Explore/treat finger joint	4	630
26080		Explore/treat finger joint	4	630
26100		Biopsy hand joint lining	2	446
26105		Biopsy finger joint lining	1	333
26110		Biopsy finger joint lining	1	333
26115		Remove hand lesion subcut	2	446
26116		Remove hand lesion, deep	2	446
26117		Remove tumor, hand/finger	3	510
26121		Release palm contracture	4	630
26123		Release palm contracture	4	630
26125		Release palm contracture	4	630
26130		Remove wrist joint lining	3	510
26135		Revise finger joint, each	4	630
26140		Revise finger joint, each	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
26145		Tendon excision, palm/finger	3	510
26160		Remove tendon sheath lesion	3	510
26170		Removal of palm tendon, each	3	510
26180		Removal of finger tendon	3	510
26185	A	Remove finger bone	4	630
26200		Remove hand bone lesion	2	446
26205		Remove/graft bone lesion	3	510
26210		Removal of finger lesion	2	446
26215		Remove/graft finger lesion	3	510
26230		Partial removal of hand bone	7	995
26235		Partial removal, finger bone	3	510
26236		Partial removal, finger bone	3	510
26250		Extensive hand surgery	3	510
26255		Extensive hand surgery	3	510
26260		Extensive finger surgery	3	510
26261		Extensive finger surgery	3	510
26262		Partial removal of finger	2	446
26320		Removal of implant from hand	2	446
26350		Repair finger/hand tendon	1	333
26352		Repair/graft hand tendon	4	630
26356		Repair finger/hand tendon	4	630
26357		Repair finger/hand tendon	4	630
26358		Repair/graft hand tendon	4	630
26370		Repair finger/hand tendon	4	630
26372		Repair/graft hand tendon	4	630
26373		Repair finger/hand tendon	3	510
26390		Revise hand/finger tendon	4	630
26392		Repair/graft hand tendon	3	510
26410		Repair hand tendon	3	510
26412		Repair/graft hand tendon	3	510
26415		Excision, hand/finger tendon	4	630
26416		Graft hand or finger tendon	3	510
26418		Repair finger tendon	4	630
26420		Repair/graft finger tendon	4	630
26426		Repair finger/hand tendon	3	510
26428		Repair/graft finger tendon	3	510
26432		Repair finger tendon	3	510
26433		Repair finger tendon	3	510
26434		Repair/graft finger tendon	3	510
26437		Realignment of tendons	3	510
26440		Release palm/finger tendon	3	510
26442		Release palm & finger tendon	3	510
26445		Release hand/finger tendon	3	510
26449		Release forearm/hand tendon	3	510
26450		Incision of palm tendon	3	510
26455		Incision of finger tendon	3	510
26460		Incise hand/finger tendon	3	510
26471		Fusion of finger tendons	2	446
26474		Fusion of finger tendons	2	446
26476		Tendon lengthening	1	333
26477		Tendon shortening	1	333
26478		Lengthening of hand tendon	1	333
26479		Shortening of hand tendon	1	333
26480		Transplant hand tendon	3	510
26483		Transplant/graft hand tendon	3	510
26485		Transplant palm tendon	2	446
26489		Transplant/graft palm tendon	3	510
26490		Revise thumb tendon	3	510
26492		Tendon transfer with graft	3	510
26494		Hand tendon/muscle transfer	3	510
26496		Revise thumb tendon	3	510
26497		Finger tendon transfer	3	510
26498		Finger tendon transfer	4	630
26499		Revision of finger	3	510
26500		Hand tendon reconstruction	4	630
26502		Hand tendon reconstruction	4	630
26504		Hand tendon reconstruction	4	630
26508		Release thumb contracture	3	510
26510		Thumb tendon transfer	3	510
26516		Fusion of knuckle joint	1	333
26517		Fusion of knuckle joints	3	510
26518		Fusion of knuckle joints	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
26520		Release knuckle contracture	3	510
26525		Release finger contracture	3	510
26530		Revise knuckle joint	3	510
26531		Revise knuckle with implant	7	995
26535		Revise finger joint	5	717
26536		Revise/implant finger joint	5	717
26540		Repair hand joint	4	630
26541		Repair hand joint with graft	7	995
26542		Repair hand joint with graft	4	630
26545		Reconstruct finger joint	4	630
26546	A	Repair nonunion hand	4	630
26548		Reconstruct finger joint	4	630
26550		Construct thumb replacement	2	446
26551	D	Great toe-hand transfer	4	630
26553	D	Single transfer, toe-hand	2	446
26554	D	Double transfer, toe-hand	2	446
26555		Positional change of finger	3	510
26560		Repair of web finger	2	446
26561		Repair of web finger	3	510
26562		Repair of web finger	4	630
26565		Correct metacarpal flaw	5	717
26567		Correct finger deformity	5	717
26568		Lengthen metacarpal/finger	3	510
26580		Repair hand deformity	5	717
26587		Reconstruct extra finger	5	717
26590		Repair finger deformity	5	717
26591		Repair muscles of hand	3	510
26593		Release muscles of hand	3	510
26596		Excision constricting tissue	2	446
26605		Treat metacarpal fracture	2	446
26607		Treat metacarpal fracture	2	446
26608	A	Treat metacarpal fracture	4	630
26615		Treat metacarpal fracture	4	630
26645		Treat thumb fracture	1	333
26650		Treat thumb fracture	2	446
26665		Treat thumb fracture	4	630
26675		Treat hand dislocation	2	446
26676		Pin hand dislocation	2	446
26685		Treat hand dislocation	3	510
26686		Treat hand dislocation	3	510
26705		Treat knuckle dislocation	2	446
26706		Pin knuckle dislocation	2	446
26715		Treat knuckle dislocation	4	630
26727		Treat finger fracture, each	7	995
26735		Treat finger fracture, each	4	630
26742		Treat finger fracture, each	2	446
26746		Treat finger fracture, each	5	717
26756		Pin finger fracture, each	2	446
26765		Treat finger fracture, each	4	630
26776		Pin finger dislocation	2	446
26785		Treat finger dislocation	2	446
26820		Thumb fusion with graft	5	717
26841		Fusion of thumb	4	630
26842		Thumb fusion with graft	4	630
26843		Fusion of hand joint	3	510
26844		Fusion/graft of hand joint	3	510
26850		Fusion of knuckle	4	630
26852		Fusion of knuckle with graft	4	630
26860		Fusion of finger joint	3	510
26861		Fusion of finger jnt, add-on	2	446
26862		Fusion/graft of finger joint	4	630
26863		Fuse/graft added joint	3	510
26910		Amputate metacarpal bone	3	510
26951		Amputation of finger/thumb	2	446
26952		Amputation of finger/thumb	4	630
26990		Drainage of pelvis lesion	1	333
26991		Drainage of pelvis bursa	1	333
26992	D	Drainage of bone lesion	2	446
27000		Incision of hip tendon	2	446
27001		Incision of hip tendon	3	510
27003		Incision of hip tendon	3	510
27030	D	Drainage of hip joint	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
27033		Exploration of hip joint	3	510
27035		Denervation of hip joint	4	630
27040		Biopsy of soft tissues	1	333
27041		Biopsy of soft tissues	2	446
27047		Remove hip/pelvis lesion	2	446
27048		Remove hip/pelvis lesion	3	510
27049		Remove tumor, hip/pelvis	3	510
27050		Biopsy of sacroiliac joint	3	510
27052		Biopsy of hip joint	3	510
27060		Removal of ischial bursa	5	717
27062		Remove femur lesion/bursa	5	717
27065		Removal of hip bone lesion	5	717
27066		Removal of hip bone lesion	5	717
27067	A	Remove/graft hip bone lesion	5	717
27080		Removal of tail bone	2	446
27086		Remove hip foreign body	1	333
27087		Remove hip foreign body	3	510
27097		Revision of hip tendon	3	510
27098		Transfer tendon to pelvis	3	510
27100		Transfer of abdominal muscle	4	630
27105		Transfer of spinal muscle	4	630
27110		Transfer of iliopsoas muscle	4	630
27111		Transfer of iliopsoas muscle	4	630
27193		Treat pelvic ring fracture	1	333
27194		Treat pelvic ring fracture	2	446
27202		Treat tail bone fracture	2	446
27230		Treat thigh fracture	1	333
27238		Treat thigh fracture	1	333
27246		Treat thigh fracture	1	333
27250		Treat hip dislocation	1	333
27252		Treat hip dislocation	2	446
27257	A	Treat hip dislocation	3	510
27265		Treat hip dislocation	1	333
27266		Treat hip dislocation	2	446
27275		Manipulation of hip joint	2	446
27301		Drain thigh/knee lesion	3	510
27303	D	Drainage of bone lesion	2	446
27305		Incise thigh tendon & fascia	2	446
27306		Incision of thigh tendon	3	510
27307		Incision of thigh tendons	3	510
27310		Exploration of knee joint	4	630
27315		Partial removal, thigh nerve	2	446
27320		Partial removal, thigh nerve	2	446
27323		Biopsy, thigh soft tissues	1	333
27324		Biopsy, thigh soft tissues	1	333
27327		Removal of thigh lesion	2	446
27328		Removal of thigh lesion	3	510
27329	A	Remove tumor, thigh/knee	4	630
27330		Biopsy, knee joint lining	4	630
27331		Explore/treat knee joint	4	630
27332		Removal of knee cartilage	4	630
27333		Removal of knee cartilage	4	630
27334		Remove knee joint lining	4	630
27335		Remove knee joint lining	4	630
27340		Removal of kneecap bursa	3	510
27345		Removal of knee cyst	4	630
27347	A*	Remove knee cyst	4	630
27350		Removal of kneecap	4	630
27355		Remove femur lesion	3	510
27356		Remove femur lesion/graft	4	630
27357	A	Remove femur lesion/graft	5	717
27358	A	Remove femur lesion/fixation	5	717
27360		Partial removal, leg bone(s)	5	717
27372		Removal of foreign body	7	995
27380		Repair of kneecap tendon	1	333
27381		Repair/graft kneecap tendon	3	510
27385		Repair of thigh muscle	3	510
27386		Repair/graft of thigh muscle	3	510
27390		Incision of thigh tendon	1	333
27391		Incision of thigh tendons	2	446
27392		Incision of thigh tendons	3	510
27393		Lengthening of thigh tendon	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
27394		Lengthening of thigh tendons	3	510
27395		Lengthening of thigh tendons	3	510
27396		Transplant of thigh tendon	3	510
27397		Transplants of thigh tendons	3	510
27400		Revise thigh muscles/tendons	3	510
27403		Repair of knee cartilage	4	630
27405		Repair of knee ligament	4	630
27407		Repair of knee ligament	4	630
27409		Repair of knee ligaments	4	630
27418		Repair degenerated kneecap	3	510
27420		Revision of unstable kneecap	3	510
27422		Revision of unstable kneecap	7	995
27424		Revision/removal of kneecap	3	510
27425		Lateral retinacular release	7	995
27427		Reconstruction, knee	3	510
27428		Reconstruction, knee	4	630
27429		Reconstruction, knee	4	630
27430		Revision of thigh muscles	4	630
27435		Incision of knee joint	4	630
27437		Revise kneecap	4	630
27438		Revise kneecap with implant	5	717
27440	D	Revision of knee joint	5	717
27441		Revision of knee joint	5	717
27442		Revision of knee joint	5	717
27443		Revision of knee joint	5	717
27496	A	Decompression of thigh/knee	5	717
27497	A	Decompression of thigh/knee	3	510
27498	A	Decompression of thigh/knee	3	510
27499	A	Decompression of thigh/knee	3	510
27500		Treatment of thigh fracture	1	333
27501		Treatment of thigh fracture	2	446
27502		Treatment of thigh fracture	2	446
27503		Treatment of thigh fracture	3	510
27507	D	Treatment of thigh fracture	4	630
27508		Treatment of thigh fracture	1	333
27509		Treatment of thigh fracture	3	510
27510		Treatment of thigh fracture	1	333
27511	D	Treatment of thigh fracture	4	630
27513	D	Treatment of thigh fracture	5	717
27516		Treat thigh fx growth plate	1	333
27517		Treat thigh fx growth plate	1	333
27520		Treat kneecap fracture	1	333
27524	D	Treat kneecap fracture	3	510
27530		Treat knee fracture	1	333
27532		Treat knee fracture	1	333
27535	D	Treat knee fracture	3	510
27538		Treat knee fracture(s)	1	333
27550		Treat knee dislocation	1	333
27552		Treat knee dislocation	1	333
27560		Treat kneecap dislocation	1	333
27562		Treat kneecap dislocation	1	333
27566		Treat kneecap dislocation	2	446
27570		Fixation of knee joint	1	333
27594	A	Amputation follow-up surgery	3	510
27600	A	Decompression of lower leg	3	510
27601	A	Decompression of lower leg	3	510
27602	A	Decompression of lower leg	3	510
27603		Drain lower leg lesion	2	446
27604		Drain lower leg bursa	2	446
27605		Incision of achilles tendon	1	333
27606		Incision of achilles tendon	1	333
27607		Treat lower leg bone lesion	2	446
27610		Explore/treat ankle joint	2	446
27612		Exploration of ankle joint	3	510
27613	D	Biopsy lower leg soft tissue	1	333
27614		Biopsy lower leg soft tissue	2	446
27615		Remove tumor, lower leg	3	510
27618		Remove lower leg lesion	2	446
27619		Remove lower leg lesion	3	510
27620		Explore/treat ankle joint	4	630
27625		Remove ankle joint lining	4	630
27626		Remove ankle joint lining	4	630

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
27630		Removal of tendon lesion	3	510
27635		Remove lower leg bone lesion	3	510
27637		Remove/graft leg bone lesion	3	510
27638		Remove/graft leg bone lesion	3	510
27640		Partial removal of tibia	2	446
27641		Partial removal of fibula	2	446
27647	A	Extensive ankle/heel surgery	3	510
27650		Repair achilles tendon	3	510
27652		Repair/graft achilles tendon	3	510
27654		Repair of achilles tendon	3	510
27656		Repair leg fascia defect	2	446
27658		Repair of leg tendon, each	1	333
27659		Repair of leg tendon, each	2	446
27664		Repair of leg tendon, each	2	446
27665		Repair of leg tendon, each	2	446
27675		Repair lower leg tendons	2	446
27676		Repair lower leg tendons	3	510
27680		Release of lower leg tendon	3	510
27681		Release of lower leg tendons	2	446
27685		Revision of lower leg tendon	3	510
27686		Revise lower leg tendons	3	510
27687		Revision of calf tendon	3	510
27690		Revise lower leg tendon	4	630
27691		Revise lower leg tendon	4	630
27692		Revise additional leg tendon	3	510
27695		Repair of ankle ligament	2	446
27696		Repair of ankle ligaments	2	446
27698		Repair of ankle ligament	2	446
27700		Revision of ankle joint	5	717
27704		Removal of ankle implant	2	446
27705		Incision of tibia	2	446
27707		Incision of fibula	2	446
27709		Incision of tibia & fibula	2	446
27715	D	Revision of lower leg	4	630
27730		Repair of tibia epiphysis	2	446
27732		Repair of fibula epiphysis	2	446
27734		Repair lower leg epiphyses	2	446
27740		Repair of leg epiphyses	2	446
27742		Repair of leg epiphyses	2	446
27745		Reinforce tibia	3	510
27750		Treatment of tibia fracture	1	333
27752		Treatment of tibia fracture	1	333
27756		Treatment of tibia fracture	3	510
27758		Treatment of tibia fracture	4	630
27759		Treatment of tibia fracture	4	630
27760		Treatment of ankle fracture	1	333
27762		Treatment of ankle fracture	1	333
27766		Treatment of ankle fracture	3	510
27780		Treatment of fibula fracture	1	333
27781		Treatment of fibula fracture	1	333
27784		Treatment of fibula fracture	3	510
27786		Treatment of ankle fracture	1	333
27788		Treatment of ankle fracture	1	333
27792		Treatment of ankle fracture	3	510
27808		Treatment of ankle fracture	1	333
27810		Treatment of ankle fracture	1	333
27814		Treatment of ankle fracture	3	510
27816		Treatment of ankle fracture	1	333
27818		Treatment of ankle fracture	1	333
27822		Treatment of ankle fracture	3	510
27823		Treatment of ankle fracture	3	510
27824		Treat lower leg fracture	1	333
27825		Treat lower leg fracture	2	446
27826		Treat lower leg fracture	3	510
27827		Treat lower leg fracture	3	510
27828		Treat lower leg fracture	4	630
27829		Treat lower leg joint	2	446
27830		Treat lower leg dislocation	1	333
27831		Treat lower leg dislocation	1	333
27832		Treat lower leg dislocation	2	446
27840		Treat ankle dislocation	1	333
27842		Treat ankle dislocation	1	333

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
27846		Treat ankle dislocation	3	510
27848		Treat ankle dislocation	3	510
27860		Fixation of ankle joint	1	333
27870		Fusion of ankle joint	4	630
27871		Fusion of tibiofibular joint	4	630
27884		Amputation follow-up surgery	3	510
27889	A	Amputation of foot at ankle	3	510
27892	A	Decompression of leg	3	510
27893	A	Decompression of leg	3	510
27894	A	Decompression of leg	3	510
28002		Treatment of foot infection	3	510
28003		Treatment of foot infection	3	510
28005		Treat foot bone lesion	3	510
28008		Incision of foot fascia	3	510
28011	A	Incision of toe tendons	3	510
28020		Exploration of foot joint	2	446
28022	A	Exploration of foot joint	2	446
28024	A	Exploration of toe joint	2	446
28030		Removal of foot nerve	4	630
28035		Decompression of tibia nerve	4	630
28043		Excision of foot lesion	2	446
28045		Excision of foot lesion	3	510
28046		Resection of tumor, foot	3	510
28050		Biopsy of foot joint lining	2	446
28052	A	Biopsy of foot joint lining	2	446
28054		Biopsy of toe joint lining	2	446
28060		Partial removal, foot fascia	2	446
28062		Removal of foot fascia	3	510
28070		Removal of foot joint lining	3	510
28072		Removal of foot joint lining	3	510
28080		Removal of foot lesion	3	510
28086		Excise foot tendon sheath	2	446
28088		Excise foot tendon sheath	2	446
28090		Removal of foot lesion	3	510
28092		Removal of toe lesions	3	510
28100		Removal of ankle/heel lesion	2	446
28102		Remove/graft foot lesion	3	510
28103		Remove/graft foot lesion	3	510
28104		Removal of foot lesion	2	446
28106		Remove/graft foot lesion	3	510
28107		Remove/graft foot lesion	3	510
28110		Part removal of metatarsal	3	510
28111		Part removal of metatarsal	3	510
28112		Part removal of metatarsal	3	510
28113		Part removal of metatarsal	3	510
28114		Removal of metatarsal heads	3	510
28116		Revision of foot	3	510
28118		Removal of heel bone	4	630
28119		Removal of heel spur	4	630
28120		Part removal of ankle/heel	7	995
28122		Partial removal of foot bone	3	510
28126	A	Partial removal of toe	3	510
28130		Removal of ankle bone	3	510
28140		Removal of metatarsal	3	510
28150		Removal of toe	3	510
28153	A	Partial removal of toe	3	510
28160	A	Partial removal of toe	3	510
28171		Extensive foot surgery	3	510
28173		Extensive foot surgery	3	510
28175		Extensive foot surgery	3	510
28192		Removal of foot foreign body	2	446
28193		Removal of foot foreign body	4	630
28200		Repair of foot tendon	3	510
28202		Repair/graft of foot tendon	3	510
28208		Repair of foot tendon	3	510
28210		Repair/graft of foot tendon	3	510
28222		Release of foot tendons	1	333
28225		Release of foot tendon	1	333
28226		Release of foot tendons	1	333
28234	A	Incision of foot tendon	2	446
28238		Revision of foot tendon	3	510
28240		Release of big toe	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
28250		Revision of foot fascia	3	510
28260		Release of midfoot joint	3	510
28261		Revision of foot tendon	3	510
28262		Revision of foot and ankle	4	630
28264		Release of midfoot joint	1	333
28270	A	Release of foot contracture	3	510
28280		Fusion of toes	2	446
28285		Repair of hammertoe	3	510
28286		Repair of hammertoe	4	630
28288		Partial removal of foot bone	3	510
28289	A*	Repair hallux rigidus	3	510
28290		Correction of bunion	2	446
28292		Correction of bunion	2	446
28293		Correction of bunion	3	510
28294		Correction of bunion	3	510
28296		Correction of bunion	3	510
28297		Correction of bunion	3	510
28298		Correction of bunion	3	510
28299		Correction of bunion	5	717
28300		Incision of heel bone	2	446
28302		Incision of ankle bone	2	446
28304		Incision of midfoot bones	2	446
28305		Incise/graft midfoot bones	3	510
28306		Incision of metatarsal	4	630
28307		Incision of metatarsal	4	630
28308		Incision of metatarsal	2	446
28309		Incision of metatarsals	4	630
28310		Revision of big toe	3	510
28312		Revision of toe	3	510
28313		Repair deformity of toe	2	446
28315		Removal of sesamoid bone	4	630
28320		Repair of foot bones	4	630
28322		Repair of metatarsals	4	630
28340		Resect enlarged toe tissue	4	630
28341		Resect enlarged toe	4	630
28344		Repair extra toe(s)	4	630
28345		Repair webbed toe(s)	4	630
28400		Treatment of heel fracture	1	333
28405		Treatment of heel fracture	2	446
28406		Treatment of heel fracture	2	446
28415		Treat heel fracture	3	510
28420		Treat/graft heel fracture	4	630
28435		Treatment of ankle fracture	2	446
28436		Treatment of ankle fracture	2	446
28445		Treat ankle fracture	3	510
28456		Treat midfoot fracture	2	446
28465		Treat midfoot fracture, each	3	510
28476		Treat metatarsal fracture	2	446
28485		Treat metatarsal fracture	4	630
28496		Treat big toe fracture	2	446
28505		Treat big toe fracture	3	510
28525		Treat toe fracture	3	510
28531	A	Treat sesamoid bone fracture	3	510
28545		Treat foot dislocation	1	333
28546		Treat foot dislocation	2	446
28555		Repair foot dislocation	2	446
28575		Treat foot dislocation	1	333
28576		Treat foot dislocation	3	510
28585		Repair foot dislocation	3	510
28605		Treat foot dislocation	1	333
28606		Treat foot dislocation	2	446
28615		Repair foot dislocation	3	510
28635		Treat toe dislocation	1	333
28636		Treat toe dislocation	3	510
28645		Repair toe dislocation	3	510
28665		Treat toe dislocation	1	333
28666		Treat toe dislocation	3	510
28675		Repair of toe dislocation	3	510
28705		Fusion of foot bones	4	630
28715		Fusion of foot bones	4	630
28725		Fusion of foot bones	4	630
28730		Fusion of foot bones	4	630

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
28735		Fusion of foot bones	4	630
28737		Revision of foot bones	5	717
28740		Fusion of foot bones	4	630
28750		Fusion of big toe joint	4	630
28755		Fusion of big toe joint	4	630
28760		Fusion of big toe joint	4	630
28810		Amputation toe & metatarsal	2	446
28820		Amputation of toe	2	446
28825		Partial amputation of toe	2	446
29800	A	Jaw arthroscopy/surgery	3	510
29804		Jaw arthroscopy/surgery	3	510
29805		Shoulder arthroscopy, dx	3	510
29806		Shoulder arthroscopy/surgery	3	510
29807		Shoulder arthroscopy/surgery	3	510
29819		Shoulder arthroscopy/surgery	3	510
29820		Shoulder arthroscopy/surgery	3	510
29821		Shoulder arthroscopy/surgery	3	510
29822		Shoulder arthroscopy/surgery	3	510
29823		Shoulder arthroscopy/surgery	3	510
29824		Shoulder arthroscopy/surgery	5	717
29825		Shoulder arthroscopy/surgery	3	510
29826		Shoulder arthroscopy/surgery	3	510
29827	A*	Arthroscop rotator cuff repr	5	717
29830		Elbow arthroscopy	3	510
29834		Elbow arthroscopy/surgery	3	510
29835		Elbow arthroscopy/surgery	3	510
29836		Elbow arthroscopy/surgery	3	510
29837		Elbow arthroscopy/surgery	3	510
29838		Elbow arthroscopy/surgery	3	510
29840		Wrist arthroscopy	3	510
29843		Wrist arthroscopy/surgery	3	510
29844		Wrist arthroscopy/surgery	3	510
29845		Wrist arthroscopy/surgery	3	510
29846		Wrist arthroscopy/surgery	3	510
29847		Wrist arthroscopy/surgery	3	510
29848	A	Wrist endoscopy/surgery	9	1339
29850		Knee arthroscopy/surgery	4	630
29851		Knee arthroscopy/surgery	4	630
29855		Tibial arthroscopy/surgery	4	630
29856		Tibial arthroscopy/surgery	4	630
29860	A	Hip arthroscopy, dx	4	630
29861	A	Hip arthroscopy/surgery	4	630
29862	A	Hip arthroscopy/surgery	9	1339
29863	A	Hip arthroscopy/surgery	4	630
29870		Knee arthroscopy, dx	3	510
29871		Knee arthroscopy/drainage	3	510
29874		Knee arthroscopy/surgery	3	510
29875		Knee arthroscopy/surgery	4	630
29876		Knee arthroscopy/surgery	4	630
29877		Knee arthroscopy/surgery	4	630
29879		Knee arthroscopy/surgery	3	510
29880		Knee arthroscopy/surgery	4	630
29881		Knee arthroscopy/surgery	4	630
29882		Knee arthroscopy/surgery	3	510
29883		Knee arthroscopy/surgery	3	510
29884		Knee arthroscopy/surgery	3	510
29885		Knee arthroscopy/surgery	3	510
29886		Knee arthroscopy/surgery	3	510
29887		Knee arthroscopy/surgery	3	510
29888		Knee arthroscopy/surgery	3	510
29889		Knee arthroscopy/surgery	3	510
29891	A	Ankle arthroscopy/surgery	3	510
29892	A	Ankle arthroscopy/surgery	3	510
29893	A	Scope, plantar fasciotomy	9	1339
29894		Ankle arthroscopy/surgery	3	510
29895		Ankle arthroscopy/surgery	3	510
29897		Ankle arthroscopy/surgery	3	510
29898		Ankle arthroscopy/surgery	3	510
29899	A*	Ankle arthroscopy/surgery	3	510
29900		Mcp joint arthroscopy, dx	3	510
29901		Mcp joint arthroscopy, surg	3	510
29902		Mcp joint arthroscopy, surg	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
30115		Removal of nose polyp(s)	2	446
30117		Removal of intranasal lesion	3	510
30118		Removal of intranasal lesion	3	510
30120		Revision of nose	1	333
30124	D	Removal of nose lesion	1	333
30125		Removal of nose lesion	2	446
30130		Removal of turbinate bones	3	510
30140		Removal of turbinate bones	2	446
30150		Partial removal of nose	3	510
30160		Removal of nose	4	630
30310		Remove nasal foreign body	1	333
30320		Remove nasal foreign body	2	446
30400		Reconstruction of nose	4	630
30410		Reconstruction of nose	5	717
30420		Reconstruction of nose	5	717
30430		Revision of nose	3	510
30435		Revision of nose	5	717
30450		Revision of nose	7	995
30460	A	Revision of nose	7	995
30462	A	Revision of nose	9	1339
30465	A*	Repair nasal stenosis	9	1339
30520		Repair of nasal septum	4	630
30540		Repair nasal defect	5	717
30545	A	Repair nasal defect	5	717
30560		Release of nasal adhesions	2	446
30580		Repair upper jaw fistula	4	630
30600		Repair mouth/nose fistula	4	630
30620		Intranasal reconstruction	7	995
30630		Repair nasal septum defect	7	995
30801		Cauterization, inner nose	1	333
30802		Cauterization, inner nose	1	333
30903		Control of nosebleed	1	333
30905		Control of nosebleed	1	333
30906		Repeat control of nosebleed	1	333
30915		Ligation, nasal sinus artery	2	446
30920		Ligation, upper jaw artery	3	510
30930	A	Therapy, fracture of nose	4	630
31020		Exploration, maxillary sinus	2	446
31030		Exploration, maxillary sinus	3	510
31032		Explore sinus,remove polyps	4	630
31050		Exploration, sphenoid sinus	2	446
31051		Sphenoid sinus surgery	4	630
31070		Exploration of frontal sinus	2	446
31075		Exploration of frontal sinus	4	630
31080		Removal of frontal sinus	4	630
31081	A	Removal of frontal sinus	4	630
31084		Removal of frontal sinus	4	630
31085	A	Removal of frontal sinus	4	630
31086		Removal of frontal sinus	4	630
31087	A	Removal of frontal sinus	4	630
31090		Exploration of sinuses	5	717
31200		Removal of ethmoid sinus	2	446
31201		Removal of ethmoid sinus	5	717
31205		Removal of ethmoid sinus	3	510
31233		Nasal/sinus endoscopy, dx	2	446
31235		Nasal/sinus endoscopy, dx	1	333
31237		Nasal/sinus endoscopy, surg	2	446
31238		Nasal/sinus endoscopy, surg	1	333
31239		Nasal/sinus endoscopy, surg	4	630
31240		Nasal/sinus endoscopy, surg	2	446
31254		Revision of ethmoid sinus	3	510
31255		Removal of ethmoid sinus	5	717
31256		Exploration maxillary sinus	3	510
31267		Endoscopy, maxillary sinus	3	510
31276		Sinus endoscopy, surgical	3	510
31287		Nasal/sinus endoscopy, surg	3	510
31288		Nasal/sinus endoscopy, surg	3	510
31300		Removal of larynx lesion	5	717
31320		Diagnostic incision, larynx	2	446
31400	A	Revision of larynx	2	446
31420	A	Removal of epiglottis	2	446
31510		Laryngoscopy with biopsy	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
31511		Remove foreign body, larynx	2	446
31512		Removal of larynx lesion	2	446
31513		Injection into vocal cord	2	446
31515		Laryngoscopy for aspiration	1	333
31525		Diagnostic laryngoscopy	1	333
31526		Diagnostic laryngoscopy	2	446
31527		Laryngoscopy for treatment	1	333
31528		Laryngoscopy and dilation	2	446
31529		Laryngoscopy and dilation	2	446
31530		Operative laryngoscopy	2	446
31531		Operative laryngoscopy	3	510
31535		Operative laryngoscopy	2	446
31536		Operative laryngoscopy	3	510
31540		Operative laryngoscopy	3	510
31541		Operative laryngoscopy	4	630
31560		Operative laryngoscopy	5	717
31561		Operative laryngoscopy	5	717
31570		Laryngoscopy with injection	2	446
31571		Laryngoscopy with injection	2	446
31576		Laryngoscopy with biopsy	2	446
31577		Remove foreign body, larynx	2	446
31578		Removal of larynx lesion	2	446
31580		Revision of larynx	5	717
31582		Revision of larynx	5	717
31584	D	Treat larynx fracture	4	630
31585		Treat larynx fracture	1	333
31586		Treat larynx fracture	2	446
31588		Revision of larynx	5	717
31590		Reinnervate larynx	5	717
31595		Larynx nerve surgery	2	446
31600	D	Incision of windpipe	2	446
31611		Surgery/speech prosthesis	3	510
31612		Puncture/clear windpipe	1	333
31613		Repair windpipe opening	2	446
31614		Repair windpipe opening	2	446
31615		Visualization of windpipe	1	333
31622		Dx bronchoscope/wash	1	333
31623	A*	Dx bronchoscope/brush	2	446
31624	A*	Dx bronchoscope/lavage	2	446
31625		Bronchoscopy with biopsy	2	446
31628		Bronchoscopy with biopsy	2	446
31629		Bronchoscopy with biopsy	2	446
31630		Bronchoscopy with repair	2	446
31631		Bronchoscopy with dilation	2	446
31635		Remove foreign body, airway	2	446
31640		Bronchoscopy & remove lesion	2	446
31641		Bronchoscopy, treat blockage	2	446
31643	A*	Diag bronchoscope/catheter	2	446
31645		Bronchoscopy, clear airways	1	333
31646		Bronchoscopy, reclear airway	1	333
31656		Bronchoscopy, inj for xray	1	333
31700		Insertion of airway catheter	1	333
31710	D	Insertion of airway catheter	1	333
31715	D	Injection for bronchus x-ray	1	333
31717		Bronchial brush biopsy	1	333
31720		Clearance of airways	1	333
31730		Intro, windpipe wire/tube	1	333
31750		Repair of windpipe	5	717
31755		Repair of windpipe	2	446
31785	D	Remove windpipe lesion	4	630
31800	D	Repair of windpipe injury	2	446
31820		Closure of windpipe lesion	1	333
31825		Repair of windpipe defect	2	446
31830		Revise windpipe scar	2	446
32000		Drainage of chest	1	333
32002	D	Treatment of collapsed lung	2	446
32005	D	Treat lung lining chemically	2	446
32020	D	Insertion of chest tube	2	446
32400		Needle biopsy chest lining	1	333
32405		Biopsy, lung or mediastinum	1	333
32420		Puncture/clear lung	1	333
33010		Drainage of heart sac	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
33011		Repeat drainage of heart sac	2	446
33222	A	Revise pocket, pacemaker	2	446
33223	A	Revise pocket, pacing-defib	2	446
34101	D	Removal of artery clot	3	510
35188	A	Repair blood vessel lesion	4	630
35207	A	Repair blood vessel lesion	4	630
35875	A	Removal of clot in graft	9	1339
35876	A	Removal of clot in graft	9	1339
36260	A	Insertion of infusion pump	3	510
36261		Revision of infusion pump	2	446
36262		Removal of infusion pump	1	333
36488	A	Insertion of catheter, vein	1	333
36489		Insertion of catheter, vein	1	333
36490	A	Insertion of catheter, vein	1	333
36491		Insertion of catheter, vein	1	333
36530		Insertion of infusion pump	3	510
36531		Revision of infusion pump	2	446
36532		Removal of infusion pump	1	333
36533		Insertion of access device	3	510
36534		Revision of access device	2	446
36535		Removal of access device	1	333
36640		Insertion catheter, artery	1	333
36800		Insertion of cannula	3	510
36810		Insertion of cannula	3	510
36815		Insertion of cannula	3	510
36819		Av fusion/uppr arm vein	9	1339
36820		Av fusion/forearm vein	3	510
36821		Av fusion direct any site	3	510
36825		Artery-vein graft	4	630
36830		Artery-vein graft	4	630
36831	A*	Open thrombect av fistula	9	1339
36832		Av fistula revision, open	4	630
36833		Av fistula revision	4	630
36835		Artery to vein shunt	4	630
36860		External cannula declotting	2	446
36861		Cannula declotting	3	510
36870	A*	Percut thrombect av fistula	9	1339
37607	A	Ligation of a-v fistula	3	510
37609		Temporal artery procedure	2	446
37650	A	Revision of major vein	2	446
37700		Revise leg vein	2	446
37720		Removal of leg vein	3	510
37730		Removal of leg veins	3	510
37735		Removal of leg veins/lesion	3	510
37760		Revision of leg veins	3	510
37780		Revision of leg vein	3	510
37785		Revise secondary varicosity	3	510
37790	A	Penile venous occlusion	3	510
38300		Drainage, lymph node lesion	1	333
38305		Drainage, lymph node lesion	2	446
38308		Incision of lymph channels	2	446
38500		Biopsy/removal, lymph nodes	2	446
38505		Needle biopsy, lymph nodes	1	333
38510		Biopsy/removal, lymph nodes	2	446
38520		Biopsy/removal, lymph nodes	2	446
38525		Biopsy/removal, lymph nodes	2	446
38530		Biopsy/removal, lymph nodes	2	446
38542		Explore deep node(s), neck	2	446
38550		Removal, neck/armpit lesion	3	510
38555		Removal, neck/armpit lesion	4	630
38570	A*	Laparoscopy, lymph node biop	9	1339
38571	A*	Laparoscopy, lymphadenectomy	9	1339
38572	A*	Laparoscopy, lymphadenectomy	9	1339
38700	D	Removal of lymph nodes, neck	2	446
38740		Remove armpit lymph nodes	2	446
38745		Remove armpit lymph nodes	4	630
38760		Remove groin lymph nodes	2	446
38790	D	Inject for lymphatic x-ray	1	333
40500		Partial excision of lip	2	446
40510		Partial excision of lip	2	446
40520		Partial excision of lip	2	446
40525		Reconstruct lip with flap	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
40527		Reconstruct lip with flap	2	446
40530		Partial removal of lip	2	446
40650		Repair lip	3	510
40652		Repair lip	3	510
40654		Repair lip	3	510
40700	A	Repair cleft lip/nasal	7	995
40701	A	Repair cleft lip/nasal	7	995
40720	A	Repair cleft lip/nasal	7	995
40761	A	Repair cleft lip/nasal	3	510
40801		Drainage of mouth lesion	2	446
40805	D	Removal, foreign body, mouth	2	446
40806	D	Incision of lip fold	1	333
40814		Excise/repair mouth lesion	2	446
40816		Excision of mouth lesion	2	446
40818		Excise oral mucosa for graft	1	333
40819		Excise lip or cheek fold	1	333
40820	D	Treatment of mouth lesion	1	333
40831		Repair mouth laceration	1	333
40840		Reconstruction of mouth	2	446
40842		Reconstruction of mouth	3	510
40843		Reconstruction of mouth	3	510
40844		Reconstruction of mouth	5	717
40845		Reconstruction of mouth	5	717
41000	D	Drainage of mouth lesion	1	333
41005		Drainage of mouth lesion	1	333
41006		Drainage of mouth lesion	1	333
41007		Drainage of mouth lesion	1	333
41008		Drainage of mouth lesion	1	333
41009		Drainage of mouth lesion	1	333
41010		Incision of tongue fold	1	333
41015		Drainage of mouth lesion	1	333
41016		Drainage of mouth lesion	1	333
41017		Drainage of mouth lesion	1	333
41018		Drainage of mouth lesion	1	333
41105	D	Biopsy of tongue	2	446
41110	D	Excision of tongue lesion	1	333
41112		Excision of tongue lesion	2	446
41113		Excision of tongue lesion	2	446
41114		Excision of tongue lesion	2	446
41115	D	Excision of tongue fold	1	333
41116		Excision of mouth lesion	1	333
41120		Partial removal of tongue	5	717
41250		Repair tongue laceration	2	446
41251		Repair tongue laceration	2	446
41252		Repair tongue laceration	2	446
41500		Fixation of tongue	1	333
41510		Tongue to lip surgery	1	333
41520		Reconstruction, tongue fold	2	446
41800		Drainage of gum lesion	1	333
41805	D	Removal foreign body, gum	1	333
41806	D	Removal foreign body, jawbone	1	333
41827		Excision of gum lesion	2	446
42000		Drainage mouth roof lesion	2	446
42104	D	Excision lesion, mouth roof	2	446
42106	D	Excision lesion, mouth roof	2	446
42107		Excision lesion, mouth roof	2	446
42120		Remove palate/lesion	4	630
42140		Excision of uvula	2	446
42145		Repair palate, pharynx/uvula	5	717
42160	D	Treatment mouth roof lesion	1	333
42180		Repair palate	1	333
42182		Repair palate	2	446
42200		Reconstruct cleft palate	5	717
42205		Reconstruct cleft palate	5	717
42210		Reconstruct cleft palate	5	717
42215		Reconstruct cleft palate	7	995
42220		Reconstruct cleft palate	5	717
42225	D	Reconstruct cleft palate	5	717
42226	A	Lengthening of palate	5	717
42235		Repair palate	5	717
42260		Repair nose to lip fistula	4	630
42281	D	Insertion, palate prosthesis	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
42300		Drainage of salivary gland	1	333
42305		Drainage of salivary gland	2	446
42310		Drainage of salivary gland	1	333
42320		Drainage of salivary gland	1	333
42325		Create salivary cyst drain	2	446
42335	D	Removal of salivary stone	3	510
42340		Removal of salivary stone	2	446
42405		Biopsy of salivary gland	2	446
42408		Excision of salivary cyst	3	510
42409		Drainage of salivary cyst	3	510
42410		Excise parotid gland/lesion	3	510
42415	A	Excise parotid gland/lesion	3	510
42420		Excise parotid gland/lesion	7	995
42425		Excise parotid gland/lesion	7	995
42440		Excise submaxillary gland	3	510
42450		Excise sublingual gland	2	446
42500		Repair salivary duct	3	510
42505		Repair salivary duct	4	630
42507		Parotid duct diversion	3	510
42508		Parotid duct diversion	4	630
42509		Parotid duct diversion	4	630
42510		Parotid duct diversion	4	630
42600		Closure of salivary fistula	1	333
42700		Drainage of tonsil abscess	1	333
42720		Drainage of throat abscess	1	333
42725		Drainage of throat abscess	2	446
42802		Biopsy of throat	1	333
42804		Biopsy of upper nose/throat	1	333
42806		Biopsy of upper nose/throat	2	446
42808		Excise pharynx lesion	2	446
42810		Excision of neck cyst	3	510
42815		Excision of neck cyst	5	717
42820	A	Remove tonsils and adenoids	3	510
42821		Remove tonsils and adenoids	5	717
42825	A	Removal of tonsils	4	630
42826		Removal of tonsils	4	630
42830	A	Removal of adenoids	4	630
42831		Removal of adenoids	4	630
42835	A	Removal of adenoids	4	630
42836		Removal of adenoids	4	630
42860		Excision of tonsil tags	3	510
42870		Excision of lingual tonsil	3	510
42890	A	Partial removal of pharynx	7	995
42892	A	Revision of pharyngeal walls	7	995
42900		Repair throat wound	1	333
42950		Reconstruction of throat	2	446
42955		Surgical opening of throat	2	446
42960		Control throat bleeding	1	333
42962		Control throat bleeding	2	446
42972	A	Control nose/throat bleeding	3	510
43200		Esophagus endoscopy	1	333
43201	A*	Esoph scope w/submucous inj	1	333
43202		Esophagus endoscopy, biopsy	1	333
43204		Esophagus endoscopy & inject	1	333
43205	A	Esophagus endoscopy/ligation	1	333
43215		Esophagus endoscopy	1	333
43216		Esophagus endoscopy/lesion	1	333
43217		Esophagus endoscopy	1	333
43219		Esophagus endoscopy	1	333
43220		Esoph endoscopy, dilation	1	333
43226		Esoph endoscopy, dilation	1	333
43227		Esoph endoscopy, repair	2	446
43228		Esoph endoscopy, ablation	2	446
43231	A*	Esoph endoscopy w/us exam	2	446
43232	A*	Esoph endoscopy w/us fn bx	2	446
43234		Upper GI endoscopy, exam	1	333
43235		Uppr gi endoscopy, diagnosis	1	333
43236	A*	Uppr gi scope w/submuc inj	2	446
43239		Upper GI endoscopy, biopsy	2	446
43240	A*	Esoph endoscope w/drain cyst	2	446
43241		Upper GI endoscopy with tube	2	446
43242	A*	Uppr gi endoscopy w/us fn bx	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
43243		Upper gi endoscopy & inject	2	446
43244	A	Upper GI endoscopy/ligation	2	446
43245		Operative upper GI endoscopy	2	446
43246		Place gastrostomy tube	2	446
43247		Operative upper GI endoscopy	2	446
43248		Uppr gi endoscopy/guide wire	2	446
43249		Esoph endoscopy, dilation	2	446
43250		Upper GI endoscopy/tumor	2	446
43251		Operative upper GI endoscopy	2	446
43255		Operative upper GI endoscopy	2	446
43256	A*	Uppr gi endoscopy w stent	3	510
43258		Operative upper GI endoscopy	3	510
43259		Endoscopic ultrasound exam	3	510
43260		Endo cholangiopancreatograph	2	446
43261		Endo cholangiopancreatograph	2	446
43262		Endo cholangiopancreatograph	2	446
43263		Endo cholangiopancreatograph	2	446
43264		Endo cholangiopancreatograph	2	446
43265		Endo cholangiopancreatograph	2	446
43267		Endo cholangiopancreatograph	2	446
43268		Endo cholangiopancreatograph	2	446
43269		Endo cholangiopancreatograph	2	446
43271		Endo cholangiopancreatograph	2	446
43272		Endo cholangiopancreatograph	2	446
43450		Dilate esophagus	1	333
43453		Dilate esophagus	1	333
43456		Dilate esophagus	2	446
43458		Dilate esophagus	2	446
43600		Biopsy of stomach	1	333
43653	A*	Laparoscopy, gastrostomy	9	1339
43750		Place gastrostomy tube	2	446
43760		Change gastrostomy tube	1	333
43870		Repair stomach opening	1	333
44100		Biopsy of bowel	1	333
44312		Revision of ileostomy	1	333
44340		Revision of colostomy	3	510
44345	D	Revision of colostomy	4	630
44346	D	Revision of colostomy	4	630
44360		Small bowel endoscopy	2	446
44361		Small bowel endoscopy/biopsy	2	446
44363		Small bowel endoscopy	2	446
44364		Small bowel endoscopy	2	446
44365		Small bowel endoscopy	2	446
44366		Small bowel endoscopy	2	446
44369		Small bowel endoscopy	2	446
44370	A*	Small bowel endoscopy/stent	9	1339
44372		Small bowel endoscopy	2	446
44373		Small bowel endoscopy	2	446
44376	A	Small bowel endoscopy	2	446
44377	A	Small bowel endoscopy/biopsy	2	446
44378	A	Small bowel endoscopy	2	446
44379	A*	S bowel endoscope w/stent	9	1339
44380		Small bowel endoscopy	1	333
44382		Small bowel endoscopy	1	333
44383	A*	Ileoscopy w/stent	9	1339
44385		Endoscopy of bowel pouch	1	333
44386		Endoscopy, bowel pouch/biop	1	333
44388		Colon endoscopy	1	333
44389		Colonoscopy with biopsy	1	333
44390		Colonoscopy for foreign body	1	333
44391		Colonoscopy for bleeding	1	333
44392		Colonoscopy & polypectomy	1	333
44393		Colonoscopy, lesion removal	1	333
44394		Colonoscopy w/snare	1	333
45000		Drainage of pelvic abscess	1	333
45005		Drainage of rectal abscess	2	446
45020		Drainage of rectal abscess	2	446
45100		Biopsy of rectum	1	333
45108		Removal of anorectal lesion	2	446
45150		Excision of rectal stricture	2	446
45160	A	Excision of rectal lesion	2	446
45170		Excision of rectal lesion	2	446

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
45190	A	Destruction, rectal tumor	9	1339
45305		Protosigmoidoscopy w/bx	1	333
45307		Protosigmoidoscopy fb	1	333
45308		Protosigmoidoscopy removal	1	333
45309		Protosigmoidoscopy removal	1	333
45315		Protosigmoidoscopy removal	1	333
45317		Protosigmoidoscopy bleed	1	333
45320		Protosigmoidoscopy ablate	1	333
45321		Protosigmoidoscopy volvul	1	333
45331		Sigmoidoscopy and biopsy	1	333
45332		Sigmoidoscopy w/fb removal	1	333
45333		Sigmoidoscopy & polypectomy	1	333
45334		Sigmoidoscopy for bleeding	1	333
45335	A*	Sigmoidoscope w/submub inj	1	333
45337		Sigmoidoscopy & decompress	1	333
45338		Sigmoidoscpy w/tumr remove	1	333
45339		Sigmoidoscopy w/ablate tumr	1	333
45340	A*	Sig w/balloon dilation	1	333
45355		Surgical colonoscopy	2	446
45378		Diagnostic colonoscopy	2	446
45379		Colonoscopy w/fb removal	2	446
45380		Colonoscopy and biopsy	2	446
45381	A*	Colonoscope, submucous inj	2	446
45382		Colonoscopy/control bleeding	2	446
45383		Lesion removal colonoscopy	2	446
45384		Lesion remove colonoscopy	2	446
45385		Lesion removal colonoscopy	2	446
45386	A*	Colonoscope dilate stricture	2	446
45500		Repair of rectum	2	446
45505		Repair of rectum	2	446
45560		Repair of rectocele	1	333
45900		Reduction of rectal prolapse	1	333
45905		Dilation of anal sphincter	1	333
45910		Dilation of rectal narrowing	1	333
45915		Remove rectal obstruction	3	510
46020		Placement of seton	1	333
46030		Removal of rectal marker	3	510
46040		Incision of rectal abscess	2	446
46045		Incision of rectal abscess	1	333
46050		Incision of anal abscess	2	446
46060		Incision of rectal abscess	3	510
46080		Incision of anal sphincter	2	446
46200		Removal of anal fissure	2	446
46210		Removal of anal crypt	2	446
46211		Removal of anal crypts	1	333
46220		Removal of anal tab	3	510
46250		Hemorrhoidectomy	3	510
46255		Hemorrhoidectomy	3	510
46257		Remove hemorrhoids & fissure	3	510
46258		Remove hemorrhoids & fistula	3	510
46260		Hemorrhoidectomy	4	630
46261		Remove hemorrhoids & fissure	4	630
46262		Remove hemorrhoids & fistula	3	510
46270		Removal of anal fistula	3	510
46275		Removal of anal fistula	4	630
46280		Removal of anal fistula	1	333
46285		Removal of anal fistula	4	630
46288	A	Repair anal fistula	1	333
46608		Anoscopy/remove for body	1	333
46610		Anoscopy/remove lesion	1	333
46611		Anoscopy	1	333
46612		Anoscopy/remove lesions	2	446
46615	A	Anoscopy	3	510
46700		Repair of anal stricture	3	510
46750		Repair of anal sphincter	3	510
46753		Reconstruction of anus	2	446
46754		Removal of suture from anus	2	446
46760		Repair of anal sphincter	3	510
46761	A	Repair of anal sphincter	7	995
46762	A	Implant artificial sphincter	1	333
46917	A	Laser surgery, anal lesions	1	333
46922		Excision of anal lesion(s)		

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
46924		Destruction, anal lesion(s)	1	333
46937		Cryotherapy of rectal lesion	2	446
46938		Cryotherapy of rectal lesion	2	446
47000		Needle biopsy of liver	1	333
47510		Insert catheter, bile duct	2	446
47511	A	Insert bile duct drain	9	1339
47525		Change bile duct catheter	1	333
47530		Revise/reinsert bile tube	1	333
47552		Biliary endoscopy thru skin	2	446
47553		Biliary endoscopy thru skin	3	510
47554		Biliary endoscopy thru skin	3	510
47555		Biliary endoscopy thru skin	3	510
47556	A	Biliary endoscopy thru skin	9	1339
47560		Laparoscopy w/cholangio	3	510
47561		Laparo w/cholangio/biopsy	3	510
47630		Remove bile duct stone	3	510
48102		Needle biopsy, pancreas	1	333
49000	D	Exploration of abdomen	4	630
49080		Puncture, peritoneal cavity	2	446
49081		Removal of abdominal fluid	2	446
49085		Remove abdomen foreign body	2	446
49180		Biopsy, abdominal mass	1	333
49250		Excision of umbilicus	4	630
49320		Diag laparo separate proc	3	510
49321		Laparoscopy, biopsy	4	630
49322		Laparoscopy, aspiration	4	630
49400	D	Air injection into abdomen	1	333
49420		Insert abdominal drain	1	333
49421		Insert abdominal drain	1	333
49422	A	Remove perm cannula/catheter	1	333
49425	D	Insert abdomen-venous drain	2	446
49426		Revise abdomen-venous shunt	2	446
49495	A	Rpr ing hernia baby, reduc	4	630
49496	A	Rpr ing hernia baby, blocked	4	630
49500	A	Rpr ing hernia, init, reduce	4	630
49501	A	Rpr ing hernia, init blocked	9	1339
49505		Rpr i/hern init reduc>5 yr	4	630
49507	A	Rpr i/hern init block>5 yr	9	1339
49520		Rerepair ing hernia, reduce	7	995
49521	A	Rerepair ing hernia, blocked	9	1339
49525		Repair ing hernia, sliding	4	630
49540		Repair lumbar hernia	2	446
49550		Rpr fem hernia, init, reduce	5	717
49553	A	Rpr fem hernia, init blocked	9	1339
49555		Rerepair fem hernia, reduce	5	717
49557	A	Rerepair fem hernia, blocked	9	1339
49560		Rpr ventral hern init, reduc	4	630
49561	A	Rpr ventral hern init, block	9	1339
49565		Rerepair ventrl hern, reduce	4	630
49566	A	Rerepair ventrl hern, block	9	1339
49568	A	Hernia repair w/mesh	7	995
49570		Rpr epigastric hern, reduce	4	630
49572	A	Rpr epigastric hern, blocked	9	1339
49580	A	Rpr umbil hern, reduc <5 yr	4	630
49582	A	Rpr umbil hern, block < 5 yr	9	1339
49585		Rpr umbil hern, reduc > 5 yr	4	630
49587	A	Rpr umbil hern, block > 5 yr	9	1339
49590		Repair spigelian hernia	3	510
49600	A	Repair umbilical lesion	4	630
49650		Laparo hernia repair initial	4	630
49651		Laparo hernia repair recur	7	995
50020	D	Renal abscess, open drain	2	446
50040	D	Drainage of kidney	3	510
50200		Biopsy of kidney	1	333
50390		Drainage of kidney lesion	1	333
50392		Insert kidney drain	1	333
50393		Insert ureteral tube	1	333
50395		Create passage to kidney	1	333
50396		Measure kidney pressure	1	333
50398		Change kidney tube	1	333
50520	D	Close kidney-skin fistula	1	333
50551		Kidney endoscopy	1	333

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
50553		Kidney endoscopy	1	333
50555		Kidney endoscopy & biopsy	1	333
50557		Kidney endoscopy & treatment	1	333
50559		Renal endoscopy/radiotracer	1	333
50561		Kidney endoscopy & treatment	1	333
50570	D	Kidney endoscopy	1	333
50572	D	Kidney endoscopy	1	333
50574	D	Kidney endoscopy & biopsy	1	333
50576	D	Kidney endoscopy & treatment	1	333
50578	D	Renal endoscopy/radiotracer	1	333
50580	D	Kidney endoscopy & treatment	1	333
50684	D	Injection for ureter x-ray	1	333
50688		Change of ureter tube	1	333
50690	D	Injection for ureter x-ray	1	333
50947	A*	Laparo new ureter/bladder	9	1339
50948	A*	Laparo new ureter/bladder	9	1339
50951		Endoscopy of ureter	1	333
50953		Endoscopy of ureter	1	333
50955		Ureter endoscopy & biopsy	1	333
50957		Ureter endoscopy & treatment	1	333
50959		Ureter endoscopy & tracer	1	333
50961		Ureter endoscopy & treatment	1	333
50970		Ureter endoscopy	1	333
50972		Ureter endoscopy & catheter	1	333
50974		Ureter endoscopy & biopsy	1	333
50976		Ureter endoscopy & treatment	1	333
50978		Ureter endoscopy & tracer	1	333
50980		Ureter endoscopy & treatment	1	333
51005	D	Drainage of bladder	1	333
51010		Drainage of bladder	1	333
51020		Incise & treat bladder	4	630
51030		Incise & treat bladder	4	630
51040		Incise & drain bladder	4	630
51045		Incise bladder/drain ureter	4	630
51050	A	Removal of bladder stone	4	630
51065	A	Remove ureter calculus	4	630
51080	A	Drainage of bladder abscess	1	333
51500		Removal of bladder cyst	4	630
51520	A	Removal of bladder lesion	4	630
51600	D	Injection for bladder x-ray	1	333
51605	D	Preparation for bladder xray	1	333
51610	D	Injection for bladder x-ray	1	333
51710		Change of bladder tube	1	333
51715	A	Endoscopic injection/implant	3	510
51725	D	Simple cystometrogram	1	333
51726		Complex cystometrogram	1	333
51772		Urethra pressure profile	1	333
51785		Anal/urinary muscle study	1	333
51865	D	Repair of bladder wound	4	630
51880		Repair of bladder opening	1	333
51900	D	Repair bladder/vagina lesion	4	630
51920	D	Close bladder-uterus fistula	3	510
52000		Cystoscopy	1	333
52001		Cystoscopy, removal of clots	2	446
52005		Cystoscopy & ureter catheter	2	446
52007		Cystoscopy and biopsy	2	446
52010		Cystoscopy & duct catheter	2	446
52204		Cystoscopy	2	446
52214		Cystoscopy and treatment	2	446
52224		Cystoscopy and treatment	2	446
52234		Cystoscopy and treatment	3	510
52235		Cystoscopy and treatment	3	510
52240		Cystoscopy and radiotracer	4	630
52250		Cystoscopy and treatment	2	446
52260		Cystoscopy & revise urethra	2	446
52270		Cystoscopy & revise urethra	2	446
52275		Cystoscopy and treatment	3	510
52276		Cystoscopy and treatment	2	446
52277		Cystoscopy and treatment	2	446
52281		Cystoscopy, implant stent	9	1339
52282	A	Cystoscopy and treatment	2	446
52283				

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
52285		Cystoscopy and treatment	2	446
52290		Cystoscopy and treatment	2	446
52300		Cystoscopy and treatment	2	446
52305		Cystoscopy and treatment	2	446
52310		Cystoscopy and treatment	2	446
52315		Cystoscopy and treatment	2	446
52317		Remove bladder stone	1	333
52318		Remove bladder stone	2	446
52320		Cystoscopy and treatment	5	717
52325		Cystoscopy, stone removal	4	630
52327	A	Cystoscopy, inject material	2	446
52330		Cystoscopy and treatment	2	446
52332		Cystoscopy and treatment	2	446
52334		Create passage to kidney	3	510
52341	A*	Cysto w/ureter stricture tx	3	510
52342	A*	Cysto w/up stricture tx	3	510
52343	A*	Cysto w/renal stricture tx	3	510
52344	A*	Cysto/uretero, stone remove	3	510
52345	A*	Cysto/uretero w/up stricture	3	510
52346	A*	Cystouretero w/renal strict	3	510
52351		Cystouretro & or pyeloscope	3	510
52352		Cystouretro w/stone remove	4	630
52353		Cystouretero w/lithotripsy	4	630
52354		Cystouretero w/biopsy	4	630
52355	A	Cystouretero w/excise tumor	4	630
52400		Cystouretero w/congen repr	3	510
52450		Incision of prostate	3	510
52500		Revision of bladder neck	3	510
52510	A	Dilation prostatic urethra	3	510
52601		Prostatectomy (TURP)	4	630
52606		Control postop bleeding	1	333
52612		Prostatectomy, first stage	2	446
52614		Prostatectomy, second stage	1	333
52620		Remove residual prostate	1	333
52630		Remove prostate regrowth	2	446
52640		Relieve bladder contracture	2	446
52647	A	Laser surgery of prostate	9	1339
52648	A	Laser surgery of prostate	9	1339
52700		Drainage of prostate abscess	2	446
53000		Incision of urethra	1	333
53010		Incision of urethra	1	333
53020		Incision of urethra	1	333
53040		Drainage of urethra abscess	2	446
53080	A	Drainage of urinary leakage	3	510
53200		Biopsy of urethra	1	333
53210		Removal of urethra	5	717
53215		Removal of urethra	5	717
53220		Treatment of urethra lesion	2	446
53230		Removal of urethra lesion	2	446
53235		Removal of urethra lesion	3	510
53240		Surgery for urethra pouch	2	446
53250		Removal of urethra gland	2	446
53260		Treatment of urethra lesion	2	446
53265		Treatment of urethra lesion	2	446
53270	A	Removal of urethra gland	2	446
53275		Repair of urethra defect	2	446
53400		Revise urethra, stage 1	3	510
53405		Revise urethra, stage 2	2	446
53410		Reconstruction of urethra	2	446
53420		Reconstruct urethra, stage 1	3	510
53425		Reconstruct urethra, stage 2	2	446
53430		Reconstruction of urethra	2	446
53431		Reconstruct urethra/bladder	2	446
53440		Correct bladder function	2	446
53442		Remove perineal prosthesis	1	333
53444		Insert tandem cuff	2	446
53445		Insert uro/ves nck sphincter	1	333
53446		Remove uro sphincter	1	333
53447		Remove/replace ur sphincter	1	333
53449		Repair uro sphincter	1	333
53450		Revision of urethra	1	333
53460		Revision of urethra	1	333

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
53502		Repair of urethra injury	2	446
53505		Repair of urethra injury	2	446
53510		Repair of urethra injury	2	446
53515		Repair of urethra injury	2	446
53520		Repair of urethra defect	2	446
53605		Dilate urethra stricture	2	446
53665		Dilation of urethra	1	333
53850	A	Prostatic microwave thermotx	9	1339
54000	A	Slitting of prepuce	2	446
54001		Slitting of prepuce	2	446
54015		Drain penis lesion	4	630
54057		Laser surg, penis lesion(s)	1	333
54060		Excision of penis lesion(s)	1	333
54065		Destruction, penis lesion(s)	1	333
54100		Biopsy of penis	1	333
54105		Biopsy of penis	1	333
54110		Treatment of penis lesion	2	446
54111	A	Treat penis lesion, graft	2	446
54112	A	Treat penis lesion, graft	2	446
54115		Treatment of penis lesion	1	333
54120		Partial removal of penis	2	446
54125	D	Removal of penis	2	446
54150	A	Circumcision	1	333
54152		Circumcision	1	333
54160	A	Circumcision	2	446
54161		Circumcision	2	446
54162		Lysis penil circumcis lesion	2	446
54163		Repair of circumcision	2	446
54164		Frenulotomy of penis	2	446
54205		Treatment of penis lesion	4	630
54220		Treatment of penis lesion	1	333
54300		Revision of penis	3	510
54304	A	Revision of penis	3	510
54308	A	Reconstruction of urethra	3	510
54312	A	Reconstruction of urethra	3	510
54316	A	Reconstruction of urethra	3	510
54318	A	Reconstruction of urethra	3	510
54322	A	Reconstruction of urethra	3	510
54324	A	Reconstruction of urethra	3	510
54326	A	Reconstruction of urethra	3	510
54328	A	Revise penis/urethra	3	510
54340	A	Secondary urethral surgery	3	510
54344	A	Secondary urethral surgery	3	510
54348	A	Secondary urethral surgery	3	510
54352	A	Reconstruct urethra/penis	3	510
54360		Penis plastic surgery	3	510
54380	A	Repair penis	3	510
54385	A	Repair penis	3	510
54400	A	Insert semi-rigid prosthesis	3	510
54401	A	Insert self-contd prosthesis	3	510
54405	A	Insert multi-comp penis pros	3	510
54406	A	Remove multi-comp penis pros	3	510
54408	A	Repair multi-comp penis pros	3	510
54410	A	Remove/replace penis prosth	3	510
54415	A	Remove self-contd penis pros	3	510
54416	A	Remv/repl penis contain pros	3	510
54420		Revision of penis	4	630
54435		Revision of penis	4	630
54440		Repair of penis	4	630
54450		Preputial stretching	1	333
54500		Biopsy of testis	1	333
54505		Biopsy of testis	1	333
54512		Excise lesion testis	7	995
54520		Removal of testis	3	510
54522	A	Orchiectomy, partial	3	510
54530		Removal of testis	4	630
54550		Exploration for testis	4	630
54600		Reduce testis torsion	4	630
54620		Suspension of testis	3	510
54640		Suspension of testis	4	630
54660		Revision of testis	2	446
54670		Repair testis injury	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
54680		Relocation of testis(es)	3	510
54690	A*	Laparoscopy, orchiectomy	9	1339
54700		Drainage of scrotum	2	446
54800		Biopsy of epididymis	1	333
54820		Exploration of epididymis	1	333
54830		Remove epididymis lesion	3	510
54840		Remove epididymis lesion	4	630
54860		Removal of epididymis	3	510
54861		Removal of epididymis	4	630
54900		Fusion of spermatic ducts	4	630
54901		Fusion of spermatic ducts	4	630
55040		Removal of hydrocele	3	510
55041		Removal of hydroceles	5	717
55060		Repair of hydrocele	4	630
55100		Drainage of scrotum abscess	1	333
55110		Explore scrotum	2	446
55120		Removal of scrotum lesion	2	446
55150		Removal of scrotum	1	333
55175		Revision of scrotum	1	333
55180		Revision of scrotum	2	446
55200		Incision of sperm duct	2	446
55250	A	Removal of sperm duct(s)	2	446
55400		Repair of sperm duct	1	333
55500		Removal of hydrocele	3	510
55520		Removal of sperm cord lesion	4	630
55530		Revise spermatic cord veins	4	630
55535		Revise spermatic cord veins	4	630
55540		Revise hernia & sperm veins	5	717
55550	A	Laparo ligate spermatic vein	9	1339
55600	D	Incise sperm duct pouch	1	333
55605	D	Incise sperm duct pouch	1	333
55650	D	Remove sperm duct pouch	1	333
55680		Remove sperm pouch lesion	1	333
55700		Biopsy of prostate	2	446
55705		Biopsy of prostate	2	446
55720		Drainage of prostate abscess	1	333
55725	A	Drainage of prostate abscess	2	446
55859	A	Percut/needle insert, pros	9	1339
56405	D	I & D of vulva/perineum	2	446
56440		Surgery for vulva lesion	2	446
56441		Lysis of labial lesion(s)	1	333
56515		Destroy vulva lesion/s compl	3	510
56605	D	Biopsy of vulva/perineum	1	333
56620		Partial removal of vulva	5	717
56625		Complete removal of vulva	7	995
56700		Partial removal of hymen	1	333
56720		Incision of hymen	1	333
56740		Remove vagina gland lesion	3	510
56800		Repair of vagina	3	510
56810		Repair of perineum	5	717
57000		Exploration of vagina	1	333
57010		Drainage of pelvic abscess	2	446
57020		Drainage of pelvic fluid	2	446
57023	A*	I & d vag hematoma, non-ob	1	333
57065		Destroy vag lesions, complex	1	333
57105		Biopsy of vagina	2	446
57130		Remove vagina lesion	2	446
57135		Remove vagina lesion	2	446
57180		Treat vaginal bleeding	1	333
57200		Repair of vagina	1	333
57210		Repair vagina/perineum	2	446
57220		Revision of urethra	3	510
57230		Repair of urethral lesion	3	510
57240		Repair bladder & vagina	5	717
57250		Repair rectum & vagina	5	717
57260		Repair of vagina	5	717
57265		Extensive repair of vagina	7	995
57268		Repair of bowel bulge	3	510
57289	A	Repair bladder & vagina	5	717
57291	A	Construction of vagina	5	717
57300		Repair rectum-vagina fistula	3	510
57310	D	Repair urethrovaginal lesion	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
57311	D	Repair urethrovaginal lesion	4	630
57320	D	Repair bladder-vagina lesion	3	510
57400		Dilation of vagina	2	446
57410		Pelvic examination	2	446
57415	A	Remove vaginal foreign body	2	446
57513		Laser surgery of cervix	2	446
57520		Conization of cervix	2	446
57522		Conization of cervix	2	446
57530		Removal of cervix	3	510
57550		Removal of residual cervix	3	510
57556	A	Remove cervix, repair bowel	5	717
57700		Revision of cervix	1	333
57720		Revision of cervix	3	510
57800	D	Dilation of cervical canal	1	333
57820		D & c of residual cervix	3	510
58120		Dilation and curettage	2	446
58145		Removal of uterus lesion	5	717
58350	A	Reopen fallopian tube	3	510
58353		Endometr ablate, thermal	4	630
58545	A	Laparoscopic myomectomy	9	1339
58546	A*	Laparo-myomectomy, complex	9	1339
58550	A*	Laparo-asst vag hysterectomy	9	1339
58551	D	Laparoscopy, remove myoma	5	717
58555		Hysteroscopy, dx, sep proc	1	333
58558		Hysteroscopy, biopsy	3	510
58559		Hysteroscopy, lysis	2	446
58560	A*	Hysteroscopy, resect septum	3	510
58561		Hysteroscopy, remove myoma	3	510
58562	A*	Hysteroscopy, remove fb	3	510
58563		Hysteroscopy, ablation	4	630
58660		Laparoscopy, lysis	5	717
58661		Laparoscopy, remove adnexa	5	717
58662		Laparoscopy, excise lesions	5	717
58670		Laparoscopy, tubal cautery	3	510
58671		Laparoscopy, tubal block	3	510
58672		Laparoscopy, fimbrioplasty	5	717
58673		Laparoscopy, salpingostomy	5	717
58800		Drainage of ovarian cyst(s)	3	510
58820		Drain ovary abscess, open	3	510
58900		Biopsy of ovary(s)	3	510
59160	A	D & c after delivery	3	510
59320	A	Revision of cervix	1	333
59812	A	Treatment of miscarriage	5	717
59820	A	Care of miscarriage	5	717
59821	A	Treatment of miscarriage	5	717
59840	A	Abortion	5	717
59841	A	Abortion	5	717
59870	A	Evacuate mole of uterus	5	717
59871	A	Remove cerclage suture	5	717
60000		Drain thyroid/tongue cyst	1	333
60200		Remove thyroid lesion	2	446
60220	D	Partial removal of thyroid	2	446
60225	D	Partial removal of thyroid	3	510
60280		Remove thyroid duct lesion	4	630
60281		Remove thyroid duct lesion	4	630
61020		Remove brain cavity fluid	1	333
61026		Injection into brain canal	1	333
61050		Remove brain canal fluid	1	333
61055		Injection into brain canal	1	333
61070		Brain canal shunt procedure	1	333
61215		Insert brain-fluid device	3	510
61790		Treat trigeminal nerve	3	510
61791		Treat trigeminal tract	3	510
61885		Implant neurostim one array	2	446
61886	A*	Implant neurostim arrays	3	510
61888		Revise/remove neuroreceiver	1	333
62194		Replace/irrigate catheter	1	333
62225		Replace/irrigate catheter	1	333
62230		Replace/revise brain shunt	2	446
62256	D	Remove brain cavity shunt	2	446
62263		Lysis epidural adhesions	1	333
62268		Drain spinal cord cyst	1	333

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
62269		Needle biopsy, spinal cord	1	333
62270		Spinal fluid tap, diagnostic	1	333
62272		Drain cerebro spinal fluid	1	333
62273		Treat epidural spine lesion	1	333
62280		Treat spinal cord lesion	1	333
62281	A	Treat spinal cord lesion	1	333
62282		Treat spinal canal lesion	1	333
62287	A	Percutaneous diskectomy	9	1339
62294		Injection into spinal artery	3	510
62310		Inject spine c/t	1	333
62311		Inject spine l/s (cd)	1	333
62318		Inject spine w/cath, c/t	1	333
62319		Inject spine w/cath l/s (cd)	1	333
62350		Implant spinal canal cath	2	446
62351	D	Implant spinal canal cath	2	446
62355	A	Remove spinal canal catheter	2	446
62360		Insert spine infusion device	2	446
62361		Implant spine infusion pump	2	446
62362		Implant spine infusion pump	2	446
62365		Remove spine infusion device	2	446
62367	D	Analyze spine infusion pump	2	446
62368	D	Analyze spine infusion pump	2	446
63600		Remove spinal cord lesion	2	446
63610		Stimulation of spinal cord	1	333
63650		Implant neuroelectrodes	2	446
63660		Revise/remove neuroelectrode	1	333
63685		Implant neuroreceiver	2	446
63688		Revise/remove neuroreceiver	1	333
63744		Revision of spinal shunt	3	510
63746		Removal of spinal shunt	2	446
64410		Injection for nerve block	1	333
64415		Injection for nerve block	1	333
64417		Injection for nerve block	1	333
64420		Injection for nerve block	1	333
64421		Injection for nerve block	1	333
64430		Injection for nerve block	1	333
64470		Inj paravertebral c/t	1	333
64472		Inj paravertebral c/t add-on	1	333
64475		Inj paravertebral l/s	1	333
64476		Inj paravertebral l/s add-on	1	333
64479		Inj foramen epidural c/t	1	333
64480		Inj foramen epidural add-on	1	333
64483		Inj foramen epidural l/s	1	333
64484		Inj foramen epidural add-on	1	333
64510		Injection for nerve block	1	333
64520		Injection for nerve block	1	333
64530		Injection for nerve block	1	333
64553	A	Implant neuroelectrodes	1	333
64573	A	Implant neuroelectrodes	1	333
64575		Implant neuroelectrodes	1	333
64577	A	Implant neuroelectrodes	1	333
64580	A	Implant neuroelectrodes	1	333
64585	A	Revise/remove neuroelectrode	1	333
64590		Implant neuroreceiver	2	446
64595		Revise/remove neuroreceiver	1	333
64600		Injection treatment of nerve	1	333
64605		Injection treatment of nerve	1	333
64610		Injection treatment of nerve	1	333
64620		Injection treatment of nerve	1	333
64622		Destr paravertebrl nerve l/s	1	333
64623		Destr paravertebral n add-on	1	333
64626		Destr paravertebrl nerve c/t	1	333
64627		Destr paravertebral n add-on	1	333
64630		Injection treatment of nerve	2	446
64680		Injection treatment of nerve	2	446
64702		Revise finger/toe nerve	1	333
64704		Revise hand/foot nerve	1	333
64708		Revise arm/leg nerve	2	446
64712		Revision of sciatic nerve	2	446
64713		Revision of arm nerve(s)	2	446
64714		Revise low back nerve(s)	2	446
64716		Revision of cranial nerve	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
64718		Revise ulnar nerve at elbow	2	446
64719		Revise ulnar nerve at wrist	2	446
64721		Carpal tunnel surgery	2	446
64722		Relieve pressure on nerve(s)	1	333
64726		Release foot/toe nerve	1	333
64727		Internal nerve revision	1	333
64732		Incision of brow nerve	2	446
64734		Incision of cheek nerve	2	446
64736		Incision of chin nerve	2	446
64738		Incision of jaw nerve	2	446
64740		Incision of tongue nerve	2	446
64742		Incision of facial nerve	2	446
64744		Incise nerve, back of head	2	446
64746		Incise diaphragm nerve	2	446
64771		Sever cranial nerve	2	446
64772		Incision of spinal nerve	2	446
64774		Remove skin nerve lesion	2	446
64776		Remove digit nerve lesion	3	510
64778		Digit nerve surgery add-on	2	446
64782		Remove limb nerve lesion	3	510
64783		Limb nerve surgery add-on	2	446
64784		Remove nerve lesion	3	510
64786		Remove sciatic nerve lesion	3	510
64787		Implant nerve end	2	446
64788		Remove skin nerve lesion	3	510
64790		Removal of nerve lesion	3	510
64792		Removal of nerve lesion	3	510
64795		Biopsy of nerve	2	446
64802		Remove sympathetic nerves	2	446
64821	A*	Remove sympathetic nerves	4	630
64831		Repair of digit nerve	4	630
64832		Repair nerve add-on	1	333
64834		Repair of hand or foot nerve	2	446
64835		Repair of hand or foot nerve	3	510
64836		Repair of hand or foot nerve	3	510
64837		Repair nerve add-on	1	333
64840		Repair of leg nerve	2	446
64856		Repair/transpose nerve	2	446
64857		Repair arm/leg nerve	2	446
64858		Repair sciatic nerve	2	446
64859		Nerve surgery	1	333
64861		Repair of arm nerves	3	510
64862		Repair of low back nerves	3	510
64864		Repair of facial nerve	3	510
64865		Repair of facial nerve	4	630
64870		Fusion of facial/other nerve	4	630
64872		Subsequent repair of nerve	2	446
64874		Repair & revise nerve add-on	3	510
64876		Repair nerve/shorten bone	3	510
64885	A	Nerve graft, head or neck	2	446
64886	A	Nerve graft, head or neck	2	446
64890		Nerve graft, hand or foot	2	446
64891		Nerve graft, hand or foot	2	446
64892		Nerve graft, arm or leg	2	446
64893		Nerve graft, arm or leg	2	446
64895		Nerve graft, hand or foot	3	510
64896		Nerve graft, hand or foot	3	510
64897		Nerve graft, arm or leg	3	510
64898		Nerve graft, arm or leg	3	510
64901		Nerve graft add-on	2	446
64902		Nerve graft add-on	2	446
64905		Nerve pedicle transfer	2	446
64907		Nerve pedicle transfer	1	333
65091		Revise eye	3	510
65093		Revise eye with implant	3	510
65101		Removal of eye	3	510
65103		Remove eye/insert implant	3	510
65105		Remove eye/attach implant	4	630
65110		Removal of eye	5	717
65112		Remove eye/revise socket	7	995
65114		Remove eye/revise socket	7	995
65130		Insert ocular implant	3	510

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
65135		Insert ocular implant	2	446
65140		Attach ocular implant	3	510
65150		Revise ocular implant	2	446
65155		Reinsert ocular implant	3	510
65175		Removal of ocular implant	1	333
65235		Remove foreign body from eye	2	446
65260		Remove foreign body from eye	3	510
65265		Remove foreign body from eye	4	630
65270		Repair of eye wound	2	446
65272		Repair of eye wound	2	446
65275		Repair of eye wound	4	630
65280		Repair of eye wound	4	630
65285		Repair of eye wound	4	630
65290		Repair of eye socket wound	3	510
65400		Removal of eye lesion	1	333
65410		Biopsy of cornea	2	446
65420		Removal of eye lesion	2	446
65426		Removal of eye lesion	5	717
65710		Corneal transplant	7	995
65730		Corneal transplant	7	995
65750		Corneal transplant	7	995
65755		Corneal transplant	7	995
65770		Revise cornea with implant	7	995
65772	A	Correction of astigmatism	4	630
65775	A	Correction of astigmatism	4	630
65800		Drainage of eye	1	333
65805		Drainage of eye	1	333
65810		Drainage of eye	3	510
65815		Drainage of eye	2	446
65850		Incision of eye	4	630
65865		Incise inner eye adhesions	1	333
65870		Incise inner eye adhesions	4	630
65875		Incise inner eye adhesions	4	630
65880		Incise inner eye adhesions	4	630
65900		Remove eye lesion	5	717
65920		Remove implant of eye	7	995
65930		Remove blood clot from eye	5	717
66020		Injection treatment of eye	1	333
66030		Injection treatment of eye	1	333
66130		Remove eye lesion	7	995
66150		Glaucoma surgery	4	630
66155		Glaucoma surgery	4	630
66160		Glaucoma surgery	2	446
66165		Glaucoma surgery	4	630
66170		Glaucoma surgery	4	630
66172		Incision of eye	4	630
66180		Implant eye shunt	5	717
66185		Revise eye shunt	2	446
66220		Repair eye lesion	3	510
66225		Repair/graft eye lesion	4	630
66250		Follow-up surgery of eye	2	446
66500		Incision of iris	1	333
66505		Incision of iris	1	333
66600		Remove iris and lesion	3	510
66605		Removal of iris	3	510
66625		Removal of iris	3	510
66630		Removal of iris	3	510
66635		Removal of iris	3	510
66680		Repair iris & ciliary body	3	510
66682		Repair iris & ciliary body	2	446
66700		Destruction, ciliary body	2	446
66710		Destruction, ciliary body	2	446
66720		Destruction, ciliary body	2	446
66740		Destruction, ciliary body	2	446
66821		After cataract laser surgery	2	446
66825	A	Reposition intraocular lens	4	630
66830		Removal of lens lesion	4	630
66840		Removal of lens material	4	630
66850		Removal of lens material	7	995
66852		Removal of lens material	4	630
66920		Extraction of lens	4	630
66930		Extraction of lens	5	717

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
66940		Extraction of lens	5	717
66982		Cataract surgery, complex	8	973
66983		Cataract surg w/iol, 1 stage	8	973
66984		Cataract surg w/iol, i stage	8	973
66985		Insert lens prosthesis	6	826
66986		Exchange lens prosthesis	6	826
67005		Partial removal of eye fluid	4	630
67010		Partial removal of eye fluid	4	630
67015		Release of eye fluid	1	333
67025		Replace eye fluid	1	333
67027	A	Implant eye drug system	4	630
67030		Incise inner eye strands	1	333
67031		Laser surgery, eye strands	2	446
67036		Removal of inner eye fluid	4	630
67038		Strip retinal membrane	5	717
67039		Laser treatment of retina	7	995
67040		Laser treatment of retina	7	995
67107		Repair detached retina	5	717
67108		Repair detached retina	7	995
67112		Rerepair detached retina	7	995
67115		Release encircling material	2	446
67120		Remove eye implant material	2	446
67121		Remove eye implant material	2	446
67141		Treatment of retina	2	446
67218		Treatment of retinal lesion	5	717
67227		Treatment of retinal lesion	1	333
67250		Reinforce eye wall	3	510
67255		Reinforce/graft eye wall	3	510
67311		Revise eye muscle	3	510
67312		Revise two eye muscles	4	630
67314		Revise eye muscle	4	630
67316		Revise two eye muscles	4	630
67318		Revise eye muscle(s)	4	630
67320		Revise eye muscle(s) add-on	4	630
67331		Eye surgery follow-up add-on	4	630
67332		Rerevise eye muscles add-on	4	630
67334	A	Revise eye muscle w/suture	4	630
67335	A	Eye suture during surgery	4	630
67340		Revise eye muscle add-on	1	333
67350		Biopsy eye muscle	3	510
67400		Explore/biopsy eye socket	4	630
67405		Explore/drain eye socket	5	717
67412		Explore/treat eye socket	5	717
67413		Explore/treat eye socket	1	333
67415		Aspiration, orbital contents	5	717
67420		Explore/treat eye socket	5	717
67430		Explore/treat eye socket	5	717
67440		Explore/drain eye socket	5	717
67450		Explore/biopsy eye socket	4	630
67550		Insert eye socket implant	2	446
67560		Revise eye socket implant	1	333
67715		Incision of eyelid fold	2	446
67808		Remove eyelid lesion(s)	2	446
67830		Revise eyelashes	2	446
67835		Revise eyelashes	3	510
67880		Revision of eyelid	3	510
67882		Revision of eyelid	4	630
67900	A	Repair brow defect	5	717
67901		Repair eyelid defect	5	717
67902		Repair eyelid defect	4	630
67903		Repair eyelid defect	4	630
67904		Repair eyelid defect	5	717
67906		Repair eyelid defect	4	630
67908		Repair eyelid defect	4	630
67909		Revise eyelid defect	3	510
67911		Revise eyelid defect	3	510
67914		Repair eyelid defect	4	630
67916		Repair eyelid defect	4	630
67917		Repair eyelid defect	3	510
67921		Repair eyelid defect	4	630
67923		Repair eyelid defect	4	630
67924		Repair eyelid defect		

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
67935		Repair eyelid wound	2	446
67950		Revision of eyelid	2	446
67961		Revision of eyelid	3	510
67966		Revision of eyelid	3	510
67971		Reconstruction of eyelid	3	510
67973		Reconstruction of eyelid	3	510
67974		Reconstruction of eyelid	3	510
67975		Reconstruction of eyelid	3	510
68115	A	Remove eyelid lining lesion	2	446
68130		Remove eyelid lining lesion	2	446
68320		Revise/graft eyelid lining	4	630
68325		Revise/graft eyelid lining	4	630
68326		Revise/graft eyelid lining	4	630
68328		Revise/graft eyelid lining	4	630
68330		Revise eyelid lining	4	630
68335		Revise/graft eyelid lining	4	630
68340		Separate eyelid adhesions	4	630
68360		Revise eyelid lining	2	446
68362		Revise eyelid lining	2	446
68500		Removal of tear gland	3	510
68505		Partial removal, tear gland	3	510
68510		Biopsy of tear gland	1	333
68520		Removal of tear sac	3	510
68525		Biopsy of tear sac	1	333
68540		Remove tear gland lesion	3	510
68550		Remove tear gland lesion	3	510
68700		Repair tear ducts	2	446
68720		Create tear sac drain	4	630
68745		Create tear duct drain	4	630
68750		Create tear duct drain	4	630
68770	A	Close tear system fistula	4	630
68810		Probe nasolacrimal duct	1	333
68811		Probe nasolacrimal duct	2	446
68815		Probe nasolacrimal duct	2	446
69110		Remove external ear, partial	1	333
69120		Removal of external ear	2	446
69140		Remove ear canal lesion(s)	2	446
69145		Remove ear canal lesion(s)	2	446
69150		Extensive ear canal surgery	3	510
69205		Clear outer ear canal	1	333
69300	A	Revise external ear	3	510
69310		Rebuild outer ear canal	3	510
69320		Rebuild outer ear canal	7	995
69421		Incision of eardrum	3	510
69424	D	Remove ventilating tube	1	333
69436		Create eardrum opening	3	510
69440		Exploration of middle ear	3	510
69450		Eardrum revision	1	333
69501		Mastoidectomy	7	995
69502		Mastoidectomy	7	995
69505		Remove mastoid structures	7	995
69511		Extensive mastoid surgery	7	995
69530		Extensive mastoid surgery	7	995
69550		Remove ear lesion	5	717
69552		Remove ear lesion	7	995
69601		Mastoid surgery revision	7	995
69602		Mastoid surgery revision	7	995
69603		Mastoid surgery revision	7	995
69604		Mastoid surgery revision	7	995
69605		Mastoid surgery revision	7	995
69620		Repair of eardrum	2	446
69631		Repair eardrum structures	5	717
69632		Rebuild eardrum structures	5	717
69633		Rebuild eardrum structures	5	717
69635		Repair eardrum structures	7	995
69636		Rebuild eardrum structures	7	995
69637		Rebuild eardrum structures	7	995
69641		Revise middle ear & mastoid	7	995
69642		Revise middle ear & mastoid	7	995
69643		Revise middle ear & mastoid	7	995
69644		Revise middle ear & mastoid	7	995
69645		Revise middle ear & mastoid	7	995

ADDENDUM: LIST OF MEDICARE APPROVED AMBULATORY SURGICAL CENTER PROCEDURES—Continued

HCPCS Code	Status	Short descriptor	Pymt. group	Pymt. amount
69646		Revise middle ear & mastoid	7	995
69650		Release middle ear bone	7	995
69660		Revise middle ear bone	5	717
69661		Revise middle ear bone	5	717
69662		Revise middle ear bone	5	717
69666		Repair middle ear structures	4	630
69667		Repair middle ear structures	4	630
69670		Remove mastoid air cells	3	510
69676		Remove middle ear nerve	3	510
69700		Close mastoid fistula	3	510
69710	D	Implant/replace hearing aid	1	333
69711		Remove/repair hearing aid	9	1339
69714	A*	Implant temple bone w/stimul	9	1339
69715	A*	Temple bne implnt w/stimulat	9	1339
69717	A*	Temple bone implant revision	9	1339
69718	A*	Revise temple bone implant	5	717
69720		Release facial nerve	5	717
69725		Release facial nerve	5	717
69740		Repair facial nerve	5	717
69745		Repair facial nerve	5	717
69801		Incise inner ear	7	995
69802		Incise inner ear	7	995
69805		Explore inner ear	7	995
69806		Explore inner ear	5	717
69820		Establish inner ear window	5	717
69840		Revise inner ear window	7	995
69905		Remove inner ear	7	995
69910		Remove inner ear & mastoid	7	995
69915		Incise inner ear nerve	7	995
69930		Implant cochlear device	2	446
G0105		Colorectal scrn; hi risk ind	2	446
G0121		Colon ca scrn; barium enema	1	333
G0260	A*	Inj for sacroiliac jt anesth		

"A"=Addition. "A*"=For Comment. "D"=Deletion.

Note: CPT codes are copyright 2002 American Medical Association. All Rights Reserved.

[FR Doc. 03–7236 Filed 3–27–03; 8:45 am]

BILLING CODE 4120–01–P

Federal Register

Friday,
March 28, 2003

Part III

The President

Executive Order 13292—Further Amendment to Executive Order 12958, as Amended, Classified National Security Information

Federal Register
Vol. 68, No. 60
Friday, March 28, 2003

Presidential Documents

Title 3—

The President

Executive Order 13292 of March 25, 2003

Further Amendment to Executive Order 12958, as Amended, Classified National Security Information

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to further amend Executive Order 12958, as amended, it is hereby ordered that Executive Order 12958 is amended to read as follows:

"Classified National Security Information

This order prescribes a uniform system for classifying, safeguarding, and declassifying national security information, including information relating to defense against transnational terrorism. Our democratic principles require that the American people be informed of the activities of their Government. Also, our Nation's progress depends on the free flow of information. Nevertheless, throughout our history, the national defense has required that certain information be maintained in confidence in order to protect our citizens, our democratic institutions, our homeland security, and our interactions with foreign nations. Protecting information critical to our Nation's security remains a priority.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

PART 1—ORIGINAL CLASSIFICATION

Sec. 1.1. *Classification Standards.* (a) Information may be originally classified under the terms of this order only if all of the following conditions are met:

(1) an original classification authority is classifying the information;

(2) the information is owned by, produced by or for, or is under the control of the United States Government;

(3) the information falls within one or more of the categories of information listed in section 1.4 of this order; and

(4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

(b) Classified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information.

(c) The unauthorized disclosure of foreign government information is presumed to cause damage to the national security.

Sec. 1.2. *Classification Levels.* (a) Information may be classified at one of the following three levels:

(1) "Top Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.

(2) "Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the

national security that the original classification authority is able to identify or describe.

(3) "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.

(b) Except as otherwise provided by statute, no other terms shall be used to identify United States classified information.

Sec. 1.3. *Classification Authority.* (a) The authority to classify information originally may be exercised only by:

(1) the President and, in the performance of executive duties, the Vice President;

(2) agency heads and officials designated by the President in the **Federal Register**; and

(3) United States Government officials delegated this authority pursuant to paragraph (c) of this section.

(b) Officials authorized to classify information at a specified level are also authorized to classify information at a lower level.

(c) Delegation of original classification authority.

(1) Delegations of original classification authority shall be limited to the minimum required to administer this order. Agency heads are responsible for ensuring that designated subordinate officials have a demonstrable and continuing need to exercise this authority.

(2) "Top Secret" original classification authority may be delegated only by the President; in the performance of executive duties, the Vice President; or an agency head or official designated pursuant to paragraph (a)(2) of this section.

(3) "Secret" or "Confidential" original classification authority may be delegated only by the President; in the performance of executive duties, the Vice President; or an agency head or official designated pursuant to paragraph (a)(2) of this section; or the senior agency official described in section 5.4(d) of this order, provided that official has been delegated "Top Secret" original classification authority by the agency head.

(4) Each delegation of original classification authority shall be in writing and the authority shall not be redelegated except as provided in this order. Each delegation shall identify the official by name or position title.

(d) Original classification authorities must receive training in original classification as provided in this order and its implementing directives. Such training must include instruction on the proper safeguarding of classified information and of the criminal, civil, and administrative sanctions that may be brought against an individual who fails to protect classified information from unauthorized disclosure.

(e) Exceptional cases. When an employee, government contractor, licensee, certificate holder, or grantee of an agency who does not have original classification authority originates information believed by that person to require classification, the information shall be protected in a manner consistent with this order and its implementing directives. The information shall be transmitted promptly as provided under this order or its implementing directives to the agency that has appropriate subject matter interest and classification authority with respect to this information. That agency shall decide within 30 days whether to classify this information. If it is not clear which agency has classification responsibility for this information, it shall be sent to the Director of the Information Security Oversight Office. The Director shall determine the agency having primary subject matter interest and forward the information, with appropriate recommendations, to that agency for a classification determination.

Sec. 1.4. *Classification Categories.* Information shall not be considered for classification unless it concerns:

(a) military plans, weapons systems, or operations;

(b) foreign government information;

(c) intelligence activities (including special activities), intelligence sources or methods, or cryptology;

(d) foreign relations or foreign activities of the United States, including confidential sources;

(e) scientific, technological, or economic matters relating to the national security, which includes defense against transnational terrorism;

(f) United States Government programs for safeguarding nuclear materials or facilities;

(g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security, which includes defense against transnational terrorism; or

(h) weapons of mass destruction.

Sec. 1.5. *Duration of Classification.* (a) At the time of original classification, the original classification authority shall attempt to establish a specific date or event for declassification based upon the duration of the national security sensitivity of the information. Upon reaching the date or event, the information shall be automatically declassified. The date or event shall not exceed the time frame established in paragraph (b) of this section.

(b) If the original classification authority cannot determine an earlier specific date or event for declassification, information shall be marked for declassification 10 years from the date of the original decision, unless the original classification authority otherwise determines that the sensitivity of the information requires that it shall be marked for declassification for up to 25 years from the date of the original decision. All information classified under this section shall be subject to section 3.3 of this order if it is contained in records of permanent historical value under title 44, United States Code.

(c) An original classification authority may extend the duration of classification, change the level of classification, or reclassify specific information only when the standards and procedures for classifying information under this order are followed.

(d) Information marked for an indefinite duration of classification under predecessor orders, for example, marked as "Originating Agency's Determination Required," or information classified under predecessor orders that contains no declassification instructions shall be declassified in accordance with part 3 of this order.

Sec. 1.6. *Identification and Markings.* (a) At the time of original classification, the following shall appear on the face of each classified document, or shall be applied to other classified media in an appropriate manner:

(1) one of the three classification levels defined in section 1.2 of this order;

(2) the identity, by name or personal identifier and position, of the original classification authority;

(3) the agency and office of origin, if not otherwise evident;

(4) declassification instructions, which shall indicate one of the following:

(A) the date or event for declassification, as prescribed in section 1.5(a) or section 1.5(c);

(B) the date that is 10 years from the date of original classification, as prescribed in section 1.5(b); or

(C) the date that is up to 25 years from the date of original classification, as prescribed in section 1.5 (b); and

(5) a concise reason for classification that, at a minimum, cites the applicable classification categories in section 1.4 of this order.

(b) Specific information described in paragraph (a) of this section may be excluded if it would reveal additional classified information.

(c) With respect to each classified document, the agency originating the document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are unclassified. In accordance with standards prescribed in directives issued under this order, the Director of the Information Security Oversight Office may grant waivers of this requirement. The Director shall revoke any waiver upon a finding of abuse.

(d) Markings implementing the provisions of this order, including abbreviations and requirements to safeguard classified working papers, shall conform to the standards prescribed in implementing directives issued pursuant to this order.

(e) Foreign government information shall retain its original classification markings or shall be assigned a U.S. classification that provides a degree of protection at least equivalent to that required by the entity that furnished the information. Foreign government information retaining its original classification markings need not be assigned a U.S. classification marking provided that the responsible agency determines that the foreign government markings are adequate to meet the purposes served by U.S. classification markings.

(f) Information assigned a level of classification under this or predecessor orders shall be considered as classified at that level of classification despite the omission of other required markings. Whenever such information is used in the derivative classification process or is reviewed for possible declassification, holders of such information shall coordinate with an appropriate classification authority for the application of omitted markings.

(g) The classification authority shall, whenever practicable, use a classified addendum whenever classified information constitutes a small portion of an otherwise unclassified document.

(h) Prior to public release, all declassified records shall be appropriately marked to reflect their declassification.

Sec. 1.7. *Classification Prohibitions and Limitations.*

(a) In no case shall information be classified in order to:

(1) conceal violations of law, inefficiency, or administrative error;

(2) prevent embarrassment to a person, organization, or agency;

(3) restrain competition; or

(4) prevent or delay the release of information that does not require protection in the interest of the national security.

(b) Basic scientific research information not clearly related to the national security shall not be classified.

(c) Information may be reclassified after declassification and release to the public under proper authority only in accordance with the following conditions:

(1) the reclassification action is taken under the personal authority of the agency head or deputy agency head, who determines in writing that the reclassification of the information is necessary in the interest of the national security;

(2) the information may be reasonably recovered; and

(3) the reclassification action is reported promptly to the Director of the Information Security Oversight Office.

(d) Information that has not previously been disclosed to the public under proper authority may be classified or reclassified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of section 3.5 of this order only if such classification meets the requirements of this order and is accomplished on a document-by-document basis with the personal participation or under the direction of the agency head, the deputy agency head, or the senior agency official designated under section 5.4 of this order.

(e) Compilations of items of information that are individually unclassified may be classified if the compiled information reveals an additional association or relationship that: (1) meets the standards for classification under this order; and (2) is not otherwise revealed in the individual items of information. As used in this order, "compilation" means an aggregation of pre-existing unclassified items of information.

Sec. 1.8. *Classification Challenges.* (a) Authorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information in accordance with agency procedures established under paragraph (b) of this section.

(b) In accordance with implementing directives issued pursuant to this order, an agency head or senior agency official shall establish procedures under which authorized holders of information are encouraged and expected to challenge the classification of information that they believe is improperly classified or unclassified. These procedures shall ensure that:

(1) individuals are not subject to retribution for bringing such actions;

(2) an opportunity is provided for review by an impartial official or panel; and

(3) individuals are advised of their right to appeal agency decisions to the Interagency Security Classification Appeals Panel (Panel) established by section 5.3 of this order.

PART 2—DERIVATIVE CLASSIFICATION

Sec. 2.1. *Use of Derivative Classification.* (a) Persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.

(b) Persons who apply derivative classification markings shall:

(1) observe and respect original classification decisions; and

(2) carry forward to any newly created documents the pertinent classification markings. For information derivatively classified based on multiple sources, the derivative classifier shall carry forward:

(A) the date or event for declassification that corresponds to the longest period of classification among the sources; and

(B) a listing of these sources on or attached to the official file or record copy.

Sec. 2.2. *Classification Guides.* (a) Agencies with original classification authority shall prepare classification guides to facilitate the proper and uniform derivative classification of information. These guides shall conform to standards contained in directives issued under this order.

(b) Each guide shall be approved personally and in writing by an official who:

(1) has program or supervisory responsibility over the information or is the senior agency official; and

(2) is authorized to classify information originally at the highest level of classification prescribed in the guide.

(c) Agencies shall establish procedures to ensure that classification guides are reviewed and updated as provided in directives issued under this order.

PART 3—DECLASSIFICATION AND DOWNGRADING

Sec. 3.1. *Authority for Declassification.* (a) Information shall be declassified as soon as it no longer meets the standards for classification under this order.

(b) It is presumed that information that continues to meet the classification requirements under this order requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head or the senior agency official. That official will determine, as an exercise of discretion, whether the public interest in disclosure outweighs the damage to the national security that might reasonably be expected from disclosure. This provision does not:

(1) amplify or modify the substantive criteria or procedures for classification; or

(2) create any substantive or procedural rights subject to judicial review.

(c) If the Director of the Information Security Oversight Office determines that information is classified in violation of this order, the Director may require the information to be declassified by the agency that originated the classification. Any such decision by the Director may be appealed to the President through the Assistant to the President for National Security Affairs. The information shall remain classified pending a prompt decision on the appeal.

(d) The provisions of this section shall also apply to agencies that, under the terms of this order, do not have original classification authority, but had such authority under predecessor orders.

Sec. 3.2. *Transferred Records.* (a) In the case of classified records transferred in conjunction with a transfer of functions, and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for purposes of this order.

(b) In the case of classified records that are not officially transferred as described in paragraph (a) of this section, but that originated in an agency that has ceased to exist and for which there is no successor agency, each agency in possession of such records shall be deemed to be the originating agency for purposes of this order. Such records may be declassified or downgraded by the agency in possession after consultation with any other agency that has an interest in the subject matter of the records.

(c) Classified records accessioned into the National Archives and Records Administration (National Archives) as of the effective date of this order shall be declassified or downgraded by the Archivist of the United States (Archivist) in accordance with this order, the directives issued pursuant to this order, agency declassification guides, and any existing procedural agreement between the Archivist and the relevant agency head.

(d) The originating agency shall take all reasonable steps to declassify classified information contained in records determined to have permanent historical value before they are accessioned into the National Archives. However, the Archivist may require that classified records be accessioned into the National Archives when necessary to comply with the provisions of the Federal Records Act. This provision does not apply to records being transferred to the Archivist pursuant to section 2203 of title 44, United States Code, or records for which the National Archives serves as the custodian of the records of an agency or organization that has gone out of existence.

(e) To the extent practicable, agencies shall adopt a system of records management that will facilitate the public release of documents at the time such documents are declassified pursuant to the provisions for automatic declassification in section 3.3 of this order.

Sec. 3.3. *Automatic Declassification.* (a) Subject to paragraphs (b)–(e) of this section, on December 31, 2006, all classified records that (1) are more than 25 years old and (2) have been determined to have permanent historical value under title 44, United States Code, shall be automatically declassified whether or not the records have been reviewed. Subsequently, all classified records shall be automatically declassified on December 31 of the year that is 25 years from the date of its original classification, except as provided in paragraphs (b)–(e) of this section.

(b) An agency head may exempt from automatic declassification under paragraph (a) of this section specific information, the release of which could be expected to:

(1) reveal the identity of a confidential human source, or a human intelligence source, or reveal information about the application of an intelligence source or method;

(2) reveal information that would assist in the development or use of weapons of mass destruction;

(3) reveal information that would impair U.S. cryptologic systems or activities;

(4) reveal information that would impair the application of state of the art technology within a U.S. weapon system;

(5) reveal actual U.S. military war plans that remain in effect;

(6) reveal information, including foreign government information, that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;

(7) reveal information that would clearly and demonstrably impair the current ability of United States Government officials to protect the President, Vice President, and other protectees for whom protection services, in the interest of the national security, are authorized;

(8) reveal information that would seriously and demonstrably impair current national security emergency preparedness plans or reveal current vulnerabilities of systems, installations, infrastructures, or projects relating to the national security; or

(9) violate a statute, treaty, or international agreement.

(c) An agency head shall notify the President through the Assistant to the President for National Security Affairs of any specific file series of records for which a review or assessment has determined that the information within that file series almost invariably falls within one or more of the exemption categories listed in paragraph (b) of this section and which the agency proposes to exempt from automatic declassification. The notification shall include:

(1) a description of the file series;

(2) an explanation of why the information within the file series is almost invariably exempt from automatic declassification and why the information must remain classified for a longer period of time; and

(3) except for the identity of a confidential human source or a human intelligence source, as provided in paragraph (b) of this section, a specific date or event for declassification of the information. The President may direct the agency head not to exempt the file series or to declassify the information within that series at an earlier date than recommended. File series exemptions previously approved by the President shall remain valid without any additional agency action.

(d) At least 180 days before information is automatically declassified under this section, an agency head or senior agency official shall notify the Director of the Information Security Oversight Office, serving as Executive Secretary of the Panel, of any specific information beyond that included in a notification to the President under paragraph (c) of this section that the agency proposes to exempt from automatic declassification. The notification shall include:

(1) a description of the information, either by reference to information in specific records or in the form of a declassification guide;

(2) an explanation of why the information is exempt from automatic declassification and must remain classified for a longer period of time; and

(3) except for the identity of a confidential human source or a human intelligence source, as provided in paragraph (b) of this section, a specific date or event for declassification of the information. The Panel may direct the agency not to exempt the information or to declassify it at an earlier date than recommended. The agency head may appeal such a decision to the President through the Assistant to the President for National Security Affairs. The information will remain classified while such an appeal is pending.

(e) The following provisions shall apply to the onset of automatic declassification:

(1) Classified records within an integral file block, as defined in this order, that are otherwise subject to automatic declassification under this section shall not be automatically declassified until December 31 of the year that is 25 years from the date of the most recent record within the file block.

(2) By notification to the Director of the Information Security Oversight Office, before the records are subject to automatic declassification, an agency head or senior agency official designated under section 5.4 of this order may delay automatic declassification for up to 5 additional years for classified information contained in microforms, motion pictures, audiotapes, videotapes, or comparable media that make a review for possible declassification exemptions more difficult or costly.

(3) By notification to the Director of the Information Security Oversight Office, before the records are subject to automatic declassification, an agency head or senior agency official designated under section 5.4 of this order may delay automatic declassification for up to 3 years for classified records that have been referred or transferred to that agency by another agency less than 3 years before automatic declassification would otherwise be required.

(4) By notification to the Director of the Information Security Oversight Office, an agency head or senior agency official designated under section 5.4 of this order may delay automatic declassification for up to 3 years from the date of discovery of classified records that were inadvertently not reviewed prior to the effective date of automatic declassification.

(f) Information exempted from automatic declassification under this section shall remain subject to the mandatory and systematic declassification review provisions of this order.

(g) The Secretary of State shall determine when the United States should commence negotiations with the appropriate officials of a foreign government or international organization of governments to modify any treaty or international agreement that requires the classification of information contained in records affected by this section for a period longer than 25 years from the date of its creation, unless the treaty or international agreement pertains to information that may otherwise remain classified beyond 25 years under this section.

(h) Records containing information that originated with other agencies or the disclosure of which would affect the interests or activities of other agencies shall be referred for review to those agencies and the information of concern shall be subject to automatic declassification only by those agencies, consistent with the provisions of subparagraphs (e)(3) and (e)(4) of this section.

Sec. 3.4. *Systematic Declassification Review.* (a) Each agency that has originated classified information under this order or its predecessors shall establish and conduct a program for systematic declassification review. This program shall apply to records of permanent historical value exempted from automatic declassification under section 3.3 of this order. Agencies shall prioritize the systematic review of records based upon the degree of researcher interest and the likelihood of declassification upon review.

(b) The Archivist shall conduct a systematic declassification review program for classified records: (1) accessioned into the National Archives as of the effective date of this order; (2) transferred to the Archivist pursuant to section 2203 of title 44, United States Code; and (3) for which the National Archives serves as the custodian for an agency or organization that has gone out of existence. This program shall apply to pertinent records no later than 25 years from the date of their creation. The Archivist shall establish priorities for the systematic review of these records based upon the degree of researcher interest and the likelihood of declassification upon review. These records shall be reviewed in accordance with the standards of this order, its implementing directives, and declassification guides provided to the Archivist by each agency that originated the records. The Director of the Information Security Oversight Office shall ensure that agencies provide the Archivist with adequate and current declassification guides.

(c) After consultation with affected agencies, the Secretary of Defense may establish special procedures for systematic review for declassification of classified cryptologic information, and the Director of Central Intelligence may establish special procedures for systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods.

Sec. 3.5. *Mandatory Declassification Review.* (a) Except as provided in paragraph (b) of this section, all information classified under this order or predecessor orders shall be subject to a review for declassification by the originating agency if:

(1) the request for a review describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort;

(2) the information is not exempted from search and review under sections 105C, 105D, or 701 of the National Security Act of 1947 (50 U.S.C. 403–5c, 403–5e, and 431); and

(3) the information has not been reviewed for declassification within the past 2 years. If the agency has reviewed the information within the past 2 years, or the information is the subject of pending litigation, the agency shall inform the requester of this fact and of the requester's appeal rights.

(b) Information originated by:

(1) the incumbent President or, in the performance of executive duties, the incumbent Vice President;

(2) the incumbent President's White House Staff or, in the performance of executive duties, the incumbent Vice President's Staff;

(3) committees, commissions, or boards appointed by the incumbent President; or

(4) other entities within the Executive Office of the President that solely advise and assist the incumbent President is exempted from the provisions of paragraph (a) of this section. However, the Archivist shall have the authority to review, downgrade, and declassify papers or records of former Presidents under the control of the Archivist pursuant to sections 2107, 2111, 2111 note, or 2203 of title 44, United States Code. Review procedures developed by the Archivist shall provide for consultation with agencies having primary subject matter interest and shall be consistent with the provisions of applicable laws or lawful agreements that pertain to the respective Presidential papers or records. Agencies with primary subject matter interest shall be notified promptly of the Archivist's decision. Any final decision by the Archivist may be appealed by the requester or an agency to the Panel. The information shall remain classified pending a prompt decision on the appeal.

(c) Agencies conducting a mandatory review for declassification shall declassify information that no longer meets the standards for classification

under this order. They shall release this information unless withholding is otherwise authorized and warranted under applicable law.

(d) In accordance with directives issued pursuant to this order, agency heads shall develop procedures to process requests for the mandatory review of classified information. These procedures shall apply to information classified under this or predecessor orders. They also shall provide a means for administratively appealing a denial of a mandatory review request, and for notifying the requester of the right to appeal a final agency decision to the Panel.

(e) After consultation with affected agencies, the Secretary of Defense shall develop special procedures for the review of cryptologic information; the Director of Central Intelligence shall develop special procedures for the review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods; and the Archivist shall develop special procedures for the review of information accessioned into the National Archives.

Sec. 3.6. *Processing Requests and Reviews.* In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of this order, or pursuant to the automatic declassification or systematic review provisions of this order:

(a) An agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors.

(b) When an agency receives any request for documents in its custody that contain information that was originally classified by another agency, or comes across such documents in the process of the automatic declassification or systematic review provisions of this order, it shall refer copies of any request and the pertinent documents to the originating agency for processing, and may, after consultation with the originating agency, inform any requester of the referral unless such association is itself classified under this order or its predecessors. In cases in which the originating agency determines in writing that a response under paragraph (a) of this section is required, the referring agency shall respond to the requester in accordance with that paragraph.

Sec. 3.7. *Declassification Database.* (a) The Director of the Information Security Oversight Office, in conjunction with those agencies that originate classified information, shall coordinate the linkage and effective utilization of existing agency databases of records that have been declassified and publicly released.

(b) Agency heads shall fully cooperate with the Director of the Information Security Oversight Office in these efforts.

PART 4—SAFEGUARDING

Sec. 4.1. *General Restrictions on Access.* (a) A person may have access to classified information provided that:

(1) a favorable determination of eligibility for access has been made by an agency head or the agency head's designee;

(2) the person has signed an approved nondisclosure agreement; and

(3) the person has a need-to-know the information.

(b) Every person who has met the standards for access to classified information in paragraph (a) of this section shall receive contemporaneous training on the proper safeguarding of classified information and on the criminal, civil, and administrative sanctions that may be imposed on an individual who fails to protect classified information from unauthorized disclosure.

(c) Classified information shall remain under the control of the originating agency or its successor in function. An agency shall not disclose information originally classified by another agency without its authorization. An official or employee leaving agency service may not remove classified information from the agency's control.

(d) Classified information may not be removed from official premises without proper authorization.

(e) Persons authorized to disseminate classified information outside the executive branch shall ensure the protection of the information in a manner equivalent to that provided within the executive branch.

(f) Consistent with law, directives, and regulation, an agency head or senior agency official shall establish uniform procedures to ensure that automated information systems, including networks and telecommunications systems, that collect, create, communicate, compute, disseminate, process, or store classified information have controls that:

(1) prevent access by unauthorized persons; and

(2) ensure the integrity of the information.

(g) Consistent with law, directives, and regulation, each agency head or senior agency official shall establish controls to ensure that classified information is used, processed, stored, reproduced, transmitted, and destroyed under conditions that provide adequate protection and prevent access by unauthorized persons.

(h) Consistent with directives issued pursuant to this order, an agency shall safeguard foreign government information under standards that provide a degree of protection at least equivalent to that required by the government or international organization of governments that furnished the information. When adequate to achieve equivalency, these standards may be less restrictive than the safeguarding standards that ordinarily apply to United States "Confidential" information, including modified handling and transmission and allowing access to individuals with a need-to-know who have not otherwise been cleared for access to classified information or executed an approved nondisclosure agreement.

(i) Except as otherwise provided by statute, this order, directives implementing this order, or by direction of the President, classified information originating in one agency shall not be disseminated outside any other agency to which it has been made available without the consent of the originating agency. An agency head or senior agency official may waive this requirement for specific information originated within that agency. For purposes of this section, the Department of Defense shall be considered one agency. Prior consent is not required when referring records for declassification review that contain information originating in several agencies.

Sec. 4.2. *Distribution Controls.* (a) Each agency shall establish controls over the distribution of classified information to ensure that it is distributed only to organizations or individuals eligible for access and with a need-to-know the information.

(b) In an emergency, when necessary to respond to an imminent threat to life or in defense of the homeland, the agency head or any designee may authorize the disclosure of classified information to an individual or individuals who are otherwise not eligible for access. Such actions shall be taken only in accordance with the directives implementing this order and any procedures issued by agencies governing the classified information, which shall be designed to minimize the classified information that is disclosed under these circumstances and the number of individuals who receive it. Information disclosed under this provision or implementing directives and procedures shall not be deemed declassified as a result of such disclosure or subsequent use by a recipient. Such disclosures shall be reported promptly to the originator of the classified information. For purposes of this section, the Director of Central Intelligence may issue an implementing directive governing the emergency disclosure of classified intelligence information.

(c) Each agency shall update, at least annually, the automatic, routine, or recurring distribution of classified information that they distribute. Recipients shall cooperate fully with distributors who are updating distribution lists and shall notify distributors whenever a relevant change in status occurs.

Sec. 4.3. *Special Access Programs.* (a) Establishment of special access programs. Unless otherwise authorized by the President, only the Secretaries of State, Defense, and Energy, and the Director of Central Intelligence, or the principal deputy of each, may create a special access program. For special access programs pertaining to intelligence activities (including special activities, but not including military operational, strategic, and tactical programs), or intelligence sources or methods, this function shall be exercised by the Director of Central Intelligence. These officials shall keep the number of these programs at an absolute minimum, and shall establish them only when the program is required by statute or upon a specific finding that:

(1) the vulnerability of, or threat to, specific information is exceptional; and

(2) the normal criteria for determining eligibility for access applicable to information classified at the same level are not deemed sufficient to protect the information from unauthorized disclosure.

(b) Requirements and limitations. (1) Special access programs shall be limited to programs in which the number of persons who will have access ordinarily will be reasonably small and commensurate with the objective of providing enhanced protection for the information involved.

(2) Each agency head shall establish and maintain a system of accounting for special access programs consistent with directives issued pursuant to this order.

(3) Special access programs shall be subject to the oversight program established under section 5.4(d) of this order. In addition, the Director of the Information Security Oversight Office shall be afforded access to these programs, in accordance with the security requirements of each program, in order to perform the functions assigned to the Information Security Oversight Office under this order. An agency head may limit access to a special access program to the Director and no more than one other employee of the Information Security Oversight Office, or, for special access programs that are extraordinarily sensitive and vulnerable, to the Director only.

(4) The agency head or principal deputy shall review annually each special access program to determine whether it continues to meet the requirements of this order.

(5) Upon request, an agency head shall brief the Assistant to the President for National Security Affairs, or a designee, on any or all of the agency's special access programs.

(c) Nothing in this order shall supersede any requirement made by or under 10 U.S.C. 119.

Sec. 4.4. *Access by Historical Researchers and Certain Former Government Personnel.* (a) The requirement in section 4.1(a)(3) of this order that access to classified information may be granted only to individuals who have a need-to-know the information may be waived for persons who:

(1) are engaged in historical research projects;

(2) previously have occupied policy-making positions to which they were appointed by the President under section 105(a)(2)(A) of title 3, United States Code, or the Vice President under 106(a)(1)(A) of title 3, United States Code; or

(3) served as President or Vice President.

(b) Waivers under this section may be granted only if the agency head or senior agency official of the originating agency:

(1) determines in writing that access is consistent with the interest of the national security;

(2) takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this order; and

(3) limits the access granted to former Presidential appointees and Vice Presidential appointees to items that the person originated, reviewed, signed, or received while serving as a Presidential appointee or a Vice Presidential appointee.

PART 5—IMPLEMENTATION AND REVIEW

Sec. 5.1. *Program Direction.* (a) The Director of the Information Security Oversight Office, under the direction of the Archivist and in consultation with the Assistant to the President for National Security Affairs, shall issue such directives as are necessary to implement this order. These directives shall be binding upon the agencies. Directives issued by the Director of the Information Security Oversight Office shall establish standards for:

(1) classification and marking principles;

(2) safeguarding classified information, which shall pertain to the handling, storage, distribution, transmittal, and destruction of and accounting for classified information;

(3) agency security education and training programs;

(4) agency self-inspection programs; and

(5) classification and declassification guides.

(b) The Archivist shall delegate the implementation and monitoring functions of this program to the Director of the Information Security Oversight Office.

Sec. 5.2. *Information Security Oversight Office.* (a) There is established within the National Archives an Information Security Oversight Office. The Archivist shall appoint the Director of the Information Security Oversight Office, subject to the approval of the President.

(b) Under the direction of the Archivist, acting in consultation with the Assistant to the President for National Security Affairs, the Director of the Information Security Oversight Office shall:

(1) develop directives for the implementation of this order;

(2) oversee agency actions to ensure compliance with this order and its implementing directives;

(3) review and approve agency implementing regulations and agency guides for systematic declassification review prior to their issuance by the agency;

(4) have the authority to conduct on-site reviews of each agency's program established under this order, and to require of each agency those reports, information, and other cooperation that may be necessary to fulfill its responsibilities. If granting access to specific categories of classified information would pose an exceptional national security risk, the affected agency head or the senior agency official shall submit a written justification recommending the denial of access to the President through the Assistant to the President for National Security Affairs within 60 days of the request for access. Access shall be denied pending the response;

(5) review requests for original classification authority from agencies or officials not granted original classification authority and, if deemed appropriate, recommend Presidential approval through the Assistant to the President for National Security Affairs;

(6) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the program established under this order;

(7) have the authority to prescribe, after consultation with affected agencies, standardization of forms or procedures that will promote the implementation of the program established under this order;

(8) report at least annually to the President on the implementation of this order; and

(9) convene and chair interagency meetings to discuss matters pertaining to the program established by this order.

Sec. 5.3. *Interagency Security Classification Appeals Panel.*

(a) Establishment and administration.

(1) There is established an Interagency Security Classification Appeals Panel. The Departments of State, Defense, and Justice, the Central Intelligence Agency, the National Archives, and the Assistant to the President for National Security Affairs shall each be represented by a senior-level representative who is a full-time or permanent part-time Federal officer or employee designated to serve as a member of the Panel by the respective agency head. The President shall select the Chair of the Panel from among the Panel members.

(2) A vacancy on the Panel shall be filled as quickly as possible as provided in paragraph (a)(1) of this section.

(3) The Director of the Information Security Oversight Office shall serve as the Executive Secretary. The staff of the Information Security Oversight Office shall provide program and administrative support for the Panel.

(4) The members and staff of the Panel shall be required to meet eligibility for access standards in order to fulfill the Panel's functions.

(5) The Panel shall meet at the call of the Chair. The Chair shall schedule meetings as may be necessary for the Panel to fulfill its functions in a timely manner.

(6) The Information Security Oversight Office shall include in its reports to the President a summary of the Panel's activities.

(b) Functions. The Panel shall:

(1) decide on appeals by persons who have filed classification challenges under section 1.8 of this order;

(2) approve, deny, or amend agency exemptions from automatic declassification as provided in section 3.3 of this order; and

(3) decide on appeals by persons or entities who have filed requests for mandatory declassification review under section 3.5 of this order.

(c) Rules and procedures. The Panel shall issue bylaws, which shall be published in the **Federal Register**. The bylaws shall establish the rules and procedures that the Panel will follow in accepting, considering, and issuing decisions on appeals. The rules and procedures of the Panel shall provide that the Panel will consider appeals only on actions in which:

(1) the appellant has exhausted his or her administrative remedies within the responsible agency;

(2) there is no current action pending on the issue within the Federal courts; and

(3) the information has not been the subject of review by the Federal courts or the Panel within the past 2 years.

(d) Agency heads shall cooperate fully with the Panel so that it can fulfill its functions in a timely and fully informed manner. An agency head may appeal a decision of the Panel to the President through the Assistant to the President for National Security Affairs. The Panel shall report to the President through the Assistant to the President for National Security Affairs any instance in which it believes that an agency head is not cooperating fully with the Panel.

(e) The Panel is established for the sole purpose of advising and assisting the President in the discharge of his constitutional and discretionary authority to protect the national security of the United States. Panel decisions are committed to the discretion of the Panel, unless changed by the President.

(f) Notwithstanding paragraphs (a) through (e) of this section, whenever the Panel reaches a conclusion that information owned or controlled by the Director of Central Intelligence (Director) should be declassified, and the Director notifies the Panel that he objects to its conclusion because he has determined that the information could reasonably be expected to cause damage to the national security and to reveal (1) the identity of a human intelligence source, or (2) information about the application of an intelligence source or method (including any information that concerns, or is provided as a result of, a relationship with a cooperating intelligence element of a foreign government), the information shall remain classified unless the Director's determination is appealed to the President, and the President reverses the determination.

Sec. 5.4. *General Responsibilities.* Heads of agencies that originate or handle classified information shall:

(a) demonstrate personal commitment and commit senior management to the successful implementation of the program established under this order;

(b) commit necessary resources to the effective implementation of the program established under this order;

(c) ensure that agency records systems are designed and maintained to optimize the safeguarding of classified information, and to facilitate its declassification under the terms of this order when it no longer meets the standards for continued classification; and

(d) designate a senior agency official to direct and administer the program, whose responsibilities shall include:

(1) overseeing the agency's program established under this order, provided, an agency head may designate a separate official to oversee special access programs authorized under this order. This official shall provide a full accounting of the agency's special access programs at least annually;

(2) promulgating implementing regulations, which shall be published in the **Federal Register** to the extent that they affect members of the public;

(3) establishing and maintaining security education and training programs;

(4) establishing and maintaining an ongoing self-inspection program, which shall include the periodic review and assessment of the agency's classified product;

(5) establishing procedures to prevent unnecessary access to classified information, including procedures that:

(A) require that a need for access to classified information is established before initiating administrative clearance procedures; and

(B) ensure that the number of persons granted access to classified information is limited to the minimum consistent with operational and security requirements and needs;

(6) developing special contingency plans for the safeguarding of classified information used in or near hostile or potentially hostile areas;

(7) ensuring that the performance contract or other system used to rate civilian or military personnel performance includes the management of classified information as a critical element or item to be evaluated in the rating of:

(A) original classification authorities;

(B) security managers or security specialists; and

(C) all other personnel whose duties significantly involve the creation or handling of classified information;

(8) accounting for the costs associated with the implementation of this order, which shall be reported to the Director of the Information Security Oversight Office for publication; and

(9) assigning in a prompt manner agency personnel to respond to any request, appeal, challenge, complaint, or suggestion arising out of this order that pertains to classified information that originated in a component of the agency that no longer exists and for which there is no clear successor in function.

Sec. 5.5. *Sanctions.* (a) If the Director of the Information Security Oversight Office finds that a violation of this order or its implementing directives

has occurred, the Director shall make a report to the head of the agency or to the senior agency official so that corrective steps, if appropriate, may be taken.

(b) Officers and employees of the United States Government, and its contractors, licensees, certificate holders, and grantees shall be subject to appropriate sanctions if they knowingly, willfully, or negligently:

(1) disclose to unauthorized persons information properly classified under this order or predecessor orders;

(2) classify or continue the classification of information in violation of this order or any implementing directive;

(3) create or continue a special access program contrary to the requirements of this order; or

(4) contravene any other provision of this order or its implementing directives.

(c) Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation.

(d) The agency head, senior agency official, or other supervisory official shall, at a minimum, promptly remove the classification authority of any individual who demonstrates reckless disregard or a pattern of error in applying the classification standards of this order.

(e) The agency head or senior agency official shall:

(1) take appropriate and prompt corrective action when a violation or infraction under paragraph (b) of this section occurs; and

(2) notify the Director of the Information Security Oversight Office when a violation under paragraph (b)(1), (2), or (3) of this section occurs.

PART 6—GENERAL PROVISIONS

Sec. 6.1. *Definitions.* For purposes of this order:

(a) "Access" means the ability or opportunity to gain knowledge of classified information.

(b) "Agency" means any "Executive agency," as defined in 5 U.S.C. 105; any "Military department" as defined in 5 U.S.C. 102; and any other entity within the executive branch that comes into the possession of classified information.

(c) "Automated information system" means an assembly of computer hardware, software, or firmware configured to collect, create, communicate, compute, disseminate, process, store, or control data or information.

(d) "Automatic declassification" means the declassification of information based solely upon:

(1) the occurrence of a specific date or event as determined by the original classification authority; or

(2) the expiration of a maximum time frame for duration of classification established under this order.

(e) "Classification" means the act or process by which information is determined to be classified information.

(f) "Classification guidance" means any instruction or source that prescribes the classification of specific information.

(g) "Classification guide" means a documentary form of classification guidance issued by an original classification authority that identifies the elements of information regarding a specific subject that must be classified and establishes the level and duration of classification for each such element.

(h) "Classified national security information" or "classified information" means information that has been determined pursuant to this order or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(i) "Confidential source" means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation that the information or relationship, or both, are to be held in confidence.

(j) "Damage to the national security" means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, taking into consideration such aspects of the information as the sensitivity, value, utility, and provenance of that information.

(k) "Declassification" means the authorized change in the status of information from classified information to unclassified information.

(l) "Declassification authority" means:

(1) the official who authorized the original classification, if that official is still serving in the same position;

(2) the originator's current successor in function;

(3) a supervisory official of either; or

(4) officials delegated declassification authority in writing by the agency head or the senior agency official.

(m) "Declassification guide" means written instructions issued by a declassification authority that describes the elements of information regarding a specific subject that may be declassified and the elements that must remain classified.

(n) "Derivative classification" means the incorporating, paraphrasing, restating, or generating in new form information that is already classified, and marking the newly developed material consistent with the classification markings that apply to the source information. Derivative classification includes the classification of information based on classification guidance. The duplication or reproduction of existing classified information is not derivative classification.

(o) "Document" means any recorded information, regardless of the nature of the medium or the method or circumstances of recording.

(p) "Downgrading" means a determination by a declassification authority that information classified and safeguarded at a specified level shall be classified and safeguarded at a lower level.

(q) "File series" means file units or documents arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular physical form, or have some other relationship arising out of their creation, receipt, or use, such as restrictions on access or use.

(r) "Foreign government information" means:

(1) information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) information produced by the United States Government pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) information received and treated as "foreign government information" under the terms of a predecessor order.

(s) "Information" means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that

is owned by, produced by or for, or is under the control of the United States Government. "Control" means the authority of the agency that originates information, or its successor in function, to regulate access to the information.

(t) "Infraction" means any knowing, willful, or negligent action contrary to the requirements of this order or its implementing directives that does not constitute a "violation," as defined below.

(u) "Integral file block" means a distinct component of a file series, as defined in this section, that should be maintained as a separate unit in order to ensure the integrity of the records. An integral file block may consist of a set of records covering either a specific topic or a range of time such as presidential administration or a 5-year retirement schedule within a specific file series that is retired from active use as a group.

(v) "Integrity" means the state that exists when information is unchanged from its source and has not been accidentally or intentionally modified, altered, or destroyed.

(w) "Mandatory declassification review" means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of this order.

(x) "Multiple sources" means two or more source documents, classification guides, or a combination of both.

(y) "National security" means the national defense or foreign relations of the United States.

(z) "Need-to-know" means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function.

(aa) "Network" means a system of two or more computers that can exchange data or information.

(bb) "Original classification" means an initial determination that information requires, in the interest of the national security, protection against unauthorized disclosure.

(cc) "Original classification authority" means an individual authorized in writing, either by the President, the Vice President in the performance of executive duties, or by agency heads or other officials designated by the President, to classify information in the first instance.

(dd) "Records" means the records of an agency and Presidential papers or Presidential records, as those terms are defined in title 44, United States Code, including those created or maintained by a government contractor, licensee, certificate holder, or grantee that are subject to the sponsoring agency's control under the terms of the contract, license, certificate, or grant.

(ee) "Records having permanent historical value" means Presidential papers or Presidential records and the records of an agency that the Archivist has determined should be maintained permanently in accordance with title 44, United States Code.

(ff) "Records management" means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations.

(gg) "Safeguarding" means measures and controls that are prescribed to protect classified information.

(hh) "Self-inspection" means the internal review and evaluation of individual agency activities and the agency as a whole with respect to the

implementation of the program established under this order and its implementing directives.

(ii) "Senior agency official" means the official designated by the agency head under section 5.4(d) of this order to direct and administer the agency's program under which information is classified, safeguarded, and declassified.

(jj) "Source document" means an existing document that contains classified information that is incorporated, paraphrased, restated, or generated in new form into a new document.

(kk) "Special access program" means a program established for a specific class of classified information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level.

(ll) "Systematic declassification review" means the review for declassification of classified information contained in records that have been determined by the Archivist to have permanent historical value in accordance with title 44, United States Code.

(mm) "Telecommunications" means the preparation, transmission, or communication of information by electronic means.

(nn) "Unauthorized disclosure" means a communication or physical transfer of classified information to an unauthorized recipient.

(oo) "Violation" means:

(1) any knowing, willful, or negligent action that could reasonably be expected to result in an unauthorized disclosure of classified information;

(2) any knowing, willful, or negligent action to classify or continue the classification of information contrary to the requirements of this order or its implementing directives; or

(3) any knowing, willful, or negligent action to create or continue a special access program contrary to the requirements of this order.

(pp) "Weapons of mass destruction" means chemical, biological, radiological, and nuclear weapons.

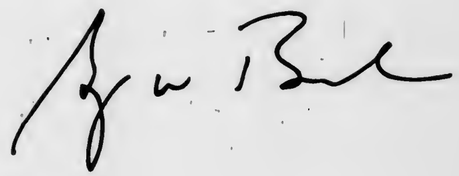
Sec. 6.2. *General Provisions.* (a) Nothing in this order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947, as amended. "Restricted Data" and "Formerly Restricted Data" shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued under that Act.

(b) The Attorney General, upon request by the head of an agency or the Director of the Information Security Oversight Office, shall render an interpretation of this order with respect to any question arising in the course of its administration.

(c) Nothing in this order limits the protection afforded any information by other provisions of law, including the Constitution, Freedom of Information Act exemptions, the Privacy Act of 1974, and the National Security Act of 1947, as amended. This order is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its departments, agencies, officers, employees, or agents. The foregoing is in addition to the specific provisos set forth in sections 3.1(b) and 5.3(e) of this order."

(d) Executive Order 12356 of April 6, 1982, was revoked as of October 14, 1995.

Sec. 6.3. *Effective Date.* This order is effective immediately, except for section 1.6, which shall become effective 180 days from the date of this order.



THE WHITE HOUSE,
March 25, 2003.

[FR Doc. 03–7736
Filed 3–27–03; 9:17 am]
Billing code 3195–01–P

Reader Aids

Federal Register
Vol. 68, No. 60
Friday, March 28, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MARCH

9851–10140	3
10141–10344	4
10345–10650	5
10651–10952	6
10953–11310	7
11311–11462	10
11463–11732	11
11733–11966	12
11967–12282	13
12283–12568	14
12569–12796	17
12797–13218	18
13219–13614	19
13615–13802	20
13803–14126	21
14127–14306	24
14307–14526	25
14527–14886	26
14887–15042	27
15043–15334	28

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7648 10641
7649 10643
7650 10645
7651 10647
7652 10649
7653 13217
7654 13805
7655 14887

Administrative Orders:
Memorandums:
Memorandum of February 12, 2003 10141
Memorandum of March 11, 2003 12569
Memorandum of March 12, 2003 12281
Presidential Determinations:
No. 2003–15 of February 13, 2003 10651
No. 2003–16 of March 14, 2003 13803
No. 2003–17 of March 20, 2003 15043
Notices:
Notice of March 12, 2003 12563

Executive Orders:
4601 (Amended by: 13286) 10619
10977 12567
10113 (Amended by: 13286) 10619
10163 (Amended by: 13286) 10619
10179 (Amended by: 13286) 10619
10271 (Amended by: 13286) 10619
10448 (Amended by: 13286) 10619
10499 (Amended by: 13286) 10619
10554 (Amended by: 13286) 10619
10631 (Amended by: 13286) 10619
10637 (Amended by: 13286) 10619
10694 (Amended by: 13286) 10619
10789 (Amended by: 13286) 10619
10977 (Amended by: 13286; See: 13289) 10619, 12567
11016 (Amended by: 13286) 10619
11046 (Amended by: 13286) 10619
11079 (Amended by: 13286) 10619
11139 (Amended by: 13286) 10619
11190 (Amended by: 13286) 10619
11231 (Amended by: 13286) 10619
11239 (Amended by: 13286) 10619
11366 (Amended by: 13286) 10619
11438 (Amended by: 13286) 10619
11446 (Amended by: 13286) 10619
11448 (Amended by: 13286) 10619
11623 (Amended by: 13286) 10619
11645 (Amended by: 13286) 10619
11800 (Amended by: 13286) 10619
11858 (Amended by: 13286) 10619
11926 (Amended by: 13286) 10619
11965 (Amended by: 13286) 10619
12002 (Amended by: 13286) 10619
12146 (Amended by: 13286) 10619
12148 (Amended by: 13286) 10619
12160 (Amended by: 13286) 10619
12188 (Amended by: 13286) 10619
12208 (Amended by: 13286) 10619
12341 (Amended by: 13286) 10619
12356 (See: 13292) 15315
12382 (Amended by: 13286) 10619
12472 (Amended by: 13286) 10619
12501 (Amended by: 13286) 10619
12555 (Amended by: 13286) 10619
12580 (Amended by: 13286) 10619
12656 (Amended by: 13286) 10619
12657 (Amended by: 13286) 10619
12699 (Amended by: 13286) 10619
12727 (Amended by: 13286) 10619

12728 (Amended by: 13286).....10619
12733 (Amended by: 13286).....10619
12742 (Amended by: 13286).....10619
12743 (Amended by: 13286).....10619
12752 (See Memorandum of March 11, 2003).....12569
12777 (Amended by: 13286).....10619
12788 (Amended by: 13286).....10619
12789 (Amended by: 13286).....10619
12793 (Amended by: 13286).....10619
12807 (Amended by: 13286).....10619
12824 (Amended by: 13286).....10619
12830 (Amended by: 13286).....10619
12835 (Amended by: 13286).....10619
12870 (Amended by: 13286).....10619
12906 (Amended by: 13286).....10619
12919 (Amended by: 13286).....10619
12957 (See Notice of March 12, 2003).....12563
12958 (Amended by: 13292).....15315
12959 (See Notice of March 12, 2003).....12563
12977 (Amended by: 13286).....10619
12978 (Amended by: 13286).....10619
12982 (Amended by: 13286).....10619
12985 (Amended by: 13286; See: 13289).....10619, 12567
12989 (Amended by: 13286).....10619
13011 (Amended by: 13286).....10619
13059 (See Notice of March 12, 2003).....12563
13076 (Amended by: 13286).....10619
13100 (Amended by: 13286).....10619
13112 (Amended by: 13286).....10619
13120 (Amended by: 13286).....10619
13130 (See: 13286).....10619
13133 (Amended by: 13286).....10619
13154 (Amended by: 13286).....10619
13165 (Amended by: 13286).....10619
13212 (Amended by: 13286).....10619
13223 (Amended by: 13286).....10619
13228 (Amended by: 13286).....10619
13231 (Amended by: 13286).....10619
13254 (Amended by: 13286).....10619
13257 (Amended by: 13286).....10619
13260 (Amended by: 13286; Revoked by: 13286, eff. 3/31/03).....10619
13271 (Amended by: 13286).....10619
13274 (Amended by: 13286).....10619
13276 (Amended by: 13286).....10619
13282 (Amended by: 13291).....14525
13284 (See: 13286).....10619
13286.....10619
13287.....10619
13288.....11457
13289.....12567
13290.....14305
13291.....14525
13292.....15315

5 CFR

110.....10666
792.....14127
Ch. XIV.....10953
2416.....10953
2424.....10953
2429.....10953
2471.....10953
2472.....10953

6 CFR

9.....10912
15.....10886
17.....10892
21.....10904

7 CFR

Ch. XVIII.....14889
Ch. XXXV.....14889
301.....11311
318.....11967
319.....9851
652.....14131
911.....10345
944.....10345
959.....11463
982.....11733
984.....10347
989.....13219, 13615
1000.....13617
1001.....13617
1005.....13617
1006.....13617
1007.....13617
1030.....13617
1032.....13617
1033.....13617
1124.....13617
1126.....13617
1131.....13617
1135.....13617
1940.....14527

Proposed Rules:

301.....13859
340.....11337
354.....13861
770.....12309
930.....9944, 13636
932.....11340
985.....11751
1205.....12310
1218.....11756
1219.....12881
1230.....11996
1405.....9944
1470.....13872
1499.....9944
1599.....14546

8 CFR

1.....10922
2.....10922
103.....10922
217.....10954
235.....10143
239.....10922
1001.....10349
1003.....10349
1101.....10349
1103.....10349
1205.....10349
1208.....10349
1209.....10349
1212.....10349
1216.....10349
1235.....10349
1236.....10349
1238.....10349
1239.....10349
1240.....10349
1241.....10349
1244.....10349
1245.....10349
1246.....10349
1249.....10349
1270.....10349
1274a.....10349
1292.....10349
1337.....10349

9 CFR

1.....12283
50.....10361
92.....10667
97.....13861
130.....13861

Proposed Rules:

94.....11998
317.....11008
327.....11008

10 CFR

20.....14307
40.....10362
50.....12571
70.....14528
71.....14528
73.....14528
150.....10362
430.....10957

Proposed Rules

20.....14349
40.....10411
150.....10411
430.....11009
490.....10320

11 CFR

111.....12572

12 CFR

202.....13144, 14476
615.....15045

Proposed Rules:

203.....11010
225.....12316
915.....13238

13 CFR

121.....13807, 15047

14 CFR

Ch. 1.....10145
25.....9854, 10365, 12581
39.....10147, 10149, 10152, 10154, 10156, 10583, 10653, 11467, 11469, 11967, 11971, 12285, 12797, 12799, 12802, 12806, 12809, 12812, 13221, 13618, 14309, 14310, 14311, 14312, 14530, 14533, 14889, 14892, 14894
47.....10316
71.....10367, 10369, 10654, 11736, 11738, 12582, 12814, 13225, 13811, 14072, 14314, 14315
91.....12542, 14072
95.....14072
97.....10962, 10963, 13619, 13621
121.....12542, 14072
125.....14072
129.....14072
135.....12542, 14072
145.....12542
1260.....14535
1274.....14535

Proposed Rules:

21.....11475, 11759
39.....9947, 9950, 9951, 9954, 10185, 10188, 10413, 10416, 11014, 11015, 11342, 11476, 11479, 11760, 11762, 11764, 11999, 12318, 12614, 12615, 12618, 13239, 14350, 14351, 14353, 14355, 14558
43.....11475, 11759
71.....12621, 14359
93.....14276
121.....12882
145.....11475, 11759
255.....12622, 12883
399.....12622, 12883

15 CFR

740.....10586
743.....10586
772.....10586
774.....10586
902.....12814

16 CFR

304.....9856

17 CFR

4.....12583
200.....12780
240.....12780, 14315

Proposed Rules:

1.....12319
4.....12001, 12622

18 CFR

284.....13813
375.....9857
388.....9857

Proposed Rules:

4.....13988
5.....13988
16.....13988
385.....13988

19 CFR

4.....13623, 13819, 14476
10.....13820, 13827, 14478
12.....13835
113.....13623, 14476
163.....14478
178.....13623, 14476

Proposed Rules:

10.....14478
12.....13636
24.....13636
113.....13638
181.....12011

20 CFR

1.....14316
30.....14316
625.....10932

Proposed Rules:

404.....12639
416.....12639
422.....14563

21 CFR

165.....9873
201.....12584
510.....13225
520.....13626
530.....14134
558.....13839
610.....10157
888.....14134
1308.....14114, 14119
1310.....11471

Proposed Rules:

1.....10668
111.....10418, 12158, 14360, 15117
112.....12158
165.....9955
201.....12500
310.....12406
312.....12406
314.....12406
320.....12406
600.....12406
601.....12406
606.....12406, 12500
610.....12500
878.....13639

22 CFR

41.....13627
42.....13627, 13628

Proposed Rules:

211.....9944

23 CFR

655.....14138

24 CFR

25.....12766
28.....12766
30.....12766
81.....12766
92.....10160
180.....12766
207.....12792
906.....11714
3282.....12766
3500.....12766

Proposed Rules:

203.....11730
3285.....11448
3286.....11452

26 CFR

1.....10161, 10655, 11313, 12287, 12815, 12817, 13226
20.....10161
25.....10161
31.....10161
53.....10161
54.....10161
56.....10161
301.....10161, 11739, 14316
602.....10161, 11739, 12287, 12817

Proposed Rules:

1.....10190, 12324, 13242, 15118
31.....15119

27 CFR

4.....10076
5.....10076
7.....10076
555.....13768

Proposed Rules:

7.....14291, 15119
25.....14191, 15119

28 CFR

0.....14899
16.....14139, 14140
540.....10656

Proposed Rules:

28.....11481

29 CFR

1404.....10659
1910.....12301
1979.....14100
4022.....12303
4044.....12303

30 CFR

18.....10965
250.....14274
916.....14322
948.....10178

Proposed Rules:

70.....10784, 12641
72.....10940, 12641
75.....10784, 11770, 12641
90.....10784, 12641
203.....14752
206.....12643
920.....14360
950.....10193

31 CFR

1.....12584
103.....10965
515.....14141
560.....11741
575.....11741

Proposed Rules:

103.....12155

32 CFR

171.....11633
199.....11973

33 CFR

52.....9882
100.....13628, 15050
110.....13629
117.....9890, 13226, 13227, 13228, 14149, 14536, 15051
165.....12304, 13228, 13231, 13233, 14150, 14326, 14328, 14899, 15051, 15053
401.....11974

Proposed Rules:

117.....13242, 13641, 14170, 14364
165.....13244, 13643, 13647, 13649, 14170, 14933, 14935
334.....14364
402.....12644

34 CFR

Proposed Rules:

200.....13796

36 CFR

704.....11974

Proposed Rules:

7.....11019
219.....10421, 12155

37 CFR

1.....14332
2.....14332
3.....14332
4.....14332
5.....14332
102.....14332
104.....14332
150.....14332

Proposed Rules:

1.....14365
2.....15119
7.....15119
201.....13652

38 CFR

17.....11977, 13590
20.....13235
61.....13590

Proposed Rules:

3.....14567

39 CFR

111.....15055
3001.....12588

40 CFR

9.....13608
52.....9892, 10966, 10969, 11316, 11977, 12590, 12825, 12827, 12829, 12831, 13630, 13840, 13843, 14151, 14154, 14156, 14159, 14161, 14537, 14540, 14542, 15059
62.....10659, 10661, 10663, 11472, 11978
63.....11745, 12590
70.....10969, 14163
82.....10370
122.....11325, 13608
123.....13608
124.....13608
125.....14164
130.....13608
141.....14502
180.....10370, 10377, 10972, 10983, 11330, 13845, 14165
228.....12592
271.....11981
300.....13633
312.....14339
439.....12266
721.....15061

Proposed Rules:

Ch. I.....10675, 12013
51.....12014
52.....11022, 11023, 12014, 12886, 12887, 13247, 13653, 13872, 14173, 14174, 14379, 14382, 14570, 15138
62.....10680, 10681, 11483, 11484, 12015
63.....12645
70.....11023
81.....13653, 14382
125.....13522
136.....11770, 11791
194.....12887
228.....11488
271.....12015
372.....13872
439.....12776

41 CFR

102-173.....15089
300-2.....12602
Ch. 304.....12602

42 CFR

50.....12306
412.....10987
416.....15268

Proposed Rules:

Ch. IV.....15139
83.....11924, 14388
412.....10421, 11234

43 CFR

Proposed Rules:

4.....13657
4100.....9964, 11345

44 CFR

61.....9895
64.....9897
152.....12544
206.....9899

45 CFR

32.....15092
162.....11445
1204.....14901
1206.....14901
1213.....14901
1229.....14901
1234.....14901

47 CFR

0.....11747, 13849
1.....12744, 15096
2.....10179, 11986, 12744
25.....11986
68.....13849
73.....10388, 10664, 10665, 11335, 11993, 12610, 12744, 14166, 15096, 15099, 15100
74.....12744
76.....13236, 13850, 14340, 15096
78.....12744
90.....10179
95.....9900
101.....12744

Proposed Rules:

15.....12015
54.....10430, 12020

64 14939
73 ..... 10681, 10682, 10683, 11345, 12023, 12024, 15140, 15141, 15142, 15143
74 12652

48 CFR

Ch. 1 ..... 13200, 13208
12 ..... 13201, 13202
16 13201
29 13204
32 ..... 13202, 13206
47 13202
52 ..... 13202, 13204, 13206
1817 13634
1825 11747

Proposed Rules:

501 13212
538 13212
552 13212

49 CFR

1 ..... 10988, 12833
107 11748
171 14341
172 14510
175 14341
190 11748
191 11748
192 11748
193 11748
195 11748
198 11748
199 11748
219 10108
225 10108
240 10108
572 13856
1540 9902

Proposed Rules:

192 ..... 9966, 13249
397 13250
544 13887

50 CFR

Ch. IV 15100
17 ..... 10388, 12611, 12834, 12863, 12982, 13370, 13498
226 13370
300 ..... 10989, 14167
622 ..... 10180, 11003
635 14167
648 ..... 9905, 10181, 12612, 12814, 14347, 14545
660 ..... 11182, 13857
679 ..... 9902, 9907, 9924, 9942, 11004, 11994, 13635, 13857, 13858, 14168, 14902, 15115
697 14902

Proposed Rules:

17 ..... 12326, 12336, 13662, 13663, 14868
21 12653
223 13662
229 10195
600 ..... 9967, 11501, 11793, 14570
622 11794
648 ..... 9968, 11023, 11346, 14388, 14571
660 ..... 12888, 13891
679 15144

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 28, 2003

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
- Stratospheric ozone protection—
  - Ozone-depleting substances; substitutes list; published 1-27-03

Air quality implementation plans; approval and promulgation; various States:
- California; published 2-26-03
- Florida; published 1-27-03

FEDERAL COMMUNICATIONS COMMISSION
Practice and procedure:
- Truthful statements; published 3-28-03

GENERAL SERVICES ADMINISTRATION
Federal Management Regulation:
- Internet GOV Domain; published 3-28-03

SECURITIES AND EXCHANGE COMMISSION
Investment companies:
- Investment company assets with a securities depository; custody; published 2-20-03

Securities:
- Sarbanes-Oxley Act of 2002; implementation—
  - Non-generally accepted accounting principles (GAAP) financial measures; conditions for use; published 1-30-03

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT
Ocean freight claims administrative appeal process; comments due by 4-2-03; published 3-3-03 [FR 03-04574]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Raisins produced from grapes grown in—
- California; comments due by 3-31-03; published 1-28-03 [FR 03-01965]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Rasins produced from grapes grown in California; comments due by 4-3-03; published 3-19-03 [FR 03-06663]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Spearmint oil produced in Far West; comments due by 4-1-03; published 3-12-03 [FR 03-05842]

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Ocean freight claims administrative appeal process; comments due by 4-2-03; published 3-3-03 [FR 03-04574]

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Child nutrition programs:
- Women, infants, and children; special supplemental nutrition programs —
  - Federal financial and participating reporting requirements and information confidentiality; comments due by 4-1-03; published 12-2-02 [FR 02-30223]

AGRICULTURE DEPARTMENT
Forest Service
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
- Age at which person can receive permits, and Regional Councils membership requirement change; comments due by 4-4-03; published 2-18-03 [FR 03-03742]

AGRICULTURE DEPARTMENT
Grain Inspection, Packers and Stockyards Administration
Fees:
- Official inspection and weighing services; comments due by 3-31-03; published 2-28-03 [FR 03-04688]
- Rice inspection services; comments due by 3-31-03; published 2-28-03 [FR 03-04689]

AGRICULTURE DEPARTMENT
Natural Resources Conservation Service
Loan and purchase programs:
- Conservation Security Program; comments due by 4-3-03; published 3-21-03 [FR 03-06825]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
- Northeastern United States fisheries—
  - Spiny dogfish; comments due by 4-4-03; published 2-18-03 [FR 03-03845]

Marine mammals:
- Commercial fishing authorizations—
  - Atlantic Large Whale Take Reduction Plan; comments due by 4-3-03; published 3-4-03 [FR 03-04897]
- Taking and importing—
  - Eastern North Pacific Southern Resident killer whales; comments due by 3-31-03; published 1-30-03 [FR 03-02031]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
- Commercially available off-the-shelf items; comments due by 3-31-03; published 1-30-03 [FR 03-01961]
- Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02159]
- Depreciation cost principle; comments due by 3-31-03; published 1-30-03 [FR 03-01962]
- Insurance and pension costs; comments due by 3-31-03; published 1-30-03 [FR 03-01963]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Virgin Islands; comments due by 3-31-03; published 2-27-03 [FR 03-04517]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Virgin Islands; comments due by 3-31-03; published 2-27-03 [FR 03-04518]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 3-31-03; published 2-27-03 [FR 03-04512]
- Maryland; comments due by 3-31-03; published 2-27-03 [FR 03-04515]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
- West Virginia; comments due by 3-31-03; published 2-28-03 [FR 03-04629]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
- West Virginia; comments due by 3-31-03; published 2-28-03 [FR 03-04630]

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- 4-(Dichloroacetyl)-1-oxa-4-azaspiro[4.5]decane; comments due by 3-31-03; published 1-29-03 [FR 03-01768]

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
- Nebraska and Iowa; comments due by 3-31-03; published 2-25-03 [FR 03-04363]
- South Carolina; comments due by 3-31-03; published 2-25-03 [FR 03-04364]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
- Commercially available off-the-shelf items; comments due by 3-31-03; published 1-30-03 [FR 03-01961]
- Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02159]
- Depreciation cost principle; comments due by 3-31-03; published 1-30-03 [FR 03-01962]

Insurance and pension costs; comments due by 3-31-03; published 1-30-03 [FR 03-01963]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare and medicaid:
Acute care hospital inpatient prospective payment system; payment methodology for extraordinarily high-cost cases; comments due by 4-4-03; published 3-5-03 [FR 03-05121]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Public Health Security and Bioterrorism Preparedness and Response Act of 2002; implementation:
Food facilities registration; comments due by 4-4-03; published 2-3-03 [FR 03-02443]
Food importation notice to FDA; comments due by 4-4-03; published 2-3-03 [FR 03-02444]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations:
Texas; comments due by 3-31-03; published 1-28-03 [FR 03-01873]
Drawbridge operations:
Florida; comments due by 3-31-03; published 8-28-02 [FR 02-21920]
Ports and waterways safety:
Portland Captain of Port Zone, ME; passenger vessels; security zones; comments due by 3-31-03; published 2-27-03 [FR 03-04635]

HOMELAND SECURITY DEPARTMENT
Immigration and Naturalization Service
Immigration:
Canada and Bermuda; visa and passport waiver removal for certain permanent residents; comments due by 4-1-03; published 1-31-03 [FR 03-02164]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Age at which person can receive permits, and Regional Councils membership requirement change; comments due by 4-4-03; published 2-18-03 [FR 03-03742]
Endangered and threatened species permit applications; comments due by 4-3-03; published 3-4-03 [FR 03-04987]

INTERIOR DEPARTMENT
National Park Service
Vehicles and traffic safety:
Motor vehicle operation under influence of alcohol or drugs; comments due by 4-1-03; published 1-31-03 [FR 03-02321]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Wyoming; comments due by 4-3-03; published 3-4-03 [FR 03-04970]

JUSTICE DEPARTMENT
Drug Enforcement Administration
Records, reports, and exports of listed chemicals:
Chemical mixtures containing phosphorus; comments due by 4-1-03; published 1-31-03 [FR 03-02296]

LABOR DEPARTMENT
Occupational Safety and Health Administration
Construction safety and health standards:
Crane and Derrick Negotiated Rulemaking Advisory Committee; intent to establish; comments due by 3-31-03; published 2-27-03 [FR 03-04560]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Commercially available off-the-shelf items; comments due by 3-31-03; published 1-30-03 [FR 03-01961]
Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02159]
Depreciation cost principle; comments due by 3-31-03; published 1-30-03 [FR 03-01962]
Insurance and pension costs; comments due by 3-31-03; published 1-30-03 [FR 03-01963]

NUCLEAR REGULATORY COMMISSION
Source material; domestic licensing:
Source material holdings; reporting requirements under international agreements; comments due by 4-4-03; published 3-5-03 [FR 03-05168]

NUCLEAR REGULATORY COMMISSION
Source material; domestic licensing:
Source material holdings; reporting requirements under international agreements; comments due by 4-4-03; published 3-5-03 [FR 03-05169]

SMALL BUSINESS ADMINISTRATION
Government contracting programs:
Contract bundling; comments due by 4-1-03; published 1-31-03 [FR 03-02158]
Small business size standards:
Facilities support services (including base maintenance); comments due by 4-4-03; published 2-3-03 [FR 03-02455]

SOCIAL SECURITY ADMINISTRATION
Social security benefits and supplemental security income:
Federal old age, survivors, and disability insurance, and aged, blind, and disabled—
Administrative law judges; video teleconference hearings; comments due by 4-4-03; published 2-3-03 [FR 03-02402]

STATE DEPARTMENT
Visas; nonimmigrant documentation:
Canada and Bermuda; visa and passport waiver removal for certain permanent residents; comments due by 4-1-03; published 1-31-03 [FR 03-02202]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Advisory circulars; availability, etc.:
Corrosion Prevention and Control Programs; development and implementation; comments due by 4-1-03; published 10-3-02 [FR 02-24933]
Air carrier certification and operations:
Corrosion Prevention and Control Programs; comments due by 4-1-03; published 10-3-02 [FR 02-24932]
Airworthiness directives:
BAE Systems (Operations) Ltd.; comments due by 3-31-03; published 2-27-03 [FR 03-04588]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 3-31-03; published 1-28-03 [FR 03-01816]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 3-31-03; published 1-29-03 [FR 03-01815]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 3-31-03; published 1-29-03 [FR 03-01827]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bombardier; comments due by 3-31-03; published 2-28-03 [FR 03-04739]
Dassault; comments due by 4-2-03; published 3-3-03 [FR 03-04839]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 3-31-03; published 2-28-03 [FR 03-04738]
Honeywell; comments due by 3-31-03; published 1-30-03 [FR 03-02094]
Airworthiness standards:
Special conditions—
Learjet Model 24, 24A, 24B, 24B-A, 24C, 24D, 24D-A, 24E, 24F, 24F-A, 25, 25A, 25B, 25C, 25D, and 25F airplanes; comments due by 4-2-03; published 3-3-03 [FR 03-04796]
Learjet Model 24/25 Series airplanes; comments due by 4-4-03; published 3-5-03 [FR 03-05129]
Accuracy-related penalty; imposition defenses establishment; comments due by 3-31-03; published 12-31-02 [FR 02-32927]

TREASURY DEPARTMENT
Terrorism Risk Insurance Program; comments due by 3-31-03; published 2-28-03 [FR 03-04831]

TREASURY DEPARTMENT
Terrorism Risk Insurance Program; comments due by 3-31-03; published 2-28-03 [FR 03-04832]

VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
Herbicide exposure, disability or death caused by; effective dates of benefits; disposition of unpaid benefits after death of beneficiary; comments due by 3-31-03; published 1-28-03 [FR 03-01834]

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
Hazardous liquid transportation—
Gas transmission pipelines; integrity management in high consequence areas; comments due by 3-31-03; published 1-28-03 [FR 03-00603]

TREASURY DEPARTMENT
Foreign Assets Control Office
Reporting and procedures regulations:
Economic Sanctions Enforcement Guidelines; comment request; comments due by 3-31-03; published 1-29-03 [FR 03-01809]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html.* Some laws may not yet be available.

H.R. 395/P.L. 108–10

Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

Last List March 10, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Now Available Online

through

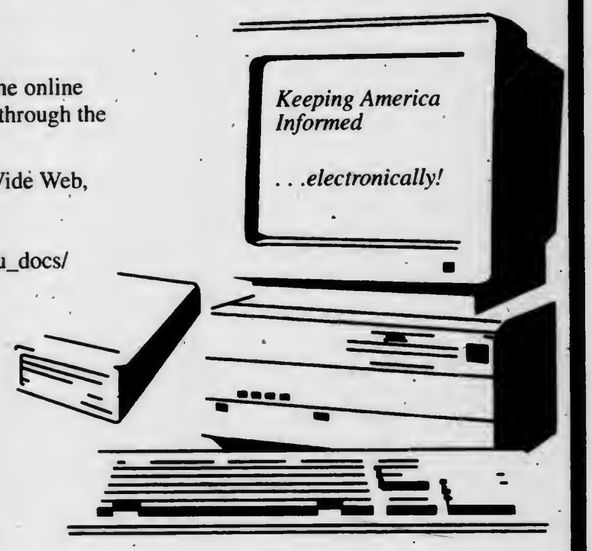
GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE



Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

Order Now!

The United States Government Manual 2002/2003

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.



$49 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS • PERIODICALS • ELECTRONIC PRODUCTS

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
***7917**

☐ **YES**, please send me ____ copies of **The United States Government Manual** 2002/2003, S/N 069–000–00145–9 at $49 ($68.60 foreign) each.

Total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

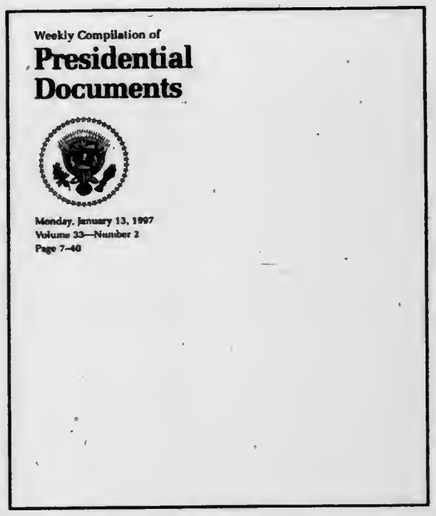
Thank you for your order!

Authorizing signature 9/02

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5420**

Charge your order. It's Easy! VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $151.00 First Class Mail ☐ $92.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 4/00

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Would you like to know. . .

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $35 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $30 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.



Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

Charge your order. It's Easy! VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscriptions for one year:

—— **LSA (List of CFR Sections Affected)**, (LCS) for $35 per year.
—— **Federal Register Index** (FRUS) $30 per year.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        DEC97 R 1
AER SMITH212J
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        DEC97 R 1
AERDO SMITH212J
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $764 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $699 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VOL
68
ISS
60
MR
28
003
MI



Printed on recycled paper

VOL
68
ISS
61
MR
31
2003
UMI

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION



Federal Register

3–31–03 Monday
Vol. 68 No. 61 Mar. 31, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
68

ISS
61

MR
31

003

MI



Federal Register

3–31–03
Vol. 68 No. 61
Pages 15335–15652

Monday
Mar. 31, 2003

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	202–512–1806
General online information	202–512–1530; 1–888–293–6498
Single copies/back copies:	
Paper or fiche	202–512–1800
Assistance with public single copies	1–866–512–1800 (Toll-Free)
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	202–741–6005
Assistance with Federal agency subscriptions	202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 61
Monday, March 31, 2003

Agricultural Marketing Service
RULES
Onions grown in—
Texas, 15335–15338
Tomatoes grown in—
Florida, 15338–15339
PROPOSED RULES
Cotton classing, testing, and standards:
Classification services to growers; 2003 user fees, 15385–15387
Onions (sweet) grown in—
Washington and Oregon, 15388
Pears (winter) grown in—
Oregon and Washington, 15387–15388

Agriculture Department
See Agricultural Marketing Service
See Food and Nutrition Service
See Forest Service
See Natural Resources Conservation Service
NOTICES
Privacy Act:
Systems of records, 15426–15427

Census Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15430–15431

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15460–15461
Meetings:
Antimicrobial Resistance Interagency Task Force; public health action plan, 15461

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15461–15462

Coast Guard
RULES
Ports and waterways safety:
Puget Sound, WA—
Large passenger vessels protection; security and safety zones, 15375–15378
Tank ships protection; security zone, 15372–15375
PROPOSED RULES
Regattas and marine parades:
Thunder on the Narrows boat races, 15417–15419
NOTICES
Committees; establishment, renewal, termination, etc.:
Commercial Fishing Industry Vessel Safety Advisory Committee, 15472–15473
Meetings:
Chemical Transportation Advisory Committee, 15473
National Boating Safety Advisory Council, 15473–15474

Commerce Department
See Census Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Committee for the Implementation of Textile Agreements
NOTICES
African Growth and Opportunity Act; determinations:
Swaziland; handloomed fabric and handmade articles, 15438
Cotton, wool, and man-made textiles:
Belarus, 15437–15438

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 15438–15439

Defense Department
RULES
Acquisition regulations:
Foreign acquisition, 15615–15641
Small disadvantaged businesses and institutions of higher education; contract goal extension; 15381
Technical amendments, 15380–15381
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Appeals and hearings procedures; formal review, 15372

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Early Childhood Educator Professional Development Program, 15643–15648
Special education and rehabilitative services—
Regional Resource Centers Program, 15439–15440

Employment Standards Administration
See Wage and Hour Division
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15483–15484

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Drilling, Completion, and Stimulation, 15440

Environmental Protection Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Coastal recreation waters adjacent to beaches; microbiological testing and monitoring, 15446–15450

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness standards:
Special conditions—
Boeing Model 777-200 series airplanes, 15339–15343
Class E airspace, 15343–15350
Class E airspace; correction, 15349
PROPOSED RULES
Class E airspace, 15388–15390
NOTICES
Advisory circulars; availability, etc.:
Normal and transport category rotorcraft; certification, 15545–15546
Committees; establishment, renewal, termination, etc.:
RTCA, Inc., 15548
Exemption petitions; summary and disposition, 15546–15547
Meetings:
Research, Engineering, and Development Advisory Committee, 15548
Passenger facility charges; applications, etc.:
Mason City Municipal Airport, IA, 15548–15549

Federal Communications Commission
PROPOSED RULES
Radio and television broadcasting:
International emergency digital distress and safety frequency 406.025 MHz; interference protection from multi-channel video and cable television systems; 15419–15425
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15450–15452

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15441
Electric rate and corporate regulation filings:
Alliant Energy Corporate Services, Inc., et al., 15442–15444
Hydroelectric applications, 15444–15445
Meetings:
Public utility filing requirements; electric quarterly reports workshop, 15445
Senior Executive Service:
Performance Review Board; membership, 15445–15446
Applications, hearings, determinations, etc.:
Columbia Gas Transmission Corp., 15442

Federal Motor Carrier Safety Administration
RULES
Motor carrier safety standards:
Civil penalties; inflation adjustment, 15381–15383
NOTICES
Reports and guidance documents; availability, etc.:
Alternative dispute resolution; binding arbitration use, 15549–15550

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 15452
Federal Open Market Committee:
Domestic policy directives, 15452

Federal Trade Commission
NOTICES
Franchising and business opportunity ventures; disclosure requirements and prohibitions; exemptions:
Paccar, Inc., 15452–15453
Rolls-Royce Corp., 15453–15454
Prohibited trade practices:
Ted Warren Corp. et al., 15454–15455

Federal Transit Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15550

Fish and Wildlife Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15474–15477
Endangered and threatened species and marine mammal permit applications, 15477–15479
Endangered and threatened species permit applications, 15479–15480
Marine mammal permit applications, 15480–15481

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Approved new animal drugs; adverse experiences; reporting and recordkeeping requirements, 15355–15369
Decoquinate; correction, 15371–15372
Gentamicin sulfate, mometasone furoate, clotrimazole otic suspension, 15370
Lasalocid and bacitracin methylene disalicylate, 15370–15371
Monensin, 15371
Sponsor name and address changes—
Bayer HealthCare LLC, Animal Health Division, 15369–15370
Organization, functions, and authority delegations:
Food Safety and Applied Nutrition Center; address change, 15355
PROPOSED RULES
Medical devices:
Gloves; patient examination and surgeon's gloves; test procedures and acceptance criteria, 15404–15417

Food and Nutrition Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15427–15428

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Texas, 15431

Forest Service
NOTICES
Meetings:
Lake Tahoe Basin Federal Advisory Committee, 15428
National Tree-Marking Paint Committee, 15428–15429
Resource Advisory Committees—
Eastern Idaho, 15429
South Mt. Baker-Snoqualmie, 15429
Southwest Idaho, 15429–15430

Government Ethics Office
PROPOSED RULES
Government ethics:
Post-employment conflict of interest restrictions
Correction, 15385

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Public Health Service
See Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Diabetes Detection Program, 15455–15456
Reports and guidance documents; availability, etc.:
Financial relationships and interests in research involving human subjects; protection guidance, 15456–15460

Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15462
Reports and guidance documents; availability, etc.:
Health Professions and Nurse Education Special Emphasis Panel; annual report, 15462

Homeland Security Department
See Coast Guard

Indian Affairs Bureau
NOTICES
Reservation establishment, additions, etc.:
Confederated Tribes of Siletz Indians of Oregon, 15481–15482
Tribal rolls:
Little Traverse Bay Band of Odawa Indians, 15481

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Minerals Management Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Meetings:
Taxpayer Advocacy Panels, 15555–15556

International Trade Administration
NOTICES
Antidumping:
Allura red from—
India, 15431–15433
Countervailing duties:
Allura red from—
India, 15433–15436
Applications, hearings, determinations, etc.:
Agriculture Department et al., 15433

Labor Department
See Employment Standards Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration
See Wage and Hour Division

Minerals Management Service
PROPOSED RULES
Royalty management:
Marginal properties; accounting and auditing relief, 15390–15404
NOTICES
Outer Continental Shelf operations:
Western Gulf of Mexico—
Oil and gas lease sales, 15482

Mine Safety and Health Administration
PROPOSED RULES
Coal mine safety and health:
Underground coal mine operators' dust control plans and compliance sampling for respirable dust; verification
Correction, 15557

National Aeronautics and Space Administration
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
A+FlowTek Corp., 15485

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Dan Hill & Associates, Inc., et al., 15550–15552
Malaguti USA et al., 15552–15553

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15462–15463
Grants and cooperative agreements; availability, etc.:
Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds, 15463–15467
Pediatric Research Loan Repayment Program, 15467–15470
Meetings:
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 15470–15471
National Institute of Child Health and Human Development, 15471
National Institute on Aging, 15470
Warren Grant Magnuson Clinical Center Board of Governors, 15471
Women's Health Research Advisory Committee, 15471

National Mediation Board
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15485–15486

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod, 15383–15384
Rock sole, flathead sole, and other flatfish, 15384
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
New England Fishery Management Council; meetings, 15425

NOTICES
Meetings:
Western Pacific Fishery Management Council, 15436–15437

National Science Foundation
RULES
Antarctic meteorites; collection for scientific research, 15378–15380

Natural Resources Conservation Service
RULES
Support services:
Technical service provider assistance Correction, 15335

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Entergy Nuclear Operations, Inc., 15487–15488
Applications, hearings, determinations, etc.:
Florida Power & Light Co. et al.; correction, 15487

Occupational Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15484–15485

Office of United States Trade Representative
See Trade Representative, Office of United States

Patent and Trademark Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15437

Presidential Documents
PROCLAMATIONS
Special observances:
National Child Abuse Prevention Month (Proc. 7656), 15649–15652

Public Health Service
NOTICES
Reports and guidance documents; availability, etc.:
National Toxicology Program—
Annual Plan, 15471–15472

Securities and Exchange Commission
RULES
Securities:
Auditor independence; requirements Correction, 15354–15355
Brokers and dealers; books and records requirements; correction, 15354
Sarbanes-Oxley Act of 2002; implementation—
Disclosure requirements; correction, 15353–15354
PROPOSED RULES
Securities and investment companies:
Sarbanes-Oxley Act of 2002; implementation—
Exchange Act reports; disclosure certification, 15599–15614
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15488–15490
Meetings:
Hedge funds; roundtable discussions, 15488
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 15490–15492
OneChicago, LLC, 15492–15493

State Department
NOTICES
Art objects; importation for exhibition:
Illuminating the Renaissance: The Triumph of Flemish Manuscript Painting in Europe, 15493
Meetings:
International Telecommunication Advisory Committee, 15493–15494

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Women's Services Advisory Committee, 15472

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15482–15483

Surface Transportation Board
NOTICES
Rail carriers:
Rail rate challenges in small cases; hearing, 15553–15554
Railroad operation, acquisition, construction, etc.:
Norfolk Southern Railway Co. et al., 15554

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Steel products; Trade Act exclusions
Conforming changes and technical corrections, 15494–15544

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
RULES
Computer reservation systems, carrier-owned:
Expiration date extension, 15350–15353
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 15544–15545
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 15545

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15554–15555
Privacy Act:
Systems of records, 15555

Wage and Hour Division
PROPOSED RULES
Fair Labor Standards Act:
Minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees; defining and delimiting exemptions, 15559–15597

Separate Parts In This Issue

Part II
Labor Department, Wage and Hour Division, 15559–15597

Part III
Securities and Exchange Commission, 15599–15614

Part IV
Defense Department, 15615–15641

Part V
Education Department, 15643–15648

Part VI
Executive Office of the President, Presidential Documents, 15649–15652

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7656.....15651
5 CFR
Proposed Rules:
2641.....15385
7 CFR
652.....15335
959.....15335
966.....15338
Proposed Rules:
28.....15385
927.....15387
956.....15388
14 CFR
25.....15339
71 (7 documents).....15343, 15345, 15346, 15347, 15348, 15349
255.....15350
Proposed Rules:
71.....15388
17 CFR
228.....15353
229.....15353
240.....15354
249.....15354
Proposed Rules:
228.....15600
229.....15600
240.....15600
249.....15600
270.....15600
274.....15600
21 CFR
Ch. I.....15355
211.....15355
226.....15355
510 (2 documents).....15355, 15369
514.....15355
524.....15370
558 (3 documents).....15370, 15371
Proposed Rules:
800.....15404
29 CFR
Proposed Rules:
541.....15560
30 CFR
Proposed Rules:
70.....15557
75.....15557
90.....15557
204.....15390
32 CFR
199.....15372
33 CFR
165 (2 documents).....15372, 15375
Proposed Rules:
100.....15417
45 CFR
674.....15378
47 CFR
Proposed Rules:
76.....15419
78.....15419
48 CFR
202.....15380
204.....15380
206.....15616
207.....15380
208.....15616
212.....15616
219.....15381
225.....15616
226.....15381
239.....15380
242.....15616
250.....15380
252.....15380
49 CFR
386.....15381
50 CFR
679 (2 documents).....15383, 15384
Proposed Rules:
648.....15425

Rules and Regulations

Federal Register
Vol. 68, No. 61
Monday, March 31, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 652

Technical Service Provider Assistance: Correction

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Interim final rule; correction.

SUMMARY: The Natural Resources Conservation Service published in the **Federal Register** of March 24, 2003, a document concerning payment rates for technical service providers, and clarification of the Department's use of technical service providers. The dates paragraph was incorrect. This document corrects that paragraph.

DATES: This correction is effective on March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Melissa Hammond, Technical Service Provider Coordinator, Strategic Natural Resource Issues Staff, NRCS, P.O. Box 2890, Washington, DC 20013–2890; telephone (202) 720–6731; fax: (202) 720–3052; submit e-mail to: *gary.gross@usda.gov,* Attention: Technical Service Provider Assistance.

SUPPLEMENTARY INFORMATION: The Natural Resources Conservation Service published a document in the **Federal Register** of March 24, 2003, (68 FR 14131) amending an interim rule published on November 21, 2002 (67 FR 70119). We intended to reopen the comment period on the November interim rule, but inadvertently omitted that reopening information. This corrects the error. On page 14131, in the second column, the dates paragraph is corrected to read as follows:

DATES: Effective date: March 31, 2003. Comments on this amendment must be received by June 30, 2003. In addition, the comment period for the Technical Service Provider Assistance Interim Final Rule published on November 21, 2002 (67 FR 70119) is hereby reopened. Comments must be received by April 30, 2003.

Dated: March 26, 2003.

Helen V. Huntington,

NRCS Federal Register Liaison.

[FR Doc. 03–7694 Filed 3–26–03; 3:46 pm]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV03–959–1 FR]

Onions Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the South Texas Onion Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.05 to $0.085 per 50-pound equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2002–03 and subsequent fiscal

periods from $0.05 to $0.085 per 50-pound equivalent of onions.

The South Texas onion marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area, and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, where all persons directly affected have an opportunity to participate and provide input.

For the 2001–02 and subsequent fiscal periods, the Committee recommended and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 11, 2002, and unanimously recommended 2002–03 expenses of $127,002 for personnel, office, compliance, and partial promotion expenses. The assessment rate and specific funding for research and promotion projects were to be recommended at a later Committee meeting.

The Committee subsequently met on October 8, 2002, and recommended 2002–03 expenditures of $463,297 and an assessment rate of $0.085 per 50-pound equivalent of onions. Ten of the 13 Committee members present voted in support of the $0.035 per 50-pound equivalent increase and three voted against it. The three Committee members voting against the recommendation were producer handlers who basically did not approve of the research and promotion budgets. In comparison, last year's budgeted expenditures were $449,190. The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas onions. Without the increase, the Committee's reserve fund would drop to $16,053. The Committee believes a reserve that low would not be adequate for its operations.

The major expenditures recommended by the Committee for the 2002–03 fiscal period included $72,002 for administrative expenses, $35,000 for compliance, $260,500 for promotion, and $95,795 for research projects. Budgeted expenses for these items in 2001–02 were $75,190, $30,000, $254,000, and $90,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. At the October 2002 meeting, onion shipments for the fiscal period were estimated at 5.5 million 50-pound equivalents, which would have provided $467,500 in assessment income.

Since then, however, the Committee has become aware that the South Texas onion acreage is approximately 26 percent less than last season's 16,148-planted acres. The Committee met January 6, 2003, to discuss reports of the reduced acreage. Based on the estimated 26 percent reduced production, shipments are estimated to be 4,070,000 fifty-pound equivalents. The Committee recommended a 40 percent reduction to a market development program previously funded at $225,000 and a 50 percent cut to three onion research projects. The revised $325,400 budget for 2002–03 includes reductions of $90,000 and $47,898 in promotion and research, respectively. The Committee did not recommend a change in the proposed assessment rate.

With shipments of 4,070,000 fifty-pound equivalents, assessment income in 2002–03 should total $345,950. Income derived from handler assessments should be adequate to cover budgeted expenses. Funds in the reserve (currently $204,350) would be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 959.43).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget has been reviewed and approved by USDA. Those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 producers of onions in the production area and approximately 35 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2001–02 fiscal period, the industry's 35 handlers shipped onions produced on 16,148 acres with the average and median volume handled being 152,446 and 136,810 fifty-pound bag equivalents, respectively. In terms of production value, total revenues for the 35 handlers were estimated to be $39.9 million, with average and median revenues being $1.1 million and $1.0 million, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 35 handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. All of the 90 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed $750,000.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.05 to $0.085 per 50-pound equivalent of onions. The Committee recommended 2002–03 expenditures of $463,297 and an assessment rate of $0.085 per 50-pound equivalent. The assessment rate of $0.085 is $0.035 higher than the 2001–02 rate.

In October 2002, the major expenditures recommended by the Committee for the 2002–03 fiscal period included $72,002 for administrative expenses, $35,000 for compliance, $260,500 for promotion, and $95,795 for research projects. Budgeted expenses for these items in 2001–02 were $75,190, $30,000, $254,000, and $90,000, respectively. The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas onions without having to draw a large amount from reserves.

The Committee reviewed and recommended 2002–03 expenditures of $463,297, which included increases in research and promotion programs. Prior to arriving at this budget, the Committee considered information from various sources, including the Executive Committee and the Research and Market Development Subcommittees. Numerous alternative expenditure levels were discussed by these groups based upon the relative value of various research and promotion projects to the onion industry. The assessment rate of $0.085 per 50-pound equivalent of assessable onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 5.5 million 50-pound equivalents for the 2002–03 fiscal period.

The quantity of assessable onions for the 2002–03 fiscal period was initially estimated at 5.5 million 50-pound equivalents. Thus, the $0.085 rate would have provided $467,500 in assessment income, and income derived from handler assessments would have been adequate to cover the $463,297 budget. This is approximately $4,203 above the anticipated expenses, which the Committee determined to be acceptable.

As mentioned earlier, the Committee met again on January 6, 2003, to discuss reports of a 26 percent onion acreage reduction, and recommended an amended budget totaling $325,400, based on a revised production estimate of 4,070,000 fifty-pound equivalents. The revised budget includes reduced promotion and research expenditures of $170,500 and $47,898, respectively. The Committee did not recommend changes to the proposed assessment rate.

With shipments of 4,070,000 fifty-pound equivalents, assessment income in 2002–03 should total $345,950. Income derived from handler assessments should be adequate to cover budgeted expenses. Funds in the reserve (currently $204,350) would be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 959.43).

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2002–03 fiscal period could range between $8.60 and $9.25 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2002–03 fiscal period as a percentage of total grower revenue could be about 1 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meetings were widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the October 8, 2002, and January 6, 2003, meetings were public meetings and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on December 26, 2002 (67 FR 78751). Copies of the proposal were also mailed to all onion handlers on December 26, 2002, by the Committee staff. Finally, the proposed rule was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending January 27, 2003, was provided for interested persons to respond to the proposal. Eight comments were received during the comment period; six were in support of the assessment rate increase as published, and two comments opposed the proposed assessment rate increase.

One commenter in support of the increased assessment rate noted that the Committee, recognizing tight economic conditions in recent years, reduced the assessment rate two years ago and budgeted a deficit by setting an artificially low assessment rate. This commenter, as well as another commenter, believes the Committee allowed its reserves to get too low, and both fully support the assessment rate increase. The commenter also noted that the projected volume of onions would be low due to decreased plantings. Both commenters state that in spite of the Committee making further cuts in the original budget, decreased production dictates that the assessment rate be increased.

Another comment in support of the increased assessment rate noted that, without the increase the Committee would not be able to meet its research and marketing program obligations the industry has always funded. Two other favorable comments expressed the need for continuing to promote Texas onions in order to be able to compete with other onion-producing areas.

One comment, representing a grower and shipper in District 2 (Laredo-Winter Garden) of the South Texas onion order production area, stated that over half of District 2's season is not covered by the order. The commenter opposes the increased assessment rate because he believes that the Rio Grande Valley growers and shippers gain more from the Committee's research and marketing program activities. While it is true that the regulatory period, which the Committee approved, ends June 4 each year and only includes part of District 2's season, District 2 handlers do not pay assessments during the latter part of their onion season. District 2 growers and shippers continue to receive the benefit of the assessment because all Texas onions grown in the production area covered by the marketing order are promoted. Consequently, USDA

disagrees with the commenter's statement that Rio Grande Valley growers and shippers would gain more from the increased assessment than those from the Laredo-Winter Garden area.

The second commenter opposing the increase expressed concern regarding a possible conflict of interest with some producers and handlers on the Committee who also produce and handle onions not assessed under the South Texas marketing order. The commenter stated that increasing the assessment rate should be determined by those who are directly affected, not handlers that either attain most of their onion business outside the jurisdiction of the order, or pass on the assessment to growers under the jurisdiction of the order. The commenter was concerned that such Committee members could unduly shape the decision-making of the Committee, that their decisions could be biased against their South Texas competitors, and that being on the Committee could enable them to raise the production costs (*i.e.* assessments) of their South Texas competition.

The Committee, which is composed of six producer and four handler members from District 1 (Coastal Bend—Lower Valley) and four producer and three handler members from District 2, is representative of the entire production area. The Committee is established and selected in accordance with the provisions of the order. The producer and handler members and alternates on the Committee are nominated by their peers and are eligible to serve based on their qualifications. The fact that some of the Committee members also grow and handle onions outside the South Texas onion production area does not disqualify them from serving on the Committee. Further, only South Texas onions grown in the 35-county production area may be assessed for marketing order purposes.

Based on the foregoing, no changes are being made to the rule as it was proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee, the comments received, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2002–03 fiscal period began August 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period. In addition, the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this action which was recommended by the Committee at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and all of the comments received have been considered.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2002, an assessment rate of $0.085 per 50-pound equivalent is established for South Texas onions.

Dated: March 24, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–7633 Filed 3–26–03; 1:47 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV03–966–03 C]

Tomatoes Grown in Florida; Decreased Assessment Rate; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendment.

SUMMARY: The Agricultural Marketing Service (AMS) published an interim final rule in the **Federal Register** on November 9, 2001 (66 FR 56599), which decreased the assessment rate for tomatoes grown in Florida. The interim final rule fixed the assessment rate at $0.20 per 25-pound container or equivalent of assessable tomatoes for the 2001–02 and subsequent fiscal periods. The rate should have been fixed at $0.02 per 25-pound container or equivalent. This document corrects the assessment rate.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375; Fax: (863) 325–8793; E-Mail: *Doris.Jamieson@usda.gov;* or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Ave, SW., STOP 0237, Washington, DC 20250–0237, telephone: (202) 720–2491, Fax: (202) 720–8938; E-Mail: *George.Kelhart@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

AMS published an interim final rule in the **Federal Register** on November 9, 2001 (66 FR 56599), decreasing the assessment rate for tomatoes grown in Florida [7 CFR part 966]. The interim final rule was subsequently finalized without change in a document published on March 13, 2002 (67 FR 11213).

Need for Correction

As published, the assessment rate was incorrectly identified as $0.20 per 25-pound container or equivalent. This correction document replaces the incorrect assessment rate with the correct assessment rate of $0.02 per 25-pound container or equivalent for Florida tomatoes.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

■ Accordingly, 7 CFR part 966 is corrected by making the following amendment:

PART 966—TOMATOES GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 966.234 [Corrected]

■ 2. In § 966.234, the figure "$0.20" is revised to "$0.02".

Dated: March 24, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–7634 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM231; Special Conditions No. 25–216–SC–A]

Special Conditions: Boeing Model 777–200 Series Airplanes; Overhead Crew Rest Compartments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amended final special conditions.

SUMMARY: These amended special conditions are issued for Boeing Model 777–200 series airplanes. Final special conditions; request for comments, No. 25–216–SC were issued on October 3, 2002, addressing this installation. Comments were received and these amended special conditions address those comments. These airplanes, modified by Flight Structures Inc., will have a novel or unusual design feature associated with the installation of an overhead flight crew rest compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These amended special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these amended special conditions is March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 2001, Flight Structures Inc., 4407 172 Street NE, Arlington, Washington, 98223, applied for a supplemental type certificate (STC) for installation of a Door 1 overhead flightcrew rest (OFCR) compartment in Boeing Model 777–200 series airplanes. The certification of the Alitalia Model 777–200 overhead crew rest was scheduled for October 9, 2002. The Boeing Model 777–200 series airplanes are large twin engine airplanes with various passenger capacities and ranges depending upon airplane configuration.

The OFCR compartment, adjacent to Door 1, is located in the overhead above the main passenger cabin and will include a maximum of two private berths, two seats, and a lavatory. Occupancy of the OFCR compartment will be limited to a maximum of four occupants.

The OFCR will be accessed from the main deck by stairs. In addition, an emergency hatch that opens directly into the main passenger cabin area will be provided for the compartment. A smoke detection system, an oxygen system, and occupant amenities will also be provided. This compartment will only be occupied in flight; occupancy is prohibited during taxi, takeoff, or landing.

Compliance with these special conditions does not relieve the applicant from the existing airplane certification basis requirements. One particular area of concern is that the OFCR installation creates a smaller compartment volume within the overhead area of the airplane. The applicant must comply with the requirements of §§ 25.365(e), (f), and (g), for the overhead area compartment, as well as any other airplane compartments whose decompression characteristics are affected by the installation of a crew rest compartment. Compliance with § 25.831 must be demonstrated for all phases of flight where occupants will be present.

The FAA considers OFCR compartment smoke or fire detection and fire suppression systems (including airflow management features that prevent hazardous quantities of smoke or fire extinguishing agent from entering any other compartment occupied by crewmembers or passengers) complex with respect to paragraph 6d of Advisory Circular (AC) 25.1309–1A, "System Design and Analysis." In addition, the FAA considers failure of the crew rest compartment fire protection system (*i.e.*, smoke or fire detection and fire suppression systems) in conjunction with a crew rest fire to be a catastrophic event. Based on the "Depth of Analysis Flowchart" shown in Figure 2 of AC 25.1309–1A, the depth of analysis should include both qualitative and quantitative assessments (reference paragraphs 8d, 9, and 10 of AC 25.1309–1A). In addition, it should be noted that flammable fluids, explosives, or other dangerous cargo are prohibited from being carried in the crew rest area:

The requirements to enable crewmember(s) quick entry to the crew rest compartment and to locate a fire source inherently places limits on the amount of baggage that may be carried and the size of the crew rest area. The FAA notes that the crew rest area is limited to stowage of crew personal luggage and it is not intended to be used for the stowage of cargo or passenger baggage. The design of such a system to include cargo or passenger baggage would require additional requirements to ensure safe operation.

The addition of galley equipment or a kitchenette incorporating a cook top or other heat source, or a stowage compartment greater than or equal to 25 ft^3, into the crew rest compartment may require further special conditions to be considered.

Amendment 25–38 modified the requirements of § 25.1439(a) by adding, "In addition, protective breathing equipment must be installed in each isolated separate compartment in the airplane, including upper and lower lobe galleys, in which crewmember occupancy is permitted during flight for the maximum number of crewmembers expected to be in the area during any operation." The requirements of § 25.1439(a) apply to the OFCR compartment, which is an isolated separate compartment. However, the PBE requirements for isolated separate compartments of § 25.1439(a) are not appropriate because the OFCR compartment is novel and unusual in terms of the number of occupants. In 1976 when amendment 25–38 was adopted, small galleys were the only isolated compartments that had been certificated. A maximum of two crewmembers were expected to occupy those galleys. Special Condition No. 9 addresses crew rest compartments that can accommodate up to four crewmembers. This large number of occupants in an isolated compartment was not envisioned at the time amendment 25–38 was adopted. It is not appropriate for all occupants to don PBE in the event of a fire because the first action should be to leave the confined space unless the occupant is fighting the fire. Taking the time to don the PBE would prolong the time for the emergency evacuation of the occupants and possibly interfere with efforts to extinguish the fire.

Operational Evaluations and Approval

These special conditions outline requirements for OFCR compartment design approvals (*i.e.* type design changes and supplemental type certificates) administered by the FAA's Aircraft Certification Service. Prior to operational use of an OFCR compartment, the FAA's Flight Standards Service must evaluate and approve the "basic suitability" of the OFCR compartment for crew occupation. Additionally, if an operator wishes to utilize a flightcrew rest area as "sleeping quarters," the crew rest area must undergo an additional evaluation and approval (Reference §§ 121.485(a), 121.523(b) and 135.269(b)(5)). Compliance with these special conditions does not ensure that the requirements of part 121 or part 135 have been demonstrated.

In order to obtain an operational evaluation, the type design holder must contact the Aircraft Evaluation Group (AEG) in the Flight Standards Service and request a "basic suitability" evaluation or a "sleeping quarters" evaluation of their crew rest. The results of these evaluations must be documented in a 777 Flight Standardization Board (FSB) Report Appendix. Individual operators may then reference these standardized evaluations in discussions with their FAA Principal Operating Inspector (POI) as the basis for an operational approval, in lieu of an on-site operational evaluation.

Any changes to the approved OFCR compartment configuration that effect crewmember emergency egress or any other procedures affecting the safety of the occupying crewmembers and/or related training shall require a re-evaluation and approval. The applicant for a crew rest design change that affects egress, safety procedures, or training is responsible for notifying the FAA's AEG that a new crew rest evaluation is required.

Procedures must be developed to assure that a crewmember entering the OFCR through the vestibule to fight a fire will examine the vestibule and the lavatory areas for the source of the fire prior to entering the remaining areas of the crew rest compartment. These procedures are intended to assure that the source of the fire is not between the crewmember and the primary exit.

Type Certification Basis

Under the provisions of § 21.101, Amendment 21–69, effective September 16, 1991, Flight Structures Inc., must show that the Boeing Model 777–200, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. T00001SE or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. T00001SE for the Boeing Model 777–200 series airplanes include 14 CFR part 25, as amended by Amendments 25–1 through 25–82. The U.S. type certification bases for the Boeing Model 777–200 series airplanes is established in accordance with 14 CFR 21.17 and 21.29 and the type certification application date. The type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 777–200 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

While the installation of a crew rest compartment is not a new concept for large transport category airplanes, each compartment design has unique features by virtue of its design, location, and use on the airplane. Previously, crew rest compartments have been evaluated that are installed within the main passenger compartment area of the Boeing Model 777–200 and Model 777–300 series airplanes and the overhead area of the passenger compartment of the 777–200. Other crew rest compartments have been installed below the passenger cabin area, adjacent to the cargo compartment. Similar overhead crew rest compartments have also been installed on the Boeing Model 747 airplane. The interfaces of the modification are evaluated within the interior and assessed in accordance with the certification basis of the airplane. However, part 25 does not provide all the requirements for crew rest compartments within the overhead area of the passenger compartment. Further, these special conditions do not negate the need to address other applicable part 25 regulations.

Due to the novel or unusual features associated with the installation of this crew rest compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type certificate.

Prior Comment

During a previous publication of the substantially identical special conditions a comment was received after the comment period had closed. The commenter thought requiring placards prohibiting storage of "hazardous quantities of flammable fluids" was unnecessary and a duplication of International Air Transport Association (IATA) Dangerous Goods Regulations, specially, "Provisions for Dangerous Goods Carried by Passengers or Crew." The FAA concurs with the commenter that the placard requirement is similar to the IATA requirement, therefore, the requirement for the placard has been removed.

Discussion of Comments Received on Special Conditions No. 25–216–SC

Notice of final special conditions; request for comments, No. 25–216–SC, for the Boeing Model 777–200 series airplanes was published in the **Federal Register** on October 11, 2002 (67 FR 63250). Two commenters responded to the notice.

The first commenter requests that Special Condition No. 2 be revised to include the wording "if the open panel would impede evacuation from the main deck." This comment was not incorporated because the FAA finds that the current statement adequately states the objectives of the requirement.

This commenter also requests that Special Condition No. 8 be revised to add the statement "Consideration can be given to bunks, walls, partitions, etc. that can be utilized to brace oneself during turbulence." This comment was not incorporated because the suggested statement would be considered a method of compliance. The FAA finds that the current statement adequately states the objectives of the requirement.

This commenter has a third comment requesting that Special Condition No. 14(d) be revised to include the phrase, "except for curtained bunks." The FAA agrees and has incorporated the phrase into Special Condition No. 14(d) as it helps clarify the intent of the requirement.

Finally, the first commenter requests the addition of a special condition dealing with the size and fire protection of stowage compartments. This project is a one-only Supplemental Type Certificate (STC) and as such has limited application and is adequately covered by the existing regulations. Also, all future STC projects will encompass this requirement in some form. Therefore this comment was not incorporated.

The second commenter requested that Special Condition No. 1 be revised as follows: 1: The occupancy of the overhead crew rest compartment is limited to the total number of installed bunks and seats in each compartment. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the overhead crew rest compartment. When being used for required flightcrew rest, the maximum occupancy of the OFCR [overhead flight crew rest] compartment is two. The maximum occupancy in the OFAR [overhead flight attendant rest] is twelve." This comment was not incorporated. The distinction between an OFCR and an OFAR based on the phase of flight is an operational issue and outside the scope of these special conditions. This issue should be addressed as described earlier in the preamble under the heading, "Operational Evaluations and Approval."

The next comment deals with occupying the crewrest during taxi, takeoff, and landing. These special conditions do not cover occupancy during taxi, takeoff, and landing, therefore, this comment was not incorporated.

The second commenter's final comment encompasses both Special Conditions No. 6 and 7. The commenter views the OFCR as being an extension of the flightdeck. Except for purely emergency notifications, all communications to the OFCR should come from the flightdeck. The FAA concurs, and this comment was incorporated into Special Condition No. 6 to include provisions to provide only the relevant information to the flight crewmembers in the overhead crew rest. Special Condition No. 7 remains unchanged.

Applicability

As discussed above, these special conditions are applicable to the Model 777–200 series airplanes. Should Flight Structures Inc., apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate Data Sheet No. T00001SE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1) Amendment 21–69, effective September 16, 1991.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777–200 series airplanes, modified by Flight Structures Inc., with an overhead flightcrew rest (OFCR) compartment.

1. Occupancy of the OFCR compartment is limited to the total number of installed bunks and seats in each compartment. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the OFCR compartment. The maximum occupancy is four in the OFCR compartment.

(a) There must be appropriate placards, inside and outside each entrance to the OFCR compartment to indicate:

(1) The maximum number of occupants allowed,

(2) That occupancy is restricted to crewmembers that are trained in the evacuation procedures for the OFCR compartment,

(3) That occupancy is prohibited during taxi, take-off and landing, and

(4) That smoking is prohibited in the OFCR compartment.

(b) There must be at least one ashtray on the inside and outside of any entrance to the OFCR compartment.

(c) There must be a means to prevent passengers from entering the OFCR compartment in the event of an emergency or when no flight attendant is present.

(d) There must be a means for any door installed between the OFCR compartment and passenger cabin to be capable of being quickly opened from inside the compartment, even when crowding occurs at each side of the door.

(e) For all doors installed, there must be a means to preclude anyone from being trapped inside the OFCR compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the compartment at any time.

2. There must be at least two emergency evacuation routes, which could be used by each occupant of the OFCR compartment to rapidly evacuate to the main cabin and be able to be closed from the main passenger cabin after evacuation. In addition—

(a) The routes must be located with sufficient separation within the OFCR compartment, and between the evacuation routes, to minimize the possibility of an event rendering both routes inoperative.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against the escape route. One of the two evacuation routes should not be located where, during times in which occupancy is allowed, normal movement by passengers occurs (*i.e.* main aisle, cross aisle or galley complex) that would impede egress of the OFCR compartment. If an evacuation route utilizes an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If there is low headroom at or near the evacuation route, provisions must be made to prevent or to protect occupants (of the OFCR area) from head injury. The use of evacuation routes must not be dependent on any powered device. If the evacuation path is over an area where there are passenger seats, a maximum of one row of passengers may be displaced from their seats temporarily during the evacuation process of an incapacitated person(s). If the evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

(c) Emergency evacuation procedures and the emergency evacuation of incapacitated occupant procedures must be established and transmitted to the operator for incorporation into their training programs and appropriate operational manuals. If the evacuation path is over an area where there are passenger seats, a maximum of one row of passengers may be displaced from their seats temporarily during the evacuation process.

(d) There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of evacuation routes.

3. There must be a means for the evacuation of an incapacitated person (representative of a ninety-fifth percentile male) from the OFCR compartment to the passenger cabin floor.

(a) The evacuation must be demonstrated for all evacuation routes. A flight crewmember or other crewmember (a total of one assistant within the OFCR area) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. These additional assistants must be standing on the floor while providing assistance. For evacuation routes having stairways, the additional assistants may ascend up to one half the elevation change from the main deck to the OFCR compartment, or to the first landing, whichever is lower.

(b) Procedures for the evacuation of an incapacitated person from the OFCR compartment must be established.

4. The following signs and placards must be provided in the OFCR compartment:

(a) At least one exit sign, located near each exit, meeting the requirements of § 25.812(b)(1)(i), except that a sign of reduced background area with no less than 5.3 square inches (excluding the letters) may be utilized, provided that it is installed such that the material surrounding the exit sign is light in color (*e.g.* white, cream, light beige). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch wide background border around the letters would also be acceptable.

(b) An appropriate placard located near each exit defining the location and the operating instructions for each evacuation route.

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(d) The exit handles and evacuation path operating instruction placards must be illuminated to at least 160 microlamberts under emergency lighting conditions.

5. There must be a means in the event of failure of the aircraft's main power system, or of the normal OFCR compartment lighting system, for emergency illumination to be automatically provided for the crew rest compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient for the occupants of the OFCR compartment to locate and transfer to the main passenger cabin floor by means of each evacuation route.

6. There must be means for two-way voice communications between crewmembers on the flightdeck and occupants of the OFCR compartment. There must also be two-way communications between the occupants of the OFCR compartment and each flight attendant station required to have a public address system microphone per § 25.1423(g) in the passenger cabin. In addition, the public address system will include provisions to provide only the relevant information to the flight crewmembers in the overhead crew rest compartment (*e.g.*, fire in flight, aircraft depressurization, preparation of the compartment occupants for landing, etc.) and the appropriate training for the flight crewmembers.

7. There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flightdeck and at each pair of required floor level emergency exits to alert occupants of the OFCR compartment of an emergency situation. Use of a public address or crew interphone system would be acceptable, providing an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units (APU), or the disconnection or failure of all power sources dependent on their continued operation (*i.e.* engine and APU), for a period of at least ten minutes.

8. There must be a means, readily detectable by seated or standing occupants of the OFCR compartment, which indicates when seat belts should be fastened. In the event there are no seats, at least one means must be provided to cover anticipated turbulence (*e.g.* sufficient handholds). Seat belt type restraints must be provided for berths and must be compatible for the sleeping attitude during cruise conditions. There must be a placard on each berth requiring that seat belts must be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, there must be a placard identifying the head position.

9. In lieu of the requirements specified in § 25.1439(a) that pertain to isolated compartments and to provide a level of safety equivalent to that which is provided occupants of a small isolated galley, the following equipment must be provided in the OFCR compartment:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur;

(b) Two protective breathing equipment (PBE) devices, approved to Technical Standard Order (TSO)-C116 or equivalent, suitable for fire fighting or one PBE for each hand-held fire extinguisher, whichever is greater; and

(c) One flashlight.

10. A smoke or fire detection system (or systems) must be provided that monitors each area within the OFCR compartment including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication to the flightdeck within one minute after the start of a fire;

(b) An aural warning in the OFCR compartment; and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

11. The OFCR compartment must be designed such that fires within the compartment can be controlled without a crewmember having to enter the compartment, or the design of the access provisions must allow crewmembers equipped for fire fighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the fire fighting equipment, and to gain access must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the fire source.

12. There must be a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the OFCR compartment from entering any other compartment occupied by crewmembers or passengers. This means must include the time periods during the evacuation of the crew rest compartment and, if applicable, when accessing the crew rest compartment to manually fight a fire. Smoke entering any other compartment occupied by crewmembers or passengers after opening the OFCR access door must dissipate within five minutes after closing the access to the OFCR compartment. Flight tests must be conducted to show compliance with this requirement.

If a built-in fire extinguishing system is used in lieu of manual fire fighting, then the fire extinguishing system must be designed so that no hazardous quantities of extinguishing agent will enter other compartments occupied by passengers or crew; the system must have adequate capacity to suppress any fire occurring in the OFCR compartment, considering the fire threat, volume of the compartment and the ventilation rate.

13. There must be a supplemental oxygen system equivalent to that provided for main deck passengers for each seat and berth in the OFCR compartment. The system must provide an aural and visual warning to warn the occupants of the crew rest compartment to don oxygen masks in the event of decompression. The warning must activate before the cabin pressure altitude exceeds 15,000 feet. The aural warning must sound continuously until a reset push button in the OFCR compartment is depressed.

14. The following requirements apply to OFCR compartments that are divided into several sections by the installation of curtains or partitions:

(a) To compensate for sleeping occupants, there must be an aural alert that can be heard in each section of the OFCR compartment that accompanies automatic presentation of supplemental oxygen masks. A minimum of two supplemental oxygen masks are required in each section whether or not seats or berths are installed in each section. There must also be a means by which the oxygen masks can be manually deployed from the flightdeck.

(b) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the OFCR compartment into small sections. The placard must require that the curtain(s) remain open when the private section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private area and, therefore, does not require a placard.

(c) For each OFCR section created by the installation of a curtain, the following requirements of these special conditions must be met with the curtain open or closed:

(1) No smoking placard (Special Condition No. 1),

(2) Emergency illumination (Special Condition No. 5),

(3) Emergency alarm system (Special Condition No. 7),

(4) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8), and

(5) The smoke or fire detection system (Special Condition No. 10).

(d) Overhead crew rest compartments visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway exit. The exit signs must be provided in each separate section of the OFCR compartment, except for curtained bunks, and must meet the requirements of § 25.812(b)(1)(i).

(e) Sections within an OFCR compartment that are created by the installation of a rigid partition with a door physically separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(1) There must be a secondary evacuation route from each section to the main deck, or alternatively, it must be shown that any door between the sections has been designed to preclude anyone from being trapped inside the compartment. Removal of an incapacitated occupant within this area must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway exit.

(4) There must be exit signs in each section meeting the requirements of § 25.812(b)(1)(i) that direct occupants to the primary stairway exit. An exit sign with reduced background area as described in Special Condition No. 4(a) may be used to meet this requirement.

(f) For each smaller section within the main OFCR compartment created by the installation of a partition with a door, the following requirements of these special conditions must be met with the door open or closed:

(1) No smoking placards (Special Condition No. 1),

(2) Emergency illumination (Special Condition No. 5),

(3) Two-way voice communication (Special Condition No. 6),

(4) Emergency alarm system (Special Condition No. 7),

(5) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8),

(6) Emergency fire fighting and protective equipment (Special Condition No. 9), and

(7) Smoke or fire detection system (Special Condition No. 10).

15. The requirements of two-way voice communication with the flightdeck and provisions for emergency firefighting and protective equipment are not applicable to lavatories or other small areas that are not intended to be occupied for extended periods of time.

16. Where a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

17. Materials (including finishes or decorative surfaces applied to the materials) must comply with the flammability requirements of § 25.853(a) as amended by Amendment 25–83. Mattresses must comply with the flammability requirements of § 25.853(c), as amended by Amendment 25–83.

Issued in Renton, Washington, on March 20, 2003.

Mike Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7667 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14195; Airspace Docket No. 03–ACE–1]

Modification of Class E Airspace; Fairmont, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising the Fairmont, NE Class E airspace. It increases the size of the Class E airspace area extending upward from 700 feet above the surface of the earth to accommodate new and amended Standard Instrument Approach Procedures (SIAPs) developed for Fairmont State Airfield, Fairmont, NE. This action also modifies the Fairmont, NE Class E airspace, and its legal description, by incorporating

the updated Fairmont State Airfield airport reference point.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing an SIAP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the rules Docket must be received on or before May 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14195/ Airspace Docket no. 03–ACE–1, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Fairmont, NE in order to provide a safer Instrument Flight Rules (IFR) environment at Fairmont State Airfield, Fairmont, NE. The FAA has developed Area navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 17, ORIGINAL SIAP; RNAV (GPS RWY 35, ORIGINAL SIAP; Nondirectional Radio Beacon (NDB) RWY 17, Amendment 1 SIAP and NDB RWY 35, Amendment 2 SIAP to serve Fairmont State Airfield, Fairmont, NE. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs. This amendment also modifies the Fairmont, NE Class E airspace by incorporating the current Fairmont State Airfield, NE airport reference point and deleting reference to Beklof NDB, NE in the legal description. These actions bring the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative command and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14195/Airspace Docket No. 03–ACE–1." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Fairmont, NE

Fairmont State Airfield, NE
(Lat 40°35′10″N., long. 97°34′23″W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Fairmont State Airfield, NE

* * * * *

Issued in Kansas City, MO on March 11, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–7674 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14598; Airspace Docket No. 03–ACE–21]

Modification of Class E Airspace; Independence, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Class E airspace at Independence, IA. An examination of controlled airspace for Independence, IA revealed discrepancies in the Independence Municipal Airport, IA airport reference point used in the legal description for the Independence, IA Class E airspace area. This action corrects the discrepancies by modifying the Independence, IA Class E airspace area. It also incorporates the revised Independence Municipal Airport, IA airport reference point in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14598/ Airspace Docket No. 03–ACE–21, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Independence, IA. An examination of controlled airspace for Independence, IA revealed discrepancies in the Independence Municipal Airport, IA airport reference point used in the legal description for this airspace area. This amendment incorporates the revised Independence Municipal Airport, IA airport reference point and brings the legal description of the Independence, IA Class E airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, and adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14598/Airspace Docket No. 03–ACE–21." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Independence, IA

Independence Municipal Airport, IA
(Lat. 42°27′13″ N., long. 91°56′51″ W.)
Wapsie NDB
(Lat. 42°27′08″ N., long. 91°57′04″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Independence Municipal Airport and within 2.6 miles each side of the 008° bearing from the Wapsie NDB extending from the 6-mile radius to 7.9 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on March 19, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–7673 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14599; Airspace Docket No. 03–ACE–22]

Modification of Class E Airspace; Keokuk, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Keokuk, IA revealed a discrepancy in the location of the Keokuk, IA nondirectional radio beacon (NDB) used in the legal description for the Keokuk, IA Class E airspace. This action corrects the discrepancy by modifying the Keokuk, IA Class E airspace and by incorporating the current location of the Keokuk NDB in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14599/Airspace Docket No. 03–ACE–22, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Keokuk, IA. It incorporates the current location of the Keokuk NDB and brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14599/Airspace Docket No. 03–ACE–22." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREA;— AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565. 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Keokuk, IA

Keokuk Municipal Airport, IA
Lat. 40°27′36″ N., long 91°25′43″ W.)
Keokuk NDB
Lat. 40°27′53″ N., long 91°26′01″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Keokuk Municipal Airport and within 2.6 miles each side of the 310° bearing from the Keokuk NDB extending from the 6.6-mile radius to 7 miles northwest of the airport.

* * * * *

Dated: Issued in Kansas City, MO, on March 19, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–7672 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13818; Airspace Docket No. 02–AGL–19]

Modification of Class E Airspace; Muskegon, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Muskegon, MI. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPS) to several runways have been developed for Muskegon County Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of the existing controlled airspace at Muskegon County Airport.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, December 10, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Muskegon, MI (67 FR 75826). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Muskegon, MI, to accommodate aircraft executing instrument flight procedures into and out of Muskegon County Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Muskegon, MI [Revised]

Muskegon County Airport, MI
(Lat. 43°10′10″ N., long. 86°14′18″ W.)
Grand Haven Memorial Airpark, MI
(Lat. 43°02′02″ N., long. 86°11′53″ W.)
Muskegon VORTAC, MI
(Lat. 43°10′10″ N., long. 86°02′22″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Muskegon County Airport, and within 2.6 miles each side of the ILS localizer southeast course extending from the 6.8-mile radius to 10.8 miles southeast of the airport, and within 2.4 miles each side of the localizer northwest course extending from the 6.8-mile radius to 12.1 miles northwest of the airport, and within 2.8 miles each side of the Muskegon VORTAC 266° radial extending from the 6.8-mile radius to 12.7 miles west of the airport, and within 1.3 miles each side of the Muskegon VORTAC 271° radial extending from the VORTAC to the 6.8-mile radius of the airport and within a 6.3-mile radius of the Grand Haven Memorial Airpark.

* * * * *

Issued in Des Plaines, Illinois on March 13, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–7664 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14352; Airspace Docket No. 00–AGL–25]

Modification of Class E Airspace; Hazen, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Hazen, ND. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway 14, and an RNAV SIAP to Rwy 32 have been developed for Mercer County Regional Airport. Controlled airspace extending upward from 700 feet or more above the surface is needed to contain aircraft executing these approaches. This action increases the size of the existing Class E airspace for Hazen, ND.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, October 6, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Hazen, ND (65 FR 59763). The proposal was to modify controlled airspace extending upward from 700 feet above the surface to contain aircraft executing instrument approach procedures.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Nineteen (19) commenters responded to this proposed airspace action. All nineteen (19) were objections, and were based on concerns dealing with the need for, or objecting to, added regulations and restrictions. The following concerns were raised:

A. Added FAA rules and regulations are unnecessary and unwanted in this region.

Of the nineteen (19) commenters, ten (10) stated they wanted no more restrictions imposed on their ability to conduct VFR flight.

B. The expansion of Class E airspace would limit the ability for VFR flight.

Of the nineteen (19) commenters, seventeen (17) felt this would adversely affect aviation, quality of life, and the economy. No specifics as to the impact on the economy were documented.

C. The expansion of Class E airspace will reduce safety.

Of the nineteen (19) commenters, eight (8) stated that expanding the overall Class E airspace as proposed, would cause an increase in flights where radar coverage is limited, thus reducing safety. All of these comments were considered and evaluated. They are responded to as follows:

In reference to concern A:

The increase in the area of Class E airspace, is necessary to ensure IFR aircraft are protected from VFR aircraft, while conducting instrument approach procedures. This is accomplished by requiring higher reported visibility in order to conduct VFR flight within the Class E airspace. The transition from Class G to Class E airspace, will require. increased visibility only for VFR flight above 1200 feet AGL. VFR flight visibility requirements for flights below this altitude remain unchanged. Cloud distance requirements for VFR flights also remain unchanged. In addition, there are only three (3) relatively small areas that will transition from Class G to Class E airspace. Unless a VFR flight was conducted exclusively in these three (3) existing areas of Class G airspace, the higher visibility requirements already exist. This is because they are surrounded by existing Class E airspace. The added restrictions are minimal.

In reference to concern B:

Although in certain areas the visibility requirements for VFR flight will increase, flight under VFR conditions is not prohibited. The comments on adversely affecting quality of life, and the economy are undefined, and beyond the scope of this airspace action.

In reference to concern C:

Establishing or modifying Class E airspace does not automatically lead to increased aircraft operations. Radar coverage in this area has no bearing or impact on IFR flights conducted in this airspace because aircraft are separated and protected by ATC non-radar procedures. Separation and protection between IFR and VFR aircraft is accomplished by visibility requirements for the VFR aircraft. Safety would actually be enhanced as a result of the larger radius of protected airspace surrounding Mercer County Airport.

Class E airspace designation for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Hazen, ND, to accommodate aircraft executing instrument flight procedures into and out of Mercer County Regional Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Hazen, ND [Revised]

Hazen, Mercer County Regional Airport, ND
(Lat. 47°17′24″ N, long. 101°34′51″ W)
Dickinson VORTAC
(Lat. 46°51′36″ N, long. 102°46′25″ W)
Williston VORTAC
(Lat. 48°15′12″ N, long. 103°45′02″ W)

That airspace extending upward from 700 feet above the surface within a 10.0-mile radius of the Mercer County Regional Airport, and that airspace extending upward from 1200 feet above the surface bounded on the northwest by a line beginning at V439, thence counterclosckwise along the Williston VORTAC 60.0-mile radius V71, thence northwest along V71 to the Williston VORTAC 39.2-mile radius to the 48°00′00″ N. latitude, on the north by the lat. 48°00′00″ N., on the east by the long. 100°44′02″ W., on the southeast by V169, on the south by lat. 46°10′00″ N., on the southwest by a line from 46°10′00″ N., long. 102°24′00″ W., to lat. 46°20′00″ N., long. 102°44′00″ W., on the west by V491, thence east along V2 to the Dickinson VORTAC 25.2-mile radius, thence counterclockwise along the Dickinson VORTAC 25.2-mile radius to V439, thence to the point of beginning, excluding that airspace within the Minot AFB, ND, Dickinson, ND, and Bismarck, ND, Class E airspace areas, and excluding all Federal Airways.

* * * * *

Issued in Des Plaines, Illinois, on March 5, 2003.

Richard K. Peterson

Assistant Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–7662 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Docket No. FAA–2002–14179; Airspace Docket No. 02–AGL–08]

Modification of Class E Airspace; Circleville, OH; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects two (2) errors contained in a final rule that was published in the **Federal Register** on Friday, January 17, 2003 (68 FR 2422). The final rule modified Class E airspace at Circleville, OH.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–1124 published on Friday, January 27, 2003 (68 FR 2422), modified Class E airspace at Circleville, OH. The Docket contained an incorrect lat./long., and also contained a misspelled city name, both contained in the legal description. This action corrects these errors.

Accordingly, pursuant to the authority delegated to me, the errors for the Class E airspace, Circleville, OH, as published in the **Federal Register** Friday, January 17, 2003 (68 FR 2422), (FR Doc. 03–1124), is corrected as follows:

§ 71.1 [Corrected]

■ On page 2422, Column 3, in the legal description:

■ 1. On the second (2nd) line, correct: "Cillicothe" to read: "Chillicothe".

■ 2. On the third (3rd) line, correct: "(Lat. 39° 26′ 29″N., long. 83° 01′ 41″W.)" to read: (Lat. 39°26′29″ N., long. 83°01′21″ W.".

Issued in Des Plaines, Illinois, on March 5, 2003.

Richard K. Petersen,

Assistant Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–7661 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14597; Airspace Docket No. 03–ACE–20]

Modification of Class E Airspace; Hampton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Class E airspace at Hampton, IA. An examination of controlled airspace for Hampton, IA revealed a discrepancy in the location of the Hampton nondirectional radio beacon (NDB). The Hampton NDB is a navigational aid serving Hampton Municipal Airport, IA and is used in the legal description of the Hampton, IA Class E airspace area. This action corrects the discrepancy by modifying the Hampton, IA Class E airspace area and incorporating the revised location of the Hampton NDB in the Class E airspace legal description.

EFFECTIVE DATE: This direct final rule is effective on 0901 UTC, July 20, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management system, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14597/ Airspace Docket No. 03–ACE–20, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (806) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Hampton, IA. An examination

of controlled airspace for Hampton, IA revealed a discrepancy in the location of the Hampton NDB which is used in the legal description of the Hampton, IA Class E airspace area. This amendment incorporates the revised Hampton NDB location and brings the legal description of the Hampton, IA Class E airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14597/Airspace Docket No. 03–ACE–20." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration Amends 14 CFR part 71 as Follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp. p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Hampton, IA

Hampton Municipal Airport, IA
(Lat. 42°43′25″ N., long. 93°13′35″ W.)
Hampton NDB
(Lat. 42°43′32″ N., long. 93°13′30″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Hampton Municipal Airport and within 2.6 miles each side of the 343° bearing from the Hampton NDB extending from the 6.4-mile radius to 7.4 miles northwest of the airport and within 2 miles each side of the 177° bearing from the Hampton Municipal Airport extending from the 6.4-mile radius to 7.7 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on March 14, 2003.

Paul J. Sheridan

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–7660 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. OST–2003–14484]

RIN 2105–AD24

Extension of Computer Reservations Systems (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is amending its rules governing airline computer reservations systems (CRSs), by changing the rules' expiration date from March 31, 2003, to January 31, 2004. If the expiration date were not changed, the rules would terminate on March 31, 2003. This extension of the current rules will keep them in effect while we complete our reexamination of the need for CRS regulations. Some or all of the rules may no longer be necessary, but the Department will maintain the current rules until January because they may be beneficial. The Department may determine in its reexamination that the need for most or all of the rules has ended. The Department has previously extended the rules from their original December 31, 1997, expiration date, most recently to March 31, 2003.

DATES: This rule is effective on March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION:

Electronic Access

You can view and download this document by going to the webpage of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on "search." On the next page, type in the last five digits of the docket number shown on the first page of this document, 14484. Then click on "search." An electronic copy of this document also may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara/index.html.*

Discussion

We adopted rules governing CRS operations, 14 CFR part 255, because almost all airlines operating in the United States relied on the CRSs in marketing their airline services and each system was then controlled by one or more airlines or airline affiliates. 57 FR 43780, September 22, 1992. We found that rules were necessary to ensure that each of the airlines and airline affiliates that controlled a system did not use the system to unfairly prejudice the competitive position of other airlines and to ensure that travel agents and their customers could obtain accurate and unbiased information from the systems. Our rules contained a sunset date to ensure that we would reexamine whether the rules remained necessary and, if so, whether they were effective.

As a result of the sunset date provision, we began a proceeding to reexamine whether the rules were necessary and effective by issuing an advance notice of proposed rulemaking, 62 FR 47606, September 10, 1997, followed later by a supplemental advance notice of proposed rulemaking that asked the parties to update their comments. 65 FR 45551, July 24, 2000.

We recently issued a notice of proposed rulemaking in which we tentatively found that elements of the rules may remain necessary, at least in the short term, and that some changes to the rules may be justified. 67 FR 69366, November 15, 2002. We also proposed to eliminate some rules, primarily the rules barring systems from charging airlines discriminatory booking fees and requiring airlines with a significant ownership in one system to participate in other systems at the same level if the terms for doing so are commercially reasonable. We invited comment on whether the public interest would be served by full and immediate sunset of the rules. Our notice includes a detailed discussion of the rulemaking issues and our tentative findings on the relevant features of the airline distribution and CRS businesses. Comments and reply comments on our tentative findings on the need for CRS regulation and our proposals are due March 16 and May 15, 2003, respectively. 67 FR 72869, December 9, 2002.

To maintain the existing rules in effect while we complete our reexamination of those rules, we proposed to extend the sunset date to January 31, 2004. 68 FR 7325, February 13, 2003. We noted that the March 31, 2003, sunset date will come only two weeks after the close of the comment period on the notice of proposed rulemaking for our overall reexamination of the rules and that the reply comment period will close seven weeks later. We clearly cannot complete our rulemaking by the March 31 sunset date. We tentatively found that allowing the rules to sunset during our reexamination of them could be contrary to the public interest. We are aware that our final decision in our overall reexamination of the rules may be that the rules do not actually serve the public interest in the short term or in the long term.

Eleven persons commented on the proposal. U.S. Airways, Sabre, Galileo International, Amadeus Global Travel Distribution, and the American Society of Travel Agents ("ASTA") supported the proposal, Worldspan, Northwest, United, and LanChile opposed any extension, and American and Orbitz stated their willingness to accept only a shorter extension.

We have determined to change the rules' expiration date to January 31, 2004, as we proposed. This will allow the rules to remain in effect while we complete our overall reexamination of the existing CRS rules. We recognize the need to complete the major rulemaking as soon as possible so that the rules reflect current industry conditions and economic realities. We intend to make a final decision promptly in that proceeding.

Background: Rulemaking History

Our notice of proposed rulemaking set forth our tentative findings and analysis on the nature of the airline distribution and CRS businesses and on whether the CRS rules should be kept or changed. We recognized the changes occurring in the airline distribution system, especially the Internet's erosion of the airlines' dependence on the systems, and the potential that these changes may eliminate the need for many or all of our rules. 67 FR 69376, 63977. Nonetheless, we tentatively concluded that at present some rules should be maintained to protect airline competition and consumers. We have requested comment on whether the non-discriminatory booking fee and mandatory participation rules noted above could be eliminated, since airlines may have more bargaining leverage against the systems than we have found in past rulemakings. 67 FR 69368. We will also consider comments contending that additional rules are unnecessary or counterproductive. We will take these comments into account in considering whether to retain some or any of the rules, or whether full and complete sunset may be in the public interest.

We initially established a sixty-day comment period and a thirty-day reply comment period. As a result of a petition submitted by nineteen commenters, we extended the comment period by sixty days and the reply comment period by thirty days. 67 FR 72869, December 9, 2002.

While we have been conducting our reexamination of the rules, we have changed the sunset date five times to maintain the rules pending our completion of that reexamination. Our most recent extension was to March 31, 2003. 62 FR 66272, December 18, 1997; 64 FR 15127, March 30, 1999; 65 FR 16808 March 30, 2000; 66 FR 17352, March 30, 2001; and 67 FR 14846, March 28, 2002.

Our Proposed Sunset Date Extension

We again proposed to extend the expiration date for our CRS rules, to January 31, 2004, in order to maintain the rules while we complete our reexamination of the need for the rules and their effectiveness. 68 FR 7325, February 13, 2003. We explained that we could not issue final rules by the current sunset date, March 31, 2003. Changing the sunset date would enable us to preserve the status quo until we determine which rules, if any, should be retained. We tentatively determined that doing so would be in the public interest. In that regard we referenced our notice of proposed rulemaking for the overall reexamination of the rules, where we tentatively concluded that elements of the rules may be necessary, at least in the near term, to protect airline competition and consumers against potentially unreasonable and unfair CRS practices. We further cited our

obligation under 49 U.S.C. 40105(b), formerly section 1102(a) of the Federal Aviation Act, then codified as 49 U.S.C. 1502(a), to act consistently with the United States' obligations under bilateral air services agreements, and concluded that that obligation might justify a short-term continuation of the rules. 67 FR 69384. We stated our awareness of the importance of adopting final rules that reflect current conditions in the CRS and airline distribution businesses.

Comments

Three of the systems—Amadeus, Galileo, and Sabre—supported our proposal to change the sunset date to January 31, 2004, as did ASTA, the largest travel agency trade association, and U.S. Airways. American and Orbitz, the on-line travel agency owned by American, Continental, Delta, Northwest, and United, supported a shorter extension of the rules. American proposed August 31 as the new sunset date, while Orbitz proposed September 30. The other commenters—Delta, Northwest, United, and LanChile—opposed any extension of the rules. United particularly opposed any continuation of the non-discriminatory booking fee and mandatory participation rules.

Sabre filed a reply challenging several of the factual assertions made by several airline commenters concerning the systems' alleged market power and unreasonable practices.

Final Rule

We have determined to adopt our proposal to change the sunset date to January 31, 2004. We obviously cannot complete our overall reexamination of the rules by March 31, and we continue to believe that we may well need an additional ten months to complete that proceeding. The comment period for reply comments will end on May 15, and we must then analyze the comments, decide what final rules should be adopted, and draft a final rule. The final rule must be reviewed by the Office of Management and Budget ("OMB"). This entire process may require ten months for completion, especially given the complex and controversial issues presented in that rulemaking.

We will, of course, try to issue a final rule as soon as possible rather than wait until the new January 31 sunset date. Adopting a shorter extension at this time might well require us to conduct an additional rulemaking to change the date again, which would be an inefficient use of Government resources and interfere with our intent to focus on completing the overall reexamination of the rules as promptly as possible. A shorter extension might also keep us from thoroughly and carefully examining the issues before making our final decision on whether CRS rules remain necessary and, if so, how they should be changed.

We recognize that the rules may have become unnecessary. As we continue our reexamination, we will maintain the rules based on a tentative finding that some of the rules may serve the public interest. It may remain true, for example, that the systems have market power that could be used to prejudice airline competition. American thus states, "CRS market and pricing power remain intact * * *." American Comments at 1. If so, ending the rules would not necessarily enable airlines to obtain better terms for participation. United, however, has pointed out that we proposed to eliminate the non-discriminatory booking fee and mandatory participation rules because we tentatively found that they may prevent airlines from obtaining lower prices. We cannot adopt United's suggestion that any extension of the sunset date exclude those two rules, since that would amount to a change in the existing rules that we do not wish to adopt until we have had the opportunity to consider the comments on the issue. Nor can we agree now, before the end of the comment period for our proposals on changing the rules, with the assertions by several other commenters that the rules preserve and enhance the systems' market power. *See, e.g.*, Orbitz Comments. We have found in past rulemakings that rules were needed to curb the systems' market power, most recently in the parity clause rulemaking completed five years ago. 62 FR 59784, November 5, 1997. We tentatively concluded in our recent notice of proposed rulemaking that we see some evidence that the systems may still have market power. At issue is whether some or all of the rules affect the exercise of such market power, to the extent it exists, and whether they do so in a manner that serves the public interest.

Effective Date

We have determined for good cause to make this amendment effective on March 31, 2003, rather than thirty days after publication as required by the Administrative Procedure Act except for good cause shown. 5 U.S.C. 553(d). To keep the current rules in force, we must make this amendment effective by March 31, 2003. Since the amendment preserves the status quo, it will not require the systems, airlines, or travel agencies to change their operating methods. Making this amendment effective on less than thirty days notice accordingly will not impose an undue burden on anyone.

Regulatory Process Matters

Regulatory Assessment

This rulemaking is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. The proposal is also significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

Our notice of proposed rulemaking in this proceeding cited the tentative findings of the preliminary regulatory assessment in our notice of proposed rulemaking for the overall reexamination of the rules that the existing rules do not appear to impose a significant burden on the systems or their users. 68 FR 7326, citing 67 FR 69418–69423. We stated our belief that that regulatory assessment should be applicable to our proposal to extend the rules' sunset date and that no new regulatory impact statement appears to be necessary. We invited interested persons to comment on those findings. No commenter specifically commented on our regulatory assessment, which we will make final.

This rule will not impose unfunded mandates or requirements that would have any impact on the quality of the human environment.

Small Business Impact

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. airlines and smaller travel agencies.

This rule sets forth the reasons for our extension of the rules' expiration date and the objectives and legal basis for that rule.

Our notice of proposed rulemaking on this extension proposal cited the tentative regulatory flexibility analysis on the rules' impact that was included in our notice of proposed rulemaking for the reexamination of the rules. We stated that that analysis appeared to be valid for our proposed extension of the rules' termination date. 68 FR 7326–7327. We stated that we would consider comments on that analysis. No one filed such comments, and we will adopt that analysis as our final regulatory flexibility statement for this proceeding.

Our rule contains no direct reporting, record-keeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

I certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law. 96–511, 44 U.S.C. chapter 35.

Federalism Assessment

We stated that we had reviewed our proposed rule in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will not limit the policymaking discretion of the States. Nothing in this rule will directly preempt any State law or regulation. We are adopting this amendment primarily under the authority granted us by 49 U.S.C. 41712 to prevent unfair methods of competition and unfair and deceptive practices in the sale of air transportation. Our notice of proposed rulemaking stated our belief that the policy set forth in this rule is consistent with the principles, criteria, and requirements of the Federalism Executive Order and the Department's governing statute.

We invited comments on these conclusions. 68 FR 7327. No one commented on our federalism assessment. We will therefore make it final. Because the rule will have no significant effect on State or local governments, as discussed above, no consultations with State and local governments on this rule were necessary.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and recordkeeping requirements, Travel agents.

■ Accordingly, the Department of Transportation amends 14 CFR part 255 as follows:

PART 255—(AMENDED)

■ 1. The authority citation for part 255 continues to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

■ 2. Section 255.12 is revised to read as follows:

§ 255.12. Termination.

The rules in this part terminate on January 31, 2004.

Issued in Washington, DC, on March 25, 2003.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03–7636 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–62–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228 and 229

[Release Nos. 33–8177A; 34–47235A; File No. S7–40–02]

RIN 3235–AI66

Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Corrections to final regulations.

SUMMARY: We are making technical corrections to rules adopted in Release No. 33–8177 (January 23, 2003), which were published in the **Federal Register** on January 31, 2003 (68 FR 5110). The rules implement sections 406 and 407 of the Sarbanes-Oxley Act of 2002 by requiring disclosures regarding audit committee financial experts and codes of ethics. This document amends an instruction to the rule to clarify that disclosures regarding audit committee financial experts are required only in annual reports.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Ray Be, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION:

I. Background

On January 23, 2003, the Commission adopted,[1] among other things, amendments to item 401 of Regulations S–K and S–B.[2] These rules require disclosure of whether a company has an audit committee financial expert, as defined in the rule, serving on its audit committee.

Subsequent to the adoption of the amendments, questions arose regarding whether the disclosures required by the new disclosure item must be provided in registration statements under the Securities Act of 1933[3] and the Securities Exchange Act of 1934.[4] Although the discussion of these provisions in the adopting release makes clear that such disclosure is required only in a company's annual report, the new disclosure item did not clearly state that such disclosure is required only in annual reports.

Accordingly, the amendments set forth in this document clarify that the rules require disclosure of whether a company has an audit committee financial expert serving on its audit committee only in an annual report. Although this disclosure is not required in any document other than the annual report, a company may, at its discretion, include the audit committee financial expert disclosure in its proxy or information statement and incorporate that disclosure into its annual report if it complies with applicable rules for incorporation by reference. The changes are technical corrections to clarify the rules as described in the original adopting release, and do not alter the forms in which the disclosure is required as described in the original adopting release.

II. Need for Correction

As published, the final regulations contain errors which are in need of clarification.

III. Correction of Publication

Accordingly, the publication on January 31, 2003, of the final rules (Release No. 33–8177) relating to the disclosure of whether a company has an audit committee financial expert serving on its audit committee and whether a company has adopted a code of ethics for its principal executive officer, principal financial officer, principal accounting officer and controller, which were the subject of FR Doc. 03–2018, is corrected as follows:

§ 228.401 [Corrected]

On page 5126, in the first column, paragraph 1 to Instructions to Item

[1] *See* Release No. 33–8177 (Jan. 23, 2003) (68 FR 5110).

[2] 17 CFR 229.401; 17 CFR 228.401.

[3] 15 U.S.C. 77a *et seq.*

[4] 15 U.S.C. 78a *et seq.*

401(e) of § 228.401 is corrected to read as follows:

* * * * *

Instructions to Item 401(e)

1. The disclosure under Item 401(e) is required only in a small business issuer's annual report. The small business issuer need not provide the disclosure required by this Item 401(e) in a proxy or information statement unless that small business issuer is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to general instruction E(3) to Form 10–KSB.

* * * * *

§ 229.401 [Corrected]

On page 5127, in the third column, paragraph 1 to Instructions to Item 401(h) of § 229.401 is corrected to read as follows:

* * * * *

Instructions to Item 401(h)

1. The disclosure under Item 401(h) is required only in a registrant's annual report. The registrant need not provide the disclosure required by this Item 401(h) in a proxy or information statement unless that registrant is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to general instruction G(3) to Form 10–K.

* * * * *

Dated: March 26, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–7680 Filed 3–28–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–44992A; File No. S7–26–98]

RIN 3235–AH04

Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the amendments to the books and records requirements for brokers and dealers under the Securities Exchange Act of 1934 that were published on November 2, 2001. The corrections contained herein redesignate two paragraphs that were incorrectly numbered and amend references to those two paragraphs to reflect that change.

EFFECTIVE DATE: May 2, 2003.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Gauch, Attorney, at (202) 942–0765, in the Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

Rules 17a–3 and 17a–4 [1] under the Securities Exchange Act of 1934 [2] (the "Exchange Act") (hereinafter the "Books and Records rules"), specify minimum requirements with respect to the records that broker-dealers must make, and how long those records and other documents relating to a broker-dealer's business must be kept. The Securities and Exchange Commission (the "Commission") amended the Books and Records rules on October 26, 2001.[3]

II. Need for Correction

As published, the amendments to the Books and Records rules contain a rule designation which was designated by another final rule. In the final rules regarding the applicability of CFTC and SEC customer protection, recordkeeping, reporting, and bankruptcy rules and the Securities Investor Protection Act of 1970 to Accounts Holding Security Futures Products, published on Friday, September 13, 2002, new paragraph (f) to rule 17a–3 was adopted and became effective immediately upon publication. The amendments to the Books and Records rules erroneously also designated a new paragraph (f) of rule 17a–3.[4] This correction redesignates the paragraph 17a–3(f) contained in the amendments to the Books and Records rules as paragraphs 17a–3(g) and makes other necessary changes throughout the release text and final rules to facilitate this change.

III. Correction of Publication

Accordingly, the final rule FR Doc. 01–27439 published on November 2, 2001 (66 FR 55818), is corrected as follows:

1. On page 55838, column 1, amenditory instruction 3.e., second line, revise the reference "(f) and (g)" to read "(g) and (h)";

2. On page 55838, column 2, paragraph (12)(i), fourth line, revise the reference "paragraph (g)(4)" to read "paragraph (h)(4)";

3. On page 55839, column 3, paragraphs (f) and (g) are redesignated as paragraphs (g) and (h).

4. On page 55841, column 1, paragraph (k), third line, revise the reference "§ 240.17a–3(f)" to read "§ 240.17a–3(g)";

5. On page 55841, column 1, paragraph (l)(1), second line, revise the reference "§ 240.17a–3(g)(1)" to read "§ 240.17a–3(h)(1)";

6. On page 55841, column 1, paragraph (l)(2), second line, revise the reference "§ 240.17a–3(g)(2)" to read "§ 240.17a–3(h)(2)";

7. On page 55841, column 1, paragraph (l)(3), third line, revise the reference "§ 240.17a–3(g)(3)" to read "§ 240.17a–3(h)(3)"; and

8. On page 55841, column 2, paragraph (l)(4), beginning on line two, revise the reference "§ 240–17a–3(g)(4)" to read "§ 240.17a–3(h)(4)".

Dated: March 26, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–7614 Filed 3–28–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 17 CFR 240.17a–3 and 240.17a–4.

[2] 17 U.S.C. 78, *et al.*

[3] Securities Exchange Act Releese No. 44992, 66 FR 55818 (Nov. 2, 2001) (the "Adopting Release").

[4] 67 FR 58284 (Sept. 13, 2002).

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 33–8183A; 34–47265A; 35–27642A; IC–25915A; IA–2103A, FR–68, File No. S7–49–02]

RIN 3235–AI73

Strengthening the Commission's Requirements Regarding Auditor Independence

AGENCY: Securities and Exchange Commission.

ACTION: Corrections to final regulations.

SUMMARY: We are making technical corrections to rules adopted in Release No. 33–8183 (January 28, 2003), which were published in the **Federal Register** on February 5, 2003 (68 FR 6005). The rules relate to requirements regarding auditor independence and enhanced disclosure of fees paid to auditors. This document corrects the numbering scheme for items within Forms 10–K and 10–KSB.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Ray Be, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION:

I. Background

On January 28, 2003, the Commission adopted amendments to strengthen requirements regarding auditor independence and enhance disclosure regarding fees paid to auditors.[1] These rules were designed to implement provisions of the Sarbanes-Oxley Act of 2002.[2] The adopting release made erroneous references to items within Forms 10–K and 10–KSB. Accordingly, the amendments correct the numbering of items in these forms, but do not alter the disclosure requirements described in the original adopting release.

II. Need for Correction

As published, the final regulations contain errors which are in need of clarification.

III. Correction of Publication

In FR Doc. 03–2364 published on February 5, 2003 (68 FR 6005) make the following corrections.

1. On page 6050, in the first column, instruction 10 is corrected to read as follows:

10. Amend Form 10–K (referenced in § 249.310) by:

a. Redesignating Item 15 of Part IV as Item 16 of Part IV, and

b. Adding new Item 15 to Part III.

The addition reads as follows:

* * * * *

2. On page 6050, in the first, second and third columns, "Item 16." is corrected to read "Item 15." in each place it appears.

Dated: March 26, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–7681 Filed 3–28–03; 8:45 am]

BILLING CODE 8010–01–P

[1] *See* Release No. 33–8183 (Jan. 28, 2003) [68 FR 6006].

[2] Pub. L. 107–204, 116 Stat. 745 (2002).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter 1

Change of Address; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect a change in the address for the Center for Food Safety and Applied Nutrition (CFSAN). This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

EFFECTIVE DATE: December 14, 2001.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 6, 2001 (66 FR 56034), FDA amended its regulations to reflect that effective December 14, 2001, CFSAN's address was to change to 5100 Paint Branch Pkwy., College Park, MD 20740. The document amended FDA's regulations by removing "200 C Street, SW., Washington, DC 20204" or "200 C St. SW., Washington, DC 20204" wherever they appeared and added in their place CFSAN's new address. However, after publication of the November 6, 2001, document, CFSAN's outdated address inadvertently remained in certain regulations. This document amends FDA's regulations to reflect CFSAN's change of address by removing the entire outdated address and adding the new address wherever it appears in 21 CFR parts 101, 165, 172, 173, 177, 178, and 184.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

■ 1. Parts 101, 165, 172, 173, 177, 178, and 184 are amended by removing "200 C St. SW., Washington, DC" or "200 C St. SW., Washington, DC 20204" or "200 C St. SW., Washington, DC 20204–0001" wherever they appear and by adding in their place "5100 Paint Branch Pkwy., College Park, MD 20740."

■ 2. Parts 710 and 720 are amended by removing "Department of Health and Human Services, Washington, DC 20204" wherever it appears and by adding in its place "5100 Paint Branch Pkwy., College Park, MD 20740."

Dated: March 25, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–7600 Filed 3–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211, 226, 510, and 514

[Docket No. 88N–0038]

RIN 0910–AC42

Records and Reports Concerning Experience With Approved New Animal Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Withdrawal of interim final rule and issuance of final rule.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the interim final rule that it published on February 4, 2002. The interim final rule amended the regulations for records and reports concerning experiences with approved new animal drugs. FDA invited interested parties to comment on the interim final rule. As a result of those comments, this final rule more clearly defines the kinds of information to be maintained and submitted by new animal drug applicants for new animal drug applications (NADAs) or abbreviated new animal drug applications (ANADAs). In addition, the final rule revises the timing and content of certain reports to enhance their usefulness. This regulation will provide for protection of public and animal health and reduce unnecessary recordkeeping and reporting requirements.

DATES: This rule is effective June 30, 2003. The interim final rule published on February 4, 2002 (67 FR 5046), is withdrawn as of March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Glenn Peterson, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0224, or gpeterso@cvm.fda.gov. Form FDA 1932 and Form FDA 2301 may be obtained by calling the Food and Drug Administration, Center for Veterinary Medicine, Division of Surveillance at 301–827–6642.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 17, 1991 (56 FR 65581), FDA published

a proposed rule (the proposed rule for records and reports) to revise § 510.300 (21 CFR 510.300) and to redesignate it as § 514.80 (21 CFR 514.80). This regulation implements section 512(l) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(l)) which provides that, following approval of an NADA or ANADA, applicants must establish and maintain records and make reports to the agency as prescribed by regulation or order. We (FDA) proposed the revision in order to more clearly define the kinds of information to be maintained and submitted by the applicant and to revise the timing and content of certain reports to enhance the usefulness of the information.

After considering comments submitted in response to the proposed rule for records and reports, FDA adopted the rule in modified form in an interim final rule. The scope and coverage of the interim final rule differed in some respects from the proposed rule for records and reports. The proposed rule for records and reports covered NADAs, ANADAs, and medicated feed applications (MFAs). In contrast, the interim final rule covered only NADAs and ANADAs. The Animal Drug Availability Act of 1996 (ADAA) (21 U.S.C. 360b(a) and (m)) amended the statutory provisions in the act regarding medicated feeds and eliminated MFAs. Therefore, the interim final rule did not address MFAs. However, the interim final rule retained reporting requirements for adverse drug experiences (ADEs) with feeds incorporating approved Type A medicated articles.

While the proposed rule for records and reports proposed to remove 21 CFR 510.310, which addressed records and reports for new animal drugs approved before June 20, 1963, we issued a final rule that revoked this provision in response to the Administration's "Reinventing Government Initiative" (61 FR 37680, July 19, 1996). The proposed rule for records and reports followed a style and format similar to the human drug records and reports regulations in part 314 (21 CFR part 314). The interim final rule maintained a similar style and format, but removed many of the proposed records and reports requirements that are not necessary to monitor animal drugs.

In response to initial concerns over duplicate reporting, FDA had removed proposed § 514.82 from the interim final rule, which concerned records and reports from manufacturers, packers, labelers, and distributors other than the applicant. However, the agency did retain certain record and report requirements for nonapplicants (defined in new § 514.3) (21 CFR 514.3)) and in § 514.80(b) of the interim final rule. Under § 514.80(b)(3), nonapplicants must submit reports of adverse events to applicants and, if they choose, also to FDA. FDA requires such reports under the authority of sections 501 and 701 of the act (21 U.S.C. 351 and 371) and section 512(l) of the act. Keeping track of such reports helps the agency assure that the new animal drug meets the requirements of the act as to safety as required by section 501. Additionally, section 512(l) requires applicants to report adverse events that the applicant has "received or otherwise obtained." In this instance, FDA is requiring that the applicant "receive" reports from other parties that are listed on the label by requiring that the nonapplicants give the reports to the applicants. For purposes of clarity, the agency also made some changes to the text and organization of the interim final rule.

On February 4, 2002, the interim final rule on ADE records and reports was published in the **Federal Register** with an effective date of August 5, 2002 (67 FR 5046). In the **Federal Register** of July 31, 2002 (67 FR 49568), the effective date of the interim final rule published at 67 FR 5046 was delayed indefinitely. We received and reviewed 33 comments on the interim final rule from 4 commenters. In response to those comments, the agency is withdrawing the interim final rule published February 4, 2002 (67 FR 5046) and issuing this final rule.

II. Comments on the Interim Final Rule

The agency received four sets of comments on the interim final rule for records and reports, three from industry associations, and one from a pharmaceutical company. A discussion of the comments and our response follows. In the interest of clarity, the comments are addressed by relevant section of the rule, with general comments following.

A. Definition of Adverse Drug Experience (§ 514.3)

(Comment 1) One comment suggested that the definition of "Adverse Drug Experience" be changed from "Failure of a new animal drug to produce its expected pharmacological or clinical effect (lack of effectiveness)" to "Unusual failure of a new animal drug to produce its expected pharmacological or clinical effect (lack of effectiveness)." The comment states that it is the unusual failure to respond to therapy that is of concern. The agency stated in comment 7 of the preamble to the interim final rule that failures to respond to therapy were expected. The comment responded "that current product labeling does not usually address efficacy failures." According to the comment, a failure not listed on the label would be considered unexpected and thus must be a 15-day NADA/ANADA alert report.

FDA agrees with the comment and does not intend for all effectiveness failures to be defined as ADEs. To this end, FDA will clarify the definition by changing the phrase "expected pharmacological or clinical effect (lack of effectiveness)" to "expected pharmacological or clinical effect (lack of expected effectiveness)." FDA also will continue to work with applicants and provide advice to applicants in determining reportable events. For example, consider a drug that is expected to cure 80 percent of the animals treated, but cures 90 percent. While there is still a 10 percent failure rate, the success rate is above the expected rate of 80 percent; therefore, this is not a reportable ADE. However, if a drug is expected to cure 80 percent of the animals treated, but cures only 40 percent, which is a 60 percent failure rate and below the expected rate, a reportable ADE has occurred. This would be reported as a 15-day NADA/ANADA alert report since it is an unexpected ADE.

B. Definition of Applicant (§ 514.3)

(Comment 2) One comment suggested that the definition of "Applicant" be changed from "Applicant is a person who owns a new animal drug application or ANADA" to "Applicant is a person who holds a new animal drug application or an ANADA." The comment explained that the actual owner of an application may be different from the sponsor of the application. It may be a parent company with the U.S. company being the sponsor. The comment agreed with the agency's statement in the preamble to the interim final rule that the term "applicant is limited to the holder of an approved application (NADA or ANADA) * * *."

The agency will revise the definition of "applicant" in § 514.3 as follows:

"*Applicant* is a person or entity who owns or holds on behalf of the owner the approval for an NADA or an ANADA, and is responsible for compliance with applicable provisions of the act and regulations."

C. Definition of Increased Frequency of Adverse Drug Experience and Summary Report of Increased Frequency of Adverse Drug Experience (§§ 514.3 and 514.80(b)(2)(iii))

(Comment 3) One comment requested that FDA provide additional clarification of this requirement or delete the requirement of a summary report. The comment acknowledged and appreciated FDA's willingness to make changes in response to previous comments. However, it stated that there are doubts that this requirement can be met "even with the adjustment for drug exposure." The comment stated that the adjustment for drug exposure based on distribution data would be unreliable given that distribution data does not "equate[d] with the amount actually used (exposure) in any given time period." Also, the comment maintained that this requirement of a summary report is "troubling" because it is required to be submitted within 15 working days.

In retrospect, FDA does concur with the concern about requiring summary reports within 15 working days. FDA has modified § 514.80(b)(2)(iii) to require that information be reported in the 6-month and yearly periodic drug experience reports under § 514.80(b)(4)(v). FDA also has made a conforming change to § 514.80(a)(4) to include § 514.80(b)(4)(v).

The following is the change to former § 514.80(b)(2)(iii), now under § 514.80(b)(4)(v):

(v) *Summary report of increased frequency of adverse drug experience.* The applicant must periodically review the incidence of reports of adverse drug experiences to determine if there has been an increased frequency of serious (expected and unexpected) adverse drug events. The applicant must evaluate the increased frequency of serious (expected or unexpected) adverse drug events at least as often as reporting of periodic drug experience reports. The applicant must report the increased frequency of serious (expected and unexpected) adverse drug events in the periodic drug experience report. Summaries of reports of increased frequency of adverse drug events must be submitted in narrative form. The summaries must state the time period on which the increased frequency is based, time period comparisons in determining increased frequency, references to any previously submitted Form FDA 1932, the method of analysis, and the interpretation of the results. The summaries must be submitted in a separate section within the periodic drug experience report.

The following is the change to § 514.80(a)(4):

"(4) The requirements of this section also apply to any approved Type A medicated article. In addition, the requirements contained in § 514.80(b)(1), (b)(2), (b)(4)(iv), and (b)(4)(v) apply to any approved Type A medicated article incorporated in animal feeds."

D. Definition of Serious Adverse Drug Experience (§ 514.3)

(Comment 4) One comment asked FDA to change the definition of a "Serious adverse drug experience" from "an adverse event that is fatal or life threatening, requires professional intervention." to "an adverse event that is fatal or is a life-threatening event that requires professional intervention." The comment stated that the listing of events "adds confusion as to whether all or just one of the conditions need to be present for the event to meet the definition of serious." The comment questioned whether "professional intervention" is necessary for every listed condition in the definition for the event to be considered a serious ADE. Another comment asked that "requires professional intervention" be removed from the list since some events involving veterinary intervention are not serious.

In order to clarify the issue, FDA has added "or" between each term so that it is clear that each event listed is independent of any other event. Any one of the events listed will be considered a serious ADE. Both comments suggest that the ADE be considered serious only in the case where the fatal or life-threatening event requires professional intervention. FDA believes that a fatal or life-threatening event is serious regardless of whether professional intervention is sought for treatment. Thus, FDA will not change the definition to require professional intervention for each event. Events that are life threatening or that require professional intervention will be considered serious ADEs. FDA believes that any professional veterinary intervention is serious enough in nature to require reporting.

(Comment 5) One comment requested clarification of the portion of the definition that "requires professional intervention" as to whether this means that any reports from veterinarians to the applicant are considered serious.

FDA addressed this issue in comment 10 of the preamble in the interim final rule and added professional intervention to clarify the definition of seriousness for animal drugs. We believe that the definition is appropriate.

(Comment 6) One comment questioned whether "infertility" is a serious ADE. The comment stated that infertility following administration is rarely drug-related, and that many types of infertility would not be serious.

We disagree with the comment. Purebred producers (e.g., of cats, dogs, or cattle) would not want to use a product that may impair fertility unless necessary. Therefore, FDA believes that it is important to make label changes regarding fertility as quickly as possible, thus providing important labeling information for the end user. FDA will not remove "infertility" from the definition.

(Comment 7) One comment stated that the "unique aspects of evaluating animals that are housed and managed as a group" should be included in the definition. The comment proposed that FDA use the International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH) definition of serious ADE. The comment used an example situation in which the background frequency of death in animals not treated is higher than animals treated with the drug. FDA addressed a similar issue in the preamble of the interim final rule under comment 7. The VICH guidance documents are in early development, and once completed it is the intention of FDA to adopt and implement them in a manner consistent with its existing regulations. At this time, it is premature to adopt VICH definitions.

(Comment 8) One comment stated that a patient examination should not be considered professional intervention if there is no administration or dispensing of medications. According to the comment, this should not be the sole means of classifying an event as serious. The comment further stated that if there is an examination and no treatment is indicated by the veterinarian, then "professional intervention in the outcome of the case has not occurred."

An examination with no medical or surgical intervention/treatment or any treatment is a reportable ADE. If professional services of a veterinarian are engaged then this is considered an intervention incident. For example, if an over-the-counter (OTC) or prescription (Rx) drug product is given to the animal prior to veterinary intervention and an adverse drug reaction occurs, then the veterinarian, upon examination, may have important information concerning the event. As explained in the preamble of the interim final rule, FDA added the words "professional intervention" to clarify the definition of seriousness for animal drugs. FDA believes that the definition is appropriate.

The following is the change to the definition for "serious adverse drug experience" in § 514.3:

"*Serious adverse drug experience* is an adverse event that is fatal, or life-threatening, or requires professional intervention, or causes an abortion, or stillbirth, or infertility, or congenital anomaly, or prolonged or permanent disability, or disfigurement."

E. Definition of Unexpected Adverse Drug Experience (§ 514.3)

(Comment 9) One comment suggested that FDA change the definition of "Unexpected drug experience" from "an adverse event that is not listed in the current labeling for the new animal drug," to "an adverse event that is not listed in the current labeling for the new animal drug or reported in its Freedom of Information Summary(ies)." The comment highlighted the inclusion of the NADA file in the current rule's definition of "unexpected drug experience" and that those incidences referenced in the NADA file may not be captured on the label. Therefore, there is concern that this change from the current § 510.300(b)(2)(i) will increase the number of reports to the NADA file. There is also a concern that this would increase FDA's workload for labeling changes, especially for Type A medicated articles and OTC products. The comment maintained that it is inappropriate for FDA to exclude the NADA file, and include only the current label, from the definition since the freedom of information summary of the NADA file is publicly available. The comment further stated that it is inappropriate since the applicant is the primary source of the ADE and is responsible for determining if the report is unexpected.

We disagree with the comment. Although the freedom of information summary is a publicly available document, it is neither a practical substitute for a label, nor is it widely distributed and available with the label.

(Comment 10) One comment posed a scenario where an ADE is commonly recognized and not on the current label. It suggested that since the ADE is commonly recognized, it should be expected by FDA. The comment asked for the agency's expectation/position on this scenario.

FDA requires that recognized ADEs be on the label. It is the position of the Center for Veterinary Medicine (CVM) that any serious, unexpected ADE be reported under § 514.80(b)(2).

F. Applicability of Records and Reports Concerning Experience With Approved New Animal Drugs (§ 514.80(a)(1))

(Comment 11) One comment objected to the requirement of "separate" filing systems in the sentence "Each applicant and nonapplicant must establish and maintain indexed, separate, and * * *" The comment stated that this is a new requirement not present in the proposed rule for records and reports and it is not in § 514.300(a). Further, the comment argued that it is the applicant's decision to determine whether files are stored separately or as part of another filing system. The comment requested an explanation for this change, and proposed that the word "separate" be deleted.

It was not FDA's intention to make the determination as to whether files are stored separately or as part of another filing system. During FDA's review of comments on the proposed rule for records and reports concerning duplicate reporting, it was determined that the proposed § 514.82 (nonapplicant) information should be combined with proposed § 514.80 (applicant) information. The use of the word "separate" in this sentence was FDA's attempt to combine the information from proposed § 514.82 with § 514.80. Unfortunately, the combined verbiage has lead to this unintended reading by the commenter. Also, it was not FDA's intention that nonapplicants "establish and maintain indexed, separate, and complete files containing full records of all information * * * of a new animal drug * * *" It is the intention of FDA that nonapplicants "establish and maintain indexed, separate, and * * *" of only the information that they receive or otherwise obtain. Therefore, FDA has separated requirements for applicants from requirements for nonapplicants in order to clarify the meaning.

(Comment 12) One comment proposed that the clause "* * * that has not been previously submitted as part of the NADA or ANADA" be changed to "* * * that has not been previously submitted as part of an investigational new animal drug (INAD) file, the NADA or ANADA." The comment expressed concern that the studies/information submitted to the INAD would be excluded from the exemption of being "previously submitted" until the sponsor incorporated the information by reference into the NADA/ANADA file.

FDA believes that changing the regulation to include INADs is outside the scope of this regulation. The scope of records and reports is for experiences with approved new animal drugs, not investigational uses. The consequences of adding INADs to this regulation would be that applicants of INADs would have to submit the information and data under § 514.80. Therefore, FDA will not change the regulation to include INADs.

The following is the change to (§ 514.80(a)(1)):

(a) *Applicability.* (1) Each applicant must establish and maintain indexed and complete files containing full records of all information pertinent to safety or effectiveness of a new animal drug that has not been previously submitted as part of the NADA or ANADA. Such records must include information from domestic as well as foreign sources.

Each nonapplicant must establish and maintain indexed and complete files containing full records of all information pertinent to safety or effectiveness of a new animal drug that is received or otherwise obtained by the nonapplicant. Such records must include information from domestic as well as foreign sources.

G. Three-Day NADA/ANADA Field Alert Report (§ 514.80(b)(1))

(Comment 13) One comment asked what district office should be notified for 3-day NADA/ANADA field alert reports for U.S.-approved products that are manufactured outside of the United States.

Applicants should contact their FDA district office to determine the procedure for reporting 3-day alerts.

H. Fifteen-Day NADA/ANADA Alert Report (§ 514.80(b)(2))

(Comment 14) One comment opposed the use of the terminology "regardless of source of the information" in the reporting requirement for 15-day NADA/ANADA alert reports. The comment stated that "regardless of source" is overly broad. According to the comment, an ADE found by an employee of the company while browsing a chat room on the Internet, would have to be reported to FDA. The comment also expressed concern that serious adverse events outside the United States be reported to FDA within 15 days.

The phrase "regardless of source" was added to emphasize that the agency wanted all reports of ADEs. A legitimate source is an identifiable reporter, an identifiable product, and one or more ADEs in animals or humans, regardless of whether the source is the Internet. If the event is a serious, unexpected adverse drug event then it must be reported in a 15-day NADA/ANADA alert report. All domestic and foreign ADEs for the U.S.-approved application should be submitted under § 514.80(b)(2) or (b)(4)(iv).

(Comment 15) One comment requested that FDA elaborate on the requirement of submission of reports of ADEs from foreign sources as it relates to § 514.80(a)(2). The comment stated that this requirement is not consistent with § 510.300 and will increase the number of reports.

The burden for reporting domestic and foreign ADEs is the same under § 510.300. Foreign ADEs are required to be reported under the current regulations, although this requirement is not stated as explicitly in the current regulation as under § 514.80(a)(2). FDA is adding the language concerning foreign sources in order to make the rule more clear.

(Comment 16) One comment requested that applicants should not have to report cases where the reporter believes that an event is not drug related and the reporter does not want the case to be filed with FDA.

The ADE must be reported regardless of whether or not the reporter considers it to be drug related, if it meets the definition of an ADE (see 21 CFR 514.3), or whether a caller wishes it not to be reported. FDA will provide assistance on a case-by-case basis for specific incidences that the applicant or other reporter still believes should be excluded.

I. Nonapplicant Report (§ 514.80(b)(3))

(Comment 17) One comment recommended that in order to avoid confusion and over-reporting, all ADE reports should be submitted to CVM by the applicant, and that the sentence "if the nonapplicant elects to also report directly to FDA, the nonapplicant should submit the report on Form FDA 1932 within 15 working days of first receiving the information" should be deleted from the regulation. The comment maintained that if the nonapplicant reports to FDA in the 15-day period and it is determined by the applicant that it is not a serious, unexpected event, FDA might come to the conclusion that the applicant is under-reporting.

FDA does not concur with this recommendation. FDA believes that it is important for the nonapplicant to have a mechanism to report voluntarily. FDA will evaluate any nonapplicant report it receives to determine whether the report is of a serious, unexpected ADE.

J. Periodic Drug Experience Report—Distribution Data (§ 514.80(b)(4)(i))

(Comment 18) One comment questioned the need to report distribution data on the amounts of product exported outside the United States, and if the data are to be reported; how they will be used. The comment stated that since foreign ADEs are not required to be reported, there is no benefit for reporting amounts exported.

Foreign reports have to be submitted under § 514.80. Foreign ADEs for the U.S.-approved application must be submitted under § 514.80(b)(2) or (b)(4)(iv). These data will be used in a similar manner as domestic distribution data in determining if an increased frequency of ADE exists.

K. Periodic Drug Experience Report—Nonclinical Laboratory Studies and Clinical Data Not Previously Reported (§ 514.80(b)(4)(iii))

(Comment 19) One comment maintained that studies conducted to support a future claim should not be reported in the periodic drug experience report. The comment suggested that because sponsors make submissions to CVM's Office of New Animal Drug Evaluation (ONADE) for its review, and also report to CVM's Office of Surveillance and Compliance, the confusion could be eliminated by changing the title of this section from "Nonclinical laboratory studies and clinical data not previously reported" to "Nonclinical laboratory studies and clinical data not previously submitted."

FDA believes that such a change is not necessary. This requirement only pertains to data not previously reported to CVM, including submissions to ONADE and reports to the Office of Surveillance and Compliance.

L. Periodic Drug Experience Report—Nonclinical Laboratory Studies and Clinical Data Not Previously Reported—Prepublication Manuscripts (§ 514.80(b)(4)(iii)(C))

(Comment 20) One comment questioned the value and need to submit prepublication manuscripts and strongly recommended deletion of this requirement. The comment stated that such manuscripts are no better than draft reports and submission of these to entities other than the publisher may be prohibited by a journal in its publication policy. Additionally, it stated that the applicant could comply with the requirements for submission of a study within 1 year of its completion only when the study is conducted by or for the applicant.

FDA concurs with the recommendation and has revised this section of the regulation.

The following is the change to § 514.80(b)(4)(iii)(C):

(C) Descriptions of completed clinical trials conducted by or for the applicant must be submitted no later than 1 year after completion of research. Supporting information is not to be reported.

M. Periodic Drug Experience Report—Adverse Drug Experiences (§ 514.80(b)(4)(iv))

(Comment 21) One comment stated that FDA limited the scope of a manufacturing/product defect by changing the definition in § 514.80(g) in response to comment 12 of the interim final rule. The comment stated, "the scope of what is considered to be a manufacturing/product defect has now been limited to that which is a problem associated with public health or animal safety or that is a significant, chemical, physical, or other change or deterioration in the drug product or significant defective packaging or labeling error." According to the comment, nonsignificant defects, which involve the physical appearance but have no impact on animal safety or public health, do not need to be reported since these defects are not included in the definition of manufacturing/product defects. The comment provided a specific example of a blister unit with a misaligned die-cut of a blister, which does not affect the integrity of the package seal or labeling or an empty blister well.

Manufacturing/product defects are defined in § 514.3. If a problem with the product does not fall under the definition in § 514.3, then it is not considered a manufacturing/product defect. The example of a misaligned die-cut of a blister unit may or may not be considered a manufacturer/product defect depending on whether it is or is not a deviation of a distributed product from the standard specified in the approved application or any other portion of the definition. Manufacturing/product defects that may result in a serious adverse drug event must be submitted as a 3-day NADA/ANADA field alert report. The requirement of a serious adverse drug event limits the number of 3-day reports. Nonserious manufacturing/product defects should be submitted in the periodic drug experience report. The manufacturing/product defects definition given in § 514.3 does not pertain to the good manufacturing practice (GMP) regulations or other regulations outside of § 514.80.

N. Periodic Drug Experience Report—Adverse Drug Experiences Not Previously Reported (§ 514.80(b)(4)(iv)(A))

(Comment 22) One comment suggested that product/manufacturing defects, other than serious ones, should not have to be reported. FDA stated in the preamble of the interim final rule that FDA would limit its scope to

problems associated with public health or animal safety. According to the comment, the requirement of reporting product/manufacturing defects, other than serious ones, is not consistent with FDA's statement. The comment requested that 21 CFR 514.80(b)(4)(iv)(A) refer only to ADEs.

FDA declines to make the proposed change because eliminating the provision as requested would leave a significant gap in the safety and effectiveness profile of a drug product. The agency would no longer receive information for product and manufacturing defects that may result in "nonserious" but significant unexpected adverse drug events, i.e., events not listed on the label of a particular drug product. These could include new symptoms and pathophysiologically-related events such as increases in enzymes or blood counts that appear not to be serious by definition, but could negatively impact the effect of the drug product. Further, the applicant would not have to report product and manufacturing defects that may result in a lack of expected effectiveness.

O. Periodic Drug Experience Report—Adverse Drug Experiences in the Literature (§ 514.80(b)(4)(iv)(B))

(Comment 23) One comment stated that applicants routinely have not submitted ADEs separate from the literature. According to the comment, applicants have limited ability to investigate incidents such as studies conducted by unrelated third parties. The comment requested that this section be deleted or reworded to clarify FDA's intent.

FDA is not requesting that each individual ADE in the literature be submitted on Form FDA 1932. The use of Form FDA 1932 does not apply to § 514.80(b)(4)(iv)(B). As the rule states, FDA is asking that "a bibliography of pertinent references" of the literature containing ADEs be submitted. A bibliographic listing from Medline or other database searches would be acceptable.

P. Periodic Drug Experience Report—Adverse Drug Experiences Occurring in Postapproval Studies That Are Not Previously Reported (§ 514.80(b)(4)(iv)(C))

(Comment 24) One comment noted that reporting ADEs from postapproval studies is duplicate reporting given that the study report is submitted to ONADE. The comment contended that this would be a considerable additional workload, especially for the first 2 years postapproval. Also, if this reporting requirement is not changed, the comment asked if FDA wanted these reports on Form FDA 1932. FDA disagrees that this would be additional work. This requirement only pertains to ADEs not previously reported to CVM. Any study reports previously submitted to ONADE do not have to be submitted again. Applicants are not required to submit these experiences on Form FDA 1932.

Q. Other Reporting—Advertisements and Promotional Labeling (§ 514.80(b)(5)(ii))

(Comment 25) One comment stated that the regulation is not clear about the submission requirements for OTC and Rx promotional labeling. Further, the comment requested that the promotional labeling requirement be applicable to Rx products only, in accordance with current regulations.

FDA believes that the regulation is clear about the submission requirement for OTC and Rx labeling. FDA declines to change the applicability to Rx products only. This is not a new proposal; it was included in the proposed rule for records and reports.

R. Other Reporting—Distributor's Statement—Current Product Labeling (§ 514.80(b)(5)(iii)(A)(1))

(Comment 26) One comment suggested that, with regard to distributor's labeling, the qualifying phrase should not be limited to "manufactured for" or "distributed by." The comment argued that § 201.1(h)(5) (21 CFR 201.1(h)(5)) provides the appropriate alternatives, which should also be permitted, and recommended that the last sentence in this section be changed.

The agency concurs with the proposed revision and has revised this section.

The following is the change to § 514.80(b)(5)(iii)(A)(*1*):

(1) The distributor's labeling must be identical to that in the approved NADA/ANADA except for a different and suitable proprietary name (if used) and the name and address of the distributor. The name and address of the distributor must be preceded by an appropriate qualifying phrase as permitted by the regulations such as "manufactured for" or "distributed by."

S. Other Reporting—Distributor's Signed Statements (§ 514.80(b)(5)(iii)(B)(2) and (b)(5)(iii)(B)(3))

(Comment 27) One comment noted that the current regulation § 514.8(a)(6)(iii) (21 CFR 514.8(a)(6)(iii)) requires the distributor to state that he/she will distribute the drug only under its approved labeling and that any other labeling or advertising will prescribe, recommend, or suggest use only under the approved labeling. According to the comment, § 514.80(b)(5)(iii)(B)(*2*) and (b)(5)(iii)(B)(*3*) of the interim final rule omits the limitation on promotional labeling. The comment suggested that the language of 21 CFR 514.8(a)(6)(iii) be changed so that paragraph (b)(5)(iii)(B)(*3*) would read as follows: "(3) that the distributor will distribute the product only for use under the conditions stated in the approved labeling, and any other labeling or advertising will prescribe, recommend, or suggest its use only under the approved labeling."

The agency believes that the provisions of paragraph (b)(5)(iii)(B)(*3*) of the proposed rules are similar to those of § 514.8(a)(6)(iii), but have been simplified and written in plain language. However, to make the meaning clear, the agency has revised the section by replacing the word "advertise" with "promote."

The following is the change to § 514.80(b)(5)(iii)(B)(*3*):

"(3) That the distributor will promote the product only for use under the conditions stated in the approved labeling;"

T. Multiple Applications—Information Specific to a Particular NADA/ANADA (§ 514.80(c)(4))

(Comment 28) One comment stated that the requirements under "Multiple Applications" do not appear to decrease, but may increase the burden on the applicant. In particular, the comment questioned the requirement under § 514.80(c)(4) and requested clarification. The comment also expressed concern with the increased reporting burden due to the increasing number of approved combinations of drugs for use in feeds since the implementation of the ADAA. Further complicating the reporting issue is that frequently there are nonapplicants involved in the marketing of these combinations. The comment stated that, with the exception of "promotional literature," there is rarely any other information to be reported. The comment suggested that the "promotional literature" be submitted to the application held by either party—i.e., the nonapplicants or applicant—and not the application approved for the use of the combination of drugs.

The provision of the regulation in question is currently codified under § 510.300(b)(4)(ii). The current regulation and the proposal in the interim final rule are similar. There is no increase of the reporting burden. It is not the intention of FDA for the implementation of § 514.80(c) to be different from the current requirement under § 510.300(b)(4)(ii). Only information specific to a particular NADA/ANADA that is not common to all the applications must be included in the report for that particular NADA/ANADA, for example, labeling. With regard to the comment that there is an increased reporting burden due to the ADAA, increased reporting is due to the increased number of approved applications, and not due to different requirements. FDA consequently believes that this is a reasonable reporting requirement.

U. Records to Be Maintained and Access to Records and Reports (§ 514.80(e) and (f))

(Comment 29) One comment asked where the primary repository for foreign report records (United States versus the foreign country) would reside.

Sponsors should keep records wherever it is their customary business practice to keep them as long as the records are available to FDA for inspection.

V. General Comments on the Regulation

(Comment 30) One comment requested that CVM adopt procedures for waiving the reporting of ADEs for NADAs/ANADAs. The comment suggested adopting procedures similar to FDA's Center for Drug Evaluation and Research's March 2001 draft publication entitled "Guidance for Industry on Postmarketing Safety Reporting for Human Drug and Biological Products Including Vaccines." This guidance states that applicants under certain conditions may request waivers from submission of full ADE reports that are both nonserious and labeled.

We disagree with the comment. The procedures in the draft guidance cited by the commenter only waive reporting such adverse experiences on FDA Form 3500A. The applicant still must collect and report these adverse experiences by providing a summary tabulation by body system and a narrative discussion about all adverse experiences in the periodic report. FDA also may request that the applicant submit these reports on the human form (FDA Form 3500A) within 5 calendar days after receipt of the agency's request. The final records and reports rule does not include such a summary tabulation or narrative discussion requirement. We believe that adding such a requirement would impose a greater burden on the regulated industry than the requirement of reporting such adverse events on Form FDA 1932 in periodic reports. Further, we believe it is crucial that all adverse drug experience information be submitted in a consistent manner and format to facilitate the agency's analysis of the information. For these reasons, we have not adopted the change proposed by this comment.

(Comment 31) One comment asked if ADEs and product defects for unapproved products, which meet the requirements of 21 CFR part 801(e)(1) of the act, should be reported.

No, this regulation only pertains to approved new animal drugs.

(Comment 32) One comment asked if a validated electronic signature in compliance with part 11 (21 CFR part 11) would suffice for an authorized signature on Form FDA 1932.

Yes, an electronic signature that is compliant with part 11 will be acceptable.

(Comment 33) One comment apparently has misinterpreted the table that outlines the purpose of each paragraph. In particular, the comment indicated belief that the purpose given for § 514.80(b)(1) also pertained to the next line § 514.80(b)(2).

FDA believes that the commenter has simply misinterpreted the table. Section 514.80(b)(1) and (b)(2) are separate line items in the table. The confusion appears to be because the purpose column for § 514.80(b)(2) is blank because the subsequent three titles are subsections of § 514.80(b)(2), i.e., § 514.80(b)(2)(i) through (b)(2)(iii). Thus, a blank in the purpose column does not mean the preceding description applies. For clarity's sake, however, FDA has added the phrase "See paragraphs below" in place of the blank spaces.

III. Summary of the Final Rule

FDA is withdrawing the interim final rule on its requirements for records and reports concerning experiences with approved new animal drugs (67 FR 5046) and is issuing this final rule. This final rule represents a modification of the withdrawn interim final rules. The modifications in the final rule include: Revising the definitions of "applicant" and "serious adverse drug experience;" modifying the reporting requirement for summary reports of increased frequency of ADEs; clarifying what safety and efficacy records a nonapplicant versus an applicant must maintain; eliminating the requirement of submission of prepublication manuscripts relating to completed clinical trials; changing distributor's labeling so that the qualifying phrase that must precede the name and address of the distributor is as permitted by § 201.1; and revising the section of the rule pertaining to distributor's signed statements to state that the distributor will promote the product only for use under the conditions stated in the approved labeling.

IV. Conforming Changes

With the amendment of the animal drug regulations, certain revisions to parts 226, 510, and 514 (21 CFR parts 226, 510, and 514) and 21 CFR part 211 are required to conform to the designations in the amendments. Certain other provisions of part 510 and § 514.8 are superseded by these regulations and are removed.

V. Environmental Impact

FDA has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VII. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act (Public Law 104–4). The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action subject to review under Executive Order 12866. FDA also certifies in accordance with the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities, and therefore, a regulatory flexibility analysis is not required. Further, the Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the final rule because it is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The

current inflation-adjusted statutory threshold is about $110 million.

The regulation is intended to clarify and simplify recordkeeping requirements while improving the protection of public and animal health. The revisions in the reporting requirements are expected to provide savings through lower recordkeeping costs in some areas while imposing small cost increases due to requirements for recordkeeping of more useful information.

In the rule, the term "applicant" is limited to the holder of an approved application (NADA or ANADA) and does not include every firm whose name appears on product labeling, as the regulations previously provided. A nonapplicant is required to send copies of necessary information to the applicant who would then combine all information received, whether from one or several sources, and submit a single report to FDA. This change would reduce paperwork requirements because firms would be required to submit fewer reports. Also, those reports should provide for a more comprehensive reporting of all required information.

The current requirement for ADE reports to be submitted by distributors is retained under the final rule in § 514.80(b)(3) in nonapplicant reporting. The requirement for any firm involved in the manufacturing, processing, packing, labeling, or distributing of a new animal drug product other than the applicant (the nonapplicant) to report adverse experiences either to FDA or to the applicant is a restatement of the previous provisions of § 510.300(f) that applies to a small number of firms that would not routinely be expected to receive such information. The restatement is intended to clearly state that any such information received is required to be reported to FDA, either directly or through the applicant. However, only one party would be required to file the report.

The revised regulations amend the language of the regulations to clarify current practices. The conformity of reporting requirements for animal drugs and human drugs may simplify the process for firms that manufacture both kinds of products. No added costs are expected for those firms that only manufacture new animal drug products. In the past, FDA has required that records and reports be retained for an indefinite period. The proposed rule provided for a retention period of 10 years. In response to industry comments, FDA changed this requirement in the interim final rule to 5 years for all information. This would provide an additional opportunity for savings compared to the proposed rule. No additional comments were received on this issue, and the 5-year retention period has been retained in the final rule. Since the current average length of time which records are kept is unknown, it is possible that there will be a small net cost due to this provision, even though the reporting requirements are clarified for easier compliance and administration.

The previously existing regulation required reports concerning newly approved NADAs and ANADAs every 6 months for the first year and annually thereafter. The proposed rule for records and reports would have required submission of such reports at quarterly intervals for 3 years following approval. FDA agrees with comments from industry that the proposed rule's requirement of reports at quarterly intervals for 3 years following approval was unnecessary, and the agency decreased the reporting requirements in the interim final rule. No additional comments were received on this issue. The final rule requires reports of ADEs to be submitted every 6 months for 2 years and annually thereafter.

The net change from the previous regulation requires one additional report in the second year. FDA estimates that it approves 30 NADAs annually. FDA estimates that 13.6 hours are required to establish and maintain the drug experience data, as well as write the report. Total hours required for this provision are estimated at 408. At a middle manager's estimated total wage rate of about $35 per hour, this provision would cost $14,280 annually. Moreover, applicants may petition for lengthier report intervals. FDA will provide for reporting at intervals longer than 1 year when justified based on current experience or manufacturing and marketing status. The expected number of petitions for reporting at intervals greater than 1 year is difficult to estimate because it depends on the extent to which each individual company wishes to qualify for this provision. The net result of these two provisions may be either a very small cost or savings to each firm.

The interim final rule would have required applicants to periodically review the incidence of ADEs and report any significant increase in the frequency to FDA as soon as possible or within 15 working days of determining a significant increase in frequency exists. In response to comments, the final rule provides more flexibility to industry by allowing these reports to be submitted in the periodic drug experience reports rather than within the 15-day period. FDA expects to receive very few of these reports each year and estimates that the annual number will be between 1 and 20. These reports would not be expected to take more than 1 to 2 hours of a manager's time, and the high-end estimated cost to industry would be $1,400 annually. Periodic review of ADE reports, although on a less formal basis, is currently understood to be normal business practice.

The net costs and benefits of this final rule, though indeterminate, are expected to be modest. FDA concludes that the impacts of the final rule do not qualify it as an economically significant rule as defined under Executive Order 12866.

The Regulatory Flexibility Act, as amended (5 U.S.C. 601–612), allows for a waiver of the regulatory flexibility analysis if an agency certifies there will not be a significant impact on a substantial number of small entities as a result of a rule, as well as provides the factual basis for such a certification. The Small Business Administration definition of a small business in this industry category is limited to those firms with less than 750 employees. It is expected that a substantial number of the firms that will be subject to the new recordkeeping and reporting requirements will meet the definition of small businesses. FDA estimates that from 1 to 13 of the approximately 30 NADA and ANADA approvals in 1999 may have been from small businesses. Using the upper end of this range, about 42 percent of the firms receiving approval annually would be subject to the new recordkeeping and reporting requirements. This regulation is not expected to have a significant economic impact on these firms because the final rule is intended to simplify and clarify current recordkeeping and reporting requirements. The net costs and benefits on each small firm are expected to be modest. Accordingly, FDA certifies in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis, therefore, is not required.

VIII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is given below. Included is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Records and Reports Concerning Experience With Approved New Animal Drugs.

Description: This final rule amends the provisions of the animal drug regulations concerning requirements for recordkeeping and reports concerning experience with approved new animal drugs. The information contained in the reports required by this rule enables FDA to monitor the use of new animal drugs after approval and to ensure their continued safety and efficacy. The reporting requirements include: A report that provides information on product and manufacturing defects that may result in serious adverse drug events within 3 days of becoming aware the defect exists (new § 514.80(b)(1)); a report that provides information on serious and unexpected adverse drug events and a followup report on such events (new § 514.80(b)(2)); a summary report of increased frequency of ADEs (new § 514.80(b)(4)(v)); a report from nonapplicants, such as distributors, to applicants providing information on ADEs (new § 514.80(b)(3)); a periodic report with information on distribution, labeling, manufacturing or controls changes, new laboratory studies, and all adverse events in the reporting period (new § 514.80(b)(4)); and other reports that include special drug experience reports; reports for advertising and promotional labeling, and reports for distributor statements (new § 514.80(b)(5)). These reports must be kept for 5 years (new § 514.80(e)).

The final rule strengthens the current reporting system by requiring periodic reports every 6 months for the first 2 years following initial approval of an application rather than just for the first year following initial approval. The increased burden on applicants amounts to one additional periodic report. While greater than the reporting burden in the previous rule, this burden is less than that of the proposed rule which would have required quarterly periodic reports for 3 years following initial approval.

All periodic reports must be submitted with Form FDA 2301, "Transmittal of Periodic Reports and Promotional Materials for New Animal Drugs" (OMB control number 0910–0012). ADE reports must be submitted on Form FDA 1932, "Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report" (OMB control number 0910–0012).

In the **Federal Register** of February 4, 2002, FDA invited comments on the interim final rule and the information collection requirements. Only one comment received pertained to information collection. That comment stated that the requirements under "Multiple Applications" do not appear to decrease but may increase the burden on the applicant. In particular, the comment questioned the requirement under § 514.80(c)(4) and requested clarification. The comment also voiced concern about an increased reporting burden due to the increasing number of approved applications for combinations of drugs for use in feeds since the implementation of the ADAA. Further complicating the reporting issue is that frequently there are nonapplicants involved in the marketing of these combinations. The comment stated that with the exception of "promotion literature," there is rarely any other information to be reported, suggesting that the "promotion literature" be submitted to the application held by either party, i.e., the nonapplicants or applicant, and not the application approved for the use of the combination of drugs.

In response, FDA notes that the provision of the regulation in question is currently codified under § 510.300(b)(4)(ii). The current regulation and the proposal in the interim final rule are similar. There is no increase of the reporting burden. It is not the intention of FDA for the implementation of § 514.80(c) to be different than the current requirement under § 510.300(b)(4)(ii). Only information specific to a particular NADA/ANADA that is not common to all the applications must be included in the report for that particular NADA/ANADA, for example, labeling. With regard to the comment that there is an increased reporting burden due to the ADAA, increased reporting is due to the increased number of approved applications, and not due to different requirements. FDA consequently believes that this is a reasonable reporting requirement.

Description of Respondents: Applicant respondents are sponsors of approved NADAs and ANADAs. Nonapplicant respondents are those, other than the applicant, involved in manufacturing, processing, packing, labeling, or distributing new animal drugs.

RECORDS AND REPORTS CONCERNING EXPERIENCE WITH APPROVED NEW ANIMAL DRUGS

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/Title/FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
514.80(b)(2)(i)/Original 15-Day Alert Report/Form FDA 1932	190	55.26	12,283	1	12,283
514.80(b)(1)/3-Day Field Alert Report/ Form FDA 1932	190	0.32	95	1	95
514.80(b)(2)(ii)/Followup 15-Day Alert Report/Form FDA 1932	190	17.90	6,007	1	6,007
514.80(b)(3)/Nonapplicant Report/ Form FDA 1932	340	2.94	1,000	1	1,000
514.80(b)(4)/Periodic Drug Experience Report/Form FDA 2301, and 514.80(c) Multiple Applications[2]	190	7.11	1,226	11	13,486
514.80(b)(4)(v)/Summary Report of Increased Frequency of Adverse Drug Experience	190	1.58	300	2	600
514.80(b)(5)(i)/Special Drug Experience Report/ Form FDA 2301	190	0.13	25	2	50

RECORDS AND REPORTS CONCERNING EXPERIENCE WITH APPROVED NEW ANIMAL DRUGS—Continued

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/Title/FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
514.80(b)(5)(ii)/Advertising and Promotional Materials Report/ Form FDA 2301	190	2.11	772	2	1,544
514.80(b)(5)(iii)/Distributor's Statement Report/ Form FDA 2301	530	0.14	56	2	112
Total					35,177

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The reporting burden for § 514.80(b)(4)(iv)(A) is included in the reporting burden for § 514.80(b)(2)(i).

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency of Response	Total Annual Responses	Hours per Response	Total Hours
514.80(e)[2]	530	28.22	19,385	0.5	9,693
514.80(e)[3]	530	4.06	2,379	10.35	24,623
Total					34,316

[1] Burden estimates were separated between Form FDA 1932 and Form FDA 2301 to reflect the difference in estimates for "Hours per Respondent" required.
[2] Recordkeeping estimates for § 514.80(b)(1), (b)(2)(i), (b)(2)(ii), and (b)(3); Form FDA 1932.
[3] Recordkeeping estimates for § 514.80(b)(2)(iii), (b)(4), (b)(5), and (c); Form FDA 2301.

Forms FDA 1932 and FDA 2301 for this collection of information are currently approved under OMB control number 0910–0012 and will not change due to implementation of this regulation. The reporting and recordkeeping burden estimates in this document are based on the submission of reports to the Division of Surveillance, CVM. The total annual response numbers are based on the 2000 fiscal year submission of reports to the Division of Surveillance, CVM. The numbers in tables 1 and 2 of this document are total burden associated with this regulation. Section 514.80(b)(3) and (b)(4)(v) are new information collection requirements over the current requirements.

The information collection provisions of this final rule have been submitted to OMB for review. FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects

21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

21 CFR Part 226

Animal drugs, Animal feeds, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 211, 226, 510, and 514 are amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

■ 1. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 360b, 371, 374.

§ 211.198 [Amended]

■ 2. Section 211.198 *Complaint files* is amended in paragraph (a) in the last sentence by removing "in accordance with § 310.305 of this chapter" and adding in its place "in accordance with §§ 310.305 and 514.80 of this chapter."

PART 226—CURRENT GOOD MANUFACTURING PRACTICE FOR TYPE A MEDICATED ARTICLES

■ 3. The authority citation for 21 CFR part 226 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 374.

■ 4. Section 226.1 is amended by redesignating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 226.1 Current good manufacturing practice.

* * * * *

(b) In addition to maintaining records and reports required in this part, Type A medicated articles requiring approved NADAs are subject to the requirements of § 514.80 of this chapter.

PART 510—NEW ANIMAL DRUGS

■ 5. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.300 [Removed]

■ 6. Section 510.300 *Records and reports concerning experience with new animal drugs for which an approved application is in effect* is removed.

§ 510.302 [Removed]

■ 7. Section 510.302 *Reporting forms* is removed.

PART 514—NEW ANIMAL DRUG APPLICATIONS

■ 8. The authority citation for 21 CFR part 514 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e, 381.

■ 9. Section 514.3 is added to read as follows:

§ 514.3 Definitions.

The definition and interpretation of terms contained in this section apply to those terms as used throughout subchapter E.

Adverse drug experience is any adverse event associated with the use of a new animal drug, whether or not considered to be drug related, and whether or not the new animal drug was used in accordance with the approved labeling (i.e., used according to label directions or used in an extralabel manner, including but not limited to different route of administration, different species, different indications, or other than labeled dosage). Adverse drug experience includes, but is not limited to:

(1) An adverse event occurring in animals in the course of the use of an animal drug product by a veterinarian or by a livestock producer or other animal owner or caretaker.

(2) Failure of a new animal drug to produce its expected pharmacological or clinical effect (lack of expected effectiveness).

(3) An adverse event occurring in humans from exposure during manufacture, testing, handling, or use of a new animal drug.

ANADA is an abbreviated new animal drug application including all amendments and supplements.

Applicant is a person or entity who owns or holds on behalf of the owner the approval for an NADA or an ANADA, and is responsible for compliance with applicable provisions of the act and regulations.

Increased frequency of adverse drug experience is an increased rate of occurrence of a particular serious adverse drug event, expected or unexpected, after appropriate adjustment for drug exposure.

NADA is a new animal drug application including all amendments and supplements.

Nonapplicant is any person other than the applicant whose name appears on the label and who is engaged in manufacturing, packing, distribution, or labeling of the product.

Product defect/manufacturing defect is the deviation of a distributed product from the standards specified in the approved application, or any significant chemical, physical, or other change, or deterioration in the distributed drug product, including any microbial or chemical contamination. A manufacturing defect is a product defect caused or aggravated by a manufacturing or related process. A manufacturing defect may occur from a single event or from deficiencies inherent to the manufacturing process. These defects are generally associated with product contamination, product deterioration, manufacturing error, defective packaging, damage from disaster, or labeling error. For example, a labeling error may include any incident that causes a distributed product to be mistaken for, or its labeling applied to, another product.

Serious adverse drug experience is an adverse event that is fatal, or life-threatening, or requires professional intervention, or causes an abortion, or stillbirth, or infertility, or congenital anomaly, or prolonged or permanent disability, or disfigurement.

Unexpected adverse drug experience is an adverse event that is not listed in the current labeling for the new animal drug and includes any event that may be symptomatically and pathophysiologically related to an event listed on the labeling, but differs from the event because of greater severity or specificity. For example, under this definition hepatic necrosis would be unexpected if the labeling referred only to elevated hepatic enzymes or hepatitis.

§ 514.8 [Amended]

■ 10. Section 514.8 *Supplemental new animal drug applications* is amended in paragraph (a)(1) by removing "§ 510.300(a) of this chapter" and by adding in its place "§ 514.80"; in paragraph (a)(5) by removing "§ 510.300(b)(4) of this chapter" and by adding in its place "§ 514.80(b)(4)"; in paragraph (a)(5)(ix) by removing "§ 510.300(b)(1) of this chapter" and by adding in its place "§ 514.80(b)(1)"; and by revising paragraph (a)(6) to read as follows:

(a) * * *

(6) Approval of a supplemental new animal drug application will not be required to provide for an additional distributor to distribute a drug which is the subject of an approved new animal drug application if the conditions described in § 514.80(b)(5)(iii) are met before putting such a change into effect.

* * * * *

§ 514.11 [Amended]

■ 11. Section 514.11 *Confidentiality of data and information in a new animal drug application file* is amended in paragraph (a) by removing "510.300" and adding in its place "514.80".

§ 514.15 [Amended]

■ 12. Section 514.15 *Untrue statements in applications* is amended in paragraph (b) by removing "§ 510.300" and adding in its place "§ 514.80".

■ 13. Section 514.80 is added to subpart B to read as follows:

§ 514.80 Records and reports concerning experience with approved new animal drugs.

The following table outlines the purpose for each paragraph of this section:

Purpose	21 CFR Paragraph and Title
What information must be reported concerning approved NADAs or ANADAs?	514.80(a) Applicability.
What authority does FDA have for requesting records and reports? Who is required to establish, maintain, and report required information relating to experiences with a new animal drug? Is information from foreign sources required?	514.80(a)(1).
What records must be established and maintained and what reports filed with FDA?	514.80(a)(2).
What is FDA's purpose for requiring reports?	514.80(a)(3).
Do applicants of Type A medicated articles have to establish, maintain, and report information required under § 514.80?	514.80(a)(4).

Purpose	21 CFR Paragraph and Title
How do the requirements under § 514.80 relate to current good manufacturing practices?	514.80(a)(5).
	514.80(b) Reporting requirements.
What are the requirements for reporting product/manufacturing defects?	514.80(b)(1) Three-day NADA/ANADA field alert report.
	514.80(b)(2) Fifteen-day NADA/ANADA alert report.
What are the requirements for reporting serious and unexpected adverse drug experiences?	514.80(b)(2)(i) Initial report.
What are the requirements for followup reporting of serious and unexpected adverse drug experiences?	514.80(b)(2)(ii) Followup report.
What are the requirements for nonapplicants for reporting adverse drug experiences?	514.80(b)(3) Nonapplicant report.
What are the general requirements for submission of periodic drug experience reports, e.g., forms to be submitted, submission date and frequency, when is it to be submitted, how many copies? How do I petition to change the date of submission or frequency of submissions?	514.80(b)(4) Periodic drug experience report.
What must be submitted in the periodic drug experience reports?	514.80(b)(4)(i) through (b)(4)(iv).
What distribution data must be submitted? How should the distribution data be submitted?	514.80(b)(4)(i) Distribution data.
What labeling materials should be submitted? How do I report changes to the labeling materials since the last report?	514.80(b)(4)(ii) Labeling.
	514.80(b)(4)(iii) Nonclinical laboratory studies and clinical data not previously reported.
What are the requirements for submission of nonclinical laboratory studies?	514.80(b)(4)(iii)(A).
What are the requirements for submission of clinical laboratory data?	514.80(b)(4)(iii)(B).
When must results of clinical trials conducted by or for the applicant be reported?	514.80(b)(4)(iii)(C).
	514.80(b)(4)(iv) Adverse drug experiences.
How do I report product/manufacturing defects and adverse drug experiences not previously reported to FDA?	514.80(b)(4)(iv)(A).
What are the requirements for submitting adverse drug experiences cited in literature?	514.80(b)(4)(iv)(B).
What are the requirements for submitting adverse drug experiences in postapproval studies and clinical trials?	514.80(b)(4)(iv)(C).
What are the requirements for reporting increases in the frequency of serious, expected, and unexpected adverse drug experiences?	514.80(b)(4)(v) Summary report of increased frequency of adverse drug experience.
	514.80(b)(5) Other reporting.
Can FDA request that an applicant submit information at different times than stated specifically in this regulation?	514.80(b)(5)(i) Special drug experience report.
What are the requirements for submission of advertisement and promotional labeling to FDA?	514.80(b)(5)(ii) Advertisements and promotional labeling.
What are the requirements for adding a new distributor to the approved application?	514.80(b)(5)(iii) Distributor's statement.
What labels and how many labels need to be submitted for review?	514.80(b)(5)(iii)(A).
What changes are required and allowed to distributor labeling?	514.80(b)(5)(iii)(A)(*1*).
What are the requirements for making other changes to the distributor labeling?	514.80(b)(5)(iii)(A)(*2*).
What information should be included in each new distributor's signed statement?	514.80(b)(5)(iii)(B)(*1*) through (b)(5)(iii)(B)(*5*).
What are the conditions for submitting information that is common to more than one application? (i.e., can I submit common information to one application?)	514.80(c) Multiple applications.
What information has to be submitted to the common application and related application?	514.80(c)(1) through (c)(4).

Purpose	21 CFR Paragraph and Title
What forms do I need? What are Forms FDA 1932 and 2301? How can I get them? Can I use computer-generated equivalents?	514.80(d) Reporting forms.
How long must I maintain Form FDA 1932 and records and reports of other required information, i.e., how long do I need to maintain this information?	514.80(e) Records to be maintained.
What are the requirements for allowing access to these records and reports, and copying by authorized FDA officer or employee?	514.80(f) Access to records and reports.
How do I obtain Forms FDA 1932 and 2301? Where do I mail FDA's required forms, records, and reports?	514.80(g) Mailing addresses.
What happens if the applicant fails to establish, maintain, or make the required reports? What happens if the applicant refuses to allow FDA access to, and/or copying and/or verify records and reports?	514.80(h) Withdrawal of approval.
Does an adverse drug experience reflect a conclusion that the report or information constitutes an admission that the drug caused an adverse effect?	514.80(i) Disclaimer.

(a) *Applicability.* (1) Each applicant must establish and maintain indexed and complete files containing full records of all information pertinent to safety or effectiveness of a new animal drug that has not been previously submitted as part of the NADA or ANADA. Such records must include information from domestic as well as foreign sources. Each nonapplicant must establish and maintain indexed and complete files containing full records of all information pertinent to safety or effectiveness of a new animal drug that is received or otherwise obtained by the nonapplicant. Such records must include information from domestic as well as foreign sources.

(2) Each applicant must submit reports of data, studies, and other information concerning experience with new animal drugs to the Food and Drug Administration (FDA) for each approved NADA and ANADA, as required in this section. A nonapplicant must submit data, studies, and other information concerning experience with new animal drugs to the appropriate applicant, as required in this section. The applicant, in turn, must report the nonapplicant's data, studies, and other information to FDA. Applicants and nonapplicants must submit data, studies, and other information described in this section from domestic, as well as foreign sources.

(3) FDA reviews the records and reports required in this section to facilitate a determination under section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) as to whether there may be grounds for suspending or withdrawing approval of the NADA or ANADA.

(4) The requirements of this section also apply to any approved Type A medicated article. In addition, the requirements contained in § 514.80(b)(1), (b)(2), (b)(4)(iv), and (b)(4)(v) apply to any approved Type A medicated article incorporated in animal feeds.

(5) The records and reports referred to in this section are in addition to those required by the current good manufacturing practice regulations in parts 211, 225, and 226 of this chapter.

(b) *Reporting requirements*—(1) *Three-day NADA/ANADA field alert report.* This report provides information pertaining to product and manufacturing defects that may result in serious adverse drug events. The applicant (or nonapplicant through the applicant) must submit the report to the appropriate FDA District Office or local FDA resident post within 3 working days of first becoming aware that a defect may exist. The information initially may be provided by telephone or other telecommunication means, with prompt written followup using Form FDA 1932 "Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report." The mailing cover for these reports must be plainly marked "3-Day NADA/ANADA Field Alert Report."

(2) *Fifteen-day NADA/ANADA alert report*—(i) *Initial report.* This report provides information on each serious, unexpected adverse drug event, regardless of the source of the information. The applicant (or nonapplicant through the applicant) must submit the report to FDA within 15 working days of first receiving the information. The report must be submitted on Form FDA 1932, and its mailing cover must be plainly marked "15-Day NADA/ANADA Alert Report."

(ii) *Followup report.* The applicant must promptly investigate all adverse drug events that are the subject of 15-day NADA/ANADA alert reports. If this investigation reveals significant new information, a followup report must be submitted within 15 working days of receiving such information. A followup report must be submitted on Form FDA 1932, and its mailing cover must be plainly marked "15-Day NADA/ANADA Alert Report Followup." The followup report must state the date of the initial report and provide the additional information. If additional information is sought but not obtained within 3 months of the initial report, a followup report is required describing the steps taken and why additional information was not obtained.

(3) *Nonapplicant report.* Nonapplicants must forward reports of adverse drug experiences to the applicant within 3 working days of first receiving the information. The applicant must then submit the report(s) to FDA as required in this section. The nonapplicant must maintain records of all nonapplicant reports, including the date the nonapplicant received the information concerning adverse drug experiences, the name and address of the applicant, and a copy of the adverse drug experience report including the date such report was submitted to the applicant. If the nonapplicant elects to also report directly to FDA, the nonapplicant should submit the report on Form FDA 1932 within 15 working days of first receiving the information.

(4) *Periodic drug experience report.* This report must be accompanied by a completed Form FDA 2301 "Transmittal of Periodic Reports and Promotional Materials for New Animal Drugs." It must be submitted every 6 months for

the first 2 years following approval of an NADA or ANADA and yearly thereafter. Reports required by this section must contain data and information for the full reporting period. The 6-month periodic drug experience reports must be submitted within 30 days following the end of the 6-month reporting period. The yearly periodic drug experience reports must be submitted within 60 days of the anniversary date of the approval of the NADA or ANADA. Any previously submitted information contained in the report must be identified as such. For yearly (annual) periodic drug experience reports, the applicant may petition FDA to change the date of submission or frequency of reporting, and after approval of such petition, file such reports on the new filing date or at the new reporting frequency. Also, FDA may require a report at different times or more frequently. The periodic drug experience report must contain the following:

(i) *Distribution data.* Information about the distribution of each new animal drug product, including information on any distributor-labeled product. This information must include the total number of distributed units of each size, strength, or potency (e.g., 100,000 bottles of 100 5-milligram tablets; 50,000 10-milliliter vials of 5-percent solution). This information must be presented in two categories: Quantities distributed domestically and quantities exported.

(ii) *Labeling.* Applicant and distributor current package labeling, including package inserts (if any). For large-size package labeling or large shipping cartons, a representative copy must be submitted (e.g., a photocopy of pertinent areas of large feed bags). A summary of any changes in labeling made since the last report (listed by date of implementation) must be included with the labeling or if there have been no changes, a statement of such fact must be included with the labeling.

(iii) Nonclinical laboratory studies and clinical data not previously reported.

(A) Copies of in vitro studies (e.g., mutagenicity) and other nonclinical laboratory studies conducted by or otherwise obtained by the applicant.

(B) Copies of published clinical trials of the new animal drug (or abstracts of them) including clinical trials on safety and effectiveness, clinical trials on new uses, and reports of clinical experience pertinent to safety conducted by or otherwise obtained by the applicant. Review articles, papers, and abstracts in which the drug is used as a research tool, promotional articles, press clippings, and papers that do not contain tabulations or summaries of original data are not required to be reported.

(C) Descriptions of completed clinical trials conducted by or for the applicant must be submitted no later than 1 year after completion of research. Supporting information is not to be reported.

(iv) *Adverse drug experiences.* (A) Product/manufacturing defects and adverse drug experiences not previously reported under § 514.80(b)(1) and (b)(2) must be reported individually on Form FDA 1932.

(B) Reports of adverse drug experiences in the literature must be noted in the periodic drug experience report. A bibliography of pertinent references must be included with the report. Upon FDA's request, the applicant must provide a full text copy of these publications.

(C) Reports of previously not reported adverse drug experiences that occur in postapproval studies must be reported separately from other experiences in the periodic drug experience report and clearly marked or highlighted.

(v) *Summary report of increased frequency of adverse drug experience.* The applicant must periodically review the incidence of reports of adverse drug experiences to determine if there has been an increased frequency of serious (expected and unexpected) adverse drug events. The applicant must evaluate the increased frequency of serious (expected or unexpected) adverse drug events at least as often as reporting of periodic drug experience reports. The applicant must report the increased frequency of serious (expected and unexpected) adverse drug events in the periodic drug experience report. Summaries of reports of increased frequency of adverse drug events must be submitted in narrative form. The summaries must state the time period on which the increased frequency is based, time period comparisons in determining increased frequency, references to any previously submitted Form FDA 1932, the method of analysis, and the interpretation of the results. The summaries must be submitted in a separate section within the periodic drug experience report.

(5) *Other reporting*—(i) *Special drug experience report.* Upon written request, FDA may require that the applicant submit a report required under § 514.80 at different times or more frequently than the timeframes stated in § 514.80.

(ii) *Advertisements and promotional labeling.* The applicant must submit at the time of initial dissemination one set of specimens of mailing pieces and other labeling for prescription and over-the-counter new animal drugs. For prescription new animal drugs, the applicant must also submit one set of specimens of any advertisement at the time of initial publication or broadcast. Mailing pieces and labeling designed to contain product samples must be complete except that product samples may be omitted. Each submission of promotional labeling or advertisements must be accompanied by a completed Form FDA 2301.

(iii) *Distributor's statement.* At the time of initial distribution of a new animal drug product by a distributor, the applicant must submit a special drug experience report accompanied by a completed Form FDA 2301 containing the following:

(A) The distributor's current product labeling.

(*1*) The distributor's labeling must be identical to that in the approved NADA/ANADA except for a different and suitable proprietary name (if used) and the name and address of the distributor. The name and address of the distributor must be preceded by an appropriate qualifying phrase as permitted by the regulations such as "manufactured for" or "distributed by."

(*2*) Other labeling changes must be the subject of a supplemental NADA or ANADA as described under § 514.8.

(B) A signed statement by the distributor stating:

(*1*) The category of the distributor's operations (e.g., wholesale or retail),

(*2*) That the distributor will distribute the new animal drug only under the approved labeling,

(*3*) That the distributor will promote the product only for use under the conditions stated in the approved labeling,

(*4*) That the distributor will adhere to the records and reports requirements of this section, and

(*5*) That the distributor is regularly and lawfully engaged in the distribution or dispensing of prescription products if the product is a prescription new animal drug.

(c) *Multiple applications.* Whenever an applicant is required to submit a periodic drug experience report under the provisions of § 514.80(b)(4) with respect to more than one approved NADA or ANADA for preparations containing the same new animal drug so that the same information is required to be reported for more than one application, the applicant may elect to submit as a part of the report for one such application (the primary application) all the information common to such applications in lieu of reporting separately and repetitively on each. If the applicant elects to do this, the applicant must do the following:

(1) State when a report applies to multiple applications and identify all related applications for which the report is submitted by NADA or ANADA number.

(2) Ensure that the primary application contains a list of the NADA or ANADA numbers of all related applications.

(3) Submit a completed Form FDA 2301 to the primary application and each related application with reference to the primary application by NADA/ANADA number and submission date for the complete report of the common information.

(4) All other information specific to a particular NADA/ANADA must be included in the report for that particular NADA/ANADA.

(d) *Reporting forms.* Applicant must report adverse drug experiences and product/manufacturing defects on Form FDA 1932, "Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report." Periodic drug experience reports and special drug experience reports must be accompanied by a completed Form FDA 2301 "Transmittal of Periodic Reports and Promotional Material for New Animal Drugs," in accordance with directions provided on the forms. Computer-generated equivalents of Form FDA 1932 or Form FDA 2301, approved by FDA before use, may be used. Form FDA 1932 and Form FDA 2301 may be obtained on the Internet at http://www.fda.gov/cvm/forms/forms.html, by telephoning the Division of Surveillance (HFV–210), or by submitting a written request to the following address: Food and Drug Administration, Center for Veterinary Medicine, Division of Surveillance (HFV–210), 7500 Standish Pl., Rockville, MD 20855–2764.

(e) *Records to be maintained.* The applicants and nonapplicants must maintain records and reports of all information required by this section for a period of 5 years after the date of submission.

(f) *Access to records and reports.* The applicant and nonapplicant must, upon request from any authorized FDA officer or employee, at all reasonable times, permit such officer or employee to have access to copy and to verify all such required records and reports.

(g) *Mailing addresses.* Completed 15-day alert reports, periodic drug experience reports, and special drug experience reports must be submitted to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855–2764. Three-day alert reports must be submitted to the appropriate FDA district office or local FDA resident post. Addresses for district offices and resident posts may be obtained from the Internet at http://www.fda.gov (click on "Contact FDA," then "FDA Field Offices").

(h) *Withdrawal of approval.* If FDA finds that the applicant has failed to establish the required records, or has failed to maintain those records, or failed to make the required reports, or has refused access to an authorized FDA officer or employee to copy or to verify such records or reports, FDA may withdraw approval of the application to which such records or reports relate. If FDA determines that withdrawal of the approval is necessary, the agency shall give the applicant notice and opportunity for hearing, as provided in § 514.200, on the question of whether to withdraw approval of the application.

(i) *Disclaimer.* Any report or information submitted under this section and any release of that report or information by FDA will be without prejudice and does not necessarily reflect a conclusion that the report or information constitutes an admission that the drug caused or contributed to an adverse event. A person need not admit, and may deny, that the report or information constitutes an admission that a drug caused or contributed to an adverse event.

Dated: March 21, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–7475 Filed 3–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Bayer Corp., Agriculture Division, Animal Health to Bayer HealthCare LLC, Animal Health Division.

DATES: This rule is effective March 31, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: dnewkirk@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Bayer Corp., Agriculture Division, Animal Health, P.O. Box 390, Shawnee Mission, KS 66201, has informed FDA of a change of name to Bayer HealthCare LLC, Animal Health Division. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect the change.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A), because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Bayer Corp." and by alphabetically adding an entry for "Bayer HealthCare LLC"; and in the table in paragraph (c)(2) by revising the entry for "000859" to read as follows.

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Bayer HealthCare LLC, Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201.	000859
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	

Drug labeler code	Firm name and address
000859	Bayer HealthCare LLC, Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201

Dated: March 21, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–7533 Filed 3–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Gentamicin Sulfate, Mometasone Furoate, Clotrimazole Otic Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The supplemental NADA provides for the addition of once-daily administration to the dosage regimens for gentamicin/mometasone/clotrimazole otic suspension used to treat otitis externa in dogs and for revision of the indications to reflect a current format.

DATES: This rule is effective March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., P.O. Box 3182, Union, NJ 07083, filed a supplement to NADA 141–177 that provides for once-daily administration of MOMETAMAX (gentamicin sulfate/mometasone furoate monohydrate/clotrimazole) Otic Suspension for the treatment of otitis externa in dogs caused by susceptible strains of yeast (*Malassezia pachydermatis*) and bacteria (*Pseudomonas* spp. [including *P. aeruginosa*], coagulase-positive staphylococci, *Enterococcus faecalis*, *Proteus mirabilis*, and beta-hemolytic streptococci). The indications for use are also being revised to reflect a current format. The supplemental NADA is approved as of January 9, 2003, and the regulations are amended in 21 CFR 524.1044h to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning January 9, 2003.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 524.1044h is amended in paragraph (a) by removing "3-" and "1-", and by adding in their respective places "3" and "1"; in paragraph (c)(1). by adding "once or" before "twice"; and by revising paragraph (c)(2) to read as follows:

§ 524.1044h Gentamicin sulfate, mometasone furoate, clotrimazole otic suspension.

* * * * *

(c) * * *

(2) *Indications for use.* For the treatment of otitis externa caused by susceptible strains of yeast (*Malassezia pachydermatis*) and bacteria (*Pseudomonas* spp. [including *P. aeruginosa*], coagulase-positive staphylococci, *Enterococcus faecalis*, *Proteus mirabilis*, and beta-hemolytic streptococci).

* * * * *

Dated: March 21, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–7534 Filed 3–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid and Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Alpharma, Inc. The supplemental NADA provides for a 0-day withdrawal period for the use of approved two-way combination drug Type C medicated feeds containing lasalocid and bacitracin methylene disalicylate in broiler and fryer chickens.

DATES: This rule is effective March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600, e-mail: candres@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed a supplement to NADA 107–996 for use of AVATEC (lasalocid sodium) and BMD (bacitracin methylene disalicylate) Type A medicated articles to formulate two-way combination drug Type C medicated chicken feeds. The supplemental NADA provides for a 0-day withdrawal period for broiler and fryer chicken feeds containing 68 grams/ton (g/ton) lasalocid and 10 to 50 g/ton bacitracin methylene disalicylate used for the prevention of coccidiosis, and for increased rate of weight gain and improved feed efficiency; and for broiler chicken feeds containing 68 to 113 g/ton lasalocid and 4 to 50 g/ton bacitracin methylene disalicylate used for the prevention of coccidiosis, and for improved feed efficiency. The NADA is approved as of December 4, 2002, and the regulations are amended in 21 CFR 558.311 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.311 [Amended]

■ 2. Section 558.311 *Lasalocid* is amended in the table in paragraph (e)(1)(iv) under the "Limitations" column by removing "withdraw 3 days before slaughter", and in the table in paragraph (e)(1)(x) under the "Limitations" column by removing "withdraw 3 days before slaughter;".

Dated: March 21, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–7535 Filed 3–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the approved caution statements that must appear on animal feeds containing monensin. This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–2), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0159, e-mail: msharar@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: FDA has found that the animal drug regulations do not reflect the approved caution statements that must appear on animal feeds containing monensin. The regulation in 21 CFR 558.355 is being amended to correct inaccurate references to mature turkeys and guinea fowl that were incorporated into the regulations in the **Federal Register** published on July 26, 2000 (65 FR 45879). This action is being taken to improve the accuracy of the regulations.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.355 [Amended]

2. Section 558.355 *Monensin* is amended in paragraph (d)(6), in the first sentence, by removing the phrase ", other equines, mature turkeys, or guinea fowl" and by adding in its place the phrase "or other equines" and in the second sentence by removing "and guinea fowl".

Dated: March 25, 2003.

Clifford Johnson,

Director, Office of Surveillance and Compliance, Center for Veterinary Medicine.

[FR Doc. 03–7598 Filed 3–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Decoquinate; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a rule that appeared in the **Federal Register** of December 5, 2002 (67 FR 72370). The rule amended the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA). FDA is correcting the range of approved concentrations of decoquinate Type A medicated article that may be used to make certain combination drug Type C medicated feeds for cattle. This correction is being made so the decoquinate regulations accurately reflect previously approved concentrations. This document corrects those errors.

DATES: This rule is effective March 31, 2003.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl.,

Rockville, MD 20855, 301–827–4567, e-mail: ghaibel@ cvm.fda.gov

SUPPLEMENTARY INFORMATION: In FR Doc. 02–30863, appearing on page 72370 in the **Federal Register** of December 5, 2002, the following correction is made:

§ 558.195 [Amended]

1. On page 72372, in § 588.195, in the table in paragraph (e)(2), under the "Decoquinate in grams/ton" column, in the entries for (iii), (iv), and (v), "13.6" is amended to read "13.6 to 27.2".

Dated: March 25, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–7599 Filed 3–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA74

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Appeals and Hearings Procedures, Formal Review

AGENCY: Department of Defense.

ACTION: Final rule; amendment.

SUMMARY: On March 13, 2003 (68 FR 11973), the Department of Defense published an administrative correction to the final rule on Appeals and Hearings Procedures. The effective date of the amendment was not published in that correction. This rule is published to identify the effective date. All other information remains unchanged.

DATES: The effective date of the correction is May 1, 1983.

FOR FURTHER INFORMATION CONTACT: G. Jones, 3030–676–3401.

Dated: March 25, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–7603 Filed 3–28–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–02–018]

RIN 1625–AA00 [Formerly 2115–AA97]

Security Zone: Protection of Tank Ships, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: In order to promptly respond to an increase in the Coast Guard's maritime security posture, the Coast Guard is establishing regulations for the security of tank ships in the navigable waters of Puget Sound and adjacent waters, Washington. This security zone, when enforced by the Captain of the Port Puget Sound, will provide for the regulation of vessel traffic in the vicinity of tank ships in the navigable waters of the United States, Puget Sound and adjacent waters, WA.

DATES: This section is effective April 15, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD13–02–018 and are available for inspection or copying at Commanding Officer, Marine Safety Office Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG R. S. Teague, c/o Captain of the Port Puget Sound, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 27, 2002, we published a notice of proposed rulemaking (NPRM) entitled Security Zone: Protection of Tank Ships, Puget Sound, WA in the **Federal Register** (67 FR 79017). We received one letter commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard promulgated a temporary final rule (67 FR 66335) establishing security zones around tank ships in Puget Sound that expires on April 15, 2003. This final rule does not substantively differ from the temporary final rule. Both the TFR and this rule were established to increase the Coast Guard's maritime security posture by providing for the security of tank ships in the navigable waters of Puget Sound. The Captain of the Port Puget Sound deems it necessary that the security zone around tank ships continue to be in effect. Rather than extend the TFR or issue a new TFR the Coast Guard is making this final rule effective upon publication in the **Federal Register**. A notice of enforcement will be simultaneously published in the **Federal Register** with this rule.

Background and Purpose

Recent events highlight the fact that there are hostile entities operating with the intent to harm U.S. National Security. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks)), (67 FR 59447 (Sept. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations)).

On October 15, 2002, the Captain of the Port Puget Sound issued a TFR (67 FR 66335, CGD13–02–015, 33 CFR 165.T13–011) establishing security zones for tank ship protection, which expires on April 15, 2003. The Coast Guard, through this action, will assist tank ships by establishing a permanent security zone, which when enforced by the Captain of the Port would exclude persons and vessels from the immediate vicinity of all tank ships. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other federal, state, or local agencies.

Discussion of Comments and Changes

In our NPRM, we stated that the Captain of the Port from time to time would publish or provide notice of "activation" of the proposed security zone. In this final rule, we have replaced the word "activation" with the word "enforcement" to clarify what we mean. Security zones are established by rulemaking procedures, which necessarily includes notice and comment and other required procedures. Notice to the public that a given security zone has been established through those required procedures is normally done by the methods set out in 33 CFR 165.7, and may include broadcasts and publication in the **Federal Register**. However, a security zone cannot be legally established only by mere notice to the public, using the methods described in 33 CFR 165.7. Because the word "activation" may connote "establishment" to some members of the public, for purposes of clarity, we have changed it to read "enforcement." The result of this change will be that the rule will operate to legally establish a security zone around all tank vessels in the Puget Sound area, and the Captain of the Port will keep the public informed via the methods described in the rule as to when the Coast Guard will enforce the security zone and when it will not. The rule provides blanket authorization for all persons and vessels to enter, transit, and depart the security zone during periods when the Coast Guard has suspended enforcement thereof. Decisions to enforce or suspend enforcement of the security zone remain within the discretion of the Captain of the Port.

We received one letter with two comments. The first comment concerned the methods of notifying the public when the security zone was activated. The commenter suggested the notification be located on the 13th Coast Guard District Web page and possibly obtaining an 800 number. In addition to notifying the public through the **Federal Register**, Broadcast Notice to Mariners, Local Notice Mariners, and press releases, the COTP will also publish the enforcement notice via Marine Safety Office Puget Sound's internet web page located at *http://www.uscg.mil/d13/units/msopuget/*. In addition, Marine Safety Office Puget Sound maintains a telephone line that is manned 24 hours a day, 7 days a week. The public can contact Marine Safety Office Puget Sound at (206) 217–6200 or (800) 688–6664 to obtain information concerning enforcement of this rule. Given the various other methods the Coast Guard intends to utilize to notify the public regarding the enforcement of this rule and the manned telephone lines, the Coast Guard finds that an additional 800 number would be costly and would not significantly improve public notification. Accordingly, the Coast Guard does not intend to purchase a separate 800 number.

The second comment addressed the VHF–FM channels that the tank ship would be monitoring. The commenter suggested that to avoid unanswered calls, anyone needing to enter the 100-yard exclusion zone should contact the on-scene official patrol or tank ship master on channel 13 only. If an on-scene official patrol is enforcing the zone, vessels should contact the on-scene official patrol on channel 16. In the absence of an official patrol, the vessel should contact the tank ship master on channel 13.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this rule would restrict access to a 500-yard area surrounding tank ships, the effect of this rule will not be significant because: (i) Individual tank ship security zones are limited in size; (ii) the on-scene official patrol or tank ship master may authorize access to the tank ship security zone; (iii) the tank ship security zone for any given transiting tank ship will effect a given geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate near or anchor in the vicinity of tank ships in the navigable waters of the United States.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual tank ship security zones are limited in size; (ii) The on-scene official patrol or tank ship master may authorize access to the tank ship security zone; (iii) the tank ship security zone for any given transiting tank ship will affect a given geographic location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this final rule will not result in such an expenditure, we do discuss the

effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. Given the flexibility of this rule to accommodate the special needs of mariners in the vicinity of tank ships, and the Coast Guard's commitment to working with the Tribes, we have determined that tank ship security and fishing rights protection need not be incompatible and therefore have determined that this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and conclude that under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.1313 to read as follows:

§ 165.1313 Security Zone Regulations, Tank Ship Protection, Puget Sound and adjacent waters, Washington

(a) Notice of enforcement or suspension of enforcement. The tank ship security zone established by this section will be enforced only upon notice by the Captain of the Port Puget Sound. Captain of the Port Puget Sound will cause notice of the enforcement of the tank ship security zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Puget Sound will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of the tank ship security zone is suspended.

(b) The following definitions apply to this section:

(1) *Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(2) *Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

(3) *Navigation Rules* means the Navigation Rules, International-Inland.

(4) *Official patrol* means those persons designated by the Captain of the Port to monitor a tank ship security zone, permit entry into the zone, give legally enforceable orders to persons or vessels with in the zone and take other actions authorized by the Captain of the Port. Persons authorized in paragraph (k) to enforce this section are designated as the official patrol.

(5) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(6) *Tank ship security zone* is a regulated area of water, established by this section, surrounding tank ships for a 500-yard radius that is necessary to provide for the security of these vessels.

(7) *Tank ship* means a self-propelled tank vessel that is constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or cargo residue in the cargo spaces. The definition of tank ship does not include tank barges.

(8) *Washington Law Enforcement Officer* means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(c) Security zone: There is established a tank ship security zone extending for a 500-yard radius around all tank ships located in the navigable waters of the United States in Puget Sound, WA, east of 123 degrees, 30 minutes West Longitude. [Datum: NAD 1983]

(d) Compliance: The tank ship security zone established by this section remains in effect around tank ships at all times, whether the tank ship is underway, anchored, or moored. Upon notice of enforcement by the Captain of the Port Puget Sound, the Coast Guard will enforce the tank ship security zone in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Captain of the Port Puget Sound, all persons and vessels are authorized to enter, transit, and exit the tank ship security zone, consistent with the Navigation Rules.

(e) The Navigation Rules shall apply at all times within a tank ship security zone.

(f) When within a tank ship security zone all vessels shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol or tank ship master. No vessel or person is allowed within 100 yards of a tank ship, unless authorized by the on-scene official patrol or tank ship master.

(g) To request authorization to operate within 100 yards of a tank ship, contact the on-scene official patrol or tank ship master on VHF–FM channel 16 or 13.

(h) When conditions permit, the on-scene official patrol or tank ship master should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of a tank ship in order to ensure a safe passage in accordance with the Navigation Rules;

(2) Permit commercial vessels anchored in a designated anchorage area to remain at anchor when within 100 yards of a passing tank ship; and

(3) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of a moored or anchored tank ship with minimal delay consistent with security.

(i) Exemption. Public vessels as defined in paragraph (b) of this section are exempt from complying with paragraphs (c), (d), (f), (g), (h), (j), and (k) of this section.

(j) Exception. 33 CFR Part 161 promulgates Vessel Traffic Service regulations. Measures or directions issued by Vessel Traffic Service Puget Sound pursuant to 33 CFR Part 161 shall take precedence over the regulations in this section.

(k) Enforcement. Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to provide effective enforcement of this section in the vicinity of a tank ship, any Federal Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR § 6.04–11. In addition, the Captain of the Port may be assisted by other federal, state or local agencies in enforcing this section.

Dated: March 20, 2003.

Danny Ellis,

Captain, Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 03–7548 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–003]

RIN 1625–AA00

Security and Safety Zone: Protection of Large Passenger Vessels, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: Increases in the Coast Guard's maritime security posture necessitate establishing temporary regulations for the safety and security of large passenger vessels in the navigable waters of Puget Sound and adjacent waters, Washington. This security and safety zone will provide for the regulation of vessel traffic in the vicinity of large passenger vessels in the navigable waters of the United States.

DATES: This temporary rule is effective February 8, 2003, until August 8, 2003. Comments and related material must reach the Coast Guard on or before April 30, 2003.

ADDRESSES: You may mail comments and related material to Marine Safety Office Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134. Marine Safety Office Puget Sound maintains the public docket [CGD13–03–003] for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Puget Sound between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG R. S. Teague, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13–03–003), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register.** Publishing a NPRM would be contrary to public interest since immediate action is necessary to safeguard large passenger vessels from sabotage, other subversive acts, or accidents. If normal notice and comment procedures were followed, this rule would not become effective soon enough to provide immediate protection to large passenger vessels from the threats posed by hostile entities and would compromise the vital national interest in protecting maritime transportation and commerce. The security and safety zone in this regulation has been carefully designed to minimally impact the public while providing a reasonable level of protection for large passenger vessels. For these reasons, following normal rulemaking procedures in this case would be impracticable, unnecessary, and contrary to the public interest.

Background and Purpose

Recent events highlight the fact that there are hostile entities operating with the intent to harm U.S. National Security. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks)), 67 FR 59447 (Sept. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by the Magnuson Act (50 U.S.C. 191 *et. seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations)).

The Coast Guard, through this action, intends to assist large passenger vessels by establishing a security and safety zone to exclude persons and vessels from the immediate vicinity of all large passenger vessels. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other federal, state, or local agencies.

Discussion of Rule

This rule, for safety and security concerns, controls vessel movement in a regulated area surrounding large passenger vessels. For the purpose of this regulation, a large passenger vessel means any vessel over 100 feet in length (33 meters) carrying passengers for hire including, but not limited to, cruise ships, auto ferries, passenger ferries, and excursion vessels. All vessels within 500 yards of large passenger vessels shall operate at the minimum speed necessary to maintain a safe course, and shall proceed as directed by the official patrol. No vessel, except a public vessel (defined below), is allowed within 100 yards of a large passenger vessel, unless authorized by the on-scene official patrol or large passenger vessel master. Vessels requesting to pass within 100 yards of a large passenger vessel shall contact the on-scene official patrol or large passenger vessel master on VHF–FM channel 16 or 13. The on-scene official patrol or large passenger vessel master may permit vessels that can only operate safely in a navigable channel to pass within 100 yards of a large passenger vessel in order to ensure a safe passage in accordance with the Navigation Rules. In addition, measures or directions issued by Vessel Traffic Service Puget Sound pursuant to 33 CFR part 161 shall take precedence over the regulations in this temporary final rule. Similarly, commercial vessels anchored in a designated anchorage area may be permitted to remain at anchor within 100 yards of passing large passenger vessels. Public vessels for the purpose of this Temporary Final Rule are vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation restricts access to the regulated area, the effect of this regulation will not be significant because: (i) Individual large passenger vessel security and safety zones are limited in size; (ii) the on-scene official patrol or large passenger vessel master may authorize access to the large passenger vessel security and safety zone; (iii) the large passenger vessel security and safety zone for any given transiting large passenger vessel will effect a given geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate near or anchor in the vicinity of large passenger vessels in the navigable waters of the United States to which this rule applies.

This temporary regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual large passenger vessel security and safety zones are limited in size; (ii) the on-scene official patrol or large passenger vessel master may authorize access to the large passenger vessel security and safety zone; (iii) the passenger vessel security and safety zone for any given transiting large passenger vessel will affect a given geographic location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact one of the points of contact listed under **FOR FURTHER INFORMATION CONTACT.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. Given the flexibility of the Temporary Final Rule to accommodate the special needs of mariners in the vicinity of large passenger vessels and the Coast Guard's commitment to working with the Tribes, we have determined that passenger vessel security and fishing rights protection need not be incompatible and therefore have determined that this Temporary Final Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this Temporary Final Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard's preliminary review indicates this temporary rule is categorically excluded from further environmental documentation under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.lD. As an emergency action, the Environmental Analysis, requisite regulatory consultations, and Categorical Exclusion Determination will be prepared and submitted after establishment of this temporary passenger vessel security zone, and will be available in the docket. This temporary rule ensures the safety and security of large passenger vessels. All standard environmental measures remain in effect. The Categorical Exclusion Determination will be made available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From February 8, 2003, until August 8, 2003, temporary § 165.T13–002 is added to read as follows:

§ 165.T13–002 Security and Safety Zone

Large Passenger Vessel Protection, Puget Sound and adjacent waters, Washington.

(a) The following definitions apply to this section:

(1) *Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(2) *Large passenger vessel* means any vessel over 100 feet in length (33 meters) carrying passengers for hire including, but not limited to, cruise ships, auto ferries, passenger ferries, and excursion vessels.

(3) *Large passenger vessel security and safety zone* is a regulated area of water, established by this section, surrounding large passenger vessels for a 500 yard radius, that is necessary to provide for the security and safety of these vessels.

(4) *Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

(5) *Navigation Rules* means the Navigation Rules, International-Inland.

(6) *Official patrol* means those persons designated by the Captain of the Port to monitor a large passenger vessel security and safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Persons authorized to enforce this section are designated as the official patrol.

(7) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(8) *Washington Law Enforcement Officer* means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(b) Security and safety zone. There is established a large passenger vessel security and safety zone extending for a 500 yard radius around all large passenger vessels located in the navigable waters of the United States in Puget Sound, WA, east of 123 degrees, 30 minutes West Longitude. [Datum: NAD 1983]

(c) The large passenger vessel security and safety zone established by this section remains in effect at all times, whether the large passenger vessel is underway, anchored, or moored.

(d) The Navigation Rules shall apply at all times within a large passenger vessel security and safety zone.

(e) All vessels within a large passenger vessel security and safety zone shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol or large passenger vessel master. No vessel or person is allowed within 100 yards of a large passenger vessel, unless authorized by the on-scene official patrol or large passenger vessel master.

(f) To request authorization to operate within 100 yards of a large passenger vessel, contact the on-scene official patrol or large passenger vessel master on VHF–FM channel 16 or 13.

(g) When conditions permit, the on-scene official patrol or large passenger vessel master should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of a large passenger vessel in order to ensure a safe passage in accordance with the Navigation Rules; and

(2) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within 100 yards of a passing large passenger vessel; and

(3) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of a moored or anchored large passenger vessel with minimal delay consistent with security.

(h) When a large passenger vessel approaches within 100 yards of a vessel that is moored, or anchored in a designated anchorage, the stationary vessel must stay moored or anchored while it remains with in the large passenger vessel's safety and security zone unless it is either ordered by, or given permission by the Captain of the Port Puget Sound, his designated representative or the on-scene official patrol to do otherwise.

(i) Exemption. Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraphs (e), (f), (g), (h), (j), (k), and (L) of this section.

(j) Exception. 33 CFR Part 161 promulgates Vessel Traffic Service regulations. Measures or directions issued by Vessel Traffic Service Puget Sound pursuant to 33 CFR Part 161 shall take precedence over the regulations in this section.

(k) Enforcement. Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. When immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to exercise effective control in the vicinity of a large passenger vessel, any Federal Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR 6.04–11. In addition, the Captain of the Port may be assisted by other federal, state or local agencies in enforcing this section.

(l) Waiver. The Captain of the Port Puget Sound may waive any of the requirements of this section for any vessel or class of vessels upon finding that a vessel or class of vessels, operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: February 8, 2003.

Danny Ellis,

Captain, Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 03–7546 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 674

RIN 3145–AA40

Antarctic Meteorites

AGENCY: National Science Foundation (NSF).

ACTION: Final rule.

SUMMARY: NSF is issuing a final rule that authorizes the collection of meteorites in Antarctica for scientific research purposes only. In addition, the regulations provide requirements for appropriate collection, handling, and curation of Antarctic meteorites to preserve their scientific value. These regulations implement Article 7 of the Protocol on Environmental Protection to the Antarctic Treaty and are issued pursuant to Section 6 of the Antarctic Conservation Act, as amended by the Antarctic Science, Tourism and Conservation Act of 1996.

DATES: The rule is effective April 30, 2003.

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Office of the General Counsel, at 703–292–8060.

SUPPLEMENTARY INFORMATION: On August 27, 2002, the NSF published a proposed rule authorizing the collection of meteorites in Antarctica for scientific research purposes only. NSF invited public comments on the proposed rule. NSF received nine comments on the proposed rule. All of the commenters were supportive of the proposed rule.

One of the commenters suggested that NSF revise § 674.5(3)(ii) to recognize that in some cases, a meteorite will not belong to any well-established classification. NSF agrees with this comment and has revised the language accordingly.

Another commenter requested clarification whether or not meteorites are considered mineral resources. As noted in the preamble to the proposed rule, the authority for this rule derives from Article 7 of the Protocol on Environmental Protection to the Antarctic Treaty which states that "any activity relating to mineral resources, other than scientific research, shall be prohibited." These regulations implement this provision of the Protocol with respect to meteorites.

The same commenter raised concerns that the definition of expedition would enable U.S. citizens to avoid application of the rule by organizing expeditions to Antarctica in a foreign country. NSF notes that the restriction in § 674.4 against collecting meteorites in Antarctic for other than scientific research purposes applies to any person subject to the jurisdiction of the U.S. This provision would extend to U.S. citizens collecting meteorites in Antarctica, regardless of the location from which the expedition is organized. Consistent with other regulations implementing U.S. obligations under the Antarctic Treaty, the more detailed requirements for preparation and plans and submissions of information to NSF are limited to expeditions for which the United States is required to provide advance notification under the Antarctic Treaty. NSF believes that this obligation is appropriately apportioned.

Another commenter expressed concern that the exception for serendipitous finds could result in meteorites "fall[ing] through the regulatory cracks before arriving at a curation site." Section 674.7 provides that serendipitous finds must be handled in a manner that minimizes contamination and must otherwise be documented in accordance with the requirements of § 674.5. This approach recognizes that serendipitous finds will occur and assures that the opportunity to collect these specimens for scientific purposes is not lost. NSF believes that the requirement for documenting and curating serendipitous finds provides an appropriate mechanism for adequately and accurately tracking Antarctic meteorites.

Another commenter suggested technical revisions to the handling requirements in Section 674.5 (b)(1) to reflect current research laboratory practices. These revisions have been adopted in the final regulation. All other comments were appropriately considered in the promulgation of this final rule.

Determinations

NSF has determined, under the criteria set forth in Executive Order 12866, that this rule is not a significant regulatory action requiring review by the Office of Information and Regulatory Affairs. The rule is not a major rule under the Congressional Review Act. The Unfunded Mandate Reform Act of 1995 (Pub. L. 104–4), in sections 202 and 205, requires that agencies prepare analytic statements before proposing any rule that may result in annual expenditures of $100 million by State, local, Indian Tribal governments, or the private sector. Since this rule will not result in expenditures of this magnitude, it is hereby certified that such statements are not necessary. As required by the Regulatory Flexibility Act, it is hereby certified this rule will not have significant impact on a substantial number of small businesses.

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations, 5 CFR part 1320, do not apply to the rule because there are less than ten U.S. entities which annually organize expeditions to Antarctica for the purpose of collecting meteorites. Finally, NSF has reviewed this rule in light of section 2 of Executive Order 12778 and I certify for the National Science Foundation that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects in 45 CFR Part 674

Antarctica, Meteorites, Research.

Dated: March 24, 2003.

Amy Northcutt,

Deputy General Counsel, National Science Foundation.

For the reasons set forth in the preamble, the National Science Foundation is adding 45 CFR part 674 to read as follows:

PART 674—ANTARCTIC METEORITES

Sec.
674.1 Purpose of regulations.
674.2 Scope and applicability.
674.3 Definitions.
674.4 Restrictions on collection of meteorites in Antarctica.
674.5 Requirements for collection, handling, documentation and curation of Antarctic meteorites.
674.6 Submission of information to NSF.
674.7 Exception for serendipitous finds.

Authority: 16 U.S.C. 2401 *et seq.*

§ 674.1 Purpose of regulations.

The purpose of the regulations in this part is to implement the Antarctic Conservation Act of 1978, as amended by the Antarctic Science, Tourism and Conservation Act of 1996, (16 U.S.C 2401 *et seq.*), and Article 7 of the Protocol on Environmental Protection to the Antarctic Treaty done at Madrid on October 4, 1991. Specifically, this part is designed to ensure meteorites in Antarctica will be collected for scientific research purposes only and that U.S. expedition organizers to Antarctica who plan to collect meteorites in Antarctica will ensure that any specimens collected will be properly collected, handled, documented and curated to preserve their scientific value.

§ 674.2 Scope and applicability.

This part applies to any person who collects meteorites in Antarctica. The requirements of § 674.5 apply to any person organizing an expedition to or within Antarctica for which the United States is required to give advance notice under Paragraph (5) of Article VII of the Antarctic Treaty where one of the purposes of the expedition is to collect meteorites in Antarctica. The requirements in this part only apply to the collection of meteorites in Antarctica after April 30, 2003.

§ 674.3 Definitions.

In this part:

Antarctica means the area south of 60 degrees south latitude.

Expedition means an activity undertaken by one or more persons organized within or proceeding from the United States to or within Antarctica for which advance notification is required under Paragraph 5 of Article VII of the Antarctic Treaty.

Incremental cost is the extra cost involved in sharing the samples with other researchers. It does not include the initial cost of collecting the meteorites in Antarctica or the cost of maintaining the samples in a curatorial facility.

Person has the meaning given that term in section 1 of title 1, United States Code, and includes any person subject to the jurisdiction of the United States.

§ 674.4 Restrictions on collection of meteorites in Antarctica.

No person may collect meteorites in Antarctica for other than scientific research purposes.

§ 674.5 Requirements for collection, handling, documentation, and curation of Antarctic meteorites.

(a) Any person organizing an expedition to or within Antarctica, where one of the purposes of the expedition is to collect meteorites in Antarctica, shall ensure that the meteorites will be properly collected, documented, handled, and curated to preserve their scientific value. Curation includes making specimens available to bona fide scientific researchers on a timely basis, in accordance with specified procedures.

(b) Expedition organizers described in paragraph (a) of this section shall develop and implement written procedures for the collection, documentation, and curation of specimens which include the following components:

(1) *Handling requirements.* Handling procedures shall ensure that the specimens are properly labeled and handled to minimize the potential for contamination from the point of collection to the point of curation. At a minimum, handling procedures shall include:

(i) Handling the samples with clean Teflon or polyethylene coated implements or stainless steel implements (or equivalent);

(ii) Double bagging of samples in Teflon or polyethylene (or equivalent) bags;

(iii) A unique sample identifier included with the sample;

(iv) Keeping the samples frozen at or below −15 °C until opened and thawed in a clean laboratory setting at the curation facility; and

(v) Thawing in a clean, dry, non-reactive gas environment, such as nitrogen or argon.

(2) *Sample documentation.* Documentation for each specimen, that includes, at a minimum:

(i) A unique identifier for the sample;

(ii) The date of find;

(iii) The date of collection (if different from date of find);

(iv) The latitude and longitude to within 500 meters of the location of the find and the name of the nearest named geographical feature;

(v) The name, organizational affiliation, and address of the finder or the expedition organizer;

(vi) A physical description of the specimen and of the location of the find; and

(vii) Any observations of the collection activity, such as potential contamination of the specimen.

(3) *Curation.* Make prior arrangements to ensure that any specimens collected in Antarctica will be maintained in a curatorial facility that will:

(i) Preserve the specimens in a manner that precludes chemical or physical degradation;

(ii) Produce an authoritative classification for meteorites that can be shown to belong to a well-established chemical and petrological group, and provide appropriate descriptions for those meteorites that cannot be shown to belong to an established chemical and petrological group;

(iii) Develop and maintain curatorial records associated with the meteorites including collection information, authoritative classification, total known mass, information about handling and sample preparation activities that have been performed on the meteorite, and sub-sample information;

(iv) Submit an appropriate summary of information about the meteorites to the Antarctic Master Directory via the National Antarctic Data Coordination Center as soon as possible, but no later

than two years after receipt of samples at the curatorial facility;

(v) Submit information on classification of the meteorite to an internationally recognized meteorite research catalog; such as the "Catalogue of Meteorites" published by the Natural History Museum of London or the "Meteoritical Bulletin" published by the Meteoritical Society;

(vi) Specify procedures by which requests for samples by bonafide scientific researchers will be handled;

(vii) Make samples available to bonafide scientific researchers at no more than incremental cost and within a reasonable period of time; and

(viii) In the event that the initial curatorial facility is no longer in a position to provide curation services for the specimens, or believes that the meteorites no longer merit curation, it shall consult with the National Science Foundation's Office of Polar Programs to identify another appropriate curatorial facility, or to determine another appropriate arrangement.

§ 674.6 Submission of information to NSF.

A copy of the written procedures developed by expedition organizers pursuant to § 674.5(b) shall be furnished to the National Science Foundation's Office of Polar Programs at a minimum of 90 days prior to the planned departure date of the expedition for Antarctica. NSF shall publish a notice of availability of the plan in the **Federal Register** that provides for a 15 day comment period. NSF shall evaluate the procedures in the plan to determine if they are sufficient to ensure that the meteorites will be properly collected, handled, documented, and curated. NSF shall provide comments on the adequacy of the plan within 45 days of receipt. If NSF advises the expedition organizer that the procedures satisfy the requirements of § 674.5 and the procedures are implemented, the expedition organizer will have satisfied the requirements of this part.

§ 674.7 Exception for serendipitous finds.

A person who makes a serendipitous discovery of a meteorite in Antarctica which could not have been reasonably anticipated, may collect the meteorite for scientific research purposes, provided that the meteorite is collected in the manner most likely to prevent contamination under the circumstances, and provided that the meteorite is otherwise handled, documented and curated in accordance with the requirements of § 674.5.

[FR Doc. 03–7607 Filed 3–28–03; 8:45 am]
BILLING CODE 7555–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 207, 239, 250, and 252 and Appendix G to Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update activity names and addresses, references, and administrative information.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

List of Subjects in 48 CFR Parts 202, 204, 207, 239, 250, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR parts 202, 204, 207, 239, 250, and 252 and Appendix G to chapter 2 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 202, 204, 207, 239, 250, and 252 and Appendix G to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

■ 2. Section 202.101 is amended in the definition of "Contracting activity", under the heading "AIR FORCE", by adding, after the entry "Air Force Materiel Command", the entry "Air Force Reserve Command".

PART 204—ADMINISTRATIVE MATTERS

■ 3. Section 204.7202–1 is amended by revising paragraph (b)(2)(i)(D) to read as follows:

204.7202–1 CAGE codes.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) The Internet to access the CAGE Lookup Server at *http://www.dlis.dla.mil/cage_welcome.asp.*

* * * * *

PART 207—ACQUISITION PLANNING

■ 4. Section 207.103 is amended by revising paragraph (h)(i)(A) to read as follows:

207.103 Agency-head responsibilities.

* * * * *

(h) * * *

(i) * * *

(A) Must submit the acquisition plan to the SMCA at the following address: Program Executive Officer, Ammunition, ATTN: SFAE–AMO, Building 171, Picatinny Arsenal, NJ 07806–5000. Telephone: Commercial (973) 724–7101; DSN 880–7101;

* * * * *

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

239.7302 [Amended]

■ 5. Section 239.7302 is amended in paragraph (b)(2)(ii), in the second sentence, by adding, after "Program", the parenthetical "(DARMP)".

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

250.102–70 [Amended]

■ 6. Section 250.102–70 is amended by removing "2410b" and adding in its place "2410(b)".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.232–7003 [Amended]

■ 7. Section 252.232–7003 is amended in paragraph (a)(2), in the second sentence, by removing "Facsmile" and adding in its place "Facsimile".

APPENDIX G—ACTIVITY ADDRESS NUMBERS

■ 8. Appendix G to Chapter 2 is amended in Part 2, by adding, in alpha-numerical order, entry "DABM16" to read as follows:

APPENDIX G TO CHAPTER 2—ACTIVITY ADDRESS NUMBERS

* * * * *

PART 2—ARMY ACTIVITY ADDRESS NUMBERS

* * * * *

DABM16 U.S. Army Central Command—Afghanistan and Uzbekistan, Director of Joint Contracting Office BAF, APO, AE 09354

* * * * *

■ 9. Appendix G to Chapter 2 is amended in Part 8, by adding, in alpha-numerical order, entry "NMA501" to read as follows:

PART 8—NATIONAL IMAGERY AND MAPPING AGENCY ACTIVITY ADDRESS NUMBERS

* * * * *

NMA501 National Imagery and Mapping Agency, Acquisition Technology, 45479 Holiday Drive, Sterling, VA 20166–9411 (ZM51)

[FR Doc. 03–7530 Filed 3–28–03; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 226

[DFARS Case 2002–D038]

Defense Federal Acquisition Regulation Supplement; Extension of Contract Goal for Small Disadvantaged Businesses and Certain Institutions of Higher Education

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 816 of the National Defense Authorization Act for Fiscal Year 2003. Section 816 provides for a 3-year extension of the percentage goal for contract awards to small disadvantaged businesses and certain institutions of higher education.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–0350. Please cite DFARS Case 2002–D038.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 219.000 and 226.7000 to implement Section 816 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314). Section 816 amends 10 U.S.C. 2323, which establishes a goal for DoD to award 5 percent of contract and subcontract dollars to small disadvantaged business concerns, historically black colleges and universities, and minority institutions. 10 U.S.C. 2323(k) previously contained a termination date of September 30, 2003. Section 816 extends the termination date to September 30, 2006.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2002–D038.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 219 and 226

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Parts 219 and 226 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 219 and 226 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

219.000 [Amended]

■ 2. Section 219.000 is amended in the introductory text by removing "2003" and adding in its place "2006".

PART 226—OTHER SOCIOECONOMIC PROGRAMS

226.7000 [Amended]

■ 3. Section 226.7000 is amended in paragraphs (a) and (b) by removing "2003" and adding in its place "2006".

[FR Doc. 03–7529 Filed 3–28–03; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 386

RIN 2126–AA81

Civil Penalties

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: This document specifies the civil penalties for violating the FMCSA regulations, as adjusted for inflation in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The inflation adjustments are reflected in this rulemaking. The Federal Civil Penalties Inflation Adjustment Act authorizes these amendments to the FMCSA penalty regulations.

DATES: The effective date if March 31, 2003.

FOR FURTHER INFORMATION CONTACT: David M. Lehrman, Office of Policy, Plans and Regulation, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–0994, Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

The Debt Collection Improvement Act of 1996

In order to preserve the remedial impact of civil penalties and foster compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (the Act) (Pub. L. 104–134, 110 Stat. 1321–1373), requires Federal agencies to regularly adjust certain civil penalties for inflation. These Acts are now codified at 28 U.S.C. 2461 note. The law requires each agency to make an initial inflationary adjustment for all applicable civil penalties, and to make further adjustments to these penalty amounts at least once every four years.

The law further stipulates that any resulting increases in a civil penalty due to the calculated inflation adjustments: (i) Should apply only to violations which occur after the date the increase takes effect; and (ii) the first adjustment of a civil monetary penalty made pursuant to the Act may not exceed 10 percent of such penalty.

The FMCSA previously adjusted civil penalties for inflation by regulation on March 13, 1998 (63 FR 12413). Subsequent to these adjustments, Congress passed the Transportation Equity Act for the 21st Century (TEA–21) on June 9, 1998 (Pub. L. 105–178, 112 Stat. 107). TEA–21 re-set several penalties at the amounts required prior to adjustment for inflation and created several new categories of penalties. The current penalties are found in 49 CFR part 386, Appendix A and B, except for

those found in paragraph (f) to Appendix B.

Paragraph (f) was amended on October 2, 2002, by removing "$27,500" and adding in its place "$10,000" (67 FR 61818) as mandated by TEA–21. The October 2002 notice failed to remove the listed minimum penalty of $250. paragraph (f) to Appendix B is re-written today to reflect that there are no minimum penalties for these violations and to correctly reflect the prohibitions mandated by 49 U.S.C. 31144 (as amended by TEA–21), which prohibits all unfit motor carriers from operating in interstate commerce. Any unsatisfactory safety rating, given to motor carriers by FMCSA, is treated by the agency as a determination of unfitness (65 FR 50919, August 22, 2000).

This notice addresses penalties considered to be initial adjustments, which are therefore subject to the statutory 10 percent maximum. The notice also addresses the previously adjusted penalties, amended on March 13, 1998 (63 FR 12413), which are therefore not subject to the statutory 10 percent maximum.

Under 5 U.S.C. 553(b), the FMCSA finds good cause that prior notice and opportunity for comment are unnecessary because these inflation adjustments required by the Act are ministerial acts over which the agency has no discretion. The adjustment simply recognizes that as inflation occurs, penalties should keep pace so that the impact of the penalty is not diminished with the passage of time.

Method of Calculation

Under the Act (28 U.S.C. 2461 note) the inflation adjustment for each applicable civil penalty is determined by increasing the maximum civil penalty amount per violation by the cost-of-living adjustment. The cost-of-living adjustment is defined as the amount by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the year in which the amount of such civil penalty was last set or adjusted pursuant to law (section 5(b), 28 U.S.C. 2461 note). Any calculated increase under this adjustment is subject to a specific rounding formula set forth in the Act (section 5(a), 28 U.S.C. 2461 note).

Under 49 U.S.C. 5123, the FMCSA may assess a fine for violations of the Federal Hazardous Materials Regulations (HMR) (49 CFR parts 171–180). The driver, motor carrier, or shipper who violates the HMR is subject to a civil penalty of not less than $250 and not more than $25,000 for each violation. The maximum penalty was adjusted for inflation on March 13, 1998 (63 FR 12413), resulting in an adjusted penalty of $27,500 (*see* 49 CFR part 386, Appendix B, paragraph (e)). But the minimum penalty was not previously adjusted for inflation. This minimum statutory penalty was last set in 1990. The Consumer Price Index was 180 in June 2002, and was approximately 130 in June of 1990 (*see* U.S. Department of Labor CPI index at *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt*). Thus the inflation factor is 180/130 or 1.38. The new minimum penalty amount after the increase and statutory rounding would thus be the result of multiplying $250 × 1.38 = $345. However, after applying the 10 percent limit on an initial increase, the new minimum penalty amount per violation is $275.

The current maximum penalty of $27,500 was adjusted for inflation in 1998. The Consumer Price Index was 180 in June 2002, and 163 in June 1998. Thus the inflation factor is 108/163 or 1.10. The new maximum penalty amount after the increase and statutory rounding would thus be the result of multiplying $27,500 × 1.10 = $30,250. The Act is instructive as to the rounding method to be employed. The increase is to be rounded to the nearest multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000. The amount of the increase was $2,750, rounded to the nearest multiple of $5,000 equals a $5,000 adjustment to the current maximum penalty, or a new penalty of $32,500. The rounding adjustment is also consistent with a General Accounting Office (GAO) clarifying letter issued on July 15, 2002 (*see* GAO #B–290021).

The following inflation factors were used to adjust penalties in this final rule: 180/163 or 1.10 for penalties previously adjusted in 1998, and new TEA–21 penalties enacted by Congress that same year; 180/130 or 1.38 for the hazardous materials minimum penalty not previously adjusted since 1990; 180/152 or 1.18 for commercial penalties established in the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 809) (all commercial penalties are being adjusted for the first time and are subject to the 10 percent maximum increase); and 180/166 or 1.08 for penalties enacted in the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748 (December 9, 1999). Appendix A, to 49 CFR part 386, paragraph (h) includes MCSIA penalties for operating during a period of suspension for failure to pay penalties as outlined in 49 CFR 386.83 and 386.84. The FMCSA adjusts these penalties for inflation, even though they are only three years old, to place all penalties on the same adjustment schedule. The Act allows for more frequent adjustments, so long as agencies adjust at least every four years. These penalties are subject to the 10 percent maximum adjustment because this is the first adjustment for inflation.

Appendices A and B are now adjusted for inflation.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. These inflation adjustments are ministerial acts in compliance with the statute over which FMCSA has no discretion. The FMCSA finds good cause to adopt the rule without prior notice or opportunity for public comment. The agency believes that this rule will not result in a major increase in costs or prices for State or local governments. The law is simply designed to preserve the remedial impact of civil penalties. Consequently, the economic impact of this final rule will be minimal because it will not substantially change the applicable civil penalty amount, but merely adjust the penalty to reflect inflation.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive order 13132, dated August 4, 1999, and it has been determined this action does not have sufficient federalism implications or limit the policymaking discretion of the States.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

The FMCSA is a new Administration within the Department of Transportation (DOT). The FMCSA analyzed this rule under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA), the Council on Environmental Quality Regulations implementing NEPA (40 CFR parts 1500–1508), and DOT Order 5610.1C, Procedures for Considering Environmental Impacts. This rule would be categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement since this action does not have any effect on the quality of the environment.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FMCSA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environment risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

List of Subjects in 49 CFR Part 386

Administrative procedures, Commercial motor vehicle safety, Highways and roads, Motor carriers, Penalties.

■ In consideration of the foregoing, the FMCSA amends title 49, Code of Federal Regulations, chapter III, part 386 as set forth below:

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

■ 1. The authority citation for part 386 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132–31133, 31136, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 217, Pub. L. 105–159, 113 stat. 1748, 1767; and 49 CFR 1.73.

APPENDIX A TO PART 386—[AMENDED]

■ 2. Appendix A to part 386 is amended by revising the figure "$550" to read as "$650", the figure "$1,100" to read as "$2,100", the figure "$10,000" to read as "$11,000", and the figure "$11,000" to read as "$16,000", whenever they appear throughout the appendix.

APPENDIX B TO PART 386—[AMENDED]

■ 3. In Appendix B to part 386 the introductory text is amended by revising the second sentence to read as follows:

* * * Pursuant to that authority, the inflation-adjusted civil penalties listed in paragraphs (a) through (g) of this appendix supersede the corresponding civil penalty amounts listed in title 49, United States Code. * * *

* * * * *

■ Appendix B to part 386 is further amended as follows:

a. Paragraph (a)(1) is amended by revising the figure "$500" to read as "$550", and the figure "$5,000" to read as "$5,500".

■ b. Paragraph (a)(2) is amended by revising the figure "$5,000" to read as "$5,500".

■ c. Paragraph (a)(3) is amended by revising the figure "$10,000" to read as "$11,000".

■ d. Paragraph (a)(4) is amended by revising the figure "$2,500" to read as "$2,750".

■ e. Paragraph (a)(5) is amended by revising the figure "$2,750" to read as "$3,750".

■ f. Paragraph (b) is amended by revising the figure "$2,750" to read as "$3,750".

■ g. Paragraph (c) is amended by revising the figure "$1,100" to read as "$2,100", the figure "$2,750" to read as "$3,750", and the figure "$11,000" to read as "$16,000" whenever they appear throughout paragraph (c).

■ h. Paragraph (d) is amended by revising the figure "$11,000" to read as "$16,000".

■ i. Paragraph (e) is amended by revising the figure "$250" to read as "$275", and the figure "$27,500" to read as "$32,500", wherever they appear throughout paragraphs (e)(1) through (e)(3).

■ j. Paragraph (f) is revised to read as follows:

(f) *Operating after being declared unfit by assignment of a final unsatisfactory safety rating.* A motor carrier operating a commercial motor vehicle in interstate commerce after receiving a final unsatisfactory safety rating is subject to a civil penalty of not more than $11,000 (49 CFR 385.13). Each day the transportation continues constitutes a separate offense.

* * * * *

■ k. Paragraph (g) is amended by revising the figure "$200" to read as "$220" the figure "$250" to read as "$275", the figure "$500" to read as "$550", the figure "$1,000" to read as "$1,100", the figure "$2,000" to read as "$2,200", the figure "$5,000" to read as "$5,500", the figure "$10,000" to read as "$11,000", the figure "$20,000" to read as "$22,000", the figure "$25,000" to read as "$27,500", and the figure "$100,000" to read as "$110,000", whenever they appear throughout paragraph (g).

Issued on: March 20, 2003.

Annette M. Sandberg,

Acting Administrator.

[FR Doc. 03–7378 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–EX–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020718172–2303–02; I.D. 032503D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod by Catcher Vessels Less Than 60 ft (18.3 m) LOA Using Jig or Hook-and-Line Gear in the Bogoslof Pacific Cod Exemption Area in the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific Cod by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the limit of Pacific cod for catcher vessels less than 60 ft (18.3 m) LOA using jig or

hook-and-line gear in the Bogoslof Pacific cod exemption area in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 27, 2003, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Section 679.22(a)(7)(B) prohibits in all waters within the Bogoslof area directed fishing for pollock, Pacific cod, and Atka mackerel by vessels named on a Federal Fisheries Permit under § 679.4(b), except as provided in paragraph (a)(7)(i)(C). Section 679.22(a)(7)(i)(C) of the regulations provides for an exemption for all catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear for directed fishing for Pacific cod and specifies 113 mt of Pacific cod for that exempted fishery. Accordingly, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 113 metric tons of Pacific cod have been caught by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof exemption area described at § 679.22(a)(7)(i)(C)(1). Consequently, the Regional Administrator is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the Bogoslof exemption area limit of Pacific cod caught by vessels using jig or hook-and-line gear, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by 50 CFR 679.22 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–7648 Filed 3–26–03; 1:47 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 032103D]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock sole/Flathead sole/"Other flatfish" Fishery Category by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands management area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the second seasonal apportionment of the 2003 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 1, 2003, through 1200 hrs, A.l.t., June 29, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of the 2003 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category in the BSAI is 164 metric tons as established by the final 2003 harvest specifications for Groundfish of the BSAI (68 FR 9907, March 3, 2003).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the 2003 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category in the BSAI has been caught. Consequently, NMFS is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the second seasonal apportionment of the 2003 halibut bycatch allowance, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries National Marine Fisheries Service.

[FR Doc. 03–7647 Filed 3–26–03; 1:47 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 61
Monday, March 31, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209–AA14

Post-Employment Conflict of Interest Restrictions; Correction

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule; correction.

SUMMARY: In this document, OGE is correcting a few minor errors in certain sections of the proposed post-employment conflict of interest regulation, which was published by OGE in the **Federal Register** on Tuesday, February 18, 2003.

DATES: Comments on these corrections are invited and must be received on or before May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Richard M. Thomas, Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; Telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: In this document, OGE is correcting three minor errors in the proposed rule document, which OGE published on February 18, 2003 at 68 FR 7843–7892 (as separate part II), concerning the post-Government employment conflict of interest restrictions of 18 U.S.C. 207 applicable to former executive branch employees. The errors being corrected are as follows: a fifth example following paragraph (g) of proposed § 2641.204 was inadvertently omitted; a note following paragraph (g) of proposed § 2641.205 was mistakenly incorporated into the text of that section as proposed; and some unintended text was included in paragraph (e)(5)(iii)(E) of proposed § 2641.301.

Approved: March 24, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics, is correcting the February 18, 2003 publication of the proposed rule on Post-Employment Conflict of Interest Restrictions, which was the subject of FR Doc. 03–3043, as follows:

PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

§ 2641.204 [Corrected]

1. On page 7882, in the third column, the examples following paragraph (g) of § 2641.204 are corrected by adding an Example 5 to read as follows:

Example 5 to paragraph (g): A chemist serves in a senior employee position in the Agency for Clean Rivers. Subsequent to his termination from the position, the mission of the Agency for Clean Rivers is expanded and it is renamed the Agency for Clean Water. A number of employees from the Agency for Marine Life are transferred to the reorganized agency. If it is determined that the Agency for Clean Water is substantially the same entity from which the chemist terminated, the section 207(c) bar will apply with respect to the chemist's contacts with all of the employees of the Agency for Clean Water, including those employees who recently transferred from the Agency for Marine Life. He would not be barred from contacting an employee serving in one of the positions that had been transferred from the Agency for Clean Rivers to the Agency for Clean Land.

§ 2641.205 [Corrected]

2. On page 7883, in the second column, the text of paragraph (g) of § 2641.205 is corrected by removing the last sentence and by adding a note following paragraph (g) to read as follows:

Note to paragraph (g): A communication made to an official described in 5 U.S.C. 5312–5316 can include a communication to a subordinate of such official with the intent that the information be conveyed directly to the official and attributed to the former very senior employee.

§ 2641.301 [Corrected]

3. On page 7887, in the first column, the text of paragraph (e)(5)(iii)(E) of § 2641.301 is corrected by removing the parentheses and words "(or deputy or acting head)".

[FR Doc. 03–7539 Filed 3–28–03; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

RIN 0581–AC17

[Doc. # CN–02–006]

User Fees for 2003 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to maintain user fees for cotton producers for 2003 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 2002. This is in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 2002 user fee for this classification service was $1.45 per bale. This proposal would maintain the fee for the 2003 crop at $1.45 per bale. The proposed fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision.

DATES: Comments must be received on or before April 15, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Comments should be submitted in triplicate. Comments may also be submitted electronically to: *cottoncomments@usda.gov*. All comments should reference the docket number and the date and the page of this issue of the **Federal Register**. All comments received will be available for public inspection during regular business hours at the above office in Rm. 2641-South Building, 1400 Independence Avenue, SW., Washington, DC. A copy of this notice may be found at: *www.ams.usda.gov/cotton/rulemaking.htm*.

FOR FURTHER INFORMATION CONTACT: Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, Room 2641–S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–

0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *norma.mcdill@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866; and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 35,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.601). Continuing the user fee at the 2002 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2002 user fee for classification services was $1.45 per bale; the fee for the 2003 crop would be maintained at $1.45 per bale; the 2003 crop is estimated at 17,200,000 bales).

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 2002 crop, 17,145,000 bales were produced; and, virtually all of these bales were voluntarily submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 2001 crop of 29.8 cents per pound, 500 pound bales of cotton are worth an average of $149 each. The proposed user fee for classification services, $1.45 per bale, is less than one percent of the value of an average bale of cotton.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

It is anticipated that the proposed changes, if adopted, would be made effective July 1, 2003, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.45 per bale during the 2002 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, and supervision.

This proposed rule establishes the user fee charged to producers for HVI classification at $1.45 per bale during the 2003 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 2002. Therefore, the 2003 producer's user fee for classification service is based on the 2002 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 2002 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.28 per bale. An increase of .84 percent, or 2 cents per bale, increase due to the implicit price deflator of the gross domestic product added to the $2.28 would result in a 2003 base fee of $2.30 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, gross national product has been replaced by gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 2003 crop is estimated at 16,793,610 bales. The 2003 base fee was decreased 15 percent based on the estimated number of bales to be classed (1 percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 35 cents per bale reduction and was subtracted from the 2003 base fee of $2.30 per bale, resulting in a fee of $1.95 per bale.

With a fee of $1.95 per bale, the projected operating reserve would be 51.09 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.95 must be reduced by 50 cents per bale, to $1.45 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 2003 season fee at $1.45 per bale.

Accordingly, § 28.909, paragraph (b) would reflect the continuation of the HVI classification fee at $1.45 per bale.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c).

Growers or their designated agents receiving classification data would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 would remain at 5 cents per bale, and it would be applicable even if the same method were requested. The fee in § 28.910 (b) for an owner receiving classification data from the central database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per, monthly billing period would remain the same. The provisions of § 28.910 (c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 would be maintained at $1.45 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

A 15-day comment period is provided for public comments. This period is appropriate because it is anticipated that the proposed changes, if adopted, would be made effective July 1, 2003, as provided by the Cotton Statistics and Estimates Act.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and record keeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is proposed to be amended as follows:

PART 28—[Amended]

1. The authority citation for 7 CFR Part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.45 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.45 per bale.

* * * * *

Dated: March 24, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–7631 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV03–927–1]

Winter Pears Grown in Oregon and Washington; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a continuance referendum be conducted among eligible growers of winter pears in Oregon and Washington to determine whether they favor continuance of the marketing order regulating the handling of winter pears grown in the production area.

DATES: The referendum will be conducted from April 16 through April 30, 2003. To vote in this referendum, growers must have been engaged in producing winter pears within the production area during the period July 1, 2001, through June 30, 2002.

ADDRESSES: Copies of the marketing order may be obtained from USDA, Northwest Marketing Field Office, 1220 SW Third Avenue, Room 369, Portland, Oregon, 97204, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 0237, Washington, DC, 20250–0237.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone (503) 326–2724; fax (503) 326–7440; or Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, PO Box 1035, Moab, UT 84532; telephone (435) 259–7988; fax (435) 259–4945.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 927 (7 CFR part 927), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers. The referendum shall be conducted during the period April 16 through April 30, 2003, among eligible winter pear growers in the production area. Only growers that were engaged in the production of winter pears in the States of Oregon and Washington during the period of July 1, 2001, through June 30, 2002, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor continuation of marketing order programs. The USDA would consider termination of the order if continuance is favored by less than two-thirds of the growers voting in the referendum and by growers of less than two-thirds of the volume of winter pears represented in the referendum.

In evaluating the merits of continuance versus termination, the USDA will not only consider the results of the continuance referendum. The USDA will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, processors, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0177. It has been estimated that it will take an average of 30 minutes for each of the approximately 1,528 producers of winter pears in the production area to cast a ballot. Participation is voluntary. Ballots postmarked after April 30, 2003, will be marked invalid and not included in the vote tabulation.

Gary D. Olson and Susan M. Hiller of the Northwest Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of USDA to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400 *et seq.*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents and their appointees.

List of Subjects in 7 CFR Part 927

Marketing agreements; Pears, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: March 24, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–7635 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. FV02–956–1 PR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Withdrawal of a Proposed Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action withdraws a proposed rule published in the **Federal Register** on July 22, 2002 (67 FR 47741), and reopened for further comments on November 1, 2002 (67 FR 66578), on the establishment of grade and inspection requirements for Walla Walla sweet onions. The order regulates the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon and is administered locally by the Walla Walla Sweet Onion Marketing Committee (Committee). The Committee met on November 21, 2002, and unanimously recommended changes to its original recommendation. The administrative record raises questions as to the nature and purpose of the proposal and possible alternatives. Therefore, the proposed rule is being withdrawn for further consideration by the Committee.

DATES: Effective April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulate the handling of Walla Walla sweet onions grown in Southeast Washington and Northeast Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This action withdraws a proposed rule published in the **Federal Register** on July 22, 2002 (67 FR 47741), and reopened for further comments on November 1, 2002 (67 FR 66578), on the establishment of grade and inspection requirements for Walla Walla sweet onions. Specifically, the proposed rule would have required all Walla Walla sweet onions handled prior to June 10 of each marketing season to be inspected and be at least U.S. Commercial grade. In addition, the Committee would have funded the total cost of all required inspections. The primary intent behind the proposal was to help ensure the maturity and marketability of early season sweet onions. A secondary goal was to help prevent onions from other production areas from being mislabeled and marketed as Walla Walla sweet onions.

During the initial comment period, July 22 through September 20, the Department of Agriculture (USDA) received one timely comment. This comment, which may be reviewed on the Internet at *http://www.ams.usda.gov/fv/modockets/956%20comments/2002onions.htm*, raised several questions regarding the proposal. To facilitate further public review of the proposed rule, USDA reopened the comment period from November 1 through November 22, 2002.

During the reopened comment period, the Committee met and unanimously recommended early mandatory inspections on Walla Walla sweet onions, but prior to June 1 of each year rather than June 10 as originally recommended. The Committee believes that a requirement for valid inspection certificates on all lots of Walla Walla sweet onions being shipped prior to June 1 would enhance compliance efforts in the prevention of the misrepresentation and mislabeling of onions.

The administrative record raises questions as to the nature and purpose of the proposal and possible alternatives. Therefore, the proposed rule is being withdrawn for further consideration by the Committee.

The proposed rule regarding the establishment of grade and inspection requirements for sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon published in the **Federal Register** July 22, 2002, (67 FR 47741) is hereby withdrawn.

List of Subjects in 7 CFR Part 956

Marketing Agreements, Onions, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: March 24, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–7632 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14644; Airspace Docket No. 03–AGL–01]

Proposed Modification of Class E Airspace; Kenton, OH; Proposed Rescission of Class E Airspace; Bellefontaine, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Kenton, OH, and rescind Class E airspace at Bellefontaine, OH. Standard Instrument Approach Procedures (SIAPs) have been developed for a new airport at Bellefontaine, OH, which has been named Bellefontaine Regional Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would modify the existing controlled airspace for Hardin County Airport and rescind the existing controlled airspace for the old Bellefontaine Municipal Airport.

DATES: Comment must be received on or before Mary 29, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2003–14644/ Airspace Docket No. 03–AGL–01, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14644/Airspace Docket No. 03–AGL–01." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Kenton, OH, for Hardin County Airport, and rescind Class E airspace at Bellefontaine Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005—Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Bellefontaine, OH [Rescind]

AGL OH E5 Kenton, OH [Revised]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat.40°43′34″ N., long. 83°33′51″ W., to lat. 40°38′16″ N., long. 83°28′39″ W., to lat. 40°30′37″ N., long. 83°57″ W., to lat. 40°24′00″ N., long. 83°33′37″ W., to lat. 40°13′31″ W., long. 83°40′22″ W., to lat. 40°11′47″ N., long. 83°52′11″ W., to lat. 40°16′44″ N., long. 83°01′10″ W., to lat. 40°24′31″ N., long. 84°02′39″ W., to lat. 40°31′30″ N., long. 83°56′56″ W., to lat. 40°32′35″ N., long. 83°46′53″ W., to lat. 40°38′56″ N., long. 83°48′49″ W., to lat. 40°43′59″ N., long. 83°42′14″ W., to the point of beginning, excluding that airspace within the Urbana, OH Class E airspace area.

* * * * *

Dated: Issued in Des Plaines, Illinois, on March 13, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–7663 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 204

RIN 1010–AC30

Accounting and Auditing Relief for Marginal Properties

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Supplementary proposed rule.

SUMMARY: MMS is proposing new regulations to implement certain provisions in the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996. These regulations would explain how lessees and their designees could obtain accounting and auditing relief for Federal oil and gas leases and unit and communitization agreements that qualify as marginal properties.

EFFECTIVE DATE: Comments must be submitted on or before May 30, 2003.

ADDRESSES: Address your comments, suggestions, or objections regarding this proposed rule to:

By regular U.S. mail. Minerals Management Service, Minerals Revenue Management, Regulations and FOIA Team, P.O. Box 25165, MS 320B2, Denver, Colorado 80225–0165; or

By overnight mail or courier. Minerals Management Service, Minerals Revenue Management, Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225; or

By e-ail. MRM.comments@mms.gov. Please submit Internet comments as an ASCII file and avoid the use of special characters and any form of encryption. Also, please include "Attn: RIN 1010–AC30" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, call the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Paul A. Knueven, Chief, Regulation and FOIA Team, Minerals Revenue Management, MMS, telephone (303) 231–3316, fax (303) 231–3385, or e-mail *Paul.Knueven@mms.gov.*

SUPPLEMENTARY INFORMATION: The principal authors of this rule are Sarah L. Inderbitzin of the Office of the Solicitor and David A. Hubbard of Minerals Revenue Management, MMS, Department of the Interior.

I. Background

On August 13, 1996, the President signed into law the Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA).[1] RSFA amends the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA).[2] Section 7 of RSFA allows MMS and the State concerned (defined under RSFA as "a State which receives a portion of royalties or other payments under the mineral leasing laws from [a Federal onshore or OCS oil and gas lease]")[3] to provide royalty prepayment and regulatory relief for marginal properties for Federal onshore and Outer Continental Shelf (OCS) oil and gas leases.[4] The stated purpose of granting relief to marginal properties under RSFA is to promote production, reduce administrative costs, and increase net receipts to the United States and the States.[5] Specifically, paragraph (c) of the new 30 U.S.C. 1726 enacted by RSFA section 7 directed the Secretary (and States that had received a delegation of audit authority) to "provide accounting, reporting, and auditing relief that will encourage lessees to continue to produce and develop" marginal properties, "provided that such relief will only be available to lessees in a State that allows." (There is an exception to the requirement for State allowance if royalty payments from a lease are not shared with a State under applicable law.)

In response to the RSFA section 7 amendments, MMS conducted three workshops to receive input from a wide variety of constituent groups to develop a proposed rule. The workshops were held at MMS offices in Denver, Colorado, on October 31, 1996, January 23, 1997, and November 5, 1997. Representatives from several Federal and State government organizations participated along with industry organizations representing both small and large Federal oil and gas lessees. The input received during these workshops was instrumental in developing the proposed rule that was published in the **Federal Register** on January 21, 1999 (64 FR 3360).

Public comments received in response to the proposed rule were sharply contradictory. The comments fell into two general categories:

1. The States believed that MMS was offering too much relief to industry; and
2. Industry believed that the rule was too complicated and did not offer enough relief.

Because of the contradictory opinions, the Associate Director for Minerals Revenue Management asked the Royalty Policy Committee (RPC) of the Department of the Interior's Minerals Management Advisory Board to form a subcommittee to review the marginal property issue and make recommendations to the Department on how MMS should proceed. The RPC appointed a subcommittee with members from several industry associations and the major States affected by the relief provisions. MMS employees and a representative of the Office of the Solicitor served as technical advisors to the subcommittee.

The RPC subcommittee prepared a report that was submitted to the RPC on March 27, 2001. The RPC accepted the subcommittee's recommendations. On August 2, 2001, the Acting MMS Director—on behalf of the Secretary of the Interior—approved the report and advised MMS to proceed with a second proposed rule incorporating the subcommittee's recommendations. This second proposed rule includes the RPC subcommittee's recommendations with one exception described below.

II. Comments on the 1999 Proposed Rule

MMS received comments on the initial proposed rule published on January 21, 1999 (64 FR 3360) from the following nine entities:

- 3 States;
- 1 State and Indian audit organization;
- 2 oil and gas producers;
- 2 industry associations; and
- 1 law firm representing 1 industry association and 11 oil and gas companies.

These comments are analyzed and discussed below:

Definition of Base Period

1999 Proposed Rule. In § 204.2, MMS proposed to define the base period as the 12-month period from October 1 through September 30 immediately preceding the calendar year in which the lessee takes or requests marginal property relief.

Public Comments. One State commented that the base period should track as closely as possible to the beginning of the applicable calendar year in which the lessee takes marginal property relief. One producer requested that the base period be moved from October 1 through September 30 to September 1 through August 31 because the proposed period did not allow sufficient time for producers to report. One industry association also requested that the base period be moved back to give industry more time for calculations.

RPC Subcommittee Recommendation. The subcommittee members discussed the need to change the proposed base period. Producer groups indicated that the base period needed to be moved back at least 1 or 2 months. However, one State representative said that the base period needed to be as close to the calendar year as possible, but the State could accept moving it back to September 1 through August 31. The subcommittee ultimately recommended changing the base period to July 1 through June 30. The subcommittee felt that it was necessary to move the base period back in order for MMS to publish a **Federal Register** notice before the first of the calendar year listing which States were participating in the marginal property relief options. The subcommittee believes that the following schedule should meet the needs of all parties (industry, States, and MMS):

August 15: Operators submit production reports for June production.

October 1: MMS furnishes States a report of marginal properties for July-June base period.

November 1: States notify MMS if they wish to opt in or out of marginal property accounting and auditing relief (if a State fails to notify MMS, they are deemed to have opted out).

December 1: MMS publishes a **Federal Register** notice listing which States are opting in or out.

MMS Response. We agree with the RPC subcommittee recommendation to change the period to July 1 through June 30.

Definition of "Marginal Property"

1999 Proposed Rule. In § 204.4, MMS proposed to define a "marginal property" as a property having average daily well production of less than 15 barrels of oil equivalent (BOE) per well per day during the base period.

Public Comments. The law firm and the two industry associations suggested that MMS establish separate production levels for different situations, particularly offshore and onshore properties. One State was concerned that using all producing wells in the calculation could result in classifying properties with very prolific wells as marginal. The same State also objected to MMS delegating to itself the determination of what marginal production is because RSFA stated that MMS and the States should determine the definition jointly.

RPC Subcommittee Recommendation. The subcommittee members discussed the comment that separate qualification rates should be established for offshore and onshore. MMS representatives advised the subcommittee that industry had previously formed an operational group to establish a rate for offshore, but the group could not agree and the idea was dropped. Subcommittee members also discussed whether the States could set their own individual qualification rates. The subcommittee members decided this was not acceptable because of the administrative burden associated with tracking and auditing different rates for different States. One State representative was concerned that some States might want to offer some relief but not at 15 BOE. The RPC subcommittee did not recommend any changes in the definition of "marginal property."

MMS Response. We propose to retain the definition of "marginal property" contained in the 1999 proposed rule. MMS agrees with the subcommittee's conclusion that using different State production levels to define "marginal property" would be too administratively onerous for use. Such an approach also would result in a Federal law having different meanings in different States, which would raise serious legal concerns.

Although using all producing wells in the calculation to determine whether a property is marginal may result in some leases or units with high-producing wells being classified as marginal properties, we believe it would be too administratively burdensome to allow relief for individual wells, rather than by lease or unit or communitization agreement (hereinafter referred to as "agreement" in this context) as the rule provides. MMS believes that the proposed rule does allow the Secretary (acting through MMS) and the State to "jointly determine, on a case-by-case basis, the amount of what marginal production from a lease or leases or well or wells, or parts thereof" may obtain royalty accounting and auditing relief, as the statute provides (30 U.S.C. 1726(a)). Several State representatives on the subcommittee ultimately recommended using the production level in the proposed rule. Moreover, any State that does not agree with the production levels MMS ultimately adopts under this rule may decline to allow accounting, reporting, and auditing relief under § 204.208.

Statutory Requirements for Relief

1999 Proposed Rule. In § 204.5, MMS reiterated the RSFA statutory requirements that any relief granted for marginal properties must promote production, reduce administrative costs, and increase net receipts to the Federal Government and the States.

Public Comments. One State stated that the proposed rule was contrary to law because it was unlikely to promote production or increase net receipts. Further, the State argued that there is no way to determine if the relief will increase net receipts. The State also noted that we must take into account the loss of the time value of royalty receipts if we allow delayed reporting.

RPC Subcommittee Recommendation. The subcommittee discussed numerous times the difficulty in finding possible relief options that would meet all three RSFA objectives. The subcommittee recommended that two relief options be retained—cumulative reporting and "other" relief.

MMS Response. We understand the State's concerns, but do not agree that the relief offered will not promote production or increase net receipts. Because use of the annual reporting option is limited to properties producing 1,000 BOE or less annually, we believe there will be little loss of time value of the royalties. Moreover, we believe the administrative savings to the lessee will promote production, and the administrative savings to MMS and the States will more than offset any possible loss of interest. A member of MMS's reengineering team informed the subcommittee that each different relief option would require modifications to MMS's compliance programs and thus add cost. We propose to limit our relief options to those recommended by the subcommittee to avoid being cost-prohibitive.

State Liability for Denials of Requests for Relief

1999 Proposed Rule. In § 204.6, MMS proposed that if MMS denied a request for relief based on a State's denial, then the decision was final for the Department of the Interior and could not be appealed administratively.

Public Comments. One State believed that MMS's interpretation of RSFA was incorrect and left the States open to litigation in Federal court. Another State indicated that the proposed rule did not clearly acknowledge that nothing in RSFA serves to waive a State's immunity from suit.

RPC Subcommittee Recommendation. All of the State representatives on the subcommittee expressed grave concern

[1] Pub. L. 104–185, as corrected by Pub. L. 104–200.

[2] 30 U.S.C. 1711 *et seq.*

[3] 30 U.S.C. 1701(31).

[4] 30 U.S.C. 1726.

[5] 30 U.S.C. 1726(a).

over the language in the proposed rule that said if a decision not to grant relief is based on a State's denial, the decision would not be subject to administrative appeal. This would put any challenge to a decision not to grant relief directly into Federal District Court. The States were not willing to accept that risk. Based on this discussion, the subcommittee sent a request to seven State agencies asking their opinion on the comments raised by State representatives on the subcommittee. Only one agency responded, stating that it agreed with the other States' concerns. Consequently, the subcommittee recommended that each State be given the ability to determine, before each calendar year, whether it will allow either the notification-based relief option or the request-based relief option, or both. If a State decides to allow the request-based relief option, the State would thereby agree to let MMS make the final decision on the relief request. That decision could be appealed administratively within the Department of the Interior.

MMS Response. We agree with the subcommittee's recommendation. We also believe that modifying the proposed rule at § 204.207(b) to read as follows would eliminate the States' concerns:

> If, for your marginal property, there is a State concerned that has determined in advance that it will allow either or both of the relief options under this subpart, MMS will decide whether to approve, deny, or modify your relief request after consulting with the State concerned.

Thus, the approval process under this proposed rule is like the current process for issuance of orders where the State has performed the audit. Although the State is consulted regarding whether to grant, deny or modify relief, MMS would ultimately issue the decision and the State would not be subject to suit in Federal District Court. Moreover, any State that does not wish to allow accounting and reporting relief may opt out.

Who May Request Relief

1999 Proposed Rule. In § 204.201, MMS proposed that a lessee or the lessee's designee of a Federal property could obtain relief if the property qualified as marginal. Further, the lessee or lessee's designee could request relief only for the lessee's fractional interest in the property.

Public Comments. One industry association liked the fact that not all lessees in a property have to seek relief in order for an individual lessee to take relief on the lessee's portion. One State commented that RSFA did not allow designees to apply for relief in place of the lessee.

RPC Subcommittee Recommendation. The subcommittee suggested retaining the original proposed language concerning designees.

MMS Response. We agree with the State that RSFA does not specifically state that designees may seek relief on behalf of lessees. However, it also does not specifically preclude such action. Indeed, 30 U.S.C. 1726(c) merely authorizes the Secretary and delegated States to provide relief "to encourage lessees to continue to produce and develop properties" and that relief will only be "available to lessees in a State that allows" such relief. The statute is silent about who may request relief. Therefore, because the statute is silent, and designees are acting as the lessee's agent, we believe that it is reasonable and consistent with RSFA to authorize designees to request relief under this rulemaking.

Cumulative Reporting and Payment Relief

1999 Proposed Rule. In § 204.203, MMS proposed to allow lessees to report quarterly, semi-annually, or annually depending upon the volume of royalty BOE produced on the property.

Public Comments. One State objected to allowing payments less often than monthly because that is what is required by lease terms. The law firm commented that cumulative reporting should not be less often than annual. One industry association suggested that the thresholds for the lessee to be allowed to submit cumulative reports should be higher. The other industry association was concerned that lessees could not perform the complicated calculations to determine the level of relief and suggested MMS establish a consistent production level for eligibility for relief. The industry association also stated that the calculations to determine cumulative royalty reporting relief were too narrow and too burdensome and all marginal properties should get the same relief. The association also suggested that MMS eliminate the requirement to report allowances separately on marginal properties and explain how estimates would work with reporting less often than monthly. One State was concerned that MMS would have to develop a separate database to track reporting dates and royalty rates by lessee.

RPC Subcommittee Recommendation. A representative of the MMS financial reengineering team was invited to a subcommittee meeting on cumulative reporting. The reengineering team representative stated that MMS would have to make some modifications to its financial system in order to process reporting on a periodic, cumulative basis. She explained that each reporting frequency would require funding for system modifications; thus, we would probably have to limit the available relief options to avoid being cost-prohibitive. Consequently, the subcommittee recommended that only annual cumulative reporting be retained as a notification-based relief option and that this option be limited to marginal properties producing 1,000 BOE or less annually.

MMS Response: We agree with the subcommittee's recommendations. Moreover, with respect to one State's concern regarding the lease instrument's requirement that lessees pay monthly, the Government may by rule waive an obligation under the lease terms if doing so does not change the lessee's position to its detriment.

Complex Calculations

1999 Proposed Rule. In §§ 204.203, 204.204, and 204.205, the level of relief in each reporting option was based on various levels of marginal production. The calculations required lessees to multiply the BOE attributable to a marginal property by the applicable lease royalty rate.

Public Comments. One State pointed out that MMS did not provide any rationale for the volume cut-offs for relief. Another State commented that it was unclear how MMS derived production levels for the levels of relief.

RPC Subcommittee Recommendation. Discussion in the subcommittee centered on the complexity of the calculations required to determine whether a marginal property qualified for a particular form of accounting relief. The proposed rule included five different production levels for the five different forms or levels of accounting relief. The subcommittee ultimately decided to recommend volume limits based on total BOE rather than royalty BOE. The subcommittee also reduced the number of volume levels from five to one. This simplified the calculations significantly.

MMS Response. We agree with the subcommittee's recommendations.

Net Adjustment Reporting

1999 Proposed Rule. In § 204.204, MMS proposed to allow net adjustment reporting as one of the notification-based relief options. In this reporting scenario, lessees could adjust a previously-reported royalty line in a one-line net entry on the Report of Sales and Royalty Remittance, Form MMS–2014, rather than using MMS's traditional two-line adjustment process.

Public Comments. One State objected to allowing net adjustments. One industry association thought net adjustment reporting should be allowed for all leases under MMS's reengineered system. The law firm, however, commented that net adjustments would not be "relief" for marginal properties if it is allowed for all reporters in the reengineered system.

RPC Subcommittee Recommendation. The subcommittee members discussed the problems MMS's financial reengineering team had encountered in trying to implement net adjustment reporting. Because of very specific requirements in FOGRMA for certain data elements to be displayed on the Explanation of Payments (EOP) sent to States and tribes, the reengineering team and MMS's industry partners found net adjustment reporting unworkable. However, MMS continues to look for acceptable net adjustment reporting options for reengineering purposes. Based on MMS's continuing efforts to offer net adjustment reporting for all reporters, the subcommittee recommended that the net adjustment reporting relief option be dropped from the proposed rule.

MMS Response. We agree with the subcommittee's recommendation.

"Rolled-Up" Reporting Relief Option

1999 Proposed Rule. In § 204.205, MMS proposed to allow "rolled-up" reporting as one of the notification-based relief options. In this reporting scenario, lessees could report all selling arrangements for a revenue source under a single selling arrangement on the Form MMS–2014.

Public Comments. The law firm stated that "rolled-up" reporting was not significant relief. One of the industry associations agreed that if all product codes could not be rolled up, this was not significant relief.

RPC Subcommittee Recommendation. The subcommittee recommended that the rolled-up reporting relief option be dropped from the proposed rule. This recommendation was, again, associated with the problem of accommodating required EOP information and the fact that selling arrangements were dropped from the revised Form MMS–2014 effective October 1, 2001.

MMS Response. We agree with the subcommittee's recommendation.

Alternate Valuation Relief Option

1999 Proposed Rule. In § 204.206, MMS proposed to allow lessees to request approval to report and pay royalties using a valuation method other than that required under 30 CFR part 206.

Public Comments. One State and one industry association did not think alternative valuation relief was necessary because lessees already have that option under current valuation regulations. The law firm was troubled by the provision that the proposed valuation method should "approximate 30 CFR part 206." The law firm stated that with all the litigation currently in progress, it would be difficult for someone to determine what that value should be. Another State commented that the proposed rule invited litigation because there was no way for a State or MMS to determine whether an alternate valuation method would "approximate" royalties in the future. The State further added that alternate valuation relief was not accounting, reporting or auditing relief but really royalty relief.

RPC Subcommittee Recommendation. The subcommittee recommended dropping this option from the proposed rule.

MMS Response. We agree with removal of this option for the reasons stated by the commenters. Moreover, alternative valuation is still an option a lessee may request under the other relief option in § 204.203 of this second proposed rule.

1999 Proposed Rule. In § 204.211, MMS proposed how it would review requests for alternative relief. MMS did not propose time frames within which it would review requests.

RPC Subcommittee Recommendation. The subcommittee recommended that MMS have 120 days to review alternative relief requests. The subcommittee recommended that if MMS did not complete the review within the prescribed 120 days, requests would be deemed "approved."

MMS Response. MMS has not determined whether to adopt the RPC subcommittee's recommendations. We are concerned about deeming a request "approved" based solely on the length of time elapsed after receipt of the request without any Department review. One alternative is to deem the request denied if MMS does not approve or disapprove a lessee's request within 120 days after MMS received the request. Because denial of a request may be appealed, that would give the Department the opportunity to review the request and make an informed decision. The other alternative is to have no timing requirements by not including any provision at all.

Because of these concerns we are specifically requesting comments on:

- Whether there should be a time limit on MMS approval after it receives a request for reporting, accounting, and auditing relief;
- Whether the request should be deemed approved or denied after some time period, and what that period should be; and
- Any other alternative approaches.

Audit Relief Option

1999 Proposed Rule. In § 204.207, MMS proposed to allow audit relief such as audits of limited scope, audits coordinated with other State or Federal agencies, or audits by independent public accountants.

Public Comments. One State objected to any limit on the scope of audits. The State further added that independent auditors do not review whether royalties are paid correctly. Another State stated that it did not believe that audit relief was warranted and would not participate in it. The third State wanted to remove the audit relief option related to "coordinated royalty and severance tax audits" because it compromised the State's right to audit. The law firm stated that audit relief was not much relief because under the current strategy marginal properties are seldom audited. One industry association agreed that audit relief was not much relief because the States and MMS already practice coordinated audits. The other industry association, however, strongly supported audit relief.

RPC Subcommittee Recommendation. The subcommittee recommended dropping this option from the proposed rule.

MMS Response. We agree with removal of this option for the reasons stated by the State commenters. Moreover, audit relief is still an option a lessee may request under the "other" relief option in § 204.203 of this second proposed rule.

Other Relief Option

1999 Proposed Rule. In § 204.208, MMS proposed to allow a lessee to request any type of accounting and auditing relief that was appropriate for a specific marginal property provided that it was not specifically prohibited.

Public Comments. One State opposed the other relief option because the burden to evaluate the request was too great for a meaningless level of cost savings.

RPC Subcommittee Recommendation. The subcommittee members discussed all three approval-based relief options contained in the 1999 proposed rule. Because of the sensitivities surrounding what was in the original proposal, the subcommittee decided to recommend an approval-based relief option called "other" relief. Other relief would apply

to all marginal properties and could be anything within MMS authority that the lessee or his/her designee believes would be marginal property relief. The lessee would need to submit a proposal to MMS for approval. After consultation with the State or States concerned, MMS would decide whether to grant the requested relief. Examples of what might be considered are payments made more than annually but less than monthly or an alternative valuation method.

MMS Response. We agree with the subcommittee's recommendation. Further, we disagree with one State's comment that such an option is too great a burden relative to any savings. As this second proposed rule states, any relief requested must meet the statutory requirements in RSFA to promote production, increase net receipts, and reduce administrative costs.

Disallowed Relief Options

1999 Proposed Rule. In § 204.209, MMS listed relief items that MMS would not approve if requested by lessees.

Public Comments. One State wanted to add three items to the types of relief that MMS would not approve. The items were any relief request that (1) decreases royalty income below true market value, (2) increases allowances, or (3) reduces royalty-bearing volumes.

RPC Subcommittee Recommendation. The subcommittee recommended retaining the list of disallowed items with no changes.

MMS Response. We believe that § 204.203(a)(1) in this second proposed rule, which provides that any alternative valuation methodology must approximate royalties payable under 30 CFR part 206, addresses the State's concern.

Notification-Based Relief

1999 Proposed Rule. In § 204.210(a), MMS described the information a lessee must submit to MMS before taking any notification-based relief.

Public Comment. One industry association supported notification-based relief rather than request-based relief. The other industry association did not want any required notification for taking relief in §§ 204.203, 204.204, and 204.205.

Two States opposed the automatic relief options. One of those States indicated that all relief should be gained through an approval process. One industry association liked the provision that would allow lessees to file a single notification for multiple marginal properties.

RPC Subcommittee Recommendation. The subcommittee recommended only one type of notification-based relief—cumulative annual reporting.

MMS Response. We agree with the subcommittee recommendation to allow only notification-based relief for annual reporting.

Approval Process

1999 Proposed Rule. In §§ 204.212 and 204.213, MMS described the approval process for request-based relief.

Public Comments. All three States thought that the approval process placed too much administrative burden on the States. One State objected to MMS telling the States what the scope, timing or process should be for its review of a request. The same State noted that MMS cannot tell a State who in the State will make determinations on relief or how long they have to make the determinations. One industry association suggested that authority to approve alternative valuation should be delegated to someone below the Assistant Secretary for Land and Minerals Management (ASLM). The other industry association wanted approval authority for all properties to be with the ASLM. The law firm, one State, and one industry association commented that they did not agree with the fact that the regulation required States to do things within specified time periods but not MMS. One State did not agree with the provision that if the State did not notify MMS of its decision within 30 days then the State is deemed to agree with MMS's determination. One industry association was concerned that States might be given more than 30 days to review and decide relief options. The same industry association supported publication of States' decisions to allow or disallow certain types of relief and wanted MMS and the States to develop criteria for analyzing relief requests.

RPC Subcommittee Recommendation. The subcommittee recommended that MMS consult with the State concerned about a request for relief rather than requiring a decision from the State in a specific period of time.

MMS Response. The State's concerns regarding timing are no longer an issue because this proposed rule now requires consultation with the State concerned, rather than specific timing requirements. See discussion on proposed § 204.207(b) under the topic "State Liability" above.

Length of Relief

1999 Proposed Rule. In § 204.217, MMS proposed that any approved relief would remain in effect for as long as the property qualified as marginal.

Public Comments. One State opposed continuous relief throughout the life of a lease and thought the marginal properties should be monitored periodically. One industry association supported relief for the life of the lease.

RPC Subcommittee Recommendation. The subcommittee did not recommend any changes in § 204.217 (redesignated as § 205.209).

MMS Response. We agree that properties should have relief for the life of the lease only if they continue to qualify as marginal. Moreover, nothing in this proposed rulemaking precludes MMS from monitoring and auditing leases for compliance with other MMS regulations and lease terms.

Relationship to Other Incentive Programs

1999 Proposed Rule. In § 204.218, MMS proposed that a lessee could obtain accounting and auditing relief for a marginal property even if the property benefited from other Federal or State production incentive programs.

Public Comments. One State commented that lessees should be required to disclose other types of relief they are receiving. One industry association supported the provision allowing lessees to get marginal property relief even if they benefit from other incentive programs.

RPC Subcommittee Recommendation. The subcommittee did not recommend any changes in this provision.

MMS Response. We agree that lessees should get marginal property accounting and auditing relief even if they benefit from other relief programs. Nothing in RSFA precludes obtaining marginal property relief if a lessee obtains other relief.

Fees

1999 Proposed Rule. In § 210.210(b), MMS listed the information that lessees must submit in their requests for accounting and auditing relief and the requirement to submit a $50 fee with each request.

Public Comments. One State stated that the items to be included in the written request for relief were inadequate. Two States said the $50 fee is too low compared to the cost incurred by States and MMS to process requests. Two States thought the fees should be shared with the States. Both industry associations opposed the fee. One industry association said that small independent producers could not afford it and did not like the fact that MMS would not refund the fee for any reason.

RPC Subcommittee Recommendation. The subcommittee recommended elimination of the fee for request-based relief.

MMS Response. After further legal review, we have decided that it is reasonable not to recover a processing fee for requests or notices under this proposed rule. MMS recovers its costs under the Independent Offices Appropriations Act of 1952 (IOAA),[6] for Federal offshore leases, and the Federal Land Policy and Management Act of 1976(FLPMA),[7] for Federal onshore leases. Thus, as part of the previously-proposed rulemaking, we analyzed the proposed marginal property relief's cost recovery fees for reasonableness according to the factors in FLPMA section 304(b).[8] In that proposed rulemaking, we examined the "reasonableness factors" which FLPMA requires to be considered: (a) Actual costs (exclusive of management overhead); (b) the monetary value of the rights or privileges sought by the applicant; (c) the efficiency to the Government processing involved; (d) that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant; (e) the public service provided; and (f) other factors relevant to determining the reasonableness of the costs.

For marginal property relief taken or requested under § 204.210, the method used to evaluate the factors under the previously-proposed rulemaking was twofold. First, we estimated actual costs and evaluated each of the remaining FLPMA reasonableness factors (b) through (f) individually to decide whether the factor might reasonably lead to an adjustment in actual costs. If so, that factor was then weighed against the remaining factors to determine whether another factor might reasonably increase, decrease, or eliminate any contemplated reduction. On the basis of that twofold analysis, although MMS's total estimated actual costs were $2,370 to process an average request, MMS determined that a fee of $50 to process relief requests was reasonable.

MMS determined a reduced fee was reasonable primarily based on its evaluation of FLPMA factor (f) Other Factors. MMS's primary consideration under this factor was RSFA's purpose with respect to marginal properties. Congress enacted RSFA to "promote production,"[9] by "encourag[ing] lessees to continue to produce and develop marginal properties."[10] Congress stated that "certain regulatory * * * obligations should be waived if it can be demonstrated such a waiver could aid in maintaining production that might otherwise be abandoned."[11] However, RSFA also mandated that any relief should "reduce administrative costs, and increase net receipts to the United States and the States."[12] Congress stated that granting relief for marginal properties should "result in additional receipts from oil and gas production that would otherwise be abandoned, and would * * * increase oil and gas production on Federal lands by creating economic efficiencies to make Federal leases more competitive with private leases."[13] Thus, as part of its FLPMA reasonableness analysis, MMS considered (1) whether the benefit from the increase in royalties to be gained from continued production from marginal properties and the decreased administrative burden to MMS from granting such relief merited a reduction in fee charges; and (2) whether recovering the fee would defeat the Congressional intent to provide relief by discouraging companies from requesting relief.

MMS has reexamined the analysis under factor (f) in the previously-proposed rule to determine whether those factors warranted elimination of the proposed fee. We believe they do. We do not believe that the administrative savings to industry that may be afforded if they are granted relief will be significant enough for them to pay to request relief. Moreover, we believe that the companies that most need the relief are small independents who would be discouraged from applying for relief by even the nominal $50 fee previously proposed. Because the purpose of RSFA is to grant relief to producers so that they will continue to produce, we believe it is counterproductive to include a fee that will discourage many of the smaller marginal producers from requesting relief. Thus, we are not proposing to require payment of a processing fee for relief requests.

III. Procedural Matters

1. Public Comment Policy

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours and on our Internet site at www.mrm.mms.gov. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

2. Summary Cost and Benefit Data

We have summarized below the estimated costs and benefits of this proposed rule to all potentially-affected groups: industry, State and local governments, and the Federal Government. Indian tribes and allottees are not affected by this rule. The cost and benefit information in this Item 2 of Procedural Matters is used as the basis for the Departmental certifications in Items 3 through 11 below.

A. Industry

(1) *Cost—Notification-based relief—Submitting notifications.* Approximately 3,000 Federal oil and gas properties produce 1,000 or less BOE annually. In the first year after this rule becomes effective, we estimate that lessees of 1,000 of these properties will submit notifications that they will take cumulative reporting and payment relief. We do not anticipate that all lessees of qualifying properties will submit notifications because not all States will allow reporting and payment relief, and large corporations may find that modifying their computer systems to report and pay on a few leases annually rather than monthly will not be cost effective.

We further estimate that a lessee will require 2 hours to determine if a property qualifies for cumulative reporting and payment relief and then prepare and submit the notification to MMS. Consequently, the total estimated burden for all notifications in the first year is 2,000 hours (1,000 properties × 2 hours). Using an estimated $50 per hour cost, the total cost for all lessees to submit these notifications is $100,000 (2,000 burden hours × $50).

Because the reporting and payment relief for a qualified property is for the life of the property as long as the property produces less than 1,000 BOE per year, a notification need only be

[6] 31 U.S.C. 9701 *et seq.*
[7] 43 U.S.C. 1701.
[8] 64 FR 3366–69.
[9] RSFA section 7(a).
[10] S. Rep. 260, 104th Cong., 2d Sess. 20 (1996); H.R. 667, 104th Cong., 2d Sess. 20 (1996).
[11] H.R. 667, 104th Cong., 2d Sess. 20 (1996).
[12] RSFA section 7(a).
[13] *Id.* at 20–21.

filed one time. However, we estimate that MMS will receive notifications for approximately 100 newly-qualifying properties in each subsequent year. The total estimated burden for each subsequent year is 200 hours (100 properties × 2 hours) for a total cost of $10,000 (200 hours × $50).

(2) *Benefit—Notification-based relief—Reporting fewer lines.* We estimate that an average of 1,000 properties (500 leases and 500 Agreements) will involve cumulative reporting and payment relief annually. This means that royalties on these properties will be reported and paid annually rather than monthly. We further estimate that lessees will submit 5,500 fewer lines for leases (1 line per month × 11 months × 500 leases) and 16,500 fewer lines for Agreements (3 lines per month × 11 months × 500 Agreements) on Form MMS–2014, each year for a total of 22,000 fewer lines per year. Because each line averages 3 minutes to submit, we estimate that lessees will save 1,100 burden hours (22,000 lines × 3 minutes ÷ 60 minutes/hour) or a total of $55,000 (1,100 hours × $50/hour) in the first year this rule is effective and for each year thereafter.

(3) *Cost—Request-based relief—Requesting approval.* MMS expects approximately 10 requests per year for other accounting and auditing relief. We estimate each request will require 4 hours for a lessee to prepare and submit. This estimate also includes providing information originally omitted from the request and lessee approval of MMS modifications, if any. The estimated cost to lessees to request other relief is approximately $2,000 per year (10 requests × 4 hours per request × $50 per hour).

(4) *Benefit—Request-based relief—Taking request-based relief.* We are unable to quantify the benefits of the request-based relief category at this time because we do not know what types of relief industry will request or how many MMS will approve.

(5) *Cost—Both types of relief—Notifying MMS that relief has ceased.* When a property ceases to qualify for previously granted relief, the lessee or designee is required to notify MMS. MMS expects that 24 properties will cease to qualify for relief each year and that each notification will require ¼ hour to prepare and submit. The estimated cost to lessees for these notifications is approximately $300 (24 properties × .25 hours × $50).

Small Business Issues. Approximately 2,500 companies report and pay royalties to MMS. We estimate that over 97 percent of these companies are small businesses as defined by the U.S. Small Business Administration because they have 500 or fewer employees. We anticipate that most of the relief granted under this proposed rule will benefit small companies. Typically, as properties near the end of their productive life, larger companies with higher overhead, sell their marginal properties to small companies who can operate them more profitably. We expect most small companies will avail themselves of the cumulative reporting and payment relief option. Generally, larger companies may not use this option because of the expense of modifying their large, complex computer systems to report a few leases on an annual rather than a monthly basis. However, we expect that most request-based relief will be sought by larger companies having more sophisticated and complex accounting considerations. If any company, large or small, chooses not to take the accounting and auditing relief offered in this proposed rule, it will incur no additional expense or burden.

B. State and Local Governments

This rule will not impose any additional burden on local governments. MMS estimates that States impacted by this rule would incur costs and benefits as calculated below:

(1) *Cost—Notification-based relief—Determining State participation.* Burden hours for review and development of a blanket State policy on accounting and auditing relief is estimated to be 40 hours at the beginning of each year. Only 4 States have sufficient numbers of marginal properties to require an in-depth analysis of the economic impact of offering accounting and auditing relief. Consequently, we estimate the total annual burden to establish blanket policies for all States to be approximately 160 hours (4 primary States × 40 hours) or a total cost of $8,000 (160 hours × $50).

(2) *Cost—Request-based relief—Consulting with MMS.* Consultation with MMS on individual requests for other accounting and auditing relief is estimated to be 4 hours per property. As noted previously, MMS expects approximately 10 requests for individual accounting and auditing relief each year for a total burden of 40 hours for all States (10 requests × 4 hours per request) or a total cost of $2,000 (40 hours × $50).

(3) *Benefit—Notification-based relief—Prolonging life of marginal wells.* As discussed in item 2.A., we estimate that after the first year, cumulative reporting will save industry approximately $45,000 annually ($55,000–$10,000). We believe this reduced cost of operations will prolong the life of marginal wells. If the reporting relief encourages industry to continue to produce oil and gas from marginal properties, States will benefit in the additional receipts. The States generally would receive 50 percent of the royalties collected on additional production plus additional severance and ad valorem taxes. The States also would benefit from continued employment and economic activity resulting from production that would otherwise be abandoned. We cannot determine the length and dollar benefit of this additional well life at this time. However, we believe that if States choose to participate in this reporting relief, the net benefits to the States will be positive.

(4) *Cost—Notification-based relief—Lost time value of money.* Because payments would be made annually rather than monthly, States will lose the time value of money on sales made in the 11 months before the royalty payment is due. Generally, States receive 50 percent of the royalties collected for onshore leases.

For example, New Mexico has the largest number of properties qualifying for cumulative reporting and payment relief—approximately 1,280. Using a value of $21 per barrel of oil and $2.20 per Mcf of gas and a 7 percent interest rate, we estimate that if all 1,280 qualifying properties take cumulative reporting and payment relief, New Mexico would lose a maximum of $14,000 annually in the time value of money. The calculation for New Mexico marginal properties producing 1,000 BOE per year or less is as follows:

Action	Gas (Mcf)	Oil (bbl)	Total
Total qualifying volume	1,741,829	154,101	
Multiplied by estimated unit value	× $2.20	× $21.00	
Total estimated value	$3,832,023	$3,236,121	$7,068,144
Multiplied by royalty rate [1]			× .125
Total royalty due for year			$ 883,518

Action	Gas (Mcf)	Oil (bbl)	Total
Divided by 12 months [2]			÷12
Average royalty due per month			$ 73,626
Multiplied by est. interest rate			× .07
Interest on 1 mo. royalty for 1 yr.			5,153
Multiplied by 66/12 [3]			× 66/12
Interest (time value) lost for yr. [4]			28,341

[1] The royalty rate for Federal onshore leases is most often 12½ percent. However, many of these marginal properties may also qualify for lower royalty rates under the stripper oil royalty rate reduction program (30 CFR 216.57). Consequently, the royalty value in this calculation could be less.

[2] To simplify this calculation, we divided the total royalty due for the year by 12 months on the assumption that the royalties would be evenly produced throughout the year.

[3] This factor reflects the fact that different amounts of interest would accrue for each production month, beginning with 11/12 of 7 percent for the first month; 10/12 of 7 percent for the second month; 9/12 of 7 percent for the third month, etc. for a total of 66/12.

[4] The New Mexico State share is 50 percent; the Federal share is 50 percent. We rounded each share to $14,000.

As noted above, we calculated the time value of money lost for qualifying properties in New Mexico to be approximately $28,000 annually (the New Mexico share is $14,000 and the Federal government's share is $14,000). Because New Mexico has 43 percent of all marginal properties producing 1,000 BOE or less per year, we extrapolated the total loss for qualifying properties in all States to be $65,000 annually ($28,000 +. 43 = $65,000). The share of the lost time value of money for all States would be $32,500 and the Federal government's share would be $32,500.

C. Federal Government

(1) *Benefit—Notification-based relief—Processing fewer lines.* As noted in item 2.A.(2) above, lessees will report—and MMS will process—approximately 22,000 fewer lines under the cumulative reporting and payment relief option. We estimate that MMS will save approximately $8,360 per year (22,000 lines X $.38 processing cost per line). We determined the cost per line using cost data from OMB Control Number 1010–0140 ($958,229 cost to MMS to process lines received from industry on the Form MMS–2014 divided by 2,496,000 expected lines per year).

(2) *Cost—Notification-based relief—Processing notifications.* In the first year, MMS expects to receive 1,000 notifications from lessees who wish to report annually on their marginal properties. We estimate that recording each notification in MMS's automated records will require 5 minutes per notice. Total time to record the notifications is 83 hours (1,000 notices X 5 minutes/notice 60 minutes/hour). Using an average cost of $50 per hour, the total cost to the Government is estimated to be $4,150.

In the second year and each year thereafter, MMS expects to receive only 100 notifications. Total time to record the notifications is 8 hours (100 notices X 5 minutes/notice 60 minutes/hour) or a total cost of $400 (8 hours X $50/hour).

(3) *Cost—Request-based relief—Evaluating requests for other relief.* As noted in item 2.A.(3) above, MMS expects to receive 10 individual accounting and auditing relief requests from lessees annually. We estimate that each request will require 40 hours to analyze for a total cost of $20,000 (10 requests X 40 hours per request X $50 per hour).

(4) *Benefit—Notification-based relief—Prolonging life of marginal wells.* As discussed in item 2.A. above, we estimate that after the first year cumulative reporting will save industry approximately $45,000 annually ($55,000—$10,000). We believe this reduced cost of operations will prolong the life of marginal wells. We cannot determine the length and dollar benefit of this additional well life at this time. The Federal government would generally receive 50 percent of the royalties collected on additional production. We believe the net benefit to the Federal government will be positive.

(5) *Cost—Notification-based relief—Lost time value of money.* The Federal government will lose the time value of money on sales made in the 11 months before the royalty payment is due. Generally, the Federal government receives 50 percent of the royalties collected for onshore leases. We believe the amount lost to the Federal government for the time value of money would be the same as for all States or $32,500 annually (see item B.4. above for the calculation).

D. Summary of Costs and Benefits

Description	Benefit / <COST>	
	First Year	Subsequent Years
A. Industry		
(1)<Cost>—Notification-based relief—Submitting notifications	$<100,000>	$<10,000>
(2) Benefit—Notification-based relief— Reporting fewer lines	55,000	55,000
(3) Cost—Request-based relief—Requesting approval	<2,000>	<2,000>
(4) Benefit—Request-based relief—Taking request-based relief and prolonging the life of marginal wells	Unknown	Unknown
(5) Cost—Both types of relief—Notifying MMS that relief has ceased	<300>	<300>
B. State and Local Governments		
(1) Cost—Notification-based relief—Determining State participation	<8,000>	<8,000>
(2) Cost—Request-based relief—Consulting with MMS	<2,000>	<2,000>
(3) Benefit—Notification-based relief—Prolonging life of marginal wells	Unknown	Unknown
(4) Cost—Notification- based relief—Lost time value of money	<32,500>	<32,500>

Description	Benefit / <COST>	
	First Year	Subsequent Years
C. Federal Government		
(1) Benefit—Notification-based relief—Processing fewer lines	8,360	8,360
(2) Cost—Notification-based relief—Processing notifications	<4,150>	<400>
(3) Cost—Request-based relief—Evaluating requests for relief	<20,000>	<20,000>
(4) Benefit—Notification based relief—Prolonging the life of marginal wells	Unknown	Unknown
(5) Cost—Notification-based relief—Lost time value of money	<32,500>	<32,500>

3. Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This proposed rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This proposed rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This proposed rule will not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This proposed rule does not raise novel legal or policy issues.

4. The Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). See the discussion of small business effects in Item 2.A. above.

Your comments are important. The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this rule, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

5. Small Business Regulatory Enforcement Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Will not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

6. Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

7. Takings (Executive Order 12630)

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. This rule does not impose conditions or limitations on the use of any private property; consequently, a takings implication assessment is not required.

8. Federalism (Executive Order 13132)

In accordance with Executive Order 13132, this proposed rule does not have Federalism implications. This rule does not substantially or directly affect the relationship between Federal and State governments or impose costs on States or localities.

9. Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed rule will not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order.

10. Paperwork Reduction Act of 1995

This proposed rule contains new information collection requirements that we have submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, we invite the public and other Federal agencies to comment on any aspect of the reporting burden.

Submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention Desk Officer for the Department of the Interior (OMB Control Number 1010–NEW), 725 17th Street, Washington, DC 20503.

Send copies of your comments to Paul A. Knueven, Chief, Regulations and FOIA Team, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, the MMS courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB Control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Mr. Knueven at (303) 231–3316.

OMB has up to 60 days to approve or disapprove this collection of information but may respond after 30 days. Therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. However, we will consider all comments received during the comment period for this notice of proposed rulemaking.

Information Collection Burden. The annual reporting burden for this information collection in the first year after this rule is effective is 2,206 hours.

We expect approximately 1,034 responses from 1,010 Federal lessees or designees and approximately 4 responses from 4 States annually. The table below shows the breakdown of burden in the first year by proposed CFR section and paragraph:

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
204.202(b); 204.205(a)	You must notify MMS under § 204.205(a) before taking [cumulative reporting] relief under this option * * * To take accounting relief under § 204.202, you must notify MMS in writing * * *.	2	1,000	2,000
204.202(c), (e), (f), (g); 204.210(c).	Submit your royalty report and payment * * * by the end of February * * * Submit your royalty report and payment by the end of March if you have an estimate on file * * * Report one line of cumulative royalty information on the Report of Sales and Royalty Remittance, Form MMS–2014 * * * If you take relief you are not qualified for, you must * * * amend your Form MMS–2014 * * * You must report allowances on Form MMS–2014 on the same annual basis as the royalties for your marginal property * * * You must report and pay royalties for the portion of the calendar year * * * by the end of the month after you dispose of the marginal property * * * You must adjust your royalty payments if they are affected by any required BLM or OMM reallocation under the nonqualifying Agreement.	Burden covered under OMB Control Number 1010–0140		
204.203(b); 204.205(b)(1); 204.206(a)(3), (b).	You must request approval from MMS under § 204.205(b) before taking relief under this [other relief] option * * * To obtain [other] accounting or auditing relief under § 204.203, you must file a written request * * * You have 60 days from your receipt of MMS's notice to either accept or reject any modifications in writing * * * If your request for relief is not complete * * * you must submit the missing information within 60 days * * * You may submit a new request for relief * * * at any time after MMS returns your incomplete request.	4	10	40
204.208(c), (d)	* * * The State must notify the Associate Director for [MRM], in writing of its intent to allow or disallow one or both of the relief options * * * [and] specify in its notice of intent * * * which relief options it will allow or disallow * * * If it so decides * * * that it will allow one or both of the relief options previously denied * * * the State must notify the Associate Director * * * in writing * * * its intent to allow one or both of the relief options * * * [and] specify in its notice of intent * * * which relief options it will allow...	40	4	160
204.209(b)	You must notify MMS in writing by December 31 that the relief for your property has terminated.	.25	24	6
Total			1,038	2,206

As noted in the table above, the total burden hours for this information collection is 2,206 hours in the first year. Using an average cost of $50 per hour, the total cost to respondents is $110,300.

In the second year after this rule is effective and each year thereafter, the annual burden for this information collection will be substantially reduced to 406 hours and a total cost of $20,300 (406 hours × $50/hour). Because the reporting and payment relief for a qualified property is for the life of the property as long as the property produces less than 1,000 BOE per year, a notification under §§ 204.202(b) and 204.205(a) need only be filed one time. Consequently, we expect only 100 notifications for newly-qualifying properties in each subsequent year. The total estimated burden for notifications will decrease from 2,000 hours (1,000 responses × 2 hours) to 200 hours (100 responses × 2 hours) for a total decrease of 1,800 hours. MMS will notify OMB of this burden adjustment at the appropriate time. There are no additional recordkeeping costs associated with this information collection.

Effects on OMB Control Number 1010–0140, Report of Sales and Royalty Remittance, Form MMS–2014. We estimate that as a result of cumulative reporting, lessees will submit, and MMS will receive, a total of 22,000 fewer lines on Forms MMS–2014 each year. However, because this rule potentially impacts less than 0.9 percent of the total expected lines (22,000 lines ÷ 2,496,000 lines = .0088) each year, we are not revising our burden estimates for OMB Control Number 1010–0140 at this time. Our burden estimates for Form MMS–2014 are based on a combination of historical information and informed but subjective judgments about future occurrences. Thus, our estimates are not sufficiently precise to project a measurable difference in burden for a potential minor decrease in reported lines.

Public Comment Policy. The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is

necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this proposed information collection and address them in our final rule. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*.

We will post all comments in response to this proposed information collection on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

11. National Environmental Policy Act

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

12. Clarity of this Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, § 204.200 What is the purpose of this part?) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

13. Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866. The primary purpose of this rule is to provide accounting and auditing relief to certain lessees of Federal oil and gas properties, largely in the form of reduced records submittal requirements. This rule does not have a significant effect on energy supply, distribution, or use because while it should promote some additional production on a subset of Federal oil and gas leases, the additional production would not be significant in comparison to total production from Federal oil and gas leases.

List of Subjects in 30 CFR Part 204

Continental shelf, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: February 19, 2003.

Rebecca W. Watson,

Assistant Secretary for Land and Minerals Management.

For reasons set out in the preamble, 30 CFR part 204 is proposed to be added as follows:

PART 204—ALTERNATIVES FOR MARGINAL PROPERTIES

Subpart A—General Provisions

Sec.

204.1 What is the purpose of this part?
204.2 What definitions apply to this part?
204.3 What alternatives are available for marginal properties?
204.4 What is a marginal property under this part?
204.5 What statutory requirements must I meet to obtain royalty prepayment or accounting and auditing relief?
204.6 May I appeal if MMS denies my request for prepayment or accounting and auditing relief?

Subpart B—Prepayment of Royalty [Reserved]

Subpart C—Accounting and Auditing Relief

204.200 What is the purpose of this subpart?
204.201 Who may obtain accounting and auditing relief?
204.202 What is the cumulative royalty reports and payments relief option?
204.203 What is the other relief option?
204.204 What accounting and auditing relief will MMS not allow?
204.205 How do I obtain accounting and auditing relief?
204.206 What will MMS do when it receives my request for accounting and auditing relief?
206.207 Who will approve, deny, or modify my request for accounting and auditing relief?
204.208 May a State decide that it will or will not allow one or both of the relief options under this subpart?
204.209 What if my property ceases to qualify for relief obtained under this subpart?
204.210 What if BLM approves my property as part of a nonqualifying agreement?
204.211 When may MMS retroactively rescind relief for a property?
204.212 What if I took relief for which I was ineligible?
204.213 May I obtain relief for a property that benefits from other Federal or State incentive programs?
204.214 Are the information collection requirements in this subpart approved by the Office of Management and Budget?

Authority: 30 U.S.C. 1701 *et seq.*

Subpart A—General Provisions

§ 204.1 What is the purpose of this part?

This part explains how you as a lessee or lessee's designee of a Federal onshore or Outer Continental Shelf (OCS) oil and gas lease may obtain prepayment or accounting and auditing relief for certain marginal properties.

§ 204.2 What definitions apply to this part?

Agreement means a federally approved communitization Agreement or unit participating area.

Barrels of oil equivalent (BOE) means the combined equivalent production of oil and gas stated in barrels of oil. Each barrel of oil production is equal to one BOE. Also, each 6,000 cubic feet of gas production is equal to one BOE.

Base period means the 12-month period from July 1 through June 30 immediately preceding the calendar year in which you take or request marginal property relief. For example, if you request relief in January 2006, your base period will be July 1, 2004 through June 30, 2005.

Combined equivalent production means the total of all oil and gas production for the marginal property, stated in BOE.

Designee means the person designated by a lessee under § 218.52 of this chapter to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

Producing wells means only those producing oil or gas wells that contribute to the sum of BOE used in the calculation under § 204.4(c). Producing wells do not include injection or water wells.

State concerned (State) means the State that receives a statutorily-prescribed portion of the royalties from a Federal onshore or OCS lease.

§ 204.3 What alternatives are available for marginal properties?

If you have production from a marginal property, MMS and the State may allow you the following options:

If your lease is * * *	Then * * *	And * * *
(1) Not in an Agreement	The entire lease must qualify as a marginal property under paragraph (b) of this section..	
(2) Entirely or partly committed to one Agreement.	The entire Agreement must qualify as a marginal property under paragraph (b) of this section.	Agreement production allocable to your lease may be eligible for relief under this part. Any production from your lease that is not committed to the Agreement also may be eligible for separate relief under (a)(4) of this table.
(3) Entirely or partly committed to more than one Agreement.	The Agreement must qualify separately as a marginal property under paragraph (b) of this section.	Only the qualifying Agreement's production allocable to your lease may be eligible for separate relief under this part.
(4) Partly committed to an Agreement and you have production from the part of the lease that is not committed to the Agreement.	The part of the lease that is not committed to the Agreement must qualify separately as a marginal property under paragraph (b) of this section..	

(a) *Prepay royalty.* MMS and the State may allow you to make a lump-sum advance payment of royalties instead of monthly royalty payments for the remainder of the lease term.

(b) *Take accounting and auditing relief.* MMS and the State may allow various accounting and auditing relief options to encourage you to continue to produce and develop your marginal property. See subpart C for accounting and auditing relief requirements.

§ 204.4 What is a marginal property under this part?

To qualify as a marginal property eligible for royalty prepayment or accounting and auditing relief under this part, your property must meet the following requirements:

(a) Production must be from, or attributable to, a Federal onshore or OCS lease or Agreement. Indian leases are not eligible for the marginal property alternatives under this part, even though production from a qualifying marginal property may be attributable to an Indian lease. You must also meet the criteria shown in the following table:

(b) To qualify as a marginal property for a calendar year, the combined equivalent production of the property during the base period must equal an average daily well production of less than 15 barrels of oil equivalent (BOE) per well per day calculated under paragraph (c) of this section.

(c) To determine the average daily well production on or attributable to your property, divide the sum of the BOE for all producing wells on the property by the sum of the number of days that each of those wells actually produced during the base period. If your property is in an Agreement, your calculation under this section must include all wells included in the Agreement, even if they are not on a Federal onshore or OCS lease.

§ 204.5 What statutory requirements must I meet to obtain royalty prepayment or accounting and auditing relief?

(a) MMS and the State may allow royalty prepayment or accounting and auditing relief for your marginal property if MMS and the State jointly determine that the prepayment or relief is in the best interests of the Federal Government and the State to:

(1) Promote production;

(2) Reduce the administrative costs of MMS and the State; and

(3) Increase net receipts to the Federal Government and the State.

(b) MMS and the State may discontinue any prepayment or accounting and auditing relief options granted for your marginal property if MMS and the State jointly determine that the prepayment or relief no longer meets the criteria in paragraph (a) of this section.

§ 204.6 May I appeal if MMS denies my request for prepayment or accounting and auditing relief?

If MMS denies your request for prepayment or accounting and auditing relief under this part, you may appeal under part 290 of this chapter.

Subpart B—Prepayment of Royalty [Reserved]

Subpart C—Accounting and Auditing Relief

§ 204.200 What is the purpose of this subpart?

This subpart explains how you as a lessee or lessee's designee may obtain accounting and auditing relief for production from a marginal property. The two types of relief that you can receive under this subpart are cumulative reports and payment relief (explained in § 204.202) and other accounting and auditing relief appropriate for your property (explained in § 204.203).

§ 204.201 Who may obtain accounting and auditing relief?

(a) You may obtain accounting and auditing relief under this subpart:

(1) If you are a lessee or its designee for a Federal lease with production from a property that qualifies as a marginal property under § 204.4;

(2) If you meet any additional requirements for specific types of relief under this subpart; and

(3) Only for your fractional interest in the marginal property.

(b) You may not obtain one or both of the relief options specified in this subpart on any portion of a property if:

(1) The property covers multiple States; and

(2) One of the States determines under § 204.208 that it will not allow one or both of the relief options.

§ 204.202 What is the cumulative royalty reports and payments relief option?

(a) The cumulative royalty reports and payments relief option allows you to submit royalty reports and payments annually for the calendar year. You are eligible for this option only if the total volume produced from the marginal property is 1,000 BOE or less during the base period.

(b) You must notify MMS under § 204.205(a) before taking relief under this option.

(c) To use the cumulative royalty reports and payments relief option, you must do all of the following.

(1) Submit your royalty report and payment in accordance with § 218.51(g) of this chapter if you do not have an estimated payment on file for gas under 30 CFR 218.150(b). You must make this submission by the end of February of the year following the calendar year for which you are reporting annually.

(2) Submit your royalty report and payment by the end of March of the year following the year for which you are reporting annually if you have an estimate on file.

(3) Use as the sales month the month before the month that you will report and pay under this paragraph (c) to report royalty information for the entire calendar year. (For example, if you report and pay by the end of February, use January as the sales month.)

(4) Report one line of cumulative royalty information on the Report of Sales and Royalty Remittance, Form MMS–2014, for the calendar year, the same as if it were a monthly report.

(d) If you do not pay your royalty by the date due in paragraph (c) of this section, you will owe late payment interest determined under part 218 of this chapter from the date your payment was due under this section until the date MMS receives it.

(e) If you take relief you are not qualified for, you must:

(1) Pay MMS late payment interest determined under part 218 of this chapter from the date your payment was due until the date MMS receives it; and

(2) Amend your Form MMS–2014 to reflect the required monthly reporting.

(f) You must report allowances on Form MMS–2014 on the same annual basis as the royalties for your marginal property.

(g) If you dispose of a marginal property for which you have taken relief under this section, you must:

(1) Report and pay royalties for the portion of the calendar year for which you had an ownership interest; and

(2) Make the report and payment by the end of the month after you dispose of the marginal property.

§ 204.203 What is the other relief option?

(a) Under this relief option, you may request any type of accounting and auditing relief that is appropriate for your marginal property, provided it is not prohibited under § 204.204 and meets the statutory requirements of § 204.5. Examples of relief options you could request are:

(1) To report and pay royalties using a valuation method other than that required under part 206 of this chapter that approximates royalties payable under part 206 of this chapter; and

(2) To reduce your royalty audit burden. However, MMS will not consider any request that eliminates MMS's or the State's right to audit.

(b) You must request approval from MMS under § 204.205(b) before taking relief under this option.

§ 204.204 What accounting and auditing relief will MMS not allow?

MMS will not approve your request for accounting and auditing relief under this subpart if your request:

(a) Prohibits MMS or the State from conducting any form of audit;

(b) Permanently relieves you from making future royalty reports or payments;

(c) Provides for less frequent royalty reports and payments than annually;

(d) Provides for you to submit royalty reports and payments at separate times;

(e) Impairs MMS's ability to properly or efficiently account for or distribute royalties;

(f) Requests relief for a lease under which the Federal Government takes its royalties in-kind;

(g) Alters production reporting requirements;

(h) Alters lease operation or safety requirements;

(i) Conflicts with rent, minimum royalty, or lease requirements; or

(j) Requests relief for a marginal property located in a State that has determined in advance that it will not allow such relief under § 204.208.

§ 204.205 How do I obtain accounting and auditing relief?

(a) To take accounting relief under § 204.202, you must notify MMS in writing by January 31 of the calendar year for which you begin taking your relief.

(1) Your notification must contain:

(i) Your company name, MMS-assigned payor code, address, phone number, and contact name; and

(ii) The specific MMS lease number and Agreement number, if applicable.

(2) You may file a single notification for multiple marginal properties.

(b) To obtain accounting or auditing relief under § 204.203, you must file a written request for relief with MMS.

(1) Your request must contain:

(i) Your company name, MMS-assigned payor code, address, phone number, and contact name;

(ii) The MMS lease number and Agreement number, if applicable; and

(iii) A complete and detailed description of the specific accounting or auditing relief you seek.

(2) You may file a single request for multiple marginal properties if you are requesting the same relief for all properties.

§ 204.206 What will MMS do when it receives my request for accounting and auditing relief?

When MMS receives your request for accounting and auditing relief under § 204.205(b), it will notify you in writing as follows:

(a) If your request for relief is complete, MMS may either approve, deny, or modify your request in writing.

(1) If MMS approves your request for relief, MMS will notify you of the effective date of your accounting or auditing relief and other specifics of the relief approved.

(2) If MMS denies your relief request, MMS will notify you of the reasons for denial and your appeal rights under § 204.6.

(3) If MMS modifies your relief request, MMS will notify you of the modifications.

(i) You have 60 days from your receipt of MMS's notice to either accept or reject any modification(s) in writing.

(ii) If you reject the modification(s) or fail to respond to MMS's notice, MMS will deny your relief request. MMS will notify you in writing of the reasons for denial and your appeal rights under § 204.6.

(b) If your request for relief is not complete, MMS will notify you in writing that your request is incomplete and identify any missing information.

(1) You must submit the missing information within 60 days of your receipt of MMS's notice that your request is incomplete.

(2) If you submit all required information, MMS and the State may approve, deny, or modify your request for relief. You may submit a new request for relief under this subpart at any time after MMS returns your incomplete request.

(3) If you do not submit all required information within 60 days of your receipt of MMS's notice that your request is incomplete, MMS will deny your relief request. MMS will notify you in writing of the reasons for denial and your appeal rights under § 204.6.

(c) [*The regulatory text in this paragraph concerning the time period, if any, within which MMS must either deny or approve your request will be determined after due consideration of public comments. See section II of the preamble titled "Comments on the 1999 Proposed Rule, Alternate Valuation Relief Option."*]

§ 204.207 Who will approve, deny, or modify my request for accounting and auditing relief?

(a) If there is not a State concerned for your marginal property, only MMS will decide whether to approve, deny, or modify your relief request.

(b) If there is a State concerned for your marginal property that has determined in advance that it may allow either or both of the relief options under this subpart, MMS will decide whether to approve, deny, or modify your relief request after consulting with the State concerned.

§ 204.208 May a State decide that it will or will not allow one or both of the relief options under this subpart?

(a) A State may decide in advance that it will or will not allow one or both of the relief options specified in this subpart for a particular calendar year.

(b) To help States decide whether to allow one or both of the relief options specified in this subpart, MMS will send States a Report of Marginal Properties by September 30 of the preceding calendar year.

(c) If a State decides under paragraph (a) of this section that it will or will not allow one or both of the relief options in this subpart, within 30 days of the State's receipt of the Report of Marginal Properties under paragraph (b) of this section, the State must:

(1) Notify the Associate Director for Minerals Revenue Management, MMS, in writing, of its intent to allow or not allow one or both of the relief options under this subpart; and

(2) Specify in its notice of intent to MMS which relief option(s) it will allow or not allow.

(d) If a State decides in advance under paragraph (a) of this section that it will not allow one or both of the relief options specified in this subpart, it may decide for subsequent calendar years that it will allow one or both of the relief options in this subpart. If it so decides, within 30 days of the State's receipt of the Report of Marginal Properties under paragraph (b) of this section, the State must:

(1) Notify the Associate Director for Minerals Revenue Management, MMS, in writing, of its intent to allow one or both of the relief options allowed under this subpart; and

(2) Specify in its notice of intent to MMS which relief option(s) it will allow.

(e) If a State does not notify MMS under paragraphs (c) or (d) of this section, the State will be deemed to have decided not to allow either of the relief options under this subpart.

(f) MMS will publish a notice of the State's intent to allow or not allow certain relief options under this section in the **Federal Register** no later than 30 days before the beginning of the applicable calendar year.

§ 204.209 What if my property ceases to qualify for relief obtained under this subpart?

(a) Your property must qualify for relief under this subpart for each calendar year based on production during the base period for that calendar year. The notice or request you provided to MMS under § 204.205 for the first calendar year that your property qualified for relief remains effective for successive calendar years if you continue to qualify.

(b) If your property is no longer eligible for relief for any reason during a calendar year other than the reason under § 204.210 or paragraph (c) of this section, the relief for your property terminates as of December 31 of that calendar year. You must notify MMS in writing by December 31 that the relief for your property has terminated.

(c) If you dispose of your property during the calendar year, your relief terminates as of the end of the sales month in which you disposed of the property.

§ 204.210 What if BLM approves my property as part of a nonqualifying Agreement?

If the Bureau of Land Management (BLM) or MMS's Offshore Minerals Management (OMM) retroactively approves your marginal property as part of a nonqualifying Agreement, the property no longer qualifies for relief under this subpart. In that case:

(a) MMS will not retroactively rescind the marginal property relief for your property under § 204.211;

(b) Your marginal property relief terminates as of December 31 of the calendar year that you receive the BLM or OMM approval of your marginal property as part of a nonqualifying Agreement; and

(c) You must adjust your royalty payments if they are affected by any required BLM or OMM reallocation under the nonqualifying Agreement.

§ 204.211 When may MMS retroactively rescind relief for a property?

MMS may retroactively rescind the relief for your property if MMS determines that your property was not eligible for the relief obtained under this subpart because:

(a) You did not submit a notice or request for relief under § 204.205;

(b) You submitted erroneous information in the notice or request for relief you provided to MMS under § 204.205 or in your royalty or production reports; or

(c) Your property is no longer eligible for relief because production increased, but you failed to provide the notice required under § 204.209(b).

§ 204.212 What if I took relief for which I was ineligible?

If you took relief under this subpart for a period for which you were not eligible, you may owe additional royalties and late payment interest determined under part 218 of this chapter from the date your additional

payments were due until the date MMS receives them.

§ 204.213 May I obtain relief for a property that benefits from other Federal or State incentive programs?

You may obtain accounting and auditing relief for your marginal property under this subpart even if the property benefits from other Federal or State production incentive programs.

§ 204.214 Are the information collection requirements in this subpart approved by the Office of Management and Budget?

The information collection requirements contained in this subpart have been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned OMB control number 1010–____. See part 210 of this chapter for details concerning your estimated reporting burden and how you may comment on the accuracy of the burden estimate.

[FR Doc. 03–6703 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 800

[Docket No. 03N–0056]

Medical Devices; Patient Examination and Surgeons' Gloves; Test Procedures and Acceptance Criteria

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the sampling plans, test method, and acceptable quality levels (AQLs) for medical gloves contained in its medical device regulations. As prescribed by its regulation, FDA samples patient examination and surgeons' gloves and examines them for visual defects and water leaks. Glove lots are considered adulterated if they do not meet the specified quality levels. The objective of the proposed regulation is to improve the barrier quality of medical gloves on the U.S. market. The updated regulation would accomplish this by reducing the acceptable level of defects observed during FDA testing of medical gloves. By reducing the AQLs for medical gloves, FDA would also harmonize the level with consensus standards developed by the International Organization for Standardization (ISO) and the American Society for Testing Materials (ASTM).

DATES: Submit written or electronic comments by June 30, 2003. See section VII of this document for the proposed effective date of a final rule based on this proposal.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Casper E. Uldriks, Office of Compliance, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4692.

SUPPLEMENTARY INFORMATION:

I. Background

With the advent of the human immunodeficiency virus (HIV) infections and the progression of infections into acquired immune deficiency syndrome (AIDS), scientists and medical and public health experts developed risk reduction strategies, including protective and preventive strategies for health care workers. These strategies were based on the etiology, and mechanisms and routes of transmission, of HIV infections.

A. Routes and Mechanisms of HIV Transmission

HIV is transmitted primarily through sexual contact. However, nonsexual transmission occurred in health care settings as a result of contact with infected blood. HIV was also isolated from other body fluids. The prevalence of HIV infections in health care settings and the risk of clinical transmission of other infections increased the importance of using effective procedures and barriers. The potential for infection heightened the importance of the quality of the barriers selected for protection.

B. The Need for Precautions in Health Care Settings

On August 21, 1987, the Centers For Disease Control (CDC) published a report emphasizing the need for all health care workers to routinely use appropriate universal precautions when they expect to come into contact with blood or other body fluids of any patient (Ref. 1). This report recommended that health care workers wear medical gloves when: (1) Touching blood or other body fluids, mucous membranes, or non-intact skin of patients; (2) handling items or surfaces soiled with blood or other bodily fluids; and (3) performing venipuncture and other vascular access procedures. The collective term, medical gloves, includes patient examination and surgeons' gloves (see 21 CFR 880.6250 and 878.4460).

C. The Need for Testing

After the publication of the CDC's recommendations, and the rise in HIV infections, health care workers increasingly relied on surgeons' gloves and patient examination gloves as a barrier to the transmission of HIV and other blood- and fluid-borne infectious agents. The CDC's recommendations clearly recognized that defects in medical gloves had the potential of resulting in transmission of HIV between patients and health care workers.

Consequently, FDA reviewed and evaluated the quality control procedures that manufacturers used in making medical gloves. FDA concluded that manufacturers could only meet reasonable expectations of barrier protection by establishing adequate specifications for medical gloves, and adequate test procedures to detect defects in gloves. Glove defects include rips, tears, embedded foreign objects in the glove that may cause the glove to rip or tear upon stretching, or holes that allow the passage of fluids and fluid-borne microorganisms. Each of these defects compromises the glove barrier integrity and may expose health care workers and patients to infectious agents. Articles written by health care professionals who studied glove quality, and the use of gloves as a barrier to infectious agents noted that gloves with defects may not provide this protection (Refs. 2 through 6). In 1989, when FDA proposed § 800.20 (21 CFR 800.20), FDA's position was that existing consensus standards did not establish adequate test methods and acceptance criteria for patient examination or surgeons' gloves (54 FR 48218, November 21, 1989). Therefore, the agency concluded that it needed to communicate clearly the test procedures and the acceptance levels it would use to determine whether medical gloves were adulterated.

D. The Setting of Adulteration Levels

In the **Federal Register** of December 12, 1990 (55 FR 51254), FDA issued a final rule that identified minimum AQLs for both patient examination and surgeons' gloves, and established the sample plans and test method for determining whether a lot of gloves were acceptable. This rule defined defects as "leaks, tears, mold, embedded foreign objects, etc." The definitions, sampling plans, test methods, and adulteration levels identified in the

1990 **Federal Register** are currently codified in title 21 of the Code of Federal Regulations in § 800.20.

II. Proposed Changes

A. Rationale and Summary of Changes

1. Continuing HIV/AIDS Incidence and Need for Protective Measures for Health Care Workers

In a May 1998 report, CDC reaffirmed its expectation that health care workers should use medical gloves as an effective barrier to HIV, hepatitis B virus, and other blood-borne infections, and that these gloves should provide effective protection against exposure to pathogenic microorganisms in blood and other body fluids (Ref. 7).

In the December 10, 1999, *Morbidity and Mortality Weekly Report* (MMWR), CDC estimated that the prevalence of HIV at the end of 1998 ranged from 800,000 to 900,000 infected persons. CDC estimated that, of these 800,000 to 900,000 persons, HIV infection or AIDS was diagnosed in approximately 625,000 of the individuals (Ref. 8). In a fact sheet posted on the Internet in June 1999, CDC reported that 54 documented cases of HIV seroconversion resulted from occupational exposure to HIV (Ref. 9). In April 2002, CDC reported that, as of December 31, 1999, 22,218 out of 437,407 adults reported diagnosed with AIDS were health care workers (Ref. 10). FDA concluded that medical gloves play an important role in the prevention of infectious disease transmission in health care settings, and that lowering the acceptable level of defects is necessary to further reduce the risk of transmission of such diseases and to harmonize the quality of gloves sold in the United States with international consensus standards.

2. Harmonization With Consensus Standards

Following the publication of § 800.20, several consensus standards organizations, such as the ISO and the ASTM, adopted the FDA test methodology and acceptance criteria for patient examination and surgeons' gloves. As glove manufacturing capabilities improved, these consensus standards organizations lowered the minimum acceptance criteria for holes/leaks for these gloves. In 1994, ISO published standards for surgeons' and patient examination gloves with AQLs of 1.5 and 2.5, respectively. ASTM adopted these same acceptance criteria in April 1998, and March 1999, for surgeons' and patient examination gloves, respectively. Because the standards organizations updated their standards to reflect the improvement in manufacturing technology, the consensus standards currently have lower AQLs for medical gloves than FDA's regulation (§ 800.20).

The consensus standards differ from the current FDA regulation in two other respects: (1) They use metric units for specifying dimensions, and (2) they refer to sampling plans from the ISO's document ISO 2859, "Sampling Procedures for Inspection by Attributes," instead of the MIL–STD–105E sampling plan that is currently referenced in § 800.20.

FDA believes that, whenever feasible, it is important to harmonize its requirements with consensus standards. Harmonization helps ensure an acceptable standard of safety and effectiveness for all manufacturers and allows manufacturers to market their products more efficiently in a global economy. FDA has recognized the ASTM standards for patient examination and surgeons' gloves for the purpose of premarket notification submissions (510(k)s), and believes that it is appropriate to use the same standards for determining the acceptability of lots of medical gloves.

3. Interpretation of Defects

Since issuing § 800.20, FDA has received many questions from FDA field laboratories, glove manufacturers, importers, and private laboratories regarding the definition of defects in the current regulation. Many questions concerned whether lumps of latex material on or beneath the glove surface are considered defects. These questions arise because the definition of defects in § 800.20 refers to "embedded foreign objects," and latex is not "foreign" to a latex glove. Other questions were whether "mold" is an appropriate defect to be included in a sampling plan intended primarily to detect physical defects. FDA believes these questions are valid and has addressed them in the proposed amendments.

4. Tightened Sampling Plans for Reconditioned Gloves

FDA recognizes the difficulty of adequately representing a large lot of gloves with a relatively small sample size. FDA has sometimes allowed manufacturers and importers to segregate and retest portions of the lot(s) or sizes of reconditioned gloves that initially failed FDA or private laboratory analysis to identify those portions of the larger lot(s) or sizes that meet quality requirements. The agency recognizes, however, that passing a retest does not provide the same assurance of quality as when the lot passes the initial analysis. This is due, in part, to the nature of the standard sampling plans, and in part to the fact that retesting is performed to identify acceptable portions of the larger lot(s) after failing the initial test. Recognized consensus standard sampling plans address the issue of previous test failures by allowing tightened sampling during retesting in order to provide additional assurance to the consumer. FDA proposes to apply this principle to testing of reconditioned lots that have failed an initial analysis.

5. Proposed Reclassification of Medical Gloves

On July 30, 1999, FDA published a proposed rule in the **Federal Register** (64 FR 41710) that addressed several issues pertaining to medical examination gloves, including their reclassification from class I to class II in order to provide reasonable assurance of safety and effectiveness. To provide this assurance, appropriate special controls (applicable to class II medical devices) were also proposed. The proposal to reclassify medical examination gloves reflects the increased importance of these devices in the health care arena and is consistent with the changes FDA is now proposing for § 800.20. However, this proposal to lower the acceptable level of defects in medical gloves is an independent initiative that will go forward as FDA continues to review the comments it received on the reclassification proposal.

Therefore, in summary, FDA is proposing to: (1) Lower the AQL to which the level of defects in lots of gloves is tested, thereby assuring improved quality of gloves; (2) lower the AQLs, convert units of measure to the metric system; eliminate references to obsolete sampling plans, and reference current ISO standards; thereby harmonizing with recognized consensus standards; (3) clarify visual defects and current methodology for conducting water leak testing; and (4) provide tightened sampling plans for testing reconditioned lots of medical gloves that have already failed one analysis.

Specifically, FDA is proposing to lower the AQL for surgeons' gloves from 2.5 to 1.5, and is proposing to base the sampling plans on the tables in the ISO sampling standard, ISO 2859–1995.

FDA is also proposing to lower the AQL for patient examination gloves from 4.0 to 2.5, and is proposing to base the sampling plans on the tables in ISO sampling standard, ISO 2859–1995. Lowering the AQLs for medical gloves will reduce the allowable defect level for patient examination gloves. Further, FDA is proposing to amend the regulation to tighten sampling plans for reconditioned lots of medical gloves

that have failed to meet the 1.5 or 2.5 AQL level. These reconditioned gloves would have to be sampled under a more stringent inspection standard in order to provide additional assurance that they meet the AQLs. This practice is consistent with the ISO sampling plans, which allow for tightened sampling when failures occur under normal sampling.

B. Paragraph by Paragraph Changes

1. Current Test Method (§ 800.20(b)) as Proposed General Test Method (§ 800.20(b)(1))

(Change 1) FDA proposes to rename and renumber current § 800.20(b), *Test method* as § 800.20(b)(1), *General test method.* FDA is revising the substance of the first sentence of current paragraph (b) to add the following language: "For the purposes of this regulation, FDA's analysis of gloves for leaks, and certain other visual defects, will be conducted by an initial visual examination and by a water leak test method, using 1,000 milliliters (ml) of water." The purpose of these changes is to recognize that there are other visual defects addition to leaks, and that these defects can sometimes be detected by visual examination.

(Change 2) For clarification, FDA would reorganize the remaining elements of current paragraph (b) into paragraphs (b)(1)(i) through (b)(1)(iii) of proposed § 800.20(b)(1), as follows:

- The current second and third sentences would be reorganized, without revision, in proposed § 800.20(b)(1)(i), *Units examined.*
- The current fifth, sixth, and seventh sentences would be reorganized and revised in proposed § 800.20(b)(1)(ii), *Identification of defects.*
- The current fourth sentence would be revised and reorganized, together with the current seventh and eighth sentences, in proposed § 800.20(b)(1)(iii).

(Change 3) Proposed § 800.20(b)(1)(ii) changes the definition of defects from the current "leaks, tears, mold, embedded foreign objects, etc." to "tears, embedded foreign objects, or other defects visible upon initial examination that may affect the barrier integrity or leaks detected when tested in accordance with paragraph (b)(3) of this section."

FDA is proposing to remove "mold" as a defect in proposed § 800.20(b)(1)(ii). The agency considers the presence of visible mold on sampled gloves as evidence that the lot is adulterated under section 501(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(a)), in that it consists in whole and/or in part of any filthy, putrid, or decomposed substance. The revised section removes the abbreviation, "etc.", as being indeterminate.

The phrase, "other defects visible upon initial examination that may affect the barrier integrity," would be added in proposed § 800.20(b)(1)(ii), to encompass various other defects that may arise, including, but not limited to:

a. Extrusions of glove material on the exterior or interior surface of, or within, the film of the glove. FDA believes that such extrusions or material lumps can contribute to rips or tears near the site of the lump, during routine donning or other stretching of the glove.

b. Gloves that are fused together so that individual glove separation is impossible.

c. Gloves that adhere to each other and tear when separated into individual gloves.

(Change 4) In proposed § 800.20(b)(1)(iii), the fourth sentence in current paragraph (b) would be revised and reorganized into two sentences for clarity, reading, "One defect in one glove is counted as one defect. A defect in both gloves in a pair is counted as two defects." Other proposed changes to § 800.20(b)(1)(iii) include:

- To confirm current counting practices, FDA would add the clarifying sentence, "If multiple defects, as defined in paragraph (b)(1)(ii) of this section, are found in one glove, they are counted as one defect."
- For further clarification, FDA is adding the sentence, "Visual defects and leaks that are observed in the top 40 millimeters (mm) of a glove will not be counted as a defect for the purposes of this part." The substance of this sentence is in current § 800.20(b)(2); however, FDA is changing the unit of measure, 1 1/2 inches, to the corresponding metric unit of measure, 40 millimeters (mm), used by most standards setting organizations.

2. Current Untitled (§ 800.20(b)(1)) as Proposed Leak Test Materials (§ 800.20(b)(2))

(Change 5) FDA proposes to rename current § 800.20(b)(1) as proposed § 800.20(b)(2), *Leak test materials.* To conform current U.S. measurement units to metric measurement units used by most standards setting organizations, FDA proposes to change the current language, "2 3/8 inch by 15-inch" to "60 mm by 380 mm" and "11 pounds" to "5 kilograms (kg)." No other change would be made to current § 800.20(b)(1).

3. Current Untitled (§ 800.20(b)(2)) as Proposed Visual Defects and Leak Test Procedure, Visual Defects Examination, and Leak Test Set-Up (§ 800.20(b)(3)(i) through (b)(3)(ii))

(Change 6) FDA is proposing to renumber and revise current § 800.20(b)(2) into the following new paragraphs:

- (b)(3) *Visual defects and leak test procedures.*
- (b)(3)(i) *Visual defects examination.*
- (b)(3)(ii) *Leak test set-up.*

(Change 7) FDA is also proposing to revise current § 800.20(b)(2) in proposed paragraph (b)(3) to reorganize the section for clarity to read, "(3) *Visual defects and leak test procedures.* Examine the sample and identify code/lot number, size, and brand as appropriate. Continue the visual examination using the following procedures:".

(Change 8) FDA is also proposing to revise current § 800.20(b)(2) in proposed paragraph (b)(3)(i) to incorporate metric units of measure, reflecting the harmonization of the test method to international standards. The revisions would read as follows:

(i) *Visual defects examination.* Inspect the gloves for visual defects by carefully removing the glove from the wrapper, box, or package. Visually examine each glove for defects. As noted in paragraph (b)(1)(iii) of this section, a visual defect observed in the top 40 mm of a glove will not be counted as a defect for the purpose of this part. Visually defective gloves do not require further testing; however, they must be included in the total number of defective gloves counted for the sample.

(Change 9) In proposed § 800.20(b)(3)(i) in the third sentence, "1 1/2 inches" would be changed to "40 mm", to reflect the corresponding metric unit of measure used by most standards setting organizations.

(Change 10) FDA proposes to add the following statement to § 800.20(b)(3)(ii) *Leak test set up*, "During this procedure, ensure that the exterior of the glove remains dry." This method conforms to the "Standard Test Method for Detection of Holes in Medical Gloves" found in ASTM D5151. The reason for including this step is that a leak can be detected more easily on a dry surface.

(Change 11) For ease of reading, FDA is proposing to reorganize current § 800.20(b)(3) into three paragraphs in proposed (b)(3)(iii) *Leak test examination.* The first three current sentences would be in the first paragraph, the current fourth sentence would be in the second paragraph, and the remaining three current sentences would be in the third paragraph.

4. Current Sample Plan (§ 800.20(c)) as Proposed Sampling, Inspection, Acceptance, and Adulteration (§ 800.20(c))

(Change 12) FDA is proposing to rename current paragraph § 800.20(c) paragraph, "(c) Sampling, inspection, acceptance, and adulteration," and to reorganize the section as follows:

- (c)(1) *Sample plans.*
- (c)(2) *Sample sizes, inspection levels, and minimum AQLs.*
- (c)(3) *Adulteration levels and accept/reject criteria.*

(Change 13) Proposed introductory paragraph § 800.20(c) would retain the element of current paragraph (c), which identifies how FDA will sample and examine lots of gloves to determine whether the gloves are considered adulterated under section 501(c) of the act. Proposed paragraph § 800.20(c) would be revised as follows: "(c) *Sampling, inspection, acceptance, and adulteration.* In performing the test for leaks and other visual defects described in paragraph (b) of this section, FDA will collect and inspect samples of medical gloves, and determine when the gloves are acceptable as set out in paragraphs (c)(1) through (c)(3) of this section."

(Change 14) Proposed § 800.20(c)(1) retains the elements of current paragraph (c) that identify the sampling plans, inspection, and AQLs used by the agency in its determination of adulteration. In § 800.20(c)(1), FDA is proposing to change the standard of sampling procedures and inspection tables from "MIL–STD–105E" to "ISO 2859" because "MIL–STD–105E" is no longer in effect. The use of ISO 2859 is consistent with the agency's recognition of this standard as provided in section 514 of the act (21 U.S.C. 360d) (see FDA's Internet Web site at http://www.fda.gov/cdrh/stdsprog.html).

(Change 15) Proposed § 800.20(c)(2) retains the same "single normal sampling," "multiple normal sampling," and "general inspection level II" that are in current paragraph (c). In proposed paragraph (c)(2), FDA proposes lowering the minimum AQL for surgeons' gloves from the current 2.5 AQL to a 1.5 AQL. Additionally, FDA proposes to lower the minimum AQL for patient examination gloves from a 4.0 AQL to a 2.5 AQL. These changes would reduce the allowable level of defective gloves in sampled lots of medical gloves and harmonize FDA adulteration criteria with the recognized consensus standards for medical gloves.

(Change 16) FDA is proposing to remove the current table entitled "ADULTERATION LEVEL AT 2.5 FOR SURGEONS' GLOVES" and the current table entitled "ADULTERATION LEVEL AT 4.0 FOR PATIENT EXAMINATION GLOVES," and replace them with the table entitled "ACCEPT/REJECT CRITERIA AT 1.5 AQL FOR SURGEONS' GLOVES" and the table entitled, "ACCEPT/REJECT CRITERIA AT 2.5 AQL FOR PATIENT EXAMINATION GLOVES," following proposed § 800.20(c)(3).

5. Current Untitled (§ 800.20(d)) as Proposed Compliance (§ 800.20(d))

(Change 17) For purposes of clarification, FDA is proposing to revise § 800.20(d) as follows:

- (d) *Compliance.*
- Add (d)(1) *Detention and seizure,*
- Add (d)(2) *Reconditioning,*
- Add (d)(2)(i) *Modified sampling, inspection, and acceptance,*
- Add (d)(2)(ii) *Adulteration levels and acceptance criteria, and adulteration levels for reconditioned gloves;* and
- Add tables, "ACCEPT/REJECT CRITERIA AT 1.5 AQL FOR RECONDITIONED SURGEONS' GLOVES" and "ACCEPT/REJECT CRITERIA AT 2.5 AQL FOR RECONDITIONED PATIENT EXAMINATION GLOVES", following paragraph (d)(2)(ii).

(Change 18) Proposed introductory § 800.20(d) retains the regulatory element of current paragraph (d), which establishes that medical gloves that are "rejected," i.e., fail to meet acceptance criteria in proposed § 800.20(c)(3) when tested as described in proposed § 800.20(b), are adulterated in accordance with section 501(c) of the act.

(Change 19) Detention under section 801(a) of the act (21 U.S.C. 381(a)) and seizure under section 304(b) of the act (21 U.S.C. 334(b)) are common administrative or enforcement actions FDA has taken against medical gloves that are in violation of section 501(c) of the act. FDA may detain and refuse entry to medical gloves that are presented for import and found to be adulterated under section 501(c) of the act. Medical gloves found to be adulterated while in domestic interstate commerce are subject to seizure. Agency regulatory procedures for the reconditioning of domestically manufactured gloves seized in interstate commerce are found in the FDA/ORA (Office of Regulatory Affairs) Regulatory Procedures Manual (RPM), Chapter 6 Judicial Actions, Subchapter—Seizure, Disposition of Seized Articles, Reconditioning Operations. Regulatory procedures for detained imported gloves are in RPM Chapter 9 Import Operations/Actions, Subchapter—Reconditioning. When appropriate, FDA may take other regulatory actions, such as injunction, civil money penalties, or criminal prosecution of manufacturers and individuals responsible for adulterated products. FDA is proposing to add revised § 800.20(d)(1) to include the detention and seizure of gloves that are adulterated under section 501(c) of the act because the quality falls below the level it is represented to have. Under the authority of section 801(b) of the act for imported gloves and section 304(d)(1) of the act for seized domestic articles, FDA is proposing to add revised § 800.20(d)(2) to provide the importer of record, owner, or consignee an opportunity to recondition the gloves as a lot or part of a lot, whether they are foreign or domestic gloves.

(Change 20) In § 800.20(d)(2)(i), FDA is proposing a modified sampling plan. The rationale for the plan is based on the agency's experience with reconditioned gloves, the need for greater assurance that reconditioned gloves meet minimum AQLs given the initial finding of adulteration, and the provisions in ISO 2859 for tightened sampling plans.

FDA samples medical gloves that are often presented for import in large quantities. When the "sampling lots" are large and include several glove sizes and manufacturing lots, FDA attempts to have each sample adequately represent each size in the proportion it occurs in the "sampling lot." On occasion, manufacturers and importers have claimed that a single size or lot code may have contributed to a disproportionate number of defects that caused the sample to fail, and have requested FDA to allow the rest of the shipment to be salvaged, based on retesting of each of the segregated sizes or lot codes. Such segregation and retesting is considered reconditioning.

FDA district offices review reconditioning proposals on a case by case basis. In determining, whether to approve a reconditioning proposal, the district offices exercise discretion in considering the nature and type of defects, the degree of noncompliance with minimum AQLs, the compliance history of the manufacturer, the qualifications and reliability of the independent testing laboratories, and any other relevant factors.

When FDA has permitted manufacturers/importers of gloves that have failed FDA or private laboratory analysis to segregate and retest portions of the lot(s)/size(s), the agency's experience has been that the segregated lot(s)/sizes(s) almost always pass the retest, resulting in two contradictory

conclusions about the analyzed lot. Statistically, a passing retest result is not unexpected due to the nature of the normal sampling plans, which minimize producer risk. When failures occur under normal sampling, ISO 2859 recommends the use of tightened sampling plans for resubmitted lots in order to reduce the risk to the consumer (see part 1 section 7.4 of ISO 2859). FDA is proposing that single normal sampling plans and the tightened level of inspection, found in ISO 2859, be used in resampling and retesting medical gloves that have been reconditioned. The proposed modifications would increase the size of the sample and the number of units examined, while lowering the number of defects required for rejection. FDA believes that this would provide greater statistical assurance that reconditioned lots meet minimum AQLs.

(Change 21) FDA proposes to add § 800.20(d)(2)(ii) to establish accept/reject criteria and adulteration levels for reconditioned surgeons' gloves and patient examination gloves based on the tightened sampling plans proposed in paragraph (d)(2)(i). For convenience, FDA is adding tables following § 800.20(d)(2)(ii), which describe the number of units to examine and the accept/reject criteria for various lot sizes.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

A. Introduction

FDA has examined the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, distributive impacts and equity). Under the Regulatory Flexibility Act, if a regulation has a significant economic impact on a substantial number of small entities, the agency must analyze regulatory options that would minimize the impact on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any regulation that may result in expenditure by State, local, and tribal governments, or by the private sector of $100 million in any one year (adjusted annually for inflation). Currently, such a statement is required if costs exceed $110 million for any one year.

The proposed regulation is consistent with the principles set forth in Executive Order 12866 and the two statutes. As explained in the following paragraphs, FDA does not believe the proposed regulation is a significant regulatory action, as defined in Executive Order 12866. In addition, FDA certifies under the Regulatory Flexibility Act that the proposed regulation would not result in a significant economic impact on a substantial number of small entities. The expected cost of this proposed regulation is under $110 million in any one year and is therefore not considered a major regulatory action as defined by the Unfunded Mandates Reform Act.

B. Objective of the Proposed Regulation

The objective of the proposed regulation is to reduce the risk of transmission of blood-borne pathogens (particularly HIV and hepatitis B (HBV) and C (HBC) infections). The regulation would accomplish this objective by ensuring that medical gloves (surgeons' and patient examination gloves) maintain a high level of quality with respect to the level of noted defects. By so doing, FDA also would harmonize its standard for acceptable defects with consensus quality standards developed by ISO and ASTM.

C. Current Risks of Blood-Borne Illness

Unnecessary exposures to blood-borne pathogens are of great importance to the health care community because contact with contaminated human blood or tissue products has led to increased cases of HIV, HBV, and HCV infections.

Available data cannot precisely quantify the number of new HIV cases that this proposed rule would prevent. This analysis, however, attempts to derive a conservative estimate. For the year 2000, the CDC reported a cumulative total of approximately 900,000 persons in the United States who had contracted HIV, of which 775,000 cases had progressed to AIDS (Ref. 1). Of those patients whose conditions had progressed to AIDS, almost 450,000 (58 percent) had died as of December 2000. For the year 2000, the CDC identified 21,704 new cases of HIV infection.

Approximately 5 percent of the reported HIV/AIDS cases were among health care personnel (Ref. 2). However, in an indepth analysis of occupational risk, the CDC reported that, since 1992, there have been only 56 identified incidents of occupational transmission of the HIV pathogen and all but 7 of these cases (12.5 percent) were due to percutaneous cuts or needle sticks. In addition, there were 138 other cases of HIV infection or AIDS among health care workers with occupational exposures to blood who had not reported other risk factors for HIV infection (Ref. 2). Assuming the same 12.5 percent rate for these workers implies that 17 additional cases of HIV transmission to health care personnel during this period might have been caused by cutaneous contact in an occupational setting. Consequently, a total of 24 incidents of occupational transmission of HIV to health care personnel may have occurred over the 10-year period (or 2.4 per year) due to problems with the glove barrier protection properties of gloves used in health care settings.

The CDC also reports approximately 80,000 new cases of HBV for the latest available reporting period (1999) (Ref. 3). There are approximately 1.25 million people in the United States chronically infected with HBV. While only 6 percent of those who contract HBV after the age of 5 will develop chronic conditions, 15 to 25 percent of those that do will die prematurely. Health care personnel are at some risk of this pathogen, but the availability of a vaccine has reduced the risk of negative outcomes due to exposure.

FDA has no direct data for estimating the rate of new HBV infections in health care personnel. While the CDC has reported the risk to health care workers as "low," there is no definition of that term (Refs. 3 and 4). FDA estimates that as many as 4,000, or 5 percent, of all new incidents of HBV occur in health care personnel. Because occupational transmission of HBV may be approximately 5 times more likely than for HIV, FDA imputes approximately 140 annual cases of occupational transmission of HBV to health care personnel. (HIV rate of 7.3 /1,085 x 5 x 4,000.) CDC analyses have stated that "most" of the occupational transmissions are due to percutaneous injuries (cuts) (Ref. 4). Because 2.4 of the 7.3 annual HIV cutaneous contact transmissions (33 percent) were believed to be attributable to glove defects, FDA similarly expects that about one-third of the 140 annual occupational transmissions of HBV infections (approximately 40 cases) may potentially be associated with the current quality level of medical gloves. If only 6 percent of these cases develop chronic conditions, then an average of 2.4 annual cases of chronic HBV are associated with defective medical gloves.

HBV currently infects 3.9 million persons (Ref. 3). Over 2.7 million patients have reported chronic conditions. More than 40,000 new cases were reported during 1999. The risk of exposure to health care workers, however, appears to be extremely low. In fact, according to the CDC, for other than needle stick punctures, no transmission of HCV for health care personnel has been documented from intact or no intact skin exposures to blood or other fluids or tissues (Ref. 4). Thus, there is little evidence that glove defects are associated with HCV exposures.

As a result, FDA estimates the overall annual transmission of blood-borne pathogens due to defects in glove barrier protection in health care settings to include 2.4 cases of HIV infection and 2.4 cases of HBV infection. Increasing the AQL of gloves by lowering the rate of acceptable defects would reduce the transmission rates of these pathogens.

D. Baseline Conditions

The current AQL for medical gloves allows a defect rate of 4.0 percent (0.04) for patient examination gloves and 2.5 percent (0.025) for surgeons' gloves. The AQL represents the proportion of sampled gloves from a given lot that may include defects such as leaks or foreign material and still be accepted for entry into the marketplace. Currently, if more than 4 percent of the sampled patient examination gloves exhibit defects, the entire lot of gloves may not be sold as medical devices. Surgeons' gloves are sampled to a higher quality level (the lower AQL requires a higher proportion of nondefective gloves in order to pass inspection), because these products have a higher likelihood of contact with bodily fluids. Of course, medical glove lots that fail to meet the AQL may be marketed as household or other products. If a sample of gloves fails to meet the AQL, the marketer may petition for resampling of the lot. The required resampling plan for a lot originally found to be out of compliance is more intensive than the original sampling plan for a randomly selected lot. Lots initially found to be out of compliance are either resampled and subsequently offered as medical gloves after meeting the current AQL, offered as nonmedical gloves, or sold in foreign markets.

Approximately 30.8 billion medical gloves were sold in the United States during the year 2000 (Ref. 6). According to FDA records, there are 417 manufacturers of medical gloves. Of these, only six are domestic firms. Malaysian manufacturers supply almost 44 percent of the medical gloves in the United States (Ref. 7). Only 250 million surgical gloves are imported each year (0.8 percent of the medical glove market) and the impact on this sector is negligibly different from overall patient examination gloves. Therefore, this analysis focuses exclusively on patient examination gloves.

FDA expects the demand for medical gloves to increase by the same rate as employment in the medical services industry. The Bureau of Labor Statistics (BLS) projects annual employment growth of 2.6 percent for this industry (NAICS 6200) (Ref. 8), which implies an annual demand for almost 40 billion medical gloves within 10 years. (A 2.6 percent annual growth rate results in an expected increase of 29.3 percent in 10 years).

Medical glove lot sizes may vary from as few as 25 gloves to as many as 500,000. According to discussions with manufacturers (Eastern Research Group, Inc. (ERG); 2001), a typical production or import lot from a foreign manufacturer contains an average of 325,000 gloves (either patient examination or surgeons'). This implies that the U.S. medical glove market currently imports about 95,000 lots of gloves per year. FDA currently samples only about 1.5 percent (0.015) of all glove lots, or 1,400 lots per year. Within 10 years, FDA expects the number of lots offered for import to increase to 122,500 per year. If the compliance sampling rate remains constant, FDA would sample 1,850 lots during that year.

FDA's Winchester Engineering and Analysis Center (WEAC) analyzed results from samples collected from 2000 and 2001. These samples represent approximately one-third of FDA's total sampling effort for that period. A total of 98,067 gloves were tested from 942 separate lots. Of these gloves, 2,354 (0.024) were defective, which implies that 2.4 percent of marketed gloves are likely to be defective. If so, then approximately 740 million defective medical gloves are currently marketed (30.8 billion gloves x 0.024). At the current AQL of 4.0 percent, 28 lots failed (0.0297) the WEAC analysis. Consequently, approximately 42 of the annually sampled lots are defective (1,400 x 0.0297). By the 10th year, in the absence of the proposed regulation, 955 million defective gloves would be marketed and 55 percent of the sampled lots would fail to meet the AQL.

FDA allows glove lots that fail to meet the AQL to be resampled. Sponsors usually attempt to resample the glove lot rather than divert the entire lot to alternative markets. According to discussions with industry sources and testing laboratories, the cost of domestic lot resembling and retesting for leakage and tensile strength equals approximately $1,400. The current annual industry cost of resampling glove lot failures with the current AQL, therefore, is approximately $59,000 (42 lots x $1,400 per lot). This resampling and retesting cost would equal $77,000 within 10 years.

E. Costs of the Proposed Regulation

FDA expects that the proposed regulation would result in changed shipping practices by medical glove manufacturers. Currently, manufacturers use the target AQLs as a guide for releasing production lots of gloves for export to the United States because the release criteria are lower in the United States. Manufacturers attempt to avoid having three lot inspection failures within a 24-month period, because this results in rejection of future imports under FDA's current recidivist policy. Thus, to maintain an uninterrupted supply of gloves to customers, and to guard brand loyalty while avoiding the recidivist list, manufacturers would be expected to raise their level of quality control to at least maintain the current average lot rejection rate of 2.97 percent. FDA also expects the regulation to increase the costs of sampling by requiring larger and more detailed sampling plans to assure that the lower AQL is met for each inspected glove lot. FDA does not envision increased regulatory oversight costs because the number of inspections is not expected to change.

1. Costs of Quality Control

Manufacturers currently conduct quality control tests on glove lots prior to release. These tests include water-tight leak and tensile strength assays. According to interviews with glove manufacturers, the current cost of conducting these tests at the manufacturing site is approximately $310 per lot, whereas more stringent quality control testing may cost an additional $45 per lot. The additional cost is for increased inventory and larger sample sizes to ensure more precise measurements at the lower AQL. Because approximately 95,000 lots of medical gloves are imported per year,

the expected costs are $4.3 million (95,000 lots x $45 per lot). Due to the expected increase in the demand for medical gloves by the 10th evaluation year, the compliance cost of meeting this increased quality level will equal $5.5 million. Over the 10-year period, the average annualized cost of this increased level of testing (at a 7 percent discount rate) is $4.9 million.

2. Increased Sampling Costs

A lower AQL would result in increased sampling costs for imported glove lots. The increased sampling costs would result from the need to test greater quantities of gloves to ensure sufficient statistical power. Based on reported costs from U.S. testing laboratories, ERG, an independent economic contractor, estimated that increased testing would add approximately $200 to the current costs of $1,400 per sample. (The difference between this increased cost and the $310 increased import sampling cost is attributable to lower costs in the foreign countries that produce medical gloves.) FDA currently samples about 1.5 percent of the 95,000 annual imported lots, or 1,400 samples. Thus, the increased sampling costs due to the proposal are $0.3 million ($1,400 x $200). Within 10 years, this increased cost will equal $0.4 million (due to expected increases in the number of inspected glove lots) and the average annualized sampling cost (at a 7 percent discount rate) increase is $0.3 million.

3. Withheld Lots

In addition, the proposed AQL is likely to result in an increase in the number of lots of medical gloves that are not released for shipment to the U.S. medical market. For example, manufacturers may attempt to maintain a target compliance level in order to avoid FDA's recidivist listing. FDA's WEAC research laboratory sampled 942 lots and discovered that 28 failed using the current AQL while 79 lots failed using the proposed AQL. To maintain the original 0.0297 (28/942) lot failure rate, the 53 lots with the highest defect rate would have to be held back by the affected manufacturers (.056)[1]. Therefore, FDA expects, that under the proposed AQL, approximately 5,500 lots would be held back by manufacturers. In order to meet the expected demand in 10 years, 7,000 lots would be held back. FDA believes that glove lots that fail to meet the proposed AQL medical quality standards would most likely be sold as nonmedical gloves. Manufacturers and distributors would experience some loss of revenue from this shift, because of the price premium commanded by medical gloves. FDA believes this loss would be inconsequential.

4. Costs of FDA Inspections

FDA does not envision increased inspection costs due to the proposed regulation. The rate of sampled glove lots is not expected to change and FDA resources are not expected to increase over the evaluation period.

5. Total Costs

In sum, therefore, FDA estimates that the proposed regulation would have an average annualized cost of about $5.2 million.

F. Benefits of the Proposed Regulation

The proposed regulation would result in public health gains by reducing the frequency of blood-borne pathogen transmissions due to defects in the barrier protection provided by medical gloves. Based on an implied societal willingness to pay (WTP), an annualized monetary benefit of $12.3 million would be saved due to fewer pathogen transmissions and unnecessary blood screens. Moreover, fewer glove defects would reduce the number of, and, therefore, the cost and anxiety associated with, unnecessary blood screens (i.e., those that yield negative results for health care personnel).

1. Reductions in Marketed Defective Gloves

As noted in the previous paragraphs, FDA finds that approximately 740 million defective gloves are marketed each year in the United States, or 2.4 percent of all medical gloves. In the absence of this regulation, FDA expects that the number of defective medical gloves marketed in the United States each year would increase to 955 million gloves within 10 years. The proposed regulation would substantially reduce this figure.

WEAC's analysis of 98,067 medical gloves from 942 sampled lots collected in 2000 and 2001 resulted in approximately 3 percent lot failures under the current AQL of 4 percent (28 failed lots). This lot failure rate was associated with 2,356 defective gloves, or 2.4 percent of the total number of sampled gloves. Under the proposed AQL of 2.5 percent, the WEAC analysis concluded that 51 additional lots would fail (a total of 79 failed lots), increasing the lot failure rate from 2.97 percent to 8.39 percent.

As discussed earlier, FDA maintains a recidivist policy under which manufacturers are denied import entry if three lots fail statistical sampling within a 24-month period. To avoid the denial of entry, manufacturers may be expected to hold a sufficient number of defective lots from shipment in order to maintain the same target lot failure rate (approximately 3 percent) with a new AQL. For example, removing the 53 most defective lots in the testing sample would result in 26 lot failures from 889 total lots, thereby maintaining the original 2.92 percent lot failure rate. This scenario leaves 85,172 total gloves in the sample, of which 1,512 gloves were defective, resulting in a glove defect rate of 1.78 percent. The proposed regulation, therefore, could reduce the proportion of marketed defective medical gloves from 2.4 percent of all marketed gloves to 1.78 percent of all marketed gloves.

The implications of this expected reduction in defective gloves are significant. The current AQL is associated with 740 million glove defects in the present year and within 10 years would result in 955 million annually marketed defective medical gloves. If the proposed AQL were in place, the current annual number of defective gloves would approximate 548 million and within 10 years would reach 709 million. The number of defective gloves, therefore, would be reduced by more than 25 percent due to the new AQL.

2. Reductions in Blood-Borne Pathogens

FDA has estimated that, on average, there are potentially 4.8 annual transmissions of blood-borne pathogens associated with medical glove defects (section IV.C of this document). These transmissions include 2.4 cases of HIV and 2.4 cases of chronic HBV. Because there are currently no documented cases of cutaneous transmission of HCV that would be affected by improving glove quality levels, this analysis does not consider potential HCV cases.

a. *Reductions in HIV transmission.* While the direct relationship between defective medical gloves and HIV is unknown, FDA believes it is reasonable to apply the proportional reduction in the number of defective gloves due to the proposed regulation (about 25 percent) to the annual transmission rate of the HIV pathogen to health care personnel. In the absence of this regulation, the current expectation of 2.4 annual cases of HIV transmission to health care personnel would likely increase to 3.1 annual cases within 10 years due to the expected growth of employment in the health services industry. However, if the proposed AQL were in place, FDA forecasts the expected value of the annual transmission of HIV in health care personnel to equal 1.8 cases during the first effective year and 2.3 cases by the 10th year (based on the expected proportionate decrease in marketed defective gloves). Over the entire 10-year evaluation period, these assumptions suggest that the regulation would prevent approximately seven cases of HIV transmission to health care personnel.

b. *Reductions in HBV transmissions.* Hepatitis B transmissions to health care personnel are more common than cutaneous HIV transmissions. However, little specific data are available to identify affected patient populations. FDA has estimated that as many as 2.4 cutaneous transmissions of chronic HBV may be due to defective medical gloves each year. In the absence of this rule, this number is expected to increase to 3.1 annual transmissions within 10 years, based on the expected employment growth in the health services industry.

Implementation of the proposed regulation would decrease these transmissions by about 25 percent. Under the new standard, FDA expects 1.8 HBV transmissions during the first evaluation year, a reduction of 0.6 transmissions from baseline conditions. By the 10th evaluation year, FDA expects 2.3 chronic HBV transmissions under the proposed AQL, a total of 0.8 fewer cases. Overall, about seven transmissions of chronic HBV would be avoided due to the proposed regulation over a 10-year period.

3. Reductions in the Number of Blood Screening Tests

As the number of defective gloves marketed in the United States decreases due to this regulation, corresponding reductions would be expected in the number of unnecessary blood screens. FDA contacted several research hospitals to ascertain how frequently health care personnel identify glove failure as a reason for initiating blood screens. Respondents stated that about 5 percent of all glove failures are noticed by the user and about 1 percent of these identified failures are reported to the facility for additional screening (Refs. 9 and 10). Respondents noted that the glove failure could occur prior to patient contact. The additional screening may apply to the affected health care personnel or the patient if identified. The great majority of these screens result in negative findings.

As shown in the previous paragraphs, during the first evaluation year under the new rule, FDA projects the number of defective gloves marketed in the United States to decrease from 740 to 548 million, a reduction of 192 million defective gloves. By the 10th year, the annual number of defective gloves is expected to decrease from 955 to 709 million, a reduction of 246 million defective gloves. At the rates of potential identification (5 percent) and reports of contact with pathogens (1 percent) obtained from the research hospital sector, the proposed regulation would result in 96,000 fewer unnecessary blood screens during the first year (192 million fewer defects x 0.05 x 0.01). By the 10th year, 123,000 fewer annual blood screens are expected. Over the entire period, the regulation could result in 1,095,000 fewer unnecessary blood screens.

4. Value of Avoiding Blood-Borne Pathogen Transmissions

a. *Quality adjusted life-years.* The economic literature includes many attempts to quantify societal values of health. A widely cited methodology assesses wage differentials necessary to attract workers to riskier occupations. This research indicates that society is willing to pay approximately $5 million to avoid a statistical death (Refs. 11, 12, and 13). That is, social values appear to show that people are willing to pay a significant number of dollars to reduce even a small risk of death; or similarly, to demand significant payments to accept even marginally higher risks.

Because this estimate is predominantly based on blue-collar occupations that mainly attract males between the ages of 30 and 40, FDA adjusted the life-expectancy of a 35 year-old male to account for future bed and nonbed disability (Refs. 14, 15, and 16), and amortized the $5 million (at a 7 percent discount rate) over the resulting quality-adjusted life span. The result yields an estimate of $373,000 per quality adjusted life-year (QALY), which implies that society is willing to pay $373,000 for the statistical probability of a year of perfect health.

b. *Value of morbidity losses.* In theory, loss of health reduces the willingness to pay for additional longevity. Many studies have attempted to estimate the relative loss of health for different conditions of morbidity. One method utilizes the Kaplan-Bush Index of Well-Being. This index assigns relative weights to functional states, and then adjusts the resulting weighted value by the problem/symptom complex that contributed to loss of function (Refs. 16 and 17). Functional state is measured in three areas: Mobility, social activity, and physical activity. For example, with treatment, chronic HBV may not have a major impact on any of these functions; a patient could drive a car, walk without a physical problem, and participate in work, school, housework, and other activities. However, because a patient with HBV has an ongoing problem/symptom complex, the relative weight of this functional state is estimated at 0.7433.[2]

This methodology then adjusts the weighted value of the functional state by the most severe problem/symptom complex contributing to that state. In the case of HBV, the most common symptom is general tiredness, weakness, or weight loss. This complex has a derived relative weight of +0.0027, which when added to the weighted functional state value results in a relative weight of 0.7460. The loss of relative health due to HBV, therefore, is expected to equal 1.0000 minus 0.7460, or 0.2540 of perfect health. When this relative health loss is applied to the derived value of a QALY, it implies that society is willing to pay $93,000 per year to avoid a case of HBV ($373,000 times 0.2540). This value includes the potential costs of treatment and additional prevention, as well as any perceived pain and suffering.

FDA compared this methodology to a variety of published estimates of preference ratings of morbidity prepared by the Harvard Center for Risk Analysis (HCRA) (Ref. 17a). The published ratings of 14 studies of chronic HBV ranged from 0.75 to 1.00 (no impact). While the estimate used in this analysis (0.746) is in the low end of the collected published studies, FDA notes that most of the expressed preferences that were derived from time trade-off and standard gamble methodologies as compared to author judgment were closer to the FDA estimate. A health care worker who may contract HBV may typically have a life expectancy of approximately 40 years (as of 2000, a 40-year old female has a future life expectancy of 41.1 years (Ref. 14)). The present value of $93,000 per year for 40 years at a 7 percent discount rate implies that society is willing to pay $1.24 million to avoid the statistical likelihood of a case of chronic HBV in health care personnel.

Deriving society's implied WTP to avoid HIV is more complicated. The CDC has published data indicating that approximately 80 percent of all HIV infections progress to AIDS within 5 years. Of the cases of AIDS, over half

[1] The current lot failure rate (28/942=0.0297) is reached by removing 53 defective lots from the sample. If only the 51 additional failing lots are removed, the overall failure rate is 0.0314 (28/891). The expected future failure rate is 0.0292 (26/889). FDA expects the withheld lots to include those with the highest defect rates.

[2] Note: The implication is that an ideal health state is valued as 1.0000 and mortality at 0.0000.

(approximately 60 percent) result in mortality within an additional 5 years. Thus, for a 10 year period, FDA tracked three potential outcomes: Patients who contract HIV but do not progress to AIDS (20 percent); patients who contract HIV and progress to AIDS in 5 years and survive (32 percent); and patients who contract HIV, progress to AIDS within 5 years, and then die within the next 5 years (48 percent).

HIV infection may not affect either mobility or social activity. However, such an infection may somewhat inhibit physical activity. HIV patients are able to walk, but with some physical limitations. This functional state has a relative weight of 0.6769. The main problem/symptom complex of HIV is general tiredness (as for HBV), so the selected functional weight is adjusted by +0.0027 to result in relative well-being of 0.6796. As a result, the relative societal willingness to pay to avoid the statistical probability of a case of HIV in health care personnel is estimated at approximately $120,000 per year ($373,000 times [1.0000 minus 0.6796]). According to the collected preference scores (Ref. 17a) in the Car's Catalog of Preference Scores, the average estimated published preference rating for HIV infection was 0.7 (range 0.3 to 1.00).

If HIV progresses to AIDS, a patient's functional state is likely to be more restricted. An AIDS patient requires some assistance with transportation, is limited in physical activity, and is limited in work, school, or household activity. The relative weight for this functional state is 0.5402. The main problem/symptom of AIDS remains general tiredness and loss of weight (as with HIV and HBV), so the adjusted health state is 0.5429. This results in a derived societal willingness to pay to avoid the statistical probability of a case of AIDS of about $170,000 per year ($373,000 times [1.0000 minus 0.5429]). The Car's Catalog of Preference Scores (Ref. 17a) reports average preference ratings of 0.375 for cases of AIDS with ranges from 0.0 to 0.5.

As discussed earlier, the derived societal willingness to pay to avoid a statistical mortality has been estimated to equal approximately $5 million.

Using these estimates, the WTP to avoid the statistical probability of an HIV transmission in health care personnel is calculated as the sum of:

- 20 percent of the percent value (PV) (at 7 percent discount rate) of avoiding 40 years of HIV infection.
- 32 percent of the sum of the PV of avoiding 5 years of HIV infection plus the PV of avoiding 35 years of AIDS infection occurring 5 years in the future.
- 48 percent of the sum of the PV of avoiding 5 years of HIV infection plus the PV of avoiding 5 years of AIDS infection occurring 5 years in the future plus the discounted WTP of avoiding a statistical mortality occurring 10 years in the future.

The PV of avoiding 40 years of health loss valued at $120,000 per year is approximately $1.6 million (at 7 percent discount). Twenty percent of this figure equals $320,000. The PV of avoiding 5 years of health loss to due HIV infection is equal to $492,900. The PV of avoiding the health loss expected from 35 years of AIDS infection (valued at $170,000 per year) is equivalent to $2.2 million. The present value of this amount occurring 5 years in the future (at 7 percent) is $1.6 million. When added to the PV of avoiding the health loss associated with 5 years of HIV infection ($492,000), the total estimated present value of the societal willingness to pay to avoid a statistical case of this outcome is about $2.1 million. Thirty-two percent of this figure equals $660,000. The PV of avoiding the health loss expected from 5 years of AIDS infection ($700,000) occurring 5 years in the future is equivalent to $497,000 (at 7 percent discount rate). The PV of avoiding a statistical mortality ($5 million) 10 years in the future is $2.54 million (at 7 percent discount). The total societal WTP to avoid a case of HIV with mortality as an outcome, therefore, is $3.5 million ($493,000 plus $497,000 plus $2.54 million). Forty-eight percent of this figure equals approximately $1.7 million. Summing the weighted amounts of the three expected outcomes for a case of HIV infection ($320,000 plus $660,000 plus $1;700,000) equals an estimated societal willingness to pay $2.68 million to avoid a statistical transmission of HIV.

In sum, the estimated societal values of avoiding morbidity and mortality due to the transmission of blood-borne pathogens are estimated to be equivalent to $1.24 million per transmission of chronic HBV and $2.68 million per transmission of HIV. FDA notes that other recent cost-effectiveness research (Ref. 18) has reported cost-effectiveness estimates (excluding pain and suffering) of $2.1 million per avoided case of HIV.

FDA believes the methodology to estimate the value of avoided HBV and HIV infection is reasonable and supportable. Nevertheless, comparison with reported published preferences show some estimates to place higher values on avoidance and some lower than the average collected weight. FDA acknowledges these differences and solicits comment on other appropriate measures for estimating the societal value of avoiding blood-borne infections.

c. *Benefits of morbidity and fatality avoidance.* The proposed regulation would reduce both HBV and HIV transmissions by reducing the prevalence of defective medical gloves used as barrier protection. During the first evaluation year, the regulation would result in 0.6 fewer chronic HBV transmissions to health care personnel. Applying the assumed societal WTP of $1.24 million to avoid the statistical probability of one chronic HBV infection, the expected benefit of avoiding these transmissions is $0.7 million. By the 10th evaluation year, 0.8 annual transmissions would be avoided at a value of $1.0 million. The PV of avoiding almost seven chronic HBV transmissions over a 10 year period equals $6.1 million (at a 7 percent discount rate), which is equivalent to an average annualized value of $0.9 million for the entire 10-year evaluation period.

Also, in the first evaluation year, FDA expects that the proposed regulation would result in the probability of 0.6 fewer transmissions of HIV caused by defective gloves. Assuming that society is willing to pay $2.68 million to avoid the probability of a single HIV transmission, the benefit of avoiding these transmissions equals $1.6 million. By the 10th evaluation year, FDA expects the proposed regulation to result in 0.8 fewer HIV transmissions, which are valued at over $2.1 million. The societal PV of avoiding seven transmissions of HIV over the 10-year evaluation period is $12.9 million (at 7 percent discount rate) and is equivalent to an average annualized benefit of $1.8 million.

In sum, FDA estimates that the reduction in blood-borne pathogen transmissions due to this proposed rule would produce health benefits valued at $2.7 million per year. Much of this benefit (almost 67 percent) is attributable to reducing the incidence of HIV.

5. Value of Avoiding Unnecessary Blood Screens

The expected decline in the number of defective medical gloves would lead to a smaller number of unnecessary blood screens and thereby provide two potential benefits. First, the direct cost of conducting screens to determine whether the pathogen was transmitted to health care personnel would fall. Second, the psychological anxiety and stress that accompanies the possibility that a pathogen was transmitted to an individual would decrease.

a. *Cost of conducting blood screens.* FDA has collected data from the American Red Cross (Ref. 5) on the costs of conducting blood screening tests designed to ensure the safety of the blood supply. These estimates include the costs of collection (including personnel, needles, bags, and other supplies) at $47.66 per sample; sample testing at $25.16 per sample; and overhead at $3.26 per sample. The estimated direct testing cost per blood sample is the sum of these amounts, or $76 per test.

b. *Anxiety and stress associated with potential transmission of pathogens.* The psychological literature has noted that levels of anxiety and stress impact participation in public health screening programs and thereby affect physiological health (Refs. 19, 20, and 21). Also, patients who experience high levels of uncertainty due to the possibility of contracting serious, threatening diseases experience heightened levels of stress and anxiety until the results of the testing screens are negative (Ref. 20). According to one measurement scale of well-being, reduced mental lucidity, depression, crying, lack of concentration, or other signs of adverse psychological sequence may detract as much as 8 percent from overall feelings of well-being (Ref. 16) and have outcomes similar to physiological morbidity. Scaling of the relative stress caused by events shows that concerns of personal health, by themselves, are likely, on average, to contribute approximately one-sixth of the total weighting required to trigger a major stressful episode (Refs. 20, 21 and 22). Thus, FDA approximates that increased stress and anxiety concerning possible exposure to pathogens may reduce overall sense of well-being and result in health loss of approximately 1.3 percent (0.013).

As described earlier, FDA has calculated an assumed WTP of $373,000 for a statistical QALY. This figure implies that the probability of each day of quality adjusted life has a social value of $1,022 ($373,000/365). If blood test results are usually obtained within 24 hours, the resultant loss of societal well-being for each test subject is valued at approximately $13 ($1,022 times 0.013).

c. *Benefit of test avoidance.* By combining the avoided direct cost of tests and the value of avoided anxiety and stress, FDA estimates that the societal benefit of avoiding an unnecessary blood test is $89 per sample. During the first evaluation year, FDA expects 96,000 fewer unnecessary blood screens because of the expected reduction in defective medical gloves due to the proposed regulation. The implied societal WTP to avoid these unnecessary screens is $8.5 million. During the 10th evaluation year, approximately 123,000 fewer unnecessary blood screens are expected with a resultant benefit of $10.9 million. The PV of each year's reduced cost of testing and anxiety totals $66.5 million for the entire period (at a 7 percent discount rate) and an average annualized amount of $9.6 million. Of the average annualized amount, $8.2 million represents reductions in the direct testing costs and $1.4 million represents reduced anxiety associated with possible infection by a contagious agent.

6. Total Benefits

FDA estimates that the proposed regulation would reduce the availability of defective medical gloves by over 25 percent, resulting in over 2.2 billion fewer defective gloves over a 10-year period. During this time, FDA expects that reduction in defective gloves would result in almost 7 fewer cases of chronic HBV, 7 fewer cases of HIV, and 1.1 million fewer unnecessary blood screens. Based on an implied societal WTP, the average annualized benefits of the fewer pathogen transmissions and unnecessary blood screens would equal $12.3 million.

G. Small Business Impact—Initial Regulatory Flexibility Analysis

FDA finds that the proposed regulation would not have a significant impact on a substantial number of small entities. There are currently 417 manufacturers of medical gloves, of which 411 are foreign. Because medical gloves are almost exclusively manufactured by foreign firms, there would not be a significant economic impact on a substantial number of domestic small entities. Moreover, FDA does not expect the increased manufacturer costs to be directly passed on to end users, because the cost increases would affect only a minority of global manufacturers and, therefore, competition would require these manufacturers to absorb these costs.

H. Conclusion

FDA has conducted an analysis of the proposed regulation, using outside economic consultants. The estimated annualized costs equal $5.2 million, while the estimated annualized benefits equal $12.3 million. FDA certifies that the proposed regulation would not have a significant economic impact on a substantial number of small entities because medical gloves are imported from foreign manufacturers not subject to the Regulatory Flexibility Act. All six domestic manufacturers of medical gloves employ more than 1,200 workers. The Small Business Administration designates as small any entity with fewer than 500 employees in this industry.

V. Submission of Comments and Proposed Effective Date

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two copies of any mailed comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FDA proposes that any final rule that may issue based on this proposal become effective 90 days after its date of publication in the **Federal Register**.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). No burden has been estimated for the requirements in § 800.20 because recordkeeping of tests and samples is a usual and customary business practice. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

VII. References

The following references have been placed on display in the Dockets Management Branch and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.

1. U.S. Centers for Disease Prevention and Control, "HIV/AIDS Fact Sheet," www.cdc.gov, 2002.

2. U.S. Centers for Disease Prevention and Control, "Surveillance of Health Care Workers With HIV/AIDS," Oct. 25, 2001.

3 U.S. Centers for Disease Prevention and Control, "Hepatitis Fact Sheet," www.cdc.gov, 2002.

4. U.S. Centers for Disease Prevention and Control, "Updated U.S. Public Health Service

Guidelines for the Management of Occupational Exposures to HBV, HCV, and HIV and Recommendations for Postexposure Prophylaxis, *Morbidity and Mortality Weekly Report*, July 17, 2002.

5. American Red Cross, Washington Post, June 12, 2001.

6. U.S. International Trade Commission, "Import Statistics," www.usitc.gov, 2001.

7. Eastern Research Group, "Labeling and Related Testing Costs for Medical Glove Manufacturers," April 17, 2002.

8. U.S. Bureau of Labor Statistics, "Industrial Outlooks," www.bls.gov, 2002.

9. Bonel, L., Johns Hopkins University, correspondence with John Farnham, July 12, 2002.

10. Budnick, L., Michigan State University, correspondence with John Farnham, July 19, 2002.

11. Viscusi, K., "Fatal Tradeoffs: Public and Private Responsibilities for Risk," Oxford University Press, 1992.

12. Fisher, A., L. Chestnut, et al., "The Value of Reducing Risks of Death: A Note on New Evidence," *Journal of Policy, Analysis, and Management*, 8(1):88–100, 1989.

13. Mudarri, D., EPA, "The Costs and Benefits of Smoking Restrictions: An Assessment of the Smoke-Free Environment Act of 1993 (HR 3434)," 1994.

14. U.S. National Center for Health Statistics, "Vital Statistics of the United States," 2002.

15. Chen, M., J. Bush, et al., "Social Indicators for Health Planning and Policy Analysis," Policy Sciences, 6:71–89, 1975.

16. Kaplan, R., J. Bush, et al., "Health Status: Types of Validity and the Index of Well-Being," *Health Services Research*, winter, 478–507, 1976.

17. Kaplan, R. and J. Bush, "Health Related Quality of Life Measurement for Evaluation Research and Policy Analysis," *Health Psychology*, 1(1):61–80, 1982.

17a. Harvard Center for Risk Analysis, 2002, "CUA Database: Catalog of Preference Scores," Harvard School of Public Health, *www.hcra.harvard.edu/pdf/preferencescores.pdf*, accessed October 26, 2002.

18. Marin, M., J. Van Lieu, et al., "Cost-Effectiveness of a Post-Exposure HIV Chemoprophylaxis Program for Blood Exposures in Health Care Workers," *Journal of Occupational and Environmental Medicine*, 41:9, 754–60, 1999.

19. Radloff, L., "The CES-D Scale: A Self-Report Depression Scale for Research in the General Population," *Applied Psychological Measurement*, 1(3):385–401, 1977.

20. Shrout, P., "The Scaling of Stressful Life Events," (in) Stressful Life Events and their Contents, B. S. Dohrenwend and B. P. Dohrenwend (eds), Rutgers University Press, 1984.

21. Holmes, T. and R. Rahe, "The Social Readjustment Rating Scale," *Journal of Psychosomatic Research*, 11:213–218, 1967.

22. Davis, M., E. Eshelman, et al., "The Relaxation and Stress Reduction Workbook," MJF Books, 1995.

List of Subjects in 21 CFR Part 800

Administrative practice and procedure, Medical devices, Ophthalmic goods and services, Packaging and containers, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 800 be amended as follows:

PART 800—GENERAL

1. The authority citation for 21 CFR part 800 continues to read as follows:

Authority: 21 U.S.C. 321, 334, 351, 352, 355, 360e, 360i, 360k, 361, 362, 371.

2. Section 800.20 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 800.20 Patient examination gloves and surgeons' gloves; sample plans and test method for leakage defects; adulteration.

* * * * *

(b)(1) *General test method.* For the purposes of this part, FDA's analysis of gloves for leaks and certain other visual defects will be conducted by an initial visual examination and by a water leak method, using 1,000 milliliters (ml) of water.

(i) *Units examined.* Each medical glove will be analyzed independently. When packaged as pairs, each glove is considered separately, and both gloves will be analyzed.

(ii) *Identification of defects.* For this test, defects are defined as tears, embedded foreign objects, or other defects visible upon initial examination that may affect the barrier integrity, or leaks detected when tested in accordance with paragraph (b)(3) of this section. A leak is defined as the appearance of water on the outside of the glove. This emergence of water from the glove constitutes a watertight barrier failure.

(iii) *Factors for counting defects.* One defect in one glove is counted as one defect. A defect in both gloves in a pair of gloves is counted as two defects. If multiple defects, as defined in paragraph (b)(1)(ii) of this section, are found in one glove, they are counted as one defect. Visual defects and leaks that are observed in the top 40 millimeters (mm) of a glove will not be counted as a defect for the purposes of this part.

(2) *Leak test materials.* The following materials are required for testing:

(i) A 60 mm by 380 mm (clear) plastic cylinder with a hook on one end and a mark scored 40 mm from the other end (a cylinder of another size may be used if it accommodates both cuff diameter and any water above the glove capacity);

(ii) Elastic strapping with velcro or other fastening material;

(iii) Automatic water-dispensing apparatus or manual device capable of delivering 1,000 ml of water;

(iv) Stand with horizontal rod for hanging the hook end of the plastic tube. The horizontal support rod must be capable of holding the weight of the total number of gloves that will be suspended at any one time, e.g., five gloves suspended will weigh about 5 kilograms (kg).

(3) *Visual defects and leak test procedures.* Examine the sample and identify code/lot number, size, and brand as appropriate. Continue the visual examination using the following procedures:

(i) *Visual defects examination.* Inspect the gloves for visual defects by carefully removing the glove from the wrapper, box, or package. Visually examine each glove for defects. As noted in paragraph (b)(1)(iii) of this section, a visual defect observed in the top 40 mm of a glove will not be counted as a defect for the purpose of this part. Visually defective gloves do not require further testing, however, they must be included in the total number of defective gloves counted for the sample.

(ii) *Leak test set-up.* (A) During this procedure, ensure that the exterior of the glove remains dry. Attach the glove to the plastic fill tube by bringing the cuff end to the 40 mm mark and fastening with elastic strapping to make a watertight seal.

(B) Add 1,000 ml of room temperature water (i.e., 20 °C to 30 °C) into the open end of the fill tube. The water shall pass freely into the glove. (With some larger sizes of long-cuffed surgeons' gloves, the water level may reach only the base of the thumb. With some smaller gloves, the water level may extend several inches up the fill tube.)

(iii) *Leak test examination.* Immediately after adding the water, examine the glove for water leaks. Do not squeeze the glove; use only minimum manipulation to spread the fingers to check for leaks. Water drops may be blotted to confirm leaking.

(A) If the glove does not leak immediately, keep the glove/filling tube assembly upright and hang the assembly vertically from the horizontal rod, using the wire hook on the open end of the fill tube (do not support the filled glove while transferring).

(B) Make a second observation for leaks 2 minutes after addition of the water to the glove. Use only minimum manipulation of the fingers to check for leaks. Record the number of defective gloves.

(c) *Sampling, inspection, acceptance, and adulteration.* In performing the test for leaks and other visual defects described in paragraph (b) of this section, FDA will collect and inspect samples of medical gloves, and determine when the gloves are acceptable as set out in paragraphs (c)(1) through (c)(3) of this section.

(1) *Sample plans.* FDA will collect samples from lots of medical gloves in accordance with agency sampling plans. These plans are based on sample sizes, levels of sample inspection, and acceptable quality levels (AQLs) found in the International Standard Organization's standard, ISO 2859, Sampling Procedures For Inspection By Attributes.

(2) *Sample sizes, inspection levels, and minimum AQLs.* FDA will use single normal sampling for lots of 1,200 gloves or less and multiple normal sampling for all larger lots. FDA will use general inspection level II in determining the sample size for any lot size. As shown in the tables following paragraph (c)(3) of this section, FDA considers a 1.5 AQL to be the minimum level of quality acceptable for surgeons' gloves and a 2.5 AQL to be the minimum level of quality acceptable for patient examination gloves.

(3) *Adulteration levels and accept/reject criteria.* FDA considers a lot of medical gloves to be adulterated when the number of defective gloves found in the tested sample meets or exceeds the applicable rejection number at the 1.5 AQL for surgeons' gloves or the 2.5 AQL for patient examination gloves. These acceptance and rejection numbers are identified in the tables following paragraph (c)(3) of this section as follows:

ACCEPT/REJECT CRITERIA AT 1.5 AQL FOR SURGEONS' GLOVES

Lot Size	Sample	Sample Size	Number Examined	Number Defective	
				Accept	Reject
8 to 90	Single sample		8	0	1
91 to 280	Single sample		32	1	2
281 to 500	Single sample		50	2	3
501 to 1,200	Single sample		80	3	4
1,201 to 3,200	First	32	32	0	4
	Second	32	64	1	5
	Third	32	96	2	6
	Fourth	32	128	3	7
	Fifth	32	160	5	8
	Sixth	32	192	7	9
	Seventh	32	224	9	10
3,201 to 10,000	First	50	50	0	4
	Second	50	100	1	6
	Third	50	150	3	8
	Fourth	50	200	5	10
	Fifth	50	250	7	11
	Sixth	50	300	10	12
	Seventh	50	350	13	14
10,001 to 35,000	First	80	80	0	5
	Second	80	160	3	8
	Third	80	240	6	10
	Fourth	80	320	8	13
	Fifth	80	400	11	15
	Sixth	80	480	14	17
	Seventh	80	560	18	19
35,000 and above	First	125	125	1	7
	Second	125	250	4	10
	Third	125	375	8	13
	Fourth	125	500	12	17
	Fifth	125	625	17	20
	Sixth	125	750	21	23
	Seventh	125	875	25	26

ACCEPT/REJECT CRITERIA AT 2.5 AQL FOR PATIENT EXAMINATION GLOVES

Lot Size	Sample	Sample Size	Number Examined	Number Defective	
				Accept	Reject
5 to 50	Single sample		5	0	1
51 to 150	Single sample		20	1	2
151 to 280	Single sample		32	2	3

ACCEPT/REJECT CRITERIA AT 2.5 AQL FOR PATIENT EXAMINATION GLOVES—Continued

Lot Size	Sample	Sample Size	Number Examined	Number Defective	
				Accept	Reject
281 to 500	Single sample		50	3	4
501 to 1,200	Single sample		80	5	6
1,201 to 3,200	First	32	32	0	4
	Second	32	64	1	6
	Third	32	96	3	8
	Fourth	32	128	5	10
	Fifth	32	160	7	11
	Sixth	32	192	10	12
	Seventh	32	224	13	14
3,201 to 10,000	First	50	50	0	5
	Second	50	100	3	8
	Third	50	150	6	10
	Fourth	50	200	8	13
	Fifth	50	250	11	15
	Sixth	50	300	14	17
	Seventh	50	350	18	19
10,001 to 35,000	First	80	80	1	7
	Second	80	160	4	10
	Third	80	240	8	13
	Fourth	80	320	12	17
	Fifth	80	400	17	20
	Sixth	80	480	21	23
	Seventh	80	560	25	26
35,000 and above	First	125	125	2	9
	Second	125	250	7	14
	Third	125	375	13	19
	Fourth	125	500	19	25
	Fifth	125	625	25	29
	Sixth	125	750	31	33
	Seventh	125	875	37	38

(d) *Compliance.* Lots of gloves that are sampled, tested, and rejected using procedures in paragraphs (b) and (c) of this section, are considered adulterated within the meaning of section 501(c) of the act.

(1) *Detention and seizure.* Lots of gloves that are adulterated under section 501(c) of the act are subject to administrative and judicial action, such as detention of imported products and seizure of domestic products.

(2) *Reconditioning.* FDA may authorize the owner of the product, or the owner's representative, to attempt to recondition, i.e., bring into compliance with the act, a lot or part of a lot of foreign gloves detained at importation, or a lot or part of a lot of seized domestic gloves.

(i) *Modified sampling, inspection, and acceptance.* If FDA authorizes reconditioning of a lot or portion of a lot of adulterated gloves, testing to confirm that the reconditioned gloves meet AQLs must be performed by an independent testing facility. The following tightened sampling plan must be followed, as described in ISO 2859 "Sampling Procedures for Inspection by Attributes:"

(A) General inspection level II,

(B) Single sampling plans for tightened inspection,

(C) 1.5 AQL for surgeons' gloves, and

(D) 2.5 AQL for patient examination gloves.

(ii) *Adulteration levels and acceptance criteria for reconditioned gloves.* (A) FDA considers a lot or part of a lot of adulterated gloves, that is reconditioned in accordance with paragraph (d)(2)(i) of this section, to be acceptable when the number of defective gloves found in the tested sample does not exceed the acceptance number in the appropriate tables in paragraph (d)(2)(ii)(B) of this section for reconditioned surgeons' gloves or patient examination gloves.

(B) FDA considers a reconditioned lot of medical gloves to be adulterated within the meaning of section 501(c) of the act when the number of defective gloves found in the tested sample meets or exceeds the applicable rejection number in the tables following paragraph (d)(2)(ii)(B) of this section:

ACCEPT/REJECT CRITERIA AT 1.5 AQL FOR RECONDITIONED SURGEONS' GLOVES

Lot Size	Sample	Sample Size	Number Examined	Number Defective	
				Accept	Reject
13 to 90	Single sample		13	0	1

ACCEPT/REJECT CRITERIA AT 1.5 AQL FOR RECONDITIONED SURGEONS' GLOVES—Continued

Lot Size	Sample	Sample Size	Number Examined	Number Defective	
				Accept	Reject
91 to 500	Single sample		50	1	2
501 to 1,200	Single sample		80	2	3
1,201 to 3,200	Single sample		125	3	4
3,201 to 10,000	Single sample		200	5	6
10,001 to 35,000	Single sample		315	8	9
35,000 and above	Single sample		500	12	13

ACCEPT/REJECT CRITERIA AT 2.5 AQL FOR RECONDITIONED PATIENT EXAMINATION GLOVES

Lot Size	Sample	Sample Size	Number Examined	Number Defective	
				Accept	Reject
8 to 50	Single sample		8	0	1
51 to 280	Single sample		32	1	2
281 to 500	Single sample		50	2	3
501 to 1,200	Single sample		80	3	4
1,201 to 3,200	Single sample		125	5	6
3,201 to 10,000	Single sample		200	8	9
10,001 to 35,000	Single sample		315	12	13
35,000 and above	Single sample		500	18	19

Dated: March 21, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–7601 Filed 3–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–031]

RIN 1625–AA08

Special Local Regulations for Marine Events; Prospect Bay, Kent Island Narrows, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the "Thunder on the Narrows" boat races, an annual marine event held on the waters of Prospect Bay near Kent Island Narrows, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Prospect Bay during the event.

DATES: Comments and related material must reach the Coast Guard on or before May 30, 2003.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD05–03–031], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 81/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address

listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Each year on the first Saturday and Sunday of August, the Kent Narrows Racing Association sponsors the "Thunder on the Narrows" powerboat races. The event consists of 75 Hydroplanes and Jersey Speed Skiffs racing in heats counter-clockwise around a 1.5 mile oval racecourse on the waters of Prospect Bay, Kent Island Narrows, Maryland. A fleet of approximately 200 spectator vessels normally gathers nearby to view the event. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of the spectators, participants and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish permanent special local regulations on specified waters of Prospect Bay. The special local regulations will be enforced annually from 9:30 a.m. to 6:30 p.m. on the first Saturday and Sunday of August. The effect will be to restrict general navigation in the regulated area during the event. Except for participants in the "Thunder on the Narrows" powerboat races and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of Prospect Bay during the event, the effect of this proposed regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the proposed regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit Prospect Bay and Kent Narrows by navigating around the regulated area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Prospect Bay during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only 2 days each year. Vessel traffic could pass safely around the regulated area. Before the enforcement period, we would issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3 (a) and 3 (b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We prepared an "Environmental Assessment" in accordance with Commandant Instruction M16475.1D, and determined that this rule will not significantly affect the quality of the human environment. The "Environmental Assessment" and "Finding of No Significant Impact" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 is revised to read as follows:

Authority: 33 U.S.C. 1233 through 1236; Department of Homeland Security Delegation No. 0170, 33 CFR 100.35.

2. Section 100.530 is added to read as follows:

§ 100.530 Prospect Bay, Kent Island Narrows, Maryland

(a) *Definitions.*—(1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Regulated area.* Includes all waters of Prospect Bay enclosed by the following points:

Latitude	Longitude
38°57′52.0″	076°14′48.0″ W, to
38°58′02.0″ N	076°15′05.0″ W, to
38°57′38.0″ N	076°15′29.0″ W, to
38°57′28.0″ N	076°15′23.0″ W, to
38°57′52.0″ N	076°14′48.0″ W.

All coordinates reference Datum NAD 1983.

(b) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Enforcement period.* This section will be enforced annually from 9:30 a.m. to 6:30 p.m. on the first Saturday and Sunday in August. Notice of the enforcement period will be given via Marine Safety Radio Broadcast on VHF–FM marine band radio, Channel 22 (157.1 MHz).

Dated: March 10, 2003.

James D. Hull,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–7545 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 76 and 78

[MB Docket No. 03–50; FCC 03–37]

Extend Interference Protection for the Marine and Aeronautical Distress and Safety Frequency at 406.025 MHz

AGENCY: Federal Communications Commission

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to provide interference protection for the international emergency digital distress and safety frequency operating at 406.025 MHz. New Emergency Position Indicated Radio Beacons (EPRIBs) and Emergency Locator Transmitters (ELTs) are using digital signals operating on 406.025 MHz instead of the traditional analog signals which operate on 121.5 and 243.0 MHz. The rules proposed herein will protect the frequency 406.025 MHz from possible interference from cable television systems and multi-channel video program distributor (MVPD) systems operating near this frequency. In addition, the Commission seeks comment on adding a provision to part 78 regarding the cancellation or forfeiture of unused or discontinued Cable Television Relay Service (CARS) licenses. Canceling unused or discontinued CARS licenses will help the Commission conserve and reclaim unused spectrum. Also, in order to keep the rules consistent and up to date, the Commission proposes to streamline and revise certain sections of parts 76 and 78.

DATES: Comments are due on or before April 30, 2003 and reply comments are due on or before May 15, 2003. Written comments by the public on the proposed information collections are due April 30, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before May 30, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jbherman@fcc.gov*, and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or

via the Internet to *jthornto@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Sarah Mahmood, Media Bureau at (202) 418–7009 or via Internet at *smahmood@fcc.gov*. For additional information concerning the information collection(s) contained in this NPRM, contact Judith Boley Herman at 202–418–0214, or via the Internet at *jbherman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–050, adopted February 24, 2003 and released March 5, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com* or may be viewed via internet at *http://www.fcc.gov/mb/*.

1. This Notice of Proposed Rule Making (NPRM) proposes to modify § 76.616 of our rules to include the international digital search and rescue frequency 406.025 MHz within the prohibition on cable system operation near the emergency and distress frequencies. As part of our continual review of our technical rules, this NPRM also proposes streamlining and revising part 76, Multichannel Video and Cable Television Service rules, and part 78, Cable Television Relay Service rules, by eliminating outdated rules, correcting others, and maintaining consistency throughout different Commission Rule parts.

2. The United States, Canada, France, and Russia use COSPAS/SARSAT satellites to detect and locate distress signals from Emergency Position Indicating Radio Beacons (EPIRBs) and Emergency Locator Transmitters (ELTs). Older EPIRBs and ELTs use analog signals and operate on 121.5 MHz and 243.0 MHz. Section 76.616 of our rules is designed to protect the emergency frequencies at 121.5 MHz and 243.0 MHz from interference by cable television systems operating near these frequencies. The Commission adopted rules prohibiting the transmission of carriers or other signal components capable of delivering peak power levels equal to or greater than 10 microwatts (10^{-5} watts) at any point in a cable television system within 100 kHz of the frequency 121.5 MHz and within 50 kHz of the frequency 243.0 MHz.

3. Newer EPIRBs and ELTs use digital signals and operate on 406.025 MHz. Conforming to satellite use, the Commission adopted rules authorizing the use of the frequency 406.025 MHz for EPIRBs in the maritime radio services, aviation radio services, and for Personal Locator Beacons (PLBs). According to the U.S. Coast Guard, EPIRBs operating on the frequency 406.025 MHz account for four times the number of lives saved as 121.5/243.0 MHz EPIRBs and are responsible for only two percent of the total number of false alerts attributed to 121.5/243.0 MHz EPIRBs. This is due in part to the ability of rescue personnel to locate and detect the emergency signal more efficiently using the additional registration information contained in the 406.025 MHz signal that specifically identifies the beacon in distress. As a result, COSPAS/SARSAT announced that it would stop equipping new satellites with 121.5/243.0 MHz processors and plans to establish a date after which any remaining active processors will be turned off. Carriage of the 406.025 MHz EPIRB is already required aboard SOLAS-class merchant vessels and U.S. commercial fishing vessels. The 406.025 MHz EPIRB is also being used aboard recreational vessels at an increasing rate. In light of these special circumstances surrounding the exclusive use of 406.025 MHz as an emergency communication frequency, it is appropriate to consider revising our rules to protect 406.025 MHz against harmful interference by cable television systems and MVPDs.

4. Analog EPIRBs and ELTs designed to transmit on 121.5 MHz and 243.0 MHz transmit amplitude modulated continuous signals with an audio swept tone. The audio swept tone assists Search and Rescue (SAR) personnel by emitting a distinctive aural signal. These signals also provide distress alerting and homing assistance in emergency situations. Digital EPIRBs and ELTs designed to transmit on 406.025 MHz send short digital signals to provide distress alerting in emergencies and use 121.5 MHz to provide homing. The 406.025 MHz digital signal includes information on the type of emergency, the country and identification code of the beacon in distress, and other information to significantly aid SAR operations. In addition, 406.025 MHz distress signals can be stored on-board COSPAS/SARSAT satellites and then later retransmitted to a ground station, thereby eliminating the "blind spots" that exist with the older analog 121.5 MHz and 243.0 MHz EPIRBs and ELTs.

5. Lifesaving efforts have been significantly aided by EPIRBs and ELTs operating on 406.025 MHz. The use of 406.025 MHz EPIRBs has been increasing rapidly, particularly as mandatory requirements come into effect. This has led the United States and the international community to consider transitioning to the exclusive use of 406.025 MHz EPIRBs in the near future.

6. We propose to amend § 76.616 of our rules to extend protection to the additional emergency frequency at 406.025 MHz. In light of the special circumstances surrounding the use of this emergency frequency, we propose forbidding the transmission of carriers or other signal components capable of delivering peak power levels equal to or greater than 10 microwatts (10^{-5} watts) at any point in the cable television system within 100 kHz of 406.025 MHz. Prohibiting cable television operation within this limited guard band will not substantially impact current cable television operation, as the closest cable television frequency in use is the color carrier of cable channel 54, which is approximately 800 kHz from 406.025 MHz. We request comment on this proposal.

7. As part of our effort to keep our rules consistent and up to date, we propose the following deletions and updates.

8. We are proposing to eliminate §§ 76.618 and 76.619 because the period allotted for grandfathered cable television operation ended on July 1, 1990. Consequently, we also are proposing to amend § 76.610 to remove the reference to §§ 76.618 and 76.619 found in the last sentence of the rule. In addition, we are deleting Note 2 of § 76.610 because the exclusion of the frequency band 136–137 MHz expired on January 1, 1990. We also propose incorporating § 76.620 into § 76.610 as the requirements under § 76.610 apply to all MVPDs (cable and non-cable).

9. We recognize the need to add a provision to part 78 addressing the cancellation or forfeiture of unused or discontinued CARS licenses. We feel that this provision is necessary to help conserve spectrum and to reclaim unused spectrum. We seek comment on how the cancellation or forfeiture of unused or discontinued CARS licenses should be implemented. We note that § 101.65 addresses the same issue for fixed microwave licenses.

10. We also propose some miscellaneous corrections for various sections of the Commission's Rules as indicated below.

11. Our proposal to expand the safeguard provision to include the international digital emergency distress frequency at 406.025 MHz is intended to promote "safety of life and property through the use of wire and radio communication." In addition, the elimination of outdated regulations should increase regulatory efficiency.

I. Procedural Matters

A. Initial Regulatory Flexibility Analysis

12. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth below. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions regarding the prevalence of small businesses in the affected industries.

13. Comments must be filed in accordance with the same filing deadlines as comments filed in this NPRM, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.

B. Paperwork Reduction Act

14. This NPRM contains either a proposed information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Ex Parte—Permit-But-Disclose Proceedings

15. This is a permit-but-disclose notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

D. Filing of Comments and Reply Comments

16. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 30, 2003, and reply comments on or before May 15, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

17. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

18. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 30, 2003, and reply comments on or before May 15, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

19. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form". A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

20. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

21. The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. The Media Bureau contact for this proceeding is Sarah Mahmood at (202) 418–7009, TTY (202) 418–7172, or at *smahmood@fcc.gov*.

22. Parties who choose to file by paper should also submit their comments on diskette. Parties should submit diskettes to Sarah Mahmood, Media Bureau, 445 12th Street SW., Room 4–C824, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible form using MS DOS 5.0 and Microsoft Word, or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding (including the lead docket number in this case MB Docket No. 03–50), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, referable in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

23. Written comments by the public on the proposed and/or modified information collections are due April 30, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before May 30, 2003. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jbherman@fcc.gov* and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *jthornto@omb.eop.gov*.

II. Initial Regulatory Flexibility Analysis

24. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in paragraph 17 of the item. The Commission will send a copy of this *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

25. The basis of this *NPRM* is our concern to assess the need to protect the emergency and distress frequency at 406.025 MHz from cable system operations in order to promote the safety of life and property. We also aim to streamline the rules by eliminating outdated regulations and making some minor changes as detailed below.

26. We seek comment on the following objectives which are proposed for consideration in this *NPRM*:

- Whether to provide for the protection of emergency and distress frequency 406.025 MHz by updating § 76.616 to include that frequency in the group of protected frequencies;
- Whether the industry believes that unused or discontinued CARS licenses should be forfeited or cancelled;
- Whether to include signal leakage restrictions among the other requirements within Part 76 listed in § 76.1510 that apply to open video systems;
- Whether to eliminate of §§ 76.618 and 76.619 because the date after which operators on these were grandfathered to continue operations ended on July 1, 1990; and
- Whether to effect the miscellaneous amendments which exclusively involve typographical errors or operations that have become obsolete.

B. Legal Basis

27. The proposed action is authorized under Sections 4, 4(i), 157, 303, 303(g), 303(r), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 157, 303, 303(g), 303(r), 307.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

28. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" under Section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

29. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small government jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 87,525 governmental entities in the United States. This number includes 38,978 counties, cities, and towns: of these, 37,566, or 96%, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulates, including cities, counties, farms, villages, and other small organizations that may be affected by these rules.

30. The rules we adopt as a result of this *NPRM* protect the emergency and distress frequency 406.025 MHz from interference from cable system operations. The nearest cable frequency is a color carrier approximately 800 kHz above the emergency and distress frequency at 406.83 MHz.

31. *Small MVPDs.* SBA has developed a definition of small entities for cable and other program distribution services, which includes such companies generating $12.5 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau, there were 1,423 such cable and other program distribution services generating less than $12.5 million in revenue. We address below services individually to provide a more precise estimate of small entities.

32. The Commission has developed, with SBA's approval, its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. The Commission's rules define a "small system," for the purposes of rate regulation, as a cable system with 15,000 or fewer subscribers. The Commission does not request nor does the Commission collect information concerning cable systems serving 15,000 or fewer subscribers and thus is unable to estimate, at this time, the number of small cable systems nationwide.

33. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

34. *Satellite Master Antenna Television Systems ("SMATV").* The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

35. Open Video System ("OVS"). Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $ 12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

36. Multichannel, Multipoint Distribution Service ("MMDS"). MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for program distribution services, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $12.5 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

37. This NPRM proposes no changes in reporting, recordkeeping or compliance.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

38. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."

39. We believe that the rules proposed in this NPRM will have a negligible economic effect on all entities regardless of size. The majority of the rule changes proposed in this NPRM include the deletion of outdated rules as well as some corrections for typographical errors and consistency.

40. The revision to § 76.616 concerning operation near certain aeronautical and marine emergency radio frequencies (*i.e.* 406.025 MHz) should have a minimal or negligible effect on small or large entities since all such operations are already well outside of the boundaries defined by the proposed rule. It is in the interest of public safety to protect the digital search and rescue frequency 406.025 MHz; the alternative of not protecting the frequency 406.025 MHz is unacceptable.

41. The revision of § 76.1510 to include signal leakage restrictions for open video systems is also in the interest of public safety, thus the alternative of non-restriction is unacceptable.

42. In this *NPRM* we ask for comment on whether discontinued or unused CARS licenses should be forfeited or cancelled. The alternative would be to leave the CARS licenses as they are, which would result in unused or wasted spectrum as it would not be available for other licensees.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule.

None.

III. Ordering Clauses

43. Pursuant to the authority contained in Sections 4, 4(i), 157, 303, 303(g), 303(r), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 157, 303, 303(g), 303(r), 307, this Notice of Proposed Rule Making is adopted.

44. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rule Making,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

45. For further information concerning this NPRM, contact Sarah Mahmood, (202) 418–7009, or Wayne McKee, (202) 418–2355, of the Engineering Division, Media Bureau.

List of Subjects in 47 CFR Parts 76 and 78

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Parts 76 and 78 of Title 47 of the Code of Federal Regulations as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.5 is amended by revising paragraph (v) and removing the Note to read as follows:

§ 76.5 Definitions.

* * * * *

(v) *Subscriber terminal.* The cable television system terminal to which a subscriber's equipment is connected. Separate terminals may be provided for delivery of signals of various classes. Terminal devices interconnected to subscriber terminals of a cable system must comply with the provisions of part 15 of this Chapter for TV interface devices.

* * * * *

3. Amend § 76.605 as follows:

a. Paragraph (a) introductory text is revised.

b. Paragraph (a)(1)(ii) is revised.

c. Paragraph (a)(6) is revised.

d. Paragraph (a)(7) is revised.

e. Note 3 in paragraph (b) is revised.

The revisions read as follows:

§ 76.605 Technical standards.

(a) The following requirements apply to the performance of a cable television system as measured at any subscriber terminal with a matched impedance at the termination point or at the output of the modulating or processing equipment (generally the headend) of the cable television system or otherwise as noted. The requirements are applicable to each NTSC or similar video downstream cable television channel in the system:

(1) * * *

(ii) Cable television systems shall transmit signals to subscriber premises equipment on frequencies in accordance with the channel allocation plan set forth in the Electronics Industries Association's "Cable Television Channel Identification Plan, EIA/CEA–542 Revision A, April 2002" (EIA–542). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR Part 51. Cable systems are required to use this channel allocation plan for signals transmitted in the frequency range 54 MHz to 1002 MHz. Copies of EIA–542 Revision A may be obtained from: Global Engineering Documents, 15 Inverness Way East, Englewood, CO., 80112, 1–800–854–7179, *http://www.global.ihs.com.* Copies of EIA–542 Revision A may be inspected during normal business hours at the following locations: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, or the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20001.

* * * * *

(6) The amplitude characteristic shall be within a range of ±2 decibels from 0.75 MHz to 5.0 MHz above the lower boundary frequency of the cable television channel, referenced to the average of the highest and lowest amplitudes within these frequency boundaries. The amplitude characteristic shall be measured at the subscriber terminal.

(7) The ratio of RF visual signal level to system noise shall not be less than 43 decibels. For class I cable television channels, the requirements of this section are applicable only to:

* * * * *

(b) * * *

Note 3: The requirements of this section shall not apply to devices subject to the TV interface device rules under part 15 of this chapter.

* * * * *

4. Section 76.610 is revised to read as follows:

§ 76.610 Operation in the frequency bands 108–137 and 225–400 MHz—scope of application.

The provisions of §§ 76.605(a)(12), 76.611, 76.612, 76.613, 76.614, 76.616, 76.617, 76.1803 and 76.1804 are applicable to all MVPDs (cable and non-cable) transmitting carriers or other signal components carried at an average power level equal to or greater than 10^{-4} watts across a 25 kHz bandwidth in any 160 microsecond period, at any point in the cable distribution system in the frequency bands 108–137 and 225–400 MHz for any purpose. Exception: Non-cable MVPDs serving less than 1000 subscribers and less than 1000 units do not have to comply with § 76.1804(g).

5. Section 76.616 is revised to read as follows:

§ 76.616 Operation near certain aeronautical and marine emergency radio frequencies.

The transmission of carriers or other signal components capable of delivering peak power levels equal to or greater than 10^{-5} watts at any point in a cable television system is prohibited within 100 kHz of the two frequencies 121.500 MHz and 406.025 MHz, and is prohibited within 50 kHz of the two frequencies 156.800 MHz and 243.000 MHz.

§ 76.618 [Removed]

6. Section 76.618 is removed.

§ 76.619 [Removed]

7. Section 76.619 is removed.

§ 76.620 [Removed]

8. Section 76.620 is removed.

9. Section 76.1510 is revised to read as follows:

§ 76.1510 Application of certain Title VI provisions.

The following sections within part 76 shall also apply to open video systems; §§ 76.71, 76.73, 76.75, 76.77, 76.79, 76.1702, and 76.1802 (Equal Employment Opportunity Requirements); §§ 76.503 and 76.504 (ownership restrictions); § 76.981 (negative option billing); and §§ 76.1300, 76.1301 and 76.1302 (regulation of carriage agreements); § 76.611 (signal leakage restrictions); provided, however, that these sections shall apply to open video systems only to the extent that they do not conflict with this subpart S. Section 631 of the Communications Act (subscriber privacy) shall also apply to open video systems.

PART 78—CABLE TELEVISION RELAY SERVICE

10. The authority citation for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

11. Section 78.19(f)(2)(ii) is revised to read as follows:

§ 78.19 Interference.

* * * * *

(f) * * *

(2) * * *

(ii) Within the rectangular areas defined as follows (vicinity of Denver, CO):

Rectangle 1:

41°30′00″ N. Lat. on the north
103°10′00″ W. Long. on the east
38°30′00″ N. Lat. on the south
106°30′00″ W. Long. on the west

Rectangle 2:

38°30′00″ N. Lat. on the north
105°00′00″ W. Long. on the east
37°30′00″ N. Lat. on the south
105°50′00″ W. Long. on the west

Rectangle 3:

40°08′00″ N. Lat. on the north
107°00′00″ W. Long. on the east
39°56′00″ N. Lat. on the south
107°15′00″ W. Long. on the west

* * * * *

12. Section 78.27(b)(1) is revised to read as follows:

§ 78.27 License conditions.

* * * * *

(b) * * *

(1) The licensee of a CARS station shall notify the Commission in writing when the station commences operation. Such notification shall be submitted on or before the last day of the authorized one year construction period; otherwise, the station license shall be automatically forfeited.

* * * * *

[FR Doc. 03–7556 Filed 3–28–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 032103A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 1–day Council meeting on April 15, 2003, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, April 15, 2003. The meeting will begin at 8 a.m. on Tuesday.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923; telephone 978/777–2500. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, April 15, 2003

Following introductions, the Council will reconsider and finalize Groundfish Amendment 13 to the Northeast Multispecies Fishery Management Plan reference point and rebuilding alternatives and control rules. In considering options, the Council will review rebuilding projections prepared by the Plan Development Team (PDT), and NMFS and peer review reports and add to or reduce the number of alternatives. The Council will also finalize Total Allowance Catch (TAC) management alternatives including defining and controlling directed and incidental catch; review and approval of Groundfish Committee suggestions for clarifying Amendment 13 management measures and finalize alternatives to implement the U.S. Canada Resource Sharing Agreement including the handling of TAC coverages and overages. The Council meeting will adjourn following the conclusion of any other outstanding business.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–7646 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 61
Monday, March 31, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Report of a New System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of new privacy act system of records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) proposes to create a new Privacy Act system of records, FCIC–11, entitled "Loss Adjuster." The system will be maintained by the Federal Crop Insurance Corporation (FCIC), a wholly-owned Government Corporation administered by the Risk Management Agency (RMA), an agency of USDA. The primary purpose of the loss adjuster system is to aid in the administration and management of the Federal crop insurance program.

EFFECTIVE DATE: This notice will be adopted without further publication on April 30, 2003 unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that the portion of the system which describes the "routine uses" of the system be published for comment, USDA invites comment on all portions of this notice. Comments must be received by the contact person listed below on or before April 30, 2003.

FOR FURTHER INFORMATION CONTACT: Director, Actuarial Division, Risk Management Agency, 6501 Beacon Drive, Kansas City, Mo 64133, Telephone: (816) 926–6487.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is creating a new system of records, FCIC–11, entitled "Loss Adjuster" to be maintained by the Federal Crop Insurance Corporation (FCIC), a wholly-owned Government Corporation administered by the Risk Management Agency (RMA), an agency of USDA.

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. The Agency is responsible for supervision of the Federal Crop Insurance Corporation (FCIC) and the administration and oversight of programs authorized under the Federal Crop Insurance Act. As an example, the Federal Crop Insurance program covers production losses due to unavoidable causes such as drought, excessive moisture, hail, and wind. Risk Management tools are available to producers through commercial insurance companies that have entered into a financial arrangement with FCIC. Under this agreement, the company agrees to deliver a product to eligible buyers.

The purpose of the loss adjuster system is to identify persons performing loss adjustment services (*i.e.*, performing field inspections, verifying cause of loss, determining total production); detect disparate or inconsistent performance among all loss adjustors; capture data that contains the social security account number of loss adjusters for actuarial purposes in determining risk classification; and analyze and evaluate general program performance at various phases of program delivery. Routine uses include identifying loss adjusters who are ineligible for participation due to disqualification, suspension, debarment or other ineligibility and for other general administrative needs. The system contains records of identification for a loss adjustor to include the name, social security number, loss adjuster code, State, county and private insurance company that insures the policy for which the loss adjustment activities are performed, the individual policy number, state and county, private insurance company, amount of premium collected, and amount of indemnity paid for all applicable losses adjusted by the loss adjuster, and any information relating to any disqualification, suspension, debarment or other ineligibility.

The loss adjuster system is maintained by the Actuarial Division, Research and Development, RMA, Kansas City, Missouri.

A "Report on New System," required by 5 U.S.C. 552a(r), as implemented by OMB Circular A–130, was sent to the Chairman, Committee on Governmental Affairs, United States Senate, the Chairman, Committee on Government Reform, U.S. House of Representatives, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on March 21, 2003.

Signed at Washington, DC, on March 21, 2003.

Ann M. Veneman,
Secretary of Agriculture.

USDA/FCIC–11

SYSTEM NAME:

Loss Adjuster,

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Kansas City Office, Federal Crop Insurance Corporation, Risk Management Agency, 6501 Beacon Drive, Stop 0814, Kansas City, Missouri 64133–4676 and regional offices for the Federal Crop Insurance Corporation. Addresses of the regional offices may be obtained from the Deputy Administrator, Insurance Services, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, SW, Stop 0805, room 6709–S, Washington, DC 20250–0803.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system consists of information on any individual who is under contract with or employed by a private insurance company reinsured by FCIC and who is authorized to perform loss adjustment and related activities under the laws of the State and the Standard Reinsurance Agreement.

Categories of Records in the System:

The system consists of standardized records containing identifying information on individuals such as name, social security number, loss adjuster code, the State, county and private insurance company that insures the policy for which the loss adjustment activities are performed, and the individual policy number, State and county, private insurance company, amount of premium collected, and amount of indemnity paid for all applicable losses adjusted by the loss adjuster and any information relating to disqualification, suspension, debarment, and any other ineligibility.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

Records contained in this system may be used as follows:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute or by rule, regulation or order issued pursuant thereto.

(2) Disclosure to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before a court, magistrate, or administrative tribunal, of any record within the system that constitutes evidence in that proceeding, or which is sought in the course of discovery, to the extent that FCIC determines that the records sought are relevant to the proceeding.

(3) Disclosure to a congressional office from the record of an individual in response to any inquiry from the congressional office made at the request of that individual.

(4) Disclosure to private insurance companies to monitor loss adjuster activity, performance, and loss histories and take such corrective action as necessary.

(5) Disclosure to contractors or other Federal agencies to conduct research and analysis to identify patterns, trends, anomalies, instances and relationships of private insurance companies, agents, loss adjusters and policyholders that may be indicative of fraud, waste, and abuse.

(6) Disclosure to private insurance companies, contractors, and other applicable Federal agencies to determine whether information has been accurately provided to FCIC and the private insurance companies and to determine compliance with program requirements.

(7) Disclosure to private insurance companies, contractors, cooperators, partners of FCIC, and other Federal agencies for any purpose relating to the sale, service, administration, analysis, or evaluation of the Federal crop insurance program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically, on computer printouts and in the file folders at the Kansas City Office.

RETRIEVABILITY:

Records may be indexed and retrieved by name, social security number, and loss adjuster code.

SAFEGUARDS:

Records are accessible only to authorized personnel, on computer printouts and in the file folders at the Kansas City Office. The electronic records are controlled by password protection and the computer network is protected by means of a firewall.

RETENTION AND DISPOSAL:

Electronic records are maintained indefinitely. Hard copy records are maintained until expiration of the record retention period established by the National Archivist.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Actuarial Division, Risk Management Agency, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0814, Kansas City, Missouri 64133–4676. Telephone: (816) 926–6487.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the Kansas City Office. The request for information should contain the individual's name, address and social security number. Before information about any record is released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

An individual may obtain information as to the procedures for gaining access to a record in the system, which pertains to such individual, by submitting a written request to the Privacy Act Officer, The Program Support Staff, Room 6620–SB, AG Stop 0821, 1400 Independence Avenue, SW., Washington, DC 20250–0821. The envelope and letters should be marked "Privacy Act Request." A request for information should contain: Name, address, ZIP code, tax identification number social security number, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Procedures for contesting records are the same as the procedures for record access. Include the reason for contesting the record and the proposed amendment to the information with supporting documentation to show how the record is inaccurate.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from the insurance company due to financial arrangement with FCIC (*i.e.* Standard Reinsurance Agreement), or from other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–7630 Filed 3–28–03; 8:45 am]
BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Form FNS–471, Coupon Account and Destruction Report

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed revision of a currently approved information collection contained in Form FNS–471, Coupon Account and Destruction Report.

DATES: Written comments must be submitted on or before May 30, 2003.

ADDRESSES: Send comments and requests for copies of this information collection to: Lizbeth Silbermann, Chief, Electronic Benefits Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Lizbeth Silbermann, Chief, Electronic Benefits Transfer Branch, (703) 305–2517..

SUPPLEMENTARY INFORMATION:

Title: Coupon Account and Destruction Report.

OMB Number: 0584–0053.

Form Number: FNS–471.

Expiration Date: 03/31/2003.

Type of Request: Revision of a currently approved collection

Abstract: Section 7(d) of the Food Stamp Act of 1977, (7 U.S.C. 2016(d)), requires that State agencies determine and monitor food stamp coupon inventories. Section 7(f) requires that the States are strictly liable for all coupon losses except when the coupons are sent through the mail. The Food Stamp Program regulations at 7 CFR 274.7(f)–(h) require State agencies to properly dispose of certain coupons received at issuance, claims collection, inventory, and bulk storage points. These are destroyed within 30 days after the end of the month in which the coupons are received if the coupons are not suitable for a return to inventories. These include mutilated coupons, improperly manufactured coupons, or old-series coupons being exchanged for current series coupons. Coupons may be returned to local offices if found by the public, returned by recipients as payment on claims, or returned for other reasons. These coupons will likely be destroyed rather than returned to inventories and the FNS–471 is the document used to account for amounts destroyed..

Food Stamp Program coupons are Federal obligations and must be accounted for by denomination and value whether loose or in book form. The FNS–471, Coupon Account and Destruction Report, is completed by staff in local offices and sent to destruction points where the destruction point staff sign the form certifying destruction has occurred. A signed copy is returned to the originating local office. The FNS–471 is attached as documentation to other monthly coupon accountability reports.

Estimate of Burden

The proposed revision to the information collection burden for the FNS–471 reflects a reduction because of the legislated change from paper coupon issuance to electronic benefits transfer (EBT) issuance systems. Currently, just over 90 percent of Food Stamp Program benefits are issued using EBT systems. This leaves a small and declining portion in the form of paper coupons. Coupon issuance declines as State agencies implement Electronic Benefits Transfer (EBT) systems and eliminate coupons. Based on State EBT implementation schedules, there should be no coupon issuance by January 2005. In Fiscal Year 2002, the amount of coupons issued was $2.59 billion, down from $6.2 billion in Fiscal Year 1999 when this collection burden was last renewed. This represents a reduction of about 58 percent. The number of respondents is being reduced using the same percentage from 9,276 to 3,896 respondents. The estimated time per response is 7 minutes to complete the form and the forms are used monthly. The resulting burden hours are 5,454 hours annually.

Affected Public: State and local government employees and recipients.

Estimated Number of Respondents: 3,896.

Estimated Number of Responses per Respondent: 12.

Estimated Time per Response: 7 minutes.

Estimated Total Annual Burden: 5,454 hours annually.

Dated: March 25, 2003.

George A. Braley,

Associate Administrator, Food and Nutrition Service.

[FR Doc. 03–7608 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on April 10, 2003, at the Lake Tahoe Basin Management Unit, Forest Service Office, 870 Emerald Bay Rd., Suite 1, South Lake Tahoe, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held April 10, 2003 beginning at 8:30 a.m. and ending at 10:30 a.m.

ADDRESSES: The meeting will be held at the Lake Tahoe Basin Management Unit, Forest Service Office, 870 Emerald Bay Rd., South Lake Tahoe, CA 96150.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service Office, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committee. Items to be covered on the agenda include: Recommendations on the USFS Report to Congress on Urban Intermix Parcel Acquisition and Management in the Lake Tahoe Basin, and public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: March 24, 2003.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 03–7555 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

National Tree-Marking Paint Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Tree-marking Paint Committee will meet in Manchester, New Hampshire, on May 6–8, 2003. The purpose of the meeting is to discuss activities, improvements, and concerns related to the handling and use of tree-marking paint by personnel of the Forest Service and the Department of the Interior Bureau of Land Management.

DATES: The meeting will be held May 6–8, 2003, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Best Western Executive Court Inn, 13500 South Willow Street, Manchester, New Hampshire 03109. Written comments may be mailed before or after the meeting until June 8, 2003, to Bob Monk, Chair, National Tree-marking Paint Committee, Forest Service, USDA, San Dimas Technology and Development Center, 444 East Bonita Avenue, San Dimas, California 91773, or sent via e-mail to: *rmonk@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Bob Monk, Project Leader, San Dimas Technology and Development Center, Forest Service, USDA, (909) 599–1267, extension 267; e-mail: *rmonk@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The National Tree-marking Paint Committee comprises representatives from the Forest Service national headquarters, each of the nine Forest Service Regions, the Forest Products Laboratory, the Forest Service San Dimas Technology and Development Center, and the Bureau of Land Management. The General Services Administration and the National Institute for Occupational Safety and Health are ad hoc members and provide technical advice to the committee.

A field trip will be held on May 6 and is designed to supplement information related to tree-marking paint. This trip is open to any member of the public participating in the public meeting on May 7–8. However, transportation is provided only for committee members.

The main session of the meeting, which is open to public attendance, will be held on May 7–8.

Closed Sessions

While certain segments of this meeting are open to the public, there will be two closed sessions during the meeting. The first closed session is planned for approximately 9 a.m. to 11 a.m. on May 7. This session is reserved for individual paint manufacturers to present products and information about tree-marking paint for consideration in future testing and use by the agency. Paint manufacturers also may provide comments on tree-marking paint specifications or other requirements. This portion of the meeting is open only to paint manufacturers, the committee, and committee staff to ensure that trade secrets will not be disclosed to other paint manufacturers or to the public. Paint manufacturers wishing to make presentations to the National Tree-marking Paint Committee during the closed session should contact the Chair at the telephone number listed under **FOR FURTHER INFORMATION CONTACT.** The second closed session is planned for approximately 1 p.m. to 4 p.m. on May 8. This session is reserved for Federal Government employees only.

Any person with special access needs should contact the Chair to make those accommodations. Space for individuals who are not members of the National Tree-marking Paint Committee is limited and will be available to the public on a first-come, first-served basis.

Dated: March 24, 2003.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. 03–7684 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Idaho Resource Advisory Committee; Caribou-Targhee National Forest, Idaho Falls, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Caribou-Targhee National Forests' Eastern Idaho Resource Advisory Committee will meet Wednesday, April 30, 2003 in Idaho Falls for a business meeting. The meeting is open to the public.

DATES: The business meeting will be held on April 30, 2003 from 9 a.m. to 3 p.m.

ADDRESSES: The meeting location is the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Jerry Reese, Caribou-Targhee National Forest Supervisor and Desiganted Federal Officer, at (208) 524–7500.

SUPPLEMENTARY INFORMATION: The business meeting on April 30, 2003, begins at 9 a.m. at the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho. Agenda topics will include presentations from project proposals and the resource advisory committee making final funding requests.

Dated: March 24, 2003.

Jerry B. Reese,

Caribou-Targhee Forest Supervisor.

[FR Doc. 03–7593 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet Thursday, April 17, 2003 in the Forest Supervisor's Office of the Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue West, Mountlake Terrace, WA 98043. The meeting, which is scheduled from 9 a.m. until 12 noon, will involve participation of some advisory committee members by conference telephone. Agenda items to be covered during the meeting: (1) Discussion and agreement on a committee process for 2004 Title II project review and prioritization and (2) identification of a May meeting date for 2004 Title II project evaluation.

All South Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The South Mt. Baker-Snoqualmie Resource Advisory Committee advises King and Pierce Counties on projects, reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars. The South Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Penny Sundblad, Management Specialist, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 321).

Dated: March 25, 2003.

John Phipps,

Designated Federal Official.

[FR Doc. 03–7594 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet for a business meeting.

DATES: Wednesday, April 16, 2003, beginning at 10:30 a.m.

ADDRESSES: The meeting will be held at the Idaho Counties Risk Management Program (ICRMP) building, 3100 South Vista Ave., Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Randy Swick, Designated Federal Officer, at (208) 634–0401 or electronically at *rswick@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include review and approval of project proposals, and an open public forum. The meeting is open to the public.

Dated: March 25, 2003.

Mark J. Madrid,

Forest Supervisor, Payette National Forest.

[FR Doc. 03–7597 Filed 3–28–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Census Bureau

2003 Company Organization Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing efforts to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 30, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Paul Hanczaryk, Bureau of the Census, Room 2747, Federal Building 3, Washington, DC 20233–6100; telephone (301) 763–4058.

SUPPLEMENTARY INFORMATION:

Abstract

The Census Bureau conducts the annual Company Organization Survey (COS) in order to update and maintain a central, multipurpose Business Register (BR), formerly known as the Standard Statistical Establishment List (SSEL). In particular, the COS supplies critical information on the composition, organizational structure, and operating characteristics of multi-establishment companies.

The BR serves two fundamental purposes:

First and most important, it provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. Essential for this purpose is the BR's ability to identify all known United States business establishments and their parent companies. Further, the BR must accurately record basic business attributes needed to control sampling and enumeration. These attributes include industrial and geographic classifications, and contact information (for example, name and address).

Second, it provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. The CBP reports present data on number of establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, the District of Columbia, Puerto Rico, counties, and county-equivalents. No other annual or more frequent series of industry statistics provides comparable detail, particularly for small geographic areas.

II. Method of Collection

The Census Bureau will conduct the 2003 COS in the same manner as the 2001 COS. (In 2002 the COS was conducted in conjunction with the 2002 Economic Census to minimize response burden). These collections will direct inquiries to approximately 80,000 multi-establishment companies, which operate over 1.1 million establishments. This panel will be drawn from the BR universe of nearly 200,000 multi-establishment companies, which operate 1.6 million establishments.

The mailing list for the 2003 COS will include a certainty component, consisting of all multi-establishment companies with 50 or more employees, and those multi-establishment companies with administrative record values that indicate organizational changes. A non-certainty component will be drawn from the remaining multi-establishment companies based on employment size.

For 2003, electronic reporting will be available to all COS respondents. Companies will receive and return responses by secure Internet transmission. Companies that cannot use the Internet will receive a CD–ROM containing their electronic data. All respondents will be allowed to mail the data via diskette or CD–ROM or submit their response data via the Internet.

The instrument will include inquiries on ownership or control by a domestic parent, ownership or control by a foreign parent, and ownership of foreign affiliates. Further, the instrument will list an inventory of establishments belonging to the company and its subsidiaries, and will request updates to these inventories, including additions, deletions, and changes to information on EIN, name and address, industrial classification, payroll, end-of-year operating status, mid-March employment, first quarter payroll, and annual payroll.

Additionally, the Census Bureau will ask certain questions in the 2003 COS in order to enhance content. We will include questions on the number of leased employees working in the establishments of the company and questions on research and development activities performed by the company.

III. Data

OMB Number: 0607–0444.
Form Number: NC–99001.
Type of Review: Regular submission.
Affected Public: Businesses or other for-profit, not-for-profit institutions.
Estimated Number of Respondents: 80,000 enterprises.
Estimated Time Per Response: 1.76 hours.
Estimated Total Annual Burden Hours: 141,000.
Estimated Total Annual Cost: Included in the total annual cost of the BR, which is estimated to be $10.3 million for fiscal year 2003.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13 of United States Code, Sections 182, 195, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 25, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–7540 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1271]

Approval for Expansion of Foreign-Trade Zone 84; Houston, TX, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Port of Houston Authority, grantee of Foreign-Trade Zone 84, submitted an application to the Board for authority to expand FTZ 84 to include a site at the Williams Terminals Holdings, L.P., petroleum products terminal (Site 15), located near Galena Park (Harris County), Texas, within the U.S. Customs Service Houston port of entry (FTZ Docket 28–2002; filed June 25, 2002), and,

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 44172, July 1, 2002), the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 84 is approved, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 21st day of March, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–7689 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–830]

Notice of Initiation of Antidumping Duty Investigation: Allura Red from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay at (202) 482–0780, or Adina Teodorescu at (202) 482–4052; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigation

The Petition

On March 4, 2003, the Department of Commerce (the Department) received a petition filed in proper form by Sensient Technologies Corporation (petitioner). *See Allura Red from India: Petition for the Imposition of Antidumping and Countervailing Duties* (*Petition*). The Department received information supplementing the petition on March 17, 2003, and March 19, 2003. *See Response to the Department's Supplemental Questions Regarding the Antidumping and Injury Portions of the Petition Regarding Allura Red from India* (March 17, 2003) (*AD/Injury Supplemental #1*); *Response to the Department's Supplemental Questions Regarding the Antidumping and Injury Portions of the Petition Regarding Allura Red from India* (March 19, 2003) (*AD/Injury Supplemental #2*).

In accordance with section 732(b) of the Act, petitioner alleges that imports of Allura Red from India are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening material injury to, an industry in the United States.

The Department finds that petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping and countervailing duty investigations that it is requesting the Department to initiate. *See Determination of Industry Support for the Petition, below.*

Period of Investigation

In accordance with 19 CFR 351.204(b)(1), the anticipated period of investigation (POI) is January 1, 2002, through December 31, 2002.

Scope of Investigation

This investigation covers Allura Red coloring, also known as Food, Drug and Cosmetic (FD&C) Red No. 40, defined as synthetic red coloring containing not less than 85 percent of the disodium salt of 6-hydroxy-5-{(2-methoxy-5-methyl-4-sulfophenyl)azo}-2-naphthalenesulfonic acid, whether or not certified for human consumption at the time of entry into the United States. The product definition covers all forms and variations of Allura Red, such as powders, press cakes, extrudates, liquid, or granules, but excludes lake pigments formed from Allura Red. This investigation does not cover colors of animal, vegetable, or mineral origin, also known as "natural colors."

Allura Red is currently classifiable in the Harmonized Tariff Schedule United States (HTSUS) under subheading 3204.12.5000, a basket category. The tariff classification is provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

As discussed in the preamble to the Department's regulations, we are setting aside a time period for parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323* (May 19, 1997). The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. *See* section 732(c)(4)(A). Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The United States International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to their separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this petition, petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Thus, based on our analysis of the information presented to the Department by petitioner, we have determined that there is a single domestic like product, which is defined in the *Scope of Investigation* section above, and have analyzed industry support in terms of this domestic like product.

Finally, the Department has determined that, pursuant to section 732(c)(4)(A) of the Act, the petition contains adequate evidence of industry support and, therefore, polling is unnecessary. *See Antidumping Investigation Initiation Checklist: Allura Red from India*, Industry Support section, March 24, 2003 (*AD Initiation Checklist*), on file in the Central Records Unit, Room B-099 of the main Department of Commerce building.

We determine, based on information provided in the petition, that petitioner has demonstrated industry support representing over 50 percent of total production of the domestic like product, consisting of petitioner and another U.S. producer of Allura Red, Noveon, Inc. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) are also met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See AD Initiation Checklist.*

United States Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department has based its decision to initiate this investigation.

United States Price

Petitioner established U.S. price based on constructed export price (CEP) and export price (EP). For its CEP allegations, petitioner used actual and estimated prices of Allura Red from an Indian producer, through its U.S. affiliate, to unaffiliated U.S. purchasers. In its March 17, 2003, and March 19, 2003, supplemental submissions, petitioner calculated CEP for three actual prices reflecting Free on Board (FOB) warehouse sales of the subject merchandise. *See AD/Injury Supplemental #1* at 1–4 and Attachment B; *AD/Injury Supplemental #2* at 4 and Attachment A. Petitioner also calculated CEP for several prices which were estimated based on the circumstances of lost sales known to petitioner. For each one of these prices, petitioner deducted movement expenses, FDA certification fees, duties, imputed credit, selling expenses, and inventory carrying cost. Since the actual sale prices are sufficient for calculating U.S. price for purposes of initiation, it is not necessary at this time to address whether it is appropriate to include margins based on estimated prices resulting from lost sales.

For EP prices, petitioner calculated U.S. price based on Indian export statistics. Petitioners reported that the HTSUS for Allura Red is in a basket category. Based on our research, we requested clarification regarding the Indian export statistics and whether they are specific to Allura Red, but were unable to determine that the export statistics are specific to the merchandise for which petitioner is alleging dumping. *See AD/Injury Supplemental #1* at 5; *AD/Injury Supplemental #2* at 1–2. Further, petitioner has stated that all imports of the subject merchandise may have been CEP transactions, as it is not aware of any specific EP sales transactions. *See AD/Injury Supplemental #2* at 2. Since questions remain with regard to the EP provided by petitioner and since the actual sale prices provided in the petition are sufficient for calculating U.S. price for purposes of initiation, it is not necessary at this time to address whether it is appropriate to include margins based on EP.

Normal Value

With respect to normal value (NV), petitioner provided a home market price from a domestic price list from Roha Dyechem Pvt., Ltd., an Indian producer of Allura Red. To calculate the NV, petitioner deducted a quantity discount that is noted on the price list. In addition, petitioner adjusted the home market price for imputed credit by deducting home market credit expenses. Petitioner also deducted home market indirect selling expenses as a CEP offset to NV. Finally, for comparison to CEP, petitioner converted the net home market price to U.S. dollars based on the average Federal Reserve exchange rate for the POI.

We are initiating this investigation based on actual U.S. prices of Allura Red from India obtained by petitioners. Based on the comparison of actual U.S. prices to NV, the estimated dumping margins range from 137.69 percent to 226.21 percent. To the extent necessary, we will consider the appropriateness of petitioner's alternative bases for determining U.S. price during the course of this proceeding. Should the need arise to use any of this information as facts available, under section 776 of the Act, in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Fair Value Comparisons

Based on the data provided by petitioner, there is reason to believe that imports of Allura Red from India are being, or are likely to be, sold at less than fair value. See Petition.

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or threatened with material injury, by reason of imports from India of the subject merchandise sold at less than NV. Petitioner contends that the industry's injured condition is evident in the reduced levels of production and capacity utilization, decline in profits, decline in research and development, decreased U.S. market share, lost sales and revenue, and price suppression and depression. The allegations of injury and causation are supported by relevant evidence including lost sales and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See AD Initiation Checklist.*

Initiation of Antidumping Investigation

Based on our examination of the petition on Allura Red, and petitioner's responses to our requests for supplemental information clarifying the petition, we have found that the petition meets the requirements of section 732 of the Act. *See AD Initiation Checklist.* Therefore, we are initiating an antidumping duty investigation to determine whether imports of Allura Red from India are being, or are likely to be, sold in the United States at less than fair value. Unless the deadline is extended, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of India. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

International Trade Commission Notification

Pursuant to section 732(d) of the Act, we have notified the ITC of our initiation.

Preliminary Determination by the ITC

The ITC will determine, no later than April 18, 2003, whether there is a reasonable indication that imports of Allura Red from India are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: March 24, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–7686 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Department of Agriculture—Albany, CA, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–007. *Applicant:* U.S. Department of Agriculture, Albany, CA 94710. *Instrument:* Electron Microscope, Model Tecnai G² TWIN, G² Upgrade, and Accessories. *Manufacturer:* FEI Company, The Netherlands. *Intended Use: See* notice at 68 FR 9984, March 3, 2003. *Order Date:* September 27, 2002.

Docket Number: 03–008. *Applicant:* The Rockefeller University, New York, NY 10021. *Instrument:* Electron Microscope, Model Tecnai G² 12 BioTWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 68 FR 9984, March 3, 2003. *Order Date:* February 22, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–7688 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–831]

Notice of Initiation of Countervailing Duty Investigation: Allura Red from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Sean Carey at (202) 482–3964, or Adina Teodorescu at (202) 482–4052; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigation

The Petition

On March 4, 2003, the Department of Commerce (the Department) received a petition filed in proper form by Sensient

[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefare from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

Technologies Corporation (petitioner). *See Allura Red from India: Petition for the Imposition of Antidumping and Countervailing Duties (Petition).* The Department received information supplementing the petition, on March 17, March 18, and March 19, 2003. *See Response to the Department's Supplemental Questions Regarding the Antidumping and Injury Portions of the Petition Regarding Allura Red from India* (March 17, 2003) *(AD/Injury Supplemental #1); Response to Department's Supplemental Questions Regarding the Subsidy Portion of the Petition Regarding Allura Red from India* (March 18, 2003) *(CVD Supplemental); Response to the Department's Supplemental Questions Regarding the Antidumping and Injury Portions of the Petition Regarding Allura Red from India* (March 19, 2003) *(AD/Injury Supplemental #2).*

In accordance with section 702(b)(1) of the Act, petitioner alleges that manufacturers, producers, or exporters of Allura Red in India receive countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping and countervailing duty investigations that it is requesting the Department to initiate. *See Determination of Industry Support for the Petition*, below.

Period of Investigation

In accordance with 19 CFR 351.204 (b)(2), the anticipated period of investigation (POI) is January 1, 2002, through December 31, 2002.

Scope of Investigation

This investigation covers Allura Red coloring, also known as Food, Drug and Cosmetic (FD&C) Red No. 40, defined as synthetic red coloring containing not less than 85 percent of the disodium salt of 6-hydroxy-5-{(2-methoxy-5-methyl-4-sulfophenyl)azo}-2-naphthalenesulfonic acid, whether or not certified for human consumption at the time of entry into the United States. The product definition covers all forms and variations of Allura Red, such as powders, press cakes, extrudates, liquid, or granules, but excludes lake pigments formed from Allura Red. This investigation does not cover colors of animal, vegetable, or mineral origin, also known as "natural colors."

Allura Red is currently classifiable in the Harmonized Tariff Schedule United States (HTSUS) under subheading 3204.12.5000, a basket category. The tariff classification is provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

As discussed in the preamble to the Department's regulations, we are setting aside a time period for parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323* (May 19, 1997). The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Consultations

In accordance with Article 13.1 of the Agreement on Subsidies and Countervailing Measures and section 702(b)(4)(A)(ii) of the Act, on March 5, 2003, we invited the Government of India (GOI) to hold consultations with us regarding the countervailing duty petition. The GOI declined our offer for consultations. *See Memorandum to the File from Dana S. Mermelstein: Allura Red from India: Petition for the Imposition of Countervailing Duties; Contacts with the Indian Embassy Regarding Consultations*, dated March 24, 2003.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. *See* section 702(c)(4)(A). Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The United States International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to their separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this petition, petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Thus, based on our analysis of the information presented to the Department by petitioner, and the information obtained and received independently by the Department, we have determined that there is a single domestic like product, which is defined in the *Scope of Investigation* section above, and have analyzed industry support in terms of this domestic like product.

Finally, the Department has determined that, pursuant to section 702(c)(4)(A) of the Act, the petition contains adequate evidence of industry support and, therefore, polling is unnecessary. *See Countervailing Duties Investigation Initiation Checklist: Allura Red from India*, Industry Support section, March 24, 2003 (*CVD Initiation Checklist*), on file in the Central Records Unit, room B–099 of the main Department of Commerce building.

We determine, based on information provided in the petition, that petitioner has demonstrated industry support representing over 50 percent of total production of the domestic like product, consisting of petitioner and another U.S. producer of Allura Red, Noveon, Inc. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 702(c)(4)(A)(ii) are also met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See CVD Initiation Checklist.*

Injury Test

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

We are initiating an investigation of the following programs alleged in the petition to have provided countervailable subsidies to manufacturers, producers and exporters of the subject merchandise in India (a full description of each program is provided in the *CVD Initiation Checklist*):

A. Government of India (GOI) Programs

1. Pre-Shipment and Post-Shipment Export Financing
2. Income Tax Exemption Scheme
3. Advance Licenses
4. GOI Loan Guarantees
5. Export Promotion Capital Goods Scheme (EPCGS)
6. Market Access Initiative (MAI)
7. The Duty Entitlement Passbook Scheme (DEPB)/ Post-Export Credits
8. Exemption of Export Credit from Interest Taxes
9. Re-discounting of Export Bills Abroad (EBR)
10. Special Imprest Licenses

B. Programs in the State of Maharashtra

1. Sales Tax Incentives
2. Capital Incentive Scheme
3. Electricity Duty Exemption Scheme
4. Waiving of Loan Interest by SICOM Limited

C. Program in the State of Uttar Pradesh

Capital Incentive Scheme

We are not including in our investigation the following programs alleged to be benefitting producers and exporters of the subject merchandise in India. The full discussion of our bases for not initiating on these programs is set forth in the *CVD Initiation Checklist:*

A. Government of India (GOI) Programs

1. Special Import Licenses (SILs)
2. Export Processing Zones/Export-Oriented Units Program
3. Income Tax Exemption Scheme (Sections 10A and 10B)
4. Duty Drawback on Excise Taxes
5. Import Duty Exemptions on Capital Equipment Purchases
6. Programs Operated by the Small Industries Development Bank of India
7. Supply of Raw Materials at Subsidized Prices

B. Program in the State of Gujarat

Infrastructure Assistance Scheme

C. Program in the State of Orissa

Subsidies Provided by the State of Orissa

D. Program in the State of Madhya Pradesh

Regional Benefits to New Facilities in Madhya Pradesh

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or threatened with material injury, by reason of subsidized imports from India of the subject merchandise. Petitioner contends that the industry's injured condition is evident in the reduced levels of production and capacity utilization, decline in profits, decline in research and development, decreased U.S. market share, lost sales and revenue, and price suppression and depression. The allegations of injury and causation are supported by relevant evidence including lost sales and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See CVD Initiation Checklist.*

Initiation of Countervailing Duty Investigation

Based on our examination of the petition on Allura Red and petitioner's responses to our requests for supplemental information clarifying the petition, we have found that the petition meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of Allura Red from India receive countervailable subsidies. Unless the deadline is extended, we will make our preliminary determination no later than 65 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of India. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

International Trade Commission Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of our initiation.

Preliminary Determination by the ITC

The ITC will determine, no later than April 18, 2003, whether there is a reasonable indication that imports of Allura Red from India are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination: Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: March 24, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–7687 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031903B]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its Coral Reef Ecosystem Plan Team (CREPT), Crustacean Plan Team (CPT) and its Precious Coral Plan Team (PCPT) in Honolulu, HI.

DATES: The meeting of the CREPT will be held on April 16, 2003 through April 17, 2003, from 8:30 a.m. to 5 p.m., each day. The CREPT, CPT and PCPT will hold a joint meeting on April 18, 2003, from 8:30 a.m. to 5 p.m.

ADDRESSES: All meetings will be held at the Western Pacific Fishery Management Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The CREPT will meet on April 16 and 17, 2003, to discuss the following agenda items:

Wednesday, 16 April 8:30 a.m.

1. Introduction
2. Status of Coral Reef Ecosystem Fishery Management Plan
3. Plan Implementation
4. Development of Annual Reports for Coral Reef Ecosystem Fisheries of the Western Pacific Region
   a. Content of Annual Reports
   b. Review of Fishery Performance Data
   c. Application of MSY Control Rule to the Coral Reef Ecosystem

Thursday, 17 April 8:30 a.m.

5. Inclusion of other coral reef resource information obtained from fishery-dependant and fishery independent sources
   a. Assessment of Essential Fish Habitat (EFH) condition
   b. Ecosystem-level impacts associated with federally regulated fishing activities
   c. Qualitative assessment and ranking of threats to coral reef ecosystems
6. State and territorial management actions
7. Pacific Coral Reef Fisheries Management Workshops
8. Coral Reef Fish Fisheries Stock Assessment Workshop
9. Ecosystem-based Fisheries Management Workshop
10. Other Business

Friday 18 April 8:30 a.m.

The joint CREPT, CPT and PCPT will meet on April 18, 2003 and discuss the following agenda items:

1. Introductions
2. NWHI Sanctuary Designation Process
3. Northwestern Hawaiian Island (NWHI)Science Workshop and Science Symposium
4. 2003 Mariana Archipelago Research Cruise
5. NWHI and Main Hawaiian Island Lobster Research
6. Impacts of invasive soft corals on coral reef ecosystem habitats
7. Other Business

The order in which the agenda items are addressed may change. The Plan Teams will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before the Plan Teams for discussion, those issues may not be the subject of formal action during these meetings. Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: March 25, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–7649 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031903C]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a its Bottomfish Plan Team (BPT) and its Pelagics Plan Team (PPT) in Honolulu, HI.

DATES: The meeting of the BPT will be held on April 22 and 23, 2003 and PPT meeting on April 24 and 25, 2003. Both meetings will be held from 8:30 a.m. to 5 p.m. each day.

ADDRESSES: Both meetings will be held at the Council Office Conference Room, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813; telephone: 808–522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The BPT will meet on April 22 and 23, 2003, at the Council Conference Room to discuss the following agenda items:

Tuesday, April 22, 2003, 8:30 a.m.

1. Introduction
2. Annual Report review
   a. Review 2002 Annual Report modules and recommendations
   b. 2002 Annual Report region-wide recommendations
3. Maximum Sustainable Yield Overfishing Definition
   a. Status of stocks based on new definitions
   b. Hapuupuu genetic research
   c. Main Hawaiian Islands area closure monitoring
   d. Rebuilding options for "overfished" stocks

Wednesday, 23 April 8:30 a.m.

4. 2003 Marianas Archipelago Research Cruise
   a. Mariana Islands Research Cruise plan
   b. Guam, Division of Aquatics and Wildlife Resources initiatives
   c. Commonwealth of Northern Mariana Islands Division of Fish and Wildlife initiatives
   d. Council initiatives
   e. Cooperative research

5. Guam offshore fishery management Draft amendment
6. Northwestern Hawaiian Islands (NWHI) Bottomfish
   a. Mau Zone Community Demonstration Projects Program entry criteria
   b. National Ocean Service Sanctuary Designation Process
7. Fishing impacts to Habitats
8. Observer and Monitoring Program NWHI bottomfish observer coverage
9. Other Business

The PPT will meet on April 24 and 25, 2003, at the Council Conference Room to discuss the following agenda items:

1. Introduction
2. Annual Report review
   a. Review 2002 Annual Report modules and recommendations
   b. 2002 Annual Report region-wide recommendations
3. NMFS Honolulu longline fishing experiments
4. NMFS Turtle sensory physiology workshop
5. Problems and issues from undocumented deployment of fish aggregating devices (FADs) around Hawaii
6. Standardizing longline catch rates for differences in depth and habitat preferences
7. Stock assessments of Pelagic Management Unit Species (PMUS) and overfishing/maximum sustainable yield (MSY) control rules
8. MULTIFAN-CL sensitivity analysis
9. International pelagic fisheries management
10. Other business

The order in which the agenda items are addressed may change. The BPT will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: March 25, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–7651 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Public Key Infrastructure (PKI) Certificate Action Form.

Form Number(s): PTO–2042.

Agency Approval Number: 0651–0045.

Type of Request: Extension of a currently approved collection.

Burden: 4,000 hours annually.

Number of Respondents: 8,000 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 30 minutes (0.5 hours) to read the instructions and Subscriber Agreement, gather the necessary information, prepare the Certificate Action Form, and submit the completed request.

Needs and Uses: In support of the Government Paperwork Elimination Act and its own electronic filing initiatives, the USPTO has implemented Public Key Infrastructure (PKI) technology to support secure electronic commerce between the USPTO and its customers. Customers may submit a request to the USPTO for a digital certificate, which allows the customer to use the encryption keys necessary for electronic identity authentication and secure transactions with the USPTO. The public uses this collection to request a digital certificate, the revocation of a certificate, or the recovery of a lost encryption key. The USPTO uses this collection to process certificate requests and to provide customers with the authorization codes to use the cryptographic software.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal government, and State, local, or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, by phone at (703) 308–7400, or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before April 30, 2003, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: March 24, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–7553 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit and Sublimit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Belarus

March 25, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit and sublimit for Category 622 and sub-Category 622-L, respectively, are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 68 FR 4181, published on January 28, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 25, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 21, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain man-made fiber textile products, produced or manufactured in Belarus and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on March 31, 2003, you are directed to increase the limit and sublimit for the following category and sub-category, as provided for under the agreement between the Governments of the United States and Belarus dated January 10, 2003:

Category	Twelve-month restraint limit [1]
622	10,101,000 square meters of which not more than 1,665,000 square meters shall be in Category 622-L [2].

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 622-L: only HTS numbers 7019.51.9010, 7019.52.4010, 7019.52.9010, 7019.59.4010, and 7019.59.9010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–7622 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the African Growth and Opportunity Act (AGOA)

March 25, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Determination.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that handloomed fabric and handmade articles made from such handloomed fabric that are produced in and exported from Swaziland qualify for preferential treatment under Section 112(a) of the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Swaziland with an appropriate AGOA Visa will qualify for duty-free treatment under the AGOA.

EFFECTIVE DATE: April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-2000)(AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA (66 FR 7837). The first digit of the visa number corresponds to one of 9 groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping "9" is reserved for Handmade, handloomed, or folklore articles.

In Section 2 of Executive Order 13191 of January 17, 2001, the Committee for the Implementation of Textile Agreements is authorized to "consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, or folklore articles" (66 FR 7272). Consultations were held on March 5, 2003 and CITA has now determined that handloomed fabrics and handmade articles made from such handloomed fabrics produced in and exported from Swaziland are eligible for preferential tariff treatment under section 112(a) of the AGOA. In the letter published below, CITA directs the Commissioner of Customs to allow entry of such products of Swaziland under Harmonized Tariff Schedule provision 9819.11.27, when accompanied by an appropriate export visa in Grouping "9".

James C. Leonard III,

Chairman, Committee for the Implementotion of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 25, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: The Committee for the Implementation of Textiles Agreements (CITA), pursuant to Sections 112(a) of the African Growth and Opportunity Act (Title I of Pub. L. No. 106-200) (AGOA) and Executive Order 13101 of January 17, 2001, has determined that, effective on April 14, 2003, handloomed fabric produced in Swaziland and handmade articles produced in Swaziland from such handloomed fabric shall be treated as being handloomed, handmade, or folklore articles under the AGOA, and that an export visa issued by the Government of Swaziland for Grouping "9" is a certification by the Government of Swaziland that the article is handloomed, handmade, or folklore. CITA directs you to permit duty-free entry of such articles accompanied by the appropriate visa and entered under heading 9819.11.27 of the Harmonized Tariff Schedule of the United States.

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementotion of Textile Agreements.

[FR Doc. 03–7623 Filed 3–28–03; 8:45 am]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Monday, April 7, 2003, 2:30 p.m.

LOCATION: Room 410, Bethesda Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Closed to the Public—Pursuant to 5 U.S.C. 552b(f)(1) and 16 CFR 1013.4(b)(3)(7)(9) and (10) and submitted to the **Federal Register** pursuant to 5 U.S.C. 552b(e)(3).

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–7923.

Dated: March 26, 2003.

Todd A. Stevenson,

Secretary.

[FR Doc. 03–7765 Filed 3–27–03; 11:33 am]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Proposed Extension of Project Period and Waiver

AGENCY: Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed extension of project period and waiver.

SUMMARY: The Secretary proposes to waive the requirements in Education Department General Administrative Regulations (EDGAR), at 34 CFR 75.250 and 75.261(a), that generally prohibit project periods exceeding 5 years and project extensions involving the obligation of additional Federal funds to enable the currently-funded Regional Resource Centers (RRCs) to receive funding from June 1, 2003 until May 31, 2004.

DATES: We must receive your comments on or before April 30, 2003.

ADDRESSES: Address all comments concerning this proposal to Debra Sturdivant or Marie Roane, U.S. Department of Education, 400 Maryland Avenue, SW., room 3527, Switzer Building, Washington, DC 20202–2641. If you prefer to send your comments through the Internet, use the following address:

Debra.Sturdivant@ed.gov or *Marie.Roane@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Debra Sturdivant, Telephone: (202) 205–8038, or Marie Roane, Telephone: (202) 205–8451.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed extension of project period and waiver.

During and after the comment period, you may inspect all public comments about this extension of project period and waiver in room 3727, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed extension of project period and waiver. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Background

On February 24, 1998, we published in the **Federal Register** (63 FR 9376–9378) a notice inviting applications for new awards under the Regional Resource Center Program for Fiscal Year 1998. Based on this notice, the Department made six awards of 56 months under 34 CFR 75.105(c)(3) and the Individuals with Disabilities Education Act (IDEA). Section 685 of IDEA authorizes the Secretary to support the establishment of Regional Resource Centers (RRCs). These Centers provide technical assistance and information that support States and local agencies in building capacity to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and address systemic-change goals and priorities. The grant period for the six centers ends May 31, 2003.

In order to carry out activities related to implementing an initiative of the Office of Special Education Programs (OSEP) to identify and disseminate alternative approaches to identifying children with learning disabilities, it is necessary to issue continuation awards to the existing grantees. Specifically, the current RRCs are helping to conduct a survey in each of their regions to collect information on the ways that States identify children with learning disabilities.

In particular, the Secretary plans for the RRCs to work with staff of OSEP, the Kennedy Center Research Program on Learning Accommodations for Individuals with Special Needs at Vanderbilt University, State educational agencies, regional in-state technical assistance systems and other State and local agencies to:

(1) Develop a coordinated plan for identifying sites within each RRC region using alternative approaches for identification of children with learning disabilities;

(2) Assist in efforts to provide or gather evidence of the value of more effective approaches for addressing the needs of children with learning disabilities; and

(3) Use research-based dissemination, training, and technical assistance to extend and increase effective practices in the area of learning disabilities.

The RRCs will also work with centers providing technical assistance to projects funded under the Training and Information for Parents of Children with Disabilities program to continue to foster improved collaboration on the No Child Left Behind Act of 2001 and IDEA, which will improve results for children with disabilities.

In addition, the Secretary plans for the RRCs to provide continued assistance to State educational agencies for Part B and the lead agencies for Part C in each region to support their implementation of continuous improvement and focused monitoring activities.

Reasons

There is an immediate need to provide training and information to the populations that will be targeted by these efforts. Providing continuous support to existing grantees will help ensure the success of these efforts by avoiding the possible disruption or interruption of activities resulting from a change in grantees. Waiting until after a new RRC competition to begin this important work would severely hinder the Department's efforts to address the critical needs that are now present in the regions. The current RRCs have already conducted extensive training and information activities related to State implementation of the IDEA Amendments of 1997 and are best suited to conduct this effort. We have determined that an additional period of time is needed to begin the additional technical assistance and training activities described in this notice.

Therefore, the Secretary proposes to issue continuation awards to the current grantees for twelve (12) months. A one-year time extension beginning June 1,

2003 thru May 31, 2004 is being proposed to ensure the successful completion of the projects. However, to do so, the Secretary must waive the requirements in 34 CFR 75.250 and 75.261(c)(2), which prohibit project periods exceeding 5 years and period extensions that involve the obligation of additional Federal funds. We are proposing a waiver at this time in order to give the affected grantees early notice of the availability of an additional twelve months of funding.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed waiver and extension of the project period will not have a significant economic impact on a substantial number of small entities. The only small entities that would be affected are the six RRCs.

Paperwork Reduction Act of 1995

This extension and waiver does not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other

Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.326, Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities.)

Dated: March 25, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–7690 Filed 3–28–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41775 entitled "Drilling, Completion, and Stimulation (DCS)." This solicitation is being issued to develop new drilling, completion, and stimulation technologies that will aid the nation in meeting the increasing natural gas demands of the future.

DATES: The solicitation will be available on the "Industry Interactive Procurement System" (IIPS) webpage located at *http://e-center.doe.gov* on or about March 28, 2003. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

ADDRESSES: See **FOR FURTHER INFORMATION CONTACT** caption.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah J. Boggs, Contract Specialist, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, E-mail Address: *dboggs@netl.doe.gov*, Telephone Number: 304–285–4473.

SUPPLEMENTARY INFORMATION: The "Drilling, Completion, and Stimulation Solicitation" supports the Strategic Center for Natural Gas 2020 Vision of the U.S. public enjoying benefits (affordable supply, reliable delivery, and environmental protection) from an increase in gas use. The demand for natural gas is expected to grow at a rate of 2.1 percent per year between 1999 and 2020, with the total annual gas consumption projected to increase from 22 tcf in 1999 to 34 tcf in 2020. This increase will put a great strain on the natural gas industry as most of the conventional reservoirs have already been discovered. Therefore, the gas needed to meet the increasing demands will have to come from unconventional sources, which are known to contain vast quantities of gas across large areas and throughout thick columns of strata in many of the nation's basins.

Past assessments of these unconventional resources show that thousands of trillion cubic feet of gas exists in place. However, due to the complexity, depth and lower-quality of these reservoirs, only a small percentage of this gas can be produced economically. Today's operators target areas of high natural fracture density because the extensive fracture network increases the drainage area of wells and thereby, the ultimate recovery of gas. But the majority of wells completed in unconventional reservoirs are sub-economic because a well-connected natural fracture system is the exception rather than the rule. Thus, technologies are needed to both reduce the costs of drilling, completion, and stimulation, and improve the recovery efficiency.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Morgantown, WV on March 20, 2003.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 03–7612 Filed 3–28–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–714–000, FERC Form No. 714]

Commission Collection Activities, Proposed Collection; Comment Request; Extension & Reinstatement

March 24, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No.104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by May 29, 2003.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments on the proposed collection of information may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 and should refer to Docket No. 03–714–000.

Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Rich Text Format or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic fillings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov.* Comments should not be submitted to this E-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873 and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

The information collected under the requirements of FERC Form No. 714, "Annual Electric Control and Planning Area Report" (OMB No. 1902–0140) is used by the Commission to carry out its responsibilities in implementing the statutory provisions of sections 202, 207, 210, 211–213 of the Federal Power Act (FPA), as amended (49 Stat. 838; 16 U.S.C. 791a–825r) and particularly sections 304, 309 and 311. The Commission implements Form No. 714's filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 141.51.

FERC Form No. 714 gathers basic utility operating and planning information, primarily on a control area basis, for the purpose of evaluating utility operations related to proposed mergers, interconnections, wholesale rate investigations, and wholesale market changes and trends under emerging competitive forces. Such evaluations are made to assess reliability, costs and other operating attributes.

Action: The Commission is requesting a three-year extension. Due to an administrative lapse, Form 714 was allowed to expire. The Commission seeks reinstatement of Form 714.

Burden Statement: Public reporting burden for this information collection is estimated as:

Number of Respondents Annually (1)	Number of Responses Per Respondent (2)	Average Burden (No. of Hours Per Response) (3)	Total Annual Burden (Total No. of Hours) (1) x (2) x (3)
250	1	50	12,500

Estimated cost to respondents: 12,500 hours 2,080 per year × $117,041 = $703,371. The cost per respondent = $2,813. The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than anyone particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7584 Filed 3–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–65–000]

Columbia Gas Transmission Corporation; Notice of Application

March 24, 2003.

Take notice that on March 14, 2003, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP03–65–000, pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon by sale to Columbia Natural Resources, Inc., a Texas corporation, certain natural gas pipeline facilities located in West Virginia, and the service provided through such facilities. In addition, Columbia requests that the Commission find the abandoned facilities to be gathering, and therefore exempt from the Commission's jurisdiction, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The facilities proposed for abandonment by sale is Columbia's Stafford Compressor Station. The Stafford Compressor Station consists of one 360 horsepower Ajax DPC compressor unit and appurtenances and is located in Mingo County, West Virginia. Columbia states that the facilities, constructed in the early 1980's as field gas compression, currently compress local production to pipeline pressure for delivery into Columbia's mainline system. However, Columbia states that the facilities are no longer an integral part of its transmission system and that the long-term needs of its customers will be best served through a divestiture of the facilities. Columbia does not propose the abandonment of any services as a result of the facility abandonment. Columbia proposes to relocate its existing receipt point from the suction side of the compressor station to an existing interconnection located on the discharge side of the station. Columbia notes that the facilities will be sold for their depreciated book cost at the time of closing, estimated to be $347,495.

Any questions regarding the application should be directed to Fredric J. George, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 22030–0146 at (304) 357–2359.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commissions' final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. The preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7582 Filed 3–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–364–001, et al.]

Alliant Energy Corporate Services, Inc., et al.; Electric Rate and Corporate Filings

March 24, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Alliant Energy Corporate Services, Inc.

[Docket No. ER03–364–001]

Take notice that on March 20, 2003, Alliant Energy Corporate Services, Inc., (AECS) tendered for filing with the Federal Energy Regulatory Commission (Commission), rate schedule designations required in Order No. 614, FERC Stats. & Reg. ¶ 31,096 (2000), and as conditioned in the Commission's order in Docket No. ER03–364–000 dated February 26, 2003.

AECS requests an effective date of March 1, 2003, for the filed Amendment.

AECS states that a copy of this filing has been served upon the Public Service Commission of Wisconsin, the Iowa Utilities Board, the Illinois Commerce Commission and the Minnesota Public Utilities Commission.

Comment Date: April 10, 2003.

2. Interstate Power & Light Company

[Docket No. ER03–476–001]

Take notice that on March 18, 2003, Interstate Power and Light Company (IPL), amended its request to terminate Rate Schedule FERC No. 120 with the City of Bellevue. IPL renews its request for an April 1, 2003 effective date and indicates that copies of the filing have been provided to the City of Bellevue and to the Iowa Utilities Board.

Comment Date: April 8, 2003.

3. Commonwealth Edison Company

[Docket ER03–630–000]

Take notice that on March 18, 2003, Commonwealth Edison Company (ComEd), submitted for filing with the Federal Energy Regulatory Commission (Commission) an interconnection agreement between ComEd and Grande Prairie Energy, LLC. ComEd requests an effective date for the interconnection agreement of March 18, 2003.

ComEd states that a copy of the filing was served on Grande Prairie Energy, LLC and on the Illinois Commerce Commission.

Comment Date: April 8, 2003.

4. ISO New England Inc.

[Docket No. ER03–631–000]

Take notice that on March 18, 2003, ISO New England Inc. (the ISO), filed with the Federal Energy Regulatory Commission, pursuant to Section 205 of the Federal Power Act, three Bid Mitigation Agreements between ISO New England and (1) Mirant Kendall, LLC; (2) PG&E Energy Trading—Power, L.P.; and (3) Devon Power LLC, Connecticut Jet Power LLC, Middletown Power LLC, Montville Power LLC, and Norwalk Harbor Power, LLC.

The ISO states that copies of said filing have been served upon all parties to this proceeding, upon NEPOOL Participants, and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the utility regulatory agencies of the six New England States.

Comment Date: April 8, 2003.

5. Commonwealth Edison Company

[Docket No. ER03–632–000]

Take notice that on March 18, 2003, Commonwealth Edison Company (ComEd) submitted to the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation effective February 20, 2003, for Substitute Original Service Agreement No. 609, Second Revised Tariff No. 5 with Midwest Generation, LLC.

ComEd states that notice of the proposed cancellation has been served on Midwest Generation, LLC and the Illinois Commerce Commission.

Comment Date: April 8, 2003.

6. Commonwealth Edison Company

[Docket No. ER03–633–000]

Take notice that on March 18, 2003, Commonwealth Edison Company (ComEd) submitted to the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation effective March 7, 2003, for Service Agreement No. 517, Second Revised Tariff No. 5 with Duke Energy Kankakee, LLC.

ComEd states that notice of the proposed cancellation has been served on Duke Energy Kankakee, LLC and on the Illinois Commerce Commission.

Comment Date: April 8, 2003.

7. San Diego Gas & Electric Company

[Docket No. ER03–634–000]

Take notice that on March 19, 2003, San Diego Gas & Electric Company (SDG&E) tendered for filing its First Revised Service Agreements Nos. 15 and 16 to SDG&E's FERC Electric Tariff, First Revised Volume No. 6, incorporating revisions to the Expedited Interconnection Facilities Agreement and Interconnection Agreement with CalPeak Power—El Cajon LLC (CalPeak) respectively. SDG&E states that the Revised Service Agreement No. 15 provides for the situation in which it would be determined that SDG&E's receipt of payments from CalPeak for the installation of the SDG&E interconnection facilities constitutes income to SDG&E that is subject to taxation, and further clarifies terms pertaining to creditworthiness requirements of CalPeak and the guarantor of CalPeak's financial obligations as contemplated by Section 10.22. SDG&E indicate that Revised Service Agreement No. 16 is being filed in executed form, whereas the original was filed in unexecuted form, without substantive changes.

SDG&E requests an effective date of April 27, 2002 for the Revised Service Agreements.

SDG&E states that copies of the filing have been served on CalPeak and on the California Public Utilities Commission.

Comment Date: April 9, 2003.

8. Bangor-Hydro-Electric Company

[Docket No. ER03–635–000]

Take notice that on March 19, 2003, Bangor Hydro-Electric Company (BHE) filed a Pre-Construction Agreement between BHE and Brascan Energy Marketing, Inc., (BEMI) for the BEH/Great Northern Paper Company—Millinocket 115 kV Interface Project as well as the First Amendment to the Pre-Construction Agreement. BHE requests an effective date of October 25, 2002, for the filing.

Comment Date: April 9, 2003.

9. Commonwealth Edison Company

[Docket No. ER03–636–000]

Take notice that on March 19, 2003, Commonwealth Edison Company (ComEd) submitted to the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation effective February 19, 2003, for Service Agreement No. 554, Second Revised Tariff No. 5, with Granite Power Partners II, L.P.

ComEd states that notice of the proposed cancellation has been served on Granite Power Partners II, L.P. and the Illinois Commerce Commission.

Comment Date: April 9, 2003.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–637–000]

Take notice that on March 20, 2003, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.12 of the Federal Energy Regulatory Commission's regulations, submitted for filing an Interconnection and Operating Agreement among New London Municipal Utilities and Interstate Power and Light Company, a wholly owned subsidiary of Alliant Energy Corporation.

Midwest ISO states that a copy of this filing was sent to New London Municipal Utilities and Interstate Power and Light Company, a wholly owned subsidiary of Alliant Energy Corporation.

Comment Date: April 10, 2003.

11. El Paso Electric Company

[Docket No.ER03–638–000]

Take notice that on March 20, 2003, El Paso Electric Company (EPE) tendered for filing a Transaction Agreement between EPE and Southwestern Public Service Company. EPE seeks an effective date of January 1, 2002.

Comment Date: April 10, 2003.

12. Southern California Edison Company

[Docket No. ER03–639–000]

Take notice that on March 20, 2003, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and the City of Colton (Colton).

SCE states that the purpose of the Letter Agreement is to provide an interim arrangement pursuant to which SCE will commence the engineering, design, and procurement of material and equipment for, and construction of certain facilities necessary to interconnect the Project to Colton's distribution system.

SCE also states that copies of this filing were served upon the Public Utilities Commission of the State of California and Colton.

Comment Date: April 9, 2003.

13. Mirant Las Vegas, LLC; Duke Energy Moapa, LLC; GenWest, LLC; Las Vegas Cogeneration II, LLC; Reliant Energy Bighorn, LLC

[Docket No. TX03–1–000]

Take notice that on March 17, 2003, Mirant Las Vegas, LLC, Duke Energy Moapa, LLC, GenWest, LLC, Las Vegas Cogeneration II, LLC and Reliant Energy Bighorn, LLC (collectively, Applicants) tendered for filing an application for an order directing the establishment of physical interconnection of facilities pursuant to Sections 210 and 212 of the Federal Power Act, 16 U.S.C. 824(l) and (k), and Rules 204 and 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.204 and 385.206.

Applicants request that the Commission issue an order directing the Los Angeles Department of Water and Power (LADWP), Nevada Power Company, the United States Department of the Interior, Bureau of Reclamation and the Salt River Project, as co-owners of the McCullough Substation located in southern Nevada, to establish an interconnection, on reasonable terms and conditions, between their transmission systems and the Applicants via a physical connection with the Nevada Power transmission system at the McCullough Substation, and to provide Applicants with transmission credits associated with upgrades to the McCullough Substation. The Applicants also request that the Commission consolidate this Application with proceedings in Docket Nos. ER02–1741–000 and ER02–1742–000.

Comment Date: April 16, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7583 Filed 3–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications for Surrender of Exemptions and Soliciting Comments, Motions To Intervene, and Protests

March 24, 2003.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Surrender of Conduit Exemptions.

b. *Project Nos.:* 8434–001, 9007–002, and 9008–002.

c. *Date Filed:* March 6, 2003.

d. *Applicant:* Los Angles County Department of Public Works.

e. *Names of Projects:* West Coast Basin Barrier, Dominguez Gap Barrier, and Alamitos Barrier.

f. *Location:* Pressure Reduction Stations, in the Cities of El Segundo, Carson, and Long Beach, in Los Angeles County, California.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Shem Hawes, Los Angeles County Department of Public Works, Water Resources Division, 900 South Fremont Avenue, Alhambra, CA 91803–1331, (626) 458–6189.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing motions to intervene, protests, comments:* April 25, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. *Description of Proposed Action:* The Applicant seeks to surrender the conduit exemptions and to decommission the plants because of the significantly decreased demand for imported water at the barriers and the consequent decrease in the efficiency of the plants.

P–8434 consists of: (1) A single Francis turbine-generator unit with an installed capacity of 950 kW located at the West Coast Basin Service Connection No. 28, an underground pressure reducing station vault used for the distribution of water, (2) an inlet gate valve, (3) control panel, and (4) switch gear.

P–9007 consists of: (1) A reaction type turbine-generator unit with an installed capacity of 250 kW located at the West Coast Basin Service Connection No. 37, an underground pressure reducing station vault used for the distribution of water, (2) a control panel, (3) a control valve, (4) and a switch and metering box.

P–9008 consists of: (1) A reaction type turbine-generator unit with an installed capacity of 200 kW located at the Central Basin Service Connection No.44, an underground pressure reducing station vault used for the distribution of water, (2) a control panel, (3) a control valve, (4) and a switch and metering box.

l. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7586 Filed 3–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–8–000 and ER02–2001–000]

Revised Public Utility Filing Requirements; Electric Quarterly Reports; Notice of Electric Quarterly Reports Workshop

March 24, 2003.

On April 25, 2002, the Commission issued Order No. 2001,[1] a final rule which requires public utilities to file Electric Quarterly Reports. Order 2001–C, issued December 18, 2002, instructs all public utilities to file these reports using Electric Quarterly Report Submission Software, beginning with the report due on or before January 31, 2003 (extended to February 21, 2003). In addition, the Commission has provided public access to Electric Quarterly Reports (EQR) data using the Commission's Web site at *http://www.ferc.gov* /Electric/eqr/eqr.htm. This notice announces a workshop to be held Friday, April 11, 2003, at 9:30 a.m., at FERC headquarters, 888 First Street, NW., Washington, DC.

At the workshop, Commission staff will:

- Demonstrate improvements made to the EQR Submission System which have been put in place for the first quarter 2003 filing;
- Discuss lessons learned during the first quarter filing period;
- Solicit input from interested parties on suggested improvements to the EQR Submission System and possible additions to the list of available Product Names;
- Solicit input from interested parties and data users regarding the EQR Dissemination System, discuss existing system plans and demonstrate some of the preliminary components of the EQR Dissemination System.

All interested parties are invited to attend. There is no registration fee. The workshop will be held in the Commission Meeting Room, Room 2C, and is expected to last up to four hours. In eddition, for those unable to attend in person, limited access to the workshop will be available via the Internet using WebEx at no cost to participants. (For more information on WebEx, *see* http://www.webex.com.) Instructions on registering for the workshop using WebEx will be detailed in a future Notice. Interested parties wishing to file comments may do so under the above-captioned Docket Numbers by April 28, 2003. Filings will be placed in the Federal Energy Regulatory Record Information System (FERRIS) data base which is accessible to everyone through the Commission Web site. These filings will be available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

For additional information, please contact Barbara Bourque of FERC's Office of Market Oversight & Investigations at 202–502–8338 or by e-mail, *barbara.bourque@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7587 Filed 3–28–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002); reh'g denied, Order No. 2001–A, 100 FERC ¶ 61,074, reconsideration and clarification denied, Order No.2001–B, 100 FERC ¶61,342 (2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Membership of Performance Review Board for Senior Executives (PRB)

March 24, 2003.

The Federal Energy Regulatory Commission hereby provides notice of the membership of its Performance Review Board (PRB) for the Commission's Senior Executive Service (SES) members. The function of this board is to make recommendations relating to the performance of senior executives in the Commission. This action is undertaken in accordance with Title 5, U.S.C. 4314(c)(4). The

Commission's PRB will include the following new member: William F. Hederman.

Magalie R. Salas,
Secretary.
[FR Doc. 03–7585 Filed 3–28–03; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–7475–2]

Beaches Environmental Assessment and Coastal Health Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of grants for implementation of Coastal Recreation Water Monitoring and Public Notification under the Beaches Environmental Assessment and Coastal Health Act.

SUMMARY: The Beaches Environmental Assessment and Coastal Health Act (BEACH Act) signed into law on October 10, 2000, amends the Clean Water Act (CWA), incorporating provisions to reduce the risk of illness to users of the Nation's recreational waters. The BEACH Act authorizes the U.S. Environmental Protection Agency (EPA) to award program development and implementation grants to eligible States, Territories, Tribes, and local governments to support microbiological testing and monitoring of coastal recreation waters, including the Great Lakes, that are adjacent to beaches or similar points of access used by the public. BEACH Act grants also provide support for development and implementation of programs to notify the public of the potential exposure to disease-causing microorganisms in coastal recreation waters. EPA encourages coastal States and Territories to apply for BEACH Act Grants for Program Implementation (referred to as Implementation Grants) to implement effective and comprehensive coastal recreation water monitoring and public notification programs.

DATES: Submit your application on or before June 30, 2003.

ADDRESSES: You must send your application to the appropriate Regional Grant Coordinator listed in this notice under **SUPPLEMENTARY INFORMATION** Section VII.

FOR FURTHER INFORMATION CONTACT: Charles Kovatch, 202–566–0399

SUPPLEMENTARY INFORMATION:

I. Grant Program

What Is the Statutory Authority for the Implementation Grants?

The general statutory authority for BEACH grants is section 406(b) of the CWA as amended by the BEACH Act, Public Law 106–284, 114 Stat. 970 (2000). It provides: "The Administrator may make grants to States and local governments to develop and implement programs for monitoring and notification for coastal recreation waters adjacent to beaches or similar points of access that are used by the public." Section 406(b)(2)(A), however, limits EPA's ability to award implementation grants. It provides that the "Administrator may make grants to States and local governments to implement a monitoring and notification program if "

(i) The program is consistent with the performance criteria published by the Administrator under subsection (a);

(ii) The State or local government prioritizes the use of grant funds for particular coastal recreation waters based on the use of the water and the risk to human health presented by pathogens or pathogen indicators;

(iii) The State or local government makes available to the Administrator the factors used to prioritize the use of funds under clause (ii);

(iv) The State or local government provides a list of discrete areas of coastal recreation waters that are subject to the program for monitoring and notification for which the grant is provided, and specifies any coastal recreation waters for which fiscal constraints will prevent consistency with the performance criteria under subsection (a); and

(v) The public is provided an opportunity to review the program through a process that provides for public notice and an opportunity for comment.

What Activities Are Eligible for Funding Under the Development Grants in Fiscal Year 2003?

In Fiscal Year 2003, EPA intends to award grants authorized under the BEACH Act to eligible States and Territories to support the implementation of coastal recreation water monitoring and public notification programs that are consistent with EPA's required performance criteria for grants. The required performance criteria for grants were published by EPA on July 19, 2002 in the document, *National Beach Guidance and Required Performance Criteria for Grants*, (document number: EPA–823–B–02–004). A notice of availability of the required performance criteria for grants was published in the **Federal Register** (67 FR 47540). This performance criteria document is available on EPA's Web site at *http://www.epa.gov/waterscience/beaches/grants*. Copies of the document can also be obtained by writing, calling, or e-mailing: Office of Water Resources Center, U.S. Environmental Protection Agency, Mail Code 4100T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. (Phone: 202–566–1731 or e-mail: *center.water-resource@epa.gov*).

II. Funding and Eligibility

Who Is Eligible to Apply for Implementation Grants Under This **Federal Register** *Notice?*

Coastal and Great Lake States that meet the requirements of Section 406(b)(2)(A) are eligible for implementation grants in FY 2003 to implement monitoring and notification programs. The term "State" is defined in section 502 of the CWA to include the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. However, the Trust Territory of the Pacific Islands no longer exists. The Marshall Islands, the Federated States of Micronesia, and Palau, which were previously entities within the Trust Territory of the Pacific Islands, have entered into Compacts of Free Association with the Government of the United States. As a result, each is now a sovereign, self-governing entity and, as such, is no longer eligible to receive grants as a Territory or possession of the United States.

Are Local Governments Eligible for Funding?

The BEACH Act authorizes EPA to make a grant to a local government for implementation of a monitoring and notification program only if, after the one-year period beginning on the date of publication of performance criteria, EPA determines that the State is not implementing a program that meets the requirements of section 406(b) of the Act. EPA published performance criteria on July 19, 2002. Therefore, July 20, 2003 is the earliest date local governments would be eligible for implementation grants.

Local governments can contact the appropriate EPA Regional office for information about BEACH Act grants, including, after July 20, 2003, a list of States and Territories, if any, that EPA has determined are not implementing programs consistent with section 406(b) of the BEACH Act. *See* Section VII for a list of EPA Regional grant coordinators.

Are Tribal Governments Eligible for Funding?

Section 518(e) of the CWA authorizes EPA to treat eligible Indian Tribes in the same manner as States for the purpose of receiving CWA section 406 grant funding. In order to receive BEACH Act grant funds a Tribe must have coastal recreation waters (defined in part as waters designated under CWA section 303(c) for use for swimming, bathing, surfing or similar water contact activities), and beaches or similar points of public access adjacent to these waters. In addition, a Tribe must meet the "treatment in the same manner as a State" criteria under CWA section 518(e) to receive grant funds under section 406 of the CWA. EPA believes that currently no Tribes meet the requirements for CWA section 406 grant funding.

How Much Funding Is Available?

For Fiscal Year 2003, EPA expects to award approximately $ 9.935 million in Implementation Grants to eligible States and Territories.

How Will the Funding Be Allocated?

For this first year of the Implementation Grants, EPA expects to award grants to all eligible States and Territories who apply for funding based on an allocation formula that EPA developed for allocating BEACH Act grant funds in 2002. EPA consulted with various States, the Coastal States Organization, and Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) to develop this formula which uses three factors that are readily available and verifiable: (1) Length of beach season, (2) miles of beach and (3) number of people that use the beaches.

(1) Beach Season Length

Beach season length was selected as a factor since it determines the part of the year that a government would conduct its monitoring program. The longer the beach season, the more resources a government would need to conduct monitoring. EPA's information on the length of a beach season was obtained from the National Health Protection Survey of Beaches for the States or Territories that reported information. The beach season length for American Samoa, Oregon, Puerto Rico, and Northern Mariana Islands was estimated based on season reported by nearby States and Territories. The beach season length for Alaska was estimated based on air and water temperature, available information on recreation activities, and data from the 1993 National Water Based Recreation Survey. EPA grouped the States and U.S. Territories into four categories of beach season lengths:

For beaches in—	The beach season category is—
Alaska	<3 months.
Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, Wisconsin.	3–4 months.
Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina months	5–6.
American Samoa, California, Florida, Guam, Hawaii, Northern Mariana, Puerto Rico, Texas, U.S. Virgin Islands	9–12 months.

(2) Beach Miles

Miles of beach was selected as a factor because it determines the geographical extent over which a government would conduct monitoring. The longer the miles of beaches, the more resources a government would need to conduct monitoring. For this first year of Implementation Grants, EPA is using shoreline miles as a surrogate rather than beach miles because beach miles are not available for all beaches in the 35 eligible States and Territories. EPA has discussed the drawbacks of using this surrogate factor with States. The shoreline miles data overestimates beach miles in some States, however, EPA and States agreed that this is the best beach estimate available at this time. States have yet to provide EPA with complete information identifying their coastal recreation waters and beaches. Thus, as a practical matter, EPA could not use beach miles in the allocation formula for FY 2003 grants. Instead, for FY 2003 grants, EPA used the NOAA publication *The Coastline of the United States* to quantify the shoreline miles. As a grant condition required by the BEACH Act, States must identify their coastal recreation waters and beaches. States must also report to EPA, as a condition of their FY 2003 grants, latitude, longitude and mileage data on:(1) The extent of beaches and similar points of public access adjacent to coastal recreation waters, and (2) the extent of beaches that are monitored. States should submit this information by October 31, 2003. Therefore, in future years, EPA will be able to measure and thus use beach miles rather than shoreline.

(3) Beach Use

Beach use was selected as a factor because it reflects the importance of beach-related tourism to the local economy. Greater beach use makes it more likely that a government would need to conduct increased monitoring because of the larger number of people potentially exposed to pathogens. For this first year of Implementation Grants, EPA is using the coastal population of counties that are wholly or partially within the State's or Territory's legally defined coastal zone as a surrogate, rather than beach usage, because information on beach visitors is not available for all beaches in the 35 eligible States and Territories. EPA discussed the drawbacks of using this surrogate factor with States, and several were doubtful that EPA could develop a consistent, verifiable approach for estimating beach use for all beaches. However, these States could not suggest a better way to quantify this factor at present. EPA is committed to working with the States and Territories that receive BEACH Act grants to develop a better way to quantify this factor. EPA used the 2000 Census data to quantify coastal population.

The grants allocation formula consists of the sum of three parts. The first part provides a base amount for all States and Territories that varies with the length of the beach season. The second part distributes 50% of the total remaining funds based on the ratio of shoreline miles in a State or Territory to the total length of shoreline miles. For example, if a State has 4% of the total coastal and Great Lakes shoreline, that State would receive 4% of 50% which is 2% of the total funds remaining after the funds for the beach season length are distributed. The third part distributes 50% of the total remaining funds based on the ratio of coastal population in a State or Territory to the total coastal population. For example, if a State has 2% of the total coastal and Great Lakes population, that State

would receive 2% of 50% which is 1% of the total funds remaining after the funds for the beach season length are distributed. The following table summarizes the allocation formula:

For the factor—	The part of the allocation is—
Beach season length	<3 months: $150,000 (States and Territories with a season. <3 months receive season-based funding only.). 3–4 months: $200,000. 5–6 months: $250,000. >6 months: $300,000.
Shoreline miles	50% of funds remaining after allocation of season-based funding.
Coastal population	50% of funds remaining after allocation of season-based funding.

For 2003, the total funds available for BEACH Act grants is $9.935 million, which is $10 million less an overall reduction of 0.65%. In computing the allocation formula, EPA used a total amount of $10 million to compute the funds for each state and Territory, and then applied a 0.65% reduction across all States and Territories. EPA believes that this approach more closely follows the intent of EPA's appropriation act because the President's budget request for FY 2003 included $10 million for BEACH Act grants, but only $9.935 million is actually available to EPA under its appropriation act, which reflects a reduction of 0.65%. Based on this allocation calculation, the amount of each State or Territory's implementation grant award in FY 2003 is expected to be from $149,0250 to $544,552 if all 35 eligible States and Territories apply. EPA anticipates that all 35 eligible governments will apply. If fewer than 35 States and Territories apply for the allocated amount, or meet the required performance criteria for award of an implementation grant, then EPA will distribute available grant funds to States and Territories in the following order of priority:

(1) States that have met the requirements for implementation grants will receive the full amount of funds based on the allocation formula.

(2) EPA may award grants for continued program development to States that have not met the requirements for implementation grants. Any program development grants awarded will be for the limited purpose of supporting completion of work that may be needed to qualify for implementation grants. Therefore, grants for continued program development (if any) are expected to be lower than the amount allocated for program implementation grants.

(3) EPA may award program implementation grants after July 20, 2003 to local governments in States that EPA has determined have not met the requirements for implementation grants.

(4) EPA may award any remaining funds to States that have met the requirements for implementation grants using the criteria in the allocation formula.

If all 35 eligible States and Territories apply and meet the requirements for implementation grants, the distribution of the $ 9.935 million in funds for year 2003 will be:

For the State or Territory of—	The year 2003 allocation is—
Alabama	$261,514
Alaska	149,025
American Samoa	300,364
California	532,164
Connecticut	223,921
Delaware	210,299
Florida	544,552
Georgia	287,442
Guam	300,860
Hawaii	322,897
Illinois	245,043
Indiana	204,963
Louisiana	380,052
Maine	257,766
Maryland	273,429
Massachusetts	257,453
Michigan	283,360
Minnesota	203,309
Mississippi	256,481
New Hampshire	203,594
New Jersey	282,586
New York	359,215
North Carolina	305,007
Northern Mariana	301,648
Ohio	224,227
Oregon	229,757
Pennsylvania	223,012
Puerto Rico	328,757
Rhode Island	212,340
South Carolina	298,726
Texas	387,508
U.S. Virgin Islands	301,483
Virginia	281,693
Washington	274,585
Wisconsin	225,970

What Is the Expected Duration of the Funding and Project Periods?

The expected funding and project period for Implementation Grants awarded in FY 2003 is one year.

Are Matching Funds Required?

Recipients are not required to provide matching funds for Implementation Grants awarded under authority of the BEACH Act at this time. EPA will consider establishing a match requirement in the future based on a review of State program activity and funding levels.

What if a State Cannot Use All of Its Allocation?

If a State or Territory cannot use all of its allocation, the Regional Administrator may award the unused funds to any eligible coastal or Great Lake grant recipient(s) in the Region for the continued development or implementation of their coastal recreation water monitoring and notification program(s). If after this re-allocation, there are still unused funds within the Region, EPA-Headquarters will redistribute these funds for award to any eligible coastal or Great Lake grant recipient(s).

III. Requirements for Implementation Grants

As discussed in Section I of this notice, EPA may only award implementation grants to States and local governments if the state or local government meets five statutory requirements, one of which is that the state or local program be consistent with the performance criteria published by EPA. In drafting the performance criteria, EPA included the remaining four statutory requirements in the performance criteria. Therefore, if a state or local program is consistent with the performance criteria, then the state or local government should also have met the remaining four statutory requirements for implementation grants. In order for EPA to determine that a state or local government is eligible for an implementation grant, documentation that programs are consistent with the performance criteria must be submitted with applications for implementation grants.

IV. Eligible Activities

Recipients may use funds for activities to support implementing a program that is consistent with the required performance criteria for grants specified in the document, *National Beach Guidance and Required Performance Criteria for Grants,* (document number: EPA–823–B–02–004).

V. Selection Process

Implementation Grants will be awarded through a non-competitive process by the EPA Regional offices. EPA expects to award grants to all eligible State and Territory applicants that meet requirements of the BEACH Act as described in this notice.

Who Has the Authority To Award BEACH Act Grants?

The Administrator has delegated the authority to award Implementation Grants to the Regional Administrators.

VI. Application Procedure

What Is the Catalog of Federal Domestic Assistance (CFDA) Number for the Program Development Implementation BEACH Act Grants?

The number assigned to the BEACH Act Grants is 66.472, Program Code CU.

Can BEACH Act Grant Funds Be Included in a Performance Partnership Grant?

For Fiscal Year 2003, BEACH Act Grants cannot be included in a Performance Partnership Grant.

What Are the Components of the Application Package?

The application package should contain completed EPA SF–424 Application for Federal Assistance, Program Summary, and Data Submission Plan and be submitted to the appropriate EPA Regional Office by June 30, 2003. EPA will review the documentation that is submitted to determine whether the program meets the requirements for implementation grants and make an award based on its determination. The Office of Management and Budget has authorized EPA to collect this information (BEACH Act Grant Information Collection Request, OMB control number 2040–0244). Please contact the appropriate EPA Regional Office for a complete application package. *See* Section VII for a list of EPA Regional Grant Coordinators or visit the EPA Beach Watch Web site at *www.epa.gov/waterscience/beaches/contact.html* on the Internet.

The Program Summary submitted with the application must provide sufficient technical detail for EPA to determine whether a State's program meets the requirements for implementation grants listed in section 1 of this notice. Specifically, the Program Summary must describe how the State used BEACH Act Grant funds to develop the beach monitoring and notification program, and how the program has met the nine performance criteria in *National Beach Guidance and Required Performance Criteria for Grants,* (document number: EPA–823–B–02–004).

The Data Submission Plan describes how States will develop their beach monitoring and notification data collection and reporting system. It will also describe the State data infrastructure, and how the State plans to submit beach monitoring and notification data to EPA. More information on both the Program Summary and Data Submission Plan is available at *www.epa.gov/waterscience/beaches/grants/.*

Will Quality Assurance and Quality Control (QA/QC) and Other Procedures Be Required for Application?

Yes. Three specific QA/QC requirements must be met to comply with EPA's required performance criteria for grants:

(1) Applicants must submit quality system documentation that describes the quality system implemented by the State, Tribe, or local government. It may be in the form of a Quality Management Plan or equivalent documentation.

(2) Applicants must submit a quality assurance project plan (QAPP) or equivalent documentation.

(3) Applicants are responsible for submitting documentation of the quality system and QAPP for review and approval by the EPA Quality Assurance Officer or his designee before environmental measurements are taken. More information about QA/QC procedures required for application is available in Chapter Four and Appendix H of National Beach Guidance and Required Performance Criteria for Grants, (document number: EPA–823–B–02–004).

Will There Be Reporting Requirements?

Recipients must submit annual performance reports and financial reports as required in 40 CFR §§ 31.40 and 31.41. The annual performance report explains changes to the beach monitoring and notification program during the grant year and how the grant funds were used to implement the program to meet the performance criteria listed in *National Beach Guidance and Required Performance Criteria for Grants,* (document number: EPA–823–B–02–004). The annual performance report required under 40 CFR 31. 40 is due no later than 90 days after the grant year. Recipients must also submit annual monitoring and notification reports required under the *National Beach Guidance and Required Performance Criteria for Grants,* (document number: EPA–823–B–02–004). The annual monitoring report requirement is established in sections 2.2.3 and 4.3 of *National Beach Guidance and Required Performance Criteria for Grants,* and the annual notification report requirement is established in sections 2.2.8 and 5.4 of the same document. The monitoring and notification data which should be submitted to EPA to meet these reporting requirements are described in Appendix E of *National Beach Guidance and Required Performance Criteria for Grants.* These reports include data collected as part of a monitoring and notification program and are required to be submitted to EPA by CWA section 406(b)(3)(A). As a condition of award of an implementation grant, EPA is requiring that the monitoring report and the notification report for any beach season be submitted not later than January 31 of the year following the beach season.

What Regulations and OMB Cost Circular Will Apply to the Award and Administration of These Grants?

The regulations at 40 CFR part 31 will govern the award and administration of grants to States, local governments, and Territories under section 406 of the BEACH Act. Allowable costs will be determined in accordance with the cost principles in OMB Cost Circular A–87.

VII. Grant Coordinators

Headquarters—Washington DC

Charles Kovatch USEPA, 1200 Pennsylvania Ave. NW—4305, Washington DC 20460; T: 202–566–0399; F: 202–566–0409; *kovatch.charles@epa.gov.*

Region I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island

Matt Liebman USEPA Region I, One Congress St. Ste. 1100–CWQ, Boston, MA 02114–2023; T: 617–918–1626; F: 617–918–1505; *liebman.matt@epa.gov.*

Region II—New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Helen Grebe USEPA Region II, 2890 Woodbridge Ave. MS220, Edison, NJ

08837–3679; T: 732–321–6797; F: 732–321–6616; *grebe.helen@epa.gov.*

Region III—Delaware, Maryland, Pennsylvania, Virginia

Nancy Grundahl USEPA Region III, 1650 Arch Street 3ES10, Philadelphia, PA 19103–2029; T: 215–814–2729; F: 215–814–2782; *grundahl.nancy@epa.gov.*

Region IV—Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina

Joel Hansel USEPA Region IV, 61 Forsyth St., 15th Floor, Atlanta, GA 30303–3415; T: 404–562–9274; F: 404–562–9224; *hansel.joel@epa.gov.*

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Holly Wirick USEPA Region V, 77 West Jackson Blvd. WT–16J, Chicago, IL 60604–3507; T: 312–353–6704; F: 312–886–0168; *wirick.holiday@epa.gov.*

Region VI—Louisiana, Texas

Mike Schaub USEPA Region VI, 1445 Ross Ave. 6WQ–EW, Dallas, TX 75202–2733; T: 214–665–7314; F: 214–665–6689; *schaub.mike@epa.gov.*

Region IX—American Soma, Commonwealth of the Northern Mariana Islands, California, Guam, Hawaii

Terry Fleming USEPA Region IX, 75 Hawthorne St. WTR–2, San Francisco, CA 94105; T: 415–972–3462; F: 415–947–3537; *fleming.terrence@epa.gov.*

Region X—Alaska, Oregon, Washington

Rob Pedersen USEPA Region X, 120 Sixth Ave. OW–134, Seattle, WA 98101; T: 206–553–1646; F: 206–553–0165; *pedersen.rob@epa.gov.*

Dated: March 24, 2003.

G. Tracy Mehan III,

Assistant Administrator for Water.

[FR Doc. 03–7639 Filed 3–28–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 21, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 30, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0331.

Title: Aeronautical Frequency Notification, FCC Form 321.

Form Number: FCC 321.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; Not-for-profit institutions.

Number of Respondents: 1,855.

Estimated Time per Response: 40 minutes.

Frequency of Response: One-time and on occasion reporting requirements.

Total Annual Burden: 1,237 hours.

Total Annual Costs: $24,733.

Needs and Uses: On March 13, 2003, the Commission adopted a *Report and Order* (R&O), *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms, Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service,* FCC 03–55 This R&O provided for electronic filing and standardized information collections. Under 47 CFR Section 76.1804 of the FCC rules, an MVPD must file FCC Form 321 prior to commencing operation in the aeronautical frequency bands at an average power level across a 25 kHz bandwidth in any 160 microsecond time period equal to or greater than 10^{-4} watts at any point in the cable distribution system. In addition, this form must be filed prior to transmitting on any new frequency or frequencies in the aeronautical radio frequency bands. This form will replace the requirement that an MVPD send a letter containing approximately the same information. It should reduce the burden on respondents by clarifying the exact information they need to send and by providing a consistent format for the information.

OMB Control Number: 3060–0310.

Title: Cable Community Registration, FCC Form 322.

Form Number: FCC 322.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; not-for-profit institutions.

Number of Respondents: 316.

Estimated Time per Response: 30 minutes.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 158 hours.

Total Annual Costs: $3,160.

Needs and Uses: On March 13, 2003, the Commission adopted a *Report and Order* (R&O), *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms, Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service,* FCC 03–55. This R&O provided for electronic filing and standardized information collections. Under 47 CFR Section 76.1801, cable operators will be required to file FCC Form 322 with the Commission prior to commencing operation of a community unit. FCC Form 322 will collect biographical information about the operator and system as well as a list of broadcast channels carried on the system. This form will replace the requirement that cable operators send a letter containing approximately the same information.

OMB Control Number: 3060–XXXX.

Title: Operator, Mail Address, and Operational Information Changes, FCC Form 324.

Form Number: FCC 324.

Type of Review: New collection.

Respondents: Business and other for-profit entities; not-for-profit institutions.

Number of Respondents: 5,000.

Estimated Time per Response: 10 minutes to 1 hour.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 2,500 hours.

Total Annual Costs: $50,000.

Needs and Uses: On March 13, 2003, the Commission adopted a Report and Order (R&O), *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms, Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service,* FCC 03–55. This R&O provided for electronic filing and standardized information collections. Under 47 CFR Section 76.1610, cable operators must notify the Commission of changes in ownership information or operating status within 30 days of such change using FCC Form 324. FCC Form 324 will cover a variety of changes related to cable operators, replacing the requirement of a letter containing approximately the same information. Every Form 324 filing will require biographical information about the operator and system—the additional information required depending largely upon the nature of the change.

OMB Control Number: 3060–0055.

Title: Application for Cable Television Relay Service Station (CARS) Authorization, FCC Form 327.

Form Number: FCC 327.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; not-for-profit institutions; individuals or households; State, local, or tribal governments.

Number of Respondents: 973.

Estimated Time per Response: 3 hrs and 10 mins (3.166 hours).

Frequency of Response: Record-keeping; On occasion reporting requirements.

Total Annual Burden: 3,081 hours.

Total Annual Costs: $61,620.

Needs and Uses: On March 13, 2003, the Commission adopted a Report and Order (R&O), *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms, Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service,* FCC 03–55. This R&O provided for electronic filing and standardized information collections. Under 47 CFR Sections 78.11–78.40 of FCC Rules, an applicant files FCC Form 327 to obtain an initial license or modification, transfer, assignment, or renewal of an existing Cable television Relay Service (CARS) microwave radio license. Franchised cable systems and other eligible services use the 12 GHz and 18 GHz CARS bands for microwave relays pursuant to 47 CFR part 78 of the Commission's Rules. CARS is principally a video transmission service used for intermediate links in a distribution network, *i.e.*, CARS stations relay broadcast television, low power television, AM, FM, and cablecasting video and audio signal transmissions for and supply program material to these various broadcast transmission systems using point-to-point and point-to-multipoint transmissions. The Commission has restructured FCC Form 327 primarily to make it conform to the online filing system.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–7558 Filed 3–28–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 24, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 30, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at (202) 418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: OMB Control No.: 3060–XXXX.

Title: Part 73, Subpart F, International Broadcast Stations.

Form Nos: FCC Forms 309, 310 and 311.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 57 respondents; 79 responses.

Estimated Time Per Response: 3–6 hours.

Frequency of Response: On occasion, semi-annual, annual and other reporting requirements, and recordkeeping requirements.

Total Annual Burden: 334 hours.

Total Annual Cost: $194,000.

Needs and Uses: The Commission released Report and Order, ET Docket No. 02–16, Amendments of Parts 2, 73, 74, 80, 90 and 97 of the Commission's Rules to Implement Decisions from World Radiocommunications Conferences Concerning Frequency Bands Below 28000 kHz. The Report and Order reduces the number of seasonal schedule changes for international broadcast stations from four per year to two per year. The Commission is seeking OMB approval for three FCC forms (FCC Forms 309, 310, and 311).

OMB Control No.: 3060–0810.

Title: Procedures for Designation of Eligible Telecommunications Carriers Pursuant to section 214(e)(6) of the Communications Act of 1934, as amended.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100.

Estimated Time Per Response: 20–60 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 6,200 hours.

Total Annual Cost: N/A.

Needs and Uses: 47 U.S.C. section 214(e)(6) states that a telecommunications carrier that is not subject to the jurisdiction of a state may request that the Commission determine whether it is eligible. The Commission must evaluate whether such telecommunications carriers meet the eligibility criteria set forth in the Act. The Commission concluded that petitions for designation filed under section 214(e)(6) relating to "near reservation" areas will not be considered as petitions relating to tribal lands and as a result, petitioners seeking Eligible Telecommunications Carriers (ETC) designation in such areas must follow the procedures outlined in the Twelfth Report and Order for non-tribal lands prior to submitting a request for designation to this Commission under section 214(e)(6).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–7559 Filed 3–28–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

March 13, 2003.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the public information collection FCC Form 303–S, Application for Renewal of Broadcast Station license (3060–0110). Therefore, the Commission announces that OMB 3060–0110 is effective March 13, 2003.

DATES: Effective March 13, 2003.

FOR FURTHER INFORMATION CONTACT: Jim Bradshaw, 202–418–2700.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission has received OMB approval for the March 2003 edition of the FCC Form 303–S, Application for Renewal of Broadcast Station License. The effective date for use of the revised form is March 13, 2003. Through this document, the Commission announces that it has received this approval; OMB Control No. 3060–0110.

Pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Les Smith, Federal Communications Commission, (202) 418–0217.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–7620 Filed 3–28–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. American Trust Bancorp, Roswell, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of American Trust Bank, Roswell, Georgia (in organization).

Board of Governors of the Federal Reserve System, March 25, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–7570 Filed 3–28–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of January 28 and 29, 2003

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on January 28 and 29, 2003.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 1¼ percent.

By order of the Federal Open Market Committee, March 25, 2003.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 03–7588 Field 3–28–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

[1] Copies of the Minutes of the Federal Open Market Committee meeting on January 28 and 29, 2003, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

ACTION: Invitation to comment on requested petition for exemption from Trade Regulation Rule.

SUMMARY: The Commission solicits public comment on a petition filed by Paccar, Inc., for an exemption from the requirements of the Franchise Rule.

DATES: Written comments will be accepted until May 30, 2003.

ADDRESSES: Comments may be filed in person or mailed to: Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Requests for copies of the petition and the Franchise Rule should be directed to the Public Reference Branch, Room 130, (202) 326–2222.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, Attorney, Room 238, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3135.

SUPPLEMENTARY INFORMATION: On December 21, 1978, the Federal Trade Commission promulgated a trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures ("the Rule")." 16 CFR part 436. In general, the Rule provides for pre-sale disclosure to prospective franchisees of important information about the franchisor, the franchise business, and the terms of the proposed franchise relationship. A summary of the Rule is available from the FTC Public Reference Branch, upon request.

Section 18(g) of the Federal Trade Commission Act provides that any person or class of persons covered by a trade regulation rule may petition the Commission for an exemption from such rule. If the Commission finds that the application of such rule to any person or class of persons is not necessary to prevent the unfair or deceptive acts or practices to which the rule relates, then the Commission may exempt such person or class from all or any part of the rule.

Paccar, Inc. ("Paccar") has filed a petition for an exemption from the Franchise Rule pursuant to section 18(g) of the Federal Trade Commission Act, 15 U.S.C. 57a(g). Paccar manufacturers heavy-duty and medium-duty trucks, truck parts, and accessories, which it distributes through a network of dealers operating under the name "Kenworth" or "Peterbilt." In its petition, Paccar asserts that an exemption should be granted because Paccar dealers are sophisticated business persons with experience in the industry, and the information-exchange and negotiation process leading to execution of a dealership agreement takes place over a period of several months, ensuring adequate time for review. Petitioner asserts that the experience and sophistication of prospective dealers and the company's lengthy selection process leading to the execution of the dealership agreement make the abuses identified by the Commission as the basis for the Franchise Rule unlikely and render application of the Rule to Paccar unnecessary and burdensome.

For a complete presentation of the arguments submitted by Petitioner, please refer to the full text of the petition, which may be obtained from the FTC Public Reference Branch, on request.

In assessing the present exemption request, the Commission solicits comments on all relevant issues germane to the proceeding, including the following: (1) Is there evidence indicating that Petitioner may engage in unfair or deceptive acts or practices in the offer and sale of dealership franchises? (2) Are there other reasons that might militate against granting Petitioner an exemption from the Franchise Rule?

The Commission has considered the arguments made by Petitioner and concludes that further inquiry is warranted before a decision regarding the petition may be made. The Commission, therefore, seeks comment on the exemption requested by Petitioner.

All interested parties are hereby notified that they may submit written data, views, or arguments on any issue of fact, law, or policy that may have some bearing on the requested exemption, whether or not such issues have been raised by the petition or in this notice. Such submission may be made for sixty days to the Secretary of the Commission.

Comments should be identified as "Paccar Franchise Rule Exemption Comment" and three copies should be submitted.

List of Subjects in 16 CFR Part 436

Trade Practices and Franchising.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–7610 Filed 3–28–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Invitation to comment on requested petition for exemption from Trade Regulation Rule.

SUMMARY: The Commission solicits public comment on a petition filed by Rolls-Royce Corp., for an exemption from the requirements of the Franchise Rule.

DATES: Written comments will be accepted until May 30, 2003.

ADDRESSES: Comments may be filed in person or mailed to: Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Requests for copies of the petition and the Franchise Rule should be directed to the Public Reference Branch, Room 130, (202) 326–2222.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, Attorney, Room 238, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580 (202) 326–3135.

SUPPLEMENTARY INFORMATION: On December 21, 1978, the Federal Trade Commission promulgated a trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" ("the Franschise Rule" or "Rule"). 16 CFR Part 3436. In general, the Rule provides for pre-sale disclosure to prospective Franchisees of important information about the francisor, the franchise business, and the terms of the proposed Franchise relationship. A summary of the Rule is available from the FTC Public Reference Branch upon request.

Section 18(g) of the Federal Trade Commission Act provides that any person or class of persons covered by a trade regulation rule may petition the Commission for an exemption from such rule. If the Commission finds that the application of such rule to any person or class of persons is not necessary to prevent the unfair or deceptive acts or practices to which the rule relates, then the Commission may exempt such person or class from all or any part of the rule.

Rolls-Royce Corp. ("Rolls-Royce" or "Petitioner") has filed a petition for an exemption from the Franchise Rule pursuant to section 18(g) of the Federal Trade Commission Act, 15 U.S.C. 57a(g). Rolls-Royce manufacturers turboprop, turbofan, and industrial gas turbine engines for sale in the defense and civilian aerospace and industrial markets. It also provides aftermarket support for some of its model engines though a combination of company-owned and independent authorized maintenance centers ("AMCs"). The AMCs perform repair, overhaul, and

maintenance services for customers under the Rolls-Royce trademark.

In its petition, Roll-Royce asserts that an exemption should be granted because AMC purchasers are sophisticated business persons with extensive prior experience in the industry, and the information-exchange and negotiation process leading to execution of an AMC agreement takes place over a period of several months, ensuring adequate time for review. Petitioner asserts that the experience and sophistication of prospective dealers and the company's lengthy selection process leading to the execution of the dealership agreement make the abuses identified by the Commission as the basis for the Franchise Rule unlikely and render application of the Rule to Rolls-Royce unnecessary and burdensome.

For a complete presentation of the arguments submitted by Petitioner, please refer to the full text of the petition, which may be obtained from the FTC Public Reference Branch, on request.

In assessing the present exemption request, the Commission solicits comments on all relevant issues germane to the proceeding, including the following: (1) Is there evidence indicating that Petitioner may engage in unfair or deceptive acts or practices in the offer and sale of dealership franchises? (2) Are there other reasons that might militate against granting Petitioner an exemption from the Franchise Rule?

The Commission has considered the arguments made by Petitioner and concludes that further inquiry is warranted before a decision regarding the petition may be made. The Commission, therefore, seeks comment on the exemption requested by Petitioner.

All interested parties are hereby notified that they may submit written data, views, or arguments on any issues of fact, law, or policy that may have some bearing on the requested exemption, whether or not such issues have been raised by the petition or in this notice. Such submission may be made for sixty days to the Secretary of the Commission.

Comments should be identified as "Rolls-Royce Corp. Franchise Rule Exemption Comment" and three copies should be submitted.

List of Subjects in 16 CFR Part 436

Trade practices and Franchising.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–7611 Filed 3–28–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 992 3298]

The Ted Warren Corporation, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 23, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Dan Salsburg or Stephen Gurwitz, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3402 or 326–3272.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 24, 2003), on the World Wide Web, at "*http://www.ftc.gov/os/2003/03/index.htm.*" A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from The Ted Warren Corporation, The Ken Roberts Institute, Inc., and The Ken Roberts Company, corporations, and Ken Roberts, as an officer of the corporations (together, "respondents").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents advertise and sell materials ("Investment Courses") that purport to teach purchasers how to profitably trade stocks, commodity futures and options, and real estate. The Investment Courses sold by respondents include the "TWC Stock Course" for trading stocks, the "KRI Investment Portfolio" for creating an investment portfolio, the "KRC Commodity Course" for trading commodity futures contracts and options, and the "Jim Banks Probate Course," pursuant to a marketing agreement with J.G. Banks, Inc., for purchasing real estate and personal property through probate proceedings. Respondents have sold these Investment Courses through the Internet Web site *http://www.kenroberts.net* and related Web sites.

This matter concerns respondents' allegedly deceptive representation that purchasers of the Investment Courses who make profitable "paper trades"—practice trades in which no funds are actually invested—using techniques described in the Investment Courses during one time period are likely to make profitable actual trades when their funds are invested in the market during a later time period. This matter also concerns the respondents' alleged failure to disclose the risks associated with the trading techniques described in the Investment Courses.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed consent order prohibits the respondents from misrepresenting that purchasers of "investment courses" who make profitable "paper trades" are likely to make profitable actual trades when their funds are invested in the market. The term "investment courses" is defined as "any program, service course, instruction, system, training, manual, computer software, or other materials involving the purchase or sale of stocks, currencies, commodity futures, options, real estate through probate proceedings, or other financial instruments or investments."

Part II of the proposed consent order requires the respondents to make the following six risk disclosures:

1. For all Investment Courses: "WARNING: [FUTURES TRADING, STOCK TRADING, CURRENCY TRADING, OPTIONS TRADING, ETC., as applicable] involves high risks and YOU can LOSE a lot of money."

2. For all Investment Courses in which purchasers are advised or instructed to "paper trade" or otherwise practice making investments without investing actual funds: "Being a successful PAPER TRADER during one time period does *not* mean that you will make money when you actually invest during a later time period. Market conditions constantly change."

3. For all Investment Courses involving securities or the purchasing of options: "When investing in [securities or the purchasing of options, as applicable] you may lose all of the money you invested."

4. For all Investment Courses involving futures or the granting of options: "When investing in (futures or the granting of options, as applicable) you may lose more than the funds you invested."

5. For all Investment Courses involving futures and commodity options: "Trading in commodity futures or options involves substantial risk of loss. According to many experts, most individual investors who trade commodity futures or options lose money."

6. For all Investment Courses in which claims are made regarding past performance: "Past Results are not necessarily indicative of Future Results."

Parts III and IV of the proposed order require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements and to provide copies of the order to certain personnel. Part V requires TWC, KRI and KRC to notify the Commission of any changes in their corporate structures that might affect compliance with the order. Part VI requires that the individual respondent notify the Commission of changes in his employment status for a period of ten years. Part VII requires TWC, KRI and KRC to file compliance reports with the Commission. Part VIII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–7609 Filed 3–28–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Partnering Organizations for Diabetes Detection Program

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: On March 6, 2003, The Department of Health and Human Services (HHS) published an announcement seeking public and private sector organizations to partner in the establishment of the nationwide Diabetes Detection Program. This notice clarifies the intent of that announcement. It describes the Program and the partnerships, which would be established through memoranda of understanding with interested organizations and entities.

ADDRESSES: Notification of interest in partnering should be sent to Elizabeth Majestic, M.P.H., Acting Director, Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738–G, 200 Independence Ave., SW., Washington, DC 20201; (202) 401–6295 (telephone), 202–690–7054 (fax). Notifications may also be submitted by electronic mail to *emajestic@osophs.dhhs.gov*.

FOR FURTHER INFORMATION CONTACT: Ellis Davis, Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738–G, 200 Independence Ave., SW., Washington, DC 20201; (202) 260–2873 (telephone), (202) 690–7054 (fax), or by electronic mail to *edavis@osophs.dhhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Department will be launching a diabetes detection initiative. The goal of the initiative is to encourage people at risk for diabetes to get tested and to refer those who test positive for follow-up. Approximately 6 million people have diabetes and do not know it. It is believed that for many of these people, earlier diagnosis and management or treatment can prevent or delay the devastating complications of diabetes. State health departments and federally-funded community health centers will serve as the cornerstone for these detection efforts.

To assist the Department in implementing the diabetes detection initiative, HHS is seeking partners to participate in the initiative in accordance with their particular interests. The partnerships would be established through memoranda of understanding where each party would be responsible for resources to support their activity.

Where appropriate, organizations and entities could collaborate with state health department and community health center programs, as in the following examples:

- Partnering organizations could participate in a nationwide advertising campaign that would alert the American public to the opportunity for diabetes detection;
- Partnering organizations could participate in the production or distribution of printed materials that will be used by state programs and community health centers responsible for implementing the initiative;
- Employers could adopt the project and conduct detection clinics where people at high risk of diabetes could be identified, then referred for specific diagnosis and followup if warranted;
- Hospitals could provide professional resources to conduct detection clinics;

- Managed care plans could adopt the project and encourage their enrollees to have themselves assessed for risk and alter their lifestyles if the risk warrants;
- Colleges and universities could conduct detection events for their student populations;
- Area agencies on aging could form a component of a statewide program.

Where a statewide program is not in place, partnering organizations such as these could proceed on their own.

Availability of Funds

There are no Federal funds available for these partnerships.

Content of Request for Partnership

Each request for partnership should contain a description of: (1) The entity or organization; (2) its proposed involvement in the Department's diabetes detection initiative; and (3) resources or services the partnering organization would like to offer.

Evaluation Criteria

Partners will be selected by the Office of Disease Prevention and Health Promotion using the following criteria:

(1) Requester's qualifications and capability to contribute to the partnership;

(2) Requester's creativity for contributing to the diabetes detection initiative.

Dated: March 25, 2003.

Elizabeth Majestic,

Acting Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion). Department of Health and Human Services.

[FR Doc. 03–7692 Filed 3–28–03; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. 02N–0475]

Draft "Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection

AGENCY: Office of the Secretary, Office of Public Health and Science, HHS.

ACTION: Notice.

SUMMARY: The Office of Public Health and Science, Department of Health and Human Services (HHS) is soliciting public comment on a draft guidance document for Institutional Review Boards (IRBs), investigators, research institutions, and other interested parties, entitled "Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection." This draft guidance document raises points to consider in determining whether specific financial interests in research affect the rights and welfare of human subjects, and if so, what actions could be considered to protect those subjects. This guidance applies to human subjects research conducted or supported by HHS or regulated by the Food and Drug Administration.

DATES: Submit written or electronic comments on the draft guidance on or before 4:30 p.m. on May 30, 2003. Comments on HHS guidance documents are welcome at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Docket Number 02N–0475, Food and Drug Administration, 5630 Fishers Lane, Room 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. All comments submitted should be identified with the docket number found in brackets in the heading of this notice. Comments received may be viewed on the Food and Drug Administration (FDA) Web site at *http://www.fda.gov/ohrms/dockets/default.htm* or may be seen in the FDA Docket Management Branch at 5630 Fishers Lane, Room 1061, Rockville, MD 20852 between 9 a.m. and 4 p.m., Monday through Friday.

Submit requests for single copies of the draft guidance document to the address identified below for further information. Requests may be made by mail or e-mail. Persons with access to the Internet also may obtain the document at *http://www.fda.gov/ohrms/dockets/GUIDANCES/DGUIDES.HTM*.

FOR FURTHER INFORMATION CONTACT: Glen Drew, Office for Human Research Protections, Office of Public Health and Science, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, (301) 402–4994, facsimile (301) 402–2071; e-mail *gdrew@osophs.dhhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

OPHS is seeking comments on the HHS draft guidance for IRBs, investigators, and research institutions, entitled "Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection." In May 2000, HHS announced five initiatives to strengthen human subject protection in clinical research. One of these was to develop guidance on financial conflict of interest that would serve to further protect research participants. As part of this initiative, HHS held a conference on the topic of human subject protection and financial conflicts of interest on August 15–16, 2000. A draft interim guidance document, "Financial Relationships in Clinical Research: Issues for Institutions, Clinical Investigators, and IRBs to Consider when Dealing with Issues of Financial Interests and Human Subject Protection," based on information obtained at and subsequent to that conference was made available to the public for comment on January 10, 2001. This document will replace that draft interim guidance.

The draft guidance recommends consideration of approaches and methods for dealing with issues of financial interests under the HHS human research subject protections regulations, 45 CFR part 46 and 21 CFR parts 50 and 56. The draft guidance expressly does not address regulatory requirements designed to enhance data integrity and objectivity in research found in 42 CFR part 50, subpart F, 45 CFR part 94, and 21 CFR part 54.

The draft guidance recommends that, in particular, IRBs, institutions engaged in research, and investigators consider whether specific financial relationships create financial interests in research studies that may adversely affect the rights and welfare of subjects. The guidance poses general considerations in evaluating financial relationships and their possible effects on human subjects. More detailed points for consideration are also offered for institutions, IRBs, and investigators.

II. Request for Comments

OPHS is distributing this draft guidance document for public comment. The Secretary is interested not only in reactions to the Guidance in general, and specifically the Points for Consideration, but also wishes to solicit views and ideas as to how to best assess any impacts of this guidance, as well as related non-Federal recommendations on enhancing the protection of human subjects. HHS guidance on consideration of financial interests in human subjects research will be issued after the public comments have been considered.

III. Draft Guidance Document

Department of Health and Human Services

Draft Guidance Document

March 31, 2003.

Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection [1]

This document will replace the "HHS Draft Interim Guidance: Financial Relationships in Clinical Research: Issues for Institutions, Clinical Investigators, and IRBs to Consider when Dealing with Issues of Financial Interests and Human Subject Protection" Dated January 10, 2001.

I. Introduction

A. Purpose

In this draft guidance document the Department of Health and Human Services (HHS, or the Department) raises points to consider in determining whether specific financial interests in research affect the rights and welfare of human subjects [2] and if so, what actions could be considered to protect those subjects. This draft guidance applies to human subjects research conducted or supported by HHS or regulated by the Food and Drug Administration (FDA). This document addresses only requirements for human subject protection (45 CFR part 46, 21 CFR parts 50, 56) [3] This document is nonbinding and does not change any existing regulations or requirements, and does not impose any new requirements.

Institutions and individuals involved in human research may establish financial relationships related to or separate from particular research projects. Those financial relationships may create financial interests of monetary value, such as payments for services, equity interests, or intellectual property rights. A financial interest related to a research study may be a conflicting financial interest if it will, or may be reasonably expected to, create a bias stemming from that financial interest. Furthermore, the Department recognizes that some financial interests in research may potentially or actually affect the rights and welfare of subjects, and this document provides some possible approaches to consider in assuring that subjects are adequately protected. Institutional review boards (IRBs), institutions, and investigators engaged in human subjects research each have appropriate roles in ensuring that financial interests do not compromise the protection of research subjects.

B. Target Audiences

The principal target audiences include institutions engaged in human subjects research and their officials, investigators, IRB members and staffs, and other interested parties.

C. Underlying Princinles

The regulations protecting human research subjects are based on the ethical principles described in the Belmont report: [4] respect for persons, beneficence, and justice. Financial relationships in human research should not compromise any of these principles. Openness and honesty are indicators of respect for persons, characteristics that promote ethical research and can only strengthen the research process.

D. Basis for This Document

The HHS human subject protection regulations (45 CFR part 46) require that institutions performing HHS conducted or supported non-exempt research involving human subjects have the research reviewed by an IRB whose goal is to help ensure that the rights and welfare of human subjects are protected. The comparable FDA regulations (21 CFR parts 50 and 56) require that FDA regulated research involving human subjects is reviewed by such an IRB. Under these regulations, IRBs are responsible for, among other things, determining that:

- Risks to subjects are minimized (45 CFR 46.111(a)(1), 21 CFR 56.111(a)(1));
- Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects (45 CFR 46.111(a)(2), 21 CFR 56.111(a)(2));
- Selection of subjects is equitable (45 CFR 46.111(a)(3), 21 CFR 56.11 1(a)(3));
- Informed consent will be sought from each prospective subject (45 CFR 46.111(a)(4), 21 CFR 56.111(a)(4)); and,
- The possibility of coercion or undue influence is minimized (45 CFR 46.116, 21 CFR 50.20).

In addition the IRB may

- Require that additional information be given to subjects "when in the IRB's judgment the information would meaningfully add to protection of the rights and welfare of subjects" (45 CFR 46.109(b), 21 CFR 56.109(b)).

For HHS conducted or supported research, the funding agency may impose additional conditions as necessary for the protection of human subjects (45 CFR 46.124).

IRBs are also responsible for ensuring that members who review research have no conflicting interest. 45 CFR 46.107(e) directly addresses conflicts of interest

[1] This document is intended to provide guidance. It does not create or confer rights for or on any person and does not operate to bind HHS, including FDA, or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

[2] Under the Public Health Service Act and other applicable law, HHS has authority to regulate institutions engaged in HHS conducted or supported research involving human subjects. For a description of what is meant by institutions engaged in research see the Office for Human Research Protections (OHRP) engagement policy at *http://ohrp.osophs.dhhs.gov/humansubjects/assurance/engage.htm*. Under the Federal Food, Drug, and Cosmetic Act, FDA has the authority to regulate Institutional Review Boards (IRBs) and investigators involved in the review or conduct of FDA-regulated research.

[3] This document does not address HHS Public Health Service regulatory requirements that cover institutional management of the financial interests of individual investigators who conduct PHS supported research. (42 CFR part 50, subpart F, and 45 CFR part 94). This document also does not address FDA regulatory requirements that place responsibilities on sponsors to disclose certain financial interests of investigators to FDA in marketing applications (21 CFR part 54). Guidelines interpreting the application of the PHS regulations to research conducted or supported by NIH that involve human subjects are available at *http://grants.nihgov/grants/guide/notice-files/NOT-OD-00-040.html*. Guidance interpreting the provisions of the FDA regulations appears at *http://www.fda.gov/oc/guidance/financialdis.html*.

[3] The PHS regulations require grantee institutions and contractors to designate one or more persons to review investigators' financial disclosure statement describing their significant financial interests and ensure that conflicting financial interests are managed, reduced, or eliminated before expenditure of funds (42 CFR 50.604(b), 45 CFR 94.4(b)). The PHS threshold for significant financial interest is $10,000 per year income or equity interests over $10,000 and 5 percent ownership in a company (42 CFR 50.603, 45 CFR 94.3). The regulations give several examples of methods for managing investigators' financial conflicts of interest (42 CFR 50.605(a), 54 CFR 94.5(a)).

Sponsors are required to disclose certain financial interests of clinical investigators to FDA in marketing approval applications under the Federal Food, Drug and Cosmetic Act (FD&C Act) (21 CFR part 54). FDA regulations at 21 CFR part 54 address requirements for the disclosure of certain financial interests held by clinical investigators. The purpose of these regulations is to provide additional information to allow FDA to assess the reliability of the clinical data (21 CFR 54.1). The FDA regulations require sponsors seeking marketing approval for products to certify that investigators do not have certain financial interests, or to disclose those interests to FDA (21 CFR 54.4). These regulations require sponsors to report (1) financial arrangements between the sponsor and the investigator whereby the value of the investigator's compensation could be influenced by the outcome of the trial, (2) any proprietary interest in the product studied held by the investigator; (3) significant payments of other sorts over $25,000 beyond costs of the study; or(4) any significant equity interest in the sponsor of a covered study (21 CFR 54.4).

Note that when the PHS regulations were promulgated, the National Science Foundation (NSF) Investigator Financial Disclosure Policy was revised to match closely the PHS regulations. The NSF conflict of interest policy appears at *http://www.nsf.gov/bfa/cpo/gpm95/ch5.htm#ch5*.

[4] *http://ohrp.osophs.dhhs.gov/humansubjects/guidonce/belmont.htm*.

by requiring that "no IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB." FDA regulations include identical language at 21 CFR 56.107(e).

Concerns have grown that financial conflicts of interest in research, derived from financial relationships and the financial interests they create, may affect the rights and welfare of human research subjects. Financial interests are not prohibited, and not all financial interests cause conflicts of interest or harm to human subjects. HHS recognizes the complexity of the relationships between government, academia, industry and others, and recognizes that these relationships often legitimately include financial relationships. However, to the extent financial interests may affect the rights and welfare of human subjects in research, IRBs, institutions, and investigators need to consider what actions regarding financial interests may be necessary to protect those subjects.

In May 2000, HHS announced five initiatives to strengthen human subject protection in clinical research. One of these was to develop guidance on financial conflict of interest that would serve to further protect research participants. As part of this initiative, HHS held a conference on the topic of human subject protection and financial conflict of interest on August 15–16, 2000. A draft interim guidance document, "Financial Relationships in Clinical Research: Issues for Institutions, Clinical Investigators, and IRBs to Consider when Dealing with Issues of Financial Interests and Human Subject Protection," based on information obtained at and subsequent to that conference was made available to the public for comment on January 10, 2001.[5] This document replaces that draft interim guidance. The Department notes that other organizations have also addressed financial interests in human research via reports, guidance and recommendations.[6] Many of these contain strong and sound ideas for actions to deal with potential financial conflicts of interest on the part of institutions, investigators and IRBs.

II. Guidance for Institutions, IRBs and Investigators

A. General Approaches to Address Financial Relationships and Interests in Research Involving Human Subjects

The Department recommends that in particular, IRBs, institutions engaged in research, and investigators consider whether specific financial relationships create financial interests in research studies that may adversely affect the rights and welfare of subjects. These entities may elect to include the following questions in their deliberations:

- What financial relationships and resulting financial interests cause potential or actual conflicts?
- At what levels could those interests cause potential or actual conflicts?
- What procedures would be helpful, including those to

—collect and evaluate information regarding financial relationships related to research,
—determine whether those relationships potentially cause a conflict,
—determine what actions are necessary to protect human subjects and ensure that those actions are taken?

- Who should be educated regarding financial conflict of interest issues and policies?
- What entity or entities would examine individual and/or institutional financial relationships and interests?

B. Points for Consideration

Financial interests may be managed by eliminating them or mitigating their potentially negative impact. A variety of methods or combinations of methods may be effective. Some methods may be implemented by institutions engaged in the conduct of research, and some methods may be implemented by IRBs. Some of those may apply before research begins, and some may apply during the conduct of the research.

In establishing and implementing methods to protect the rights and welfare of human subjects from conflicts of interest created by financial relationships of parties involved in research, the Department recommends that IRBs, institutions engaged in research, and investigators consider the questions below. Additional questions may be appropriate. The Department's intent is not to be exhaustive, but to suggest ways to examine the issues so that appropriate actions can be taken for protection of the rights and welfare of human research subjects.

- Does the research involve financial relationships that could create conflicts of interest?

—How is the research supported or financed?
—Where and by whom was the study designed?
—Where and by whom will the resulting data be analyzed?

- What interests are created by the financial relationships involved in the situation?

[5] *http://ohrp.osophs.dhhs.gov/humansubjects/finreltn/finguid.htm.*

[6] Recent Federal and Private Sector Activities: In addition to the HHS initiative, several Federal organizations have examined the issues related to financial relationships in human subjects research:

- The National Bioethics Advisory Commission (NBAC), in a comprehensive examination of the "Ethical and Policy Issues in Research Involving Human Participants," in Chapter 3 recommended development of federal, institutional, and sponsor policies and guidance to ensure that research subjects' rights and welfare are protected from the effects of conflicts of interest (*http://www.georgetown.edu/research/nbcbl/nbac/human/overvoll.pdf*).
- The HHS Office of the Inspector General (OIG) has issued a series of reports examining regulation and activities of IRBs. A June 2000 OIG report addressed recruitment practices and found that about one-quarter of the surveyed IRBs consider financial arrangements with sponsors of research as part of their protocol review. (*http://oig.hhs.gov/oei/reports/oei-01-97-00195.pdf*).
- The National Human Research Protections Advisory Committee (NHRPC) offered advice to HHS regarding the content and finalization of the HHS Draft Interim Guidance in August, 2001 (*http://ohrp.osophs.dhhs.gov/nhrpac/documents/aug01o.pdf*).
- In December 2001, the General Accounting Office released report 02–89 "Biomedical Research: HHS Direction Needed to Address Financial Conflicts of Interest." The report recommended that the Secretary of Health and Human Services develop specific guidance or regulations concerning institutional financial conflicts of interest (*http://www.gao.gov/*).
- A number of nongovernmental organizations recently have addressed financial interests in reports and issued new or updated policies or guidelines of varying scope and specificity, including the Association of American Universities, October 2001 (*http://www.aau.edu/research/COI.01.pdf*), the Association of American Medical Colleges, December 2001 and October 2002 (*http://www.aamc.org/members/coitf/firstreport.pdf* and *http://www.aamc.org/members/coitf/2002coireport.pdf*), the International Committee of Medical Journal Editors October 2001 (*http://www.icmje.org/sponsor.htm*), the American Medical Association, January 2002 (*http://jama.ama-assn.org/issues/v287n1/abs/jsc10070.html*), the American Society of Gene Therapy, April 2000 (*http://www.asgt.org/policy/index.html*), and the Institute of Medicine, October 2002,report "Responsible Research: A Systems Approach to Protecting Research Participants" (*http://www.nap.edu/books/0309084881/html/*)

  Two accrediting bodies for human subject protection programs have included elements addressing individual and institutional conflicts of interest in their accreditation evaluations, the *Association for the Accreditation of Human Research Protection Programs* (*http://www.aahrpp.org/images/Evaluation_Instrument_1.pdf*), and the National Committee for Quality Assurance, (*http://www.ncqa.org/Programs/QSG/VAHRPAP/vahrpapfindstds.pdf*).

  Internationally, the World Medical Association's revision in 2000 of the Declaration of Helsinki, (*http://www.wma.net/e/policy/17-c_e.html*) principle 22, includes "sources of funding" among the items of information to be provided to subjects. A number of individual institutions also have developed policies for their own situations, as noted in the NIH Guide Notice issued in June 2000 (*http://grants.nih.grants/guide/notice-files/NOT-OD-00-040.html*). Some of these policies involve conflicts of interest management methods and address institutional financial interests as well as individual interests.

—Do individuals or institutions receive any compensation that may be affected by the study outcome?
—Do individuals or institutions involved in the research:
+have any proprietary interests in the product including patents, trademarks, copyrights, and licensing agreements?
+have an equity interest in the research sponsor and is it a publicly held company or non-publicly held company?
+receive significant payments of other sorts? (*e.g.* grants, compensation in the form of equipment, retainers for ongoing consultation, and honoraria)
+receive payment per participant or incentive payments, and are those payments within the norm?

- Given the financial relationships involved, is the institution an appropriate site for the research?
- How should financial relationships that potentially create a conflict of interest be managed?

Would the rights and welfare of human subjects be better protected by any or a combination of the following:

+reduction of the financial interest?
+disclosure of the financial interest to prospective subjects?
+separation of responsibilities for financial decisions and research decisions?
+additional oversight or monitoring of the research?
+an independent data and safety monitoring committee or similar monitoring body?
+modification of role(s) of particular research staff or changes in location for certain research activities, *e.g.*, a change of the person who seeks consent, or a change of investigator?
+elimination of the financial interest?

C. Specific Issues for Consideration Regarding

1. Institutions

The Department recommends that institutions engaged in federally conducted or supported human subjects research consider the following actions or other actions regarding financial conflicts of interest:

- Separate responsibilities for financial decisions and research decisions.
- Establish conflict of interest committees (COICs)[7] or identify other bodies or persons to deal with individuals' financial interests in research or verify their absence.
- Extend the responsibility of the COIC to address institutional financial interests in research or establish a separate COIC to address institutional financial interests in research.
- Establish criteria to determine what constitutes an institutional conflict of interest, including identifying leadership positions for which the individual's financial interests are such that they may need to be treated as institutional financial interests.
- Establish clear channels of communication between COICs and IRBs.
- Establish policies on providing information, recommendations, or findings from COIC deliberations to IRBs.
- Establish measures to foster the independence of IRBs and COICs.
- Include IRB members and staff and appropriate officials of the institution, along with investigators, among the individuals who report financial interests to COICs.
- Establish procedures for disclosure of institutional financial relationships to COICs.
- Provide training to appropriate individuals regarding financial interest requirements.
- Use independent organizations to hold or administer the institution's financial interest.
- Include individuals from outside the institution in the review and oversight of financial interests in research.
- Establish policies regarding the types of relationships that may be held by parties involved in the research and circumstances under which those financial relationships and interests may be held.

2. IRB Operations

The Department recommends that institutions engaged in human subjects research and IRBs that review HHS conducted or supported human subjects research or FDA regulated human subjects research consider establishing policies and procedures addressing IRB member potential and actual conflicts of interest as part of overall IRB policies and procedures. These might include:

- Reminding members of conflict of interest policies at the start of each meeting.
- Polling members to verify that no conflicts of interest exist regarding any protocols to be considered during the meeting.
- Recording the polling results in the meeting minutes.
- Recording in the meeting minutes verification for each protocol that any conflicted members did not participate in discussion or vote on protocols involving their conflict of interest, except to provide information as requested by the IRB (45 CFR 46.107(e), 21 CFR 56.107(e)).
- Developing educational materials about the regulations' requirements for IRE members.

3. IRB Review

The Department recommends that IRBs reviewing HHS conducted or supported human subjects research or FDA regulated human subjects research consider the following actions, or other actions related to conduct or oversight of research, based on particular situations:

- Determine whether methods being considered or used for management of financial interests of parties involved in the research adequately protect the rights and welfare of human subjects.
- Determine when an IRB needs additional information to decide whether the financial interests of parties involved in research could affect the rights and welfare of subjects as well as mechanisms for obtaining the additional information.
- Determine what actions are necessary to minimize risks to subjects.
- Determine the kind, amount, and level of detail of information to be provided to research subjects regarding the source of funding, funding arrangements, financial interests of parties involved in the research, and any financial interest management techniques applied.

4. Investigators

The Department recommends that investigators consider the potential effect that a financial relationship of any kind might have on a clinical trial, including interactions with research subjects, and whether to take any of the following actions:

- Including information in the consent document, such as

—the source of funding and funding arrangements for the conduct and review of research, or
—information about a financial arrangement of an institution or an investigator and how it is being managed.

- Using special measures to modify the consent process when a potential or actual financial conflict exists, such as

—having a non-biased third party obtain consent, especially when a potential or actual conflict of interest could influence the tone, presentation, or type of information presented during the consent process.

[7] The acronym COIC will be used to represent the body or person(s) designated to review financial interests.

• Considering independent monitoring of the research, e.g., using a data and safety monitoring committee.

Dated: March 21, 2003.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

[FR Doc. 03–7691 Filed 3–28–03; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–03–54]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506 (c) (2) (A) of the Paperwork reduction Act of 1995, the Center for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda M. Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Emergency Epidemic Investigations (0920–0010)—Extension—(Epidemiology Program Office, EPO)—One of the objectives of CDC's epidemic services is to provide for the prevention and control of epidemics and protect the population from public health crises such as man made or natural biological disasters and chemical emergencies. This is carried out, in part, by training investigators, maintaining laboratory capabilities for identifying potential problems, collecting and analyzing data, and recommending appropriate actions to protect the public's health. When state, local, or foreign health authorities request help in controlling an epidemic or solving other health problems, CDC dispatches skilled epidemiologists from the Epidemic Intelligence Service (EIS) to investigate and resolve the problem. Resolving public health problems rapidly ensures costs effective health care and enhances health promotion and disease prevention. Annually, the EIS Program coordinates 400 Epidemic Assistance Investigations (Epi-Aids) and state-based field investigations. Epidemics are prevented and controlled by mobilizing and deploying CDC staff, primarily EIS officers to respond rapidly to disease outbreaks and disaster situations. At the request of public health officials—at the state, national, or international level-CDC provides assistance by participating in epidemiologic field investigations.

The purpose of the Emergency Epidemic Investigation surveillance is to collect data on the conditions surrounding and preceding the onset of a problem. The data must be collected in a timely fashion so that information can be used to develop prevention and control techniques, to interrupt disease transmission and to help identify the cause of an outbreak. Since the events necessitating the collections of information are of an emergency nature, most data collection is done by direct interview or written questionnaire and are one-time efforts related to a specific outbreak or circumstance. If during the emergency investigation, the need for further study is recognized, a project is designed and separate OMB clearance is required. Interviews are conducted to be as unobtrusive as possible and only the minimal information necessary is collected. The Emergency Epidemic Investigations is the principal source of data on outbreaks of infectious and noninfectious diseases, injuries, nutrition, environmental health and occupational problems.

Each investigation does contribute to the general knowledge about a particular type of problem or emergency, so that data collections are designed taking into account similar situations in the past. Some questionnaire have been standardized, such as investigations of outbreaks aboard aircraft or cruise vessels.

The Emergency Epidemic Investigations provides a range of data on the characteristics of outbreaks and those affected by them. Data collected include demographic characteristics, exposure to the causative agent(s), transmission patterns and severity of the outbreak on the affected population. These data, together with trend data, may be used to monitor the effects of change in the health care system, planning of health services, improving the availability of medical services and assessing the health status of the population.

Users of the Emergency Epidemic Investigations data include, but are not limited to EIS Officers in investigating the patterns of disease or injury, investigating the level of risky behaviors, identifying the causative agent and identifying the transmission of the condition and the impact of interventions.

It is difficult to predict the number of epidemic investigations which might occur in any given year. The previous three years' experience shows an annualized burden of 2,304 hours and respondent total of 10,150. Therefore, the request is for an estimated annual burden of 3,000 hours. This represents an estimated 12,000 respondents annually at 15/60 hours per response. There are no costs to respondents other than time.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Total Respondents	12,000	1	15/60	3,000

Dated: March 24, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–7591 Filed 3–28–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

A Public Health Action Plan To Combat Antimicrobial Resistance (Part I: Domestic Issues): Meeting for Public Comment on the Antimicrobial Resistance Interagency Task Force Annual Report

The Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and National Institutes of Health (NIH) announce an open meeting concerning antimicrobial resistance.

Name: A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues): Meeting for Public Comment on the Antimicrobial Resistance Interagency Task Force Annual Report.

Time and Date: 1:30 p.m.–6 p.m., June 25, 2003.

Place: Hyatt Regency Bethesda, Haverford Ballroom, One Bethesda Metro Center, 7400 Wisconsin Avenue at Old Georgetown Road, Bethesda, Maryland, 20814; telephone: 1–301–657–1234; Fax: 1–301–657–6453.

Status: Open to the public, limited only by the space available.

Purpose: To present the second annual report of progress by Federal agencies in accomplishing activities outlined in A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues), and solicit comments from the public regarding the annual report. The Action Plan serves as a blueprint for activities of Federal agencies to address antimicrobial resistance. The focus of the plan is on domestic issues.

Matters to be Discussed: The agenda will consist of welcome, introductory comments, followed by discussion of four focus areas in sequential plenary sessions lasting about 45 minutes each. The four focus areas are: Surveillance, Prevention and Control, Research, and Product Development. Session leaders will give a 10 to 15 minute overview at the beginning of each session, then open the meeting for general discussion.

Comments and suggestions from the public for Federal agencies related to each of the focus areas will be taken under advisement by the Antimicrobial Resistance Interagency Task Force. The agenda does not include development of consensus positions, guidelines, or discussions or endorsements of specific commercial products.

The Action Plan, Annual Report, and meeting agenda are available at *http://www.cdc.gov/drugresistance.* The public meeting is sponsored by the CDC, FDA, and NIH, in collaboration with seven other Federal agencies and departments involved in developing and writing A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues).

Agenda items are subject to change as priorities dictate.

Limited time will be available for oral questions, comments, and suggestions from the public. Depending on the number wishing to comment, a time limit of three minutes may be imposed. In the interest of time, visual aids will not be permitted, although written material may be submitted to the Task Force. Written comments and suggestions from the public are encouraged and can be submitted at the meeting or should be received by the contact person by regular mail or email listed below no later than July 31, 2003.

Persons anticipating attending the meeting are requested to send written notification to the contact person below by June 19, 2003, including name, organization (if applicable), address, phone, fax, and e-mail address.

For Further Information Contact: Ms. Vickie Garrett, Antimicrobial Resistance, Office of the Director, NCID, CDC, mail stop C–12, 1600 Clifton Road, NE, Atlanta, GA 30333; telephone 404–639–2603; fax 404–639–4197; or e-mail *aractionplan@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 25, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–7592 Filed 3–28–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Program Grant Application and Budget Instrument.

OMB No.: 0970–0207.

Description: The Head Start Bureau is proposing to renew the Head Start Grant Application and Budget Instrument which standardizes the grant application information that is requested from all Head Start and Early Head Start grantees applying for continuation grants. The application and budget forms are available on a data diskette and can be transmitted electronically to Regional and Central Offices. The Administration for Children, Youth and Families believes that in promulgating this application document the process of applying for Head Start program grants is made more efficient for applicants.

Respondents: Head Start and Early Head Start grantees.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
	1600	1	33	52,800
Estimated Total Annual Burden Hours:				52,800

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it

within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503. Attn: Desk Officer for ACF.

Dated: March 24, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–7552 Filed 3–28–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Faculty Loan Repayment Program (FLRP) Application (OMB No. 0915–0150)-Extension

Under the Health Resources and Services Administration Faculty Loan Repayment Program, disadvantaged graduates from certain health professions may enter into a contract under which HRSA will make payments on eligible educational loans in exchange for a minimum of two years of service as a full-time or part-time faculty member of an accredited health professions school. Applicants must complete an application and provide current loan balances on all eligible educational loans.

The estimate of burden for the form is as follows:

Form	Number of respondents	Responses per respondent	Total Responses	Hours per responses	Total burden hours
Applicants	94	1	94	1	94

Send comments to Susan G. Queen, PhD., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 24, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–7537 Filed 3–28–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the fiscal year 2002 annual report for the following Health Resources and Services Administration's Federal advisory committee has been filed with the Library of Congress:

Health Professions and Nurse Education Special Emphasis Panel.

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room in the James Madison Memorial Building, Room LM–133 (entrance on Independence Avenue, between First and Second Streets, SE., Washington, DC).

Copies may be obtained from: Ms. Wilma Johnson, Acting Director, Office of Peer Review, Parklawn Building, Room 11A–33, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone 301–443–6339.

Dated: March 24, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–7536 Filed 3–28–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review, Comment Request; Organochlorine Exposure in Relation to Timing of Natural Menopause: The North Carolina Menopause Study

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 23, 2002, pages 65132–65133 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB number.

PROPOSED COLLECTION: *Title:* Organochlorine Exposure in Relation to Timing of Natural menopause (The North Carolina Menopause Study) *Type of Information Collection Request:* New. *Need and Use of Information Collection:* Smoking has been shown in many studies to be associated with a 1–2 year decrease in age at natural menopause. However, relatively little is known about the effect of other potential toxicants, including organochlorines such as polychlorinated biphenyls (PCBs), and 1,1 dichloro-2,2–bis(p-chlorophenyl) ethylene (p,p'-DDE (DDE). We will assess timing of menopause among women who previously participated in the North Carolina Infant Feeding Study. PCB and DDE levels were analyzed in blood and breast milk samples around delivery and after pregnancy. The median age of the women as of March 2002 is 50 years. Data will be collected in a telephone interview focusing on reproductibve and menstrual history with additional information collected on demographic, social and behavioral factors that could affecting time of menopause. Approximately 50% of participants based on sampling strata that involve criteria relating to age and menopausal status will also have a blood sample collection. The purpose of this study is to assess the association between the baseline organochlorine measurements and timing of natural menopause. A secondary aim will be to conduct exploratory analyses of the association between specific factors (*e.g.*, pregnancy history, weight change) and rate of change in organochlorine levels. *Frequency of Response:* 1.1 responses per respondent. There also will be a yearly assessment of menopausal status based on a short interview (fifteen minute telephone interview) targeting women who are pre-menopausal based on the initial interview. *Affected Public:* Individuals or households. *Types of Respondents:* Women who participated in the North Carolina Infant Feeding Study. The annual reporting burden is as follows: *Estimated Number of Respondents:* 642 *Estimated Number of Responses per Respondent:* 1.1. *Average Burden Hours Per Response:* 0.66. *Estimated Total Burden Hours Requested:* 426. Annualized cost to respondents is $6,816. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DIRECT COMMENTS TO OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Glinda Cooper, Epidemiology Branch, NIEHS, Building 101, A3–05, P.O. Box 12233, Research Triangle Park, NC 27709 or call non-toll-free number (919) 541–0799 or E-mail your request, including your address to: "*cooper1@niehs.nih.gov*".

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: March 20, 2003.

Francine Little,

NIEHS, Associate Director for Management.

[FR Doc. 03–7578 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Extramural Clinical Research Loan Repayment Program for Individuals From Disadvantaged Backgrounds

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) invites applications for the Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (ECR–LRP or Program) for fiscal year 2003. Pursuant to authority granted by Public Law 106–554, the Consolidated Appropriations Act of 2001, which amended Section 487E of the Public Health Service (PHS) Act (42 U.S.C. 288–5), as added by the National Institutes of Health Revitalization Act of 1993 (Pub. L. 103–43), the Secretary of Health and Human Services (Secretary), acting through the Director of NIH, has established a loan repayment program that offers the repayment of educational loan debt to qualified health professionals from disadvantaged backgrounds, who have substantial debt relative to income and agree to conduct clinical research. The Director of NIH may enter into contracts with qualified health professionals from disadvantaged backgrounds who agree to engage in clinical research for a minimum of two years in exchange for loan repayments toward their outstanding educational loan debt, up to a maximum of $35,000 per year. Payments equal to 39 percent of total loan repayments are issued to the Internal Revenue Service on behalf of the participants to offset Federal tax liabilities incurred due to their participation in the Program.

DATES: Information regarding the ECR-LRP is currently available, and the following are the application deadline dates: Fiscal Year 2003—January 31, 2003; Fiscal Year 2004—January 31, 2004; and Fiscal Year 2005—January 31, 2005. All applications must be submitted on-line by 5 p.m. (eastern standard time). If an Application Deadline Date falls on a weekend or holiday, the application is due on the following business day by 5 p.m. (eastern standard time).

ADDRESSES: The information and an on-line application may be obtained at the NIH Loan Repayment Program Web site at *www.lrp.nih.gov* or by contacting the National Center on Minority Health and Health Disparities, Attention Kenya McRae, non-toll free telephone number (301) 402–1366, or via email at *mcraek@od.nih.gov*.

SUPPLEMENTARY INFORMATION:

Definitions

(1) "Clinical research" is defined as patient-oriented clinical research conducted with human subjects or research on the causes and consequences of disease in human populations involving material of human origin (such as tissue specimens and cognitive phenomena) for which an investigator or colleague directly interacts with human subjects in an outpatient or inpatient setting to clarify a problem in human physiology, pathophysiology or disease, or epidemiologic or behavioral studies, outcomes research or health services research, or developing new technologies, therapeutic interventions, or clinical trials.

(2) "Debt threshold" is the minimum amount of qualified educational loan debt an applicant must have in order to be eligible for Program benefits. An applicant must have qualified educational loan debt equal to at least 20 percent of the applicant's annual

institutional base salary at the time of award.

(3) An "individual from a disadvantaged background" is defined as one who comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for the changes in the Consumer Price Index and adjusted by the Secretary of Health and Human Services (Secretary) for use in all health professions programs. The Secretary periodically publishes these income levels in the **Federal Register**. An applicant must certify his/her disadvantaged status under the above definition by submitting (a) a written statement from the individual's former health professions school(s) that indicates that he/she qualified for Federal disadvantaged assistance during attendance; or (b) documentation that he/she received financial aid from either Health Professions Student Loans (HPSL) or the Loans for Disadvantaged Student Program; or (c) documentation that he/she received scholarships from the U.S. Department of Health and Human Services (HHS) under the Scholarship for Individuals with Exceptional Financial Need.

(4) "Institutional base salary" is defined as the annual amount that the organization pays for the participant's appointment, whether the time is spent in research, teaching, patient care or other activities. Institutional base salary excludes any income that a participant may earn outside the duties of the organization, and it may not include or comprise any income (salary or wages) earned as a Federal employee.

(5) "Total educational loan debt" is defined as the outstanding educational loan debt incurred by health professionals for their educational expenses incurred at accredited institutions. It consists of the principal, interest, and related expenses of qualified U.S. Government, academic institutions, and commercial U.S. educational loans obtained by the applicant for (a) undergraduate, graduate and health professional school tuition expenses; (b) other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and (c) reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other reasonable living expenses as determined by the Secretary or his designee.

(6) "Repayable debt" means the difference between the applicant's total educational loan debt and 50 percent of the applicant's debt threshold.

Background

The Consolidated Appropriations Act of 2001 (Pub. L. 106–554) was enacted on December 21, 2000, amending Section 487E of the Public Health Service (PHS) Act to authorize the Secretary of the Department of Health and Human Services (Secretary), through the Director of the National Institutes of Health (NIH), to enter into contracts with qualified health professionals from disadvantaged backgrounds. These health professionals are required to engage in clinical research in consideration of the Federal Government repaying a portion of the principal and interest of their extant educational loans, up to a maximum of $35,000 per year, for each year of service. The program is known as the Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (ECR–LRP). Selected applicants become participants of the ECR–LRP only upon the execution of a contract by the Secretary or his designee.

Eligibility Criteria

Specific eligibility criteria with regard to participation in the ECR-LRP include the following:

(1) Applicants must be U.S. citizens, U.S. nationals, or permanent residents of the United States;

(2) Applicants must have a Ph.D., M.D., D.O., D.D.S., D.M.D., D.P.M., Pharm.D., D.C., N.D., or equivalent doctoral degree from an accredited institution;

(3) Applicants must come from a disadvantaged background;

(4) Applicants must have total qualifying educational loan debt equal to or in excess of 20 percent of their annual institutional base salary at the time their loan repayment contract is executed by the Secretary or designee (example: an applicant with a base salary of $40,000 per year must have a minimum outstanding educational loan debt of $8,000);

(5) Applicants must engage in qualified clinical research supported by a non-profit foundation, non-profit professional society, non-profit institution, or a U.S. or other government agency (Federal, State, or local). A foundation, professional society, or institution is considered to be non-profit if exempt from Federal tax under the provisions of Section 501 of the Internal Revenue Code (26 U.S.C. 501);

(6) Applicants must engage in qualified clinical research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week;

(7) Applicants must agree to conduct research for which funding is not prohibited by Federal law, regulations, or HHS/NIH policy. Recipients of LRP awards must conduct their research in accordance with applicable Federal, State and local law (*e.g.*, applicable human subject protection regulations);

(8) Full-time employees of Federal Government agencies are ineligible to apply for LRP benefits. Part-time Federal employees who engage in qualifying research as part of their non-Federal duties, for the required percentage of time, are eligible to apply for loan repayment if they meet all other eligibility requirements;

(9) Applicants must have a research supervisor or mentor with experience in the area of proposed research;

(10) Applicants will not be excluded from consideration under the ECR-LRP on the basis of age, race, culture, religion, gender, sexual orientation, disability or other non-merit factors; and

(11) No individual may submit more than one LRP application to the NIH in any fiscal year. Individuals who have applied previously for the Program or any other NIH Loan Repayment Program but did not receive an award are eligible to submit a new application if they meet the above eligibility criteria.

The following individuals are ineligible for participation in the ECR–LRP:

(1) Persons who are not United States citizens, nationals, or permanent residents;

(2) Individuals who have a Federal judgment lien against their property arising from a Federal debt are barred from receiving Federal funds until the judgment is paid in full or satisfied;

(3) Individuals who owe an obligation of health professional service to the Federal Government, a State, or other entity, unless deferrals or extensions are granted for the length of the ECR–LRP service obligation. The following are examples of programs with service obligations that disqualify applicants from consideration, unless a deferral for the length of participation in the ECR–LRP is obtained:

- Physicians Shortage Area Scholarship Program,
- Primary Care Loan (PCL) Program—recipients of PCLs incur a service obligation to practice primary care. PCL recipients are eligible to apply for the ECR–LRP if the PCL has been paid in full. If still repaying the PCL, LRP applicants must submit documentation, via facsimile to (866) 849–4046, from the Health Resources and Services Administration (HRSA) that demonstrates that the LRP applicant is satisfying the terms and conditions of the PCL,
- Public Health Service Scholarship Program,
- National Health Service Corps Scholarship Program,
- Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program,
- Indian Health Service Scholarship Program,
- National Research Service Award Program—a current recipient of a postdoctoral National Research Service Award support from an individual postdoctoral fellowship (F32) or an institutional research training grant (T32) will not be eligible for loan repayment during the second year of NRSA support without a formal deferral of the NRSA service obligation (*see http://grants1.nih.gov/grants/guide/pa-files/PA–02–109.html).* Concurrent repayment of service obligations is prohibited. Participation in an NIH LRP is only permissible by first satisfying the NRSA service obligation, which is satisfied either by completing the second year of NRSA support or by requesting a deferral of the NRSA service obligation. (Note—first year NRSA recipients are eligible to apply for and receive NIH loan repayment. Second year NRSA recipients can apply to participate in the ECR–LRP, but can only receive loan repayment during the second year if an extension of time is obtained to satisfy the NRSA service obligation. If an extension is not obtained, loan repayment will commence after the completion of the NRSA service obligation. LRP payments are NOT retroactive.);

(4) Full-time employees of Federal Government agencies;

(5) Recipients of NIH Intramural Research Training Awards (IRTA) or Cancer Research Training Awards (CRTA);

(6) Individuals conducting research for which funding is precluded by Federal law, regulations or HHS/NIH policy, or that does not comply with applicable Federal, State, and local law regarding the conduct of the research (*e.g.*, applicable human subject protection regulations);

Individuals with ineligible loans, which include loans that have been consolidated with a loan of another individual (including spouses and children), or loans that are not educational, such as home equity loans;

(8) Individuals with existing service obligations to Federal, State, or other entities may not apply for the ECR-LRP, unless and until the existing service obligation is discharged or deferred for the length of program participation; and

(9) Individuals that have a Federal judgment lien against their property arising from a Federal debt may not apply for the ECR–LRP until the judgment has been paid in full or otherwise satisfied.

Application Procedures

Applications must be submitted electronically to the Office of Loan Repayment (OLR). The NIH LRP Web site is *www.lrp.nih.gov*. The site has an Applicant Information Bulletin with the current deadlines, sources for assistance, and additional details regarding application procedures.

Application materials from the applicant, the supervisor/mentor, recommenders, and institutional officials must be submitted prior to the application deadline.

The following information must be provided by the applicant:

1. *Applicant Information Statement.*
2. *Biosketch.*
3. *Personal Statement,* which includes a discussion of career goals and academic objectives.
4. *Description of Research Activities,* which describes the current or proposed research project including the specific responsibilities and role of the applicant in conducting the research. The research supervisor or mentor will be asked to concur in the research project description provided by the applicant.
5. *Contact Information for Three Recommenders* (one of whom is identified as research supervisor or mentor).
6. *Contact Information for Institution Official* able to serve as the Institutional Contact and verify an applicant's employment/research appointment and research funding status.
7. *On-line Certification.*
8. *Loan information,* which includes the current account statement(s), and promissory note(s) or disclosure statement(s), obtained from lending institution(s), submitted via facsimile to (866) 849–4046.
9. *Notice of Grant/Award* (or PHS Form Number 2271 for T32 recipients) if applying based on NIH support.
10. *Certification of Disadvantaged Background,* which verifies the applicant's disadvantaged status and consists of one of the following: (a) Written statement from the applicant's former health professions school(s) that indicates that the applicant qualified for Federal disadvantaged assistance during attendance; (b) documentation that the applicant received financial aid from either Health Professions Student Loans (HPSL) or the Loans for Disadvantaged Students Program; or (c) documentation that the applicant received a scholarship from the HHS under the Scholarship for Individuals with Exceptional Financial Need.

The following information must be provided by the Research Supervisor/Mentor, and submitted electronically via the NIH–LRP Web site:

1. *Recommendation.*
2. *Biosketch.*
3. *Assessment of the Research Activities Statement* submitted by the applicant.
4. *Description of the Research Environment.* (Please provide detailed information about the lab where the applicant is or will be conducting research, including funding, lab space, and major areas under investigation.)
5. *Training or Mentoring Plan.* (Includes a detailed discussion of the training and/or mentoring plan, as well as the research methods and scientific techniques to be taught.)
6. *Biosketch of other pertinent staff members* involved in training or mentoring the applicant.

Recommenders must submit their recommendations electronically.

Institutional Contacts must electronically submit a certification, via the NIH–LRP Web site, that (a) assures the applicant will be provided the necessary time and resources to engage in the research project for two years from the date a Loan Repayment Program Contract is executed; (b) assures that the applicant is or will be engaged in qualifying research for 50 percent of his/her time, *i.e.*, not less than 20 hours per week; (c) certifies that the funding foundation, professional society, or institution is considered to be non-profit as provided under Section 501 of the Internal Revenue Code (26 U.S.C. 501) or is a U.S. or other government entity (Federal, State or local), and (d) provides the applicant's institutional base salary.

Review Process

Applications that are received and complete by the deadline will undergo peer review by a Special Emphasis Panel (SEP). The reviewers will use the review criteria in assessing and rating each application.

Review Criteria

a. Potential of the applicant to pursue a career in clinical research.

- Appropriateness of the applicant's previous training and experience to prepare him/her for a clinical research career.
- Suitability of the applicant's proposed clinical research activities in the two-year loan repayment period to foster a research career.
- Assessment of the applicant's commitment to a research career as

reflected by the personal statement of long-term career goals and the plan outlined to achieve those goals.

• Strength of recommendations attesting to the applicant's potential for a research career.

b. Quality of the overall environment to prepare the applicant for a clinical research career.

• Availability of appropriate scientific colleagues to achieve and/or enhance the applicant's research independence.

sbull Quality and appropriateness of institutional resources and facilities.

Program Administration and Details

Under the ECR–LRP, a portion of the participants' outstanding educational loan debt will be repaid. Participants will not automatically qualify for the maximum amount of loan repayment. The amount the NCMHD will consider for repayment during the initial two-year contract shall be calculated as follows: one-fourth the repayable debt per year, up to a maximum of $35,000 per year. For example, a participant with a base salary of $40,000 per year and an outstanding eligible educational loan debt of $100,000, would have a debt threshold of $8,000 (the debt threshold is 20 percent of an applicant's annual institutional salary). All participants are responsible for paying one-half of their debt threshold amount. This amount is known as the participant's obligation and is subtracted from the total outstanding loan debt. In this case, the participant's obligation would be $4,000 and the participant's eligible loan debt would be reduced to $96,000. This reduced amount is known as the repayable debt ($100,000 − $4,000 = $96,000). Of the $96,000 repayable debt amount, the NCMHD would repay $24,000 a year in loan repayments (one-fourth of the repayable debt amount), plus tax benefits.

Loan repayments will be made to the designated lender following the completion of each full quarter (3 months) of service by the participant and upon the receipt of requested documentation from the participants and their supervisors/mentors. Because the first payment to the lenders on behalf of the participants will not commence until the end of the first full quarter of obligated service, participants should continue to make monthly loan payments until they have been informed that payments have been forwarded to their lenders. This measure enables the participants to maintain their loans in a current payment status.

In return for the repayment of their educational loans, participants must agree to (1) engage in qualified clinical research for a minimum period of two years; (2) engage in such research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week; (3) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (4) pay monetary damages as required for breach of contract; and (5) satisfy other terms and conditions of the LRP contract.

Repayments are made directly to lenders, following the receipt of (1) the Principal Investigator, Program Director, or Research Supervisor's verification of completion of the prior period of research, and (2) lender verification of the crediting of prior loan repayments, including the resulting account balances and current account status. The NIH will repay loans in the following order, unless the Secretary determines that significant savings would result from a different order of priority:

(1) Loans guaranteed by the U.S. Department of Health and Human Services:

• Health Education Assistance Loan (HEAL);

• Health Professions Student Loan (HPSL);

• Loans for Disadvantaged Students (LDS); and

• Nursing Student Loan Program (NSL);

(2) Loans guaranteed by the U.S. Department of Education:

• Direct Subsidized Stafford Loan;

• Direct Unsubsidized Stafford Loan;

• Direct Consolidation Loan;

• Perkins Loan;

• FFEL Subsidized Stafford Loan;

• FFEL Unsubsidized Stafford Loan; and

• FFEL Consolidation Loan;

(3) Loans made or guaranteed by a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States;

(4) Loans made by academic institutions; and

(5) Private ("Alternative") Educational Loans:

• MEDLOANS; and

• Private (non-guaranteed) Consolidation Loans.

The following loans are NOT repayable under the ECR–LRP:

(i) Loans not obtained from a U.S. or other government entity, academic institution, or a commercial or other chartered U.S. lending institution such as loans from friends, relatives, or other individuals, and non-educational loans, such as home equity loans;

(ii) Loans for which contemporaneous documentation (current account statement and promissory note or lender disclosure statement) is not available;

(iii) Loans that have been consolidated with loans of other individuals, such as a spouse or child;

(iv) Loans or portions of loans obtained for educational or living expenses that exceed a reasonable level, as determined by the standard school budget for the year in which the loan was made, and are not determined by the LRP to be reasonable based on additional contemporaneous documentation provided by the applicant;

(v) Loans, financial debts, or service obligations incurred under the following programs, or other programs that incur a service obligation that converts to a loan on failure to satisfy the service obligation:

• Physicians Shortage Area Scholarship Program (Federal or State);

• National Research Service Award Program;

• Public Health Service and National Health Service Corps Scholarship Program;

• Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Program; and

• Indian Health Service Scholarship Program;

(vi) Delinquent loans, loans in default, or loans not current in their payment schedule;

(vii) PLUS Loans;

(viii) Loans that have been paid in full;

(ix) Loans obtained after the execution of the LRP Contract (*e.g.*, promissory note signed after the LRP contract has been awarded); and

(x) Primary Care Loans.

During lapses in loan repayments, due either to NIH administrative complications or a break in service, LRP participants are wholly responsible for making payments or other arrangements that maintain loans current, such that increases in either principal or interest do not occur. Penalties assessed participants as a result of NIH administrative complications to maintain a current payment status may not be considered for reimbursement.

Additional Program Information

This program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs. Under the requirements of the Paperwork Reduction Act of 1995, OMB has approved the application forms for use by the ECR–LRP under OMB Approval No. 0925–0361 (expires December 31, 2004).

The Catalog of Federal Domestic Assistance number for the ECR–LRP is 93.308.

Dated: February 5, 2003.

Elias A. Zerhouni,

Director, NIH.

[FR Doc. 03–7580 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health Pediatric Research Loan Repayment Program

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) announces the availability of educational loan repayment under the NIH Pediatric Research Loan Repayment Program (PR–LRP). The Pediatric Research Loan Repayment Program, which is authorized by Section 487F [1] of the Public Health Service (PHS) Act (42 U.S.C. 288–6), as added by the Children's Health Act of 2000 (Pub. L. 106–310), provides for the repayment of educational loan debt of qualified health professionals who agree to conduct pediatric research. The Pediatric Research Loan Repayment Program provides for the repayment of up to $35,000 of the principal and interest of the extant educational loans of such health professionals for each year of obligated service. Payments equal to 39 percent of total loan repayments are issued to the Internal Revenue Service on behalf of program participants to offset Federal tax liabilities incurred. The purpose of the Pediatric Research Loan Repayment Program is the recruitment and retention of highly qualified health professionals as pediatric investigators. Through this notice, the NIH invites qualified health professionals who contractually agree to engage in pediatric research for at least two years, and who agree to engage in such research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week, to apply for participation in the NIH Pediatric Research Loan Repayment Program.

DATES: Interested persons may request information about the Pediatric Research Loan Repayment Program on March 31, 2003.

[1] So in law. There are two sections 487F. Section 1002(b) of Public Law 106–310 (114 Stat. 1129), inserted section 487F above. Subsequently, section 205 of Public Law 106–505 (114 Stat. 2329), which relates to a Loan Repayment Program for Clinical Researchers, inserted a section 487F after section 487E.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, NIH, 6011 Executive Blvd., Room 601, MSC 7669, Rockville, MD 20892, by email (*jm40z@nih.gov*), by fax 301–402–0169, or by telephone 301–496–4607 (not a toll-free number). For program information contact Marc S. Horowitz, e-mail *lrp@nih.gov*, or telephone 301–402–5666 (not a toll free number). Information regarding the requirements, application deadline dates, and an on-line application for the Pediatric Research Loan Repayment Program may be obtained at the NIH Loan Repayment Program Web site, *http://www.lrp.nih.gov*.

SUPPLEMENTARY INFORMATION: The Children's Health Act of 2000 (Pub. L. 106–310) was enacted on October 17, 2000, adding section 487F of the PHS Act (42 U.S.C. 288–6). *Section 487F* authorizes the Secretary, acting through the Director of the NIH, to carry out a program of entering into contracts with appropriately qualified health professionals. Under such contracts, qualified health professionals agree to conduct pediatric research for at least two years in consideration of the Federal Government agreeing to repay, for each year of research service, not more than $35,000 of the principal and interest of the qualified educational loans of such health professionals. Payments equal to 39 percent of total loan repayments are issued to the Internal Revenue Service on behalf of program participants to offset Federal tax liabilities incurred. This program is known as the NIH Pediatric Research Loan Repayment Program (PR–LRP).

Eligibility Criteria

Specific eligibility criteria with regard to participation in the Pediatric Research Loan Repayment Program include the following:

1. Applicants must be U.S. citizens, U.S. nationals, or permanent residents of the United States;

2. Applicants must have a Ph.D., M.D., D.O., D.D.S., D.M.D., D.P.M., Pharm.D., D.V.M., D.C., N.D., or equivalent doctoral degree from an accredited institution;

3. Applicants must have total qualifying educational loan debt equal to or in excess of 20 percent of their institutional base salary on the date of program eligibility (the effective date that a loan repayment contract has been executed by the Secretary of Health and Human Services or designee), expected to be between June 1 and August 1, 2003. Institutional base salary is the annual amount that the organization pays for the participant's appointment, whether the time is spent in research, teaching, patient care, or other activities. Institutional base salary excludes any income that a participant may earn outside the duties of the organization. Institutional base salary may not include or comprise any income (salary or wages) earned as a Federal employee;

4. Applicants must conduct qualifying research supported by a non-profit foundation, non-profit professional association, or other non-profit institution, or a U.S. or other government agency (Federal, State, or local). A foundation, professional association, or institution is considered to be non-profit if exempt from Federal tax under the provisions of Section 501 of the Internal Revenue Code (26 U.S.C. 501);

5. Applicants must engage in qualified pediatric research. Pediatric research is defined as research that is directly related to diseases, disorders, and other conditions in children;

6. Applicants must engage in qualified pediatric research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week;

7. Full-time employees of Federal Government agencies are ineligible to apply for LRP benefits. Part-time Federal employees who engage in qualifying research as part of their non-Federal duties for at least 20 hours per week, and whose funding is from a non-profit institution as defined in number 4 of this section, are eligible to apply for loan repayment if they meet all other eligibility requirements;

8. Applicants must agree to conduct research for which funding is not prohibited by Federal law, regulation, or HHS/NIH policy. Recipients who receive LRP awards must conduct their research in accordance with applicable Federal, State and local laws (*e.g.*, applicable human subject protection regulations);

9. Applicants will not be excluded from consideration under the Pediatric Research Loan Repayment Program on the basis of age, race, culture, religion, gender, sexual orientation, disability, or other non-merit factors; and

10. No individual may submit more than one LRP application to the NIH in any fiscal year. Individuals who have applied previously for the PR–LRP but did not receive an award are eligible to submit a new application if they meet all of the above eligibility criteria.

The following individuals are ineligible for participation in the Pediatric Research Loan Repayment Program:

1. Persons who are not United States citizens, nationals, or permanent residents;

2. Any individual who has a Federal judgment lien against his/her property arising from a Federal debt is barred from receiving Federal funds until the judgment is paid in full or satisfied;

3. Any individual who owes an obligation of health professional service to the Federal Government, a State, or other entity, unless deferrals or extensions are granted for the length of their Extramural Loan Repayment Program service obligation. The following are examples of programs with service obligations that disqualify an applicant from consideration, unless a deferral for the length of participation in the Pediatric Research Loan Repayment Program is obtained:

Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program,
Exceptional Financial Need (EFN) Scholarship Program,
Financial Assistance for Disadvantaged Health Professions Students (FADHPS),
Indian Health Service (IHS) Scholarship Program,
National Health Service Corps (NHSC) Scholarship Program,
National Institutes of Health Undergraduate Scholarship Program (UGSP),
Physicians Shortage Area Scholarship Program,
Primary Care Loan (PCL) Program,
Public Health Service (PHS) Scholarship Program, and
National Research Service Award (NRSA) Program—a recipient of postdoctoral National Research Service Award support from an individual postdoctoral fellowship (F32) or an institutional research training grant (T32) is eligible for loan repayment. NRSA recipients incur a service obligation of 12 months for their first year of NRSA support. This obligation is usually repaid in the second year of the NRSA award. Note: NRSA service and loan repayment service obligations cannot be concurrently satisfied. There are two options for NRSA LRP recipients: (1) Defer receipt of LRP payments in the 2nd year of NRSA support to fulfill their obligation; or (2) request an extension of time to fulfill the NRSA service obligation in order to satisfy the LRP service obligation while also receiving loan repayment.

4. Full-time employees of Federal Government agencies;

5. Current recipients of NIH Intramural Research Training Awards (IRTA) or Cancer Research Training Awards (CRTA);

6. Individuals conducting research for which funding is precluded by Federal law, regulations or HHS/NIH policy, or that does not comply with applicable Federal, State, and local law regarding the conduct of the research (*e.g.*, applicable human subject protection regulations); and

7. Individuals with ineligible loans, which include loans that have been consolidated with a loan of another individual (including spouses or children), or loans that are not educational, such as home equity loans.

Selection Process

Upon receipt, applications for the Pediatric Research Loan Repayment Program will be reviewed for eligibility and completeness by the NIH Office of Loan Repayment. Incomplete or ineligible applications will not be processed for review. Applications that are complete and eligible will be referred to the appropriate NIH Institute or Center for peer review by the NIH Center for Scientific Review (CSR). In evaluating the application, reviewers will be directed to consider the following components as they relate to the likelihood that the applicant will continue in a pediatric research career:

a. Potential of the applicant to pursue a career in pediatric research.

- Appropriateness of the applicant's previous training and experience to prepare him/her for a pediatric research career.
- Suitability of the applicant's proposed pediatric research activities in the two-year loan repayment period to foster a research career.
- Assessment of the applicant's commitment to a research career as reflected by the personal statement of long-term career goals and the plan outlined to achieve those goals.
- Strength of recommendations attesting to the applicant's potential for a research career.

b. Quality of the overall environment to prepare the applicant for a pediatric research career.

- Availability of appropriate scientific colleagues to achieve and/or enhance the applicant's research independence.
- Quality and appropriateness of institutional resources and facilities.

The following information is furnished by the applicant or others on behalf of the applicant (forms are completed electronically at the NIH LRP Web site, *www.lrp.nih.gov*):

Applicants electronically transmit the following to the NIH Office of Loan Repayment:

1. Applicant Information Statement.
2. Biosketch.
3. Personal Statement, which includes a discussion of career goals and academic objectives.
4. Description of Research Activities, which describes the current or proposed research project including the specific responsibilities and role of the applicant in conducting the research. The research supervisor or mentor will be asked to concur in the research project description provided by the applicant.
5. Identification of three Recommenders (one of whom is identified as research supervisor or mentor).
6. Identification of Institutional Contact.
7. On-line Certification.
8. Current account statement(s), and promissory note(s) or disclosure statement(s), obtained from lending institution(s), submitted via facsimile to 866–849–4046.
9. If applying based on NIH support, Notice of Grant/Award (or PHS Form Number 2271 for T32 recipients).

Research supervisors or mentors electronically transmit the following to the NIH Office of Loan Repayment:

1. Recommendation.
2. Biosketch.
3. Assessment of the Research Activities Statement submitted by the applicant.
4. Description of the Research Environment, which provides detailed information about the lab where the applicant is or will be conducting research, including funding, lab space, and major areas under investigation.
5. Training or Mentoring Plan, which includes a detailed discussion of the training or mentoring plan, including a discussion of the research methods and scientific techniques to be taught. This document is completed by the research supervisor or mentor and is submitted for all applicants (except for applicants with an NIH R01 or equivalent grant).
6. Biosketch of a laboratory staff member if involved in training or mentoring the applicant.

The other two Recommenders electronically transmit recommendations to the NIH Office of Loan Repayment.

Institutional Contacts electronically transmit the following to the NIH Office of Loan Repayment:

A certification that: (a) Assures that the applicant will be provided the necessary time and resources to engage in the research project for two years from the date a Loan Repayment Program Contract is executed; (b) assures that the applicant is or will be engaged in qualifying research for 50 percent of his/her time, *i.e.*, not less than 20 hours per week; (c) certifies that the institution is non-profit (exempt from tax under 26 U.S.C. 501) or is a U.S. or other government agency (Federal, State, local); and (d) provides the applicant's institutional base salary.

Program Administration and Details

Under the Pediatric Research Loan Repayment Program the NIH will repay a portion of the extant qualified educational loan debt incurred to pay for the researcher's undergraduate, graduate, and/or health professional school educational expenses. Individuals must have total qualified educational debt that equals or exceeds 20 percent of their institutional base salary on the date of program eligibility. This is called the debt threshold. The formula used to calculate the potential annual loan repayment amount is total educational debt less the participant obligation (an amount equal to 10 percent of institutional base salary), which yields the total repayable debt; the total repayable debt is divided by 25 percent, which yields the potential annual repayment amount (up to $35,000). Participants are encouraged to pay the participant obligation during the contract period.

Following is an example of loan repayment calculations: An applicant has a loan debt of $100,000 and a university compensation of $40,000. Since the loan debt exceeds the debt threshold (20 percent of university compensation = $8,000), the applicant has sufficient debt for loan repayment consideration. The participant obligation is 10 percent of the institutional base salary, in this case $4,000. Thus, repayment of the $4,000 debt is the applicant's responsibility. The remaining amount, in this example $96,000 (total repayable debt) will be considered for repayment on a graduated basis. In this case, the maximum to be repaid in the initial two-year contract is $48,000 or $24,000 per year, plus tax reimbursement benefits.

The total repayable debt will be paid at the rate of one-quarter per year, subject to a statutory limit of $35,000 per year, for each year of obligated service. Individuals are required to initially engage in 2 years of qualified pediatric research.

Following conclusion of the initial two-year contract, participants may competitively apply for renewal contracts if they continue to engage in qualified pediatric research. These continuation contracts may be approved on a year-to-year basis, subject to a finding by NIH that the applicant's pediatric research accomplishments are acceptable, qualified pediatric research continues, and non-profit institutional or U.S. or other government agency (Federal, State, or local) support has been assured. Renewal applications are competitively reviewed and the submission of a renewal application does not assure the award of benefits. Funding of renewal contracts is also contingent upon an appropriation and/or allocation of funds from the U.S. Congress and/or the NIH or the NIH Institutes and Centers.

In return for the repayment of their educational loans, participants must agree to (1) engage in qualified pediatric research for a minimum period of two years; (2) engage in such research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week; (3) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (4) pay monetary damages as required for breach of contract; and (5) satisfy other terms and conditions of the LRP contract. Applicants must submit a signed contract, prepared by the NIH, agreeing to engage in qualified pediatric research at the time they submit an application. Substantial monetary penalties will be imposed for breach of contract.

The NIH will repay lenders for the extant principal, interest, and related expenses (such as the required insurance premiums on the unpaid balances of some loans) of qualified U.S. or other government (Federal, State, local), academic institutions, and commercial or other chartered U.S. lending institution educational loans obtained by participants for the following:

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other living expenses as determined by the Secretary.

Repayments are made directly to lenders, following receipt of (1) the Principal Investigator, Program Director, or Research Supervisor's verification of completion of the prior period of research, and (2) lender verification of the crediting of prior loan repayments, including the resulting account balances and current account status. The NIH will repay loans in the following order, unless the Secretary determines that significant savings would result from a different order of priority:

(1) Loans guaranteed by the U.S. Department of Health and Human Services:

- Health Education Assistance Loan (HEAL);
- Health Professions Student Loan (HPSL);
- Loans for Disadvantaged Students (LDS); and
- Nursing Student Loan Program (NSL);

(2) Loans guaranteed by the U.S. Department of Education:

- Direct Subsidized Stafford Loan;
- Direct Unsubsidized Stafford Loan;
- Direct Consolidation Loan;
- Perkins Loan;
- FFEL Subsidized Stafford Loan;
- FFEL Unsubsidized Stafford Loan; and
- FFEL Consolidation Loan;

(3) Loans made or guaranteed by a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States;

(4) Loans made by academic institutions; and

(5) Private ("Alternative") Educational Loans:

- MEDLOANS; and
- Private (non-guaranteed) Consolidation Loans.

The following loans are NOT repayable under the Pediatric Research Loan Repayment Program:

(1) Loans not obtained from a U.S. or other government entity (Federal, State, local), academic institution, or a commercial or other chartered U.S. lending institution, such as loans from friends, relatives, or other individuals, and non-educational loans, such as home equity loans;

(2) Loans for which contemporaneous documentation (current account statement, and promissory note or lender disclosure statement) is not available;

(3) Loans that have been consolidated with loans of other individuals, such as a spouse or child;

(4) Loans or portions of loans obtained for educational or living expenses, which exceed a reasonable level, as determined by the standard school budget for the year in which the loan was made, and are not determined by the LRP to be reasonable based on additional contemporaneous documentation provided by the applicant;

(5) Loans, financial debts, or service obligations incurred under the following

programs, or other programs that incur a service obligation that converts to a loan on failure to satisfy the service obligation:

- Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Program;
- Indian Health Service (IHS) Scholarship Program;
- National Research Service Award (NRSA) Program;
- National Institutes of Health Undergraduate Scholarship Program (UGSP),
- Physicians Shortage Area Scholarship Program (Federal or State);
- Primary Care Loan (PCL) Program; and
- Public Health Service (PHS) and National Health Service Corps (NHSC) Scholarship Program.

(6) Delinquent loans, loans in default, or loans not current in their payment schedule;

(7) PLUS Loans;

(8) Loans that have been paid in full; and

(9) Loans obtained after the execution of the NIH Loan Repayment Program Contract (*e.g.*, promissory note signed after the LRP contract has been awarded).

Before the commencement of loan repayment, or during lapses in loan repayments, due to NIH administrative complications, Leave Without Pay (LWOP), or a break in service, LRP participants are wholly responsible for making payments or other arrangements that maintain loans current, such that increases in either principal or interest do not occur. The LRP contract period will not be modified or extended as a result of Leave Without Pay (LWOP) or a break in service. Penalties assessed participants as a result of NIH administrative complications to maintain a current payment status may not be considered for reimbursement.

LRP payments are NOT retroactive. Loan repayment for Fiscal Year 2003 will commence after a loan repayment contract has been executed, which is expected to be no earlier than June 2003.

Additional Program Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs.

This program is subject to OMB clearance under the requirements of the Paperwork Reduction Act of 1995. The OMB approval of the information collection associated with the Pediatric Research Loan Repayment Program expires on December 31, 2004. The Catalog of Federal Domestic Assistance number for the Pediatric Research LRP is 93.285.

Dated: January 24, 2003.

Elias A. Zerhouni,

Director, NIH.

[FR Doc. 03–7579 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Program Project Grants.

Date: April 23, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7572 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging, Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552(b)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel. Imaging of Aging Brain.

Date: April 3–4, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crown Plaza at the United Nations, 304 East 42nd Street, New York, NY 10017.

Contact Person: Ramesh Vemuri, PhD., National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Ave, Suite 2C212, Bethesda, MD 20892, 301–402–7700, rv23r@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Immunology of Aged T Cells.

Date: April 6–7, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Empress Hotel, 7766 Fay Ave., La Jolla, CA 92037.

Contact Person: James P. Harwood, PhD., Deputy Chief, Scientific Review Office, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9666, *harwoodj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, Nationa Institutes of Health, HHS).

Dated: March 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7573 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel. Clinical Career Developments Awards.

Date: April 28, 2003.

Time: 1:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John R. Lymangrover, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, 6701 Democracy Plaza, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7574 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Hyperglycemia and Adverse Pregnancy Outcome (HAPO).

Date: April 18, 2003.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7577 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center, March 31, 2003, 9 AM to March 31, 2003, 12 PM, which was published in the **Federal Register** on February 28, 2003, FR 68,40–9703.

The meeting will be held March 31, 2003 and is being changed from open to partially closed. The meeting will be closed from 11:30 to adjournment in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for discussion of personal qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: March 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7576 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Advisory Committee on Research on Women's Health, April 7, 2003, 9 a.m. to 5 p.m. and on April 8, 2003 9 a.m.–12 p.m. On April 7, 2003 the meeting is being held in 31 Center Drive, Conference Room 6, Bethesda, Maryland, 20892. On April 8, 2003 the meeting is being held in the Medical Board Room, Clinical Center, Room 2C–116, 10 Center Drive, Bethesda, Maryland, 20892 which was published in the **Federal Register** on March 11, 2003, VOL68;11572–11573.

The meeting will be held on 4/7/2008 and 4/8/2003 in Bethesda, Maryland. The meeting is open to the public, with attendance limited to space available.

Dated: March 25, 2003.

LaVerne Y. Stringfield,

Dierctor, Office of Federal Advisory Committee Policy.

[FR Doc. 03–7575 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); The NTP Annual Plan for Fiscal Year 2002; Notice of Availability

Summary

The NTP announces the availability of the NTP Annual Plan for Fiscal Year 2002. This report outlines the NTP research program for studying the toxicity of physical and chemical agents and for developing methods for toxicological evaluations. The report also provides information about efforts to develop and validate alternative and improved methods and identifies NTP resource allocations.

Background

The NTP was established within the Public Health Service of the Department of Health and Human Services (DHHS) in November 1978. The NTP is an interagency program whose mission is to evaluate agents of public health concern by developing and applying the tools of modern toxicology and molecular biology. In carrying out its mission, the NTP has several goals to:

- Broaden the spectrum of toxicological information obtained on selected chemicals;
- Develop and validate more sensitive and specific test methods;
- Develop improved strategies for generating scientific data that strengthen the scientific foundation for risk assessments; and
- Communicate NTP plans and results to government agencies, the medical and scientific communities, and the public.

A balanced program was created that includes chronic exposure studies, short-term exposure studies, the collection and application of mechanistic information, model development, alternative methods, and human studies. Scientific activities are divided into several major program areas: carcinogenesis, risk assessment research, alternative test systems, and toxicology. Toxicology covers activities in immunotoxicology, neurobehavioral toxicology, reproductive and developmental toxicology, respiratory toxicology and phototoxicology. Program and project leaders along with contact information are provided in the plan.

The NTP is headquartered at the National Institute of Environmental Health Sciences of the National Institutes of Health (NIEHS/NIH). The NTP consists of the relevant toxicology activities of the NIEHS/NIH, the National Center for Toxicological Research of the Food and Drug Administration and the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health. The Director of the NIEHS is also the NTP Director.

Availability of the NTP Annual Plan

The NTP Annual Plan for Fiscal Year 2002 is available electronically on the NTP Web site (*http://ntp-server.niehs.nih.gov*). Hard copies are available from the NTP Central Data Management (NIEHS, P.O. Box 12233, MD EC–03, Research Triangle Park, NC 27709; telephone 919–541–3419; fax 919–541–3687; *cdm@niehs.nih.gov*).

Dated: March 20, 2003.

Samuel Wilson,

Deputy Director, NIEHS.

[FR Doc. 03–7581 Filed 3–28–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Office for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA) in April 2003.

The meeting of the Advisory Committee for Women's Services will include welcoming three new members to the Committee, discussion involving SAMHSA's Priorities, Programs and Principles Matrix, activities of the Women, Youth and Families Task Force; and other substance abuse and mental health issues affecting women.

A summary of the meeting and/or a roster of committee members may be obtained from: Nancy P. Brady, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, SAMHSA, Parklawn Building, Room 12C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–1135.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date/Time: Open: April 11, 2003, 9 a.m.–5 p.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact: Nancy P. Brady, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 12C–26, Rockville, MD 20857. Telephone: (301) 443–1135; FAX: (301) 594–6159 and e-mail: *nbrady@samhsa.gov*.

Dated: March 24, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–7538 Filed 3–28–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–14686]

Commercial Fishing Industry Vessel Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC). CFIVSAC advises and makes recommendations to the Coast Guard on the safety of the commercial fishing industry.

DATES: Application forms should reach us on or before July 20, 2003.

ADDRESSES: You may request an application form by writing to Commandant (G–MOC–3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–0315; or by faxing 202–267–0506; or by emailing *kfrost@comdt.uscg.mil*. Send your application in written form to the above street address. This notice and the application form are available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Commander Joseph A. Servidio, Executive Director of CFIVSAC, or Kevin Frost, Assistant to the Executive Director, telephone 202–267–0315, fax 202–267–0506, e-mail: *kfrost@comdt.uscg.mil* or *http://www.uscg.mil/hq/gm/cfvs/cfivac.htm*.

SUPPLEMENTARY INFORMATION: The Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) is a Federal advisory committee under 5 U.S.C. App. 2. As required by the Commercial Fishing Industry Vessel Safety Act of 1988, the Coast Guard established CFIVSAC to provide advice to the Coast Guard on issues related to the safety of commercial fishing vessels regulated under chapter 45 of Title 46, United States Code, which includes uninspected fishing vessels, fish processing vessels, and fish tender vessels. (*See* section 4508 of title 46 of the U.S. Code, 46 U.S.C. 4508).

CFIVSAC consists of 17 members as follows: Ten members from the commercial fishing industry who reflect a regional and representational balance and have experience in the operation of vessels to which chapter 45 of Title 46, United States Code applies, or as a crew member or processing line member on an uninspected fish processing vessel; one member representing naval architects or marine surveyors; one member representing manufacturers of vessel equipment to which chapter 45 applies; one member representing education or training professionals related to fishing vessel, fish processing vessels, or fish tender vessel safety, or personnel qualifications; one member representing underwriters that insure vessels to which chapter 45 applies; and three members representing the general public, including whenever possible, an independent expert or consultant in maritime safety and a member of a national organization composed of persons representing the marine insurance industry.

CFIVSAC meets at least once a year in different seaport cities nationwide. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific problems as required.

We will consider applications for six positions that expire or become vacant in October 2003 in the following categories: (a) Commercial Fishing Industry (four positions); (b) Naval Architect (one position); (c) General Public (one position).

Each member serves a 3-year term. A few members may serve consecutive terms. All members serve at their own expense and receive no salary from the Federal Government, although travel reimbursement and per diem are provided.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected as a member representing the general public, you are required to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: March 12, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 03–7542 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–14706]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and its Hazardous Cargo Transportation Security Subcommittee will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. These meetings will be open to the public.

DATES: CTAC will meet on Thursday, April 17, 2003, from 9 a.m. to 3:30 p.m. The Subcommittee on Hazardous Cargo Transportation Security will meet on Monday, April 14, 2003, from 1 p.m. to 4 p.m., Tuesday, April 15, 2003, from 8 a.m. to 4 p.m., Wednesday, April 16, 2003, from 8 a.m. to 4 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 7, 2003. Requests to have a copy of your material distributed to each member of the Committee should reach the Coast Guard on or before April 7, 2003.

ADDRESSES: CTAC will meet at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC, in room 2415. The Subcommittee on Hazardous Cargo Transportation Security will meet at Department of Transportation Headquarters, Nassif Building, 400 7th Street, SW., Washington, DC, in room 6244. Send written material and requests to make oral presentations to Commander James M. Michalowski, Executive Director of CTAC, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Commander James M. Michalowski, Executive Director of CTAC, or Ms. Sara Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Subcommittee Meeting on April 14–16, 2003

(1) Introduction of Subcommittee members and attendees.
(2) Discussion of inland vessel tracking system.
(3) Discussion of security communications.
(4) Discussion of security training.
(5) Discussion of security drills and exercises.
(6) Discussion of outreach initiatives concerning U.S. Coast Guard security regulations.

Agenda of CTAC Meeting on Thursday, April 17, 2003

(1) Introduction of Committee members and attendees.
(2) Status reports from the Charter Revision and Outreach Workgroups.
(3) Status report from the Hazardous Cargo Transportation Security Subcommittee.
(4) Presentation by the American Chemistry Council on their security initiatives.
(5) Presentation by the Coast Guard's Office of Port, Vessel, and Facility Security (G–MPS).
(6) Presentation by the Coast Guard's Office of Response on the development of the Comprehensive Hazardous Chemical Spill Response Guide.
(7) Presentation by the Coast Guard's Office of Standards Evaluation and Development on the Coast Guard's regulatory process.
(8) Update of Coast Guard Regulatory Projects and IMO Activities.

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. At the discretion of the Chair, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director and submit written material on or before April 7, 2003. If you would like a copy of your material distributed to each member of the Committee in advance of a meeting, please submit 25 copies to the Executive Director (see **ADDRESSES**) no later than April 7, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Executive Director as soon as possible.

Dated: March 13, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 03–7543 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–14750]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its subcommittees on regulatory review III of recreational boating safety regulations, boats and associated equipment, aftermarket marine equipment, and prevention through people will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAG will meet on Monday, April 28, 2003, from 8:30 a.m. to 5 p.m. and Tuesday, April 29 from 8:30 a.m. to 12 noon. The Recreational Boating Safety Regulatory Review III Subcommittee will meet on Saturday, April 26, 2003, from 1 p.m. to 5 p.m. The Boats and Associated Equipment Subcommittee will meet on Sunday, April 27, 2003, from 9 a.m. to 12 noon. The Aftermarket Marine Equipment Subcommittee will meet on Sunday, April 27, 2003, from 1 p.m. to 3 p.m. The Prevention Through People Subcommittee will meet on Sunday, April 27, 2003, from 3:30 p.m. to 5:30 p.m. These meetings may close early if all business is finished. On Sunday, April 27, a Subcommittee meeting may start earlier if the preceding Subcommittee meeting has closed early. Written material and requests to make oral presentations should reach the Coast Guard on or before April 15, 2003. Requests to have a copy of your material distributed to each member of the committee or subcommittees should reach the Coast Guard on or before April 7, 2003.

ADDRESSES: NBSAC will meet at the Holiday Inn Rosslyn at Key Bridge, 1900 N. Fort Meyer Drive, Arlington, VA 22209. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Jeff Hoedt, Executive Director of NBSAC, Commandant (G–OPB–1), US. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov* under docket USCG–2003–14750 or at the Web Site for the Office of Boating Safety at URL address www.uscgboating.org.

FOR FURTHER INFORMATION CONTACT: Jeff Hoedt, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Tentative Agendas of Meetings

National Boating Safety Advisory Council (NBSAC). The agenda includes the following:

(1) Remarks—Rear Admiral Jeffrey J. Hathaway, Director of Operations Policy and Council Sponsor.
(2) Chief, Office of Boating Safety Update on NBSAC Resolutions.
(3) Executive Director's report.
(4) Chairman's session.
(5) Recreational Boating Safety Regulatory Review III Subcommittee report.
(6) Boats and Associated Equipment Subcommittee report.
(7) Aftermarket Marine Equipment Subcommittee report.
(8) Prevention Through People Subcommittee report.
(9) Recreational Boating Safety Program report.
(10) Coast Guard Auxiliary report.
(11) Canadian Coast Guard report.
(12) National Association of State Boating Law Administrators Report.
(13) Wallop Breaux reauthorization update.
(14) Presentation on Canoe and Kayak Safety Issue.
(15) Report on Boating Safety Interventions for Anglers and Hunters.
(16) Update on Risk-based Approval Process for Personal Flotation Devices (PFDs) (Former Personal Flotation Device-Life Saving Index (PFD–LSI).) and development of PFD design and evaluation tools—manikin family and computer model.
(17) Presentation on USCG Maritime Security Rulemaking Effort.

Recreational Boating Safety Regulatory Review III Subcommittee. The agenda includes the following:

(1) Review recreational boating safety regulations concerning requirements for operators of recreational vessels (33 CFR parts 95, 100, 173, 174, 175, 177, 181 (subparts A and G), 187 and 46 CFR part 25 (subpart 25.30), and part 58 (subparts 58.03 and 58.10).
(2) Present recommendations to the Council as to whether the current recreational boating safety regulations need to be changed or removed based on a review of need, technical accuracy, cost/benefit, problems and alternatives.

Boats and Associated Equipment Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting boats and associated equipment.

Aftermarket Marine Equipment Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting aftermarket marine equipment.

Prevention Through People Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting prevention through people.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than April 14, 2003. Written material for distribution at a meeting should reach the Coast Guard no later than April 7, 2003. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than April 7, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: March 24, 2003

Jeffrey J. Hathaway,

Rear Admiral, Coast Guard, Director of Operations Policy.

[FR Doc. 03–7544 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection to be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; OMB Control Number 1018–0093, Applications for Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) will submit the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act. An estimate of the information collection burden is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and/or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments on or before May 30, 2003.

ADDRESSES: Send your comments and suggestions on specific requirements to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection submission, explanatory information, and/or related forms, contact Anissa Craghead, Information Collection Clearance Officer at 703–358–2445, electronically at *Anissa_Craghead@fws.gov*, or Amy Brisendine at 703–358–2104 ext. 5100, electronically at *Amy_Brisendine@fws.gov*.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies be given an opportunity to comment on information collection and record keeping activities (see 5 CFR 1320.8(d)). We are submitting a request to OMB to approve: (1) The revision of the collection of information for many of the Service's permit applications (Form numbers 3–200–19 through 3–200–37, 3–200–39 through 3–200–53, and 3–200–58, currently approved under OMB control number 1018–0093); (2) the addition of forms 3–200–64 through 3–200–66, and 3–200–73; and (3) the deletion of forms 3–200–38 and 3–200–51. All of these forms are used by the Division of Management Authority, International Affairs. We are requesting a three-year term of approval for this information collection activity. Federal agencies may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0093.

Revisions to the currently approved forms include modification of the format and content of the application forms so that they will be easier to understand and easier for the applicant to complete. We are removing one application form (3–200–38, Import of Wildlife Samples, CITES and/or ESA) from the information collection approval request because it is being combined with form 3–200–29, Import/Export/Re-Export of Samples (Wildlife and/or Biomedical Samples) (CITES and/or ESA). We are also removing Form 3–200–51, Approval of a Foreign Breeding Facility Under WBCA, from the information collection approval request because the regulations (50 CFR 15.41) have not yet been developed. Five new forms have been added to the information collection in order to simplify the information collection process on the public in terms of reporting requirements. The new forms (3–200–58, 3–200–64 through 3–200–66, and 3–200–73) are noted in the table below. In addition, we are requesting that Form 3–200–26, which is currently approved under OMB control number 1018–0092, be transferred to this collection.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden on the public; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond. The information collections in this program are part of a system of records covered by the Privacy Act (5 U.S.C. 552 (a)).

The information obtained from the applications for permits will be used to determine the eligibility of applicants for permits they are requesting according to criteria in various Federal wildlife conservation laws, international treaties, and regulations on the issuance, suspension, revocation, or denial of permits.

The information collection requirements in this submission implement the regulatory requirements of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*), the Lacey Act (16 U.S.C. 3371 *et seq.*), the Bald and Golden Eagle Protection Act (16 U.S.C. 668), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (27 U.S.T. 1087), the Marine Mammal Protection Act (16 U.S.C. 1361–1407 *et seq*), and the Wild Bird Conservation Act (16 U.S.C. 4901–4916 *et seq*), and are contained in Service regulations in Chapter I, Subchapter B of Title 50 Code of Federal Regulations (CFR). Generic permit application and record keeping requirements shared by our permit-issuing offices have been consolidated in 50 CFR part 13. The following table lists the application forms, with their respective burden estimates and applicable regulations, that we plan to submit to OMB for approval under the Paperwork Reduction Act.

Application No.	Activity	Total number of respondents annually	Estimated time to complete application (hours)	Total annual public reporting burden (hours)	Applicable regulation(s)
3–200–19	Import of Sport-hunted Trophies of Southern African Leopard, African Elephant, and Namibian Southern White Rhinoceros.	880	0.3	264	50 CFR 17.40(e), 17.40(f), 23.11, 23.12, and 23.15
3–200–20	Import of Sport-Hunted Trophies (Appendix I of CITES and/or ESA).	50	1.0	50	50 CFR 17.21, 17.22, 17.31, 17.32, 23.11, and 23.15
3–200–21	Import of Sport-Hunted Trophies of Argali	220	0.8	165	50 CFR 17.31, 17.32 and 17.40(j)
3–200–22	Import of Sport-Hunted Bontebok Trophies	110	0.3	33	50 CFR 17.21 and 17.22
3–200–23	Export of Pre-Convention, Pre-Act, or Antique Specimens (CITES and/or ESA).	300	0.7	210	50 CFR 14.22, 17.4, 18.14, 23.11, 23.13(c), and 23.15
3–200–24	Export of Live Captive-Born Animals (CITES).	450	0.7	315	50 CFR 23.11, 23.12 and 23.15
3–200–25	Export of Raptors	100	1.0	100	50 CFR 21.21, 21.29, 23.11, 23.12 and 23.15

Application No.	Activity	Total number of respondents annually	Estimated time to complete application (hours)	Total annual public reporting burden (hours)	Applicable regulation(s)
3–200–26	Export of Skins/Products of Six Native Species: bobcat, lynx, river otter, Alaskan brown bear, Alaskan gray wolf, and American alligator (CITES).	3760	0.3	1128	50 CFR 23.11, 23.12 and 23.15
3–200–27	Export of Wildlife Removed from the Wild (CITES).	10	0.7	7	50 CFR 23.11, 23.12 and 23.15
3–200–28	Export/Re-Export of Trophies by Hunters or Taxidermists (CITES).	60	0.5	30	50 CFR 23.11, 23.12 and 23.15
3–200–29	Import/Export/Re-Export of Samples (Wildlife and or Biomedical) (CITES and/or ESA).	600	1.5	615	50 CFR 17.21, 17.22, 17.31, 17.32, 23.11, 23.12, 23.13 and 23.15
3–200–30	Export/Re-import of Circuses and Traveling Animal Exhibitions.	230	1.0	230	50 CFR 17.21, 17.22, 17.31, 17.32, 23.11, 23.12, 23.13 and 23.15
3–200–31	Introduction from the Sea (CITES)	40	2.0	80	50 CFR 23.11, 23.12, and 23.15
3–200–32	Export/Re-Export of Plants (CITES)	180	1.0	180	50 CFR 23.11, 23.12, 23.13 and 23.15
3–200–33	Export of Artificially Propagated Plants (Multiple-use).	100	2.0	200	50 CFR 17.61, 17.62, 17.71, 17.72, 23.11, 23.12, 23.13 and 23.15
3–200–34	Export of American Ginseng*	70	0.3	21	50 CFR 23.11, 23.12, 23.13, 23.15 and 23.51
3–200–35	Import of Appendix-I Plants (CITES)	10	1.0	10	50 CFR 23.11, 23.12, 23.13 and 23.15
3–200–36	Export/Import/Interstate and Foreign Commerce of Plants (ESA and/or CITES).	5	1.0	5	50 CFR 17.61, 17.62, 17.71, 17.72, 23.11, 23.12 and 23.15
3–200–37	Export/Import/Interstate and Foreign Commerce/Take of Animals (ESA and/or CITES).	230	2.0	460	50 CFR 17.21, 17.22, 17.31, 17.32, 23.11, 23.12 and 23.15
3–200–39	Certificate of Scientific Exchange (CITES)*	20	1.0	20	50 CFR 23.11, 23.13(g) and 23.15
3–200–40	Export and Re-import of Museum Specimens (ESA)*.	10	1.0	10	50 CFR 17.21, 17.22, 17.31, 17.32, 17.61, 17.62, 17.71 and 17.72
3–200–41	Captive-Bred Wildlife Registration*	300	2.0	600	50 CFR 17.21(g) and 17.31
3–200–42	Import/Transport of Injurious Wildlife	35	2.0	70	50 CFR 16.22
3–200–43	Take/Import/Transport/Export of Marine Mammals or Amendment of Existing Permit*.	100	4.0	400	50 CFR 18.11, 18.22, 18.31, 17.21, 17.22, 17.31, 17.32, 23.11, 23.12, 23.13 and 23.15
3–200–44	Registration of an Agent/Tannery (MMPA)*	20	0.5	10	50 CFR 18.11, 18.12 and 8.23(d)
3–200–45	Import of Polar Bear Trophies Sport Hunted in Canada.	60	0.5	30	50 CFR 18.11, 18.12 and 18.30
3–200–46	Import or Export of Personal Pets (CITES and/or WBCA).	440	0.5	220	50 CFR 15.11, 15.12, 15.21 and 15.25
3–200–47	Import of Birds for Scientific Research or Zoological Breeding and Display (WBCA).	50	2.0	100	50 CFR 15.11, 15.12, 15.21, 15.22 and 15.23
3–200–48	Import of Birds Under an Approved Cooperative Breeding Program (WBCA)*.	20	1.0	20	50 CFR 15.11, 15.12, 15.21 and 15.24
3–200–49	Approval of a Cooperative Breeding Program (WBCA).	10	3.0 3	0	50 CFR 15.11, 15.12, 15.21 and 15.26
3–200–50	Approval of Sustainable Use Management Plan Under WBCA.	1	10	10	50 CFR 15.11, 15.12, 15.21 and 15.32
3–200–51	Approval of Sustainable Use Management Plan Under WBCA.	1	8	8	50 CFR 15.11, 15.12, 15.21 and 15.41
3–200–52	Reissuance or Renewal of a Permit	200	0.3	50	50 CFR 13.21 and 13.22
3–200–53	Export/Re-Export of Captive-Held Marine Mammals (CITES).	20	2.0	40	50 CFR Part 18, 23.11, 23.12, 23.13 and 23.15
3–200–58	Retrospective Documents**	50	1.0	50	50 CFR 23.11, 23.15
3–200–64	Certificate of Ownership for Personally Owned Wildlife "Pet passport" (CITES)**.	400	0.5	200	50 CFR 23.11, 23.15
3–200–65	Registration of Appendix-I Commercial Breeding Operations (CITES)**.	15	44.5	245	50 CFR 23.11, 23.15
3–200–66	Replacement Documents (CITES)**	50	0.5	25	23.11, 23.15
3–200–73	Re-Export of Wildlife (CITES)**	300	0.5	150	50 CFR 23.11, 23.12 and 23.15
Total Hours		9507		6391	

*Note: There is a reporting requirement associated with the issuance of permits granted as a result of this information collection which is included in the estimated burden. Required information to be submitted is outlined on the corresponding permits issued.
**Note: These are new forms.

Title: Federal Fish and Wildlife Permit Application, Management Authority.

OMB Number: 1018–0093.

Service Form Numbers: 3–200–19 through 3–200–37, 3–200–39 through 3–200–53 and 3–200–58, 3–200–64 through 3–200–66, and 3–200–73.

Frequency of Collection: On occasion.

Description of Respondents: Individuals, biomedical companies, circuses, zoological parks, botanical gardens, nurseries, museums, universities, scientists, antique dealers, exotic pet industry, hunters, taxidermists, commercial importers/exporters of wildlife and plants, freight forwarders/brokers, local, State, tribal and Federal governments.

Total Annual Responses: 9507 responses.

Total Annual Burden Hours: 6391 hours.

Dated: March 14, 2003.

Charlie R. Chandler,

Chief, Branch of Permits—Domestic, Division of Management Authority.

[FR Doc. 03–7568 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 30, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–069356

Applicant: Philip Dudley, Upperville, VA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–069332

Applicant: Miami Metrozoo, Miami, Florida.

The applicant requests a permit to export one live male Komodo island monitor (*Varanus komodoensis*) to the Zoologico Guadalajara, Mexico for the purpose of conservation education and enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: March 21, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–7563 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 30, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive,

Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–064172

Applicant: Exotic Feline Breeding Compound, Inc., Rosamond CA.

The applicant request a permit to export one male captive-born jaguar (*Panthera onca*) to the Singapore Zoological Gardens, Singapore, for the purpose of enhancement of the survival of the species through captive propagation and conservations education.

PRT–068724

Applicant: Albert Schweizer, Reistertown, MD.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–068750

Applicant: Wayne M. Knapp, Syracuse, NY.

The applicant requests a permit to import the sport-hunted trophy of one male bontetok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–068778

Applicant: Samuel G. Spicer, Dallas, TX.

The applicant request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–068868

Applicant: Thomas U. Dudley, Upperville, VA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–063832

Applicant: Racine Zoological Gardens, Racine, WI.

The applicant request a permit to re-export and return a captive born tiger (*Panthera tigris*) to the Parken Zoo, Eskilstuna, Sweden, for the purpose of enhancement of the species through conservation education. This animal is being returned to the facility from which it originated.

PRT–06892

Applicant: National Geographic Society, Washington, DC.

The applicant requests a permit to import biological samples from wild specimens of American crocodile (*Crocoylus acutus*), taken from the Tarcoles River, Costa Rica, for the purpose of enhancement of the survival of the species through scientific research.

PRT–057398

Applicant: The Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to import wild live specimens and biological samples of California condors (*Gymnogyps californianus*) for the purpose of enhancement of the survival of the species through reintroduction to Sierra San Pedro Martir, Baja California, Mexico. This notification covers activities conducted by the applicant over a five year period. Permittee must annually apply for renewal.

PRT–068198

Applicant: Zoological Society of San Diego, San Diego Wild Animal Park, Escondido, CA.

The applicant request a permit to export one male captive born greater Indian one-horned rhinoceros (*Rhinoceros unicornis*) to the Warsaw Zoo, Poland, for the purpose of enhancement of the survival of the species through captive propagation.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: March 7, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Managment Authority.

[FR Doc. 03–7564 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 30, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–030791

Applicant: Scovill Zoo, Decatur, IL

The applicant requests a permit to import two male captive-born cheetahs (*Acinonyx jubatus*) from De Wildt Cheetah and Wildlife Centre, De Wildt, South Africa for the purpose of enhancement of the species through conservation education.

PRT–765658, 809334, 068882, 068908

Applicant: Ferdinand F. and Anton F. Hantig, dba Fercos, Las Vegas, NV

The applicant requests permits to export captive born tigers (*Panthera tigris*) and leopards (*Panthera pardus*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: 765658, Indy; 809334, Sarina; 068882, Rama; and 068908, Astar. This notification covers activities conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

PRT–066667

Applicant: Thomas D. Klug, Watertown, WI

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–068965

Applicant: SEA—EL CARMEN, Houston, TX

The applicant requests a permit to import biological samples obtained from Hawksbill sea turtles (*Eretmochelys imbricata*) collected in the wild in Mexico, for the purpose of enhancement of the species through scientific research. This notification covers activities conducted by the applicant over a five-year period.

PRT–054484, 065144, 065145, 065146, 065147, 065148, 065149

Applicant: Tarzan Zerbini Circus, Webb City, MO

The applicant requests permits to re-export wild and captive born Asian elephants (*Elephas maximus*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: 054484, Luke; 065144, Jan; 065145, Roxy; 065146, Schell; 065147, Peggy; 065148, Bunny; and 065149, Marie. This notification covers activities conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–069177

Applicant: Felix F. Gardina, Ghent, NY

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: March 14, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–7566 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We (U.S. Fish and Wildlife Service) solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before April 30, 2003, to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–832717

Applicant: Rod Dossey, Encinitas, California.

The permittee requests an amendment to remove/reduce to possession (collect) the *Arctostaphylos glandulosa* ssp. *crassifolia* (Del Mar manzanita), *Chorizanthe orcuttiana* (Orcutt's spineflower), *Ambrosia pumila* (San Diego ambrosia), and *Fremontodendron mexicanum* (Mexican flannelbush) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing their survival.

Permit No. TE–067992

Applicant: Daniel Dugan, Morro Bay, California.

The applicant requests a permit to take (harass by survey) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permif No. TE–067990

Applicant: Barbie Dugan, Morro Bay, California

The applicant requests a permit to take (harass by survey) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–036499

Applicant: Golden Gate National Recreation Area, San Francisco, California.

The permittee requests an amendment to take (harass by survey) the Mission blue butterfly (*Icaricia icaroides missionensis*) in conjunction with surveys within the Golden Gate National Recreation Area in California for the purpose of enhancing its survival.

Permit No. TE–068140

Applicant: Laird A. Henkel, Aptos, California.

The applicant requests a permit to take (locate and monitor nests) the California least tern (*Sterna antillarum browni*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–061375

Applicant: Renee Spenst, Sacramento, California.

The permittee requests an amendment to take (harass) the California clapper rail (*Rallus longirostris obsoletus*) and the salt marsh harvest mouse (*Reithrodontomys raviventris*) in conjunction with scientific research in Napa County, California for the purpose of enhancing their survival.

Permit No. TE–068072

Applicant: Philippe Vergne, Ramona, California.

The applicant requests a permit to take (capture) the Stephens' kangaroo rat (*Dipodomys stephensi*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), and the Pacific pocket mouse (*Perognathus longimembris pacificus*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing their survival.

Permit No. TE–038701

Applicant: Bonnie Peterson, Lakeside, California.

The permittee requests an amendment to take (locate and monitor nests and band) the California least tern (*Sterna antillarum browni*) and the least Bell's vireo (*Vireo bellii pusillus*), and to take (harass by survey, locate and monitor nests, and band) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys in San Diego County, California for the purpose of enhancing their survival.

Permit No. TE–068743

Applicant: University of California Botanical Garden, Berkeley, California.

The applicant requests a permit to remove/reduce to possession (collect) the *Calystegia stebbinsii* (Stebbin's morning-glory), *Fremontodendron californicum* ssp. *decumbens* (Pine Hill flannelbush), and *Galium californicum* ssp. *sierrai* (El Dorado bedstraw) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing their survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: March 7, 2003.

Rowan W. Gould,

Deputy Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 03–7590 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application

SUMMARY: We announce our receipt of an application to conduct certain activities pertaining to scientific research and enhancement of survival of endangered species.

DATES: Written comments on this request for a permit must be received April 30, 2003.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director-Ecological Services, U.S. Fish and Wildlife Service, PO Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; telephone 303–236–7400, facsimile 303–236–0027.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone 303–236–7400.

SUPPLEMENTARY INFORMATION: The following applicant has requested issuance of a scientific research and enhancement of survival permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

TE–067729

Applicant: Keith B. Gido, Kansas State University, Manhattan, Kansas.

The applicant requests a permit to take Topeka shiners (Notropis topeka) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Dated: March 14, 2003.

Mary G. Henry,

Acting Regional Director, Denver, Colorado.

[FR Doc. 03–7595 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application is available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On April 18, 2002, a notice was published in the **Federal Register** (67 FR 19206), that an application had been filed with the Fish and Wildlife Service by Harry M. League for a permit (PRT–055029) to import one polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population, Canada, for personal use.

Notice is hereby given that on March 10, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: March 21, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–7565 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application is available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On September 30, 2002, a notice was published in the **Federal Register** (67 FR 61349), that an application had been filed with the Fish and Wildlife Service by Olds D. Schupp for a permit (PRT–061560) to import one polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on February 24, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: March 14, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–7567 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Roll Submitted by the Little Traverse Bay Band of Odawa Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 9(b)(2) of Public Law 103–324, 108 Stat. 2156, as amended, notice is given of receipt of the membership list of the Little Traverse Bay Band of Odawa Indians, containing 2,239 names of tribal members.

FOR FURTHER INFORMATION CONTACT: Anne E. Bolton, Field Representative, Michigan Field Office, 2901.5 I–75 Business Spur, Sault Ste. Marie, Michigan 49783, Telephone number (906) 632–6809.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

The membership roll was received at the Bureau of Indian Affairs, Michigan Agency, on May 2, 1996. After review, the following corrections to the roll were made: Six names that were left off the initial roll were added, four names were removed due to being denied membership, nine people were removed due to membership in another tribe, two names were removed due to relinquishment prior to May 2, 1996 and three people were removed due to a change in the enrollment date. The corrected list containing the names of 2,239 tribal members was approved by Tribal Council Resolution # 072102–02 and received in the Michigan Field Office on August 1, 2002.

Dated: March 13, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–7619 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Confederated Tribes of Siletz Indians of Oregon

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed approximately 10.70 acres, more or less, as an addition to the Siletz Indian Reservation for the Confederated Tribes of Siletz Indians of Oregon on March 12, 2003. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Division of Real Estate Services, MS–4512/MIB/Code 220, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for four tracts of land described below. The land was proclaimed to be an addition to and part of the Siletz Indian Reservation for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Siletz Indian Reservation

Lincoln County, Oregon

Tract 1

A tract of land lying within Lots 14 and 15, Block 6, Siletz Townsite, Lincoln County Oregon, described as follows:

Beginning at the southwest corner of Lot 15, Block 6, Siletz Townsite, located in the northeast one-quarter of Section 9, Township 10 south, Range 10 west, Willamette Meridian in Lincoln County, Oregon, said corner being on the easterly Right-Of-Way of Gaither Street; thence north 89 deg. 59′ 43″ east, along the south boundary of Lot 15, a distance of 165.96 feet to the southeast corner of the tract described in Book 177, page 1838, recorded December 30, 1986; thence north 00 deg. 05′ 01″ west along the eastline of said Book 177, page 1838, to the southerly Right-Of-Way of East Logsden Road, a distance of 70.04 feet; thence south 89 deg. 58′ 26″ west, along said Right-Of-Way to the easterly Right-Of-Way of Gaither Street, a distance of 165.94 feet; thence south 00 deg. 04′ 24″ east, along said Right-Of-Way, a distance of 69.98 feet to the point of beginning. Containing 0.27 acres more or less.

Tract 2

A tract of land lying within Lots 14, 15, 16 and Tract C of Block 6, Siletz Townsite, a duly recorded subdivision plat, which is the northeast quarter, Section 9, Township 10 south, Range 10 west, Willamette Meridian, Lincoln County, Oregon. Said parcel being more particularly described in accordance with Lincoln County Survey Record Number 13,943 as follows:

Beginning at a ⅝ inch by 30 inch iron rebar set flush, with yellow plastic cap inscribed "VILES LS 2029", which is at the intersection of the southeasterly line of Tract C (formally Power Site Reserve No. 181) and the south line of East Logsden Road; thence south 31 deg. 30′ 05″ west along above said southeasterly line of Tract C, 154.51 feet to a ½ inch by 27 inch iron rebar at the northeast corner of the Clark Tract described in instrument recorded June 11, 1997, Book 338, Page 2170; thence leaving above said line north 58 deg. 29′ 55″ west 100.05 feet along the north line of said Clark Tract to a ½-inch iron rebar, which is on the northwesterly line of above said Tract C; thence south 31 deg. 30′ 36″ west along above said northwesterly line of Tract C, 24.22 feet to a ⅝ inch by 30 inch iron rebar set flush, with yellow plastic cap inscribed "VILES LS 2029", said point being the northeast corner of the Blackwood Tract described in instrument, recorded May 25, 1993, Book 262, page 183; thence leaving above said line south 89 deg. 59′ 58″ west 58.52 feet along said Blackwood line to a ⅝ inch by 30 inch

iron rebar set flush, with yellow plastic cap inscribed "VILES LS 2029", said point being a corner of said Blackwood Tract; thence north 00 deg. 04′ 38″ west 30.00 feet to a ⅝ inch by 30 inch iron rebar set flush, with yellow plastic cap inscribed "VILES LS 2029", which is on the line common to Lot 15 and Lot 16, Block 6, Siletz Townsite; thence continuing north 00 deg. 04′ 38″ west 70.01 feet to a ⅝ inch by 30 inch iron rebar set flush, with yellow plastic cap inscribed "VILES LS 2029", which is on the above said south line of East Logsden Road; thence along above said south line north 89 deg. 58′ 35″ east 120.00 feet to a ⅝-inch iron rebar which is at the above said northwesterly line of Tract C; thence continuing along above said south line north 89 deg. 58′ 35″ east 117.36 feet to the beginning point. Containing 0.48 acres more or less.

Tract 3

Parcel III A tract of land located in U.S. Lots 17 and 32, Section 4, Township 10 south, Range 10 west, Willamette Meridian and U.S. Lot 24, Section 3, Township 10 south, Range 10 west, Willamette Meridian, in Lincoln County, Oregon, being more particularly described as follows:

Beginning at the northwest corner of U.S. Lot 32, Section 4, Township 10 south, Range 10 west; thence south 00 deg. 38′ 26″ west, along the westerly line of U.S. Lot 32 to the northerly Right of Way of County Road No. 406 (also known as "Old River Road"), a distance of 157.92 feet; thence continuing on said Right of Way along the arc of a 411.97 foot radius curve to the right (the short chord of which bears north 47 deg. 46′ 42″ east, 56.56 feet), a distance of 56.60 feet; thence north 51 deg. 47′ 10″ east, a distance of 111.95 feet; thence along the arc of a 331.56 foot radius curve to the right (the long chord of which bears north 67 deg. 18′ 57″ east, 178.24 feet), a distance of 180.46 feet; thence north 82 deg. 53′ 58″ east, a distance of 172.13 feet; thence along the arc of a 219.11 foot radius curve to the left (the long chord of which bears north 55 deg. 39′ 57″ east, 200.54 feet), a distance of 208.29 feet; thence north 28 deg. 25′ 55″ east, a distance of 294.37 feet; thence along the arc of a 271.56 foot radius curve to the left (the long chord of which bears north 14 deg. 07′ 01″ east, 134.29 feet), a distance of 136.70 feet; thence north 00 deg. 11′ 53″ west, a distance of 71.49 feet; thence along the arc of a 220.99 foot radius curve to the right (the short chord of which bears north 14 deg. 41′ 58″ east, 113.63 feet), a distance of 114.92 feet to the most easterly corner of a tract of land as described in Microfilm Book 330, page 0078, Lincoln County Film Records; thence north 59 deg. 23′ 47″ west, along the Northerly boundary of the above described tract to the High Water Line of the east bank of the Siletz River, a distance of 329 feet, more or less; thence southwesterly, along said High Water Line to its intersection with the westerly line of U.S. Lot 17, Section 4; thence south 00 deg. 43′ 00″ west, along said westerly line to the southwest corner of U.S. Lot 17, which is the point of beginning, a distance of 144, more or less. Containing 9.2 acres more or less.

Tract 4

Parcel III A tract of land located in Section 9, Township 10 south, Range 10 west of the Willamette Meridian, Lincoln County, Oregon, described as follows:

Beginning at the northwest corner of Government Lot 15, in Section 9, Township 10 south, Range 10 west, Willamette Meridian, Lincoln County, Oregon; running thence north 0 deg. 01′ west, a distance of 332.8 feet to the true point of beginning of the tract herein described; thence north 89 deg. 59′ east, a distance of 200 feet, more or less, to the northwest corner of that tract conveyed to the Confederated Tribes of Siletz Indians by Memorandum of Contract recorded December 15, 1987 in Book 188, page 1134; thence south 0 deg. 01′ east 170 feet, more or less, to the northeast corner of the Neil Bordon Tract as described in Bargain and Sale Deed recorded May 22, 1989 in Book 204, page 1443; thence south 89 deg. 59′ west 200 feet, more or less, to the northwest corner of the Neil Bordon Tract as described by Warranty Deed recorded April 18, 1978 in Book 86, page 1091; thence north 0 deg. 01′ west 170 feet, more or less, to the point of beginning. Containing 0.75 acres more or less.

The above-described tracts contain a total of 10.70 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, public utilities and for railroads and pipelines and any other rights-of-way or reservations record.

Dated: March 12, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–7637 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Western Gulf of Mexico (GOM), Oil and Gas Lease Sale 187

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the proposed notice of sale.

SUMMARY: GOM OCS; notice of availability of the proposed notice of sale for proposed Oil and Gas Lease Sale 187 in the Western GOM. This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

FOR FURTHER INFORMATION CONTACT: The proposed Notice of Sale for Sale 187 and a "Proposed Sale Notice Package" containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

DATES: The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for August 20, 2003.

Dated: March 19, 2003.

R.M. "Johnnie" Burton,

Director, Minerals Management Service.

[FR Doc. 03–7618 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0035 and 1029–0063

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for the titles described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and their expected burden and cost.

DATES: Comments must be submitted on or before April 30, 2003, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783. You may also contact Mr. Trelease at *jtrelease@osmre.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13),

require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted two requests to OMB to renew its approval for the collections of information found at 30 CFR part 779, Surface mining permit applications—minimum requirements for environmental resources; and for the Coal Production and Reclamation Fee Report—Form OSM–1. OSM is requesting a 3-year term of approval for these information collection activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for these collections of information are 1029–0035 for Part 779 and 1029–0063 for the OSM–1 form.

As required under 5 CFR 1320.8(d), a Federal Register notice soliciting comments on these collections of information was published on January 17, 2003 (68 FR 2574). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Surface mining permit applications—minimum requirements for environmental resources, 30 CFR Part 779.

OMB Control Number: 1029–0035.

Summary: Applicants for surface coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed surface mining activities. The information will be used by the regulatory authority to determine if the applicant can comply with environmental protection performance standards.

Bureau Form Number: None.

Frequency of Collection: Once upon submittal of mining application.

Description of Respondents: Coal mining companies and state regulatory authorities.

Total Annual Responses: 325.

Total Annual Burden Hours: 52,813 hours.

Title: Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting, 30 CFR Part 870.

OMB Control Number: 1029–0063.

Summary: The information is used to maintain a record of coal produced for sale, transfer, or use nationwide each calendar quarter, the method of coal removal and the type of coal, and the basis for coal tonnage reporting in compliance with 30 CFR 870 and sections 401 and 402 of Public Law 95–87. Individual reclamation fee payment liability is based on this information. Without the collection of information OSM could not implement its regulatory responsibilities and collect the fee. This submission is mandatory. Estimated time to complete the OSM–1 form is 16 minutes for paper copy and 5 minutes using electronic means.

Bureau Form Number: OSM–1.

Frequency of Collection: Quarterly.

Description of Respondents: Coal mine permittees.

Total Annual Responses: 12,364.

Total Annual Burden Hours: 2,605.

Send comments on the need for the collection of information for the performances of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503, and to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240.

Dated: March 20, 2003.

Richard G. Bryson,

Acting Assistant Director, Program Support.

[FR Doc. 03–7562 Filed 3–28–03; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Rehabilitation Maintenance Certificate (OWCP–17). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 30, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW, Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *hbell@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act and the Federal Employees' Compensation Act. These Acts provide employment rehabilitation benefits to eligible injured workers. The OWCP–17 is a certificate which serves as a bill. It will be submitted, signed, and dated by an injured worker receiving rehabilitation services to request reimbursement from OWCP for expenses incurred as a result of participation in an approved rehabilitation effort. The form requires the signature of a facility official to verify that the employee is in attendance at the program. This information collection is currently approved for use through September 30, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to provide vocational rehabilitation services to injured workers currently unemployed as a result of their injury, to enhance their employment potential.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Rehabilitation Maintenance Certificate.

OMB Number: 1215–0161.

Agency Number: OWCP–17.

Affected Public: Individual or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Total Respondents: 1,300.

Total Responses: 15,600.

Time per Response: 10 minutes.

Frequency: Monthly.

Estimated Total Burden Hours: 2,605.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 25, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–7602 Filed 3–28–03; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0070(2003)]

Standard on Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comment concerning its proposed extension of the information-collection requirements specified by its Standard on Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)). In the event an employee is injured while operating a mechanical power press, 29 CFR 1910.217(g) requires the employer to provide information to OSHA regarding the accident within 30 days of the accident. This information includes the employer's and employee's names, workplace address, injury sustained, task being performed when the injury occurred, number of operators involved, cause of the accident, type of clutch, safeguard(s), and feeding method(s) used, and means used to actuate the press. OSHA's Office of Engineering Safety collects and reviews this information.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by May 30, 2003.

Facsimile and electronic transmission: Your comments must be received by May 30, 2003.

ADDRESSES:

I. Submission of Comments

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR 1218–0070(2003), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number, ICR 1218–0070(2003), in your comments.

Electronic: You may submit comments, but not attachments, through the Internet at *http://ecomments.osha.gov/*.

You may submit comments in response to this document by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA webpage. Please note you cannot attach materials such as studies or journal articles to electronic comments. If you have additional material, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

II. Obtaining Copies of the Supporting Statement for the Information Collection Request

The Supporting Statement for the Information Collection Request is available for downloading from OSHA's Web site at *http://www.osha.gov*. The supporting statement is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the supporting statement can be obtained by contacting Theda Kenney at (202) 693–2222.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information-collection burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illness, and accidents (29 U.S.C. 657).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information requirements specified by the Standard on Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)). In the past, OSHA has used these reports as a source of up-to-date information on power press machines. Particularly, this information was used to identify the equipment used and conditions association with these injuries. As the number of reports have declined, and other sources of information have become available, OSHA is determining if these reports have any practical utility. Commenters are encouraged to provide any recommendations on how OSHA may utilize these reports now, or in the future. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently approved information-collection requirement.

Title: Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)).

OMB Number: 1218–0070.

Affected Public: Business or other for-profit; not-for-profits institutions; Federal government; State, local, or tribal Government.

Number of Respondents: 75.

Frequency of Recordkeeping: On occasion.

Average Time per Response: 20 minutes (.33 hour).

Total Annual Hours Requested: 25.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on March 25, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–7682 Filed 3–28–03; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–034)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that A+FlowTek Corporation, of Kingwood, Texas, has applied for an exclusive license to practice the invention disclosed in NASA Case No. MFS–31952–1 entitled "Balance Flow Meter." Written objections to the prospective grant of a license should be sent to James J. McGroary, Patent Counsel, Mail Stop LS01, Marshall Space Flight Center, Huntsville, AL 35812. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATE: Responses to this notice must be received by April 15, 2003.

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Department/CD30, Marshall Space Flight Center, Huntsville, AL 35812, telephone (256) 544–5226.

Dated: March 21, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–7541 Filed 3–28–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL MEDIATION BOARD

Submission for OMB Review; Comment Request

AGENCY: National Mediation Board (NMB).

ACTION: Notice.

SUMMARY: The Chief Information Officer, Finance and Administration Department, invites comments on the submission for OMB review, in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995, and 5 CFR 1320). This notice announces that the NMB has submitted to the Office of Management and Budget a request for clearance of six (6) information collections.

DATES: Interested persons are invited to submit comments within 30 days from the date of this publication.

ADDRESSES: Written comments should be addressed to June D. W. King, Chief Information Officer, Finance and Administration, National Mediation Board, 1301 K Street, NW., Suite 250 East, Washington, DC, 20572 or should be e-mailed to *king@nmb.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Chief Information Officer, Finance and Administration Department, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection contains the following: (1) Type of review requested, *e.g.* new, revision extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: March 25, 2003.

June D. W. King,

Chief Information Officer, Finance and Administration Department, National Mediation Board.

Request for Arbitration Panel for Airline System Boards of Adjustment

Frequency: On occasion.
Affected Public: Airline carrier and union officials.
Reporting and Recordkeeping Hour Burden:
Responses: Estimate about 80 annually.
Burden Hours: 20.
Abstract: Section 183 of the Railway Labor Act, 45 U.S.C. 183, provides that the parties to the labor-management disputes in the airline industry must have a procedure for the resolution of disputes involving the interpretation or application of provisions of the collective bargaining agreement. The Railway Labor Act mentions system board of adjustment or arbitration boards as the mechanism for resolution and is silent as to how the neutral arbitrator is to be selected if the parties are unable to agree on an individual. The National Mediation Board provides panels of arbitrators to help the parties in their selection of an arbitrator.

This form is necessary to assist the parties in this process. The parties invoke the process through the submission of this form. The brief information is necessary for the NMB to perform this important function.

Arbitration Services—Personal Data Sheet

Frequency: On occasion.
Affected Public: Arbitrators.
Reporting and Recordkeeping Hour Burden:
Responses: 25 annually.
Burden Hours: 25.
Abstract: Sections 183 and 153 of the Railway Labor Act, 45 U.S.C. 153 and 183, provide for the use of arbitrators in the resolution of disputes concerning the application or interpretation of provisions of a collective bargaining agreement in the airline and railroad industries. The NMB maintains a roster of arbitrators for this purpose. The NMB must have a means for interested individuals to apply for inclusion on this roster. This form is the application for inclusion on the NMB roster. The brief information that the NMB solicits is necessary to perform this responsibility under the Railway Labor Act.

Request for Public Law Board Member

Frequency: On occasion.
Affected Public: Carrier and union officials of railroads.
Reporting and Recordkeeping Hour Burden:
Responses: Estimate 15 annually.
Burden Hours: 3.75.
Abstract: Section 153, Second, of the Railway Labor Act, 45 U.S.C. 153, Second, governs procedures to be followed by carriers and representatives of employees in the establishment and functioning of special adjustment boards. These special adjustment boards are referred to as public law boards (board). The statute provides that within thirty (30) days from the date a written request is made by an employee representative or carrier official for the establishment of a board, an agreement establishing such board shall be made. If, however, one party fails to designate a member of the board, the party making the request may ask the NMB to designate a member on behalf of the other party. The NMB must designate the representative who, together with the other party constitute the public board. It will be the task of these two individuals to decide on the terms of the agreement. If these individuals are unable to decide upon the terms, the Railway Labor Act provides that one of these parties may request that the NMB designate a neutral to resolve the remaining matters which are procedural issues. Pursuant to 29 CFR 1207.2, requests for the NMB to appoint either representatives or neutrals must be made on printed forms which may be secured from the NMB.

This form is necessary for the NMB to fulfill its statutory responsibilities. Without this information, the NMB would not be able to assist the railroad labor and management representatives in resolving disputes, which is contrary to the intent of the Railway Labor Act.

Arbitration Services—Official Travel/ Referee Compensation Authorization

Frequency: On occasion.
Affected Public: Arbitrators.
Reporting and Recordkeeping Hour Burden:
Responses: Approximately 624 annually.
Burden Hours: 156.
Abstract: Section 153, First and Second of the Railway Labor Act, 45 U.S.C. 153, First and Second, provide that the NMB shall compensate arbitrators who resolve the resolves under these sections of the Act. The arbitrator must submit a written request, in advance, for authorization to be compensated for work to be performed. The arbitrator must obtain authorization before performing work. This form is the request and is necessary for the NMB to fulfill its financial responsibilities.

Arbitration Services—Pay Voucher for Personal Services

Frequency: On occasion.
Affected Public: Arbitrators.
Reporting and Recordkeeping Hour Burden:
Responses: Approximately 624 annually.
Burden Hours: 156.
Abstract: Section 153, First and Second of the Railway Labor Act, 45 U.S.C. 153, First and Second, provide that the NMB shall compensate arbitrators who resolve the resolves under these sections of the Act. After the work is performed, the arbitrator must submit a written request for compensation. This form is the vehicle used to request compensation and is necessary for the NMB to fulfill its financial responsibilities.

Neutral's Report of Activity

Frequency: On occasion.
Affected Public: Arbitrators.
Reporting and Recordkeeping Hour Burden:
Responses: Approximately 624 annually.
Burden Hours: 156.
Abstract: Section 153, First and Second of the Railway Labor Act, 45 U.S.C. 153, First and Second, provide that the parties may use an arbitrator to resolve their disputes concerning the application or interpretation of the provisions of a collective bargaining agreement. The NMB must record the decisions rendered by the arbitrators selected by the parties and compensated by the NMB. This form is used to gather that information. This brief information is necessary for the NMB to fulfill its responsibilities under the Railway labor Act.

Requests for copies of the proposed information collection request may be accessed from *www.nmb.gov* or should be addressed to Grace Ann Leach, NMB, 1301 K Street, NW., Suite 250 E, Washington, DC 20572 or addressed to the e-mail address *leach@nmb.gov* or faxed to 202–692–5081. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to June D. W. King at 202–692–5010 or via internet address *king@nmb.gov*. Individuals who use a telecommunications device for the deaf (TDD/TDY) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–7571 Filed 3–28–03; 8:45 am]

BILLING CODE 7550–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 and 50–389]

Florida Power and Light Co., et al.; Individual Notice, Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Consideration; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Individual notice; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 28, 2003 (68 FR 4244), that contained an incorrect No Significant Hazards Consideration. This action is necessary to correct the No Significant Hazards Consideration.

FOR FURTHER INFORMATION CONTACT: Brendan T. Moroney, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–3974, e-mail: *btm3@nrc.gov*.

SUPPLEMENTARY INFORMATION: The No Significant Hazards Consideration in the January 28, 2003, individual notice should be replaced in its entirety with the No Significant Hazards Consideration for the same amendment that was included in the Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration published on December 10, 2002 (67 FR 75881).

Dated in Rockville, Maryland, this 25th day of March, 2003.

For the Nuclear Regulatory Commission.

Brendan T. Moroney,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–7628 Filed 3–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of Title 10 of the Code of Federal Regulations (CFR) section 50.44, "Standards for combustible gas control system in light-water-cooled power reactors," for Facility Operating License No. DPR–64, issued to Entergy Nuclear Operations, Inc. (ENO or licensee), for operation of the Indian Point Nuclear Generating Unit No. 3 (IP3) located in Westchester County, Buchanan, New York. The exemption would permit removal of the backup post accident containment ventilation (PACV) system for IP3. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

Section 50.44 of 10 CFR sets out requirements for the control of the hydrogen generated after a postulated loss-of-coolant accident (LOCA). The hydrogen control system at IP3 includes the PACV system. The proposed action would allow the licensee to remove the PACV system from the IP3 licensing basis. A planned retirement of the PACV system would occur during Refueling Outage 12, in the spring of 2003. The proposed action is in accordance with ENO's request for an exemption, dated October 3, 2002, as supplemented on January 16 and March 11, 2003.

The Need for the Proposed Action

The proposed exemption from the requirements pertaining to the hydrogen purge system and the associated removal from the licensing basis, would simplify the Severe Accident Management Guidelines and prevent the need to restore or maintain the PACV system with its accompanying cost and exposure. The capping of the piping for the PACV system containment penetrations also eliminates the need to verify the containment isolation valves in this system are operable.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes, as set forth below, that there are no significant environmental impacts associated with the removal of the PACV system from the IP3 licensing basis.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types or quantities of effluents that may be released off-site, and there is no significant increase in occupational or public radiation exposure since there is no change to facility operations that could create a new or affect a previously analyzed accident or release path. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no changes in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for IP3, dated February 1975.

Agencies and Persons Consulted

On March 14, 2003, the staff consulted with the New York State official, Mr. John Spath of the New York State Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 3, 2002, as supplemented by letters dated January 16 and March 11, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/*

reading-rm/adams.html. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 25th day of March, 2003.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–7629 Filed 3–28–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–2117; File No. 4–476]

Roundtable Discussions Relating to Hedge Funds

AGENCY: Securities and Exchange Commission.

ACTION: Notice of roundtable discussions; request for comment.

SUMMARY: On May 14 and 15, 2003, the Securities and Exchange Commission will host roundtable discussions concerning several issues relating to private, unregistered investment pools, commonly known as hedge funds. The roundtable discussions will bring together representatives from the hedge fund industry and other interested persons to discuss issues relating to hedge funds and offer their recommendations. The roundtable discussions will take place at the Commissions' headquarters at 450 Fifth Street, NW., Washington, DC from 9 a.m. to 5:30 p.m. each day. The public is invited to observe the roundtable discussions. Seating is available on a first-come, first-serve basis.

DATES: Comments must be received on or before April 30, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following E-mail address: *hedgefunds@sec.gov.* All comment letters should refer to File No. 4–476; this File number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Relevant electronically submitted comment letters also will be posted on the Commission's Internet Web site: *http://www.sec.gov/spotlight/hedgefunds.htm.*

FOR FURTHER INFORMATION CONTACT: Cynthia M. Fornelli, Deputy Director, Division of Investment Management, (202) 942–0720, or Elizabeth G. Osterman, Assistant Chief Counsel, Division of Investment Management, (202) 942–0580, *Ostermane@sec.gov,* at Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The public may submit written comments on the following topics to be discussed at the Roundtable Discussions Relating to Hedge Funds:

The structure, operation and compliance activities of hedge funds, including the role of hedge fund service providers;

The marketing of hedge funds;

Investor protection concerns, including disclosure issues, valuation issues and potential conflicts of interest;

Current regulation of hedge funds and their managers, and whether additional regulation is necessary; and

If additional regulation is warranted, what form it might take.

By the Commission.

Dated: March 26, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–7615 Filed 3–28–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47570; File No. S7–26–98]

RIN 3235–AH04

Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Notice of OMB approval of collections of information.

SUMMARY: The Securities and Exchange Commission adopted amendments to Rules 17a–3 and 17a–4 (17 CFR 240.17a–3 and 240.17a–4) under the Securities Exchange Act of 1934 (17 U.S.C. 78, *et seq.*) on October 26, 2001. The amendments clarify and expand recordkeeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters, and require broker-dealers to maintain or promptly produce certain records at each office to which those records relate. Certain provisions of these amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and the Commission submitted the proposed collections of information to the Office of Management and Budget ("OMB") for review. OMB has approved the collection of information requirements contained in the amendments to the Books and Records Rules.

DATES: The effective date of the amendments to Exchange Act Rules 17a–3 and 17a–4 is May 2, 2003.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Gauch, Attorney, at (202) 942–0765, in the Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION:

I. Amendments to Rules 17a–3 and 17a–4

Rules 17a–3 and 17a–4[1] under the Securities Exchange Act of 1934[2] (the "Exchange Act")(hereinafter the "Books and Records Rules"), specify minimum requirements with respect to the records that broker-dealers must make, and how long those records and other documents relating to a broker-dealer's business must be kept. The Securities and Exchange Commission (the "Commission") amended the Books and Records Rules on October 26, 2001.[3] The amendments to Rule 17a–3 included revisions to the information that must be recorded on order tickets, and new requirements to: create certain records relating to associated persons; collect certain account record information and verify that information with customers periodically; create a record of customer complaints; create a record indicating compliance with applicable advertising rules; and create records identifying persons responsible for establishing procedures and persons able to explain the broker-dealer's records to a regulator. The amendments to Rule 17a–4 require that a broker-dealer: maintain a record of advertisements and other "communications with the public;" clarify the definitions of organizational documents; and set recordkeeping requirements for new records required to be created pursuant to the

[1] 17 CFR 240.17a–3 and 240.17a–4.

[2] 17 U.S.C. 78, *et al.*

[3] Securities Exchange Act Release No. 44992, 66 FR 55818 (Nov. 2, 2001) (the "Adopting Release").

amendments to 17a–3, certain exception reports and special regulatory reports, and written compliance, supervisory and procedure manuals. Finally, the amendments to Rules 17a–3 and 17a–4 also set forth, (i) the definition of "office," (ii) what records must be created as to each office, and (iii) what records must be maintained at each office.

II. Collection of Information Requirements

As explained in the Adopting Release, certain provisions of the amendments to the Books and Records Rules contain "collection of information" requirements[4] within the meaning of the Paperwork Reduction Act of 1995.[5] In the Adopting Release, the Commission estimated the burden hours for these collection of information requirements and solicited comments on the collection of information requirements and the burden estimate. The Commission submitted the proposed collection of information requirements to OMB for review as required pursuant to 44 U.S.C. 3507 and 5 CFR 1320.11. The titles for the collections of information are: (1) "Rule 17a–3; Records to be Made by Certain Exchange Members, Brokers and Dealers;" and (2) "Rule 17a–4; Records to be Preserved by Certain Exchange Members, Brokers and Dealers." The Commission did not receive any comments on the collection of information requirements of the amendments to the Books and Records Rules.

The purpose of requiring that broker-dealers create and maintain the records specified in the amendments to the Books and Records Rules is to enhance the ability of regulators to protect investors. These records and the information contained therein will be used by examiners and other representatives of the Commission, State[6] securities regulatory authorities, and the self-regulatory organizations ("SROs") to determine whether broker-dealers are in compliance with the Commission's antifraud and anti-manipulation rules, financial responsibility program, and other Commission, SRO, and State laws, rules, and regulations.

A. Respondents

As of the end of 2000, broker-dealers reported that they maintained a total of approximately 97,600,000 customer accounts. The Commission estimates that the total number of accounts that would need to be contacted for updating is approximately 70,500,000. Approximately 70 of the 7,217 active, registered broker-dealers[7] maintain over 100,000 accounts, and the remaining broker-dealers (7,147) maintain less than 100,000 accounts each. Of the approximately 70,500,000 accounts that may be affected by these Adopted Amendments to Rule 17a–3, approximately 68,385,000 (or 97%) are maintained at these large broker-dealers, and 2,115,000 (or 3%) are maintained at broker-dealers with fewer than 100,000 accounts each.

B. Total Annual Reporting and Recordkeeping Burden of Amendments to Rule 17a–3

New paragraph (a)(17) of Rule 17a–3 requires that broker-dealers collect certain account information for each account, and send account information to customers for verification within 30 days of account opening and at least every 36 months thereafter. This new paragraph is designed to: (1) Assure that broker-dealers have customer account information to provide to regulators which enable the regulators to review for compliance with suitability rules, and (2) reduce the number of misunderstandings between customers and broker-dealers regarding the customer's situation or investment objectives. The Commission estimates that the total annual burden of new paragraph (a)(17) of Rule 17a–3 will be 1,283,786 hours.[8]

Amendments to paragraph (a)(12) and new paragraph (a)(19) of Rule 17a–3 require broker-dealers to keep certain records regarding their associated persons. These amendments will allow securities regulators to identify where associated persons work, read various records which may identify the associated persons solely through the use of identification numbers, and quickly identify compensation trends and focus examinations. The Commission estimates that, on average, these amendments would require each broker-dealer to spend approximately 30 minutes each year to ensure that it is in compliance with these amendments to Rule 17a–3, which would result in a total annual compliance burden of about 3,609 hours.[9]

The amendments to Rule 17a–3 also require broker-dealers to make records: That indicate that they have either complied with or adopted procedures designed to establish compliance with applicable regulations of certain securities regulatory authorities,[10] that list persons who can explain the information in the broker-dealer's records,[11] and that list principals responsible for establishing compliance policies and procedures.[12] These

[4] 66 FR 55818, at 55834 through 55837 (Nov. 2, 2001).

[5] 44 U.S.C. 3501 *et seq.*

[6] 15 U.S.C. 78c(a)(16).

[7] Of approximately 7,739 broker-dealers registered with the Commission, approximately 341 are not yet active because their registration is pending SRO approval and approximately 181 are inactive because they have ceased doing a securities business and have filed a Form BDW with the Commission. Of these 7,217 active, registered broker-dealers, three are registered OTC Derivatives Dealers. OTC Derivatives Dealers are a special class of broker-dealers that limit their business to dealer activities in eligible over-the-counter derivative instruments and that meet certain financial responsibility and other requirements.

[8] The Commission estimates that, as their processes are more automated, it will take large broker-dealers an average of 1½ additional minutes per account every three years, thus requiring large broker-dealers to spend an additional 569,875 hours per year (68,385,000 account records /3 years × 1.5 minutes /60 minutes) to send account information to customers. As small broker-dealers utilize processes that are more manual in nature, the Commission estimates that it will take small broker-dealers an average of 7 minutes per account every three years, thus requiring small broker-dealers to spend an additional 82,250 hours per year (2,115,000 account records /3 years × 7 minutes /60 minutes) to send account records to customers. Thus, the total additional burden on the industry to send account records to customers is approximately 652,125 hours per year.

The Commission estimates that approximately 20% of the customers from whom information is requested will update their account records, resulting in 4,700,000 updated account records each year (70,500,000 /3 years × 20%). Thus, the Commission estimates that it would take, on average, 5 minutes for large broker-dealers to update each account and 10 minutes for small broker-dealers to update each account, resulting in an additional burden of approximately 403,417 hours per year ((4,559,000 account records × 5 minutes /60 minutes) + (141,000 account records × 10 minutes /60 minutes)).

If a customer has provided the broker-dealer with updated account record information, under Paragraphs (a)(17)(B)(2) and (3) of Rule 17a–3 the broker-dealer must send a copy of the revised account record to the customer within 30 days after the broker-dealer received notification of the change or, under (a)(17)(B)(3), the broker-dealer may send the notification with the next statement mailed to the customer. The Commission estimates that, in addition to the 70,500,000 updated account records discussed above, approximately 3,525,000 customers (5% of the 70,500,000 accounts for which firms will be required to make the account record) will initiate changes to their account records on a yearly basis, just as they do now, with no prompting from any account record mailing. The Commission estimates, as stated above, that it will take large broker-dealers 1½ minutes and smaller broker-dealers 7 minutes to send out account information to each customer who updated their account. The Commission estimates that 8,225,000 (4,700,000 + 3,525,000) customers will update their account record, and that broker-dealers will spend an additional 228,244 hours each year ((7,978,250 account records × 1.5 minutes /60 minutes) + (246,750 account records × 7 minutes /60 minutes)) sending the updated account records to customers.

[9] (7,217 broker-dealers × 30 minutes) /60 minutes.

[10] 17 CFR 240.17a–3(a)(17)(iii) and 17 CFR 240.17a–3(e)(20).

[11] 17 CFR 240.17a–3(a)(21).

[12] 17 CFR 240.17a–3(a)(22).

requirements are designed to assist securities regulators in conducting efficient examinations. The Commission estimates, therefore, that on average each broker-dealer would spend 10 minutes each year to ensure compliance with these requirements, yielding a total additional burden of about 1,203 hours.[13]

Thus, the Commission estimates that the total annual burden of the amendments to Rule 17a–3 will be 1,288,598 hours. The Commission further estimates that broker-dealers would incur a one-time burden to update certain forms, to include additional information on the new account form and provide customers with an address as to where they should direct complaints, of 28,856 hours.[14] Finally, based on comments received in response to the reproposing release,[15] the Commission estimates that broker-dealers will incur $21.2 million in start-up costs for systems and equipment development, and up to $24.8 million in annual costs for postage and systems development in order to comply with the amendments to Rule 17a–3. On January 30, 2002, OMB approved the collections of information contained in the amendments to rule 17a–3.

C. Total Annual Reporting and Recordkeeping Burden of Amendments to Rule 17a–4

The amendments to Rule 17a–4 require that certain information be kept for prescribed periods of time. The Commission estimates that compliance with the amendments for Rule 17a–4 would require an additional 28,868 hours each year.[16] On April 18, 2002, OMB approved the collections of information contained in the amendments to Rule 17a–4.

III. Additional Information

The amendments to Rules 17a–3 and 17a–4 (OMB Control Nos. 3235–0033 and 3235–0279, respectively) were adopted pursuant to the authority conferred on the Commission by the Exchange Act, including sections 17(a) and 23(a). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. We are providing this notice to inform the public that the Commission has received OMB approval and OMB has issued a control number for this collection.

It is mandatory for all brokers and dealers to create records as required pursuant to Rules 17a–3 and to retain those and other specified records as set forth in Rule 17a–4.

The records required by the amendments to the Books and Records Rules are not filed with the Commission, but are available to the examination staffs of the Commission, State regulatory authorities, and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552 ("FOIA") and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission generally does not publish or make available information contained in reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

Dated: March 26, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–7617 Filed 3–28–03; 8:45 am]

BILLING CODE 8010–01–P

[13] (7,217 broker-dealers × 10 minutes) /60 minutes.

[14] 7,217 total active registered broker-dealers × 4 hours each. This includes the time it would take for a broker-dealer to draft the additional language and incorporate it into its present forms.

[15] Exchange Act Release No. 40518 (Oct. 2, 1998), 63 FR 54404 (Oct. 9, 1998).

[16] The Commission estimates that, on average, each broker-dealer (7,217) would spend four hours each year to ensure that it is in compliance with the amendments to Rule 17a–4 and to produce required records promptly at an office when so required.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47566; File No. SR–NASD–2003–41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Disseminate Up to Thirty Additional Corporate Bonds Under the Trade Reporting and Compliance Engine ("TRACE") Rules

March 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a "non-controversial" rule change pursuant to section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rule 6250(a)(4) to increase the number of TRACE-eligible securities to be disseminated under the rule from 90 securities to up to 120 securities. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

6250. Dissemination of Corporate Bond Trade Information

(a) General Dissemination Standard

Immediately upon receipt of transaction reports received at or after 8:00 a.m. through 6:29:59 p.m. Eastern Time, NASD will disseminate transaction information (except that market aggregate information and last sale information will not be updated after 5:15 p.m. Eastern Time) in the securities described below.

(1) No Change.

(2) No Change.

(3) No Change.

(4) Ninety *to 120* TRACE-eligible securities designated by NASD that are rated "Baa/BBB" at the time of designation, according to the following standards.

(A) Three groups, *each* composed of *up to 50* [30] TRACE-eligible securities (Group 1, Group 2, and Group 3), *but collectively not exceeding 120* shall be designated by NASD. At the time of designation, each TRACE-eligible security in Group 1 must be rated "Baa1/BBB+[;]" and each TRACE-eligible security in Group 2 and Group 3 must be rated, respectively, "Baa2/BBB–[,]" and "Baa3/BBB–.[,]" [provided that if] *If* a TRACE-eligible security is rated one of the "Baa" ratings by Moody's and one of the "BBB" ratings by S&P and the ratings indicate two different levels of credit quality, the lower of the two ratings will be used to determine the group to which a debt security will be assigned under this paragraph (a)(4).

(B) No Change.

(C) No Change.

(b) through (d) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 6250(a)(4) to increase the number of TRACE-eligible securities rated "Baa/BBB"[6] that will be subject to dissemination from 90 bonds to up to 120 bonds. This minor adjustment in the number of "Baa/BBB"-rated bonds to be disseminated under the Trade Reporting and Compliance Engine ("TRACE") rules is being proposed so that NASD may continue to increase transparency as appropriate, while being cognizant of the potential adverse effects, if any, that transparency may have on the liquidity of the corporate bond market.

On July 1, 2002, when TRACE began, transaction information was disseminated in two types of corporate bonds: (1) TRACE-eligible securities having an initial issuance size of $1 billion or greater that are Investment Grade at the time of receipt of the transaction report; and (2) 50 actively traded TRACE-eligible securities that are Non-Investment Grade and meet other criteria set forth in Rule 6250(a)(2). Approximately 540 corporate bonds were disseminated under the two categories.

On December 6, 2002, NASD filed SR–NASD–2002–174, a proposal to increase substantially the dissemination of Investment Grade TRACE-eligible securities. NASD proposed, and obtained approval from the SEC, to increase transparency by requiring dissemination of price and other transaction information in two additional categories of corporate bonds. They are: (1) Any TRACE-eligible security that is Investment Grade, is rated by Moody's as "A3" or higher, and by S&P's as "A–" or higher, and has an original issue size of $100 million or greater; and (2) ninety TRACE-eligible securities rated "Baa/BBB" at the time of designation, with the bonds being identified in three subgroups to represent the "Baa/BBB" credit spectrum (*i.e.*, "Baa1/BBB+," "Baa2/BBB," and "Baa3/BBB–").[7]

On March 3, 2003, NASD began disseminating the TRACE-eligible securities rated "A3/A–" or higher and with original issue size of 100 million or greater, which increased the number of bonds subject to dissemination to over 4,000 corporate bonds.[8] However, NASD withheld the dissemination of ninety bonds rated "Baa/BBB" to provide time to assure that the bonds designated for dissemination were appropriately diverse and representative of the "Baa/BBB"-rated group. During the bond identification process, NASD, based on guidance from independent economists, determined that the database of disseminated transaction data on "triple-B-rated bonds" should be increased to include transaction information on up to 120 TRACE-eligible securities to increase transparency in a sufficient number of "Baa/BBB" bonds to improve significantly the quality of the data to be collected. The increased transparency will provide a better foundation for determining the effect, if any, of transparency on liquidity.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[9] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change requiring the dissemination of up to 30 additional "Baa/BBB"-rated TRACE-eligible securities will protect investors and the public interest by increasing transparency in the debt securities markets and serving as an appropriately designed database to aid NASD in determining if transparency has an adverse effect on the liquidity of the bond market.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on this proposed rule change were neither solicited nor received. However, written comments were solicited concerning the dissemination of a representative group of bonds rated "Baa/BBB" with the publication for notice and comment of SR–NASD–2002–174, and two comment letters were received. NASD represents that these two comment letters generally favored the NASD's proposed rule change.[10] After considering the comments, the SEC approved SR–NASD–2002–174 on January 31, 2003.[11] NASD represents that its proposal in this rule filing is a minor, non-controversial proposed change to the provision in Rule 6250(a)(4) providing for the dissemination of TRACE-eligible securities rated "Baa/BBB."

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] NASD asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] Moody's Investors Service, Inc. ("Moody's") is a nationally recognized statistical rating organization. Moody's is a registered trademark of Moody's Investors Service. Moody's ratings are proprietary to Moody's and are protected by copyright and other intellectual property laws. Moody's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without Moody's prior written consent.

Standard & Poor's, a division of the McGraw-Hill Companies, Inc. ("S&P"), is a nationally recognized statistical rating organization. S&P's ratings are proprietary to S&P and are protected by copyright and other intellectual property laws. S&P licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without S&P's prior written consent.

[7] Securities Exchange Act Release No. 47302 (January 31, 2003), 68 FR 6233 (February 6, 2003) (order approving SR–NASD–2002–174).

[8] *See* NASD Notice to Members 03–12 (February 2003).

[9] 15 U.S.C. 78o–3(b)(6).

[10] Securities Exchange Act Release No. 47057 (December 19, 2002), 67 FR 79210 (December 27, 2002) (notice of filing of and request for comment on SR–NASD–2002–174).

[11] *See* note 7, *supra.*

interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) from the date on which it was filed, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NASD has requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[14] because (1) the public interest is furthered and the protection of investors is enhanced by increasing transparency in the "Baa/BBB"-rated segment of the corporate bond market; (2) NASD briefly deferred the dissemination of "Baa/BBB"-rated TRACE-eligible securities in order to designate a representative group of such securities; and (3) for the convenience of investors, broker-dealers, other market participants, and NASD, NASD will initiate the dissemination of all the "Baa/BBB"-rated corporate bonds approved for dissemination on the same date, which will occur as soon as possible after the filing of this rule filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will permit NASD to expand dissemination of "Baa/BBB"-rated corporate bonds immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to file number SR–NASD–2003–41 and should be submitted by April 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–7613 Filed 3–28–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] See section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47563; File No. SR–OC–2003–03]

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC Relating to Position Limits

March 24, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b-7 under the Act,[2] notice is hereby given that on February 13, 2003, OneChicago, LLC ("OneChicago") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in items I and II below, which items have been prepared by OneChicago. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. OneChicago also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"), together with a written certification under section 5c(c) of the Commodity Exchange Act[3] on February 10, 2003.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago proposes to amend OneChicago rules 414(a) and 902(f) relating to position limits to reference CFTC Regulation 41.25.[4] The text for proposed rule change follows.

Proposed new language is *italicized*; proposed deletions are in [brackets].

Position Limits and Price Limits

414. Position Limits

(a) Position limits shall be as established by the Exchange from time to time *as permitted by Commission Regulation § 41.25.* Such position limits may be specific to a particular Contract or delivery month or may be established on an aggregate basis among Contracts or delivery months. Except as specified in paragraph (b) below, no Clearing Member, Exchange Member or Access Person shall control, or trade in, any number of Contracts that exceed any position limits so established by the Exchange. Except as specified in paragraph (b) below, no Clearing Member, Exchange Member or Access Person shall be permitted to enter into any transaction on the Exchange that would cause such Clearing Member, Exchange Member or Access Person to exceed any position limits.

(b)–(g) No Change

* * * * *

902 Contract Specifications

(a)–(e) No Change

(f) Speculative Position Limit. For purposes of rule 414, the position limit applicable to positions in any Single Stock Future held during the last five trading days of an expiring contract month shall be *in accordance with Commission Regulation § 41.25* [13,500 contracts (net), long or short, in such contract month. There shall be no other position limits for Single Stock Futures].

(g)–(i) No Change

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

[4] 17 CFR 41.25.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in item IV below. These statements are set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OneChicago proposes to amend OneChicago rules 414(a) and 902(f) relating to position limits to reference CFTC Regulation 41.25.[5] The proposed rule change would permit OneChicago to set position limits on futures on a single security consistent with CFTC Regulation 41.25.[6]

2. Statutory Basis

OneChicago believes that the proposed rule change is consistent with CFTC Regulation 41.25[7] and with section 6(b)(5) of the Act[8] in that it promotes competition, is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago does not believe that the proposed rule change will have an impact on competition because the proposed rule change is referencing a CFTC Regulation, which is applicable to all security futures participants equally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited nor have any comments been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on February 11, 2003. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of OneChicago. Electronically submitted comments will be posted on the Commission's Internet website (*http://www.sec.gov*). All submissions should refer to File No. SR–OC–2003–03 and should be submitted by April 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7616 Filed 3–28–03; 8:45 am]

BILLING CODE 8010–01–P

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(1).

[10] 17 CFR 200.30–3(a)(15).

DEPARTMENT OF STATE

[Public Notice 4324]

Culturally Significant Objects Imported for Exhibition Determinations: "Illuminating the Renaissance: The Triumph of Flemish Manuscript Painting in Europe"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibition, "Illuminating the Renaissance: The Triumph of Flemish Manuscript Painting in Europe" imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Los Angeles, California, from on or about June 17, 2003, to on or about September 7, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: March 24, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–7652 Filed 3–28–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4267]

Notice of Meeting of the United States International Telecommunication Advisory Committee Radiocommunication Sector (ITAC–R)

The Department of State announces a meeting of the ITAC–R. The purpose of the Committee is to advise the Department on matters related to telecommunication and information policy matters in preparation for international meetings pertaining to telecommunication and information issues.

The ITAC–R will meet to discuss the matters related to the World Radiocommunication Conference that will take place 9 June–4 July 2003 in Geneva, Switzerland. The ITAC–R

meeting will be convened on 4 April 2003 from 2 to 4 p.m. in the Dean Acheson Auditorium at the Department of State. The Department of State is located at 2201 C St., NW., Washington, DC.

Members of the public will be admitted and may join in the discussions subject to the instructions of the Chair. Entrance to the Department of State is controlled. Persons planning to attend the meeting should send the following data by fax to (202) 647–7407 or email to *worsleydm@state.gov* not later than 24 hours before the meeting: (1) Name of the meeting, (2) your name, (3) social security number, (4) date of birth, and (5) organizational affiliation. One of the following current photo identifications must be presented to gain entrance to the Department of State: U.S. driver's license with your photo on it, U.S. passport, or U.S. Government identification. Directions to the Department of State may be obtained by calling the ITAC Secretariat at 202–647–2592 or emailing to *worsleydm@state.gov*.

Dated: March 26, 2003.

Douglas R. Spalt,

International Telecommunications and Information Policy, Department of State.

[FR Doc. 03–7779 Filed 3–28–03; 8:45 am]

BILLING CODE 4710–45–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Exclusion of Particular Products From Actions Under Section 203 of the Trade Act of 1974 With Regard to Certain Steel Products; Conforming Changes and Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to authority granted to the United States Trade Representative ("USTR") in Presidential Proclamation 7529 of March 5, 2002 (67 FR 10553), USTR has found that particular products should be excluded from actions under section 203 of the Trade Act of 1974, as amended, (19 U.S.C. 2253) ("Trade Act") with regard to certain steel products, and is modifying subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice to implement these exclusions. In addition, pursuant to authority delegated to USTR in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415), USTR is making technical corrections to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice. These modifications correct several inadvertent errors and omissions in the subheadings 9903.72.30 through 9903.74.24 of the HTS so that the intended tariff treatment is provided.

EFFECTIVE DATE: The modifications and corrections made in this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in each item in the annex to this notice.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW., Room 501, Washington, DC 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On March 5, 2002, pursuant to section 203 of the Trade Act, the President issued Proclamation 7529, which imposed tariffs and a tariff-rate quota on (a) certain flat steel, consisting of: slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel; (b) hot-rolled bar; (c) cold-finished bar; (d) rebar; (e) certain tubular products; (f) carbon and alloy fittings; (g) stainless steel bar; (h) stainless steel rod; (i) tin mill products; and (j) stainless steel wire, as provided for in subheadings 9903.72.30 through 9903.74.24 of the Harmonized Tariff Schedule of the United States ("HTS") ("safeguard measures") for a period of three years plus 1 day. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., EST, on March 20, 2002, Proclamation 7529 modified subchapter III of chapter 99 of the HTS so as to provide for such increased duties and a tariff-rate quota. Proclamation 7529 also delegated to the USTR the authority to consider requests for exclusion of a particular product submitted in accordance with the procedures set out in 66 FR 54321, 54322–54323 (October 26, 2001) and, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provisions created by the annex to that proclamation to exclude such particular product from the pertinent safeguard measure. On April 5, 2002, USTR published a notice in the **Federal Register** excluding particular products from the safeguard measures, and modified the HTS accordingly. 67 FR 16484. On July 3, the President issued Proclamation 7576, which extended the period for granting exclusions until August 31, 2002. On July 12, 2002, and August 30, 2002, USTR published notices in the **Federal Register** excluding additional products from the safeguard measures, and modified the HTS accordingly. 67 FR 46221 and 67 FR 56182.

USTR has further considered exclusion requests for certain products designated as A600, A604, A605, A607, A609, A611, A613, A614, A615, A617, A619, A621, A623, A625, A626, A627, A629, A630, A631, A632, A634, A635, A641, A642, A643, A645, A646, A648, A649, A650, A655, A656, A661, A663, A667, A668, A669, A672, A673, A674, A675, A676, A677, A679, A680, A682, A684, A686, A688, A689, A692, A693, A694, A695, A697, A698, A699, A701, A705, A708, A709, A710, A711, A712, A714, A715, A717, A719, A721, A723, A725, A726, A728, A729, A732, A739, A742, A743, A744, A750, A751, A752, A754, A756, A765, A767, A769, A774, A779, A782, A786, A789, A791, A793, A805, A806, A807, A809, and A810. USTR finds that the exclusion from the safeguard measures established in Proclamation 7529 of certain steel products within these designations, as described in the annex to this notice, would not undermine the goals of those safeguard measures. Therefore, I find that these products should be excluded from those safeguard measures. Accordingly, under authority vested in the USTR by Proclamations 7529, I modify the HTS provisions created by the annex to Proclamation 7529 as set forth in the annex to this notice. Such modifications shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on the dates indicated in the annex to this notice.

On March 19, 2002, June 4, 2002, July 12, 2002, August 30, 2002, November 14, 2002, and February 11, 2003, USTR published Federal Register notices (67 FR 12635, 67 FR 38541, 67 FR 46221, 67 FR 56182, 67 FR 69065 and 68 FR 6982, respectively) making technical corrections to subchapter III of chapter 99 of the HTS to remedy several technical errors introduced in the annex to Proclamation 7529. These corrections ensured that the intended tariff treatment was provided. Since the publication of these Federal Register notices, additional technical errors and omissions in subchapter III of chapter 99 have come to the attention of USTR. The annex to this notice makes technical corrections to the HTS to remedy these errors and omissions. In particular, the annex to this notice corrects errors in the descriptions of the physical dimensions or chemical composition of certain products

excluded from the application of the safeguard measures and increases the quantitative levels for certain products subject to quantitative limits.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the annex to this notice.

Robert B. Zoellick,

United States Trade Representative.

BILLING CODE 3190–01–P

ANNEX

Section I. Unless otherwise specified in a subdivision herein, the following modifications of subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EST, on March 20, 2002 or, in the case of corrections in existing provisions, on or after the date of the inclusion in, or of the previous correction of, the individual HTS provision or text being corrected.

1. U.S. note 11 to such subchapter III is hereby modified as follows:

(A) effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 20, 2002, the phrase ", as in effect on March 20, 2002," is inserted after the word "subchapter" in subdivisions (b)(i) and (b)(ii);

(B) subdivision (b)(xxv)(B) is modified by deleting "600 t" and by inserting in lieu thereof "1,000 t";

(C) in subdivision (c)(xx)(C), "maximum" is inserted after "sulfur 0.025";

(D) subdivision (c)(xxi) is modified by deleting "50 t" and by inserting in lieu thereof "250 t";

(E) subdivision (c)(xxvii) is modified by inserting "not over" after "phosphorus" and after "sulfur"; by deleting "decarburization 4" and by inserting in lieu thereof "decarburization 6"; by deleting the text from "tensile" through "HRC)", inclusive, and by inserting in lieu thereof the following: "tensile strength/hardness for product thickness of not over 2.0 mm of 1450 +/-100 N/mm^2 (42 to 46 HRC) or 1670 +/- 100 N/mm^2 (42 to 46 HRC), and for product thickness 2.0 mm and over of 1370 +/- 100 N/mm^2 (40 to 44 HRC)"; by deleting the text from "product width of" through "3 m", inclusive, and by inserting in lieu thereof the following: "for product width not over 40 mm, maximum deviation of 0.35 mm on 1.0 m and maximum 3.2 mm on 3 m; for product width over 40 mm but not over 134 mm, maximum deviation of 0.25 mm on 1 m and maximum 1.2 mm on 3 m; for product width over 135mm, maximum deviation of 0.25 mm on 1 m and maximum 0.8 on 3 m;"and by deleting "within g a product maximum half the tolerance zone for T1" and by inserting in lieu thereof "within one coil half the tolerance zone for T1";

(F) subdivision (c)(xxviii)(A) is modified by deleting "0.002 mm" and by inserting in lieu thereof "0.05 mm";

(G) subdivision (c)(lxviii) is modified by deleting "10 t" and by inserting in lieu thereof "1,165 t";

(H) in subdivision (c)(lxxiii)(C), "manganese 0.70" is deleted and "manganese 0.07" is inserted in lieu thereof;

(J) in subdivisions (c)(clvii)(A), (c)(clvii)(B) and (c)(clvii)(C), "width of 228 mm to 305 mm" is deleted at each occurrence and "width of 1,397.0 mm to 1,422.4 mm" is inserted in lieu thereof;

(K) in subdivision (c)(cxlv), "JIS-G3445" is deleted and "JIS-G3444" is inserted in lieu thereof; "maximum" is inserted after "carbon 0.25";

(L) iIn subdivision (c)(lxvii), "0.350 mm in thickness" is deleted and "0.378 mm in thickness" is inserted in lieu thereof;

(M) subdivision (c)(clxxxii) is modified by deleting "1,000 t" and by inserting in lieu thereof "3,000 t"; and

(N) in subdivision (c)(cxc), "phosphorus less than 0.014 percent" is deleted and "phosphorus not over 0.015" is inserted in lieu thereof, and "sulfur less than 0.003" is deleted and "sulfur not over 0.005" is inserted in lieu thereof.

2. The following subheadings of such subchapter III are each modified as follows:

(A) subheading 9903.72.97 is modified by deleting from the article description "600 t" and by inserting in lieu thereof "1,000 t";

(B) subheading 9903.75.04 is modified by deleting "1,000 t" and by inserting in lieu thereof "3,000 t";

(C) subheading 9903.76.86 is modified by deleting "50 t" and by inserting in lieu thereof "250 t";

(D) subheading 9903.76.79 is modified by deleting "300 t" and by inserting in lieu thereof "500 t"; and

(E) subheading 9903.77.32 is modified by deleting "10 t" and by inserting in lieu thereof "1,165 t".

Section II. The following new exclusions being inserted in and other modifications of subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EST, on March 20, 2003:

1. The following new subdivisions are inserted at the end of U.S. note 11(c) to subchapter III of chapter 99 of the HTS:

"(ccxiii) cold-rolled coiled flat rolled steel, designated as A-613, the foregoing 2.96 mm to 3.01 mm in thickness; 620 mm wide plus or minus 1 mm; hardness of 202 to 214 HB; having the following chemical composition (percent by weight): chromium 0.4 to 0.7, vanadium 0.15 to 0.25, sulfur not over 0.03, phosphorus not over 0.03, manganese 0.3 to 0.5, silicon 0.25 to 0.4, carbon 0.75 to 0.85 and not over 0.03 aluminum;

(ccxiv) Cold finished nonalloy steel bar of circular cross section, designated as A-611, diameter not greater than 81 mm, surface hardened, precision ground, chemical composition (expressed as percent by weight): carbon 0.50 to 0.57, silicon 0.15 to 0.35, manganese 0.40 to 0.70, phosphorus not greater than 0.025, sulfur not greater than 0.035 and aluminum 0.02 to 0.08; with the following other properties: grain size of 6 or finer as per DIN 50601; hardness HV 670 to 840; surface finish maximum RMS 12; and minimum hardness depth of 0.4 mm;

(ccxv) flat-rolled steel products, not further worked than cold-rolled, designated as A-623 and entered in an aggregate annual quantity not to exceed 15,000 t, the foregoing meeting either of the following sets of characteristics:

(i) grade ASTM A366-97-B, coated with 5 to 15 mg/m^2 of di octyl sebacate oil, meeting the following specifications: thickness 0.40 mm to 1.40 mm; width 711 mm to 1,281 mm; having the following chemical composition (percent by weight): carbon 0.02 to 0.08, manganese not over 0.60, phosphorus not over 0.030 and sulfur not over 0.025; with the following mechanical properties: minimum tensile strength of 269 MPa; maximum yield point of 262 MPa; minimum elongation of 30 percent; Rockwell hardness 48-56 (B scale); and restricted gauge accuracy of 1/4 ASTM; or

(ii) grade ASTM A366-97, coated with 5 to 15 mg/m^2 di octyl sebacate oil, meeting the following specifications: thickness 0.40 mm to1.40 mm and width 832 mm to 1,499 mm; having the following chemical composition (percent by weight): carbon 0.02 to 0.08, manganese not over 0.50, phosphorus not over 0.025 and sulfur not over 0.025; with the following mechanical properties: minimum tensile strength of 268.9 MPa; minimum yield point of 255.1 MPa; minimum elongation of 32 percent; Rockwell hardness 43-55 (B scale); and restricted gauge accuracy 1/4 ASTM;

(ccxvi) unhardened low carbon cold-rolled flat-rolled steel products (soft magnetic iron), designated as A-626 and entered in an aggregate annual quantity not exceed 3 t; thickness range less than or equal to 5 mm, width not over 300 mm, chemical composition (percent by weight): carbon 0.015 to 0.027, silicon not over 0.05, manganese 0.12 to 0.22, phosphorus not over 0.012, sulfur not over 0.025 and chromium not over 0.05; tensile strength of 120 MPa or more but not over 580 MPa; surface finish: Ra not over 0.25 micrometer;

(ccxvii) cold-rolled steel products, in coils per ASTM A625M T3, designated as A-643 and entered in an aggregate annual quantity not to exceed 8,000 t, the foregoing with a matte finish, continuously annealed, thermal flattened, with the following characteristics: thickness 0.254 mm to 0.381mm and width 254 mm to 1016 mm; having the following chemical composition (percent by weight): carbon 0.02 to 0.05, manganese 0.18 to 0.45, phosphorus not over 0.015, sulfur not over 0.025, copper not over 0.10 and aluminum 0.020 to 0.075; having a temper of T3 or 52 to 62 on the Rockwell 30T scale; with the following other properties: average coil gauge down the center of the sheet the ordered gauge thickness +/- 0.0076mm; gauge variation measured on any longitudinal line down the length of a single coil not to exceed 0.01016 mm total; the crown of the coil not to exceed 0.01016 mm when measured along any straight line across the width of the coil (but at least 25.4 mm away from the edge); coil width tolerance + 3.175 mm, - 0 mm; carrying a uniform but minimal amount of D.O.S. or S.2 type oil on all surfaces; surface smooth and free from lamination, deep scratches, pits, scale, rolled in particles, weld joints, edge cracks, holes and excessive edge-wave; thoroughly recrystallized and have a uniform grain size not exceeding ASTM 5; all other tolerances as per ASTM A625;

(ccxviii) cold-rolled flat-rolled steel in coils, grade SAE J1392 045YLF, designated as A-645 and entered in an aggregate annual quantity not to exceed 5,000 t, the foregoing meeting the following criteria: thickness 1.25 mm to 1.65 mm; width 1,140 mm to 1,270 mm; bright finish of Ra value of 0.0 to 0.4 micrometer; surface cleanliness defined as surface carbon of 4 mg/m^2 per side maximum; hydrogen annealed; with maximum yield-to-tensile ratio of 80 percent; and elongation of 24 percent minimum;

(ccxix) cold-rolled flat-rolled high strength steel, non-alloy, designated as A-655 and entered in an aggregate annual quantity not to exceed 4,000 t; the foregoing with a temper pass of 3.75 percent to 4.25 percent reduction after annealing to result in the following mechanical requirements: yield strength at 240 MPa to 340 MPa; tensile strength 310 MPa to 365 MPa; elongation of 33 percent or more; R value of 1.64 to 2.15 and N value of 0.14 to 0.165; prelube required to be applied; thickness 1.7729 mm to 1.8846 mm; coil width 1,377 mm to 1,410 mm; having the following chemical composition (percent by weight): carbon not over 0.15, manganese not over 0.60, phosphorus not over 0.030 and sulfur not over 0.035;

(ccxx) cold-rolled flat-rolled products, designated as A-656 and entered in an aggregate annual quantity not to exceed 120 t; the foregoing meeting the following characteristics: thickness range of 0.30 to 0.40 mm; width not over 5 mm; having the following chemical composition (percent by weight): carbon 0.040 to 0.080, manganese 0.20 to 0.30, phosphorus not over 0.03, sulfur not over 0.030 and aluminum 0.04 to 0.06; mechanical properties: yield point (MPa) of 185 to 280; minimum tensile strength (MPa) of 270; and minimum elongation of 28 percent;

(ccxxi) cold-rolled flat-rolled measuring tape steel products, designated as A-710, the foregoing of SAE 1095, having the following chemical composition (percent by weight): carbon 0.90 to 1.05, silicon 0.15 to 0.35, manganese 0.30 to 0.60, sulfur less than 0.050 and phosphorus less than 0.2; width 4.76 mm to 38.1 mm; thickness 0.114 mm to 0.1542 mm (tolerance +/-0.005 mm); tensile strength 800 to 1,100 MPa; edge deburred, Vickers Hardness Range 210 to 650;

(ccxxii) cold-rolled hardened and tempered flat-rolled steel products, designated as A-714, the foregoing of grade AISI 1095 modified by expanding carbon and decreasing sulfur; having the following chemical composition (percent by weight): carbon 0.9 to 1.05, silicon 0.15 to 0.35, manganese 0.30 to 0.50, phosphorus not over 0.03 and sulfur not over 0.006; width not over 153 mm; thickness 0.8 mm to 1.35 mm; blue polished surface; surface roughness not over 5.0 micrometers; ultimate tensile strength 1,400 MPa to 1,500 MPa; edges deburred or machined; straightness 0.6 to 1.2 mm over 3 m; flatness equal or less than 0.1 percent of the product width;

(ccxxiii) cold-rolled heat-treatable flat-rolled steel products, designated as A-714, the foregoing of grade AISI 1050 modified (as described by the chemical composition) with a decarburized surface; produced by open coil batch annealing facilities for decarburizing, decarburization depths of 10 to 300 micrometers with adjusted carbon transition gradient; having the following chemical composition (percent by weight): carbon 0.44 to 0.55, chromium 0 to 0.40, manganese 0.60 to 0.80, silicon 0.15 to 0.35, phosphorus not over 0.025, sulfur not over 0.01, aluminum less than 0.05; thickness 0.50 mm to 2.00 mm; width 300 mm to 800 mm; not hardened and with low carbon surface (less than 0.1 percent carbon); thickness tolerance T3 and better; yield strength 450 MPa or more; tensile strength 500 MPa or more but not over 850 MPa;

(ccxxiv) cold-rolled heat-treatable flat-rolled steel products, designated as A-714, the foregoing of grade AISI 1065 modified (as described by the chemical composition) with a decarburized surface; produced by open coil batch annealing facilities for decarburizing, decarburization depths of 10 mm to 300 micrometers with adjusted carbon transition gradient; having the following chemical composition (percent by weight): carbon 0.56 to 0.70, chromium 0 to 0.40, manganese 0.60 to 0.80, silicon 0.15 to 0.35, phosphorus not over 0.025, sulfur not over 0.01 and aluminum less than 0.05; thickness 0.50 mm to 2.00 mm; width 300 mm to 800 mm; not hardened and with low carbon surface (less than 0.1 percent carbon); thickness tolerance T3 and better; yield strength 450 MPa or more; tensile strength 500 MPa or more but not over 850 MPa;

(ccxxv) cold-rolled heat-treatable flat-rolled steel products, designated as A-714, the foregoing of grade AISI 1074 modified (as described by the chemical composition) with decarburized surface; produced by open coil batch annealing facilities for decarburizing, decarburization depths of 10 to 300 micrometer with adjusted carbon transition gradient; having the following chemical composition (percent by weight): carbon 0.69 to 0.80, chromium 0 to 0.40, manganese 0.60 to 0.80, silicon 0.15 to 0.35 and aluminum less than 0.05; thickness 0.50 mm to 2.00 mm; width 300 mm to 800 mm; not hardened and with low carbon surface (less than 0.1 percent carbon); thickness tolerance: T3 and better; yield strength of not less than 450 MPa; tensile strength of 500 MPa or more but not over 850 MPa;

(ccxxvi) cold-rolled plating quality steel, designated as A-721 and entered in an aggregate annual quantity not to exceed 3,600 t; the foregoing meeting the following characteristics: thickness of 0.66 mm, 0.75 mm, 0.90 mm, 1.08 mm, 1.38 mm or 1.85 mm, each with a tolerance of +3 percent / -0 percent; width of not less than 1,092 mm and not over 1,219 mm; having the following chemical composition (percent by weight): carbon 0.02 or more but not over 0.05, phosphorus not over 0.03, manganese not over 0.6 and sulfur not over 0.035; with the following properties: surface finish bright, suitable for nickel chrome plating, free from pits, scratches, rust, cracks, or seams, with a surface finish of RMS6 or better; hardness not less than 45Rb and not over 55Rb;

(ccxxvii) cold-rolled flat-rolled steel products, designated as A-756 and entered in an aggregate annual quantity not to exceed 930 t, the foregoing single reduced; T-4 temper; continuous annealed; type MR chemistry; 5C Matte Finish; having a thickness 0.211 mm and width 1073.15 mm to 1219.20 mm or a thickness of 0.239 mm and width of 1092.20 mm or a thickness of 0.312 mm and width of 1104.9 mm to 1193.8 mm; thickness tolerance of plus 5 percent and minus 8 percent; width tolerance of minus 0 mm and plus 3.175 mm; otherwise produced according to ASTM A623-00 and A625-98; certified by the importer that such products will be slit into two coils, each of which is 533.40 mm or more but not over 609.60 mm wide for use in the manufacturing of engine gaskets;

(ccxxviii) cold-rolled black flat-rolled products, designated as A-756 and entered in an aggregate annual quantity not to exceed 100 t, the foregoing single reduced; T-4 temper; continuous annealed; type MR chemistry; 5C Matte Finish; thickness 0.378 mm, plus 5 percent and minus 8 percent tolerances; width 1,155.7 mm, minus 0 and plus 3.175 mm tolerances; otherwise produced to ASTM A623-00 and A625-98; certified by the importer that such products will each be slit into two coils each measuring from 508.00 mm to 635.00 mm wide for use in the manufacturing of engine gaskets;

(ccxxix) cold-rolled flat-rolled, designated as A-626, the foregoing of grade AISI 1095, having the following chemical composition (percent by wight): carbon 0.90 to 1.00, silicon 0.20 to 0.35, manganese 0.55 to 0.75, phosphorus 0.020 maxiumum, sulfur 0.015 maximum, chromium 0.55 to 0.75 and vanadium 0.15 to 0.25; width 4 mm to 40 mm; thickness 0.20 to 0.70 mm; straightness deviation for width less than 8 mm a maximum of 27 mm per 3,000 mm, for width 8 to less than 20 mm a maximum of 18 mm per 3,000 mm, width 20 to 40 mm maximum of 13.5 mm per 3,000 mm; flatness deviation: maximum of 0.3 percent of width; surface finish: bright polished surface free from oxide, discoloration and harmful defects, Ra 0.2 to 0.6 micrometer; edges: fine machined square edges; microstructure: matrix of fine needled tempered martensite with approximately 7 percent residual carbides; tensile strength: 1,550 plus or minus 100 N/mm^2;

(ccxxx) cold-rolled hardened and tempered flat-rolled, designated as A-626, the foregoing of grade AISI 1095; having the following chemical composition (percent by weight): carbon 0.95 to 1.05, silicon 0.20 to 0.35, manganese 0.35 to 0.50, phosphorus not over 0.015 and sulfur not over 0.010; thickness not over 1.00 mm, width not over 300 mm; microstructure being acicular tempered martensite with 3 to 7 percent by volume of spheroidized and uniformly distributed cementite (undissolved carbides) in sizes below 3 micrometers, partial decarburization (fully martensitic) allowed to a depth of 6 percent of thickness; flatness deviation along the rolling direction 0.3 percent of the length maximum; surface finish for thicknesses up to and including 0.381 mm Ra not more than 0.13 micrometer, for thicknesses above 0.381 mm Ra is not more than 0.25 micrometer;

(ccxxxi) bright or blue polished printing doctor blade steel, designated as A-626; the foregoing with thickness not over 0.305 mm, width not over 100 mm; having the following chemical composition (percent by weight): carbon 0.95 to 1.05, silicon 0.20 to 0.35, manganese 0.60 to 0.80, phosphorus not over 0.02, sulfur not over 0.005 and chromium 0.25 to 0.40; microstructure a matrix of fine needled tempered martensite with approximately 10 percent uniformly dispersed residual carbides; surface finish in bright or blue polished finish, free from pits, scratches, rust, cracks or seams; smooth, rounded or beveled edges; edge camber (in each 3000 mm of length) of not greater than 1 mm arc height; cross bow no greater than 0.3 percent of product width; in coils;

(ccxxxii) cold-rolled unhardened flat-rolled products, designated as A-626, the foregoing of grade AISI 1095; having the following chemical composition (percent by weight): carbon 0.95 to 1.05, silicon 0.20 to 0.35, manganese 0.25 to 0.40, phosphorus not over 0.020, sulfur not over 0.001 and chromium 1.35 to 1.5; thickness not over 2 mm, width not over 300 mm; hardness H Rb 95 maximum; tensile strength 480 MPa or more but not over 680 MPa; surface finish: Ra not over 0.25 micrometer;

(ccxxxiii) cold-rolled hardened and tempered flat-rolled products, designated as A-626, the foregoing of grade AISI 1075, having the following chemical composition (percent by weight): carbon 0.62 to 0.72, silicon 1.20 to 1.40, manganese 0.40 to 0.60, phosphorus not over 0.020, sulfur not over 0.010 and chromium 0.40 to 0.60; thickness not over 2.5 mm, width not over 300 mm; Vickers hardness 440 to 650; tensile strength 1,460 MPa or more but not over 2,210 MPa; surface finish: Ra not more than 0.25 micrometer for thicknesses not over 0.381 mm, Ra not more than 0.5 micrometer for thicknesses 0.381 mm or more but not over 2.5 mm;

(ccxxxiv) cold-rolled creasing knife flat-rolled products, designated as A-626, the foregoing with round edge, in straight length, curved or coiled; body microstructure bainitic hardened to 370 plus or minus 20HV; with machined or ground round creasing edge of a knife; width 8.0 mm to 100.0 mm, thickness 0.4 mm to 2.13 mm (thickness tolerance plus or minus 0.015 for thickness 0.4 mm to 0.71 mm, or plus or minus 0.020 mm for thickness 1.05 mm to 2.13 mm; width tolerance plus or minus 0.020 mm for width 8.0 mm to 25.3 mm, plus or minus 0.025 mm for width 25.4 mm to 50.7 mm or plus or minus 0.030 mm for width 50.8 mm to 100.0 mm); cross camber 0.0005 mm/mm rule height maximum; straightness 0.3/1,000 mm rule length maximum; flatness 5 mm/1,000 mm rule length maximum; decarburization zone on both strip surfaces of 0.01 to 0.04 mm; having the following chemical composition (percent by weight): carbon 0.35 to 0.45, silicon 0.10 to 0.45, manganese 0.50 to 0.85, phosphorus less than 0.04, sulfur less than 0.03, chromium 0.05 to 0.30, molybdenum less than 0.05, nickel less than 0.30 and copper less than 0.30;

(ccxxxv) cold-rolled rule steel flat-rolled products, designated as A-626, the foregoing in straight lengths, curved or coiled, with a cutting edge; body microstructure bainitic hardened to either 320 plus or minus 15 or 400 plus or minus 20 HV or 450 plus or minus 20HV or 525 plus or minus 25 HV; machined or a ground sharp cutting edge, high frequency or plasma hardened to 620 plus or minus 30 HV or same as body hard ness; cutting edge having a specific cutting angle of 30 to 60 degrees; having the following chemical composition (percent by weight): carbon 0.53 to 0.57, silicon 0.10 to 0.35, manganese 0.60 to 0.75, phosphorus less than 0.02, sulfur less than 0.01, chromium 0.10 to 0.20, molybdenum less than 0.05, nickel less than 0.10, copper less than 0.10 and aluminum 0.015 to 0.035; width 8.0 to 100.0 mm, thickness 0.4 to 2.13 mm (thickness tolerance: plus or minus 0.015 mm for thickness 0.4 to 0.71 mm, or plus or minus 0.020 mm for thickness 1.05 to 2.13 mm; width tolerance plus or minus 0.020 mm for width 8.0 to 25.3 mm, plus or minus 0.025 mm for width 25.4 to 50.7 mm, or plus or minus 0.030 mm for width 50.8 to 100.0 mm); cross camber 0.0005 mm/mm rule width maximum; straightness 0.3/1,000 mm rule length maximum; flatness 5 mm/1,000 mm rule length maximum; decarburization on strip surfaces 0.01 to 0.04 mm;

(ccxxxvi) cold-rolled flat-rolled steel products, designated as A-632, the foregoing described as DIN125 Cr1; thickness not over 1.00 mm, width not over to 40 mm; having the following chemical composition (percent by weight): carbon 1.22 to 1.32, silicon 0.20 to 0.35, manganese 0.20 to 0.40, phosphorus not over 0.025, sulfur not over 0.010, chromium 0.20 to 0.35 and aluminum not over 0.015; carbides fully spheroidized, having greater than 80 percent of carbides; treated edges, surface finish is blue or bright finish free from pits, scratches, rust, cracks, or seams; edge camber (in each 3,000 mm of length) not greater than 12.70 mm arc height; cross bow (per mm of width) not greater than 0.025 mm; hardness (15N) of 72 to 82.5;

(ccxxxvii) cold-rolled flat-rolled steel products, designated as A-632, the foregoing SAE 1050 modified, having the following chemical composition (percent by weight): carbon 0.47 to 0.60, silicon 0.15 to 0.30, manganese 0.60 to 0.90, phosphorus not over 0.020, sulfur not over 0.015 and aluminum not over 0.020; thickness not less than 0.305 mm nor more than 3.175 mm; width not less than 31.75 mm nor more than 500.00 mm; microstructure spheroidized annealed with skin pass; surface finish is bright, roughness not greater than Ra 0.60 micrometer on both sides; edge finish slit or deburred; flatness less than 0.6 percent of the product width; camber (in each 1,000 mm of length) of not greater than 2.00 mm arc height; and cross bow (per mm of width) of not greater than 3.00 mm; hardness not greater than HRB 85; tensile strength not greater than 582 MPa;

(ccxxxviii) cold-rolled flat-rolled steel products, designated as A-645, the foregoing with transformation induced plasticity (TRIP) effect, microstructure with retained austenite; width 630 mm to 1,400 mm, thickness 3 mm to 4 mm; tensile strength greater than 800 MPa, elongation greater than 23 percent; having the following chemical composition (percent by weight): carbon less than 0.5, manganese not over 2.00, silicon 0.60 to 2.00 and sulfur not over 0.01;

(ccxxxix) cold-rolled flat-rolled magnetic alloy products, designated as A-648, the foregoing containing (percent by weight) 7.4 to 8.4 percent manganese, not over 0.05 percent carbon, no other individual element (except iron) over 0.30 percent and balance iron; mechanical properties yield strength 880 to 1,650 N/mm^2, ultimate tensile strength 980 to 2,000 N/mm^2, 1 to 20 percent elongation; cold-rolled coils; thickness 0.193 to 0.213 mm, width 250.0 to 380.0 mm; surface oiled to prevent rust;

(ccxl) cold-rolled flat-rolled steel products, designated as A-694; having the following chemical composition (percent by weight): carbon not over 0.19, silicon not over 1.60, manganese not over 2.25, phosphorus not over 0.02 and sulfur not over 0.010; tensile strength 980 N/mm^2 or more but not over 1,080 N/mm^2; and stretch flangeability at least 30 percent; meeting one of the following sets of properties:

(i) thickness 0.8 mm or more but not over 1.0 mm; yield strength 700 N/mm^2 or more but not over 850 N/mm^2; elongation 11 percent or more but not over 20 percent;

(ii) thickness 1.0 mm or more but not over 1.2 mm; yield strength 690 N/mm^2 or more but not over 850 N/mm^2; elongation 12 percent or more but not over 21 percent;

(iii) thickness 1.2 mm or more but not over 1.6 mm; yield strength 690 N/mm^2 or more but not over 850 N/mm^2; elongation 13 percent or more but not over 22 percent; or

(iv) thickness 1.6 mm or more but not over 2.3 mm; yield strength 690 N/mm^2 or more but not over 850 N/mm^2; elongation at least 13 percent;

(ccxli) cold-rolled flat-rolled steel products, designated as A-694, having the following chemical composition (percent by weight): carbon not over 0.19, silicon not over 1.60, manganese not over 2.25, phosphorus not over 0.020 and sulfur not over 0.010; tensile strength 980 N/mm^2 or more but not over 1,060 N/mm^2; yield strength 590 N/mm^2 or more but not over 730 N/mm^2; and elongation 13 percent or more but not over 20 percent; meeting one of the following sets of properties:

(i) thickness at least 0.8 mm but not greater than 1.0 mm; yield strength at least 590 N/mm² but not greater than 730 N/mm²; and elongation at least 13 percent but not greater than 20 percent;

(ii) thickness at least 1.0 mm but not greater than 1.2 mm; yield strength at least 580 N/mm² but not greater than 730 N/mm²; and elongation at least 14 percent but not greater than 21 percent;

(iii) thickness at least 1.2 mm but not greater than 1.6 mm; yield strength at least 580 N/mm² but not greater than 730 N/mm²; and elongation at least 14 percent but not greater than 22 percent; or

(iv) thickness at least 1.6 mm but not greater than 2.3 mm; yield strength at least 580 N/mm² but not greater than 730 N/mm²;and elongation at least 14 percent;

(ccxlii) cold-rolled flat-rolled steel products, designated as A-694, the foregoing with thickness 1.0 mm or more but not over 2.3 mm; having the following chemical composition (percent by weight): carbon not over 0.09, silicon not over 1.0, manganese not over 3.00, phosphorus not over 0.012 and sulfur not over 0.005; tensile strength 980 N/mm² or more but not over 1080 N/mm²; yield strength 800N/mm² or more but not over 980 N/mm²; elongation 6 percent or more but not over 14 percent; stretch flangeability at least 70 percent;

(ccxliii) cold-rolled flat-rolled steel products, designated as A-694, the foregoing having the following chemical composition (percent by weight): carbon not over 0.10, silicon not over 0.80, manganese not over 2.5, phosphorus not over 0.015 and sulfur not over 0.010; tensile strength at least 780 N/mm²; meeting one of the following sets of properties:

(i) thickness at least 0.6 mm but not greater than 0.8 mm; yield strength at least 420 N/mm² but not greater than 645 N/mm²; and elongation at least 14 percent but not greater than 25 percent;

(ii) thickness at least 0.8 mm but not greater than 1.0 mm; yield strength at least 410 N/mm² but not greater than 635 N/mm²; and elongation at least 15 percent but not greater than 26 percent;

(iii) thickness at least 1.0 mm but not greater than 1.2 mm; yield strength at least 400 N/mm² but not greater than 625N/mm²; and elongation at least 16 percent but not greater than 27 percent;

(iv) thickness at least 1.2 mm but not greater than 1.6 mm; yield strength at least 400 N/mm² but not greater than 625N/mm²; and elongation at least 17 percent but not greater than 28 percent; or

(v) thickness at least 1.6 mm but not greater than 2.3 mm; yield strength at least 400 N/mm² but not greater than 625 N/mm²; and elongation at least 18 percent;

(ccxliv) cold-rolled flat-rolled steel products, designated as A-694, the foregoing having the following chemical composition (percent by weight): carbon not over 0.16, silicon not over 0.80, manganese not over 2.60, phosphorus not over 0.012 and sulfur not over 0.010; tensile strength at least 1180 N/mm²; meeting one of the following sets of properties:

(i) thickness at least 0.8 mm but not greater than 1.0 mm; yield strength at least 835 N/mm² but not greater than 1,225 N/mm²; and elongation at least 5 percent but not greater than 10 percent;

(ii) thickness at least 1.0 mm but not greater than 1.2 mm; yield strength at least 825 N/mm2 but not greater than 1,215 N/mm²; and elongation at least 5percent but not greater than 17 percent;

(iii) thickness at least 1.2mm but not greater than 1.6 mm; yield strength at least 825 N/mm² but not greater than 1,215 N/mm²; and elongation at least 7 percent but not greater than 18 percent; or

(iv) thickness at least 1.6 mm but not greater than 2.3 mm; yield strength at least 825 N/mm² but not greater than 1,215 N/mm²; and elongation at least 8 percent;

(ccxlv) bright finish cold-rolled saw steel products, designated as A-711, the foregoing flat-rolled; thickness not over 4.0 mm; width not over 710 mm; having the following chemical composition (percent by weight): carbon 0.70 to 0.80, silicon 0.25 to 0.50, manganese 0.60 to 0.80, phosphorus not over 0.035, sulfur not over 0.035 and chromium 0.30 to 0.45; through-hardened to 40 to 50 HRc with a tolerance of +/- 2HRc; thickness tolerance of +/- 0.03 mm; surface finish bright finish free from pits, cracks or seams; smooth edges; cross bow (per mm of width) not greater than 0.0015 mm;

(ccxlvi) bright finish cold-rolled flat-rolled chrome-vanadium saw steel, designated as A-711, the foregoing with thickness not over 4.0 mm, width not over 710 mm; having the following chemical composition (percent by weight): carbon 0.75 to 0.85, silicon 0.25 to 0.45, manganese 0.30 to 0.85, phosphorus not over 0.035, sulfur not over 0.035, chromium 0.40 to 0.70 and vanadium 0.15 to 0.25; through-hardened to 40 to 50 HRc with a tolerance of +/- 2 HRc; thickness tolerance of +/- 0.03 mm; surface finish bright finish free from pits, cracks or seams; smooth edges; cross bow (per mm of width) not greater than 0.0015 mm;

(ccxlvii) cold-rolled hardened and tempered flat-rolled steel products, designated as A-714, the foregoing of grade AISI 1095 modified by expanding carbon and decreasing sulfur; having the following chemical composition (percent by weight): carbon 0.90 to 1.05, silicon 0.15 to 0.35, manganese 0.30 to 0.50, phosphorus 0.03 maximum and sulfur 0.006 maximum; thickness 0.5 to 1.00 mm , thickness tolerance 0.024 mm, width not over 152.4 mm; ultimate tensile strength at least 1590 N/mm²; flatness less than or equal 0.2 percent of the product width; microstructure completely free from decarburization, carbides are spheroidal and fine within 1 percent to 4 percent per square meter in the uniform tempered martensite; nonmetallic inclusions; sulfide inclusions maximum 0.04 percentage per square meter and oxide inclusions maximum 0.05 percentage per square meter; surface roughness arithmetic maximum 0.25 micrometer, surface roughness maximum 2.5 micrometer;

(ccxlviii) cold-rolled flat-rolled steel products, designated as A-714; having the following chemical composition (percent by weight): carbon 0.10 or more but not over 0.15, manganese 0.50 or more but not over 0.70, phosphorus not over 0.025, sulfur not over 0.025, chromium 0.2 or more but not over 0.4, nickel 0.2 or more but not over 0.4 and aluminum 0.02 or more but not over 0.07; tensile strength not less than 448 MPa not more than 496 MPa; Rockwell hardness B 65 to 75; minimum elongation 35 percent; maximum average scratch depth.0.35 micrometer; thickness at least 0.80 mm but not more than 1.50 mm; width not less than 330 mm nor more than 429 mm;

(ccxlix) cold-rolled flat-rolled measuring tape steel products, designated as A-723, the foregoing produced to specification JIS SK-4; thickness 0.114 mm to 0.152 mm (plus or minus 0.005 mm); having the following chemical composition (percent by weight): carbon 0.94 to 1.00, silicon 0.15 to 0.30, manganese 0.40 to 0.50, phosphorus not over 0.022, sulfur not over 0.010, copper not over 0.08, nickel not over 0.08, chromium 0.10 to 0.25 and aluminum not over 0.010; Vickers hardness HV 290 plus or minus 20; tensile strength 800 to 1100 N/mm²; surface roughness (RZ) not more than 1 micrometer; quantity of cementite minimum 33 in a 100 micrometer by 100 micrometer area; meeting either of the following sets of properties:

(i) width 4.76 mm to 35 mm (plus or minus 0.05 mm); edge condition deburred edge; camber (in each 2,400 mm of length) of not over 20 mm arc height; or

(ii) width 150 mm to 350 mm (plus or minus 0.50 mm); edge condition slit edge; camber (in each 2,400 mm of length) of not over 6.35 mm arc height;

(ccl) anisotropic annealed and slit magnetic semihard alloy products, designated as A-732, the foregoing having the following chemical composition (percent by weight): nickel 14.7 to 15.3, aluminum 1.7 to 1.9, titanium 0.6 to 0.8 and iron 80 to 82; density of 7.65 g/cm³; with a remanence of 1.30 to1.60 Tesla; with coercivity of 1.5 to 2.6 plus or minus 0.5 kA/m; Curie temperature 630°C; Vicker hardness in heat treated condition of 600; thickness 0.045 to 0.3 mm; maximum width 240 mm;

(ccli) forged products, designated as A-645, the foregoing in thicknesses of 153 mm to 1270 mm; hardness of 290 to 320 BHN; hardness dispersion including through-thickness measured anywhere on block not exceeding 15 BHN for thicknesses 153 mm to 203 mm, hardness dispersion measured anywhere on block including through-thickness not exceeding 30 BHN for thickness over 203 mm to 1270 mm; homogenous (free of hard spots); conforming to ASTM A578-S9 ultrasonic testing requirements with 3 mm flat bottom hole; rolled for thicknesses not exceeding 813 mm; rough machined for thicknesses greater than 813 mm; oxygen content not exceeding 20 ppm, hydrogen content not exceeding 2 ppm.; having the following chemical composition (percent by weight): carbon 0.235 to 0.275, chromium 1.2 to 1.5, manganese 1.2 to 1.5, molybdenum 0.35 to 0.55, silicon 0.05 to 0.15, sulfur 0.060 to 0.080 and boron 0.002 to 0.004;

(cclii) prehardened hot-rolled mold steel products, designated as A-626; the foregoing comprising rounds from 12 mm to 500 mm diameter, flats with a thickness 12 mm to 1300 mm and width 300 mm to 2000 mm; having the following chemical composition (percent by weight): carbon 0.23 to 0.27, chromium 1.20 to 1.40, manganese 1.20 and 1.40, nickel not more than 0.30, molybdenum 0.35 to 0.55, silicon 0.05 to 0.15, boron 0.0002 to 0.004, sulfur not more than 0.02, phosphorus not more than 0.02 and aluminum not more than 0.07;

(ccliii) hot-rolled flat-rolled products, of high strength grade 100, designated as A-645; the foregoing in thicknesses 2.3 mm to 3.0 mm; widths 1.016 m to 1.524 m; yield strength of 700 to 800 MPa, tensile strength of 750 to 910 MPa; elongation not less than 13 percent; and bending radius of 1.6 times thickness; having the following chemical composition

(percent by weight): carbon not over 0.1, manganese not over 2.0, phosphorus not over 0.025, sulfur not over 0.01, silicon not over 0.4, aluminum 0.02 to 0.06, titanium not over 0.15, molybdenum not over 0.5, niobium (columbium) not over 0.09 and vanadium not over 0.2;

(cclxiv) hot-rolled flat-rolled products, designated as A-668, the foregoing in coils, high strength, minimum yield strength of 550 MPa. in compliance with ASTM SAE J1392 Grade 080 XLF; having the following chemical composition (percent by weight): carbon 0.10 maximum, manganese 1.7 maximum, silicon 0.250 maximum, niobium (columbium) 0.080 maximum, vanadium 0.10 maximum and titanium 0.005 maximum; thickness 15.5 mm or more, width 1820 mm or more;

(cclv) hot-rolled or hot-rolled pickled and oiled, high strength, flat-rolled steel coils, designated as A-682; having the following chemical composition (percent by weight): carbon 0.025 to 0.065, manganese 0.195 to 0.305, phosphorus 0.020 maximum, sulfur 0.015 maximum, silicon 0.030 maximum, aluminum 0.015 to 0.055, nitrogen 0.0050 maximum, copper 0.040 maximum, tin 0.010 maximum, chromium 0.040 maximum, nickel 0.040 maximum, molybdenum 0.010 maximum, niobium (columbium) 0.006 to 0.012, vanadium 0.005 maximum, boron 0.0005 maximum and titanium 0.005 maximum; minimum yield strength 248 MPa, minimum tensile strength of 345 MPa, minimum elongation of 30 percent; in the following dimensions: hot-rolled or hot-rolled pickled and oiled: 2.31 mm to 2.72 mm x 1930 mm or more; or 3.0 mm to 3.40 mm x 1930 mm or more;

(cclvi) hot-rolled flat-rolled steel products, designated as A-705; the foregoing in coils, thickness 5.0 mm +/- 0.2 mm, width 6.2 mm +/- 0.2 mm; chemical composition (percent by weight): carbon 0.11 to 0.17, silicon 0.10 maximum, manganese 0.30 to 0.60, phosphorus 0.025 maximum, sulfur 0.025 maximum, molybdenum 0.20 to 0.50, vanadium 0.04 to 0.11 and aluminum 0.02 to 0.08; minimum yield strength of 400 N/mm^2; tensile strength 490 N/mm^2 to 610 N/mm^2; minimum elongation of 22 percent,

(cclvii) hot-rolled hardened and annealed saw steel in sheet form, designated as A-711, the foregoing in thickness not over 15 mm; width not over 1610 mm; through-hardened to 38 to 52 HRc with a tolerance of +/- 2 HRc; thickness tolerances: up to 6 mm thickness: + 0.30 / - 0.0 mm, above 6 mm up to 8 mm thickness: + 0.34 / - 0.0 mm, above 8 mm thickness: +0.38 / - 0.0 mm; surface descaled; smooth edges; cross bow (per mm of width) not greater than 0.001 mm; meeting one of the following chemical compositions (percent by weight):

(i) carbon 0.70 to 0.80, silicon 0.25 to 0.50, manganese 0.60 to 0.80, phosphorus not over 0.035, sulfur not over 0.035 and chromium 0.30 to 0.45;

(ii) carbon 0.75 to 0.85, silicon 0.25 to 0.45, manganese 0.30 to 0.85, phospborus not over 0.035, sulfur not over 0.035, chromium 0.40 to 0.70 and vanadium 0.15 to 0.25; or

(iii) carbon 0.60 to 0.80, silicon 0.10 to 0.30, manganese 0.35 to 0.60, phosphorus not over 0.035, sulfur not over 0.035, chromium 0.20 to 0.50, molybdenum not over 0.10 and nickel 0.50 to 1.00;

(cclviii) hot-rolled flat-rolled steel, designated as A-754, in coils, having the following chemical composition (percent by weight): carbon 0.10 to 0.14, manganese not over 0.90, phosphorus not over 0.025, sulfur not over 0.003, silicon 0.30 to 0.50, chromium content 0.50 to 0.70, copper 0.20 to 0.40 and nickel not over 0.20; thickness 1.6 to 5.03 mm, width up to 1,550 mm; minimum yield strength 344 N/mm^2, tensile strength 482 to 607 N/mm^2, thickness tolerance according to half of ASTM 568 specification; minimum elongation 22 percent; hardness 79 to 89 HRB; pickled and oiled; surface condition free of injurious defects such as holes, breaks, scabs, scale and embosses;

(cclix) hot-rolled flat-rolled steel, designated A-791; the foregoing being ferritic mono-phase alloyed high-tensile steel; thickness at least 1.2 mm; having the following chemical composition (percent by weight): carbon 0.10 maximum, silicon 0.40 maximum, manganese 2.0 maximum, phosphorus 0.025 maximum, aluminum 0.060 maximum, niobium 0.09 maximum, titanium 0.20 maximum, vanadium 0.20 maximum, molybdenum 0.50 maximum and sulfur 0.010 maximum; in either of the following conditions:

(i) minimum tensile strength 780 MPa, minimum elongation 13 percent, and minimum stretch flange ratio of 70 percent; or

(ii) minimum tensile strength 980 MPa, minimum elongation 10 percent, and minimum stretch flange ratio of 40 percent;

(cclx) hot-rolled flat-rolled steel, designated as A-809, the foregoing in coils; width less than 600 mm; thickness 2.00 mm to 4.00 mm or 10 mm to 13 mm; inclusions determined in accordance of ASTM E45, Method A or DIN 50602

specifications; having the following chemical composition (percent by weight): carbon not over 0.12, silicon not over 0.6, manganese not over 2.1, phosphorus not over 0.025, sulfur not over 0.015, aluminum 0.02 or more, niobium 0.02 or more but not over 0.15, vanadium not over 0.20, titanium not over 0.20, molybdenum not over 0.20 and boron not over 0.20; minimum yield strength 759 MPa in both longitudinal and transverse directions, minimum tensile strength 814 MPa, Charpy impact values greater than or equal to 17 J -40°C; elongation greater than or equal to 12 percent; minimum bendability 1.125 times thickness;.

(cclxi) hot-rolled floor plate in coils, designated as A-645 and entered in an aggregate quantity not to exceed 8,500 t; in widths greater than 1,651 mm and meeting either of the sets of properties described below:

(i) thickness from 2 mm to 16 mm; commercial quality grade; having the following chemical composition (percent by weight): carbon of 0.02 to 0.10, silicon of 0.03 maximum, manganese of 0.15 to 0.50, phosphorus not over 0.03, sulfur not over 0.03, vanadium not over 0.008, aluminum of 0.01 to 0.08 and nitrogen not over 0.014; or

(ii) grade A36; having the following chemical composition (percent by weight): carbon of 0.04 to 0.21 , silicon not over 0.40, manganese not over 1.50, phosphorus not over 0.03, sulfur not over 0.025, vanadium not over 0.05, aluminum from 0.010 to 0.05 and nitrogen not over 0.009;

(cclxii) hot-rolled steel, designated as A-645 and entered in an aggregate quantity not to exceed 250 t; in grade SAE 1060; thickness 1.78 mm or more but less than 2.54 mm, widths of 1016 mm to 1524 mm; having the following chemical composition (percent by weight): carbon of 0.57 to 0.65, manganese of 0.6 to 0.75, phosphorus not over 0.025, sulfur not over 0.005, silicon not over 0.25, aluminum 0.015 to 0.03, copper not over 0.1, nitrogen not over 0.01, and combined nickel, chromium and molybdenum not over 0.45;

(cclxiii) hot-rolled steel, designated as A-645 and entered in an aggregate quantity not to exceed 250 metric tons; in grade SAE 1080/1085 with the following characteristics: thickness of at least 1.78 mm but less than 2.06 mm; widths greater than 1,500 mm to 1,650 mm; inclusion controlled according to ASTM E45 (average value on ten fields: A max 1.5, B max 1, C max 1, D max 1.5) having the following chemical composition (percent by weight): carbon 0.815 to 0.884, manganese 0.8 to 0.9, phosphorus not over 0.02, sulfur not over 0.01, silicon 0.15 to 0.25, aluminum 0.02 to 0.04, copper not over 0.35, combined nickel, chromium, and molybdenum not over 0.3; in coils;

(cclxiv) heat treatable boron hot rolled flat-rolled steel, designated as A-645 and entered in an aggregate quantity not to exceed 250 t; the foregoing with thickness 1.7 mm or more but less than 1.9 mm; having the following chemical composition (percent by weight): carbon 0.27 to 0.33, manganese 1.15 to 1.45, silicon 0.20 to 0.30, aluminum over 0.02, phosphorus not over 0.020, sulfur not over 0.005, copper not over 0.060, nickel not over 0.050, chromium from 0.15 to 0.25, titanium from 0.02 to 0.05, nitrogen not over 0.009 and boron from 0.001 to 0.004; calcium treated;

(cclxv) hot-rolled flat-rolled high strength low alloy grade 100 heavy gauge steel, designated as A-645 and entered in an aggregate quantity not to exceed 5,000 t; the foregoing with thickness 4.5 mm to 12.7 mm; width 1.524 m to 1.829 m, with a yield strength of 700 to 800 MPa; tensile strength of 750 to 910 MPa; elongation not less than 13 percent; guaranteed bending radius of 1.6 times a thickness less than 6 mm and 1.8 times a thickness greater than 6 mm; having the following chemical composition (percent by weight): carbon not over 0.1, manganese not over 2.0, phosphorus not over 0.025, sulfur not over 0.01, silicon not over 0.4, aluminum from 0.02 to 0.06, titanium not over 0.15, molybdenum not over 0.5, niobium (columbium) not over 0.09 and vanadium not over 0.2;

(cclxvi) hot-rolled flat-rolled steel, designated as A-649 and entered in an aggregate quantity not to exceed 10,000 t; the foregoing with thickness 1.8 mm or more but not over 2.2 mm; width not over 1524 mm; having the following chemical composition (percent by weight): carbon 0.05 to 0.13, manganese 1.20 to 1.65 and phosphorus equal to or less than 0.035; yield strength 550 to 575 MPa; tensile strength 620 to 760 MPa; elongation minimum 20 percent; bend radius of 2 times material thickness;

(cclxvii) hot-rolled flat-rolled steel, designated as A-649 and entered in an aggregate quantity not to exceed 8,000 t; ASTM A507 SAE-number 4130; 95 percent spheroidized annealed; thickness 2.48 mm to 6.12 mm; having the following chemical composition (percent by weight): carbon of 0.28 to 0.33, manganese of 0.40 to 0.60, phosphorus of 0.02 maximum, silicon of 0.03 maximum and chromium of 0.80 to 1.1; hardness Rb maximum of 85;

(cclxviii) hot-rolled flat-rolled products, ASTM A1011 CS type A (modified) as rolled or tension leveled hot rolled pickled and oiled flat rolled steel coils, designated as A-680 and entered in an aggregate quantity not to exceed 1,000 t; whether temper rolled or not, with surface requirements equal to exposed, possessing non-earing properties; thicknesses from 1.37 mm but less than 1.7 mm and with thickness tolerance of one half or less than standard thickness tolerance as

specified in ASTMA568 ANDA635; having the following chemical composition (percent by weight): carbon 0.025 to 0.070, manganese 0.175 to 0.274, phosphorus not over 0.017, sulfur not over 0.024, silicon not over 0.024, aluminum 0.025 to 0.060, nitrogen 0.0025 to 0.0050, copper not over 0.040, tin not over 0.10, chromium not over 0.040, nickel not over 0.040, molybdenum not over 0.010, niobium (columbium) not over 0.005, vanadium not over 0.005, boron not over 0.0005 and titanium not over 0.005;

(cclxix) hot-rolled flat-rolled A1011 CS TYPE B (modified) hot rolled or tension leveled hot rolled pickled and oiled flat rolled steel coils, designated as A-680 and entered in an aggregate quantity not to exceed 1,000 t; whether temper passed or not with surface requirements equal to exposed; thicknesses from 1.397 mm but less than 1.676 mm and with thickness tolerance of one half or less than standard thickness tolerance (ASTM A568 and A635; having the following chemical composition (percent by weight): carbon 0.080 to 0.100, manganese 0.300 to 0.400, phosphorus not over 0.020, silicon not over 0.030, aluminum 0.025 to 0.064, nitrogen not over 0.0050, copper not over 0.070, tin not over 0.024, chromium not over 0.060, nickel not over 0.060, molybdenum not over 0.015, niobium (columbium) not over 0.005, vanadium not over 0.005, boron not over 0.0005 and titanium not over 0.005;

(cclxx) hot-rolled flat-rolled, pickled and oiled, tension leveled, high strength steel coils, designated as A-680; the foregoing according to SAE J1392 grade 060XLF modified with inclusion shape control and following chemistry (percent by weight): carbon 0.070 to 0.110; manganese 1.220 to 1.354; phosphorus 0.020 maximum, sulfur 0.005 maximum, silicon 0.120 maximum, aluminum 0.015 to 0.055, nitrogen 0.0060 maximum, copper 0.040 maximum, tin 0.010 maximum, chromium.040 maximum., nickel 0.040 maximum, molybdenum 0.010 maximum, niobium (columbium) 0.015 to 0.025, vanadium 0.005 maximum, boron 0.0008 maximum and titanium 0.005 maximum; minimum yield strength 414 MPa, minimum tensile strength 482 MPa and minimum elongation of 20 percent; thickness 3.404+0.203/-0 mm and width 1.350.645+38.100/-.0 mm or thickness 3.584+0.203/-0 mm and width 1.279.525+38.100/-.0 mm;

(cclxxi) hot-rolled pickled and oiled tension leveled, high strength, flat-rolled steel coils, designated as A-680; the foregoing according to SAE J1392 grade 070XLF mod with inclusion shape control and following chemistry in (percent by weight): carbon 0.080 to 0.120, manganese 1.370 to 1.504, phosphorus 0.020 maximum, sulfur 0.005 maximum, silicon 0.120 maximum, aluminum 0.015 to 0.055, nitrogen 0.0060 maximum, copper 0.040 maximum, tin 0.010 maximum, chromium 0.040 maximum, nickel 0.040 maximum, molybdenum 0.010 maximum, niobium (columbium) 0.040 to 0.050, vanadium 0.005 maximum, boron 0.0008 maximum and titanium 0.005 maximum; minimum yield strength of 482 MPa, minimum tensile strength of 550 MPa; thickness 3.584+0.203/-0 mm and width 1,288.725 +31.750/-0 mm;

(cclxxii) hot-rolled or hot rolled pickled and oiled flat-rolled steel coils, designated as A-682 and entered in an aggregate quantity not to exceed 14,500 t; having the following chemical composition (percent by weight): carbon 0.090 to 0.130, manganese 0.425 to 0.575, phosphorus 0.020 maximum, sulfur 0.020 maximum, silicon 0.020 maximum, aluminum 0.020 to 0.060, nitrogen 0.0030 to 0.0050 maximum, copper 0.040 maximum, tin 0.010 maximum, chromium 0.040 maximum, nickel 0.040 maximum, molybdenum 0.010 maximum, niobium (columbium) 0.005 maximum; vanadium 0.005 maximum, boron 0.0005 maximum and titanium 0.005 maximum; minimum yield strength 248 MPa, minimum tensile strength 345 MPa, minimum elongation of 30 percent; width 1,778 mm or more, thickness 2.49 mm to 3.51 mm;

(cclxxiii) hot-rolled floor plate in coils, designated as A-688; the foregoing being pattern number 4, grade ASTMA786, thickness of 4.75 mm or more but less than 6.4 mm, width of 1,829 mm or greater;

(cclxxiv) hot-rolled flat-rolled steel in coils; in widths from 733 mm to 1,244.6 mm (width tolerance of 20.0 mm) having coil weights of 17.89 kg/mm of width or more; designated as A-689 and entered in an aggregate annual quantity not to exceed 35,000 t; camber tolerance of not more than 20 mm per 10 m, thickness ranging from 1.80 mm to 3.00 mm (tolerances of 0.1 mm); flatness deviation not to exceed 2.5 percent steepness ratio (defined as height over the wavelength); in one of the following combinations of chemical compositions (percent by weight) and widths: (A) width from 733 to 1,244.6 mm, inclusive, and containing 0.010 to 0.08 carbon, 0.16 to 0.30 manganese, 0.025 maximum silicon, 0.020 maximum phosphorus, 0.020 maximum sulfur, 0.008 maximum nitrogen and 0.02 to 0.08 aluminum; (B) of a width from 915 to 1,244.6 mm, inclusive, and containing 0.08 to 0.13 carbon, 0.30 to 0.60 manganese, 0.035 maximum silicon, 0.025 maximum phosphorus, 0.025 maximum sulfur, 0.008 maximum nitrogen and 0.02 to 0.07 aluminum; (C) of a width from 762 to 1,244.6 mm, inclusive, and containing 0.13 to 0.17 carbon, 0.30 to 0.60 manganese, 0.035 maximum silicon, 0.025 maximum phosphorus, 0.025 maximum sulfur, 0.010 maximum nitrogen and 0.02 to 0.07 aluminum; or (D) of a width from 733 to 1,244.6 mm, inclusive, and containing 0.010 maximum carbon, 0.10 to 0.20 manganese, 0.030 maximum silicon, 0.020 maximum phosphorus, 0.020 maximum sulfur, 0.007 maximum nitrogen, 0.02 to 0.075 aluminum and 0.15 maximum titanium; all certified by the importer of record to be

used for rerolling in a reversing cold reduction mill, with a reduction in thickness during the cold rolling process of at least 40;

(cclxxv) hot-rolled coils, designated as A-699 and entered in an aggregate quantity not to exceed 500 t; the foregoing meeting ANSI 1095 in thickness from 1.75 mm but less than 2.03 mm and in widths over 685.8 mm but not over 1,220 mm; and modified to meet the following chemical specifications (percent by weight): 0.70 to 1.04 carbon, 0.30 to 0.100 manganese, not over 0.025 phosphorus, not over 0.015 sulfur, 0.025 to 0.065 aluminum, 0.15 to 0.25 silicon, not over 0.100 copper, not over 0.100 nickel, 0.090 to 0.30 chromium, no over 0.025 molybdenum, not over 0.020 tin, not over 0.008 niobium, not over 0.008 titanium, not over 0.0008 boron, not over 0.010 nitrogen and not over 0.008 vanadium;

(cclxxvi) hot-rolled ferritic mono-phase alloyed high-tensile steel, designated as A-791; the foregoing in thickness of 1.2 mm or more but less than 1.8 mm; having the following chemical composition (percent by weight): carbon 0.10 maximum, silicon 0.40 maximum, manganese 2.0 maximum, phosphorus 0.025 maximum, aluminum 0.060 maximum, niobium 0.09 maximum, titanium 0.20 maximum, vanadium 0.20 maximum, molybdenum 0.50 maximum and sulfur 0.010 maximum; minimum tensile strength of 590 MPa, minimum elongation of 16 percent, and a minimum stretch flange ratio of 80 percent;

(cclxxvii) cold-rolled electrolytically nickel-coated steel foil, designated as A-604; the foregoing being substrate SAE 1008 A-1 Killed Quality; having the following chemical composition (percent by weight): carbon not over 0.10, manganese not over 0.50, phosphorus not over 0.030 and sulfur not over 0.035; substrate thickness 0.050 mm or more but not over 0.0572 mm, width 607.6 mm or more but not over 611.6 mm; as rolled with a Rockwell hardness not less than 83on 15T scale; unalloyed nickel coating 2.54 micrometers or more in thickness; non-brilliant finish; in coils wound on 76.6 mm diameter steel cores and with 355.6 mm maximum outer diameter;

(cclxxviii) flat-rolled products, designated as A-619, the foregoing coated with zinc according to ASTM-Designation 653/A 653M Type A/ Grade 40, 150 g/m^2 to 280 g/m^2 of zinc for both sides; having the following chemical composition (percent by weight): carbon not over 0.20, manganese not over 1.20, sulfur not over 0.035, nickel not over 0.20, chromium not over 0.15, vanadium not over 0.008 and titanium not over 0.30; longitudinal mechanical properties of base metal: yield strength 185 MPa minimum, tensile strength 310 MPa or more but not over 540 MPa, elongation 22 percent minimum; edges rounded and galvanized after slitting; width 40 mm or more but not over 60 mm; weight 0.63 kg/ linear m to 0.86 kg/linear m; thickness 1 mm or more but not over 2 mm; in coils with outside diameter 750 mm or more but not over 1,300 mm;

(cclxxix) nickel-coated cold-rolled slit-to-width steel, in coils, designated as A-643, the foregoing in thickness 0.250 mm or more but not over 1.828 mm, width 25.39 mm or more but not over 76.17 mm; having the following chemical composition (percent by weight): carbon 0.020 to 0.05, manganese 0.10 to 0.30, phosphorus not over 0.025, sulfur not over 0.020, silicon not over 0.025, aluminum 0.030 to 0.085, nitrogen not over 0.007 and copper plus nickel plus chromium not over 0.2; aluminum-killed, continuously cast; electrolytically coated with nickel free from pits or blisters on one surface ("plated side") of the product with a minimum thickness of 0.00381 mm and with nickel thickness of not over 0.000762 mm on the opposite "bare" side; in coils with a maximum inside diameter of 50.8 cm and a maximum outside diameter of 172.72 cm;

(cclxxx) copper coated cold-rolled slit-to-width steel, designated as A-643, the foregoing in coils; thickness 0.250 mm or more but not over 1.828 mm, width 25.39 mm or more but not over 76.17 mm; having the following chemical composition (percent by weight): carbon 0.020 to 0.08, manganese 0.10 to 0.45, phosphorus 0.02 maximum, and sulfur 0.035 maximum; rimmed, capped, aluminum-killed, or continuously cast; coated with smooth and clean copper, free from pits, blisters, or roughness, deposited electrolytically on the two flat surfaces of the strip in an amount, for both sides, of not less than 50.0 and not more than 100.7 g per m sq of product (or, for a single side, of not less than 25.0 and not more than 50.35 g per m sq. of surface); in coils with inside diameter 40.6 cm or more but not over 50.8cm and a maximum outside diameter of 140.0cm;

(cclxxxi) aluminized manganese-boron steel, designated as A-645; the foregoing sometimes known commercially as "USIBOR"; having the following chemical composition (percent by weight): carbon 0.20 to 0.25; manganese 1.10 to1.40, sulfur not over 0.008, aluminum not over 0.06, silicon not over 0.50, boron 0.002 to 0.005 and titanium not over 0.05; in coils, width 620 mm or more but not over 1,600 mm; thickness 0.6 mm or more but not over 3.0 mm; ASTM 463-A coating; yield strength 370 to 490 MPa, tensile strength greater than 550 MPa, and elongation 10 percent or more;

(cclxxxii) steel-backed bearing material, in coils, designated as A-646, the foregoing of a thickness 0.95 mm or more but not over 2.51 mm; width 5 mm to 51 mm, inclusive, or 170 mm to 200 mm, inclusive; of SAE1010 steel with a sintered bronze layer consisting (by weight) of 91.3 percent tin, 0 to 6 percent lead, 0 to 0.2 percent phosphorus and balance copper; said bronze being impregnated with one of the following compositions (by weight):

(i) 30 to 40 percent polytetrafluoroethylene and 60 to 70 percent lead oxide, with the lead oxide being dispersed throughout the polytetrafluoroethylene in a scale-like arrangement;

(ii) 50 to 60 percent polytetrafluoroethylene, 5 to10 percent fluorinated ethylene propylene, with the balance a tin-lead alloy dispersed in globular form throughout the polytetrafluoroethylene and fluoridated ethylene propylene;

(iii) 70 to 80 percent polytetrafluoroethylene, 8 percent fluorinated ethylene propylene, with the balance consisting of a tin-oxide alloy dispersed in globular form throughout the polytetrafluoroethylene and fluorinated ethylene propylene and a polyester resin dispersed in fiber form;

(iv) 95 to 99.5 percent polyacetal with a balance of titanium dioxide;

(v) 70 to 80 percent polytetrafluoroethylene, 8 to 10 percent fluorinated ethylene propylene, with the balance consisting of a tin oxide alloy dispersed in globular form throughout the polytetrafluoroethylene and fluoridated ethylenepropylene and carbon dispersed in fiber form; or

(vi) 80 to 90 percent polytetrafluoroethylene, with the balance carbon fibers dispersed throughout the polytetrafluoroethylene;

(cclxxxiii) flat-rolled products, designated as A-688, the foregoing coated with zinc-aluminum alloy, such alloy consisting of 95 percent zinc and 5 percent aluminum by weight; sometimes referred to as (but not limited to) products known as ``Ragal Galfan''; width of 1,220 mm or more;

(cclxxxiv) flat-rolled coated SAE 1009 steel in coils, designated as A-695, meeting one of the following characteristics (compositions by weight):

(i) thickness not less than 0.915 mm but not over 0.965 mm, width not less than 19.75 mm or more but not over 20.35 mm; with a two-layer coating; the first layer consisting of tin 9 to 11 percent, lead 9 to 11 percent, zinc less than 1 percent, other materials (other than copper) not over 1 percent and balance copper; the second layer consisting of lead 45 to 55 percent, molybdenum disulfide (MoS_2) 3 to 5 percent, other materials not over 2 percent, balance polytetrafluoroethylene (PTFE);

(ii) thickness not less than 0.915 mm or more but not over 0.965mm; width not less than 18.65 mm or more but not over19.25 mm; with a two-layer coating; the first layer consisting of tin 9 to 11 percent, lead 9 to 11 percent, zinc less than 1 percent, other materials (other than copper) not over 1 percent, balance copper; the second layer consisting of lead 33 to 37 percent, aromatic polyester 13 to 17 percent, other materials (other than polytetrafluoroethylene (PTFE)) less than 2 percent, balance PTFE;

(iii) thickness not less than 0.920 mm or more but not over 0.970 mm; width not less than 21.35 mm or more but not over 21.95 mm; with a two-layer coating; the first layer consisting of tin 9 to 11 percent, lead 9 to 11 percent, zinc less than 1 percent, other materials (other than copper) not over 1 percent, balance copper; the second layer consisting of lead 33 to 37 percent, aromatic polyester 13 to 17 percent, other materials (other than PTFE) less than 2 percent, balance PTFE;

(iv) thickness not less than 1.80 mm or more but not over 1.85 mm, width not less than 14.7 mm or more but not over 15.3 mm; with a lining consisting of tin 2.5 to 4.5 percent, lead 21.0 to 25.0 percent, zinc less than 3 percent, iron less than 0.35 percent, other materials (other than copper) less than 1 percent, balance copper;

(v) thickness 1.59 mm or more but not over 1.64 mm; width 14.5 mm or more but not over 15.1 mm; with a lining consisting of tin 2.3 to 4.2 percent, lead 20 to 25 percent, iron 1.5 to 4.5 percent, phosphorus 0.2 to 2.0 percent, other materials (other than copper) less than 1 percent, with a balance copper;

(vi) thickness not less than 1.75 mm or more but not over 1.8 mm; width nor less than 18.0 mm or more but not over 18.6 mm; with a lining consisting of tin 2.3 to 4.2 percent, lead 20 to 25 percent, iron 1.5 to 4.5 percent, phosphorus 0.2 to 2.0 percent, other materials (other than copper) less than 1 percent, with a balance copper;

(vii) thickness 1.59 mm or more but not over 1.64 mm; width 13.6 mm or more but not over14.2 mm; with a lining consisting of tin 2.3 to 4.2 percent, lead 20 to 25 percent, iron 1.5 to 4.5 percent, phosphorus 0.2 to 2.0 percent, other materials (other than copper) less than 1 percent, with a balance copper;

(viii) thickness 1.59 mm or more but not over 1.64 mm; width 11.5 mm or more but not over12.1 mm; with a lining consisting of tin 2.3 to 4.2 percent, lead 20 to 25 percent, iron 1.5 to 4.5 percent, phosphorus 0.2 to 2.0 percent, other materials (other than copper) less than 1 percent, with a balance copper;

(ix) thickness 1.59 mm or more but not over 1.64 mm; width 11.2 mm or more but not over 11.8 mm, with a lining consisting of copper 0.7 to 1.3 percent, tin 17.5 to 22.5 percent, silicon less than 0.3 percent, nickel less than 0.15 percent, other materials (other than copper) less than 1 percent, balance copper;

(x) thickness 1.59 mm or more but not over1.64 mm; width 7.2 mm or more but not over 7.8 mm; with a lining consisting of copper 0.7 to 1.3 percent, tin 17.5 to 22.5 percent, silicon less than 0.3 percent, nickel less than 0.15 percent, other materials (other than copper) less than 1 percent, balance copper; or

(xi) thickness 1.72 mm or more but not over1.77 mm; width 7.7 mm or more but not over 8.3 mm; with a lining consisting of copper 0.7 to 1.3 percent, tin 17.5 to 22.5 percent, silicon less than 0.3 percent, nickel less than 0.15 percent, other materials (other than copper) less than 1 percent, balance copper;

(cclxxxv) cold rolled flat-rolled steel, designated as A-719; the foregoing continuously hot-dip zinc coated; with round rolled and zinc coated edges, certified by the importer to meet the following specifications: steel strip dimensions (before zinc coating): thickness 1.45 +/-0.02 mm or 1.85+/-0.02 mm, width 15 mm to 60 mm +/-0.25 mm; edges round rolled; having the following chemical composition (percent by weight): carbon not over 0.07, silicon not over 0.02, manganese 0.15 to 0.30, phosphorus not over 0.025, sulfur not over 0.030, nitrogen not over 0.010 and aluminum 0.020 to 0.100; annealed in reducing protective gas atmosphere, with 7 percent hydrogen; tolerance in thickness with zinc coating: +/- 0.03 mm, tolerance in width with zinc coating: +/- 0.3 mm; tensile strength 310 to 450 N/mm^2, elongation 22 percent minimum; zinc coating Super High Grade Zinc according to EN 1179Z1,SHG.; coating mass, including both surfaces, minimum 220 g/m^2, corresponding to a minimum coating thickness of 15.4 micrometers per surface; the adhesion of the coating shall, after bending the zinc coated strip 180 degrees tightly together in any direction, show no signs of flaking;

(cclxxxvi) ultra-thin, prepainted, galvanized alloy steel, designated as A-742, the foregoing having the following chemical composition (percent by weight): carbon 0.020 to 0.070, silicon 0.025 to 0.050, manganese 0.20 to 0.45, phosphorus 0.015 to 0.040, sulfur 0.020 to 0.050 and titanium 0.05 to 0.07; plated or coated with zinc (120 g/m^2); one side coated with epoxy primer plus polyester paint with total thickness not over 0.023 mm, in colors white, almond, brown and taupe; the other side coated with grey polyester primer with no wax or silicon with a thickness not greater than 0.104 mm (0.0041 mil); tensile strength 413 to 500 MPa; yield strength 396 to 500 MPa, elongation from 16 to 21 percent; steepness (ratio of height to wave length) less than one percent; meeting one of the following sets of dimensions:

(i) thickness 0.21 mm or more but not over 0.25 mm, and width 803 mm or more but not over 810 mm or width 846 mm or more but not over 853 mm; or

(ii) thickness 0.18 mm or more but not over 0.22 mm, and width 374 mm or more but not over 380 mm or width 417 mm or more but not over 424 mm or width 493 mm or more but not over 500 mm or width 622 mm or more but not over 629 mm;

(cclxxxvii) cold-rolled, extra deep draw quality steel, designated as A-743, the foregoing electrocoated on both sides with zinc-nickel coating of weight 34 g/m^2 or more but not over 49 g/m^2, thickness 0.75 mm (+/- 0.06 mm), width1570 mm (+5 mm/-0 mm); having the following chemical composition (percent by weight): carbon not over 0.003, sulfur not over 0.006, silicon not over 0.03, manganese not over 0.20, phosphorus not over 0.020 and titanium stabilized; certified by the importer to have the following mechanical properties using JIS (Japan Industry Standard) testing methods: elongation not less than 45 percent or more but not over 53

percent, yield strength not less than 110 MPa or more but not over 155 MPa, tensile strength of not less than 260 MPa but not over 300 MPa, and R-Value equal to or greater than 1.8;

(cclxxxviii) polymer coated electrolytic chromium/chromium oxide coated cold reduced low carbon steel, designated as A-684; the foregoing manufactured according to Euro norm standard EN10202:2001; thickness 0.1 mm or more but not over 0.6 mm and width not over 1,000 mm; having the following chemical composition (percent by weight): carbon 0.015 or more but not over 0.12, manganese 0.15 or more but not over 0.6, phosphorus not over 0.02, silicon not over 0.025 and sulfur not over 0.02; proof/lower yield strength not less than 180 MPa and not more than 700 MPa (measured according to Euronorm EN10002 part 1.2001), elongation not less than 0.5% and not more than 40%; polymer coating on one side of the steel strip consisting amorphous layer of polyethyleneterepthalate (PET) that has been directly extruded or laminated in two and/or three layers and having a thickness not less than 15 micrometers and not more than 200 micrometers; coating second side may be the same as the first side or be composed of a similarly extruded layer of polypropylene (PP) polymer that has a thickness not less than 15 micrometers and not more than 200 micrometers;

(cclxxxix) gray chromate-free coated commercial quality flat-rolled steel products, designated as A-600, the foregoing having resin coatings and electrolytic zinc coatings that are chromate free, with zinc coating weight 8.5 g/m^2 or more and resin coating weight of 0.2 g/m^2 or more but not over 1.8 g/m^2; gray color; anti-fingerprint; meeting ASTM A366 or ASTM A366M standards; thickness of 0.3 mm or more but not over 2.3 mm; width of 600 mm or more but not over 1,854 mm; yield strength of 170 MPa to 260 MPa; tensile strength of 300 MPa to 360 MPa; elongation of 34 percent to 48 percent; having the following chemical composition (percent by weight): carbon not over 0.15, manganese not over 0.60, phosphorus not over 0.10, sulfur not over 0.035, copper not over 0.20, nickel not over 0.20, chromium not over 0.15, molybdenum not over 0.08, vanadium not over 0.008, titanium not over 0.008 and columbium or niobium not over 0.008;

(ccxc) gray chromate-free coated drawing quality flat-rolled steel products, designated as A-600, with the following characteristics: having resin coatings and electrolytic zinc coatings that are chromate free, with zinc coating weight 8.5 g/m^2 or more and resin coating weight of 0.2 g/m^2 or more but not over 1.8 g/m^2; gray color; anti-fingerprint; meeting ASTM A620 or ASTM A620M standards; thickness of 0.3 mm or more but not over 2.3 mm; width of 600 mm or more but not over 1,854 mm; yield strength of 130 MPa to 190 MPa; minimum tensile strength of 270 MPa; elongation of 38 percent to 52 percent; having the following chemical composition (in percent by weight): titanium not over 0.06, carbon not over 0.003, manganese not over 0.18, phosphorus not over 0.022, sulfur not over 0.009, aluminum 0.01 to 0.06, silicon not over 0.034, copper not over 0.05, nickel not over 0.05, chromium not over 0.06 and columbium or niobium 0.003 to 0.007;

(ccxci) galvannealed flat-rolled steel products, designated as A-615 and entered in an aggregate annual quantity not to exceed 80,000 t, the foregoing vacuum degassed, interstitial-free; with gauge from 0.61 mm or more but not over 2.10 mm and width 1219.2 mm or more but not over 1830 mm; having the following chemical composition (percent by weight): carbon not over 0.02, silicon 0.06 to 0.10, manganese not over 0.40, phosphorus not over 0.02, sulfur not over 0.02, aluminum 0.01 or more, copper not over 0.20, nickel not over 0.20, chromium not over 0.15, molybdenum not over 0.06 and titanium not over 0.30; yield strength from 120 to 180 N/mm^2 and tensile strength of not over 350 N/mm^2;

(ccxcii) coated cold-rolled flat-rolled steel products, designated as A-625 and entered in an aggregate quantity not to exceed 2,700 t, the foregoing coated with zinc by using an electrolytic process in coils, then top coated with dark metallic black, crystal white, metallic silver or bisque by using rolling process in coils; meeting the following characteristics: width not over 1524 mm; referenced in ASTM A879 and A917; minimum requirements of paint coated steel, CS Type B; top coating weight 19 or more but not over 30 micrometers; backer coat from 13 to 20 micrometers any color; substrate 0.457 mm to 0.533 mm with a coating weight of 40 g/m^2 in accordance with testing methods described in ASTM A754, using an X-ray fluorescence nondestructive test method; having the following chemical composition (percent by weight): carbon not over 0.06, manganese not over 0.50, phosphorus not over 0.02 and sulfur 0.025; yield strength 138 to 241 MPa , elongation with 51 mm bar, greater than or equal to 32 percent; r value 1.4 to 1.8, n value 0.19 to 0.24;

(ccxciii) coated flat-rolled SAE C1006 DDQ (deep draw quality) steel, designated as A-663 and entered in an aggregate annual quantity not to exceed 4,250 t, the foregoing being hot-dipped galvanized steel sheet, better than 15-1 units flat of sheet as cut from the coil, thickness 0.38 to 0.63 mm with a desired tolerance of plus or minus 0.025 mm and with 40 to 60 grams per meter square of zinc coating per side; painted one side with 20 to 30 percent cross-linked polyester paint; coil size 6000 to 9000 kg; width 730 to 940 mm; having the following chemical composition (percent by weight): carbon not over 0.08, manganese 0.25 percent or more but not over 0.40, silicon not over 0.30, phosphorus not over 0.04 and sulfur not over 0.05;

(ccxciv) continuous galvannealed and phosphate-coated (patented L-treated) flat-rolled steel products, designated as A-676 and entered in an aggregate annual quantity not to exceed 500 t, the foregoing extra deep draw quality, single stabilized, interstitial-free, with a minimum elongation of 46 percent, meeting the following characteristics: thickness 0.65 mm to 0.85 mm; width 1,650 mm or more; having the following chemical composition (percent by weight): carbon not over 0.0025, sulfur not over 0.01, manganese not over 0.15 and phosphorus not over 0.007; with the following other properties: maximum yield point of 155 MPa; maximum tensile strength of 350 MPa; surface finish free from pits, scratches, rust, slivers and laminations; having undergone L-treatment comprising hot-dipped zinc-iron annealed coated steel treated with a highly lubricative film (with coating weights of 0.01 g/m^2 to 0.05 g/m^2) containing manganese and phosphorus;

(ccxcv) prepainted hot-dipped galvanized flat-rolled steel products, designated as A-692 and entered in an aggregate annual quantity not to exceed 3,000 t, the foregoing having thickness of 0.490 mm or more but not over 0.520 mm; width of 762.0 mm or more but not over 850.9 mm; hardness HRB 54 to HRB 60; yield strength 260 MPa to 300 MPa; tensile strength 360 MPa to 390 MPa; elongation in 50 mm of 37 percent to 41 percent; having the following chemical composition (percent by weight): carbon 0.026 to 0.050, silicon not over 0.023, manganese 0.20 percent to 0.29, phosphorus not over 0.017, sulfur not over 0.013, aluminum less than 0.05, copper not over 0.03, nickel not over 0.03, chromium not over 0.06; zero spangled surface; edge camber (in each 10,000 mm of length) not over 3 mm arc height; flatness not over 5 mm (in each 600 mm to 1,250 mm of length); in-line temper-passed and tension-leveled, with application of highly workable polyester paint after galvanizing, with high gloss of 75 percent plus or minus 5 percent, which paint shows no visible cracking after 1T bending test according to ASTM D4145;

(ccxcvi) electrolytically plated or coated flat-rolled steel products of other alloy steel, designated as A-694, with a coating of either pure zinc or zinc nickel meeting the following characteristics: thickness 0.6 mm or more but not over 1.75 mm, thickness tolerances 0.05 mm; width 240 mm or more but not over 1,219 mm; with coating thickness tolerances not in excess of 6 g/m^2 per side; with a surface chemical treatment that is completely chromate-free deposited from an aqueous dispersion containing thiocarbonyl group compounds, phosphate ions and silica such that, when subjected to salt spray conditions for 72 hours in accordance with the testing method prescribed by JIS Z2371, the electrogalvanized steel sheet having a rusted surface area ratio of 5 percent or less; electrical conductivity of the electrogalvanized steel sheet having an interlaminar resistance value of 5 ohms per square centimeter or less, as measured by JIS C2550;

(ccxcvii) electrogalvanized, high-strength, low alloy steel products, in coils per ASTM A568, designated as A-667 or A-701 and entered in an aggregate annual quantity not to exceed 2,260 t; the foregoing having a width of 762 mm or more but not over 1730 mm; electrogalvanized coating on both sides of 52 g/m^2 or more but not over 65 g/m^2; oiled; thickness of 2.06 mm or greater; having the following chemical composition (percent by weight): carbon not over 0.15, sulfur not over 0.25, copper not over 0.20, nickel not over 0.20, chromium not over 0.15 and molybdenum not over 0.06; minimum yield strength 260 MPa; minimum tensile strength 450 MPa;

(ccxcviii) battery quality nickel/cobalt plated, diffusion-annealed cold-rolled flat-rolled steel products, designated as A-782, the foregoing with a cold-rolled substrate conforming to AISI 1006 chemistry; thickness 0.203 mm; thickness tolerance +/- 0.010 mm; having the top-side electrolytically plated with natural nickel and then natural cobalt and the reverse side plated with natural nickel, then annealed to create a diffused layer between the nickel/cobalt and steel substrate; having a coating thickness on the top side of 1.25 micrometers or more, reverse side 1.875 micrometers or more, adherent to the substrate to permit a 1T bend in accordance with ASTM E290 without cracking, flaking, peeling or any other evidence of separation;

(ccxcix) flat-rolled steel products, in coils, designated as A-807, having a width not over 150 mm; flash plated with copper on both sides and then coated on one side with a layer of sintered bronze powder, which layer is then coated with a second layer consisting of a plastic compound primarily containing polytetrafluoroethylene ("PTFE"); steel base with the following physical characteristics: tensile strength of 270 N/mm^2 or more, elongation 25 percent or more, hardness of HV 95 to130; flash plated on both sides with copper to a thickness of 2.6 to 3.4 micrometers; sintered bronze layer containing by weight 9 to12 percent tin, 88 to 91 percent copper and not over 0.3 percent other elements; outer-coated layer of a compound containing 65 percent minimum by weight PTFE and a maximum of 35 percent by weight other chemicals; total thickness 0.48 mm to 2.0 mm and width 4 mm to 150 mm;

(ccc) double-reduced tin mill flat-rolled products, designated as A-674; the foregoing meeting ASTMA623, A623M, A626, or A626M; having thickness 0.171 mm to 0.227 mm; width 800.1 mm to 908.1 mm; electrolytically plated with tin, with coating weight from 0.56 g/m^2 to 2.8 g/m^2 per side; continuously annealed; type L chemistry; oiled with acetyltributyl citrate (ATBC), meeting either of the following sets of properties:

(i) yield strength from 520 MPa to 580 MPa; minimum elongation of 5 percent; or

(ii) yield strength from 620 MPa to 680 MPa; minimum elongation of 3 percent;

(ccci) hot-rolled alloy steel sections, designated as A-621, having the following chemical composition (percent by weight): carbon 0.52 to 0.59, silicon 0.25 to 0.40, manganese 0.65 to 0.85, sulfur 0.030 maximum, phosphorus 0.030 maximum, chromium 0.60 to 0.80, molybdenum 0.10 maximum and vanadium 0.09 maximum; spheroidized annealed (80 percent minimum), decarburization 0.20 mm maximum, hardness HRB 99 maximum, shot blasted finish, in random lengths of 3 to 5 m; with the following cross sections:

(i) equal taper sections with width not greater than 35.00 mm and thickness not greater than 6.35 mm tapering to 1.60 mm maximum;

(ii) equal taper sections with width not greater than 95.00 mm and thickness not greater than 12.00 mm tapering to 4.00 mm maximum;

(iii) single bevel sections with width not greater than 36.00 mm and thickness not greater than 4.00 mm tapering to 1.25 mm with a single bevel no longer than 13.00 mm;

(iv) bevel sections with width not greater than 36.00 mm and thickness not greater than 5.00 mm tapering to 1.79 mm with a single bevel no longer than 26.00 mm; or

(v) bevel section with width not greater than 65.00 mm and thickness not greater than 7.00 mm tapering to 2.40 mm with a single bevel no longer than 26.00 mm;

(cccii) steel bar in rectangular section, designated as A-630, not further worked than hot rolled, 45 mm in width and 32 mm in thickness plus or minus 1.5 mm; extra straight, certified by the importer to have the following characteristics: steel grade St 52-3, with restricted chemical composition (percent by weight) : aluminum 0.020 to 0.050, nitrogen 0.009 maximum, total residual elements 0.15 maximum, certified by the importer as having a minimum reduction ratio of 102.3 having been hot rolled from a direct cast bloom;

(ccciij) steel bars, designated as A-650, not further worked than hot-rolled, grade SAE8620 alloy steel, with a maximum copper content of 0.05 percent by weight, in flat rectangular profile with sharp corners, with sectional dimensions ranging from 5 mm to 41.3 mm thick, and from 76.97 mm to 242.1 mm wide, with dimensional tolerance of plus and minus 1.5 mm;

(ccciv) hot-rolled bars, designated as A-693; having thickness from 10 mm to 19 mm, width from 98 mm to 150 mm; having the following chemical composition (percent by weight): carbon 0.28 to 0.33, manganese 0.45 to 0.65, silicon 0.55 to 0.75, phosphorus not over 0.025, sulfur not over 0.025, chromium 1.00 to 1.24, molybdenum 0.40 to 0.60, vanadium 0.20 to 0.30, nickel not over 0.25 and copper not over 0.25; spheroidize annealed, descaled; hardness of 86 to 96 HRB; grain size ASTM 4.5 or finer with occasional grains as large as 3 permissible, as determined using ASTM E112; decarburization (sub and partial)determined using ASTM E1077; aircraft quality conforming to AMS 2301 and free from injurious imperfections such as laminating, segregation and surface defects; produced by basic oxygen or electric furnace process, killed, treated with rare earths or calcium-silicon; flatness: for up to 12.7 mm thick, less than 6.35 mm in 3048 mm; for 12.7 mm to15.9 mm thick, less than 12.7 mm in 3658 mm; or for 15.9 mm to 25.4 mm thick, less than 25.4 mm in 3048 mm;

(cccv) hot-rolled bars, designated as A-708, the foregoing of SAE Grade 1095; having the following chemical composition (percent by weight): carbon 0.90 to 1.030, manganese 0.30 to 0.50, silicon 0.15 to 0.30, phosphorus not greater than0.04, sulfur not greater than 0.05, nickel not greater than 0.25 and chromium not greater than 0.20; no more than 0.4572 mm depth of surface decarburization; meeting one of the following sets of dimensions:

(i) half round cross section, width from 39.9 mm to 40.6 mm, thickness from 11.3 mm to 11.8 mm, and radius of 24.5 mm to 24.8 mm; length from 189.23 cm to 290.83cm;

(ii) square cross section, sides 15.7 mm to 16.3 mm, length from 228.91 cm to 304.49 cm; or

(iii) triangular cross section, sides 20.6 mm to 20.9 mm, length from 198.75 cm to 263.53 cm;

(cccvi) hot-rolled bars, designated as A-708; the foregoing of SAE Grade 1045; having the following chemical composition (percent by weight): carbon 0.43 to 0.50, manganese 0.60 to 0.90, silicon 0.15 to 0.30, phosphorus not greater than 0.04, sulfur not greater than 0.05, nickel not greater than 0.25 and chromium not greater than 0.20; no more than 0.4572 mm depth of decarburization; width 33.7 mm to 44.7 mm, thickness 6.9 mm to 9.0 mm, length from 194.94 cm to 307.98 cm;

(cccvii) hot-rolled steel handrail shapes, designated as A-712; the foregoing roll formed, grade C1010 ASTMA29; having the following chemical composition (percent by weight): carbon not greater than 0.19, manganese 0.300 to 1.500, phosphorus not greater than 0.050, sulfur not greater than 0.050 and silicon not greater than 0.600; yield strength not less than 235 N/mm^2, tensile strength 340 to 470 N/mm^2, elongation 26 percent minimum; in one of the following shapes:

(i) between 46 mm and 55 mm wide, a flat bottom, weight between 4.22 kg/m and 5.16 kg/m, length between 5.49 m and 6.71 m, top of profile having a concave radius of between 11.5 mm and 12.5 mm, with a convex radius between 24.5 mm and 25.5 mm on each side; edges having a radius between 4.0 mm and 5.0 mm, with a total depth of between 10 mm and 20 mm;

(ii) between 44 mm and 54 mm wide, a channel opening on underside of between 28 mm and 38 mm wide, a weight between 3.015 kg/m and 3.685 kg/m, length between 5.80 m and 6.41 m, top of profile having a concave radius between 11 mm and 21 mm, into a convex radius on each top side radius between 17 mm and 27 mm; total depth 14 mm to 24 mm; edge concave radius between 3 mm and 8 mm into a convex radius between 4 mm and 14 mm;

(iii) between 50 mm and 60 mm wide, a channel opening on underside between 35 mm and 45 mm wide, a weight between 3.55 kg/m and 4.33 kg/m, length between 5.49 m and 6.71 m, top of profile having a concave radius between 61 mm and 71 mm, edge radius between 2 mm and 12 mm, a total depth of 13 mm and 23 mm; or

(iv) between 52 mm and 62 mm wide, a channel opening on underside of between 30 mm to 50 mm wide, a weight between 2.86 kg/m and 3.50 kg/m, length between 5.80 m and 6.71 m, top of profile having a concave radius between 16 mm and 26 mm, into a convex radius on each topside with a radius between 10 mm and 20 mm, edge radius concave between 2 mm and 7 mm, into a convex radius between 3 mm and 13 mm;

(cccviii) bars and rods of alloy steel, not further worked than hot-rolled, designated as A-717; the foregoing of rectangular cross section, 330 mm (plus or minus 3 mm) wide and between 19 mm and 41 mm (plus or minus 1.5 mm) high, with height-to-width ratio of between 6/100 and 12/100, mass from 45.5 kg/m to 102.5 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.28 to 0.32, manganese 1.1 to 1.3, sulfur not greater than 0.025, phosphorus not greater than 0.025 and boron 0.001 to 0.003;

(cccix) bars and rods of alloy steel, not further worked than hot-rolled, designated as A-717; the foregoing of rectangular cross section, width 120 mm and 152.4 mm (plus or minus 3 mm), thicknesses 15 mm to 20 mm (plus or minus 1.5 mm), with height-to-width ratio of between 10/100 and 13/100, mass from12.2 kg/m 21 kg/m (plus or minus 2 kg/m); tapered at an angle of 25 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.28 to 0.32, manganese 1.1 to 1.3, sulfur not greater than 0.025, phosphorus not greater than 0.025 and boron 0.001 to 0.003;

(cccx) bars and rods of alloy steel, not further worked than hot-rolled, designated as A-717; the foregoing of rectangular cross section, in widths of 110mm and 150 mm (plus or minus 3 mm), thickness 12 mm to 25 mm (plus or minus 1.5 mm), with height-to-width ratio between 11/100 and 17/100, mass 9.6 k/m to 27.6 kg/m (plus or minus 2 kg/m); tapered at an angle between 21 degrees and 26.5 degrees (plus or minus 1degree) on one corner of the rectangular cross-section, thereby having a scraping/cutting edge on one side of the rectangle; having the following chemical composition (percent by weight): carbon 0.28 to 0.32; manganese 1.1 to 1.3, sulfur not greater than 0.025, phosphorus not greater than 0.025 and boron 0.001 to 0.003;

(cccxi) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 406 mm wide (plus or minus 3 mm) and between 22 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 5/100 and 10/100, mass 65.3 kg/m to 125.8 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.28 to 0.32; manganese 1.1 to 1.3; sulfur not over 0.025; phosphorus not over 0.025 and boron 0.001 to 0.003; the foregoing designated as A-717;.

(cccxii) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 330 mm wide (plus or minus 3 mm) and between 19 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 6/100 and 12/100, mass 45.5 kg/m to 102.5 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus

1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.32 to 0.37, manganese 1.1 to 1.45, sulfur not greater than 0.025, phosphorus not greater than 0.025, boron 0.001 to 0.003; the foregoing designated as A-717;

(cccxiii) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 330 mm wide (plus or minus 3 mm) and between 19 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 6/100 and 12/100, mass 45.5 kg/m to 102.5 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.17 to 0.23 percent, manganese 1.1 to1.3, sulfur not greater than 0.02, phosphorus not greater than 0.02 and boron 0.001 to 0.004; the foregoing designated as A-717;

(cccxiv) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 330 mm wide (plus or minus 3 mm) and between 19 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 6/100 and 12/100, mass 45.5 kg/m to 102.5 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.19 to 0.24, manganese 1.25 to 1.45; sulfur not greater than 0.025, phosphorus not greater than 0.025 and boron 0.001 to 0.003; the foregoing designated as A-717;

(cccxv) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 330 mm wide (plus or minus 3 mm) and between 19 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 6/100 and 12/100, mass 45.5 kg/m to 102.5 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.72 to 0.78, manganese 0.75 to 0.95, sulfur not greater than 0.025 and phosphorus not greater than 0.025; the foregoing designated as A-717;

(cccxvi) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 330 mm wide (plus or minus 3 mm) and between 19 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 6/100 and 12/100, mass 45.5 kg/m to 102.5 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.30 to 0.34, manganese 1.00 to 1.15; sulfur not greater than 0.025, phosphorus not greater than 0.03 and boron 0.001 to 0.003; the foregoing designated as A-717;

(cccxvii) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 406 mm wide (plus or minus 3 mm) and between 22 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 5/100 and 10/100, mass 65.3 kg/m to 125.8 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.32 to 0.37, manganese 1.1 to 1.45, sulfur not greater than 0.025, phosphorus not greater than 0.025 and boron 0.001 to 0.003; the foregoing designated as A-717;

(cccxviii) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 406 mm wide (plus or minus 3 mm) and between 22 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 5/100 and 10/100, mass 65.3 kg/m to 125.8 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.17 to 0.23, manganese 1.1 to 1.3, sulfur not greater than 0.02, phosphorus not greater than 0.02, boron 0.001 to 0.004; the foregoing designated as A-717;.

(cccxix) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 406 mm widen (plus or minus 3 mm) and between 22 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 5/100 and 10/100, mass 65.3 kg/m to 125.8 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.19 to 0.24, manganese 1.25 to 1.45, sulfur not greater than 0.025, phosphorus not greater than 0.025 and boron 0.001 to 0.003; the foregoing designated as A-717;

(cccxx) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 406 mm wide (plus or minus 3 mm) and between 22 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 5/100 and 10/100, mass 65.3 kg/m to 125.8 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.72 to 0.78, manganese 0.75 to 0.95, sulfur not greater than 0.025 and phosphorus not greater than 0.025; the foregoing designated as A-717;

(cccxxi) bars and rods of alloy steel, not further worked than hot-rolled; of rectangular cross section, 406 mm wide (plus or minus 3 mm) and between 22 mm and 41 mm high (plus or minus 1.5 mm), with height-to-width ratio of between 5/100 and 10/100, mass 65.3 kg/m to 125.8 kg/m (plus or minus 2 kg/m); tapered at an angle of 22.5 degrees (plus or minus 1degree) on each of two symmetrical corners of the rectangular cross-section, thereby having one scraping/cutting edge on each side of the rectangle; having the following chemical composition (percent by weight): carbon 0.30 to 0.34, manganese 1.00 to 1.15, sulfur not greater than 0.025, phosphorus not greater than 0.03 and boron 0.001 to 0.003; the foregoing designated as A-717;

(cccxxii) hollow drill bars and rods of circular cross section, external diameter not less than 19.03 mm nor greater than 25.35 mm, internal diameter not less than 6.0 mm not more than 7.6 mm; having the following chemical composition (percent by weight): carbon 0.04 to1.01, silicon 0.18 to 0.30, manganese 0.20 to 0.35, sulfur 0.009 to 0.020, phosphorus not over 0.025, nickel not over 0.020, chromium 0.91 to 1.19 and molybdenum 0.16 to 0.28; the foregoing designated as A-726;

(cccxxiii) hollow drill bars and rods of circular cross section, external diameter not less than 19.03 mm not greater than 25.35 mm, internal diameter not less than 6.0 mm nor greater than 7.6 mm; having the following chemical composition (percent by weight): carbon 0.40 to 0.43, silicon 1.40 to1.60, manganese 0.80 to 0.95, sulfur 0.010 to 0.020, phosphorus not over 0.025, nickel 0.40 to 0.50, chromium 0.60 to 0.80 and molybdenum 0.18 to 0.28; the foregoing designated as A-726;

(cccxxiv) hollow drill bars and rods of circular or hexagonal cross section, with an external dimension not less than 22.17 mm and not greater than 60.0 mm, and an internal dimension not less than 6.7 mm nor more than 22.6 mm; having the following chemical composition (percent by weight): carbon 0.19 to 0.24, silicon 0.20 to 0.35, manganese 0.55 to 0.75, sulfur 0.010 to 0.025, phosphorus not over 0.020, nickel 2.80 to 3.10, chromium 1.20 to 1.40 and molybdenum 0.20 to 0.26; the foregoing designated as A-726;

(cccxxv) hollow drill bars and rods of circular or hexagonal cross section, with an external dimension not less than 22.17 mm not more than 60.0 mm, and an internal dimension not less than 6.7 mm not more than 22.6 mm; having the following chemical composition (percent by weight): carbon 0.23 to 0.25, silicon 0.20 to 0.35, manganese 0.40 to 0.60, sulfur 0.010 to 0.025, phosphorus not over 0.020, nickel not over 0.25, chromium 3.00 to 3.50 and molybdenum 0.45 to 0.60; the foregoing designated as A-726;

(cccxxvi) hot-rolled or forged plastic mold steel round bars, having the following chemical composition (percent by weight): carbon 0.08 to 0.18, silicon 0.30 to 0.60, manganese 1.20 to 1.80, phosphorus 0.03 maximum, sulfur 0.30 maximum, chromium 0.20 to1.50, copper 0.50 maximum, nickel 3.00 to 5.00, molybdenum 0.50 maximum, vanadium 0.50 maximum and aluminum 0.80 to 2.00; displaying the following mechanical properties: hardness HRc 37 to 41, tensile strength 1,150 to 1,300 MPa, yield strength 830 to 950 MPa, reduction of area 35 to 55 percent, elongation 10 to 30 percent at room temperature; with Charpy-notch impact value of 54 N m/cm2 =25 ~ 50J, 2 mm U notch; displaying the following physical properties: coefficient of thermal expansion (plus or minus 10 percent): 7.30 $x10^{-6}$ $°C^{-1}$ for 25°C to 50°C, 9.10 $x10^{-6}$ $°C^{-1}$ for 25°C to 100°C, 11.12 $x10^{-6}$ $°C^{-1}$ for 25°C to 200°C, 12.54 $x10^{-6}$ $°C^{-1}$ for 25°C to 300°C, and 13.57 $x10^{-6}$ $°C^{-1}$ for 25°C to 400°C; coefficient of thermal conductivity at 100°C of 24.14 ±10% or at 200°C of 25.3 ±10% kcal/(m hr°C); the foregoing designated as A-728;

(cccxxvii) galvanized, cold formed, steel channels; surface finish: smooth in-line galvanized zinc coating with mass of 100 g/m^2 minimum, applied after forming with the zinc coating further passivated to resist white rust; not further cold worked, not manufactured from pre-galvanized strip; length 3.048 m to 12.192 m; channel sizes: 230 x 75 mm, 200 x 75 mm, 180 x 75 mm, 150 x 75 mm, 125 x 65 mm, 100 x 50 mm, 75 x 40 mm with thicknesses of 4.0 and 5.0 or 6.0 mm and minium yield strength 450 MPa and 300 x 90 mm with thicknesses of 7.0 mm or 8.0 mm and a minimum yield strength of 400 MPa; tolerances: squareness (angular tolerance) the included angle between the sides of a channel shall be 90 degrees, the maximum out-of-squareness of a channel shall be in accordance with the following: where the shorter leg length is not more than 50.8 mm, ± 2.0 degrees, where the shorter leg length is greater than 50.8 mm but not more than 76.2 mm, ± 1.5 degrees, where the shorter leg length is greater than 76.2 mm, ± 1.0 degree; twist: maximum angle of twist is 1 degree over 1 meter; feedstock fully killed, continuously cast steel, fine grain; maximum content of specified elements (percent by weight): carbon 0.20, manganese 1.60, silicon 0.10, aluminum 0.10, phosphorus 0.040 and sulfur

0.030, carbon equivalent of no more than 0.39; all channels produced from flat product (strip) having a uniform cross section (wall thickness); the foregoing designated as A-751;

(cccxxviii) alloy steel, forged or rolled, black or bright bars, not further worked than forged, rolled or forged; diameters from 12 mm to 25 mm, lengths not more than 11 m; having the following chemical composition (percent by weight): carbon 0.28 to 0.36, silicon not more than 0.35, manganese 0.35 to 0.45, phosphorus not more than 0.035, sulfur not more than 0.015, chromium 0.75 to 0.95; molybdenum 0.55 to 0.75, nickel 3.20 to 3.50 and vanadium 0.15 to 0.20; the foregoing designated as A-774;

(cccxxix) free machining steel flat bars, not further worked than hot-rolled; designated as A-779; in coils weighing not less than 1100 kg (2500 lb.)each; SAE 1215; physical dimensions (in cross-section): 33.5 mm (plus or minus 0.50 mm) by 24.0 mm (plus or minus 0.30 mm); secondary grain size of ASTM 5 and finer; free from surface defects deeper than 2 percent of diameter or 0.305 mm (which ever is greater); containing not more than350 particles per square centimeter of oxide inclusions of with a diameter greater than 1 micrometer; having the following chemical composition (percent by weight): copper not greater than 0.15, chromium not greater than 0.10 and nickel not greater than 0.15; certified by importer as: continuously cast, BOF steel; coarse-grain practice with aluminum content no more than 0.006 percent by weight; reduction ratio 8 or more, and free from mixes as determined by 100 percent spectrometer testing;

(cccxxx) special bar quality steel bars, hot rolled, square profile, designated as A-630 and entered in an aggregate annual quantity not to exceed 200 t, the foregoing not further worked than hot rolled, in sizes from 58.7 mm across flats up to and including 103.2 mm across flats, with a tolerance of minus 1.0 mm and plus 2.0 mm applied to each across flats dimension, having sharp corners defined as having corner radii not over 1.5 mm on sizes between 58.7 mm and 97 mm and not over 2.0 mm on sizes over 97 mm, in other-alloy steel grades, suitable for cold drawing into cold finished squares with sharp corners;

(cccxxxi) hot-worked non-alloy steel bars, designated as A-630 and entered in an aggregate annual quantity not to exceed 50 t, the foregoing not further worked than hot rolled, in steel grade ASTM A752 GR50 type 2, in a special bar shape of rectangular type cross section with overall width 89.0 mm and of thickness 22.0 mm, with two side faces at 90 degrees to the long faces, one long face having an indent at each end described as 8.25 mm wide by 11.0 mm deep with side face angles inclined at 5 degrees, with a tolerance of plus and minus 1.5 mm applied to cross sectional dimensions, and a tolerance of plus and minus 2 degrees applied to all angular degrees; the special shape having 6 external corners and 2 internal corners;

(cccxxxii) hot-rolled steel bars of rectangular section, designated as A-630 and entered in an aggregate annual quantity not to exceed 80 t, the foregoing not further worked than hot rolled, 45 mm wide and 45 mm thick, with a plus and minus tolerance of 1.5 mm applied to width and thickness dimensions, extra straight, in steel grade St 52-3, with a restricted chemical composition (percent by weight): aluminum 0.020 to 0.050, nitrogen 0.009 and total residual elements 0.15 maximum; with a minimum reduction ratio of 48.7 having been hot re-rolled from a direct cast bloom;

(cccxxxiii) hot-rolled steel bars of rectangular section, designated as A-630 and entered in an aggregate annual quantity not to exceed 100 t, the foregoing not further than hot rolled, 55 mm in width and 55 mm in thickness, with a plus and minus tolerance of 1.5 mm applied to width and thickness dimensions, extra straight, in steel grade St 52-3, with a restricted chemical composition (percent by weight): aluminum 0.020 to 0.050, nitrogen 0.009 maximum and total residual elements 0.15 maximum; with a minimum reduction ratio of 72.7 having been hot re-rolled from a direct cast bloom;

(cccxxxiv) free-cutting steel bars of rectangular section, designated as A-630 and entered in an aggregate annual quantity not to exceed 9 t, the foregoing not further worked than hot-rolled; thickness 26.19 mm; width 29.37 mm; with a plus and minus tolerance of 1.5 mm applied to width and thickness dimensions; with sharp corners; in steel grade AISI C1215; suitable for cold drawing;

(cccxxxv) carbon steel bars, designated as A-630 and entered in an aggregate annual quantity not to exceed 5 t, the foregoing of rectangular section, not further worked than hot rolled; thickness 19.84 mm; width 30.16 mm; with a plus and minus tolerance of 1.5 mm applied to the width and thickness dimensions; with sharp corners; in steel grade AISI C1018; suitable for cold drawing;

(cccxxxvi) special bar quality steel bars, designated as A-631 and entered in an aggregate annual quantity not to exceed 200 t, the foregoing in square profile; not further worked than hot rolled; in sizes from 58.7 mm across flats up to and including 103.2 mm across flats, with a tolerance of minus 1.0 mm and plus 2.0 mm applied to each across flats dimension; having sharp corners defined as having corner radii not over 1.5 mm on sizes between

58.7 mm and 97 mm and not over 2.0 mm on sizes over 97 mm; in 1200 series free-cutting steel grades; suitable for cold drawing into cold finished squares with sharp corners;

(cccxxxvii) bars, designated as A-635, the foregoing not further worked than hot rolled; of grade SAE 5120 alloy steel; in flat rectangular profile; with sectional dimensions ranging from 12.12 mm to 20.07 mm in thickness and 153 mm to 257.18 mm width; with sharp corners; with a tolerance of plus and minus 1.5 mm applied to width and thickness dimensions;

(cccxxxviii) bright finish hot-rolled, annealed, turned and polished steel bars, designated as A-642 and entered in an aggregate annual quantity not to exceed 325 t, the foregoing meeting the following characteristics: diameters of 75 and 80 mm in 5.5 to 7.5 meter lengths; having the following chemical composition (percent by weight): carbon 0.15 to 0.20, silicon not over 0.40, manganese 1.00 to 1.30, phosphorus not over 0.025, sulfur 0.20 to 0.35; chromium 1.00 to 1.30; molybdenum not over 0.05, nickel not over 0.15; aluminum 0.20 to 0.50; boron 0.001 to 0.003; copper not over 0.25, tin not over 0.025, titanium not over 0.005, calcium not over 0.003, antimony not over 0.005 and oxygen not over 0.0025; with the following other properties: surface finish free from pits, scratches, cracks, or seams; straight to within 1 mm per 1 m of length; grain size of 5 or finer according to American Standards for Testing Materials method A112 (ASTM A112); fracture toughness test (Fdyn) with a minimum of 49,000 N;

(cccxxxix) irregular sections of non-alloy steel, designated as A-661, the foregoing not further worked than hot-rolled, hot-drawn, or extruded; having the following chemical composition (percent by weight): carbon 0.24 to 0.28, manganese 1.20 to 1.40, silicon 0.15 to 0.30, aluminum 0.015 to 0.035, vanadium 0.06 to 0.10, phosphorus not over 0.025, sulfur not over 0.025, chromium not over 0.15 and nickel not over 0.15; yield strength of not less than 440 N/mm^2; tensile strength of not less 600 N/mm^2; elongation in 50 mm not less than 18 percent; physical dimensions of: two segments constituting one unitary and solid piece, respectively known as the base segment and the leg segment; cross section comprising an angle with the base segment horizontal and the leg segment joined vertically at 90 degrees to the upper right side of the base segment and with the height of the entire shape equaling the height of the base segment added to the height of the leg segment, totaling less than 80 mm; base segment having a height of 34.2 mm to 35.8 mm and width of 52.2 mm to 53.7 mm and the leg segment a height of 11.5 mm to 13.0 mm and width at the point it joins the base segment of 15 mm to 16 mm with one vertical side in line with the right side of the base segment and the other vertical side tapering away from the base segment at 20 degrees so that the width at the top of the leg segment is 11 mm to 12 mm; leg segment having 2 mm to 5 mm radius corners; base segment having a 7 mm to 9 mm by 7 mm to 9 mm chamfer on the lower right corner, a 7 mm to 9 mm high by 13 mm to 15 mm wide chamfer on the lower left side (diagonally from the leg segment) and a 6 mm to 7.5 mm by 6mm to 7.5 mm chamfer on the upper left corner; weighing 14.6 to 15.0 kg/m;

(cccxl) S-sections of non-alloy steel, designated as A-661, the foregoing not further worked than hot-rolled, hot-drawn, or extruded; having the following chemical composition (percent by weight): carbon 0.24 to 0.28, manganese 1.20 to 1.40, silicon 0.15 to 0.30, aluminum 0.015 to 0.035, vanadium 0.06 to 0.10, phosphorus not over 0.025, sulfur not over 0.025, chromium not over 0.15 and nickel not over 0.15; yield strength of not less than 440 N/mm^2; tensile strength of not less than 600 N/mm^2; elongation in 50 mm not less than 18 percent; with physical dimensions of: five segments joined at 90 degree angles to each other constituting one unitary and solid piece with a cross section view of an upright "S" with an overall height of 88.9 mm to 91.2 mm and width of 56.0 mm to 59.0 mm; having a top most horizontal segment 33.0 mm to 35.5 mm wide and an upper vertical segment 21.5 mm to 22.5 mm wide; middle horizontal segment 56.0 mm to 59.0 mm wide; lower vertical segment 13.0 mm to 14.0 mm wide and bottom horizontal segment 33.0 mm to 35.0 wide; with both the top and bottom horizontal segments having inside horizontal surfaces with 20-degree tapers to their ends; with an upper vertical segment with 7 mm to 9 mm by 7 mm to 9 mm chamfer on the upper left corner and a 9 mm to 11 mm high by 8 mm to 10 mm wide chamfer on the lower left corner; with the lower vertical segment having two outside 10.5 mm to 13.5 mm radii and two inside 4 mm to 6 mm radii; weighing 17.7 to 18.1 kg/m;

(cccxli) irregular sections of non-alloy steel, designated as A-661, the foregoing not further worked than hot-rolled, hot-drawn, or extruded; having the following chemical composition (percent by weight): carbon 0.09 to 0.13, manganese 1.25 to 1.45, silicon 0.40 to 0.50, aluminum 0.01 to 0.04, vanadium 0.04 to 0.06, phosphorus not over 0.02, sulfur not over 0.02, chromium not over 0.20 and nickel not over 0.15; yield strength of not less than 355 N/mm^2 , tensile strength of between 490 and 630 N/mm^2, and elongation in 50 mm not less than 22 percent, with physical dimensions of: two segments constituting one unitary and solid piece, respectively known as the base segment and the leg segment; the cross section view is of an irregular shaped angle with the base segment horizontal and the leg segment joined vertically at 90 degrees to the upper right side of the base segment and with the height of the entire shape equaling the height of the base segment added to the height of the leg segment, totaling 62.7 mm to 64.3 mm; the base segment having a height of 34.7 mm to 35.1 mm and width of 46.1 mm to 46.9 mm including the 6.6 mm to 8.4 mm x 7.7 mm to 11.3 mm protrusion;

the leg segment having a height of 27.6 mm to 29.6 mm with one vertical side in line with the right side of the base segment and the other vertical side tapering away from the base segment at 14 to 16 degrees so that the width at the top of the leg segment is 4.7 mm to 7.1 mm at the point the 1.7 mm to 3.3 mm radius tip begins; the tapered leg meeting the base segment with a 5.9 mm to 6.9 mm inside radius; the base segment having a 19 mm wide x 30 degree chamfer on the lower right corner; weight 13.2 kg/m to 13.6 kg/m;

(cccxlii) irregular sections of non-alloy steel, designated as A-661, the foregoing not further worked than hot-rolled, hot-drawn, or extruded; having the following chemical composition (percent by weight): carbon 0.09 to.13, manganese 1.25 to 1.45, silicon 0.15 to 0.25, aluminum 0.01 to 0.04, vanadium 0.04 to 0.06, phosphorus not over 0.02, sulfur not over 0.02, chromium not over 0.20 and nickel not over 0.15; yield strength of not less than 355 N/mm^2, tensile strength of between 490 and 630 N/mm^2, and elongation in 50 mm not less than 22 percent, with physical dimensions of: two segments constituting one unitary and solid piece, respectively known as the base segment and the leg segment; the cross section view is of an irregular shaped angle with the base segment horizontal and the leg segment joined vertically at 90 degrees to the upper right side of the base segment and with the height of the entire shape equaling the height of the base segment added to the height of the leg segment, totaling 49.3 mm to 49.8 mm; the base segment having a height of 27.6 mm to 28.2 mm and width of 37.8 mm to 38.4 mm; the leg segment having a height of 21.0 mm to 22.1 mm with one vertical side in line with the right side of the base segment and the other vertical side tapering away from the base segment at 14 to 16 degrees so that the width at the top of the leg segment is 6.3 mm to 7.4 mm at the point the 2.2 mm to 3.8 mm radius tip begins; the tapered leg meeting the base segment with a 6.0 mm to 6.6 mm inside radius; the base segment having a 17.5 mm to 19.1 mm high x 50 degree chamfer on the lower right corner, a 8.3 mm to 9.9 mm high x 45 degree chamfer on the lower left corner, and a 11.6 mm to 13.7 mm high x 25 degree chamfer on the upper left corner offset in 3 mm from the left edge; the weight 7.7 kg/m to 8.1 kg/m;

(cccxliii) irregular sections of non-alloy steel, designated as A-661, the foregoing not further worked than hot-rolled, hot-drawn, or extruded; having the following chemical composition (percent by weight): carbon 0.09 to 0.13, manganese 1.25 to 1.45, silicon 0.15 to 0.25, aluminum 0.01 to 0.04, vanadium 0.04 to 0.06, phosphorus not over 0.02, sulfur not over 0.02, chromium not over 0.20 and nickel not over 0.15; yield strength of not less than 355 N/mm^2, tensile strength of between 490 and 630 N/mm^2,and elongation in 50 mm not less than 22 percent, with physical dimensions of: a vertical section with a height that ranges from 23.7 mm to 24.3 mm and width that ranges from 27.7 mm to 28.3 mm, joined at 90 degrees to the center of the top horizontal section that has a width that ranges from 57.1 mm to 58.9 mm and a height that ranges from 9.7 mm to 11.3 mm to produce a frontal view of a "T" with the height of the entire shape equaling the height of the vertical section added to the thickness of the top horizontal section, totaling 34.0 mm to 35.0 mm; the top horizontal section having three depressions, one centered on the top side of the "T" that is 13 mm to 15 mm wide and 1.7 mm to 2.3 mm deep with the different surfaces blended into each other with 4.7 mm to 5.3 mm radii and the other two depressions on the vertical section side, one on each side of the vertical section, each with a radius of 9.8 mm to 10.5 mm and a depth of 1.5 mm to 2.7 mm; weight 10.1 kg/m to 11.1 kg/m;

(cccxliv) irregular sections of non-alloy steel, designated as A-661, the foregoing not further worked than hot-rolled, hot-drawn, or extruded; having the following chemical composition (percent by weight): carbon 0.09 to 0.13, manganese 1.25 to 1.45, silicon 0.15 to 0.25, aluminum 0.01 to 0.04, vanadium 0.04 to 0.06, phosphorus not over 0.02, sulfur not over 0.02, chromium not over 0.20 and nickel not over 0.15; yield strength of not less than 355 N/mm^2, tensile strength of between 490 and 630 N/mm^2, and elongation in 50 mm not less than 22 percent, with physical dimensions of: two segments constituting one unitary and solid piece, respectively known as the base segment and the leg segment; the cross section view is of an angle with the base segment horizontal and the leg segment joined vertically at 90 degrees to the upper left side of the base segment and with the height of the entire shape equaling the height of the base segment added to the height of the leg segment, totaling 42.4 mm to 43.6 mm; the base segment having a height of 27.7 mm to 28.3 mm and width of 34.0 mm to 35.0 mm and the leg segment with a height of 14.7 mm to 15.3 mm and width of 9.7 mm to 11.3 mm with one vertical side in line with the left side of the base segment; the opposite vertical side having a depression with a radius of 9.9 mm to 10.5 mm and a depth of 1.5 mm to 2.7 mm; the base segment having an 18 mm to 21.5 mm high x 11.6 mm to 13.2 mm wide chamfer on the lower left side; the weight 7.4 kg/m to 8.0 kg/m;

(cccxlv) S-sections of non-alloy steel, designated as A-661, the foregoing not further worked than hot-rolled, hot-drawn, or extruded; having the following chemical composition (percent by weight): carbon 0.09 to 0.13, manganese 1.25 to 1.45, silicon 0.15 to 0.50, aluminum 0.01 to 0.04, vanadium 0.04 to 0.06, phosphorus not over 0.02, sulfur not over 0.02, chromium not over 0.20 and nickel not over 0.15; yield strength of not less than 355 N/mm^2, tensile strength of 490 N/mm^2 to 630 N/mm^2, and elongation in 50 mm not less than 22 percent, with physical dimensions of: five segments joined at 90 degree angles to each other constituting one unitary and solid piece with a cross section view of an upright "S" with an overall height of 74.2 mm to 77.3 mm and width of 50.0 mm to 52.0 mm; the top most horizontal segment 25.0 mm to 27.5 mm wide, the upper vertical segment 13.5 mm to 14.5 mm wide, the middle horizontal segment 50.0 mm to 52.0 mm wide, the lower vertical segment 15.0 mm to 16.0 mm wide, and the bottom horizontal segment 31.2 mm to 33.2 wide; the top horizontal segment having an inside horizontal surface with a 20-degree taper to its end and

the bottom horizontal segment having an inside horizontal surface with a 12-degree taper to its end; the upper vertical segment having a 5 mm maximum radius on the upper left corner and a 8.0 mm to 9.5 mm high x 8.0 mm to 9.5 mm wide chamfer on the lower left corner; the lower vertical segment having a 9.2 mm to 10.8 mm radius on the upper right hand corner; all remaining corners having 1.5 mm to 6.5 mm radii; weight 13.5 kg/m to 13.9 kg/m;

(cccxlvi) U - sections of non-alloy steel, designated as A-661, the foregoing not further worked than hot-rolled, hot-drawn, or extruded, with a chemical composition (percent by weight) of: carbon 0.15 to.20, manganese 0.60 to 0.90, silicon 0.15 to 0.35, phosphorus not over 0.04, sulfur not over 0.05; yield strength of not less than 275 N/mm^2, tensile strength not less than 450 N/mm^2, and elongation in 50 mm not less than 22 percent, with physical dimensions of: a center – bottom piece, of width of 45.3 mm to 48.9 mm and thickness of 13.5 mm to 14.5 mm, joined along the entire length of both long sides to horizontal pieces at a 90-degree angle; one side piece, of width of 13.5 mm to 14.5 mm and height of 27.5 mm to 28.5 mm, and the other side piece of width of 7.5 mm to 8.5 mm and height of 14.8 mm to 15.8 mm, protruding from the center-bottom piece in such a manner that the outside of each side piece is flush with the outside of the center-bottom piece to produce a frontal view of a squared-off "U" with the width of the entire shape equaling the width of the center-bottom piece; all inside and outside corners have a minimum 1 mm radius and maximum 5 mm radius;

(cccxlvii) half round cross section steel bars, SAE Grade 1095, designated as A-708; the foregoing with not more than 0.4572 mm depth of decarburization on surface of steel; width from 39.9 mm to 40.6 mm, thickness from 11.3 mm to 11.8 mm, radius 24.5 mm to 24.8 mm; length from 189.23 cm to 290.83 cm, having the following chemical composition (percent by weight): carbon 0.90 to 1.0, manganese 0.30 to 0.50, silicon 0.15 to 0.30, phosphorus not over 0.04, sulfur not over 0.05, nickel not over 0.25 and chromium not over 0.20;

(cccxlviii) hot-rolled steel bars, designated as A-765 and entered in an aggregate annual quantity not to exceed 325 t, the foregoing meeting the following characteristics: AISI C1055V, diameter not over 19.5 mm not less than 18.5 mm; length not over 161.5 mm not less than 159.0 mm; having the following chemical compositioa (percent by weight): carbon 0.53 to 0.58, silicon 0.15 to 0.35, manganese 0.70 to 0.90, phosphorus not over 0.030, sulfur not over 0.035, copper not over 0.25, nickel not over 0.20, chromium 0.07 to 0.20 and vanadium 0.100 to 0.150; grain size shall be more than 5.0 following measuring methods specified in JISG0552; hardness 20 to 26.5 on HRC scale; tensile strength not less than 834 MPa , yield strength not less than 539 MPa;

(cccxlix) bars of nonalloy steel in hard metric sizes, designated as A-609; the foregoing not further worked than cold-drawn; of rectangular cross section; thickness 6 mm or more but not over 50 mm; width 10 mm or more but not over 150 mm; length not over 6.5 m; having the following chemical composition (percent by weight): carbon not over 0.20, manganese not over 1.4, phosphorus and sulfur not over 0.045 and silicon not over 0.25; tensile strength 340 N/mm^2 to 470 N/mm^2, upper yield stress 235 N/mm^2 to 215 N/mm^2;

(cccl) cold finished nonalloy steel bars, of circular cross section, designated as A-611; the foregoing diameter not over 81 mm; surface hardened, precision ground; having the following chemical composition (percent by weight): carbon 0.50 to 0.57, silicon 0.15 to 0.35, manganese 0.40 to 0.70, phosphorus not over 0.025, sulfur not over 0.035 and aluminum 0.02 to 0.08; grain size of 6 or finer as per DIN 50601; hardness HV 670 to 840; surface finish maximum RMS 12; minimum hardness depth of 0.4 mm;

(cccli) machined alloy steel flat and square bars to specification AISI 8620 to ASTM A29 (A331), designated as A-621; the foregoing in thickness 88.9 mm or more but not over 152.4 mm,. width 127 mm or more but not over 304.8 mm; having the following chemical composition (percent by weight): carbon 0.18 to 0.23, manganese 0.70 to 0.90, silicon 0.15 to 0.35, sulfur 0.040 maximum, phosphorus 0.035 maximum, chromium of 0.40 to 0.60, molybdenum 0.15 to 0.25, nickel 0.40 to 0.70 and copper 0.350 maximum; length 3 m to 5 m;

(ccclii) E-4130 cold drawn aircraft quality bars, designated as A-621; the foregoing being square bars with sides up to16.00 mm and round bars up to16.00 mm diameter, according to MIL S -6758, AMS-S-6758, AMS-2301, ASTM-A-331, AMS-6348, AMS-2304 or AMS-6370, Condition D4, latest revisions; having the following chemical composition (percent by weight): carbon 0.28 to 0.33, silicon 0.15 to 0.35, manganese 0.40 to 0.60, sulfur 0.025 maximum, phosphorus 0.025 maximum, chromium 0.80 to 1.10, molybdenum 0.10 to 0.25, nickel 0.25 maximum, copper 0.35 maximum; heat treated; random lengths of 3 m to 4 m;

(ccccliii) cold finished AISI 4140 aircraft quality square steel bars, designated as A-621; the foregoing to MIL & AMS-S-5626, AMS 6382, 2301, 2304, ASTM-A-331,AMS 6349 except condition D, COND C-4, latest revisions; up to 32.00 mm square; having the following chemical composition (percent by weight): carbon 0.38 to 0.43, silicon 0.15 to 0.35, manganese 0.75 to 1.00, sulfur 0.025 maximum, phosphorus 0.025 maximum, chromium 0.80 to 1.10, molybdenum 0.10 to 0.25, nickel 0.25 maximum and copper 0.35 maximum; annealed; length 3,000 mm or more but not over 4,000 mm;

(ccclxiv) cold drawn aircraft quality E4340 steel bars, designated as A-621, the foregoing to ASTM-A-331, AMS 6415, 6409, 2310, 2301, 2304, MIL &AMS-S-5000, trans specs: BMS 728, AMS 6484, DMS 1555Grade B, physical cond E, surface condition 4, latest revisions; having the following chemical composition (percent by weight): carbon 0.38 to 0.43, silicon 0.15 to 0.35, manganese 0.60 to 0.80, sulfur 0.025 maximum, phosphorus 0.025 maximum, chromium 0.70 to 0.90, molybdenum 0.10 to 0.25, nickel 1.65 to 2.00 and copper 0.35 maximum; normalized and sub-critically annealed; length 3 m to 4 m; the foregoing in one of the following cross sections:

(i) hexagonal, up to 16.00 mm across flats;

(ii) round, up to 16.00 mm diameter; or

(iii) square, up to 16.00 mm across flats;

(ccclv) unhardened cold drawn steel rounds (soft magnetic iron), designated as A-626, the foregoing with diameter 3 mm to 178 mm, in cut lengths; having the following chemical composition (percent by weight): carbon 0.15 to 0.27, silicon not over 0.05, manganese 0.12 to 0.22, phosphorus not over 0.012, sulfur not over 0.025 and chromium not over 0.05;

(ccclvi) leaded alloy steel bars, designated as A-627, the foregoing in grade C45Pb, DIN 1.0504; having the following chemical composition (percent by weight): carbon 0.40 to 0.50, silicon not over 0.40, manganese 0.050 to 0.085, sulfur 0.020 to 0.040 and lead 0.15 to 0.30; cold drawn, eddy current and ultrasonically tested at a level of Flat Bottom Hole (FBH) less than 0.7 mm (specific calibration of ultrasonic testing equipment to sort out defective bars); microscopic cleanliness testing according to DIN50602 and without macroscopic inclusion and lead segregations detrimental for high pressure applications; tensile strength 690 N/mm^2 to 900 N/mm^2; diameters up to 25.4 mm in random bar length, with mill test report according to DIN EN 10204/3.1B;

(ccclvii) flat bars of nonalloy freecutting steel, designated as A-630, the foregoing not further worked than cold drawn; according to ASTM A29/A108; meeting one of the following cross sections:

(i) thickness 26.16 mm or more but not over 48.26 mm, width 31.75 mm or more but not over 70.61 mm;

(ii) thickness 26.16 mm or more but not over 48.26 mm, width 166.1 mm or more but not over 374.6 mm;

(iii) thickness 15.88 mm or more but not over 19.81 mm, width 76.96 mm or more but not over 152.4 mm; or

(iv) thickness 51.56 mm or more but not over 76.2 mm, width 76.96 mm or more but not over 152.4 mm;

(ccclviii) cold finished flat bars, designated as A-630; the foregoing in grade C1018 according to ASTMA29/A108, containing by weight not over 0.25 percent carbon; thickness 6.35 mm or more but not over 76.2 mm, width 203.2 mm or more but not over 355.6 mm; produced from bloom cast material; low residual value (not over 0.15 percent by weight) and nitrogen not over 0.009 percent (by weight); with sharp corners size tolerance of 0.203 mm;

(ccclix) steel hexagonal bars, designated as A-630; the foregoing not further worked than cold finished, in sizes from 28.57 mm to 55.56 mm (inclusive), in grade C11L37 according to ASTM A29/A108, carbon content of 0.32 to 0.39 percent by weight;

(ccclx) cold finished near-square rectangular keyway sections, designated as A-630, the foregoing of grade C1045 according to ASTM A29/A108; containing by weight 0.43 to 0.50 percent carbon, size 50.72 mm x 57.07 mm;

(ccclxi) cold finished special sections, designated as A-630; the foregoing in grade C1018 according to ASTM A29/A108, containing by weight not over 0.25 percent carbon, 125.4 mm in width and 9.5 mm in thickness and four radius corners of 4.76 mm;

(ccclxii) cold finished alloy steel bars, designated as A-630; the foregoing in grade SAE 4140 according to ASTM A29/A108; containing by weight 0.38 to 0.43 percent carbon; in nonstandard cross sectional shape being a segment of a circle, described by a radius of length 49.12 mm or 41.63 mm and an inclusive angle of 45 degrees, a tolerance of plus and minus 1.0 mm being applied to all cross sectional dimensions, and plus and minus 2 degrees being applied to all angular degrees;

(ccclxiii) cold finished machined square bars, designated as A-630; the foregoing in grades C1018 and C1117 according to ASTM A29/A108 in sizes over 101.6 mm up to and including 160 mm, with sharp defined corners;

(ccclxiv) cold finished square bars, designated as A-630; the foregoing in grade C1117 according to ASTMA29/A108, containing by weight not over 0.25 percent carbon, with dimensions 76.2 mm or more but not over 101.6 mm;

(ccclxv) flat bars of non-alloy freecutting steel, designated as A-630; the foregoing not further worked than cold drawn, rectangular dimension of 20.64 mm thickness and 25.4 mm width according to ASTM A29/A108;

(ccclxvi) alloy steel bars, designated as A-675; the foregoing in grade 18CrNi8 / DIN 1.5920; having the following chemical composition (percent by weight): carbon 0.15 to 0.20, silicon: 0.10 to 0.30, manganese 0.40 to 0.60, sulfur 0.015 to 0.025, chromium 1.80 to 2.10, nickel 1.80 to 2.10 and copper not over 0.35; oxygen content 30 ppm maximum; annealed, cold drawn and polished, eddy current and ultrasonically tested at a level FBH less than 0.7, with a microscopic cleanliness less than K3 maximum 10 according to DIN 50602 and without macroscopic inclusion detrimental for high pressure application as injector nozzle holder, in diameters up to 25.4 mm, in random bar length, with mill test report according to DIN EN10204/3.1.B;

(ccclxvii) cold finished alloy steel round bars, designated as A-709; the foregoing in grade AMS 6304, annealed and ground; tensile strength not over 860 MPa; having the following chemical composition (percent by weight): carbon 0.40 to 0.50, manganese 0.40 to 0.70, silicon 0.15 to 0.35, phosphorus 0.025 maximum, sulfur 0.025 maximum, chromium 0.80 to 1.10, molybdenum 0.45 to 0.65, vanadium 0.25 to 0.35, nickel 0.25 maximum and copper 0.35 maximum; bar diameters from 6 mm to 27 mm, length 3 m 6 m;

(ccclxviii) cold finished alloy steel round bars, designated as A-709; the foregoing in grade SAE 4130, aerospace quality according to the requirements of AMS-S-6758 (formerly MIL-S-6758), hardened and tempered condition; tensile strength not less than 860 MPa, yield strength not less than 690 MPa, elongation not less than 17 percent of 50.8 mm gauge length, reduction of area not less than 55 percent; having the following chemical composition (percent by weight): carbon 0.28 to 0.33, manganese 0.40 to 0.60, silicon 0.15 to 0.35, phosphorus 0.025 maximum, sulfur 0.025 maximum, chromium 0.80 to 1.10, molybdenum 0.15 to 0.25, nickel 0.25 maximum and copper 0.35 maximum; bar diameter 6.3 mm to 25.4 mm, length 3 m to 6 m;

(ccclxix) cold finished alloy steel round bars, designated as A-709; the foregoing in grade SAE 4340, according to the requirements of AMS 6484, normalized and tempered condition having hardness not over 322 Brinell; having the following chemical composition (percent by weight): carbon 0.38 to 0.43, manganese 0.65 to 0.85, silicon 0.15 to 0.35, phosphorus 0.025 maximum, sulfur 0.025 maximum, chromium 0.70 to 0.90, nickel 1.65 to 2.00, molybdenum 0.20 to 0.30 and copper 0.35 maximum; bar diameter 7.9 mm to 25.4 mm, length 3 m to 6 m;

(ccclxx) cold finished alloy steel round bars, designated as A-709; the foregoing in grade SAE 4340H, annealed and cold drawn, with a structure of lamellar pearlite and partial spheroidization for good machinability; hardness not over 248 Brinell; having the following chemical composition (percent by weight): carbon 0.38 to 0.43, manganese 0.60 to 0.80, silicon 0.15 to 0.35, phosphorus 0.035 maximum, sulfur 0.040 maximum, chromium 0.70 to 0.90, nickel 1.65 to 2.00 and molybdenum 0.20 to 0.30; bar diameter 10.0 mm to19.6 mm, length 3 m to 6 m;

(ccclxxi) cold finished alloy steel round bars, designated as A-709; the foregoing in grade SAE 8740, according to the requirements of AMS 6322, annealed and cold drawn, with surface removal by micro-scalping, grinding or peeling to give a seam-free finish; tensile strength not higher than 825 MPa; hardness not over 241 Brinell; having the following chemical composition (percent by weight): carbon 0.38 to 0.43, manganese 0.75 to 1.00, silicon 0.15 to 0.35, phosphorus 0.025 maximum, sulfur 0.025 maximum, chromium 0.40 to 0.60, nickel 0.40 to 0.70, molybdenum 0.20 to 0.30 and copper 0.35 maximum; bar diameter 8.5 mm to 13.6 mm, length 3 m to 6 m;

(ccclxxii) cold finished alloy steel hexagon bars, designated as A-709; the foregoing in grade SAE 8740, according to the requirements of AMS 6322, annealed and cold drawn; tensile strength not higher than 825 MPa; hardness not over 241 Brinell; having the following chemical composition (percent by weight): carbon 0.38 to 0.43, manganese 0.75 to 1.00, silicon 0.15 to 0.35, phosphorus 0.025 maximum, sulfur 0.025 maximum, chromium 0.40 to 0.60, nickel 0.40 to 0.70, molybdenum 0.20 to 0.30 and copper 0.35 maximum; bar size (across flats) 19.0 mm to 23.8 mm, length 3 to 6 m;

(ccclxxiii) cold finished alloy steel round bars, designated as A-709; the foregoing in grade SAE 4140, according to the requirements of AMS 6382, annealed and cold drawn; tensile strength not higher than 860 MPa; hardness not over 241 Brinell; having the following chemical composition (percent by weight): carbon 0.38 to 0.43, manganese 0.75 to 1.00, silicon 0.15 to 0.35, phosphorus 0.025 maximum, sulfur 0.025 maximum, chromium 0.80 to 1.10, molybdenum 0.15 to 0.25, nickel 0.25 maximum and copper 0.35 maximum; bar diameter 6.3 mm to 12.7 mm, length 3 m to 6 m;

(ccclxxiv) cold formed bars and rods, designated as A-752 and entered in an aggregate annual quantity not to exceed 5,000 t; the foregoing not further worked other than cold finished, thickness 12.0 mm or more but not over 15.00 mm; having the following chemical composition (percent by weight): carbon 0.43 to 0.50, manganese 0.85 to 1.15,silicon 1.45 to 1.60, phosphorus not over 0.025, sulfur not over 0.020, chromium 0.45 to 0.65 and vanadium 0.10 to 0.17; surface finish peeled (shiny finish), free from pits, cracks or seams; smooth edges; cut to length; certified free of all surface defects and verified by 100 percent eddy current inspection;

(ccclxxv) alloy steel round bars (42CrMo4), designated as A-767; the foregoing 24.9 mm to 95 mm in diameter; length not over 3.65 m; quenched and tempered; induction hardened; ground and polished; finished to an f7 outside diameter tolerance; having the following chemical composition (percent by weight): carbon 0.38 to 0.45, manganese 0.60 to 0.90, silicon 0.15 to 0.40, chromium 0.90 to 0.120 and molybdenum 0.15 to 0.25; core tensile strength 800 MPa minimum; induction hardened surface hardness of not less than 55 and not over 60 HRc; maximum surface roughness rating of Ra equal to 0.6 micrometer for finished round bar;

(ccclxxvi) scaleless oil tempered finish, carbon steel flat "brush wire," designated as A-786; the foregoing with round edges, drawn and cold rolled from wire rod, and in-line oil hardened, tempered and cut to length, thickness not over 0.61 mm; width not over 3.43 mm; length not over 665 mm; having the following chemical composition to AISI 1050 (percent by weight): carbon 0.50 to 0.55, silicon 0.15 to 0.35, manganese 0.50 to 0.70, phosphorus not over 0.02, sulfur not over 0.025, chromium not over 0.05 and nickel not over 0.05; tensile strength 1300 N/mm^2 or more but not over1500 N/mm^2, hardness not less than HRa 70.1 but not over HRa 72.4; camber not over 3.8 mm in 665 mm; smooth rolled round edges; surface finish free from scale, pits, scratches, rust, cracks or seams;

(ccclxxvii) cold finished steel bars, of SAE 4150 DH, AQ steel, designated as A-607; the foregoing quenched, tempered and turned and polished; manufactured from killed steel, which has been vacuum degassed; forged or rolled, having undergone forging of the ingots to reduce their size before hot rolling; forged or rolled to a forging ratio of 6S from ingot or bloom; free of cracks, seams voids or inclusions, which could weaken the material or develop into a defect during further processing, after turn and polishing; residual magnetism less than 10 gauss; surface roughness less than 10S after straightening; diameter allowance tolerance 0 or more but not over 0.15 mm; physical dimensions: 10.2, 15.2, 16.2, 20.2, 22.2, 25.2, 28.2, 32.2, 36.3, 38.3, 40.2, 44.3, 45.3, 50.3 or 63.3 mm; circularity tolerance less than 0.05 mm; straightness tolerance not over 0.5 mm/m; hardness after quench and temper HRC 24 to 32 at the surface, core and throughout the bar; variation from core to surface from one end to the other not over 5HRC; macrostructure not exceeding S2, R2 and C2 of the Plate 1 of visual aid of ASTM E381-94; banding on the microstructure conforming to S5 of ASTM A534-94; average austenite grain size 6 or finer and uniform so that no grains of 3 sizes or coarser exist, according to ASTM E112-96 and ASTM E930-92; non-metallic inclusions inspected by ASTM E45-97 shall not exceed the rating in Table 2 of ASTM A534-94;

(ccclxxviii) cold drawn aircraft quality E-4130 steel bars, designated as A-621, the foregoing having hexagonal cross section of not over 16.00 mm across flats; meeting the following specifications: MIL – S -6758, AMS-S-6758, AMS-2301, ASTM-A-331, AMS-6348, AMS-2304, and AMS-6370; condition D4, spec latest revisions; having the following chemical composition (percent by weight): carbon 0.28 to 0.33, silicon 0.15 to 0.35, manganese 0.40 to 0.60, sulfur not over 0.025, phosphorus not over 0.025, chromium 0.80 to 1.10, molybdenum 0.10 to 0.25, nickel not over 0.25 and copper not over 0.35; heat treated; length 3,000 mm to 4,000 mm;

(ccclxxix) cold finished bars, designated as A-629 and entered in an aggregate annual quantity not to exceed 835 t; with the following characteristics: cold finished, killed steel, normalized, peeled to a tolerance of +0.6 mm, -0, and stress relieved, coarse grain practice (range of 2 to 5); having the following chemical composition (percent by weight): carbon 0.37 to 0.45, phosphorus not over 0.040, manganese 1.35 to 1.65, sulfur 0.08 to 0.13 and silicon 0.10 to 0.20; manufactured to the following sizes: 157.15 mm rolled diameter, 168.84 mm rolled diameter, 199.30 mm rolled diameter or 238.13 mm rolled diameter; certified to have a Rockwell B hardness that increases from the outer surface to the core; certified to be prepared with the following heat treatment: normalized by heating from a cold charge at the rate of 50°C per hour to 400°C, from 400°C to 850°C at any rate; hold at 850°C for 30 minutes per inch (71 s/mm) of diameter; cooled in still air and peeled; stress relieved by heating from a cold charge at the rate of 50 °C per hour to 400 °C , from 400 °C to 600°C heat at any rate; hold at 600 °C for one hour per inch (142 s/mm) of diameter; cooled down at rate of 100°C per hour to 350°C and then air cooled;

(ccclxxx) cold finished steel bars, the foregoing designated as A-629 and entered in an aggregate annual quantity not to exceed 550 t; with the following characteristics: cold finished bars, killed steel, normalized, peeled to a tolerance of +0.6 mm, -0, and stress relieved, coarse grain practice range of (2-5); having the following chemical composition (percent by weight): carbon 0.43 to 0.50, phosphorus not over 0.040, silicon 0.15 to 0.20, molybdenum not over 0.06, copper 0.35, manganese 0.60 to 0.90, sulfur 0.02 to 0.050, chromium not over 0.20 and nickel not over 0.25; manufactured to the following sizes: 114.52 mm rolled diameter, 126.79 mm rolled diameter, 138.94 mm rolled diameter or 150.38 mm rolled diameter; certified to have a Rockwell B hardness that increases from the outer surface hardness to the core; certified to be prepared with the following heat treatment (thermal recipe): normalized by heating at 50°C per hour to 400°C, then heated to 850°C at any rate; soaked at 850°C for 30 minutes per inch (71 s/mm) in diameter; cooled in still air to ambient and peeled; stress relieved by heating at 50°C per hour to 400°C, then heated to 550°C at any rate; soaked at 550°C for one hour per inch (142 s/mm) in diameter; cooled at a rate of 100°C maximum per hour to 350°C; cooled in still air;

(ccclxxxi) cold-drawn T-sections of non-alloy steel, designated as A-661, the foregoing not further worked than cold formed or cold finished; having the following chemical composition (percent by weight): carbon 0.14 to 0.20, manganese 1.20 to 1.50, silicon 0.15 to 0.50, aluminum 0.01 to 0.07, vanadium 0.04 to 0.06, phosphorus not over 0.02, sulfur not over 0.02, chromium not over 0.20 and nickel not over 0.15; yield strength of not less than 482 N/mm^2, tensile strength of not less than 620 N/mm^2; elongation in 50 mm not less than 14 percent; with physical dimensions: vertical section with height of 37.2 mm or more but not over 57.8 mm and width 10.7 mm or more but not over 15.3 mm; joined at 90 degrees to the center of the top horizontal section that has a width of 44.2 mm or more but not over 66.3 mm and a height of 15.7 mm or more but not over 21.3 mm to produce a frontal view of a "T" with the height of the entire shape equaling the height of the vertical section added to the thickness of the top horizontal section, totaling less than 80 mm; all six of the section's outside corners having radii of 1.0 mm to 2.0 mm and the two inside corners having radii of 2.5 mm or more but not over 4.5 mm; weight per m ranging from 8.7 kg to 17.9 kg;

(ccclxxxii) irregular sections of iron or non-alloy steel, designated as A-661, the foregoing not further worked than cold formed or cold finished; having the following chemical composition (percent by weight): carbon 0.09 to 0.13, manganese 1.25 to 1.45, silicon 0.15 to 0.50, aluminum 0.01 to 0.04, vanadium 0.04 to 0.06, phosphorus not over 0.02, sulfur not over 0.02, chromium not over 0.20 and nickel not over 0.15; yield strength of not less than 355 N/mm^2, tensile strength 490 N/mm^2 to 630 N/mm^2; elongation in 50 mm not less than 22 percent, with physical dimensions of: two segments constituting one unitary and solid piece, respectively known as the half-round segment and rectangular segment; half-round segment having a radius of 26.15 mm to 27.15 mm; rectangular segment 52.3 mm to 54.3 mm high and 26.9 mm to 28.7 mm wide joined on one 52.3 mm to 54.3 mm side to the half-round segment and the opposite side having a 4.2 mm to 5.2 mm radius on one corner and the other corner having a 4.4 mm to 4.8 mm x 11.0 mm to 11.5 mm notch with the 11 mm side parallel to the flat side of the half-round segment; notch blends into the long and short sides of the rectangular segment with 3 mm to 4.8 mm chamfers; weight 19.6 kg/m to 20.0 kg/m;

(ccclxxxiii) cold-finished bars of alloyed steel, designated as A-744, the foregoing being rounds with diameters of 25 mm or more but less than 48 mm, quenched and tempered with qualities according to specifications AISI/SAE 4130, 4140, 4145, or 4150;

(ccclxxxiv) cold-finished bars of alloyed steel, designated as A-744, the foregoing being rounds with diameters of 24 mm or more but less than 48 mm, quenched and tempered with qualities according to specifications AISI/SAE 4340;

(ccclxxxv) cold-finished bars of alloyed steel, designated as A-744, the foregoing being rounds with diameters of 24 mm or more but less than 48 mm, quenched and tempered with qualities according to specifications AISI/SAE 8620;

(ccclxxxvi) round cold finished bars, designated as A-810 and entered in an aggregate annual quantity not to exceed 13,000 t; the foregoing cold finished, peeled, steel grades AISI(SAE) 1018, 1020, 1040 or 1045; killed; permissible curvature 1 mm on 1 m length; diameter from 306 mm to 330 mm;

(ccclxxxvii) round cold finished bars, designated as A-810 and entered in an aggregate annual quantity not to exceed 1,700 t; the foregoing cold finished, peeled, steel grades AISI(SAE) 4140, 4142, 4150, 4340; killed; permissible curvature 1 mm on 1 m length; diameter from 306 mm to 330 mm;

(ccclxxxviii) round cold finished bars, designated as A-810 and entered in an aggregate annual quantity not to exceed 300 t; the foregoing cold finished, peeled, steel grade AISI(SAE) 8620; killed; permissible curvature 1 mm on 1 m length; diameter from 306 mm to 330 mm;

(ccclxxxix) hot-rolled thread bars, designated as A-769; the foregoing of grade 95, diameter 18 mm to 75 mm; meeting the following characteristics: hot-rolled and tempered bars of non alloy steel with deformations forming a screwable right hand thread, in diameters of 18 mm, 22 mm, 25 mm, 28 mm, 30 mm, 35 mm, 43 mm, 50.5 mm, 63.5 mm or 75 mm, complying with ASTM A615 with deformations being spaced along the bar at substantially uniform distances ranging from 8 mm to 24 mm; water quenched and tempered; having the following chemical composition (percent by weight): carbon 0.19 to 0.28, silicon 0.38 to 0.64, manganese 1.3 to 1.5, phosphorus not over 0.04, sulfur not over 0.03 and chromium 0.30 to 0.35; with the following other properties: a yield strength of not less than 670 MPa, a tensile strength of not less than 800 MPa and elongation on a 10 diameter gage of not less than 16 percent for diameters up to 43 mm and not less than 10 percent for diameters greater than 43 mm;

(cccxc) hot-rolled thread bars, designated as A-769, the foregoing of grade 150, diameter 40 mm to 75 mm; meeting the following characteristics: hot-rolled and tempered bars of nonalloy steel with deformations forming a screwable right hand thread; diameter 40 mm, 47 mm, 57.5 mm, 63 mm or 75 mm; complying with ASTM 722 for Type II with deformations being spaced along the bar at substantially uniform distances ranging from 20 mm to 30 mm, water quenched and tempered , cold stretched and annealed; having the following chemical composition (percent by weight): carbon 0.60 to 0.80, silicon 0.15 to 0.45 manganese 0.5 to 1.0, phosphorus not over 0.035 and sulfur not over 0.035; with the following other properties: a yield strength of not less than 950 MPa and a tensile strength of not less than 1050 MPa for diameters 40 mm and 47 mm and a yield strength of not less than 830 MPa and a tensile strength of not less than 1035 MPA for diameters 57.5 mm and larger, and elongation on a 10 diameter gage of not less than 7 percent;

(cccxci) hot-rolled weldable thread bars, designated as A-769, the foregoing of grade 145; diameter 12.5 mm to 20 mm; meeting the following characteristics: hot-rolled and tempered bars of nonalloy steel with deformations forming a screwable right hand thread; diameter 12.5 mm, 15 mm or 20 mm; with deformations being spaced along the bar at substantially uniform distances ranging from 6 mm to 10 mm; water quenched and tempered; having the following chemical composition (percent by weight): carbon 0.18 to 0.22, silicon 0.43 to 0.47, manganese 1.4 to 1.6, phosphorus not over 0.035 and sulfur not over 0.035; with the following other properties: a yield strength of not less than 1000 MPa, a tensile strength of not less than 1100 MPa, and elongation on a 10 diameter gage of not less than 10 percent;

(cccxcii) hot-rolled thread bars, grade 150, designated as A-769, the foregoing in diameter 18 mm; meeting the following characteristics: hot-rolled and tempered bars of nonalloy steel with deformations forming a screwable right hand thread; complying with ASTM 722 for Type II with deformations being spaced along the bar at substantially uniform distances ranging from 7 mm to 9 mm; water quenched and tempered; cold stretched and annealed; having the following chemical composition (percent by weight): carbon 0.60 to 0.80, silicon 0.15 to 0.45, manganese 0.5 to 1.0, phosphorus not over 0.035 and sulfur not over 0.035; with the following other properties: a yield strength of not less than 950 MPa, a tensile strength of not less than 1050 MPa, and elongation on a 10 diameter gage of not less than 7 percent;

(cccxciii) cold finished stainless steel bars of circular cross section, designated as A-611; the foregoing with diameter not over 81 mm; surface hardened; precision ground; having the following chemical composition (percent by weight): carbon 0.42 to 0.50, silicon 0.30 to 1.00, manganese 0.20 to 1.00, phosphorus not over 0.045, sulfur not over 0.030, chromium 12.5 to 14.5; grain size of 6 or finer as per DIN 50601; hardness HV 550 to 620; surface finish maximum RMS 12; minimum hardness depth of 0.4 mm;

(cccxciv) cold finished stainless steel bars of circular cross section, designated as A-611; the foregoing with diameter not over 81 mm; surface hardened; precision ground; having the following chemical composition (percent by weight): carbon 0.85 to 0.95, silicon not over 1.00, manganese not over 1.00, phosphorus not over 0.045, sulfur 0.015 to 0.030, chromium 17.0 to 19.0, molybdenum 1.0 to 1.3 and vanadium 0.07 to 0.12; grain size of 8 or finer as per DIN 50601; hardness HV 550 to 620; surface finish maximum RMS 12; minimum hardness depth of 0.4 mm;

(cccxcv) modified chemistry AISI 400 stainless sulfurized plastic mold steel, designated as A-626; the foregoing if round sections with diameter from 12 mm to 500 mm; if flat sections with thickness 12 mm to 350 mm and width 45 mm to 1250 mm; having the following chemical composition (percent by weight): carbon 0.02 to 0.14, silicon 0.10 to 0.60, manganese 0.50 to 1.45, phosphorus not over 0.04, sulfur 0.08 to 0.25, chromium 12.4 to 15.2, nickel 0.20 to 1.80, molybdenum 0.05 to 1.0, vanadium not over 0.25, nitrogen 0.02 to 0.12, copper not over 0.45 and aluminum not over 0.030; hydrogen not over 7.0 parts per million; cleanliness according to ASTM E45/87, Method A plate I.: Slag type A: T-, H-; Slag type B: T 2.0, H2.0; Slag type C: T 1.0, H 1.0; Slag type D: T 2.0,H less than 1.0; hardness of 260 to 360 Brinell;

(cccxcvi) precipitation hardening stainless mold steel, designated as A-626; the foregoing if round sections with diameter 12 mm to 400 mm; if flat sections with thickness 12 mm to 306 mm and width 150 mm to 762 mm; having the following chemical composition (percent by weight): carbon 0.025 to 0.035, silicon 0.20 to 0.40, manganese 0.20 to 0.40, phosphorus not over 0.020, sulfur not more than 0.030, chromium 11.8 to 12.2, nickel 9.00 to 9.50, molybdenum 1.30 to 1.50, titanium not over 0.010, nitrogen not over 0.010, niobium not over 0.005, zirconium not over 0.005, copper not over 0.20 and aluminum 1.60 to 1.80, hydrogen not over 3 parts per million; cleanliness according to ASTM E45/97, Method A plate I-r: Slag type A:T-,H-; Slag type B: T less than 1,5 H less than 1.0; Slag type C: T less than 1.0 H less than 1.0; Slag type D: T less than 1,5, H less than 1.0;

(cccxcvii) modified chemistry AISI 400 stainless sulfurized plastic mold steel, designated as A-626; the foregoing if round sections with diameter 12 mm to 27.9 mm; if flat sections with thickness 12 mm to 42.9 mm and width 300 mm to 1016 mm; having the following chemical composition (percent by weight): carbon 0.31 to 0.36, silicon 0.20 to 0.50, manganese 1.20 to 1.50, phosphorus not over 0.035, sulfur 0.08 to 0.15, chromium 15.2 to 17.0, nickel 0.40 to 0.70, molybdenum not over 0.60, vanadium not over 0.40, nitrogen not over 0.14, copper not over 0.30 and aluminum not over 0.030; hydrogen not over 7.0 parts per million; cleanliness according to ASTM E45/87, Method A plate I.:Slag type A: T-, H-; Slag type B: T 2.0, H 2.0; Slag type C:T 1.0, H 1.0; Slag type D: T 2.0 ,H less than 1.0; hardened and tempered hardness of 260 to 400 Brinell;

(cccxcviii) forged, pre-hardened, martensitic stainless steel bars, designated as A-669; the foregoing in modified AISI 420; having the following chemical composition (percent by weight): carbon 0.28 to 0.38, silicon not over 1.0, manganese 1.00 to 1.40, sulfur 0.05 to 0.10 and chromium 15.0 to 17.0; hardness in as supplied condition of 280 to 355HB (Brinell Hardness) (29 to38 HRc); thickness 133 mm to 229 mm and width 280 mm to 1,100 mm; in a black cold-finished condition;

(cccxcix) stainless steel bars, designated as A-805; the foregoing 20 to 30 percent air by volume, permeated with interconnecting pores of three (3) to twenty (20) micrometers diameter to allow passage of gas through the steel; produced from a mixture of ferritic stainless steel long fibers having a width of 100 micrometer or less, and ferritic stainless steel powder, all of which are compressed in a cold isostatic press, sintered in a vacuum atmosphere, and then held in nitrogen gas or ammonia gas at a temperature of 900 to 1050°C to impart porous quality over the entire surface; hardness HRc 35 to 40, tensile strength 441 MPa to 490 MPa; heat transfer coefficient (at room temperature) of 2.0993 to 2.3994 kilocalories m^{-2} h^{-1} $°C^{-1}$; linear expansion (at 20 to 150°C) of 12 x 10^{-6} to 12.5 x 10^{-6} $°C^{-1}$; having the following chemical composition (percent by weight): carbon 0.001 to 0.100, silicon 0.25 to 1.75, manganese 0.05 to 0.50, phosphorus 0.005 to 0.075, sulfur 0.001 to 0.100, nickel 0.050 to 0.500, chromium 10.00 to 20.00 and molybdenum 0.50 to 3.00;

(cd) stainless steel bars further worked than cold finished and formed, designated as A-806; the foregoing with diameter 41 mm to 106 mm; having the following chemical composition (percent of weight): carbon 0.28 to 0.34, manganese 0.30 to 0.60, silicon 0.30 to 0.80, phosphorus not over 0.020, sulfur not over 0.010, chromium 14.5 to 16.0, molybdenum 0.95 to 1.10, nitrogen 0.35 to 0.44 and nickel not over 0.30; or

(cdi) stainless steel non-magnetic wire, designated as A-793; the foregoing having the following chemical composition (percent by weight): carbon 0.07 to 0.12, silicon not over 1.00, manganese 9.00 to 10.00, phosphorus not over 0.030, sulfur not over 0.030, chromium 17.5 to 19.0, nitrogen 0.20 to 0.35 and nickel 5.0 to 6.0; diameter 0.500 mm to 3.493 mm, a diameter tolerance of +/- 0.020 mm after annealing, an out-of-round tolerance of 0.020 mm after annealing; tensile strength 750 N/mm^2 to 2,200 N/mm^2, and magnetic permeability of 1.010 maximum; maximum surface crack depth 0.03 mm;

(cdii) quick coupler ball-and-socket fittings of steel, designated as A-698; the foregoing in the following shapes: balls; sockets; lever closure rings; socket end caps; end balls; elbows; step bows; tees; reducers; enlargers; strainers; flanged connections with a ball; flanged connections with a socket; balls with nominal pipe threads on one end; sockets with nominal pipe threads on one end, hose connections and components thereof; all the foregoing whether galvanized or not, of which each fitting is capable of being attached to another by means of a ball-and-socket connection and secured by a lever closure; with the internal diameter of the end of each fitting 40 mm or more but not over 350 mm;

(cdiii) round electric welded steel tubing, designated as A-605; the foregoing with outside diameter greater than 20 mm but less than 50 mm; wall thickness greater than 2.0 mm but less than 7.00 mm; having the following chemical composition (percent by weight): carbon 0.14 to 0.18, silicon 0.05 to 0.30, manganese 0.60 to 1.20, phosphorus 0.020 maximum, sulfur 0.006 maximum and niobium 0.005 to 0.040; tensile strength 590 to 740 N/mm^2, yield strength 520 to 665 N/mm^2, minimum elongation 15 percent;

(cdiv) steel brazed double wound or electric resistance welded steel tubing, designated as A-605; the foregoing with outside diameter greater than 4.0 mm but less than 20 mm; wall thickness greater than 0.4 mm but less than 2.1 mm; having the following chemical composition (percent by weight): carbon 0.12 maximum, silicon 0.35 maximum, manganese 0.60 maximum, phosphorus 0.040 maximum and sulfur 0.040 maximum; mechanical properties: tensile strength 290 N/mm^2.

minimum, yield strength 175 N/mm² minimum, 25 percent minimum elongation; inside of tube having copper plating 3 micrometer minimum thickness, outside of tube having yellow zinc dichromate plating;

(cdv) galvanized welded steel circular tubes, designated as A-634; the foregoing with plain square cut ends produced in accordance with ASTM A120 (E-H); outer diameter 19.30 mm to 28.60 mm, 31.40 mm to 44.40 mm, 46.00 mm to 62.40 mm, 71.00 mm to 91.00 mm, 99.50 mm to 116.40 mm or 139.10 mm to 170.40 mm; inside diameter 14.10 mm to 21.30 mm, 25.00 mm to 37.50 mm, 39.20 mm to 54.91 mm, 61.10 mm to 80.50 mm, 88.50mm to 105.00 mm or126.50 mm to 157.00 mm, respectively; wall thickness 2.00 mm to 2.90 mm, 3.00 mm to 3.50 mm, 3.51 mm to 3.80 mm, 4.70 mm to 5.40 mm, 5.41 mm to 5.85 mm or 5.86 mm to 6.90 mm, respectively; 2,962 mm to 3,063 mm in length; chamfered to eliminate sharp edges on both ends; zinc coating on the outside to a thickness of 0.02 mm to 0.05 mm; physical properties: elongation 45 to 50 percent; hardness 58 to 72 Rockwell B; AISI C1012; having the following chemical composition (percent by weight): iron 97 to 99, carbon 0.25, manganese 0.99; phosphorus 0.035, sulfur 0.035, zinc coating 0.50 to 0.99 and aluminum 0.01 to 0.10;

(cdvi) coated brazed double wall steel tubing of circular cross section, designated as A-641; the foregoing with tubing characteristics: outer diameter not greater than 8 mm; wall thickness not greater than 0.7 mm; having the following chemical composition (percent by weight): 0.15 maximum carbon, 0.60 maximum manganese, 0.05 maximum phosphorus and 0.05 maximum sulfur; tubes coated with the following materials, in order from the innermost material: zinc plating minimum 13 micrometer thickness, primer coating of approximately 10 micrometer thickness, Polyamide 11 coating thickness of 10 micrometer to 200 micrometers (mechanical properties of Polyamide 11 (nylon coating): specific gravity of 1.03 at 23 °C; melt point of 183 to187 °C; yield strength of 42 MPa; yield elongation of 8 percent, ultimate strength of 53 MPa; ultimate elongation of 300 percent and Rockwell hardness of 108); polypropylene coating thickness 0.60 mm to 1.3 mm;

(cdvii) coated welded single wall steel tubing of circular cross section, designated as A-641; the foregoing with tubing characteristics: outer diameter not greater than 8 mm; wall thickness not greater than 0.7 mm; having the following chemical composition (percent by weight): 0.15 maximum carbon, 0.60 maximum manganese, 0.05 maximum phosphorus and 0.05 maximum sulfur; tubes coated with the following materials, in order from the innermost material: zinc plating minimum 13 micrometer thickness; primer coating of approximately 10 micrometer thickness; Polyamide 11 coating thickness of 10 micrometer to 200 micrometer, the mechanical properties of Polyamide 11 (nylon coating) are as follows: specific gravity of 1.03 at 23 °C; melt point 183 to187 °C; yield strength 42 MPa; yield elongation 8 percent; ultimate strength 53 MPa; ultimate elongation 300 percent; Rockwell hardness of 108;

(cdviii) coated welded single wall steel tubing of a circular cross section, designated as A-641; the foregoing with tubing characteristics: outer diameter not greater than 12 mm, wall thickness not greater than 0.9 mm: having the following chemical composition (percent by weight): 0.15 maximum carbon, 0.60 maximum manganese, 0.05 maximum phosphorus and 0.05 maximum sulfur; tubes are coated with the following materials, in order from the innermost material: zinc plating minimum 13 micrometer thickness, primer coating of approximately 10 micrometer thickness, Polyamide 11 coating thickness of 10 micrometer to 200 micrometer (mechanical properties of Polyamide 11 (nylon coating) are as follows: specific gravity 1.03 at 23 °C; melt point 183 to 187 °C; yield strength 42 MPa; yield elongation 8 percent; ultimate strength 53 MPa; ultimate elongation 300 percent; Rockwell hardness of 108); polypropylene coating thickness of 0.60 mm to 1.3 mm;

(cdix) coated welded single wall steel tubing of circular cross section, designated as A-641; the foregoing with tubing characteristics: outer diameter not greater than 12 mm, wall thickness not greater than 0.9 mm; having the following chemical composition (percent by wight): 0.15 maximum carbon, 0.60 maximum manganese, 0.05 maximum phosphorus and 0.05 maximum sulfur; tubes coated with the following materials, in order from the innermost material: zinc plating minimum 13 micrometer thickness, primer coating of approximately 10 micrometer thickness, Polyamide 11 coating thickness of 10 micrometer to 200 micrometer; mechanical properties of Polyamide 11 (nylon coating): specific gravity of 1.03 at 23 °C, melt point 183 to 187 °C; yield strength 42 MPa ; yield elongation 8 percent; ultimate strength 53MPa; ultimate elongation 300 percent; Rockwell hardness of 108;

(cdx) nonalloy steel pipe, designated as A-698; the foregoing with outside diameter 49 mm or more but not over 195 mm; wall thickness 0.64 mm or more but not over 1.1 mm; pressure rating of 12 bar or more but not over 25 bar; with components of ball-and socket fittings of non-alloy steel welded to each end (the ball on one end of the pipe and the socket on the opposite end) such that one pipe is capable of being attached to another of the same diameter by means of the ball-and-socket connection and secured by a lever closure; the entire outer surface of which has been galvanized;

(cdxi) galvanized rectangular hollow sections, designated as A-751; the foregoing welded, complying with ASTM A500, but having a minimum yield strength of 450 MPa and galvanized, with a smooth in-line galvanized external zinc coating of 100 g/m² or more but not over 200 g/m² (0.60oz/ft²); galvanizing applied after welding with the zinc coating further passivated to resist white rust; not further worked other than cold forming; not formed from pre-galvanized strip product; supplied with or without internal corrosion protection (barrier or zinc rich paint) applied to the inside of the section; size range of rectangles chemistry is controlled to provide a carbon equivalent of no more than 0.39 (calculated by the following formula: CE = C + (Mn/6) + ((Cr+Mo+V)/5) + ((Ni+Cu)/15))); having the following chemical composition (percent by weight): 0.23 carbon, 1.35 manganese, 0.25 silicon, 0.10 aluminum, 0.035 phosphorus and 0.035 sulfur; produced from fully killed steel with fine grain; in wall thicknesses of 1.55 mm to 6.05 mm; in either of the following sections:

(i) squares, 19.0 mm by 19.0 mm to 101.6 by 101.6 mm; or

(ii) rectangles, 38.0 by 25.0 mm to 152.4 by 50.0 mm;

(cdxii) cold finished 316L vacuum melted stainless steel medical implant profiles, designated as A-750 and entered in an aggregate annual quantity not to exceed 25 t; conforming to ASTM F138; having the following chemical composition (percent by weight): carbon not over 0.030, chromium 17 to 19, molybdenum 2.25 to 3 and nickel 13 to 15; with tensile strength 850 MPa to 1,100 MPa; with surface cold-rolled, free from cracks, scratches and seams; in straight lengths from 2.90 to 3.20 meters; meeting one of the following sets of dimensions:

(i) width 10.0 mm to 10.4 mm; thickness 3.0 mm to 3.4 mm; corner radius 0.4 mm to 0.6 mm on all four corners of the profile; profile cross-section having arc with a bend radius of 10 mm on the bottom, and having an arc with a bend radius of 13.2 mm on the top; the bottom and the top being concentric; bottom arc measuring from 50 to 55 degrees of convexity, resulting in a frontal view of an arc with parallel vertical sides;

(ii) width 10.0 mm to 10.4 mm; thickness 3.3 mm to 3.7 mm; corner radius 0.4 mm to 0.6 mm on all four corners of the profile; profile cross-section having arc with a bend radius of 10 mm on the bottom, and having an arc with a bend radius of 13.50 mm on the top; the bottom and the top being concentric; bottom arc measuring from 45 to 50 degrees of convexity, resulting in a frontal view of an arc with parallel vertical sides;

(iii) width 12.0 mm to 12.4 mm; thickness 3.8 mm to 4.2 mm; corner radius 0.7 mm to 1.3 mm on all four corners; profile cross-section having arc with bend radius of 25 mm on the bottom, and having an arc with bend radius of 29 mm on the top; the bottom and the top being concentric; bottom arc measuring from 37 to 42 degrees of convexity, resulting in a frontaf view of an arc with parallel vertical sides;

(iv) width 16.0 mm to 16.4 mm; thickness 4.8 mm to 5.2 mm; corner radius 0.9 mm to 1.1mm on all four corners; profile cross-section having arc with bend radius of 25 mm on the bottom, and having an arc with a bend radius of 30 mm on the top; the bottom and the top being concentric; bottom arc measuring at 35 to 40 degrees of convexity, resulting in a frontal view of an arc with parallel vertical sides;

(v) width 10.87 mm to 11.28 mm; thickness 3.12 mm to 3.53 mm; corner radius 1.4 mm to 1.48 mm on the bottom corners and corner radius 1.0 mm to 1.1 mm on the top corners; profile cross-section having arc with a bend radius of 9.97 mm on the bottom, and having an arc with a bend radius of 13.30 mm on the top; the bottom and the top being concentric; bottom arc measuring from 42 to 48 degrees of convexity, resulting in a frontal view of an arc with parallel vertical sides;

(vi) width 13.39 mm to 13.79 mm; thickness 4.06 mm to 4.47 mm; corner radius 1.80 mm to 1.84 mm on the bottom corners and 1.54 mm to 1.58 mm on the top corners; profile cross-section having arc with bend radius of 24.96 mm on the bottom, and having an arc with bend radius of 29.23 mm on the top; the bottom and the top being concentric; bottom arc measuring from 35 to 40 degrees of convexity, resulting in a frontal view of an arc with parallel vertical sides;

(vii) width 17.27 mm to 17.68 mm; thickness 5.08 mm to 5.49 mm; corner radius 2.30 mm to 2.35 mm on the bottom corners and corner radius 1.92 mm to 1.96 mm on the top corners; profile cross-section having arc with bend radius of 24.96 mm on the bottom, and having an arc with a bend radius of 30.24 mm on the top; the bottom and the top being concentric; bottom arc measuring from 43 to 48 degrees of convexity, resulting in a frontal view of an arc with parallel vertical sides;

(viii) width 8.9 mm to 9.3 mm; thickness 0.9 mm to 1.3 mm; corner radius of 0.5 mm to 0.6 mm on all four corners; profile cross-section having arc with bend radius of 5 mm on the bottom, and having an arc with a bend radius of 6.10 mm on the top; the bottom and the top being concentric; bottom arc measuring from 90 to 95 degrees of convexity, resulting in a frontal view of an irregular crescent; the left and right sides of the profile at a 44 to 46-degree angle from the perpendicular toward the center from the bottom;

(ix) width 10.8 mm to 11.2 mm; thickness 3.1 mm to 3.5 mm; corner radius 1.40 mm to 1.80 mm on the bottom corners and 0.9 mm to 1.4 mm on the top corners; profile cross-section having arc with bend radius 10 mm on the bottom, and having an arc with a bend radius of 13.30 mm on the top; the bottom and the top being concentric; bottom arc measuring from 44 to 49 degrees of convexity, resulting in a frontal view of an irregular crescent; the left and right sides of the profile at 9 to 11 degrees from the perpendicular toward the center from the bottom;

(x) width 13.3 mm to 13.7 mm; thickness 4.0 mm to 4.4 mm; corner radius 1.90 mm to 2.50 mm on the bottom corners and 0.9 mm to 1.4 mm on the top corners; profile cross-section having arc with bend radius of 25 mm on the bottom, and having an arc with a bend radius of 29.20 mm on the top; the bottom and the top being concentric; bottom arc measuring from 30 to 35 degrees of convexity, resulting in a frontal view of an irregular crescent; the left and right sides at 9 to 11 degrees from the perpendicular toward the center from the bottom;

(xi) width 17.3 mm to 17.7 mm; thickness 5.0 mm to 5.4 mm; corner radius 1.9 mm to 2.60 mm on the bottom corners and 0.9 mm to 1.4 mm on the top corners; profile cross-section having arc with bend radius of 25 mm on the bottom, and having an arc with a bend radius of 30.20 mm on the top; the bottom and the top being concentric; bottom arc measuring from 25 to 30 degrees of convexity, resulting in a frontal view of an irregular crescent; the left and right sides of the profile at 9 to 11 degrees from the perpendicular toward the center from the bottom;

(xii) width 10.0 mm to 10.4 mm; thickness 3.2 mm to 3.6 mm; corner radius 0.4 mm to 0.6 mm on all four corners; profile cross-section having arc with bend radius of 10 mm on the bottom, and having an arc with a bend radius of 13.40 mm on the top; the bottom and the top being concentric; bottom arc measuring from 48 to 53 degrees of convexity, resulting in a frontal view of an arc with parallel vertical sides;

(xiii) width 11.8 mm to 12.2 mm; thickness 3.8 mm to 4.2 mm; corner radius 0.7 mm to 1.3 mm on all four corners; profile cross-section having arc with bend radius of 25 mm on the bottom, and having an arc with bend radius of 29 mm on the top; the bottom and the top being concentric; bottom arc measuring from 25 to 30 degrees of convexity, resulting in a frontal view of an arc with parallel vertical sides;

(xiv) width 15.8 mm to 16.2 mm; thickness 6.4 mm to 6.8 mm; corner radius 1.0 mm to 1. mm on the bottom corners and 4.8 mm to 4.84 mm on the top corners; profile cross-section having arc with bend radius of 17.78 mm on the bottom; the bottom arc of the profile measuring from 35 to 40 degrees of convexity; the top of the profile having a flat surface and the left and right sides vertical and parallel;

(xv) width 7.39 mm to 7.79 mm; thickness 3.61 mm to 4.01 mm; corner radius 0.27 mm to 0.33 mm on all four corners; with the top and bottom surfaces of the profile flat and the left and right sides vertical and parallel;

(xvi) width 12.5 mm to 12.9 mm; thickness 2.6 mm to 3.0 mm; profile has sharp corners with no corner radius, resulting in a true rectangular shape; with both the top and bottom surfaces of the profile flat and the left and right sides vertical and parallel; or

(xvii) width 16.3 mm to 16.7 mm; thickness 6.3 mm to 6.7 mm; corner radius of 1.40 mm to 1.80 mm on all four corners; with both the top and bottom surfaces of the profile flat and the left and right sides vertical and parallel;

(cdxiii) hot-rolled stainless steel bars, designated as A-614, the foregoing with a mill rolled rounded edge and thickness not over to 12 mm, width not over 180 mm and length not over 7 m; having the following chemical composition (in percent by weight), conforming to DIN 1.4021: carbon 0.18 to 0.22, silicon not over 1, manganese not over 1, phosphorus not over 0.045, sulfur not over 0.03, chromium 12 to 14, with or without other trace elements; tolerances for chemical composition and sizes conforming to ASTM A-484, latest revision;

(cdxiv) hot-rolled stainless steel bars, designated as A-614, the foregoing with a mill rolled rounded edge and thickness not over 15 mm, width not over 250 mm and length not over 7 m; having the following chemical composition (in percent by weight), conforming to DIN 1.4116: carbon 0.42 to 0.48, silicon not over 1, manganese not over 1, phosphorus not over 0.045, sulfur not over 0.03, chromium 13.8 to 15, molybdenum 0.45 to 0.60, vanadium 0.10 to 0.15, with or without other trace elements; tolerances for chemical composition and sizes conforming to ASTM A-484, latest revision;

(cdxv) hot-rolled stainless steel bars, designated as A-614, with a mill rolled rounded edge and thickness not over 12 mm, width not over 180 mm and length not over 7 m; having the following chemical composition (in percent by weight), conforming to DIN 1.4117: carbon 0.35 to 0.40, silicon not over 1, manganese not over 1, phosphorus not over 0.045, sulfur not over 0.03, chromium 13 to 15, molybdenum 0.40 to 0.60, vanadium 0.10 to 0.15, with or without other trace elements; tolerances for chemical composition and sizes conforming to ASTM A-484, latest revision;

(cdxvi) stainless steel reinforcing bars, designated as A-739 and entered in an aggregate annual quantity not to exceed 50 t; the foregoing whether or not in irregularly wound coils, in diameters of less than 12.7 mm, with uniform dimensions; tensile strength not less than 620 MPa; yield strength not less than 448 MPa; with elongation of not less than 9 percent minimum in 200 mm; meeting all specifications of ASTM A955 M-96; in grades AISI 304, AISI 304LN, AISI 316, AISI 316LN or AISI 2205;

(cdxvii) cold-rolled AISI 316L vacuum melted stainless medical implant steel, designated as A-673 and entered in an aggregate annual quantity not to exceed 20 t; meeting the following characteristics: 20.4 mm to 20.6 mm in width with thickness of 15.4 mm to 15.6 mm or 20.35 mm to 20.65 mm in width with thickness of 17.85 mm to 18.15 mm; corner radius 0.1 mm to 0.9 mm; in straight lengths from 2.90 m to 3.20 m; with chemical composition according to ASTM F138; tensile strength from 931 MPa to 1,069 MPa; surface cold-rolled, free from cracks, scratches and seams; surface roughness 32 rms or better;

(cdxviii) hot-rolled annealed and pickled stainless steel wire rods per AISI 660, designated as A-645 and entered in an aggregate annual quantity not to exceed 500 t, the foregoing with the following additional specifications: diameter 5.3 mm to 12.2 mm; air melted without remelting through a consumable electrode melting process; with tensile strength 700 MPa maximum; and with the following chemical composition (percent by weight): carbon not over 0.080, silicon not over 1.00, manganese not over 2.00, nickel 24.00 to 27.00, chromium 13.50 to 16.00, molybdenum 1.00 to 1.50, copper not over 0.50, titanium 1.90 to 2.35, sulfur not over 0.0300, phosphorus not over 0.040, aluminum not over 0.35, vanadium 0.10 to 0.50, lead not over 0.0050, boron 0.0010 to 0.0100 and bismuth not over 0.00002 (0.2 ppm);

(cdxix) hot-rolled annealed, pickled, and coated stainless steel wire rods per AISI 305, designated as A-645 and entered in an aggregate annual quantity not to exceed 1,500 t, the foregoing with the following additional specifications: tensile strength 440.0 MPa to 590.0 MPa; diameter 5.3 mm to 15.7 mm; with the following chemical composition (percent by weight): carbon not over 0.025; silicon not over 1.00; manganese not over 2.00; nickel 10.50 to 13.00; chromium 17.00 to 19.00; sulfur not over 0.0300; and phosphorus not over 0.045; with a coating containing not less than 70 percent combined potassium sulfate and sodium sulfate;

(cdxx) stainless steel wire rod, designated as A-725 and entered in an aggregate annual quantity not to exceed 180 t, hot-rolled, in irregularly wound coils, of circular cross-section, with a diameter of less than 19 mm; having the following chemical composition (percent by weight): carbon 0.96 to 0.98, silicon 0.30 to 0.50, manganese 0.30 to 0.50, phosphorus not over 0.025, sulfur not over 0.025, nickel not over 0.60, chromium 16.0 to 18.0, molybdenum 0.40 to 0.65, copper not over 0.50 and vanadium not over 0.08; hardness less than 95 HRB; primary carbide controlled to less than 20 micrometer; micro inclusion rating shall not exceed the following rating value defined by ASTM E45 Method A: Type A-Thin not over 2.0, Type A-Heavy not over 1.5, Type B-Thin not over 2.0, Type B-Heavy not over 1.5, Type C-Thin not over 1.0, Type C-Heavy not over 1.0, Type D-Thin not over 2.0, and Type D-Heavy not over 1.0; depth of decarburization not exceeding the following: for sample rod of diameter of not over 10 mm, then not over 0.1 mm; for sample rod over 10 mm in diameter, then not over 1 percent of diameter;

(cdxxi) cut-to-length flat-rolled products, designated as A-645; the foregoing per ASTM A387 Grade 91; with the following additional characteristics: thickness 4.76 mm to 12.6 mm and 101.7 mm to 250 mm; width 3.5 m to 4.5 m; length 3.0 m to 12.5 m; with KCV Charpy impact property guarantee of 27 Jminimum at -29 °C; with the following additional chemical property guarantees, expressed as percentages by weight: carbon not over 0.10 and phosphorus not 0.015;

(cdxxii) flat-rolled products of other alloy steel, designated as A-677; the foregoing not further worked than hot-rolled; not in coils; specification: thermomechanically rolled, ASTM A 656 Grade 80 Type 7 plate, modified as described below by increasing the maximum carbon content and the minimum tensile strength; physical properties: width 600 mm or more; thickness: 12.45 mm to 13.08 mm; flatness: product to be controlled to one-third commercial flatness as specified under ASTM-A6; having the following chemical composition (percent by weight): carbon content not over 0.22; mechanical properties: tensile strength minimum ultimate tensile strength 690 MPa; maximum ultimate tensile strength 793 MPa; bend radius capable of taking a 90 degree bend with a radius 0.5 times the thickness of the plate (0.5 T) without any cracking as performed on a 88.9 mm vee opening lower die with a 3.18 mm radius upper die, the bend to be made perpendicular to the grain of the plate.

(cdxxiii) abrasion resistant, quenched and tempered flat-rolled products of alloy steel, designated as A-679 and entered in an aggregate annual quantity not exceed 180 t; the foregoing not further worked than hot-rolled, not in coils; physical dimensions: thickness 6 mm or more; width 600 mm or more; having the following chemical composition (percent by

weight): carbon not over 0.30, silicon not over 0.50, manganese not over 1.80, phosphorus not over 0.025, sulfur not over 0.001 and containing one or more of the following alloying elements: molybdenum not over 0.50, nickel not over 0.80, chromium not over 1.50, vanadium not over 0.08, niobium not over 0.05 and boron 0.001 to 0.005; mechanical properties: minimum Brinell hardness of 400 BHN; flatness of maximum deviation 1/2 of the values required by ASTM A6; fine-grained to austenitic grain size 6 or finer; water quenched after austenitization, followed by tempering, to achieve the specified hardness; vacuum degassed and desulfurized to maximum 0.001 percent to achieve the following standard of cleanliness: no inclusions greater than 1 mm in diameter on six polished test samples and not more than 3 inclusions greater than 1 mm in diameter per m^2 of the ground, finished surface; free from surface defects deeper than 0.3 mm or free from surface defects deeper than 0.5 mm if the affected area is not more than 5 percent of the total surface area;

(cdxxiv) flat-rolled products of other alloy steel, designated as A-686 and entered in an aggregate annual quantity not to exceed 1,000 t; not further worked than hot-rolled, not in coils; abrasion-resistant, heat-resistant steel; air quenched to produce the mechanical properties set out below; physical properties: width 600 mm or more; thickness 4.75 mm to 25 mm; having the following chemical composition (percent by weight): carbon 0.16 to 0.19, silicon 0.30 to 0.50, manganese 1.30 to 1.50, phosphorus not over 0.015, sulfur not over 0.005, chromium 0.90 to 1.45, nickel 0.50 to 0.90 and molybdenum 0.15 to 0.60; mechanical properties: hardness of minimum Brinell hardness 340 HB for thickness less than 20 mm and 320 HB for thickness greater than or equal to 20 mm; ductility: capable of being cold-formed without cracking to a 90-degree bend with a radius five times the thickness of the plate longitudinal to the rolling direction; capable of being cold-formed without cracking to a 90-degree bend with a radius four times the thickness of the product transverse to the rolling direction; capable of being cold rolled without cracking to a 360-degree bend with an inside diameter 30 times the thickness of the product; heat-resistance: retains its abrasion resistance at temperatures up to 500 °C due to hard chromium and molybdenum microcarbides;

(cdxxv) flat-rolled alloy steel structural products, the foregoing designated as A-697 and entered in an aggregate annual quantity not exceed 500 t; 4.0 mm to 16.0 mm in thickness; not over 3,350 mm in width; having the following chemical composition (expressed as percent by weight): carbon 0.145 to 0.194, silicon 0.15 to 0.30, manganese 1.15 to 1.35, phosphorus not over 0.02, sulfur not over 0.003, chromium 0.10 to 0.30, nickel not over 0.10, molybdenum not over 0.70, vanadium not over 0.055, titanium not over 0.01, copper not over 0.10, aluminum 0.045 to 0.080, niobium not over 0.020, boron 0.0007 to 0.0020 and nitrogen not over 0.0084; quenched and tempered; with a minimum yield strength of 960 N/mm^2; grain refined; surface treated with a low zinc silicate primer of maximum 12 micrometers; formatted with a square edge; free of scale; guaranteed to a thickness tolerance of one-third of ASTM standards; and guaranteed to a flatness tolerance of 3 mm per mm or better;

(cdxxvi) flat-rolled products of alloy steel, designated as A-729 and entered in an aggregate annual quantity not to exceed 525 t; the foregoing not further worked than hot-rolled; not in coils; of AISI 4142 of plastic mold quality, modified by decreasing phosphorus and sulfur content and increasing manganese content to produce a smoother surface with fewer inclusions; physical properties: width 1050 mm or more; thickness 4.75 mm or more; flatness less than or equal to 3 mm per mm; surface quality in accordance with EN 10 163, Class A; having the following chemical composition (percent by weight): carbon from 0.38 to 0.46, silicon from 0.15 to 0.40, manganese from 0.70 to 1.70, sulfur not over 0.002, chromium from 0.75 to 1.25, molybdenum from 0.15 to 0.30 and vanadium from 0.05 to 0.10; mechanical properties: prehardened (air hardened and tempered) to achieve Brinell hardness of 260 to 310 HB; tensile strength 880 MPa to 1,050 MPa; cleanliness of 2 or better in accordance with ASTM E45-A, including desulfurization to maximum 0.002 percent for high sulfidic cleanliness; vacuum degassing; argon stirring for oxide and sulfide cleanliness; special casting conditions to ensure high oxide cleanliness; ultrasonic testing performed on each plate in accordance with ASTM A 578, supplementary requirements S1 and S9; calcium treatment for inclusion shape control; modified by heat treatment and implementation of a rolling technique applying a rolling force of 11,000 t for high thickness reduction achieving a closely packed structure otherwise achieved only by forging (High Shape Factor Rolling) and resulting in low residual stress and homogeneous hardness distribution;

(cdxxvii) flat-rolled electrolytic tin plate according to ASTM 624-98, designated as A-672 and entered in an aggregate annual quantity not to exceed 3,000 t, the foregoing single reduced with tin coating weight designation #10; with an unmelted coating; with a surface finish between 254 and 635 micrometers; with a chemical treatment yielding to 8,890 to 16,510 micrometers of chromium per 0.3048 square meter of surface; with DOS or ATBC oil applied at a level of 0.10 to 0.30 grams per 66.45 mm^2; with a thickness of 0.167 mm to 0.194 mm; with a steel Type of "MR", a Temper Designation of "T-5" per ASTM A623 with a Non-Reflow Matte Finish Designation of 5C;

(cdxxviii) continuous annealed intersitial free tin plated steel, designated as A-715 and entered in an aggregate annual quantity not to exceed 2,000 t; the foregoing of thickness 0.2290 mm to 0.2950 mm; width 949.71 mm to 959.94 mm; hardness of HR 27T to HR 33T; yield strength 19.0 kg/mm^2 to 29.0 kg/mm^2, tensile strength of 30.0 kg/mm^2 to 40.0 kg/mm^2; having the following chemical composition per ASTM A623, type MR (percent by weight): carbon 0.00225 to 0.00375,

silicon not over 0.02, manganese 0.21 to 0.29, phosphorus not over 0.017, sulfur not over 0.015 LM, chromium not over 0.06 and nickel not over 0.03; with the following other properties: interstitial free vacuum degassed steel; 7C bright finish, coating weight 2.8/2.8 g/m^2 per ASTM A624; surface to be free of defects, imperfections, pits, scratches, rust, cracks, or seams; smooth edges; edge camber maximum 3 mm arc height in 1000 mm; and cross bow of not over 3.00 mm per length or width of 1000 mm; certified by the importer that such products will be slit into two coils of equal widths, each coil having a width of 471.678 mm to 472.033 mm for use in manufacturing of paint trays;

(cdxxix) longitudinally welded tubes of cold-rolled steel, designated as A-623 and entered in an aggregate annual quantity not to exceed 350 t; with the following specifications: outside diameter of 21.87 mm to 22.13 mm; wall thickness of 0.84 mm to 0.92 mm; in any of the following six lengths: (1) 936 mm to 937 mm; (2) 1,033 mm to1,034 mm; (3) 1,150 mm to1,151 mm; (4) 3,929 mm to 3,930 mm; (5) 3,950 mm to 3,951 mm; and (6) 4,205 mm to 4,206 mm; coated on outside diameter only, in two-step process: first, a zinc coating of 6 to 10 mg/m^2, thickness of 8 to 15 microns; and second, a fine uniform layer of corrosion-resistant varnish, thickness of 1 to 3 microns; having the following chemical composition (percent by weight): carbon 0.045 to 0.094, manganese 0.30 to 0.554, sulfur not over 0.20, phosphorus not over 0.20, silicon not over 0.30, aluminum 0.25 to 0.74 and niobium 0.015 to 0.030; carbon equivalent content of 0.120 to 0.185; or

(cdxxx) longitudinally welded tubes of cold-rolled steel, designated as A-623 and entered in an aggregate annual quantity not to exceed 400 t; with the following specifications: length 4,205 mm to 4,206 mm; outside diameter 21.87 mm to 22.13 mm, diameter reduced at one end to 19.2 mm to 19.5 mm, reduction beginning at a maximum of 60 mm from end; wall thickness of 0.84 mm to 0.92 mm; coated on outside diameter only, in two-step process: first, a zinc coating of 6 to 10 mg/m^2, thickness of 8 to 15 microns; second, a fine uniform layer of corrosion-resistant varnish, thickness of 1 to 3 microns; having the following chemical composition (percent by weight): carbon 0.045 to 0.094, manganese 0.30 to 0.554, sulfur not over 0.20, phosphorus not over 0.20, silicon not over 0.30, aluminum 0.25 to 0.74 and niobium 0.015 to 0.030; carbon equivalent content of 0.120 to 0.185."

2. The following new subheadings are inserted in numerical sequence in subchapter III of chapter 99 of the HTS, with the new material being inserted in the columns entitled "Heading/Subheading", "Article Description", "Rate of Duty 1 General", "Rates of Duty 1 Special" and "Rates of Duty 2", respectively:

	:[Goods...:]			
"9903.75.60	Enumerated in U.S. note 11(c)(ccxiii) to this subchapter	No change	No change	No change
9903.75.62	Enumerated in U.S. note 11(c)(ccxv) to this subchapter, and entered in an aggregate annual quantity not to exceed 15,000 t	No change	No change	No change
9903.75.63	Enumerated in U.S. note 11(c)(ccxvi) to this subchapter, and entered in an aggregate annual quantity not to exceed 3 t	No change	No change	No change
9903.75.64	Enumerated in U.S. note 11(c)(ccxvii) to this subchapter, and entered in an aggregate annual quantity not to exceed 8,000 t	No change	No change	No change
9903.75.65	Enumerated in U.S. note 11(c)(ccxviii) to this subchapter, and entered in an aggregate annual quantity not to exceed 5,000 t	No change	No change	No change
9903.75.66	Enumerated in U.S. note 11(c)(ccxix) to this subchapter, and entered in an aggregate annual quantity not to exceed 4,000 t	No change	No change	No change

	[Goods...:]			
9903.75.67	Enumerated in U.S. note 11(c)(ccxx) to this subchapter, and entered in an aggregate annual quantity not to exceed 120 t	No change	No change	No change
9903.75.68	Enumerated in U.S. note 11(c)(ccxxi) to this subchapter	No change	No change	No change
9903.75.69	Enumerated in U.S. note 11(c)(ccxxii) to this subchapter	No change	No change	No change
9903.75.70	Enumerated in U.S. note 11(c)(ccxxiii) to this subchapter	No change	No change	No change
9903.75.71	Enumerated in U.S. note 11(c)(ccxxiv) to this subchapter	No change	No change	No change
9903.75.72	Enumerated in U.S. note 11(c)(ccxxv) to this subchapter	No change	No change	No change
9903.75.73	Enumerated in U.S. note 11(c)(ccxxvi) to this subchapter, and entered in an aggregate annual quantity not to exceed 3,600 t	No change	No change	No change
9903.75.74	Enumerated in U.S. note 11(c)(ccxxvii) to this subchapter, and entered in an aggregate annual quantity not to exceed 930 t	No change	No change	No change
9903.75.75	Enumerated in U.S. note 11(c)(ccxxviii) to this subchapter, and entered in an aggregate annual quantity not to exceed 100 t	No change	No change	No change
9903.75.76	Enumerated in U.S. note 11(c)(ccxxix) to this subchapter	No change	No change	No change
9903.75.77	Enumerated in U.S. note 11(c)(ccxxx) to this subchapter	No change	No change	No change
9903.75.78	Enumerated in U.S. note 11(c)(ccxxxi) to this subchapter	No change	No change	No change
9903.75.79	Enumerated in U.S. note 11(c)(ccxxxii) to this subchapter	No change	No change	No change
9903.75.80	Enumerated in U.S. note 11(c)(ccxxxiii) to this subchapter	No change	No change	No change
9903.75.81	Enumerated in U.S. note 11(c)(ccxxxiv) to this subchapter	No change	No change	No change
9903.75.82	Enumerated in U.S. note 11(c)(ccxxxv) to this subchapter	No change	No change	No change
9903.75.83	Enumerated in U.S. note 11(c)(ccxxxvi) to this subchapter	No change	No change	No change
9903.75.84	Enumerated in U.S. note 11(c)(ccxxxvii) to this subchapter	No change	No change	No change

	[Goods...:]			
9903.75.85	Enumerated in U.S. note 11(c)(ccxxxviii) to this subchapter	No change	No change	No change
9903.75.86	Enumerated in U.S. note 11(c)(ccxxxix) to this subchapter	No change	No change	No change
9903.75.87	Enumerated in U.S. note 11(c)(ccxl) to this subchapter	No change	No change	No change
9903.75.88	Enumerated in U.S. note 11(c)(ccxli) to this subchapter	No change	No change	No change
9903.75.89	Enumerated in U.S. note 11(c)(ccxlii) to this subchapter	No change	No change	No change
9903.75.90	Enumerated in U.S. note 11(c)(ccxliii) to this subchapter	No change	No change	No change
9903.75.91	Enumerated in U.S. note 11(c)(ccxliv) to this subchapter	No change	No change	No change
9903.75.92	Enumerated in U.S. note 11(c)(ccxlv) to this subchapter	No change	No change	No change
9903.75.93	Enumerated in U.S. note 11(c)(ccxlvi) to this subchapter	No change	No change	No change
9903.75.94	Enumerated in U.S. note 11(c)(ccxlvii) to this subchapter	No change	No change	No change
9903.75.95	Enumerated in U.S. note 11(c)(ccxlviii) to this subchapter	No change	No change	No change
9903.75.96	Enumerated in U.S. note 11(c)(ccxlix) to this subchapter	No change	No change	No change
9903.75.97	Enumerated in U.S. note 11(c)(ccl) to this subchapter	No change	No change	No change
9903.76.24	Enumerated in U.S. note 11(c)(cclxxvii) to this subchapter	No change	No change	No change
9903.76.25	Enumerated in U.S. note 11(c)(cclxxviii) to this subchapter	No change	No change	No change
9903.76.38	Enumerated in U.S. note 11(c)(ccc) to this subchapter	No change	No change	No change
9903.76.39	Enumerated in U.S. note 11(c)(cdxxvii) to this subchapter, and entered in an aggregate annual quantity not to exceed 3,000 t	No change	No change	No change
9903.76.40	Enumerated in U.S. note 11(c)(cdxxviii) to this subchapter, and entered in an aggregate annual quantity not to exceed 2,000 t	No change	No change	No change
9903.76.81	Enumerated in U.S. note 11(c)(ccci) to this subchapter	No change	No change	No change

	:[Goods...:]			
9903.76.82	: Enumerated in U.S. note 11(c)(ccclii) to this subchapter	: No change	: No change	: No change
9903.76.83	: Enumerated in U.S. note 11(c)(ccciii) to this subchapter	: No change	: No change	: No change
9903.76.84	: Enumerated in U.S. note 11(c)(ccciv) to this subchapter	: No change	: No change	: No change
9903.76.85	: Enumerated in U.S. note 11(c)(cccv) to this subchapter	: No change	: No change	: No change
9903.77.03	: Enumerated in U.S. note 11(c)(ccclxlix) to this subchapter	: No change	: No change	: No change
9903.77.04	: Enumerated in U.S. note 11(c)(ccccl) to this subchapter	: No change	: No change	: No change
9903.77.05	: Enumerated in U.S. note 11(c)(ccccli) to this subchapter	: No change	: No change	: No change
9903.77.06	: Enumerated in U.S. note 11(c)(ccccli) to this subchapter	: No change	: No change	: No change
9903.77.07	: Enumerated in U.S. note 11(c)(ccccliii) to this subchapter	: No change	: No change	: No change
9903.77.08	: Enumerated in U.S. note 11(c)(ccccliv) to this subchapter	: No change	: No change	: No change
9903.77.09	: Enumerated in U.S. note 11(c)(ccclv) to this subchapter	: No change	: No change	: No change
9903.77.10	: Enumerated in U.S. note 11(c)(ccclvi) to this subchapter	: No change	: No change	: No change
9903.77.11	: Enumerated in U.S. note 11(c)(ccclvii) to this subchapter	: No change	: No change	: No change
9903.77.12	: Enumerated in U.S. note 11(c)(ccclviii) to this subchapter	: No change	: No change	: No change
9903.77.13	: Enumerated in U.S. note 11(c)(ccclix) to this subchapter	: No change	: No change	: No change
9903.77.14	: Enumerated in U.S. note 11(c)(ccclx) to this subchapter	: No change	: No change	: No change
9903.77.15	: Enumerated in U.S. note 11(c)(cccbxi) to this subchapter	: No change	: No change	: No change
9903.77.16	: Enumerated in U.S. note 11(c)(cccbxii) to this subchapter	: No change	: No change	: No change
9903.77.17	: Enumerated in U.S. note 11(c)(cccbxiii) to this subchapter	: No change	: No change	: No change

	:[Goods...:]			
9903.77.18	: Enumerated in U.S. note 11(c)(cccbxiv) to this subchapter	: No change	: No change	: No change
9903.77.19	: Enumerated in U.S. note 11(c)(cccbxv) to this subchapter	: No change	: No change	: No change
9903.77.20	: Enumerated in U.S. note 11(c)(cccbxvi) to this subchapter	: No change	: No change	: No change
9903.77.21	: Enumerated in U.S. note 11(c)(cccbxvii) to this subchapter	: No change	: No change	: No change
9903.77.22	: Enumerated in U.S. note 11(c)(cccbxviii) to this subchapter	: No change	: No change	: No change
9903.77.23	: Enumerated in U.S. note 11(c)(cccbxix) to this subchapter	: No change	: No change	: No change
9903.77.24	: Enumerated in U.S. note 11(c)(cccbxx) to this subchapter	: No change	: No change	: No change
9903.77.25	: Enumerated in U.S. note 11(c)(cccbxxi) to this subchapter	: No change	: No change	: No change
9903.77.26	: Enumerated in U.S. note 11(c)(cccbxxii) to this subchapter	: No change	: No change	: No change
9903.77.27	: Enumerated in U.S. note 11(c)(cccbxxiii) to this subchapter	: No change	: No change	: No change
9903.77.28	: Enumerated in U.S. note 11(c)(cccbxxiv) to this subchapter, and entered in an aggregate annual quantity not to exceed 5,000 t	: No change	: No change	: No change
9903.77.29	: Enumerated in U.S. note 11(c)(cccbxxv) to this subchapter	: No change	: No change	: No change
9903.77.51	: Enumerated in U.S. note 11(c)(cdii) to this subchapter	: No change	: No change	: No change
9903.77.79	: Enumerated in U.S. note 11(c)(cccxciii) to this subchapter	: No change	: No change	: No change
9903.77.80	: Enumerated in U.S. note 11(c)(cccxciv) to this subchapter	: No change	: No change	: No change
9903.77.81	: Enumerated in U.S. note 11(c)(cccxcv) to this subchapter	: No change	: No change	: No change
9903.77.82	: Enumerated in U.S. note 11(c)(cccxcvi) to this subchapter	: No change	: No change	: No change
9903.77.83	: Enumerated in U.S. note 11(c)(cccxcvii) to this subchapter	: No change	: No change	: No change
9903.77.84	: Enumerated in U.S. note 11(c)(cccxcviii) to this subchapter	: No change	: No change	: No change

	[Goods...]			
9903.77.87	Enumerated in U.S. note 11(c)(cdxviii) to this subchapter, and entered in an aggregate annual quantity not to exceed 500 t	No change	No change	No change
9903.77.88	Enumerated in U.S. note 11(c)(cdxix) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,500 t	No change	No change	No change
9903.77.89	Enumerated in U.S. note 11(c)(cdxx) to this subchapter, and entered in an aggregate annual quantity not to exceed 180 t	No change	No change	No change
9903.78.16	Enumerated in U.S. note 11(c)(cdi) to this subchapter	No change	No change	No change
9903.78.25	Enumerated in U.S. note 11(c)(ccli) to this subchapter	No change	No change	No change
9903.78.26	Enumerated in U.S. note 11(c)(cclii) to this subchapter	No change	No change	No change
9903.78.27	Enumerated in U.S. note 11(c)(cdxxi) to this subchapter	No change	No change	No change
9903.78.28	Enumerated in U.S. note 11(c)(cdxxii) to this subchapter : No change	No change	No change	
9903.78.29	Enumerated in U.S. note 11(c)(cdxxiii) to this subchapter, and entered in an aggregate annual quantity not to exceed 180 t	No change	No change	No change
9903.78.30	Enumerated in U.S. note 11(c)(cdxxiv) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,000 t	No change	No change	No change
9903.78.31	Enumerated in U.S. note 11(c)(cdxxv) to this subchapter, and entered in an aggregate annual quantity not to exceed 500 t	No change	No change	No change
9903.78.32	Enumerated in U.S. note 11(c)(cdxxvi) to this subchapter, and entered in an aggregate annual quantity not to exceed 525 t	No change	No change	No change
9903.78.40	Enumerated in U.S. note 11(c)(ccliii) to this subchapter	No change	No change	No change
9903.78.41	Enumerated in U.S. note 11(c)(ccliv) to this subchapter	No change	No change	No change
9903.78.42	Enumerated in U.S. note 11(c)(cclv) to this subchapter	No change	No change	No change
9903.78.43	Enumerated in U.S. note 11(c)(cclvi) to this subchapter	No change	No change	No change
9903.78.44	Enumerated in U.S. note 11(c)(cclvii) to this subchapter	No change	No change	No change

	[Goods...]			
9903.78.45	Enumerated in U.S. note 11(c)(cclviii) to this subchapter	No change	No change	No change
9903.78.46	Enumerated in U.S. note 11(c)(cclix) to this subchapter	No change	No change	No change
9903.78.47	Enumerated in U.S. note 11(c)(cclx) to this subchapter	No change	No change	No change
9903.78.48	Enumerated in U.S. note 11(c)(cclxi) to this subchapter, and entered in an aggregate annual quantity not to exceed 8,500 t	No change	No change	No change
9903.78.49	Enumerated in U.S. note 11(c)(cclxii) to this subchapter, and entered in an aggregate annual quantity not to exceed 250 t	No change	No change	No change
9903.78.50	Enumerated in U.S. note 11(c)(cclxiii) to this subchapter, and entered in an aggregate annual quantity not to exceed 250 t	No change	No change	No change
9903.78.51	Enumerated in U.S. note 11(c)(cclxiv) to this subchapter, and entered in an aggregate annual quantity not to exceed 250 t	No change	No change	No change
9903.78.52	Enumerated in U.S. note 11(c)(cclxv) to this subchapter, and entered in an aggregate annual quantity not to exceed 5,000 t	No change	No change	No change
9903.78.53	Enumerated in U.S. note 11(c)(cclxvi) to this subchapter, and entered in an aggregate annual quantity not to exceed 10,000 t	No change	No change	No change
9903.78.54	Enumerated in U.S. note 11(c)(cclxvii) to this subchapter, and entered in an aggregate annual quantity not to exceed 8,000 t	No change	No change	No change
9903.78.55	Enumerated in U.S. note 11(c)(cclxviii) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,000 t	No change	No change	No change
9903.78.56	Enumerated in U.S. note 11(c)(cclxix) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,000 t	No change	No change	No change
9903.78.57	Enumerated in U.S. note 11(c)(cclxx) to this subchapter	No change	No change	No change
9903.78.58	Enumerated in U.S. note 11(c)(cclxxi) to this subchapter	No change	No change	No change
9903.78.59	Enumerated in U.S. note 11(c)(cclxxii) to this subchapter, and entered in an aggregate annual quantity not to exceed 14,500 t	No change	No change	No change
9903.78.60	Enumerated in U.S. note 11(c)(cclxxiii) to this subchapter	No change	No change	No change

	:[Goods...:]			
9903.78.61	: Enumerated in U.S. note 11(c)(cclxxiv) to this subchapter, and entered in an aggregate annual quantity not to exceed 35,000 t	: No change	: No change	: No change
9903.78.62	: Enumerated in U.S. note 11(c)(cclxxv) to this subchapter, and entered in an aggregate annual quantity not to exceed 500 t	: No change	: No change	: No change
9903.78.63	: Enumerated in U.S. note 11(c)(cclxxvi) to this subchapter	: No change	: No change	: No change
9903.79.60	: Enumerated in U.S. note 11(c)(cclxxix) to this subchapter	: No change	: No change	: No change
9903.79.61	: Enumerated in U.S. note 11(c)(cclxxx) to this subchapter	: No change	: No change	: No change
9903.79.62	: Enumerated in U.S. note 11(c)(cclxxxi) to this subchapter	: No change	: No change	: No change
9903.79.63	: Enumerated in U.S. note 11(c)(cclxxxii) to this subchapter	: No change	: No change	: No change
9903.79.64	: Enumerated in U.S. note 11(c)(cclxxxiii) to this subchapter	: No change	: No change	: No change
9903.79.65	: Enumerated in U.S. note 11(c)(cclxxxiv) to this subchapter	: No change	: No change	: No change
9903.79.66	: Enumerated in U.S. note 11(c)(cclxxxv) to this subchapter	: No change	: No change	: No change
9903.79.67	: Enumerated in U.S. note 11(c)(cclxxxvi) to this subchapter	: No change	: No change	: No change
9903.79.68	: Enumerated in U.S. note 11(c)(cclxxxvii) to this subchapter	: No change	: No change	: No change
9903.79.69	: Enumerated in U.S. note 11(c)(cclxxxviii) to this subchapter	: No change	: No change	: No change
9903.79.70	: Enumerated in U.S. note 11(c)(cclxxxix) to this subchapter	: No change	: No change	: No change
9903.79.71	: Enumerated in U.S. note 11(c)(ccxc) to this subchapter	: No change	: No change	: No change
9903.79.72	: Enumerated in U.S. note 11(c)(ccxci) to this subchapter, and entered in an aggregate annual quantity not to exceed 80,000 t	: No change	: No change	: No change
9903.79.73	: Enumerated in U.S. note 11(c)(ccxcii) to this subchapter, and entered in an aggregate annual quantity not to exceed 2.700 t	: No change	: No change	: No change
9903.79.74	: Enumerated in U.S. note 11(c)(ccxciii) to this subchapter, and entered in an aggregate annual quantity not to exceed 4,250 t	: No change	: No change	: No change

	:[Goods...:]			
9903.79.75	: Enumerated in U.S. note 11(c)(ccxciv) to this subchapter, and entered in an aggregate annual quantity not to exceed 500 t	: No change	: No change	: No change
9903.79.76	: Enumerated in U.S. note 11(c)(ccxcv) to this subchapter, and entered in an aggregate annual quantity not to exceed 3,000 t	: No change	: No change	: No change
9903.79.77	: Enumerated in U.S. note 11(c)(ccxcvi) to this subchapter	: No change	: No change	: No change
9903.79.78	: Enumerated in U.S. note 11(c)(ccxcvii) to this subchapter, and entered in an aggregate annual quantity not to exceed 2,260 t	: No change	: No change	: No change
9903.79.79	: Enumerated in U.S. note 11(c)(ccxcviii) to this subchapter	: No change	: No change	: No change
9903.79.80	: Enumerated in U.S. note 11(c)(ccxcix) to this subchapter	: No change	: No change	: No change
9903.80.40	: Enumerated in U.S. note 11(c)(cccvi) to this subchapter	: No change	: No change	: No change
9903.80.41	: Enumerated in U.S. note 11(c)(cccvii) to this subchapter	: No change	: No change	: No change
9903.80.42	: Enumerated in U.S. note 11(c)(cccviii) to this subchapter	: No change	: No change	: No change
9903.80.43	: Enumerated in U.S. note 11(c)(ccclx) to this subchapter	: No change	: No change	: No change
9903.80.44	: Enumerated in U.S. note 11(c)(cccx) to this subchapter	: No change	: No change	: No change
9903.80.45	: Enumerated in U.S. note 11(c)(cccxi) to this subchapter	: No change	: No change	: No change
9903.80.46	: Enumerated in U.S. note 11(c)(cccxii) to this subchapter	: No change	: No change	: No change
9903.80.47	: Enumerated in U.S. note 11(c)(cccxiii) to this subchapter	: No change	: No change	: No change
9903.80.48	: Enumerated in U.S. note 11(c)(cccxiv) to this subchapter	: No change	: No change	: No change
9903.80.49	: Enumerated in U.S. note 11(c)(cccxv) to this subchapter	: No change	: No change	: No change
9903.80.50	: Enumerated in U.S. note 11(c)(cccxvi) to this subchapter	: No change	: No change	: No change
9903.80.51	: Enumerated in U.S. note 11(c)(cccxvii) to this subchapter	: No change	: No change	: No change

	[Goods...:]			
9903.80.52	Enumerated in U.S. note 11(c)(cccxviii) to this subchapter	No change	No change	No change
9903.80.53	Enumerated in U.S. note 11(c)(cccxix) to this subchapter	No change	No change	No change
9903.80.54	Enumerated in U.S. note 11(c)(cccxx) to this subchapter	No change	No change	No change
9903.80.55	Enumerated in U.S. note 11(c)(cccxxi) to this subchapter	No change	No change	No change
9903.80.56	Enumerated in U.S. note 11(c)(cccxxii) to this subchapter	No change	No change	No change
9903.80.57	Enumerated in U.S. note 11(c)(cccxxiii) to this subchapter	No change	No change	No change
9903.80.58	Enumerated in U.S. note 11(c)(cccxxiv) to this subchapter	No change	No change	No change
9903.80.59	Enumerated in U.S. note 11(c)(cccxxv) to this subchapter	No change	No change	No change
9903.80.60	Enumerated in U.S. note 11(c)(cccxxvi) to this subchapter	No change	No change	No change
9903.80.61	Enumerated in U.S. note 11(c)(cccxxvii) to this subchapter	No change	No change	No change
9903.80.62	Enumerated in U.S. note 11(c)(cccxxviii) to this subchapter	No change	No change	No change
9903.80.63	Enumerated in U.S. note 11(c)(cccxxix) to this subchapter	No change	No change	No change
9903.80.64	Enumerated in U.S. note 11(c)(cccxxx) to this subchapter, and entered in an aggregate annual quantity not to exceed 200 t	No change	No change	No change
9903.80.65	Enumerated in U.S. note 11(c)(cccxxxi) to this subchapter, and entered in an aggregate annual quantity not to exceed 50 t	No change	No change	No change
9903.80.66	Enumerated in U.S. note 11(c)(cccxxxii) to this subchapter, and entered in an aggregate annual quantity not to exceed 80 t	No change	No change	No change
9903.80.67	Enumerated in U.S. note 11(c)(cccxxxiii) to this subchapter, and entered in an aggregate annual quantity not to exceed 100 t	No change	No change	No change
9903.80.68	Enumerated in U.S. note 11(c)(cccxxxiv) to this subchapter, and entered in an aggregate annual quantity not to exceed 9 t	No change	No change	No change
9903.80.69	Enumerated in U.S. note 11(c)(cccxxxv) to this subchapter, and entered in an aggregate annual quantity not to exceed 5 t	No change	No change	No change

	[Goods...:]			
9903.80.70	Enumerated in U.S. note 11(c)(cccxxxvi) to this subchapter, and entered in an aggregate annual quantity not to exceed 200 t	No change	No change	No change
9903.80.71	Enumerated in U.S. note 11(c)(cccxxxvii) to this subchapter	No change	No change	No change
9903.80.72	Enumerated in U.S. note 11(c)(cccxxxviii) to this subchapter, and entered in an aggregate annual quantity not to exceed 325 t	No change	No change	No change
9903.80.73	Enumerated in U.S. note 11(c)(cccxxxix) to this subchapter	No change	No change	No change
9903.80.74	Enumerated in U.S. note 11(c)(cccxl) to this subchapter	No change	No change	No change
9903.80.75	Enumerated in U.S. note 11(c)(cccxli) to this subchapter	No change	No change	No change
9903.80.76	Enumerated in U.S. note 11(c)(cccxlii) to this subchapter	No change	No change	No change
9903.80.77	Enumerated in U.S. note 11(c)(cccxliii) to this subchapter	No change	No change	No change
9903.80.78	Enumerated in U.S. note 11(c)(cccxliv) to this subchapter	No change	No change	No change
9903.80.79	Enumerated in U.S. note 11(c)(cccxlv) to this subchapter	No change	No change	No change
9903.80.80	Enumerated in U.S. note 11(c)(cccxlvi) to this subchapter	No change	No change	No change
9903.80.81	Enumerated in U.S. note 11(c)(cccxlvii) to this subchapter	No change	No change	No change
9903.80.82	Enumerated in U.S. note 11(c)(cccxlviii) to this subchapter, and entered in an aggregate annual quantity not to exceed 325 t	No change	No change	No change
9903.80.83	Enumerated in U.S. note 11(c)(ccli) to this subchapter	No change	No change	No change
9903.80.84	Enumerated in U.S. note 11(c)(cclii) to this subchapter	No change	No change	No change
9903.81.00	Enumerated in U.S. note 11(c)(ccclxxvi) to this subchapter	No change	No change	No change
9903.81.01	Enumerated in U.S. note 11(c)(ccclxxvii) to this subchapter	No change	No change	No change
9903.81.02	Enumerated in U.S. note 11(c)(ccclxxviii) to this subchapter	No change	No change	No change
9903.81.03	Enumerated in U.S. note 11(c)(ccclxxix) to this subchapter	No change	No change	No change

	:[Goods...:]			
9903.81.04	: Enumerated in U.S. note 11(c)(ccclxxx) to this subchapter, and entered in an aggregate annual not to exceed 550 t	: No change	: No change	: No change
9903.81.05	: Enumerated in U.S. note 11(c)(ccclxxxi) to this subchapter	: No change	: No change	: No change
9903.81.06	: Enumerated in U.S. note 11(c)(ccclxxxii) to this subchapter	: No change	: No change	: No change
9903.81.07	: Enumerated in U.S. note 11(c)(ccclxxxiii) to this subchapter	: No change	: No change	: No change
9903.81.08	: Enumerated in U.S. note 11(c)(ccclxxxiv) to this subchapter	: No change	: No change	: No change
9903.81.09	: Enumerated in U.S. note 11(c)(ccclxxxv) to this subchapter	: No change	: No change	: No change
9903.81.10	: Enumerated in U.S. note 11(c)(ccclxxxvi) to this subchapter, and entered in an aggregate annual quantity not to exceed 13,000 t	: No change	: No change	: No change
9903.81.11	: Enumerated in U.S. note 11(c)(ccclxxxvii) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,700 t	: No change	: No change	: No change
9903.81.12	: Enumerated in U.S. note 11(c)(ccclxxxviii) to this subchapter, and entered in an aggregate annual quantity not to exceed 300 t	: No change	: No change	: No change
9903.81.13	: Enumerated in U.S. note 11(c)(ccxiv) to this subchapter	: No change	: No change	: No change
9903.81.70	: Enumerated in U.S. note 11(c)(ccclxxxix) to this subchapter	: No change	: No change	: No change
9903.81.71	: Enumerated in U.S. note 11(c)(cccxc) to this subchapter	: No change	: No change	: No change
9903.81.72	: Enumerated in U.S. note 11(c)(cccxci) to this subchapter	: No change	: No change	: No change
9903.81.73	: Enumerated in U.S. note 11(c)(cccxcii) to this subchapter	: No change	: No change	: No change
9903.82.10	: Enumerated in U.S. note 11(c)(cccxcix) to this subchapter	: No change	: No change	: No change
9903.82.11	: Enumerated in U.S. note 11(c)(cd) to this subchapter	: No change	: No change	: No change
9903.82.12	: Enumerated in U.S. note 11(c)(cdxii) to this subchapter, and entered in an aggregate annual quantity not to exceed 25 t	: No change	: No change	: No change
9903.82.13	: Enumerated in U.S. note 11(c)(cdxiii) to this subchapter	: No change	: No change	: No change

	:[Goods...:]			
9903.82.14	: Enumerated in U.S. note 11(c)(cdxiv) to this subchapter	: No change	: No change	: No change
9903.82.15	: Enumerated in U.S. note 11(c)(cdxv) to this subchapter	: No change	: No change	: No change
9903.82.16	: Enumerated in U.S. note 11(c)(cdxvi) to this subchapter, and entered in an aggregate annual quantity not to exceed 50 t	: No change	: No change	: No change
9903.82.17	: Enumerated in U.S. note 11(c)(cdxvii) to this subchapter, and entered in an aggregate annual quantity not to exceed 20 t	: No change	: No change	: No change
9903.82.90	: Enumerated in U.S. note 11(c)(cdiii) to this subchapter	: No change	: No change	: No change
9903.82.91	: Enumerated in U.S. note 11(c)(cdiv) to this subchapter	: No change	: No change	: No change
9903.82.92	: Enumerated in U.S. note 11(c)(cdv) to this subchapter	: No change	: No change	: No change
9903.82.93	: Enumerated in U.S. note 11(c)(cdvi) to this subchapter	: No change	: No change	: No change
9903.82.94	: Enumerated in U.S. note 11(c)(cdvii) to this subchapter	: No change	: No change	: No change
9903.82.95	: Enumerated in U.S. note 11(c)(cdviii) to this subchapter	: No change	: No change	: No change
9903.82.96	: Enumerated in U.S. note 11(c)(cdix) to this subchapter	: No change	: No change	: No change
9903.82.97	: Enumerated in U.S. note 11(c)(cdx) to this subchapter	: No change	: No change	: No change
9903.82.98	: Enumerated in U.S. note 11(c)(cdxi) to this subchapter	: No change	: No change	: No change
9903.82.99	: Enumerated in U.S. note 11(c)(cdxxix) to this subchapter, and entered in an aggregate annual quantity not to exceed 350 t	: No change	: No change	: No change
9903.83.00	: Enumerated in U.S. note 11(c)(cdxxx) to this subchapter, and entered in an aggregate annual quantity not to exceed 400 t	: No change	: No change	: No change"

CONFORMING CHANGES:

Subheading 9903.72.57 is modified by inserting at the end of the article description "and 9903.78.25 through 9903.78.32";

Subheading 9903.72.78 is modified by inserting at the end of the article description "and 9903.78.40 through 9903.78.63";

Subheading 9903.73.01 is modified by deleting "9903.75.59" and by inserting in lieu thereof "9903.75.97";

Subheading 9903.73.18 is modified by deleting "9903.76.23" and by inserting in lieu thereof "9903.76.25", and by inserting at the end of the article description "and 9903.79.60 through 9903.79.80";

Subheading 9903.73.35 is modified by deleting "9903.76.37" and by inserting in lieu thereof "9903.76.40";

Subheading 9903.73.48 is modified by deleting "9903.76.80" and by inserting in lieu thereof "9903.76.85", and by inserting at the end of the article description "and 9903.80.40 through 9903.80.84";

Subheading 9903.73.55 is modified by deleting "9903.77.02" and by inserting in lieu thereof "9903.77.29", and by inserting at the end of the article description "and 9903.81.00 through 9903.81.13";

Subheading 9903.73.65 is modified by inserting at the end of the article description ", as described in subheadings 9903.81.70 through 9903.81.73";

Subheading 9903.73.82 is modified by inserting at the end of the article description "and subheadings 9903.82.90 through 9903.83.00";

Subheading 9903.73.88 is modified by deleting "subheading 9903.77.50" and by inserting in lieu thereof "subheadings 9903.77.50 through 9903.77.51";

Subheading 9903.74.01 is modified by inserting at the end of the article description "and 9903.82.10 through 9903.82.17";

Subheading 9903.74.12 is modified by deleting "9903.77.86" and by inserting in lieu thereof "9903.77.89"; and

Subheading 9903.74.18 is modified by deleting "9903.78.15" and by inserting in lieu thereof "9903.78.16".

[FR Doc. 03–7782 Filed 3–27–03; 1:13 pm]
BILLING CODE 3190–01–C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending March 21, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–14710.
Date Filed: March 17, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 AFR 0135 dated March 14, 2003,
Mail Vote 272—Resolution 010a,
TC2 Within Africa Special Passenger Amending Resolution,
Intended effective date: April 15, 2003.

Docket Number: OST–2003–14712.
Date Filed: March 17, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 ME–AFR 0101 dated March 18, 2003,
Mail Vote 274—Resolution 002cc,
TC2 Middle East-Africa Special Passenger Amending Resolution,
Intended effective date: April 15, 2003.

Docket Number: OST–2003–14719.
Date Filed: March 19, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 SATL–EUR 0105 dated February 11, 2003,
TC12 South Atlantic-Europe Resolutions r1–r12,
Minutes—PTC12 SATL–EUR 0106 dated March 4, 2003,
Tables—PTC12 SATL–EUR Fares 0028 dated February 14, 2003,
Intended effective date: April 1, 2003.

Docket Number: OST–2003–14720.
Date Filed: March 19, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR 0500 dated March 21, 2003,
Mail Vote 281—Resolution 010u,
TC2 Within Europe Special Passenger Amending Resolution from Austria to Europe,
PTC2 EUR 0501 dated March 21, 2003,
Mail Vote 283—Resolution 010w,
TC2 Within Europe Special Passenger Amending Resolution from UK to Europe,
PTC2 EUR 0502 dated March 21, 2003,
Mail Vote 275—Resolution 010t,
TC2 Within Europe Special Passenger Amending Resolution from Spain to Europe,
PTC2 EUR 0503—dated March 21, 2003,
Mail Vote 285—Resolution 010x ,
TC2 Within Europe Special Passenger Amending Resolution from Belgium to Europe,
Intended effective dates: March 26, 2003, March 28, 2003, April 1, 2003.

Docket Number: OST–2003–14721.
Date Filed: March 19, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 MATL–EUR 0075 dated February 11, 2003,
TC12 Mid Atlantic-Europe Resolution r1–r23,
Minutes—PTC12 MATL–EUR 0076 dated March 7, 2003,
Tables—PTC12 MATL–EUR Fares 0024 dated February 14, 2003,
Intended effective date: April 1, 2003.

Docket Number: OST–2003–14722.
Date Filed: March 19, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 MEX–EUR 0057 dated February 18, 2003,
TC12 North Atlantic Mexico-Europe Resolutions r1–r20,
Minutes—PTC12 MEX–EUR 0058 dated March 11, 2003,
Tables—PTC12 MEX–EUR Fares 0021 dated February 21, 2003,
Intended effective date: May 1, 2003.

Docket Number: OST–2003–14723.
Date Filed: March 19, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 NMS–ME 0189 dated February 28, 2003,
Mail Vote 267—TC12 Mid Atlantic-Middle East
Resolutions r1–r10,
PTC12 NMS–ME 0190 dated March 4, 2003,
Mail Vote 268—TC12 South Atlantic-Middle East
Resolutions r11–r20,
Minutes—PTC12 NMS–ME 0191 dated March 14, 2003,
Tables—PTC2 NMS–ME Fares 0099 dated February 28, 2003 (Mid Atlantic),
PTC12 NMS–ME Fares 0103 dated March 7, 2003 (South Atlantic),
Intended effective date: April 1, 2003.

Docket Number: OST–2003–14724.
Date Filed: March 19, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 NMS–ME 0185 dated February 18, 2003,
TC12 North Atlantic-Middle East Resolutions r1–r26,
Minutes—PTC12 NMS–ME 0191 dated March 14, 2003,
Tables—PTC12 NMS–ME Fares 0097 dated February 21, 2003,
Intended effective date: April 1, 2003.

Docket Number: OST–2003–14763.
Date Filed: March 21, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR 0504 dated March 25, 2003,
Mail Vote 287—Resolution 010z,
TC2 Within Europe Special Passenger Amending Resolution from Morocco to Europe,
PTC2 EUR 0505 dated March 25, 2003,
Mail Vote 288—Resolution 010a,
TC2 Within Europe Special Passenger Amending Resolution from Portugal to Europe,
Intended effective date: April 1, 2003.

Dorothy Y. Beard,
Chief, Docket Operations & Media Management, Federal Register Liaison.
[FR Doc. 03–7657 Filed 3–28–03; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 21, 2003

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's procedural regulations (See 14 CFR 301.201 *et. seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2003–14773.
Date Filed: March 21, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 11, 2003.
Description: Application of Primaris Airlines, Inc., pursuant to 49 U.S.C. 41102 and subpart B, requesting a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

Docket Number: OST–2003–14774.
Date Filed: March 21, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 11, 2003.
Description: Application of Primaris Airlines, Inc., pursuant to 49 U.S.C. 41102 and subpart B, requesting a certificate of public convenience and necessity to engage in foreign scheduled air transportation of persons, property, and mail: (a) Between any point in the United States and any point in France; (b) between any point in the United States and any point in the Federal Republic of Germany; (c) between any point in the United States and any point in Canada; and, (d) between Boston and London (Gatwick).

Dorothy Y. Beard,
Chief, Docket Operations & Media Management, Federal Register Liaison.
[FR Doc. 03–7658 Filed 3–28–03; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Change 1 to Advisory Circular 27–1B, Certification of Normal Category Rotorcraft, and Change 1 to Advisory Circular 29–2C, Certification of Transportation Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of Advisory Circular (AC) changes.

SUMMARY: The FAA announces the issuances of Change 1 to AC 27–1B, Certification of Normal Category Rotorcraft, and Change 1 to AC 29–2C, Certification of Transport Category Rotorcraft. The changes contain guidance material to bring the AC's up to date with the most recent amendments to 14 Code of Federal Regulations (CFR) parts 27 and 29 and current practices.

DATES: The FAA issued Change 1 to AC 27–1B, Certification of Normal Category Rotorcraft, and Change 1 to AC 29–2C, Certification of Transport Category Rotorcraft, on February 12, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy L. Jones, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate, Aircraft Certification Service, Fort

Worth, TX 76193–0110; telephone (817) 222–5359; fax (817) 222–5961; e-mail: *Kathy.L.Jones@FAA.GOV*. Both of the AC's, with Change 1 incorporated, are available on the Internet at the following address: *http://www.airweb.faa.gov/rgl*. If you do not have access to the Internet, you may request a copy by contacting the individual listed in this section. In the rear future, the Government Printing Office (GPO) will issue a paper coy of Change 1 to both AC's.

SUPPLEMENTARY INFORMATION: The FAA published a notice in the **Federal Register** on July 26, 2001 (66 FR 39074) that announced the availability of the proposed changes and invited interested parties to comment.

Issued in Fort Worth, Texas, on March 20, 2003.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–7676 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–13]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 21, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–14148 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb (425–227–1134), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave, SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 26, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations,

Petitions for Exemption

Docket No.: FAA–2002–14148.
Petitioner: Embraer.
Section of 14 CFR Affected: 14 CFR 25.901(c).
Description of Relief Sought: Exemption for Embraer ERJ–170 series airplanes from 14 CFR 25.901(c), with regard to certain extremely remote powerplant control system failures that could affect only a very limited area of the flight envelope.

[FR Doc. 03–7668 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–14]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 21, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–200X–XXXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7653.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 26, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13581.
Petitioner: TransNorthern, LLC.
Section of 14 CFR Affected: 14 CFR part 43.3.
Description of Relief Sought: To permit TNA pilots who have completed approved TNA training to (1) remove and reinstall passenger seats and (2) replenish hydraulic fluid in the hydraulic reservoir of Douglas R4D–8Z aircraft operated by TNA.
Docket No.: FAA–2002–12365.

Petitioner: Mr. David J. Flock.
Section of 14 CFR Affected: 14 CFR parts 43.3, 43.7, and 43.9.
Description of Relief Sought: To permit the petitioner to install and remove Union Aviation Incorporated hand controls on Cessna model 172, 177, and 182 aircraft without holding an FAA-approved mechanic's certificate. The exemption would also allow the petitioner to approve the aircraft for return to service after such an alteration without making logbook entries regarding the alterations.

[FR Doc. 03–7669 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–15]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 21, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–14013 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb (425–227–1134), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 26, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–14013.
Petitioner: Embraer.
Section of 14 CFR Affected: 14 CFR 25.841(a)(2)(ii).
Description of Relief Sought: Exemption of EMBRAER ERJ–170 airplanes from 14 CFR 25.841(a)(2)(ii) affected by cabin altitude exceeding 40,000 feet following a rare event of an uncontained engine rotor burst hitting the pressurized cabin.

[FR Doc. 03–7670 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–16]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice for the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before [insert date 20 days after date of publication].

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002-14148 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comment, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb (425–227–1134), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC., on March 26, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–14148.
Petitioner: Embraer.
Section of 14 CFR Affected: 14 CFR 25.901(c).
Description of Relief Sought: Exemption for EMBRAER ERJ–170 series airplanes from 14 CFR 25.901(c), with regard to certain extremely remote powerplant control system failures that could affect only a very limited area of the flight envelope.

[FR Doc. 03–7671 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development (R,E&D) Advisory Committee

AGENCY: Federal Aviation Administration.

ACTION: Notice of meeting.

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee.

Name: Research, Engineering & Development Advisory Committee.

Time and Date: April 29—9 a.m.–5 p.m.; April 30—9 a.m.–5 p.m.

Place: Federal Aviation Administration—Bessie Coleman Room 800 Independence Avenue, SW., Washington, DC.

Purpose: On April 29–30 from 9 a.m.–5 p.m. the meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, security, human factors and environment and energy.

Attendance is open to the interested public but seating is limited. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267–8937 or *gloria.dunderman@faa.gov.* All attendees will be required to sign-in at security, provide picture ID and be escorted to the meeting room.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on March 18, 2003.

Herman A. Rediess,

Director, Office of Aviation Research.

[FR Doc. 03–7551 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Charter Renewal, RTCA, Inc. (Utilized as an Advisory Committee)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Charter renewal.

SUMMARY: The FAA is issuing this notice to advise the public of the renewal of the RTCA Charter (FAA Order 1110.77P) for two years, effective March 13, 2003. The Administrator is the sponsor of the committee. The objective of the advisory committee is to seek solutions to problems involving applied technology (for example, electronics, computers, and telecommunications) to aeronautical operations that impact the future air traffic management system. The solutions are often about recommended minimum operational performance standards and technical guidance documents that are acceptable to government, industry, and users. Standards ensure equivalent performance of the same generic equipment built by different manufacturers. Government regulatory and procurement practices reference or use RTCA standards (with or without change). The Secretary of Transportation has determined that the information and use of the committee are necessary in the public interest in connection with the performance of duties imposed on the FAA by law.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*, or the FAA Office of System Architecture and Investment Analysis (ASD–1), 800 Independence Avenue, SW., Washington, DC, telephone (202) 385–7100; fax (202) 385–7105.

SUPPLEMENTARY INFORMATION: Steering Committee and Special Committee meetings are open to the public and announced in the **Federal Register**, except as authorized by section 10(d) of the Federal Advisory Committee Act.

Issued in Washington, DC, on March 20, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–7665 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–02–C–00–MCW To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Mason City Municipal Airport, Mason City, IA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Mason City Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 15, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Pamela Osgood, Interim Airport Manager, Mason City Municipal Airport, at the following address: Mason City Municipal Airport, P.O. Box 2585, Mason City, IA 50402.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Mason City Municipal Airport, Mason City, Iowa, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 901 Locust Street, Kansas City, MO 64106, (816) 329–2641. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Mason City Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 21, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Mason City Airport Commission, Mason City, Iowa, was substantially complete within the requirements of § 158.25 fo part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 19, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: July, 2003.

Proposed charge expiration date: April, 2009.

Total estimated PFC revenue: $379,500.

Brief description of proposed project(s): Runway safety area improvements; runway edge drains, phase 2; reconstruct terminal and general aviation ramps; reconstruct terminal restrooms; aircraft passenger lift; replace windcone and install supplemental windcone; update airport master plan; rehabilitate Runway 17/35 (design); acquire land in runway protection zone; PFC consultation services.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Mason City Municipal Airport. Issued in Kansas City, Missouri on March 21, 2003.

Jim Johnson,

Acting Manager, Airports Division, Central Region.

[FR Doc. 03–7675 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–14794]

Proposed Guidance for the Use of Binding Arbitration Under the Administrative Dispute Resolution Act of 1996

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of proposed guidance; Request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA), a modal administration within the U.S. Department of Transportation (DOT), proposes to use the alternative dispute resolution (ADR) technique of binding arbitration in civil penalty forfeiture proceedings in which the only issues remaining to be resolved are: (1) The amount of the civil penalty owed, and (2) the length of time in which to pay. it. FMCSA will *not* agree to arbitrate maximum penalty cases issued pursuant to section 222 of the Motor Carrier Safety Improvement Act of 1999, or any cases that require interpretation of the regulations or analysis of important policy issues. FMCSA intends to implement binding arbitration immediately upon publication of this notice. Binding arbitration will be implemented to provide more efficient and effective resolution of the large volume of adjudication cases that are now before FMCSA's Chief Safety Officer. In accordance with section 575(c) of the Administrative Dispute Resolution Act of 1996, FMCSA has submitted this Guidance to the Attorney General for consultation. The Attorney General concurs in the issuance of this Guidance. Changes to the arbitration program may be made, however, in accordance with any comments or information received by FMCSA concerning implementation of binding arbitration.

DATES: Comments must be received on or before May 30, 2003.

ADDRESSES: You may mail, fax, hand deliver or electronically submit written comments on the Guidance to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 7th Street, SW., Washington, DC 20590–0001, FAX (202) 493–2251, on-line at *http://dms.dot.gov/submit.* Please include the docket number that appears in the heading of this document in your submission. Comments may be examined at the Dockets Management Facility from 9 a.m. to 5 p.m., Eastern Standard Time, Monday through Friday, except Federal holidays. You may also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at *http://dms.dot.gov/search.htm* and by typing the last five digits of the docket number appearing at the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the "help" section of the web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on-line.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, (202) 385–2351, Federal Motor Carrier Safety Administration, Adjudications Counsel, 400 7th Street, SW., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in finalizing this Guidance by submitting such written comments, views, or arguments as they may desire. All comments received will be included in the docket and available for public inspection before and after the comment closing date. All comments received on or before the closing date will be considered by FMCSA. Late-filed comments will be considered to the extent practicable. The Guidance referenced in this notice may be changed in light of the comments received.

Availability of the Guidance

This notice and request for comments merely identifies the Guidance. A complete copy of the Guidance has been placed in the public docket. The docket may be accessed at the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 7th Street, SW., Washington, DC 20590–0001, or on-line at *http://dms.dot.gov.* The docket number is provided at the beginning of this Notice.

Background

In the Administrative Dispute Resolution Act of 1996 (ADRA) (Pub. L. 104–320, 110 Stat.3870 (October 19, 1996) (now codified at 5 U.S.C. 571–583)), Congress authorizes Federal agencies to utilize binding arbitration to resolve administrative disputes, provided that conditions specified in the ADRA are satisfied. Among other things, the ADRA requires interested agencies to develop and issue guidance on the appropriate use of arbitration. FMCSA has posted its Guidance at *http://www.fmcsa.dot.gov* as well as in the docket for this Notice at *http://dms.dot.gov* and is implementing binding arbitration in civil penalty forfeiture proceedings in which the only issues remaining to be resolved are the amount of the civil penalty owed and the length of time in which to pay it. The Chief Safety Officer will determine if a case is appropriate for arbitration and notify the parties in writing that the case will be referred to arbitration with the consent of both parties. A detailed explanation of the notification and consent process is provided in the Guidance. Cases requiring interpretation of the regulations or analysis of important policy issues will *not* be selected for binding arbitration. FMCSA will immediately modify or terminate the use of binding arbitration if there is reason to believe that continuing it is inconsistent with the goals and objectives of the safety regulations.

In accordance with section 575 of the ADRA, FMCSA's Guidance for use of binding arbitration to resolve civil penalty disputes was developed in consultation with the Attorney General. FMCSA has been informed by the Department of Justice (DOJ) that the Attorney General concurs in the Guidance and implementation of binding arbitration.

The Guidance satisfies the requirements regarding binding arbitration specified by section 575 of the ADRA of 1996, and addresses use of binding arbitration in a manner consistent with FMCSA's dispute resolution process and its procedural rules of practice at 49 CFR part 386.

Issued: March 24, 2003.

Annette M. Sandberg,

Acting Administrator.

[FR Doc. 03–7656 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2003–14804]

Notice of Request for the Extension of Currently Approved Information Collections

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collections: Bus Testing Program.

DATES: Comments must be submitted before May 30, 2003.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Marcel Bellanger, Office of Research, Demonstration and Innovation, (202) 366–0725.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of these information collections, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB reinstatement of this information collection.

Title: Bus Testing Program (*OMB Number: 2132–0550*).

Background: 49 U.S.C. 5323(c) provides that no federal funds appropriated or made available after September 30, 1989, may be obligated or expended for the acquisition of a new bus model (including any model using alternative fuels) unless the bus has been tested at the Bus Testing Center (Center) in Altoona, Pennsylvania. 49 U.S.C. 5318(a) further specifies that each new bus model is to be tested for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise.

The operator of the Bus Testing Center, the Pennsylvania Transportation Institute (PTI), has entered into a cooperative agreement with FTA. PTI operates and maintains the Center, and establishes and collects fees for the testing of the vehicles at the facility. Upon completion of the testing of the vehicle at the Center, a test report is provided to the manufacturer of the new bus model. The bus manufacturer certifies to an FTA grantee that the bus the grantee is purchasing has been tested at the Center. Also, grantees about to purchase a bus use this report to assist them in making their purchasing decisions. PTI maintains a reference file for all the test reports which are made available to the public.

Respondents: Bus manufacturers.

Estimated Annual Burden on Respondents: 3½ hours for each of the 15 bus manufacturers.

Estimated Total Annual Burden: 53 hours.

Frequency: Annual.

Issued: March 26, 2003.

Timothy B. Wolgast,

Acting Associate Administrator for Administration.

[FR Doc. 03–7659 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–8827; Notice 3]

Dan Hill and Associates, Inc.; Red River Manufacturing; Receipt of Application for Renewal of Temporary Exemptions From Federal Motor Vehicle Safety Standard No. 224

We are asking for comments on the application by Dan Hill and Associates, Inc. ("Dan Hill"), of Norman, Oklahoma, and by Red River Manufacturing ("Red River") of West Fargo, North Dakota, for a renewal of their temporary exemptions from Motor Vehicle Safety Standard No. 224, *Rear Impact Protection*. Dan Hill asserts that compliance would cause substantial economic hardship to manufacturers that have tried in good faith to comply with the standard. Red River argues that absent an exemption it would be otherwise unable to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle.

We are publishing this notice of receipt of the applications in accordance with our regulations on the subject. This action does not mean that we have made a judgment yet about the merits of the application.

Dan Hill and Red River have been the beneficiaries of temporary exemptions from Standard No. 224, and renewals of exemptions, from January 26, 1998, to April 1, 2003 (for **Federal Register** notices granting the petitions by Dan Hill, *see* 63 FR 3784 and 64 FR 49047; by Red River, *see* 63 FR 15909 and 64 FR 49049; for the most recent grant applicable to both petitioners, *see* 66 FR 20028). The information below is based on material from the petitioners' original and renewal applications of 1998, 1999, 2001, and their most recent applications.

Dan Hill and Red River filed their petitions at least 60 days before the expiration of their existing exemption. Thus, pursuant to 49 CFR 555.8(e), their current exemptions will not expire until we have made a decision on the current requests.

The Petitioners' Reasons Why They Continue To Need an Exemption

Dan Hill. Dan Hill manufactures and sells horizontal discharge semi-trailers (Models ST–1000, CB–4000, and CB–5000, collectively referred to as "Flow Boy") that are used in the road construction industry to deliver asphalt and other road building materials to the construction site. The Flow Boy is designed to connect with and latch onto various paving machines ("pavers"). The Flow Boy, with its hydraulically controlled horizontal discharge system, discharges hot mix asphalt at a controlled rate into a paver which overlays the road surface with asphalt material.

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 kg or more, including Flow Boy trailers, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear Impact Guards*. Dan Hill argued that installation of the rear impact guard will prevent the Flow Boy from connecting to the paver. Thus, Flow Boy trailers will no longer be functional. Paving contractors will be forced to use either competitors' horizontal discharge trailers that comply with Standard No. 224 or standard dump body trucks or trailers which, according to Dan Hill, have inherent limitations and safety risks. In spite of continued exemptions since the effective date of the standard, Dan Hill avers that it has been unable to engineer its trailers to conform. Dan Hill and Red River jointly filed a petition for rulemaking with NHTSA to amend Standard No. 224 to exclude horizontal discharge trailers. The petition was filed on March 23, 2001. Dan Hill requests an exemption of two years with the hope that the petition will be granted and rulemaking completed by April 1, 2005. We discuss below its efforts to conform in greater detail.

Red River. Red River has previously applied for exemptions on the basis that compliance would cause it substantial economic hardship. The company now applies for an exemption on the basis that absent an exemption it would be otherwise unable to sell a vehicle whose overall level of safety is at least equal to that of a nonexempted motor vehicle. Red River believes "petitioning on the basis of equal overall safety ([49 CFR] 555.6(d)) is more appropriate because Red River is now part of a larger family of companies and because the merits of Red River's requested renewal of its exemption under § 555.6(d) are straightforward and clear." Red River references its continuing but unsuccessful efforts to develop a means to conform its horizontal discharge trailers to Standard No. 224, and its petition for ameliorative rulemaking, filed jointly with Dan Hill.

Dan Hill's Reasons Why It Believes That Compliance Would Cause It Substantial Economic Hardship and That It Has Tried in Good Faith To Comply With Standard No. 224

Dan Hill is a small volume manufacturer. Its total production in the 12-month period preceding its latest petition was 55 units, a substantial decline from the 151 units reported in the petition preceding the current one. In the absence of a further exemption, Dan Hill asserts that the majority of its "work force in the Norman, Oklahoma plant would be laid off resulting in McClain County losing one of its largest single employers." If the exemption were not renewed, Dan Hill's gross sales in 2003 would decrease by approximately $5,526,522. Its cumulative net income after taxes for the fiscal years 2000, 2001, and 2002 was $271,058. It projects a net income of $46,267 for fiscal year 2003.

The **Federal Register** notices cited above contain Dan Hill's arguments of its previous good faith efforts to conform with Standard No. 224 and formed the basis of our previous grants of Dan Hill's petitions. Dan Hill originally asked for a year's exemption in order to explore the feasibility of a rear impact guard that would allow the Flow Boy trailer to connect to a conventional paver. It concentrated its efforts between 1998 and 1999 in investigating the feasibility of a retractable rear impact guard, which would enable Flow Boys to continue to connect to pavers. The company examined various alternatives: Installation of a fixed rear impact guard, redesign of pavers, installation of a removable rear impact guard, installation of a retractable rear impact guard, and installation of a "swing-up" style tailgate with an attached bumper. Its efforts to conform, from September 1999 until December 2000, involved the design of a swing-in retractable rear impact guard. A review of its design, by Tech, Inc., showed that this, too, was not feasible. Among other things, Tech, Inc., was concerned that "the tailgate, hinges, and air cylinders will not meet the criteria of the Standard 224-plasticity requirement," and that "the bumper is a potential safety hazard" because if the gate were raised and "a flagman or a trailer stager is in between the paver and the bumper while the gate and bumper is rising, the bumper could cause serious injury or death." A copy of Tech Inc.'s report has been filed in the docket as part of Dan Hill's 2001 petition. The report also indicated that the costs associated with this design may be cost prohibitive "when trying to win business in a highly competitive, yet narrow marketplace." Having concluded that compliance of horizontal discharge trailers with Standard No. 224 was unattainable, Dan Hill filed the petition for permanent relief through rulemaking, mentioned above.

Red River's Reasons Why Compliance Would Preclude Sale of Its Horizontal Discharge Trailers and Why These Trailers Provide an Overall Level of Safety at Least Equal to That of Nonexempted Trailers

Under 49 U.S.C. 30113(b)(3)(B)(iv), as implemented by 49 CFR 555.6(d), we may grant a temporary exemption on finding that compliance with Standard No. 224 "would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles."

A requirement that its horizontal discharge trailers comply with Standard No. 224 would preclude their sale, according to Red River. The petitioner discusses a range of options using fixed and retractable guards, concluding that "the design and manufacturing problems associated with the development of a retractable rear impact guard for construction horizontal discharge trailers are enormous—perhaps, even insurmountable.

Nonexempted trailers are equipped with rear underride guards. Red River's horizontal discharge trailers will not be equipped with these guards, but, in Red River's opinion, an equivalent level of safety exists because the geometry of these trailers is similar to that of "wheels-back" trailers that are specifically exempted from Standard No. 224. Further, if measurements were based "on the traditional dry van approach, and a plane was passed through the rear door and rear frame of the Red River trailers, the plane would be less than six inches beyond the rear tire."

In addition, according to Red River, the design affords protection against passenger compartment intrusion in rear-end collisions in that the maximum forward movement of a motor vehicle involved in a rear-end collision is 24 inches; it is not likely that any part of the trailer would strike the colliding vehicle's windshield.

Red River notes that the trailer beds of end dump trailers have to be raised in order for their cargo to be off-loaded by gravity, contrasted with the more controlled discharge of cargo by horizontal discharge trailers. Further, use of end dump trailers is problematic on uneven terrain or where overhead obstacles such as bridges and power lines are present.

For all these reasons, Red River submits that its horizontal discharge trailers have an overall level of safety at least equal to that of end dump trailers that comply with Standard No. 224.

Arguments Presented by Dan Hill and Red River Why a Renewal of Their Temporary Exemptions Would Be in the Public Interest and Consistent With Objectives of Motor Vehicle Safety

Dan Hill. Dan Hill previously argued that an exemption would be in the public interest and consistent with traffic safety objectives because, without an exemption, "within a short time, production of the trailer will cease entirely. This would mean a significant loss to many people in the state, including shareholders, lenders, employees, families, and other stakeholders." The amount of time actually spent on the road is limited because of the need to move the asphalt to the job site before it hardens. Dan Hill also cited its efforts before 2001 to enhance the conspicuity of Flow Boy trailers by: 1. Adding "High intensity flashing safety lights; 2. doubling the legally required amount of conspicuity taping at the rear of the trailer; 3. [adding] safety signage; 4. [adding] red clearance lights that normally emit light in twilight or night-time conditions; and 5. installation of a rear under-ride protection assembly 28" above the ground and 60" in width."

With respect to the current petition, Dan Hill concludes that "the general public benefits from better and improved roads as a result of the horizontal discharge method of delivering and discharging hot mix asphalt and other road building materials." It also asserts that "contractors benefit from the discharge system because they operate more efficiently, [and] experience greater safety records which results in lower costs." Such trailers "present a safe alternative to the standard dump body truck or trailer" because "the location of the rear-most axle of the Flow Boy causes its rear tires to act as a buffer and limits the maximum forward movement of a motor vehicle involved in a rear-end collision with a horizontal discharge trailer * * *."

Red River. Red River argues that, "because of the functionality and safety of Red River's construction horizontal discharge trailers, the exemption requested here would be in the public interest."

According to Red River, an exemption would be consistent with considerations of safety as well. The trailers spend a large portion of their operating time off the public roads. Further, "typical hauls are short and have a minimal amount of highway time when compared with other semi-trailers." As noted above, Red River knows of no rear end collisions involving this type of trailer that has resulted in injuries.

***How You May Comment on the* Applications by Dan Hill and Red River**

If you would like to comment on the applications, please do so in writing, in duplicate, referring to the docket and notice number, and mail to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

We shall consider all comments received before the close of business on the date indicated below. Comments are available for examination in the docket in room PL–401 both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, we also consider comments filed after the closing date. We will publish our decision on the application, pursuant to the authority indicated below.

Comment closing date: April 30, 2003.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on March 26, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–7655 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 03–14758]

Grant of Applications of Two Motorcycle Manufacturers for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

This notice grants the applications by two motorcycle manufacturers for a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays.* The applicants assert that "compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles," 49 U.S.C. 30113(b)(3)(iv).

The manufacturers who have applied for a temporary exemption are Malaguti USA, Miami, Florida, on behalf of Malaguti S.p.A. of Bologna, Italy, and Yamaha Motor Corporation USA of Cypress, California. Malaguti's petition covers four vehicles it describes as "motor scooters:" the Phantom 200cc, the Madison 200cc and 400cc, and the B–2 500cc. Yamaha seeks relief for its Vino 125 (125cc) machine.

Because the safety issues are identical we have decided to address both the petitions in a single notice. Further, given the opportunity for public comment on these issues in the years 1998–2002 (which resulted only in comments in support of the petitions), we have concluded that a further opportunity to comment on the same issues is not likely to result in any substantive submissions, and that we may proceed to decisions on these petitions. See, *e.g.*, most recently the grant of applications by five motorcycle manufacturers (67 FR 62850).

The Reason Why the Applicants Need a Temporary Exemption

The problem is one that is common to the motorcycles covered by the applications. If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control, although the left handlebar is permissible for motor-driven cycles (Item 11, Table 1). Motor-driven cycles are motorcycles with motors that produce 5 brake horsepower or less. Malaguti and Yamaha petitioned to use the left handlebar as the control for the rear brakes of certain of their motorcycles whose engines produce more than 5 brake horsepower. The frame of each of these motorcycles has not been designed to mount a right foot operated brake pedal (*i.e.*, these scooter-type vehicles which provide a platform for the feet and operate only through hand controls). Applying considerable stress to this sensitive pressure point of the frame could cause failure due to fatigue unless proper design and testing procedures are performed.

Absent an exemption, the manufacturers will be unable to sell the motorcycle models named above because the vehicles would not fully comply with Standard No. 123.

Arguments Why the Overall Level of Safety of the Vehicles To Be Exempted Equals or Exceeds That of Non-Exempted Vehicles

As required by statute, the petitioners have argued that the overall level of safety of the motorcycles covered by their petitions equals or exceeds that of a non-exempted motor vehicle for the following reasons. All vehicles for which petitions have been submitted are equipped with an automatic transmission. As there is no foot-operated gear change, the operation and use of a motorcycle with an automatic transmission is similar to the operation and use of a bicycle, and the vehicles can be operated without requiring special training or practice.

Malaguti stated that it has "independent U.S. lab test data by an NHTSA approved lab as well as European Union TUV testing, and Malaguti factory testing data proving that the phantom 200cc, Madison 200cc, Madison 400cc, and B–2 500cc motor scooters exceed the requirements in FMVSS No. 123." It asserted that all four models "meet the braking requirements of ECE 93/14 as well."

Yamaha identified itself as "the importer and distributor of Yamaha brand motor vehicles produced by a host of Yamaha affiliates throughout the world."

Arguments Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

In Malaguti's opinion, its scooters provide a "much more natural braking response by the rider than non-exempted vehicles." The exemption would also be in the public interest "because Malaguti is promoting environmentally clean and efficient urban transportation."

Yamaha simply concludes that its "request is consistent with the intent of the National Traffic and Motor Vehicle Safety Act."

NHTSA's Decisions on the Applications and Request

It is evident that, unless Standard No. 123 is amended to permit or require the left handlebar brake control on motor scooters with more than 5 hp, the petitioners will be unable to sell their motorcycles if they do not receive a temporary exemption from the requirement that the right foot pedal operate the brake control. It is also evident from the previous grants of similar petitions that we have repeatedly found that the motorcycles exempted from the brake control location requirement of Standard No. 123 have an overall level of safety that equals or exceeds that of nonexempted motorcycles.

Malaguti's public interest and safety arguments are similar to those of other petitioners, which we have found sufficient, regarding braking response and the effect of an exemption in enhancing the environment and urban transportation. We note that Yamaha made no public interest argument or provided support for its conclusion that an exemption would be consistent with the purposes of the Vehicle Safety Act. However, the exemption requested is not one of first impression, and the arguments of other petitioners support public interest and safety findings applicable to the Yamaha Vino as well.

In consideration of the foregoing, we hereby find that the petitioners have met their burden of persuasion that to require compliance with Standard No. 123 would prevent these manufacturers from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles. We further find that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Therefore:

1. Malaguti S.p.A. is hereby granted NHTSA Temporary Exemption No. EX03–1 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays,* that the rear wheel brakes be operable through the right foot control. This exemption covers only the Phantom 200cc, Madison 200cc, Madison 400cc, and B–2 500cc models and expires on March 1, 2005.

2. Yamaha Motor Corporation USA is hereby granted NHTSA Temporary Exemption No. EX03–2 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays,* that the rear wheel brakes be operable through the right foot control. This exemption covers only the Vino 125 model and expires on March 1, 2005.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on March 26, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–7654 Filed 3–28–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 646]

Rail Rate Challenges in Small Cases

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing on Wednesday, April 16, 2003, at its offices in Washington, DC, to provide interested persons an opportunity to express their views on the subject of Board processing of rail rate challenges that are not suitable for handling under the Board's constrained market pricing procedures. Persons wishing to speak at the hearing should notify the Board in writing.

DATES: The public hearing will take place on Wednesday, April 16, 2003. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than April 8, 2003. Each speaker should also file with the Board his/her written testimony by April 11, 2003.

ADDRESSES: An original and 10 copies of all notices of intent to participate and testimony should refer to STB Ex Parte No. 646, and should be sent to: Surface Transportation Board, Attn: STB Ex Parte No. 646, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION, CONTACT: Beryl Gordon, (202) 565–1616. [Federal Information Relay Service (FIRS) (Hearing Impaired): (800) 877–8339.]

SUPPLEMENTARY INFORMATION: The Board will hold a public hearing to provide a forum for the expression of views by rail shippers, railroads, and other interested persons, regarding rail rate challenges in small cases to be considered by the Board. This hearing will provide a forum for the oral discussion of any proposals that interested persons might wish to offer for handling small cases involving a challenge to the reasonableness of rates charged by a rail carrier. The Board is also interested in participants' views on how small rate cases should be defined or identified.

Date of Hearing

The hearing will begin at 10:00 a.m. on Wednesday, April 16, 2003, in the 7th floor hearing room at the Board's headquarters in Washington, DC, and will continue, with short breaks if necessary, until every person scheduled to speak has been heard.

Notice of Intent To Participate

Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than April 8, 2003.

Testimony

Each speaker should file with the Board his/her written testimony by April 11, 2003.

Paper Copies

Each person intending to speak at the hearing should submit an original and 10 paper copies of his/her notice of intent to participate (as soon as possible but no later than April 8, 2003) and testimony (by April 11, 2003).

Board Releases Available via the Internet

Decisions and notices of the Board, including this notice, are available on the Board's Web site at "*http://www.stb.dot.gov.*"

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: March 26, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–7752 Filed 3–28–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34293]

Metro-North Commuter Railroad Company-Acquisition and Operation Exemption-Line of Norfolk Southern Railway Company and Pennsylvania Lines LLC

Metro-North Commuter Railroad Company (Metro-North),[1] a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire through a sublease from Norfolk Southern Railway Company (NSR) and operate a rail line owned by Pennsylvania Lines LLC (PRR) and leased and operated by NSR: (1) Between approximately milepost JS–31.3 at Suffern, NY, and approximately milepost JS–76.6 at CP-Howells, NY; and (2) between approximately milepost SR–68.7 (equals JS–76.6) at CP-Howells, NY, and approximately milepost SR–89.9 at Port Jervis, NY.[2] The total distance of the line is approximately 66.5 miles and it traverses Orange and Rockland Counties, NY.[3]

The transaction was scheduled to be consummated on February 28, 2003.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34293, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Ave., NW., 2nd Floor, Washington, DC 20036–1800.

Board decisions and notices are available on our website at "*http://www.stb.dot.gov.*"

Decided: March 11, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–7679 Filed 3–28–03; 8:45 am]

BILLING CODE 4915–00–P

[1] Metro-North, a subsidiary of Metropolitan Transportation Authority, provides mass transportation for commuters in the States of New York and Connecticut. It has been providing passenger service over the line since 1983 pursuant to a trackage rights agreement. That agreement will be replaced by a new sublease and operations agreement, pursuant to which Metro-North will continue to conduct passenger operations and NSR will continue to conduct freight operations on the line.

[2] The line is a continuous line of railroad between Suffern and Port Jervis, that is sometimes referred to as the Port Jervis Line.

[3] On March 5, 2003, Metro-North filed a motion to dismiss its notice of exemption in this case to obtain a jurisdictional determination regarding its prospective common carrier status with respect to the line. That motion will be addressed in a subsequent decision.

DEPARTMENT OF THE TREASURY

Office of International Investment; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of International Investment within the Department of the Treasury is soliciting comments concerning the information collection provisions of the Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons, 31 CFR 800.402.

DATES: Written comments should be received on or before May 30, 2003 to be assured of consideration.

ADDRESS: Direct all written comments to Gay Sills, Director, Office of International Investment, Department of the Treasury, 1500 Pennsylvania Ave., NW., 4201NY, Washington, DC. 20220 (Tel.: (202) 622–1860).

FOR FURTHER INFORMATION CONTACT: Jack Dempsey, Economist (Tel.: (202) 622–1860), Office of International Investment, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220; Francine McNulty Barber, Senior Counsel, Department of the Treasury, Room 2010, 1500 Pennsylvania Ave., NW., Washington, DC 20220, ((202) 622–1947).

SUPPLEMENTARY INFORMATION:

Title: Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons.

OMB Number: 1505–0121.

Abstract: The information request in this proposed collection is contained in section 800.402. The information collected under these regulations is used by the Committee on Foreign Investment in the United States (CFIUS), an inter-agency committee chaired by the Secretary of the Treasury and comprised of the Secretaries of State, Defense, Treasury and Commerce, the Attorney General, the U.S. Trade Representative. the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, and the Assistants to the President for National Security, National Economic Policy, and Science and Technology. The President has delegated to CFIUS the President's authority under section 721 of the Defense Production Act to determine the effects on the national security of acquisitions proposed or pending after the date of enactment (August 23, 1988) by or with foreign persons that could result in foreign control of persons engaged in interstate commerce in the United States.

Current Actions: Extension.

Type of Review: Extension.

Affected Public: Foreign businesses and foreign individuals.

Estimated Number of Responses: 60.

Estimated Time Per Respondent: This varies, depending on individual circumstances, with an average of 60 hours.

Estimated Total Annual Burden Hours: 3600 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will be become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 24, 2003.

Francine McNulty Barber,

Senior Counsel, Office of the Assistant General Counsel for International Affairs.

[FR Doc. 03–7560 Filed 3–28–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974; System of Records

AGENCY: Office of Inspector General, Treasury.

ACTION: Notice of alteration of Privacy Act system of records.

SUMMARY: The Department of the Treasury, Office of Inspector General (OIG), gives notice of a proposed alteration to the system of records entitled "Investigative Data Management System " Treasury/DO," which is subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The system was last published in its entirety in the **Federal Register** on February 19, 2002, at 67 FR 7487.

DATES: Comments must be received no later than April 30, 2003. The proposed routine use will be effective May 12, 2003, unless the Department receives comments that would result in a contrary determination.

ADDRESSES: Comments must be submitted to the Office of Counsel, Office of Inspector General, 740 15th Street, NW., Suite 110, Washington, DC 20220. Comments may be submitted via e-mail to: *DelmarR@oig.treas.gov.* Comments received will be available for inspection at the same address between the hours of 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rich Delmar, Counsel to the Inspector General, (202) 927–0650.

SUPPLEMENTARY INFORMATION: As required by the Inspector General Act of 1978, as amended, 5 U.S.C.A. appendix 3, the OIG conducts investigations of the bureaus and offices of the Department of the Treasury, with the exception of the Internal Revenue Service. The investigative case files and data produced by this work are organized to be retrievable by names of subjects, complainants, victims, and witnesses.

The Homeland Security Act of 2002, Public Law 107–296 has caused certain bureaus of the Department of the Treasury to be transferred to other departments: the Bureau of Alcohol, Tobacco and Firearms to the Department of Justice, and the Secret Service, Customs Service, and Federal Law Enforcement Training Center to the Department of Homeland Security. The responsibilities of the OIG to conduct investigations regarding these bureaus are being similarly transferred to the OIGs of the Department of Justice (DOJ) and Department of Homeland Security (DHS). To enable these OIGs to carry out their investigative responsibilities, access to Treasury OIG investigative records regarding events and personnel of the transferred bureaus is necessary. New routine use (8) will accomplish this by allowing the OIGs of the DOJ and DHS to access Treasury OIG investigative reports and case files containing information related to the bureaus for which they have acquired responsibility.

Section 812 of the Homeland Security Act of 2002, Public Law 107–296, creates a new section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. appendix 3, by which OIGs are granted law enforcement authority as determined by the Attorney General. The statute requires that OIGs obtain peer reviews conducted by other OIGs to advise the Department of Justice and the President's Council on Integrity and Efficiency (PCIE) how this authority is used. New routine use (9) will allow other OIGs, the PCIE, and the Department of Justice, with respect to their involvement in conducting peer reviews of the Treasury OIG, access to the IDMS in connection with their evaluation of how Treasury OIG uses its law enforcement authority.

These two new routine uses are consistent with the purpose for which information is collected by this system, to detect and prevent fraud, waste, and abuse in the programs and operations of the bureaus and offices of the Department.

For the reasons set forth in the preamble, OIG proposes to alter system of records Treasury/DO.190—Investigative Data Management System, as follows:

Treasury/DO.190

SYSTEM NAME:

Investigative Data Management System—Treasury/DO.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of change: The period "." at the end of routine use (7) is replaced with a semicolon ";", and the following routine uses are added at the end thereof:

"(8) Provide information to the Office of Inspector General of the Department of Justice with respect to investigations involving the Bureau of Alcohol, Tobacco and Firearms; and to the Office of Inspector General of the Department of Homeland Security with respect to investigations involving the Secret Service, Customs Service, and Federal Law Enforcement Training Center, for such OIGs' use in carrying out their obligations under the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3 and other applicable laws; and

(9) Provide information to other OIGs, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of Treasury OIG's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3."

* * * * *

Dated: March 17, 2003.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 03–7561 Filed 3–28–03; 8:45 am]

BILLING CODE 4810–27–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted.

DATES: The meeting (s) will be held Friday, April 25, 2003, & Saturday, April 26, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday,

April 25, 2003, from 8:30 a.m. to noon e.s.t., and from 1 p.m. to 4 p.m. e.s.t., and Saturday, April 26, 2003, from 8:30 a.m. to noon e.s.t. at the Hotel Inter-Continental Miami, 100 Chopin Plaza, Miami, Florida 33131. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. You may submit written comments to the panel by faxing to (954) 423–7975 or by mail to Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Public comments will also be welcome during the meeting. Individual comments will be limited to 5 minutes. Due to limited space, notification of intent to participate in the meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 20, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–7683 Filed 3–28–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 61

Monday, March 31, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 75, and 90

RIN 1219–AB14

Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust

Correction

In proposed rule document 03–3941 beginning on page 10784 in the issue of Thursday, March 6, 2003, make the following corrections:

1. On page 10794, in the first column, in the second paragraph, in the ninth line, "[(10.0%+7.2%+16.1%)3=11.1%]", should read "[(10.0%+7.2%+16.1%)+3=11.1%]".

2. On page 10795, the table heading should have appeared as follows: "Table III–1. For Two Scenarios, Using Alternate Methods, Percent of Quartz in Respirable Dust".

3. On page 10803, in the third column, the fourth line from the bottom, "(2.6mg/m^{3}4)", should read "(2.6 mg/m^3+4)".

4. On page 10816, in the second column, in footnote number nine, in the last line, "P(X>) 10", should read "P(X>10)".

5. On page 10839, in the first column, the heading "3. Biological Respirable Coal Mine Dust", should read "3. Biological Action: Respirable Coal Mine Dust".

6. On page 10842, in the table, in the first column, under "Studies", in the first line, "Hansen, *et al.*,", should read "Hansen, *et al.*, 1999".

7. On page 10849, in the second column, in the 20th line, "(MSHA, datafile: RBDA2001.ZIP)", should read "(MSHA, datafile: RB–DA2001.ZIP)".

8. On page 10853, in the first column, the first equation within the footnotes is corrected to read as follows:

$\lambda' = P_{y'} - P_{x'}$

9. On page 10857, Table IX–2–2 is corrected to read as set forth below

TABLE IX–2–2.—ESTIMATED NUMBER OF AFFECTED MECHANIZED MINING UNITS [a] (MMUS) AND AFFECTED UNDERGROUND COAL MINERS, BY PRODUCTION SHIFTS AND MINE SIZE

Number of production shifts	Mine size by number of employees									Totals			
	Less than 20 employees			20 to 500 employees			Greater than 500 employees			MMUs n=	DOs [b] n=	NDOs [c] n=	Total affected miners on MMUs
	NMUs n=	DOS [b] n=	NDOs [c] n=	MMUs n=	DOs [b] n=	NDOs [c] n=	MMUs n=	DOs [b] n=	NDOs [c] n=				
One	98	98	588	24	24	144	0	0	0	122	122	732	854
Two	16	32	192	264	528	3,168	0	0	0	280	560	3,360	3,920
Three	0	0	0	55	165	990	18	54	324	73	219	1,314	1,533
Totals	114	130	780	343	717	4,302	18	54	324	475	901	5,406	6,307

[a] Affected MMUs in production are estimated by applying the observed percentage of MMUs' production shifts by mine size (as of July 10, 2002) to the snapshot of active MMUs as of May 14, 2002, by mine size, and multiplied by 0.570 (since fifty-seven percent of MMUs have a pattern of recurrent overexposures) (MSHA Table, July 10, 2002; MSHA Table, May 14, 2002).
Where:
[b] DO = Designated Occupational Miners = (MMUs * 1 * production shifts).
[c] NDO = Non-designated Occupational Miners = (MMUs * 6 * production shifts).

10. On page 10860, in the first table, in the eighth column, under "Prevented cases, n=", in the second line, "3.18", should read "3.8".

[FR Doc. C3–3941 Filed 3–28–03; 8:45 am]

BILLING CODE 1505–01–D

VOL
68

ISS
61

MR

31

003

MI

Federal Register

Monday,
March 31, 2003

Part II

Department of Labor

Wage and Hour Division

29 CFR Part 541

Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees; Proposed Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 541

RIN 1215–AA14

Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule and request for comments.

SUMMARY: The Department of Labor proposes to update and revise the regulations issued under the Fair Labor Standards Act (FLSA) implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales and computer employees. These exemptions are often referred to as the FLSA's "white collar" exemptions. To be considered exempt, employees must meet certain minimum tests related to their primary job duties and be paid on a salary basis at not less than specified minimum amounts. The basic "duties" tests were originally established in 1938 and revised in 1940. The duties tests were last modified in 1949 and have remained essentially unchanged since that time. The "salary basis" test has remained essentially unchanged since 1954. The salary levels required for exemption were last updated in 1975, and the amounts adopted at that time were intended as an interim adjustment. Suggested changes to the part 541 regulations have been the subject of public commentary for years, including a review of the regulations by the U.S. General Accounting Office (GAO) in 1999. GAO recommended that the Secretary of Labor comprehensively review and make necessary changes to the part 541 regulations to better meet the needs of both employers and employees in the modern work place, and to anticipate future work place trends. During 2002, the Department of Labor convened a series of stakeholder meetings, and heard suggestions for changes from over 40 interest groups representing employees and employers. The Department of Labor has carefully examined issues of concern raised by various interested parties in developing this proposed rule. The Department now invites public comment on all aspects of the proposed rule.

DATES: Submit written comments on or before June 30, 2003.

ADDRESSES: Address written comments to Tammy D. McCutchen, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who would like to be notified that their comments were received should include with their comments a self-addressed, stamped postcard or submit them certified mail, return receipt requested. As a convenience, comments of 20 pages or less may be submitted by facsimile ("FAX") machine to (202) 693–1432, which is not a toll-free number, or by e-mail to: *whd-reg@fenix2.dol-esa.gov*. Because we continue to experience delays in receiving mail in our area, commenters are encouraged to submit any comments by mail early, or to transmit them electronically by FAX or e-mail.

FOR FURTHER INFORMATION CONTACT: Richard M. Brennan, Deputy Director, Office of Enforcement Policy, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3506, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–0745 (this is not a toll-free number). Copies of this proposed rule may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of regulations issued by this agency or referenced in this notice may be directed to the nearest Wage and Hour Division District Office. Locate the nearest office by calling our toll-free help line at 1–866–4USWAGE (1–866–487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the Wage and Hour Division's Web site for a nationwide listing of Wage and Hour District and Area Offices at: *http://www.dol.gov/esa/contacts/whd/america2.htm*.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposed rule contains no new information collection requirements subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). The information collection requirements for employers who claim exemption under 29 CFR part 541 are contained in the general FLSA recordkeeping requirements codified at 29 CFR part 516, which were approved by the Office of Management and Budget under OMB Control number 1215–0017. *See* 29 CFR 516.0 and 516.3.

II. Background

The FLSA generally requires covered employers to pay their employees at least the federal minimum wage (which is currently $5.15 an hour), and overtime premium pay of time-and-one-half the regular rate of pay for all hours worked over 40 in a work week. However, the FLSA includes a number of exemptions from the minimum wage and overtime requirements. Section 13(a)(1) of the FLSA, codified at 29 U.S.C. 213(a)(1), exempts from both minimum wage and overtime pay "any employee employed in a bona fide executive, administrative, or professional capacity * * * or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act * * *.)"

The FLSA does not define the terms "executive," "administrative," "professional," or "outside salesman." However, pursuant to Congress' grant of rulemaking authority, implementing regulations have been issued, at 29 CFR part 541, defining the scope of the section 13(a)(1) exemptions. Because the FLSA delegates to the Secretary of Labor the power to define and delimit the specific terms of the exemptions through notice-and-comment rulemaking, the regulations so issued have the binding effect of law.[1]

These exemptions have engendered considerable confusion over the years regarding who is, and who is not, exempt. The implementing regulations generally require each of three tests to be met for the exemption to apply: (1) The employee must be paid a predetermined and fixed salary, not an hourly wage that is subject to reductions because of variations in the quality or quantity of work performed (the "salary basis test"); (2) the amount of salary paid must meet minimum specified amounts (the "salary level test"); and (3) the employee's job duties must primarily involve managerial, administrative or professional skills as defined by the regulations (the "duties tests").

Legislative History

Section 13(a)(1) was included in the original FLSA of 1938, and was based on provisions contained in the earlier

[1] *See Batterton* v. *Francis*, 432 U.S. 416, 425 n. 9 (1977).

National Industrial Recovery Act and state law precedents. Specific references in the legislative history to the employee exemptions contained in section 13(a)(1) are scant. However, the exemptions were premised on the belief that the workers exempted typically earned salaries well above the minimum wage, and they were presumed to enjoy other compensatory privileges such as above average fringe benefits, greater job security and better opportunities for advancement, setting them apart from the nonexempt workers entitled to overtime pay.[2] Further, the type of work they performed was difficult to standardize to any time frame and could not be easily spread to other workers after 40 hours in a week, making enforcement of the overtime provisions difficult and generally precluding the potential job expansion intended by the FLSA's time-and-a-half overtime premium.[3]

Initially, persons employed in a "local retailing capacity" were also exempt, but Congress eliminated that language from the section 13(a)(1) exemptions in 1961 when the FLSA was expanded to cover retail and service enterprises.[4] Teachers and academic administrative personnel were added to the exemption when elementary and secondary schools were made subject to the FLSA in 1966. The Education Amendments of 1972 made the Equal Pay provisions, section 6(d) of the FLSA, expressly applicable to employees who were otherwise exempt from the FLSA under section 13(a)(1). A 1990 enactment expanded the exemption to include computer systems analysts, computer programmers, software engineers, and similarly skilled professional workers, including those paid on an hourly basis if paid at least 6½ times the minimum wage.[5] The compensation test for computer-related occupations was subsequently capped at $27.63 an hour (6½ times the former $4.25 minimum wage) when Congress increased the minimum wage to its current $5.15 rate and enacted the new section 13(a)(17) exemption for such computer employees as part of the 1996 FLSA Amendments.[6]

Regulatory History

The FLSA became law on June 25, 1938, and the first version of part 541 was issued later that year in October (3 FR 2518; Oct. 20, 1938). In 1940, after receiving many comments on the original regulations, the Wage and Hour Division convened a series of public hearings for interested parties to express views on the regulations and to propose amendments. Revised regulations were issued in October 1940 (5 FR 4077; Oct. 15, 1940).[7] Further hearings were initiated in 1947, leading to revised regulations that were issued in December 1949 (14 FR 7705; Dec. 24, 1949).[8] An explanatory bulletin interpreting some of the terms used in the regulations was published as subpart B of part 541 on December 28, 1949 (14 FR 7730), and became effective on January 25, 1950. On March 9, 1954, the Department issued proposed revisions to the regulatory interpretations of "salary basis" (19 FR 1321), followed by a final rule issued on July 17, 1954 (19 FR 4405). The regulations were revised in 1958 to adjust the salary levels (23 FR 8962; Nov. 18, 1958).[9] Further changes were made to accommodate statutory amendments to the FLSA and/or to increase the salary levels in 1961, 1963, 1967, 1970, 1973, and 1975.[10] The existing salary rates were last revised on an interim basis in 1975 (*see* 40 FR 7092; Feb. 19, 1975). Revisions to increase the salary rates in January 1981 (issued at the end of the Carter Administration) were stayed indefinitely by the incoming Reagan Administration (46 FR 11972; Feb. 12, 1981). Based on petitions from industry groups to address other parts of the rules, and developing case law, the Department began a more comprehensive review leading to a 1985 Advance Notice of Proposed Rulemaking (ANPRM) that reopened the public comment period and broadened the review to all aspects of the regulations (50 FR 47696; Nov. 11, 1985).

The Department revised these regulations in the early 1990s to address two specific issues. A 1990 law (Pub. L. 101–583; Nov. 15, 1990) required regulations to be issued permitting computer systems analysts, computer programmers, software engineers, and other similarly-skilled workers in the computer field to be exempt, including those paid on an hourly basis if the hourly rate exceeded 6½ times the applicable minimum wage. (57 FR 46744; Oct. 9, 1992). Also, in 1992, the Department issued a final rule to modify the exemption's requirement for payment on a "salary basis" as applied in the public sector for otherwise exempt employees paid according to pay and leave systems based on principles of public accountability. Under 29 CFR 541.5d (57 FR 37677; Aug. 19, 1992), an otherwise exempt public sector employee does not lose exempt status under a regulated public sector pay and leave system that requires partial-day (or hourly) deductions from pay for employee absences not covered by accrued leave, or for budget-driven furloughs.

Overview of Existing Requirements

The implementing regulations in part 541 contain specific criteria that define each category of exemption provided by section 13(a)(1). The applicability of any particular exemption is not presumed under the FLSA, but must be affirmatively established. Job titles, nomenclature, or job descriptions do not determine the exemptions, nor does paying a "salary" rather than an hourly rate. Rather, whether an exemption applies depends on the specific duties and responsibilities of each employee's job, how much salary the employee is paid, and whether the salary is guaranteed without regard to the quality or quantity of work performed, as defined by the regulations.

The duties tests differ for each category of exemption. Two different salary (or fee) levels exist for each of the exemptions for executive, administrative, and professional employees. The salary requirements do not apply to certain licensed or certified doctors, lawyers and teachers, or to outside sales employees. Employees paid below the applicable lower salary rate are not exempt regardless of their duties. Those paid above the higher (or

[2] Report of the Minimum Wage Study Commission, Volume IV, pp. 236 and 240 (June 1981).

[3] *Id.*

[4] Public Law 87–30, 75 Stat. 65 (May 5, 1961). Although Congress eliminated the separate, broad exemption for retail employees in 1961, such employees could still qualify as exempt executive, administrative or professional employees if they met the requirements for these exemptions, and Congress relaxed the duties tests solely to make it easier for such firms to meet the exemption requirements.

[5] Public Law 101–583, 104 Stat. 2871 (Nov. 15, 1990).

[6] 29 U.S.C. 213(a)(17), as added by the 1996 FLSA Amendments (sec. 2105(a), Public Law 104–188, 110 Stat. 1755 (Aug. 20, 1996)).

[7] *See*, "Executive, Administrative, Professional * * * Outside Salesman" Redefined, Wage and Hour Division, U.S. Department of Labor, Report and Recommendations of the Presiding Officer (Harold Stein) at Hearings Preliminary to Redefinition (Oct. 10, 1940) ("Stein Report").

[8] *See*, Report and Recommendations on Proposed Revisions of Regulations, part 541, by Harry Weiss, Presiding Officer, Wage and Hour and Public Contracts Divisions, U.S. Department of Labor (June 30, 1949) ("Weiss Report").

[9] *See*, Report and Recommendations on Proposed Revisions of Regulations, part 541, under the Fair Labor Standards Act, by Harry S. Kantor, Presiding Officer, Wage and Hour and Public Contracts Divisions, U.S. Department of Labor (March 3, 1958) ("Kantor Report").

[10] *See*, 26 FR 8635 (Sept. 15, 1961); 28 FR 9505 (Aug. 30, 1963); 32 FR 7823 (May 30, 1967); 35 FR 883 (Jan. 22, 1970); 38 FR 11390 (May 7, 1973); and 40 FR 7091 (Feb. 15, 1975).

"upset") salary rate are exempt if they meet a "short" duties test. Those paid between the higher and lower salary rates must meet a more detailed "long" duties test.

The salary tests were originally designed to operate as a ready guide to assist employers in deciding which employees were more likely to meet the duties tests in the exemptions. In fact, the salary levels specified in the regulations were once viewed as the best indicator of exempt status. As last revised effective April 1, 1975, the salary required for executive and administrative employees under the current "long" test is $155 per week; professional employees are exempt at $170 per week. The short test salary level (requiring fewer duties to be satisfied) for all three exemptions is $250 per week. Because these salary levels have not been raised in 28 years, virtually all employees are tested for exemption today under the "short" duties tests. Moreover, while the existing salary tests ($155, $170, and $250 per week) still reflect the interim 1975 rates, a full-time minimum wage worker today earns $206 per week for a 40-hour work week. Consequently, the existing salary tests no longer provide employees or employers any help in distinguishing between bona fide executive, administrative, and professional employees and those who should not be considered for exemption. Moreover, the outdated salary tests and complex duties tests in the current regulation cause employees to be erroneously misclassified as exempt and thus not paid properly.

Under the currently applicable "short" test exemption requirements, an exempt "executive" employee must be paid at least $250 per week on a salary basis, have a primary duty to manage the enterprise or a customarily recognized department or subdivision thereof, and regularly direct the work of two or more other employees. An exempt "administrative" employee must be paid at least $250 per week on a salary or fee basis, have a primary duty of office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers (or similar functions in the administration of a school system or educational institution in work directly related to academic instruction), and perform work requiring the exercise of discretion and independent judgment. An exempt "professional" employee must be paid at least $250 per week on a salary or fee basis; have a primary duty of (1) work requiring knowledge of an advanced type in a field of science or learning customarily acquired by prolonged, specialized, intellectual instruction and study, or (2) work that is original and creative in a recognized field of artistic endeavor, or (3) teaching in a school system or educational institution, or (4) work as a computer systems analyst, computer programmer, software engineer, or other similarly-skilled worker in the computer software field; and perform work requiring the consistent exercise of discretion and judgment, or work requiring invention, imagination, or talent in a recognized field of artistic endeavor. Under the professional exemption, the salary or fee requirement does not apply to certain licensed or certified doctors, lawyers and teachers; or to certain computer-related occupations if paid on an hourly basis at $27.63 or more per hour. An "outside sales" employee who is customarily and regularly engaged away from the employer's places of business making sales or obtaining orders or contracts for services or use of facilities, and who does not exceed a twenty percent tolerance per work week performing duties unrelated to his or her own outside sales or solicitations, is exempt. There are no salary or fee requirements for outside sales employees.

Employees meeting the foregoing requirements are excluded from the Act's minimum wage and overtime protections. Thus, they may work any number of hours in the work week and are not subject to the Federal law's overtime pay requirements. Some state laws have stricter exemption standards than those just described. The FLSA does not preempt any such stricter State standards. If a State or local law establishes a higher standard than the provisions of the FLSA, the higher standard applies. *See* section 18 of the FLSA, 29 U.S.C. 218.

The executive and administrative exemptions apply generally to certain management and staff-level positions within an employer's organization. For example, department heads with management as their primary duty, who regularly supervise two or more full time employees in their department, may qualify as executives if they are paid a predetermined salary of $250 or more per week. An administrative employee must primarily perform office or nonmanual work of substantial importance to the management of the business, but is not required to supervise other employees. Persons with functional (rather than departmental) management authority, or who perform "staff" rather than production or sales work, may qualify as administrative employees if their duties include "discretion and independent judgment" or decision-making responsibilities on important matters in managing the employer's general business operations (*e.g.*, if they primarily determine or affect management policies in a particular area, such as credit, personnel, or labor relations). Executive assistants delegated decision-making authority to carry out parts of an exempt executive or administrative employee's management responsibilities may also qualify as exempt administrative employees.

The professional exemption (aside from the artistic, teaching, and computer-related categories) applies to the recognized professions requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study (*i.e.*, the "learned" professions, such as doctor, lawyer, architect, engineer, etc.), and is typically characterized by possession of the appropriate academic degree for the particular profession. Outside sales employees must regularly work away from their employer's place of business making sales or obtaining orders or contracts; they may not exceed a 20 percent tolerance for performing duties unrelated to their own outside sales work. "Inside sales" employees are not included within the scope of the exemption for "outside sales" employees.

Under the regulatory "salary basis" test codified at 29 CFR 541.118, partial-day deductions from pay based on the number of hours worked ("pay-docking") are generally not allowed in the private sector (unless made in the first or last weeks of employment or due to unpaid leave taken pursuant to the Family and Medical Leave Act, 29 U.S.C. 2601 *et seq.*). Disciplinary deductions from pay also violate the "salary basis" test (except for safety rules of major significance, such as no-smoking rules in oil refineries and coal mines). These concepts clarify the intended meaning of the requirements for payment of a guaranteed salary—*i.e.*, the predetermined salary amount may not be reduced because of variations in either the quality or quantity of the work performed by the employee. Pay practices not meeting the guaranteed "salary basis" requirements cause the exemption to be declared inapplicable, in some cases for entire classes of employees.[11]

[11] As noted, a special rule applies to employees of public agencies paid according to regulated pay and leave systems that require deductions for partial-day absences not covered by accrued leave, and for budget-driven furloughs (*see* 29 CFR 541.5d).

Public Commentary and the GAO Report

Suggested changes to the part 541 regulations have been the subject of extensive public commentary for years, including a report issued by the General Accounting Office (GAO) in September 1999.[12] In this report, GAO chronicled the background and history of the exemptions, estimated the number of workers who might be included within the scope of the exemptions, identified the major concerns of employers and employees regarding the exemptions, and suggested possible solutions to the issues of concern raised by the affected interests. In general, the employers contacted by GAO were concerned that the regulatory tests are too complicated, confusing, and outdated for the modern work place, and create potential liability for violations when errors in classification occur.[13]

Employers were particularly concerned about potential liability for violations of the complex "salary basis" test and the exacting requirements of the so-called "no-docking" rule, which has been the focus of lawsuits against employers in recent years brought collectively by groups of highly paid managerial and professional employees. This test in effect limits employers' ability to "dock" exempt employees" pay for partial-day personal absences and disciplinary violations, which limits employers' ability to hold exempt employees accountable for their time and actions. In addition, employers believed that limiting the administrative and professional exemptions to "nonproduction" employees did not account for the effects of modern technology on employment today. They also noted the traditional limits of the exemptions have blurred in the modern work place, citing highly skilled and highly paid technical workers without college degrees who do not qualify as exempt professionals but who perform essentially the same job as exempt engineers who have the required academic degrees. Manufacturing employers pointed to new technology used in factories, which requires advanced technical skills but far less traditional "manual" labor. They also told GAO that, while these workers may have to follow precise written guidelines to perform their work, prescribed procedures were important to modern quality control. Employers also believed adherence to precise written guidelines—one major distinction between exempt and nonexempt workers under the existing regulations—is necessary in a modern, efficient work place. Employers also complained that the discretion and independent judgment requirements for administrative and professional employees are confusing and applied inconsistently by Wage and Hour Division investigators in classifying similarly-situated employees, and are particularly difficult to apply. Thus, employers were unsure how to classify administrative personnel. GAO's discussions with employers and Wage and Hour Division investigators, and its review of compliance cases, confirmed that this part of the duties test involved particularly difficult and subjective determinations, for both the employers and the investigators, and that it was a source of contention in Department audits.

Employee representatives contacted by GAO, in contrast, were most concerned that the use of the exemptions be limited to preserve existing overtime work hour limits and the 40-hour standard work week for as many employees as possible. They believed the tests have become weakened as applied today by judicial rulings and do not adequately restrict employers' use of the exemptions. When combined with the low salary test levels, the employee representatives felt that few protections remain, particularly for low-income supervisory employees. They believed that inflation has severely eroded the salary-level limitations originally envisioned by the regulations. Because of inflation, according to the employee representatives, the current salary test levels are now near the minimum wage level, rendering application of the regulations to the current work force virtually meaningless.

GAO's report noted that the conflicting interests affected by these rules have made consensus difficult and that, since the FLSA was enacted, the interests of employers to expand the white collar exemptions have competed with those of employees to limit use of the exemptions. To resolve the issues presented, GAO suggested that employers' desires for clear and unambiguous regulatory standards must be balanced with employees' desires for fair and equitable treatment in the work place. The GAO recommended that the Secretary of Labor comprehensively review the regulations and restructure the exemptions to better accommodate today's workplace and to anticipate future work place trends.

The House Subcommittee on Workforce Protections of the Committee on Education and the Workforce held a hearing in May 2000 to receive testimony from GAO and other interested parties on GAO's September 1999 report. Testimony provided by the GAO, representatives of business and labor organizations, and the Department of Labor confirmed GAO's assessment of the issues and the difficulty in moving forward with constructive changes due to the differing views of the many affected and interested parties, and the potential impact of possible changes. Representatives of worker interests opposed making changes that would remove overtime protections for workers now covered, while business interests and employer groups advocated modernizing the regulations to exempt more classifications of workers from overtime pay.

[12] Fair Labor Standards Act: White Collar Exemptions in the Modern Work Place (GAO/HEHS–99–164, September 30, 1999).

[13] Under the FLSA, employees may sue their employer (individually or collectively) for up to two, or in some cases three, years of back weges, plus an equal amount in liquidated damages and attorney fees and court costs, for violations of the FLSA's minimum wage and overtime requirements.

III. Summary of Current Regulatory Proposal

Structure and Organization

Part 541 presently contains two subparts. Subpart A provides the regulatory tests that define each category of the exemption (executive, administrative, professional, and outside sales). Subpart B provides interpretations of the terms used in the exemptions. Subpart B was first issued as an explanatory bulletin effective in January 1950 to provide guidance to the public on how the Wage and Hour Division interpreted and applied the exemption criteria when enforcing the FLSA. The Department proposes to eliminate the current distinction between the "regulations" in subpart A and the "interpretations" in subpart B. This will consolidate and streamline the regulatory text, reduce redundancies, and make the regulations more understandable and easier to decipher when applying them to particular factual situations, providing much-requested simplification. In addition, eliminating the distinction between the subpart A "regulations" and the subpart B "interpretations" will eliminate confusion regarding the appropriate level of deference to be given to the provisions in each subpart.

The proposed rule reorganizes the subparts according to each category of exemption, and consolidates common elements (such as a new subpart containing common definitions), in order to eliminate unnecessary duplication and repetition of regulatory

text. Thus, after several introductory provisions in subpart A, the proposed new subpart B would pertain to the executive exemption; subpart C would pertain to the administrative exemption; subpart D would pertain to the professional exemption; subpart E would contain provisions regarding computer employees; and subpart F would contain provisions regarding outside sales employees. The proposed subpart G would include provisions regarding salary requirements applicable to most of the exemptions, including salary levels and the salary basis test. Subpart G would also include a section on highly compensated employees. Proposed subpart H would contain definitions and other miscellaneous provisions applicable to all or several of the exemptions. Finally, numerous editorial changes are proposed throughout the rule to streamline and improve its clarity, delete outdated references and illustrations, and remove gender-specific references.

Current section 541.6, entitled "Petition for amendment of regulations," has been deleted in this proposed rule. The substance of that section, originally adopted in 1938 and providing for interested persons to petition the Administrator for desired changes in these regulations, has been superseded and supplanted by enactment of the Administrative Procedure Act, 5 U.S.C. 553(e).

Finally, the proposed rule deletes a number of discussions regarding application of the exemption to specific occupations. These discussions appeared to be outdated, relating to occupations and duties which may not exist in the 21st century economy. However, because most stakeholders find such examples useful in applying the regulations to specific occupations, we invite comments on specific occupations and duties which should be discussed in the regulations. In particular, we invite comments on occupations the exempt status of which has been the subject of confusion and litigation including but not limited to pilots, athletic trainers, funeral directors, insurance salespersons, loan officers, stock brokers, hotel sales and catering managers, and dietary managers in retirement homes. The Department anticipates that the final rule will include additional provisions on the application of the exemptions to such borderline occupations, but requires more information about the particular job duties and responsibilities generally found in such occupations. We invite comments on which occupations should be included in the final rule and whether such occupations should be treated as exempt or nonexempt, including detailed information about job duties in such occupations.

Subpart A, General Regulations, §§ 541.000—.002

The current regulations have several general, introductory provisions scattered in various locations. The proposed regulations would gather these provisions together into proposed subpart A. Thus, the proposed section 541.000 combines an introductory statement currently located at section 541.99 and information currently located at section 541.5b regarding the application of the equal pay provisions in section 6(d) of the FLSA to employees exempt from the minimum wage and overtime provisions of the FLSA under section 13(a)(1). Proposed section 541.000 also contains new language to reflect legislative changes to the FLSA regarding computer employees and information regarding the new organizational structure of the proposed regulations. Proposed section 541.001 relocates definitions of "Act" and "Administrator" from their current location in section 541.0. Finally, proposed section 541.002 contains a general statement that job titles alone are insufficient to establish the exempt status of an employee. This fundamental concept, equally applicable to all the exemption categories, currently appears in section 541.201(b) regarding administrative employees.

Subpart B, Executive Employees, §§ 541.100—.107

To qualify as an exempt executive under the current regulations, an employee must be compensated on a salary basis at a rate of not less than $155 per week and meet the "long" duties test, or at a rate of not less than $250 per week and meet an abbreviated "short" duties test. The long test requires that an exempt executive employee: Have a primary duty of managing the enterprise (or a recognized department or subdivision thereof); customarily and regularly direct the work of two or more other employees; have authority to hire or fire other employees or have particular weight given to suggestions and recommendations as to hiring, firing, advancement, promotion or other change of status; customarily and regularly exercise discretionary powers; and devote no more than 20 percent (or as much as 40 percent in retail or service establishments) of hours worked per week to activities that are not directly and closely related to performing exempt managerial work. The percentage restrictions on performing nonexempt work in the long test do not apply to an employee who is in sole charge of an independent or physically separate branch establishment, or to an owner of at least a 20 percent interest in the enterprise in which the employee is employed. The executive short duties test requires that the employee have a primary duty of managing the enterprise (or a recognized department or subdivision thereof) and customarily and regularly direct the work of two or more other employees.

The proposed regulations would streamline the current regulations by eliminating the separate long and short tests, and substituting a single standard duties test in proposed § 541.100. The proposed standard duties test would provide that an exempt executive employee must: (1) Have a primary duty of managing the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (2) customarily and regularly direct the work of two or more other employees; and (3) have the authority to hire or fire other employees or have particular weight given to suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees. This standard test, consisting of the current short test requirements plus a third objective requirement taken from the long test, represents a middle ground between the current long and short tests.

This streamlining and simplification of the current executive exemption regulations will eliminate the long test subsections regarding the percentage restrictions on nonexempt work and the discretionary powers requirement. We propose to eliminate these subsections for several reasons. Because of its outdated salary level, the long test has, as a practical matter, not been operative for many years. Reintroducing its requirements now would add new complexity and burdens to the exemption tests. The tests are complex and require time-testing managers for the duties they perform, hour-by-hour in a typical work week. Employers are not generally required to maintain any records of daily or weekly hours worked by exempt employees (see 29 CFR 516.3), let alone perform a moment-by-moment examination of an employee's specific duties performed or discretionary powers exercised. Yet reactivating the long test's limitations on nonexempt work could impose such significant new monitoring requirements (and, indirectly, new recordkeeping burdens) for employers to analyze the substance of each particular

employee's daily and weekly tasks in order to be confident of any claimed exemption. Further, historically, deciding which specific activities were not inherently an "essential part of and necessarily incident to" the exempt work proved to be a subjective and difficult standard to apply for employers, employees, as well as Wage and Hour Division investigators. The discretionary powers test has similarly proved to be a subjective and difficult standard to apply. Moreover, making such finite determinations would be made even more difficult in the aftermath of the decisions in *Donovan* v. *Burger King, Corp.*, 675 F.2d 516 (2nd Cir. 1982), *Donovan* v. *Burger King Corp.*, 672 F.2d 221 (1st Cir. 1982), and similar judicial rulings which hold that an exempt employee's managerial duties can be carried out at the same time the employee performs nonexempt manual tasks. Accordingly, given these developments in judicial construction of the law, the Department is of the view that the discretionary powers provision and the percentage limitations on particular duties formerly applied under the now dormant long test are not useful criteria that should be reintroduced for defining the executive exemption in today's work place.

The proposed regulations at § 541.101 would recognize as an exempt executive any employee who owns at least a 20 percent equity interest in the enterprise in which the employee is employed. Section 541.102 of the proposed regulations would continue the principle that an employee in "sole charge" of an independent establishment or a physically separated branch establishment may qualify as an exempt executive. "Sole charge" of an establishment is defined to include the senior employee with authority to make decisions regarding day-to-day operations and to direct the work of other employees. These provisions appear in the current regulations as exceptions to the percentage restrictions on non-exempt work under the former long test, in recognition of the due weight to be given the freedom from direct supervision and the high degree of executive responsibility enjoyed by the top person in charge of a separate business location, as well as the special status of a partial equity owner of an enterprise. The Department believes that these continue to be valid concepts for special status as executives under the proposed restructured regulations as well. The Department seeks comments on whether the salary level and/or salary basis requirements should be eliminated as unnecessary for sole charge executives and business owners. We have proposed to eliminate those requirements only for the 20 percent owner, based upon our belief that such an individual likely will share in the profits of the enterprise and that this is an adequate substitute indicator of exempt status.

The proposed regulations also would reorganize, simplify, streamline and update the regulations in other ways. The proposed regulations utilize objective, plain language in an attempt to make the regulations understandable to employees and employee representatives, small business owners and human resource professionals. We also propose to eliminate outdated and uninformative examples and to update definitions of key terms and phrases. The proposed regulations would move a number of sections pertaining to salary issues (current §§ 541.117, 541.118) to a new subpart G (discussed below), where all such provisions will be consolidated. Other sections relevant to several or all of the exemption categories (such as the definition of primary duty and a section regarding application of the exemptions to trainees) would move to a proposed new subpart H (Definitions and Miscellaneous Provisions) to eliminate unnecessary repetition. The following sections of the current regulations have been edited and moved to proposed new subpart H:

Current Section . . .	Moved to . . .	Proposed section
541.101	General	541.702
541.103	Primary duty	541.700
541.108	Work directly and closely related	541.703
541.109	Emergencies	541.705
541.110	Occasional tasks	541.706
541.111	Nonexempt work generally	541.702
541.116	Trainees	541.704

Section 541.102 of the current regulations, entitled "Management," has been modified and moved to proposed section 541.103.

Section 541.115 of the current regulations, entitled "Working foremen," has been moved to proposed § 541.106 and renamed, "Working supervisors," although no substantive changes are intended. A new provision on supervisors in retail establishments has been added as proposed § 541.107. Both 541.106 and 541.107 address the difficult issue of classifying employees who have both exempt supervisory duties and non-exempt duties, and the Department invites comments on whether these sections have appropriately distinguished exempt and non-exempt employees. Section 541.106 provides, as in the current regulation, that an employee with a primary duty of ordinary production work is not exempt even if the employee also has some supervisory responsibilities. This situation often occurs in a factory setting where a collective bargaining unit employee who works on a production line also has some responsibility to direct the work of other bargaining unit employees. Another example is a police officer who directs the work of other police officers on the conduct of an investigation but is also a member of a bargaining unit. Bargaining unit members do not become exempt employees simply because they are given some supervisory responsibilities.

The definition of the term "department or subdivision" remains at § 541.104, and the definition of "two or more employees" remains at § 541.105. The Department invites comments on whether the supervision of "two or more employees" required for exemption should be modified to include "the customary or regular leadership, alone or in combination with others, of two or more other employees."

Section 541.106 of the current regulations, entitled "Authority to hire or fire," is proposed to be deleted. The text in this section does not contribute to any further explanation of the requirement, and no further explanation seems necessary. Section 541.107 of the current regulations, entitled "Discretionary powers," and § 541.112 of the current regulations, "Percentage limitations on nonexempt work," are also deleted from the proposed rule for the reasons discussed above.

Subpart C, Administrative Employees, §§ 541.200–.207

To qualify as an exempt administrative employee under the current regulations, an employee must be paid on a salary or fee basis at a rate of not less than $155 per week and meet the "long" duties test, or earn $250 per week and meet the "short" duties test. The long test requires that an exempt administrative employee have a primary duty of either performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers; or performing functions in the administration of a school system, or educational establishment or institution, in work directly related to academic instruction or training. In addition, the current regulations require that an administrative employee: Customarily and regularly exercise discretion and

independent judgment; regularly and directly assist another exempt employee or perform work along specialized or technical lines requiring special training, experience or knowledge under only general supervision *or* perform special assignments and tasks under only general supervision; and devote no more than 20 percent (or as much as 40 percent in retail or service establishments) of work hours in a week to activities that are not directly and closely related to the performance of exempt work. The short test requires that the employee have a primary duty of performing office or non-manual work directly related to management policies or general business operations, which must include work requiring the exercise of discretion and independent judgment. Under both tests, when considering whether an employee's work is "directly related to management policies or general business operations" the regulations and the courts assess whether the work is "related to the administrative operations of the business as distinguished from production"—known as the "production versus staff dichotomy"—and whether the work is "of substantial importance to the management or operation of the business."

The current duties test for administrative employees is the most difficult to apply of all the duties tests. The requirement that the employee exercise "discretion and independent judgment," for instance, has generated significant confusion and litigation, as noted in the GAO report discussed above. This rule has been interpreted to deny the exemption to an employee who follows a procedures manual, even though most employees in the modern workplace are required to operate within standard procedures. The "production versus staff dichotomy" also is difficult to apply uniformly in the 21st century workplace.

The proposed regulations at § 541.200 would retain the requirement that an exempt administrative employee have a "primary duty" of "performing office or non-manual work related to the management or general business operations of the employer or the employer's customers," but replace the "discretion and independent judgment" requirement with a new requirement that the employee hold "a position of responsibility" with the employer.

The primary duty requirement of "performing office or non-manual work related to the management or general business operations" is defined in a new § 541.201. New § 541.201 clarifies that this requirement refers to the type of work performed by the employee and includes an illustrative list of the types of work areas that meet this requirement: tax, finance, accounting, auditing, quality control, purchasing, procurement, advertising, marketing, research, safety and health, personnel management, human resources, employee benefits, labor relations, public relations, government relations and similar activities. The Department invites comments on any other areas that should be included in this list and on any areas that should be deleted. Like the proposed changes to the executive exemption, the proposed administrative exemption focuses on "primary duty" and eliminates the percentage restrictions on non-exempt work currently required by the now-inoperative long duties test, for the same reasons discussed above under the executive exemption.

The proposed rule would also reduce the emphasis on the so-called "production versus staff" dichotomy in distinguishing between exempt and non-exempt workers, while retaining the concept that an exempt administrative employee must be engaged in work related to the management or general business operations of the employer or of the employer's customers. These changes are needed to reflect emerging case law in this area. For example, the court in *Piscione* v. *Ernst & Young*, 171 F.3d 527 (7th Cir. 1999), examined whether an employee's duties were directly related to Ernst & Young's management policies or general business operations or those of the firm's clients. The employee worked as a consultant in the firm's Human Resources Consulting Group on several multi-million dollar defined benefit plans and defined contribution plans in which thousands of individuals participated. The employee's work involved benefits calculations, actuarial valuations, government filings, compliance testing, and client advice. The court stated that this work influenced the internal business operations and policies of Ernst & Young's clients with regard to their benefit plans. The employee was the primary contact for several clients; the employee identified problems with their plans and suggested solutions, and the employee offered suggestions to clients regarding how to improve their efficiency. The court rejected the argument that, because the employee provided clients with reports and government forms to file, the work was production work. Rather, the employee was an advisory specialist or consultant whose work was exempt. In addition, the court found that the employee contributed to the management policies of Ernst & Young because the employee played a major role in developing new methods for improving client services and the timeliness of firm operations.

The proposed § 541.200 also contains a second requirement for the administrative exemption relating to the importance of the work performed or the high level of competence required by the work performed—a requirement that an exempt employee must hold a "position of responsibility." The term "position of responsibility" is defined in the proposed regulations at new § 541.202. To meet this new "position of responsibility" requirement, an employee must either (1) perform work of substantial importance, or (2) employ a high level of skill or training. The concept of "work of substantial importance" has been in the interpretive regulations since 1950, as a factor for determining whether a worker is an exempt administrative employee. The proposed regulations at new § 541.204 define this phrase based on language in the current regulations and include a revised list illustrating the types of activities that are generally considered of "substantial importance" for purposes of the exemption including: Formulating or interpreting management policies; providing consultation and expert advice to management; making or recommending decisions that have a substantial impact on business operations or finances; analyzing and recommending changes to operating practices; planning long or short-term business objectives; analyzing data, drawing conclusions and recommending changes; and handling complaints, arbitrating disputes or resolving grievances. The Department invites comments on any additional activities that should be included in this list and on any activities that should be deleted. The second alternative for meeting the "position of responsibility" requirement, "work requiring a high level of skill or training," defined in the proposed regulations at new § 541.205, would ensure that the administrative exemption is not denied to a highly trained and skilled employee who performs administrative functions merely because the employee uses a procedures manual, so long as the manual contains information that can only be interpreted properly by someone with a high level of specialized skills or training, as opposed to a manual in which the employee simply looks up the correct answer for a particular set of circumstances. As reflected in the GAO report noted above, it has become commonplace for employees in the modern work place to use procedures manuals and written guidelines as standard practices for achieving quality control and efficiency.

The administrative exemption is the most challenging of the § 13(a)(1) exemptions to define and delimit, and the "discretion and independent judgment" requirement has become increasingly difficult to apply with uniformity in the 21st century workplace. Thus, the Department proposes to delete this requirement and replace it with the requirement that an employee hold a "position of responsibility." The Department specifically seeks comments on whether the "discretion and independent judgment" requirement should be deleted entirely, retained as a third alternative for meeting the "position of responsibility" requirement, or retained by itself but modified to provide better guidance on distinguishing exempt administrative employees. The Department invites commenters to submit alternative proposed regulatory language for either "discretion and independent judgment" or "position of responsibility." The Department solicits comment on how employers currently interpret the "discretion and independent judgment" requirement, and whether individuals currently exempt under that requirement would continue to be exempt under the new "position of responsibility" requirement.

Finally, the proposed regulations also would reorganize, simplify, streamline and update the regulations in other ways. The proposed regulations utilize objective, plain language; eliminate outdated and uninformative examples; and update definitions of key terms and phrases. As with the executive exemption, the proposal for the administrative exemption would move a number of sections pertaining to salary issues (current §§ 541.211, 541.212 and 541.213) to subpart G, and other sections relevant to several or all of the exemption categories would move to the proposed subpart H (Definitions and Miscellaneous Provisions) to eliminate unnecessary repetition. For example, current § 541.203 entitled "Nonmanual work" is moved to proposed new § 541.703. Current § 541.206 entitled "Primary duty" is merged with current § 541.103 and moved to proposed new § 541.700. Current § 541.208 entitled "Directly and closely related" is combined with current §§ 541.108, 541.202, and 541.307 and moved to proposed new § 541.702. Current § 541.210 entitled "Trainees, administrative" is combined with current § 541.116 ("Trainees, executive") and current § 541.310 ("Trainees, professional") and moved to proposed new § 541.704. Provisions related to the administration of educational institutions in current §§ 541.2, 541.201(c), 541.202(e), and 541.215 have been consolidated and moved to new § 541.206; no substantive changes are intended by this consolidation.

Subpart D, Professional Employees, §§ 541.300–.304

The current regulations pertaining to the professional exemption contain four separate categories of exempt employees: learned professionals, artistic professionals, teachers, and computer professionals. As with the executive and administrative exemptions, the regulations contain both "short" and "long" duties tests, depending upon the salary level of the employee. The long test contains a separate primary duty requirement for each of the four categories of employees. The long test for learned professionals requires that the primary duty consist of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes. For creative professionals, the primary duty must consist of work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee. For teachers, the primary duty must consist of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge by an employee who is employed and engaged in this activity as a teacher in the school system or educational establishment or institution by which the person is employed. The duties tests for computer employees are discussed in subpart E. The long test also requires that an exempt employee: Perform work requiring the consistent exercise of discretion and judgment; do work that is predominantly intellectual and varied in character, such that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and devote no more than 20 percent of work hours in a week to activities that are not an essential part of and necessarily incident to exempt work. The short test in the current regulations for both learned professionals and teachers contains the specific primary duty requirement discussed above, and requires that the employee perform work requiring the consistent exercise of discretion and judgment. For artistic professionals, the work must require invention, imagination or talent in a recognized field of artistic endeavor.

The proposed regulations pertaining to the professional employee exemption would make changes similar to those we propose for the executive and administrative exemptions. The goal is to clarify and simplify the regulations defining the professional employee exemption, while remaining consistent with the purposes of the FLSA. For ease of reference, and making no substantive changes, we propose to move the provisions pertaining to computer professionals to new subpart E, which will contain all information pertinent to such employees. We also propose to simplify the regulations by eliminating the separate short and long tests for each of the remaining three categories and substituting a single standard duties test for each. This restructuring and simplification would eliminate the percentage limitation on nonexempt work and the consistent exercise of discretion and judgment requirement. As discussed above in connection with similar proposed changes to the executive and administrative exemptions, we are proposing to eliminate these subsections because they have proven difficult standards to apply uniformly.

For learned professionals, the proposed new standard test in § 541.301 would provide that employees qualify for exemption as a learned professional if they have a primary duty of performing office or non-manual work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which also may be acquired by an equivalent combination of intellectual instruction and work experience. This proposed standard test for learned professionals would focus on the knowledge of the employee and how that knowledge is used in everyday work, not on the educational path followed to obtain that knowledge. Although some flexibility to focus on the worker's knowledge exists in the current regulation, it is very limited and rarely used. The clarified test reflects changes in the 21st century workplace in how some "knowledge workers" acquire specialized learning and skills: in the modern workplace, some

employees acquire advanced knowledge through a combination of formal college-level education, training and work experience, even where other employees in that field customarily acquire advanced knowledge by obtaining a baccalaureate or advanced degree. The proposed changes would clarify that, so long as such an employee's level of advanced knowledge is equivalent to the knowledge possessed by an employee with the typical academic degree generally required by the profession, the employee may qualify as an exempt professional. Thus, for example, an employee who obtained advanced knowledge by completing college courses in a field such as engineering, and who worked in that field for a number of years, could qualify for exemption if the knowledge acquired was equivalent to that of an employee with a baccalaureate degree in engineering. We have not proposed any specific formula in the regulations for determining the equivalencies of intellectual instruction and qualifying work experience, although some examples from the current rule have been included and expanded. Public comments are invited on whether the regulations should specify such equivalencies.

The view that several years of specialized training plus intensive on-the-job training for a number of additional years may be equated with a college degree in certain fields has found support in reported judicial decisions. For example, the professional exemption has been applied to employees with a combination of training and academics in *Leslie* v. *Ingalls Shipbuilding, Inc.*, 899 F. Supp. 1578 (D. Miss. 1995). In Leslie, the court concluded that an employee who had completed three years of engineering study at a university and had many years of experience in the field of engineering was properly classified as a professional employee, even though the employee did not satisfy one of the usual minimum qualifications for an engineering position of having a bachelor's degree in an engineering discipline. The court considered the employee's combination of education and experience as satisfying the requirement for a prolonged course of specialized intellectual instruction and study.

For creative professionals, we propose to adopt the current short test, slightly modified, as the new standard test in proposed § 541.302. This new standard test would apply the creative professional exemption to any employee with the primary duty of "performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor." This language, although simplified, is not intended to make any material changes from the existing regulations. This standard was applied in the case of *Freeman* v. *National Broadcasting Company, Inc.*, 80 F.3d 78 (2nd Cir. 1996), in which employees who researched facts, developed story elements, interviewed subjects, wrote scripts, and supervised the editing of videotape were deemed to have been correctly classified as artistic professional employees. On the other hand, employees of small news organizations who spent their time gathering facts about routine community events such as municipal, school board, and city council meetings, and gathering information from the police blotter and real estate transaction reports, and then reporting those facts in a standard format were deemed not to be artistic professional employees in *Reich* v. *Newspapers of New England*, 44 F.3d 1060 (1st Cir. 1995) and *Reich* v. *Gateway Press, Inc.*, 13 F.3d 685 (3d Cir. 1994).

The standard test for teachers in proposed section 541.303 would be unchanged from the current short test, with the exception of the deletion of the requirement that the employee's work require the consistent exercise of discretion and judgment, a requirement that, as discussed above, has engendered significant confusion. Provisions on teachers from current §§ 541.3, 541.301(g), and 541.314 have been consolidated into proposed new § 541.303. The minor editorial changes are not intended to cause any substantive changes.

In addition, the proposed regulations utilize objective, plain language that can be easily understood by employees, small business owners and human resource professionals, and eliminate outdated and uninformative examples. The proposed regulations also would address a number of specific occupations that have been the subject of ambiguity and litigation. For example, we propose to update and clarify the circumstances under which employees working as newspaper journalists or as radio or television commentators are exempt, because the case law regarding such employees has been evolving over the years, and the existing regulations discussing such employees are outdated.

Provisions of the current regulations in §§ 541.3 and 541.314 that provide an exception to the salary or fee requirements for physicians and lawyers have been consolidated and moved to proposed § 541.304. Current § 541.307 entitled "Essential part of and necessarily incident to" has been combined with current § 541.108 ("Work directly and closely related"), 541.202 ("Categories of work"), and § 541.208 ("Directly and closely related"), and moved to proposed new § 541.702 ("Directly and closely related"), for a streamlined discussion of the principles for distinguishing exempt and nonexempt work. Although these sections have been consolidated and simplified, we do not intend any substantive changes.

Finally, we propose to move sections that pertain to salary issues (§§ 541.311, 541.312 and 541.313) to subpart G, where all such issues will be consolidated. Other sections relevant to several or all of the exemption categories (such as the definition of primary duty, a section regarding application of the exemption to trainees, and a section discussing nonexempt work generally) would move to the proposed subpart H (Definitions and Miscellaneous Provisions) to eliminate unnecessary repetition. Current § 541.305 entitled "Discretion and judgment" and current § 541.309 entitled "20-percent nonexempt work limitation" have been deleted from the proposed regulations for the same reasons similar changes are being proposed in the executive and administrative exemptions as discussed above.

Subpart E, Computer Employees Exemption, §§ 541.400–.403

The exemption for employees in computer occupations has a unique legislative and regulatory history. Prior to 1991, the interpretative regulations acknowledged that employees in various computer-related occupations could have supervisory or managerial duties meeting the exemption for "executive" or "administrative" employees, provided that all the applicable regulatory tests were otherwise met. However, the regulations did not recognize computer employees as exempt "learned" professionals absent a showing that specialized, prolonged academic education and training was an essential prerequisite for entry into the computer field. At the time, colleges and universities did not consistently recognize computer sciences as a *bona fide* academic discipline under which standard licensing, certification, or registration procedures were being followed. Thus, before 1990, employees in computer occupations were rarely recognized as exempt "learned" professionals and many also did not perform duties

meeting all the requirements for the executive or administrative exemptions. Of course, much has changed since then, and today "computer scientists" who possess advanced academic degrees in the computer field are routinely recognized as exempt professionals.

In November 1990, Congress enacted legislation directing the Department to issue regulations permitting computer systems analysts, computer programmers, software engineers, and other similarly-skilled professional workers to qualify for exemption under FLSA section 13(a)(1). This enactment also extended the exemption to employees in such computer occupations if paid on an hourly basis at a rate at least 6½ times the minimum wage. Final implementing regulations were issued in 1992 following public notice and comment procedures (*see* 29 CFR 541.3(a)(4) and 541.303; 57 FR 46744, Oct. 9, 1992; 57 FR 47163, Oct. 14, 1992). However, when Congress increased the minimum wage in 1996, that law included some of the Department's regulatory language as a separate statutory exemption under a new FLSA section 13(a)(17). The 1996 enactment also froze the hourly compensation test at $27.63 (which equaled 6½ times the former $4.25 minimum wage). The original 1990 statute was not affected by the 1996 enactment.

Accordingly, under the current regulations, an exempt computer employee must have a primary duty of performing work requiring theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, or software engineering. In addition, an exempt computer employee must be engaged in performing these activities as a computer systems analyst, computer programmer, software engineer, or other similarly-skilled worker in the computer software field. Finally, under the current regulations, an exempt computer employee must consistently exercise discretion and judgment, and be paid not less than $250 per week on a salary basis or not less than $27.63 an hour if paid an hourly rate.

The proposed regulations would consolidate and condense all of the regulatory guidance on the computer occupations exemption into a new regulatory subpart E by combining provisions of the current regulations found at §§ 541.3(a)(4), 541.205(c)(7), and 541.303. This new subpart will collect in one place the substance of the original 1990 enactment, the 1992 final regulations, and the 1996 enactment. The key regulatory language that resulted from the 1990 enactment is now substantially codified in section 13(a)(17) of the Act, and thus no substantive changes have been made to that language. However, consistent with changes in the professional exemption, the proposal deletes the additional requirement that an exempt computer employee must consistently exercise discretion and judgment. Further, the former regulatory text has been edited and streamlined to provide a more concise presentation, and the structure has been modified to conform to similar changes proposed in the professional exemption. Because of the tremendously rapid pace of significant changes occurring in the information technology industry, we have avoided citing specific job titles as examples of exempt workers, as they tend to quickly become outdated once included in the regulatory text. The Department recognizes that the computer employee exemption has been particularly confusing, and invites comments on any further clarifications possible under the statute.

Subpart F, Outside Sales Employees, §§ 541.500–.504

Section 13(a)(1) of the FLSA contains a specific and separate exemption for any employee employed "in the capacity of outside salesman." Under the existing regulations, outside sales employees must be customarily and regularly engaged away from the employer's places of business making sales or obtaining orders or contracts for services or the use of facilities. ("Inside sales" employees are not within the scope of this statutory exemption for "outside sales" employees.) The regulatory interpretations examine whether any given employee's chief duty or primary function is to make sales or take orders while away from the employer's premises, by analyzing the character of the job as a whole, to distinguish exempt outside sales employees from other nonexempt occupations (*e.g.*, route delivery personnel).

Under the current regulations, outside sales employees also may not exceed a 20 percent tolerance, per work week, performing duties unrelated to their own outside sales or solicitations. Activities that are incidental to, and in conjunction with, their own outside sales or solicitations, including incidental deliveries and collections, are not counted against the 20 percent nonexempt work limitation. The 20 percent limit is based not upon the employee's own hours of work performed, but upon the hours worked by other nonexempt employees of the employer who perform the kind of nonexempt work performed by the outside sales employee. If no one else performs such nonexempt work, the base applied is 40 hours, and the amount of nonexempt work allowed is eight hours per week. There is no salary or fee requirement for the outside sales employee exemption.

In keeping with similar proposed changes to the other exemptions in this part, and to simplify the outside sales exemption, the Department proposes to adopt a primary duty concept similar to the other exemptions, and to eliminate the particularly confusing 20 percent restriction on nonexempt work by outside sales employees. By eliminating this percentage limitation, the Department proposes to avoid any necessity that the employer track hours of outside sales employees. This will provide a consistent approach between this exemption and the exemptions for executive, administrative and professional employees. The essential elements required for exemption would continue, *i.e.*, the outside sales employee's primary duty must be to make sales or obtain orders or contracts for services or the use of facilities, and the employee must be customarily and regularly engaged away from the employer's place of business performing such duty. Outdated illustrations and redundant examples have also been deleted from the regulations, but no substantive changes are intended by these deletions. Finally, although the FLSA refers to the "outside salesman," we propose replacing this gender-specific term and refer instead to the "outside sales employee." The discussion of nonexempt work generally in current § 541.506 has been incorporated into proposed new § 541.701, and the discussion of outside sales trainees in current § 541.508 has been incorporated into proposed new § 541.704. As noted above and in connection with similar proposed changes to the executive, administrative and professional exemptions, the 20-percent limitation on nonexempt work in current § 541.507 is proposed to be deleted.

Subpart G, Compensation Requirements, §§ 541.600–.606

Salary Levels

Salary level tests have been included as part of the exemption criteria since the original regulations of 1938. Under the current rules, most executive, administrative and professional employees must earn a minimum salary

level to qualify for the exemption.[14] Employees paid below the minimum salary level are not exempt, irrespective of their job duties and responsibilities. Employees paid a salary above the minimum level in the regulations may be exempt if they also meet the salary basis and job duties tests.

To qualify for exemption under the existing regulations, an employee currently must earn a minimum salary of $155 per week for the executive and administrative exemptions, and $170 per week for the professional exemption. Employees paid above these minimum salary levels must meet a "long" duties test to qualify for the exemption. The current regulations also provide that employees paid above a higher (or "upset") salary rate of $250 per week are exempt if they meet a "short" duties test. As explained above, the short tests contain fewer requirements and are less burdensome to meet.[15] The most recent updates to these minimum salary levels were in 1975. In January 1981, revisions to increase the salary rates by the outgoing Carter Administration were stayed indefinitely by the incoming Reagan Administration. Because the salary levels have not been increased since 1975, the existing salary levels are outdated and no longer useful in distinguishing between exempt and nonexempt employees.

Proposed Standard Test. Under the proposal, the minimum salary level to qualify for exemption from the FLSA minimum wage and overtime requirements as an executive, administrative, or professional employee would be increased from $155 per week to $425 per week. This salary level would be referred to as the "standard test," thus eliminating the "short test" and "long test" terminology. The separate, higher salary level test for professional employees also would be eliminated.

Most stakeholders agreed that the salary levels need to be increased. A full-time minimum wage worker earns $206 per week ($5.15/hour x 40 hours)—an amount above the current long test levels and closely approaching the current short test level. As a result, under the current regulations, no full-time salaried worker is automatically exempt by earning below the long test level, and most salaried employees are tested for exemption under the short tests. Salary level was once viewed as being the best indicator of exempt status. Today, the existing salary level tests are of no help in distinguishing exempt employees from non-exempt workers. Accordingly, the question is not whether the Department should raise the salary levels, but by how much.

One suggestion for increasing the current salary levels is to adjust the existing rates, adopted in 1975, to account for inflation. The 1999 General Accounting Office report adjusted the 1975 salary levels for inflation based on 1998 BLS Consumer Price Index (CPI) data, resulting in the following salary levels: $470/week for the executive and administrative long test; $515/week for the professional long tests; and $757/week for the short test.[16] In January 2001, the Department published a report that applied 1999 CPI data to inflation adjust the current salary levels to $480/week for the long test and $774/week for the short test.[17]

However, several considerations weigh against mechanically adjusting the 1975 salary levels for inflation. First, the Department is proposing a different, standard duties test. Consequently, equivalency to either the current long and short test salary levels is not appropriate. Second, although adjusting the existing rates for inflation might provide the simplest, mechanical approach, the Department is concerned about the impact such adjusted salary levels would have on certain segments of industry and geographic areas of the country, particularly in the retail industry and in rural areas in the South, which tend to pay lower salaries. Third, mechanically adjusting for inflation presumes that the salary levels set in 1975 are precisely the appropriate baseline; and that the nature of work and the relationship between job duties and compensation practices have not changed in the intervening years since 1975. Fourth, the regulatory history has looked to information on actual salaries and incomes, not inflation-adjusted amounts. The 1949 Weiss Report, for example, considered and rejected proposals to increase salary levels based upon the change in the cost of living from the 1940 levels.[18]

Because of these concerns, the Department believes it would be more appropriate to examine available data on actual salary levels currently being paid in the economy. We reviewed a preliminary report on actual salary levels based on the BLS year 2000 Current Population Survey (CPS) Outgoing Rotations data set. This data included full-time, salaried workers aged 16 and above, but excluded the self-employed, agricultural workers, volunteers and federal employees (who are all not subject to the salary level tests in the part 541 regulations), broken out by industry and geographic area.

In considering this data and various salary levels in the development of this proposal, the Department was guided by the prescient analysis of a 1958 Department of Labor report recommending changes to the salary levels:

> The salary tests have thus been set for the country as a whole * * * with appropriate consideration given to the fact that the same salary cannot operate with equal effect as a test in high-wage and low-wage industries and regions, and in metropolitan and rural areas, in an economy as complex and diversified as that of the United States. Despite the variation in effect, however, it is clear that the objectives of the salary tests will be accomplished if the levels selected are set at points near the lower end of the current range of salaries for each of the categories. Such levels will assist in demarcating the "*bona fide*" executive, administrative and professional employees without disqualifying any substantial number of such employees.
>
> * * * * *
>
> It is my conclusion, from all the evidence, that the lower portion of the range of prevailing salaries will be most nearly approximated if the tests are set at about the levels at which no more than about 10 percent of those in the lowest-range region, or in the smallest size establishment group, or in the smallest-sized city group, or in the lowest-wage industry of each of the categories would fail to meet the tests. Although this may result in loss of exemption for a few employees who might otherwise qualify for exemption, * * * in the light of the objectives discussed above, this is a reasonable exercise of the Administrator's authority to "delimit" as well as define.[19]

As in the 1958 analysis, the Department looked to "points near the lower end of the current range of salaries" to determine an appropriate salary level for the standard test—although we settled upon on the lowest 20 percent, rather than the lowest 10 percent, because of the proposed change from the "short" and "long" test structure in the proposed rule and because the data included some salaried employees who would not meet the duties tests for exemption. Applying this analysis, and also considering adjustments to the current salary levels for inflation, the Department proposes a standard salary level test of $425/week. Under this level, approximately the bottom 20 percent of salaried employees would fall below the minimum salary requirement and be automatically entitled to overtime pay.

Proposed special rule for highly compensated employees. The proposed regulations also include in § 541.601 a special, streamlined rule for employees paid $65,000 or more annually. Under this proposed rule for highly compensated employees, employees paid $65,000 or more annually and performing non-manual work would be exempt if they have an identifiable executive, administrative or professional function as described in the standard duties tests. These highly compensated employees would not have to meet all the elements of the standard duties test to qualify for the exemption as a highly compensated employee. For example, an employee who supervises two workers but does not participate in any hiring or termination decisions in the company would still be exempt because the employee has a function that is identifiable as an executive function. In addition, the proposed special rule for highly compensated employees would permit counting base salary, commissions, non-discretionary bonuses and other non-discretionary compensation in determining whether an employee earns $65,000 or more annually. To qualify as a highly compensated employee under the proposed regulation, any commissions or non-discretionary bonuses would have to be settled and paid out to the employee as due on at least a monthly basis. An employee who works only a portion of a year, whether because the employee begins work during the year or leaves before the end of the year, must be guaranteed a *pro rata* portion of the $65,000 annual guarantee. The pro rata portion should be based upon the number of weeks the employee works in such a position. If an employee's total annual compensation does not total at least the guaranteed $65,000 by the end of the year, the proposed regulation would allow the employer to make a payment by the next pay period sufficient to bring the employee to the guaranteed level. The employer is not required to make this payment; however, if the employer elects not to make the one-time payment, the employee is not exempt as a highly compensated employee.[20]

To determine an appropriate salary level for highly compensated employees, the Department looked to points near the higher end of the current range of salaries and found that the top 20 percent of all salaried employees earned above $65,000 annually. This level is consistent with setting the proposed standard test salary level at the bottom 20 percent of salaried employees.

Puerto Rico, Virgin Islands and American Samoa. Prior to the Fair Labor Standards Amendments of 1989 (Pub. L. 101–157), Puerto Rico, the Virgin Islands, and American Samoa were subject to wage order proceedings under the Act, in lieu of the FLSA minimum wage, and consequently lower salary test levels traditionally were established for employees in these jurisdictions. The 1989 Amendments removed Puerto Rico and the Virgin Islands from the Act's wage order proceedings, and provided that the U.S. mainland minimum hourly wage rates under section 6(a)(1) of the Act would apply in Puerto Rico and the Virgin Islands. For this reason, the proposed regulations would apply the mainland salary test level of $425 per week in Puerto Rico and the Virgin Islands. Employees in American Samoa remain subject to wage order proceedings under the Act. Consequently, the proposed regulations would apply a special, lower salary test level of $360 per week for executive, administrative and professional employees in American Samoa. This special salary level maintains approximately the same ratio to the mainland test in the current regulations (84% for executive and administrative workers). Similarly, the proposal would apply a special test for highly compensated employees in American Samoa of $55,000 annually. Comments are invited on whether the 84 percent ratio is appropriate.

Comments on salary levels. The Department invites comments on these proposed salary levels and on any alternative salary level amounts or methodologies for determining the appropriate salary level. In addition, the Department invites comments on the alternative of removing the salary tests from the regulations entirely and on how the regulations could be structured without the need for any specific salary amounts (relying only on duties tests, for example). The Department also invites comments on the alternative of adopting a "salary only" test for highly compensated employees. Under such an alternative, for example, employees performing non-manual or office work and earning a total annual compensation over a certain amount would automatically be considered exempt, without any reference to the employee's duties.

Salary Basis Test

Under the current regulations, to qualify for the executive, administrative or professional exemption, an employee must be paid on a "salary basis" as defined in § 541.118. The employee must regularly receive a predetermined amount of salary, on a weekly or less frequent basis, that "is not subject to reduction because of variations in the quality or quantity of the work performed." Thus, with a few exceptions described below, the employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked.

The salary basis test prohibits an employer from making deductions from the salary "for absences occasioned by the employer or by the operating requirements of the business." In other words, "if the employee is ready, willing, and able to work, deductions may not be made for time when work is not available." However, the employee does not have to be paid for any work week in which he or she performs no work.

The current salary basis test also prohibits deductions from pay for disciplinary problems, performance issues or for absences caused by jury duty, attendance as a witness, or temporary military leave (although employers may take offsets for jury or military pay) in any week in which an employee performs any work.

The current regulations contain several exceptions to these salary basis rules: An employer may make deductions from the guaranteed pay "when the employee absents himself from work for a day or more for personal reasons, other than sickness or accident." Deductions also are permitted for absences of a day or more due to sickness or disability, if taken in accordance with a *bona fide* plan, policy or law (workers compensation, for example) providing wage

[14] There is no salary level test for outside sales employees and some professional employees (teachers, doctors, lawyers). Such employees are exempt regardless of their salary.

[15] Also, in 1996, Congress amended the FLSA to exempt certain hourly-paid computer professionals paid at least $27.63 per hour ($57,470 per year, assuming 40 hours per week).

[16] Fair Labor Standards Act: White Collar Exemptions in the Modern Work Place, GAO/HEHS–99–164, September 30, 1999.

[17] The "New Economy" and its Impact on Executive, Administrative and Professional Exemptions to the Fair Labor Standards Act (FLSA), January 2001, pp. 71–73.

[18] "Actual data showing the increases in the prevailing minimum salary levels of bona fide executive, administrative and professional employees since October 1940 would be the best evidence of the appropriate salary increases for the revised regulations. * * * The change in the cost of living which was urged by several witnesses as a basis for determining the appropriate levels is, in my opinion, not a measure of the rise in prevailing minimum salary levels." Weiss Report, p. 12.

[19] Report and Recommendations on Proposed Revision of Regulations, Part 541 under the Fair Labor Standards Act, March 3, 1958, by Harry S. Kantor, Assistant Administrator, Presiding Officer.

[20] Of course, if all of the requirements in either the executive, administrative or professional employee tests established in §§ 541.100, 541.200 or 541.300 are satisfied, the employer still would be able to claim the appropriate exemption.

replacement benefits. Employers also may make deductions from an exempt employee's salary for any hours not worked in the initial and final weeks of employment or for hours taken as unpaid FMLA leave without affecting the exempt status of the employee. Finally, less than full week deductions from pay are permitted for violations of major safety rules.

Under the current rules, an employer can lose the exemption for an entire class of employees for making improper deductions from guaranteed pay, even for highly paid employees. Depending on the facts, improper deductions can "indicate that there was no intention to pay the employee on a salary basis. In such a case, the exemption would not be applicable to him during the entire period when such deductions were being made." For inadvertent mistakes, however, the regulations provide employers with a "window of correction." If the facts demonstrate that the prohibited deduction from guaranteed pay was inadvertent, the exemption is not lost if the employer reimburses the employee for such deductions and promises to comply in the future.

In developing options for its proposed rule, the Department considered whether to eliminate the salary basis test. We carefully weighed the need for the salary basis test and concluded that the underlying concept of the test " guaranteed pay, not subject to reduction because of variations in the quality or quantity of the work performed " should be retained. The nearly universal practice of paying employees with the requisite status to be bona fide executive, administrative, or professional employees on a salary basis, as the 1949 hearings on the exemption revealed, reflected the understanding that such employees have discretion to manage their time and are not answerable for the number of hours worked or the number of tasks performed. Such employees are not paid by the hour or task, but for the general value of services performed. The salary basis test also describes the *quid pro quo* enjoyed by exempt employees, which distinguishes them from non-exempt workers. Exempt employees are not paid overtime for working over 40 hours in a week. In exchange, the employer must provide a guaranteed salary that cannot be reduced when an employee works less than 40 hours.

The Department also considered amending the salary basis test to permit deductions from pay for cases in which an exempt employee chooses to be absent for a part of a day. But allowing such "pay docking" for partial-day absences would breach the quid pro quo and blur the line between exempt and non-exempt employees. An exempt manager, for example, does not receive extra pay for working 16 hours on a Thursday to complete a project; thus, as a matter of fundamental fairness, an employer should not be allowed to dock the employee's salary for leaving work early on Friday. Of course, an employer can terminate an employee who abuses this salary arrangement.

Although the proposed rule retains the salary basis test and its concept of guaranteed pay in proposed § 541.602, two significant updates are included in the proposal: *Disciplinary Deductions.* The proposed regulations would allow an exception to the no pay-docking rule for deductions from pay for full-day disciplinary suspensions. For example, an employer would be permitted to suspend an exempt employee without pay for reasons such as sexual harassment or workplace violence. The current regulations permit such deductions only for penalties imposed for infractions of safety rules of major significance and for unpaid suspensions for one or more full work weeks (*i.e.*, Monday to Friday). The proposed change would allow employers to suspend exempt employees without pay for discriminatory harassment for two days, four days or 10 days, as appropriate to respond to the misconduct. The Department believes this is a common-sense change that will permit employers to uniformly hold exempt employees to the same standards of conduct as that required of nonexempt, hourly workers. *Safe Harbor Provision.* Under the current regulations, an employer who makes improper deductions from pay can lose the exemption for an entire class of employees. However, as mentioned above, the current rules also include a "window of correction" provision at 541.118(a)(6) under which an employer who inadvertently makes impermissible deductions can, in some circumstances, retain the exemption by reimbursing employees for any improper deductions. Unfortunately, the "window of correction" has proved difficult for the Department to administer and has been the source of considerable litigation. The proposed rule, at 541.603, would clarify the circumstances and the extent to which an improper deduction causes an employee or groups of employees to become nonexempt. The proposed rule maintains the underlying purpose of the current rule that an employer does not lose the FLSA exemption because of isolated incidents of improper pay deductions. Under the proposal, the exemption would be lost only if there is a pattern and practice of improper deductions, and then only for employees in the same job classification and working for the same manager who is responsible for the improper pay docking decision or policy. For example, if one manager at a single company facility routinely docks the pay of engineers for partial-day absences, then all engineers at that one facility whose pay could have been docked by that same manager are not exempt. Engineers at other facilities or working for other managers would remain exempt. Further, the proposed rule would create a new "safe harbor" provision: if an employer has a written policy prohibiting improper pay deductions, notifies employees of that policy and reimburses employees for any improper deductions, then that employer would not lose the exemption for any employees unless the employer's policy prohibiting improper deductions is repeatedly and willfully violated. The Department believes this approach would be much easier to apply uniformly and more consistent with the purposes of the FLSA.

Proposed section 541.604 continues the guidance from current 541.118(b) on allowing payments of additional compensation besides the salary as not being inconsistent with the salary basis of payment, and on pay plans that compute an exempt employee's salary from daily or shift rates if accompanied by the minimum guarantee. The language has been clarified to add hourly compensation plans that include such guarantees, consistent with established enforcement practices, if a reasonable relationship exists between the guaranteed amount and an employee's usual earnings for a normal scheduled work week.

Proposed § 541.605 contains updated guidance on the "fee basis" of payment permitted for administrative and professional employees, taken from current sections 541.213 and 541.313. Proposed § 541.606 provides guidance on payment of required salary amounts "exclusive of board, lodging or other facilities" or "free and clear," taken from §§ 541.117(c), 541.211(d), and 541.311(d) of the current regulations and expanded to cross-reference 29 CFR 531.32 for more guidance on qualifying "other facilities" similar to board and lodging.

The former "upset salary" provisions that were part of the short tests for executive, administrative and professional employees have been deleted from this proposed rule (current §§ 541.119, 541.214, and 541.315).

Subpart H, Definitions and Miscellaneous Provisions, §§ 541.700–.708

To eliminate unnecessary repetition, the proposed regulations would move definitions and other provisions applicable to several or all of the exemption categories to a new subpart H, Definitions and Miscellaneous Provisions. The proposed subpart H would define "primary duty" in proposed § 541.700; "directly and closely related" in proposed Section 541.702; "exempt and nonexempt work" in proposed § 541.701; and "office or non-manual work" in proposed § 541.703. Subpart H would also contain provisions regarding trainees, emergencies and occasional tasks, combination exemptions, the motion picture producing industry, and employees of public agencies. Most of these provisions have been moved from the existing regulations without substantial change, although some changes have been made to simplify and update the current regulations. Current § 541.602, containing guidance on the percentage limitations on performing nonexempt work for executive and administrative employees in multi-store retailing operations, is proposed to be deleted for the same reasons noted above for eliminating those former long duties test requirements from the executive and administrative exemptions.

IV. Executive Order 12866 and the Small Business Regulatory Enforcement Fairness Act

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that the proposed rule is an economically significant regulatory action under section 3(f)(1) of Executive Order 12866. Based on a preliminary analysis of the data the rule could have an annual effect on the economy of $100 million or more. However, the proposed rule is not likely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

For similar reasons, the Department has concluded that this proposed rule also is a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Although it could result in an annual effect on the economy of $100 million or more, it is not likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As a result, the Department has prepared a Preliminary Regulatory Impact Analysis (PRIA) in connection with this proposed rule as required under section 6(a)(3) of the Order and the Office of Management and Budget has reviewed the rule. Copies of the complete PRIA may be obtained from the Department by contacting the Wage and Hour Division at the address and telephone number provided above. The results of the PRIA are summarized below.

Preliminary Regulatory Impact Analysis

Overview

The proposed changes in the rules for determining whether an employee is exempt as an executive, administrative, or professional (EAP) worker under the Fair Labor Standards Act (FLSA) will affect virtually all employers covered by the FLSA that employ workers within the scope of the exemptions in 29 CFR part 541. Employers will be affected unless all of their employees are expressly excluded from FLSA coverage by the statute. Excluded from these regulations are the self-employed, agricultural workers, railroad workers, selected occupations in the transportation industries and in automobile dealerships, and most Federal employees subject to separate rules administered by the U.S. Office of Personnel Management. However, 29 CFR part 541 regulations apply to the following Federal agencies: Library of Congress, U.S. Postal Service, Postal Rate Commission, and Tennessee Valley Authority (see 29 U.S.C. 204(f)).

Therefore, employers in all industrial sectors except agriculture, railroads, and private households are subject to the existing and proposed regulations. The regulations also apply to State and local governmental employees.

The PRIA indicates that there are 6.5 million establishments with 109.5 million employees, annual payrolls totaling $2.8 trillion, annual sales revenues of $17.9 trillion, and annual pre-tax profits of $769.5 billion in the industry sectors affected by the proposed rule. Corresponding data based on SBA's size standards for small business entities indicates that over 5.2 million of these establishments are considered to be small businesses. These small firms employ approximately 38.7 million workers with an annual payroll of $940.0 billion. Their total annual sales are estimated to be $5.7 trillion and their annual pre-tax profits are estimated to be $233.9 billion. Approximately 79.8 percent of the affected establishments are considered to be small businesses and they account for 38.8 percent of the employment, 33.7 percent of the payroll, 31.8 percent of the annual sales, and 30.4 percent of the annual pre-tax profits.

Over 87,400 state and local governmental entities will be affected by the proposed rule (3,043 county governments, 19,372 municipal governments, 16,629 township governments, 34,683 special district governments, and 13,726 school district governments). Nationwide, these entities receive more than $1.4 trillion in general revenues, including revenues from taxes, some categories of fees and charges, and intergovernmental transfers. Their direct expenditures exceed $1.6 trillion in the aggregate. State and local governments employ more than 4 million workers and their payrolls exceed $12.6 billion per month.

The following tables summarize the provisions of the current 29 CFR part 541 and the proposed rule that were analyzed in the PRIA.

TABLE 1.—WEEKLY SALARY LEVELS IN THE CURRENT AND PROPOSED RULES

	Dollars
Current Rule	
Long Test:	
Executives	155
Administrative	155
Professionals	170
Short Test	250
Proposed Rule	
Standard Test	425
Highly Compensated	1,250

TABLE 2.—THE CURRENT AND PROPOSED DUTIES TESTS FOR EXECUTIVE EMPLOYEES

Current long test (salary and duties)	Current short test (salary and duties)	Proposed standard test (salary and duties)
$155 per week Primary duty of the management of the enterprise or a recognized department or subdivision. Customarily and regularly directs the work of two or more other employees. Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion or other change of status of employees is given particlar weight). Customarily and regularly exercises discretionary powers. Does not devote more than 20 percent (40 percent in retail or service establishments) of time to activities that are not directly and closely related to exempt work.	$250 per week Primary duty of the management of the enterprise or a recognized department or subdivision. Customarily and regularly directs the work of two or more other employees.	$425 per week. Primary duty of management of the enterprise or a recognized department or subdivision.. Customarily and regularly directs the work of two or more other employees. Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion or other change of status of other employees is given particlar weight).

TABLE 3.—THE CURRENT AND PROPOSED DUTIES TESTS FOR ADMINISTRATIVE EMPLOYEES

Current long test (salary and duties)	Current short test (salary and duties)	Proposed standard test (salary and duties)
$155 per week Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers. Customarily and regularly exercises discretion and independent judgment. Regularly and directly assists a proprietor, or exempt executive or administrative employee; or performs specialized or technical work requiring special knowledge under only general supervision; or executes special assignments under only general supervision. Does not devote more than 20 percent (40 percent in retail or service establishments) of time to activities that are not directly and closely related to exempt work.	$250 per week Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers. Customarily and regularly exercises discretion and independent judgment.	$425 per week. Primary duty of performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers. Holds a "position of responsibility" with the employer, defined as either (1) performing work of substantial importance or (2) performing work requiring a high level skill or training.

TABLE 4.—THE CURRENT AND PROPOSED DUTIES TESTS FOR LEARNED PROFESSIONAL EMPLOYEES

Current long test (salary and duties)	Current short test (salary and duties)	Proposed standard test (salary and duties)
$170 per week Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. Consistently exercises discretion and judgment. Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time.. Does not devote more than 20 percent of time to activities that are not an essential part of and necessarily incident to exempt work.	$250 per week Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study Consistently exercises discretion and judgment.	$425 per week. Primary duty of performing office or non-manual work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which also may be acquired by alternative means such as an equivalent combination of intellectual instruction and work experience.

TABLE 5.—THE CURRENT AND PROPOSED DUTIES TESTS FOR CREATIVE PROFESSIONAL EMPLOYEES

Current long test (salary and duties)	Current short test (salary and duties)	Proposed standard test (salary and duties)
$170 per week	$250 per week	$425 per week.

TABLE 5.—THE CURRENT AND PROPOSED DUTIES TESTS FOR CREATIVE PROFESSIONAL EMPLOYEES—Continued

Current long test (salary and duties)	Current short test (salary and duties)	Proposed standard test (salary and duties)
Primary duty of performing work that is original and creative in character in a recognized field of artistic endeavor, and the result of which depends primarily on the invention, imagination, or talent of the employee. Consistently exercises discretion and judgment. Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time. Does not devote more than 20 percent of time to activities that are not directly and closely related to exempt work.	Performs work requiring invention, imagination, or talent in a recognized field of artistic endeavor.	Primary duty of performing work requiring invention, imagination, originality or talent in a recognized field of artistic, or creative endeavor.

TABLE 6.—THE CURRENT AND PROPOSED DUTIES TESTS FOR COMPUTER EMPLOYEES

Current long test (salary and duties)	Current short test (salary and duties)	Section 13(a)(17) test (salary and duties)	Proposed Standard Test (salary and duties)
$170 per week Primary duty of performing work requiring theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering. Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field. Consistently exercises discretion and judgment. Performs work that is predominantly intellectual and varied in character and is of such character that he output produced or result accomplished cannot be standardized in relation to a given period of time. Does not devote more than 20 percent of time to activities that are not directly and closely related to exempt work.	$250 per week Primary duty of performing work requiring theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering. Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field. Consistently exercises discretion and judgment.	$27.63 an hour Primary duty of (A) application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software of system functional applications; or (B) design, development, documentation analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user of system design specifications; or (C) design, documentation, testing , creation or modification of computer programs related to machine operating systems; or (D) a combination of duties described in (A), (B) and (C), the performance of which requires the same level of skills. Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.	$425 per week or $27.63 an hour. Primary duty of (A) application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software of system functional applications; or (B) design, development, documentation analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user of system design specifications; or (C) design, documentation, testing , creation or modification of computer programs related to machine operating systems; or (D) a combination of duties described in (A), (B) and (C), the performance of which requires the same level of skills. Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.

TABLE 7.—THE CURRENT AND PROPOSED DUTIES TESTS FOR OUTSIDE SALES EMPLOYEES

Current long test (salary and duties)	Current short test (salary and duties)	Proposed standard test (salary and duties)
None required	None required	None required.

TABLE 7.—THE CURRENT AND PROPOSED DUTIES TESTS FOR OUTSIDE SALES EMPLOYEES—Continued

Current long test (salary and duties)	Current short test (salary and duties)	Proposed standard test (salary and duties)
Employed for the purpose of and customarily and regularly engaged away from the employer's place of business in making sales; or in obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer. Does not devote more than 20 percent of the hours worked by nonexempt employees of the employer to activities that are not incidental to and in conjunction with the employee's own outside sales or solicitations.	No separate "short" test	Primary duty of making sales; or of obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer Customarily and regularly engaged away from the employer's place or places of business.

Methodology for Estimating Costs

The principal database used in the PRIA is the 2001 Current Population Survey (CPS). A complete description of the methodology used for determining the employees who are potentially exempt and nonexempt from the overtime requirements of the current and proposed rule is contained in the PRIA available by contacting the Wage and Hour Division at the address and telephone number provided above.

The economic impact of the proposed rule includes two components: One-time implementation costs; and recurring incremental payroll costs incurred by employers for those employees presently treated as exempt from overtime under the current rule, who become nonexempt.

The implementation costs contain two parts. The first part includes the amount of time employers would take to: (1) Read and understand the proposed rule; (2) update and formulate their overtime policies; (3) notify employees of any changes; and (4) all other time taken to *implement* the proposed rule. The second part of the implementation costs is the amount of time employers would take to review their job categories to determine (1) whether or not a particular job category is exempt or nonexempt under the proposed rule, and (2) how to adjust to the new salary levels and duties tests. To estimate the implementation costs of the proposed rule, the department contacted six human resource specialists from around the country to obtain information on the amount of time small and large businesses would take for each of these activities. High and low estimates of the implementation costs were estimated by varying the amount of time taken to review job categories and other time taken to implement the proposed rule.

The second component of the economic impact of the proposed rule is the recurring incremental payroll costs incurred by employers for those employees presently treated as exempt from overtime under the current rule, who become nonexempt as a result of raising the salary levels and revising the duties tests.

Affected employers would have four choices concerning potential payroll costs: (1) Adhering to a 40 hour work week; (2) paying statutory overtime premiums for affected workers' hours worked beyond 40 per week; (3) raising employees' salaries to levels required for exempt status by the proposed rule; or (4) converting salaried employees' basis of pay to an hourly rate (no less than the federal minimum wage) that results in virtually no (or only a minimal) changes to the total compensation paid to those workers. Employers could also change the duties of currently exempt and nonexempt workers to comply with the proposed rule.

For the second choice above, paying overtime premium pay, employers typically have two options, with differing cost implications, for meeting their statutory overtime obligations. For example, assume an employer paid an employee a fixed salary of $400 per week with no overtime premium pay, for which the employee worked 45 hours per week, and the employer must now begin to pay this employee overtime pay. As one option, the employer could assume that the former weekly salary of $400 represents compensation for a standard 40-hour workweek, and pay this employee in the future time-and-one-half the $10 hourly rate for any overtime hours worked beyond 40 per week. For a 45-hour workweek, total compensation due, including overtime, would equal $475 ((40 hours × $10/hour) + (5 hours × $15/hour) = $475), compared to $400 formerly. As a second option, the employer could pay the fixed salary of $400 per week as total straight time pay for all hours worked in the week (provided it equals or exceeds the federal minimum wage), and pay additional "half-time" for each hour worked beyond 40 in the week. This method of payment is known as a "fixed salary for fluctuating hours" (*see* 29 CFR 778.114). For a 45-hour workweek, total compensation due under this method, including overtime, would equal $422.22 ($400 + (($400÷45) × ½ × 5) = $422.22).

The third choice above is straightforward—an employer could simply raise the salary level for currently exempt salaried workers earning less than $22,100 to at least the new proposed salary level or more and have them remain exempt salaried workers.

Nothing in the FLSA would prohibit an employer affected by the proposed rule, or under the current rule, from implementing the fourth choice above that results in virtually no (or only a minimal) increase in labor costs. For example, to pay an hourly rate and time and one-half that rate for 5 hours of overtime in a 45-hour workweek and incur approximately the same total costs as the former $400 weekly salary, the regular hourly rate would compute to $8.421 ((40 hours × $8.421) + (5 hours × (1.5 × $8.421)) = $399.99).

Most employers affected by the proposed rule would be expected to choose the most cost-effective compensation adjustment method that maintains the stability of their work force, pay structure, and output levels. Given the range of options available to an employer confronted with paying overtime to employees previously treated as exempt, the actual payroll cost impact for individual employers could range from near zero to up to the maximum cost impacts estimated in the Department's PRIA. However, for the PRIA it is was assumed that, for any nonexempt employee who satisfies the pertinent duties test, the employer will choose to pay the smaller of either the additional weekly salary required to qualify the employee for exemption or the usual weekly overtime payment for the employee. Thus, the Department's assessment of costs of the proposed rule reflects a range of upper bound estimates. Actual payroll costs would be expected to be lower than the estimates summarized below and presented in the PRIA because of the payroll adjustment option employers have that could offset the impact of the proposed rule. Moreover, some of the cost is likely to be passed on to consumers in the form of higher prices, some of the cost is likely to be passed on to business owners and shareholders in the form of lower profits, and some of the cost is likely to be passed on to workers in the form of fewer overtime hours.

Finally, estimated costs are presented as ranges because data limitations prevent the Department from identifying exactly which workers are exempt and nonexempt based on the current and proposed duties tests. The estimates were determined using previous Department and U.S. General Accounting Office methodology and the latest data from the Bureau of Labor Statistics, the Census Bureau, and Dunn and Bradstreet. The ranges result from estimating a minimum and maximum number of workers that are likely to change from exempt to nonexempt employees. To estimate the recurring payroll costs of the proposed rule, it was necessary to apply some assumptions to the PRIA data to identify which employees are exempt and nonexempt under the current and proposed rules. Specifically, the Department assumed that for employees in occupations with a combination of exempt and nonexempt duties those with lower salaries would more likely be non-exempt. The Department also assumed that six years or more of work experience would be considered equivalent to a bachelor's degree for the learned professional exemption. For each occupational category with a combination of exempt and nonexempt duties a lower bound and an upper bound estimate of the number of employees who are exempt has been calculated. Finally, it was assumed that for each executive, administrative, or professional employee who becomes nonexempt, the likely incremental payroll cost is the smaller of the additional weekly salary required to qualify for exemption or the usual weekly overtime payment required to be paid to that worker.

Methodology for Estimating Benefits

The benefit estimates are lower bound estimates based on PRIA data and a Minimum Wage Study Commission report that estimated overtime violation rates by industry. The Department applied these rates to the overtime hours worked by salaried employees in the PRIA data, and then reduced these estimates by two-thirds to account for other types of overtime violations (off-the-clock-work, straight time for all hours) that occur in addition to violations of the "white collar" exemptions. The Department's high and low benefit estimates result from different assumptions on the lower costs associated with determining the exempt status of employees including conducting expensive time-and-motion studies and lower litigation costs, as well as the updated window of correction and safe harbor provisions in the proposed rule. The benefit estimates summarized below are lower bound estimates because they exclude significant, but difficult to quantify, benefits such as avoidance of the following additional costs which could be incurred by an employer who has misclassified employees as exempt: (1) The second and third years of overtime back pay allowed under the FLSA; (2) an amount equal to the back pay as liquidated damages; and (3) litigation costs, including attorney's fees. The benefit estimates also exclude the reduced human resource and legal costs for classifying workers under the proposed rule, and improved management productivity from reduced Department of Labor investigations and private litigation.

Three assumptions were applied to the PRIA data to estimate the benefits of the proposed rule; the Department requests comments on these and all assumptions used for the impact analysis. First, the overtime violation rates published by the Minimum Wage Study Commission in 1980 were assumed to apply today. Second, the Commission's overtime violation rates were reduced to account for other types of overtime violations (off-the-clock-work, straight time for all hours) that occur in addition to violations of the "white collar" exemptions. Finally, the Department's range of benefit estimates result from different assumptions on the impact of the updated window-of-correction and safe harbor provisions in the proposed rule. The Department welcomes comments and estimates from the public on the amount of benefits associated with these provisions and other significant, but difficult to quantify, benefits such as the reduced human resource and legal costs for classifying workers under the proposed rule, and improved management productivity from reduced investigations and litigation.

Total Costs and Benefits

The upper bound total cost estimate for the proposed rule ranges from $870.3 million to $1,575.5 million. This includes one-time implementation costs ranging from $535.4 million to $680.0 million and recurring payroll costs ranging from $334.8 million to $895.5 million. The lower bound total benefit estimate for the proposed rule ranges from $1,109.8 million to $1,972.7 million.

Private Sector Costs and Benefits

The upper bound private sector cost estimate for the proposed rule ranges from $849.2 million to $1,531.9 million. This includes one-time implementation costs ranging from $521.4 million to $660.3 million and recurring payroll costs ranging from $327.8 million to $871.6 million. The total private sector costs as a percentage of total payroll range from 0.03 percent to 0.05 percent for all industries, and from 0.11 percent to 0.21 percent of total pre-tax profits for all industries.

The lower bound private sector benefit estimate for the proposed rule ranges from $1,061.3 million to $1,886.5 million. These estimates include the impact of updating the window of correction and safe harbor provisions in the proposed rule but do not include significant, but difficult to quantify, benefits such as the reduced human resource and legal costs for classifying workers under the proposed rule, and improved management productivity from reduced investigations and litigation.

The largest total costs are incurred by the Health Services industry ($85.3 million to $163.4 million), Construction ($71.2 million to $119.1 million), Business Services ($54.1 million to $86.4 million), Personal Services ($38.1 million to $83.8 million), and Real Estate ($32.2 million to $71.4 million). The 10 industries with the highest costs account for over 50.4 percent of the total private sector costs.

Although the benefits of the proposed rule exceed the costs at the total level and for many of the major industry levels, there are some industries where the costs exceed the benefits (*see* Table 8). This result arises for three reasons. First, the costs are upper bound estimates and the benefits are lower bound estimates (*see* Methodology section above). The true net benefit for most industries could very well be positive. Second, a large increase in the salary levels raises the potential costs of the proposed rule. Finally, the industries most likely to bear the cost of the proposed rule are not necessarily the

industries most likely to receive the benefits. Most of the benefits come from the reduction in the potential legal liability from unintentionally misclassifying fairly high paid salaried workers working more than 40 hours per week in occupations with exempt and nonexempt duties, while most of the costs come from increasing the salary level tests for relatively low paid salaried workers. The PRIA data suggest that the number of workers in these two groups is often not equal at a detailed industry level. For example, because of the historical pattern of compensation levels in the Personal Services and Automotive Repair, Services, and Parking industries one would expect to find far more relatively low paid salaried workers affected by the proposed salary level tests than relatively high paid salaried workers unintentionally misclassified.

The largest total costs as a percentage of payroll are incurred by the Educational Services industry (0.37 percent to 0.98 percent), Agricultural Services (0.22 percent to 0.53 percent), Personal Services (0.21 percent to 0.46 percent), Automotive Repair, Services, and Parking (0.13 percent to 0.29 percent), and Transportation by Air (0.11 percent to 0.22 percent).

The largest recurring payroll costs as a percentage of pre-tax profits are incurred by the Educational Services industry (1.95 percent to 5.22 percent), Personal Services (1.38 percent to 3.03 percent), Automotive Repair, Services, and Parking (0.84 percent to 1.81 percent), Agricultural Services (0.54 percent to 1.26 percent), and Transportation by Air (0.54 percent to 1.07 percent).

TABLE 8.—SUMMARY OF COSTS AND BENEFITS FOR INDUSTRY SECTORS AFFECTED BY THE PROPOSED RULE

SIC	Industry description	Low implementation costs	High implementation costs	Low payroll costs	High payroll costs	Low total costs	High total costs	Low benefits	High benefits	Low difference	High difference
07	Agricultural Services[4]	$2,895	$4,020	$14,833	$37,529	$17,729	$41,549	$2,032	$3,612	−$15,697	−$37,937
08	Forestry[4]	83	113	27	58	110	171	346	614	235	444
09	Fishing, Hunting, & Trapping[4]	63	88	121	381	184	469	195	346	11	−123
	Agriculture Subtotal	3,042	4,221	14,981	37,968	18,023	42,188	2,572	4,573	−15,451	−37,616
10	Metal mining	121	146	0	0	121	146	185	328	64	182
12	Coal mining	239	293	119	346	358	639	647	1,150	289	511
13	Oil & gas extraction	1,431	1,820	856	1,882	2,287	3,701	4,525	8,044	2,238	4,342
14	Nonmetallic minerals, except fuels.	475	602	8	13	483	615	520	924	37	309
	Mining Subtotal	2,266	2,860	984	2,242	3,250	5,102	5,877	10,447	2,627	5,345
15–17	Construction	48,090	64,024	23,096	55,046	71,186	119,070	33,486	59,524	−37,700	−59,545
20	Food & kindred products	5,587	6,577	1,767	3,793	7,354	10,370	3,654	6,495	−3,700	−3,875
21	Tobacco products	87	100	83	197	169	297	110	195	−60	−102
22	Textile mill products	1,855	2,176	488	1,192	2,343	3,368	538	956	−1,806	−2,412
23	Apparel & other textile products	4,367	5,212	960	1,896	5,327	7,108	790	1,405	−4,537	−5,703
24	Lumber & wood products	5,746	6,917	804	2,103	6,550	9,021	922	1,639	−5,628	−7,382
25	Furniture & fixtures	2,454	2,918	371	1,068	2,824	3,986	727	1,292	−2,098	−2,694
26	Paper & allied products	2,034	2,383	826	1,754	2,860	4,137	1,484	2,638	−1,376	−1,500
27	Printing & publishing	10,260	12,319	3,607	16,921	13,867	29,240	3,554	6,318	−10,313	−22,922
28	Chemicals & allied products	3,118	3,678	2,969	11,299	8,087	14,977	5,892	10,473	−196	−4,504
29	Petroleum & coal products	481	569	910	1,637	1,390	2,206	776	1,380	−614	−826
30	Rubber & miscellaneous plastics products.	4,040	4,775	819	2,313	4,860	7,088	1,586	2,820	−3,274	−4,268
31	Leather & leather products	373	443	179	459	552	902	261	465	−291	−437
32	Stone, clay, & glass products	2,915	3,487	642	1,616	3,558	5,104	998	1,774	−2,560	−3,329
33	Primary metal industries	2,125	2,485	1,078	3,017	3,203	5,501	1,596	2,837	−1,607	−2,664
34	Fabricated metal products	7,498	8,927	1,993	4,837	9,491	13,764	1,942	3,452	−7,549	−10,311
35	Industrial machinery & equipment.	10,509	12,543	2,778	6,887	13,287	19,430	7,515	13,359	−5,772	−6,071
36	Electronic & other electric equipment.	5,180	6,076	3,768	8,860	8,948	14,936	6,759	12,014	−2,189	−2,922
37	Transportation equipment	4,689	5,469	5,207	11,883	9,896	17,352	5,352	9,513	−4,545	−7,839
38	Instruments & related products	3,032	3,573	1,911	4,940	4,943	8,512	3,057	5,435	−1,885	−3,078
39	Misc. manufacturing industries	2,886	3,470	1,281	3,727	4,167	7,196	1,220	2,169	−2,947	−5,027
	Manufacturing Subtotal	79,235	94,095	32,442	90,399	111,678	184,494	48,733	86,628	−62,944	−97,866
40	Railroad Transportation[5]	nc	nc	528	1,890	528	1,890	1,510	2,684	982	793
41	Local & interurban passenger transportation.	1,500	1,881	1,216	2,652	2,716	4,533	861	1,531	−1,854	−3,003
42	Motor freight transportation & warehousing.	8,873	11,271	3,415	7,879	12,288	19,150	7,722	13,727	−4,566	−5,423
43	U.S. Postal Service[6]	2,875	3,810	1,359	5,147	4,234	8,757	643	1,143	−3,591	−7,614
44	Water transportation	655	827	380	1,255	1,036	2,082	1,694	3,010	658	928
45	Transportation by air[7]	986	1,225	11,213	22,633	12,200	23,858	4,588	8,155	−7,612	−15,703
46	Pipelines, except natural gas	59	74	6	14	65	89	31	54	−35	−34
47	Transportation services	3,125	4,014	822	2,407	3,947	6,421	963	1,712	−2,984	−4,710
48	Communications	3,815	4,740	5,424	13,690	9,239	18,430	14,516	25,804	5,277	7,374
49	Electric, gas, & sanitary services	2,052	2,537	2,623	7,136	4,675	9,673	5,977	10,625	1,302	952
	Trans., Comm., & Pub. Util. Subtotal.	23,940	30,180	26,460	62,813	50,400	92,993	38,994	65,761	−13,406	−27,233
50	Wholesale trade—durable goods	25,544	32,579	4,334	10,296	29,877	42,875	38,356	68,182	8,479	25,307
51	Wholesale trade—nondurable goods.	14,764	18,738	4,538	10,934	19,302	29,672	31,512	56,016	12,210	26,344
	Wholesale Subtotal	40,308	51,318	8,871	21,229	49,179	72,547	69,868	124,198	20,689	51,650
52	Building materials, hardware, garden supply, & mobile home dealers.	4,608	5,874	949	2,380	5,557	8,254	10,553	18,758	4,995	10,504

TABLE 8.—SUMMARY OF COSTS AND BENEFITS FOR INDUSTRY SECTORS AFFECTED BY THE PROPOSED RULE—Continued

SIC	Industry description	Low implementation costs	High implementation costs	Low payroll costs	High payroll costs	Low total costs	High total costs	Low benefits	High benefits	Low difference	High difference
53	General merchandise stores	5,222	6,352	2,961	7,041	8,183	13,393	14,966	26,604	6,783	13,210
54	Food stores	13,060	16,499	6,487	16,941	19,547	33,441	19,519	34,698	−28	1,257
55	Automotive dealers & gasoline service stations.	13,380	17,101	3,942	10,470	17,322	27,571	38,529	68,490	21,207	40,919
56	Apparel & accessory stores	7,926	10,182	959	1,905	8,885	12,087	5,547	9,860	−3,339	−2,227
57	Home furniture, furnishings, & equipment stores.	7,015	9,032	1,627	3,795	8,641	12,827	20,518	36,472	11,876	23,646
58	Eating & drinking places	33,346	42,414	9,310	26,857	42,656	69,271	38,054	67,646	−4,601	−1,626
59	Miscellaneous retail	22,326	28,755	6,152	14,028	28,478	42,783	31,195	55,452	2,717	12,669
	Retail Subtotal	106,884	136,210	32,387	83,417	139,271	219,627	178,881	317,979	39,611	98,353
60	Depository institutions	6,943	8,924	2,677	8,838	9,620	17,760	23,042	40,960	13,422	23,200
61	Nondepository credit institutions	2,727	3,580	1,795	4,701	4,522	8,281	13,449	23,907	8,927	15,625
62–67	Holding & other investment offices, except trusts, & Security & commodity brokers, dealers, exchanges, & services.	4,055	5,302	8,260	20,789	12,315	26,091	30,936	54,992	18,620	28,901
63–64	Insurance carriers, Insurance agents, brokers, & services.	9,454	12,342	6,016	11,003	15,470	23,345	26,681	47,428	11,211	24,083
65	Real estate	10,801	14,565	21,401	56,982	32,202	71,546	21,773	38,703	−10,429	−32,843
	Fin., Insure., & Real Est. Subtotal.	33,980	44,713	40,150	102,311	74,130	147,024	115,881	205,990	41,751	58,966
70	Hotels, rooming houses, camps, & other lodging places.	6,394	7,899	2,707	7,492	9,101	15,391	10,461	18,595	1,359	3,204
72	Personal services	12,705	16,505	25,351	67,270	38,055	83,775	8,112	14,419	−29,943	−69,355
73	Business services	37,518	46,860	16,606	39,540	54,124	86,401	109,491	194,631	55,367	108,230
75	Automotive repair, services, & parking.	11,698	15,230	19,375	51,798	31,073	67,028	9,480	16,851	−21,593	−50,177
76	Miscellaneous repair services	4,164	5,406	1,373	4,213	5,537	9,618	1,586	2,819	−3,951	−6,800
78	Motion pictures	3,470	4,419	4,283	19,485	7,753	23,904	10,446	18,570	2,693	−5,334
79	Amusement & recreation services.	7,987	10,088	5,622	16,716	13,609	26,804	10,573	18,795	−3,035	−8,009
80	Health services	48,132	60,026	37,155	103,356	85,287	163,382	114,546	203,617	29,259	40,235
81	Legal services	10,263	13,361	2,246	8,969	12,509	22,329	42,821	76,119	30,313	53,790
82	Educational services	1,878	2,412	14,052	40,243	15,930	42,655	155,178	275,844	139,248	233,189
83	Social services	12,637	16,039	9,438	21,396	22,075	37,435	12,498	22,216	−9,577	−15,219
84	Museums, art galleries, & botanical & zoological gardens.	455	574	294	858	749	1,432	1,009	1,794	260	362
88	Membership organizations	4,425	5,701	1,396	9,151	5,821	14,851	8,252	14,668	2,430	−183
87	Engineering, accounting, research, management, & related services.	20,847	26,721	7,828	23,332	28,675	50,053	71,813	127,656	43,138	77,602
89	Services, not elsewhere classified[4].	1,080	1,405	206	488	1,286	1,892	1,205	2,143	−81	251
	Services Subtotal	183,651	232,645	147,933	414,307	331,584	646,952	567,471	1,008,736	235,887	361,784
	Private Industry	521,396	660,266	327,832	871,621	849,228	1,531,887	1,061,273	1,886,519	212,045	354,632
	State & Local Government	14,033	19,695	7,012	23,911	21,045	43,606	48,495	86,205	27,450	42,599
	Total	535,429	679,961	334,844	895,532	870,273	1,575,493	1,109,768	1,972,724	239,495	397,231

Note: Unless otherwise noted, data are from USDOC (2001a). Na: Data not available. Nc: Not calculable.
[1] Number of employers are derived from the U.S. Department of Commerce, Bureau of Census, 1992 Enterprise Statistics.
[2] Employment is estimated when data suppression occurs.
[3] Sales data for industries 07, 08, 09, and 89 are from the D&B (2001a) database.
[4] Number of establishments, number of employees, and annual payroll are derived from the USDOC (1999) database. Sales data are derived from the D&B (2001a) database.
[5] Only includes Railroad Switching and Terminal Establishments (SIC 4013).
[6] All data for the U.S. Postal Service are from USPS (1997).
[7] Data do not include large certificated passenger carriers that report to the Office of Airline Statistics, U.S. Department of Transportation.

Sources: CONSAD Research Corporation and the U.S. Department of Labor; U.S. Department of Commerce, Bureau of the Census (USDOC, 2001a), 1997 Economic Census: Comparative Statistics, downloaded from http://www.census.gov/epcd/ec97sic/index.html#download; U.S. Department of Commerce, Bureau of the Census (USDOC (1999), 1997 County Business Patterns; Dun & Bradstreet (D&B, 2001a) National Profile of Businesses Database for Fiscal Year 2000; Dun & Bradstreet (D&B, 2001b), Industry Norms and Key Business Ratios for Fiscal Year 2000/2001; U.S. Department of the Treasury, Internal Revenue Service (IRS, 2000) Corporate Tax Returns for Active Corporetions for 1997; and U.S. Postal Service (USPS, 1997), 1997 Annual Report.

Small Business Cost Estimates

The upper bound small business cost estimate for the proposed rule ranges from $502.4 million to $835.9 million. This includes one-time implementation costs ranging from $349.3 million to $451.7 million and recurring payroll costs ranging from $153.1 million to $384.2 million. The recurring payroll costs as a percentage of total payroll range from 0.02 percent to 0.04 percent, and from 0.07 percent to 0.16 percent of total pre-tax profits.

The lower bound small business benefit estimate for the proposed rule ranges from $629.8 million to $1,119.4 million. These estimates do not include significant, but difficult to quantify, benefits such as the reduced human resource and legal costs for classifying workers under the proposed rule, and improved management productivity from reduced investigations and litigation.

The largest recurring payroll costs are incurred by the Personal Services industry ($17.6 million to $46.6

million), Construction ($16.7 million to $39.4 million), Automotive Repair, Services, and Parking ($13.9 million to $37.1 million), Agricultural Services ($10.4 million to $26.4 million), and Real Estate ($9.9 million to $26.3 million). The 10 industries with the highest costs account for 57.4 percent to 67.0 percent of the total small business costs.

The largest recurring payroll costs as a percentage of payroll are incurred by the Educational Services industry (0.4 percent to 1.0 percent), Agricultural Services (0.2 percent to 0.6 percent), Personal Services (0.2 percent to 0.4 percent), Transportation by Air (0.1 percent to 0.3 percent), and Automotive Repair, Services, and Parking (0.1 percent to 0.2 percent).

The largest recurring payroll costs as a percentage of pre-tax profits are incurred by the General Merchandise Stores (4.5 percent to 10.6 percent), Educational Services (2.0 percent to 5.3 percent), Agricultural Services (1.1 percent to 2.8 percent), Personal Services (0.9 percent to 2.4 percent), and Eating and Drinking Places (0.8 percent to 2.2 percent).

State and Local Government Cost and Benefit Estimates

The upper bound cost estimate for State and local governments for the proposed rule ranges from $21.0 million to $43.6 million. This includes one-time implementation costs ranging from $14.0 million to $19.7 million and recurring payroll costs ranging from $7.0 million to $23.9 million. The cost estimates represents less than 0.005 percent of the $1.4 trillion in general revenues received by all state and local governmental entities nationwide, and 0.01 percent to 0.03 percent of the $150 billion in total payrolls for those entities.

The lower bound benefit estimate for State and local governments for the proposed rule ranges from $48.5 million to $86.2 million. These estimates do not include significant, but difficult to quantify, benefits such as the reduced human resource and legal costs for classifying workers under the proposed rule, and improved management productivity from reduced investigations and litigation.

The largest costs are incurred by California ($2.6 million to $5.3 million), New York ($2.3 million to $4.7 million), Texas ($1.3 million to $2.8 million), Illinois ($1.2 million to $2.5 million), and Florida ($1.1 million to $2.2 million).

The largest recurring payroll costs as a percentage of payroll are incurred by Arizona (0.2 percent to 0.4 percent), Wyoming (0.2 percent to 0.4 percent), Alabama (0.1 percent to 0.3 percent), Illinois (0.1 percent to 0.3 percent), and West Virginia (0.1 percent to 0.3 percent). As a percentage of total state and local government revenues, the recurring payroll costs do not exceed 0.01 percent in any state.

Economic Impact of Updating the Duties Tests

The economic impact of updating the duties tests includes two components. First, determining whether an employee satisfies the requirements of the updated duties tests will be less difficult than determining whether that employee satisfies the requirements of the current duties tests. As a result, employers will likely incur much lower costs associated with determining the exempt status of employees, including conducting expensive time-and-motion studies, and responding to litigation contesting their exemption decisions. The second component is the incremental payroll costs that employers would be required to pay to the employees who satisfy the updated duties test but do not satisfy the current duties test if the proposed salary level tests were adopted without simultaneously adopting the proposed duties tests.

The possible magnitude of the cost savings of the first component is indicated by the estimated numbers of employees with salaries between $425 per week and $1,250 per week who would have failed to satisfy the current duties tests but would pass the updated duties tests. Because very little evidence is available on the costs for this component, the only indicator that is available is the potential number of employees who might require time-and-motion studies or involve litigation. The PRIA indicates an additional 1.5 million to 2.7 million employees will be more readily identified as exempt from the overtime requirements of the FLSA because the updated duties tests will replace the current duties tests in determining their exemption. Although certification and adjudication costs would only have been incurred on behalf of some portion of those employees, the large number of employees who could bring litigation under the current regulations and their relatively high levels of compensation indicate that the impact of revising the duties tests is probably substantial.

The second component of the economic impact of the revised duties tests is the additional incremental payroll costs that employers would be required to pay if the revised salary level tests were adopted without updating duties tests. If the proposed rule had increased the standard salary level test and highly compensated salary levels to $425 per week and $1,250 per week, respectively, without replacing the current long duties tests with the updated duties test, employers would have incurred incremental payroll costs for all executive, administrative, and professional employees in that salary range who would satisfy the updated duties test but would not satisfy the current long duties tests. The PRIA estimates that the incremental payroll costs for those 1.5 million to 2.7 million employees will be between $1.839 billion and $3.370 billion, in addition to the $870.2 million to $1,575.5 million for the regulation as proposed.

Finally, revising the duties tests could result in some paid hourly workers becoming salaried employees. PRIA data indicate there are 644,000 paid hourly workers working overtime in occupations with exempt administrative and professional duties that could be converted to salaried employees. All of these workers have either an associate degree or 4 year college degree or more and their average income ranges from $50,100 to $54,700 per year. This is an upper bound estimate based on the number of professional and administrative workers in occupations with mixed exempt and nonexempt duties employing a high level of skill or training.

V. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, requires agencies to prepare regulatory flexibility analyses, and make them available for public comment, when proposing regulations that will have "a significant economic impact on a substantial number of small entities." Accordingly, the following analysis assesses the impact of these regulations on small entities as defined by the applicable SBA size standards.

In accordance with E.O. 13272, "Proper Consideration of Small Entities in Agency Rulemaking," this proposed rule has been reviewed to assess its potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the Regulatory Flexibility Act. The Chief Counsel for Advocacy of the Small Business Administration was notified of a draft of this rule upon submission of the rule to the Office of Management and Budget under E.O. 12866, Regulatory Planning and Review.

(1) Reasons Why Action by Agency Is Being Considered

Section 13(a)(1) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 213(a)(1), directs the Secretary of Labor to define and delimit from time to time, by regulations subject to the Administrative Procedure Act, "any employee employed in a *bona fide* executive, administrative, or professional capacity * * * or in the capacity of outside salesman * * *." Employees meeting the criteria specified in these regulations are completely exempt from minimum wage and overtime pay under the FLSA. The existing regulations contain requirements for payment "on a salary basis," at not less than specified minimum amounts, and certain additional tests related to an employee's primary job duties and responsibilities. The duties tests were last modified in 1949 and have remained essentially unchanged since contributing to higher human resource and legal costs in the economy. The salary levels required for exemption were last updated in 1975 on an interim basis. In 1999, the U.S. General Accounting Office reviewed these regulations and recommended that the Secretary of Labor comprehensively review and update them, and make necessary changes to better meet the needs of both employers and employees in the modern work place. These regulations were also suggested as a candidate for reform in public comments submitted on OMB's 2001 and 2002 Reports to Congress on the Costs and Benefits of Regulations. The Department is proposing revisions to these regulations in response to the concerns that have been raised over the years to update, clarify and simplify them for the 21st century workplace.

(2) Objectives of and Legal Basis for Rule

This proposed rule is issued pursuant to the authority provided by section 13(a)(1) of the FLSA. Its objective is to provide clear and concise regulatory guidance, in plain language, that will assist employers and employees in determining whether an employee is exempt from the FLSA as a *bona fide* executive, administrative, professional, or outside sales employee.

(3) Number of Small Entities Covered by the Rule

The estimated number of small entities covered by this rule is presented in the Department's Preliminary Regulatory Impact Analysis (PRIA). A copy of the Department's complete PRIA may be obtained by contacting the Wage and Hour Division at the address and telephone number provided above. Data based on SBA's size standards for small business entities indicates that 5.2 million establishments that will be affected by the proposed rule are considered to be small businesses. These small businesses employ approximately 38.7 million workers with an annual payroll of $940.0 billion. Their total annual sales are estimated to be $5.7 trillion and their annual pre-tax profits are estimated to be $233.9 billion. Approximately 79.8 percent of all affected establishments are considered to be small businesses and they account for 38.8 percent of the employment, 33.7 percent of the payroll, 31.8 percent of the annual sales, and 30.4 percent of the annual pre-tax profits.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

Although an employer claiming an exemption from the FLSA under 29 CFR part 541 must be prepared to establish affirmatively that all required conditions for the exemption are met, this proposed rule contains no reporting or recordkeeping requirements as a condition for the exemption. However, the recordkeeping requirements for employers claiming exemptions from the FLSA under 29 CFR part 541 for particular employees are contained in the general FLSA recordkeeping regulations, applicable to all employers covered by the FLSA (codified at 29 CFR part 516; *see* 29 CFR 516.0 and 516.3) and have been approved by the Office of Management and Budget Control Number 1215–0017. There are no other compliance requirements under the proposed rule.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

No other Federal rules duplicate or conflict with the requirements contained in these rules. Federal employees subject to the jurisdiction of the U.S. Office of Personnel Management (OPM) are governed by separate regulations administered by OPM and not these regulations. Some state laws have exemption standards applied under state law that differ from the exemption standards provided by these Federal rules. The FLSA does not preempt any stricter exemption standards that may apply under state law. *See* 29 U.S.C. 218.

(6) Differing Compliance and Reporting Requirements for Small Entities

The FLSA generally requires employers to pay covered non-exempt employees at least the federal minimum wage of $5.15 an hour, and time-and-one-half overtime premium pay for hours worked over 40 per week. Under the terms of the statute, Congress excluded some smaller businesses (those with annual revenues less than $500,000) from the definition of covered "enterprises" (although individual workers who are engaged in interstate commerce or who produce goods for such commerce may be individually covered by the FLSA). This proposed rule clarifies and updates the criteria for the statutory exemption from the FLSA for executive, administrative, professional, and outside sales employees for all employers covered by the FLSA. Moreover, given the purpose of the FLSA, Congressional intent, and the statutory provisions regarding the coverage for smaller businesses, adopting different compliance requirements for small entities under this rule was not considered feasible.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements for Small Entities

As previously noted, the purpose of this proposed rule is to clarify, consolidate, simplify, and update the existing criteria for compliance with the exemption from the FLSA for executive, administrative, professional, and outside sales employees, for all businesses including small businesses. The proposed rule contains no new reporting requirements.

(8) Use of Performance Rather Than Design Standards

The FLSA requires that employers comply with the minimum wage and overtime pay requirements and permits a number of ways in which employers can achieve these "performance standards."

The Department considered a number of alternatives to the proposed rule that would impact small entities. One alternative would be not to change the existing regulations. This alternative was rejected because the Department has determined that the existing salary tests, which have not been raised in over 27 years, no longer provide any help in distinguishing between *bona fide* executive, administrative, and professional employees and those who should not be considered for exemption, and that the duties tests, which were last modified in 1949, are too complicated, confusing, and outdated for the modern workplace.

Two other alternatives would be to raise the salary levels and not update the duties tests or conversely to update

the duties tests without raising the salary levels. However, the Department has concluded that raising the salary levels is necessary to reestablish a clear relevant bright-line test between exempt and nonexempt workers for both employers and employees. Moreover, increasing the salary levels without updating the duties tests would increase the cost of the proposed rule by $1.839 billion to $3.370 billion per year—much of which would be incurred by small business. The duties tests were last revised in 1949 and have remained essentially unchanged since that time. The salary levels were last updated in 1975. The Department has determined that updating both the salary level and duties tests are necessary to better meet the needs of both employees and employers in the modern workplace and to anticipate future workplace trends.

Another alternative could be to adjust the salary levels for the proposed standard test for inflation. However, the Department has never relied solely on inflation adjustments to determine the appropriate salary levels, and has decided to continue its long-standing regulatory practice to reject such mechanical adjustments for inflation. In addition, the Department has determined that this alternative would be far too burdensome on small businesses. The PRIA indicates that adjusting the salary levels for inflation would more than double the recurring payroll costs of the proposed rule from a range of $335 million to $896 million per year to $747 million to $1,966 million per year.

Another alternative would be to adjust the salary levels for the proposed standard test and highly compensated test to levels consistent with the 1958 Department of Labor report—no more than 10 percent of those [workers] in the lowest-range—instead of the 20 percent range in the proposed rule. However, the Department has concluded that this would exclude overtime protections for a significant number of workers without having much of an impact on the cost of the proposed rule. The PRIA indicates that adjusting the salary levels consistent with the 1958 report could exempt 319,000 to 360,000 employees from overtime and reduce the cost of the proposed rule to $265 million to $719 million per year. The Department invites comments on the appropriate salary levels for the proposed standard test and highly compensated test.

(9) Exemption from Coverage of the Rule for Small Entities

As discussed above in section (6) of this analysis, under the terms of the statute, Congress excluded smaller businesses with annual revenues less than $500,000 from the definition of covered enterprises under the FLSA. Given the purpose of the FLSA, Congressional intent, and the statutory provisions regarding the coverage for smaller businesses, adopting different compliance requirements for small entities under this rule was not considered feasible.

VI. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501, requires agencies to prepare a written statement that identifies the: (1) Authorizing legislation; (2) cost-benefit analysis; (3) macro-economic effects; (4) summary of state, local, and tribal government input; and (5) identification of reasonable alternatives and selection, or explanation of non-selection, of the least costly, most cost-effective or least burdensome alternative; for proposed rules that include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

(1) Authorizing Legislation

This rule is issued pursuant to section 13(a)(1) of the Fair Labor Standards Act, 29 U.S.C. 213(a)(1). The section exempts from the FLSA's minimum wage and overtime pay requirements "any employee employed in a *bona fide* executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act * * *)." The requirements of the exemption provided by this section of the Act are contained in this rule, 29 CFR part 541.

Section 3(e) of the Fair Labor Standards Act, 29 U.S.C. 203(e) defines employee to include most individuals employed by a state, political subdivision of a state, or interstate governmental agency. Section 3(x) of the Fair Labor Standards Act, 29 U.S.C. 203(x), also defines public agencies to include the government of a state or political subdivision thereof, or any interstate governmental agency.

(2) Cost-Benefit Analysis

Over 87,400 State and local governmental entities will be affected by the proposed rule (3,043 county governments, 19,372 municipal governments, 16,629 township governments, 34,683 special district governments, and 13,726 school district governments). Nationwide, these entities receive more than $1.4 trillion in general revenues, including revenues from taxes, some categories of fees and charges, and intergovernmental transfers. Their direct expenditures exceed $1.6 trillion in the aggregate. State and local governments employ more than 4 million workers and their payrolls exceed $12.6 billion per month.

The Department's Preliminary Regulatory Impact Analysis (PRIA) includes estimates of the implementation costs, incremental payroll costs, and benefits of the proposed rule for all state and local government sectors in the aggregate in each state. The results indicate that the total first year costs of the proposed rule on state and local government entities range from $21.0 to $43.6 million. This includes $14.0 to $19.7 million in first year (nonrecurring) implementation costs and $7.0 to $23.9 million in recurring incremental payroll costs. The first year costs represent less than three one-thousandths percent (0.003 percent) of the $1.434 trillion in general revenues received by all state and local government entities nationwide, and three one-hundredths percent (0.03 percent) of the $150.8 billion in total payrolls for those entities. The recurring incremental payroll costs are about one-half these very small amounts.

The Department's PRIA estimates that the benefits of the proposed rule for all state and local government sectors range from $48.5 to $86.2 million. These estimates exclude difficult to quantify benefits such as lower human resource costs and additional lower legal and settlement costs stemming from unintentionally misclassifying workers. The PRIA results indicate that the benefits of the proposed rule will exceed the costs for state and local governments in every year. However, State and local governments, as employers covered by the monetary requirements of the FLSA, will need to raise any such additional revenues required, however minimal, to meet their future compliance obligations if the proposed rule is adopted. The FLSA does not provide for Federal financial assistance or other Federal resources to meet the requirements of its intergovernmental mandates. The Federal mandate imposed by the rule is not expected to have measurable effects on health, safety, or the natural environment.

(3) Macro-Economic Effects

Agencies are expected to estimate the effect of a regulation on the national economy, such as the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services, if accurate estimates are reasonably feasible and the effect is relevant and material. 5 U.S.C. 1532(a)(4). However, OMB guidance on this requirement notes that such macro-economic effects tend to be measurable in nationwide econometric models only if the economic impact of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product, or in the range of $1.5 billion to $3.0 billion. A regulation with smaller aggregate effect is not likely to have a measurable impact in macro-economic terms unless it is highly focused on a particular geographic region or economic sector, which is not the case with this proposed rule.

The Department's PRIA estimates that the total aggregate economic impact of this proposed rule ranges from $870.3 million to $1,575.5 million. However, as noted in the previous section summarizing the Department's PRIA, these are upper bound estimates and the actual costs and impacts expected to be incurred by employers, including state and local governments, if the proposed rule were adopted, are likely to be lower. Therefore, given OMB's guidance, the Department has determined that a full macro-economic analysis is not likely to show any measurable impact on the economy.

(4) Summary of State, Local, and Tribal Government Input

Congress amended the FLSA in 1985 to readjust how the Act would apply to the public sector. The 1985 amendments allowed compensatory time off in lieu of cash overtime pay, partial overtime exemptions for police and fire departments, the use of unpaid volunteers in certain circumstances, and a temporary phase-in period for meeting FLSA compliance obligations. However, Congress enacted no special provisions for public agencies related to the section 13(a)(1) exemptions or the 541 regulations. Consequently, the same rules for distinguishing 541-exempt employees from nonexempt employees that apply in the private sector were initially applied to the public sector following the 1985 amendments.

Since 1985, State and local governments have confronted FLSA compliance issues and the 541 regulations have been among the foremost of their concerns, particularly in the administrative exemption category. Many State and local governments classified nearly all of their non-supervisory "white collar" workers as exempt administrative employees without regard to whether their primary duty relates directly to agency management policies or general business operations or meets the discretion and independent judgment test. In the late 1980s, several Governors and State and local government agencies urged the Department to exempt classifications such as social workers, detectives, probation officers, and others, to avoid disrupting the level of public services that would result from increasing costs or limiting the hours of service due to overtime requirements. In 1989, former Labor Secretary Elizabeth Dole, in a widely disseminated response to 13 Governors, confirmed the nature of the administrative exemption's duties test as applied to public sector employees but solicited specific input with accompanying rationale for what should be changed. Responses were limited but argued generally that government services are unique because of the impact on health, safety, welfare or liberty of citizens. This, they argued, should allow exemption of positions in law enforcement and criminal justice, human services, health care and rehabilitation services, and the unemployment compensation systems, regardless of whether any particular employee's job duties include important decision-making on how the agency is operated or managed internally. They also urged the Department to redefine the professional exemption to recognize a broader contemporary use of that term in government employment.

In the midst of a growing wave of private lawsuits filed by public employees against their employers challenging their exempt status, a series of court decisions were rendered that sharply limited public employers' ability to successfully assert exemption under the "salary basis" rule. This led the Department to alter the "salary basis" rules to provide specific relief to public employers in a final rule issued in August 1992 (57 FR 37666; Aug. 19, 1992). Under this special rule, the fact that a public sector pay and leave system includes partial-day deductions from pay for absences not covered by accrued paid leave becomes irrelevant to determining any public sector employee's eligibility for exemption.

Public sector employers have been less vocal over FLSA issues since the Department's 1992 rulemaking allowing partial-day (or hourly) deductions from pay for employee absences not covered by accrued leave and other special "salary basis" rules for budget-driven furloughs (29 CFR 541.5d). The U.S. Supreme Court's 1997 decision in *Auer* v. *Robbins*, 519 U.S. 452 (1997), a public sector case involving the City of St. Louis Police Department and disciplinary deductions from pay, may also have relieved many concerns of public agencies over pay docking for discipline.

Although public agency organizations were invited to the Department's stakeholder meetings to address concerns over the 541 regulations, they mostly did not respond to the invitations. The International Personnel Management Association, accompanied by the National Public Employers Labor Relations Association and the U.S. Conference of Mayors, suggested that progressive discipline systems are common in the public sector (some collectively bargained) and the "salary basis" rule for exempt workers, which prohibits disciplinary deductions except for major safety rules, threatens such systems. Representatives of the Interstate Labor Standards Association (ILSA) submitted written views suggesting that the salary threshold be indexed to the current minimum wage or some multiple thereof (*e.g.*, 3 times the minimum wage for a 40-hour workweek or $618 per week). One additional idea was to relate the salary levels to those of the supervised employees.

The proposed rule would revise and simplify the exemptions' duties tests, but would continue to apply the same basic duties tests in both the public and private sectors. The public sector is governed by a different set of pay-docking rules and additional proposed revisions in this rule would broaden permissible disciplinary deductions to include sanctions for infractions such as sexual harassment and work place violence. However, a broader or separate duties test rule applicable solely to the public sector does not seem warranted at this time, as the case has not been made for such separate treatment. The Department is interested in receiving specific public comments on any issues of concern to public employees and public employers, and will carefully examine any such public comments submitted on this proposal during the rulemaking process.

(5) Least Burdensome Option or Explanation Required

The Department's consideration of various options is described in the preceding section in the preamble on the Regulatory Flexibility Act and Executive Order 13272. The Department

believes that it has chosen the least burdensome option that updates, clarifies, and simplifies the rule. One alternative option would have set the exemptions' salary level at a rate lower than the proposed $425 per week, which might impose lower direct payroll costs on employers but may not necessarily be the most cost-effective or least burdensome alternative for employers. A lower salary level could result in a less effective "bright-line" test that separates exempt workers from those nonexempt workers whom Congress intended to cover by the Act. Greater ambiguity regarding who is exempt and nonexempt increases the potential legal liability from unintentionally misclassifying workers, and thus the ultimate cost of the regulation.

VII. Effects on Families

This rule has been assessed under section 654 of the Treasury and General Government Appropriations Act, 1999, for its effect on family well-being and the undersigned hereby certifies that the rule will not adversely affect the well-being of families.

VIII. Executive Order 13045, Protection of Children

In accordance with Executive Order 13045, the Department has evaluated this rule and determined that it has no environmental health risk or safety risk that may disproportionately affect children.

IX. Executive Order 13132, Federalism

This rule will not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under the terms of section 6 of E.O. 13132, it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

This rule is issued pursuant to section 13(a)(1) of the Fair Labor Standards Act, 29 U.S.C. 213(a)(1). The section exempts from the FLSA's minimum wage and overtime pay requirements "any employee employed in a *bona fide* executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act * * *)." The requirements of the exemption provided by this section of the Act are contained in this rule, 29 CFR part 541.

Section 3(e) of the Fair Labor Standards Act, 29 U.S.C. 203(e), defines employee to include most individuals employed by a state, political subdivision of a state, or interstate governmental agency. Section 3(x) of the Fair Labor Standards Act, 29 U.S.C. 203(x), also defines public agencies to include the government of a state or political subdivision thereof, or any interstate governmental agency.

The Department's Preliminary Regulatory Impact Analysis (PRIA) estimates the implementation costs, incremental payroll costs, and benefits of the proposed rule for all state and local government sectors in the aggregate in each state. The results indicate that the total first year costs of the proposed rule on state and local government entities range from $24.1 to $43.6 million. This includes $14.0 to $19.7 million in first year (nonrecurring) implementation costs and $10.1 to $23.9 million in recurring incremental payroll costs. The first year costs represent less than three one-thousandths percent (0.003 percent) of the $1.434 trillion in general revenues received by all state and local government entities nationwide, and three one-hundredths percent (0.03 percent) of the $150.8 billion in total payrolls for those entities. The recurring incremental payroll costs are about one-half these very small amounts.

The Department's PRIA also estimates that the benefits of the proposed rule for all state and local government sectors range from $48.5 to $86.2 million. These estimates exclude difficult to quantify benefits such as lower human resource costs and additional lower legal and settlement costs stemming from unintentionally misclassifying workers. The PRIA results indicate that the benefits of the proposed rule will exceed the costs for state and local governments in every year. The Federal mandate imposed by the rule is not expected to have substantial direct effects on the States and will not affect the current relationship between the national government and the states or the distribution of power and responsibilities among the various levels of government.

X. Executive Order 13175, Indian Tribal Governments

This rule was reviewed under the terms of E.O. 13175 and determined not to have "tribal implications." The rule does not have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." As a result, no tribal summary impact statement has been prepared.

XI. Executive Order 12630, Constitutionally Protected Property Rights

This rule is not subject to E.O. 12630 because it does not involve implementation of a policy "that has takings implications" or that could impose limitations on private property use.

XII. Executive Order 12988, Civil Justice Reform Analysis

This rule was drafted and reviewed in accordance with E.O. 12988 and will not unduly burden the federal court system. The rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct, and to promote burden reduction.

XIII. Executive Order 13211, Energy Supply

This rule is not subject to E.O. 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

XIV. Environmental Impact Assessment

The Department has reviewed this rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 U.S.C. 1500), and the Department's NEPA procedures (29 CFR part 11). The rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not conducted an environmental assessment or an environmental impact statement.

List of Subjects in 29 CFR Part 541

Labor, Minimum wages, Overtime pay, Salaries, Teachers, Wages.

Signed in Washington, DC, this 25th day of March, 2003.

Tammy D. McCutchen,

Administrator, Wage and Hour Division.

For the reasons set forth above, 29 CFR part 541 is proposed to be amended as set forth below.

PART 541—DEFINING AND DELIMITING THE EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, COMPUTER AND OUTSIDE SALES EMPLOYEES

Subpart A—General Regulations

Sec.
541.0 Introductory statement.
541.1 Terms defined.
541.2 Job titles insufficient.

Subpart B—Executive Employees

541.100 General rule for executive employees.
541.101 Business owner.
541.102 Sole charge executive.
541.103 Management of the enterprise.
541.104 Department or subdivision.
541.105 Two or more other employees.
541:106 Working supervisors.
541.107 Supervisors in retail establishments.

Subpart C—Administrative Employees

541.200 General rule for administrative employees.
541.201 Related to management or general business operations.
541.202 Position of responsibility.
541.203 Work of substantial importance.
541.204 High level of skill or training.
541.205 Educational establishments.

Subpart D—Professional Employees

541.300 General rule for professional employees.
541.301 Learned professionals.
541.302 Creative professionals.
541.303 Teachers.
541.304 Practice of law or medicine.

Subpart E—Computer Employees

541.400 General rule for computer employees.
541.401 High level of skill and expertise.
541.402 Computer operation, manufacture and repair.
541.403 Executive and administrative computer employees.

Subpart F—Outside Sales Employees

541.500 General rule for outside sales employees.
541.501 Making sales or obtaining orders.
541.502 Away from employer's place of business.
541.503 Promotion work.
541.504 Drivers who sell.

Subpart G—Salary Requirements

541.600 Amount of salary required.
541.601 Highly compensated employees.
541.602 Salary basis.
541.603 Effect of improper deductions from salary.
541.604 Minimum guarantee plus extras.
541.605 Fee basis.
541.606 Board, lodging or other facilities.

Subpart H—Definitions and Miscellaneous Provisions

541.700 Primary duty.
541.701 Customarily and regularly.
541.702 Exempt and nonexempt work.
541.703 Directly and closely related.
541.704 Trainees.
541.705 Emergencies.
541.706 Occasional tasks.
541.707 Combination exemptions.
541.708 Motion picture producing industry.
541.709 Employees of public agencies.

Authority: 29 U.S.C. 213; Pub. L. 101–583, 104 Stat. 2871; Reorganization Plan No. 6 of 1950 (3 CFR 1945–53 Comp. p. 1004); Secretary's Order No. 4–2001 (66 FR 29656).

Subpart A—General Regulations

§ 541.0 Introductory statement.

(a) Section 13(a)(1) of the Fair Labor Standards Act, as amended, provides an exemption from the Act's minimum wage and overtime requirements for any employee employed in a *bona fide* executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of an outside sales employee, as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act. Section 13(a)(17) of the Act provides an exemption from the minimum wage and overtime requirements for computer systems analysts, computer programmers, software engineers, and other similarly skilled computer employees.

(b) The requirements for these exemptions are contained in this part as follows: executive employees, subpart B; administrative employees, subpart C; professional employees, subpart D; computer employees, subpart E; outside sales employees, subpart F. Subpart G contains regulations regarding salary requirements applicable to most of the exemptions, including salary levels and the salary basis test. Subpart G also contains a provision for exempting certain highly compensated employees. Subpart H contains definitions and other miscellaneous provisions applicable to all or several of the exemptions.

(c) Effective July 1, 1972, the Fair Labor Standards Act was amended to include within the protection of the equal pay provisions those employees exempt from the minimum wage and overtime pay provisions as *bona fide* executive, administrative, and professional employees (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of an outside sales employee under section 13(a)(1) of the Act. The equal pay provisions in section 6(d) of the Fair Labor Standards Act are administered and enforced by the United States Equal Employment Opportunity Commission.

§ 541.1 Terms defined.

Act means the Fair Labor Standards Act of 1938, as amended.

Administrator means the Administrator of the Wage and Hour Division, United States Department of Labor. The Secretary of Labor has delegated to the Administrator the functions vested in the Secretary under sections 13(a)(1) and 13(a)(17) of the Fair Labor Standards Act.

§ 541.2 Job titles insufficient.

A job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the regulations in this part.

Subpart B—Executive Employees

§ 541.100 General rule for executive employees.

(a) The term "employee employed in a *bona fide* executive capacity" in section 13(a)(1) of the Act shall mean any employee:

(1) Compensated on a salary basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;

(2) With a primary duty of the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;

(3) Who customarily and regularly directs the work of two or more other employees; and

(4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees will be given particular weight.

(b) The phrase "salary basis" is defined at § 541.602; "board, lodging or other facilities" is defined at § 541.606; "primary duty" is defined at § 541.700; and "customarily and regularly" is defined at § 541.701.

§ 541.101 Business owner.

The term "employee employed in a *bona fide* executive capacity" in section 13(a)(1) of the Act also includes any employee who owns at least a 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization.

The requirements of subpart G (salary requirements) of this part do not apply to the business owners described in this section.

§ 541.102 Sole charge executive.

(a) The term "employee employed in a *bona fide* executive capacity" in section 13(a)(1) of the Act also includes any employee compensated on a salary basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities, who is in sole charge of an independent establishment or a physically separated branch establishment.

(b) The term "sole charge" means that the employee ordinarily must be in charge of the company activities at the location where the employee is employed. Thus, to qualify as a "sole charge" executive, the employee must have authority to make decisions regarding the day-to-day operations of the establishment and to direct the work of any other employees at the establishment or branch. Only one person in any establishment can qualify as a sole charge executive, and then only if that person is the top person in charge at that location. The "sole-charge" status of an employee will not be considered lost because of an occasional visit to the establishment or branch office of a superior.

(c) The phrase "independent establishment or a physically separated branch establishment" means an establishment that has a fixed location and is geographically separated from other company property. The management of operations within one of several buildings located on single or adjoining tracts of company property does not qualify for the exemption under this section. In the case of a branch, there must be a true and complete physical separation from the main office.

(d) A leased department may qualify as an independent establishment when the lessee operates under a separate trade name, with its own separate employees and records, and in other respects conducts the lessee's business independently of the lessor's. In such a case the leased department would enjoy the same status as a physically separated branch establishment. A leased department cannot be considered an independent establishment when the lessor has authority over such matters as hiring and firing of employees, other personnel policies, advertising, purchasing, pricing, credit operations, insurance and taxes.

§ 541.103 Management of the enterprise.

Generally, "management of the enterprise" includes activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; and providing for the safety of the employees or the property.

§ 541.104 Department or subdivision.

(a) The phrase "a customarily recognized department or subdivision" is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. A customarily recognized department or subdivision must have a permanent status and a continuing function. For example, a large employer's human resources department might have subdivisions for labor relations, pensions and other benefits, equal employment opportunity, and personnel management, each of which has a permanent status and function.

(b) When an enterprise has more than one establishment, the employee in charge of each establishment may be considered in charge of a recognized subdivision of the enterprise. The employee also may qualify for the sole charge exemption, if all of the requirements of § 541.102 are satisfied.

(c) A recognized department or subdivision need not be physically within the employer's establishment and may move from place to place. The mere fact that the employee works in more than one location does not invalidate the exemption if other factors show that the employee is actually in charge of a recognized unit with a continuing function in the organization.

(d) Continuity of the same subordinate personnel is not essential to the existence of a recognized unit with a continuing function. An otherwise exempt employee will not lose the exemption merely because the employee draws and supervises workers from a pool or supervises a team of workers drawn from other recognized units, if other factors are present that indicate that the employee is in charge of a recognized unit with a continuing function.

§ 541.105 Two or more other employees.

(a) To qualify as an exempt executive under § 541.100, the employee must customarily and regularly direct the work of two or more other employees. The phrase "two or more other employees" means two full-time employees or their equivalent. One full-time and two half-time employees, for example, are equivalent to two full-time employees. Four half-time employees are also equivalent.

(b) The supervision can be distributed among two, three or more employees, but each such employee must customarily and regularly direct the work of two or more other full-time employees or the equivalent. Thus, for example, a department with five full-time non-exempt workers may have up to two exempt supervisors if each such supervisor customarily and regularly directs the work of two of those workers.

(c) An employee who merely assists the manager of a particular department and supervises two or more employees only in the actual manager's absence does not meet this requirement.

(d) Hours worked by an employee cannot be credited more than once for different executives. Thus, a shared responsibility for the supervision of the same two employees in the same department does not satisfy this requirement. However, a full-time employee who works four hours for one supervisor and four hours for a different supervisor, for example, can be credited as a half-time employee for both supervisors.

§ 541.106 Working supervisors.

Employees, sometimes called "working foremen" or "working supervisors," who have some supervisory functions, such as directing the work of other employees, but also perform work unrelated or only remotely related to the supervisory activities are not exempt executives if, instead of having management as their primary duty as required in § 541.100, their primary duty consists of either the same kind of work as that performed by their subordinates; work that, although not performed by their own subordinates, consists of ordinary production or sales work; or routine, recurrent or repetitive tasks.

§ 541.107 Supervisors in retail establishments.

Supervisors in retail establishments often perform work such as serving

customers, cooking food, stocking shelves, cleaning the establishment or other non-exempt work. Performance of such non-exempt work by a supervisor in a retail establishment does not disqualify the employee from the exemption if the requirements of § 541.100 are otherwise met. Thus, an assistant manager whose primary duty includes such activities as scheduling employees, assigning work, overseeing product quality, ordering merchandise, managing inventory, handling customer complaints, authorizing payment of bills or performing other management functions may be an exempt executive even though the assistant manager spends the majority of the time on non-exempt work.

Subpart C—Administrative Employees

§ 541.200 General rule for administrative employees.

(a) The term "employee employed in a *bona fide* administrative capacity" in section 13(a)(1) of the Act shall mean any employee:

(1) Compensated on a salary or fee basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;

(2) With a primary duty of the performance of office or non-manual work related to the management or general business operations of the employer or the employer's customers; and

(3) Who holds a position of responsibility with the employer.

(b) The term "salary basis" is defined at § 541.602; "fee basis" is defined at § 541.605; "board, lodging or other facilities" is defined at § 541.606; and "primary duty" is defined at § 541.700.

§ 541.201 Related to management or general business operations.

(a) To qualify for the administrative exemption, an employee must perform work related to the management or general business operations of the employer or the employer's customers. The phrase "related to management or general business operations" refers to the type of work performed by the employee. To meet this requirement, an employee must perform work related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product.

(b) Work related to management or general business operations includes, for example, work in areas such as tax, finance, accounting, auditing, insurance, quality control, purchasing, procurement, advertising, marketing, research, safety and health, personnel management, human resources, employee benefits, labor relations, public relations, government relations and similar activities. Some of these activities may be performed by employees who also would qualify for another exemption. For example, a tax attorney and an accountant likely are performing work that qualifies for the professional exemption.

(c) An employee may qualify for the administrative exemption if the employee performs work related to the management or general business operations of the employer's customers. Thus, for example, employees acting as advisers and consultants to their employer's clients or customers (as tax experts or financial consultants, for example) may be exempt.

§ 541.202 Position of responsibility.

To qualify for the administrative exemption, an employee must hold a position of responsibility with the employer. The phrase "position of responsibility" refers to the importance to the employer of the work performed or the high level of competence required by the work performed. To meet this requirement, an employee must either customarily and regularly perform work of substantial importance or perform work requiring a high level of skill or training. The phrase "customarily and regularly" is defined at § 541.710.

§ 541.203 Work of substantial importance.

(a) The phrase "work of substantial importance" means work that, by its nature or consequence, affects the employer's general business operations or finances to a significant degree.

(b) Work of substantial importance includes activities such as formulating, interpreting or implementing management policies; providing consultation or expert advice to management; making or recommending decisions that have a significant impact on general business operations or finances; analyzing and recommending changes to operating practices; planning long or short-term business objectives; analyzing data, drawing conclusions and recommending changes; handling complaints, arbitrating disputes or resolving grievances; representing the company during important contract negotiations; and work of similar impact on general business operations or finances. Work of substantial importance thus is not limited to employees who participate in the formulation of management policies or in the operation of the business as a whole. It includes the work of employees who carry out major assignments in conducting the operations of the business, or whose work affects general business operations to a significant degree, even though their assignments are tasks related to the operation of a particular segment of the business.

(1) For example, an employee who is a buyer of a particular type of equipment in an industrial plant or who is an assistant buyer for a retail or service establishment may have a significant impact on the business, even though the work may be limited to purchasing for a particular department. Similarly, although comparison shopping by an employee who merely reports findings on a competitor's prices is not work of substantial importance, the buyer who evaluates such reports to set the employer's prices does perform work of substantial importance.

(2) Insurance claims adjusters also generally perform work of substantial importance, whether they work for an insurance company or other type of company, if their duties include activities such as interviewing insureds, witnesses and physicians; inspecting property damage; reviewing factual information to prepare damage estimates; evaluating and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendations regarding litigation.

(3) An employee who leads a team of other employees assigned to complete a major project for the employer (such as purchasing, selling or closing all or part of the business, negotiating a real estate transaction or a collective bargaining agreement, or designing and implementing productivity improvements) performs work of substantial importance, even if the employee does not have direct supervisory responsibility over the other employees on the team.

(4) Other employees that perform work of substantial importance, even if their decisions or recommendations are reviewed for possible modification or rejection at a higher level, include: a human resources manager who formulates employment policies; a management consultant who studies the operations of a business and proposes change in organization; a purchasing agent who is required to consult with top management officials when making a purchase commitment for raw materials in excess of the contemplated plant needs; or an executive or administrative assistant to a proprietor or chief executive of a business if such

employee, without specific instructions or prescribed procedures, has been delegated authority to arrange meetings, handle callers and answer correspondence.

(c) Work of substantial importance does not include clerical or secretarial tasks, recording or tabulating data, or performing other mechanical, repetitive, recurrent or routine work. For example, an employee who simply tabulates data is not exempt, even if labeled as a "statistician." An example of an employee who does not perform work of substantial importance is a personnel clerk engaged in "screening" of applicants (collecting data and rejecting applicants who do not meet basic qualifications), but who is not involved in making the decision to hire.

(d) An employer's volume of business may make it necessary to employ a number of employees to perform the same or similar work. The fact that many employees perform identical work or work of the same relative importance does not mean that the work of each such employee is not work of substantial importance.

(e) The work of an employee does not meet this requirement merely because the employer will experience financial losses if the employee fails to perform the job properly. For example, a messenger who is entrusted with carrying large sums of money does not perform work of substantial importance even though serious consequences may flow from the employee's neglect. An employee who operates very expensive equipment is not performing work of substantial importance merely because improper performance of the employee's duties may cause serious financial loss to the employer.

§ 541.204 High level of skill or training.

(a) The phrase "work requiring a high level of skill or training" means administrative work requiring specialized knowledge or abilities, or advanced training. The specialized knowledge or abilities need not be acquired through any particular course of academic training or study. Also, the high level of training required may involve advanced academic instruction or advanced on-the-job training, or a combination of both. Administrative work that satisfies the "high level of skill or training" standard includes advisory work performed for the management of the company (or for the management of the company's customers), as is typically performed by financial advisors, tax advisors, insurance experts, credit managers, employee benefits experts, human resource consultants, labor relations consultants, marketing consultants, safety directors, account executives of advertising agencies and stock brokers. Employees with a high level of skill or training also may perform special assignments, including assignments performed away from their employer's place of business if the employee serves as a field representative for the employer.

(b) Work requiring a high level of skill or training may include work by employees who use a reference manual. The use of such a manual can require a high level of skill and training if the manual contains highly technical, scientific, legal, financial or other similarly complex information that can be interpreted properly only by those with advanced training or specialized knowledge or skills. Such manuals are used to provide guidance in addressing very difficult or novel circumstances. Thus, if an employee performs administrative work that satisfies the "high level of skill or training" standard, using this type of reference manual would not affect the employee's exempt status.

(c) Work requiring a high level of skill or training does not include work requiring the employee simply to look up information (from a handbook, for example) to determine the correct response to an inquiry or set of circumstances. Nor does it include clerical or secretarial work, recording or tabulating data, or other mechanical, repetitive, recurrent or routine work. Employees such as inspectors, examiners and graders who use established techniques, procedures or standards to accept or reject a product do not perform work requiring a high level of skill or training, even though such employees may have some leeway in the performance of their work.

§ 541.205 Educational establishments.

(a) The term "employee employed in a *bona fide* administrative capacity" in section 13(a)(1) of the Act also includes employees:

(1) Compensated for services on a salary or fee basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government) exclusive of board, lodging or other facilities, or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed; and

(2) With a primary duty of performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof.

(b) The term "educational establishment" means an elementary or secondary school system, an institution of higher education or other educational institution. Sections 3(v) and 3(w) of the Act define elementary and secondary schools as those day or residential schools that provide elementary or secondary education, as determined under State law. Under the laws of most States, such education includes the curricula in grades 1 through 12; under many it includes also the introductory programs in kindergarten. Such education in some States may also include nursery school programs in elementary education and junior college curricula in secondary education. The term "educational establishment" includes special schools for mentally or physically disabled or gifted children, regardless of any classification of such schools as elementary, secondary or higher. Also, for purposes of the exemption, no distinction is drawn between public and private schools, or between those operated for profit and those that are not for profit.

(c) The phrase "performing administrative functions directly related to academic instruction or training" means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

(1) Employees engaged in academic administrative functions include: the superintendent or other head of an elementary or secondary school system, and any assistants, responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program; the principal and any vice-principals responsible for the operation of an elementary or secondary school; department heads in institutions of higher education responsible for the administration of the mathematics department, the English department, the foreign language department, etc.; and other employees with similar responsibilities.

(2) Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunch room managers or dietitians do not perform academic administrative functions. Although such work is not considered academic administration, such employees may qualify for exemption under § 541.200 or under other sections of this part provided the requirements for such exemptions are met.

Subpart D—Professional Employees

§ 541.300 General rule for professional employees.

(a) The term "employee employed in a *bona fide* professional capacity" in section 13(a)(1) of the Act shall mean any employee:

(1) Compensated on a salary or fee basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging, or other facilities; and

(2) With a primary duty of performing office or non-manual work:

(i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which also may be acquired by alternative means such as an equivalent combination of intellectual instruction and work experience; or

(ii) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

(b) The term "salary basis" is defined at § 541.602; "fee basis" is defined at § 541.605; "board, lodging or other facilities" is defined at § 541.606; and "primary duty" is defined at § 541.700.

§ 541.301 Learned professionals.

(a) Learned professionals must have a primary duty of performing office or non-manual work requiring advanced knowledge in a field of science or learning. The term "advanced knowledge" means knowledge that is customarily acquired through a prolonged course of specialized intellectual instruction, but which also may be acquired by alternative means such as an equivalent combination of intellectual instruction and work experience. The learned professions include the professions of law, medicine, theology, teaching, accounting, actuarial oomputation, engineering, architecture, various types of physical, chemical and biological sciences, pharmacy, and other similar occupations that have a recognized professional status based on the acquirement of advanced knowledge and performance of work that is predominantly intellectual in character as opposed to routine, mental, manual, mechanical or physical work.

(b) The phrase "knowledge of an advanced type" means knowledge that cannot be attained at the high school level.

(c) The phrase "field of science or learning" distinguishes the learned professions from the mechanical arts where in some instances the knowledge is of a fairly advanced type, but not in a field of science or learning.

(d) The phrase "customarily acquired by a prolonged course of specialized intellectual instruction" generally restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree. However, the word "customarily" means that the exemption is also available to employees in such professions who have substantially the same knowledge level as the degreed employees, but who attained such knowledge through a combination of work experience, training in the armed forces, attending a technical school, attending a community college or other intellectual instruction.

(e) The following professions have been found by the Administrator generally to meet the primary duty requirement for learned professionals in § 541.300(b)(1):

(1) *Registered or certified medical technologists.* Registered or certified medical technologists who have successfully completed three academic years of pre-professional study in an accredited college or university plus a fourth year of professional course work in a school of medical technology approved by the Council of Medical Education of the American Medical Association.

(2) *Registered nurses.* Nurses who are registered by the appropriate State examining board.

(3) *Dental hygienists.* Dental hygienists who have successfully completed four academic years of pre-professional and professional study in an accredited college or university approved by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association.

(4) *Physician assistants.* Physician assistants who have successfully completed three years of pre-professional study (or 2,000 hours of patient care experience in a military or civilian occupation such as laboratory technology, nursing, psychology, biology, or related activity) plus not less than one year of professional course work in a medical school or hospital.

(5) *Accountants.* Certified public accountants, except in unusual cases, meet the primary duty requirement for the learned professional exemption. In addition, many other accountants who are not certified public accountants but perform similar job duties may qualify as exempt learned professionals. However, accounting clerks and other employees who normally perform a great deal of routine work generally will not qualify as exempt professionals.

(6) *Chefs.* Chefs, such as executive chefs and sous chefs, who have attained a college degree in a culinary arts program, meet the primary duty requirement for the learned professional exemption.

(f) Professional occupations do not include those whose duties may be performed with the general knowledge acquired by an academic degree in any field or with knowledge acquired through an apprenticeship or from training in routine mental, manual or physical processes. Thus, for example, the professional exemption does not apply to occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, teamsters and other employees who perform manual work that does not require an advanced academic degree.

(g) The areas in which professional exemptions may be available are expanding. As knowledge is developed, academic training is broadened and specialized degrees are offered in new and diverse fields, thus creating new specialists in particular fields of science or learning. When a specialized degree has become a standard requirement for a particular occupation, that occupation may have acquired the characteristics of a learned profession.

§ 541.302 Creative professionals.

(a) Creative professionals must have a primary duty of performing office or non-manual work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical or physical work. The exemption does not apply to work which can be produced by a person with general manual ability and training.

(b) To qualify for exemption as a creative professional, the work performed must be "in a recognized field of artistic or creative endeavor." This includes such fields as music, writing, acting and the graphic arts.

(c) The requirement of "invention, imagination, originality or talent" distinguishes the creative professions from work that primarily depends on

intelligence, diligence and accuracy. This requirement generally is met by actors, musicians, composers, conductors, and soloists; painters who at most are given the subject matter of their painting; cartoonists who are merely told the title or underlying concept of a cartoon and must rely on their own creative ability to express the concept; essayists, novelists, short-story writers and screen play writers who choose their own subjects and hand in a finished piece of work to their employers (the majority of such persons are, of course, not employees but self-employed); and persons holding the more responsible writing positions in advertising agencies. This requirement generally is not met by a person who is employed as a copyist, as an "animator" of motion-picture cartoons, or as a retoucher of photographs, since such work is not properly described as creative in character.

(d) Journalists may qualify as creative professionals if their work generally requires invention, imagination, originality or talent. Writers for newspapers, news magazines, television news programs, the Internet and other media, for example, generally perform work involving originality and talent. Radio announcers and television announcers also perform work that requires artistic or creative talent. Exempt work includes conducting interviews, reporting or analyzing public events, and acting as a narrator, announcer or commentator. Positions that primarily require the employee to collect and record routine facts or data without analysis, interpretation, synthesis, or creative or original writing would not qualify for the creative professional exemption.

§ 541.303 Teachers.

(a) The term "employee employed in a *bona fide* professional capacity" in section 13(a)(1) of the Act also means any employee with a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed. The term "educational establishment" is defined in § 541.205(b).

(b) Exempt teachers include, but are not limited to: regular academic teachers; teachers of kindergarten or nursery school pupils; teachers of gifted or disabled children; teachers of skilled and semiskilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors. Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate or journalism are engaged in teaching. Such activities are a recognized part of the schools' responsibility in contributing to the educational development of the student.

(c) The possession of an elementary or secondary teacher's certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (*e.g.*, permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the State to refer to different kinds of certificates. However, private schools and public schools are not uniform in requiring a certificate for employment as an elementary or secondary school teacher, and a teacher's certificate is not generally necessary for employment in institutions of higher education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system.

(d) The requirements of § 541.300 and subpart G (salary requirements) of this part do not apply to the teaching professionals described in this section.

§ 541.304 Practice of law or medicine.

(a) The term "employee employed in a *bona fide* professional capacity" in section 13(a)(1) of the Act also shall mean:

(1) Any employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof; and

(2) Any employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of the profession.

(b) In the case of medicine, the exemption applies to physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners. The term "physicians" includes medical doctors including general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry).

(c) Employees engaged in internship or resident programs, whether or not licensed to practice prior to commencement of the program, qualify as exempt professionals if they enter such internship or resident programs after the earning of the appropriate degree required for the general practice of their profession.

(d) The requirements of § 541.300 and subpart G (salary requirements) of this part do not apply to the licensed lawyers and medical professionals described in this section.

Subpart E—Computer Employees

§ 541.400 General rule for computer employees.

(a) Computer systems analysts, computer programmers, software engineers or other similarly skilled workers in the computer field are eligible for exemption as professionals under section 13(a)(1) of the Act and under section 13(a)(17) of the Act. Employees who qualify for this exemption are highly skilled in computer systems analysis, programming, software engineering or similar computer functions. Because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the applicability of this exemption. To qualify for the computer occupations exemption, the employee must:

(1) Be compensated on a salary or fee basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities, or on an hourly basis at a rate not less than $27.63 an hour; and

(2) Have a primary duty consisting of:

(i) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(ii) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(iii) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(iv) A combination of the aforementioned duties, the performance of which requires the same level of skills.

(b) The term "salary basis" is defined at § 541.602; "fee basis" is defined at § 541.605; "board, lodging or other facilities" is defined at § 541.606; and "primary duty" is defined at § 541.700.

§ 541.401 High level of skill and expertise.

The exemption for computer employees applies only to highly-skilled employees who have achieved a level of proficiency in the theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming and software engineering. This exemption does not include trainees or employees in entry level positions learning to become proficient in such areas or to employees in computer occupations who have not attained a level of skill and expertise which allows them to work generally without close supervision. The level of expertise and skill required to qualify for this exemption is generally attained through combinations of education, specialized training and experience in the field. No particular academic degree is required for this exemption, nor are there any requirements for licensure or certification.

§ 541.402 Computer operation, manufacture and repair.

The exemption for employees in computer occupations does not include employees engaged in the operation of computers or in the manufacture, repair or maintenance of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (*e.g.*, engineers, drafters and others skilled in computer-aided design software), but who are not in computer systems analysis and programming occupations, are also not exempt computer professionals.

§ 541.403 Executive and administrative computer employees.

Computer employees within the scope of this exemption, as well as those employees not within its scope, may also have executive and administrative duties which qualify the employees for exemption under subpart B or subpart C of this part. For example, systems analysts and computer programmers whose primary duties are to plan, schedule, and coordinate activities required to develop systems to solve complex business, scientific or engineering problems of the employer or the employer's customers are performing work of substantial importance related to management or general business operations and may qualify as exempt administrative employees under § 541.200. Similarly, a senior or lead computer programmer whose primary duty is to manage and direct the work of other programmers in a customarily recognized department or subdivision may qualify as an exempt executive employee under § 541.100.

Subpart F—Outside Sales Employees

§ 541.500 General rule for outside sales employees.

(a) The term "employee employed in the capacity of outside salesman" in section 13(a)(1) of the Act shall mean any employee:

(1) With a primary duty of:

(i) Making sales within the meaning of section 3(k) of the Act, or

(ii) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

(2) Who is customarily and regularly engaged away from the employer's place or places of business in performing such primary duty.

(b) The term "primary duty" is defined at § 541.700. In determining the primary duty of an outside sales employee, work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall be regarded as exempt outside sales work. Other work that furthers the employee's sales efforts also shall be regarded as exempt work including, for example, writing sales reports, updating or revising the employee's sales or display catalog, planning itineraries and attending sales conferences. The requirements of subpart G (salary requirements) of this part do not apply to the outside sales employees described in this section.

§ 541.501 Making sales or obtaining orders.

(a) Section 541.500 requires that the employee be engaged in:

(1) Making sales within the meaning of section 3(k) of the Act, or

(2) Obtaining orders or contracts for services or for the use of facilities.

(b) Sales within the meaning of section 3(k) of the Act include the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. Section 3(k) of the Act states that "sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(c) Exempt outside sales work includes not only the sales of commodities, but also "obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer." Obtaining orders for "the use of facilities" includes the selling of time on radio or television, the solicitation of advertising for newspapers and other periodicals, and the solicitation of freight for railroads and other transportation agencies.

(d) The word "services" extends the outside sales exemption to employees who sell or take orders for a service, which may be performed for the customer by someone other than the person taking the order.

§ 541.502 Away from employer's place of business.

(a) An outside sales employee must be customarily and regularly engaged "away from the employer's place or places of business." This requirement is based on the obvious connotation of the word "outside" in the statutory term "outside salesman." The Administrator does not have authority to define this exemption for "outside" sales under section 13(a)(1) of the Act as including inside sales work. Section 13(a)(1) does not exempt inside sales and other inside work (except work performed incidental to and in conjunction with outside sales and solicitations). However, section 7(i) of the Act exempts commissioned inside sales employees of qualifying retail or service establishments if those employees meet the compensation requirements of section 7(i).

(b) The outside sales employee is an employee who makes sales at the customer's place of business or, if selling door-to-door, at the customer's home. Outside sales does not include sales made by mail, telephone or the Internet unless such contact is used merely as an adjunct to personal calls. Thus, any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales is considered one of the employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property. However, an outside sales employee does not lose the exemption by displaying samples in hotel sample rooms during trips from city to city; these sample rooms should not be considered as the employer's places of business.

§ 541.503 Promotion work.

(a) Promotion work is one type of activity often performed by persons who make sales, which may or may not be exempt outside sales work, depending upon the circumstances under which it is performed. Promotional work that is actually performed incidental to and in

conjunction with an employee's own outside sales or solicitations is exempt work. On the other hand, promotional work that is incidental to sales made, or to be made, by someone else is not exempt outside sales work.

(b) A manufacturer's representative, for example, may perform various types of promotional activities such as putting up displays and posters, removing damaged or spoiled stock from the merchant's shelves or rearranging the merchandise. Such an employee can be considered an exempt outside sales employee if the employee's primary duty is making sales or contracts. Promotion activities directed toward consummation of the employee's own sales are exempt. Promotional activities designed to stimulate sales that will be made by someone else are not exempt.

(c) Another example is a company representative who visits chain stores, arranges the merchandise on shelves, replenishes stock by replacing old with new merchandise, consults with the store manager as to the requirements of the store, fills out a requisition for the quantity wanted, but leaves the requisition with the store manager to be transmitted to the central warehouse of the chain store company which later ships the quantity requested. The arrangement of merchandise on the shelves or the replenishing of stock is not exempt work unless it is incidental to and in conjunction with the employee's own outside sales. Because the employee in this instance does not consummate the sale nor direct efforts toward the consummation of a sale, the work in this example is not exempt.

§ 541.504 Drivers who sell.

(a) Drivers who deliver products and also sell such products may qualify as exempt outside sales employees only if the employee has a primary duty of making sales. If the employee has a primary duty of making sales, all work performed incidental to and in conjunction with the employee's own sales efforts, including loading, driving or delivering products, is exempt work.

(b) Several factors should be considered in determining if a driver has a primary duty of making sales, including: a comparison of the driver's duties with those of other employees engaged as truck drivers and as salespersons; possession of a selling or solicitor's license when such license is required by law or ordinances; presence or absence of customary or contractual arrangements concerning amounts of products to be delivered; description of the employee's occupation in collective bargaining agreements; the employer's specifications as to qualifications for hiring; sales training; attendance at sales conferences; method of payment; and proportion of earnings directly attributable to sales.

(c) Drivers who may qualify as exempt outside sales employees include:

(1) A driver who provides the only sales contact between the employer and the customers visited, who calls on customers and takes orders for products, who delivers products from stock in the employee's vehicle or procures and delivers the product to the customer on a later trip, and who receives compensation commensurate with the volume of products sold.

(2) A driver who obtains or solicits orders for the employer's products from persons who have authority to commit the customer for purchases.

(3) A driver who calls on new prospects for customers along the employee's route and attempts to convince them of the desirability of accepting regular delivery of goods,

(4) A driver who calls on established customers along the route and carrying an assortment of the employer's products who persuades regular customers to accept delivery of increased amounts of goods or of new products, even though the initial sale or agreement for delivery was made by someone else.

(d) Drivers who generally would not qualify as exempt outside sales employees include:

(1) A route driver whose primary duty is to transport products sold by the employer through vending machines and to keep such machines stocked, in good operating condition, and in good locations does not have a primary duty of making sales.

(2) A driver who often calls on established customers day after day or week after week, delivering a quantity of the employer's products at each call when the sale was not significantly affected by solicitations of the customer by the delivering driver or the amount of the sale is determined by the volume of the customer's sales since the previous delivery.

(3) A driver primarily engaged in making deliveries to customers and performing activities intended to promote sales by customers (including placing point-of-sale and other advertising materials, price stamping commodities, arranging merchandise on shelves, in coolers or in cabinets, rotating stock according to date, and cleaning and otherwise servicing display cases), unless such work is in furtherance of the driver's own sales efforts.

Subpart G—Compensation Requirements

§ 541.600 Amount of salary required.

(a) To qualify as an exempt executive, administrative or professional employee under section 13(a)(1) of the Act, an employee must be compensated on a salary basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities. Administrative and professional employees may also be paid on a fee basis, as defined in § 541.605.

(b) The $425 a week may be translated into equivalent amounts for periods longer than one week. The requirement will be met if the employee is compensated biweekly on a salary basis of $850, semimonthly on a salary basis of $920.84, or monthly on a salary basis of $1,841.67. However, the shortest period of payment that will meet this compensation requirement is one week.

(c) In the case of academic administrative employees, the compensation requirement also may be met by compensation on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment by which the employee is employed, as provided in § 541.206(a)(1).

(d) In the case of computer employees, the compensation requirement also may be met by compensation on an hourly basis at a rate not less than $27.63 an hour, as provided in § 541.400(a).

(e) In the case of professional employees, the compensation requirements in this section shall not apply to employees engaged as teachers (§ 541.303); employees who hold a valid license or certificate permitting the practice of law or medicine or any of their branches and are actually engaged in the practice thereof (*see* § 541.304); or to employees who hold the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program pursuant to the practice of the profession (*see* § 541.304). In the case of medical occupations, the exception from the salary or fee requirement does not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists, or other professions which service the medical profession.

§ 541.601 Highly compensated employees.

(a) An employee who performs office or non-manual work and is guaranteed a total annual compensation of at least $65,000 ($55,000 if employed in American Samoa by employers other than the Federal Government) is deemed exempt under section 13(a)(1) of the Act if the employee performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in subparts B, C or D of this part.

(b) The phrase "total annual compensation" excludes board, lodging or other facilities as defined in § 541.606, but includes base salary, commissions, non-discretionary bonuses and other non-discretionary compensation.

(1) The base salary, commissions and non-discretionary compensation must be settled and paid out to the employee as due on at least a monthly basis. Thus, for example, employees told they will receive a commission of 1 percent of all monthly sales orders that exceed $1 million must receive any commission due each month. Of course, if sales do not exceed $1 million in a particular month, no commission is due for that month. Similarly, employees who are told they will receive a $300 production bonus for each ton of product manufactured in excess of a weekly quota must receive any bonus earned at least monthly. Again, there may be months in which no bonus is due because production did not exceed the quota in any week of the month.

(2) If an employee's base salary and non-discretionary compensation do not total at least the minimum guarantee established in § 541.601(a) by end of the year, the employer may, by the next pay period after the end of the year, make a final payment sufficient to achieve the guaranteed level. For example, an employee may earn $36,000 in guaranteed base salary, and the employer may anticipate based upon past sales that the employee also will earn $36,000 in commissions. However, due to poor sales in the final quarter of the year, the employee actually only earns $26,000 in commissions. In this situation, the employer may by the next pay period after the end of the year make a payment of $3,000 to the employee. If the employer fails to make such a payment, the employee does not qualify as a highly compensated employee, but may still qualify as exempt under subparts B, C or D of this part.

(3) An employee who does not work a full year for the employer, either because the employee is newly hired after the beginning of the year or ends the employment before the end of the year, may qualify for exemption under this section if the employee receives a *pro rata* portion of the minimum guarantee established in § 541.601(a), based upon the number of weeks that the employee will be or has been employed. The employer may utilize any 52-week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year will apply.

(c) A high level of compensation is a strong indicator of an employee's exempt status, thus eliminating the need for a detailed analysis of the employee's job duties. Thus, a highly compensated employee may qualify for exemption if the employee performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in subparts B, C or D of this part. Thus, an employee may qualify as a highly compensated executive employee, for example, if the employee directs the work of two or more other employees, even though the employee does not have authority to hire and fire.

(d) This section applies only to employees performing office or non-manual work. carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, teamsters and other employees who perform manual work are not exempt under this section no matter how highly paid they might be.

§ 541.602 Salary basis.

(a) *General rule.* An employee will be considered to be paid on a "salary basis" within the meaning of these regulations if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided in paragraph (b) of this section, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work. An employee is not paid on a salary basis if deductions from the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

(b) *Exceptions.* The prohibition against deductions from pay in the salary basis requirement is subject to the following exceptions:

(1) Deductions from pay may be made when an exempt employee is absent from work for a full day for personal reasons, other than sickness or disability. Thus, if an employee is absent for two full days to handle personal affairs, the employee's salaried status will not be affected if deductions are made from the salary for two full-day absences. However, if an exempt employee is absent for one and a half days for personal reasons, the employer can deduct only for the one full-day absence.

(2) Deductions from pay may be made for absences of a full day or more occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a *bona fide* plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. The employer is not required to pay any portion of the employee's salary for full day absences for which the employee receives compensation under the plan, policy or practice. Deductions for such full day absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder. Thus, for example, if an employer maintains a short-term disability insurance plan providing salary replacement for 12 weeks starting on the fourth day of absence, the employer may make deductions from pay for the three days of absence before the employee qualifies for benefits under the plan; for the twelve weeks in which the employee receives salary replacement benefits under the plan; and for absences after the employee has exhausted the 12 weeks of salary replacement benefits. Similarly, an employer may make deductions from pay for absences of a full day or more if salary replacement benefits are provided under a State disability insurance law or under a State workers' compensation law.

(3) While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, attendance as a witness or temporary military leave, the employer can offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(4) Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of

safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines.

(5) Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of a full day or more imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applied uniformly to all workers. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a uniformly applied written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for twelve days for violating a uniformly applied written policy prohibiting workplace violence.

(6) An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement. However, employees are not paid on a salary basis within the meaning of these regulations if they are employed occasionally for a few days, and the employer pays them a proportionate part of the weekly salary when so employed.

(7) An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, when an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works forty hours per week uses four hours of unpaid leave under the Family and Medical Leave Act, the employer could deduct 10% of the employee's normal salary that week.

(c) When calculating the amount of a deduction from pay allowed under paragraph (b) of this section, the employer may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed by the employee. A deduction from pay as a penalty for violations of major safety rules under paragraph (b)(4) of this section may be made in any amount.

§ 541.603 Effect of improper deductions from salary.

(a) An employer who makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer has a pattern and practice of not paying employees on a salary basis. A pattern and practice of making improper deductions demonstrates that the employer did not intend to pay employees in the job classification on a salary basis. Improper deductions that are isolated or inadvertent, however, will not result in loss of the exemption. The factors to consider when determining whether an employer has a pattern and practice of not paying employees on a salary basis include, but are not limited to: The number of improper deductions; the time period during which the employer made improper deductions; the number and geographic location of employees whose salary was improperly reduced; the number and geographic location of managers responsible for taking the improper deductions; the size of the employer; whether the employer has a written policy prohibiting improper deductions; and whether the employer corrected the improper pay deductions.

(b) If the facts demonstrate that the employer has a policy of not paying on a salary basis, the exemption is lost during the time period in which improper deductions were made for employees in the same job classification working for the same managers responsible for the improper deductions. Employees in different job classifications who work for different managers do not lose their status as exempt employees. Thus, for example, if a manager at a company facility routinely docks the pay of engineers at that facility for partial-day personal absences, then all engineers at that facility whose pay could have been improperly docked by the manager would lose the exemption; engineers at other facilities or working for other managers, however, would remain exempt.

(c) If an employer has a written policy prohibiting improper pay deductions as provided in § 541.602, notifies employees of that policy and reimburses employees for any improper deductions, such employer will not lose the exemption for any employees unless the employer repeatedly and willfully violates the policy or continues to make improper deductions after receiving employee complaints. Examples of notification include publishing the policy to employees at the time of hire, in an employee handbook or on the employer's Intranet.

(d) This section shall not be construed in an unduly technical manner so as to defeat the exemption.

§ 541.604 Minimum guarantees plus extras.

(a) An exempt employee may receive additional compensation, consistent with the exemption and the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed at least $425 each week paid on a salary basis may also receive additional compensation of a one percent commission on sales. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least $425 each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at least $425 each week paid on a salary basis also receives additional compensation based on hours worked. Such additional compensation may be paid on any basis (*e.g.* flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis).

(b) An exempt employee's salary may be computed on an hourly, a daily or a shift basis, consistent with the exemption and the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked and a reasonable relationship exists between the guaranteed amount and the amount actually earned. The reasonable relationship test will be met if the weekly guarantee is roughly equivalent to the employee's usual earnings at the assigned hourly, daily or shift rate for the employee's normal scheduled workweek. Thus, for example, an exempt employee guaranteed compensation of at least $500 for any week in which the employee performs any work, and who normally works four or five shifts each week, may be paid $150 per shift consistent with the salary basis requirement.

§ 541.605 Fee basis.

(a) Administrative and professional employees may be paid on a fee basis, rather than on a salary basis. An employee will be considered to be paid on a "fee basis" within the meaning of these regulations if the employee is paid an agreed sum for a single job regardless of the time required for its completion. These payments in a sense resemble piecework payments with the important distinction that generally a "fee" is paid for the kind of job that is unique rather than for a series of jobs repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis.

(b) To determine whether the fee payment meets the minimum amount of salary required for exemption under these regulations, the amount paid to the employee will be tested by determining the time worked on the job and whether the fee payment is at a rate that would amount to at least $425 per week if the employee worked 40 hours. Thus, an artist paid $250 for a picture that took 20 hours to complete meets the minimum salary requirement for exemption since earnings at this rate would yield the artist $500 if 40 hours were worked.

§ 541.606 Board, lodging or other facilities.

(a) To qualify for exemption under section 13(a)(1) of the Act, an employee must earn the minimum salary amount set forth in § 541.600, "exclusive of board, lodging or other facilities." The phrase "exclusive of board, lodging or other facilities" means "free and clear" or independent of any claimed credit for non-cash items of value that an employer may provide to an employee. Thus, the costs incurred by an employer to provide an employee with board, lodging or other facilities may not count towards the minimum salary amount required for exemption under this part 541. Such separate transactions are not prohibited between employers and their exempt employees, but the costs to employers associated with such transactions may not be considered when determining if an employee has received the full required minimum salary payment.

(b) Regulations defining what constitutes "board, lodging, or other facilities" are contained in 29 CFR part 531. As described in 29 CFR 531.32, the term "other facilities" refers to items similar to board and lodging, such as meals furnished at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees; meals, dormitory rooms, and tuition furnished by a college to its student employees; merchandise furnished at company stores or commissaries, including articles of food, clothing, and household effects; housing furnished for dwelling purposes; and transportation furnished to employees for ordinary commuting between their homes and work.

Subpart H—Definitions and Miscellaneous Provisions

§ 541.700 Primary duty.

To qualify for exemption under this part, an employee must have a "primary duty" of performing exempt work. The term "primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case. Factors to consider when determining the primary duty of an employee include, but are not limited to the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the same kind of nonexempt work. The term "primary duty" does not require that employees spend over fifty percent of their time performing exempt work. Thus, for example, an assistant manager in a retail establishment who performs exempt work such as supervising and directing the work of other employees, ordering merchandise, handling customer complaints and authorizing payment of bills may have management as the primary duty, even if the assistant manager spends more than fifty percent of the time performing non-exempt work such as running the cash register. However, the amount of time spent performing exempt work can be a useful guide, and employees who spend over fifty percent of the time performing exempt work will be considered to have a primary duty of performing exempt work. The fact that an employer has well-defined operating policies or procedures should not by itself defeat an employee's exempt status.

§ 541.701 Customarily and regularly.

The phrase "customarily and regularly" means a frequency that must be greater than occasional but which, of course, may be less than constant. Tasks or work performed "customarily and regularly" includes work normally and recurrently performed every work week; it does not included isolated or one-time tasks.

§ 541.702 Exempt and nonexempt work.

The term "exempt work" means all work described in §§ 541.100, 541.101, 541.102, 541.200, 541.206, 541.300, 541.301, 541.302, 541.303, 541.304, 541.400 and 541.500, and the activities directly and closely related to such work. All other work is considered "nonexempt."

§ 541.703 Directly and closely related.

(a) Work that is "directly and closely related" to the performance of exempt work is also considered exempt work. The phrase "directly and closely related" means tasks that are related to exempt duties and that contribute to or facilitate performance of exempt work. Thus, "directly and closely related" work may include physical tasks and menial tasks that arise out of exempt duties, and the routine work without which the exempt employee's more important work cannot be performed properly. Work "directly and closely related" to the performance of exempt duties may also include recordkeeping; monitoring and adjusting machinery; taking notes; using the computer to create documents or presentations; opening the mail for the purpose of reading it and making decisions; and using a photocopier or fax machine. Work is not "directly and closely related" if the work is remotely related or completely unrelated to exempt duties.

(b) The following examples further illustrate the type of work that is and is not normally considered as directly and closely related to exempt work:

(1) Keeping time, production or sales records for subordinates is work directly and closely related to an exempt executive's function of managing a department and supervising employees.

(2) The distribution of materials, merchandise or supplies to maintain control of the flow of and expenditures for such items is directly and closely related to the performance of exempt duties.

(3) A supervisor who spot checks and examines the work of subordinates to determine whether they are performing their duties properly, and whether the product is satisfactory, is performing work which is directly and closely related to managerial and supervisory functions, so long as the checking is distinguishable from the work ordinarily performed by a nonexempt inspector.

(4) A supervisor who sets up a machine may be engaged in exempt work, depending upon the nature of the industry and the operation. In some cases the setup work, or adjustment of the machine for a particular job, is typically performed by the same employees who operate the machine. Such setup work is part of the production operation and is not exempt. In other cases, the setting up of the work is a highly skilled operation which the ordinary production worker or machine

tender typically does not perform. In large plants, non-supervisors may perform such work. However, particularly in small plants, such work is a regular duty of the executive and is directly and closely related to the executive's responsibility for the work performance of subordinates and for the adequacy of the final product. Under such circumstances, it is exempt work.

(5) A department manager in a retail or service establishment who walks about the sales floor observing the work of sales personnel under the employee's supervision to determine the effectiveness of their sales techniques, checks on the quality of customer service being given, or observes customer preferences is performing work which is directly and closely related to managerial and supervisory functions.

(6) A business consultant may take extensive notes recording the flow of work and materials through the office or plant of the client; after returning to the office of the employer, the consultant may personally use the computer to type a report and create a proposed table of organization. Standing alone, or separated from the primary duty, such note taking and typing would be routine in nature. However, because this work is necessary for analyzing the data and making recommendations, the work is directly and closely related to exempt work. While it is possible to assign note taking and typing to nonexempt employees, and in fact it is frequently the practice to do so, delegating such routine tasks is not required as a condition of exemption.

(7) A credit manager who makes and administers the credit policy of the employer, establishes credit limits for customers, authorizes the shipment of orders on credit, and makes decisions on whether to exceed credit limits would be performing work exempt under § 541.200. Work that is directly and closely related to these exempt duties may include checking the status of accounts to determine whether the credit limit would be exceeded by the shipment of a new order, removing credit reports from the files for analysis, and writing letters giving credit data and experience to other employers or credit agencies.

(8) A traffic manager in charge of planning a company's transportation, including the most economical and quickest routes for shipping merchandise to and from the plant, contracting for common-carrier and other transportation facilities, negotiating with carriers for adjustments for damages to merchandise, and making the necessary rearrangements resulting from delays, damages or irregularities in transit is performing exempt work. If the employee also spends part of the day taking telephone orders for local deliveries, such order-taking is a routine function and is not directly and closely related to the exempt work.

(9) An example of work directly and closely related to exempt professional duties is a chemist performing menial tasks such as cleaning a test tube in the middle of an original experiment, even though such menial tasks can be assigned to laboratory assistants.

(10) A teacher performs work directly and closely related to exempt duties when, while taking students on a field trip, the teacher drives a school van or monitors the students' behavior in a restaurant.

§ 541.704 Trainees.

The executive, administrative, professional, outside sales and computer employee exemptions do not apply to employees training for employment in an executive, administrative, professional, outside sales or computer employee capacity who are not actually performing the duties of an executive, administrative, professional, outside sales or computer employee.

§ 541.705 Emergencies.

(a) An exempt employee will not lose the exemption by performing work of a normally nonexempt nature because of the existence of an emergency. Thus, when emergencies arise that threaten the safety of employees, a cessation of operations or serious damage to the employer's property, any work performed in an effort to prevent such results is considered exempt work.

(b) An "emergency" does not include occurrences that are not beyond control or for which the employer can reasonably provide in the normal course of business. Emergencies generally occur only rarely, and are events that the employer cannot reasonably anticipate.

(c) The following examples illustrate the distinction between emergency work considered exempt work and routine work that is not exempt work:

(1) A mine superintendent who pitches in after an explosion and digs out workers who are trapped in the mine is still a *bona fide* executive.

(2) Assisting nonexempt employees with their work during periods of heavy workload or to handle rush orders is not exempt work.

(3) Replacing a nonexempt employee during the first day or partial day of an illness may be considered exempt emergency work depending on factors such as the size of the establishment and of the executive's department, the nature of the industry, the consequences that would flow from the failure to replace the ailing employee immediately, and the feasibility of filling the employee's place promptly.

(4) Regular repair and cleaning of equipment is not emergency work, even when necessary to prevent fire or explosion; however, repairing equipment may be emergency work if the breakdown of or damage to the equipment was caused by accident or carelessness that the employer could not reasonably anticipate.

§ 541.706 Occasional tasks.

Occasional, infrequently recurring tasks that cannot practicably be performed by nonexempt employees, but are the means for an exempt employee to properly carry out exempt functions and responsibilities, are considered exempt work. The following factors should be considered in determining whether such work is exempt work: whether the same work is performed by any of the executive's subordinates; practicability of delegating the work to a nonexempt employee; whether the executive performs the task frequently or occasionally; and existence of an industry practice for the executive to perform the task.

§ 541.707 Combination exemptions.

Employees who perform a combination of exempt duties as set forth in these regulations for executive, administrative, professional, outside sales and computer employees may qualify for exemption. Thus, for example, an employee who works forty percent of the time performing exempt administrative duties and another forty percent of the time performing exempt executive duties may qualify for exemption. In other words, work that is exempt under one section of this part will not defeat the exemption under any other section.

§ 541.708 Motion picture producing industry.

The requirement that the employee be paid "on a salary basis" does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $650 a week (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under subparts B, C and D of this part, and who is employed at a base rate of at least $650 a week is exempt if paid a proportionate amount (based on a week of not more than 6 days) for any week in which the employee does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if the employee is employed at a daily rate under the following circumstances:

(a) The employee is in a job category for which a weekly base rate is not provided and the daily base rate would yield at least $650 if 6 days were worked; or

(b) The employee is in a job category having a weekly base rate of at least $650 and the daily base rate is at least one-sixth of such weekly base rate.

§ 541.709 Employees of public agencies.

(a) An employee of a public agency who otherwise meets the salary basis requirements of § 541.602 shall not be disqualified from exemption under §§ 541.100, 541.200, 541.300 or 541.400 on the basis that such employee is paid according to a pay system established by statute, ordinance or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by an employee because:

(1) Permission for its use has not been sought or has been sought and denied;

(2) Accrued leave has been exhausted; or

(3) The employee chooses to use leave without pay.

(b) Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

[FR Doc. 03–7449 Filed 3–28–03; 8:45 am]
BILLING CODE 4510–27–P

VOL
68
ISS
61
MR
31
003
MI



Federal Register

Monday,
March 31, 2003

Part III

Securities and Exchange Commission

17 CFR Parts 228, 229, 240, et al.
Certification of Disclosure in Certain Exchange Act Reports; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 240, 249, 270 and 274

[Release Nos. 33–8212, 34–47551, IC–25967; File No. S7–06–03]

RIN 3235–AI79

Certification of Disclosure in Certain Exchange Act Reports

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; interim guidance regarding filing procedures.

SUMMARY: We are proposing amendments to our rules and forms under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 to require issuers to provide the certifications required by sections 302 and 906 of the Sarbanes-Oxley Act of 2002 as exhibits to the periodic reports to which they relate. We also are publishing guidance about how the certifications required by section 906 may "accompany" a periodic report to which they relate, pending the adoption of final rules.

DATES: Comments must be received on or before May 15, 2003.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following electronic mail address: *rule-comments@sec.gov*. To help us process and review your comments more efficiently, comments should be submitted by one method only. All comment letters should refer to File No. S7–06–03; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Mark A. Borges or Andrew Thorpe, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, or Carol McGee or Jonathan Ingram, Special Counsel, Office of Chief Counsel, Division of Corporation Finance, at (202) 942–2900, or, with respect to investment companies, Christian Broadbent, Senior Counsel, Office of Disclosure Regulation, Division of Investment Management, at (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Item 601[2] of Regulation S–B,[3] Item 601[4] of Regulation S–K,[5] Rules 12b–15,[6] 13a–14,[7] 13a–15,[8] 15d–14[9] and 15d–15[10] under the Securities Exchange Act of 1934,[11] Rules 8b–15,[12] 30a–2[13] and 30a–3[14] under the Investment Company Act of 1940,[15] Forms 10–Q,[16] 10–QSB,[17] 10–K,[18] 10–KSB,[19] 20–F[20] and 40–F[21] under the Securities Exchange Act of 1934 and Form N–CSR[22] under the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

I. Background

On July 30, 2002, the Sarbanes-Oxley Act of 2002 (the "Act") was enacted.[23] Section 302 of the Act required the Commission to adopt final rules to be effective by August 29, 2002 under which the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, of a company filing periodic reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act")[24] must certify in each quarterly and annual report, among other things, that, based on his or her knowledge:

- The report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading; and
- The financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report.[25]

On August 28, 2002, we adopted Exchange Act Rules 13a–14 and 15d–14 and Investment Company Act Rule 30a–2 and amended our periodic report forms to implement this statutory directive.[26] These rules and amendments became effective on August 29, 2002. On January 27, 2003, we adopted Form N–CSR to be used by registered management investment companies to file certified shareholder reports with the Commission.[27]

Section 906 of the Act added new section 1350 to Title 18 of the United States Code,[28] which contains federal criminal provisions. Section 906 contains a certification requirement that is separate and distinct from the certification requirement mandated by section 302.[29] Section 906 provides that each periodic report containing financial statements filed by an issuer[30] with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act must be accompanied by a written statement by the issuer's chief executive officer and chief financial officer (or the equivalent thereof) certifying that:

- The report fully complies with the requirements of section 13(a) or 15(d) of the Exchange Act; and
- The information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the issuer.

Section 906 expressly creates new criminal penalties for a knowingly or willfully false certification.[31] This provision became effective on July 30, 2002. As discussed below, we propose to require the inclusion of the certifications required by sections 302 and 906 of the Act as exhibits to the periodic reports to which they relate.

II. Proposed Amendments

A. Section 302 Certifications

To implement section 302's directive that the required certifications be "in" each quarterly or annual report filed or submitted under section 13(a) or 15(d) of the Exchange Act, we amended Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F and 40–F under the Exchange Act to require the certifications to appear immediately after the signature block at the end of these reports. Because the certifications are part of the text of the report to which they relate, however, investors are not able to easily access the certifications through our Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system. In addition, the Commission staff must review the actual text of a quarterly or annual report to confirm that the certifications have been filed.

Consequently, we propose to amend our rules and forms to require issuers to file these certifications as an exhibit to the periodic reports to which they relate. Specifically, we propose to amend Item 601 of Regulations S–B and S–K to add the section 302 certifications to the list of required exhibits as new Item 31.[32] With this change, investors using third-party databases to access an issuer's Exchange Act reports should be able to locate the section 302 certifications more easily and efficiently. In addition, the Commission staff should be able to search a periodic report more expeditiously to verify that the required certifications have been included in the report and to review the certifications.

The signatures appearing at the end of the certifications that we propose to require as an exhibit would continue to be part of the periodic reports to which they relate and, therefore, would be subject to the signature requirement of our rules.[33] Aside from our proposal to require issuers to file the section 302 certifications as an exhibit,[34] we do not propose in this release to modify any other substantive aspect of the certification requirements under Exchange Act Rules 13a–14 and 15d–14.[35] In particular, we note that the consequences for failing to file a required certification or making a false or misleading certification would not be affected by the proposed amendments.[36]

B. Section 906 Certifications

Each periodic report containing financial statements filed by an issuer with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act must "be accompanied by" a written statement by the issuer's chief executive and financial officers containing the information specified in section 906 of the Act (referred to in this release as the "section 906 certifications").[37] After discussions with the Department of Justice, we propose to amend our rules and forms to require issuers to furnish these certifications as an exhibit to the periodic reports to which they relate. Specifically, we propose to amend Exchange Act Rules 13a–14 and 15d–14 to require the submission of the section 906 certifications with the periodic reports to which they relate,[38] and to amend Item 601 of Regulations S-B and S-K to add the section 906 certifications to the list of required exhibits as new Item 32. We also propose to amend Investment Company Act Rule 30a–2 to require the submission of the section 906 certifications with the periodic reports on Form N–CSR to which they relate[39] and Item 10 of Form N–CSR to add the section 906 certifications as a required exhibit.[40] Because the section 906 certification requirement applies to periodic reports containing financial statements that are filed by an issuer pursuant to section 13(a) or 15(d) of the Exchange Act, the proposed exhibit requirement would only apply to reports on Form N–CSR filed under these sections and not to reports on Form N–CSR that are filed under the

---

[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submission. You should submit only information that you wish to make available publicly.

[2] 17 CFR 228.601.

[3] 17 CFR 228.10 *et seq.*

[4] 17 CFR 229.601.

[5] 17 CFR 229.10 *et seq.*

[6] 17 CFR 240.12b–15.

[7] 17 CFR 240.13a–14.

[8] 17 CFR 240.13a–15.

[9] 17 CFR 240.15d–14.

[10] 17 CFR 240.15d–15.

[11] 15 U.S.C. 78a *et seq.*

[12] 17 CFR 270.8b–15.

[13] 17 CFR 270.30a–2.

[14] 17 CFR 270.30a–3.

[15] 15 U.S.C. 80a–1 *et seq.*

[16] 17 CFR 249.308a.

[17] 17 CFR 249.308b.

[18] 17 CFR 249.310.

[19] 17 CFR 249.310b.

[20] 17 CFR 249.220f.

[21] 17 CFR 249.240f.

[22] 17 CFR 249.331; 17 CFR 274.128.

[23] Pub. L. 107–204, 116 Stat. 745 (2002).

[24] 15 U.S.C. 78m(a) or 78o(d). Section 13(a) of the Exchange Act requires every issuer of a security registered pursuant to section 12 of the Exchange Act [15 U.S.C. 781] to file with the Commission such annual reports and such quarterly reports as the Commission may prescribe. Section 15(d) of the Exchange Act requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (the "Securities Act") to file such supplementary and periodic information, documents and reports as may be required pursuant to section 13 in respect of a security registered pursuant to section 12, unless the duty to file under section 15(d) has been suspended for any fiscal year. *See* Exchange Act Rule 12h–3 [17 CFR 240.12h–3].

[25] *See* sections 302(a)(2) and (3) of the Act [15 U.S.C. 7241(a)(2) and (3)].

[26] *See* Release No. 33–8124 (Aug. 28, 2002) [67 FR 57276] (the "Adopting Release").

[27] *See* Release No. IC–25914 (Jan. 27, 2003) [68 FR 5348].

[28] 18 U.S.C. 1350.

[29] *See* Release No. 34–46300 (Aug. 2, 2002) [67 FR 51508] containing supplemental information on the Commission's original certification proposal in light of the enactment of the Sarbanes-Oxley Act of 2002, at n. 11.

[30] As defined in section 2(a)(7) of the Act [15 U.S.C. 7201(7)], the term "issuer" means an issuer (as defined in section 3(a)(8) of the Exchange Act [15 U.S.C. 78c(a)(8)]) the securities of which are registered under section 12 of the Exchange Act, that is required to file reports under section 15(d) of the Exchange Act or that files, or has filed, a registration statement that has not yet become effective under the Securities Act and that has not been withdrawn.

[31] *See* section 1350(c) [18 U.S.C. 1350(c)]. An individual who willfully fails to submit a certification required by section 1350 may be subject to criminal prosecution under section 32 of the Exchange Act [15 U.S.C. 78ff]. *See* section 3(b)(1) of the Act [15 U.S.C. 7202(b)(1)].

[32] We recently adopted Form N–CSR, to be used by registered management investment companies to file certified shareholder reports with the Commission. *See* Release No. IC–25914 (Jan. 27, 2003) [68 FR 5348]. As adopted, Form N–CSR requires the section 302 certifications to be filed as an exhibit to a report on Form No–CSR. Item 10(b) of Form No–CSR.

[33] *See* Exchange Act Rule 12b–11(d) [17 CFR 240.12b–11(d)]. Rule 302 of Regulations S–T applies to the signatures appearing in a certification. Regulation S–T contains the rules prescribing requirements for filing information electronically and the procedures for making such filings. Instructions for electronic filing, including technical formatting requirements, are set forth in the EDGAR Filer Manual. *See* Rule 301 of Registration S–T [17 CFR 232.301].

[34] In connection with this change, we are proposing to revise Exchange Act Rules 13a–14(b) and 15d–14(b) and Investment Company Rule 30a–2(b) to delete from those paragraphs the detailed description of the contents of the required certifications and to revise the instructions to Forms 10–Q, 10–QSB, 10–K, 10–KSB and N–CSR to delete the references to the section 302 certification requirements. As proposed, it is contemplated that the specific form and content of the required certifications will be set forth in the exhibit item (or in the appropriate item of the form, in the case of Forms 20–F, 40–F, 40–F and N–CSR). Further, we are proposing to move the definition of the term "disclosure controls and procedures" from Exchange Act Rules 13a–14(c) and 15d–14(c) and Investment Company Act Rule 30a–2(c) to new Exchange Act Rules 13a–15(c) and 15d–15(c) and Investment Company Act Rule 30a–3(c), respectively, and to redesignate the subsequent paragraphs of Exchange Act Rules 13a–14 and 15d–14 and Investment Company Act Rule 30a–2. Finally, we are proposing technical conforming amendments to Exchange Act Rules 12b–15, 13a–14(a), 13a–14(d) (proposed to be redesignated as Rule 13a–14(c), 13a–14(e) (proposed to be redesignated as Rule 13a–14(d), 13a–14(f) (proposed to be redesignated as Rule 13a–14(e), 13a–15(a), 15d–14(a), 15d–14(d) (proposed to be redesignated as Rule 15d–14(c)), 15d–14(e) (proposed to be redesignated as Rule 15d–14(d)), 15d–14(f) (proposed to be redesignated as Rule 15d–14(e)) and 15d–15(a).

[35] We note, however, that we have proposed substantive revisions to these rules in conjunction with our consideration of new rules implementing section 404 of the Act [15 U.S.C. 7262]. *See* Release No. 33–8138 (Oct. 22, 2002) [67 FR 66208]. These proposals are pending.

[36] See the Adopting Release at Section II.B.6.

[37] This certification requirement applies to quarterly reports on Forms 10–Q and 10–QSB, annual reports on Forms 10–K, 10–KSB, 20–F and 40–F and semi-annual reports on Form N–CSR containing financial statements. It does not apply to reports that are current reports, such as reports on Forms 6–K [17 CFR 249.306] and 8–K [17 CFR 249.308], rather than periodic reports. In addition, this certification requirement does not apply to issues of asset-backed securities that are not required to file financial statements in their reports. Such entities typically are passive pools of assets, without an audit committee or board of directors or persons acting in a similar capacity. Accordingly, most asset-backed issuers are currently not subject to section 906. Similarly, unit investment trusts ("UITs"), as defined in section 4(2) of the Investment Company Act [15 U.S.C. 80a–4(2)], and small business investment companies ("SBICs") licensed under the Small Business Investment Act of 1958 are currently not subject to section 906. UITs and SBICs file reports on Form N–SAR pursuant to section 13(a) or 15(d) of the Exchange Act, and reports on Form N–SAR do not contain financial statements.

[38] *See* proposed Exchange Act Rules 13a–14(b) and 15d–14(b). As discussed in n. 34 above, we are proposing to delete existing Exchange Act Rules 13a–14(b) and 15d–14(b).

[39] *See* proposed Investment Company Act Rule 30a–2(b).

[40] *See* proposed Item 10(b) of Form N–CSR. Existing Items 10(a) and 10(b) of Form N–CSR would be redesigned as Items 10(a) and 10(a)(2). We also are proposing technical conforming amendments to Investment Company Act Rules 8b–15 and 30a–2(d) (proposed to be redesignated as Rule 30a–2(c)).

Investment Company Act only.[41] Just as with the section 302 certifications, an exhibit requirement would enable investors and the Commission staff, as well as the Department of Justice, to monitor compliance with this certification requirement more easily and efficiently.

Unlike the section 302 certifications, the section 906 certifications are required only in periodic reports that contain financial statements. In addition, unlike the section 302 certifications, the section 906 certifications may take the form of a single statement signed by an issuer's chief executive and financial officers.[42] Issuers with unusual structures may contact the Office of Chief Counsel in the Commission's Division of Corporation Finance for further guidance on compliance with the section 906 certification requirement.

We propose to amend Exchange Act Rules 13a–14 and 15d–14 and Investment Company Act Rule 30a–2 to require the section 906 certifications to be provided with periodic reports containing financial statements. We also propose to amend Item 601 of Regulations S–B and S–K to add the section 906 certifications to the list of required exhibits to be included in reports filed with the Commission. Each form specified in the exhibit table in Item 601(a) requires a registrant to include as part of the report the exhibits required by Item 601.[43] Consequently, a failure to furnish the section 906 certifications would cause the periodic report to which they relate to be incomplete, thereby violating section 13(a) of the Exchange Act.[44] In addition, referencing the section 906 certifications in Exchange Act Rules 13a–14 and 15d–14 and Investment Company Act Rule 30a–2 would subject these certifications to the signature requirements of Rule 302 of Regulation S–T.[45]

We note that section 906 merely requires that the certifications "accompany" a periodic report to which they relate. This is in contrast to section 302, which requires the certifications to be included "in" the periodic report. In recognition of this difference, we are proposing to require issuers to "furnish," rather than "file," the section 906 certifications with the Commission.[46] Thus, the certifications would not be subject to liability under section 18 of the Exchange Act.[47] Moreover, the certifications would not be subject to automatic incorporation by reference into an issuer's Securities Act registration statements, which are subject to liability under section 11 of the Securities Act,[48] unless the issuer takes steps to include the certifications in a registration statement. Although section 906 does not explicitly require the certifications to be made public, we believe that it is appropriate to require the certifications to accompany a periodic report in the proposed manner.

III. Interim Guidance Regarding Filing Procedures

As previously discussed, section 906 requires that the written statements of an issuer's chief executive and financial officers "accompany" any periodic report containing financial statements filed by the issuer pursuant to section 13(a) or 15(d) of the Exchange Act. To date, issuers have employed a variety of methods to submit the section 906 certifications with the periodic reports to which they relate.[49]

Until we adopt final rules, we encourage issuers to submit the section 906 certifications as an exhibit to the periodic reports to which they relate. An issuer using this approach should designate the certifications as an "Additional Exhibit" under Item 99 of Item 601(b) of Regulation S–B or S–K[50] or, in the case of a foreign private issuer, satisfy the exhibit requirements of the appropriate report form.[51] Where the periodic report to which the section 906 certifications relate is being filed electronically via our EDGAR system, which will generally be the case, an issuer should retain the manual signature page for each certification or another document authenticating, acknowledging or otherwise adopting the signature that appears in typed form within the electronic version of the certification. In order to treat these electronically filed signed statements consistent with other electronically filed signed statements, the issuer should insert the following legend after the text of each certification: "A signed original of this written statement required by section 906 has been provided to [name of issuer] and will be retained by [name of issuer] and furnished to the Securities and Exchange Commission or its staff upon request." Where the periodic report to which the section 906 certifications relate is being filed in paper form (where a paper submission is permitted by Regulation S–T), an issuer should file signed originals and conformed copies of each section 906 certification in accordance with the requirements of the relevant report form. A Section 906 certification submitted in this manner will be treated as "accompanying" the periodic report to which it relates rather than "filed" as part of the report.

IV. General Request for Comment

We are proposing these amendments to enhance the accessibility of the certifications that must be provided in connection with periodic reports filed pursuant to the Exchange Act. We solicit comment, both specific and general, upon each aspect of the proposed amendments. If you would like to submit written comments on the proposed amendments, to suggest changes or to submit comments on other matters that might affect the proposed amendments, we encourage you to do so.

In particular, we solicit comment on the following specific aspects of the proposed amendments:

- Will the inclusion of the section 302 certifications and the section 906 certifications as exhibits make it easier for investors to access this information?
- Are there any means other than those proposed to enhance investor or Commission staff access to the certifications?
- Will treatment of section 906 certifications as "furnished" to, rather than "filed" with, the Commission adequately address liability concerns arising from the proposed requirement that issuers include the certifications in the periodic reports to which the certifications relate?

Finally, we request comment on whether any further changes to our rules and forms are necessary or appropriate to implement the objectives of the proposed amendments or the Act.

V. Paperwork Reduction Act

The rules and forms that we are proposing to amend contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[52] We do not believe that the proposed amendments with respect to the section 302 certifications would alter the burden estimates for Forms 10–K (OMB Control No. 3235–0063), 10–KSB (OMB Control No. 3235–0420), 10–Q (OMB Control No. 3235–0070), 10–QSB (OMB Control No. 3235–0416), 20–F (OMB Control No. 3235–0288) or 40–F (OMB Control No. 3235–0381) previously submitted to, and approved by, the Office of Management and Budget (the "OMB"). These proposed amendments merely relocate the certifications from the text of quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act to the "Exhibits" section of these reports.

The proposed amendments with respect to the section 906 certifications may alter the burden estimates for these reports and for Form N–CSR (OMB Control No. 3235–0570). Accordingly, we are submitting these proposed amendments to the OMB for review in accordance with the PRA.[53] The titles for these collections of information are "Form 10–K," "Form 10–KSB," "Form 10–Q," "Form 10–QSB," "Form 20–F," "Form 40–F" and "Form N–CSR." An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

A. Summary of Proposed Rules

Section 1350 of Title 18 of the United States Code, added by section 906 of the Act, requires each periodic report containing financial statements filed by an issuer with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act to be accompanied by a written statement by the issuer's chief executive officer and chief financial officer (or the equivalent thereof) certifying that the report fully complies with the requirements of section 13(a) or 15(d) of the Exchange Act and the information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the issuer. By requiring these certifications to be furnished to the Commission as an exhibit to the periodic reports to which they relate, the certifications would become part of the "collection of information" required in each periodic report filed with the Commission. Compliance with the proposed exhibit requirement would be mandatory. Under our rules for the retention of manual signatures, issuers would be required to maintain the original certifications for five years. The information required by the proposed amendments would not be kept confidential.

B. Reporting and Cost Burden Estimates

The compliance burden estimates for the proposed collections of information are based on several assumptions. The reporting requirements of section 13 of the Exchange Act apply to entities that have a class of securities registered under section 12 of the Exchange Act. The reporting requirements of section 15(d) of the Exchange Act apply to entities with an effective registration statement under the Securities Act that are not otherwise subject to the registration requirements of section 12 of the Exchange Act. We estimate that there are approximately 13,200 entities that fit these descriptions.[54] In addition, we estimate that there are approximately 3,700 registered management investment companies that are required to file reports on Form N–CSR.

The compliance burden associated with the proposed amendments would be the burden of preparing and including the section 906 certifications in periodic reports containing financial statements filed by an issuer, after the issuer's chief executive and financial officers evaluated the information relevant to making the certification statements. To a large extent, this evaluation is already performed in connection with the section 302 certifications required by Exchange Act Rules 13a–14 and 15d–14 and Investment Company Act Rule 30a–2. We estimate that the proposed amendments to require the section 906 certifications to be included as an exhibit to the periodic reports to which they relate would result in an increase of two burden hours[55] per issuer in connection with preparing each quarterly report on Form 10–Q or 10–QSB and annual report on Form 10–K, 10–KSB, 20–F or 40–F. With respect to semi-annual reports on Form N–CSR, because the financial statements of registered management investment companies are not as complex as those of operating companies, we estimate that the proposed amendments relating to the section 906 certifications would result in an increase of one burden hour per portfolio.[56]

In the case of domestic issuers, based on a burden hour estimate of eight hours per respondent per year,[57] we estimate that, in the aggregate, all respondents will incur approximately 105,384 burden hours[58] to comply with the proposed amendments. The total burden hours of complying with Forms 10–Q and 10–QSB, revised to include the burden hours expected from the proposed amendments, is estimated to be 3,334,256 hours for Form 10–Q, an increase of 56,304 hours[59] from the current annual burden of 3,277,952 hours, and 1,497,884 hours for Form 10–QSB, an increase of 22,734 hours[60] from the current annual burden of 1,475,150 hours. The total burden hours of complying with Forms 10–K and 10–KSB, revised to include the burden hours expected from the proposed amendments, is estimated to be 11,535,739 hours for Form 10–K, an increase of 18,768 hours[61] from the current annual burden of 11,516,971 hours, and 3,619,627 hours for Form 10–KSB, an increase of 7,578 hours[62]

---

[41] *See* General Instruction A of Form N–CSR (Form N–CSR is a combined reporting form to be used for reports of registered management investment companies under section 30(b)(2) of the Investment Company Act of 1940 and sections 13(a) or 15(d) of the Exchange Act); n. 24 above (discussing issuers covered by sections 13(a) and 15(d) of the Exchange Act).

[42] *See* proposed Exchange Act Rules 13a–14(b) and 15d–14(b).

[43] *See* for example, Item 6(a) of Form 10–Q and Item 15(a)(3) of Form 10–K.

[44] *See* also section 3(b)(1) of the Act, which provides that "[a] violation by any person of this Act . . . shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 . . . and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act * * *"

[45] *See* Rule 302(b) of Regulation S–T [17 CFR 232.302(b)].

[46] *See*, for example, proposed Item 601(b)(32)(ii) of Regulation S–K.

[47] 15 U.S.C 78r.

[48] 15 U.S.C. 77k.

[49] These methods include: (1) Submitting the statement as non-public paper correspondence; (2) submitting the statement as non-public electronic correspondence with the EDGAR filing of the periodic report; (3) submitting the statement under (1) or (2) above supplemented by an Item 9 Form 8–K report so that the statement is publicly available; (4) submitting the statement as an exhibit to the periodic report; or (5) submitting the statement in the text of the periodic report (typically, below the signature block for the report).

[50] 17 CFR 228.601(b)(99) and 17 CFR 229.601(b)(99).

[51] For a registered management investment company filing reports on Form N–CSR that uses this approach, the EDGAR document type should be EX–99.906CERT for the section 906 certifications. For fiscal annual or semi-annual periods ending on or before March 31, 2003, registered management investment companies other than SBICs must either file Form N–CSR or continue to comply with the certification requirements of Form N–SAR. See Release No. IC–25914 (Jan. 27, 2003) [68 FR 5348, 5356] (discussing transition provisions and compliance dates for requirement to file Form N–CSR).

[52] 44 U.S.C. 3501 *et seq.*

[53] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[54] This estimate is based on the total number of companies that filed annual reports on Form 10–K (9,384) or Form 10–KSB (3,789) during the 2001 fiscal year, which are required of all companies with a class of securities registered under section 12 of the Exchange Act and all companies subject to section 15(d) of the Exchange Act.

[55] This estimate is based on consultations with several law firms and other persons who regularly assist registrants in preparing and filing periodic reports containing financial statements with the Commission.

[56] Many registered management investment companies have multiple portfolios. However, they prepare separate financial statements for each portfolio. Thus, the burden of the section 1350 certifications is estimated on a portfolio basis rather than a registered management investment company basis.

[57] Three quarterly reports and one annual report at an estimated two burden hours per report equals eight hours.

[58] 13,173 companies multiplied by eight burden hours each equals 105,384 hours.

[59] 28,152 quarterly reports multiplied by two burden hours each equals 56,304 hours.

[60] 11,367 quarterly reports multiplied by two burden hours each equals 22,734 hours.

[61] 9,384 annual reports multiplied by two burden hours each equals 18,768 hours.

[62] 3,789 annual reports multiplied by two burden hours each equals 7,578 hours.

from the current annual burden of 3,612,049 hours. Based on a burden hour estimate of two hours per portfolio per year, we estimate that the total burden hours of complying with Form N–CSR for registered management investment companies, revised to include the burden hours expected from the proposed amendments, will be 142,498 hours, an increase of 19,700 hours [63] from the current annual burden of 122,798 hours.

In the case of foreign private issuers, based on a burden hour estimate of two hours per respondent per year, we estimate that the total burden hours of complying with Forms 20–F and 40–F, revised to include the burden hours expected from the proposed amendments, will be 655,521.25 hours for Form 20–F, an increase of 2,400 [64] from the current annual burden of 653,121.25 hours, and 1,412.25 hours for Form 40–F, an increase of 200 hours [65] from the current annual burden of 1,212.25 hours.

C. Request for Comment

We request comment in order to: (a) Evaluate whether the proposed information collections are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (b) evaluate the accuracy of our estimate of the burden of the proposed amendments; (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (d) evaluate whether there are ways to minimize the burden of the proposed amendments on those who respond, including through the use of automated collection techniques or other forms of information technology.[66]

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the proposed collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609, with reference to File No. S7–06–03. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–06–03 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

[63] This estimate is based on the current annual burden for registered management investment companies required to file reports on Form N–CSR. We estimate that there are 3,700 registered management investment companies that will file reports on Form N–CSR, containing 9,850 portfolios. The estimate of 19,700 hours is calculated by 9,850 portfolios x two filings per year x one burden hour.

[64] This estimate is based on the current annual burden per filing for each foreign private issuer. The estimate of 2,400 hours is based on an estimate of 1,200 foreign private issuers with one filing per year multiplied by two burden hours for each filing.

[65] This estimate is based on the current annual burden per filing for each Canadian issuer. The estimate of 200 hours is based on an estimate of 100 Canadian issuers with one filing per year multiplied by two burden hours for each filing.

[66] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

VI. Cost-Benefit Analysis

The proposed amendments would relocate the certifications required by Exchange Act Rules 13a–14 and 15d–14 from the text of quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act to the "Exhibits" section of these reports. The proposed amendments also would require that the certifications required by section 1350 of Title 18 of the United States Code, added by section 906 of the Act, accompany the periodic reports to which they relate as an exhibit to these reports. These changes should enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. In addition, the changes should enable the Department of Justice, which has responsibility for enforcing section 906, to effectively review the form and content of the certifications required by that provision.

Since issuers must already include the certifications required by Exchange Act Rules 13a–14 and 15d–14 in their quarterly and annual reports, there should be no incremental cost to relocating the certifications from the text of the reports to the "Exhibits" section of these reports. Requiring the section 906 certifications to be included as an exhibit to the periodic reports to which they relate may lead to some additional costs for issuers that currently are submitting the certifications to the Commission in some other manner. While these costs are difficult to quantify, we estimate that the annual paperwork burden of the proposed amendments would be approximately $25.5 million.[67]

To the extent that issuers may assume greater legal risk by including the section 906 certifications as part of their periodic reports filed pursuant to the Exchange Act where these reports are incorporated by reference into Securities Act registration statements, we address this risk by proposing to require issuers to "furnish," rather than "file," the certifications with the Commission for purposes of section 18 of the Exchange Act or incorporation by reference into other filings. Thus, the proposed amendments should mitigate this potential indirect cost of compliance.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis, or IRFA, has been prepared in accordance with the Regulatory Flexibility Act.[68] It involves proposed amendments that would relocate the certifications required by Exchange Act Rules 13a–14 and 15d–14 from the text of quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act to the "Exhibits" section of these reports, and require that the certifications required by section 1350 of Title 18 of the United States Code, added by section 906 of the Act, accompany the periodic reports to which they relate as an exhibit to these reports.

A. Reasons for, and Objectives of, Proposed Rule and Form Amendments

The relocation of the certifications required by Exchange Act Rules 13a–14 and 15d–14 from the text of quarterly and annual reports to the "Exhibits" section of these reports should enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. In addition, the proposed amendments should

[67] This calculation is based on an estimate of 127,684 burden hours (see nn. 58, 63, 64 and 65 above) multiplied by a cost of $200.00 per hour. (127,684 hours multiplied by $200.00 per hour equals $25,536,800) The hourly cost estimate is based on consultations with several registrants and law firms and other persons who regularly assist registrants in preparing and filing periodic reports with the Commission.

[68] 5 U.S.C. 603.

enable the Department of Justice, which has responsibility for enforcing section 1350, to efficiently review the form and content of the certifications required by that provision.

B. Legal Basis

We are proposing the amendments under the authority set forth in sections 13, 15(d), 23(a) and 36 of the Exchange Act, sections 8, 30 and 38 of the Investment Company Act and sections 3(a), 302 and 906 of the Sarbanes-Oxley Act of 2002.

C. Small Entities Subject to the Proposed Rule and Form Amendments

The proposed amendments would affect small entities that are subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act. For purposes of the Regulatory Flexibility Act, the Exchange Act defines the term "small business," other than an investment company, to be an issuer that, on the last day of its most recent fiscal year, has total assets of $5 million or less.[69] We estimate that there are approximately 2,500 companies subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act that are not investment companies and that have assets of $5 million or less.[70]

For purposes of the Regulatory Flexibility Act, an investment company is a "small entity" if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[71] We estimate that there are approximately 205 registered management investment companies that, together with other investment companies in the same group of related investment companies, have net assets of $50 million or less as of the end of the most recent fiscal year.[72]

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments would require issuers, including "small businesses," to provide the certifications required by Exchange Act Rules 13a–14 and 15d–14, as well as the certifications required by section 906, as exhibits to the periodic reports to which they relate. Depending on how an issuer's chief executive and financial officers presently satisfy the section 906 certification requirements, issuers, including "small businesses," may incur some additional costs in submitting these certifications as an exhibit to these reports. While these costs are difficult to quantify, we believe that they would be nominal.

E. Duplicative, Overlapping or Conflicting Federal Rules

Presently, Exchange Act Rules 13a–14 and 15d–14 require an issuer to include in the text of its quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act the required certifications of its principal executive and financial officers. While section 906 requires that written statements of an issuer's chief executive and financial officers certifying the contents of a periodic report to which the certifications relate "accompany" the report when it is filed with the Commission, issuers have used a variety of different methods to submit these certifications to the Commission.

F. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In that regard, we are considering the following alternatives: (a) Establishing different compliance or reporting requirements that take into account the resources of small entities, (b) clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities and (c) exempting small entities from all or part of the proposed rule and form amendments. Both the section 302 and section 906 certifications are required by the Sarbanes-Oxley Act of 2002 and the legislative history does not reflect a Congressional intent to exempt small entities from these requirements. We are not aware of means to further simplify these requirements. After discussions with the Department of Justice, we believe a design standard for how the section 906 certifications are to "accompany" a periodic report is necessary to monitor compliance. We solicit comment as to whether small business issuers should be excluded from the proposed amendments or if other changes are warranted to accommodate the interests of small business issuers.

G. Request for Comments

We encourage the submission of comments with respect to any aspect of the IRFA. In particular, we request comment on the number of small businesses that would be affected by the proposed amendments, the nature of the impact, how to quantify the number of small businesses that would be affected and how to quantify the impact of the proposed rule and form amendments. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA,"[73] we must advise the Office of Management and Budget as to whether the proposed amendments constitute a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

IX. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act[74] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed amendments would relocate the certifications required by Exchange Act Rules 13a–14 and 15d–14 from the text of quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act to the

[69] 17 CFR 240.0–10(a). A similar definition is provided under Securities Act Rule 157 [17 CFR 230.157].

[70] This estimate is based on filings with the Commission.

[71] 17 CFR 270.0–10.

[72] This estimate is based on figures compiled by the Commission staff regarding investment companies registered on Forms N–1A, N–2, and N–3, which will be required to file reports on Form N–CSR.

[73] Pub. L. 104–121, Title II, 110 Stat. 857 (1996), (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[74] 15 U.S.C. 78w(a)(2).

"Exhibits" section of these reports. This relocation should enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. The proposed amendments also would streamline compliance with section 1350 of Title 18 of the United States Code, added by section 906 of the Act, and should enable investors, the Commission staff and the Department of Justice, which has responsibility for enforcing section 1350, to verify submission and efficiently review the form and content of the certifications required by that provision.

We do not believe that the proposed amendments would impose any burden on competition. Depending on how an issuer's chief executive and financial officers presently satisfy the section 906 certification requirements, issuers may incur some additional costs in submitting these certifications as an exhibit to their periodic reports. While these costs are difficult to quantify, we believe that they would be nominal. We request comment on whether the proposed amendments, if adopted, would promote competition. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

X. Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act [75] and section 2(c) of the Investment Company Act [76] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. The proposed amendments would relocate the certifications required by Exchange Act Rules 13a–14 and 15d–14 from the text of quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act to the "Exhibits" section of these reports. This relocation should enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. The proposed amendments also would streamline compliance with section 1350 of Title 18 of the United States Code, added by section 906 of the Act, and should enable investors, the Commission staff and the Department of Justice, which has responsibility for enforcing section 1350, to verify submission and efficiently review the form and content of the certifications required by that provision.

We do not believe that the proposed amendments would impose any burden on competition. Nor are we aware of any impact on capital formation that would result from the proposed amendments. Depending on how an issuer's chief executive and financial officers presently satisfy the section 906 certification requirements, issuers may incur some additional costs in submitting these certifications as an exhibit to their periodic reports. While these costs are difficult to quantify, we believe that they would be nominal. We request comment on whether the proposed amendments, if adopted, would affect competition, efficiency and capital formation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

XI. Statutory Authority

The amendments described in this release are being proposed under the authority set forth in sections 13, 15(d), 23(a) and 36 of the Exchange Act, sections 8, 30 and 38 of the Investment Company Act and sections 3(a), 302 and 906 of the Sarbanes-Oxley Act of 2002.

List of Subjects

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II, of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 is amended by revising the authority citation for "Section 228.601" to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

* * * * *

Section 228.601 is also issued under secs. 3(a), 302, 406 and 906, Pub. L. 107–204, 116. Stat. 745.

2. By amending § 228.601 by:

a. Removing the last sentence of paragraph (a)(1);

b. Revising the Exhibit Table;

c. Revising paragraph (b)(7) to read "No Exhibit Required."; and

d. Revising paragraphs (b)(27) through (b)(98).

The revisions read as follows.

§ 228.601 (Item 601) Exhibits.

* * * * *

	Securities Act Forms					Exchange Act Forms			
	SB–2	S–2	S–3	S–4 [3]	S–8	10–SB	8–K	10–QSB	10–KSB
(1) Underwriting agreement	X	X	X	X			X		
(2) Plan of purchase, sale, reorganization, arrangement, liquidation or succession.	X	X	X	X		X	X	X	X
(3) (i) Articles of Incorporation	X			X		X		X	X
(ii) By-laws	X			X		X		X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X
(5) Opinion re: legality	X	X	X	X	X				

[75] 15 U.S.C. 78c(f).

[76] 15 U.S.C. 80a–2(c).

	Securities Act Forms					Exchange Act Forms			
	SB–2	S–2	S–3	S–4 [3]	S–8	10–SB	8–K	10–QSB	10–KSB
(6) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(8) Opinion on tax matters	X	X	X	X					
(9) Voting trust agreement and amendments	X			X		X			X
(10) Material contracts	X	X		X		X		X	X
(11) Statement re: computation of per share earnings	X	X		X		X		X	X
(12) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(13) Annual report to security holders for the last fiscal year, Form 10–Q or 10–QSB or quarterly report to security holders [1]	X	X		X					X
(14) Code of ethics									X
(15) Letter on unaudited interim financial information	X	X	X	X	X			X	
(16) Letter on change in certifying accountant [4]	X	X		X		X	X		X
(17) Letter on director resignation							X		
(18) Letter on change in accounting principles								X	X
(19) Reports furnished to security holders								X	
(20) Other documents or statements to security holders or any document incorporated by reference								X	X
(21) Subsidiaries of the small business issuer	X			X		X			X
(22) Published report regarding matters submitted to vote of security holders								X	X
(23) Consents of experts and counsel	X	X	X	X	X		X [2]	X [2]	X [2]
(24) Power of attorney	X	X	X	X	X	X	X	X	X
(25) Statement of eligibility of trustee	X	X	X	X					
(26) Invitations for competitive bids		X	X	X	X				
(27) through (30) [Reserved]									
(31) Rule 13a–14(a)/15d–14(a) Certifications								X	X
(32) Section 1350 Certifications								X	X
(33) through (98) [Reserved]									
(99) Additional Exhibits	X	X	X	X	X	X	X	X	X

[1] Only if incorporated by reference into a prospectus and delivered to holders along with the prospectus as permitted by the registration statement; or in the case of a Form 10–KSB, where the annual report is incorporated by reference into the text of the Form 10–KSB.

[2] Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

[3] An issuer need not provide an exhibit if: (1) an election was made under Form S–4 to provide S–2 or S–3 disclosure; and (2) the form selected (S–2 or S–3) would not require the company to provide the exhibit.

[4] If required under item 304 of Regulation S–B.

(b) *Description of exhibits.* * * *

(27) through (30) [Reserved]

(31) *Rule 13a–14(a)/15d–14(a) Certifications.* The certifications required by Rule 13a–14(a) (17 CFR 240.13a–14(a)) or Rule 15d–14(a) (17 CFR 240.15d–14(a)) exactly as set forth below:

Certifications *

I, [identify the certifying individual], certify that:

1. I have reviewed this [specify report] of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–15 and 15d–15) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and

procedures as of a date within 90 days prior to the filing date of this report (the "Evaluation Date"); and

(c) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

_____

[Signature]

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. *See* Rules 13a–14(a) and 15d–14(a).

(32) *Section 1350 Certifications.*

(i) The certifications required by Rule 13a–14(b) (17 CFR 240.13a–14(b)) or Rule 15d–14(b) (17 CFR 240.15d–14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(ii) A certification furnished pursuant to this item will not be deemed "filed" for purposes of Section 18 of the Exchange Act [15 U.S.C. 78r], or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(33) through (98) [Reserved]

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 is amended by revising the authority citation for "Section 229.601" to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39 and 80b–11, unless otherwise noted.

* * * * *

Section 229.601 is also issued under secs. 3(a), 302, 406 and 906, Pub. L. No. 107–204, 116. Stat. 745.

4. By amending § 229.601 by:

a. Removing the second sentence of paragraph (a)(1);

b. Revising the phrase "Notwithstanding the provisions of paragraphs (b)(27) and (c) of this Item, registered investment companies" at the beginning of the third sentence of paragraph (a)(1) to read "Registered investment companies";

c. Revising the Exhibit Table which follows the Instructions to the Exhibit Table; and

d. Revising paragraphs (b)(27) through (b)(98).

The revisions read as follows.

§ 229.601 (Item 601) Exhibits.

(a) *Exhibits and index required.* * * *

Instructions to the Exhibit Table

* * * * *

EXHIBIT TABLE

	Securities act forms										Exchange act forms			
	S–1	S–2	S–3	S–4[3]	S–8	S–11	F–1	F–2	F–3	F–4[3]	10	8–K	10–Q	10–K
(1) Underwriting agreement	X	X	X	X	.....	X	X	X	X	X	.....	X		
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	X	.....	X	X	X	X	X	X	X	X	X
(3)(i) Articles of incorporation	X	.....	.....	X	.....	X	X	.....	.....	X	X	.....	X	X
(ii) By-laws	X	.....	.....	X	.....	X	X	.....	.....	X	X	.....	X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X	X	X				
(6) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(8) Opinion re tax matters	X	X	X	X	.....	X	X	X	X	X				
(9) Voting trust agreement	X	.....	.....	X	.....	X	X	.....	.....	X	X	.....	.....	X
(10) Material contracts	X	X	.....	X	.....	X	X	X	.....	X	X	.....	X	X
(11) Statement re computation of per share earnings	X	X	.....	X	.....	X	X	X	.....	X	X	.....	X	X
(12) Statements re computation of ratios	X	X	X	X	.....	X	X	X	.....	X	X	.....	.....	X

EXHIBIT TABLE—Continued

	Securities act forms										Exchange act forms			
	S–1	S–2	S–3	S–4[3]	S–8	S–11	F–1	F–2	F–3	F–4[3]	10	8–K	10–Q	10–K
(13) Annual report to security holders, Form 10–Q or 10–QSB, or quarterly report to security holders[1]	.....	X	.....	X	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
(14) Code of Ethics	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
(15) Letter re unaudited interim financial information	X	X	X	X	X	X	X	X	X	X	.....	.....	X	
(16) Letter re change in certifying accountant[4]	X	X	.....	X	.....	X	.....	.....	.....	.....	X	X	.....	X
(17) Letter re director resignation	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X		
(18) Letter re change in accounting principles	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
(19) Report furnished to security holders	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	
(20) Other documents or statements to security holders	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X		
(21) Subsidiaries of the registrant	X	.....	.....	X	.....	X	X	.....	.....	X	X	.....	.....	X
(22) Published report regarding matters submitted to vote of security holders	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
(23) Consents of experts and counsel	X	X	X	X	X	X	X	X	X	X	.....	X[2]	X[2]	X[2]
(24) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(25) Statement of eligibility of trustee	X	X	X	X	.....	X	X	X	X	X				
(26) Invitations for competitive bids	X	X	X	X	.....	.....	X	X	X	X				
(27) through (30) [Reserved]	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....				
(31) Rule 13a–14(a)/15d–14(a) Certifications	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
(32) Section 1350 Certifications	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
(33) through (98) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(99) Additional Exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X	X

[1] Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10–K, where the annual report to security holders is incorporated by reference into the text of the Form 10–K.

[2] Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

[3] An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S–4 or F–4 to provide information about such company at a level prescribed by Forms S–2, S–3, F–2 or F–3 and (2) the form, the level of which has been elected under Forms S–4 or F–4, would not require such company to provide such exhibit if it were registering a primary offering.

[4] If required pursuant to Item 304 of Regulation S–K.

(b) *Description of exhibits.* * * *

(27) through (30) [Reserved]

(31) *Rule 13a–14(a)/15d–14(a) Certifications.* The certifications required by Rule 13a–14(a) (17 CFR 240.13a–14(a)) or Rule 15d–14(a) (17 CFR 240.15d–14(a)) exactly as set forth below:

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this [specify report] of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–15 and 15d–15) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within

those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this report (the "Evaluation Date"); and

(c) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

[Signature] _____

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. *See* Rules 13a–14 and 15d–14.

(32) *Section 1350 Certifications.*

(i) The certifications required by Rule 13a–14(b) (17 CFR 240.13a–14(b)) or Rule 15d–14(b) (17 CFR 240.15d–14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(ii) A certification furnished pursuant to this item will not be deemed "filed" for purposes of Section 18 of the Exchange Act [15 U.S.C. 78r], or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(33) through (98) [Reserved]

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 240 is amended by revising the authority citations for "Section 240.12b–15," "Section 240.13a–14" and "Section 240.15d–14" to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

Section 240.12b–15 is also issued under secs. 3(a), 302 and 906, Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

Section 240.13a–14 is also issued under secs. 3(a), 302 and 906, Pub. L 107–204, 116 Stat. 745.

* * * * *

Section 240.15d–14 is also issued under secs. 3(a), 302 and 906, Pub. L. 107–204, 116 Stat. 745.

* * * * *

6. By revising § 240.12b–15 to read as follows:

§ 240.12b–15 Amendments.

All amendments must be filed under cover of the form amended, marked with the letter "A" to designate the document as an amendment, *e.g.*, "10–K/A," and in compliance with pertinent requirements applicable to statements and reports. Amendments filed pursuant to this section must set forth the complete text of each item as amended. Amendments must be numbered sequentially and be filed separately for each statement or report amended. Amendments to a statement may be filed either before or after registration becomes effective. Amendments must be signed on behalf of the registrant by a duly authorized representative of the registrant. An amendment to any report required to include the certifications as specified in § 240.13a–14(a) or § 240.15d–14(a) must include new certifications by each principal executive officer and principal financial officer of the registrant, and an amendment to any report required to be accompanied by the certifications as specified in § 240.13a–14(b) or § 240.15d–14(b) must be accompanied by new certifications by each chief executive officer and chief financial officer of the registrant. The requirements of the form being amended will govern the number of copies to be filed in connection with a paper format amendment. Electronic filers satisfy the provisions dictating the number of copies by filing one copy of the amendment in electronic format. *See* § 232.309 of this chapter (Rule 309 of Regulation S–T).

7. By amending § 240.13a–14 by:

a. Revising paragraphs (a) and (b);

b. Removing paragraph (c);

c. Redesignating paragraphs (d), (e), (f) and (g) as paragraphs (c), (d), (e) and (f); and

d. Revising newly redesignated paragraph (c), the introductory text of newly redesignated paragraph (d) and newly redesignated paragraph (e).

The revisions read as follows.

§ 240.13a–14 Certification of disclosure in annual and quarterly reports.

(a) Each report, including transition reports, filed on Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, Form 20–F or Form 40–F (§§ 249.308a, 249.308b, 249.310, 249.310b, 249.220f or 249.240f of this chapter) under section 13(a) of the Act (15 U.S.C. 78m(a)), other than a report filed by an Asset-Backed Issuer (as defined in paragraph (f) of this section), must include certifications in the form specified in paragraph (b)(31) of Item 601 of Regulation S–B [17 CFR 228.10 through 228.702] or S–K [17 CFR 229.10 through 229.1016] and filed as Exhibit (31) to such report. Each principal executive officer or officers and principal financial officer or officers of the issuer, or persons performing similar functions, at the time of filing of the report must sign a certification.

(b) Each periodic report containing financial statements filed by an issuer pursuant to section 13(a) of the Act (15 U.S.C. 78m(a)) must be accompanied by certifications in the form specified in paragraph(b)(32) of Item 601 of Regulation S–B [17 CFR 228.10 through 228.702] or S–K [17 CFR 229.10 through 229.1016] and furnished as Exhibit (32) to such report. Each chief executive officer and chief financial officer of the issuer (or equivalent thereof) must sign a certification. This requirement may be satisfied by a single certification signed by an issuer's chief executive officer and chief financial officer.

(c) A person required to provide a certification specified in paragraph (a) or (b) of this section may not have the certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

(d) Each annual report filed by an Asset-Backed Issuer (as defined in paragraph (f) of this section) under section 13(a) of the Act (15 U.S.C. 78m(a)) must include a certification addressing the following items: * * *

(e) With respect to Asset-Backed Issuers, the certification required by paragraph (d) of this section must be signed by the trustee of the trust (if the trustee signs the annual report) or the senior officer in charge of securitization of the depositor (if the depositor signs the annual report). Alternatively, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent functions) may sign the certification.

* * * * *

8. By amending § 240.13a–15 by:

a. Revising paragraph (a); and

b. Adding paragraph (c).

The revisions read as follows.

§ 240.13a–15 Issuer's disclosure controls and procedures related to preparation of required reports.

(a) Every issuer that has a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*), other than an Asset-Backed Issuer (as defined in § 240.13a–14(f) of this chapter), a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), or a unit investment trust as defined in section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4(2)), must maintain disclosure controls and procedures (as defined in paragraph (c) of this section).

* * * * *

(c) For purposes of this section, the term *disclosure controls and procedures* means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*) is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Act is accumulated and communicated to the issuer's management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

9. By amending § 240.15d–14 by:

a. Revising paragraphs (a) and (b);

b. Removing paragraph (c);

c. Redesignating paragraphs (d), (e), (f) and (g) as paragraphs (c), (d), (e) and (f); and

d. Revising newly redesignated paragraph (c), the introductory text of newly redesignated paragraph (d) and newly redesignated paragraph (e).

The revisions read as follows.

§ 240.15d–14 Certification of disclosure in annual and quarterly reports.

(a) Each report, including transition reports, filed on Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, Form 20–F or Form 40–F (§§ 249.308a, 249.308b, 249.310, 249.310b, 249.220f or 249.240f of this chapter) under section 15(d) of the Act (15 U.S.C. 78o(d)), other than a report filed by an Asset-Backed Issuer (as defined in paragraph (f) of this section), must include certifications in the form specified in paragraph (b)(31) of Item 601 of Regulation S–B [17 CFR 228.10 through 228.702] or S–K [17 CFR 229.10 through 229.1016] and filed as Exhibit (31) to such report. Each principal executive officer or officers and principal financial officer or officers of the issuer, or persons performing similar functions, at the time of filing of the report must sign a certification.

(b) Each periodic report containing financial statements filed by an issuer pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) must be accompanied by certifications in the form specified in paragraph (b)(32) of Item 601 of Regulation S–B [17 CFR 228.10 through 228.702] or S–K [17 CFR 229.10 through 229.1016] and furnished as Exhibit (32) to such report. Each chief executive officer and chief financial officer of the issuer (or equivalent thereof) must sign a certification. This requirement may be satisfied by a single certification signed by an issuer's chief executive officer and chief financial officer.

(c) A person required to provide a certification specified in paragraph (a) or (b) of this section may not have the certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

(d) Each annual report filed by an Asset-Backed Issuer (as defined in paragraph (f) of this section) under section 13(a) of the Act (15 U.S.C. 78m(a)) must include a certification addressing the following items: * * *

(e) With respect to Asset-Backed Issuers, the certification required by paragraph (d) of this section must be signed by the trustee of the trust (if the trustee signs the annual report) or the senior officer in charge of securitization of the depositor (if the depositor signs the annual report). Alternatively, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent functions) may sign the certification.

* * * * *

10. By amending § 240.15d–15 by:

a. Revising paragraph (a); and

b. Adding paragraph (c).

The revisions read as follows.

§ 240.15d–15 Issuer's disclosure controls and procedures related to preparation of required reports.

(a) Every issuer that has a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*), other than an Asset-Backed Issuer (as defined in § 240.15d–14(f) of this chapter), a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), or a unit investment trust as defined in section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4(2)), must maintain disclosure controls and procedures (as defined in paragraph (c) of this section).

* * * * *

(c) For purposes of this section, the term *disclosure controls and procedures* means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*) is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Act is accumulated and communicated to the issuer's management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

11. The authority citation for Part 249 is amended by revising the authority citations for "Section 249.220f," "Section 249.240f" and "Section 249.331" to read as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

* * * * *

Section 249.220f is also issued under secs. 3(a), 302, 404, 407 and 906, Pub. L. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 302, 404, 407 and 906, Pub. L. 107–204, 116 Stat. 745.

Section 249.331 is also issued under secs. 3(a), 202, 208, 302, 406, 407 and 906, Pub. L. 107–204, 116 Stat. 745

12. By amending Form 10–Q (referenced in § 249.308a) by removing the last sentence of General Instruction

G and by removing the "Certifications" section after the "Signatures" section.

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

13. By amending Form 10–QSB (referenced in § 249.308b) by removing the last sentence of paragraph 2 of General Instruction F and by removing the "Certifications" section after the "Signatures" section.

Note: The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

14. By amending Form 10–K (referenced in § 249.310) by removing the phrase "(who also must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14) exactly as specified in this form)" wherever it appears in the first sentence of paragraph (2)(a) of General Instruction D. and by removing the "Certifications" section after the "Signatures" section and before the reference to "Supplemental Information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Act by Registrants Which Have Not Registered Securities Pursuant to Section 12 of the Act."

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

15. By amending Form 10–KSB (referenced in § 249.310b) by removing the phrase "(who also must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14) exactly as specified in this form)" wherever it appears in the first sentence of paragraph 2 of General Instruction C. and by removing the "Certifications" section after the "Signatures" section and before the reference to "Supplemental Information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Exchange Act By Non-reporting Issuers."

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

16. By amending Form 20–F (referenced in § 249.220f) by:

a. Revising paragraph (e) to General Instruction B;

b. Removing the "Certifications" section after the "Signatures" section and before the section referencing "Instructions as to Exhibits"; and

c. In the "Instruction as to Exhibits" section, redesignate paragraph 12 as paragraph 14 and add new paragraph 12 and paragraph 13.

The revisions and additions read as follows.

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

General Instructions

* * * * *

B. General Rules and Regulations That Apply to this Form.

* * * * *

(e) Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, provide the certifications required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14).

* * * * *

Instructions as to Exhibits

* * * * *

12. The certifications required by Rule 13a–14(a) (17 CFR 240.13a–14(a)) or Rule 15d–14(a) (17 CFR 240.15d–14(a)) exactly as set forth below:

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 20–F of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–15 and 15d–15) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this report (the "Evaluation Date"); and

(c) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

_____

[Signature]

[Title]

*Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14 and 15d–14.

13. (a) The certifications required by Rule 13a–14(b) (17 CFR 240.13a–14(b)) or Rule 15d–14(b) (17 CFR 240.15d–14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(b) A certification furnished pursuant to this item will not be deemed "filed" for purposes of Section 18 of the Exchange Act [15 U.S.C. 78r], or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

* * * * *

17. By amending Form 40–F (referenced in § 249.240f) by:

a. Revising paragraph (6) to General Instruction B; and

b. Removing the "Certifications" section after the "Signatures" section.

The revisions read as follows.

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on This Form

* * * * *

(6) Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act:

(a)(1) Provide the certifications required by Rule 13a–14(a) (17 CFR 240.13a–14(a)) or Rule 15d–14(a) (17 CFR 240.15d–14(a)) as an exhibit to this report exactly as set forth below.

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 40–F of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a–15 and 15d–15) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this report (the "Evaluation Date"); and

(c) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

[Signature]

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14(a) and 15d–14(a).

(2)(i) Provide the certifications required by Rule 13a–14(b) (17 CFR 240.13a–14(b)) or Rule 15d–14(b) (17 CFR 240.15d–14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(ii) A certification furnished pursuant to this item will not be deemed "filed" for purposes of Section 18 of the Exchange Act [15 U.S.C. 78r], or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

18. The authority citation for Part 270 is amended by revising the authority citation for "Section 270.30a–2" to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

Section 270.30a–2 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29, and secs. 3(a), 302, and 906, Pub. L. 107–204, 116 Stat. 745.

* * * * *

19. By revising the last sentence of § 270.8b–15 to read as follows:

§ 270.8b–15 Amendments.

* * * An amendment to any report required to include the certifications as specified in § 270.30a–2(a) must include new certifications by each principal executive officer and principal financial officer of the registrant, and an amendment to any report required to be accompanied by the certifications as specified in § 270.30a–2(b) must be accompanied by new certifications by each chief executive officer and chief financial officer of the registrant.

20. Section 270.30a–2 is revised to read as follows:

§ 270.30a–2 Certification of Form N–CSR.

(a) Each report filed on Form N–CSR (§§ 249.331 and 274.128 of this chapter) by a registered management investment company must include certifications in the form specified in Item 10(a)(2) of Form N–CSR and filed as an exhibit to such report. Each principal executive officer or officers and principal financial officer or officers of the investment company, or persons performing similar functions, at the time of filing of the report must sign a certification.

(b) Each report on Form N–CSR filed by a registered management investment company under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a); 15 U.S.C. 78o(d)) and that contains financial statements must be accompanied by certifications in the form specified in Item 10(b) of Form N–CSR and furnished as an exhibit to such report. Each chief executive officer and chief financial officer of the investment company (or equivalent thereof) must sign a certification. This requirement may be satisfied by a single certification signed by an investment company's chief executive officer and chief financial officer.

(c) A person required to provide a certification specified in paragraph (a) or (b) of this section may not have the certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

21. By amending § 270.30a–3 by:

a. Revising paragraph (a); and

b. Adding paragraph (c).

The revisions and additions read as follows.

§ 270.30a–3 Disclosure controls and procedures related to preparation of required filings.

(a) Every registered management investment company, other than a small

business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), must maintain disclosure controls and procedures (as defined in paragraph (c) of this section).

* * * * *

(c) For purposes of this section, the term *disclosure controls and procedures* means controls and other procedures of a registered management investment company that are designed to ensure that information required to be disclosed by the investment company on Form N–CSR (§§ 249.331 and 274.128 of this chapter) is recorded, processed, summarized, and reported within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an investment company in the reports that it files or submits on Form N–CSR is accumulated and communicated to the investment company's management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

22. The authority citation for Part 274 is amended by revising the authority citation for "Section 274.128" to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

Section 274.128 is also issued under secs. 3(a), 202, 208, 302, 406, 407, and 906, Pub. L. No. 107–204, 116 Stat. 745.

23. Form N–CSR (referenced in §§ 249.331 and 274.128) is amended by:

a. In General Instruction D, revising the reference "Item 10(a)" to read "Item 10(a)(1)";

b. Revising paragraph 2.(a) of General Instruction F;

c. In paragraph (c) of Item 2, revising the reference "Item 10(a)" to read "Item 10(a)(1)";

d. In paragraph (f)(1) of Item 2, revising the reference "Item 10(a)" to read "Item 10(a)(1)";

e. In paragraph (a) of Item 9, revising the reference "Rule 30a–2(c) under the Act (17 CFR 270.30a–2(c))" to read "Rule 30a–3(c) under the Act (17 CFR 270.30a–3(c))";

f. In Item 10:

(i) The introductory text, paragraphs (a) and (b) are redesignated as paragraphs (a), (a)(1) and (a)(2), respectively;

(ii) Revising newly redesignated paragraph (a) and the introductory text of newly redesignated paragraph (a)(2); and

(iii) Adding new paragraph (b) and an Instruction to Item 10; and

g. In paragraph 4 of the "Certifications" section in newly redesignated paragraph (a)(2) of Item 10, revising the reference "Rule 30a–2(c) under the Investment Company Act of 1940" to read "Rule 30a–3(c) under the Investment Company Act of 1940".

The revisions and additions read as follows.

Note: The text of Form N–CSR does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–CSR

* * * * *

General Instructions

* * * * *

F. Signature and Filing of Report.

* * * * *

2.(a) The report must be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers and its principal financial officer or officers.

* * * * *

Item 10. Exhibits

(a) File the exhibits listed below as part of this Form.

* * * * *

(a)(2) A separate certification for each principal executive officer and principal financial officer of the registrant as required by rule 30a–2(a) under the Act (17 CFR 270.30a–2(a)), exactly as set forth below:

* * * * *

(b) If the report is filed under Section 13(a) or 15(d) of the Exchange Act, provide the certifications required by rule 30a–2(b) under the Act (17 CFR 270.30a–2(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) as an exhibit. A certification furnished pursuant to this paragraph will not be deemed "filed" for purposes of Section 18 of the Exchange Act (15 U.S.C. 78r), or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

Instruction to Item 10

Letter or number the exhibits in the sequence that they appear in this item.

* * * * *

By the Commission.

Dated: March 21, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7310 Filed 3–28–03; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Monday,
March 31, 2003

Part IV

Department of Defense

48 CFR Parts 206, et al.

Defense Federal Acquisition Regulation Supplement; Foreign Acquisition; Final Rule

DEPARTMENT OF DEFENSE

48 CFR Parts 206, 208, 212, 225, 242, and 252

[DFARS Case 2002–D009]

Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to simplify and clarify policy pertaining to the acquisition of supplies and services from foreign sources.

EFFECTIVE DATE: April 30, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002–D009.

SUPPLEMENTARY INFORMATION:

A. Background

This rule revises DFARS Part 225, Foreign Acquisition, and associated provisions and clauses. The rule—

- Provides streamlined procedures for evaluating foreign offers when acquiring supplies, and adds procedures for evaluating foreign offers in acquisitions in which price is not the determining factor.
- Changes the definition of "qualifying country end product" to permit the qualifying country manufacturing the product to use components from any other qualifying country.
- Lowers the required approval levels for determinations of nonavailability under the Buy American Act.
- Lowers the required approval levels for individual public interest determinations for acquisition of end products from qualifying countries.
- Provides that the Government will evaluate duty only if it is to be paid. Except for qualifying country supplies or eligible end products, the contractor will request duty-free entry only on foreign supplies for which the contractor estimates that duty will exceed $200 per shipment into the customs territory of the United States. One duty-free entry clause replaces five existing clauses.
- Eliminates the requirement for a contractor to represent that it will comply with all laws, decrees, labor standards, and regulations of the foreign country in which the contract will be performed.
- Deletes obsolete text and clauses relating to outdated appropriations act restrictions, resulting in the elimination of four clauses.

DoD published a proposed rule in the **Federal Register** at 67 FR 62590 on October 7, 2002. Five sources submitted comments on the proposed rule. Most respondents generally favored the rule, with minor technical suggestions. Differences between the proposed and final rules are addressed below in the discussion of comments 8, 9, 10, 13, 14, 16, and 17.

1. *Comment:* One respondent supported the change in the definition of "qualifying country end product" which permits the qualifying country manufacturing the product to use components of another qualifying country, stating that "This change recognizes the multi-national realities of many manufacturing and assembly operations * * *".

DoD Response: Concur.

2. *Comment:* One respondent suggested that 225.003, Definitions, also incorporate by reference the definitions found at 252.225–7021(a), particularly the definitions for "designated country," "designated country end product," and "U.S.-made end product."

DoD Response: Do not concur. These definitions are in the FAR at 25.003. The DFARS supplements the FAR, must be read in conjunction with the FAR, and does not repeat FAR text.

3. *Comment:* One respondent objected to "the expanded" definition of "domestic end product" (252.225–7001 and 252.225–7036) and the two-part test at 225.101, which flows from this definition. The respondent stated that the rule has the potential to allow a manufactured end product that is 100 percent manufactured in a qualifying country to be determined a domestic end product.

DoD Response: Do not concur. This rule makes no substantive change to the definition of "domestic end product." As required by the Buy American Act, a domestic end product must be mined, produced, or manufactured in the United States. With regard to components, the rule requires that the cost of the qualifying country components and the components that are mined, produced, or manufactured in the United States exceed 50 percent of the cost of all components. This rule implements long-standing DoD policy, based on Memoranda of Understanding with DoD's allies, and does not represent a change from the current regulations.

4. *Comment:* One respondent recommended keeping the definition of "nondesignated country end product" in 225.003.

DoD Response: Do not concur. This definition is unnecessary, because the term is no longer used in Part 225.

5. *Comment:* One respondent supported lowering of the approval levels for domestic nonavailability and public interest determinations, because this takes into account the increasingly global nature of manufacturing operations and addresses the short-supply or nonavailability situations that can result when production moves offshore.

DoD Response: Concur.

6. *Comment:* One respondent objected to the change at 225.103(a)(ii)(A)*(3)(i)* from "American good" to "domestic end product."

DoD Response: Do not concur. The rule replaces the term "American good" with "domestic end product" for consistency with the terminology used elsewhere in Part 225 and associated clauses. The change in terminology does not substantially change the meaning of the DFARS text.

7. *Comment:* One respondent objected to the replacement of "original manufacturer" with "original foreign manufacturer" at 225.103(b)(iii)(B), as it changes the focus.

DoD Response: Do not concur. DFARS 225.103(b)(iii)(B) relates to a DoD determination that certain articles are not reasonably available from domestic sources because they are spare or replacement parts that must be acquired from the original manufacturer. If the original manufacturer were domestic, the spare or replacement parts could be obtained from a domestic source and no exception would be required.

8. *Comment:* One respondent recommended clarifying that a determination and findings is not required for the items listed in 225.103(b)(iii)(A)–(C).

DoD Response: Concur. DoD has changed DFARS 225.103(b)(iii) to clarify that no separate determination is required for these items.

9. *Comment:* One respondent asked whether the references to "$100K" in 225.103 should be changed to the "simplified acquisition threshold."

DoD Response: Concur. Approval thresholds of $100,000 that appeared in the proposed rule have been changed to the "simplified acquisition threshold" at 225.103(a)(ii)(B), 225.103(b)(ii), and 225.872–4(b). The circumstances in which the simplified acquisition threshold is greater than $100,000 would also justify an increased threshold for approval for these determinations.

10. *Comment:* One respondent suggested reinstating the text at 225.170 to apply the Part 225 evaluation procedures to foreign items on Federal Supply Schedules.

DoD Response: Concur. DoD has reinstated this text in the final rule.

11. *Comment:* One respondent noted that DFARS specifically identifies the inapplicability of qualifying country offers on small business set-asides (225.872–3). The respondent recommended addition of similar coverage regarding designated country offers or NAFTA offers in Subpart 225.4, Trade Agreements.

DoD Response: Do not concur. The FAR addresses this issue at 25.401(a)(1).

12. *Comment:* One respondent objected that the evaluation procedures—

a. Are still convoluted and confusing;

b. Summarily perpetuate the notion that qualifying country end products are exempt from application of the Buy American Act or Balance of Payments Program;

c. Eliminate the requirement for "two tests that must be met to determine whether a manufactured item is a domestic end product"; and

d. May result in a regulatory pre-determination that a foreign offer that is lower than the lowest domestic offer may be exempt from the Buy American Act and the Balance of Payments Program simply because the regulation says so.

DoD Response: a. Do not concur. Due to the complexity of the laws involved, the evaluation procedures cannot be simplified further. The rule lays out step-by-step procedures, parallel to the FAR, which will lead to the correct conclusion. The rule eliminates many confusing aspects of the current regulation: It no longer requires treatment of offers of eligible end products as if they were qualifying country offers; no longer requires evaluation of duty unless duty is to be paid; and no longer requires application of an evaluation factor to offers that are already known to be unacceptable. In addition, DoD is preparing an on-line training module to provide additional explanatory material and practical examples to clarify the main issues.

b. Concur. The rule does exempt qualifying country end products from application of the Buy American Act or the Balance of Payments Program. This exemption represents long-standing DoD policy implementing Memoranda of Understanding with qualifying countries, whereby DoD has reciprocal procurement agreements of non-discrimination.

c. Do not concur. The "two tests" previously at 225.502(c)(v)(A) have been moved to 225.101.

d. Do not concur. The determination that a foreign product may be exempt from the Buy American Act and the Balance of Payments Program is not simply because the regulations say so, but because following these evaluation procedures results in correct implementation of the exceptions to the Buy American Act provided in the Buy American Act itself, and further amplified in Executive Order 10582, and determinations of the Secretary of Defense that are in accordance with the Act and the Executive order.

13. *Comment:* One respondent indicated that the phrase "products of the following qualifying countries" at 225.872–1(b) is not sufficiently precise and should take into consideration whether the end product is manufactured in the originating country.

DoD Response: Partially concur. DoD has clarified the text at 225.872–1(a) and (b) by using the term "qualifying country end products."

14. *Comment:* One respondent did not find the $200 "per unit" reference with regard to duty to be clear.

DoD Response: Concur. DoD has revised DFARS 225.901(3) and the associated clause at 252.225–7013, to change "$200 per unit (end product or component)" to "$200 per shipment into the customs territory of the United States." Duty-free entry certificates are issued on a per shipment basis. Therefore, the determination of the threshold at which it is economically worthwhile to issue such certificates should be on a per shipment basis.

Furthermore, DoD has changed the prescription at 225.1101(4) for use of the Duty-Free Entry clause at 252.225–7013, to base its use on whether the supplies will enter the customs territory of the United States, rather than whether the supplies are for exclusive use outside the United States.

15. *Comment:* One respondent was concerned that there are no specific criteria at 225.7003 for determining if a foreign country discriminates against defense items produced in the United States to a greater degree than the United States discriminates against items produced in that country. The respondent stated that "semantics and unsubstantiated allegations of discrimination could be used as a basis for waiving compliance with the Buy American Act * * *"

DoD Response: Do not concur. This rule makes no substantive change to the DFARS text on this subject. This waiver condition comes directly from 10 U.S.C. 2534(d)(2). Since the Under Secretary of Defense (Acquisition, Technology, and Logistics) exercises this authority without power of delegation, it is not necessary to include the determination criteria in the DFARS.

16. *Comment:* One respondent supported the changes proposed under DFARS Case 2002–D008, Trade Agreements Act—Exception for U.S.-Made End Product, that were also included in this rule. Another respondent objected to the changes on the basis that they could create a *de facto* blanket exception to the Buy American Act for all end products that are substantially transformed in the United States.

DoD Response: These comments are outside the scope of this case. Comments on this issue were requested under DFARS Case 2002–D008, for which a final rule was issued on December 20, 2002. However, DoD notes that the exception for U.S.-made end products was based on a determination by the Under Secretary of Defense (Acquisition, Technology, and Logistics) that it was not in the public interest to continue to apply the Buy American Act only to U.S.-made end products in acquisitions subject to the Trade Agreements Act, because the Buy American Act has already been waived for the competing eligible products from countries other than the United States.

This final rule deletes DFARS 225.502(c)(i)(C) to conform to the changes made under DFARS Case 2002–D008.

17. *Comment:* DoD received internal Government comments recommending that the text at 209.104–1, 209.104–70, 209.405–2, 209.409, and the associated clauses at 252.209, not be moved to Part 225 and associated clauses.

DoD Response: Concur. This text has been retained at its present location.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most of the changes in the rule merely simplify and clarify existing policy and procedures. Other changes, such as the revised definition of "qualifying country end product" primarily affect foreign firms, which, by definition, do not qualify as small entities within the meaning of the

Regulatory Flexibility Act. The changes in procedures for evaluation of duty will result in a paperwork burden reduction for both large and small businesses, but the economic impact will not be significant.

C. Paperwork Reduction Act

This rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The information collection requirements in the rule are currently approved by the Office of Management and Budget under Control Number 0704–0187. Elimination of the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, will result in a reduction of 21,451 hours in estimated annual burden.

List of Subjects in 48 CFR Parts 206, 208, 212, 225, 242, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Parts 206, 208, 212, 225, 242, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 206, 208, 212, 225, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 206—COMPETITION REQUIREMENTS

■ 2. Section 206.303–1 is amended by adding paragraph (d) to read as follows:

206.303–1 Requirements.

* * * * *

(d) The Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), is the agency point of contact for submission of justifications to the Office of the United States Trade Representative.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

3. Section 208.7203 is amended by revising paragraph (c) to read as follows:

208.7203 Authority.

* * * * *

(c) Acquisition of items restricted under 225.7005 and Subpart 225.71.

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS 212.301 [Amended]

■ 4. Section 212.301 is amended by removing paragraph (f)(vi) and redesignating paragraph (f)(vii) as paragraph (f)(vi).

PART 225—FOREIGN ACQUISITION

■ 5. Sections 225.000, 225.001, and 225.003 are revised to read as follows:

225.000 Scope of part.

This part also provides policy and procedures for—

(1) Purchasing foreign defense supplies, services, and construction materials with special procedures for—

(i) Contracting with Canadian and other qualifying country sources; and

(ii) Cooperative projects;

(2) Implementing statutory and policy restrictions on foreign acquisition;

(3) Reporting contract performance outside the United States;

(4) Foreign military sales acquisitions; and

(5) Antiterrorism/force protection for defense contractors outside the United States.

225.001 General.

When evaluating offers of foreign end products, consider the following:

(1) *Statutory or policy restrictions.*

(i) Determine whether the product is restricted by—

(A) Statute (see Subpart 225.70); or

(B) DoD policy (see Subpart 225.71 and FAR 6.302–3).

(ii) If an exception to or waiver of a restriction in Subpart 225.70 or 225.71 would result in award of a foreign end product, apply the policies and procedures of the Buy American Act or the Balance of Payments Program, and, if applicable, the trade agreements.

(2) *Memoranda of understanding or other international agreements.* Determine whether the offered product is the product of one of the qualifying countries listed in 225.872–1.

(3) *Trade agreements.* If the product is not an eligible product, a qualifying country end product, or a U.S.-made end product, purchase of the foreign end product may be prohibited (see FAR 25.403(c) and 225.403(c)).

(4) *Other trade sanctions and prohibited sources.*

(i) Determine whether the offeror complies with the secondary Arab boycott of Israel. Award to such offerors may be prohibited (see 225.670).

(ii) Determine whether the offeror is a prohibited source (see Subpart 225.7).

(5) *Buy American Act and Balance of Payments Program.* See the evaluation procedures in Subpart 225.5.

225.003 Definitions.

As used in this part—

(1) *Caribbean Basin country end product* includes petroleum or any product derived from petroleum.

(2) *Defense equipment* means any equipment, item of supply, component, or end product purchased by DoD.

(3) *Domestic concern* means—

(i) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is a foreign concern; or

(ii) An unincorporated concern having its principal place of business in the United States.

(4) *Domestic end product* has the meaning given in the clauses at 252.225–7001, Buy American Act and Balance of Payments Program; and 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the meaning in FAR 25.003.

(5) *Eligible product* means, instead of the definition in FAR 25.003, a designated, NAFTA, or Caribbean Basin country end product in the categories listed in 225.401–70.

(6) *Foreign concern* means any concern other than a domestic concern.

(7) *Nonqualifying country* means a country other than the United States or a qualifying country.

(8) *Nonqualifying country component* means a component mined, produced, or manufactured in a nonqualifying country.

(9) *Qualifying country* means a country with a memorandum of understanding or international agreement with the United States. Qualifying countries are listed in 225.872–1.

(10) *Qualifying country component* and *qualifying country end product* are defined in the clauses at 252.225–7001, Buy American Act and Balance of Payments Program; and 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. *Qualifying country end product* is also defined in the clause at 252.225–7021, Trade Agreements.

(11) *Qualifying country offer* means an offer of a qualifying country end product, including the price of transportation to destination.

(12) *Source*, when restricted by words such as foreign, domestic, or qualifying country, means the actual manufacturer or producer of the end product or component.

■ 6. Subpart 225.1 is revised to read as follows:

Subpart 225.1—Buy American Act—Supplies

Sec.

225.101 General.
225.103 Exceptions.
225.104 Nonavailable articles.
225.105 Determining reasonableness of cost.
225.170 Acquisition from or through other Government agencies.
225.171 Solicitations.

225.101 General.

(a) For DoD, the following two-part test determines whether a manufactured end product is a domestic end product:

(i) The end product is manufactured in the United States; and

(ii) The cost of its U.S. and qualifying country components exceeds 50 percent of the cost of all its components. This test is applied to end products only and not to individual components.

(c) Additional exceptions that allow the purchase of foreign end products are listed at 225.103.

225.103 Exceptions.

(a)(i)(A) Public interest exceptions for certain countries are in 225.872.

(B) For procurements subject to the Trade Agreements Act, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that it is inconsistent with the public interest to apply the Buy American Act to end products that are substantially transformed in the United States.

(ii)(A) Normally, use the evaluation procedures in Subpart 225.5, but consider recommending a public interest exception if the purposes of the Buy American Act are not served, or in order to meet a need set forth in 10 U.S.C. 2533. For example, a public interest exception may be appropriate—

(1) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(2) To ensure access to advanced state-of-the-art commercial technology; or

(3) To maintain the same source of supply for spare and replacement parts (also see paragraph (b)(iii)(B) of this section)—

(i) For an end item that qualifies as a domestic end product; or

(ii) In order not to impair integration of the military and commercial industrial base.

(B) Except as provided in 225.872–4(b), process a determination for a public interest exception after consideration of the factors in 10 U.S.C. 2533—

(1) At a level above the contracting officer for acquisitions valued at or below the simplified acquisition threshold;

(2) By the head of the contracting activity for acquisitions with a value greater than the simplified acquisition threshold but less than $1,000,000; or

(3) By the agency head for acquisitions valued at $1,000,000 or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required when domestic offers are insufficient to meet the requirement and award is to be made on other than a qualifying country or eligible end product.

(ii) Except as provided in FAR 25.103(b)(3), the determination shall be approved—

(A) At a level above the contracting officer for acquisitions valued at or below the simplified acquisition threshold;

(B) By the chief of the contracting office for acquisitions with a value greater than the simplified acquisition threshold but less than $1,000,000; or

(C) By the head of the contracting activity or immediate deputy for acquisitions valued at $1,000,000 or more.

(iii) A separate determination as to whether an article is reasonably available is not required for the following articles. DoD has already determined that these articles are not reasonably available from domestic sources:

(A) End products or components listed in 225.104(a).

(B) Spare or replacement parts that must be acquired from the original foreign manufacturer or supplier.

(C) Foreign drugs acquired by the Defense Supply Center, Philadelphia, when the Director, Pharmaceuticals Group, Directorate of Medical Materiel, determines that only the requested *foreign drug will fulfill the* requirements.

(iv) Under coordinated acquisition (see Subpart 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

(c) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under Subpart 225.5.

225.104 Nonavailable articles.

(a) DoD has determined that the following articles also are nonavailable in accordance with FAR 25.103(b):

(i) Aluminum clad steel wire.

(ii) Sperm oil.

225.105 Determining reasonableness of cost.

(b) Use an evaluation factor of 50 percent instead of the factors specified in FAR 25.105(b).

225.170 Acquisition from or through other Government agencies.

Contracting activities must apply the evaluation procedures in Subpart 225.5 when using Federal supply schedules.

225.171 Solicitations.

For oral solicitations, inform prospective quoters that only domestic and qualifying country end products are acceptable unless—

(1) Other foreign end products are excepted either on a blanket or an individual basis; or

(2) The price of another foreign end product is the low offer under the evaluation procedures in Subpart 225.5.

225.202 [Amended]

■ 7. Section 225.202 is amended in paragraph (a)(2) as follows:

■ a. In the first sentence, by removing the parenthetical "(iii)"; and

■ b. In the second sentence, by removing "must" and adding in its place "shall".

■ 8. Section 225.401 is revised to read as follows:

225.401 Exceptions.

(a)(2) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR Subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement and Acquisition Policy (OUSD(AT&L)DPAP). Approval by OUSD(AT&L)DPAP is not required if—

(A) Purchase from foreign sources is restricted by statute (see Subpart 225.70);

(B) Another exception in FAR 25.401 applies to the acquisition; or

(C) Competition from foreign sources is restricted under Subpart 225.71.

■ 9. Section 225.401–70 is amended in the introductory text by revising the last sentence to read as follows:

225.401–70 Products subject to trade agreement acts.

* * * The following list indicates those products that are eligible for designated and NAFTA countries, but are not eligible for Caribbean Basin countries.

* * * * *

■ 10. Section 225.403 is revised to read as follows:

225.403 Trade Agreements Act.

(c) For acquisitions subject to the Trade Agreements Act, acquire only U.S.-made, qualifying country, or eligible end products unless—

(i) The contracting officer determines that offers of U.S.-made, qualifying country, or eligible products from responsive, responsible offerors are either—

(A) Not received; or

(B) Insufficient to fill the Government's requirements. In this case, accept all responsive, responsible offers of U.S.-made, qualifying country, and eligible products before accepting any other offers; or

(ii) A national interest waiver under 19 U.S.C. 2512(b)(2) is granted on a case-by-case basis. Except as delegated in paragraphs (c)(i)(A) and (B) of this section, submit any request for a national interest waiver to the Director of Defense Procurement and Acquisition Policy in accordance with department or agency procedures. Include supporting rationale with the request.

(A) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas purchasing activity, if the waiver is supported by a written statement from the requiring activity that the products being acquired are critical for the support of U.S. forces stationed abroad.

(B) The Commander or Director, Defense Energy Support Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

■ 11. Subpart 225.5 is revised to read as follows:

Subpart 225.5—Evaluating Foreign Offers—Supply Contracts

Sec.
225.502 Application.
225.503 Group offers.
225.504 Evaluation examples.

225.502 Application.

(b) Use the following procedures instead of the procedures in FAR 25.502(b) for acquisitions subject to the Trade Agreements Act:

(i) Consider only offers of U.S.-made, qualifying country, or eligible end products, except as permitted by 225.403.

(ii) If price is the determining factor, award on the low offer.

(c) Use the following procedures instead of those in FAR 25.502(c) for acquisitions subject to the Buy American Act or the Balance of Payments Program:

(i)(A) If the acquisition is subject only to the Buy American Act or the Balance of Payments Program, then only qualifying country end products are exempt from application of the Buy American Act or Balance of Payments Program evaluation factor.

(B) If the acquisition is also subject to NAFTA, then NAFTA country end products are also exempt from application of the Buy American Act or Balance of Payments Program evaluation factor.

(ii) If price is the determining factor, use the following procedures:

(A) If the low offer is a domestic offer, award on that offer.

(B) If there are no domestic offers, award on the low offer (see example in 225.504(1)).

(C) If the low offer is a foreign offer that is exempt from application of the Buy American Act or Balance of Payments Program evaluation factor, award on that offer. (If the low offer is a qualifying country offer from a country listed at 225.872–1(b) and the Trade Agreements Act does not apply, execute a determination in accordance with 225.872–4).

(D) If the low offer is a foreign offer that is not exempt from application of the Buy American Act or Balance of Payments Program evaluation factor, and there is another foreign offer that is exempt and is lower than the lowest domestic offer, award on the low foreign offer (see example in 225.504(2)).

(E) Otherwise, apply the 50 percent evaluation factor to the low foreign offer.

(1) If the price of the low domestic offer is less than the evaluated price of the low foreign offer, award on the low domestic offer (see example in 225.504(3)).

(2) If the evaluated price of the low foreign offer remains less than the low domestic offer, award on the low foreign offer (see example in 225.504(4)).

(iii) If price is not the determining factor, use the following procedures:

(A) If there are domestic offers, apply the 50 percent Buy American Act or Balance of Payments Program evaluation factor to all foreign offers unless an exemption applies.

(B) Evaluate in accordance with the criteria of the solicitation.

(C) If these procedures will not result in award on a domestic offer, reevaluate offers without the 50 percent factor. If this will result in award on an offer to which the Buy American Act or Balance of Payments Program applies, but evaluation in accordance with paragraph (c)(ii) of this section would result in award on a domestic offer, proceed with award only after execution of a determination in accordance with 225.103(a)(ii)(B), that domestic preference would be inconsistent with the public interest.

225.503 Group offers.

Evaluate group offers in accordance with FAR 25.503, but apply the evaluation procedures of 225.502.

225.504 Evaluation examples.

The following examples illustrate the evaluation procedures in 225.502(c)(ii). The examples assume that the contracting officer has eliminated all offers that are unacceptable for reasons other than price or a trade agreement and that price is the determining factor in contract award. The same evaluation procedures and the 50 percent evaluation factor apply regardless of whether the acquisition is subject to the Buy American Act (BAA) or the Balance of Payments Program (BOPP).

(1) Example 1.
Offer A $945,000—Foreign offer subject to BAA/BOPP
Offer B $950,000—Foreign offer exempt from BAA/BOPP
Since no domestic offers are received, do not apply the evaluation factor. Award on Offer A.

(2) Example 2.
Offer A $950,000—Domestic offer
Offer B $890,000—Foreign offer exempt from BAA/BOPP
Offer C $880,000—Foreign offer subject to BAA/BOPP
Since the exempt foreign offer is lower than the domestic offer, do not apply the evaluation factor. Award on Offer C.

(3) Example 3.
Offer A $9,100—Foreign offer exempt from BAA/BOPP
Offer B $8,900—Domestic offer
Offer C $6,000—Foreign offer subject to BAA/BOPP
Since the domestic offer is lower than the exempt foreign offer, apply the 50 percent evaluation factor to Offer C. This results in an evaluated price of $9,000 for Offer C. Award on Offer B.

(4) Example 4.
Offer A $910,000—Foreign offer exempt from BAA/BOPP
Offer B $890,000—Domestic offer
Offer C $590,000—Foreign offer subject to BAA/BOPP
Since the domestic offer is lower than the exempt foreign offer, apply the 50 percent evaluation factor to Offer C. This results in an evaluated price of $885,000 for Offer C. Award on Offer C.

■ 12. Subpart 225.6 is added to read as follows:

Subpart 225.6—Trade Sanctions

Sec.
225.670 Secondary Arab boycott of Israel.
225.670–1 Restriction.
225.670–2 Procedures.
225.670–3 Exceptions.
225.670–4 Waivers.

225.670 Secondary Arab boycott of Israel.

225.670–1 Restriction.

In accordance with 10 U.S.C. 2410i, do not enter into a contract with a foreign entity unless it has certified that it does not comply with the secondary Arab boycott of Israel.

225.670–2 Procedures.

For contracts awarded to the Canadian Commercial Corporation (CCC), the CCC will submit a certification from its proposed subcontractor with the other required precontractual information (see 225.870).

225.670–3 Exceptions.

This restriction does not apply to—

(a) Purchases at or below the simplified acquisition threshold;

(b) Contracts for consumable supplies, provisions, or services for the support of United States forces or of allied forces in a foreign country; or

(c) Contracts pertaining to the use of any equipment, technology, data, or services for intelligence or classified purposes, or to the acquisition or lease thereof, in the interest of national security.

225.670–4 Waivers.

The Secretary of Defense may waive this restriction on the basis of national security interests. Forward waiver requests to the Director, Defense Procurement and Acquisition Policy, Attn: OUSD(AT&L)DPAP(PAIC), 3060 Defense Pentagon, Washington, DC 20301–3060.

225.701 [Amended]

■ 13. Section 225.701 is amended by removing the second sentence.

225.770 through 225.771–5 [Removed]

■ 14. Sections 225.770 through 225.771–5 are removed.

■ 15. Subpart 225.8 is revised to read as follows:

Subpart 225.8—Other International Agreements and Coordination

Sec.
225.802 Procedures.
225.802–70 Contracts for performance outside the United States and Canada.
225.802–71 End use certificates.
225.870 Contracting with Canadian contractors.
225.870–1 General.
225.870–2 Solicitation of Canadian contractors.
225.870–3 Submission of offers.
225.870–4 Contracting procedures.
225.870–5 Contract administration.
225.870–6 Termination procedures.
225.870–7 Acceptance of Canadian supplies.
225.870–8 Industrial security.
225.871 North Atlantic Treaty Organization cooperative projects.
225.871–1 Scope.
225.871–2 Definitions.
225.871–3 General.
225.871–4 Statutory waivers.
225.871–5 Directed subcontracting.
225.871–6 Disposal of property.
225.871–7 Congressional notification.
225.872 Contracting with qualifying country sources.
225.872–1 General.
225.872–2 Applicability.
225.872–3 Solicitation procedures.
225.872–4 Individual determinations.
225.872–5 Contract administration.
225.872–6 Audit.
225.872–7 Industrial security for qualifying countries.
225.872–8 Subcontracting with qualifying country sources.
225.873 Waiver of United Kingdom commercial exploitation levies.
225.873–1 Policy.
225.873–2 Procedures.

225.802 Procedures.

(b) Information on specific agreements is available as follows:

(i) Memoranda of understanding and other international agreements between the United States and the countries listed in 225.872–1 are maintained in the Office of the Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting) ((703) 697–9351, DSN 227–9351).

(ii) Military Assistance Advisory Groups, Naval Missions, and Joint U.S. Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

(iii) Copies of international agreements covering the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and the Middle East are filed with the U.S. European Command.

(iv) Agreements with countries in the Pacific and Far East are filed with the U.S. Pacific Command.

225.802–70 Contracts for performance outside the United States and Canada.

(a) When a contracting office anticipates placement of a contract for performance outside the United States and Canada, and the contracting office is not under the jurisdiction of a command for the country involved, the contracting office shall maintain liaison with the cognizant contract administration office (CAO) during preaward negotiations and postaward administration. The CAO will provide pertinent information for contract negotiations, effect appropriate coordination, and obtain required approvals for the performance of the contract.

(b) If the acquisition requires the performance of work in the foreign country by U.S. personnel or a third country contractor, or if the acquisition requires logistics support for contract employees, source inspection, or additional Government employees—

(1) The contracting officer shall coordinate with the CAO before contract award;

(2) The contracting officer shall request the following information from the CAO:

(i) The applicability of any international agreements to the acquisition.

(ii) Security requirements applicable to the area.

(iii) The standards of conduct for the prospective contractor and its employees and any consequences for violation of the standards of conduct.

(iv) Requirements for use of foreign currencies, including applicability of U.S. holdings of excess foreign currencies.

(v) Availability of logistical support for contractor employees.

(vi) Information on taxes and duties from which the Government may be exempt; and

(3) The contracting officer shall furnish the following information to the CAO:

(i) A synopsis of the work to be performed and, if practical, a copy of the solicitation.

(ii) Any contractor logistical support desired in support of U.S. or foreign military sale requirements.

(iii) Contract performance period and estimated contract value.

(iv) Number and nationality of contractor employees and date of planned arrival of contractor personnel.

(v) Contract security requirements.

(vi) Other pertinent information to effect complete coordination and cooperation.

225.802–71 End use certificates.

Contracting officers considering the purchase of an item from a foreign source may encounter a request for the signing of a certificate to indicate that the Armed Forces of the United States is the end user of the item, and that the U.S. Government will not transfer the item to third parties without authorization from the Government of the country selling the item. When encountering this situation, refer to DoD Directive 2040.3, End Use Certificates, for guidance.

225.870 Contracting with Canadian contractors.

225.870–1 General.

(a) The Canadian Government guarantees to the U.S. Government all commitments, obligations, and covenants of the Canadian Commercial Corporation under any contract or order issued to the Corporation by any contracting office of the U.S. Government. The Canadian Government has waived notice of any change or modification that may be made, from time to time, in these commitments, obligations, or covenants.

(b) For production planning purposes, Canada is part of the defense industrial base (see 225.870–2(b)).

(c) The Canadian Commercial Corporation will award and administer contracts with contractors located in Canada, except for—

(1) Negotiated acquisitions for experimental, developmental, or research work under projects other than the Defense Development Sharing Program;

(2) Acquisitions of unusual or compelling urgency;

(3) Acquisitions at or below the simplified acquisition threshold; or

(4) Acquisitions made by DoD activities located in Canada.

(d) The Canadian Commercial Corporation uses provisions in contracts with Canadian or U.S. concerns that give DoD the same production rights, data, and information that DoD would obtain in contracts with U.S. concerns.

(e) The Government of Canada will provide the following services under contracts with the Canadian Commercial Corporation without charge to DoD:

(1) *Contract administration services,* including—

(i) Cost and price analysis;

(ii) Industrial security;

(iii) Accountability and disposal of Government property;

(iv) Production expediting;

(v) Compliance with Canadian labor laws;

(vi) Processing of termination claims and disposal of termination inventory;

(vii) Customs documentation;

(viii) Processing of disputes and appeals; and

(ix) Such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier.

(2) *Audits.* The Public Works and Government Services Canada performs audits when needed. Route requests for audit on non-Canadian Commercial Corporation contracts through the cognizant contract management office of the Defense Contract Management Agency.

(3) *Inspection.* The Department of National Defence (Canada) provides inspection personnel, services, and facilities at no charge to DoD departments and agencies (see 225.870–7).

225.870–2 Solicitation of Canadian contractors.

(a) Except for acquisitions described in 225.870–1(c)(1) through (4), include Canadian firms on solicitation mailing lists and comparable source lists only at the request of the Canadian Commercial Corporation.

(b) Include Canadian planned producers under the Industrial Preparedness Production Planning Program on solicitation mailing lists for their planned items (see FAR 14.205–1).

(c) Send solicitations directly to Canadian firms appearing on the appropriate solicitation mailing lists. Send a complete copy of the solicitation and a listing of Canadian firms solicited to the Canadian Commercial Corporation, 11th Floor, 50 O'Connor Street, Ottawa, Ontario, K1A–0S6, Canada.

(d) If requested, furnish a solicitation to the Canadian Commercial Corporation even if no Canadian firm is solicited.

(e) Handle acquisitions at or below the simplified acquisition threshold directly with Canadian firms and not through the Canadian Commercial Corporation.

225.870–3 Submission of offers.

(a) As indicated in 225.870–4, the Canadian Commercial Corporation is the prime contractor. To indicate acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter supporting the Canadian offer and containing the following information:

(1) Name of the Canadian offeror.

(2) Confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation.

(3) A statement that the Corporation shall subcontract 100 percent with the offeror.

(b) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the date for receipt of offers, the Corporation may permit Canadian firms to submit offers directly. However, the contracting officer shall receive the Canadian Commercial Corporation's endorsement before contract award.

(c) The Canadian Commercial Corporation will submit all sealed bids in terms of U.S. currency. Do not adjust contracts awarded under sealed bidding for losses or gains from fluctuation in exchange rates.

(d) Except for sealed bids, the Canadian Commercial Corporation normally will submit offers and quotations in terms of Canadian currency. The Corporation may, at the time of submitting an offer, elect to quote and receive payment in terms of U.S. currency, in which case the contract—

(1) Shall provide for payment in U.S. currency; and

(2) Shall not be adjusted for losses or gains from fluctuation in exchange rates.

225.870–4 Contracting procedures.

(a) Except for contracts described in 225.870–1(c)(1) through (4), award individual contracts covering purchases from suppliers located in Canada to the Canadian Commercial Corporation, 11th Floor, 50 O'Connor Street, Ottawa, Ontario, Canada, K1A–0S6.

(b) Direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract, provided the Corporation's approval is obtained on any matters involving changes to the contract.

(c) Identify in the contract, the type of currency, *i.e.,* U.S. or Canadian. Contracts that provide for payment in Canadian currency shall—

(1) Quote the contract price in terms of Canadian dollars and identify the amount by the initials "CN", *e.g.,* $1,647.23CN; and

(2) Clearly indicate on the face of the contract the U.S./Canadian conversion rate at the time of award and the U.S. dollar equivalent of the Canadian dollar contract amount.

225.870–5 Contract administration.

(a) Assign contract administration in accordance with Part 242. When the Defense Contract Management Agency will perform contract administration in Canada, name in the contract the following payment office for disbursement of DoD funds (DoD Department Code: 17-Navy; 21-Army; 57-Air Force; 97-all other DoD components), whether payment is in Canadian or U.S. dollars: DFAS–Columbus Center, DFAS–CO/New Dominion Division, P.O. Box 182041, Columbus, OH 43218–2041.

(b) The following procedures apply to cost-reimbursement type contracts:

(1) The Public Works and Government Services Canada (PWGSC) automatically arranges audits on contracts with the Canadian Commercial Corporation.

(i) Consulting and Audit Canada (CAC) furnishes audit reports to PWGSC.

(ii) Upon advice from PWGSC, the Canadian Commercial Corporation certifies the invoice and forwards it with Standard Form (SF) 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing office.

(2) For contracts placed directly with Canadian firms, the administrative contracting officer requests audits from the CAC, Ottawa, Ontario, Canada. The CAC/PWGSC—

(i) Approves invoices on a provisional basis pending completion of the contract and final audit;

(ii) Forwards these invoices, accompanied by SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing officer; and

(iii) Furnishes periodic advisory audit reports directly to the administrative contracting officer.

225.870–6 Termination procedures.

(a) The Canadian Commercial Corporation will continue administering contracts that the U.S. contracting officer terminates.

(b) The Corporation will settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government.

(c) The U.S. agency administering the contract with the Canadian Commercial Corporation shall provide any services required by the Canadian Commercial Corporation, including disposal of inventory, for settlement of any subcontracts placed in the United States. Settlement of such U.S. subcontracts will be in accordance with this regulation.

225.870–7 Acceptance of Canadian supplies.

(a) For contracts placed in Canada, either with the Canadian Commercial Corporation or directly with Canadian suppliers, the Department of National Defence (Canada) will perform any necessary contract quality assurance and/or acceptance, as applicable.

(b) Signature by the Department of National Defence (Canada) quality assurance representative on the DoD inspection and acceptance form is satisfactory evidence of acceptance for payment purposes.

225.870–8 Industrial security.

Industrial security for Canada shall be in accordance with the U.S.-Canada Industrial Security Agreement of March 31, 1952, as amended.

225.871 North Atlantic Treaty Organization cooperative projects.

225.871–1 Scope.

This section—

(a) Implements 22 U.S.C. 2767 and 10 U.S.C. 2350b; and

(b) Provides guidance on awarding contracts for North Atlantic Treaty Organization (NATO) cooperative projects.

225.871–2 Definitions.

As used in this section—

(a) *Cooperative project* means a jointly managed arrangement—

(1) Described in a written agreement between the parties;

(2) Undertaken to further the objectives of standardization, rationalization, and interoperability of the armed forces of NATO member countries; and

(3) Providing for—

(i) One or more of the other participants to share with the United States the cost of research and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(ii) Concurrent production in the United States and in another member country of a defense article jointly developed; or

(iii) Acquisition by the United States of a defense article or defense service from another member country.

(b) *Other participant* means a cooperative project participant other than the United States.

225.871–3 General.

(a) *Cooperative project authority.*

(1) Departments and agencies, that have authority to do so, may enter into cooperative project agreements with NATO or with one or more member countries of NATO under DoDD 5530.3, International Agreements.

(2) Under laws and regulations governing the negotiation and implementation of cooperative project agreements, departments and agencies may enter into contracts, or incur other obligations, on behalf of other participants without charge to any appropriation or contract authorization.

(3) Agency heads are authorized to solicit and award contracts to implement cooperative projects.

(b) Contracts implementing cooperative projects shall comply with all applicable laws relating to Government acquisition, unless a waiver is granted under 225.871–4. A waiver of certain laws and regulations may be obtained if the waiver—

(1) Is required by the terms of a written cooperative project agreement;

(2) Will significantly further NATO standardization, rationalization, and interoperability; and

(3) Is approved by the appropriate DoD official.

225.871–4 Statutory waivers.

(a) For contracts or subcontracts placed outside the United States, the Deputy Secretary of Defense may waive any provision of law that specifically prescribes—

(1) Procedures for the formation of contracts;

(2) Terms and conditions for inclusion in contracts;

(3) Requirements or preferences for—

(i) Goods grown, produced, or manufactured in the United States or in U.S. Government-owned facilities; or

(ii) Services to be performed in the United States; or

(4) Requirements regulating the performance of contracts.

(b) There is no authority for waiver of—

(1) Any provision of the Arms Export Control Act (22 U.S.C. 2751);

(2) Any provision of 10 U.S.C. 2304;

(3) The cargo preference laws of the United States, including the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)); or

(4) Any of the financial management responsibilities administered by the Secretary of the Treasury.

(c) Forward any request for waiver under a cooperative project to the Deputy Secretary of Defense, through the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics). The waiver request shall include a draft Determination and Findings for signature by the Deputy Secretary of Defense establishing that the waiver is necessary to significantly further NATO standardization, rationalization, and interoperability.

(d) Obtain the approval of the Deputy Secretary of Defense before committing to make a waiver in an agreement or a contract.

225.871–5 Directed Subcontracting.

(a) The Director of Defense Procurement and Acquisition Policy may authorize the direct placement of subcontracts with particular subcontractors. Directed subcontracting is not authorized unless specifically addressed in the cooperative project agreement.

(b) In some instances, it may not be feasible to name specific subcontractors at the time the agreement is concluded. However, the agreement shall clearly

state the general provisions for work sharing at the prime and subcontract level.

(c) The agreement is the authority for a contractual provision requiring the contractor to place certain subcontracts with particular subcontractors. No separate justification and approval during the acquisition process is required.

225.871–6 Disposal of property.

Dispose of property that is jointly acquired by the members of a cooperative project under the procedures established in the agreement or in a manner consistent with the terms of the agreement.

225.871–7 Congressional notification.

(a) Congressional notification is required when DoD makes a determination to award a contract or subcontract to a particular entity, if the determination was not part of the certification made under 22 U.S.C. 2767(f) before finalizing the cooperative agreement.

(1) Departments and agencies shall provide a proposed Congressional notice to the Director of Defense Procurement and Acquisition Policy in sufficient time to forward to Congress before the time of contract award.

(2) The proposed notice shall include the reason it is necessary to use the authority to designate a particular contractor or subcontractor.

(b) Congressional notification is also required each time a statutory waiver under 225.871–4 is incorporated in a contract or a contract modification, if such information was not provided in the certification to Congress before finalizing the cooperative agreement.

225.872 Contracting with qualifying country sources.

225.872–1 General.

(a) As a result of memoranda of understanding and other international agreements, DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American Act or the Balance of Payments Program to the acquisition of qualifying country end products from the following qualifying countries:

Australia
Belgium
Canada
Denmark
Egypt
Federal Republic of Germany
France
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Portugal
Spain
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland

(b) Individual acquisitions of qualifying country end products from the following qualifying countries may, on a purchase-by-purchase basis (see 225.872–4), be exempted from application of the Buy American Act and the Balance of Payments Program as inconsistent with the public interest:

Austria
Finland
Sweden

(c) The determination in paragraph (a) of this subsection does not limit the authority of the Secretary concerned to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a qualifying country source when considered necessary for national defense reasons.

225.872–2 Applicability.

(a) This section applies to all acquisitions of supplies except those restricted by—

(1) U.S. National Disclosure Policy, DoDD 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations;

(2) U.S. defense mobilization base requirements purchased under the authority of FAR 6.302–3(a)(2)(i), except for quantities in excess of that required to maintain the defense mobilization base. This restriction does not apply to Canadian planned producers.

(i) Review individual solicitations to determine whether this restriction applies.

(ii) Information concerning restricted items may be obtained from the Deputy Under Secretary of Defense (Industrial Affairs);

(3) Other U.S. laws or regulations (*e.g.*, the annual DoD appropriations act); and

(4) U.S. industrial security requirements.

(b) This section does not apply to construction contracts.

225.872–3 Solicitation procedures.

(a) Include qualifying country sources on solicitation mailing lists upon their request (see FAR 14.205).

(b) Except for items developed under the U.S./Canadian Development Sharing Program, use the criteria for soliciting and awarding contracts to small business concerns under FAR Part 19 without regard to whether there are potential qualifying country sources for the end product. Do not consider an offer of a qualifying country end product if the solicitation is identified for the exclusive participation of small business concerns.

(c) Send solicitations directly to qualifying country sources. Solicit Canadian sources through the Canadian Commercial Corporation in accordance with 225.870.

(d) Use international air mail if solicitation destinations are outside the United States and security classification permits such use.

(e) If unusual technical or security requirements preclude the acquisition of otherwise acceptable defense equipment from qualifying country sources, review the need for such requirements. Do not impose unusual technical or security requirements solely for the purpose of precluding the acquisition of defense equipment from qualifying countries.

(f) Do not automatically exclude qualifying country sources from submitting offers because their supplies have not been tested and evaluated by the department or agency.

(1) Consider the adequacy of qualifying country service testing on a case-by-case basis. Departments or agencies that must limit solicitations to sources whose items have been tested and evaluated by the department or agency shall consider supplies from qualifying country sources that have been tested and accepted by the qualifying country for service use.

(2) The department or agency may perform a confirmatory test, if necessary.

(3) Apply U.S. test and evaluation standards, policies, and procedures when the department or agency decides that confirmatory tests of qualifying country end products are necessary.

(4) If it appears that these provisions might adversely delay service programs, obtain the concurrence of the Under Secretary of Defense (Acquisition, Technology, and Logistics), before excluding the qualifying country source from consideration.

(g) Permit industry representatives from a qualifying country to attend symposia, program briefings, prebid conferences (see FAR 14.207 and 15.201(c)), and similar meetings that address U.S. defense equipment needs and requirements. When practical, structure these meetings to allow attendance by representatives of qualifying country concerns.

225.872–4 Individual determinations.

(a) If the offer of an end product from a qualifying country source listed in 225.872–1(b), as evaluated, is low or otherwise eligible for award, prepare a determination and findings exempting the acquisition from the Buy American Act and the Balance of Payments Program as inconsistent with the public interest, unless another exception such as the Trade Agreements Act applies.

(b) Obtain signature of the determination and findings—

(1) At a level above the contracting officer, for acquisitions valued at or below the simplified acquisition threshold; or

(2) By the chief of the contracting office, for acquisitions with a value greater than the simplified acquisition threshold.

(c) Prepare the determination and findings substantially as follows:

Service or Agency

Exemption of the Buy Americon Act and Balance of Payments Program

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.103(a), the acquisition of a qualifying country end product may be made as follows:

Findings

1. The (*contracting office*) proposes to purchase under contract number ____, (*describe item*) mined, produced, or manufactured in (*qualifying country of origin*). The total estimated cost of this acquisition is ____.

2. The United States Government and the Government of _____ have agreed to remove barriers to procurement at the prime and subcontract level for defense equipment produced in each other's countries insofar as laws and regulations permit.

3. The agreement provides that the Department of Defense will evaluate competitive offers of qualifying country end products mined, produced, or manufactured in (*qualifying country*) without imposing any price differential under the Buy American Act or the Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that such items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of such items shall fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. To achieve the foregoing objectives, the solicitation contained the clause (*title and number of the Buy American Act clause contained in the contract*). Offers were solicited from other sources and the offer received from (*offeror*) is found to be otherwise eligible for award.

Determination

I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act or the Balance of Payments Program to the offer described in this determination and findings.

_____
(Date)

225.872–5 Contract administration.

(a) Arrangements exist with some qualifying countries to provide reciprocal contract administration services. Some arrangements are at no cost to either government. To determine whether such an arrangement has been negotiated and what contract administration functions are covered, contact the Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), ((703) 697–9351, DSN 227–9351).

(b) When contract administration services are required on contracts to be performed in qualifying countries, direct the request to the cognizant activity listed in the Federal Directory of Contract Administration Services. The cognizant activity also will arrange contract administration services for DoD subcontracts that qualifying country sources place in the United States.

(c) The contract administration activity receiving a delegation shall determine whether any portions of the delegation are covered by memoranda of understanding annexes and, if so, shall delegate those functions to the appropriate organization in the qualifying country's government.

(d) Information on quality assurance delegations to foreign governments is in Subpart 246.4, Government Contract Quality Assurance.

225.872–6 Audit.

(a) Memoranda of understanding with some qualifying countries contain annexes that provide for reciprocal "no-cost" audits of contracts and subcontracts (pre- and post-award).

(b) To determine if such an annex is applicable to a particular qualifying country, contact the Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), ((703) 697–9351, DSN 227–9351).

(c) Handle requests for audits in qualifying countries in accordance with 215.404–2(c).

(1) Except for the United Kingdom, send the request to the administrative contracting officer at the cognizant activity listed in Section 2B of the Federal Directory of Contract Administration Services. Send the request for audit from the United Kingdom directly to their Ministry of Defence.

(2) Send an advance copy of the request to the focal point identified by the Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting).

225.872–7 Industrial security for qualifying countries.

The required procedures for safeguarding classified defense information necessary for the performance of contracts awarded to qualifying country sources are in the DoD Industrial Security Regulation DoD 5220.22–R (implemented for the Army by AR 380–49; for the Navy by SECNAV Instruction 5510.1H; for the Air Force by AFI 31–601; for the Defense Information Systems Agency by DCA Instruction 240–110–8; and for the National Imagery and Mapping Agency by NIMA Instruction 5220.22).

225.872–8 Subcontracting with qualifying country sources.

In reviewing contractor subcontracting procedures, the contracting officer shall ensure that the contract does not preclude qualifying country sources from competing for subcontracts, except when restricted by national security interest reasons, mobilization base considerations, or applicable U.S. laws or regulations (see the clause at 252.225–7002, Qualifying Country Sources as Subcontractors).

225.873 Waiver of United Kingdom commercial exploitation levies.

225.873–1 Policy.

DoD and the Government of the United Kingdom (U.K.) have agreed to waive U.K. commercial exploitation levies and U.S. nonrecurring cost recoupment charges on a reciprocal basis. For U.K. levies to be waived, the offeror or contractor shall identify the levies and the contracting officer shall request a waiver before award of the contract or subcontract under which the levies are charged.

225.873–2 Procedures.

(a) The Government of the U.K. shall approve waiver of U.K. levies. When an offeror or contractor identifies a levy included in an offered or contract price, the contracting officer shall provide written notification to the Defense Security Cooperation Agency, ATTN: PSD-PMD, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306, telephone (703) 601–3864. The Defense Security Cooperation Agency will request a waiver of the levy from the Government of the U.K. The notification shall include—

(1) Name of the U.K. firm;

(2) Prime contract number;

(3) Description of item for which waiver is being sought;
(4) Quantity being acquired; and
(5) Amount of levy.
(b) Waiver may occur after contract award. If levies are waived before contract award, evaluate the offer without the levy. If levies are identified but not waived before contract award, evaluate the offer inclusive of the levies.

■ 16. Subpart 225.9 is revised to read as follows:

Subpart 225.9—Customs and Duties

Sec.
225.901 Policy.
225.902 Procedures.
225.903 Exempted supplies.

225.901 Policy.

Unless the supplies are entitled to duty-free treatment under a special category in the Harmonized Tariff Schedule of the United States (*e.g.*, the Caribbean Basin Economic Recovery Act or NAFTA), or unless the supplies already have entered into the customs territory of the United States and the contractor already has paid the duty, DoD will issue duty-free entry certificates for—
(1) Qualifying country supplies (end products and components);
(2) Eligible products (end products but not components) under contracts subject to the Trade Agreements Act or NAFTA; and
(3) Other foreign supplies for which the contractor estimates that duty will exceed $200 per shipment into the customs territory of the United States.

225.902 Procedures.

(1) *Formal entry and release.*
(i) The administrative contracting officer shall—
(A) Ensure that contractors are aware of and understand any Duty-Free Entry clause requirements. Contractors should understand that failure by them or their subcontractors to provide the data required by the clause will result in treatment of the shipment as without benefit of free entry under Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States.
(B) Upon receipt of the required notice of purchase of foreign supplies from the contractor or any tier subcontractor—
(*1*) Verify the duty-free entitlement of supplies entering under the contract; and
(*2*) Review the prime contract to ensure that performance of the contract requires the foreign supplies (quantity and price) identified in the notice.
(C) Within 20 days after receiving the notification of purchase of foreign supplies, forward the following information in the format indicated to the Commander, DCMA New York, ATTN: Customs Team, DCMAE–GNTF, 207 New York Avenue, Building 120, Staten Island, NY 10305–5013:

We have received a contractor notification of the purchase of foreign supplies. I have verified that foreign supplies are required for the performance of the contract.
Prime Contractor Name and Address:
Prime Contractor CAGE Code:
Prime Contract Number plus Delivery Order Number, if applicable:
Total Dollar Value of the Prime Contract or Delivery Order:
Expiration Date of the Prime Contract or Delivery Order:
Foreign Supplier Name and Address:
Number of Subcontract/Purchase Order for Foreign Supplies:
Total Dollar Value of the Subcontract for Foreign Supplies:
Expiration Date of the Subcontract for Foreign Supplies:
CAO Activity Address Number:
ACO Name and Telephone Number:
ACO Code:
Signature:
Title:

(D) If a contract modification results in a change to any data verifying duty-free entitlement previously furnished, forward a revised notification including the changed data to DCMA New York.
(ii) The Customs Team, DCMAE–GNTF, DCMA New York—
(A) Is responsible for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract; and
(B) Upon receipt of import documentation for incoming shipments from the contractor, its agent, or the U.S. Customs Service, will verify the duty-free entitlement and execute the duty-free entry certificate.
(iii) Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or its agent (import broker) for shipments to other than a military installation, will file U.S. Customs Form 7501, 7501A, or 7506, with the District Director of Customs.
(2) *Immediate entry and release.* Importations made in the name of a DoD military facility or shipped directly to a military facility are entitled to release under the immediate delivery procedure.
(i) A DoD immediate delivery application has been approved and is on file at Customs Headquarters.
(ii) The application is for an indefinite period and is good for all Customs districts, areas, and ports.

225.903 Exempted supplies.

(b)(i) The term "supplies"—
(A) Includes—
(1) Articles known as "stores," such as food, medicines, and toiletries; and
(2) All consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes; and
(B) Does not include portable articles necessary and appropriate for the navigation, operation, or maintenance of the vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term "equipment."
(ii) The duty-free certificate shall be printed, stamped, or typed on the face of, or attached to, Customs Form 7501. A duly designated officer or civilian official of the appropriate department or agency shall execute the certificate in the following form:

(Date) _____

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name) _____
(Title) _____
(Organization) _____

■ 17. Subpart 225.11 is revised to read as follows:

Subpart 225.11—Solicitation Provisions and Contract Clauses

Sec.
225.1100 Scope of subpart.
225.1101 Acquisition of supplies.
225.1103 Other provisions and clauses.

225.1100 Scope of subpart.

This subpart prescribes the clauses that implement Subparts 225.1 through 225.10. The clauses that implement Subparts 225.70 through 225.75 are prescribed within those subparts.

225.1101 Acquisition of supplies.

(1) Use the provision at 252.225–7000, Buy American Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–2, Buy American Act Certificate. Use the provision in any solicitation that includes the clause at 252.225–7001, Buy American Act and Balance of Payments Program.
(2) Use the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225–1, Buy American Act—Supplies, in solicitations and contracts unless'
(i) All line items will be acquired from a particular source or sources under the authority of FAR 6.302–3;

(ii) All line items must be domestic or qualifying country end products in accordance with Subpart 225.70. (However, the clause may still be required if Subpart 225.70 requires manufacture of the end product in the United States or in the United States or Canada, without a corresponding requirement for use of domestic components);
(iii) An exception to the Buy American Act or Balance of Payments Program applies; or
(iv) One or both of the following clauses will apply to all line items in the contract:
(A) 252.225–7021, Trade Agreements.
(B) 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.
(3) Use the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include one of the following clauses:
(i) 252.225–7001, Buy American Act and Balance of Payments Program.
(ii) 252.225–7021, Trade Agreements.
(iii) 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.
(4) Use the clause at 252.225–7013, Duty-Free Entry, instead of the clause at FAR 52.225–8. Do not use the clause for acquisitions of supplies that will not enter the customs territory of the United States.
(5) Use the provision at 252.225–7020, Trade Agreements Certificate, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations that include the clause at 252.225–7021, Trade Agreements.
(6)(i) Use the clause at 252.225–7021, Trade Agreements, instead of the clause at FAR 52.225–5, Trade Agreements, if the Trade Agreements Act applies.
(ii) Do not use the clause if purchase from foreign sources is restricted, unless the contracting officer anticipates a waiver of the restriction.
(iii) The acquisition of eligible and noneligible products under the same contract may result in the application of trade agreements to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Trade Agreements clause.
(7) Use the provision at 252.225–7032, Waiver of United Kingdom Levies-Evaluation of Offers, in solicitations if a U.K. firm is expected to—
(i) Submit an offer; or
(ii) Receive a subcontract exceeding $1 million.
(8) Use the clause at 252.225–7033, Waiver of United Kingdom Levies, in solicitations and contracts if a U.K. firm is expected to—
(i) Submit an offer; or
(ii) Receive a subcontract exceeding $1 million.
(9) Use the provision at 252.225–7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–4, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, in solicitations that include the clause at 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. Use the provision with its Alternate I when the clause at 252.225–7036 is used with its Alternate I.
(10)(i) Use the clause at 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, in solicitations and contracts for the items listed at 225.401–70, when the estimated value equals or exceeds $25,000, but is less than $169,000, and NAFTA applies to the acquisition.
(A) Use the basic clause when the estimated value equals or exceeds $56,190.
(B) Use the clause with its Alternate I when the estimated value equals or exceeds $25,000 but is less than $56,190.
(ii) Do not use the clause if purchase from foreign sources is restricted (see 225.401(a)(2)), unless the contracting officer anticipates a waiver of the restriction.
(iii) The acquisition of eligible and noneligible products under the same contract may result in the application of the North American Free Trade Agreement Implementation Act to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program clause.

225.1103 Other provisions and clauses.

(1) Unless the contracting officer knows that the prospective contractor is not a domestic concern, use the clause at 252.225–7005, Identification of Expenditures in the United States, in solicitations and contracts that—
(i) Exceed the simplified acquisition threshold; and
(ii) Are for the acquisition of—
(A) Supplies for use outside the United States;
(B) Construction to be performed outside the United States; or
(C) Services to be performed primarily outside the United States.
(2) Unless an exception applies or a waiver has been granted in accordance with Subpart 225.6, use the provision at 252.225–7031, Secondary Arab Boycott of Israel, in all solicitations.
(3) Use the clause at 252.225–7041, Correspondence in English, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.
(4) Use the provision at 252.225–7042, Authorization to Perform, in solicitations when contract performance will be wholly or in part in a foreign country.

225.7000 [Amended]

■ 18. Section 225.7000 is amended as follows:
■ a. In paragraph (a), in the first sentence, by removing "Defense" and adding in its place "DoD"; and
■ b. In paragraph (b), by adding "the" before "Balance of Payments Program".

■ 19. Section 225.7002–3 is amended by revising paragraph (c) to read as follows:

225.7002–3 Contract clauses.

* * * * *

(c) Use the clause at 252.225–7015, Restriction on Acquisition of Hand or Measuring Tools, in solicitations and contracts exceeding the simplified acquisition threshold that require delivery of hand or measuring tools.

225.7003 through 225.7023–3 [Removed]

■ 20. Sections 225.7003 through 225.7023–3 are removed.

■ 21. New sections 225.7003 through 225.7017–4 are added to read as follows:

225.7003 Waiver of restrictions of 10 U.S.C. 2534.

(a) Where provided for elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534(a) may be waived as follows:
(1)(i) The Under Secretary of Defense (Acquisition, Technology, and Logistics), without power of delegation, may waive a restriction for a particular item for a particular foreign country upon determination that—
(A) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country; or

(B) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(ii) A notice of the determination to exercise the waiver authority shall be published in the **Federal Register** and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(iii) The effective period of the waiver shall not exceed 1 year.

(iv) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, the waiver shall be applied as directed or authorized in the waiver to—

(A) Subcontracts entered into on or after the effective date of the waiver; and

(B) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.

(2) The head of the contracting activity may waive a restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(i) The restriction would cause unreasonable delays.

(ii) Satisfactory quality items manufactured in the United States or Canada are not available.

(iii) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.

(iv) Application of the restriction is not in the national security interests of the United States.

(v) Application of the restriction would adversely affect a U.S. company.

(3) A restriction is waived when it would cause unreasonable costs. The cost of an item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items that are not of U.S. or Canadian origin.

(b) In accordance with the provisions of paragraphs (a)(1)(i) through (iii) of this section, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restrictions of 10 U.S.C. 2534(a) for certain items manufactured in the United Kingdom, including air circuit breakers for naval vessels, totally enclosed lifeboats, and ball and roller bearings (see 225.7006, 225.7008, and 225.7009). This waiver applies to—

(1) Procurements under solicitations issued on or after August 4, 1998; and

(2) Subcontracts and options under contracts entered into prior to August 4, 1998, under the conditions described in paragraph (a)(1)(iv) of this section.

225.7004 Restriction on acquisition of foreign buses.

225.7004–1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire a multipassenger motor vehicle (bus) unless it is manufactured in the United States or Canada.

225.7004–2 Applicability.

Apply this restriction if the buses are purchased, leased, rented, or made available under contracts for transportation services.

225.7004–3 Exceptions.

This restriction does not apply in any of the following circumstances:

(a) Buses manufactured outside the United States and Canada are needed for temporary use because buses manufactured in the United States or Canada are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States or Canada.

(b) The requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, buses manufactured outside the United States and Canada may be used for temporary periods of time. Such use may not, however, exceed the period of time needed to meet the special requirement.

(c) Buses manufactured outside the United States and Canada are available at no cost to the U.S. Government.

(d) The acquisition is for an amount at or below the simplified acquisition threshold.

225.7004–4 Waiver.

The waiver criteria at 225.7003(a) apply to this restriction.

225.7005 Restriction on certain chemical weapons antidote.

225.7005–1 Restriction.

In accordance with 10 U.S.C. 2534 and defense industrial mobilization requirements (see Subpart 208.72), do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the chemical weapons antidote or component is manufactured in the United States or Canada by a company that—

(a) Is a producer under the industrial preparedness program at the time of contract award;

(b) Has received all required regulatory approvals; and

(c) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

225.7005–2 Exception.

This restriction does not apply if the acquisition is for an amount at or below the simplified acquisition threshold.

225.7005–3 Waiver.

The waiver criteria at 225.7003(a) apply to this restriction.

225.7006 Restriction on air circuit breakers for naval vessels.

225.7006–1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire air circuit breakers for naval vessels unless they are manufactured in the United States or Canada.

225.7006–2 Exceptions.

This restriction does not apply if the acquisition is—

(a) For an amount at or below the simplified acquisition threshold; or

(b) For spare or repair parts needed to support air circuit breakers manufactured outside the United States. Support includes the purchase of spare air circuit breakers when those from alternate sources are not interchangeable.

225.7006–3 Waiver.

(a) The waiver criteria at 225.7003(a) apply to this restriction.

(b) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restriction for air circuit breakers manufactured in the United Kingdom. See 225.7003(b) for applicability.

225.7006–4 Solicitation provision and contract clause.

(a) Use the provision at 252.225–7037, Evaluation of Offers for Air Circuit Breakers, in solicitations requiring air circuit breakers for naval vessels unless—

(1) An exception applies; or

(2) A waiver has been granted, other than the waiver for the United Kingdom, which has been incorporated into the provision.

(b) Use the clause at 252.225–7038, Restriction on Acquisition of Air Circuit Breakers, in solicitations and contracts requiring air circuit breakers for naval vessels unless—

(1) An exception applies; or

(2) A waiver has been granted, other than the waiver for the United Kingdom, which has been incorporated into the clause.

225.7007 Restrictions on anchor and mooring chain.

225.7007–1 Restrictions.

(a) In accordance with Section 8041 of the Fiscal Year 1991 DoD Appropriations Act (Public Law 101–511) and similar sections in subsequent DoD appropriations acts, do not acquire welded shipboard anchor and mooring chain, four inches or less in diameter, unless—

(1) It is manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States exceeds 50 percent of the total cost of components.

(b) 10 U.S.C. 2534 also restricts acquisition of welded shipboard anchor and mooring chain, four inches or less in diameter, when used as a component of a naval vessel. However, the Appropriations Act restriction described in paragraph (a) of this subsection takes precedence over the restriction of 10 U.S.C. 2534.

225.7007–2 Waiver.

(a) The Secretary of the department responsible for acquisition may waive the restriction in 225.7007–1(a), on a case-by-case basis, if—

(1) Sufficient domestic suppliers are not available to meet DoD requirements on a timely basis; and

(2) The acquisition is necessary to acquire capability for national security purposes.

(b) Document the waiver in a written determination and findings containing—

(1) The factors supporting the waiver; and

(2) A certification that the acquisition must be made in order to acquire capability for national security purposes.

(c) Provide a copy of the determination and findings to the House and Senate Committees on Appropriations.

225.7007–3 Contract clause.

Unless a waiver has been granted, use the clause at 252.225–7019, Restriction on Acquisition of Anchor and Mooring Chain, in solicitations and contracts requiring welded shipboard anchor or mooring chain four inches or less in diameter.

225.7008 Restrictions on totally enclosed lifeboat survival systems.

225.7008–1 Restrictions.

(a) In accordance with Section 8124 of the Fiscal Year 1994 DoD Appropriations Act (Pub. L. 103–139) and Section 8093 of the Fiscal Year 1995 DoD Appropriations Act (Pub. L. 103–335), do not purchase a totally enclosed lifeboat survival system, which consists of the lifeboat and associated davits and winches, unless—

(1) 50 percent or more of the components are manufactured in the United States; and

(2) 50 percent or more of the labor in the final manufacture and assembly of the entire system is performed in the United States.

(b) In accordance with 10 U.S.C. 2534(a), do not purchase a totally enclosed lifeboat that is a component of a naval vessel unless it is manufactured in the United States or Canada.

(1) 10 U.S.C. 2534(h) prohibits the use of a contract clause or certification to implement this restriction.

(2) Implement this restriction through management and oversight techniques that achieve the objective of the restriction without imposing a significant management burden on the Government or the contractor.

225.7008–2 Exceptions.

The restriction in 225.7008–1(b) does not apply if the acquisition is—

(a) For an amount at or below the simplified acquisition threshold; or

(b) For spare or repair parts needed to support totally enclosed lifeboats manufactured outside the United States.

225.7008–3 Waiver.

(a) The waiver criteria at 225.7003(a) apply to the restriction of 225.7008–1(b).

(b) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restriction of 225.7008–1(b) for totally enclosed lifeboats manufactured in the United Kingdom. See 225.7003(b) for applicability.

225.7008–4 Contract clause.

Use the clause at 252.225–7039, Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems, in solicitations and contracts that require delivery of totally enclosed lifeboat survival systems.

225.7009 Restrictions on ball and roller bearings.

225.7009–1 Restrictions.

(a) In accordance with 10 U.S.C. 2534, through fiscal year 2005, do not acquire ball and roller bearings or bearing components unless they are manufactured in the United States or Canada.

(b) In accordance with Section 8099 of the Fiscal Year 1996 DoD Appropriations Act (Pub. L. 104–61) and similar sections in subsequent DoD appropriations acts, do not acquire ball and roller bearings unless the bearings and bearing components are manufactured in the United States or Canada.

225.7009–2 Exceptions.

(a) The restriction in 225.7009–1(a) does not apply to—

(1) Acquisitions using simplified acquisition procedures, unless ball or roller bearings or bearing components are the end items being purchased;

(2) Commercial items incorporating ball or roller bearings;

(3) Miniature and instrument ball bearings needed to meet urgent military requirements;

(4) Items acquired overseas for use overseas; or

(5) Ball and roller bearings or bearing components, or items containing bearings, for use in a cooperative or co-production project under an international agreement. This exception does not apply to miniature and instrument ball bearings.

(b) The restriction in 225.7009–1(b) does not apply to contracts or subcontracts for the acquisition of commercial items, except for commercial ball and roller bearings acquired as end items.

225.7009–3 Waiver.

(a)(1) The waiver criteria at 225.7003(a)(1) apply to the restriction of 225.7009–1(a).

(2) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restriction of 225.7009–1(a) for ball and roller bearings manufactured in the United Kingdom. See 225.7003(b) for applicability.

(b) The head of the contracting activity may waive the restriction in 225.7009–1(a)—

(1) Upon execution of a determination and findings that—

(i) No domestic (U.S. or Canadian) bearing manufacturer meets the requirement;

(ii) It is not in the best interests of the United States to qualify a domestic bearing to replace a qualified nondomestic bearing.

(A) This determination shall be based on a finding that the qualification of a domestically manufactured bearing would cause unreasonable costs or delay.

(B) A finding that a cost is unreasonable should take into

consideration DoD policy to assist the domestic industrial mobilization base.

(C) Contracts should be awarded to domestic bearing manufacturers to increase their capability to reinvest and become more competitive;

(iii) Application of the restriction would result in the existence of only one source for the item in the United States or Canada;

(iv) Application of the restriction is not in the national security interests of the United States; or

(v) Application of the restriction would adversely affect a U.S. company.

(2) If the acquisition is for an amount less than the simplified acquisition threshold and simplified acquisition procedures are being used.

(3) For multiyear contracts or contracts exceeding 12 months, except those for miniature and instrument ball bearings, if—

(i) The head of the contracting activity executes a determination and findings in accordance with paragraph (b)(1) of this subsection;

(ii) The contractor submits a written plan for transitioning from the use of nondomestic to domestically manufactured bearings;

(iii) The contractor's written plan—

(A) States whether a domestically manufactured bearing can be qualified, at a reasonable cost, for use during the course of the contract period;

(B) Identifies any bearings that are not domestically manufactured, their application, and source of supply; and

(C) Describes, including cost and timetable, the transition to a domestically manufactured bearing (the timetable for the transition should normally take no longer than 24 months from the date the waiver is granted); and

(iv) The contracting officer accepts the contractor's plan and incorporates it into the contract.

(4) For miniature and instrument ball bearings, only if the contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernmental use.

(c) The Secretary of the department responsible for acquisition may waive the restriction in 225.7009–1(b), on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(1) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(2) The acquisition must be made in order to acquire capability for national security purposes.

225.7009–4 Contract clause.

(a) Use the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, unless—

(1) The items being acquired do not contain ball and roller bearings; or

(2) An exception applies or a waiver has been granted, other than the waiver for the United Kingdom, which has been incorporated into the clause.

(b) Use the clause with its Alternate I in solicitations and contracts that use simplified acquisition procedures.

225.7010 Restriction on vessel propellers.

225.7010–1 Restriction.

In accordance with Section 8064 of the Fiscal Year 2001 DoD Appropriations Act (Public Law 106–259), do not use fiscal year 2000 or 2001 funds to acquire vessel propellers other than those produced by a domestic source and of domestic origin, *i.e.*, vessel propellers—

(a) Manufactured in the United States or Canada; and

(b) For which all component castings were poured and finished in the United States or Canada.

225.7010–2 Exceptions.

This restriction does not apply to contracts or subcontracts for acquisition of commercial items.

225.7010–3 Waiver.

The Secretary of the department responsible for acquisition may waive this restriction on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7010–4 Contract clause.

Use the clause at 252.225–7023, Restriction on Acquisition of Vessel Propellers, in solicitations and contracts that use fiscal year 2000 or 2001 funds for the acquisition of vessels or vessel propellers, unless—

(a) An exception applies or a waiver has been granted; or

(b) The vessels being acquired do not contain vessel propellers.

225.7011 Restriction on carbon, alloy, and armor steel plate.

225.7011–1 Restriction.

In accordance with Section 8111 of the Fiscal Year 1992 DoD Appropriations Act (Public Law 102–172) and similar sections in subsequent DoD appropriations acts, do not acquire any of the following types of carbon, alloy, or armor steel plate unless it is melted and rolled in the United States or Canada:

(a) Carbon, alloy, or armor steel plate in Federal Supply Class 9515.

(b) Carbon, alloy, or armor steel plate described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.

225.7011–2 Waiver.

The Secretary of the department responsible for acquisition may waive this restriction, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate U.S. or Canadian supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7011–3 Contract clause.

Unless a waiver has been granted, use the clause at 252.225–7030, Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate, in solicitations and contracts that'

(a) Require the delivery to the Government of carbon, alloy, or armor steel plate that will be used in a facility owned by the Government or under the control of DoD; or

(b) Require contractors operating in a Government-owned facility or a facility under the control of DoD to purchase carbon, alloy, or armor steel plate.

225.7012 Restriction on supercomputers.

225.7012–1 Restriction.

In accordance with Section 8112 of Public Law 100–202, and similar sections in subsequent DoD appropriations acts, do not purchase a supercomputer unless it is manufactured in the United States.

225.7012–2 Waiver.

The Secretary of Defense may waive this restriction, on a case-by-case basis, after certifying to the Armed Services and Appropriations Committees of Congress that—

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7012–3 Contract clause.

Unless a waiver has been granted, use the clause at 252.225–7011, Restriction on Acquisition of Supercomputers, in solicitations and contracts for the acquisition of supercomputers.

225.7013 Restrictions on construction or repair of vessels in foreign shipyards.

In accordance with 10 U.S.C. 7309—

(a) Do not award a contract to construct in a foreign shipyard—

(1) A vessel for any of the armed forces; or

(2) A major component of the hull or superstructure of a vessel for any of the armed forces; and

(b) Do not overhaul, repair, or maintain in a foreign shipyard, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States. This restriction does not apply to voyage repairs.

225.7014 Restriction on overseas military construction.

For restriction on award of military construction contracts to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, see 236.274(a).

225.7015 Restriction on overseas architect-engineer services.

For restriction on award of architect-engineer contracts to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, see 236.602–70.

225.7016 Restriction on research and development.

(a) In accordance with Public Law 92–570, do not use DoD appropriations to make an award to any foreign corporation, organization, person, or entity, for research and development in connection with any weapon system or other military equipment, if there is a U.S. corporation, organization, person, or entity—

(1) Equally competent; and

(2) Willing to perform at a lower cost.

(b) This restriction does not affect the requirements of FAR Part 35 for selection of research and development contractors. However, when a U.S. source and a foreign source are equally competent, award to the source that will provide the services at the lower cost.

225.7017 Restriction on Ballistic Missile Defense research, development, test, and evaluation.

225.7017–1 Definitions.

Competent, foreign firm, and *U.S. firm* are defined in the provision at 252.225–7018, Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation.

225.7017–2 Restriction.

In accordance with Section 222 of the DoD Authorization Act for Fiscal Years 1988 and 1989 (Pub. L. 100–180), do not use any funds appropriated to or for the use of DoD to enter into or carry out a contract with a foreign government or firm, including any contract awarded as a result of a broad agency announcement, if the contract provides for the conduct of research, development, test, and evaluation (RDT&E) in connection with the Ballistic Missile Defense Program.

225.7017–3 Exceptions.

This restriction does not apply—

(a) To contracts awarded to a foreign government or firm if the contracting officer determines that—

(1) The contract will be performed within the United States;

(2) The contract is exclusively for RDT&E in connection with antitactical ballistic missile systems; or

(3) The foreign government or firm agrees to share a substantial portion of the total contract cost. Consider the foreign share as substantial if it is equitable with respect to the relative benefits that the United States and the foreign parties will derive from the contract. For example, if the contract is more beneficial to the foreign party, its share of the cost should be correspondingly higher; or

(b) If the head of the contracting activity certifies in writing, before contract award, that a U.S. firm cannot competently perform a contract for RDT&E at a price equal to or less than the price at which a foreign government or firm would perform the RDT&E. The contracting officer or source selection authority, as applicable, shall make a determination that will be the basis for the certification.

(1) The determination shall—

(i) Describe the contract effort;

(ii) State the number of proposals solicited and received from both U.S. and foreign firms;

(iii) Identify the proposed awardee and the amount of the contract;

(iv) State that selection of the contractor was based on the evaluation factors contained in the solicitation, or the criteria contained in the broad agency announcement; and

(v) State that a U.S. firm cannot competently perform the effort at a price equal to, or less than, the price at which the foreign awardee would perform it.

(2) When either a broad agency announcement or program research and development announcement is used, or when the determination is otherwise not based on direct competition between foreign and domestic proposals, the determination shall not be merely conclusory.

(i) The determination shall specifically explain its basis, include a description of the method used to determine the competency of U.S. firms, and describe the cost or price analysis performed.

(ii) Alternately, the determination may contain—

(A) A finding, including the basis for such finding, that the proposal was submitted solely in response to the terms of a broad agency announcement, program research and development announcement, or other solicitation document without any technical guidance from the program office; and

(B) A finding, including the basis for such finding, that disclosure of the information in the proposal for the purpose of conducting a competitive acquisition is prohibited.

(3) Within 30 days after contract award, forward a copy of the certification and supporting documentation to the Missile Defense Agency, Attn: MDA/DRI, 7100 Defense Pentagon, Washington, DC 20301–7100.

225.7017–4 Solicitation provision.

Unless foreign participation is otherwise excluded, use the provision at 252.225–7018, Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation, in competitively negotiated solicitations for RDT&E in connection with the Ballistic Missile Defense Program.

■ 22. Sections 225.7100 through 225.7103–3 are revised to read as follows:

225.7100 Scope of subpart.

This subpart contains foreign product restrictions that are based on policies designed to protect the defense industrial base.

225.7101 Definitions.

Domestic manufacture is defined in the clause at 252.225–7025, Restriction on Acquisition of Forgings.

225.7102 Forgings.

225.7102–1 Policy.

When acquiring the following forging items, whether as end items or components, acquire items that are of domestic manufacture to the maximum extent practicable:

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.

225.7102–2 Exceptions.

The policy in 225.7102–1 does not apply to acquisitions—

(a) Using simplified acquisition procedures, unless the restricted item is the end item being purchased;

(b) Overseas for overseas use; or

(c) When the quantity acquired exceeds the amount needed to maintain the U.S. defense mobilization base (provided the excess quantity is an economical purchase quantity). The requirement for domestic manufacture does not apply to the quantity above that required to maintain the base, in which case, qualifying country sources may compete.

225.7102–3 Waiver.

Upon request from a contractor, the contracting officer may waive the requirement for domestic manufacture of the items listed in 225.7102–1.

225.7102–4 Contract clause.

Use the clause at 252.225–7025, Restriction on Acquisition of Forgings, in solicitations and contracts, unless—

(a) The supplies being acquired do not contain any of the items listed in 225.7102–1; or

(b) An exception in 225.7102–2 applies. If an exception applies to only a portion of the acquisition, specify the excepted portion in the solicitation and contract.

225.7103 Polyacrylonitrile (PAN) carbon fiber.

225.7103–1 Policy.

DoD has imposed restrictions on the acquisition of PAN carbon fiber from foreign sources. DoD is phasing out the restrictions over the 5-year period ending May 31, 2005. Contractors with contracts that contain the clause at 252.225–7022 shall use U.S. or Canadian manufacturers or producers for all PAN carbon fiber requirements.

225.7103–2 Waivers.

With the approval of the chief of the contracting office, the contracting officer may waive, in whole or in part, the requirement of the clause at 252.225–7022. For example, a waiver may be justified if a qualified U.S. or Canadian source cannot meet scheduling requirements.

225.7103–3 Contract clause.

Use the clause at 252.225–7022, Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber, in solicitations and contracts for major systems as follows:

(a) In solicitations and contracts issued on or before May 31, 2003, if—

(1) The system is not yet in production (milestone C as defined in DoDI 5000.2, Operation of the Defense Acquisition System); or

(2) The clause was used in prior program contracts.

(b) In solicitations and contracts issued during the period beginning June 1, 2003, and ending May 31, 2005, if the system is not yet in development and demonstration (milestone B as defined in DoDI 5000.2).

■ 23. Section 225.7200 is revised to read as follows:

225.7200 Scope of subpart.

This subpart—

(a) Prescribes procedures for contractor reporting and DoD monitoring of the volume, type, and nature of contract performance outside the United States; and

(b) Implements 10 U.S.C. 2410g, which requires offerors and contractors to notify DoD of any intention to perform a DoD contract outside the United States and Canada when the contract could be performed inside the United States or Canada.

■ 24. Sections 225.7202 and 225.7203 are revised to read as follows:

225.7202 Distribution of reports.

Forward a copy of reports submitted in accordance with the clause at 252.225–7004, Reporting of Contract Performance Outside the United States, to the Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), OUSD(AT&L)DPAP(PAIC), Washington, DC 20301–3060. This is necessary to satisfy the requirement of 10 U.S.C. 2410g that the notifications (or copies) be maintained in compiled form for 5 years after the date of submission.

225.7203 Solicitation provision and contract clause.

Except for acquisitions described in 225.7201—

(a) Use the provision at 252.225–7003, Report of Intended Performance Outside the United States, in solicitations with a value exceeding $500,000; and

(b) Use the clause at 252.225–7004, Reporting of Contract Performance Outside the United States, in solicitations and contracts with a value exceeding $500,000.

■ 25. Section 225.7301 is amended by revising paragraphs (b) through (d) to read as follows:

225.7301 General.

* * * * *

(b) Conduct FMS acquisitions under the same acquisition and contract management procedures used for other defense acquisitions.

(c) Separately identify known FMS requirements and the FMS customer in solicitations.

(d) Clearly identify contracts for known FMS requirements by marking "FMS requirement" on the face of the contract along with the FMS customer and the case identifier code.

■ 26. Section 225.7302 is amended as follows:

a. By revising the introductory text;

■ b. In paragraph (a)(1) by removing the period and adding a semicolon in its place; and

■ c. By revising paragraph (a)(4). The revised text reads as follows:

225.7302 Procedures.

For FMS programs that will require an acquisition, the contracting officer will assist the departmental/agency activity responsible for preparing the LOA by—

(a) * * *

(4) For noncompetitive acquisitions over $10,000, ask the prospective contractor for information on price, delivery, and other relevant factors. The request for information shall identify the fact that the information is for a potential foreign military sale and shall identify the foreign customer; and

* * * * *

225.7303 [Amended]

■ 27. Section 225.7303 is amended as follows:

■ a. In paragraph (a), in the first sentence, by removing the phrase "as are";

■ b. In paragraph (a), in the second sentence, by removing "Application" and adding in its place "However, application"; and

■ c. In paragraph (b), in the first sentence, by removing "must" and adding in its place "shall".

■ 28. Section 225.7303–2 is amended as follows:

■ a. In paragraph (a) introductory text, by revising the last sentence;

■ b. By revising paragraph (a)(1);

■ c. In paragraph (a)(2)(ii), by adding "or" before "operations/tactics";

■ d. By revising paragraph (c) introductory text; and

■ e. In paragraph (c)(1) by removing the period and adding in its place "; and". The revised text reads as follows:

225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) * * * Examples of such costs include, but are not limited to, the following:

(1) Selling expenses (not otherwise limited by FAR Part 31), such as—

(i) Maintaining international sales and service organizations;

(ii) Sales commissions and fees in accordance with FAR Subpart 3.4;

(iii) Sales promotions, demonstrations, and related travel for sales to foreign governments. Section 126.8 of the International Traffic in Arms Regulations (22 CFR 126.8) may require Government approval for these costs to be allowable, in which case the appropriate Government approval shall be obtained; and

(iv) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

* * * * *

(c) The limitations for major contractors on independent research and development and bid and proposal (IR&D/B&P) costs for projects that are of potential interest to DoD, in 231.205–18(c)(iii), do not apply to FMS contracts, except as provided in 225.7303–5. The allowability of IR&D/B&P costs on contracts for FMS not wholly paid for from funds made available on a nonrepayable basis is limited to the contract's allocable share of the contractor's total IR&D/B&P expenditures. In pricing contracts for such FMS—

* * * * *

■ 29. Section 225.7303–4 is revised to read as follows:

225.7303–4 Contingent fees.

(a) Except as provided in paragraph (b) of this subsection, contingent fees are generally allowable under DoD contracts, provided—

(1) The fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR Part 31 and FAR Subpart 3.4); and

(2) The contracting officer determines that the fees are fair and reasonable.

(b)(1) Under DoD 5105.38–M, LOAs for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) shall provide that all U.S. Government contracts resulting from the LOAs prohibit the reimbursement of contingent fees as an allowable cost under the contract, unless the contractor identifies the payments and the foreign customer approves the payments in writing before contract award (see 225.7308(a)).

(2) For FMS to countries not listed in paragraph (b)(1) of this subsection, contingent fees exceeding $50,000 per FMS case are unallowable under DoD contracts, unless the contractor identifies the payment and the foreign customer approves the payment in writing before contract award.

■ 30. Section 225.7303–5 is amended by revising paragraphs (a) and (b) to read as follows:

225.7303–5 Acquisitions wholly paid for from nonrepayable funds.

(a) In accordance with 22 U.S.C. 2762(d), price FMS wholly paid for from funds made available on a nonrepayable basis on the same costing basis with regard to profit, overhead, IR&D/B&P, and other costing elements as is applicable to acquisitions of like items purchased by DoD for its own use.

(b) Direct costs associated with meeting a foreign customer's additional or unique requirements are allowable under such contracts. Indirect burden rates applicable to such direct costs are permitted at the same rates applicable to acquisitions of like items purchased by DoD for its own use.

* * * * *

■ 31. Section 225.7305 is amended by revising the first sentence to read as follows:

225.7305 Limitation of liability.

Advise the contractor when the foreign customer will assume the risk for loss or damage under the appropriate limitation of liability clause(s) (see FAR Subpart 46.8). * * *

■ 32. Section 225.7308 is revised to read as follows:

225.7308 Contract clauses.

(a) Use the clause at 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales, in solicitations and contracts for FMS. Insert in paragraph (b)(1) of the clause the name(s) of any foreign country customer(s) listed in 225.7303–4(b).

(b) Use the clause at 252.225–7028, Exclusionary Policies and Practices of Foreign Governments, in solicitations and contracts for the purchase of supplies and services for international military education training and FMS.

■ 33. Section 225.7401 is amended by revising paragraph (d) to read as follows:

225.7401 General.

* * * * *

(d) For Air Force contracts: HQ AFSFC/SFPA; telephone, DSN 945–7035/36 or commercial (210) 925–7035/36.

* * * * *

PART 242—CONTRACT ADMINISTRATION

242.302 [Amended]

■ 34. Section 242.302 is amended by removing paragraph (a)(19).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 35. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date and paragraph (b); and

■ b. In paragraph (c), in entry "252.225–7014", by removing "(MAR 1998)" and adding in its place "(APR 2003)". The revised text reads as follows:

252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (Apr 2003)

* * * * *

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

___ 252.205–7000 Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).

___ 252.219–7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996) (15 U.S.C. 637).

___ 252.219–7004 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program) (JUN 1997) (15 U.S.C. 637 note).

___ 252.225–7001 Buy American Act and Balance of Payments Program (APR 2003) (41 U.S.C. 10a–10d, E.O. 10582).

___ 252.225–7012 Preference for Certain Domestic Commodities (FEB 2003) (10 U.S.C. 2533a).

___ 252.225–7014 Preference for Domestic Specialty Metals (APR 2003) (10 U.S.C. 2533a).

___ 252.225–7015 Restriction on Acquisition of Hand or Measuring Tools (APR 2003) (10 U.S.C. 2533a).

___ 252.225–7016 Restriction on Acquisition of Ball and Roller Bearings (APR 2003) (___ Alternate I) (APR 2003) (10 U.S.C. 2534 and Section 8099 of Public Law 104–61 and similar sections in subsequent DoD appropriations acts).

___ 252.225–7021 Trade Agreements (APR 2003) (19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note).

___ 252.225–7027 Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).

___ 252.225–7028 Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).

___ 252.225–7036 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (APR 2003) (___ Alternate I) (APR 2003) (41 U.S.C. 10a–10d and 19 U.S.C. 3301 note).

___ 252.225–7038 Restriction on Acquisition of Air Circuit Breakers (APR 2003) (10 U.S.C. 2534(a)(3)).
___ 252.227–7015 Technical Data—Commercial Items (NOV 1995) (10 U.S.C. 2320).
___ 252.227–7037 Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).
___ 252.232–7003 Electronic Submission of Payment Requests (MAR 2003) (10 U.S.C. 2227).
___ 252.243–7002 Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).
___ 252.247–7023 Transportation of Supplies by Sea (MAY 2002)
(___Alternate I) (MAR 2000)
(___Alternate II) (MAR 2000) (10 U.S.C. 2631).
___ 252.247–7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

* * * * *

■ 36. Sections 252.225–7000 through 252.225–7003 are revised to read as follows:

252.225–7000 Buy American Act—Balance of Payments Program Certificate.

As prescribed in 225.1101(1), use the following provision:

Buy American Act—Balance of Payments Program Certificate (Apr 2003)

(a) *Definitions. Domestic end product, foreign end product, qualifying country,* and *qualifying country end product* have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will evaluate offers of qualifying country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American Act and Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except those listed in paragraph (c)(2) or (3) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror certifies that the following end products are quallfying country end products:

_____
(Line Item Number Country of Origin)

_____
(Country of Origin)

(3) The following end products are other foreign end products:

_____
(Line Item Number)

_____
(Country of Origin) (If known)

(End of provision)

252.225–7001 Buy American Act and Balance of Payments Program.

As prescribed in 225.1101(2), use the following clause:

Buy American Act and Balance of Payments Program (Apr 2003)

(a) *Definitions.* As used in this clause—

(1) *Component* means an article, material, or supply incorporated directly into an end product.

(2) *Domestic end product means*—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(A) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) It is inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) *End product* means those articles, materials, and supplies to be acquired under this contract for public use.

(4) *Foreign end product* means an end product other than a domestic end product.

(5) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(6) *Qualifying country component* means a component mined, produced, or manufactured in a qualifying country.

(7) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States.

(b) This clause implements the Buy American Act (41 U.S.C. Section 10a–d). Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, the Contractor shall deliver a qualifying country end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

252.225–7002 Qualifying Country Sources as Subcontractors.

As prescribed in 225.1101(3), use the following clause:

Qualifying Country Sources as Subcontractors (Apr 2003)

(a) *Definition. Qualifying country,* as used in this clause, means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation (FAR) Supplement.

(b) Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources or U.S. sources from competing for subcontracts under this contract.

(End of clause)

252.225–7003 Report of Intended Performance Outside the United States.

As prescribed in 225.7203(a), use the following provision:

Report of Intended Performance Outside the United States (Apr 2003)

(a) The offeror shall submit a Report of Contract Performance Outside the United States, with its offer, if—

(1) The offer exceeds $10 million in value; and

(2) The offeror is aware that the offeror or a first-tier subcontractor intends to perform any part of the contract outside the United States and Canada that—

(i) Exceeds $500,000 in value; and

(ii) Could be performed inside the United States or Canada.

(b) Information to be reported includes that for—

(1) Subcontracts;

(2) Purchases; and

(3) Intracompany transfers when transfers originate in a foreign location.

(c) The offeror shall submit the report using—

(1) DD Form 2139, Report of Contract Performance Outside the United States; or

(2) A computer-generated report that contains all information required by DD Form 2139.

(d) The offeror may obtain a copy of DD Form 2139 from the Contracting Officer.

(End of provision)

■ 37. Section 252.225–7004 is added to read as follows:

252.225–7004 Reporting of Contract Performance Outside the United States.

As prescribed in 225.7203(b), use the following clause:

Reporting of Contract Performance Outside the United States (Apr 2003)

(a) *Reporting criteria.* Reporting under this clause is required for—

(1) Contracts exceeding $10 million in value, when any part that exceeds $500,000 in value could be performed inside the United States or Canada, but will be performed outside the United States and Canada. If the Contractor submitted the information with its offer, the Contractor need not resubmit the information unless it changes; and

(2) Contracts exceeding $500,000 in value, when any part that exceeds the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation will be performed outside the United States, unless—

(i) A foreign place of performance is the principal place of performance; and

(ii) The Contractor indicated the foreign place of performance in the Place of Performance provision of its offer.

(b) *Information required.* Information to be reported includes that for—

(1) Subcontracts;

(2) Purchases; and

(3) Intracompany transfers when transfers originate in a foreign location.

(c) *Submission of reports.* The Contractor—

(1) Shall submit reports required by paragraph (a)(1) of this clause to the Contracting Officer as soon as the information is known, with a copy to the addressee in paragraph (c)(2) of this clause. To the maximum extent practicable, the Contractor shall report information regarding a first-tier subcontractor at least 30 days before award of the subcontract;

(2) Shall submit reports required by paragraph (a)(2) of this clause within 10 days after the end of each Government quarter to: Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), OUSD(AT&L)DPAP(PAIC), Washington, DC 20301–3060;

(3) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(4) May obtain copies of DD Form 2139 from the Contracting Officer.

(d) *Flowdown requirements.*

(1) The Contractor shall include the substance of this clause in all first-tier subcontracts exceeding $500,000, except those for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence.

(2) The Contractor shall provide the number of this contract to its subcontractors for reporting purposes.

(End of clause)

252.225–7008 through 252.225–7010 [Removed and Reserved]

■ 38. Sections 252.225–7008 through 252.225–7010 are removed and reserved.

■ 39. Section 252.225–7011 is revised to read as follows:

252.225–7011 Restriction on Acquisition of Supercomputers.

As prescribed in 225.7012–3, use the following clause:

Restriction on Acquisition of Supercomputers (Apr 2003)

Supercomputers delivered under this contract shall be manufactured in the United States.

(End of clause)

■ 40. Section 252.225–7013 is added to read as follows:

252.225–7013 Duty-Free Entry.

As prescribed in 225.1101(4), use the following clause:

Duty-Free Entry (Apr 2003)

(a) *Definitions.* As used in this clause—

(1) *Customs territory of the United States* means the States, the District of Columbia, and Puerto Rico.

(2) *Eligible product* means—

(i) *Designated country end product* or *Caribbean Basin country end product* as defined in the Trade Agreements clause of this contract;

(ii) *NAFTA country end product* as defined in the Trade Agreements clause or the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract; or

(iii) *Canadian end product* as defined in Alternate I of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract.

(3) *Qualifying country* and *qualifying country end product* have the meanings given in the Trade Agreements clause, the Buy American Act and Balance of Payments Program clause, or the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract.

(b) Except as provided in paragraph (i) of this clause, or unless supplies were imported into the United States before the date of this contract or the applicable subcontract, the price of this contract shall not include any amount for duty on—

(1) End items that are eligible products or qualifying country end products;

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in U.S.-made end products to be delivered under this contract; or

(3) Other supplies for which the Contractor estimates that duty will exceed $200 per shipment into the customs territory of the United States.

(c) The Contractor shall—

(1) Claim duty-free entry only for supplies that the Contractor intends to deliver to the Government under this contract, either as end items or components of end items; and

(2) Pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use, other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer.

(d) Except as the Contractor may otherwise agree, the Government will execute duty-free entry certificates and will afford such assistance as appropriate to obtain the duty-free entry of supplies—

(1) For which no duty is included in the contract price in accordance with paragraph (b) of this clause; and

(2) For which shipping documents bear the notation specified in paragraph (e) of this clause.

(e) For foreign supplies for which the Government will issue duty-free entry certificates in accordance with this clause, shipping documents submitted to Customs shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information:

(i) Prime contract number and, if applicable, delivery order number.

(ii) Number of the subcontract for foreign supplies, if applicable.

(iii) Identification of the carrier.

(iv) (A) For direct shipments to a U.S. military installation, the notation: "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify Commander, Defense Contract Management Agency (DCMA) New York, ATTN: Customs Team, DCMAE–GNTF, 207 New York Avenue, Staten Island, New York, 10305–5013, for execution of Customs Form 7501, 7501A, or 7506 and any required duty-free entry certificates."

(B) If the shipment will be consigned to other than a military installation, *e.g.*, a domestic contractor's plant, the shipping document notation shall be altered to include the name and address of the contractor, agent, or broker who will notify Commander, DCMA New York, for execution of the duty-free entry certificate. (If the shipment will be consigned to a contractor's plant and no duty-free entry certificate is required due to NAFTA or another trade agreement, the Contractor shall claim duty-free entry under NAFTA or the applicable trade agreement and shall comply with the U.S. Customs Service requirements. No notification to Commander, DCMA New York, is required.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight).

(vi) Estimated value in U.S. dollars.

(vii) Activity address number of the contract administration office administering the prime contract, *e.g.*, for DCMA Dayton, S3605A.

(f) *Preparation of customs forms.*

(1)(i) Except for shipments consigned to a military installation, the Contractor shall—

(A) Prepare any customs forms required for the entry of foreign supplies into the United States in connection with this contract; and

(B) Submit the completed customs forms to the District Director of Customs, with a copy to DCMA NY for execution of any required duty-free entry certificates.

(ii) Shipments consigned directly to a military installation will be released in accordance with sections 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(g) The Contractor shall—

(1) Prepare (if the Contractor is a foreign supplier), or shall instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) Consign the shipment as specified in paragraph (e) of this clause; and

(3) Mark on the exterior of all packages—

(i) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE"; and

(ii) The activity address number of the contract administration office administering the prime contract.

(h) The Contractor shall notify the Administrative Contracting Officer (ACO) in writing of any purchase of qualifying country supplies to be accorded duty-free entry, that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The Contractor shall furnish the notice to the ACO immediately upon award to the qualifying country supplier and shall include in the notice—

(1) The Contractor's name, address, and Commercial and Government Entity (CAGE) code;

(2) Prime contract number and, if applicable, delivery order number;

(3) Total dollar value of the prime contract or delivery order;

(4) Date of the last scheduled delivery under the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Date of the last scheduled delivery under the subcontract for foreign supplies;

(9) List of items purchased;

(10) An agreement that the Contractor will pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer;

(11) Qualifying country of origin; and

(12) Scheduled delivery date(s).

(i) This clause does not apply to purchases of qualifying country supplies in connection with this contract if—

(1) The supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.

(j) The Contractor shall—

(1) Insert the substance of this clause, including this paragraph (j), in all subcontracts for—

(i) Qualifying country components; or

(ii) Nonqualifying country components for which the Contractor estimates that duty will exceed $200 per unit;

(2) Require subcontractors to include the number of this contract on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause; and

(3) Include in applicable subcontracts—

(i) The name and address of the ACO for this contract;

(ii) The name, address, and activity address number of the contract administration office specified in this contract; and

(iii) The information required by paragraphs (h)(1), (2), and (3) of this clause.

(End of clause)

■ 41. Sections 252.225–7014 through 252.225–7016 are revised to read as follows:

252.225–7014 Preference for Domestic Specialty Metals.

As prescribed in 225.7002–3(b)(1), use the following clause:

Preference for Domestic Specialty Metals (Apr 2003)

(a) *Definitions.* As used in this clause—

(1) *Qualifying country* means any country listed in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(2) *Specialty metals* means—

(i) Steel—

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium base alloys.

(b) Any specialty metals incorporated in articles delivered under this contract shall be melted in the United States, its possessions, or Puerto Rico.

(c) This clause does not apply to specialty metals—

(1) Melted in a qualifying country or incorporated in an article manufactured in a qualifying country; or

(2) Purchased by a subcontractor at any tier.

(End of clause)

Alternate I (Apr 2003)

As prescribed in 225.7002–3(b)(2), substitute the following paragraph (c) for paragraph (c) of the basic clause, and add the following paragraph (d) to the basic clause:

(c) This clause does not apply to specialty metals melted in a qualifying country or incorporated in an article manufactured in a qualifying country.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts for items containing specialty metals.

252.225–7015 Restriction on Acquisition of Hand or Measuring Tools.

As prescribed in 225.7002–3(c), use the following clause:

Restriction on Acquisition of Hand or Measuring Tools (Apr 2003)

Hand or measuring tools delivered under this contract shall be produced in the United States or its possessions.

(End of clause)

252.225–7016 Restriction on Acquisition of Ball and Roller Bearings.

As prescribed in 225.7009–4(a), use the following clause:

Restriction on Acquisition of Ball and Roller Bearings (Apr 2003)

(a) *Definitions.* As used in this clause—

(1) *Bearing components* means the bearing element, retainer, inner race, or outer race.

(2) *Miniature and instrument ball bearings* means all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, regardless of material, tolerance, performance, or quality characteristics.

(b) Except as provided in paragraph (c) of this clause, all ball and roller bearings and ball and roller bearing components (including miniature and instrument ball bearings) delivered under this contract, either as end items or components of end items, shall be wholly manufactured in the United States or Canada. Unless otherwise specified, raw materials, such as preformed bar, tube, or rod stock and lubricants, need not be mined or produced in the United States or Canada.

(c)(1) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as components if—

(i) The end items or components containing ball or roller bearings are commercial items; or

(ii) The ball or roller bearings are commercial components manufactured in the United Kingdom.

(2) The commercial item exception in paragraph (c)(1) of this clause does not include items designed or developed under a Government contract if the end item is bearings or bearing components.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7019–3 of the Defense Federal Acquisition Regulation Supplement. If the restriction is waived for miniature and instrument ball bearings, the Contractor shall acquire a like quantity and type of domestic manufacture for nongovernmental use.

(e) The Contractor shall retain records showing compliance with the restriction in paragraph (b) of this clause until 3 years after final payment and shall make the records available upon request of the Contracting Officer.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts, except those for—

(1) Commercial items other than ball or roller bearings; or

(2) Items that do not contain ball or roller bearings.

(End of clause)

Alternate I (Apr 2003)

As prescribed in 225.7009–4(b), substitute the following paragraph (c)(1)(ii) for paragraph (c)(1)(ii) of the basic clause:

(c)(1)(ii) The ball or roller bearings are commercial components.

252.225–7017 [Removed and Reserved]

■ 42. Section 252.225–7017 is removed and reserved.

■ 43. Sections 252.225–7018 through 252.225–7021 are revised to read as follows:

252.225–7018 Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation.

As prescribed in 225.7017–4, use the following provision:

Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation (Apr 2003)

(a) *Definitions.*

(1) *Competent* means the ability of an offeror to satisfy the requirements of the solicitation. This determination is based on a comprehensive assessment of each offeror's proposal including consideration of the specific areas of evaluation criteria in the relative order of importance described in the solicitation.

(2) *Foreign firm* means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.

(3) *U.S. firm* means a business entity other than a foreign firm.

(b) Except as provided in paragraph (c) of this provision, the Department of Defense will not enter into or carry out any contract, including any contract awarded as a result of a broad agency announcement, with a foreign government or firm if the contract provides for the conduct of research, development, test, or evaluation in connection with the Ballistic Missile Defense Program. However, foreign governments and firms are encouraged to submit offers, since this provision is not intended to restrict access to unique foreign expertise if the contract will require a level of competency unavailable in the United States.

(c) This prohibition does not apply to a foreign government or firm if—

(1) The contract will be performed within the United States;

(2) The contract is exclusively for research, development, test, or evaluation in connection with antitactical ballistic missile systems;

(3) The foreign government or firm agrees to share a substantial portion of the total contract cost. The foreign share is considered substantial if it is equitable with respect to the relative benefits that the United States and the foreign parties will derive from the contract. For example, if the contract is more beneficial to the foreign party, its share of the costs should be correspondingly higher; or

(4) The U.S. Government determines that a U.S. firm cannot competently perform the contract at a price equal to or less than the price at which a foreign government or firm can perform the contract.

(d) The offeror (___) is (___) is not a U.S. firm.

(End of provision)

252.225–7019 Restriction on Acquisition of Anchor and Mooring Chain.

As prescribed in 225.7007–3, use the following clause:

Restriction on Acquisition of Anchor and Mooring Chain (Apr 2003)

(a) Welded shipboard anchor and mooring chain, four inches or less in diameter, delivered under this contract—

(1) Shall be manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States shall exceed 50 percent of the total cost of components.

(b) The Contractor may request a waiver of this restriction if adequate domestic supplies meeting the requirements in paragraph (a) of this clause are not available to meet the contract delivery schedule.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts for items containing welded shipboard anchor and mooring chain, four inches or less in diameter.

(End of clause)

252.225–7020 Trade Agreements Certificate.

As prescribed in 225.1101(5), use the following provision:

Trade Agreements Certificate (Apr 2003)

(a) *Definitions. Caribbean Basin country end product, designated country end product, NAFTA country end product, nondesignated country end product, qualifying country end product,* and *U.S.-made end product* have the meanings given in the Trade Agreements clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will consider only offers of end products that are U.S.-made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products, unless the Government determines that—

(i) There are no offers of such end products;

(ii) The offers of such end products are insufficient to fulfill the Government's requirements; or

(iii) A national interest exception to the Trade Agreements Act applies.

(c) *Certification and identification of country of origin.*

(1) For all line items subject to the Trade Agreements clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2) of this provision, is a U.S.-made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end product.

(2) The following supplies are other nondesignated country end products:

(Line Item Number)

(Country of Origin)

(End of provision)

252.225–7021 Trade Agreements.

As prescribed in 225.1101(6), use the following clause:

Trade Agreements (Apr 2003)

(a) *Definitions.* As used in this clause—

(1) *Caribbean Basin country* means—

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
British Virgin Islands
Costa Rica
Dominica
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
St. Kitts-Nevis
St. Lucia
St. Vincent and the Grenadines
Trinidad and Tobago

(2) *Caribbean Basin country end product*—
(i) Means an article that—
(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
(B) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself; and
(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of—
(A) Textiles, apparel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and handloomed, handmade, or folklore articles that are not granted duty-free status in the Harmonized Tariff Schedule of the United States (HTSUS);
(B) Tuna, prepared or preserved in any manner in airtight containers; and
(C) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the HTSUS column 2 rates of duty (HTSUS General Note 3(b)) apply.
(3) *Component* means an article, material, or supply incorporated directly into an end product.
(4) *Designated country* means—

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Denmark
Djibouti
Equatorial Guinea
Finland
France
Gambia
Germany
Greece
Guinea
Guinea-Bissau
Haiti
Hong Kong
Iceland
Ireland
Israel
Italy
Japan
Kiribati
Lesotho
Liechtenstein
Luxembourg
Malawi
Maldives
Mali
Mozambique
Nepal
Netherlands
Niger
Norway
Portugal
Republic of Korea
Rwanda
Sao Tome and Principe
Sierra Leone
Singapore
Somalia
Spain
Sweden
Switzerland
Tanzania U.R.
Togo
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Yemen

(5) *Designated country end product* means an article that—
(i) Is wholly the growth, product, or manufacture of the designated country; or
(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.
(6) *End product* means those articles, materials, and supplies to be acquired under this contract for public use.
(7) *NAFTA country end product* means an article that—
(i) Is wholly the growth, product, or manufacture of a NAFTA country; or
(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.
(8) *Nondesignated country end product* means any end product that is not a U.S.-made end product or a designated country end product.
(9) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.
(10) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.
(11) *Qualifying country end product* means—
(i) An unmanufactured end product mined or produced in a qualifying country; or
(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:
(A) Components mined, produced, or manufactured in a qualifying country.
(B) Components mined, produced, or manufactured in the United States.
(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States.
(12) *United States* means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.
(13) *U.S.-made end product* means an article that—
(i) Is mined, produced, or manufactured in the United States; or
(ii) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.
(b) This clause implements the Trade Agreements Act of 1979 (19 U.S.C. 2501, *et seq.*), the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note), and the Caribbean Basin Initiative. Unless otherwise specified, this clause applies to all items in the Schedule.
(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products unless—
(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and
(2) The Government determines that—
(i) Offers of U.S.-made end products or qualifying, designated, Caribbean Basin, or NAFTA country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest exception to the Trade Agreements Act applies.
(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.
(e) The HTSUS is available on the Internet at *http://www.customs.ustreas.gov/impoexpo/impoexpo.htm*. The following sections of the HTSUS provide information regarding duty-free status of articles specified in paragraph (a)(2)(ii)(A) of this clause:
(1) General Note 3(c), Products Eligible for Special Tariff Treatment.
(2) General Note 17, Products of Countries Designated as Beneficiary Countries Under the United States—Caribbean Basin Trade Partnership Act of 2000.
(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).
(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits Under the United States—Caribbean Basin Trade Partnership Act.
(End of clause)

252.225–7022 [Amended]

■ 44. Section 252.225–7022 is amended by revising the clause date to read "(APR 2003)"; and in paragraph (a) by removing "only".

252.225–7023 [Amended]

■ 45. Section 252.225–7023 is amended in the introductory text by removing "225.7020–4" and adding in its place "225.7010–4".

252.225–7024 [Removed and Reserved]

■ 46. Section 252.225–7024 is removed and reserved.

■ 47. Section 252.225–7025 is revised to read as follows:

252.225–7025 Restriction on Acquisition of Forgings.

As prescribed in 225.7102–4, use the following clause:

Restriction on Acquisition of Forgings (Apr 2003)

(a) *Definitions.* As used in this clause—
(1) *Domestic manufacture* means manufactured in the United States or Canada if the Canadian firm—
(i) Normally produces similar items or is currently producing the item in support of DoD contracts (as a contractor or a subcontractor); and
(ii) Agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Production Planning Program, if it is not already a planned producer for the item.
(2) *Forging items* means—

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.

(b) End items and their components delivered under this contract shall contain forging items that are of domestic manufacture only.
(c) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7102–3 of the Defense Federal Acquisition Regulation Supplement.
(d) The Contractor shall retain records showing compliance with the restriction in paragraph (b) of this clause until 3 years after final payment and shall make the records available upon request of the Contracting Officer.
(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in subcontracts for forging items or for other items that contain forging items.
(End of clause)

252.225–7026 [Removed and Reserved]

■ 48. Section 252.225–7026 is removed and reserved.

■ 49. Sections 252.225–7027 and 252.225–7028 are revised to read as follows:

252.225–7027 Restriction on Contingent Fees for Foreign Military Sales.

As prescribed in 225.7308(a), use the following clause.

Restriction on Contingent Fees for Foreign Military Sales (Apr 2003)

(a) Except as provided in paragraph (b) of this clause, contingent fees, as defined in the Covenant Against Contingent Fees clause of this contract, are generally an allowable cost, provided the fees are paid to—
(1) A bona fide employee of the Contractor; or
(2) A bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business.
(b) For foreign military sales, unless the contingent fees have been identified and payment approved in writing by the foreign customer before contract award, the following contingent fees are unallowable under this contract:
(1) For sales to the Government(s) of _____, contingent fees in any amount.
(2) For sales to Governments not listed in paragraph (b)(1) of this clause, contingent fees exceeding $50,000 per foreign military sale case.
(End of clause)

252.225–7028 Exclusionary Policies and Practices of Foreign Governments.

As prescribed in 225.7308(b), use the following clause:

Exclusionary Policies and Practices of Foreign Governments (Apr 2003)

The Contractor and its subcontractors shall not take into account the exclusionary policies or practices of any foreign government in employing or assigning personnel, if—
(a) The personnel will perform functions required by this contract, either in the United States or abroad; and
(b) The exclusionary policies or practices of the foreign government are based on race, religion, national origin, or sex.
(End of clause)

252.225–7029 [Removed and Reserved]

■ 50. Section 252.225–7029 is removed and reserved.

■ 51. Sections 252.225–7030 through 252.225–7033 are revised to read as follows:

252.225–7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate.

As prescribed in 225.7011–3, use the following clause:

Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate (Apr 2003)

Carbon, alloy, and armor steel plate shall be melted and rolled in the United States or Canada if the carbon, alloy, or armor steel plate—
(a) Is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute; and
(b) Will be delivered to the Government or will be purchased by the Contractor as a raw material for use in a Government-owned facility or a facility under the control of the Department of Defense.
(End of clause)

252.225–7031 Secondary Arab Boycott of Israel.

As prescribed in 225.1103(2), use the following provision:

Secondary Arab Boycott of Israel (Apr 2003)

(a) *Definitions.* As used in this provision—
(1) *Foreign person* means any person (including any individual, partnership, corporation, or other form of association) other than a United States person.
(2) *United States person* is defined in 50 U.S.C. App. 2415(2) and means—
(i) Any United States resident or national (other than an individual resident outside the United States who is employed by other than a United States person);
(ii) Any domestic concern (including any permanent domestic establishment of any foreign concern); and
(iii) Any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern.
(b) *Certification.* If the offeror is a foreign person, the offeror certifies, by submission of an offer, that it—
(1) Does not comply with the Secondary Arab Boycott of Israel; and
(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. 2407(a) prohibits a United States person from taking.
(End of provision)

252.225–7032 Waiver of United Kingdom Levies—Evaluation of Offers.

As prescribed in 225.1101(7), use the following provision:

Waiver of United Kingdom Levies—Evaluation of Offers (Apr 2003)

(a) Offered prices for contracts or subcontracts with United Kingdom (U.K.) firms may contain commercial exploitation levies assessed by the Government of the U.K. The offeror shall identify to the Contracting Officer all levies included in the offered price by describing—

(1) The name of the U.K. firm;

(2) The item to which the levy applies and the item quantity; and

(3) The amount of levy plus any associated indirect costs and profit or fee.

(b) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the offeror may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW., Washington, DC 20006.

(c) The U.S. Government may attempt to obtain a waiver of levies pursuant to the U.S./U.K. reciprocal waiver agreement of July 1987.

(1) If the U.K. waives levies before award of a contract, the Contracting Officer will evaluate the offer without the levy.

(2) If levies are identified but not waived before award of a contract, the Contracting Officer will evaluate the offer inclusive of the levies.

(3) If the U.K. grants a waiver of levies after award of a contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(End of provision)

252.225–7033 Waiver of United Kingdom Levies.

As prescribed in 225.1101(8), use the following clause:

Waiver of United Kingdom Levies (Apr 2003)

(a) The U.S. Government may attempt to obtain a waiver of any commercial exploitation levies included in the price of this contract, pursuant to the U.S./United Kingdom (U.K.) reciprocal waiver agreement of July 1987. If the U.K. grants a waiver of levies included in the price of this contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(b) If the Contractor contemplates award of a subcontract exceeding $1 million to a U.K. firm, the Contractor shall provide the following information to the Contracting Officer before award of the subcontract:

(1) Name of the U.K. firm.

(2) Prime contract number.

(3) Description of item to which the levy applies.

(4) Quantity being acquired.

(5) Amount of levy plus any associated indirect costs and profit or fee.

(c) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the Contractor may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW., Washington, DC 20006.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in any subcontract for supplies where a lower-tier subcontract exceeding $1 million with a U.K. firm is anticipated.

(End of clause)

■ 52. Sections 252.225–7035 through 252.225–7039 are revised to read as follows:

252.225–7035 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

As prescribed in 225.1101(9), use the following provision:

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate (Apr 2003)

(a) *Definitions. Domestic end product, foreign end product, NAFTA country end product, qualifying country end product,* and *United States* have the meanings given in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to the North American Free Trade Agreement Implementation Act, will evaluate offers of qualifying country end products or NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Canadian) end products:

_____
(Line Item Number)

_____
(Country of Origin)

(ii) The offeror certifies that the following supplies are NAFTA country end products:

_____
(Line Item Number)

_____
(Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products.

_____
(Line Item Number)

_____
(Country of Origin (If known))

(End of provision)

Alternate I (Apr 2003)

As prescribed in 225.1101(9), substitute the phrase "Canadian end product" for the phrase "NAFTA country end product" in paragraph (a) of the basic provision; and substitute the phrase "Canadian end products" for the phrase "NAFTA country end products" in paragraphs (b) and (c)(2)(ii) of the basic provision.

252.225–7036 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

As prescribed in 225.1101(10)(i), use the following clause:

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (Apr 2003)

(a) *Definitions.* As used in this clause—

(1) *Component* means an article, material, or supply incorporated directly into an end product.

(2) *Domestic end product* means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(A) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) It is inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) *End product* means those articles, materials, and supplies to be acquired under this contract for public use.

(4) *Foreign end product* means an end product other than a domestic end product.

(5) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(6) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(7) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(8) *Qualifying country component* means a component mined, produced, or manufactured in a qualifying country.

(9) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States.

(10) *United States* means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(b) This clause implements the Buy American Act (41 U.S.C. Section 10a–d), the Balance of Payments Program, and the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note). Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a NAFTA country end product, the Contractor shall deliver a qualifying country end product, a NAFTA country end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate I (Apr 2003)

As prescribed in 225.1101(10)(i)(B), substitute the following paragraphs (a)(6) and (c) for paragraphs (a)(6) and (c) of the basic clause:

(a)(6) *Canadian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, Canadian, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Canadian end product, the Contractor shall deliver a qualifying country end product, a Canadian end product, or, at the Contractor's option, a domestic end product.

252.225–7037 Evaluation of Offers for Air Circuit Breakers.

As prescribed in 225.7006–4(a), use the following provision:

Evaluation of Offers for Air Circuit Breakers (Apr 2003)

(a) The offeror shall specify, in its offer, any intent to furnish air circuit breakers that are not manufactured in the United States, Canada, or the United Kingdom.

(b) The Contracting Officer will evaluate offers by adding a factor of 50 percent to the offered price of air circuit breakers that are not manufactured in the United States, Canada, or the United Kingdom.

(End of provision)

252.225–7038 Restriction on Acquisition of Air Circuit Breakers.

As prescribed in 225.7006–4(b), use the following clause:

Restriction on Acquisition of Air Circuit Breakers (Apr 2003)

Unless otherwise specified in its offer, the Contractor shall deliver under this contract air circuit breakers manufactured in the United States, Canada, or the United Kingdom.

(End of clause)

252.225–7039 Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems.

As prescribed in 225.7008–4, use the following clause:

Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems (Apr 2003)

The Contractor shall deliver under this contract totally enclosed lifeboat survival systems (consisting of the lifeboat and associated davits and winches), for which—

(a) 50 percent or more of the components have been manufactured in the United States; and

(b) 50 percent or more of the labor in the manufacture and assembly of the entire system has been performed in the United States.

(End of clause)

252.225–7041 [Amended]

■ 53. Section 252.225–7041 is amended in the introductory text by removing "225.1103(2)" and adding in its place "225.1103(3)".

■ 54. Section 252.225–7042 is revised to read as follows:

252.225–7042 Authorization to Perform.

As prescribed in 225.1103(4), use the following provision:

Authorization to Perform (Apr 2003)

The offeror represents that it has been duly authorized to operate and to do business in the country or countries in which the contract is to be performed.

(End of provision)

[FR Doc. 03–7531 Filed 3–28–03; 8:45 am]

BILLING CODE 5001–08–P

VOL
68

ISS
61

MR

31

003

MI

Federal Register

Monday,
March 31, 2003

Part V

Department of Education

Early Childhood Educator Professional Development Program; Notice of Final Achievement Indicators and Invitation for Applications for New Awards for Fiscal Year 2003; Notices

DEPARTMENT OF EDUCATION

[CFDA NO: 84.349A]

Early Childhood Educator Professional Development Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program

The purpose of the Early Childhood Educator Professional Development Program, authorized by section 2151(e) of the Elementary and Secondary Education Act (ESEA) as added by the No Child Left Behind Act, Public Law 107–110, is to enhance the school readiness of young children, particularly disadvantaged young children, and to prevent them from encountering difficulties once they enter school. The program is designed to improve the knowledge and skills of early childhood educators who work in communities that have high concentrations of children living in poverty.

Projects funded under the Early Childhood Educator Professional Development Program provide high-quality, sustained, and intensive professional development for these early childhood educators in how to provide developmentally appropriate school-readiness services for preschool-age children that are based on the best available research on early childhood pedagogy and on child development and learning, including the age-appropriate development of oral language, phonological awareness, print awareness, alphabet knowledge, and numeracy skills. These grants are part of the President's early childhood initiative, "Good Start, Grow Smart," and complement other early learning grant programs, such as Early Reading First, by helping States and local communities strengthen early learning for young children. The Department intends to disseminate information about the funded projects that prove to be effective professional development.

Eligible Applicants

A partnership consisting of at least one entity from each of the following categories, as indicated below—

(i) One or more institutions of higher education, or other public or private entities (including faith-based organizations), that provide professional development for early childhood educators who work with children from low-income families in high-need communities; and

(ii) One or more public agencies (including local educational agencies, State educational agencies, State human services agencies, and State and local agencies administering programs under the Child Care and Development Block Grant Act of 1990), Head Start agencies, or private organizations (including faith-based organizations); and

(iii) If feasible, an entity with demonstrated experience in providing training to educators in early childhood education programs concerning identifying and preventing behavior problems or working with children identified as or suspected to be victims of abuse. This entity may be one of the partners described above, if appropriate.

Applications Available: March 31, 2003.

Deadline for Transmittal of Applications: May 16, 2003.

Deadline for Intergovernmental Review: July 15, 2003.

Estimated Available Funds: $14,875,000.

Estimated Range of Awards: $1,200,000–$2,800,000.

Estimated Average Size of Awards: $2,000,000.

Estimated Number of Awards: 5–12 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 2 years.

Applicable Regulations: The following provisions of the Education Department General Administrative Regulations (EDGAR) apply to these Early Childhood Educator Professional Development program grants: 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

These regulations are available at the following Web site: *http://www.ed.gov/offices/OCFO/grants/edgar.html.*

Matching and Use of Funds Requirements

Cost-sharing: Each partnership carrying out a project through an Early Childhood Educator Professional Development Program grant under this program must provide a cost share of (1) at least 50 percent of the total cost of the project for the entire grant period; and (2) at least 20 percent of the project cost for each year. The project may provide this cost share from any source other than funds under this program, including other Federal sources.

The partnership may provide the project cost share through contributions of cash or in-kind, fairly evaluated, including plant, equipment, and services. Only allowable costs may be counted as part of the cost share. For example, any indirect costs over and above the allowable amount (see "Indirect Costs" section under this heading) may not be counted toward a grantee's cost share.

Indirect Costs: For purposes of indirect cost charges, the Secretary considers all Early Childhood Educator Professional Development Program grants to be "educational training grants" within the meaning of section 75.562(a) of EDGAR (34 CFR 75.562(a)). Consistent with 34 CFR 75.562, the indirect cost rate for any fiscal agent other than a State agency or agency of local government (such as a local educational agency) is limited to a maximum of eight percent or the amount permitted by the fiscal agent's negotiated indirect cost rate agreement, whichever is less. Further information about indirect cost rates, and on how to apply for a negotiated indirect cost rate for fiscal agents that do not yet have one, is available at the following Web site: *http://www.ed.gov/offices/OCFO/FIPAO/icgindex.html.*

Pre-award Costs: The Department's regulations authorize grant recipients to incur allowable pre-award costs up to 90 calendar days before the grant award (sections 75.263 and 74.25(e)(1) of EDGAR, 34 CFR 75.263 and 74.25(e)(1)). In this case, pre-award costs may include the necessary and reasonable costs of the needs assessment that the statute requires applicants to conduct before submitting their applications, to determine the most critical professional development needs of the early childhood educators to be served by the project and in the broader community. The Secretary extends the period for recipients to charge necessary and reasonable pre-award costs incurred related to the needs assessment for these grants for up to 90 days before the application due date. Applicants incur any pre-award costs at their own risk. That is, the Secretary is under no obligation to reimburse these costs if for any reason the applicant does not receive an award or if the award is less than anticipated and inadequate to cover these costs.

SUPPLEMENTARY INFORMATION:

Background

These Early Childhood Educator Professional Development Program grants will provide a small but significant base of high-quality, intensive, replicable, professional development programs for early childhood educators. These programs will be based on the best available research on both effective adult professional development approaches, and on early childhood pedagogy and on child development and learning, including the age-appropriate development of oral language, phonological awareness, print

awareness, alphabet knowledge, and numeracy skills. The grants are particularly important because there is a critical need for more high-quality, intensive, research-based professional development programs for early childhood educators to enable them to help young children better develop the knowledge, skills, and dispositions necessary for school readiness.

These grants will fund projects that carry out activities to improve the knowledge and skills of early childhood educators working in early childhood programs that are located in high-need communities. Under the invitational priority identified in this notice, the Secretary is particularly interested in proposals that focus on providing professional development for early childhood educators to work with children who have limited English proficiency, children with disabilities as identified under Parts B or C of the Individuals with Disabilities Education Act, and children with other special needs. An application that meets this invitational priority, however, receives no competitive or absolute preference over applications that do not meet the priority.

The specific activities for which recipients may use grant funds are identified in the application package. The Secretary will expect funded projects to use rigorous methodologies to measure progress toward attaining project objectives and the final achievement indicators that are described in this notice under **Achievement Indicators.**

Definitions

The following terms used in the application package for this grant competition have specific statutory meanings that are included in that package: "child with a disability," "early childhood educator," "high-need community," "low-income family," "poverty line," "professional development," and "scientifically based research." The Secretary strongly encourages applicants to review the statutory definitions of these terms before preparing their grant applications.

Applications

Early Childhood Educator Professional Development Program grants for FY 2003 will be awarded through a competitive process. The statute requires each applicant to submit an application that contains specific information and assurances that are described in the application package. Applicants must meet a statutory requirement to be eligible for consideration for funding, and must address the selection criteria from section 75.210 of EDGAR that are identified in the application package. The application narrative addressing the statutory requirement, the selection criteria, and other information identified in the application package is limited to 30 double-spaced, typed pages. The Appendices, including the required Partnership Agreement, are not part of this page limit. The additional budget narrative is limited to 5 double-spaced, typed pages. Other application materials are limited to the specific materials indicated in the application package, and may not include any video or other non-print materials.

Achievement Indicators

On January 6, 2003, the Secretary published in the **Federal Register** (68 FR 547–548) proposed achievement indicators for these grants. After receiving public comment, the Secretary now is publishing the following final achievement indicators in accordance with section 2151(e)(6) of the ESEA, elsewhere in this issue of the **Federal Register.** That Notice of Final Achievement Indicators contains the Secretary's response to submitted public comments to the proposed achievement indicators. The Notice of Final Achievement Indicators also is posted on the Department's website at the following address: *http://www.ed.gov/offices/OESE/SASA/ecprofdev.html.*

These final achievement indicators will govern these FY 2003 grants. Applicants must describe in their applications how their project objectives and measurement methods are aligned with these final achievement indicators, and report annually on their progress toward attaining these indicators.

Final Achievement Indicators

In accordance with the timeline included in the approved application:

Indicator 1: Projects will offer an increasing number of hours of high-quality professional development to early childhood educators. High-quality professional development is ongoing, intensive, classroom-focused, and based on scientific research on early childhood cognitive and social development, including the age-appropriate development of oral language, phonological awareness, print awareness, alphabet knowledge, and numeracy skills, and on effective pedagogy for young children. High-quality professional development also includes instruction in the effective administration of age-appropriate assessments of young children and the use of assessment results.

Indicator 2: Early childhood educators who work in early childhood programs serving low-income children will participate in greater numbers, and in increasing numbers of hours, in high-quality professional development.

Indicator 3: Early childhood educators will demonstrate increased knowledge and understanding of effective strategies to support school readiness based on scientific research on cognitive and social development in early childhood and effective pedagogy for young children, and in the effective administration of age-appropriate assessments of young children and the use of assessment results.

Indicator 4: Early childhood educators will more frequently apply research-based approaches in early childhood pedagogy and child development and learning domains, including using a content-rich curriculum and activities that promote the age-appropriate development of oral language, age-appropriate social and emotional behavior, phonological awareness, print awareness, alphabet knowledge, and numeracy skills. Early childhood educators also will more frequently participate in the effective administration of age-appropriate assessments of young children and the use of assessment results.

Indicator 5: Children will demonstrate improved readiness for school, especially in the areas of appropriate social and emotional behavior and early language, literacy, and numeracy skills.

Statutory Requirement—High-Need Communities: Section 2151(e)(5)(A) of the ESEA (20 U.S.C. 6651(e)(5)(A)) requires that grant funds be used to carry out activities that will improve the knowledge and skills of early childhood educators who are working in early childhood programs that are located in high-need communities. Thus, the statute requires that each early childhood program, in which the early childhood educators work who will receive professional development under the project, must be located in a "high-need community." To be considered for funding under this program, an eligible applicant must demonstrate in its application narrative how it meets this statutory requirement by including relevant demographic and socioeconomic information about those communities. "High-need community," as defined in section 2151(e)(9)(B) of the ESEA, means: (a) A political subdivision of a State, or a portion of a political subdivision of a State, in which at least 50 percent of the children are from low-income families; or (b) a political subdivision of a State that is among the

10 percent of political subdivisions of the State having the greatest numbers of such children.

The Secretary will fund under this competition only applications that meet this statutory requirement.

Note: The following terms used in this statutory requirement have statutory definitions that are included in the application package: "early childhood educator," "high-need community," "low-income family," and "professional development."

Invitational Priority—Special Needs Children: The Secretary is particularly interested in receiving applications that propose to focus on providing professional development for early childhood educators to work with young children who have limited English proficiency, children with disabilities as identified under parts B or C of the Individuals with Disabilities Education Act, and children with other special needs.

Note: The following term used in this invitational priority has a statutory definition that is included in the application package: "child with a disability."

Under section 75.105(c)(1) of EDGAR (34 CFR 75.105(c)(1)), an application that meets this invitational priority receives no competitive or absolute preference over applications that do not meet the priority.

Selection Criteria

The Secretary will use selection criteria from section 75.210 of EDGAR (34 CFR 75.210) to evaluate applications under this competition. Those selection criteria are identified in the application package. The Secretary will use the procedures in § 75.217 of EDGAR (34 CFR 75.217) to select applications for funding.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.349A. The public also may obtain a copy of the application package on the Department's website at the following address: *http://www.ed.gov/offices/OESE/SASA/ecprofdev.html.*

FOR FURTHER INFORMATION CONTACT: Melanie Kadlic, U.S. Department of Education, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, 400 Maryland Avenue SW., Washington, DC 20202–6132. Telephone: (202) 260–3793, or via Internet: *Melanie.Kadlic@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at that site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 6651(e).

Dated: March 26, 2003.

Eugene W. Hickok,

Under Secretary.

[FR Doc. 03–7763 Filed 3–28–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA NO: 84.349A]

Early Childhood Educator Professional Development Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final achievement indicators.

SUMMARY: The Under Secretary announces final achievement indicators for the Early Childhood Educator Professional Development Program, for fiscal year (FY) 2003 and future years' grants. These achievement indicators will help ensure that the professional development provided under these discretionary grants will improve the knowledge and skills of early childhood educators who work in high-poverty communities, and will enhance the school readiness of young children, particularly disadvantaged young children, to prevent them from encountering difficulties once they enter school.

EFFECTIVE DATE: These achievement indicators are effective April 30, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie Kadlic, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., room 3C138, FB–6, Washington, DC 20202–2645. Telephone (202) 260–3793 or via Internet: *Melanie.Kadlic@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: The Early Childhood Educator Professional Development Program (ECEPD) is a discretionary grant program authorized by section 2151(e) of the Elementary and Secondary Education Act (ESEA), as added by the No Child Left Behind Act, Public Law 107–110. The ECEPD program provides funds for projects that carry out activities to improve the knowledge and skills of early childhood educators working in programs that are located in high-need communities, particularly those serving disadvantaged young children. These programs are based on the best available research on early childhood pedagogy and on child development and learning, including the age-appropriate development of oral language, phonological awareness, print awareness, alphabet knowledge, and numeracy skills. The grants serve an important purpose because high-quality, intensive, research-based professional development is critical for implementing effective early childhood programs that improve young children's readiness for school.

ECEPD grants are made to partnerships of: providers of professional development for early childhood educators; State or local public agencies or private organizations; and, if feasible, a provider experienced in training early childhood educators to identify and prevent behavior problems or work with children identified as or suspected to be victims of abuse.

Section 2151(e)(6) of the ESEA requires the Secretary to announce achievement indicators for the ECEPD program. These achievement indicators must be designed: (1) To measure the quality and accessibility of the professional development provided; (2) to measure the impact of that professional development on the early childhood education provided by the individuals who receive the professional development; and (3) to provide any other measures of program impact that the Secretary determines to be appropriate. The statute requires each partnership receiving an ECEPD grant to report annually to the Secretary on the partnership's progress toward attaining these achievement indicators. The Secretary may terminate an ECEPD grant if the Secretary determines that the partnership receiving the grant is not making satisfactory progress toward attaining the achievement indicators.

The Secretary will use these final achievement indicators for the ECEPD grant competition for FY 2003, and for future years, unless otherwise announced.

On January 6, 2003, the Secretary published a Notice of Proposed Achievement Indicators for this program (68 FR 547). These final achievement indicators are similar to those proposed indicators, with two differences. First, these final indicators will measure the extent to which projects provide professional development on the effective, age-appropriate assessment of young children. Second, these indicators clarify that research-based approaches in early childhood pedagogy and child development and learning domains include activities that promote the age-appropriate development of oral language, phonological awareness, print awareness, alphabet knowledge, and numeracy skills. These changes from the proposed indicators are explained in the Analysis of Comments and Changes in this notice.

Analysis of Comments and Changes

The Department received relevant comments from three parties in response to the Assistant Secretary's invitation to comment in the Notice of Proposed Achievement Indicators. The Department also received other comments that were not relevant to the proposed indicators. Commenters indicated their support of a number of aspects of the proposed indicators, including commending the indicators' general emphasis on child development research and high-quality professional development, supporting in particular the indicator on participation in and intensity of the professional development (Indicator 2), and supporting the indicator on using research-based approaches that include using a content-rich curriculum and activities (Indicator 4). An analysis of other relevant comments, and the Secretary's responses to those comments, is presented below. Comments are grouped according to subject.

Comment: One commenter requested that the achievement indicators include professional development in the areas of effective observation, tracking, and assessment of young children, including children with disabilities. The commenter indicated that, to ensure that content-rich curriculum and activities that promote cognitive, language, social, physical, and emotional development are achieving desired child outcomes, early childhood educators must have access to high-quality, research-based instruction and best practices in effective data gathering, tracking, assessment, and analysis of child development. The commenter indicated that professional development should include specific, targeted training in how to use, and analyze effectively, diverse valid and reliable research-based assessment instruments for young children, including those that effectively track and measure the developmental progress of children with disabilities.

Discussion: The applicable definition of "professional development" in section 9101(34) of the ESEA includes instruction in the use of data and assessments to inform and instruct classroom practice. The Secretary agrees that specific training for early childhood educators in the effective, age-appropriate assessment of young children is an integral part of a high-quality professional development program. This training will enable the educators to administer screening and other assessments effectively and use the results to inform instruction, and to identify children with special needs.

Change: A clarifying change has been made to the first, third, and fourth achievement indicators to clarify that the effective, age-appropriate assessment of young children is included in a high-quality professional development program.

Comment: One commenter expressed the understanding that mastery and control over a variety of teaching strategies is included in "high-quality professional development" in the first indicator and "effective strategies to support school readiness" in the third indicator.

Discussion: The Secretary agrees that high-quality professional development, and effective strategies to support school readiness, both generally require knowledge and understanding of a variety of teaching strategies to meet the diverse learning needs of all students in the classroom, including students with special needs.

Changes: None.

Comment: One commenter addressed the specific ways that children may demonstrate "improved readiness for school" in Indicator 5. With respect to social and emotional child behaviors, the commenter indicated that behaviors that demonstrate readiness include growth in initiative, ability to orient to and feel comfortable in a group setting, decision making, and negotiating ideas and social interactions with peers and adults. The commenter also stated that readiness in the areas of language and literacy will be demonstrated when children can show growth in the use of language to express ideas, relate to others, and explain and discuss their thinking as they investigate their surroundings.

Discussion: The Secretary believes that the indicator on how children will demonstrate improved readiness for school needs to remain broad, to provide applicants with the flexibility to be responsive in their grant proposals to their own State standards. School readiness is defined by what each child should know and be able to do by the time that child enters elementary school in the State in which that child lives. That is, early childhood education should prepare children with the knowledge, skills, and dispositions needed to meet a State's preschool standards or content guidelines, if any, and the foundational knowledge and skills that the children will need in order to meet that State's content standards when the children reach the lowest grade for which the State has elementary content standards.

Change: None.

Comment: Two commenters suggested that the achievement indicators would be stronger if they were more specific concerning content and quality of professional development. For example, one commenter suggested that achievement indicators should indicate how early childhood educators: engage children in appropriate interactions that encourage early language and cognitive development; individualize experiences for young children based on observation of children's abilities, development, and learning; and form and maintain culturally competent relationships with parents of young children served. Another commenter suggested that the achievement indicators specify the experiences in which early childhood

educators will engage children. For example, the commenter defined "content-rich," as referenced in Indicator 4, to mean "conceptually rich experiences that grow out of direct experience with concrete materials related to the disciplines of the physical and natural sciences and the social sciences."

Discussion: High-quality professional development for early childhood education programs must be based on scientific research on early childhood cognitive and social development. The Secretary agrees that the indicators would be strengthened by indicating the specific types of early childhood developmental skills that research shows are included in early language and cognitive development, namely, the age-appropriate development of oral language, phonological awareness, print awareness, alphabet knowledge, and numeracy skills.

As provided in Indicator 4, research-based approaches in early childhood pedagogy and child development and learning domains include using a content-rich curriculum. The Secretary believes that the specific content and context of the curriculum should remain broadly defined in the indicators, however, to give applicants the flexibility to align their high-quality, research-based professional development programs with their State's preschool standards or content guidelines, if any, and to address the foundational knowledge and skills that the children will need in order to meet that State's content standards when the children reach the lowest grade for which the State has elementary content standards.

Change: Changes are made to the first and fourth indicator to clarify that research-based approaches on early childhood cognitive and social development include the age-appropriate development of oral language, phonological awareness, print awareness, alphabet knowledge, and numeracy skills. A change is made to the fifth indicator by adding numeracy to the competencies that children need to demonstrate improved readiness for school.

Achievement Indicators: The Secretary announces the following final achievement indicators for the ECEPD program, as required by section 2151(e)(6) of the ESEA.

In accordance with the timeline included in the approved application:

Indicator 1: Projects will offer an increasing number of hours of high-quality professional development to early childhood educators. High-quality professional development is ongoing, intensive, classroom-focused, and based on scientific research on early childhood cognitive and social development, including the age-appropriate development of oral language, phonological awareness, print awareness, alphabet knowledge, and numeracy skills, and on effective pedagogy for young children. High-quality professional development also includes instruction in the effective administration of age-appropriate assessments of young children and the use of assessment results.

Indicator 2: Early childhood educators who work in early childhood programs serving low-income children will participate in greater numbers, and in increasing numbers of hours, in high-quality professional development.

Indicator 3: Early childhood educators will demonstrate increased knowledge and understanding of effective strategies to support school readiness based on scientific research on cognitive and social development in early childhood and effective pedagogy for young children, and in the effective administration of age-appropriate assessments of young children and the use of assessment results.

Indicator 4: Early childhood educators will more frequently apply research-based approaches in early childhood pedagogy and child development and learning domains, including using a content-rich curriculum and activities that promote the age-appropriate development of oral language, age-appropriate social and emotional behavior, phonological awareness, print awareness, alphabet knowledge, and numeracy skills. Early childhood educators also will more frequently participate in the effective administration of age-appropriate assessments of young children and the use of assessment results.

Indicator 5: Children will demonstrate improved readiness for school, especially in the areas of appropriate social and emotional behavior and early language, literacy, and numeracy skills.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

You may also view this document in text or PDF at the following site: *http://www.ed.gov/offices/OESE/SASA/ecprofdev.html.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 6651(e).

(Catalog of Federal Domestic Assistance Number 84.349A. Early Childhood Educator Professional Development Program)

Dated: March 26, 2003.

Eugene W. Hickok,

Under Secretary.

[FR Doc. 03–7762 Filed 3–28–03; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Monday,
March 31, 2003

Part VI

The President

Proclamation 7656—National Child Abuse Prevention Month, 2003

Federal Register
Vol. 68, No. 61
Monday, March 31, 2003

Presidential Documents

Title 3—

The President

Proclamation 7656 of March 26, 2003

National Child Abuse Prevention Month, 2003

By the President of the United States of America

A Proclamation

Our Nation has an important responsibility to create a caring environment in which our children can flourish and reach their full potential. As we observe the 20th anniversary of National Child Abuse Prevention Month, we recognize the significant progress we have made to increase the safety and security of our children. We also renew our commitment to protecting our most vulnerable citizens from harm. Child abuse and neglect are national tragedies, and we must work together to eradicate them.

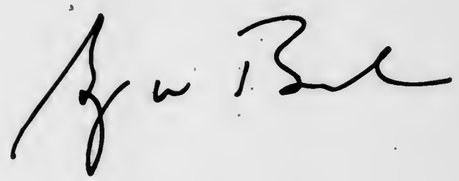
Every day, thousands of children are mistreated by their parents, guardians, relatives, or caregivers. On average, three children a day die as a result of abuse and neglect, and countless others remain silent, their pain unnoticed and unreported. These children face challenges that no child deserves, and young people who have experienced abuse may grow into adults who are self-destructive and damaging to our communities. To help these children become healthy and happy adults, parents and caregivers must provide them with love, security, emotional support, and a strong connection to their extended families and communities.

To help ensure the safety and well-being of our children, my Administration is committed to supporting and strengthening families. In the last year, we have worked with faith-based and community organizations to promote healthy marriages, responsible fatherhood, and partnerships that seek to prevent child abuse and neglect. We also worked with the Congress to reauthorize the Promoting Safe and Stable Families program. This year, we are asking the Congress to fully fund this program at $505 million, an increase of more than 65 percent. In addition, we are working with the Congress to reauthorize the Child Abuse Prevention and Treatment Act. This important legislation will provide funding to States for child abuse prevention activities and other vital programs.

Every child is a blessing. Through the cooperation of Federal, State, and local governments, faith-based and community organizations, schools, law enforcement, and health and human service agencies, we can develop and enhance successful prevention strategies that protect our young people. In addition, we must continue to recognize the spirit of compassion in individuals and community groups across our Nation that offer care, guidance, and support for young people, parents, and caregivers. By working together, we can put hope in our children's hearts and ensure healthy and safe lives for all our children.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2003 as National Child Abuse Prevention Month. I encourage all Americans to join together to support strong families, protect our children from abuse, neglect, and maltreatment, and make our Nation a more promising place for all.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of March, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–7879
Filed 3–28–03; 8:47 am]
Billing code 3195–01–P

Reader Aids

Federal Register
Vol. 68, No. 61
Monday, March 31, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MARCH

9851–10140	3
10141–10344	4
10345–10650	5
10651–10952	6
10953–11310	7
11311–11462	10
11463–11732	11
11733–11966	12
11967–12282	13
12283–12568	14
12569–12796	17
12797–13218	18
13219–13614	19
13615–13802	20
13803–14126	21
14127–14306	24
14307–14526	25
14527–14886	26
14887–15042	27
15043–15334	28
15335–15652	31

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7648 10641
7649 10643
7650 10645
7651 10647
7652 10649
7653 13217
7654 13805
7655 14887
7656 15651

Administrative Orders:
Memorandums:
Memorandum of February 12, 2003 10141
Memorandum of March 11, 2003 12569
Memorandum of March 12, 2003 12281
Presidential Determinations:
No. 2003–15 of February 13, 2003 10651
No. 2003–16 of March 14, 2003 13803
No. 2003–17 of March 20, 2003 15043
Notices:
Notice of March 12, 2003 12563

Executive Orders:
4601 (Amended by: 13286) 10619
10977 12567
10113 (Amended by: 13286) 10619
10163 (Amended by: 13286) 10619
10179 (Amended by: 13286) 10619
10271 (Amended by: 13286) 10619
10448 (Amended by: 13286) 10619
10499 (Amended by: 13286) 10619
10554 (Amended by: 13286) 10619
10631 (Amended by: 13286) 10619
10637 (Amended by: 13286) 10619
10694 (Amended by: 13286) 10619
10789 (Amended by: 13286) 10619
10977 (Amended by: 13286; See: 13289) 10619, 12567
11016 (Amended by: 13286) 10619
11046 (Amended by: 13286) 10619
11079 (Amended by: 13286) 10619
11139 (Amended by: 13286) 10619
11190 (Amended by: 13286) 10619
11231 (Amended by: 13286) 10619
11239 (Amended by: 13286) 10619
11366 (Amended by: 13286) 10619
11438 (Amended by: 13286) 10619
11446 (Amended by: 13286) 10619
11448 (Amended by: 13286) 10619
11623 (Amended by: 13286) 10619
11645 (Amended by: 13286) 10619
11800 (Amended by: 13286) 10619
11858 (Amended by: 13286) 10619
11926 (Amended by: 13286) 10619
11965 (Amended by: 13286) 10619
12002 (Amended by: 13286) 10619
12146 (Amended by: 13286) 10619
12148 (Amended by: 13286) 10619
12160 (Amended by: 13286) 10619
12188 (Amended by: 13286) 10619
12208 (Amended by: 13286) 10619
12341 (Amended by: 13286) 10619
12356 (See: 13292) 15315
12382 (Amended by: 13286) 10619
12472 (Amended by: 13286) 10619
12501 (Amended by: 13286) 10619
12555 (Amended by: 13286) 10619
12580 (Amended by: 13286) 10619
12656 (Amended by: 13286) 10619
12657 (Amended by: 13286) 10619
12699 (Amended by: 13286) 10619
12727 (Amended by:

13286).....10619
12728 (Amended by: 13286).....10619
12733 (Amended by: 13286).....10619
12742 (Amended by: 13286).....10619
12743 (Amended by: 13286).....10619
12752 (See Memorandum of March 11, 2003).....12569
12777 (Amended by: 13286).....10619
12788 (Amended by: 13286).....10619
12789 (Amended by: 13286).....10619
12793 (Amended by: 13286).....10619
12807 (Amended by: 13286).....10619
12824 (Amended by: 13286).....10619
12830 (Amended by: 13286).....10619
12835 (Amended by: 13286).....10619
12870 (Amended by: 13286).....10619
12906 (Amended by: 13286).....10619
12919 (Amended by: 13286).....10619
12957 (See Notice of March 12, 2003).....12563
12958 (Amended by: 13292).....15315
12959 (See Notice of March 12, 2003).....12563
12977 (Amended by: 13286).....10619
12978 (Amended by: 13286).....10619
12982 (Amended by: 13286).....10619
12985 (Amended by: 13286; See: 13289).....10619, 12567
12989 (Amended by: 13286).....10619
13011 (Amended by: 13286).....10619
13059 (See Notice of March 12, 2003).....12563
13076 (Amended by: 13286).....10619
13100 (Amended by: 13286).....10619
13112 (Amended by: 13286).....10619
13120 (Amended by: 13286).....10619
13130 (See: 13286).....10619
13133 (Amended by: 13286).....10619
13154 (Amended by: 13286).....10619
13165 (Amended by: 13286).....10619
13212 (Amended by: 13286).....10619
13223 (Amended by: 13286).....10619
13228 (Amended by: 13286).....10619
13231 (Amended by: 13286).....10619
13254 (Amended by: 13286).....10619
13257 (Amended by: 13286).....10619
13260 (Amended by: 13286; Revoked by: 13286, eff. 3/31/03).....10619
13271 (Amended by: 13286).....10619
13274 (Amended by: 13286).....10619
13276 (Amended by: 13286).....10619
13282 (Amended by: 13291).....14525
13284 (See: 13286).....10619
13286.....10619
13287.....10619
13288.....11457
13289.....12567
13290.....14305
13291.....14525
13292.....15315

5 CFR

110.....10666
792.....14127
Ch. XIV.....10953
2416.....10953
2424.....10953
2429.....10953
2471.....10953
2472.....10953
Proposed Rules:
2641.....15385

6 CFR

9.....10912
15.....10886
17.....10892
21.....10904

7 CFR

Ch. XVIII.....14889
Ch. XXXV.....14889
301.....11311
318.....11967
319.....9851
652.....14131, 15335
911.....10345
944.....10345
959.....11463, 15335
966.....15338
982.....11733
984.....10347
989.....13219, 13615
1000.....13617
1001.....13617
1005.....13617
1006.....13617
1007.....13617
1030.....13617
1032.....13617
1033.....13617
1124.....13617
1126.....13617
1131.....13617
1135.....13617
1940.....14527
Proposed Rules:
28.....15385
301.....13859
340.....11337
354.....13861
770.....12309
927.....15387
930.....9944, 13636
932.....11340
956.....15388
985.....11751
1205.....12310
1218.....11756
1219.....12881
1230.....11996
1405.....9944
1470.....13872
1499.....9944
1599.....14546

8 CFR

1.....10922
2.....10922
103.....10922
217.....10954
235.....10143
239.....10922
1001.....10349
1003.....10349
1101.....10349
1103.....10349
1205.....10349
1208.....10349
1209.....10349
1212.....10349
1216.....10349
1235.....10349
1236.....10349
1238.....10349
1239.....10349
1240.....10349
1241.....10349
1244.....10349
1245.....10349
1246.....10349
1249.....10349
1270.....10349
1274a.....10349
1292.....10349
1337.....10349

9 CFR

1.....12283
50.....10361
92.....10667
97.....13861
130.....13861
Proposed Rules:
94.....11998
317.....11008
327.....11008

10 CFR

20.....14307
40.....10362
50.....12571
70.....14528
71.....14528
73.....14528
150.....10362
430.....10957
Proposed Rules
20.....14349
40.....10411
150.....10411
430.....11009
490.....10320

11 CFR

111.....12572

12 CFR

202.....13144, 14476
615.....15045
Proposed Rules:
203.....11010
225.....12316
915.....13238

13 CFR

121.....13807, 15047

14 CFR

Ch. 1.....10145
25.....9854, 10365, 12581, 15339
39.....10147, 10149, 10152, 10154, 10156, 10583, 10653, 11467, 11469, 11967, 11971, 12285, 12797, 12799, 12802, 12806, 12809, 12812, 13221, 13618, 14309, 14310, 14311, 14312, 14530, 14533, 14889, 14892, 14894
47.....10316
71.....10367, 10369, 10654, 11736, 11738, 12582, 12814, 13225, 13811, 14072, 14314, 14315, 15343, 15345, 15346, 15347, 15348, 15349
91.....12542, 14072
95.....14072
97.....10962, 10963, 13619, 13621
121.....12542, 14072
125.....14072
129.....14072
135.....12542, 14072
145.....12542
255.....15350
1260.....14535
1274.....14535
Proposed Rules:
21.....11475, 11759
39.....9947, 9950, 9951, 9954, 10185, 10188, 10413, 10416, 11014, 11015, 11342, 11476, 11479, 11760, 11762, 11764, 11999, 12318, 12614, 12615, 12618, 13239, 14350, 14351, 14353, 14355, 14558
43.....11475, 11759
71.....12621, 14359, 15388
93.....14276
121.....12882
145.....11475, 11759
255.....12622, 12883
399.....12622, 12883

15 CFR

740.....10586
743.....10586
772.....10586
774.....10586
902.....12814

16 CFR

304.....9856

17 CFR

4.....12583
200.....12780
228.....15353
229.....15353
240.....12780, 14315, 15354
249.....15354

Proposed Rules:
1.....12319
4.....12001, 12622
228.....15600
229.....15600
240.....15600
249.....15600
270.....15600
274.....15600

18 CFR

284.....13813
375.....9857
388.....9857
Proposed Rules:
4.....13988
5.....13988
16.....13988
385.....13988

19 CFR

4.....13623, 13819, 14476
10.....13820, 13827, 14478
12.....13835
113.....13623, 14476
163.....14478
178.....13623, 14476
Proposed Rules:
10.....14478
12.....13636
24.....13636
113.....13638
181.....12011

20 CFR

1.....14316
30.....14316
625.....10932
Proposed Rules:
404.....12639
416.....12639
422.....14563

21 CFR

Ch. 1.....15355
165.....9873
201.....12584
211.....15355
226.....15355
510.....13225, 15355, 15369
514.....15355
520.....13626
524.....15370
530.....14134
558.....13839, 15370, 15371
610.....10157
888.....14134
1308.....14114, 14119
1310.....11471
Proposed Rules:
1.....10668
111.....10418, 12158, 14360, 15117
112.....12158
165.....9955
201.....12500
310.....12406
312.....12406
314.....12406
320.....12406
600.....12406
601.....12406
606.....12406, 12500
610.....12500
800.....15404
878.....13639

22 CFR

41.....13627
42.....13627, 13628
Proposed Rules:
211.....9944

23 CFR

655.....14138

24 CFR

25.....12766
28.....12766
30.....12766
81.....12766
92.....10160
180.....12766
207.....12792
906.....11714
3282.....12766
3500.....12766
Proposed Rules:
203.....11730
3285.....11448
3286.....11452

26 CFR

1.....10161, 10655, 11313, 12287, 12815, 12817, 13226
20.....10161
25.....10161
31.....10161
53.....10161
54.....10161
56.....10161
301.....10161, 11739, 14316
602.....10161, 11739, 12287, 12817
Proposed Rules:
1.....10190, 12324, 13242, 15118
31.....15119

27 CFR

4.....10076
5.....10076
7.....10076
555.....13768
Proposed Rules:
7.....14291, 15119
25.....14191, 15119

28 CFR

0.....14899
16.....14139, 14140
540.....10656
Proposed Rules:
28.....11481

29 CFR

1404.....10659
1910.....12301
1979.....14100
4022.....12303
4044.....12303
Proposed Rules:
541.....15560

30 CFR

18.....10965
250.....14274
916.....14322
948.....10178
Proposed Rules:
70.....10784, 12641, 15557
72.....10940, 12641
75.....10784, 11770, 12641, 15557
90.....10784, 12641, 15557
203.....14752
204.....15390
206.....12643
920.....14360
950.....10193

31 CFR

1.....12584
103.....10965
515.....14141
560.....11741
575.....11741
Proposed Rules:
103.....12155

32 CFR

171.....11633
199.....11973, 15372

33 CFR

52.....9882
100.....13628, 15050
110.....13629
117.....9890, 13226, 13227, 13228, 14149, 14536, 15051
165.....12304, 13228, 13231, 13233, 14150, 14326, 14328, 14899, 15051, 15053, 15372, 15375
401.....11974
Proposed Rules:
100.....15417
117.....13242, 13641, 14170, 14364
165.....13244, 13643, 13647, 13649, 14170, 14933, 14935
334.....14364
402.....12644

34 CFR

Proposed Rules:
200.....13796

36 CFR

704.....11974
Proposed Rules:
7.....11019
219.....10421, 12155

37 CFR

1.....14332
2.....14332
3.....14332
4.....14332
5.....14332
102.....14332
104.....14332
150.....14332
Proposed Rules:
1.....14365
2.....15119
7.....15119
201.....13652

38 CFR

17.....11977, 13590
20.....13235
61.....13590
Proposed Rules:
3.....14567

39 CFR

111.....15055
3001.....12588

40 CFR

9.....13608
52.....9892, 10966, 10969, 11316, 11977, 12590, 12825, 12827, 12829, 12831, 13630, 13840, 13843, 14151, 14154, 14156, 14159, 14161, 14537, 14540, 14542, 15059
62.....10659, 10661, 10663, 11472, 11978
63.....11745, 12590
70.....10969, 14163
82.....10370
122.....11325, 13608
123.....13608
124.....13608
125.....14164
130.....13608
141.....14502
180.....10370, 10377, 10972, 10983, 11330, 13845, 14165
228.....12592
271.....11981
300.....13633
312.....14339
439.....12266
721.....15061
Proposed Rules:
Ch. I.....10675, 12013
51.....12014
52.....11022, 11023, 12014, 12886, 12887, 13247, 13653, 13872, 14173, 14174, 14379, 14382, 14570, 15138
62.....10680, 10681, 11483, 11484, 12015
63.....12645
70.....11023
81.....13653, 14382
125.....13522
136.....11770, 11791
194.....12887
228.....11488
271.....12015
372.....13872
439.....12776

41 CFR

102-173.....15089
300–2.....12602
Ch. 304.....12602

42 CFR

50.....12306
412.....10987
416.....15268
Proposed Rules:
Ch. IV.....15139
83.....11924, 14388
412.....10421, 11234

43 CFR

Proposed Rules:
4.....13657
4100.....9964, 11345

44 CFR

61.....9895
64.....9897
152.....12544
206.....9899

45 CFR

32.....15092

162.....11445
674.....15378
1204.....14901
1206.....14901
1213.....14901
1229.....14901
1234.....14901

47 CFR

0.....11747, 13849
1.....12744, 15096
2.....10179, 11986, 12744
25.....11986
68.....13849
73.....10388, 10664, 10665, 11335, 11993, 12610, 12744, 14166, 15096, 15099, 15100
74.....12744
76.....13236, 13850, 14340, 15096
78.....12744
90.....10179
95.....9900
101.....12744

Proposed Rules:

15.....12015
54.....10430, 12020
64.....14939
73.....10681, 10682, 10683, 11345, 12023, 12024, 15140, 15141, 15142, 15143
74.....12652
76.....15419
78.....15419

48 CFR

Ch. 1.....13200, 13208
12.....13201, 13202
16.....13201
29.....13204
32.....13202, 13206
47.....13202
52.....13202, 13204, 13206
202.....15380
204.....15380
206.....15616
207.....15380
208.....15616
212.....15616
219.....15381
225.....15616
226.....15381
239.....15380
242.....15616
250.....15380
252.....15380
1817.....13634
1825.....11747

Proposed Rules:

501.....13212
538.....13212
552.....13212

49 CFR

1.....10988, 12833
107.....11748
171.....14341
172.....14510
175.....14341
190.....11748
191.....11748
192.....11748
193.....11748
195.....11748
198.....11748
199.....11748
219.....10108
225.....10108
240.....10108
386.....15381
572.....13856
1540.....9902

Proposed Rules:

192.....9966, 13249
397.....13250
544.....13887

50 CFR

Ch. IV.....15100
17.....10388, 12611, 12834, 12863, 12982, 13370, 13498
226.....13370
300.....10989, 14167
622.....10180, 11003
635.....14167
648.....9905, 10181, 12612, 12814, 14347, 14545
660.....11182, 13857
679.....9902, 9907, 9924, 9942, 11004, 11994, 13635, 13857, 13858, 14168, 14902, 15115, 15383, 15384
697.....14902

Proposed Rules:

17.....12326, 12336, 13662, 13663, 14868
21.....12653
223.....13662
229.....10195
600.....9967, 11501, 11793, 14570
622.....11794
648.....9968, 11023, 11346, 14388, 14571, 15425
660.....12888, 13891
679.....15144

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 31, 2003

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Tomatoes grown in—
Florida; published 3-31-03

AGRICULTURE DEPARTMENT
Natural Resources Conservation Service
Support services:
Technical service provider assistance
Correction; published 3-31-03

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Summer flounder, scup, and black sea bass; published 3-4-03

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Small disadvantaged businesses and institutions of higher education; published 3-31-03
Technical amendments; published 3-31-03

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Ambient air quality standards, national—
Particulate matter; published 12-31-02
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Alabama; published 1-28-03
Air quality implementation plans; approval and promulgation; various States:
California; published 2-28-03
Connecticut; published 2-27-03
North Dakota; published 2-28-03

FEDERAL TRADE COMMISSION
Telemarketing sales rule; published 1-29-03

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Decoquinate; correction; published 3-31-03
Gentamicin sulfate, et al.; published 3-31-03
Methylene disalicylate; published 3-31-03
Monensin; published 3-31-03
Sponsor name and address changes- -
Bayer HealthCare LLC, Animal Helth Division; published 3-31-03
Medical devices:
Hematology and pathology devices—
Automated blood cell separator device operating by filtration principle; reclassification; published 2-28-03

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Chesapeake Bay, Calvert County, MD; Calvert Cliffs Nuclear Power Plant; security zone; published 3-28-03

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Plant species from Kauai and Niihau, HI; published 2-27-03

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Andondoned mine land reclamation:
Notice publication requirement; published 2-27-03

SECURITIES AND EXCHANGE COMMISSION
Securities:
Auditor independence; Commission requirements
Correction; published 3-31-03
Lost securityholders; transfer agent requirements; technical amendment; published 3-25-03
Sarbanes-Oxley Act of 2002; implementation
Disclosure requirements; correction; published 3-31-03

TRANSPORTATION DEPARTMENT
Computer reservation systems, carrier-owned:
Expiration date extension; published 3-31-03

TRANSPORTATION DEPARTMENT
Federal Motor Carrier Safety Administration
Motor carrier safety standards:
Technical amendments; published 3-31-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Olives grown in—
California; comments due by 4-9-03; published 3-10-03 [FR 03-05561]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Foot-and-mouth disease; disease status change—
Uruguay; comments due by 4-11-03; published 2-10-03 [FR 03-03228]
Noxious weeds:
Kikuyu grass cultivars; comments due by 4-11-03; published 2-10-03 [FR 03-03181]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Noxious weeds:
Witchweed; regulated areas; comments due by 4-11-03; published 2-10-03 [FR 03-03182]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Wheat and related products; flag smut import prohibitions; comments due by 4-8-03; published 2-7-03 [FR 03-03057]
Plant related quarantine; domestic:
Fire ant, imported; comments due by 4-7-03; published 2-5-03 [FR 03-02685]

AGRICULTURE DEPARTMENT
Forest Service
National Forest System land and resource management planning; comments due by 4-7-03; published 3-5-03 [FR 03-05116]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 4-10-03; published 3-26-03 [FR 03-07252]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Energy conservation standards and test procedures—
Refrigerators and refrigerator-freezers; comments due by 4-7-03; published 3-7-03 [FR 03-05405]

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Energy conservation standards and test procedures—
Refrigerators and refrigerator-freezers; comments due by 4-7-03; published 3-7-03 [FR 03-05404]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
California; comments due by 4-10-03; published 3-11-03 [FR 03-05748]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Indiana; comments due by 4-10-03; published 3-11-03 [FR 03-05741]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Indiana; comments due by 4-10-03; published 3-11-03 [FR 03-05742]
New Hampshire; comments due by 4-7-03; published 3-6-03 [FR 03-05305]
ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Hampshire; comments due by 4-7-03; published 3-6-03 [FR 03-05306]
ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Jersey; comments due by 4-7-03; published 3-6-03 [FR 03-05320]
ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Jersey; comments due by 4-7-03; published 3-6-03 [FR 03-05321]
Rhode Island; comments due by 4-7-03; published 3-6-03 [FR 03-05307]
ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Rhode Island; comments due by 4-7-03; published 3-6-03 [FR 03-05308]
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-7-03; published 3-7-03 [FR 03-05325]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-7-03; published 3-7-03 [FR 03-05326]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Iowa; comments due by 4-7-03; published 3-7-03 [FR 03-05309]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Iowa; comments due by 4-7-03; published 3-7-03 [FR 03-05310]
ENVIRONMENTAL PROTECTION AGENCY
Small Business Liability Relief and Brownfields Revitalization Act; implementation:
Federal standards for conducting all appropriate inquiry; negotiated rulemaking committee; intent to establish; comments due by 4-7-03; published 3-6-03 [FR 03-05324]
FARM CREDIT ADMINISTRATION
Farm credit system:
Borrower rights; comments due by 4-7-03; published 2-4-03 [FR 03-02506]
FEDERAL COMMUNICATIONS COMMISSION
Radio frequency devices:
Unlicensed devices operating in additional frequency bands; feasibility; comments due by 4-7-03; published 1-21-03 [FR 03-01206]
Radio stations; table of assignments:
North Carolina and Virginia; comments due by 4-11-03; published 3-10-03 [FR 03-05333]
Oregon; comments due by 4-11-03; published 3-6-03 [FR 03-05334]
Various States; comments due by 4-11-03; published 3-6-03 [FR 03-05335]
FEDERAL MARITIME COMMISSION
Passenger vessel financial responsibility:
Performance and casualty rules, Alternative Dispute Resolution program, etc.; miscellaneous amendments; comments due by 4-8-03; published 12-27-02 [FR 02-32645]
FEDERAL RESERVE SYSTEM
Home mortgage disclosure (Regulation C):
Transition rules for applications; staff commentary; comments due by 4-8-03; published 3-7-03 [FR 03-05365]
GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]
HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare:
End-stage renal disease services; provider bad debt payment; comments due by 4-11-03; published 2-10-03 [FR 03-02974]
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Radiological health:
Diagnostic x-ray systems and their major components; performance standard; comments due by 4-9-03; published 12-10-02 [FR 02-30550]
HEALTH AND HUMAN SERVICES DEPARTMENT
Energy Employees Occupational Illness Compensation Program Act; implementation:
Special Exposure Cohort; classes of employees designated as members; procedures; comments due by 4-7-03; published 3-7-03 [FR 03-05604]
HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
New Jersey; comments due by 4-7-03; published 2-5-03 [FR 03-02696]
Pollution:
Ballast water management reports; non-submission penalties; comments due by 4-7-03; published 1-6-03 [FR 03-00100]
Vessel and facility response plans for oil; 2003 removal equipment requirements and alternative technology revisions
Meeting; comments due by 4-8-03; published 11-19-02 [FR 02-29168]
Ports and waterways safety:
Oahu, Maui, Hawaii, and Kauai, HI; security zones; comments due by 4-7-03; published 2-4-03 [FR 03-02523]
HOMELAND SECURITY DEPARTMENT
Lobbying restrictions; comments due by 4-7-03; published 3-6-03 [FR 03-05145]
HOMELAND SECURITY DEPARTMENT
Nondiscrimination on basis of disability in federally conducted programs or activities; comments due by 4-7-03; published 3-6-03 [FR 03-05142]
HOMELAND SECURITY DEPARTMENT
Nondiscrimination on basis of race, color, or national origin in programs or activities receiving Federal financial assistance; comments due by 4-7-03; published 3-6-03 [FR 03-05144]
Nondiscrimination on basis of sex in education programs or activities receiving Federal financial assistance; comments due by 4-7-03; published 3-6-03 [FR 03-05143]
Organization, functions, and authority delegations:
Immigration law enforcement; comments due by 4-7-03; published 3-6-03 [FR 03-05146]
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Public housing assessment system; changes; comments due by 4-7-03; published 2-6-03 [FR 03-02608]
JUSTICE DEPARTMENT
DNA identification system:
USA PATRIOT Act; implementation—
Federal offenders; DNA sample collection; comments due by 4-10-03; published 3-11-03 [FR 03-05861]
LABOR DEPARTMENT
Occupational Safety and Health Administration
Safety and health standards:
Commercial diving operations; comments due by 4-10-03; published 1-10-03 [FR 03-00372]
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):

Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]
PERSONNEL MANAGEMENT OFFICE
Federal Long Term Care Insurance Program; comments due by 4-7-03; published 2-4-03 [FR 03-02463]
PERSONNEL MANAGEMENT OFFICE
Health benefits, Federal employees:
Health care providers; financial sanctions; comments due by 4-11-03; published 2-10-03 [FR 03-03125]
PERSONNEL MANAGEMENT OFFICE
Homeland Security Act; implementation:
Voluntary separation incentive payments; comments due by 4-7-03; published 2-4-03 [FR 03-02766]
SECURITIES AND EXCHANGE COMMISSION
Securities:
Sarbanes-Oxley Act of 2002; implementation—
Attorneys; professional conduct standards; implementation; comments due by 4-7-03; published 2-6-03 [FR 03-02520]
OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States
Andean Trade Preference Act, as amended by Andean Trade Promotion and Drug Eradication Act; countries eligibility for benefits; petition process; comments due by 4-7-03; published 2-4-03 [FR 03-02705]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Aircraft products and parts; certification procedures:
Production Approval Holder's quality system; products and/or parts that have left system, performing work on; policy statement; comments due by 4-10-03; published 3-11-03 [FR 03-05128]
Airworthiness directives:
BAE Systems (Operations) Ltd.; comments due by 4-11-03; published 3-12-03 [FR 03-05859]
Bell; comments due by 4-8-03; published 2-7-03 [FR 03-03030]
Boeing; comments due by 4-10-03; published 2-24-03 [FR 03-04236]
Dornier; comments due by 4-11-03; published 3-12-03 [FR 03-05858]
General Electric Co.; comments due by 4-8-03; published 2-7-03 [FR 03-02995]
McDonnell Douglas; comments due by 4-7-03; published 2-20-03 [FR 03-04028]
Raytheon; comments due by 4-10-03; published 2-24-03 [FR 03-04234]
Sikorsky; comments due by 4-8-03; published 2-7-03 [FR 03-03031]
Turbomeca; comments due by 4-7-03; published 2-5-03 [FR 03-02633]
Turbomeca S.A.; comments due by 4-8-03; published 2-7-03 [FR 03-02996]
Jet routes; comments due by 4-7-03; published 2-19-03 [FR 03-03965]
TRANSPORTATION DEPARTMENT
Federal Highway Administration
Grants:
Operation of motor vehicles by intoxicated persons; withholding of Federal-aid highway funds; comments due by 4-7-03; published 2-6-03 [FR 03-02790]
TRANSPORTATION DEPARTMENT
Federal Motor Carrier Safety Administration
Motor carrier safety standards:
Intermodal container chassis and trailers; general inspection, repair, and maintenance requirements; negotiated rulemaking process; intent to consider; comments due by 4-10-03; published 2-24-03 [FR 03-04228]
TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Grants:
Operation of motor vehicles by intoxicated persons; wtihholding of Federal-aid highway funds; comments due by 4-7-03; published 2-6-03 [FR 03-02790]
TREASURY DEPARTMENT
Comptroller of the Currency
National banks:
Authority provided by American Homeownership and Economic Opportunity Act, and other miscellaneous amendments; comments due by 4-8-03; published 2-7-03 [FR 03-02641]
TREASURY DEPARTMENT
Community Development Financial Institutions Fund
Bank Enterprise Award Program; implementation; comments due by 4-7-03; published 2-4-03 [FR 03-02336]
Community Development Financial Institutions Program; implementation; comments due by 4-7-03; published 2-4-03 [FR 03-02335]
TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Anti-money laundering programs for businesses engaged in vehicle sales; comments due by 4-10-03; published 2-24-03 [FR 03-04173]
Anti-money laundering programs for travel agencies; comments due by 4-10-03; published 2-24-03 [FR 03-04172]
VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
Cirrhosis of liver in former prisoners of war; presumptive service connection; comments due by 4-11-03; published 2-10-03 [FR 03-03175]
VETERANS AFFAIRS DEPARTMENT
Loan guaranty:
Veterans Education and Benefits Expansion Act; implementation; comments due by 4-11-03; published 2-10-03 [FR 03-03176]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 395/P.L. 108–10

Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

Last List March 10, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.access.gpo.gov/nara/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $1195.00 domestic, $298.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512-1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2250.**

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-050-00001-6)	9.00	[4]Jan. 1, 2003
3 (1997 Compilation and Parts 100 and 101)	(869-048-00002-0)	59.00	[1] Jan. 1, 2002
4	(869-050-00003-2)	9.50	Jan. 1, 2003
5 Parts:			
1-699	(869-050-00004-1)	57.00	Jan. 1, 2003
700-1199	(869-050-00005-9)	46.00	Jan. 1, 2003
1200-End, 6 (6 Reserved)	(869-048-00006-2)	58.00	Jan. 1, 2002
7 Parts:			
1-26	(869-048-00001-1)	41.00	Jan. 1, 2002
*27-52	(869-050-00008-3)	47.00	Jan. 1, 2003
53-209	(869-050-00009-1)	36.00	Jan. 1, 2003
210-299	(869-048-00010-1)	59.00	Jan. 1, 2002
300-399	(869-050-00011-3)	43.00	Jan. 1, 2003
400-699	(869-050-00012-1)	39.00	Jan. 1, 2003
*700-899	(869-050-00013-0)	42.00	Jan. 1, 2003
900-999	(869-048-00014-3)	58.00	Jan. 1, 2002
1000-1199	(869-048-00015-1)	25.00	Jan. 1, 2002
1200-1599	(869-048-00016-0)	58.00	Jan. 1, 2002
1600-1899	(869-050-00017-2)	61.00	Jan. 1, 2003
1900-1939	(869-048-00018-6)	29.00	Jan. 1, 2002
1940-1949	(869-048-00019-4)	53.00	Jan. 1, 2002
1950-1999	(869-048-00020-8)	47.00	Jan. 1, 2002
2000-End	(869-050-00021-1)	46.00	Jan. 1, 2003
8	(869-048-00022-4)	58.00	Jan. 1, 2002
9 Parts:			
1-199	(869-048-00023-2)	58.00	Jan. 1, 2002
200-End	(869-048-00024-1)	56.00	Jan. 1, 2002
10 Parts:			
*1-50	(869-050-00025-3)	58.00	Jan. 1, 2003
*51-199	(869-050-00026-1)	56.00	Jan. 1, 2003
200-499	(869-048-00027-5)	44.00	Jan. 1, 2002
500-End	(869-048-00028-3)	58.00	Jan. 1, 2002
11	(869-048-00029-1)	34.00	Jan. 1, 2002
12 Parts:			
1-199	(869-050-00030-0)	30.00	Jan. 1, 2003
200-219	(869-048-00031-3)	36.00	Jan. 1, 2002
220-299	(869-048-00032-1)	58.00	Jan. 1, 2002
300-499	(869-050-00033-4)	43.00	Jan. 1, 2003
500-599	(869-050-00034-2)	38.00	Jan. 1, 2003
600-899	(869-050-00035-1)	54.00	Jan. 1, 2003
900-End	(869-050-00036-9)	47.00	Jan. 1, 2003
13	(869-050-00037-7)	47.00	Jan. 1, 2003
14 Parts:			
1-59	(869-048-00037-2)	60.00	Jan. 1, 2002
*60-139	(869-050-00039-3)	58.00	Jan. 1, 2003
140-199	(869-050-00040-7)	28.00	Jan. 1, 2003
200-1199	(869-048-00040-2)	47.00	Jan. 1, 2002
1200-End	(869-050-00042-3)	43.00	Jan. 1, 2003
15 Parts:			
0-299	(869-050-00043-1)	37.00	Jan. 1, 2003
300-799	(869-048-00043-7)	58.00	Jan. 1, 2002
800-End	(869-050-00045-8)	40.00	Jan. 1, 2003
16 Parts:			
0-999	(869-050-00046-6)	47.00	Jan. 1, 2003
1000-End	(869-050-00047-4)	57.00	Jan. 1, 2003
17 Parts:			
1-199	(869-048-00048-8)	47.00	Apr. 1, 2002
200-239	(869-048-00049-6)	55.00	Apr. 1, 2002
240-End	(869-048-00050-0)	59.00	Apr. 1, 2002
18 Parts:			
1-399	(869-048-00051-8)	59.00	Apr. 1, 2002
400-End	(869-048-00052-6)	24.00	Apr. 1, 2002
19 Parts:			
1-140	(869-048-00053-4)	57.00	Apr. 1, 2002
141-199	(869-048-00054-2)	56.00	Apr. 1, 2002
200-End	(869-048-00055-1)	29.00	Apr. 1, 2002
20 Parts:			
1-399	(869-048-00056-9)	47.00	Apr. 1, 2002
400-499	(869-048-00057-7)	60.00	Apr. 1, 2002
500-End	(869-048-00058-5)	60.00	Apr. 1, 2002
21 Parts:			
1-99	(869-048-00059-3)	39.00	Apr. 1, 2002
100-169	(869-048-00060-7)	46.00	Apr. 1, 2002
170-199	(869-048-00061-5)	47.00	Apr. 1, 2002
200-299	(869-048-00062-3)	16.00	Apr. 1, 2002
300-499	(869-048-00063-1)	29.00	Apr. 1, 2002
500-599	(869-048-00064-0)	46.00	Apr. 1, 2002
600-799	(869-048-00065-8)	16.00	Apr. 1, 2002
800-1299	(869-048-00066-6)	56.00	Apr. 1, 2002
1300-End	(869-048-00067-4)	22.00	Apr. 1, 2002
22 Parts:			
1-299	(869-048-00068-2)	59.00	Apr. 1, 2002
300-End	(869-048-00069-1)	43.00	Apr. 1, 2002
23	(869-048-00070-4)	40.00	Apr. 1, 2002
24 Parts:			
0-199	(869-048-00071-2)	57.00	Apr. 1, 2002
200-499	(869-048-00072-1)	47.00	Apr. 1, 2002
500-699	(869-048-00073-9)	29.00	Apr. 1, 2002
700-1699	(869-048-00074-7)	58.00	Apr. 1, 2002
1700-End	(869-048-00075-5)	29.00	Apr. 1, 2002
25	(869-048-00076-3)	68.00	Apr. 1, 2002
26 Parts:			
§§ 1.0-1-1.60	(869-048-00077-1)	45.00	Apr. 1, 2002
§§ 1.61-1.169	(869-048-00078-0)	58.00	Apr. 1, 2002
§§ 1.170-1.300	(869-048-00079-8)	55.00	Apr. 1, 2002
§§ 1.301-1.400	(869-048-00080-1)	44.00	Apr. 1, 2002
§§ 1.401-1.440	(869-048-00081-0)	60.00	Apr. 1, 2002
§§ 1.441-1.500	(869-048-00082-8)	47.00	Apr. 1, 2002
§§ 1.501-1.640	(869-048-00083-6)	44.00	[6]Apr. 1, 2002
§§ 1.641-1.850	(869-048-00084-4)	57.00	Apr. 1, 2002
§§ 1.851-1.907	(869-048-00085-2)	57.00	Apr. 1, 2002
§§ 1.908-1.1000	(869-048-00086-1)	56.00	Apr. 1, 2002
§§ 1.1001-1.1400	(869-048-00087-9)	58.00	Apr. 1, 2002
§§ 1.1401-End	(869-048-00088-7)	61.00	Apr. 1, 2002
2-29	(869-048-00089-5)	57.00	Apr. 1, 2002
30-39	(869-048-00090-9)	39.00	Apr. 1, 2002
40-49	(869-048-00091-7)	26.00	Apr. 1, 2002
50-299	(869-048-00092-5)	38.00	Apr. 1, 2002
300-499	(869-048-00093-3)	57.00	Apr. 1, 2002
500-599	(869-048-00094-1)	12.00	[5]Apr. 1, 2002
600-End	(869-048-00095-0)	16.00	Apr. 1, 2002
27 Parts:			
1-199	(869-048-00096-8)	61.00	Apr. 1, 2002

Title	Stock Number	Price	Revision Date
200-End	(869-048-00097-6)	13.00	Apr. 1, 2002
28 Parts:			
0-42	(869-048-00098-4)	58.00	July 1, 2002
43-end	(869-048-00099-2)	55.00	July 1, 2002
29 Parts:			
0-99	(869-048-00100-0)	45.00	[8]July 1, 2002
100-499	(869-048-00101-8)	21.00	July 1, 2002
500-899	(869-048-00102-6)	58.00	July 1, 2002
900-1899	(869-048-00103-4)	35.00	July 1, 2002
1900-1910 (§§ 1900 to 1910.999)	(869-048-00104-2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869-048-00105-1)	42.00	[8]July 1, 2002
1911-1925	(869-048-00106-9)	29.00	July 1, 2002
1926	(869-048-00107-7)	47.00	July 1, 2002
1927-End	(869-048-00108-5)	59.00	July 1, 2002
30 Parts:			
1-199	(869-048-00109-3)	56.00	July 1, 2002
200-699	(869-048-00110-7)	47.00	July 1, 2002
700-End	(869-048-00111-5)	56.00	July 1, 2002
31 Parts:			
0-199	(869-048-00112-3)	35.00	July 1, 2002
200-End	(869-048-00113-1)	60.00	July 1, 2002
32 Parts:			
1-39, Vol. I		15.00	[2]July 1, 1984
1-39, Vol. II		19.00	[2]July 1, 1984
1-39, Vol. III		18.00	[2]July 1, 1984
1-190	(869-048-00114-0)	56.00	July 1, 2002
191-399	(869-048-00115-8)	60.00	July 1, 2002
400-629	(869-048-00116-6)	47.00	July 1, 2002
630-699	(869-048-00117-4)	37.00	July 1, 2002
700-799	(869-048-00118-2)	44.00	July 1, 2002
800-End	(869-048-00119-1)	46.00	July 1, 2002
33 Parts:			
1-124	(869-048-00120-4)	47.00	July 1, 2002
125-199	(869-048-00121-2)	60.00	July 1, 2002
200-End	(869-048-00122-1)	47.00	July 1, 2002
34 Parts:			
1-299	(869-048-00123-9)	45.00	July 1, 2002
300-399	(869-048-00124-7)	43.00	July 1, 2002
400-End	(869-048-00125-5)	59.00	July 1, 2002
35	(869-048-00126-3)	10.00	[7]July 1, 2002
36 Parts			
1-199	(869-048-00127-1)	36.00	July 1, 2002
200-299	(869-048-00128-0)	35.00	July 1, 2002
300-End	(869-048-00129-8)	58.00	July 1, 2002
37	(869-048-00130-1)	47.00	July 1, 2002
38 Parts:			
0-17	(869-048-00131-0)	57.00	July 1, 2002
18-End	(869-048-00132-8)	58.00	July 1, 2002
39	(869-048-00133-6)	40.00	July 1, 2002
40 Parts:			
1-49	(869-048-00134-4)	57.00	July 1, 2002
50-51	(869-048-00135-2)	40.00	July 1, 2002
52 (52.01-52.1018)	(869-048-00136-1)	55.00	July 1, 2002
52 (52.1019-End)	(869-048-00137-9)	58.00	July 1, 2002
53-59	(869-048-00138-7)	29.00	July 1, 2002
60 (60.1-End)	(869-048-00139-5)	56.00	July 1, 2002
60 (Apps)	(869-048-00140-9)	51.00	[8]July 1, 2002
61-62	(869-048-00141-7)	38.00	July 1, 2002
63 (63.1-63.599)	(869-048-00142-5)	56.00	July 1, 2002
63 (63.600-63.1199)	(869-048-00143-3)	46.00	July 1, 2002
63 (63.1200-End)	(869-048-00144-1)	61.00	July 1, 2002
64-71	(869-048-00145-0)	29.00	July 1, 2002
72-80	(869-048-00146-8)	59.00	July 1, 2002
81-85	(869-048-00147-6)	47.00	July 1, 2002
86 (86.1-86.599-99)	(869-048-00148-4)	52.00	[8]July 1, 2002
86 (86.600-1-End)	(869-048-00149-2)	47.00	July 1, 2002
87-99	(869-048-00150-6)	57.00	July 1, 2002
100-135	(869-048-00151-4)	42.00	July 1, 2002
136-149	(869-048-00152-2)	58.00	July 1, 2002
150-189	(869-048-00153-1)	47.00	July 1, 2002
190-259	(869-048-00154-9)	37.00	July 1, 2002
260-265	(869-048-00155-7)	47.00	July 1, 2002
266-299	(869-048-00156-5)	47.00	July 1, 2002
300-399	(869-048-00157-3)	43.00	July 1, 2002
400-424	(869-048-00158-1)	54.00	July 1, 2002
425-699	(869-048-00159-0)	59.00	July 1, 2002
700-789	(869-048-00160-3)	58.00	July 1, 2002
790-End	(869-048-00161-1)	45.00	July 1, 2002
41 Chapters:			
1, 1-1 to 1-10		13.00	[3]July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3-6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10-17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3]July 1, 1984
19-100		13.00	[3]July 1, 1984
1-100	(869-048-00162-0)	23.00	July 1, 2002
101	(869-048-00163-8)	43.00	July 1, 2002
102-200	(869-048-00164-6)	41.00	July 1, 2002
201-End	(869-048-00165-4)	24.00	July 1, 2002
42 Parts:			
1-399	(869-048-00166-2)	56.00	Oct. 1, 2002
400-429	(869-048-00167-1)	59.00	Oct. 1, 2002
430-End	(869-048-00168-9)	61.00	Oct. 1, 2002
43 Parts:			
1-999	(869-048-00169-7)	47.00	Oct. 1, 2002
1000-end	(869-048-00170-1)	59.00	Oct. 1, 2002
44	(869-048-00171-9)	47.00	Oct. 1, 2002
45 Parts:			
1-199	(869-048-00172-7)	57.00	Oct. 1, 2002
200-499	(869-048-00173-5)	31.00	[9]Oct. 1, 2002
500-1199	(869-048-00174-3)	47.00	Oct. 1, 2002
1200-End	(869-048-00175-1)	57.00	Oct. 1, 2002
46 Parts:			
1-40	(869-048-00176-0)	44.00	Oct. 1, 2002
41-69	(869-048-00177-8)	37.00	Oct. 1, 2002
70-89	(869-048-00178-6)	14.00	Oct. 1, 2002
90-139	(869-048-00179-4)	42.00	Oct. 1, 2002
140-155	(869-048-00180-8)	24.00	[9]Oct. 1, 2002
156-165	(869-048-00181-6)	31.00	[9]Oct. 1, 2002
166-199	(869-048-00182-4)	44.00	Oct. 1, 2002
200-499	(869-048-00183-2)	37.00	Oct. 1, 2002
500-End	(869-048-00184-1)	24.00	Oct. 1, 2002
47 Parts:			
0-19	(869-048-00185-9)	57.00	Oct. 1, 2002
20-39	(869-048-00186-7)	45.00	Oct. 1, 2002
40-69	(869-048-00187-5)	36.00	Oct. 1, 2002
70-79	(869-048-00188-3)	58.00	Oct. 1, 2002
80-End	(869-048-00189-1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1-51)	(869-048-00190-5)	59.00	Oct. 1, 2002
1 (Parts 52-99)	(869-048-00191-3)	47.00	Oct. 1, 2002
2 (Parts 201-299)	(869-048-00192-1)	53.00	Oct. 1, 2002
3-6	(869-048-00193-0)	30.00	Oct. 1, 2002
7-14	(869-048-00194-8)	47.00	Oct. 1, 2002
15-28	(869-048-00195-6)	55.00	Oct. 1, 2002
29-End	(869-048-00196-4)	38.00	[9]Oct. 1, 2002
49 Parts:			
1-99	(869-048-00197-2)	56.00	Oct. 1, 2002
100-185	(869-048-00198-1)	60.00	Oct. 1, 2002
186-199	(869-048-00199-9)	18.00	Oct. 1, 2002
200-399	(869-048-00200-6)	61.00	Oct. 1, 2002
400-999	(869-048-00201-4)	61.00	Oct. 1, 2002
1000-1199	(869-048-00202-2)	25.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
1200–End	(869–048–00203–1)	30.00	Oct. 1, 2002
50 Parts:			
1–17	(869–048–00204–9)	60.00	Oct. 1, 2002
18–199	(869–048–00205–7)	40.00	Oct. 1, 2002
200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
600–End	(869–048–00207–3)	58.00	Oct. 1, 2002
*CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.

VOL
68
ISS
61
MR
31
2003
UMI



Printed on recycled paper

JA

003

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION



Code of Federal Regulations

LSA

List of CFR Sections Affected

January 2003

Save this issue for Title 11

Editors Note:
The revision for the 2002 edition of Title 11 will be delayed until February 3, 2003. The 2002 edition will include amendments promulgated during the period of January 2, 2002 through February 3, 2003. For the convenience of the user, this LSA contains all amendments promulgated since the January 1, 2002 revision.

United States Government Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

Code of Federal Regulations

LSA

List of CFR Sections Affected

January 2003

Title 1–10 and 12–16
Changes January 2, 2003
through January 31, 2003

Title 11
Changes January 2, 2002
through February 3, 2003

Title 17–27
Changes April 1, 2002
through January 31, 2003

Title 28–41
Changes July 2, 2002
through January 31, 2003

Title 42–50
Changes October 1, 2002
through January 31, 2003

LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1–16—as of Jan. 1
17–27—as of April 1
28–41—as of July 1
42–50—as of Oct. 1

To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

The page numbers listed to the right of each LSA entry indicate where the specific amendments begin in the Federal Register. **Boldface** page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the previous year from the current year.

Cite a page reference from this publication using the volume number (64 FR for 1999, 67 FR for 2002) and the page number. Example: 24727 in bold cite as 64 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

ISSUES TO BE SAVED

There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1–16; the MARCH issue is the ANNUAL for Titles 17–27; the JUNE issue is the ANNUAL for Titles 28–41; the SEPTEMBER issue is the ANNUAL for Titles 42–50. ANNUAL ISSUES to be saved are clearly designated on the cover.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

LSA ONLINE

The LSA can be found on the Internet at http://www.access.gpo.gov/nara/lsa/aboutlsa.html.

INQUIRIES AND SUGGESTIONS

Shelley C. Featherson was Chief Editor of the LSA, assisted by Thomas W. Wright. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Brian Swidal. INQUIRIES, telephone 202–741–6000.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Raymond A. Mosley, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail fedreg.info@nara.gov.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–048–00001–1)	9.00	Jan. 1, 2002
3 (1997 Compilation and Parts 100 and 101).	(869–048–00002–0)	59.00	[1] Jan. 1, 2002
4	(869–048–00003–8)	9.00	[4] Jan. 1, 2002
5 Parts:			
1–699	(869–048–00004–6)	57.00	Jan. 1, 2002
700–1199	(869–048–00005–4)	47.00	Jan. 1, 2002
1200–End, 6 (6 Reserved)	(869–048–00006–2)	58.00	Jan. 1, 2002
7 Parts:			
1–26	(869–048–00001–1)	41.00	Jan. 1, 2002
27–52	(869–048–00008–9)	47.00	Jan. 1, 2002
53–209	(869–048–00009–7)	36.00	Jan. 1, 2002
210–299	(869–048–00010–1)	59.00	Jan. 1, 2002
300–399	(869–048–00011–9)	42.00	Jan. 1, 2002
400–699	(869–048–00012–7)	57.00	Jan. 1, 2002
700–899	(869–048–00013–5)	54.00	Jan. 1, 2002
900–999	(869–048–00014–3)	58.00	Jan. 1, 2002
1000–1199	(869–048–00015–1)	25.00	Jan. 1, 2002
1200–1599	(869–048–00016–0)	58.00	Jan. 1, 2002
1600–1899	(869–048–00017–8)	61.00	Jan. 1, 2002
1900–1939	(869–048–00018–6)	29.00	Jan. 1, 2002
1940–1949	(869–048–00019–4)	53.00	Jan. 1, 2002
1950–1999	(869–048–00020–8)	47.00	Jan. 1, 2002
2000–End	(869–048–00021–6)	46.00	Jan. 1, 2002
8	(869–048–00022–4)	58.00	Jan. 1, 2002
9 Parts:			
1–199	(869–048–00023–2)	58.00	Jan. 1, 2002
200–End	(869–048–00024–1)	56.00	Jan. 1, 2002
10 Parts:			
1–50	(869–048–00025–4)	58.00	Jan. 1, 2002
51–199	(869–048–00026–7)	56.00	Jan. 1, 2002
200–499	(869–048–00027–5)	44.00	Jan. 1, 2002
500–End	(869–048–00028–3)	58.00	Jan. 1, 2002
11	(869–048–00029–1)	34.00	Jan. 1, 2002
12 Parts:			
1–199	(869–048–00030–5)	30.00	Jan. 1, 2002
200–219	(869–048–00031–3)	36.00	Jan. 1, 2002
220–299	(869–048–00032–1)	58.00	Jan. 1, 2002
300–499	(869–048–00033–0)	45.00	Jan. 1, 2002
500–599	(869–048–00034–8)	42.00	Jan. 1, 2002
600–End	(869–048–00035–6)	61.00	Jan. 1, 2002
13	(869–048–00036–4)	47.00	Jan. 1, 2002
14 Parts:			
1–59	(869–048–00037–2)	60.00	Jan. 1, 2002
60–139	(869–048–00038–1)	58.00	Jan. 1, 2002
140–199	(869–048–00039–9)	29.00	Jan. 1, 2002
200–1199	(869–048–00040–2)	47.00	Jan. 1, 2002
1200–End	(869–048–00041–1)	41.00	Jan. 1, 2002
15 Parts:			
0–299	(869–048–00042–9)	37.00	Jan. 1, 2002
300–799	(869–048–00043–7)	58.00	Jan. 1, 2002
800–End	(869–048–00044–5)	40.00	Jan. 1, 2002
16 Parts:			
0–999	(869–048–00045–3)	47.00	Jan. 1, 2002

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1000–End	(869–048–00046–1)	57.00	Jan. 1, 2002
17 Parts:			
1–199	(869–048–00048–8)	47.00	Apr. 1, 2002
200–239	(869–048–00049–6)	55.00	Apr. 1, 2002
240–End	(869–048–00050–0)	59.00	Apr. 1, 2002
18 Parts:			
1–399	(869–048–00051–8)	59.00	Apr. 1, 2002
400–End	(869–048–00052–6)	24.00	Apr. 1, 2002
19 Parts:			
1–140	(869–048–00053–4)	57.00	Apr. 1, 2002
141–199	(869–048–00054–2)	56.00	Apr. 1, 2002
200–End	(869–048–00055–1)	29.00	Apr. 1, 2002
20 Parts:			
1–399	(869–048–00056–9)	47.00	Apr. 1, 2002
400–499	(869–048–00057–7)	60.00	Apr. 1, 2002
500–End	(869–048–00058–5)	60.00	Apr. 1, 2002
21 Parts:			
1–99	(869–048–00059–3)	39.00	Apr. 1, 2002
100–169	(869–048–00060–7)	46.00	Apr. 1, 2002
170–199	(869–048–00061–5)	47.00	Apr. 1, 2002
200–299	(869–048–00062–3)	16.00	Apr. 1, 2002
300–499	(869–048–00063–1)	29.00	Apr. 1, 2002
500–599	(869–048–00064–0)	46.00	Apr. 1, 2002
600–799	(869–048–00065–8)	16.00	Apr. 1, 2002
800–1299	(869–048–00066–6)	56.00	Apr. 1, 2002
1300–End	(869–048–00067–4)	22.00	Apr. 1, 2002
22 Parts:			
1–299	(869–048–00068–2)	59.00	Apr. 1, 2002
300–End	(869–048–00069–1)	43.00	Apr. 1, 2002
23	(869–048–00070–4)	40.00	Apr. 1, 2002
24 Parts:			
0–199	(869–048–00071–2)	57.00	Apr. 1, 2002
200–499	(869–048–00072–1)	47.00	Apr. 1, 2002
500–699	(869–048–00073–9)	29.00	Apr. 1, 2002
700–1699	(869–048–00074–7)	58.00	Apr. 1, 2002
1700–End	(869–048–00075–5)	29.00	Apr. 1, 2002
25	(869–048–00076–3)	68.00	Apr. 1, 2002
26 Parts:			
§§ 1.0–1–1.60	(869–048–00077–1)	45.00	Apr. 1, 2002
§§ 1.61–1.169	(869–048–00078–0)	58.00	Apr. 1, 2002
§§ 1.170–1.300	(869–048–00079–8)	55.00	Apr. 1, 2002
§§ 1.301–1.400	(869–048–00080–1)	44.00	Apr. 1, 2002
§§ 1.401–1.440	(869–048–00081–0)	60.00	Apr. 1, 2002
§§ 1.441–1.500	(869–048–00082–8)	47.00	Apr. 1, 2002
§§ 1.501–1.640	(869–048–00083–6)	44.00	[6] Apr. 1, 2002
§§ 1.641–1.850	(869–048–00084–4)	57.00	Apr. 1, 2002
§§ 1.851–1.907	(869–048–00085–2)	57.00	Apr. 1, 2002
§§ 1.908–1.1000	(869–048–00086–1)	56.00	Apr. 1, 2002
§§ 1.1001–1.1400	(869–048–00087–9)	58.00	Apr. 1, 2002
§§ 1.1401–End	(869–048–00088–7)	61.00	Apr. 1, 2002
2–29	(869–048–00089–5)	57.00	Apr. 1, 2002
30–39	(869–048–00090–9)	39.00	Apr. 1, 2002
40–49	(869–048–00091–7)	26.00	Apr. 1, 2002
50–299	(869–048–00092–5)	38.00	Apr. 1, 2002

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
300–499	(869–048–00093–3)	57.00	Apr. 1, 2002
500–599	(869–048–00094–1)	12.00	[5]Apr. 1, 2002
600–End	(869–048–00095–0)	16.00	Apr. 1, 2002
27 Parts:			
1–199	(869–048–00096–8)	61.00	Apr. 1, 2002
200–End	(869–048–00097–6)	13.00	Apr. 1, 2002
28 Parts:			
0–42	(869–048–00098–4)	58.00	July 1, 2002
43–end	(869–048–00099–2)	55.00	July 1, 2002
29 Parts:			
0–99	(869–048–00100–0)	45.00	[8]July 1, 2002
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–048–00102–6)	58.00	July 1, 2002
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§1910.1000 to end)	(869–048–00105–1)	42.00	[8]July 1, 2002
1911–1925	(869–048–00106–9)	29.00	July 1, 2002
1926	(869–048–00107–7)	47.00	July 1, 2002
1927–End	(869–048–00108–5)	59.00	July 1, 2002
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–048–00110–7)	47.00	July 1, 2002
700–End	(869–048–00111–5)	56.00	July 1, 2002
31 Parts:			
0–199	(869–048–00112–3)	35.00	July 1, 2002
200–End	(869–048–00113–1)	60.00	July 1, 2002
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–048–00114–0)	56.00	July 1, 2002
191–399	(869–048–00115–8)	60.00	July 1, 2002
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–048–00117–4)	37.00	July 1, 2002
700–799	(869–048–00118–2)	44.00	July 1, 2002
800–End	(869–048–00119–1)	46.00	July 1, 2002
33 Parts:			
1–124	(869–048–00120–4)	47.00	July 1, 2002
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–048–00122–1)	47.00	July 1, 2002
34 Parts:			
1–299	(869–048–00123–9)	45.00	July 1, 2002
300–399	(869–048–00124–7)	43.00	July 1, 2002
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[7]July 1, 2002
36 Parts			
1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–048–00128–0)	35.00	July 1, 2002
300–End	(869–048–00129–8)	58.00	July 1, 2002
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–048–00131–0)	57.00	July 1, 2002
18–End	(869–048–00132–8)	58.00	July 1, 2002
39	(869–048–00133–6)	40.00	July 1, 2002

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
40 Parts:			
1–49	(869–048–00134–4)	57.00	July 1, 2002
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–048–00138–7)	29.00	July 1, 2002
60 (60.1–End)	(869–048–00139–5)	56.00	July 1, 2002
60 (Apps)	(869–048–00140–9)	51.00	[8]July 1, 2002
61–62	(869–048–00141–7)	38.00	July 1, 2002
63 (63.1–63.599)	(869–048–00142–5)	56.00	July 1, 2002
63 (63.600–63.1199)	(869–048–00143–3)	46.00	July 1, 2002
63 (63.1200-End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–048–00145–0)	29.00	July 1, 2002
72–80	(869–048–00146–8)	59.00	July 1, 2002
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8]July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
100–135	(869–048–00151–4)	42.00	July 1, 2002
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–048–00154–9)	37.00	July 1, 2002
260–265	(869–048–00155–7)	47.00	July 1, 2002
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–048–00157–3)	43.00	July 1, 2002
400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
700–789	(869–048–00160–3)	58.00	July 1, 2002
790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–048–00163–8)	43.00	July 1, 2002
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9]Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–044–00179–9)	41.00	Oct. 1, 2001
140–155	(869–048–00180–8)	24.00	[9]Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9]Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–044–00187–0)	36.00	Oct. 1, 2001
70–79	(869–044–00188–8)	58.00	Oct. 1, 2001
80–End	(869–044–00189–6)	55.00	Oct. 1, 2001
48 Chapters:			
1 (Parts 1–51)	(869–044–00190–0)	60.00	Oct. 1, 2001
1 (Parts 52–99)	(869–044–00191–8)	45.00	Oct. 1, 2001
2 (Parts 201–299)	(869–048–00192–1)	53.00	Oct. 1, 2002
3–6	(869–048–00193–0)	30.00	Oct. 1, 2002
7–14	(869–044–00194–2)	51.00	Oct. 1, 2001
15–28	(869–044–00195–1)	53.00	Oct. 1, 2001
29–End	(869–048–00196–4)	38.00	[9]Oct. 1, 2002
49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
100–185	(869–044–00198–5)	60.00	Oct. 1, 2001
186–199	(869–048–00199–9)	18.00	Oct. 1, 2002
200–399	(869–044–00200–1)	60.00	Oct. 1, 2001
400–999	(869–044–00201–9)	58.00	Oct. 1, 2001
1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002
1200–End	(869–048–00203–1)	30.00	Oct. 1, 2002
50 Parts:			
1–199	(869–044–00204–3)	63.00	Oct. 1, 2001
200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
600–End	(869–044–00206–0)	55.00	Oct. 1, 2001
CFR Index and Findings Aids	(869–048–00047–0)	59.00	Jan. 1, 2002
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 to March 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5]No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

[6]No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

Order from Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 512-1800 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Other Related Publications

Title	*Price*	*Revision Date*
Federal Register:		
Yearly subscription (with FR Index and LSA)	764.00	
Yearly subscription (without FR Index and LSA)	699.00	
Individual copies	10.00	daily

TITLE 1—GENERAL PROVISIONS

No amendments to 1 CFR have been published in the FEDERAL REGISTER since January 2, 2002.

TITLE 2—[RESERVED]

There is no regulatory text to this title.

TITLE 3—THE PRESIDENT

Presidential Documents

Proclamations

6641 *See* Proc. 3163 3163
7636 995
7637 1951
7638 2173
7639 2409
7640 2869
7641 3163
7642 3169
7643 4887

Executive Orders

10865 Amended by EO 13284 4075
11423 Amended by EO 13284 4075
11958 Amended by EO 13284 4075
12260 Amended by EO 13284 4075
12333 *See* EO 13283 3371
Amended by 13284 4075
12543 *See* Notice of Jan. 2, 2003 661
12544 *See* Notice of Jan. 2, 2003 661
12590 Amended by EO 13284 4075
12829 *See* EO 13284 4075
12859 Amended by EO 13284 4075
12881 Amended by EO 13284 4075
12947 *See* Notice of Jan 18, 2002 3033
12958 *See* EO 13284 4075
12968 *See* EO 13284 4075
12992 Amended by EO 13284 4075
13011 Amended by EO 13284 4075
13048 Amended by EO 13284 4075
13099 *See* Notice of Jan 18, 2002 3033
13122 Amended by EO 13284 4075
13151 Amended by EO 13284 4075
13224 Amended by EO 13284 4075
13228 Amended by EO 13284 4075
13231 Amended by EO 13284 4075
13234 Amended by EO 13284 4075
13249 Superseded by EO 13282 1133
13282 1133
13283 3371
13284 Amended by EO 13284 4075

Administrative Orders

Memorandums:

Jan. 17, 2003 3157

Notices:

Jan. 2, 2003 661
Jan. 16, 2003 2677
Jan. 20, 2003 3161
Jan. 29, 2003 ..... 5199, 5201

Presidential Determinations:

No. 2003–09 of Jan. 7, 2003 1513
No. 2003–10 of Jan. 10, 2003 2411
No. 2003–11 of Jan. 10, 2003 2419
No. 2003–12 of Jan. 17, 2003 3803

TITLE 4—ACCOUNTS

No amendments to 4 CFR have been published in the FEDERAL REGISTER since February 25, 2002.

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Office of Personnel Management (Parts 1—1199)

532 Regulation at 67 FR 46839 and 46840 confirmed 1515
532.201—532.285 (Subpart B) Appendix C amended 459
532.217 (c) amended 460
550.162 (g) revised 4681
831.305 (d) added; interim 2178
831.704 Revised; interim 2178
837.506 Revised; interim 2178
842.304 (d) revised; interim 2178
843.314 Revised; interim 2178
844.106 Revised; interim 2178
847 Authority citation revised 2179
847.101 (a) revised; interim 2179
847.102 (a)(8) and (9) added; (c)(4) revised; interim 2179
847.103 (b) amended; interim 2179
847.104 (c) added; interim 2179
847.105 Revised; interim 2179
847.106 (a) revised; interim 2179
847.107 (b) revised; interim 2179
847.202 Revised; interim 2179

TITLE 5 Chapter I—Con.

847.203 (a) revised; interim 2180
847.204 (a) revised; interim 2180
847.205 (a) revised; interim 2180
847.402 (a)(1) and (b)(1) revised; interim 2180
847.421 (a)(2) revised; interim 2180
847.431 (a)(2) revised; interim 2180
847.801—847.809 (Subpart H) Added; interim 2180

Chapter XVI—Office of Government Ethics (Parts 2600—2699)

2641 Appendix B amended 4683

Proposed Rules:

735 1987
2606 2923

TITLE 6—HOMELAND SECURITY

Chapter I—Department of Homeland Security, Office of the Secretary (Parts 0—99)

Chapter I Established; interim 4056
5 Added; interim 4056
5.41–5.49 (Subpart C) Added; interim 4070
7 Added; interim 4074

TITLE 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

97.175 Revised 1360

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

301 Authority citation revised 1362
301.64–3 (c) amended; interim ... 2680, 3374
301.93–3 (c) amended; interim 1362
318.58 (c) revised; interim 2683
318.58–2 (b)(1) revised; (b)(2) amended; (b)(4) added; interim 2683
318.58–4a Footnote 1 and text reference redesignated as Footnote 2; interim 2684
318.58–12 Amended; Footnotes 2 and 3 redesignated as Footnotes 3 and 4; interim 2684
319.56–2 (d) revised; interim 2684
319.56–2d (b)(1), (5)(iii), (iv)(B), (v)(B), (vi)(B), (vii)(A) and (C) amended; (b)(5)(vii) introductory text and (H) revised 2686
319.56–2x (a) table amended; interim 2684
354 Regulation at 67 FR 56218 confirmed 3375
354.3 Regulation at 67 FR 56218 confirmed 3375

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

905.149 Regulation at 67 FR 62317 confirmed 62317
906.235 Regulation at 67 FR 62320 confirmed 1364
989.156 (a), (d), (h)(2), (3), (i) and (o) revised; interim 4083
Regulation at 67 FR 42474 confirmed; (b)(6) revised 4090
989.347 Revised 1145
996.2 Revised 1157
996.7 Revised 1157
996.30 (b) revised 1157
996.40 (b)(4) revised 1157
996.60 (c) revised 1158

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1208 Removed 1366
Technical correction 2108

Chapter XVII—Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

1738 Added 4687

Proposed Rules:

51 4967
56 1169
300 69
723 1556
1464 1556
1794 1988
1951 1170
1962 1170
1965 1170

TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—599)

103.7 (b)(1) amended; interim 3800
212.1 (a) revised; interim 5193
231 Authority citation revised 5193
231.1 (d) introductory text amended; (d)(1) and (2) removed; interim 5193
235.1 (e) introductory text and (1)(v) revised; (e)(5)(ii) amended; interim 5193
236 Regulation at 67 FR 19511 confirmed 4367
236.6 Regulation at 67 FR 19511 confirmed 4367
241 Regulation at 67 FR 19511 confirmed 4367
241.15 Regulation at 67 FR 19511 confirmed 4367
286.2 (b) redesignated as (c); new (b) added 4092
286.3 Introductory text and (a) revised 4092
286.9 (b)(4) revised; interim 5194

Proposed Rules:

217 292
231 292
251 292

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

82 Authority citation revised 1517
82.3 (c) revised; interim 1517
(c) amended; interim 3376
82.16 Added; interim 1517

Chapter III—Food Safety and Inspection Service, Department of Agriculture (Parts 300—599)

317.363 (b)(3) introductory text and (i) amended; interim 463
381.463 (b)(3) introductory text and (i) amended; interim 463

Proposed Rules:

1—199 (Ch. I) 2703
71 3826
94 2711

TITLE 10—ENERGY

Chapter I—Nuclear Regulatory Commission (Parts 0—199)

72.214 Amended 471
Regulation at 67 FR 69989 eff. date confirmed 2686

CHANGES JANUARY 2, 2002 THROUGH FEBRUARY 3, 2003

TITLE 11—FEDERAL ELECTIONS

[EDITORIAL NOTE: The revision date for the 2002 edition of Title 11 will be delayed until February 3, 2003. The 2002 revision will include amendments promulgated during the period of January 2, 2002 through February 3, 2003. For the convenience of the user, this LSA contains all amendments promulgated since the January 2, 2002 revision.]

Chapter I—Federal Election Commission (Parts 1—9099)

100 Authority citation revised **12839, 65210**
Authority citation revised 451
100.1—100.50 (Subpart A) Designated **49111**
100.5 (c) amended **78679**
100.7 (b)(11) introductory text revised; (b)(22) added **38358**
Removed **50585**
100.8 (b)(12) introductory text revised; (b)(24) added **38359**
Removed **50585**
100.14 Revised **49110**
100.16 Revised 451
100.18 Revised; eff. 1–13–03 ..... **76975**
100.19 Revised **12839**
Regulation at 67 FR 12839 confirmed **40586**
Introductory text and (b) through (e) revised; (a) heading and (f) added 416
(b) revised; (g) added 3995
100.23 Removed 451
100.24 Added **49110**
100.25 Added **49110**
100.26 Added **49110**
100.27 Added **49110**
100.28 Added **49110**
100.29 Added **49111, 65210**
(b)(6) and (7) added; interim **65217**
100.33 Added 3995
100.51—100.56 (Subpart B) Added **50585**
100.52 (b)(5) amended **78680**
100.71—100.92 (Subpart C) Added **50585**
100.82 (e)(1)(ii) amended **78680**
100.87 (g) amended **78680**
100.89 (g) amended **78680**
100.91 Amended **78680**
100.110—100.114 (Subpart D) Added **50585**
100.130—100.154 (Subpart E) Added **50585**
100.142 (e)(1)(ii) amended **78680**
100.147 (g) amended **78680**
100.149 (g) amended **78680**
100.151 Amended **78680**
101 Authority citation revised **78680**
101.1 (a) revised 3995
101.2 (a) amended **78680**
101.3 Amended **78680**
102.2 (a)(1)(vi) and (vii) amended; (a)(1)(viii) added 3995
102.5 Revised **49111**
(b)(1) amended **78680**
102.6 (a)(1)(ii) revised 451
102.7 (d) amended **78680**
102.9 (a)(4) added; (e) revised **69946**
102.13 (b) and (c)(2) amended **78680**
102.14 (c) amended **78680**
102.17 (a) introductory text added **49112**
104 Policy statement **71075**
Authority citation revised 3995
104.3 (a)(3)(vii)(B), (b)(2)(iii)(A), (4)(iii), (d) introductory text, (1) introductory text, (2) and (3) revised; (b)(4)(iv) removed; (d)(4) added **38360**
(a)(3)(iii), (b)(1)(viii), (3)(viii), (d)(1), (g) and (h) amended **78680**
Regulation at 67 FR 38360 eff. date confirmed **79844**
(g) revised 417
Corrected 611
(d)(1) introductory text amended 2871
104.4 (b) revised **12839**
Regulation at 67 FR 12839 confirmed **40586**
Revised 417
104.5 (f) and (g) revised **12839**
Regulation at 67 FR 12839 confirmed **40586**
(a), (c) introductory text, heading and (g) revised; (c)(4) and (j) added 418
104.6 (a) amended **78680**
104.8 (g) added **38360**
(e) and (f) revised **49112**
Regulation at 67 FR 38360 eff. date confirmed **79844**
104.9 (f) added **38361**
(c), (d) and (e) revised **49113**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JANUARY 2, 2002 THROUGH FEBRUARY 3, 2003

TITLE 11 Chapter I—Con.

Regulation at 67 FR 38361 eff. date confirmed **79844**
104.10 Revised **49113**
104.14 (a) revised **12840**
(b) revised **38361**
Regulation at 67 FR 12840 confirmed **40586**
Regulation at 67 FR 38361 eff. date confirmed **79844**
104.17 Added **49114**
104.18 (h) revised **12840**
Regulation at 67 FR 12840 confirmed **40586**
104.19 Added 419
Revised 3995
104.20 Added 419
(a)(5) corrected 5075
105 Authority citation revised 420
105.2 Revised 420
106 Policy statement **5445, 71075**
106.1 (a)(1), (2) and (e) revised **49115**
(b) and (c)(3) amended **78681**
106.2 (a)(2) amended **78681**
106.4 (a) and (b) amended **78681**
106.5 Revised **49116**
106.7 Added **49118**
(c)(3) amended **78681**
108.1 (b) revised 420
108.7 (c)(4) and (5) revised; (c)(6) added **49119**
109 Revised 451
109.1 (f) added **12840**
Regulation at 67 FR 12840 confirmed **40586**
109.2 (a) introductory text, (1) introductory text, (v), (2) and (b) revised; (c) added **12840**
Regulation at 67 FR 12840 confirmed **40586**
Removed 420
109.10 Added 420
110 Authority citation revised **69947**
Technical correction 1793
110.1 (c)(5) added **49120**
(a), (b)(1), (3)(iii), (5)(ii), (c)(1), (i), (k)(3)(ii), (l)(4) and (5) revised **69947**
(k)(3)(ii)(A)(*1*) and (B)(*2*) corrected **78959**
(d) revised; (n) added 457
(b)(3)(ii)(A) and (B) amended; (b)(3)(ii)(C) added 3996
110.2 (e) revised **69948**
(d) revised; (k) added 457
110.4 Heading revised; (a) removed **69948**
110.5 Heading, (a), (b), (d) and (e) revised **69948**
110.7 Removed 457
110.8 Introductory text, (a)(1) and (2) redesignated as (a)(1), (i) and (ii); (a)(2) revised; (a)(3) added 457
110.9 Revised **69949**
Regulation at 67 FR 69949 eff. date delayed to 1-13-03 ..... **78959**
110.10 Revised 3996
110.11 Revised; eff. 1-13-03 ..... **76975**
110.13 (a)(2) amended **78681**
110.14 (f)(2)(i) introductory text, (ii) introductory text, (3)(iii), (i)(2)(i) introductory text, (2)(ii) and (3)(iii) revised 457
110.15 Added **69949**
110.16 Added **69949**
Added; eff. 1-13-03 ..... **76977**
110.17 Added **69949**
110.18 Added **69949**
Added 457
110.19 Added **69949**
(e) amended **78681**
(e) amended 2872
110.20 Added **69950**
111.24 (a) revised; eff. 1-13-03 ..... **76977**
113.1 (g)(6) introductory text revised **38361**
(b) and (g) revised; (e) removed; eff. 1-13-03 ..... **76978**
(g)(5) and (6) amended **78681**
Regulation at 67 FR 38361 eff. date confirmed **79844**
113.2 Heading, introductory text, (e)(1)(i), (5) and (f) revised; (d) removed; eff. 1-13-03 ..... **76979**
114 Authority citation revised **65211**
114.1 (a)(2)(ix) revised **49120**
(a)(1) amended **78681**
114.2 (b) revised **65211**
(b)(1), (2)(i), (c) and (f)(1) amended **78681**
114.3 (a)(1) and (b) amended **78681**
114.4 (a) amended **78681**
(c)(5)(i) and (ii)(A) revised 457
114.5 (e)(2)(i) amended **78681**
114.9 (a)(2) amended **78681**
(b)(2) and (d) amended **78682**
114.10 Heading, (a), (d); (e) and (g) revised; (h) and (i) added **65211**
(e)(2) amended **78681**
114.14 Added **65212**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JANUARY 2, 2002 THROUGH FEBRUARY 3, 2003

116.4 (a)(1), (b)(1) and (c)(1) amended **78682**
116.5 (b) amended **78682**
116.6 (a) amended **78682**
116.11 Added 3996
116.12 Added 3996
300 Policy statement **71075**
Authority citation revised **78682**
300.1—300.72 (Subpart C) Added **49120**
300.2 (c) heading amended **78682**
300.36 (a)(2) and (c)(2) amended **78682**
400 Added 3997
9002.11 (b)(5) amended **78682**
9002.13 Amended **78682**
9003.3 (a)(2)(iii) amended **78682**
9003.4 (b)(1) amended **78682**
9004.1 Amended **78683**
9004.4 (a)(2) amended **78683**
9008.7 (b)(3) amended **78683**
9032.4 Amended **78683**
9034.2 (a)(4) amended **78683**
9034.4 (a)(2) and (e)(1) amended **78683**
9034.8 (a) introductory text added **49132**
9035.1 (c)(1) and (2) amended **78683**
9035.2 (c) revised 4002

Proposed Rules:

100 ..... **6883, 40881, 51131, 55348, 60042, 64555, 78753**
102 ..... **60042**
104 ..... **51131, 60042, 64555**
105 ..... **51131, 60042, 64555**
108 ..... **64555**
109 ..... **60042, 64555**
110 ..... **31164, 54366, 55348, 60042, 62410, 78753**
111 ..... **20461, 55348**
113 ..... **55348**
114 ..... **6883, 51131, 60042**
117 ..... **6883**

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 12—BANKS AND BANKING

Chapter II—Federal Reserve System (Parts 200—299)

201.51 (a), (b) and (c) revised....1794
208.36 (a) revised....4096
211.41 Revised....1159
211.42 Revised....1159
211.43 Revised....1159
211.44 Revised....1159
211.45 Revised....1159

Chapter V—Office of Thrift Supervision, Department of the Treasury (Parts 500—599)

550.70 Corrected....2108
563.41 Corrected....1218

Proposed Rules:

19....1116, 4967, 5075
24....1394
263....4967, 5075
308....4967, 5075
513....4967, 5075
1730....3194

TITLE 13—BUSINESS CREDIT AND ASSISTANCE

Proposed Rules:

125....5134

TITLE 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation (Parts 1—199)

1 Technical correction....3096
21 Technical correction....1512
Special FAA conditions....2183
23 Special FAA conditions....1, 3
25 Special FAA conditions....255
Technical correction....3096
25.735 (f)(2) and (g) corrected....1955
29 Special FAA conditions....2183
36 Corrected....1512
36.6 Corrected....2402
39.13....12, 15, 17, 19, 24, 26, 28, 29, 32, 35, 38, 258, 472, 475, 478, 480, 482, 484, 486, 487, 489, 998, 1000, 1002, 1518, 1520, 1523, 1524, 1527, 1530, 1957, 1962, 2688, 2873, 3173, 3378, 3380, 3807, 4097, 4369, 4371, 4373, 4376, 4379, 4890, 4893, 4899, 4901, 4903, 4904, 4909, 4911
Corrected....6, 10, 3808
61 SFAR No. 73 amended....43
61.18 Added....3774
63.14 Added....3774
65.14 Added....3775
71.1....44, 260—264, 491, 2186, 2187, 2188, 2421—2425, 2875, 4098
Corrected....1657, 2423, 3808, 3934
Regulation at 67 FR 68757 eff. date confirmed....2186
73.23 Amended....3175
73.66 Amended....3174
91 Technical correction....1512
97 Technical correction....3096
97.21—97.35...265, 492, 1796, 1963, 3810, 3811

Proposed Rules:

25....1932
39....71, 302, 305, 308, 311, 315, 317, 320, 322, 324, 516, 518, 1016, 1017, 1586, 1802, 1805, 2714, 3475, 3826, 3829, 3832, 3836, 4116, 4398, 4725, 4727, 4730, 4731, 4737, 4739
71....328, 2460—2463, 3196, 3778, 3837, 3934, 4118, 4741, 4742
73....3198
91....3778
95....3778
121....1942, 3778
125....3778
129....3778
135....3778
158....1807
255....1172
399....1172

TITLE 15—COMMERCE AND FOREIGN TRADE

Subtitle A—Office of the Secretary of Commerce (Parts 0—29)

6.4 Revised....4381
6.5 Revised....4382

Chapter II—National Institute of Standards and Technology, Department of Commerce (Parts 200--299)

270 (Subchapter G) Established; interim....4694

CHANGES JANUARY 2, 2003 THROUGH JANUARY 31, 2003

TITLE 15

Chapter VII—Bureau of Industry and Security, Department of Commerce (Parts 700—799)

744 Authority citation revised.....1797
744.17 Added.....1797
744 Supplement No. 1 added.....1797
Supplement No. 1, Category 3 (ECCN 3A001) amended.....1798

Chapter VIII—Bureau of Economic Analysis, Department of Commerce (Parts 800--899)

806.15 (h)(1) and (2) revised.....3813
806.17 Revised.....1532

Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

902 Technical correction.....2636
902.1 (b) table amended (OMB numbers).....209, 2192

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission (Parts 0—999)

303.7 (m) amended.....3816
310 Revised.....4669
801.1 (h) revised.....2430
801.21 Introductory text revised.....2430
803.9 (a) Examples 7 and 8 added; (c) revised.....2431
803.20 (c) and example revised.....2431
803 Appendix revised.....2431

Chapter II—Consumer Product Safety Commission (Parts 1000--1799)

1500.85 (a)(14) added.....4699

Proposed Rules:

0—999 (Ch. I).....2465

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Futures Trading Commission (Parts 1—199)

1 Fee schedule.....**44036**
Technical correction.....**63966, 67445**
1.3 (gg)(4), (vv) and (ww) added.....**58297**
1.12 (g)(3) and (h) amended.....**62351**
1.41a Removed.....**62353**
1.41c Removed.....**62353**
1.42 Removed.....**62353**
1.55 (h) added.....**58297**
1.62 (b) amended.....**62351**
1.65 (d) amended.....**62351**
1.66 (b)(5)(ii) amended.....**62351**
3.2 (c) revised.....**38874**
3.10 (a)(2)(i) revised; (d) removed.....**38874**
Corrected.....**41166**
3.11 (a)(2), (3) and (b) revised; (C) and (d) removed.....**38874**
3.12 (c)(1), (4), (d)(1) introductory text and (f) revised; (d)(2) and (3) redesignated as (d)(3) and (4); new (d)(2) added.....**38874**
3.12 (g)(2)(i) and (ii) amended.....**62351**
3.22 Amended.....**62351**
3.31 (a)(2) redesignated as (a)(3); new (a)(2) added; (a)(1) and new (3) revised; (d) amended.....**38875**
3.33 (b) introductory text and (e) amended; (b)(3) and (d) removed; (b)(4) through (7) and (c)(2) redesignated as (b)(3) through (6) and (c).....**38876**
(e) amended.....**62351**
3.40 Revised.....**38876**
3.41 Removed.....**38876**
3.42 (a)(2), (3), (4) and (6) revised.....**38876**
3.44 (a)(4) introductory text and (5) revised.....**38876**
3.46 (a)(6) and (8) revised.....**38876**
3.50 (c) and (d) amended.....**62351**
3.55 (e)(2) amended.....**62351**
3.56 (e)(2) amended.....**62351**
3.63 Amended.....**62351**
3.70 (a) amended.....**62351, 62352**
3 Appendix A amended.....**44931**
4 Technical correction.....**44931**
4.2 (a) amended.....**62352**
4.5 (c) introductory text, (3) and (d)(1) amended; (f)(3) removed; (f)(4) redesignated as (f)(3).....**77410**
4.7 (b)(3)(i), (d)(1)(viii), (ix) and (3) amended; (d)(2) revised.....**77411**
4.12 (b)(3)(vii) removed; (b)(3)(viii) redesignated as new (b)(3)(vii); (b)(3) introductory text, new (vii) and (5)(ii) amended.....**77411**
4.13 (b)(1)(iv)(A) removed; (b)(1)(iv)(B) redesignated as (b)(1)(vii)(A).....**77411**
4.14 (a)(8)(v)(C) removed; (a)(8)(v)(D) redesignated as (a)(8)(v)(C); (a)(8)(iii) and new (v)(C) amended.....**77411**
4.22 (c) introductory text, (f)(1) and (2)(i) amended.....**77411**
4.26 (c) removed; (b) redesignated as new (c); new (b) added.....**42710**
4.26 (d) revised.....**77411**
4.36 (d) amended.....**77411**
9.2 (h) amended.....**62352**
9.11 (c) amended.....**62352**
9.12 (b) amended.....**62352**
9.26 Amended.....**62352**
9.31 (a) amended.....**62352**
11 Technical correction.....**39473**
11.2 (a) amended.....**62352**
11.4 (e) and (f) added.....**37322**
15.03 (b) revised.....**64524**
16.07 Amended.....**62352**
17.03 Amended.....**62352**
18.03 Amended.....**62352**
19.00 (a)(3) amended.....**62352**
21.02a (c) amended.....**62352**
30 Order.....**30785, 45056**
31.6 (f)(1) and (2) amended.....**62352**
31.13 (n)(1) amended.....**62352**
31.14 (a) amended.....**62352**
36.3 (b)(2)(ii) amended.....**62352**
37 Authority citation revised.....**62876**
37.2 Revised.....**62876**
37.5 (f)(1) and (2) amended.....**62352**
(a), (b) and (f)(1) revised.....**62876**
37.6 (a), (b) introductory text, (1), (2), (i) introductory text, (iii) and (c) revised.....**62877**
37.8 (d) amended.....**62352**
38 Authority citation revised.....**62877**
38.2 Revised.....**62877**
38.3 (e)(1) and (2) amended.....**62352**
(a) revised.....**62878**
38.4 (a)(2) revised.....**62878**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

TITLE 17 Chapter I—Con.

38.5 (c) added **62878**
38 Appendix B amended **62352**
39 Authority citation revised **62878**
39.3 (e)(1) and (2) amended **62352**
39.4 Heading revised; (c) text redesignated as (c)(2); (c)(1) added **62878**
40 Fee schedule **38379**
Authority citation revised **62878**
40.1 Amended **62878**
40.3 (a)(4) revised; (a)(5) added **62879**
40.4 (b)(5) and (6) revised; (b)(7) and (8) added **62879**
40.5 (a)(1)(v) and (vi) revised; (a)(1)(vii) added **62879**
40.6 (a)(2) amended; (c)(2)(iii), (iv), (3)(ii)(B), (C) AND (D) revised; (c)(2)(v) and (3)(ii)(E) added **62879**
40.7 (a)(1), (2) and (b) introductory text amended **62352**
(b)(1) revised **62880**
40.8 Added **62880**
40 Appendix C amended **62880**
41 Authority citation revised **36761, 53171, 58297**
Heading revised **53171**
Technical correction **67445**
41.1 (j), (k) and (l) added **36761**
41.3 Redesignated from 41.41 ..... **53171**
(d) amended **62352**
41.25 (a)(2) and (d) added; (b) revised **36761**
41.33 (g)(1) and (2) amended **62352**
41.41 Redesignated as 41.3 ..... **53171**
Added **58297**
41.42—41.49 (Subpart E) Added **53171**
140.72 (a) amended **62352**
140.73 (a) and (b) amended **62352**
140.74 (a), (b) and (c) amended **62352**
140.75 Amended **62352**
140.76 (a) and (b) amended **62352**
140.77 (a), (b) and (c) amended **62353**
140.91 (a) and (b) amended **62353**
140.92 (a), (b) and (c) amended **62353**
140.93 (a), (b) and (c) amended **62353**
140.95 (a), (b) and (c) amended **62353**
140.96 (a) through (d) amended **62353**
140.97 (a), (b) and (c) amended **62353**
140.99 (a)(5) amended; (d)(2) revised **62353**
140.100 Added **45299**
Removed **62354**
140.735–2a Note 7 amended **62353**
145.6 (a) amended **62353**
(b)(2) revised **63539**
145 Appendix A amended **62353, 63539**
150.3 (b) amended **62353**
150.4 (e) amended **62353**
170.12 Amended **62353**
171.28 Amended **62353**
171.31 (a) amended **62353**
190 Technical correction **67445**
190.01 (f) revised; (kk)(9) added **58298**
190.02 (d)(8) amended; (d)(11) and (12) redesignated as(d)(12) and (13); new (d)(11) added **58298**
190.07 (b)(1)(iii)(B)(*3*) revised **58298**
190.08 (a)(2)(v) and (vi) revised; (a)(2)(vii) added **58298**
190.10 (h) added **58298**
(a), (b)(4), (d) heading, (1), (2) and (3) amended **62353**
190 Appendix A amended **58298**

Chapter II—Securities and Exchange Commission (Parts 200—399)

200.20b (a) revised **43535**
200.30–3 (a)(77) added **65037**
200.30–7 (a)(12) added; authority citation removed **30326**
200.30–14 (g)(1)(xv) added **56220**
210 Authority citation revised 4871
210.2–06 Added 4872
210.3–01 (c) introductory text and (d) amended; (e) revised; (i) added **58503**
210.3–09 Authority citation removed; (a) and (b) amended; (b)(1) through (4) added **58504**
210.3–12 (a) and (b) amended; (g) added **58504**
228 Authority citation revised **57287**
Authority citation amended 4830, 5125
228.10 (h) added 4830
228.307 Added **57287**
228.401 (e) added 5125
228.406 Added 5126
228.601 Table amended; (b)(14) added 5126
229 Authority citation revised **57287**
Authority citation amended 4831, 5127
229.10 Heading revised; (h) added 4831
229.101 (e) revised **58504**
229.307 Added **57287**
229.401(h) added 5127
229.406 Added 5127

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

229.601 Table amended; (b)(14) added 5127
230 Authority citation amended **19673**
Authority citation amended 5128
230.134b Revised **19868**
230.238 Added 192
230.403 (c) revised; authority citation removed **36698**
230.405 Amended **19673**
230.430 (b) introductory text revised **19868**
230.430A (e) revised **19869**
230.493 Revised **36699**
230.495 (a), (c) and (d) revised **19869**
230.496 Revised **19869**
230.497 (c) and (e) revised **19869**
231 Interpretive releases **43246**
232 Authority citation revised **57287**
232.100 (a) and (c) revised **36699**
232.101 (a)(1)(iii) note, (c)(16) and (17) redesignated as (a)(1)(iii) Note 1, (c)(15) and (16); (a)(1)(iii) Note 2, (a)(1)(vi), (vii), (viii) and (b)(7) through (10) added; (a)(1)(iv), (v), (c)(5), (6), (14), new (c)(15) and (16) amended; (b)(1), (6) and (c)(9) revised; (c)(15) and (d) removed **36699**
232.302 (a) and (b) revised **57287**
232.303 (b) revised **36700**
232.306 (a) revised; (b) redesignated as (e); new (b), (c) and (d) added **36700**
232.311 (f), (g) and (h) redesignated as (h), (i) and (j); new (f) and (g) added **36700**
232.601 Removed **36700**
239 Authority citation amended **19869**
239.17b Form N-4 amended **69979**
239.17c Added **19870**
Form N-6 amended **69981**
239.31 Form F–1 amended **36700**
239.32 Form F–2 amended **36701**
239.33 Form F–3 amended **36701**
239.34 Form F–4 amended **36701**
239.36 Form F–6 amended **36702**
239.37 Form F–7 amended **36702**
239.38 Form F–8 amended **36702**
239.39 Form F–9 amended **36703**
239.40 Form F–10 amended **36703**
239.41 Form F–80 amended **36704**
239.42 Form F–X amended **36709**
239.800 Form CB amended **36707**
240 Authority citation amended **57288, 58299**
Authority citation amended 4355
240.3a4–1 Undesignated center heading removed **19673**
240.3a11–1 Revised **19673**
240.6h–1 Added **36762**
240.9b–1 (b)(1) amended; (c)(8) revised; authority citation removed 192
240.10b–10 (a)(2)(i)(C), (b)(2) and (3) amended; (a)(7)(i) through (iv) and authority citation removed; (e) redesignated as (f); new (e) added **58312**
240.11aC1–7 Removed **79458**
240.11d2–1 Added **58313**
240.12a–9 Added 192
240.12b–2 Amended **58505**
240.12b–12 (d) revised; authority citation removed **36704**
240.12b–15 Revised **57288**
240.12h–1 (b)(2) and (c) amended; (d) and (e) added; authority citation removed 192
240.13a–1 (b) revised; authority citation removed 4355
240.13a–10 Note redesignated as Note 1; Note 2 added **57288**
(b), (c), (e)(2) and (f) amended; (j) added **58505**
240.13a–14 Added **57288**
240.13a–15 Added **57289**
240.13e–102 Amended **36705**
240.14d–102 Amended **36705**
240.14d–103 Amended **36706**
240.15c3–3 Authority citation removed; (a)(1) amended; (a)(14), (15) and (o) added **58299**
240.15d–5 Corrected; CFR correction **59779**
240.15d–10 Authority citation revised **57288**
Note redesignated as Note 1; Note 2 added **57289**
(b), (c), (e)(2) and (f) amended; (j) added **58505**
240.15d–11 (b) revised; authority citation removed 4355
240.15d–14 Added **57289**
240.15d–15 Added **57290**
240.16a–2 Introductory text amended **43535**
240.16a–3 (d) revised **43535**
(f)(1)(i)(A) and (g) revised **56467**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

TITLE 17 Chapter II—Con.

240.16a–6 (a) introductory text and (b) revised **56467**
240.16a–8 (a)(1) revised **56467**
240.17a–3 (f) added **58299**
240.17a–4 (b)(9) revised; (k) and (l) redesignated as as (l) and (m); new (k) added; eff. in part 5–2–03 ..... **58299**
240.17a–5 (l)(4) added **58300**
240.17a–7 (a)(1) and (2) amended; (c) redesignated as (d); new (c) added **58300**
240.17a–11 (i) added **58300**
240.17a–13 (e) redesignated as (f); new (e) added **58300**
240.31–1 Amended **46108**
241 Interpretive releases **43246**
242 Authority citation revised **53176**
242.100 Undesignated center heading added **53176**
242.400 Added **53176**
242.401 Added **53176**
242.402 Added **53176**
242.403 Added **53176**
242.404 Added **53176**
242.405 Added **53176**
242.406 Added **53176**
244 Added 4832
245 Added 4355
249 Authority citation amended **57290**
Authority citation amended 5128
249.103 Amended **43535**
Form 3 amended **56467**
249.104 Amended **43535**
Form 4 amended **56468**
249.105 Amended **43535**
Form 5 amended **56468**
249.220f Form 20–F amended **36706, 57293**
Form 20–F amended 4358, 5129
249.240f Form 40–F amended **36707, 57294**
Form 40–F amended 4359, 5130
249.250 Form F–X amended **36709**
249.306 Form 6–K amended **36708**
Authority citation revised 4358
Form 8–K amended 4359, 4833
249.308 Form 8–K amended **5128**
249.308a Form 10–Q amended **57290**
Revised; Form 10–Q amended **58506**
249.308b Form 10–QSB amended **57291**
249.310 Authority citation revised **57290**
Form 10–K amended **57292**
Revised; Form 10–K amended **58506**
Form 10–K amended 5131
249.310b Form 10–KSB amended **57293**
Form 10–KSB amended 5132
249.330 Form N–SAR amended **57296**
249.480 Form CB amended **36707**
269.5 Form F–X amended **36709**
270 Authority citation amended **19870, 57295**
270.3a–1 Introductory text and (b) revised **43536**
270.3a–2 (a) introductory text revised **43536**
270.3a–3 Introductory text and (b) revised **43536**
270.3a–5 (a) introductory text revised **43536**
270.3a–6 (a) revised **43536**
270.6c–6 (h) introductory text revised **43536**
270.6e–2 (b)(15)(iv) revised **43536**
270.6e–3(T) (b)(15)(iii)(B) revised **43536**
270.8b–11 Authority citation removed; (b) revised **19870**
270.8b–12 (b) revised **19870**
270.10f–3 (b)(1) and (4) revised **31079**
(b) redesignated as (c); (a)(6), (7), (8) and new (b) added; (c) heading and (7) revised 3152
270.12d3–1 (c) revised; (d)(9) added 3152
270.17a–6 Revised 3152
270.17a–8 Revised **48518**
270.17a–10 Added 3153
270.17d–1 (d)(5) and (6) revised 3153
270.17e–1 (b)(3) and (d) revised 3154
270.30a–2 Added **57295**
270.30b1–3 Amended **57296**
270.30f–1 Redesignated as 270.30h–1; revised **43537**
270.30h–1 Redesignated from 270.30f–1 ..... **43537**
274 Authority citation revised, ... **19870, 57296, 69979**
Form N–1A amended **19870**
274.11c Form N–4 amended **69979**
274.11d Added **19870**
Form N–6 amended **69981**
274.12 Revised; Form N–8B–2 amended; Form N–6 added **19870**
274.101 Form N–SAR amended **31079, 57296**
274.202 Revised **43537**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

Form 3 amended **43537, 56467**
274.203 Revised **43537**
275.203A–2 (f) added **77625**
279.1 Form ADV amended **77625**

Chapter IV—Department of the Treasury (Parts 400--499)

420.2 (c) revised **77414**
420.3 (c)(1), (2) and (3) revised **77415**
420 Appendix B amended **77415**
Appendix B corrected 402

Proposed Rules:

1 ..... **52641**
3 ..... **19358**
4 ..... **65743, 68785, 69598, 77446**
..... 2254
15 ..... **50608**
37 ..... **20702**
38 ..... **20702**
39 ..... **20702,**
40 ..... **20702, 65325**
71 ..... **69598**
190 ..... **52641**
205 ..... **71670**
210 ..... **44964, 66208, 71018, 76780**
..... 160
228 ..... **35620, 42914, 66208, 68054, 68790, 77594**
..... 2638
229 ..... **19896, 35620, 42914, 44964, 66208, 68054, 68790, 77594**
..... 2638
230 ..... **19914, 36712, 50326, 79466**
232 ..... **41877, 51508, 79466**
239 ..... **19886, 19914, 36712, 60828, 79466**
..... 160
240 ..... **19896, 30628, 38588, 38610, 39642, 39647, 41877, 42914, 50326, 51508, 59748, 65325, 66208, 67496, 69430, 71909, 76780, 77594, 79466**
..... 2638
242 ..... **51510**
244 ..... **68790**
245 ..... **69430**
249 ..... **19896, 19914, 35620, 38610, 41877, 42914, 51508, 57298, 60828, 68054, 68790, 69430, 76780, 79466**
..... 160, 2638
250 ..... **79466**
259 ..... **79466**
260 ..... **79466**
269 ..... **79466**
270 ..... **31081, 36712, 57298, 66208, 71915**
..... 160
274 ..... **19886, 36712, 57298, 60828, 66208, 76780, 77594, 79466**
..... 160, 2638
275 ..... **19500, 48579, 60841**
279 ..... **19500, 48579**
420 ..... **49630**

TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

2.8 Removed **31069**
11 Appendix A revised **70159**
35 Heading revised **31069**
Order **39272**
35.1 Heading revised; (g) added **31069**
35.10a Added **31069**
35.10b Added **31069**
35.25 (c)(1)(ii)(C) removed; (c)(1)(ii)(D) redesignated as new (c)(1)(ii)(C) **36096**
101 Amended **67701**
Regulation at 67 FR 67701 eff. date corrected **70007**
141.1 (b)(1)(i) and (2) revised **36096**
201 Amended **67703**
Regulation at 67 FR 67703 eff. date corrected **70007**
260.1 (b) revised 269
260.2 (b) revised 269
284 Policy statement **37669**
Order **44529, 49564**
284.12 (a) removed; (b) and (c) redesignated as new (a) and (b); new (a)(1)(i) through (v) amended **30794**
284.241—284.242 (Subpart H) Removed **72099**
352 Amended **67706**
Regulation at 67 FR 67706 eff. date corrected **70007**
357.2 (c)(3) revised 269
375.302 (x) added; eff. 1–7–03 ..... **52410**
381.302 (a) amended **54087**
381.303 (a) amended **54087**
381.304 (a) amended **54087**
381.305 (a) amended **54087**
381.403 Amended **54087**
381.505 (a) amended **54087**
381.801 Amended **54087**
385 Authority citation revised **52412**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

TITLE 18 Chapter I—Con.

385.1601—385.1602 (Subpart P) Added **52412**
385.2011 (c)(3) revised **36096**
(c)(3) revised 269
388 ..... **64835**
388.109 (a)(4)(i) revised **21996**
390 Added; eff. 1-7-03 ..... **52410**
390.1 Eff. date extended 1964
Chapter I Form 1-F corrected 45

Chapter III—Delaware River Basin Commission (Parts 400--499)

401.101—401.119 (Subpart H) Authority citation revised **56753**
401.110 (a) revised **56753**

Chapter XIII—Tennessee Valley Authority (Parts 1300--1399)

1301.4 (a) revised 4700
1308 Comment request 1964

Proposed Rules:

1—399 (Ch. I) **16071, 20922**
2 ..... **51516**
4 ..... **58739**
16 ..... **58739**
35 ..... **22250, 54749, 55376, 55452, 57187, 58751, 61049, 63327, 67339, 69816, 70194, 70890, 76122, 76321, 77007** 3842, 4401
37 ..... **35062**
101 ..... **51150, 57994, 69816, 70890**
154 ..... **62918, 69816, 70890**
157 4120
161 ..... **35062, 62918**
201 ..... **51150, 57994, 69816, 70890**
250 ..... **35062, 62918**
284 ..... **19136, 35062, 39315, 48592, 54387, 62918, 72870**
346 ..... **69816, 70890**
352 ..... **51150, 57994, 69816, 70890**
358 ..... **35062**
375 ..... **57994, 64835**
388 ..... **57994**

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

4.7 Heading revised; (b) text redesignated as (b)(1); new (b)(1) amended; (b)(2), (3), (4) and (e) added **66331**
(b)(3)(i) corrected 1801
4.7a (c)(1) amended; (c)(4) and (f) added **66332**
4.8 (b) amended **66332**
4.30 (n) added **66332**
4.37 (d) through (g) redesignated as (e) through (h); (c) and new (e) amended; new (d) added **68032**
4.94 (b)j amended **52862**
10 Authority citation amended **39289**
10.183 Revised **39289**
10.199 Revised **62882**
12 Technical correction **43247, 66333**
12.104g (a) amended **38878, 47449, 59160, 61260**
19.1 (a) heading, (11) and (c) added; (a)(1) and (b) revised **68032**
19.2 (d) added; (f) amended **68032**
19.9 (a) revised **68032**
19.12 (a) introductory text revised **68033**
24.24 (e)(4)(iv) revised **31953**
101.3 (b)(1) table amended 3384
102.21 (b)(5) and (e)(1) table corrected; interim **51752**
113.64 (a) amended; (c) through (f) redesignated as (d) through (g); new (c) added **66333**
122 Authority citation amended **42712, 55721**
122.15 (b) amended **35723**
122.48 (c) revised **55721**
122.49a (c)(2) amended **42712**
122.49b Added **42712**
122.50 Heading revised; (d), (e) and (f) redesignated as (e), (f) and (g); (c) and new (e) amended **68033**
122.181 Amended; interim **48984**
122.182 (a), (c) and (d) revised; (b), (e), (f) and (g) amended; interim **48984**
Corrected **51928**
122.183 (a) and (d) revised; (c) amended; interim **48985**
122.184 Revised; interim **48986**
Corrected **51928**
122.185 Revised; interim **48986**
122.186 Revised; interim **48986**
122.187 Revised; interim **48986**
Corrected **51928, 54023**
122.188 Heading and (a) through (d) amended; interim **48988**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

122.189 Added **48988**
123.10 Heading revised; (d), (e) and (f) redesignated as (e), (f) and (g); (c) and new (e) amended; new (d) added; (a) introductory text revised **68033**
127 Authority citation amended **68033**
127.1 Authority citation removed **68034**
127.2 Authority citation removed **68034**
127.11 Authority citation removed **68034**
127.12 Authority citation removed **68034**
127.13 Authority citation removed; (a) revised **68034**
127.14 Authority citation removed; (a) revised **68034**
127.21 Authority citation removed; amended **68034**
127.23 Authority citation removed **68034**
127.24 Authority citation removed **68034**
127.25 Authority citation removed **68034**
127.26 Authority citation removed **68034**
127.27 Authority citation removed **68034**
127.28 Authority citation removed; (a) amended **68034**
127.29 Authority citation removed **68034**
127.31 Authority citation removed **68034**
127.32 Authority citation removed **68034**
127.33 Authority citation removed **68034**
127.34 Authority citation removed **68034**
127.35 Authority citation removed **68034**
127.36 Authority citation removed **68034**
127.37 Authority citation removed **68034**
127.41—127.43 (Subpart E) Added **68034**
132.16 Authority citation revised **46588**
Removed **46588**
132.18 Regulation at 66 FR 21666 confirmed **55723**
141 Authority citation amended **36097**
141.4 (b)(3) revised **36097**
141.5 Revised **68035**
142.2 (a) revised **68035**
163 Regulation at 66 FR 21667 confirmed **55723**
163 Appendix amended **46588, 62884**
177 Authority citation revised **53496**
177.2 (b)(2)(ii)(B) amended **53496**
177.9 Heading revised; (a) and (c) amended; (d) and (e) removed **53496**
177.10 (a) and (e) amended; (b) removed; (c) revised **53496**
177.11 (b)(7) amended **53496**
177.12 Redesignated as 177.13; new 177.12 added **53497**
(c)(2)(ii) and (d)(1)(viii) corrected **54733**
177.13 Redesignated from 177.12 ..... **53497**
178.2 Table amended **53499, 66333, 68035**
181 Authority citation revised **15482**
181.72 (b) revised **15482**
181 Appendix amended **15483**
Appendix corrected **19810**
191 Authority citation amended **48548**
191.13 (a) designated; (a) heading added; (b) amended **16637**
191.26 (b)(2) and (3) amended; (b)(4) added; interim **48370**
191.51 (b)(2) *Example 2* revised **48548**
191.171 (a) revised **16637**
191.172 (a) revised **16637**
191.173 (e) revised **16637**
191.175 (b) redesignated as (b)(1); (a) and new (b)(1) amended; (b)(2) added; (c) revised **16637**
191 Appendix A amended **16638**

Chapter II—United States International Trade Commission (Parts 200--299)

201 Waiver 3175
201.8 (f) and (g) added **68037**
201.16 (e) added **68037**

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 19

Chapter III—International Trade Administration, Department of Commerce (Parts 300--399)

360 Added **79849**

Proposed Rules:

1—199 (Ch. I) **70706**
4 ..... **51519**
12 ..... **51800**
24 ..... **62920**
101 ..... **54137, 62920, 71510**
..... 1172
103 1173
111 ..... **63576**
113 ..... **51519**
122 ..... **71510, 71512**
123 ..... **71512**
133 ..... **39321**
141 ..... **16664, 39322**
142 ..... **16664**
146 ..... **48594**
151 ..... **39322**
201 ..... **20709, 38614**
204 ..... **38614**
206 ..... **38614**
207 ..... **38614**
400—499 (Ch. III) **47338**

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board (Parts 200—399)

1 Revised **78885**
30 (Subchapter C) Revised **78876**
217.9 (b)(1) amended; (b)(3) added **42714**
217.30 (b) removed; (c) redesignated as new (b); new (c) added **42714**
260 Heading revised **77153**
260.1 Heading and (a) introductory text revised; (b), (d)(1) and (2) amended **77153**
260.2 Heading revised **77153**
260.3 Heading, (a), introductory text, (b), (c), (d) and (f) revised **77153**
260.4 Heading and (b) through (i) revised **77153**
260.5 Revised **77154**
260.8 Amended **77155**
260.9 (d) through (g) redesignated as (e) through (h); (b), new (e) and new (f) revised; new (d) added **77155**
260.10 Revised **77156**
320.5 Amended **77156**
320.6 (b) introductory text, (d) and (e) revised; (b)(8) and (f) added **77156**
320.10 (e) revised **77156**
320.11 (a) and (f) revised; (d), (e), and (g) amended **77156**
320.12 Revised **77157**
320.25 (a), (b) and (d) revised **77157**
320.28 Revised **77157**
320.39 Revised **77157**
320.40 Heading revised; (d) added **77158**
320.49 Revised **77158**

Chapter III—Social Security Administration (Parts 400—499)

404 Regulation at 65 FR 42285 confirmed **20893**
404.201 Revised 4701
404.277 Revised 4702
404.304 Revised 4702
404.310 Revised 4702
404.311 Revised 4702
404.312 Revised 4702
404.313 Revised 4703
404.315 Heading and (a) introductory text revised 4704
404.316 (b)(2) revised 4704
404.317 Revised 4704
404.321 (a) and (c)(1) revised 4704
404.335 Revised 4704
404.336 Revised 4705
404.337 Revised 4706
404.338 Revised 4706
404.352 Revised 4707
404.401—404.480 (Subpart E) Authority citation revised 4707
404.409 Added 4707
404.410 Revised 4708
404.411 Revised 4709
404.412 Revised 4710
404.413 Revised 4710
404.421 Revised 4710
404.459 Regulation at 65 FR 42285 confirmed **20893**
404.621 Revised 4711
404.623 Revised 4712
404.1501—404.1599 (Subpart P) Appendix 1 amended **20024, 43538**
Appendix 1 corrected **35723**
416.570 Amended **38383**

416.572 Heading, (a), (b), (c)(2) and (e) revised **38383**
416.1321—416.1340 (Subpart M) Regulation at 65 FR 42286 confirmed **20893**
416.1340 Regulation at 65 FR 42286 confirmed **20893**

Chapter V—Employment and Training Administration, Department of Labor (Parts 600--699)

655 Regulation at 65 FR 43542 withdrawn **59779**
655.0 Regulation at 65 FR 43542 withdrawn **59779**
655.00 Regulation at 65 FR 43542 withdrawn **59779**
655.90—655.114 (Subpart B) Regulation at 65 FR 43542 withdrawn **59779**
655.90 Regulation at 65 FR 43542 withdrawn **59779**
655.92 Regulation at 65 FR 43542 withdrawn **59779**
655.100 Regulation at 65 FR 43543 withdrawn **59779**
655.101 Regulation at 65 FR 43543 withdrawn **59779**
655.103 Regulation at 65 FR 43543 withdrawn **59779**
655.104 Regulation at 65 FR 43543 withdrawn **59779**
655.105 Regulation at 65 FR 43543 withdrawn **59779**
655.106 Regulation at 65 FR 43543 and 43544 withdrawn **59779**
655.108 Regulation at 65 FR 43544 withdrawn **59779**
655.112 Regulation at 65 FR 43544 withdrawn **59779**

Proposed Rules:

206 ..... **77447**
217 ..... **77448**
218 ..... **41205**
220 ..... **41205**
225 ..... **41205**
404 ..... **19138, 39904, 69161, 69164, 78196**
408 ..... **55744**
416 ..... **22021, 39904, 69161, 69164, 78196**
422 ..... **69164**
429 ..... **77942**
604 ..... **72122**
655 ..... **30466, 59797, 64074**
656 ..... **30466**

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

1.101 Regulation at 66 FR 65447 eff. date stayed **34387**
2 Authority citation revised **48384**
Technical correction **49396, 58678**
2.125 Revised; eff. 1–20–03 ..... **48384**
5.28 (c)(1) revised; (c)(10) redesignated as (c)(11); new (c)(10) added **53306**
Regulation at 67 FR 53306 eff. date confirmed **71461**
14.100 (c)(7) heading and (ii) revised **45900**
16.42 (a) revised **53306**
Regulation at 67 FR 53306 eff. date confirmed **71461**
20.100 (c)(41) added **35729**
58.3 (e)(23) added **35729**
73.125 Added **35431**
Regulation at 67 FR 35431 confirmed **49567**
73.3128 Added **65312**
101 Policy statement **79851**
101.65 (d)(2)(ii)(C), (3)(ii)(C) and (4)(ii)(B) suspended to 1–1–06 ..... **30796**
101.80 (c)(2)(ii) redesignated as (c)(2)(iii); heading, (a)(4), (c)(1), (2)(i) introductory text, (B), (C), (E), (F), new (iii), (d)(1), (4) and (e) introductory text revised; (b) amended; (c)(2)(i)(H), (ii), (e)(1)(iii), (iv), (2)(iii) and (iv) added; interim **71470**
101.81 (c)(2)(iii)(A)(*1*) revised; (c)(2)(iii)(A)(*2*) redesignated as (c)(2)(iii)(A)(*3*); (c)(2)(ii)(A)(*4*) and (iii)(A)(*2*) added; interim **61782**
163.124 Added; eff. 1–1–04 ..... **62177**
170.3 (e)(2) revised; (e)(3) added **35729**
170.100—170.106 (Subpart D) Added **35729**
171.1 (i)(1) revised **35731**
171.7 (c) added **35731**
171.133 (b)(2) and (3) correctly revised; CFR correction **66045**
172.829 Added **45310**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

TITLE 21 Chapter I—Con.

173.325 (g) redesignated as (h); new (g) added **15720**
173.357 (a)(2) table amended **42716**
173.370 (b)(1) revised **61784**
174.5 (d)(5) added **35731**
179.25 (c) revised **35731**
201 Compliance date extension **16304**
201.323 Regulation at 65 FR 4110 eff. date delayed to 1–26–04 ..... **70691**
201.323 (c)(3) amended; eff. 1–16–04 ..... **70692**
203.3 Regulation at 64 FR 67761 eff. date delayed in part 4912
203.50 Regulation at 64 FR 67761 eff. date delayed 4912
207.20 Regulation at 66 FR 5466 eff. date delayed to 1–21–04 2690
211.198 Regulation at 67 FR 5056 eff. date delayed; interim **49568**
226.1 Regulation at 67 FR 5056 eff. date delayed; interim **49568**
310.500 Removed **42997**
310.545 (a)(28)(i) heading added; (a)(28)(ii) and (d)(34) through (36) added; (d)(28) revised **31125**
(a)(12)(iv)(C) and (d)(30) added **31127**
314.600—314.650 (Subpart I) Added **37995**
314.94 (a)(9)(ii), (iii) and (iv) amended; (a)(9)(v) revised **77672**
314.127 (a)(8)(ii)(A) introductory text, (B) and (C) amended **77672**
320.1 (c) revised; (e) amended **77672**
320.21 (d)(1) removed; (d)(2) and (3) redesignated as (d)(1) and (2); (a)(1), (2), (b)(1), (2), (c)(1), new (d)(2)(i), new (ii), (e), (f), (g) introductory text, (2) and (h) revised **77672**
320.22 (a), (b)(1)(ii), (2)(ii), (3)(i), (ii), (iii), (c), (d) introductory text, (2)(i), (iv) and (4)(i) revised; (b) introductory text and (e) amended **77673**
320.23 Heading revised; (a)(1) amended **77673**
320.24 Heading, (b)(5), (6) and (c) introductory text revised; (a) and (b)(4) amended **77673**
320.25 (a)(2) removed; (a)(3) redesignated as (a)(2); new (a)(2), (d)(1), (e)(1) introductory text, (i) and (f) heading revised; (f) amended **77674**
320.26 Heading and (a)(1) revised **77674**
320.27 (a)(3)(iv), (d)(1) and (2) revised; (b)(2) and (3)(i) amended **77674**
320.28 Amended **77674**
320.29 Heading and (a) revised; (b) amended **77674**
320.30 (c) revised **77674**
320.31 (b) introductory text and (3) amended **77674**
330 Compliance date extension **16304**
331 Compliance date extension **16304**
336.50 (c)(8) added; eff. 12–8–03 ..... **72559**
338.50 (c)(5) added; eff. 12–8–03 ..... **72559**
341 Compliance date extension **16304**
341.40 Added; eff. 12–23–04 ..... **78168**
341.70 (b) added; eff. 12–23–04 ..... **78170**
341.72 (c)(6)(iv) and (7) added; eff. 12–8–03 ..... **72559**
341.74 (c)(4)(viii)(C) and (ix)(C) added; eff. 12–8–03 ..... **72559**
341.85 Added; eff. 12–23–04 ..... **78170**
346 Compliance date extension **16304**
352.10 (f) through (n) revised **41823**
352.20 (a)(1) and (2) revised **41823**
355 Compliance date extension **16304**
358 Compliance date extension **16304**
369 Compliance date extension **16304**
500.80 (a) amended **78174**
500.82 (b) amended **78174**
500.84 Heading and (c)(2) revised; (c)(1) amended; (c)(3) added **78174**
500.88 (b) and (c) revised **78174**
510.88b (c) amended **67521**
510.88f (b) amended **67521**
510.300 Regulation at 67 FR 5056 eff. date delayed; interim **49568**
510.302 Regulation at 67 FR 5057 eff. date delayed; interim **49568**
510.600 (c)(1) table and (c)(2) table amended **17283, 41824, 42717, 42997, 43247, 45900, 50802, 51079, 51080, 63055, 67520, 67521, 72366, 78354, 78355, 78684**
(c)(1) table and (c)(2) table amended 1161, 4712, 4914, 4916
514 Regulation at 67 FR 5057 eff. date delayed; interim **49568**
514.3 Regulation at 67 FR 5057 eff. date delayed; interim **49568**
514.8 Regulation at 67 FR 5057 eff. date delayed; interim **49568**
514.11 Regulation at 67 FR 5057 eff. date delayed; interim **49568**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

514.15 Regulation at 67 FR 5057 eff. date delayed; interim **49568**
514.80 Regulation at 67 FR 5057 eff. date delayed; interim **49568**
520.44 (b) amended **78355**
520.154c. (b) amended **78355**
520.309 (a), (b) and (d) revised **65038**
(b), (d)(1) and (2) revised **65697**
520.390a (b)(2) amended 4914
520.445a (b) amended **78355**
520.445b (b) amended **78355**
520.445c (b) amended **78355**
520.446 Revised **54954**
520.447 Revised **54954**
(b)(2) amended **78684**
520.531 (b) amended **78355**
520.538 Added **68760**
520.540b (b)(2) amended 4914
520.580 (b)(1) amended **43248**
520.622a (a)(3) amended 4914
520.823 (b) amended 4914
520.905b (c) redesignated as (d); new (c) added; (d)(1)(iii) and (2)(iii) amended; (a), (d)(1)(i), (2)(i) and (3)(i) revised **47450**
520.955 Added **78357**
520.1192 (b)(2) amended **71820**
520.1193 (b)(2) amended **21996**
520.1194 Removed **50597**
520.1195 Revised **50597**
520.1196 Heading and (b) amended **21996**
520.1242a (b)(1) amended **63055**
(b)(4) added 4916
520.1242b (c) amended **63055**
520.1242c (b) amended **63055**
520.1242e (b) amended **63055**
520.1242f (b) amended **63055**
520.1263c (a), (b) and (d) revised **17284**
(d)(1)(iii) amended **71819, 78356**
(b) amended 3817
520.1380 (c) amended **67521**
520.1484 (a) and (b) revised **72366**
(b)(1) and (2) amended **78971**
(b)(2) amended 4914
520.1660d (d)(1)(iii)(C) amended **51081**
(b)(7) amended 4914
520.1696b (b) amended 4914
520.1720a (b)(3) amended **67521**
(b)(3) amended 4914
520.1720d (b) amended 4915
520.2041 (b) amended **21996**
520.2043 Revised **43248**
520.2123a (b) amended 4915
520.2123b (b) amended 4915
520.2184 (b) amended **78355**
520.2240a (c) amended **78355**
520.2240b (c) amended **78355**
520.2260a (a)(1) amended **78355**
520.2260b (c)(1) and (e)(1) amended 4915
520.2261a (a) amended **78355**
520.2261b (a) amended **78355**
520.2345c (b) amended **78355**
520.2345d (a)(3), (d)(1)(iii) and (2)(iii) amended **78355**
522.234 (b) amended **63055**
522.314 Heading, (a), (d)(1)(i), (iii) and (2) revised **45901**
522.522 Added **78972**
522.690 Revised **41824**
522.775 (b) amended **67521**
522.820 (a) amended 4915
522.940 (c)(1) amended **78355**
522.1010 (b)(3) amended **18086**
522.1066 (b) amended **67521**
522.1078 Revised **68759**
522.1085 (b) amended **67521**
522.1222a Revised **17283**
522.1244 (b) amended **63055**
522.1260 Heading, (a), (b), (e)(1)(i), (iii), (2)(i) and (iii) revised **34388**
522.1451 (d)(2) amended **57944**
522.1380 (b) amended **67521**
522.1660 (d)(1)(iii) amended **47451, 72366, 78357**
(b), (d)(1)(iii) and (2)(iii) amended **72367**
522.1720 (b)(1) amended **67521**
522.1870 (b) amended **79853**
522.2112 (c) removed; (d) redesignated as (c); heading, (a) and new (c) revised **18085**
522.2240 (c) amended **78355**
522.2260 (b) amended **78355**
522.2444b (b) amended 4915
522.2470 (b) amended **67521**
522.2471 Revised **72367**
522.2477 (b)(1) amended **78358**
522.2478 Revised **78972**
524.1140 Added **78685**
524.1193 (b) amended 3817, 4713
524.1240 (b) amended **78355**
524.1580b (b) amended 4915
524.1600a (b) amended **67521**
524.2482 Added 4916
526.820 (b) amended 4915
529.1940 Added **41824**
(b) amended **51080**
556.169 Added **78973**
556.283 (b) revised **78357**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

TITLE 21 Chapter I—Con.

556.735 (b) revised **72368**
558 Technical correction **44931**
558.4 (d) amended **47692**
558.76 (d)(3)(xii) amended **30327**
(d)(3)(v) through (xvii) redesignated as (d)(3)(vi) through (xviii); new (d)(3)(v) added **34830**
558.78 (a)(2) amended **71821**
558.128 (a), (b) and (d) redesignated as (b), (c) and (e); new (a) and (d) added; new (b) and (e) revised **43249**
558.155 Amended **21171**
558.195 (d) table amended **36098**
Revised **72370**
558.198 (a) revised; (b) and (d)(1)(iii) through (v) redesignated as (c) and (d)(1)(v) through (vii); new (b), (d)(1)(iii) and (iv) added **34830**
(d)(2)(ii) added **47257**
(d)(2)(iii) and (iv) added **48549**
558.248 (a)(1), (2) and (d)(1) table amended 4915
558.311 (b)(8) and (e)(1)(xviii) added; (d)(7) amended; (e)(1)(xii) revised **72368**
558.315 (a) amended **63055**
558.325 (a) and (b) amended; (a)(1), (5), (13) and (d) revised **36513**
558.342 (b), (c) and (d) redesignated as (c), (d) and (e); heading, (a) and new (e) revised; new (b), (d)(3) and (8) added **47688**
558.355 (f)(3)(iv) removed; (f)(7) revised **47691**
558.366 (d) table amended **30327**
558.450 (d)(1)(ix) table amended **51081**
558.485 (b)(7) amended **51080**
558.500 (a) amended; (d)(1) table revised **47692**
Revised **71820**
558.515 (d) table amended **30546**
558.530 (d)(5)(x) revised **34831**
558.550 (d)(1)(xx)(ii) added **72369**
558.618 (a) through (d) redesignated as (b) through (e); new (a) added; new (b), (c) and (e)(3) revised **21997**
558.625 (b)(39) table amended 4915
573.920 (h) revised **46851**
601.90—601.95 (Subpart H) Added **37996**
701 Compliance date extension **16304**
807.20 Regulation at 66 FR 5466 eff. date delayed to 1-21-04 2690
822 Added **38887**
862.1 (d) added **58329**
862.1235 Added **58329**
862.1678 Added **58329**
868.1 (e) added **76681**
868.2375 (a) revised **46852**
868.2377 Added **46852**
868.2480 (b) revised **76681**
872.5570 Added **68512**
874.1 (e) added **67790**
874.3850 Revised **20894**
874.3950 Added **67790**
878.1 (e) added **77676**
880.6991 Added **69121**
880.6992 Added **69121**
884.5320 (c) revised **40849**
888.3027 Revised **46855**
888.3310 Revised **21173**
1271.3 Regulation at 66 FR 5466 eff. date delayed to 1-21-04 2690

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1301 Policy statement **51988**
1308 Policy statement **42479**
1308.11 (g)(3) and (4) added **59162**
(g)(5) added **59165**
1308.13 (e) revised **62370**
1308.15 (b) revised **62370**
1310.05 (c) amended **49569**
1310.06 (g) amended **49569**
1310.12 (b) and (e)(i) amended **49569**
1313.21 (b) and (e) introductory text amended **49569**
1313.22 (e) amended **49569**
1313.31 (b), introductory text amended **49569**
1313.32 (b)(1) amended **49569**

Proposed Rules:

1 ..... **54138**
..... 1568
5 ..... **53324**
16 ..... **53324**
101 ..... **38913, 69171**
170 ..... **35764**
184 ..... **18834**
201 ..... **20070, 41360, 43068, 52429, 54139**
..... 2254
211 ..... **41360, 43068**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

212 ..... **15344**
310 ..... **62218**
312 ..... **20070, 41642, 44931**
314 ..... **20070, 22367, 65448, 66593**
343 ..... **54139**
358 ..... **31739, 62218**
589 ..... **67572, 70707**
601 ..... **20070, 22367, 41360, 43068**
870 ..... **76706**
872 ..... **16338, 34416, 46941, 52901**
878 ..... **77698**
880 ..... **41890**
882 ..... **64835**
1020 ..... **76056, 78760**
1308 ..... **20072, 47341, 47343**
..... 4127
1310 ..... **47493, 53842, 56776**
..... 4968

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

11 Authority citation revised **46109**
11.1 (e)(4) and (5) revised; (f) amended **46109**
22.1 Revised **34835**
Amended; interim **62886**
40.53 Added; interim **77159**
41 Authority citation revised **18822**
Technical correction **40849**
41.2 (l) revised **30547**
(l)(2) corrected **50349**
(b) revised; interim 5195
41.24 (a) revised; (c) added; interim **18822**
41.61 (b)(1)(i) revised; (d) added; interim **58695**
41.62 (a)(1) revised; (a)(5) added **58695**
41.63 (c)(4)(iii) corrected **77160**
41.81—41.86 (Subpart I) regulation at 61 FR 1838 confirmed **67108**
41.82 Regulation at 61 FR 1838 confirmed **67108**
41.83 Regulation at 61 FR 1838 confirmed **67108**
41.101 (g) removed **66046**
41.102 (c) removed **66046**
41.103 (c) removed **66046**
41.104 (e) removed **66046**
41.107 (c)(3) added; interim **38893**
(f) removed **66046**
41.112 (f) removed **66046**
41.113 (i), (j) and (k) removed **66046**
41.122 (i) and (j) removed **66046**
42 Technical correction **40849**
Authority citation revised **55320**
42.11 Table amended **55320**
Table corrected **70839**
42.32 Regulation at 66 FR 15350 confirmed **60562**
42.33 (h)(2) revised; interim **38893**
(a)(2), (3), (b)(1)(iii), (2), (3) and (4)(ii) revised; interim **51753**
42.67 (b) revised **77161**
42.71 Revised; interim **38893**
42.72 (c) removed; interim **38894**
42.74 (a)(2)(i), (b)(iv), (1)(v) and (c) amended **38894**
45 Removed **76682**
51.61 Revised **34838**
62.2 Amended; interim **17612, 17613**
62.3 (a)(3) and (b)(1) amended; interim **17612**
62.4 (a)(2) amended; interim **17612**
62,5 (a), (c)(2) and (5) amended; interim **17612**
62.5 (a) amended; interim **17612, 17613**
62.6 (a) and (b) amended; interim **17612**
62.7 (c) amended; interim **17612**
62.9 (g) amended; interim **17612**
62.10 (d) and (e)(1) amended; interim **17613**
62. 11 (d) amended; interim **17612, 17613**
62.12 Heading, introductory text, (a) through (c), (4), (d)(1) through (4), (e)(1) through (3) amended; interim **17613**
62.13 (a)(2) and (7) amended; interim **17612**
62.13 (a)(7) and (c)(1) amended; interim **17613**
62.14 (g) amended; interim **17612**
62.15 (d) and (g) amended; interim **17612**
62.15 (e) amended; interim **17613**
62.20 (a)(1), (2), (d)(ii)(A), (C), (f), (g)(2)(ii) and (j)(1) through (4) amended; interim **17612**
62.20 (d)(ii), (e), (f) and (h) amended; interim **17613**
62.21 (d), (e) and (g) amended;interim **17612**
62.21 (f) amended; interim **17613**
62.22 (a), (c)(1), (f)(1), (3), (g), (j), (n)(2) and (3) amended; interim **17612**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

TITLE 22 Chapter I—Con.

62.23 (a), (d), (e)(5), (f)(5)(ii)(A), (C), (h)(1)(i)(A), (ii) and (2)(ii) amended; interim 17612
62.23 (d), (f)(3)(ii), (4)(iii), (h)(1)(i) and (2)(i) amended; interim 17613
62.24 (a), (d) and (f) amended; interim 17612
(e) and (g) amended; interim 17613
62.25 (b)(2), (e), (g) and (k) amended; interim 17612
(m) amended; interim 17613
62.26 (a)(1) through (3), (b), (e)(1), (2) and (f) amended; interim 17612
(g) and (h) amended; interim 17613
62.27 (b)(3) and (f) amended; interim 17612
(c)(1), (i), (ii), (2) and (d) amended; interim 17613
62.28 (a) and (b) amended; interim 17612
(e) amended; interim 17613
62.29 (a) and (c) amended; interim 17612
(f) and (g) amended; interim 17613
62.30 (c) amended; interim 17612
(i) amended; interim 17613
62.31 (d), (f), (i), (m) and (n) amended; interim 17612
62.32 (b) amended; interim 17612
(h) amended; interim 17613
62.40 (a)(4) amended; interim 17612
62.41 (b) and (e) amended; interim 17613
62.42 (b)(2), (c) and (1) amended; interim 17613
62.43 (b) amended; interim 17613
62.45 (d)(3), (6), (e)(2) and (f)(1) amended; interim 17612
(c)(1) through (4)(i), (ii)(D), (d)(1), (e)(1), (h)(1)(i), (ii), (2)(i), (ii), (i)(2)(i), (ii) and (k) amended; interim 17613
62.50 (Subpart D) Revised; interim 17613
62.60—62.62 (Subpart E) Revised; interim 17615
62.70—62.79 (Subpart F) Added; interim 76314
196 Added 50803
121 Authority citation revised 20895
121.1 Amended 20895, 58985, 59733, 70841
121.4 Removed 58987
121.6 Removed 58987
121.7 Removed 70845
121.9 Removed 20896
121.12 Removed 70845
121.13 Removed 70845
123.20 Revised 58988
126.1 (a) revised; (g) added 44352
126.5 (b) introductory text revised 78686

Chapter II—Agency for International Development (Parts 200—299)

200 Revised 78686
213 Revised 47258

Chapter V—Broadcasting Board of Governors (Parts 500--599)

507 Added 76112

Proposed Rules:

41 76711
62 43264
203 30631
213 17655
507 58548

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

172 Revised 40155
420 Revised 47271
450 Technical correction 68512
450.104 Amended 3181
450.206 (b) revised; (c) added 3181
450.212 (h) and (i) added 3181
450.214 (f) added 3181
450.216 (e) added 3181
450.224 Existing text designated as (a); (b) added 3181
450.322 (a) revised 62373
627 Authority citation revised; nomenclature change 75924
627.5 (e) added 75924
635 Authority citation revised; nomenclature change 75924
635.102 Amended 75924
635.104 (c) added 75925
635.107 Revised 75925
635.109 (c) added 75925
635.110 (f) added 75925

NOTE: Boldface page numbers indicate 2002 changes.

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

635.112 Heading revised; (i) added 75925
635.113 (c) added 75925
635.114 (k) added 75925
635.116 (d) added 75925
635.122 (c) added 75925
635.309 (p) added 75926
635.411 (f) added 75926
635.413 Heading revised; (e) added 75926
636 Added 75926
650 Authority citation revised 63542
650.703 (b) revised; (c) added 63542
650.707 (a) and (b) revised 63542
650.709 (a) and (c) revised 63543
655.601—655.607 (Subpart F) Appendix revised 49572
655.601 Regulation at 67 FR 7076 confirmed 49236
Appendix amended 70163

Proposed Rules:

450 ..... 41648, 53326, 59219
630 ..... 51802, 55376
655 ..... 35850, 66076
657 48821
658 ..... 48994, 65056
771 59225
970 1080
971 1088
972 1096
973 ..... 1105, 4744
1410 59219
1420 59219
1430 59219

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

5.506 (c) added 65273
5.603 (b) amended 47432
5.609 (b)(6) revised 47432
5.801 (a)(5), (c)(3) and (d)(3) added 53451
15.302 (a) revised 65276
15.303 Revised 65276
15.305 Revised 65277
17.6—17.161 (Subpart C) Authority citation revised 47435
17.150 Undesignated center heading and text revised 47435
17.151 Introductory text and (b) revised 47435
17.153 (c) revised 47435
17.154 (a) revised 47435
17.156 Revised 47435
17.157 Revised 47435
17.159 Revised 47435
17.160 Heading and (a) revised 47436
17.161 (c) revised; undesignated center heading added 47436
17.170 Added 47436
92.2 Amended 61755
92.50 (b), (c)(3) and (d)(3) revised; (d)(4) amended 61755
92.101 (a)(1) and (3) revised; (f) added 61756
92.207 Introductory text amended 61756
92.209 (c)(2) removed; (c)(3) and (4) redesignated as (c)(2) and (3); new (c)(2) and new (3) amended 61756
92.214 (a)(4) revised; (a)(5) removed; (a)(6), (7) and (8) redesignated as (a)(5), (6) and (7); new (a)(8) added 61756
92.217 Revised 61756
92.253 (d)(3) removed; (d)(4) and (5) redesignated as (d)(3) and (4) 61756
92.254 (a)(5)(ii)(A)(*6*) and (*7*) redesignated as (a)(6) and (7); new (a)(7) revised; (a)(8) added 61756
92.353 (e) revised 61756
92.504 (c)(3)(v) revised 61757
92.506 Revised 61757
92.508 (a)(3)(xiii) added 61757

Chapter II—Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200 Authority citation revised 52380
200.190 Added 52380
200.191 Added 52380
200.193 Added 52380
200.194—200.195 (Subpart F) Added 39239
202.5 (n)(1) introductory text revised 53451
202.7 (b)(4)(i) introductory text and (A) revised 53451

NOTE: Boldface page numbers indicate 2002 changes.

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

TITLE 24 Chapter II—Con.

202.8 (b)(3) introductory text and (b)(3)(i) revised **53451**
203.50 (l) added **52381**

Chapter IV—Office of Housing and Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development (Parts 400--499)

401.3 Revised 3363

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

570.201 (d) revised **47213**
580 Interpretation **46109**

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—1699)

903.2 (c)(1)(iii) revised **51033**
941.102 (b)(3) revised **76101**
941.103 Amended **76101**
941.306 Revised **76102**
982.4 (b) amended **64492**
982.503 (b)(2) and (c)(2)(i) introductory text revised; (c)(2)(iii) removed **56688**
982.505 (c)(4) revised **56689**
982.601 (d) revised **64493**
982.625 (c) and (d) redesignated as (f) and (g); new (c),(d),(e),(h) and (i) added; new (g) introductory text amended **64493**
982.627 (c)(1), (2)(iii), (3), (e) amended **64493**
982.628 (a)(2) and (3) revised; (b) redesignated as (c); new (b) added **64494**
(c) added; interim **65865**
Corrected **67522**
982.631 Heading and (a) revised; (b)(4) and (c)(1) amended; (d) added **64494**
982.635 (c)(2)(vi), (vii) and (e) amended; (c)(2)(viii) added **64494**
982.640 Removed **64494**
982.641(b)(4) revised **64494**
982.643 Added **64494**
1005.101 Revised **19493**
1005.105 (e) revised **19493**
1005.107 (b)(5)(ii) amended **19493**
1006 Added; interim **40776**
Technical correction **42185**
1007 Added; interim **40776**
Technical correction **42185**

Chapter XII—Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

2002 Authority citation revised **47216**
2002.1 Revised **47216**
2002.3 Revised **47217**
2002.7 revised **47217**
2002.9 Revised **47217**
2002.11 (a) revised **47217**
2002.15 (b) revised **47217**
2002.17 (a) revised **47217**
2004 Revised 3366

Chapter XX—Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

3280 Waiver **20400**
3284 Added **52835**

Proposed Rules:

21 ..... **48006**
24 ..... **48006**
25 1766
50 ..... **43208**
58 ..... **43208**
92 648
200 ..... **48344, 63198**
203 ..... **54308, 54312**
..... 1766
234 ..... **54316**
236 ..... **52526**
245 ..... **41582**
570 648
572 648
574 ..... **43208**
..... 648
576 648
582 ..... **43208**
..... 648
583 ..... **43208**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

..... 648
585 648
888 ..... **36306**
902 ..... **53276**
903 ..... **53276**
970 ..... **43208**
985 ..... **53276**
1000 ..... **44787**
2004 ..... **59428**
3284 ..... **18398**
3500 ..... **49134**

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

11.100 (a)(14) added **44355**
11.110 (a)(15) added **59783**
21 Removed **77678**
39.11 (h)(2)(v) and (i)(6) through (18) removed **52830**
39.12 Revised **52830**
39.13 Revised **52830**
103.22 Corrected **63543**
112 Removed **54735**
116 Removed **54735**
121 Removed **54735**
123 Removed **54735**
125 Removed **54735**
154 Removed **54735**
156 Removed **54735**
170.4b Revised **44357**
Added; eff. 1–13–03 through 9–30–03 1005
178 Removed **54735**
243 Removed **54735**
256.2 Amended **77920**
256.5 Revised **77920**
256.7 Table revised **77920**
256.8 (b) amended **77920**
256.9 Amended **77920**
256.10 Amended **77921**
256.11 Heading revised **77921**
256.13 (a), (b), (c) and (g)(1) amended **77921**
256.14 (a) and (e) amended; (b)(2) table revised **77921**
256.15 Heading revised **77922**
256.17 Amended **77922**
256.19 Amended **77922**
256.23 Heading revised **77922**
256.24 Removed; new 256.24 redesignated from 256.25 ..... **77922**
256.25 Redesignated as 256.24; new 256.25 redesignated from 256.26 ..... **77922**
256.26 Redesignated as 256.25; new 256.26 redesignated from 256.27 ..... **77922**
256.27 Redesignated as 256.26; new 256.27 redesignated from 256.28 ..... **77922**
256.28 Redesignated as 256.27; new 256.28 redesignated from 256.29 ..... **77922**
256.29 Redesignated as 256.28 ..... **77922**

Chapter III—National Indian Gaming Commission (Parts 500—599)

502.7 Revised **41172**
502.8 Revised **41172**
502.9 Revised **41172**
542 Revised **43400**

Chapter V—Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)

900 Amended **34602**

Proposed Rules:

1—299 (Ch. I) **75828**
..... 2465
25 ..... **47755**
170 ..... **51328, 62417**
502 ..... **20923**
504 ..... **46134**
542 ..... **19713, 37369**

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—799)

1 Technical correction **35732, 37671, 45311, 46855**
Authority citation amended **18994, 20899, 20904, 34394, 37999, 38002, 43540, 47285, 47693, 48756, 49864, 54089, 65698, 68513, 78361, 78376, 78691**
Authority citation amended 4920
1.25A–0 Added **78691**
1.25A–1 Added **78691**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

TITLE 26 Chapter I—Con.

1.25A–2 Added 78691
1.25A–3 Added 78691
1.25A–4 Added 78691
1.25A–5 Added 78691
1.46–1 (p)(2)(iv) amended 35012
1.48–3 (d)(1)(iii) amended 35012
1.48–12 (d)(7)(iii) added 20030
(d)(7)(iii) revised; (d)(7)(iv) added 4920
1.48–12T Revised 20030
Removed 4920
1.72(p)–1 amended 71824
1.121–1 Revised 78361
1.121–2 Revised 78361
1.121–3 Revised 78361
1.121–3T Added 78369
1.121–4 Revised 78361
1.121–5 Removed 78367
1.141–0 Table amended 59759
1.141–2 (d)(e)(ii)(B) amended 59759
1.141–7 Added 59759
Corrected 70845
1.141–7T Removed 59763
1.141–8 Added 59763
1.141–8T Removed 59765
1.141–15 (a) revised; (f) through (i) added 59765
1.152–3 (c) removed 20031
(a)(4) and (b) revised; (c) added 4920
1.152–3T Added 20031
Removed 4921
1.170A–9 (e)(6)(i) amended 20437
1.274–5 (j)(3) added 68513
1.274–5T (j) revised; (m) amended 68513
Corrected 72273
1.280H–1T (a) amended 35012
1.334–1 (b) amended 34605
1.337(d)–2T (a)(4) and (b)(4) added 37999
1.338–1 (b)(2)(vii) amended 43540
1.355–0 Heading revised; text amended 20636
Corrected 38200
1.355–7T Revised 20636
(b)(3)(iii) and (j) *Example 4* corrected 38200
1.358–1 (a) amended 34604
1.362–1 (a) amended 34605
1.368–2 (b)(1) revised 3387
1.368–2T Added 3387
1.381(c)(4)–1 (a)(2) amended 34605
1.401(a)(2)–1 Added 47693
1.401(a)(9)–0 Added 18994
1.401(a)(9)–1 Added 18994
1.401(a)(9)–2 Added 18994
1.401(a)(9)–3 Added 18994
1.401(a)(9)–4 Added 18994
1.401(a)(9)–5 Added 18994
1.401(a)(9)–6T Added 18994
1.401(a)(9)–7 Added 18994
1.401(a)(9)–8 Added 18994
1.401(a)(9)–9 Added 18994
Table corrected 36676
1.403(b)–3 Added 19023
1.408–8 Added 19024
1.441–0 Added 35012
1.441–1 Added 35012
1.441–1T Removed 35019
1.441–2 Added 35012
1.441–2T Removed 35012
1.441–3 Added 35012
1.441–3T Removed 35019
1.441–4 Added 35012
1.441–4T Removed 35019
1.442–1 Revised 35019
1.442–2T Removed 35020
1.442–3T Removed 35020
1.443–1 (b)(1)(ii) amended 35012
1.444–1T (a)(1) amended 35012
1.444–2T (a) amended 35012
1.444–4 Added 34394
1.444–4T Removed 34394
1.446–1 (c)(2)(iii) added 76985
1.446–4 Corrected 31955
1.448–1 (h)(2)(ii)(B)(*1*) amended 35012
1.460–0 Amended 34605
1.460–4 (a) amended; (k) added 34605
1.460–6 (g) revised 34609
1.469–0 Amended 54089
1.469–1 (h)(4)(ii)(D) amended 35012
1.469–1T (g)(2)(i) amended 35012
1.469–7 Heading revised; (a) through (h) added 54089
1.469–11 (a)(3) amended; (a)(4) redesignated as (a)(5); new (a)(4) and (c)(1)(iii) added; (c)(1) and (i) headings revised 54093
1.471–6 (c) and (g) amended; (f) revised 65698
1.509(a)–3 (f)(1) amended; (f)(3) heading and introductory text revised; (f)(3) *Example* designated as *Example 1*; *Examples 2* and *3* added 20437
1.512(a)–1 (e) heading and introductory text revised; (e) *Example* designated as *Example 1*; (e) *Example 2* added 20437
1.513–4 Added 20438

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

1.611–3 (h) removed 20031
(h) added 4921
1.611–3T Added 20031
Removed 4921
1.641(b)–3 (a) amended 78376
1.641(c)–0 Added 34394
1.641(c)–1 Added 34394
1.642(c)–1 (a)(1) amended 78376
1.645–1 Undesignated center heading and section added 78377
1.671–4 (d), (h) and (i) redesignated as (d)(1), (i) and (j); new (d)(1) heading, (2), new (h) and new (i)(3) added 78381
1.702–1 (a)(8)(ii) revised; (c)(1)(iii) and (iv) amended; (c)(1)(v) added 48023
1.706–1 (a) and (b) revised; (d) added 35020
(b)(5) and (6) revised; (b)(11) added 48019
1.706–1T Removed 35024
1.706–3T Removed 48020
1.708–1 (b)(4) and (5) corrected 57330
1.852–9 (c)(1) removed 20031
(c)(1) added 4921
1.852–9T Added 20031
Removed 4921
1.860A–0 Amended 47453
1.860E–1 (c)(4)(i) and (ii) amended; (c)(4)(iii), (iv), (5) and (10) added 47453
1.883–1 Corrected 58548
1.883–4 Corrected 58548
1.892–5 Added 49864
1.892–5T (a)(2) concluding text removed; (a)(3) added 49864
1.894–1 (d)(2)(ii) and (iii) added; (d)(6) revised 40160
1.952–1 (g) added 48023
1.954–0 (b) amended 4917
1.954–1 (g) added 48023
1.954–2 (a)(5) added 48024
(f)(2)(iii)(E) removed; (f)(2)(iv) heading and (g)(2)(iii) revised; (f)(2)(iv)(C), (v) (vi), (g)(2)(ii)(C)(*1*) through (*2*)(*iii*) added 4917
1.954–3 (a)(6) added 48025
1.954–4 (b)(2)(iii) added 48025
1.956–2 (a)(3) added 48025
1.1041–1T (c) amended 1536
1.1041–2 Added 1536
1.1092(c)–1 Redesignated as 1.1092(c)–2; new 1.1092(c)–1 added 20899
Regulation at 67 FR 20899 suspended to 7–29–02 37671
1.1092(c)–2 Redesignated from 1.1092(c)–1 20899
(b) and (d) revised; (c) added; (d)(1) introductory text, (i) introductory text, (A) through (D), (ii) introductory text, (A), (B) and (2) redesignated as (a) introductory text, (1) introductory text, (i) through (iv), (2) introductory text, (i), (ii) and (f) in 1.1092(c)–4; (e) removed 20900
Regulation at 67 FR 20899 and 20900 suspended to 7–29–02 37671
1.1092(c)–3 Added 20900
Regulation at 67 FR 20900 suspended to 7–29–02 37671
1.1092(c)–4 Added; (a) introductory text, (1) introductory text, (i) through (iv), (2) introductory text, (i), (ii) and (f) redesignated from (d)(1) introductory text, (i) introductory text, (A) through (D), (ii) introductory text, (A), (B) and (2) in 1.1092(c)–2 20900
(a)(1)(iv), (2) introductory text and (i) revised; (b) through (e) and (g) added 20901
Regulation at 67 FR 20900 and 20901 suspended to 7–29–02 37671
1.1256(e)–1 Corrected 31955
1.1271–0 (k) introductory text through (3) added 30548
1.1275–1 (k) added 30548
1.1361–0 Amended 34396
1.1361–1 (h)(1)(vi), (3)(i)(F), (j)(12) and (m) added; (h)(3)(ii) introductory text and (k)(2)(i) amended 34397
1.1361–5 (c)(1) amended 65313
1.1362–2 (c)(6) *Example 2* amended 34610
1.1362–7 Heading revised; (a) amended 34401
1.1374–4 (g) amended 34610
1.1377–0 Amended 34401
1.1377–1 (a)(2)(iii) and (c) *Example 3* added 34401
1.1377–3 Revised 34401
1.1398–3 Added 78367
1.1441–0 Amended 70312

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

TITLE 26 Chapter I—Con.

1.1441–1 (b)(7)(i)(D) added **70312**
1.1441–1T Regulation at 67 FR 2328 and 2387 confirmed **70311**
1.1441–1T Removed **70312**
1.1441–6 (g) redesignated as (h); new (g) added; (b)(1) and new (h)(2) amended; new (h) heading and (1) revised **70312**
1.1441–6T Regulation at 67 FR 2328 and 2387 confirmed **70311**
Removed **70313**
1.1502–6 (b) amended **43540**
1.1502–13 (a)(3)(i) amended **76985**
1.1502–20T (i)(3)(v) and (i)(4) revised **38000**
1.1502–21 (b)(3)(ii)(C) added **38002**
1.1502–21T Added **38002**
1.1502–41B Undesignated center heading added **43540**
1.1502–77 Redesignated as 1.1502–77A; new 1.1502–77 added **43540**
1.1502–77A Redesignated from 1.1502–77; Heading revised; (a) through (d) amended; (e) removed; (f) and (g) added **43540**
(e) redesignated from 1.1502–77T (a) **43544**
1.1502–77T (a) redesignated as 1.1502–77A(e); removed **43544**
Regulation at 67 FR 43544 corrected **77678**
1.1502–78 (a) revised; (b)(1), (2), (c) *Examples* 1, 2 and 3 amended; (e)(2)(v) removed; (f) added **43544**
1.1502–79A Undesignated center heading added **43545**
1.1561–1 (c)(2) amended **35012**
1.6011–4T Heading, (a)(1), (b)(1), (4)(i), (5) *Example 3*, (c)(2) *Example* and (e) amended; (a) heading, (c)(1)(iii), (v), (d)(1) and (g) revised; (a)(2), (3), (b)(1)(i) and (ii) added **41327**
1.6011–4T Revised **64802**
1.6012–3 (a)(1)(iv) added **78382**
1.6013–4 (d) added **47285**
1.6013–5 Removed **47285**
1.6015–0 Added **47285**
1.6015–1 Added **47285**
1.6015–2 Added **47285**
1.6015–3 Added **47285**
1.6015–4 Added **47285**
1.6015–5 Added **47285**
(b)(3) corrected **54735**
1.6015–6 Added **47285**
1.6015–7 Added **47285**
1.6015–8 Added **47285**
1.6015–9 Added **47285**
1.6031(a)–1 (a)(1) amended **41328**
1.6037–1 (c) amended **41328**
1.6038–3 (b)(9) *Example 1* amended; (g)(1)(i) through (v) redesignated as (g)(1)(ii) through (vi); new (g)(1)(i) added; (j) and (l) revised **78175**
1.6038–3T Added **78176**
1.6041–1 (b)(1) and (c) amended; (e), (f) and (g) redesignated as (g), (h) and (i); new (e), (f) and (j) added **48756**
1.6041–3 (d) revised; (n) removed; (o), (p) and (q) redesignated as (n), (o) and (p) **48758**
1.6043–4T Added **69469**
1.6045–1 (a) introductory text and (c)(3) revised; (g)(3)(iv) and (4) *Examples 1, 4, 5, 6, 7*(i), *8*(i) and *9*(i) amended **48758**
1.6045–2 (b)(2)(ii) amended **48759**
1.6045–3T Added **69472**
1.6049–4 (a)(2) revised **48759**
1.6050S–0 Amended **77681**
1.6050S–1 Added **77682**
1.6050S–1T Redesignated as 1.6050S–2T **20904**
1.6050S–2T Redesignated as 1.6050S–4T; new 1.6050S–2T redesignated from 1.6050S–1T **20904**
1.6050S–4T Redesignated from 1.6050S–2T **20904**
1.6072–1 (a) text redesignated as (a)(1); new (a)(1) heading and (2) added **78382**
1.6115–1 Undesignated center heading added **52863**
1.6109–2 Redesignated as 1.6109–2A; new 1.6109–2 added **52863**
1.6109–2A Redesignated from 1.6109–2; (d) amended **52863**
1.6109–2T Removed **52863**
1.6654–2 (a) amended **35012**
1.6655–2 (a)(4) amended **35012**
1.7476–1 (e) added **47456**
1.7476–2 (b), (c) and (d) revised; (e) added **47456**
3.1378–1 Added **35024**
5c.442–1 Removed **35024**
5f Authority citation amended **48759**
5f.442–1 Removed **35025**
5f.6045–1 Removed **48759**
18.1378–1 Removed **35025**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

20.6011–4T Added **64805**
25.6011–4T Added **64805**
31 Authority citation amended 4923
31.3406–0 (b) and (d) tables amended **48759**
31.3406(a)–2 Revised **48759**
31.3406(a)–4 (c)(1) and (3) amended **48760**
31.3406(b)(3)–2 (b)(5) amended **48760**
31.3406(d)–4 (a)(1) introductory text amended **48760**
31.3406(h)–1 (c) amended **48760**
31.3406(h)–2 (c), (d) and (f)(6) amended **48760**
31.3406(j)–1 (a) and (f) revised 4923
31.3406(j)–1T Added 4923
31.6011–4T Added **64806**
46.4374–1 Revised **70846**
52.4974–2 Regulation at 67 FR 19028 corrected **35732**
53.6011–4T Added **64806**
54 Authority citation amended **19026**
54.4974–2 Added **19026**
54.6011–4T Added **64806**
56.6011–4T Added **64806**
301 Technical correction **37671, 47427**
Authority citation amended **41621**
Authority citation amended 2693, 2696
301.6011–1 Removed **20032**
Added 4921
301.6011–1T Added **20032**
Removed 4921
301.6011–2 (b)(1) and (g)(1) revised; (g)(3) added **20907**
301.6103(j)(1)–1 Revised 2693
301.6103(j)(1)–1T Removed 2695
301.6103(j)(5)–1 (b)(2)(xiv) added; (d) revised **41621**
301.6103(p)(2)(B)–1 Added 2696
301.6103(p)(2)(B)–1T Removed 2696
301.6109–1 Regulation at 67 FR 2329 and 2388 confirmed **70311**
(g)(3) revised **70313**
301.6109–1T Regulation at 67 FR confirmed **70311**
Removed **70313**
301.6112–1T Revised (temporary) **64809**
301.6011–2 (b)(1) amended; (g)(3) revised **77687**
301.6109–1 (a)(2)(iii) removed; (a)(3) through (6) added **78382**
301.6111–2T (a)(3) and (h) amended **41329**
(a)(3) and (b)(3)(i) revised; (c)(3) and (h) amended **64806**
301.6331–3 Added **77417**
301.6331–4 Added **77417**
301.6903–1 (b) removed **20032**
(b) added 4921
301.6903–1T Added **20032**
Removed 4922
301.7122–0 Added **48029**
301.7122–0T Removed **48032**
301.7122–1 Added **48029**
(d)(2) corrected **53879**
301.7122–1T Removed **48032**
301.7602–1 (b) revised **57331**
301.7602–1T Added; eff. to 9–9–05 ..... **57331**
301.7602–2 Added **77421**
301.7701–2 (b)(6) and (c)(2)(ii) revised; (e) amended **49864**
301.7701–15 (a)(7)(iii) and (iv) amended; (a)(7)(v) through (viii) added **77419**
301.7701(b)–6 (a) amended **35012**
601.201 (o)(3)(xv) and (xxi) amended; (o)(3)(xvi) introductory text and (xvii) revised **47457**
601.701 Removed **69675**
601.702 Revised **69675**
602 Technical correction **35732, 37671, 45311**
602.101 (b) table amended; OMB numbers **19028, 20032, 20907, 34401, 34610, 35025, 38003, 43545, 47296, 47454, 48760, 54093, 69473, 77678, 78176, 78383, 78698**
(b) table amended; OMB numbers 1537, 2696, 4922

Proposed Rules:

1 ..... **17309, 18834, 18835, 19713, 20072, 20711, 20923, 21187, 30634, 30826, 31995, 35064, 35765, 37369, 37736, 38025, 38039, 38040, 38214, 40629, 40896, 41362, 41653, 41892, 42210, 43574, 45414, 45683, 45933, 46612, 48067, 48070, 48596, 48823, 48997, 49634, 49892, 50386, 50510, 50840, 53327, 54388, 56244, 56509, 57543, 58346, 59767, 59797, 62417, 63330, 64331, 64840, 65060, 65842, 67132, 68539, 69496, 70031, 70707, 70891, 75899, 76123, 77450, 77701, 78202, 78398, 78761, 79538, 79894**

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 26 *Proposed Rules:—Con.*

1020, 2466, 2930, 3477, 4969
20 ..... **48070, 63330, 64840**
25 ..... **48070, 61997, 63330, 64840**
31 ..... **30634, 44579, 45414, 50386, 64067, 64840, 67802**
4970
41 ..... **38913, 53539, 58346**
48 ..... **34882, 38913, 53539, 58346**
53 ..... **64840**
54 ..... **19713, 35765, 43574, 64840**
56 ..... **64840**
145 ..... **38913, 53539, 58346**
300 ..... **67573**
301 ..... **18839, 20072, 20923, 37736, 39915, 41362, 41892, 43574, 44579, 48823, 50840, 57354, 64067, 64840, 64842, 76132, 79538**
4970
602 ..... **19713, 41892, 43574**

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

Chapter I Heading revised 3747
4 Amended **30797**
4.1—4.4 (Subpart A) Undesignated cross-references and center heading removed **62857**
4.5 Added **62857**
4.91 Amended **56481**
4.101 (Subpart K) Added **62858**
5.2 Amended **30797**
Revised **62858**
5.71 (Subpart I) Added **62858**
7.4 Amended **30798**
Revised **62858**
7.81 (Subpart I) Added **62858**
9.107 (b) and (c) revised **56484**
9.174 Added **72839**
9.176 Added **77924**
13.1 Amended **62858**
13.3 Added **62858**
13.51 Amended **62858**
13.61 (a) text redesignated as (a)(1); new (a)(1) heading and (2) added **62859**
13.101 (Subpart G) Added **62859**
19.3 Amended **30798**
19.524 (a)(1), (b)(1) and (3) amended **30798**
19.538 (a)(1)(iii) amended **30798**
20.3 Amended **17938, 30798**
20.21 (a) amended **17938**
20.22 (a)(3) removed; (a)(4) redesignated as new (a)(3) **17938**
20.26 Removed **17938**
20.43 (a)(2) and (b) revised **17938**
20.58 Amended **17939**
20.59 (b) removed; (c) and (d) redesignated as new (b) and (c) **17939**
20.61 Amended **17939**
20.62 (a) designation, heading and (b) removed **17939**
20.68 (b) removed; (c) redesignated as new (b) **17939**
20.71—20.82 (Subpart E) Removed **17939**
20.175 (c) revised **17939**
Corrected **20868**
20.177 (b) amended **17939**
20.232 (b) removed; (c) redesignated as new (b) **17939**
20.241 Amended **17939**
22.3 Amended **30798**
22.171 (b) amended **30798**
24.4 Amended **30798**
24.272 (a)(1), (b)(1) and (3) amended **30798**
25.165 (a)(1), (b)(1) and (3) amended **30798**
26.112a (a)(1), (b)(1) and (3) amended **30798**
26.267 (a) amended **30798**
27 Redesignated from Part 251 ..... **30799**
27.3 Amended **30799**
27.11 Amended **30799**
27.31 Amended **30799**
27.40 (c) amended **30799**
27.44 Amended **30799**
27.74 Amended **30799**
27.76 (c)(3) amended **30799**
27.77 (a), (b)(1), (2), (3)(iii) and (d) amended **30799**
27.120 Amended **30799**
27.133 Amended **30799**
27.138 Introductory text amended **30799**
27.172 Amended **30799**
27.185 (b) amended **30799**
27.208 Amended **30799**
40.232 Revised **19333**
44.2 (a) amended; (b) revised **30801**
44.3 Added **30801**
44.11 Amended **30801**
44.35 (c) amended **30801**

NOTE: **Boldface page numbers indicate 2002 changes.**

44.62 Amended **30801**
44.66 Amended **30801**
44.70 Amended **30801**
44.71 Amended **30801**
44.72 Introductory text and (c) amended **30801**
44.73 Introductory text and (c) amended **30801**
44.82 Amended **30801**
44.83 Amended **30801**
44.84 Amended **30801**
44.86 Amended **30801**
44.87 Amended **30802**
44.91 Amended **30802**
44.92 Amended **30802**
44.93 Revised **30802**
44.101 Amended **30802**
44.102 Amended **30802**
44.103 Amended **30802**
44.104 Amended **30802**
44.105 Amended **30802**
44.106 Amended **30802**
44.108 Heading revised; amended **30802**
44.109 Amended **30802**
44.110 Removed **30802**
44.111 Amended **30802**
44.112 Amended **30802**
44.121 (b) amended **30802**
44.123 Amended **30802**
44.124 Amended **30802**
44.125 Amended **30802**
44.126 Amended **30802**
44.127 Amended **30802**
44.129 (a) amended **30802**
44.142 (e) amended **30801**
44.143 (b) amended **30801**
(a) amended; (a)(1) and (2) removed **30802**
44.144 Amended **30802**
44.145 Amended **30801**
44.146 Amended **30802**
44.147 Amended **30801, 30802**
44.150 Amended **30801**
44.152 Amended **30802**
44.153 Amended **30802**
44.154 Amended **30802**
44.161 Amended **30802**
44.162 Amended **30802**
44.184 Amended **30801**
44.199 Amended **30801, 30802**
44.200 Amended **30802**
44.201 Amended **30801, 30802**
44.202 Amended **30802**
44.203 Amended **30802**
44.204 Amended **30802**
44.205 (b)(3) amended **30802**
44.206 Amended **30802**
44.207 Amended **30802**
44.207a Amended **30802**
44.208 Amended **30802**
44.209 Amended **30802**
44.210 Amended **30802**
44.212 Amended **30802**
44.213 Amended **30802**
44.222 Revised **30803**
44.223 Amended **30802, 30803**
44.224 Amended **30803**
44.225 Amended **30801**
44.226 Amended **30802**
44.227 Amended **30803**
44.228 Amended **30802**
44.229 Amended **30803**
44.230 Amended **30802**
44.231 Amended **30802**
44.232 Amended **30802**
44.242 Amended **30802, 30803**
44.243 Amended **30802, 30803**
44.244 Amended **30802**
44.245 Amended **30802**
44.246 Amended **30802**
44.257 Amended **30801, 30803**
44.258 Amended **30803**
44.259 Amended **30803**
44.260 Amended **30803**
44.261 Amended **30803**
44.262 Amended **30803**
44.263 Amended **30803**
44.264 Amended **30803**
44.264a Amended **30803**
44.265 Amended **30803**
44.266 Amended **30801**
44.267 Amended **30801, 30803**
46.8 (f) corrected **63544**
46.141—46.155 (Subpart F) Transferred to Chapter II (Subchapter D) and redesignated as Part 646 3753
47 Transferred to Chapter II (Subchapter B) and redesignated as Part 447 3747
47.11 Amended **64526**
47.31 Revised **64526**
47.32 (a) revised; (c) amended **64526**
47.33 Amended **64526**
47.34 (b) amended **64526**
47.35 (a) amended; (b) revised **64526**
47.41 (a) and (b) amended **64526**
47.42 (a)(1) introductory text and (2)(i) amended **64526**
47.43 (c) amended **64526**
47.44 Amended **64526**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

TITLE 27 Chapter I—Con.

47.45 (a) introductory text amended; (a)(1) amended **64526**
47.51 Amended **64526**
47.52 (b) introductory text and (f) amended **64526**
45.58 Added **64526**
55 Transferred to Chapter II (Subchapter C) and redesignated as Part 555 3748
70.411 (c)(27) amended **30799**
178 Transferred to Chapter II (Subchapter B) and redesignated as Part 478; note amended 3750
179 Transferred to Chapter II (Subchapter B) and redesignated as Part 479 3752
251 Redesignated as Part 27 ..... **30799**
252.2 (a) amended; (b) revised **18087**
252.4 Added **18087**
252.11 Amended **18088**
252.20 (a)(2) introductory text, (3) and (4) amended **18087**
Heading and (c) revised; (a)(1), (b)(1), (2) introductory text and (3) amended **18088**
252.22 Amended **18088, 18089**
252.23 Amended **18089**
252.35 Amended **18089**
252.36 Undesignated text and (c) amended **18088**
Introductory text and (c) amended **18089**
252.37 Amended **18088**
252.38 Amended **18088**
252.43 (a)(1), (2), (6), (b)(1), (2) and (3) amended **18088**
(a)(1), (2), (b)(1) and (2) amended **18089**
252.45 Amended **18089**
252.51 Revised **18089**
252.52a Amended **18088**
252.55 Amended **18088**
252.56 Introductory text amended **18088**
252.57 Amended **18089**
252.58 (c) amended **18088**
252.59 Amended **18089**
252.61 Amended **18089**
252.62 (b) amended **18088**
(a) and (c) amended **18089**
252.63 Amended **18089**
252.64 Amended **18089**
252.65 Amended **18088, 18089**
252.67 Amended **18088**
252.70 Amended **18088, 18089**
252.71 Amended **18088, 18089**
252.72 Amended **18088, 18089**
252.73 (a) and (b) amended **18089**
252.74 Amended **18088**
252.92 (a) amended **18089**
252.96 Amended **18088**
252.103 (b) amended **18088**
252.104 Amended **18089**
252.116 Introductory text amended **18089**
252.117 Amended **18088**
252.122 (c) and (d) amended **18088**
(a) and (b) revised **18089**
252.123 (b) amended **18088, 18090**
252.125 Amended **18088**
252.131 Amended **18088**
Introductory text amended **18090**
252.133 Amended **18090**
252.142 Amended **18088, 18089**
252.146 Amended **18088, 18089**
252.147 Amended **18088, 18089**
252.152 Amended **18090**
252.161 Introductory text amended **18090**
252.162 Amended **18088**
252.171 Amended **18088**
252.195a Removed **18090**
252.195b (b) and (c) amended **18088**
252.198 Introductory text amended **18090**
252.199 Amended **18090**
252.211 Amended **18088**
252.214 Amended **18088**
252.215 Amended **18088**
Heading revised; amended **18090**
252.218 Amended **18088**
252.220 (b) amended **18088**
Introductory text amended **18090**
252.220a Amended **18088, 18090**
252.221 Amended **18088**
252.222 Amended **18088**
252.225 Introductory text amended **18088, 18090**
252.226 Amended **18088**
252.227 Amended **18088, 18090**
252.250 (a)(4) amended **18088**
Introductory text amended **18089**
Amended **18090**
Corrected **48550**
252.261 Amended **18088, 18089**
252.262 Amended **18090**
252.264 Amended **18088, 18089**
252.265 Amended ..... **18088—18090**
252.266 Amended **18088**
252.267 Amended **18088, 18089**
252.268 Amended **18090**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

252.269 (a), (b) and (c) amended **18088**
(a) and (c) amended **18089**
252.275 Amended **18088, 18089**
252.281 Amended **18088**
252.282 Amended **18088, 18089**
252.285 Amended **18088**
252.286 Amended **18090**
252.290 Introductory text amended **18088, 18089**
252.295 Amended **18088, 18089**
252.301 Amended **18088**
252.302 Amended **18088**
252.303 Amended **18088**
Introductory text amended **18090**
252.304 Amended **18088**
252.310 Amended **18088**
252.315 Amended **18088**
252.316 Amended **18088**
252.317 Amended **18088**
Introductory text amended **18090**
252.320 Amended **18088**
(a) amended **18089**
252.321 Amended **18088**
252.331 Amended ..... **18088—18090**
252.332 Amended **18088**
252.333 Amended **18088, 18089, 18090**
252.334 Amended **18090**
252.335 Amended **18088**

Chapter II—Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice (Parts 300—699)

Chapter II Established 3747
447 Transferred and redesignated from Chapter I, Part 47 3747
447.2 (a), (b) and (c) amended 3748
447.11 Amended 3748
447.34 (a) and (b) amended 3748
447.41 (a) and (b) amended 3748
447.42 (a)(i) introductory text and (b) amended 3748
447.52 (e) introductory text amended 3748
447.56 (a) amended 3748
447.57 (a)(1) and (b)(2) amended 3748
478 Redesignated from 178 3750
478.2 Amended 3750
478.11 Note amended 3750
478.28 (c) amended 3750
478.29 (b) and (c) amended 3750
478.36 (a) and (b) amended 3750
478.37 (c) amended 3750
478.39 (b)(2) amended 3750
478.40 (b)(9) and (c)(5) amended 3750
478.40a (b)(5) and (c)(5) amended 3750
478.41 (b), (c) and (d) amended 3750
478.45 Amended 3750
478.47 (c) amended 3750
478.50 (c) and (d) amended 3750
478.51 Amended 3750
478.52 (a) and (b) amended 3750
478.54 Amended 3750
478.55 Amended 3750
478.57 (a), (b) and (c) amended 3750
478.71 Amended 3751
478.72 Amended 3751
478.73 (b) amended 3751
478.92 (a)(4)(iii) amended 3751
478.93 Amended 3751
478.95 Amended 3751
478.96 (b), (c)(1)(ii) and (iii) amended 3751
478.97 (a) amended 3751
478.98 (b) amended 3751
478.99 (a), (c)(1), (5), (d)(3) and (e) amended 3751
478.100 (a)(1) amended 3751
478.102 (a)(3), (b), (d)(2), (3) and (e) amended 3751
478.112 (a) and (d)(2) amended 3751
478.113 (a) amended 3751
478.116 Amended 3751
478.118 Amended 3751
478.119 (c)(7), (f)(2) and (g) amended 3751
478.121 (a), (b) and (d) amended 3751
478.122 (b) and (d) amended 3751
478.123 (b) and (d) amended 3751
478.124 (c)(3)(i), (ii) and (iv), (d) and (f) amended 3751
478.125 (b), (c), (e), (f)(2)(i) and (ii) amended 3751
478.125a Introductory text, (2) and (3) amended 3751
478.129 (b), (c) and (f) amended 3751
478.131 (a)(1), (2) and (3) amended 3751
478.132 (b)(2) amended 3752
478.133 Amended 3752
478.141 Introductory text amended 3752
478.144 (a) and (i)(1) amended 3752
478.145 Amended 3752
478.147 Amended 3752

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

TITLE 27 Chapter II—Con.

478.149 Amended 3752
478.150 (a) introductory text and (c) amended 3752
478.151 (a) amended 3752
478.153 Amended 3752
479 Transferred and redesignated from Chapter I, Part 179 3752
479.25 Amended 3752
479.31 (a) and (b) amended 3752
479.32 (b) amended 3752
479.32a (a) amended 3752
479.34 (b)(3), (6) and (e) amended 3752
479.38 Amended 3752
479.42 Amended 3752
479.43 Amended 3752
479.44 Amended 3752
479.46 Amended 3752
479.48 Amended 3752
479.49 Amended 3752
479.50 Amended 3752
479.52 Amended 3752
479.62 Amended 3752
479.69 Amended 3752
479.70 Amended 3752
479.84 Amended 3752
479.87 Amended 3752
479.89 Amended 3752
479.90 (b) amended 3752
479.91 Amended 3752
479.92 Amended 3752
479.93 Amended 3752
479.111 (a)(3), (b) and (c) amended 3752
479.112 (a) amended 3752
479.118 Amended 3752
479.119 Amended 3752
479.120 Amended 3752
479.121 Amended 3752
479.122 (a) amended 3752
479.131 Amended 3752
479.192 Amended 3753
479.193 Amended 3753
555 Transferred and redesignated from Chapter I, Part 55 3748
555.2 Amended 3748
555.11 Amended 3748
555.26 (a)(1) and (d) amended 3748
555.41 (b) introductory text and (c) amended 3748
555.45 (b) amended 3748
555.46 (a) and (b) amended 3748
555.49 (b)(6) and (c) amended 3748
555.52 (a) and (b) amended 3748
555.53 Amended 3748
555.55 Amended 3748
555.57 Amended 3748
555.58 Amended 3748
555.61 Amended 3748
555.71 Amended 3748
555.72 Amended 3748
555.73 Amended 3749
555.74 Amended 3749
555.75 Amended 3749
555.76 (b) introductory text, (3) and (c) amended 3749
555.77 Amended 3749
555.78 Amended 3749
555.79 Amended 3749
555.102 (b) amended 3749
555.103 (e) amended 3749
555.104 introductory text amended 3749
555.105 (b) and (f) amended 3749
555.106 (a), (c)(1) and (d) amended 3749
555.108 (a), (c) and (d) amended 3749
555.121 (a)(2) and (b) amended 3749
555.122 (a)(4) and (f) amended 3749
555.123 (a)(4) and (e) amended 3749
555.124 (a)(4) and (f) amended 3749
555.125 (a)(4), (c) and (d) amended 3749
555.126 (b) amended 3749
555.127 Amended 3749
555.128 Amended 3749
555.129 Amended 3749
555.141 (a) introductory text amended 3749
555.165 Amended 3749
555.180 (d)(4) amended 3749
555.182 Introductory text amended 3749
555.183 (a) and (b) amended 3749
555.201 (a), (c), (d) and (e) amended 3749
555.202 (a) and (c) amended 3749
555.203 Introductory text and (a) through (e) amended 3749
555.205 (d) amended 3749
555.206 (a), (b), (c)(1) and (2) amended 3749
555.208 (b)(1) amended 3749
555.211 (b)(1) amended 3749
555.218 (1) table notes amended 3749
555.220 Table amended 3750
555.223 Table amended 3750
555.224 Table amended 3750

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH JANUARY 31, 2003

646 Transferred and redesignated from 46.141—46.155 (Subpart F); authority citation added 3753
646.141 Heading amended 3753
646.142 Amended 3753
646.143 Introductory text amended 3753
646.146 Amended 3753
646.147 (a) introductory text and (b) amended 3753
646.150 (a) amended 3753
646.154 (b) amended 3753

Proposed Rules:

4 ..... **17312, 38915, 61998, 62860, 79011**
5 ..... **62860, 79011**
7 ..... **43496, 54388, 62860, 79011**
9 ..... **45437, 47494, 48597, 51156, 64573, 64575, 66079, 66083, 70352**
1020, 2262, 3199
13 ..... **62860, 79011**
40 ..... **67340**
55 ..... **63862**
4402, 4406
275 ..... **67340**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH JANUARY 31, 2003

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—199)

0.1 Amended 4926
0.103 (a)(3) revised **58990**
0.100—0.104 (Subpart R) Appendix amended **58990**
0.137 Removed 4926
0.130—0.132 (Subpart W) Redesignated as 0.135—0.137 (Subpart W–1) 4926
0.130—0.133 (Subpart W) Added 4926
0.135—0.137 (Subpart W–1) Redesignated from 0.130—132 (Subpart W) 4926
0.138 Heading and (a) amended 4927
0.140 Amended 4927
0.141 Amended 4927
0.142 Introductory text and (g) amended 4927
0.143 Amended 4927
0.144 Amended 4928
0.145 Amended 4928
0.146 Amended 4928
0.147 Amended 4928
0.148 Amended 4928
0.149 Introductory text, (a) through (c) and concluding text redesignated as (a) introductory text, (1) through (3) and new (b); new (a) introductory text amended 4928
0.151 Amended 4928
0.152 Amended 4928
0.153 Amended 4928
0.154 Amended 4928
0.155 Amended 4928
2.20 Amended **70692**
2.35 (d) added; interim **67792**
2.68 (l) amended **70694**
2.75 (a)(1) and (2) revised **57945**
2.80 (a) and (f) revised; (h) amended; (o) added; appendix removed **57946**
2.82 (a) revised **57946**
2.86 (c) amended in part; (d) redesignated as (e); (c) redesignated in part as new (d) **57946**
2.94 (a) amended **57946**
2.101 (a) and (b) revised 3390
2.106 (a) and (d) heading revised; (b) amended; (d) text redesignated as (d)(1); (d)(2) added **57946**
2.207 (a) amended **57947**
2.208 (f) added **57947**
2.211 (a)(1) amended; (f) revised 3390
2.212 (b) revised; (e) amended 3390
2.214 Revised 3390
2.215 (f) revised 3392
2.216 (e) revised; (g) and (h) added 3392
2.217 (a)(1) amended 3392
2.218 (g) revised 3392
2.219 (a)(1) through (4) amended **57947**
9.1 (b)(1) amended 4928
9.3 (e)(1)(iii) redesignated as (e)(1)(iv); new (e)(1)(iii) added 4928
9.4 (e) amended 4928
11.6 (b) amended 4928
16.2 (b)(11) and (12) redesignated as (b)(12) and (13); new (b)(11) added 4928
16.76 (c) through (h) removed **70163**
16.79 Revised 4929
16.97 (j) and (k) added **51754**
(l) and (m) added **51755**
(n) and (o) added **51756**
16.105 Added **51756**
16.106 Added; interim 3393
16.132 Added **70163**
16 Appendix I amended 4928
65.80 Amended **48359**
65.83 Introductory text revised; (d) added **48360**
65.84 Heading and (a) revised **48360**
65.85 (e) revised **48361**
71.2 (e) and (f) redesignated as (f) and (g); new (e) added 4929
77.2 (a) amended 4929
79 Authority citation revised **51423**
79.1—79.5 (Subpart A) Revised; OMB number **51423**
79.10—79.16 (Subpart B) Revised; OMB number **51423**
79.20—79.27 (Subpart C) Revised; OMB number **51423**
79.30—79.36 (Subpart D) Revised; OMB number **51423**
79.40—79.47 (Subpart E) Removed; OMB number **51423**
79.50—79.55 (Subpart F) Removed; OMB number **51423**

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 28 Chapter I—Con.

79 (Subpart G) Added; OMB number 51423
79.70—79.75 (Subpart H) Added; OMB number 51423
97 Added; eff. 1–27–03 78699

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

523.30—523.34 (Subpart D) Added; interim 48386
540 Authority citation revised 77164, 77427
540.71 (a) revised; eff. 1–16–03 77164
540.72 (b)(1) amended 77427
541 Authority citation revised 77428
541.13 Table 3 amended; interim 77428
542 Authority citation revised 50805
542.10 Revised 50805
542.12 Removed 50805

Chapter VIII—Court Services and Offender Supervision Agency for the District of Columbia (Parts 800—899)

801 Added 57948
811 Added; interim 54095
812 Added; interim 54100

Proposed Rules:

15 64844
16 ..... 59798, 66348
..... 3847, 4974
79 ..... 51440, 70892
549 ..... 46136, 63059
902 70567

TITLE 29—LABOR

Chapter I—National Labor Relations Board (Parts 100--199)

102.114 Heading revised; (i) added 70695
102.111 (c) revised 70696

Chapter V—Wage and Hour Division, Department of Labor (Parts 500--899)

500 Authority citation revised 76986
500.170 Revised 76986

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600--1699)

1611.13 Revised 72373

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1902 Authority citation revised 60128
1902.31 Amended 60128
1902.33 Revised 60128
1904.10 Revised 44047
1904.10 (b)(7) revised; eff. date delayed to 1–1–04 77170
1904.12 Note revised; eff. date delayed to 1–1–04 77170
1904.29 (b)(7)(vi) revised; eff. date delayed to 1–1–04 77170
1910.33 Added 67961
1910.34 Added 67961
1910.35—1910.38 (Subpart E) Authority citation revised 67961
1910.35 Revised 67961
1910.36 Revised 67961
1910.37 Revised 67961
1910.38 Revised 67961
1910.35—1910.38 (Subpart E) Appendix amended 67961
1910.39 Added 67961
1910.101—1910.126 (Subpart H) Authority citation revised 67964
1910.119 (n) amended 67964
1910.120 (l)(1)(ii), (p)(8)(i) and (q)(1) revised; (q)(11)(ii) amended 67964
1910.155—1910.163 (Subpart L) Authority citation revised 67964
1910.157 (a) and (b)(1) revised 67964
1910.261—1910.272 (Subpart R) Authority citation revised 67964
1910.268 (b)(1)(iii) revised 67965
1910.272 (d) revised 67965
Appendix A amended 67965
1910.1000—1910.1450 (Subpart Z) Authority citation revised 67965
1910.1047 (h)(1)(iii) revised 67965
1910.1050 (d)(1)(iii) revised 67965
1910.1051 (j) revised 67965
1915 Authority citation revised 44540
1915.4 (k) and (t) revised 44541

NOTE: **Boldface page numbers indicate 2002 changes.**

1915.5 (d)(1)(i), (ii) and (v) revised 44541
1915.14 (a)(1)(iv), (iv) note, (b)(1)(iii), (iv) and note revised 44541
1915.15 (c) and (e) heading revised 44541
1915.11—1915.16 (Subpart B) Appendix A amended 44541
1915.35 (b)(2) revised 44541
1915.51 (c)(3), (d)(1) introductory text, (2) introductory text, (i), (3), (e)(1)(ii) and (f)(2) revised 44541
1915.53 (d) revised 44542
1915.71 (e)(2)(ii), (9), (i)(8) and (j)(3) revised 44542
1915.72 (a)(4), (6) and (c)(1)(iii) revised 44542
1915.73 (e) revised 44542
1915.74 (a)(2) revised; (c)(2) amended 44542
1915.75 (b) and (d) amended; (e) revised 44542
1915.77 (a) and (c) amended; (e) revised 44543
1915.92 (e) revised 44543
1915.97 (a) revised 44543
1915.112 (c)(3) revised 44543
1915.115 (d) revised 44543
1915.116 (n) revised 44543
1915.118 Tables E–1, E–3, G–1, G–3, G–7 and G–9 amended 44543
1915.131 (c) and (g) amended; (d) revised 44543
1915.134 (c) amended 44543
1915.152 (e)(2) revised 44543
1915.158 (a)(1) and (b)(4) revised 44543
1915.159 (a)(3), (9), (b)(2), (3), (4), (6)(iv), (iv) note, (7), (c)(1)(i) and (8) revised 44544
1915.160 (a)(2), (b)(1) and (2)(ii) revised; (b)(2)(i) amended 44544
1915.151—1915.160 (Subpart I) Appendices A and B amended 44544
1915.163 (a)(1) amended; (a)(2) revised 44545
1915.165 (a)(1) revised 44545
1915.172 (a) amended 44545
1915.181 (c) revised 44545
1915.1000 (d) heading revised 44545
1915.1001 (d)(2), (h)(1) Table 1 amended; (d)(4), (g)(5)(ii)(B)(*1*), (*7*), (*8*), (iii)(A), (8)(iii)(C), (h)(1)(iv), (i)(4)(i), (k)(3) heading, (ii), (5)(ii)(A), (9)(vi), (viii) and (o)(1) revised 44545
Appendix C amended 44546
1926 Request for public comment 54103
1926.200—1926.203 (Subpart G) Regulation at 67 FR 18112 withdrawn 46375
Authority citation revised 57736
1926.200 (g)(2) revised 57736
1926.201 (a) revised 57736
1926.202 Revised 57736
1926.203 (c) revised 57736
1952 Authority citation revised 60128
1952.125 (a) revised 60129
1952.175 (a) and (c) through (h) revised 60129
1952.212 (a) revised 60129
1952.367 (b) revised 60129
1952.372 (p) revised 60129
1953 Revised 60125
1954 Authority citation revised 60129
1954.3 (b)(2), (d)(1)(ii) and (iii) revised 60129
1955 Authority citation revised 60129
1955.2 (a)(4) revised 60129
1955.3 (a)(1) and (2) introductory texts revised 60129

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2520 Authority citation revised 64772
2520.101–3 Added; interim 64773
Revised 3727
2560 Authority citation revised 64779
2560.502c–2 (d) through (i) revised; interim 64779
(b)(1) and (d) through (i) revised 3734
2560.502c–5 (d) through (i) revised 64780
(b)(1) and (d) through (i) revised 3734
2560.502c–6 (d) through (i) revised 64781
(b)(1) and (d) through (i) revised 3735

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH JANUARY 31, 2003

TITLE 29 Chapter XXV—Con.

2560.502c-7 (d) through (i) revised **64781**
Revised 3736
2570 Authority citation revised **64782**
2570.61(c) Revised; interim **64782**
(c) revised 3737
2570.64 Revised; interim **64782**
Revised 3737
2570.94 Revised; interim **64783**
Revised 3737
2570.114 Revised; interim **64783**
Revised 3738
2570.130—2570.141 (Subpart G) Added **64783**
Revised 3738
2575 Authority citation revised 2878
2575.100 Revised 2878
2575.502c-5 Added 2878
2575.502c-6 Added 2878
2590 Authority citation revised **60861**
2590.712 (f)(1), (g)(2) and (i) amended; interim **60861**

Chapter XXVII—Federal Mine Safety and Health Review Commission (Parts 2700—2799)

2700.4 (b)(1) amended **60862**
2700.5 (b) and (g) amended **60862**
2700.82 (d) amended **60862**
2701.4 Amended **60862**
2702.2 Revised **60862**
2702.3 (a) amended **60863**
2704.201 (a) amended **60863**
2704.308 (b) amended **60863**
2705.4 Amended **60863**
2705.8 Amended **60863**
2706.170 (c) amended **60863**

Chapter XL—Pension Benefit Guaranty Corporation (Parts 4000—4999)

4003.61 Added **47695**
4011 Appendix B amended **71471**
4022 Appendix B amended **46376, 53307, 57950, 63545, 69122, 76683**
Appendix C amended **46377, 53307, 57950, 63545, 69122, 76683**
Appendix D amended **71472**
Appendices B and C amended 1966
4044 Appendix B amended **46377, 53308, 57950, 63545, 69122, 76683**
Appendix D amended **71472**
Appendix B amended 1967

Proposed Rules:

403 ..... **79280**
408 ..... **79280**
1404 ..... **70569**
1611 ..... **49276**
1626 ..... **52431**
1904 ..... **44124**
1910 ..... **51524, 54389, 55181, 66494, 70707**, 1023, 1399
1915 ..... **66494, 76214**, 1023, 1808
1926 ..... **46612, 50610, 66494**, 1023
2550 992

TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

18.41(f) revised 2883
42 Technical correction **57635**
46 Technical correction **57635**
47.11 Corrected **57635**
47.32 Corrected **57635**
47.42 (d) corrected **63255**
47.52 Corrected **57635**
47.92 Corrected **57635**
Table 47.92 corrected **63255**
48 Technical correction **57635, 78713**
48.8 (b)(4) revised **76665**
56 Technical correction **57635**
57 Technical correction **57635**
57.5060 (d), (e) and (f) stayed **47297**
57.5062 Stayed **47297**
75 Technical correction **78713**
75.1101-23 Redesignated as 75.1502 ..... **76665**
75.1500—75.1501 (Subpart P) Heading revised **76665**
75.1501 Added **76665**
75.1502 Redesignated from 75.1101-23 ..... **76665**
Corrected **78044**
77 Technical correction **57635**

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

250.175 Existing text redesignated as (a); (b) added **44360**
250.198 (d) table and (e) table amended **51759**
(e) table corrected 46
250.802 (b) and (e)(2) revised **51759**
250.803 (a), (b)(4) introductory text, (5)(i), (7) (9)(v) and (c)(2) introductory text revised; (b)(2)(i), (10) and (d) amended **51759**
250.804 (a)(3) introductory text revised; (a)(4) through (11) redesignated as (a)(5) through (12); new (a)(4) added; (a) introductory text, new (a)(5) and (10) amended; d **51760**
(a)(5) and (6) corrected 46
250.1002 (d) amended **51760**
250.1004 (b)(9) amended **51760**
250.1604 (c) and (d) amended **51760**
250.1628 (c) and (d)(2) revised **51760**
250.1629 (b)(2) and (4)(v) revised **51760**
250.1630 (a) introductory text and (2) introductory text revised; (a)(3), (4) and (5) redesignated as (a)(4), (5) and (6); new (a)(3) added **51761**
250.1700 Table corrected **66047**
250.1704 Table correctly added **44265**
(f) correctlyly designated as (g); new (f) correctly added; table heading and new (g) correctly revised **66047**
250.1712 Introductory text corrected; (e) and (f)(14) correctly revised **66048**
250.1715 Table correctly added **44265**
(a) table and (1) through (4) correctly revised; (a)(10) correctly added **66048**
250.1717 Introductory text correctly revised **66049**
250.1721 Heading, undesignated center heading and introductory text corrected; (a) and (g) amended **66049**
250.1722 Introductory text, (c) and (g) corrected; (a) and (d) amended **66049**
250.1723 Introductory text corrected; (b) amended **66049**
250.1726 Introductory text correctly revised **66049**
250.1740 (a) correctly removed; (b) correctly redesignated as (a); new (b) correctly added; (a) introductory text and (c) introductory text correctly revised; (c)(3) corrected **66049**
250.1741 (g) table correctly added **44266**
(b) correctly revised; (g) table corrected **66049**
250.1742 Table correctly added **44266**
250.1743 (a) amended; (b) corrected **66049**
260.114 (d) revised **57739**
260.124 (b)(1) revised **57739**
280 Revised **46858**

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

915.15 Table amended **67524**
915.25 Added **72379**
917.12 (c) added **70009**
(d) added 2199
917.15 Table amended **67528**
Table amended 2199
917.16 (c)(2) and (o) removed 2201
918.15 Table amended **69129**
924.15 Table amended **71831**
924.16 (i) and (l) removed **71832**
924.17 Heading revised **71832**
931.15 Table amended **46384**
931.16 (e), (u) and (v) removed **46385**
936.15 Table amended 2451
938.15 Table amended **67531**
938.16 (gggg) removed **67531**
943.15 Table amended **67534**
944.15 Table amended **67540**
948.15 Table amended **71840**
950.15 Table amended **67547**
950.16 (ii) and (jj) removed **67547**

Proposed Rules:

6 ..... **64196**
7 ..... **64196**
14 ..... **46431**
18 ..... **46431, 64196**, 2941
19 ..... **64196**
20 ..... **64196**
22 ..... **64196**
23 ..... **64196**
27 ..... **64196**
33 ..... **64196**
35 ..... **64196**
36 ..... **64196**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH JANUARY 31, 2003

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 30 *Proposed Rules:—Con.*

56 60611
57 ..... 60199, 60611
58 60611
70 60611
71 60611
72 60611
75 ..... 46431, 60611
3936
90 60611
250 ..... 46616, 46942
1808
251 46942
773 46617
780 46617
784 46617
800 46617
901 2263
915 ..... 52659, 52662
916 59484
2265
917 ..... 46432, 53539
920 2268
924 56967
926 46434
936 54979
938 721
943 52664
944 521
948 ..... 53542, 67576

TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)

1.36 (g)(1)(viii) table amended 48387, 62886
5 Revised; interim 65845
10.1—10.8 (Subpart A) Revised 48765
10.20 Revisjed 48771
10.21 Revised 48771
10.22 Revised 48771
10.23 Revised 48771
10.24 Revised 48771
10.25 Revised 48771
10.26 Revised 48771
10.27 Revised 48771
10.28 Revised 48771
10.29 Revised 48771
10.30 Revised 48771
10.31 Revised 48771
10.32 Revised 48771
10.34 Revised 48771
10.50—10.53 (Subpart C) Revised 48774
10.60—10.82 (Subpart D) Revised 48774
10.90—10.93 (Subpart E) Revised 48774

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

103 Authority citation revised 48351, 60570, 78384
Policy statement 48388
Technical correction 493
103.11 (ii)(1) revised; (ww) added 44055
(n)(5)(ii), (iii), (6)(i) and (ii) amended; (n)(6)(ii)(1) revised 60729
103.19 Added 44056
103.21 Added 60729
103.64 (a)(2)(ii) and (v)(B) revised; (a)(2)(iii) amended 60730
103.81 Added 48351
103.90 Revised 60585
103.100 Added 60585
103.110 Revised 60587
103.90—103.110 (Subpart H) Appendix A added 60587
103.120—103.170 (Subpart I) Undesignated center heading added 48351, 60570
(Subpart I) Appendices A and B added 60570
103.170 Heading, (b) and (c) revised; (d) added; interim 67549
Corrected 68935
103.175 Added 60570
103.177 Added 60570
(d)(1) revised 78384
103.182 Added 48351
103.183 Added 48351
103.185 Added 60572

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

285.5 Added; interim 78942
321.8 (a)(2) redesignated as (a)(3); (a)(1) revised; (a)(2) added 2666
321.9 (a) revised 2666
321 Appendix amended 2666
351.2 (d) amended 2667
351.6 Revised 64278
352.7 (a) amended 2667
352 Table 1 removed 78384
353.35 (b) revised 2667

NOTE: **Boldface page numbers indicate 2002 changes.**

356.2 Amended 68516
(e)(1)(i) through (vii) redesignated as (e)(1)(ii) through (viii); new (e)(1)(i) added; new (e)(1)(ii) and (2) revised 78384
356.12 (c)(1)(i) and (2) revised 68516
356.13 (a) revised 68516
356.20 (a) revised 68516
356.21 (a) revised; (b) amended 68516
356.22 (b) revised 68517
357.0 Revised 64278
359 Revised 64278
359.6 Revised 2667
360 Heading revised 64285
360.0 Revised 62485
360.2 (a) revised 64286
360.35 (b) revised 2667
363 Added 64286

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500--599)

585.529 Added 78974
586.520 Added 78974

Proposed Rules:

5 65856
10 77724
103 ..... 48290, 60617, 60625, 64067, 64075, 68540
2716
501 4422
515 4422
538 56969
550 56969
560 56969
800 70194

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

3 Authority citation revised 54956
3.1 Revised 54956
3.2 Redesignated as 3.3; new 3.2 added 54956
3.3 Redesignated as 3.4; new 3.3 redesignated from 3.2 54956
3.4 Redesignated as 3.7; new 3.4 redesignated from 3.3 and amended 54956
3.5 Added 54956
3.6 Added 54956
3.7 Redesignated from 3.4 54956
Heading revised 54957
199.4 (e)(22) correctly designated 45311
220 Heading revised 57740
220.1 Revised 57740
220.2 (a) and (b) revised 57740
220.4 (c)(2)(iii) revised 57740
220.8 Heading, (a), (b), (c), (e), (f), (h), (i) and (j) revised; (k) and (l) removed 57740
220.10 (c)(1) introductory text revised 57742
220.12 (a)(1) revised 57742
220.13 (a) revised 57742
220.14 Amended 57742
320.12 (b) added 55724

Chapter VI—Department of the Navy (Parts 700--799)

700.405 (c)(9) amended; (c)(10) added; (d)(3) revised 2697
700.505 (b)(5) redesignated as (b)(6); new (b)(5) added 2697
700.701 (a) revised 2697
700.1053 (a) revised 2697
776.20 Revised 70165
776.53 (a)(4) revised 70165

Chapter VII—Department of the Air Force (Parts 800—1099)

806b Appendix C amended 53879
Appendix C corrected 64313
861 Revised 65698

Chapter XII—Defense Logistics Agency (Parts 1200--1299)

1293 Removjed 69688

Proposed Rules:

281 68956
282 68957
283 68963
284 68965
311 ..... 71118, 71119
806b 71120
861 56777

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

6 Clarification **51082**
6.01–6 Added **56215**
6.04–1 Revised **56215**
100 Temporary regulations list **49236, 71840**
Technical correction **56222**
100.35–T05–049 Added (temporary) **48782**
100.35–T05–052 Added (temporary) **53310**
100.35–T05–057 Added (temporary) **54106**
100.35–T05–059 Added (temporary) **54343**
100.35–T05–061 Added (temporary) **54341**
100.35–T05–062 Added (temporary) **54345**
100.35–T05–064 Added (temporary) **57952**
100.35–T05–075 Added (temporary) **60865**
100.35T–07–013 Added (temporary) **45313**
100.35T–07–045 Added (temporary) **44553**
100.35T–07–049 Added (temporary) **44548**
100.35T–07–056 Added (temporary) **44551**
100.35T–07–074 Added (temporary) **44549**
100.35T–07–087 Added (temporary) **45635**
100.35T–07–117 Added (temporary) **63267**
100.515 Implementation (temporary) **53735**
100.527 Added **56221**
100.735 Added **76988**
100.1101 Implementation (temporary) **53735**
110.130 Redesignated as 110.132; new 110.130 added **68518**
110.131 Redesignated as 110.133 ..... **68518**
110.132 Redesignated as 110.134; new 110.32 redesignated from 110.130 ..... **68518**
110.133 Redesignated as 110.136; new 110.133 redesignated from 110.131 ..... **68518**
110.134 Redesignated as 110.138; new 110.134 redesignated from 110.132 ..... **68518**
110.136 Redesignated from 110.133 ..... **68518**
110.138 Redesignated from 110.134 ..... **68518**
110.157 (b)(11)(1) added (temporary) **65040**
110.235 (c) added (temporary) **66051**
117 Temporary drawbridge operations regulations **45059, 48782, 49575, 49576, 51761, 55115, 56929, 57147, 58329, 60865, 61987, 64527, 65041, 65706, 65707, 66053, 66552, 67551, 68519, 70165, 70550, 70551, 70552, 70846, 71473, 71840, 72099, 72100, 72559, 76116, 76988, 76989, 79853**
Temporary drawbridge operations regulations 1366, 2201, 2883, 2884
Temporary regulations list **49236, 71840**
Technical correction **56222**
117.205 (c) suspended; (d) added (temporary) **66554**
117.261 (rr) added (temporary) **44566**
117.305 Suspended (temporary) **63259**
117.319 (a) revised; (c) added **50351**
117.393 (c) suspended; (e) added (temporary) **67110**
117.451 (c) revised 3183
117.455 Revised 3184
117.481 Removed **68521**
117.597 Suspended (temporary) **66053**
117.609 Revised **63261**
117.647 (a), (b) introductory text, (3) and (4) revised; (d) and (e) redesignated as (c) and (d) **49240**
117.684 Removed **69131**
117.680 Removed **69132**
117.739 (b) suspended; (q) added (temporary) **64813**
117.755 (b) suspended; (c) added (temporary) **67551**
117.789 (c) suspended; (h) added (temporary) **63547**
(h) added (temporary) **71475**
117.799 (e) suspended; (k) added (temporary) **63547**
117.801 (g) suspended; (h) added **63547**

NOTE: **Boldface page numbers indicate 2002 changes.**

117.802 (a) suspended; (c) added (temporary) **72561**
117.829 Revised **70554**
117.T306 Added (temporary) **63259**
117.T408 Added (temporary) **76115**
Added (temporary) **78977, 78978**
Corrected 4382
117.T602 Added (temporary) **66053**
125 Clarification **51082**
147.815 Added 4102
147.817 Added 4102
147.819 Added 4102
147.821 Added 4102
147.823 Added 4102
147.825 Added 4100
155 Authority citation and note revised **58523**
155.200 Amended **58524**
155.490 Added **58524**
156 Authority citation revised **58524**
156.120 (ee) added **58524**
160.201 Regulation at 66 FR 50572 suspended in part through 3–31–03 ..... **55119**
160.203 Amended **53740**
Regulation at 66 FR 50572 suspended in part through 3–31–03 ..... **55120**
160.207 Regulation at 66 FR 50572 suspended through 3–31–03 ..... **55120**
160.211 Regulation at 66 FR 50573 suspended through 3–31–03 ..... **55120**
160.213 Regulation at 66 FR 50574 suspended in part through 3–31–03 ..... **55120**
160.T204 Regulation at 66 FR 50572 extended through 3–31–03 ..... **55120**
160.T208 (c)(15)(iv) revised; (c)(16) added (temporary) **53740**
Regulation at 66 FR 50572 extended through 3–31–03 ..... **55120**
160.T212 (b)(20) added (temporary) **53740**
Regulation at 66 FR 50573 extended through 3–31–03 ..... **55120**
160.T214 Regulation at 66 FR 50574 extended through 3–31–03 ..... **55120**
161.60 (b) through (d) redesignated as (c) through (e); new (b) added **53742**
165 Temporary regulations list **48988, 49236, 71840**
Implementation (temporary) **46387, 51083, 55120, 62178**
Technical correction **56222, 57332**
Enforcement notice **70696**
165.103 Revised **56487**
165.104 Added **49582**
165.106 Added **64815**
165.110 Revised **63263**
165.114 (b) revised **63265**
165.116 Added **45909**
165.121 Revised **56224**
165.160 Revised 2890
165.167 Added **56489**
165.169 Added 2890
165.501 Regulation at 67 FR 3814 eff. date confirmed **50351**
(d)(14) added (temporary) 2203
(a)(1) suspended ; (a)(13), (d)(15) and (16) added (temporary) 2886
165.756 Added **46867**
165.757 Added **60867**
165.758 Added **76991**
165.759 Added 3186
165.761 Added 3189
165.812 Added **61989**
165.809 Added **64046**
165.813 Added **64048**
165.825 Added **64043**
165.908 Corrected **47299**
Added **53502**
Removed **66055**
165.909 Added **44560**
165.910 Corrected **65041**
165.911 ..... **53500**
165.912 Added **52611**
165.915 Added **46386**
165.916 Added **49578**
165.917 Added **65043**
165.1101 Suspended (temporary) **58334**
165.1103 Suspended (temporary) **58526**
165.1104 Suspended (temporary) **58528**
165.1108 Added 1008
165.1154 Added **72563**
165.1151 Suspended (temporary) **79858**
165.1155 Added **77430**
165.1183 Added **79855**
165.1405 Added 4384
165.1703 (a) correctly revised **45313**
165.1709 Added; interim (OMB number pending) **44059**
165.T01–062 Added (temporary) **44366**
165.T01–063 Added (temporary) **51763**
165.T01–065 Added (temporary) **45061**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH JANUARY 31, 2003

TITLE 33 Chapter I—Con.

165.T01–093 Added (temporary).....52865
165.T01–094 Added (temporary).....50353
165.T01–096 Added (temporary).....49242
165.T01–099 Added (temporary).....56757
165.T01–114 Added (temporary).....62375
165.T01–131 Added (temporary).....72841
Technical correction (temporary).....1162
165.T01–153 (c) revised (temporary).....69134
165.T01–154 (b) revised (temporary).....69134
165.T01–165 (c) revised (temporary).....53312
165.T01–166 (b) revised (temporary).....53312
165.T01–207 (b) revised.....52609
165.T05–060 Added (temporary).....57744
165.T05–071 (d) revised (temporary).....61495
165.T05–087 Added (temporary).....65040
165.T05–097 Added (temporary).....77925
165.T07–054 Added (temporary).....46391
165.T07–065 Added (temporary).....44556
165.T07–101 Added (temporary).....57954
165.T07–132 Added (temporary).....68764
165.T07–133 Added (temporary).....68762
165.T07–146 Added (temporary).....76993
165.T07–148 Added (temporary).....71477
165.T07–156 Added (temporary).....1969
165.T08–064 Added (temporary).....48552
165.T08–065 Added (temporary).....45905
165.T08–099 Added (temporary).....60590
165.T08–100 Added (temporary).....58332
165.T08–108 Added (temporary).....67303
165.T08–122 Added (temporary).....70315
Revised (temporary).....2453
165.T09–011 Added (temporary).....46389
165.T09–032 Added (temporary).....44566
165.T09–035 Added (temporary).....44362
165.T09–036 Added (temporary).....44368
165.T09–037 Added (temporary).....45903
165.T09–038 Added (temporary).....44564
165.T09–042 Added (temporary).....44558
165.T09–109 Removed.....49578
165.T09–110 Removed.....49578
165.T09–135 Removed.....46386
165.T09–136 Removed.....46386
165.T09–506 Added (temporary).....52607
Removed.....52611
165.T09–526 Added (temporary).....78386
165.T11–033 Added (temporary).....59454
165.T11–034 Added (temporary).....66335
165.T11–035 Added (temporary).....67111
165.T11–040 Added (temporary).....3399
165.T11–042 Added (temporary).....3401
165.T11–043 Added (temporary).....3397
165.T11–045 Added (temporary).....54737
165.T11–047 Added (temporary).....58334
165.T11–048 Added (temporary).....58528
165.T11–049 Added (temporary).....58526
165.T11–066 (f) revised (temporary).....79858
165.T11–069 Added (temporary).....55726
165.T11–082 Revised.....49580
165.T11–086 Added (temporary).....44568
165.T11–089 Added (temporary).....54108
165.T13–005 Added (temporary).....45907
165.T13–007 Added (temporary).....44364
165.T13–008 Added (temporary).....48784
165.T13–011 Added (temporary).....66337
165.T14–072 Added (temporary).....66051
165.T17–013 Added (temporary).....49584
165.TD05–02–041 Added (temporary).....44061
167.1700 Added.....53743
167.1701 Added.....53743
167.1702 Added.....53743
167.1703 Added.....53743
177.799 (g) suspended; (k) added (temporary).....56755

Chapter II—Corps of Engineers, Department of the Army (Parts 200--399)

334.81 Added.....65313

Chapter IV—Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400--499)

401.102 (a) amended.....67113

Proposed Rules:

1—199 (Ch. 1).....50840
2.....52906, 58752
26.....52906
52.....76142
62.....52906
64.....52906
95.....52906
100.....52906, 66349
110.....45071, 56245, 68540
.....4130
117.....44582, 50842, 50844, 51157, 56247, 57355, 57773, 61303, 64578, 64580, 71513, 72126, 77949, 79012
120.....52906
148.....53764
149.....53764

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH JANUARY 31, 2003

150.....53764
151.....523
154.....63331, 69697
155.....51159, 63331, 69697
160.....48073
165.....45945, 48832, 48834, 49643, 50846, 55184, 56245, 58006, 59228, 64345, 65074, 65746, 66086, 66595, 67342, 70892, 71513, 75831, 77008, 79014, 79017
.....2946
167.....48837, 54981, 60630
328.....1991
334.....50389, 50390, 65331, 65332, 71014, 78912
.....1790
385.....50540, 55377
401.....70897

TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1--99)

36 Added.....69655

Chapter II—Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

200 Heading and authority citation revised.....45039
Authority citation revised.....71715
200.1—200.29 (Subpart A) undesignated center headings removed.....71715
200.1 Undesignated center heading and section revised.....45039
200.2 Revised.....45039
200.3 Revised.....45039
200.4 Revised.....45039
200.5 Revised.....45039
200.6 Revised.....45039
(a)(2) revised.....71715
200.7 Added.....45042
(c) and (d) added.....71715
200.8 Redesignated as 200.18; new 200.8 added.....45042
200.9 Added.....45043
200.10 Redesignated as 200.14; new 200.10 added.....45043
200.11 Undesignated center heading added; section revised.....71715
200.12 Revised.....71716
200.13 Undesignated center heading added; section revised; OMB number.....71716
(b) corrected.....1008
200.14 Redesignated from 200.10.....45043
Revised.....71716
200.15 Revised.....71716
200.16 Revised.....71716
200.17 Amended.....45042
Revised.....71716
200.18 Redesignated from 200.8.....45042
Revised.....71716
200.19 Added.....71717
200.20 Revised.....71717
200.21 Revised.....71718
200.22 Removed.....71718
200.23 Removed.....71718
200.24 Removed.....71718
200.25 Undesignated center heading added; section revised.....71718
200.26 Added; OMB number.....71718
200.27 Revised; OMB number.....71719
200.28 Revised; OMB number.....71719
200.29 Added.....71720
(a)(1) correctly designated.....1008
200.30 Transferred to subpart A; undesignated center heading added; section revised; OMB number.....71720
200.31 Added; OMB number.....71721
200.32 Added.....71721
200.33 Added; OMB number.....71721
200.34 Added; OMB number.....71721
200.35 Added.....71721
200.36 Added; OMB number.....71721
200.37 Added; OMB number.....71721
200.38 Added; OMB number.....71721
200.39 Added; OMB number.....71721
200.40 Transferred to subpart A; revised.....71723
200.41 Transferred to subpart A; revised; OMB number.....71723
200.42 Transferred to subpart A; revised; OMB number.....71723
200.43 Transferred to subpart A; revised; OMB number.....71723
200.44 Transferred to subpart A; revised.....71723
200.45 Transferred to subpart A; revised; OMB number.....71723
200.46 Added; OMB number.....71725
200.47 Added; OMB number.....71725
200.48 Added.....71725
200.49 Added; OMB number.....71725

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 34 Chapter II—Con.

200.50 Transferred to subpart A; revised; OMB number 71727
200.51 Transferred to subpart A; revised; OMB number 71727
200.52 Added; OMB number 71728
200.53 Added; OMB number 71728
200.55 Undesignated center heading and section added 71729
200.56 Added; OMB number 71729
200.57 Added; OMB number 71729
200.58 Added 71729
200.59 Added 71729
200.60 Transferred to subpart A; revised 71731
200.61 Transferred to subpart A; revised 71731
200.62 Undesignated centerheading and section added; OMB number 71732
200.63 Transferred to subpart A; revised; OMB number 71732
200.64 Added 71732
200.65 Transferred to subpart A; revised 71733
200.66 Added 71733
200.67 Added 71733
200.70 Undesignated center heading and section added; OMB number 71733
200.71 Added; OMB number 71733
200.72 Added; OMB number 71733
200.73 Added; OMB number 71733
200.74 Added; OMB number 71733
200.75 Added; OMB number 71733
200.77 Undesignated center heading and section added 71735
200.78 Added 71735
200.79 Undesignated center heading and section added 71736
200.80 (Subpart B) revised 71736
200.81—200.89 (Subpart C) revised; OMB numbers 71736
200.90—200.99 (Subpart D) revised; OMB numbers 71738
200.91 Added; OMB number 71738
200.100—200.109 (Subpart E) revised; OMB numbers 71738
200.100 Added; OMB number 71739
222.170—222.196 (Subpart L) Added 5368211
263 Revised 47696

Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600--699)

600 Authority citation revised 67070
600.8 Amended 67070
600.21 (f) revised; OMB number 67070
600.31 (e) revised; OMB number 67070
668.2 (b) amended 67071
668.3 Revised 67071
668.4 Revised 67071
668.8 (b)(e) revised; (b)(4) removed 67072
668.14 (b)(22) revised 67072
668.22 (a)(3), (4)(ii)(B), (d)(2), (3)(i), (iii)(B) and (j)(1) amended; (d)(1)(vii) and (2) removed; (d)(1)(viii), (ix), (3) and (4) redesignated as (d)(1)(vii), (viii), (2) and (3); (b)(3)(i), (d)(1)(vi) and new (vii) revised 67073
668.32 (e)(2) amended 67073
668.35 (b) through (f) redesignated as (d) through (h); (a)(2) introductory text and new (b) and (c) added; new (e) revised 67073
668.46 (a) amended; (b)(12) added 66520
668.84 (a)(1) introductory text amended; footnote 1 added 69655
668.151 (a)(2) amended 67073
668.164 (g) revised 67073
668.165 (a)(3) revised; OMB Number 67074
668.171 (b)(2) and (4)(i) amended 67074
668.173 (a), (b) and (c) revised; (d) redesignated as (f); new (d) and (e) added; OMB number 67074
668.174 (c)(4) revised 67075
668.183 (c)(1)(ii) amended; (c)(1)(iii) removed; (c)(1)(iv) redesignated as (c)(1)(iii) 67075
668.193 (d)(1) amended; (f)(3) removed 67075
673.5 (f) revised 67075
674.2 (b) amended 67076
674.9 (g) removed; (h) through (l) redesignated as (g) through (k); new (g)(3) amended; new (j) revised 67076
674.16 (d)(2) revised; (d)(3) added 67076
674.17 (a)(2), (c), (d) and (e) removed; (a)(3) redesignated as (a)(2); (a) introductory text, new (2) and (b) amended 67076
674.19 (e)(4) revised 67076
674.33 (b)(2) introductory text and (3) text revised 67076
674.34 (e)(4) and (5) amended; (e)(10) revised 67076
674.39 (a) introductory text and (2) amended; (a)(3) removed 67077
674.42 (a)(11) and (b)(2)(x) added; (b)(3) removed; (b)(4) and (5) redesignated as (b)(3) and (4); (b)(2)(i), (v) through (viiii), (ix) and new (4) amended; (a)(10), (b)(1), (2) introductory text, (iii) and new (3) revised 67077
674.43 (b)(2) introductory text amended 67077
674.45 (a)(1) amended 67077
674.46 (a)(1) introductory text and (i) amended 67077
674.47 (g)(1) removed; (g)(2), (i) and (ii) redesignated as (g) introductory text, (1) and (2); new (g)(1) and (h) heading amended; (h)(1) revised; (h)(3) added 67077
674.50 (e)(2)(ii), (3) and (g)(2) amended; (e)(4) removed 67077
675.2 (b) amended 67078
675.21 (b)(2)(i) revised 67078
682.200 (b)(2)(i) amended 67078
682.204 (a)(8), (9), (d)(7) and (8) added; (l) amended 67078
682.209 (a)(3)(ii)(A), (B), (C) and (8)(iv) amended; (a)(3)(iii) added 67078
682.210 (h)(2), (3)(iv), (4), (s)(6)(vii) and (ix) amended 67078
682.211 (b), (c), (e) and (f)(11) revised; (f) introductory text and (2) amended; (h)(3) redesignated as (h)(4); new (h)(3) added 67079
682.401 (b)(4) amended 67079
682.402 (a)(2), (3) and (4) redesignated as (a)(3), (4) and (5); new (a)(2) and (b)(6) added; new (a)(3) and (5)(iii) amended; (f)(4), (g)(1)(i), (h)(1)(i), (3)(iii) and (k)(2)(iii) revised 67079
682.405 (a)(1) and (b)(1) amended; (a)(4) removed 67080
682.414 (a)(5)(ii) revised 67080
682.603 (f)(1)(ii)(B) and (2)(i) amended 67080
682.604 (f)(1), (2) introductory text, (3), (g)(1), (2) and (3) revised; (f)(2)(iv) amended; (f)(2)(v) added 67080
685.102 (b) amended 67081
685.203 (a)(8), (9), (c)(2)(viii) and (ix) added; (h) amended 67081
685.211 (f) revised 67081
685.212 (a)(3) added 67081
685.220 (l)(3) revised 67082
685.301 (a)(9)(i)(B)(*2*) and (ii)(A) amended 67082
685.304 (a)(1), (2), (3), (5), (b)(4) and (5) revised; (b)(1), (2) and (3) amended; (b)(6) redesignated as (b)(7); new (b)(6) added 67082
690.61 (b) amended 67083
690.75 (a) revised 67083
690.79 Revised 67083
694.10 (e) revised 67083

Chapter VII—Office of Educational Research and Improvement, Department of Education (Parts 700--799)

700 Removed 78979
701 Removed 78979
702 Removed 78979

Proposed Rules:

1—99 (Ch. I) 69456
200 50986
600 51718
668 ..... 51036, 51718
673 51718
674 51036
675 51718
682 ..... 51036, 51718
685 ..... 51036, 51718
690 51718
694 51718

TITLE 35—PANAMA CANAL

No amendments to 35 CFR have been published in the FEDERAL REGISTER since July 2, 2000.

NOTE: **Boldface page numbers indicate 2002 changes.**

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1--199)

6.01-4 Correctly revised; CFR correction **59783**
7.13 (l)(2) removed; (l)(5) introductory text, (7) introductory text, and (11)(i) revised; (11)(viii) amended **69477**
7.21 (a)(1), (4) introductory text, (5) introductory text, and (9)(vi) revised; (a)(2) removed **69477**
7.22 (g)(1), (4), (6) and (7)(vi) revised; (g)(2) and (3) removed **69477**

Chapter II—Forest Service, Department of Agriculture (Parts 200—299)

223.50 (e) revised **70169**
242 Emergency closures and adjustments **50597**
Temporary regulations **54572, 58695**

Chapter XI—Architectural and Transportation Barriers Compliance Board (Parts 1100--1199)

1191 Appendix A amended **56384**

Chapter XII—National Archives and Records Administration (Parts 1200—1299)

1200 Revised **72101**
1200.2 Corrected **76995**
1201 Added; interim **44757**
Regulation at 67 FR 44757 confirmed **63267**
1228.24 (a) revised **79518**
1228.42 (d) corrected **47701**
1228.270 (a), (b), and (c) revised; (f) added **79518**
1254.6 (a) revised **63268**
1275 Authority citation revised **44766**
1275.64 (d) revised **44766**
1275.66 (a) revised **44766**
1275 Appendix A amended **44766**

Proposed Rules:

1—199 (Ch. I) **59487, 64347**
4 4975
7 ..... **56785, 57357**
..... 2466
52 ..... **70899**
61 ..... **52532**
215 ..... **77451**
219 ..... **72770, 72816**
242 ..... **50619**
251 2948
261 2948
295 2948
404 ..... **69172**
1190 ..... **56441**
1191 ..... **56441**
1200 ..... **46945**
1254 ..... **45683**

TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—United States Patent and Trademark Office, Department of Commerce (Parts 1--199)

1.4 (d)(1)(iii)(A) revised **79522**
1.16 (a), (g) and (h) revised **70849**
1.17 (a)(2) through (5), (e), (m), (r), (s) and (t) revised **70849**
1.18 (a), (b) and (c) revised **70849**
1.19 (a)(1) and (b)(1) revised **70849**
1.20 (e), (f) and (g) revised **70849**
1.492 (a)(1), (2), (3) and (5) revised **70850**
2.6 (a)(1), (b)(1) and (2) revised **70850**
(b)(8) revised **79522**
2.18 Revised **79522**
2.24 Revised **79522**
2.33 (b)(2) revised **79522**
2.34 (a)(2)(i), (3)(i), (ii),(iii), and (4)(ii) revised **79522**
2.119 (d) revised **79523**
2.161 (h) removed; (g)(2) revised **79523**
2.183 (d) removed; (e) and (f) redesignated as new (d) and (e) **79523**
3.31 (a)(7) removed; (a)(8) redesignated as new (a)(7) **79523**
3.61 Revised **79523**

NOTE: **Boldface page numbers indicate 2002 changes.**

Chapter II—Copyright Office, Library of Congress (Parts 200—299)

201Authority citation revised **69136**
201.4 (a)(1)(v) amended **69136**
201.10 (b)(1)(i) through (v) redesignated as (b)(1)(ii) through (v) and (vii); introductory text, new (b)(1)(i) and (vi) added; new (b)(1)(vii) amended; (c)(2), (d)(2), (4) and (e) revised **69136**
(b)(2), (c)(3) and (4) redesignated as (b)(3), (c)(4) and (5); Heading, (b)(1) introductory text, (v), (vii)(B), ne (3), (c)(1), (2), (d)(2) introductory text, (e)(1) and (2) revised; introductory text and (d)(4) amended; (b)(2) and (c)(3) added; interim **78176**
253.1 Amended **77171**
253.3 Removed **77171**
253.4 Introductory text, (c) and (d) amended; (a) revised **77171**
253.5 (c)(1) and (2) revised **71105**
253.5 (c)(3) amended **77171**
253.6 (c) revised **77172**
253.7 (a) amended; (b) revised **77172**
253.8 (b)(1) and (f)(1) revised **77172**
253.10 (a)j amended **77173**
259 Waiver **71477**
260 4744
261 Added **45272**

Proposed Rules:

201 ..... **58550, 63578, 77951**
260 ..... **4744**
253 ..... **66090**

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Department of Veterans Affairs (Parts 0—99)

1.600 Added **62643**
1.617 Added **62644**
3 Nomenclature change **46868**
3.6 (a)(1), (2) and (3) removed; (a) amended; (e)(3) added **49585**
3.27 (c) and (d) revised **49586**
3.29 (c) revised **49586**
3.31 Introductory text and (c)(4)(ii) amended; authority citation revised **49586**
3.105 (g) revised **49586**
3.114 (a) introductory text amended; (a) authority citation revised **49586**
3.158 (a) and (c) amended **49586**
3.216 Amended; authority citation revised **49586**
3.261 (a)(40) revised **49586**
3.262 (y) revised **49587**
3.263 (g) revised **49587**
3.272 (u) revised **49587**
3.275 (i) revised **49587**
3.307 (a) introductory text and (c) amended; (d) and authority citation revised **67793**
3.309 (a) amended **67793**
3.317 Regulation at 66 FR 56615 confirmed **78980**
3.353 (b)(2) revised **46868**
3.403 (b) revised; (c) added **49587**
3.503 (b) revised **49587**
3.700 (a)(2)(iii), (3) and (5)(i) amended; (a)(5) heading and authority citation revised **60868**
3.814 Heading and authority citation revised; (a) heading and (d) heading added; (a), (c)(1), (2) and (e) introductory text amended **49587**
3.815 Added **49588**
3.850 (d) amended **46868**
3.1000 Heading, (c)(1) and (d)(4) revised **65708**
3.2600 (a) amended **46868**
4.71 Amended **48785**
4.71a Tables amended **48785, 54349**
4.118 Revised **49596**
Corrected **58448, 58449**
8.0 Revised **54738**
8.1 Revised **54738**
8.18 Revised **54738**
8.25 Undesignated center heading and section removed; new 8.25 redesignated from 8.26 ..... **54739**
8.26 Redesignated as 8.25; new 8.26 redesignated from 8.27 ..... **54739**
8.27 Redesignated as 8.26; new 8.27 redesignated from 8.28 ..... **54739**
8.28 Redesignated as 8.27; new 8.28 redesignated from 8.29 ..... **54739**
8.29 Redesignated as 8.28; new 8.29 redesignated from 8.30 ..... **54739**

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 38 Chapter I—Con.

8.30 Redesignated as 8.29; new 8.30 redesignated from 8.31 ..... **54739**
8.31 Redesignated as 8.30; new 8.31 redesignated from 8.32 ..... **54739**
8.32 Redesignated as 8.31; new 8.32 redesignated from 8.33; revised **54739**
8.33 Redesignated as 8.32; new 8.33 redesignated from 8.37 ..... **54739**
8.37 Redesignated as 8.33 ..... **54739**
9 Authority citation revised **52413**
9.1 (b) revised **52413**
9.14 Added **52413**
13 Nomenclature change **46868**
13.2 (a) amended **46869**
13.56 (b) amended **46869**
13.71 (a)(3) and (b) amended **46869**
13.108 Revised **46869**
17 Regulation at 67 FR 4359 confirmed **66555**
Undesignated center heading revised 1010
17.36 Amended **62887**
(d)(3), (4) and (5) redesignated as (d)(4), (5) and (6); (a)(2), (b)(4), (7), (d)(1), new (5) introductory text, (i) and authority citation revised; (b)(3), new (d)(5)(iii) and (f) amended; (b)(8) and new (d)(3) added **62888**
(b)(7), (8) and (c)(2) revised 2672
17.49 Revised; interim **58529**
17.271 Regulation at 67 FR 4359 confirmed **66555**
17.272 Regulation at 67 FR 4359 confirmed **66555**
17.274 Regulation at 67 FR 4359 confirmed **66555**
17.902 OMB number 1011
17.903 OMB number 1012
17.904 OMB number 1013
17.1000 Note amended 3404
17.1002 (d) amended 3404
17.1004 (b) amended 3404
17.1005 (b) amended 3404
20.609 (c) revised **49600**
20.1404 Regulation at 66 FR 35903 confirmed **46870**
20.1409 Regulation at 66 FR 35903 confirmed **46870**
21.8010—21.8410 (Subpart M) Revised **72565**
36 Technical correction **62889**
36.4301 Amended **62647**
36.4323 (e)(1)(v) and (4) amended; (e)(1)(vi) revised **62647**
39.2 (d) added **62645**
39.3 (b)(1) and authority citation added **62645**

Proposed Rules:

0—99 (Chap. I) **79020**
1 ..... **77737**
3 ..... **49646, 63352, 76322**
..... 2476, 4132
4 ..... **54394, 56509, 59033, 65915**
17 ..... **48078, 49278**
21 ..... **57543**

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

111 DMM amended; incorporation by reference **45063, 53457, 53881, 63551, 65500, 66056, 78178**
DMM amended; incorporation by reference 4715
111.3 (f) table amended **46875**
111.5 Revised **46875**
255 Revised **75814**
265.6 (d) introductory text and (2) revised; (d)(3) through (d)(8) redesignated as (d)(4) through (d)(9); new (d)(3) added **46393**
266.9 (b)(7) added **79859**
501.2 Introductory text, (c) and (d) revised **69479**
(c)(i) and (ii) correctly designated as (c)(1) and (2) **71843**
501.22 Revised 2698
501.28 Revised 2699
501.23 (g) and (h) revised **69138**
927 Revised **50353**
952.5 Amended **62179**
952.33 Amended **62179**
957.2 Amended **62179**
958.3 (d) amended **62179**
960.3 (b) amended **62179**
962.2 (d) and (m) amended **62179**
962.12 (f)(1) amended **62179**
962.13 (f)(2) amended **62179**
962.21 (b)(4) amended **62179**
964.1 Amended **62179**
964.2 Amended **62179**
965.3 Amended **62179**

NOTE: **Boldface page numbers indicate 2002 changes.**

Chapter III—Postal Rate Commission (Parts 3000--3099)

3001.6 (b) and (c) revised **67559**
3001.9 Revised **67559**
(e) added 47
3001.10 Revised **67559**
3001.11 Revised **67559**
3001.12 Revised **67559**
3001.13 Revised **67559**
3001.20 (c) revised **67561**
3001.20a (a) revised **67561**
3001.20b (a), (b) and (c) redesignated as (b), (c) and (d); new (a) added 47
3001.26 (a) through (c) and (e) revised **67561**
3001.27 (a) through (c) and (e) revised **67562**
3001.28 (a) through (c) and (e) revised **67562**
3001.30 (e)(2) and (3) revised **67563**
3001.31 (b)(2)(iv) amended **67563**
3001.42 (a) revised **67563**

Proposed Rules:

111 ..... **48425, 53328, 54397, 63582, 66094, 69698, 72626, 77726**
..... 530
501 ..... **70712**
3001 ..... **79538**
..... 2272

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—1099)

2.100—2.108 (Subpart A) Revised **67307**
9.1 Table amended (OMB numbers) **58996, 59784, 65709**
Table amended (OMB numbers) 887
19 Regulation at 67 FR 41345 withdrawn **53743**
22.30 (a)(1) amended 2204
27.3 Regulation at 67 FR 41345 withdrawn **53743**
50 Remand response 614
51 State implementation plan determinations **48032, 50600, 62388**
51.166 (b)(1)(i)(*b*), (5) and (23)(i) amended; (a)(7), (b)(2)(iv), (3)(vi)(*d*), (viii), (38) through (52), (r)(3) through (7) and (t) through (x) added; (i)(4) through (12) redesignated as (i)(1) through (9); (a)(1), (6)(i), (b)(2)(i), (ii), (iii)(*h*), (3)(i), (iii), (iv), (vi)(*b*), (*c*), (7), (8), (13), (21), (31), (i) introductory text and new (i)(5)(i)(*g*) through (*j*) revised; (i)(1), (2), (3), new (i)(5)(i)(*k*), (*l*) and (*m*) removed **80659**
(b)(1)(i)(*a*), (12), (23)(ii), new (i)(4), (j)(2) and (3) amended **80260**
52 State implementation plan determinations **44369, 48032, 52414, 61784, 62388**
Attainment status determinations **67113**
Policy statement 4932
52.21 (a) and (i)(4) through (13) redesignated as (a)(1) and (i)(1) through (10); (b)(1)(i)(*a*), (*b*), (2)(i), (5), (23)(i), (ii), new (i)(4), new (5)(i), (j)(2) and (3) amended; (a)(2), (b)(2)(iv), (3)(vi)(*d*), (ix), (39) through (54), (r)(5), (6), (7) and (x) through (bb) added; (b)(2)(i), (ii), (iii)(*h*), (i), (iii), (iv), (vi)(*b*), (*c*), (7), (8), (13), (21), (32) and (i) introductory text revised; (b)(33), (i)(1), (2) and (3) removed **80274**
52.165 (a) introductory text, (1)(v)(A), (C)(*8*), (vi)(A), (C), (E)(*2*) ,(*4*), (vii), (xii), (xiii) introductory text, (xviii), (xxv) and (2) revised; (a)(1)(i) and (iv)(A)(1) amended; (a)(1)(v)(D), (vi)(E)(*5*), (G), (xxvi) through (xlii), (3)(ii)(H), (I), (J), (6), (7), and (c)through (g) added **80245**
52.50 (c) table amended **76317**
52.73 Added **58712**
52.120 (c)(99) through (102) added **48736**
(c)(105) added **52418**
(c)(106) added **54959**
(c)(84)(i)(G), (H) and (107) added **68767**
(c)(108) and (109) added 2914
52.122 Added **54743**
52.123 (f)(1)(i) removed; (j) added **48739**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH JANUARY 31, 2003

TITLE 40 Chapter I—Con.

(k) added 2914
52.124 (b) and (c) removed **48739**
52.133 (e) added **59460**
(f) and (g) added **68767**
52.166 (a)(1) **80259**
(b)(1)(i)(*a*), (12), (23)(ii), (i)(4), (j)(2) and (3) amended **80260**
52.220 (c)(280)(i)(A)(*3*) and (C)(*2*) added **44065**
(c)(297)(i)(B) added **45066**
(c)(284)(i)(C), (292)(i)(B) and (296) added **45069**
(c)(297)(i)(A)(2) added **46598**
(c)(284)(i)(A)(*3*) and (B)(*4*) added **46878**
(c)(294)(i)(A)(*4*) added **47703**
(c)(286) introductory text revised; (c)(286)(i)(A)(*3*), 193)(i)(A)(*2*), 297)(i)(A)(*3*) and (i)(C) added **52614**
(c)(297)(i)(D) added **54351**
(c)(298) added **54965**
(c)(297)(i)(C)(*2*) added **57956**
(c)(284)(i)(B)(*6*) added **57956**
(c)(299) added **57962**
(c)(242)(i)(*b*)(*2*) added **62378**
(c)(300) added **62387**
(c)(284)(i)(D) added **65504**
(c)(279)(i)(A)(*9*), (2)(84)(C)(i)(*2*) and (D)(*2*) added **65876**
(c)(279)(i)(A)(*8*) and (288)(i)(D) added **67316**
Regulation at 67 FR 62387 withdrawn **70556**
(c)(301) added **72574**
(c)(215)(i)(F), (264)(10)(i)(C)(*2*) and (281)(i)(B) added **72844**
(c)(303) added 3192
(c)(302) added 4932
52.222 (a)(3)(ii) added **54741**
52.242 (a)(1)(ii) and (2) added **62385**
52.244 Added **69146**
52.320 (c)(95) added **58337**
(c)(98) added 4934
52.332 (l) added **58338**
52.420 (c) table amended **70316**
52.520 (e) table amended **53317**
(c) table amended 2205, 3819
52.570 (c) table amended **45913**
(d) table amended **45915**
(e) table amended **60871**
52.670 (c)(37) added 2222
52.672 Added **65718**
52.674 Removed 2222
52.679 Revised 2222
52.681 Revised 2225
52.683 Revised 2226
52.770 (c)(146) added **46594**
(c)(151) added **52616**
(c)(148) added **57517**
(c)(152) added **63270**
(c)(153) added **70012**
Regulation at 67 FR 63270 withdrawn **70850**
(c)(155) added **72846**
(c)(156) added **79861**
(c)(147) added 1972
52.776 (j) removed; (r) added 1373
52.820 (c) table amended **62891**
(d) heading and table amended **67565**
52.869 Removed **66060**
52.870 (e) table amended **55728**
(c) table amended **66060**
52.919 Added **53314**
52.920 (c) table amended **59786, 69690, 79525**
(d) table amended **77432**
52.970 (e) table amended **60593, 61801**
(c) table amended **60595, 60877, 60885, 61270**
52.1020 (c)(46) and (47) added **57153**
52.1031 Table 52.1031 amended **57154**
52.1070 (c)(173) added **44062**
(c)(177) added 1974
(c)(179) added 2210
52.1120 (c)(129) added **62183**
(c)(120) added **62187**
(c)(132) added **78181**
52.1127 Table revised **72579**
52.1129 (c) added **55125**
(d) added **72579**
52.1167 Table 52.1167 amended **62183, 62187, 78181**
52.1220 (c)(61) added **57519**
52.1230 (c) added **48790**
52.1270 (c) table amended **77927**
52.1320 (c) table amended **54961, 54963, 54967**
(c) table amended **55131, 70319, 70321**
52.1370 (c)(55) added **55125**
(c)(29) and (49) introductory texts revised **59456**
(c)(56) added **62395**
(c)(58) added **70011**
(c)(37) introductory text revised **70555**
52.1520 (c)(68) added **48036**
(c)(60) added **65712**
52.1523 Table revised **72575**
52.1525 Table 52.1525 amended **48036, 65712**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH JANUARY 31, 2003

52.1529 Revised **65712**
52.1581 Added **54579**
52.1582 Heading revised; (d)(2) removed **54580**
52.1770 (c) table redesignated as Table 1 and amended **51463**
(c) Table 2 added **51764**
(c) Table 1 amended **64991, 78982**
(c) Table 1 amended; (e) added **78986**
(c) Table 2 amended **64995**
(c) Table 3 added **65000**
(c)(1) table amended **66058**
(b) revised; (c) Table 1 amended **78988**
52.1820 (c)(32) added **62398**
Regulation at 67 FR 62398 withdrawn **72580**
52.1836 Added **62398**
52.1870 (c)(126) added 1370
(c)(127) added 2217
52.1970 (c)(137) added **48393**
(c)(138) and (139) added 2903
52.1977 Amended 2904
52.1982 (a)(1)(ii) revised 2909
52.1985 Removed 2909
52.1987 (a) and (c) revised 2909
52.1988 (a) revised 2909
52.2020 (c)(193) added **57159**
(c)(157) added **62392**
(c)(183) added **68525**
(c)(192) added **68940**
(c)(190) added 2458
(c)(195) added 2208
52.2022 Regulation at 67 FR 38896 withdrawn **50602**
52.2023 (c) removed **68941**
52.2036 (n) added **68525**
52.2070 (e) table amended **68944**
52.2120 (c) table amended **68769**
52.2185 Added **57521**
52.2220 (c) table amended **46595, 55322**
52.2270 (c) table amended **58709, 72382**
(e) table amended **72382**
52.2320 (c)(51) added **44069**
(c)(50) added **57748**
(c)(53) added **59168**
(c)(48) and (49) added **62894**
(c)(54) added **78190**
52.2348 Existing text designated as (a); (b) added **57748**
52.2352 Added **59000**
52.2420 (c) table amended **76995**
(c) table amended 667
52.2423 (r) added 670
52.2475 Added **66560**
52.2520 (c)(47) added **62381**
(c)(50) added **62383**
(c)(48) added **63271**
52.2570 (c)(107) added 3410
58 Appendix D amended **57334**
Appendix A amended **80328**
60 Authority delegation notices **70170**
60.4 (c) amended **57521**
(c) table amended **59000**
61 Authority delegation notices **70170**
61.04 (c) table amended **62399**
61.18 Introductory text, (a) introductory text, (c) and (d) introductory text revised **57166**
61.93 (b) introductory text, (1)(i), (ii) and (2)(i) revised; (c) through (g) added **57166**
61.93 (b) introductory text, (1)(i), (ii) and (2)(i) revised; (c) through (g) added **57166**
61.107 (b) introductory text, (1)(i), (ii) and (2)(i) revised; (d) through (h) added **57167**
61.340 (d) added **68531**
61.341 Amended **68531**
61.343 (a) introductory text revised; (a)(2) and (e) added **68532**
61.345 (a)(3) revised **68532**
61.356 (n) added **68533**
61 Appendix B amended **57168**
62.02 (b) revised 5158
62.13 (d) and (e) added 5158
62.100—62.106 (Subpart B) Unedesignated center heading added 4105
62.107 Added 4105
62.1850—62.1985, (Subpart I) Undesignated center heading added 49, 51
62.1980 Added 51
62.1985 Added 49
62.2100—62.2155 (Subpart J) Undesignated center heading added 49, 51, 53, 55
62.2140 Added 55
62.2145 Added 51
62.2150 Added 53
62.2155 Added 49
62.5340 Added **62896**
62.5350—52.5400 (Subpart W) Undesignated center heading added **62896**
62.5425 Added **62896**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH JANUARY 31, 2003

TITLE 40 Chapter I—Con.

62.6100—62.6125 (Subpart Z) Undesignated center heading added 67317
62.6126 Added 67317
62.8850—62.8852 (Subpart KK) Center heading added 61272
62.8855 Added 61272
62.9600—62.9662 (Subpart NN) Undesignated center heading added 49, 51
62.9633 Added 55
62.9645 Added 51
62.9646 Added 51
62.9670 Added 49
62.13107 Added 46600
62.13350—62.13355 (Subpart CCC) Undesignated heading added 76119
62.13355 Added 76119
62.15000—62.15410 (Subpart JJJ) Added 5158
63 Authority delegation notice 48036, 70170
63.14 (b)(24), (25) and (i) revised; (b)(26) added 48262
(d)(4) added 58342
(i) amended 72341
63.99 (a)(19) added 46398
(a)(21) added 58342
(a)(29)(i) added 59005
63.210—63.217 (Subpart J) Added 45892
63.981 Amended 46277
63.983 (a)(3)(i), (ii) and (b) heading revised; (b)(4) added 46277
63.987 (b)(3)(ii) amended; (b)(3)(iii) revised 46277
63.992 Added 46277
63.997 (e)(2)(ii), (iii) introductory text, (D) and (iv) introductory text revised; (e)(2)(iii)(C)(*1*) amended; (e)(2)(iii)(E) and (iv)(F) through (I) added; (e)(2)(iv)(B)(*2*) and (*3*) removed 46277
63.1000 (b) added 46278
63.1019 (f) added 46279
63.1067 Added 46279
63.1080—63.1097 (Subpart XX) Added 46271
63.1100 (a), Table 1 and (g) introductory text amended; (g)(1) through (4) and (5) heading revised; (g)(6) added 46279
63.1101 Amended 46280
63.1102 (a) revised; (b) and Table 1 added 46280
63.1103 (e) through (h) added 46281
(h)(1)(i) introductory text revised; (h)(1)(ii)(C) added; (h)(2) amended 46293
63.1104 (a), (e) introductory text, (f)(1), (k) introductory text and (m)(2)(i) introductory text amended 46288
63.1105 Added 46288
63.1114 Added 46289
63.1201 (a) amended 77691
63.1205 (b)(6) revised 77691
63.1206 (c)(5)(ii) revised 77691
63.1207 (f)(1)(xxi) and (j)(1)(i) revised; (j)(5) added 77691
63.1209 (c)(2)(v), (k)(4) introductory text, (i), (m)(3) and (p) revised; (o)(3)(vi) removed 77691
63.1213 (a) and (b)(1) introductory text revised 77691
63.1340 Regulation at 66 FR 16619 withdrawn in part 44371
(c) revised 72584
63.1344 Regulation at 66 FR 16619 withdrawn in part 44371
(a)(3) revised 72585
63.1349 Regulation at 66 FR 16619 withdrawn in part 44371
(e)(3) added 72585
63.1350 Regulation at 66 FR 16620 withdrawn in part 44371
Table 1 amended 44769
(a)(4)(v), (vi) and (vii) added; (c)(2)(i), (d)(2)(i) and (e) introductory text revised 72585
63.1360 (b) introductory text, (2), (d)(3), (f) introductory text, (2), (3), (4), (h) and (i)(1) revised; (d)(4) redesignated as (d)(5); new (d)(4) and (f)(5) added 59340
63.1360—63.1369 (Subpart MMM) Table 1 amended; Table 4 revised 59355
63.1361 Amended 59342
63.1362 (b)(2)(iv)(A), (4)(ii)(A), (5)(ii), (6), (c)(2) introductory text, (iv) introductory text, (B), (3) through (6), (d) introductory text, (2) introductory text, (12), (13), (14), (h)(2) introductory text, (i), (iii), (3) and (4) revised; (c)(7), (d)(15) and (16) added; (d)(2)(v) removed 59343
63.1363 (a)(1), (1)(10)(ii), (iii), (b)(3)(iii)(A) through (F), (iv), (c)(2)(i), (iii), (3)(i), (4)(ii), (5) introductory text, (iv), (6), (9), (e)(7)(iii), (9), (f) and (g)(2)(vi) revised; (b)(3)(iii)(G) and (c)(5)(vi), (vii) added; (c)(5)(vi)(C) and (D) removed 59345
63.1365 (a)(1)(iii), (2), (5), (6), (7)(i) introductory text, (A), (C), (ii), (b) introductory text, (8), (11) introductory text, (iii) introductory text, (iv), (c)(1)(iii), (v), (2)(i)(C), (D)(*4*)(*i*), (*iii*), (E)(3), (4), (F), (ii) introductory text, (A), (3)(ii)(A), (iii) introductory text, (d)(1)(i)(A), (B), (3)(ii) and (e) revised; (b)(11)(iii)(A), (g) introductory text, (3)(i), (ii), (4) introductory text, (i) and (ii) amended; (b)(11)(iii)(D) added; (b)(12) removed 59347
63.1366 (b)(5) and (8)(iii) revised; (b)(8) introductory text amended; (h) added 59352
63.1367 (a)(3) introductory text amended; (a)(3)(i), (b) introductory text, (4), (6)(i), (7) and (f) revised; (b)(6)(ix) and (8) through (11) added 59353
63.1368 (e)(4), (f)(6), (g)(1) introductory text, (2) introductory text and (h)(1) introductory text revised; (f)(9) and (g)(2)(ix) through (xii) added; (m) amended 59354
63.1500—63.1520 (Subpart RRR) Regulation at 67 FR 41124 withdrawn 52616
Regulation at 67 FR 59793 eff. date corrected 68038
63.1500 (a) revised; (d) removed; (e) and (f) redesignated as (d) and (e); new (f) added 79815
Appendix A amended 59793
63.1501 Regulation at 67 FR 41122 withdrawn 52616
Revised 59791
Regulation at 67 FR 59791 eff. date corrected 68038
63.1503 Amended 79815
63.1505 Regulation at 67 FR 41123 withdrawn 52616
(b) through (e) introductory texts, (f)(2) and (g), (h) and (k) introductory texts revised 59792
Regulation at 67 FR 59792 eff. date corrected 68038
Heading, (f)(1), (i)(7) and Equation 2 revised; (k)(6) added 79816
63.1506 Regulation at 67 FR 41123 withdrawn 52616
(a)(1) revised 59792
Regulation at 67 FR 59792 eff. date corrected 68038
(a)(2) removed; (a)(3), (4), and (5) redesignated as (a)(2), (3) and (4); (m)(6)(i) revised 79816
63.1510 Regulation at 67 FR 41123 withdrawn 52616
(a) and (b) introductory text revised 59792
Regulation at 67 FR 59792 eff. date corrected 68038
(b) introductory text amended; (o)(1) introductory text and (w) introductory text revised 79816
63.1511 Regulation at 67 FR 41123 withdrawn 52616
(a) and (b) introductory text revised 59792
Regulation at 67 FR 59792 eff. date corrected 68038
(f) revised; (h) and (i) added 79817
63.1512 (h) revised 79817
63.1515 Regulation at 67 FR 41124 withdrawn 52616
(b) introductory text amended 59793
Regulation at 67 FR 59793 eff. date corrected 68038
(b)(8) and (9) revised 79518
63.1517 (b)(11) and (16)(ii) revised 79818
63.1520–63.1579 (Subpart RRR) Table 2 and Table 3 amended 79518
63.1520–63.1579 (Subpart RRR) Appendix A amended 79519
63.1580 Revised 64745
63.1580—63.1595 (Subpart VVV) Table 1 amended 64746
63.1586 Introductory text revised 64746

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH JANUARY 31, 2003

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH JANUARY 31, 2003

TITLE 40 Chapter I—Con.

63.1590 (a)(1) introductory text revised **64746**
63.1591 (a) revised **64746**
63.1592 Revised **64746**
63.1930—63.1990 (Subpart AAAA) Added 2238
63.3280—63.3420 (Subpart JJJJ) Added **72341**
63.4080—63.4181 (Subpart NNNN) Added **48262**
63.5980—63.6015 (Subpart XXXX) Added **45598**
63.9480—63.9579 (Subpart QQQQQ) Added **64506**
69.13 (f) added 1167
70 Appendix A amended **55131, 63563, 70323, 71481**
Appendix A amended 1985
70.6 (c)(1) suspended; interim **58536**
71.6 (c)(1) suspended; interim **58536**
72.2 Corrected **53504**
75.16 (e)(1) corrected **53504**
75.19 (c)(1)(iv)(h)(3), (3)(ii)(G) and (H) corrected **53504**
75.21 (a)(7) corrected **53505**
75.22 (a)(4) corrected **53505**
75.33 (c)(7) corrected **53505**
Corrected **57574**
75.53 Corrected **57574**
75.71 Corrected **53505**
75.74 Corrected **57574**
75 Appendices A, B, D and E corrected **53505**
Appendices B, D and G corrected **57574**
80 Meetings **67317**
80.310 Regulation at 57 FR 40184 withdrawn in part **54743**
81 Policy statement **44769**
Attainment status determination **48039, 48552, 49600, 54580, 64815, 65043**
Technical correction **59005**
Regulation at 67 FR 54580 withdrawn **65045**
81.53 Amended **57334**
81.92 Amended **57335**
81.94 Amended **57335**
81.305 Table amended **50807**
81.306 Table amended **58338**
81.309 Table amended 3424
81.313 Table amended **65718**
Amended 2226
81.314 Table amended 4840
81.315 Table amended 1373
81.319 Table amended **53885, 57335**
Regulation at 67 FR 42696 withdrawn; table amended **61801**
81.321 Table amended 3424
81.322 Table amended **62187**
81.323 Table amended **45637**
81.324 Table amended **45639, 48790**
81.329 Table amended **68776**
81.331 Table amended **54580**
81.338 Table amended **48393**
81.339 Table amended **68526**
Corrected 1657
81.348 Table amended **66560**
82 Acceptable substitutes listing **77927**
82.3 Amended **79872**
Amended 251
Heading revised; text amended 2847
82.4 (t)(2) table revised **79511**
(j) revised **79872**
(a), (c) and (k) redesignated as (a)(1), (c)(1) and (k)(1); (a)(2), (c)(2) and (k)(2) added 251
Heading revised; (n) through (s) and (u) removed; (t) through (w) redesignated as (n) through (q) 2848
82.5 Heading revised; (h) removed 2848
82.6 Heading revised; (h) removed 2848
82.7 Corrected; CFR correction 4385
82.8 Removed 2848
82.9 Heading revised 2848
82.10 Heading revised 2848
82.11 Heading revised 2848
82.12 Heading revised 2848
82.13 Heading revised; (n) and (o) removed; (p) through (cc) redesignated as (n) through (aa) 2848
82.15 Added 2848
82.16 Added 2848
82.17 Added 2848
82.18 Added 2848
82.19 Added 2848
82.20 Added 2848
82.21 Added 2848
82.22 Added 2848
82.23 Added 2848
82.24 Added 2848
82.1—82.24 (Subpart A) Appendix B revised 2859
Appendix C revised 2860
Appendix L added 2863

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH JANUARY 31, 2003

82.170—82.184 (Subpart G) Appendix K added **47721**
Appendix L added 4010
82.13 (g)(2), (3), and (u) **79872**
(f)(2)(xvii) through (xix), (3)(xiii), (xiv), (xv), (g)(1)(xvii) through (xix), (4)(xv), (xvi), (xvii), (aa), (bb) and (cc) added; (h) revised 252
86 Authority citation revised **72825**
86.1105–87 (e) revised; (i) added **51477**
86.1801–01 (d) revised **72825**
86.1811–04 (c)(4)(iv), (6) Table SO4–2 and (f)(4) revised; (f)(7) added **72825**
86.1838–01 (b)(1)(i), (ii) and (2)(i) revised **72826**
89.2 Amended **68339**
89.106 (b) revised **68339**
90 Heading revised **68339**
90.1 Revised **68339**
90.2 (c) added **68339**
90.3 Amended **68339**
90.103 (a)(2)(v) redesignated as (a)(2)(vi); new (a)(2)(v) added **68340**
90.110 (b) revised **68340**
91.3 Amended **68340**
91.110 (b) revised **68340**
91.419 (b) amended **68340**
91.601—91.608 (Subpart G) Appendix A amended **68340**
91.803 (a) revised **68340**
93.102 (d) added **50817**
93.104 (e)(2) revised **50817**
94 Heading revised **68341**
94.1 Revised **68341**
94.2 Amended; (b) introductory text revised **68341**
94.7 (c), (d) and (e) revised **68341**
94.8 (a), (e), (f) introductory text and (1) revised **68342**
94.9 (a) introductory text and (1) revised **68343**
94.12 Introductory text, (a), (b)(1) and (e) revised; (f) and (g) added **68343**
94.104 (c) redesignated as (d); new (c) added **68343**
94.105 (b) text and footnotes 1 and 2 in (c)(1) table, (2) table and (d)(1) table amended; (e) added **68343**
94.106 (b) introductory text, (1) introductory text, (3) introductory text and (4) revised; (b)(5) added **68344**
94.203 (d)(14) and (16) revised **68346**
94.204 (b)(9) and (10) amended; (b)(11) added; (e) revised **68346**
94.209 Revised **68346**
94.212 (b)(10) revised **68346**
94.218 (d)(2)(iv) added **68346**
94.304 (k) revised **68346**
94.501 (a) revised **68346**
94.503 (d) added **68347**
94.907 (d) and (g) revised **68347**
94.1103 (a)(5) revised **68347**
112.1—112.7 (Subpart A) Designated and revised **47140**
112.3 (a) and (b) revised; interim 1351
112.8—112.11 (Subpart B) Added **47146**
112.12—112.15 (Subpart C) Added **47149**
112.20—112.21 (Subpart D) Designated; heading added **47151**
112.20 (h) amended **47151**
112 Appendices C, D and F amended **47152**
Appendix F corrected; CFR correction 4385
125.83 Amended **78954**
125.84 (b)(4)(ii), (iii), (5)(ii), (c)(3)(ii), (iii), and (d)(1) revised **78954**
125.85 (a)(2) and (3) revised **78955**
125.89 (b)(2) revised **78955**
131.36 (d)(7) removed **68041**
(d)(2)(ii) table, (3)(ii) table, (5)(ii) table and (9)(ii) table revised **71846**
136.3 (a) introductory text, tables and (b) amended **65226**
(a) Table IB and (e) Table II amended; (a) Table IB Footnote 43 and (b)(41) revised **65886**
(a) table and (b) amended **69971**
141 Corrected **73011**
141.21 (f)(3) table footnote 1 revised; (f)(5) and (8) amended; (f)(6)(i) and (ii) revised **65246**
(f)(3) table revised; (f)(6)(viii) and (ix) added **65896**
141.23 (k)(1) table and footnotes revised **65246**
(a)(4)(i) table and (k)(1) table amended **65897**
Corrected **68911**
141.24 (e)(1) amended **65250**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH JANUARY 31, 2003

TITLE 40 Chapter I—Con.

(e)(1), introductory text and table revised....65898
141.25 (a) table and footnotes revised....65250
141.40 Table 1 revised....65900
141.74 (a)(1) table footnote 1 revised; (a)(2) amended....65252
(a)(1) table revised....65901
141.151—141.155 (Subpart O) Appendix A amended....70855
141.201—141.210 (Subpart Q) Appendix B amended....70857
142.3 (b)(3) removed....70858
143.4 (b) table and footnotes revised....65252
147.2555 Table amended....47726
180 Authority citation revised....47309
Comment period extended....53505, 58536
Technical correction....63503, 67566
180.106 (b) table amended....46883
180.108 (a)(1) table amended....49615
180.120 Removed....46909
180.132 Revised....49615
180.142 (b) table amended....2247
180.145 (a)(1) table amended....49615
180.169 (a)(1) table amended....49615
180.173 (a) table revised....49615
180.176 (b) table amended....2247
180.183 (a) revised....49615
180.189 (b) table amended....46883
180.206 (a) table amended....49616
180.214 (a) table revised....49616
180.220 (a)(1) and (2) tables amended....46893
180.230 Removed....46893
180.239 revised....46893
180.240 Removed....46893
180.241 Amended....46893
180.242 (b) table amended....46883
180.252 (a)(1) table amended....49616
180.261 (a) table amended....49616
180.262 (c) text removed; (c) heading added....49616
180.263 Table amended....49616
180.272 (a) table amended....49616
180.284 (b) table amended....2247
180.287 (a) designated; (a) heading through (d) heading added; (a) table amended....49616
180.294 (a) and (c) tables revised....46905
180.301 (a) table amended....72853
180.303 (a)(1) table amended....49617
180.305 Removed....46893
180.315 (a) table revised....49617
180.332 (a) table amended....49617
180.338 Removed....46893
180.342 (a)(1) table and (2) table amended; (c)(i) revised....49617
180.346 Removed....3428
180.361 (b) table amended....46883
180.364 (a) introductory text revised; (a) table amended....60950
180.368 (b) table amended....46883
(b) designated as (b)(1); (b)(2) added....283
180.371 (a) table and (c) table amended....55150
(b) amended....57753
180.377 (a)(1) and (2) tables amended; (c) text removed....59017
(b) table amended....59181
180.404 (a) table amended....49617
180.405 Revised....52873
180.409 (a)(1) table revised; (a)(2) removed; (a)(3) redesignated as (a)(2)....49617
180.413 (a)(1) table amended....46893
180.414 (a)(1) table amended....72593
180.415 (a) table amended....55346
180.416 (a) table amended....49617
180.417 (a)(1) table amended....58725
180.418 (b) added....56495
180.425 (a) table amended....54124
180.427 (a) table revised; (c) text removed....49617
180.428 (a)(1) table amended; (b) text removed....51097
180.431 (a) table amended; (b) text removed....60160
(a) table amended....65315
180.434 (a) table amended....49617
180.436 (a)(1) revised; (b) table amended....60991
180.438 (a)(1) table and (b) table amended....60915
(b) table amended....291, 2247
180.442 (b) table amended....48795
(b) table amended....2247
180.443 (b) table amended....46883
180.447 Revised....55331
180.448 (b) table amended....46884
180.456 Revised....45642
180.458 (a)(3) table amended....46900
180.464 (b) table amended....46884
180.465 Revised....4392
180.469 (a) table revised....51105
180.472 (b) table amended....46884
(a) and (b) tables amended....54111
180.474 (b) table amended....46884
180.476 (b) amended....54587

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH JANUARY 31, 2003

180.479 (b) amended....45649
Heading revised; (a)(2) table amended; (b) text removed....59192
180.480 (b) table amended....46884
180.482 (b) table amended....2247
180.487 (a) revised....72110
180.493 (a)(1) table amended....60923
180.495 (a) table and (b) table amended....60933
(b) table amended....2247
180.498 (b) table amended....46884, 54118
(b) table amended....2247
180.505 (b) table amended....46884
180.507 (b) table amended....55137
(a) table amended....59176
180.510 (a) table amended....55159
(b) table amended....71110
180.516 (a) table amended....50362
180.527 (b) table amended....2247
180.535 (b) table amended....46884, 60146
180.544 Revised....59203
180.549 (a) revised....55338
180.553 (b) table amended....2247
180.564 (a) table revised....47309
(b) table amended....58730
180.565 (a) table amended....66571
180.571 (b) revised....45656
(a) table amended....273
180.572 (b) table amended....46884
180.579 Added....60976
180.580 Added....57532
180.581 Added....54359
180.582 Added....60901
180.583 Added....60959
180.584 Added....60141
180.940 Added....71853
180.950 (d) and (e) added....56229
(e) table amended....78718
180.1001 (c) table and (e) table amended....51101
(c) table, (d) table and (e) table amended....78715
180.1020 (b) table amended....2247
180.1117 Removed....78715
180.1143 Revised....51088
180.1181 Revised....70017
180.1206 Revised....46888
180.1220 Added....48800
180.1221 Added....60966
180.1222 Added....60152
228.15 (h)(20) added....44773
258.10 (e) added....45920
Regulation at 67 FR 45920 withdraw....62647
258.41 (c) added....47319
260 Policy statement....52617
261.4 (a)(20) and (21) added....48413
261.4 (a)(23) and (24) added....78730
261.39–261.40 (Subpart E) Added....78731
261 Appendix IX amended....48557, 54131, 79877
266.20 (b) amended; (d) added; eff. 1–24–03....48414
268.40 (i) removed....48414
Table amended....62623
268.44 Table corrected; CFR correction....4392
270.19 (e) revised....77692
270.22 Introductory text revised....77692
270.62 Introductory text revised....77692
270.66 Introductory text revised....77692
271 State hazardous waste management program authorizations....44069, 46600, 49617, 51478, 51765, 53886, 53889, 57337, 66338, 69690, 76995
State hazardous waste management program authorizations....3429
271.1 (j) Tables 1 and 2 amended....48414
(j) Table 1 amended....62624
272.1651 Added....49867
272 Appendix A amended....49868
281 State underground storage tank program authorizations....53743, 55160, 60161
300 Appendix B amended....47320, 53320, 53507, 53508, 54744, 56764, 57758, 58731, 59020, 61273, 61274, 61804, 65321, 76684
Appendix B amended....1540, 2252, 2700
302 Technical correction....64846
302.2 Removed....45321
302.3 Amended....45321
302.4 Table and note revised....45321
Tables corrected....54846, 54847
Appendix A amended....45348
Appendix A corrected....54847
302.5 (b) revised....45356
302.6 (a) revised....45356
302.7 (a)(3) revised....45356
302.8 (e)(1)(iv)(H) and (f)(4)(viii) revised....45357
312 Added....3434
420.02 (r) through (u) added....64260
420.03 Revised....64261
420.07 Added....64261

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH JANUARY 31, 2003

TITLE 40 Chapter I—Con.

420.08 Added 64261
420.10 Revised 64261
420.11 Revised 64261
420.12 (c) revised 64262
420.13 Revised 64262
420.14 Revised 64262
420.15 Revised 64263
420.16 Revised 64263
420.17 (c) revised 64264
420.18 Added 64264
420.21 Added 64264
420.22 Revised 64264
420.23 Revised 64264
420.24 Revised 64265
420.25 Revised 64265
420.26 Revised 64266
420.28 Added 64266
420.29 Added 64266
420.31 Revised 64266
420.32 (b) removed 64266
420.33 (b) removed 64266
420.34 (b) removed 64266
420.35 table amended; (b) removed 64266
420.36 (a) table amended; (b) removed 64267
420.40 Revised 64267
420.41 (b) removed 64267
420.42 (a) and (c) heading revised; (d) added 64267
420.43 (a) and (c) heading revised; (d) added 64267
420.44 (a) revised; (d) removed 64267
420.45 (a) and (c) revised; (d) Added 64267
420.46 (a) revised; (d) removed 64268
420.47 Heading and (a) revised; (d) added 64268
420.48 Added 64268
420.130—420.137 (Subpart M) Added 64268
430.02 (f) added 58997
710 Heading and contents amended 887
710.1—710.4 (Subpart A) Designated; heading added 887
710.1 Revised 887
710.2 Removed 888
710.3 Added 888
710.4 (a), (b)(2), (c)(1), (2), (3), (d)(2) note, (5) and (8) note amended 889
710.23 Added 889
710.25—710.39 (Subpart B) Designated; heading added 889
710.39 Heading revised; (a), (c) introductory text, (1), (3) and (d) amended 890
710.43—710.59 (Subpart C) Added 890
721.3628 Removed 60993
721.5300 Removed 60993
721.8170 Removed 60993
721.9582 Revised 72863
723.175 (b)(e) revised 890
761.80 (j) added; eff. through 4–17–04 4941
1048—1068 (Subchapter U) Added 68347
1065.210 Corrected 72724

Chapter V—Council on Environmental Quality (Parts 1500--1599)

1518 Added 62189

Chapter VI—Chemical Safety and Hazard Investigation Board (Parts 1600--1699)

1610 Authority citation revised 4393
1610.4 Added 4393

Proposed Rules:

9 79020
49 51802
50 79460
51 ..... 51525, 80290
52 ..... 44127, 44128, 44410, 45073, 45074, 45684, 45947, 46617, 46618, 46948, 47757, 48082, 48083, 48090, 48095, 48426, 48839, 49647, 49895, 49897, 50391, 50847, 51527, 51803, 52433, 52665, 52666, 52913, 53329, 53765, 54159, 54399, 54601, 54758, 54759, 54992, 54993, 55186, 55187, 55378, 55757, 57187, 57188, 57357, 57549, 57550, 57775, 57776, 58009, 58551, 59034, 59229, 59232, 59798, 60633, 61055, 62221, 62222, 62425, 62426, 62427, 62431, 62432, 62926, 63353, 63354, 63583, 63586, 64347, 64582, 64993, 64998, 65002, 65077, 65080, 65526, 65749, 65750, 66096, 66598, 67345, 67580, 68542, 68545, 68804, 68971, 69702, 70032, 70036, 70357, 71515, 72874, 76326, 77010, 77196, 77204, 77212, 77463, 77955, 79028, 79543, 79897, 80290

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH JANUARY 31, 2003

..... 723, 1414, 1998, 2275, 2276, 2476, 2722, 2953, 2954, 2969, 3202, 3478, 3847, 3848, 4141, 4842, 4847, 4977
55 53546
..... 1570
58 ..... 57362, 80329
60 ..... 45684, 55186, 59434, 61380, 64014
61 ..... 62432, 68546
..... 3848
62 ..... 61305, 67348, 70640, 76150
..... 76, 77, 3848, 4158
63 ..... 44672, 46028, 46294, 47894, 48098, 49398, 51928, 52674, 52780, 54399, 54400, 58347, 59034, 59434, 61380, 66252, 69702, 72276, 72875, 77562, 77828, 77830, 78046, 78274, 78612
.... 77, 78, 329, 1276, 1660, 1888, 2110, 2276, 2970
69 1175
70 ..... 46439, 48426, 55187, 57496, 58561, 70357
71 ..... 48426, 58561, 66351, 69703
73 47757
81 ..... 44128, 45688, 48426, 48839, 52666, 54601, 56249, 57362, 58551, 62222, 65750, 66598, 68545, 68805, 77196, 77204, 77212
..... 1414, 4847
82 ..... 65916, 67581
..... 4012
85 51402
86 ..... 51402, 52696, 53050, 57188, 66097, 72818
90 ..... 53050, 57188
110 1991
112 ..... 1352, 1991
116 1991
117 1991
122 ..... 48099, 51527, 63867, 79020, 79028, 79828
..... 1991
123 79020
124 79020
125 78756
130 79020
131 ..... 65256, 68079, 68971
141 ..... 46949, 71520, 78203, 79898
152 56970
158 56070
180 ..... 70032, 70036
..... 1575
194 ..... 51930, 53330, 53331, 57189, 57190
..... 4977
228 62659
230 1991
232 1991
258 ..... 45948, 66252
..... 2276
260 66252
..... 2276
261 ..... 46139, 49649, 66252, 78761
..... 531, 2276
262 52674
264 ..... 66252, 78612
..... 2276
265 ..... 66252, 78612
..... 2276
266 66252
..... 2276
268 62626
270 66252
..... 2276
271 ..... 46621, 51803, 53899, 57191, 62626, 64594, 66252, 66351, 77010
..... 2276
272 49900
279 66252
..... 2276
281 329
300 ..... 51528, 52918, 53332, 54602, 55187, 56794, 57778, 59035, 59487, 61844, 64846, 65082, 72888
..... 1580, 1991, 2277, 2726, 4429
302 45440
312 3478
372 63060
401 1991
403 52674
412 48099
450 ..... 51527, 63867
451 ..... 57872, 71523
571 45440
721 59233
761 58567
764 71524
1001 ..... 72892, 72894
1045 ..... 53050, 57188
1051 ..... 53050, 57188
1065 57188
1068 ..... 53050, 57188
1610 72890

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 101—Federal Property Management Regulations (Parts 101-1--101-99)

101–5.2 Removed 78732
101–6.3 Revised 76882
101–6.6 Revised 76882

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH JANUARY 31, 2003

TITLE 41 Chapter 101—Con.

101–18 Revised 76882
101–19 Revised 76883
101–20 Revised 76883
101–17—101–21 (Subchapter D) Appendix amended 76883
101–33 Revised 76883
101–37 Authority citation revised 67743
101–37.000 Revised 67743
101–37.200—101–37.205 (Subpart 101–37.2) Removed 67743
101–37.300—101–37.305 (Subpart 101–37.3) Removed 67743
101–37.500—101–37.506 (Subpart 101–37.5) Removed 67743
101–37.600—101–37.610 (Subpart 101–37.6) Removed 67743
101–37.1100—101–37.1109 (Subpart 101–37.11) Removed 67743
101–37.1200—101–37.1214 (Subpart 101–37.12) Removed 67743
101–37.1400—101–37.1401 (Subpart 101–37.14) Removed 67743
101–47 Revised 76883

Chapter 102—Federal Management Regulation (Parts 102-1—102-99)

102–33 Added 67743
102–33.370 Corrected 70480
102–37.110 (c) revised 78732
102–42.10 Introductory text amended 56496
102–42.140 Revised 56496
102–71.15 Removed 76820
102–71.20 Revised 76820
102–72.30 Amended 76823
102–72.60 Amended 76823
102–72.85 Amended 76823
102–73 Revised 76823
102–74 Revised 76830
102–75 Revised 76843
102–75.880 (a) corrected 1168
102–75.885 (b) corrected 1168
102–75.905 (a) and (c) corrected 1168
102–76.25 (b) amended 76874
102–78.60 Revised 76874
102–79 Revised 76874
102–80 Revised 76876
102–81.15 Revised 76879
102–81.20 Added 76879
102–81.25 Added 76879
102–81.30 Added 76880
102–83 Added 76880
102–192.55 Correctly redesignated from 195.55 54132
102–195.125 Introductory text and (e) corrected 54132
195.55 Correctly redesignated as 102–192.55 54132

Chapter 301—Temporary Duty (TDY) Travel Allowances (Parts 301-1—301-99)

300–3.1 (l)(v) amended 57964
301–1.1 Table amended 57964
301–10 Authority citation revised 494
301–10.107 Authority citation revised; Notes 1 and 2 added 57964
301–10.108 Revised 57964
301–10.111 Revised 57964
301–10.114 Revised 57964
301–10.124 (h) revised 57964
301–10.141 Amended 57964
301–10.160 (d) added 57965
301–10.164 Amended 57965
301–10.303 Revised 494
301–10.304 Table revised 57965
301–11.11 Revised 57965
301–11.18 Table revised 56160
301–11.26 Table revised 57965
301–11.27 Amended 57965
301–11.31 Amended 57965
301–11.32 Added 57965
301–12.1 Table amended 57965
301–30.4 (b) revised; (d) added 57966
301–31.8 Amended 57966
301–50.3 Revised 57966
301–51.2 (j), (k) and (l) amended; (m) added 57966
301–51.101 Introductory text amended 57966
301–51.200 (b) table amended 57966
301–52.4 (b)(1) and (2) amended; (b)(3) added 57966
301–70.501 Revised 57967
301–70.502 Redesignated as 301–70.503; new 301–70.502 added 57967
301–70.503 Redesignated as 301–70.504; new 301–70.503 redesignated from 301–70.502 and revised 57967
301–70.504 Redesignated as 301–70.505; new 301–70.504 redesignated from 301–70.503 57967
301–70.505 Redesignated as 301–70.506; new 301–70.505 redesignated from 301–70.504 57967
301–70.506 Redesignated as 301–70.507; new 301–70.506 redesignated from 301–70.505 57967
301–70.507 Redesignated as 301–70.508; new 301–70.507 redesignated from 301–70.506 57967
301–70.508 Redesignated as 301–70.509; new 301–70.508 redesignated from 301–70.507 57967
301–70.509 Redesignated from 301–70.508 57967
301–70.708 Added 57967
301–71.301 Redesignated as 301–71.302; new 301–71.301 added 57967
301–71.302 Redesignated as 301–71.303; new 301–71.302 redesignated from 301–71.301 57967
301–71.303 Redesignated as 301–71.304; new 301–71.303 redesignated from 301–71.302 57967
301–71.304 Redesignated as 301–71.305; new 301–71.304 redesignated from 301–71.303 57967
301–71.305 Redesignated as 301–71.306; new 301–71.305 redesignated from 301–71.304 57967
301–71.306 Redesignated as 301–71.307; new 301–71.306 redesignated from 301–71.305 57967
301–71.307 Redesignated as 301–71.308; new 301–71.307 redesignated from 301–71.306 57967
301–71.308 Redesignated as 301–71.309; new 301–71.308 redesignated from 301–71.307 57967
301.71–309 Redesignated from 301.71–308 57967
301–72.301 (a) and (c) revised 57967
301–73.102 Revised 57968
301–73.103 Revised 57968
301–74.17 (b) revised 57968
301–75.202 Table amended 57968
Chapter 301 Appendix A amended 47458, 57170, 69634
Appendix A amended 196
Appendix A revised 56160

Chapter 302—Relocation Allowances (Parts 302-1--302-99)

302–1.1 (e) revised 57968
302–1.2 (d) revised 57968
302–2 Authority citation revised 57968
302–2.3 Amended 57968
302–3 Authority citation revised 57968
302–3.2 Table A amended; Table B revised 57968
302–3.101 Tables A and B amended 57969
Corrected 65321
302–4.200 Revised 57969
302–5 Authority citation revised 57969
302–5.13 (a) table amended 57969
302–5.15 Amended 57969
302–7.20 Added 57969
302–7.200 Amended 57969
302–16 Authority citation revised 57969
302–16.1 (b) table amended 57969

Proposed Rules:

101–45 47494
102–38 47494

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH JANUARY 31, 2003

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH JANUARY 31, 2003

TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health and Human Services (Parts 1—199)

52 Clarification **61805**
73 Added **76896**

Chapter IV—Centers for Medicare & Medicaid Services, Department of Health and Human Services (Parts 400—499)

403.744 (a)(1) revised; (c) added 1385
405 Technical correction **69146**
405.371 (c) revised **66813**
405.502 (g) and (h) revised; interim **76696**
410 Policy statement **67318**
410.37 (a)(1)(v) and (2) revised **80040**
410.59 (c)(1)(ii)(C) revised; (c)(1)(ii)(D) and (E) added **80040**
410.60 (c)(1)(ii)(C) revised; (c)(1)(ii)(D) and (E) added **80041**
410.61 (d)(1)(iii) revised **80041**
410.65 Heading, (a)(1), and (b) introductory text revised **80041**
410.76 (b)(3) revised **80041**
410.78 Heading, (b) introductory text and (1) revised; (f) added **80041**
411.354 Regulation at 66 FR 958 and 60155 effective date delayed **70322**
413.86 (e)(4)(ii)(C)*(2)(iii)* correctly designated; (e)(4)(ii)(C)*(2)* introductory text, *(i)* and *(iii)* correctly added; CFR correction **61496**
414 Policy statement **67318**
414.46 (g) revised **80041**
416.44 (b)(1) and (3) revised; (b)(4) added 1385
418.100 (d)(1), (3), and (4) revised 1386
419 Technical correction **69146**
419.21 (d)(3) revised **66813**
419.66 (c)(1) amended **66813**
431.220 Corrected **65505**
433.15 (b)(10) added 3635
438.8 Corrected **65505**
438.310—438.370 (Subpart E) Added 3635
438.10 Corrected **65505**
438.52 Corrected **65505**
438.100 Corrected **65505**
438.102 Corrected **65505**
438.114 Corrected **65505**
438.116 Corrected **65505**
438.703 Corrected **65505**
438.810 Corrected **65505**
457.10 Amended **61974**
457.350 (b) text redesignated as (b)(1); (b)(2) added **61974**
457.622 (c)(5) revised **61974**
457.626 (a)(3) added **61974**
460 Nomenclature change; eff. 10–31–02 ..... **61504**
460.10—460.24 (Subpart B) Heading revised; eff. 10–31–02 ..... **61504**
460.10 Revised; eff. 10–31–02 ..... **61504**
460.12 (a)(2) removed; eff. 10–31–02 ..... **61505**
460.26 Added; eff. 10–31–02 ..... **61505**
Corrected **63966**
460.28 Added; eff. 10–31–02 ..... **61505**
460.30 (b) revised; (c) added; eff. 10–31–02 ..... **61505**
460.60 (b) and (c) revised; eff. 10–31–02 ..... **61505**
460.68 (b) revised; (c) removed; eff. 10–31–02 ..... **61505**
460.70 (b)(1)(i) and (e)(2) revised; (e)(5)(vi) through (ix) and (f) added; eff. 10–31–02 ..... **61505**
460.71 Added; eff. 10–31–02 ..... **61505**
460.72 (b)(1) revised; (b)(3) added 1386
460.102 (d)(2)(iii) revised; (d)(3) amended; (f) and (g) removed; eff. 10–31–02 ..... **61506**
482.21 Revised 3454
482.23 (c)(2) amended **61814**
482.41 (b)(1) introductory text, and (i) revised; (b)(7)(iv) added 1386
483.40 (b)(3) revised **61814**
483.70 (a) introductory text revised; (a)(4) added 1387
483.470 (j)(1)(i), (iii) and (2) revised; (j)(3) added 1387
484.18 (c) amended **61814**
485.618 (d) revised **80041**
485.623 (d)(1) and (2) revised; (d)(5) added 1387
493.2 Amended 3702
493.3 (b)(3) amended 3702
493.20 (b) and (c) amended 3702
493.25 (b), (c) and (d) amended 3702
493.43 (a) amended 3702
493.45 (c)(3) amended 3702

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 42 Chapter IV—Con.

493.47 (c)(2) and (3) amended....3702
493.49 (a)(3) amended....3702
493.643 (c)(3)(ix) amended....3702
493.801—493.865 (Subpart H) Heading revised....3702
493.801 (a)(2)(ii) amended....3702
493.803 (a) amended....3702
493.807 Heading revised....3702
493.901—493.959 (Subpart I) Heading revised....3702
493.911 (c)(1) amended....3702
493.913 (c)(1) amended....3702
493.915 (c)(1) amended....3702
493.917 (c)(1) amended....3702
493.919 (c)(1) amended....3702
493.923 (b)(1) amended....3702
493.927 (c)(1) amended....3702
493.931 (c)(1) amended....3702
493.933 (c)(1) amended....3702
493.937 (c)(1) amended....3702
493.941 (c)(1) amended....3702
493.945 (a)(1) amended....3702
493.1100—493.1105 (Subpart J) Revised....3703
493.1200—493.1299 (Subpart K) Revised....3703
493.1351—493.1495 (Subpart M) Heading revised....3713
493.1359 (b)(2) amended....3713
493.1407 (e)(5) amended....3713
493.1443 (b)(3) revised....3713
493.1445 (e)(5) amended....3714
493.1451 (c)(4) amended....3714
493.1471 (b)(2) amended....3714
493.1485 (a) amended....3714
493.1701—493.1721 (Subpart P) Removed....3714
493.1844 (c)(1) amended....3714
493.2001 (e)(1) amended; (e)(4) revised....3714

Chapter V—Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000--1999)

1003 Authority citation revised....**76905**
1003.100 (a), (b)(1)(xiv) and (xv) revised; (b)(1)(xvi) added....**76905**
1003.101 jAmended....**76905**
1003.102 (b)(16) added....**76905**
1003.103 (l) added....**76905**

Proposed Rules:

52a....**68548**
54....**77350**
54a....**77350**
73....**71528**
200—299 (Ch. IV)....**70358**
400—499 (Ch. IV)....3482
405....**69312**
409....**65672**
410....**67318**
412....**70358**
413....**70358**
414....**67318**
417....**65672**
418....**70363**
422....**65672**
476....**70358**
482....**70373**
484....**70358**
1003....**72896**

TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

2 Authority citation revised....**64530**
2.1—2.3 (Subpart A) Revised; redesignated as Supbarts A through E....**64530**
2.11—2.22 (Subpart B) Revised; Redesignated as Subparts A through E....**64530**
2.41 (Subpart C) Redesignated as Subpart F; new Subpart C (2.7—2.27) redesignated from Subparts A and B....**64530**
2.41 (Subpart F) Redesignated from Subpart C....**64530**
2.45—2.79 (Subpart D) Redesignated as Subpart G; new Subpart D (2.28—2.33) redesignated from Subparts A and B....**64530**
(Subpart G) Redesignated from Subpart D....**64530**
2.80—2.90 (Subpart E) Redesignated as Subpart H; new Subpart E (2.34) redesignated from Subparts A and B....**64530**
(Subpart H) Redesignated from Subpart E....**64530**
4.1100 (e) revised....**61509**
4.1109 (a)(2) revised....**61510**
4.1190 (a) revised....**61510**
4.1192 (a) revised....**61510**

NOTE: **Boldface page numbers indicate 2002 changes.**

4.1193 Redesignated as 4.1194; new 4.1193 added....**61510**
4.1194 Redesignated as 4.1195; new 4.1194 redesignated from 4.1193....**61510**
4.1195 Redesignated as 4.1196; new 4.1195 redesignated from 4.1194; new (a) revised....**61510**
4.1196 Redesignated as 4.1197; new 4.1196 redesignated from 4.1195....**61510**
4.1197 Redesignated from 4.1196....**61510**
4.1200 (a), (b)(2), (3) and (4) revised....**61510**
4.1204 Introductory text revised....**61510**
4.1266 Heading and (b)(2) revised....**61510**
4.1270 (f) revised....**61511**
4.1276 (a) revised....**61511**
4.1350 Revised....**61511**
4.1351 Revised....**61511**
4.1352 Revised....**61511**
4.1355 Revised....**61511**
4.1360 (c) amended; (d) revised; (e) added....**61511**
4.1370—4.1377 Undesignated center heading revised....**61511**
4.1370 Revised....**61511**
4.1371 (a) revised....**61511**
4.1372 (a)(1) and (2) revised....**61511**
4.1374 (a) revised....**61512**
4.1376 Heading and (a) revised....**61512**
4.1380—4.1387 Undesignated center heading revised....**61512**
4.1380 Revised....**61512**
4.1381 (a) revised....**61512**
4.1390 Revised....**61512**
4.1391 (a) and (b) revised....**61512**
4.1394 Revised....**61512**

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

1864.01—1864.4 (Subpart 1864) Authority citation added....502
1864.0-5 (h) added....502
1864.1-1 Revised....502
1864.1-3 Revised....502
1864.1-4 Revised....503
2930 Added; eff. 10-31-02....**61740**
3432.3 (c) revised; (d) added....**63567**
3472.1-3 (a)(1) and (2) amended....**63567**
3601.51 Corrected....**68778**
3602.12 Corrected....**68778**
3802.1-1 (d) amended; eff. 10-31-02....**61745**
6302.20 (i) amended; eff. 10-31-02....**61745**
8224.1 Corrected....**68778**
8340 Authority citation revised....**61745**
8344.1 Amended; eff. 10-31-02....**61745**
8360 Authority citation corrected....**68778**
8365.1-5 (c)orrected....**68778**
8370 Removed; eff. 10-31-02....**61745**
9268.3 (e)(1) amended; eff. 10-31-02....**61745**

Proposed Rules:

4....**77011**
2930....**61746**
4100....**77011**
5000....**77011**

TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

64.6 Table amended....**63272, 67118, 72594, 79880**
65.4 Flood elevation determinations....**63274, 63830, 63835, 65719, 67120, 67123, 70697, 71483**
Flood elevation determinations....1541, 1543, 4942, 4945, 4947
67.11 Flood elevation determinations....**63275, 63838, 63849, 67126, 67127, 67128, 70699, 70701**
Flood elevation determinations....1547, 1550, 1551, 4950, 4951
201.3 (c)(3) revised; interim....**61515**
201.4 (a) revised; interim....**61515**
201.6 (a) revised; interim....**61515**
206.10—206.120 (Subpart D) Corrected....**62896**
206.15 Corrected....**62896**
206.117 Corrected....**62896**
206.120 Corrected....**62897**
206.432 (b)(1) revised; interim....**61515**
206.434 (b)(1) revised; interim....**61515**

Proposed Rules:

67....**63358, 63359, 63867, 63872, 67132, 67133, 67135, 70712**....1581, 1585, 2477, 2479, 4978, 4979

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 44 *Proposed Rules:—Con.*

208 ..... **77628**

TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Services (Parts 1--199)

4.6 Revised **78990**
50.1 Revised; interim **77695**
50.2 (b) and (c) revised; (d) removed; interim **77695**
50.3 Revised; interim **77696**
50.4 Revised; interim **77696**
50.5 Redesignated as 50.7; new 50.5 added; interim **77696**
50.6 Revised; interim **77697**
50.7 Redesignated from 50.5; interim **77696**
50.8 Added; interim **77697**

Chapter VII—Commission on Civil Rights (Parts 700--799)

Chapter VII Revised **70482**

Chapter XII—Corporation for National and Community Service (Parts 1200--1299)

1230 Appendix B correctly revised; CFR correction **66061**

Proposed Rules:

31 ..... **72128**
46 ..... **62432**
96 ..... **77350**
260 ..... **77362**
1050 ..... **77368**
1602 ..... **69498**
1611 ..... **70376**

TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

10.102 (b) revised; interim **66067**
10.103 Amended; interim **66067**
10.205 (l)(1), (2) and (3) amended; interim **66067**
10.304 (f) amended; interim **66068**
10.407 (a)(2)(iv) amended **64315**
Regulation at 67 FR 64315 confirmed **79881**
10.603 (c) amended; interim **66068**
10.901 (c) amended; interim **66068**
10.903 (c) and (d) amended; interim **66068**
10.1005 Amended; interim **66068**
10.1101—10.1105 (Subpart K) Added; interim **66068**
12.01–1 Amended; interim **66068**
12.01–3 Revised; interim **66068**
12.01–6 Amended; interim **66068**
12.02–7 (d) amended; interim **66068**
12.02–11 (h)(1) amended; interim **66068**
12.03–1 (a)(8) amended; interim **66068**
12.05–3 (b)(1) amended; interim **66068**
12.05–7 (a)(5) amended; interim **66068**
12.05–11 (a) amended; interim **66068**
12.10–3 Amended; interim **66068**
12.10–5 (d) amended; interim **66068**
12.10–7 Amended; interim **66069**
12.10–9 (b)(2) amended; interim **66069**
12.15–3 (d)(1) amended; interim **66069**
12.15–7 Amended; interim **66069**
12.25–45 Amended; interim **66069**
12.30–5 Amended; interim **66069**
12.35–1—12.35–5 (Subpart 12.35) Added; interim **66069**
15.1103 (e), (f) and (g) redesignated as (f), (g) and (h); new (e) added; heading, (d), new (g) and (h) revised; interim **66069**
26.03–8 Technical correction **72100**
32.22T Removed **58524**
34.50–10 (e) correctly revised; CFR correction **66069**
169.230 Regulation at 67 FR 21083 correctely confirmed **64315**
176.615 Regulation at 67 FR 21083 correctly confirmed **64315**

Proposed Rules:

401 ..... **3202**
540 ..... **66352, 79029**

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

0.5 (e) added **70177**
0.331 (d) introductory text revised **63284**
0.467 Table, (a)(1) note and (3) amended **4105**

NOTE: **Boldface page numbers indicate 2002 changes.**

1 Petition reconsideration ... **63850, 77173**
Order **67567**
1.924 (f) correctly designated as (g); (f) text correctly reinstated **71111**
1.1102 Revised **67319**
1.1103 Revised **67327**
1.1104 Revised **67328**
1.1105 Revised **67331**
1.1106 Revised **67332**
1.1107 Revised **67332**
1.1109 (c) note, (d) introductory text, (e) and note revised **67337**
1.1110 (a)(1), (2) and (3) revised **67337**
1.1111 (c) revised **67337**
1.1113 (a)(1) revised **67337**
1.1114 Introductory text revised **67337**
1.1116 (a) introductory text revised **67337**
1.1117 (c)(1) and (e) revised **67337**
1.1119 (a) revised **67337**
2.106 Table amended 3460
11 Compliance notification **65321**
11.31 (f) revised **77174**
15.117 (a) revised; (h) redesignated as (j); new (h) and (i) added **63294**
20 Petition reconsideration **63851**
Comment request 2252
20.18 (j) revised 2918
21.50 Removed 3464
22.165 (e) revised; eff. 2–18–03 ..... **77190**
22.323 Removed; eff. 2–18–03 ..... **77191**
22.367 (a)(4) removed; (d) revised **77191**
22.377 (c) removed **77191**
22.901 Revised **77191**
22.905 Revised **77191**
22.911 (b)(1) and (3) amended **77191**
22.915 Removed **77191**
22.917 Revised **77191**
22.919 Removed **77192**
22.921 Revised **77192**
22.933 Removed **77192**
22.937 Removed **77192**
22.941 Removed **77192**
22.943 Revised **77192**
22.945 Removed **77192**
22.946 (b) abd (c) revised **77192**
24.238 Revised **77192**
25.200 Removed **61816**
25.213 (b) removed **61816**
25.216 Added **61816**
32 Meetings **66069**
32.5200 Regulation at 67 FR 5693 eff. date delayed **77432**
32.6562 Regulation at 67 FR 5696 eff. date delayed **77432**
32.6620 Regulation at 67 FR 5696 eff. date delayed **77432**
42 Meetings **66069**
51 Meetings **66069**
54 Order **70703**
Order 4105
54.303 (b)(4) correctly revised **70702**
54.706 (b) and (c) revised **79532**
54.709 (a) introductory text, and (1) revised; (a)(2) amended **79533**
54.711 (a) revised **79533**
54.712 Added **79533**
61 Petition reconsideration **63850**
64 Petition reconsideration **62648**
Meetings **66069**
64.1301 Revised **71890**
69 Petition reconsideration **63850**
73 Petition reconsideration **61816, 64818, 70556, 76318**
Actions on petitions **66340**
Actions on petitions 1986
Order **78193**
73.202 (b) table amended **63853, 64049, 64553, 64554, 64817, 64818, 65721, 66341, 66342, 67568, 69694, 70180, 71891, 71892, 71893, 71895, 76998, 78387**
(b) table amended 504, 1555, 2702, 3819, 4107
73.606 (b) table amended **61516, 62400, 62648, 63853, 78192**
73.622 (b) table amended **61516, 62400, 62649, 62650, 63852, 70018, 70177, 70178, 70179, 78191, 78192, 78193**
(b) table amended ... 503, 1986, 2701, 4394
73.682 (d) revised **63294**
73.2080 Revised 689
76.75 Heading, (b) and (f) through (j) revised; (k) removed 691
76.77 Revised 692
76.122 (c)(2) revised **68951**
76.127 (c) revised **68951**
76.128 (b) revised **68951**
76.1702 Revised 693
90.20 (a)(1)(i) revised; (c)(3) amended; (d)(43) removed **63284**
(e)(6) introductory text revised **70705**
90.35 (b)(2)(iii), (c)(60)(ii), (61)(iii) and (iv) revised; (b)(3) amended **63284**
90.175 (b)(1) revised **63288**
90.201 Revised **76700**
90.203 (m) and (n) added **76700**

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 47 Chapter I—Con.

90.210 (b) and (c) introductory texts and (h), (i) and (j) introductory texts revised **63288**
90.242 (a)(1) removed **63289**
95.401 (f) revised **63289**
90.531 (b)(5), (6) and (d)(1) revised **76700**
90.533 (a) revised **76700**
90.535 (b) and (c) revised; (d) added **76701**
95.603 (g) revised **63289**
95.631 (j) revised **63289**
95.632 (b) revised **63289**
95.633 (f) revised **63289**
95.635 (e) revised **63289**
95.639 (h) revised **63289**
95.655 (d) added **63290**
95.1307 Revised **63290**
95.1311 Added **63290**
95.1313 Added **63290**
95.1315 Added **63290**
95.1317 Added **63290**
101.3 Amended 4955
101.5 (b) revised 4955
101.31 (a)(3), (4), (5) and (b)(4) removed; (a)(6) redesignated as new (a)(3); (a)(2), new (3), (b)(1) introductory text, (vii) and (3) revised 4955
101.55 (a) introductory text revised; (e) removed 4955
101.69 (d) introductory text revised 3464
101.73 (d) introductory text and (3) amended 3464
101.75 (d) revised 3464
101.99 Heading and (a) revised 3464
101.101 Table amended 4955
101.107 (a) table amended 4956
101.109 (c) table amended 4956
101.111 (a)(2)(i) through (iv) revised 4956
101.113 (a) table amended 4957
101.115 (b) removed; (c) through (g) redesignated as (b) through (f); new (b) table amended 4957
101.117 Revised 4957
101.133 (e) added 4957
101.135 (a) revised 4958
101.139 (a) and (g) revised 4958
101.141 (a) introductory text and (1) revised 4958
101.147 (a) table and (b)(2) Table 3 amended; (b) introductory text note added; (k) removed; (r)(10) introductory text and (s) revised 4958
101.507 Revised 4961
101.603 (b)(1) revised 4961
101.803 (a)(5) and (d)(8) revised; (e) removed; (f) and (g) redesignated as new (e) and (f) 4961
101.809 (d) revised 4961
101.815 (a)(1) revised 4961
101.1325 (a) revised 4961
101.1333 (c) revised 4961

Chapter III—National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)

301 Added **41193**

Proposed Rules:

0—199 (Ch. I) **64968**, 723, 730
0 ..... **65527, 77220**
1 ..... **76628**
2 ..... **75968**, 1999
15 2730
20 3214
22 ..... **78209**
24 ..... **78209**
25 ..... **61999, 75968, 78399**
27 ..... **68079, 78209**
36 ..... **71121**
43 ..... **65527, 77220**
54 ..... **71121, 79543**
63 ..... **65527, 77220**, 1660
64 ..... **62667, 65527, 71126, 77220, 78763**
73 ..... **61572, 61845, 63873—63876, 64080, 64598, 64853, 65750, 65751, 66376, 66377, 69703, 70195, 71925, 71926, 71927, 77220, 78215, 78387, 78400, 78401, 78402**, 532, 533, 1586, 1587, 1657, 2278, 2733, 2734, 4158
76 ..... **77374, 78387**, 1657, 2278
87 ..... **75968**
90 ..... **67348, 68079, 70196**, 1999

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1--99)

Chapter I—Federal Acquisition Circular 2001–10 ..... **70516**
Small entity compliance guide **70522, 80322**
Small entity compliance guide 4051
Summary disposition **80320**
2.101 Amended; interim 4049
4.705–2 Heading and (a) revised **70517**
7.105 (b)(4)(i) amended **70522**
10.001 (a)(2)(iii) amended; (a)(2)(v) added; interim 4049
12.102 (f) revised; interim 4050
13.003 (b)(1) revised; interim 4050
13.105 (b) Amended; interim 4050
13.201 (g) revised; interim 4050
13.500 (d) amended **80321**
(a) amended; (e) added; interim 4050
13.501 (a)(1)(i) and (2)(ii) amended; (a)(1)(ii) revised; (a)(2)(iii) and (iv) added; interim 4050
17.603 Regulation at 66 FR 27415 confirmed **70518**
19.502–1 (b) revised; interim 4050
19.502–2 (a) amended **70522**
(a) amended; interim 4050
19.805–1 (b)(1) and (2) amended; (b)(3) added; interim 4051
19.903 (b)(2) amended; (b)(3) redesignated as (b)(4); new (b)(3) added; new (b)(4) amended 4051
19.1306 (a)(2) introductory text revised; (c) added 4051
22.101–1 Regulation at 66 FR 27415 confirmed **70518**
25.003 Amended **70520**
25.400 (a)(2) amended **70520**
25.1101 (a)(1) introductory text revised 4051
25.1103 (a) revised 4051
32.504 (b) introductory text and (2) revised **70521**
32.1003 Introductory text and (b) amended **70521**
36.202 Regulation at 66 FR 27415 confirmed **70518**
39.204 (a) amended; interim **80322**
52.216–7 Clause amended **70521**
52.216–26 Clause amended **70521**
52.225–5 Clause amended **70520**
52.232–7 Clause amended **70521**
52.232–16 Clause amended **70521**
58 Appendix A amended **80328**

Chapter 2—Department of Defense (Parts 200--299)

201.603–2 Revised **65509**
206.302–2 (b)(iv) amended **61516**
207.103 (h) introductory text, (i)(A), (B), (C), (ii) introductory text and (B) amended **61516**
207.105 Introductory text and (b)(19)(C) amended **61516**
208 Meetings **65721**
208.001 (a)(1)(v) revised **65511**
Redesignated as 208.002 ..... **77936**
208.002 Redesignated as 208.003; new 208.002 redesignated from 208.001 ..... **77936**
208.003 Redesignated from 208.002; new (f) and (g) redesignated as (d) and (e) **77936**
208.74—208.7403 (Subpart 208.74) Added **65511**
208.404—208.405–2 (Subpart 208.4) Heading revised **65508**
208.404 (b) added **65508**
208.404–70 Added **65508**
208.7000 (b) amended **77936**
212.102 Revised **65514**
216 Meetings **65721**
216.501–1 Added **65508**
216.505–70 Added **65508**
217.7600 Amended **61516**
219.7104 (b) and (d) amended **77937**
223.7100 Amended **61516**
223.7102 (b) amended **61516**
225.001 (3)(ii) removed; (3)(iii) redesignated as (3)(ii); new (3)(ii) amended **77938**
225.003 (4) and (12) amended **77938**
225.103 (a)(1) redesignated as (a)(i); new (a)(i)(B) revised **77938**
225.402 Revised **77938**
225.502 Revised **77938**
225.504 (4) removed **77938**
225.7304 Revised **70325**
225.1101 (3)(ii), (5) and (6) removed; (3)(iii), (iv) and (7) through (14) redesignated as (3)(ii), (iii) and (5) through (12); (2)(i), new (9) and new (12) amended **77938**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH JANUARY 31, 2003

TITLE 48 Chapter 2—Con.

225.7501 (b)(1)(iii) revised **77939**
226.104 Revised **65514**
237.104 (c)(2)(C)(*1*) amended **61516**
239.1 (Subpart 239.1) Added **65512**
242.1105 (1)(i) amended **61516**
245.403 (1) amended **61517**
245.609 Amended **61517**
247.305–10 (b)(1)(A)(*3*) amended **61517**
247.371 Amended **61517**
251.102 (f) revised; Table 51–1 amended **65512**
(e) introductory text amended **70325**
252.212–7001 Clause amended **70325, 77939**
252.225–7006 Removed **77939**
252.225–7007 Clause amended **65514**
Removed **77939**
252.225–7008 Introductory text amended **77939**
252.225–7009 Introductory text amended **77939**
252.225–7010 Introductory text amended **77939**
252.225–7020 Introductory text amended **77939**
252.225–7021 Clause amended **65514**
Introductory text amended **77939**
252.225–7035 Introductory text amended **77939**
252.225–7036 Introductory text amended **77939**
252.225–7037 Introductory text amended **77939**
252.251–7000 Clause amended **65512**
Chapter 2 Appendix G amended **61517, 70325, 70329, 77936**
Appendix I amended **77937**

Chapter 8—Department of Veterans Affairs (Parts 800--899)

801.301–70 (c) table amended (OMB numbers) 3467
801.602–70 (a)(4)(vi) and (vii) revised 3468
801.602–71 (b)(2) revised 3468
801.602–72 (b) revised 3468
806.302–5 (b) revised; (c) redesignated as (d); new (c) added 3468
812.301 (c) revised; (g) added 3468
837.403 Amended 3469
852.207–70 Introductory text revised 3469
852.273–70 Added 3469
852.273–71 Added 3469
852.273–72 Added 3469
852.273–73 Added 3469
852.273–74 Added 3469
873 Added 3469

Chapter 9—Department of Energy (Parts 900--999)

904 Regulation at 67 FR 14875 confirmed 56
904.401 Regulation at 67 FR 14875 confirmed 56
904.402 Regulation at 67 FR 14876 confirmed 56
904.404 Regulation at 67 FR 14876 confirmed 56
904.70 Regulation at 67 FR 14876 confirmed 56
904.7000 Regulation at 67 FR 14876 confirmed 56
904.7002 Regulation at 67 FR 14876 confirmed 56
904.7003 Regulation at 67 FR 14876 confirmed 56
904.7005 Regulation at 67 FR 14876 confirmed 56
904.7100 Regulation at 67 FR 14876 confirmed 56
904.7102 Regulation at 67 FR 14876 confirmed 56
904.7103 Regulation at 67 FR 14877 confirmed 56
952 Regulation at 67 FR 14875 confirmed 56
952.204–2 Regulation at 67 FR 14877 confirmed 56
952.204–73 Regulation at 67 FR 14877 confirmed 56
952.204–74 Regulation at 67 FR 14878 confirmed 56
970.0404–1 Regulation at 67 FR 14878 confirmed 56
970.0404–2 Regulation at 67 FR 14878 confirmed 56
970.0404–3 Regulation at 67 FR 14878 confirmed 56

Chapter 15—Environmental Protection Agency (Parts 1500—1599)

1509 Authority citation revised **66344**
1509.170–3 (a) and (c) revised; (d) added **66344**
1509.170–4 (f) amended **66344**
1509.170–5 (b) revised **66344**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH JANUARY 31, 2003

1509.170–8 (b) revised **66344**
1509.209–76 Undesignated text, (a)(2), (b)(2) and (4) revised **66344**
1552 Authority citation revised **66344**

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1804.7101 (b) amended **62191**
1804.7102 (a) table, (c) and (d) amended **62191**
1804.7103 (a) amended **62191**
1808.002 Redesignated as 1808.003 ..... **68533**
1808.002–70 Redesignated as 1808.003–70 ..... **68533**
1808.002–71 Redesignated as 1808.003–71 ..... **68533**
1808.002–72 Redesignated as 1808.003–72 ..... **68533**
1808.002–75 Redesignated as 1808.003–75 ..... **68533**
1808.003 Redesignated from 1808.002 ..... **68533**
1808.003–70 Redesignated from 1808.002–70 ..... **68533**
1808.003–71 Redesignated from 1808.002–71 ..... **68533**
1808.003–72 Redesignated from 1808.002–72 ..... **68533**
1808.003–75 Redesignated from 1808.002–73 ..... **68533**
1833.103 (c) amended; (f) revised **61519**
1845.7101–1 (a) and (g) introductory text revised; (h) through (k) amended; interim **68534**
1845.7101–2 (a) amended; interim **68534**
1845.7101–3 (b) amended; interim **68534**
1845.7101–4 (g) amended; interim **68535**
1851.2 (Subpart) Added **68533**
1852.233–70 Clause amended **61519**
1852.235–72 Clause amended **61520**
1872.303 (b) amended **61520**
1872.307 (b) amended **61520**
1872.402 (b)(7) redesignated as (b)(8); new (b)(7) added **61520**
1872.705 Amended **61520**

Proposed Rules:

1 ..... **67762**
2 ..... **64010**, 4874, 4876, 5138
5 ..... **67762**
6 ..... **68914**
7 5138
8 ..... **68914**, 5138
9 ..... **67282**
10 ..... **76150**
11 ..... **64010**
12 4874
14 ..... **67762**
16 5138
19 ..... **67762**, 5138
22 ..... **67762**
23 ..... **64010**
31 ..... **65468**, 4054, 4876, 4880
36 ..... **67762**
42 5138
52 ..... **67762, 68914**, 4874, 4880
53 ..... **67762**
206 ..... **62590**
208 ..... **62590**
209 ..... **62590**
213 ..... **77955**
216 ..... **70388**
225 ..... **62590**
242 ..... **62590**
252 ..... **62590, 70389**
505 1358
532 3220
538 3220
552 3220
1511 2988
1552 2988
1825 ..... **68551**

TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1.66 (ee) added **72384**
40.245 Revised; eff. 10–31–02 ..... **61522**

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100--199)

107.612 (b) introductory text revised; (c) and (d) added 1345
107.616 (d)(2) revised 1346

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH JANUARY 31, 2003

TITLE 49 Chapter I—Con.

171.7 (a)(e) table amended 1015
172.201 (e) revised 66573
174.24 (b) revised 66574
175.30 (a)(2) revised 66574
176.24 Revised 66574
177.817 (f) revised 66574
192 Meetings 56
195 Meetings 56
195.573 Corrected 70118
199 Random drug testing rate 78388

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200--299)

219 Determination 57
225.19 (c) amended; (e) revised; interim 79536
225 Appendix B revised; interim 79536
241 Added 75960
244.13 (j) introductory text revised 68045
244.19 (c)(1) revised 68045

Chapter III—Federal Motor Carrier Safety Administration, Department of Transportation (Parts 300—399)

350 Authority citation revised 61820
350.201 (m) and (t)(1) amended 61820
350.211 (15) amended 61820
350.213 (b) introductory text amended 61820
Corrected 63019
360.3 (a)(2), (iii) introductory text, (f) and (g)(2) amended 61820
365.101 (b), (c) and (g) amended 61820
365.105 (a) amended; (b) revised 61820
365.107 (f) removed; (g) and section note redesignated as (f) and (g); (e) introductory text, new (f) and (g) amended 61820
365.109 (a)(7) amended 61820
365.401 Amended 61820
365.403 (b)(1) and (2) amended 61821
365.405 (a)(1) revised; (a)(2) and (b)(1)(ii) amended 61821
365.411 (b) amended 61821
365.413 Heading revised 61821
372.303 Heading revised 61821
377.215 (c) heading amended 61821
382.305 (i)(3) amended 61821
382.401 (d) amended 61821
383 Authority citation revised 61821
383.3 (f)(3)(i)(A) amended 61821
383.51 Table 2 revised 4396
386.2 amended 61821
386.22 amended 61821
386.71 Amended 61821
386.82 (a)(4) amended 61821
386 Appendix B amended 61821
387.9 Table amended 61821
387.39 Form amended 61821
Form revised 61822
387.303 (b)(2) table amended 61824
388 Nomenclature change 61824
390.27 Table amended 61824
Corrected 63019
391.41 (a) footnote added 61824
391.49 (a) amended 61824
391.65 (a)(2)(vii) amended 61824
393.48 (c)(2) authority citation removed 61824
393.52 (d) amended 61824
393.86 (b)(3) heading amended 61824
393.124 Corrected 63966
397 Authority citation revised 62192
397.17 (a) revised 62192

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

567.4 (h)(2) revised 69623
571.3 (b) amended; eff. 12-27-04 79439
571.5 (b)(2) through (6) and (8) revised 77193
571.105 Amended; eff. 12-27-04 79439
571.109 Amended 69623
571.110 Heading revised; text amended; Figures 1 and 2 added 69623
571.117 Amended 69627
571.120 Amended 69627
571.129 Amended 69627
571.138 Amended 4110
571.139 Added 69627
571.201 Amended; eff. 12-27-04 79439
571.205 Amended; eff. 12-27-04 79439
571.208 Amended; eff. 12-27-04 79439
Amended 513, 4965
571.213 Amended 61529
Amended; interim 64823
571.403 Added; eff. 12-27-04 79439
571.404 Added; eff. 12-27-04 79451

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH JANUARY 31, 2003

573.6 (c)(7), (8)(i), and (10) revised 64063
573.13 Added 64063
573.14 Added 72392
574.5 (d) and Figures 1 and 2 revised 69628
575 Heading and authority citation revised 67494
575.1—575.7 (Subpart A) Heading revised 67494
575.6 Amended; (a)(4) and (5) added 69631
575.101—575.105 (Subpart B) Heading revised 67494
575.201 (Subpart C) Added 67494
577.11 Added 64065
577.12 Added 72393
579.2 Revised 63310
579.3 (a) revised; (b) and (c) redesignated as (c) and (d); new (b) added 63310
579.4 (c) and (d) amended 63310
Amended 4113
579.6 Revised 4113
579.11—579.20 (Subpart B) Revised 63310
(d)(2) revised; (e) amended 4113
590.3 Revised 4111
594.6 (d) correctly added 62897
597 Added 69631

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

600.10 Revised 64312
600.746 (c)(1) introductory text 64312
660.31 Corrected 69479

Chapter X—Surface Transportation Board, Department of Transportation (Parts 1000—1399)

1002 Policy statement 65046

Chapter XI—Bureau of Transportation Statistics, Department of Transportation (Parts 1400—1499)

1420.2 (b)(1) and (5) amended 4719
1420.3 (a), (b)(1), (4) and (c) amended 4719
1420.4 (b) and (c) amended 4719
1420.6 Amended 4719
1420.10 (a) amended 4719
1420.11 Amended 4719

Chapter XII—Transportation Security Administration, Department of Transportation (Parts 1500—1599)

1510 Waiver 3192
1511 Waiver 66071
1540.115 Added 3761
1540.117 Added 3768
1544.101 (f) revised 79887

Proposed Rules:

10 78403
..... 2002
23 76327
171 ..... 66598, 72034
..... 2734
172 72034
..... 2734
173 72034
..... 2734
175 72034
176 72034
177 62681
..... 2734
178 72034
..... 2734
179 2734
180 72034
..... 2734
192 68815
..... 4278
219 ..... 63022, 70809, 75966
225 ..... 63022, 70809
240 ..... 63022, 70809
390 71127
396 71127
397 62681
533 ..... 77015, 79549
571 ..... 66098, 67373, 68551
..... 2003, 2480, 2993
575 62528

TITLE 50—WILDLIFE AND FISHERIES

Chapter I—United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

16.13 (a)(2) revised 62203
17 Comment period extended 66344
17.12 (h) table amended 62908, 63988, 65437, 67990, 68015, 76048, 78598

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH JANUARY 31, 2003

TITLE 50 Chapter I—Con.

(h) table amended 1268
17.21 (c)(4) revised 2919
17.40 (l)(2)(vi) and (vii) added; eff. 10–1–02 through 5–22–04 ..... **61536**
17.96 (a) amended **62908, 63988, 65437, 67990, 76048, 78599**
(b) added 1269
17.108 (a) introductory text, (8) through (11), (b) and (c)(1) through (5) revised; (c)(6) through (11) added; (a)(7) illustration amended **68473**
20.21 (j) revised 1392
20.104 Seasonal hunting adjustments **67257**
20.105 Seasonal hunting adjustments **67258**
20.106 Seasonal hunting adjustments **67275**
20.107 Seasonal hunting adjustments **67276**

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

216.132 Revised **70180**
216.134 Removed **70181**
216.135 (i) removed **70181**
216.136 (a) revised **70181**
222 Fishery management measures **67793, 67795**
222.102 Amended **71899**
223 Fishery management measures **67793, 67795**
223.203 Corrected **68725, 70809**
223.206 (d) introductory text revised; (d)(8) added **71899**
(d)(6) revised; interim **78392**
229 Fishery management measures **71900, 75817, 79536**
229.32 (g)(3)(iii) introductory text, (A) and (B) corrected; (g)(e)(iii)(C), correctly designated as (g)(3)(iii)(D); new (g)(3)(iii)(C) added; (g)(4) introductory text, (i)(B) and (ii) correctly revised **65727**
229 Regulation at 67 FR 1146 and 1147 corrected **65723**

Chapter III—International Fishing and Related Activities (Parts 300--399)

300 Fishery management measures **72110, 72394**
Technical correction 1392
300.17 (b)(1)(iv) revised **64312**

Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600--699)

600 Fishery management measures **61824, 62204, 70018**
600.10 Amended **64312**
600.746 (c)(1) introductory text revised **64312**
622 Fishery management measures **65902, 72112, 71901, 71902**
Fishery management measures 4965
622.4 (r) introductory text, (1) and (6) amended; (r)(1), (6) and (8)(v) suspended in part; (r)(8)(vi) added **77195**
(a)(2)(viii), (c), (f) through (j) and (l) revised; (a)(5) and (b)(4) added 2192
622.7 (b) and (c) revised; (bb) through (ee) added 2194
622.9 Added 2194
622.19 Added 2194
622.41 (g) heading revised; (j) added 2196
635 Fishery management measures **61537, 63854, 66072, 68045, 71487, 77433**
635.2 Amended **77436**
635.4 (a)(1), (2), (5), (b), (d)(1), (2), (3), (h)(1) introductory text and (m)(1) revised; (c) added **77436**
635.5 (c) amended **77437**
(c) revised 714
635.6 (b)(1) introductory text revised; (c)(1) amended **77437**
635.20 (e)(1) suspended **78993**
(a) revised 714
635.21 (d)(4)(iv) added 714
635.22 (a), (c) and (d) revised **77437**
(a), (c) and (d) revised; (e) and (f) added 714

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH JANUARY 31, 2003

635.23 (b) introductory text, (2), (3), (c) introductory text and (3) revised **77438**
635.25 Added **70026**
635.27 (c) revised **70026**
(a) introductory text amended, (1)(i) introductory text and (2) introductory text amended **77438**
(b)(1)(i) and (ii) suspended; (b)(1)(v) and (vi) added **78993**
635.28 (b)(3) revised **77438**
(b)(1) and (2) suspended; (b)(4) and (5) added **78993**
635.31 (a)(1) revised **77438**
(b)(2)(ii) revised; (b)(3) added 715
635.45 Revised **70027**
635.47 Revised **70027**
635.71 (a)(24) and (29) revised; (a)(3)(8) added **70027**
(b)(1), (3), (14) and (15) revised **77439**
(b)(6) revised; (c)(6), (e)(14) and (9)15(10) added 715
648 Fishery management measures **62650, 63311, 64825, 66072, 69148, 70027, 70556, 71111, 71488, 72867, 76318, 76701, 78994, 79887**
Fishery management measures 2919
648.1 (a) amended **63229**
648.2 Amended **63229**
648.3 (a)(13) added **63229**
648.4 (a) amended **63231**
648.6 (a)(1) revised **63231**
648.7 (b)(1)(iii) and (iv) removed; (b)(2) added **63231**
648.10 (c) introductory text, (2) and (5) revised **63232**
648.11 (a) amended; (e) revised **63232**
648.12 Introductory text revised **63232**
648.13 (g) added **63232**
648.14 (x)(12) and (dd) added **63232**
(a)(122) revised; (a)(127) added; eff. to 12–31–03 68
648.21 (f)(3) revised 60
648.80 (a)(15) introductory text, table and (i)(F) revised **69696**
648.86 (h)(2)(ii) revised 4114
648.92 (b)(2) revised 4114
648.94 Regulation at 67 FR 35931 eff. date extended; interim **67568**
648.122 (a)(1) and (b)(1) revised; (d) added; eff. to 12–31–03 68
648.260—648.264 (Subpart M) Added **63233**
654.2 Amended **61991**
654.3 (a) revised; (d) removed **61991**
654.4 Heading revised; text added **61991**
654.6 Introductory text added; (a) and (b) revised **61993**
654.7 (a) and (g) revised; (p) and (q) added **61993**
654.8 Revised **61993**
654.9 Revised **61993**
654.1 (a) amended **61993**
654.2 Introductory text amended **61993**
654.7 (n) amended **61993**
654.20 (b)(2)(i) amended **61993**
654.25 (b) amended **61993**
654.26 Amended **61993**
654.27 (d) amended **61993**
660 Technical correction **61994**
Fishery management measures ..... **61994, 62204, 62401, 63055, 63057, 64826, 65514, 65728—65730, 70018, 79889**
Technical correction 4719
660.12 Amended **65906**
660.14 (b), (c), (e) and (f)(2) amended **65906**
660.15 (e) and (j) amended **65906**
660.17 (a), (c), (d), (e)(1), (2), (4) and (k) amended **65906**
660.21 (l) introductory text and (1) through (4) amended **65906**
660.23 (a) and (b) amended **65906**
660.27 (e), (f)(1), (2) introductory text and (i) amended **65906**
660.28 (b), (e), (g), (h), (i)(1) and (2)(ii) amended **65906**
660.31 (c)(2), (d)(2) and (g)(2) amended **65906**
Corrected **69479**
660.43 (b) amended **65906**
660.50 (c) amended **65906**
660.51 (a), (b), (c)(1), (2), (d) through (g)(2) and (j)(2) amended **65906**
660.52 (a), (b)(1), (3) amended **65906**
660.53 (c)(2) and (d)(2) amended **65906**
660.65 (a) and (d) amended **65906**
660.66 Introductory text and (a) amended **65906**
660.67 (c)(1), (2), (4), (d)(2)(iii) and (iv) amended **65906**
660.81 (e) amended **65906**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH JANUARY 31, 2003

TITLE 50 Chapter VI—Con.

660.84 (c)(2) and (4) amended **65906**
660.85 (a) amended **65906**
660.302 Amended **65906**
Amended 934
660.304 (a) through (f) suspended; (g) through (j) added (temporary) 934
660.321 (a) amended **65906**
660.322 (b)(5) suspended; (b)(6) and (7) added (temporary) 935
660.324 (d) and (f) amended **65905**
(d) amended 65906
660.334 (d)(2) and (3) redesignated as (d)(3) and (4); new (d)(2) added; new (d)(3) and (4) revised **65905**
660.335 (d)(1), (2) and (e)(1) revised **65906**
660.350 (b)(3) amended **65906**
660.339 Amended **65906**
660.402 Amended **65906**
660.409 (a)(1) and (b)(1) amended **65906**
660.411 (c) amended **65906**
660.502 Amended 3822
660.512 (h) added 3822
660.514 Revised 3822
679 Temporary regulations **61826, 61827, 62212, 62651, 62910, 63312, 64066, 65046, 66575, 67798, 70557, 70858, 71489, 76998, 77439, 78733, 78739**
Authority citation revised; eff. 1–29–03 to 12–31–07 ..... **79721**
Technical correction 1393
Temporary regulations 2920, 2921, 2922, 3823, 3824, 4115
679.1 (k) revised; eff. 1–29–03 to 12–31–07 ..... **79721**
679.2 Amended **64316, 72610**
Amended 209
Corrected **71112**
Amended; eff. 1–29–03 to 12–31–07 ..... **79721**
679.4 (b)(5)(vi) and (vii) amended **64317**
(a)(1)(iii) revised; (k)(10), and (l) added; eff. 1–29–03 to 12–31–07 ..... **79723**
(b)(5)(vi) revised 209
679.5 (n)(2)(iii)(B)(4) amended **64317**
(n)(2)(iii)(B)(*4*) revised 209
679.7 (a)(7)(iii), (iv), (v), (vii), (17), (18), (19), (f)(16), (j) and (k) amended **64316**
(f)(8)(ii)(B)(*2*) correctly revised **71112**
(a)(3) revised **72611**
(a)(7), and (k) revised; eff. 1–29–03 to 12–31–07 ..... **79728**
Amended; eff. 1–29–03 to 12–31–07 ..... **79738**
(c)(3) removed; (a)(1), (17), (18), (19) and (b) revised 209
679.20 (a)(5)(i)(B), (F), (ii)(C), (6)(ii), (iii), (7)(i)(C)(*4*), (*5*), (ii)(d), (E), (iii)(D), (8)(ii)(C), (iii), (11), (b)(2)(i), (ii) and (d)(4) amended **64317**
(a)(5)(ii) redesignated as (a)(5)(iii); new (a)(5)(ii) and (d)(1)(iv) added; (a)(5)(i)(A), (6), (b)(1)(i) and (c)(4) revised; eff. 1–29–03 to 12–31–07 ..... **79730**
(a)(7)(iii)(B) and (f)(3) removed; (a)(7)(iii)(C) and (D) redesignated as (a)(7)(iii)(B) and (C); (a)(5)(i)(A), (B), (ii)(B), (6)(ii), (iii), (7)(1)(C)(2), (*3*), (ii)(A), (D), (iii)(A), new (B), (8)(ii)(C), (iii), (11), (b)(2)(i), (ii), (c)(2)(i), (ii) and (d)(4) revised; (e)(2)(iv) added 210
679.21 (d)(8) and (e)(3)(v) added; eff. 1–29–03 to 12–31–07 ..... **79731**
679.22 (a)(5)(iv), (11), (12), (b)(3) and (6) amended **64317**
(b)(7) added **70860**
(a)(5), (7), (8), (b)(2) and (3) revised 212
679.23 (d)(3), (4), (e)(4)(iv), (v), (5), (6), (7) and (i) amended **64317**
(d)(2), (3), (e)(2), (3), (4)(iii), (5) and (i) revised 214
Corrected 2636
679.28 (f)(3)(viii) and (ix) amended **64317**
(c) revised; (g) added; eff. inpart 1–29–03 to 12–31–07 ..... **79731**
(f)(e)(ii) AND (iii) revised; (f)(4), (5) AND (6) added 215
679.30 Amended; eff. 1–29–03 to 12–31–07 ..... **79738**
679.31 (g) amended **64317**
(a) revised; eff. 1–29–03 to 12–31–07 ..... **79733**
679.32 (a) amended **64317**
new (c)(3)(vi) added; eff. 1–29–03 to 12–31–07 ..... **79733**
Amended; eff. 1–29–03 to 12–31–07 ..... **79738**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH JANUARY 31, 2003

(e) removed 215
679.43 (a) amended **64317**
(e) revised **72611**
679.50 (c)(1)(x), (4)(vi) introductory text, (c)(4)(vi)(C) and (6) amended **64317**
(c)(4)(i) through (iv), (v)(A), (B), (vi)(A), (B), (C), (6)(ii) and (d)(4)(i) amended; (j) removed; (e) through (i) redesignated as (f) through (j); new (e) added; heading, new (h), (i) and (j) revised; eff. date confirmed **72611**
Heading and (c)(4)(i) revised; (c)(6) removed; (d)(5) added; eff. 1–29–03 to 12–31–07 ..... **79733**
Amended; eff. 1–29–03 to 12–31–07 ..... **79738**
(c)(1)(x) revised 215
(d)(3) through (6) redesignated as (d)(4) through (7); (c)(1)(vii), new (d)(4), (i)(2)(vi) and (xii) revised; new (d)(3) added 719
679.60–679.65 (Subpart F) added; eff. 1–29–03 to 12–31–07 ..... **79734**
679 Table 11 revised **64317**
Tables 4, 5 and 6 revised; Table 12 added; Tables 13 and 21 through 24 removed 215

Proposed Rules:

17 ..... **61845, 62926, 63064, 63066, 63067, 63738, 65083, 65931, 66377, 66378, 66599, 67586, 67803, 68490, 69176, 69177, 69179, 70199, 70201, 70202, 70203, 71032, 71236, 71529, 72396, 72407, 75834, 76156, 77464, 77466, 78763**
331, 2283, 3000, 4159, 4160
18 ..... **69078, 71127**
1175
216 ..... **68553**
3483, 4747
223 ..... **69704, 79898**
4433
224 ..... **69704, 79898**
4433
226 ..... **69708**
229 1414
300 ..... **64853, 67139**
402 3786
600 ..... **62222, 65933, 65934, 67140, 68556, 76329, 77957, 79550**
4161
622 ..... **69502**
635 ..... **69180, 69502, 72629, 78404**
1024, 3853
648 ..... **65934, 65938, 66103, 69181, 70570, 70904, 72131**
533, 1587, 2303
660 ..... **62001, 63599, 64861, 66103, 70573**
936, 4162, 4441
679 ..... **63600, 65941, 76344, 76362**
3225, 3485
697 ..... **68556**

NOTE: **Boldface page numbers indicate 2002 changes.**

2002

67 FR Page

15333–15462	Apr. 1
15463–15706	2
15707–16010	3
16011–16284	4
16285–16626	5
16627–16968	8
16969–17278	9
17279–17602	10
17603–17904	11
17905–18084	12
18085–18460	15
18461–18772	16
18773–19100	17
19101–19318	18
19319–19506	19
19507–19634	22
19635–20004	23
20005–20424	24
20425–20606	25
20607–20880	26
20881–21158	29
21159–21558	30
21559–21974	May 1
21975–22336	2
22337–30306	3
30307–30532	6
30533–30768	7
30769–31104	8
31105–31710	9
31711–31934	10
31935–32816	13
34383–34584	14
34585–34816	15
34817–34990	16
34991–35424	17
35425–35704	20
35705–35890	21
35891–36078	22
36079–36494	23
36495–36778	24
36779–37318	28
37319–37662	29
37663–37964	30
37965–38192	31
38193–38340	June 3
38341–38582	4
38583–38840	5
38841–39240	6
39241–39593	7
39595–39840	10
39841–40136	11
40137–40580	12
40581–40832	13
40833–41154	14
41155–41304	17
41305–41588	18
41589–41808	19
41809–42182	20
42183–42466	21
42467–42702	24
42703–42980	25
42981–43216	26
43217–43524	27
43525–44014	28
44015–44348	July 1
44349–44522	2
44523–44756	3
44757–45048	5
45049–45292	8
45293–45626	9
45627–45894	10
45895–46092	11
46093–46368	12
46369–46576	15
46577–46836	16
46837–47242	17
47243–47436	18
47437–47678	19
47679–48014	22
48015–48252	23
48353–48518	24
48519–48740	25
48741–48970	26
48971–49216	29
49217–49556	30
49557–49854	31
49855–50342	Aug. 1
50343–50580	2
50581–50790	5
50791–51064	6
51065–51458	7
51459–51750	8
51751–52382	9
52383–52594	12
52595–52840	13
52841–53280	14
53281–53460	15
53461–53722	16
53723–53872	19
53873–54084	20
54085–54324	21
54325–54564	22
54565–54726	23
54727–54940	26
54941–55100	27
55101–55318	28
55319–55688	29
55689–56210	30
56211–56474	Sept. 3
56475–56744	4
56745–56894	5
56895–57122	6
57123–57308	9
57309–57500	10
57501–57718	11
57719–57936	12
57937–58318	13

58319–58508	16
58509–58682	17
58955–59132	18
58683–58954	19
59133–59448	20
59449–59769	23
59769–60098	24
60099–60518	25
60519–60852	26
60853–61248	27
61249–61466	30
61467–61760	Oct. 1
61761–61974	2
61975–62164	3
62165–62310	4
62311–62626	7
62627–62862	8
62863–63048	9
63049–63236	10
63237–63528	11
63529–63812	15
63813–64026	16
64727–64306	17
64307–64516	18
64517–64786	21
64787–65010	22
65011–65284	23
65285–65468	24
65469–65688	25
65689–65870	28
65871–66042	29
66043–66302	30
66303–66526	31
66527–67088	Nov. 1
67089–67282	4
67283–67508	5
67509–67776	6
6777–68016	7
68019–68492	8
68493–68752	12
68753–68930	13
68931–69118	14
69119–69457	15
69459–69656	18
69657–69986	19
69987–70118	20
70119–70308	21
70309–70528	22
70529–70672	25
70673–70834	26
70835–71068	27
71069–71442	29
71443–71796	Dec. 2
71797–72088	3
72089–72362	4
72363–72550	5
72551–72826	6
72827–75798	9
75799–76102	10
76103–76292	11
76293–76670	12
76671–76980	13
76981–77146	16
77147–77398	17
77399–77644	18
77645–77906	19
77907–78120	20
78121–78320	23
78321–78664	24
78665–78958	26
78959–79512	27
79513–79832	30
79833–80332	31

2003

68 FR Page

1–254	Jan. 2
255–458	3
459–662	6
663–994	7
995–1142	8
1143–1358	9
1359–1512	10
1513–1792	13
1793–1954	14
1955–2174	15
2175–2408	16
2421–2678	17
2679–2868	21
2869–3162	22
3163–3370	23
3371–3802	24
3803–4074	27
4075–4360	28
4361–4680	29
4681–4888	30
4889–5202	31

JA

003

MI

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION



Code of Federal Regulations

LSA

List of CFR Sections Affected

February 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

Code of Federal Regulations

LSA

List of CFR Sections Affected

February 2003

Title 1–16
Changes January 2, 2003
through February 28, 2003

Title 17–27
Changes April 1, 2002
through February 28, 2003

Title 28–41
Changes July 2, 2002
through February 28, 2003

Title 42–50
Changes October 1, 2002
through February 28, 2003

LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1–16—as of Jan. 1
17–27—as of April 1
28–41—as of July 1
42–50—as of Oct. 1

To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

The page numbers listed to the right of each LSA entry indicate where the specific amendments begin in the Federal Register. **Boldface** page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the previous year from the current year.

Cite a page reference from this publication using the volume number (64 FR for 1999, 67 FR for 2002) and the page number. Example: 24727 in bold cite as 64 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

ISSUES TO BE SAVED

There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1–16; the MARCH issue is the ANNUAL for Titles 17–27; the JUNE issue is the ANNUAL for Titles 28–41; the SEPTEMBER issue is the ANNUAL for Titles 42–50. ANNUAL ISSUES to be saved are clearly designated on the cover.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

LSA ONLINE

The LSA can be found on the Internet at http://www.access.gpo.gov/nara/lsa/aboutlsa.html.

INQUIRIES AND SUGGESTIONS

Shelley C. Featherson was Chief Editor of the LSA, assisted by Thomas W. Wright. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Brian Swidal. INQUIRIES, telephone 202–741–6000.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Raymond A. Mosley, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail fedreg.info@nara.gov.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–048–00001–1)	9.00	Jan. 1, 2002
3 (1997 Compilation and Parts 100 and 101).	(869–048–00002–0)	59.00	[1] Jan. 1, 2002
4	(869–048–00003–8)	9.00	[4] Jan. 1, 2002
5 Parts:			
1–699	(869–048–00004–6)	57.00	Jan. 1, 2002
700–1199	(869–048–00005–4)	47.00	Jan. 1, 2002
1200–End, 6 (6 Reserved)	(869–048–00006–2)	58.00	Jan. 1, 2002
7 Parts:			
1–26	(869–048–00001–1)	41.00	Jan. 1, 2002
27–52	(869–048–00008–9)	47.00	Jan. 1, 2002
53–209	(869–048–00009–7)	36.00	Jan. 1, 2002
210–299	(869–048–00010–1)	59.00	Jan. 1, 2002
300–399	(869–048–00011–9)	42.00	Jan. 1, 2002
400–699	(869–048–00012–7)	57.00	Jan. 1, 2002
700–899	(869–048–00013–5)	54.00	Jan. 1, 2002
900–999	(869–048–00014–3)	58.00	Jan. 1, 2002
1000–1199	(869–048–00015–1)	25.00	Jan. 1, 2002
1200–1599	(869–048–00016–0)	58.00	Jan. 1, 2002
1600–1899	(869–048–00017–8)	61.00	Jan. 1, 2002
1900–1939	(869–048–00018–6)	29.00	Jan. 1, 2002
1940–1949	(869–048–00019–4)	53.00	Jan. 1, 2002
1950–1999	(869–048–00020–8)	47.00	Jan. 1, 2002
2000–End	(869–048–00021–6)	46.00	Jan. 1, 2002
8	(869–048–00022–4)	58.00	Jan. 1, 2002
9 Parts:			
1–199	(869–048–00023–2)	58.00	Jan. 1, 2002
200–End	(869–048–00024–1)	56.00	Jan. 1, 2002
10 Parts:			
1–50	(869–048–00025–4)	58.00	Jan. 1, 2002
51–199	(869–048–00026–7)	56.00	Jan. 1, 2002
200–499	(869–048–00027–5)	44.00	Jan. 1, 2002
500–End	(869–048–00028–3)	58.00	Jan. 1, 2002
11	(869–048–00029–1)	34.00	Jan. 1, 2002
12 Parts:			
1–199	(869–048–00030–5)	30.00	Jan. 1, 2002
200–219	(869–048–00031–3)	36.00	Jan. 1, 2002
220–299	(869–048–00032–1)	58.00	Jan. 1, 2002
300–499	(869–048–00033–0)	45.00	Jan. 1, 2002
500–599	(869–048–00034–8)	42.00	Jan. 1, 2002
600–End	(869–048–00035–6)	61.00	Jan. 1, 2002
13	(869–048–00036–4)	47.00	Jan. 1, 2002
14 Parts:			
1–59	(869–048–00037–2)	60.00	Jan. 1, 2002
60–139	(869–048–00038–1)	58.00	Jan. 1, 2002
140–199	(869–048–00039–9)	29.00	Jan. 1, 2002
200–1199	(869–048–00040–2)	47.00	Jan. 1, 2002
1200–End	(869–048–00041–1)	41.00	Jan. 1, 2002
15 Parts:			
0–299	(869–048–00042–9)	37.00	Jan. 1, 2002
300–799	(869–048–00043–7)	58.00	Jan. 1, 2002
800–End	(869–048–00044–5)	40.00	Jan. 1, 2002
16 Parts:			
0–999	(869–048–00045–3)	47.00	Jan. 1, 2002

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1000–End	(869–048–00046–1)	57.00	Jan. 1, 2002
17 Parts:			
1–199	(869–048–00048–8)	47.00	Apr. 1, 2002
200–239	(869–048–00049–6)	55.00	Apr. 1, 2002
240–End	(869–048–00050–0)	59.00	Apr. 1, 2002
18 Parts:			
1–399	(869–048–00051–8)	59.00	Apr. 1, 2002
400–End	(869–048–00052–6)	24.00	Apr. 1, 2002
19 Parts:			
1–140	(869–048–00053–4)	57.00	Apr. 1, 2002
141–199	(869–048–00054–2)	56.00	Apr. 1, 2002
200–End	(869–048–00055–1)	29.00	Apr. 1, 2002
20 Parts:			
1–399	(869–048–00056–9)	47.00	Apr. 1, 2002
400–499	(869–048–00057–7)	60.00	Apr. 1, 2002
500–End	(869–048–00058–5)	60.00	Apr. 1, 2002
21 Parts:			
1–99	(869–048–00059–3)	39.00	Apr. 1, 2002
100–169	(869–048–00060–7)	46.00	Apr. 1, 2002
170–199	(869–048–00061–5)	47.00	Apr. 1, 2002
200–299	(869–048–00062–3)	16.00	Apr. 1, 2002
300–499	(869–048–00063–1)	29.00	Apr. 1, 2002
500–599	(869–048–00064–0)	46.00	Apr. 1, 2002
600–799	(869–048–00065–8)	16.00	Apr. 1, 2002
800–1299	(869–048–00066–6)	56.00	Apr. 1, 2002
1300–End	(869–048–00067–4)	22.00	Apr. 1, 2002
22 Parts:			
1–299	(869–048–00068–2)	59.00	Apr. 1, 2002
300–End	(869–048–00069–1)	43.00	Apr. 1, 2002
23	(869–048–00070–4)	40.00	Apr. 1, 2002
24 Parts:			
0–199	(869–048–00071–2)	57.00	Apr. 1, 2002
200–499	(869–048–00072–1)	47.00	Apr. 1, 2002
500–699	(869–048–00073–9)	29.00	Apr. 1, 2002
700–1699	(869–048–00074–7)	58.00	Apr. 1, 2002
1700–End	(869–048–00075–5)	29.00	Apr. 1, 2002
25	(869–048–00076–3)	68.00	Apr. 1, 2002
26 Parts:			
§§ 1.0–1–1.60	(869–048–00077–1)	45.00	Apr. 1, 2002
§§ 1.61–1.169	(869–048–00078–0)	58.00	Apr. 1, 2002
§§ 1.170–1.300	(869–048–00079–8)	55.00	Apr. 1, 2002
§§ 1.301–1.400	(869–048–00080–1)	44.00	Apr. 1, 2002
§§ 1.401–1.440	(869–048–00081–0)	60.00	Apr. 1, 2002
§§ 1.441–1.500	(869–048–00082–8)	47.00	Apr. 1, 2002
§§ 1.501–1.640	(869–048–00083–6)	44.00	[6] Apr. 1, 2002
§§ 1.641–1.850	(869–048–00084–4)	57.00	Apr. 1, 2002
§§ 1.851–1.907	(869–048–00085–2)	57.00	Apr. 1, 2002
§§ 1.908–1.1000	(869–048–00086–1)	56.00	Apr. 1, 2002
§§ 1.1001–1.1400	(869–048–00087–9)	58.00	Apr. 1, 2002
§§ 1.1401–End	(869–048–00088–7)	61.00	Apr. 1, 2002
2–29	(869–048–00089–5)	57.00	Apr. 1, 2002
30–39	(869–048–00090–9)	39.00	Apr. 1, 2002
40–49	(869–048–00091–7)	26.00	Apr. 1, 2002
50–299	(869–048–00092–5)	38.00	Apr. 1, 2002

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
300–499	(869–048–00093–3)	57.00	Apr. 1, 2002
500–599	(869–048–00094–1)	12.00	[5]Apr. 1, 2002
600–End	(869–048–00095–0)	16.00	Apr. 1, 2002
27 Parts:			
1–199	(869–048–00096–8)	61.00	Apr. 1, 2002
200–End	(869–048–00097–6)	13.00	Apr. 1, 2002
28 Parts:			
0–42	(869–048–00098–4)	58.00	July 1, 2002
43–end	(869–048–00099–2)	55.00	July 1, 2002
29 Parts:			
0–99	(869–048–00100–0)	45.00	[8]July 1, 2002
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–048–00102–6)	58.00	July 1, 2002
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869–048–00105–1)	42.00	[8]July 1, 2002
1911–1925	(869–048–00106–9)	29.00	July 1, 2002
1926	(869–048–00107–7)	47.00	July 1, 2002
1927–End	(869–048–00108–5)	59.00	July 1, 2002
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–048–00110–7)	47.00	July 1, 2002
700–End	(869–048–00111–5)	56.00	July 1, 2002
31 Parts:			
0–199	(869–048–00112–3)	35.00	July 1, 2002
200–End	(869–048–00113–1)	60.00	July 1, 2002
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–048–00114–0)	56.00	July 1, 2002
191–399	(869–048–00115–8)	60.00	July 1, 2002
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–048–00117–4)	37.00	July 1, 2002
700–799	(869–048–00118–2)	44.00	July 1, 2002
800–End	(869–048–00119–1)	46.00	July 1, 2002
33 Parts:			
1–124	(869–048–00120–4)	47.00	July 1. 2002
125–199	(869–048–00121–2)	60.00	July 1. 2002
200–End	(869–048–00122–1)	47.00	July 1. 2002
34 Parts:			
1–299	(869–048–00123–9)	45.00	July 1, 2002
300–399	(869–048–00124–7)	43.00	July 1, 2002
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[7]July 1, 2002
36 Parts			
1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–048–00128–0)	35.00	July 1, 2002
300–End	(869–048–00129–8)	58.00	July 1, 2002
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–048–00131–0)	57.00	July 1, 2002
18–End	(869–048–00132–8)	58.00	July 1, 2002
39	(869–048–00133–6)	40.00	July 1, 2002

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
40 Parts:			
1–49	(869–048–00134–4)	57.00	July 1, 2002
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–048–00138–7)	29.00	July 1, 2002
60 (60.1–End)	(869–048–00139–5)	56.00	July 1, 2002
60 (Apps)	(869–048–00140–9)	51.00	[8]July 1, 2002
61–62	(869–048–00141–7)	38.00	July 1, 2002
63 (63.1–63.599)	(869–048–00142–5)	56.00	July 1, 2002
63 (63.600–63.1199)	(869–048–00143–3)	46.00	July 1, 2002
63 (63.1200–End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–048–00145–0)	29.00	July 1, 2002
72–80	(869–048–00146–8)	59.00	July 1, 2002
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8]July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
100–135	(869–048–00151–4)	42.00	July 1, 2002
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–048–00154–9)	37.00	July 1, 2002
260–265	(869–048–00155–7)	47.00	July 1, 2002
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–048–00157–3)	43.00	July 1, 2002
400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
700–789	(869–048–00160–3)	58.00	July 1, 2002
790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–048–00163–8)	43.00	July 1, 2002
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9]Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9]Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9]Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
80–End	(869–048–00189–1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1–51)	(869–048–00190–5)	59.00	Oct. 1, 2002
1 (Parts 52–99)	(869–048–00191–3)	47.00	Oct. 1, 2002
2 (Parts 201–299)	(869–048–00192–1)	53.00	Oct. 1, 2002
3–6	(869–048–00193–0)	30.00	Oct. 1, 2002
7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–048–00196–4)	38.00	[9]Oct. 1, 2002
49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
100–185	(869–048–00198–1)	60.00	Oct. 1, 2002
186–199	(869–048–00199–9)	18.00	Oct. 1, 2002
200–399	(869–048–00200–6)	61.00	Oct. 1, 2002
400–999	(869–048–00201–4)	61.00	Oct. 1, 2002
1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002
1200–End	(869–048–00203–1)	30.00	Oct. 1, 2002
50 Parts:			
1–17	(869–048–00204–9)	60.00	Oct. 1, 2002
18–199	(869–048–00205–7)	40.00	Oct. 1, 2002
200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
600–End	(869–048–00207–3)	58.00	Oct. 1, 2002
CFR Index and Findings Aids	(869–048–00047–0)	59.00	Jan. 1, 2002
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 to March 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5]No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

[6]No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

Order from Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 512-1800 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Other Related Publications

Title	*Price*	*Revision Date*
Federal Register:		
Yearly subscription (with FR Index and LSA)	764.00	
Yearly subscription (without FR Index and LSA)	699.00	
Individual copies	10.00	daily

CHANGES JANUARY 2, 2003 THROUGH FEBRUARY 28, 2003

TITLE 1—GENERAL PROVISIONS

No amendments to 1 CFR have been published in the FEDERAL REGISTER since January 2, 2002.

TITLE 2—[RESERVED]

There is no regulatory text to this title.

TITLE 3—THE PRESIDENT
Presidential Documents

Proclamations

6641 *See* Proc. 3163 3163
6867 *See* Notice of Feb. 27, 2003 9849
7636 995
7637 1951
7638 2173
7639 2409
7640 2869
7641 3163
7642 3169
7643 4887
7644 6055
7645 6057
7646 6059
7647 7053

Executive Orders

10865 Amended by EO 13284 4075
11423 Amended by EO 13284 4075
11958 Amended by EO 13284 4075
12260 Amended by EO 13284 4075
12333 *See* EO 13283 3371
Amended by 13284 4075
12543 *See* Notice of Jan. 2, 2003 661
12544 *See* Notice of Jan. 2, 2003 661
12590 Amended by EO 13284 4075
12829 *See* EO 13284 4075
12859 Amended by EO 13284 4075
12881 Amended by EO 13284 4075
12947 *See* Notice of Jan 18, 2002 3033
12958 *See* EO 13284 4075
12968 *See* EO 13284 4075
12992 Amended by EO 13284 4075
13011 Amended by EO 13284 4075
13048 Amended by EO 13284 4075
13099 *See* Notice of Jan 18, 2002 3033
13122 Amended by EO 13284 4075
13151 Amended by EO 13284 4075
13224 Amended by EO 13284 4075
13228 Amended by EO 13284 4075
13231 Amended by EO 13284 4075
13234 Amended by EO 13284 4075
13249 Superseded by EO 13282 1133
13282 1133
13283 3371
13284 4075
13285 5203

Administrative Orders

Memorandums:

Jan. 17, 2003 3157

Notices:

Jan. 2, 2003 661
Jan. 16, 2003 2677
Jan. 20, 2003 3161
Jan. 29, 2003 ..... 5199, 5201
Feb. 27, 2003 9849

Presidential Determinations:

No. 2003–09 of Jan. 7, 2003 1513
No. 2003–10 of Jan. 10, 2003 2411
No. 2003–11 of Jan. 10, 2003 2419
No. 2003–12 of Jan. 17, 2003 3803
No. 2003–13 of Jan. 29, 2003 5785
No. 2003–14 of Jan. 30, 2003 5787

TITLE 4—ACCOUNTS

No amendments to 4 CFR have been published in the FEDERAL REGISTER since February 25, 2002.

TITLE 5—ADMINISTRATIVE PERSONNEL
Chapter I—Office of Personnel Management (Parts 1—1199)

532 Regulation at 67 FR 46839 and 46840 confirmed 1515
532.217 (c) amended 460
532.201—532.285 (Subpart B) Appendix C amended 459
550.162 (g) revised 4681
576 Revised; interim 5529
831.305 (d) added; interim 2178
831.704 Revised; interim 2178
837.506 Revised; interim 2178
842.304 (d) revised; interim 2178
843.314 Revised; interim 2178

TITLE 5 Chapter I—Con.

844.106 Revised; interim 2178
847 Authority citation revised 2179
847.101 (a) revised; interim 2179
847.102 (a)(8) and (9) added; (c)(4) revised; interim 2179
847.103 (b) amended; interim 2179
847.104 (c) added; interim 2179
847.105 Revised; interim 2179
847.106 (a) revised; interim 2179
847.107 (b) revised; interim 2179
847.202 Revised; interim 2179
847.203 (a) revised; interim 2180
847.204 (a) revised; interim 2180
847.205 (a) revised; interim 2180
847.402 (a)(1) and (b)(1) revised; interim 2180
847.421 (a)(2) revised; interim 2180
847.431 (a)(2) revised; interim 2180
847.801—847.809 (Subpart H) Added; interim 2180
875 Added; interim 5534
890 Authority citation revised 5475
890.1001—1055 (Subpart J) Revised 5475

Chapter XVI—Office of Government Ethics (Parts 2600—2699)

2641 Appendix B amended 4683

Proposed Rules:

735 1987
890 6649
2606 2923
2637 7844
2641 7844

TITLE 6—HOMELAND SECURITY

Chapter I—Department of Homeland Security, Office of the Secretary (Parts 0—99)

Chapter I Established; interim 4056
5 Added; interim 4056
5.41–5.49 (Subpart C) Added; interim 4070
7 Added; interim 4074

TITLE 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

1.131 (a) text, footnote 2 and (b)(1) amended 6340
1.132 Amended 6340
1.133 (b)(2) amended 6340
1.136 (c) amended 6340
1.137 (b) amended 6340
1.141 (b)(1) footnote 3 redesignated as (b)(1) footnote 2; (b)(1) footnote 2 and (e)(2) amended 6340
1.142 (c)(4) amended 6340
1.143 (d) amended 6340
1.144 (c) introductory text and (13) amended 6340
1.145 (a) revised 6341
1.147 (h) amended 6341
1.148 (a)(3) amended 6341
1.149 Footnote 4 redesignated as footnote 3 6341
97.175 Revised 1360

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

301 Authority citation revised 1362
301.64–3 (c) amended; interim 2680, 3374
301.64–10 (g) added; interim 8819
301.80–2a Revised; interim 6604
301.81–3 (e) amended 5795
301.89–4 Regulation at 67 FR 21161 confirmed 5793
301.89–6 Regulation at 67 FR 21161 confirmed 5793
301.89–13 Regulation at 67 FR 21161 confirmed 5793
301.93–3 (c) amended; interim 1362
318.13—318.30–17 (Subpart) Heading revised 5802
318.13–1 Amended 5802
318.13–2 (b) amended 5802
318.13–3 (b)(1) amended 5802
318.13–4 (a) and (c)(2) amended 5802
318.13–4f (a), (b)(2)(i), (5) and (6)(ii) revised (OMB number) 5800
318.13–4j Added 5802

318.58 (c) revised; interim 2683
318.58–2 (b)(1) revised; (b)(2) amended; (b)(4) added; interim 2683
318.58–4a Footnote 1 and text reference redesignated as Footnote 2; interim 2684
318.58–12 Amended; Footnotes 2 and 3 redesignated as Footnotes 3 and 4; interim 2684
319.56–2 (d) revised; interim 2684
319.56–2d (b)(1), (5)(iii), (iv)(B), (v)(B), (vi)(B), (vii)(A) and (C) amended; (b)(5)(vii) introductory text and (H) revised 2686
319.56–2x (a) table amended; interim 2684
Corrected 6544
330 Authority citation revised 6342
330.400 (f)(2) revised 6342
354 Regulation at 67 FR 56218 confirmed 3375
Authority citation revised 6342
354.3 Regulation at 67 FR 56218 confirmed 3375

Chapter VII—Farm Service Agency, Department of Agriculture (Parts 700—799)

741 15f.5(c) amended; interim 7412
741 15f.9 Revised; interim 7412
762.102 (b) amended 7695
762.110 (a) introductory text, (1), (3) and (b) introductory text amended 7695
762.129 (b)(2) revised; (b)(3) amended; (b)(4) added 7695
764.2 Amended 7695
774.18 (a)(1) and (b)(1) revised 7696

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

905.149 Regulation at 67 FR 62317 confirmed 62317
906.235 Regulation at 67 FR 62320 confirmed 1364
989.156 (a), (d), (h)(2), (3), (i) and (o) revised; interim 4083
Regulation at 67 FR 42474 confirmed; (b)(6) revised 4090
989.347 Revised 1145
996.2 Revised 1157
996.7 Revised 1157
996.30 (b) revised 1157
996.40 (b)(4) revised 1157
996.60 (c) revised 1158

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1160)

1000.40 (c)(1)(ii) added; (d)(1)(i) revised 7064
1000.50 Introductory text amended; (a), (b), (c) (g), (h), (j), (l) through (p)(1) and (q)(3) revised; (q)(4) removed 7064
1001.60 (c)(3), (d)(2) and (h) revised 7065
1001.61 Revised 7065
1001.62 (e) and (g) revised 7065
1001.71 (b)(2) and (3) revised 7066
1001.73 (a)(2)(ii) and (b)(3)(vi) revised 7066
1030.60 (c)(3), (d)(2) and (i) revised 7066
1030.61 Revised 7066
1030.62 (e) and (h) revised 7066
1030.71 (b)(2) and (4) revised 7066
1030.73 (a)(2)(ii), (c)(2)(v) and (3)(ii) revised 7066
1032.7 (c) introductory text, (1) and (2) revised; (c)(4) removed; (c)(5) redesignated as (c)(4); new (c)(5) added; interim 7072
1032.13 (d)(2) revised; (d)(3), (4) and (5) redesignated as (d)(4), (5) and (6); new (d)(3) and (e) added; interim 7072
1032.60 (c)(3), (d)(2) and (i) revised 7067
1032.61 Revised 7067
1032.62 (e) and (h) revised 7067
1032.71 (b)(2) and (4) revised 7067
1032.73 (a)(2)(ii), (c)(2)(v) and (3)(ii) revised 7067
1033.60 (c)(3), (d)(2) and (i) revised 7067
1033.61 Revised 7067
1033.62 (e) and (h) revised 7068
1033.71 (b)(2) and (4) revised 7068
1033.73 (a)(2)(ii) and (b)(3)(v) revised 7068

CHANGES JANUARY 2, 2003 THROUGH FEBRUARY 28, 2003

TITLE 7 Chapter X—Con.

1124.60 (c)(3), (d)(2) and (h) revised 7068
1124.61 Revised 7068
1124.62 (e) and (g) revised 7069
1124.71 (b)(2) and (3) revised....7069
1124.73 (a)(2)(ii), (c)(2)(v) and (3)(ii) revised....7069
1126.60 (c)(3), (d)(2) and (i) revised 7069
1126.61 Revised 7069
1126.62 (e) and (h) revised 7069
1126.71 (b)(2) and (4) revised....7069
1126.73 (a)(2)(ii) and (b)(3)(v) revised 7069
1135.60 (c)(3), (d)(2) and (h) revised 7070
1135.61 Revised 7070
1135.62 (e) and (g) revised 7070
1135.71 (b)(2) revised; (b)(3) removed 7070
1135.73 (a)(2)(ii) and (b)(3)(v) revised 7070

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1208 Removed 1366
Technical correction 2108

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

1413 Added 5207

Chapter XVII—Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

1738 Added 4687
1738.10 (b) correctly amended 8989
1755.97 Amended 7898

Chapter XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

1910.4 (b) heading and (2) revised; (b) amended 7696
1924.55 Heading revised; (e) amended 7696
1924.74 (b)(1) amended 7696
1941.1—1941.50 (Subpart A) Nomenclature change 7696
1941.1 Amended 7696
1941.4 (e) amended 7696
1941.6 (c) revised 7697
1941.12 (a)(4), (5), (b)(5)(iii), and (iv) removed; (a)(6) through (11), (b)(5)(v) and (vi) redesignated as (a)(4) through (9), (b)(5)(iii) and (iv); (a)(6), (b)(6)(i), (7)(i), (8)(iii) and (9) revised 7697
1941.54 (b)(2) revised; (b)(3) removed 7697
1941.57 (a) revised 7697
1943.1–1941.50 (Subpart A) Amended 7697
1943.1 Amended 7697
1943.4 (e) amended 7697
1943.6 (c) revised 7698
1943.12 (a)(4), (5), (b)(4)(iii) and (iv) removed; (a)(6) through (11), (b)(4)(v) and (vi) redesignated as (a)(4) through (9), (b)(4)(iii) and (iv); (b)(5)(i), (6)(i) and (7) revised 7698
1943.14 (c), (d)(4) and (e)(2)(i) revised 7698
1943.16 (e) added 7698
1943.38 (g)(3)(ii) amended; (g)(3)(iii) removed 7698
1951.463 (e) removed....7698
1951.903 Amended 7698
1951.909 (a)(3), (e)(1)(xii), (2)(viii) and (i)(2)(i) revised; (e)(2)(ix) redesignated as (e)(2)(x); new (e)(2)(ix) added 7698
1951.909–1951.950 (Subpart S) Exhibit A amended 7699
1955.10 (f)(2) and (3) revised 7699
1951.1–1951.50 (Subpart A) Exhibits G and G–1 removed 7700
1955.63 (a) and (b) revised 7700
1955.107 (a)(2)(i), (b) introductory text, (b)(1) and (2) revised 7700
1955.137 (b)(3)(ii) and (iii) amended 7700
1956.57 (f) removed....7700
1956.70 (b)(3) introductory text revised 7700
1956.84 (e) revised 7700
1956.96 Revised 7696
1962.41 (f) removed; (e) revised 7701
1962.46 (g)(5)(ii) revised 7701
1965.26 (f)(6) and (g) removed; (c)(2)(iv) introductory text and (f)(5) revised 7701
1965.27 (b)(19) and (g)(6) removed; (f) revised; (h) amended 7701

Proposed Rules:

51....4967
56....1169
300....69
319....6362
360....6653
723....1556
800....9589
868....9593
1464....1556
1466....6655
1470....7720
1794....1988
1951....1170
1962....1170
1965....1170

CHANGES JANUARY 2, 2003 THROUGH FEBRUARY 28, 2003

TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—599)

1 Duplicated and redesignated as Chapter V, Part 1001 9830
3 Transferred and redesignated as Chapter V, Part 1003....9830
3 Added 9831
101 Duplicated and redesignated as Chapter V, Part 1101....9832
103 Heading and authority citation duplicated and redesignated as Chapter V, Part 1103 9833
103.3 (c) amended....9832
Duplicated and redesignated as 1103.3....9833
103.4 Duplicated and redesignated as 1103.4....9833
103.7 (b)(1) amended; interim 3800
(b)(1) amended; interim 8992
Duplicated and redesignated as 1103.7....9833
103.37 Added 9832
205 Duplicated and transferred to Chapter V, Part 1205....9833
207 Duplicated and transferred to Chapter V, Part 1207....9833
207.3 Duplicated and transferred to Chapter V, Part 1205....9833
208 Duplicated and transferred to Chapter V, Part 1208....9834
209 Duplicated and transferred to Chapter V, Part 1209....9835
211 Duplicated and transferred to Chapter V, Part 1211....9835
211.4 Duplicated as 1211.4 9835
212 Duplicated and transferred to Chapter V, Part 1212....9835
212.1 (a) revised; interim 5193
215 Duplicated and transferred to Chapter V, Part 1215....9836
216 Duplicated and transferred to Chapter V, Part 1216....9837
231 Authority citation revised 5193
231.1 (d) introductory text amended; (d)(1) and (2) removed; interim 5193
235 Duplicated and transferred to Chapter V, Part 1235....9837
235.1 (e) introductory text and (1)(v) revised; (e)(5)(ii) amended; interim....5193
236 Regulation at 67 FR 19511 confirmed....4367
Duplicated and transferred to Chapter V, Part 1236 9838
236.6 Regulation at 67 FR 19511 confirmed....4367
238 Duplicated and transferred to Chapter V, Part 1238....9838
238.1 Duplicated as 1238.4 9838
239 Duplication and transfrred to Chapter V, Part 1239 9838
240 Duplicated in part and transferred to Chapter V, Part 1240....9838
240.1—240.18 (Subpart A) Transferred and redesignated as Chapter V, Part 1240.1—1240.18 (Subpart A) 9838
240.19—240.24 (Subpart B) Heading transferred and redesignated as Chapter V, 1240.19—1240.24 (Subpart B) 9838
240.19 Redesignated as 1240.19....9838
240.20 Redesignated as 1240.20....9838
240.21 Duplicated and redesignated as 1240.21 9840
240.22 Redesignated as 1240.22....9838
240.23 Redesignated as 1240.23....9838
240.24 Redesignated as 1240.24....9838
240.26—240.29 (Subpart C) Transferred and redesignated as

CHANGES JANUARY 2, 2003 THROUGH FEBRUARY 28, 2003

TITLE 8 Chapter I—Con.

Chapter V, 1240.26—1240.29 (Subpart C) 9838
240.30—240.39 (Subpart D) Transferred and redesignated as Chapter V, 1240.30—1240.39 (Subpart D) 9838
240.40—240.54 (Subpart E) Transferred and redesignated as Chapter V, 1240.40—1240.54 (Subpart E) 9838
240.55—240.58 (Subpart F) Transferred and redesignated as Chapter V, 1240.55—1240.58 (Subpart F) 9838
240.60—240.70 (Subpart H) Duplicated and redesignated as Chapter V, 1240.60—1240.70 (Subpart H) 9838
241 Regulation at 67 FR 19511 confirmed 4367
Duplicated and transferred to Chapter V, Part 1241 9840
241.15 Regulation at 67 FR 19511 confirmed 4367
244 Duplicated and transferred to Chapter V, Part 1244 9841
245 Duplicated and transferred to Chapter V, Part 1245 9842
246 Duplicated and transferred to Chapter V, Part 1246 9842
249 Duplicated and transferred to Chapter V, Part 1249 9843
270 Duplicated and transferred to Chapter V, Part 1270 9843
274a Duplicated and transferred to Chapter V, Part 1274a 9844
280 Duplicated and transferred to Chapter V, Part 1280 9844
286.2 (b) redesignated as (c); new (b) added 4092
286.3 Introductory text and (a) revised 4092
286.9 (b)(4) revised; interim 5194
287 Duplicated and transferred to Chapter V, Part 1287 9845
292 Duplicated and transferred to Chapter V, Part 1292 9845
337 Duplicated and transferred to Chapter V, Part 1337 9845
507 Transferred and redesignated as 28 CFR, Part 200 9846

Chapter V—Executive Office for Immigration Review, Department of Justice (Parts 1000—1099)

Chapter V Established 9830
1001—1003 (Subchapter A) Heading added 9830
1001 Duplicated and redesignated from Chapter I, Part 1 9830
1003 Transferred and redesignated from Chapter I, Part 3 9830
Amended 9846
1003.1 (g) and (h) revised; (i) and (j) added 9831
1003.14 (d) added 9832
1101—1299 (Subchapter B) Heading added 9830
1101 Duplicated and redesignated from Chapter I, Part 101 9832
Amended 9846
1103 Heading and authority citation duplicated and redesignated from Chapter I, Part 103; authority citation revised 9833
Amended 9846
1103.3 Duplicated and redesignated from 103.3 9833
1103.4 Duplicated and redesignated from 103.3 9833
1103.7 Duplicated and redesignated from 103.3 9833
1204 Added 9833
1205 Duplicated and transferred from Chapter I, Part 205 9833
Amended 9846
1207 Duplicated and transferred from Chapter I, Part 207 9833
1207.3 Duplicated from 207.3 9833
1208 Duplicated and transferred from Chapter I, Part 208 9834
Amended 9846
1209 Duplicated and transferred from Chapter I, Part 209 9835
Amended 9846
1211 Duplicated and transferred from Chapter I, Part 211 9835
Amended 9846
1211.4 duplicated from 211.4 9835
1212 Duplicated and transferred from Chapter I, Part 212 9835
Amended 9846

CHANGES JANUARY 2, 2003 THROUGH FEBRUARY 28, 2003

1214 Added 9835
1215 Duplicated and transferred from Chapter I, Part 215 9836
Amended 9846
1216 Duplicated and transferred from Chapter I, Part 216; authority citation revised 9837
Amended 9846
1235 Duplicated and transferred from Chapter I, Part 235 9837
Amended 9846
1236 Duplicated and transferred from Chapter I, Part 236 9838
Amended 9846
1238 Duplicated and transferred from Chapter I, Part 238 9838
1238.1 duplicated from 238.1 9838
1239 Duplicated and transferred from Chapter I, Part 239 9838
Amended 9846
1240.1—1240.18 (Subpart A) Transferred and redesignated from Chapter I, Part 240.1—240.18 (Subpart A) 9838
1240 Amended 9846
1240.19—1240.24 (Subpart B) Heading transferred and redesignated from Chapter I, 240.19—240.24 (Subpart B) 9838
1240.19 Redesignated from 240.19 9838
1240.20 Redesignated from 240.20 9838
1240.21 Duplicated and redesignated from 240.19 ..... 9838, 9840
1240.22 Redesignated from 240.22 9838
1240.23 Redesignated from 240.23 9838
1240.24 Redesignated from 240.24 9838
1240.26—1240.29 (Subpart C) Transferred and redesignated from Chapter I, 240.26—240.29 (Subpart C) 9838
1240.30—1240.39 (Subpart D) Transferred and redesignated from Chapter I, 240.30—240.39 (Subpart D) 9838
1240.40—1240.54 (Subpart E) Transferred and redesignated from Chapter I, 240.40—240.54 (Subpart E) 9838
1240.55—1240.58 (Subpart F) Transferred and redesignated from Chapter I, 240.55—240.58 (Subpart F) 9838
1240.60—1240.70 (Subpart G) Duplicated and redesignated from Chapter I, 240.60—240.70 (Subpart G) 9840
1241 Duplicated and transferred from Chapter I, Part 241 9840
Amended 9846
1244 Duplicated and transferred from Chapter I, Part 244 9841
Amended 9846
1245 Duplicated and transferred from Chapter I, Part 245 9842
Amended 9846
1246 Duplicated and transferred from Chapter I, Part 246 9842
Amended 9846
1249 Duplicated and transferred from Chapter I, Part 249 9842
Amended 9846
1270 Duplicated and transferred from Chapter I, Part 270 9843
Amended 9846
1274a Duplicated and transferred from Chapter I, Part 274a 9844
Amended 9846
1280 Duplicated and transferred from Chapter I, Part 280 9844
Amended 9846
1287 Duplicated and transferred from Chapter I, Part 287 9845
Amended 9846
1292 Duplicated and transferred from Chapter I, Part 292 9845
Amended 9846
1299 Added 9845
1337 (Subchapter C) Heading added 9830
Duplicated and transferred from Chapter I, Part 337 9845
Amended 9846

Proposed Rules:

217 292
231 292
251 292

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

4 Authority citation revised 6342
11 Authority citation revised 6342
12 Authority citation added 6342
12.1 Amended 6342
12.10 Amended 6342
49 Authority citation revised 6342
49.1 Amended 6342
50 Authority citation revised 6342
51 Authority citation revised 6342
51.1 Amended 6342
52 Authority citation revised 6342
52.1 Amended 6342
53 Authority citation revised 6342
53.3 (d) amended 6343
54 Authority citation revised 6343
70 Authority citation revised 6343
70.1 Amended 6343
71 Authority citation revised 6343
72 Authority citation revised 6343
73 Authority citation revised 6343
73.1 (b) amended 6343
74 Authority citation revised 6343
75 Authority citation revised 6343
77 Authority citation revised 6343
78 Authority citation revised 6343
79 Authority citation revised 6343
79.2 (f)(3) amended 6343
80 Authority citation revised 6343
82 Authority citation revised 1517
82.3 (c) revised; interim 1517
(c) amended; interim 3376, 7413
82.16 Added; interim 1517
85 Authority citation revised 6343
89 Authority citation revised 6343
91 Authority citation revised 6343
92 Authority citation revised 6343
93 Authority citation revised 6343
93.101 (d)(1)(ii) amended 6343
93.106 (a), (b)(4) and (c)(5)(iii) amended 6343
93.201 (b)(1)(ii) amended 6344
93.202 (a) amended 6344
93.207 Amended 6344
93.301 (b)(1)(ii) amended 6344
(h)(6) and (7) amended; interim 7414
93.302 (a) amended 6344
93.306 (a) designation removed; amended 6344
93.401 (a), (b) introductory text and (1)(ii) amended 6344
93.402 (a) amended 6344
93.404 (a)(2) revised 6344
93.405 (d) amended 6344
93.408 Amended 6344
93.419 (b) amended 6344
93.423 (d) amended 6344
93.426 (a) amended 6344
93.428 (c) amended 6344
93.501 (a), (b) introductory text and (1)(ii) amended 6344
93.502 (a) amended 6344
93.504 (a)(2) revised 6344
93.505 (c) amended 6344
93.507 (a) designation removed; amended 6344
93.520 Undesignated center heading amended 6344
94 Authority citation revised 6345
94.0 Regulation at 67 FR 31937 confirmed 5805
94.1 Regulation at 67 FR 31938 confirmed 5805
94.1 (a) introductory text amended 6345
94.1a (a) introductory text amended 6345
94.4 (b)(2) amended 6345
94.5 (e)(2) amended 6345
94.7 Revised 6345
94.15 (b)(4) and (c)(4) amended 6345
95 Revised 6345
96 Authority citation revised 6345
97 Authority citation revised 6345
98 Authority citation revised 6345
98.32 (a) amended 6345
99 Authority citation revised 6345
99.1 Amended 6345
122 Authority citation revised 6345
123 Authority citation revised 6346
124 Authority citation revised 6346
124.2 Amended 6346
130 Authority citation revised 6346
130.51 (d) amended 6346
145 Authority citation revised 6346
147 Authority citation revised 6346
160 Authority citation revised 6346
161 Authority citation revised 6346
161.4 (d) amended 6346
162 Authority citation revised 6346
166 Authority citation revised 6346
166.14 (a)(3) amended 6346
166.15 (a), (b), and (c) amended 7415

Chapter III—Food Safety and Inspection Service, Department of Agriculture (Parts 300—599)

317.363 (b)(3) introductory text and (i) amended; interim 463
381.463 (b)(3) introductory text and (i) amended; interim 463

Proposed Rules:

1—199 (Ch. I) 2703
71 3826
94 ..... 2711, 6673, 7722
391 8858
590 8858
592 8858

TITLE 10—ENERGY

Chapter I—Nuclear Regulatory Commission (Parts 0—199)

72.214 Amended 471, 8447
Regulation at 67 FR 69989 eff. date confirmed 2686

Proposed Rules:

20 9595
63 9023
72 8472

TITLE 11—FEDERAL ELECTIONS

Chapter I—Federal Election Commission (Parts 1—9099)

100 Authority citation revised 451
100.8 (a)(2) correctly added 6346
100.14 (f)(2)(ii)(B) correctly revised 6346
100.16 Revised 451
100.19 Introductory text and (b) through (e) revised; (a) heading and (f) added 416
(b) revised; (g) added 3995
100.23 Removed 451
100.33 Added 3995
101.1 (a) revised 3995
102.2 (a)(1)(vi) and (vii) amended; (a)(1)(viii) added 3995
102.6 (a)(1)(ii) revised 451
104 Authority citation revised 3995
104.3 (g) revised 417
Corrected 611
(d)(1) introductory text amended 2871
104.4 Revised 417
104.5 (a), (c) introductory text, heading and (g) revised; (c)(4) and (j) added 418
104.19 Added 419
Revised 3995
104.20 Added 419
(a)(5) corrected 5075
105 Authority citation revised 420
105.2 Revised 420
108.1 (b) revised 420
109 Revised 451
109.2 Removed 420
109.10 Added 420
110 Technical correction 1793
110.1 (d) revised; (n) added 457
(b)(3)(ii)(A) and (B) amended; (b)(3)(ii)(C) added 3996
110.2 (d) revised; (k) added 457
110.7 Removed 457
110.8 Introductory text, (a)(1) and (2) redesignated as (a)(1), (i) and (ii); (a)(2) revised; (a)(3) added 457
(a)(2) correctly added 6346
110.10 Revised 3996
110.14 (f)(2)(i) introductory text, (ii) introductory text, (3)(iii), (i)(2)(i) introductory text, (2)(ii) and (3)(iii) revised 457
(f)(2)(ii)(B) correctly revised 6346
110.18 Added 457
110.19 (e) amended 2872
114.4 (c)(5)(i) and (ii)(A) revised 457
116.11 Added 3996
116.12 Added 3996
400 Added 3997
9035.2 (c) revised 4002

Proposed Rules:

100 7728
110 7728

TITLE 12—BANKS AND BANKING

Chapter II—Federal Reserve System (Parts 200—299)

201.51 (a), (b) and (c) revised 1794
208.36 (a) revised 4096
211.41 Revised 1159
211.42 Revised 1159
211.43 Revised 1159
211.44 Revised 1159
211.45 Revised 1159

CHANGES JANUARY 2, 2003 THROUGH FEBRUARY 28, 2003

TITLE 12 Chapter II—Con.
211.605 Added 7899
220 OTC margin stock lists 8993
272.3 (c) revised 6061

Chapter III—Federal Deposit Insurance Corporation (Parts 300—399)

303.15 Added 7308

Chapter V—Office of Thrift Supervision, Department of the Treasury (Parts 500—599)

550.70 Corrected 2108
563.41 Corrected 1218

Chapter XVII—Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1700—1799)

1750.10–175.13 (Subpart B) Appendix A amended 7312

Chapter XVIII—Community Development Financial Institutions Fund, Department of the Treasury (Part 1800—1899)

1805 Revised; interim 5707
1806 Revised; interim 5720

Proposed Rules:

3 6363
5 6363
6 6363
7 6363
9 6363
19 ..... 1116, 4967, 5075
24 1394
28 6363
34 6363
263 ..... 4967, 5075
308 ..... 4967, 5075
513 ..... 4967, 5075
611 5587
612 5587
614 5587
617 5587
709 8860
1730 3194

TITLE 13—BUSINESS CREDIT AND ASSISTANCE

Proposed Rules:

120 5234
121 5234
125 5134

TITLE 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation (Parts 1—199)

1 Technical correction 3096
21 Technical correction 1512
Special FAA conditions 2183
23 Special FAA conditions 1, 3, 5538
25 Special FAA conditions 255, 5208
Technical correction 3096
25.735 (f)(2) and (g) corrected 1955
29 Special FAA conditions 2183
36 Corrected 1512
36.6 Corrected 2402
39.13 ..... 12, 15, 17, 19, 24, 26, 28, 29, 32, 35, 38, 258, 472, 475, 478, 480, 482, 484, 486, 487, 489, 998, 1000, 1002, 1518, 1520, 1523, 1524, 1527, 1530, 1957, 1962, 2688, 2873, 3173, 3378, 3380, 3807, 4097, 4369, 4371, 4373, 4376, 4379, 4890, 4893, 4899, 4901, 4903, 4904, 4909, 4911, 5542, 5806, 5809, 5811, 5814, 5816, 5819, 5821, 5823, 6349, 6816, 7901, 7903, 7906, 7909, 7911, 7912, 8540, 8995, 9504, 9506, 9509, 9510, 9512, 9515, 9517, 9519, 9521, 9522, 9524, 9526
Corrected 6, 10, 3808, 7651
61 SFAR No. 73 amended 43
61.18 Added 3774
63.14 Added 3774
65.14 Added 3775
71.1 ..... 44, 260—264, 491, 2186, 2187, 2188, 2421—2425, 2875, 4098, 6606, 6607, 7914, 7915, 7916, 8703—8707, 8997, 8998, 9000, 9528
Corrected 1657, 2423, 3808, 3934, 7913, 7917, 8997
Regulation at 67 FR 68757 eff. date confirmed 2186
Technical correction 7651
73.23 Amended 3175
73.66 Amended 3174
73.89 Amended 7918

CHANGES JANUARY 2, 2003 THROUGH FEBRUARY 28, 2003

91 Technical correction 1512
SFAR No 94. amended 7691
Appendix D amended 9795
93 Heading revised 9795
93.1 Revised 9795
93.51 Revised 9795
93.71 (Subpart E) Added 9795
93.80 Added 9795
93.81 (a) and (b) designation removed; (b)(1), (2), (2)(i), (ii) and (iii) redesignated as (a), (b), (b)(1), (2) and (3) 9795
93.117 Revised 9795
93.151 Revised 9795
93.152 Added 9795
93.251—93.253 (Subpart T) Nomenclature change 9795
93.305 Regulation at 61 FR 69330 stayed in part until 2–2–06 9498
95 7918
97 Technical correction 3096
97.21—97.35 ..... 265, 492, 1796, 1963, 3810, 3811, 6817, 6819, 8708, 8710
119 Comment period extended 5782
121 Comment period extended 5782
129 Comment period extended 5782
135 Comment period extended 5782
150 Correctly amended; CFR correction 6608
183 Comment period extended 5782

Proposed Rules:

1 6802
25 ..... 1932, 5241
39 ..... 71, 302, 305, 308, 311, 315, 317, 320, 322, 324, 516, 518, 1016, 1017, 1586, 1802, 1805, 2714, 3475, 3826, 3829, 3832, 3836, 4116, 4398, 4725, 4727, 4730, 4731, 4737, 4739, 5610, 5856, 6376, 6379, 6380, 6382, 6383, 7081, 7084, 7449, 7451, 7947, 8155, 8157, 8161, 8473, 8475, 8477, 8555, 8558, 8560, 8563, 8564, 8566, 8862, 8865, 9032, 9034, 9602, 9607
71 ..... 328, 2460—2463, 3196, 3778, 3837, 3934, 4118, 4741, 4742, 5613, 6677, 7949
73 3198
91 ..... 3778, 6802, 9818
95 3778
121 ..... 1942, 3778, 6802
125 ..... 3778, 5488, 6802
129 3778
135 ..... 3778, 5488, 6802
158 1807
255 ..... 1172, 7325
399 1172

TITLE 15—COMMERCE AND FOREIGN TRADE

Subtitle A—Office of the Secretary of Commerce (Parts 0—29)

6.4 Revised 4381
6.5 Revised 4382

Chapter II—National Institute of Standards and Technology, Department of Commerce (Parts 200—299)

270 (Subchapter G) Established; interim 4694

Chapter VII—Bureau of Industry and Security, Department of Commerce (Parts 700—799)

744 Authority citation revised 1797
744.17 Added 1797
744 Supplement No. 1 added 1797
Supplement No. 1, Category 3 (ECCN 3A001) amended 1798

Chapter VIII—Bureau of Economic Analysis, Department of Commerce (Parts 800—899)

806.15 (h)(1) and (2) revised 3813
806.17 Revised 1532

Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

902 Technical correction 2636
902.1 (b) table amended (OMB numbers) 209, 2192

Chapter XX—Office of the United States Trade Representative (Parts 2000—2099)

2016 Added; interim 5543

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission (Parts 0—999)

303.7 (m) amended 3816

CHANGES JANUARY 2, 2003 THROUGH FEBRUARY 28, 2003

TITLE 16 Chapter I—Con.

305.8 (b) revised 8449
305.10 (a) revised 8449
310 Revised 4669
801.1 (h) revised 2430
801.21 Introductory text revised 2430
803.9 (a) Examples 7 and 8 added; (c) revised 2431
803.20 (c) and example revised 2431
803 Appendix revised 2431

Chapter II—Consumer Product Safety Commission (Parts 1000—1799)

1500.85 (a)(14) added 4699
1512 Authority citation revised 7073
1512.2 (a) revised 7073

Proposed Rules:

0—999 (Ch. I) 2465

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Futures Trading Commission (Parts 1—199)

1 Fee schedule **44036**
Technical correction **63966, 67445**
1.3 (gg)(4), (vv) and (ww) added **58297**
1.12 (g)(3) and (h) amended **62351**
1.32 (a) introductory text revised 5551
1.41a Removed **62353**
1.41c Removed **62353**
1.42 Removed **62353**
1.49 Added 5551
1.55 (h) added **58297**
1.62 (b) amended **62351**
1.65 (d) amended **62351**
1.66 (b)(5)(ii) amended **62351**
3.2 (c) revised **38874**
3.10 (a)(2)(i) revised; (d) removed **38874**
Corrected **41166**
3.11 (a)(2), (3) and (b) revised; (C) and (d) removed **38874**
3.12 (c)(1), (4), (d)(1) introductory text and (f) revised; (d)(2) and (3) redesignated as (d)(3) and (4); new (d)(2) added **38874**
3.12 (g)(2)(i) and (ii) amended **62351**
3.22 Amended **62351**
3.31 (a)(2) redesignated as (a)(3); new (a)(2) added; (a)(1) and new (3) revised; (d) amended **38875**
3.33 (b) introductory text and (e) amended; (b)(3) and (d) removed; (b)(4) through (7) and (c)(2) redesignated as (b)(3) through (6) and (c) **38876**
(e) amended **62351**
3.40 Revised **38876**
3.41 Removed **38876**
3.42 (a)(2), (3), (4) and (6) revised **38876**
3.44 (a)(4) introductory text and (5) revised **38876**
3.46 (a)(6) and (8) revised **38876**
3.50 (c) and (d) amended **62351**
3.55 (e)(2) amended **62351**
3.56 (e)(2) amended **62351**
3.63 Amended **62351**
3.70 (a) amended **62351, 62352**
3 Appendix A amended **62352**
4 Technical correction **44931**
4.2 (a) amended **62352**
4.5 (c) introductory text, (3) and (d)(1) amended; (f)(3) removed; (f)(4) redesignated as (f)(3) **77410**
4.7 (b)(3)(i), (d)(1)(viii), (ix) and (3) amended; (d)(2) revised **77411**
4.12 (b)(3)(vii) removed; (b)(3)(viii) redesignated as new (b)(3)(vii); (b)(3) introductory text, new (vii) and (5)(ii) amended **77411**
4.13 (b)(1)(iv)(A) removed; (b)(1)(iv)(B) redesignated as (b)(1)(vii)(A) **77411**
4.14 (a)(8)(v)(C) removed; (a)(8)(v)(D) redesignated as (a)(8)(v)(C); (a)(8)(iii) and new (v)(C) amended **77411**
4.22 (c) introductory text, (f)(1) and (2)(i) amended **77411**
4.26 (c) removed; (b) redesignated as new (c); new (b) added **42710**
4.26 (d) revised **77411**
4.36 (d) amended **77411**
9.2 (h) amended **62352**
9.11 (c) amended **62352**
9.12 (b) amended **62352**
9.26 Amended **62352**
9.31 (a) amended **62352**
11 Technical correction **39473**
11.2 (a) amended **62352**
11.4 (e) and (f) added **37322**
15.03 (b) revised **64524**
16.07 Amended **62352**
17.03 Amended **62352**
18.03 Amended **62352**
19.00 (a)(3) amended **62352**
21.02a (c) amended **62352**
30 Order **30785, 45056**
30.7 (c) revised 5551
31.6 (f)(1) and (2) amended **62352**
31.13 (n)(1) amended **62352**
31.14 (a) amended **62352**
36.3 (b)(2)(ii) amended **62352**
37 Authority citation revised **62876**
37.2 Revised **62876**
37.5 (f)(1) and (2) amended **62352**
(a), (b) and (f)(1) revised **62876**
37.6 (a), (b) introductory text, (1), (2), (i) introductory text, (iii) and (c) revised **62877**
37.8 (d) amended **62352**
38 Authority citation revised **62877**

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 17 Chapter I—Con.

38.2 Revised **62877**
38.3 (e)(1) and (2) amended **62352**
(a) revised **62878**
38.4 (a)(2) revised **62878**
38.5 (c) added **62878**
38 Appendix B amended **62352**
39 Authority citation revised **62878**
39.3 (e)(1) and (2) amended **62352**
39.4 Heading revised; (c) text redesignated as (c)(2); (c)(1) added **62878**
40 Fee schedule **38379**
Authority citation revised **62878**
40.1 Amended **62878**
40.3 (a)(4) revised; (a)(5) added **62879**
40.4 (b)(5) and (6) revised; (b)(7) and (8) added **62879**
40.5 (a)(1)(v) and (vi) revised; (a)(1)(vii) added **62879**
40.6 (a)(2) amended; (c)(2)(iii), (iv), (3)(ii)(B), (C) AND (D) revised; (c)(2)(v) and (3)(ii)(E) added **62879**
40.7 (a)(1), (2) and (b) introductory text amended **62352**
(b)(1) revised **62880**
40.8 Added **62880**
40 Appendix C amended **62880**
41 Authority citation revised **36761, 53171, 58297**
Heading revised **53171**
Technical correction **67445**
41.1 (j), (k) and (l) added **36761**
41.3 Redesignated from 41.41 ..... **53171**
(d) amended **62352**
41.25 (a)(2) and (d) added; (b) revised **36761**
41.33 (g)(1) and (2) amended **62352**
41.41 Redesignated as 41.3 ..... **53171**
Added **58297**
41.42—41.49 (Subpart E) Added **53171**
140.72 (a) amended **62352**
140.73 (a) and (b) amended **62352**
140.74 (a), (b) and (c) amended **62352**
140.75 Amended **62352**
140.76 (a) and (b) amended **62352**
140.77 (a), (b) and (c) amended **62353**
140.91 (a) and (b) amended **62353**
140.92 (a), (b) and (c) amended **62353**
140.93 (a), (b) and (c) amended **62353**
140.95 (a), (b) and (c) amended **62353**
140.96 (a) through (d) amended **62353**
140.97 (a), (b) and (c) amended **62353**
140.99 (a)(5) amended; (d)(2) revised **62353**
140.100 Added **45299**
Removed **62354**
140.735–2a Note 7 amended **62353**
145.6 (a) amended **62353**
(b)(2) revised **63539**
145 Appendix A amended **62353, 63539**
150.3 (b) amended **62353**
150.4 (e) amended **62353**
170.12 Amended **62353**
171.28 Amended **62353**
171.31 (a) amended **62353**
190 Technical correction **67445**
190.01 (f) revised; (kk)(9) added **58298**
190.02 (d)(8) amended; (d)(11) and (12) redesignated as(d)(12) and (13); new (d)(11) added **58298**
190.07 (b)(1)(iii)(B)(*3*) revised **58298**
190.08 (a)(2)(v) and (vi) revised; (a)(2)(vii) added **58298**
190.10 (h) added **58298**
(a), (b)(4), (d) heading, (1), (2) and (3) amended **62353**
190 Appendix A amended **58298**
Appendix B revised 5552

Chapter II—Securities and Exchange Commission (Parts 200—399)

200.20b (a) revised **43535**
200.30–3 (a)(77) added **65037**
200.30–7 (a)(12) added; authority citation removed **30326**
200.30–14 (g)(1)(xv) added **56220**
205 Added 6320
210 Authority citation revised 4871
210.2–01 (c)(2)(iii), (4), (e)(1), (f)(1), (3) and (7) revised; (c)(6), (7), (8) and (f)(17) added; (e)(2) removed; (e)(3) redesignated as (e)(2) 6044
210.2–06 Added 4872
210.2–07 Added 6048
210.3–01 (c) introductory text and (d) amended; (e) revised; (i) added **58503**
210.3–09 Authority citation removed; (a) and (b) amended; (b)(1) through (4) added **58504**
210.3–12 (a) and (b) amended; (g) added **58504**
228 Authority citation revised **57287**
Authority citation amended 4830, 5125, 5998
228.10 (h) added 4830
228.303 (c) and (d) added; introductory text and new (c) amended 5998

NOTE: **Boldface page numbers indicate 2002 changes.**

228.307 Added **57287**
228.401 (e) added 5125
228.406 Added 5126
228.601 Table amended; (b)(14) added 5126
229 Authority citation revised **57287**
Authority citation amended 4831, 5127, 5999
229.10 Heading revised; (h) added 4831
229.101 (e) revised **58504**
229.303 Authority citation removed; (a)(4), (5) and (c) added; (a) introductory text, (3)(iv), (5)(ii)(D) and *Instructions* amended 5999
229.307 Added **57287**
229.401(h) added 5127
229.406 Added 5127
229.601 Table amended; (b)(14) added 5127
230 Authority citation amended **19673**
Authority citation amended 5128
230.134b Revised **19868**
230.238 Added 192
230.403 (c) revised; authority citation removed **36698**
230.405 Amended **19673**
230.430 (b) introductory text revised **19868**
230.430A (e) revised **19869**
230.493 Revised **36699**
230.495 (a), (c) and (d) revised **19869**
230.496 Revised **19869**
230.497 (c) and (e) revised **19869**
231 Interpretive releases **43246**
232 Authority citation revised **57287**
232.100 (a) and (c) revised **36699**
232.101 (a)(1)(iii) note, (c)(16) and (17) redesignated as (a)(1)(iii) Note 1, (c)(15) and (16); (a)(1)(iii) Note 2, (a)(1)(vi), (vii), (viii) and (b)(7) through (10) added; (a)(1)(iv), (v), (c)(5), (6), (14), new (c)(15) and (16) amended; (b)(1), (6) and (c)(9) revised; (c)(15) and (d) removed **36699**
232.302 (a) and (b) revised **57287**
232.303 (b) revised **36700**
232.306 (a) revised; (b) redesignated as (e); new (b), (c) and (d) added **36700**
232.311 (f), (g) and (h) redesignated as (h), (i) and (j); new (f) and (g) added **36700**
232.601 Removed **36700**
239 Authority citation amended **19869**
239.14 Form N–2 amended 6582
239.15A Form N–1A amended 6581
239.17a Form N–3 amended 6583
239.17b Form N–4 amended **69979**
239.17c Added **19870**
Form N–6 amended **69981**
239.31 Form F–1 amended **36700**
239.32 Form F–2 amended **36701**
239.33 Form F–3 amended **36701**
239.34 Form F–4 amended **36701**
239.36 Form F–6 amended **36702**
239.37 Form F–7 amended **36702**
239.38 Form F–8 amended **36702**
239.39 Form F–9 amended **36703**
239.40 Form F–10 amended **36703**
239.41 Form F–80 amended **36704**
239.42 Form F–X amended **36709**
239.800 Form CB amended **36707**
240 Authority citation amended **57288, 58299**
Authority citation amended 4355, 5364
240.3a4–1 Undesignated center heading removed **19673**
240.3a5–1 Revised 8700
240.3a11–1 Revised **19673**
240.3b–18 Revised 8700
240.6h–1 Added **36762**
240.9b–1 (b)(1) amended; (c)(8) revised; authority citation removed 192
240.10A–2 Added 6048
240.10b–10 (a)(2)(i)(C), (b)(2) and (3) amended; (a)(7)(i) through (iv) and authority citation removed; (e) redesignated as (f); new (e) added **58312**
240.11aC1–7 Removed **79458**
240.11d2–1 Added **58313**
240.12a–9 Added 192
240.12b–2 Amended **58505**
240.12b–12 (d) revised; authority citation removed **36704**
240.12b–15 Revised **57288**
240.12b–25 heading, (a) and (b)(2)(ii) revised 5364
240.12h–1 (b)(2) and (c) amended; (d) and (e) added; authority citation removed 192

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 17 Chapter II—Con.

240.13a–1 (b) revised; authority citation removed 4355
240.13a–10 Note redesignated as Note 1; Note 2 added **57288**
(b), (c), (e)(2) and (f) amended; (j) added **58505**
240.13a–14 Added **57288**
240.13a–15 Added **57289**
(a) revised 5364
240.13e–102 Amended **36705**
240.14a–101 Amended 6048
240.14d–102 Amended **36705**
240.14d–103 Amended **36706**
240.15a–8 Revised 8701
240.15a–11 Added 8701
240.15c3–3 Authority citation removed; (a)(1) amended; (a)(14), (15) and (o) added **58299**
240.15d–5 Corrected; CFR correction **59779**
240.15d–10 Authority citation revised **57288**
Note redesignated as Note 1; Note 2 added **57289**
(b), (c), (e)(2) and (f) amended; (j) added **58505**
240.15d–11 (b) revised; authority citation removed 4355
240.15d–14 Added **57289**
240.15d–15 Added **57290**
(a) revised 5364
240.16a–2 Introductory text amended **43535**
240.16a–3 (d) revised **43535**
(f)(1)(i)(A) and (g) revised **56467**
240.16a–6 (a) introductory text and (b) revised **56467**
240.16a–8 (a)(1) revised **56467**
240.17a–3 (f) added **58299**
240.17a–4 (b)(9) revised; (k) and (l) redesignated as (l) and (m); new (k) added; eff. in part 5–2–03 ..... **58299**
240.17a–5 (l)(4) added **58300**
240.17a–7 (a)(1) and (2) amended; (c) redesignated as (d); new (c) added **58300**
240.17a–11 (i) added **58300**
240.17a–13 (e) redesignated as (f); new (e) added **58300**
240.31–1 Amended **46108**
241 Interpretive releases **43246**
242 Authority citation revised **53176**
Heading revised 9492
242.100 Undesignated center heading added **53176**
242.400 Added **53176**
242.401 Added **53176**
242.402 Added **53176**
242.403 Added **53176**
242.404 Added **53176**
242.405 Added **53176**
242.406 Added **53176**
242.500 Added 9492
242.501 Added 9492
242.502 Added 9492
242.503 Added 9492
242.504 Added 9492
242.505 Added 9492
244 Added 4832
245 Added 4355
249 Authority citation amended **57290**
Authority citation amended 5128, 5364, 6001, 6049
249.103 Amended **43535**
Form 3 amended **56467**
249.104 Amended **43535**
Form 4 amended **56468**
249.105 Amended **43535**
Form 5 amended **56468**
249.220f Form 20–F amended **36706, 57293**
Form 20–F amended 4358, 5129, 6001, 6049
249.240f Form 40–F amended **36707, 57294**
Form 40–F amended 4359, 5130, 6001, 6049
249.250 Form F–X amended **36709**
249.306 Form 6–K amended **36708**
Authority citation revised 4358
Form 8–K amended 4359, 4833, 5128
249.308a Form 10–Q amended **57290**
Revised; Form 10–Q amended **58506**
249.308b Form 10–QSB amended **57291**
249.310 Authority citation revised **57290**
Form 10–K amended **57292,**
Form 10–K amended 6050
Revised; Form 10–K amended **58506**
Form 10–K amended 5131
249.310b Form 10–KSB amended **57293**
Form 10–KSB amended 5132, 6050
249.322 (a) revised; Form 12b–25 amended 5364
249.330 Revised 5364
Form N-SAR amended 5366

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

249.331 Added 5365
Form N-CSR added 5368, 6051
Form N-CSR amended 6584
249.330 Form N–SAR amended **57296**
249.480 Form CB amended **36707**
269.5 Form F–X amended **36709**
270 Authority citation amended **19870, 57295**
Authority citation amended 5365
270.3a–1 Introductory text and (b) revised **43536**
270.3a–2 (a) introductory text revised **43536**
270.3a–3 Introductory text and (b) revised **43536**
270.3a–5 (a) introductory text revised **43536**
270.3a–6 (a) revised **43536**
270.6c–6 (h) introductory text revised **43536**
270.6e–2 (b)(15)(iv) revised **43536**
270.6e–3(T) (b)(15)(iii)(B) revised **43536**
270.8b–11 Authority citation removed; (b) revised **19870**
270.8b–12 (b) revised **19870**
270.8b–15 Amended 5365
270.10f–3 (b)(1) and (4) revised **31079**
(b) redesignated as (c); (a)(6), (7), (8) and new (b) added; (c) heading and (7) revised 3152
270.12d3–1 (c) revised; (d)(9) added 3152
270.17a–6 Revised 3152
270.17a–8 Revised **48518**
270.17a–10 Added 3153
270.17d–1 (d)(5) and (6) revised 3153
270.17e–1 (b)(3) and (d) revised 3154
270.17f–4 Revised 8442
270.30a–1 Revised 5364
270.30a–2 Added **57295**
Heading, (a) and (c) revised 5365
270.30a–3 Added 5365
270.30b1–1 Revised 5365
270.30b1–3 Amended **57296**
Revised 5365
270.30b1–4 Added 6581
270.30b2–1 Revised 5366
270.30d–1 Added 5366
270.30f–1 Redesignated as 270.30h–1; revised **43537**
270.30h–1 Redesignated from 270.30f–1 ..... **43537**
274 Authority citation revised **19870, 57296, 69979**
Authority citation revised 5366
Authority citation amended 6051, 6581
Form N-1A amended **19870**
274.11A Form N-1A amended 6581
274.11a–1 Form N–2 amended 6582
274.11b Form N–3 amended 6583
274.11c Form N–4 amended **69979**
274.11d Added **19870**
Form N-6 amended **69981**
274.12 Revised; Form N–8B–2 amended; Form N–6 added **19870**
274.101 Form N-SAR amended **31079, 57296**
Revised; Form N–SAR amended 5366
274.128 Added 5368
Form N–CSR amended 6051, 6584
274.129 Added; Form N–PX amended 6584
274.202 Revised **43537**
Form 3 amended **43537, 56467**
274.203 Revised **43537**
275.203A–2 (f) added **77625**
275.204–2 (c) introductory text, (1) and (2) redesignated as (c)(1) introductory text, (i) and (ii); (c)(2) added; (e)(1) revised 6592
275.206(4)–6 Added 6593
279.1 Form ADV amended **77625**

Chapter IV—Department of the Treasury (Parts 400—499)

420.2 (c) revised **77414**
420.3 (c)(1), (2) and (3) revised **77415**
420 Appendix B amended **77415**
Appendix B corrected 402

Proposed Rules:

1 ..... **52641**
3 ..... **19358**
4 ..... **65743, 68785, 69598, 77446**
..... 2254
15 ..... **50608**
37 ..... **20702**
38 ..... **20702**
39 ..... **20702,**
40 ..... **20702, 65325**
71 ..... **69598**
190 ..... **52641**
201 8138
205 ..... **71670**
..... 6324
210 ..... **44964, 66208, 71018, 76780**
..... 160

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 17 *Proposed Rules:—Con.*

228.....**35620, 42914, 66208, 68054, 68790, 77594**
.....2638
229.....**19896, 35620, 42914, 44964, 66208, 68054, 68790, 77594**
.....2638
230.....**19914, 36712, 50326, 79466**
232.....**41877, 51508, 79466**
239.....**19886, 19914, 36712, 60828, 79466**
.....160
240.....**19896, 30628, 38588, 38610, 39642, 39647, 41877, 42914, 50326, 51508, 59748, 65325, 66208, 67496, 69430, 71909, 76780, 77594, 79466**
.....2638, 6324
242.....**51510**
244.....**68790**
245.....**69430**
249.....**19896, 19914, 35620, 38610, 41877, 42914, 51508, 57298, 60828, 68054, 68790, 69430, 76780, 79466**
.....160, 2638, 6324
250.....**79466**
259.....**79466**
260.....**79466**
269.....**79466**
270.....**31081, 36712, 57298, 66208, 71915**
.....160, 7038
274.....**19886, 36712, 57298, 60828, 66208, 76780, 77594, 79466**
.....160, 2638
275.....**19500, 48579, 60841**
.....7038
279.....**19500, 48579**
420.....**49630**

TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

2.8 Removed.....**31069**
11 Appendix A revised.....**70159**
35 Heading revised.....**31069**
Order.....**39272**
35.1 Heading revised; (g) added.....**31069**
35.10a Added.....**31069**
35.10b Added.....**31069**
35.25 (c)(1)(ii)(C) removed; (c)(1)(ii)(D) redesignated as new (c)(1)(ii)(C).....**36096**
101 Amended.....**67701**
Regulation at 67 FR 67701 eff. date corrected.....**70007**
141.1 (b)(1)(i) and (2) revised.....**36096**
157.208 (d) Table I revised.....8711
157.215 (a) Table II revised.....8711
201 Amended.....**67703**
Regulation at 67 FR 67703 eff. date corrected.....**70007**
260.1 (b) revised.....269
260.2 (b) revised.....269
284 Policy statement.....**37669**
Order.....**44529, 49564**
284.12 (a) removed; (b) and (c) redesignated as new (a) and (b); new (a)(1)(i) through (v) amended.....**30794**
284.241—284.242 (Subpart H) Removed.....**72099**
352 Amended.....**67706**
Regulation at 67 FR 67706 eff. date corrected.....**70007**
357.2 (c)(3) revised.....269
375.302 (x) added; eff. 1–7–03.....**52410**
375.304 (b)(1)(iv) revised; (b)(1)(v) added.....6609
381.302 (a) amended.....**54087**
381.303 (a) amended.....**54087**
381.304 (a) amended.....**54087**
381.305 (a) amended.....**54087**
381.403 Amended.....**54087**
381.505 (a) amended.....**54087**
381.801 Amended.....**54087**
385 Authority citation revised.....**52412**
385.1601—385.1602 (Subpart P) Added.....**52412**
385.2011 (c)(3) revised.....**36096**
(c)(3) revised.....269
388.....**64835**
388.109 (a)(4)(i) revised.....**21996**
390 Added; eff. 1–7–03.....**52410**
390.1 Eff. date extended.....1964
Regulation at 67 FR 52410 suspended.....7416
Chapter I Form 1–F corrected.....45

Chapter III—Delaware River Basin Commission (Parts 400—499)

401.101—401.119 (Subpart H) Authority citation revised.....**56753**
401.110 (a) revised.....**56753**

Chapter XIII—Tennessee Valley Authority (Parts 1300—1399)

1301.4 (a) revised.....4700
1308 Comment request.....1964

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

Proposed Rules:

1—399 (Ch. I).....**16071, 20922**
2.....**51516**
4.....**58739**
16.....**58739**
35.....**22250, 54749, 55376, 55452, 57187, 58751, 61049, 63327, 67339, 69816, 70194, 70890, 76122, 76321, 77007**
.....3842, 4401
37.....**35062**
101.....**51150, 57994, 69816, 70890**
154.....**62918, 69816, 70890**
157.....4120
161.....**35062, 62918**
201.....**51150, 57994, 69816, 70890**
250.....**35062, 62918**
284.....**19136, 35062, 39315, 48592, 54387, 62918, 72870**
346.....**69816, 70890**
352.....**51150, 57994, 69816, 70890**
358.....**35062**
375.....**57994, 64835**
388.....**57994**

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

4.7 Heading revised; (b) text redesignated as (b)(1); new (b)(1) amended; (b)(2), (3), (4) and (e) added.....**66331**
(b)(3)(i) corrected.....1801
4.7a (c)(1) amended; (c)(4) and (f) added.....**66332**
4.8 (b) amended.....**66332**
4.30 (n) added.....**66332**
4.37 (d) through (g) redesignated as (e) through (h); (c) and new (e) amended; new (d) added.....**68032**
4.94 (b) amended.....**52862**
10 Authority citation amended.....**39289**
10.183 Revised.....**39289**
10.199 Revised.....**62882**
12 Technical correction.....**43247, 66333**
12.104g (a) amended.....**38878, 47449, 59160, 61260**
19.1 (a) heading, (11) and (c) added; (a)(1) and (b) revised.....**68032**
19.2 (d) added; (f) amended.....**68032**
19.9 (a) revised.....**68032**
19.12 (a) introductory text revised.....**68033**
24.24 (e)(4)(iv) revised.....**31953**
101.3 (b)(1) table amended.....3384
102.21 (b)(5) and (e)(1) table corrected; interim.....**51752**
(e)(2)(ii) and (iii) introductory text revised.....8713
113.64 (a) amended; (c) through (f) redesignated as (d) through (g); new (c) added.....**66333**
122 Authority citation amended.....**42712, 55721**
122.15 (b) amended.....**35723**
122.48 (c) revised.....**55721**
122.49a (c)(2) amended.....**42712**
122.49b Added.....**42712**
122.50 Heading revised; (d), (e) and (f) redesignated as (e), (f) and (g); (c) and new (e) amended.....**68033**
122.181 Amended; interim.....**48984**
122.182 (a), (c) and (d) revised; (b), (e), (f) and (g) amended; interim.....**48984**
Corrected.....**51928**
122.183 (a) and (d) revised; (c) amended; interim.....**48985**
122.184 Revised; interim.....**48986**
Corrected.....**51928**
122.185 Revised; interim.....**48986**
122.186 Revised; interim.....**48986**
122.187 Revised; interim.....**48986**
Corrected.....**51928, 54023**
122.188 Heading and (a) through (d) amended; interim.....**48988**
122.189 Added.....**48988**
123.10 Heading revised; (d), (e) and (f) redesignated as (e), (f) and (g); (c) and new (e) amended; new (d) added; (a) introductory text revised.....**68033**
127 Authority citation amended.....**68033**
127.1 Authority citation removed.....**68034**
127.2 Authority citation removed.....**68034**
127.11 Authority citation removed.....**68034**
127.12 Authority citation removed.....**68034**
127.13 Authority citation removed; (a) revised.....**68034**

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 19 Chapter I—Con.

127.14 Authority citation removed; (a) revised **68034**
127.21 Authority citation removed; amended **68034**
127.23 Authority citation removed **68034**
127.24 Authority citation removed **68034**
127.25 Authority citation removed **68034**
127.26 Authority citation removed **68034**
127.27 Authority citation removed **68034**
127.28 Authority citation removed; (a) amended **68034**
127.29 Authority citation removed **68034**
127.31 Authority citation removed **68034**
127.32 Authority citation removed **68034**
127.33 Authority citation removed **68034**
127.34 Authority citation removed **68034**
127.35 Authority citation removed **68034**
127.36 Authority citation removed **68034**
127.37 Authority citation removed **68034**
127.41—127.43 (Subpart E) Added **68034**
132.16 Authority citation revised **46588**
Removed **46588**
132.18 Regulation at 66 FR 21666 confirmed **55723**
141 Authority citation amended **36097**
141.4 (b)(3) revised **36097**
141.5 Revised **68035**
141.51 Revised 8719
141.57 Added 8719
142.2 (a) revised **68035**
142.21 (e)(1) and (2) amended; (g) redesignated as (h); new (g) added; new (h) revised 8721
142.22 (a) amended 8721
163 Regulation at 66 FR 21667 confirmed **55723**
163 Appendix amended **46588, 62884**
177 Authority citation revised **53496**
177.2 (b)(2)(ii)(B) amended **53496**
177.9 Heading revised; (a) and (c) amended; (d) and (e) removed **53496**
177.10 (a) and (e) amended; (b) removed; (c) revised **53496**
177.11 (b)(7) amended **53496**
177.12 Redesignated as 177.13; new 177.12 added **53497**
(c)(2)(ii) and (d)(1)(viii) corrected **54733**
177.13 Redesignated from 177.12 ..... **53497**
178.2 Table amended **53499, 66333, 68035**
181 Authority citation revised **15482**
181.72 (b) revised **15482**
181 Appendix amended **15483**
Appendix corrected **19810**
191 Authority citation amended **48548**
191.13 (a) designated; (a) heading added; (b) amended **16637**
191.26 (b)(2) and (3) amended; (b)(4) added; interim **48370**
191.51 (b)(2) *Example 2* revised **48548**
191.171 (a) revised **16637**
191.172 (a) revised **16637**
191.173 (e) revised **16637**
191.175 (b) redesignated as (b)(1); (a) and new (b)(1) amended; (b)(2) added; (c) revised **16637**
191 Appendix A amended **16638**

Chapter II—United States International Trade Commission (Parts 200—299)

201 Waiver 3175
201.8 (f) and (g) added **68037**
201.16 (e) added **68037**

Chapter III—International Trade Administration, Department of Commerce (Parts 300—399)

360 Added **79849**

Proposed Rules:

1—199 (Ch. I) **70706**
4 ..... **51519**
12 ..... **51800**
24 ..... **62920**
101 ..... **54137, 62920, 71510**
..... 1172
103 1173
111 ..... **63576**

NOTE: **Boldface page numbers indicate 2002 changes.**

113 ..... **51519**
122 ..... **71510, 71512**
123 ..... **71512**
133 ..... **39321**
141 ..... **16664, 39322**
142 ..... **16664**
146 ..... **48594**
151 ..... **39322**
201 ..... **20709, 38614**
204 ..... **38614**
206 ..... **38614**
207 ..... **38614**
400—499 (Ch. III) **47338**

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board (Parts 200—399)

1 Revised **78885**
30 (Subchapter C) Revised **78876**
217.9 (b)(1) amended; (b)(3) added **42714**
217.30 (b) removed; (c) redesignated as new (b); new (c) added **42714**
260 Heading revised **77153**
260.1 Heading and (a) introductory text revised; (b), (d)(1) and (2) amended **77153**
260.2 Heading revised **77153**
260.3 Heading, (a), introductory text, (b), (c), (d) and (f) revised **77153**
260.4 Heading and (b) through (i) revised **77153**
260.5 Revised **77154**
260.8 Amended **77155**
260.9 (d) through (g) redesignated as (e) through (h); (b), new (e) and new (f) revised; new (d) added **77155**
(b) correctly amended 6820
260.10 Revised **77156**
320.5 Amended **77156**
320.6 (b) introductory text, (d) and (e) revised; (b)(8) and (f) added **77156**
320.10 (e) revised **77156**
320.11 (a) and (f) revised; (d), (e), and (g) amended **77156**
320.12 Revised **77157**
320.25 (a), (b) and (d) revised **77157**
320.28 Revised **77157**
320.39 Revised **77157**
(a) correctly amended 6820
320.40 Heading revised; (d) added **77158**
320.49 Revised **77158**

Chapter III—Social Security Administration (Parts 400—499)

404 Regulation at 65 FR 42285 confirmed **20893**
404.201 Revised 4701
404.277 Revised 4702
404.304 Revised 4702
404.310 Revised 4702
404.311 Revised 4702
404.312 Revised 4702
404.313 Revised 4703
404.315 Heading and (a) introductory text revised 4704
404.316 (b)(2) revised 4704
404.317 Revised 4704
404.321 (a) and (c)(1) revised 4704
404.335 Revised 4704
404.336 Revised 4705
404.337 Revised 4706
404.338 Revised 4706
404.352 Revised 4707
404.401—404.480 (Subpart E) Authority citation revised 4707
404.409 Added 4707
404.410 Revised 4708
404.411 Revised 4709
404.412 Revised 4710
404.413 Revised 4710
404.421 Revised 4710
404.459 Regulation at 65 FR 42285 confirmed **20893**
404.621 Revised 4711
404.623 Revised 4712
404.929 Revised 5218
404.936 Revised 5218
404.938 Revised 5219
404.950 (a) and (e) revised 5219
416.1429 Revised 5219
416.1436 Revised 5220
416.1438 Revised 5220
416.1450 (a) and (e) revised 5221
404.1501—404.1599 (Subpart P) Appendix 1 amended **20024, 43538**
Appendix 1 corrected **35723**
416.570 Amended **38383**
416.572 Heading, (a), (b), (c)(2) and (e) revised **38383**
416.1321—416.1340 (Subpart M) Regulation at 65 FR 42286 confirmed **20893**
416.1340 Regulation at 65 FR 42286 confirmed **20893**

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 20

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

655 Regulation at 65 FR 43542 withdrawn 59779
655.0 Regulation at 65 FR 43542 withdrawn 59779
655.00 Regulation at 65 FR 43542 withdrawn 59779
655.90—655.114 (Subpart B) Regulation at 65 FR 43542 withdrawn 59779
655.90 Regulation at 65 FR 43542 withdrawn 59779
655.92 Regulation at 65 FR 43542 withdrawn 59779
655.100 Regulation at 65 FR 43543 withdrawn 59779
655.101 Regulation at 65 FR 43543 withdrawn 59779
655.103 Regulation at 65 FR 43543 withdrawn 59779
655.104 Regulation at 65 FR 43543 withdrawn 59779
655.105 Regulation at 65 FR 43543 withdrawn 59779
655.106 Regulation at 65 FR 43543 and 43544 withdrawn 59779
655.108 Regulation at 65 FR 43544 withdrawn 59779
655.112 Regulation at 65 FR 43544 withdrawn 59779

Proposed Rules:

206 77447
217 77448
218 41205
220 41205
225 41205
404 ..... 19138, 39904, 69161, 69164, 78196
408 55744
416 ..... 22021, 39904, 69161, 69164, 78196
422 69164
429 77942
604 72122
655 ..... 30466, 59797, 64074
656 30466

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

1.101 Regulation at 66 FR 65447 eff. date stayed 34387
2 Authority citation revised 48384
Technical correction 49396, 58678
2.125 Revised; eff. 1–20–03 48384
5.28 (c)(1) revised; (c)(10) redesignated as (c)(11); new (c)(10) added 53306
Regulation at 67 FR 53306 eff. date confirmed 71461
14.100 (c)(7) heading and (ii) revised 45900
16.42 (a) revised 53306
Regulation at 67 FR 53306 eff. date confirmed 71461
20.100 (c)(41) added 35729
58.3 (e)(23) added 35729
(e)(9) correctly removed; CFR correction 6609
73.125 Added 35431
Regulation at 67 FR 35431 confirmed 49567
73.3128 Added 65312
Regulation at 67 FR 65312 eff. date confirmed 7416
101 Policy statement 79851
101.65 (d)(2)(ii)(C), (3)(ii)(C) and (4)(ii)(B) suspended to 1–1–06 30796
101.80 (c)(2)(ii) redesignated as (c)(2)(iii); heading, (a)(4), (c)(1), (2)(i) introductory text, (B), (C), (E), (F), new (iii), (d)(1), (4) and (e) introductory text revised; (b) amended; (c)(2)(i)(H), (ii), (e)(1)(iii), (iv), (2)(iii) and (iv) added; interim 71470
101.81 (c)(2)(iii)(A)(*1*) revised; (c)(2)(iii)(A)(*2*) redesignated as (c)(2)(iii)(A)(*3*); (c)(2)(ii)(A)(*4*) and (iii)(A)(*2*) added; interim 61782
163.124 Added; eff. 1–1–04 62177
170.3 (e)(2) revised; (e)(3) added 35729

NOTE: Boldface page numbers indicate 2002 changes.

170.100—170.106 (Subpart D) Added 35729
171.1 (i)(1) revised 35731
171.7 (c) added 35731
171.133 (b)(2) and (3) correctly revised; CFR correction 66045
172.380 Added 9003
172.829 Added 45310
173.325 (g) redesignated as (h): new (g) added 15720
173.357 (a)(2) table amended 42716
173.370 (b)(1) revised 61784
174.5 (d)(5) added 35731
179.25 (c) revised 35731
201 Compliance date extension 16304
201.24 Added 6081
201.323 Regulation at 65 FR 4110 eff. date delayed to 1–26–04 70691
201.323 (c)(3) amended; eff. 1–16–04 70692
203.3 Regulation at 64 FR 67761 eff. date delayed in part 4912
203.50 Regulation at 64 FR 67761 eff. date delayed 4912
207.20 Regulation at 66 FR 5466 eff. date delayed to 1–21–04 2690
211.198 Regulation at 67 FR 5056 eff. date delayed; interim 49568
226.1 Regulation at 67 FR 5056 eff. date delayed; interim 49568
310.500 Removed 42997
310.545 (a)(28)(i) heading added; (a)(28)(ii) and (d)(34) through (36) added; (d)(28) revised 31125
(a)(12)(iv)(C) and (d)(30) added 31127
314.600—314.650 (Subpart I) Added 37995
314.94 (a)(9)(ii), (iii) and (iv) amended; (a)(9)(v) revised 77672
314.127 (a)(8)(ii)(A) introductory text, (B) and (C) amended 77672
320.1 (c) revised; (e) amended 77672
320.21 (d)(1) removed; (d)(2) and (3) redesignated as (d)(1) and (2); (a)(1), (2), (b)(1), (2), (c)(1), new (d)(2)(i), new (ii), (e), (f), (g) introductory text, (2) and (h) revised 77672
320.22 (a), (b)(1)(ii), (2)(ii), (3)(i), (ii), (iii), (c), (d) introductory text, (2)(i), (iv) and (4)(i) revised; (b) introductory text and (e) amended 77673
320.23 Heading revised; (a)(1) amended 77673
320.24 Heading, (b)(5), (6) and (c) introductory text revised; (a) and (b)(4) amended 77673
320.25 (a)(2) removed; (a)(3) redesignated as (a)(2); new (a)(2), (d)(1), (e)(1) introductory text, (i) and (f) heading revised; (f) amended 77674
320.26 Heading and (a)(1) revised 77674
320.27 (a)(3)(iv), (d)(1) and (2) revised; (b)(2) and (3)(i) amended 77674
320.28 Amended 77674
320.29 Heading and (a) revised; (b) amended 77674
320.30 (c) revised 77674
320.31 (b) introductory text and (3) amended 77674
330 Compliance date extension 16304
331 Compliance date extension 16304
336.50 (c)(8) added; eff. 12–8–03 72559
338.50 (c)(5) added; eff. 12–8–03 72559
341 Compliance date extension 16304
341.40 Added; eff. 12–23–04 78168
341.70 (b) added; eff. 12–23–04 78170
341.72 (c)(6)(iv) and (7) added; eff. 12–8–03 72559
341.74 (c)(4)(viii)(C) and (ix)(C) added; eff. 12–8–03 72559
341.85 Added; eff. 12–23–04 78170
346 Compliance date extension 16304
349.20 Revised 7921
349.78 (a) revised 7921
352.10 (f) through (n) revised 41823
352.20 (a)(1) and (2) revised 41823
355 Compliance date extension 16304
358 Compliance date extension 16304
369 Compliance date extension 16304
500.80 (a) amended 78174
500.82 (b) amended 78174
500.84 Heading and (c)(2) revised; (c)(1) amended; (c)(3) added 78174
500.88 (b) and (c) revised 78174
510.88b (c) amended 67521
510.88f (b) amended 67521
510.300 Regulation at 67 FR 5056 eff. date delayed; interim 49568
510.302 Regulation at 67 FR 5057 eff. date delayed; interim 49568
510.600 (c)(1) table and (c)(2) table amended 17283, 41824, 42717, 42997, 43247, 45900, 50802, 51079,

NOTE: Boldface page numbers indicate 2002 changes.

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 21 Chapter I—Con.

51080, 63055, 67520, 67521, 72366, 78354, 78355, 78684

(c)(1) table and (c)(2) table amended 1161, 4712, 4914, 4916
514 Regulation at 67 FR 5057 eff. date delayed; interim 49568
514.3 Regulation at 67 FR 5057 eff. date delayed; interim 49568
514.8 Regulation at 67 FR 5057 eff. date delayed; interim 49568
514.11 Regulation at 67 FR 5057 eff. date delayed; interim 49568
514.15 Regulation at 67 FR 5057 eff. date delayed; interim 49568
514.80 Regulation at 67 FR 5057 eff. date delayed; interim 49568
520.44 (b) amended 78355
520.154c. (b) amended 78355
520.309 (a), (b) and (d) revised 65038
(b), (d)(1) and (2) revised 65697
520.390a (b)(2) amended 4914
520.445a (b) amended 78355
520.445b (b) amended 78355
520.445c (b) amended 78355
520.446 Revised 54954
520.447 Revised 54954
(b)(2) amended 78684
520.531 (b) amended 78355
520.538 Added 68760
520.540b (b)(2) amended 4914
520.580 (b)(1) amended 43248
520.622a (a)(3) amended 4914
520.823 (b) amended 4914
520.905b (c) redesignated as (d); new (c) added; (d)(1)(iii) and (2)(iii) amended; (a), (d)(1)(i), (2)(i) and (3)(i) revised 47450
520.955 Added 78357
520.1192 (b)(2) amended 71820
520.1193 (b)(2) amended 21996
520.1194 Removed 50597
520.1195 Revised 50597
520.1196 Heading and (b) amended 21996
520.1242a (b)(1) amended 63055
(b)(4) added 4916
520.1242b (c) amended 63055
520.1242c (b) amended 63055
520.1242e (b) amended 63055
520.1242f (b) amended 63055
520.1263c (a), (b) and (d) revised 17284
(d)(1)(iii) amended 71819, 78356
(b) amended 3817
520.1380 (c) amended 67521
520.1484 (a) and (b) revised 72366
(b)(1) and (2) amended 78971
(b)(2) amended 4914
520.1660d (d)(1)(iii)(C) amended 51081
(b)(7) amended 4914
520.1696b (b) amended 4914
520.1720a (b)(3) amended 67521
(b)(3) amended 4914
520.1720d (b) amended 4915
520.2041 (b) amended 21996
520.2043 Revised 43248
520.2123a (b) amended 4915
520.2123b (b) amended 4915
520.2184 (b) amended 78355
520.2240a (c) amended 78355
520.2240b (c) amended 78355
520.2260a (a)(1) amended 78355
520.2260b (c)(1) and (e)(1) amended 4915
520.2261a (a) amended 78355
520.2261b (a) amended 78355
520.2345c (b) amended 78355
520.2345d (a)(3), (d)(1)(iii) and (2)(iii) amended 78355
522.234 (b) amended 63055
522.314 Heading, (a), (d)(1)(i), (iii) and (2) revised 45901
522.522 Added 78972
522.690 Revised 41824
522.775 (b) amended 67521
522.820 (a) amended 4915
522.940 (c)(1) amended 78355
522.1010 (b)(3) amended 18086
522.1066 (b) amended 67521
522.1078 Revised 68759
522.1085 (b) amended 67521
522.1222a Revised 17283
522.1244 (b) amended 63055
522.1260 Heading, (a), (b), (e)(1)(i), (iii), (2)(i) and (iii) revised 34388
522.1451 (d)(2) amended 57944
522.1380 (b) amended 67521
522.1660 (d)(1)(iii) amended 47451, 72366, 78357
(b), (d)(1)(iii) and (2)(iii) amended 72367
(d)(1)(iii) amended 8153
522.1720 (b)(1) amended 67521
522.1870 (b) amended 79853
522.2112 (c) removed; (d) redesignated as (c); heading, (a) and new (c) revised 18085
522.2240 (c) amended 78355
522.2260 (b) amended 78355
522.2444b (b) amended 4915
522.2470 (b) amended 67521
522.2471 Revised 72367

NOTE: Boldface page numbers indicate 2002 changes.

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

522.2477 (b)(1) amended 78358
522.2478 Revised 78972
524.1140 Added 78685
524.1193 (b) amended 3817, 4713
524.1240 (b) amended 78355
524.1580b (b) amended 4915
524.1600a (b) amended 67521
524.2482 Added 4916
526.820 (b) amended 4915
529.1030 Heading, (a), (b)(1), (2), (d)(2)(i) table and (iv) amended; (b) introductory text revised 5563
529.1940 Added 41824
(b) amended 51080
530.41 (a)(12) added; eff. 5–29–03 9530
556.169 Added 78973
556.283 (b) revised 78357
556.735 (b) revised 72368
558 Technical correction 44931
558.4 (d) amended 47692
558.76 (d)(3)(xii) amended 30327
(d)(3)(v) through (xvii) redesignated as (d)(3)(vi) through (xviii); new (d)(3)(v) added 34830
558.78 (a)(2) amended 71821
558.128 (a), (b) and (d) redesignated as (b), (c) and (e); new (a) and (d) added; new (b) and (e) revised 43249
558.155 Amended 21171
558.195 (d) table amended 36098
Revised 72370
558.198 (a) revised; (b) and (d)(1)(iii) through (v) redesignated as (c) and (d)(1)(v) through (vii); new (b), (d)(1)(iii) and (iv) added 34830
(d)(2)(ii) added 47257
(d)(2)(iii) and (iv) added 48549
558.248 (a)(1), (2) and (d)(1) table amended 4915
558.311 (b)(8) and (e)(1)(xviii) added; (d)(7) amended; (e)(1)(xii) revised 72368*
558.315 (a) amended 63055
558.325 (a) and (b) amended; (a)(1), (5), (13) and (d) revised 36513
558.342 (b), (c) and (d) redesignated as (c), (d) and (e); heading, (a) and new (e) revised; new (b), (d)(3) and (8) added 47688
558.355 (f)(3)(iv) removed; (f)(7) revised 47691
558.366 (d) table amended 30327
558.450 (d)(1)(ix) table amended 51081
558.485 (b)(7) amended 51080
558.500 (a) amended; (d)(1) table revised 47692
Revised 71820
558.515 (d) table amended 30546
558.530 (d)(5)(x) revised 34831
558.550 (d)(1)(xx)(ii) added 72369
(a)(2) amended 6820
558.618 (a) through (d) redesignated as (b) through (e); new (a) added; new (b), (c) and (e)(3) revised 21997
558.625 (b)(39) table amended 4915
573.920 (h) revised 46851
601.90—601.95 (Subpart H) Added 37996
701 Compliance date extension 16304
807.20 Regulation at 66 FR 5466 eff. date delayed to 1–21–04 2690
822 Added 38887
862.1 (d) added 58329
862.1235 Added 58329
862.1678 Added 58329
864.9245 (b) and (c) redesignated as (c) and (d); new (b) added; new (c) and (d) revised 9532
866.1 (e) added; eff. 5–6–03 5827
866.1645 Added; eff. 5–6–03 5827
868.1 (e) added 76681
868.2375 (a) revised 46852
868.2377 Added 46852
868.2480 (b) revised 76681
872.5570 Added 68512
874.1 (e) added 67790
874.3850 Revised 20894
874.3950 Added 67790
878.1 (e) added 77676
880.6991 Added 69121
880.6992 Added 69121
884.5320 (c) revised 40849
888.3027 Revised 46855
888.3310 Revised 21173
1271.3 Regulation at 66 FR 5466 eff. date delayed to 1–21–04 2690

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1301 Policy statement 51988
1308 Policy statement 42479

NOTE: Boldface page numbers indicate 2002 changes.

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 21 Chapter II—Con.

1308.11 (g)(3) and (4) added 59162
(g)(5) added 59165
1308.13 (e) revised 62370
1308.15 (b) revised 62370
1310.05 (c) amended 49569
1310.06 (g) amended 49569
1310.12 (b) and (e)(i) amended 49569
1313.21 (b) and (e) introductory text amended 49569
1313.22 (e) amended 49569
1313.31 (b) introductory text amended 49569
1313.32 (b)(1) amended 49569

Proposed Rules:

1 54138
..... 1568, 5378, 5428
5 53324
16 53324
101 ..... 38913, 69171
..... 8163
170 35764
184 18834
201 ..... 20070, 41360, 43068, 52429, 54139
..... 2254
211 ..... 41360, 43068
212 15344
310 62218
312 ..... 20070, 41642, 44931
314 ..... 20070, 22367, 65448, 66593
343 54139
349 7951
358 ..... 31739, 62218
589 ..... 67572, 70707
601 ..... 20070, 22367, 41360, 43068
870 76706
872 ..... 16338, 34416, 46941, 52901
878 77698
880 41890
882 64835
1020 ..... 76056, 78760
1301 7728
1308 ..... 20072, 47341, 47343
..... 4127
1310 ..... 47493, 53842, 56776
..... 4968

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

11 Authority citation revised 46109
11.1 (e)(4) and (5) revised; (f) amended 46109
22.1 Revised 34835
Amended; interim 62886
40.53 Added; interim 77159
41 Authority citation revised 18822
Technical correction 40849
41.2 (l) revised 30547
(l)(2) corrected 50349
(b) revised; interim 5195
41.24 (a) revised; (c) added; interim 18822
41.61 (b)(1)(i) revised; (d) added; interim 58695
41.62 (a)(1) revised; (a)(5) added 58695
41.63 (c)(4)(iii) corrected 77160
41.81—41.86 (Subpart I) regulation at 61 FR 1838 confirmed 67108
41.82 Regulation at 61 FR 1838 confirmed 67108
41.83 Regulation at 61 FR 1838 confirmed 67108
41.101 (g) removed 66046
41.102 (c) removed 66046
41.103 (c) removed 66046
41.104 (e) removed 66046
41.107 (c)(3) added; interim 38893
(f) removed 66046
41.112 (f) removed 66046
41.113 (i), (j) and (k) removed 66046
41.122 (i) and (j) removed 66046
42 Technical correction 40849
Authority citation revised 55320
42.11 Table amended 55320
Table corrected 70839
42.32 Regulation at 66 FR 15350 confirmed 60562
42.33 (h)(2) revised; interim 38893
(a)(2), (3), (b)(1)(iii), (2), (3) and (4)(ii) revised; interim 51753
42.67 (b) revised 77161
42.71 Revised; interim 38893
42.72 (c) removed; interim 38894
42.74 (a)(2)(i), (b)(iv), (1)(v) and (c) amended 38894
45 Removed 76682
51.61 Revised 34838
62.2 Amended; interim 17612, 17613
62.3 (a)(3) and (b)(1) amended; interim 17612
62.4 (a)(2) amended; interim 17612
62.5 (a), (c)(2) and (5) amended; interim 17612
62.5 (a) amended; interim 17612, 17613
62.6 (a) and (b) amended; interim 17612
62.7 (c) amended; interim 17612

NOTE: Boldface page numbers indicate 2002 changes.

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

62.9 (g) amended; interim 17612
62.10 (d) and (e)(1) amended; interim 17613
62. 11 (d) amended; interim 17612, 17613
62.12 Heading, introductory text, (a) through (c), (4), (d)(1) through (4), (e)(1) through (3) amended; interim 17613
62.13 (a)(2) and (7) amended; interim 17612
62.13 (a)(7) and (c)(1) amended; interim 17613
62.14 (g) amended; interim 17612
62.15 (d) and (g) amended; interim 17612
62.15 (e) amended; interim 17613
62.20 (a)(1), (2), (d)(ii)(A), (C), (f), (g)(2)(ii) and (j)(1) through (4) amended; interim 17612
62.20 (d)(ii), (e), (f) and (h) amended; interim 17613
62.21 (d), (e) and (g) amended;interim 17612
62.21 (f) amended; interim 17613
62.22 (a), (c)(1), (f)(1), (3), (g), (j), (n)(2) and (3) amended; interim 17612
62.23 (a), (d), (e)(5), (f)(5)(ii)(A), (C), (h)(1)(i)(A), (ii) and (2)(ii) amended; interim 17612
62.23 (d), (f)(3)(ii), (4)(iii), (h)(1)(i) and (2)(i) amended; interim 17613
62.24 (a), (d) and (f) amended; interim 17612
(e) and (g) amended; interim 17613
62.25 (b)(2), (e), (g) and (k) amended; interim 17612
(m) amended; interim 17613
62.26 (a)(1) through (3), (b), (e)(1), (2) and (f) amended; interim 17612
(g) and (h) amended; interim 17613
62.27 (b)(3) and (f) amended; interim 17612
(c)(1), (i), (ii), (2) and (d) amended; interim 17613
62.28 (a) and (b) amended; interim 17612
(e) amended; interim 17613
62.29 (a) and (c) amended; interim 17612
(f) and (g) amended; interim 17613
62.30 (c) amended; interim 17612
(i) amended; interim 17613
62.31 (d), (f), (i), (m) and (n) amended; interim 17612
62.32 (b) amended; interim 17612
(h) amended; interim 17613
62.40 (a)(4) amended; interim 17612
62.41 (b) and (e) amended; interim 17613
62.42 (b)(2), (c) and (1) amended; interim 17613
62.43 (b) amended; interim 17613
62.45 (d)(3), (6), (e)(2) and (f)(1) amended; interim 17612
(c)(1) through (4)(i), (ii)(D), (d)(1), (e)(1), (h)(1)(i), (ii), (2)(i), (ii), (i)(2)(i), (ii) and (k) amended; interim 17613
62.50 (Subpart D) Revised; interim 17613
62.60—62.62 (Subpart E) Revised; interim 17615
62.70—62.79 (Subpart F) Added; interim 76314
196 Added 50803
120 Authority citation revised 7417
120.1 (a) and (b) revised 7417
121 Authority citation revised 20895
121.1 Amended 20895, 58985, 59733, 70841
121.4 Removed 58987
121.6 Removed 58987
121.7 Removed 70845
121.9 Removed 20896
121.12 Removed 70845
121.13 Removed 70845
123 Authority citation correctly revised; CFR correction 6609
123.20 Revised 58988
126.1 (a) revised; (g) added 44352
126.5 (b) introductory text revised 78686

Chapter II—Agency for International Development (Parts 200—299)

200 Revised 78686
213 Revised 47258

Chapter V—Broadcasting Board of Governors (Parts 500—599)

507 Added 76112

Proposed Rules:

41 76711
62 43264

NOTE: Boldface page numbers indicate 2002 changes.

TITLE 22 *Proposed Rules:—Con.*

203 ..... **30631**
213 ..... **17655**
307 5857
507 ..... **58548**

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

172 Revised **40155**
420 Revised **47271**
450 Technical correction **68512**
450.104 Amended 3181
Corrected 7419
450.206 (b) revised; (c) added 3181
450.212 (h) and (i) added 3181
450.214 (f) added 3181
450.216 (e) added 3181
450.224 Existing text designated as (a); (b) added 3181
450.322 (a) revised **62373**
627 Authority citation revised; nomenclature change **75924**
627.5 (e) added **75924**
635 Authority citation revised; nomenclature change **75924**
635.102 Amended **75924**
635.104 (c) added **75925**
635.107 Revised **75925**
635.109 (c) added **75925**
635.110 (f) added **75925**
635.112 Heading revised; (i) added **75925**
635.113 (c) added **75925**
635.114 (k) added **75925**
635.116 (d) added **75925**
635.122 (c) added **75925**
635.309 (p) added **75926**
635.411 (f) added **75926**
635.413 Heading revised; (e) added **75926**
636 Added **75926**
636.211 (b)(2)(i) corrected 7922
650 Authority citation revised **63542**
650.703 (b) revised; (c) added **63542**
650.707 (a) and (b) revised **63542**
650.709 (a) and (c) revised **63543**
655.601—655.607 (Subpart F) Appendix revised **49572**
655.601 Regulation at 67 FR 7076 confirmed **49236**
Appendix amended **70163**

Proposed Rules:

450 ..... **41648, 53326, 59219**
630 ..... **51802, 55376**
655 ..... **35850, 66076**
657 ..... **48821**
658 ..... **48994, 65056**
771 ..... **59225**
970 1080
971 1088
972 1096
973 ..... 1105, 4744
1225 6091
1410 ..... **59219**
1420 ..... **59219**
1430 ..... **59219**

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

5.506 (c) added **65273**
5.603 (b) amended **47432**
5.609 (b)(6) revised **47432**
5.801 (a)(5), (c)(3) and (d)(3) added **53451**
15.302 (a) revised **65276**
15.303 Revised **65276**
15.305 Revised **65277**
17.6—17.161 (Subpart C) Authority citation revised **47435**
17.150 Undesignated center heading and text revised **47435**
17.151 Introductory text and (b) revised **47435**
17.153 (c) revised **47435**
17.154 (a) revised **47435**
17.156 Revised **47435**
17.157 Revised **47435**
17.159 Revised **47435**
17.160 Heading and (a) revised **47436**
17.161 (c) revised; undesignated center heading added **47436**
17.170 Added **47436**
92.2 Amended **61755**
92.50 (b), (c)(3) and (d)(3) revised; (d)(4) amended **61755**
92.101 (a)(1) and (3) revised; (f) added **61756**
92.207 Introductory text amended **61756**

92.209 (c)(2) removed; (c)(3) and (4) redesignated as (c)(2) and (3); new (c)(2) and new (3) amended **61756**
92.214 (a)(4) revised; (a)(5) removed; (a)(6), (7) and (8) redesignated as (a)(5), (6) and (7); new (a)(8) added **61756**
92.217 Revised **61756**
92.253 (d)(3) removed; (d)(4) and (5) redesignated as (d)(3) and (4) **61756**
92.254 (a)(5)(ii)(A)(6) and (7) redesignated as (a)(6) and (7); new (a)(7) revised; (a)(8) added **61756**
92.353 (e) revised **61756**
92.504 (c)(3)(v) revised **61757**
92.506 Revised **61757**
92.508 (a)(3)(xiii) added **61757**

Chapter II—Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200 Authority citation revised **52380**
200.190 Added **52380**
200.191 Added **52380**
200.193 Added **52380**
200.194—200.195 (Subpart F) Added **39239**
202.5 (n)(1) introductory text revised **53451**
202.7 (b)(4)(i) introductory text and (A) revised **53451**
202.8 (b)(3) introductory text and (b)(3)(i) revised **53451**
203.50 (l) added **52381**
234.3 Amended 6597

Chapter IV—Office of Housing and Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development (Parts 400—499)

401.3 Revised 3363

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

570.201 (d) revised **47213**
580 Interpretation **46109**

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—1699)

903.2 (c)(1)(iii) revised **51033**
941.102 (b)(3) revised **76101**
941.103 Amended **76101**
941.306 Revised **76102**
982.4 (b) amended **64492**
982.503 (b)(2) and (c)(2)(i) introductory text revised; (c)(2)(iii) removed **56688**
982.505 (c)(4) revised **56689**
982.601 (d) revised **64493**
982.625 (c) and (d) redesignated as (f) and (g); new (c),(d),(e),(h) and (i) added; new (g) introductory text amended **64493**
982.627 (c)(1), (2)(iii), (3), (e) amended **64493**
982.628 (a)(2) and (3) revised; (b) redesignated as (c); new (b) added **64494**
(c) added; interim **65865**
Corrected **67522**
982.631 Heading and (a) revised; (b)(4) and (c)(1) amended; (d) added **64494**
982.635 (c)(2)(vi), (vii) and (e) amended; (c)(2)(viii) added **64494**
982.640 Removed **64494**
982.641(b)(4) revised **64494**
982.643 Added **64494**
1005.101 Revised **19493**
1005.105 (e) revised **19493**
1005.107 (b)(5)(ii) amended **19493**
1006 Added; interim **40776**
Technical correction **42185**
1007 Added; interim **40776**
Technical correction **42185**

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 24

Chapter XII—Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

2002 Authority citation revised **47216**
2002.1 Revised **47216**
2002.3 Revised **47217**
2002.7 revised **47217**
2002.9 Revised **47217**
2002.11 (a) revised **47217**
2002.15 (b) revised **47217**
2002.17 (a) revised **47217**
2004 Revised 3366

Chapter XX—Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

3280 Waiver **20400**
3284 Added **52835**

Proposed Rules:

21 ..... **48006**
24 ..... **48006**
25 1766
50 ..... **43208**
58 ..... **43208**
92 648
200 ..... **48344, 63198**
203 ..... **54308, 54312**, 1766
234 ..... **54316**
236 ..... **52526**
245 ..... **41582**
570 648
572 648
574 ..... **43208**, 648
576 648
582 ..... **43208**, 648
583 ..... **43208**, 648
585 648
888 ..... **36306**
902 ..... **53276**, 6262
903 ..... **53276**
970 ..... **43208**
985 ..... **53276**
1000 ..... **44787**
2004 ..... **59428**
3284 ..... **18398**
3500 ..... **49134**, 6385

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

11.100 (a)(14) added **44355**
11.110 (a)(15) added **59783**
21 Removed **77678**
39.11 (h)(2)(v) and (i)(6) through (18) removed **52830**
39.12 Revised **52830**
39.13 Revised **52830**
103.22 Corrected **63543**
112 Removed **54735**
116 Removed **54735**
121 Removed **54735**
123 Removed **54735**
125 Removed **54735**
154 Removed **54735**
156 Removed **54735**
170.4b Revised **44357**
Added; eff. 1–13–03 through 9–30–03 1005
178 Removed **54735**
243 Removed **54735**
256.2 Amended **77920**
256.5 Revised **77920**
256.7 Table revised **77920**
256.8 (b) amended **77920**
256.9 Amended **77920**
256.10 Amended **77921**
256.11 Heading revised **77921**
256.13 (a), (b), (c) and (g)(1) amended **77921**
256.14 (a) and (e) amended; (b)(2) table revised **77921**
256.15 Heading revised **77922**
256.17 Amended **77922**
256.19 Amended **77922**
256.23 Heading revised **77922**
256.24 Removed; new 256.24 redesignated from 256.25 ..... **77922**
256.25 Redesignated as 256.24; new 256.25 redesignated from 256.26 ..... **77922**
256.26 Redesignated as 256.25; new 256.26 redesignated from 256.27 ..... **77922**
256.27 Redesignated as 256.26; new 256.27 redesignated from 256.28 ..... **77922**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

256.28 Redesignated as 256.27; new 256.28 redesignated from 256.29 ..... **77922**
256.29 Redesignated as 256.28 ..... **77922**

Chapter III—National Indian Gaming Commission (Parts 500—599)

502.7 Revised **41172**
502.8 Revised **41172**
502.9 Revised **41172**
542 Revised **43400**

Chapter V—Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)

900 Amended **34602**

Proposed Rules:

1—299 (Ch. I) **75828**, 2465
25 ..... **47755**
170 ..... **51328, 62417**
502 ..... **20923**
504 ..... **46134**
542 ..... **19713, 37369**

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—799)

1 Technical correction **35732, 37671, 45311, 46855**
Authority citation amended **18994, 20899, 20904, 34394, 37999, 38002, 43540, 47285, 47693, 48756, 49864, 54089, 65698, 68513, 78361, 78376, 78691**
Authority citation amended 4920
Technical correction 5346
1.25A–0 Added **78691**
1.25A–1 Added **78691**
1.25A–2 Added **78691**
1.25A–3 Added **78691**
1.25A–4 Added **78691**
1.25A–5 Added **78691**
1.46–1 (p)(2)(iv) amended **35012**
1.48–3 (d)(1)(iii) amended **35012**
1.48–12 (d)(7)(iii) added **20030**
(d)(7)(iii) revised; (d)(7)(iv) added 4920
1.48–12T Revised **20030**
Removed 4920
1.72(p)–1 amended **71824**
Corrected 9532, 9533
1.121–1 Revised **78361**
1.121–2 Revised **78361**
1.121–3 Revised **78361**
1.121–3T Added **78369**
1.121–4 Revised **78361**
(e) correctly amended 6350
1.121–5 Removed **78367**
1.141–0 Table amended **59759**
1.141–2 (d)(e)(ii)(B) amended **59759**
1.141–7 Added **59759**
Corrected **70845**
1.141–7T Removed **59763**
1.141–8 Added **59763**
1.141–8T Removed **59765**
1.141–15 (a) revised; (f) through (i) added **59765**
1.152–3 (c) removed **20031**
(a)(4) and (b) revised; (c) added 4920
1.152–3T Added **20031**
Removed 4921
1.170A–9 (e)(6)(i) amended **20437**
1.274–5 (j)(3) added **68513**
1.274–5T (j) revised; (m) amended **68513**
Corrected **72273**
1.280H–1T (a) amended **35012**
1.334–1 (b) amended **34605**
1.337(d)–2T (a)(4) and (b)(4) added **37999**
1.338–1 (b)(2)(vii) amended **43540**
1.355–0 Heading revised; text amended **20636**
Corrected **38200**
1.355–7T Revised **20636**
(b)(3)(iii) and (j) *Example 4* corrected **38200**
1.358–1 (a) amended **34604**
1.362–1 (a) amended **34605**
1.368–2 (b)(1) revised 3387
1.368–2T Added 3387
1.381(c)(4)–1 (a)(2) amended **34605**
1.401(a)(2)–1 Added **47693**
1.401(a)(9)–0 Added **18994**
1.401(a)(9)–1 Added **18994**
1.401(a)(9)–2 Added **18994**
1.401(a)(9)–3 Added **18994**
1.401(a)(9)–4 Added **18994**
1.401(a)(9)–5 Added **18994**
1.401(a)(9)–6T Added **18994**
1.401(a)(9)–7 Added **18994**
1.401(a)(9)–8 Added **18994**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 26 Chapter I—Con.

1.401(a)(9)–9 Added **18994**
Table corrected **36676**
1.403(b)–3 Added **19023**
1.408–8 Added **19024**
1.441–0 Added **35012**
1.441–1 Added **35012**
1.441–1T Removed **35019**
1.441–2 Added **35012**
1.441–2T Removed **35012**
1.441–3 Added **35012**
1.441–3T Removed **35019**
1.441–4 Added **35012**
1.441–4T Removed **35019**
1.442–1 Revised **35019**
1.442–2T Removed **35020**
1.442–3T Removed **35020**
1.443–1 (b)(1)(ii) amended **35012**
1.444–1T (a)(1) amended **35012**
1.444–2T (a) amended **35012**
1.444–4 Added **34394**
1.444–4T Removed **34394**
1.446–1 (c)(2)(iii) added **76985**
1.446–4 Corrected **31955**
1.448–1 (h)(2)(ii)(B)(*1*) amended **35012**
1.460–0 Amended **34605**
1.460–4 (a) amended; (k) added **34605**
1.460–6 (g) revised **34609**
1.469–0 Amended **54089**
1.469–1 (h)(4)(ii)(D) amended **35012**
1.469–1T (g)(2)(i) amended **35012**
1.469–7 Heading revised; (a) through (h) added **54089**
1.469–11 (a)(3) amended; (a)(4) redesignated as (a)(5); new (a)(4) and (c)(1)(iii) added; (c)(1) and (i) headings revised **54093**
1.471–6 (c) and (g) amended; (f) revised **65698**
1.509(a)–3 (f)(1) amended; (f)(3) heading and introductory text revised; (f)(3) *Example* designated as *Example 1*; *Examples 2* and *3* added **20437**
1.512(a)–1 (e) heading and introductory text revised; (e) *Example* designated as *Example 1*; (e) *Example 2* added **20437**
1.513–4 Added **20438**
1.611–3 (h) removed **20031**
(h) added 4921
1.611–3T Added **20031**
Removed 4921
1.641(b)–3 (a) amended **78376**
1.641(c)–0 Added **34394**
1.641(c)–1 Added **34394**
1.642(c)–1 (a)(1) amended **78376**
1.645–1 Undesignated center heading and section added **78377**
1.671–4 (d), (h) and (i) redesignated as (d)(1), (i) and (j); new (d)(1) heading, (2), new (h) and new (i)(3) added **78381**
1.702–1 (a)(8)(ii) revised; (c)(1)(iii) and (iv) amended; (c)(1)(v) added **48023**
1.706–1 (a) and (b) revised; (d) added **35020**
(b)(5) and (6) revised; (b)(11) added **48019**
1.706–1T Removed **35024**
1.706–3T Removed **48020**
1.708–1 (b)(4) and (5) corrected **57330**
1.852–9 (c)(1) removed **20031**
(c)(1) added 4921
1.852–9T Added **20031**
Removed 4921
1.860A–0 Amended **47453**
1.860E–1 (c)(4)(i) and (ii) amended; (c)(4)(iii), (iv), (5) and (10) added **47453**
1.883–1 Corrected **58548**
1.883–4 Corrected **58548**
1.892–5 Added **49864**
1.892–5T (a)(2) concluding text removed; (a)(3) added **49864**
1.894–1 (d)(2)(ii) and (iii) added; (d)(6) revised **40160**
1.952–1 (g) added **48023**
1.954–0 (b) amended 4917
1.954–1 (g) added **48023**
1.954–2 (a)(5) added **48024**
(f)(2)(iii)(E) removed; (f)(2)(iv) heading and (g)(2)(iii) revised; (f)(2)(iv)(C), (v) (vi), (g)(2)(ii)(C)(*1*) through (*2*)(*iii*) added 4917
1.954–3 (a)(6) added **48025**
1.954–4 (b)(2)(iii) added **48025**
1.956–2 (a)(3) added **48025**
1.1041–1T (c) amended 1536
1.1041–2 Added 1536
1.1092(c)–1 Redesignated as 1.1092(c)–2; new 1.1092(c)–1 added **20899**
Regulation at 67 FR 20899 suspended to 7–29–02 ..... **37671**
1.1092(c)–2 Redesignated from 1.1092(c)–1 ..... **20899**
(b) and (d) revised; (c) added; (d)(1) introductory text, (i) introductory text, (A) through (D), (ii) introductory text, (A), (B) and (2) redesignated as (a) introductory text, (1) introductory text, (i) through (iv), (2) introductory text, (i), (ii) and (f) in 1.1092(c)–4; (e) removed **20900**
Regulation at 67 FR 20899 and 20900 suspended to 7–29–02 ..... **37671**
1.1092(c)–3 Added **20900**
Regulation at 67 FR 20900 suspended to 7–29–02 ..... **37671**
1.1092(c)–4 Added; (a) introductory text, (1) introductory text, (i) through (iv), (2) introductory text, (i), (ii), and (f) redesignated from (d)(1) introductory text, (i) introductory text, (A) through (D), (ii) introductory text, (A), (B) and (2) in 1.1092(c)–2 ..... **20900**
(a)(1)(iv), (2) introductory text and (i) revised; (b) through (e) and (g) added **20901**
Regulation at 67 FR 20900 and 20901 suspended to 7–29–02 ..... **37671**
1.1256(e)–1 Corrected **31955**
1.1271–0 (k) introductory text through (3) added **30548**
1.1275–1 (k) added **30548**
1.1361–0 Amended **34396**
1.1361–1 (h)(1)(vi), (3)(i)(F), (j)(12) and (m) added; (h)(3)(ii) introductory text and (k)(2)(i) amended **34397**
1.1361–5 (c)(1) amended **65313**
1.1362–2 (c)(6) *Example 2* amended **34610**
1.1362–7 Heading revised; (a) amended **34401**
1.1374–4 (g) amended **34610**
1.1377–0 Amended **34401**
1.1377–1 (a)(2)(iii) and (c) *Example 3* added **34401**
1.1377–3 Revised **34401**
1.1398–3 Added **78367**
1.1441–0 Amended **70312**
1.1441–1 (b)(7)(i)(D) added **70312**
1.1441–1T Regulation at 67 FR 2328 and 2387 confirmed **70311**
1.1441–1T Removed **70312**
1.1441–6 (g) redesignated as (h); new (g) added; (b)(1) and new (h)(2) amended; new (h) heading and (1) revised **70312**
1.1441–6T Regulation at 67 FR 2328 and 2387 confirmed **70311**
Removed **70313**
1.1502–6 (b) amended **43540**
1.1502–13 (a)(3)(i) amended **76985**
1.1502–20T (i)(3)(v) and (i)(4) revised **38000**
1.1502–21 (b)(3)(ii)(C) added **38002**
1.1502–21T Added **38002**
1.1502–41B Undesignated center heading added **43540**
1.1502–77 Redesignated as 1.1502–77A; new 1.1502–77 added **43540**
1.1502–77A Redesignated from 1.1502–77; Heading revised; (a) through (d) amended; (e) removed; (f) and (g) added **43540**
(e) redesignated from 1.1502–77T (a) **43544**
1.1502–77T (a) redesignated as 1.1502–77A(e); removed **43544**
Regulation at 67 FR 43544 corrected **77678**
1.1502–78 (a) revised; (b)(1), (2), (c) *Examples* 1, 2 and 3 amended; (e)(2)(v) removed; (f) added **43544**
1.1502–79A Undesignated center heading added **43545**
1.1561–1 (c)(2) amended **35012**
1.6011–4T Heading, (a)(1), (b)(1), (4)(i), (5) *Example 3*, (c)(2) *Example* and (e) amended; (a) heading, (c)(1)(iii), (v), (d)(1) and (g) revised; (a)(2), (3), (b)(1)(i) and (ii) added **41327**
1.6011–4T Revised **64802**
1.6012–3 (a)(1)(iv) added **78382**
1.6013–4 (d) added **47285**
1.6013–5 Removed **47285**
1.6015–0 Added **47285**
1.6015–1 Added **47285**
1.6015–2 Added **47285**
1.6015–3 Added **47285**
1.6015–4 Added **47285**
1.6015–5 Added **47285**
(b)(3) corrected **54735**
1.6015–6 Added **47285**
1.6015–7 Added **47285**
1.6015–8 Added **47285**
1.6015–9 Added **47285**
1.6031(a)–1 (a)(1) amended **41328**
1.6037–1 (c) amended **41328**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 26 Chapter I—Con.

1.6038–3 (b)(9) *Example 1* amended; (g)(1)(i) through (v) redesignated as (g)(1)(ii) through (vi); new (g)(1)(i) added; (j) and (l) revised **78175**
1.6038–3T Added **78176**
1.6041–1 (b)(1) and (c) amended; (e), (f) and (g) redesignated as (g), (h) and (i); new (e), (f) and (j) added **48756**
1.6041–3 (d) revised; (n) removed; (o), (p) and (q) redesignated as (n), (o) and (p) **48758**
1.6043–4T Added **69469**
(a)(5) and (h) corrected 6081
1.6045–1 (a) introductory text and (c)(3) revised; (g)(3)(iv) and (4) *Examples 1, 4, 5, 6, 7*(i), *8*(i) and *9*(i) amended **48758**
1.6045–2 (b)(2)(ii) amended **48759**
1.6045–3T Added **69472**
(d) corrected 6081
1.6049–4 (a)(2) revised **48759**
1.6050S–0 Amended **77681**
1.6050S–1 Added **77682**
(b)(2)(vii) correctly amended 6350
1.6050S–1T Redesignated as 1.6050S–2T **20904**
1.6050S–2T Redesignated as 1.6050S–4T; new 1.6050S–2T redesignated from 1.6050S–1T **20904**
1.6050S–4T Redesignated from 1.6050S–2T **20904**
1.6072–1 (a) text redesignated as (a)(1); new (a)(1) heading and (2) added **78382**
1.6115–1 Undesignated center heading added **52863**
1.6109–2 Redesignated as 1.6109–2A; new 1.6109–2 added **52863**
1.6109–2A Redesignated from 1.6109–2; (d) amended **52863**
1.6109–2T Removed **52863**
1.6654–2 (a) amended **35012**
1.6655–2 (a)(4) amended **35012**
1.7476–1 (e) added **47456**
1.7476–2 (b), (c) and (d) revised; (e) added **47456**
3.1378–1 Added **35024**
5c.442–1 Removed **35024**
5f Authority citation amended **48759**
5f.442–1 Removed **35025**
5f.6045–1 Removed **48759**
18.1378–1 Removed **35025**
20.6011–4T Added **64805**
25.6011–4T Added **64805**
31 Authority citation amended 4923
31.3406–0 (b) and (d) tables amended **48759**
31.3406(a)–2 Revised **48759**
31.3406(a)–4 (c)(1) and (3) amended **48760**
31.3406(b)(3)–2 (b)(5) amended **48760**
31.3406(d)–4 (a)(1) introductory text amended **48760**
31.3406(h)–1 (c) amended **48760**
31.3406(h)–2 (c), (d) and (f)(6) amended **48760**
31.3406(j)–1 (a) and (f) revised 4923
31.3406(j)–1T Added 4923
31.6011–4T Added **64806**
46.4374–1 Revised **70846**
52.4974–2 Regulation at 67 FR 19028 corrected **35732**
53.6011–4T Added **64806**
54 Authority citation amended **19026**
54.4974–2 Added **19026**
54.6011–4T Added **64806**
56.6011–4T Added **64806**
157 Added 7923
301 Technical correction **37671, 47427**
Authority citation amended **41621**
Authority citation amended 2693, 2696
301.6011–1 Removed **20032**
Added 4921
301.6011–1T Added **20032**
Removed 4921
301.6011–2 (b)(1) and (g)(1) revised; (g)(3) added **20907**
301.6103(j)(1)–1 Revised 2693
301.6103(j)(1)–1T Removed 2695
301.6103(j)(5)–1 (b)(2)(xiv) added; (d) revised **41621**
301.6103(p)(2)(B)–1 Added 2696
301.6103(p)(2)(B)–1T Removed 2696
301.6109–1 Regulation at 67 FR 2329 and 2388 confirmed **70311**
(g)(3) revised **70313**
301.6109–1T Regulation at 67 FR confirmed **70311**
Removed **70313**
301.6112–1T Revised (temporary) **64809**
301.6011–2 (b)(1) amended; (g)(3) revised **77687**
301.6109–1 (a)(2)(iii) removed; (a)(3) through (6) added **78382**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

301.6111–2T (a)(3) and (h) amended **41329**
(a)(3) and (b)(3)(i) revised; (c)(3) and (h) amended **64806**
301.6331–3 Added **77417**
301.6331–4 Added **77417**
301.6903–1 (b) removed **20032**
(b) added 4921
301.6903–1T Added **20032**
Removed 4922
301.7122–0 Added **48029**
301.7122–0T Removed **48032**
301.7122–1 Added **48029**
(d)(2) corrected **53879**
301.7122–1T Removed **48032**
301.7602–1 (b) revised **57331**
301.7602–1T Added; eff. to 9–9–05 ..... **57331**
301.7602–2 Added **77421**
301.7701–2 (b)(6) and (c)(2)(ii) revised; (e) amended **49864**
301.7701–15 (a)(7)(iii) and (iv) amended; (a)(7)(v) through (viii) added **77419**
301.7701(b)–6 (a) amended **35012**
601.201 (o)(3)(xv) and (xxi) amended; (o)(3)(xvi) introductory text and (xvii) revised **47457**
601.701 Removed **69675**
601.702 Revised **69675**
602 Technical correction **35732, 37671, 45311**
602.101 (b) table amended; OMB numbers **19028, 20032, 20907, 34401, 34610, 35025, 38003, 43545, 47296, 47454, 48760, 54093, 69473, 77678, 78176, 78383, 78698**
(b) table amended; OMB numbers 1537, 2696, 4922, 7926

Proposed Rules:

1 ..... **17309, 18834, 18835, 19713, 20072, 20711, 20923, 21187, 30634, 30826, 31995, 35064, 35765, 37369, 37736, 38025, 38039, 38040, 38214, 40629, 40896, 41362, 41653, 41892, 42210, 43574, 45414, 45683, 45933, 46612, 48067, 48070, 48596, 48823, 48997, 49634, 49892, 50386, 50510, 50840, 53327, 54388, 56244, 56509, 57543, 58346, 59767, 59797, 62417, 63330, 64331, 64840, 65060, 65842, 67132, 68539, 69496, 70031, 70707, 70891, 75899, 76123, 77450, 77701, 78202, 78398, 78761, 79538, 79894**
.....1020, 2466, 2930, 3477, 4969, 7453, 7454, 8868
20 ..... **48070, 63330, 64840**
25 ..... **48070, 61997, 63330, 64840**
31 ..... **30634, 44579, 45414, 50386, 64067, 64840, 67802**
..... 4970
41 ..... **38913, 53539, 58346**
..... 7454
48 ..... **34882, 38913, 53539, 58346**
..... 7454
53 ..... **64840**
54 ..... **19713, 35765, 43574, 64840**
56 ..... **64840**
145 ..... **38913, 53539, 58346**
..... 7454
157 7956
300 ..... **67573**
301 ..... **18839, 20072, 20923, 37736, 39915, 41362, 41892, 43574, 44579, 48823, 50840, 57354, 64067, 64840, 64842, 76132, 79538**
..... 4970
602 ..... **19713, 41892, 43574**
..... 7956

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

Chapter I Heading revised 3747
4 Amended **30797**
4.1—4.4 (Subpart A) Undesignated cross-references and center heading removed **62857**
4.5 Added **62857**
4.91 Amended **56481**
4.101 (Subpart K) Added **62858**
5.2 Amended **30797**
Revised **62858**
5.71 (Subpart I) Added **62858**
7.4 Amended **30798**
Revised **62858**
7.81 (Subpart I) Added **62858**
9.107 (b) and (c) revised **56484**
9.174 Added **72839**
9.176 Added **77924**
13.1 Amended **62858**
13.3 Added **62858**
13.51 Amended **62858**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 27 Chapter I—Con.

13.61 (a) text redesignated as (a)(1); new (a)(1) heading and (2) added 62859
13.101 (Subpart G) Added 62859
19.3 Amended 30798
19.524 (a)(1), (b)(1) and (3) amended 30798
19.538 (a)(1)(iii) amended 30798
20.3 Amended 17938, 30798
20.21 (a) amended 17938
20.22 (a)(3) removed; (a)(4) redesignated as new (a)(3) 17938
20.26 Removed 17938
20.43 (a)(2) and (b) revised 17938
20.58 Amended 17939
20.59 (b) removed; (c) and (d) redesignated as new (b) and (c) 17939
20.61 Amended 17939
20.62 (a) designation, heading and (b) removed 17939
20.68 (b) removed; (c) redesignated as new (b) 17939
20.71—20.82 (Subpart E) Removed 17939
20.175 (c) revised 17939
Corrected 20868
20.177 (b) amended 17939
20.232 (b) removed; (c) redesignated as new (b) 17939
20.241 Amended 17939
22.3 Amended 30798
22.171 (b) amended 30798
24.4 Amended 30798
24.272 (a)(1), (b)(1) and (3) amended 30798
25.165 (a)(1), (b)(1) and (3) amended 30798
26.112a (a)(1), (b)(1) and (3) amended 30798
26.267 (a) amended 30798
27 Redesignated from Part 251 30799
27.3 Amended 30799
27.11 Amended 30799
27.31 Amended 30799
27.40 (c) amended 30799
27.44 Amended 30799
27.74 Amended 30799
27.76 (c)(3) amended 30799
27.77 (a), (b)(1), (2), (3)(iii) and (d) amended 30799
27.120 Amended 30799
27.133 Amended 30799
27.138 Introductory text amended 30799
27.172 Amended 30799
27.185 (b) amended 30799
27.208 Amended 30799
40.232 Revised 19333
44.2 (a) amended; (b) revised 30801
44.3 Added 30801
44.11 Amended 30801
44.35 (c) amended 30801
44.62 Amended 30801
44.66 Amended 30801
44.70 Amended 30801
44.71 Amended 30801
44.72 Introductory text and (c) amended 30801
44.73 Introductory text and (c) amended 30801
44.82 Amended 30801
44.83 Amended 30801
44.84 Amended 30801
44.86 Amended 30801
44.87 Amended 30802
44.91 Amended 30802
44.92 Amended 30802
44.93 Revised 30802
44.101 Amended 30802
44.102 Amended 30802
44.103 Amended 30802
44.104 Amended 30802
44.105 Amended 30802
44.106 Amended 30802
44.108 Heading revised; amended 30802
44.109 Amended 30802
44.110 Removed 30802
44.111 Amended 30802
44.112 Amended 30802
44.121 (b) amended 30802
44.123 Amended 30802
44.124 Amended 30802
44.125 Amended 30802
44.126 Amended 30802
44.127 Amended 30802
44.129 (a) amended 30802
44.142 (e) amended 30801
44.143 (b) amended 30801
(a) amended; (a)(1) and (2) removed 30802
44.144 Amended 30802
44.145 Amended 30801
44.146 Amended 30802
44.147 Amended 30801, 30802
44.150 Amended 30801
44.152 Amended 30802
44.153 Amended 30802
44.154 Amended 30802
44.161 Amended 30802
44.162 Amended 30802

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

44.184 Amended 30801
44.199 Amended 30801, 30802
44.200 Amended 30802
44.201 Amended 30801, 30802
44.202 Amended 30802
44.203 Amended 30802
44.204 Amended 30802
44.205 (b)(3) amended 30802
44.206 Amended 30802
44.207 Amended 30802
44.207a Amended 30802
44.208 Amended 30802
44.209 Amended 30802
44.210 Amended 30802
44.212 Amended 30802
44.213 Amended 30802
44.222 Revised 30803
44.223 Amended 30802, 30803
44.224 Amended 30803
44.225 Amended 30801
44.226 Amended 30802
44.227 Amended 30803
44.228 Amended 30802
44.229 Amended 30803
44.230 Amended 30802
44.231 Amended 30802
44.232 Amended 30802
44.242 Amended 30802, 30803
44.243 Amended 30802, 30803
44.244 Amended 30802
44.245 Amended 30802
44.246 Amended 30802
44.257 Amended 30801, 30803
44.258 Amended 30803
44.259 Amended 30803
44.260 Amended 30803
44.261 Amended 30803
44.262 Amended 30803
44.263 Amended 30803
44.264 Amended 30803
44.264a Amended 30803
44.265 Amended 30803
44.266 Amended 30801
44.267 Amended 30801, 30803
46.8 (f) corrected 63544
46.141—46.155 (Subpart F) Transferred to Chapter II (Subchapter D) and redesignated as Part 646 3753
47 Transferred to Chapter II (Subchapter B) and redesignated as Part 447 3747
47.11 Amended 64526
47.31 Revised 64526
47.32 (a) revised; (c) amended 64526
47.33 Amended 64526
47.34 (b) amended 64526
47.35 (a) amended; (b) revised 64526
47.41 (a) and (b) amended 64526
47.42 (a)(1) introductory text and (2)(i) amended 64526
47.43 (c) amended 64526
47.44 Amended 64526
47.45 (a) introductory text amended; (a)(1) amended 64526
47.51 Amended 64526
47.52 (b) introductory text and (f) amended 64526
45.58 Added 64526
55 Transferred to Chapter II (Subchapter C) and redesignated as Part 555 3748
70.411 (c)(27) amended 30799
178 Transferred to Chapter II (Subchapter B) and redesignated as Part 478; note amended 3750
179 Transferred to Chapter II (Subchapter B) and redesignated as Part 479 3752
251 Redesignated as Part 27 30799
252.2 (a) amended; (b) revised 18087
252.4 Added 18087
252.11 Amended 18088
252.20 (a)(2) introductory text, (3) and (4) amended 18087
Heading and (c) revised; (a)(1), (b)(1), (2) introductory text and (3) amended 18088
252.22 Amended 18088, 18089
252.23 Amended 18089
252.35 Amended 18089
252.36 Undesignated text and (c) amended 18088
Introductory text and (c) amended 18089
252.37 Amended 18088
252.38 Amended 18088
252.43 (a)(1), (2), (6), (b)(1), (2) and (3) amended 18088
(a)(1), (2), (b)(1) and (2) amended 18089
252.45 Amended 18089
252.51 Revised 18089
252.52a Amended 18088
252.55 Amended 18088
252.56 Introductory text amended 18088
252.57 Amended 18089
252.58 (c) amended 18088
252.59 Amended 18089
252.61 Amended 18089

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 27 Chapter I—Con.

252.62 (b) amended **18088**
(a) and (c) amended **18089**
252.63 Amended **18089**
252.64 Amended **18089**
252.65 Amended **18088, 18089**
252.67 Amended **18088**
252.70 Amended **18088, 18089**
252.71 Amended **18088, 18089**
252.72 Amended **18088, 18089**
252.73 (a) and (b) amended **18089**
252.74 Amended **18088**
252.92 (a) amended **18089**
252.96 Amended **18088**
252.103 (b) amended **18088**
252.104 Amended **18089**
252.116 Introductory text amended **18089**
252.117 Amended **18088**
252.122 (c) and (d) amended **18088**
(a) and (b) revised **18089**
252.123 (b) amended **18088, 18090**
252.125 Amended **18088**
252.131 Amended **18088**
Introductory text amended **18090**
252.133 Amended **18090**
252.142 Amended **18088, 18089**
252.146 Amended **18088, 18089**
252.147 Amended **18088, 18089**
252.152 Amended **18090**
252.161 Introductory text amended **18090**
252.162 Amended **18088**
252.171 Amended **18088**
252.195a Removed **18090**
252.195b (b) and (c) amended **18088**
252.198 Introductory text amended **18090**
252.199 Amended **18090**
252.211 Amended **18088**
252.214 Amended **18088**
252.215 Amended **18088**
Heading revised; amended **18090**
252.218 Amended **18088**
252.220 (b) amended **18088**
Introductory text amended **18090**
252.220a Amended **18088, 18090**
252.221 Amended **18088**
252.222 Amended **18088**
252.225 Introductory text amended **18088, 18090**
252.226 Amended **18088**
252.227 Amended **18088, 18090**
252.250 (a)(4) amended **18088**
Introductory text amended **18089**
Amended **18090**
Corrected **48550**
252.261 Amended **18088, 18089**
252.262 Amended **18090**
252.264 Amended **18088, 18089**
252.265 Amended ..... **18088—18090**
252.266 Amended **18088**
252.267 Amended **18088, 18089**
252.268 Amended **18090**
252.269 (a), (b) and (c) amended **18088**
(a) and (c) amended **18089**
252.275 Amended **18088, 18089**
252.281 Amended **18088**
252.282 Amended **18088, 18089**
252.285 Amended **18088**
252.286 Amended **18090**
252.290 Introductory text amended **18088, 18089**
252.295 Amended **18088, 18089**
252.301 Amended **18088**
252.302 Amended **18088**
252.303 Amended **18088**
Introductory text amended **18090**
252.304 Amended **18088**
252.310 Amended **18088**
252.315 Amended **18088**
252.316 Amended **18088**
252.317 Amended **18088**
Introductory text amended **18090**
252.320 Amended **18088**
(a) amended **18089**
252.321 Amended **18088**
252.331 Amended ..... **18088—18090**
252.332 Amended **18088**
252.333 Amended **18088, 18089, 18090**
252.334 Amended **18090**
252.335 Amended **18088**

Chapter II—Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice (Parts 300—699)

Chapter II Established 3747
447 Transferred and redesignated from Chapter I, Part 47 3747
447.2 (a), (b) and (c) amended 3748
447.11 Amended 3748
447.34 (a) and (b) amended 3748
447.41 (a) and (b) amended 3748
447.42 (a)(i) introductory text and (b) amended 3748
447.52 (e) introductory text amended 3748
447.56 (a) amended 3748
447.57 (a)(1) and (b)(2) amended 3748

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

478 Redesignated from 178 3750
478.2 Amended 3750
478.11 Note amended 3750
478.28 (c) amended 3750
478.29 (b) and (c) amended 3750
478.36 (a) and (b) amended 3750
478.37 (c) amended 3750
478.39 (b)(2) amended 3750
478.40 (b)(9) and (c)(5) amended 3750
478.40a (b)(5) and (c)(5) amended 3750
478.41 (b), (c) and (d) amended 3750
478.45 Amended 3750
478.47 (c) amended 3750
478.50 (c) and (d) amended 3750
478.51 Amended 3750
478.52 (a) and (b) amended 3750
478.54 Amended 3750
478.55 Amended 3750
478.57 (a), (b) and (c) amended 3750
478.71 Amended 3751
478.72 Amended 3751
478.73 (b) amended 3751
478.92 (a)(4)(iii) amended 3751
478.93 Amended 3751
478.95 Amended 3751
478.96 (b), (c)(1)(ii) and (iii) amended 3751
478.97 (a) amended 3751
478.98 (b) amended 3751
478.99 (a), (c)(1), (5), (d)(3) and (e) amended 3751
478.100 (a)(1) amended 3751
478.102 (a)(3), (b), (d)(2), (3) and (e) amended 3751
478.112 (a) and (d)(2) amended 3751
478.113 (a) amended 3751
478.116 Amended 3751
478.118 Amended 3751
478.119 (c)(7), (f)(2) and (g) amended 3751
478.121 (a), (b) and (d) amended 3751
478.122 (b) and (d) amended 3751
478.123 (b) and (d) amended 3751
478.124 (c)(3)(i), (ii) and (iv), (d) and (f) amended 3751
478.125 (b), (c), (e), (f)(2)(i) and (ii) amended 3751
478.125a Introductory text, (2) and (3) amended 3751
478.129 (b), (c) and (f) amended 3751
478.131 (a)(1), (2) and (3) amended 3751
478.132 (b)(2) amended 3752
478.133 Amended 3752
478.141 Introductory text amended 3752
478.144 (a) and (i)(1) amended 3752
478.145 Amended 3752
478.147 Amended 3752
478.149 Amended 3752
478.150 (a) introductory text and (c) amended 3752
478.151 (a) amended 3752
478.153 Amended 3752
479 Transferred and redesignated from Chapter I, Part 179 3752
479.25 Amended 3752
479.31 (a) and (b) amended 3752
479.32 (b) amended 3752
479.32a (a) amended 3752
479.34 (b)(3), (6) and (e) amended 3752
479.38 Amended 3752
479.42 Amended 3752
479.43 Amended 3752
479.44 Amended 3752
479.46 Amended 3752
479.48 Amended 3752
479.49 Amended 3752
479.50 Amended 3752
479.52 Amended 3752
479.62 Amended 3752
479.69 Amended 3752
479.70 Amended 3752
479.84 Amended 3752
479.87 Amended 3752
479.89 Amended 3752
479.90 (b) amended 3752
479.91 Amended 3752
479.92 Amended 3752
479.93 Amended 3752
479.111 (a)(3), (b) and (c) amended 3752
479.112 (a) amended 3752
479.118 Amended 3752
479.119 Amended 3752
479.120 Amended 3752
479.121 Amended 3752
479.122 (a) amended 3752
479.131 Amended 3752
479.192 Amended 3753
479.193 Amended 3753
555 Transferred and redesignated from Chapter I, Part 55 3748
555.2 Amended 3748
555.11 Amended 3748
555.26 (a)(1) and (d) amended 3748
555.41 (b) introductory text and (c) amended 3748

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 27 Chapter II—Con.

555.45 (b) amended 3748
555.46 (a) and (b) amended 3748
555.49 (b)(6) and (c) amended 3748
555.52 (a) and (b) amended 3748
555.53 Amended 3748
555.55 Amended 3748
555.57 Amended 3748
555.58 Amended 3748
555.61 Amended 3748
555.71 Amended 3748
555.72 Amended 3748
555.73 Amended 3749
555.74 Amended 3749
555.75 Amended 3749
555.76 (b) introductory text, (3) and (c) amended 3749
555.77 Amended 3749
555.78 Amended 3749
555.79 Amended 3749
555.102 (b) amended 3749
555.103 (e) amended 3749
555.104 introductory text amended 3749
555.105 (b) and (f) amended 3749
555.106 (a), (c)(1) and (d) amended 3749
555.108 (a), (c) and (d) amended 3749
555.121 (a)(2) and (b) amended 3749
555.122 (a)(4) and (f) amended 3749
555.123 (a)(4) and (e) amended 3749
555.124 (a)(4) and (f) amended 3749
555.125 (a)(4), (c) and (d) amended 3749
555.126 (b) amended 3749
555.127 Amended 3749
555.128 Amended 3749
555.129 Amended 3749
555.141 (a) introductory text amended 3749
555.165 Amended 3749
555.180 (d)(4) amended 3749
555.182 Introductory text amended 3749
555.183 (a) and (b) amended 3749
555.201 (a), (c), (d) and (e) amended 3749
555.202 (a) and (c) amended 3749
555.203 Introductory text and (a) through (e) amended 3749
555.205 (d) amended 3749
555.206 (a), (b), (c)(1) and (2) amended 3749
555.208 (b)(1) amended 3749
555.211 (b)(1) amended 3749
555.218 (1) table notes amended 3749
555.220 Table amended 3750
555.223 Table amended 3750
555.224 Table amended 3750
646 Transferred and redesignated from 46.141—46.155 (Subpart F); authority citation added 3753
646.141 Heading amended 3753
646.142 Amended 3753
646.143 Introductory text amended 3753
646.146 Amended 3753
646.147 (a) introductory text and (b) amended 3753
646.150 (a) amended 3753
646.154 (b) amended 3753

Proposed Rules:

4 ..... **17312, 38915, 61998, 62860, 79011**
5 ..... **62860, 79011**
7 ..... **43496, 54388, 62860, 79011**
9 ..... **45437, 47494, 48597, 51156, 64573, 64575, 66079, 66083, 70352**
..... 1020, 2262, 3199
13 ..... **62860, 79011**
40 ..... **67340**
55 ..... **63862**
..... 4402, 4406, 7410, 8331
275 ..... **67340**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—299)

0.1 Amended 4926
0.103 (a)(3) revised **58990**
0.100—0.104 (Subpart R) Appendix amended **58990**
0.137 Removed 4926
0.130—0.132 (Subpart W) Redesignated as 0.135—0.137 (Subpart W–1) 4926
0.130—0.133 (Subpart W) Added 4926
0.135—0.137 (Subpart W–1) Redesignated from 0.130—132 (Subpart W) 4926
0.138 Heading and (a) amended 4927
0.140 Amended 4927
0.141 Amended 4927
0.142 Introductory text and (g) amended 4927
0.143 Amended 4927
0.144 Amended 4928
0.145 Amended 4928
0.146 Amended 4928
0.147 Amended 4928
0.148 Amended 4928
0.149 Introductory text, (a) through (c) and concluding text redesignated as (a) introductory text, (1) through (3) and new (b); new (a) introductory text amended 4928
0.151 Amended 4928
0.152 Amended 4928
0.153 Amended 4928
0.154 Amended 4928
0.155 Amended 4928
2.20 Amended **70692**
2.35 (d) added; interim **67792**
2.68 (l) amended **70694**
2.75 (a)(1) and (2) revised **57945**
2.80 (a) and (f) revised; (h) amended; (o) added; appendix removed **57946**
2.82 (a) revised **57946**
2.86 (c) amended in part; (d) redesignated as (e); (c) redesignated in part as new (d) **57946**
2.94 (a) amended **57946**
2.101 (a) and (b) revised 3390
2.106 (a) and (d) heading revised; (b) amended; (d) text redesignated as (d)(1); (d)(2) added **57946**
2.207 (a) amended **57947**
2.208 (f) added **57947**
2.211 (a)(1) amended; (f) revised 3390
2.212 (b) revised; (e) amended 3390
2.214 Revised 3390
2.215 (f) revised 3392
2.216 (e) revised; (g) and (h) added 3392
2.217 (a)(1) amended 3392
2.218 (g) revised 3392
2.219 (a)(1) through (4) amended **57947**
9.1 (b)(1) amended 4928
9.3 (e)(1)(iii) redesignated as (e)(1)(iv); new (e)(1)(iii) added 4928
9.4 (e) amended 4928
11.6 (b) amended 4928
16.2 (b)(11) and (12) redesignated as (b)(12) and (13); new (b)(11) added 4928
16.76 (c) through (h) removed **70163**
16.79 Revised 4929
16.97 (j) and (k) added **51754**
(l) and (m) added **51755**
(n) and (o) added **51756**
16.105 Added **51756**
16.106 Added; interim 3393
16.132 Added **70163**
16 Appendix I amended 4928
65.80 Amended **48359**
65.83 Introductory text revised; (d) added **48360**
65.84 Heading and (a) revised **48360**
(a)(4) added; interim 8822
65.85 (e) revised **48361**
71.2 (e) and (f) redesignated as (f) and (g); new (e) added 4929
77.2 (a) amended 4929
79 Authority citation revised **51423**
79.1—79.5 (Subpart A) Revised; OMB number **51423**
79.10—79.16 (Subpart B) Revised; OMB number **51423**
79.20—79.27 (Subpart C) Revised; OMB number **51423**
79.30—79.36 (Subpart D) Revised; OMB number **51423**
79.40—79.47 (Subpart E) Removed; OMB number **51423**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 28 Chapter I—Con.

79.50—79.55 (Subpart F) Removed; OMB number 51423
79 (Subpart G) Added; OMB number 51423
79.70—79.75 (Subpart H) Added; OMB number 51423
97 Added; eff. 1–27–03 78699
105 Revised 7318
200 Transferred and redesignated from 8 CFR, Part 507 9846

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

522 Authority citation revised 5564
522.40–522.42 (Subpart E) Removed; interim 5564
523.30—523.34 (Subpart D) Added; interim 48386
540 Authority citation revised 77164, 77427
540.71 (a) revised; eff. 1–16–03 77164
540.72 (b)(1) amended 77427
541 Authority citation revised 77428
541.13 Table 3 amended; interim 77428
542 Authority citation revised 50805
542.10 Revised 50805
542.12 Removed 50805

Chapter VIII—Court Services and Offender Supervision Agency for the District of Columbia (Parts 800—899)

801 Added 57948
811 Added; interim 54095
812 Added; interim 54100

Proposed Rules:

15 64844
16 ..... 59798, 66348
..... 3847, 4974
79 ..... 51440, 70892
549 ..... 46136, 63059
902 70567

TITLE 29—LABOR

Chapter I—National Labor Relations Board (Parts 100—199)

102.114 Heading revised; (i) added 70695
102.111 (c) revised 70696

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

500 Authority citation revised 76986
500.170 Revised 76986

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1611.13 Revised 72373

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1902 Authority citation revised 60128
1902.31 Amended 60128
1902.33 Revised 60128
1904.10 Revised 44047
1904.10 (b)(7) revised; eff. date delayed to 1–1–04 77170
1904.12 Note revised; eff. date delayed to 1–1–04 77170
1904.29 (b)(7)(vi) revised; eff. date delayed to 1–1–04 77170
1910.33 Added 67961
1910.34 Added 67961
1910.35—1910.38 (Subpart E) Authority citation revised 67961
1910.35 Revised 67961
1910.36 Revised 67961
1910.37 Revised 67961
1910.38 Revised 67961
1910.35—1910.38 (Subpart E) Appendix amended 67961
1910.39 Added 67961
1910.101—1910.126 (Subpart H) Authority citation revised 67964
1910.119 (n) amended 67964
1910.120 (l)(1)(ii), (p)(8)(i) and (q)(1) revised; (q)(11)(ii) amended 67964
1910.155—1910.163 (Subpart L) Authority citation revised 67964
1910.157 (a) and (b)(1) revised 67964
1910.261—1910.272 (Subpart R) Authority citation revised 67964
1910.268 (b)(1)(iii) revised 67965
1910.272 (d) revised 67965
Appendix A amended 67965
1910.1000—1910.1450 (Subpart Z) Authority citation revised 67965

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

1910.1047 (h)(1)(iii) revised 67965
1910.1050 (d)(1)(iii) revised 67965
1910.1051 (j) revised 67965
1915 Authority citation revised 44540
1915.4 (k) and (t) revised 44541
1915.5 (d)(1)(i), (ii) and (v) revised 44541
1915.14 (a)(1)(iv), (iv) note, (b)(1)(iii), (iv) and note revised 44541
1915.15 (c) and (e) heading revised 44541
1915.11—1915.16 (Subpart B) Appendix A amended 44541
1915.35 (b)(2) revised 44541
1915.51 (c)(3), (d)(1) introductory text, (2) introductory text, (1), (3), (e)(1)(ii) and (f)(2) revised 44541
1915.53 (d) revised 44542
1915.71 (e)(2)(ii), (9), (f)(8) and (j)(3) revised 44542
1915.72 (a)(4), (6) and (c)(1)(iii) revised 44542
1915.73 (e) revised 44542
1915.74 (a)(2) revised; (c)(2) amended 44542
1915.75 (b) and (d) amended; (e) revised 44542
1915.77 (a) and (c) amended; (e) revised 44543
1915.92 (e) revised 44543
1915.97 (a) revised 44543
1915.112 (c)(3) revised 44543
1915.115 (d) revised 44543
1915.116 (n) revised 44543
1915.118 Tables E–1, E–3, G–1, G–3, G–7 and G–9 amended 44543
1915.131 (c) and (g) amended; (d) revised 44543
1915.134 (c) amended 44543
1915.152 (e)(2) revised 44543
1915.158 (a)(1) and (b)(4) revised 44543
1915.159 (a)(3), (9), (b)(2), (3), (4), (6)(iv), (iv) note, (7), (c)(1)(i) and (8) revised 44544
1915.160 (a)(2), (b)(1) and (2)(ii) revised; (b)(2)(i) amended 44544
1915.151—1915.160 (Subpart I) Appendices A and B amended 44544
1915.163 (a)(1) amended; (a)(2) revised 44545
1915.165 (a)(1) revised 44545
1915.172 (a) amended 44545
1915.181 (c) revised 44545
1915.1000 (d) heading revised 44545
1915.1001 (d)(2), (h)(1) Table 1 amended; (d)(4), (g)(5)(ii)(B)(*1*), (*7*), (*8*), (iii)(A), (8)(iii)(C), (h)(1)(iv), (i)(4)(i), (k)(3) heading, (ii), (5)(ii)(A), (9)(vi), (viii) and (o)(1) revised 44545
Appendix C amended 44546
1926 Request for public comment 54103
1926.200—1926.203 (Subpart G) Regulation at 67 FR 18112 withdrawn 46375
Authority citation revised 57736
1926.200 (g)(2) revised 57736
1926.201 (a) revised 57736
1926.202 Revised 57736
1926.203 (c) revised 57736
1952 Authority citation revised 60128
1952.125 (a) revised 60129
1952.175 (a) and (c) through (h) revised 60129
1952.212 (a) revised 60129
1952.367 (b) revised 60129
1952.372 (p) revised 60129
1953 Revised 60125
1954 Authority citation revised 60129
1954.3 (b)(2), (d)(1)(ii) and (iii) revised 60129
1955 Authority citation revised 60129
1955.2 (a)(4) revised 60129
1955.3 (a)(1) and (2) introductory texts revised 60129

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2520 Authority citation revised 64772
2520.101–3 Added; interim 64773
Revised 3727
2560 Authority citation revised 64779
2560.502c–2 (d) through (i) revised; interim 64779
(b)(1) and (d) through (i) revised 3734
2560.502c–5 (d) through (i) revised 64780

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 29 Chapter XXV—Con.

(b)(1) and (d) through (i) revised 3734
2560.502c–6 (d) through (i) revised **64781**
(b)(1) and (d) through (i) revised 3735
2560.502c–7 (d) through (i) revised **64781**
Revised 3736
2570 Authority citation revised **64782**
2570.61(c) Revised; interim **64782**
(c) revised 3737
2570.64 Revised; interim **64782**
Revised 3737
2570.94 Revised; interim **64783**
Revised 3737
2570.114 Revised; interim **64783**
Revised 3738
2570.130—2570.141 (Subpart G) Added **64783**
Revised 3738
2575 Authority citation revised 2878
2575.100 Revised 2878
2575.502c–5 Added 2878
2575.502c–6 Added 2878
2590 Authority citation revised **60861**
2590.712 (f)(1), (g)(2) and (i) amended; interim **60861**

Chapter XXVII—Federal Mine Safety and Health Review Commission (Parts 2700—2799)

2700.4 (b)(1) amended **60862**
2700.5 (b) and (g) amended **60862**
2700.82 (d) amended **60862**
2701.4 Amended **60862**
2702.2 Revised **60862**
2702.3 (a) amended **60863**
2704.201 (a) amended **60863**
2704.308 (b) amended **60863**
2705.4 Amended **60863**
2705.8 Amended **60863**
2706.170 (c) amended **60863**

Chapter XL—Pension Benefit Guaranty Corporation (Parts 4000—4999)

4003.61 Added **47695**
4011 Appendix B amended **71471**
4022 Appendix B amended **46376, 53307, 57950, 63545, 69122, 76683**
Appendix C amended **46377, 53307, 57950, 63545, 69122, 76683**
Appendix D amended **71472**
Appendices B and C amended 1966, 7420
4044 Appendix B amended **46377, 53308, 57950, 63545, 69122, 76683**
Appendix D amended **71472**
Appendix B amended 1967, 7421

Proposed Rules:

403 ..... **79280**
..... 8727
408 ..... **79280**
..... 8727
1404 ..... **70569**
1611 ..... **49276**
1626 ..... **52431**
1904 ..... **44124**
1910 ..... **51524, 54389, 55181, 66494, 70707**
..... 1023, 1399
1915 ..... **66494, 76214**
..... 1023, 1808
1926 ..... **46612, 50610, 66494**
..... 1023, 9036
2550 992
4000 7454
4003 7454
4007 7454
4010 7454
4011 7454
4022 7454
4041 7454
4041A 7454
4043 7454
4050 7454
4062 7454
4203 7454
4204 7454
4207 7454
4208 7454
4211 7454
4219 7454
4220 7454
4221 7454
4231 7454
4245 7454
4281 7454
4901 7454
4902 7454
4903 7454
4907 7454

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

18.41(f) revised 2883
42 Technical correction **57635**
46 Technical correction **57635**
47.11 Corrected **57635**
47.32 Corrected **57635**
47.42 (d) corrected **63255**
47.52 Corrected **57635**
47.92 Corrected **57635**
Table 47.92 corrected **63255**
48 Technical correction **57635, 78713**
48.8 (b)(4) revised **76665**
56 Technical correction **57635**
57 Technical correction **57635**
57.5060 (d), (e) and (f) stayed **47297**
57.5062 Stayed **47297**
75 Technical correction **78713**
75.1101–23 Redesignated as 75.1502 ..... **76665**
75.1500—75.1501 (Subpart P) Heading revised **76665**
75.1501 Added **76665**
75.1502 Redesignated from 75.1101–23 ..... **76665**
Corrected **78044**
77 Technical correction **57635**
100.3 (a) introductory text amended; (g) table revised 6613
100.4 (a) revised 6613
100.5 (c) revised 6613

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

250.102 (b)(1) table amended 8422
250.105 Amended 8422
250.108 Revised 7426
250.175 Existing text redesignated as (a); (b) added **44360**
250.198 (d) table and (e) table amended **51759**
(e) table corrected 46
(e) table amended 7427, 8422
250.199 (e) table amended 8422
250.203 (b)(5)(i), (ii) and (p) amended 8422
250.204 (b)(2)(i), (ii) and (t) amended 8422
250.400 Revised 8423
250.401 Revised 8423
250.402 Revised 8423
250.403 Revised 8423
250.404 Revised 8423
250.405 Revised 8423
250.406 Revised 8423
250.407 Revised 8423
250.408 Revised 8423
250.409 Revised 8423
250.410 Revised 8423
250.411 Revised 8423
250.412 Revised 8423
250.413 Revised 8423
250.414 Revised 8423
250.415 Revised 8423
250.416 Revised 8423
250.417 Redesignated as 250.490; new 250.17 added 8423
250.418 Added 8423
250.420 Added 8423
250.421 Added 8423
250.422 Added 8423
250.423 Added 8423
250.424 Added 8423
250.425 Added 8423
250.426 Added 8423
250.427 Added 8423
250.428 Added 8423
250.430 Added 8423
250.431 Added 8423
250.432 Added 8423
250.433 Added 8423
250.434 Added 8423
250.440 Added 8423
250.441 Added 8423
250.442 Added 8423
250.443 Added 8423
250.444 Added 8423
250.445 Added 8423
250.446 Added 8423
250.447 Added 8423
250.448 Added 8423
250.449 Added 8423
250.450 Added 8423
250.451 Added 8423
250.455 Added 8423
250.456 Added 8423
250.457 Added 8423
250.458 Added 8423
250.459 Added 8423
250.460 Added 8423
250.461 Added 8423
250.462 Added 8423
250.463 Added 8423
250.465 Added 8423
250.466 Added 8423
250.467 Added 8423

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 30 Chapter II—Con.

250.468 Added 8423
250.469 Added 8423
250.490 Redesignated from 250.417; undesignated center heading added 8423
240.490 new (g)(4)(iv), (j)(13)(ii) and (p)(2) revised 8434
250.504 Amended 8434
250.513 (a) and (b)(4) amended 8434
250.515 (b) revised 8434
250.604 amended 8435
250.613 (b)(3) amended 8435
250.615 (b) revised 8435
250.802 (b) and (e)(2) revised **51759**
250.803 (a), (b)(4) introductory text, (5)(i), (7) (9)(v) and (c)(2) introductory text revised; (b)(2)(i), (10) and (d) amended **51759**
250.804 (a)(3) introductory text revised; (a)(4) through (11) redesignated as (a)(5) through (12); new (a)(4) added; (a) introductory text, new (a)(5) and (10) amended; d **51760**
(a)(5) and (6) corrected 46
250.807 Amended 8435
250.1002 (d) amended **51760**
250.1004 (b)(9) amended **51760**
250.1105 (f)(1)(i) amended 8435
250.1604 (c) and (d) amended **51760**
(b) amended 8435
250.1612 Amended 8435
250.1614 (b) amended 8435
250.1628 (c) and (d)(2) revised **51760**
250.1629 (b)(2) and (4)(v) revised **51760**
250.1630 (a) introductory text and (2) introductory text revised; (a)(3), (4) and (5) redesignated as (a)(4), (5) and (6); new (a)(3) added **51761**
250.1700 Table corrected **66047**
250.1704 Table correctly added **44265**
(f) correctlyly designated as (g); new (f) correctly added; table heading and new (g) correctly revised **66047**
250.1712 Introductory text corrected; (e) and (f)(14) correctly revised **66048**
250.1715 Table correctly added **44265**
(a) table and (1) through (4) correctly revised; (a)(10) correctly added **66048**
250.1717 Introductory text correctly revised **66049**
250.1721 Heading, undesignated center heading and introductory text corrected; (a) and (g) amended **66049**
250.1722 Introductory text, (c) and (g) corrected; (a) and (d) amended **66049**
250.1723 Introductory text corrected; (b) amended **66049**
250.1726 Introductory text correctly revised **66049**
250.1740 (a) correctly removed; (b) correctly redesignated as (a); new (b) correctly added; (a) introductory text and (c) introductory text correctly revised; (c)(3) corrected **66049**
250.1741 (g) table correctly added **44266**
(b) correctly revised; (g) table corrected **66049**
250.1742 Table correctly added **44266**
250.1743 (a) amended; (b) corrected **66049**
260.114 (d) revised **57739**
260.124 (b)(1) revised **57739**
280 Revised **46858**

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

875.15 (d) and (e) amended; (f) revised 9502
915.15 Table amended **67524**
915.25 Added **72379**
917.12 (c) added **70009**
(d) added 2199
917.15 Table amended **67528**
Table amended 2199
917.16 (c)(2) and (o) removed 2201
918.15 Table amended **69129**
924.15 Table amended **71831**
924.16 (l) and (l) removed **71832**
924.17 Heading revised **71832**
931.15 Table amended **46384**
931.16 (e), (u) and (v) removed **46385**
936.15 Table amended 2451
938.15 Table amended **67531**
938.16 (gggg) removed **67531**
943.15 Table amended **67534**
944.15 Table amended **67540**
948.15 Table amended **71840**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

950.15 Table amended **67547**
950.16 (ii) and (jj) removed **67547**

Proposed Rules:

6 ..... **64196**
7 ..... **64196**
14 ..... **46431**
18 ..... **46431, 64196**
..... 2941
19 ..... **64196**
20 ..... **64196**
22 ..... **64196**
23 ..... **64196**
27 ..... **64196**
33 ..... **64196**
35 ..... **64196**
36 ..... **64196**
56 ..... **60611**
57 ..... **60199, 60611**
58 ..... **60611**
70 ..... **60611**
71 ..... **60611**
72 ..... **60611**
75 ..... **46431, 60611**
..... 3936
90 ..... **60611**
206 7086
250 ..... **46616, 46942**
..... 1808, 8480
251 ..... **46942**
773 ..... **46617**
780 ..... **46617**
784 ..... **46617**
800 ..... **46617**
901 2263
915 ..... **52659, 52662**
916 ..... **59484**
..... 2265
917 ..... **46432, 53539**
..... 6838
920 2268
924 ..... **56967**
926 ..... **46434**
934 6842
936 ..... **54979**
938 721
943 ..... **52664**
944 521
948 ..... **53542, 67576**

TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)

1.36 (g)(1)(viii) table amended **48387, 62886**
5 Revised; interim **65845**
10.1—10.8 (Subpart A) Revised **48765**
10.20 Revisjed **48771**
10.21 Revised **48771**
10.22 Revised **48771**
10.23 Revised **48771**
10.24 Revised **48771**
10.25 Revised **48771**
10.26 Revised **48771**
10.27 Revised **48771**
10.28 Revised **48771**
10.29 Revised **48771**
10.30 Revised **48771**
10.31 Revised **48771**
10.32 Revised **48771**
10.34 Revised **48771**
10.50—10.53 (Subpart C) Revised **48774**
10.60—10.82 (Subpart D) Revised **48774**
10.90—10.93 (Subpart E) Revised **48774**
50 Added; interim 9811

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

103 Authority citation revised **48351, 60570, 78384**
Policy statement **48388**
Technical correction 493
103.11 (ii)(1) revised; (ww) added **44055**
(n)(5)(ii), (iii), (6)(i) and (ii) amended; (n)(6)(ii)(1) revised **60729**
103.19 Added **44056**
(b)(1), (2), (3), (c)(1), (d) and (e) amended 6617
103.20 (a)(1) and (b)(3) amended; (a)(2)(iv) added 6617
103.21 Added **60729**
103.64 (a)(2)(ii) and (v)(B) revised; (a)(2)(iii) amended **60730**
103.81 Added **48351**
103.90 Revised **60585**

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 31 Chapter I—Con.

103.100 Added **60585**
103.110 Revised **60587**
103.90—103.110 (Subpart H) Appendix A added **60587**
103.120—103.170 (Subpart I) Undesignated center heading added **48351, 60570**
(Subpart I) Appendices A and B added **60570**
103.170 Heading, (b) and (c) revised; (d) added; interim **67549**
Corrected **68935**
103.175 Added **60570**
103.177 Added **60570**
(d)(1) revised **78384**
103.182 Added **48351**
103.183 Added **48351**
103.185 Added **60572**

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

285.5 Added; interim **78942**
321.8 (a)(2) redesignated as (a)(3); (a)(1) revised; (a)(2) added 2666
(a)(1) corrected 7427
321.9 (a) revised 2666
(a)(1) corrected 7427
321 Appendix amended 2666
Appendix corrected 7427
351.2 (d) amended 2667
(d) corrected 7427
351.6 Revised **64278**
352.7 (a) amended 2667
(a) corrected 7427
352 Table 1 removed **78384**
353.35 (b) revised 2667
(b) corrected 7427
356.2 Amended **68516**
(e)(1)(i) through (vii) redesignated as (e)(1)(ii) through (viii); new (e)(1)(i) added; new (e)(1)(ii) and (2) revised **78384**
356.12 (c)(1)(i) and (2) revised **68516**
356.13 (a) revised **68516**
356.20 (a) revised **68516**
356.21 (a) revised; (b) amended **68516**
356.22 (b) revised **68517**
357.0 Revised **64278**
359 Revised **64278**
359.6 Revised 2667
(a) corrected 7427
360 Heading revised **64285**
360.0 Revised **62485**
360.2 (a) revised **64286**
360.35 (b) revised 2667
(b) corrected 7427
363 Added **64286**

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

501.805 (d) added 6822
585.529 Added **78974**
586.520 Added **78974**

Proposed Rules:

5 ..... **65856**
10 ..... **77724**
50 9815
103 ..... **48290, 60617, 60625, 64067, 64075, 68540**
..... 2716, 8480, 8568, 8571
501 4422
515 4422
538 ..... **56969**
550 ..... **56969**
560 ..... **56969**
800 ..... **70194**

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

3 Authority citation revised **54956**
3.1 Revised **54956**
3.2 Redesignated as 3.3; new 3.2 added **54956**
3.3 Redesignated as 3.4; new 3.3 redesignated from 3.2 ..... **54956**
3.4 Redesignated as 3.7; new 3.4 redesignated from 3.3 and amended **54956**
3.5 Added **54956**
3.6 Added **54956**
3.7 Redesignated from 3.4 ..... **54956**
Heading revised **54957**
171 Added 8823
199.2 (b) amended 6618
199.4 (e)(22) correctly designated **45311**
199.8 (a), (c)(1) and (d)(3) revised; (b)(3), (c)(2) and (3) redesignated as (b)(4), (c)(4) and (5); new (b)(3), (c)(2) and (3) added 6618
199.12 Revised 6619
220 Heading revised **57740**

NOTE: **Boldface page numbers indicate 2002 changes.**

220.1 Revised **57740**
220.2 (a) and (b) revised **57740**
220.4 (c)(2)(iii) revised **57740**
220.8 Heading, (a), (b), (c), (e), (f), (h), (i) and (j) revised; (k) and (l) removed **57740**
220.10 (c)(1) introductory text revised **57742**
220.12 (a)(1) revised **57742**
220.13 (a) revised **57742**
220.14 Amended **57742**
254 Removed 6082
285.1 Revised 8825
285.3 (e) revised 8825
285.4 (a) revised; (a)(4) removed; (b) and (c) redesignated as (c) and (d); new (b) added; new (d)(1) revised 8825
285.5 Revised 8825
311.8 (c)(12) and (13) added 8722
320.12 (b) added **55724**

Chapter VI—Department of the Navy (Parts 700—799)

700.405 (c)(9) amended; (c)(10) added; (d)(3) revised 2697
700.505 (b)(5) redesignated as (b)(6); new (b)(5) added 2697
700.701 (a) revised 2697
700.1053 (a) revised 2697
706.2 Table 4 amended ..... 5827—5832
Table 5 amended 5829, 5830, 5832
776.20 Revised **70165**
776.53 (a)(4) revised **70165**

Chapter VII—Department of the Air Force (Parts 800—1099)

806b Appendix C amended **53879**
Appendix C corrected **64313**
861 Revised **65698**

Chapter XII—Defense Logistics Agency (Parts 1200—1299)

1293 Removjed **69688**

Proposed Rules:

281 ..... **68956**
282 ..... **68957**
283 ..... **68963**
284 ..... **68965**
311 ..... **71118, 71119**
322 8179
806b **71120**
861 ..... **56777**

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1 Authority citation revised 9534
1.01–70 (e) amended 9534
1.05 (Subpart) Authority citation revised 9534
1.05–1 (a) and (b) amended 9534
1.05–10 (a) and (b) amended 9534
1.05–25 (a) amended 9534
3 Authority citation revised 9534
3.01–1 (a) amended 9534
3.01–5 Amended 9534
5 Authority citation revised 9534
5.01 (j) amended 9534
6 Clarification **51082**
6.01–6 Added **56215**
6.04–1 Revised **56215**
45 Authority citation revised 9534
45.1 (a) amended 9535
51 Authority citation revised 9535
51.2 (a) amended 9535
52 Authority citation revised 9535
52.1 Amended 9535
52.2 (a) amended 9535
52.11 (a) and (b) amended 9535
52.81 Amended 9535
53 Authority citation revised 9535
53.3 Amended 9535
53.5 Amended 9535
53.7 (a) amended 9535
53.9 (a) introductory text amended 9535
66 Authority citation revised 9535
66.01–3 (a) amended 9535
100 Temporary regulations list **49236, 71840**
Technical correction **56222**
100.35–T05–049 Added (temporary) **48782**
100.35–T05–052 Added (temporary) **53310**
100.35–T05–057 Added (temporary) **54106**
100.35–T05–059 Added (temporary) **54343**
100.35–T05–061 Added (temporary) **54341**
100.35–T05–062 Added (temporary) **54345**
100.35–T05–064 Added (temporary) **57952**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 33 Chapter I—Con.

100.35–T05–075 Added (temporary) **60865**
100.35T–07–013 Added (temporary) **45313**
100.35T–07–045 Added (temporary) **44553**
100.35T–07–049 Added (temporary) **44548**
100.35T–07–056 Added (temporary) **44551**
100.35T–07–074 Added (temporary) **44549**
100.35T–07–087 Added (temporary) **45635**
100.35T–07–117 Added (temporary) **63267**
100.515 Implementation (temporary) **53735**
100.527 Added **56221**
100.735 Added **76988**
100.1101 Implementation (temporary) **53735**
109 Authority citation revised 9535
109.07 Amended 9535
110.130 Redesignated as 110.132; new 110.130 added **68518**
110.131 Redesignated as 110.133 ..... **68518**
110.132 Redesignated as 110.134; new 110.32 redesignated from 110.130 ..... **68518**
110.133 Redesignated as 110.136; new 110.133 redesignated from 110.131 ..... **68518**
110.134 Redesignated as 110.138; new 110.134 redesignated from 110.132 ..... **68518**
110.136 Redesignated from 110.133 ..... **68518**
110.138 Redesignated from 110.134 ..... **68518**
110.157 (b)(11)(1) added (temporary) **65040**
110.235 (c) added (temporary) **66051**
114 Authority citation revised 9535
114.05 (e), (g) and (i) amended 9535
117 Temporary drawbridge operations regulations **45059, 48782, 49575, 49576, 51761, 55115, 56929, 57147, 58329, 60865, 61987, 64527, 65041, 65706, 65707, 66053, 66552, 67551, 68519, 70165, 70550, 70551, 70552, 70846, 71473, 71840, 72099, 72100, 72559, 76116, 76988, 76989, 79853**
Temporary drawbridge operations regulations 1366, 2201, 2883, 2884, 5832, 6621, 7427, 9535, 9536, 9537
Temporary regulations list **49236, 71840**
Technical correction **56222**
117.205 (c) suspended; (d) added (temporary) **66554**
117.261 (rr) added (temporary) **44566**
117.305 Suspended (temporary) **63259**
117.319 (a) revised; (c) added **50351**
117.393 (c) suspended; (e) added (temporary) **67110**
117.451 (c) revised 3183
117.455 Revised 3184
117.481 Removed **68521**
117.597 Suspended (temporary) **66053**
117.609 Revised **63261**
117.647 (a), (b) introductory text, (3) and (4) revised; (d) and (e) redesignated as (c) and (d) **49240**
117.684 Removed **69131**
117.680 Removed **69132**
117.739 (b) suspended; (q) added (temporary) **64813**
117.755 (b) suspended; (c) added (temporary) **67551**
117.789 (c) suspended; (h) added (temporary) **63547**
(h) added (temporary) **71475**
117.799 (e) suspended; (k) added (temporary) **63547**
117.801 (g) suspended; (h) added **63547**
117.802 (a) suspended; (c) added (temporary) **72561**
117.829 Revised **70554**
117.T306 Added (temporary) **63259**
117.T408 Added (temporary) **76115**
Added (temporary) **78977, 78978**
Corrected 4382
117.T602 Added (temporary) **66053**
120 Authority citation revised 9535
120.220 (a) amended 9535
125 Clarification **51082**
147.815 Added 4102
147.817 Added 4102
147.819 Added 4102
147.821 Added 4102
147.823 Added 4102
147.825 Added 4100
155 Authority citation and note revised **58523**
155.200 Amended **58524**
155.490 Added **58524**
156 Authority citation revised **58524**
156.120 (ee) added **58524**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

160 Authority citation revised 9543
160.201–160.215 (Subpart C) Revised 9543
160.201 Regulation at 66 FR 50572 suspended in part through 3–31–03 ..... **55119**
160.203 Amended **53740**
Regulation at 66 FR 50572 suspended in part through 3–31–03 ..... **55120**
160.207 Regulation at 66 FR 50572 suspended through 3–31–03 ..... **55120**
160.211 Regulation at 66 FR 50573 suspended through 3–31–03 ..... **55120**
160.213 Regulation at 66 FR 50574 suspended in part through 3–31–03 ..... **55120**
160.T204 Regulation at 66 FR 50572 extended through 3–31–03 ..... **55120**
160.T208 (c)(15)(iv) revised; (c)(16) added (temporary) **53740**
Regulation at 66 FR 50572 extended through 3–31–03 ..... **55120**
160.T212 (b)(20) added (temporary) **53740**
Regulation at 66 FR 50573 extended through 3–31–03 ..... **55120**
160.T214 Regulation at 66 FR 50574 extended through 3–31–03 ..... **55120**
161.60 (b) through (d) redesignated as (c) through (e); new (b) added **53742**
165 Temporary regulations list **48988, 49236, 71840**
Implementation (temporary) **46387, 51083, 55120, 62178**
Technical correction **56222, 57332**
Enforcement notice **70696**
165.103 Revised **56487**
165.104 Added **49582**
165.106 Added **64815**
165.110 Revised **63263**
165.114 (b) revised **63265**
165.116 Added **45909**
165.121 Revised **56224**
165.160 Revised 2890
165.167 Added **56489**
165.169 Added 2890
(a)(7) through (10) added (temporary) 7929
165.501 Regulation at 67 FR 3814 eff. date confirmed **50351**
(d)(14) added (temporary) 2203
(a)(1) suspended ; (a)(13), (d)(15) and (16) added (temporary) 2886
165.756 Added **46867**
165.757 Added **60867**
165.758 Added **76991**
165.759 Added 3186
165.761 Added 3189
165.812 Added **61989**
165.809 Added **64046**
165.813 Added **64048**
165.825 Added **64043**
165.908 Corrected **47299**
Added **53502**
Removed **66055**
165.909 Added **44560**
165.910 Corrected **65041**
165.911 ..... **53500**
165.912 Added **52611**
165.915 Added **46386**
165.916 Added **49578**
165.917 Added **65043**
165.1101 Suspended (temporary) **58334**
Suspended (temporary) 7080
165.1103 Suspended (temporary) **58526**
Suspended (temporary) 7075
165.1104 Suspended (temporary) **58528**
Suspended (temporary) 7077
165.1108 Added 1008
165.1154 Added **72563**
165.1151 Suspended (temporary) **79858**
165.1155 Added **77430**
165.1183 Added **79855**
165.1405 Added 4384
165.1703 (a) correctly revised **45313**
165.1709 Added; interim (OMB number pending) **44059**
165.T01–062 Added (temporary) **44366**
165.T01–063 Added (temporary) **51763**
165.T01–065 Added (temporary) **45061**
165.T01–093 Added (temporary) **52865**
165.T01–094 Added (temporary) **50353**
165.T01–096 Added (temporary) **49242**
165.T01–099 Added (temporary) **56757**
165.T01–114 Added (temporary) **62375**
165.T01–131 Added (temporary) **72841**
Technical correction (temporary) 1162
165.T01–153 (c) revised (temporary) **69134**
165.T01–154 (b) revised (temporary) **69134**

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 33 Chapter I—Con.

165.T01–165 (c) revised (temporary) **53312**
165.T01–166 (b) revised (temporary) **53312**
165.T01–207 (b) revised **52609**
165.T05–007 Added (temporary) 5834
165.T05–060 Added (temporary) **57744**
165.T05–071 (d) revised (temporary) **61495**
165.T05–087 Added (temporary) **65040**
165.T05–097 Added (temporary) **77925**
165.T07–011 Added (temporary) 7703
165.T07–054 Added (temporary) **46391**
165.T07–065 Added (temporary) **44556**
165.T07–101 Added (temporary) **57954**
165.T07–132 Added (temporary) **68764**
165.T07–133 Added (temporary) **68762**
165.T07–146 Added (temporary) **76993**
165.T07–148 Added (temporary) **71477**
165.T07–156 Added (temporary) 1969
165.T08–013 Added (temporary) 9548
165.T08–064 Added (temporary) **48552**
165.T08–065 Added (temporary) **45905**
165.T08–099 Added (temporary) **60590**
165.T08–100 Added (temporary) **58332**
165.T08–108 Added (temporary) **67303**
165.T08–122 Added (temporary) **70315**
Revised (temporary) 2453
165.T09–011 Added (temporary) **46389**
165.T09–032 Added (temporary) **44566**
165.T09–035 Added (temporary) **44362**
165.T09–036 Added (temporary) **44368**
165.T09–037 Added (temporary) **45903**
165.T09–038 Added (temporary) **44564**
165.T09–042 Added (temporary) **44558**
165.T09–109 Removed **49578**
165.T09–110 Removed **49578**
165.T09–135 Removed **46386**
165.T09–136 Removed **46386**
165.T09–506 Added (temporary) **52607**
Removed **52611**
165.T09–526 Added (temporary) **78386**
165.T11–031 Added (temporary) 7075
165.T11–033 Added (temporary) **59454**
165.T11–034 Added (temporary) **66335**
165.T11–035 Added (temporary) **67111**
165.T11–040 Added (temporary) 3399
165.T11–042 Added (temporary) 3401
165.T11–043 Added (temporary) 3397
165.T11–045 Added (temporary) **54737**
165.T11–047 Added (temporary) **58334**
Added (temporary) 7080
165.T11–048 Added (temporary) **58528**
165.T11–049 Added (temporary) **58526**
Added (temporary) 7077
165.T11–066 (f) revised (temporary) **79858**
165.T11–069 Added (temporary) **55726**
165.T11–077 Added (temporary) 9006
165.T11–082 Revised **49580**
165.T11–086 Added (temporary) **44568**
165.T11–089 Added (temporary) **54108**
165.T13–005 Added (temporary) **45907**
165.T13–007 Added (temporary) **44364**
165.T13–008 Added (temporary) **48784**
165.T13–011 Added (temporary) **66337**
165.T14–072 Added (temporary) **66051**
165.T17–013 Added (temporary) **49584**
165.TD05–02–041 Added (temporary) **44061**
167.1700 Added **53743**
167.1701 Added **53743**
167.1702 Added **53743**
167.1703 Added **53743**
177.799 (g) suspended; (k) added (temporary) **56755**

Chapter II—Corps of Engineers, Department of the Army (Parts 200—399)

334.81 Added **65313**

Chapter IV—Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

401.20 Added 9551
401.102 (a) amended **67113**

Proposed Rules:

1—199 (Ch. 1) **50840**
2 ..... **52906, 58752**
26 ..... **52906**
52 ..... **76142**
62 ..... **52906**
64 ..... **52906**
95 ..... **52906**
100 ..... **52906, 66349**
..... 9037
110 ..... **45071, 56245, 68540**
..... 4130
117 ..... **44582, 50842, 50844, 51157, 56247, 57355, 57773, 61303, 64578, 64580, 71513, 72126, 77949, 79012**
..... 5858, 6100, 7087, 9609
120 ..... **52906**
147 9611
148 ..... **53764**
149 ..... **53764**

NOTE: **Boldface page numbers indicate 2002 changes.**

150 ..... **53764**
151 523
154 ..... **63331, 69697**
155 ..... **51159, 63331, 69697**
160 ..... **48073**
165 ..... **45945, 48832, 48834, 49643, 50846, 55184, 56245, 58006, 59228, 64345, 65074, 65746, 66086, 66595, 67342, 70892, 71513, 75831, 77008, 79014, 79017**
.....2946, 5614, 6844, 7093, 7471, 7473, 7958, 7960, 9039
167 ..... **48837, 54981, 60630**
179 7096
181 7096
183 7096
328 ..... 1991, 9613
334 ..... **50389, 50390, 65331, 65332, 71014, 78912**
..... 1790
385 ..... **50540, 55377**
..... 5860
401 ..... **70897**

TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

34 Added 8142
36 Added **69655**

Chapter II—Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

200 Heading and authority citation revised **45039**
Authority citation revised **71715**
200.1—200.29 (Subpart A) undesignated center headings removed **71715**
200.1 Undesignated center heading and section revised **45039**
200.2 Revised **45039**
200.3 Revised **45039**
200.4 Revised **45039**
200.5 Revised **45039**
200.6 Revised **45039**
(a)(2) revised **71715**
200.7 Added **45042**
(c) and (d) added **71715**
200.8 Redesignated as 200.18; new 200.8 added **45042**
200.9 Added **45043**
200.10 Redesignated as 200.14; new 200.10 added **45043**
200.11 Undesignated center heading added; section revised **71715**
200.12 Revised **71716**
200.13 Undesignated center heading added; section revised; OMB number **71716**
(b) corrected 1008
200.14 Redesignated from 200.10 ..... **45043**
Revised **71716**
200.15 Revised **71716**
200.16 Revised **71716**
200.17 Amended **45042**
Revised **71716**
200.18 Redesignated from 200.8 ..... **45042**
Revised **71716**
200.19 Added **71717**
200.20 Revised **71717**
200.21 Revised **71718**
200.22 Removed **71718**
200.23 Removed **71718**
200.24 Removed **71718**
200.25 Undesignated center heading added; section revised **71718**
200.26 Added; OMB number **71718**
200.27 Revised; OMB number **71719**
200.28 Revised; OMB number **71719**
200.29 Added **71720**
(a)(1) correctly designated 1008
200.30 Transferred to subpart A; undesignated center heading added; section revised; OMB number **71720**
200.31 Added; OMB number **71721**
200.32 Added **71721**
200.33 Added; OMB number **71721**
200.34 Added; OMB number **71721**
200.35 Added **71721**
200.36 Added; OMB number **71721**
200.37 Added; OMB number **71721**
200.38 Added; OMB number **71721**
200.39 Added; OMB number **71721**
200.40 Transferred to subpart A; revised **71723**
200.41 Transferred to subpart A; revised; OMB number **71723**
200.42 Transferred to subpart A; revised; OMB number **71723**
200.43 Transferred to subpart A; revised; OMB number **71723**
200.44 Transferred to subpart A; revised **71723**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 34 Chapter II—Con.

200.45 Transferred to subpart A; revised; OMB number 71723
200.46 Added; OMB number 71725
200.47 Added; OMB number 71725
200.48 Added 71725
200.49 Added; OMB number 71725
200.50 Transferred to subpart A; revised; OMB number 71727
200.51 Transferred to subpart A; revised; OMB number 71727
200.52 Added; OMB number 71728
200.53 Added; OMB number 71728
200.55 Undesignated center heading and section added 71729
200.56 Added; OMB number 71729
200.57 Added; OMB number 71729
200.58 Added 71729
200.59 Added 71729
200.60 Transferred to subpart A; revised 71731
200.61 Transferred to subpart A; revised 71731
200.62 Undesignated centerheading and section added; OMB number 71732
200.63 Transferred to subpart A; revised; OMB number 71732
200.64 Added 71732
200.65 Transferred to subpart A; revised 71733
200.66 Added 71733
200.67 Added 71733
200.70 Undesignated center heading and section added; OMB number 71733
200.71 Added; OMB number 71733
200.72 Added; OMB number 71733
200.73 Added; OMB number 71733
200.74 Added; OMB number 71733
200.75 Added; OMB number 71733
200.77 Undesignated center heading and section added 71735
200.78 Added 71735
200.79 Undesignated center heading and section added 71736
200.80 (Subpart B) revised 71736
200.81—200.89 (Subpart C) revised; OMB numbers 71736
200.90—200.99 (Subpart D) revised; OMB numbers 71738
200.91 Added; OMB number 71738
200.100—200.109 (Subpart E) revised; OMB numbers 71738
200.100 Added; OMB number 71739
222.170—222.196 (Subpart L) Added 5368211
263 Revised 47696

Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600—699)

600 Authority citation revised 67070
600.8 Amended 67070
600.21 (f) revised; OMB number 67070
600.31 (e) revised; OMB number 67070
668.2 (b) amended 67071
668.3 Revised 67071
668.4 Revised 67071
668.8 (b)(e) revised; (b)(4) removed 67072
668.14 (b)(22) revised 67072
668.22 (a)(3), (4)(ii)(B), (d)(2), (3)(i), (iii)(B) and (j)(1) amended; (d)(1)(vii) and (2) removed; (d)(1)(viii), (ix), (3) and (4) redesignated as (d)(1)(vii), (viii), (2) and (3); (b)(3)(i), (d)(1)(vi) and new (vii) revised 67073
668.32 (e)(2) amended 67073
668.35 (b) through (f) redesignated as (d) through (h); (a)(2) introductory text and new (b) and (c) added; new (e) revised 67073
668.46 (a) amended; (b)(12) added 66520
668.84 (a)(1) introductory text amended; footnote 1 added 69655
668.151 (a)(2) amended 67073
668.164 (g) revised 67073
668.165 (a)(3) revised; OMB Number 67074
668.171 (b)(2) and (4)(i) amended 67074
668.173 (a), (b) and (c) revised; (d) redesignated as (f); new (d) and (e) added; OMB number 67074
668.174 (c)(4) revised 67075
668.183 (c)(1)(ii) amended; (c)(1)(iii) removed; (c)(1)(iv) redesignated as (c)(1)(iii) 67075
668.193 (d)(1) amended; (f)(3) removed 67075
673.5 (f) revised 67075
674.2 (b) amended 67076
674.9 (g) removed; (h) through (l) redesignated as (g) through (k); new (g)(3) amended; new (j) revised 67076
674.16 (d)(2) revised; (d)(3) added 67076
674.17 (a)(2), (c), (d) and (e) removed; (a)(3) redesignated as (a)(2); (a) introductory text, new (2) and (b) amended 67076
674.19 (e)(4) revised 67076
674.33 (b)(2) introductory text and (3) text revised 67076
674.34 (e)(4) and (5) amended; (e)(10) revised 67076
674.39 (a) introductory text and (2) amended; (a)(3) removed 67077
674.42 (a)(11) and (b)(2)(x) added; (b)(3) removed; (b)(4) and (5) redesignated as (b)(3) and (4); (b)(2)(i), (v) through (viiii), (ix) and new (4) amended; (a)(10), (b)(1), (2) introductory text, (iii) and new (3) revised 67077
674.43 (b)(2) introductory text amended 67077
674.45 (a)(1) amended 67077
674.46 (a)(1) introductory text and (i) amended 67077
674.47 (g)(1) removed; (g)(2), (i) and (ii) redesignated as (g) introductory text, (1) and (2); new (g)(1) and (h) heading amended; (h)(1) revised; (h)(3) added 67077
674.50 (e)(2)(ii), (3) and (g)(2) amended; (e)(4) removed 67077
675.2 (b) amended 67078
675.21 (b)(2)(i) revised 67078
682.200 (b)(2)(i) amended 67078
682.204 (a)(8), (9), (d)(7) and (8) added; (l) amended 67078
682.209 (a)(3)(ii)(A), (B), (C) and (8)(iv) amended; (a)(3)(iii) added 67078
682.210 (h)(2), (3)(iv), (4), (s)(6)(vii) and (ix) amended 67078
682.211 (b), (c), (e) and (f)(11) revised; (f) introductory text and (2) amended; (h)(3) redesignated as (h)(4); new (h)(3) added 67079
682.401 (b)(4) amended 67079
682.402 (a)(2), (3) and (4) redesignated as (a)(3), (4) and (5); new (a)(2) and (b)(6) added; new (a)(3) and (5)(iii) amended; (f)(4), (g)(1)(i), (h)(1)(i), (3)(iii) and (k)(2)(iii) revised 67079
682.405 (a)(1) and (b)(1) amended; (a)(4) removed 67080
682.414 (a)(5)(ii) revised 67080
682.603 (f)(1)(ii)(B) and (2)(i) amended 67080
682.604 (f)(1), (2) introductory text, (3), (g)(1), (2) and (3) revised; (f)(2)(iv) amended; (f)(2)(v) added 67080
685.102 (b) amended 67081
685.203 (a)(8), (9), (c)(2)(viii) and (ix) added; (h) amended 67081
685.211 (f) revised 67081
685.212 (a)(3) added 67081
685.220 (l)(3) revised 67082
685.301 (a)(9)(i)(B)(*2*) and (ii)(A) amended 67082
685.304 (a)(1), (2), (3), (5), (b)(4) and (5) revised; (b)(1), (2) and (3) amended; (b)(6) redesignated as (b)(7); new (b)(6) added 67082
690.61 (b) amended 67083
690.75 (a) revised 67083
690.79 Revised 67083
694.10 (e) revised 67083

Chapter VII—Office of Educational Research and Improvement, Department of Education (Parts 700—799)

700 Removed 78979
701 Removed 78979
702 Removed 78979

Proposed Rules:

1—99 (Ch. I) 69456
200 50986
600 51718
668 ..... 51036, 51718
673 51718
674 51036
675 51718
682 ..... 51036, 51718
685 ..... 51036, 51718
690 51718
694 51718

NOTE: Boldface page numbers indicate 2002 changes.

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

NOTE: Boldface page numbers indicate 2002 changes.

TITLE 35—PANAMA CANAL

No amendments to 35 CFR have been published in the FEDERAL REGISTER since July 2, 2000.

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1—199)

6.01–4 Correctly revised; CFR correction **59783**
7.13 (l)(2) removed; (l)(5) introductory text, (7) introductory text, and (11)(i) revised; (11)(viii) amended **69477**
7.21 (a)(1), (4) introductory text, (5) introductory text, and (9)(vi) revised; (a)(2) removed **69477**
7.22 (g)(1), (4), (6) and (7)(vi) revised; (g)(2) and (3) removed **69477**

Chapter II—Forest Service, Department of Agriculture (Parts 200—299)

223.50 (e) revised **70169**
242 Emergency closures and adjustments **50597**
Temporary regulations **54572, 58695**
Temporary regulations 7298
242.6 (b) revised 7704
242.11 (b)(1) amended 7704
242.24 (a)(2) and (3) revised 7279
242.27 Added; eff. 3–1–03 through 2–29–04 7282
242.28 Added; eff. 3–1–03 through 2–29–04 7282

Chapter IV—American Battle Monuments Commission (Parts 400—499)

404 Revised 8826
405 Removed 8829

Chapter XI—Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)

1191 Appendix A amended **56384**

Chapter XII—National Archives and Records Administration (Parts 1200—1299)

1200 Revised **72101**
1200.2 Corrected **76995**
1201 Added; interim **44757**
Regulation at 67 FR 44757 confirmed **63267**
1228.24 (a) revised **79518**
1228.42 (d) corrected **47701**
1228.270 (a), (b), and (c) revised; (f) added **79518**
1254.6 (a) revised **63268**
1275 Authority citation revised **44766**
1275.64 (d) revised **44766**
1275.66 (a) revised **44766**
1275 Appendix A amended **44766**

Proposed Rules:

1—199 (Ch. I) **59487, 64347**
4 4975
7 ..... **56785, 57357**
..... 2466
52 ..... **70899**
61 ..... **52532**
215 ..... **77451**
219 ..... **72770, 72816**
242 ..... **50619**
..... 7294, 7734
251 2948
261 2948
295 2948
404 ..... **69172**
1190 ..... **56441**
1191 ..... **56441**
1200 ..... **46945**
1254 ..... **45683**

TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—United States Patent and Trademark Office, Department of Commerce (Parts 1—199)

1.4 (d)(1)(iii)(A) revised **79522**
1.16 (a), (g) and (h) revised **70849**
1.17 (a)(2) through (5), (e), (m), (r), (s) and (t) revised **70849**
1.18 (a), (b) and (c) revised **70849**
1.19 (a)(1) and (b)(1) revised **70849**
1.20 (e), (f) and (g) revised **70849**

NOTE: **Boldface page numbers indicate 2002 changes.**

1.492 (a)(1), (2), (3) and (5) revised **70850**
2.6 (a)(1), (b)(1) and (2) revised **70850**
(b)(8) revised **79522**
2.18 Revised **79522**
2.24 Revised **79522**
2.33 (b)(2) revised **79522**
2.34 (a)(2)(i), (3)(i), (ii),(iii), and (4)(ii) revised **79522**
2.119 (d) revised **79523**
2.161 (h) removed; (g)(2) revised **79523**
2.183 (d) removed; (e) and (f) redesignated as new (d) and (e) **79523**
3.31 (a)(7) removed; (a)(8) redesignated as new (a)(7) **79523**
3.61 Revised **79523**
4.5 Revised 9553

Chapter II—Copyright Office, Library of Congress (Parts 200—299)

201 Authority citation revised **69136**
201.4 (a)(1)(v) amended **69136**
201.10 (b)(1)(i) through (v) redesignated as (b)(1)(ii) through (v) and (vii); introductory text, new (b)(1)(i) and (vi) added; new (b)(1)(vii) amended; (c)(2), (d)(2), (4) and (e) revised **69136**
(b)(2), (c)(3) and (4) redesignated as (b)(3), (c)(4) and (5); Heading, (b)(1) introductory text, (v), (vii)(B), ne (3), (c)(1), (2), (d)(2) introductory text, (e)(1) and (2) revised; introductory text and (d)(4) amended; (b)(2) and (c)(3) added; interim **78176**
253.1 Amended **77171**
253.3 Removed **77171**
253.4 Introductory text, (c) and (d) amended; (a) revised **77171**
253.5 (c)(1) and (2) revised **71105**
253.5 (c)(3) amended **77171**
253.6 (c) revised **77172**
253.7 (a) amended; (b) revised **77172**
253.8 (b)(1) and (f)(1) revised **77172**
253.10 (a)j amended **77173**
259 Waiver **71477**
260 4744
261 Added **45272**

Proposed Rules:

201 ..... **58550, 63578, 77951**
..... 6678
260 4744
253 ..... **66090**

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Department of Veterans Affairs (Parts 0—99)

1.600 Added **62643**
1.617 Added **62644**
3 Nomenclature change **46868**
3.6 (a)(1), (2) and (3) removed; (a) amended; (e)(3) added **49585**
3.27 (c) and (d) revised **49586**
3.29 (c) revised **49586**
3.31 Introductory text and (c)(4)(ii) amended; authority citation revised **49586**
3.105 (g) revised **49586**
3.114 (a) introductory text amended; (a) authority citation revised **49586**
3.158 (a) and (c) amended **49586**
3.216 Amended; authority citation revised **49586**
3.261 (a)(40) revised **49586**
3.262 (y) revised **49587**
3.263 (g) revised **49587**
3.272 (u) revised **49587**
3.275 (i) revised **49587**
3.307 (a) introductory text and (c) amended; (d) and authority citation revised **67793**
3.309 (a) amended **67793**
3.317 Regulation at 66 FR 56615 confirmed **78980**
3.353 (b)(2) revised **46868**
3.403 (b) revised; (c) added **49587**
3.503 (b) revised **49587**
3.700 (a)(2)(iii), (3) and (5)(i) amended; (a)(5) heading and authority citation revised **60868**
3.814 Heading and authority citation revised; (a) heading and (d) heading added; (a), (c)(1), (2) and (e) introductory text amended **49587**
3.815 Added **49588**
3.850 (d) amended **46868**
3.1000 Heading, (c)(1) and (d)(4) revised **65708**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 38 Chapter I—Con.

3.2600 (a) amended **46868**
4.71 Amended **48785**
4.71a Tables amended **48785, 54349**
4.118 Revised **49596**
Corrected **58448, 58449**
8.0 Revised **54738**
8.1 Revised **54738**
8.18 Revised **54738**
8.25 Undesignated center heading and section removed; new 8.25 redesignated from 8.26 ..... **54739**
8.26 Redesignated as 8.25; new 8.26 redesignated from 8.27 ..... **54739**
8.27 Redesignated as 8.26; new 8.27 redesignated from 8.28 ..... **54739**
8.28 Redesignated as 8.27; new 8.28 redesignated from 8.29 ..... **54739**
8.29 Redesignated as 8.28; new 8.29 redesignated from 8.30 ..... **54739**
8.30 Redesignated as 8.29; new 8.30 redesignated from 8.31 ..... **54739**
8.31 Redesignated as 8.30; new 8.31 redesignated from 8.32 ..... **54739**
8.32 Redesignated as 8.31; new 8.32 redesignated from 8.33; revised **54739**
8.33 Redesignated as 8.32; new 8.33 redesignated from 8.37 ..... **54739**
8.37 Redesignated as 8.33 ..... **54739**
9 Authority citation revised **52413**
9.1 (b) revised **52413**
9.14 Added **52413**
13 Nomenclature change **46868**
13.2 (a) amended **46869**
13.56 (b) amended **46869**
13.71 (a)(3) and (b) amended **46869**
13.108 Revised **46869**
14.626 Revised 8544
14.627 (g) revised; (h) through (k) redesignated as (k) through (n); new (h), (i), (j) and authority citation added 8544
14.628 (e) removed; (f) and (g) redesignated as (e) and (f); (a)(2), (b), (c) heading, (d) and new (e) revised; OMB number 8544
14.629 Heading, introductory text, (a) introductory text, (1), (2)(ii), authority citation, (b) and (c) revised; OMB number 8545
14.630 Revised 8546
14.631 (c)(3) and (e) removed; (b), (c) and (d) redesignated as (e), (f) and (g); (a) introductory text, new (e), (f)(1), (g) and authority citation revised; (b), (c) and (d) added 8546
14.632 Revised 8547
14.634 Amended 8547
14.635 Introductory text, (b) and authority citation revised; amended 8547
17 Regulation at 67 FR 4359 confirmed **66555**
Undesignated center heading revised 1010
17.36 Amended **62887**
(d)(3), (4) and (5) redesignated as (d)(4), (5) and (6); (a)(2), (b)(4), (7), (d)(1), new (5) introductory text, (i) and authority citation revised; (b)(3), new (d)(5)(iii) and (f) amended; (b)(8) and new (d)(3) added **62888**
(b)(7), (8) and (c)(2) revised 2672
17.49 Revised; interim **58529**
17.271 Regulation at 67 FR 4359 confirmed **66555**
17.272 Regulation at 67 FR 4359 confirmed **66555**
17.274 Regulation at 67 FR 4359 confirmed **66555**
17.902 OMB number 1011
17.903 OMB number 1012
17.904 OMB number 1013
17.1000 Note amended 3404
17.1002 (d) amended 3404
17.1004 (b) amended 3404
17.1005 (b) amended 3404
19.2 Revised 6625
20.609 (c) revised **49600**
20.1404 Regulation at 66 FR 35903 confirmed **46870**
20.1409 Regulation at 66 FR 35903 confirmed **46870**
21.8010—21.8410 (Subpart M) Revised **72565**
36 Technical correction **62889**
36.4301 Amended **62647**
36.4302 (a)(4), (e)(1)(i), (2)(i) and (3) text and authority citation revised; interim 6627
36.4323 (e)(1)(v) and (4) amended; (e)(1)(vi) revised **62647**
36.4308 Authority citation removed; (c)(2) revised; interim 6627

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

36.4404 (a) introductory text, (b)(2) and authority citation revised; interim 6627
36.4527 (a)(1) amended; (a)(2) redesignated as (a)(3); new (a)(2) added; interim 6627
39.2 (d) added **62645**
39.3 (b)(1) and authority citation added **62645**
60 Added 8549

Proposed Rules:

0—99 (Chap. I) **79020**
1 ..... **77737**
3 ..... **49646, 63352, 76322**
..... 2476, 4132, 6679, 6998
4 ..... **54394, 56509, 59033, 65915**
..... 6998
17 ..... **48078, 49278**
21 ..... **57543**

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

111 DMM amended; incorporation by reference **45063, 53457, 53881, 63551, 65500, 66056, 78178**
DMM amended; incorporation by reference 4715, 9008
111.3 (f) table amended **46875**
111.5 Revised **46875**
255 Revised **75814**
265.6 (d) introductory text and (2) revised; (d)(3) through (d)(8) redesignated as (d)(4) through (d)(9); new (d)(3) added **46393**
266.9 (b)(7) added **79859**
501.2 Intjroductory text, (c) and (d) revised **69479**
(c)(i) and (ii) correctly designated as (c)(1) and (2) **71843**
501.22 Revised 2698
501.28 Revised 2699
501.23 (g) and (h) revised **69138**
927 Revised **50353**
952.5 Amended **62179**
952.33 Amended **62179**
957.2 Amended **62179**
958.3 (d) amended **62179**
960.3 (b) amended **62179**
962.2 (d) and (m) amended **62179**
962.12 (f)(1) amended **62179**
962.13 (f)(2) amended **62179**
962.21 (b)(4) amended **62179**
964.1 Amended **62179**
964.2 Amended **62179**
965.3 Amended **62179**

Chapter III—Postal Rate Commission (Parts 3000—3099)

3001.6 (b) and (c) revised **67559**
3001.9 Revised **67559**
(e) added 47
3001.10 Revised **67559**
3001.11 Revised **67559**
3001.12 Revised **67559**
3001.13 Revised **67559**
3001.20 (c) revised **67561**
3001.20a (a) revised **67561**
3001.20b (a), (b) and (c) redesignated as (b), (c) and (d); new (a) added 47
3001.26 (a) through (c) and (e) revised **67561**
3001.27 (a) through (c) and (e) revised **67562**
3001.28 (a) through (c) and (e) revised **67562**
3001.30 (e)(2) and (3) revised **67563**
3001.31 (b)(2)(iv) amended **67563**
3001.42 (a) revised **67563**

Proposed Rules:

111 ..... **48425, 53328, 54397, 63582, 66094, 69698, 72626, 77726**
..... 530
501 ..... **70712**
3001 ..... **79538**
..... 2272

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—1099)

2.100—2.108 (Subpart A) Revised **67307**
9.1 Table amended (OMB numbers) **58996, 59784, 65709**
Table amended (OMB numbers) 887, 7265, 9780
19 Regulation at 67 FR 41345 withdrawn **53743**
22.30 (a)(1) amended 2204
27.3 Regulation at 67 FR 41345 withdrawn **53743**
50 Remand response 614

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 40 Chapter I—Con.

51 State implementation plan determinations....**48032, 50600, 62388**
51.166 (b)(1)(i)(*b*), (5) and (23)(i) amended; (a)(7), (b)(2)(iv), (3)(vi)(*d*), (viii), (38) through (52), (r)(3) through (7) and (t) through (x) added; (i)(4) through (12) redesignated as (i)(1) through (9); (a)(1), (6)(i), (b)(2)(i), (ii), (iii)(*h*), (3)(i), (iii), (iv), (vi)(*b*), (*c*), (7), (8), (13), (21), (31), (i) introductory text and new (i)(5)(i)(*g*) through (*j*) revised; (i)(1), (2), (3), new (i)(5)(i)(*k*), (*l*) and (*m*) removed....**80659**
(b)(1)(i)(*a*), (12), (23)(ii), new (i)(4), (j)(2) and (3) amended....**80260**
52 State implementation plan determinations....**44369, 48032, 52414, 61784, 62388**
State implementation plan determinations....7321, 8838
Attainment status determinations....**67113**
Policy statement....4932
Technical correction....7428
52.21 (a) and (i)(4) through (13) redesignated as (a)(1) and (i)(1) through (10); (b)(1)(i)(*a*), (*b*), (2)(i), (5), (23)(i), (ii), new (i)(4), new (5)(i), (j)(2) and (3) amended; (a)(2), (b)(2)(iv), (3)(vi)(*d*), (ix), (39) through (54), (r)(5), (6), (7) and (x) through (bb) added; (b)(2)(i), (ii), (iii)(*h*), (i), (iii), (iv), (vi)(*b*), (*c*), (7), (8), (13), (21), (32) and (i) introductory text revised; (b)(33), (i)(1), (2) and (3) removed....**80274**
52.165 (a) introductory text, (1)(v)(A), (C)(*8*), (vi)(A), (C), (E)(*2*) ,(*4*), (vii), (xii), (xiii) introductory text, (xviii), (xxv) and (2) revised; (a)(1)(i) and (iv)(A)(1) amended; (a)(1)(v)(D), (vi)(E)(*5*), (G), (xxvi) through (xlii), (3)(ii)(H), (I), (J), (6), (7), and (c)through (g) added....**80245**
52.50 (c) table amended....**76317**
(b), (c), (d), and (e) revised....5222
Corrected....7174
52.73 Added....**58712**
52.120 (c)(99) through (102) added....**48736**
(c)(105) added....**52418**
(c)(106) added....**54959**
(c)(84)(i)(G), (H) and (107) added....**68767**
(c)(108) and (109) added....2914
52.122 Added....**54743**
52.123 (f)(1)(i) removed; (j) added....**48739**
(k) added....2914
52.124 (b) and (c) removed....**48739**
52.133 (e) added....**59460**
(f) and (g) added....**68767**
52.166 (a)(1)....**80259**
(b)(1)(i)(*a*), (12), (23)(ii), (i)(4), (j)(2) and (3) amended....**80260**
52.220 (c)(280)(i)(A)(*3*) and (C)(*2*) added....**44065**
(c)(297)(i)(B) added....**45066**
(c)(284)(i)(C), (292)(i)(B) and (296) added....**45069**
(c)(297)(i)(A)(2) added....**46598**
(c)(284)(i)(A)(*3*) and (B)(*4*) added....**46878**
(c)(294)(i)(A)(*4*) added....**47703**
(c)(286) introductory text revised; (c)(286)(i)(A)(*3*), 193)(i)(A)(*2*), 297)(i)(A)(*3*) and (i)(C) added....**52614**
(c)(297)(i)(D) added....**54351**
(c)(298) added....**54965**
(c)(297)(i)(C)(*2*) added....**57956**
(c)(284)(i)(B)(*6*) added....**57956**
(c)(299) added....**57962**
(c)(242)(i)(*b*)(*2*) added....**62378**
(c)(300) added....**62387**
(c)(284)(i)(D) added....**65504**
(c)(279)(i)(A)(*9*), (2)(84)(C)(i)(*2*) and (D)(*2*) added....**65876**
(c)(279)(i)(A)(*8*) and (288)(i)(D) added....**67316**
Regulation at 67 FR 62387 withdrawn....**70556**
(c)(301) added....**72574**
(c)(215)(i)(F), (264)(10)(i)(C)(*2*) and (281)(i)(B) added....**72844**
(c)(303) added....3192
(c)(302) added....4932
(c)(304) added....8835
(c)(297)(i)(D)(*2*) and (303)(i)(C)(1) added....8837
(c)(302)(i)(A)(*3*) added....8841
(c)(300) added....9017
(c)(305) added....9565
52.222 (a)(3)(ii) added....**54741**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

52.242 (a)(1)(ii) and (2) added....**62385**
52.244 Added....**69146**
52.320 (c)(95) added....**58337**
(c)(98) added....4934
52.332 (l) added....**58338**
52.370 (c)(91) added....9011
52.385 Table 52.385 amended....9011
52.420 (c) table amended....**70316**
52.520 (e) table amended....**53317**
(c) table amended....2205, 3819
(b) through (e) revised....9554
52.570 (c) table amended....**45913**
(d) table amended....**45915**
(e) table amended....**60871**
52.670 (c)(37) added....2222
52.672 Added....**65718**
52.674 Removed....2222
52.679 Revised....2222
52.681 Revised....2225
52.683 Revised....2226
52.770 (c)(146) added....**46594**
(c)(151) added....**52616**
(c)(148) added....**57517**
(c)(152) added....**63270**
(c)(153) added....**70012**
Regulation at 67 FR 63270 withdrawn....**70850**
(c)(155) added....**72846**
(c)(156) added....**79861**
(c)(147) added....1972
52.776 (j) removed; (r) added....1373
52.820 (c) table amended....**62891**
(d) heading and table amended....**67565**
52.869 Removed....**66060**
52.870 (e) table amended....**55728**
(c) table amended....**66060**
(c) table amended....8846
52.919 Added....**53314**
52.920 (c) table amended....**59786, 69690, 79525**
(d) table amended....**77432**
Regulation at 67 FR 77432 and 79525 withdrawn....6629
52.970 (e) table amended....**60593, 61801**
(c) table amended....**60595, 60877, 60885, 61270**
52.1020 (c)(46) and (47) added....**57153**
52.1031 Table 52.1031 amended....**57154**
52.1070 (c)(173) added....**44062**
(c)(177) added....1974
(c)(179) added....2210
(c)(174) and (175) added....5229
(c)(182) added....9014
(c)(180) added....9019
52.1120 (c)(129) added....**62183**
(c)(120) added....**62187**
(c)(132) added....**78181**
52.1127 Table revised....**72579**
52.1129 (c) added....**55125**
(d) added....**72579**
52.1167 Table 52.1167 amended....**62183, 62187, 78181**
52.1170 (c)(118) added....8553
52.1220 (c)(61) added....**57519**
52.1230 (c) added....**48790**
52.1270 (c) table amended....**77927**
52.1320 (c) table amended....**54961, 54963, 54967**
(c) table amended....**55131, 70319, 70321**
52.1370 (c)(55) added....**55125**
(c)(29) and (49) introductory texts revised....**59456**
(c)(56) added....**62395**
(c)(58) added....**70011**
(c)(37) introductory text revised....**70555**
52.1520 (c)(68) added....**48036**
(c)(60) added....**65712**
52.1523 Table revised....**72575**
52.1525 Table 52.1525 amended....**48036, 65712**
52.1529 Revised....**65712**
52.1570 (c)(72) added....7706
52.1581 Added....**54579**
52.1582 Heading revised; (d)(2) removed....**54580**
52.1770 (c) table redesignated as Table 1 and amended....**51463**
(c) Table 2 added....**51764**
(c) Table 1 amended....**64991, 78982**
(c) Table 1 amended; (e) added....**78986**
(c) Table 2 amended....**64995**
(c) Table 3 added....**65000**
(c)(1) table amended....**66058**
(b) revised; (c) Table 1 amended....**78988**
52.1820 (c)(32) added....**62398**
Regulation at 67 FR 62398 withdrawn....**72580**
(c)(32) added....9567
52.1836 Added....**62398**
52.1870 (c)(126) added....1370
(c)(127) added....2217
52.1970 (c)(137) added....**48393**
(c)(138) and (139) added....2903
52.1977 Amended....2904
52.1982 (a)(1)(ii) revised....2909
52.1985 Removed....2909
52.1987 (a) and (c) revised....2909
52.1988 (a) revised....2909

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 40 Chapter I—Con.

52.2020 (c)(193) added **57159**
(c)(157) added **62392**
(c)(183) added **68525**
(c)(192) added **68940**
(c)(190) added 2458
(c)(195) added 2208
(c)(197) added 8724
52.2022 Regulation at 67 FR 38896 withdrawn **50602**
52.2023 (c) removed **68941**
52.2036 (n) added **68525**
52.2070 (e) table amended **68944**
52.2120 (c) table amended **68769**
52.2185 Added **57521**
52.2220 (c) table amended **46595, 55322**
52.2270 (c) table amended **58709, 72382**
(e) table amended **72382**
52.2320 (c)(51) added **44069**
(c)(50) added **57748**
(c)(53) added **59168**
(c)(48) and (49) added **62894**
(c)(54) added **78190**
52.2348 Existing text designated as (a); (b) added **57748**
52.2352 Added **59000**
52.2420 (c) table amended **76995**
(c) table amended 667, 8843
52.2423 (r) added 670
52.2475 Added **66560**
52.2520 (c)(47) added **62381**
(c)(50) added **62383**
(c)(48) added **63271**
(c)(51) added 6629
(c)(52) added 9561
52.2570 (c)(107) added 3410
58 Appendix D amended **57334**
Appendix A amended **80328**
60 Authority delegation notices **70170**
60.4 (c) amended **57521**
(c) table amended **59000**
61 Authority delegation notices **70170**
61.04 (c) table amended **62399**
61.18 Introductory text, (a) introductory text, (c) and (d) introductory text revised **57166**
61.93 (b) introductory text, (1)(i), (ii) and (2)(i) revised; (c) through (g) added **57166**
61.93 (b) introductory text, (1)(i), (ii) and (2)(i) revised; (c) through (g) added **57166**
61.107 (b) introductory text, (1)(i), (ii) and (2)(i) revised; (d) through (h) added **57167**
61.340 (d) added **68531**
61.341 Amended **68531**
61.343 (a) introductory text revised; (a)(2) and (e) added **68532**
Regulation at 67 FR 68532 withdrawn in part 6082
61.345 (a)(3) revised **68532**
61.356 (n) added **68533**
61 Appendix B amended **57168**
62.02 (b) revised 5158
62.13 (d) and (e) added 5158
62.100—62.106 (Subpart B) Unedesignated center heading added 4105
62.107 Added 4105
62.1850—62.1985 (Subpart I) Undesignated center heading added 49, 51
62.1980 Added 51
62.1985 Added 49
62.2100—62.2155 (Subpart J) Undesignated center heading added 49, 51, 53, 55
62.2140 Added 55
62.2145 Added 51
62.2150 Added 53
62.2155 Added 49
62.5340 Added **62896**
62.5350—52.5400 (Subpart W) Undesignated center heading added **62896**
62.5425 Added **62896**
62.6100—62.6125 (Subpart Z) Undesignated center heading added **67317**
62.6126 Added **67317**
62.7325 (b)(4) and (c)(4) added 6632
62.7460 Undesignated center heading and text added 6632
62.7325 (b)(3) and (c)(3) added 6635
62.7455 Undesignated center heading and text added 6635
62.8850—62.8852 (Subpart KK) Center heading added **61272**
62.8855 Added **61272**
62.9600—62.9662 (Subpart NN) Undesignated center heading added 49, 51
62.9633 Added 55
62.9645 Added 51
62.9646 Added 51
62.9670 Added 49
62.13107 Added **46600**
62.13350—62.13355 (Subpart CCC) Undesignated heading added **76119**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

62.13355 Added **76119**
62.13356 Added 9022
62.15000—62.15410 (Subpart JJJ) Added 5158
63 Authority delegation notice **48036, 70170**
63.14 (b)(24), (25) and (i) revised; (b)(26) added **48262**
(d)(4) added **58342**
(i) amended **72341**
(i) revised; (j) removed 7713
63.99 (a)(19) added **46398**
(a)(21) added **58342**
(a)(29)(i) added **59005**
63.210—63.217 (Subpart J) Added **45892**
63.860 (b) introductory text and (5) revised; (b)(7) added 7713
63.861 Amended 7713
63.862 (a)(1)(i)(B) and (2) revised; (d) added 7713
63.864 Revised 7713
63.865 Introductory text, (a)(2)(vi) and (b)(5)(i) through (iv) added; (a)(1), (b) introductory text, (1), (2), (3), (5), (c), (d) introductory text and (1) revised; (e) and (f) removed 7716
63.866 (c)introductory text, (1) and (2) revised; (c)(7) added 7718
63.867 (a)(3) added 7718
63.981 Amended **46277**
63.983 (a)(3)(i), (ii) and (b) heading revised; (b)(4) added **46277**
63.987 (b)(3)(ii) amended; (b)(3)(iii) revised **46277**
63.992 Added **46277**
63.997 (e)(2)(ii), (iii) introductory text, (D) and (iv) introductory text revised; (e)(2)(iii)(C)(*1*) amended; (e)(2)(iii)(E) and (iv)(F) through (I) added; (e)(2)(iv)(B)(*2*) and (*3*) removed **46277**
63.1000 (b) added **46278**
63.1019 (f) added **46279**
63.1067 Added **46279**
63.1080—63.1097 (Subpart XX) Added **46271**
63.1100 (a), Table 1 and (g) introductory text amended; (g)(1) through (4) and (5) heading revised; (g)(6) added **46279**
63.1101 Amended **46280**
Correctly amended: CFR correction 6635
63.1102 (a) revised; (b) and Table 1 added **46280**
63.1103 (e) through (h) added **46281**
(h)(1)(i) introductory text revised; (h)(1)(ii)(C) added; (h)(2) amended **46293**
63.1104 (a), (e) introductory text, (f)(1), (k) introductory text and (m)(2)(i) introductory text amended **46288**
63.1105 Added **46288**
63.1114 Added **46289**
63.1201 (a) amended **77691**
63.1205 (b)(6) revised **77691**
63.1206 (c)(5)(ii) revised **77691**
63.1207 (f)(1)(xxi) and (j)(1)(i) revised; (j)(5) added **77691**
63.1209 (c)(2)(v), (k)(4) introductory text, (i), (m)(3) and (p) revised; (o)(3)(vi) removed **77691**
63.1213 (a) and (b)(1) introductory text revised **77691**
63.1340 Regulation at 66 FR 16619 withdrawn in part **44371**
(c) revised **72584**
63.1344 Regulation at 66 FR 16619 withdrawn in part **44371**
(a)(3) revised **72585**
63.1349 Regulation at 66 FR 16619 withdrawn in part **44371**
(e)(3) added **72585**
63.1350 Regulation at 66 FR 16620 withdrawn in part **44371**
Table 1 amended **44769**
(a)(4)(v), (vi) and (vii) added; (c)(2)(i), (d)(2)(i) and (e) introductory text revised **72585**
63.1360 (b) introductory text, (2), (d)(3), (f) introductory text, (2), (3), (4), (h) and (i)(1) revised; (d)(4) redesignated as (d)(5); new (d)(4) and (f)(5) added **59340**
63.1360—63.1369 (Subpart MMM) Table 1 amended; Table 4 revised **59355**
63.1361 Amended **59342**
63.1362 (b)(2)(iv)(A), (4)(ii)(A), (5)(ii), (6), (c)(2) introductory text, (iv) introductory text, (B), (3) through (6), (d) introductory text, (2) introductory text, (12), (13), (14),

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 40 Chapter I—Con.

(h)(2) introductory text, (i), (iii), (3) and (4) revised; (c)(7), (d)(15) and (16) added; (d)(2)(v) removed **59343**
63.1363 (a)(1), (1)(10)(ii), (iii), (b)(3)(iii)(A) through (F), (iv), (c)(2)(i), (iii), (3)(i), (4)(ii), (5) introductory text, (iv), (6), (9), (e)(7)(iii), (9), (f) and (g)(2)(vi) revised; (b)(3)(iii)(G) and (c)(5)(vi), (vii) added; (c)(5)(vi)(C) and (D) removed **59345**
63.1365 (a)(1)(iii), (2), (5), (6), (7)(i) introductory text, (A), (C), (ii), (b) introductory text, (8), (11) introductory text, (iii) introductory text, (iv), (c)(1)(iii), (v), (2)(i)(C), (D)(*4*)(*i*), (*iii*), (E)(3), (4), (F), (ii) introductory text, (A), (3)(ii)(A), (iii) introductory text, (d)(1)(i)(A), (B), (3)(ii) and (e) revised; (b)(11)(iii)(A), (g) introductory text, (3)(i), (ii), (4) introductory text, (i) and (ii) amended; (b)(11)(iii)(D) added; (b)(12) removed **59347**
63.1366 (b)(5) and (8)(iii) revised; (b)(8) introductory text amended; (h) added **59352**
63.1367 (a)(3) introductory text amended; (a)(3)(i), (b) introductory text, (4), (6)(i), (7) and (f) revised; (b)(6)(ix) and (8) through (11) added **59353**
63.1368 (e)(4), (f)(6), (g)(1) introductory text, (2) introductory text and (h)(1) introductory text revised; (f)(9) and (g)(2)(ix) through (xii) added; (m) amended **59354**
63.1500—63.1520 (Subpart RRR) Regulation at 67 FR 41124 withdrawn **52616**
Regulation at 67 FR 59793 eff. date corrected **68038**
63.1500 (a) revised; (d) removed; (e) and (f) redesignated as (d) and (e); new (f) added **79815**
Appendix A amended **59793**
63.1501 Regulation at 67 FR 41122 withdrawn **52616**
Revised **59791**
Regulation at 67 FR 59791 eff. date corrected **68038**
63.1503 Amended **79815**
63.1505 Regulation at 67 FR 41123 withdrawn **52616**
(b) through (e) introductory texts, (f)(2) and (g), (h) and (k) introductory texts revised **59792**
Regulation at 67 FR 59792 eff. date corrected **68038**
Heading, (f)(1), (i)(7) and Equation 2 revised; (k)(6) added **79816**
63.1506 Regulation at 67 FR 41123 withdrawn **52616**
(a)(1) revised **59792**
Regulation at 67 FR 59792 eff. date corrected **68038**
(a)(2) removed; (a)(3), (4), and (5) redesignated as (a)(2), (3) and (4); (m)(6)(i) revised **79816**
63.1510 Regulation at 67 FR 41123 withdrawn **52616**
(a) and (b) introductory text revised **59792**
Regulation at 67 FR 59792 eff. date corrected **68038**
(b) introductory text amended; (o)(1) introductory text and (w) introductory text revised **79816**
63.1511 Regulation at 67 FR 41123 withdrawn **52616**
(a) and (b) introductory text revised **59792**
Regulation at 67 FR 59792 eff. date corrected **68038**
(f) revised; (h) and (i) added **79817**
63.1512 (h) revised **79817**
63.1515 Regulation at 67 FR 41124 withdrawn **52616**
(b) introductory text amended **59793**
Regulation at 67 FR 59793 eff. date corrected **68038**
(b)(8) and (9) revised **79518**
63.1517 (b)(11) and (16)(ii) revised **79818**
63.1520–63.1579 (Subpart RRR) Table 2 and Table 3 amended **79518**
63.1520–63.1579 (Subpart RRR) Appendix A amended **79519**
63.1580 Revised **64745**
63.1580—63.1595 (Subpart VVV) Table 1 amended **64746**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

63.1586 Introductory text revised **64746**
63.1590 (a)(1) introductory text revised **64746**
63.1591 (a) revised **64746**
63.1592 Revised **64746**
63.1930—63.1990 (Subpart AAAA) Added 2238
63.3280—63.3420 (Subpart JJJJ) Added **72341**
63.4080—63.4181 (Subpart NNNN) Added **48262**
63.5980—63.6015 (Subpart XXXX) Added **45598**
63.9480—63.9579 (Subpart QQQQQ) Added **64506**
69.13 (f) added 1167
70 Appendix A amended **55131, 63563, 70323, 71481**
Appendix A amended 1985
70.6 (c)(1) suspended; interim **58536**
71.6 (c)(1) suspended; interim **58536**
72.2 Corrected **53504**
75.16 (e)(1) corrected **53504**
75.19 (c)(1)(iv)(h)(*3*), (3)(ii)(G) and (H) corrected **53504**
75.21 (a)(7) corrected **53505**
75.22 (a)(4) corrected **53505**
75.33 (c)(7) corrected **53505**
Corrected **57574**
75.53 Corrected **57574**
75.71 Corrected **53505**
75.74 Corrected **57574**
75 Appendices A, B, D and E corrected **53505**
Appendices B, D and G corrected **57574**
80 Meetings **67317**
80.310 Regulation at 57 FR 40184 withdrawn in part **54743**
81 Policy statement **44769**
Attainment status determination **48039, 48552, 49600, 54580, 64815, 65043**
Technical correction **59005**
Regulation at 67 FR 54580 withdrawn **65045**
81.53 Amended **57334**
81.92 Amended **57335**
81.94 Amended **57335**
81.305 Table amended **50807**
81.306 Table amended **58338**
81.309 Table amended 3424
81.313 Table amended **65718**
Amended 2226
Corrected 7174
Technical correction 8085
81.314 Table amended 4840
81.315 Table amended 1373
81.319 Table amended **53885, 57335**
Regulation at 67 FR 42696 withdrawn; table amended **61801**
81.321 Table amended 3424
81.322 Table amended **62187**
81.323 Table amended **45637**
81.324 Table amended **45639, 48790**
81.326 Corrected 7410
81.329 Table amended **68776**
81.331 Table amended **54580**
81.338 Table amended **48393**
81.339 Table amended **68526**
Corrected 1657
81.348 Table amended **66560**
82 Acceptable substitutes listing **77927**
82.3 Amended **79872**
Amended 251
Heading revised; text amended 2847
82.4 (t)(2) table revised **79511**
(j) revised **79872**
(a), (c) and (k) redesignated as (a)(1), (c)(1) and (k)(1); (a)(2), (c)(2) and (k)(2) added 251
Heading revised; (n) through (s) and (u) removed; (t) through (w) redesignated as (n) through (q) 2848
82.5 Heading revised; (h) removed 2848
82.6 Heading revised; (h) removed 2848
82.7 Corrected; CFR correction 4385
82.8 Removed 2848
82.9 Heading revised 2848
82.10 Heading revised 2848
82.11 Heading revised 2848
82.12 Heading revised 2848
82.13 Heading revised; (n) and (o) removed; (p) through (cc) redesignated as (n) through (aa) 2848
82.15 Added 2848
82.16 Added 2848
82.17 Added 2848
82.18 Added 2848
82.19 Added 2848
82.20 Added 2848
82.21 Added 2848
82.22 Added 2848
82.23 Added 2848

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 40 Chapter I—Con.

82.24 Added 2848
82.1—82.24 (Subpart A) Appendix B revised 2859
Appendix C revised 2860
Appendix L added 2863
82.170—82.184 (Subpart G) Appendix K added **47721**
Appendix L added 4010
82.13 (g)(2), (3), and (u) **79872**
(f)(2)(xvii) through (xix), (3)(xiii), (xiv), (xv), (g)(1)(xvii) through (xix), (4)(xv), (xvi), (xvii), (aa), (bb) and (cc) added; (h) revised 252
86 Authority citation revised **72825**
86.1105–87 (e) revised; (i) added **51477**
86.1801–01 (d) revised **72825**
86.1811–04 (c)(4)(iv), (6) Table SO4–2 and (f)(4) revised; (f)(7) added **72825**
86.1838–01 (b)(1)(i), (ii) and (2)(i) revised **72826**
89.2 Amended **68339**
89.106 (b) revised **68339**
90 Heading revised **68339**
90.1 Revised **68339**
90.2 (c) added **68339**
90.3 Amended **68339**
90.103 (a)(2)(v) redesignated as (a)(2)(vi); new (a)(2)(v) added **68340**
90.110 (b) revised **68340**
91.3 Amended **68340**
91.110 (b) revised **68340**
91.419 (b) amended **68340**
91.601—91.608 (Subpart G) Appendix A amended **68340**
91.803 (a) revised **68340**
93.102 (d) added **50817**
93.104 (e)(2) revised **50817**
94 Heading revised **68341**
94.1 Revised **68341**
(b) revised 9780
94.2 Amended; (b) introductory text revised **68341**
(b) amended 9781
94.5 Revised 9781
94.7 (c), (d) and (e) revised **68341**
(d) revised 9782
94.8 (a), (e), (f) introductory text and (1) revised **68342**
(a) and (c) through (g) revised 9782
94.9 (a) introductory text and (1) revised **68343**
(a)(1), (b)(1) and (2) revised 9783
94.10 (a) revised 9784
94.11 (g) added 9784
94.12 Introductory text, (a), (b)(1) and (e) revised; (f) and (g) added **68343**
Introductory text revised; (f) added 9784
94.104 (c) redesignated as (d); new (c) added **68343**
94.105 (b) text and footnotes 1 and 2 in (c)(1) table, (2) table and (d)(1) table amended; (e) added **68343**
94.106 (b) introductory text, (1) introductory text, (2) introductory text, (3) introductory text and (4) revised; (b)(5) added **68344**
Heading and introductory text revised 9784
94.107 (a) revised; (f) added 9784
94.108 (a)(1), (b) and (d)(1) revised; (e) added 9784
94.109 Added 9785
94.203 (d)(14) and (16) revised **68346**
(d)(14) revised 9785
94.204 (b)(9) and (10) amended; (b)(11) added; (e) revised **68346**
(f) added 9785
94.205 (b) revised; (e) and (f) added 9785
94.209 Revised **68346**
Introductory text added 9786
94.211 (a)(3), (e)(2)(iii), (k) and (l) added; (h) introductory text and (j)(2) introductory text revised 9786
94.212 (b)(10) revised **68346**
94.214 Revised 9786
94.217 (f) added 9786
94.218 (d)(2)(iv) added **68346**
(c) and (d)(1) revised 9786
94.219 (a) revised 9786
94.304 (k) revised **68346**
94.305 (a) revised 9786
94.403 (a) revised 9786
94.501 (a) revised **68346**
94.503 (d) added **68347**
(a) and (b) revised 9787
94.505 (a) introductory text revised 9787
94.507 (a) revised 9787
94.508 (a) through (d) and (e) introductory text revised 9787
94.510 (b) revised 9787
94.801 (b) revised 9787

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

94.904 (b)(7) removed 9787
94.906 Heading revised; (d) removed 9787
94.907 (d) and (g) revised **68347**
(d) introductory text revised 9787
94.1001—94.1004 (Subpart K) Added 9787
94.1103 (a)(5) revised **68347**
(a)(2)(v), (vi) and (7) added; (a)(3)(i) revised 9788
94.1106 Introductory text and (d) added; (a) and (c)(1) revised 9789
112.1—112.7 (Subpart A) Designated and revised **47140**
112.3 (a) and (b) revised; interim 1351
112.8—112.11 (Subpart B) Added **47146**
112.12—112.15 (Subpart C) Added **47149**
112.20—112.21 (Subpart D) Designated; heading added **47151**
112.20 (h) amended **47151**
112 Appendices C, D and F amended **47152**
Appendix F corrected; CFR correction 4385
122.21 (a)(1) amended; (i)(1) revised 7265
122.23 Revised 7265
122.28 (b)(2)(ii) amended 7268
122.42 (e) added 7268
122 Appendix B removed 7269
123.36 Added 7269
125.83 Amended **78954**
125.84 (b)(4)(ii), (iii), (5)(ii), (c)(3)(ii), (iii), and (d)(1) revised **78954**
125.85 (a)(2) and (3) revised **78955**
125.89 (b)(2) revised **78955**
131.36 (d)(7) removed **68041**
(d)(2)(ii) table, (3)(ii) table, (5)(ii) table and (9)(ii) table revised **71846**
136.3 (a) introductory text, tables and (b) amended **65226**
(a) Table IB and (e) Table II amended; (a) Table IB Footnote 43 and (b)(41) revised **65886**
(a) table and (b) amended **69971**
141 Corrected **73011**
141.21 (f)(3) table footnote 1 revised; (f)(5) and (8) amended; (f)(6)(i) and (ii) revised **65246**
(f)(3) table revised; (f)(6)(viii) and (ix) added **65896**
141.23 (k)(1) table and footnotes revised **65246**
(a)(4)(i) table and (k)(1) table amended **65897**
Corrected **68911**
141.24 (e)(1) amended **65250**
(e)(1), introductory text and table revised **65898**
141.25 (a) table and footnotes revised **65250**
141.40 Table 1 revised **65900**
141.74 (a)(1) table footnote 1 revised; (a)(2) amended **65252**
(a)(1) table revised **65901**
141.151—141.155 (Subpart O) Appendix A amended **70855**
141.201—141.210 (Subpart Q) Appendix B amended **70857**
142.3 (b)(3) removed **70858**
143.4 (b) table and footnotes revised **65252**
147.2555 Table amended **47726**
180 Authority citation revised **47309**
Comment period extended **53505, 58536**
Technical correction **63503, 67566**
180.106 (b) table amended **46883**
180.108 (a)(1) table amended **49615**
180.120 Removed **46909**
180.132 Revised **49615**
180.142 (b) table amended 2247
180.145 (a)(1) table amended **49615**
180.169 (a)(1) table amended **49615**
180.173 (a) table revised **49615**
180.176 (b) table amended 2247
180.183 (a) revised **49615**
180.189 (b) table amended **46883**
180.206 (a) table amended **49616**
180.214 (a) table revised **49616**
180.220 (a)(1) and (2) tables amended **46893**
180.230 Removed **46893**
180.239 revised **46893**
180.240 Removed **46893**
180.241 Amended **46893**
180.242 (b) table amended **46883**
180.252 (a)(i) table amended **49616**
180.261 (a) table amended **49616**
180.262 (c) text removed; (c) heading added **49616**
180.263 Table amended **49616**
180.272 (a) table amended **49616**
180.284 (b) table amended 2247

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 40 Chapter I—Con.

180.287 (a) designated; (a) heading through (d) heading added; (a) table amended **49616**
180.294 (a) and (c) tables revised **46905**
180.301 (a) table amended **72853**
180.303 (a)(1) table amended **49617**
180.305 Removed **46893**
180.315 (a) table revised **49617**
180.332 (a) table amended **49617**
180.338 Removed **46893**
180.342 (a)(1) table and (2) table amended; (c)(i) revised **49617**
180.346 Removed 3428
180.361 (b) table amended **46883**
180.364 (a) introductory text revised; (a) table amended **60950**
180.368 (b) table amended **46883**
(b) designated as (b)(1); (b)(2) added 283
180.371 (a) table and (c) table amended **55150**
(b) table amended **57753**
(b) table amended 5852
180.377 (a)(1) and (2) tables amended; (c) text removed **59017**
(b) table amended **59181**
180.404 (a) table amended **49617**
180.405 Revised **52873**
180.409 (a)(1) table revised; (a)(2) removed; (a)(3) redesignated as (a)(2) **49617**
180.413 (a)(1) table amended **46893**
180.414 (a)(1) table amended **72593**
180.415 (a) table amended **55346**
180.416 (a) table amended **49617**
180.417 (a)(1) table amended **58725**
180.418 (b) added **56495**
180.425 (a) table amended **54124**
180.427 (a) table revised; (c) text removed **49617**
180.428 (a)(1) table amended; (b) text removed **51097**
180.431 (a) table amended; (b) text removed **60160**
(a) table amended **65315**
180.434 (a) table amended **49617**
180.436 (a)(1) revised; (b) table amended **60991**
180.438 (a)(1) table and (b) table amended **60915**
(b) table amended 291, 2247
180.442 (b) table amended **48795**
(b) table amended 2247
180.443 (b) table amended **46883**
180.447 Revised **55331**
180,448 (b) table amended **46884**
180.456 Revised **45642**
180.458 (a)(3) table amended **46900**
180.464 (b) table amended **46884**
180.465 Revised 4392
180.469 (a) table revised **51105**
180.472 (b) table amended **46884**
(a) and (b) tables amended **54111**
180.474 (b) table amended **46884**
180.476 (b) amended **54587**
180.479 (b) amended **45649**
Heading revised: (a)(2) table amended; (b) text removed **59192**
180.480 (b) table amended **46884**
180.482 (b) table amended 2247
180.487 (a) revised **72110**
180.493 (a)(1) table amended **60923**
180.495 (a) table and (b) table amended **60933**
(b) table amended 2247
180.498 (b) table amended **46884, 54118**
(b) table amended 2247
180.505 (b) table amended **46884**
180.507 (b) table amended **55137**
(a) table amended **59176**
180.508 Removed 7433
180.510 (a) table amended **55159**
(b) table amended **71110**
180.516 (a) table amended **50362**
180.527 (b) table amended 2247
180.532 (a)(1) table amended 5847
180.535 (b) table amended **46884, 60146**
180.544 Revised **59203**
180.549 (a) revised **55338**
180.553 (b) table amended 2247
180.564 (a) table revised **47309**
(b) table amended **58730**
180.565 (a) table amended **66571**
180.571 (b) revised **45656**
(a) table amended 273
180.572 (b) table amended **46884**
180.579 Added **60976**
180.580 Added **57532**
180.581 Added **54359**
180.582 Added **60901**
180.583 Added **60959**
180.584 Added **60141**
180.940 Added **71853**
180.950 (d) and (e) added **56229**
(e) table amended **78718**
180.960 Table amended 8850
180.1001 (c) table and (e) table amended **51101**
(c) table, (d) table and (e) table amended **78715**
180.1020 (b) table amended 2247

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

180.1028 Removed 8856
180.1038 Removed 8856
180.1053 Removed 8856
180.1060 Removed 8856
180.1112 Removed 8856
180.1117 Removed **78715**
180.1143 Revised **51088**
180.1150 Revised 5839
180.1159 (c) added 7935
180.1181 Revised **70017**
180.1206 Revised **46888**
180.1220 Added **48800**
180.1221 Added **60966**
180.1222 Added **60152**
180.1223 Added 7433, 7939
228.15 (h)(20) added **44773**
258.10 (e) added **45920**
Regulation at 67 FR 45920 withdraw **62647**
258.41 (c) added **47319**
260 Policy statement **52617**
261.4 (a)(20) and (21) added **48413**
(a)(23) and (24) added 78730
Regulation at 67 FR 78730 withdrawn 8553
261.39–261.40 (Subpart E) Added **78731**
(Subpart E) Regulation at 67 FR 78731 withdrawn 8553
261 Appendix IX amended **48557, 54131, 79877**
266.20 (b) amended; (d) added; eff. 1–24–03 ..... **48414**
268.40 (i) removed **48414**
Table amended **62623**
268.44 Table corrected; CFR correction 4392
270.19 (e) revised **77692**
270.22 Introductory text revised **77692**
270.62 Introductory text revised **77692**
270.66 Introductory text revised **77692**
271 State hazardous waste management program authorizations **44069, 46600, 49617, 51478, 51765, 53886, 53889, 57337, 66338, 69690, 76995**
State hazardous waste management program authorizations 3429
271.1 (j) Tables 1 and 2 amended **48414**
(j) Table 1 amended **62624**
272.1651 Added **49867**
272 Appendix A amended **49868**
281 State underground storage tank program authorizations **53743, 55160, 60161**
300 Appendix B amended **47320, 53320, 53507, 53508, 54744, 56764, 57758, 58731, 59020, 61273, 61274, 61804, 65321, 76684**
Appendix B amended 1540, 2252, 2700
302 Technical correction **64846**
302.2 Removed **45321**
302.3 Amended **45321**
302.4 Table and note revised **45321**
Tables corrected **54846, 54847**
Appendix A amended **45348**
Appendix A corrected **54847**
302.5 (b) revised **45356**
302.6 (a) revised **45356**
302.7 (a)(3) revised **45356**
302.8 (e)(1)(iv)(H) and (f)(4)(viii) revised **45357**
312 Added 3434
412 Revised 7269
420.02 (r) through (u) added **64260**
420.03 Revised **64261**
420.07 Added **64261**
420.08 Added **64261**
420.10 Revised **64261**
420.11 Revised **64261**
420.12 (c) revised **64262**
420.13 Revised **64262**
420.14 Revised **64262**
420.15 Revised **64263**
420.16 Revised **64263**
420.17 (c) revised **64264**
420.18 Added **64264**
420.21 Added **64264**
420.22 Revised **64264**
420.23 Revised **64264**
420.24 Revised **64265**
420.25 Revised **64265**
420.26 Revised **64266**
420.28 Added **64266**
420.29 Added **64266**
420.31 Revised **64266**
420.32 (b) removed **64266**
420.33 (b) removed **64266**
420.34 (b) removed **64266**
420.35 table amended; (b) removed **64266**
420.36 (a) table amended; (b) removed **64267**
420.40 Revised **64267**
420.41 (b) removed **64267**
420.42 (a) and (c) heading revised; (d) added **64267**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 40 Chapter I—Con.

420.43 (a) and (c) heading revised; (d) added **64267**
420.44 (a) revised; (d) removed **64267**
420.45 (a) and (c) revised; (d) Added **64267**
420.46 (a) revised; (d) removed **64268**
420.47 Heading and (a) revised; (d) added **64268**
420.48 Added **64268**
420.130—420.137 (Subpart M) Added **64268**
430.02 (f) added **58997**
710 Heading and contents amended 887
710.1—710.4 (Subpart A) Designated; heading added 887
710.1 Revised 887
710.2 Removed 888
710.3 Added 888
710.4 (a), (b)(2), (c)(1), (2), (3), (d)(2) note, (5) and (8) note amended 889
710.23 Added 889
710.25—710.39 (Subpart B) Designated; heading added 889
710.39 Heading revised; (a), (c) introductory text, (1), (3) and (d) amended 890
710.43—710.59 (Subpart C) Added 890
721.3628 Removed **60993**
721.5300 Removed **60993**
721.8170 Removed **60993**
721.9582 Revised **72863**
723.175 (b)(e) revised 890
761.80 (j) added; eff. through 4–17–04 4941
1048—1068 (Subchapter U) Added **68347**
1065.210 Corrected **72724**

Chapter V—Council on Environmental Quality (Parts 1500—1599)

1518 Added **62189**

Chapter VI—Chemical Safety and Hazard Investigation Board (Parts 1600—1699)

1610 Authority citation revised 4393
1610.4 Added 4393

Proposed Rules:

9 ..... **79020**
49 ..... **51802**
50 ..... **79460**
51 ..... **51525, 80290**
..... 9614
52 ..... **44127, 44128, 44410, 45073, 45074, 45684, 45947, 46617, 46618, 46948, 47757, 48082, 48083, 48090, 48095, 48426, 48839, 49647, 49895, 49897, 50391, 50847, 51527, 51803, 52433, 52665, 52666, 52913, 53329, 53765, 54159, 54399, 54601, 54758, 54759, 54992, 54993, 55186, 55187, 55378, 55757, 57187, 57188, 57357, 57549, 57550, 57775, 57776, 58009, 58551, 59034, 59229, 59232, 59798, 60633, 61055, 62221, 62222, 62425, 62426, 62427, 62431, 62432, 62926, 63353, 63354, 63583, 63586, 64347, 64582, 64993, 64998, 65002, 65077, 65080, 65526, 65749, 65750, 66096, 66598, 67345, 67580, 68542, 68545, 68804, 68971, 69702, 70032, 70036, 70357, 71515, 72874, 76326, 77010, 77196, 77204, 77212, 77463, 77955, 79028, 79543, 79897, 80290**
..... 723, 1414, 1998, 2275, 2276, 2476, 2722, 2953, 2954, 2969, 3202, 3478, 3847, 3848, 4141, 4842, 4847, 4977, 5246, 5263, 6681, 7327, 7330, 7476, 8574, 8727, 8868, 8869, 8871, 9042, 9043, 9614, 9615
55 ..... **53546**
..... 1570
58 ..... **57362, 80329**
60 ..... **45684, 55186, 59434, 61380, 64014**
..... 8574
61 ..... **62432, 68546**
..... 3848
62 ..... **61305, 67348, 70640, 76150**
..... 76, 77, 3848, 4158, 6681, 6682, 9043
63 ..... **44672, 46028, 46294, 47894, 48098, 49398, 51928, 52674, 52780, 54399, 54400, 58347, 59034, 59434, 61380, 66252, 69702, 72276, 72875, 77562, 77828, 77830, 78046, 78274, 78612**
..... 77, 78, 329, 1276, 1660, 1888, 2110, 2276, 2970, 7735
69 1175
70 ..... **46439, 48426, 55187, 57496, 58561, 70357**
71 ..... **48426, 58561, 66351, 69703**
73 ..... **47757**
81 ..... **44128, 45688, 48426, 48839, 52666, 54601, 56249, 57362, 58551, 62222, 65750, 66598, 68545, 68805, 77196, 77204, 77212**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

..... 1414, 4847
82 ..... **65916, 67581**
..... 4012
85 ..... **51402**
86 ..... **51402, 52696, 53050, 57188, 66097, 72818**
90 ..... **53050, 57188**
110 ..... 1991, 9613
112 ..... 1352, 9613
116 ..... 1991, 9613
117 ..... 1991, 9613
122 ..... **48099, 51527, 63867, 79020, 79028, 79828**
..... 1991, 9613
123 ..... **79020**
124 ..... **79020**
125 ..... **78756**
130 ..... **79020**
131 ..... **65256, 68079, 68971**
141 ..... **46949, 71520, 78203, 79898**
152 ..... **56970**
158 ..... **56070**
180 ..... **70032, 70036**
..... 1575, 7097
194 ..... **51930, 53330, 53331, 57189, 57190**
..... 4977
228 ..... **62659**
230 ..... 1991, 9613
232 ..... 1991, 9613
258 ..... **45948, 66252**
..... 2276
260 ..... **66252**
..... 2276
261 ..... **46139, 49649, 66252, 78761**
..... 531, 2276
262 ..... **52674**
264 ..... **66252, 78612**
..... 2276
265 ..... **66252, 78612**
..... 2276
266 ..... **66252**
..... 2276
268 ..... **62626**
270 ..... **66252**
..... 2276
271 ..... **46621, 51803, 53899, 57191, 62626, 64594, 66252, 66351, 77010**
..... 2276
272 ..... **49900**
279 ..... **66252**
..... 2276
281 329
300 ..... **51528, 52918, 53332, 54602, 55187, 56794, 57778, 59035, 59487, 61844, 64846, 65082, 72888**
..... 1580, 1991, 2277, 2726, 4429, 9613, 9615
302 ..... **45440**
312 3478
372 ..... **63060**
401 ..... 1991, 9613
403 ..... **52674**
412 ..... **48099**
450 ..... **51527, 63867**
451 ..... **57872, 71523**
571 ..... **45440**
721 ..... **59233**
761 ..... **58567**
764 ..... **71524**
1001 ..... **72892, 72894**
1045 ..... **53050, 57188**
1051 ..... **53050, 57188**
1065 ..... **57188**
1068 ..... **53050, 57188**
1610 ..... **72890**

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 101—Federal Property Management Regulations (Parts 101-1—101-99)

101–5.2 Removed **78732**
101–6.3 Revised **76882**
101–6.6 Revised **76882**
101–18 Revised **76882**
101–19 Revised **76883**
101–20 Revised **76883**
101–17—101–21 (Subchapter D) Appendix amended **76883**
101–33 Revised **76883**
101–37 Authority citation revised **67743**
101–37.000 Revised **67743**
101–37.200—101–37.205 (Subpart 101–37.2) Removed **67743**
101–37.300—101–37.305 (Subpart 101–37.3) Removed **67743**
101–37.500—101–37.506 (Subpart 101–37.5) Removed **67743**
101–37.600—101–37.610 (Subpart 101–37.6) Removed **67743**
101–37.1100—101–37.1109 (Subpart 101–37.11) Removed **67743**
101–37.1200—101–37.1214 (Subpart 101–37.12) Removed **67743**
101–37.1400—101–37.1401 (Subpart 101–37.14) Removed **67743**
101–47 Revised **76883**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 41

Chapter 102—Federal Management Regulation (Parts 102-1—102-99)

102–33 Added **67743**
102–33.370 Corrected **70480**
102–37.110 (c) revised **78732**
102–42.10 Introductory text amended **56496**
102–42.140 Revised **56496**
102–71.15 Removed **76820**
102–71.20 Revised **76820**
102–72.30 Amended **76823**
102–72.60 Amended **76823**
102–72.85 Amended **76823**
102–73 Revised **76823**
102–74 Revised **76830**
102–75 Revised **76843**
102–75.880 (a) corrected 1168
102–75.885 (b) corrected 1168
102–75.905 (a) and (c) corrected 1168
102–76.25 (b) amended **76874**
102–78.60 Revised **76874**
102–79 Revised **76874**
102–80 Revised **76876**
102–81.15 Revised **76879**
102–81.20 Added **76879**
102–81.25 Added **76879**
102–81.30 Added **76880**
102–83 Added **76880**
102–192.55 Correctly redesignated from 195.55 ..... **54132**
102–195.125 Introductory text and (e) corrected **54132**
195.55 Correctly redesignated as 102–192.55 ..... **54132**

Chapter 109—Department of Energy Property Management Regulations (Parts 109-1—109-99)

109–6.400 (a) amended 7941
109–6.402 (b) removed; (c) and (d) redesignated as new (b) and (c); (a) and new (b) amended 7941

Chapter 301—Temporary Duty (TDY) Travel Allowances (Parts 301-1—301-99)

300–3.1 (l)(v) amended **57964**
301–1.1 Table amended **57964**
301–10 Authority citation revised 494
301–10.107 Authority citation revised; Notes 1 and 2 added **57964**
301–10.108 Revised **57964**
301–10.111 Revised **57964**
301–10.114 Revised **57964**
301–10.124 (h) revised **57964**
301–10.141 Amended **57964**
301–10.160 (d) added **57965**
301–10.164 Amended **57965**
301–10.303 Revised 494
301–10.304 Table revised **57965**
301–11.11 Revised **57965**
301–11.18 Table revised **56160**
301–11.26 Table revised **57965**
301–11.27 Amended **57965**
301–11.31 Amended **57965**
301–11.32 Added **57965**
301–12.1 Table amended **57965**
301–30.4 (b) revised; (d) added **57966**
301–31.8 Amended **57966**
301–50.3 Revised **57966**
301–51.2 (j), (k) and (l) amended; (m) added **57966**
301–51.101 Introductory text amended **57966**
301–51.200 (b) table amended **57966**
301–52.4 (b)(1) and (2) amended; (b)(3) added **57966**
301–70.501 Revised **57967**
301–70.502 Redesignated as 301–70.503; new 301–70.502 added **57967**
301–70.503 Redesignated as 301–70.504; new 301–70.503 redesignated from 301–70.502 and revised **57967**
301–70.504 Redesignated as 301–70.505; new 301–70.504 redesignated from 301–70.503 ..... **57967**
301–70.505 Redesignated as 301–70.506; new 301–70.505 redesignated from 301–70.504 ..... **57967**
301–70.506 Redesignated as 301–70.507; new 301–70.506 redesignated from 301–70.505 ..... **57967**
301–70.507 Redesignated as 301–70.508; new 301–70.507 redesignated from 301–70.506 ..... **57967**
301–70.508 Redesignated as 301–70.509; new 301–70.508 redesignated from 301–70.507 ..... **57967**
301–70.509 Redesignated from 301–70.508 ..... **57967**
301–70.708 Added **57967**
301–71.301 Redesignated as 301–71.302; new 301–71.301 added **57967**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH FEBRUARY 28, 2003

301–71.302 Redesignated as 301–71.303; new 301–71.302 redesignated from 301–71.301 ..... **57967**
301–71.303 Redesignated as 301–71.304; new 301–71.303 redesignated from 301–71.302 ..... **57967**
301–71.304 Redesignated as 301–71.305; new 301–71.304 redesignated from 301–71.303 ..... **57967**
301–71.305 Redesignated as 301–71.306; new 301–71.305 redesignated from 301–71.304 ..... **57967**
301–71.306 Redesignated as 301–71.307; new 301–71.306 redesignated from 301–71.305 ..... **57967**
301–71.307 Redesignated as 301–71.308; new 301–71.307 redesignated from 301–71.306 ..... **57967**
301–71.308 Redesignated as 301–71.309; new 301–71.308 redesignated from 301–71.307 ..... **57967**
301.71–309 Redesignated from 301.71–308 ..... **57967**
301–72.301 (a) and (c) revised **57967**
301–73.102 Revised **57968**
301–73.103 Revised **57968**
301–74.17 (b) revised **57968**
301–75.202 Table amended **57968**
Chapter 301 Appendix A amended **47458, 57170, 69634**
Appendix A amended 196
Appendix A revised **56160**

Chapter 302—Relocation Allowances (Parts 302-1—302-99)

302–1.1 (e) revised **57968**
302–1.2 (d) revised **57968**
302–2 Authority citation revised **57968**
302–2.3 Amended **57968**
302–3 Authority citation revised **57968**
302–3.2 Table A amended; Table B revised **57968**
302–3.101 Tables A and B amended **57969**
Corrected **65321**
302–4.200 Revised **57969**
302–5 Authority citation revised **57969**
302–5.13 (a) table amended **57969**
302–5.15 Amended **57969**
302–7.20 Added **57969**
302–7.200 Amended **57969**
302–16 Authority citation revised **57969**
302–16.1 (b) table amended **57969**
302–17 Appendices A through D revised 7942

Proposed Rules:

101–45 ..... **47494**
102–38 ..... **47494**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health and Human Services (Parts 1—199)

52 Clarification **61805**
73 Added **76896**

Chapter IV—Centers for Medicare & Medicaid Services, Department of Health and Human Services (Parts 400—499)

403.744 (a)(1) revised; (c) added 1385
405 Technical correction **69146**
Technical correction 6636
405.371 (c) revised **66813**
405.502 (g) and (h) revised; interim **76696**
410 Policy statement **67318**
Policy statement 9567
410.37 (a)(1)(v) and (2) revised **80040**
410.59 (c)(1)(ii)(C) revised; (c)(1)(ii)(D) and (E) added **80040**
410.60 (c)(1)(ii)(C) revised; (c)(1)(ii)(D) and (E) added **80041**
410.61 (d)(1)(iii) revised **80041**
410.65 Heading, (a)(1), and (b) introductory text revised **80041**
410.76 (b)(3) revised **80041**
410.78 Heading, (b) introductory text and (1) revised; (f) added **80041**
411.354 Regulation at 66 FR 958 and 60155 effective date delayed **70322**
413.86 (e)(4)(ii)(C)*(2)(iii)* correctly designated; (e)(4)(ii)(C)*(2)* introductory text, *(i)* and *(iii)* correctly added; CFR correction **61496**
414 Policy statement **67318**
Policy statement 9567
414.46 (g) revised **80041**
416.44 (b)(1) and (3) revised; (b)(4) added 1385
418.100 (d)(1), (3), and (4) revised 1386
419 Technical correction **69146**
Technical correction 6636
419.21 (d)(3) revised **66813**
419.66 (c)(1) amended **66813**
431.220 Corrected **65505**
433.15 (b)(10) added 3635
438.8 Corrected **65505**
438.310—438.370 (Subpart E) Added 3635
438.10 Corrected **65505**
438.52 Corrected **65505**
438.100 Corrected **65505**
438.102 Corrected **65505**
438.114 Corrected **65505**
438.116 Corrected **65505**
438.703 Corrected **65505**
438.810 Corrected **65505**
457.10 Amended **61974**
457.350 (b) text redesignated as (b)(1); (b)(2) added **61974**
457.622 (c)(5) revised **61974**
457.626 (a)(3) added **61974**
460 Nomenclature change; eff. 10–31–02 ..... **61504**
460.10—460.24 (Subpart B) Heading revised; eff. 10–31–02 ..... **61504**
460.10 Revised; eff. 10–31–02 ..... **61504**
460.12 (a)(2) removed; eff. 10–31–02 ..... **61505**
460.26 Added; eff. 10–31–02 ..... **61505**
Corrected **63966**
460.28 Added; eff. 10–31–02 ..... **61505**
460.30 (b) revised; (c) added; eff. 10–31–02 ..... **61505**
460.60 (b) and (c) revised; eff. 10–31–02 ..... **61505**
460.68 (b) revised; (c) removed; eff. 10–31–02 ..... **61505**
460.70 (b)(1)(i) and (e)(2) revised; (e)(5)(vi) through (ix) and (f) added; eff. 10–31–02 ..... **61505**
460.71 Added; eff. 10–31–02 ..... **61505**
460.72 (b)(1) revised; (b)(3) added 1386
460.102 (d)(2)(iii) revised; (d)(3) amended; (f) and (g) removed; eff. 10–31–02 ..... **61506**
482.21 Revised 3454
482.23 (c)(2) amended **61814**
482.41 (b)(1) introductory text, and (i) revised; (b)(7)(iv) added 1386
483.40 (b)(3) revised **61814**
483.70 (a) introductory text revised; (a)(4) added 1387
483.470 (j)(1)(i), (iii) and (2) revised; (j)(3) added 1387
484.18 (c) amended **61814**
485 Policy statement 9567
485.618 (d) revised **80041**
485.623 (d)(1) and (2) revised; (d)(5) added 1387
493.2 Amended 3702

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 42 Chapter IV—Con.

493.3 (b)(3) amended 3702
493.20 (b) and (c) amended 3702
493.25 (b), (c) and (d) amended 3702
493.43 (a) amended 3702
493.45 (c)(3) amended 3702
493.47 (c)(2) and (3) amended 3702
493.49 (a)(3) amended 3702
493.643 (c)(3)(ix) amended 3702
493.801—493.865 (Subpart H) Heading revised 3702
493.801 (a)(2)(ii) amended 3702
493.803 (a) amended 3702
493.807 Heading revised 3702
493.901—493.959 (Subpart I) Heading revised 3702
493.911 (c)(1) amended 3702
493.913 (c)(1) amended 3702
493.915 (c)(1) amended 3702
493.917 (c)(1) amended 3702
493.919 (c)(1) amended 3702
493.923 (b)(1) amended 3702
493.927 (c)(1) amended 3702
493.931 (c)(1) amended 3702
493.933 (c)(1) amended 3702
493.937 (c)(1) amended 3702
493.941 (c)(1) amended 3702
493.945 (a)(1) amended 3702
493.1100—493.1105 (Subpart J) Revised 3703
493.1200—493.1299 (Subpart K) Revised 3703
493.1351—493.1495 (Subpart M) Heading revised 3713
493.1359 (b)(2) amended 3713
493.1407 (e)(5) amended 3713
493.1443 (b)(3) revised 3713
493.1445 (e)(5) amended 3714
493.1451 (c)(4) amended 3714
493.1471 (b)(2) amended 3714
493.1485 (a) amended 3714
493.1701—493.1721 (Subpart P) Removed 3714
493.1844 (c)(1) amended 3714
493.2001 (e)(1) amended; (e)(4) revised 3714

Chapter V—Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

1003 Authority citation revised **76905**
1003.100 (a), (b)(1)(xiv) and (xv) revised; (b)(1)(xvi) added **76905**
1003.101 jAmended **76905**
1003.102 (b)(16) added **76905**
1003.103 (l) added **76905**

Proposed Rules:

52a **68548**
54 ..... **77350**
54a **77350**
73 ..... **71528**
200—299 (Ch. II) **70358**
400—499 (Ch. IV) 3482
405 ..... **69312**
409 ..... **65672**
410 ..... **67318**
412 ..... **70358**
413 ..... **70358**
..... 6682
414 ..... **67318**
417 ..... **65672**
418 ..... **70363**
422 ..... **65672**
476 ..... **70358**
482 ..... **70373**
484 ..... **70358**
1003 ..... **72896**

TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

2 Authority citation revised **64530**
2.1—2.3 (Subpart A) Revised; redesignated as Supbarts A through E **64530**
2.11—2.22 (Subpart B) Revised; Redesignated as Subparts A through E **64530**
2.41 (Subpart C) Redesignated as Subpart F; new Subpart C (2.7—2.27) redesignated from Subparts A and B **64530**
2.41 (Subpart F) Redesignated from Subpart C **64530**
2.45—2.79 (Subpart D) Redesignated as Subpart G; new Subpart D (2.28—2.33) redesignated from Subparts A and B **64530**
(Subpart G) Redesignated from Subpart D **64530**
2.80—2.90 (Subpart E) Redesignated as Subpart H; new Subpart E (2.34) redesignated from Subparts A and B **64530**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH FEBRUARY 28, 2003

(Subpart H) Redesignated from Subpart E **64530**
4.1100 (e) revised **61509**
4.1109 (a)(2) revised **61510**
4.1190 (a) revised **61510**
4.1192 (a) revised **61510**
4.1193 Redesignated as 4.1194; new 4.1193 added **61510**
4.1194 Redesignated as 4.1195; new 4.1194 redesignated from 4.1193 ..... **61510**
4.1195 Redesignated as 4.1196; new 4.1195 redesignated from 4.1194; new (a) revised **61510**
4.1196 Redesignated as 4.1197; new 4.1196 redesignated from 4.1195 ..... **61510**
4.1197 Redesignated from 4.1196 ..... **61510**
4.1200 (a), (b)(2), (3) and (4) revised **61510**
4.1204 Introductory text revised **61510**
4.1266 Heading and (b)(2) revised **61510**
4.1270 (f) revised **61511**
4.1276 (a) revised **61511**
4.1350 Revised **61511**
4.1351 Revised **61511**
4.1352 Revised **61511**
4.1355 Revised **61511**
4.1360 (c) amended; (d) revised; (e) added **61511**
4.1370—4.1377 Undesignated center heading revised **61511**
4.1370 Revised **61511**
4.1371 (a) revised **61511**
4.1372 (a)(1) and (2) revised **61511**
4.1374 (a) revised **61512**
4.1376 Heading and (a) revised **61512**
4.1380—4.1387 Undesignated center heading revised **61512**
4.1380 Revised **61512**
4.1381 (a) revised **61512**
4.1390 Revised **61512**
4.1391 (a) and (b) revised **61512**
4.1394 Revised **61512**

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

1864.01—1864.4 (Subpart 1864) Authority citation added 502
1864.0–5 (h) added 502
1864.1–1 Revised 502
1864.1–3 Revised 502
1864.1–4 Revised 503
2930 Added; eff. 10–31–02 ..... **61740**
3432.3 (c) revised; (d) added **63567**
3472.1–3 (a)(1) and (2) amended **63567**
3601.51 Corrected **68778**
3602.12 Corrected **68778**
3802.1–1 (d) amended; eff. 10–31–02 ..... **61745**
6302.20 (i) amended; eff. 10–31–02 ..... **61745**
8224.1 Corrected **68778**
8340 Authority citation revised **61745**
8344.1 Amended; eff. 10–31–02 ..... **61745**
8360 Authority citation corrected **68778**
8365.1–5 (c)orrected **68778**
8370 Removed; eff. 10–31–02 ..... **61745**
9268.3 (e)(1) amended; eff. 10–31–02 ..... **61745**

Proposed Rules:

4 ..... **77011**
2930 ..... **61746**
4100 ..... **77011**
5000 ..... **77011**

TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

64.6 Table amended **63272, 67118, 72594, 79880**
Table amended 5853
65.4 Flood elevation determinations **63274, 63830, 63835, 65719, 67120, 67123, 70697, 71483**
Flood elevation determinations 1541, 1543, 4942, 4945, 4947, 6644, 6823, 6827
67.11 Flood elevation determinations **63275, 63838, 63849, 67126, 67127, 67128, 70699, 70701**
Flood elevation determinations 1547, 1550, 1551, 4950, 4951, 6829, 6831
201.3 (c)(3) revised; interim **61515**
201.4 (a) revised; interim **61515**
201.6 (a) revised; interim **61515**
206.10—206.120 (Subpart D) Corrected **62896**
206.15 Corrected **62896**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 44 Chapter I—Con.

206.117 Corrected **62896**
206.120 Corrected **62897**
206.432 (b)(1) revised; interim **61515**
206.434 (b)(1) revised; interim **61515**

Proposed Rules:

61 5264
67 ..... **63358, 63359, 63867, 63872, 67132, 67133, 67135, 70712**
.....1581, 1585, 2477, 2479, 4978, 4979, 6847, 6861
208 ..... **77628**

TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Services (Parts 1—199)

4.6 Revised **78990**
50.1 Revised; interim **77695**
50.2 (b) and (c) revised; (d) removed; interim **77695j**
50.3 Revised; interim **77696**
50.4 Revised; interim **77696**
50.5 Redesignated as 50.7; new 50.5 added; interim **77696**
50.6 Revised; interim **77697**
50.7 Redesignated from 50.5; interim **77696**
50.8 Added; interim **77697**
160.103 Amended 8374
162 Authority citation revised 8374
162.103 Amended 8374
162.900 Revised 8396
162.920 Revised 8396
162.1002 Introductory text revised; (a) through (f), new (a)(1)(1) through (5), (a)(2)(1) through (4), (a)(3)(1), (2), (a)(5)(1) through (7), (a)(6)(1), (2) and (3) redesignated as (a)(1) through (6), new (a)(1)(i) through (v), (a)(2)(i) through (iv), (a)(3)(1), (ii), (a)(5)(i) through (vii), (a)(6)(i), (ii) and (iii); new (a) introductory text and (b) added 8397
162.1102 Revised 8397
162.1202 Revised 8398
162.1302 Revised 8398
162.1402 Revised 8398
162.1502 Revised 8398
162.1602 Revised 8398
162.1702 Revised 8399
162.1802 Revised 8399
164 Authority citation revised 8374
164.103 Added 8374
164.104 Revised 8375
164.105 Added 8375
164.302—164.318 (Subpart C) Added 8376

Chapter VII—Commission on Civil Rights (Parts 700—799)

Chapter VII Revised **70482**

Chapter XII—Corporation for National and Community Service (Parts 1200—1299)

1230 Appendix B correctly revised; CFR correction **66061**

Chapter XVI—Legal Services Corporation (Parts 1600—1699)

1602.2 (k) added 7437
1602.5 (a) revised 7437
1602.6 Amended 7437
1602.8 (b) amended 7437
1602.13 (e) and (f) revised; (j), (k) and (l) redesignated as (k), M and (n); new (j) added 7437
1611 Appendix A revised 7718
Appendix A correctly revised 8856

Proposed Rules:

5 9621
31 ..... **72128**
46 ..... **62432**
96 ..... **77350**
260 ..... **77362**
1050 ..... **77368**
1602 ..... **69498**
1611 ..... **70376**

TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1 Authority citation revised 9535
1.01–10 (b)(1) and (2) amended 9535
10.102 (b) revised; interim **66067**
10.103 Amended; interim **66067**
10.205 (l)(1), (2) and (3) amended; interim **66067**
10.304 (f) amended; interim **66068**
10.407 (a)(2)(iv) amended **64315**
Regulation at 67 FR 64315 confirmed **79881**
10.603 (c) amended; interim **66068**
10.901 (c) amended; interim **66068**
10.903 (c) and (d) amended; interim **66068**
10.1005 Amended; interim **66068**
10.1101—10.1105 (Subpart K) Added; interim **66068**
12.01–1 Amended; interim **66068**
12.01–3 Revised; interim **66068**
12.01–6 Amended; interim **66068**
12.02–7 (d) amended; interim **66068**
12.02–11 (h)(1) amended; interim **66068**
12.03–1 (a)(8) amended; interim **66068**
12.05–3 (b)(1) amended; interim **66068**
12.05–7 (a)(5) amended; interim **66068**
12.05–11 (a) amended; interim **66068**
12.10–3 Amended; interim **66068**
12.10–5 (d) amended; interim **66068**
12.10–7 Amended; interim **66069**
12.10–9 (b)(2) amended; interim **66069**
12.15–3 (d)(1) amended; interim **66069**
12.15–7 Amended; interim **66069**
12.25–45 Amended; interim **66069**
12.30–5 Amended; interim **66069**
12.35–1—12.35–5 (Subpart 12.35) Added; interim **66069**
15.1103 (e), (f) and (g) redesignated as (f), (g) and (h); new (e) added; heading, (d), new (g) and (h) revised; interim **66069**
26.03–8 Technical correction **72100**
32.22T Removed **58524**
34.50–10 (e) correctly revised; CFR correction **66069**
68 Authority citation revised 9535
68.01 Appendices A and B amended 9535
68.05 Appendices A and B amended 9535
169.230 Regulation at 67 FR 21083 correctely confirmed **64315**
176.615 Regulation at 67 FR 21083 correctly confirmed **64315**

Chapter II—Maritime Administration, Department of Transportation (Parts 200—399)

356 Authority citation revised: nomenclature change 5576
356.3 (g) and (h), (i) through (k), (l) through (x) and new (q)(3) redesignated as (h) and (i), (k) through (m), (o) through (aa) and (q)(2); new (g), (j), (n) and (q)(3) added; (e)(2), new (h)(2), (u), (y)(2) and (s) revised; new (p) and (q) amended 5576
356.5 (d) revised 5577
356.7 (c)(1)(ii) revised 5579
356.11 (a)(7) revised 5577
356.13 (a)(5) revised; (a)(11) and (12) amended; (a)(13) added 5579
356.15 (a), (b), and (c) removed; (d), (e) and (f) redesignated as (c), (a) and (b), new (d) added 5579
356.17 (b) revised 5579
356.19 Revised 5579
356.21 Amended; heading, (a) introductory text and (e) revised 5581
356.23 heading and (a) introductory text revised 5581
356.27 (a), (b)(1), (c)(2), (3), (4) and (g) revised 5581
356.37 Revised 5582
356.45 (a)(2)(iv) amended 5582
356.47 (a)(2), and (b)(3) revised; new (e) added 5582
356.51 (e) removed; (d) redesignated as (e); (a) introductory text, (1), (c), new (e) introductory text and (1) amended; new (d) and (f) added 5583
356.53 (a), (b)(1), (3), (4), (d), (f)(4) and (g)(1) amended; (b)(5) removed; (g)(2) revised; (g)(3) and (4) added 5583

Proposed Rules:

4 9622
401 ..... 3202, 7489
540 ..... **66352, 79029**

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

0.5 (e) added **70177**
0.331 (d) introductory text revised **63284**
0.467 Table, (a)(1) note and (3) amended 4105
1 Petition reconsideration **63850, 77173**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH FEBRUARY 28, 2003

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 47 Chapter I—Con.

Order **67567**
1.924 (f) correctly designated as (g); (f) text correctly reinstated **71111**
1.1102 Revised **67319**
1.1103 Revised **67327**
1.1104 Revised **67328**
1.1105 Revised **67331**
1.1106 Revised **67332**
1.1107 Revised **67332**
1.1109 (c) note, (d) introductory text, (e) and note revised **67337**
1.1110 (a)(1), (2) and (3) revised **67337**
1.1111 (c) revised **67337**
1.1113 (a)(1) revised **67337**
1.1114 Introductory text revised **67337**
1.1116 (a) introductory text revised **67337**
1.1117 (c)(1) and (e) revised **67337**
1.1119 (a) revised **67337**
2.106 Table amended 3460
11 Compliance notification **65321**
11.31 (f) revised **77174**
15.117 (a) revised; (h) redesignated as (j); new (h) and (i) added **63294**
20 Petition reconsideration **63851**
Comment request 2252
20.18 (j) revised 2918
21.50 Removed 3464
22.165 (e) revised; eff. 2–18–03 ..... **77190**
22.323 Removed; eff. 2–18–03 ..... **77191**
22.367 (a)(4) removed; (d) revised **77191**
22.377 (c) removed **77191**
22.901 Revised **77191**
22.905 Revised **77191**
22.911 (b)(1) and (3) amended **77191**
22.915 Removed **77191**
22.917 Revised **77191**
22.919 Removed **77192**
22.921 Revised **77192**
22.933 Removed **77192**
22.937 Removed **77192**
22.941 Removed **77192**
22.943 Revised **77192**
22.945 Removed **77192**
22.946 (b) abd (c) revised **77192**
24.238 Revised **77192**
25.200 Removed **61816**
25.213 (b) removed **61816**
25.216 Added **61816**
32 Meetings **66069**
Order 6351
32.5200 Regulation at 67 FR 5693 eff. date delayed **77432**
32.6562 Regulation at 67 FR 5696 eff. date delayed **77432**
32.6620 Regulation at 67 FR 5696 eff. date delayed **77432**
42 Meetings **66069**
51 Meetings **66069**
Order 6351
52 Actions on petitions 7323
53 Order 6351
54 Order **70703**
Order 4105, 6646, 6832
54.303 (b)(4) correctly revised **70702**
54.706 (b) and (c) revised **79532**
54.709 (a) introductory text, and (1) revised; (a)(2) amended **79533**
54.711 (a) revised **79533**
54.712 Added **79533**
61 Petition reconsideration **63850**
64 Petition reconsideration **62648**
Meetings **66069**
Order 6351
Technical correction 8554
64.604 (a)(3) revised 6355
64.1301 Revised **71890**
69 Petition reconsideration **63850**
73 Petition reconsideration **61816, 64818, 70556, 76318**
Actions on petitions **66340**
Actions on petitions 1986, 5854
Order **78193**
73.202 (b) table amended **63853, 64049, 64553, 64554, 64817, 64818, 65721, 66341, 66342, 67568, 69694, 70180, 71891, 71892, 71893, 71895, 76998, 78387**
(b) table amended 504, 1555, 2702, 3819, 4107, 5584, 5585, 5855, 6083, 7945, 8724, 8725
(b) table corrected 5854
73.606 (b) table amended **61516, 62400, 62648, 63853, 78192**
73.622 (b) table amended **61516, 62400, 62649, 62650, 63852, 70018, 70177, 70178, 70179, 78191, 78192, 78193**
(b) table amended ... 503, 1986, 2701, 4394
73.682 (d) revised **63294**
73.2080 Revised 689
76.75 Heading, (b) and (f) through (j) revised; (k) removed 691
76.77 Revised 692
76.122 (c)(2) revised **68951**
76.127 (c) revised **68951**
76.128 (b) revised **68951**
76.1702 Revised 693

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH FEBRUARY 28, 2003

90.20 (a)(1)(i) revised; (c)(3) amended; (d)(43) removed **63284**
(e)(6) introductory text revised **70705**
90.35 (b)(2)(iii), (c)(60)(ii), (61)(iii) and (iv) revised; (b)(3) amended **63284**
90.175 (b)(1) revised **63288**
90.201 Revised **76700**
90.203 (m) and (n) added **76700**
90.210 (b) and (c) introductory texts and (h), (i) and (j) introductory texts revised **63288**
90.242 (a)(1) removed **63289**
95.401 (f) revised **63289**
90.531 (b)(5), (6) and (d)(1) revised **76700**
90.533 (a) revised **76700**
90.535 (b) and (c) revised; (d) added **76701**
95.603 (g) revised **63289**
95.631 (j) revised **63289**
95.632 (b) revised **63289**
95.633 (f) revised **63289**
95.635 (e) revised **63289**
95.639 (h) revised **63289**
95.655 (d) added **63290**
95.1307 Revised **63290**
95.1311 Added **63290**
95.1313 Added **63290**
95.1315 Added **63290**
95.1317 Added **63290**
101.3 Amended 4955
101.5 (b) revised 4955
101.31 (a)(3), (4), (5) and (b)(4) removed; (a)(6) redesignated as new (a)(3); (a)(2), new (3), (b)(1) introductory text, (vii) and (3) revised 4955
101.55 (a) introductory text revised; (e) removed 4955
101.69 (d) introductory text revised 3464
101.73 (d) introductory text and (3) amended 3464
101.75 (d) revised 3464
101.99 Heading and (a) revised 3464
101.101 Table amended 4955
101.107 (a) table amended 4956
101.109 (c) table amended 4956
101.111 (a)(2)(i) through (iv) revised 4956
101.113 (a) table amended 4957
101.115 (b) removed; (c) through (g) redesignated as (b) through (f); new (b) table amended 4957
101.117 Revised 4957
101.133 (e) added 4957
101.135 (a) revised 4958
101.139 (a) and (g) revised 4958
101.141 (a) introductory text and (1) revised 4958
101.147 (a) table and (b)(2) Table 3 amended; (b) introductory text note added; (k) removed; (r)(10) introductory text and (s) revised 4958
101.507 Revised 4961
101.603 (b)(1) revised 4961
101.803 (a)(5) and (d)(8) revised; (e) removed; (f) and (g) redesignated as new (e) and (f) 4961
101.809 (d) revised 4961
101.815 (a)(1) revised 4961
101.1325 (a) revised 4961
101.1333 (c) revised 4961

Chapter III—National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)

301 Added **41193**

Proposed Rules:

0—199 (Ch. I) **64968**
..... 723, 730, 6689
0 ..... **65527, 77220**
1 ..... **76628**
2 ..... **75968**
..... 1999
15 2730
20 3214
22 ..... **78209**
24 ..... **78209**
25 ..... **61999, 75968, 78399**
27 ..... **68079, 78209**
36 ..... **71121**
43 ..... **65527, 77220**
..... 6689
54 ..... **71121, 79543**
63 ..... **65527, 77220**
..... 1660, 6689
64 ..... **62667, 65527, 71126, 77220, 78763**
..... 6689
73 ..... **61572, 61845, 63873—63876, 64080, 64598, 64853, 65750, 65751, 66376, 66377, 69703, 70195, 71925, 71926, 71927, 77220, 78215, 78387, 78400, 78401, 78402**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 47 *Proposed Rules:—Con.*

.....532, 533, 1586, 1587, 1657, 2278, 2733, 2734, 4158, 5616, 5617, 5860, 5861, 5862, 7737, 7961—7964, 8486, 8728, 8729, 8730
74.....7737
76.....**77374, 78387**
.....1657, 2278, 7737
87.....**75968**
90.....**67348, 68079, 70196**
.....1999, 6687, 6688, 7735

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

Chapter I—Federal Acquisition Circular 2001-10.....**70516**
Small entity compliance guide.....**70522, 80322**
Small entity compliance guide.....4051
Summary disposition.....**80320**
2.101 Amended; interim.....4049
4.705-2 Heading and (a) revised.....**70517**
7.105 (b)(4)(1) amended.....**70522**
10.001 (a)(2)(iii) amended; (a)(2)(v) added; interim.....4049
12.102 (f) revised; interim.....4050
13.003 (b)(1) revised; interim.....4050
13.105 (b) Amended; interim.....4050
13.201 (g) revised; interim.....4050
13.500 (d) amended.....**80321**
(a) amended; (e) added; interim.....4050
13.501 (a)(1)(i) and (2)(ii) amended; (a)(1)(ii) revised; (a)(2)(iii) and (iv) added; interim.....4050
17.603 Regulation at 66 FR 27415 confirmed.....**70518**
19.502-1 (b) revised; interim.....4050
19.502-2 (a) amended.....**70522**
(a) amended; interim.....4050
19.805-1 (b)(1) and (2) amended; (b)(3) added; interim.....4051
19.903 (b)(2) amended; (b)(3) redesignated as (b)(4); new (b)(3) added; new (b)(4) amended.....4051
19.1306 (a)(2) introductory text revised; (c) added.....4051
22.101-1 Regulation at 66 FR 27415 confirmed.....**70518**
25.003 Amended.....**70520**
25.400 (a)(2) amended.....**70520**
25.1101 (a)(1) introductory text revised.....4051
25.1103 (a) revised.....4051
32.504 (b) introductory text and (2) revised.....**70521**
32.1003 Introductory text and (b) amended.....**70521**
36.202 Regulation at 66 FR 27415 confirmed.....**70518**
39.204 (a) amended; interim.....**80322**
52.216-7 Clause amended.....**70521**
52.216-26 Clause amended.....**70521**
52.225-5 Clause amended.....**70520**
52.232-7 Clause amended.....**70521**
52.232-16 Clause amended.....**70521**
58 Appendix A amended.....**80328**

Chapter 2—Department of Defense (Parts 200—299)

201.201-1 (d)(i)V amended.....7439
201.304 (1)(ii), (4) and (5) amended.....7439
201.402 (1) introductory text and (2) introductory text amended.....7439
201.404 (b)(i) amended.....7439
202.101 Amended.....7439
204.7003 (a)(1)(i)(j) amended.....7439
201.603-2 Revised.....**65509**
206.302-2 (b)(iv) amended.....**61516**
206.302-5 (c)(i)(B) amended.....7439
207.103 (h) introductory text, (i)(A), (B), (C), (ii) introductory text and (B) amended.....**61516**
207.105 Introductory text and (b)(19)(C) amended.....**61516**
208 Meetings.....**65721**
208.001 (a)(1)(v) revised.....**65511**
Redesignated as 208.002.....**77936**
208.002 Redesignated as 208.003; new 208.002 redesignated from 208.001.....**77936**
208.003 Redesignated from 208.002; new (f) and (g) redesignated as (d) and (e).....**77936**
208.74—208.7403 (Subpart 208.74) Added.....**65511**
208.404—208.405-2 (Subpart 208.4) Heading revised.....**65508**
208.404 (b) added.....**65508**
208.404-70 Added.....**65508**
208.7000 (b) amended.....**77936**
209.104-1 (g)(ii)(C) amended.....7439
209.104-70 (a) amended.....7439
209.403 Amended.....7439

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH FEBRUARY 28, 2003

209.406-2 (a)(ii) amended.....7439
212.102 Revised.....**65514**
212.301 (f)(i)(B) removed; (f)(i)(C) and (D) redesignated as (f)(i)(B) and (C).....7439
214.407-3 (e)(vii) revised.....7439
(e)(vii) correctly designated as (e)(viii).....9580
216 Meetings.....**65721**
216.501-1 Added.....**65508**
216.505-70 Added.....**65508**
217.170 (d)(4) amended.....7439
217.173 (b)(5)(iv) amended.....7439
217.7600 Amended.....**61516**
219.1007 (b)(1) amended.....7439
219.7104 (b) and (d) amended.....**77937**
223.7100 Amended.....**61516**
223.7102 (b) amended.....**61516**
225.001 (3)(ii) removed; (3)(iii) redesignated as (3)(ii); new (3)(ii) amended.....**77938**
225.003 (4) and (12) amended.....**77938**
225.103 (a)(1) redesignated as (a)(i); new (a)(i)(B) revised.....**77938**
225.402 Revised.....**77938**
225.502 Revised.....**77938**
225.504 (4) removed.....**77938**
225.701-70 Added.....7441
225.7002-2 (j) revised; interim.....7442
225.7304 Revised.....**70325**
225.1101 (3)(ii), (5) and (6) removed; (3)(iii), (iv) and (7) through (14) redesignated as (3)(ii), (iii) and (5) through (12); (2)(i), new (9) and new (12) amended.....**77938**
225.7501 (b)(1)(iii) revised.....**77939**
226.104 Revised.....**65514**
230.201-5 (a)(1)(A)(2), (B), (e)(i) and (ii) amended.....7440
231.205-70 (d)(9) and (10) amended.....7440
232.70 Added; interim.....8455
232.006-5 Amended.....7440
232.070 (a) amended.....7440
232.071 (a)(1), (b)(1), and (3) amended.....7440
232.501-2 (a) amended.....7440
232.617 (a) amended.....7440
236.570 (b)(5) amended.....7440
237.101 Added; interim.....7443
237.102-70 (d) added; interim.....7443
237.104 (c)(2)(C)(*1*) amended.....**61516**
239.1 (Subpart 239.1) Added.....**65512**
239.7302 (b)(2)(i) amended; (b)(2)(ii) revised.....7440
242.602 (c)(2) amended.....7440
242.771-3 (c) amended.....7440
242.1105 (1)(i) amended.....**61516**
242.1203 (b)(2)(A) amended.....7440
245.403 (1) amended.....**61517**
245.609 Amended.....**61517**
247.305-10 (b)(1)(A)(*3*) amended.....**61517**
247.371 Amended.....**61517**
249.7000 (a)(1) amended.....7440
249.7001 (b)(11) revised.....7440
250.303 (3) amended; (12) revised.....7440
251.102 (f) revised; Table 51-1 amended.....**65512**
(e) introductory text amended.....**70325**
252.211-7005 clause amended.....7440
252.212-7001 clause amended; interim.....7442, 8455
252.212-7001 Clause amended.....**70325, 77939**
252.225-7006 Removed.....**77939**
252.225-7007 Clause amended.....**65514**
Removed.....**77939**
252.225-7008 Introductory text amended.....**77939**
252.225-7009 Introductory text amended.....**77939**
252.225-7010 Introductory text amended.....**77939**
252.225-7012 (c)(3) amended; interim.....7442
252.225-7020 Introductory text amended.....**77939**
252.225-7021 Clause amended.....**65514**
Introductory text amended.....**77939**
252.225-7035 Introductory text amended.....**77939**
252.225-7036 Introductory text amended.....**77939**
252.225-7037 Introductory text amended.....**77939**
252.232-7003 Added; interim.....8455
252.246-7000 Revised; interim.....8455
252.251-7000 Clause amended.....**65512**
253.204-70 (b)(12)(iii)(B) and (c)(4)(5)(B)(*5*) amended.....7441
253.204-71 (e)(2)(i)(A)(*4*) amended.....7441
Chapter 2 Appendix G amended.....**61517, 70325, 70329, 77936**
Appendix I amended.....**77937**
Appendix G Amended.....7441

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 48

Chapter 3—Department of Health and Human Services (Parts 300—399)

356 Authority citation revised 5576
356.3 (l) 5576

Chapter 8—Department of Veterans Affairs (Parts 800—899)

801.301–70 (c) table amended (OMB numbers) 3467
801.602–70 (a)(4)(vi) and (vii) revised 3468
801.602–71 (b)(2) revised 3468
801.602–72 (b) revised 3468
806.302–5 (b) revised; (c) redesignated as (d); new (c) added 3468
812.301 (c) revised; (g) added 3468
837.403 Amended 3469
852.207–70 Introductory text revised 3469
852.273–70 Added 3469
852.273–71 Added 3469
852.273–72 Added 3469
852.273–73 Added 3469
852.273–74 Added 3469
873 Added 3469

Chapter 9—Department of Energy (Parts 900—999)

904 Regulation at 67 FR 14875 confirmed 56
904.401 Regulation at 67 FR 14875 confirmed 56
904.402 Regulation at 67 FR 14876 confirmed 56
904.404 Regulation at 67 FR 14876 confirmed 56
904.70 Regulation at 67 FR 14876 confirmed 56
904.7000 Regulation at 67 FR 14876 confirmed 56
904.7002 Regulation at 67 FR 14876 confirmed 56
904.7003 Regulation at 67 FR 14876 confirmed 56
904.7005 Regulation at 67 FR 14876 confirmed 56
904.7100 Regulation at 67 FR 14876 confirmed 56
904.7102 Regulation at 67 FR 14876 confirmed 56
904.7103 Regulation at 67 FR 14877 confirmed 56
923 Authority citation revised 6358
923.405 Added 6358
923.471 Removed 6358
936 Authority citation revised 6358
936.602–70 (a)(8) added 6358
952 Regulation at 67 FR 14875 confirmed 56
952.204–2 Regulation at 67 FR 14877 confirmed 56
952.204–73 Regulation at 67 FR 14877 confirmed 56
952.204–74 Regulation at 67 FR 14878 confirmed 56
970.0404–1 Regulation at 67 FR 14878 confirmed 56
970.0404–2 Regulation at 67 FR 14878 confirmed 56
970.0404–3 Regulation at 67 FR 14878 confirmed 56
970.2303—970.2306 (Subpart 970.23) Heading revised 6359
970.2304–1 Revised 6359
970.2304–2 Revised 6359
970.5223–2 Revised 6359

Chapter 15—Environmental Protection Agency (Parts 1500—1599)

1509 Authority citation revised **66344**
1509.170–3 (a) and (c) revised; (d) added **66344**
1509.170–4 (f) amended **66344**
1509.170–5 (b) revised **66344**
1509.170–8 (b) revised **66344**
1509.209–76 Undesignated text, (a)(2), (b)(2) and (4) revised **66344**
1552 Authority citation revised **66344**

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1804.202 Revised 5231
1804.7101 (b) amended **62191**
1804.7102 (a) table, (c) and (d) amended **62191**
1804.7103 (a) amended **62191**
1808.002 Redesignated as 1808.003 .....**68533**
1808.002–70 Redesignated as 1808.003–70 .....**68533**
1808.002–71 Redesignated as 1808.003–71 .....**68533**

NOTE: **Boldface page numbers indicate 2002 changes.**

1808.002–72 Redesignated as 1808.003–72 .....**68533**
1808.002–75 Redesignated as 1808.003–75 .....**68533**
1808.003 Redesignated from 1808.002 .....**68533**
1808.003–70 Redesignated from 1808.002–70 .....**68533**
1808.003–71 Redesignated from 1808.002–71 .....**68533**
1808.003–72 Redesignated from 1808.002–72 .....**68533**
1808.003–75 Redesignated from 1808.002–73 .....**68533**
1827.406–70 Removed 5231
1833.103 (c) amended; (f) revised **61519**
1835.010 Added 5231
1835.011 Added 5231
1835.070 Revised 5231
1845.7101–1 (a) and (g) introductory text revised; (h) through (k) amended; interim **68534**
1845.7101–2 (a) amended; interim **68534**
1845.7101–3 (b) amended; interim **68534**
1845.7101–4 (g) amended; interim **68535**
1851.2 (Subpart) Added **68533**
1852.233–70 Clause amended **61519**
Revised 5232
1852.235–72 Clause amended **61520**
1852.235–73 Added 5232
1852.235–74 Added 5232
1872.303 (b) amended **61520**
1872.307 (b) amended **61520**
1872.402 (b)(7) redesignated as (b)(8); new (b)(7) added **61520**
1872.705 Amended **61520**

Proposed Rules:

1 .....**67762**
2 .....**64010**
.....4874, 4876, 5138, 5774
5 .....**67762**
6 .....**68914**
7 5138
8 .....**68914**
.....5138
9 .....**67282**
10 .....**76150**
11 .....**64010**
12 4874
14 .....**67762**
16 5138
19 .....**67762**
.....5138
22 .....**67762**
23 .....**64010**
31 .....**65468**
.....4054, 4876, 4880, 5774
36 .....**67762**
42 5138
52 .....**67762, 68914**
.....4874, 4880, 5778,
53 .....**67762**
206 .....**62590**
208 .....**62590**
209 .....**62590**
213 .....**77955**
216 .....**70388**
225 .....**62590**
228 7490
232 9627
242 .....**62590**
252 .....**62590, 70389**
.....7491, 9627
505 1358
532 .....3220, 8486
538 .....3220, 8486
552 .....3220, 8486
1511 2988
1552 2988
1825 .....**68551**

TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1.66 (ee) added **72384**
40.245 Revised; eff. 10–31–02 .....**61522**

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100—199)

107.612 (b) introductory text revised; (c) and (d) added 1345
107.616 (d)(2) revised 1346
171.7 (a)(e) table amended 1015
172.201 (e) revised **66573**
174.24 (b) revised **66574**
175.30 (a)(2) revised **66574**
176.24 Revised **66574**
177.817 (f) revised **66574**
192 Meetings 56
195 Meetings 56
195.573 Corrected **70118**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 49 Chapter I—Con.

199 Random drug testing rate **78388**

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

219 Determination 57
225.19 (c) amended; (e) revised; interim **79536**
225 Appendix B revised; interim **79536**
241 Added **75960**
244.13 (j) introductory text revised **68045**
244.19 (c)(1) revised **68045**

Chapter III—Federal Motor Carrier Safety Administration, Department of Transportation (Parts 300—399)

350 Authority citation revised **61820**
350.201 (m) and (t)(1) amended **61820**
350.211 (15) amended **61820**
350.213 (b) introductory text amended **61820**
Corrected **63019**
360.3 (a)(2), (iii) introductory text, (f) and (g)(2) amended **61820**
365.101 (b), (c) and (g) amended **61820**
365.105 (a) amended; (b) revised **61820**
365.107 (f) removed; (g) and section note redesignated as (f) and (g); (e) introductory text, new (f) and (g) amended **61820**
365.109 (a)(7) amended **61820**
365.401 Amended **61820**
365.403 (b)(1) and (2) amended **61821**
365.405 (a)(1) revised; (a)(2) and (b)(1)(ii) amended **61821**
365.411 (b) amended **61821**
365.413 Heading revised **61821**
372.303 Heading revised **61821**
377.215 (c) heading amended **61821**
382.305 (i)(3) amended **61821**
382.401 (d) amended **61821**
383 Authority citation revised **61821**
383.3 (f)(3)(i)(A) amended **61821**
383.51 Table 2 revised 4396
386.2 amended **61821**
386.22 amended **61821**
386.71 Amended **61821**
386.82 (a)(4) amended **61821**
386 Appendix B amended **61821**
387.9 Table amended **61821**
387.39 Form amended **61821**
Form revised **61822**
387.303 (b)(2) table amended **61824**
388 Nomenclature change **61824**
390.27 Table amended **61824**
Corrected **63019**
391.41 (a) footnote added **61824**
391.49 (a) amended **61824**
391.65 (a)(2)(vii) amended **61824**
393.48 (c)(2) authority citation removed **61824**
393.52 (d) amended **61824**
393.86 (b)(3) heading amended **61824**
393.124 Corrected **63966**
397 Authority citation revised **62192**
397.17 (a) revised **62192**

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

567.4 (h)(2) revised **69623**
571.3 (b) amended; eff. 12–27–04 ..... **79439**
571.5 (b)(2) through (6) and (8) revised **77193**
571.105 Amended; eff. 12–27–04 ..... **79439**
571.109 Amended **69623**
571.110 Heading revised; text amended; Figures 1 and 2 added **69623**
571.117 Amended **69627**
571.120 Amended **69627**
571.129 Amended **69627**
571.138 Amended 4110
571.139 Added **69627**
571.201 Amended; eff. 12–27–04 ..... **79439**
571.205 Amended; eff. 12–27–04 ..... **79439**
571.208 Amended; eff. 12–27–04 ..... **79439**
Amended 513, 4965
571.213 Amended **61529**
Amended; interim **64823**
571.221 Corrected 6360
571.403 Added; eff. 12–27–04 ..... **79439**
571.404 Added; eff. 12–27–04 ..... **79451**
573.6 (c)(7), (8)(i), and (10) revised **64063**
573.13 Added **64063**
573.14 Added **72392**
574.5 (d) and Figures 1 and 2 revised **69628**
575 Heading and authority citation revised **67494**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH FEBRUARY 28, 2003

575.1—575.7 (Subpart A) Heading revised **67494**
575.6 Amended; (a)(4) and (5) added **69631**
575.101—575.105 (Subpart B) Heading revised **67494**
575.201 (Subpart C) Added **67494**
577.11 Added **64065**
577.12 Added **72393**
579.2 Revised **63310**
579.3 (a) revised; (b) and (c) redesignated as (c) and (d); new (b) added **63310**
579.4 (c) and (d) amended **63310**
Amended 4113
579.6 Revised 4113
579.11—579.20 (Subpart B) Revised **63310**
(d)(2) revised; (e) amended 4113
590.3 Revised 4111
594.6 (d) correctly added **62897**
597 Added **69631**

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

600.10 Revised **64312**
600.746 (c)(1) introductory text **64312**
660.31 Corrected **69479**
661 Authority citation revised 9799
661.13 (b) revised 9799

Chapter X—Surface Transportation Board, Department of Transportation (Parts 1000—1399)

1002 Policy statement **65046**
1011 Authority citation revised 8726
1011.4 (a)(9) added 8726
1011.7 (c)(5) added 8726

Chapter XI—Bureau of Transportation Statistics, Department of Transportation (Parts 1400—1499)

1420.2 (b)(1) and (5) amended 4719
1420.3 (a), (b)(1), (4) and (c) amended 4719
1420.4 (b) and (c) amended 4719
1420.6 Amended 4719
1420.10 (a) amended 4719
1420.11 Amended 4719

Chapter XII—Transportation Security Administration, Department of Transportation (Parts 1500—1599)

1510 Waiver 3192
1511 Waiver **66071**
1540 Interpretation 7444
1540.115 Added 3761
1540.117 Added 3768
1544.101 (f) revised **79887**
1570—1572 (Subpart D) Added; interim 6086

Proposed Rules:

10 ..... **78403**
..... 2002
23 ..... **76327**
171 ..... **66598, 72034**
..... 2734
172 ..... **72034**
..... 2734
173 ..... **72034**
..... 2734, 6689
175 ..... **72034**
176 ..... **72034**
177 ..... **62681**
..... 2734
178 ..... **72034**
..... 2734
179 2734
180 ..... **72034**
..... 2734
192 ..... **68815**
..... 4278, 6385
219 ..... **63022, 70809, 75966**
225 ..... **63022, 70809**
240 ..... **63022, 70809**
390 ..... **71127**
..... 8580
396 ..... **71127**
..... 8580
397 ..... **62681**
533 ..... **77015, 79549**
571 ..... **66098, 67373, 68551**
..... 2003, 2480, 2993, 5863, 7101, 7747
575 ..... **62528**
661 9801
1180 6695

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 50—WILDLIFE AND FISHERIES

Chapter I—United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

16.13 (a)(2) revised **62203**
17 Comment period extended **66344**
17.12 (h) table amended **62908, 63988, 65437, 67990, 68015, 76048, 78598**
(h) table amended 1268, 9237
17.21 (c)(4) revised 2919
17.40 (l)(2)(vi) and (vii) added; eff. 10–1–02 through 5–22–04 ..... **61536**
17.95 (e) amended 8132
17.96 (a) amended **62908, 63988, 65437, 67990, 76048, 78599**
(b) added 1269
17.99 Added 9241
17.108 (a) introductory text, (8) through (11), (b) and (c)(1) through (5) revised; (c)(6) through (11) added; (a)(7) illustration amended **68473**
20.21 (j) revised 1392
20.104 Seasonal hunting adjustments **67257**
20.105 Seasonal hunting adjustments **67258**
20.106 Seasonal hunting adjustments **67275**
20.107 Seasonal hunting adjustments **67276**
100 Temporary regulations 7298
100.6 (b) revised 7704
100.11 (b)(1) amended 7704
100.24 (a)(2) and (3) revised 7279
100.27 Added; eff. 3–1–03 through 2–29–04 7282
100.28 Added; eff. 3–1–03 through 2–29–04 7282

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

216.132 Revised **70180**
216.134 Removed **70181**
216.135 (i) removed **70181**
216.136 (a) revised **70181**
222 Fishery management measures **67793, 67795**
222.102 Amended **71899**
Amended 8467
222.206 (d)(2)(ii)(B)(*1*), (iv) and (5) removed; (d)(2)(ii)(B)(*2*), (*3*) and (v) redesignated as (d)(2)(ii)(B)(*1*), (2) and (iv); (d)(2)(ii)(A)(*2*) and (*4*) revised; new (d)(2)(ii)(A)(*5*) added 8467
223 Fishery management measures **67793, 67795**
223.203 Corrected **68725, 70809**
223.206 (d) introductory text revised; (d)(8) added **71899**
(d)(6) revised; interim **78392**
223.206 Comment period extended 78392
223.207 (a) introductory text, (3)(ii), (4) through (8), (b)(1), (2), (d)(2), (3), (c)(1)(iv)(A) heading and (B) heading revised; (c)(1)(iv)(A) and (B) amended 8467
223 Figures 1, 2, 11, 12a and 12b removed; Figure 12 added; Figure 15 revised 8469
224.104 (c) removed; (d) redesignated as (c) 8471
229 Fishery management measures **71900, 75817, 79536**
229.32 (g)(3)(iii) introductory text, (A) and (B) corrected; (g)(e)(iii)(C) correctly designated as (g)(3)(iii)(D); new (g)(3)(iii)(C) added; (g)(4) introductory text, (i)(B) and (ii) correctly revised **65727**
229 Regulation at 67 FR 1146 and 1147 corrected **65723**

Chapter III—International Fishing and Related Activities (Parts 300—399)

300 Fishery management measures **72110, 72394**
Technical correction 1392
300.17 (b)(1)(iv) revised **64312**

Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

600 Fishery management measures **61824, 62204, 70018**
600.10 Amended **64312**
600.746 (c)(1) introductory text revised **64312**
622 Fishery management measures **65902, 72112, 71901, 71902**
Fishery management measures 4965
Temporary regulations 6360
622.4 (r) introductory text, (1) and (6) amended; (r)(1), (6) and (8)(v) suspended in part; (r)(8)(vi) added **77195**
(a)(2)(viii), (c), (f) through (j) and (l) revised; (a)(5) and (b)(4) added 2192
622.7 (b) and (c) revised; (bb) through (ee) added 2194
622.9 Added 2194
622.19 Added 2194
622.41 (g) heading revised; (j) added 2196
635 Fishery management measures **61537, 63854, 66072, 68045, 71487, 77433**
635.2 Amended **77436**
635.4 (a)(1), (2), (5), (b), (d)(1), (2), (3), (h)(1) introductory text and (m)(1) revised; (c) added **77436**
635.5 (c) amended **77437**
(c) revised 714
635.6 (b)(1) introductory text revised; (c)(1) amended **77437**
635.20 (e)(1) suspended **78993**
(a) revised 714
635.21 (d)(4)(iv) added 714
635.22 (a), (c) and (d) revised **77437**
(a), (c) and (d) revised; (e) and (f) added 714
635.23 (b) introductory text, (2), (3), (c) introductory text and (3) revised **77438**
635.25 Added **70026**
635.27 (c) revised **70026**
(a) introductory text amended, (1)(i) introductory text and (2) introductory text amended **77438**
(b)(1)(i) and (ii) suspended; (b)(1)(v) and (vi) added **78993**
635.28 (b)(3) revised **77438**
(b)(1) and (2) suspended; (b)(4) and (5) added **78993**
635.31 (a)(1) revised **77438**
(b)(2)(ii) revised; (b)(3) added 715
635.45 Revised **70027**
635.47 Revised **70027**
635.71 (a)(24) and (29) revised; (a)(3)(8) added **70027**
(b)(1), (3), (14) and (15) revised **77439**
(b)(6) revised; (c)(6), (e)(14) and (9)15(10) added 715
648 Fishery management measures **62650, 63311, 64825, 66072, 69148, 70027, 70556, 71111, 71488, 72867, 76318, 76701, 78994, 79887**
Fishery management measures 2919, 6088
648.1 (a) amended **63229**
648.2 Amended **63229**
648.3 (a)(13) added **63229**
648.4 (a) amended **63231**
648.6 (a)(1) revised **63231**
648.7 (b)(1)(iii) and (iv) removed; (b)(2) added **63231**
648.10 (c) introductory text, (2) and (5) revised **63232**
648.11 (a) amended; (e) revised **63232**
648.12 Introductory text revised **63232**
648.13 (g) added **63232**
648.14 (x)(12) and (dd) added **63232**
(a)(122) revised; (a)(127) added; eff. to 12–31–03 68
648.21 (f)(3) revised 60
648.23 (b)(2) revised 9586
648.53 (b) table revised 9586
648.57 (a) introductory text and (b) introductory text revised 9587
648.58 (c)(1), (4), (6), (e)(2), (3)(ii), (4)(ii) and (f) revised 9587
648.80 (a)(15) introductory text, table and (i)(F) revised **69696**
648.86 (h)(2)(ii) revised 4114
648.92 (b)(2) revised 4114
648.94 Regulation at 67 FR 35931 eff. date extended; interim **67568**
648.122 (a)(1) and (b)(1) revised; (d) added; eff. to 12–31–03 68
648.260—648.264 (Subpart M) Added **63233**
654.2 Amended **61991**
654.3 (a) revised; (d) removed **61991**
654.4 Heading revised; text added **61991**
654.6 Introductory text added; (a) and (b) revised **61993**
654.7 (a) and (g) revised; (p) and (q) added **61993**
654.8 Revised **61993**

NOTE: **Boldface page numbers indicate 2002 changes.**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 50 Chapter VI—Con.

654.9 Revised **61993**
654.1 (a) amended **61993**
654.2 Introductory text amended **61993**
654.7 (n) amended **61993**
654.20 (b)(2)(i) amended **61993**
654.25 (b) amended **61993**
654.26 Amended **61993**
654.27 (d) amended **61993**
660 Technical correction **61994**
Fishery management measures ..... **61994, 62204, 62401, 63055, 63057, 64826, 65514, 65728—65730, 70018, 79889**
Technical correction 4719
660.12 Amended **65906**
660.14 (b), (c), (e) and (f)(2) amended **65906**
660.15 (e) and (j) amended **65906**
660.17 (a), (c), (d), (e)(1), (2), (4) and (k) amended **65906**
660.21 (l) introductory text and (1) through (4) amended **65906**
660.23 (a) and (b) amended **65906**
660.27 (e), (f)(1), (2) introductory text and (i) amended **65906**
660.28 (b), (e), (g), (h), (i)(1) and (2)(ii) amended **65906**
660.31 (c)(2), (d)(2) and (g)(2) amended **65906**
Corrected **69479**
660.43 (b) amended **65906**
660.50 (c) amended **65906**
660.51 (a), (b), (c)(1), (2), (d) through (g)(2) and (j)(2) amended **65906**
660.52 (a), (b)(1), (3) amended **65906**
660.53 (c)(2) and (d)(2) amended **65906**
660.65 (a) and (d) amended **65906**
660.66 Introductory text and (a) amended **65906**
660.67 (c)(1), (2), (4), (d)(2)(iii) and (iv) amended **65906**
660.81 (e) amended **65906**
660.84 (c)(2) and (4) amended **65906**
660.85 (a) amended **65906**
660.302 Amended **65906**
Amended 934
660.304 (a) through (f) suspended; (g) through (j) added (temporary) 934
660.321 (a) amended **65906**
660.322 (b)(5) suspended; (b)(6) and (7) added (temporary) 935
660.324 (d) and (f) amended **65905**
(d) amended 65906
660.334 (d)(2) and (3) redesignated as (d)(3) and (4); new (d)(2) added; new (d)(3) and (4) revised **65905**
660.335 (d)(1), (2) and (e)(1) revised **65906**
660.350 (b)(3) amended **65906**
660.339 Amended **65906**
660.402 Amended **65906**
660.409 (a)(1) and (b)(1) amended **65906**
660.411 (c) amended **65906**
660.502 Amended 3822
660.512 (h) added 3822
660.514 Revised 3822
679 Temporary regulations **61826, 61827, 62212, 62651, 62910, 63312, 64066, 65046, 66575, 67798, 70557, 70858, 71489, 76998, 77439, 78733, 78739**
Authority citation revised; eff. 1–29–03 to 12–31–07 ..... **79721**
Technical correction 1393
Temporary regulations 2920, 2921, 2922, 3823, 3824, 4115, 5585, 7323, 7448, 7719, 8153, 8154, 8726
Authority citation revised 6836
679.1 (k) revised; eff. 1–29–03 to 12–31–07 ..... **79721**
679.2 Amended **64316, 72610**
Amended 209
Corrected **71112**
Amended; eff. 1–29–03 to 12–31–07 ..... **79721**
679.4 (b)(5)(vi) and (vii) amended **64317**
(a)(1)(iii) revised; (k)(10), and (l) added; eff. 1–29–03 to 12–31–07 ..... **79723**
(b)(5)(vi) revised 209
(l)(6)(ii)(D)(*2*)(*iii*) added 6836
679.5 (n)(2)(iii)(B)(4) amended **64317**
(n)(2)(iii)(B)(*4*) revised 209
679.7 (a)(7)(iii), (iv), (v), (vii), (17), (18), (19), (f)(16), (j) and (k) amended **64316**
(f)(8)(ii)(B)(*2*) correctly revised **71112**
(a)(3) revised **72611**
(a)(7), and (k) revised; eff. 1–29–03 to 12–31–07 ..... **79728**
Amended; eff. 1–29–03 to 12–31–07 ..... **79738**
(c)(3) removed; (a)(1), (17), (18), (19) and (b) revised 209

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH FEBRUARY 28, 2003

(k)(5)(i) revised 6836
679.20 (a)(5)(i)(B), (F), (ii)(C), (6)(ii), (iii), (7)(i)(C)(*4*), (*5*), (ii)(d), (E), (iii)(D), (8)(ii)(C), (iii), (11), (b)(2)(i), (ii) and (d)(4) amended **64317**
(a)(5)(ii) redesignated as (a)(5)(iii); new (a)(5)(ii) and (d)(1)(iv) added; (a)(5)(i)(A), (6), (b)(1)(i) and (c)(4) revised; eff. 1–29–03 to 12–31–07 ..... **79730**
(a)(7)(iii)(B) and (f)(3) removed; (a)(7)(iii)(C) and (D) redesignated as (a)(7)(iii)(B) and (C); (a)(5)(i)(A), (B), (ii)(B), (6)(ii), (iii), (7)(1)(C)(*2*), (*3*), (ii)(A), (D), (iii)(A), new (B), (8)(ii)(C), (iii), (11), (b)(2)(i), (ii), (c)(2)(i), (ii) and (d)(4) revised; (e)(2)(iv) added 210
679.21 (d)(8) and (e)(3)(v) added; eff. 1–29–03 to 12–31–07 ..... **79731**
679.22 (a)(5)(iv), (11), (12), (b)(3) and (6) amended **64317**
(b)(7) added **70860**
(a)(5), (7), (8), (b)(2) and (3) revised 212
679.23 (d)(3), (4), (e)(4)(iv), (v), (5), (6), (7) and (i) amended **64317**
(d)(2), (3), (e)(2), (3), (4)(iii), (5) and (i) revised 214
Corrected 2636
679.28 (f)(3)(viii) and (ix) amended **64317**
(c) revised; (g) added; eff. inpart 1–29–03 to 12–31–07 ..... **79731**
(f)(e)(ii) AND (iii) revised; (f)(4), (5) AND (6) added 215
679.30 Amended; eff. 1–29–03 to 12–31–07 ..... **79738**
679.31 (g) amended **64317**
(a) revised; eff. 1–29–03 to 12–31–07 ..... **79733**
679.32 (a) amended **64317**
new (c)(3)(vi) added; eff. 1–29–03 to 12–31–07 ..... **79733**
Amended; eff. 1–29–03 to 12–31–07 ..... **79738**
(e) removed 215
679.43 (a) amended **64317**
(e) revised **72611**
679.50 (c)(1)(x), (4)(vi) introductory text, (c)(4)(vi)(C) and (6) amended **64317**
(c)(4)(i) through (iv), (v)(A), (B), (vi)(A), (B), (C), (6)(ii) and (d)(4)(i) amended; (j) removed; (e) through (i) redesignated as (f) through (j); new (e) added; heading, new (h), (i) and (j) revised; eff. date confirmed **72611**
Heading and (c)(4)(i) revised; (c)(6) removed; (d)(5) added; eff. 1–29–03 to 12–31–07 ..... **79733**
Amended; eff. 1–29–03 to 12–31–07 ..... **79738**
(c)(1)(x) revised 215
(d)(3) through (6) redesignated as (d)(4) through (7); (c)(1)(vii), new (d)(4), (i)(2)(vi) and (xii) revised; new (d)(3) added 719
679.60–679.65 (Subpart F) added; eff. 1–29–03 to 12–31–07 ..... **79734**
679.61 (a) revised 6836
679.62 (b) revised; (c) added 6836
679 Table 11 revised **64317**
Tables 4, 5 and 6 revised; Table 12 added; Tables 13 and 21 through 24 removed 215

Proposed Rules:

17 ..... **61845, 62926, 63064, 63066, 63067, 63738, 65083, 65931, 66377, 66378, 66599, 67586, 67803, 68490, 69176, 69177, 69179, 70199, 70201, 70202, 70203, 71032, 71236, 71529, 72396, 72407, 75834, 76156, 77464, 77466, 78763**
..... 331, 2283, 3000, 4159, 4160, 6863, 8487, 8730
18 ..... **69078, 71127**
..... 1175
20 6697
21 6697
92 6697
100 ..... 7294, 7734
216 ..... **68553**
..... 3483, 4747
223 ..... **69704, 79898**
..... 4433
224 ..... **69704, 79898**
..... 4433
226 ..... **69708**
229 1414
300 ..... **64853, 67139**
..... 6103
402 3786
600 ..... **62222, 65933, 65934, 67140, 68556, 76329, 77957, 79550**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH FEBRUARY 28, 2003

TITLE 50 *Proposed Rules:—Con.*

.....4161, 6863, 7492, 8487, 8871, 8872, 9044, 9628, 9629
622.....**69502**
635.....**69180, 69502, 72629, 78404**
.....1024, 3853
648.....**65934, 65938, 66103, 69181, 70570, 70904, 72131**
.....533, 1587, 2303, 7749, 7965, 8731
660.....**62001, 63599, 64861, 66103, 70573**
.....936, 4162, 4441
679.....**63600, 65941, 76344, 76362**
.....3225, 3485, 6386, 6865, 7750, 9630
697.....**68556**

NOTE: **Boldface page numbers indicate 2002 changes.**

2002

67 FR Page	
15333–15462	Apr. 1
15463–15706	2
15707–16010	3
16011–16284	4
16285–16626	5
16627–16968	8
16969–17278	9
17279–17602	10
17603–17904	11
17905–18084	12
18085–18460	15
18461–18772	16
18773–19100	17
19101–19318	18
19319–19506	19
19507–19634	22
19635–20004	23
20005–20424	24
20425–20606	25
20607–20880	26
20881–21158	29
21159–21558	30
21559–21974	May 1
21975–22336	2
22337–30306	3
30307–30532	6
30533–30768	7
30769–31104	8
31105–31710	9
31711–31934	10
31935–32816	13
34383–34584	14
34585–34816	15
34817–34990	16
34991–35424	17
35425–35704	20
35705–35890	21
35891–36078	22
36079–36494	23
36495–36778	24
36779–37318	28
37319–37662	29
37663–37964	30
37965–38192	31
38193–38340	June 3
38341–38582	4
38583–38840	5
38841–39240	6
39241–39593	7
39595–39840	10
39841–40136	11
40137–40580	12
40581–40832	13
40833–41154	14
41155–41304	17
41305–41588	18
41589–41808	19
41809–42182	20
42183–42466	21
42467–42702	24
42703–42980	25
42981–43216	26
43217–43524	27
43525–44014	28
44015–44348	July 1
44349–44522	2
44523–44756	3
44757–45048	5
45049–45292	8
45293–45626	9
45627–45894	10
45895–46092	11
46093–46368	12
46369–46576	15
46577–46836	16
46837–447242	17
47243–47436	18
47437–47678	19
47679–48014	22
48015–48252	23
48353–48518	24
48519–48740	25
48741–48970	26
48971–49216	29
49217–49556	30
49557–49854	31
49855–50342	Aug. 1
50343–50580	2
50581–50790	5
50791–51064	6
51065–51458	7
51459–51750	8
51751–52382	9
52383–52594	12
52595–52840	13
52841–53280	14
53281–53460	15
53461–53722	16
53723–53872	19
53873–54084	20
54085–54324	21
54325–54564	22
54565–54726	23
54727–54940	26
54941–55100	27
55101–55318	28
55319–55688	29
55689–56210	30
56211–56474	Sept. 3
56475–56744	4
56745–56894	5
56895–57122	6
57123–57308	9
57309–57500	10
57501–57718	11
57719–57936	12
57937–58318	13

58319–58508	16
58509–58682	17
58955–59132	18
58683–58954	19
59133–59448	20
59449–59769	23
59769–60098	24
60099–60518	25
60519–60852	26
60853–61248	27
61249–61466	30
61467–61760	Oct. 1
61761–61974	2
61975–62164	3
62165–62310	4
62311–62626	7
62627–62862	8
62863–63048	9
63049–63236	10
63237–63528	11
63529–63812	15
63813–64026	16
64727–64306	17
64307–64516	18
64517–64786	21
64787–65010	22
65011–65284	23
65285–65468	24
65469–65688	25
65689–65870	28
65871–66042	29
66043–66302	30
66303–66526	31
66527–67088	Nov. 1
67089–67282	4
67283–67508	5
67509–67776	6
6777–68016	7
68019–68492	8
68493–68752	12
68753–68930	13
68931–69118	14
69119–69457	15
69459–69656	18
69657–69986	19
69987–70118	20
70119–70308	21
70309–70528	22
70529–70672	25
70673–70834	26
70835–71068	27
71069–71442	29
71443–71796	Dec. 2
71797–72088	3
72089–72362	4
72363–72550	5
72551–72826	6
72827–75798	9
75799–76102	10
76103–76292	11
76293–76670	12
76671–76980	13
76981–77146	16
77147–77398	17
77399–77644	18
77645–77906	19
77907–78120	20
78121–78320	23
78321–78664	24
78665–78958	26
78959–79512	27
79513–79832	30
79833–80332	31

2003

68 FR Page	
1–254	Jan. 2
255–458	3
459–662	6
663–994	7
995–1142	8
1143–1358	9
1359–1512	10
1513–1792	13
1793–1954	14
1955–2174	15
2175–2408	16
2421–2678	17
2679–2868	21
2869–3162	22
3163–3370	23
3371–3802	24
3803–4074	27
4075–4360	28
4361–4680	29
4681–4888	30
4889–5202	31
5203–5528	Feb. 3
5529–5784	4
5785–6060	5
6061–6338	6
6339–6602	7
6603–6814	10
6815–7062	11
7063–7300	12
7301–7410	13
7411–7692	14
7693–7896	18
7897–8152	19
8153–8444	20
8445–8538	21
8539–8702	24
8703–8816	25
8817–8998	26
8989–9502	27
9503–9850	28

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION



Code of Federal Regulations

LSA

List of CFR Sections Affected

March 2003

Save this issue for
Titles 17—27 (Annual)

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

Code of Federal Regulations

LSA

List of CFR Sections Affected

March 2003

Title 1–16
Changes January 2, 2003
through March 31, 2003

Title 17–27
Changes April 1, 2002
through March 31, 2003

Title 28–41
Changes July 2, 2002
through March 31, 2003

Title 42–50
Changes October 1, 2002
through March 31, 2003

LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1–16—as of Jan. 1
17–27—as of April 1
28–41—as of July 1
42–50—as of Oct. 1

To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

The page numbers listed to the right of each LSA entry indicate where the specific amendments begin in the Federal Register. **Boldface** page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the previous year from the current year.

Cite a page reference from this publication using the volume number (64 FR for 1999, 67 FR for 2002) and the page number. Example: 24727 in bold cite as 64 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

ISSUES TO BE SAVED

There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1–16; the MARCH issue is the ANNUAL for Titles 17–27; the JUNE issue is the ANNUAL for Titles 28–41; the SEPTEMBER issue is the ANNUAL for Titles 42–50. ANNUAL ISSUES to be saved are clearly designated on the cover.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

LSA ONLINE

The LSA can be found on the Internet at http://www.access.gpo.gov/nara/lsa/aboutlsa.html.

INQUIRIES AND SUGGESTIONS

Brian Swidal was Chief Editor of the LSA, assisted by Thomas W. Wright, Tim Turner and Ashley Tyson. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Brian Swidal. INQUIRIES, telephone 202–741–6000.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Raymond A. Mosley, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail fedreg.info@nara.gov.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–050–00001–6)	9.00	[4]Jan. 1, 2003
3 (1997 Compilation and Parts 100 and 101).	(869–048–00002–0)	59.00	[1]Jan. 1, 2002
4	(869–050–00003–2)	9.50	Jan. 1, 2003
5 Parts:			
1–699	(869–050–00004–1)	57.00	Jan. 1, 2003
700–1199	(869–050–00005–9)	46.00	Jan. 1, 2003
1200–End, 6 (6 Reserved)	(869–048–00006–2)	58.00	Jan. 1, 2002
7 Parts:			
1–26	(869–048–00001–1)	41.00	Jan. 1, 2002
27–52	(869–050–00008–3)	47.00	Jan. 1, 2003
53–209	(869–050–00009–1)	36.00	Jan. 1, 2003
210–299	(869–048–00010–1)	59.00	Jan. 1, 2002
300–399	(869–050–00011–3)	43.00	Jan. 1, 2003
400–699	(869–050–00012–1)	39.00	Jan. 1, 2003
700–899	(869–050–00013–0)	42.00	Jan. 1, 2003
900–999	(869–048–00014–3)	58.00	Jan. 1, 2002
1000–1199	(869–048–00015–1)	25.00	Jan. 1, 2002
1200–1599	(869–048–00016–0)	58.00	Jan. 1, 2002
1600–1899	(869–050–00017–2)	61.00	Jan. 1, 2003
1900–1939	(869–048–00018–6)	29.00	Jan. 1, 2002
1940–1949	(869–048–00019–4)	53.00	Jan. 1, 2002
1950–1999	(869–048–00020–8)	47.00	Jan. 1, 2002
2000–End	(869–050–00021–1)	46.00	Jan. 1, 2003
8	(869–048–00022–4)	58.00	Jan. 1, 2002
9 Parts:			
1–199	(869–048–00023–2)	58.00	Jan. 1, 2002
200–End	(869–048–00024–1)	56.00	Jan. 1, 2002
10 Parts:			
1–50	(869–050–00025–3)	58.00	Jan. 1, 2003
51–199	(869–050–00026–1)	56.00	Jan. 1, 2003
200–499	(869–048–00027–5)	44.00	Jan. 1, 2002
500–End	(869–048–00028–3)	58.00	Jan. 1, 2002
11	(869–048–00029–1)	34.00	Jan. 1, 2002
12 Parts:			
1–199	(869–050–00030–0)	30.00	Jan. 1, 2003
200–219	(869–048–00031–3)	36.00	Jan. 1, 2002
220–299	(869–048–00032–1)	58.00	Jan. 1, 2002
300–499	(869–050–00033–4)	43.00	Jan. 1, 2003
500–599	(869–050–00034–2)	38.00	Jan. 1, 2003
600–899	(869–050–00035–1)	54.00	Jan. 1, 2003
900–End	(869–050–00036–9)	47.00	Jan. 1, 2003
13	(869–050–00037–7)	47.00	Jan. 1, 2003
14 Parts:			
1–59	(869–048–00037–2)	60.00	Jan. 1, 2002
60–139	(869–050–00039–3)	58.00	Jan. 1, 2003
140–199	(869–050–00040–7)	28.00	Jan. 1, 2003
200–1199	(869–048–00040–2)	47.00	Jan. 1, 2002
1200–End	(869–050–00042–3)	43.00	Jan. 1, 2003
15 Parts:			
0–299	(869–050–00043–1)	37.00	Jan. 1, 2003
300–799	(869–048–00043–7)	58.00	Jan. 1, 2002
800–End	(869–050–00045–8)	40.00	Jan. 1, 2003
16 Parts:			

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
0–999	(869–050–00046–6)	47.00	Jan. 1, 2003
1000–End	(869–050–00047–4)	57.00	Jan. 1, 2003
17 Parts:			
1–199	(869–048–00048–8)	47.00	Apr. 1, 2002
200–239	(869–048–00049–6)	55.00	Apr. 1, 2002
240–End	(869–048–00050–0)	59.00	Apr. 1, 2002
18 Parts:			
1–399	(869–048–00051–8)	59.00	Apr. 1, 2002
400–End	(869–048–00052–6)	24.00	Apr. 1, 2002
19 Parts:			
1–140	(869–048–00053–4)	57.00	Apr. 1, 2002
141–199	(869–048–00054–2)	56.00	Apr. 1, 2002
200–End	(869–048–00055–1)	29.00	Apr. 1, 2002
20 Parts:			
1–399	(869–048–00056–9)	47.00	Apr. 1, 2002
400–499	(869–048–00057–7)	60.00	Apr. 1, 2002
500–End	(869–048–00058–5)	60.00	Apr. 1, 2002
21 Parts:			
1–99	(869–048–00059–3)	39.00	Apr. 1, 2002
100–169	(869–048–00060–7)	46.00	Apr. 1, 2002
170–199	(869–048–00061–5)	47.00	Apr. 1, 2002
200–299	(869–048–00062–3)	16.00	Apr. 1, 2002
300–499	(869–048–00063–1)	29.00	Apr. 1, 2002
500–599	(869–048–00064–0)	46.00	Apr. 1, 2002
600–799	(869–048–00065–8)	16.00	Apr. 1, 2002
800–1299	(869–048–00066–6)	56.00	Apr. 1, 2002
1300–End	(869–048–00067–4)	22.00	Apr. 1, 2002
22 Parts:			
1–299	(869–048–00068–2)	59.00	Apr. 1, 2002
300–End	(869–048–00069–1)	43.00	Apr. 1, 2002
23	(869–048–00070–4)	40.00	Apr. 1, 2002
24 Parts:			
0–199	(869–048–00071–2)	57.00	Apr. 1, 2002
200–499	(869–048–00072–1)	47.00	Apr. 1, 2002
500–699	(869–048–00073–9)	29.00	Apr. 1, 2002
700–1699	(869–048–00074–7)	58.00	Apr. 1, 2002
1700–End	(869–048–00075–5)	29.00	Apr. 1, 2002
25	(869–048–00076–3)	68.00	Apr. 1, 2002
26 Parts:			
§§ 1.0–1–1.60	(869–048–00077–1)	45.00	Apr. 1, 2002
§§ 1.61–1.169	(869–048–00078–0)	58.00	Apr. 1, 2002
§§ 1.170–1.300	(869–048–00079–8)	55.00	Apr. 1, 2002
§§ 1.301–1.400	(869–048–00080–1)	44.00	Apr. 1, 2002
§§ 1.401–1.440	(869–048–00081–0)	60.00	Apr. 1, 2002
§§ 1.441–1.500	(869–048–00082–8)	47.00	Apr. 1, 2002
§§ 1.501–1.640	(869–048–00083–6)	44.00	[6]Apr. 1, 2002
§§ 1.641–1.850	(869–048–00084–4)	57.00	Apr. 1, 2002
§§ 1.851–1.907	(869–048–00085–2)	57.00	Apr. 1, 2002
§§ 1.908–1.1000	(869–048–00086–1)	56.00	Apr. 1, 2002
§§ 1.1001–1.1400	(869–048–00087–9)	58.00	Apr. 1, 2002
§§ 1.1401–End	(869–048–00088–7)	61.00	Apr. 1, 2002
2–29	(869–048–00089–5)	57.00	Apr. 1, 2002
30–39	(869–048–00090–9)	39.00	Apr. 1, 2002
40–49	(869–048–00091–7)	26.00	Apr. 1, 2002

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
50–299	(869–048–00092–5)	38.00	Apr. 1, 2002
300–499	(869–048–00093–3)	57.00	Apr. 1, 2002
500–599	(869–048–00094–1)	12.00	[5]Apr. 1, 2002
600–End	(869–048–00095–0)	16.00	Apr. 1, 2002
27 Parts:			
1–199	(869–048–00096–8)	61.00	Apr. 1, 2002
200–End	(869–048–00097–6)	13.00	Apr. 1, 2002
28 Parts:			
0–42	(869–048–00098–4)	58.00	July 1, 2002
43-end	(869-048-00099-2)	55.00	July 1, 2002
29 Parts:			
0–99	(869–048–00100–0)	45.00	[8]July 1, 2002
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–048–00102–6)	58.00	July 1, 2002
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869–048–00105–1)	42.00	[8]July 1, 2002
1911–1925	(869–048–00106–9)	29.00	July 1, 2002
1926	(869–048–00107–7)	47.00	July 1, 2002
1927–End	(869–048–00108–5)	59.00	July 1, 2002
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–048–00110–7)	47.00	July 1, 2002
700–End	(869–048–00111–5)	56.00	July 1, 2002
31 Parts:			
0–199	(869–048–00112–3)	35.00	July 1, 2002
200–End	(869–048–00113–1)	60.00	July 1, 2002
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–048–00114–0)	56.00	July 1, 2002
191–399	(869–048–00115–8)	60.00	July 1, 2002
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–048–00117–4)	37.00	July 1, 2002
700–799	(869–048–00118–2)	44.00	July 1, 2002
800–End	(869–048–00119–1)	46.00	July 1, 2002
33 Parts:			
1–124	(869–048–00120–4)	47.00	July 1, 2002
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–048–00122–1)	47.00	July 1, 2002
34 Parts:			
1–299	(869–048–00123–9)	45.00	July 1, 2002
300–399	(869–048–00124–7)	43.00	July 1, 2002
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[7]July 1, 2002
36 Parts			
1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–048–00128–0)	35.00	July 1, 2002
300–End	(869–048–00129–8)	58.00	July 1, 2002
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–048–00131–0)	57.00	July 1, 2002
18–End	(869–048–00132–8)	58.00	July 1, 2002

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
39	(869–048–00133–6)	40.00	July 1, 2002
40 Parts:			
1–49	(869–048–00134–4)	57.00	July 1, 2002
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–048–00138–7)	29.00	July 1, 2002
60 (60.1–End)	(869–048–00139–5)	56.00	July 1, 2002
60 (Apps)	(869–048–00140–9)	51.00	[8]July 1, 2002
61–62	(869–048–00141–7)	38.00	July 1, 2002
63 (63.1–63.599)	(869–048–00142–5)	56.00	July 1, 2002
63 (63.600–63.1199)	(869–048–00143–3)	46.00	July 1, 2002
63 (63.1200–End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–048–00145–0)	29.00	July 1, 2002
72–80	(869–048–00146–8)	59.00	July 1, 2002
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8]July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
100–135	(869–048–00151–4)	42.00	July 1, 2002
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–048–00154–9)	37.00	July 1, 2002
260–265	(869–048–00155–7)	47.00	July 1, 2002
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–048–00157–3)	43.00	July 1, 2002
400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
700–789	(869–048–00160–3)	58.00	July 1, 2002
790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–048–00163–8)	43.00	July 1, 2002
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9]Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9]Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9]Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
80–End	(869–048–00189–1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1–51)	(869–048–00190–5)	59.00	Oct. 1, 2002
1 (Parts 52–99)	(869–048–00191–3)	47.00	Oct. 1, 2002
2 (Parts 201–299)	(869–048–00192–1)	53.00	Oct. 1, 2002
3–6	(869–048–00193–0)	30.00	Oct. 1, 2002
7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–048–00196–4)	38.00	[9]Oct. 1, 2002
49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
100–185	(869–048–00198–1)	60.00	Oct. 1, 2002
186–199	(869–048–00199–9)	18.00	Oct. 1, 2002
200–399	(869–048–00200–6)	61.00	Oct. 1, 2002
400–999	(869–048–00201–4)	61.00	Oct. 1, 2002
1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002
1200–End	(869–048–00203–1)	30.00	Oct. 1, 2002
50 Parts:			
1–17	(869–048–00204–9)	60.00	Oct. 1, 2002
18–199	(869–048–00205–7)	40.00	Oct. 1, 2002
200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
600–End	(869–048–00207–3)	58.00	Oct. 1, 2002
CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 to March 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5]No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

[6]No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

Order from Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 512-1800 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Other Related Publications

Title	Price		Revision Date
List of CFR Sections Affected (1986--2000) (Titles 1—16) Vol. I	64.00		2002
(Titles 17—27) Vol. II	53.00		2002
(Titles 28—41) Vol. III	63.00		2002
(Titles 42—50) Vol. IV	65.00		2002
Federal Register: Yearly subscription (with FR Index and LSA)	764.00		
Yearly subscription (without FR Index and LSA)	699.00		
Individual copies	10.00		daily

CHANGES JANUARY 2, 2003 THROUGH MARCH 31, 2003

TITLE 1—GENERAL PROVISIONS

No amendments to 1 CFR have been published in the FEDERAL REGISTER since January 2, 2002.

TITLE 2—[RESERVED]

There is no regulatory text to this title.

TITLE 3—THE PRESIDENT

Presidential Documents

Proclamations

6641 *See* Proc. 3163 3163
6867 *See* Notice of Feb. 27, 2003 9849
7636 995
7637 1951
7638 2173
7639 2409
7640 2869
7641 3163
7642 3169
7643 4887
7644 6055
7645 6057
7646 6059
7647 7053
7648 10641
7649 10643
7650 10645
7651 10647
7652 10649
7653 13217
7654 13805
7655 14887
7656 15651

Executive Orders

4601 Amended by EO 13286 10619
10865 Amended by EO 13284 4075
10113 Amended by EO 13286 10619
10163 Amended by EO 13286 10619
10179 Amended by EO 13286 10619
10271 Amended by EO 13286 10619
10448 Amended by EO 13286 10619
10499 Amended by EO 13286 10619
10554 Amended by EO 13286 10619
10631 Amended by EO 13286 10619
10637 Amended by EO 13286 10619
10694 Amended by EO 13286 10619
10789 Amended by EO 13286 10619
10977 Amended by EO 13286 10619
See EO 13289 12567
11016 Amended by EO 13286 10619
11046 Amended by EO 13286 10619
11079 Amended by EO 13286 10619
11139 Amended by EO 13286 10619
11190 Amended by EO 13286 10619
11231 Amended by EO 13286 10619
11239 Amended by EO 13286 10619
11366 Amended by EO 13286 10619
11423 Amended by EO 13284 4075
11438 Amended by EO 13286 10619
11446 Amended by EO 13286 10619
11448 Amended by EO 13286 10619
11623 Amended by EO 13286 10619
11645 Amended by EO 13286 10619
11800 Amended by EO 13286 10619
11858 Amended by EO 13286 10619
11926 Amended by EO 13286 10619
11958 Amended by EO 13284 4075
11965 Amended by EO 13286 10619
12002 Amended by EO 13286 10619
12146 Amended by EO 13286 10619
12148 Amended by EO 13286 10619
12160 Amended by EO 13286 10619
12170 *See* Notice of Mar 12, 2003 12563
12188 Amended by EO 13286 10619
12208 Amended by EO 13286 10619
12260 Amended by EO 13284 4075
12333 *See* EO 13283 3371
Amended by 13284 4075
12341 Amended by EO 13286 10619
12356 *See* EO 13292 15315
12382 Amended by EO 13286 10619
12472 Amended by EO 13286 10619
12501 Amended by EO 13286 10619
12543 *See* Notice of Jan. 2, 2003 661
12544 *See* Notice of Jan. 2, 2003 661
12555 Amended by EO 13286 10619
12580 Amended by EO 13286 10619
12590 Amended by EO 13284 4075
12656 Amended by EO 13286 10619
12657 Amended by EO 13286 10619
12699 Amended by EO 13286 10619
12722 *See* EO 13290 14307
12727 Amended by EO 13286 10619
12728 Amended by EO 13286 10619
12733 Amended by EO 13286 10619
12742 Amended by EO 13286 10619
12743 Amended by EO 13286 10619
12752 *See* Memorandum of Mar. 11, 2003 12569
12777 Amended by EO 13286 10619
12788 Amended by EO 13286 10619

CHANGES JANUARY 2, 2003 THROUGH MARCH 31, 2003

TITLE 3 Executive Orders—Con.

12789 Amended by EO 13286 10619
12793 Amended by EO 13286 10619
12807 Amended by EO 13286 10619
12824 Amended by EO 13286 10619
12829 *See* EO 13284 4075
12830 Amended by EO 13286 10619
12835 Amended by EO 13286 10619
12859 Amended by EO 13284 4075
12870 Amended by EO 13286 10619
12881 Amended by EO 13284 4075
12906 Amended by EO 13286 10619
12919 Amended by EO 13286 10619
12947 *See* Notice of Jan 18, 2002 3033
12957 *See* Notice of Mar 12, 2003 12563
12958 *See* EO 13284 4075
Amended by EO 13292 15315
12959 *See* Notice of Mar 12, 2003 12563
12968 *See* EO 13284 4075
12977 Amended by EO 13286 10619
12978 Amended by EO 13286 10619
12982 Amended by EO 13286 10619
12985 Amended by EO 13286 10619
See EO 13289 12567
12989 Amended by EO 13286 10619
12992 Amended by EO 13284 4075
13011 Amended by EO 13284 4075
Amended by EO 13286 10619
13048 Amended by EO 13284 4075
13059 *See* Notice of Mar 12, 2003 12563
13076 Amended by EO 13286 10619
13099 *See* Notice of Jan 18, 2002 3033
13100 Amended by EO 13286 10619
13112 Amended by EO 13286 10619
13120 Amended by EO 13286 10619
13122 Amended by EO 13284 4075
13130 *See* EO 13286 10619
13133 Amended by EO 13286 10619
13151 Amended by EO 13284 4075
13154 Amended by EO 13286 10619
13165 Amended by EO 13286 10619
13212 Amended by EO 13286 10619
13223 Amended by EO 13286 10619
13224 Amended by EO 13284 4075
13228 Amended by EO 13284 4075
Amended by EO 13286 10619
13231 Amended by EO 13284 4075
Amended by EO 13286 10619
13234 Amended by EO 13284 4075
Amended by EO 13286 10619
13247 *See* Memorandum of Feb. 12, 2003 10141
13249 Superseded by EO 13282 1133
13254 Amended by EO 13286 10619
13257 Amended by EO 13286 10619
13260 Amended by EO 13286; Revoked by EO 13283 eff. 3–31–03 10619
13271 Amended by EO 13286 10619
13274 Amended by EO 13286 10619
13276 Amended by EO 13286 10619
13282 1133
Amended by EO 13291 14525
13283 3371
13284 4075
See EO 13286 10619
13285 5203
13286 10619
13287 10635
13288 11457
13289 12567
13290 14307
13291 14525
13292 15315

Administrative Orders

Memorandums:

Jan. 17, 2003 3157
Feb. 12, 2003 10141
Mar. 11, 2003 12281
Mar. 11, 2003 12569

Notices:

Jan. 2, 2003 661
Jan. 16, 2003 2677
Jan. 20, 2003 3161
Jan. 29, 2003 ..... 5199, 5201
Feb. 27, 2003 9849
Mar. 14, 2003 12563

Presidential Determinations:

No. 2003–09 of Jan. 7, 2003 1513
No. 2003–10 of Jan. 10, 2003 2411
No. 2003–11 of Jan. 10, 2003 2419
No. 2003–12 of Jan. 17, 2003 3803
No. 2003–13 of Jan. 29, 2003 5785
No. 2003–14 of Jan. 30, 2003 5787
No. 2003–15 of Feb. 13, 2003 10651
No. 2003–16 of Mar. 14, 2003 13803
No. 2003–17 of Mar. 20, 2003 15043

TITLE 4—ACCOUNTS

No amendments to 4 CFR have been published in the FEDERAL REGISTER since February 25, 2002.

CHANGES JANUARY 2, 2003 THROUGH MARCH 31, 2003

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Office of Personnel Management (Parts 1—1199)

532 Regulation at 67 FR 46839 and 46840 confirmed 1515
532.217 (c) amended 460
532.201—532.285 (Subpart B) Appendix C amended 459
550.162 (g) revised 4681
576 Revised; interim 5529
792.200—792.231 (Subpart B) Revised; interim 14128
831.305 (d) added; interim 2178
831.704 Revised; interim 2178
837.506 Revised; interim 2178
842.304 (d) revised; interim 2178
843.314 Revised; interim 2178
844.106 Revised; interim 2178
847 Authority citation revised 2179
847.101 (a) revised; interim 2179
847.102 (a)(8) and (9) added; (c)(4) revised; interim 2179
847.103 (b) amended; interim 2179
847.104 (c) added; interim 2179
847.105 Revised; interim 2179
847.106 (a) revised; interim 2179
847.107 (b) revised; interim 2179
847.202 Revised; interim 2179
847.203 (a) revised; interim 2180
847.204 (a) revised; interim 2180
847.205 (a) revised; interim 2180
847.402 (a)(1) and (b)(1) revised; interim 2180
847.421 (a)(2) revised; interim 2180
847.431 (a)(2) revised; interim 2180
847.801—847.809 (Subpart H) Added; interim 2180
875 Added; interim 5534
890 Authority citation revised 5475
890.1001—1055 (Subpart J) Revised 5475

Chapter XVI—Office of Government Ethics (Parts 2600—2699)

2416.170 (c) revised 10953
2424.10 Revised 10953
2429.24 (a) revised 10953
2471.2 Revised 10954
2471.4 Revised 10954
2472.3 Revised 10954
2472.5 Revised 10954
2472 Appendix A amended 10954
2641 Appendix B amended 4683

Proposed Rules:

110 10666
735 1987
890 6649
2606 2923
2637 7844
2641 ..... 7844, 15385

TITLE 6—HOMELAND SECURITY

Chapter I—Department of Homeland Security, Office of the Secretary (Parts 0—99)

Chapter I Established; interim 4056
5 Added; interim 4056
5.41–5.49 (Subpart C) Added; interim 4070
7 Added; interim 4074
9 Added; interim 10912
15 Added; interim 10886
17 Added; interim 10892
21 Added; interim 10904

TITLE 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

1.131 (a) text, Footnote 2 and (b)(1) amended 6340
1.132 Amended 6340
1.133 (b)(2) amended 6340
1.136 (c) amended 6340
1.137 (b) amended 6340
1.141 (b)(1) Footnote 3 redesignated as (b)(1) Footnote 2; (b)(1) Footnote 2 and (e)(2) amended 6340
1.142 (c)(4) amended 6340
1.143 (d) amended 6340
1.144 (c) introductory text and (13) amended 6340
1.145 (a) revised 6341
1.147 (h) amended 6341
1.148 (a)(3) amended 6341
1.149 Footnote 4 redesignated as Footnote 3 6341
97.175 Revised 1360

TITLE 7

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

301 Authority citation revised.....1362
301.64 (a) amended; interim.....11312
301.64–3 (c) amended; interim...2680, 3374
(c) amended; interim.....11312
301.64–10 (g) added; interim.....8819
301.80–2a Revised; interim.....6604
301.81–3 (e) amended.....5795
301.89–4 Regulation at 67 FR 21161 confirmed.....5793
301.89–6 Regulation at 67 FR 21161 confirmed.....5793
301.89–13 Regulation at 67 FR 21161 confirmed.....5793
301.93–3 (c) amended; interim.....1362
318.13—318.30–17 (Subpart) Heading revised.....5802
318.13–1 Amended.....5802
318.13–2 (b) amended.....5802
318.13–3 (b)(1) amended.....5802
318.13–4 (a) and (c)(2) amended.....5802
318.13–4f (a), (b)(2)(i), (5) and (6)(ii) revised (OMB number).....5800
318.13–4j Added.....5802
(b) corrected.....11967
318.58 (c) revised; interim.....2683
318.58–2 (b)(1) revised; (b)(2) amended; (b)(4) added; interim.....2683
318.58–4a Footnote 1 and redesignated as Footnote 2; interim.....2684
318.58–12 Amended; Footnotes 2 and 3 redesignated as Footnotes 3 and 4; interim.....2684
319 Authority citation revised.....9853
319.28 (b) introductory text, (5) and (7) revised; interim.....9853
319.56–2 (d) revised; interim.....2684
319.56–2d (b)(1), (5)(iii), (iv)(B), (v)(B), (vi)(B), (vii)(A) and (C) amended; (b)(5)(vii) introductory text and (H) revised.....2686
319.56–2x (a) table amended; interim.....2684
Corrected.....6544
330 Authority citation revised.....6342
330.400 (f)(2) revised.....6342
354 Regulation at 67 FR 56218 confirmed.....3375
Authority citation revised.....6342
354.3 Regulation at 67 FR 56218 confirmed.....3375

Chapter VI—Natural Resources Conservation Service, Department of Agriculture (Parts 600—699)

652 Comment period reopened.....15335
652.1 Amended; interim.....14134
652.4 (h) added; interim.....14134
652.5 (d) revised; (j) added; interim.....14133
652.21 (f) and (g) revised; interim.....14134

Chapter VII—Farm Service Agency, Department of Agriculture (Parts 700—799)

741 15f.5 (c) amended; interim.....7412
741 15f.9 Revised; interim.....7412
762.102 (b) amended.....7695
762.110 (a) introductory text, (1), (3) and (b) introductory text amended.....7695
762.129 (b)(2) revised; (b)(3) amended; (b)(4) added.....7695
764.2 Amended.....7695
774.18 (a)(1) and (b)(1) revised.....7696

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

905.149 Regulation at 67 FR 62317 confirmed.....62317
906.235 Regulation at 67 FR 62320 confirmed.....1364
911 Removed.....10346
944.209 Removed.....10346
944.350 Amended.....10346
944.400 Amended.....10347
959.104 Revised; interim.....11466
959.237 Amended; interim.....11466
Revised.....15338
959.322 (c) removed; (d) through (h) redesignated as new (c) through (g); introductory text, new (c)(1), (e), (f) introductory text and (f)(4) introductory text revised; interim.....11466

966.234 Corrected.....15339
982 Marketing percentages.....11736
984.347 Regulation at 67 FR 70148 confirmed.....10349
989.56 Regulation at 67 FR 71074 confirmed.....13617
989.156 (a), (d), (h)(2), (3), (i) and (o) revised; interim.....4083
Regulation at 67 FR 42474 confirmed; (b)(6) revised.....4090
(t) revised; interim.....13221
Regulation at 67 FR 71074 confirmed.....13617
989.347 Revised.....1145
996.2 Revised.....1157
996.7 Revised.....1157
996.30 (b) revised.....1157
996.40 (b)(4) revised.....1157
996.60 (c) revised.....1158

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1160)

1000.40 (c)(1)(ii) added; (d)(1)(i) revised.....7064
1000.50 Introductory text amended; (a), (b), (c) (g), (h), (j), (l) through (p)(1) and (q)(3) revised; (q)(4) removed.....7064
1001.60 (c)(3), (d)(2) and (h) revised.....7065
1001.61 Revised.....7065
1001.62 (e) and (g) revised.....7065
1001.71 (b)(2) and (3) revised.....7066
1001.73 (a)(2)(ii) and (b)(3)(vi) revised.....7066
1030.60 (c)(3), (d)(2) and (i) revised.....7066
1030.61 Revised.....7066
1030.62 (e) and (h) revised.....7066
(h) corrected.....13618
1030.71 (b)(2) and (4) revised.....7066
1030.73 (a)(2)(ii), (c)(2)(v) and (3)(ii) revised.....7066
1032.7 (c) introductory text, (1) and (2) revised; (c)(4) removed; (c)(5) redesignated as (c)(4); new (c)(5) added; interim.....7072
1032.13 (d)(2) revised; (d)(3), (4) and (5) redesignated as (d)(4), (5) and (6); new (d)(3) and (e) added; interim.....7072
1032.60 (c)(3), (d)(2) and (i) revised.....7067
1032.61 Revised.....7067
1032.62 (e) and (h) revised.....7067
1032.71 (b)(2) and (4) revised.....7067
1032.73 (a)(2)(ii), (c)(2)(v) and (3)(ii) revised.....7067
1033.60 (c)(3), (d)(2) and (i) revised.....7067
1033.61 Revised.....7067
1033.62 (e) and (h) revised.....7068
1033.71 (b)(2) and (4) revised.....7068
1033.73 (a)(2)(ii) and (b)(3)(v) revised.....7068
1124.60 (c)(3), (d)(2) and (h) revised.....7068
1124.61 Revised.....7068
1124.62 (e) and (g) revised.....7069
1124.71 (b)(2) and (3) revised.....7069
1124.73 (a)(2)(ii), (c)(2)(v) and (3)(ii) revised.....7069
1126.60 (c)(3), (d)(2) and (i) revised.....7069
1126.61 Revised.....7069
1126.62 (e) and (h) revised.....7069
1126.71 (b)(2) and (4) revised.....7069
1126.73 (a)(2)(ii) and (b)(3)(v) revised.....7069
1135.60 (c)(3), (d)(2) and (h) revised.....7070
1135.61 Revised.....7070
1135.62 (e) and (g) revised.....7070
1135.71 (b)(2) revised; (b)(3) removed.....7070
1135.73 (a)(2)(ii) and (b)(3)(v) revised.....7070

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1208 Removed.....1366
Technical correction.....2108

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

1413 Added.....5207

CHANGES JANUARY 2, 2003 THROUGH MARCH 31, 2003

TITLE 7

Chapter XVII—Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

1738 Added 4687
1738.10 (b) correctly amended 8989
1755.97 Amended 7898

Chapter XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

Chapter XVIII Policy statement 14889
1910.4 (b) heading and (2) revised; (b) amended 7696
1924.55 Heading revised; (e) amended 7696
1924.74 (b)(1) amended 7696
1940.588 Heading, (d), (g), (h) and (j) revised; (k) removed 14528
1940.589 (b)(1)(ii), (g) and (h) revised; (k) removed 14528
1940.593 Added 14528
1941.1—1941.50 (Subpart A) Nomenclature change 7696
1941.1 Amended 7696
1941.4 (e) amended 7696
1941.6 (c) revised 7697
1941.12 (a)(4), (5), (b)(5)(iii), and (iv) removed; (a)(6) through (11), (b)(5)(v) and (vi) redesignated as (a)(4) through (9), (b)(5)(iii) and (iv); (a)(6), (b)(6)(i), (7)(i), (8)(iii) and (9) revised 7697
1941.54 (b)(2) revised; (b)(3) removed 7697
1941.57 (a) revised 7697
1943.1—1941.50 (Subpart A) Amended 7697
1943.1 Amended 7697
1943.4 (e) amended 7697
1943.6 (c) revised 7698
1943.12 (a)(4), (5), (b)(4)(iii) and (iv) removed; (a)(6) through (11), (b)(4)(v) and (vi) redesignated as (a)(4) through (9), (b)(4)(iii) and (iv); (b)(5)(i), (6)(i) and (7) revised 7698
1943.14 (c), (d)(4) and (e)(2)(i) revised 7698
1943.16 (e) added 7698
1943.38 (g)(3)(ii) amended; (g)(3)(iii) removed 7698
1951.463 (e) removed 7698
1951.903 Amended 7698
1951.909 (a)(3), (e)(1)(xii), (2)(viii) and (i)(2)(i) revised; (e)(2)(ix) redesignated as (e)(2)(x); new (e)(2)(ix) added 7698
1951.909–1951.950 (Subpart S) Exhibit A amended 7699
1955.10 (f)(2) and (3) revised 7699
1951.1–1951.50 (Subpart A) Exhibits G and G–1 removed 7700
1955.63 (a) and (b) revised 7700
1955.107 (a)(2)(i), (b) introductory text, (b)(1) and (2) revised 7700
1955.137 (b)(3)(ii) and (iii) amended 7700
1956.57 (f) removed 7700
1956.70 (b)(3) introductory text revised 7700
1956.84 (e) revised 7700
1956.96 Revised 7696
1962.41 (f) removed; (e) revised 7701
1962.46 (g)(5)(ii) revised 7701
1965.26 (f)(6) and (g) removed; (c)(2)(iv) introductory text and (f)(5) revised 7701
1965.27 (b)(19) and (g)(6) removed; (f) revised; (h) amended 7701

Chapter XXXV—Rural Housing Service, Department of Agriculture (Parts 3500—3599)

Chapter XXXV Policy statement 14889

Proposed Rules:

28 15385
51 4967
56 1169
300 69
301 13859
319 6362
340 11337
354 13861
360 6653
723 1556
770 12309
800 9589
868 9593
927 15387
930 ..... 9944, 13636
932 11340

CHANGES JANUARY 2, 2003 THROUGH MARCH 31, 2003

956 15388
985 11751
1205 12310
1218 11756
1219 12881
1230 11996
1405 9944
1464 1556
1466 6655
1470 ..... 7720, 13872
1499 9944
1599 14546
1794 1988
1951 1170
1962 1170
1965 1170

TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—599)

1 Duplicated and redesignated as Chapter V, Part 1001 9830
Authority citation revised 10923
1.1 (o) revised 10923
2 Heading, and authority citation revised 10923
2.1 Revised 10923
3 Transferred and redesignated as Chapter V, Part 1003 9830
3 Added 9831
101 Duplicated and redesignated as Chapter V, Part 1101 9832
103 Heading and authority citation duplicated and redesignated as Chapter V, Part 1103 9833
Heading, and authority citation revised 10922
103.3 (c) amended 9832
Duplicated and redesignated as 1103.3 9833
Revised 10923
103.4 Duplicated and redesignated as 1103.4 9833
103.7 (b)(1) amended; interim 3800
(b)(1) amended; interim 8992
Duplicated and redesignated as 1103.7 9833
103.37 Added 9832
205 Duplicated and transferred to Chapter V, Part 1205 9833
207 Duplicated and transferred to Chapter V, Part 1207 9833
207.3 Duplicated and transferred to Chapter V, Part 1205 9833
208 Duplicated and transferred to Chapter V, Part 1208 9834
209 Duplicated and transferred to Chapter V, Part 1209 9835
211 Duplicated and transferred to Chapter V, Part 1211 9835
211.4 Duplicated as 1211.4 9835
212 Duplicated and transferred to Chapter V, Part 1212 9835
212.1 (a) revised; interim 5193
215 Duplicated and transferred to Chapter V, Part 1215 9836
216 Duplicated and transferred to Chapter V, Part 1216 9837
217 Heading revised 10957
217.2 (a) amended 10957
231 Authority citation revised 5193
231.1 (d) introductory text amended; (d)(1) and (2) removed; interim 5193
235 Duplicated and transferred to Chapter V, Part 1235 9837
235.1 (e) introductory text and (1)(v) revised; (e)(5)(ii) amended; interim 5193
235.7 (a)(4)(xi) amended; interim 10145
236 Regulation at 67 FR 19511 confirmed 4367
Duplicated and transferred to Chapter V, Part 1236 9838
236.6 Regulation at 67 FR 19511 confirmed 4367
238 Duplicated and transferred to Chapter V, Part 1238 9838
238.1 Duplicated as 1238.4 9838
239 Duplication and transfrred to Chapter V, Part 1239 9838
Authority citation revised 10924
239.1 (a) revised 10924
240 Duplicated in part and transferred to Chapter V, Part 1240 9838
240.1—240.18 (Subpart A) Transferred and redesignated as Chapter V, Part 1240.1—1240.18 (Subpart A) 9838
240.19—240.24 (Subpart B) Heading transferred and redesignated as Chapter V, 1240.19—1240.24 (Subpart B) 9838
240.19 Redesignated as 1240.19 9838

TITLE 8 Chapter I—Con.

240.20 Redesignated as 1240.20.....9838
240.21 Duplicated and redesignated as 1240.21.....9840
240.22 Redesignated as 1240.22.....9838
240.23 Redesignated as 1240.23.....9838
240.24 Redesignated as 1240.24.....9838
240.26—240.29 (Subpart C) Transferred and redesignated as Chapter V, 1240.26—1240.29 (Subpart C).....9838
240.30—240.39 (Subpart D) Transferred and redesignated as Chapter V, 1240.30—1240.39 (Subpart D).....9838
240.40—240.54 (Subpart E) Transferred and redesignated as Chapter V, 1240.40—1240.54 (Subpart E).....9838
240.55—240.58 (Subpart F) Transferred and redesignated as Chapter V, 1240.55—1240.58 (Subpart F).....9838
240.60—240.70 (Subpart H) Duplicated and redesignated as Chapter V, 1240.60—1240.70 (Subpart H).....9838
241 Regulation at 67 FR 19511 confirmed.....4367
Duplicated and transferred to Chapter V, Part 1241.....9840
241.15 Regulation at 67 FR 19511 confirmed.....4367
244 Duplicated and transferred to Chapter V, Part 1244.....9841
245 Duplicated and transferred to Chapter V, Part 1245.....9842
246 Duplicated and transferred to Chapter V, Part 1246.....9842
249 Duplicated and transferred to Chapter V, Part 1249.....9843
270 Duplicated and transferred to Chapter V, Part 1270.....9843
274a Duplicated and transferred to Chapter V, Part 1274a.....9844
280 Duplicated and transferred to Chapter V, Part 1280.....9844
286.2 (b) redesignated as (c); new (b) added.....4092
286.3 Introductory text and (a) revised.....4092
286.9 (b)(4) revised; interim.....5194
287 Duplicated and transferred to Chapter V, Part 1287.....9845
292 Duplicated and transferred to Chapter V, Part 1292.....9845
337 Duplicated and transferred to Chapter V, Part 1337.....9845
507 Transferred and redesignated as 28 CFR, Part 200.....9846

Chapter V—Executive Office for Immigration Review, Department of Justice (Parts 1000—1099)

Chapter V Established.....9830
1001—1003 (Subchapter A) Heading added.....9830
1001 Duplicated and redesignated from Chapter I, Part 1.....9830
1001.1 (j) and (r) amended.....10350
1003 Transferred and redesignated from Chapter I, Part 3.....9830
Nomenclature change.....9846
1003.1 (g) and (h) revised; (i) and (j) added.....9831
(b)(2), (3), (5) through (10), (12), (14), (d)(2)(D)(iii) and (5) amended.....10351
1003.2 (c)(1) and (3)(iv) amended.....10351
1003.4 Amended.....10351
1003.6 (b) amended.....10351
1003.8 (a) and (b) amended.....10351
1003.14 (d) added.....9832
1003.14 (a) and (c) amended.....10351
1003.15 (b)(5) amended.....10351
1003.16 (b) amended.....10351
1003.19 (a), (h)(1)(i)(D), (E), (ii) and (2)(ii) amended.....10351
1003.23 (b)(1) amended.....10351
1003.24 Amended.....10351
1003.30 Amended.....10351
1003.31 (b) amended.....10351
1003.61 (a)(1), (2) and (4) amended.....10351
1003.62 Amended.....10351
1003.64 Amended.....10351
1003.65 Amended.....10351
1003.101 Amended.....10351
1003.102 Amended.....10351
1003.105 (a) amended.....10351
1003.106 (a)(1)(ii), (v) and (c) amended.....10351
1003.107 Amended.....10351
1101—1299 (Subchapter B) Heading added.....9830
1101 Duplicated and redesignated from Chapter I, Part 101.....9832
Nomenclature change.....9846

1101.4 Nomenclature change.....10351
1103 Heading and authority citation duplicated and redesignated from Chapter I, Part 103; authority citation revised.....9833
Nomenclature change.....9846
Authority citation revised.....10351
1103.3 Duplicated and redesignated from 103.3.....9833
(a)(1)(ii), (iii)(B), (v), (2)(iii), (v)(A)(2)(ii) and (B)(2)(ii) amended.....10352
1103.4 Duplicated and redesignated from 103.3.....9833
(a)(6) amended.....10352
1103.7 Duplicated and redesignated from 103.3.....9833
(c)(1) and (4) amended.....10352
1204 Added.....9833
1205 Duplicated and transferred from Chapter I, Part 205.....9833
Nomenclature change.....9846
1205.1 (a) amended.....10352
1205.2 (d) amended.....10352
1207 Duplicated and transferred from Chapter I, Part 207.....9833
1207.3 Duplicated from 207.3.....9833
1208 Duplicated and transferred from Chapter I, Part 208.....9834
Nomenclature change.....9846
1208.1 (a) amended.....10352
1208.2 (c)(3)(i) amended.....10352
1208.4 (a)(2)(ii), (b)(3)(ii), (4) and (5) amended.....10352
1208.5 (b)(2) amended.....10352
1208.7 (a)(1), (2) and (4) amended.....10352
1208.8 (b) amended.....10352
1208.12 Amended.....10352
1208.14 (c)(4)(i) and (ii) amended.....10352
1208.17 (d)(1) and (e)(1) amended.....10352
1208.18 (b)(2) and (3)(ii)(A) amended.....10352
1208.22 (f) amended.....10352
1208.23 (f) amended.....10352
1208.30 (f) and (g)(2)(iii) amended.....10352
1208.31 Amended.....10353
1209 Duplicated and transferred from Chapter I, Part 209.....9835
Nomenclature change.....9846
(c) amended.....10353
1211 Duplicated and transferred from Chapter I, Part 211.....9835
Nomenclature change.....9846
1211.4 duplicated from 211.4.....9835
1212 Duplicated and transferred from Chapter I, Part 212.....9835
Nomenclature change.....9846
1212.1 (g)(3) amended.....10353
1212.3 (e)(3) amended.....10353
1212.4 (b) amended.....10353
1212.5 (b) and (c) amended.....10353
1212.6 (a)(2), (d)(1) and (e) amended.....10353
1212.7 (a)(1)(iii), (iv), (b)(2)(iv), (v), (5), (c)(7), (9)(ii)(B) and (vi) amended.....10353
1212.8 (b) amended.....10353
1212.10 Amended.....10353
1212.14 (a)(1)(vi) amended.....10353
1214 Added.....9835
1215 Duplicated and transferred from Chapter I, Part 215.....9836
Nomenclature change.....9846
1216 Duplicated and transferred from Chapter I, Part 216; authority citation revised.....9837
Nomenclature change.....9846
1216.3 (a) amended.....10354
1216.4 (a)(1), (4), (6) and (d)(2) amended.....10354
1216.5 (b) amended.....10354
1216.6 (a)(1), (5) and (b)(3) amended.....10354
1235 Duplicated and transferred from Chapter I, Part 235.....9837
Nomenclature change.....9846
1235.1 (d)(1), (4), (e)(1)(iii), (v), (2), (5)(ii), (f)(1)(i), (iii), (iv) and (v) amended.....10354
1235.3 (b)(1)(i), (2)(i), (4), (5)(ii), (iii), (8), (c) and (f) amended.....10354
1235.4 Amended.....10354
1235.5 (a) amended.....10354
1235.6 (a)(2)(iii) amended.....10354
1235.8 (b)(4) and (e) amended.....10354
1235.11 (c) amended.....10354
1236 Duplicated and transferred from Chapter I, Part 236.....9838
Nomenclature change.....9846
1236.1 (a) amended.....10354
(b), (c)(10), (11), (d)(1), (3)(i), (4) and (f) amended.....10355
1236.2 (a) amended.....10355
1236.5 (d) amended.....10355

CHANGES JANUARY 2, 2003 THROUGH MARCH 31, 2003

TITLE 8 Chapter V—Con.

1238 Duplicated and transferred from Chapter I, Part 238 9838
1238.1 Duplicated from 238.1 9838
(a), (b)(1)(iii), (2)(i), (iv), (c)(1), (f)(1), (3) and (g) amended 10355
1239 Duplicated and transferred from Chapter I, Part 239 9838
Nomenclature change 9846
1239.2 (a) and (c) amended 10355
1240.1—1240.18 (Subpart A) Transferred and redesignated from Chapter I, Part 240.1—240.18 (Subpart A) 9838
1240.2 (a) amended 10355
1240.3 Amended 10355
1240.7 Amended 10356
1240.10 (a)(2) and (b) amended 10356
1240.11 (a)(1), (c)(1), (2), (3), (e) and (f) amended 10356
1240.13 (a) amended 10356
1240.14 Amended 10356
1240.15 Amended 10356
1240 Amended 9846
1240.19—1240.24 (Subpart B) Heading transferred and redesignated from Chapter I, 240.19—240.24 (Subpart B) 9838
1240.19 Redesignated from 240.19 9838
1240.20 Redesignated from 240.20 9838
(a) and (b) amended 10356
1240.21 Duplicated and redesignated from 240.19 .....9838, 9840
(b)(2)(iii), (5)(ii) and (c) amended 10356
1240.22 Redesignated from 240.22 9838
1240.23 Redesignated from 240.23 9838
1240.24 Redesignated from 240.24 9838
1240.26—1240.29 (Subpart C) Transferred and redesignated from Chapter I, 240.26—240.29 (Subpart C) 9838
1240.26 Amended 10356
1240.30—1240.39 (Subpart D) Transferred and redesignated from Chapter I, 240.30—240.39 (Subpart D) 9838
1240.32 (a) amended 10356
1240.33 (b) and (c) amended 10356
1240.35 Amended 10356
1240.36 Amended 10356
1240.37 Amended 10356
1240.40—1240.54 (Subpart E) Transferred and redesignated from Chapter I, 240.40—240.54 (Subpart E) 9838
1240.40 Amended 10356
1240.42 Amended 10356
1240.46 Amended 10356
1240.48 (a) amended 10356
1240.49 (a), (c)(2), (3), (4) and (e) amended 10356
1240.51 (a) amended 10356
1240.52 Amended 10356
1240.53 Amended 10356
1240.55—1240.58 (Subpart F) Transferred and redesignated from Chapter I, 240.55—240.58 (Subpart F) 9838
1240.55 Amended 10356
1240.56 Amended 10356
1240.60—1240.70 (Subpart G) Duplicated and redesignated from Chapter I, 240.60—240.70 (Subpart G) 9840
1240.62 Amended 10356
1240.63 (a) and (b) amended 10356
1240.67 (a) and (b)(1) amended 10356
1240.69 Amended 10356
1241 Duplicated and transferred from Chapter I, Part 241 9840
Nomenclature change 9846
1241.2 Amended 10357
1241.3 (b)(1) through (4) amended 10357
1241.4 (j) amended 10357
1241.6 (a) and (b) amended 10357
1241.8 (e) amended 10357
1241.11 (d) amended 10357
1241.13 (b)(1), (3)(i), (g)(1) and (2) amended 10357
1241.14 (d)(3)(ii), (g)(3)(i), (h)(4), (i)(3), (4)(ii), (k)(6)(ii) and (iii) amended 10357
1241.15 Amended 10357
1241.22 Amended 10357
1241.30 Amended 10357
1241.31 Amended 10357
1241.33 Amended 10357
1244 Duplicated and transferred from Chapter I, Part 244 9841
Nomenclature change 9846
1244.8 Amended 10357
1244.10 (b), (c)(2) and (d)(1) amended 10357
1244.11 Amended 10357
1244.13 Amended 10357
1244.18 (d) amended 10357

CHANGES JANUARY 2, 2003 THROUGH MARCH 31, 2003

1245 Duplicated and transferred from Chapter I, Part 245 9842
Nomenclature change 9846
1245.1 (b)(7), (8), (10), (c)(1), (2), (3), (4), (6)(i), (ii), (7), (d)(1)(ii), (2) and (f) amended 10358
1245.2 (a) amended 10358
1245.4 Amended 10358
1245.5 Amended 10358
1245.9 (k)(1) amended 10358
1245.10 (a)(2)(i), (4), (d) and (f)(1) amended 10358
1245.11 (d)(1) amended 10358
1245.12 (a)(2) amended 10358
1245.13 (c)(1), (e)(1), (2), (g), (j)(1), (2), (k)(1), (3), (m)(1)(i), (n)(1) and (2) amended 10358
1245.14 Amended 10358
1245.15 (a), (c)(2)(iv)(B), (d)(4), (e)(2), (g)(3)(iii), (h)(1), (2), (n)(1), (2), (p)(1), (r)(2)(i), (s)(3) and (t) amended 10358
1245.18 Amended 10358
1245.20 Amended 10358
1246 Duplicated and transferred from Chapter I, Part 246 9842
Nomenclature change 9846
1246.1 Amended 10359
1246.3 Amended 10359
1246.5 (a) amended 10359
1246.6 Amended 10359
1246.7 Amended 10359
1249 Duplicated and transferred from Chapter I, Part 249 9842
Nomenclature change 9846
1249.2 Amended 10359
1249.3 Amended 10359
1270 Duplicated and transferred from Chapter I, Part 270 9843
Nomenclautre change 9846
1270.1 (c), (d), (h) and (i) amended 10359
1274a Duplicated and transferred from Chapter I, Part 274a 9844
Nomenclature change 9846
1274a.10 Amended 10359
1274a.12 (b)(1), (2), (3) and (5) through (10) amended 10359
(b)(11) through (20), (c)(1), (2), (3)(i), (4) through (9), (16), (20), (22) and (23) amended 10360
1274a.14 (a)(2) amended 10360
1280 Duplicated and transferred from Chapter I, Part 280 9844
Nomenclature change 9846
1287 Duplicated and transferred from Chapter I, Part 287 9845
Nonmenclature change 9846
1292 Duplicated and transferred from Chapter I, Part 292 9845
Nomenclature change 9846
1292.1 (a)(1) and (6) amended 10360
1292.3 (a)(1), (2), (b)(1), (c)(1), (3), (4), (d)(1)(ii), (e)(1), (3) and (f)(1) amended 10360
1292.4 (a) and (b) amended 10360
1292.6 Amended 10360
1299 Added 9845
1337 (Subchapter C) Heading added 9830
Duplicated and transferred from Chapter I, Part 337 9845
Nomenclature change 9846, 10360

Proposed Rules:

217 292
231 292
251 292

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

1.1 Amended 12285
4 Authority citation revised 6342
11 Authority citation revised 6342
12 Authority citation added 6342
12.1 Amended 6342
12.10 Amended 6342
49 Authority citation revised 6342
49.1 Amended 6342
50 Authority citation revised 6342
50.17 (b)(1) and (d) revised 10361
51 Authority citation revised 6342
51.1 Amended 6342
52 Authority citation revised 6342
52.1 Amended 6342
53 Authority citation revised 6342
53.3 (d) amended 6343
54 Authority citation revised 6343
70 Authority citation revised 6343
70.1 Amended 6343
71 Authority citation revised 6343
72 Authority citation revised 6343
73 Authority citation revised 6343
73.1 (b) amended 6343

CHANGES JANUARY 2, 2003 THROUGH MARCH 31, 2003

TITLE 9 Chapter I—Con.

74 Authority citation revised.....6343
75 Authority citation revised.....6343
77 Authority citation revised.....6343
78 Authority citation revised.....6343
79 Authority citation revised.....6343
79.2 (f)(3) amended.....6343
80 Authority citation revised.....6343
82 Authority citation revised.....1517
82.3 (c) revised; interim.....1517
(c) amended; interim 3376, 7413
82.16 Added; interim.....1517
85 Authority citation revised.....6343
89 Authority citation revised.....6343
91 Authority citation revised.....6343
92 Authority citation revised.....6343
93 Authority citation revised.....6343
93.101 (d)(1)(ii) amended 6343
93.106 (a), (b)(4) and (c)(5)(iii) amended.....6343
93.201 (b)(1)(ii) amended 6344
93.202 (a) amended.....6344
93.207 Amended 6344
93.301 (b)(1)(ii) amended 6344
(h)(6) and (7) amended; interim 7414
93.302 (a) amended.....6344
93.306 (a) designation removed; amended.....6344
93.401 (a), (b) introductory text and (1)(ii) amended 6344
93.402 (a) amended.....6344
93.404 (a)(2) revised.....6344
93.405 (d) amended.....6344
93.408 Amended 6344
93.419 (b) amended.....6344
93.423 (d) amended.....6344
93.426 (a) amended.....6344
93.428 (c) amended.....6344
93.501 (a), (b) introductory text and (1)(ii) amended 6344
93.502 (a) amended.....6344
93.504 (a)(2) revised.....6344
93.505 (c) amended 6344
93.507 (a) designation removed; amended.....6344
93.520 Undesignated center heading amended.....6344
94 Authority citation revised.....6345
94.0 Regulation at 67 FR 31937 confirmed.....5805
94.1 Regulation at 67 FR 31938 confirmed.....5805
94.1 (a) introductory text amended 6345
94.1a (a) introductory text amended.....6345
94.4 (b)(2) amended 6345
94.5 (e)(2) amended 6345
94.7 Revised.....6345
94.15 (b)(4) and (c)(4) amended.....6345
95 Revised 6345
96 Authority citation revised.....6345
97 Authority citation revised.....6345
98 Authority citation revised.....6345
98.32 (a) amended 6345
99 Authority citation revised.....6345
99.1 Amended 6345
122 Authority citation revised 6345
123 Authority citation revised 6346
124 Authority citation revised 6346
124.2 Amended 6346
130 Authority citation revised 6346
130.51 (d) amended 6346
145 Authority citation revised 6346
147 Authority citation revised 6346
160 Authority citation revised 6346
161 Authority citation revised 6346
161.4 (d) amended 6346
162 Authority citation revised 6346
166 Authority citation revised 6346
166.14 (a)(3) amended 6346
166.15 (a), (b), and (c) amended 7415

Chapter III—Food Safety and Inspection Service, Department of Agriculture (Parts 300—599)

317.363 (b)(3) introductory text and (i) amended; interim.....463
381.463 (b)(3) introductory text and (i) amended; interim.....463

Proposed Rules:

1—199 (Ch. I).....2703
71.....3826
92.....10667
94.....2711, 6673, 7722, 11998
97.....13861
130.....13861
317.....11008
327.....11008
391.....8858
590.....8858
592.....8858

TITLE 10—ENERGY

Chapter I—Nuclear Regulatory Commission (Parts 0—199)

20.2203 (b)(2) revised [**Editorial Note:** Due to a pagination anomaly, this document, which published March 25, 2003, shares the same *Federal Register* page number as a Presidential Executive Order published on March 24, 2003] 14308
40.4 Amended 10364
40.64 (a) and (b) revised.....10364
50.75 (e)(1)(ii) revised 12571
70.5 (a)(1), (2) and (b) amended 14529
70.20b (f)(1), (2)(ii), (iii) and (g)(1) amended 14529
70.32 (c)(2), (e) and (i) amended 14529
71.97 (c)(1) and (f)(1) amended 14529
72.214 Amended 471, 8447
Regulation at 67 FR 69989 eff. date confirmed.....2686
73.4 Amended 14530
73.26 (i)(6) amended.....14530
73.27 (b) amended.....14530
73.67 (e)(7)(ii) amended 14530
73.71 (a)(4) amended.....14530
73.72 (a)(1), (4) and (5) amended 14530
73.73 (a)(1) and (b) amended 14530
73.74 (a)(1) and (b) amended 14530
150.3 Amended 10365
150.17 (a) and (b) revised 10365

Proposed Rules:

20 .....9595, 14349
40 10410
63.....9023
72.....8472
150.....10410
430.....11009
490.....10320

TITLE 11—FEDERAL ELECTIONS

Chapter I—Federal Election Commission (Parts 1—9099)

100 Authority citation revised.....451
100.8 (a)(2) correctly added.....6346
100.14 (f)(2)(ii)(B) correctly revised 6346
100.16 Revised 451
100.19 Introductory text and (b) through (e) revised; (a) heading and (f) added.....416
(b) revised; (g) added.....3995
100.23 Removed 451

CHANGES JANUARY 2, 2003 THROUGH MARCH 31, 2003

100.33 Added 3995
101.1 (a) revised 3995
102.2 (a)(1)(vi) and (vii) amended; (a)(1)(viii) added.....3995
102.6 (a)(1)(ii) revised 451
104 Authority citation revised 3995
104.3 (g) revised.....417
Corrected.....611
(d)(1) introductory text amended.....2871
104.4 Revised.....417
104.5 (a), (c) introductory text, heading and (g) revised; (c)(4) and (j) added.....418
104.19 Added.....419
Revised 3995
104.20 Added.....419
(a)(5) corrected.....5075
105 Authority citation revised.....420
105.2 Revised.....420
108.1 (b) revised.....420
109 Revised 451
109.2 Removed.....420
109.10 Added.....420
110 Technical correction 1793
110.1 (d) revised; (n) added 457
(b)(3)(ii)(A) and (B) amended; (b)(3)(ii)(C) added 3996
110.2 (d) revised; (k) added 457
110.7 Removed.....457
110.8 Introductory text, (a)(1) and (2) redesignated as (a)(1), (i) and (ii); (a)(2) revised; (a)(3) added.....457
(a)(2) correctly added.....6346
110.10 Revised.....3996
110.14 (f)(2)(i) introductory text, (ii) introductory text, (3)(iii), (i)(2)(i) introductory text, (2)(ii) and (3)(iii) revised.....457
(f)(2)(ii)(B) correctly revised.....6346
110.18 Added 457
110.19 (e) amended 2872
111.35 (b)(4)(iii) revised 12577
111.43 (a) and (b) revised; (d) amended 12577
111.45 Amended 12580
111.46 Added.....12580
114.4 (c)(5)(i) and (ii)(A) revised 457
116.11 Added 3996
116.12 Added 3996
400 Added 3997
9035.2 (c) revised.....4002

TITLE 11

Proposed Rules:

100 7728
110 7728

TITLE 12—BANKS AND BANKING

Chapter II—Federal Reserve System (Parts 200—299)

201.51 (a), (b) and (c) revised 1794
202 Revised 13161
Appendix C corrected 14476
208.36 (a) revised 4096
211.41 Revised 1159
211.42 Revised 1159
211.43 Revised 1159
211.44 Revised 1159
211.45 Revised 1159
211.605 Added 7899
220 OTC margin stock lists 8993
272.3 (c) revised 6061

Chapter III—Federal Deposit Insurance Corporation (Parts 300—399)

303.15 Added 7308

Chapter V—Office of Thrift Supervision, Department of the Treasury (Parts 500—599)

550.70 Corrected 2108
563.41 Corrected 1218

Chapter VI—Farm Credit Administration (Parts 600—699)

615.5210 (f)(2)(ii)(L) added; interim 15047

Chapter XVII—Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1700—1799)

1750.10–175.13 (Subpart B) Appendix A amended 7312

Chapter XVIII—Community Development Financial Institutions Fund, Department of the Treasury (Part 1800—1899)

1805 Revised; interim 5707
1806 Revised; interim 5720

Proposed Rules:

3 6363
5 6363
6 6363
7 6363
9 6363
19 ..... 1116, 4967, 5075
24 1394
28 6363
34 6363
203 11010
225 12316
263 ..... 4967, 5075
308 ..... 4967, 5075
513 ..... 4967, 5075
611 5587
612 5587
614 5587
617 5587
709 8860
915 13238
1730 3194

TITLE 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration (Parts 1—199)

121.201 Table amended 13811, 15050

Proposed Rules:

120 5234
121 5234
125 5134

TITLE 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation (Parts 1—199)

Chapter I Policy statement 10145
1 Technical correction 3096
21 Technical correction 1512
Special FAA conditions 2183
23 Special FAA conditions 1, 3, 5538
25 Special FAA conditions 255, 5208, 9854, 10365, 12581, 15341
Technical correction 3096
25.735 (f)(2) and (g) corrected 1955
29 Special FAA conditions 2183

36 Corrected 1512
36.6 Corrected 2402
39.13 ..... 12, 15, 17, 19, 24, 26, 28, 29, 32, 35, 38, 258, 472, 475, 478, 480, 482, 484, 486, 487, 489, 998, 1000, 1002, 1518, 1520, 1523, 1524, 1527, 1530, 1957, 1962, 2688, 2873, 3173, 3378, 3380, 3807, 4097, 4369, 4371, 4373, 4376, 4379, 4890, 4893, 4899, 4901, 4903, 4904, 4909, 4911, 5542, 5806, 5809, 5811, 5814, 5816, 5819, 5821, 5823, 6349, 6816, 7901, 7903, 7906, 7909, 7911, 7912, 8540, 8995, 9504, 9506, 9509, 9510, 9512, 9515, 9517, 9519, 9521, 9522, 9524, 9526, 10148, 10150, 10153, 10155, 10157, 10654, 11468, 11470, 11969, 11972, 12286, 12798, 12801, 12808, 12810, 12813, 13223, 13619, 14311, 14313, 14531, 14534, 14891, 14893, 14897
Corrected 6, 10, 3808, 7651, 10583, 12803, 14309, 14310
47.37 (b)(2) revised 10318
61 SFAR No. 73 amended 43
61.18 Added 3774
63.14 Added 3774
65.14 Added 3775
71 SFAR No. 97 cross-reference added 14077
71.1 ..... 44, 260—264, 491, 2186, 2187, 2188, 2421—2425, 2875, 4098, 6606, 6607, 7914, 7915, 7916, 8703—8707, 8997, 8998, 9000, 9528, 10368, 10369, 10655, 11737, 11738, 11739, 13812, 14315, 15344, 15346, 15347, 15349, 15350
Corrected 1657, 2423, 3808, 3934, 7913, 7917, 8997, 13225, 14315, 15349
Regulation at 67 FR 68757 eff. date confirmed 2186
Technical correction 7651
Regulation at 67 FR 70534 eff. date delayed to 5–15–03 12583
Regulation at 68 FR 4098 confirmed 12814
73.23 Amended 3175
73.66 Amended 3174
73.89 Amended 7918
91 Technical correction 1512
SFAR No. 94 amended 7691
SFAR No. 97 added 14077
91.411 Regulation at 66 FR 41116 eff. date delayed to 10–6–03 12542
91.413 Regulation at 66 FR 41116 eff. date delayed to 10–6–03 12542
91 Appendix D amended 9795
Appendix A Regulation at 66 FR 41116 eff. date delayed to 10–6–03 12542
93 Heading revised 9795
93.1 Revised 9795
93.51 Revised 9795
93.71 (Subpart E) Added 9795
93.80 Added 9795
93.81 (a) and (b) designation removed; (b)(1), (2), (2)(i), (ii) and (iii) redesignated as (a), (b), (b)(1), (2) and (3) 9795
93.117 Revised 9795
93.151 Revised 9795
93.152 Added 9795
93.251—93.253 (Subpart T) Nomenclature change 9795
93.305 Regulation at 61 FR 69330 stayed in part until 2–2–06 9498
95 7918
95 SFAR No. 97 cross-reference added 14077
97 Technical correction 3096
97.21—97.35 ..... 265, 492, 1796, 1963, 3810, 3811, 6817, 6819, 8708, 8710, 10964, 13620, 13622
119 Comment period extended 5782
121 Comment period extended 5782
121 SFAR No. 36 Regulation at 66 FR 41116 eff. date delayed to 10–6–03 12542
SFAR No. 97 cross-reference added 14077
121.378 Regulation at 66 FR 41116 eff. date delayed to 10–6–03 12542
121.709 Regulation at 66 FR 41116 eff. date delayed to 10–6–03 12542
125 SFAR No. 97 cross-reference added 14077
129 Comment period extended 5782
SFAR No. 97 cross-reference added 14077
135 Comment period extended 5782
SFAR No. 97 cross-reference added 14077
135.435 Regulation at 66 FR 41117 eff. date delayed to 10–6–03 12542
135.443 Regulation at 66 FR 41117 eff. date delayed to 10–6–03 12542

CHANGES JANUARY 2, 2003 THROUGH MARCH 31, 2003

TITLE 14 Chapter I—Con.

145.1—145.5 (Subpart A) Regulation at 66 FR 41117 eff. date delayed to 10–6–03 12542
145.51—145.61 (Subpart B) Regulation at 66 FR 41117 eff. date delayed to 10–6–03 12542
145.101—145.109 (Subpart C) Regulation at 66 FR 41117 eff. date delayed to 10–6–03 12542
145.151—145.163 (Subpart D) Regulation at 66 FR 41117 eff. date delayed in part to 10–6–03 12542
145.163 Regulation at 66 FR 41117 eff. date delayed to 10–6–05 12542
145.201—145.223 (Subpart E) Regulation at 66 FR 41117 eff. date delayed to 10–6–03 12542
145 Appendix A Regulation at 66 FR 41117 eff. date delayed to 10–6–03 12542
150 Correctly amended; CFR correction 6608
183 Comment period extended 578210368, 10369

Chapter II—Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)

240.17 (b)(1)(i) amended 14316
255.12 Revised 15353

Chapter V—National Aeronautics and Space Administration (Parts 1200—1299)

1260.13 (a)(2) amended 14535
1274.207 (b) redesignated as (d); new (b) and (c) added 14535

Proposed Rules:

1 6802
21 ..... 11475, 11759
25 ..... 1932, 5241
39 ..... 71, 302, 305, 308, 311, 315, 317, 320, 322, 324, 516, 518, 1016, 1017, 1586, 1802, 1805, 2714, 3475, 3826, 3829, 3832, 3836, 4116, 4398, 4725, 4727, 4730, 4731, 4737, 4739, 5610, 5856, 6376, 6379, 6380, 6382, 6383, 7081, 7084, 7449, 7451, 7947, 8155, 8157, 8161, 8473, 8475, 8477, 8555, 8558, 8560, 8563, 8564, 8566, 8862, 8865, 9032, 9034, 9602, 9607, 9947, 9950, 9951, 9954, 10185, 10188, 10412, 10415, 11014, 11015, 11342, 11476, 11479, 11760, 11762, 11764, 11999, 12318, 12614, 12615, 12618, 13239, 14350, 14351, 14353, 14355, 14558
43 ..... 11475, 11759
71 ..... 328, 2460—2463, 3196, 3778, 3837, 3934, 4118, 4741, 4742, 5613, 6677, 7949, 12621, 14359, 15388
73 3198
91 ..... 3778, 6802, 9818, 10073
93 14276
95 3778
121 ..... 1942, 3778, 6802, 12882
125 ..... 3778, 5488, 6802
129 3778
135 ..... 3778, 5488, 6802
145 ..... 11475, 11759
158 1807
255 ..... 1172, 7325, 12622, 12883
399 ..... 1172, 12622, 12883

TITLE 15—COMMERCE AND FOREIGN TRADE

Subtitle A—Office of the Secretary of Commerce (Parts 0—29)

6.4 Revised 4381
6.5 Revised 4382

Chapter II—National Institute of Standards and Technology, Department of Commerce (Parts 200—299)

270 (Subchapter G) Established; interim 4694

Chapter VII—Bureau of Industry and Security, Department of Commerce (Parts 700—799)

740.11 (a)(2) revised 10589
Supplement No. 1 revised 10590
743.1 (b)(1) and (c) revised; (e)(2) removed 10591
744 Authority citation revised 1797
744.17 Added 1797
744 Supplement No. 1 added 1797
Supplement No. 1, Category 3 (ECCN 3A001) amended 1798
772.1 Amended 10591
774 Supplement No. 1, Category 2 (ECCN 2A001, 2B001, 2B003 and 2B006) amended 10592

CHANGES JANUARY 2, 2003 THROUGH MARCH 31, 2003

Supplement No. 1, Category 3 (ECCN 2A001, 2A002, 3B001, 3B991, 3C004, 3E001, 3E002 and 3E003) amended 10593
Supplement No. 1, Category 4 (ECCN 4A003, 4D003 and 4D993) amended 10598
Supplement No. 1, Category 5 (ECCN 5A001, 5A991 and 5B001, 5E001 and 5E991) amended 10599
Supplement No. 1, Category 5 (ECCN 5A002, 5B002 and 5E002) amended 10601
Supplement No. 1, Category 6 (ECCN 6A001, 6A005, 6A008, 6C992, 6C994 and 6D003) amended 10602
Supplement No. 1, Category 7 (ECCN 7A003, 7D002 and 7D003) amended 10602
Supplement No. 1, Category 8 (ECCN 8A002, 8A018 and 8A992) amended 10606
Supplement No. 1, Category 9 (ECCN 9A012, 9D001, 9D002, 9D003 and 9D102) amended 10607

Chapter VIII—Bureau of Economic Analysis, Department of Commerce (Parts 800—899)

806.15 (h)(1) and (2) revised 3813
806.17 Revised 1532

Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

902 Technical correction 2636
902.1 (b) table amended (OMB numbers) 209, 2192, 12815

Chapter XX—Office of the United States Trade Representative (Parts 2000—2099)

2016 Added; interim 5543

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission (Parts 0—999)

303.7 (m) amended 3816
304 Request for public comment 9856
305.8 (b) revised 8449
305.10 (a) revised 8449
310 Revised 4669
801.1 (h) revised 2430
801.21 Introductory text revised 2430
803.9 (a) Examples 7 and 8 added; (c) revised 2431
803.20 (c) and example revised 2431
803 Appendix revised 2431

Chapter II—Consumer Product Safety Commission (Parts 1000—1799)

1500.85 (a)(14) added 4699
1512 Authority citation revised 7073
1512.2 (a) revised 7073

Proposed Rules:

0—999 (Ch. I) 2465

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Futures Trading Commission (Parts 1—199)

1 Fee schedule **44036**
Technical correction **63966, 67445**
1.3 (gg)(4), (vv) and (ww) added **58297**
1.12 (g)(3) and (h) amended **62351**
1.32 (a) introductory text revised 5551
1.41a Removed **62353**
1.41c Removed **62353**
1.42 Removed **62353**
1.49 Added 5551
1.55 (h) added **58297**
1.62 (b) amended **62351**
1.65 (d) amended **62351**
1.66 (b)(5)(ii) amended **62351**
3.2 (c) revised **38874**
3.10 (a)(2)(i) revised; (d) removed **38874**
Corrected **41166**
3.11 (a)(2), (3) and (b) revised; (C) and (d) removed **38874**
3.12 (c)(1), (4), (d)(1) introductory text and (f) revised; (d)(2) and (3) redesignated as (d)(3) and (4); new (d)(2) added **38874**
3.12 (g)(2)(i) and (ii) amended **62351**
3.22 Amended **62351**
3.31 (a)(2) redesignated as (a)(3); new (a)(2) added; (a)(1) and new (3) revised; (d) amended **38875**
3.33 (b) introductory text and (e) amended; (b)(3) and (d) removed; (b)(4) through (7) and (c)(2) redesignated as (b)(3) through (6) and (c) **38876**
(e) amended **62351**
3.40 Revised **38876**
3.41 Removed **38876**
3.42 (a)(2), (3), (4) and (6) revised **38876**
3.44 (a)(4) introductory text and (5) revised **38876**
3.46 (a)(6) and (8) revised **38876**
3.50 (c) and (d) amended **62351**
3.55 (e)(2) amended **62351**
3.56 (e)(2) amended **62351**
3.63 Amended **62351**
3.70 (a) amended **62351, 62352**
3 Appendix A amended **62352**
4 Technical correction **44931**
4.2 (a) amended **62352**
4.5 (c) introductory text, (3) and (d)(1) amended; (f)(3) removed; (f)(4) redesignated as (f)(3) **77410**
4.7 (b)(3)(i), (d)(1)(viii), (ix) and (3) amended; (d)(2) revised **77411**
4.12 (b)(3)(vii) removed; (b)(3)(viii) redesignated as new (b)(3)(vii); (b)(3) introductory text, new (vii) and (5)(ii) amended **77411**
4.13 (b)(1)(iv)(A) removed; (b)(1)(iv)(B) redesignated as (b)(1)(vii)(A) **77411**
4.14 (a)(8)(v)(C) removed; (a)(8)(v)(D) redesignated as (a)(8)(v)(C); (a)(8)(iii) and new (v)(C) amended **77411**
4.22 (c) introductory text, (f)(1) and (2)(i) amended **77411**
4.26 (c) removed; (b) redesignated as new (c); new (b) added **42710**
(d) revised **77411**
(d) introductory text amended; (d)(3) removed 12584
4.36 (d) amended **77411**
9.2 (h) amended **62352**
9.11 (c) amended **62352**
9.12 (b) amended **62352**
9.26 Amended **62352**
9.31 (a) amended **62352**
11 Technical correction **39473**
11.2 (a) amended **62352**
11.4 (e) and (f) added **37322**
15.03 (b) revised **64524**
16.07 Amended **62352**
17.03 Amended **62352**
18.03 Amended **62352**
19.00 (a)(3) amended **62352**
21.02a (c) amended **62352**
30 Order **30785, 45056**
30.7 (c) revised 5551
31.6 (f)(1) and (2) amended **62352**
31.13 (n)(1) amended **62352**
31.14 (a) amended **62352**
36.3 (b)(2)(ii) amended **62352**
37 Authority citation revised **62876**
37.2 Revised **62876**
37.5 (f)(1) and (2) amended **62352**
(a), (b) and (f)(1) revised **62876**
37.6 (a), (b) introductory text, (1), (2), (i) introductory text, (iii) and (c) revised **62877**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

TITLE 17 Chapter I—Con.

37.8 (d) amended **62352**
38 Authority citation revised **62877**
38.2 Revised **62877**
38.3 (e)(1) and (2) amended **62352**
(a) revised **62878**
38.4 (a)(2) revised **62878**
38.5 (c) added **62878**
38 Appendix B amended **62352**
39 Authority citation revised **62878**
39.3 (e)(1) and (2) amended **62352**
39.4 Heading revised; (c) text redesignated as (c)(2); (c)(1) added **62878**
40 Fee schedule **38379**
Authority citation revised **62878**
40.1 Amended **62878**
40.3 (a)(4) revised; (a)(5) added **62879**
40.4 (b)(5) and (6) revised; (b)(7) and (8) added **62879**
40.5 (a)(1)(v) and (vi) revised; (a)(1)(vii) added **62879**
40.6 (a)(2) amended; (c)(2)(iii), (iv), (3)(ii)(B), (C) AND (D) revised; (c)(2)(v) and (3)(ii)(E) added **62879**
40.7 (a)(1), (2) and (b) introductory text amended **62352**
(b)(1) revised **62880**
40.8 Added **62880**
40 Appendix C amended **62880**
41 Authority citation revised **36761, 53171, 58297**
Heading revised **53171**
Technical correction **67445**
41.1 (j), (k) and (l) added **36761**
41.3 Redesignated from 41.41 ..... **53171**
(d) amended **62352**
41.25 (a)(2) and (d) added; (b) revised **36761**
41.33 (g)(1) and (2) amended **62352**
41.41 Redesignated as 41.3 ..... **53171**
Added **58297**
41.42—41.49 (Subpart E) Added **53171**
140.72 (a) amended **62352**
140.73 (a) and (b) amended **62352**
140.74 (a), (b) and (c) amended **62352**
140.75 Amended **62352**
140.76 (a) and (b) amended **62352**
140.77 (a), (b) and (c) amended **62353**
140.91 (a) and (b) amended **62353**
140.92 (a), (b) and (c) amended **62353**
140.93 (a), (b) and (c) amended **62353**
140.95 (a), (b) and (c) amended **62353**
140.96 (a) through (d) amended **62353**
140.97 (a), (b) and (c) amended **62353**
140.99 (a)(5) amended; (d)(2) revised **62353**
140.100 Added **45299**
Removed **62354**
140.735–2a Note 7 amended **62353**
145.6 (a) amended **62353**
(b)(2) revised **63539**
145 Appendix A amended **62353, 63539**
150.3 (b) amended **62353**
150.4 (e) amended **62353**
170.12 Amended **62353**
171.28 Amended **62353**
171.31 (a) amended **62353**
190 Technical correction **67445**
190.01 (f) revised; (kk)(9) added **58298**
190.02 (d)(8) amended; (d)(11) and (12) redesignated as(d)(12) and (13); new (d)(11) added **58298**
190.07 (b)(1)(iii)(B)(*3*) revised **58298**
190.08 (a)(2)(v) and (vi) revised; (a)(2)(vii) added **58298**
190.10 (h) added **58298**
(a), (b)(4), (d) heading, (1), (2) and (3) amended **62353**
190 Appendix A amended **58298**
Appendix B revised 5552

Chapter II—Securities and Exchange Commission (Parts 200—399)

200.20b (a) revised **43535**
200.30–3 (a)(77) added **65037**
(a)(10) revised; eff. 4–16–03 12783
200.30–7 (a)(12) added; authority citation removed **30326**
200.30–14 (g)(1)(xv) added **56220**
205 Added 6320
210 Authority citation revised 4871
210.2–01 (c)(2)(iii), (4), (e)(1), (f)(1), (3) and (7) revised; (c)(6), (7), (8) and (f)(17) added; (e)(2) removed; (e)(3) redesignated as (e)(2) 6044
210.2–06 Added 4872
210.2–07 Added 6048
210.3–01 (c) introductory text and (d) amended; (e) revised; (i) added **58503**
210.3–09 Authority citation removed; (a) and (b) amended; (b)(1) through (4) added **58504**
210.3–12 (a) and (b) amended; (g) added **58504**
228 Authority citation revised **57287**
Authority citation amended 4830, 5125, 5998

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

228.10 (h) added 4830
228.303 (c) and (d) added; introductory text and new (c) amended 5998
228.307 Added **57287**
228.401 (e) added 5126
Regulation at 68 FR 5126 corrected 15353
228.406 Added 5126
228.601 Table amended; (b)(14) added 5126
229 Authority citation revised **57287**
Authority citation amended 4831, 5127, 5999
229.10 Heading revised; (h) added 4831
229.101 (e) revised **58504**
229.303 Authority citation removed; (a)(4), (5) and (c) added; (a) introductory text, (3)(iv), (5)(ii)(D) and *Instructions* amended 5999
229.307 Added **57287**
229.401 (h) added 5127
Regulation at 68 FR 5127 corrected 15354
229.406 Added 5127
229.601 Table amended; (b)(14) added 5127
230 Authority citation amended **19673**
Authority citation amended 5128
230.134b Revised **19868**
230.238 Added 192
230.403 (c) revised; authority citation removed **36698**
230.405 Amended **19673**
230.430 (b) introductory text revised **19868**
230.430A (e) revised **19869**
230.493 Revised **36699**
230.495 (a), (c) and (d) revised **19869**
230.496 Revised **19869**
230.497 (c) and (e) revised **19869**
231 Interpretive releases **43246**
232 Authority citation revised **57287**
232.100 (a) and (c) revised **36699**
232.101 (a)(1)(iii) note, (c)(16) and (17) redesignated as (a)(1)(iii) Note 1, (c)(15) and (16); (a)(1)(iii) Note 2, (a)(1)(vi), (vii), (viii) and (b)(7) through (10) added; (a)(1)(iv), (v), (c)(5), (6), (14), new (c)(15) and (16) amended; (b)(1), (6) and (c)(9) revised; (c)(15) and (d) removed **36699**
232.302 (a) and (b) revised **57287**
232.303 (b) revised **36700**
232.306 (a) revised; (b) redesignated as (e); new (b), (c) and (d) added **36700**
232.311 (f), (g) and (h) redesignated as (h), (i) and (j); new (f) and (g) added **36700**
232.601 Removed **36700**
239 Authority citation amended **19869**
239.14 Form N–2 amended 6582
239.15A Form N–1A amended 6581
239.17a Form N–3 amended 6583
239.17b Form N–4 amended **69979**
239.17c Added **19870**
Form N–6 amended **69981**
239.31 Form F–1 amended **36700**
239.32 Form F–2 amended **36701**
239.33 Form F–3 amended **36701**
239.34 Form F–4 amended **36701**
239.36 Form F–6 amended **36702**
239.37 Form F–7 amended **36702**
239.38 Form F–8 amended **36702**
239.39 Form F–9 amended **36703**
239.40 Form F–10 amended **36703**
239.41 Form F–80 amended **36704**
239.42 Form F–X amended **36709**
239.800 Form CB amended **36707**
240 Authority citation amended **57288, 58299**
Authority citation amended 4355, 5364
240.3a4–1 Undesignated center heading removed **19673**
240.3a5–1 Revised 8700
240.3a11–1 Revised **19673**
240.3b–18 Revised 8700
240.6h–1 Added **36762**
240.9b–1 (b)(1) amended; (c)(8) revised; authority citation removed 192
240.10A–2 Added 6048
240.10b–10 (a)(2)(i)(C), (b)(2) and (3) amended; (a)(7)(i) through (iv) and authority citation removed; (e) redesignated as (f); new (e) added **58312**
240.11aC1–7 Removed **79458**
240.11d2–1 Added **58313**
240.12a–9 Added 192
240.12b–2 Amended **58505**
240.12b–12 (d) revised; authority citation removed **36704**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

TITLE 17 Chapter II—Con.

240.12b–15 Revised **57288**
240.12b–25 heading, (a) and (b)(2)(ii) revised 5364
240.12h–1 (b)(2) and (c) amended; (d) and (e) added; authority citation removed 192
240.13a–1 (b) revised; authority citation removed 4355
240.13a–10 Note redesignated as Note 1; Note 2 added **57288**
(b), (c), (e)(2) and (f) amended; (j) added **58505**
240.13a–14 Added **57288**
240.13a–15 Added **57289**
(a) revised 5364
240.13e–102 Amended **36705**
240.14a–101 Amended 6048
240.14d–102 Amended **36705**
240.14d–103 Amended **36706**
240.15a–8 Revised 8701
240.15a–11 Added 8701
240.15c3–3 Authority citation removed; (a)(1) amended; (a)(14), (15) and (o) added **58299**
(b)(3)(iii) revised; authority citation removed; eff. 4–16–03 12783
240.15d–5 Corrected; CFR correction **59779**
240.15d–10 Authority citation revised **57288**
Note redesignated as Note 1; Note 2 added **57289**
(b), (c), (e)(2) and (f) amended; (j) added **58505**
240.15d–11 (b) revised; authority citation removed 4355
240.15d–14 Added **57289**
240.15d–15 Added **57290**
(a) revised 5364
240.16a–2 Introductory text amended **43535**
240.16a–3 (d) revised **43535**
(f)(1)(i)(A) and (g) revised **56467**
240.16a–6 (a) introductory text and (b) revised **56467**
240.16a–8 (a)(1) revised **56467**
240.17a–3 (f) added **58299**
240.17a–3 (f) and (g) correctly designated as (g) and (h); (12)(i), (k) and (l)(1) through (4) corrected 15354
240.17Ad–17 (b)(1)(i) amended **14316**
240.17a–4 (b)(9) revised; (k) and (l) redesignated as as (l) and (m); new (k) added; eff. in part 5–2–03 ..... **58299**
240.17a–5 (l)(4) added **58300**
240.17a–7 (a)(1) and (2) amended; (c) redesignated as (d); new (c) added **58300**
240.17a–11 (i) added **58300**
240.17a–13 (e) redesignated as (f); new (e) added **58300**
240.31–1 Amended **46108**
241 Interpretive releases **43246**
242 Authority citation revised **53176**
Heading revised 9492
242.100 Undesignated center heading added **53176**
242.400 Added **53176**
242.401 Added **53176**
242.402 Added **53176**
242.403 Added **53176**
242.404 Added **53176**
242.405 Added **53176**
242.406 Added **53176**
242.500 Added 9492
242.501 Added 9492
242.502 Added 9492
242.503 Added 9492
242.504 Added 9492
242.505 Added 9492
244 Added 4832
245 Added 4355
249 Authority citation amended **57290**
Authority citation amended 5128, 5364, 6001, 6049
249.103 Amended **43535**
Form 3 amended **56467**
249.104 Amended **43535**
Form 4 amended **56468**
249.105 Amended **43535**
Form 5 amended **56468**
249.220f Form 20–F amended **36706, 57293**
Form 20–F amended 4358, 5129, 6001, 6049
249.240f Form 40–F amended **36707, 57294**
Form 40–F amended 4359, 5130, 6001, 6049
249.250 Form F–X amended **36709**
249.306 Form 6–K amended **36708**
Authority citation revised 4358
Form 8–K amended 4359, 4833, 5128
249.308a Form 10–Q amended **57290**
Revised; Form 10–Q amended **58506**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

249.308b Form 10–QSB amended **57291**
249.310 Authority citation revised **57290**
Form 10–K amended **57292**
Form 10–K amended 6050
Regulation at 69 FR 6050 corrected 15355
Revised; Form 10–K amended **58506**
Form 10–K amended 5131
249.310b Form 10–KSB amended **57293**
Form 10–KSB amended 5132, 6050
249.322 (a) revised; Form 12b–25 amended 5364
249.330 Revised 5364
Form N–SAR amended 5366
249.331 Added 5365
Form N–CSR added 5368, 6051
Form N–CSR amended 6584
249.330 Form N–SAR amended **57296**
249.480 Form CB amended **36707**
269.5 Form F–X amended **36709**
270 Authority citation amended **19870, 57295**
Authority citation amended 5365
270.3a–1 Introductory text and (b) revised **43536**
270.3a–2 (a) introductory text revised **43536**
270.3a–3 Introductory text and (b) revised **43536**
270.3a–5 (a) introductory text revised **43536**
270.3a–6 (a) revised **43536**
270.6c–6 (h) introductory text revised **43536**
270.6e–2 (b)(15)(iv) revised **43536**
270.6e–3(T) (b)(15)(iii)(B) revised **43536**
270.8b–11 Authority citation removed; (b) revised **19870**
270.8b–12 (b) revised **19870**
270.8b–15 Amended 5365
270.10f–3 (b)(1) and (4) revised **31079**
(b) redesignated as (c); (a)(6), (7), (8) and new (b) added; (c) heading and (7) revised 3152
270.12d3–1 (c) revised; (d)(9) added 3152
270.17a–6 Revised 3152
270.17a–8 Revised **48518**
270.17a–10 Added 3153
270.17d–1 (d)(5) and (6) revised 3153
270.17e–1 (b)(3) and (d) revised 3154
270.17f–4 Revised 8442
270.30a–1 Revised 5364
270.30a–2 Added **57295**
Heading, (a) and (c) revised 5365
270.30a–3 Added 5365
270.30b1–1 Revised 5365
270.30b1–3 Amended **57296**
Revised 5365
270.30b1–4 Added 6581
270.30b2–1 Revised 5366
270.30d–1 Added 5366
270.30f–1 Redesignated as 270.30h–1; revised **43537**
270.30h–1 Redesignated from 270.30f–1 ..... **43537**
274 Authority citation revised, ... **19870, 57296, 69979**
Authority citation revised 5366
Authority citation amended 6051, 6581
Form N–1A amended **19870**
274.11A Form N–1A amended 6581
274.11a–1 Form N–2 amended 6582
274.11b Form N–3 amended 6583
274.11c Form N–4 amended **69979**
274.11d Added **19870**
Form N–6 amended **69981**
274.12 Revised; Form N–8B–2 amended; Form N–6 added **19870**
274.101 Form N–SAR amended **31079, 57296**
Revised; Form N–SAR amended 5366
274.128 Added 5368
Form N–CSR amended 6051, 6584
274.129 Added; Form N–PX amended 6584
274.202 Revised **43537**
Form 3 amended **43537, 56467**
274.203 Revised **43537**
275.203A–2 (f) added **77625**
275.204–2 (c) introductory text. (1) and (2) redesignated as (c)(1) introductory text, (i) and (ii); (c)(2) added; (e)(1) revised 6592
275.206(4)–6 Added 6593
279.1 Form ADV amended **77625**

Chapter IV—Department of the Treasury (Parts 400—499)

420.2 (c) revised **77414**
420.3 (c)(1), (2) and (3) revised **77415**
420 Appendix B amended **77415**
Appendix B corrected 402

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 17

Proposed Rules:

1 ..... **52641**
..... 12319
3 ..... **19358**
4 ..... **65743, 68785, 69598, 77446**
..... 2254, 12001, 12622
15 ..... **50608**
37 ..... **20702**
38 ..... **20702**
39 ..... **20702,**
40 ..... **20702, 65325**
71 ..... **69598**
190 ..... **52641**
201 8138
205 ..... **71670**
..... 6324
210 ..... **44964, 66208, 71018, 76780**
..... 160
228 ..... **35620, 42914, 66208, 68054, 68790, 77594**
..... 2638, 15600
229 ..... **19896, 35620, 42914, 44964, 66208, 68054, 68790, 77594**
..... 2638, 15600
230 ..... **19914, 36712, 50326, 79466**
232 ..... **41877, 51508, 79466**
239 ..... **19886, 19914, 36712, 60828, 79466**
..... 160
240 ..... **19896, 30628, 38588, 38610, 39642, 39647, 41877, 42914, 50326, 51508, 59748, 65325, 66208, 67496, 69430, 71909, 76780, 77594, 79466**
..... 2638, 6324, 15600
242 ..... **51510**
244 ..... **68790**
245 ..... **69430**
249 ..... **19896, 19914, 35620, 38610, 41877, 42914, 51508, 57298, 60828, 68054, 68790, 69430, 76780, 79466**
..... 160, 2638, 6324, 15600
250 ..... **79466**
259 ..... **79466**
260 ..... **79466**
269 ..... **79466**
270 ..... **31081, 36712, 57298, 66208, 71915**
..... 160, 7038, 15600
274 ..... **19886, 36712, 57298, 60828, 66208, 76780, 77594, 79466**
..... 160, 2638, 15600
275 ..... **19500, 48579, 60841**
..... 7038
279 ..... **19500, 48579**
420 ..... **49630**

TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

2.8 Removed **31069**
11 Appendix A revised **70159**
35 Heading revised **31069**
Order **39272**
35.1 Heading revised; (g) added **31069**
35.10a Added **31069**
35.10b Added **31069**
35.25 (c)(1)(ii)(C) removed; (c)(1)(ii)(D) redesignated as new (c)(1)(ii)(C) **36096**
101 Amended **67701**
Regulation at 67 FR 67701 eff. date corrected **70007**
141.1 (b)(1)(i) and (2) revised **36096**
157.208 (d) Table I revised 8711
157.215 (a) Table II revised 8711
201 Amended **67703**
Regulation at 67 FR 67703 eff. date corrected **70007**
260.1 (b) revised 269
260.2 (b) revised 269
284 Policy statement **37669**
Order **44529, 49564**
284.12 (a) removed; (b) and (c) redesignated as new (a) and (b); new (a)(1)(i) through (v) amended **30794**
(a)(1)(i), (ii), (iii), (iv), and (v) revised; eff. 4–21–03 13819
284.241—284.242 (Subpart H) Removed **72099**
352 Amended **67706**
Regulation at 67 FR 67706 eff. date corrected **70007**
357.2 (c)(3) revised 269
375.302 (x) added; eff. 1–7–03 ..... **52410**
375.304 (b)(1)(iv) revised; (b)(1)(v) added 6609
375.313 Added; eff. 4–2–03 9869
381.302 (a) amended **54087**
381.303 (a) amended **54087**
381.304 (a) amended **54087**
381.305 (a) amended **54087**
381.403 Amended **54087**
381.505 (a) amended **54087**
381.801 Amended **54087**
385 Authority citation revised **52412**

NOTE: **Boldface page numbers indicate 2002 changes.**

385.1601—385.1602 (Subpart P) Added **52412**
385.2011 (c)(3) revised **36096**
(c)(3) revised 269
388 ..... **64835**
388.109 (a)(4)(i) revised **21996**
388.112 Revised; eff. 4–2–03 9869
388.113 Added; eff. 4–2–03 9870
390 Added **52410**
390.1 Eff. date extended 1964
Regulation at 67 FR 52410 suspended 7416
Chapter I Form 1–F corrected 45

Chapter III—Delaware River Basin Commission (Parts 400—499)

401.101—401.119 (Subpart H) Authority citation revised **56753**
401.110 (a) revised **56753**

Chapter XIII—Tennessee Valley Authority (Parts 1300—1399)

1301.4 (a) revised 4700
1308 Comment request 1964

Proposed Rules:

1—399 (Ch. I) **16071, 20922**
2 ..... **51516**
4 ..... **58739**
..... 13988
5 13988
16 ..... **58739**
..... 13988
35 ..... **22250, 54749, 55376, 55452, 57187, 58751, 61049, 63327, 67339, 69816, 70194, 70890, 76122, 76321, 77007**
..... 3842, 4401
37 ..... **35062**
101 ..... **51150, 57994, 69816, 70890**
154 ..... **62918, 69816, 70890**
157 4120
161 ..... **35062, 62918**
201 ..... **51150, 57994, 69816, 70890**
250 ..... **35062, 62918**
284 ..... **19136, 35062, 39315, 48592, 54387, 62918, 72870**
346 ..... **69816, 70890**
352 ..... **51150, 57994, 69816, 70890**
358 ..... **35062**
375 ..... **57994, 64835**
385 13988
388 ..... **57994**

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

4 Authority citation amended; eff. 4–21–03 13625
Authority citation amended 13820
Technical correction 14478
4.7 Heading revised; (b) text redesignated as (b)(1); new (b)(2) amended; (b)(2), (3), (4) and (e) added **66331**
(b)(3)(i) corrected 1801
4.7a (c)(1) amended; (c)(4) and (f) added **66332**
4.8 (b) amended **66332**
4.30 (n) added **66332**
4.37 (d) through (g) redesignated as (e) through (h); (c) and new (e) amended; new (d) added **68032**
4.80 (b)(2) revised 13820
4.92 Amended 13820
4.94 (b)j amended **52862**
4.94a Added; eff. 4–21–03 13625
10 Authority citation amended **39289**
10.183 Revised **39289**
10.199 Revised **62882**
10.212 Amended; interim 13824
10.213 (a)(1) through (a)(5) and (8) revised; (a)(7) amended; (b)(2) redesignated as (b)(3); (a)(11) and new (b)(2) added; interim 13824
10.214 (b) and (c) revised; interim 13825
10.215 (a) revised; interim 13827
10.216 (b)(4)(ii) amended; interim 13827
10.217 (a)(2) and (3) amended; interim 13827
10.222 Amended; interim 13831
10.223 (a)(1), (2), (3), (6), and (12) revised; (b), (c), and new (c)(1)(ii) redesignated as (c), (d), and new (c)(1)(iii); (a)(4), (11), and (c)(1)(iii) amended; (a)(13), new (b), (c)(1)(ii) and (3) added; interim 13832
10.224 (b) and (c) revised; interim 13833
10.225 (a) revised; interim 13835

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 19 Chapter I—Con.

10.226 (b)(4)(ii) amended; interim 13835
10.227 (a)(2), (3), and (b)(3) amended; interim 13835
12 Technical correction **43247, 66333**
12.104g (a) amended **38878, 47449, 59160, 61260**
12.145 Undesignated center heading and section added 13839
19.1 (a) heading, (11) and (c) added; (a)(1) and (b) revised **68032**
19.2 (d) added; (f) amended **68032**
19.9 (a) revised **68032**
19.12 (a) introductory text revised **68033**
24.24 (e)(4)(iv) revised **31953**
101.3 (b)(1) table amended 3384
102.21 (b)(5) and (e)(1) table corrected; interim **51752**
(e)(2)(ii) and (iii) introductory text revised 8713
113 Authority citation amended; eff. 4–21–03 13626
Technical correction 14478
113.64 (a) amended; (c) through (f) redesignated as (d) through (g); new (c) added **66333**
113.75 Added; eff. 4–21–03 13626
113 Appendix C added; eff. 4–21–03 13626
122 Authority citation amended **42712, 55721**
122.15 (b) amended **35723**
122.48 (c) revised **55721**
122.49a (c)(2) amended **42712**
122.49b Added **42712**
122.50 Heading revised; (d), (e) and (f) redesignated as (e), (f) and (g); (c) and new (e) amended **68033**
122.181 Amended; interim **48984**
122.182 (a), (c) and (d) revised; (b), (e), (f) and (g) amended; interim **48984**
Corrected **51928**
122.183 (a) and (d) revised; (c) amended; interim **48985**
122.184 Revised; interim **48986**
Corrected **51928**
122.185 Revised; interim **48986**
122.186 Revised; interim **48986**
122.187 Revised; interim **48986**
Corrected **51928, 54023**
122.188 Heading and (a) through (d) amended; interim **48988**
122.189 Added **48988**
123.10 Heading revised; (d), (e) and (f) redesignated as (e), (f) and (g); (c) and new (e) amended; new (d) added; (a) introductory text revised **68033**
127 Authority citation amended **68033**
127.1 Authority citation removed **68034**
127.2 Authority citation removed **68034**
127.11 Authority citation removed **68034**
127.12 Authority citation removed **68034**
127.13 Authority citation removed; (a) revised **68034**
127.14 Authority citation removed; (a) revised **68034**
127.21 Authority citation removed; amended **68034**
127.23 Authority citation removed **68034**
127.24 Authority citation removed **68034**
127.25 Authority citation removed **68034**
127.26 Authority citation removed **68034**
127.27 Authority citation removed **68034**
127.28 Authority citation removed; (a) amended **68034**
127.29 Authority citation removed **68034**
127.31 Authority citation removed **68034**
127.32 Authority citation removed **68034**
127.33 Authority citation removed **68034**
127.34 Authority citation removed **68034**
127.35 Authority citation removed **68034**
127.36 Authority citation removed **68034**
127.37 Authority citation removed **68034**
127.41—127.43 (Subpart E) Added **68034**
132.16 Authority citation revised **46588**
Removed **46588**

NOTE: **Boldface page numbers indicate 2002 changes.**

132.18 Regulation at 66 FR 21666 confirmed **55723**
141 Authority citation amended **36097**
141.4 (b)(3) revised **36097**
141.5 Revised **68035**
141.51 Revised 8719
141.57 Added 8719
142.2 (a) revised **68035**
142.21 (e)(1) and (2) amended; (g) redesignated as (h); new (g) added; new (h) revised 8721
142.22 (a) amended 8721
163 Regulation at 66 FR 21667 confirmed **55723**
163 Appendix amended **46588, 62884**
177 Authority citation revised **53496**
177.2 (b)(2)(ii)(B) amended **53496**
177.9 Heading revised; (a) and (c) amended; (d) and (e) removed **53496**
177.10 (a) and (e) amended; (b) removed; (c) revised **53496**
177.11 (b)(7) amended **53496**
177.12 Redesignated as 177.13; new 177.12 added **53497**
(c)(2)(ii) and (d)(1)(viii) corrected **54733**
177.13 Redesignated from 177.12 ..... **53497**
178 Technical correction 14478
178.2 Table amended; OMB numbers **53499, 66333, 68035**
Table amended; OMB numbers; eff. 4–21–03 13626
181 Authority citation revised **15482**
181.72 (b) revised **15482**
181 Appendix amended **15482**
Appendix corrected **19810**
191 Authority citation amended **48548**
191.13 Existing text designated as (a); new (a) heading and (b) added; new (a) amended **16637**
191.26 (b)(2) and (3) amended; (b)(4) added; interim **48370**
191.51 (b)(2) *Example 2* revised **48548**
191.171 (a) revised **16637**
191.172 (a) revised **16637**
191.173 (e) revised **16637**
191.175 (b) redesignated as (b)(1); (a) amended; new (b)(1) heading and (2) added; (c) revised **16637**
191 Appendix A amended **16638**

Chapter II—United States International Trade Commission (Parts 200—299)

201 Waiver 3175
201.8 (f) and (g) added **68037**
201.16 (e) added **68037**

Chapter III—International Trade Administration, Department of Commerce (Parts 300—399)

360 Added **79849**

Proposed Rules:

1—199 (Ch. I) **70706**
4 ..... **51519**
10 14478
12 ..... **51800**
..... 13636
24 ..... **62920**
..... 13636
101 ..... **54137, 62920, 71510**
..... 1172
103 1173
111 ..... **63576**
113 ..... **51519**
..... 13638
122 ..... **71510, 71512**
123 ..... **71512**
133 ..... **39321**
141 ..... **16664, 39322**
142 ..... **16664**
146 ..... **48594**
151 ..... **39322**
163 14478
181 12011
201 ..... **20709, 38614**
204 ..... **38614**
206 ..... **38614**
207 ..... **38614**
400—499 (Ch. III) **47338**

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board (Parts 200—399)

1 Revised **78885**
30 (Subchapter C) Revised **78876**
30.112 OMB number pending **78874**
OMB number 14316
30.213 OMB number pending **78874**
OMB number 14316
217.9 (b)(1) amended; (b)(3) added **42714**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

TITLE 20 Chapter II—Con.

217.30 (b) removed; (c) redesignated as new (b); new (c) added **42714**
260 Heading revised **77153**
260.1 Heading and (a) introductory text revised; (b), (d)(1) and (2) amended **77153**
260.2 Heading revised **77153**
260.3 Heading, (a), introductory text, (b), (c), (d) and (f) revised **77153**
260.4 Heading and (b) through (i) revised **77153**
260.5 Revised **77154**
260.8 Amended **77155**
260.9 (d) through (g) redesignated as (e) through (h); (b), new (e) and new (f) revised; new (d) added **77155**
(b) correctly amended 6820
260.10 Revised **77156**
320.5 Amended **77156**
320.6 (b) introductory text, (d) and (e) revised; (b)(8) and (f) added **77156**
320.10 (e) revised **77156**
320.11 (a) and (f) revised; (d), (e), and (g) amended **77156**
320.12 Revised **77157**
320.25 (a), (b) and (d) revised **77157**
320.28 Revised **77157**
320.39 Revised **77157**
(a) correctly amended 6820
320.40 Heading revised; (d) added **77158**
320.49 Revised **77158**

Chapter III—Social Security Administration (Parts 400—499)

404 Regulation at 65 FR 42285 confirmed **20893**
404.201 Revised 4701
404.277 Revised 4702
404.304 Revised 4702
404.310 Revised 4702
404.311 Revised 4702
404.312 Revised 4702
404.313 Revised 4703
404.315 Heading and (a) introductory text revised 4704
404.316 (b)(2) revised 4704
404.317 Revised 4704
404.321 (a) and (c)(1) revised 4704
404.335 Revised 4704
404.336 Revised 4705
404.337 Revised 4706
404.338 Revised 4706
404.352 Revised 4707
404.401—404.480 (Subpart E) Authority citation revised 4707
404.409 Added 4707
404.410 Revised 4708
404.411 Revised 4709
404.412 Revised 4710
404.413 Revised 4710
404.421 Revised 4710
404.459 Regulation at 65 FR 42285 confirmed **20893**
404.621 Revised 4711
404.623 Revised 4712
404.929 Revised 5218
404.936 Revised 5218
404.938 Revised 5219
404.950 (a) and (e) revised 5219
416.1429 Revised 5219
416.1436 Revised 5220
416.1438 Revised 5220
416.1450 (a) and (e) revised 5221
404.1501—404.1599 (Subpart P) Appendix 1 amended **20024, 43538**
Appendix 1 corrected **35723**
416.570 Amended **38383**
416.572 Heading, (a), (b), (c)(2) and (e) revised **38383**
416.1321—416.1340 (Subpart M) Regulation at 65 FR 42286 confirmed **20893**
416.1340 Regulation at 65 FR 42286 confirmed **20893**

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

625.5 Regulation at 66 FR 56962 confirmed; (c)(2) and (3) revised; eff. in part 4–7–03 10937
655 Regulation at 65 FR 43542 withdrawn **59779**
655.0 Regulation at 65 FR 43542 withdrawn **59779**
655.00 Regulation at 65 FR 43542 withdrawn **59779**
655.90—655.114 (Subpart B) Regulation at 65 FR 43542 withdrawn **59779**
655.90 Regulation at 65 FR 43542 withdrawn **59779**
655.92 Regulation at 65 FR 43542 withdrawn **59779**
655.100 Regulation at 65 FR 43543 withdrawn **59779**
655.101 Regulation at 65 FR 43543 withdrawn **59779**
655.103 Regulation at 65 FR 43543 withdrawn **59779**
655.104 Regulation at 65 FR 43543 withdrawn **59779**
655.105 Regulation at 65 FR 43543 withdrawn **59779**
655.106 Regulation at 65 FR 43543 and 43544 withdrawn **59779**
655.108 Regulation at 65 FR 43544 withdrawn **59779**
655.112 Regulation at 65 FR 43544 withdrawn **59779**

Proposed Rules:

206 ..... **77447**
217 ..... **77448**
218 ..... **41205**
220 ..... **41205**
225 ..... **41205**
404 ..... **19138, 39904, 69161, 69164, 78196**
..... 12639
408 ..... **55744**
416 ..... **22021, 39904, 69161, 69164, 78196**
..... 12639
422 ..... **69164**
..... 14563
429 ..... **77942**
604 ..... **72122**
655 ..... **30466, 59797, 64074**
656 ..... **30466**

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

1.101 Regulation at 66 FR 65447 eff. date stayed **34387**
2 Authority citation revised **48384**
Technical correction **49396, 58678**
2.125 Revised; eff. 1–20–03 ..... **48384**
5.28 (c)(1) revised; (c)(10) redesignated as (c)(11); new (c)(10) added **53306**
Regulation at 67 FR 53306 eff. date confirmed **71461**
14.100 (c)(7) heading and (ii) revised **45900**
16.42 (a) revised **53306**
Regulation at 67 FR 53306 eff. date confirmed **71461**
20.100 (c)(41) added **35729**
58.3 (e)(23) added **35729**
(e)(9) correctly removed; CFR correction 6609
73.125 Added **35431**
Regulation at 67 FR 35431 confirmed **49567**
73.3128 Added **65312**
Regulation at 67 FR 65312 eff. date confirmed 7416
101 Policy statement **79851**
Nomenclature change 15355
101.65 (d)(2)(ii)(C), (3)(ii)(C) and (4)(ii)(B) suspended to 1–1–06 ..... **30796**
101.80 (c)(2)(ii) redesignated as (c)(2)(iii); heading, (a)(4), (c)(1), (2)(i) introductory text, (B), (C), (E), (F), new (iii), (d)(1), (4) and (e) introductory text revised; (b) amended; (c)(2)(i)(H), (ii), (e)(1)(iii), (iv), (2)(iii) and (iv) added; interim **71470**
101.81 (c)(2)(iii)(A)(*1*) revised; (c)(2)(iii)(A)(*2*) redesignated as (c)(2)(iii)(A)(*3*); (c)(2)(ii)(A)(*4*) and (iii)(A)(*2*) added; interim **61782**
163.124 Added; eff. 1–1–04 ..... **62177**
165 Nomenclature change 15355
165.110 (b)(5)(i)(D) added; (b)(5)(ii) revised; eff. 5–2–03 9881
170.3 (e)(2) revised; (e)(3) added **35729**
170.100—170.106 (Subpart D) Added **35729**
171.1 (i)(1) revised **35731**
171.7 (c) added **35731**
172 Nomenclature change 15355
172.133 (b)(2) and (3) correctly revised; CFR correction **66045**
172.380 Added 9003
172.829 Added **45310**
173 Nomenclature change 15355
173.325 (g) redesignated as (h); new (g) added **15720**
173.357 (a)(2) table amended **42716**
173.370 (b)(1) revised **61784**
174.5 (d)(5) added **35731**
177 Nomenclature change 15355
178 Nomenclature change 15355
179.25 (c) revised **35731**
184 Nomenclature change 15355
201 Compliance date extension **16304**
Technical correction 12584
201.24 Added 6081

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

TITLE 21 Chapter I—Con.

201.323 Regulation at 65 FR 4110 eff. date delayed to 1–26–04.....**70691**
201.323 (c)(3) amended; eff. 1–16–04 .....**70692**
203.3 Regulation at 64 FR 67761 eff. date delayed in part.....4912
203.50 Regulation at 64 FR 67761 eff. date delayed.....4912
207.20 Regulation at 66 FR 5466 eff. date delayed to 1–21–04 2690
211.198 Regulation at 67 FR 5056 eff. date delayed; interim.....**49568**
Regulation at 67 FR 5056 withdrawn 15355
(a) amended; eff. 6–30–03 15364
226.1 Regulation at 67 FR 5056 eff. date delayed; interim.....**49568**
Regulation at 67 FR 5056 withdrawn 15355
Existing text designated as (a); (b) added; eff. 6–30–03 15364
310.500 Removed.....**42997**
310.545 (a)(28)(i) heading added; (a)(28)(ii) and (d)(34) through (36) added; (d)(28) revised.....**31125**
(a)(12)(iv)(C) and (d)(30) added **31127**
314.600—314.650 (Subpart I) Added **37995**
314.94 (a)(9)(ii), (iii) and (iv) amended; (a)(9)(v) revised **77672**
314.127 (a)(8)(ii)(A) introductory text, (B) and (C) amended **77672**
320.1 (c) revised; (e) amended.....**77672**
320.21 (d)(1) removed; (d)(2) and (3) redesignated as (d)(1) and (2); (a)(1), (2), (b)(1), (2), (c)(1), new (d)(2)(i), new (ii), (e), (f), (g) introductory text, (2) and (h) revised.....**77672**
320.22 (a), (b)(1)(ii), (2)(ii), (3)(i), (ii), (iii), (c), (d) introductory text, (2)(i), (iv) and (4)(i) revised; (b) introductory text and (e) amended.....**77673**
320.23 Heading revised; (a)(1) amended **77673**
320.24 Heading, (b)(5), (6) and (c) introductory text revised; (a) and (b)(4) amended **77673**
320.25 (a)(2) removed; (a)(3) redesignated as (a)(2); new (a)(2), (d)(1), (e)(1) introductory text, (i) and (f) heading revised; (f) amended.....**77674**
320.26 Heading and (a)(1) revised **77674**
320.27 (a)(3)(iv), (d)(1) and (2) revised; (b)(2) and (3)(i) amended.....**77674**
320.28 Amended **77674**
320.29 Heading and (a) revised; (b) amended.....**77674**
320.30 (c) revised.....**77674**
320.31 (b) introductory text and (3) amended **77674**
330 Compliance date extension **16304**
331 Compliance date extension **16304**
336.50 (c)(8) added; eff. 12–8–03.....**72559**
338.50 (c)(5) added; eff. 12–8–03.....**72559**
341 Compliance date extension **16304**
341.40 Added; eff. 12–23–04.....**78168**
341.70 (b) added; eff. 12–23–04 .....**78170**
341.72 (c)(6)(iv) and (7) added; eff. 12–8–03 .....**72559**
341.74 (c)(4)(viii)(C) and (ix)(C) added; eff. 12–8–03.....**72559**
341.85 Added; eff. 12–23–04.....**78170**
346 Compliance date extension **16304**
349.20 Revised.....7921
349.78 (a) revised.....7921
352.10 (f) through (n) revised.....**41823**
352.20 (a)(1) and (2) revised **41823**
355 Compliance date extension **16304**
358 Compliance date extension **16304**
369 Compliance date extension **16304**
500.80 (a) amended.....**78174**
500.82 (b) amended.....**78174**
500.84 Heading and (c)(2) revised; (c)(1) amended; (c)(3) added **78174**
500.88 (b) and (c) revised.....**78174**
510.88b (c) amended.....**67521**
510.88f (b) amended **67521**
510.300 Regulation at 67 FR 5056 eff. date delayed.....**49568**
Regulation at 67 FR 5056 withdrawn 15355
Removed; eff. 6–30–03.....15364
510.302 Regulation at 67 FR 5057 eff. date delayed.....**49568**
Regulation at 67 FR 5057 withdrawn 15355
Removed; eff. 6–30–03 15365
510.600 (c)(1) table and (c)(2) table amended.....**17283, 41824, 42717, 42997, 43247, 45900, 50802, 51079, 51080, 63055, 67520, 67521, 72366, 78354, 78355, 78684**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

(c)(1) table and (c)(2) table amended.....1161, 4712, 4914, 4916, 13226, 15369
514 Regulation at 67 FR 5057 eff. date delayed.....**49568**
Regulation at 67 FR 5057 withdrawn 15355
Authority citation revised 15365
514.3 Regulation at 67 FR 5057 eff. date delayed.....**49568**
Regulation at 67 FR 5057 withdrawn 15355
Added; eff. 6–30–03.....15365
514.8 Regulation at 67 FR 5057 eff. date delayed.....**49568**
Regulation at 67 FR 5057 withdrawn 15355
(a)(1) and (5) amended; (a)(6) revised; eff. 6–30–03 15365
514.11 Regulation at 67 FR 5057 eff. date delayed.....**49568**
Regulation at 67 FR 5057 withdrawn 15355
(a) amended; eff. 6–30–03 15365
514.15 Regulation at 67 FR 5057 eff. date delayed.....**49568**
Regulation at 67 FR 5057 withdrawn 15355
(b) amended; eff. 6–30–03 15365
514.80 Regulation at 67 FR 5057 eff. date delayed.....**49568**
Regulation at 67 FR 5057 withdrawn 15355
Added; eff. 6–30–03.....15365
520.44 (b) amended.....**78355**
520.88b (c) amended.....**67521**
520.88f (b) amended **67571**
520.154c (b) amended.....**78355**
520.309 (a), (b) and (d) revised **65038**
(b), (d)(1) and (2) revised.....**65697**
520.390a (b)(2) amended.....4914
520.445a (b) amended.....**78355**
520.445b (b) amended.....**78355**
520.445c (b) amended.....**78355**
520.446 Revised **54954**
520.447 Revised **54954**
(b)(2) amended.....**78684**
520.530 (b) amended.....**78355**
520.531 (b) amended.....**78355**
520.538 Added **68760**
520.540b (b)(2) amended.....4914
520.580 (b)(1) amended **43248**
520.622a (a)(3) amended.....4914
520.823 (b) amended 4914
520.905b (c) redesignated as (d); new (c) added; (d)(1)(iii) and (2)(iii) amended; (a), (d)(1)(i), (2)(i) and (3)(i) revised **47450**
520.955 Added **78357**
520.1192 (b)(2) amended **71820**
520.1193 (b)(2) amended **21996**
520.1194 Removed.....**50597**
520.1195 Revised **50597**
520.1196 Heading and (b) amended **21996**
520.1242a (b)(1) amended **63055**
(b)(4) added 4916
520.1242b (c) amended.....**63055**
520.1242c (b) amended.....**63055**
520.1242e (b) amended.....**63055**
520.1242f (b) amended.....**63055**
520.1263c (a), (b) and (d) revised **17284**
(d)(1)(iii) amended **71819, 78356**
(b) amended 3817
520.1380 (c) amended **67521**
520.1484 (a) and (b) revised **72366**
(b)(1) and (2) amended.....**78971**
(b)(2) amended.....4914
520.1660d (d)(1)(iii)(C) amended.....**51081**
(b)(7) amended.....4914
520.1696b (b) amended 4914
520.1720a (b)(3) amended **67521**
(b)(3) amended.....4914
520.1720d (b) amended 4915
520.2041 (b) amended **21996**
520.2043 Revised **43248**
520.2044 (a) and (b) revised 13627
520.2123a (b) amended 4915
520.2123b (b) amended 4915
520.2184 (b) amended **78355**
520.2240a (c) amended **78355**
520.2240b (c) amended **78355**
520.2260a (a)(1) amended **78355**
520.2260b (c)(1) and (e)(1) amended 4915
520.2261a (a) amended.....**78355**
520.2261b (a) amended.....**78355**
520.2345c (b) amended.....**78355**
520.2345d (a)(3), (d)(1)(iii) and (2)(iii) amended **78355**
522.234 (b) amended.....**63055**
522.314 Heading, (a), (d)(1)(i), (iii) and (2) revised.....**45901**
522.522 Added **78972**
522.690 Revised **41824**
522.775 (b) amended.....**67521**
522.820 (a) amended 4915
522.940 (c)(1) amended **78355**
522.1010 (b)(3) amended **18086**
522.1066 (b) amended **67521**
522.1078 Revised **68759**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

TITLE 21 Chapter I—Con.

522.1085 (b) amended **67521**
522.1222a Revised **17283**
522.1244 (b) amended **63055**
522.1260 Heading, (a), (b), (e)(1)(i), (iii), (2)(i) and (iii) revised **34388**
522.1451 (d)(2) amended **57944**
522.1380 (b) amended **67521**
522.1660 (d)(1)(iii) amended **47451, 72366, 78357**
(b), (d)(1)(iii) and (2)(iii) amended **72367**
(d)(1)(iii) amended 8153
522.1720 (b)(1) amended **67521**
522.1870 (b) amended **79853**
522.2112 (c) removed; (d) redesignated as (c); heading, (a) and new (c) revised **18085**
522.2240 (c) amended **78355**
522.2260 (b) amended **78355**
522.2444b (b) amended 4915
522.2470 (b) amended **67521**
522.2471 Revised **72367**
522.2477 (b)(1) amended **78358**
522.2478 Revised **78972**
524.1044h (a) and (c)(1) amended; (c)(2) revised 15370
524.1140 Added **78685**
524.1193 (b) amended 3817, 4713
524.1240 (b) amended **78355**
524.1580b (b) amended 4915
524.1600a (b) amended **67521**
524.2482 Added 4916
526.820 (b) amended 4915
529.1030 Heading, (a), (b)(1), (2), (d)(2)(i) table and (iv) amended; (b) introductory text revised 5563
529.1940 Added **41824**
(b) amended **51080**
530.41 (a)(12) added; eff. 5–29–03 9530
(a)(12) corrected 14134
556.169 Added **78973**
556.283 (b) revised **78357**
556.735 (b) revised **72368**
558 Technical correction **44931**
558.4 (d) amended **47692**
558.76 (d)(3)(xii) amended **30327**
(d)(3)(v) through (xvii) redesignated as (d)(3)(vi) through (xviii); new (d)(3)(v) added **34830**
558.78 (a)(2) amended **71821**
558.128 (a), (b) and (d) redesignated as (b), (c) and (e); new (a) and (d) added; new (b) and (e) revised **43249**
(e)(6)(vii) through (e)(6)(xii) redesignated as (e)(6)(viii) through (e)(6)(xiii); new (e)(6)(vii) added 13839
558.155 Amended **21171**
558.195 (d) table amended **36098**
Revised **72370**
558.198 (a) revised; (b) and (d)(1)(iii) through (v) redesignated as (c) and (d)(1)(v) through (vii); new (b), (d)(1)(iii) and (iv) added **34830**
(d)(2)(ii) added **47257**
(d)(2)(iii) and (iv) added **48549**
558.248 (a)(1), (2) and (d)(1) table amended 4915
558.305 Heading, (a), and (d) revised; (b) redesignated as (c); new (b) and (c)(3) added 13839
558.311 (b)(8) and (e)(1)(xviii) added; (d)(7) amended; (e)(1)(xii) revised **72368**
(e)(1)(iv) table and (x) table amended 15371
558.315 (a) amended **63055**
558.325 (a) and (b) amended; (a)(1), (5), (13) and (d) revised **36513**
558.342 (b), (c) and (d) redesignated as (c), (d) and (e); heading, (a) and new (e) revised; new (b), (d)(3) and (8) added **47688**
558.355 (f)(3)(iv) removed; (f)(7) revised **47691**
(d)(6) amended 15371
558.366 (d) table amended **30327**
558.450 (d)(1)(ix) table amended **51081**
558.485 (b)(7) amended **51080**
558.500 (a) amended; (d)(1) table revised **47692**
Revised **71820**
558.515 (d) table amended **30546**
558.530 (d)(5)(x) revised **34831**
558.550 (d)(1)(xx)(ii) added **72369**
(a)(2) amended 6820
558.618 (a) through (d) redesignated as (b) through (e); new (a) added; new (b), (c) and (e)(3) revised **21997**
558.625 (b)(39) table amended 4915
573.920 (h) revised **46851**
588.195 (e)(2) table corrected 15372
601.90—601.95 (Subpart H) Added **37996**
610.11 (g)(2) added; eff. 5–5–03 10160

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

701 Compliance date extension **16304**
710 Nomenclature change 15355
720 Nomenclature change 15355
807.20 Regulation at 66 FR 5466 eff. date delayed to 1–21–04 2690
822 Added **38887**
862.1 (d) added **58329**
862.1235 Added **58329**
862.1678 Added **58329**
864.9245 (b) and (c) redesignated as (c) and (d); new (b) added; new (c) and (d) revised 9532
866.1 (e) added; eff. 5–6–03 5827
866.1645 Added; eff. 5–6–03 5827
868.1 (e) added **76681**
868.2375 (a) revised **46852**
868.2377 Added **46852**
868.2480 (b) revised **76681**
872.5570 Added **68512**
874.1 (e) added **67790**
874.3850 Revised **20894**
874.3950 Added **67790**
878.1 (e) added **77676**
880.6991 Added **69121**
880.6992 Added **69121**
884.5320 (c) revised **40849**
888.1 (e) added 14137
888.3027 Revised **46855**
888.3310 Revised **21173**
888.3535 Added 14137
888.3565 Added 14137
1271.3 Regulation at 66 FR 5466 eff. date delayed to 1–21–04 2690

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1301 Policy statement **51988**
1308 Policy statement **42479**
1308.11 (g)(3) and (4) added **59162**
(g)(5) added **59165**
1308.13 (e) revised **62370**
1308.15 (b) revised **62370**
1308.11 (d)(27) revised; eff. date 4–21–03 14119
1308.35 Regulation at 66 FR 51544 eff. 4–21–03 14126
1310.04 (f)(1)(i)(C) removed; (f)(1)(i)(D) through (W) redesignated as new (f)(1)(i)(C) through (V); (f)(1)(ii) introductory text revised; (g) added 11472
1310.05 (c) amended **49569**
1310.06 (g) amended **49569**
1313.12 (b) and (e) introductory text amended **49569**
1313.21 (b) and (e) introductory text amended **49569**
1313.22 (e) amended **49569**
1313.31 (b) introductory text amended **49569**
1313.32 (b)(1) amended **49569**

Proposed Rules:

1 ..... **54138**
..... 1568, 5378, 5428, 10668
5 ..... **53324**
16 ..... **53324**
101 ..... **38913, 69171**
..... 8163
111 ..... 10417, 12158, 14360, 15117
112 12158
165 9955
170 ..... **35764**
184 ..... **18834**
201 ..... **20070, 41360, 43068, 52429, 54139**
..... 2254, 12500
211 ..... **41360, 43068**
212 ..... **15344**
310 ..... **62218**
..... 12406
312 ..... **20070, 41642, 44931**
..... 12406
314 ..... **20070, 22367, 65448, 66593**
..... 12406
320 12406
343 ..... **54139**
349 7951
358 ..... **31739, 62218**
589 ..... **67572, 70707**
600 12406
601 ..... **20070, 22367, 41360, 43068**
..... 12406
606 ..... 12406, 12500
610 12500
800 15404
870 ..... **76706**
872 ..... **16338, 34416, 46941, 52901**
878 ..... **77698**
..... 13639
880 ..... **41890**
882 ..... **64835**
1020 ..... **76056, 78760**
1301 7728
1308 ..... **20072, 47341, 47343**
..... 4127
1310 ..... **47493, 53842, 56776**
..... 4968

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

11 Authority citation revised **46109**
11.1 (e)(4) and (5) revised; (f) amended **46109**
22.1 Revised **34835**
Amended; interim **62886**
40.53 Added; interim **77159**
41 Authority citation revised **18822**
Technical correction **40849**
41.2 (l) revised **30547**
(l)(2) corrected **50349**
(b) revised; interim 5195
41.24 (a) revised; (c) added; interim **18822**
41.61 (b)(1)(i) revised; (d) added; interim **58695**
41.62 (a)(1) revised; (a)(5) added **58695**
41.63 (c)(4)(iii) corrected **77160**
41.81—41.86 (Subpart I) regulation at 61 FR 1838 confirmed **67108**
41.82 Regulation at 61 FR 1838 confirmed **67108**
41.83 Regulation at 61 FR 1838 confirmed **67108**
41.101 (g) removed **66046**
41.102 (c) removed **66046**
41.103 (c) removed **66046**
41.104 (e) removed **66046**
41.107 (c)(3) added; interim **38893**
(f) removed **66046**
Regulation at 65 FR 52307 confirmed 13627
41.112 (f) removed **66046**
41.113 (i), (j) and (k) removed **66046**
41.122 (i) and (j) removed **66046**
42 Technical correction **40849**
Authority citation revised **55320**
42.11 Table amended **55320**
Table corrected **70839**
42.21 Regulation at 67 FR 1415 confirmed 13628
42.32 Regulation at 66 FR 15350 confirmed **60562**
42.33 (h)(2) revised; interim **38893**
(a)(2), (3), (b)(1)(iii), (2), (3) and (4)(ii) revised; interim **51753**
42.67 (b) revised **77161**
42.71 Revised; interim **38893**
42.72 (c) removed; interim **38894**
(e) removed 13628
42.74 (a)(2)(i), (b)(iv), (1)(v) and (c) amended **38894**
Regulation at 67 FR 1416 confirmed 13627
45 Removed **76682**
51.61 Revised **34838**
62.2 Amended; interim **17612, 17613**
62.3 (a)(3) and (b)(1) amended; interim **17612**
62.4 (a)(2) amended; interim **17612**
62.5 (a), (c)(2) and (5) amended; interim **17612**
62.5 (a) amended; interim **17612, 17613**
62.6 (a) and (b) amended; interim **17612**
62.7 (c) amended; interim **17612**
62.9 (g) amended; interim **17612**
62.10 (d) and (e)(1) amended; interim **17613**
62. 11 (d) amended; interim **17612, 17613**
62.12 Heading, introductory text, (a) through (c), (4), (d)(1) through (4), (e)(1) through (3) amended; interim **17613**
62.13 (a)(2) and (7) amended; interim **17612**
62.13 (a)(7) and (c)(1) amended; interim **17613**
62.14 (g) amended; interim **17612**
62.15 (d) and (g) amended; interim **17612**
62.15 (e) amended; interim **17613**
62.20 (a)(1), (2), (d)(ii)(A), (C), (f), (g)(2)(ii) and (j)(1) through (4) amended; interim **17612**
62.20 (d)(ii), (e), (f) and (h) amended; interim **17613**
62.21 (d), (e) and (g) amended;interim **17612**
62.21 (f) amended; interim **17613**
62.22 (a), (c)(1), (f)(1), (3), (g), (j), (n)(2) and (3) amended; interim **17612**
62.23 (a), (d), (e)(5), (f)(5)(ii)(A), (C), (h)(1)(i)(A), (ii) and (2)(ii) amended; interim **17612**
62.23 (d), (f)(3)(ii), (4)(iii), (h)(1)(i) and (2)(i) amended; interim **17613**
62.24 (a), (d) and (f) amended; interim **17612**
(e) and (g) amended; interim **17613**
62.25 (b)(2), (e), (g) and (k) amended; interim **17612**
(m) amended; interim **17613**

NOTE: **Boldface page numbers indicate 2002 changes.**

62.26 (a)(1) through (3), (b), (e)(1), (2) and (f) amended; interim **17612**
(g) and (h) amended; interim **17613**
62.27 (b)(3) and (f) amended; interim **17612**
(c)(1), (i), (ii), (2) and (d) amended; interim **17613**
62.28 (a) and (b) amended; interim **17612**
(e) amended; interim **17613**
62.29 (a) and (c) amended; interim **17612**
(f) and (g) amended; interim **17613**
62.30 (c) amended; interim **17612**
(i) amended; interim **17613**
62.31 (d), (f), (i), (m) and (n) amended; interim **17612**
62.32 (b) amended; interim **17612**
(h) amended; interim **17613**
62.40 (a)(4) amended; interim **17612**
62.41 (b) and (e) amended; interim **17613**
62.42 (b)(2), (c) and (1) amended; interim **17613**
62.43 (b) amended; interim **17613**
62.45 (d)(3), (6), (e)(2) and (f)(1) amended; interim **17612**
(c)(1) through (4)(i), (ii)(D), (d)(1), (e)(1), (h)(1)(i), (ii), (2)(i), (ii), (i)(2)(i), (ii) and (k) amended; interim **17613**
62.50 (Subpart D) Revised; interim **17613**
62.60—62.62 (Subpart E) Revised; interim **17615**
62.70—62.79 (Subpart F) Added; interim **76314**
196 Added **50803**
120 Authority citation revised 7417
120.1 (a) and (b) revised 7417
121 Authority citation revised **20895**
121.1 Amended **20895, 58985, 59733, 70841**
121.4 Removed **58987**
121.6 Removed **58987**
121.7 Removed **70845**
121.9 Removed **20896**
121.12 Removed **70845**
121.13 Removed **70845**
123 Authority citation correctly revised; CFR correction 6609
123.20 Revised **58988**
126.1 (a) revised; (g) added **44352**
126.5 (b) introductory text revised **78686**

Chapter II—Agency for International Development (Parts 200—299)

200 Revised **78686**
213 Revised **47258**

Chapter V—Broadcasting Board of Governors (Parts 500—599)

507 Added **76112**

Proposed Rules:

41 ..... **76711**
62 ..... **43264**
203 ..... **30631**
211 9944
213 ..... **17655**
307 5857
507 ..... **58548**

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

172 Revised **40155**
420 Revised **47271**
450 Technical correction **68512**
450.104 Amended 3181
Corrected 7419
450.206 (b) revised; (c) added 3181
450.212 (h) and (i) added 3181
450.214 (f) added 3181
450.216 (e) added 3181
450.224 Existing text designated as (a); (b) added 3181
450.322 (a) revised **62373**
627 Authority citation revised; nomenclature change **75924**
627.5 (e) added **75924**
635 Authority citation revised; nomenclature change **75924**
635.102 Amended **75924**
635.104 (c) added **75925**
635.107 Revised **75925**
635.109 (c) added **75925**
635.110 (f) added **75925**
635.112 Heading revised; (i) added **75925**
635.113 (c) added **75925**
635.114 (k) added **75925**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

TITLE 23 Chapter I—Con.

635.116 (d) added **75925**
635.122 (c) added **75925**
635.309 (p) added **75926**
635.411 (f) added **75926**
635.413 Heading revised; (e) added **75926**
636 Added **75926**
636.211 (b)(2)(i) corrected 7922
650 Authority citation revised **63542**
650.703 (b) revised; (c) added **63542**
650.707 (a) and (b) revised **63542**
650.709 (a) and (c) revised **63543**
655.601 Regulation at 67 FR 7076 confirmed **49236**
655.603 (b)(1), (2) and (d)(1) revised; eff. 4–23–03 14139
655.601—655.607 (Subpart F) Appendix revised **49572**
Appendix amended **70163**

Proposed Rules:

450 ..... **41648, 53326, 59219**
630 ..... **51802, 55376**
655 ..... **35850, 66076**
657 ..... **48821**
658 ..... **48994, 65056**
771 ..... **59225**
970 1080
971 1088
972 1096
973 ..... 1105. 4744
1225 6091
1410 ..... **59219**
1420 ..... **59219**
1430 ..... **59219**

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

5.506 (c) added **65273**
5.603 (b) amended **47432**
5.609 (b)(6) revised **47432**
5.801 (a)(5), (c)(3) and (d)(3) added **53451**
15.302 (a) revised **65276**
15.303 Revised **65276**
15.305 Revised **65277**
17.60—17.161 (Subpart C) Authority citation revised **47435**
17.150 Undesignated center heading and text revised **47435**
17.151 Introductory text and (b) revised **47435**
17.153 (c) revised **47435**
17.154 (a) revised **47435**
17.156 Revised **47435**
17.157 Revised **47435**
17.159 Revised **47435**
17.160 Heading and (a) revised **47436**
17.161 (c) revised; undesignated center heading added **47436**
17.170 Added **47436**
25.12 Revised; eff. 4–16–03 12787
28.10 (a) introductory text and (b)(1) revised; eff. 4–16–03 12787
30.35 (c) revised; eff. 4–16–03 12788
30.40 (c) revised; eff. 4–16–03 12788
30.45 (g) revised; eff. 4–16–03 12788
30.50 (c) revised; eff. 4–16–03 12788
30.55 (c) revised; eff. 4–16–03 12788
30.60 (c) revised; eff. 4–16–03 12788
81.83 (b)(1) revised; eff. 4–16–03 12788
92.2 Amended **61755**
92.50 (b), (c)(3) and (d)(3) revised; (d)(4) amended **61755**
92.101 (a)(1) and (3) revised; (f) added **61756**
92.207 Introductory text amended **61756**
92.209 (c)(2) removed; (c)(3) and (4) redesignated as (c)(2) and (3); new (c)(2) and new (3) amended **61756**
92.214 (a)(4) revised; (a)(5) removed; (a)(6), (7) and (8) redesignated as (a)(5), (6) and (7); new (a)(8) added **61756**
92.217 Revised **61756**
92.253 (d)(3) removed; (d)(4) and (5) redesignated as (d)(3) and (4) **61756**
92.254 (a)(5)(ii)(A)(6) and (7) redesignated as (a)(6) and (7); new (a)(7) revised; (a)(8) added **61756**
(a)(7) correctly revised 10161
92.353 (e) revised **61756**
92.504 (c)(3)(v) revised **61757**
92.506 Revised **61757**
92.508 (a)(3)(xiii) added **61757**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

180.670 (b)(3)(iii)(*A*)(*2*) and (*3*) revised; eff. 4–16–03 12788
180.671 (a)(2) and (3) revised; eff. 4–16–03 12788

Chapter II—Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200 Authority citation revised **52380**
200.190 Added **52380**
200.191 Added **52380**
200.193 Added **52380**
200.194—200.195 (Subpart F) Added **39239**
202.5 (n)(1) introductory text revised **53451**
202.7 (b)(4)(i) introductory text and (A) revised **53451**
202.8 (b)(3) introductory text and (b)(3)(i) revised **53451**
203.50 (l) added **52381**
207 Regulation at 66 FR 35072 confirmed; eff. 4–16–03 12792
207.252 Regulation at 66 FR 35072 confirmed; eff. 4–16–03 12792
207.252a Regulation at 66 FR 35073 confirmed; eff. 4–16–03 12792
207.254 Regulation at 66 FR 35073 confirmed; eff. 4–16–03 12792
234.3 Amended 6597

Chapter IV—Office of Housing and Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development (Parts 400—499)

401.3 Revised 3363

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

570.201 (d) revised **47213**
580 Interpretation **46109**

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—1699)

903.2 (c)(1)(iii) revised **51033**
906 Revised; eff. 4–10–03 11721
941.102 (b)(3) revised **76101**
941.103 Amended **76101**
941.306 Revised **76102**
982.4 (b) amended **64492**
982.503 (b)(2) and (c)(2)(i) introductory text revised; (c)(2)(iii) removed **56688**
982.505 (c)(4) revised **56689**
982.601 (d) revised **64493**
982.625 (c) and (d) redesignated as (f) and (g); new (c),(d),(e),(h) and (i) added; new (g) introductory text amended **64493**
982.627 (c)(1), (2)(iii), (3), (e) amended **64493**
982.628 (a)(2) and (3) revised; (b) redesignated as (c); new (b) added **64494**
(c) added; interim **65865**
Corrected **67522**
982.631 Heading and (a) revised; (b)(4) and (c)(1) amended; (d) added **64494**
982.635 (c)(2)(vi), (vii) and (e) amended; (c)(2)(viii) added **64494**
982.640 Removed **64494**
982.641(b)(4) revised **64494**
982.643 Added **64494**
1005.101 Revised **19493**
1005.105 (e) revised **19493**
1005.107 (b)(5)(ii) amended **19493**
1006 Added; interim **40776**
Technical correction **42185**
1007 Added; interim **40776**
Technical correction **42185**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

TITLE 24

Chapter XII—Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

2002 Authority citation revised **47216**
2002.1 Revised **47216**
2002.3 Revised **47217**
2002.7 revised **47217**
2002.9 Revised **47217**
2002.11 (a) revised **47217**
2002.15 (b) revised **47217**
2002.17 (a) revised **47217**
2004 Revised 3366

Chapter XX—Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

3280 Waiver **20400**
3282.10 Revised; eff. 4–16–03 12788
3284 Added **52835**
3500.17 (m)(1) revised; eff. 4–16–03 12789

Proposed Rules:

21 ..... **48006**
24 ..... **48006**
25 1766
50 ..... **43208**
58 ..... **43208**
92 648
200 ..... **48344, 63198**
203 ..... **54308, 54312**, 1766, 11730
234 ..... **54316**
236 ..... **52526**
245 ..... **41582**
570 648
572 648
574 ..... **43208**, 648
576 648
582 ..... **43208**, 648
583 ..... **43208**, 648
585 648
888 ..... **36306**
902 ..... **53276**, 6262
903 ..... **53276**
970 ..... **43208**
985 ..... **53276**
1000 ..... **44787**
2004 ..... **59428**
3284 ..... **18398**
3285 11448
3286 11452
3500 ..... **49134**, 6385

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

11.100 (a)(14) added **44355**
11.110 (a)(15) added **59783**
21 Removed **77678**
39.11 (h)(2)(v) and (i)(6) through (18) removed **52830**
39.12 Revised **52830**
39.13 Revised **52830**
103.22 Corrected **63543**
112 Removed **54735**
116 Removed **54735**
121 Removed **54735**
123 Removed **54735**
125 Removed **54735**
154 Removed **54735**
156 Removed **54735**
170.4b Revised **44357**
Added; eff. 1–13–03 through 9–30–03 1005
178 Removed **54735**
243 Removed **54735**
256.2 Amended **77920**
256.5 Revised **77920**
256.7 Table revised **77920**
256.8 (b) amended **77920**
256.9 Amended **77920**
256.10 Amended **77921**
256.11 Heading revised **77921**
256.13 (a), (b), (c) and (g)(1) amended **77921**
256.14 (a) and (e) amended; (b)(2) table revised **77921**
256.15 Heading revised **77922**
256.17 Amended **77922**
256.19 Amended **77922**
256.23 Heading revised **77922**
256.24 Removed; new 256.24 redesignated from 256.25 ..... **77922**
256.25 Redesignated as 256.24; new 256.25 redesignated from 256.26 ..... **77922**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

256.26 Redesignated as 256.25; new 256.26 redesignated from 256.27 ..... **77922**
256.27 Redesignated as 256.26; new 256.27 redesignated from 256.28 ..... **77922**
256.28 Redesignated as 256.27; new 256.28 redesignated from 256.29 ..... **77922**
256.29 Redesignated as 256.28 ..... **77922**

Chapter III—National Indian Gaming Commission (Parts 500—599)

502.7 Revised **41172**
502.8 Revised **41172**
502.9 Revised **41172**
542 Revised **43400**

Chapter V—Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)

900 Amended **34602**

Proposed Rules:

1—299 (Ch. I) **75828**, 2465
25 ..... **47755**
170 ..... **51328, 62417**
502 ..... **20923**
504 ..... **46134**
542 ..... **19713, 37369**

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—799)

1 Technical correction **35732, 37671, 45311, 46855**
Authority citation amended **18994, 20899, 20904, 34394, 37999, 38002, 43540, 47285, 47693, 48756, 49864, 54089, 65698, 68513, 78361, 78376, 78691**
Authority citation amended 4920, 11313, 12290, 12819
Technical correction 5346
1.25A–0 Added **78691**
1.25A–1 Added **78691**
1.25A–2 Added **78691**
1.25A–3 Added **78691**
1.25A–4 Added **78691**
1.25A–5 Added **78691**
1.32–2 (a), (b)(1), (c)(1) and (d) removed; (b)(2), (3), (c)(2) and (e)(2) revised 10656
1.46–1 (p)(2)(iv) amended **35012**
1.48–3 (d)(1)(iii) amended **35012**
1.48–12 (d)(7)(iii) added **20030**
(d)(7)(iii) revised; (d)(7)(iv) added 4920
1.48–12T Revised **20030**
Removed 4920
1.72(p)–1 amended **71824**
Corrected 9532, 9533
1.121–1 Revised **78361**
1.121–2 Revised **78361**
1.121–3 Revised **78361**
1.121–3T Added **78369**
1.121–4 Revised **78361**
(e) correctly amended 6350
1.121–5 Removed **78367**
1.141–0 Table amended **59759**
1.141–2 (d)(e)(ii)(B) amended **59759**
1.141–7 Added **59759**
Corrected **70845**
1.141–7T Removed **59763**
1.141–8 Added **59763**
1.141–8T Removed **59765**
1.141–15 (a) revised; (f) through (i) added **59765**
1.152–3 (c) removed **20031**
(a)(4) and (b) revised; (c) added 4920
1.152–3T Added **20031**
Removed 4921
1.163–9T (b)(2)(i)(A) corrected 13226
1.170A–9 (e)(6)(i) amended **20437**
1.267(f)–1 (k) amended 12290
1.274–5 (j)(3) added **68513**
1.274–5T (j) revised; (m) amended **68513**
Corrected **72273**
1.280H–1T (a) amended **35012**
1.334–1 (b) amended **34605**
1.337(d)–2T (a)(4) and (b)(4) added **37999**
1.337(d)–5T Redesignated as 1.337(d)–5 12819
1.337(d)–5 Redesignated from 1.337(d)–5T; heading, (b)(3), and (d) amended 12819
1.337(d)–6 Added 12820
1.337(d)–6T Removed 12822
1.337(d)–7 Added 12822
1.337(d)–7T Removed 12825

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

TITLE 26 Chapter I—Con.

1.338–1 (b)(2)(vii) amended **43540**
1.355–0 Heading revised; text amended **20636**
Corrected **38200**
1.355–7T Revised **20636**
(b)(3)(iii) and (j) *Example 4* corrected **38200**
1.358–1 (a) amended **34604**
1.362–1 (a) amended **34605**
1.368–2 (b)(1) revised 3387
1.368–2T Added 3387
1.381(c)(4)–1 (a)(2) amended **34605**
1.401(a)(2)–1 Added **47693**
1.401(a)(9)–0 Added **18994**
1.401(a)(9)–1 Added **18994**
1.401(a)(9)–2 Added **18994**
1.401(a)(9)–3 Added **18994**
1.401(a)(9)–4 Added **18994**
1.401(a)(9)–5 Added **18994**
1.401(a)(9)–6T Added **18994**
1.401(a)(9)–7 Added **18994**
1.401(a)(9)–8 Added **18994**
1.401(a)(9)–9 Added **18994**
Table corrected **36676**
1.403(b)–3 Added **19023**
1.408–8 Added **19024**
1.441–0 Added **35012**
1.441–1 Added **35012**
1.441–1T Removed **35019**
1.441–2 Added **35012**
1.441–2T Removed **35012**
1.441–3 Added **35012**
1.441–3T Removed **35019**
1.441–4 Added **35012**
1.441–4T Removed **35019**
1.442–1 Revised **35019**
1.442–2T Removed **35020**
1.442–3T Removed **35020**
1.443–1 (b)(1)(ii) amended **35012**
1.444–1T (a)(1) amended **35012**
1.444–2T (a) amended **35012**
1.444–4 Added **34394**
1.444–4T Removed **34394**
1.446–1 (c)(2)(iii) added **76985**
1.446–4 Corrected **31955**
1.448–1 (h)(2)(ii)(B)(*1*) amended **35012**
1.460–0 Amended **34605**
1.460–4 (a) amended; (k) added **34605**
1.460–6 (g) revised **34609**
1.469–0 Amended **54089**
1.469–1 (h)(4)(ii)(D) amended **35012**
1.469–1T (g)(2)(i) amended **35012**
1.469–7 Heading revised; (a) through (h) added **54089**
1.469–11 (a)(3) amended; (a)(4) redesignated as (a)(5); new (a)(4) and (c)(1)(iii) added; (c)(1) and (i) headings revised **54093**
1.471–6 (c) and (g) amended; (f) revised **65698**
1.509(a)–3 (f)(1) amended; (f)(3) heading and introductory text revised; (f)(3) *Example* designated as *Example 1*; *Examples 2* and *3* added **20437**
1.512(a)–1 (e) heading and introductory text revised; (e) *Example* designated as *Example 1*; (e) *Example 2* added **20437**
1.513–4 Added **20438**
1.514(c)–2 (e)(1)(v) added 12825
1.597–3 (e) removed 12290
1.597–4 (g)(2)(v) amended 12290
1.611–3 (h) removed **20031**
(h) added 4921
1.611–3T Added **20031**
Removed 4921
1.641(b)–3 (a) amended **78376**
1.641(c)–0 Added **34394**
1.641(c)–1 Added **34394**
1.642(c)–1 (a)(1) amended **78376**
1.645–1 Undesignated center heading and section added **78377**
1.671–4 (d), (h) and (i) redesignated as (d)(1), (i) and (j); new (d)(1) heading, (2), new (h) and new (i)(3) added **78381**
1.702–1 (a)(8)(ii) revised; (c)(1)(iii) and (iv) amended; (c)(1)(v) added **48023**
1.705–1 (a)(7) revised 12816
1.705–2 (a) and (c)(1) amended; (b)(2) and (d) added; (e) revised 12816
1.706–1 (a) and (b) revised; (d) added **35020**
(b)(5) and (6) revised; (b)(11) added **48019**
1.706–1T Removed **35024**
1.706–3T Removed **48020**
1.708–1 (b)(4) and (5) corrected **57330**
1.852–9 (c)(1) removed **20031**
(c)(1) added 4921
1.852–9T Added **20031**
Removed 4921
1.860A–0 Amended **47453**
1.860E–1 (c)(4)(i) and (ii) amended; (c)(4)(iii), (iv), (5) through (10) added **47453**
1.874–1 (b)(2), (3) and (4) revised 11313
1.874–1T Removed 11314
1.882–4 (a)(3)(ii), (iii) and (iv) revised 11314
1.882–4T Removed 11316
1.892–5 Added **49864**
1.892–5T (a)(2) concluding text removed; (a)(3) added **49864**
1.894–1 (d)(2)(ii) and (iii) added; (d)(6) revised **40160**
1.952–1 (g) added **48023**
1.954–0 (b) amended 4917
1.954–1 (g) added **48023**
1.954–2 (a)(5) added **48024**
(f)(2)(iii)(E) removed; (f)(2)(iv) heading and (g)(2)(iii) revised; (f)(2)(iv)(C), (v) (vi), (g)(2)(ii)(C)(*1*) through (*2*)(*iii*) added 4917
1.954–3 (a)(6) added **48025**
1.954–4 (b)(2)(iii) added **48025**
1.956–2 (a)(3) added **48025**
1.1041–1T (c) amended 1536
1.1041–2 Added 1536
1.1092(c)–1 Redesignated as 1.1092(c)–2; new 1.1092(c)–1 added **20899**
Regulation at 67 FR 20899 suspended to 7–29–02 ..... **37671**
1.1092(c)–2 Redesignated from 1.1092(c)–1 ..... **20899**
(b) and (d) revised; (c) added; (d)(1) introductory text, (i) introductory text, (A) through (D), (ii) introductory text, (A). (B) and (2) redesignated as (a) introductory text, (1) introductory text, (i) through (iv), (2) introductory text, (i), (ii) and (f) in 1.1092(c)–4; (e) removed **20900**
Regulation at 67 FR 20899 and 20900 suspended to 7–29–02 ..... **37671**
1.1092(c)–3 Added **20900**
Regulation at 67 FR 20900 suspended to 7–29–02 ..... **37671**
1.1092(c)–4 Added; (a) introductory text, (1) introductory text, (i) through (iv), (2) introductory text, (i), (ii) and (f) redesignated from (d)(1) introductory text, (i) introductory text, (A) through (D), (ii) introductory text, (A), (B) and (2) in 1.1092(c)–2 ..... **20900**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

1.1256(e)–1 Corrected **31955**
1.1271–0 (k) introductory text through (3) added **30548**
1.1275–1 (k) added **30548**
1.1361–0 Amended **34396**
1.1361–1 (h)(1)(vi), (3)(i)(F), (j)(12) and (m) added; (h)(3)(ii) introductory text and (k)(2)(i) amended **34397**
1.1361–5 (c)(1) amended **65313**
1.1362–2 (c)(6) *Example 2* amended **34610**
1.1362–7 Heading revised; (a) amended **34401**
1.1374–4 (g) amended **34610**
1.1377–0 Amended **34401**
1.1377–1 (a)(2)(iii) and (c) *Example 3* added **34401**
1.1377–3 Revised **34401**
1.1398–3 Added **78367**
1.1441–0 Amended **70312**
1.1441–1 (b)(7)(i)(D) added **70312**
1.1441–1T Regulation at 67 FR 2328 and 2387 confirmed **70311**
1.1441–1T Removed **70312**
1.1441–6 (g) redesignated as (h); new (g) added; (b)(1) and new (h)(2) amended; new (h) heading and (1) revised **70312**
1.1441–6T Regulation at 67 FR 2328 and 2387 confirmed **70311**
Removed **70313**
1.1502–6 (b) amended **43540**
1.1502–11 (b)(3)(ii) *Example* amended 12290
1.1502–12 (r) amended 12291
1.1502–13 (a)(3)(i) amended **76985**
(f)(7) *Example 1* amended 12291
1.1502–15 (b)(2)(iii) amended 12291
1.1502–20T (i)(3)(v) and (i)(4) revised **38000**
1.1502–21 (b)(3)(ii)(C) added **38002**
(b)(1) revised; (b)(2)(i) amended; (b)(3)(v) and (h)(7) added 12291
1.1502–21T Added **38002**
Revised 12291
1.1502–32 (a)(2) revised; (b)(3)(iii)(B), (b)(5)(ii) *Example 2*, and (e)(2) *Example 4* (a)(1)(iv), (2) introductory text and (i) revised; (b) through (e) and (g) added **20901**
Regulation at 67 FR 20900 and 20901 suspended to 7–29–02 ..... **37671**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

TITLE 26 Chapter I—Con.

amended; (b)(3)(iii)(C), (D), (b)(4)(vi), and (h)(6) added.....12291
1.1502–32T Revised 12291
1.1502–35T Added 12292
1.1502–41B Undesignated center heading added.....**43540**
1.1502–77 Redesignated as 1.1502–77A; new 1.1502–77 added.....**43540**
1.1502–77A Redesignated from 1.1502–77; Heading revised; (a) through (d) amended; (e) removed; (f) and (g) added.....**43540**
(e) redesignated from 1.1502–77T (a).....**43544**
1.1502–77T (a) redesignated as 1.1502–77A(e); removed.....**43544**
Regulation at 67 FR 43544 corrected.....**77678**
1.1502–78 (a) revised; (b)(1), (2), (c) *Examples* 1, 2 and 3 amended; (e)(2)(v) removed; (f) added.....**43544**
1.1502–79A Undesignated center heading added.....**43545**
1.1502–80 (c) amended 12291
1.1502–91 (h)(2) amended.....12291
1.1561–1 (c)(2) amended.....**35012**
1.6011–4 Added 10163
1.6011–4T Heading, (a)(1), (b)(1), (4)(i), (5) *Example 3*, (c)(2) *Example* and (e) amended; (a) heading, (c)(1)(iii), (v), (d)(1) and (g) revised; (a)(2), (3), (b)(1)(i) and (ii) added.....**41327**
Revised.....**64802**
Removed.....10169
1.6012–3 (a)(1)(iv) added.....**78382**
1.6013–4 (d) added.....**47285**
1.6013–5 Removed.....**47285**
1.6015–0 Added **47285**
1.6015–1 Added **47285**
1.6015–2 Added **47285**
1.6015–3 Added **47285**
1.6015–4 Added **47285**
1.6015–5 Added **47285**
(b)(3) corrected.....**54735**
1.6015–6 Added.....**47285**
1.6015–7 Added **47285**
1.6015–8 Added **47285**
1.6015–9 Added **47285**
1.6031(a)–1 (a)(1) amended **41328**
1.6037–1 (c) amended **41328**
1.6038–3 (b)(9) *Example 1* amended; (g)(1)(i) through (v) redesignated as (g)(1)(ii) through (vi); new (g)(1)(i) added; (j) and (l) revised.....**78175**
1.6038–3T Added.....**78176**
1.6041–1 (b)(1) and (c) amended; (e), (f) and (g) redesignated as (g), (h) and (i); new (e), (f) and (j) added.....**48756**
1.6041–3 (d) revised; (n) removed; (o), (p) and (q) redesignated as (n), (o) and (p).....**48758**
1.6043–4T Added.....**69469**
(a)(5) and (h) corrected 6081
1.6045–1 (a) introductory text and (c)(3) revised; (g)(3)(iv) and (4) *Examples 1, 4, 5, 6, 7*(i), *8*(i) and *9*(i) amended.....**48758**
1.6045–2 (b)(2)(ii) amended.....**48759**
1.6045–3T Added.....**69472**
(d) corrected 6081
1.6049–4 (a)(2) revised.....**48759**
1.6050S–0 Amended.....**77681**
1.6050S–1 Added.....**77682**
(b)(2)(vii) correctly amended 6350
1.6050S–1T Redesignated as 1.6050S–2T.....**20904**
1.6050S–2T Redesignated as 1.6050S–4T; new 1.6050S–2T redesignated from 1.6050S–1T **20904**
1.6050S–4T Redesignated from 1.6050S–2T.....**20904**
1.6072–1 (a) text redesignated as (a)(1); new (a)(1) heading and (2) added **78382**
1.6115–1 Undesignated center heading added.....**52863**
1.6109–2 Redesignated as 1.6109–2A; new 1.6109–2 added **52863**
1.6109–2A Redesignated from 1.6109–2; (d) amended.....**52863**
1.6109–2T Removed.....**52863**
1.6654–2 (a) amended **35012**
1.6655–2 (a)(4) amended **35012**
1.7476–1 (e) added **47456**
1.7476–2 (b), (c) and (d) revised; (e) added.....**47456**
3.1378–1 Added **35024**
5c.442–1 Removed.....**35024**
5f Authority citation amended.....**48759**
5f.442–1 Removed **35025**
5f.6045–1 Removed **48759**
18.1378–1 Removed.....**35025**
20.6011–4 Added 10169
20.6011–4T Added.....**64805**
Removed.....10169
25.6011–4 Added 10169
25.6011–4T Added.....**64805**
Removed.....10169

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

31 Authority citation amended 4923
31.3406–0 (b) and (d) tables amended.....**48759**
31.3406(a)–2 Revised.....**48759**
31.3406(a)–4 (c)(1) and (3) amended.....**48760**
31.3406(b)(3)–2 (b)(5) amended.....**48760**
31.3406(d)–4 (a)(1) introductory text amended.....**48760**
31.3406(h)–1 (c) amended **48760**
31.3406(h)–2 (c), (d) and (f)(6) amended.....**48760**
31.3406(j)–1 (a) and (f) revised 4923
31.3406(j)–1T Added 4923
31.6011–4 Added 10169
31.6011–4T Added.....**64806**
Removed.....10169
46.4374–1 Revised.....**70846**
53.6011–4 Added 10169
53.6011–4T Added.....**64806**
Removed.....10170
54 Authority citation amended **19026**
54.4974–2 Added.....**19026**
(b)(4) corrected 35732
54.6011–4 Added 10170
54.6011–4T Added.....**64806**
Removed.....10170
56.6011–4 Added 10170
56.6011–4T Added.....**64806**
Removed.....10170
157 Added 7923
301 Technical correction.....**37671, 47427**
Authority citation amended.....**41621**
Authority citation amended.....2693, 2696
301.6011–1 Removed **20032**
Added.....4921
301.6011–1T Added **20032**
Removed 4921
301.6011–2 (b)(1) and (g)(1) revised; (g)(3) added.....**20907**
301.6103(j)(1)–1 Revised 2693
301.6103(j)(1)–1T Removed.....2695
301.6103(j)(5)–1 (b)(2)(xiv) added; (d) revised.....**41621**
301.6103(n)–1 (c) revised; (f) added 11741
301.6103(p)(2)(B)–1 Added.....2696
301.6103(p)(2)(B)–1T Removed 2696
301.6109–1 Regulation at 67 FR 2329 and 2388 confirmed.....**70311**
(g)(3) revised **70313**
301.6109–1T Regulation at 67 FR confirmed.....**70311**
Removed **70313**
301.6112–1T Revised (temporary) **64809**
301.6011–2 (b)(1) amended; (g)(3) revised **77687**
301.6109–1 (a)(2)(iii) removed; (a)(3) through (6) added.....**78382**
301.6111–2 Added.....10170
301.6111–2T (a)(3) and (h) amended.....**41329**
(a)(3) and (b)(3)(i) revised; (c)(3) and (h) amended.....**64806**
Removed.....10173
301.6112–1 Added.....10173
301.6112–1T Removed.....10178
301.6331–3 Added.....**77417**
301.6331–4 Added.....**77417**
301.6903–1 (b) removed **20032**
(b) added 4921
301.6903–1T Added **20032**
Removed 4922
301.7122–0 Added.....**48029**
301.7122–0T Removed **48032**
301.7122–1 Added.....**48029**
(d)(2) corrected.....**53879**
301.7122–1T Removed **48032**
301.7426–2 Added.....14319
301.7430–1 (e), (f), and (g) redesignated as (f), (g), and (h); new (e) added; new (f) amended 14319
301.7430–2 (c)(2) amended.....14320
301.7430–3 (a)(4) revised; (b) amended 14320
301.7430–6 Amended 14320
301.7430–8 Added 14320
301.7433–1 (a) introductory text, (b)(1), (e)(1) and (h) amended; (i) revised 14320
301.7433–2 Added 14321
301.7602–1 (b) revised.....**57331**
301.7602–1T Added; eff. to 9–9–05 .....**57331**
301.7602–2 Added.....**77421**
301.7701–2 (b)(6) and (c)(2)(ii) revised; (e) amended **49864**
301.7701–15 (a)(7)(iii) and (iv) amended; (a)(7)(v) through (viii) added.....**77419**
301.7701(b)–6 (a) amended **35012**
601.201 (o)(3)(xv) and (xxi) amended; (o)(3)(xvi) introductory text and (xvii) revised **47457**
601.701 Removed.....**69675**
601.702 Revised **69675**

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 26 Chapter I—Con.

602 Technical correction.....**35732, 37671, 45311**

602.101 (b) table amended; OMB numbers....**19028, 20032, 20907, 34401, 34610, 35025, 38003, 43545, 47296, 47454, 48760, 54093, 69473, 77678, 77687, 78176, 78383, 78698**

(b) table amended; OMB numbers.....1537, 2696, 4922, 7926, 10178, 11741, 12300, 12825

Proposed Rules:

1.....**17309, 18834, 18835, 19713, 20072, 20711, 20923, 21187, 30634, 30826, 31995, 35064, 35765, 37369, 37736, 38025, 38039, 38040, 38214, 40629, 40896, 41362, 41653, 41892, 42210, 43574, 45414, 45683, 45933, 46612, 48067, 48070, 48596, 48823, 48997, 49634, 49892, 50386, 50510, 50840, 53327, 54388, 56244, 56509, 57543, 58346, 58678, 59767, 59797, 62417, 63330, 64331, 64840, 65060, 65842, 67132, 68539, 69496, 70031, 70707, 70891, 75899, 76123, 77450, 77701, 78202, 78398, 78761, 79538, 79894**.....1020, 2466, 2930, 3477, 4969, 7453, 7454, 8868, 10190, 12324, 13242, 15118

20.....**48070, 63330, 64840**

25.....**48070, 61997, 63330, 64840**

31.....**30634, 44579, 45414, 50386, 64067, 64840, 67802**.....4970, 15119

41.....**38913, 53539, 58346**.....7454

48.....**34882, 38913, 53539, 58346**.....7454

53.....**64840**

54.....**19713, 35765, 43574, 64840**

56.....**64840**

145.....**38913, 53539, 58346**.....7454

157.....7956

300.....**67573**

301.....**18839, 20072, 20923, 37736, 39915, 41362, 41892, 43574, 44579, 48823, 50840, 57354, 64067, 64840, 64842, 76132, 79538**.....4970

602.....**19713, 41892, 43574**.....7956

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

Chapter I Heading revised.....3747

4 Amended.....**30797**

4.1—4.4 (Subpart A) Undesignated cross-references and center heading removed.....**62857**

4.5 Added.....**62857**

4.39 (h) revised; eff. 6–2–03.....10103

4.64 (i) revised; eff. 6–2–03.....10103

4.91 Amended.....**56481**

4.101 (Subpart K) Added.....**62858**

5.2 Amended.....**30797**

Revised.....**62858**

5.42 (b)(8) revised; eff. 6–2–03.....10104

5.65 (d) revised; eff. 6–2–03.....10105

5.71 (Subpart I) Added.....**62858**

7.4 Amended.....**30798**

Revised.....**62858**

7.29 (e) revised; eff. 6–2–03.....10104

7.54 (e) revised; eff. 6–2–03.....10106

7.81 (Subpart I) Added.....**62858**

9.107 (b) and (c) revised.....**56484**

9.174 Added.....**72839**

9.176 Added.....**77924**

13.1 Amended.....**62858**

13.3 Added.....**62858**

13.51 Amended.....**62858**

13.61 (a) text redesignated as (a)(1); new (a)(1) heading and (2) added.....**62859**

13.101 (Subpart G) Added.....**62859**

19.3 Amended.....**30798**

19.524 (a)(1), (b)(1) and (3) amended.....**30798**

19.538 (a)(1)(iii) amended.....**30798**

20.3 Amended.....**17938, 30798**

20.21 (a) amended.....**17938**

20.22 (a)(3) removed; (a)(4) redesignated as new (a)(3).....**17938**

20.26 Removed.....**17938**

20.43 (a)(2) and (b) revised.....**17938**

20.58 Amended.....**17939**

20.59 (b) removed; (c) and (d) redesignated as new (b) and (c).....**17939**

20.61 Amended.....**17939**

20.62 (a) designation, heading and (b) removed.....**17939**

NOTE: **Boldface page numbers indicate 2002 changes.**

20.68 (b) removed; (c) redesignated as new (b).....**17939**

20.71—20.82 (Subpart E) Removed.....**17939**

20.175 (c) revised.....**17939**

Corrected.....**20868**

20.177 (b) amended.....**17939**

20.232 (b) removed; (c) redesignated as new (b).....**17939**

20.241 Amended.....**17939**

22.3 Amended.....**30798**

22.171 (b) amended.....**30798**

24.4 Amended.....**30798**

24.272 (a)(1), (b)(1) and (3) amended.....**30798**

25.165 (a)(1), (b)(1) and (3) amended.....**30798**

26.112a (a)(1), (b)(1) and (3) amended.....**30798**

26.267 (a) amended.....**30798**

27 Redesignated from Part 251.....**30799**

27.3 Amended.....**30799**

27.11 Amended.....**30799**

27.31 Amended.....**30799**

27.40 (c) amended.....**30799**

27.44 Amended.....**30799**

27.74 Amended.....**30799**

27.76 (c)(3) amended.....**30799**

27.77 (a), (b)(1), (2), (3)(iii) and (d) amended.....**30799**

27.120 Amended.....**30799**

27.133 Amended.....**30799**

27.138 Introductory text amended.....**30799**

27.172 Amended.....**30799**

27.185 (b) amended.....**30799**

27.208 Amended.....**30799**

40.232 Revised.....**19333**

44.2 (a) amended; (b) revised.....**30801**

44.3 Added.....**30801**

44.11 Amended.....**30801**

44.35 (c) amended.....**30801**

44.62 Amended.....**30801**

44.66 Amended.....**30801**

44.70 Amended.....**30801**

44.71 Amended.....**30801**

44.72 Introductory text and (c) amended.....**30801**

44.73 Introductory text and (c) amended.....**30801**

44.82 Amended.....**30801**

44.83 Amended.....**30801**

44.84 Amended.....**30801**

44.86 Amended.....**30801**

44.87 Amended.....**30802**

44.91 Amended.....**30802**

44.92 Amended.....**30802**

44.93 Revised.....**30802**

44.101 Amended.....**30802**

44.102 Amended.....**30802**

44.103 Amended.....**30802**

44.104 Amended.....**30802**

44.105 Amended.....**30802**

44.106 Amended.....**30802**

44.108 Heading revised; amended.....**30802**

44.109 Amended.....**30802**

44.110 Removed.....**30802**

44.111 Amended.....**30802**

44.112 Amended.....**30802**

44.121 (b) amended.....**30802**

44.123 Amended.....**30802**

44.124 Amended.....**30802**

44.125 Amended.....**30802**

44.126 Amended.....**30802**

44.127 Amended.....**30802**

44.129 (a) amended.....**30802**

44.142 (e) amended.....**30801**

44.143 (b) amended.....**30801**

(a) amended; (a)(1) and (2) removed.....**30802**

44.144 Amended.....**30802**

44.145 Amended.....**30801**

44.146 Amended.....**30802**

44.147 Amended.....**30801, 30802**

44.150 Amended.....**30801**

44.152 Amended.....**30802**

44.153 Amended.....**30802**

44.154 Amended.....**30802**

44.161 Amended.....**30802**

44.162 Amended.....**30802**

44.184 Amended.....**30801**

44.199 Amended.....**30801, 30802**

44.200 Amended.....**30802**

44.201 Amended.....**30801, 30802**

44.202 Amended.....**30802**

44.203 Amended.....**30802**

44.204 Amended.....**30802**

44.205 (b)(3) amended.....**30802**

44.206 Amended.....**30802**

44.207 Amended.....**30802**

44.207a Amended.....**30802**

44.208 Amended.....**30802**

44.209 Amended.....**30802**

44.210 Amended.....**30802**

44.212 Amended.....**30802**

44.213 Amended.....**30802**

44.222 Revised.....**30803**

44.223 Amended.....**30802, 30803**

44.224 Revised.....**30803**

44.225 Amended.....**30801**

44.226 Amended.....**30802**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

TITLE 27 Chapter I—Con.

44.227 Amended **30803**
44.228 Amended **30802**
44.229 Amended **30803**
44.230 Amended **30802**
44.231 Amended **30802**
44.232 Amended **30802**
44.242 Amended **30802, 30803**
44.243 Amended **30802, 30803**
44.244 Amended **30802**
44.245 Amended **30802**
44.246 Amended **30802**
44.257 Amended **30801, 30803**
44.258 Amended **30803**
44.259 Amended **30803**
44.260 Amended **30803**
44.261 Amended **30803**
44.262 Amended **30803**
44.263 Amended **30803**
44.264 Amended **30803**
44.264a Amended **30803**
44.265 Amended **30803**
44.266 Amended **30801**
44.267 Amended **30801, 30803**
46.8 (f) corrected **63544**
46.141—46.155 (Subpart F) Transferred to Chapter II (Subchapter D) and redesignated as Part 646 3753
47 Transferred to Chapter II (Subchapter B) and redesignated as Part 447 3747
47.11 Amended **64526**
47.31 Revised **64526**
47.32 (a) revised; (c) amended **64526**
47.33 Amended **64526**
47.34 (b) amended **64526**
47.35 (a) amended; (b) revised **64526**
47.41 (a) and (b) amended **64526**
47.42 (a)(1) introductory text and (2)(i) amended **64526**
47.43 (c) amended **64526**
47.44 Amended **64526**
47.45 (a) introductory text amended; (a)(1) revised **64526**
47.51 Amended **64526**
47.52 (b) introductory text and (f) amended **64526**
47.58 Added **64526**
55 Transferred to Chapter II (Subchapter C) and redesignated as Part 555 3748
70.411 (c)(27) amended **30799**
178 Transferred to Chapter II (Subchapter B) and redesignated as Part 478; note amended 3750
179 Transferred to Chapter II (Subchapter B) and redesignated as Part 479 3752
251 Redesignated as Part 27 ..... **30799**
252.2 (a) amended; (b) revised **18087**
252.4 Added **18087**
252.11 Amended **18088**
252.20 (a)(2) introductory text, (3) and (4) amended **18087**
Heading and (c) revised; (a)(1), (b)(1), (2) introductory text and (3) amended **18088**
252.22 Amended **18088, 18089**
252.23 Amended **18089**
252.35 Amended **18089**
252.36 Undesignated text and (c) amended **18088**
Introductory text and (c) amended **18089**
252.37 Amended **18088**
252.38 Amended **18088**
252.43 (a)(1), (2), (6), (b)(1), (2) and (3) amended **18088**
(a)(1), (2), (b)(1) and (2) amended **18089**
252.45 Amended **18089**
252.51 Revised **18089**
252.52a Amended **18088**
252.55 Amended **18088**
252.56 Introductory text amended **18088**
252.57 Amended **18089**
252.58 (c) amended **18088**
252.59 Amended **18089**
252.61 Amended **18089**
252.62 (b) amended **18088**
(a) and (c) amended **18089**
252.63 Amended **18089**
252.64 Amended **18089**
252.65 Amended **18088, 18089**
252.67 Amended **18088**
252.70 Amended **18088, 18089**
252.71 Amended **18088, 18089**
252.72 Amended **18088, 18089**
252.73 (a) and (b) amended **18089**
252.74 Amended **18088**
252.92 (a) amended **18089**
252.96 Amended **18088**
252.103 (b) amended **18088**
252.104 Amended **18089**
252.116 Introductory text amended **18089**
252.117 Amended **18088**
252.122 (c) and (d) amended **18088**
(a) and (b) revised **18089**
252.123 (b) amended **18088, 18090**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

252.125 Amended **18088**
252.131 Amended **18088**
Introductory text amended **18090**
252.133 Amended **18090**
252.142 Amended **18088, 18089**
252.146 Amended **18088, 18089**
252.147 Amended **18088, 18089**
252.152 Amended **18090**
252.161 Introductory text amended **18090**
252.162 Amended **18088**
252.171 Amended **18088**
252.195a Removed **18090**
252.195b (b) and (c) amended **18088**
252.198 Introductory text amended **18090**
252.199 Amended **18090**
252.211 Amended **18088**
252.214 Amended **18088**
252.215 Amended **18088**
Heading revised; amended **18090**
252.218 Amended **18088**
252.220 (b) amended **18088**
Introductory text amended **18090**
252.220a Amended **18088, 18090**
252.221 Amended **18088**
252.222 Amended **18088**
252.225 Introductory text amended **18088, 18090**
252.226 Amended **18088**
252.227 Amended **18088, 18090**
252.250 (a)(4) amended **18088**
Introductory text amended **18089**
Amended **18090**
Corrected **48550**
252.261 Amended **18088, 18089**
252.262 Amended **18090**
252.264 Amended **18088, 18089**
252.265 Amended ..... **18088—18090**
252.266 Amended **18088**
252.267 Amended **18088, 18089**
252.268 Amended **18090**
252.269 (a), (b) and (c) amended **18088**
(a) and (c) amended **18089**
252.275 Amended **18088, 18089**
252.281 Amended **18088**
252.282 Amended **18088, 18089**
252.285 Amended **18088**
252.286 Amended **18090**
252.290 Introductory text amended **18088, 18089**
252.295 Amended **18088, 18089**
252.301 Amended **18088**
252.302 Amended **18088**
252.303 Amended **18088**
Introductory text amended **18090**
252.304 Amended **18088**
252.310 Amended **18088**
252.315 Amended **18088**
252.316 Amended **18088**
252.317 Amended **18088**
Introductory text amended **18090**
252.320 Amended **18088**
(a) amended **18089**
252.321 Amended **18088**
252.331 Amended ..... **18088—18090**
252.332 Amended **18088**
252.333 Amended **18088, 18089, 18090**
252.334 Amended **18090**
252.335 Amended **18088**

Chapter II—Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice (Parts 300—699)

Chapter II Established 3747
447 Transferred and redesignated from Chapter I, Part 47 3747
447.2 (a), (b) and (c) amended 3748
447.11 Amended 3748
447.34 (a) and (b) amended 3748
447.41 (a) and (b) amended 3748
447.42 (a)(i) introductory text and (b) amended 3748
447.52 (e) introductory text amended 3748
447.56 (a) amended 3748
447.57 (a)(1) and (b)(2) amended 3748
478 Redesignated from 178 3750
478.2 Amended 3750
478.11 Note amended 3750
478.28 (c) amended 3750
478.29 (b) and (c) amended 3750
478.36 (a) and (b) amended 3750
478.37 (c) amended 3750
478.39 (b)(2) amended 3750
478.40 (b)(9) and (c)(5) amended 3750
478.40a (b)(5) and (c)(5) amended 3750
478.41 (b), (c) and (d) amended 3750
478.45 Amended 3750
478.47 (c) amended 3750
478.50 (c) and (d) amended 3750
478.51 Amended 3750
478.52 (a) and (b) amended 3750
478.54 Amended 3750
478.55 Amended 3750
478.57 (a), (b) and (c) amended 3750

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

TITLE 27 Chapter II—Con.

478.71 Amended 3751
478.72 Amended 3751
478.73 (b) amended 3751
478.92 (a)(4)(iii) amended 3751
478.93 Amended 3751
478.95 Amended 3751
478.96 (b), (c)(1)(ii) and (iii) amended 3751
478.97 (a) amended 3751
478.98 (b) amended 3751
478.99 (a), (c)(1), (5), (d)(3) and (e) amended 3751
478.100 (a)(1) amended 3751
478.102 (a)(3), (b), (d)(2), (3) and (e) amended 3751
478.112 (a) and (d)(2) amended 3751
478.113 (a) amended 3751
478.116 Amended 3751
478.118 Amended 3751
478.119 (c)(7), (f)(2) and (g) amended 3751
478.121 (a), (b) and (d) amended 3751
478.122 (b) and (d) amended 3751
478.123 (b) and (d) amended 3751
478.124 (c)(3)(i), (ii) and (iv), (d) and (f) amended 3751
478.125 (b), (c), (e), (f)(2)(i) and (ii) amended 3751
478.125a Introductory text, (2) and (3) amended 3751
478.129 (b), (c) and (f) amended 3751
478.131 (a)(1), (2) and (3) amended 3751
478.132 (b)(2) amended 3752
478.133 Amended 3752
478.141 Introductory text amended 3752
478.144 (a) and (i)(1) amended 3752
478.145 Amended 3752
478.147 Amended 3752
478.149 Amended 3752
478.150 (a) introductory text and (c) amended 3752
478.151 (a) amended 3752
478.153 Amended 3752
479 Transferred and redesignated from Chapter I, Part 179 3752
479.25 Amended 3752
479.31 (a) and (b) amended 3752
479.32 (b) amended 3752
479.32a (a) amended 3752
479.34 (b)(3), (6) and (e) amended 3752
479.38 Amended 3752
479.42 Amended 3752
479.43 Amended 3752
479.44 Amended 3752
479.46 Amended 3752
479.48 Amended 3752
479.49 Amended 3752
479.50 Amended 3752
479.52 Amended 3752
479.62 Amended 3752
479.69 Amended 3752
479.70 Amended 3752
479.84 Amended 3752
479.87 Amended 3752
479.89 Amended 3752
479.90 (b) amended 3752
479.91 Amended 3752
479.92 Amended 3752
479.93 Amended 3752
479.111 (a)(3), (b) and (c) amended 3752
479.112 (a) amended 3752
479.118 Amended 3752
479.119 Amended 3752
479.120 Amended 3752
479.121 Amended 3752
479.122 (a) amended 3752
479.131 Amended 3752
479.192 Amended 3753
479.193 Amended 3753
555 Transferred and redesignated from Chapter I, Part 55 3748
555.1 (a) and (b)(3) revised; interim 13780
555.2 Amended 3748
555.11 Amended 3748
Amended; interim 13780
555.24 Revised; interim 13781
555.26 (a)(1) and (d) amended 3748
Revised; interim 13781
555.27 Revised; interim 13782
555.33 Added; interim 13783
555.34 Added; interim 13783
555.41 (b) introductory text and (c) amended 3748
Revised; interim 13783
555.43 Revised; interim 13785
555.45 (b) amended 3748
(a) and (b) amended; (a) heading, (b) heading, and (c) added; OMB numbers; interim 13785
555.46 (a) and (b) amended 3748
555.49 (b)(6) and (c) amended 3748
Revised; interim 13785
555.51 Revised; interim 13786
555.52 (a) and (b) amended 3748

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

555.53 Amended 3748
555.54 Introductory text, (a), and (b) redesignated as (a), (a)(1), and (a)(2); new (b) added; OMB numbers; interim 13786
555.55 Amended 3748
555.57 Amended 3748
Heading revised; existing text redesignated as (a); new (b), (c), (d) added; OMB numbers; interim 13786
555.58 Amended 3748
555.61 Amended 3748
555.71 Amended 3748
555.72 Amended 3748
555.73 Amended 3749
555.74 Amended 3749
555.75 Amended 3749
555.76 (b) introductory text, (3) and (c) amended 3749
555.77 Amended 3749
555.78 Amended 3749
555.79 Amended 3749
555.101 Amended; interim 13786
555.102 (b) amended 3749
(b) revised; interim 13787
555.103 (e) amended 3749
Revised; interim 13787
555.104 introductory text amended 3749
555.105 (b) and (f) amended 3749
Revised; interim 13788
555.106 (a), (c)(1) and (d) amended 3749
(a) revised; (c)(3), (4), and (d) amended; (c)(5), (6), and (7) added; interim 13790
555.108 (a), (c) and (d) amended 3749
(a) amended; interim 13790
555.110 Added; interim 13790
555.121 (a)(2) and (b) amended 3749
(a)(2) amended; (b) revised; interim 13790
555.122 (a)(4) and (f) amended 3749
555.123 (a)(4) and (e) amended 3749
555.124 (a)(4) and (f) amended 3749
555.125 (a)(4), (c) and (d) amended 3749
Revised; interim 13790
555.126 (b) amended 3749
Heading revised; (a) amended; (a) through (f) redesignated as (a)(1) through (6); (a) heading, new (a)(2), and (3) amended; (b) added; OMB numbers; interim 13791
555.127 Amended 3749
555.128 Amended 3749
Amended; interim 13792
555.129 Amended 3749
555.141 (a) introductory text amended 3749
(a)(1) amended; interim 13792
555.142 Heading and (a) through (d) revised; (f) added; OMB numbers; interim 13792
555.165 Amended 3749
Existing text redesignated as (a); (b) added; interim 13793
555.180 (d)(4) amended 3749
555.182 Introductory text amended 3749
555.183 (a) and (b) amended 3749
555.201 (a), (c), (d) and (e) amended 3749
555.202 (a) and (c) amended 3749
555.203 Introductory text and (a) through (e) amended 3749
555.205 (d) amended 3749
555.206 (a), (b), (c)(1) and (2) amended 3749
555.208 (b)(1) amended 3749
555.211 (b)(1) amended 3749
555.218 (1) table notes amended 3749
555.220 Table amended 3750
555.223 Table amended 3750
555.224 Table amended 3750
646.141—646.155 (Subpart F) Transferred and redesignated from 46.141—46.155 (Subpart F); authority citation added 3753
646.141 Heading amended 3753
646.142 Amended 3753
646.143 Introductory text amended 3753
646.146 Amended 3753
646.147 (a) introductory text and (b) amended 3753
646.150 (a) amended 3753
646.154 (b) amended 3753

Proposed Rules:

4 ....**17312, 38915, 61998, 62860, 79011**
5 ....**62860, 79011**
7 ....**43496, 54388, 62860, 79011**
....14292, 15119
9 ....**45437, 47494, 48597, 51156, 64573, 64575, 66079, 66083, 70352**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES APRIL 1, 2002 THROUGH MARCH 31, 2003

TITLE 27 *Proposed Rules:—Con.*

.....1020, 2262, 3199
13.....**62860, 79011**
25.....14292, 15119
40.....**67340**
55.....**63862**
.....4402, 4406, 7410, 8331
275.....**67340**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—299)

0.1 Amended.....4926
0.100 (b) amended.....14899
0.103 (a)(3) revised.....**58990**
0.100—0.104 (Subpart R) Appendix amended.....**58990**
0.137 Removed.....4926
0.130—0.132 (Subpart W) Redesignated as 0.135—0.137 (Subpart W–1).....4926
0.130—0.133 (Subpart W) Added.....4926
0.135—0.137 (Subpart W–1) Redesignated from 0.130—132 (Subpart W).....4926
0.138 Heading and (a) amended.....4927
0.140 Amended.....4927
0.141 Amended.....4927
0.142 Introductory text and (g) amended.....4927
0.143 Amended.....4927
0.144 Amended.....4928
0.145 Amended.....4928
0.146 Amended.....4928
0.147 Amended.....4928
0.148 Amended.....4928
0.149 Introductory text, (a) through (c) and concluding text redesignated as (a) introductory text, (1) through (3) and new (b); new (a) introductory text amended.....4928
0.151 Amended.....4928
0.152 Amended.....4928
0.153 Amended.....4928
0.154 Amended.....4928
0.155 Amended.....4928
2.20 Amended.....**70692**
2.35 (d) added; interim.....**67792**
2.68 (l) amended.....**70694**
2.75 (a)(1) and (2) revised.....**57945**
2.80 (a) and (f) revised; (h) amended; (o) added; appendix removed.....**57946**
2.82 (a) revised.....**57946**
2.86 (c) amended in part; (d) redesignated as (e); (c) redesignated in part as new (d).....**57946**
2.94 (a) amended.....**57946**
2.101 (a) and (b) revised.....3390
2.106 (a) and (d) heading revised; (b) amended; (d) text redesignated as (d)(1); (d)(2) added.....**57946**
2.207 (a) amended.....**57947**
2.208 (f) added.....**57947**
2.211 (a)(1) amended; (f) revised.....3390
2.212 (b) revised; (e) amended.....3390
2.214 Revised.....3390
2.215 (f) revised.....3392
2.216 (e) revised; (g) and (h) added.....3392
2.217 (a)(1) amended.....3392
2.218 (g) revised.....3392
2.219 (a)(1) through (4) amended.....**57947**
9.1 (b)(1) amended.....4928
9.3 (e)(1)(iii) redesignated as (e)(1)(iv); new (e)(1)(iii) added.....4928
9.4 (e) amended.....4928
11.6 (b) amended.....4928
16.2 (b)(11) and (12) redesignated as (b)(12) and (13); new (b)(11) added.....4928
16.76 (c) through (h) removed.....**70163**
16.79 Revised.....4929
16.96 (a) introductory text, (g) introductory text and (j) introductory text revised; (b)(6) and (h)(5) redesignated as (b)(7) and (h)(6); new (b)(6), (g)(1), (h)(5) and (k)(5) added; (k)(4) amended.....14140
16.97 (j) and (k) added.....**51754**
(l) and (m) added.....**51755**
(n) and (o) added.....**51756**
16.98 (c) revised; (d) amended; (g) and (h) removed.....14140
16.105 Added.....**51756**
16.106 Added; interim.....3393
16.132 Added.....**70163**
16 Appendix I amended.....4928
65.80 Amended.....**48359**
65.83 Introductory text revised; (d) added.....**48360**
65.84 Heading and (a) revised.....**48360**
(a)(4) added; interim.....8822
65.85 (e) revised.....**48361**
71.2 (e) and (f) redesignated as (f) and (g); new (e) added.....4929
77.2 (a) amended.....4929
79 Authority citation revised.....**51423**
79.1—79.5 (Subpart A) Revised; OMB number.....**51423**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 28 Chapter I—Con.

79.10—79.16 (Subpart B) Revised; OMB number **51423**
79.20—79.27 (Subpart C) Revised; OMB number **51423**
79.30—79.36 (Subpart D) Revised; OMB number **51423**
79.40—79.47 (Subpart E) Removed; OMB number **51423**
79.50—79.55 (Subpart F) Removed; OMB number **51423**
79 (Subpart G) Added; OMB number **51423**
79.70—79.75 (Subpart H) Added; OMB number **51423**
97 Added **78699**
105 Revised 7318
200 Transferred and redesignated from 8 CFR, Part 507 9846

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

522 Authority citation revised 5564
522.40–522.42 (Subpart E) Removed; interim 5564
523.30—523.34 (Subpart D) Added; interim **48386**
540 Authority citation revised **77164, 77427**
Authority citation revised 10658
540.44 Introductory text and (c) revised 10658
540.45 Revised 10658
540.46 Revised 10658
540.47 Revised 10658
540.48 (c) through (g) redesignated as (d) through (h); new (c) added 10658
540.71 (a) revised **77164**
540.72 (b)(1) amended **77427**
541 Authority citation revised **77428**
541.13 Table 3 amended; interim **77428**
542 Authority citation revised **50805**
542.10 Revised **50805**
542.12 Removed **50805**

Chapter VIII—Court Services and Offender Supervision Agency for the District of Columbia (Parts 800—899)

801 Added **57948**
811 Added; interim **54095**
812 Added; interim **54100**

Proposed Rules:

15 ..... **64844**
16 ..... **59798, 66348**
..... 3847, 4974
28 11481
79 ..... **51440, 70892**
549 ..... **46136, 63059**
902 ..... **70567**

TITLE 29—LABOR

Chapter I—National Labor Relations Board (Parts 100—199)

102.114 Heading revised; (i) added **70695**
102.111 (c) revised **70696**

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

500 Authority citation revised **76986**
500.170 Revised **76986**

Chapter XII—Federal Mediation and Conciliation Service (Parts 1400—1499)

1404 Appendix revised 10659

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1611.13 Revised **72373**

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1902 Authority citation revised **60128**
1902.31 Amended **60128**
1902.33 Revised **60128**
1904.10 Revised **44047**
1904.10 (b)(7) revised; eff. date delayed to 1–1–04 ..... **77170**
1904.12 Note revised; eff. date delayed to 1–1–04 ..... **77170**
1904.29 (b)(7)(vi) revised; eff. date delayed to 1–1–04 ..... **77170**
1910 Policy statement 12301
1910.33 Added **67961**
1910.34 Added **67961**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

1910.35—1910.38 (Subpart E) Authority citation revised **67961**
1910.35 Revised **67961**
1910.36 Revised **67961**
1910.37 Revised **67961**
1910.38 Revised **67961**
1910.35—1910.38 (Subpart E) Appendix amended **67961**
1910.39 Added **67961**
1910.101—1910.126 (Subpart H) Authority citation revised **67964**
1910.119 (n) amended **67964**
1910.120 (l)(1)(ii), (p)(8)(i) and (q)(1) revised; (q)(11)(ii) amended **67964**
1910.155—1910.163 (Subpart L) Authority citation revised **67964**
1910.157 (a) and (b)(1) revised **67964**
1910.261—1910.272 (Subpart R) Authority citation revised **67964**
1910.268 (b)(1)(iii) revised **67965**
1910.272 (d) revised **67965**
Appendix A amended **67965**
1910.1000—1910.1450 (Subpart Z) Authority citation revised **67965**
1910.1047 (h)(1)(iii) revised **67965**
1910.1050 (d)(1)(iii) revised **67965**
1910.1051 (j) revised **67965**
1915 Authority citation revised **44540**
1915.4 (k) and (t) revised **44541**
1915.5 (d)(1)(i), (ii) and (v) revised **44541**
1915.14 (a)(1)(iv), (iv) note, (b)(1)(iii), (iv) and note revised **44541**
1915.15 (c) and (e) heading revised **44541**
1915.11—1915.16 (Subpart B) Appendix A amended **44541**
1915.35 (b)(2) revised **44541**
1915.51 (c)(3), (d)(1) introductory text, (2) introductory text, (i), (3), (e)(1)(ii) and (f)(2) revised **44541**
1915.53 (d) revised **44542**
1915.71 (e)(2)(ii), (9), (f)(8) and (j)(3) revised **44542**
1915.72 (a)(4), (6) and (c)(1)(iii) revised **44542**
1915.73 (e) revised **44542**
1915.74 (a)(2) revised; (c)(2) amended **44542**
1915.75 (b) and (d) amended; (e) revised **44542**
1915.77 (a) and (c) amended; (e) revised **44543**
1915.92 (e) revised **44543**
1915.97 (a) revised **44543**
1915.112 (c)(3) revised **44543**
1915.115 (d) revised **44543**
1915.116 (n) revised **44543**
1915.118 Tables E–1, E–3, G–1, G–3, G–7 and G–9 amended **44543**
1915.131 (c) and (g) amended; (d) revised **44543**
1915.134 (c) amended **44543**
1915.152 (e)(2) revised **44543**
1915.158 (a)(1) and (b)(4) revised **44543**
1915.159 (a)(3), (9), (b)(2), (3), (4), (6)(iv), (iv) note, (7), (c)(1)(i) and (8) revised **44544**
1915.160 (a)(2), (b)(1) and (2)(ii) revised; (b)(2)(i) amended **44544**
1915.151—1915.160 (Subpart I) Appendices A and B amended **44544**
1915.163 (a)(1) amended; (a)(2) revised **44545**
1915.165 (a)(1) revised **44545**
1915.172 (a) amended **44545**
1915.181 (c) revised **44545**
1915.1000 (d) heading revised **44545**
1915.1001 (d)(2), (h)(1) Table 1 amended; (d)(4), (g)(5)(ii)(B)(*1*), (*7*), (*8*), (iii)(A), (8)(iii)(C), (h)(1)(iv), (i)(4)(i), (k)(3) heading, (ii), (5)(ii)(A), (9)(vi), (viii) and (o)(1) revised **44545**
Appendix C amended **44546**
1926 Request for public comment **54103**
1926.200—1926.203 (Subpart G) Authority citation revised **57736**
1926 Regulation at 67 FR 18112 withdrawn **46375**
1926.200 Regulation at 67 FR 18112 withdrawn **46375**
(g)(2) revised **57736**
1926.201 Regulation at 67 FR 18112 withdrawn **46375**
(a) revised **57736**
1926.202Regulation at 67 FR 18112 withdrawn **46375**
Revised **57736**
1926.203 (c) revised **57736**
1952 Authority citation revised **60128**
1952.125 (a) revised **60129**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 29 Chapter XVII—Con.

1952.175 (a) and (c) through (h) revised **60129**
1952.212 (a) revised **60129**
1952.367 (b) revised **60129**
1952.372 (p) revised **60129**
1953 Revised **60125**
1954 Authority citation revised **60129**
1954.3 (b)(2), (d)(1)(ii) and (iii) revised **60129**
1955 Authority citation revised **60129**
1955.2 (a)(4) revised **60129**
1955.3 (a)(1) and (2) introductory texts revised **60129**
1979 Revised 14107

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2520 Authority citation revised **64772**
2520.101–3 Added; interim **64773**
Revised 3727
2560 Authority citation revised **64779**
2560.502c–2 (d) through (i) revised; interim **64779**
(b)(1) and (d) through (i) revised 3734
2560.502c–5 (d) through (i) revised **64780**
(b)(1) and (d) through (i) revised 3734
2560.502c–6 (d) through (i) revised **64781**
(b)(1) and (d) through (i) revised 3735
2560.502c–7 (d) through (i) revised **64781**
Revised 3736
2570 Authority citation revised **64782**
2570.61(c) Revised; interim **64782**
(c) revised 3737
2570.64 Revised; interim **64782**
Revised 3737
2570.94 Revised; interim **64783**
Revised 3737
2570.114 Revised; interim **64783**
Revised 3738
2570.130—2570.141 (Subpart G) Added **64783**
Revised 3738
2575 Authority citation revised 2878
2575.100 Revised 2878
2575.502c–5 Added 2878
2575.502c–6 Added 2878
2590 Authority citation revised **60861**
2590.712 (f)(1), (g)(2) and (i) amended; interim **60861**

Chapter XXVII—Federal Mine Safety and Health Review Commission (Parts 2700—2799)

2700.4 (b)(1) amended **60862**
2700.5 (b) and (g) amended **60862**
2700.82 (d) amended **60862**
2701.4 Amended **60862**
2702.2 Revised **60862**
2702.3 (a) amended **60863**
2704.201 (a) amended **60863**
2704.308 (b) amended **60863**
2705.4 Amended **60863**
2705.8 Amended **60863**
2706.170 (c) amended **60863**

Chapter XL—Pension Benefit Guaranty Corporation (Parts 4000—4999)

4003.61 Added **47695**
4011 Appendix B amended **71471**
4022 Appendix B amended **46376, 53307, 57950, 63545, 69122, 76683**
Appendix C amended **46377, 53307, 57950, 63545, 69122, 76683**
Appendix D amended **71472**
Appendices B and C amended 1966, 7420, 12304
4044 Appendix B amended **46377, 53308, 57950, 63545, 69122, 76683**
Appendix D amended **71472**
Appendix B amended 1967, 7421, 12304

Proposed Rules:

403 ..... **79280**
..... 8727
408 ..... **79280**
..... 8727
541 15560
1404 ..... **70569**
1611 ..... **49276**
1626 ..... **52431**
1904 ..... **44124**
1910 ..... **51524, 54389, 55181, 66494, 70707**
..... 1023, 1399

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

1915 ..... **66494, 76214**
..... 1023, 1808
1926 ..... **46612, 50610, 66494**
..... 1023, 9036
2550 992
4000 7454
4003 7454
4007 7454
4010 7454
4011 7454
4022 7454
4041 7454
4041A 7454
4043 7454
4050 7454
4062 7454
4203 7454
4204 7454
4207 7454
4208 7454
4211 7454
4219 7454
4220 7454
4221 7454
4231 7454
4245 7454
4281 7454
4901 7454
4902 7454
4903 7454
4907 7454

TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

18.41(f) revised 2883
Regulation at 68 FR 2883 withdrawn 10965
42 Technical correction **57635**
46 Technical correction **57635**
47.11 Corrected **57635**
47.32 Corrected **57635**
47.42 (d) corrected **63255**
47.52 Corrected **57635**
47.92 Corrected **57635**
Table 47.92 corrected **63255**
48 Technical correction **57635, 78713**
48.8 (b)(4) revised **76665**
56 Technical correction **57635**
57 Technical correction **57635**
57.5060 (d), (e) and (f) stayed **47297**
57.5062 Stayed **47297**
75 Technical correction **78713**
75.1101–23 Redesignated as 75.1502 ..... **76665**
75.1500—75.1501 (Subpart P) Heading revised **76665**
75.1501 Added **76665**
75.1502 Redesignated from 75.1101–23 ..... **76665**
Corrected **78044**
77 Technical correction **57635**
100.3 (a) introductory text amended; (g) table revised 6613
100.4 (a) revised 6613
100.5 (c) revised 6613

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

250.102 (b)(1) table amended 8422
250.105 Amended 8422
250.108 Revised 7426
250.175 Existing text redesignated as (a); (b) added **44360**
250.198 (d) table and (e) table amended **51759**
(e) table corrected 46
(e) table amended 7427, 8422
250.199 (e) table amended 8422
250.203 (b)(5)(i), (ii) and (p) amended 8422
250.204 (b)(2)(i), (ii) and (t) amended 8422
250.400 Revised 8423
250.401 Revised 8423
250.402 Revised 8423
250.403 Revised 8423
250.404 Revised 8423
250.405 Revised 8423
250.406 Revised 8423
250.407 Revised 8423
250.408 Revised 8423
250.409 Revised 8423
250.410 Revised 8423
250.411 Revised 8423
250.412 Revised 8423
250.413 Revised 8423
250.414 Revised 8423
250.415 Revised 8423
250.416 Revised 8423
250.417 Redesignated as 250.490; new 250.17 added 8423
250.418 Added 8423
250.420 Added 8423
250.421 Added 8423
250.422 Added 8423
250.423 Added 8423
250.424 Added 8423

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 30 Chapter II—Con.

250.425 Added 8423
250.426 Added 8423
250.427 Added 8423
250.428 Added 8423
250.430 Added 8423
250.431 Added 8423
250.432 Added 8423
250.433 Added 8423
250.434 Added 8423
250.440 Added 8423
250.441 Added 8423
250.442 Added 8423
250.443 Added 8423
250.444 Added 8423
250.445 Added 8423
250.446 Added 8423
250.447 Added 8423
250.448 Added 8423
250.449 Added 8423
250.450 Added 8423
250.451 Added 8423
250.455 Added 8423
250.456 Added 8423
(i) corrected 14274
250.457 Added 8423
250.458 Added 8423
250.459 Added 8423
250.460 Added 8423
250.461 Added 8423
250.462 Added 8423
250.463 Added 8423
250.465 Added 8423
250.466 Added 8423
250.467 Added 8423
250.468 Added 8423
250.469 Added 8423
250.490 Redesignated from 250.417; undesignated center heading added 8423
240.490 new (g)(4)(iv), (j)(13)(ii) and (p)(2) revised 8434
250.504 Amended 8434
250.513 (a) and (b)(4) amended 8434
250.515 (b) revised 8434
250.604 amended 8435
250.613 (b)(3) amended 8435
250.615 (b) revised 8435
250.802 (b) and (e)(2) revised **51759**
250.803 (a), (b)(4) introductory text, (5)(i), (7) (9)(v) and (c)(2) introductory text revised; (b)(2)(i), (10) and (d) amended **51759**
250.804 (a)(3) introductory text revised; (a)(4) through (11) redesignated as (a)(5) through (12); new (a)(4) added; (a) introductory text, new (a)(5) and (10) amended; d **51760**
(a)(5) and (6) corrected 46
250.807 Amended 8435
250.1002 (d) amended **51760**
250.1004 (b)(9) amended **51760**
250.1105 (f)(1)(i) amended 8435
250.1604 (c) and (d) amended **51760**
(b) amended 8435
250.1612 Amended 8435
250.1614 (b) amended 8435
250.1628 (c) and (d)(2) revised **51760**
250.1629 (b)(2) and (4)(v) revised **51760**
250.1630 (a) introductory text and (2) introductory text revised; (a)(3), (4) and (5) redesignated as (a)(4), (5) and (6); new (a)(3) added **51761**
250.1700 Table corrected **66047**
250.1704 Table correctly added **44265**
(f) correctlyly designated as (g); new (f) correctly added; table heading and new (g) correctly revised **66047**
250.1712 Introductory text corrected; (e) and (f)(14) correctly revised **66048**
250.1715 Table correctly added **44265**
(a) table and (1) through (4) correctly revised; (a)(10) correctly added **66048**
250.1717 Introductory text correctly revised **66049**
250.1721 Heading, undesignated center heading and introductory text corrected; (a) and (g) amended **66049**
250.1722 Introductory text, (c) and (g) corrected; (a) and (d) amended **66049**
250.1723 Introductory text corrected; (b) amended **66049**
250.1726 Introductory text correctly revised **66049**
250.1740 (a) correctly removed; (b) correctly redesignated as (a); new (b) correctly added; (a) introductory text and (c) introductory text correctly revised; (c)(3) corrected **66049**
250.1741 (g) table correctly added **44266**
(b) correctly revised; (g) table corrected **66049**
250.1742 Table correctly added **44266**
250.1743 (a) amended; (b) corrected **66049**
260.114 (d) revised **57739**
260.124 (b)(1) revised **57739**
280 Revised **46858**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

875.15 (d) and (e) amended; (f) revised 9502
915.15 Table amended **67524**
915.25 Added **72379**
916.12 Heading revised 14326
916.15 Table amended 14326
916.25 Table amended 14326
917.12 (c) added **70009**
(d) added 2199
917.15 Table amended **67528**
Table amended 2199
917.16 (c)(2) and (o) removed 2201
918.15 Table amended **69129**
924.15 Table amended **71831**
924.16 (i) and (l) removed **71832**
924.17 Heading revised **71832**
931.15 Table amended **46384**
931.16 (e), (u) and (v) removed **46385**
936.15 Table amended 2451
938.15 Table amended **67531**
938.16 (gggg) removed **67531**
943.15 Table amended **67534**
944.15 Table amended **67540**
948.15 Table amended **71840**
948.16 (nnn), (ooo), (sss) and (oooo) added 10179
950.15 Table amended **67547**
950.16 (ii) and (jj) removed **67547**

Proposed Rules:

6 ..... **64196**
7 ..... **64196**
14 ..... **46431**
18 ..... **46431, 64196**
..... 2941
19 ..... **64196**
20 ..... **64196**
22 ..... **64196**
23 ..... **64196**
27 ..... **64196**
33 ..... **64196**
35 ..... **64196**
36 ..... **64196**
56 ..... **60611**
57 ..... **60199, 60611**
58 ..... **60611**
70 ..... **60611**
..... 10784, 12641, 15557
71 ..... **60611**
72 ..... **60611**
..... 10940, 12641
75 ..... **46431, 60611**
..... 3936, 10784, 11770, 12641, 15557
90 ..... **60611**
..... 10784, 12641, 15557
203 14868
204 15390
206 ..... 7086, 12643
250 ..... **46616, 46942**
..... 1808, 8480
251 ..... **46942**
773 ..... **46617**
780 ..... **46617**
784 ..... **46617**
800 ..... **46617**
901 2263
915 ..... **52659, 52662**
916 ..... **59484**
..... 2265
917 ..... **46432, 53539**
..... 6838
920 ..... 2268, 14360
924 ..... **56967**
926 ..... **46434**
934 6842
936 ..... **54979**
938 721
943 ..... **52664**
944 521
948 ..... **53542, 67576**
950 10193

TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)

1.8 Amended; interim 12586
1.10 (a) revised; interim 12586
1.11 Revised; interim 12586
1.12 Amended; interim 12588
1.36 (g)(1)(viii) table amended **48387, 62886**
5 Revised; interim **65845**
10.1—10.8 (Subpart A) Revised **48765**
10.20 Revisjed **48771**
10.21 Revised **48771**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 31 Subtitle A—Con.

10.22 Revised **48771**
10.23 Revised **48771**
10.24 Revised **48771**
10.25 Revised **48771**
10.26 Revised **48771**
10.27 Revised **48771**
10.28 Revised **48771**
10.29 Revised **48771**
10.30 Revised **48771**
10.31 Revised **48771**
10.32 Revised **48771**
10.34 Revised **48771**
10.50—10.53 (Subpart C) Revised **48774**
10.60—10.82 (Subpart D) Revised **48774**
10.90—10.93 (Subpart E) Revised **48774**
50 Added; interim 9811

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

103 Authority citation revised **48351, 60570, 78384**
Policy statement **48388**
Technical correction 493
Request for public comments 10965
103.11 (ii)(1) revised; (ww) added **44055**
(n)(5)(ii), (iii), (6)(i) and (ii) amended; (n)(6)(ii)(1) revised **60729**
103.19 Added **44056**
(b)(1), (2), (3), (c)(1), (d) and (e) amended 6617
103.20 (a)(1) and (b)(3) amended; (a)(2)(iv) added 6617
103.21 Added **60729**
103.64 (a)(2)(ii) and (v)(B) revised; (a)(2)(iii) amended **60730**
103.81 Added **48351**
103.90 Revised **60585**
103.100 Added **60585**
103.110 Revised **60587**
103.90—103.110 (Subpart H) Appendix A added **60587**
103.120—103.170 (Subpart I) Undesignated center heading added **48351, 60570**
(Subpart I) Appendices A and B added **60570**
103.170 Heading, (b) and (c) revised; (d) added; interim **67549**
Corrected **68935**
103.175 Added **60570**
103.177 Added **60570**
(d)(1) revised **78384**
103.182 Added **48351**
103.183 Added **48351**
103.185 Added **60572**

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

285.5 Added; interim **78942**
321.8 (a)(2) redesignated as (a)(3): (a)(1) revised; (a)(2) added 2666
(a)(1) corrected 7427
321.9 (a) revised 2666
(a)(1) corrected 7427
321 Appendix amended 2666
Appendix corrected 7427
351.2 (d) amended 2667
(d) corrected 7427
351.6 Revised **64278**
352.7 (a) amended 2667
(a) corrected 7427
352 Table 1 removed **78384**
353.35 (b) revised 2667
(b) corrected 7427
356.2 Amended **68516**
(e)(1)(i) through (vii) redesignated as (e)(1)(ii) through (viii); new (e)(1)(i) added; new (e)(1)(ii) and (2) revised **78384**
356.12 (c)(1)(i) and (2) revised **68516**
356.13 (a) revised **68516**
356.20 (a) revised **68516**
356.21 (a) revised; (b) amended **68516**
356.22 (b) revised **68517**
357.0 Revised **64278**
359 Revised **64278**
359.6 Revised 2667
(a) corrected 7427
360 Heading revised **64285**
360.0 Revised **62485**
360.2 (a) revised **64286**
360.35 (b) revised 2667
(b) corrected 7427
363 Added **64286**

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

501.805 (d) added 6822
515.302 (a) revised; interim 14144

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

515.329 (c) and (d) revised; interim 14145
515.330 (a)(3) and (4) revised; interim 14145
515.420 (a) introductory text revised; (a) note added; interim 14145
515.505 Revised; interim 14145
515.512 Added; interim 14146
515.533 Revised; interim 14146
515.559 (b) note added; (d) removed; interim 14146
515.560 (c)(4) revised; (c)(4) note added; interim 14146
515.561 Revised; interim 14147
515.565 (b)(1) amended; (b)(2) removed; interim 14147
515.567 (b) and (c) revised; note added; interim 14147
515.570 Revised; interim 14147
515.571 (a) introductory text revised; (a)(5) and note added; interim 14148
515.572 (d) amended; interim 14148
515.574 Revised; interim 14148
515.575 Revised; interim 14148
560.536 Added; interim 11742
560.537 Added; interim 11743
575.329 Added; interim 11743
575.330 Added; interim 11743
575.527 Added; interim 11744
575.528 Added; interim 11744
585.529 Added **78974**
586.520 Added **78974**

Proposed Rules:

5 ..... **65856**
10 ..... **77724**
50 9815
103 ..... **48290, 60617, 60625, 64067, 64075, 68540**
..... 2716, 8480, 8568, 8571
501 4422
515 4422
538 ..... **56969**
550 ..... **56969**
560 ..... **56969**
800 ..... **70194**

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

3 Authority citation revised **54956**
3.1 Revised **54956**
3.2 Redesignated as 3.3; new 3.2 added **54956**
3.3 Redesignated as 3.4; new 3.3 redesignated from 3.2 ..... **54956**
3.4 Redesignated as 3.7; new 3.4 redesignated from 3.3 and amended **54956**
3.5 Added **54956**
3.6 Added **54956**
3.7 Redesignated from 3.4 ..... **54956**
Heading revised **54957**
171 Added 8823
171.6 (b) correctly redesignated 11633
199.2 (b) amended 6618
199.4 (e)(22) correctly designated **45311**
199.8 (a), (c)(1) and (d)(3) revised; (b)(3), (c)(2) and (3) redesignated as (b)(4), (c)(4) and (5); new (b)(3), (c)(2) and (3) added 6618
199.10 (b) introductory text and (c) revised; interim 11973
Regulation at 68 FR 11973 eff. date correctly added 15372
199.12 Revised 6619
220 Heading revised **57740**
220.1 Revised **57740**
220.2 (a) and (b) revised **57740**
220.4 (c)(2)(iii) revised **57740**
220.8 Heading, (a), (b), (c), (e), (f), (h), (i) and (j) revised; (k) and (l) removed **57740**
220.10 (c)(1) introductory text revised **57742**
220.12 (a)(1) revised **57742**
220.13 (a) revised **57742**
220.14 Amended **57742**
254 Removed 6082
285.1 Revised 8825
285.3 (e) revised 8825
285.4 (a) revised; (a)(4) removed; (b) and (c) redesignated as (c) and (d); new (b) added; new (d)(1) revised 8825
285.5 Revised 8825
311.8 (c)(12) and (13) added 8722
320.12 (b) added **55724**

Chapter VI—Department of the Navy (Parts 700—799)

700.405 (c)(9) amended; (c)(10) added; (d)(3) revised 2697
700.505 (b)(5) redesignated as (b)(6); new (b)(5) added 2697

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 32 Chapter VI—Con.

700.701 (a) revised 2697
700.1053 (a) revised 2697
706.2 Table 4 amended ..... 5827—5832
Table 5 amended 5829, 5830, 5832
776.20 Revised **70165**
776.53 (a)(4) revised **70165**

Chapter VII—Department of the Air Force (Parts 800—1099)

806b Appendix C amended **53879**
Appendix C corrected **64313**
861 Revised **65698**

Chapter XII—Defense Logistics Agency (Parts 1200—1299)

1293 Removed **69688**

Proposed Rules:

281 ..... **68956**
282 ..... **68957**
283 ..... **68963**
284 ..... **68965**
311 ..... **71118, 71119**
322 8179
806b **71120**
861 ..... **56777**

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1 Authority citation revised 9534
1.01–70 (e) amended 9534
1.05 (Subpart) Authority citation revised 9534
1.05–1 (a) and (b) amended 9534
1.05–10 (a) and (b) amended 9534
1.05–25 (a) amended 9534
3 Authority citation revised 9534
3.01–1 (a) amended 9534
3.01–5 Amended 9534
5 Authority citation revised 9534
5.01 (j) amended 9534
6 Clarification **51082**
6.01–6 Added **56215**
6.04–1 Revised **56215**
45 Authority citation revised 9534
45.1 (a) amended 9535
51 Authority citation revised 9535
51.2 (a) amended 9535
52 Authority citation revised 9535
Revised 9886
52.1 Amended 9535
52.2 (a) amended 9535
52.11 (a) and (b) amended 9535
52.81 Amended 9535
53 Authority citation revised 9535
53.3 Amended 9535
53.5 Amended 9535
53.7 (a) amended 9535
53.9 (a) introductory text amended 9535
66 Authority citation revised 9535
66.01–3 (a) amended 9535
100 Temporary regulations list **49236, 71840**
Technical correction **56222**
100.35–T05–049 Added (temporary) **48782**
100.35–T05–052 Added (temporary) **53310**
100.35–T05–057 Added (temporary) **54106**
100.35–T05–059 Added (temporary) **54343**
100.35–T05–061 Added (temporary) **54341**
100.35–T05–062 Added (temporary) **54345**
100.35–T05–064 Added (temporary) **57952**
100.35–T05–075 Added (temporary) **60865**
100.35T–07–013 Added (temporary) **45313**
100.35T–07–045 Added (temporary) **44553**
100.35T–07–049 Added (temporary) **44548**
100.35T–07–056 Added (temporary) **44551**
100.35T–07–074 Added (temporary) **44549**
100.35T–07–087 Added (temporary) **45635**
100.35T–07–117 Added (temporary) **63267**
100.515 Implementation (temporary) **53735**
100.518 Implementation (temporary) 13628, 15050
100.527 Added **56221**
100.735 Added **76988**
100.1101 Implementation (temporary) **53735**
109 Authority citation revised 9535
109.07 Amended 9535

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

110.130 Redesignated as 110.132; new 110.130 added **68518**
110.131 Redesignated as 110.133 ..... **68518**
110.132 Redesignated as 110.134; new 110.32 redesignated from 110.130 ..... **68518**
110.133 Redesignated as 110.136; new 110.133 redesignated from 110.131 ..... **68518**
110.134 Redesignated as 110.138; new 110.134 redesignated from 110.132 ..... **68518**
110.136 Redesignated from 110.133 ..... **68518**
110.138 Redesignated from 110.134 ..... **68518**
110.157 (b)(11)(1) added (temporary) **65040**
110.195 (a)(4) revised 13630
110.235 (c) added (temporary) **66051**
114 Authority citation revised 9535
114.05 (e), (g) and (i) amended 9535
117 Temporary drawbridge operations regulations **45059, 48782, 49575, 49576, 51761, 55115, 56929, 57147, 58329, 60865, 61987, 64527, 65041, 65706, 65707, 66053, 66552, 67551, 68519, 70165, 70550, 70551, 70552, 70846, 71473, 71840, 72099, 72100, 72559, 76116, 76988, 76989, 79853**
Temporary regulations list **49236, 71840**
Technical correction **56222**
Temporary drawbridge operations regulations 1366, 2201, 2883, 2884, 5832, 6621, 7427, 9535, 9536, 9537, 13226, 13227, 13228, 14149, 15051
117.205 (c) suspended; (d) added (temporary) **66554**
117.261 (rr) added (temporary) **44566**
117.305 Suspended (temporary) **63259**
117.319 (a) revised; (c) added **50351**
117.393 (c) suspended; (e) added (temporary) **67110**
(c) suspended; (e) added (temporary) 14537
117.451 (c) revised 3183
117.455 Revised 3184
117.481 Removed **68521**
117.597 Suspended (temporary) **66053**
117.609 Revised **63261**
117.647 (a), (b) introductory text, (3) and (4) revised; (d) and (e) redesignated as (c) and (d) **49240**
117.684 Removed **69131**
117.680 Removed **69132**
117.739 (b) suspended; (q) added (temporary) **64813**
117.755 (b) suspended; (c) added (temporary) **67551**
117.789 (c) suspended; (h) added (temporary) **63547**
(h) added (temporary) **71475**
117.795 (b) suspended; new (d) added (temporary) 9892
117.799 (e) suspended; (k) added (temporary) **63547**
117.801 (g) suspended; (h) added **63547**
117.802 (a) suspended; (c) added (temporary) **72561**
117.829 Revised **70554**
117.T306 Added (temporary) **63259**
117.T408 Added (temporary) **76115**
Added (temporary) **78977, 78978**
Corrected 4382
117.T602 Added (temporary) **66053**
120 Authority citation revised 9535
120.220 (a) amended 9535
125 Clarification **51082**
147.815 Added 4102
147.817 Added 4102
147.819 Added 4102
147.821 Added 4102
147.823 Added 4102
147.825 Added 4100
155 Authority citation and note revised **58523**
155.200 Amended **58524**
155.490 Added **58524**
156 Authority citation revised **58524**
156.120 (ee) added **58524**
160 Authority citation revised 9543
160.201–160.215 (Subpart C) Revised 9543
160.201 Regulation at 66 FR 50572 suspended in part through 3–31–03 ..... **55119**
160.203 Amended **53740**
Regulation at 66 FR 50572 suspended in part through 3–31–03 ..... **55120**
160.207 Regulation at 66 FR 50572 suspended through 3–31–03 ..... **55120**
160.211 Regulation at 66 FR 50573 suspended through 3–31–03 ..... **55120**
160.213 Regulation at 66 FR 50574 suspended in part through 3–31–03 ..... **55120**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 33 Chapter I—Con.

160.T204 Regulation at 66 FR 50572 extended through 3–31–03 ..... **55120**
160.T208 (c)(15)(iv) revised; (c)(16) added (temporary) **53740**
Regulation at 66 FR 50572 extended through 3–31–03 ..... **55120**
160.T212 (b)(20) added (temporary) **53740**
Regulation at 66 FR 50573 extended through 3–31–03 ..... **55120**
160.T214 Regulation at 66 FR 50574 extended through 3–31–03 ..... **55120**
161.60 (b) through (d) redesignated as (c) through (e); new (b) added **53742**
165 Temporary regulations list **48988, 49236, 71840**
Implementation (temporary) **46387, 51083, 55120, 62178**
Technical correction **56222, 57332**
Enforcement notice **70696**
Authority citation revised 13233, 14331
165.103 Revised **56487**
165.104 Added **49582**
165.106 Added **64815**
165.110 Revised **63263**
165.114 (b) revised **63265**
165.116 Added **45909**
165.121 Revised **56224**
165.160 Revised 2890
165.167 Added **56489**
165.169 Added 2890
(a)(7) through (10) added (temporary) 7929
165.501 Regulation at 67 FR 3814 eff. date confirmed **50351**
(d)(14) added (temporary) 2203
(a)(1) suspended ; (a)(13), (d)(15) and (16) added (temporary) 2886
165.505 Added 15053
165.756 Added **46867**
165.757 Added **60867**
165.758 Added **76991**
165.759 Added 3186
165.761 Added 3189
165.812 Added **61989**
165.809 Added **64046**
165.813 Added **64048**
165.822 Added 14151
165.825 Added **64043**
165.908 Corrected **47299**
Added **53502**
Removed **66055**
165.909 Added **44560**
165.910 Corrected **65041**
165.911 ..... **53500**
165.912 Added **52611**
165.915 Added **46386**
165.916 Added **49578**
165.917 Added **65043**
165.1101 Suspended (temporary) **58334**
Suspended (temporary) 7080
165.1103 Suspended (temporary) **58526**
Suspended (temporary) 7075
165.1104 Suspended (temporary) **58528**
Suspended (temporary) 7077
165.1108 Added 1008
165.1151 Suspended (temporary) **79858**
Revised 13233
165.1154 Added **72563**
165.1155 Added **77430**
165.1183 Added **79855**
165.1313 Added 15374
165.1405 Added 4384
165.1703 (a) correctly revised **45313**
165.1709 Added; interim (OMB number pending) **44059**
Regulation at 66 FR 44059 confirmed 14328
165.T01–062 Added (temporary) **44366**
165.T01–063 Added (temporary) **51763**
165.T01–065 Added (temporary) **45061**
165.T01–093 Added (temporary) **52865**
165.T01–094 Added (temporary) **50353**
165.T01–096 Added (temporary) **49242**
165.T01–099 Added (temporary) **56757**
165.T01–114 Added (temporary) **62375**
165.T01–131 Added (temporary) **72841**
Technical correction (temporary) 1162
165.T01–153 (c) revised (temporary) **69134**
(c) revised (temporary) 12306
165.T01–154 (b) revised (temporary) **69134**
(b) revised (temporary) 12306
165.T01–165 (c) revised (temporary) **53312**
165.T01–166 (b) revised (temporary) **53312**
165.T01–207 (b) revised **52609**
165.T05–007 Added (temporary) 5834
165.T05–060 Added (temporary) **57744**
165.T05–071 (d) revised (temporary) **61495**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

165.T05–087 Added (temporary) **65040**
165.T05–097 Added (temporary) **77925**
165.T07–006 Added (temporary) 14331
165.T07–011 Added (temporary) 7703
165.T07–054 Added (temporary) **46391**
165.T07–065 Added (temporary) **44556**
165.T07–101 Added (temporary) **57954**
165.T07–132 Added (temporary) **68764**
165.T07–133 Added (temporary) **68762**
165.T07–146 Added (temporary) **76993**
165.T07–148 Added (temporary) **71477**
165.T07–156 Added (temporary) 1969
165.T08–013 Added (temporary) 9548
165.T08–064 Added (temporary) **48552**
165.T08–065 Added (temporary) **45905**
165.T08–099 Added (temporary) **60590**
165.T08–100 Added (temporary) **58332**
165.T08–108 Added (temporary) **67303**
165.T08–122 Added (temporary) **70315**
Revised (temporary) 2453
165.T09–011 Added (temporary) **46389**
165.T09–032 Added (temporary) **44566**
165.T09–035 Added (temporary) **44362**
165.T09–036 Added (temporary) **44368**
165.T09–037 Added (temporary) **45903**
165.T09–038 Added (temporary) **44564**
165.T09–042 Added (temporary) **44558**
165.T09–109 Removed **49578**
165.T09–110 Removed **49578**
165.T09–135 Removed **46386**
165.T09–136 Removed **46386**
165.T09–506 Added (temporary) **52607**
Removed **52611**
165.T09–528 Added (temporary) **78386**
165.T11–031 Added (temporary) 7075
165.T11–033 Added (temporary) **59454**
165.T11–034 Added (temporary) **66335**
165.T11–035 Added (temporary) **67111**
165.T11–039 Added (temporary) 14901
165.T11–040 Added (temporary) 3399
165.T11–042 Added (temporary) 3401
165.T11–043 Added (temporary) 3397
165.T11–045 Added (temporary) **54737**
165.T11–047 Added (temporary) **58334**
Added (temporary) 7080
165.T11–048 Added (temporary) **58528**
165.T11–049 Added (temporary) **58526**
Added (temporary) 7077
165.T11–066 (f) revised (temporary) **79858**
165.T11–069 Added (temporary) **55726**
165.T11–070 Added (temporary) 13235
165.T11–077 Added (temporary) 9006
165.T11–078 Added (temporary) 13230
165.T11–082 Revised **49580**
165.T11–086 Added (temporary) **44568**
165.T11–089 Added (temporary) **54108**
165.T13–002 Added (temporary) 15377
165.T13–003 Added (temporary) 15055
165.T13–005 Added (temporary) **45907**
165.T13–007 Added (temporary) **44364**
165.T13–008 Added (temporary) **48784**
165.T13–011 Added (temporary) **66337**
165.T14–072 Added (temporary) **66051**
165.T17–013 Added (temporary) **49584**
165.TD05–02–041 Added (temporary) **44061**
167.1700 Added **53743**
167.1701 Added **53743**
167.1702 Added **53743**
167.1703 Added **53743**
177.799 (g) suspended; (k) added (temporary) **56755**

Chapter II—Corps of Engineers, Department of the Army (Parts 200—399)

334.81 Added **65313**

Chapter IV—Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

401.20 Added 9551
Heading corrected 11974
401.102 (a) amended **67113**

Proposed Rules:

1—199 (Ch. 1) **50840**
2 ..... **52906, 58752**
26 ..... **52906**
52 ..... **76142**
62 ..... **52906**
64 ..... **52906**
95 ..... **52906**
100 ..... **52906, 66349**
9037, 15417
110 ..... **45071, 56245, 68540**
4130
117 ..... **44582, 50842, 50844, 51157, 56247, 57355, 57773, 61303, 64578, 64580, 71513, 72126, 77949, 79012**
5858. 6100, 7087, 9609, 13242, 13641, 14170, 14364
120 ..... **52906**
147 9611
148 ..... **53764**
149 ..... **53764**
150 ..... **53764**
151 523

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 33 *Proposed Rules:—Con.*

154 ..... **63331, 69697**
155 ..... **51159, 63331, 69697**
160 ..... **48073**
165 ..... **45945, 48832, 48834, 49643, 50846, 55184, 56245, 58006, 59228, 64345, 65074, 65746, 66086, 66595, 67342, 70892, 71513, 75831, 77008, 79014, 79017**
..... 2946, 5614, 6844, 7093, 7471, 7473, 7958, 7960, 9039, 13244, 13643, 13647, 13649, 14170, 14933, 14935
167 ..... **48837, 54981, 60630**
179 7096
181 7096
183 7096
328 ..... 1991, 9613
334 ..... **50389, 50390, 65331, 65332, 71014, 78912**
..... 1790, 14364
385 ..... **50540, 55377**
..... 5860
401 ..... **70897**
402 12644

TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

34 Added 8142
36 Added **69655**

Chapter II—Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

200 Heading and authority citation revised **45039**
Authority citation revised **71715**
200.1—200.29 (Subpart A) undesignated center headings removed **71715**
200.1 Undesignated center heading and section revised **45039**
200.2 Revised **45039**
200.3 Revised **45039**
200.4 Revised **45039**
200.5 Revised **45039**
200.6 Revised **45039**
(a)(2) revised **71715**
200.7 Added **45042**
(c) and (d) added **71715**
200.8 Redesignated as 200.18; new 200.8 added **45042**
200.9 Added **45043**
200.10 Redesignated as 200.14; new 200.10 added **45043**
200.11 Undesignated center heading added; section revised **71715**
200.12 Revised **71716**
200.13 Undesignated center heading added; section revised; OMB number **71716**
(b) corrected 1008
200.14 Redesignated from 200.10 ..... **45043**
Revised **71716**
200.15 Revised **71716**
200.16 Revised **71716**
200.17 Amended **45042**
Revised **71716**
200.18 Redesignated from 200.8 ..... **45042**
Revised **71716**
200.19 Added **71717**
200.20 Revised **71717**
200.21 Revised **71718**
200.22 Removed **71718**
200.23 Removed **71718**
200.24 Removed **71718**
200.25 Undesignated center heading added; section revised **71718**
200.26 Added; OMB number **71718**
200.27 Revised; OMB number **71719**
200.28 Revised; OMB number **71719**
200.29 Added **71720**
(a)(1) correctly designated 1008
200.30 Transferred to subpart A; undesignated center heading added; section revised; OMB number **71720**
200.31 Added; OMB number **71721**
200.32 Added **71721**
200.33 Added; OMB number **71721**
200.34 Added; OMB number **71721**
200.35 Added **71721**
200.36 Added; OMB number **71721**
200.37 Added; OMB number **71721**
200.38 Added; OMB number **71721**
200.39 Added; OMB number **71721**
200.40 Transferred to subpart A; revised **71723**
200.41 Transferred to subpart A; revised; OMB number **71723**
200.42 Transferred to subpart A; revised; OMB number **71723**
200.43 Transferred to subpart A; revised; OMB number **71723**
200.44 Transferred to subpart A; revised **71723**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

200.45 Transferred to subpart A; revised; OMB number **71723**
200.46 Added; OMB number **71725**
200.47 Added; OMB number **71725**
200.48 Added **71725**
200.49 Added; OMB number **71725**
200.50 Transferred to subpart A; revised; OMB number **71727**
200.51 Transferred to subpart A; revised; OMB number **71727**
200.52 Added; OMB number **71728**
200.53 Added; OMB number **71728**
200.55 Undesignated center heading and section added **71729**
200.56 Added; OMB number **71729**
200.57 Added; OMB number **71729**
200.58 Added **71729**
200.59 Added **71729**
200.60 Transferred to subpart A; revised **71731**
200.61 Transferred to subpart A; revised **71731**
200.62 Undesignated centerheading and section added; OMB number **71732**
200.63 Transferred to subpart A; revised; OMB number **71732**
200.64 Added **71732**
200.65 Transferred to subpart A; revised **71733**
200.66 Added **71733**
200.67 Added **71733**
200.70 Undesignated center heading and section added; OMB number **71733**
200.71 Added; OMB number **71733**
200.72 Added; OMB number **71733**
200.73 Added; OMB number **71733**
200.74 Added; OMB number **71733**
200.75 Added; OMB number **71733**
200.77 Undesignated center heading and section added **71735**
200.78 Added **71735**
200.79 Undesignated center heading and section added **71736**
200.80 (Subpart B) revised **71736**
200.81—200.89 (Subpart C) revised; OMB numbers **71736**
200.90—200.99 (Subpart D) revised; OMB numbers **71738**
200.91 Added; OMB number **71738**
200.100—200.109 (Subpart E) revised; OMB numbers **71738**
200.100 Added; OMB number **71739**
222.170—222.196 (Subpart L) Added **5368211**
263 Revised **47696**

Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600—699)

600 Authority citation revised **67070**
600.8 Amended **67070**
600.21 (f) revised; OMB number **67070**
600.31 (e) revised; OMB number **67070**
668.2 (b) amended **67071**
668.3 Revised **67071**
668.4 Revised **67071**
668.8 (b)(e) revised; (b)(4) removed **67072**
668.14 (b)(22) revised **67072**
668.22 (a)(3), (4)(ii)(B), (d)(2), (3)(i), (iii)(B) and (j)(1) amended; (d)(1)(vii) and (2) removed; (d)(1)(viii), (ix), (3) and (4) redesignated as (d)(1)(vii), (viii), (2) and (3); (b)(3)(i), (d)(1)(vi) and new (vii) revised **67073**
668.32 (e)(2) amended **67073**
668.35 (b) through (f) redesignated as (d) through (h); (a)(2) introductory text and new (b) and (c) added; new (e) revised **67073**
668.46 (a) amended; (b)(12) added **66520**
668.84 (a)(1) introductory text amended; Footnote 1 added **69655**
668.151 (a)(2) amended **67073**
668.164 (g) revised **67073**
668.165 (a)(3) revised; OMB Number **67074**
668.171 (b)(2) and (4)(i) amended **67074**
668.173 (a), (b) and (c) revised; (d) redesignated as (f); new (d) and (e) added; OMB number **67074**
668.174 (c)(4) revised **67075**
668.183 (c)(1)(ii) amended; (c)(1)(iii) removed; (c)(1)(iv) redesignated as (c)(1)(iii) **67075**
668.193 (d)(1) amended; (f)(3) removed **67075**
673.5 (f) revised **67075**
674.2 (b) amended **67076**
674.9 (g) removed; (h) through (l) redesignated as (g) through

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 34 Chapter VI—Con.

(k); new (g)(3) amended; new (j) revised 67076
674.16 (d)(2) revised; (d)(3) added 67076
674.17 (a)(2), (c), (d) and (e) removed; (a)(3) redesignated as (a)(2); (a) introductory text, new (2) and (b) amended 67076
674.19 (e)(4) revised 67076
674.33 (b)(2) introductory text and (3) text revised 67076
674.34 (e)(4) and (5) amended; (e)(10) revised 67076
674.39 (a) introductory text and (2) amended; (a)(3) removed 67077
674.42 (a)(11) and (b)(2)(x) added; (b)(3) removed; (b)(4) and (5) redesignated as (b)(3) and (4); (b)(2)(i), (v) through (viiii), (ix) and new (4) amended; (a)(10), (b)(1), (2) introductory text, (iii) and new (3) revised 67077
674.43 (b)(2) introductory text amended 67077
674.45 (a)(1) amended 67077
674.46 (a)(1) introductory text and (i) amended 67077
674.47 (g)(1) removed; (g)(2), (i) and (ii) redesignated as (g) introductory text, (1) and (2); new (g)(1) and (h) heading amended; (h)(1) revised; (h)(3) added 67077
674.50 (e)(2)(ii), (3) and (g)(2) amended; (e)(4) removed 67077
675.2 (b) amended 67078
675.21 (b)(2)(i) revised 67078
682.200 (b)(2)(i) amended 67078
682.204 (a)(8), (9), (d)(7) and (8) added; (l) amended 67078
682.209 (a)(3)(ii)(A), (B), (C) and (8)(iv) amended; (a)(3)(iii) added 67078
682.210 (h)(2), (3)(iv), (4), (s)(6)(vii) and (ix) amended 67078
682.211 (b), (c), (e) and (f)(11) revised; (f) introductory text and (2) amended; (h)(3) redesignated as (h)(4); new (h)(3) added 67079
682.401 (b)(4) amended 67079
682.402 (a)(2), (3) and (4) redesignated as (a)(3), (4) and (5); new (a)(2) and (b)(6) added; new (a)(3) and (5)(iii) amended; (f)(4), (g)(1)(i), (h)(1)(i), (3)(iii) and (k)(2)(iii) revised 67079
682.405 (a)(1) and (b)(1) amended; (a)(4) removed 67080
682.414 (a)(5)(ii) revised 67080
682.603 (f)(1)(ii)(B) and (2)(i) amended 67080
682.604 (f)(1), (2) introductory text, (3), (g)(1), (2) and (3) revised; (f)(2)(iv) amended; (f)(2)(v) added 67080
685.102 (b) amended 67081
685.203 (a)(8), (9), (c)(2)(viii) and (ix) added; (h) amended 67081
685.211 (f) revised 67081
685.212 (a)(3) added 67081
685.220 (l)(3) revised 67082
685.301 (a)(9)(i)(B)(*2*) and (ii)(A) amended 67082
685.304 (a)(1), (2), (3), (5), (b)(4) and (5) revised; (b)(1), (2) and (3) amended; (b)(6) redesignated as (b)(7); new (b)(6) added 67082
690.61 (b) amended 67083
690.75 (a) revised 67083
690.79 Revised 67083
694.10 (e) revised 67083

Chapter VII—Office of Educational Research and Improvement, Department of Education (Parts 700—799)

700 Removed 78979
701 Removed 78979
702 Removed 78979

Proposed Rules:

1—99 (Ch. I) 69456
200 50986
..... 13796
600 51718
668 ..... 51036, 51718
673 51718
674 51036
675 51718
682 ..... 51036, 51718
685 ..... 51036, 51718
690 51718
694 51718

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 35—PANAMA CANAL

No amendments to 35 CFR have been published in the FEDERAL REGISTER since July 2, 2000.

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1—199)

6.01–4 Correctly revised; CFR correction 59783
7.13 (l)(2) removed; (l)(5) introductory text, (7) introductory text, and (11)(i) revised; (11)(viii) amended 69477
7.21 (a)(1), (4) introductory text, (5) introductory text, and (9)(vi) revised; (a)(2) removed 69477
7.22 (g)(1), (4), (6) and (7)(vi) revised; (g)(2) and (3) removed 69477

Chapter II—Forest Service, Department of Agriculture (Parts 200—299)

223.50 (e) revised 70169
242 Emergency closures and adjustments 50597
Temporary regulations 54572, 58695
Temporary regulations 7298
242.6 (b) revised 7704
242.11 (b)(1) amended 7704
242.24 (a)(2) and (3) revised 7279
242.27 Added; eff. 3–1–03 through 2–29–04 7282
242.28 Added; eff. 3–1–03 through 2–29–04 7282

Chapter IV—American Battle Monuments Commission (Parts 400—499)

404 Revised 8826
405 Removed 8829

Chapter VII—Library of Congress (Parts 700—799)

704.25 Added 11975
704.26 Added 11975
704.27 Added 11975
704.28 Added 11975
704.29 Added 11976
704.30 Added 11976
704.31 Added 11976
704.32 Added 11976
704.33 Added 11976

Chapter XI—Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)

1191 Appendix A amended 56384

Chapter XII—National Archives and Records Administration (Parts 1200—1299)

1200 Revised 72101
1200.2 Corrected 76995
1201 Added; interim 44757
Regulation at 67 FR 44757 confirmed 63267
1228.24 (a) revised 79518
1228.42 (d) corrected 47701
1228.270 (a), (b), and (c) revised; (f) added 79518
1254.6 (a) revised 63268
1275 Authority citation revised 44766
1275.64 (d) revised 44766
1275.66 (a) revised 44766
1275 Appendix A amended 44766

Proposed Rules:

1—199 (Ch. I) 59487, 64347
4 4975
7 ..... 56785, 57357
..... 2466, 11019
52 70899
61 52532
215 77451
219 ..... 72770, 72816
..... 10420
242 50619
..... 7294, 7734
251 2948
261 2948
295 2948
404 69172
1190 56441
1191 56441
1200 46945
1254 45683

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—United States Patent and Trademark Office, Department of Commerce (Parts 1—199)

1 Nomenclature change 14335
1.1 Revised 14335
1.4 (d)(1)(iii)(A) revised **79522**
1.6 (b) removed 14336
1.9 (j) added 14336
1.15 Removed 14336
1.16 (a), (g) and (h) revised **70849**
1.17 (a)(2) through (5), (e), (m), (r), (s) and (t) revised **70849**
1.18 (a), (b) and (c) revised **70849**
1.19 (a)(1) and (b)(1) revised **70849**
1.20 (e), (f) and (g) revised **70849**
1.25 (c) added 14336
1.51 (a) revised 14336
1.53 (d)(9) revised 14336
1.181 Undesignated center heading revised 14336
1.302 (c) revised 14336
1.417 Revised 14337
1.434 (a) and (d)(2) revised 14337
1.480 (b) revised 14337
1.492 (a)(1), (2), (3) and (5) revised **70850**
1.627 (a) added 14337
1.676 (d) introductory text revised 14337
1.740 (a)(13) revised 14337
2 Authority citation revised; nomenclature change 14337
2.6 (a)(1), (b)(1) and (2) revised **70850**
(b)(8) revised **79522**
2.18 Revised **79522**
2.24 Revised **79522**
2.33 (b)(2) revised **79522**
2.34 (a)(2)(i), (3)(i), (ii),(iii), and (4)(ii) revised **79522**
2.119 (d) revised **79523**
2.123 (f)(2) revised 14337
2.145 (b)(3) revised 14337
2.146 Undesignated center heading revised 14337
2.161 (h) removed; (g)(2) revised **79523**
2.183 (d) removed; (e) and (f) redesignated as new (d) and (e) **79523**
3 Nomenclature change 14337
3.27 Revised 14337
3.31 (a)(7) removed; (a)(8) redesignated as new (a)(7) **79523**
3.61 Revised **79523**
4 Authority citation revised 14338
4.3 (c) revised 14338
4.5 Revised 9553
4.6 Revised 14338
5 Authority citation revised; nomenclure change 14338
5.1 (a) revised 14338
102.1 (b) revised 14338
102.4 (a) revised 14338
102.10 (b) revised 14338
102.23 (a) revised 14338
102.24 (a) revised 14338
102.29 (b) revised 14339
104.1 Amended 14339
150 Authority citation revised; nomenclature change 14339
150.1 (a) revised 14339
150.6 Revised 14339

Chapter II—Copyright Office, Library of Congress (Parts 200—299)

201 Authority citation revised **69136**
201.4 (a)(1)(v) amended **69136**
201.10 (b)(1)(i) through (v) redesignated as (b)(1)(ii) through (v) and (vii); introductory text, new (b)(1)(i) and (vi) added; new (b)(1)(vii) amended; (c)(2), (d)(2), (4) and (e) revised **69136**
(b)(2), (c)(3) and (4) redesignated as (b)(3), (c)(4) and (5); Heading, (b)(1) introductory text, (v), (vii)(B), ne (3), (c)(1), (2), (d)(2) introductory text, (e)(1) and (2) revised; introductory text and (d)(4) amended; (b)(2) and (c)(3) added; interim **78176**
253.1 Amended **77171**
253.3 Removed **77171**
253.4 Introductory text, (c) and (d) amended; (a) revised **77171**
253.5 (c)(1) and (2) revised **71105**
253.5 (c)(3) amended **77171**
253.6 (c) revised **77172**
253.7 (a) amended; (b) revised **77172**
253.8 (b)(1) and (f)(1) revised **77172**
253.10 (a)j amended **77173**
259 Waiver **71477**
260 4744
261 Added **45272**

NOTE: **Boldface page numbers indicate 2002 changes.**

Proposed Rules:

1 14365
2 15119
7 15119
201 ..... **58550, 63578, 77951** 6678, 13652
260 4744
253 ..... **66090**

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Department of Veterans Affairs (Parts 0—99)

1.600 Added **62643**
1.617 Added **62644**
3 Nomenclature change **46868**
3.6 (a)(1), (2) and (3) removed; (a) amended; (e)(3) added **49585**
3.27 (c) and (d) revised **49586**
3.29 (c) revised **49586**
3.31 Introductory text and (c)(4)(ii) amended; authority citation revised **49586**
3.105 (g) revised **49586**
3.114 (a) introductory text amended; (a) authority citation revised **49586**
3.158 (a) and (c) amended **49586**
3.216 Amended; authority citation revised **49586**
3.261 (a)(40) revised **49586**
3.262 (y) revised **49587**
3.263 (g) revised **49587**
3.272 (u) revised **49587**
3.275 (i) revised **49587**
3.307 (a) introductory text and (c) amended; (d) and authority citation revised **67793**
3.309 (a) amended **67793**
3.317 Regulation at 66 FR 56615 confirmed **78980**
3.353 (b)(2) revised **46868**
3.403 (b) revised; (c) added **49587**
3.503 (b) revised **49587**
3.700 (a)(2)(iii), (3) and (5)(i) amended; (a)(5) heading and authority citation revised **60868**
3.814 Heading and authority citation revised; (a) heading and (d) heading added; (a), (c)(1), (2) and (e) introductory text amended **49587**
3.815 Added **49588**
3.850 (d) amended **46868**
3.1000 Heading, (c)(1) and (d)(4) revised **65708**
3.2600 (a) amended **46868**
4.71 Amended **48785**
4.71a Tables amended **48785, 54349**
4.118 Revised **49596**
Corrected **58448, 58449**
8.0 Revised **54738**
8.1 Revised **54738**
8.18 Revised **54738**
8.25 Undesignated center heading and section removed; new 8.25 redesignated from 8.26 ..... **54739**
8.26 Redesignated as 8.25; new 8.26 redesignated from 8.27 ..... **54739**
8.27 Redesignated as 8.26; new 8.27 redesignated from 8.28 ..... **54739**
8.28 Redesignated as 8.27; new 8.28 redesignated from 8.29 ..... **54739**
8.29 Redesignated as 8.28; new 8.29 redesignated from 8.30 ..... **54739**
8.30 Redesignated as 8.29; new 8.30 redesignated from 8.31 ..... **54739**
8.31 Redesignated as 8.30; new 8.31 redesignated from 8.32 ..... **54739**
8.32 Redesignated as 8.31; new 8.32 redesignated from 8.33; revised **54739**
8.33 Redesignated as 8.32; new 8.33 redesignated from 8.37 ..... **54739**
8.37 Redesignated as 8.33 ..... **54739**
9 Authority citation revised **52413**
9.1 (b) revised **52413**
9.14 Added **52413**
13 Nomenclature change **46868**
13.2 (a) amended **46869**
13.56 (b) amended **46869**
13.71 (a)(3) and (b) amended **46869**
13.108 Revised **46869**
14.626 Revised 8544
14.627 (g) revised; (h) through (k) redesignated as (k) through (n); new (h), (i), (j) and authority citation added 8544
14.628 (e) removed; (f) and (g) redesignated as (e) and (f); (a)(2), (b), (c) heading, (d) and new (e) revised; OMB number 8544
14.629 Heading, introductory text, (a) introductory text, (1), (2)(ii), authority citation, (b) and (c) revised; OMB number 8545
14.630 Revised 8546

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 38 Chapter I—Con.

14.631 (c)(3) and (e) removed; (b), (c) and (d) redesignated as (e), (f) and (g); (a) introductory text, new (e), (f)(1), (g) and authority citation revised; (b), (c) and (d) added 8546
14.632 Revised 8547
14.634 Amended 8547
14.635 Introductory text, (b) and authority citation revised; amended 8547
17 Regulation at 67 FR 4359 confirmed **66555**
Undesignated center heading revised 1010
17.36 Amended **62887**
(d)(3), (4) and (5) redesignated as (d)(4), (5) and (6); (a)(2), (b)(4), (7), (d)(1), new (5) introductory text, (i) and authority citation revised; (b)(3), new (d)(5)(iii) and (f) amended; (b)(8) and new (d)(3) added **62888**
(b)(7), (8) and (c)(2) revised 2672
17.49 Revised; interim **58529**
17.96 Regulation at 63 FR 37780 confirmed 11977
17.271 Regulation at 67 FR 4359 confirmed **66555**
17.272 Regulation at 67 FR 4359 confirmed **66555**
17.274 Regulation at 67 FR 4359 confirmed **66555**
17.700—17.731 Undesignated center heading and sections removed; interim 13594
17.902 OMB number 1011
17.903 OMB number 1012
17.904 OMB number 1013
17.1000 Note amended 3404
17.1002 (d) amended 3404
17.1004 (b) amended 3404
17.1005 (b) amended 3404
19.2 Revised 6625
20.204 Revised 13236
20.609 (c) revised **49600**
20.1404 Regulation at 66 FR 35903 confirmed **46870**
20.1409 Regulation at 66 FR 35903 confirmed **46870**
21.8010—21.8410 (Subpart M) Revised **72565**
36 Technical correction **62889**
36.4301 Amended **62647**
36.4302 (a)(4), (e)(1)(i), (2)(i) and (3) text and authority citation revised; interim 6627
36.4323 (e)(1)(v) and (4) amended; (e)(1)(vi) revised **62647**
36.4308 Authority citation removed; (c)(2) revised; interim 6627
36.4404 (a) introductory text, (b)(2) and authority citation revised; interim 6627
36.4527 (a)(1) amended; (a)(2) redesignated as (a)(3); new (a)(2) added; interim 6627
39.2 (d) added **62645**
39.3 (b)(1) and authority citation added **62645**
60 Added 8549
61 Added; interim 13594

Proposed Rules:

0—99 (Chap. I) **79020**
1 ..... **77737**
3 ..... **49646, 63352, 76322**
2476, 4132, 6679, 6998, 14567
4 ..... **54394, 56509, 59033, 65915**
6998
17 ..... **48078, 49278**
21 ..... **57543**

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

111 DMM amended; incorporation by reference **45063, 53457, 53881, 63551, 65500, 66056, 78178**
DMM amended; incorporation by reference 4715, 9008, 15056
111.3 (f) table amended **46875**
111.5 Revised **46875**
255 Revised **75814**
265.6 (d) introductory text and (2) revised; (d)(3) through (d)(8) redesignated as (d)(4) through (d)(9); new (d)(3) added **46393**
266.9 (b)(7) added **79859**
501.2 Intjroductory text, (c) and (d) revised **69479**
(c)(1) and (ii) correctly designated as (c)(1) and (2) **71843**
501.22 Revised 2698
501.28 Revised 2699
501.23 (g) and (h) revised **69138**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

927 Revised **50353**
952.5 Amended **62179**
952.33 Amended **62179**
957.2 Amended **62179**
958.3 (d) amended **62179**
960.3 (b) amended **62179**
962.2 (d) and (m) amended **62179**
962.12 (f)(1) amended **62179**
962.13 (f)(2) amended **62179**
962.21 (b)(4) amended **62179**
964.1 Amended **62179**
964.2 Amended **62179**
965.3 Amended **62179**

Chapter III—Postal Rate Commission (Parts 3000—3099)

3001.6 (b) and (c) revised **67559**
3001.9 Revised **67559**
(e) added 47
3001.10 Revised **67559**
3001.11 Revised **67559**
3001.12 Revised **67559**
3001.13 Revised **67559**
3001.20 (c) revised **67561**
3001.20a (a) revised **67561**
3001.20b (a), (b) and (c) redesignated as (b), (c) and (d); new (a) added 47
3001.26 (a) through (c) and (e) revised **67561**
3001.27 (a) through (c) and (e) revised **67562**
3001.28 (a) through (c) and (e) revised **67562**
3001.30 (e)(2) and (3) revised **67563**
3001.31 (b)(2)(iv) amended **67563**
3001.42 (a) revised **67563**
3001.59 (c) and (e)(4) revised 12589
3001.69b (b), (c), and (d) revised 12590
3001.163 (b), (c), and (d) revised 12590
3001.173 (b), (c), and (d) revised 12590

Proposed Rules:

111 ..... **48425, 53328, 54397, 63582, 66094, 69698, 72626, 77726**
530
501 ..... **70712**
3001 ..... **79538**
2272

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—1099)

2.100—2.108 (Subpart A) Revised **67307**
9.1 Table amended (OMB numbers) **58996, 59784, 65709**
Table amended (OMB numbers) 887, 7265, 9780
Regulation at 65 FR 43661 withdrawn 13614
19 Regulation at 67 FR 41345 withdrawn **53743**
22.30 (a)(1) amended 2204
27.3 Regulation at 67 FR 41345 withdrawn **53743**
50 Remand response 614
51 State implementation plan determinations **48032, 50600, 62388**
51.166 (b)(1)(i)(*b*), (5) and (23)(i) amended; (a)(7), (b)(2)(iv), (3)(vi)(*d*), (viii), (38) through (52), (r)(3) through (7) and (t) through (x) added; (i)(4) through (12) redesignated as (i)(1) through (9); (a)(1), (6)(i), (b)(2)(i), (ii), (iii)(*h*), (3)(i), (iii), (iv), (vi)(*b*), (*c*), (7), (8), (13), (21), (31), (i) introductory text and new (i)(5)(i)(*g*) through (*j*) revised; (i)(1), (2), (3), new (i)(5)(i)(*k*), (*l*) and (*m*) removed **80659**
(b)(1)(i)(*a*), (12), (23)(ii), new (i)(4), (j)(2) and (3) amended **80260**
52 State implementation plan determinations **44369, 48032, 52414, 61784, 62388**
Attainment status determinations **67113**
Policy statement 4932, 14159
State implementation plan determinations 7321, 8838, 13840
Technical correction 7428
52.21 (a) and (i)(4) through (13) redesignated as (a)(1) and (i)(1) through (10); (b)(1)(i)(*a*), (*b*), (2)(i), (5), (23)(i), (ii), new (i)(4), new (5)(i), (j)(2) and (3) amended; (a)(2), (b)(2)(iv), (3)(vi)(*d*), (ix), (39) through (54), (r)(5), (6), (7) and (x)

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 40 Chapter I—Con.

through (bb) added; (b)(2)(i), (ii), (iii)(*h*), (i), (iii), (iv), (vi)(*b*), (*c*), (7), (8), (13), (21), (32) and (i) introductory text revised; (b)(33), (i)(1), (2) and (3) removed **80274**
52.165 (a) introductory text, (1)(v)(A), (C)(*8*), (vi)(A), (C), (E)(*2*) ,(*4*), (vii), (xii), (xiii) introductory text, (xviii), (xxv) and (2) revised; (a)(1)(i) and (iv)(A)(1) amended; (a)(1)(v)(D), (vi)(E)(*5*), (G), (xxvi) through (xlii), (3)(ii)(H), (I), (J), (6), (7), and (c)through (g) added **80245**
52.50 (c) table amended **76317**
(b), (c), (d), and (e) revised 5222
Corrected 7174
52.73 Added **58712**
52.96 (b) revised 11321
52.120 (c)(99) through (102) added **48736**
(c)(105) added **52418**
(c)(106) added **54959**
(c)(84)(i)(G), (H) and (107) added **68767**
(c)(108) and (109) added 2914
(c)(110) added 14154
52.122 Added **54743**
52.123 (f)(1)(i) removed; (j) added **48739**
(k) added 2914
52.124 (b) and (c) removed **48739**
52.133 (e) added **59460**
(f) and (g) added **68767**
52.144 (b) revised 11321
52.166 (a)(1) **80259**
(b)(1)(i)(*a*), (12), (23)(ii), (i)(4), (j)(2) and (3) amended **80260**
52.181 (b) revised 11322
52.220 (c)(280)(i)(A)(*3*) and (C)(*2*) added **44065**
(c)(297)(i)(B) added **45066**
(c)(284)(i)(C), (292)(i)(B) and (296) added **45069**
(c)(297)(i)(A)(2) added **46598**
(c)(284)(i)(A)(*3*) and (B)(*4*) added **46878**
(c)(294)(i)(A)(*4*) added **47703**
(c)(286) introductory text revised; (c)(286)(i)(A)(*3*), 193)(i)(A)(*2*), 297)(i)(A)(*3*) and (i)(C) added **52614**
(c)(297)(i)(D) added **54351**
(c)(298) added **54965**
(c)(297)(i)(C)(*2*) added **57956**
(c)(284)(i)(B)(*6*) added **57956**
(c)(299) added **57962**
(c)(242)(i)(*b*)(*2*) added **62378**
(c)(300) added **62387**
(c)(284)(i)(D) added **65504**
(c)(279)(i)(A)(*9*), (2)(84)(C)(i)(*2*) and (D)(*2*) added **65876**
(c)(279)(i)(A)(*8*) and (288)(i)(D) added **67316**
Regulation at 67 FR 62387 withdrawn **70556**
(c)(301) added **72574**
(c)(215)(i)(F), (264)(10)(i)(C)(*2*) and (281)(i)(B) added **72844**
(c)(303) added 3192
(c)(302) added 4932
(c)(304) added 8835
(c)(297)(i)(D)(*2*) and (303)(i)(C)(1) added 8837
(c)(302)(i)(A)(*3*) added 8841
(c)(300) added 9017
(c)(305) added 9565
(c)(284)(i)(A)(*4*), (285)(i)(D), (302)(i)(B)(*2*) added 10969
(c)(159)(iii)(E), (194)(i)(G)(*2*), and (279)(i)(A)(*10*) added 13845
(c)(307) and (308) added 14159
(c)(279)(i)(A)(*11*) and (288)(i)(D)(*2*) added 14163
52.222 (a)(3)(ii) added **54741**
52.242 (a)(1)(ii) and (2) added **62385**
52.244 Added **69146**
52.270 (a)(3), (b)(1) introductory text, (2) introductory text, (3) introductory text and (4) introductory text revised 11322
52.320 (c)(95) added **58337**
(c)(98) added 4934
52.332 (l) added **58338**
52.343 (b) revised 11322
52.370 (c)(91) added 9011
52.382 (b) revised 11322
52.385 Table 52.385 amended 9011
52.420 (c) table amended **70316**
52.499 (b) revised 11322
52.520 (e) table amended **53317**
(c) table amended 2205, 3819
(b) through (e) revised 9554
Regulation at 68 FR 3819 withdrawn 11977
52.530 (d) introductory text revised 11322
52.570 (c) table amended **45913**
(d) table amended **45915**
(e) table amended **60871**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

52.632 (b) revised 11322
52.670 (c)(37) added 2222
52.672 Added **65718**
52.674 Removed 2222
52.679 Revised 2222
52.681 Revised 2225
52.683 Revised 2226
(b) and (c) revised 11322
52.738 (b) revised 11323
52.770 (c)(146) added **46594**
(c)(151) added **52616**
(c)(148) added **57517**
(c)(152) added **63270**
(c)(153) added **70012**
Regulation at 67 FR 63270 withdrawn **70850**
(c)(155) added **72846**
(c)(156) added **79861**
(c)(147) added 1972
(c)(147) regulation at 68 FR 1972 withdrawn 9892
(c)(147) added 9895
52.776 (j) removed; (r) added 1373
52.793 (b) revised 11323
52.820 (c) table amended **62891**
(d) heading and table amended **67565**
(c) table amended 10971
52.833 (b) revised 11323
52.869 Removed **66060**
52.870 (e) table amended **55728**
(c) table amended **66060**
(c) table amended 8846, 14541
52.919 Added **53314**
52.920 (c) table amended **59786, 69690, 79525**
(d) table amended **77432**
Regulation at 67 FR 77432 and 79525 withdrawn 6629
52.970 (e) table amended **60593, 61801**
(c) table amended **60595, 60877, 60885, 61270**
52.986 (b) revised 11323
52.1020 (c)(46) and (47) added **57153**
52.1031 Table 52.1031 amended **57154**
52.1070 (c)(173) added **44062**
(c)(177) added 1974
(c)(179) added 2210
(c)(174) and (175) added 5229
(c)(182) added 9014
(c)(180) added 9019
52.1120 (c)(129) added **62183**
(c)(120) added **62187**
(c)(132) added **78181**
52.1127 Table revised **72579**
52.1129 (c) added **55125**
(d) added **72579**
52.1165 (b) revised 11323
52.1167 Table 52.1167 amended **62183, 62187, 78181**
52.1170 (c)(118) added 8553
52.1180 (b) revised 11323
52.1220 (c)(61) added **57519**
52.1230 (c) added **48790**
52.1234 (b) revised 11323
52.1270 (c) table amended **77927**
(b), (c), and (d) revised 13631
52.1320 (c) table amended **54961, 54963, 54967**
(c) table amended **55131, 70319, 70321, 12827, 12829, 12831, 12833**
(c) table amended 14539
52.1370 (c)(55) added **55125**
(c)(29) and (49) introductory texts revised **59456**
(c)(56) added **62395**
(c)(58) added **70011**
(c)(37) introductory text revised **70555**
52.1382 (b) revised 11323
52.1436 Introductory text revised 11323
52.1485 (b) revised 11323
52.1520 (c)(68) added **48036**
(c)(60) added **65712**
52.1523 Table revised **72575**
52.1525 Table 52.1525 amended **48036, 65712**
52.1529 Revised **65712**
52.1570 (c)(72) added 7706
52.1581 Added **54579**
52.1582 Heading revised; (d)(2) removed **54580**
52.1603 (b) revised 11323
52.1634 (b) revised 11323
52.1689 (b) revised 11324
52.1770 (c) table redesignated as Table 1 and amended **51463**
(c) Table 2 added **51764**
(c) Table 1 amended **64991, 78982**
(c) Table 1 amended; (e) added **78986**
(c) Table 2 amended **64995**
(c) Table 3 added **65000**
(c)(1) table amended **66058**
(b) revised; (c) Table 1 amended **78988**
52.1820 (c)(32) added **62398**
Regulation at 67 FR 62398 withdrawn **72580**
(c)(32) added 9567
52.1829 (b) revised 11324

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 40 Chapter I—Con.

52.1836 Added **62398**
52.1870 (c)(126) added 1370
(c)(127) added 2217
Regulation at 68 FR 2211 withdrawn 12590
52.1929 (a) introductory text revised 11324
52.1970 (c)(137) added **48393**
(c)(138) and (139) added 2903
52.1977 Amended 2904
52.1982 (a)(1)(ii) revised 2909
52.1985 Removed 2909
52.1987 (a) and (c) revised 2909
(c) revised 11324
52.1988 (a) revised 2909
52.2020 (c)(193) added **57159**
(c)(157) added **62392**
(c)(183) added **68525**
(c)(192) added **68940**
(c)(190) added 2458
(c)(195) added 2208
(c)(197) added 8724
(c)(201) added 14156
(c)(203) added 15061
52.2022 Regulation at 67 FR 38896 withdrawn **50602**
52.2023 (c) removed **68941**
52.2036 (n) added **68525**
52.2070 (e) table amended **68944**
52.2120 (c) table amended **68769**
52.2178 (b) revised 11324
52.2185 Added **57521**
52.2220 (c) table amended **46595, 55322**
52.2233 (b) introductory text revised 11324
52.2270 (c) table amended **58709, 72382**
(e) table amended **72382**
52.2303 (c) and (d) revised 11324
52.2320 (c)(51) added **44069**
(c)(50) added **57748**
(c)(53) added **59168**
(c)(48) and (49) added **62894**
(c)(54) added **78190**
52.2346 (b) revised 11324
52.2348 Existing text designated as (a); (b) added **57748**
52.2352 Added **59000**
52.2420 (c) table amended **76995**
(c) table amended 667, 8843
(d) table amended 14545
52.2423 (r) added 670
52.2475 Added **66560**
52.2497 (b) revised 11324
52.2520 (c)(47) added **62381**
(c)(50) added **62383**
(c)(48) added **63271**
(c)(51) added 6629
(c)(52) added 9561
52.2570 (c)(107) added 3410
52.2581 (e) revised 11324
52.2630 (b) introductory text revised 11324
52.2676 (b) revised 11325
52.2729 (b) revised 11325
52.2779 (b) revised 11325
52.2827 (b) revised 11325
58 Appendix D amended **57334**
Appendix A amended **80328**
60 Authority delegation notices **70170**
60.4 (c) amended **57521**
(c) table amended **59000**
61 Authority delegation notices **70170**
61.04 (c) table amended **62399**
61.18 Introductory text, (a) introductory text, (c) and (d) introductory text revised **57166**
61.93 (b) introductory text, (1)(i), (ii) and (2)(i) revised; (c) through (g) added **57166**
61.93 (b) introductory text, (1)(i), (ii) and (2)(i) revised; (c) through (g) added **57166**
61.107 (b) introductory text, (1)(i), (ii) and (2)(i) revised; (d) through (h) added **57167**
61.340 (d) added **68531**
61.341 Amended **68531**
61.343 (a) introductory text revised; (a)(2) and (e) added **68532**
Regulation at 67 FR 68532 withdrawn in part 6082
61.345 (a)(3) revised **68532**
61.356 (n) added **68533**
61 Appendix B amended **57168**
62.02 (b) revised 5158
62.13 (d) and (e) added 5158
62.100—62.106 (Subpart B) Unedesignated center heading added 4105
62.107 Added 4105
62.1850—62.1985 (Subpart I) Undesignated center heading added 49, 51
62.1980 Added 51
62.1985 Added 49
62.2100—62.2155 (Subpart J) Undesignated center heading added 49, 51, 53, 55
62.2140 Added 55
62.2145 Added 51

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

62.2150 Added 53
62.2155 Added 49
62.3625 (d) added 11474
62.5340 Added **62896**
62.5350—52.5400 (Subpart W) Undesignated center heading added **62896**
62.5425 Added **62896**
62.6100—62.6125 (Subpart Z) Undesignated center heading added **67317**
62.6126 Added **67317**
62.7325 (b)(4) and (c)(4) added 6632
4(b)(3) and (c)(3) added 6635
62.7405 Undesignated center heading and section added 10661
62.7455 Undesignated center heading and text added 6635
62.7460 Undesignated center heading and text added 6632
62.7603 Undesignated center heading and section added 10662
62.8107 Undesignated centerheading and section added 11981
62.8850—62.8852 (Subpart KK) Center heading added **61272**
62.8855 Added **61272**
62.9600—62.9662 (Subpart NN) Undesignated center heading added 49, 51
62.9633 Added 55
62.9645 Added 51
62.9646 Added 51
62.9670 Added 49
62.9985 Undesignated center heading and section added 10661
62.13107 Added **46600**
62.13350—62.13355 (Subpart CCC) Undesignated heading added **76119**
62.13355 Added **76119**
62.13356 Added 9022
62.15000—62.15410 (Subpart JJJ) Added 5158
63 Authority delegation notice **48036, 70170**
63.14 (b)(24), (25) and (i) revised; (b)(26) added **48262**
(d)(4) added **58342**
(i) amended **72341**
(i) revised; (j) removed 7713
63.99 (a)(19) added **46398**
(a)(21) added **58342**
(a)(29)(i) added **59005**
63.210—63.217 (Subpart J) Added **45892**
63.860 (b) introductory text and (5) revised; (b)(7) added 7713
63.861 Amended 7713
63.862 (a)(1)(i)(B) and (2) revised; (d) added 7713
63.864 Revised 7713
63.865 Introductory text, (a)(2)(vi) and (b)(5)(i) through (iv) added; (a)(1), (b) introductory text, (1), (2), (3), (5), (c), (d) introductory text and (1) revised; (e) and (f) removed 7716
63.866 (c)introductory text, (1) and (2) revised; (c)(7) added 7718
63.867 (a)(3) added 7718
63.981 Amended **46277**
63.983 (a)(3)(i), (ii) and (b) heading revised; (b)(4) added **46277**
63.987 (b)(3)(ii) amended; (b)(3)(iii) revised **46277**
63.992 Added **46277**
63.997 (e)(2)(ii), (iii) introductory text, (D) and (iv) introductory text revised; (e)(2)(iii)(C)(*1*) amended; (e)(2)(iii)(E) and (iv)(F) through (I) added; (e)(2)(iv)(B)(*2*) and (*3*) removed **46277**
63.1000 (b) added **46278**
63.1019 (f) added **46279**
63.1067 Added **46279**
63.1080—63.1097 (Subpart XX) Added **46271**
63.1100 (a), Table 1 and (g) introductory text amended; (g)(1) through (4) and (5) heading revised; (g)(6) added **46279**
63.1101 Amended **46280**
Correctly amended; CFR correction 6635
63.1102 (a) revised; (b) and Table 1 added **46280**
63.1103 (e) through (h) added **46281**
(h)(1)(i) introductory text revised; (h)(1)(ii)(C) added; (h)(2) amended **46293**
63.1104 (a), (e) introductory text, (f)(1), (k) introductory text and (m)(2)(i) introductory text amended **46288**
63.1105 Added **46288**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 40 Chapter I—Con.

63.1114 Added **46289**
63.1201 (a) amended **77691**
63.1205 (b)(6) revised **77691**
63.1206 (c)(5)(ii) revised **77691**
63.1207 (f)(1)(xxi) and (j)(1)(i) revised; (j)(5) added **77691**
63.1209 (c)(2)(v), (k)(4) introductory text, (i), (m)(3) and (p) revised; (o)(3)(vi) removed **77691**
63.1213 (a) and (b)(1) introductory text revised **77691**
63.1340 Regulation at 66 FR 16619 withdrawn in part **44371**
(c) revised **72584**
63.1344 Regulation at 66 FR 16619 withdrawn in part **44371**
(a)(3) revised **72585**
63.1349 Regulation at 66 FR 16619 withdrawn in part **44371**
(e)(3) added **72585**
63.1350 Regulation at 66 FR 16620 withdrawn in part **44371**
Table 1 amended **44769**
(a)(4)(v), (vi) and (vii) added; (c)(2)(i), (d)(2)(i) and (e) introductory text revised **72585**
63.1360 (b) introductory text, (2), (d)(3), (f) introductory text, (2), (3), (4), (h) and (i)(1) revised; (d)(4) redesignated as (d)(5); new (d)(4) and (f)(5) added **59340**
63.1360—63.1369 (Subpart MMM) Table 1 amended; Table 4 revised **59355**
63.1361 Amended **59342**
63.1362 (b)(2)(iv)(A), (4)(ii)(A), (5)(ii), (6), (c)(2) introductory text, (iv) introductory text, (B), (3) through (6), (d) introductory text, (2) introductory text, (12), (13), (14), (h)(2) introductory text, (i), (iii), (3) and (4) revised; (c)(7), (d)(15) and (16) added; (d)(2)(v) removed **59343**
63.1363 (a)(1), (1)(10)(ii), (iii), (b)(3)(iii)(A) through (F), (iv), (c)(2)(i), (iii), (3)(i), (4)(ii), (5) introductory text, (iv), (6), (9), (e)(7)(iii), (9), (f) and (g)(2)(vi) revised; (b)(3)(iii)(G) and (c)(5)(vi), (vii) added; (c)(5)(vi)(C) and (D) removed **59345**
63.1365 (a)(1)(iii), (2), (5), (6), (7)(i) introductory text, (A), (C), (ii), (b) introductory text, (8), (11) introductory text, (iii) introductory text, (iv), (c)(1)(iii), (v), (2)(i)(C), (D)(*4*)(*i*), (*iii*), (E)(3), (4), (F), (ii) introductory text, (A), (3)(ii)(A), (iii) introductory text, (d)(1)(i)(A), (B), (3)(ii) and (e) revised; (b)(11)(iii)(A), (g) introductory text, (3)(i), (ii), (4) introductory text, (i) and (ii) amended; (b)(11)(iii)(D) added; (b)(12) removed **59347**
63.1366 (b)(5) and (8)(iii) revised; (b)(8) introductory text amended; (h) added **59352**
63.1367 (a)(3) introductory text amended; (a)(3)(i), (b) introductory text, (4), (6)(i), (7) and (f) revised; (b)(6)(ix) and (8) through (11) added **59353**
63.1368 (e)(4), (f)(6), (g)(1) introductory text, (2) introductory text and (h)(1) introductory text revised; (f)(9) and (g)(2)(ix) through (xii) added; (m) amended **59354**
63.1500—63.1520 (Subpart RRR) Regulation at 67 FR 41124 withdrawn **52616**
Regulation at 67 FR 59793 eff. date corrected **68038**
63.1500 (a) revised; (d) removed; (e) and (f) redesignated as (d) and (e); new (f) added **79815**
Appendix A amended **59793**
63.1501 Regulation at 67 FR 41122 withdrawn **52616**
Revised **59791**
Regulation at 67 FR 59791 eff. date corrected **68038**
63.1503 Amended **79815**
63.1505 Regulation at 67 FR 41123 withdrawn **52616**
(b) through (e) introductory texts, (f)(2) and (g), (h) and (k) introductory texts revised **59792**
Regulation at 67 FR 59792 eff. date corrected **68038**
Heading, (f)(1), (i)(7) and Equation 2 revised; (k)(6) added **79816**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

63.1506 Regulation at 67 FR 41123 withdrawn **52616**
(a)(1) revised **59792**
Regulation at 67 FR 59792 eff. date corrected **68038**
(a)(2) removed; (a)(3), (4), and (5) redesignated as (a)(2), (3) and (4); (m)(6)(i) revised **79816**
63.1510 Regulation at 67 FR 41123 withdrawn **52616**
(a) and (b) introductory text revised **59792**
Regulation at 67 FR 59792 eff. date corrected **68038**
(b) introductory text amended; (o)(1) introductory text and (w) introductory text revised **79816**
63.1511 Regulation at 67 FR 41123 withdrawn **52616**
(a) and (b) introductory text revised **59792**
Regulation at 67 FR 59792 eff. date corrected **68038**
(f) revised; (h) and (i) added **79817**
63.1512 (h) revised **79817**
63.1515 Regulation at 67 FR 41124 withdrawn **52616**
(b) introductory text amended **59793**
Regulation at 67 FR 59793 eff. date corrected **68038**
(b)(8) and (9) revised **79518**
63.1517 (b)(11) and (16)(ii) revised **79818**
63.1520–63.1579 (Subpart RRR) Table 2 and Table 3 amended **79518**
63.1520–63.1579 (Subpart RRR) Appendix A amended **79519**
63.1580 Revised **64745**
63.1580—63.1595 (Subpart VVV) Table 1 amended **64746**
63.1586 Introductory text revised **64746**
63.1590 (a)(1) introductory text revised **64746**
63.1591 (a) revised **64746**
63.1592 Revised **64746**
63.1930—63.1990 (Subpart AAAA) Added 2238
63.3280—63.3420 (Subpart JJJJ) Added **72341**
63.4080—63.4181 (Subpart NNNN) Added **48262**
63.5180 (g)(1)(i) and (ii) revised 12592
63.5980—63.6015 (Subpart XXXX) Added **45598**
63.5994 (c)(4) amended 11747
63.6015 Amended 11747
63.9480—63.9579 (Subpart QQQQQ) Added **64506**
69.13 (f) added 1167
70 Actions on petitions 14163
70.6 (c)(1) suspended; interim **58536**
70 Appendix A amended **55131, 63563, 70323, 71481**
Appendix A amended 1985, 10972
71.6 (c)(1) suspended; interim **58536**
72.2 Corrected **53504**
75.16 (e)(1) corrected **53504**
75.19 (c)(1)(iv)(h)(*3*), (3)(ii)(G) and (H) corrected **53504**
75.21 (a)(7) corrected **53505**
75.22 (a)(4) corrected **53505**
75.33 (c)(7) corrected **53505**
Corrected **57574**
75.53 Corrected **57574**
75.71 Corrected **53505**
75.74 Corrected **57574**
75 Appendices A, B, D and E corrected **53505**
Appendices B, D and G corrected **57574**
80 Meetings **67317**
80.310 Regulation at 57 FR 40184 withdrawn in part **54743**
81 Policy statement **44769**
Attainment status determination **48039, 48552, 49600, 54580, 64815, 65043**
Technical correction **59005**
Regulation at 67 FR 54580 withdrawn **65045**
81.53 Amended **57334**
81.92 Amended **57335**
81.94 Amended **57335**
81.305 Table amended **50807**
81.306 Table amended **58338**
81.309 Table amended 3424
81.313 Table amended **65718**
Amended 2226
Corrected 7174
Technical correction 8085
81.314 Table amended 4840
81.315 Table amended 1373
81.319 Table amended **53885, 57335**
Regulation at 67 FR 42696 withdrawn; table amended **61801**
81.321 Table amended 3424
81.322 Table amended **62187**
81.323 Table amended **45637**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 40 Chapter I—Con.

81.324 Table amended **45639, 48790**
81.326 Corrected 7410
81.329 Table amended **68776**
81.331 Table amended **54580**
81.338 Table amended **48393**
81.339 Table amended **68526**
Corrected 1657
81.348 Table amended **66560**
82 Acceptable substitutes listing **77927**
82.3 Amended **79872**
Amended 251
Heading revised; text amended 2847
82.4 (t)(2) table revised **79511**
(j) revised **79872**
(a), (c) and (k) redesignated as (a)(1), (c)(1) and (k)(1); (a)(2), (c)(2) and (k)(2) added 251
Heading revised; (n) through (s) and (u) removed; (t) through (w) redesignated as (n) through (q) 2848
(t)(4) Table I correctly removed; CFR correction 10370
82.5 Heading revised; (h) removed 2848
82.6 Heading revised; (h) removed 2848
82.7 Corrected; CFR correction 4385
82.8 Removed 2848
82.9 Heading revised 2848
82.10 Heading revised 2848
82.11 Heading revised 2848
82.12 Heading revised 2848
82.13 Heading revised; (n) and (o) removed; (p) through (cc) redesignated as (n) through (aa) 2848
82.15 Added 2848
82.16 Added 2848
82.17 Added 2848
82.18 Added 2848
82.19 Added 2848
82.20 Added 2848
82.21 Added 2848
82.22 Added 2848
82.23 Added 2848
82.24 Added 2848
82.1—82.24 (Subpart A) Appendix B revised 2859
Appendix C revised 2860
Appendix L added 2863
82.170—82.184 (Subpart G) Appendix K added **47721**
Appendix L added 4010
82.13 (g)(2), (3), and (u) **79872**
(f)(2)(xvii) through (xix), (3)(xiii), (xiv), (xv), (g)(1)(xvii) through (xix), (4)(xv), (xvi), (xvii), (aa), (bb) and (cc) added; (h) revised 252
86 Authority citation revised **72825**
86.1105–87 (e) revised; (i) added **51477**
86.1801–01 (d) revised **72825**
86.1811–04 (c)(4)(iv), (6) Table SO4–2 and (f)(4) revised; (f)(7) added **72825**
86.1838–01 (b)(1)(i), (ii) and (2)(i) revised **72826**
89.2 Amended **68339**
89.106 (b) revised **68339**
90 Heading revised **68339**
90.1 Revised **68339**
90.2 (c) added **68339**
90.3 Amended **68339**
90.103 (a)(2)(v) redesignated as (a)(2)(vi); new (a)(2)(v) added **68340**
90.110 (b) revised **68340**
91.3 Amended **68340**
91.110 (b) revised **68340**
91.419 (b) amended **68340**
91.601—91.608 (Subpart G) Appendix A amended **68340**
91.803 (a) revised **68340**
93.102 (d) added **50817**
93.104 (e)(2) revised **50817**
94 Heading revised **68341**
94.1 Revised **68341**
(b) revised 9780
94.2 Amended; (b) introductory text revised **68341**
(b) amended 9781
94.5 Revised 9781
94.7 (c), (d) and (e) revised **68341**
(d) revised 9782
94.8 (a), (e), (f) introductory text and (1) revised **68342**
(a) and (c) through (g) revised 9782
94.9 (a) introductory text and (1) revised **68343**
(a)(1), (b)(1) and (2) revised 9783
94.10 (a) revised 9784
94.11 (g) added 9784
94.12 Introductory text, (a), (b)(1) and (e) revised; (f) and (g) added **68343**
Introductory text revised; (f) added 9784

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

94.104 (c) redesignated as (d); new (c) added **68343**
94.105 (b) text and Footnotes 1 and 2 in (c)(1) table, (2) table and (d)(1) table amended; (e) added **68343**
94.106 (b) introductory text, (1) introductory text, (2) introductory text, (3) introductory text and (4) revised; (b)(5) added **68344**
Heading and introductory text revised 9784
94.107 (a) revised; (f) added 9784
94.108 (a)(1), (b) and (d)(1) revised; (e) added 9784
94.109 Added 9785
94.203 (d)(14) and (16) revised **68346**
(d)(14) revised 9785
94.204 (b)(9) and (10) amended; (b)(11) added; (e) revised **68346**
(f) added 9785
94.205 (b) revised; (e) and (f) added 9785
94.209 Revised **68346**
Introductory text added 9786
94.211 (a)(3), (e)(2)(iii), (k) and (l) added; (h) introductory text and (j)(2) introductory text revised 9786
94.212 (b)(10) revised **68346**
94.214 Revised 9786
94.217 (f) added 9786
94.218 (d)(2)(iv) added **68346**
(c) and (d)(1) revised 9786
94.219 (a) revised 9786
94.304 (k) revised **68346**
94.305 (a) revised 9786
94.403 (a) revised 9786
94.501 (a) revised **68346**
94.503 (d) added **68347**
(a) and (b) revised 9787
94.505 (a) introductory text revised 9787
94.507 (a) revised 9787
94.508 (a) through (d) and (e) introductory text revised 9787
94.510 (b) revised 9787
94.801 (b) revised 9787
94.904 (b)(7) removed 9787
94.906 Heading revised; (d) removed 9787
94.907 (d) and (g) revised **68347**
(d) introductory text revised 9787
94.1001—94.1004 (Subpart K) Added 9787
94.1103 (a)(5) revised **68347**
(a)(2)(v), (vi) and (7) added; (a)(3)(i) revised 9788
94.1106 Introductory text and (d) added; (a) and (c)(1) revised 9789
112.1—112.7 (Subpart A) Sections designated as Subpart A and revised **47140**
112.3 (a) and (b) revised; interim 1351
112.8—112.11 (Subpart B) Added **47146**
112.12—112.15 (Subpart C) Added **47149**
112.20—112.21 (Subpart D) Sections designated as Subpart D; heading added **47151**
112.20 (h) amended **47151**
112 Appendices C, D and F amended **47152**
Appendix F corrected; CFR correction 4385
122.21 (a)(1) amended; (i)(1) revised 7265
122.23 Revised 7265
122.26 (e)(8) revised 11329
122.28 (b)(2)(ii) amended 7268
122.42 (e) added 7268
122.44 Regulation at 65 FR 43661 withdrawn 13614
122 Appendix B removed 7269
123.36 Added 7269
123.44 Regulation at 65 FR 43661 withdrawn 13614
124.7 Regulation at 65 FR 43661 withdrawn 13614
124.8 Regulation at 65 FR 43661 withdrawn 13614
125.83 Amended **78954**
Regulation at 67 FR 78954 withdrawn 14164
125.84 (b)(4)(ii), (iii), (5)(ii), (c)(3)(ii), (iii), and (d)(1) revised **78954**
Regulation at 67 FR 78954 withdrawn 14164
125.85 (a)(2) and (3) revised **78955**
Regulation at 67 FR 78955 withdrawn 14164
125.89 (b)(2) revised **78955**
Regulation at 67 FR 78955 withdrawn 14164

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 40 Chapter I—Con.

130.0—130.7 (Subpart A) Regulation at 65 FR 43662 withdrawn 13614
130.1 Regulation at 65 FR 43662 withdrawn 13614
130.2 Regulation at 65 FR 43662 withdrawn 13614
130.4 Regulation at 65 FR 43662 withdrawn 13614
130.5 Regulation at 65 FR 43662 withdrawn 13614
130.6 Regulation at 65 FR 43662 withdrawn 13614
130.7 Regulation at 65 FR 43663 withdrawn 13614
130.8 Regulation at 65 FR 43662 withdrawn 13614
130.9 Regulation at 65 FR 43662 withdrawn 13614
130.10—130.11 (Subpart B) Regulation at 65 FR 43662 withdrawn 13614
130.10 Regulations at 65 FR 43662 and 43663 withdrawn 13614
130.11 Regulations at 65 FR 43662 and 43664 withdrawn 13614
130.12 Regulation at 65 FR 43662 withdrawn 13614
130.15 Regulation at 65 FR 43662 withdrawn 13614
130.20—130.37 (Subpart C) Regulation at 65 FR 43664 withdrawn 13614
130.50—130.51 (Subpart D) Regulation at 65 FR 43662 withdrawn 13614
130.50 Regulations at 65 FR 43662 and 43670 withdrawn 13614
130.51 Regulations at 65 FR 43662 and 43670 withdrawn 13614
130.60—130.64 (Subpart E) Regulation at 65 FR 43662 withdrawn 13614
130.60 Regulation at 65 FR 43662 withdrawn 13614
130.61 Regulations at 65 FR 43662 and 43670 withdrawn 13614
130.62 Regulation at 65 FR 43662 withdrawn 13614
130.63 Regulation at 65 FR 43662 withdrawn 13614
130.64 Regulations at 65 FR 43662 and 43670 withdrawn 13614
131.36 (d)(7) removed **68041**
(d)(2)(ii) table, (3)(ii) table, (5)(ii) table and (9)(ii) table revised **71846**
136.3 (a) introductory text and Tables IA through IE revised; (b) amended **65226**
(a) Table IB and (e) Table II amended; (b)(41) revised **65886**
(a) table and (b) amended **69971**
141 Corrected **73011**
141.21 (f)(3) table, (f)(5) and (8) amended; (f)(6)(i) and (ii) revised **65246**
(f)(3) table revised; (f)(6)(viii) and (ix) added **65896**
141.23 (k)(1) table revised **65246**
(a)(4)(i) table and (k)(1) table amended **65897**
Corrected **68911**
(a)(4)(i) table and (k)(1) table amended 14506
141.24 (e)(1) amended **65250**
(e)(1) introductory text and table revised **65898**
141.25 (a) table revised **65250**
141.40 Table 1 amended **65900**
141.62 (b) table amended 14506
141.74 (a)(1) table and (2) amended **65252**
(a)(1) table amended **65901**
141.154 (b) introductory text amended; (f) revised 14506
141.151—141.155 (Subpart O) Appendix A amended **70855**
Appendix A amended 14506
141.201—141.210 (Subpart Q) Appendix B amended **70857**
Appendix B amended 14507
142.3 (b)(3) removed **70858**
143.4 (b) table revised **65252**
147.2555 Table amended **47726**
180 Authority citation revised **47309**
Comment period extended **53505, 58536**
Technical correction **63503, 67566**
180.106 (b) table amended **46883**
180.108 (a)(1) table amended **49615**
180.120 Removed **46909**
180.132 Revised **49615**
180.142 (b) table amended 2247
180.145 (a)(1) table amended **49615**
180.169 (a)(1) table amended **49615**
180.173 (a) table revised **49615**
180.176 (b) table amended 2247
180.183 (a) revised **49615**
180.189 (b) table amended **46883**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

180.191 Existing text designated as (a); new (a) heading, (b) heading, (c) heading and (d) heading added; (a) table amended 10388
180.206 (a) table amended **49616**
180.214 (a) table revised **49616**
180.220 (a)(1) and (2) tables amended **46893**
180.230 Removed **46893**
180.239 revised **46893**
180.240 Removed **46893**
180.241 Amended **46893**
180.242 (b) table amended **46883**
180.252 (a)(i) table amended **49616**
180.261 (a) table amended **49616**
180.262 (c) text removed; (c) heading added **49616**
180.263 Table amended **49616**
180.272 (a) table amended **49616**
180.284 (b) table amended 2247
180.287 Existing text designated as (a); new (a) heading through (d) heading added; (a) table amended **49616**
180.294 (a) and (c) tables revised **46905**
180.301 (a) table amended **72853**
180.303 (a)(1) table amended **49617**
180.305 Removed **46893**
180.315 (a) table revised **49617**
180.332 (a) table amended **49617**
180.338 Removed **46893**
180.342 (a)(1) table and (2) table amended; (c)(i) revised **49617**
180.346 Removed 3428
180.361 (b) table amended **46883**
180.364 (a) introductory text revised; (a) table amended **60950**
180.368 (b) table amended **46883**
(b) designated as (b)(1); (b)(2) added 283
180.371 (a) table and (c) table amended **55150**
(b) table amended **57753**
(b) table amended 5852
180.377 (a)(1) and (2) tables amended; (c) text removed **59017**
(b) table amended **59181**
180.404 (a) table amended **49617**
180.405 Revised **52873**
180.409 (a)(1) table revised; (a)(2) removed; (a)(3) redesignated as (a)(2) **49617**
180.413 (a)(1) table amended **46893**
180.414 (a)(1) table amended **72593**
180.415 (a) table amended **55346**
(a) table amended 11335
180.416 (a) table amended **49617**
180.417 (a)(1) table amended **58725**
180.418 (b) added **56495**
180.425 (a) table amended **54124**
180.427 (a) table revised; (c) text removed **49617**
180.428 (a)(1) table amended; (b) text removed **51097**
180.431 (a) table amended; (b) text removed **60160**
(a) table amended **65315**
180.434 (a) table amended **49617**
180.436 (a)(1) revised; (b) table amended **60991**
180.438 (a)(1) table and (b) table amended **60915**
(b) table amended 291, 2247
180.442 (b) table amended **48795**
(b) table amended 2247
180.443 (b) table amended **46883**
180.447 Revised **55331**
(a)(1) and (2) tables amended 13849
180.448 (b) table amended **46884**
(a) table amended; (b) removed 10376
180.456 Revised **45642**
180.458 (a)(3) table amended **46900**
180.464 (b) table amended **46884**
180.465 Revised 4392
180.469 (a) table revised **51105**
180.472 (b) table amended **46884**
(a) and (b) tables amended **54111**
180.474 (b) table amended **46884**
180.476 (b) amended **54587**
180.479 (b) amended **45649**
Heading revised; (a)(2) table amended; (b) text removed **59192**
180.480 (b) table amended **46884**
180.482 (b) table amended 2247
180.487 (a) revised **72110**
180.493 (a)(1) table amended **60923**
180.495 (a) table and (b) table amended **60933**
(b) table amended 2247
180.498 (b) table amended **46884, 54118**
(b) table amended 2247
180.505 (b) table amended **46884**
180.507 (b) table amended **55137**
(a) table amended **59176**
180.508 Removed 7433
180.510 (a) table amended **55159**
(b) table amended **71110**
(a)(1) table amended 10982

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 40 Chapter I—Con.

180.516 (a) table amended **50362**
180.527 (b) table amended 2247
180.532 (a)(1) table amended 5847
180.535 (b) table amended **46884, 60146**
180.544 Revised **59203**
180.549 (a) revised **55338**
180.553 (b) table amended 2247
180.564 (a) table revised **47309**
(b) table amended **58730**
180.565 (a) table amended **66571**
180.571 (b) revised **45656**
(a) table amended 273
180.572 (b) table amended **46884**
180.579 Added **60976**
180.580 Added **57532**
180.581 Added **54359**
180.582 Added **60901**
180.583 Added **60959**
180.584 Added **60141**
180.940 Added **71853**
Regulation at 67 FR 71853 withdrawn 14165
180.950 (d) and (e) added **56229**
(e) table amended **78718**
180.960 Table amended 8850
Table amended 10982
180.1001 (c) table and (e) table amended **51101**
(c) table, (d) table and (e) table amended **78715**
180.1020 (b) table amended 2247
180.1028 Removed 8856
180.1038 Removed 8856
180.1053 Removed 8856
180.1060 Removed 8856
180.1112 Removed 8856
180.1117 Removed **78715**
180.1143 Revised **51088**
180.1150 Revised 5839
180.1159 (c) added 7935
180.1181 Revised **70017**
180.1206 Revised **46888**
180.1220 Added **48800**
180.1221 Added **60966**
180.1222 Added **60152**
180.1223 Added 7433, 7939
228.15 (h)(20) added **44773**
(d)(6)(v)(E) added 12602
258.10 (e) added **45920**
Regulation at 67 FR 45920 withdraw **62647**
258.41 (c) added **47319**
260 Policy statement **52617**
261.4 (a)(20) and (21) added **48413**
(a)(23) and (24) added 78730
Regulation at 67 FR 78730 withdrawn 8553
261.39–261.40 (Subpart E) Added **78731**
(Subpart E) Regulation at 67 FR 78731 withdrawn 8553
261 Appendix IX amended **48557, 54131, 79877**
266.20 (b) amended; (d) added; eff. 1–24–03 ..... **48414**
268.40 (i) removed **48414**
Table amended **62623**
268.44 Table corrected; CFR correction 4392
270.19 (e) revised **77692**
270.22 Introductory text revised **77692**
270.62 Introductory text revised **77692**
270.66 Introductory text revised **77692**
271 State hazardous waste management program authorizations **44069, 46600, 49617, 51478, 51765, 53886, 53889, 57337, 66338, 69690, 76995**
State hazardous waste management program authorizations 3429, 11981
271.1 (j) Tables 1 and 2 amended **48414**
(j) Table 1 amended **62624**
272.1651 Added **49867**
272 Appendix A amended **49868**
281 State underground storage tank program authorizations **53743, 55160, 60161**
300 Appendix B amended **47320, 53320, 53507, 53508, 54744, 56764, 57758, 58731, 59020, 61273, 61274, 61804, 65321, 76684**
Appendix B amended 1540, 2252, 2700, 13633
302 Technical correction **64846**
302.2 Removed **45321**
302.3 Amended **45321**
302.4 Table and note revised **45321**
Tables corrected **54846, 54847**
Appendix A amended **45348**
Appendix A corrected **54847**
302.5 (b) revised **45356**
302.6 (a) revised **45356**
302.7 (a)(3) revised **45356**
302.8 (e)(1)(iv)(H) and (f)(4)(viii) revised **45357**
312 Added 3434

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

Regulation at 68 FR 3430 withdrawn 14339
412 Revised 7269
420.02 (r) through (u) added **64260**
420.03 Revised **64261**
420.07 Added **64261**
420.08 Added **64261**
420.10 Revised **64261**
420.11 Revised **64261**
420.12 (c) revised **64262**
420.13 Revised **64262**
420.14 Revised **64262**
420.15 Revised **64263**
420.16 Revised **64263**
420.17 (c) revised **64264**
420.18 Added **64264**
420.21 Added **64264**
420.22 Revised **64264**
420.23 Revised **64264**
420.24 Revised **64265**
420.25 Revised **64265**
420.26 Revised **64266**
420.28 Added **64266**
420.29 Added **64266**
420.31 Revised **64266**
420.32 (b) removed **64266**
420.33 (b) removed **64266**
420.34 (b) removed **64266**
420.35 table amended; (b) removed **64266**
420.36 (a) table amended; (b) removed **64267**
420.40 Revised **64267**
420.41 (b) removed **64267**
420.42 (a) and (c) heading revised; (d) added **64267**
420.43 (a) and (c) heading revised; (d) added **64267**
420.44 (a) revised; (d) removed **64267**
420.45 (a) and (c) revised; (d) Added **64267**
420.46 (a) revised; (d) removed **64268**
420.47 Heading and (a) revised; (d) added **64268**
420.48 Added **64268**
420.130—420.137 (Subpart M) Added **64268**
430.02 (f) added **58997**
439.1 (b) through (n) revised; (o) and (p) added 12270
439.2 Revised 12271
439.4 Revised 12271
439.10—439.17 (Subpart A) heading revised 12271
439.11 Revised 12271
439.12 (a) introductory text and (b) through (e) revised 12271
439.14 Revised 12271
439.15 Revised 12272
439.16 Revised 12272
439.17 Revised 12272
439.20—439.27 (Subpart B) heading revised 12272
439.21 Revised 12272
439.22 (a) introductory text, (b), (c), and (d) revised 12273
439.25 Revised 12273
439.26 Revised 12273
439.27 Revised 12273
439.30—439.37 (Subpart C) heading revised 12273
439.31 Revised 12273
439.32 (a) through (d) revised; (e), (f), and (g) removed 12273
439.34 Revised 12273
439.35 Revised 12273
439.36 Revised 12274
439.37 Revised 12274
439.40—439.47 (Subpart D) heading revised 12274
439.41 Revised 12274
439.42 (a), (b), and (c) revised; (d) removed 12274
439.44 Revised 12274
439.45 Revised 12274
439.46 Revised 12274
439.47 Revised 12274
439.50—439.52 (Subpart E) heading revised 12274
439.51 Revised 12274
439.52 (a) through (d) revised 12274
439 Appendix A amended 12275
710 Heading and contents amended 887
710.1—710.4 (Subpart A) Sections designated as Subpart A; heading added 887
710.1 Revised 887
710.2 Removed 888
710.3 Added 888
710.4 (a), (b)(2), (c)(1), (2), (3), (d)(2) note, (5) and (8) note amended 889
710.23 Added 889
710.25—710.39 (Subpart B) Sections designated as Subpart B; heading added 889
710.39 Heading revised; (a), (c) introductory text, (1), (3) and (d) amended 890
710.43—710.59 (Subpart C) Added 890
721.321 Added 15079

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

TITLE 40 Chapter I—Con.

721.338 Added 15079
721.463 Added 15079
721.465 Added 15079
721.522 Added 15080
721.525 Added 15080
721.532 Added 15080
721.533 Added 15080
721.638 Added 15080
721.648 Added 15080
721.843 Added 15081
721.910 Added 15081
721.984 Added 15081
721.990 Added 15081
721.1767 Added 15081
721.1852 Added 15081
721.1878 Added 15082
721.1880 Added 15082
721.2093 Added 15082
721.2155 Added 15082
721.2465 Added 15082
721.2577 Added 15082
721.2582 Added 15083
721.2584 Added 15083
721.2673 Added 15083
721.3628 Removed **60993**
721.3805 Added 15084
721.3807 Added 15084
721.3812 Added 15084
721.3818 Added 15084
721.3848 Added 15084
721.4136 Added 15084
721.4486 Added 15084
721.4575 Added 15085
721.4792 Added 15085
721.5260 Added 15085
721.5262 Added 15085
721.5283 Added 15085
721.5286 Added 15086
721.5300 Removed **60993**
721.5452 Added 15086
721.5454 Added 15086
721.5590 Added 15086
721.5925 Added 15086
721.6005 Added 15086
721.6178 Added 15087
721.6181 Added 15087
721.6183 Added 15087
721.6205 Added 15087
721.8085 Added 15088
721.8170 Removed **60993**
721.8658 Added 15088
721.8920 Added 15088
721.9502 Added 15088
721.9504 Added 15088
721.9520 Added 15088
721.9538 Added 15088
721.9582 Revised **72863**
721.9597 Added 15089
721.9952 Added 15089
723.175 (b)(e) revised 890
761.80 (j) added; eff. through 4–17–04 4941
1048—1068 (Subchapter U) Added **68347**
1065.210 Corrected **72724**

Chapter V—Council on Environmental Quality (Parts 1500—1599)

1518 Added **62189**

Chapter VI—Chemical Safety and Hazard Investigation Board (Parts 1600—1699)

1610 Authority citation revised 4393
1610.4 Added 4393

Proposed Rules:

1—799(Ch. I) 10675, 12013
9 ..... **79020**
49 ..... **51802**
50 ..... **79460**
51 ..... **51525, 80290**, 9614, 12014
52 ..... **44127, 44128, 44410, 45073, 45074, 45684, 45947, 46617, 46618, 46948, 47757, 48082, 48083, 48090, 48095, 48426, 48839, 49647, 49895, 49897, 50391, 50847, 51527, 51803, 52433, 52665, 52666, 52913, 53329, 53765, 54159, 54399, 54601, 54758, 54759, 54992, 54993, 55186, 55187, 55378, 55757, 57187, 57188, 57357, 57549, 57550, 57775, 57776, 58009, 58551, 59034, 59229, 59232, 59798, 60633, 61055, 62221, 62222, 62425, 62426, 62427, 62431, 62432, 62926, 63353, 63354, 63583, 63586, 64347, 64582, 64993, 64998, 65002, 65077, 65080, 65526, 65749, 65750, 66096, 66598, 67345, 67580, 68542, 68545, 68804, 68971, 69702, 70032, 70036, 70357, 71515, 72874, 76326, 77010, 77196, 77204, 77212, 77463, 77955, 79028, 79543, 79897, 80290**, 723, 1414, 1998, 2275, 2276, 2476, 2722, 2953, 2954, 2969, 3202, 3478, 3847, 3848, 4141, 4842, 4847, 4977, 5246, 5263, 6681, 7327, 7330, 7476, 8574, 8727, 8868, 8869, 8871, 9042, 9043, 9614, 9615, 11022, 11023, 12014, 12886, 12887, 13247, 13653, 13872, 14173, 14174, 14379, 14382, 14570, 15138
55 ..... **53546**, 1570
58 ..... **57362, 80329**
60 ..... **45684, 55186, 59434, 61380, 64014**, 8574
61 ..... **62432, 68546**, 3848
62 ..... **61305, 67348, 70640, 76150**, 76, 77, 3848, 4158, 6681, 6682, 9043, 10680, 10681, 11483, 11484, 12015
63 ..... **44672, 46028, 46294, 47894, 48098, 49398, 51928, 52674, 52780, 54399, 54400, 58347, 59034, 59434, 61380, 66252, 69702, 72276, 72875, 77562, 77828, 77830, 78046, 78274, 78612**, 77, 78, 329, 1276, 1660, 1888, 2110, 2276, 2970, 7735, 12645
69 1175
70 ..... **46439, 48426, 55187, 57496, 58561, 70357**, 11023
71 ..... **48426, 58561, 66351, 69703**
73 ..... **47757**
81 ..... **44128, 45688, 48426, 48839, 52666, 54601, 56249, 57362, 58551, 62222, 65750, 66598, 68545, 68805, 77196, 77204, 77212**, 1414, 4847, 13653, 14382
82 ..... **65916, 67581**, 4012
85 ..... **51402**
86 ..... **51402, 52696, 53050, 57188, 66097, 72818**
90 ..... **53050, 57188**
110 ..... 1991, 9613
112 ..... 1352, 9613
116 ..... 1991, 9613
117 ..... 1991, 9613
122 ..... **48099, 51527, 63867, 79020, 79028, 79828**, 1991, 9613
123 ..... **79020**
124 ..... **79020**
125 ..... **78756**, 13522
130 ..... **79020**
131 ..... **65256, 68079, 68971**
136 ..... 11770, 11791
141 ..... **46949, 71520, 78203, 79898**
152 ..... **56970**
158 ..... **56070**
180 ..... **70032, 70036**, 1575, 7097
194 ..... **51930, 53330, 53331, 57189, 57190**, 4977, 12887
228 ..... **62659**, 11488
230 ..... 1991, 9613
232 ..... 1991, 9613
258 ..... **45948, 66252**, 2276
260 ..... **66252**, 2276
261 ..... **46139, 49649, 66252, 78761**, 531, 2276
262 ..... **52674**
264 ..... **66252, 78612**, 2276
265 ..... **66252, 78612**, 2276
266 ..... **66252**, 2276
268 ..... **62626**
270 ..... **66252**, 2276
271 ..... **46621, 51803, 53899, 57191, 62626, 64594, 66252, 66351, 77010**, 2276, 12015
272 ..... **49900**
279 ..... **66252**, 2276
281 329
300 ..... **51528, 52918, 53332, 54602, 55187, 56794, 57778, 59035, 59487, 61844, 64846, 65082, 72888**, 1580, 1991, 2277, 2726, 4429, 9613, 9615
302 ..... **45440**
312 3478
372 ..... **63060**, 13872
401 ..... 1991, 9613
403 ..... **52674**
412 ..... **48099**
439 12276
450 ..... **51527, 63867**
451 ..... **57872, 71523**
571 ..... **45440**
721 ..... **59233**
761 ..... **58567**
764 ..... **71524**
1001 ..... **72892, 72894**
1045 ..... **53050, 57188**
1051 ..... **53050, 57188**
1065 ..... **57188**
1068 ..... **53050, 57188**
1610 ..... **72890**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES JULY 1, 2002 THROUGH MARCH 31, 2003

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 101—Federal Property Management Regulations (Parts 101-1—101-99)

101–5.2 Removed **78732**
101–6.3 Revised **76882**
101–6.6 Revised **76882**
101–18 Revised **76882**
101–19 Revised **76883**
101–20 Revised **76883**
101–17—101–21 (Subchapter D) Appendix amended **76883**
101–33 Revised **76883**
101–37 Authority citation revised **67743**
101–37.000 Revised **67743**
101–37.200—101–37.205 (Subpart 101–37.2) Removed **67743**
101–37.300—101–37.305 (Subpart 101–37.3) Removed **67743**
101–37.500—101–37.506 (Subpart 101–37.5) Removed **67743**
101–37.600—101–37.610 (Subpart 101–37.6) Removed **67743**
101–37.1100—101–37.1109 (Subpart 101–37.11) Removed **67743**
101–37.1200—101–37.1214 (Subpart 101–37.12) Removed **67743**
101–37.1400—101–37.1401 (Subpart 101–37.14) Removed **67743**
101–47 Revised **76883**

Chapter 102—Federal Management Regulation (Parts 102-1—102-99)

102–33 Added **67743**
102–33.370 Corrected **70480**
102–37.110 (c) revised **78732**
102–42.10 Introductory text amended **56496**
102–42.140 Revised **56496**
102–71.15 Removed **76820**
102–71.20 Revised **76820**
102–72.30 Amended **76823**
102–72.60 Amended **76823**
102–72.85 Amended **76823**
102–73 Revised **76823**
102–74 Revised **76830**
102–75 Revised **76843**
102–75.880 (a) corrected 1168
102–75.885 (b) corrected 1168
102–75.905 (a) and (c) corrected 1168
102–76.25 (b) amended **76874**
102–78.60 Revised **76874**
102–79 Revised **76874**
102–80 Revised **76876**
102–81.15 Revised **76879**
102–81.20 Added **76879**
102–81.25 Added **76879**
102–81.30 Added **76880**
102–83 Added **76880**
102–173 Added 15090
102–192.55 Correctly designated **54132**
102–195.125 Introductory text and (e) amended **54132**

Chapter 109—Department of Energy Property Management Regulations (Parts 109-1—109-99)

109–6.400 (a) amended 7941
109–6.402 (b) removed; (c) and (d) redesignated as new (b) and (c); (a) and new (b) amended 7941

Chapter 300—General (Parts 300-1—300-99)

300–2.22 Table revised 12604
300–3.1 (l)(v) amended **57964**

Chapter 301—Temporary Duty (TDY) Travel Allowances (Parts 301-1—301-99)

301–1.1 Table amended **57964**
301–10 Authority citation revised 494
301–10.107 Authority citation revised; Notes 1 and 2 added **57964**
301–10.108 Revised **57964**
301–10.111 Revised **57964**
301–10.114 Revised **57964**
301–10.124 (h) revised **57964**
301–10.141 Amended **57964**
301–10.160 (d) added **57965**
301–10.164 Amended **57965**
301–10.303 Revised 494
301–10.304 Table revised **57965**
301–11.11 Revised **57965**
301–11.18 Table revised **56160**
301–11.26 Table revised **57965**
301–11.27 Amended **57965**
301–11.31 Amended **57965**
301–11.32 Added **57965**
301–12.1 Table amended **57965**
301–30.4 (b) revised; (d) added **57966**

NOTE: **Boldface page numbers indicate 2002 changes.**

301–31.8 Amended **57966**
301–50.3 Revised **57966**
301–51.2 (j), (k) and (l) amended; (m) added **57966**
301–51.101 Introductory text amended **57966**
301–51.200 (b) table amended **57966**
301–52.4 (b)(1) and (2) amended; (b)(3) added **57966**
301–70.501 Revised **57967**
301–70.502 Redesignated as 301–70.503; new 301–70.502 added **57967**
301–70.503 Redesignated as 301–70.504; new 301–70.503 redesignated from 301–70.502 and revised **57967**
301–70.504 Redesignated as 301–70.505; new 301–70.504 redesignated from 301–70.503 ..... **57967**
301–70.505 Redesignated as 301–70.506; new 301–70.505 redesignated from 301–70.504 ..... **57967**
301–70.506 Redesignated as 301–70.507; new 301–70.506 redesignated from 301–70.505 ..... **57967**
301–70.507 Redesignated as 301–70.508; new 301–70.507 redesignated from 301–70.506 ..... **57967**
301–70.508 Redesignated as 301–70.509; new 301–70.508 redesignated from 301–70.507 ..... **57967**
301–70.509 Redesignated from 301–70.508 ..... **57967**
301–70.708 Added **57967**
301–71.301 Redesignated as 301–71.302; new 301–71.301 added **57967**
301–71.302 Redesignated as 301–71.303; new 301–71.302 redesignated from 301–71.301 ..... **57967**
301–71.303 Redesignated as 301–71.304; new 301–71.303 redesignated from 301–71.302 ..... **57967**
301–71.304 Redesignated as 301–71.305; new 301–71.304 redesignated from 301–71.303 ..... **57967**
301–71.305 Redesignated as 301–71.306; new 301–71.305 redesignated from 301–71.304 ..... **57967**
301–71.306 Redesignated as 301–71.307; new 301–71.306 redesignated from 301–71.305 ..... **57967**
301–71.307 Redesignated as 301–71.308; new 301–71.307 redesignated from 301–71.306 ..... **57967**
301–71.308 Redesignated as 301–71.309; new 301–71.308 redesignated from 301–71.307 ..... **57967**
301.71–309 Redesignated from 301.71–308 ..... **57967**
301–72.301 (a) and (c) revised **57967**
301–73.102 Revised **57968**
301–73.103 Revised **57968**
301–74.17 (b) revised **57968**
301–75.202 Table amended **57968**
Chapter 301 Appendix A amended **47458, 57170, 69634**
Appendix A revised **56160**
Appendix A amended 196

Chapter 302—Relocation Allowances (Parts 302-1—302-99)

302–1.1 (e) revised **57968**
302–1.2 (d) revised **57968**
302–2 Authority citation revised **57968**
302–2.3 Amended **57968**
302–3 Authority citation revised **57968**
302–3.2 Table A amended; Table B revised **57968**
302–3.101 Tables A and B amended **57969**
Corrected **65321**
302–4.200 Revised **57969**
302–5 Authority citation revised **57969**
302–5.13 (a) table amended **57969**
302–5.15 Amended **57969**
302–7.20 Added **57969**
302–7.200 Amended **57969**
302–16 Authority citation revised **57969**
302–16.1 (b) table amended **57969**
302–17 Appendices A through D revised 7942

Chapter 304—Payments from a Non-Federal Source for Travel Expenses (Parts 304-1—304-99)

Chapter 304 Revised 12604

Proposed Rules:

101–45 ..... **47494**
102–38 ..... **47494**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health and Human Services (Parts 1—199)

50.201—50.210 (Subpart B) Appendix amended 12308
52 Clarification **61805**
73 Added **76896**

Chapter IV—Centers for Medicare & Medicaid Services, Department of Health and Human Services (Parts 400—499)

403.744 (a)(1) revised; (c) added 1385
405 Technical correction **69146**
Technical correction 6636
405.371 (c) revised **66813**
405.502 (g) and (h) revised; interim **76696**
410 Policy statement **67318**
Policy statement 9567
410.37 (a)(1)(v) and (2) revised **80040**
410.59 (c)(1)(ii)(C) revised; (c)(1)(ii)(D) and (E) added **80040**
410.60 (c)(1)(ii)(C) revised; (c)(1)(ii)(D) and (E) added **80041**
410.61 (d)(1)(iii) revised **80041**
410.65 Heading, (a)(1), and (b) introductory text revised **80041**
410.76 (b)(3) revised **80041**
410.78 Heading, (b) introductory text and (1) revised; (f) added **80041**
411.354 Regulation at 66 FR 958 and 60155 effective date delayed **70322**
412.22 (h)(3)(ii) revised 10988
412.541 (d)(1) amended 10988
413.86 (e)(4)(ii)(C)(*2*)*(iii)* correctly designated; (e)(4)(ii)(C)(*2*) introductory text, *(i)* and *(iii)* correctly added; CFR correction **61496**
414 Policy statement **67318**
Policy statement 9567
414.46 (g) revised **80041**
416 Amubulatory Surgical Centers list of covered procedures 15268
416.44 (b)(1) and (3) revised; (b)(4) added 1385
418.100 (d)(1), (3), and (4) revised 1386
419 Technical correction **69146**
Technical correction 6636
419.21 (d)(3) revised **66813**
419.66 (c)(1) amended **66813**
431.220 Corrected **65505**
433.15 (b)(10) added 3635
438.8 Corrected **65505**
438.310—438.370 (Subpart E) Added 3635
438.10 Corrected **65505**
438.52 Corrected **65505**
438.100 Corrected **65505**
438.102 Corrected **65505**
438.114 Corrected **65505**
438.116 Corrected **65505**
438.703 Corrected **65505**
438.810 Corrected **65505**
457.10 Amended **61974**
457.350 (b) text redesignated as (b)(1); (b)(2) added **61974**
457.622 (c)(5) revised **61974**
457.626 (a)(3) added **61974**
460 Nomenclature change; eff. 10–31–02 ..... **61504**
460.10—460.24 (Subpart B) Heading revised; eff. 10–31–02 ..... **61504**
460.10 Revised; eff. 10–31–02 ..... **61504**
460.12 (a)(2) removed; eff. 10–31–02 ..... **61505**
460.26 Added; eff. 10–31–02 ..... **61505**
Corrected **63966**
460.28 Added; eff. 10–31–02 ..... **61505**
460.30 (b) revised; (c) added; eff. 10–31–02 ..... **61505**
460.60 (b) and (c) revised; eff. 10–31–02 ..... **61505**
460.68 (b) revised; (c) removed; eff. 10–31–02 ..... **61505**
460.70 (b)(1)(i) and (e)(2) revised; (e)(5)(vi) through (ix) and (f) added; eff. 10–31–02 ..... **61505**
460.71 Added; eff. 10–31–02 ..... **61505**
460.72 (b)(1) revised; (b)(3) added 1386
460.102 (d)(2)(iii) revised; (d)(3) amended; (f) and (g) removed; eff. 10–31–02 ..... **61506**
482.21 Revised 3454
482.23 (c)(2) amended **61814**
482.41 (b)(1) introductory text, and (i) revised; (b)(7)(iv) added 1386
483.40 (b)(3) revised **61814**
483.70 (a) introductory text revised; (a)(4) added 1387
483.470 (j)(1)(i), (iii) and (2) revised; (j)(3) added 1387

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

TITLE 42 Chapter IV—Con.

484.18 (c) amended **61814**
485 Policy statement 9567
485.618 (d) revised **80041**
485.623 (d)(1) and (2) revised; (d)(5) added 1387
493.2 Amended 3702
493.3 (b)(3) amended 3702
493.20 (b) and (c) amended 3702
493.25 (b), (c) and (d) amended 3702
493.43 (a) amended 3702
493.45 (c)(3) amended 3702
493.47 (c)(2) and (3) amended 3702
493.49 (a)(3) amended 3702
493.643 (c)(3)(ix) amended 3702
493.801—493.865 (Subpart H) Heading revised 3702
493.801 (a)(2)(ii) amended 3702
493.803 (a) amended 3702
493.807 Heading revised 3702
493.901—493.959 (Subpart I) Heading revised 3702
493.911 (c)(1) amended 3702
493.913 (c)(1) amended 3702
493.915 (c)(1) amended 3702
493.917 (c)(1) amended 3702
493.919 (c)(1) amended 3702
493.923 (b)(1) amended 3702
493.927 (c)(1) amended 3702
493.931 (c)(1) amended 3702
493.933 (c)(1) amended 3702
493.937 (c)(1) amended 3702
493.941 (c)(1) amended 3702
493.945 (a)(1) amended 3702
493.1100—493.1105 (Subpart J) Revised 3703
493.1200—493.1299 (Subpart K) Revised 3703
493.1351—493.1495 (Subpart M) Heading revised 3713
493.1359 (b)(2) amended 3713
493.1407 (e)(5) amended 3713
493.1443 (b)(3) revised 3713
493.1445 (e)(5) amended 3714
493.1451 (c)(4) amended 3714
493.1471 (b)(2) amended 3714
493.1485 (a) amended 3714
493.1701—493.1721 (Subpart P) Removed 3714
493.1844 (c)(1) amended 3714
493.2001 (e)(1) amended; (e)(4) revised 3714

Chapter V—Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

1003 Authority citation revised **76905**
1003.100 (a), (b)(1)(xiv) and (xv) revised; (b)(1)(xvi) added **76905**
1003.101 jAmended **76905**
1003.102 (b)(16) added **76905**
1003.103 (l) added **76905**

Proposed Rules:

52a **68548**
54 ..... **77350**
54a **77350**
73 ..... **71528**
83 ..... 11294, 14388
200—299 (Ch. II) **70358**
400—499 (Ch. IV) 3482, 15139
405 ..... **69312**
409 ..... **65672**
410 ..... **67318**
412 ..... **70358**
..... 10420, 11234
413 ..... **70358**
..... 6682
414 ..... **67318**
417 ..... **65672**
418 ..... **70363**
422 ..... **65672**
476 ..... **70358**
482 ..... **70373**
484 ..... **70358**
1003 ..... **72896**

TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

2 Authority citation revised **64530**
2.1—2.3 (Subpart A) Revised; redesignated as Supbarts A through E **64530**
2.11—2.22 (Subpart B) Revised; Redesignated as Subparts A through E **64530**
2.34 (Subpart E) Redesignated from Suparts A and B in part **64530**
2.41 (Subpart C) Redesignated as Subpart F; new Subpart C (2.7—2.27) redesignated from Subparts A and B **64530**
2.41 (Subpart F) Redesignated from Subpart C **64530**
2.45—2.79 (Subpart D) Redesignated as Subpart G; new Subpart D (2.28—2.33) redesignated from Subparts A and B **64530**
(Subpart G) Redesignated from Subpart D **64530**
2.80—2.90 (Subpart E) Redesignated as Subpart H; new Subpart E (2.34) redesignated from Subparts A and B **64530**
4.1100 (e) revised **61509**
4.1109 (a)(2) revised **61510**
4.1190 (a) revised **61510**
4.1192 (a) revised **61510**
4.1193 Redesignated as 4.1194; new 4.1193 added **61510**
4.1194 Redesignated as 4.1195; new 4.1194 redesignated from 4.1193 ..... **61510**
4.1195 Redesignated as 4.1196; new 4.1195 redesignated from 4.1194; new (a) revised **61510**
4.1196 Redesignated as 4.1197; new 4.1196 redesignated from 4.1195 ..... **61510**
4.1197 Redesignated from 4.1196 ..... **61510**
4.1200 (a), (b)(2), (3) and (4) revised **61510**
4.1204 Introductory text revised **61510**
4.1266 Heading and (b)(2) revised **61510**
4.1270 (f) revised **61511**
4.1276 (a) revised **61511**
4.1350 Revised **61511**
4.1351 Revised **61511**
4.1352 Revised **61511**
4.1355 Revised **61511**
4.1360 (c) amended; (d) revised; (e) added **61511**
4.1370—4.1377 Undesignated center heading revised **61511**
4.1370 Revised **61511**
4.1371 (a) revised **61511**
4.1372 (a)(1) and (2) revised **61511**
4.1374 (a) revised **61512**
4.1376 Heading and (a) revised **61512**
4.1380—4.1387 Undesignated center heading revised **61512**
4.1380 Revised **61512**
4.1381 (a) revised **61512**
4.1390 Revised **61512**
4.1391 (a) and (b) revised **61512**
4.1394 Revised **61512**

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

1864.01—1864.4 (Subpart 1864) Authority citation added 502
1864.0–5 (h) added 502
1864.1–1 Revised 502
1864.1–3 Revised 502
1864.1–4 Revised 503
2930 Added; eff. 10–31–02 ..... **61740**
3432.3 (c) revised; (d) added **63567**
3472.1–3 (a)(1) and (2) amended **63567**
3601.51 Corrected **68778**
3602.12 Corrected **68778**
3802.1–1 (d) amended; eff. 10–31–02 ..... **61745**
6302.20 (i) amended; eff. 10–31–02 ..... **61745**
8224.1 Corrected **68778**
8340 Authority citation revised **61745**
8344.1 Amended; eff. 10–31–02 ..... **61745**
8360 Authority citation corrected **68778**
8365.1–5 (c)orrected **68778**
8370 Removed; eff. 10–31–02 ..... **61745**
9268.3 (e)(1) amended; eff. 10–31–02 ..... **61745**

Proposed Rules:

4 ..... **77011**
..... 13657
2930 ..... **61746**
4100 ..... **77011**
..... 9964, 11345
5000 ..... **77011**

TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

61 Appendices (A)(1),(2) and (3) amended 9897
64.6 Table amended ... **63272, 67118, 72594, 79880**
Table amended 5853, 9898

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

TITLE 44 Chapter I—Con.

65.4 Flood elevation determinations **63274, 63830, 63835, 65719, 67120, 67123, 70697, 71483**
Flood elevation determinations.....1541, 1543, 4942, 4945, 4947, 6644, 6823, 6827
67.11 Flood elevation determinations **63275, 63838, 63849, 67126, 67127, 67128, 70699, 70701**
Flood elevation determinations.....1547, 1550, 1551, 4950, 4951, 6829, 6831
152 Revised 12547
201.3 (c)(3) revised; interim **61515**
201.4 (a) revised; interim **61515**
201.6 (a) revised; interim **61515**
206.10—206.120 (Subpart D) Corrected **62896**
206.15 Corrected **62896**
206.117 Corrected **62896**
206.120 Corrected **62897**
206.171 (g)(4)(i) revised; interim 9900
206.432 (b)(1) revised; interim.....**61515**
206.434 (b)(1) revised; interim.....**61515**

Proposed Rules:

61.....5264
67 .....**63358, 63359, 63867, 63872, 67132, 67133, 67135, 70712**
.....1581, 1585, 2477, 2479, 4978, 4979; 6847, 6861
208.....**77628**

TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Services (Parts 1—199)

4.6 Revised **78990**
32 Added 15093
50.1 Revised; interim.....**77695**
50.2 (b) and (c) revised; (d) removed; interim.....**77695**
50.3 Revised; interim.....**77696**
50.4 Revised; interim.....**77696**
50.5 Redesignated as 50.7; new 50.5 added; interim **77696**
50.6 Revised; interim.....**77697**
50.7 Redesignated from 50.5; interim **77696**
50.8 Added; interim.....**77697**
160.103 Amended.....8374
162 Authority citation revised 8374
162.103 Amended.....8374
162.900 Revised 8396
162.920 Revised 8396
162.1002 Introductory text revised; (a) through (f), new (a)(1)(1) through (5), (a)(2)(1) through (4), (a)(3)(1), (2), (a)(5)(1) through (7), (a)(6)(1), (2) and (3) redesignated as (a)(1) through (6), new (a)(1)(i) through (v), (a)(2)(i) through (iv), (a)(3)(1), (ii), (a)(5)(i) through (vii), (a)(6)(i), (ii) and (iii); new (a) introductory text and (b) added 8397
162.1102 Revised.....8397
(b) introductory text, (3) heading and (4) corrected.....11445
162.1202 Revised.....8398
(b)(1) and (2) corrected 11445
162.1302 Revised.....8398
162.1402 Revised.....8398
162.1502 Revised.....8398
162.1602 Revised.....8398
162.1702 Revised.....8399
162.1802 Revised.....8399
164 Authority citation revised 8374
164.103 Added.....8374
164.104 Revised 8375
164.105 Added.....8375
164.302—164.318 (Subpart C) Added.....8376

Chapter VI—National Science Foundation (Parts 600—699)

674 Added.....15379

Chapter VII—Commission on Civil Rights (Parts 700—799)

Chapter VII Revised.....**70482**

Chapter XII—Corporation for National and Community Service (Parts 1200—1299)

1204 Removed.....14901
1206 Removed.....14901
1213 Removed.....14901
1229 Removed.....14901
1230 Appendix B correctly revised; CFR correction **66061**
1234 Removed.....14901

Chapter XVI—Legal Services Corporation (Parts 1600—1699)

1602.2 (k) added 7437

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

1602.5 (a) revised.....7437
1602.6 Amended 7437
1602.8 (b) amended.....7437
1602.13 (e) and (f) revised; (j), (k) and (l) redesignated as (k), M and (n); new (j) added.....7437
1611 Appendix A revised 7718
Appendix A correctly revised 8856

Proposed Rules:

5 9621
31.....**72128**
46.....**62432**
96.....**77350**
260.....**77362**
1050.....**77368**
1602.....**69498**
1611.....**70376**

TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1 Authority citation revised 9535
1.01–10 (b)(1) and (2) amended 9535
10.102 (b) revised; interim.....**66067**
10.103 Amended; interim **66067**
10.205 (1)(1), (2) and (3) amended; interim **66067**
10.304 (f) amended; interim.....**66068**
10.407 (a)(2)(iv) amended.....**64315**
Regulation at 67 FR 64315 confirmed **79881**
10.603 (c) amended; interim **66068**
10.901 (c) amended; interim **66068**
10.903 (c) and (d) amended; interim **66068**
10.1005 Amended; interim **66068**
10.1101—10.1105 (Subpart K) Added; interim **66068**
12.01–1 Amended; interim **66068**
12.01–3 Revised; interim **66068**
12.01–6 Amended; interim **66068**
12.02–7 (d) amended; interim **66068**
12.02–11 (h)(1) amended; interim **66068**
12.03–1 (a)(8) amended; interim **66068**
12.05–3 (b)(1) amended; interim **66068**
12.05–7 (a)(5) amended; interim **66068**
12.05–11 (a) amended; interim **66068**
12.10–3 Amended; interim **66068**
12.10–5 (d) amended; interim **66068**
12.10–7 Amended; interim **66069**
12.10–9 (b)(2) amended; interim **66069**
12.15–3 (d)(1) amended; interim **66069**
12.15–7 Amended; interim **66069**
12.25–45 Amended; interim.....**66069**
12.30–5 Amended; interim **66069**
12.35–1—12.35–5 (Subpart 12.35) Added; interim **66069**
15.1103 (e), (f) and (g) redesignated as (f), (g) and (h); new (e) added; heading, (d), new (g) and (h) revised; interim **66069**
26.03–8 Technical correction **72100**
32.22T Removed **58524**
34.50–10 (e) correctly revised; CFR correction.....**66069**
68 Authority citation revised.....9535
68.01 Appendices A and B amended 9535
68.05 Appendices A and B amended 9535
169.230 Regulation at 67 FR 21083 correctely confirmed.....**64315**
176.615 Regulation at 67 FR 21083 correctly confirmed.....**64315**

Chapter II—Maritime Administration, Department of Transportation (Parts 200—399)

356 Authority citation revised; nomenclature change 5576
356.3 (g) and (h), (i) through (k), (l) through (x) and new (q)(3) redesignated as (h) and (i), (k) through (m), (o) through (aa) and (q)(2); new (g), (j), (n) and (q)(3) added; (e)(2), new (h)(2), (u), (y)(2) and (s) revised; new (p) and (q) amended.....5576
356.5 (d) revised 5577
356.7 (c)(1)(ii) revised.....5579
356.11 (a)(7) revised.....5577
356.13 (a)(5) revised; (a)(11) and (12) amended; (a)(13) added.....5579
356.15 (a), (b), and (c) removed; (d), (e) and (f) redesignated as (c), (a) and (b), new (d) added 5579
356.17 (b) revised.....5579
356.19 Revised.....5579
356.21 Amended; heading, (a) introductory text and (e) revised 5581
356.23 heading and (a) introductory text revised.....5581

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

TITLE 46 Chapter II—Con.

356.27 (a), (b)(1), (c)(2), (3), (4) and (g) revised 5581
356.37 Revised 5582
356.45 (a)(2)(iv) amended 5582
356.47 (a)(2), and (b)(3) revised; new (e) added 5582
356.51 (e) removed; (d) redesignated as (e); (a) introductory text, (1), (c), new (e) introductory text and (1) amended; new (d) and (f) added 5583
356.53 (a), (b)(1), (3), (4), (d), (f)(4) and (g)(1) amended; (b)(5) removed; (g)(2) revised; (g)(3) and (4) added 5583

Proposed Rules:

4 9622
401 ..... 3202, 7489
540 ..... **66352, 79029**

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

0.5 (e) added **70177**
(a)(4) amended 11747
0.21 Undesignated center heading and introductory text amended 11747
0.31 (g) amended 11747
0.91 (j), (k), and (l) redesignated as (k), (l), and (m); new (j) added 13850
0.271 Undesignated center heading and (a) amended 11747
0.303 Removed 13850
0.331 (d) introductory text revised **63284**
0.467 Table, (a)(1) note and (3) amended 4105
1 Petition reconsideration ... **63850, 77173**
Order **67567**
1.17 Revised 15098
1.901 Revised 12755
1.902 Revised 12755
1.924 (f) correctly designated as (g); (f) text correctly reinstated **71111**
1.929 (c)(4) and (d) introductory text revised 12755
1.1102 Revised **67319**
1.1103 Revised **67327**
1.1104 Revised **67328**
1.1105 Revised **67331**
1.1106 Revised **67332**
1.1107 Revised **67332**
1.1109 (c) note, (d) introductory text, (e) and note revised **67337**
1.1110 (a)(1), (2) and (3) revised **67337**
1.1111 (c) revised **67337**
1.1113 (a)(1) revised **67337**
1.1114 Introductory text revised **67337**
1.1116 (a) introductory text revised **67337**
1.1117 (c)(1) and (e) revised **67337**
1.1119 (a) revised **67337**
2 Actions on petitions 10180
2.106 Table amended 3460
Table amended; Footnotes NG156 and NG168 revised; Footnotes NG177 and NG 178 added 11990
Table amended; Footnotes US11, NG53, and NG175 revised; Footnote US291 removed; Footnote NG 175 added 12755
11 Compliance notification **65321**
11.31 (f) revised **77174**
15.117 (a) revised; (h) redesignated as (j); new (h) and (i) added **63294**
20 Petition reconsideration **63851**
Comment request 2252
20.18 (j) revised 2918
21.50 Removed 3464
22.165 (e) revised; eff. 2–18–03 ..... **77190**
22.323 Removed; eff. 2–18–03 ..... **77191**
22.367 (a)(4) removed; (d) revised **77191**
22.377 (c) removed **77191**
22.901 Revised **77191**
22.905 Revised **77191**
22.911 (b)(1) and (3) amended **77191**
22.915 Removed **77191**
22.917 Revised **77191**
22.919 Removed **77192**
22.921 Revised **77192**
22.933 Removed **77192**
22.937 Removed **77192**
22.941 Removed **77192**
22.943 Revised **77192**
22.945 Removed **77192**
22.946 (b) abd (c) revised **77192**
24.238 Revised **77192**
25.200 Removed **61816**
25.201 amended 11993

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

25.202 (a)(4)(ii) revised 11993
25.213 (b) removed **61816**
25.216 Added **61816**
32 Meetings **66069**
Order 6351
32.5200 Regulation at 67 FR 5693 eff. date delayed **77432**
32.6562 Regulation at 67 FR 5696 eff. date delayed **77432**
32.6620 Regulation at 67 FR 5696 eff. date delayed **77432**
42 Meetings **66069**
51 Meetings **66069**
Order 6351
52 Actions on petitions 7323
53 Order 6351
54 Order **70703**
Order 4105, 6646, 6832
54.303 (b)(4) correctly revised **70702**
54.706 (b) and (c) revised **79532**
54.709 (a) introductory text, and (1) revised; (a)(2) amended **79533**
54.711 (a) revised **79533**
54.712 Added **79533**
61 Petition reconsideration **63850**
64 Petition reconsideration **62648**
Meetings **66069**
Order 6351
Technical correction 8554
64.604 (a)(3) revised 6355
64.1301 Revised **71890**
68.211 (b) revised 13850
68.400 Removed 13850
68.402 Removed 13850
68.404 Removed 13850
68.406 Removed 13850
68.408 Removed 13850
68.410 Removed 13850
68.412 Removed 13850
69 Petition reconsideration **63850**
73 Petition reconsideration **61816, 64818, 70556, 76318**
Actions on petitions **66340**
Actions on petitions 1986, 5854
Order **78193**
73.202 (b) table amended **63853, 64049, 64553, 64554, 64817, 64818, 65721, 66341, 66342, 67568, 69694, 70180, 71891, 71892, 71893, 71895, 76998, 78387**
(b) table amended 504, 1555, 2702, 3819, 4107, 5584, 5585, 5855, 6083, 7945, 8724, 8725, 10665, 11336, 11993, 11994, 15099, 15100
(b) table corrected 5854
(b) table corrected; CFR correction 10388
73.606 (b) table amended **61516, 62400, 62648, 63853, 78192**
(b) table amended 10665, 12611
73.622 (b) table amended **61516, 62400, 62649, 62650, 63852, 70018, 70177, 70178, 70179, 78191, 78192, 78193**
(b) table amended 503, 1986, 2701, 4394, 10664, 12611, 14166, 14167
73.682 (d) revised **63294**
73.1015 Revised 15098
73.2080 Revised 689
73.3500 (a) table amended 12761
73.3533 (a)(3) removed 12761
73.3536 (b)(3) removed 12761
73.3598 (a) revised 12761
74.5 (a)(4) through (a)(7) redesignated as (a)(5) through (a)(8); new (a)(4) and (f) added 12761
74.6 Added 12761
74.15 (f) revised 12761
74.24 Introductory text, (a), (d), (f), (g), (h)(1), and (i) revised; (b)(1) Note removed 12762
74.25 Added 12762
74.34 Added 12763
74.402 Revised 12763
74.403 (b) introductory text revised 12764
74.431 (g) removed; (i) revised 12764
74.432 (b), (g), and (k) revised 12764
74.433 (b) and (c) revised 12765
74.451 (a) revised 12765
74.452 Revised 12765
74.462 (a), (b) table, and (c) introductory text revised; (b) table amended; (e), (f), and (g) removed 12765
74.464 Introductory text revised 12766
74.482 (a) and (e) revised 12766
74.502 (b) introductory text, (c)(1)(ii), and (d) revised 12766
74.532 (d) note removed; (f) revised 12766
74.534 Revised 12766
74.535 (a), (b), and (d) revised; (e) and (f) removed; (g) redesignated as new (e) 12766
74.536 (c) table amended 12767
74.537 (b) and (c) revised 12767
74.551 (a) introductory text revised; (b) and (c) removed; (d) redesignated as new (b) 12768

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

TITLE 47 Chapter I—Con.

74.561 Table amended 12768
74.602 (a) introductory text, (d), (f), (h), and (i) introductory text revised; (a) table amended; (a)(2) removed 12768
74.603 (b) removed 12769
74.604 (a) removed 12769
74.631 (a) amended 12769
74.632 (a) amended; (c), (e), and (g) revised; (f) note removed 12769
74.633 (b) and (c) revised 12769
74.636 Revised 12769
74.637 (a), (b), and (c) revised; (g) table amended 12769
74.638 Revised 12770
74.641 (a) introductory text, (a)(5), and (b) introductory text revised; (a)(1) table amended 12771
74.643 Revised 12771
74.644 (a) table and (b) revised 12771
74.651 (a) and (b) revised; (c) and (d) removed; (e) redesignated as (c) 12771
74.655 (a) amended 12772
74.661 Table revised 12772
74.801 Amended 12772
74.802 (b)(3) revised 12772
74.832 (e), (g), and (i) revised 12772
74.833 (b) and (c) revised 12772
74.870 Added 12772
74.882 Revised 12774
76.5 (mm)(4) note amended 13855
76.75 Heading, (b) and (f) through (j) revised; (k) removed 691
76.77 Revised 692
76.122 (c)(2) revised **68951**
76.122 Regulation at 67 FR 68951 confirmed 14340
76.127 (c) revised **68951**
Regulation at 67 FR 68951 confirmed 14340
(c) correctly revised 14341
76.128 (b) revised **68951**
76.501 (a) and (c) removed 13237
76.620 (a) revised (OMB numbers pending) 13855
76.802 (l) revised (OMB numbers pending) 13855
76.804 (b)(3) revised (OMB numbers pending) 13855
76.806 (d) added 13855
76.939 Revised 15098
76.1702 Revised 693
78.18 (l) revised 12774
78.36 Revised 12774
78.101 (a) table amended; (c) added 12776
78.103 (e) table amended 12776
78.105 (a) introductory text revised; (a)(1) table amended; (a)(4) removed; (a)(5) redesignated as (a)(4) 12776
78.106 Revised 12776
78.108 (b) revised 12776
78.111 Table amended 12776
90 Actions on petitions 10180
90.20 (a)(1)(i) revised; (c)(3) amended; (d)(43) removed **63284**
(e)(6) introductory text revised **70705**
90.35 (b)(2)(iii), (c)(60)(ii), (61)(iii) and (iv) revised; (b)(3) amended **63284**
90.175 (b)(1) revised **63288**
90.201 Revised **76700**
90.203 (m) and (n) added **76700**
90.210 (b) and (c) introductory texts and (h), (i) and (j) introductory texts revised **63288**
90.242 (a)(1) removed **63289**
90.531 (b)(5), (6) and (d)(1) revised **76700**
90.533 (a) revised **76700**
90.535 (b) and (c) revised; (d) added **76701**
95.193 (a) and (b) revised 9901
95.194 (d) added 9901
95.401 (f) revised **63289**
95.603 (g) revised **63289**
95.631 (j) revised **63289**
(d) revised 9901
95.632 (b) revised **63289**
95.633 (f) revised **63289**
(c) revised 9902
95.635 (e) revised **63289**
95.639 (h) revised **63289**
95.655 (d) added **63290**
95.1307 Revised **63290**
95.1311 Added **63290**
95.1313 Added **63290**
95.1315 Added **63290**
95.1317 Added **63290**
101.3 Amended 4955
101.5 (b) revised 4955
101.31 (a)(3), (4), (5) and (b)(4) removed; (a)(6) redesignated as new (a)(3); (a)(2), new (3), (b)(1) introductory text, (vii) and (3) revised 4955

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

101.55 (a) introductory text revised; (e) removed 4955
101.69 (d) introductory text revised 3464
101.73 (d) introductory text and (3) amended 3464
101.75 (d) revised 3464
101.99 Heading and (a) revised 3464
101.101 Table amended 4955
101.107 (a) table amended 4956
101.109 (c) table amended 4956
101.111 (a)(2)(i) through (iv) revised 4956
101.113 (a) table amended 4957, 12776
101.115 (b) removed; (c) through (g) redesignated as (b) through (f); new (b) table amended 4957
101.117 Revised 4957
101.133 (e) added 4957
101.135 (a) revised 4958
101.139 (a) and (g) revised 4958
101.141 (a) introductory text and (1) revised 4958
101.145 Introductory text revised; (b) and (c) amended 12777
101.147 (a) table and (b)(2) Table 3 amended; (b) introductory text note added; (k) removed; (r)(10) introductory text and (s) revised 4958
101.507 Revised 4961
101.603 (b)(1) revised 4961
101.803 (a)(5) and (d)(8) revised; (e) removed; (f) and (g) redesignated as new (e) and (f) 4961
(b) amended 12777
101.807 Revised 12777
101.809 (d) revised 4961
101.815 (a)(1) revised 4961
101.1325 (a) revised 4961
101.1333 (c) revised 4961

Chapter III—National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)

301 Added **41193**

Proposed Rules:

0—199 (Ch. I) **64968**
..... 723, 730, 6689
0 ..... **65527, 77220**
1 ..... **76628**
2 ..... **75968**
..... 1999
15 ..... 2730, 12015
20 3214
22 ..... **78209**
24 ..... **78209**
25 ..... **61999, 75968, 78399**
27 ..... **68079, 78209**
36 ..... **71121**
43 ..... **65527, 77220**
..... 6689
54 ..... **71121, 79543**
..... 10429, 12020
63 ..... **65527, 77220**
..... 1660, 6689
64 ..... **62667, 65527, 71126, 77220, 78763**
..... 6689, 14939
73 ..... **61572, 61845, 63873—63876, 64080, 64598, 64853, 65750, 65751, 66376, 66377, 69703, 70195, 71925, 71926, 71927, 77220, 78215, 78387, 78400, 78401, 78402**
..... 532, 533, 1586, 1587, 1657, 2278, 2733, 2734, 4158, 5616, 5617, 5860, 5861, 5862, 7737, 7961—7964, 8486, 8728, 8729, 8730, 10681, 10682, 10683, 11345, 12023, 12024, 15140—15143
74 ..... 7737, 12652
76 ..... **77374, 78387**
..... 1657, 2278, 7737, 15419
87 ..... **75968**
78 15419
90 ..... **67348, 68079, 70196**
..... 1999, 6687, 6688, 7735

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

Chapter I—Federal Acquisition Circular 2001–10 ..... **70516**
Small entity compliance guide **70522, 80322**
Summary disposition **80320**
Small entity compliance guide 4051, 13208
Federal Acquisition Circular 2003–10 13200
2.101 Amended; interim 4049
4.705–2 Heading and (a) revised **70517**
7.105 (b)(4)(1) amended **70522**
10.001 (a)(2)(iii) amended; (a)(2)(v) added; interim 4049
12.102 (f) revised; interim 4050
12.207 Amended 13201

NOTE: **Boldface page numbers indicate 2002 changes.**

TITLE 48 Chapter 1—Con.

12.504 (a)(1) through (11) redesignated as (a)(2) through (12); new (a)(1) added; new (11) revised 13203
13.003 (b)(1) revised; interim 4050
13.105 (b) Amended; interim 4050
13.201 (g) revised; interim 4050
13.500 (d) amended **80321**
(a) amended; (e) added; interim 4050
13.501 (a)(1)(i) and (2)(ii) amended; (a)(1)(ii) revised; (a)(2)(iii) and (iv) added; interim 4050
16.202–1 Amended 13201
16.203–1 Introductory text, (a), (b), and (c) redesignated as (a), (1), (2), and (3); (b) added 13201
17.603 Regulation at 66 FR 27415 confirmed **70518**
19.502–1 (b) revised; interim 4050
19.502–2 (a) amended **70522**
(a) amended; interim 4050
19.805–1 (b)(1) and (2) amended; (b)(3) added; interim 4051
19.903 (b)(2) amended; (b)(3) redesignated as (b)(4); new (b)(3) added; new (b)(4) amended 4051
19.1306 (a)(2) introductory text revised; (c) added 4051
22.101–1 Regulation at 66 FR 27415 confirmed **70518**
25.003 Amended **70520**
25.400 (a)(2) amended **70520**
25.1101 (a)(1) introductory text revised 4051
25.1103 (a) revised 4051
29.305 (b)(1) revised 13205
29.401–3 Revised 13205
29.401–4 Removed; redesignated from 29.401–6; new 29.401–4 added 13205
29.401–5 Removed 13205
29.401–6 Redesignated as 29.401–4 13205
32.503–5 (c) amended 13208
32.504 (b) introductory text and (2) revised **70521**
32.1003 Introductory text and (b) amended **70521**
32.1103 (e) introductory text amended 13203
36.202 Regulation at 66 FR 27415 confirmed **70518**
39.204 (a) amended; interim **80322**
47.504 (d) revised 13203
47.507 Revised 13203
52.212–5 Clause amended 13203
52.213–4 Clause amended 13203
52.216–7 Clause amended **70521**
52.216–26 Clause amended **70521**
52.225–5 Clause amended **70520**
52.229–3 Clause amended 13205
52.229–4 Clause amended 13205
52.229–5 Removed 13205
52.229–10 Introductory text and clause amended 13205
52.232–7 Clause amended **70521**
52.232–16 Clause amended **70521**
Clause amended 13208
52.244–6 Clause amended 13203
52.247–64 Clause amended 13203
58 Appendix A amended **80328**

Chapter 2—Department of Defense (Parts 200—299)

201.201–1 (d)(i)V amended 7439
201.304 (1)(ii), (4) and (5) amended 7439
201.402 (1) introductory text and (2) introductory text amended 7439
201.404 (b)(i) amended 7439
201.603–2 Revised **65509**
202.101 Amended 7439, 15380
204.7003 (a)(1)(i)(j) amended 7439
204.7202–1 (b)(2)(i)(D) revised 15380
206.302–2 (b)(iv) amended **61516**
206.302–5 (c)(i)(B) amended 7439
206.303–1 (d) added 15618
207.103 (h) introductory text, (i)(A), (B), (C), (ii) introductory text and (B) amended **61516**
(h)(i)(A) revised 15380
207.105 Introductory text and (b)(19)(C) amended **61516**
208 Meetings **65721**
208.001 (a)(1)(v) revised **65511**
Redesignated as 208.002 ..... **77936**
208.002 Redesignated as 208.003; new 208.002 redesignated from 208.001 ..... **77936**
208.003 Redesignated from 208.002; new (f) and (g) redesignated as (d) and (e) **77936**
208.74—208.7403 (Subpart 208.74) Added **65511**
208.404—208.405–2 (Subpart 208.4) Heading revised **65508**
208.404 (b) added **65508**

NOTE: **Boldface page numbers indicate 2002 changes.**

208.404–70 Added **65508**
208.7000 (b) amended **77936**
208.7203 (c) revised 15618
209.104–1 (g)(ii)(C) amended 7439
209.104–70 (a) amended 7439
209.403 Amended 7439
209.406–2 (a)(ii) amended 7439
212.102 Revised **65514**
212.301 (f)(i)(B) removed; (f)(i)(C) and (D) redesignated as (f)(i)(B) and (C) 7439
(f)(vi) removed; (f)(vii) redesignated as (f)(vi) 15618
214.407–3 (e)(vii) revised 7439
(e)(vii) correctly designated as (e)(viii) 9580
216 Meetings **65721**
216.501–1 Added **65508**
216.505–70 Added **65508**
217.170 (d)(4) amended 7439
217.173 (b)(5)(iv) amended 7439
217.7600 Amended **61516**
219.000 Introductory text amended 15381
219.1007 (b)(1) amended 7439
219.7104 (b) and (d) amended **77937**
223.7100 Amended **61516**
223.7102 (b) amended **61516**
225.000 Revised 15618
225.001 (3)(ii) removed; (3)(iii) redesignated as (3)(ii); new (3)(ii) amended **77938**
Revised 15618
225.003 (4) and (12) amended **77938**
Revised 15618
225.101—225.171 (Subpart 225.1) Revised 15619
225.103 (a)(1) redesignated as (a)(i); new (a)(i)(B) revised **77938**
225.202 (a)(2) amended 15619
225.401 Revised 15619
225.401–70 Introductory text amended 15619
225.402 Revised **77938**
225.403 Revised 15619
225.502—225.504 (Subpart 225.5) Revised 15620
225.502 Revised **77938**
225.504 (4) removed **77938**
225.670—225.670–4 (Subpart 225.6) Added 15620
225.701 Amended 15621
225.701–70 Added 7441
225.770 Removed 15621
225.770–1 Removed 15621
225.770–2 Removed 15621
225.770–3 Removed 15621
225.770–4 Removed 15621
225.770–5 Removed 15621
225.771 Removed 15621
225.771–1 Removed 15621
225.771–2 Removed 15621
225.771–3 Removed 15621
225.771–4 Removed 15621
225.771–5 Removed 15621
225.802—225.873–2 (Subpart 225.8) Revised 15621
225.901—225.903 (Subpart 225.9) Revised 15626
225.1100—225.1103 (Subpart 225.11) Revised 15626
225.1101 (3)(ii), (5) and (6) removed; (3)(iii), (iv) and (7) through (14) redesignated as (3)(ii), (iii) and (5) through (12); (2)(i), new (9) and new (12) amended **77938**
225.7000 (a) and (b) amended 15627
225.7002–2 (j) revised; interim 7442
225.7002–3 (c) revised 15627
225.7003 Removed; new 225.7003 added 15627
225.7004 Removed; new 225.7004 added 15627
225.7004–1 Added 15627
225.7004–2 Added 15627
225.7004–3 Added 15627
225.7004–4 Added 15627
225.7005 Removed; new 225.7005 added 15627
225.7005–1 Added 15627
225.7005–2 Added 15627
225.7005–3 Added 15627
225.7006 Removed; new 225.7006 added 15627
225.7006–1 Added 15627
225.7006–2 Added 15627
225.7006–3 Added 15627
225.7006–4 Added 15627
225.7007 Removed; new 225.7003 added 15627
225.7007–1 Removed; new 225.7007–1 added 15627
225.7007–2 Removed; new 225.7007–2 added 15627
225.7007–3 Removed; new 225.7007–3 added 15627
225.7007–4 Removed 15627
225.7008 Removed; new 225.7008 added 15627
225.7008–1 Added 15627
225.7008–2 Added 15627

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

TITLE 48 Chapter 2—Con.

225.7008–3 Added 15627
225.7008–4 Added 15627
225.7009 Removed; new 225.7009 added 15627
225.7009–1 Added 15627
225.7009–2 Added 15627
225.7009–3 Added 15627
225.7009–4 Added 15627
225.7010 Removed; new 225.7010 added 15627
225.7010–1 Removed; new 225.7010–1 added 15627
225.7010–2 Removed; new 225.7010–2 added 15627
225.7010–3 Removed; new 225.7010–3 added 15627
225.7010–4 Added 15627
225.7011 Removed; new 225.7011 added 15627
225.7011–1 Removed; new 225.7011–1 added 15627
225.7011–2 Removed; new 225.7011–2 added 15627
225.7011–3 Removed; new 225.7011–3 added 15627
225.7011–4 Removed 15627
225.7011–5 Removed 15627
225.7012 Removed; new 225.7012 added 15627
225.7012–1 Removed; new 225.7012–1 added 15627
225.7012–2 Removed; new 225.7012–2 added 15627
225.7012–3 Removed; new 225.7012–3 added 15627
225.7013 Removed; new 225.7013 added 15627
225.7014 Removed; new 225.7014 added 15627
225.7015 Removed; new 225.7015 added 15627
225.7015–1 Removed 15627
225.7015–2 Removed 15627
225.7015–3 Removed 15627
225.7016 Removed; new 225.7016 added 15627
225.7016–1 Removed 15627
225.7016–2 Removed 15627
225.7016–3 Removed 15627
225.7016–4 Removed 15627
225.7017 Removed; new 225.7017 added 15627
225.7017–1 Removed; new 225.7017–1 added 15627
225.7017–2 Removed; new 225.7017–2 added 15627
225.7017–3 Removed; new 225.7017–3 added 15627
225.7017–4 Removed; new 225.7017–4 added 15627
225.7018 Removed 15627
225.7018–1 Removed 15627
225.7018–2 Removed 15627
225.7018–3 Removed 15627
225.7019 Removed 15627
225.7019–1 Removed 15627
225.7019–2 Removed 15627
225.7019–3 Removed 15627
225.7019–4 Removed 15627
225.7020 Removed 15627
225.7020–1 Removed 15627
225.7020–2 Removed 15627
225.7020–3 Removed 15627
225.7020–4 Removed 15627
225.7021 Removed 15627
225.7021–1 Removed 15627
225.7021–2 Removed 15627
225.7021–3 Removed 15627
225.7022 Removed 15627
225.7022–1 Removed 15627
225.7022–2 Removed 15627
225.7022–3 Removed 15627
225.7022–4 Removed 15627
225.7023 Removed 15627
225.7023–1 Removed 15627
225.7023–2 Removed 15627
225.7023–3 Removed 15627
225.7100 Revised 15631
225.7101 Revised 15631
225.7102 Revised 15631
225.7102–1 Revised 15631
225.7102–2 Revised 15631
225.7102–3 Revised 15631
225.7102–4 Revised 15631
225.7103 Revised 15631
225.7103–1 Revised 15631
225.7103–2 Revised 15631
225.7103–3 Revised 15631
225.7200 Revised 15632
225.7202 Revised 15632
225.7203 Revised 15632
225.7301 (b), (c) and (d) revised 15632
225.7302 Introductory text and (a)(4) revised; (a)(1) amended 15632
225.7303 (a) and (b) amended 15632
225.7303–2 (a) introductory text, (2)(ii) and (c)(1) amended; (a)(1) and (c) introductory text revised 15632
225.7303–4 Revised 15633
225.7303–5 (a) and (b) revised 15633

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

225.7304 Revised **70325**
225.7305 Amended 15633
225.7308 Revised 15633
225.7401 (d) revised 15633
225.7501 (b)(1)(iii) revised **77939**
226.104 Revised **65514**
226.7000 (a) and (b) amended 15381
230.201–5 (a)(1)(A)(2), (B), (e)(i) and (ii) amended 7440
231.205–70 (d)(9) and (10) amended 7440
232.70 Added; interim 8455
232.006–5 Amended 7440
232.070 (a) amended 7440
232.071 (a)(1), (b)(1), and (3) amended 7440
232.501–2 (a) amended 7440
232.617 (a) amended 7440
236.570 (b)(5) amended 7440
237.101 Added; interim 7443
237.102–70 (d) added; interim 7443
237.104 (c)(2)(C)(*1*) amended **61516**
239.1 (Subpart 239.1) Added **65512**
239.7302 (b)(2)(i) amended; (b)(2)(ii) revised 7440
(b)(2)(ii) amended 15380
242.302 (a)(19) removed 15633
242.602 (c)(2) amended 7440
242.771–3 (c) amended 7440
242.1105 (1)(i) amended **61516**
242.1203 (b)(2)(A) amended 7440
245.403 (1) amended **61517**
245.609 Amended **61517**
247.305–10 (b)(1)(A)(*3*) amended **61517**
247.371 Amended **61517**
249.7000 (a)(1) amended 7440
249.7001 (b)(11) revised 7440
250.102–70 Amended 15380
250.303 (3) amended; (12) revised 7440
251.102 (f) revised; Table 51–1 amended **65512**
(e) introductory text amended **70325**
252.211–7005 clause amended 7440
252.212–7001 Clause amended **70325, 77939**
Clause amended; interim 7442, 8455
Clause amended 15633
252.225–7000 Revised 15634
252.225–7001 Revised 15634
252.225–7002 Revised 15634
252.225–7003 Revised 15634
252.225–7004 Added 15634
252.225–7006 Removed **77939**
252.225–7007 Clause amended **65514**
Removed **77939**
252.225–7008 Introductory text amended **77939**
Removed 15635
252.225–7009 Introductory text amended **77939**
Removed 15635
252.225–7010 Introductory text amended **77939**
Removed 15635
252.225–7011 Revised 15635
252.225–7012 (c)(3) amended; interim 7442
252.225–7013 Added 15635
252.225–7014 Revised 15636
252.225–7015 Revised 15636
252.225–7016 Revised 15636
252.225–7017 Removed 15637
252.225–7018 Revised 15637
252.225–7019 Revised 15637
252.225–7020 Introductory text amended **77939**
Revised 15637
252.225–7021 Clause amended **65514**
Introductory text amended **77939**
Revised 15637
252.225–7022 Clause amended 15639
252.225–7023 Introductory text amended 15639
252.225–7024 Removed 15639
252.225–7025 Revised 15639
252.225–7026 Removed 15639
252.225–7027 Revised 15639
252.225–7028 Revised 15639
252.225–7029 Removed 15639
252.225–7030 Revised 15639
252.225–7031 Revised 15639
252.225–7032 Revised 15639
252.225–7033 Revised 15639
252.225–7035 Introductory text amended **77939**
Revised 15640
252.225–7036 Introductory text amended **77939**
Revised 15640
252.225–7037 Introductory text amended **77939**
Revised 15640
252.225–7038 Revised 15640
252.225–7039 Revised 15640
252.225–7041 Introductory text amended 15641
252.225–7042 Revised 15641
252.232–7003 Added; interim 8455
(a)(2) amended 15380
252.246–7000 Revised; interim 8455

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

TITLE 48 Chapter 2—Con.

252.251–7000 Clause amended **65512**
253.204–70 (b)(12)(iii)(B) and (c)(4)(5)(B)(*5*) amended 7441
253.204–71 (e)(2)(i)(A)(*4*) amended 7441
Chapter 2 Appendix G amended **61517, 70325, 70329, 77936**
Appendix I amended **77937**
Appendix G Amended 7441, 15380

Chapter 3—Department of Health and Human Services (Parts 300—399)

356 Authority citation revised 5576
356.3 (l) 5576

Chapter 8—Department of Veterans Affairs (Parts 800—899)

801.301–70 (c) table amended (OMB numbers) 3467
801.602–70 (a)(4)(vi) and (vii) revised 3468
801.602–71 (b)(2) revised 3468
801.602–72 (b) revised 3468
806.302–5 (b) revised; (c) redesignated as (d); new (c) added 3468
812.301 (c) revised; (g) added 3468
837.403 Amended 3469
852.207–70 Introductory text revised 3469
852.273–70 Added 3469
852.273–71 Added 3469
852.273–72 Added 3469
852.273–73 Added 3469
852.273–74 Added 3469
873 Added 3469

Chapter 9—Department of Energy (Parts 900—999)

904 Regulation at 67 FR 14875 confirmed 56
904.401 Regulation at 67 FR 14875 confirmed 56
904.402 Regulation at 67 FR 14876 confirmed 56
904.404 Regulation at 67 FR 14876 confirmed 56
904.70 Regulation at 67 FR 14876 confirmed 56
904.7000 Regulation at 67 FR 14876 confirmed 56
904.7002 Regulation at 67 FR 14876 confirmed 56
904.7003 Regulation at 67 FR 14876 confirmed 56
904.7005 Regulation at 67 FR 14876 confirmed 56
904.7100 Regulation at 67 FR 14876 confirmed 56
904.7102 Regulation at 67 FR 14876 confirmed 56
904.7103 Regulation at 67 FR 14877 confirmed 56
923 Authority citation revised 6358
923.405 Added 6358
923.471 Removed 6358
936 Authority citation revised 6358
936.602–70 (a)(8) added 6358
952 Regulation at 67 FR 14875 confirmed 56
952.204–2 Regulation at 67 FR 14877 confirmed 56
952.204–73 Regulation at 67 FR 14877 confirmed 56
952.204–74 Regulation at 67 FR 14878 confirmed 56
970.0404–1 Regulation at 67 FR 14878 confirmed 56
970.0404–2 Regulation at 67 FR 14878 confirmed 56
970.0404–3 Regulation at 67 FR 14878 confirmed 56
970.2303—970.2306 (Subpart 970.23) Heading revised 6359
970.2304–1 Revised 6359
970.2304–2 Revised 6359
970.5223–2 Revised 6359

Chapter 15—Environmental Protection Agency (Parts 1500—1599)

1509 Authority citation revised **66344**
1509.170–3 (a) and (c) revised; (d) added **66344**
1509.170–4 (f) amended **66344**
1509.170–5 (b) revised **66344**
1509.170–8 (b) revised **66344**
1509.209–76 Undesignated text, (a)(2), (b)(2) and (4) revised **66344**
1552 Authority citation revised **66344**

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1804.202 Revised 5231
1804.7101 (b) amended **62191**
1804.7102 (a) table, (c) and (d) amended **62191**
1804.7103 (a) amended **62191**
1808.002 Redesignated as 1808.003 ..... **68533**
1808.002–70 Redesignated as 1808.003–70 ..... **68533**
1808.002–71 Redesignated as 1808.003–71 ..... **68533**
1808.002–72 Redesignated as 1808.003–72 ..... **68533**
1808.002–75 Redesignated as 1808.003–75 ..... **68533**
1808.003 Redesignated from 1808.002 ..... **68533**
1808.003–70 Redesignated from 1808.002–70 ..... **68533**
1808.003–71 Redesignated from 1808.002–71 ..... **68533**
1808.003–72 Redesignated from 1808.002–72 ..... **68533**
1808.003–75 Redesignated from 1808.002–73 ..... **68533**
1817.500 Added 13634
1817.503 Removed 13634
1817.504 Removed 13634
1817.7201 Revised 13634
1817.7202 Added 13634
1817.7203 Added 13634
1825.103 (a)(iii) added 11748
1825.1101 (c)(1) added 11748
1827.406–70 Removed 5231
1833.103 (c) amended; (f) revised **61519**
1835.010 Added 5231
1835.011 Added 5231
1835.070 Revised 5231
1845.7101–1 (a) and (g) introductory text revised; (h) through (k) amended; interim **68534**
1845.7101–2 (a) amended; interim **68534**
1845.7101–3 (b) amended; interim **68534**
1845.7101–4 (g) amended; interim **68535**
1851.2 (Subpart) Added **68533**
1852.233–70 Clause amended **61519**
Revised 5232
1852.235–72 Clause amended **61520**
1852.235–73 Added 5232
1852.235–74 Added 5232
1872.303 (b) amended **61520**
1872.307 (b) amended **61520**
1872.402 (b)(7) redesignated as (b)(8); new (b)(7) added **61520**
1872.705 Amended **61520**

Proposed Rules:

1 ..... **67762**
2 ..... **64010**
..... 4874, 4876, 5138, 5774
5 ..... **67762**
6 ..... **68914**
7 5138
8 ..... **68914**
..... 5138
9 ..... **67282**
10 ..... **76150**
11 ..... **64010**
12 4874
14 ..... **67762**
16 5138
19 ..... **67762**
..... 5138
22 ..... **67762**
23 ..... **64010**
31 ..... **65468**
..... 4054, 4876, 4880, 5774
36 ..... **67762**
42 5138
52 ..... **67762, 68914**
..... 4874, 4880, 5778
53 ..... **67762**
206 ..... **62590**
208 ..... **62590**
209 ..... **62590**
213 ..... **77955**
216 ..... **70388**
225 ..... **62590**
228 7490
232 9627
242 ..... **62590**
252 ..... **62590, 70389**
..... 7491, 9627
501 13212
505 1358
532 ..... 3220, 8486
538 ..... 3220, 8486, 13212
552 ..... 3220, 8486, 13212
1511 2988
1552 2988
1825 ..... **68551**

TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1 Authority citation revised 10989

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

TITLE 49 Subtitle A—Con.

1.58 (i) added 12834
1.66 (ee) added **72384**
1.68 Added 10989
1.73 (d)(2) and (e) revised 10989
40.245 Revised **61522**

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100—199)

107.1 Amended 11749
107.612 (b) introductory text revised; (c) and (d) added 1345
107.616 (d)(2) revised 1346
171.7 (a)(e) table amended 1015
171.14 (f) added 14346
172.201 (e) revised **66573**
172.704 (a) introductory text, and (b) revised; (a)(4), and (5) added 14521
174.24 (b) revised **66574**
175.30 (a)(2) revised **66574**
175.33 (a)(1) introductory text revised; (a)(7) and (8) redesignated as (a)(9) and (10); (a)(7), (8), (c) and (d) added 14347
176.24 Revised **66574**
177.817 (f) revised **66574**
190.3 Amended 11749
191.3 Amended 11749
192 Meetings 56
192.3 Amended 11749
193.2007 Amended 11749
195 Meetings 56
195.2 Amended 11749
195.573 Corrected **70118**
198.3 Amended 11750
199 Random drug testing rate **78388**
199.3 Amended 11750

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

219 Determination 57
219.5 Amended 10135
225 Authority citation revised 10136
225.5 Amended 10136
225.9 Revised 10138
225.19 (c) amended; (e) revised; interim **79536**
(d) revised 10138
225.21 (j) added 10138
225.23 (a) revised 10139
225.25 (b)(6), (16), (25)(v), (e)(8), (24) and (h)(15) revised; (b)(25)(xi), (xii) and (i) added 10139
225.33 (a)(11) added 10139
225.35 Amended 10139
225.39 Added 10139
225 Appendix B revised; interim **79536**
240 Authority citation revised 10139
240.117 (e)(2) revised 10139
241 Added **75960**
244.13 (j) introductory text revised **68045**
244.19 (c)(1) revised **68045**

Chapter III—Federal Motor Carrier Safety Administration, Department of Transportation (Parts 300—399)

350 Authority citation revised **61820**
350.201 (m) and (t)(1) amended **61820**
350.211 (15) amended **61820**
350.213 (b) introductory text amended **61820**
Corrected **63019**
360.3 (a)(2), (iii) introductory text, (f) and (g)(2) amended **61820**
365.101 (b), (c) and (g) amended **61820**
365.105 (a) amended; (b) revised **61820**
365.107 (f) removed; (g) and section note redesignated as (f) and (g); (e) introductory text, new (f) and (g) amended **61820**
365.109 (a)(7) amended **61820**
365.401 Amended **61820**
365.403 (b)(1) and (2) amended **61821**
365.405 (a)(1) revised; (a)(2) and (b)(1)(ii) amended **61821**
365.411 (b) amended **61821**
365.413 Heading revised **61821**
372.303 Heading revised **61821**
377.215 (c) heading amended **61821**
382.305 (i)(3) amended **61821**
382.401 (d) amended **61821**
383 Authority citation revised **61821**
383.3 (f)(3)(i)(A) amended **61821**
383.51 Table 2 revised 4396
386.2 Amended **61821**
386.22 Amended **61821**
386.71 Amended **61821**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

386.82 (a)(4) amended **61821**
386 Appendix B amended **61821**
Appendices A and B amended 15383
387.9 Table amended **61821**
387.39 Form amended **61821**
Form revised **61822**
387.303 (b)(2) table amended **61824**
388 Nomenclature change **61824**
390.27 Table amended **61824**
Corrected **63019**
391.41 (a) footnote added **61824**
391.49 (a) amended **61824**
391.65 (a)(2)(vii) amended **61824**
393.48 (c)(2) authority citation removed **61824**
393.52 (d) amended **61824**
393.86 (b)(3) heading amended **61824**
393.124 Corrected **63966**
397 Authority citation revised **62192**
397.17 (a) revised **62192**

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

567.4 (h)(2) revised **69623**
571.3 (b) amended; eff. 12–27–04 ..... **79439**
571.5 (b)(2) through (6) and (8) revised **77193**
571.105 Amended; eff. 12–27–04 ..... **79439**
571.109 Amended **69623**
571.110 Heading revised; text amended; Figures 1 and 2 added **69623**
571.117 Amended **69627**
571.120 Amended **69627**
571.129 Amended **69627**
571.138 Amended 4110
571.139 Added **69627**
571.201 Amended; eff. 12–27–04 ..... **79439**
571.205 Amended; eff. 12–27–04 ..... **79439**
571.208 Amended; eff. 12–27–04 ..... **79439**
Amended 513, 4965
571.213 Amended **61529**
Amended; interim **64823**
571.221 Corrected 6360
571.403 Added; eff. 12–27–04 ..... **79439**
571.404 Added; eff. 12–27–04 ..... **79451**
572 Actions on petitions 13856
573.6 (c)(7), (8)(i), and (10) revised **64063**
573.13 Added **64063**
573.14 Added **72392**
574.5 (d) and Figures 1 and 2 revised **69628**
575 Heading and authority citation revised **67494**
575.1—575.7 (Subpart A) Heading revised **67494**
575.6 Amended; (a)(4) and (5) added **69631**
575.101—575.105 (Subpart B) Heading revised **67494**
575.201 (Subpart C) Added **67494**
577.11 Added **64065**
577.12 Added **72393**
579.2 Revised **63310**
579.3 (a) revised; (b) and (c) redesignated as (c) and (d); new (b) added **63310**
579.4 (c) and (d) amended **63310**
Amended 4113
579.6 Revised 4113
579.11—579.20 (Subpart B) Revised **63310**
(d)(2) revised; (e) amended 4113
590.3 Revised 4111
594.6 (d) correctly added **62897**
597 Added **69631**

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

600.10 Revised **64312**
600.746 (c)(1) introductory text **64312**
660.31 Corrected **69479**
661 Authority citation revised 9799
661.13 (b) revised 9799

Chapter X—Surface Transportation Board, Department of Transportation (Parts 1000—1399)

1002 Policy statement **65046**
1011 Authority citation revised 8726
1011.4 (a)(9) added 8726
1011.7 (c)(5) added 8726

Chapter XI—Bureau of Transportation Statistics, Department of Transportation (Parts 1400—1499)

1420.2 (b)(1) and (5) amended 4719
1420.3 (a), (b)(1), (4) and (c) amended 4719
1420.4 (b) and (c) amended 4719
1420.6 Amended 4719
1420.10 (a) amended 4719

TITLE 49 Chapter XI—Con.

1420.11 Amended 4719

Chapter XII—Transportation Security Administration, Department of Transportation (Parts 1500—1599)

1510 Waiver 3192
1511 Waiver **66071**
1540 Interpretation 7444
Technical correction 9902
1540.115 Added 3761
1540.117 Added 3768
1544.101 (f) revised **79887**
1570—1572 (Subpart D) Added; interim 6086

Proposed Rules:

10 ..... **78403**
..... 2002
23 ..... **76327**
171 ..... **66598, 72034**
..... 2734
172 ..... **72034**
..... 2734
173 ..... **72034**
..... 2734, 6689
175 ..... **72034**
176 ..... **72034**
177 ..... **62681**
..... 2734
178 ..... **72034**
..... 2734
179 2734
180 ..... **72034**
..... 2734
192 ..... **68815**
..... 4278, 6385, 9966, 13249
219 ..... **63022, 70809, 75966**
225 ..... **63022, 70809**
240 ..... **63022, 70809**
390 ..... **71127**
..... 8580
396 ..... **71127**
..... 8580
397 ..... **62681**
..... 13250
533 ..... **77015, 79549**
544 13887
571 ..... **66098, 67373, 68551**
..... 2003, 2480, 2993, 5863, 7101, 7747
575 ..... **62528**
661 9801
1180 6695

TITLE 50—WILDLIFE AND FISHERIES

Chapter I—United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

16.13 (a)(2) revised **62203**
17 Comment period extended **66344**
Comment period reopened 12611
17.11 (h) table amended 10409, 13406, 13519
17.12 (h) table amended **62908, 63988, 65437, 67990, 68015, 76048, 78598**
(h) table amended 1268, 9237, 12851, 12873, 13052
17.21 (c)(4) revised 2919
17.40 (l)(2)(vi) and (vii) added; eff. 10–1–02 through 5–22–04 ..... **61536**
17.95 (e) amended 8132, 13406
17.96 (a) amended **62908, 63988, 65437, 67990, 76048, 78599**
(b) added 1269
(a) amended 12851, 12874
17.99 Added 9241
Heading, and (a) heading amended; (c) and (d) added 13055
17.108 (a) introductory text, (8) through (11), (b) and (c)(1) through (5) revised; (c)(6) through (11) added; (a)(7) illustration amended **68473**
20.21 (j) revised 1392
20.104 Seasonal hunting adjustments **67257**
20.105 Seasonal hunting adjustments **67258**
20.106 Seasonal hunting adjustments **67275**
20.107 Seasonal hunting adjustments **67276**
100 Temporary regulations 7298
100.6 (b) revised 7704
100.11 (b)(1) amended 7704
100.24 (a)(2) and (3) revised 7279
100.27 Added; eff. 3–1–03 through 2–29–04 7282
100.28 Added; eff. 3–1–03 through 2–29–04 7282

NOTE: **Boldface page numbers indicate 2002 changes.**

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

216.132 Revised **70180**
216.134 Removed **70181**
216.135 (i) removed **70181**
216.136 (a) revised **70181**
222 Fishery management measures **67793, 67795**
222.102 Amended **71899**
Amended 8467
222.206 (d)(2)(ii)(B)(*1*), (iv) and (5) removed; (d)(2)(ii)(B)(*2*), (*3*) and (v) redesignated as (d)(2)(ii)(B)(*1*), (2) and (iv); (d)(2)(ii)(A)(*2*) and (*4*) revised; new (d)(2)(ii)(A)(*5*) added 8467
223 Fishery management measures **67793, 67795**
223.203 Corrected **68725, 70809**
223.206 (d) introductory text revised; (d)(8) added **71899**
(d)(6) revised; interim **78392**
223.206 Comment period extended 78392
223.207 (a) introductory text, (3)(ii), (4) through (8), (b)(1), (2), (d)(2), (3), (c)(1)(iv)(A) heading and (B) heading revised; (c)(1)(iv)(A) and (B) amended 8467
223 Figures 1, 2, 11, 12a and 12b removed; Figure 12 added; Figure 15 revised 8469
224.104 (c) removed; (d) redesignated as (c) 8471
226.214 Added 13454
229 Fishery management measures **71900, 75817, 79536**
229.32 (g)(3)(iii) introductory text, (A) and (B) corrected; (g)(e)(iii)(C) correctly designated as (g)(3)(iii)(D); new (g)(3)(iii)(C) added; (g)(4) introductory text, (i)(B) and (ii) correctly revised **65727**
229 Regulation at 67 FR 1146 and 1147 corrected **65723**

Chapter III—International Fishing and Related Activities (Parts 300—399)

300 Fishery management measures **72110, 72394**
Technical correction 1392, 14167
Fishery management measures 9902
300.17 (b)(1)(iv) revised **64312**
300.63 (a)(3)(ii) revised 11003

Chapter IV—Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)

Chapter IV Policy statement 15100

Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

600 Fishery management measures **61824, 62204, 70018**
600.10 Amended **64312**
600.746 (c)(1) introductory text revised **64312**
622 Fishery management measures **65902, 72112, 71901, 71902**
Fishery management measures 4965, 11003
Temporary regulations 6360
Comment requests 10180
622.4 (r) introductory text, (1) and (6) amended; (r)(1), (6) and (8)(v) suspended in part; (r)(8)(vi) added **77195**
(a)(2)(viii), (c), (f) through (j) and (l) revised; (a)(5) and (b)(4) added 2192
622.7 (b) and (c) revised; (bb) through (ee) added 2194
622.9 Added 2194
622.19 Added 2194
622.41 (g) heading revised; (j) added 2196

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

TITLE 50 Chapter VI—Con.

635 Fishery management measures.....**61537, 63854, 66072, 68045, 71487, 77433**
Fishery management measures 14167
635.2 Amended.....**77436**
635.4 (a)(1), (2), (5), (b), (d)(1), (2), (3), (h)(1) introductory text and (m)(1) revised; (c) added **77436**
635.5 (c) amended.....**77437**
(c) revised.....714
635.6 (b)(1) introductory text revised; (c)(1) amended **77437**
635.20 (e)(1) suspended.....**78993**
(a) revised.....714
635.21 (d)(4)(iv) added.....714
635.22 (a), (c) and (d) revised **77437**
(a), (c) and (d) revised; (e) and (f) added 714
635.23 (b) introductory text, (2), (3), (c) introductory text and (3) revised.....**77438**
635.25 Added.....**70026**
635.27 (c) revised.....**70026**
(a) introductory text amended, (1)(i) introductory text and (2) introductory text amended.....**77438**
(b)(1)(i) and (ii) suspended; (b)(1)(v) and (vi) added **78993**
635.28 (b)(3) revised **77438**
(b)(1) and (2) suspended; (b)(4) and (5) added **78993**
635.31 (a)(1) revised **77438**
(b)(2)(ii) revised; (b)(3) added 715
635.45 Revised.....**70027**
635.47 Revised.....**70027**
635.71 (a)(24) and (29) revised; (a)(3)(8) added **70027**
(b)(1), (3), (14) and (15) revised **77439**
(b)(6) revised; (c)(6), (e)(14) and (9)15(10) added.....715
648 Fishery management measures.....**62650, 63311, 64825, 66072, 69148, 70027, 70556, 71111, 71488, 72867, 76318, 76701, 78994, 79887**
Fishery management measures 2919, 6088, 9905, 12612
Temporary regulations 14545
648.1 (a) amended.....**63229**
648.2 Amended.....**63229**
648.3 (a)(13) added.....**63229**
648.4 (a) amended.....**63231**
(b) revised.....10182
648.6 (a)(1) revised **63231**
648.7 (b)(1)(iii) and (iv) removed; (b)(2) added **63231**
648.10 (c) introductory text, (2) and (5) revised.....**63232**
648.11 (a) amended; (e) revised.....**63232**
648.12 Introductory text revised **63232**
648.13 (g) added.....**63232**
648.14 (x)(12) and (dd) added.....**63232**
(a)(122) revised; (a)(127) added; eff. to 12–31–03 68
(a)(96), (u)(3), (11), (x)(3), (6) and (7) revised 10183
OMB number 12815
648.21 (f)(3) revised 60
648.23 (b)(2) revised.....9586
648.53 (b) table revised.....9586
648.57 (a) introductory text and (b) introductory text revised 9587
648.58 (c)(1), (4), (6), (e)(2), (3)(ii), (4)(ii) and (f) revised 9587
648.80 (a)(15) introductory text, table and (i)(F) revised **69696**
648.81 (g)(1)(ii) revised; interim 14348
648.86 (h)(2)(ii) revised.....4114
648.92 (b)(2) revised.....4114
648.94 Regulation at 67 FR 35931 eff. date extended; interim **67568**
648.122 (a)(1) and (b)(1) revised; (d) added; eff. to 12–31–03.....68
OMB number 12815
648.140 (b)(1), (2) and (d) revised 10183
648.260—648.264 (Subpart M) Added **63233**
654.2 Amended.....**61991**
654.3 (a) revised; (d) removed.....**61991**
654.4 Heading revised; text added **61991**
654.6 Introductory text added; (a) and (b) revised **61993**
654.7 (a) and (g) revised; (p) and (q) added.....**61993**
654.8 Revised.....**61993**
654.9 Revised.....**61993**
654.1 (a) amended.....**61993**
654.2 Introductory text amended **61993**
654.7 (n) amended **61993**
654.20 (b)(2)(i) amended.....**61993**
654.25 (b) amended.....**61993**
654.26 Amended **61993**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

654.27 (d) amended.....**61993**
660 Technical correction.....**61994**
Fishery management measures .....**61994, 62204, 62401, 63055, 63057, 64826, 65514, 65728—65730, 70018, 79889**
Technical correction 4719
660.12 Amended **65906**
660.14 (b), (c), (e) and (f)(2) amended **65906**
660.15 (e) and (j) amended **65906**
660.17 (a), (c), (d), (e)(1), (2), (4) and (k) amended **65906**
660.21 (l) introductory text and (1) through (4) amended.....**65906**
660.22 Regulation at 67 FR 40236 corrected 13857
660.23 (a) and (b) amended **65906**
660.27 (e), (f)(1), (2) introductory text and (i) amended.....**65906**
660.28 (b), (e), (g), (h), (i)(1) and (2)(ii) amended.....**65906**
660.31 (c)(2), (d)(2) and (g)(2) amended **65906**
Corrected.....**69479**
660.43 (b) amended.....**65906**
660.50 (c) amended.....**65906**
660.51 (a), (b), (c)(1), (2), (d) through (g)(2) and (j)(2) amended **65906**
660.52 (a), (b)(1), (3) amended.....**65906**
660.53 (c)(2) and (d)(2) amended **65906**
660.65 (a) and (d) amended **65906**
660.66 Introductory text and (a) amended **65906**
660.67 (c)(1), (2), (4), (d)(2)(iii) and (iv) amended.....**65906**
660.81 (e) amended.....**65906**
660.84 (c)(2) and (4) amended **65906**
660.85 (a) amended.....**65906**
660.302 Amended **65906**
Amended.....934, 11182
660.304 (a) through (f) suspended; (g) through (j) added (temporary) 934
Heading, (a) heading, (b), (c) and (d) revised 11231
660.321 (a) amended.....**65906**
660.322 (b)(5) suspended; (b)(6) and (7) added (temporary) 935
(b)(5) revised; (b)(6) added.....11231
660.323 (b) revised.....11231
660.324 (d) and (f) amended **65906**
(d) amended.....**65906**
660.334 (d)(2) and (3) redesignated as (d)(3) and (4); new (d)(2) added; new (d)(3) and (4) revised **65905**
660.335 (d)(1), (2) and (e)(1) revised **65906**
660.350 (b)(3) amended **65906**
660.339 Amended **65906**
660.402 Amended **65906**
660.409 (a)(1) and (b)(1) amended **65906**
660.411 (c) amended **65906**
660.502 Amended 3822
660.512 (h) added 3822
660.514 Revised 3822
679 Temporary regulations.....**61826, 61827, 62212, 62651, 62910, 63312, 64066, 65046, 66575, 67798, 70557, 70858, 71489, 76998, 77439, 78733, 78739**
Authority citation revised; eff. 1–29–03 to 12–31–07.....**79721**
Technical correction 1393, 14902
Temporary regulations.....2920, 2921, 2922, 3823, 3824, 4115, 5585, 7323, 7448, 7719, 8153, 8154, 8726, 9907, 9924, 9942, 11994, 13635, 13857, 13858, 14168, 15115, 15383, 15384
Authority citation revised....6836, 9905
679.1 (k) revised; eff. 1–29–03 to 12–31–07.....**79721**
679.2 Amended.....**64316, 72610**
Amended 209
Corrected.....**71112**
Amended; eff. 1–29–03 to 12–31–07 .....**79721**
679.4 (b)(5)(vi) and (vii) amended **64317**
(a)(1)(iii) revised; (k)(10), and (l) added; eff. 1–29–03 to 12–31–07 .....**79723**
(b)(5)(vi) revised 209
(l)(6)(ii)(D)(*2*)(*iii*) added 6836
679.5 (n)(2)(iii)(B)(4) amended **64317**
(n)(2)(iii)(B)(*4*) revised.....209
679.7 (a)(7)(iii), (iv), (v), (vii), (17), (18), (19), (f)(16), (j) and (k) amended.....**64316**
(f)(8)(ii)(B)(*2*) correctly revised **71112**
(a)(3) revised **72611**
(a)(7), and (k) revised; eff. 1–29–03 to 12–31–07.....**79728**
Amended; eff. 1–29–03 to 12–31–07 .....**79738**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

TITLE 50 Chapter VI—Con.

(c)(3) removed; (a)(1), (17), (18), (19) and (b) revised....209
(k)(5)(i) revised....6836
679.20 (a)(5)(i)(B), (F), (ii)(C), (6)(ii), (iii), (7)(i)(C)(*4*), (*5*), (ii)(d), (E), (iii)(D), (8)(ii)(C), (iii), (11), (b)(2)(i), (ii) and (d)(4) amended....**64317**
(a)(5)(ii) redesignated as (a)(5)(iii); new (a)(5)(ii) and (d)(1)(iv) added; (a)(5)(i)(A), (6), (b)(1)(i) and (c)(4) revised; eff. 1-29-03 to 12-31-07....**79730**
(a)(7)(iii)(B) and (f)(3) removed; (a)(7)(iii)(C) and (D) redesignated as (a)(7)(iii)(B) and (C); (a)(5)(i)(A), (B), (ii)(B), (6)(ii), (iii), (7)(1)(C)(*2*), (*3*), (ii)(A), (D), (iii)(A), new (B), (8)(ii)(C), (iii), (11), (b)(2)(i), (ii), (c)(2)(i), (ii) and (d)(4) revised; (e)(2)(iv) added....210
679.21 (d)(8) and (e)(3)(v) added; eff. 1-29-03 to 12-31-07....**79731**
679.22 (a)(5)(iv), (11), (12), (b)(3) and (6) amended....**64317**
(b)(7) added....**70860**
(a)(5), (7), (8), (b)(2) and (3) revised....212
(a)(11) revised....11006
679.23 (d)(3), (4), (e)(4)(iv), (v), (5), (6), (7) and (i) amended....**64317**
(d)(2), (3), (e)(2), (3), (4)(iii), (5) and (i) revised....214
Corrected....2636
679.28 (f)(3)(viii) and (ix) amended....**64317**
(c) revised; (g) added; eff. inpart 1-29-03 to 12-31-07....**79731**
(f)(e)(ii) AND (iii) revised; (f)(4), (5) AND (6) added....215
679.30 Amended; eff. 1-29-03 to 12-31-07....**79738**
679.31 (g) amended....**64317**
(a) revised; eff. 1-29-03 to 12-31-07....**79733**
(b)(3)(iv) revised....9905
679.32 (a) amended....**64317**
new (c)(3)(vi) added; eff. 1-29-03 to 12-31-07....**79733**
Amended; eff. 1-29-03 to 12-31-07....**79738**
(e) removed....215
679.43 (a) amended....**64317**
(e) revised....**72611**
679.50 (c)(1)(x), (4)(vi) introductory text, (c)(4)(vi)(C) and (6) amended....**64317**
(c)(4)(i) through (iv), (v)(A), (B), (vi)(A), (B), (C), (6)(ii) and (d)(4)(i) amended; (j) removed; (e) through (i) redesignated as (f) through (j); new (e) added; heading, new (h), (i) and (j) revised; eff. date confirmed....**72611**
Heading and (c)(4)(i) revised; (c)(6) removed; (d)(5) added; eff. 1-29-03 to 12-31-07....**79733**
Amended; eff. 1-29-03 to 12-31-07....**79738**
(c)(1)(x) revised....215
(d)(3) through (6) redesignated as (d)(4) through (7); (c)(1)(vii), new (d)(4), (i)(2)(vi) and (xii) revised; new (d)(3) added....719
679.60-679.65 (Subpart F) added; eff. 1-29-03 to 12-31-07....**79734**
679.61 (a) revised....6836
679.62 (b) revised; (c) added....6836
679 Table 11 revised....**64317**
Tables 4, 5 and 6 revised; Table 12 added; Tables 13 and 21 through 24 removed....215
697.2 Amended....14925
697.4 (a)(7)(ii) revised; (a)(7)(vi) through (x) and (f)(1)(v) added....14925
697.18 (a), (b), and (h) revised....14930
697.19 Revised....14930
697.25 (b) and (c) redesignated as (c) and (d); new (b) added....14931

Proposed Rules:

17....**61845, 62926, 63064, 63066, 63067, 63738, 65083, 65931, 66377, 66378, 66599, 67586, 67803, 68490, 69176, 69177, 69179, 70199, 70201, 70202, 70203, 71032, 71236, 71529, 72396, 72407, 75834, 76156, 77464, 77466, 78763**
331, 2283, 3000, 4159, 4160, 6863, 8487, 8730, 12326, 12336, 13663, 14752
18....**69078, 71127**
1175
20....6697
21....6697, 12653
92....6697
100....7294, 7734
216....**68553**

NOTE: **Boldface page numbers indicate 2002 changes.**

CHANGES OCTOBER 1, 2002 THROUGH MARCH 31, 2003

3483, 4747
223....**69704, 79898**
4433, 13662
224....**69704, 79898**
4433
226....**69708**
229....1414, 10195
300....**64853, 67139**
6103
402....3786
600....**62222, 65933, 65934, 67140, 68556, 76329, 77957, 79550**
4161, 6863, 7492, 8487, 8871, 8872, 9044, 9628, 9629, 9967, 11501, 11793, 14570
622....**69502**
11794
635....**69180, 69502, 72629, 78404**
1024, 3853
648....**65934, 65938, 66103, 69181, 70570, 70904, 72131**
533, 1587, 2303, 7749, 7965, 8731, 9968, 11023, 11346, 14388, 14571, 15425
660....**62001, 63599, 64861, 66103, 70573**
936, 4162, 4441, 12888, 13891
679....**63600, 65941, 76344, 76362**
3225, 3485, 6386, 6865, 7750, 9630, 15144
697....**68556**

NOTE: **Boldface page numbers indicate 2002 changes.**

2002

67 FR Page

15333–15462	Apr. 1
15463–15706	2
15707–16010	3
16011–16284	4
16285–16626	5
16627–16968	8
16969–17278	9
17279–17602	10
17603–17904	11
17905–18084	12
18085–18460	15
18461–18772	16
18773–19100	17
19101–19318	18
19319–19506	19
19507–19634	22
19635–20004	23
20005–20424	24
20425–20606	25
20607–20880	26
20881–21158	29
21159–21558	30
21559–21974	May 1
21975–22336	2
22337–30306	3
30307–30532	6
30533–30768	7
30769–31104	8
31105–31710	9
31711–31934	10
31935–32816	13
34383–34584	14
34585–34816	15
34817–34990	16
34991–35424	17
35425–35704	20
35705–35890	21
35891–36078	22
36079–36494	23
36495–36778	24
36779–37318	28
37319–37662	29
37663–37964	30
37965–38192	31
38193–38340	June 3
38341–38582	4
38583–38840	5
38841–39240	6
39241–39593	7
39595–39840	10
39841–40136	11
40137–40580	12
40581–40832	13
40833–41154	14
41155–41304	17
41305–41588	18
41589–41808	19
41809–42182	20
42183–42466	21
42467–42702	24
42703–42980	25
42981–43216	26
43217–43524	27
43525–44014	28
44015–44348	July 1
44349–44522	2
44523–44756	3
44757–45048	5
45049–45292	8
45293–45626	9
45627–45894	10
45895–46092	11
46093–46368	12
46369–46576	15
46577–46836	16
46837–447242	17
47243–47436	18
47437–47678	19
47679–48014	22
48015–48252	23
48353–48518	24
48519–48740	25
48741–48970	26
48971–49216	29
49217–49556	30
49557–49854	31
49855–50342	Aug. 1
50343–50580	2
50581–50790	5
50791–51064	6
51065–51458	7
51459–51750	8
51751–52382	9
52383–52594	12
52595–52840	13
52841–53280	14
53281–53460	15
53461–53722	16
53723–53872	19
53873–54084	20
54085–54324	21
54325–54564	22
54565–54726	23
54727–54940	26
54941–55100	27
55101–55318	28
55319–55688	29
55689–56210	30
56211–56474	Sept. 3
56475–56744	4
56745–56894	5
56895–57122	6
57123–57308	9
57309–57500	10
57501–57718	11
57719–57936	12
57937–58318	13

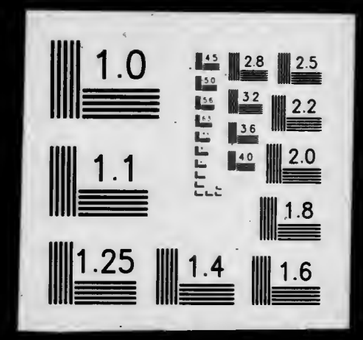
58319–58508	16
58509–58682	17
58955–59132	18
58683–58954	19
59133–59448	20
59449–59769	23
59769–60098	24
60099–60518	25
60519–60852	26
60853–61248	27
61249–61466	30
61467–61760	Oct. 1
61761–61974	2
61975–62164	3
62165–62310	4
62311–62626	7
62627–62862	8
62863–63048	9
63049–63236	10
63237–63528	11
63529–63812	15
63813–64026	16
64727–64306	17
64307–64516	18
64517–64786	21
64787–65010	22
65011–65284	23
65285–65468	24
65469–65688	25
65689–65870	28
65871–66042	29
66043–66302	30
66303–66526	31
66527–67088	Nov. 1
67089–67282	4
67283–67508	5
67509–67776	6
6777–68016	7
68019–68492	8
68493–68752	12
68753–68930	13
68931–69118	14
69119–69457	15
69459–69656	18
69657–69986	19
69987–70118	20
70119–70308	21
70309–70528	22
70529–70672	25
70673–70834	26
70835–71068	27
71069–71442	29
71443–71796	Dec. 2
71797–72088	3
72089–72362	4
72363–72550	5
72551–72826	6
72827–75798	9
75799–76102	10
76103–76292	11
76293–76670	12
76671–76980	13
76981–77146	16
77147–77398	17
77399–77644	18
77645–77906	19
77907–78120	20
78121–78320	23
78321–78664	24
78665–78958	26
78959–79512	27
79513–79832	30
79833–80332	31

2003

68 FR Page

1–254	Jan. 2
255–458	3
459–662	6
663–994	7
995–1142	8
1143–1358	9
1359–1512	10
1513–1792	13
1793–1954	14
1955–2174	15
2175–2408	16
2421–2678	17
2679–2868	21
2869–3162	22
3163–3370	23
3371–3802	24
3803–4074	27
4075–4360	28
4361–4680	29
4681–4888	30
4889–5202	31
5203–5528	Feb. 3
5529–5784	4
5785–6060	5
6061–6338	6
6339–6602	7
6603–6814	10
6815–7062	11
7063–7300	12
7301–7410	13
7411–7692	14
7693–7896	18
7897–8152	19
8153–8444	20
8445–8538	21
8539–8702	24
8703–8816	25
8817–8998	26
8989–9502	27
9503–9850	28
9851–10140	Mar. 3
10141–10344	4
10345–10650	5
10651–10952	6

10953–11310	7
11311–11461	10
11463–11732	11
11733–11965	12
11966–12282	13
12283–12568	14
12569–12795	17
12796–13218	18
13219–13614	19
13615–13801	20
13803–14126	21
14127–14308	24
14307–14526	25
14527–14886	26
14887–15041	27
15043–15334	28
15335–15652	31


1.0
1.1
1.25
1.4
1.6
1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0
4.5
5.0

VOL
68
ISS
62
AP
1
003
UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL
PUBLICATION MAY AFFECT THE QUALITY OF
THE MICROFORM EDITION.



Federal Register

4–1–03 Tuesday
Vol. 68 No. 62 Apr. 1, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

VOL
68

ISS
62

AP
1

003

MI



Federal Register

4–1–03 Tuesday
Vol. 68 No. 62 Apr. 1, 2003
Pages 15653–15920

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 202–512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 202–512–1800
Assistance with public single copies 1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES
Subscriptions:
Paper or fiche 202–741–6005
Assistance with Federal agency subscriptions 202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 62
Tuesday, April 1, 2003

Agriculture Department
See Farm Service Agency
See Food and Nutrition Service
See Forest Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 15709

Antitrust Division
NOTICES
National cooperative research notifications:
Gaming Standards Association, 15743

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Committees; establishment, renewal, termination, etc.:
Smoking and Health Interagency Committee, 15730

Citizenship and Immigration Services Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15734–15735

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Connecticut, 15704

Coast Guard
PROPOSED RULES
Anchorage regulations:
Maine, 15691–15694
Great Lakes Pilotage regulations; rates update
Correction, 15697–15702
Ports and waterways safety:
Northeast Ohio; safety zones, 15694–15696

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Consumer Product Safety Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15707–15708

Corporation for National and Community Service
NOTICES
Grants and cooperative agreements; availability, etc.:
President's Volunteer Service Awards Program, 15708–15709

Customs and Border Protection Bureau
NOTICES
Customhouse broker license cancellation, suspension, etc.:
Beluga International Co. et al, 15735
Ellsworth, Jill R., et al., 15735
Engers, George S., et al., 15735
Stroth, Neill F., 15736

Defense Department
See Air Force Department
See Engineers Corps

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15709–15710
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Carol M. White Physical Education Program, 15911–15914
Institute of Education Sciences; correction, 15710

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Workforce Investment Act, Wagner-Peyser Act, Reemployment Services, etc.; State allotments, 15745–15756

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
National Coal Council Advisory Committee, 15710
National Coal Council Coal Policy Committee, 15710–15711

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Salt Lake and Davis Counties, UT, 15790

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Indiana, 15664–15666
Pennsylvania, 15661–15664
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Indiana, 15696–15697
Pennsylvania, 15696
NOTICES
Air pollution control:
EMFAC2002 motor vehicle emission factor model; official release for use in California, 15720–15723
Meetings:
Environmental Policy and Technology National Advisory Council, 15723–15724
Water pollution control:
Marine discharges of vessel sewage, prohibition; petitions, etc.—
New Jersey, 15724

Executive Office of the President
See Management and Budget Office

See Presidential Documents

Farm Service Agency
NOTICES
Crambe and sesame seed designated as eligible oilseeds; Marketing Assistance Loan Deficiency Payments, and Direct and Counter Cyclical Program, 15703

Federal Aviation Administration
RULES
Air carrier certification and operations:
Collision avoidance systems, 15883–15904
Air traffic operating and flight rules, etc.:
Grand Canyon National Park, AZ; special flight rules in vicinity—
Commercial air tour limitation, 15657–15658
Airworthiness directives:
Quality Aerospace, Inc., 15653–15657
PROPOSED RULES
Airworthiness directives:
Aerospatiale, 15682–15684
Empresa Brasileira de Aeronautica S.A. (EMBRAER), 15684–15686
Eurocopter France, 15687–15688

Federal Communications Commission
RULES
Common carrier services:
Federal-State Joint Board on Universal Service—
Interim Contribution Methodology Order, 15669–15672

Federal Emergency Management Agency
RULES
National Flood Insurance Program:
Increased coverage rates, 15666–15669

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Marseilles Hydro Power, LLC, 15718
Hydroelectric applications, 15718–15719
Practice and procedure:
Off-the-record communications, 15719–15720
Applications, hearings, determinations, etc.:
CenterPoint Energy Gas Transmission Co., 15711
Clark Fork & Blackfoot, L.L.C., 15711–15712
Enron Power Marketing, Inc., et al., 15712–15714
Iroquois Gas Transmission System, L.P., 15714
Liberty Power Corp., Inc., 15715
Natural Gas Pipeline Co. of America, 15715
NM Colton Genco LLC et al., 15715–15716
PG&E Gas Transmission, Northwest Corp., 15716
Reliant Energy Services, Inc., et al., 15716–15718
Stingraw Pipeline Co., L.L.C., 15718

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Salt Lake and Davis Counties, UT, 15790

Federal Railroad Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15790–15794

Federal Reserve System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15725–15729
Banks and bank holding companies:
Change in bank control, 15730
Formations, acquisitions, and mergers, 15730

Federal Transit Administration
RULES
Bus testing, 15672–15674

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Privacy Act:
Systems of records, 15796–15797

Fish and Wildlife Service
RULES
Endangered and threatened species:
Gray wolf, 15803–15875
PROPOSED RULES
Endangered and threatened species:
Gray wolf, 15875–15882
NOTICES
Endangered and threatened species permit applications, 15739–15740

Food and Drug Administration
NOTICES
Human drugs:
Patent extension; regulatory review period determinations—
LEVULAN KERASTICK, 15730–15731
Reports and guidance documents; availability, etc.:
Human subject protection; comment request, 15731

Food and Nutrition Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15703–15704

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
Idaho Panhandle, 15704

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Homeland Security Department
See Citizenship and Immigration Services Bureau
See Coast Guard
See Customs and Border Protection Bureau
See Federal Emergency Management Agency
See Immigration and Customs Enforcement Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
Homeland Security Advisory Council, 15733

Housing and Urban Development Department
PROPOSED RULES
Mortgage and loan insurance programs:
Federal Housing Administration Credit Watch Termination Initiative; revisions, 15905–15910

NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15736–15739

Immigration and Customs Enforcement Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15736

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
PROPOSED RULES
Excise taxes:
Communications services; distance sensitivity, 15690
Income taxes:
Partnership; noncompensatory options
Correction, 15801

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 15704–15705

International Trade Commission
NOTICES
Import investigations:
Fresh tomatoes from—
Mexico, 15741–15743
Non-malleable cast iron pipe fittings from—
China, 15743

Justice Department
See Antitrust Division
See Justice Programs Office

Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15743–15745

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Environmental statements; notice of intent:
California Desert Conservation Area, CA, 15740–15741
Realty actions; sales, leases, etc.:
Arizona; correction, 15741

Management and Budget Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15772
Reports and guidance documents; availability, etc.:
Costs and benefits of Federal regulations; report to Congress, 15772–15773

Mine Safety and Health Administration
PROPOSED RULES
Coal mine safety and health:
Respirable coal mine dust; concentration determination
Correction, 15691
Underground coal mine operators' dust control plans and compliance sampling for respirable dust; verification
Correction, 15691

National Aeronautics and Space Administration
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
SeatSignal, Inc., 15756

National Highway Traffic Safety Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15794
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 15794–15795

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Smalltooth sawfish, 15674–15680
Whaling provisions:
Aboriginal subsistence whaling quotas, 15680–15681
NOTICES
Committees; establishment, renewal, termination, etc.:
Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council, 15705–15706
Meetings:
Pacific Fishery Management Council, 15706–15707
Permits:
Endangered and threatened species, 15707

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 15756
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 15756–15771
Senior Executive Service:
Performance Review Boards; membership, 15771–15772

Office of Management and Budget
See Management and Budget Office

Overseas Private Investment Corporation
NOTICES
Meetings; Sunshine Act, 15773

Presidential Documents
EXECUTIVE ORDERS
U.S. Armed Forces:
National Defense Service Medal; amendments to Executive Order 10448, 15915–15917
Government agencies and employees:
Hazardous duty incentive pay, aviation career incentive pay, and submarine duty incentive pay, regulations (EO 13294), 15919

Public Debt Bureau
See Fiscal Service

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 15795–15796

Securities and Exchange Commission
PROPOSED RULES
Securities:
Consolidated Tape Association; participant fee exemptions, 15688–15690

NOTICES
Investment Company Act of 1940:
Exemption applications—
Huntington VA Funds et al., 15773–15780
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 15780–15781
Fixed Income Clearing Corp., 15781–15782
Municipal Securities Rulemaking Board, 15782–15784

Social Security Administration
RULES
Social security benefits:
Federal old-age, survivors, and disability insurance—
Facility-of-payment provision; repeal, 15658–15659
NOTICES
Privacy Act:
Systems of records, 15784–15789

State Department
NOTICES
Meetings:
International Telecommunication Advisory Committee, 15789–15790

Substance Abuse and Mental Health Services Administration
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 15732–15733

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration

Treasury Department
See Fiscal Service
See Internal Revenue Service

Veterans Affairs Department
RULES
Naitonal cemeteries:
Eligibility for burial of adult and minor children, and certain Filipino veterans, 15659–15661
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15797–15800

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 15803–15882

Part III
Transportation Department, Federal Aviation Administration, 15883–15904

Part IV
Housing and Urban Development Department, 15905–15910

Part V
Education Department, 15911–15914

Part VI
Executive Office of the President, Presidential Documents, 15915–15919

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
10448 (Amended by 13293)....15917
11157 (Revoked by 13294)....15919
11800 (Revoked by 13294)....15919
13293....15917
13294....15919

14 CFR
39....15653
93....15657
121....15884
125....15884
129....15884
Proposed Rules:
39 (3 documents)....15682, 15684, 15687

17 CFR
Proposed Rules:
240....15688

20 CFR
404....15658

24 CFR
Proposed Rules:
202....15906

26 CFR
Proposed Rules:
1....15801
49....15690

30 CFR
Proposed Rules:
70....15691
72....15691
75....15691
90....15691

33 CFR
Proposed Rules:
110....15691
165....15694

38 CFR
1....15659

40 CFR
52 (2 documents)....15661, 15664
Proposed Rules:
52 (2 documents)....15696

44 CFR
Ch.1....15666
61....15666

46 CFR
Proposed Rules:
401....15697

47 CFR
54....15669

49 CFR
665....15672

50 CFR
17....15804
224....15674
230....15680
Proposed Rules:
17 (2 documents)....15876, 15879

Rules and Regulations

Federal Register
Vol. 68, No. 62
Tuesday, April 1, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–37–AD; Amendment 39–13097; AD 2003–07–01]

RIN 2120–AA64

Airworthiness Directives; Quality Aerospace, Inc. S2R Series and Model 600 S2D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 2000–11–16, which currently applies to certain Quality Aerospace, Inc. (Quality Aerospace) (formerly Ayres Corporation) S2R series and Model 600 S2D airplanes. AD 2000–11–16 requires you to repetitively inspect the ¼-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking; replace or repair any lower spar cap where fatigue cracking is found; and report any fatigue cracking found. AD 2000–11–16 resulted from an accident of an Ayres S2R series airplane where the wing separated from the airplane in flight. Since AD 2000–11–16, additional airplanes have been identified that were manufactured with a similar design to those affected by the AD and a third repair option has been developed. This AD retains the repetitive inspections and replacement (if necessary) requirements of the lower spar caps that are currently required in AD 2000–11–16, adds additional airplanes to the Applicability of the AD, and adds a third repair option. The actions specified by this AD are intended to detect and correct fatigue cracking of the lower spar caps, which could result in the wing separating from the airplane with consequent loss of control of the airplane.

DATES: This AD becomes effective on May 20, 2003.

The Director of the Federal Register previously approved the incorporation by reference of Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996; Ayres Custom Kit No. CK–AG–29, dated December 23, 1997, as of July 25, 2000 (65 FR 36055, June 7, 2000).

The Director of the Federal Register approved the incorporation by reference of Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001, as of May 20, 2003.

ADDRESSES: You may get the service information referenced in this AD from Quality Aerospace, Inc., P.O. Box 3050, Albany, Georgia 31706–3050; telephone: (229) 883–1440; facsimile: (229) 883–9790. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–37–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Lorenzen, Aerospace Engineer, FAA, Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6078; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

An accident on an Ayres S2R series airplane where the wing separated from the airplane in flight caused us to issue AD 2000–11–16, Amendment 39–11764 (65 FR 36055, June 7, 2000). This AD requires the following on certain Quality Aerospace S2R series and Model 600 S2D airplanes:

- Repetitively inspect the ¼-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking;
- Replacing or repairing any lower spar cap where fatigue cracking is found; and
- Reporting any fatigue cracking to FAA.

AD 2000–11–16 superseded AD 97–17–03, Amendment 39–10195 (62 FR 43296, August 18, 1997), which required accomplishing the following:

- Inspecting the ¼-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking;
- Replacing any lower spar cap where fatigue cracking is found; and
- Reporting any fatigue cracking to FAA.

AD 2000–11–16 made the inspections required in AD 97–17–03 repetitive, added additional airplanes to the Applicability of the AD, changed the initial compliance time for all airplanes, and arranged the affected airplanes into six groups based on usage and configuration.

AD 97–17–03 superseded AD 97–13–11, Amendment 39–10071 (62 FR 36978, July 10, 1997), which required accomplishing the following:

- Inspecting the ¼-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking;
- Replacing any lower spar cap where fatigue cracking is found; and
- Reporting any fatigue cracking to FAA.

AD 97–13–11 incorrectly referenced the Ayres Model S2R–R1340 airplanes as Model S2R–1340R. AD 97–17–03 corrected the model designation and retained the actions of AD 97–13–11.

What Has Happened Since AD 2000–11–16 To Initiate This Action?

Since AD 2000–11–16, FAA has identified additional airplanes with the same type design that should be added to the Applicability of the AD. The manufacturer has issued update service information that gives the owners/operators of the affected airplanes an additional repair option. We have also identified several minor typographical errors in AD 2000–11–16.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in the wing separating from the airplane with consequent loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Quality Aerospace (formerly Ayres Corporation) S2R series and Model 600 S2D airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on

November 8, 2002 (67 FR 68047). The NPRM proposed to supersede AD 2000–11–16 with a new AD that would:

- Retain the repetitive inspections and replacement (if necessary) requirements of AD 2000–11–16;
- Add an additional repair option of installing a splice block to improve the chances of salvaging a spar cap that has small cracks in the 1/4-inch and 5/16-inch bolt holes; and
- Add additional airplanes to the Applicability of the AD.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue: Reference Correct Standard for Magnetic Particle Inspection

What Is the Commenter's Concern?

One commenter states that the American Society for Testing Materials (ASTM) Standard referenced in the proposed AD, ASTM Standard E 1444–94A, should be changed to the updated ASTM Standard E 1444–01. The standard has been updated by the ASTM and the document referenced in the NPRM is outdated.

What Is FAA's Response to the Concern?

We concur with the commenter and will change the final rule AD action to incorporate this change.

FAA's Determination

What Is FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the reference change discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

- Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 1,015 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish each inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 = $180	$417	$597	1,015 × $597 = $605,955.

We estimate the following costs to accomplish any necessary cold work of bolt holes that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such repair:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $60 = $60	$100	$160

We estimate the following costs to accomplish any necessary installation of a butterfly splice plate that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such installation:

Labor cost	Parts cost	Total cost per airplane
70 workhours × $60 = $4,200	$700	$4,900

We estimate the following costs to accomplish any necessary reaming of outer holes to 5/16-inch diameter that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such repair:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $60 = $60	None	$60

We estimate the following costs to accomplish any necessary drilling and reaming of outer holes and adding three holes to install a splice block that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such modification:

Labor cost	Parts cost	Total cost per airplane
65 workhours × $60 = $3,900	$4,100	$8,000

We estimate the following costs to accomplish any necessary spar cap replacement that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost per spar cap	Parts cost per spar cap	Total cost per spar cap
200 workhours × $60 = $12,000	$2,316	$14,316

What Is the Difference Between the Cost Impact of This AD and the Cost Impact of AD 2000–11–16?

The differences between this AD and the cost impact of AD 2000–11–16 are:

- The addition of an optional repair to install a splice block; and
- The addition of 15 airplanes of similar design.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2000–11–16, Amendment 39–11764 (65 FR 36055, June 7, 2000), and by adding a new AD to read as follows:

2003–07–01 Quality Aerospace, Inc. (Ayres Corporation formerly held Type Certificate (TC) No. A4SW): Amendment 39–13097; Docket No. 2001–CE–37–AD; Supersedes AD 2000–11–16, Amendment 39–11764.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category and do not incorporate a P/N 22507 lower spar cap on both the left and right wings:

Model	Serial Nos.	Group
(1) S–2R	5000R through 5099R, except 5010R, 5031R, 5038R, 5047R, and 5085R	1
(2) S2R–G1	G1–101 through G1–106	1
(3) S2R–R1820	R1820–001 through R1820–035	1
(4) S2R–T15	T15–001 through T15–033	1
(5) S2R–T34	6000R through 6049R, T34–001 through T34–143, T34–145, T34–147 through T34–167, T34–171, T34–180, and T34–181.	1
(6) S2R–G10	G10–101 through G10–136, G10–138, G10–140, and G10–141	2
(7) S2R–G5	G5–101 through G5–105	2
(8) S2R–G6	G6–101 through G6–147	2
(9) S2RHG–T65	T65–002 through T65–018	2
(10) S2R–R1820	R1820–036	2
(11) S2R–T34	T34–144, T34–146, T34–168, T34–169, T34–172 through T34–179, and T34–189 through T34–232, and T34–234.	2
(12) S2R–T45	T45–001 through T45–014	2
(13) S2R–T65	T65–001 through T65–018	2
(14) 600 S2D	All serial numbers beginning with 600–1311D	3
(15) S–2R	1380R and 1416R through 2592R	3
(16) S2R–R1340	R1340–001 through R1340–035	3
(17) S2R–R3S	R3S–001 through R3S–011	3
(18) S2R–T11	T11–001 through T11–005	3
(19) S2R–G1	G1–107, G1–108, and G1–109	4
(20) S2R–G10	G10–137, G10–139, and G10–142	4
(21) S2R–T34	T34–236, T34–237, and T34–238	4
(22) S2R–G1	G1–110 through G1–115	5
(23) S2R–G10	G10–143 through G10–165	5
(24) S2R–G6	G6–148 through G6–155	5
(25) S2RHG–T34	T34HG–101 and T34HG–102	5
(26) S2R–T15	T15–034 through T15–040	5
(27) S2R–T34	T34–239 through T34–270	5
(28) S2R–T45	T45–015	5
(29) S2R	5010R, 5031R, 5038R, 5047R, and 5085R	6

Note 1: The serial numbers of the Model S2R–T15 airplanes could incorporate T15–xxx and T27–xxx. This AD applies to both of these serial number designations as they are both Model S2R–T15 airplanes.

Note 2: The serial numbers of the Model S2R–T34 airplanes could incorporate T34–xxx, T36–xxx, T41–xxx, or T42–xxx. This AD applies to all of these serial number designations as they are all Model S2R–T34 airplanes.

Note 3: Any Group 3 airplane that has been modified with a hopper of a capacity more than 410 gallons, a piston engine greater than 600 horsepower, or any gas turbine engine, makes the airplane a Group 1 airplane for the purposes of this AD. Inspect the airplane at the Group 1 compliance time specified in this AD.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct fatigue cracking of the lower spar caps, which could result in the wing separating from the airplane with consequent loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

(1) Repetitively inspect, using magnetic particle, ultrasonic, or eddy current procedures, the ¼-inch and 5/16-inch bolt hole areas on each lower spar cap for fatigue cracking. Reference paragraph (e)(3) and (e)(4) of this AD (including all subparagraphs) to obtain the initial and repetitive inspection compliance times.

(i) The cracks may emanate from the bolt hole on the face of the spar cap or they may occur in the shaft of the hole.

(ii) You must inspect both of these areas.

(iii) If using the magnetic particle method for the inspection, perform the inspection using the "Inspection" portion of the "Accomplishment Instructions" and "Lower Splice Fitting Removal and Installation Instructions" in Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996. You must follow American Society for Testing Materials (ASTM) E 1444–01, using wet particles meeting the requirements of the Society for Automotive Engineers (SAE) AMS 3046. The inspection must be performed by or supervised by a Level 2 or Level 3 inspector certified for magnetic particle inspection method using the guidelines established by the American Society for Nondestructive Testing or MIL-STD–410. CAUTION: You must firmly support the wings during the inspection to prevent movement of the spar caps when the splice blocks are removed. This will allow easier realignment of the splice block holes and the holes in the spar cap for bolt insertion.

(iv) If using ultrasonic or eddy current methods for the inspection, a procedure must be sent to the FAA Atlanta Aircraft Certification Office (ACO) for approval prior to performing the inspection. Send your proposed procedure to the FAA Atlanta Aircraft ACO, Attn: Cindy Lorenzen, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349. You are not required to remove the splice block for either the ultrasonic or eddy current inspections, unless corrosion is visible.

(2) If any cracking is found during any inspection required by this AD, you must accomplish the following:

(i) Repair or replace:

(A) Use the cold work process to ream out small cracks as defined in Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996; or

(B) Ream the ¼-inch bolt holes to 5/16 inches diameter as defined in Part I of Ayres Custom Kit No. CK–AG–29, dated December 23, 1997; or

(C) Install Kaplan Splice Blocks as defined in Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001; or

(D) Replace the affected spar cap in accordance with the maintenance manual.

(ii) Submit a report of inspection findings to the Manager, Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; facsimile: (770) 703–6097. You must include:

(A) The airplane serial number and engine model number;

(B) The total number of flight hours on the lower spar cap that is cracked;

(C) Time on the spar cap since last inspection, if applicable;

(D) The procedure (magnetic particle, ultrasonic, or eddy current) used for the last inspection;

(E) Indicate if cold working has been accomplished or modifications incorporated such as installation of big butterfly plates;

(F) Indicate the time on the spar cap when the cold working or modifications were accomplished; and

(G) Indicate which bolt hole is cracked and the length of the crack.

Note 4: Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) *What is the compliance time of this AD?* The compliance times for each of the actions of this AD are as follows:

(1) Any required repair or replacement: Prior to further flight after the inspection where the crack(s) was/were found.

(2) Reporting requirement:

(i) Submit the report within 10 days after finding any crack(s) during any inspection required by this AD.

(ii) For airplanes where cracking was found during any inspection accomplished in accordance with AD 2000–11–16, which is superseded by this AD; or by AD 97–17–03, which was superseded AD 2000–11–16; or by AD 97–13–11, which was superseded by AD 97–17–03, submit the report within 10 days after May 20, 2003 (the effective date of this AD), unless already accomplished.

(3) Initial inspection: Required unless already accomplished (compliance with AD 2000–11–16, or AD 97–17–03, or AD97–13–11) within 50 flight hours after May 20, 2003 (the effective date of this AD) or upon the accumulation of these hours time-in-service (TIS) on each lower spar cap, whichever occurs later:

Airplane group	Lower spar cap hours TIS
(i) 1	2,000
(ii) 2	2,200
(iii) 3	6,400
(iv) 4	2,500
(v) 5	6,200
(vi) 6:	
	For S/N 5010R: 5,530
	For S/N 5038R: 5,900
	For S/N 5031R: 6,400
	For S/N 5047R: 6,400
	For S/N 5085R: 6,290

(4) Repetitive inspections: The following table gives the required repetitive inspection intervals based on the work performed and the method of inspection utilized. Each time is hours TIS after the last inspection:

Work previously performed	Magnetic particle hours TIS	Ultrasonic hours TIS	Eddy current hours TIS
(i) One of the following where the airplane does not have butterfly plates, part number (P/N) 20211–09 and P/N 20211–11, installed per CK–AG–29, Part II	500	550	700
(A) No cracks found previously on wing spar; or			
(B) Small cracks repaired through cold work (or done as an option if never cracked) accomplished per SB–AG–39; or			
(C) Small cracks repaired through ¼-inch bolt hole reamed to 5/16 inch diameter (or done as an option if never cracked) per CK–AG–29, Part I; or			
(D) Small cracks repaired through previous Alternative Methods of Compliance; or			
(E) Small cracks repaired by installation of Kaplan Splice Blocks, part number 22515–1–3 or 88–251 (or done as an option if never cracked) per CK–AG–30 and inspection of the six outboard bolt holes on both lower spars is required			
(ii) One of the following where the airplane has butterfly plates, part number (P/N) 20211–09 and P/N 20211–11, installed per CK–AG–29, Part II	900	950	1,250
(A) No cracks found previously on wing spar; or			

Work previously performed	Magnetic particle hours TIS	Ultrasonic hours TIS	Eddy current hours TIS
(B) Small cracks repaired through cold work (or done as an option if no cracks found) accomplished per SB–AG–39; or			
(C) Small cracks repaired through ¼-inch bolt hole reamed to 5/16 inch diameter (or done as an option if no cracks found) per CK–AG–29, Part I; or			
(D) Small cracks repaired through previous Alternative Methods of Compliance; or			
(E) Small cracks repaired by installation of Kaplan Splice Blocks, part number 22515–1–3 or 88–251 (or done as an option if never cracked) per CK–AG–30 and inspection of the six outboard bolt holes on both lower spar caps is required			
(iii) Cracked wing spar found during previous inspection with wing spar replacement	For all inspection methods (magnetic particle, ultrasonic, or eddy current), time for initial and repetitive inspection intervals start over when wing spar is replaced.		

Note 5: Aircraft S/Ns T45–007DC and T45–010DC had modified splice block assemblies installed at Ayres (Ayres/Kaplan Assembly No. 88–251) and must still follow the repetitive inspection intervals listed here.

Note 6: If a crack is found, the reaming associated with the cold work process may remove a crack if it is small enough. Some aircraft owners/operators were issued alternative methods of compliance with AD 97–17–03 to ream the ¼-inch bolt hole to 5/16 inch diameter to remove small cracks. Ayres CK–AG–29, Part I, also provides procedures to ream the ¼-inch bolt hole to 5/16 inch diameter. If you use either of these two methods to remove cracks and the airplane is reinspected immediately with no cracks found, you may continue to follow the repetitive inspection intervals listed above.

Note 7: Group 4 and Group 5 airplanes had the butterfly plates installed at the factory and may follow the repetitive inspection interval listed in paragraph (e)(4)(ii).

(f) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Atlanta ACO, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 2000–11–16, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

Note 8: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Cindy Lorenzen, Aerospace Engineer, FAA, Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6078; facsimile: (770) 703–6097.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD provided that:

(1) the hopper is empty;

(2) Vne is reduced to 126 miles per hour (109 knots) indicated airspeed (IAS); and

(3) flight into known turbulence is prohibited.

(i) *Are any service bulletins incorporated into this AD by reference?*

(1) Actions required by this AD must be done in accordance with Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996; Ayres Custom Kit No. CK–AG–29, dated December 23, 1997; and Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001.

(i) The Director of the Federal Register approved the incorporation by reference of Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001, under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Quality Aerospace, Inc., P.O. Box 3050, Albany, Georgia 31706–3050; telephone: (229) 883–1440; facsimile: (229) 883–9790.

(ii) The Director of the Federal Register previously approved the incorporation by reference of Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996; Ayres Custom Kit No. CK–AG–29, dated December 23, 1997, as of July 25, 2000 (65 FR 36055, June 7, 2000).

(2) You may get copies from Quality Aerospace, Inc., P.O. Box 3050, Albany, Georgia 31706–3050; telephone: (229) 883–1440; facsimile: (229) 883–9790. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(j) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2000–11–16, Amendment 39–11764.

(k) *When does this amendment become effective?* This amendment becomes effective on May 20, 2003.

Issued in Kansas City, Missouri, on March 21, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7454 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–99–5927]

RIN 2120–AG73

Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area; Notice of Availability

AGENCY: Federal Aviation Administration (FAA); DOT.

ACTION: Notice of availability.

SUMMARY: On April 4, 2000, the FAA published a final rule limiting the number of commercial air tours that may be conducted in the Grand Canyon National Park Special Flight Rules Area (SFRA). This rule also contained a requirement that operators in the GCNP SFRA submit quarterly reports indicating the number of commercial air tours conducted during that time frame. The FAA has compiled this data and is making it publicly available by placing it in docket number FAA–99–5927, the docket for the final rule on Commercial Air Tour Limitations. This document also provides instruction on how to access that data both electronically and in person.

ADDRESSES: You may view a copy of the final rule, and the additional data on changes in operations, through the Internet at: *http://dms.dot.gov* and by searching under docket number "5927". You may also review the public docket

on this regulation in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the plaza level of the Nassif Building at the Department of Transportation, 400 7th St., SW., Room 401, Washington, DC 20590.

You may also request a paper copy of the final rule or the additional data from the Office of Rulemaking, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–9685.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Flight Standards Service, (AFS–200) Federal Aviation Administration, Seventh and Maryland Streets, SW., Washington, DC, 20591. Telephone: (202) 267–3747, or by e-mail at *Gary.Davis@faa.gov*.

Issued in Washington, DC, on March 26, 2003.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 03–7804 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Reg. No. 4]

RIN 0960–AE02

Federal Old-Age, Survivors and Disability Insurance; Repeal of the Facility-of-Payment Provision

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are revising our rules on benefit reduction for the family maximum to reflect enactment of two self-implementing provisions in the Social Security Independence and Program Improvements Act of 1994. The provisions repealed the facility-of-payment provision of the Social Security Act (the Act) and provided that reduction for the family maximum will be made prior to a temporary suspension for work when a non-working auxiliary or survivor beneficiary resides in a separate household from a working auxiliary or survivor beneficiary. These revisions are necessary to conform our regulations to current law. We have been paying benefits under these self-implementing provisions since January 1996.

EFFECTIVE DATE: The rule is effective April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Jerry Strauss, Social Insurance Specialist, Office of Payment Policy, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, 410–965–7930, TTY 410–966–5609, or *regulations@ssa.gov* for information about these rules. For information on eligibility or filing for benefits, contact our national toll free number at 1–800–772–1213 or TTY at 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.ssa.gov*.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.access.gpo.gov/su_docs/aces/aces140.html*. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://www.ssa.gov/regulations/*.

SUPPLEMENTARY INFORMATION:

The facility-of-payment provision established a simplified method to use in paying benefits when all of the following conditions applied:

- An individual receiving benefits as an auxiliary or survivor of an insured individual incurred a deduction in his or her benefits (for example, his or her earnings exceeded the earnings test exempt amount); and
- The maximum family benefit applied (the maximum family benefit is a limit on the total amount of monthly benefits which may be paid for any month to an insured individual and his or her auxiliaries or survivors); and
- All of the auxiliaries or survivors lived in the same household.

The facility-of-payment provision permitted us to continue paying the same amount to the household instead of withholding the amount of the deduction from the beneficiary who incurred the deduction and recalculating and redistributing the same amount of total family benefits to the other auxiliaries or survivors. The provision was enacted to relieve SSA of the need to engage in costly, time-consuming manual recalculations of benefits when the family would continue to receive the same amount of benefits.

However, because these recalculations are now automated, the withholding of benefits and redistribution to other family members is no longer a burdensome procedure and the simplified method is no longer needed.

Section 309(a) of the Social Security Independence and Program Improvements Act of 1994, Public Law 103–296, repealed the facility-of-payment provision effective with benefits payable for months after December 1995. Deductions are now made from the monthly benefit of the beneficiary who is affected by the deductions, and the benefits are recalculated and redistributed to the other beneficiaries living in the same household. We are, therefore revising § 408.458 of our regulations to reflect that repeal.

In addition, we are revising our regulations at § 404.402 to reflect section 309(b) of Public Law 103–296 which provides that benefits will be reduced to meet the family maximum before benefits are suspended to a working auxiliary or survivor beneficiary who lives in a separate household from a non-working auxiliary or survivor beneficiary. This prevents potential overpayments to those in separate households and the need to recover them in the event that the working auxiliary stops working.

Regulatory Procedure

Pursuant to section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), we follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when developing our regulations. The APA provides exceptions to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures for these rules. Good cause exists because these regulations simply reflect self-implementing statutory changes and do not involve the making of any discretionary policy. Therefore, we have determined that opportunity for prior comment is unnecessary and we are issuing these changes to our regulations as final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided by 5 U.S.C. 553(d). As explained above, these regulations merely reflect self-implementing statutory changes that were effective for all benefits payable after 1995.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review.

Paperwork Reduction Act

These final regulations impose no additional reporting or recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; and 96.004, Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and disability insurance, Reporting and recordkeeping requirements, Social Security.

Dated: March 24, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subpart E of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart E—[Amended]

■ 1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, 702(a)(5) and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, 902(a)(5) and 1320a–8a).

■ 2. Section 404.402 is amended by removing the word "and" after paragraph (b)(1)(v), by removing the period after paragraph (b)(1)(vi) and adding in its place a semi-colon and the word "and", and by adding a new paragraph (b)(1)(vii) to read as follows:

§ 404.402 Interrelationship of deductions, reductions, adjustments, and nonpayment of benefits.

* * * * *

(b) * * *

(1) * * *

(vii) Before suspension of benefits due to earnings (see § 404.456), for benefits payable or paid for months after December 1995 to a non-working auxiliary or survivor who resides in a different household than the working auxiliary or survivor whose benefits are suspended.

* * * * *

■ 3. Section 404.458 is amended by adding a new first sentence to read as follows:

§ 404.458 Limiting deductions where total family benefits payable would not be affected or would be only partly affected.

The provisions of this section apply only to benefits payable or paid for months before January 1996. * * *

[FR Doc. 03–7756 Filed 3–31–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AI95

Eligibility for Burial of Adult Children; Eligibility for Burial of Minor Children; Eligibility for Burial of Certain Filipino Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Veterans Affairs (VA) regulations to provide a list of those individuals who are eligible for burial in a national cemetery. The final rule specifies that the burial of adult children of eligible persons in national cemeteries with available space is limited to those unmarried adult children of any age who became permanently incapable of self-support because of a physical or mental disability incurred before their reaching the age of 21 years, or before reaching 23 years of age if pursuing a full-time course of instruction at an approved educational institution. The final rule also specifies that the burial of minor children of eligible persons is limited to unmarried children under 21 years of age, or under 23 years of age if pursuing a full-time course of instruction at an approved educational institution. Lastly, this final rule recognizes the eligibility for burial of certain Philippine Commonwealth Army veterans in national cemeteries. This final rule is necessary to conform the regulations to statutory provisions.

DATES: *Effective Date:* May 1, 2003.

Applicability Date. The provisions of this regulation shall apply to all applications for interment or memorialization of an adult child or minor child received by VA on or after the effective date of this regulation. Pursuant to Public Law 106–419, the provisions of this regulation shall apply to requests for interment or memorialization of certain Filipino veterans whose deaths occurred on or after November 1, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Barber, Program Analyst, Communications and Regulatory Division (402B1), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; Telephone: (202) 273–5183 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On May 16, 2002, the National Cemetery Administration (NCA) published in the **Federal Register** (67 FR 34884) a proposed rule to implement the provisions of 38 U.S.C. 2402. The provisions of 38 U.S.C. 2402 set forth eligibility requirements for burying the remains of persons in national cemeteries with available space under VA's jurisdiction. The final rule, at 38 CFR 1.620, states a list of those individuals who are eligible for burial in a national cemetery pursuant to VA's statutory authority.

VA has discretion under 38 U.S.C. 2402(5) to determine which unmarried adult children of persons listed in paragraphs (1) through (4) and (7) are eligible to be buried in such cemeteries. The provisions of 38 CFR 1.620(c) currently specify only that an unmarried adult child of an eligible person must have been physically or mentally disabled and incapable of self-support to be eligible for burial. The final rule amends § 1.620 to specify that, to be eligible, an unmarried adult child of any age must have become permanently incapable of self-support because of a physical or mental disability that the child incurred before reaching the age of 21 years, or before reaching 23 years of age if pursuing a full-time course of instruction at an approved educational institution. We believe that eligibility for burial of unmarried adult children under 38 U.S.C. 2402(5) should be limited to persons who have been continuously dependent on the person upon whom their eligibility is based.

The final rule amends § 1.620 to clarify that, to be eligible, a minor child of an eligible person must be unmarried and under 21 years of age, or under 23 years of age if pursuing a full-time course of instruction at an approved educational institution.

Additionally, the final rule amends § 1.620 by adding a new paragraph to recognize the eligibility for burial of certain Philippine Commonwealth Army veterans in national cemeteries.

To be eligible, a person whose death occurred on or after November 1, 2002, must have served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States. At time of death, the veteran must have been a citizen of the United States or an alien lawfully admitted for permanent residence in the United States and have resided in the United States.

Comment on Proposed Rule

We provided a 60-day comment period that ended July 15, 2002. We received one written response by electronic mail during this period. The comment sought to clarify whether a minor child of an eligible person must be "unmarried" in order to be eligible for national cemetery burial. Although 38 U.S.C. 2402(5) does not specify that a "minor child" must be unmarried, 38 U.S.C. 101(4)(A) defines "child" for purposes of title 38, United States Code, as "a person who is unmarried." For purposes of clarity and consistency with the governing statute, the final rule specifically requires that a minor child must be "unmarried" and under 21 years of age, or under 23 years of age if pursuing a full-time course of instruction at an approved educational institution.

Based on the rationale set forth in this document and in the proposed rule, we are adopting its provisions as a final rule.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only individual VA beneficiaries would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments, nor will it require expenditures by the private sector.

Catalog of Federal Domestic Assistance Program Number

The Catalog of Federal Domestic Assistance program number for this document is 64.201.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Cemeteries, Collection of claims, Privacy, Security, Veterans.

Approved: January 28, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below:

PART—GENERAL PROVISIONS

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Section 1.620 is revised to read as follows:

§ 1.620 Eligibility for burial.

The following is a list of those individuals who are eligible for burial in a national cemetery:

(a) Any veteran (which for purposes of this section includes a person who died in the active military, naval, or air service).

(b) Any member of a Reserve component of the Armed Forces, and any member of the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while such member is hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is performing active duty for training, inactive duty training, or undergoing that hospitalization or treatment at the expense of the United States.

(c) Any Member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while such member is—

(1) Attending an authorized training camp or on an authorized practice cruise;

(2) Performing authorized travel to or from that camp or cruise; or

(3) Hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is—

(i) Attending that camp or on that cruise;

(ii) Performing that travel; or

(iii) Undergoing that hospitalization or treatment at the expense of the United States.

(d) Any person who, during any war in which the United States is or has been engaged, served in the armed forces of any government allied with the United States during that war, whose last such service terminated honorably, and who was a citizen of the United States at the time of entry on such service and at the time of his or her death.

(e) The spouse, surviving spouse (which for purposes of this section includes an unremarried surviving spouse who had a subsequent remarriage which was terminated by death or divorce), unmarried minor child (which for purposes of this section is limited to a child under 21 years of age, or under 23 years of age if pursuing a full-time course of instruction at an approved educational institution), and unmarried adult child (which for purposes of this section is limited to a child who became permanently physically or mentally disabled and incapable of self-support before reaching 21 years of age, or before reaching 23 years of age if pursuing a full-time course of instruction at an approved educational institution) of a person eligible under paragraph (a), (b), (c), (d), or (g) of this section.

(f) Such other persons or classes of persons as may be designated by the Secretary.

(g) Any person who at the time of death was entitled to retired pay under chapter 1223 of title 10, United States Code, or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

(h) Any person, whose death occurred on or after November 1, 2000, with service before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, if such person at the time of death—

(1) Was a citizen of the United States or an alien lawfully admitted for permanent residence in the United States; and

(2) Resided in the United States.

(Authority: 38 U.S.C. 501, 2402)

[FR Doc. 03–7697 Filed 3–31–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA183–4198a; FRL–7465–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determinations for Five Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for five major sources of nitrogen oxides (NO_X) located in Pennsylvania. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on June 2, 2003, without further notice, unless EPA receives adverse written comment by May 1, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Walter K. Wilkie, Deputy Branch Chief, Air Quality Planning & Information Services Branch, Air Protection Division, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Betty Harris at (215) 814–2168 or Rose Quinto at (215) 814–2182 or via e-mail at *harris.betty@epa.gov* or *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major volatile organic compound (VOC) and NO_X sources. The major source size is determined by its location, the classification of that area, and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT, as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

II. Summary of the SIP Revision

On December 21, 2001, PADEP submitted formal revisions to its SIP to establish and impose case-by-case RACT for several major sources of VOC and NO_X. This rulemaking pertains to five of those sources. The other sources are subject to separate rulemaking actions. The RACT determinations and requirements are included in plan approvals (PA) or operating permits (OP) issued by PADEP.

The following table identifies the individual plan approval or operating permit that EPA is approving for each source.

PENNSYLVANIA—NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	OP or PA #	Source type	Major source pollutant
Lafarge Corporation	Lehigh	OP–39–0011B	Cement Facility	NO_X.
The Peoples Natural Gas Company	Cambria	OP–11–000–356	Natural Gas Reciprocating Engines	NO_X.
Horsehead Resource Development Company, Inc.	Carbon	OP–13–0001	Recycling Operation	NO_X.
Williams Generation Company	Luzerne	OP–40–0031A	Natural Gas Turbine	NO_X.
Pennsylvania Power and Light Company, Holtwood.	Lancaster	PA–36–2016	Steam Generating Station	NO_X.

A. Lafarge Corporation

Lafarge Corporation owns and operates a cement producing company. This facility is located in Lehigh County, Pennsylvania and is considered a major NO_X emitting facility. In this instance, RACT has been established and imposed by PADEP in an operating permit. On December 21, 2001, PADEP submitted operating permit No. OP–39–0011B to EPA as a SIP revision. This permit requires Lafarge Corporation and any associated air cleaning devices to be operated and maintained in a manner consistent with good operating and maintenance practices. This permit contains firing rate limitations for the boiler of 37.5 gallons per hour of No. 2 oil, and 35.5 gallons per hour of No. 5 oil. The facility shall record the amount of the oil fired in the boiler in an hourly and yearly basis and submit to PADEP by March 31 of the following year. Based on a 30-day rolling average, the permit contains NO_X emission limits for the operation of the cement kilns without burning tires of 297.7 pounds per hour for Kiln No. 2, and 202.3 pounds per hour for Kiln No. 3. Also based on a 30-day rolling average, the

permit contains NO_X emission limits for the operation of the cement kilns, while burning tires, of 260.5 pounds per hour for Kiln No. 2 and 166.0 pounds per hour for Kiln No. 3. For both Kilns No. 2 and No. 3, the facility shall operate and maintain NO_X continuous emission monitors in conformance with 40 CFR Part 60, 25 Pa. Code Chapter 139 and PADEP's Continuous Source Monitoring Manual (CEM Manual). Monitoring and recording of exhaust gas flow shall be conducted. The facility shall maintain records in accordance with the recordkeeping requirements of 25 Pa. Code Chapter 129.95 and maintain a file containing all records and other data that are required to be collected pursuant to the various provisions of this permit. This file shall include, but is not limited to the following: all air pollution control system performance evaluations and records of calibration checks, adjustments and maintenance performed on all equipment which is subject to this permit. All measurements, records, and other data required to be maintained, shall be retained for at least two years following the date on which such measurements, records or other data are recorded. All continuous emission monitoring (CEM) reports shall be submitted to PADEP within 30 days after each quarter but no later than the time frame established in the PADEP's latest CEM Manual. The facility shall keep a record of fuel usage and operating hours for each generator and maintained for at least two years, and made available to PADEP upon request. The generators shall be maintained and operated in accordance with the manufacturers' specifications.

B. The Peoples Natural Gas Company

The Peoples Natural Gas Company (PNG) is a natural gas utility and is considered a major NO_X emitting facility. PNG owns and operates the Rager Mountain/Laurel Ridge Compressor Station Complex located in Jackson Township, Cambria County, Pennsylvania. In this instance, RACT has been established and imposed by PADEP in an operating permit. On December 21, 2001, PADEP submitted operating permit No. OP–11–000–356 to EPA as a SIP revision. This permit requires PNG and any associated air cleaning devices to be operated and maintained in a manner consistent with good operating and maintenance practices. The permit contains NO_X emission limits in pounds per hour per unit for three compressor engines of the facility: (1) Dresser-Clark—49.8, (2) Cooper-Superior—4.2, and (3) Ingersoll-Rand—3.0. The permit also contains operational limits for the three compressor engines: (1) Dresser-Clark—3 units with combined total hours of 7625, (2) Cooper-Superior—2 units with combined total hours of 7625, and (3) Ingersoll-Rand—2 units with combines total hours of 8784. The permit requires PNG to perform stack testing in accordance with 25 Pa. Code Chapter 139 regulations and PADEP's Source Testing Manual. Two copies of the stack test results shall be supplied to PADEP for review within 60 days of completion of testing.

C. Horsehead Resource Development Company, Inc.

Horsehead Resource Development Company, Inc. (HRD) is a recycling operation located in Palmerton, Carbon County, Pennsylvania and is considered a major NO_X emitting facility. In this instance, RACT has been established and imposed by PADEP in an operating permit. On December 21, 2001, PADEP submitted operating permit No. OP–13–0001 to EPA as a SIP revision. This permit requires HRD and any associated air cleaning devices to be operated and maintained in a manner consistent with good operating and maintenance practices. Stack tests shall be performed in accordance with Chapter 139 of the Rules and Regulations of PADEP to show compliance with the NO_X and VOC emission rates of each kiln listed in the permit. The stack tests shall be performed while operating at the maximum rated capacity. Two copies of the complete stack test reports, including all operating conditions, shall be submitted to PADEP.

D. Williams Generation Company, Hazleton

Williams Generation Company—Hazleton is a cogeneration facility located in Luzerne, Pennsylvania and is considered a major NO_X emitting facility. The facility has a natural gas fired turbine with a water injection control. In this instance, RACT has been established and imposed by PADEP in an operating permit. On December 21, 2001, PADEP submitted operating permit No. OP–40–0031A to EPA as a SIP revision. This permit requires Williams Generation Company and any associated air cleaning devices to be operated and maintained in a manner consistent with good operating and maintenance practices. This permit contains NO_X emission limits for the facility's combustion unit (turbine) of 252.4 allowable pounds per hour at any time, established pursuant to the best available control technology provision of 25 Pa. Code 127.83 (40 CFR, 52.1(j)(2)). The permit limits the facility to 252.4 tons per year of NO_X based on a 12 month rolling average. The facility must cease operation or obtain prior approval under applicable regulations if the facility exceeds this total annual emissions limit. The facility shall not operate more than 2,000 hours per year. This annual limit must be met on a rolling monthly basis over every consecutive 12-month period. The facility shall maintain the following records: (1) Data which clearly demonstrates that the heat input for the turbine never exceeds its rated capacity; (2) data which clearly demonstrates that the turbine never exceeds the operational limit of 2,000 hours per year on a 12-month rolling sum; (3) the records shall provide sufficient data to clearly demonstrate that the requirements of this operating permit are met; and (4) all records shall be maintained for at least two years and shall be made available to PADEP upon request. The permit requires the facility to install and operate a continuous monitoring system to monitor and record the fuel consumption and the water injection rate in the turbine. The permit also requires the facility to maintain a file containing all records and other data that are required to be collected pursuant to the various provisions of this permit and 25 Pa. Code Section 129.95, such that records provide sufficient data and calculations to clearly demonstrate that the requirements of 25 Pa. Code Sections 129.91–4 are met. The file shall include, but is not limited to all air pollution control system performance evaluations and records of calibration checks, adjustments and maintenance performed on all equipment which is subject to this permit. All measurements, records and other data required to be maintained by the facility shall be retained for at least two years following the date on which such measurements, records or data are recorded.

E. Pennsylvania Power & Light Company, Holtwood

Pennsylvania Power & Light Company (PPL), Holtwood is a steam electric station located in Lancaster County, Pennsylvania and is considered a major NO_X emitting facility. In this instance, RACT has been established and imposed by PADEP in a plan approval. On December 21, 2001, PADEP submitted plan approval No. PA–36–2016 to EPA as a SIP revision. PPL is subject to an interim NO_X emission limit of 1.4 lb/Mbtu for Boiler 17 imposed in the plan approval. This interim limit shall be based on hourly continuous emission monitoring data averaged on a 30-day rolling basis. A final NO_X emission limit will be determined upon evaluation of one year's worth of emissions monitoring data. The final NO_X emission limit will be incorporated into an operating permit. Should the final limit in the operating permit differ from the interim limit established in the plan approval, the interim limit shall remain the applicable Federally enforceable requirement until such time as PADEP submits a SIP revision for this facility. The plan approval contains a limit of 131,000 gallons on the usage of No. 2 fuel oil in Auxiliary Boiler 3 during any consecutive 12-month period. The plan approval also contains a limit of 435 hours on the usage of No. 2 Coal Dryer during any consecutive 12-month period. The facility shall maintain records in accordance with 25 Pa. Code Section 129.95 requirements.

III. EPA's Evaluation of the SIP Revisions

EPA is approving these SIP submittals because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT or for limiting a source's potential to emit. The Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

IV. Final Action

EPA is approving revisions to the Commonwealth of Pennsylvania's SIP which establish and require RACT for the five major sources of NO_X listed in this document. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This direct final rule will be effective on June 2, 2003, without further notice unless we receive adverse comment by May 1, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for five named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 2, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving the Commonwealth's source-specific RACT requirements to control NO_X from five individual sources may not be challenged later in proceedings to

enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 5, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(196) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(196) Revisions pertaining to NO_X RACT for major sources submitted on December 21, 2001.

(i) Incorporation by reference.

(A) Letter submitted on December 21, 2001 by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals or operating permits.

(B) Plan approval (PA); Operating permit (OP):

(*1*) Lafarge Corporation, Lehigh County, OP–39–0011B, effective May 19, 1997.

(*2*) The Peoples Natural Gas Company, Cambria County, OP–11–000–356, effective November 23, 1994.

(*3*) Horsehead Resource Development Company, Inc., Carbon County, OP–13–0001, effective May 16, 1995.

(*4*) Williams Generation Company, Hazleton, Luzerne County, OP–40–0031A, effective March 10, 2000.

(*5*) Pennsylvania Power and Light Company, Holtwood Steam Electric Station, Lancaster County, PA–36–2016, effective May 25, 1995.

(ii) Additional Material.

(A) Letter of October 15, 2002 from the Pennsylvania Department of Environmental Protection to EPA transmitting materials related to the RACT permits listed in paragraph (c)(196)(i) of this section.

(B) Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(196)(i) of this section.

[FR Doc. 03–7642 Filed 3–31–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN214–1a; FRL–7470–7]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On August 8, 2001, the Indiana Department of Environmental Management (IDEM) submitted a request that EPA approve a revision to its shipbuilding and ship repair volatile organic compound (VOC) rules into the Indiana State Implementation Plan. The State submitted additional information on October 1, 2002. This revision changes exemption levels and compliance, recordkeeping and reporting requirements. EPA is approving these revisions because they are enforceable and, in some cases, more stringent than the existing rules.

DATES: This rule is effective on June 2, 2003, unless EPA receives relevant adverse written comments by May 1, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean EPA. "You" means the reader of this document.

Table of Contents

I. Background
II. What changes did the state include in this SIP Revision Request and what is EPA's analysis of these revisions?
III. Rulemaking action
IV. Statutory and Executive Order Reviews

I. Background

Shipbuilding and ship repair companies in Clark, Floyd, Lake, and Porter counties are required to comply with the VOC requirements in 326 Indiana Administrative Code (IAC) 8–12 and the national emission standards for hazardous air pollutants (NESHAPS) in title 40, part 63, subpart II.

IDEM states, in an October 1, 2002, letter from IDEM to EPA that it has identified one source in Clark County, Jeffboat, that is subject to both the NESHAPS and the VOC rule for shipbuilding and ship repair. In an effort to streamline some of the overlapping requirements between the NESHAPs and the VOC rule, IDEM revised its VOC rule to eliminate certain inconsistent requirements. This letter includes IDEM's interpretation of certain points in its rule as well as a table for use in determining the allowable thinning ratio (that is, the amount of generally 100% VOC solvent that can be added to a coating without it exceeding the allowable VOC content).

II. What Changes Did the State Include in This SIP Revision Request and What Is EPA's Analysis of These Revisions?

Indiana revised several sections in 326 IAC 8–12, its VOC rule for Shipbuilding and Ship Repair coating operations. A description of these revisions and EPA's evaluation of these revisions follows:

A. 326 IAC 8–12–2(1) Exemptions

Indiana increased the exemption level of any coating from 20 to 25 gallons per year, and reduced the total volume of all exempt coatings from 400 to 264 gallons per year. This revision is approvable because the total allowable annual volume of exempt coatings is reduced and the cutoffs are less than those in the NESHAPS.

B. 326 IAC 8–12–4(2)VOC Emission Limiting Requirements

This section has been revised to require that the general use coating emission limit be in effect for the entire year, instead of only May 1 through September 30. This revision is approvable because it extends the applicability of the general use coating limitation, and will limit VOC emissions from October through April.

The VOC emission limits for each coating category require that each coating (with no averaging between coatings) must comply with the limits on an as-applied (that is, including any thinner added) basis. This requirement is reinforced in IDEM's October 1, 2002, letter.

C. 326 IAC 8–12–5 Compliance Requirements

The compliance requirements in this section were replaced by the NESHAPS requirements in 40 CFR 63.784 and 40 CFR 63.785. These requirements include an equation to determine the maximum allowable thinning ratio. The emission limit, in units of grams VOC/liter of solids (as opposed to the pounds VOC/gallon units in Indiana's rule), is one of the terms in this equation. IDEM's October 1, 2002, letter includes a table that specifies the limits for each coating category in terms of grams VOC/liter of solids, thus facilitating use of this equation. This revision, therefore, improves the effectiveness of this rule by explicitly establishing how much thinner can be added to a coating without exceeding the applicable emission limit.

D. 326 IAC 8–12–6 Test Methods and Procedures

The test methods and procedures in this section were replaced by the NESHAPS requirements in 40 CFR 63.786. The NESHAPS test methods include the use of EPA's Method 24 for determining VOC content and are therefore approvable.

E. Recordkeeping, Notification and Reporting Requirements

This section replaces the previous requirements with the NESHAPS requirements in 40 CFR 63.787 and 40 CFR 63.788. This results in a change from daily to monthly recordkeeping. Although going from daily to monthly recordkeeping may sometimes constitute a relaxation, it is not in this case. As discussed previously, Indiana's rules were changed from allowing compliance to be determined on a daily average to requiring that each coating comply on an as-applied basis without averaging. Monthly recordkeeping does not interfere with enforceability of these emission limits because it is only necessary for the VOC content of the coatings to be identified without consideration of any averaging.

III. Rulemaking Action

EPA is approving, through direct final rulemaking, revisions to the VOC rules for the shipbuilding and ship repair industry. This rule applies to the coating operations carried out by the shipbuilding and ship repair industries in Clark, Floyd, Lake, and Porter counties of Indiana. This revision amends 326 IAC 8–12. EPA is approving: Increasing of the individual coating exemptions from 20 gallons per year to 25 gallons per year in 326 IAC 8–12–2; the decreasing of the amount of total allowable exempt coatings from 400 gallons per year to 264 gallons per year in 326 IAC 8–12–2; the changing of the wording of 326 IAC 8–12–4 by moving the words, "from May 1 through September 30," from 8–12–4(a)(2) to 8–12–4(a)(2)(B); the replacing of portions of the VOC rules, sections 326 IAC 8–12–5 through 326 IAC 8–12–7, dealing with compliance requirements, test methods and procedures, recordkeeping requirements, notification requirements, and reporting requirements with the Federal National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements in sections 40 CFR 63.784 through 40 CFR 63.788.

We are publishing this action without a prior proposal because we view these as noncontroversial revisions and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on June 2, 2003, without further notice unless we receive relevant adverse written comment by May 1, 2003. If the EPA receives adverse written comment, we will publish a final rule informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA does not intend to institute a second comment period on this action. Any parties interested in commenting on these actions must do so at this time.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 2, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 4, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P–Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(154) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c)* * *

(154) On August 08, 2001, Indiana submitted revised volatile organic Compound control requirements for certain facilities in the Indiana shipbuilding and ship repair industry. This submittal changes the individual and plantwide coating exemption levels and makes revisions to the compliance requirements, test methods and recordkeeping requirements. On October 1, 2002, Indiana submitted a letter providing its interpretation of certain of the above requirements.

(i) Incorporation by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 8: Volatile Organic Compounds, Rule 12: Shipbuilding or Ship Repair Operations in Clark, Floyd, Lake, and Porter Counties, Section 2: Exemptions, Section 4: Volatile organic compound emissions limiting requirements, Section 5: Compliance requirements, Section 6: Test methods and procedures, Section 7: Recordkeeping, notification, and reporting requirements. Adopted by the Indiana Air Pollution Control Board on February 7, 2001. Filed with the Secretary of State June 15, 2001, effective July 15, 2001.

(B) An October 1, 2002, letter from the Indiana Department of Environmental Management which provides background information on its shipbuilding and ship repair rule revisions and its interpretation of certain of these requirements.

[FR Doc. 03–7643 Filed 3–31–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Chapter I and Part 61

RIN 1660–AA25

National Flood Insurance Program (NFIP); Increased Rates for Flood Coverage

AGENCY: Federal Emergency Managemnent Agency (FEMA), Emergency Preparedness and Response Directorate, Homeland Security.

ACTION: Final rule.

SUMMARY: We (the Mitigation Division of the Emergency Preparedness and Response Directorate of DHS) are changing the way premiums are calculated for policyholders who purchase flood insurance coverage under the NFIP for "Pre-FIRM" buildings in Special Flood Hazard Areas (SFHAs). (The term "Pre-FIRM buildings" means buildings whose construction began on or before December 31, 1974, or before the effective date of the community's Flood Insurance Rate Map (FIRM), whichever date is later. Pre-FIRM buildings and their contents are eligible for subsidized rates under the NFIP.)

These increased flood insurance rates will be implemented in coordination with the elimination of the Expense Constant, a flat charge that the policyholder previously paid to defray certain expenses of the Federal Government related to flood insurance. As a result of this change, the same amount of premium revenue will still be collected to cover those expenses previously paid for by the Expense Constant; however, policyholders will pay for those expenses through premiums that vary by the amount of insurance that they purchase, instead of a flat charge per policy. The end result will be revenue neutral. In addition, we are revising the CFR chapter heading for our rules to reflect the Homeland Security Act.

EFFECTIVE DATE: May 1, 2003, except for the revision of the heading of 44 CFR chapter I, which is effective March 1, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Hayes, DHS, Mitigation Division, 500 C Street SW., Washington, DC 20472, 202–646–3419, (facsimile) 202–646–7970, or (e-mail) *Thomas.Hayes@fema.gov.*

SUPPLEMENTARY INFORMATION:

Summary of Comments

On February 3, 2003, we published at 68 FR 5264 a proposed rule to change the way premiums are calculated for policyholders who purchase flood insurance coverage under the NFIP for "Pre-FIRM" buildings in Special Flood Hazard Areas (SFHAs). (The term "Pre-FIRM buildings" means buildings whose construction began on or before December 31, 1974, or before the effective date of the community's Flood Insurance Rate Map (FIRM), whichever date is later.)

During the comment period, we received three sets of comments. All were in support of this change. These comments came from the Association of State Floodplain Managers (ASFPM), the Florida Division of Emergency Management, and an insurance company that participates in the NFIP's Write Your Own program.

The following comment by the ASFPM is indicative of the other responses as well:

We view this to be a positive effort by FIMA to encourage growth in the Program:

- The change will be revenue neutral.
- It will remove a perceived barrier to the sale of flood insurance—which may help the NFIP increase its policy base and increase revenue.
- By making the NFIP "more like other insurance industry standards" it may remove some resistance to write flood policies by insurance agents.

Comparison of May 1, 2003 Rate Increases With Current Rates

The following chart compares the current rates we charge for Pre-FIRM SFHA properties with the May 1, 2003 rates for Pre-FIRM, SFHA properties. Also these rates apply only to the rates charged for the "first layer" of flood insurance coverage set by Congress in Section 1306 of the National Flood Insurance Act of 1968, as amended (Pub. L. 90–448):

Type of structure	Current a zone [1] rates per year per $100 coverage on:		May 1, 2003 a zone [1] rates per year per $100 coverage on:			
			Structure			
	Structure	Contents	RCBAP [2]		All other	Contents
			High rise	Low rise		
1. Residential:						
No Basement or Enclosure	.68	.79	.85	.70	.76	.96
With Basement or Enclosure	.73	.79	.90	.75	.81	.96
2. All other including hotels and motels with normal occupancy of less than 6 months duration:						
No Basement or Enclosure	.79	1.58	N/A	N/A	.83	1.62
With Basement or Enclosure	.84	1.58	N/A	N/A	.88	1.62

[1] A zones are zones A1–A30, AE, AO, AH, and unnumbered A zones.
[2] Residential Condominium Building Association Policies (RCBAP) are distinguished between High Rise (those structures that have 3 or more floors and 5 or more units) and Low Rise (those structures that have either less than 3 floors or less than 5 units).

Type of structure	Current a zone [1] rates per year per $100 coverage on:		May 1, 2003 a zone [1] rates per year per $100 coverage on:			
			Structure			
	Structure	Contents	RCBAP [2]		All other	Contents
			High rise	Low rise		
1. Residential:						
No Basement or Enclosure	.91	1.06	1.08	.93	.99	1.23
With Basement or Enclosure	.98	1.06	1.15	1.00	1.06	1.23
2. All other including hotels and motels with normal occupancy of less than 6 months duration:						
No Basement or Enclosure	1.06	2.10	N/A	N/A	1.10	2.14
With Basement or Enclosure	1.12	2.10	N/A	N/A	1.16	2.14

[1] V zones are zones V1–V30, VE, and unnumbered V zones.
[2] Residential Condominium Building Association Policies (RCBAP) are distinguished between High Rise (those structures that have 3 or more floors and 5 or more units) and Low Rise (those structures that have either less than 3 floors or less than 5 units).

Prior to this change, as shown in the Current A Zone and Current V Zone table, RCBAP policyholders were always charged the same building rates as everyone else. In order to accomplish the elimination of the Expense Constant in a revenue-neutral manner, it is now necessary to vary the rates as shown in the accompanying tables.

National Environmental Policy Act (NEPA)

Pursuant to section 102(2) (c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4317 *et seq.*, we conducted an environmental assessment of this final rule. This assessment concludes that there will be no significant impact on the human environment as a result of the issuance of this final rule, and no Environmental Impact Statement will be prepared. Copies of the environmental assessment and Finding of No Significant Impact are on file for inspection through the Rules Docket Clerk, DHS, room 840, 500 C St. SW., Washington, DC 20472.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow we have concluded that the rule is neither an economically significant nor a significant regulatory action under the

Executive Order. The rule will be premium neutral for the National Flood Insurance Fund. The adjustment in premiums rates will be offset by the elimination of the Expense Constant. It will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, the insurance sector, competition, or other sectors of the economy. It will create no serious inconsistency or otherwise interfere with an action taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget has not reviewed this rule under the provisions of Executive Order 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 13132, Federalism

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this final rule under E.O.13132 and have determined that the rule does not have federalism implications as defined by the Executive Order. The rule will adjust the premiums for buildings in Pre-FIRM Special Flood Hazard Areas. The rule in no way that we foresee affects the distribution of power and responsibilities among the various levels of government or limits the policymaking discretion of the States.

List of Subjects in 44 CFR Part 61

Flood insurance.

■ Accordingly, we amend 44 CFR chapter I as follows:

Chapter I—Federal Emergency Management Agency, Department of Homeland Security

■ 1. Revise the heading of 44 CFR chapter I to read as set forth above.

PART 61—INSURANCE COVERAGE AND RATES

■ 2. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

■ 3. Revise § 61.9 (a) to read as follows:

§ 61.9 Establishment of chargeable rates.

(a) Under section 1308 of the Act, we are establishing annual chargeable rates for each $100 of flood insurance coverage as follows for Pre-FIRM, A zone properties, Pre-FIRM, V-zone properties, and emergency program properties.

Type of structure	A zone[1] rates per year per $100 coverage on:				V zone[2] rates per year per $100 coverage on:			
	structure			Contents	Structure			Contents
	RCBAP[3]		All other		RCBAP[3]		All other	
	High rise	Low rise			High rise	Low rise		
1. Residential:								
No Basement or Enclosure	.85	.70	.76	.96	1.08	.93	.99	1.23
With Basement or Enclosure	.90	.75	.81	.96	1.15	1.00	1.06	1.23
2. All other including hotels and motels with normal occupancy of less than 6 months duration:								
No Basement or Enclosure	N/A	N/A	.83	1.62	N/A	N/A	1.10	2.14
With Basement or Enclosure	N/A	N/A	.88	1.62	N/A	N/A	1.16	2.14

[1] 1 A zones are zones A1–A30, AE, AO, AH, and unnumbered A zones.
[2] V zones are zones V1–V30, VE, and unnumbered V zones.
[3] Residential Condominium Building Association Policies (RCBAP) are distinguished between High Rise (those structures that have 3 or more floors and 5 or more units) and Low Rise (those structures that have either less than 3 floors or less than 5 units).

* * * * *

Dated: March 26, 2003.

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness & Response.

[FR Doc. 03–7685 Filed 3–31–03; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, 98–170; FCC 03–58]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses petitions for interim waiver and several petitions for reconsideration of rules recently adopted in the Interim Contribution Methodology Order regarding the assessment and recovery of contributions to the federal universal service support mechanisms.

DATES: Effective April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Garnett, Attorney or Diane Law Hsu, Deputy Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order and Second Order on Reconsideration in CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, 98–170; FCC 03–58, released on March 14, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this Order, we address petitions for interim waiver and several petitions for reconsideration of rules recently adopted in the Interim Contribution Methodology Order, 67 FR 79525, December 30, 2002, regarding the assessment and recovery of contributions to the federal universal service support mechanisms. We grant local exchange carriers' request for an interim waiver of § 54.712 of the Commission's rules to permit such carriers to continue to recover through the federal universal service line item certain contribution costs associated with Centrex customers on a per-line basis from multi-line business customers, pending action on petitions for reconsideration of this rule. In addition, we grant, in part, petitions filed by the United States Telecommunications Association (USTA) and SBC Communications Inc. (SBC) seeking reconsideration of § 54.712 to permit eligible telecommunications carriers (ETCs) to recover contribution costs associated with Lifeline customers' occasional interstate revenues through a universal service pass-through charge for such customers. We also address petitions filed by the National Exchange Carrier Association, Inc. (NECA), Verizon Wireless, and WorldCom, Inc. (WorldCom), and clarify how the Universal Service Administrative Corporation (USAC) shall conduct the universal service contribution true-up processes for revenues from 2002 and 2003. Finally, we grant, in part, a petition for reconsideration filed by AT&T Corp. (AT&T) requesting that the Commission announce the universal service contribution factor as a percentage rounded up to the nearest tenth of a percent.

II. Discussion

1. *Centrex.* In this Order, we grant, in part, petitions for interim waiver filed by BellSouth, National Exchange Carrier Association (NECA), National Telecommunications Cooperative Association (NTCA), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), SBC, and Verizon (Petitioners) of § 54.712(a) of our rules as it applies to the multi-line business customers of local exchange carriers, pending the Commission's resolution of petitions for reconsideration of the rule. We find Petitioners have demonstrated special circumstances to warrant deviation from our rule and that the public interest would be served by granting a limited interim waiver. Therefore, we waive § 54.712 on an interim basis to enable local exchange carriers to continue to recover federal universal service contribution costs through universal service line items using the equivalency ratios established for Centrex lines under our rules governing the Presubscribed Interexchange Carrier Charge (PICC). Until the Commission resolves pending petitions for reconsideration of § 54.712, local exchange carriers that utilize the PICC equivalency ratios when recovering contribution costs from Centrex customers will be permitted to recover a share of their contributions associated with the subscriber line charge for a specific Centrex line from their multi-line business customers in a given state.

3. Under §§ 69.131 and 69.158 of our rules, local exchange carriers have the option of recovering their contribution costs from Centrex customers through a universal service line item that uses the equivalency ratios established for Centrex lines under our rules governing the PICC. In the *Access Charge Reform Reconsideration Order*, the Commission adopted, for purposes of the PICC, a ratio of up to nine Centrex lines to one PBX trunk. The Commission subsequently granted local exchange carriers the option of applying this equivalency ratio to the recovery of universal service contribution costs from Centrex customers.

4. In the *Interim Contribution Methodology Order*, the Commission adopted a general prohibition on the recovery of amounts in excess of contribution obligations through federal universal line-item charges. As discussed, the Commission concluded such action would prevent carriers from recovering unrelated costs through universal service line items and from averaging contribution costs across all end-user customers. In addition, it would alleviate end-user confusion regarding universal service line items.

5. We conclude that special circumstances exist that warrant interim waiver of the rule. Petitioners have noted a potential inconsistency between §§ 54.712, 69.131, and 69.158. They assert that if carriers are not permitted to increase recovery charges for multi-line business customers, they may be unable to continue to apply an equivalency ratio to Centrex universal service pass-through charges as permitted by §§ 69.131 and 69.158 of our rules and still recover their contribution costs from their customers. They note the Commission did not indicate its intent in the *Interim Contribution Methodology Order* to overturn its existing policy of permitting local exchange carriers to apply an equivalency ratio to Centrex customer universal service pass-through charges. To the contrary, they argue that the Commission recognized that it may be appropriate to continue applying the one-ninth equivalency ratio to Centrex customer lines in the event that a connection-based universal service contribution methodology is adopted.

6. The petitions for reconsideration of this issue raise important issues we intend to resolve expeditiously. In the meanwhile, we believe the public interest would be served by granting a limited waiver of the general prohibition on averaging contribution

costs among different customers for contribution costs not recovered by operation of the Centrex equivalency ratios to preserve the status quo for a limited period of time. Grant of this interim waiver does not represent a substantive change in Commission policy. To the contrary, grant of this interim waiver is only provided to allow carriers to continue an existing Commission policy, while we examine that policy and contribution issues more broadly. Until the Commission addresses pending petitions for reconsideration of this issue, local exchange carriers will be permitted to continue to average such unrecovered contribution costs across multi-line business customers.

7. Moreover, this interim waiver will prevent an unintended increase in universal service pass-through charges on current Centrex users, pending the Commission's determination of the merits of the petitions for reconsideration on this and other related issues. Because most local exchange carriers currently apply the PICC equivalency ratios to Centrex universal service pass-through charges, the limited waiver we grant today will minimize changes in universal service line items for multi-line business customers in the immediate term, while carriers otherwise implement the new rule on April 1, 2003. In particular, we note that several organizations representing state agencies have submitted letters in support of this action. These commenters note that state governments rely heavily on Centrex service and would be disproportionately affected by increases in universal service line item charges resulting from denial of the interim waiver. We intend to weigh these and other arguments in reviewing the pending petitions for reconsideration.

8. We emphasize the limited nature of our action today. This waiver is limited to the narrow issue of how to accommodate existing Commission policies that the Commission did not directly address in the *Interim Contribution Methodology Order*. Except for this limited exception, all carriers (including local exchange carriers) will continue to be subject to broader limitations on the recovery of contribution costs through federal universal service line-item charges.

9. *Lifeline.* In addition, we grant, in part, petitions filed by SBC and USTA to reconsider § 54.712(b) of our rules, as it applies to the recovery of contributions associated with Lifeline customers. Specifically, we amend § 54.712(b) to permit ETCs to recover from Lifeline customers contribution costs associated with the provision of interstate telecommunications services that are not supported by the Commission's universal service mechanisms. ETCs have always been free to recover such amounts from these customers in the past, and the Commission did not intend to preclude such recovery when it adopted the interim modifications in the *Interim Contribution Methodology Order*.

10. Sections 54.712(a) and (b) read together prohibit ETCs from recovering any contribution costs associated with Lifeline customers either from Lifeline customers directly or through a federal universal service line-item charge assessed on all other customers. When the Commission adopted § 54.712(b), it reasoned that because "customers of Lifeline services do not generate assessable interstate telecommunications revenues for ETCs, the relevant assessment rate and contribution amounts recovered from such customers would be zero." In particular, the Commission focused on the fact that Lifeline customers are not obligated to pay a subscriber line charge, which typically is a major source of interstate revenue for an ETC. Several large local exchange carriers, however, point out that customers of Lifeline services do in fact generate occasional interstate telecommunications revenues from interstate telecommunications services, such as one-time presubscribed interexchange carrier (PIC) change charges and other interstate intraLATA toll charges. These charges, however, are not associated with services subject to Lifeline discounts and, in any event, should not generate substantial contribution amounts. Therefore, we find that ETCs should not be prohibited from recovering these minimal contributions associated with these occasional interstate charges from Lifeline customers.

11. Moreover, this modification will ensure that ETCs are not disadvantaged by our recovery limitations if they provide both local and long distance services to customers who participate in the Lifeline program. The combination of §§ 54.712(a) and (b) could prohibit ETCs that provide both local and long distance services from recovering their contributions associated with such customer's long distance charges through any universal service line items. Interexchange carriers that only provide long distance services to customers who also qualify for Lifeline, however, have always been permitted to recover their contribution costs from these customers and still are free to do so under the current rules. We do not believe this disparity in recovery practices is competitively neutral. Accordingly, we will amend our rules to permit ETCs to recover contribution costs associated with interstate long distance charges from Lifeline customers.

12. *True-Up Process for 2002 and 2003.* In response to petitions for reconsideration filed by NECA, Verizon Wireless, and WorldCom, we clarify how USAC will true up annual revenue data filed by contributors on the FCC Form 499–A against quarterly revenue data filed on the FCC Form 499–Q. Specifically, we clarify that USAC shall only apply the annual true-up to revenue periods for which universal service contributions actually were assessed. The annual true-ups for calendar year 2002 and 2003 revenues, therefore, will not apply to revenues from the fourth quarter of 2002 and the first quarter 2003. As discussed, we deny other proposed modifications to USAC's true-up procedures or to the methodologies for calculating contributions to other support programs.

13. During the third quarter of each calendar year, USAC uses annual revenue data provided by contributors in the FCC Form 499–A to perform a true-up to quarterly revenue data submitted by contributors in FCC Form 499–Qs for the prior calendar year. As necessary, USAC refunds or collects from contributors any over-payments or under-payments. If the combined quarterly revenues reported by a contributor are greater than those reported on its annual revenue report (FCC Form 499–A), then a refund is provided to the contributor based on an average of the two lowest contribution factors for the year. If the combined quarterly revenues reported by a contributor are less than those reported on its FCC Form 499–A, USAC collects the difference from the contributor using an average of the two highest contribution factors for the year.

14. Because the purpose of the annual true-up is to ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanisms based on quarterly revenue data, we agree with WorldCom and Verizon Wireless that USAC should only apply the true-up to revenue periods for which universal service contributions actually were assessed. If USAC applied the true-up to revenue periods for which universal service contributions were not assessed, certain providers' contribution obligation could potentially be increased or decreased. Consistent with this conclusion, we direct USAC not to apply the annual true-ups for calendar years 2002 and 2003 to revenues from the fourth quarter 2002 and first quarter 2003.

15. The true-up for calendar year 2002 revenues will apply to revenues reported for the first three quarters of 2002, which were the basis for assessments in the third and fourth quarters of 2002 and the first quarter of 2003. The true-up for calendar year 2002 revenues will not apply to revenues reported for the fourth quarter of 2002. USAC will subtract revenues reported for the fourth quarter of 2002 from annual revenues reported on the FCC Form 499–A to arrive at an estimate of a contributor's actual revenues for the first three quarters of 2002. Consistent with USAC's current true-up procedures, USAC will then compare this amount to the sum of revenues reported for the first three quarters of 2002 to determine whether a refund or additional collection is warranted. Refunds will be based on the average of the two lowest contribution factors applied to revenues reported for the first three quarters of 2002. Additional collections will be based on the average of the two highest contribution factors applied to revenues reported for the first three quarters of 2002.

16. The true-up for calendar year 2003 revenues will apply to revenues projected for the second through fourth quarters of 2003. The true-up for calendar year 2003 revenues will not apply to revenues projected for the first quarter of 2003. USAC will subtract revenues projected for the first quarter of 2003 from annual revenues reported on the FCC Form 499–A to arrive at an estimate of a contributor's actual revenues for the second through fourth quarters of 2003. USAC will then compare this amount to the sum of revenues projected for the second through fourth quarters of 2003 to determine whether a refund or collection is appropriate. In subsequent years, the annual true-up will continue to apply to any and all revenue periods for which contributions are assessed.

17. We deny NECA's proposal to conduct additional true-ups on a quarterly basis. In addition to the annual true-up, NECA proposes a quarterly true-up mechanism in which a contributor's quarterly revenue projections would be compared to the corresponding quarter's actual revenue filed six months later. Under NECA's proposal, any difference between projections and actual revenues would be applied to the relevant contribution factor for that calendar quarter to arrive at a true-up amount. We disagree with NECA that quarterly true-ups are appropriate because it is more difficult for contributors to project revenues than report historical revenues. As the Commission noted in the Interim Contribution Methodology Order, although the modified contribution methodology relies on the ability of contributors to project gross-billed and collected revenues, it only requires contributors to project for the upcoming quarter, which should minimize the potential for inaccurate estimates. In addition, contributors may correct their projections up to 45 days after the due date of each FCC Form 499–Q. We also note that by eliminating penalties for over-or under-reporting, NECA's quarterly true-up proposal would reduce incentives created under current true-up procedures for contributors to accurately forecast their revenues for the upcoming quarter. We therefore decline to adopt NECA's proposal at this time.

18. *Timing of Revised Safe Harbor for Mobile Wireless Providers.* We also reject Verizon Wireless's contention that the Commission retroactively changed reporting requirements for mobile wireless providers by requiring mobile wireless providers that choose to report their interstate telecommunications revenues based on an interim safe harbor to report an increased percentage of interstate revenues for the fourth quarter of 2002 and the first quarter of 2003. In the Interim Contribution Methodology Order, the Commission increased to 28.5 the interim safe harbor that provides cellular, broadband Personal Communications Service, and certain Specialized Mobile Radio providers with the option of assuming that a fixed percentage of their telecommunications revenues are interstate with the presumption of reasonableness. The Commission's decision to increase the mobile wireless safe harbor was based, in large part, on traffic studies conducted in the third quarter of 2002 by five unnamed large national mobile wireless providers. In the Interim Contribution Methodology Order, the Commission left unchanged mobile wireless providers' option of reporting actual interstate telecommunications revenues if they are able to do so.

19. Contrary to Verizon Wireless's contention, the rules adopted in the Interim Contribution Methodology Order do not impact revenues reported prior to January 29, 2003, the effective date of the order. The requirements adopted in the Interim Contribution Methodology Order only apply to future reporting obligations. For example, contributors to the federal universal service programs first reported revenues for the fourth quarter of 2002 and the first quarter of 2003 on the FCC Form 499–Q filed on February 3, 2003. Moreover, the increased interim safe harbor for mobile wireless providers will apply to universal service contributions beginning in the second quarter of 2003. These contributions will be based on projected revenues for the second quarter of 2003, which contributors reported on the February 3, 2003, FCC Form 499–Q.

20. The Commission also did not retroactively change revenue reporting requirements for other Commission programs, such as Local Number Portability, Numbering Administration, and Telecommunications Relay Service. The reporting of fourth quarter 2002 revenues for purposes of calculating assessment to other Commission programs will not occur until April 1, 2003. Contributions to these other programs are based on annual revenues reported on April 1st of each year. Assessments to these other programs based on calendar year 2002 revenues will not be billed until beginning in the third quarter of 2003. Likewise, reporting of revenues for the first quarter of 2003 for these other Commission programs will not occur until April 1, 2004, and will not be assessed until beginning in the third quarter of 2004. Therefore, we conclude that our decision to apply the revised interim wireless safe harbor to revenues reported for the fourth quarter of 2002 and the first quarter of 2003 does not constitute retroactive changes to reporting obligations or to contribution obligations.

21. *Rounding Up the Contribution Factor.* Finally, we grant, in part, a petition for reconsideration filed by AT&T requesting that the Commission announce the universal service contribution factor as a percentage rounded up to the nearest tenth of a percent. Sprint and Verizon support AT&T's request. We direct the Wireline Competition Bureau (Bureau) to announce a contribution factor rounded up to the nearest tenth of a percent (e.g., .073 or 7.3 percent). In order to allow an individual contributor the ability to recover the full amount of its contribution obligation through its federal universal line item, we also direct the Bureau to account for contribution factor rounding when calculating the circularity discount factor.

22. In the past, the Bureau has announced a contribution factor rounded to the nearest 1/10,000th of a percent (e.g., .072805). AT&T has asserted that some of its billing systems can only accommodate a factor of three digits beyond the decimal point. Our decision today that the contribution

factor be rounded up to the nearest tenth of a percent, and that rounding be accounted for when calculating circularity, accommodates concerns expressed by AT&T and others that billing system limitations, when coupled with the recovery limitations in § 54.712 of our rules, may inhibit some carriers' ability to recover a portion of their contribution costs through their federal universal service line-item charges. This action also will prevent carriers from recovering amounts in excess of contribution obligations. We therefore conclude that each quarter the Bureau shall announce a contribution factor rounded up to the nearest tenth of a percent.

III. Regulatory Flexibility Act Certification

23. The Regulatory Flexibility Act of 1980, as amended (RFA), *see generally* 5 U.S.C. 601–612, requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *First Further Notice*, 67 FR 11254, March 13, 2002. The Commission sought written public comment on the proposals in the *First Further Notice*, including comment on the IRFA. In the *Interim Contribution Methodology Order*, the Commission included a Final Regulatory Flexibility Analysis (FRFA) that conformed to the RFA.

24. In the *Second Order on Reconsideration*, we eliminate § 54.712(b) of the Commission's rules, in order to permit eligible telecommunications carriers (ETCs) to recover from Lifeline customers contribution costs associated with the provision of interstate telecommunications services, such as occasional interstate charges and interstate long distance charges, that are not supported by the Commission's universal service mechanisms. By eliminating this restriction on cost recovery, the *Second Order on Reconsideration* will have a beneficial, deregulatory impact on all ETCs with such customers, including small entity ETCs. We also note that this action will have no impact on the universal service contribution obligations of ETCs and should only minimally impact their contribution recovery practices. We therefore conclude that a FRFA is not required here because the *Second Order on Reconsideration* will have no significant economic impact on a substantial number of small entities.

IV. Ordering Clauses

25. Pursuant to sections 1–4, 201–202, 254, and 405 of the Communications Act of 1934, as amended, and § 1.108 of the Commission's rules, this Order and Second Order on Reconsideration *is adopted*.

26. Pursuant to sections 1, 4(i), 254 and 405 of the Communications Act of 1934, as amended, and §§ 1.3, 1.429 of the Commission's rules, that the Verizon Telephone Companies, SBC Communications Inc., and BellSouth Corporation Joint Petition for Interim Waiver and the National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies Joint Petition for Interim Waiver are granted to the extent indicated herein.

27. Pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petitions for reconsideration filed by the United States Telecommunications Association and SBC Communications Inc. *are granted* to the extent indicated herein.

28. Pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petition for reconsideration filed by the National Exchange Carrier Association, Inc. *is denied*.

29. Pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petition for reconsideration filed by WorldCom, Inc. *is granted*.

30. Pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petition for reconsideration filed by the Verizon Wireless *is granted*, in part, and denied, in part, to the extent indicated herein.

31. Pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petition for reconsideration filed by AT&T Corp. *is granted* to the extent indicated herein.

32. Section 54.712 of the Commission's rules, is amended as set forth, effective April 1, 2003.

List of Subjects 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

Subpart H—Administration

■ 1. The authority citation for part 54 continues to read as follows:

Authority :47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

§ 54.712 [Amended]

■ 2. In § 54.712, remove and reserve paragraph (b).

[FR Doc. 03–7702 Filed 3–31–03; 8:45 am]
BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 665

[FTA Docket No. 98–B]

RIN 2132–AA30

Bus Testing

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Transit Administration is adopting, as a final rule, without change, the current interim final rule that sets forth regulations governing the testing of vehicles used in mass transportation service.

EFFECTIVE DATE: June 2, 2003.

FOR FURTHER INFORMATION CONTACT: For technical questions, contact Marcel Belanger, Office of Research and Innovation, Federal Transit Administration, (202) 366–0725. For legal issues, contact Richard L. Wong, Office of the Chief Counsel, Federal Transit Administration, (202) 366–4011.

SUPPLEMENTARY INFORMATION:

Background

The Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) required FTA to establish a facility for the testing of buses, and prohibited the expenditure of FTA funds for any new bus model that had not first been tested at that facility.

FTA's initial Notice of Proposed Rulemaking (NPRM), published on May 25, 1989, was expansive, proposing that all new vehicles used in mass transportation service after September 30, 1989, (the effective date in STURAA) would be subject to testing. Due to numerous comments from the industry, FTA issued its first interim final rule on August 23, 1989, limiting testing to large buses, noting that the categories of vehicles subject to testing would be expanded over time. Subsequent interim final rules adding these remaining categories of vehicles were published on October 6, 1990, and July 28, 1992. Because of additional industry concerns, however, the effective dates in the July 28, 1992, interim final rule were further postponed, finally taking effect on February 10, 1993. FTA's fourth interim final rule, issued on November 3, 1993, set forth the final four subcategories of small vehicles subject to testing, and established guidelines for the partial testing of bus models that had been fully tested but later are produced with changes in configuration or components.

During the rulemaking process, FTA has had numerous meetings with bus manufacturing representatives that were widely publicized throughout the industry and interested persons were invited to attend the meetings and participate in the deliberations. Most recently, FTA and the Pennsylvania Transportation Institute (PTI) conducted a Bus Testing Program Workshop at PTI's facilities in State College, Pennsylvania, from January 28–29, 2002, in which all entities, both vehicle manufacturers and purchasers, were invited to express their views on the subject.

We note that at that workshop, as well as at Bus Rapid Transit (BRT) conferences in Los Angeles in April 2002 and at State College in June 2002, the issue of testing BRT vehicles was discussed. We believe that the current regulation, including the provisions which allow a waiver for demonstration vehicles and partial testing procedures, are adequate to address vehicles intended for use on BRT systems. FTA, however, is willing to entertain petitions for further rulemaking by interested parties.

Administratively, FTA has been pursuing non-regulatory efforts to reduce the testing burden on purchasers and manufacturers, such as implementing the partial testing procedures in the regulation to streamline test procedures and eliminate unnecessary and redundant tests. In addition, FTA is reviewing the possibility of progress payments, which would affect the funding eligibility of buses undergoing testing at PTI.

After consideration of all relevant material, including the discussions at the workshop and conferences, FTA has determined that accepting the existing regulation as FTA's final rule, without change, as published in the **Federal Register** (58 FR 58732 November 3, 1993) will effectuate the declared intent of STURAA.

Regulatory Analyses and Notices

FTA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, as the economic affect of this rulemaking will not exceed $100 million or more, it will not adversely affect, in a material way, any sector of the economy, nor will it interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. However, it was listed as significant within the meaning of U.S. Department of Transportation's regulatory policies and procedures due to Congressional interest in the implementation of the program.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FTA has evaluated the effects of this action on small entities and has determined that the action will not have a significant economic impact on a substantial number of small entities, as FTA now pays 80 percent of the testing fee (57 FR 8954, March 13, 1992), and allows the partial testing of certain vehicles (57 FR 33394, July 28, 1992). For these reasons, FTA believes that it has minimized the effects of this rule so that it will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule is consistent with the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48), as it will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). This final rule reflects participation by state and local governments, and FTA believes it is the least costly and most effective way of implementing the statutory mandate.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, as it will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and FTA has determined that this action does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA believes that this action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. OMB has approved the paperwork requirements of this rule (OMB No. 2132–0550), and this action will not impose any additional paperwork burden.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be

used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 665

Vehicle testing. Grant programs—transportation. Mass Transportation.

■ Accordingly, the interim rule amending 49 CFR part 665 which was published at 58 FR 58732, November 3, 1993, is adopted as a final without change.

Issued on: March 24, 2003.

Jennifer L. Dorn,

Administrator.

[FR Doc. 03–7549 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–17–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 000303059–3034–03; I.D. No. 021700B]

RIN No. 0648–XA49

Endangered and Threatened Species; Final Endangered Status for a Distinct Population Segment of Smalltooth Sawfish (*Pristis pectinata*) in the United States

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment

SUMMARY: NMFS published a proposed rule to list the U.S. population of smalltooth sawfish as endangered on April 16, 2001. After considering public comments on the proposed rule, NMFS is issuing a final rule to list the distinct population segment (DPS) of smalltooth sawfish in the United States as an endangered species. NMFS has determined that the U.S. DPS is in danger of extinction throughout its range.

NMFS is also making a technical amendment to the list of endangered marine and anadromous species to reinsert the listing of Atlantic salmon.

DATES: Effective May 1, 2003.

ADDRESSES: The complete administrative record for this regulation is available at NMFS, Southeast Regional Office, Protected Resources Division, 9721 Executive Center Drive North, St. Petersburg, FL 33702. The status review and proposed rule are also available electronically at the NMFS Web site at *http://www.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Shelley Norton, NMFS, at the address above, 727–570–5312, or David O'Brien, NMFS, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

NMFS designated the smalltooth sawfish as a candidate species under the Endangered Species Act (ESA) on June 23, 1999 (64 FR 33467). On November 30, 1999, NMFS received a petition from the Center for Marine Conservation (now The Ocean Conservancy) requesting that NMFS list the North American populations of smalltooth sawfish and largetooth sawfish as endangered under the ESA. The petitioner's request was based on four criteria: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) the inadequacy of existing regulatory mechanisms; and (4) other natural or manmade factors affecting its continued existence. On March 10, 2000, NMFS published its determination that the petition presented substantial information indicating that listing may be warranted for smalltooth sawfish, but not for largetooth sawfish. Concurrently, NMFS announced the initiation of a smalltooth sawfish formal status review (65 FR 12959, March 10, 2000).

In order to conduct a comprehensive review of smalltooth sawfish, NMFS created a status review team to investigate the status of the species with regard to the listing criteria provided by the ESA. In addition to its own resources and data, the status review team gathered all known records and data of smalltooth sawfish by contacting fishery managers, museums and other research collectors. The status review contains the best scientific and commercial information available on smalltooth sawfish at the time of the report. The document addresses the status of the species, the five listing determination criteria, and the effect of efforts underway to protect the species.

The Smalltooth Sawfish Status Review was completed in December 2000 and has undergone peer review. The findings of the Status Review have been accepted by NMFS and some of the findings are summarized here. The Status Review contains a more complete discussion and complete literature citations for the information summarized in this final rule. The Status Review is available at on the NMFS Web site (see **ADDRESSES**).

NMFS published the proposed rule to list the smalltooth sawfish on April 16, 2001 (66 FR 19414). Comments received on the proposed rule are discussed below.

In addition to this final rule to list the U.S. population of smalltooth sawfish as endangered, NMFS is also making a technical amendment to the list of endangered species (50 CFR 224.101) to reinsert the listing for Atlantic salmon, which was inadvertently deleted from the list.

Summary of Comments Received on the Proposed Rule

During the 60–day public comment period, NMFS received a total of 12 written comments: four from private citizens, seven from non-governmental organizations, and one from a local non-profit research laboratory. All commenters supported the proposed rule. Three of the commenters also requested that critical habitat be designated for the smalltooth sawfish. Several commenters requested that NMFS develop a recovery plan or program for the species. One commenter also requested the listing of the largetooth sawfish. A brief summary of the comments received on the proposed rule is presented below, along with NMFS' response to each comment.

Comment 1: Three commenters stated that critical habitat designation is necessary for the smalltooth sawfish and urged NMFS to designate critical habitat.

Response: Section 4(a)(3)(A) of the ESA requires that critical habitat be designated concurrently with a determination that a species is endangered or threatened, to the maximum extent prudent and determinable. When such a designation is not determinable at the time of final listing of a species, section 4(b)(6)(C)(ii) of the ESA, 16 U.S.C. 1533(b)(6)(C)(ii), provides for additional time to promulgate a critical habitat designation. NMFS has determined that designation of critical habitat for the sawfish is not determinable at this time.

NMFS has and continues to fund research that is necessary to identify the biological and physical habitat features that are essential to the conservation of the species. While more information is required before critical habitat can be designated, the available data suggest that shallow water, 1 meter or less, may be important nursery areas for the smalltooth sawfish; that river and creek mouths are important habitat elements; and that channels through shallow habitats may be important mating aggregation areas. During the next year NMFS will be gathering and reviewing the current and ongoing studies on the habitat use and requirements of smalltooth sawfish. NMFS believes that this knowledge is extremely important for its determination relating to critical habitat.

Comment 2: Several commenters urged NMFS to initiate recovery efforts for the smalltooth sawfish and requested that NMFS develop a Recovery Program or Recovery Plan.

Response: Section 4(f) of the ESA requires that NMFS develop recovery plans for ESA listed species, unless such a plan will not promote the conservation of the species. NMFS will convene a recovery team to develop a recovery plan for the smalltooth sawfish, after finalizing this rule and the critical habitat designation. NMFS recognizes that the U.S. DPS of smalltooth sawfish is at risk of extinction and that there is an urgent need to begin recovery efforts for this species as soon as possible. NMFS is committed to the recovery effort and intends to take the lead role in smalltooth sawfish recovery and research efforts even before a final recovery plan is developed. NMFS is currently funding studies to better define abundance, movements, and habitat requirements for smalltooth sawfish. NMFS believes that these research efforts are important in the development of the recovery plan and that they are important for the survival and recovery of the species. NMFS is also cooperating with state agencies and academia on their ongoing research and conservation efforts.

Comment 3: One commenter requested that NMFS also list the largetooth sawfish because of the similarity in appearance to the smalltooth sawfish.

Response: Section 4(e) of the ESA allows NMFS to treat any non-listed species as an endangered or threatened species if: (1) the species so resembles a listed species that enforcement personnel would have substantial difficulty differentiating the listed and non-listed species; (2) the effect of this substantial difficulty is an additional threat to the listed species; and (3) such a treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the ESA. NMFS does not believe that treating largetooth sawfish as endangered due to its similarity of appearance to smalltooth sawfish is warranted. NMFS recognizes that largetooth sawfish and smalltooth sawfish closely resemble each other, and that law enforcement personnel may have substantial difficulty differentiating the two species. However, historic records indicate that largetooth sawfish were rarely found in North America, and that all largetooth sawfish captured in U.S. waters were caught along the coast of Texas and Louisiana, outside of the known current range of smalltooth sawfish (see the sawfish 90–day finding, March 10, 2000; 65 FR 12959). Therefore, the possibility of confusing the two species in the U.S. is very small. It is unlikely that the similarity in appearance of the two species would pose an additional threat to smalltooth sawfish, or that treating largetooth sawfish as endangered would facilitate the enforcement of regulations to protect smalltooth sawfish.

Peer Review

NMFS solicited expert opinions on the status review documents in compliance with the July 1, 1994, Peer Review Policy (59 FR 34270). The responses received from the reviews support the proposed listing action.

Consideration as a "Species" Under the Endangered Species Act

Section 3(16) of the ESA, 16 U.S.C. 1532 (16), defines a species as "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." This definition allows for the listing of DPSs at levels below taxonomically recognized species or subspecies. On February 7, 1996, the U.S. Fish and Wildlife Service (FWS) and NMFS published a joint policy to clarify the phrase "distinct population segment (DPS)" for the purposes of listing, delisting and reclassifying species under the ESA (61 FR 4722). This policy identifies two criteria that must be met for a population segment to be considered a DPS under the ESA: (1) The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs.

Discreteness of the U.S. Population of Smalltooth Sawfish

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

The status review team did not find any indication that the current U.S. population of smalltooth sawfish interacts with smalltooth sawfish elsewhere, suggesting that the U.S. population may be effectively isolated from other populations. However, there are few scientific data on the biology of smalltooth sawfish, and it is not possible to conclusively subdivide this species into discrete populations on the basis of genetics, morphology, behavior, or other biological characteristics. The DPS policy provides for the delineation of a DPS based on international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist. Although several southeastern U.S. states have regulations in place prohibiting fishing for this species, the smalltooth sawfish status review team was unable to identify any mechanisms regulating the exploitation of this species anywhere outside of the U.S. These differences are directly relevant to the inadequacy of existing regulatory mechanisms as a basis for considering the U.S. DPS as a species for purposes of the listing determination, particularly because the review team found no recent verifiable records of smalltooth sawfish populations outside of the U.S. Therefore, NMFS has determined that the U.S. population of smalltooth sawfish is discrete as defined under the DPS policy.

Significance of the U.S. Population of Smalltooth Sawfish

The DPS policy identifies several factors that may be considered in making a determination of a population's significance to the taxon to which it belongs. Among these considerations is evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon. The smalltooth sawfish has already been wholly or nearly extirpated from large areas of its former range in the North Atlantic (Mediterranean, U.S. Atlantic and Gulf of Mexico) and the Southwest Atlantic by fishing and habitat modification, and its status elsewhere is uncertain but likely to be similarly reduced. In fact, the status review did not find any recent verifiable records of smalltooth sawfish populations outside the United States. Reports of this species from outside the Atlantic may be misidentifications of other pristids. Therefore, smalltooth sawfish populations in U.S. waters, while extremely depleted, may be the largest population of smalltooth sawfish in the Western Atlantic. The U.S. population of smalltooth sawfish

comprises an important component of the sawfishes' remaining global biological diversity, as sawfish in general are suffering worldwide declines. The U.S. population of smalltooth sawfish is also the northernmost population in the western hemisphere. Loss of the U.S. population of smalltooth sawfish would clearly result in a significant gap in the range of this species. For these reasons, the U.S. population of smalltooth sawfish is significant as defined under the DPS policy.

Based on the above analysis of the discreteness and significance of smalltooth sawfish, the population of smalltooth sawfish that occurs in waters of the eastern United States is both discrete and significant and constitutes a DPS. Therefore, consideration of the conservation status of the U.S. DPS of smalltooth sawfish in relationship to the ESA's listing standards is appropriate.

Distribution and Abundance

Smalltooth sawfish are tropical marine and estuarine fish that have the northwestern terminus of their Atlantic range in the waters of the eastern United States. In the United States, smalltooth sawfish are generally a shallow water fish of inshore bars, mangrove edges, and seagrass beds, but larger animals can be found in deeper coastal waters.

In order to assess both the historic and the current distribution and abundance of the smalltooth sawfish, the status review team collected and compiled literature accounts, museum collection specimens, and other records on the species. This information indicates that prior to around 1960, smalltooth sawfish occurred commonly in shallow waters of the Gulf of Mexico and eastern seaboard up to North Carolina, and more rarely as far north as New York. Subsequently their distribution has contracted to peninsular Florida and, within that area, they can only be found with any regularity off the extreme southern portion of the state. The current distribution is centered in the Everglades National Park, including Florida Bay.

Smalltooth sawfish have declined dramatically in U.S. waters over the last century, as indicated by publication and museum records, negative scientific survey results, anecdotal fisher observations, and limited landings per unit effort (from Louisiana). The "Fisheries Statistics of the United States" data sets from 1945–1978 report that smalltooth sawfish landings in Louisiana declined from a high of 34,900 lbs (15,830 kg) in 1949 to less than 1,500 lbs (680 kg) in most years after 1967. The decline is likely greater than indicated by numbers or frequencies of catches because during the past century, both fishing and scientific sampling effort have increased by orders of magnitude. The fact that documented smalltooth sawfish catch records have declined during this period despite these tremendous increases in fishing effort underscores the population reduction in the species. While NMFS lacks time-series abundance data to quantify the extent of the DPS's decline, the best available information indicates that the abundance of the U.S. DPS of smalltooth sawfish is at an extremely low level relative to historic levels.

Summary of Factors Affecting the Species

Section 4 of the ESA (16 U.S.C. 1533) and regulations promulgated to implement the listing provisions of the ESA (50 CFR part 424) set forth the procedures for adding species to the Federal list. Section 4 requires that listing determinations be based solely on the best scientific and commercial data available, without consideration of possible economic or other impacts of such determinations. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the ESA.

NMFS has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species and conservation efforts that are underway in determining to promulgate this final rule. The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. NMFS has determined that the U.S. DPS of smalltooth sawfish is in danger of extinction throughout all or a significant portion of its range from a combination of four listing factors: The present threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; inadequacy of existing regulatory mechanisms; and other natural and manmade factors affecting the continued existence of the species. For these reasons, NMFS is listing the U.S. DPS of smalltooth sawfish as endangered. The listing factors and their application to the U.S. DPS of smalltooth sawfish are described below.

(a) The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Loss and degradation of habitat has contributed to the decline of many marine species, and is judged to have impacted the distribution and abundance of smalltooth sawfish. The continued urbanization of the southeastern coastal states has resulted in substantial loss of coastal habitat through such activities as agricultural and urban development, commercial activities, dredge and fill operations, boating, erosion, and diversions of freshwater run-off. Animal wastes and fertilizers from agricultural runoff contribute large amounts of non-point source nutrient loading and introduce a wide range of toxic chemicals into habitats important to smalltooth sawfish. The rate of urban development in the southeast coastal zone is more than four times the national average, destroying or degrading significant amounts of coastal and estuarine habitat. Commercial activities in the southeast eliminate or degrade substantial amounts of marine and estuarine fish habitat, although the exact amount is unknown. An analysis of 18 major southeastern estuaries recorded over 703 miles (1,131 km) of navigation channels and 9,844 miles (15,842 km) of shoreline modifications. Profound impacts to hydrological regimes have been produced in South Florida through the construction of a 1,400–mile (2,253–km) network of canals, levees, locks, and other water control structures that modulate freshwater flow from Lake Okeechobee, the Everglades, and other coastal areas.

Potential detrimental impacts from the activities listed above on habitat of the U.S. DPS of smalltooth sawfish include: (1) loss of wetlands, (2) eutrophication, (3) point and non-point sources of pollution, (4) increased sedimentation and turbidity, and (5) hydrologic modifications. Smalltooth sawfish may be especially vulnerable to coastal habitat degradation due to their affinity for shallow, estuarine systems. The cumulative impacts from habitat degradation discussed above may reduce habitat quality and limit habitat quantity available to the species. Given current low levels of abundance, and its current retracted range, efforts need to be undertaken to better understand, avoid, minimize and mitigate these factors.

(b) Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Smalltooth sawfish have historically been caught as bycatch in various fishing gears throughout their historic range, including gillnet, otter trawl, trammel net, seine, and, to a lesser degree, hand line. There are frequent accounts in early literature of smalltooth sawfish being entangled in fishing nets from areas where smalltooth sawfish were once common, but are now rare or extirpated (Evermann and Bean, 1898). Their long, toothed rostrum makes it difficult to avoid entanglement in virtually any kind of large mesh gillnet gear. The saw penetrates easily through nets and causes the animal to become entangled when it attempts to escape. Shrimp trawling is another source of incidental mortality on smalltooth sawfish. Entangled specimens frequently have to be cut free, causing extensive damage to nets and presenting a substantial hazard if brought on board. For these reasons, most smalltooth sawfish caught by fishermen are either killed outright or released only after removal of their saws.

Large-scale directed fisheries for smalltooth sawfish have not existed; however, smalltooth sawfish bycatch has been commercially landed in various regions, primarily in Louisiana. Total Gulf of Mexico landings dropped continually from 1950 to 1978, ranging from a high of 9.3 metric tons to less than 0.1 metric tons during this time period. NMFS does not have any records of landings since 1978 (NMFS Fisheries Statistics and Economic Division's Database, commercial landings data).

A data set from "Fisheries Statistics of the United States" (1945–1978) of smalltooth sawfish landings in Louisiana by shrimp trawlers, containing both landings data and crude information on effort (number of vessels, vessel tonnage, number of gear units), underscores that landings have dramatically declined, even as fishing effort increased. Annual smalltooth landings in Louisiana declined from a high of 34,900 lbs (15,830 kg) in 1949 to less than 1,500 lbs (680 kg) in most years after 1967. During this period of time, the number of fishing vessels, the size of the fishing vessels, and the amount of gear that they deployed increased substantially. Landings per unit effort (LPUE) was calculated using three different units of effort (number of vessels, tonnage of vessels, and number of gear units). All three data series showed dramatic declines in LPUE, from high levels in the 1950s to very low levels in the 1970s. The magnitude of these declines is such that the LPUE values in the 1970s are less than one percent of those in the 1950s, indicating a severe decline in the population. The lack of landings since 1978 shows that smalltooth sawfish have been commercially unavailable for over 20 years.

Anecdotal information collected by NMFS port agents indicates that smalltooth sawfish are now taken very rarely in the shrimp trawl fishery. The most recent records from Texas are from the 1980s. Through 1999, smalltooth sawfish were still occasionally documented in shrimp trawls in Florida (4 from 1990 to 1999). Mote Marine Laboratory records documented a smalltooth sawfish taken in a shrimp trawler and one caught on a long-line off the coast of Florida, in 2002.(Simpfendorfer, pers. comm., 2002).

In historical recreational fisheries records, smalltooth sawfish have occasionally occurred as bycatch. Occasional takes with harpoon or hook-and-line by recreational fishers in Florida were recorded during the first half of the twentieth century. In Texas, many sawfish were reportedly taken incidentally by sport fishermen in the bays and surf prior to the 1960s. Most of these fish were released. However, prior to their live release the saws of many individuals were removed. This practice may have contributed to the decline of smalltooth sawfish in Texas.

Today, recreational catches of sawfish are very rare, and poorly documented for the most part, except within the Everglades National Park. Long-term abundance data are not available, but there are recent (1989–1999) recreational catch per unit effort (CPUE) data for the Everglades. These CPUE data indicate that a sustaining population still exists there, with consistent annual catches by private recreational anglers and guide boats. Direct take of smalltooth sawfish has been of little importance or remains obscure. Although there is a market for smalltooth sawfish saws, the species is not commonly taken and any captures are apparently incidental. Smalltooth sawfish have also been taken by collectors and sold live to aquaria. The recent high prices aquaria are willing to pay for this species ($1,000 per ft; $3,200 per m) may be providing increased incentive for their collection. The smalltooth sawfish has rarely been taken for scientific purposes.

(c) Disease or Predation

There is no information regarding predation or disease affecting smalltooth sawfish. The decline of the species appears to have been one of slow attrition over the course of the twentieth century, primarily from bycatch in fisheries and secondarily by coastal habitat destruction rather than from some acute epizootic event. The few living specimens examined (Colin Simpfendorfer, Mote Marine Laboratory and Jose Castro, NMFS, pers. comm., 2000) appear to be in good health.

(d) Inadequacy of Existing Regulatory Mechanisms

Numerous Federal, state, and inter-jurisdictional laws, regulations and policies govern activities in U.S. waters that have the potential to affect the abundance and survival of smalltooth sawfish and their habitat. While these laws, regulations, and policies lead to overall environmental enhancements indirectly aiding smalltooth sawfish, very few have been applied specifically for the protection of smalltooth sawfish. For example, NMFS and FWS consult with other agencies on projects that may impact fish and wildlife and provide recommendations to avoid any adverse impacts, but there has never been a recommendation directed at the protection of sawfish. Any general recommendations that are implemented and reduce habitat loss in shallow coastal areas may provide some benefit to smalltooth sawfish by curbing increased habitat degradation.

There are no Federal regulations for the protection of sawfish. With the exception of Florida and Louisiana, smalltooth sawfish can also still be legally harvested in state waters.

As noted above, a century of net fisheries combined with the low reproductive potential of the sawfish (typical of most elasmobranchs) has resulted in a very severe decline in sawfish populations. Smalltooth sawfish bycatch in gillnets has likely been reduced due to recent regulations prohibiting or limiting the use of gillnets in some state waters, but bycatch in other gears such as trawls may still present a threat to this species. Recent reports of smalltooth sawfish caught with their saws already removed indicate that smalltooth sawfish are still being harmed by commercial or recreational fishing activities. Based on this information, NMFS believes that existing Federal and state laws, regulations, and policies are inadequate to protect smalltooth sawfish.

(e) Other Natural or Manmade Factors Affecting its Continued Existence

Current and future abundance of smalltooth sawfish is limited by its life history characteristics. While little is

known directly about smalltooth sawfish life history, inferences can be drawn from closely related species for which more information is available, such as the largetooth sawfish and other elasmobranchs. These species have slow growth, late maturity, a long life span, and low fecundity, and it is highly likely that smalltooth sawfish share these characteristics. These combined characteristics result in a very low intrinsic rate of population increase and are associated with the life history strategy known as "k-selection." K-selected animals are usually successful at maintaining relatively small, persistent population sizes in relatively constant environments. Conversely, they are not able to respond effectively (rapidly) to additional sources of mortality, such as overexploitation and habitat degradation. Smalltooth sawfish have been and are currently subjected to both overexploitation and habitat degradation.

The intrinsic rate of population growth can be a useful parameter to estimate the capacity of a species to withstand exploitation. Animals with low intrinsic rates of increase are particularly vulnerable to excessive mortalities and rapid stock collapse, after which recovery may take decades. The estimated intrinsic rate of natural increase for smalltooth sawfish ranges from 0.08 per year to 0.13 per year, and population doubling times range from 5.4 years to 8.5 years (Simpfendorfer, 2000a). The American Fisheries Society considers smalltooth sawfish in North America to be at a high risk of extinction (Musick et al., 2000).

Listing Determination

The U.S. DPS of smalltooth sawfish is at a critically low level of abundance based on the status review team's review of literature accounts, museum collection specimens, and other records of the species. The U.S. DPS of smalltooth sawfish continues to face threats from: (1) loss of wetlands, (2) eutrophication, (3) point and non point sources of pollution, (4) increased sedimentation and turbidity, (5) hydrologic modifications, and (6) incidental catch in fisheries. Commercial bycatch has played the primary role in the decline of this DPS. Quantitative data are limited, but indicate that smalltooth sawfish have been taken by commercial fishermen and that this species has experienced severe declines in its abundance. While Federal, state, and interjurisdictional laws, regulations, and policies lead to overall environmental enhancements indirectly aiding smalltooth sawfish, very few have been applied specifically for the protection of smalltooth sawfish. Based on the species' low intrinsic rate of increase resulting from their slow growth, late maturation, and low fecundity, population recovery potential for the species is limited and the species is at risk of extinction. Therefore, under current circumstances, the U.S. DPS of smalltooth sawfish is in danger of extinction.

Current protective measures and conservation efforts underway to protect the U.S. DPS of smalltooth sawfish are confined to: actions directed at increasing general awareness of this species and the risks it faces; possession prohibitions in the state waters of Florida and Louisiana; and research being pursued by the Mote Marine Laboratory's Center for Shark Research. There are no Federal or state conservation plans for the smalltooth sawfish.

Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the ESA include development and implementation of recovery plans, requirements that Federal agencies use their authorities to conserve the species, and prohibitions against certain practices, such as taking individuals of the species. Recognition through listing encourages and results in conservation actions taken by Federal agencies, state agencies, private organizations, groups, and individuals. The ESA also provides for possible land acquisition and cooperation with the states. The conservation measures required of Federal agencies and the prohibitions against taking and harm are discussed, in part, here.

The ESA and its implementing regulations set forth a series of general prohibitions that apply to all endangered wildlife. The prohibitions of section 9 of the ESA, in part, make it illegal for any person subject to the jurisdiction of the United States to take (to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct), to import into, or export from, the United States, to ship in interstate or foreign commerce in the course of commercial activity, or to sell or offer for sale in interstate or foreign commerce any endangered wildlife. To possess, sell, deliver, carry, transport, or ship endangered wildlife that has been taken illegally is also prohibited.

Section 7 of the ESA imposes special duties on Federal agencies for the protection and conservation of endangered and threatened species. Section 7(a)(1) requires Federal agencies to use their authorities to conserve listed species and their habitats by carrying out conservation programs for endangered and threatened species. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the NMFS or the FWS. Regulations implementing this interagency cooperation provision of the ESA are codified at 50 CFR part 402.

ESA sections 10(a)(1)(A) and 10(a)(1)(B) provide NMFS with authority to grant exceptions to the section 9 takings prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a take of listed species. NMFS has issued section 10(a)(1)(A) research and enhancement permits for other listed species for these purposes. ESA section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include agricultural or development activities that affect sawfish habitat and the management of state fisheries that may interact with sawfish.

The ESA also provides some exceptions to the prohibitions, without permits, for certain antique articles and species held in captivity at the time of listing. ESA section 10(h) allows antique articles of listed species to be excluded from essentially all the ESA prohibitions as long as they are at least 100 years old and meet certain other specified conditions. Section 9(b)(1) provides a narrow exemption for animals held in captivity at the time of listing: those animals are not subject to the import/export prohibition or to protective regulations adopted by the Secretary, so long as the holding of the species in captivity, before and after listing, is not in the course of a commercial activity; however, 180 days after listing there is a rebuttable presumption that the exemption does not apply. Thus, in order to apply this exemption, the burden of proof for confirming the status of animals held in captivity prior to listing lies with the holder. The section 9(b)(1) exemption for captive wildlife would not apply to any progeny of the captive animals that may be produced post-listing.

Take Guidance

On July 1, 1994, NMFS and FWS published a series of policies regarding listing under the ESA, including a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272). The intent of this policy is to increase public awareness of the effect of ESA listings on proposed and ongoing activities within the species' range. Although not binding, NMFS has identified specific activities that would likely not be considered a violation of section 9, as well as activities that would likely be considered a violation. Activities that NMFS believes would result in violation of section 9 prohibitions with respect to the U.S. DPS of smalltooth sawfish include, but are not limited to, the following:

(1) Taking or attempting to take smalltooth sawfish, including as by-catch in commercial and recreational fisheries;

(2) Possessing, delivering, transporting or shipping any smalltooth sawfish or smalltooth sawfish part that was illegally taken;

(3) Delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce any smalltooth sawfish or smalltooth sawfish part, in the course of a commercial activity, even if the original taking of the smalltooth sawfish was legal;

(4) Selling or offering for sale in interstate or foreign commerce any smalltooth sawfish or smalltooth sawfish part, except antique articles at least 100 years old;

(5) Importing or exporting smalltooth sawfish or any smalltooth sawfish part to or from the United States;

(6) Degradation or modification of the smalltooth sawfish's coastal habitat through, for example, such activities as agricultural and urban development, commercial activities, dredge and fill operations, boating, and diversions of freshwater run-off to the extent that such habitat modification would result in death or injury to smalltooth sawfish by significantly impairing essential behavioral patterns including breeding, rearing, migrating, feeding, or sheltering;

(7) Collecting or handling wild smalltooth sawfish, even for scientific or conservation purposes, without the required permits;

(8) Releasing a captive smalltooth sawfish into the wild. Although smalltooth sawfish held non-commercially in captivity at the time of listing are exempt from certain prohibitions, the individual animals are considered listed and afforded most of the protections of the ESA, including most importantly the prohibition against injuring or killing. Release of a captive animal has the potential to injure or kill the animal if the release is not properly planned and the animal is not properly acclimated. Of an even greater conservation concern, the release of a captive animal has the potential to affect wild populations of sawfish through introduction of diseases or inappropriate genetic mixing. Depending upon the circumstances of the case, NMFS may authorize the release of a captive animal through a section 10(a)(1)(A) permit for enhancement of survival; and

(9) Harming captive smalltooth sawfish by, among other things, injuring or killing a captive smalltooth sawfish, through, for example, provision of experimental or potentially injurious veterinary care or conducting research or breeding activities on captive smalltooth sawfish, outside the bounds of normal animal husbandry practices. Specifically, NMFS has not found any records of successful captive breeding of smalltooth sawfish and, therefore, believes that captive breeding is inherently experimental and potentially injurious. Furthermore, the production of smalltooth sawfish progeny has conservation implications (both positive and negative) for wild populations of smalltooth sawfish. Experimental or potentially injurious veterinary procedures and research or breeding activities on smalltooth sawfish may, depending upon the circumstances, be authorized by NMFS through an ESA section 10(a)(1)(A) permit for scientific research or the enhancement of the propagation or survival of the species.

Although not binding, NMFS believes that the following actions, depending on the circumstances, would not result in a violation of section 9 prohibitions with respect to the U.S. DPS of smalltooth sawfish:

(1) Take of smalltooth sawfish authorized by, and carried out in accordance with, the terms and conditions of an ESA section 10(a)(1)(A) permit issued by NMFS for purposes of scientific research or the enhancement of the propagation or survival of the species;

(2) Incidental take of smalltooth sawfish resulting from Federally authorized, funded, or conducted projects for which consultation under section 7 of the ESA has been completed, and when the otherwise lawful activity is conducted in accordance with any terms and conditions granted by NMFS in an incidental take statement in a biological opinion pursuant to section 7 of the ESA;

(3) Incidental take of smalltooth sawfish resulting from otherwise lawful, non-Federal activities for which an ESA section 10(a)(1)(B) permit has been issued. Permittees may be individuals, groups (e.g., an agricultural cooperative whose farming activities affect habitat), or local or state governments (e.g., a state marine fisheries agency seeking incidental take authorization for fisheries managed by the state);

(4) Continued possession of smalltooth sawfish parts that were in possession at the time of this listing. Such parts may be non-commercially exported or imported; however, the importer or exporter must be able to provide sufficient evidence to show that the parts meet the criteria of an ESA section 9(b)(1) (i.e. held in a controlled environment at the time of listing, non-commercial activity).

(5) Continued possession of live smalltooth sawfish that were in captivity or in a controlled environment (e.g. in aquaria) at the time of this listing, so long as the prohibitions under an ESA section 9(a)(1) are not violated. Again, facilities should be able to provide evidence that the smalltooth sawfish were in captivity or in a controlled environment prior to listing. NMFS suggests that such facilities submit information to NMFS on smalltooth sawfish in their possession (e.g., size, age, and description of animals, and the source and date of acquisition) to establish their claim of possession (see **FOR FURTHER INFORMATION CONTACT**); and

(6) Provision of care for live smalltooth sawfish that were in captivity at the time of this listing. As stated previously, animals held in captivity at the time of listing are still protected under the ESA and may not be killed or injured, or otherwise harmed, and, therefore, must receive proper care. Normal care of captive animals necessarily entails handling or other manipulation of the animals, and NMFS does not consider such activities to constitute take or harassment of the animals so long as adequate care, including adequate veterinary care is provided. Such veterinary care includes confining, tranquilizing, or anesthetizing smalltooth sawfish when such practices, procedures, or provisions are not likely to result in injury.

Section 11(f) of the ESA gives NMFS authority to promulgate regulations that may be appropriate to enforce the ESA. Future regulations may be promulgated to regulate trade or holding of smalltooth sawfish, if necessary. The

public will be given the opportunity to comment on future proposed regulations.

Critical Habitat

"Critical habitat" is defined in section 3 of the ESA (16 U.S.C. 1532(3)) as: (1) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, in which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. "Conservation" is defined as the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary.

Section 4(a)(3)(A) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the maximum extent prudent and determinable, critical habitat be designated, concurrently, with the listing of a species. Section 4(b)(6)(C)(ii) of the ESA, 16 U.S.C. 1533(b)(6)(C)(ii), provides for additional time to promulgate a critical habitat designation if such designation is not determinable at the time of final listing of a species. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic and other relevant impacts of specifying any particular area as critical habitat.

NMFS has determined that designation of critical habitat is not determinable at this time. NMFS will complete ongoing research and gather and review other ongoing studies on the habitat use and requirements of smalltooth sawfish to attempt to identify smalltooth sawfish nursery and breeding areas. Once these and other habitat areas are identified and mapped, NMFS will publish, in a separate rule, a proposed designation of critical habitat for the U.S. DPS of smalltooth sawfish, to the maximum extent prudent and determinable.

References Cited

Evermann, B.W. and B. A. Bean. 1897(1898). Indian River and its fishers. U. S. Comm. Fish.,Rep. Comm 22:227–248.

Musick, J.A., M.M. Harbin, S. A. Berkeley, G.H. Burgess, A. M. Eklund, L. Findley, R.G. Gilmore, J.T. Golden, D.S. Ha, G.R. Hunstman, J.C. McGovern, S.J. Parker, S.G. Poss, E. Sala, T.W. Schmidt, G.R. Sedberry, H. Weeks, and S.G. Wright. 200. Marine estuarine, and diadromous fish stocks at risk of extinction in North America. Fisheries 25(11):6–30.

Simpfendorfer, C.A. 2000(a). Predicting population recovery rates for endangered western Atlantic sawfishes using demographic analysis. Environmental Biology of Fishes 58: 371–377.

Classification

Regulatory Flexibility Act and Executive Order 12866

The Conference Report on the 1982 amendments to the ESA notes that economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, listing actions are not subject to review under Executive Order 12866.

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F.2d 825 (6th Cir.1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act. (See also NOAA Administrative Order 216–6.)

Executive Order 13132, Federalism

Smalltooth sawfish records and data were collected by the status review team from appropriate state fishery managers and incorporated into the Status Review. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NMFS intends to engage in formal and informal contacts with states, other affected local and regional entities, and those engaged in ongoing conservation and recovery efforts for the smalltooth sawfish.

List of Subjects in 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation

Dated: March 25, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For reasons set out in the preamble, 50 CFR part 224 is amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 2. In § 224.101, paragraph (a) is revised by inserting the following text after "Shortnose sturgeon (*Acipenser brevirostrum*)" and before "Totoaba (*Cynoscian macdonaldi*)": "Smalltooth sawfish (*Pristis pectinata*) in the United States; Atlantic salmon (*Salmo salar*) Gulf of Maine population, including naturally reproducing populations and those river-specific hatchery populations cultured from them;".

[FR Doc. 03–7786 Filed 3–31–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 230

[Doc. No. 030324070–3070–01, I.D. 030703C]

Whaling Provisions: Aboriginal Subsistence Whaling Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of aboriginal subsistence whaling quota.

SUMMARY: NMFS announces the aboriginal subsistence whaling quota for bowhead whales, and other limitations deriving from regulations adopted at the 2002 Special Meeting of the International Whaling Commission (IWC). For 2003, the quota is 75 bowhead whales struck. This quota and other limitations will govern the harvest of bowhead whales by members of the Alaska Eskimo Whaling Commission (AEWC).

DATES: Effective April 1, 2003.

ADDRESSES: Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Chris Yates, (301) 713–2322.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (16 U.S.C. 916 *et seq.*). Regulations that implement the Act, found at 50 CFR 230.6, require the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 2002 Special Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock. The bowhead quota was based on a joint request by the United States and the Russian Federation, accompanied by documentation concerning the needs of 2 Native groups: Alaska Eskimos and Chukotka Natives in the Russian Far East.

This action by the IWC thus authorized aboriginal subsistence whaling by the AEWC for bowhead whales. This aboriginal subsistence harvest is conducted in accordance with a cooperative agreement between NOAA and the AEWC.

The IWC set a 5–year block quota of 280 bowhead whales landed. For each of the years 2003 through 2007, the number of bowhead whales struck may not exceed 67, except that any unused portion of a strike quota from any year, including 15 unused strikes from the 1998 through 2002 quota, may be carried forward. No more than 15 strikes may be added to the strike quota for any 1 year. At the end of the 2002 harvest, there were 15 unused strikes available for carry-forward, so the combined strike quota for 2003 is 82 (67 + 15).

This arrangement ensures that the total quota of bowhead whales landed and struck in 2003 will not exceed the quotas set by the IWC. Under an arrangement between the United States and the Russian Federation, the Russian natives may use no more than seven strikes, and the Alaska Eskimos may use no more than 75 strikes.

NOAA is assigning 75 strikes to the Alaska Eskimos. The AEWC will allocate these strikes among the 10 villages whose cultural and subsistence needs have been documented in past requests for bowhead quotas from the IWC, and will ensure that its hunters use no more than 75 strikes.

Other Limitations

The IWC regulations, as well as the NOAA rule at 50 CFR 230.4(c), forbid the taking of calves or any whale accompanied by a calf.

NOAA rules (at 50 CFR 230.4) contain a number of other prohibitions relating to aboriginal subsistence whaling, some of which are summarized here. Only licensed whaling captains or crew under the control of those captains may engage in whaling. They must follow the provisions of the relevant cooperative agreement between NOAA and a Native American whaling organization. The aboriginal hunters must have adequate crew, supplies, and equipment. They may not receive money for participating in the hunt. No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native handicrafts. Captains may not continue to whale after the relevant quota is taken, after the season has been closed, or if their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Dated: March 25, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–7785 Filed 3–31–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 62
Tuesday, April 1, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–280–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes, and Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–200, –300, –320, –500 series airplanes, and Model ATR72 series airplanes. This proposal would require replacement of a certain Automatic Takeoff Power Control System (ATPCS) test selector switch with a different test selector switch. This action is necessary to prevent shorting of a contact in the ATPCS test selector switch due to abnormal wear of contact surfaces, which could result in dual engine power drop with associated loss of both alternating current wild and main hydraulic power during ground maneuvers, and consequent reduced controllability of the airplane and increased flight crew workload. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 1, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–280–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–280–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–280–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–280–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–200, –300, –320, and –500 series airplanes, and Model ATR72 series airplanes. The DGAC advises that it has received several reports of dual engine power drop during ground maneuvers, with associated loss of both alternating current wild (ACW) and main hydraulic power. Investigation revealed abnormal wear of contact surfaces within the IPP JANCO ATPCS (Automatic Takeoff Power Control System) test selector switch. The abnormal wear is suspected to have caused contact shorting. (Each time the ATPCS test selector switch was replaced, the malfunction cleared.) Due to the different governing modes applicable during these operating phases, the malfunction can only occur during taxiing or landing, not during takeoff or in flight. Shorting of the contact in the ATPCS test selector switch due to abnormal wear of contact surfaces, if not corrected, could result in dual engine power drop with associated loss of both ACW and main hydraulic power during ground maneuvers, and consequent reduced controllability of the airplane and increased flight crew workload.

Explanation of Relevant Service Information

Aerospatiale has issued Avions de Transport Regional Service Letters ATR42–61–5012 (for Model ATR42 series airplanes) and ATR72–61–6008 (for Model ATR72 series airplanes), both dated April 23, 2002, which describe procedures for replacing the IPP JANCO ATPCS test selector switch on panel 114VU (FIN 22KF) with an IEC Electronique test selector switch. Accomplishment of the actions specified in the applicable service letter is intended to adequately address the identified unsafe condition. The DGAC classified these actions as mandatory and issued French airworthiness directives 2001–214–084(B) and 2001–215–057(B), both dated May 30, 2001, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service letter described previously.

Cost Impact

The FAA estimates that 133 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $536 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $103,208, or $776 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 2001–NM–280–AD.

Applicability: Model ATR42–200, –300, –320, –500 series airplanes, and Model ATR72 series airplanes; certificated in any category; equipped with IPP JANCO Automatic Takeoff Power Control System (ATPCS) test selector switch, part number (P/N) ACE 0002; except those airplanes having received modification 5162 in production and on which no replacement of the ATPCS test selector switch has been performed afterwards.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent shorting of a contact in the ATPCS test selector switch due to abnormal wear of contact surfaces, which could result in dual engine power drop with associated loss of both alternating current wild and main hydraulic power during ground maneuvers, and consequent reduced controllability of the airplane and increased flight crew workload, accomplish the following:

Replacement

(a) Within 5 years after the effective date of this AD, replace the IPP JANCO Automatic Takeoff Power Control System (ATPCS) test selector switch having P/N ACE 0002 on panel 114VU (FIN 22KF) with an IEC Electronique test selector switch having P/N 097–037–00, per Avions de Transport Regional Service Letters ATR42–61–5012 (for Model ATR42 series airplanes) or ATR72–61–6008 (for Model ATR72 series airplanes), both dated April 23, 2002; as applicable.

Parts Installation

(b) As of the effective date of this AD, no person shall install an IPP JANCO ATPCS test selector switch, P/N ACE 0002, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 2001–214–084(B) and 2001–215–057(B), both dated May 30, 2001.

Issued in Renton, Washington, on March 26, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7749 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–33–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 series airplanes. This proposal would require revising the airplane flight manual to include operational limitations for use of the autopilot, and installing two placards that advise the flight crew to check the pitch trim before descent. This action is necessary to prevent pitch trim upsets if the pitch trim actuators jam or freeze, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 1, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–33–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–33–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), PO Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–33–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–33–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 series airplanes. The DAC advises that several events involving pitch trim upsets have occurred on these airplanes during the autopilot coupled descent phase of flight. The pitch trim upsets have been attributed to jammed or frozen pitch trim actuators. As the airplane ascends through visible moisture, the pitch trim actuators can freeze in a position trimmed for cruise flight. During a coupled descent, the autopilot will attempt to retrim the airplane, and, if the actuators are frozen, the control cables in the pitch trim system can become stretched. If the autopilot is subsequently disengaged for any reason, the spring-back effect caused by the sudden release of the tension in the stretched cables could result in a pitch upset. This condition, if not corrected, could result in reduced controllability of the airplane.

Airplane Flight Manual (AFM) Revisions

The DAC advises that the flight crew must check the pitch trim before any descent. The check will alert the crew to a possible frozen or jammed actuator and enable the crew to take appropriate action to prevent a pitch upset. The check procedures are described in certain AFM revisions, which the DAC has mandated.

Explanation of Relevant Service Information

The manufacturer has issued EMBRAER Service Bulletin 120–25–0262, dated October 15, 2001; and Change 01, dated September 3, 2002. The service bulletins describe procedures for installing two placards that advise the flight crew to check the pitch trim before descent. The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directive 2001–06–01R1, dated November 28, 2001, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require revising the AFM to include operational limitations for use of the autopilot, and installing two placards that advise the flight crew to check the pitch trim before any descent.

Differences Between Proposed AD and Brazilian Airworthiness Directive

The Brazilian airworthiness directive mandates a 20-flight-hour compliance time to "add a copy of [the] AD to the AFM" to enforce certain procedures, and a 400-flight-hour compliance time to "incorporate the applicable AFM revision" for revised procedures. This proposed AD would require that the AFM be revised within 100 flight hours. An AD that requires an AFM revision sets forth a single compliance time that applies to the incorporation of the revised language into the AFM as well as adherence to the revised procedures. The FAA has determined that a 100-flight-hour compliance time is an appropriate interval that will maintain an adequate level of safety.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 233 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $13,980, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira De Aeronautica S.A. (Embraer): Docket 2003–NM–33–AD.

Applicability: All Model EMB–120 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent pitch trim upsets if the pitch trim actuators jam or freeze, which could result in reduced controllability of the airplane, accomplish the following:

Revision of Airplane Flight Manual (AFM): AFM–120/794

(a) Within 100 flight hours after the effective date of this AD, revise the FAA-approved AFM, EMBRAER AFM–120/794, as specified in paragraphs (a)(1) and (a)(2) of this AD. These actions may be accomplished by inserting a copy of this AD into the AFM.

(1) Revise the Flight Controls Failures paragraph of the Abnormal Procedures section by replacing the existing Elevator Trim Jamming procedure with the following:

"Elevator Trim Jamming:

Control Wheel	Hold Firmly
Autopilot	Disengage
Airspeed	Reduce

Note: Minimum airspeed with flap 0°—160 KIAS

Pitch trim command	Check all switches and elevator trim wheel

If pitch trim is recovered: Re-trim the airplane and continue the flight with the autopilot disengaged, not exceeding the airspeed when the trim was recovered.
If pitch trim is not recovered: Land at the nearest suitable airport.
Approach and landing configuration:

Landing gear	Down
Flaps	25
Airspeed	Vref25

Caution: Do Not Try to Re-Engage the Autopilot."

(2) Revise the Normal Procedures section of the AFM, after the current checklist item for activating the FASTEN BELTS switch, by inserting the following:

"Pitch Trim System Check:

Control Wheel	Hold firmly
Autopilot	Disengage
Power Levers	As required
Elevator Trim Wheels	As required

Caution: Manually Set the Elevator Trim Wheels To the Required Descent Attitude.

If any trim system binding (if trim wheel rotates more than one trim wheel index mark after being released), or abnormal trim operation is observed:

Elevator Trim Jamming Procedure	Perform

Caution: Do Not Try To Re-Engage the Autopilot.

If no abnormal trim operation is observed:

Flight Director Vertical Mode	As required
Autopilot	Reengage"

AFM Revision: Collins APS–65B Autopilot AFM Supplement

(b) Concurrently with the AFM revisions required by paragraph (a) of this AD, revise the Limitations section of the Collins APS–65B Autopilot System Supplement to include the following (this may be accomplished by inserting a copy of this AD into the AFM Supplement):

"(1) The autopilot must not be used during descent unless a trim check has been performed successfully prior to descent, as follows:
Pitch Trim System Check:

Control Wheel	Hold firmly
Autopilot	Disengage
Power Levers	As required
Elevator Trim Wheels	As required

Caution: Manually Set the Elevator Trim Wheels to the Required Descent Attitude.

If any trim system binding (if trim wheel rotates more than one trim wheel index mark after being released), or abnormal trim operation is observed:

Elevator Trim Jamming Procedure	Perform

Caution: Do Not Try To Re-Engage the Autopilot.

If no abnormal trim operation is observed:

Flight Director Vertical Mode	As required
Autopilot	Reengage

(2) If an elevator trim jamming is detected during flight and the pitch trim system resumes normal operation on ground, only a ferry flight using a special permit may be performed to return the aircraft to a maintenance base for replacement of the actuators. In this case, the use of autopilot is prohibited."

Placard Installation

(c) Within 300 flight hours after the effective date of this AD, install two placards on the glareshield, advising the flight crew to check the pitch trim before any descent, in accordance with EMBRAER Service Bulletin 120–25–0262, dated October 15, 2001; or Change 01, dated September 3, 2002.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance and/or Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2001–06–01R1, dated November 28, 2001.

Issued in Renton, Washington, on March 26, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7750 Filed 3–31–03; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–61–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 365 N3 and EC 155B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS 365 N3 and EC 155B helicopters that would have revised the Airworthiness Limitations section of the maintenance manuals by establishing a new service life limit for the Fenestron pitch change control rod (control rod). That proposal was prompted by a failure of a control rod on a prototype helicopter that led to a precautionary landing. This action revises the proposed rule by requiring replacement of the control rod with an improved reinforced steel airworthy control rod. The actions specified by this proposed AD are intended to prevent failure of the control rod, loss of control of the tail rotor, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before June 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–61–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–SW–61–AD." The postcard will be date stamped and returned to the commenter.

Discussion

A proposal to amend 14 CFR part 39 to add an AD for Eurocopter Model AS 365 N3 and EC 155B helicopters was published a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 2, 2002 (67 FR 61843). That NPRM proposed to reduce the current service life limit of 1,500 hours time in service (TIS) to 300 hours TIS for the control rod, part number (P/N) 365A33–6161–21, and proposed to require removing the control rod:

- Before further flight for helicopters with control rods having 700 or more hours TIS;
- Within 20 hours TIS for helicopters with control rods having 500 or more hours TIS, but less than 700 hours TIS; and
- Within 30 hours TIS for helicopters with control rods having more than 270 hours TIS and less than 500 hours TIS.

The proposed AD would also have required revising the Airworthiness Limitations section of the maintenance manuals to reflect the new retirement life of 300 hours TIS for the control rod. That NPRM was prompted by a failure of a control rod on a prototype helicopter that led to a precautionary landing. That condition, if not corrected, could result in loss of control of the tail rotor and subsequent loss of control of the helicopter.

Since issuing that NPRM, the manufacturer has made available a newly designed, reinforced steel control rod. Therefore, based upon the adoption of the improved-design control rod by the airworthiness authority of the country in which the product was manufactured, we are proposing to adopt a one-time replacement of the control rod rather than our original proposal to replace the control rod initially and thereafter at 300 hours TIS intervals. In addition, we have made other changes to the proposal.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The Direction Générale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS 365 N and Model EC 155B helicopters. The DGAC advises that a control rod failure occurred on a prototype aircraft and mandates removing control rod, P/N 365A33–6161–21, at certain times depending on the number of helicopter flight hours, and replacing it with a reinforced steel control rod, P/N 365A33–6214–20.

Eurocopter has issued Alert Telex No. 04A005 for Model EC 155B helicopters, and Alert Telex No. 01.00.55 for Model AS 365 N3 helicopters, both dated July 4, 2002. The alert telexes specify removing the control rod, P/N 365A33–6161–21, and replacing it with a reinforced steel control rod, P/N 365A33–6214–20. The DGAC classified these alert telexes as mandatory and issued AD No. 2002–472–057(A) for Model AS 365 N3 helicopters, and AD No. 2002–473–006(A) for Model EC 155B helicopters. Both AD's are dated September 18, 2002, and were issued to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

An unsafe condition is likely to exist or develop on other helicopters of these same type designs registered in the United States. Therefore, the proposed

AD would require removing the control rod, P/N 365A33–6161–21, and replacing it with a reinforced steel control rod, P/N 365A33–6214–20.

The FAA estimates that 3 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per helicopter to remove and replace the control rod, and that the average labor rate is $60 per work hour. Required parts would cost approximately $2,677. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,391.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2001–SW–61–AD.

Applicability: Model AS 365 N3 helicopters with MOD 0764B39 (Quiet Fenestron) and Model EC 155B helicopters with tail rotor pitch change control rod (control rod), part number (P/N) 365A33–6161–21, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the control rod, loss of control of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the control rod, P/N 365A33–6161–21, and replace it with a reinforced steel control rod, P/N 365A33–6214–20, in accordance with the following table:

Remove the control rod:	For control rods with:
Before further flight	700 or more hours TIS.
Within 20 hours TIS	500 or more hours TIS but less than 700 hours TIS.
Within 30 hours TIS	More than 270 hours TIS and less than 500 hours TIS.

Note 2: Eurocopter Alert Telex No. 04A005, for Model EC 155B helicopters, and Alert Telex No. 01.00.55, for Model AS 365 N3 helicopters, both dated July 4, 2002, pertain to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 2002–472–057(A) for Model AS 365 N3 helicopters, and AD No. 2002–473–006(A) for Model EC 155B helicopters. Both AD's are dated September 18, 2002.

Issued in Fort Worth, Texas, on March 24, 2003.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–7596 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–47571; File No. S7–07–03]

RIN 3235–AI78

Request for Comment on the NYSE Petition Relating to Participant Fee Exemptions

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comments.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") seeks comment on a petition ("NYSE Petition") submitted by the New York Stock Exchange, Inc. ("NYSE"), as a member of the Consolidated Tape Association ("CTA"). The NYSE Petition requests that the Commission amend the CTA Plan and the CQ Plan (collectively, the "Plans") to delete the provisions that exempt any participant in the Plans ("Participant") from market data fees if the Participant receives the data for its internal use in regulating its market ("Participant Fee Exemptions"). The NYSE Petition would require all Participants to pay for CTA and CQS market data whether such data is received or used for regulation or other purposes. The Commission seeks comment on whether it should act on the NYSE Petition and the effects that eliminating the Participant Fee Exemptions would have on Participants in the National Market System.

DATES: Comments must be received on or before May 1, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only.

Persons wishing to submit written comments should send three copies to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–07–03. Comments submitted by e-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Any of the following attorneys in the Division of Market Regulation, Securities and Exchange Commission; 450 Fifth Street, NW., Washington, DC 20549–1001: Alden S. Adkins at (202) 942–0180; Katherine A. England at (202) 942–0154; Sapna C. Patel at (202) 942–0166; or Ian K. Patel at (202) 942–0089.

SUPPLEMENTARY INFORMATION:

I. Background

Section XII(b)(iv) of the CTA [2] Plan and section IX(b)(iv) of the CQ Plan provide, in relevant part, that no Participant may be charged for receiving or using any portion of the CTA and CQ Networks' last sale price and quotation information, provided that such information is: (1) Furnished to the Participant "only at premises occupied solely by such Participant or on the trading floor or trading floors (as the term is generally understood) of such Participant"; (2) used by the Participant "solely for regulatory and surveillance purposes, or for any other approved purposes"; and (3) not "made available [by the Participant] to any person not located within or on, such premises or trading floor." [3]

On February 16, 2001, the NYSE filed the NYSE Petition with the Commission requesting that the Commission, pursuant to Section 11A of the Act [4] and Rule 11Aa3–2(b)(2) thereunder,[5] amend the CTA and CQ Plans to remove the Participant Fee Exemptions.[6] The NYSE Petition is described in more detail in Part II below. We note that this is not the first time the Commission has been asked to take action related to these paragraphs of the Plans.[7]

II. Summary of the NYSE Petition

The NYSE is requesting that the Commission, pursuant to Rule 11Aa3–2(b)(2) of the Act, amend the CTA and CQ Plans to delete the Participant Fee Exemptions. The Participant Fee Exemptions are found in the section of each Plan that regulates Plan expenses and revenues, including the imposition of market data charges on data recipients. They specify that each of the Participants is exempt from market data charges (other than access fees) if it is in compliance with the requisite market data contract. According to the Participant Fee Exemptions, no Participant may be charged for receiving or using any portion of the CTA and CQ Networks' last sale price information, provided that such information is: (1) Furnished to the Participant "only at premises occupied solely by such Participant or on the trading floor or trading floors (as the term is generally understood) of such Participant'; (2) used by the Participant "solely for regulatory and surveillance purposes, or for any other approved purposes'; and (3) not "made available [by the Participant] to any person not located within or on, such premises or trading floor."

The NYSE states that the Participant Fee Exemptions, adopted in 1979, applied to practices used by the NYSE and AMEX at that time. However, as the technological and structural environment of the markets have changed, the NYSE represents that many Participants believe that the Participant Fee Exemptions are no longer desirable. The NYSE believes that the Participant Fee Exemptions create perceived inequities and interpretative disputes over their plain meaning. To address this problem, the NYSE requests that the Commission amend the Plans to delete Section XII(b)(iv) of the CTA Plan, and Section IX(b)(iv) of the CQ Plan, which would effectively eliminate the Participant Fee Exemptions in their entirety.

The NYSE believes that the elimination of the Participant Fee Exemptions will satisfy the standards of fairness mandated by the Act and the avoidance of unreasonable discrimination.[8] The NYSE, however, asserts that an alternative to eliminating the Participant Fee Exemptions would be to expand them in an attempt to level the playing field among market makers. However, the NYSE believes that this would simply redraw the boundaries of fee exemptions for devices, which would only complicate the surveillance of market data, as new trading structures and technologies change the nature of such boundaries. Further, the NYSE asserts that such an alternative would simply result in future disputes over the boundaries of fee exemptions for devices. The NYSE also believes that expanding fee exemptions would only complicate market data administration and increase the policing burden.

The NYSE believes that favorable action on the NYSE Petition by the Commission would be beneficial in several ways. First, the NYSE believes that the elimination of the Participant Fee Exemptions would eliminate future grievances relating to the application of the Participant Fee Exemptions by eliminating the perception of inequity that the Participant Fee Exemptions have caused, or may cause in the future. Second, the NYSE believes that the elimination of the Participant Fee Exemptions would eliminate the deviation of revenue sharing among the Participants away from the revenue sharing formulae. Finally, the NYSE believes that the elimination of the

[1] Personal identifying information, such as names or e-mail addresses, will not be edited from electronic submission. Submit only information that you wish to make publicly available.

[2] CTA is an association consisting of representatives from the American Stock Exchange LLC ("AMEX"); The Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Exchange, Inc.; the Philadelphia Stock Exchange, Inc.; the Cincinnati Stock Exchange, Inc.; the Boston Stock Exchange, Inc.; and the Chicago Board Options Exchange, Inc. CTA's function is to oversee the dissemination, on a current and continuous basis, of last sale prices of transactions in securities listed on a national securities exchange.

[3] The CTA Plan, pursuant to which markets collect and disseminate last sale price information for securities listed on national securities exchanges, is a "transaction reporting plan" under Rule 11Aa3–1 of the Securities Exchange Act of 1934 ("Act"), 17 CFR 240.11Aa3–1, and a "national market system plan" under Rule 11Aa3–2 of the Act, 17 CFR 240.11Aa3–2. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for securities listed on national securities exchanges, is also a "national market system plan" under Rule 11Aa3–2 of the Act, 17 CFR 240.11Aa3–2.

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 240.11Aa3–2(b)(2).

[6] *See* letter to Jonathan G. Katz, Secretary, Commission, from Robert G. Britz, Group Executive Vice President, NYSE, dated February 14, 2001.

[7] *See In the Matter of the Application of the Chicago Board Options Exchange*, Administrative Proceeding File No. 3–10561 (March 13, 2002) and *In the Matter of the Application of the Chicago Board Options Exchange*, Administrative Proceeding File No. 3–10561 (March 5, 2003). *See also In the Matter of the Application of the Cincinnati Stock Exchange, Inc.*, Administrative Proceeding File No. 3–9967.

[8] The NYSE believes that repealing the Participant Fee Exemptions would place the Plans on equal footing with the national market system plan governing market data relating to over-the-counter securities, which does not provide for similar fee exemptions for participants, and which requires the participating markets and their remotely located market makers to pay the plan's fees.

Participant Fee Exemptions would allow each Participant to decide individually whether or not to pass the fees for market data through to the members that use such data.

III. General Request for Comments

The Commission is seeking comment on the NYSE Petition in general. More specifically, the Commission is requesting comments on whether it should act on the NYSE Petition. The Commission is also seeking comment on the effects of the NYSE Petition on Participants and on the National Market System as a whole.

Dated: March 26, 2003.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–7730 Filed 3–31–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 49

[REG–141097–02]

RIN 1545–BB18

Excise Taxes; Communications Services, Distance Sensitivity

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the definition of toll telephone service for purposes of the communications excise tax. These regulations affect providers and purchasers of communications services.

DATES: Written and electronic comments and requests for a public hearing must be received by June 30, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–141097–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:PA:RU (REG–141097–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http: www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning submissions, LaNita Van Dyke, (202) 622–7180; concerning the regulations, Cynthia McGreevy (202) 622–3130 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Facilities and Services Excise Tax Regulations (26 CFR part 49) relating to the definition of toll telephone service.

Section 4251 imposes tax on amounts paid for certain communications services, including local and toll telephone service. Section 4252(b)(1) provides that toll telephone service means a telephonic quality communication for which there is a toll charge that varies in amount with the distance and elapsed transmission time of each individual communication.

Section 4252(b)(1), as enacted in 1965, describes the long distance telephone service sold to residential and most business subscribers under the 1965 Federal Communications Commission rules. At that time, the charge for a long distance telephone call increased as the duration of the call increased and generally increased as the distance between the originating telephone station and the terminating telephone station increased. By the late 1990's, most carriers had moved toward a fee structure that includes a flat per-minute rate for domestic calls.

In 1979, the Treasury Department published Rev. Rul. 79–404 (1979–2 C.B. 382), which stands for the principle that a long distance telephone call for which the charge varies with elapsed transmission time but not with distance is toll telephone service described in section 4252(b)(1).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Cynthia McGreevy, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 49

Excise taxes, Reporting and recordkeeping requirements, Telephone, Transportation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 49 is proposed to be amended as follows:

PART 49—FACILITIES AND SERVICES EXCISE TAXES

1. The authority citation for part 49 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

2. Section 49.4252–0 is added to read as follows:

§ 49.4252–0 Section 4252(b)(1); distance sensitivity.

(a) *In general.* For a communications service to constitute toll telephone service described in section 4252(b)(1), the charge for the service need not vary with the distance of each individual communication.

(b) *Effective date.* This section applies to amounts paid on and after the date of publication of these regulations in the **Federal Register** as final regulations.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–7813 Filed 3–31–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 75 and 90

RIN 1219–AB14

Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; corrections.

SUMMARY: This document corrects errors that appeared in MSHA's preamble and proposed rule for Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 202–693–9440.

SUPPLEMENTARY INFORMATION: On March 6, 2003, (68 FR 10784), MSHA published a proposed rule in the **Federal Register** that would require mine operators to verify through sampling the effectiveness of the dust control parameters for each mechanized mining unit (MMU) specified in the mine ventilation plan. For samples to be valid, the operator would be required to sample on a production shift during which the amount of material produced by a MMU is at or above the verification production level using only the dust control parameters listed in the ventilation plan.

The **Federal Register** will be publishing additional corrections to printing errors.

Please make the following corrections to that preamble:

1. On page 10819, column three, line 43, change [(3.54 mg/m^3/3]" to read "[(3.54 mg/m^3)/3]".

2. On page 10819, column three, line 44, change [(174 μg/m^3/3]" to read "[(174 μg/m^3)/3]".

3. On page 10835, column two, line 33, change "bulletin report" to read "bulletin board."

4. On page 10854, column one, line 69, change "Table 11," to read "Table 119."

5. On page 10861, column two, line one, change "*http://wwww.msha.gov/REGSINFO.HTM*" to read "*http://www.msha.gov/REGSINFO.HTM*".

Dated: March 21, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 03–7753 Filed 3–31–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 72

RIN 1219–AB18

Determination of Concentration of Respirable Coal Mine Dust

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; reopening of record; correction.

SUMMARY: This document corrects errors which appeared in a notice of reopening addressing the joint Department of Labor and Department of Health and Human Services proposed rule, "Determination of Concentration of Respirable Coal Mine Dust."

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 202–693–9440.

SUPPLEMENTARY INFORMATION: On March 6, 2003 (68 FR 10940) MSHA published a notice of reopening addressing the July 7, 2000 proposed rule, (65 FR 42068), Determination of Concentration of Respirable Coal Mine Dust.

The proposed rule announced that the Secretary of Labor and the Secretary of Health and Human Services would find that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift. The Secretaries proposed to rescind a previous 1972 finding by the Secretary of the Interior and the Secretary of Health, Education and Welfare, on the accuracy of single shift sampling.

This document makes the following correction to the notice of reopening only as published on March 6, 2003.

Correction

On page 10947, column one, line 50, change the equation

$$A = P_{y'} - P_{x'}$$

where $y' = y/x$ and x and $x' = e^{a0xage}$

to read

$$\Delta' = P_{y'} - P_{x'}$$

where $y' = y/x$ and $x' = e^{a_0 + a_1 \times age}$

Dated: March 21, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 03–7754 Filed 3–31–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD01–02–129]

RIN 2115–AA98

Anchorage Regulations; Rockland, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the anchorage regulations for Rockland Harbor by redesignating anchorage ground "C" as a special anchorage area and reorienting anchorage ground "A". This proposed action is necessary to (1) alert mariners that vessels moored within special anchorage "C", are not required to sound signals or display anchor lights or shapes, and (2) provide a wider navigable channel between the two anchorages. This action is intended to increase the safety of life and property on navigable waters, improve the safety of anchored vessels in both anchorage "A" and the special anchorage area, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: Comments and related material must reach the Coast Guard on or before June 2, 2003.

ADDRESSES: You may mail comments and related material to Commander (oan) (CGD01–02–129), First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110, or deliver them to room 628 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 628, First Coast Guard District Boston, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. J. J. Mauro, Commander (oan), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, Telephone (617) 223–8355.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–129), indicate the specific section of this

document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of comments received.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Office of Aids to Navigation Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed rule is in response to a request made by the City of Rockland and Hartley Marine Services, Rockland, Maine, to accommodate the increased number of vessels mooring in Penobscot Bay, Rockland Harbor, and provide for safe navigation between the anchorages within that harbor. This proposed rule would re-designate anchorage ground "C", identified in 33 CFR 110.130(a)(3), as a special anchorage area and reorient anchorage "A", identified in 33 CFR 110.130(a)(1).

The Coast Guard has determined that the small commercial and recreational vessels now anchoring in anchorage "C" do not have the ability to maintain anchor lights sufficient to meet anchorage ground requirements. Vessel traffic, as well as users of anchorage "C", would transit and anchor more safely when anchorage "C" is designated a special anchorage area, limited to vessels less than 20 meters in length, since transiting vessels will neither expect sound signals nor anchor lights or shapes from all moored vessels. Thus, establishing a special anchorage area will better meet future vessel traffic expectations of that area when it is redesignated as such and limited to vessels no greater than 20 meters in length.

In order to facilitate the safe and efficient flow of vessel traffic and commerce between anchorages "A" and the newly designated special anchorage area, the Coast Guard proposes to reorient anchorage "A". Reorienting anchorage "A" would provide a wider channel between the two above-mentioned anchorages. Additionally, a wider channel would allow safer passage for vessels anchoring in anchorage "A" and the special anchorage area as well as vessel traffic transiting via Atlantic Point.

In developing this proposed rule, the Coast Guard has consulted with the Army Corps of Engineers, Northeast, located at 696 Virginia Rd., Concord, MA 01742.

Discussion of Proposed Rule

This proposed rule redesignates one anchorage ground and reorients another. The Coast Guard proposes to amend 33 CFR 110.130, Rockland Harbor, by removing anchorage ground "C", identified in 33 CFR 110.130(a)(3), then establishing that same area as a special anchorage area. The special anchorage area will be established and identified in an added section, 33 CFR 110.4. The special anchorage area would be limited to vessels no greater than 20 meters in length. Vessels not more than 20 meters in length are not required to sound signals as required by rule 35 of the Inland Navigation Rules (33 U.S.C. 2035) or exhibit anchor lights or shapes required by rule 30 of the Inland Navigation Rules (33 U.S.C 2030) when at anchor in a special anchorage area.

The Coast Guard also proposes to reorient anchorage ground "A", identified in 33 CFR 110.130(a)(1) to create a wider channel between anchorage "A" and the special anchorage area. Reorienting anchorage "A" would facilitate the safe and efficient flow of vessel traffic and commerce between anchorages "A" and the newly designated special anchorage area. The wider channel would also allow unrestricted navigation for large commercial vessels and fishing vessels requiring access to facilities in the vicinity of Atlantic Point.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This finding is based on the fact that this proposal conforms to the changing needs of the harbor, the changing needs of recreational, fishing and commercial vessels, and to make the best use of the available navigable water. This proposed rule is in the interest of safe navigation and protection of the Port of Rockland and the marine environment.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule should have minimal economic impact on lobster fishing vessels and owners or operators of vessels intending to transit to facilities in the vicinity of Atlantic Point or anchor in the newly created special anchorage area in Rockland Harbor.

This finding is based on the fact that the proposed change in the anchorage grounds and establishment of a special anchorage area conform to the changing geography of the harbor, the changing needs of commercial vessels and the increasing amount of recreational traffic in the area. They are all proposed in the interest of safe navigation and protection of the marine environment.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact John J. Mauro at the address listed in **ADDRESSES** above.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(f), of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**. This proposed rule fits paragraph 34(f) as it revises one anchorage ground and establishes a special anchorage area.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 is revised to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; Department of Homeland Security Delegation No. 0170 and 33 CFR 1.05–1(g).

2. Add § 110.4 to read as follows:

§ 110.4 Penobscot Bay, Maine.

(a) *Rockland Harbor.* Beginning at a point bearing 244°, 1,715 yards, from Rockland Breakwater Light; thence 260°, 490 yards, to a point bearing 248° from Rockland Breakwater Light; thence 350°, 580 yards, to a point bearing 263° from Rockland Breakwater Light; thence 83°, 480 yards, to a point bearing 263° from Rockland Breakwater Light; and thence 169°, 550 yards, to the point of beginning.

This area is limited to vessels no greater than 20 meters in length.

Note to paragraph (a): This area is primarily for use by yachts and other recreational craft. Temporary floats or buoy for marking the location of the anchor may be used. All moorings shall be so placed that no vessel, when anchored, shall at any time extend beyond the limits of the area. All anchoring in the area shall be under the supervision of the local harbormaster or such authority as may be designated by authorities of the City of Rockland, Maine. Requests for placement of mooring buoys shall be directed to the local government. Fixed mooring piles or stakes are prohibited.

3. Remove § 110.130(a)(3).

4. Revise § 110.130 to read as follows:

§ 110.130 Rockland Harbor, Maine.

(a) *The anchorage grounds.* (1) Anchorage A. Beginning at a point bearing 158°, 1,075 yards, from Rockland Breakwater Light; thence 252°, 2,020 yards, to a point bearing 224° from Rockland Breakwater Light; thence 345°, 740 yards; to a point bearing 242° from Rockland Breakwater Light; thence 72°, 1,300 yards, to a point bearing 222° from Rockland Breakwater Light; and thence 120°, 1,000 yards, to the point of beginning.

(2) * * *

(b) *Regulations.* (1) Anchorages A and B are general anchorage grounds reserved for merchant vessels, commercial vessels or passenger vessels over 65 feet in length. Fixed moorings, piles or stakes are prohibited.

(2) A distance of approximately 500 yards shall be left between Anchorages A and B for vessels entering or departing from the Port of Rockland. A distance of approximately 100 yards shall be left between Anchorage A and the Special Anchorage Area for vessels entering or departing facilities in the vicinity of Atlantic Point. Any vessel anchored in these anchorages shall be capable of moving and when ordered to move by the Captain of the Port shall do so with reasonable promptness.

* * * * *

Dated: March 3, 2003.

Vivien S. Crea,

RADM, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 03–7806 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–202]

RIN 1625–AA00

Safety Zones; Northeast Ohio

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish Safety Zones for annual fireworks displays located in Northeast Ohio. These rules are intended to manage vessel traffic in Northeast Ohio during each event to protect life and property.

DATES: Comments must be received on or before 60 days from the publication date of this notice.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office (MSO) Cleveland (CGD09–03–202), 1055 East Ninth Street, Cleveland, Ohio, 44114. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and available for inspection or copying at Coast Guard MSO Cleveland between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Allen Turner, U.S. Coast Guard Marine Safety Office Cleveland, at (216) 937–0128.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–03–202), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please include a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard MSO Cleveland at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

A total of eight permanent safety zones would be established in Northeast Ohio for annual firework displays. The safety zones would be activated only during a firework display at their respective location. There is a total of ten separate annual firework events in Northeast Ohio. The safety zones would be established to protect the public from potential firework debris.

Discussion of Proposed Rule

The safety zones would be established around the launch site in the following areas:

(1) Cleveland Harbor and Lake Erie, north of Voinovich Park;

(2) Rocky River and Lake Erie, west of the river entrance;

(3) Lake Erie, North of Lakewood Park;

(4) Black River (2 locations);

(5) Mentor Harbor Beach, west bank of harbor entrance;

(6) Ashtabula, north of Walnut Beach Park; and

(7) Fairport Harbor, east of harbor entrance.

The size of each safety zone was determined using National Fire Protection Association, local fire department standards.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the short amount of time that vessels will be restricted from the zones, and the actual location of the safety zones within the waterways.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons. The proposed zone is only in effect for few hours on the day of the event. Vessel traffic can safely pass outside the proposed safety zones during the events. In cases where recreational boat traffic congestion is greater than expected and consequently obstructs shipping channels, commercial traffic may be allowed to pass through the Safety Zone under Coast Guard escort with the permission of the Captain of the Port Cleveland. Before the effective period, the Coast Guard would issue maritime advisories available to users who may be impacted through notification in the **Federal Register**, the Ninth Coast Guard District Local Notice to Mariners, and through Marine Information Broadcasts. Additionally, the Coast Guard has not received any reports from small entities negatively affected during previous events.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Cleveland (*see* **ADDRESSES.**)

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

The Coast Guard has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

2. Add § 165.919 to read as follows:

§ 165.919 Safety Zones; Annual fireworks events in the Captain of the Port Cleveland Zone.

(a) *Safety Zones.* The following areas are designated safety zones:

(1) *City of Cleveland 4th of July Fireworks Display, Cleveland, OH.*

(i) *Location.* All navigable waters of Cleveland Harbor and Lake Erie beginning at 41°30.823′ N, 081°41.620′ W (the northwest corner of Burke Lakefront Airport); continuing northwest to 41°31.176′ N, 081°41.884′ W; then southwest to 41°30.785′ N, 081°42.542′ W; then southeast to 41°30.450′ N, 081°42.222′ W (the northwest corner of dock 28 at the Cleveland Port Authority) then northeast back to the starting at 41°30.443′ N, 081°42.215′ W. All geographic coordinates are based upon North American Datum 1983 (NAD 1983).

(ii) *Expected date.* One day in the first week of July.

(2) *Dollar Bank Jamboree Fireworks Display, Cleveland, OH.*

(i) *Location.* Same as (1)(i).

(ii) *Expected date.* One Saturday evening in late July or August.

(3) *Browns Football Halftime Fireworks Display, Cleveland, OH.*

(i) *Location.* Same as (1)(i).

(ii) *Expected date.* One Sunday afternoon during NFL football season.

(4) *Lakewood City Fireworks Display, Lakewood, OH.*

(i) *Location.* All waters and adjacent shoreline of Lake Erie bounded by the arc of a circle with a 500-yard radius with its center approximate position 41° 29.755′ N,081° 47.780′ W (off of Lakewood Park)(NAD 1983).

(ii) *Expected date.* One day in the first week of July.

(5) *Cleveland Yachting Club Fireworks Display, Rocky River, OH.*

(i) *Location.* All waters and adjacent shoreline of the Rocky River and Lake Erie bounded by the arc of a circle with a 200-yard radius with its center at Sunset Point on the western side of the mouth of the Rocky River in approximate position 41°29.428′ N, 081°50.309′ W (NAD 1983).

(ii) *Expected date.* One day during the second or third week of July.

(6) *Lorain 4th of July Celebration Fireworks Display, Lorain, OH.*

(i) *Location.* The waters of Lorain Harbor bounded by the arc of a circle with a 300-yard radius with its center east of the harbor entrance on the end of the break wall near Spitzer's Marina in approximate position 41°28.591′ N, 082°10.855′ W (NAD 1983).

(ii) *Expected date.* One day during the first week of July.

(7) *Lorain Port Fest Fireworks Display, Lorain, OH.*

(i) *Location.* All waters and adjacent shoreline of Lorain Harbor bounded by the arc of a circle with a 250-yard radius with its center at approximate position 41°28.040′ N, 082°10.365′ W.

(ii) *Expected date.* One day during the third or fourth week of July.

(8) *Mentor Harbor Yacht Club Fireworks Display, Mentor, OH.*

(i) *Location.* All waters and adjacent shoreline of Lake Erie and Mentor Harbor bounded by the arc of a circle with a 200-yard radius with its center in approximate position 41°43.200′ N, 081°21.400′ W (west of the harbor entrance)(NAD 1983).

(ii) *Expected date.* One day during the first week of July.

(9) *Fairport Mardi Gras Fireworks Display, Fairport Harbor, OH.*

(i) *Location.* All waters and adjacent shoreline of Fairport Harbor and Lake Erie bounded by the arc of a circle with a 300-yard radius with its center east of the harbor entrance at Fairport Harbor Beach in approximate position 41°45.500′ N, 081°16.300′ W (NAD 1983).

(ii) *Expected date.* One day during the first or second week of July.

(10) *Ashtabula Area Fireworks Display, Ashtabula, OH.*

(i) *Location.* All waters and adjacent shoreline of Lake Erie and Ashtabula Harbor bounded by the arc of a circle with a 300-yard radius with its center west of the harbor in approximate position 41°54.167′ N, 080°48.416′ W (NAD 83).

(ii) *Expected date.* One day during the first week of July.

(b) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) Several of the safety zones in this regulation encompass portions commercial navigation channels but are not expected to adversely affect shipping. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Cleveland to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via the U.S. Coast Guard Patrol Commander (PAT COM) on Channel 16, VHF–FM.

(c) *Effective period.* The Captain of the Port Cleveland will publish at least 5 days in advance a Notice in the **Federal Register** as well as in the Ninth Coast Guard District Local Notice to Mariners the dates and times this section is in effect.

Dated: March 10, 2003.

Lorne W. Thomas,

Commander, U.S. Coast Guard, Captain of the Port Cleveland.

[FR Doc. 03–7805 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA183–4198b; FRL–7465–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determinations for Five Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania to establish and require reasonably available control technology (RACT) for five major sources of nitrogen oxides (NO_X) located in Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 1, 2003.

ADDRESSES: Written comments should be addressed to Walter K. Wilkie, Deputy Branch Chief, Air Quality Planning & Information Services Branch, Air Protection Division, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Betty Harris at (215) 814–2168 or Rose Quinto at (215) 814–2182 or via e-mail at *harris.betty@epa.gov* or *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Pennsylvania's Approval of NO_X RACT Determinations for Five Individual Sources, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: March 5, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–7641 Filed 3–31–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN214–1b; FRL–7470–8]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to Indiana's shipbuilding and ship repair volatile organic compound (VOC) rules into the Indiana State Implementation Plan (SIP). This request for a SIP revision, which was submitted by the Indiana Department of Management on August 8, 2001, revises exemption levels and compliance, recordkeeping and reporting requirements and is being approved because these revisions are enforceable and in some cases more stringent than the existing rules.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The rationale for approval is set forth in the direct final rule. If EPA receives no written adverse comments, EPA will take no further action on this proposed rule. If EPA receives written adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this action must be received by May 1, 2003.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the State's SIP revision request is available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" are used we mean the EPA.

I. What action is EPA taking today?
II. Where can I find more information about this proposal and corresponding direct final rule?

I. What Action Is EPA Taking Today?

The EPA is proposing to approve a revision to Indiana's SIP which revises exemption levels and compliance and recordkeeping requirements in its shipbuilding and ship repair VOC rules. This revision was requested by Indiana on August 8, 2001, to streamline some of the overlapping requirements between the national emission standards for hazardous air pollutants and its shipbuilding and ship repair VOC rules.

II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 4201 *et seq.*

Dated: March 4, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–7644 Filed 3–31–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[USCG–2002–11288]

RIN 1625–AA38

Rates for Pilotage on the Great Lakes; Correction

AGENCY: Coast Guard, DHS.

ACTION: Notice correcting notice of proposed rulemaking, announcing public meeting, and extending period for comment.

SUMMARY: This document corrects the notice of proposed rulemaking (NPRM) published in the **Federal Register** on January 23, 2003. It also announces a public meeting for April 14, 2003. And it also extends the NPRM's comment period through May 1, 2003, to afford the general public an opportunity for comment on the NPRM as here corrected. A review and audit of this NPRM, conducted after publication, identified an erroneous number and an error in the formula used to compute return on investment.

DATES: Effective on April 1, 2003. A public meeting will take place from 10 a.m. to 4 p.m. on April 14, 2003. Comments and related material must reach the Docket Management Facility on or before May 1, 2003.

ADDRESSES: A public meeting will take place in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington DC 20593–0001. This meeting may close early if all business is finished. To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

(2) By mail to the Docket Management Facility (USCG–2002–11288), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice or questions concerning the docket call or e-mail Tom Lawler, Chief Economist, Office of Great Lakes Pilotage (G–MW–1), U.S. Coast Guard, at telephone 202–267–1241, or tlawler@comdt.uscg.mil. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [USCG–2002–11288], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a

stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the proposed rule in view of them.

Public Meeting

A public meeting will take place from 10 a.m. to 4 p.m. on April 14, 2003, in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington DC 20593–0001. This meeting may close early if all business is finished.

Please send requests to make oral presentations to: Tom Lawler, Commandant (G–MW–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

Whether or not able to attend the public meeting, people should send written comments to the Docket Management Facility, as directed under **ADDRESSES**, during the comment period.

Need for Correction

The NPRM, as published, contained an erroneous number for the total of District 1's operating expenses and understated the total revenue required by each of the three Districts to cover operating expenses, pilots' target compensation, and return on investment. This was due to an error in the calculation used to compute the total dollar return on the investment base of one pilots' association. Because of this error, the percentage of pilotage-rate adjustment in rates for Areas 4, 5, 7, and 8 was understated by 1%; and because of this the proposed charges for pilotage services in those areas was understated, also by 1%.

Correction of Publication

Accordingly, we correct the NPRM, FR Doc. 03–1461, published January 23, 2003 (68 FR 3202), as follows (with upper-case or lower-case initial letters, as appropriate):

1. On page 3204, in the table contained in the paragraph titled "What Is the Coast Guard Proposing in This Rulemaking?", change the percentage for Area 4, increase 31%, to increase 32%; change the percentage for Area 5, increase 17%, to increase 18%; change the percentage for Area 7, increase 3%, to increase 4%; and change the percentage for Area 8, increase 28%, to increase 29%.

2. On page 3204, in Table A–DISTRICT ONE Step 1, change the figure under Total District One to $599,506.

3. On page 3204, in Table A–DISTRICT ONE Step 6, change:

Step 6, Adjustment determination	$1,356,243	$1,019,063	$2,375,306

to:

Step 6, Adjustment determination	$1,359,515	$1,022,335	$2,381,850

4. On page 3204 in Table B.—DISTRICT TWO Steps 6 and 7, change:

Step 6, Adjustment determination	$925,306	$1,712,340	$2,637,646
Step 7, Adjustment of pilotage rates	1.31 (+31%)	1.17 (+17%)	1.22 (+22%)

to:

Step 6, Adjustment determination	$931,178	$1,721,525	$2,652,703
Step 7, Adjustment of pilotage rates	1.32 (+32%)	1.18 (+18%)	1.22 (+22%)

5. On page 3204 in Table C.—DISTRICT THREE Step 6, change:

Step 6, Adjustment determination	$1,841,115	$1,156,463	$1,319,623	$4,317,201

To:

Step 6, Adjustment determination	$1,848,423	$1,161,943	$1,325,104	$4,335,471

to:

6. On page 3205, in Table C.—DISTRICT THREE Step 7, change:

Step 7, Adjustment of pilotage rate	1.20 (+20%)	1.03 (+3%)	1.28 (+28%)	1.17 (+17%)

to:

Step 7, Adjustment of pilotage rate	1.20 (+20%)	1.04 (+4%)	1.29 (+29%)	1.17 (+17%)

7. On page 3211, in the paragraph titled "Step 6: Adjustment Determination (Revenue Needed)" change the table—

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Adjustment determination	$1,356,243	$1,019,063	$2,375,306

to:

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Adjustment determination	$1,359,515	$1,022,335	$2,381,850

8. On page 3211, in the paragraph titled "Step 6: Adjustment Determination (Revenue Needed)" change the table—

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Adjustment determination	$925,306	$1,712,340	$2,637,646

to:

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Adjustment determination	$931,178	$1,721,525	$2,652,703

9. On page 3211, in the paragraph titled "Step 6: Adjustment Determination (Revenue Needed)" change the table—

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Adjustment determination	$1,841,115	$1,156,463	$1,319,623	$4,317,201

to:

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Adjustment determination	$1,848,423	$1,161,943	$1,325,104	$4,335,471

10. On page 3212, change the table—

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Adjustment of pilotage rates	1.31 (+31%)	1.17 (+17%)	1.22 (+22%)

to:

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Adjustment of pilotage rates	1.32 (+32%)	1.18 (+18%)	1.22 (+22%)

11. On page 3212, change the table—

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Adjustment of pilotage rate	1.20 (+20%)	1.03 (+4%)	1.28 (+28%)	1.17 (+17%)

to:

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Adjustment of pilotage rate	1.20 (+20%)	1.04 (+4%)	1.29 (+29%)	1.17 (+17%)

12. On page 3213, § 401.407 [Amended] in § 401.407(a), in change the table—

Service	Lake Erie (East of Southeast Shoal)	Buffalo
Six-Hour Period	$439	$439
Docking or Undocking	338	338
Any Point on the Niagara River below the Black Rock Lock	N/A	862

to:

Service	Lake Erie (East of Southeast Shoal)	Buffalo
Six-Hour Period	$442	$442
Docking or Undocking	341	341
Any Point on the Niagara River below the Black Rock Lock	N/A	869

13. On page 3214, in § 401.407(b), change the table—

Any point on or in	Southeast Shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal Port Huron Change Point	$1,156	$682	$1,500	$1,156	N/A
St. Clair River	[1] 2,012	[1] 2,332	1,513	1,176	$837
Detroit or Windsor or the Detroit River	[1] 2,012	N/A	1,513	1,513	682
Detroit Pilot Boat	1,156	1,500	682	N/A	1,513
	837	1,156	N/A	N/A	1,513

[1] When pilots are not changed at the Detroit Pilot Boat.

to:

Any point on or in	Southeast Shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$1,166	$688	$1,513	$1,166	N/A
Port Huron Change Point	[1] 2,030	[1] 2,352	1,526	1,186	$844
St. Clair River	[1] 2,030	N/A	1,526	1,526	688
Detroit or Windsor Or the Detroit River	1,166	1,513	688	N/A	1,526
Detroit Pilot Boat	844	1,166	N/A	N/A	1,526

[1] When pilots are not changed at the Detroit Pilot Boat.

14. On page 3214, § 401.410 [Amended] in § 401.410(b), change the table—

Area	Detour	Gros Cap	Any Harbor
Gros Cap	$1,479	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie Ontario	1,479	557	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	1,240	557	N/A
Sault Ste. Marie, MI	1,240	557	N/A
Harbor Movage	N/A	N/A	$557

to:

Area	Detour	Gros Cap	Any Harbor
Gros Cap	$1,493	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie Ontario	1,494	$563	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	1,252	563	N/A
Sault Ste. Marie, MI	1,252	563	N/A
Harbor Movage	N/A	N/A	$563

15. On page 3214, in § 401.410(c), change the table—

Service	Lake Superior
Six-Hour Period	$334
Docking or Undocking	319

to:

Service	Lake Superior
Six-Hour Period	$337

Service	Lake Superior
Docking or Undocking	321

Dated: March 24, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 03–7703 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register
Vol. 68, No. 62
Tuesday, April 1, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

2002 Crop Year Crambe and Sesame Seed Marketing Assistance Loan Deficiency Payments, and Direct and Counter Cyclical Program

AGENCIES: Commodity Credit Corporation, Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the Department of Agriculture is exercising its discretionary authority to designate crambe and sesame seed as eligible commodities for the 2002 crop year for the Direct and Counter Cyclical Program (DCP) and for Marketing Assistance Loans (MAL) and Loan Deficiency Payments (LDP) from the Commodity Credit Corporation (CCC). The intended effect of this notice is to inform the public of the USDA decision designating crambe and sesame seed as eligible oilseeds.

DATES: To be eligible, producers of 2002-crop crambe or sesame seed must:

(1) Submit a request for MAL and LDP at their local Farm Service Agency Service Center by close of business on March 31, 2003.

(2) Make their DCP base acreage election before May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Kimberly Graham, Price Support Division, FSA, USDA, 1400 Independence Avenue, SW., Room 4789, STOP 0512, Washington, DC 20250–0514, by phone at (202) 720–7901, or e-mail at *KGraham@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

MAL and LDP Eligibility

Section 1421.3 of 7 CFR part 1421 defines "Loan commodities" to include "other crops designated by CCC," and further defines "other crops designated by CCC," to be, "(3) As otherwise designated by CCC." Also, section 1421.5(a) provides that eligible loan commodities include, "* * * and other crops designated by CCC." Accordingly, this notice announces the Agency's extension of MAL and LDP eligibility to include crambe and sesame seed for the crop year 2002.

Also, for the loan deficiency payments for 2002 crop crambe and sesame seed only, this notice announces that the Agency will waive section 1421.6(a)(1) of 7 CFR part 1421, which requires a producer to have beneficial interest in the commodity that is tendered to CCC for a marketing assistance loan or loan deficiency payment. Producers who lost beneficial interest in the 2002-crop crambe or sesame seed are eligible for LDP's. For those LDP requests submitted after beneficial interest has been lost, the LDP rate will be based on the date beneficial interest was lost. Section 1421.6(a)(1) must be complied with and beneficial interest maintained in all other 2002-crop year commodities and for all commodities, including crambe and sesame seed, for a loan or LDP in subsequent years.

DCP Eligibility

Section 1412.103 of 7 CFR part 1412 defines "Covered commodity" to include, "* * * other oilseeds as determined by the Secretary." and defines "Other oilseeds" to include the words "* * * or, if determined and announced by CCC, another oilseed." This notice announces the extension of the CCC Direct and Counter Cyclical Program under 7 CFR part 1412 to include crambe and sesame seed as eligible commodities for the crop year 2002.

FSA and CCC are taking these actions under section 1421.2(e) of 7 CFR part 1421, and section 1412.102(e) of 7 CFR part 1412, which allow exceptions to selected program requirements. The intent is to encourage development of alternative enterprises for producers, greater planting flexibility and rural development. All other requirements for program eligibility in 7 CFR parts 1412 or 1421 will apply.

Sign-up for marketing assistance loans and requests for loan deficiency payments (LDP) must be completed by March 31, 2003. Marketing assistance loan applications, and LDP request forms are available electronically through the USDA eForms website for downloading. Base elections for DCP, loan applications and LDP request forms may be submitted at the FSA county offices.

Signed at Washington, DC, on March 27, 2003.

James R. Little,

Administrator, Farm Service Agency, Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–7937 Filed 3–28–03; 2:22 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Form FNS–143, Claim for Reimbursement (Summer Food Service Program)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the public to comment on the Food and Nutrition Service (FNS) use of Form FNS–143, Claim for Reimbursement. The Form is used to collect data to determine the amount of reimbursement sponsoring organizations participating in the Summer Food Service Program (SFSP) are eligible to receive.

DATES: To be assured of consideration, comments must be received by June 2, 2003.

ADDRESSES: Send comments or requests for copies of this information collection to Terry A. Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 636, Alexandria, Virginia 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter if public record.

FOR FURTHER INFORMATION CONTACT: Terry Hallberg, (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Title: Forms FNS–143, Claim for. Reimbursement (Summer Food Service Program).

OMB Number: 0584–0041.

Expiration Date: March 31, 2003.

Type of Request: Extension of a currently approved collection.

Abstract: The SFSP claim for reimbursement form, FNS–143, is used to collect meal and cost data from sponsoring organizations whose participation in this program is administered directly by FNS Regional Offices (Regional Office Administered Programs or ROAP). FNS Regional offices directly administer participation in this program for sponsoring organizations in Virginia and Michigan. In order to determine the amount of reimbursement sponsoring organizations are entitled to receive for meals served, they must complete these forms. The completed forms are submitted to the Child Nutrition Payments Center at the FNS Mid-Atlantic Regional Office where they are entered into a computerized payment system. The payment system computes earned reimbursement.

Earned reimbursement in the SFSP is based on performance which is measured as an assigned rate for operations and for administration per meal served, with cost comparisons to actual operational and administrative costs. To fulfill the earned reimbursement requirements set forth in SFSP regulations issued by the Secretary of Agriculture (7 CFR 225.9), the meal and cost data must be collected on form FNS–143. These forms are an intrinsic part of the accounting system being used currently by the subject programs to ensure proper reimbursement as well as to facilitate adequate recordkeeping.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: The respondents are sponsoring organizations participating in the SFSP under the auspices of the FNS ROAP.

Estimated Total Number of Respondents: 212.

Estimated Number of Responses Per Respondent: 4.

Estimated Hours Per Response: .5.

Estimated Total Annual Burden on Respondents: 424.

Dated: March 25, 2003.

George A. Braley,

Associate Administrator.

[FR Doc. 03–7589 Filed 3–31–03; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Idaho Panhandle Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Idaho Panhandle National Forest's Idaho Panhandle Resource Advisory Committee will meet Friday, April 18, 2003 at 9:30 a.m. in Coeur d'Alene, Idaho for a business meeting. The business meeting is open to the public.

DATES: April 18, 2003.

ADDRESSES: The meeting location is the Idaho Panhandle National Forests' Supervisor's Office, located at 3815 Schreiber Way, Coeur d'Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT: Ranotta K. McNair, Forest Supervisor and Designated Federal Official, at (208) 765-7369.

SUPPLEMENTARY INFORMATION: The meeting agenda will focus on reviewing project proposals for fiscal year 2003 and recommending funding for projects during the business meeting. The public forum begins at 1 p.m.

Dated: March 25, 2003.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 03–7738 Filed 3–31–03; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, April 3, 2003, at the Family Services Woodfield, 475 Clinton Ave., Bridgeport, CT 06605. The purpose of this meeting will be orientation and planning future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116) or Patrick Johnson, Jr., chair, (860) 242–2274 ext 3801. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC March 19, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–7720 Filed 3–31–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with § 351.213(2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request o Review: Not later than the last day of April 2003, interested parties may request administrative review of the following orders, findings, or suspended

investigations, with anniversary dates in April for the following periods:

	Period
Antidumping Duty Proceedings	
France: Sorbitol, A–427–001	4/1/02–3/31/03
Norway: Fresh and Chilled Atlantic Salmon, A–403–801	4/1/02–3/31/03
The People's Republic of China: Brake Rotors, A–570–846	4/1/02–3/31/03
Turkey: Certain Steel Concrete Reinforcing Bars, A–489–807	4/1/02–3/31/03
Countervailing Duty Proceedings	
Norway: Fresh and Chilled Atlantic Salmon, C–403–802	1/1/02–12/31/02
Suspension Agreements	
None	

In accordance with § 351.213 (b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of April 2003. If the Department does not receive, by the last day of April 2003, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 26, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II, for Import Administration.

[FR Doc. 03–7788 Filed 3–31–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Call for Applications for Representatives and Alternates to the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve is seeking applicants for the following vacant seats on its Reserve Advisory Council (Council): (1) Conservation, (2) Research, (1) Ocean-Related Tourism, (1) Recreational Fishing, (1) Education, (1) Citizen-At-Large. Council Representatives and Alternates are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the State of Hawaii. Applicants who are chosen as Representatives or Alternates should expect to serve three-year terms, pursuant to the Council's Charter. Persons who are interested in applying for membership on the Council as either a Representative or Alternate may obtain an application from the person or website identified under the **ADDRESSES** section below. This notice extends an original application period that began February 3 and ended on February 28. Applications received during this extension from April 1, 2003 to May 1, 2003 will be accepted for consideration. Applicants who applied during the period from February 3 to February 28 will be contacted to clarify their original applications.

DATES: Completed applications must be postmarked no later than May 1, 2003.

ADDRESSES: Applications may be obtained from Moani Pai, 6700 Kalanianaole Highway, Suite 215, Honolulu, Hawaii 96825, (808) 397–2661 or online at *http://hawaiireef.noaa.gov*. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Aulani Wilhelm, 6700 Kalanianaole Highway, Suite 215, Honolulu, Hawaii 96825, (808) 397–2657, *Aulani.Wilhelm@noaa.gov*.

SUPPLEMENTARY INFORMATION: The NWHI Coral Reef Ecosystem Reserve is a new marine protected area designed to conserve and protect the coral reef ecosystem and related natural and cultural resources of the area. The Reserve was established by Executive Order pursuant to the National Marine Sanctuaries Amendments Act of 2000

(Pub. L. 106–513). The NWHI Reserve was established by Executive Order 13178 (12/00) and Executive Order 13196 (1/01).

The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands, extending approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is adjacent to and seaward of the seaward boundary of Hawaii State waters and submerged lands and the Midway Atoll National Wildlife Refuge, and includes the Hawaiian Islands National Wildlife Refuge to the extent it extends beyond Hawaii State waters and submerged lands. The Reserve is managed by the Secretary of Commerce pursuant to the National Marine Sanctuaries Act and the Executive Orders. The Secretary has also initiated the process to designate the Reserve as a National Marine Sanctuary. The management principles and implementation strategy and requirements for the Reserve are found in the enabling Executive Orders, which are part of the application kit and can be found on the website listed above.

In designating the Reserve, the Secretary of Commerce was directed to establish a Coral Reef Ecosystem Reserve Advisory Council, pursuant to section 315 of the National Marine Sanctuaries Act, to provide advice and recommendations on the development of the Reserve Operations Plan and the proposal to designate and manage a Northwestern Hawaiian Islands National Marine Sanctuary by the Secretary.

The National Marine Sanctuary Program (NMSP) has established the Reserve Advisory Council and is now accepting applications from interested individuals for Council Representatives and Alternates for the following seven citizen/constituent positions on the Council:

1. Two (2) representatives from the non-Federal science community (Research) with experience specific to the Northwestern Hawaiian Islands and with expertise in at least one of the following areas:

A. Marine mammal science.

B. Coral reef ecology.

C. Native marine flora and fauna of the Hawaiian Islands.

D. Oceanography.

E. Any other scientific discipline the Secretary determines to be appropriate.

2. One (1) representative from a non-governmental wildlife/marine life, environmental, and/or conservation organization (Conservation).

3. One (1) representative from the recreational fishing industry that conducts activities in the Northwestern Hawaiian Islands (Recreational Fishing).

4. One (1) representative from the ocean-related tourism industry (Ocean-Related Tourism).

5. One (1) representative from the non-Federal community with experience in education and outreach regarding marine conservation issues (Education).

6. One (1) citizen-at-large representative (Citizen-at-Large).

Current Reserve Council Representatives and Alternates may reapply for these vacant seats.

The Council consists of 25 members, 14 of which are non-government voting members (the State of Hawaii representative is a voting member) and 10 of which are government non-voting members. The voting members are representatives of the following constituencies: Conservation, Citizen-At-Large, Ocean-Related Tourism, Recreational Fishing, Research, Commercial Fishing, Education, State of Hawaii and Native Hawaiian. The government non-voting seats are represented by the following agencies: Department of Defense, Department of the Interior, Department of State, Marine Mammal Commission, NOAA's Hawaiian Islands Humpback Whale National Marine Sanctuary, NOAA's National Marine Fisheries Service, National Science Foundation, U.S. Coast Guard, Western Pacific Regional Fishery Management Council, and NOAA's National Ocean Service.

Authority: 16 U.S.C. sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 21, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–7734 Filed 3–31–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032703A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Groundfish Stock Assessment Review (STAR) Panel for Pacific ocean perch and widow rockfish will hold a work session which is open to the public.

DATES: The Pacific ocean perch and widow rockfish Stock Assessment Review Panel will meet beginning at 1 p.m., April 14, 2003. The meeting will continue on April 15, 2003, beginning at 8 a.m. through April 18, 2003. The meetings will end at 5 p.m. each day, or as necessary to complete business.

ADDRESSES: The Pacific ocean perch and widow rockfish Stock Assessment Review Panel meeting will be held at the National Marine Fisheries Service, Northwest Fisheries Science Center, Auditorium, 2725 Montlake Blvd. E, Seattle, WA 98112; telephone: 206–860–3200.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Staff Officer; 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review draft stock assessment documents and any other pertinent information, work with the Stock Assessment Team to make necessary revisions, and produce a STAR Panel report for use by the Council family and other interested persons.

Entry to the Northwest Fisheries Science Center requires identification with photograph (such as a student ID, state drivers license, etc.). A security guard will review the identification and issue a Visitor's Badge valid only for the date of the meeting.

Although nonemergency issues not contained in STAR Panel agendas may come before the STAR Panel for discussion, those issues may not be the subject of formal Panel action during this meeting. STAR Panel action will be restricted to those issues specifically listed in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Panel's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: March 27, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–7783 Filed 3–31–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032503B]

Endangered Species; File No. 1429

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the Southeast Fisheries Science Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, FL 33149, has applied in due form for a permit to take loggerhead (*Caretta caretta*), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*), Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), and olive ridley (*Lepidochelys olivacea*) sea turtles for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before May 1, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320; and

Permits,Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9328; fax (978)281–9371.

FOR FURTHER INFORMATION CONTACT: Patrick Opay (301) 713–1401, or Carrie Hubard (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to conduct sea turtle bycatch reduction research in the pelagic longline fishery of the western north Atlantic Ocean. The researchers propose to work cooperatively with U.S. pelagic longline fishermen in the Northeast Distant area (NED) to conduct fishery-dependent testing. The purpose of the research is to develop and test methods to reduce bycatch that occurs incidental to commercial, pelagic longline fishing. The goal is to develop a means to reduce turtle take and retain viable fishing performance that may be adopted by the U.S. pelagic longline fleet as an alternative to more restrictive sea turtle protection measures, such as closures. The technologies developed through this research are expected to be transferrable to other nations' fleets as well, so this work will address the larger problem of sea turtle bycatch by pelagic longlines throughout the entire Atlantic Ocean and in other regions where sea turtle bycatch is a concern. The research will also attempt to determine the feasibility of using pop-up satellite tags to study the post-hooking survival of turtles impacted by the fishery.

Sea turtles are expected to be taken as they entangle in and/or are hooked by the longline gear deployed in this experiment. An additional 15 free-swimming loggerhead turtles may be dipnetted from the surface. The applicant proposes to take 217 loggerheads (202 to be taken by the experimental fishery and 15 dipnetted from the surface), 160 leatherbacks, 2 green turtles, 2 hawksbills, 2 olive ridleys, 2 Kemp's ridleys, and 2 unidentified hardshell species. The applicant is requesting authorized mortalities of 2 loggerheads, 2 leatherbacks, as well as 1 green, Kemp's ridley, olive ridley, hawksbill, or unidentified hardshell in aggregate. All takes will occur in the NED of the Atlantic Ocean. The applicant is requesting a 1-year permit.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: March 26, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–7784 Filed 3–31–03; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Request for Comments Concerning Proposed Request for Approval of a Collection of Information—Safety Standard for Automatic Residential Garage Door Operators

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed request for extension of approval of a collection of information from manufacturers and importers of residential garage door operators. The collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Automatic Residential Garage Door Operators (16 CFR part 1211). The Commission will consider all comments received in response to this notice before requesting approval of this extension of a collection of information from the Office of Management and Budget.

DATES: The Office of the Secretary must receive written comments not later than June 2, 2003.

ADDRESSES: Written comments should be captioned "Residential Garage Door Operators" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR part 1211, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7671.

SUPPLEMENTARY INFORMATION: In 1990, Congress enacted legislation requiring residential garage door operators to

comply with the provisions of a standard published by Underwriters Laboratories to protect against entrapment. (The Consumer Product Safety Improvement Act of 1990, Pub. L. 101–608, 104 Stat. 3110.) The entrapment protection requirements of UL Standard 325 are codified into the Safety Standard for Automatic Residential Garage Door Operators, 16 CFR part 1211. Automatic residential garage door operators must comply with the latest edition of the Commission's regulations at 16 CFR part 1211.

The Office of Management and Budget (OMB) approved the collection of information concerning the Safety Standard for Automatic Residential Garage Door Operators under control number 3041–0125. OMB's most recent approval will expire on June 30, 2003. The Commission now proposes to request an extension of approval without changes of this collection of information.

A. Certification Requirements

The Improvement Act provides that UL Standard 325 shall be considered to be a consumer product safety standard issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2058). Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Section 14(b) of the CPSA (15 U.S.C. 2063(b)) authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard. Section 14(b) of the CPSA allows firms that are required to issue certificates of compliance to use an independent third-party organization to conduct the testing required to support the certificate of compliance.

Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules to require establishment and maintenance of records necessary to implement the CPSA or determine compliance with rules issued under the authority of the CPSA. On December 22, 1992, the Commission issued rules prescribing requirements for a reasonable testing program to support certificates of compliance with the Safety Standard for Automatic Residential Garage Door Operators (57 FR 60449). These regulations also require manufacturers, importers, and private labelers of residential garage door operators to establish and maintain records to demonstrate compliance with the requirements for testing to support certification of compliance. 16 CFR part 1211, subparts B and C.

The Commission uses the information compiled and maintained by manufacturers and importers of residential garage door operators to protect consumers from risks of death and injury resulting from entrapment accidents associated with garage door operators. More specifically, the Commission uses this information to determine whether the products produced and imported by those firms comply with the standard.

The Commission also uses this information to facilitate corrective action if any residential garage door operators fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

B. Estimated Burden

The Commission staff estimates that about 22 firms are subject to the testing and recordkeeping requirements of the certification regulations. The staff estimates that each respondent will spend 40 hours annually on the collection of information for a total of about 880 hours. Using an hourly rate of $42.30, based on Total compensation, private goods-producing section, managerial, executive, and administrative category, Bureau of Labor Statistics, the total industry cost would be $37,224.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: March 27, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–7761 Filed 3–31–03; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for an Organization To Administer the President's Volunteer Service Awards

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds and request for proposals.

SUMMARY: The Corporation for National and Community Service (hereinafter "the Corporation") will enter into a cooperative agreement of up to three years with a single organization selected under this Notice to provide administrative and technical support in the development and implementation of the President's Volunteer Service Awards program. The Corporation seeks an organization that has, or can contract with others to acquire, expertise in marketing and publicity, awards fulfillment, database management, production and distribution of identity items, and event management. Commercial organizations, non-profit organizations, state and local government entities, institutions of higher education and Indian tribal organizations are all eligible to apply. The Executive Director of the President's Council on Service and Civic Participation at the Corporation (hereinafter the "Executive Director") will oversee the President's Volunteer Service Awards program. The Executive Director will work with the organization selected under this Notice and others to develop strategic partnerships that can build awareness, understanding, and distribution of the Awards.

The Corporation expects to provide approximately $100,000 in year one, and contingent upon performance and availability of funding, to provide up to approximately $250,000 in year two and up to approximately $250,000 in year three to the selected organization for technical and administrative assistance for the President's Volunteer Service Awards program. The selected organization must meet stated financial goals for all years that the cooperative agreement is in effect. Funding beyond year one is contingent upon satisfactory performance on financial and award fulfillment goals and the availability of appropriations for this purpose.

DATES: Proposals must be received by the Corporation by 5 p.m. Eastern time on April 25, 2003. The Corporation will not accept applications that are submitted by facsimile. Due to delays in delivery of regular U.S.P.S. mail to government offices, your application may not arrive in time to be considered. We suggest that you use U.S.P.S. priority mail or a commercial overnight delivery service to make sure that you meet the deadline.

ADDRESSES: Submit proposals to the Corporation at the following address: Corporation for National and Community Service, Attention: Christine Benero, Room 8419, 1201 New York Avenue NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Christine Benero at the Corporation, telephone (202) 606–5000, ext. 193, (*cbenero@cns.gov*), facsimile (202) 575–2784, T.D.D. (202) 565–2799. This Notice, with the complete program application guidelines included, is available on the Corporation's Web site, at: *http://www.cns.gov/whatshot/notices.html*. Upon request, this information will be made available in alternate formats for people with disabilities.

Dated: March 26, 2003.

Sandy Scott,

Deputy Director, Office of Public Affairs.

[FR Doc. 03–7626 Filed 3–31–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Transformational Communications Advanced Technology Study. The purpose of the meeting is to conduct a mid term review of the study. This meeting will be closed to the public.

DATES: March 31–April 1, 2003.

ADDRESSES: Bldg 201, Kirtland AFB NM 87117.

FOR FURTHER INFORMATION CONTACT: Maj John J. Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–7715 Filed 3–31–03; 8:45 am]

BILLING CODE 5001–5–P

DEPARTMENT OF DEFENSE

Department of the Air Force HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the B–2 Maintenance Study and the Commander of Air Combat Command. The purpose of the meeting is to allow the SAB leadership to advise the Director on the outcome of the study. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: April 4, 2003.

ADDRESSES: HQ, Air Combat Command.

FOR FURTHER INFORMATION CONTACT: Maj Dwight Pavek, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–7716 Filed 3–31–03; 8:45 am]

BILLING CODE 5001–5–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 1, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: March 26, 2003.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision of a currently approved collection.

Title: Reading Excellence Act Performance Report (KA).

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 18.

Burden Hours: 24.

Abstract: This Annual Performance Report will allow the Department of Education to collect information required by the Reading Excellence Act.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2173. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC

20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at *kathy.axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–7719 Filed 3–31–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.305M]

Institute of Education Sciences

ACTION: Notice inviting applications for grants to support education research for fiscal year 2003; Correction.

On January 6, 2003, a notice inviting applications for grants to support education research was published in the **Federal Register** (68 FR 656). On page 656, in the table, the column *Project Period* states that the duration of the project period is "up to 36 months" for the Teacher Quality Research program (84.305M). The *Project Period* for grants awarded under the Teacher Quality Research program is corrected to read "up to 48 months."

FOR FURTHER INFORMATION CONTACT: Harold Himmelfarb, U.S. Department of Education, 555 New Jersey Avenue, NW., room 510f, Washington, DC 20208. Telephone: (202) 219–2031 or via the Internet: *harold.himmelfarb@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/nara/index.html*.

Program Authority: 20 U.S.C. 9501 *et seq.* (the "Education Sciences Reform Act of 2002", Title 1 of Public Law 107–279, November 5, 2002).

Dated: March 26, 2003.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 03–7811 Filed 3–31–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings to be announced in the **Federal Register**.

DATES: May 14, 2003, 9 a.m. to 12 p.m.

ADDRESSES: The Hamilton Crowne Plaza Hotel, 14th and K Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Estelle W. Hebron, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202/586–6837.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda:

- Call to order by Mr. Wes Taylor, Chairman.
- Remarks by Honorable Spencer Abraham, Secretary of Energy (invited).
- Other Council business
- Presentation by Frank Burke, CONSOL Energy on generation efficiency & carbon management.
- Presentation by Bernhard Schlamadinger, Ph.D., Senior Scientist, on carbon sequestration project being conducted in the Lower Mississippi River Valley.
- Presentation by Dr. Howard J. Herzog, MIT, on geological sequestration options.
- Presentation by Mr. Dwain Spencer, SIMTECHE, on promising developments regarding costs of carbon capture and separation.
- Discussion of other business properly brought before the Committee.
- Public comment—10 minute rule.
- Adjournment.

Public Participation: The meeting is open to the public. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Estelle W. Hebron at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be make to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Transcripts: The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 26, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–7764 Filed 3–31–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; Coal Policy Committee of the National Coal Council

AGENCY: Department of Energy

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Coal Policy Committee of the National Coal Council. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, April 29, 2003, 10 a.m. to 2 p.m.

ADDRESSES: Greenbrier Hotel, 300 West Main Street, White Sulphur Springs, West Virginia.

FOR FURTHER INFORMATION CONTACT: Estelle W. Hebron, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202/586–6837.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Coal Policy Committee of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues. The purpose of this meeting is to discuss and act on the energy efficiency and carbon sequestration study.

Tentative Agenda:

- Call to order by Frank Burke.
- Review and discuss the Council study on energy efficiency and carbon sequestration.
- Discussion of other business properly brought before the Coal Policy Committee.
- Public Comment—10 minute rule.
- Adjournment.

Public Participation: The meeting is open to the public. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Estelle W. Hebron at the address or telephone number listed above. You make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Transcripts: The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on March 26, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–7766 Filed 3–31–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–308–000]

CenterPoint Energy Gas Transmission Company; Notice of Tariff Filing

March 25, 2003.

Take notice that on March 20, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with an effective date of May 1, 2003:

First Revised Sheet No. 17
First Revised sheet No. 18
First Revised Sheet No. 19
First Revised Sheet No. 31
First Revised Sheet No. 32

CEGT states that the purpose of this filing is to adjust CEGT's fuel percentages and Electric Power Costs Tracker pursuant to section 27 and 28 of its General Terms and Conditions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 1, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7775 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2569–000, ER02–2569–001, and ER02–2569–002]

The Clark Fork and Blackfoot, L.L.C.; Notice of Issuance of Order

March 25, 2003.

The Clark Fork and Blackfoot, L.L.C. ("Clark Fork") filed an application for market-based rate authority, with accompanying tariff. The proposed market-based rate tariff provides for the wholesale sales of electric power, energy and certain ancillary services. Clark Fork also requested waiver of various Commission regulations. In particular, Clark Fork requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Clark Fork.

On March 21, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Clark Fork should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 21, 2003.

Absent a request to be heard in opposition by the deadline above, Clark Fork is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Clark Fork, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Clark Fork's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may

also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7768 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–77–000 and RP03–311–000]

Order Proposing Revocation of Market-Based Rate Authority and Termination of Blanket Marketing Certificates

Issued March 26, 2003.

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell: Enron Power Marketing, Inc. and Enron Energy Services, Inc.; Bridgeline Gas Marketing L.L.C., Citrus Trading Corporation, ENA Upstream Company, LLC, Enron Canada Corp., Enron Compression Services Company, Enron Energy Services, Inc., Enron MW, L.L.C., and Enron North America Corp.

1. This order directs Enron Power Marketing, Inc. and Enron Energy Services, Inc. (collectively, Enron Power Marketers) to show cause to the Commission in a paper hearing why their authority to sell power at market-based rates [1] should not be revoked by the Commission in light of their apparent engagement in gaming, in violation of Section 205(a) of the Federal Power Act's (FPA) requirement that rates be just and reasonable, as well as their apparent failure to disclose changes in their market shares to the Commission in violation of their market-based rate authority.[2] This order also initiates a proceeding under Section 206 of the FPA,[3] in Docket No. EL03–77–000, where the show cause filing will be considered.

2. This order also directs Bridgeline Gas Marketing L.L.C., Citrus Trading Corporation, ENA Upstream Company, LLC, Enron Canada Corp., Enron Compression Services Company, Enron Energy Services, Inc., Enron MW, L.L.C., and Enron North America Corp. (collectively, Enron Gas Marketers) to show cause to the Commission in a paper hearing why the Commission should not terminate their blanket marketing certificates under Section 284.402 of the Commission's regulations [4] to make sales for resale at negotiated rates in interstate commerce of categories of natural gas subject to the Commission's Natural Gas Act (NGA) jurisdiction.[5] This order also institutes a proceeding under Sections 5 and 7 of the NGA, in Docket No. RP03–311–000, where the show cause filings will be considered.

3. This order is necessary to fulfill the Commission's obligation to monitor competitive markets in order to protect wholesale electricity and natural gas customers from unjust and unreasonable rates.

Background

4. On February 13, 2002, the Commission directed a Staff fact-finding investigation into whether any entity manipulated prices in electricity or natural gas markets in the West or otherwise exercised undue influence over wholesale electricity prices in the West, since January 1, 2000.[6]

5. On August 13, 2002, Staff released its Initial Report in Docket No. PA02–2–000.[7] In that Report, Staff recommended the initiation of various company-specific proceedings [8] to further investigate possible misconduct, and recommended several generic changes to market-based tariffs to prohibit the deliberate submission of false information or the deliberate omission of material information and to provide for the imposition of both refunds and penalties for violations.

6. As noted in Staff's Final Report, being publicly released concurrently with this order,[9] evidence indicates that the Enron Power Marketers appear to have engaged in gaming and misrepresentation, and also failed to disclose significant changes in their market shares to the Commission. In addition, the Staff's Final Report identifies evidence which indicates that certain Enron Gas Marketers apparently engaged in the manipulation of prices in natural gas markets.

Discussion

A. Proposed Market-Based Rate Revocation

7. We find that the Enron Power Marketers, based on the evidence discussed in the Final Report appear to have engaged in gaming, and failed to disclose significant changes in their market shares to the Commission.

8. The Commission's grant of authority to sell power at market-based rates, as opposed to at cost-based rates, depends on a functioning, competitive market for wholesale power unimpaired by market manipulation. Moreover, implicit in Commission orders granting market-based rates is a presumption that a company's behavior will not involve fraud, deception or misrepresentation. Companies failing to adhere to such standards are subject to revocation of their market-based rate authority.[10] In addition, the Enron Power Marketers were directed, when they were granted market-based rate authority, to inform the Commission promptly of changes in status that reflect a departure from the characteristics that the Commission relied upon in granting market-based rate authority.[11]

9. The information in Staff's Final Report indicates that the Enron Power Marketers appear to have violated FPA Section 205(a) by engaging in gaming. It also indicates that Enron Power Marketers appear to have acted inconsistently with their market-based rate authority, not only by engaging in gaming, but also by failing to inform the Commission in a timely manner of significant changes in their market shares by gaining influence/control over others' facilities. In view of the foregoing, we are therefore requiring the Enron Power Marketers to show cause why the Commission should not revoke their market-based rate authority. The Commission will institute a Section 206 proceeding and direct Enron Power Marketers to show cause to the Commission in a paper hearing in that proceeding.

10. In cases where, as here, the Commission institutes a Section 206 proceeding on its own motion, Section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the Commission's investigation in the **Federal Register**, and no later than five months subsequent to expiration of the 60-day period. In order to give maximum protection to customers, we will establish the statutorily-directed effective date, in this context the date that we would revoke their market-based rate authorities, at the earliest date allowed,[12] 60 days after publication of the order initiating the Commission's investigation in Docket No. EL03–77–000 in the **Federal Register**. In addition, Section 206 requires that, if no final decision has been rendered by that date, the Commission must provide its estimate as to when it reasonably expects to make such a decision. Given the times for filing identified in this order, and the nature and complexity of the matters to be resolved, the Commission estimates that it will be able to reach a final decision by July 31, 2003.

B. Proposed Blanket Marketing Certificate Termination

1. *Statutory Origins*

11. The Enron Gas Marketers are affiliates of Transwestern Pipeline Company, Citrus Corp., and/or Northern Plains Natural Gas Company.[13] Section 284.402 of the Commission's regulations grants any person who is not an interstate pipeline a blanket certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act to make sales for resale at negotiated rates in interstate commerce of any category of natural gas that is subject to the Commission's NGA jurisdiction.[14] The Commission's NGA sales jurisdiction currently extends to sales for resale of natural gas that are made by pipelines, local distribution companies, and their affiliates.[15] Thus, natural gas marketers who fall into those categories, including the Enron Gas Marketers, require the blanket marketing certificate in order to make sales for resale.

12. The Commission adopted Section 284.402 of its regulations, granting a blanket marketing certificate, in Order No. 547.[16] The purpose of Order No. 547 was to "foster a truly competitive market for natural gas sales for resale in interstate commerce, giving purchasers of natural gas access to multiple sources of natural gas and the opportunity to make gas purchasing decisions in accord with market conditions."[17] Although the order was independent of Order Nos. 636 and 636–A, it was promulgated for the same reasons, including the promotion of an active and viable spot market for natural gas.[18] The Commission permitted affiliated gas marketers to sell gas at negotiated rates based on a finding that the sale of gas as a commodity would be sufficiently competitive to prevent affiliated gas marketers from exercising market power, that is, controlling prices or excluding competition. NGA Sections 4 and 5 require that jurisdictional gas sales be made at rates that are just and reasonable.[19] The Commission also stated in Order No. 547 that it would monitor the operation of the market.[20]

2. Apparent Manipulation

13. The evidence developed in Staff's investigation indicates that certain Enron Gas Marketers apparently misused their authority under their blanket marketing certificates to make sales to and purchases from gas markets serving California at rates that were unjust and unreasonable from the summer of 2000 through the winter of 2000–2001. This evidence indicates that the Enron Gas Marketers, through their electronic trading platform, EnronOnline (EOL),[21] apparently manipulated the price of natural gas at the Henry Hub located in Louisiana on at least one occasion to profit from positions taken in the over-the-counter (OTC) financial derivatives markets (OTC markets). Although the price change in the physical markets was only about $.10/MMBtu, Enron Gas Marketers nevertheless profited due to the effect that this small change in the physical price had on its large financial position; Enron Gas Marketers earned approximately $3.2 million from this apparent manipulation.

14. On July 19, 2001 a number of traders entered relatively large short positions in the financial markets through OTC swaps and Gas Daily financial swaps. These traders continued to increase the short positions throughout the initial phase of the manipulation, which was the period when the EOL market maker (who was, at times, the desk manager) quickly and steadily raised prices on EOL, resulting in the purchase of a very large amount of next-day physical gas. This purchasing caused prices in the financial markets to rise, but by a lesser amount.

15. The financial traders stopped increasing their short positions near the end of the EOL market maker's buying streak, at a point when the EOL market maker stopped raising prices and began to hold prices steady at the high levels. Once the EOL market maker leveled out prices, the OTC swap began to fall. The EOL market maker then began to lower the prices and sold a very large amount of gas at rapidly falling prices. The falling of the physical price then further pushed down the OTC swap price, generating significant profits for the financial traders. These profits greatly exceeded the losses that were generated from the impatient buying and selling of the physical gas.

---

[1] Enron Power Marketers are authorized to sell power at market-based rates. *See* Enron Power Marketing, Inc., 65 FERC ¶ 61,305 (1993); Enron Energy Services Power, Inc., 81 FERC ¶ 61,267 (1997).

[2] 18 U.S.C. 824d(a) (2000).

[3] 16 U.S.C. 824e (2000).

[4] 18 CFR 284.402 (2002).

[5] *See* 15 U.S.C. 717 *et seq.* (2000).

[6] Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 98 FERC ¶ 61,165 (2002) (February 13 Order).

[7] The Initial Report is available on the Commission's Web site at *http://www.ferc.gov/electric/bulkpower/pa02-2/Initial-Report-PA02-2-000.pdf*.

[8] These proceedings, which are currently pending before the Commission, are Docket Nos. EL02–113–000, EL02–114–000, and EL02–115–000.

[9] Final Report on Price Manipulation in Western Markets (Docket No. PA02–2–000 (Docket No. PA02–2–000 (March 2003). The Staff Final Report is available on the Commission's website. We will incorporate the Staff Final Report, and the underlying record in Docket No. PA02–2–000, by reference into the records in these proceedings.

[10] Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 99 FERC ¶ 61,272 at 62,153–54 (2002); *accord* Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 97 FERC ¶ 61,220 at 61,975–77 (2001); GWF Energy, LLC, *et al.*, 98 FERC ¶ 61,330 at 62,390 (2002); New York Independent System Operator, Inc., 91 FERC ¶ 61,218 at 61,798–800 (2000), order *on reh'g*, 97 FERC ¶ 61,155 (2001); Washington Water Power Company, 83 FERC ¶ 61,097 at 61,462–64, *order in response to show cause presentation*, 83 FERC ¶ 61,282 (1998); Kansas City Power & Light Company, 74 FERC ¶ 61,066 at 61,175, *order on reh'g*, 75 FERC ¶ 61,244 (1996).

[11] 65 FERC at 62,405; 81 FERC at 62,319.

[12] *See, e.g.*, Canal Electric Company, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

[13] On March 19, 2003, Enron Corp. made a Form 8–K filing with the Securities and Exchange Commission, under file number 1–13159, proposing to place ownership of Transwestern Pipeline Company, Citrus Corp., and Northern Plains Natural Gas Company with a newly created company called PipeCo.

[14] 18 CFR 284.402 (2002). Affiliates of pipelines are not engaged in first sales, *see* 15 U.S.C. 3301(21)-(2000), and, so, are subject to the Commission's jurisdiction.

[15] The NGA gives the Commission jurisdiction over sales for resale of natural gas in interstate commerce. However, this jurisdiction has been limited by Sections 601(a)(1)(A) and (b)(1)(A) of the Natural Gas Policy Act as amended by the Natural Gas Wellhead Decontrol Act (NGPA), which remove all "first sales" from the Commission's NGA jurisdiction as of January 1, 1993. NGPA Section 2(21) defines first sales to include all sales other than sales by interstate or intrastate pipelines, local distributions companies, and their affiliates. Reporting of Natural Gas Sales to the California Market, 96 FERC ¶ 61,119 at 61,463, *order on reh'g*, 97 FERC ¶ 61,029 (2001); San Diego Gas and Electric Co., 101 FERC ¶ 61,161 at 61,656 (2002).

[16] Regulations Governing Blanket Marketer Sales Certificates, Order No 547, FERC Stats. & Regs., Regulations Preambles January 1991—June 1996 ¶ 30,957 (1992), *order on reh'g*, 62 FERC ¶ 61,239 (1993).

[17] *Id.* at 30,719.

[18] *Id.* at 30,721.

[19] *Id.* at 30,726; *see* 15 U.S.C. 717c, 717d (2000).

[20] Id. at 30,727.

[21] The EnronOnline system is administered by Enron Networks, an Enron Corp. subsidiary. EnronOnline is a free, Internet-based, transaction system which allows the Enron Gas Marketers to buy from and sell gas to third parties.

3. Commission Determination

16. The Commission granted a blanket marketing certificate after a finding that the gas commodity market was sufficiently competitive to prevent certificate holders from manipulating prices. The Commission now has evidence that certain Enron Gas Marketers have apparently participated in practices that manipulate prices so as to charge unjust and unreasonable rates.

17. The Commission has discretion to implement remedies when it finds conduct that has violated its policies or regulations. The agency is at its zenith in fashioning such remedies.[22] Its discretion extends to denial of participation in a government program generally extended to business managers for the purpose of maintaining the fairness, equity, and efficiency of the program.[23] Given the Enron Gas Marketers' conduct and their adverse effects on gas prices, the Enron Gas Marketers are directed to show cause why it still serves the public convenience and necessity for the Enron Gas Marketers to have blanket marketing certificates and why the Commission should not terminate their blanket marketing certificates. The Commission will institute a proceeding pursuant to the Commission's authority under NGA Sections 5 and 7,[24] and direct the Enron Gas Marketers to show cause to the Commission in a paper hearing in that proceeding

The Commission orders:

(A) The Enron Power Marketers are hereby directed, within 21 days of the date of this order, to show cause to the Commission in a paper hearing, in Docket No. EL03–77–000, why they should not be found to have violated Section 205(a) of the Federal Power Act and their market-based rate authorizations and why their market-based rate authority should no be revoked.

(B) The effective date in Docket No. EL03–77–000 will be 60 days following publication of this order in the **Federal Register**.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the department of Energy Organization Act and the Federal Power Act, particularly Section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR chapter I), the Commission hereby institutes an investigation of the Enron Power Marketers' market-based rates, in Docket No. EL03–77–000, as discussed in the body of this order.

(D) The Enron Gas Marketers are hereby directed, within 21 days of the date of this order, to show cause to the Commission in a paper hearing, in Docket No. RP03–311–000, why the Commission should not terminate its blanket marketing certificate under 18 CFR 284.402 (2002), as discussed in the body of this order.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Natural Gas Act, particularly Sections 5 and 7 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR chapter I), the Commission hereby institutes an investigation of the Enron Gas Marketers' blanket marketing certificates, in Docket No. RP03–311–000, as discussed in the body of this order.

(F) Any interested person desiring to be heard in these proceedings should file notices of intervention or motions to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) within 21 days of the date of this order.

(G) Responses to the show cause submissions filed pursuant to Ordering Paragraphs (A) and (D) above may be submitted within 15 days of the date of filing of the show cause submissions.

(H) The Secretary shall promptly publish a copy of this order in the **Federal Register**.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7796 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

[22] *E.g., Niagara Mohawk Power Corp.* v. *FPC*, 379 F.2d 153, 159 (DC Cir. 1967). *See also Connecticut Valley Electric Company, Inc.* v. *FERC*, 208 F.3d 1037, 1044 (DC Cir. 2000); *Louisiano Public Service Commission* v. *FERC*, 174 F.3d 218, 225 (DC Cir. 1999).

[23] *Niagara Mohawk Power Corp.* v. *FPC*, 379 F.2d 153, 159 (DC Cir. 1967).

[24] 15 U.S.C. 717d, 717f (2000).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–411–008 and RP01–44–010]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

March 25, 2003.

Take notice that on March 19, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to become effective November 1, 2002:

Sub. Seventh Revised Sheet No. 46
Sub. Ninth Revised Sheet No. 47

Iroquois asserts that the purpose of this filing is to insert inadvertently omitted language which should have been included when these sheets were submitted as part of the December 2, 2002, compliance filing.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7774 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–500–000]

Liberty Power Corp., Inc.; Notice of Issuance of Order

March 25, 2003.

Liberty Power Corp., Inc. (Liberty Power) filed a market based-rate application, with accompanying tariff. The proposed rate tariff provides for the sale of capacity and energy at market-based rates. Liberty Power also requested waiver of various Commission regulations. In particular, Liberty Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Liberty Power.

On March 21, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Liberty Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 21, 2003.

Absent a request to be heard in opposition by the deadline above, Liberty Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Liberty Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Liberty Power's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7770 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–309–000]

Natural Gas Pipeline Company of America; Notice of Reconciliation Report

March 25, 2003.

Take notice that on March 21, 2003, Natural Gas Pipeline Company of America (Natural) filed its Final Reconciliation Report on Account No. 858.

Natural states that copies of the filing are being mailed to all of its customers, interested state commissions and all parties in Docket No. RP03–257.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 1, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7776 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–320–000, ER03–320–001, ER03–320–002, ER03–321–000, ER03–321–001, ER03–321–002, ER03–322–000, ER03–322–001, and ER03–322–002]

NM Colton Genco LLC, NM Mid-Valley Genco LLC, and NM Milliken Genco LLC; Notice of Issuance of Order

March 25, 2003.

NM Colton Genco LLC, NM Mid-Valley Genco LLC, and NM Milliken Genco LLC (together, "Applicants") filed a petition for acceptance of initial tariffs for each Applicant, waivers and blanket authority. The petition requests the Commission authorize the Applicants to engage in wholesale sales of electric power, energy and certain ancillary services, and for the reassignment and resale of firm transmission rights. Applicants also requested waiver of various Commission regulations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by the Applicants.

On March 21, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 21, 2003.

Absent a request to be heard in opposition by the deadline above, the

Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of the Applicants' issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7769 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–95–001]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

March 25, 2003.

Take notice that on March 20, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 6, with an effective date of January 1, 2003.

GTN states that the filing is being made to reflect in its tariff the incremental fuel surcharge that was approved by Commission order issued March 4, 2003 in Docket No. RP02–331–002.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 1, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7777 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–59–000 and EL03–60–000]

Order Proposing Revocation of Market-Based Rate Authority

Issued March 26, 2003.

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell: Reliant Energy Services, Inc., BP Energy Company.

1. This order directs Reliant Energy Services, Inc. (Reliant) and BP Energy Company (BP Energy) to show cause to the Commission in paper hearings why their authority to sell power at market-based rates [1] should not be revoked by the Commission in light of their apparent manipulation of electricity prices at the Palo Verde, Arizona trading hub, in violation of section 205(a) of the Federal Power Act's (FPA) requirement that rates be just and reasonable.[2] This order also initiates proceedings under section 206 of the FPA,[3] in Docket Nos. EL03–59–000 (for Reliant) and EL03–60–000 (for BP Energy), where the show cause filings will be considered.

2. This order is necessary to fulfill the Commission's obligation to monitor competitive markets in order to protect wholesale electricity customers from unjust and unreasonable rates.

Background

3. On February 13, 2002, the Commission directed a Staff fact-finding investigation into whether any entity manipulated prices in electricity or natural gas markets in the West or otherwise exercised undue influence over wholesale electricity prices in the West, since January 1, 2000.[4]

4. On August 13, 2002, Staff released its Initial Report in Docket No. PA02–2–000.[5] In that Report, Staff recommended the initiation of various company-specific proceedings [6] to further investigate possible misconduct, and recommended several generic changes to market-based tariffs to prohibit the deliberate submission of false information or the deliberate omission of material information and to provide for the imposition of both refunds and penalties for violations.

5. In Staff's Final Report, being publicly released concurrently with this order,[7] Staff notes evidence that indicates that Reliant and BP Energy appear to have engaged in coordinated efforts to manipulate electricity prices.

6. Specifically, Staff points to three occasions where a BP Energy trader called a Reliant trader and asked him to buy power from an offer he was going

[1] Reliant and BP Energy are power marketers previously authorized to sell electric power at market-based rates. *See* Office Director Letter Orders issued on July 25, 1994 in Docket No. ER94–1247–000 and March 12, 1999 in Docket No. ER99–1801–000 (granting Reliant market-based rate authority); Office Director Letter Orders issued on June 17, 1999 in Docket No. ER99–2895–000 and October 18, 2000 in Docket No. ER00–3614–000 (granting BP Energy market-based rate authority).

[2] 16 U.S.C. 824d(a) (2000).

[3] 16 U.S.C. 824e (2000).

[4] Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 98 FERC ¶ 61,165 (2002) (February 13 Order).

[5] The Initial Report is available on the Commission's Web site at *http://www.ferc.gov/electric/bulkpower/pa02–2/Initial-Report-PA02–2–000.pdf*.

[6] These proceedings, which are currently pending before the Commission, are Docket Nos. EL02–113–000, EL02–114–000, and EL02–115–000.

[7] Final Report on Price Manipulation in Western Markets (Docket No. PA02–2–000 March 2003). The Staff Final Report is available on the Commission's website. We will incorporate the Staff Final report, and the underlying record in Docket No. PA02–2–000, by reference into the records in these proceedings.

to place on an electronic trading platform (Bloomberg). The Reliant trader would then sell the power back to the BP Energy trader at the same price, but the transaction would not take place on the electronic trading platform.

7. On one of the occasions the BP Energy trader with the aid of Reliant's trader appears to have manipulated the price of electricity delivered at Palo Verde, a trading hub in Arizona to affect the value of his trading position (such that a higher price raises the value of the trader's portfolio).

8. Recorded telephone conversations and transcripts provided to Staff by Reliant in Docket No. PA02–2–000 document the manipulation.[8] The BP trader contacted the Reliant trader and offered a transaction. The BP trader would offer to sell electricity on the Bloomberg electronic platform, the Reliant trader would buy at the posted price, and the BP trader would then buy back the power (off the Bloomberg electronic platform) at the same price to undo the sale. The BP trader goes on to explain that he is trying to move the market price up to $43.10 but no one will buy it at that price, so he needs the Reliant trader to "lift his offer'[9] in order to increase the price.

9. Several days later the same BP trader contacted the same Reliant trader and offered a similar proposal, again, apparently to manipulate the price in order to increase the value of his trading position under the company's mark-to-market accounting.

10. The BP trader goes on to explain that they are marking their books on the October Palo Verde price. He notes that power for delivery in October at Palo Verde had traded as high as $44, and he wants to move the price even higher because of his long position. He indicates that he will post an offer to sell at $44.15 and asks the Reliant trader to lift that offer and then he will buy it back from him at the same price. The BP trader then posts the offer on the Bloomberg electronic platform. Shortly thereafter, the BP trader asks the Reliant trader to lift the offer because he senses the market beginning to move. The Reliant trader lifts the offer and asks the BP trader what they should do next. The evidence indicates that the BP trader informed the Reliant trader that he will buy the power back at the same price.

Discussion

11. We find that BP Energy and Reliant, in the transactions identified above, appear to have manipulated electricity prices at Palo Verde, an important trading hub.[10]

12. The Commission's grant of authority to sell power at market-based rates, as opposed to at cost-based rates, depends on a functioning, competitive market for wholesale power unimpaired by market manipulation. Moreover, implicit in Commission orders granting market-based rates is a presumption that a company's behavior will not involve fraud or deception. Companies failing to adhere to such standards are subject to revocation of their market-based rate authority.[11]

13. The information in Staff's Final Report indicates that BP Energy and Reliant appear to have violated FPA section 205(a)'s requirement that rates be just and reasonable by manipulating the electricity prices at Palo Verde.[12] In view of the foregoing, we are therefore requiring Reliant and BP Energy to show cause to the Commission in a paper hearing why the Commission should not revoke their market-based rate authority. The Commission will institute FPA section 206 proceedings and direct BP Energy and Reliant to show cause in those proceedings why their market-based rate authorizations should not be revoked.

14. In cases where, as here, the Commission institutes section 206 proceedings on its own motion, section 206(b) requires that the Commission establish effective dates that are no earlier than 60 days after publication of notice of the Commission's investigation in the **Federal Register**, and no later than five months subsequent to expiration of the 60-day period. In order to give maximum protection to customers, we will establish the statutorily-directed effective dates, in this context the dates that we would revoke their market-based rate authorities, at the earliest date allowed,[13] 60 days after publication of the order initiating the Commission's investigations in Docket Nos. EL03–59–000 and EL03–60–000 in the **Federal Register**. In addition, section 206 requires that, if no final decision has been rendered by that date, the Commission must provide its estimate as to when it reasonably expects to make such a decision. Given the times for filing identified in this order, and the nature and complexity of the matters to be resolved, the Commission estimates that it will be able to reach a final decision by July 31, 2003.

The Commission orders:

(A) Reliant is hereby directed, within 21 days of the date of this order, to show cause to the Commission in a paper hearing, in Docket No. EL03–59–000, why it should not be found to have violated section 205 of the FPA and why its market-based rate authority should not be revoked.

(B) BP Energy is hereby directed, within 21 days of the date of this order, to show cause to the Commission in a paper hearing, in Docket No. EL03–60–000, why it should not be found to have violated section 205 of the FPA and why its market-based rate authority should not be revoked.

(C) The Secretary shall promptly publish a copy of this order in the **Federal Register**.

(D) The effective dates in Docket Nos. EL03–59–000 and EL03–60–000 will be 60 days following publication in the **Federal Register** of the order discussed in Ordering Paragraph (C) above.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR chapter I), the Commission hereby institutes investigations of BP Energy's and Reliant's market-based rates, in Docket Nos. EL03–59–000 and EL03–60–000,

[8] The conversations and transcripts are non-public. They will be made available to parties subject to an appropriate protective order.

The Staff's Final Report indicates that when Staff asked BP Energy for information and telephone transcripts containing other information concerning these events, BP Energy stated simply that it had no information regarding the activity of its trader because it did not keep telephone records.

[9] *I.e.*, to buy at the price posted on the Bloomberg electronic platform.

[10] The Palo Verde trading hub previously was presumed to be liquid and not subject to price manipulation. The transactions identified and discussed above suggest that that presumption is not true. In addition, although electricity price indices are not as critical a part of the market price formation process in the electric industry as natural gas price indices are in the natural gas industry, they were nevertheless considered by many to be an important part of electricity market price discovery.

[11] Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 99 FERC ¶ 61,272 at 62,153–54 (2002); *accord* Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 97 FERC ¶ 61,220 at 61,975–77 (2001); GWF Energy, LLC, *et al.*, 98 FERC ¶ 61,330 at 62,390 (2002); New York Independent System Operator, Inc., 91 FERC ¶ 61,218 at 61,798–800 (2000), *order on reh'g*, 97 FERC ¶ 61,155 (2001); Washington Water Power Company, 83 FERC ¶ 61,097 at 61,462–64, *order in response to show cause presentotion*, 83 FERC ¶ 61,282 (1998); Kansas City Power & Light Company, 74 FERC ¶ 61,066 at 61,175, *order on reh'g*, 75 FERC ¶ 61,244 (1996).

[12] Further context is provided in the Staff's Final Report.

[13] *See e.g.*, Canal Electric Company, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

respectively, as discussed in the body of this order.

(F) Any interested person desiring to be heard in these proceedings should file notices of intervention or motions to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) within 21 days of the date of this order.

(G) Responses to the show cause submissions filed pursuant to Ordering Paragraphs (A) and (B) above may be submitted within 15 days of the date of filing of the show cause submissions.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7797 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–166–005]

Stingray Pipeline Company, L.L.C.; Notice of Compliance Filing

March 25, 2003.

Take notice that on March 12, 2003, Stingray Pipeline Company, L.L.C. (Stingray) tendered for filing a refund report to comply with Article 2.4 of the Stipulation and Agreement approved by the Commission on December 24, 2002.[1]

Stingray states that on September 19, 2002, it filed a stipulation and agreement (Settlement) to resolve all issues pending in this proceeding. By letter order dated December 24, 2002, the Commission approved the settlement and directed Stingray to notify the Commission within 30 days after making a lump-sum payment in the amount of $4.5 million to the Indicated Shippers. As directed by the Commission, Stingray is submitting the statement of compliance with the Commission as notification that such payment has been forwarded to the Indicated Shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 1, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7778 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Docket No. RP99–166–000, 101 FERC ¶ 61,365 (2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12020–000]

Marseilles Hydro Power, LLC, Illinois; Notice of Availability of Environmental Assessment

March 25, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for major license for the proposed Marseilles Hydroelectric Project located in the town of Marseilles, on the Illinois River in La Salle County, Illinois, and has prepared an Environmental Assessment (EA) for the project.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 12020–000 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

For further information, contact Steve Kartalia at (202) 502–6131 or by E-mail at stephen.kartalia@ferc.gov.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7771 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

March 25, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12452–000.

c. *Date filed:* March 3, 2003.

d. *Applicant:* United Power Corporation.

e. *Name and Location of Project:* The Bryant Mountain Pumped Storage Hydroelectric Project would use flows from the U.S. Bureau of Reclamation's D and J Canals and would be built on federal lands administered by the U.S. Bureau of Land Management in Klamath County, Oregon. No tribal lands would be involved.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Bart M. O'Keeffe, United Power Corporation, P.O. Box 1916, Byron, CA 94514, (925) 634–1550.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed pumped storage project would consist of: (1) An upper reservoir, an enlargement of the existing Pope Reservoir, with a surface area of 550 acres and a storage capacity of 60,000 acre-feet at a water surface elevation of 5,500 feet msl, (2) a 4,000-foot-long, 310-foot-high earthen upper dam, (3) a 1,500-foot-long, 30-foot-diameter concrete low pressure tunnel, (4) a 270-foot-deep, 30-foot-diameter concrete surge shaft, (5) a 1,100-foot-long, 30-foot diameter vertical concrete power shaft, (6) a 3,800-foot-long, 24-foot-diameter concrete power tunnel, (7) a powerhouse containing four reversible generating units with a total installed capacity of 1,000 megawatts, (8) a lower reservoir with a surface area of 1,480 acres and a storage capacity of 110,000 acre-feet at a water surface elevation of 4,220 feet msl, (9) a 21,500-foot-long, 135-foot-high earthen lower dam, (10) a 4-mile-long, 500-kilovolt transmission line, and (11) appurtenant facilities.

Water for the project would be obtained from the D canal by an intake and pumping plant to be located 1.5 miles east of the town of Malin and a 5,700-foot-long, 36-inch-diameter pipeline to the lower reservoir, and from the J canal by an intake and pumping plant to be located one mile south of Malin and a 17,000-foot-long, 36-inch-diameter pipeline to the lower reservoir. The D and J canals convey water diverted from the Lost River in southern Oregon for irrigation. The applicant proposes to fill the project reservoirs when the canals are not being used to capacity for irrigation.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov* . For TTY, call (202) 502–8659.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application— Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7772 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

March 25, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt

of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Prohibited

Docket No., Date Filed, Presenter/ Requester

1. Project No. 1354–000, 3–11–03 Hon. Ron W. Goode

Exempt

Docket No., Date Filed, Presenter, or Requester

1. Project No. 719–000, 3–10–03, Reid Brown
2. Project No. 184–000, 3–10–03, Sharon Waechter
3. Project No. 2090–000, 3–10–03, Janet Hutzel
5. CP02–434–000, 3–10–03, Peter Nauth
6. CP02–434–000, 3–18–03, David Swearingen
7. CP02–90–000, 3–11–03, James Martin
8. Project No. 516–000, 3–13–03, Patti Leppert
9. Project No. 2042–013, 3–19–03, Jeff Selle

Magalie R. Salas,

Secretary.

[FR Doc. 03–7773 Filed 3–31–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[CA090–NOA; FRL–7475–6]

Official Release of EMFAC2002 Motor Vehicle Emission Factor Model for Use in the State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is approving and announcing the availability of the latest version of the California EMFAC model for use in state implementation plan (SIP) development in California. EMFAC2002 is the latest update to the EMFAC model for use by California state and local governments to meet Clean Air Act (CAA) requirements. EMFAC2002 calculates air pollution emission factors for passenger cars, trucks and buses. The new model is based on new and improved data and is also a more user-friendly version of the model, allowing agencies to update assumptions and run multiple scenarios for emissions analyses. Today's notice also starts a time period before EMFAC2002 is required to be used statewide in all new transportation conformity analyses in California. Since the EMFAC model is only used in California, EPA's approval of the model does not affect MOBILE model users in other states.

DATES: This determination is effective April 1, 2003. See below for further information regarding how today's approval starts a time period after which EMFAC2002 is required in new transportation conformity analyses.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, oconnor.karina@epa.gov, (775) 833–1276, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901.

SUPPLEMENTARY INFORMATION: Copies of the official version of the EMFAC2002 model are available on the California Air Resources Board (CARB) Web site: *http://www.arb.ca.gov/planning/emfac2002/emfac2002.htm* (transmittal and links to support documents) and *http://www.arb.ca.gov/msei/on-road/latest_version.htm* (model, technical support documents, etc.).

I. Background

A. What Is the EMFAC Model?

The EMFAC model (short for EMission FACtor) is a computer model that can estimate emission rates for motor vehicles for calendar years from 1970 to 2040 operating in California. Pollutant emissions for hydrocarbons, carbon monoxide, nitrogen oxides, particulate matter, lead, sulfur oxides, and carbon dioxide are output from the model. Emissions are calculated for passenger cars, eight different classes of trucks, motorcycles, urban diesel and school busses and motor homes. The EMFAC2002 model is operated with a user-friendly graphical user interface (GUI) which facilitates data input and allows the development of alternative emissions scenarios through a What If Scenarios (WIS) generator. The WIS interface can be used to incorporate updated vehicle data, adjust ambient conditions or make changes to potential emission control programs in a specific area.

EMFAC is used to calculate current and future inventories of motor vehicle emissions at the state, county, air district, air basin, or air basin within county level. EMFAC contains default vehicle activity data, and the option of modifying that data, so it can be used to estimate a motor vehicle emission inventory in tons/day for a specific day, month, or season, and as a function of ambient temperature, relative humidity, vehicle population, mileage accrual, miles of travel and speeds. Thus the model can be used to make decisions about air pollution policies and programs at the local or state level. Inventories based on EMFAC are also used to meet the federal CAA's state implementation plan (SIP) and transportation conformity requirements.

B. What Versions of EMFAC Are Currently in Use in California?

Most SIPs in California were developed using the vehicle emission models EMFAC7F (released by CARB September 1993) or EMFAC7G (released by CARB July 1997). EPA approved use of EMFAC7F in May 1994 and then EMFAC7G in April 1998. EMFAC7G was considered a minor update to EMFAC (similar to MOBILE5b as a minor update to MOBILE5a), thus areas with SIP motor vehicle emissions budgets developed using EMFAC7F were allowed to continue to use EMFAC7F for conformity. EMFAC7G included updated data on control measures (*e.g.* inspection and maintenance and truck standards), updated vehicle information (*e.g.* vehicle population and starts/vehicle/day) and vehicle activity data (*e.g.* vehicle miles per day and vehicle miles per speed distribution). Areas with SIP budgets developed using EMFAC7G were required to use EMFAC7G for regional conformity analyses.

Since the release of EMFAC7G, CARB has made several interim updates to EMFAC, EMFAC2000 and EMFAC2001. Of these models, only EMFAC2000 was submitted to EPA for approval and used in development of a SIP. Like EMFAC7G, EMFAC2000 included updated data on control measures (*e.g.*, cleaner fuels, new vehicle standards for motorcycles, buses, and heavy-duty trucks), updated vehicle information (*e.g.*, vehicle population, starts/vehicle/day) and updated vehicle activity data (*e.g.*, vehicle miles per day, vehicle miles per speed distribution, and mileage accrual rates). In January 2002, EPA approved EMFAC2000 (67 FR 1464, January 11, 2002) for use only in the San Francisco Bay Area (Bay Area), for estimation of ozone precursor emission factors. EPA's approval of EMFAC2000 was limited because: (1) EMFAC2000 was an improvement on existing available models despite certain technical limitations; and (2) CARB has committed to revise the Bay Area ozone attainment SIP's motor vehicle emissions budgets with EMFAC2001 or a successor model as part of its mid-course review SIP revision in April 2004.

C. Why Have Transportation Agencies Stopped Using EMFAC7F and EMFAC7G for Regional Conformity Emissions Analyses?

On May 2, 2002, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) sent a letter to CARB indicating that, after December 31, 2002, they would not continue to make conformity determinations that require a new regional emissions analysis, unless the analysis incorporates more recent vehicle data. The letter indicated that vehicle data embedded in the EMFAC7F and EMFAC7G versions of the EMFAC emission factor model were about ten years old. Consistent with the U.S. DOT/EPA January 18, 2001, guidance on latest planning assumptions, new vehicle registration data must be used when it is available for conformity purposes. Since newer vehicle data was available but was not included in the older versions of EMFAC, EMFAC7F and EMFAC7G have not been used in any new regional emissions analyses since December 31, 2002.

D. Why Is EPA Announcing Its Approval of the EMFAC Model?

CAA section 172(c)(3) and 40 CFR 51.112(a)(1) require that SIP inventories be based on the most current and applicable models that are available at the time the SIP is developed. CAA section 176(c)(1) requires that the latest emissions estimates be used in conformity analyses. EPA approves models that fulfill these requirements.

Under 40 CFR 93.111(a), EPA must approve new versions of EMFAC for SIP purposes before they can be used in conformity analyses. In a December 20, 2002 letter, CARB requested that EPA approve EMFAC2002 for use in developing SIPs and in determining conformity of transportation plans in California. EMFAC2002 is a significant change from previous EMFAC models and is capable of calculating motor vehicle emissions for all California areas. EMFAC2002 is being approved as the latest emissions model for statewide use in SIP development (rather than as an interim update to the EMFAC model as EMFAC7G was an interim update to EMFAC7F). Since the EMFAC model is only used in California, EPA's statewide approval of the model does not affect MOBILE emissions factor model users in other states.

II. EPA Action

A. What Version of EMFAC Is EPA Approving?

In this notice, EPA is approving and announcing that EMFAC2002 is available to use in statewide California SIP development. EMFAC2002 was developed by CARB and transmitted for approval to EPA on December 20, 2002.

On January 28, 2003, CARB also transmitted a methodology to adjust vehicle activity data used by EMFAC2002 when updated data is available. Since the transportation conformity rule (40 CFR 93.110) requires areas to use the latest information for estimating vehicle activity, we are also approving the CARB methodology for updating vehicle activity data in EMFAC2002.

CARB's methodology, "Recommended Methods for Use of EMFAC2002 to Develop Motor Vehicle Emission Budgets and Assess Conformity," explains how vehicle activity data should be updated. The methodology explains how each parameter associated with vehicle activity was originally developed in EMFAC, how each parameter is related, and how each can be updated when new data becomes available. These relationships are important when adjusting vehicle trips or VMT. For example, VMT in EMFAC2002 is directly related to vehicle population [1] and mileage accrual rate. Similarly, start and evaporative vehicle emissions are also related to vehicle population levels. If new VMT data is available, CARB suggests modifying the input vehicle population levels, instead of directly inputting new VMT data so that start and evaporative emissions are revised appropriately. Updated vehicle activity data (vehicle miles traveled) can also be input to EMFAC using the WIS interface. As CARB states, local circumstances may alternatively support adjustment of mileage accrual rates, subject to the interagency consultation process. In addition, CARB intends to periodically update vehicle population information, including vehicle classes by model year, in EMFAC2002.

B. What Pollutants Can EMFAC2002 Estimate?

EPA is approving the model to estimate regional emissions of hydrocarbons (HC), carbon monoxide (CO), nitrogen oxides (NO_X), particulate matter (PM), lead, sulfur oxides and carbon dioxide. However, EMFAC2002 will only be used in transportation conformity for pollutants and precursors that affect transportation emissions and are identified in air quality plans as significant. Transportation-related pollutants and precursors that are currently covered by the conformity rule are HC, NO_X, CO, and PM–10. EPA is also approving EMFAC2002 to estimate hotspot emissions for carbon monoxide.

[1] Vehicle population includes vehicle type (class) and age distribution.

C. Why Does EPA Consider EMFAC2002 as a Major Update to EMFAC?

EMFAC2002 includes significant changes to its model interface, new data and methodologies regarding calculation of vehicle emissions, revisions to implementation data for control measures, and corrections to technical errors mentioned in our prior approval of EMFAC2000. The new WIS interface makes EMFAC2002 both more user friendly and allows users to change input data updated for factors that had previously been embedded within the model (*e.g.* fleet vehicle data). EMFAC2002 includes updated data estimating idle emissions from heavy duty trucks and school buses. Base emission rates for light-duty vehicles are now drawn from the real-world unified drive cycle. EMFAC2002 accounts for gross evaporative emissions (*i.e.*, "liquid leakers") and updates particulate emissions to account for smoking vehicles. The model also accounts for recent amendments to California's low emissions vehicle and fuels regulations, as well as updated heavy-duty truck standards. Full chassis dynamometer tests, rather than engine dynamometer tests, are now the source of heavy-duty truck emissions factors. CARB's web site describes these and other model changes at *http://www.arb.ca.gov/planning/emfac2002/encl_a.pdf.*

D. How Were Stakeholders and the Public Involved in the EMFAC Development Process?

Since 1999, CARB has held a series of public workshops to discuss proposed model updates and receive comments on interim versions of the new model. In the most recent workshops, held June 11 and 13, 2002, CARB described the latest EMFAC changes under consideration and sought public input. Those changes are reflected in the final EMFAC2002 model released in October 2002. Two additional public information briefings were held on November 6 and 7, 2002, to share the emissions estimates resulting from use of the final model with updated travel activity, as well as plans for transmittal of EMFAC2002 to U.S. EPA. CARB has also discussed both the model and the activity update methodology with affected transportation and air agencies as part of the interagency consultation process.

CARB also released a series of technical memos, that describe each update to the model, and a public information document that summarizes the changes from earlier versions of the model. The technical memos are available on CARB's Web site at: *http://www.arb.ca.gov/msei/on-road/latest_revisions.htm.* Each memo describes the model update, the reason for the change, how the change was incorporated into the EMFAC model, and the resulting emissions impact. The public information document is also available on the CARB Web site at: *http://www.arb.ca.gov/msei/on-road/briefs/2002.pdf.* This document summarizes the major changes to the EMFAC model and contains tables showing the impacts of the changes both statewide and by county for VOC, CO, NO_X and PM. The detailed description of all major model updates since EMFAC7F is an enclosure to the transmittal package and available on the CARB Web site at: *http://www.arb.ca.gov/planning/emfac2002/encl_a.pdf.*

E. Will a Transportation Conformity Grace Period Be Set by This Approval?

Yes. The transportation conformity rule (40 CFR 93.111) requires that conformity analyses be based on the latest motor vehicle emissions model approved by EPA for SIP purposes for a state or area. Section 176(c)(1) of the CAA states that "* * * [t]he determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates* * *." When we approve a new emissions model such as EMFAC2002, a grace period is established before the model is required for conformity analyses. However, areas have the option of using the new model prior to the end of the grace period. The conformity rule provides for a grace period for new emissions models of between 3 to 24 months.

In consultation with the DOT, EPA considers many factors in establishing the length of the grace period, including the degree of change in emissions models and the effects of the new model on the transportation planning process (40 CFR 93.111).

Upon consideration of all of these factors, EPA is establishing a 3-month grace period before EMFAC2002 is required for new conformity analyses. The grace period begins today and ends on June 30, 2003. As discussed earlier in the notice, several prior versions of EMFAC (EMFAC7F, EMFAC7G) are no longer used in California for new regional emissions analyses for transportation plan and transportation improvement program (TIP) conformity determinations. Therefore it is appropriate to set a short grace period since all areas in California will need to use EMFAC2002 to begin any new regional conformity analyses. A longer grace period would provide no practical benefit for transportation plan and TIP conformity determinations, since older EMFAC models cannot be used in new regional analyses.

When the grace period ends on June 30, 2003, EMFAC2002 will become the only approved motor vehicle emissions model for new regional and hot-spot transportation conformity analyses across California. In general, this means that all new VOC, NO_X, PM–10, and CO regional conformity analyses and CO hot-spot analyses started after the end of the 3-month grace period must be based on EMFAC2002, even if the SIP is based on an earlier version of the EMFAC model.

F. Can Areas Use Any Other Models During the Grace Period?

Yes, in limited cases. The only area in California with motor vehicle emission budgets developed with EMFAC2000 and approved to use EMFAC2000 is the Bay Area. During the grace period, the Bay Area can continue to use EMFAC2000 for regional analyses for ozone precursors or choose to use EMFAC2002 on a shorter time frame. DOT's May 2, 2002 memo did not preclude the continuing use of EMFAC2000 for use in new regional conformity determinations. In addition, the Bay Area could proceed with transportation plan and TIP conformity analyses for ozone precursors based on EMFAC2000 if the analysis was begun before or during the grace period. (40 CFR 93.111(c))

Conformity determinations for transportation projects can also be based on EMFAC7F if the analysis was begun before the end of the grace period, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document (*see* 40 CFR 93.111(c)). The interagency consultation process should be used if it is unclear whether an EMFAC7F or EMFAC7G based analysis was begun before the end of the grace period.

G. Related SIP Development Actions

The Bay Area 2001 ozone SIP included a commitment from CARB to revise the SIP with the latest technical information as part of its mid-course review in April 2004. This commitment was referenced in EPA's approval of EMFAC2000 (67 FR 1464, January 11, 2002), with the understanding that CARB would submit revisions to the EMFAC model (*e.g.*, EMFAC2002) in early 2003, so that the Bay Area SIP revision would occur within one year of EPA's approval of EMFAC2002. This is consistent with EPA's past practice where an older version of the MOBILE model has been used prior to the release of a newer version that includes technical corrections in emission estimates. We understand that the Bay Area has begun work on the plan revision, that the EMFAC2002 model will be used in development of the motor vehicle emission inventories in the plan and that the SIP should be submitted to EPA by the April 2004 deadline.

In addition, on June 14, 2002, CARB submitted a letter indicating the State's intention to submit comprehensive revisions to the progress, attainment, and maintenance SIPs and the budgets for most areas in California. These SIP revisions, would reflect, among other new information, the State's revised motor vehicle emissions factors using EMFAC2002 and updated information on vehicle fleet, age distribution, and activity levels (letter from Michael P. Kenny, CARB, to Wayne Nastri, EPA). In this letter, CARB acknowledged that the previously approved budgets had become outdated and made clear its intention to update these budgets as part of a comprehensive update to the plans. CARB also requested that EPA limit the duration of its prior approvals of the emission budgets.

In response, on July 16, 2002 (67 FR 46618), EPA proposed to limit our approvals of the existing SIP budgets to last only until the effective date of our adequacy finding for new budgets that replace the existing approved budgets for the same pollutant, CAA requirement, and year. That proposal was finalized on November 15, 2002 (67 FR 69139), limiting our prior approvals of the emission budgets. Normally, new budgets that replace existing budgets in approved plans cannot be used until the corresponding plans have been fully approved as part of the SIP (see 40 CFR 93.118(e)). However, since approval of the existing budgets now expires when we determine that the new budgets are adequate, the updated budgets can be employed in transportation conformity determinations within a few months of their submission, rather than only when the SIP is finally approved, which could take as long as 18 months.

Consistent with the June 2002 letter, CARB has already begun submitting revised SIPs. Ozone maintenance plans, new and revised, have already been submitted for San Diego and Santa Barbara. A revised statewide CO maintenance plan and revised regional air quality plans for San Joaquin Valley, South Coast, Coachella Valley, and Ventura County are also expected within the next year. Motor vehicle emission budgets from all of these plans would go into effect upon determination of a positive adequacy finding, rather than after a full plan approval and be available for conformity analyses using EMFAC2002.

H. Summary of EPA Actions

EPA is approving EMFAC2002 as submitted by CARB on December 20, 2002 with the following limitations and conditions.

(1) The approval is limited to California.

(2) The approval is Statewide and applies to estimation of hydrocarbon, carbon monoxide, nitrogen oxides, and particulate matter emissions, lead, sulfur oxides and carbon dioxide. However, EMFAC2002 will only be used in transportation conformity for pollutants and precursors that affect transportation emissions and are identified in air quality plans as significant. EPA is also approving EMFAC2002 to estimate hotspot emissions for carbon monoxide.

(3) A 3-month statewide conformity grace period will be established beginning April 1, 2003 and ends June 30, 2003.

Dated: March 20, 2003.

Wayne Nastri,

Regional Administrator, EPA Region IX.

[FR Doc. 03–7815 Filed 3–31–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7475–3]

EPA National Advisory Council for Environmental Policy and Technology; Notification of Public Advisory Committee Teleconference Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; notification of Public Advisory Committee teleconference meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the National Advisory Council for Environmental Policy and Technology (NACEPT) will meet in a public teleconference on Thursday, April 17, 2003, from 10 a.m. to 12 p.m. Eastern Time. The meeting will be hosted out of the main conference room, U.S. EPA, 655 15th Street, NW., Suite 800, Washington, DC 20005. The meeting is open to the public, however, due to limited space, seating will be on a registration-only basis. For further information regarding the teleconference meeting, or how to register and obtain the phone number, please contact the individuals listed below.

Background

NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Public Law 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serves as a sounding board for new strategies that the Agency is developing.

Purpose of Meeting

The NACEPT Council will review and discuss the EPA's draft FY 2003–2008 Strategic Plan. The draft Strategic Plan is built around five goals, centered on the themes of air, water, land, communities and ecosystems, and compliance and environmental stewardship. EPA is currently soliciting public comments on the draft strategic plan. This meeting will provide the full NACEPT Council the opportunity to make recommendations on EPA's draft strategic plan.

Availability of Review Materials

EPA's Draft FY 2003–2008 Draft Strategic Plan is available electronically from EPA's Office of Chief Financial Officer, at *http://epa.gov/ocfo/plan/plan.htm.*

FOR FURTHER INFORMATION CONTACT: Members of the public wishing to gain access to the conference room on the day of the meeting must contact Ms. Gwen Whitt, Designated Federal Officer for NACEPT, U.S. Environmental Protection Agency (1601E), Office of Cooperative Environmental Management, 655 15th Street, NW., Suite 800, Washington, DC 20005; telephone/voice mail at (202) 233–0090 or via email at *whitt.gwen@epa.gov.* You may also contact Sonia Altieri at (202) 233–0090 if you have any questions. The agenda will be available to the public upon request. General comments from the public on the draft strategic plan should be sent to *http://epa.gov/ocfo/plan/plan.htm.* Specific comments for NACEPT's consideration should be submitted no later than Monday April 21, 2003.

General Information

Additional information concerning the National Advisory Council for

Environmental Policy and Technology (NACEPT) can be found on our website *(http://www.epa.gov/ocem).*

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Whitt at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 24, 2003.

Gwen Whitt,

Designated Federal Officer.

[FR Doc. 03–7798 Filed 3–31–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7475–4]

New Jersey State Prohibition on Marine Discharges of Vessel Sewage; Receipt of Petition and Tentative Determination

Notice is hereby given that a petition dated March 27, 2002 was received from the State of New Jersey requesting a determination by the Regional Administrator, Environmental Protection Agency (EPA), pursuant to section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Barnegat Bay, Ocean County, New Jersey. This petition was made by the New Jersey Department of Environmental Protection (NJDEP) in cooperation with the Barnegat Bay Estuary Program, New Jersey Marine Sciences Consortium, Ocean County Planning Board and Ocean County Vacation and Technical School. Upon receipt of an affirmative determination in response to this petition, NJDEP would completely prohibit the discharge of sewage, whether treated or not, from any vessel in the Barnegat Bay Complex in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

Barnegat Bay is a shallow, lagoon-type estuary characteristic of a back bay system of a barrier island coastline. Barnegat Bay is bordered by two barrier islands, Island Beach and Long Beach Island. These islands are approximately 64 km in total length, are oriented north-south and separate the bay from the Atlantic Ocean. The No Discharge Zone (NDZ) will include Barnegat Bay Complex and its navigable tributaries. The boundary lines have been defined for the Point Pleasant Canal, Barnegat Inlet and Egg Harbor Inlet as lines between the following points:

Point Pleasant Canal—
40 04.030 N, 74 03.281 W;
40 04.068 N, 74 03.278 W

Barnegat Inlet—
Inside South Bouy, 39 45.457 N, 74 05.519 W;
Inside North Bouy, 39 45.525 N, 74 05.519 W

Egg Harbor Inlet—
39 30.521 N, 74 18.389 W;
39 30.476 N, 74 17.322 W

Barnegat Bay provides recreational, economic, and aesthetic benefits to the coastal users of New Jersey. The estuary is productive for shellfish harvesting, recreational activities such as fishing, kayaking, swimming and boating. The bay supports hard clam harvest and blue crab landings. NJDEP Bureau of Marine Water Classification and Analysis has divided the State into 36 Shellfish growing water reaches. The bay complex is identified as Reaches 7 through 13 which are as follows:

Reach 7—Barnegat Bay (Bay Head to Seaweed Point)
Reach 8—Barnegat Bay (Seaweed Point to Mathis Bridge)
Reach 9—Toms River
Reach 10—Barnegat Bay (Mathis Bridge to Forked River)
Reach 11—Barnegat Bay (Forked River to Main Point)
Reach 12—Manahawkin/Little Egg Harbor Bay (Main Point to Long Point)
Reach 13—Long Point to Beach Haven Inlet

Information submitted by the State of New Jersey indicate that there are sixty-six existing pumpout facilities and two pumpout boats available to service vessels throughout the Barnegat Bay Complex. The typical facility is available to the boating community from April through November with hours of operation from 8 am until 5 pm, seven days a week. Seven facilities are available all year. Sixty-three of the existing pumpout facilities are connected to municipal sewage lines. Sewage from these facilities is routed to the Ocean County Municipal Utilities Authority where it undergoes secondary treatment. Three pumpout facilities (Ocean Gate Yacht Basin, Ocean Beach South and Causeway Boat Rental and Marina) store their waste in holding tanks for disposal by a septic waste hauler.

According to the State's petition, the vessel population for the waters of Barnegat Bay Complex is approximately 15,587 vessels which are docked at private residences and 12,900 vessels docked or moored at marinas or yacht clubs. The total vessel population is 28,487. The ratio of boats to pumpout facilities has been based on the total number of vessels which could be expected. With sixty-six shore-side pumpout facilities and two pumpout vessel available to boaters, the ratio of docked or moored boats (including transients) is approximately 420 vessels per pumpout. Standard guidelines refer to acceptable ratios falling in the range of 300 to 600 vessels per pumpout. If the EPA calculation is employed (as listed in the guidance manual entitled, "Protecting Coastal Waters from Vessel and Marina Discharges: A Guide for State and Local Officials—April 1994"), it estimates that twenty-four pumpouts are needed to provide adequate facilities.

Commercial vessels which operate in and around the harbor are engaged in fishing activities exclusively. Most of the operators will use the facilities where they dock or obtain fuel. The larger fishing vessels do not operate in the bay, but dock in the vicinity of Barnegat Light and fish the Atlantic Ocean.

The EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Barnegat Bay Complex in Ocean County, New Jersey. A final determination on this matter will be made following the 30-day period for public comment regarding a New Jersey State prohibition of any sewage discharges from marine vessels in the Barnegat Bay Complex.

Comments and views regarding this petition and EPA's tentative determination may be filed on or before May 1, 2003. Comments or requests for information or copies of the applicant's petition should be addressed to Walter E. Andrews, U.S. Environmental Protection Agency, Region 2, Water Programs Branch, 290 Broadway, 24th Floor, New York, New York 10007–1866. Telephone: (212) 637–3880.

Dated: March 14, 2003.

William J. Muszynski,

Acting Regionol Administrator, Region 2.

[FR Doc. 03–7799 Filed 3–31–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice

SUMMARY: Background.

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Wanda Dreslin, Supervisory Financial Analyst (202–452–3515) or Tina Robertson, Supervisory Financial Analyst (202–452–2949) for information concerning the specific bank holding company reporting requirements. The following may also be contacted regarding the information collection:

Federal Reserve Board Clearance Officer – Cindy Ayouch –Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer–Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Final approval under OMB delegated authority the revision, without extension, of the following reports:

Report title: Financial Statements for Bank Holding Companies

Agency form numbers: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9CS, and FR Y–9ES

OMB control number: 7100–0128.

Frequency: Quarterly, semiannually, and annually

Reporters: Bank holding companies (BHCs).

Annual reporting hours: 346,439.

Estimated average hours per response: FR Y–9C: 34.73 hours, FR Y–9LP: 4.75 hours, FR Y–9SP: 4.09 hours, FR Y–9CS: 30 minutes, FR Y–9ES: 30 minutes

Number of respondents: FR Y–9C: 1,959, FR Y–9LP: 2,320, FR Y–9SP: 3,541, FR Y–9CS: 600; FR Y–9ES: 100

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The FR Y–9C consists of standardized consolidated financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No.7100–0036). The FR Y–9C is filed quarterly by top–tier BHCs that have total assets of $150 million or more and by lower–tier BHCs that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each BHC that files the FR Y–9C. In addition, for tiered BHCs, a separate FR Y–9LP must be filed for each lower tier BHC.

The FR Y–9SP is a parent company only financial statement filed semiannually by one–bank holding companies with total consolidated assets of less than $150 million, and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This report, an abbreviated version of the more extensive FR Y–9LP, is designed to obtain basic balance sheet and income statement information for the parent company, information on intangible assets, and information on intercompany transactions.

The FR Y–9CS is a free form supplement that may be utilized to collect any additional information deemed to be critical and needed in an expedited manner. It is intended to supplement the FR Y–9C and FR Y–9SP reports.

The FR Y–9ES is filed annually by BHCs that are Employee Stock Ownership Plans (ESOPs).

Current Actions: Many of the proposed reporting revisions that pertain to the FR Y–9 reports are being requested to parallel revisions to the Federal Financial Institutions Examination Council (FFIEC) Commercial bank Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No.7100–0036). However, there are other revisions not directly related to the Call Report.

Also addressed in this notice is the requirement that BHCs electronically submit all FR Y–9 reports effective with the June 30, 2003, report date for FR Y–9C and FR Y–9 LP filers and December 31, 2003, report date for FR Y–9SP and FR Y–9ES filers. The Federal Reserve will no longer accept paper copy reports from BHCs as of these reporting dates.

March 2003 revisions

On December 24, 2002, the Board issued for public comment proposed revisions to bank holding company reports (67 FR 78467). The comment period expired on February 24, 2003. The Federal Reserve received comment letters from one bank holding company (BHC) trade association and four large BHCs. The comments received are addressed in detail below.

Accelerated Filing Deadline

The Federal Reserve originally proposed to require the filing of FR Y–9C, FR Y–9LP and FR Y–9SP reports within 35 days after the period end, consistent with the Securities and Exchange Commission's (SEC's) final rule to accelerate the filing of SEC quarterly reports to 35 days. However, the Federal Reserve proposed to implement the 35–day deadline in June 2004 whereas the SEC's phased–in rule accelerates the filing deadline to 40 days in March 2004 and 35 days in March 2005. All five commenters expressed concerns about their ability to meet the accelerated deadline as well as the burden of imposing the accelerated deadline on all FR Y–9 reporters, not just those filers with market exposure.

Commenters suggested several alternatives to the original proposal: (1) a phased–in approach consistent with the SEC's implementation of a 40–day deadline for 2004 and 35–day deadline for 2005; (2) a 40–day deadline; (3) an accelerated 35–day deadline for top–tier BHCs only, with lower–tier holding companies' deadline remaining at the current 45 days; (4) parent company only reports' (FR Y–9LP and FR Y–9SP) deadline remaining at the current 45 days; (5) a 35–day deadline for balance sheet and income statements with a 45–day deadline for all other supporting schedules; and (6) an extended 45–day deadline for year–end FR Y–9 reports. In addition, two commenters suggested

extending other regulatory filings if the Federal Reserve implemented the accelerated deadline as proposed.

In order to provide sufficient time for the BHCs to make changes to their software and internal programs, the Federal Reserve will follow the SEC's phased–in approach by delaying implementation until June 2004 for the 40–day deadline and June 2005 for the 35–day deadline. Also, the new filing deadlines will only apply to top–tier FR Y–9C filers for March, June, and September report dates. The December filing deadline for top–tier FR Y–9C filers will remain at 45 days after the report date. In addition, the filing deadline for FR Y–9LP, FR Y–9SP and all lower–tier BHCs that file the FR Y–9C will remain at 45 days after the report date.

The Federal Reserve also proposes that the 35–day deadline be defined as "5 business days after the 30th day after the report date" to allow time for integration of bank data in the event that the 30th day falls on a weekend. The Federal Reserve believes that the primary purpose of the accelerated deadline, market discipline, will be fulfilled by restricting the accelerated deadlines to top–tier BHCs since these entities are generally of more interest to users of financial information. The Federal Reserve will assess reporting under this definition of 35 days after implementation and may revise the deadline dates to conform precisely to the SEC deadline. Any modification would be addressed in a separate proposal.

Allocated Transfer Risk Reserves

The Federal Reserve proposed modifying the reporting instructions to the FR Y–9C regarding allocated transfer risk reserves (ATRR) to parallel March 2003 Call Report changes. As proposed, these provisions would be included in the provision for loan and lease losses rather than in other noninterest expense, with the amount of any provision for allocated transfer risk included in the provision for loan and lease losses separately disclosed. Two commenters supported this change as being more consistent with generally accepted accounting principles (GAAP), but recommended that the Federal Reserve also make a comparable change to the way in which the ATRR is reported on the FR Y–9C balance sheet.

The Federal Reserve agrees with these comments and will revise the FR Y–9C instructions to include any ATRR related to loans and leases in the allowance for loan and lease losses. With this change, instructions for reporting loan charge–offs and recoveries, the reconcilement of the loan loss allowance, and Tier 2 risk–based capital treatment will also be changed to reflect this revised method for treating ATRR.

In addition, one commenter suggested adding a memorandum item to collect the ATRR balance related to loans and leases included in the allowance for loan and lease losses, consistent with the March 2003 Call Report. The Federal Reserve decided to add this item to the FR Y–9C Schedule HI–B, part II.

Instructional Clarification for Use of Trading Account Designation for Loans

Because of questions concerning the categorization of certain loans as trading assets and to parallel the March 2003 Call Report changes, the Federal Reserve originally proposed to revise the Glossary definition of "Trading Account" and establish a rebuttable presumption that loans should not be reported as trading assets. Three commenters addressed this proposed instructional change and recommended that the Federal Reserve avoid creating a "rebuttable presumption" that does not exist in the accounting literature. They believe that it is appropriate to classify loans as trading assets under GAAP when they have been acquired as part of trading functions. Two commenters disagreed with including loans acquired from third parties and held for securitization in the held–for–sale category.

In considering these comments, the Federal Reserve will update the General Instructions section of the FR Y–9C loan schedule for situations where loans reported as trading assets should have been reported as held–for–sale or held–for–investment (rather than in the "Trading Account" Glossary entry). In so doing, the rebuttable presumption language will be removed. Furthermore, the Federal Reserve will retain the instructional language that explains that loans acquired (originated or purchased) and held for securitization purposes should be reported as loans held–for–sale.

Schedule HC–N – Past Due and Nonaccrual Loans, Leases, and Other Assets

The Federal Reserve proposed adding two items, additions to nonaccrual assets and the portion of nonaccrual assets that have been sold during the quarter, to collect data on the inflows and outflows of nonaccrual loans to enhance the Federal Reserve System's ability to assess portfolio credit quality, credit cycle trends, and approaches to problem asset resolution. Commenters stated that this information should be obtained through the examination process, but if the data were required, defer collection until December 31, 2003, to allow time to develop software for capturing the requested information. They further stated that the data would be of limited value and lack comparability across institutions due to differences in portfolio composition.

After reviewing the comments, the Federal Reserve will collect the two items on nonaccrual assets, as proposed. Data provided through the examination or inspection process are collected at staggered, infrequent intervals, are institution–specific with respect to formats, and are therefore unsuitable for comparative analysis. The information to be collected will be sufficient in tracking changes in the general or underlying credit quality trends of BHCs in aggregate and will provide specific information on an increasingly important aspect of risk management – asset sales.

The Federal Reserve acknowledges that the data collection could pose significant burden to large global banking organizations. As a result, the Federal Reserve will postpone the initial collection of nonaccrual information until December 31, 2003, to allow these organizations time to create the necessary data systems.

Selected Information of Large Predecessor or Acquired Companies

The Federal Reserve proposed collecting thirty items on the companies acquired by a BHC during any quarter in which such significant acquisitions were made. The items would only be collected for each firm with consolidated assets of $150 million or more. These profitability data would not otherwise be included in the consolidated financial statements of the combined entity under the purchase accounting method. Three comment letters addressed this proposed revision.

Commenters stated that seller financial statements submitted by the BHC during the application process are sufficient to satisfy the request for data collection. The Federal Reserve believes the "applications" financial statements often are stale and lack year–to–date information immediately prior to the merger date. Three commenters commenters expressed concern regarding the confidentiality of data solicited on the FR–Y9C. Specifically, these commenters wanted to insure the confidentiality of data not previously disclosed to the public. One commenter suggested all data on individual transactions be treated as confidential; another referred generally to "any proprietary information that may not have a GAAP disclosure requirement." The Board recognizes the concern expressed by these commenters but has concluded there is no reason to depart from its current practice of permitting the FR–Y9C filers to request confidential treatment in individual cases, which requests may be granted if properly supported.

Furthermore, commenters suggested a materiality threshold based on a percentage of assets or Tier 1 capital. As a result, the Federal Reserve has reconsidered its position and recommends a significantly higher reporting criterion of $10 billion in aggregate assets of all acquired entities during the quarter or 5 percent of the respondent's consolidated assets as of the previous quarter–end, whichever is lower. Another commenter questioned whether separate schedules or a single, combined schedule for each transaction would be required. The Federal Reserve will modify the FR Y–9C instructions to clarify that only a single schedule will need to be completed with aggregated information for all entities acquired during the quarter.

Commenters also stated unique or discreet information may no longer be available, particularly for nonbanking organizations acquired by the respondent, may be misleading, and may reflect institutional differences in areas such as accounting principles. The Federal Reserve believes excluding information that involves a significant acquirer may substantially distort aggregate data for broad segments of the industry. When a BHC acquires a nonbanking organization, the number of items the proposal requires is dramatically reduced. For example, for an insurance company without investment securities gains or losses, the pretax items to be collected would be limited to noninterest income, noninterest expense, and personnel expenses. While the Federal Reserve concurs that institutional differences may exist, they should not detract from the substance of financial statements prepared according to GAAP.

The Federal Reserve believes that most firms have accounting systems in place, which are maintained up to the date before a business entity ceases to be a going concern. However, one commenter provided additional information on rare situations that could emerge when only a portion of a firm may be purchased and actual financial statements may not be readily available for the acquirer. As a result, the Federal Reserve will accept estimates in lieu of actual data in these difficult circumstances.

One banking organization cited that merger–related adjustments to data might not be disclosed in the proposed items. In response, the Federal Reserve will modify the instructions to give BHCs the flexibility to provide merger–adjusted data.

Revised Filing Method

On September 16, 2002, the Federal Reserve issued for public comment revision to the filing method for bank holding company reports (67 FR 58425). The comment period expired on November 15, 2002. The comments received are addressed in detail below.

The Federal Reserve received comment letters from two bank holding company (BHC) trade associations, one large BHC, five small BHCs, and two accounting firms. The large BHC and one BHC association expressed support of the proposal to require electronic submission of the FR Y–9 series of reports. However, they expressed some specific concerns regarding the statement that the Federal Reserve anticipates in the future requiring that electronic submission software include data editing capabilities. The Federal Reserve appreciates the comments received regarding potential data editing capabilities of computer software, and will take these comments into consideration when this issue is formally addressed in a separate proposal for public comment at a later date.

Several small BHCs and one BHC association cited the cost to purchase software to submit the FR Y–9SP report electronically as prohibitive, and requested that small BHCs either be exempted from the electronic filing requirement, or that the Federal Reserve provide the means to file the report over the Internet. As referenced in the initial notice, the Federal Reserve provided the option to file the FR Y–9SP via the Internet in 2001 by means of data entry or file submission, referred to as the Internet Electronic Submission (IESUB) application. Bank holding companies interested in learning more about IESUB submission options should contact their district Federal Reserve Bank or go to www.reportingandreserves.org. for additional information.

One accounting firm requested that report submission software allow for the attachment of a compilation report for financial statements that they prepare for a third party. Submission of such a compilation report to the Federal Reserve is not a reporting requirement for BHC reports. Accounting firms may choose to have BHC clients maintain a hard copy of their compilation reports in the files of the BHC. Another accounting firm requested that reporting software allow for submission of Excel spreadsheets for the FR Y–9SP report and possibly other FR–Y series reports. FR Y–9SP and FR Y–9ES filers currently have the ability to submit text files created by Excel spreadsheets through IESUB, and they should contact their district Federal Reserve Bank or go to www.reportingandreserves.org for procedures for submitting such spreadsheets and information on other submission options.

One small BHC requested that the Federal Reserve provide an email notification to remind the institution that the report date is approaching. Reserve Banks will continue to provide notification in the same manner currently provided to respondents of reporting deadlines, changes to reporting requirements, and any pertinent supplemental instructions prior to each report date.

Another small BHC indicated that it does not own a computer and wishes to continue to submit paper reports. As indicated above, the Federal Reserve provides respondents the option to file the FR Y–9SP via the Internet by means of data entry. Information may be submitted through public Internet access, or respondents may choose to make arrangements for data submission through a private software vendor. Also one small BHC asked if software could allow for electronic signatures; however, current Federal Reserve and vendor software do not possess this feature. The BHC is only required to keep a signed copy in its files to meet the signature requirement.

In considering these comments, the Federal Reserve will implement the revised filing method as proposed. BHCs will be required to electronically submit all FR Y–9 reports effective with the June 30, 2003, report date for FR Y–9C and FR Y–9 LP filers and December 31, 2003, report date for FR Y–9SP and FR Y–9ES filers. The Federal Reserve will no longer accept paper copy reports from BHCs as of these reporting dates.

Board of Governors of the Federal Reserve System, March 26, 2003.

Robert deV. Frierson

Deputy Secretary of the Board.

[FR Doc. 03–7728 Filed 3–31–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request For Comment on Information Collection Proposals.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before June 2, 2003.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at 202-452-3819 or 202-452-3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP-500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202-263-4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposals to Approve Under OMB Delegated Authority The Extension For Three Years, Without Revision, of the Following Reports:

1. Report title: The Senior Loan Officer Opinion Survey on Bank Lending Practices
Agency form number: FR 2018
OMB control number: 7100-0058
Frequency: Up to six times a year
Reporters: Large U.S. commercial banks and large U.S. branches and agencies of foreign banks
Annual reporting hours: 1,008 hours
Estimated average hours per response: 2 hour
Number of respondents: 84
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. §§248 (a), 324, 335, 3101, 3102, and 3105) and is given confidential treatment (5 U.S.C. § 552 (b)(4)).
Abstract: The FR2018 is conducted with a senior loan officer at each respondent bank up to six times a year. The purpose of the survey is to provide qualitative information with respect to bank credit developments on current price and flow developments and evolving techniques and practices in the U.S. banking sector. Consequently, a significant portion of the questions in each survey consists of unique questions on topics of timely interest. There is the option to survey other types of respondents (such as other depository institutions, bank holding companies, or corporations) should the need arise. The FR 2018 survey provides crucial information for monitoring and understanding the evolution of lending practices at banks and developments in credit markets.

2. Report title: Senior Financial Officer Survey
Agency form number: FR 2023
OMB control number: 7100-0223
Frequency: Up to four times per year
Reporters: Large commercial banks
Annual reporting hours: 240 hours
Estimated average hours per response: 1 hour
Number of respondents: 60
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. §§ 225a, 248(a), and 263). It has been anticipated that most, if not all, of the information to be collected on the FR 2023 would be exempt from disclosure under subsection (b)(4) of the Freedom of Information Act (5 U.S.C. § 552 (b)(4)). However, it also is possible that some information that might be collected on this survey may not be exempt, depending on the specific questions to be asked. Thus, the confidentiality status of the survey would be determined on a case-by-case basis.
Abstract: The FR 2023 collects qualitative and limited quantitative information about liability management, the provision of financial services, and the functioning of key financial markets from a selection of sixty large commercial banks (or, if appropriate, from other depository institutions or major financial market participants). Although the primary panel of respondents has been, and will likely continue to be, appropriate for most survey topics, panels based on alternative criteria may be more appropriate and efficient for some situations. Consequently, the option would continue to be available to survey other depository institutions or major participants in financial markets. This option greatly enhances the potential scope and utility of the survey. Responses are obtained from a senior officer at each participating institution through a telephone interview. The survey is conducted when major informational needs arise and cannot be met from existing data sources. The survey does not have a fixed set of questions; each survey consists of a limited number of questions directed at topics of timely interest. The survey helps pinpoint developing trends in bank funding practices, enabling the Federal Reserve to distinguish these trends from transitory phenomena.

Proposal to Approve Under OMB Delegated Authority The Extend, With Revision, the Following Reports:

1. Report titles: Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans and Quarterly Report of Credit Card Plans
Agency form numbers: FR 2835, and FR 2835a
OMB control number: 7100-0085
Frequency: Quarterly
Reporters: Commercial banks
Annual reporting hours: FR 2835: 90 hours; and FR 2835a: 160 hours
Estimated average hours per response: FR 2835: 9 minutes; and FR 2835a: 30 minutes
Number of respondents: FR 2835: 150; and FR 2835a: 80
Small businesses are not affected.
General description of report: These information collections are voluntary (12 U.S.C. 248(a)(2)). The FR 2835a individual respondent data are given confidential treatment (5 U.S.C. 552 (b)(4)), the FR 2835 data however, is not given confidential treatment.
Abstract: The FR 2835 collects the most common interest rate charged at a sample of 150 commercial banks on two types of consumer loans made in a given week each quarter: new auto loans and other loans for consumer goods and personal expenditures.

The FR 2835a collects information on two measures of credit card interest rates from a sample of 100 commercial banks (authorized panel size), selected to include banks with $1 billion or more in credit card receivables, and a representative group of smaller issuers. The data are representative of interest rates paid by consumers on bank credit cards because the panel includes virtually all large issuers and an appropriate sample of other issuers.
Current Actions: The Federal Reserve proposes to decrease the authorized sample size for the FR 2835a from 100 commercial banks to 80 commercial banks; 24 banks currently report. The proposed decrease in panel size would lower the total estimated annual burden from 304 hours to 264 hours.

2. Report title: Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates
Agency form numbers: FR-Y8
OMB control number: 7100-0126
Frequency: Quarterly
Reporters: Bank holding companies (BHC), financial holding companies, and foreign banking organizations (FBO)
Annual reporting hours: 159,619 hours
Estimated average hours per response: 7.8 hours
Number of respondents: 5,116
Small businesses are affected.
General description of report: This information collection is authorized by section 5(c) of the BHC Act (12 U.S.C. 1844 (c)) and section 225.5 (b) of Regulation Y (12 CFR 225.5 (b)) and is given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. 552 (b)(4) and (8)).
Abstract: This report collects information on transactions between an insured depository institution and its affiliates that are subject to section 23A of the Federal Reserve Act. The information is used to enhance the Federal Reserve's ability to monitor bank exposures to affiliates and to ensure compliance with section 23A of the Federal Reserve Act. Section 23A of the Federal Reserve Act is one of the most important statutes on limiting exposures to individual institutions and protecting against the expansion of the federal safety net.
Current actions: The Federal Reserve proposes the following changes to the data items collected on the FR Y-8, effective with the June 30, 2003, report date.

(1) Add a memoranda item to collect the maximum aggregate amount for all covered transactions for any single day during the calendar quarter. The collection of a single number representing the largest total end of day amount of all covered transactions in the quarter would enhance the Federal Reserve's ability to monitor and ensure ongoing compliance with section 23A.

(2) Add three items on derivative transactions between insured depository institutions and their affiliates: (1) Positive fair value of derivative contracts between the insured depository institution and its affiliates; (2) amount of collateral pledged to the insured depository institution to secure contracts between the insured depository institution and its affiliates; and (3) notional amount of derivative contracts between the insured depository institution and its affiliates. Only insured depository institutions that engage in derivative transactions with their affiliates would complete the three items. The collection of these three items would assist the Federal Reserve in monitoring derivative transactions and establishing policy regulating such transactions.

(3) Modify the FR Y-8 cover page to allow the respondent to provide the email address of the person to whom questions about this report should be directed.

Instructions

The current reporting instructions and glossary would be revised and clarified to reflect interpretations and definitions in Regulation W, the rule that comprehensively implements sections 23A and 23B of the Federal Reserve Act. Interpretations and definitions included in Regulation W would modify the information reported in current line items and in some cases covered transactions would be reported in different line items of the report. The instructions for the FR Y-8 declaration page would be revised to (1) clarify that an insured depository institution is not required to complete page 2 or page 3 of the report if it only engaged in covered transactions that are exempt pursuant to sections 223.41 and 223.42 of Regulation W and (2) indicate that BHCs with derivative transactions between insured depository institutions and their affiliates must complete the report form.

Regulation W also applies section 23A to transactions between U.S. branches and agencies of foreign bank and affiliates of the foreign bank engaged in the United States in new Gramm-Leach-Bliley Act activities. However, over 95 percent of the U.S. branches and agencies are uninsured and would not fall within the scope of this report. Consistent with current reporting requirements, foreign banks would not be required to submit a FR Y-8 for their insured U.S. branches and agencies.

Board of Governors of the Federal Reserve System, March 26, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03-7729 Filed 3-31-03; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 15, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Suzanne L. Meyerson Revocable Trust dated December 4, 2002; Robert E. Meyerson Revocable Trust dated December 4, 2002; Robert E. Meyerson; and Suzanne L. Meyerson, Trustees, all of Atwater, Minnesota; to acquire voting shares of Cattail Bancshares, Inc., Atwater, Minnesota, and thereby indirectly acquire voting shares of Atwater State Bank, Atwater, Minnesota, and State Bank of Kimball, Kimball, Minnesota.

Board of Governors of the Federal Reserve System, March 26, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–7726 Filed 3–31–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 25, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Triangle Financial Group, Inc., Loganville, Georgia; to become a bank holding by acquiring 100 percent of the voting shares of The Community Bank, Loganville, Georgia.

Board of Governors of the Federal Reserve System, March 26, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–7727 Filed 3–31–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the charter for the Interagency Committee on Smoking and Health (ICSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services, has been renewed for a 2-year period, through March 20, 2005.

For further information, contact Dana Shelton, Executive Secretary, Interagency Committee on Smoking and Health, Centers for Disease Control Prevention, of the Department of Health and Human Services, CDC, 4770 Buford Highway, N.E., M/S K–50, Atlanta, Georgia 30341–3717 telephone: 770–488–5709 or fax: 770/488–5767.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 26, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–7739 Filed 3–31–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1404]

Determination of Regulatory Review Period for Purposes of Patent Extension; LEVULAN KERASTICK

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for LEVULAN KERASTICK and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product LEVULAN KERASTICK (aminolevulinic acid HCl). THE LEVULAN KERASTICK for topical solution plus blue light illumination using the BLU-U Blue Light Photodynamic Therapy Illuminator is indicated for the treatment of nonhyperkeratotic actinic keratoses of the face or scalp. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for LEVULAN KERASTICK (U.S. Patent No. 5,079,262) from DUSA Pharmaceuticals, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 2, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of LEVULAN KERASTICK represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LEVULAN KERASTICK is 2,528 days. Of this time, 2,007 days occurred during the testing phase of the regulatory review period, while 521 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: January 2, 1993. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 2, 1993.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: July 1, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for LEVULAN KERASTICK (NDA 20–965) was initially submitted on July 1, 1998.

3. *The date the application was approved*: December 3, 1999. FDA has verified the applicant's claim that NDA 20–965 was approved on December 3, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,524 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by June 2, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 29, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 7, 2003.

Jane A. Axelrad,

Associate Director of Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–7711 Filed 3–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0014]

Draft Guidance on Human Subject Protection; HHS Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of solicitation of comments by HHS.

SUMMARY: The Food and Drug Administration (FDA) is announcing that in the issue of the **Federal Register** published March 31, 2003, the Department of Health and Human Services, Office of the Secretary, Office of Health and Science is soliciting public comment on a draft guidance document for Institutional Review Boards, investigators, research institutions, and other interested parties, entitled "Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection." This draft guidance document raises points to consider in determining whether specific financial interests in research affect the rights and welfare of human subjects, and if so, what actions could be considered to protect those subjects. This draft guidance applies to human subjects research conducted or supported by HHS or regulated by FDA.

DATES: HHS is accepting written or electronic comments on the draft guidance until 4:30 p.m. on May 30, 2003.

Dated: January 21, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–7957 Filed 3–28–03; 2:22 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following Web sites: *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–6870, (Formerly: Jewish Hospital of Cincinnati, Inc.).

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917.

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652 / 417–269–3093, (Formerly: Cox Medical Centers).

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200 / 800–735–5416.

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468.

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661 / 800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories,* 10150–102 Street, Suite 200, Edmonton, Alberta, Canada TJ5 5E2, 780–451–3702 / 800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609.

Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, 319–377–0500.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823, (Formerly: Laboratory Specialists, Inc.).

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927 / 800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288 / 800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400 / 800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory" Guidelines for Workplace Drug Testing" (59 FR, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042 / 800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734.

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.).

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466 / 800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295 / 800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250 / 800–350–3515.

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300 / 800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.).

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134.

Pacific Toxicology Laboratories, 9348 De Soto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Drive, Spokane, WA 99204, 509–755–8991 / 800–541–7891x8991.

PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory).

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600 / 877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).

Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130.

Sciteck Clinical Laboratories, Inc., 317 Rutledge Road, Fletcher, NC 28732, 828–650–0409.

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300 / 800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176x276.

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507 / 800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System).

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

Sure-Test Laboratories, Inc., 2900 Broad Avenue, Memphis, Tennessee 38112, 901–474–6028.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson Street, Fort George G. Meade, MD 20755–5235, 301–677–3714.

The following laboratory voluntarily withdrew from the National Laboratory Certification Program (NLCP) on March 17, 2003: Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–7883 Filed 3–31–03; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Establishment of the Homeland Security Advisory Council

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Secretary of Homeland Security (Secretary) is establishing the Homeland Security Advisory Council (HSAC) effective April 1, 2003. The Secretary has determined that the HSAC is necessary and in the public interest in connection with the performance of his duties. The primary purpose of the HSAC will be to provide advice and recommendations to the Secretary on matters relating to homeland security. The HSAC will operate in an advisory capacity only. This notice is being provided in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The HSAC will terminate two years from the date of its establishment, unless extended by the Secretary.

In accordance with 41 CFR 102–3.65(b), as requested by the Department, the General Services Administration Committee Management Secretariat has approved a period of less than 15 calendar days pursuant to the publication of this notice for the filing of the HSAC Charter.

FOR FURTHER INFORMATION CONTACT: Cynthia Gismegian, Homeland Security Advisory Council, Department of Homeland Security, Washington, DC 20528, (202) 282–8000, *cynthia.gismegian@dhs.gov*.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–7880 Filed 3–28–03; 11:43 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: contacts concerning Project Speak Out; Form G–1046.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 12, 2002 at 67 FR 76418, allowing for a 60-day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 1, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Contacts Concerning Project Speak Out!

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–1046, Office of Policy and Planning, Bureau of Citizenship and Immigration Services, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form provides a standardized way of recording the number of individuals contacting the Community Based Organizations concerning the practitioner fraud pilot program. The agency will use the information collected on the form to determine how many persons are served by the program and if its public outreach efforts are successful.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 60,000 responses at 52 minutes (0.866 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 51,960 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, U.S. Department of Homeland Security, 425 I Street, NW., Room 4034, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Dated: March 25, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

[FR Doc. 03–7605 Filed 3–31–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: applicant Survey, Form G–942

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 12, 2002 at 67 FR 76418, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 1, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Room 10235, Washington, DC 20530; 202–395–5887.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Applicant Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–942, Human Resources Branch, Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is required to ensure compliance with Federal laws and regulations which mandate equal opportunity in the recruitment of applicants for Federal employment.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75,000 responses at 4 minutes (.066 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,950 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, U.S. Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Dated: March 25, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

[FR Doc. 03–7606 Filed 3–31–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license and any and all associated local and national permits are canceled without prejudice.

Name	License #	Issuing port
Beluga International Company.	16842	Tampa.
Serko & Simon International Trade Services, Inc.	20949	New York.
Yamato Customs Brokers USA, Inc.	9198	Los Angeles.
Suarez International, Inc.	11763	Nogales.
Jeffrey E. Brown.	9703	Boston.
James B. Fong.	3248	San Francisco.
Northwest Customs Brokers, Inc.	15651	Seattle.

Dated: March 11, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–7725 Filed 3–31–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker Permit

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

Name	Permit #	Issuing port
Jill R. Ellsworth, Phoenix International.	35–01–066	Minneapolis.
Freight Services, Inc..	163	Seattle.
Daniel Delgado-White.	88–57	Buffalo.
Robert Stein ..	88–52	Buffalo.
Thomas Iuppa	88–51	Buffalo.
Neill F. Stroth	28–01–DZ8	San Francisco.

Dated: March 11, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–7724 Filed 3–31–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations(19 CFR 111.51), the following Customs broker license and any and all associated local and national permits are canceled without prejudice.

Name	License #	Issuing port
George S. Engers.	7283	Miami.
HECNY Brokerage Services, Inc..	5356	San Francisco.
Robert A. Leslie.	5481	San Francisco.

These brokers hold multiple Customs broker licenses. They continue to hold other valid Customs broker licenses.

Dated: March 11, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–7723 Filed 3–31–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker National Permit

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker national permit is canceled without prejudice.

Name	Permit #	Issuing port
Neill F. Stroth	99–00129	Headquarters.

Dated: March 11, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–7722 Filed 3–21–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information collection under review: biographical information/program eligibility questionnaire and practitioner fraud pilot program initial interview form, forms I–908 and I–909.

The Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on November 29, 2002, at 67 FR 71204. The notice allowed for a 60-day public review and comment period. No public comment was received by the agency.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 1, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

Title of the Form/Collection: Biographical Information/Program Eligibility Questionnaire and Practitioner Fraud Pilot Program Initial Interview Form.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms I–908 and I–909. Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This information collection will be used by the agency to identify unscrupulous immigration practitioners who intentionally defraud undocumented alien victims.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, U.S. Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Dated: March 26, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–7721 Filed 3–31–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4817–N–04]

Announcement of OMB Approval Number for Public Housing Agency Lease Requirement, Recordkeeping Requirements

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of OMB approval number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for HUD regulations that prescribe the provisions that shall be incorporated in leases by Public Housing agencies (PHAs) for dwelling units assisted under the U.S. Housing Act Of 1937 in projects owned by or leased to PHAs to the tenants. The recordkeeping requirement imposed upon PHAs by HUD regulations and associated information is incidental to PHAs' day-to-day operations as landlords of rental housing.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0614, extension 4250. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection for Public Housing Agency (PHA), LeaseRequirements, Recordkeeping Requirements. The OMB approval number for this information collection is 2577–0006, which expires March 31, 2006.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: March 25, 2003.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–7705 Filed 3–31–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–14]

Notice of Submission of Proposed Information Collection to OMB: Modernization of Public Housing Under the Comprehensive Grant Program (CGP) Reporting Requirements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 1, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0157) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail Lauren_Wittenberg@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Modernization of Public Housing Under the Comprehensive Grant Program (CGP) Reporting Requirements.

OMB Approval Number: 2577–0157.

Form Numbers: HUD–52832, HUD–52833, HUD–52834, HUD–52835, HUD–52836, HUD–52837, HUD–52838, HUD–52839, HUD–52842.

Description of the Need for the Information and Its Proposed Use:

Public Housing Agencies (PHAs) with 250 units or more of public housing submit information to HUD for approval of PHAs' Annual Comprehensive Plans. The information is to reserve formula share of the nation allocation for the CGP, certify resident consultation by the local government, certify a PHA's compliance with statutory and regulatory requirements, and to monitor performance of the projected activities of the CGP funds.

The Public Housing Capital Fund Program will replace the CGP once final regulations are implemented.

Respondents: State or Local Government.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	832	1		66.3		55,162

Total Estimated Burden Hours: 55,162.

Status: Reinstatement, with change of a previously approved collection for which approval has expired. The reported burden hours has been increased 842 hours due to a re-estimation of that burden.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 26, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–7706 Filed 3–31–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4529–N–05]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for

emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: April 8, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, *lauren_wittenberg@opm.eop.gov*, Fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to a guide format which specifies the components of a legal opinion required by the Department in connection with the insurance of mortgage loans upon multifamily rental projects and health care facilities under Title II of the National Housing Act, 12 U.S.C. 1702, *et seq.* The guide form was originally prepared in 1994 in view of changes in opinion practice. This guide form has been used in the past to establish the parameters of the opinion which HUD requires the counsel to the mortgagor to submit to HUD and the mortgagee. The guide clearly articulates those matters upon which HUD requires an opinion from private counsel, as well as those matters upon which confirmations are required. The guide also contains detailed instructions pertaining to the form as well as a format for certifications by the mortgagor as to matters particularly within the knowledge of the mortgagor upon which its legal counsel relies in rendering the opinion.

The Department regards the mortgagor's attorney as a crucial, central figure in the process of preparing and executing the legal and administrative documents necessary to achieve a closing in those multifamily rental and health care mortgage insurance programs where a note is endorsed for mortgage insurance by the Department. The existing guide form has expired and expedited processing of the guide is necessary to facilitate timely closings of pending multifamily mortgage insurance transactions. To the extent that the guide represents any "collection of information," the process is necessary to ensure the Department that the attorney representing the mortgagor has followed the otherwise specified requirements of the Department and to ensure the Department that the attorney has exercised an acceptable degree of due diligence in representing the client and in rendering the opinion to the mortgagee and HUD. The extent of due diligence expected to be performed under the guide is not substantially different from what HUD had anticipated under Form 1725 or from what qualified counsel, in fact, perform in conventional financing transactions.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Guide for Opinion of Mortgagor's Counsel.

Office: The Office of General Counsel.

OMB Control Number: 2510–0010.

Description of the need for the information and proposed use: The opinion is required to provide comfort to HUD and the mortgagee in multifamily rental and health care facility mortgage insurance transactions and similarly to HUD and owners in the capital advance transactions.

Form Number: Guide.

Members of affected public: Counsel to mortgagors of multifamily rental projects and health care facilities upon which the mortgage loans are insured by HUD.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents	×	Frequency of response	=	Hours per response	=	Burden hours
700		1		1		700

Total Estimated Burden Hours: 700.

Status: Expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: March 26, 2003.

Camille Acevedo,

Associate General Counsel.

[FR Doc. 03–7707 Filed 3–31–03; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4529–N–06]

Notice of Proposed Information Collection: Comment Request; Guide for Opinion of Counsel to the Mortgagor and HUD Guide for Counsel to Owner

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 2, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Patricia A. Wash, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 10245, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Millicent Potts, Assistant General Counsel for Multifamily Mortgage Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 9230, Washington, DC 20410, telephone (202) 708–4090 (this is not a toll-free number) for copies of the proposed guide.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD Guide for Counsel to the Mortgagor and HUD Guide to Counsel to Owner.

OMB Control Number, if applicable: 2510–0010

Description of the need for the information and proposed use:

The opinion is required to provide comfort to HUD and the mortgagee in multifamily rental and health care facility mortgage insurance transactions and similarly to HUD and owners in the capital advance transactions.

Agency form numbers, if applicable: Guide.

Members of affected public: Counsel to mortgagors of multifamily rental projects and health care facilities upon which the mortgage loans are insured by HUD and counsel to owners of section 202 or section 811 projects which receive capital advances from HUD.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: As closings occur in connection with the aforementioned projects.

Number of respondents	Burden hours	Frequency of response	Total burden hours
700	1.0	1	700

Status of the proposed information collection: Expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: March 26, 2003.

Camille Acevedo,

Associate General Counsel.

[FR Doc. 03–7708 Filed 3–31–03; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt.

SUMMARY: The following applicant has applied for a permit to conduct certain activities with an endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on this application must be received at the address given below by May 1, 2003.

ADDRESSES: Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035. Attention: Diane Lynch, Regional Endangered Species Permits Coordinator, telephone: 413–253–8628; facsimile: 413–253–8482.

FOR FURTHER INFORMATION CONTACT: Diane Lynch, telephone: 413–253–8628; facsimile: 413–253–8482.

SUPPLEMENTARY INFORMATION: You are invited to comment on an application received from York University, Department of Biology, Toronto, Ontario, Canada, PRT–TE068166–0. The application requests authorization to take (harm) Karner blue butterfly (*Lycaeides melissa samuelis*) eggs and/or larvae from Saratoga County, New York; Lake and Porter Counties, Indiana; and Manistee, Wexford, Mason, Lake, Oceana, and Newaygo Counties, Michigan. This project may result in accidental injury or death of Karner blue butterfly eggs and/or larvae through unavoidable foot traffic when conducting field work. The applicant's objectives are to access the quality of potential reintroduction sites in Ontario, Canada; to identify the most suitable Karner blue butterfly source sites in the United States; and to compare the effect of different management methods by comparing vegetation structures of sites managed under different strategies. None of the proposed activities involves collection of Karner blue butterflies.

Dated: March 7, 2003.

Mamie A. Parker,

Regional Director.

[FR Doc. 03–7740 Filed 3–31–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written comments on these permit applications must be received within 30 days of the date of publication.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species Division, Ecological Services, PO Box 1306, Room 4102,

Albuquerque, New Mexico 87103; (505) 248–6649; Fax (505) 248–6788. Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW., Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, Ecological Services, PO Box 1306, Room 4102, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the address above within 30 days of the date of publication of this notice.

SUPPLEMENTARY INFORMATION:

Permit No. TE–676811

Applicant: U.S. Fish & Wildlife Service, Region 2, Albuquerque, New Mexico.

Applicant requests an amendment to an existing permit to add the scaleshell mussel (*Leptodea leptodon*) within Oklahoma.

Permit No. TE–819541

Applicant: Ecosystem Management, Inc., Albuquerque, New Mexico.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for northern aplomado falcon (*Falco femoralis septentrionalis*) with Arizona and New Mexico.

Permit No. TE–068175

Applicant: Jones & Stokes, Phoenix, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for cactus ferruginous pygmy owl (*Glaucidium brasilianum cactorum*) and Yuma clapper rail (*Rallus longirostris yumanensis*) within Arizona. Additionally, applicant requests authorization to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona, New Mexico, and Texas.

Permit No. TE–068895

Applicant: Southwest Texas State University, San Marcos, Texas.

Applicant requests a new permit for research and recovery purposes to survey, collect, and captively propagate Comal Springs dryopid beetle (*Stygoparnus comalensis*) and Peck's Cave amphipod (*Stygobromus pecki*) within Texas.

Permit No. TE–068189

Applicant: Archaeological Consulting Service, Ltd., Tempe, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for cactus ferruginous pygmy owl (*Glaucidium brasilianum cactorum*), Yuma clapper rail (*Rallus longirostris yumanensis*), desert pupfish (*Cyprinodon macularius*), Gila topminnow (*Poeciliopsis occidentalis*), razorback sucker (*Xyrauchen texanus*), and Gila trout (*Oncorhynchus gilae*) within Arizona. Additionally, applicant requests authorization to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) and lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) within Arizona and New Mexico.

Permit No. TE–035179

Applicant: Denis Humphrey, Show Low, Arizona.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona.

Permit No. TE–067869

Applicant: Rhea Environmental Consulting, Durango, Colorado.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona, New Mexico, Colorado, and Utah.

Permit No. TE–067868

Applicant: Coronado National Memorial, Hereford, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys and habitat assessment for lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) within Arizona.

Allan M. Strand,

Acting Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 03–7741 Filed 3–31–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[(CA–670–1430 ER) CACA–44656]

Notice of Intent To Prepare an Amendment to the California Desert Conservation Area Plan for a 2.8 Mile Right-of-Way Proposed by Imperial Irrigation District for a Double Circuit 161 kV Overhead Transmission Line

AGENCY: Bureau of Land Management; El Centro Field Office, Interior.

ACTION: Notice of Intent (NOI) to prepare an Amendment to the California Desert Conservation Area (CDCA) Plan for a 2.8 mile Right-of-Way Proposed by Imperial Irrigation District (IID) for a Double Circuit 161 kV Overhead Transmission Line.

SUMMARY: This notice announces the Department of Interior, Bureau of Land Management (BLM)'s intent to prepare an amendment to the CDCA to consider issuance of a right-of-way proposed by Imperial Irrigation District (IID) for a double circuit 161 kV overhead transmission line. The purpose of the proposed transmission line is to deliver power generated by a proposed geothermal power plant to an existing IID electrical transmission line (L-line). The proposed L-Line Interconnection is a new 16-mile line of which approximately 2.8 miles will cross Federal lands in sections 8, 9 and 17, Township 13 South, Range 12 East, San Bernardino Meridian, Imperial County, California. The CDCA Plan requires new electrical transmission towers and cables of 161 Kv or above to be placed within designated corridors as identified in the Plan's Energy Production and Utility Corridor Element. An amendment to the CDCA Plan is necessary because the proposed right-of-way is outside any utility corridor designated by the CDCA Plan. The proposed plan amendment would allow an exception to the Energy Production and Utility Corridors element of the CDCA Plan, thereby allowing the issuance of a right-of-way grant to IID for the construction, operation, maintenance, and termination of a double circuit 161 kV overhead transmission line.

DATES: This notice initiates the public scoping process for the proposed plan amendment. Written comments are requested on this notice concerning the scope of analysis of the Environmental Assessment and Proposed Plan Amendment. Comments must be received within 30 days of the publication date of this notice in the **Federal Register**.

ADDRESSES: Please submit comments concerning the scope of the analysis for the Proposed Plan Amendment and Proposed Imperial Irrigation District 161 kV Transmission Line in writing to Lynda Kastoll, Bureau of Land Management, El Centro Field Office, 1661 So. 4th Street, El Centro, CA 92243. Documents pertinent to this proposal, including comments, may be examined at the El Centro Field Office during regular business hours (7:45 a.m.–4:45 p.m.), Monday through Friday, except holidays. Information concerning the status of the SSU6 Project, notices and other relevant documents are available on the CEC's Web site at *http://www.energy.ca.gov/sitingcases/saltonsea*. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review of from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or business, will be available for public inspection in their entirety.

FOR FUTHER INFORMATION: Contact Lynda Kastoll at the above address or at (760) 337–4421.

SUPPLEMENTARY INFORMATION: On July 29, 2002, CE Obsidian Energy LLC (CEOE) filed an Application for Certification (AFC) seeking approval from the California Energy Commission (CEC) to construct and operate the Salton Sea Unit 6 Geothermal Energy Power Project (SSU6). The proposed geothermal project is a 185 MW geothermal electric generation facility located on private lands, approximately 1,000 feet southeast of the Salton Sea, and six miles northwest of Calipatria, CA, within an unincorporated area of Imperial County, California. The SSU6 Project will be owned by CEOE, and operated by an affiliate of CEOE. The IID will engineer, construct, own, operate, and maintain the transmission lines required for the facility. The proposed L-Line Interconnection is a new 16-mile double circuit 161 kV transmission line that would provide a direct inter-tie between the proposed SSU6 Project and IID's existing L-Line. The L-Line Interconnection would proceed south from the plant site along the east side of Severe Road, turning west along the south side of Kuns Road, then south along the east side of Crummer Road to Lindsey Road. The line would continue west along the south side of Lindsey Road to Lack Road, and then along the east side of Lack Road to Bannister Road west to Highway 86, and then across approximately 2.8 miles of BLM land to the existing L-Line.

BLM is soliciting comments only on the proposed plan amendment and the proposed right-of-way for the 2.8 miles of transmission line that would cross Federal lands. The CEC has the exclusive authority to certify the construction and operation of the SSU6 Geothermal Power Plant and related facilities. The CEC's thorough site certification process provides a timely review and analysis of all aspects of a proposed project, including need, public health and environmental impacts, safety, efficiency, and reliability. CEC's responsibilities are similar to those of a lead agency under the California Environmental Quality Act (CEQA).

Dated: January 14, 2003.

Greg Thomsen,

Field Manager.

[FR Doc. 03–7164 Filed 3–31–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–030–1610–DH; AZA–31733]

Correction to Notice of Realty Action and Intent To Amend the Kingman Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to Notice of Realty Action and Intent to Amend the Kingman Resource Management Plan.

SUMMARY: On March 26, 2003, the Bureau of Land Management published a notice in the **Federal Register** (68 FR 14687) concerning a proposed Shooting Range in Arizona. The notice contained an incorrect timeframe for when the public comment period ends. The correct timeframe is 45 days (May 10, 2003).

FOR FURTHER INFORMATION CONTACT: Joyce Cook, Realty Specialist, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona, 86401, telephone (928) 692–4428.

Correction

In the **Federal Register** of March 26, 2003 on page 14687 correct the "Dates" caption to read:

DATES: The public is invited to identify issues and concerns addressed in the EA to be prepared for the potential RMP amendment. Submissions should be in writing or by e-mail (see addresses below). Comments must be postmarked no later than 45 days following the date of publication of this notice in the **Federal Register**. Future public involvement activities, opportunities and review/comment periods will be announced at least 15 days in advance through other notices, media releases, or mailings. A public open house will be held on the Mohave Valley Campus of Mohave Community College, Room 210, 3400 Highway 95, Bullhead City, Arizona.

Dated: March 26, 2003.

Robin A. Sanchez,

Acting Field Manager, Kingman Field Office.

[FR Doc. 03–7742 Filed 3–31–03; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 731–TA–747]

Fresh Tomatoes From Mexico; Notice of Commission Determination To Dismiss Request for Institution of a Section 751(b) Review Investigation

AGENCY: International Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) review investigation concerning the suspension agreement in effect suspending investigation No. 731–TA–747: fresh tomatoes from Mexico.

SUMMARY: The Commission determines pursuant to section 751(b) of the Tariff Act of 1930 (the Act) [1] and Commission rule 207.45,[2] that the subject request does not show the existence of good cause or changed circumstances sufficient to warrant institution of an investigation to review the suspension agreement in effect suspending the Commission's investigation No. 731–TA–747: Fresh Tomatoes from Mexico. Pursuant to Commission rule 207.45(b),[3] the Commission also determines that the request is not sufficient to warrant the publication of a notice in the **Federal Register** seeking comment on the request.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3095. Hearing-impaired persons are advised that information on this matter

[1] 19 U.S.C. 1675(b).
[2] 19 CFR 207.45.
[3] 19 CFR 207.45(b).

can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this matter may be viewed on the Commission's electronic docket (EDIS at *http://edis.usitc.gov*).

Background Information: In May of 1996, the Commission made an affirmative preliminary determination in *Fresh Tomatoes from Mexico,* Inv. No. 731–TA–747 (Preliminary), USITC Pub. 2967. On October 29, 1996, the Department of Commerce (Commerce) entered into a suspension agreement with growers/exporters of fresh tomatoes from Mexico. As a result, the Commission and Commerce suspended their investigations.[4]

On October 1, 2001, pursuant to section 751(c), Commerce initiated a five-year review of the suspension agreement, and the Commission instituted its five-year review.[5] Before the reviews were completed, the Mexican parties withdrew from the suspension agreement, effective July 30, 2002.[6] Commerce and the Commission terminated their five-year reviews and resumed their respective investigations, pursuant to 19 U.S.C. 734(i).[7] On December 4, 2002, before the resumed investigations were completed, Commerce and fresh tomato growers/exporters from Mexico entered into a new suspension agreement. Accordingly, pursuant to section 734(c), Commerce and the Commission again suspended their investigations.[8]

On February 10, 2003, the Commission received a request to institute a changed circumstances review of the suspension agreement currently in effect regarding imports of fresh tomatoes from Mexico. The request was filed by counsel for San Vicente Camalu, a producer of fresh tomatoes in Mexico, and for Expo Fresh, LLC, an importer of fresh tomatoes from Mexico (collectively, "SVC").

[4] 61 FR 56616 (Nov. 1, 1996) (suspension of DOC investigation); 61 FR 58217, 58218 (Nov. 1, 1996) (suspension of ITC investigation).

[5] 66 FR 49926 (DOC), 66 FR 49975 (ITC).

[6] 67 FR 50856 (Aug. 6, 2002).

[7] 67 FR 50858 (Aug. 6, 2002) (DOC), 67 FR 50854, 50855 (Sept. 5, 2002) (ITC).

[8] 67 FR 77044 (Dec. 16, 2002) (DOC), 67 FR 78615 (Dec. 26, 2002) (ITC).

Analysis

In considering whether to institute a review investigation, the Commission must be persuaded that there is sufficient information available demonstrating:

(1) That there are significant changed circumstances from those in existence at the time of the determination or suspension agreement for which review is sought;

(2) That those changed circumstances are not the natural and direct result of the imposition of the antidumping duty order or suspension agreement; and

(3) That the changed circumstances, allegedly indicating that revocation of the order or termination of the suspended investigation would not be likely to lead to the continuation or recurrence of material injury to the domestic industry, warrant a full investigation.[9]

In general, changed circumstances warranting review are those relating to (1) the import pattern following imposition of an order and (2) market conditions.[10]

The Commission may not without good cause review a determination made under sections 705 or 735 of the Act, or suspension agreements made under sections 704 or 734 of the Act, less than 24 months after the date of publication of notice of that determination or suspension.[11] Good cause includes:

(1) Fraud or misfeasance in the proceeding for which review is sought;

(2) Acts of God, as exemplified where a severe freeze sharply reduced U.S. producers' shipments of frozen concentrated orange juice; and

(3) A mistake of law or fact in the proceeding for which review is requested that renders that proceeding unfair.[12]

This list "is by no means exhaustive."[13] However, "good cause will be found only in an unusual case" and "[w]hat constitutes good cause will necessarily depend on the facts of a particular case."[14] The review at issue here was requested less than 24 months after the date on which notice of the suspension agreement was published.

The Commission seeks comments on a request for a changed circumstances review upon receipt of a "properly filed and sufficient request."[15] The decision to undertake a review is "a threshold question * * * [which] may be made only when it reasonably appears that positive evidence adduced by the petitioner together with other evidence gathered by the Commission leads the ITC to believe that there are changed circumstances sufficient to warrant review."[16] The party requesting a changed circumstances review bears the burden of persuasion of showing that there are sufficient changed circumstances to warrant a review.[17]

SVC asserts that no five-year review will occur until 2007, due to the suspension of the investigation in 1996, the termination of that suspension agreement in 2002, and the entry into the second suspension agreement in 2002. SVC asserts that such a result is contrary to U.S. law and U.S. obligations under the World Trade Organization agreements. SVC does not, however, address the good cause requirement that applies to the requested review, nor does it allege any change in circumstances that have occurred since the entry into the suspension agreement in December of 2002. The entry into the suspension agreement does not itself constitute a changed circumstance. Given SVC's failure to assert the existence of good cause or any change in circumstances, the Commission concludes that SVC has not met its burden in this request. For the same reasons, the Commission concludes that SVC's request is not "sufficient" to warrant the issuance of a notice seeking comment on the request.

In light of the above, the Commission determines that institution of a review investigation under section 751(b) of the Act concerning the suspension agreement in effect suspending investigation No. 731–TA–747: Fresh Tomatoes from Mexico, is not warranted.

Issued: March 25, 2003.

[9] *See generally Silicon Metal from Argentina, Brazil, and China,* 63 FR 52289 (Sept. 30, 1998) (citing, *inter alia, A. Hirsh, Inc.* v. *United States,* 737 F. Supp. 1166 (Ct. Int'l Trade 1990)).

[10] *A. Hirsh, Inc.* v. *United States,* 729 F. Supp. 1360, 1363 (Ct. Int'l Trade 1990).

[11] 19 U.S.C. 1675(b)(4).

[12] *See generally Porcelain-On-Steel Cooking Ware from Taiwan,* Views of the Commission Concerning Its Determination to Not Institute a Review of Investigation No. 731–TA–299, USITC Pub. 2117 (Aug. 1988) at 7–8 (citing *Welded Carbon Steel Pipes and Tubes from Turkey,* Commission Memorandum Opinion, in re Docket No. 1394; Request for review investigation under section 751(b) of the Tariff Act of 1930, 19 U.S.C. 1675(b)). The Commission's views in *Porcelain-On-Steel Cooking Ware* reference the "original investigation" and "original proceeding" because at the time of those views (1988) the good cause requirement did not apply to Commission reviews of suspended investigations.

[13] *Id.* at 8.

[14] *Id.* at 7.

[15] 19 CFR 207.45(b).

[16] *Avesta AB* v. *United States,* 689 F. Supp 1173, 1181 (Ct. Int'l Trade 1988).

[17] 19 U.S.C. 1675(b)(1) & (3), *Avesta,* 689 F. Supp. at 1181.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–7627 Filed 3–31–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–990 (Final)]

Non-Malleable Cast Iron Pipe Fittings From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from China of non-malleable cast iron pipe fittings, provided for in subheadings 7307.11.00 and 7307.19.30 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV). The Commission further determines that it would not have found material injury but for the suspension of liquidation.

Background

The Commission instituted this investigation effective February 21, 2002, following receipt of a petition filed with the Commission and Commerce by Anvil International, Inc., Portsmouth, NH, and Ward Manufacturing, Inc., Blossburg, PA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of non-malleable cast iron pipe fittings from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 24, 2002 (67 FR 65360). The hearing was held in Washington, DC, on February 11, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 24, 2003. The views of the Commission are contained in USITC Publication 3586 (March 2003), entitled Non-Malleable Cast Iron Pipe Fittings from China: Investigation No. 731–TA–990 (Final).

Issued: March 25, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–7625 Filed 3–31–03; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gaming Standards Association

Notice is hereby given that, on March 6, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Gaming Standards Association (GSA) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identifies of the parties are: 3M Touch Systems, Methuen, MA; Acres Gaming, Las Vegas, NV; Aristocrat Technologies, Inc., Las Vegas, NV; AstroSys International Ltd, Las Vegas, NV; Atronic Americas, LLC, Scottsdale, AZ; Austrian Gaming Industries GMbH, Lower Austria, AUSTRIA; Bally Gaming & Systems, Inc., Sparks, NV; Boyd Gaming Corporation, Las Vegas, NV; CashCode, Inc., Concord, Ontario, CANADA; Casino Management Association (CMA), St. Louis, MO; Coin Mechanisms, Inc., Glendale Heights, IL; Elo Touchsystems, Fremont, CA; Ensico d.o.o., Ljubljana, SLOVENIA; European Gaming Organisation (EGO), Lelystad, THE NETHERLANDS; Foxwoods Resort Casino, Mashantucket, CT; Friedberg & Associates, Woodinville, WA; Gaming Consultants International, Dingley, Victoria, AUSTRALIA; Global Payment Technologies, Hauppauge, NY; Gold Club, Sezana, SLOVENIA; Harrah's Entertainment, Las Vegas, NV; Himecs Co., Ltd, Tokyo, JAPAN; IDX, Inc., El Dorado, AR; IGT-International Game Technology, Reno, NV; Isle of Capri Casinos, Inc., Biloxi, MS; JCM American, Inc., Las Vegas, NV; Konami Gamin, Inc., Las Vegas, NV; Mandalay Resort Group, Jean, NV; Mars Electronics, West Chester, PA; Mikohn Gaming Corporation, Las Vegas, NV; MIS-Group, Grambach, AUSTRIA; Money Controls/ARDAC, Inc., Eastlake, OH; Park Place Entertainment, Las Vegas, NV; Scientific Games Corporation, Las Vegas, NV; Shuffle Master Gaming, Inc., Las Vegas, NV; Sierra Design Group, Reno, NV; Sigma Game, Inc., Las Vegas, NV; Spielo Manufacturing, Inc., Dieppe, New Brunswick, CANADA; Station Casinos, Las Vegas, NV; TransAct Technologies, Inc., Ithaca, NY; Unidesa, Barcelona, SPAIN; Universal Distributing, Las Vegas, NV; University of Nevada-Las Vegas, Las Vegas, NV; and WMS Gaming, Inc., Chicago, IL. The nature and objectives of the venture are to identify, define, develop, promote, and implement open standards to enable innovation, education, and communication for the benefit of the gaming industry.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–7713 Filed 3–31–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection NCJRS customer satisfaction surveys

The Department of Justice (DOJ), Office of Justice Programs, (OJP) National Institute of Justice has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "60 days" until June 2, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed

information collection instrument with instructions or additional information, please contact William Ballweber, (202) 305–2975, National Institute of Justice, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* DOJ requests three year extension of generic clearance to conduct customer satisfaction surveys.

(2) *Title of the Form/Collection:* NCJRS Customer Satisfaction Surveys.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms Numbers: NCJ–CR–01–00 thorough NCJ–CR–01–07. Office of Justice Programs, US Department of Justice.

(4) *Affected public who will be asked or required to respond to survey request, as well as a brief abstract:* Respondents will be current and potential users of agency products and services. Respondents may represent Federal agencies, State, local, and tribal governments, members of private organizations, research organizations, the media, non-profit organizations, international organizations, as well as faculty and students. The purpose of such surveys is to assess needs, identifying problems, and plan for programmatic improvements in the delivery of agency products and services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are an estimated 7,526 respondents who complete a survey. It will take the average respondent 10 minutes to respond by mail, 6 minutes to respond using the World Wide Web, 4 minutes to respond by telephone, 90 minutes to respond by teleconference, and 90 minutes for a focus group to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 25,313 annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: March 24, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–7712 Filed 3–31–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: new collection, southwest border prosecution initiative.

The Department of Justice (DOJ), Office of Justice Programs has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 195, page 62817 on October 8, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 1, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Bureau of Justice Assistance, Southwest Border Prosecution Initiative.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and local government. This information will assist BJA in determining program eligibility and payment levels for select units of general government in Texas, Arizona, New Mexico and California. It will also provide contact and banking information for purposes of ongoing communication and Federal payments resulting from submitting and approved online, Internet-based applications. The respondents will be the chief executive officers or their designees from local governments located in the four States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 250 respondents who will complete an application for benefits. The estimated amount of time required for the average respondent to respond is between 2 and 10 hours.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 1,500 burden hours annually associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: March 27, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–7810 Filed 3–31–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Program Year (PY) 2003 Workforce Investment Act (WIA) Allotments; PY 2003 Wagner-Peyser Act Final Allotments; PY 2003 Reemployment Services Allotments; Fiscal Year (FY) 2003 Work Opportunity and Welfare to Work Tax Credit Allotments; and FY 2003 Congressional Rescissions for WIA Adults and Dislocated Workers

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This Notice announces states' allotments for PY 2003 (July 1, 2003–June 30, 2004) for WIA Title I Youth, Adults and Dislocated Worker programs; final allotments for public Employment Service (ES) activities under the Wagner-Peyser Act for PY 2003; Reemployment Services Allotments for PY 2003; Work Opportunity and (WtW) Tax Credit allotments for FY 2003; and FY 2003 Congressional Rescissions for WIA Adults and Dislocated Worker programs.

The WIA allotments for states and the final allotments for Wagner-Peyser ES activities are based on formulas defined in their respective statutes. The WIA allotments for the outlying areas are based on a formula determined by the Secretary. As required by WIA section 182(d), on February 17, 2000, a Notice of the discretionary formula for allocating PY 2000 funds for the outlying areas was published in the **Federal Register** at 65 FR 8236 (February 17, 2000). The rationale for the formula and methodology was fully explained in the February 17, 2000, Notice. The formula for PY 2003, like PY 2002, is the same as used for PY 2000 and is described in the section on Youth allotments. Comments are invited upon the formula used to allot funds to the outlying areas.

DATES: Comments must be received by May 1, 2003.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Financial and Administrative Management, 200 Constitution Ave, NW., Room N–4702, Washington, DC 20210, Attention: Ms. Sherryl Bailey, 202–693–2813 (phone), 202–693–2859 (fax), e-mail: *bailey.sherryl@dol.gov.*

FOR FURTHER INFORMATION CONTACT: WIA Youth Activities allotments: Lorenzo Harrison at 202–693–3528; WIA Adult and Dislocated Worker Employment and Training Activities allotments: Marilyn Shea at 202–693–2712; ES final allotments: Anthony Dais at 202–693–2784. (These are not toll-free numbers.) Information may also be found at the Web site—*http://www.doleta.gov.*

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL or Department) is announcing WIA allotments for PY 2003 (July 1, 2003–June 30, 2004) for Youth Activities, Adults and Dislocated Worker Activities, and Wagner-Peyser Act PY 2003 ES final allotments. This document provides information on the amount of funds available during PY 2003 to states with an approved WIA Title I and Wagner-Peyser 5-Year Strategic Plan and information regarding allotments to the outlying areas. The allotments and estimates are based on the funds appropriated in the Consolidated Appropriations Resolution, 2003, Public Law 108–7, February 20, 2003. This appropriation requires an across-the-board reduction of .65 percent to all FY 2003 discretionary programs, including FY 2003 advance funds for the WIA Adults and Dislocated Worker programs appropriated in the FY 2002 appropriation. Attached are tables listing the FY 2003 rescissions for the WIA Adults (Attachment II–A) and Dislocated Worker (Attachment III–A) programs and the PY 2003 allotments for programs under WIA Title I Youth Activities, Adults and Dislocated Workers Employment and Training Activities and the PY 2003 ES final allotments under the Wagner-Peyser Act. Also attached are tables displaying PY 2003 Reemployment Services allotments, and FY 2003 Work Opportunity and WtW Tax Credit allotments.

Youth Activities Allotments. PY 2003 Youth Activities funds under WIA total $1,038,669,477 (including $44,210,750 for Youth Opportunity grants and $994,458,727 for WIA Title I Youth Activities). Attachment I includes a breakdown of the Youth Activities program allotments for PY 2003 and provides a comparison of these allotments to PY 2002 Youth Activities allotments for all states, outlying areas, Puerto Rico and the District of Columbia. Before determining the amount available for states, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Youth Activities, including Youth Opportunity Grants. WIA section 127(b)(1)(B)(i)(IV) provides that the Freely Associated States (Marshall Islands, Micronesia, and Palau) are not eligible for funding for any program year beginning after September 30, 2001. However, section 3 of Public Law 106–504, (November 13, 2000), supercedes this section of WIA, and provides that the Freely Associated States remain eligible for funding until negotiations on the Compact of Free Association is complete and consideration of legislation pursuant to the Compact is completed. This legislation remains uncompleted; therefore, the Freely Associated States are provided funds for PY 2003. The methodology for distributing funds to all outlying areas is not specified by WIA, but is at the Secretary's discretion. The methodology used is the same as used since PY 2000, *i.e.*; funds are distributed among the areas by formula based on relative share of number of unemployed, a 90 percent hold-harmless of the prior year share, a $75,000 minimum, and a 130 percent stop-gain of the prior year share. Data used for the relative share calculation in the formula were the same as used for PY 2002 for all outlying areas, essentially using 1995 Census data from special surveys. The total amount available for Native Americans is 1.5 percent of the total amount for Youth Activities excluding Youth Opportunity Grants, in accordance with WIA section 127. After determining the amount for the outlying areas and Native Americans, the amount available for allotment to the States for PY 2003 is $976,945,172. This total amount was

below the required $1 billion threshold specified in section 127(b)(1)(C)(iv)(IV); therefore, unlike in PY 2002, the WIA additional minimum provisions were not applied: (1) The minimum 1998 dollar (not percentage) (JTPA II–B and II–C combined) allotment, and (2) the two-tier small state minimum allotment (.3 percent of the first $1 billion and .4 percent of the amount over $1 billion). Instead, as required by WIA, the JTPA section 202(a)(3) (as amended by section 701 of the Job Training Reform Amendments of 1992) minimums of 90 percent hold-harmless of the prior year allotment percentage and 0.25 percent state minimum floor were used. Also, as required by WIA, the provision applying a 130 percent stop-gain of the prior year allotment percentage was used. The three formula factors required in WIA use the following data for the PY 2003 allotments:

(1) The number of unemployed for areas of substantial unemployment (ASU's) are averages for the 12-month period, July 2001 through preliminary June 2002;

(2) The number of excess unemployed individuals or the ASU excess (depending on which is higher) are averages for the same 12-month period used for ASU unemployed data; and

(3) The number of economically disadvantaged youth (age 16 to 21, excluding college students and military) are from the 1990 Census. (2000 Census data are expected to be available for use for the PY 2004 allotment calculations.)

Adult Employment and Training Activities Allotments. The total Adult Employment and Training Activities appropriation is $898,778,000. Attachment II–B shows the PY 2003 Adult Employment and Training Activities allotments and comparison to PY 2002 allotments by state. Similarly to the Youth Activities program, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Adults. The Adult Activities funds for grants to all outlying areas, for which the distribution methodology is at the Secretary's discretion, were distributed among the areas by the same principles, formula and data as used for outlying areas for Youth Activities. After determining the amount for the outlying areas, the amount available for allotments to the states is $896,531,055. Like the Youth Activities program, the WIA minimum provisions were not applied for the PY 2003 allotments because the total amount available for the states was below the $960 million threshold required for Adults in section 132(b)(1)(B)(iv)(IV). Instead, as required by WIA, the minimum allotments were calculated using the JTPA section 202(a)(3) (as amended by section 701 of the Job Training Reform Amendments of 1992) minimums of 90 percent hold-harmless of the prior year allotment percentage and 0.25 percent state minimum floor. Also, like the Youth Activities program, a provision applying a 130 percent stop-gain of the prior year allotment percentage was used. The three formula factors use the same data as used for the Youth Activities formula, except that data from the 1990 Census for the number of economically disadvantaged adults (age 22 to 72, excluding college students and military) were used. (2000 Census data are expected to be available for use for the PY 2004 allotment calculations.)

Dislocated Worker Employment and Training Activities Allotments. The total Dislocated Worker appropriation is $1,431,340,495. The total appropriation includes formula funds for the states, while the National Reserve is used for National Emergency Grants, technical assistance and training, demonstration projects, and the outlying areas Dislocated Worker allotments. Attachment III–B shows the PY 2003 Dislocated Worker Activities fund allotments by state. Like the Youth and Adults programs, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Dislocated Worker Activities. The Dislocated Worker Activities funds for grants to all outlying areas, for which the distribution methodology is at the Secretary's discretion, were distributed among the areas by the same pro rata share as the areas received for the PY 2003 WIA Adult Activities program, the same methodology used in PY 2002. For the state distribution of formula funds, the three formula factors required in WIA use the following data for the PY 2003 allotments:

(1) Number of unemployed, averages for the 12-month period, October 2001 through September 2002;

(2) Number of excess unemployed, averages for the 12-month period, October 2001 through September 2002; and

(3) Number of long-term unemployed, averages for calendar year 2001.

Since the Dislocated Worker Activities formula has no floor amount or hold-harmless provisions, funding changes for states directly reflect the impact of changes in the number of unemployed.

Wagner-Peyser Act Employment Service Final Allotments. The public Employment Service (ES) program involves a Federal-State partnership between the U.S. Department of Labor and the State Workforce Agencies. Under the Wagner-Peyser Act, funds are allotted to each state to administer a labor exchange program responding to the needs of the state's employers and workers through a system of local employment services offices that are part of the One-Stop service delivery system established by the state. Attachment IV shows the ES final allotments for PY 2003. These final allotments have been produced using the formula set forth at Section 6 of the Wagner-Peyser Act, 29 U.S.C. 49e. They are based on monthly averages of the civilian labor force (CLF) and unemployment for the calendar year 2002. State planning estimates reflect $18,000,000 being withheld from distribution to states to finance postage costs associated with the conduct of Wagner-Peyser Act labor exchange services for PY 2003. The Secretary of Labor is required to set aside up to three percent of the total available funds to assure that each state will have sufficient resources to maintain statewide employment service activities, as required under section 6(b)(4) of the Wagner-Peyser Act. In accordance with this provision, the three percent set-aside funds are included in the total planning estimate. The set-aside funds are distributed in two steps to states that have lost in relative share of resources from the previous year. In Step 1, states that have a CLF below one million and are also below the median CLF density are maintained at 100 percent of their relative share of prior year resources. All remaining set-aside funds are distributed on a pro-rata basis in Step 2 to all other states losing in relative share from the prior year but not meeting the size and density criteria for Step 1. Under the Wagner-Peyser Act section 7, ten percent of the total sums allotted to each state shall be reserved for use by the Governor to provide performance incentives for public ES offices; services for groups with special needs; and for the extra costs of exemplary models for delivering job services.

Reemployment Services Allotments. The purpose of these funds is to ensure that Unemployment Insurance (UI) claimants receive the necessary services to become re-employed. The total funds available for PY 2003 are $34,772,500. The allotment figures for the distribution of funds for each state for PY 2003 are listed in Attachment V. The funds were distributed using the following administrative formula: each state received $215,000, with the remaining funds distributed using each state's share of first payments for FY 2002 to UI claimants.

Work Opportunity (WOTC) and Welfare to Work Tax Credit Program Grants to States. Total funding for FY 2003 is $20,863,500. Attachment VI shows the PY 2003 Work Opportunity and Welfare to Work Tax Credit grants by state. After reserving $584,200 for postage and $20,000 for the Virgin Islands, funds are distributed to states by administrative formula with a $64,000 minimum allotment and a 95% stop-loss/120% stop-gain from the prior year allotment share percentage. The allocation formula is as follows:

(1) 50% based on each state's relative share of total FY 2002 certifications issued for the WOTC/WtW Tax Credit program;

(2) 30% based on each state's relative share of the CLF for calendar year 2001; and

(3) 20% based on each state's relative share of the adult recipients of Temporary Assistance for Needy Families (TANF) for FY 2001.

Signed at Washington, DC this 26th day of March, 2003.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

BILLING CODE 4510–30–P

Attachment I

U.S. Department of Labor
Employment and Training Administration
WIA Youth Activities State Allotments
PY 2003 vs PY 2002

State	PY 2002	PY 2003	Difference	% Change
Total	1,127,965,000	994,458,727	(133,506,273)	-11.84%
Alabama	20,901,613	16,855,132	(4,046,481)	-19.36%
Alaska	4,059,320	3,222,244	(837,076)	-20.62%
Arizona	18,724,084	17,618,550	(1,105,534)	-5.90%
Arkansas	10,968,513	9,192,466	(1,776,047)	-16.19%
California	174,352,954	144,177,321	(30,175,633)	-17.31%
Colorado	7,246,178	8,308,353	1,062,175	14.66%
Connecticut	9,511,625	7,550,224	(1,961,401)	-20.62%
Delaware	3,430,651	2,723,213	(707,438)	-20.62%
District of Columbia	4,134,267	3,281,736	(852,531)	-20.62%
Florida	40,269,848	44,092,006	3,822,158	9.49%
Georgia	20,753,889	18,088,873	(2,665,016)	-12.84%
Hawaii	5,519,083	4,380,988	(1,138,095)	-20.62%
Idaho	4,707,720	3,736,937	(970,783)	-20.62%
Illinois	57,523,690	47,822,181	(9,701,509)	-16.87%
Indiana	13,604,901	15,599,164	1,994,263	14.66%
Iowa	4,026,670	3,789,782	(236,888)	-5.88%
Kansas	6,190,812	5,538,059	(652,753)	-10.54%
Kentucky	17,117,753	15,843,538	(1,274,215)	-7.44%
Louisiana	27,488,847	21,820,346	(5,668,501)	-20.62%
Maine	3,835,799	3,044,815	(790,984)	-20.62%
Maryland	13,734,681	11,663,795	(2,070,886)	-15.08%
Massachusetts	16,005,091	12,704,666	(3,300,425)	-20.62%
Michigan	38,712,364	40,644,085	1,931,721	4.99%
Minnesota	11,286,720	8,959,275	(2,327,445)	-20.62%
Mississippi	17,273,760	13,711,722	(3,562,038)	-20.62%
Missouri	15,939,667	16,181,718	242,051	1.52%
Montana	4,029,740	3,198,764	(830,976)	-20.62%
Nebraska	3,430,651	2,723,213	(707,438)	-20.62%
Nevada	4,983,868	5,714,424	730,556	14.66%
New Hampshire	3,430,651	2,723,213	(707,438)	-20.62%
New Jersey	29,273,666	23,237,116	(6,036,550)	-20.62%
New Mexico	10,371,230	8,232,569	(2,138,661)	-20.62%
New York	78,384,460	66,245,602	(12,138,858)	-15.49%
North Carolina	23,476,656	26,917,963	3,441,307	14.66%
North Dakota	3,430,651	2,723,213	(707,438)	-20.62%
Ohio	46,654,314	39,875,453	(6,778,861)	-14.53%
Oklahoma	9,427,216	7,741,715	(1,685,501)	-17.88%
Oregon	13,507,227	15,487,173	1,979,946	14.66%
Pennsylvania	39,258,866	32,978,730	(6,280,136)	-16.00%
Puerto Rico	55,047,926	43,696,441	(11,351,485)	-20.62%
Rhode Island	3,430,651	2,723,213	(707,438)	-20.62%
South Carolina	14,935,516	14,607,125	(328,391)	-2.20%
South Dakota	3,430,651	2,723,213	(707,438)	-20.62%
Tennessee	21,110,535	18,331,645	(2,778,890)	-13.16%
Texas	91,315,821	82,983,454	(8,332,367)	-9.12%
Utah	3,803,175	4,360,660	557,485	14.66%
Vermont	3,430,651	2,723,213	(707,438)	-20.62%
Virginia	16,534,311	14,274,975	(2,259,336)	-13.66%
Washington	30,638,767	27,578,685	(3,060,082)	-9.99%
West Virginia	10,601,615	8,415,446	(2,186,169)	-20.62%
Wisconsin	12,972,896	13,453,552	480,656	3.71%
Wyoming	3,430,651	2,723,213	(707,438)	-20.62%
State Total	1,107,662,862	976,945,172	(130,717,690)	-11.80%
American Samoa	132,755	91,717	(41,038)	-30.91%
Guam	1,297,603	896,485	(401,118)	-30.91%
Marshall Islands	300,725	207,764	(92,961)	-30.91%
Micronesia	534,840	462,834	(72,006)	-13.46%
Northern Marianas	208,905	208,474	(431)	-0.21%
Palau	76,690	75,000	(1,690)	-2.20%
Virgin Islands	831,145	654,400	(176,745)	-21.27%
Outlying Areas Total	3,382,663	2,596,674	(785,989)	-23.24%
Native Americans	16,919,475	14,916,881	(2,002,594)	-11.84%

Attachment II-A

U. S. Department of Labor
Employment and Training Administration
WIA Adult Activities
2003 Appropriation Rescission to FY 2003 Advance (Available 10/1/02) Funds
in PY 2002 State Allotments

State	Initial	0.65%	Revised
Total	$712,000,000	$4,628,000	$707,372,000
Alabama	13,915,979	90,454	13,825,525
Alaska	2,718,797	17,672	2,701,125
Arizona	12,176,737	79,149	12,097,588
Arkansas	7,276,064	47,294	7,228,770
California	112,976,740	734,347	112,242,393
Colorado	3,890,959	25,291	3,865,668
Connecticut	4,544,739	29,541	4,515,198
Delaware	1,775,550	11,541	1,764,009
District of	2,678,752	17,412	2,661,340
Florida	26,831,674	174,406	26,657,268
Georgia	13,498,461	87,740	13,410,721
Hawaii	3,672,707	23,873	3,648,834
Idaho	3,076,355	19,996	3,056,359
Illinois	38,303,586	248,973	38,054,613
Indiana	7,302,262	47,465	7,254,797
Iowa	2,398,232	15,589	2,382,643
Kansas	4,169,331	27,101	4,142,230
Kentucky	10,786,315	70,111	10,716,204
Louisiana	18,120,070	117,780	18,002,290
Maine	2,226,907	14,475	2,212,432
Maryland	9,380,664	60,974	9,319,690
Massachusetts	7,578,426	49,260	7,529,166
Michigan	23,919,593	155,477	23,764,116
Minnesota	7,439,454	48,356	7,391,098
Mississippi	10,855,821	70,563	10,785,258
Missouri	10,739,641	69,808	10,669,833
Montana	2,812,854	18,284	2,794,570
Nebraska	1,775,550	11,541	1,764,009
Nevada	3,339,514	21,707	3,317,807
New Hampshire	1,775,550	11,541	1,764,009
New Jersey	14,123,828	91,805	14,032,023
New Mexico	6,648,448	43,215	6,605,233
New York	54,386,185	353,510	54,032,675
North Carolina	15,739,393	102,306	15,637,087
North Dakota	1,775,550	11,541	1,764,009
Ohio	31,259,830	203,189	31,056,641
Oklahoma	6,229,688	40,493	6,189,195
Oregon	9,079,480	59,017	9,020,463
Pennsylvania	27,118,802	176,272	26,942,530
Puerto Rico	36,846,722	239,504	36,607,218
Rhode Island	1,775,550	11,541	1,764,009
South Carolina	8,565,387	55,675	8,509,712
South Dakota	1,775,550	11,541	1,764,009
Tennessee	14,299,002	92,944	14,206,058
Texas	58,398,242	379,589	58,018,653
Utah	2,152,316	13,990	2,138,326
Vermont	1,775,550	11,541	1,764,009
Virginia	8,417,021	54,711	8,362,310
Washington	20,441,603	132,870	20,308,733
West Virginia	7,122,093	46,294	7,075,799
Wisconsin	8,556,925	55,620	8,501,305
Wyoming	1,775,550	11,541	1,764,009
State Total	710,219,999	4,616,430	705,603,569
American Samoa	86,635	563	86,072
Guam	374,258	2,433	371,825
Marshall Islands	184,011	1,196	182,815
Micronesia	354,578	2,305	352,273
Northern Marianas	221,535	1,440	220,095
Palau	57,647	375	57,272
Virgin Islands	501,337	3,258	498,079
Outlying Areas	1,780,001	11,570	1,768,431

Attachment II-B

U.S. Department of Labor
Employment and Training Administration
WIA Adult Activities State Allotments
PY 2003 vs PY 2002

State	PY 2002	PY 2003	Difference	% Change
Total	950,000,000	898,778,000	(51,222,000)	-5.39%
Alabama	18,567,668	15,809,885	(2,757,783)	-14.85%
Alaska	3,627,608	3,088,814	(538,794)	-14.85%
Arizona	16,247,051	16,106,496	(140,555)	-0.87%
Arkansas	9,708,232	8,510,825	(1,197,407)	-12.33%
California	150,741,436	128,352,398	(22,389,038)	-14.85%
Colorado	5,191,589	6,385,170	1,193,581	22.99%
Connecticut	6,063,908	5,163,259	(900,649)	-14.85%
Delaware	2,369,063	2,241,328	(127,735)	-5.39%
District of Columbia	3,574,178	3,043,319	(530,859)	-14.85%
Florida	35,800,688	42,506,473	6,705,785	18.73%
Georgia	18,010,587	16,416,374	(1,594,213)	-8.85%
Hawaii	4,900,382	4,172,547	(727,835)	-14.85%
Idaho	4,104,687	3,495,034	(609,653)	-14.85%
Illinois	51,107,313	43,516,543	(7,590,770)	-14.85%
Indiana	9,743,186	11,983,210	2,240,024	22.99%
Iowa	3,199,888	3,479,855	279,967	8.75%
Kansas	5,563,012	5,225,669	(337,343)	-6.06%
Kentucky	14,391,853	15,065,366	673,513	4.68%
Louisiana	24,177,060	20,586,135	(3,590,925)	-14.85%
Maine	2,971,294	2,529,979	(441,315)	-14.85%
Maryland	12,516,336	11,140,826	(1,375,510)	-10.99%
Massachusetts	10,111,664	9,146,541	(965,123)	-9.54%
Michigan	31,915,187	37,426,616	5,511,429	17.27%
Minnesota	9,926,238	8,451,933	(1,474,305)	-14.85%
Mississippi	14,484,593	12,333,253	(2,151,340)	-14.85%
Missouri	14,329,577	15,255,516	925,939	6.46%
Montana	3,753,106	3,195,672	(557,434)	-14.85%
Nebraska	2,369,063	2,241,328	(127,735)	-5.39%
Nevada	4,455,812	5,480,233	1,024,421	22.99%
New Hampshire	2,369,063	2,241,328	(127,735)	-5.39%
New Jersey	18,844,995	20,462,777	1,617,782	8.58%
New Mexico	8,870,823	7,553,274	(1,317,549)	-14.85%
New York	72,565,836	64,833,150	(7,732,686)	-10.66%
North Carolina	21,000,594	25,828,772	4,828,178	22.99%
North Dakota	2,369,063	2,241,328	(127,735)	-5.39%
Ohio	41,709,042	37,400,608	(4,308,434)	-10.33%
Oklahoma	8,312,084	7,266,384	(1,045,700)	-12.58%
Oregon	12,114,474	14,899,673	2,785,199	22.99%
Pennsylvania	36,183,794	31,825,313	(4,358,481)	-12.05%
Puerto Rico	49,163,463	41,861,405	(7,302,058)	-14.85%
Rhode Island	2,369,063	2,241,328	(127,735)	-5.39%
South Carolina	11,428,536	13,621,665	2,193,129	19.19%
South Dakota	2,369,063	2,241,328	(127,735)	-5.39%
Tennessee	19,078,725	17,352,119	(1,726,606)	-9.05%
Texas	77,919,002	74,481,312	(3,437,690)	-4.41%
Utah	2,871,770	3,532,009	660,239	22.99%
Vermont	2,369,063	2,241,328	(127,735)	-5.39%
Virginia	11,230,576	13,305,145	2,074,569	18.47%
Washington	27,274,610	25,857,712	(1,416,898)	-5.19%
West Virginia	9,502,793	8,091,380	(1,411,413)	-14.85%
Wisconsin	11,417,246	12,559,792	1,142,546	10.01%
Wyoming	2,369,063	2,241,328	(127,735)	-5.39%
State Total	947,625,000	896,531,055	(51,093,945)	-5.39%
American Samoa	115,594	98,425	(17,169)	-14.85%
Guam	499,361	477,793	(21,568)	-4.32%
Marshall Islands	245,520	209,054	(36,466)	-14.85%
Micronesia	473,102	452,668	(20,434)	-4.32%
Northern Marianas	295,587	293,977	(1,610)	-0.54%
Palau	76,917	75,000	(1,917)	-2.49%
Virgin Islands	668,919	640,028	(28,891)	-4.32%
Outlying Areas Total	2,375,000	2,246,945	(128,055)	-5.39%

Attachment III-A

U. S. Department of Labor
Employment and Training Administration
Dislocated Worker Activities
2003 Appropriation Rescission to FY 2003 Advance (Available 10/1/02) Funds
in PY 2002 State Allotments

State	Initial	0.65%	Revised
Total	$1,060,000,000	$6,890,000	$1,053,110,000
Alabama	15,668,655	101,846	15,566,809
Alaska	6,618,330	43,019	6,575,311
Arizona	8,626,527	56,072	8,570,455
Arkansas	5,166,867	33,585	5,133,282
California	149,527,433	971,926	148,555,507
Colorado	5,049,408	32,821	5,016,587
Connecticut	3,684,819	23,951	3,660,868
Delaware	1,748,170	11,363	1,736,807
District of Columbia	6,047,325	39,308	6,008,017
Florida	27,445,623	178,397	27,267,226
Georgia	13,028,790	84,687	12,944,103
Hawaii	2,903,547	18,873	2,884,674
Idaho	4,367,311	28,388	4,338,923
Illinois	62,856,355	408,566	62,447,789
Indiana	8,396,618	54,578	8,342,040
Iowa	3,310,555	21,519	3,289,036
Kansas	4,376,254	28,446	4,347,808
Kentucky	7,674,658	49,885	7,624,773
Louisiana	30,345,085	197,243	30,147,842
Maine	2,305,021	14,983	2,290,038
Maryland	11,607,743	75,450	11,532,293
Massachusetts	8,431,525	54,805	8,376,720
Michigan	18,929,575	123,042	18,806,533
Minnesota	7,828,437	50,885	7,777,552
Mississippi	13,488,179	87,673	13,400,506
Missouri	10,815,795	70,303	10,745,492
Montana	2,252,149	14,639	2,237,510
Nebraska	1,898,988	12,343	1,886,645
Nevada	4,548,883	29,568	4,519,315
New Hampshire	1,547,343	10,058	1,537,285
New Jersey	18,144,943	117,942	18,027,001
New Mexico	12,109,929	78,715	12,031,214
New York	46,102,645	299,667	45,802,978
North Carolina	18,619,945	121,030	18,498,915
North Dakota	820,037	5,330	814,707
Ohio	23,421,804	152,242	23,269,562
Oklahoma	4,433,022	28,815	4,404,207
Oregon	20,345,957	132,249	20,213,708
Pennsylvania	28,510,583	185,319	28,325,264
Puerto Rico	83,723,148	544,200	83,178,948
Rhode Island	1,834,382	11,923	1,822,459
South Carolina	8,208,945	53,358	8,155,587
South Dakota	674,096	4,382	669,714
Tennessee	9,530,732	61,950	9,468,782
Texas	40,911,246	265,923	40,645,323
Utah	2,966,131	19,280	2,946,851
Vermont	894,255	5,813	888,442
Virginia	7,603,645	49,424	7,554,221
Washington	46,865,551	304,626	46,560,925
West Virginia	10,423,193	67,751	10,355,442
Wisconsin	10,480,129	68,121	10,412,008
Wyoming	879,714	5,718	873,996
State Total	848,000,000	5,512,000	842,488,000
American Samoa	128,979	838	128,141
Guam	557,182	3,622	553,560
Marshall Islands	273,949	1,781	272,168
Micronesia	527,882	3,431	524,451
Northern Marianas	329,813	2,144	327,669
Palau	85,823	558	85,265
Virgin Islands	746,373	4,851	741,522
Outlying Areas	2,650,001	17,225	2,632,776
National Reserve	209,349,999	1,360,775	207,989,224

Attachment III-B

U.S. Department of Labor
Employment and Training Administration
WIA Dislocated Worker Activities State Allotments
PY 2003 vs PY 2002

State	PY 2002	PY 2003	Difference	% Change
Total	1,549,000,000	1,431,340,495	(117,659,505)	-7.60%
Alabama	22,896,931	19,733,903	(3,163,028)	-13.81%
Alaska	9,671,503	3,547,956	(6,123,547)	-63.32%
Arizona	12,606,123	19,319,754	6,713,631	53.26%
Arkansas	7,550,450	8,418,083	867,633	11.49%
California	218,507,541	181,903,156	(36,604,385)	-16.75%
Colorado	7,378,805	12,699,522	5,320,717	72.11%
Connecticut	5,384,702	6,574,440	1,189,738	22.09%
Delaware	2,554,637	1,626,875	(927,762)	-36.32%
District of Columbia	8,837,081	3,426,849	(5,410,232)	-61.22%
Florida	40,106,859	56,772,587	16,665,728	41.55%
Georgia	19,039,241	19,959,194	919,953	4.83%
Hawaii	4,243,014	3,523,052	(719,962)	-16.97%
Idaho	6,382,042	4,620,076	(1,761,966)	-27.61%
Illinois	91,853,295	63,948,516	(27,904,779)	-30.38%
Indiana	12,270,152	18,749,009	6,478,857	52.80%
Iowa	4,837,782	4,754,065	(83,717)	-1.73%
Kansas	6,395,111	5,885,172	(509,939)	-7.97%
Kentucky	11,215,137	15,391,281	4,176,144	37.24%
Louisiana	44,343,903	22,202,620	(22,141,283)	-49.93%
Maine	3,368,375	2,416,484	(951,891)	-28.26%
Maryland	16,962,636	13,878,761	(3,083,875)	-18.18%
Massachusetts	12,321,163	16,346,535	4,025,372	32.67%
Michigan	27,662,181	49,265,375	21,603,194	78.10%
Minnesota	11,439,858	10,861,209	(578,649)	-5.06%
Mississippi	19,710,556	15,052,083	(4,658,473)	-23.63%
Missouri	15,805,346	17,431,907	1,626,561	10.29%
Montana	3,291,112	2,077,280	(1,213,832)	-36.88%
Nebraska	2,775,031	2,888,995	113,964	4.11%
Nevada	6,647,377	9,376,689	2,729,312	41.06%
New Hampshire	2,261,165	2,502,182	241,017	10.66%
New Jersey	26,515,582	30,098,146	3,582,564	13.51%
New Mexico	17,696,491	7,082,177	(10,614,314)	-59.98%
New York	67,370,751	85,640,106	18,269,355	27.12%
North Carolina	27,209,712	43,544,252	16,334,540	60.03%
North Dakota	1,198,337	950,765	(247,572)	-20.66%
Ohio	34,226,768	39,264,551	5,037,783	14.72%
Oklahoma	6,478,067	6,353,809	(124,258)	-1.92%
Oregon	29,731,969	25,742,763	(3,989,206)	-13.42%
Pennsylvania	41,663,107	44,985,677	3,322,570	7.97%
Puerto Rico	122,346,374	36,968,824	(85,377,550)	-69.78%
Rhode Island	2,680,620	2,582,668	(97,952)	-3.65%
South Carolina	11,995,901	17,690,855	5,694,954	47.47%
South Dakota	985,071	1,278,341	293,270	29.77%
Tennessee	13,927,456	17,752,044	3,824,588	27.46%
Texas	59,784,453	91,566,972	31,782,519	53.16%
Utah	4,334,469	6,466,518	2,132,049	49.19%
Vermont	1,306,794	1,298,772	(8,022)	-0.61%
Virginia	11,111,364	14,032,707	2,921,343	26.29%
Washington	68,485,602	39,395,498	(29,090,104)	-42.48%
West Virginia	15,231,628	6,944,168	(8,287,460)	-54.41%
Wisconsin	15,314,830	19,403,913	4,089,083	26.70%
Wyoming	1,285,545	955,311	(330,234)	-25.69%
State Total	1,239,200,000	1,155,152,447	(84,047,553)	-6.78%
American Samoa	188,479	156,745	(31,734)	-16.84%
Guam	814,221	760,747	(53,474)	-6.57%
Marshall Islands	400,327	332,926	(67,401)	-16.84%
Micronesia	771,405	720,743	(50,662)	-6.57%
Northern Marianas	481,963	468,072	(13,891)	-2.88%
Palau	125,415	120,059	(5,356)	-4.27%
Virgin Islands	1,090,690	1,019,059	(71,631)	-6.57%
Outlying Area Total	3,872,500	3,578,351	(294,149)	-7.60%
National Reserve	305,927,500	272,609,697	(33,317,803)	-10.89%

Attachment IV

U.S. Department of Labor
Employment and Training Administration
Employment Service (Wagner-Peyser) State Allotments
PY 2003 Final vs PY 2002 Final

	Final PY 2002	Final PY 2003	Difference	% Change
Total	761,735,000	756,783,722	(4,951,278)	-0.65%
Alabama	10,891,481	10,553,788	(337,693)	-3.10%
Alaska	8,106,495	8,030,931	(75,564)	-0.93%
Arizona	11,626,345	12,708,064	1,081,719	9.30%
Arkansas	6,255,851	6,112,317	(143,534)	-2.29%
California	88,500,302	87,026,157	(1,474,145)	-1.67%
Colorado	10,301,856	11,310,375	1,008,519	9.79%
Connecticut	8,032,006	7,858,518	(173,488)	-2.16%
Delaware	2,082,968	2,063,552	(19,416)	-0.93%
District of Columbia	3,254,942	3,121,006	(133,936)	-4.11%
Florida	36,932,996	36,944,410	11,414	0.03%
Georgia	19,441,833	19,256,784	(185,049)	-0.95%
Hawaii	3,115,883	2,987,670	(128,213)	-4.11%
Idaho	6,754,153	6,691,195	(62,958)	-0.93%
Illinois	31,972,759	31,475,936	(496,823)	-1.55%
Indiana	14,560,124	14,373,896	(186,228)	-1.28%
Iowa	6,952,699	6,972,545	19,846	0.29%
Kansas	6,595,682	6,482,034	(113,648)	-1.72%
Kentucky	9,949,880	9,652,389	(297,491)	-2.99%
Louisiana	10,956,434	10,518,812	(437,622)	-3.99%
Maine	4,016,631	3,979,190	(37,441)	-0.93%
Maryland	13,486,099	13,115,865	(370,234)	-2.75%
Massachusetts	15,101,771	15,782,983	681,212	4.51%
Michigan	25,855,187	25,159,933	(695,254)	-2.69%
Minnesota	12,556,225	12,501,180	(55,045)	-0.44%
Mississippi	7,074,189	6,850,823	(223,366)	-3.16%
Missouri	14,247,515	14,008,971	(238,544)	-1.67%
Montana	5,519,529	5,468,079	(51,450)	-0.93%
Nebraska	6,633,389	6,571,557	(61,832)	-0.93%
Nevada	5,290,387	5,214,637	(75,750)	-1.43%
New Hampshire	3,035,822	3,083,468	47,646	1.57%
New Jersey	20,564,472	20,384,182	(180,290)	-0.88%
New Mexico	6,193,882	6,136,146	(57,736)	-0.93%
New York	45,863,436	45,169,427	(694,009)	-1.51%
North Carolina	20,275,400	20,470,545	195,145	0.96%
North Dakota	5,620,532	5,568,141	(52,391)	-0.93%
Ohio	27,983,201	27,526,534	(456,667)	-1.63%
Oklahoma	7,925,054	7,713,677	(211,377)	-2.67%
Oregon	9,586,808	9,468,627	(118,181)	-1.23%
Pennsylvania	29,822,619	29,420,399	(402,220)	-1.35%
Puerto Rico	9,938,300	9,538,343	(399,957)	-4.02%
Rhode Island	2,537,871	2,506,567	(31,304)	-1.23%
South Carolina	9,821,032	9,607,931	(213,101)	-2.17%
South Dakota	5,194,663	5,146,242	(48,421)	-0.93%
Tennessee	13,585,282	13,368,481	(216,801)	-1.60%
Texas	51,244,750	51,580,580	335,830	0.66%
Utah	9,803,073	9,399,693	(403,380)	-4.11%
Vermont	2,433,477	2,410,794	(22,683)	-0.93%
Virginia	16,111,056	15,892,108	(218,948)	-1.36%
Washington	16,141,463	15,903,378	(238,085)	-1.47%
West Virginia	5,945,805	5,890,382	(55,423)	-0.93%
Wisconsin	14,193,276	14,010,878	(182,398)	-1.29%
Wyoming	4,030,272	3,992,704	(37,568)	-0.93%
State Total	743,917,157	736,982,824	(6,934,333)	-0.93%
Guam	348,947	345,694	(3,253)	-0.93%
Virgin Islands	1,468,896	1,455,204	(13,692)	-0.93%
Postage	16,000,000	18,000,000	2,000,000	12.50%

Attachment V

U. S. Department of Labor
Employment and Training Administration
Reemployment Services Allotments
PY 2003 vs PY 2002

	PY 2002	PY 2003	Difference	% Change
Total	$35,000,000	$34,772,500	-$227,500	-0.65%
Alabama	636,366	550,972	-85,394	-13.42%
Alaska	330,553	326,058	-4,495	-1.36%
Arizona	469,321	510,304	40,983	8.73%
Arkansas	490,925	458,459	-32,466	-6.61%
California	3,332,953	3,404,676	71,723	2.15%
Colorado	416,385	480,637	64,252	15.43%
Connecticut	564,660	571,624	6,964	1.23%
Delaware	286,908	286,781	-127	-0.04%
District of Columbia	263,530	270,980	7,450	2.83%
Florida	966,973	1,071,667	104,694	10.83%
Georgia	875,223	811,784	-63,439	-7.25%
Hawaii	290,627	307,783	17,156	5.90%
Idaho	354,739	349,504	-5,235	-1.48%
Illinois	1,272,883	1,296,182	23,299	1.83%
Indiana	720,996	677,166	-43,830	-6.08%
Iowa	500,750	471,939	-28,811	-5.75%
Kansas	394,124	400,504	6,380	1.62%
Kentucky	583,210	523,881	-59,329	-10.17%
Louisiana	430,780	439,271	8,491	1.97%
Maine	300,451	290,972	-9,479	-3.15%
Maryland	507,019	517,652	10,633	2.10%
Massachusetts	821,230	911,443	90,213	10.99%
Michigan	1,513,365	1,362,258	-151,107	-9.98%
Minnesota	597,430	606,834	9,404	1.57%
Mississippi	421,733	390,956	-30,777	-7.30%
Missouri	652,106	622,700	-29,406	-4.51%
Montana	285,137	274,081	-11,056	-3.88%
Nebraska	308,177	312,249	4,072	1.32%
Nevada	411,066	436,289	25,223	6.14%
New Hampshire	275,911	270,234	-5,677	-2.06%
New Jersey	958,429	993,139	34,710	3.62%
New Mexico	300,341	302,529	2,188	0.73%
New York	1,647,588	1,682,704	35,116	2.13%
North Carolina	1,130,772	1,065,743	-65,029	-5.75%
North Dakota	249,043	251,544	2,501	1.00%
Ohio	1,117,759	1,036,012	-81,747	-7.31%
Oklahoma	359,867	375,320	15,453	4.29%
Oregon	693,724	624,878	-68,846	-9.92%
Pennsylvania	1,533,728	1,491,997	-41,731	-2.72%
Puerto Rico	552,030	493,458	-58,572	-10.61%
Rhode Island	324,158	315,605	-8,553	-2.64%
South Carolina	598,632	557,239	-41,393	-6.91%
South Dakota	242,398	242,778	380	0.16%
Tennessee	802,674	759,581	-43,093	-5.37%
Texas	1,328,284	1,481,573	153,289	11.54%
Utah	353,123	369,704	16,581	4.70%
Vermont	270,972	277,479	6,507	2.40%
Virgin Islands	218,831	223,016	4,185	1.91%
Virginia	556,355	614,647	58,292	10.48%
Washington	865,776	875,996	10,220	1.18%
West Virginia	353,579	337,465	-16,114	-4.56%
Wisconsin	1,020,775	945,365	-75,410	-7.39%
Wyoming	245,631	248,888	3,257	1.33%

Attachment VI

U. S. Department of Labor
Employment and Training Administration
Work Opportunity Tax Credit (WOTC) State Allotments
FY 2003 vs FY 2002

State	FY 2002	FY 2003	Difference	% Diff
Total	$21,000,000	$20,863,500	-$136,500	-0.65%
Alabama	335,460	321,489	-13,971	-4.16%
Alaska	64,000	65,120	1,120	1.75%
Arizona	314,972	301,854	-13,118	-4.16%
Arkansas	366,051	350,806	-15,245	-4.16%
California	2,362,490	2,264,101	-98,389	-4.16%
Colorado	196,566	188,380	-8,186	-4.16%
Connecticut	304,074	291,411	-12,663	-4.16%
Delaware	65,980	65,120	-860	-1.30%
Dist of Columbia	80,561	77,206	-3,355	-4.16%
Florida	725,126	694,927	-30,199	-4.16%
Georgia	589,171	564,634	-24,537	-4.16%
Hawaii	80,561	77,206	-3,355	-4.16%
Idaho	64,000	65,120	1,120	1.75%
Illinois	1,072,496	1,027,830	-44,666	-4.16%
Indiana	396,241	479,670	83,429	21.06%
Iowa	233,874	283,116	49,242	21.05%
Kansas	150,429	144,164	-6,265	-4.16%
Kentucky	305,651	292,922	-12,729	-4.16%
Louisiana	513,185	491,813	-21,372	-4.16%
Maine	73,912	89,474	15,562	21.05%
Maryland	497,076	476,375	-20,701	-4.16%
Massachusetts	447,458	428,823	-18,635	-4.16%
Michigan	730,907	700,467	-30,440	-4.16%
Minnesota	329,459	398,828	69,369	21.06%
Mississippi	174,152	210,820	36,668	21.06%
Missouri	493,618	473,061	-20,557	-4.16%
Montana	64,000	65,120	1,120	1.75%
Nebraska	129,759	124,355	-5,404	-4.16%
Nevada	109,630	132,713	23,083	21.06%
New Hampshire	80,561	77,206	-3,355	-4.16%
New Jersey	604,103	578,944	-25,159	-4.16%
New Mexico	164,557	199,205	34,648	21.06%
New York	1,298,675	1,244,590	-54,085	-4.16%
North Carolina	540,918	518,391	-22,527	-4.16%
North Dakota	64,000	65,120	1,120	1.75%
Ohio	948,747	909,235	-39,512	-4.16%
Oklahoma	164,300	198,893	34,593	21.05%
Oregon	242,717	232,609	-10,108	-4.16%
Pennsylvania	1,047,124	1,003,515	-43,609	-4.16%
Puerto Rico	122,166	147,888	25,722	21.05%
Rhode Island	80,561	97,524	16,963	21.06%
South Carolina	211,607	256,161	44,554	21.06%
South Dakota	64,000	65,120	1,120	1.75%
Tennessee	508,623	615,714	107,091	21.06%
Texas	1,290,686	1,236,934	-53,752	-4.16%
Utah	90,329	86,567	-3,762	-4.16%
Vermont	64,000	65,120	1,120	1.75%
Virginia	480,004	460,013	-19,991	-4.16%
Washington	485,815	465,582	-20,233	-4.16%
West Virginia	142,752	136,807	-5,945	-4.16%
Wisconsin	402,896	386,117	-16,779	-4.16%
Wyoming	64,000	65,120	1,120	1.75%
State Total	20,434,000	20,259,300	-174,700	-0.85%
Virgin Islands	20,000	20,000	0	0.00%
Postage	546,000	584,200	38,200	7.00%

[FR Doc. 03–7737 Filed 3–31–03; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–035)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that SeatSignal, Incorporated, of Atlanta, Georgia, has applied for an exclusive license to practice the invention described in NASA Case Numbers LAR 16324–1 and LAR 16324–1–PCT entitled "Self-Activating System And Method For Alerting When An Object Or A Person Is Left Unattended," for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Kurt G. Hammerle, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–2199. Voicemail: 757–864–2470, Facsimile: 757–864–9190.

Dated: March 25, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–7757 Filed 3–31–03; 8:45 am]
BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of March 31, April 7, 14, 21, 28, May 5, 2003.

AGENCY: Nuclear Regulatory Commission.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 31, 2003

There are no meetings scheduled for the Week of March 31, 2003.

Week of April 7, 2003–Tentative

Friday, April 11, 2003

9 a.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address: *http://www.nrc.gov.*

12:30 p.m. Discussion of Management Issues (Closed—Ex. 2)

Week of April 14, 2003—Tentative

There are no meetings scheduled for the Week of April 14, 2003.

Week of April 21, 2003—Tentative

There are no meetings scheduled for the Week of April 21, 2003.

Week of April 28, 2003—Tentative

There are no meetings scheduled for the Week of April 28, 2003.

Week of May 5, 2003—Tentative

There are no meetings scheduled for the Week of May 5, 2003.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: David Louis Gamberoni, (301) 415–1651.

Additional Information

By a vote of 5–0 on march 25, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Final Rule: part 2, subpart G, rules of General Applicability, 'Availability of Official Records'" be held on March 27, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: March 27, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–7921 Filed 3–28–03; 11:43 am]
BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 7, 2003 through March 20, 2003. The last biweekly notice was published on March 18, 2003 (68 FR 12946).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed

determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By May 1, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.*

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text to 10 CFR 2.714(d), please *see* 67 FR 20884; April 29, 2002.

A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: May 10, 2002, as supplemented March 12, 2003.

Description of amendment request: Carolina Power & Light Company (the licensee) is proposing changes to Appendix A, Technical Specifications (TS), and appendix B, Additional Conditions, of Facility Operating License No. DPR–23 for the H. B. Robinson Steam Electric Plant, Unit No. 2 (HBRSEP2). These changes will revise the licensing basis for HBRSEP2 to implement the Alternative Source Term (AST) described in Regulatory Guide 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors." Implementation of the AST will allow for removal of the cycle operating length restriction from appendix B, Additional Conditions, of the Operating License, as the AST radiological consequence analyses support operation for an entire cycle at the increased power level approved in License Amendment No. 196. The AST is used by the licensee in evaluating the radiological consequences of the following Updated Final Safety Analysis Report Chapter 15 accidents:

- Main Steam Line Break,
- Reactor Coolant Pump Shaft Seizure,
- Single Rod Control Cluster Assembly Withdrawal,
- Steam Generator Tube Rupture,
- Large Break Loss-of-Coolant Accident, and
- Waste Gas Decay Tank Rupture.

In addition, revised atmospheric dispersion factors for onsite and offsite dose consequences have been calculated and incorporated in the reanalysis of these events.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the standards in 10 CFR 50.92(c). A discussion of these standards as they relate to this amendment request follows:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Implementation of the Alternative Source Term does not affect the design or operation of HBRSEP, Unit No. 2. Rather, once the occurrence of an accident has been postulated, the new source term is an input to evaluate the consequences of the postulated accident. The implementation of the Alternative Source Term has been evaluated in revisions to limiting design basis accidents at HBRSEP, Unit No. 2. Based on the results of these analyses, it has been demonstrated that, with the requested changes to the Technical Specifications, the dose consequences of these limiting events are within the regulatory guidance provided by the NRC. This guidance is presented in 10 CFR 50.67 and Regulatory Guide 1.183. The proposed Technical Specifications changes result in more restrictive requirements and support the revisions to the limiting design basis accident analyses.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed changes do not affect plant structures, systems or components. The Alternative Source Term and those plant systems affected by implementing the proposed changes do not initiate design basis accidents.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed changes are associated with the implementation of a new licensing basis for HBRSEP, Unit No. 2. The new licensing basis implements an Alternative Source Term in accordance with 10 CFR 50.67 and the associated Regulatory Guide 1.183. The results of the revised limiting design basis analyses are subject to revised acceptance criteria. The analyses have been performed using conservative methodologies in accordance with the regulatory guidance. The dose consequences of the limiting design basis events are within the acceptance criteria found in the regulatory guidance associated with Alternative Source Terms.

The proposed changes continue to ensure that doses at the exclusion area and low population zone boundaries, as well as the control room, are within the corresponding regulatory limits. Specifically, the margin of safety for the radiological consequences of these accidents is considered to be that provided by meeting the applicable regulatory limits, which are conservatively set below the 10 CFR 50.67 limits. With respect to control room personnel doses, the margin of safety (the difference between the 10 CFR 50.67 limits and the regulatory limits defined by 10 CFR 50, Appendix A, [General Design] Criterion 19 (GDC–19)) continues to be satisfied.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based on the above discussion, Progress Energy Carolinas, Inc., also known as Carolina Power and Light Company, has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602–1551.

NRC Section Chief: Allen G. Howe.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: February 17, 2003.

Description of amendment request: The proposed amendments would revise the Technical Specification Surveillance Requirement 3.10.1.9 to require that the Standby Shutdown Facility (SSF) diesel generator (DG) be loaded to at least 3280 kilowatts during the surveillance. The current requirement is that the SSF DG be loaded to at least 3000 kilowatts during the surveillance. The change supports resolution of an Oconee design basis issue associated with SSF pressurizer heater capacity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.91, Duke Power Company (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by the NRC in 10 CFR 50.92. This ensures that operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated:

This change revises the loading of the Standby Shutdown Facility (SSF) Diesel Generators (DG) to ≥ 3280 kW. The design rating of the DG is currently 3500 kW. Since the proposed loading is within the design rating already evaluated, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

As stated above, the proposed revision revises the DG loading to an analytical value that is within the equipment's design limit. Applicable load and support system calculations have been revised and results have shown that the increase does not adversely affect the ability of the SSF diesel generator or SSF to perform its intended safety function. Additionally, this change is bounded by all of the existing accidents and does not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change does not adversely affect any plant safety limits, set points, or design parameters. The change also does not adversely affect the fuel, fuel cladding, Reactor Coolant System, or containment integrity. Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: January 31, 2003.

Description of amendment request: The proposed amendments would revise Appendix A, Technical Specifications (TS) 3.4.11, "RCS Pressure and Temperature (P/T) Limits," to incorporate revised P/T curves. The revised P/T curves are based on calculations performed in accordance with General Electric (GE) Topical Report NEDC–32983P, "General Electric Methodology for Reactor Pressure Vessel Fast Neutron Flux Evaluation." The NEDC–32983P methodology is consistent with the guidance contained in Regulatory Guide (RG) 1.190, "Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence," dated March 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes request for LaSalle County Station, Units 1 and 2, that the pressure and temperature (P/T) limit curves in TS 3.4.11, "RCS Pressure and Temperature (P/T) Limits," and Surveillance Requirement (SR) 3.4.11.1 and SR 3.4.11.2 be revised. The revised curves were developed using the methodology of GE Topical Report NEDC–32983P, "General Electric Methodology for Reactor Pressure Vessel Fast Neutron Flux Evaluation." NEDC–32983P methodology has been previously approved by the NRC for use by licensees. The P/T limits are prescribed during normal operation to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause nonductile failure of the reactor coolant pressure boundary, a condition that is unanalyzed. Thus, the proposed changes do not have any affect on the probability of an accident previously evaluated.

The P/T curves are used as operational limits during heatup or cooldown maneuvering, when pressure and temperature indications are monitored and compared to the applicable curve to determine that operation is within the allowable region. The P/T curves provide assurance that station operation is consistent with previously evaluated accidents. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not change the response of plant equipment to transient conditions. The proposed changes do not introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes adopt P/T curves that have been developed using the methodology of GE Topical Report NEDC–32983P. The NEDC–32983P methodology is consistent with the guidance contained in RG 1.190, "Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence," dated March 2001. In a letter dated September 14, 2001, the NRC approved NEDC–32983P for use by licensees.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the above, EGC concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief : Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: February 27, 2003.

Description of amendment request: The proposed amendments revise the Technical Specifications to reflect a one-time deferral of the primary containment Type A leak rate test to no later than July 22, 2009, for Unit 1 and no later than May 16, 2008, for Unit 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will revise Quad Cities Nuclear Power Station (QCNPS), Units 1 and 2, Technical Specification (TS) 5.5.12, "Primary Containment Leakage Rate Testing Program," to reflect a one-time deferral of the primary containment Type A test to no later than July 22, 2009, for Unit 1, and no later than May 16, 2008, for Unit 2. The current Type A test interval of 10 years, based on past performance, would be extended on a one-time basis to 15 years from the last Type A test.

The function of the primary containment is to isolate and contain fission products released from the reactor coolant system (RCS) following a design basis loss of coolant accident (LOCA) and to confine the postulated release of radioactive material to within limits. The test interval associated with Type A testing is not a precursor of any accident previously evaluated. Therefore, extending this test interval on a one-time basis from 10 years to 15 years does not result in an increase in the probability of occurrence of an accident. The successful performance history of Type A testing provides assurance that the QCNPS primary containments will not exceed allowable leakage rate values specified in the TS and will continue to perform their design function following an accident. The risk assessment of the proposed change has concluded that there is an insignificant increase in total population dose rate and an insignificant increase in the conditional containment failure probability.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change for a one-time extension of the Type A tests for QCNPS, Units 1 and 2, will not affect the control parameters governing unit operation or the response of plant equipment to transient and accident conditions. The proposed change does not introduce any new equipment or modes of system operation. No installed equipment will be operated in a new or different manner. As such, no new failure mechanisms are introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

QCNPS, Units 1 and 2, are General Electric BWR/3 [boiling water reactor class 3] plants with Mark I primary containments. The Mark I primary containment consists of a drywell, which encloses the reactor vessel, reactor coolant recirculation system, and branch lines of the RCS; a toroidal-shaped pressure suppression chamber containing a large volume of water; and a vent system connecting the drywell to the water space of the suppression chamber. The primary containment is penetrated by access, piping, and electrical penetrations.

The integrity of the primary containment penetrations and isolation valves is verified through Type B and Type C local leak rate tests (LLRTs) and the overall leak tight integrity of the primary containment is verified by a Type A integrated leak rate test (ILRT) as required by 10 CFR 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." These tests are performed to verify the essentially leak tight characteristics of the primary containment at the design basis accident pressure. The proposed change for a one-time extension of the Type A tests do not affect the method for Type A, B, or C testing, or the test acceptance criteria. In addition, based on previous Type A testing results, EGC [Exelon Generation Company, LLC] does not expect additional degradation, during the extended period between Type A tests, which would result in a significant reduction in a margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: February 27, 2003,

Description of amendment request: The proposed amendments add a surveillance requirement to perform a quarterly trip unit calibration of the reactor protection system scram discharge volume water level—high differential pressure switches.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Technical Specifications (TS) change adds a trip unit calibration surveillance requirement (SR) for the analog trip units associated with the Scram Discharge Volume (SDV) Water Level—High Trip Function for the Reactor Protection System (RPS) Instrumentation. Specifically, SR 3.3.1.1.11 is added to Function 7.b of TS Table 3.3.1.1–1, "Reactor Protection System Instrumentation." In addition, the proposed change revises Function 7.a of TS Table 3.3.1.1–1 to delete a reference to thermal switches, applicable to Unit 1 through cycle 17. The change to Function 7.a is editorial, since Unit 1 SDV level instrumentation has been upgraded to replace Fluid Components International thermal switches with Magnetrol float switches.

TS requirements that govern operability or routine testing of plant instruments are not assumed to be initiators of any analyzed event because these instruments are intended to prevent, detect, or mitigate accidents. Therefore, these proposed changes will not involve an increase in the probability of an accident previously evaluated. Additionally, these proposed changes do not increase the consequences of an accident previously evaluated because the proposed changes do not adversely impact structures, systems, or components. The proposed changes establish requirements that ensure components are operable when necessary for the prevention or mitigation of accidents or transients. Furthermore, there will be no change in the types or significant increase in the amounts of any effluents released offsite.

In summary, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There is no change being made to the parameters within which Quad Cities Nuclear Power Station (QCNPS) is operated. The proposed changes do not adversely impact the manner in which the SDV Water Level—High RPS instrumentation will operate under normal and abnormal operating conditions. The proposed changes will not alter the function demands on credited equipment. No alteration in the procedures, which ensure QCNPS remains within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. Therefore, these proposed changes provide an equivalent level of safety and will not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes in methods governing normal plant operation are consistent with the current safety analysis assumptions. Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety[?]

Response: No.

Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the establishment of setpoints to initiate alarms and actions. The proposed changes do not affect the probability of failure or availability of the affected instrumentation, and the proposed changes do not revise any allowable values for RPS functions. Therefore, it is concluded that the proposed changes do not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: January 14, 2003.

Description of amendment request: This license amendment request proposes a change to Technical Specifications (TSs) 5.1.1, 5.4.1, and 5.5.1 that would replace the requirement for the plant manager to approve administrative procedures and the Offsite Dose Calculation Manual. The plant manager approval signature would be replaced with the signature of a procedurally authorized individual who would be a more appropriate authority for approval of the activity.

Basis for proposed no significant hazards consideration determination: As required by Section 50.91(a) of Title 10 of the Code of Federal Regulations (10 CFR), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to replace the plant manager's approval with the approval by an authorized individual is consistent with the requirements of Regulatory Guide 1.33 and American National Standards Institute (ANSI) N18.7–1976/American Nuclear Society (ANS) 3.2. The authorized individuals are management and supervisory personnel who satisfy the requirements of ANSI N18.1–1971. Use of ANSI N18.1–1971 is consistent with the requirements of the existing TS and Updated Safety Analysis Report (USAR). The change is administrative and does not impact or otherwise affect the physical plant.

The proposed change to the License Condition to delete the reporting time frame eliminates duplication of a requirement that is already an integral part of 10 CFR 50.73 which is referenced in the License Condition. The proposed change is administrative and does not impact or otherwise affect the physical plant.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed administrative changes do not involve any physical modifications to the facility nor add new equipment. The methods of plant operation have not been altered. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes will not involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature and have no direct impact upon any plant safety analyses. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant (PNPP), Unit 1, Lake County, Ohio

Date of amendment request: January 30, 2003.

Description of amendment request: This license amendment request would modify the existing minimum critical power ratio (MCPR) safety limit contained in Technical Specification (TS) 2.1.1.2. Specifically, the change modifies the MCPR safety limit values, as calculated by Global Nuclear Fuel (GNF), by decreasing the limit for two recirculation loop operation from 1.10 to 1.07, and decreasing the limit for single recirculation loop operation from 1.11 to 1.08. The change resulted from the core reload analysis performed for the Perry Nuclear Power Plant (PNPP) fuel cycle 10.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

PPNP Updated Safety Analysis Report (USAR) Section 4.2, "Fuel System Design," states the PNPP fuel system design bases are provided in the General Electric Topical Report, NEDE–24011–P–A, "General Electric Standard Application for Reactor Fuel (GESTAR II)." The MCPR Safety Limit is one of the limits used to protect the fuel in accordance with the design basis. The MCPR Safety Limit establishes a margin to the onset of transition boiling. The basis of the MCPR Safety Limit remains the same, ensuring that greater than 99.9% of all fuel rods in the core avoid transition boiling. The methodology used to determine the MCPR Safety Limit values is contained within GESTAR II and is NRC approved. The change does not result in any physical plant modifications or physically affect any plant components. As a result, there is no increase in the probability of occurrence of a previously analyzed accident.

The fundamental sequences of accidents and transients have not been altered. The Safety Limit MCPR is established to avoid fuel damage in response to anticipated operational occurrences. Compliance with a MCPR Safety Limit greater than or equal to the calculated value will ensure that less than 0.1% of the fuel rods will experience boiling transition. This in turn ensures fuel damage does not occur following transitions due to excessive thermal stresses on the fuel cladding. The MCPR Operating Limits are set higher (*i.e.*, more conservative) than the Safety Limit such that potentially limiting plant transients prevent the MCPR from decreasing below the MCPR Safety Limit during the transient. Therefore, there is no impact on any limiting USAR Appendix 15B transients. The radiological consequences remain the same as previously stated in the USAR. Therefore, the consequences of an accident do not increase over previous evaluations in the USAR.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The MCPR Safety Limit basis is preserved, which is to ensure that transition boiling does not occur in at least 99.9% of the fuel rods in the core as a result of the postulated limiting transient. The values are calculated in accordance with GESTAR II. The GESTAR II analyses have been accepted by the NRC.

The MCPR Safety Limit is one of the limits established to ensure the fuel is protected in accordance with the design basis. The function, location, operation, and handling of the fuel remain unchanged. No changes in the design of the plant or the method of operating the plant are associated with these revised safety limit values. Therefore, no new or different kind of accident from any previously evaluated is created.

3. The proposed change does not involve a significant reduction in a margin of safety.

This change revises the PNPP MCPR Safety Limit values. The new MCPR Safety Limit values reflect changes due to the Cycle 10 core reload, but do not alter the design or function of any plant system, including the fuel. The new MCPR Safety Limit values were calculated using NRC-approved methods described in GESTAR II. The proposed MCPR Safety Limit values continue to satisfy the fuel design safety criteria which ensures that transition boiling does not occur in at least 99.9% of the fuel rods in the core as a result of the postulated limiting transient. Therefore, the proposed values for the MCPR Safety Limit do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of amendment request: December 10, 2002.

Description of amendment request: The proposed amendment would revise the Unit 2 reactor coolant system (RCS) pressure-temperature curves in Technical Specification (TS) Figures 3.4–2 and 3.4–3 and associated TS Bases. The revised curves will bound operation of the unit for the remainder of its current license duration and bound operation with planned license amendments to increase the power level at which the unit is allowed to operate. In support of this proposed amendment, Indiana Michigan Power (I&M) has submitted a request, in accordance with 10 CFR 50.60, "Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation," for exemption from requirements in 10 CFR Part 50, Appendix G, "Fracture Toughness Requirements."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

Probability of Occurrence of an Accident Previously Evaluated

The proposed change will revise the RCS pressure-temperature curves to reflect new limiting reactor vessel materials, to bound operation of the reactor up to 3600 MWt for the current fuel cycle and beyond, to reflect new fluence analysis methodology, to reflect the use of ASME [American Society of Mechanical Engineers] Code Case N–641, to include boltup limits, and to no longer include instrument uncertainty margins.

The proposed change will not result in physical changes to structures, systems, or components (SSCs), or changes to event initiators or precursors. The proposed change will not affect the ability of personnel to control RCS pressure at low temperatures and, thereby, ensure the integrity of the reactor coolant pressure boundary. Use of Code Case N–641 in developing the proposed revision to the RCS pressure-temperature curves is in accordance with methodologies accepted by the ASME. These methodologies provide assurance that the reactor vessel will withstand the effects of normal cyclic loads due to temperature and pressure changes, and provide an acceptable level of protection against brittle failure.

Additionally, the proposed changes will not impact the design or operation of plant systems such that previously analyzed SSCs will be more likely to fail. The initiating conditions and assumptions for accidents described in the UFSAR [updated final safety analysis report] will remain as previously analyzed. Therefore, the proposed changes will not involve a significant increase in the probability of an accident previously evaluated.

Consequences of an Accident Previously Evaluated

The proposed change does not reduce the ability of any SSC to limit the radiological consequences of accidents described in the UFSAR. The proposed change will not alter any assumptions made in the analysis of radiological consequences of previously evaluated accidents, nor does it affect the ability to mitigate these consequences. No new or different radiological source terms will be generated as a result of the proposed change. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

The format changes will improve the appearance of the affected pages but will not affect any requirements. In summary, the probability of occurrence and the consequences of an accident previously evaluated will not be significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will not result in physical changes to SSCs. The proposed change will not involve the addition or modification of plant equipment (no new or different type of equipment will be installed) nor will it alter the design of any plant systems. The proposed change solely involves RCS pressure-temperature limits. The types of potential accidents associated with these limits have been previously identified and evaluated. No new accident scenarios, accident or transient initiators or precursors, failure mechanisms, or single failures will be introduced as a result of the proposed changes. No new or different modes of failure will be created. The format changes will improve the appearance of the affected pages but will not affect any requirements. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed RCS pressure-temperature curves will continue to provide adequate margins of protection for the reactor coolant pressure boundary. The proposed changes have been determined, through supporting analyses, to be in accordance with the methodologies and criteria set forth in the applicable regulations, or in accordance with technically adequate alternatives. Compliance with these methodologies provides adequate margins of safety and ensures that the reactor coolant pressure boundary will withstand the effects of normal cyclic loads due to temperature and pressure changes as well as the loads associated with postulated faulted events as described in the UFSAR. The format changes will improve the appearance of the affected pages but will not affect any requirements. Therefore, the proposed change will not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station (VCSNS), Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 25, 2003.

Description of amendment request: The proposed Technical Specification (TS) changes will add an allowed outage time (AOT) for Engineered Safety Features Actuation System (ESFAS) Instrumentation channels to be out of service in a bypassed state.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The addition of an ACTION STATEMENT and the addition of an AOT (and its associated actions if not met) for a TS action statement are neither an accident initiator nor precursor. The ESFAS actuates in response to an accident and has a mitigating function. Increasing the TS requirements for specific TS instrument loops provides additional assurance that the channels will be capable of performing their design function in the event of a DBA [design-basis accident]. The ability of the operations staff to respond to an evaluated accident or plant transient will not be hampered. This change provides conservative requirements to assure that the design basis of the plant is maintained.

Addition of conservative changes to the Engineered Safety Feature Actuation System Instrumentation does not contribute to the initiation of any accident evaluated in the FSAR [Final Safety Analysis Report]. Supporting factors are as follows:

• The changes provide consistency between Tables 3.3–2, 3.3–3, and 4.3–2, resulting in a one-for-one correlation between the functional units in those tables. These changes are conservative and consistent with the Standard Technical Specifications, NUREG–1431, Rev. 2. There are no deletions from the Technical Specifications made by these changes, nor relaxation in any applicability, action, or surveillance requirements.

• Overall plant performance and operation is not altered by the proposed changes. There are to be no plant hardware changes as a result of this proposed change and only minimal procedural changes.

Therefore, since the Engineered Safety Feature Actuation System Instrumentation are treated more conservatively, the probability of occurrence or consequences of an accident evaluated in the VCSNS FSAR will be no greater than the original design basis of the plant.

Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes provide consistency between Tables 3.3–2, 3.3–3, and 4.3–2, resulting in a one-for-one correlation between the functional units in those tables. Additionally, the addition of an ACTION STATEMENT and an AOT with conservative requirements are intended to assure that the plant is in a safe configuration and can meet accident analyses assumptions. These changes are conservative and consistent with the Improved Technical Specifications, NUREG–1431, Rev. 2. No new accident initiator mechanisms are introduced since:

• No physical changes to the Engineered Safety Feature Actuation System Instrumentation are made.

• No deletions from the Technical Specifications are made.

• No relaxations in any applicability, action, or surveillance requirements are made.

Since the safety and design requirements continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, no new accident scenarios have been created. Therefore, the types of accidents defined in the FSAR continue to represent the credible spectrum of events to be analyzed, which determine safe plant operation.

3. Does this change involve a significant reduction in margin of safety?

The proposed change requires that an instrument channel for an Engineered Safety Feature remain operable or be restored to operability within a reasonable time period, otherwise a controlled shutdown is required. This conforms to the safety analysis where the plant and its systems, structures and components must be capable of performing the safety function while a DBA is occurring, in the presence of a worst case single failure.

This is not a reduction in a margin of safety, since it restores the margin that was designed into the plant.

The proposed changes provide consistency between Tables 3.3–2, 3.3–3, and 4.3–2, resulting in a one-for-one correlation between the functional units in those tables. These changes are conservative and consistent with the Standard Technical Specifications, NUREG–0452, Rev. 5. The proposed changes impose more restrictive operating limitations, and their use provides increased assurance that the Engineered Safety Feature Actuation System Instrumentation remains operable. Since the changes are conservative additions, it is concluded that the changes do not involve a significant reduction in the margin of safety. This is not a reduction in a margin of safety, since it restores the margin that was designed into the plant.

Pursuant to 10 CFR 50.91, the preceding analyses provides a determination that the proposed Technical Specifications change poses no significant hazard as delineated by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: John A. Nakoski.

Tennessee Valley Authority (TVA), Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: February 13, 2003.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) 4.2.1, Fuel Assemblies, to modify the fuel design description to encompass Framatome Advanced Nuclear Power (FANP) fuel assemblies and also to modifiy TS 4.3, Fuel Storage, to remove nomenclature specific to Global Nuclear Fuels analysis methods. The proposed TS changes are needed to allow the receipt and storage of Framatome-fuel assemblies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration in accordance with the three standards set forth in 10 CFR 50.92(c), which are presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment revises TS 4.2.1, Fuel Assemblies, to modify the fuel design description to accommodate FANP fuel designs. The change to TS 4.2.1 is administrative and simply adds descriptive text to reflect that FANP fuel assemblies have a water channel.

To make the fuel storage TS compatible with the storage of GNF [Global Nuclear Fuels] and FANP fuel, the proposed amendment also modifies TS 4.3, Fuel Storage, to delete criteria specific to GNF fuel storage criticality analysis methods. BFN criticality analysis and storage requirements continue to be adequately described in the Updated Final Safety Analysis Report (UFSAR) and in existing TS 4.3.1.1.b, TS 4.3.1.1.c, TS 4.3.1.2.b, 4.3.1.2.c, and 4.3.1.2.d. Hence, the proposed elimination of the GNF-specific criteria in TS 4.3 does not affect BFN design basis requirements associated with ensuring adequate criticality margins are maintained for fuel storage.

The requested TS changes do not involve any plant modifications or operational changes that could affect system reliability, performance, or the possibility of operator error. The requested changes do not affect any postulated accident precursors, do not affect accident mitigation systems, and do not introduce any new accident initiation methods. Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes to TS do not affect the performance of any BFN structure,

system, or component credited with mitigating any accident previously evaluated. Fuel storage criticality analyses will continue to be performed in accordance with established UFSAR commitments that are independent are fuel vendor specific methods. The TS changes do not introduce new modes of operation or involve plant modifications.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed amendment modifies TS 4.3, Fuel Storage, to remove nomenclature specific to GNF criticality analysis methods. Fuel storage criticality analyses will continue to be performed in accordance with UFSAR commitments and the remaining TS commitments in accordance with FANP accepted methods, which specify appropriate criteria and conservatisms. Therefore, the proposed TS change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority (TVA), Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of amendment request: December 19, 2002.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) Chapter 5.0, "Administrative Controls," to incorporate three approved TS Task Force (TSTF) changes: TSTF–258, Revision 4; TSTF–299, Revision 0; and TSTF–308, Revision 1. These changes have been incorporated in Revision 2 of NUREG 1431, "Standard Technical Specifications Westinghouse Plants."

In addition, the amendment proposes two editorial changes. These changes either update personnel titles with the titles currently used at WBN and TVA's other nuclear units or clarify required staffing levels.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration in accordance with the three standards set forth in 10 CFR 50.92(c), which are presented below:

1. Does the proposed change involve a significant increase in the probability of consequences of an accident previously evaluated?

No. The proposed changes affect only administrative requirements or programs. As indicated below, the justification for five of the changes (Parts 2 through 4 of Change Number 2 and Change Numbers 3, 5 [only Parts 1 and 2 of Change 5], 6, and 7) is based on the existence of a regulation or other regulatory document which controls the administrative requirements. For these changes, the proposed amendment modifies the administrative TS to make it consistent with the current regulations or NRC guidance document. Two changes (Change Number 1 and Part 1 of Change Number 2) are strictly editorial. In addition, two changes (Change Number 4 and Part 3 of Change Number 5) add a requirement to make the program consistent with the criteria for Surveillance Requirements in the Improved Standard Technical Specifications (ISTS). Based on the preceding information, the proposed amendment does not involve technical changes to the configuration or operation of the plant there is not a significant increase in the probability or consequences of an accident previously evaluated:

Change No.	Administrative section affected	Justification for the change
1.	5.1, "Responsibility," Section 5.1.2	Editorial update of staff titles.
2.	5.2.2, "Unit Staff"	Part 1 of Change number 2—Editorial clarification of the number of non-licensed operators required for the operation of WBN Unit 1. Parts 2 through 4 of Change Number 2—The existing administrative requirements are revised to align the requirements with 10 CFR 50.54.
3.	5.3, "Unit Staff Qualifications," Section 5.3.2.	Adds TS 5.3.2 which clarifies the "Operator" and "Senior Operator" definitions in 10 CFR 55.4 and ties these positions to the requirements of 10 CFR 50.54.
4.	5.7.2.4, "Primary Coolant Sources Outside Containment.	WBN TS 5.7.2.4 serves the same function as a Surveillance Requirement (SR). The proposed change structures TS 5.7.2.4 so that it is consistent with other ISTS SRs and the frequency extension allowed by SR 3.0.2.
5.	5.7.2.7, "Radioactive Effluent Controls Program".	The intent of the revisions to this TS are to: 1) eliminate possible confusion or improper implementation of the requirements of 10 CFR 20; 2) clarifies the wording to not require dose projections for a calendar quarter and a calendar year every 31 days; 3) structures the TS so that it is consistent with other ISTS SRs.
6.	5.9.4, "Monthly Operating Reports"	The proposed change makes the TS reporting requirements consistent with the reporting requirements in Generic Letter 97–02.
7.	5.11, "High Radiation Area"	The proposed revision updates the TS to be consistent with 10 CFR 20.1601(c) and updates the acceptable alternate controls to those given in 10 CFR 20.1601.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. As indicated above, the proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods controlling normal plant operation. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed changes will not reduce the margin of safety because they have no effect on assumptions made in WBN's safety analysis or the configuration of plant equipment important to safety. Additionally, several of the proposed revisions adjust the administrative requirements to be consistent with existing regulations or NRC guidance documents and therefore, will not adversely impact plant safety. The balance of the proposed changes are editorial updates or adjust a program to be consistent with the ISTS.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority (TVA), Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: February 14, 2003.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for Watts Bar Nuclear Plant (WBN), Unit 1. The proposed TS change would allow WBN Unit 1 to be refueled and operated using the Westinghouse 17x17 Robust Fuel Assembly-2 (RFA–2) design commencing with Cycle 6 in September 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated.

No. The Loss of Coolant Accident (LOCA) and non-LOCA transients and accidents which are potentially affected by the parameters and assumptions associated with the use of RFA–2 (including the effects of Tritium Producing Burnable Absorber Rods, TPBARs) have been evaluated/analyzed and all design standards and applicable safety criteria are met. The consideration of these changes does not result in a situation where the design material, and construction standards that were applicable prior to the change are altered. Therefore, the changes occurring with the use of RFA–2 will not result in any additional challenges to plant equipment that could increase the probability of any previously evaluated accident.

The changes associated with the use of RFA–2 do not affect plant systems such that their function in the control of radiological consequences is adversely affected. TVA's evaluation documents that the design standards and applicable safety criteria limits continue to be met and, therefore, fission barrier integrity is not challenged. The fuel rod design (the first fission product barrier) is not changed. Compared to the current grid design on the resident fuel, the RFA–2 grid design provides improved resistance to fuel rod fretting. The RFA–2 fuel changes have been shown not to adversely affect the response of the plant to postulated accident scenarios. These changes will therefore not affect the mitigation of the radiological consequences of any accident described in the Final Safety Analysis Report (FSAR).

Therefore, since the actual plant configuration, performance of systems, and initiating event mechanisms are not being changed as a result of this evaluation, TVA has concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated.

No. The possibility for a new or different type of accident from any accident previously evaluated is not created since the changes associated with the use of RFA–2 do not result in a change to the design basis of any plant component or system. The evaluation of the effects of the use of RFA–2 shows that all design standards and applicable safety criteria limits are met. Specifically, the results of the evaluations/analyses lead to the following conclusions:

1. The RFA–2 fuel design for Watts Bar Unit 1 is mechanically compatible with the current fuel assemblies, core components, the control rods and the reactor internals interfaces.

2. The structural integrity of the RFA–2 fuel design has been evaluated for seismic/LOCA loadings for Watts Bar Unit 1. Evaluation of the RFA–2 fuel assembly component stresses and grid impact forces due to postulated faulted condition accidents verified that the fuel assembly design is structurally acceptable.

3. The changes to the nuclear characteristics due to the transition to the RFA–2 fuel assembly design will be within the range normally seen from cycle to cycle due to fuel management.

4. The RFA–2 fuel assembly design is hydraulically compatible with the current fuel assemblies.

5. The core design and safety analyses documented in this report demonstrate the capability of the core to operate safely at the rated Watts Bar Unit 1 design thermal power with either a mixed core of RFA–2 fuel and the current fuel product or with a full core of RFA–2 fuel.

6. TVA's amendment request establishes a reference upon which to base Westinghouse reload safety evaluations for future reloads with the RFA–2 fuel assembly design.

7. Reload core designs with either a mixed core of RFA–2 fuel and the current fuel product or with a full core of RFA–2 fuel are compatible with the planned introduction of Tritium-Producing Burnable Absorber Rods (TPBARs) into Watts Bar Unit 1.

These changes therefore do not cause the initiation of any accident nor create any new failure mechanisms. All equipment important to safety will operate as designed. Component integrity is not challenged. The changes do not result in any event previously deemed incredible being made credible. The use of RFA–2 is not expected to result in more adverse conditions and is not expected to result in any increase in the challenges to safety systems.

Therefore, TVA concludes that this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety.

No. The margin of safety is maintained by assuring compliance with acceptance limits reviewed and approved by the NRC. All of the appropriate acceptance criteria for the various analyses and evaluations have been met, therefore, there has not been a reduction in any margin of safety.

Therefore, TVA concludes that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action *see* (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide

Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: April 10, 2002.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to relocate emergency diesel generator maintenance inspection requirements from Section 4.7 to the Updated Final Safety Analysis Report.

Date of Issuance: March 7, 2003.

Effective date: March 7, 2003 shall be implemented within 30 days of issuance, except the relocation of the emergency diesel generator maintenance requirements of Technical Specification 4.7, which shall be incorporated into the Updated Final Safety Analysis Report in accordance with the schedule specified by 10 CFR 50.71.

Amendment No.: 236.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* May 28, 2002 (67 FR 36926).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 2003.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: August 30, 2002, as supplemented November 21 and December 16, 2002, and January 23, 2003.

Brief description of amendment: This amendment revises the Technical Specifications by eliminating the requirements to perform response time testing for several reactor protection system and engineered safety feature functions in conformance with previously approved topical reports.

Date of issuance: March 7, 2003.

Effective date: March 7, 2003.

Amendment No.: 112.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register****:* November 1, 2002 (67 FR 61676).

The November 21 and December 16, 2002, and January 23, 2003, letters provided clarifying information and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 2003.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1 (HNP), Wake and Chatham Counties, North Carolina

Date of application for amendment: August 28, 2002.

Brief description of amendment: This amendment revises Technical Specification (TS) 3/4.9.9, "Containment Ventilation Isolation System," to allow the same administrative controls for this TS as were approved previously by the NRC in Amendment No. 104 to the HNP TS for TS 3/4.9.4, "Containment Building Penetrations," to provide consistency between the two TS.

Date of issuance: March 12, 2003.

Effective date: March 12, 2003.

Amendment No.: 113.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register****:* October 1, 2002 (67 FR 61676).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket No. 50–414, Catawba Nuclear Station, Unit 2, York County, South Carolina

Date of application for amendments: October 10, 2002, as supplemented by letters dated February 7 and February 26, 2003.

Brief description of amendments: The amendment authorizes the licensee to continue to use, for operational cycle 13 beginning in March 2003, and subsequent cycles of operation, the reactor coolant system cold leg elbow tap flow coefficients that were approved by the NRC on an interim basis for cycle 12 in Amendment No. 186.

Date of issuance: March 19, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 199.

Facility Operating License No. NPF–52: Amendment authorizes revision of the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register****:* November 26, 2002 (67 FR 70765).

The supplements dated February 7 and February 26, 2003, provided clarifying information that did not change the scope of the October 10, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 19, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: May 29, 2002, as supplemented by letters dated September 25 and November 12, 2002, and January 8 and January 29, 2003.

Brief description of amendments: The amendments revised the Technical Specifications to allow a one-time change in the Appendix J, Type A containment integrated leakage rate test interval from the currently required 10-year interval to a test interval of 15 years.

Date of issuance: March 12, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 205/198.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* July 9, 2002 (67 FR 45563).

The supplements dated September 25 and November 12, 2002, and January 8 and January 29, 2003, provided clarifying information that did not change the scope of the May 29, 2002, application or the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 12, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: May 29, 2002, as supplemented by letters dated September 25 and November 12, 2002, and January 8 and January 29, 2003.

Brief description of amendments: The amendments revised the Technical Specifications to allow a one-time change in the Appendix J, Type A containment integrated leakage rate test interval from the currently required 10-year interval to a test interval of 15 years.

Date of issuance: March 12, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 211/192.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* July 9, 2002 (67 FR 45563).

The supplements dated September 25 and November 12, 2002, and January 8 and January 29, 2003, provided clarifying information that did not change the scope of the May 29, 2002, application or the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 12, 2003.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: April 24, 2002, as supplemented by letters dated July 18, December 18 and 20, 2002, and February 19, 2003.

Brief description of amendment: The amendment reflects a full-scope implementation of the alternative source term, as described in Regulatory Guide 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors," pursuant to 10 CFR 50.67, "Accident source term."

Date of issuance: March 14, 2003.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 132.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* June 11, 2002 (67 FR 40021).

The July 18, December 18 and 20, 2002, and February 19, 2003, supplemental letters provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 14, 2003.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 14, 2002, as supplemented by letters dated February 12 and 28, 2003.

Brief description of amendment: The amendment modifies the surveillance requirements (SRs) pertaining to the testing of the Division 3 standby emergency diesel generator (EDG). The change allows performance of some required surveillance tests for the Division 3 EDG during any mode of plant operation (previously allowed only in Modes 4 (Cold Shutdown) and 5 (Refueling)).

Date of issuance: March 14, 2003.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 133.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications and Surveillance Requirements.

Date of initial notice in ***Federal Register****:* June 25, 2002 (67 FR 42824).

The February 12, 2003, supplemental letter provided clarifying information and the February 28, 2003, supplemental letter withdrew the requested change to the Note associated with SR 3.8.1.8. The supplemental letters did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 14, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: June 5, 2002, as supplemented on January 9 and March 4, 2003.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) to implement the alternate source term methodology for the fuel-handling accident analysis. Specifically, the amendment revises TS 3.9.3, "Containment Penetrations," to: (1) Permit the equipment closure hatch opening and the personnel airlock doors to be capable of being closed during movement of irradiated fuel, (2) allow use of administrative controls for unisolating containment penetrations during movement of irradiated fuel, (3) delete the containment purge and containment pressure relief requirements and associated surveillances with the reactor subcritical for less than 550 hours, and (4) eliminate the TS applicability "during core alterations." In this regard, the amendment adopts TS Task Force (TSTF) Standard TS Change Travelers TSTF–68, "Containment Personnel Airlock Doors Open During Fuel Movement," TSTF–312, "Administratively Control Containment Penetrations," and, in part, TSTF–51, "Revise Containment Requirements During Handling Irradiated Fuel and Core Alterations." The amendment also revises the Applicability Statements for Limiting Condition for Operation (LCO) 3.3.8 for the fuel storage building emergency ventilation system (FSBEVS) actuation instrumentation and LCO 3.7.13 for the FSBEVS to also add the term "recently" before "irradiated fuel assemblies." In addition, the LCO Required Action would likewise be modified to add the term "recently" to now require the suspension of movement of recently irradiated fuel in the FSB.

Date of issuance: March 17, 2003.

Effective date: March 17, 2003.

Amendment No.: 215.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* July 9, 2002 (67 FR 45567).

The January 9 and March 4 letters provided clarifying information that did not expand the scope of the proposed amendment or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: August 16, 2002.

Brief description of amendment: The amendment relocates certain Control Rod Block functions from Technical Specifications 3/4.2.C, "Control Rod Block Actuation," Tables 3.2.C.1, 3.2.C–2, and 4.2.C to the Updated Final Safety Analysis Report.

Date of issuance: March 17, 2003.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 196.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* November 12, 2002 (67 FR 68735).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2003.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 24, 2002, as supplemented by letter dated February 4, 2003.

Brief description of amendment: The amendment revises Technical Specifications (TSs) relating to positive reactivity additions while in shutdown modes by clarifying TSs involving positive reactivity additions. In addition, the borated water volume requirements in TS 3.1.2.7 is now presented in "percent level" units and an obsolete reference from Surveillance Requirement 4.8.2.2 is deleted.

Date of issuance: March 7, 2003.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 185.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* December 10, 2002 (67 FR 75874).

The February 4, 2003, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 2003.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: April 2, 2001, as supplemented by letters dated September 24, 2001, and February 27, July 31, and December 19, 2002.

Brief description of amendment: The Refueling Water Storage Pool (RWSP) purification system is aligned to the RWSP to maintain the purity and clarity of the borated water contained in the pool. It is also one of two means of makeup to the Spent Fuel Pool, with the Condensate Storage Pool being the primary makeup source. Entergy Operations Inc. has proposed to revise its Waterford Steam Electric Station, Unit 3, Updated Final Safety Analysis Report (UFSAR) to allow the manual valves (FS–423 and FS–404) that isolate the RWSP from the RWSP purification system and provide the boundary between the seismically qualified, safety related RWSP and the non-seismic, non-safety related RWSP purification system to be maintained open.

Date of issuance: March 12, 2003.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 186.

Facility Operating License No. NPF–38: The amendment revised the UFSAR.

Date of initial notice in ***Federal Register****:* May 16, 2001 (66 FR 27176).

The September 24, 2001, and February 27, July 31, and December 19, 2002, supplemental letters provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: November 27, 2002.

Brief description of amendments: These amendments delete technical specification (TS) 5.5.3, "Post Accident Sampling," and thereby eliminate the requirements to have and maintain the post accident sampling system at the Dresden Nuclear Power Station, Units 2 and 3. The amendments also address related changes to TS 5.5.2, "Primary Coolant Sources Outside Containment."

Date of issuance: March 11, 2003.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment Nos.: 197/190.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* January 21, 2003 (68 FR 2802).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 11, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: November 21, 2002, as supplemented February 25, 2003.

Brief description of amendment: This amendment revised the Technical Specifications (TSs) for the safety limit for the minimum critical power ratio from its current value of 1.09 to 1.07 for two recirculation-loop operations, and from 1.11 to 1.09 for single recirculation-loop operation.

Date of issuance: March 11, 2003.

Effective date: As of the date of issuance, to be implemented prior to startup for Cycle 8 operations, scheduled for March 2003.

Amendment No.: 127.

Facility Operating License No. NPF–85: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* January 7, 2003 (68 FR 802). The February 25, 2003, letter provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on January 7, 2003 (68 FR 802).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 11, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: November 27, 2002.

Brief description of amendments: These amendments delete technical specification (TS) 5.5.3, "Post Accident Sampling," and thereby eliminate the requirements to have and maintain the post accident sampling system at the Quad Cities Nuclear Power Station, Units 1 and 2. The amendments also address related changes to TS 5.5.2, "Primary Coolant Sources Outside Containment."

Date of issuance: March 11, 2003.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment Nos.: 212/206.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* January 21, 2003 (68 FR 2802)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 11, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: March 14, 2002, as supplemented by letters dated July 17 and September 12, 2002, and January 24, 2003.

Brief description of amendment: This amendment supplements License Amendment No. 100, which was issued on February 24, 1999, by placing restrictions on removing the inclined fuel transfer system (IFTS) blind flange during Operational Modes 1, 2, and 3. The amendment includes a time limit on the removal of the IFTS blind flange, provides a requirement to install the upper pool IFTS gate prior to IFTS blind flange removal, and limits the unbolted configuration of the IFTS blind flange when it is rotated.

Date of issuance: March 7, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 123.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* February 4, 2003 (68 FR 5675).

The supplemental information contained clarifying information that was within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: October 30, 2002.

Brief description of amendment: This amendment deletes Technical Specification (TS) 5.5.3, "Post Accident Sampling System (PASS)," and thereby eliminates the requirements to have and maintain the PASS at the Perry Nuclear Power Plant, Unit 1. The amendment also addresses related changes to TS 5.5.2, "Primary Coolant Sources Outside Containment."

Date of issuance: March 7, 2003.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment No.: 124.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* January 21, 2003 (68 FR 2803).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 2003.

No significant hazards consideration comments received: No.

GPU Nuclear Inc., Docket No. 50–320, Three Mile Island Nuclear Station, Unit 2, Dauphin County, Pennsylvania

Date of amendment request: November 14, 2002, supplemented by a letter dated January 24, 2003, that supersedes previous applications dated August 9, 2000, June 13, 2002.

Brief description of amendment request: The amendment revises TS 6.5.4 and 6.5.3 to eliminate the requirements for the Independent Onsite Safety Review Group (IOSRG) which is not needed for safe monitoring of TMI–2 based on consideration that the reactor has been defueled to the extent reasonably achievable and the fuel shipped offsite. The amendment also revises TS 6.4 to delete the requirements for unit staff training that are outdated based on the adoption of a systems approach to training consistent with 10 CFR 50.120, "Training and Qualification of Nuclear Power Plant Personnel."

Date of issuance: March 5, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 59.

Facility Operating License No. DPR–73: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50955).

The November 14, 2002, application and supplemental letter dated January 24, 2003, replace in their entirety the previous applications dated August 9, 2000, June 13, 2002. The November 14, 2002, application supplemented by the January 24, 2003, letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated March 5, 2003.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket No. 50–316, Donald C. Cook Nuclear Plant, Unit 2, Berrien County, Michigan

Date of application for amendment: July 23, 2002, as supplemented November 15, 2002, and January 24, 2003.

Brief description of amendment: The amendment revises the Unit 2 reactor coolant system pressure-temperature curves in Technical Specification (TS) Figures 3.4–2 and 3.4–3 and associated TS Bases. The revised curves will bound operation of the unit for the remainder of its current license duration and bound operation with planned license amendments to increase the power level at which the unit is allowed to operate.

Date of issuance: March 20, 2003.

Effective date: As of the date of issuance and shall be implemented prior to startup from Unit 2 refueling outage 14.

Amendment No.: 255.

Facility Operating License No. DPR–74: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 29, 2002 (67 FR 66010).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 20, 2003.

No significant hazards consideration comments received: No.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: January 13, 2000, and supplemented by letters dated June 1, 2001, August 13, 2001, and October 15, 2002.

Brief description of amendment: The amendment adds License Condition 2.B.(9) to the MY license. This new license condition incorporates the Nuclear Regulatory Commission (NRC) approved, "License Termination Plan Rev 3." (LTP), and associated addendum, into the MY license and allows the licensee to make certain changes to the approved LTP without prior NRC review and approval.

Date of issuance: February 28, 2003.

Effective date: Date of issuance; to be implemented within [30] days from the date of issuance.

Amendment No.: 168.

Facility Operating License No. DPR–36: The amendment adds License Condition 2.B.(9).

Date of initial notice in ***Federal Register:*** March 19, 2002.

The supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination published in the **Federal Register** on March 19, 2002.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation Report dated February 28, 2003.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 26, 2002.

Brief description of amendment: The amendment revises Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of " * * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: March 6, 2003.

Effective date: March 6, 2003.

Amendment No.: 197.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75882).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 2003.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: November 15, 2002, as supplemented by letter dated February 24, 2003.

Brief description of amendment: The amendment revises the safety limit minimum critical power ratio values in Technical Specification 2.1.1.2.

Date of issuance: March 17, 2003.

Effective date: March 17, 2003.

Amendment No.: 198.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 24, 2002 (67 FR 78521).

The supplemental letter provided clarifying information that was within the scope of the original **Federal Register** Notice (67 FR 78521) and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: July 26, 2002, as supplmented December 19, 2002.

Brief description of amendment: The amendment revises Technical Specification (TS) 1.0, "Definitions," TS 2.1, "Safety Limits, Reactor Core," TS 2.3, "Limiting Safety System Settings, Protective Instrumentation," TS 3.1, "Reactor Coolant System," TS 3.8, "Refueling Operations," TS 3.10, "Control Rod and Power Distribution Limits," TS 6.9, "Reporting Requirements," and their associated Bases. These modifications allow the licensee to implement a Core Operating Limits Report (COLR) by relocating cycle-specific, reactor coolant system-related parameter limits from the TSs to the COLR. In addition, the amendment makes administrative changes to the above TSs.

Date of issuance: March 11, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 165.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56322).

The supplemental information dated December 19, 2002, contained clarifying information and did not change the scope of the July 26, 2002, application nor the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 11, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: March 19, 2002, supplemented by letters dated September 13 and October 21, 2002.

Brief description of amendment: The amendment revises the current radiological consequence analyses for the Kewaunee Nuclear Power Plant (KNPP) design-basis accidents to implement the alternate source term (AST) as described in Regulatory Guide 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors" and Pursuant to 10 CFR 50.67, "Accident Source Term."

Date of issuance: March 17, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 166.

Facility Operating License No. DPR–43: Amendment revised the current radiological consequence analyses for the KNPP design-basis accidents to implement the AST.

Date of initial notice in ***Federal Register:*** April 16, 2002 (67 FR 18646).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2003.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: January 4, 2002, as supplemented January 9, 2003.

Brief description of amendment: The amendment adds a limiting condition for operation of the mechanical vacuum pump instrumentation to trip the pumps on indication of high radiation levels in the main steam line and adds associated Surveillance Requirements.

Date of issuance: March 11, 2003.

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No.: 143.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7421).

The January 9, 2003, supplement contained clarifying information and did not change the staff's proposed finding of no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 11, 2003.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: August 20, 2002.

Brief description of amendment: The amendment modifies the diesel generator action statements and surveillance requirements defined in the plant's Technical Specifications, in order to reduce degradation of the diesel generators associated with fast starting and rapid loading.

Date of issuance: March 17, 2003.

Effective date: March 17, 2003.

Amendment No.: 144.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 1, 2002 (67 FR 61684).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2003.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: March 20, 2002.

Brief description of amendment: The proposed amendment would change Technical Specification (TS) Section 1.10, "Definitions, Dose Equivalent I–131," to allow the use of the thyroid dose conversion factors listed in the International Commission on Radiological Protection Publication No. 30 (ICRP–30), "Limits for Intakes of Radionuclides by Workers," 1979, in determining the iodine-131 dose equivalent reactor coolant activity in TS Section 3/4.4.8 and in calculating the radiological consequences from postulated design basis accidents.

Date of issuance: March 6, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 162.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 20, 2002 (67 FR 53991).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 2003.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: August 9 2002, as supplemented by letters dated January 8 and February 6, 2003.

Brief description of amendments: The amendments revised the Updated Final Safety Analysis Report to incorporate the Boiling Water Reactor Vessel and Internals Project Integrated Surveillance for the surveillance of the material capsules.

Date of issuance: March 10, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 237 and 179.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** October 1, 2002 (67 FR 61684).

The supplements dated January 8 and February 6, 2003, provided clarifying information that did not change the scope of the August 9, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 10, 2003.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 24th day of March, 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–7489 Filed 3–31–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Boards for Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level employees:

Patricia G. Norry, Deputy Executive Director for Management Services, Office of the Executive Director for Operations.

R. William Borchardt, Associate Director for Inspection and Programs, Office of Nuclear Reactor Regulation.

Stephen G. Burns, Deputy General Counsel, Office of the General Counsel.

Frank J. Congel, Director, Office of Enforcement.

James E. Dyer, Regional Administrator, Region III.

Jesse L. Funches, Chief Financial Officer.

Scott F. Newberry, Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

James B. Schaeffer, Director, Applications Development Division, Office of the Chief Information Officer.

Michael L. Springer, Director, Office of Administration.

Martin J. Virgilio, Director, Office of Nuclear Material Safety and Safeguards.

Michael F. Weber, Deputy Director, Office of Nuclear Security and Incident Response.

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Karen D. Cyr, General Counsel, Office of the General Counsel.

William F. Kane, Deputy Executive Director for Reactor Programs, Office of the Executive Director for Operations.

Carl J. Paperiello, Deputy Executive Director for Materials, Research, and State Programs, Office of the Executive Director for Operations.

All appointments are made pursuant to section 4314 of chapter 43 of Title 5 of the United States Code.

EFFECTIVE DATE: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Secretary, Executive Resources Board, Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–2026.

Dated at Rockville, Maryland, this 17th day of March, 2003.

For the U.S. Nuclear Regulatory Commission.

Johanna P. Gallagher,

Secretary, Executive Resources Board.

[FR Doc. 03–7787 Filed 3–31–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Proposed Information Collection Activities; Request For Comments

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on the renewal without change of three (3) standard forms, the SF–270, Request for Advance or Reimbursement; the SF–271, Outlay Report and Request for Reimbursement for Construction Programs; and the SF–LLL, Disclosure of Lobbying Activities. These forms are required by OMB Circulars A–102, "Grants and Cooperative Agreements with State and Local Governments," and A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

DATES: Comments must be submitted on or before June 2, 2003. Late comments will be considered to the extent practicable.

ADDRESSES: Comments should be mailed to Garrett Hatch, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW., Room 6025, Washington, DC 20503. Electronic mail (E-mail) comments may be submitted to *ghatch@omb.eop.gov*. Please include the full body of the comments in the text of the message and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message. Due to problems receiving postal mail, mailed comments may not be received in a timely manner.

FOR FURTHER INFORMATION CONTACT: Garrett Hatch, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993. The standard forms can be downloaded from the OMB Grants Management Home page (*http://www.whitehouse.gov/WH/EOP/OMB/Grants*).

OMB Control No.: 0348–0004.

Title: Request for Advance or Reimbursement.

Form No: SF–270.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 100,000.

Estimated Time Per Response: 60 minutes.

Needs and Uses: The SF–270 is used to request funds for all nonconstruction grant programs when letters of credit or predetermined advance methods are not used. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0002.

Title: Outlay and Request for Reimbursement for Construction Programs.

Form No: SF–271.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 40,000.

Estimated Time Per Response: 60 minutes.

Needs and Uses: The SF–271 is used to request reimbursement for all construction grant programs. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0046.

Title: Disclosure of Lobbying Activities.

Form No: SF–LLL.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations, Individuals, Businesses.

Number of Responses: 300.

Estimated Time Per Response: 10 minutes.

Needs and Uses: The SF–LLL is the standard disclosure form for lobbying paid for with non-Federal funds, as required by the Byrd Amendment, as amended by the Lobbying Disclosure Act of 1995.

Office of Management and Budget.

Joseph L. Kull,

Deputy Controller.

[FR Doc. 03–7718 Filed 3–31–03; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: The Office of Management and Budget (OMB) is extending the comment period regarding its draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations from April 3, 2003 to May 5, 2003. Chapter II of this draft Report requests comments from the public in three areas: (1) Guidelines for regulatory analysis; (2) Analysis and management of emerging risks; and (3) Improving analysis of regulations to homeland security.

DATES: Written comments regarding the Draft Report and the three specific areas are due by May 5, 2003.

ADDRESSES: We are still experiencing delays in the regular mail, including first class and express mail. To ensure that your comments are received, we recommend that comments on this draft Report be electronically mailed to *OIRA_BC_RPT@omb.eop.gov*, or faxed to (202) 395–7245. Comments on the OMB Draft Guidelines for the Conduct of Regulatory Analysis and the Format of Accounting Statements (Appendix C) should be e-mailed to *OIRA_ECON_GUIDE@omb.eop.gov*, or faxed, with the title "Comments on Draft Guidelines" identified in the transmittal page, to (202) 395–7245.

You may also submit comments to Lorraine Hunt, office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10202, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lorraine Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395–3084.

SUPPLEMENTARY INFORMATION: On February 3, 2003 (68 FR 5492), OMB announced it was seeking comments on its Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations by April 3, 2003. OMB is now extending that comment period to May 5, 2003. The Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations, including OMB Draft Guidelines for the Conduct of Regulatory Analysis and the Format of Accounting Statements (Appendix C), are posted on OMB's Web site, *http://www.whitehouse.gov/omb/inforeg/index.html*.

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 03–7717 Filed 3–31–03; 8:45 am]

BILLING CODE 3110–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

TIME AND DATE: 2 p.m. Thursday, April 17, 2003.

PLACE: Office of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing open to the public at 2 p.m.

PURPOSE: Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Monday, April 14, 2003. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate in an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Monday, April 14, 2003. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov*.

Dated: March 28, 2003.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 03–7884 Filed 3–28–03; 10:16 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25982; File No. 812–12923]

Huntington VA Funds, et al.; Notice of Application

March 26, 2003.

AGENCY: The Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for Exemption under section 6(c) of the Investment Company Act of 1940, as amended (the "1940 Act"), for an exemption from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and rules 6e–2(b)(15) and 6e–3(T)(b)(15), thereunder.

Applicants: Huntington VA Funds (the "Trust") and Huntington Asset Advisors, Inc. ("HAA").

Summary of Application: Applicants and certain life insurance companies and their separate accounts that currently invest or may hereafter invest in the Trust (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) seek exemptive relief from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trust and shares of any other investment company or portfolio that is designed to fund insurance products and for which HAA or any of its affiliates may serve in the future as investment adviser, manager, principal underwriter, sponsor, or administrator ("Future Trusts") (the Trust, together with Future Trusts, are the "Trusts") to be sold to and held by: (a) Separate accounts funding variable annuity and variable life insurance contracts (collectively referred to herein as "Variable Contracts") issued by both affiliated and unaffiliated life insurance companies; (b) qualified pension and retirement plans ("Qualified Plans") outside of the separate account context; (c) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under section 3(c) of the 1940 Act; (d) HAA or certain related corporations (collectively "HAA"); and (e) any other person permitted to hold shares of the Trusts pursuant to Treasury Regulation 1.817–5 ("General Accounts"), including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

Filing Date: The application was filed on January 29, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 25, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Victor R. Siclari, Esq., Reed Smith LLP, Federated Investors Tower, 1001 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3779.

FOR FURTHER INFORMATION CONTACT: Alison White, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. The Trust is registered with the Commission as an open-end management investment company and is organized as a Massachusetts business trust. HAA is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 and serves as the investment

adviser to the Trust. The Trust currently consists of six investment portfolios that are sold only to separate accounts of insurance companies in conjunction with variable life and variable annuity contracts: Huntington VA Growth Fund, Huntington VA Income Equity Fund, Huntington VA Rotating Index Fund, Huntington VA Dividend Capture Fund, Huntington VA Mid Corp America Fund, and Huntington VA New Economy Fund (each, a "Fund," and collectively, the "Funds"). The Trust or any Future Trusts may offer one or more additional investment portfolios in the future (also referred to as "Funds").

2. Shares of the Funds will be offered to separate accounts of affiliated and unaffiliated insurance companies (each, a "Participating Insurance Company") to serve as investment vehicles to fund Variable Contracts (as hereinafter defined). These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration pursuant to exemptions from registration under section 3(c) of the 1940 Act (individually, a "Separate Account" and collectively, the "Separate Accounts"). Shares of the Portfolios may also be offered to Qualified Plans, HAA or certain related corporations (collectively "HAA"), and any other person permitted to hold shares of the Trusts pursuant to Treasury Regulation 1.817–5 ("General Accounts"), including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

3. The Participating Insurance Companies at the time of their investment in the Trusts either have or will establish their own Separate Accounts and design their own Variable Contracts. Each Participating Insurance Company has or will have the legal obligation of satisfying all applicable requirements under both state and federal law. Each Participating Insurance Company, on behalf of its Separate Accounts, has or will enter into an agreement with the Trusts concerning such Participating Insurance Company's participation in the Funds. The role of the Trusts under this agreement, insofar as the federal securities laws are applicable, will consist of, among other things, offering shares of the Trusts to the participating Separate Accounts and complying with any conditions that the Commission may impose upon granting the order requested herein.

Applicants' Legal Analysis

1. Applicants and certain life insurance companies and their Separate Accounts that currently invest or may hereafter invest in the Trust (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) seek exemptive relief from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trusts and shares of any Future Trusts to be sold to and held by: (a) Separate accounts funding Variable Contracts issued by both affiliated and unaffiliated life insurance companies; (b) qualified plans outside of the separate account context; (c) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under section 3(c) of the 1940 Act; (d) HAA or certain related corporations (collectively "HAA"); and (e) any General Accounts, including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered as a unit investment trust ("UIT") under the 1940 Act, rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by rule 6e–2 is also granted to the investment adviser, principal underwriter, and depositor of the separate account. Section 9(a)(2) of the 1940 Act makes it unlawful for any company to serve as an investment adviser or principal underwriter of any UIT, if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2) of the 1940 Act. Sections 13(a), 15(a) and 15(b) of the 1940 Act have been deemed by the Commission to require "pass-through" voting with respect to an underlying investment company's shares. Rule 6e–2(b)(15) provides these exemptions apply only where all of the assets of the UIT are shares of management investment companies "which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company." Therefore, the relief granted by rule 6e–2(b)(15) is not available with respect to a scheduled premium life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account or flexible premium variable life insurance separate account of the same company or any other affiliated insurance company. The use of a common management investment company as the underlying investment vehicle for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as "mixed funding."

3. The relief granted by rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment vehicle for variable annuity and/or variable life insurance separate accounts of unaffiliated life insurance companies is referred to herein as "shared funding."

4. The relief under rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company, additional exemptive relief is necessary if the shares of the Funds are also to be sold to Qualified Plans or other eligible holders of shares, as described above. Applicants note that if shares of the Funds are sold only to Qualified Plans, exemptive relief under rule 6e–2 would not be necessary. The relief provided for under this section does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to Qualified Plans. The use of a common management investment company as the underlying investment vehicle for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies, and for Qualified Plans, is referred to herein as "extended mixed and shared funding."

5. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by rule 6e–3(T)(b)(15) are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies that offer to sell their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance companies, offering either scheduled contracts or flexible

contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account." Therefore, rule 6e–3(T)(b)(15) permits mixed funding but does not permit shared funding.

6. The relief under rule 6e–3(T) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company, and additional exemptive relief is necessary if the shares of the Funds are also to be sold to Qualified Plans or other eligible holders of shares as described above. Applicants note that if shares of the Funds were sold only to Qualified Plans, exemptive relief under rule 6e–3(T)(b)(15) would not be necessary. The relief provided for under this section does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to Qualified Plans.

7. Applicants maintain, as discussed below, that there is no policy reason for the sale of the Funds' shares to Qualified Plans, to HAA, or General Accounts to result in a prohibition against, or otherwise limit, a Participating Insurance Company from relying on the relief provided by rules 6e–2(b)(15) and 6e–3(T)(b)(15). However, because the relief under rules 6e–2(b)(15) and 6e–3(T)(b)(15) is available only when shares are offered exclusively to separate accounts, additional exemptive relief may be necessary if the shares of the Funds are also to be sold to Qualified Plans, HAA or General Accounts. Applicants therefore request relief in order to have the participating insurance companies enjoy the benefits of the relief granted in rules 6e–2(b)(15) and 6e–3(T)(b)(15). Applicants note that if the Funds' shares were to be sold only to Qualified Plans, HAA, General Accounts and/or separate accounts funding variable annuity contracts, exemptive relief under rule 6e–2 and rule 6e–3(T) would be unnecessary. The relief provided for under rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to Qualified Plans, HAA, or General Accounts, or to a registered investment company's ability to sell its shares to such purchasers.

8. Applicants also note that the promulgation of rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations that made it possible for shares of an investment company portfolio to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company portfolio also to be held by the separate accounts of insurance companies in connection with their Variable Contracts. Thus, the sale of shares of the same portfolio to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of rules 6e–2(b)(15) and 6e–3(T)(b)(15).

9. Consistent with the Commission's authority under section 6(c) of the 1940 Act to grant exemptive orders to a class or classes of persons and transactions, this Application requests relief for the class consisting of insurers and Separate Accounts that will invest in the Funds, and to the extent necessary, Qualified Plans, other eligible holders of shares and investment advisers, principal underwriters and depositors of such accounts.

10. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and rules 6e–3(T)(b)(15)(i) and (ii) under the 1940 Act provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in management of the underlying management company.

11. The partial relief granted in rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act from the requirements of section 9 of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management of the Trusts. Those individuals who participate in the management of the Trusts will remain the same regardless of which Separate Accounts or Qualified Plans invests in the Trusts. Applying the monitoring requirements of section 9(a) of the 1940 Act because of investment by separate accounts of other insurers or Qualified Plans would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs could reduce the net rates of return realized by contract owners.

12. Moreover, since the Qualified Plans, HAA and General Accounts are not themselves investment companies, and therefore are not subject to section 9 of the 1940 Act and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

13. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between such a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T), respectively, under the 1940 Act). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that the insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in an underlying fund's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C), respectively, of rules 6e–2 and 6e–3(T) under the 1940 Act).

14. Rule 6e–2 under the 1940 Act recognizes that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. In adopting rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's

objection. The Commission, therefore, deemed such exemptions necessary "to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Therefore, the corresponding provisions of rule 6e–3(T) under the 1940 Act undoubtedly were adopted in recognition of the same factors.

15. The sale of Fund shares to Qualified Plans, HAA and General Accounts will not have any impact on the relief requested herein. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Qualified Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Qualified Plan assets to certain specified persons. Under section 403(a) of ERISA, shares of a portfolio of a fund sold to a Qualified Plan must be held by the trustees of the Qualified Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA, and (b) when the authority to manage, acquire, or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies.

16. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants. Similarly, HAA and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, HAA or General Accounts.

17. Where a Qualified Plan does not provide participants with the right to give voting instructions, the trustee or named fiduciary has responsibility to vote the shares held by the Qualified Plan. In this circumstance, the trustee has a fiduciary duty to vote the shares in the best interest of the Qualified Plan participants. Accordingly, even if HAA or an affiliate of HAA were to serve in the capacity of trustee or named fiduciary with voting responsibilities, HAA or the affiliates would have a fiduciary duty to vote those shares in the best interest of the Qualified Plan participants.

18. In addition, even if a Qualified Plan were to hold a controlling interest in a Fund, Applicants do not believe that such control would disadvantage other investors in such Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed funding or shared funding, Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

19. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. The purchase of shares of Funds by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

20. The prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. When rule 6e–2 under the 1940 Act was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. Therefore, the Commission staff contemplated underlying funds with public shareholders, as well as with variable life insurance separate account shareholders. The Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contract owners. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly available mutual fund and to affect the investment decisions of public shareholders.

21. For reasons unrelated to the 1940 Act, however, Internal Revenue Service Revenue Ruling 81–225 (Sept. 25, 1981) effectively deprived variable annuities funded by publicly available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment vehicle for Variable Contracts (including variable life contracts). Section 817(h) of the Code in effect requires that the investments made by variable annuity and variable life insurance separate accounts be "adequately diversified." If a separate account is organized as a UIT that invests in a single fund or series, the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if "all of the beneficial interests" in the underlying fund "are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts * * *" Accordingly, a UIT separate account that invests solely in a publicly available mutual fund will not be adequately diversified. In addition, any underlying mutual fund, including any Fund, that sells shares to separate accounts, in effect, would be precluded from also selling its shares to the public. Consequently, there will be no public shareholders of any Fund.

22. Shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

23. Shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the affected Trust. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Fund.

24. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. This right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

25. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the affected Trust's election, to withdraw its Separate Account's investment in such Fund. No charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in each Fund.

26. Each Fund will be managed to attempt to achieve the investment objective or objectives of such Fund, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product. There is no reason to believe that different features of various types of contracts, including the "minimum death benefit" guarantee under certain variable life insurance contracts, will lead to different investment policies for different types of Variable Contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, the different insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure in either case.

27. Applicants do not believe that the sale of the shares of the Funds to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond those which would otherwise exist between variable annuity and variable life insurance contract owners. Moreover, in considering the appropriateness of the requested relief, Applicants have analyzed the following issues to assure themselves that there were either no conflicts of interest or that there existed the ability by the affected parties to resolve the issues without harm to the contract owners in the Separate Accounts or to the participants under the Qualified Plans.

28. Applicants considered whether there are any issues raised under the Code, Regulations, or Revenue Rulings thereunder, if Qualified Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same underlying fund. As noted above, section 817(h) of the Code imposes certain diversification standards on the underlying assets of Variable Contracts held in an underlying mutual fund. The Code provides that a Variable Contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified.

29. Regulations issued under section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of such shares also to be held by separate accounts of insurance companies in connection with their Variable Contracts. (Treas. Reg. 1.817–5(f)(3)(iii)) Thus, the Regulations specifically permit "qualified pension or retirement plans" and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor Regulations, nor Revenue Rulings thereunder, present any inherent conflicts of interest if the Qualified Plans and Separate Accounts all invest in the same Fund.

30. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Trusts. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the relevant Fund at their respective net asset value in conformity with rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan.

31. There is analogous precedent for a situation in which the same funding vehicle was used for contract owners subject to different tax rules, without any apparent conflicts. Prior to the Tax Reform Act of 1984, a number of insurance companies offered variable annuity contracts on both a qualified and non-qualified basis through the same separate account. Underlying reserves of both qualified and non-qualified contracts therefore were commingled in the same separate account. However, long-term capital gains incurred in such separate accounts were taxed on a different basis than short-term gains and other income with respect to the reserves underlying non-qualified contracts. A tax reserve at the estimated tax rate was established in the separate account affecting only the non-qualified reserves. To the best of Applicants' knowledge, that practice was never found to have violated any fiduciary standards. Accordingly, Applicants have concluded that the tax

consequences of distributions with respect to Participating Insurance Companies and Qualified Plans do not raise any conflicts of interest with respect to the use of the Funds.

32. In connection with any meeting of shareholders, the soliciting Trust will inform each shareholder, including each Separate Account, Qualified Plan, HAA and General Account, of information necessary for the meeting, including their respective share of ownership in the relevant Fund. Each Participating Insurance Company then will solicit voting instructions in accordance with rules 6e–2 and 6e–3(T), as applicable, and its agreement with the Funds concerning participation in the relevant Fund. Shares of a Fund that are held by HAA and any General Account will be voted in the same proportion as all variable contract owners having voting rights with respect to that Fund. However, HAA and any General Account will vote their shares in such other manner as the Commission may require. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of a Fund would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public. Furthermore, if a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the affected Trust, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal.

33. Applicants reviewed whether a "senior security," as such term is defined under section 18(g) of the 1940 Act, is created with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan, HAA or a General Account. Applicants concluded that the ability of the Trusts to sell shares of their Funds directly to Qualified Plans, HAA or a General Account does not create a senior security. "Senior security" is defined under section 18(g) of the 1940 Act to include "any stock of a class having priority over any other class as to distribution of assets or payment of dividends." As noted above, regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans, HAA, General Accounts and the Separate Accounts only have rights with respect to their respective shares of the Fund. They only can redeem such shares at net asset value. No shareholder of a Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. A majority of the Board of Trustees (the "Board") of the Trust will consist of persons who are not "interested persons" of the Trust, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any Trustee or Trustees, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Trust, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Trust are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of general account assets in a Fund), HAA, and any Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of any Fund (collectively, "Participants") will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Trust, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board, or a majority of the disinterested Trustees of the Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested Trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Fund and reinvesting such assets in a different investment vehicle including another Fund, or in the case of Participating Insurance Company Participants submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners or life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the Trust, to withdraw such insurer's Separate Account's investment in the Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Fund, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Trust, and these responsibilities will be carried out with a view only to the interests of contract owners and Qualified Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event will the Trust, HAA or an affiliate of HAA, as relevant, be required to establish a new funding vehicle for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding vehicle for any Variable Contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding vehicle for the Qualified Plan if: (a) A majority of the Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Qualified Plan makes such decision without a Qualified Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. As to Variable Contracts issued by Separate Accounts registered under the 1940 Act, Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners as required by the 1940 Act as interpreted by the Commission.

However, as to Variable Contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, such Participants, where applicable, will vote shares of the applicable Fund held in their Separate Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Fund calculates voting privileges in a manner consistent with other Participants.

The obligation to calculate voting privileges as provided in this Application will be a contractual obligation of all Participating Insurance Companies under their agreement with the Trusts governing participation in a Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares it owns through its Separate Accounts. in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to variable contract owners, HAA or any of its affiliates, and any General Account will vote its shares of any Fund in the same proportion of all variable contract owners having voting rights with respect to that Fund; provided, however, that HAA, any of its affiliates or any insurance company General Account shall vote its shares in such other manner as may be required by the Commission or its staff.

8. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, which for these purposes, shall be the persons having a voting interest in the shares of the respective Fund, and, in particular, the Trust will either provide for annual meetings (except to the extent that the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act (although the Trust is not one of the funds of the type described in the section 16(c) of the 1940 Act), as well as with section 16(a) of the 1940 Act and, if and when applicable, section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trust will notify all Participants that Separate Account prospectus disclosure or Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. The Trust will disclose in its prospectus that (a) shares of the Trust may be offered to Separate Accounts of Variable Contracts and, if applicable, to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in the Trust and the interests of Qualified Plans investing in the Trust, if applicable, may conflict; and (c) the Trust's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent that rule 6e–2 and rule 6e–3(T) under the 1940 Act are amended, or proposed rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Trust and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with rules 6e–2 and 6e–3(T), or rule 6e–3, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in this Application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to the Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Funds.

12. All reports of potential or existing conflicts received by the Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed

action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. The Trust will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10 percent or more of the assets of such Fund unless such Qualified Plan executes an agreement with the Trust governing participation in such Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan 1 or Qualified Plan participant will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7760 Filed 3–31–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47573; File No. SR–CBOE–2003–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Proposing To Extend the Rapid Opening System Pilot Program

March 26, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2003, the Chicago Board Options Exchange, Inc., ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to extend the Rapid Opening System ("ROS") pilot program until September 30, 2003 or such time as the Commission has approved ROS on a permanent basis.[3] The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

Rapid Opening System

Rule 6.2A

(a)–(c) No change.

(d) Pilot Program.

This Rule (and the sentences in Rule 6.2 and Rule 6.45 referring to this Rule) will be in effect until [March 31, 2003] *September 30, 2003* on a pilot basis.

* * * Interpretation and Policies:

.01–.02 Unchanged.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 9, 1999, the Commission approved, on a pilot basis, the implementation of ROS.[4] ROS is a system developed by CBOE to open an entire options class, all series, as a single event, based on a single underlying value. The ROS pilot program is due to expire on March 31, 2003.[5] The Exchange proposes to extend the ROS pilot until September 30, 2003 or such time as the Commission has approved ROS on a permanent basis.

The Exchange recently submitted a proposed rule filing to the Commission proposing permanent approval of ROS as well as an extension of the ROS pilot.[6] CBOE proposes an extension of the ROS pilot so that the pilot may continue to operate while the Commission considers the Exchange's request for permanent approval.

2. Statutory Basis

The CBOE believes that ROS has improved market efficiency for all market participants by successfully facilitating expedited openings of options classes on the Exchange during the pilot period. Therefore, CBOE believes that the proposed rule change is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5),[8] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of rule 19b–4[10] thereunder because the Exchange has designated the proposed rule change as one that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing, or such shorter time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and accelerate the operative date of the proposal to March 31, 2003 so that the ROS pilot program may continue without interruption after it would have otherwise expired on March 31, 2003. For this reason, the Commission, consistent with the protection of investors and the public interest, has determined to waive the five-day pre-filing notice requirement and accelerate the operative date of the proposal to March 31, 2003.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2003–12 and should be submitted by April 22, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7759 Filed 3–31–03; 8:45 am]

BILLING CODE 8010–01–P

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The request to permanently approve ROS is being considered separately under SR–CBOE–2002–55.

[4] *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999) (approving SR–CBOE–98–48). ROS is governed by CBOE Rule 6.2A.

[5] The Commission has extended the ROS pilot program four times. *See* Securities Exchange Act Release Nos. 42596 (March 30, 2000), 65 FR 18397 (April 7, 2000) (extending the pilot until September 30, 2000); 43395 (September 29, 2000), 65 FR 60706 (October 12, 2000) (extending the pilot until September 30, 2001); 44891 (October 1, 2001), 66 FR 51483 (October 9, 2001) (extending the pilot until September 30, 2002); and 46572 (September 30, 2002), 67 FR 62508 (October 7, 2002) (extending the pilot until March 31, 2003).

[6] *See* SR–CBOE–2002–55.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47569; File No. SR–FICC–2002–13]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to FICC's Schedule of Money Tolerances

March 26, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 20, 2002, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the schedule of money tolerances set forth in the rules of the Government Securities Division of FICC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The rules of the Government Securities Division of FICC contain a schedule of money tolerances ("Schedule") that permits FICC, among other things, to compare a buy-sell trade with a discrepancy in its settlement amount of $1 per million in real time.[3] FICC is proposing to amend this tolerance to $2 per million in order to increase the intraday comparison rate of valid trades.

FICC has found that the current $1 tolerance on the settlement amount of buy-sell transactions results in increased risk. Specifically, FICC has found after conducting an analysis that many valid trades remain uncompared during the day and thus do not receive the benefit of FICC's guaranty. These trades eventually compare at end of day, when the applicable tolerance is higher, but they are left without the FICC guaranty during the day. FICC's analysis has shown that increasing the real-time money tolerance to $2 per million would cause more than 1,000 additional trades to compare earlier in the day. FICC is thus proposing to amend the Schedule to provide for a $2 real-time tolerance per million for buy-sell transactions.

FICC believes the proposed rule change is consistent with the Act and the rules and regulations thereunder because it will permit valid trades to compare earlier in the day and thus will eliminate risk and will promote the prompt and accurate clearance and settlement of securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition.

FICC does not believe that the proposed rule change would have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited nor received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(4)[5] thereunder because it

---

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Money tolerances are calculated based on the par amount of the securities. GSCC, FICC's predecessor, recently amended the real-time money tolerance applicable to the statement amount of repo transactions from $1 to $0.10. Securities Exchange act Release No. 46658 (October 11, 2002) 67 FR 64943 [SR–GSCC–2002–08]. In making that rule filing, GSCC inadvertently eliminated the text that was applicable to the real-time tolerance for the settlement money of buy-sell transactions, which is the subject of this present rule filing. This present rule filing therefore reinstates the necessary language to cover the real time tolerance applicable to buy-sell transactions and distinguishes it from the language applicable to repo transactions.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–(f)(4).

effects a change in an existing service of OCC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–FICC–2002–13. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of FICC. All submissions should refer to the File No. SR–FICC–2002–13 and should be submitted by April 22, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7758 Filed 3–31–03; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47565; File No. SR–MSRB–2003–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to the Establishment of an Optional Procedure for Electronic Submission of Forms G–37/G–38 and G–37x Under Rule G–37, on Political Contributions and Prohibitions on Municipal Securities Business, and Rule G–38, on Consultants

March 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act") and rule 19b–4 thereunder,[1] notice is hereby given that on March 21, 2003, the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "Commission") a proposed rule change (File No. SR–MSRB–2003–01) (the "proposed rule change") described in items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change amending Rule G–37, on political contributions and prohibitions on municipal securities business, and Rule G–38, on consultants, to establish an optional procedure for electronic submission of Forms G–37/G–38 and G–37x. The proposed rule change will become effective on the later of June 30, 2003 or 30 days after Commission approval, and the MSRB expects that the new electronic submission system will become operational concurrently therewith. The text of the proposed rule change is set forth below. Additions are italicized; deletions are bracketed.

Rule G–37—Political Contributions and Prohibitions on Municipal Securities Business

(a)–(d) No change.

(e)(i) Except as otherwise provided in paragraph (e)(ii), each broker, dealer or municipal securities dealer shall, by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31) send to the Board [by certified or registered mail, or some other equally prompt means that provides a record of sending, two copies of] Form G–37/G–38 setting forth, in the prescribed format, the following information:

(A)–(E) No change.

The Board shall make public a copy of each Form G–37/G–38 received from any broker, dealer or municipal securities dealer.

(ii)(A) No broker, dealer or municipal securities dealer shall be required to send Form G–37/G–38 to the Board for any calendar quarter in which either:

(1) No change.

(2) Subject to clause (B) of this paragraph (e)(ii), such broker, dealer or municipal securities dealer has not engaged in municipal securities business, but only if such broker, dealer or municipal securities dealer:

(a) No change.

(b) Has sent to the Board[, by certified or registered mail or some other equally prompt means that provides a record of sending, two copies of a] completed Form G–37x setting forth, in the prescribed format, (i) a certification to the effect that such broker, dealer or municipal securities dealer did not engage in municipal securities business during the eight consecutive calendar quarters immediately preceding the date of such certification, (ii) certain acknowledgments as are set forth in said Form G–37x regarding the obligations of such broker, dealer or municipal securities dealer in connection with Forms G–37/G–38 and G–37x under this paragraph (e)(ii) and rule G–8(a)(xvi), and (iii) such other identifying information required by Form G–37x; provided that, if a broker, dealer or municipal securities dealer has engaged in municipal securities business subsequent to the submission of Form G–37x to the Board, such broker, dealer or municipal securities dealer shall be required to submit a new Form G–37x to the Board in order to again qualify for an exemption under this subclause (A)(2). The Board shall make public a copy of each Form G–37x received from any broker, dealer or municipal securities dealer.

(B) No change.

(iii) No change.

(iv) A broker, dealer or municipal securities dealer that submits Form G–37/G–38 or Form G–37x to the Board shall either:

(A) Send two copies of such form to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending; or

(B) submit an electronic version of such form to the Board in such format and manner specified in the current Instructions for Form G–37/G–38 and Form G–37x.

(f)–(i) No change.

* * * * *

Rule G–38—Consultants

(a)–(d) No change.

(e) Disclosure to Board. Each broker, dealer and municipal securities dealer shall send to the Board, [by certified or registered mail, or some other equally prompt means that provides a record of sending,] and the Board shall make public, reports of all consultants used by the broker, dealer or municipal securities dealer during each calendar quarter. *Such* [Two copies of the] reports must be sent to the Board on Form G–37/G–38 by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31, and October 31) *in the manner provided under Rule G–37.* Such reports shall include, for each consultant, in the prescribed format, the consultant's name pursuant to the Consultant Agreement, business address, role (including the state or geographic area in which the consultant is working on behalf of the broker, dealer or municipal securities dealer), compensation arrangement, any municipal securities business obtained or retained by the consultant with each such business listed separately, and, if applicable, dollar amounts paid to the consultant connected with particular municipal securities business. Such reports shall indicate the total dollar amount of payments made to each consultant during the report period. In addition, such reports shall include the following information to the extent required to be obtained during such calendar quarter pursuant to paragraph (c)(i) of this rule:

(i)–(ii) No change.

(iii) if applicable, a statement that the consultant failed to provide any report of information to the *broker, dealer or municipal securities* dealer concerning reportable political contributions or reportable political party payments.

Once a contribution or payment has been disclosed on a report, the *broker, dealer or municipal securities* dealer should not continue to disclose that particular contribution or payment on subsequent reports.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in item IV below. The MSRB has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Rules G–37 and G–38 require brokers, dealers and municipal securities dealers ("dealers") to submit to the MSRB on Form G–37/G–38 certain information regarding political contributions to issuer officials, payments to state and local political parties, issuers with which the dealer has engaged in municipal securities business and consultants engaged by the dealer to obtain municipal securities business. In addition, certain dealers that wish to be exempted from the Form G–37/G–38 submission requirement must submit Form G–37x to the MSRB. The MSRB is implementing an optional system of electronic submission by dealers of Forms G–37/G–38 and G–37x to the MSRB. The MSRB also is amending rules G–37 and G–38 in order to effectuate this electronic system.[2]

Dealers will not be required to make submissions electronically and the MSRB will continue to accept submissions made on paper. Dealers that submit Forms G–37/G–38 and G–37x on paper will continue to be required to send two copies of each form to the MSRB by certified or registered mail, or some other equally prompt means that provides a record of sending.[3] Electronic submissions will be made as described below.[4]

Electronic submissions will be made by dealers through a secure, password-protected Internet website. A password will be assigned to a dealer prior to the first use by such dealer of the electronic system in a manner intended to assure authentication of submitters using the system. Each dealer will be required to submit an e-mail address for purposes of receiving electronic records of submissions as well as to provide for follow-up by MSRB staff should any submission prove to be incomplete or incorrect.

Forms G–37/G–38 and G–37x will be submitted electronically by completion of an on-line data entry form, by uploading of an electronic file of a completed form, or a combination of on-line data entry and uploading of files.[5] On-line forms will elicit the same information as paper Forms G–37/G–38 and G–37x and will be in substantially the same format. All uploaded files must be in Adobe Acrobat® portable document format ("PDF"). The MSRB will continue to make all Forms G–37/G–38 and G–37x available to the public for viewing and printing through its website.

The new system will provide a dealer that makes an electronic submission with an electronic record confirming receipt of the submission and providing a control number assigned by the system. This electronic record, together with a PDF copy of the Form G–37/G–38 or G–37x submitted by the dealer made available by the system on-line, is intended to satisfy the requirement under Rule G–8(a)(xvi)(H) that dealers maintain copies of Forms G–37/G–38 and G–37x and records of sending such forms to the MSRB.[6]

The MSRB currently requires that any incomplete or incorrect submission be corrected by the submitter prior to the MSRB accepting the submission as in compliance with Rules G–37 and G–38. Thus, any submission through the electronic system will be subject to such automated and/or manual review as MSRB staff deems appropriate prior to final acceptance. The electronic record of submission sent by the system as described above should not be viewed as a record of acceptance by the MSRB.

(2) Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Exchange Act, which requires that the MSRB's rules:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with

[1] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4 thereunder.

[2] Technical amendments to the final sentence of Rule G–38(e) and to Rule G–38(e)(iii) are also made to conform language to usage throughout MSRB rules.

[3] Procedures for making submissions by paper are removed from Rules G–37(e)(i), G–37(e)(ii)(A)(2)(b) and G–38(e) and are consolidated in amended Rule G–37(e)(iv)(A).

[4] Amended Rule G–37(e)(iv)(B) provides that procedures for making submissions using the electronic system would be set forth in the MSRB's *Instructions for Form G–37/G–38 and Form G–37x* to be published upon implementation of the system. These instructions will replace the current *Instructions of Completing and Filing Form G–37/G–38.*

[5] For example, a dealer could provide information regarding political contributions through direct data entry into the on-line form and could upload an internally-generated electronic file listing all municipal securities business engaged in during the calendar quarter.

[6] Of course, this electronic record must be maintained in a manner that complies with section (e) of Rule G–9, on preservation of records.

persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act in that it allows for a more efficient process of submitting required information by dealers to the MSRB.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply equally to all dealers

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commssion Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The MSRB has requested that the proposed rule change become effective on the later of June 30, 2003 or 30 days after Commission approval.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0608. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the SEC, and all written communications relating to the proposed rule change between the SEC and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the SEC's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2003–01 and should be submitted by April 22, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–7731 Filed 3–31–03; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; Alteration to an Existing System of Records

AGENCY: Social Security Administration (SSA).

ACTION: Notice of alteration to an existing Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)) we are issuing public notice of our intent to alter an existing system of records, the *Claims Folders System, 60–0089*, by expanding the categories of records mentioned in the System. We discuss this proposed change in the **SUPPLEMENTARY INFORMATION** section below.

We invite public comments on these proposals.

DATES: We filed a report of the proposed alteration with the Chairwoman of the Senate Committee on Governmental Affairs, the Chairman of the House Government Reform Committee, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 25, 2003. The proposed alteration will become effective on May 8, 2003, unless we receive comments on or before that date that would warrant our not implementing the proposed alteration.

ADDRESSES: Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Thibodeaux, Social Insurance Specialist, Social Security Administration, Room 3–C–2 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone (410) 965–9821, e-mail: *linda.thibodeaux@ssa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed Alteration to Existing Privacy Act System of Records, the Claims Folders System, 60–0089

A. General Background

The Social Security Administration (SSA) plans to conduct several pilot projects designed to test and gather information on the use of photographic identification to address the issue of complicit impersonation in the disability and blindness claims process. The part of the disability and blindness determination process used by SSA to supplement existing medical evidence from treatment sources when there is not enough information to make a disability or blindness determination or decision is the consultative examination (CE). Complicit impersonation is accomplished when an individual posing as the intended claimant, and with the consent of the claimant, responds to a CE appointment in order to misrepresent the claimant's true medical condition or provides false or misleading information that affects eligibility during interviews with SSA field office employees.

SSA is promulgating temporary regulations that will provide the authority for us to require individuals filing for title II or title XVI disability and blindness benefits in the pilot sites to have their photograph taken. Once these regulations are promulgated, failure to comply with the pilot requirements will result in denial of benefits.

The claimant identification pilot projects will be in effect for a six-month period of time that will begin 30 days after final rules providing regulatory authority for the pilots are published in the **Federal Register**. The pilot sites include all SSA field offices in the States of South Carolina and Kansas; the Augusta, Georgia SSA field office; and nine SSA field offices located in New York City: Uptown (Manhattan); East Bronx (Bronx); Parkway (Bronx); West Farms (Bronx); Bushwick (Brooklyn); East New York (Brooklyn); Avenue X (Brooklyn); Flatbush (Brooklyn) and Flushing (Queens).

[7] 17 CFR 200.30–3(a)(12).

B. Pilot Methodology

Individuals filing for title II and title XVI disability and blindness benefits at a Social Security office in the pilot sites will be required to participate in the claimant identification pilots. In addition, individuals filing via the Internet or by telephone and who are later required to undergo CEs will be included in the pilots. Each individual will be asked to provide some form of photographic identification. This identification will be photocopied and the copy will be made part of his/her SSA claims folder. If the individual does not have photographic identification available or does not wish to provide it, SSA personnel will not require it but will follow identification procedures already in place.

Next, as part of the claimant identification pilots, individuals will be required to have a photograph taken by SSA personnel, regardless of whether the individual provides photographic identification for photocopying. (An exception to the photograph requirement will be permitted when an individual has a sincere religious objection.) A copy will be made of the image and placed in the individual's SSA claims folder. Images also will be stored electronically and accessed by authorized SSA and Disability Determination Service (DDS) personnel. If DDS personnel request a CE for the individual, a hard copy image of the photograph will be made available to the person conducting the CE. This will help to determine whether the individual appearing for the CE is the same individual who presented himself or herself as the individual filing for disability benefits. When the CE physician has not been provided with a photograph or a copy of a photographic identification previously made by SSA personnel, *e.g.*, the claim was filed via the Internet or by telephone, the CE physician will copy the individual's photographic identification and place it in the claims folder.

Additionally, this same requirement will be used to verify the identity of pilot participants during the duration of the pilots if they are required to appear for subsequent interviews including Continuing Disability Reviews, SSI Redeterminations, and appeals associated with a denial of a claim including any CEs associated with those appeals.

II. Impact of the Collection, Maintenance and Use of Pilot Data on SSA Privacy Act System of Records: The Claims Folders System

The *Claims Folders System* contains information that constitutes the basic record for payments and determinations made for program benefits under the Social Security Act. Included in claim folder records is identifying information about claimants for Social Security benefits.

We are proposing to revise the description of the categories of records maintained in the *Claims Folders System*. In connection with the claimant identification pilot projects SSA is conducting, records specifically collected for the pilot projects will be maintained in the claims folders of those individuals who file for title II or title XVI disability and blindness benefits for the duration of the pilot. The records include: photocopies of identification documents, photographs taken by field office personnel or a report of contact or other documentation explaining why an individual refused to allow SSA to take their photograph, flag on the folder indicating the case is part of the pilot, and the evaluation forms developed for the pilot.

III. Effect of the Proposed Alteration on the Rights of Individuals

SSA's implementation of the claimant identification pilots will result in the collection and maintenance of information to test the use of photograph identification to address the issue of complicit impersonation in the disability and blindness claims process. SSA will maintain photocopies of identification documents and photographs. We will afford individuals suspected of fraudulent activities all due process and other rights to which they are entitled. There is potential for an adverse effect on those individuals who refuse to be photographed for reasons other than a sincere religious objection. Failure to comply with the mandatory requirements of the pilot will result in denial of benefits.

Dated: March 25, 2003.

Jo Anne B. Barnhart,

Commissioner.

60–0089

SYSTEM NAME:

Claims Folders System, Social Security Administration, Office of the General Counsel, Office of Public Disclosure.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The claims folders initially are established and maintained in Social Security field offices when claims for benefits are filed or a lead is expected to result in a claim. Telephone and address information for Social Security field offices may be found in local telephone directories under Social Security Administration (SSA). This information can also be found on the Agency's Web site, Social Security Online. The claims folders are retained in field offices until all development has been completed, and then transferred to the appropriate processing center as set out below. In addition, the information provided by Social Security claimants on the application for benefits is maintained as a computerized record. The computerized records are maintained at the following address: Social Security Administration, Office of Systems, 6401 Security Boulevard, Baltimore, MD 21235.

Supplemental Security Income (SSI) claims folders are held in Social Security field offices pending establishment of a payment record, or until the appeal period in a denied claim situation has expired. The folders are then transferred to a folder-staging facility (FSF) in Wilkes-Barre, Pennsylvania. The address is:

Social Security Administration, SSI Folder Staging Operations, Wilkes-Barre Data Operations Center, PO Box 7000, Wilkes-Barre, PA 18703.

Retirement and Survivors Insurance (RSI) claims folders are maintained primarily in the SSA's PSCs (contact the system manager at the address below for PSC address information). If the individual to whom the claim pertains resides outside the United States or any of its possessions, the folder is maintained in the Office of Central Operations (OCO) Rolling Heights Building (Megasite). The address for the Megasite is: 2255 Rolling Road, Baltimore, MD 21244.

Disability Insurance (DI) claims folders for individuals under age 55 are maintained primarily in the OCO Megasite (*see* the address above).

DI claims folders for disabled individuals age 55 and over are maintained in SSA's National Records Center (NRC). The address for the NRC is: 601 S. 291 Hwy., 6000 E. Geospace Dr., Independence, MO 64056.

If the individual to whom the claim pertains resides outside the United States or any of its possessions, DI claims folders for individuals are maintained in the OCO Megasite (*see* the address above).

Special Veterans Benefits (SVB) claims folders are held in Social

Security field offices and the Veterans Affairs Regional Office (VARO), Philippines pending establishment of a payment record or until the appeal period in a denied claim situation has expired. Contact the system manager for address information for SVB claims folders maintained in the VARO, Philippines. The VA data file associated with SVB claims is located in SSA's San Francisco Regional Office. The address is: Center for Infrastructure, Systems Support Staff, Frank Hagel Federal Building, 1221 Nevin Avenue, Richmond, California 94801.

In addition, claims folders are transferred to the General Services Administration and on occasion may be temporarily transferred to other Federal agencies. The DI claims folders also are transferred to State agencies for disability and vocational rehabilitation determinations. Contact the system manager for address information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants, applicants, beneficiaries and potential claimants for benefits and payments administered by the Social Security Administration (*e.g.*, title II RSI and DI benefits; and title VIII SVB and title XVI SSI payments). Folders also are maintained on claims that have been denied.

CATEGORIES OF RECORDS IN THE SYSTEM:

The claims folder contains the name and Social Security number of the claimant or potential claimant; the application for benefits; earnings record information established and maintained by SSA; documents supporting findings of fact regarding factors of entitlement and continuing eligibility; payment documentation; correspondence to and from claimants and/or representatives; information about representative payees; and leads information from third parties such as social service agencies, IRS, VA and mental institutions. There is also a VA data file associated with SVB claims. This data includes potential beneficiaries for title VIII SVB and will be used to help determine individuals' eligibility.

The claims folder also may contain data collected as a result of inquiries or complaints, and evaluation and measurement studies of the effectiveness of claims policies. Separate files may be maintained of certain actions, which are entered directly into the computer processes. These relate to reports of changes of address, work status, and other post-adjudicative reports. Separate files also temporarily may be maintained for the purpose of resolving problem cases. Separate abstracts also are maintained for statistical purposes (*i.e.*, disallowances, technical denials, and demographic and statistical information relating to disability decisions).

In addition, the claims folder may contain information collected in connection with SSA's Claimant Identification Pilot Projects. This information includes: photocopies of identification documents, photographs taken by field office personnel or a report of contact or other documentation explaining why an individual refused to allow SSA to take their photograph, flag on the folder indicating the case is part of the pilot, and the evaluation forms developed for the pilot.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 202–205, 223, 226, 228, 1611, 1631, 1818, 1836, and 1840 (42 U.S.C. Sections 402–405, 423, 426, 428, 1382, 1383, 1395i–2, 1395o and 1395s and title VIII of the Social Security Act.

PURPOSE(S):

Each claim constitutes a basic record for payments and determinations under the Social Security Act. The information in the claims folder is used to produce and maintain the Master Beneficiary Record (60–0090), which is the automated payment system for RSI and DI benefits; the Supplemental Security Income Record (60–0103), which is the automated payment system for SSI payments for the aged, blind, disabled and SVB payments under title VIII of the Act; the Black Lung Payment System (60–0045), which is the payment system for BL claims; and the Health Insurance Billing and Collection Master Record system (70–0522) which is the payment system for HI and Supplementary Medical Insurance (Medicare) benefits.

Claims folders information is used throughout SSA for purposes of pursuing claims; determining, organizing and maintaining documents for making determinations of eligibility for benefits, the amount of benefits, the appropriate payee for benefits; reviewing continuing eligibility; holding hearings or administrative review processes; ensuring that proper adjustments are made based on events affecting entitlement; and answering inquiries.

Claims folders may be referred to State disability determination services agencies or vocational rehabilitation agencies in disability cases. They may also be used for quality review, evaluation, and measurement studies, and other statistical and research purposes. Extracts may be maintained as interviewing tools, activity logs, records of claims clearance, and records of type or nature of actions taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below. However, disclosure of any information defined as "return or return information" under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

1. To third party contacts in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for or entitlement to benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

(i) He/she is incapable or of questionable mental capability;

(ii) He/she cannot read or write;

(iii) He/she cannot afford the cost of obtaining the information;

(iv) He/she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(v) A language barrier exists; or

(vi) The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(i) His/her eligibility for benefits under the Social Security program;

(ii) The amount of his/her benefit payment; or

(iii) Any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement activities.

2. To third party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

3. To a person (or persons) on the rolls when a claim is filed by an individual which is adverse to the person on the rolls, *i.e.*,

(a) An award of benefits to a new claimant precludes an award to a prior claimant; or

(b) An award of benefits to a new claimant will reduce the benefit payments to the individual(s) on the rolls; but only for information concerning the facts relevant to the interests of each party in a claim.

4. To employers or former employers for correcting or reconstructing earnings records and for Social Security tax purposes only.

5. To the Department of the Treasury for:

(a) Collecting Social Security taxes or as otherwise pertinent to tax and benefit payment provisions of the Act (including SSN verification services); or

(b) Investigating alleged theft, forgery, or unlawful negotiation of Social Security checks.

6. To the United States Postal Service for investigating the alleged forgery, theft or unlawful negotiation of Social Security checks.

7. To the Department of Justice (DOJ) for:

(a) Investigating and prosecuting violations of the Act to which criminal penalties attach,

(b) Representing the Commissioner, or

(c) Investigating issues of fraud by agency officers or employees, or violation of civil rights.

8. To the Department of State and its agents for administering the Act in foreign countries through facilities and services of that agency.

9. To the American Institute of Taiwan and its agents for administering the Act in Taiwan through facilities and services of that organization.

10. To the Department of Veterans Affairs, Philippines Regional Office and its agents for administering the Act in the Philippines through facilities and services of that agency.

11. To the Department of Interior and its agents for administering the Act in the Northern Mariana Islands through facilities and services of that agency.

12. To RRB for administering provisions of the Act relating to railroad employment.

13. To State Social Security Administrators for administration of agreements pursuant to section 218 of the Act.

14. To State audit agencies for:

(a) Auditing State supplementation payments and Medicaid eligibility considerations; and

(b) Expenditures of Federal funds by the State in support of the DDS.

15. To private medical and vocational consultants for use in making preparation for, or evaluating the results of, consultative medical examinations or vocational assessments which they were engaged to perform by SSA or a State agency acting in accord with sections 221 or 1633 of the Act.

16. To specified business and other community members and Federal, State, and local agencies for verification of eligibility for benefits under section 1631(e) of the Act.

17. To institutions or facilities approved for treatment of drug addicts or alcoholics as a condition of the individual's eligibility for payment under section 1611(e)(3) of the Act and as authorized by regulations issued by the Special Action Office for Drug Abuse Prevention.

18. To applicants, claimants, prospective applicants or claimants, other than the data subject, their authorized representatives or representative payees to the extent necessary to pursue Social Security claims and to representative payees when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under the Act and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

19. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

20. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Act.

21. To Federal, State, or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance or health maintenance programs (including programs under the Act). Such disclosures include, but are not limited to, release of information to:

(a) RRB for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the Railroad Unemployment Insurance Act;

(b) The VA for administering 38 U.S.C. 412, and upon request, information needed to determine eligibility for or amount of VA benefits or verifying other information with respect thereto;

(c) The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act;

(d) State welfare departments for administering sections 205(c)(B)(i)(II) and 402(a)(25) of the Act requiring information about assigned SSNs for AFDC program purposes only;

(e) State agencies for making determinations of Medicaid eligibility; and

(f) State agencies for making determinations of food stamp eligibility under the food stamp program.

22. To State welfare departments:

(a) Pursuant to agreements with SSA for administration of State supplementation payments;

(b) For enrollment of welfare recipients for medical insurance under section 1843 of the Act; and

(c) For conducting independent quality assurance reviews of SSI recipient records, provided that the agreement for Federal administration of the supplementation provides for such an independent review.

23. To State vocational rehabilitation agencies or State crippled children's service agencies (or other agencies providing services to disabled children) for consideration of rehabilitation services per sections 222(a) and 1615 of the Act.

24. To the Social Security agency of a foreign country, to carry out the purpose of an international Social Security agreement entered into between the United States and the other country, pursuant to section 233 of the Act.

25. To IRS, Department of the Treasury, for the purpose of auditing SSA's compliance with the safeguard provisions of the IRC of 1986, as amended.

26. To the Office of the President for responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

27. To third party contacts (including private collection agencies under contract with SSA) for the purpose of their assisting SSA in recovering overpayments.

28. To DOJ (Immigration and Naturalization), upon request, to identify and locate aliens in the United States pursuant to section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

29. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

30. Non-tax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA)

and the National Archive and Records Administration (NARA) for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984.

31. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Disclosure of any information defined as "return or return information" under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

32. Addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 U.S.C. 1071, *et seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by section 489A of the Higher Education Act of 1965.

33. To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

34. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities, or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records generally are maintained manually in file folders. However, some records may be maintained in magnetic media (*e.g.*, on disk and microcomputer).

RETRIEVABILITY:

Claims folders are retrieved both numerically by SSN and alphabetically by name.

SAFEGUARDS:

Paper claims folders are protected through limited access to SSA records. Access to the records is limited to those employees who require such access in the performance of their official duties. All employees are instructed in SSA confidentiality rules as a part of their initial orientation training.

Safeguards for automated records have been established in accordance with the Systems Security Handbook. All magnetic tapes and disks are within an enclosure attended by security guards. Anyone entering or leaving this enclosure must have special badges, which are issued only to authorized personnel. All microfilm and paper files are accessible only by authorized personnel and are locked after working hours.

For computerized records, electronically transmitted between SSA's central office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and an audit trail.

RETENTION AND DISPOSAL:

The retention periods for claims folders are as follows:

A. RSI CLAIMS FOLDERS

Folders for disallowed life and death claims, withdrawals, and lump-sum claims in which potential entitlements exist are transferred to the FRC after being so identified and then destroyed 10 years thereafter.

Folders for awarded claims where the last payment has been made and there is no future potential claimant indicated in the record are transferred to the FRC and then destroyed 5 years thereafter.

B. DI CLAIMS FOLDERS

Folders for DI denial claims are transferred to the FRC after expiration of the reconsideration period and then destroyed 10 years thereafter.

Folders for terminated DI claims are transferred to the FRC after being identified as eligible for transfer and then destroyed 10 years thereafter.

C. SSI CLAIMS FOLDERS AND SVB FOLDERS

Folders for SSI and SVB death termination claims are destroyed 2 years after resolution of possible outstanding overpayments or underpayments. Folders for other SSI and SVB terminations are transferred to the FRC after termination and destroyed after 6 years, 6 months.

When a subsequent claim is filed on the SSN the claim folder is recalled from the FRC. Similarly, claims folders may be recalled from the FRC at any time by SSA, as necessary, in the administration of Social Security programs. When this occurs, the folder will be temporarily maintained in a Social Security field, regional or central office.

Separate files of actions entered directly into the computer processes are shredded or destroyed by heat after 1 to 6 months. Claims leads that do not result in a filing of an application are destroyed 6 months after the inquirer is invited by letter to file a claim.

All paper claim files are disposed of by shredding or the application of heat when the retention periods have expired.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

When requesting notification, the individual should provide the type of claim he or she filed (RSI, DI, HI, BL special minimum payments, SSI or SVB). If more than one claim is filed, each should be identified, whether he/she is or has been receiving benefits, whether payments are being received under his or her own SSN, and if not, the name and SSN under which received, if benefits have not been received, the approximate date and place the claim was filed, and his/her address and/or telephone number. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and prevent delay.)

An individual can determine if this system contains a record about him/her by writing to the systems manager(s) at the above address and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification. If an individual does not have any identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth along with one other piece of information such as mother's maiden name) and ask for his/her consent in providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

An individual who requests access to his or her medical records shall be given direct access to those records unless SSA determines that it is likely that direct access would adversely affect the individual. If SSA determines that direct access to the medical record(s) would likely adversely affect the individual, he or she must designate a responsible representative who is capable of explaining the contents of the medical record(s) to him or her and who would be willing to provide the entire record(s) to the individual. These procedures are in accordance with SSA Regulations (20 CFR 401.55).

A parent or guardian who requests notification of or access to a minor's medical record shall at the time he/she makes the request designate a physician or other health professional (other than a family member) who is capable of explaining the contents of the medical record(s) to him or her and who would be willing to provide the entire record(s) to the individual. These procedures are in accordance with SSA Regulations (20 CFR 401.55).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the information they are seeking. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c) and 401.55).

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

RECORD SOURCE CATEGORIES:

Information in this system is obtained from claimants, beneficiaries, applicants and recipients; accumulated by SSA from reports of employers or self-employed individuals; various local, State, and Federal agencies; claimant representatives and other sources to support factors of entitlement and continuing eligibility or to provide leads information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 03–7755 Filed 3–31–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4301]

Notice of Meetings: United States International Telecommunication Advisory Committee Information Meeting on the World Summit on the Information Society and the U.S. Preparatory Process

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on matters related to telecommunication and information policy matters in preparation for international meetings pertaining to telecommunication and information issues.

The ITAC will meet to discuss the matters related to the World Summit on the Information Society (WSIS), which will take place in December 2003, including U.S. preparations for the WSIS. The meeting will take place on April 17, 2002, from 10:30 am to 12 pm at the Historic National Academy of Science Building. The National Academy of Sciences is located at 2100 C St. NW., Washington, DC. Members of the public are welcome to participate and may join in the discussions, subject to the discretion of the Chair. People intending to attend a meeting at the Department of State should send the following data by fax to (202)–647–7407 or e-mail to *worsleydm@state.gov* not later than 24 hours before the meeting: (1) Name of the meeting, (2) your name, and (3) organizational affiliation. A valid photo ID must be presented to gain entrance to the National Academy of Sciences Building. Directions to the meeting location may be obtained by calling the ITAC Secretariat at 202–647–2592 or e-mail to *worsleydm@state.gov*. The ITAC meeting is to advise the Department on policy, technical and operational issues that will be considered by the Council. The time and location of the ITAC meeting will be announced via email. People may join the e-mail broadcast list by sending a request to *worsleydm@state.gov* or calling (202) 647–2592.

Dated: March 24, 2003.

Marian Gordon,

Director, Telecommunication & Information Standardization, Department of State.

[FR Doc. 03–7780 Filed 3–31–03; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 4269]

Notice of Meeting of the United States International Telecommunication Advisory Committee To Prepare for ITU Council Meeting April 17, 2003

The Department of State announces a meeting of the U.S. InternationalTelecommunication Advisory Committee (ITAC) on April 17 to discuss the International Telecommunication Union (ITU) Council meeting to be held in Geneva from May 5 to May 16. The purpose of

Dated: March 25, 2003.

Sally Shipman,

Telecommunicotion Policy Advisor, Department of State.

[FR Doc. 03–7781 Filed 3–31–03; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Supplemental Environmental Impact Statement (SEIS), Salt Lake and Davis Counties, UT

AGENCIES: Federal Highway Administration (FHWA), DOT. Army Corps of engineers (USACE), DoD.

ACTION: Notice of intent.

SUMMARY: FHWA and USACE, as Federal joint lead agencies, are issuing this notice to inform the public and affected public agencies that an SEIS will be prepared in accordance with the National Environmental Policy Act of 1969 (NEPA) for Utah Department of Transportation's proposed construction of the Legacy Parkway project in Salt Lake and Davis Counties, Utah.

FHWA is a lead agency because it must approve the connection of the proposed project to Interstate 215 (I–215) and Interstate 15 (I–15); the USACE is a lead agency because it must issue a 404 permit pursuant to the Clean Water Act. The U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS) and Federal Transit Administration (FTA) have agreed to serve as "cooperating agencies" in the preparation and review of the SEIS.

FOR FURTHER INFORMATION CONTACT: Greg Punske, Environmental Program Manager, FHWA, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118 or Nancy Kang, Chief, Utah Office, USACE, 533 West 2600 South, Suite 150, Bountiful, Utah 84010. Written comments on the scope and content of the SEIS should be submitted to the above contacts by June 1, 2003.

SUPPLEMENTARY INFORMATION: The proposed action is the construction of the Legacy Parkway in the corridor from I–215 at 2100 North in Salt Lake City northward to I–15 and U.S. 89 near Farmington (approximately 14 miles). A multiple-use trail for pedestrians, bicyclists, and equestrians would parallel the highway. The proposed action is related to the three-part "Shared Solution" to 2020 transportation problems, which includes: (1) Constructing the Legacy Parkway; (2) improving and expanding I–15; and (3) expanding the public transit system, including transit, intelligent transportation systems (ITS), travel demand management (TDM) and transportation systems management (TSM). Separate environmental studies pursuant to NEPA are being prepared for improving and expanding I–15 and expansion of the public transit system.

The SEIS will supplement the June 2000 Legacy Parkway Final EIS (FEIS) (FHWA–UT–EIS–98–02–F), which was the subject of litigation and a court decision in *Utahns for Better Transportation et al.* v. *U.S. Department of Transportation et al.* (305 F.3d 1152 (10th Cir. 2002)). In accordance with that decision, several specific aspects of the FEIS require further study. Additionally, the FEIS will be re-evaluated to determine if any other information should be updated and revised as part of the SEIS process in accordance with FHWA NEPA regulations 23 CFR 771.129.

FHWA and USACE have made a preliminary determination to consider the following alternatives in the SEIS based on the court ruling: (1) The Denver and Rio Grande railroad (D&RG) alignment, which involves locating a portion of the Legacy Parkway within the railroad regional alignment corridor defined in the FEIS; (2) a narrower right-of-way for the proposed alignment; (3) alternative sequencing of the Shared Solution; (4) concurrent integration of the construction of the Legacy Parkway with expansion of public transit and (5) the No Build alternative. The SEIS will also consider impacts to wildlife, as required by the court.

To ensure that a full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the SEIS should be directed to the FHWA and USACE at the addresses given above. Scoping will be accomplished through public and interagency scoping meetings, as well as correspondence and meetings with interested persons, organizations, and Federal, State, and local agencies. Informational displays and written material will also be available throughout the time periods given.

An initial scoping meeting will be held on April 17, 2003, at the Woods Cross High School, 600 West 2200 South in Woods Cross from 4 p.m. to 8 p.m. Public notice will be given of the time and place of additional meetings.

(Catalog of Federal and Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: March 26, 2003.

Gregory S. Punske,

Environmental Program Manager, FHWA, Salt Lake City, Utah.

Nancy Kang,

Chief, Utah Office, USACE, Salt Lake City, Utah.

[FR Doc. 03–7751 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than June 2, 2003.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number ____. Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at *robert.brogan@fra.dot.gov,* or to Ms. Steward at *debra.steward@fra.dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of eight currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Filing of Dedicated Cars.

OMB Control Number: 2130–0502.

Abstract: Title 49, Part 215 of the Code of Federal Regulations, prescribes certain conditions to be followed for the movement of freight cars that are not in compliance with this Part. These cars must be identified in a written report to FRA before they are assigned to dedicated service, and the words "Dedicated Service" must be stenciled on each side of the freight car body.

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response (minutes)	Total annual burden hours (hours)	Total annual burden cost
Blue Signal Protection	70	8,942,500 records	2	298,083	$9,240,573
Camp Cars	7	4,000 notifications	4	267	8,277

Total Estimated Annual Burden: 298,350 hours.

Status: Regular Review.

Title: Bad Order and Home Shop Card.

OMB Control Number: 2130–0519.

Abstract: Under 49 CFR part 215, each railroad is required to inspect freight cars placed in service and take the necessary remedial action when defects are identified. Part 215 defects are specific in nature and relate to items that have or could have caused accidents or incidents. Section 215.9 sets forth specific procedures that railroads must follow when it is necessary to move defective cars for repair purposes. For example, railroads must affix a "bad order" tag describing each defect to each side of the freight car. It is imperative that a defective freight car be tagged "bad order" so that it may be readily identified and moved to another location for repair purposes only. At the repair point, the "bad order" tag serves as a repair record. Railroads must retain each tag for 90 days to verify that proper repairs were made at the designated location. FRA and State inspectors review all pertinent records to determine whether defective cars presenting an immediate hazard are being moved in transportation.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Respondent Universe: 685 railroads.

Total Responses: 165,000 tags/notifications/records.

Average Time Per Response: 4.636 minutes.

FRA uses the information to determine whether the equipment is safe to operate and that the operation qualifies for dedicated service. *See* 49 CFR 215.5 (c)(2), 215.5 (d).

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Total Responses: 6.

Estimated Annual Burden: 6 hours.

Status: Regular Review.

Title: Remotely Controlled Railroad Switch Operations.

OMB Control Number: 2130–0516.

Abstract: Title 49, Section 218.30 of the Code of Federal Regulations (CFR), ensures that remotely controlled switches are lined to protect workers who are vulnerable to being struck by moving cars as they inspect or service equipment on a particular track or, alternatively, occupy camp cars. FRA believes that production of notification requests promotes safety by minimizing mental lapses of workers who are simultaneously handling several tasks. Sections 218.30 and 218.67 require the operator of remotely controlled switches to maintain a record of each notification requesting blue signal protection for fifteen days. Operators of remotely controlled switches use the information as a record documenting blue signal protection of workers or camp cars. This record also serves as a valuable resource for railroad supervisors and FRA inspectors monitoring regulatory compliance.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Reporting Burden:

Estimated Total Annual Burden: 12,750 hours.

Status: Regular Review.

Title: Stenciling Reporting Mark on Freight Cars.

OMB Control Number: 2130–0520.

Abstract: Title 49, section 215.301 of the Code of Federal Regulations, sets forth certain requirements that must be followed by railroad carriers and private car owners relative to identification marks on railroad equipment. FRA, railroads, and the public refer to the stenciling to identify freight cars.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Respondent Universe: 685 railroads.

Total Responses: 20,000 cars stencilled.

Average Time Per Response: 45 minutes.

Estimated Total Annual Burden: 15,000 hours.

Status: Regular Review.

Title: Disqualification Proceedings.

OMB Control Number: 2130–0529.

Abstract: Under 49 U.S.C. 20111(c), FRA is authorized to issue orders disqualifying railroad employees, including supervisors, managers, and other agents, from performing safety-sensitive service in the rail industry for violations of safety rules, regulations, standards, orders, or laws evidencing unfitness. FRA's regulations, 49 CFR part 209, subpart D, implement the statutory provision by requiring (i) a railroad employing or formerly employing a disqualified individual to disclose the terms and conditions of a disqualification order to the individual's new or prospective employing railroad; (ii) a railroad considering employing an individual in a safety-sensitive position to ask the individual's previous employing railroad whether the individual is currently serving under a disqualification order; and (iii) a disqualified individual to inform his new or prospective employer of the disqualification order and provide a copy of the same. Additionally, the regulations prohibit a railroad from employing a person serving under a disqualification order to work in a safety-sensitive position. This information serves to inform a railroad whether an employee or prospective employee is currently disqualified from performing safety-sensitive service based on the issuance of a disqualification order by FRA. Furthermore, it prevents an individual currently serving under a disqualification order from retaining and obtaining employment in a safety-sensitive position in the rail industry.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion/recordkeeping.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
Respondent reply to disqualification order.	40,000 locomotive engineers.	1 doc. reply	3 hours	3 hours	$135
Informal reply to proposed disqualification order.	40,000 locomotive engineers.	1 informal response.	1 hour	1 hour	45
Provide copy of disqualification order to prospective employer.	685 railroads	1 notification	30 minutes	.5 hour	23
Request copy of disqualification order from previous employer.	685 railroads	Usual and customary procedure.	N/A	N/A	N/A

Total Estimated Burden: 5 hours.

Status: Regular Review.

Title: Grade Crossing Signal System Safety Regulations.

OMB Control Number: 2130–0534.

Abstract: FRA believes that highway-rail grade crossing (grade crossing) accidents resulting from warning system failures can be reduced. Motorists lose faith in warning systems that constantly warn of an oncoming train when none is present. Therefore, the fail-safe feature of a warning system loses its effectiveness if the system is not repaired within a reasonable period of time. A greater risk of an accident is present when a warning system fails to activate as a train approaches a grade crossing. FRA's regulations require railroads to take specific responses in the event of an activation failure. FRA uses the information to develop better solutions to the problems of grade crossing device malfunctions. With this information, FRA is able to correlate accident data and equipment malfunctions with the types of circuits and age of equipment. FRA can then identify the causes of grade crossing system failures and investigate them to determine whether periodic maintenance, inspection, and testing standards are effective. FRA also uses the information collected to alert railroad employees and appropriate highway traffic authorities of warning system malfunctions so that they can take the necessary measures to protect motorists and railroad workers at the grade crossing until repairs have been made.

Form Number(s): FRA F 6180.83.

Affected Public: Businesses.

Frequency of Submission: On occasion; recordkeeping.

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response (minutes)	Total annual burden hours (hours)	Total annual burden cost
234.7—Telephone Notification	685	4 phone calls	15	1	$34
234.9—Grade crossing signal system failure rpts.	685	600 reports	15	150	5,100
234.9—Notification to train crew and highway traffic control authority.	685	24,000 notifications	5	2,000	68,000
234.9—Recordkeeping	685	12,000 records	10	2,000	68,000

Total Estimated Burden: 4,151.

Status: Regular Review.

Title: New Locomotive Certification (Noise Compliance Regulations).

OMB Control Number: 2130–0527.

Abstract: Part 210 of Title 49 of the United States Code of Federal Regulations (CFR) pertains to FRA's noise enforcement procedures which encompass rail yard noise source standards published by the Environmental Protection Agency (EPA). EPA has the authority to set these standards under the Noise Control Act of 1972. The information collected by FRA under Part 210 is necessary to ensure compliance with EPA noise standards for new locomotives.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Respondent Universe: 2 Locomotive Manufacturers.

Total Responses: 2,040 requests/badges/measurements.

Average Time Per Response: 1.725 hours.

Estimated Total Annual Burden: 3,520 hours.

Status: Regular Review.

Title: Railroad Signal System Requirements.

OMB Control Number: 2130–0006.

Abstract: The regulations pertaining to railroad signal systems are contained in 49 CFR parts 233 (Signal System Reporting Requirements), 235 (Instructions Governing Applications For Approval of a Discontinuance or Material Modification of a Signal System), and 236 (Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Systems, Devices, and Appliances). Section 233.5 provides that each railroad must report to FRA within 24 hours after learning of an accident or incident arising from the failure of a signal appliance, device, method, or system to function or indicate as required by part 236 of this title that results in a more favorable aspect than intended or other condition hazardous to the movement of a train. Section 233.7 sets forth the specific requirements for reporting signal failures within 15 days in accordance with the instructions printed on Form FRA F 6180.14. Finally, Section 233.9 sets forth the specific requirements for the "Signal System Five Year Report." It requires that every five years each railroad must file a signal system status report. The report is to be prepared on a form issued by FRA in accordance with the instructions and definitions provided. Title 49, Part 235 of the Code of Federal Regulations, sets forth the specific conditions under which FRA approval of modification or discontinuance of railroad signal systems is required and prescribes the methods available to seek such approval. The application process prescribed under Part 235 provides a vehicle enabling FRA to obtain the necessary information to make logical and informed decisions concerning carrier requests to modify or discontinue signaling systems. Section 235.5 requires railroads to apply for FRA approval to discontinue or materially modify railroad signaling systems. Section 235.7 defines material modifications' and identifies those changes that do not require agency approval. Section 235.8 provides that any railroad may petition FRA to seek relief from the requirements under 49 CFR part 236. Sections 235.10, 235.12, and 235.13 describe where the petition must be submitted, what information must be included, the organizational format, and the official authorized to sign the application. Section 235.20 sets forth the process for protesting the granting of a carrier application for signal changes or relief from the rules, standards, and instructions. This section provides the information that must be included in the protest, the address for filing the protest, the item limit for filing the protest, and the requirement that a person requesting a public hearing explain the need for such a forum. Section 236.110 requires that the test results of certain signaling apparatus be recorded and specifically identify the tests required under sections 236.102–109; sections 236.377 to 236.387; sections 236.576, 236.577; and section 236.586–236.589. Section 236.110 further provides that the test results must be recorded on preprinted or computerized forms provided by the carrier and that the forms show the name of the railroad; place and date of the test conducted; equipment tested; tests results; repairs; and the condition of the apparatus. This section also requires that the employee conducting the test must sign the form and that the record be retained at the office of the supervisory official having the proper authority. Results of tests made in compliance with section 236.587 must be retained for 92 days, and results of all other tests must be retained until the next record is filed, but in no case less than one year. Additionally, section 236.587 requires each railroad to make a departure test of cab signal, train stop, or train control devices on locomotives before that locomotive enters the equipped territory. This section further requires that whoever performs the test must certify in writing that the test was properly performed. The certification and test results must be posted in the locomotive cab with a copy of the certification and test results retained at the office of the supervisory official having the proper authority. However, if it is impractical to leave a copy of the certification and test results at the location of the test, the test results must be transmitted to either the dispatcher or one other designated official, who must keep a written record of the test results and the name of the person performing the test. All records prepared under this section are required to be retained for 92 days. Finally, section 236.590 requires the carrier to clean and inspect the pneumatic apparatus of automatic train stop, train control, or cab signal devices on locomotives every 736 days, and to stencil, tag, or otherwise mark the pneumatic apparatus indicating the last cleaning date.

Form Number(s): FRA F 6180.14; FRA F 6180.47.

Affected Public: Businesses.

Frequency of Submission: On occasion;

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
233.5—Reporting of accidents	685	10 phone calls	30 minutes	5	$170
233.7—False proceed signal failures report	685	100 reports	15 minutes	25	850
233.9—5 Year signal system report	N/A	Outside scope of PRA.	Outside scope of PRA.	(1)	(1)
235.5—Block signal applications	80	111 applications	10 hours	1,110	37,740
235.8—Applicatioins for relief	80	24 relief requests	2.5 hours	60	2,040
235.20—Protest letters	80	84 protest letters	30 minutes	42	1,428
236.110—Record keeping	80	936,660 forms	27 minutes	427,881	14,547,954

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
236.587—Departure tests	18	730,000 tests	4 minutes	48,667	1,654,678
236.590—Pneumatic valves	18	6,697 stencilings	22.5 minutes	2,511	85,374

[1]Outside scope of PRA.

Total Estimated Burden: 480.301 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on March 26, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–7807 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** document with a 60-day comment period was published on October 30, 2002 [67 FR 66193].

DATES: Comments must be received on or before May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Rosalind Proctor at the National Highway Traffic Safety Administration, (NVS–131), 400 Seventh Street, SW., Room 5320, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her facsimile number is (202) 493–2290.

SUPPLEMENTARY INFORMATION:

Title: 49 CFR part 575; Consumer Information Regulations (Sections 103 and 105).

OMB Control Number: 2127–0049.

Type of Request: Extension of a currently approved information collection.

Abstract: NHTSA must ensure that motor vehicle manufacturers comply with 49 CFR part 575, Consumer Information Regulation part 575.103 Truck-camper loading and part 575.105 Utility Vehicles. Part 575.103 requires that manufacturers of light trucks that are capable of accommodating slide-in campers provide information on the cargo weight rating and the longitudinal limits within which the center of gravity for the cargo weight rating should be located. Part 575.105 requires manufacturers of utility vehicles affix a sticker in a prominent location alerting drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when these vehicles are operated.

Affected Public: Motor vehicle manufacturers of light trucks and utility vehicles.

Estimated Total Annual Burden: 300 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: March 27, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–7808 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–14628]

Extension of Comment Period on Whether Nonconforming 1996 and 1997 Lamborghini Diablo Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of comment period.

SUMMARY: On March 12, 2003, NHTSA published notice (at 68 FR 11898) that it had received a petition to decide that nonconforming 1996 and 1997 Lamborghini Diablo passenger cars are eligible for importation into the United States. The notice solicited public comments on the petition and stated that the closing date for comments is April 11, 2003.

This is to notify the public that NHTSA is extending the comment period until May 30, 2003. This extension is based on a request from Automobili Lamborghini S.p.A. ("Lamborghini"). In requesting the extension, Lamborghini noted that its available resources for responding to the petition are "seriously constrained." In particular, Lamborghini stated that it has only two employees who would be able to conduct the necessary research to prepare the response and those employees will be on travel in the United States for three to four weeks beginning March 18, 2003 to prepare the company's emission certification on a vehicle to be introduced in the 2004 model year.

DATES: Comments on the import eligibility petition must be submitted on or before May 30, 2003.

ADDRESSES: Comments are to be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590 (Docket hours are from 9 am to 5 pm). Anyone is able to search the electronic form of all

comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 27, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–7809 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before April 16, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 21, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
4884–M		Matheson Tri-Gas, Inc., East Rutherford, NJ. (*See* Footnote 1.)	4884
10704–M		Terumo Cardiovascular Systems, Tustin, CA. (*See* Footnote 2.)	10704
12068–M	RSPA–98–3850	Sea Launch Company, L.L.C., Long Beach, CA. (*See* Footnote 3.).	12068
12112–M	RSPA–98–4322	Kidde Aerospace, Wilson, NC. (*See* Footnote 4.)	12112
13048–M	RSPA–02–12808	U.S. Department of Energy, Richland, WA. (*See* Footnote 5.)	13048
13170–M		Premier Industries, Fridley, MN. (*See* Footnote 6.)	13170

(1) To modify the exemption to authorize alternative packaging under certain segregation scenarios when transported by private carrier.
(2) To modify the exemption to authorize the transportation of an additional Division 2.2 material in DOT Specification 2Q containers.
(3) To modify the exemption to authorize the transportation of an additional Class 3 material contained as part of the launch vehicle with and without payload.
(4) To modify the exemption to authorize the use of a non-DOT specification steel cylinder used as a component in aircraft of foreign manufacture for the transportation of division 2.2 materials.
(5) To modify the exemption to authorize an alternative disposal site for the one-time, one-way transportation of a Division 4.3 material in a non-DOT specification containment system for disposal.
(6) To reissue the exemption originally issued on an emergency basis for the transportation of a Division 2.2 material in a non-DOT specification pressure vessel assembly.

[FR Doc. 03–7709 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of

Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 1, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (*See* Docket Number) are available for inspection at the new Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at *http://dms.dot.gov.*

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC on March 24, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
33208–N		Provensis Limited of South Harefield Middlesex, UK.	49 CFR 171.11(d)(14), 171.11(d)(7), 171.12(b)(17), 173.306(a)(3)(v), part 174, part 177.	To authorize the transportation in commerce of aerosol containers that have not been subjected to the hot water bath test for use in transporting non-flammable compressed gas. (Modes 1, 2, 3, 4.)
13209–N		Corning, Inc., Corning, NY.	49 CFR 173.21(e), 173.25(a)(1), 180.205(g).	To authorize the transportation in commerce of sodium borophydridge, Division 4.3 with various aqueous solutions in specially designed packaging. (Modes 1, 4.)
13211–N		Avecia Inc., Wilmington, DE.	49 CFR 172.101, SP N8.	To authorize the transportation in commerce of a non-bulk UN standard alternative packaging for use in transporting nitroglycerin solution in alcohol. (Modes 1, 3, 5.)
13212–N		Southern California Edison, San Clemente, CA.	49 CFR 173.427, 173.465(c), 173.465(d).	To authorize the transportation in commerce of three large reactor coolant pumps containing Class 7 radioactive materials and surface contaminated objects. (Mode 1.)
13213–N		Washington State Ferries, Seattle, WA.	49 CFR 172.101(10a)	To authorize the transportation in commerce of limited quantities of Class 3, Class 9 and Division 2.1 hazardous materials being stowed on and below deck on passenger ferry vessels transporting motor vehicles, such as recreational vehicles, with attached cylinders of liquefied petroleum gas. (Mode 5.)

[FR Doc. 03–7710 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974, System of Records

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of alterations to two Department of the Treasury, Financial Management Service (FMS), Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), the Department of the Treasury, Financial Management Service (FMS), gives notice of proposed alterations to two of its existing systems of records, as follows: "Payment Issue Records for Regular Recurring Benefit Payments—Treasury/FMS .002" and "Payment Records for Other Than Regular Recurring Benefit Payments .016." The systems of records were last published in the **Federal Register** in their entirety on August 22, 2001, beginning in 66 FR 44204. An alteration to the systems was published in the **Federal Register** on February 26, 2003, in 68 FR 8964.

DATES: Comments must be received no later than May 1, 2003. The proposed systems of records will be effective May 12, 2003 unless FMS receives comments which would result in a contrary determination.

ADDRESSES: Comments must be submitted to Federal Finance, Financial Management Service, 401 14th Street, SW., Room 426B, Washington, DC 20227, or by electronic mail to *michael.dressler@fms.treas.gov.* Comments received will be available for inspection at the same address between the hours of 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Michael Dressler, Financial Management Service, Federal Finance, (202) 874–7082.

SUPPLEMENTARY INFORMATION: The Financial Management Service (FMS) is the money manager for the Federal Government. As such, FMS disburses over 900 million payments totaling more than $1.64 trillion in social security and veterans' benefits, income tax refunds, and other federal payments. In the operation of its payment programs, FMS maintains records on individuals who receive payments from the Federal Government. Records on individuals who receive Federal payments are maintained in FMS's "Payment Issue Records for Regular Recurring Benefit Payments-Treasury/FMS .002," and "Payment Records for Other Than Regular Recurring Benefit Payments-Treasury/FMS .016."

As part of its continuing efforts to efficiently operate and manage its payment disbursement processes, FMS sometimes retains the services of its fiscal agents (the Federal Reserve Banks (FRBs)), financial agents (financial institutions), and/or contractors of FMS or FMS's fiscal or financial agents. For example, FMS may ask the FRB and/or a contractor to assist FMS in surveying payment recipients to ascertain public attitudes about direct deposit and other alternatives to check payments. Such services assist FMS in determining the most efficient and effective way to deliver Government payments to the public. Disclosures of information maintained in FMS's systems of records, specifically, a payee's name and address, may be required in order for the FRB or a contractor to perform the services for which it has been retained. If disclosure to a financial agent or contractor is necessary, the financial agent or contractor to which disclosure is made will be subject to the same limitations applicable to FMS officers and employees under the Privacy Act. This means that the financial agent or contractor is required to safeguard Privacy Act information to prevent unauthorized use or disclosure of any Privacy Act records. In addition, the FRB and regulated financial institutions impose their own strict limitations concerning the protection of non-public personal information.

FMS is altering the referenced systems of records to allow disclosure of information from such systems to its fiscal or financial agents, their employees, agents or contractors, or to a private contractor as necessary to efficiently operate and manage its payment disbursement processes.

For the reasons set forth above, FMS proposes to alter its systems of records as follows:

Treasury/FMS .002

SYSTEM NAME:

Payment Issue Records for Regular Recurring Benefit Payments—Treasury/Financial Management Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

* * * * *

DESCRIPTION OF CHANGE:

The period "." at the end of routine use (14) is replaced with a semicolon ";", and the following routine use is added at the end thereof:

"(15) Disclose information to a fiscal or financial agent of the Financial Management Service, its employees, agents, and contractors, or to a contractor of the Financial Management Service, for the purpose of ensuring the efficient administration of payment processing services, subject to the same or equivalent limitations applicable to FMS officers and employees under the Privacy Act."

* * * * *

Treasury/FMS .016

SYSTEM NAME:

Payment Records for Other Than Regular Recurring Benefit Payments—Treasury/Financial Management Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

* * * * *

DESCRIPTION OF CHANGE:

The period "." at the end of routine use (14) is replaced with a semicolon ";", and the following routine use is added at the end thereof:

"(15) Disclose information to a fiscal or financial agent of the Financial Management Service, its employees, agents, and contractors, or to a contractor of the Financial Management Service, for the purpose of ensuring the efficient administration of payment processing services, subject to the same or equivalent limitations applicable to FMS officers and employees under the Privacy Act."

* * * * *

Dated: March 25, 2003.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 03–7767 Filed 3–31–03; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW (VA Home Loan Guaranty Program Evaluation)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Planning and Analysis, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Planning and Analysis, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection of information, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to evaluate home loan guaranty and specially adapted housing grant programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 2, 2003.

ADDRESSES: Submit written comments on the collection of information to Christopher LaLonde, Office of Assistant Secretary for Planning and Analysis (008B), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420 or *mailto:christopher.lalonde@mail.va.gov.* Please refer to "OMB Control No. 2900–NEW (VA Home Loan Guaranty Program Evaluation)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Christopher LaLonde at (202) 273–2122 or FAX (202) 273–5993.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, the Office of Planning and Analysis invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of VA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Home Loan Guaranty Program Evaluation.

OMB Control Number: None assigned.

Type of Review: New collection.

Abstract: The purpose of these surveys is to provide information for an evaluation that assesses the effectiveness and efficiency of VA Home Loan Guaranty Program for assisting eligible veterans and active duty military personnel to purchase, construct, repair, or improve a dwelling that they will own and occupy as their home; and to assess the adequacy, efficiency, and effectiveness of the Specially Adapted Housing Grant Program. These surveys will assist VA with the improvement of program operations and development of policy

positions to support the needs and requirements of the veteran population.

Affected Public: Individuals or households.

Estimated Time Per Respondent and Annual Burden: 1,140 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,281.

Dated: March 20, 2003.
By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–7698 Filed 3–31–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0265]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine an applicant's entitlement to counseling services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 2, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to "OMB Control No. 2900–0265" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Counseling, VA Form 28–8832.

OMB Control Number: 2900–0265.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–8832 is used by Vocational Rehabilitation and Counseling to quickly assess an applicant's probable entitlement to counseling. A veteran or dependent may use this form to apply for counseling services.

Affected Public: Individuals or households.

Estimated Annual Burden: 417 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Dated: March 20, 2003.
By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–7699 Filed 3–31–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0353]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 1, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0353."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0353" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Certification of Lessons Completed, (Chapters 30, 32, and 35, Title 38, U.S.C.; Chapter 1606, Title 10, U.S.C., and section 903, Pub. L. 96–343), VA Forms 22–6553b and 22–6553b–1.

OMB Control Number: 2900–0353.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 22–6553b and 22–6553b–1 are used to determine the number of lessons completed by a student and serviced by the correspondence school, and if necessary to determine the date of completion or termination of correspondence training. VA pays education benefits based on the information furnished on the form. Benefits are not payable when training is interrupted, discontinued or completed. Without this information, VA would be unable to determine the proper payment or the student's training status.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 3, 2002, at pages 72029–72030.

Affected Public: Individuals or households, Business or other for-profit.

Estimated Annual Burden: 1,782 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Quarterly.

Estimated Number of Respondents: 3,564.

Number of Responses Annually: 10,692.

Dated: March 13, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–7700 Filed 3–31–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0321]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0321."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0321" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Appointment of Veterans Service Organization as Claimant's Representative, VA Form 21–22.

OMB Control Number: 2900–0321.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–22 is completed by VA beneficiaries to appoint a representative from a recognized veterans service organization to represent them in the prosecution of their VA claims. The information is used to determine who has access to the beneficiary's claim file and the right to receive copies of correspondence from VA to the beneficiary. Title 38, U.S.C. 5902(b)(2), provides that VA may recognize representatives of service organizations to assist beneficiaries in the prosecution of VA claims, but that no individual shall be recognized unless such individual has filed a power of attorney, executed in a manner prescribed by VA.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on January 30, 2003, at page 4815.

Affected Public: Individuals or households.

Estimated Annual Burden: 27,083 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 325,000.

Dated: March 20, 2003.
By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–7701 Filed 3–31–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0180]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether or not proprietary schools receiving Federal financial assistance from VA and the Department of Education are in compliance with equal opportunity laws.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 2, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to "OMB Control No. 2900–0180" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Compliance Report of Proprietary Institutions, VA Form 20–4274.

OMB Control Number: 2900–0180.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 20–4274 is used to determine whether or not proprietary educational institutions receiving Federal financial assistance are in compliance with applicable civil rights statute and regulations. The collected information is used to identify areas that

may indicate, statistically, disparate treatment of minority group members.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 124 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 124.

Dated: March 13, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–7714 Filed 3–31–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 62

Tuesday, April 1, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103580–02]

RIN 1545–BA53

Noncompensatory Partnership Options

Correction

In proposed rule document 03–872 beginning on page 2930 in the issue of Wednesday, January 22, 2003, make the following corrections:

1. On page 2932, in the first column, in the first full paragraph, in the third line from the bottom, "an" should read, "and".

PART 1—[CORRECTED]

2. On page 2933, in the third column, under amendatory instruction 2., the first paragraph is corrected to read as follows:

"1. Paragraph (b)(0) is amended by adding entries for 1.704–1(b)(2)(iv)(*d*)(*4*), 1.704–1(b)(2)(iv)(*h*)(*1*), 1704–1(b)(2)(iv)(*h*)(*2*), 1.704–1(b)(2)(iv)(*s*), 1.704–1(b)(4)(ix), and 1.704–1(b)(4)(x)."

§ 1.704–1 [Corrected]

3. On page 2934, in the first column, in § 1.704–1 (d)(4), in the second line from the bottom, add the following sentence after the word "conversion.":

"With respect to convertible debt, the fair market value of the property contributed on the exercise of the option includes the adjusted basis and the accrued but unpaid qualified stated interest on the debt immediately before the conversion."

4. On the same page, in the second column, in the same section, in paragraph (2), in the second line, "value" should read, "value of".

5. On the same page, in the same column, in the same section, in the same paragraph, in the eighth line, "(b)(2)(iv(*f*)" should read, "(b)(2)(iv)(*f*)".

6. On page 2935, in the first column, in the same section, in paragraph (*s*)(4), in the fifth line, "(s)(3)" should read, "(*s*)(*3*)".

7. On page 2936, in the same section, in the last table, in the fifth column, the column heading. "1704(c) book" should read, "704(c) book".

8. On page 2937, in the same section, in the first table, in the fifth column, the column heading. "1704(c) book" should read, "704(c) book".

§ 1.761–3 [Corrected]

9. On page 2941, in the first column, in § 1.761–3 (d), in paragraph (ii), in the second line, "Example 3" should read, "*Example 3*".

[FR Doc. C3–872 Filed 3–31–03; 8:45 am]

BILLING CODE 1505–01–D

VOL
68
ISS
62
AP
1
003
MI

Federal Register

Tuesday,
April 1, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Reclassify and Remove the Gray Wolf From the List of Endangered and Threatened Wildlife in Portions of the Conterminous United States; Establishment of Two Special Regulations for Threatened Gray Wolves; Final and Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF20

Endangered and Threatened Wildlife and Plants; Final Rule To Reclassify and Remove the Gray Wolf From the List of Endangered and Threatened Wildlife in Portions of the Conterminous United States; Establishment of Two Special Regulations for Threatened Gray Wolves

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) hereby changes the classification of the gray wolf (*Canis lupus*) under the Endangered Species Act of 1973, as amended (Act). We establish three distinct population segments (DPS) for the gray wolf in the conterminous United States. Gray wolves in the Western DPS and the Eastern DPS are reclassified from endangered to threatened, except where already classified as threatened or as an experimental population. Gray wolves in the Southwestern DPS retain their previous endangered or experimental population status. All three existing gray wolf experimental population designations are retained and are not affected by this rule. Gray wolves are removed from the protections of the Act in all or parts of 16 southern and eastern States where the species historically did not occur. We establish a new special regulation under section 4(d) of the Act for the threatened Western DPS to increase our ability to respond to wolf-human conflicts outside the two experimental population areas in the Western DPS. A second section 4(d) special regulation applies provisions similar to those previously in effect in Minnesota to most of the Eastern DPS. We find that these special rules are necessary and advisable to provide for the conservation of the Western DPS and the Eastern DPS. The classification, under the Act, of captive gray wolves is determined by the location from which they, or their ancestors, were removed from the wild. This final rule does not affect the protection currently afforded by the Act to the red wolf (*Canis rufus*), a separate species found in the southeastern United States that is listed as endangered.

DATES: This rule becomes effective April 1, 2003. The explanation of the need for an immediate effective date is found in the **SUPPLEMENTARY INFORMATION** section under the heading *Need for Immediate Implementation*.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at our Midwest Regional Office: U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111–4056. Call 612–713–5350 to make arrangements. The comments and materials we received during the comment period are also available for public inspection, by appointment, during normal business hours at this and other Regional Offices and several of our Ecological Services field offices. Use the contact information in the next paragraph to obtain the addresses of those locations.

FOR FURTHER INFORMATION: Direct all questions or requests for additional information to the Service using the Gray Wolf Phone Line—612–713–7337, facsimile—612–713–5292, the general gray wolf electronic mail address—*GRAYWOLFMAIL@FWS.GOV*, or write to: GRAY WOLF QUESTIONS, U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111–4056. Additional information is also available on our World Wide Web site at *http://midwest.fws.gov/wolf*. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

This rule begins with discussions on the biology, ecology, taxonomy, and the historical range of the gray wolf. We then describe previous Federal listing actions taken for the gray wolf. Next we provide information concerning specific issues related to this rulemaking, including our Vertebrate Population Policy, experimental population designations, and wolf-dog hybrids. We conclude this introductory section with a discussion on the recovery of the gray wolf.

We next provide a summary of the many and diverse comments and recommendations on the proposal. All substantive issues that were raised during that comment period are described, and we present our response to each of those issues.

A detailed discussion is then presented for the five listing factors as required by the Act. We analyze these factors for the reclassification of certain populations in response to the current status of the species, which encompasses present and future threats and conservation efforts. We designate three distinct population segments (DPSs), and we also discuss how this listing affects wolves in captivity and their role in wolf recovery.

We next describe the differences between our July 13, 2000, proposal (65 FR 43450) and this final rule. In our proposal, we identified a variety of alternative actions that we considered but did not propose, and we explained the reasons for selecting the proposed action. We also requested comments on those alternatives. Those alternatives will not be discussed in this rule except in the cases where they were adopted or partially adopted in our final decision, or were otherwise addressed in substantive comments that we received.

Separate sections explain the two special regulations that are being adopted and how these special regulations are consistent with the conservation of the gray wolf within their respective DPSs. We also explain the conservation measures that are being provided to the species by this rule. The text of the regulatory changes for the gray wolf is found at the end of this document.

A. Biology and Ecology of Gray Wolves

Gray wolves are the largest wild members of the Canidae, or dog family, with adults ranging from 18 to 80 kilograms (kg)(40 to 175 pounds (lb)) depending upon sex and subspecies (Mech 1974). The average weight of male wolves in Wisconsin is 35 kg (77 lb) and ranges from 26 to 46 kg (57 to 102 lb), while females average 28 kg (62 lb) and range from 21 to 34 kg (46 to 75 lb) (Wisconsin Department of Natural Resources (WI DNR) 1999a). In the northern U.S. Rocky Mountains, adult male gray wolves average just over 45 kg (100 lb), while the females weigh slightly less. Wolves' fur color is frequently a grizzled gray, but it can vary from pure white to coal black. Wolves may appear similar to coyotes (*Canis latrans*) and some domestic dog breeds (such as the German shepherd or Siberian husky) (*C. familiaris*). However, wolves' longer legs, larger feet, wider head and snout, and straight tail distinguish them from both coyotes and dogs.

Wolves primarily are predators of medium and large mammals. Wild prey species in North America include white-tailed deer (*Odocoileus virginianus*) and mule deer (*O. hemionus*), moose (*Alces alces*), elk (*Cervus canadensis*), woodland caribou (*Rangifer caribou*) and barren ground caribou (*R. arcticus*), bison (*Bison bison*), muskox (*Ovibos moschatus*), bighorn sheep (*Ovis canadensis*) and Dall sheep (*O. dalli*), mountain goat (*Oreamnos americanus*), beaver (*Castor canadensis*), and snowshoe hare (*Lepus americanus*), with small mammals, birds, and large invertebrates sometimes being taken (Mech 1974, Stebler 1944, WI DNR 1999a). In the Midwest, during the last 22 years, wolves have also killed domestic animals including horses (*Equus caballus*), cattle (*Bos taurus*), sheep (*Ovis aries*), goats (*Capra hircus*), llamas (*Lama glama*), pigs (*Sus scrofa*), geese (*Anser sp.*), ducks (*Anas sp.*), turkeys (*Meleagris gallopavo*), chickens (*Gallus sp.*), pheasants (*Phasianus colchicus*), dogs, and cats (*Felis catus*) (Paul 2001, Wydeven *et al.* 2001a). Since 1987, wolves in the northern Rocky Mountains of Montana, Idaho, and Wyoming have also killed domestic animals, including llamas, horses, cattle, sheep, and dogs (Service *et al.* 2002).

Wolves are social animals, normally living in packs of 2 to 12 wolves. However, 2 packs within Yellowstone National Park (NP) had 22 and 27 members in 2000, and Yellowstone's Druid Peak pack increased to 37 members in 2001 (Service *et al.* 2001, 2002). Packs are primarily family groups consisting of a breeding pair, their pups from the current year, offspring from the previous year, and occasionally an unrelated wolf. Packs typically occupy, and defend from other packs and individual wolves, a territory of 50 to 550 square kilometers (sq km) (20 to 214 square miles (sq mi)). However, in the northern U.S. Rocky Mountains territories tend to be larger, usually from 520 to 1,040 sq km (200 to 400 sq mi), and in Wood Buffalo National Park in Canada, territories of up to 2,700 sq km (1,042 sq mi) have been recorded (Carbyn *in litt.* 2000). Normally, only the top-ranking ("alpha") male and female in each pack breed and produce pups. Litters are born from early April into May; they can range from 1 to 11 pups, but generally include 4 to 6 pups (Michigan Department of Natural Resources (MI DNR) 1997; Service 1992a; Service *et al.* 2001). Normally a pack has a single litter annually, but producing 2 or 3 litters in one year has been documented in Yellowstone NP (Service *et al.* 2002). Yearling wolves frequently disperse from their natal packs, although some remain with their natal pack. Dispersers may become nomadic and cover large areas as lone animals, or they may locate suitable unoccupied habitat and a member of the opposite sex and begin their own territorial pack. Dispersal movements on the order of 800 km (500 mi) have been documented (Fritts 1983; James Hammill, Michigan DNR, *in litt.* 2001).

The gray wolf historically occurred across most of North America, Europe, and Asia. In North America, gray wolves formerly occurred from the northern reaches of Alaska, Canada, and Greenland to the central mountains and the high interior plateau of southern Mexico. The only areas of the conterminous United States that apparently lacked gray wolf populations since the last glacial events are parts of California and portions of the eastern and southeastern United States (an area occupied by the red wolf). In addition, wolves were generally absent from the extremely arid deserts and the mountaintops of the western United States (Young and Goldman 1944, Hall 1981, Mech 1974, Nowak 2000). (Refer to the *Taxonomy of Gray Wolves in the Eastern United States* section below for additional discussion.)

European settlers in North America and their cultures often had superstitions and fears of wolves. Their attitudes, coupled with perceived and real conflicts between wolves and human activities along the frontier, led to widespread persecution of wolves. Poisons, trapping, and shooting-spurred by Federal, State, and local government bounties-resulted in extirpation of this once widespread species from more than 95 percent of its range in the 48 conterminous States. At the time of the passage of the Act, likely only several hundred wolves occurred in northeastern Minnesota and on Isle Royale, Michigan, and possibly a few scattered wolves in the Upper Peninsula of Michigan, Montana, and the American Southwest.

Researchers have learned a great deal about gray wolf biology, especially regarding the species' adaptability and its use of nonwilderness habitats. Public appreciation of the role of predators in our ecosystems has increased, and we believe that the recovery of the species is widely supported. Most importantly, within the last decade the prospects for gray wolf recovery in several areas of their former historical United States range have greatly increased. In the western Great Lakes area, wolves have dramatically increased their numbers and occupied range. Gray wolf reintroduction programs in the northern U.S. Rocky Mountains have shown great success. Additionally, the reintroduction and recovery program of the Mexican wolf in the American Southwest, although in its initial stages, is beginning to show similar progress after only a few years.

The gray wolf (*Canis lupus*) is one of two North American wolf species currently protected by the Act. The other is the red wolf (*C. rufus*), a separate species that is listed as endangered throughout its range in the southeastern United States and extending west into central Texas. The red wolf is the subject of a separate recovery program. This final rule does not affect the current listing status or protection of the red wolf.

B. Taxonomy of Gray Wolves in the Eastern United States

Both the 1978 and 1992 versions of the Recovery Plan for the Eastern Timber Wolf were developed to recover the gray wolf subspecies *Canis lupus lycaon*, commonly known as the eastern timber wolf. *C. l. lycaon* was believed to be the gray wolf subspecies historically occurring throughout the northeastern quarter of the United States east of the Great Plains (Young and Goldman 1944, Hall 1981, Mech 1974). Since the publication of those recovery plans, various studies on the subspecific taxonomy of the gray wolf have been conducted with conflicting results (Nowak 1995, 2000; Wayne *et al.* 1995; Wilson *et al.* 2000).

At the time we prepared the July 13, 2000, gray wolf reclassification proposal, new information had recently become available that called into question the identity of the large canid in southeastern Canada, an area with an extant wolf population adjacent to the northeastern United States. However, we believed that the preponderance of available data supported the position that the historical canid in the northeastern United States was a subspecies of the gray wolf, probably *Canis lupus lycaon*.

An alternative position advanced by Wilson *et al.* (2000) appears to be gaining wider acceptance. That view is that the wolf currently occurring in Algonquin Provincial Park, and possibly the ancestral wolf of southeastern Canada and the northeastern United States, is a smaller form of wolf that is similar to or indistinguishable from the red wolf (*C. rufus*). Still others argue that ecologically, the ancestral wolf in northern Maine, New Hampshire, and Vermont, where moose and woodland caribou were the predominant ungulate prey (Hall 1981), was likely to be a large-bodied *C. lupus*, rather than a smaller, deer-eating wolf such as the red wolf (Daniel Harrison, University of Maine, pers. comm.).

The coyote is the dominant canid in the northeastern United States today, although wolf genetic material is also present in these animals. Prey species' ranges in the Northeast have undergone significant changes in the last hundred-plus years as the whitetail deer has expanded north into Canada, while the

caribou has disappeared from the northeastern United States, and the moose has repopulated northern and central New England and are newly reestablished in the Adirondacks of northern New York. Changes in prey base may trigger accompanying changes in the primary predator, because smaller canids and smaller canid social groups are able to subsist on deer, but are less well suited to preying on caribou and moose. All of these changes have proceeded with surprising rapidity, as has the eastern expansion of the coyote. Clearly, it becomes extremely difficult to determine the genetic identity of the wolf (or wolves) that occurred in the Northeast prior to European settlement. Bounty records, old trapper notes, and discovery of heretofore unknown mounted specimens may hold clues that will be investigated. However, the ranges of specific forms of wolf may have changed over time or intermingled along contact zones, and scientific consensus on one ancestral form of wolf for the Northeast may not be possible.

Currently, the existing molecular genetic and morphological data suggest several plausible identities for the large canid that historically occupied the Northeast. Nowak's morphological data continue to support the contention that *Canis lupus lycaon*, a subspecies of the gray wolf, occupied part of the Northeast and adjacent southeastern Canada; however, his more recent work suggests a smaller United States range (and a possible hybrid origin) for that subspecies and a consequent larger range for the red wolf (Nowak 1995, 2000). The recent molecular genetics studies (Wilson *et al.* 2000) identify this canid as something other than a gray wolf, which they tentatively refer to as *C. lycaon*. Under this scenario the historical northeastern United States wolf could either be the red wolf (*C. rufus*) or a separate subspecies of *C. lycaon*. Due to the extreme uncertainty over wolf taxonomy, at this time we are adopting no final position on the identity of the wolf (or wolves) that historically existed in the northeastern United States. Instead, we are encouraging additional research on that question, and we are maintaining the listing of the gray wolf in the northeastern United States because there are insufficient data showing that listing to be in error.

C. Historical Range of the Gray Wolf

Until the molecular genetics studies of the last few years, the range of the gray wolf prior to European settlement was generally believed to include most of North America. The only areas that were believed to have lacked gray wolf populations are southern and interior Greenland, the coastal regions of Mexico, all of Central America south of Mexico, coastal and parts of California, the extremely arid deserts and the mountaintops of the western United States, and parts of the eastern and southeastern United States (Young and Goldman 1944, Hall 1981, Mech 1974, and Nowak 1995). (However, some authorities question the reported historical absence of gray wolves from parts of California (Carbyn *in litt.* 2000, Mech *in litt.* 2000)). Authors are inconsistent on their views of the precise boundary of historical gray wolf range in the eastern and southeastern United States. Some use Georgia's southeastern corner as the southern extent of gray wolf range (Young and Goldman 1944, Mech 1974); others believe gray wolves didn't extend into the southeast at all (Hall 1981) or did so to a limited extent, primarily at somewhat higher elevations (Nowak 1995). The southeastern and mid-Atlantic States have generally been recognized as being within the historical range of the red wolf, and it is not known how much range overlap historically occurred between these competing canids. Recent morphological work by Nowak (2000) supports extending the historical range of the red wolf into southern New England or even further northward, indicating that the historical range of the gray wolf in the eastern United States may have been more limited than previously believed. Another possibility is that the respective ranges of several wolf species expanded and contracted in the eastern and northeastern United States, intermingling along contact zones, in post-glacial times.

The results of the recent molecular genetic (Wilson *et al.* 2000) and morphometric studies (Nowak 1995, 2000) may help explain some of the past difficulties in establishing the southern boundary of the gray wolf's range in the eastern United States. It may be shown by additional genetics investigation that the red wolf, or another wolf species, historically populated the entire east coast of the United States, and the gray wolf did not occur there at all. However, until additional data convincingly show that gray wolves did not historically occur in the northeastern States, we will view the historical range of the gray wolf as including those areas north of the Ohio River, the southern borders of Pennsylvania and New Jersey, and southern Missouri; and west from central Texas and Oklahoma. This boundary is a reasonable compromise of several published accounts, being somewhat south of that shown by Nowak (2000) and north of the range boundary shown by Young and Goldman (1944) and Mech (1974). The historical range boundary we are using most closely approximates that given in Hall (1981).

D. Previous Federal Action

The eastern timber wolf (*Canus lupus lycaon*) was listed as endangered in Minnesota and Michigan, and the northern Rocky Mountain wolf (*C. l. irremotus*) was listed as endangered in Montana and Wyoming in the first list of species that were protected under the 1973 Act, published in May 1974 (USDI 1974). A third gray wolf subspecies, the Mexican wolf (*C. l. baileyi*), was listed as endangered on April 28, 1976, (41 FR 17740) with its known range given as "Mexico, USA (Arizona, New Mexico, Texas)." On June 14, 1976, (41 FR 24064) the subspecies *C. l. monstrabilis* was listed as endangered (using the nonspecific common name "Gray wolf"), and its range was described as "Texas, New Mexico, Mexico."

To eliminate problems with listing separate subspecies of the gray wolf and identifying relatively narrow geographic areas in which those subspecies are protected, on March 9, 1978, we published a rule (43 FR 9607) relisting the gray wolf at the species level (*Canus lupus*) as endangered throughout the conterminous 48 States and Mexico, except for Minnesota, where the gray wolf was reclassified to threatened (refer to Map 1 below, located after the *Changes from the Proposed Rules* section). In addition, critical habitat was designated in that rulemaking. In 50 CFR 17.95(a), we describe Isle Royale National Park, Michigan, and Minnesota wolf management zones 1, 2, and 3 (delineated in 50 CFR 17.40(d)(1)) as critical habitat. We also promulgated special regulations under section 4(d) of the Act for operating a wolf management program in Minnesota at that time. The depredation control portion of the special regulation was later modified (50 FR 50793; December 12, 1985); these special regulations are found in 50 CFR 17.40(d)(2).

On November 22, 1994, we designated areas in Idaho, Montana, and Wyoming as nonessential experimental populations in order to initiate gray wolf reintroduction projects in central Idaho and the Greater Yellowstone Area (59 FR 60252, 59 FR 60266). On January 12, 1998, a nonessential experimental population was established for the Mexican gray wolf in portions of Arizona, New Mexico, and Texas (63 FR 1752). These experimental population designations also contain special

regulations that govern take of wolves within these geographic areas (codified at 50 CFR 17.84(i) and (k)). (Refer to *Currently Designated Nonessential Experimental Populations of Gray Wolves*, section below, for more details.) We have received several petitions during the past decade requesting consideration to delist the gray wolf in all or part of the 48 conterminous States. We subsequently published findings that these petitions did not present substantial information that delisting gray wolves in all or part of the conterminous 48 States may be warranted (54 FR 16380, April 24, 1989; 55 CFR 48656, November 30, 1990; 63 FR 55839, October 19, 1998).

On July 13, 2000, we published a proposal (65 FR 43450) to revise the current listing of the gray wolf across most of the conterminous United States (Refer to Map 2 following *Changes from the Proposed Rules* section below). That proposal also included recommended wording for 3 special regulations that would apply to those wolves proposed for reclassification to threatened status. The proposal was followed by a 4-month public comment period, during which we held 14 public hearings and many additional informational meetings in those areas of the country where wolves and people would be most affected by the proposed changes.

Following the development of our July 2000 proposal, but prior to its publication, we received petitions from Mr. Lawrence Krak, of Gilman, Wisconsin, and from the Minnesota Conservation Federation. Mr. Krak's petition requested the delisting of gray wolves in Minnesota, Wisconsin, and Michigan. The Minnesota Conservation Federation requested the delisting of gray wolves in the Western Great Lakes DPS. Because the data reviews that would result from the processing of these petitions would be a subset of the review begun by our July 2000 proposal, we did not initiate separate reviews in response to those two petitions.

Subsequent to our proposal, but after the close of the comment period, we received petitions from Defenders of Wildlife to list gray wolf DPSs in the southern Rocky Mountains, northern California—southern Oregon, and western Washington, and to grant endangered status to gray wolves in those DPSs. Because wolves were already protected as endangered in those areas, we took no action on these petitions. Additionally, there are no wolf populations in those areas, and a DPS cannot be designated for an area that is unoccupied by a population of the species of concern.

Since then, we have received a petition from Mr. Karl Knuchel on behalf of the Friends of Northern Yellowstone Elk Herd Inc. Mr. Knuchel's petition requested the delisting of gray wolves in the Rocky Mountains. Because the data review that would result from the processing of this petition would be a subset of the review begun by this rulemaking, we will not initiate action on this petition until after publication of this rule.

E. Summary of Issues Related to This Final Rule

Purpose and Definitions of the Act

The primary purpose of the Act is to prevent animal and plant species endangerment and extinction. One of the ways the Act does this is to require the Service to identify species that meet the Act's definitions of endangered and threatened species, to add those species to the Federal Lists of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12, respectively), and to plan and implement conservation measures to improve their status to the point at which they no longer need the protections of the Act. When that protection is no longer needed, we take steps to remove (delist) the species from the Federal lists. If a species is listed as endangered, we may first reclassify it to threatened status as an intermediate step before its eventual delisting; however, reclassification to threatened status is not required prior to delisting.

Section 3 of the Act provides the following definitions that are relevant to this rule:

Endangered species—Any species which is in danger of extinction throughout all or a significant portion of its range;

Threatened species—Any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range; and

Species—Includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. (See additional discussion in the Distinct Population Segments Under Our Vertebrate Population Policy section, below.)

Distinct Population Segments Under Our Vertebrate Population Policy

The Act's definition of the term "species" includes "any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." On February 7, 1996, we, in conjunction with the National Marine Fisheries Service, adopted a policy governing the recognition of distinct population segments (DPSs) for purposes of listing, reclassifying, and delisting vertebrate species under the Act (61 FR 4722). This policy, sometimes referred to as the "Vertebrate Population Policy," guides the Services in recognizing DPSs that satisfy the definition of "species" under the Act. To be recognized as a DPS, a group of vertebrate animals must satisfy tests of discreteness and significance.

To be considered discrete, a group of vertebrate animals must be markedly separated from other populations of the same taxon by physical, physiological, ecological, or behavioral factors or by an international governmental boundary that coincides with differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms. A population does not have to be completely isolated by such factors from other populations of its parent taxon in order to be considered discrete.

The significance of a potential DPS is assessed in light of its importance to the taxon to which it belongs. Evidence of significance includes, but is not limited to, the use of an unusual or unique ecological setting; a marked difference in genetic characteristics; or the occupancy of an area that, if devoid of the species, would result in a significant gap in the range of the taxon.

If a group of vertebrate animals is determined to be both discrete and significant, it is then evaluated to determine whether it meets the definition of threatened or endangered based on the five listing factors (section 4(a)(1) of the Act). If it is recovered, a DPS can be delisted.

Although the Vertebrate Population Policy does not allow State or other intra-national governmental boundaries to be used in determining the discreteness of a potential DPS, a State boundary may be used as a boundary of convenience in order to clearly identify the geographic area included within a DPS designation when the State boundary incidentally separates two DPSs that are judged to be discrete on other grounds.

It is important to note that a DPS is a listed entity under the Act, and is treated the same as a listed species or subspecies. It is listed, protected, subject to interagency consultation, and recovered just as any other threatened or endangered species or subspecies. A DPS frequently will have its own recovery plan and its own recovery goals. As with a species or subspecies, a DPS recovery program is not required to seek restoration of the animal

throughout the entire geographic area of the listed entity, but only to the point at which it no longer meets the definition of a threatened or endangered species.

Distinct Population Segments and Experimental Populations

The Act does not provide a definition for the term "population." However, the Act uses the term "population" in two different concepts—distinct population segments and experimental populations. These two concepts were added to the original Act at different times and are used in different contexts. The term "distinct population segment" is part of the statutory definition of a "species" and is significant for listing, delisting, and reclassification purposes, under section 4 of the Act. Our Vertebrate Population Policy (61 FR 4722; February 7, 1996) defines a DPS as one or more groups of members of a species or subspecies within a portion of that species' or subspecies' geographic distribution that meets established criteria regarding discreteness and significance. Congress included the DPS concept in the Act, recognizing that a listing, reclassification, or delisting action may, in some circumstances, be more appropriately applied over something less than the entire area in which a species or subspecies is found or was known to occur in order to protect and recover organisms in a more timely and cost-effective manner.

In contrast, Congress added the experimental population concept to give the Secretary another tool to aid in the conservation of "species" (*i.e.*, species, subspecies, or DPSs) that have already been listed under the Act. The Act also requires that an experimental population must be geographically separate from existing populations of the species. The term "population" as used in the experimental population program is necessarily a flexible concept, depending upon the organism involved and its biological requirements for successfully breeding, reproducing, and establishing itself in the reintroduction area.

For purposes of gray wolf reintroduction by means of experimental populations in central Idaho and Yellowstone National Park, we needed to examine the biological characteristics of the species to determine if the reintroduced wolves would be geographically separate from other gray wolf populations. We defined a wolf population to be two breeding pairs, each successfully raising two or more young for two consecutive years in a recovery area (Service 1994a). This wolf population definition was used to evaluate all wolves in the northern U.S. Rocky Mountains to determine if, and where, gray wolf populations might exist. We determined that gray wolves in northwestern Montana qualified as a wolf population under this definition and that this population was geographically separated from the potential experimental population areas. We therefore designated the two experimental population areas and began gray wolf reintroductions to establish the two experimental populations.

Because of these different purposes for experimental populations and distinct population segments, a DPS can contain several experimental populations, or a combination of experimental and nonexperimental populations.

Refer to the *Designation of Distinct Population Segments* section below, for further discussion and analysis of how our Vertebrate Population Policy has been applied in this rule.

F. Currently Designated Nonessential Experimental Populations of Gray Wolves

Section 10(j) of the Act gives the Secretary of the Interior the authority to designate populations of listed species that are reintroduced outside their current range, but within their probable historical range, as "experimental populations" for the purposes of promoting the recovery of those species by establishing additional wild populations. Such a designation increases our flexibility in managing reintroduced populations, because experimental populations are treated as threatened species under the Act. Threatened status, in comparison to endangered status, allows somewhat more liberal issuance of take permits for conservation and educational purposes, imposes fewer permit requirements on recovery activities by cooperating States, and allows the promulgation of special regulations that are consistent with the conservation of the species.

For each experimental population, the Secretary is required to determine whether it is essential to the continued existence of the species. If the Secretary determines that an experimental population is "nonessential," then for the purposes of section 7 of the Act (Interagency Cooperation), the population is treated as a species proposed to be listed as a threatened or endangered species, except when the population occurs within areas of the National Wildlife Refuge System or the National Park System. Proposed species are subject to the advisory section 7(a)(4) conference process rather than the formal section 7(a)(2) consultation process.

The Secretary has designated three nonessential experimental population areas for the gray wolf, and wolves have subsequently been reintroduced into these areas. These nonessential experimental population areas are the Yellowstone Experimental Population Area, the Central Idaho Experimental Population Area, and the Mexican Wolf Experimental Population Area. The first two of these are intended to further the recovery of gray wolves in the northern U.S. Rocky Mountains, and the third is part of our Mexican wolf recovery program, as described in their respective recovery plans (Service 1982, 1987) (Refer to Map 1, after the *Changes from the Proposed Rules* section below.)

The Yellowstone Experimental Population Area consists of that portion of Idaho east of Interstate Highway 15; that portion of Montana that is east of Interstate Highway 15 and south of the Missouri River from Great Falls, Montana, to the eastern Montana border; and all of Wyoming (59 FR 60252; November 22, 1994).

The Central Idaho Experimental Population Area consists of that portion of Idaho that is south of Interstate Highway 90 and west of Interstate 15; and that portion of Montana south of Interstate 90, west of Interstate 15, and south of Highway 12 west of Missoula (59 FR 60266; November 22, 1994).

The special regulations for these two experimental populations allow flexible management of wolves, including authorization for private citizens to take wolves in the act of attacking livestock on private land. These rules also provide a permit process that similarly allows the taking, under certain circumstances, of wolves in the act of attacking livestock grazing on public land. In addition, they allow opportunistic noninjurious harassment of wolves by livestock producers on private and public grazing lands, and designated government employees may perform lethal and nonlethal control efforts to remove problem wolves under specified circumstances.

On January 12, 1998, we established a similar third nonessential experimental population area to reintroduce the Mexican gray wolf into its historical habitat in the southwestern States. The Mexican Gray Wolf Nonessential Experimental Population Area consists of that portion of Arizona lying south of Interstate Highway 40 and north of Interstate Highway 10; that portion of New Mexico lying south of Interstate Highway 40 and north of Interstate Highway 10 in the west and north of the Texas-New Mexico border in the east; and that part of Texas lying north of U.S. Highway 62/180 (63 FR 1752).

This final rule will not affect any of these three existing nonessential experimental populations for gray wolves, nor will it affect the existing special regulations that apply to them.

G. Gray Wolf-Dog Hybrids

The many gray wolf-dog hybrids in North America have no value to gray wolf recovery programs and are not provided the protections of the Act. Wolf-dog hybrids, when they escape from captivity or are intentionally released into the wild, can interfere with gray wolf recovery programs in several ways. They are familiar with humans, so they commonly are attracted to the vicinity of farms and residences, leading to unwarranted fears that they are wild wolves hunting in pastures and yards. In such situations they may exhibit bold behavior patterns and show little fear of humans, leading to human safety concerns. They generally have poor hunting skills; thus, they may resort to preying on domestic animals, while the blame for their depredations is commonly and mistakenly placed on wild wolves. These behaviors, when reported in the media or spread by word of mouth, can erode public support for wolf recovery efforts. In addition, although unlikely, feral wolf-dog hybrids may mate with wild wolves, resulting in the introduction of dog genes into wild wolf populations. For these reasons, this rule does not extend the protections of the Act to gray wolf-dog hybrids, regardless of the geographic location of the capture of their pure wolf ancestors.

In recovery programs for other threatened or endangered species, hybrids and hybridization could perhaps play an important role. This decision to not extend the protections of the Act to gray wolf-dog hybrids should not be taken as an indication of our position on the potential importance of hybrids and hybridization to recovery programs for other species. Determining the importance and treatment under the Act of hybrids requires a species-by-species evaluation.

H. Conservation and Recovery of the Gray Wolf

Understanding the Service's strategy for gray wolf recovery first requires an understanding of the meaning of "recover" and "conserve" under the Act. "Conserve" is defined in the Act itself (section 3(3)) while "recovery" is defined in the Act's implementing regulations at 50 CFR 402.02. Conserve is defined, in part, as "the use of all measures and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." Recovery is defined as "improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act." Essentially, recover and conserve both mean to bring a species to the point at which it no longer needs the protections of the Act, because the species is no longer threatened or endangered.

Important Principles of Conservation Biology

Representation, resiliency, and redundancy are three principles of conservation biology that are generally recognized as being necessary to conserve the biodiversity of an area (Shaffer and Stein 2000). Although the Act is not a biodiversity conservation statute, in some ways it functions as such on a single species level. Thus, we can and should apply these principles when establishing goals for individual species' recovery under the Act.

The principle of representation is the need to preserve "some of everything"—every species, every habitat, and every biotic community—so biodiversity can be maintained. At the species level it also calls for preserving the genetic diversity that remains within a species, in order to maximize the species' ability to cope with short-term environmental variability and to adapt and evolve in response to long-term environmental change.

Redundancy and resiliency both deal with preserving "enough to last," but they address it at distinctly different levels. Redundancy addresses the need for a sufficient number of populations of a species, while resiliency deals with the necessary size (numerical and geographic) of those individual populations that are needed for species' persistence over time. Larger populations are more resilient to environmental changes and other threats to their existence. The redundancy that comes from preserving multiple populations provides additional assurances of species' survival. (In the broader conservation biology context, these two principles are also applied to biotic communities and ecosystems.)

Due to the vast array of life forms that are potentially subject to the protections of the Act, and the variety of physical, biological, and cultural factors acting on them, these three principles must be applied on a species-by-species basis to determine the appropriate recovery goals. For example, addressing the need for redundancy and resiliency for nonmotile organisms, species of limited range (for example, island or insular species), or those species restricted to linear features of the environment (stream or shoreline species) should be expected to result in recovery goals that are quite different from goals developed for habitat generalist, widely distributed, and/or highly mobile species.

Application of These Principles to the Gray Wolf DPSs

Because this rule finalizes three new DPS listings for the gray wolf (see "Designation of Distinct Population Segments" below), we evaluated what is necessary for long-term extinction avoidance in each DPS, and the extent of progress made to date toward that goal in each DPS. This examined whether recovery is underway across a significant portion of each DPS to ensure long-term viability when that recovery is completed. Each DPS evaluation used the principles of conservation biology and focused on the size, number, makeup, and distribution of wolves in the individual DPSs, and the threats manifest there, in order to determine if the gray wolf is in danger of extinction throughout all or a significant portion of the respective DPS.

Eastern DPS

The original Recovery Plan for the Eastern Timber Wolf and the 1992 revision of that plan (Service 1978, 1992a) established and reiterated criteria to identify the point at which long-term population viability would be assured in the eastern United States (Recovery Plans for the gray wolf are discussed in more detail below). Although the 1978 Recovery Plan predated the scientific field of conservation biology, it embodied conservation biology tenets in its recovery criteria, and those criteria were carried forward unchanged in the 1992 revised recovery plan. The Eastern Timber Wolf Recovery Team was subsequently queried by the Service in 1997, and at that time the Eastern Team reviewed the criteria and found them to be adequate and sufficient to ensure long-term population viability (Peterson *in litt.* 1997).

The principles of representation, resiliency, and redundancy are fully incorporated into the recovery criteria developed by the Eastern Timber Wolf Recovery Team. The need to maintain the Minnesota wolf population is believed to be vital, because the remaining genetic diversity of gray

wolves in the eastern United States was carried by the several hundred wolves who survived in the State into the early 1970s. The Eastern Team insisted that the remnant Minnesota wolf population must be maintained and expanded to achieve wolf recovery in the eastern United States, and the successful growth of that remnant population has maximized the representation of that genetic diversity among Midwestern gray wolves. Furthermore, the Eastern Team specified that the Minnesota wolf population would increase to 1250–1400 animals, which would increase the likelihood of maintaining its genetic diversity over the long-term, and would provide the resiliency to reduce the adverse impacts of unpredictable chance demographic and environmental events. The Minnesota wolf population currently is estimated to be double that numerical goal.

The need for redundancy was clearly recognized by the Eastern Team members, and they specified that it be accomplished by establishing a second population of gray wolves in the eastern United States. They identified several potential locations for the second population. To ensure that the second population also had sufficient resiliency to survive chance demographic and environmental fluctuations, the Recovery Teams specified a minimum size that must be maintained for a minimum of five years by the second population. If the second population was isolated from the larger Minnesota wolf population, the recovery criteria required that the second population contain at least 200 wolves for a minimum of 5 years. However, if it was near the Minnesota wolf population, the 2 populations would function as a metapopulation rather than as 2 separate and isolated populations; in that case the second population would be viable if it maintained 100 wolves for at least 5 years. A metapopulation is a conservation biology concept whereby the spatial distribution of a population has a major influence on its viability. In nature many populations exist as partially isolated sets of subpopulations-termed "metapopulations." A metapopulation is widely recognized by conservation biologists as being more secure over the long-term than are several isolated populations that contain the same total number of packs and individuals (Service 1994a, Appendix 9, Dr. Steven Fritts). This is because adverse affects experienced by one of its subpopulations resulting from genetic drift, demographic shifts, and local environmental fluctuations can be countered by occasional influxes of individuals and their genetic diversity from the other components of the metapopulation.

The close proximity to the larger Minnesota population would allow wolves to move between the two populations and would provide substantial genetic and demographic support for the smaller second population. Therefore, the Recovery Team specified a lower recovery goal of 100 wolves if a second population would develop in a location that would allow it to be closely tied to (that is, less than 200 miles from) the Minnesota wolf population. Such a second wolf population has developed in Wisconsin and the adjacent Upper Peninsula of Michigan. This second population is less than 200 miles from the Minnesota wolf population, and it has had a late winter population exceeding 100 animals since 1994.

As described elsewhere in this final rule, there is no convincing evidence in recent decades of another wild gray wolf population in the United States east of Michigan, so the wolves in the western Great Lakes States represents all the known gray wolf genetic diversity found in the Eastern DPS. In other words, the area in the western Great Lakes States where the wolf currently exists represents the entire range of the species within the Eastern DPS. Furthermore, the number of wolves in the Eastern DPS greatly exceeds the recovery goals of (1) a secure wolf population in Minnesota and (2) a second population of 100 wolves for 5 successive years, and thus contains sufficient numbers and distribution (resiliency and redundancy) to ensure the long-term survival of gray wolves within the DPS. The wolf's progress toward recovery in the Eastern DPS, together with the threats that remain to the wolf within the DPS, indicates that the gray wolf is not in danger of extinction in its entire range within the DPS. Moreover, the progress towards recovery of each of the two populations that comprise the metapopulation within the western Great Lakes States demonstrates that the species is not in danger of extinction in any significant portion of the range of the species within the DPS. We therefore conclude that gray wolves are no longer properly classified as endangered in the Eastern DPS.

Western DPS

Similarly, the reclassification and recovery criteria that were found in the Northern Rocky Mountain Wolf Recovery Plan (Service 1987) have been subsequently revised following peer review (Bangs 2002) to provide sufficient representation, resiliency, and redundancy to ensure the species is no longer endangered in the Western DPS when those criteria are met. Large numbers of wolves in three widely-spaced locations in the Northern U.S. Rockies achieve the desired resiliency and redundancy. Furthermore, the recovery program is based on 3 founder populations from 3 different Canadian source populations having high levels of genetic diversity (Forbes and Boyd 1997, Fritts *et al.* 1997). This has achieved sufficient representation of the genetic diversity from the closest thriving wolf populations in Canada, and allowed the Northern U.S. Rockies wolves to benefit from the local adaptions of those source populations. Additionally, the northwest Montana population remains connected to the Canadian wolf population, providing a conduit for continuing genetic exchange with wolves farther to the north. This connection is exemplified by wolves such as "Opal," which was radio collared in Banff National Park in Alberta, Canada, and subsequently moved south and successfully raised pups as the alpha female of the Boulder Pack in northwestern Montana.

The three initially isolated gray wolf populations in northwestern Montana, central Idaho, and the Greater Yellowstone Area have expanded in range and increased in numbers to the point that they are no longer isolated from each other and the movement of individual wolves from one to another is becoming more common. Wolf dispersal and interbreeding has been documented between all three core recovery areas within the northern Rocky Mountains (see *Dispersal of Western Gray Wolves*). They are now functioning as a large metapopulation rather than as three isolated populations. The revised recovery criteria specify that at least 30 packs, comprising at least 300 wolves, should exist across the metapopulation's range for a minimum of 3 years. Twenty packs (200 or more wolves) across the metapopulation for 3 years would indicate the species is no longer endangered in the DPS and should be considered for reclassification to threatened status. There have been at least 300 wolves in a minimum of 30 packs since the end of 2000, and at the end of 2001 there were 563 wolves in 34 packs in the Northern U.S. Rockies. There have been over 200 wolves in at least 20 packs since the end of 1997.

The gray wolf's substantial success in meeting the revised recovery criteria for the Northern Rocky Mountains area ensures the wolf's long-term survival within its range in the Western DPS (*i.e.*, the area inhabited by the metapopulation of gray wolves in the Northern Rocky Mountains). We conclude, based both on the wolf's recovery progress, and on our assessment of the threats that will remain once the wolf is reclassified as threatened (including the continuation of the nonessential experimental population designation and its special regulations), that the gray wolf is not in danger of extinction throughout its range within the Western DPS. Because the three initially isolated populations in the Western DPS now function as a single large metapopulation, and because there is no other population of wolves within the DPS, this conclusion applies to all parts of the wolf's range in the DPS, and so we also conclude that the wolf is not in danger of extinction within any significant portion of its range in the DPS. The gray wolf therefore is no longer endangered throughout all or a significant portion of its range in the Western DPS.

Southwestern DPS

The recovery program for the Southwestern (Mexican) gray wolf is based upon reintroductions of captive reared Mexican wolves to portions of their historical range in the Southwestern U.S. and Mexico. These captive-reared wolves are the products of a carefully managed breeding program designed to preserve the remaining genetic diversity of the historical wolves in those areas and maximize the genetic diversity in the reintroduced population. This propagation and reintroduction program ensures that the principle of representation is achieved in the Mexican wolf recovery program.

At this point, the Mexican wolf recovery program lacks a recovery goal. A prime objective of 100 self-sustaining wolves in the wild was set in the 1982 Mexican Wolf Recovery Plan (Service 1982), but the Plan states that goal is preliminary, and is focused more on assuring the survival of wolves in the Southwest and Mexico, rather than on recovering and delisting them. As more is learned about wolves and their conservation in the Southwest, the Service will endeavor to develop reclassification (endangered to threatened) and delisting criteria for the Mexican wolf. When delisting criteria are developed, they too will incorporate the principles of representation, resiliency, and redundancy to assure the long-term survival of the Mexican wolf.

However, at this time we believe their geographic distribution, low numbers and population density, and relatively low rate of population increase indicate that the Mexican wolf recovery program has not achieved sufficient redundancy and resiliency to assure the long-term survival of the gray wolf in the Southwest and Mexico. We conclude that the gray wolf continues to be in danger of extinction throughout all or a significant portion of its range in the foreseeable future in the Southwestern DPS, and it remains properly classified as endangered in the DPS except where part of a nonessential experimental population.

I. Gray Wolf Recovery Plans

Section 4(f) of the Act directs us to develop and implement recovery plans for listed species. In some cases, we appoint recovery teams of experts to assist in the writing of recovery plans and oversight of subsequent recovery efforts. Once a species no longer meets the definition of endangered or threatened it is considered to be recovered and must be delisted. Therefore, the restoration of a species throughout its historical range, or even throughout all the remaining suitable habitat, may not be necessary before a species may be delisted.

We initiated recovery programs for the originally listed subspecies of gray wolves by appointing recovery teams and developing and implementing recovery plans. Recovery plans describe criteria that are used to assess a species' progress toward recovery, contain specific prioritized actions believed necessary to achieve the recovery criteria and objectives, and identify the most appropriate parties to implement the recovery actions.

Recovery plans contain criteria that are intended to trigger our consideration of the need to either reclassify (from endangered to threatened) or to delist a species due to improvements in its status. Criteria are based upon factors that can be measured or otherwise objectively evaluated to document improvements in a species' biological status. Examples of the type of criteria typically used are numbers of individuals, numbers and distribution of subgroups or populations of the species, rates of productivity of individuals and/or populations, protection of habitat, and reduction or elimination of threats to the species and its habitat.

The reclassification and recovery criteria contained in our recovery plans must be viewed in terms of the other currently available information. In some cases, new information will demonstrate that reclassification or delisting is appropriate independent of the information in the recovery plan. For example, our knowledge of a species and its conservation needs may be incomplete when the recovery plan is prepared. The criteria are based on the best available scientific data and analysis at the time the plan is developed. However, as recovery progresses and our knowledge of a species increases, we may need to reinterpret the original recovery goals, or even add or drop one or more recovery criteria. If appropriate, and if funding and timing allow, we may revise or update recovery plans to reflect our new knowledge and modified recovery criteria. However, revision of recovery plans or recovery criteria is not a required precursor to species reclassification or delisting.

The first gray wolf recovery plan was written for the eastern timber wolf, and it was approved on May 2, 1978 (Service 1978). This recovery plan was later revised and was approved on January 31, 1992 (Service 1992a). The 1978 Recovery Plan for the Eastern Timber Wolf (Eastern Plan) and its revision were intended to recover the eastern timber wolf, *Canus lupus lycaon*, believed at that time to be the only gray wolf subspecies that historically inhabited the United States east of the Great Plains. Thus, the Eastern Plan covers a geographic triangle extending from Minnesota to Maine and into northeastern Florida. The recovery plan for the eastern timber wolf was based on the best available information on wolf taxonomy at the time of its publication. Since the publication of those recovery plans, various studies have produced conflicting results regarding the identity of the wolf that historically occupied the eastern States. Therefore, this recovery program has focused on recovering the gray wolf population that survived in, and has expanded outward from, northeastern Minnesota, regardless of its subspecific identity. (See the *Taxonomy of Gray Wolves in the Eastern United States* section above).

The Northern Rocky Mountain Wolf Recovery Plan (Rocky Mountain Plan) was approved in 1980 and revised in 1987 (Service 1980, 1987). The Rocky Mountain Plan states in its introduction that it should be understood to refer to "gray wolves in the northern Rocky Mountains of the contiguous 48 States, rather than to a specific subspecies." The Rocky Mountain Plan focuses recovery efforts in Idaho, most of Montana, and Wyoming.

The Mexican Wolf Recovery Plan was approved in 1982 (Service 1982). Based on a review of Southwestern (Mexican) subspecies of the gray wolf by Bogan and Mehlhop (1983), the plan combines the historical ranges of *Canus lupus baileyi, C. l. monstrabilis*, and the

presumed extinct *C. l. mogollonensis* (which historically occurred in parts of New Mexico and Arizona) to define the portions of Arizona, New Mexico, Texas, and Mexico where recovery of the Mexican wolf would be appropriate.

J. Recovery Progress of the Eastern Gray Wolf

The 1992 revised Eastern Plan has two delisting criteria. The first criterion states that the survival of the wolf in Minnesota must be assured. We, and the Eastern Timber Wolf Recovery Team (Rolf Peterson, Eastern Timber Wolf Recovery Team, *in litt.* 1997, 1998, 1999a, 1999b), believe that this first delisting criterion remains valid. It identifies a need for reasonable assurances that future State and tribal wolf management practices and protection will maintain a viable recovered population of gray wolves within the borders of Minnesota for the foreseeable future. While there is no specific numerical recovery criterion for the Minnesota wolf population, the Eastern Plan identified State subgoals for use by land managers and planners. The Eastern Plan's subgoal for Minnesota is 1,251 to 1,400 wolves.

The second delisting criterion in the Eastern Plan states that at least one viable wolf population should be reestablished within the historical range of the eastern timber wolf outside of Minnesota and Isle Royale, Michigan. The Eastern Plan provides two options for reestablishing this second viable wolf population. If it is located more than 100 miles from the Minnesota wolf population, it would be considered "isolated," and the frequency of movement of individuals and genetic material from one population to the other would likely be low or nonexistent. Such an isolated population, in order to be self-sustaining, should consist of at least 200 wolves for at least 5 years (based upon late winter population estimates) to be considered viable. Alternatively, if the second population is located within 100 miles of a self-sustaining wolf population (for example, the Minnesota wolf population), a reestablished population having a minimum of 100 wolves for at least 5 years would be considered viable. Such a smaller population would be considered to be viable, because its proximity would allow frequent immigration of Minnesota wolves to supplement it numerically and genetically.

The Eastern Plan does not specify where in the eastern United States the second population should be reestablished. Therefore, the second population could be located anywhere within the triangular Minnesota-Maine-Florida land area covered by the Eastern plan, except on Isle Royale, Michigan and within Minnesota. While the 1978 Eastern Plan identified potential gray wolf restoration areas throughout the eastern States, extending as far south as the Great Smoky Mountains and adjacent areas in Tennessee, North Carolina, and Georgia, the revised 1992 Eastern Plan dropped from consideration the more southern potential restoration areas, because recovery efforts for the red wolf were being initiated in those areas (Service 1978, 1992a).

The 1992 Eastern Plan recommends reclassifying wolves in Wisconsin and Michigan from endangered to threatened status separately, recognizing that progress towards recovery may occur at differing rates in these two States. The Plan specifies that wolves in Wisconsin could be reclassified to threatened if the population within the State remained at or above 80 wolves (late winter estimates) for 3 consecutive years. The Plan does not contain a reclassification criterion for Michigan wolves. Instead, it states that if Wisconsin wolves reached their reclassification criterion, consideration should also be given to reclassifying Michigan wolves. However, with the subsequent increase in Michigan wolf numbers, it has frequently, but unofficially, been assumed that the "80 wolves for 3 years" criterion also would be applied to Michigan. In other words, each State could be considered for reclassification if its wolf population reached 80 individuals or more for 3 successive years. The Eastern Timber Wolf Recovery Team used these criteria in its recommendation that the gray wolf in the western Great Lakes States be reclassified to threatened as soon as possible (Peterson *in litt.* 1997, 1998, 1999a, 1999b).

The Eastern Timber Wolf Recovery Team clarified the second population delisting criterion, which considers the wolves in northern Wisconsin and the adjacent Upper Peninsula of Michigan to be a single population. The Recovery Team stated that the numerical delisting criterion for the Wisconsin-Michigan population will be achieved when 6 successive late winter wolf surveys document that the population equaled or exceeded 100 wolves (excluding Isle Royale wolves) for 5 consecutive years (Rolf Peterson, *in litt.* 1998). Because the Wisconsin-Michigan wolf population was first known to have exceeded 100 wolves in the late winter 1993–94 survey, the numerical delisting criterion was satisfied in early 1999, based upon late winter 1998–99 data (Beyer *et al.* 2001, Wydeven *et al.* 1999).

The Eastern Plan has no goals or criteria for the gray wolf population on the 546-sq km (210-sq mi) Isle Royale, Michigan. This small and isolated wolf population is not expected to make a significant numerical contribution to gray wolf recovery, although long-term research on this wolf population has added a great deal to our knowledge of the species.

Over the last several years, the Eastern Timber Wolf Recovery Team has consistently recommended that we designate a DPS in the western Great Lakes area and proceed with reclassification of wolves in that DPS to threatened status as soon as possible. The Eastern Team recommended that the DPS include a wide buffer around the existing populations of wolves in Minnesota, Wisconsin, and Michigan. This buffer was described as lands that may not be regularly occupied by wolves but which may be temporarily used by dispersing wolves. Thus, the Eastern Team suggested the DPS also include the States of North Dakota, South Dakota, Iowa, Illinois, Indiana, and Ohio (Peterson *in litt.* 1997, 1998, 1999a, 1999b).

Minnesota

During the pre-1965 period of wolf bounties and legal public trapping, wolves persisted in the more remote northeastern areas of Minnesota. Estimates of population levels of Minnesota wolves prior to listing under the Act in 1974 include 450 to 700 in 1950–53 (Fuller *et al.* 1992, Stenlund 1955), 350 to 700 in 1963 (Cahalane 1964), 750 in 1970 (Leirfallom 1970), 736 to 950 in 1971–72 (Fuller *et al.* 1992), and 500 to 1,000 in 1973 (Mech and Rausch 1975). While these estimates were based upon varying methodologies and are not directly comparable, they all agree in estimating the wolf population in Minnesota, the only significant population in the Lower 48 States during those time-periods, at 1,000 or fewer animals preceding their listing under the Act.

Various population estimates in Minnesota have indicated increasing numbers after the wolf was listed as endangered under the Act. A population of 1,000 to 1,200 was estimated by L. David Mech for 1976 (Service 1978), and 1,235 wolves in 138 packs were estimated for the winter of 1978–79 (Berg and Kuehn 1982).

In 1988–89, the Minnesota Department of Natural Resources (MN DNR) repeated the 1978–79 survey, and also used a second method to estimate wolf numbers in the State. The resulting

independent estimates were 1,500 and 1,750 wolves in at least 233 packs (Fuller *et al.* 1992).

During the winter of 1997–98, a Statewide wolf population and distribution survey was repeated by MN DNR, using methods similar to those of the two previous surveys. Field staff of Federal, State, tribal, and county land management agencies and wood products companies were queried to identify occupied wolf range in Minnesota. Data from five concurrent radio telemetry studies tracking 36 packs, representative of the entire Minnesota wolf range, were used to determine average pack size and territory area. Those figures were then used to calculate a Statewide estimate of pack numbers and the overall wolf population in the occupied range, with single (nonpack) wolves factored into the estimate (Berg and Benson 1999).

The 1997–98 survey concluded that approximately 2,445 wolves existed in about 385 packs in Minnesota during that winter period. This figure indicates the continued growth of the Minnesota wolf population at an average rate of about 3.7 percent annually. The Minnesota wolf population has shown approximately this average annual rate of increase since 1970 (Berg and Benson 1999, Fuller *et al.* 1992). No rigorous survey of the Minnesota wolf population has been conducted since the winter of 1997–98, but biologists generally accept that the population has increased, and will continue to increase, perhaps at a slower rate and with occasional fluctuations (Mech 1998, Paul 2001).

Simultaneous with the increase in wolf numbers in Minnesota there has been a parallel expansion of the area in which wolves are routinely found. During 1948–53 the major wolf range was estimated to be about 31,080 sq km (11,954 sq mi) (Stenlund 1955). A 1970 questionnaire survey resulted in an estimated wolf range of 38,400 sq km (14,769 sq mi) (calculated by Fuller *et al.* 1992 from Leirfallom 1970). Fuller *et al.* (1992), using data from Berg and Kuehn (1982), estimated that Minnesota primary wolf range included 36,500 sq km (14,038 sq mi) during winter 1978–79. By 1982–83, pairs or breeding packs of wolves were estimated to occupy an area of 57,050 sq km (22,000 sq mi) in northern Minnesota (Mech *et al.* 1988). That study also identified an additional 40,500 sq km (15,577 sq mi) of peripheral range, where habitat appeared suitable but no wolves or only lone wolves existed. The 1988–89 study produced an estimate of 60,200 sq km (23,165 sq mi) as the contiguous wolf range at that time in Minnesota (Fuller *et al.* 1992), an increase of 65 percent over the primary range calculated for 1978–79. The 1997–98 study concluded that the contiguous wolf range had expanded to 88,325 sq km (33,971 sq mi), a 47 percent increase in 9 years (Berg and Benson 1999). The wolf population in Minnesota has recovered to the point that its contiguous range covered approximately 40 percent of the State during 1997–98.

Wisconsin

Wolves were considered to have been extirpated from Wisconsin by 1960. No formal attempts were made to monitor the State's wolf population from 1960 until 1979. From 1960 through 1975 individual wolves and an occasional wolf pair were reported. However, no evidence exists of any wolf reproduction occurring in Wisconsin, and the wolves that were reported may have been dispersing animals from Minnesota.

Wolf population monitoring by the WI DNR began in 1979 and estimated a Statewide population of 25 wolves at that time. This population remained relatively stable for several years, then declined slightly to approximately 15 to 19 wolves in the mid-1980s.

In the late 1980s, the Wisconsin wolf population began an increase that continues today. WI DNR intensively monitors its wolf population, using a combination of aerial, ground, and satellite radio telemetry, snow tracking, and wolf sign surveys (Wydeven *et al.* 1995, 2001a). The number of wolves in each pack is estimated based on the totality of ground and aerial observations made of the individual packs over the winter. During the winter of 2000–01, 30 of Wisconsin's 66 wolf packs (45 percent) had members carrying active radio transmitters much of the season. Twenty-seven of these monitored wolves were located 20 or more times during the mid-September to mid-April period. Five additional radio-tracked wolves were loners, and one was in an adjacent Minnesota pack. Minimum wolf population estimates (late-winter counts) for 1994 through 2001 are 57, 83, 99, 148, 178, 205, 248, and 257 animals, comprising 14, 18, 28, 35, 47, 57, 66, and 66 packs respectively (Wydeven *et al.* 2001a). WI DNR preliminarily estimated that about 320 wolves in 70 to 80 packs were in the State in late winter 2001–2002 (WI DNR 2002, Wydeven *et al.* 2002). Because the monitoring methods focus on wolf packs, it is believed that lone wolves are undercounted in Wisconsin, and that, as a result, these population estimates are probably slight underestimates of the actual wolf population within the State.

In 1995, wolves were first documented in Jackson County, Wisconsin, an area well to the south of the northern Wisconsin area occupied by other Wisconsin wolf packs. The number of wolves in this central Wisconsin area has dramatically expanded since that time. During the winter of 2000–2001, there were 34 wolves in 9 packs, plus 3 lone wolves, in and around Jackson County (Wydeven *et al.* 2001a).

During the winter of 2000–2001, 10 wolves occurred on Native American reservations in Wisconsin, and this increased to at least 13 wolves in the winter of 2001–2002 (WI DNR 2002, Wydeven pers. comm. 2002). These animals were on the Bad River (8) and Lac Courte Oreilles Reservations (5). There also is evidence of individual wolves on the Lac du Flambeau and Menominee Reservations, with a high likelihood of wolf packs developing on these reservation in the near future (Wydeven pers. comm. 2002).

Wolf numbers in Wisconsin alone greatly surpassed the second population goal of 200 animals identified in the Eastern Plan and exceeded its reclassification criterion several years ago. Although population growth nearly stalled between 1999–2000 and 2000–2001, a resumption of the steady upward trend was again quite apparent in the preliminary late-winter 2001–2002 estimate of 320. (Refer to the *Disease or predation* section below for additional discussion.)

Michigan

Michigan wolves were extirpated as a reproducing population long before they were listed as endangered in 1974. Prior to 1991, and excluding Isle Royale, the last known breeding population of wild Michigan wolves occurred in the mid-1950s. As wolves began to reoccupy northern Wisconsin, the Michigan Department of Natural Resources (MI DNR) began noting single wolves at various locations in the Upper Peninsula of Michigan. In the late 1980s, a wolf pair was verified in the central Upper Peninsula and produced pups in 1991. Since that time, wolf packs have spread throughout the Upper Peninsula, with immigration occurring from both Wisconsin on the west and Ontario on the east. They now are found in every county of the Upper Peninsula.

The MI DNR annually monitors the wolf population in the Upper Peninsula by intensive late winter tracking surveys that focus on each pack. Pack locations are derived from previous surveys, citizen reports, and ground tracking of radio-collared wolves. During the winter of 2000–2001 at least 50 wolf packs

were resident in the Upper Peninsula. Approximately 40 percent of these packs had members with active radio tracking collars (Hammill pers. comm. 2002.) Care is taken to avoid double-counting wolves, and a variety of evidence is used to distinguish adjacent packs and accurately count their members (Beyer *et al.* 2001).

These annual surveys have documented the following minimum late winter estimates of wolves occurring in the Upper Peninsula from 1994 through 2001: 57 wolves in 1994, 80 in 1995, 116 in 1996, 112 in 1997, 140 in 1998, 174 in 1999, 216 in 2000, and 249 in 2001. In recent years the annual rate of increase has been about 24 percent (MI DNR 1997, 1999a, 2001). The MI DNR estimated a minimum of 278 wolves in the Upper Peninsula in late winter 2001–2002 (MI DNR 2002).

The Upper Peninsula Michigan wolf population has exceeded the unofficial criterion of 80 animals for reclassification from endangered to threatened status. Similar to the situation in Wisconsin, the Upper Peninsula wolf population by itself has surpassed the goal of 200 wolves for a second population, as specified in the Eastern Plan.

During the winter of 1997–98, one wolf pack composed of four animals lived on lands of the Keewenaw Bay Indian Community. No other wolves are known to be primarily using tribal lands in Michigan (Hammill *in litt.* 1998).

The wolf population of Isle Royale National Park, Michigan, is not considered to be an important factor in the recovery or long-term survival of wolves in the western Great Lakes States. This population is small, varying from 12 to 29 animals over the last 15 years, and is almost completely isolated from other wolf populations (Peterson *et al.* 1998, pers. comm. 1999). For these reasons, the Eastern Plan does not include these wolves in its recovery criteria and recommends only the continuation of research and complete protection for these wolves (Service 1992a).

Although there have been reports of wolf sightings in the Lower Peninsula of Michigan, including a 1997 report of 2 large canids believed to be wolves on the ice west of the Mackinaw Bridge, there is no evidence that there are resident wolves in the Lower Peninsula. However, recognizing the likelihood that small numbers of gray wolves will eventually move into the Lower Peninsula, MI DNR has begun a revision of its Wolf Management Plan to incorporate provisions for wolf management there (see issue U, "State Wolf Management Plans").

Northeastern United States

Wolves were extirpated from the northeastern United States by 1900. Few credible observations of wolves were reported in the Northeast during most of the 20th century. However, in 1993 a single female wolf was killed in western Maine, and in 1996 a second wolf or wolf-like canid was trapped and killed in central Maine. Another wolf-like canid was mistaken for a coyote and killed in 1997 in northern Vermont. In early 2002 a 29 kg (64 lb) apparent wolf was killed by a trapper in southeastern Quebec, 20 miles from the New Hampshire border; tissue samples are undergoing genetic analysis. These records and other observations and signs of large, unidentified canids in Maine during recent years led to speculation that wolves may be dispersing into the northeastern United States from nearby occupied habitat in Canada. Many of the characteristics of the unidentified canids are consistent with an animal intermediate between the eastern coyote and the gray wolf. Private conservation organizations, the Maine Department of Inland Fisheries and Wildlife, the New York Department of Environmental Conservation, and the Service are continuing to seek evidence of the presence of wild wolves in northern New York and New England. However, at this time there is no firm evidence that a breeding population of wolves or wolf-like animals exists in the northeastern United States.

A recent Geographic Information System analysis evaluated the potential for wolf dispersal from southern Quebec and Ontario into the northeastern United States (Harrison and Chapin 1998). The study also estimated the amount of suitable wolf habitat present in northern New York and other New England States, and with Wydeven *et al.* (1998) evaluated the likelihood of natural wolf colonization from existing occupied wolf range in Canada. These studies, and Mladenoff and Sickley (1998), found that sufficient suitable wolf habitat is available in the Adirondack Park region of New York and in Maine and northern New Hampshire. However, the New York habitat is relatively isolated, and the authors concluded that natural recolonization is unlikely to occur there. Furthermore, while there are relatively narrow potential dispersal corridors connecting expansive wolf habitat in Maine and New Hampshire with existing wolf populations north of Quebec City, there are significant barriers to dispersal, including about 18 km (11 mi) of the St. Lawrence River, an adjacent four lane highway, rail lines, and dense human developments that may preclude the movement of a sufficient number of wolves from Canada into Maine (Harrison and Chapin 1997).

In the study on the feasibility of wolf reintroduction in the Adirondacks, Paquet *et al.* (1999) found that suitable habitat for sustaining a small population of gray wolves is present, but that habitat fragmentation within the Adirondack Park and the lack of linkages to occupied wolf areas to the north suggest that wolves would not persist there without periodic human intervention. As a result, the authors conclude that the ecological conditions in the Adirondack Park dictate against a successful reintroduction of gray wolves.

Other Areas in the Eastern United States

The increasing numbers of wolves in Minnesota and the accompanying expansion of their range westward and southwestward in the State have led to an increase in dispersing, mostly young, wolves that have been documented in North and South Dakota in recent years. An examination of skull morphology of North and South Dakota wolves indicates that of eight examined, seven likely had dispersed from Minnesota; the eighth probably came from Manitoba, Canada (Licht and Fritts 1994). Genetic analysis of an additional gray wolf killed in 2001 in extreme northwestern South Dakota indicates that it, too, originated from the Minnesota-Wisconsin-Michigan wolf population (Straughan and Fain 2002). The low potential for the establishment of a viable and self-sustaining wolf population in North and South Dakota, and the belief that all or most wolves in the Dakotas are biologically part of the Minnesota-Wisconsin-Michigan wolf population, leads us to conclude that any wolves in these States should be included in the Eastern Gray Wolf DPS.

In October 2001, a wolf was killed in north-central Missouri by a farmer who believed it was a coyote. The wolf's ear tag identified it as having originated from the western portion of Michigan's Upper Peninsula, where it had been captured as a juvenile in July of 1999.

Wolves like these and others described below in the Western DPS are expected to continue to disperse from the core recovery populations and move into areas where wolf numbers are extremely low or nonexistent. Unless they return to a core recovery population and join or start a pack there, they are unlikely to contribute to wolf recovery. While it is possible for them to disperse and encounter another wolf, mate, and even reproduce,

throughout much of the Midwest the lack of large expanses of unfragmented public land will make it difficult for wolf packs to persist in new areas without causing significant conflicts with agricultural and other human activities.

Because gray wolf recovery in the eastern United States can be achieved by restoring the species to Minnesota, Wisconsin, and Michigan, we do not intend to undertake wolf recovery programs in other areas of the Midwest. However, we may provide technical assistance to States and tribes who wish to develop wolf recovery plans beyond those which we have undertaken.

K. Recovery Progress of the Rocky Mountain Gray Wolf

In 1974, an interagency wolf recovery team was formed, and it completed the Northern Rocky Mountain Wolf Recovery Plan in 1980 (Service 1980). The Rocky Mountain Plan focuses wolf recovery efforts on the large contiguous blocks of public land from western Wyoming through Montana to the Canadian border.

The revised Rocky Mountain Recovery Plan (Service 1987) identifies a recovery criterion of 10 breeding pairs of wolves (defined as a male and female capable of reproduction) for 3 consecutive years in each of the 3 recovery areas—(1) northwestern Montana (Glacier National Park; the Great Bear, Bob Marshall, and Lincoln Scapegoat Wilderness Areas; and adjacent public lands), (2) central Idaho (Selway-Bitterroot, Gospel Hump, Frank Church River of No Return, and Sawtooth Wilderness Areas; and adjacent, mostly Federal, lands), and (3) the Yellowstone National Park area (including the Absaroka-Beartooth, North Absaroka, Washakie, and Teton Wilderness Areas; and adjacent public lands). The Plan states that if one of these recovery areas maintains a population of 10 breeding pairs for 3 successive years, wolves in that recovery area can be reclassified to threatened status. If 2 recovery areas maintain 10 breeding pairs (totaling about 200 adult wolves) for 3 successive years, gray wolves across the coverage area of the Rocky Mountain Plan can be reclassified to threatened status. It also states that if all 3 recovery areas maintain 10 breeding pairs for 3 successive years, the Northern Rocky Mountain wolf population can be considered as fully recovered and can be delisted. The wolf population would be about 300 adult wolves upon attainment of full recovery. The Plan also recommends that wolves be reintroduced into the Yellowstone National Park area as an experimental population. Additionally, if natural recovery has not resulted in at least two packs becoming established in central Idaho within 5 years, the Rocky Mountain Plan states that other measures, including reintroduction, would be considered to recover wolves in that area. The goals identified in the Rocky Mountain Plan are intended to ensure a well distributed and viable population in the Rocky Mountains, goals that could be met in a variety of ways while still adhering to the "biological intent" of the recovery plan.

Gray wolf populations were eliminated from Montana, Idaho, and Wyoming, as well as adjacent southwestern Canada by the 1930s (Young and Goldman 1944). After human-caused mortality of wolves in southwestern Canada was regulated in the 1960s, populations expanded southward (Carbyn 1983). Dispersing individuals occasionally reached the northern Rocky Mountains of the United States (Ream and Mattson 1982, Nowak 1983), but lacked legal protection there until 1974 when they were listed as endangered.

In 1982, a wolf pack from Canada began to occupy Glacier National Park along the United States-Canada border. In 1986, the first litter of pups documented in over 50 years was born in the Park. In recognition of the ongoing natural recovery of wolves arising from these Canadian dispersers, the Rocky Mountain Plan was revised in 1987 (Service 1987). The revised Rocky Mountain Plan recommends that recovery be focused in areas with large blocks of public land, abundant native ungulates, and minimal livestock. Three recovery areas were identified—northwestern Montana, central Idaho, and the Greater Yellowstone Area. Promotion of natural recovery was advocated for Montana and Idaho (unless no breeding pairs formed in Idaho within 5 years), but recovery in the Yellowstone area was believed to require a reintroduction program.

By 1989, we formed an interagency wolf working group, composed of Federal, State, and tribal agency personnel. The group conducted four basic recovery tasks, in addition to the standard enforcement functions associated with any take of listed species. These tasks were—(1) monitor wolf distribution and numbers, (2) control wolves that attacked livestock by either moving or killing them, (3) research wolves' relationships to ungulate prey, livestock, and people, and (4) provide accurate information to the public through reports and mass media so that people could develop their opinions about wolves and wolf management from an informed perspective.

In 1995 and 1996, we reintroduced wolves from southwestern Canada to remote public lands in central Idaho and Yellowstone National Park (Bangs and Fritts 1996, Fritts *et al.* 1997, Bangs *et al.* 1998). We designated these wolves as nonessential experimental populations to increase management flexibility and address local and State concerns (59 FR 60252 and 60266; November 22, 1994). Wolves in northwestern Montana remain listed as endangered, the most protective category under the Act; they are not included within the nonessential experimental population areas. (Refer to the *Currently Designated Nonessential Experimental Populations of Gray Wolves* section above, for additional details.)

The reintroduction of wolves to Yellowstone National Park and central Idaho in 1995 and 1996 greatly expanded the numbers and distribution of wolves in the northern Rocky Mountains of the United States. Because of the reintroduction, wolves soon became established throughout central Idaho and the Greater Yellowstone Area. In 1995, an estimated 8 breeding pairs (using the Environmental Impact Statement (EIS) definition of a male and female successfully raising 2 pups until December 31), within a total population of about 101 individual wolves, produced pups in the northern Rocky Mountains. By 1996, a total population of 152 wolves containing 14 breeding pairs were producing pups. In 1997, 213 wolves with 20 breeding pairs produced pups. In 1998, there were 275 wolves and 21 breeding pairs. In 1999 there were 322 wolves with 24 breeding pairs. December 1999 ended the third successive year in which over 20 wolf breeding pairs successfully produced pups in the northern U.S. Rocky Mountains. In 2000 there were 433 wolves with 30 breeding pairs. As of December 2001 the wolf population was about 563 wolves, with 34 breeding pairs producing pups (Service *et al.* 2002).

The presence of 20 breeding pairs (using the EIS definition of a male and female successfully raising 2 pups) distributed in 3 recovery areas for 3 successive years, exceeded the biological criteria of having 10 breeding pairs (defining as a male and female capable of reproduction) in only 2 recovery areas as recommended in the 1987 recovery plan. For this reason the Service proposed to reclassify the wolf population in the northern Rocky Mountains and adjacent States in July

2000. Because the wolf population has continued to expand since that time, it no longer warrants listing as endangered.

Northwestern Montana

Reproduction first occurred in northwestern Montana in 1986. The natural ability of wolves to find and quickly recolonize empty habitat and the interagency recovery program combined to effectively promote an increase in wolf numbers. By 1993 the number of wolves had grown to about 55 wolves in 4 packs. However, since 1993 the number of breeding groups and number of wolves has slowed or perhaps stabilized, varying from 5 to 7 packs and from 48 to 84 wolves. The reasons for this are unknown, but are being investigated. The lack of continuing steady growth in documented wolf numbers may be due to a dramatic reduction of white-tailed deer numbers throughout northwestern Montana (Caroline Sime, Montana Dept. Fish, Wildlife and Parks, pers. comm. 1998) due to the severe winter of 1996–97, which we believe was responsible for the record high level of livestock depredations and correspondingly high level of wolf control in northwestern Montana during summer 1997. Our 1998 estimate was a minimum of 49 wolves in 5 reproducing packs. In 1999, and again in 2000, 6 breeding pairs appear to have produced pups, and the northwestern Montana population increased to about 63 wolves. In 2001, there were an estimated 84 wolves in 7 breeding pairs (Service *et al.* 2002).

Wolf conflicts with livestock have increased with the growing wolf population and with fluctuations in prey populations. For example, in 1997, following a severe winter that reduced white-tailed deer populations, wolf conflicts with livestock increased dramatically. That year alone accounted for nearly 50 percent of all the wolf livestock depredations that were confirmed and subsequent lethal wolf control actions that were taken in northwestern Montana during the period 1987–1999 (Bangs *et al.* 1998). Wolf numbers should increase as prey numbers rebound, but, for now, the need for wolf control measures has subsided. Unlike Yellowstone National Park or the central Idaho Wilderness, northwestern Montana lacks a core refugia that also contains overwintering ungulates. Therefore, wolf numbers are not ever likely to be as high in northwestern Montana as they are in central Idaho and northwest Wyoming.

Central Idaho

In January 1995, 15 young adult wolves captured in Alberta, Canada, were released in central Idaho (Bangs and Fritts 1996, Fritts *et al.* 1997, Bangs *et al.* 1998). During January 1996, an additional 20 wolves from British Columbia were released. In 1998 the population consisted of a minimum of 114 wolves, including 10 packs that produced pups (Bangs *et al.* 1998). In 1999 it had grown to about 141 wolves in 10 reproducing packs. By 2000 Idaho had 192 wolves in 10 breeding pairs and in 2001 the population was about 261 wolves in 14 breeding pairs (Service *et al.* 2002).

Greater Yellowstone Area

In January 1995, 14 wolves from Alberta, representing three family groups, were placed in 3 pens in Yellowstone National Park (Bangs and Fritts 1996, Fritts *et al.* 1997). The groups were released in late March. Two of the three groups produced young in late April. In January 1996, this procedure was repeated with 17 wolves from British Columbia, representing 4 family groups, for release in early April. Two of those groups produced pups in late April. Furthermore, as the result of a September 1996 wolf control action in northwestern Montana, 10 5-month-old pups were transported to a pen in the Park. These pups and 3 adults from the Greater Yellowstone Area, which were originally reintroduced from Canada, were released in spring 1997. By 1998, the Greater Yellowstone Area population consisted of 112 wolves, including 6 packs that produced 10 litters of pups. The 1999 population consisted of 118 wolves, including 8 breeding pairs. In 2000 Yellowstone had 177 wolves, including 14 breeding pairs, and there were 218 wolves, including 13 breeding pairs, in 2001 (Service *et al.* 2002).

Dispersal of Western Gray Wolves

Significant numbers of pups (9 in 1995, 25 in 1996, 99 in 1997, and steadily increasing to about 150 in 2000, and nearly 200 in 2001 and 2002) born to reintroduced wolves are becoming sexually mature and are dispersing from their natal packs. Because dispersing wolves may travel extensively and often settle in areas without resident packs, we expect that these wolves will continue to initiate significant expansion in the number and distribution of wolf packs in the northern Rocky Mountains. Dispersal will increase management costs and controversy, because many of these wolves will not be radio-collared and will attempt to colonize areas of private land used for livestock production. This geographic expansion of wolf presence will also increase the amount of needed agency wolf control, particularly lethal control. Wolves that disperse southward in central Idaho and the Greater Yellowstone Area will increasingly encounter the full range of domestic livestock, including sheep, which are more susceptible to predation and multiple-mortality incidents than are other domestic livestock (Bangs *et al.* 1995, Fritts *et al.* 1992).

We predicted that these three populations eventually would expand and begin to overlap, resulting in one meta-population of gray wolves in the northern U.S. Rocky Mountains. In 1994 we believed that the most likely direction for wolf dispersal and population growth would be from northwestern Montana southward into the experimental areas. Wolves most commonly disperse toward other wolves even when separated by great distances, and we speculated that the presence of reintroduced wolves in the central Idaho and Yellowstone experimental areas would increase the likelihood for wolf dispersal into those areas from northwestern Montana. At that time, we believed that wolves in the northwestern Montana recovery area would be the first to reach 10 breeding pairs. We now believe that the severe winter of 1996–97 temporarily depressed the number of wolves in northwestern Montana and limited the number of dispersal-aged wolves in that area (Service 1994a, Bangs *et al.* 1998).

In contrast, the wolves reintroduced into central Idaho and Yellowstone have increased their numbers greatly, and nearly two-thirds of those wolves are young, dispersal-aged animals that may move from those areas over the next several years. We now believe that wolves that are offspring of the reintroduced animals will increasingly disperse into northwestern Montana and elsewhere. A recent study of wolf genetics among wolves in northwestern Montana and the reintroduced populations found that wolves in those areas were as genetically diverse as their source populations in Canada and that genetic diversity was not a wolf conservation issue in the northern Rocky Mountains at this time (Forbes and Boyd 1997). To date, from radio telemetry monitoring we have documented routine wolf movement between wolves in Canada and northwestern Montana, occasional wolf movement between wolves in Idaho and Montana, and at least two wolves that have traveled into Idaho from northwestern Wyoming. Additionally, in 2001–2002 a wolf from Yellowstone dispersed 240 km (150 mi) into northwestern Montana, and a wolf from Idaho dispersed over 480 km (300 mi) to northwestern Wyoming. Since two-thirds of the wolf population is not radio-collared, additional dispersal has undoubtedly occurred in addition to that documented by radio-collared wolves. Because of the long dispersal distances and the relative speed of natural wolf movement between Montana, Idaho, and Wyoming, we anticipate that wolves will continue to maintain high genetic diversity in the three States. If significant genetic concerns do arise at some future time, our experience with wolf relocation shows that we could effectively remedy those concerns with occasional wolf relocation actions.

We also anticipate additional movement of wolves from the northern U.S. Rockies and Canada into western Washington and Oregon and into the Cascade Range. For example, one radio-collared wolf from northwestern Montana was found dead in 1994 from unknown causes in eastern Washington, and a radio-collared young female wolf from central Idaho dispersed into eastern Oregon in early 1999. She was recaptured and returned to the Central Idaho Recovery Area where she would have a better opportunity to find a mate. Since 1999, 2 other dead wolves (1 radio-collared in Idaho and one not radio-collared) were found in eastern Oregon. These wolves were killed by a vehicle collision and an illegal shooting, respectively. Furthermore, suitable habitat and prey conditions exist in other areas to which wolves may be able to disperse from current populations. Given that wolves in the northern Rocky Mountains have dispersed over 800 km (500 mi), it is reasonable to assume that occasional but routine wolf dispersal will continue to occur within 400 km (250 mi) of the current boundaries of the wolf population.

Observation data indicate that the wolves outside of the core recovery areas mostly occur as individuals, although several wolf family units have been reported in the North Cascades (Almack and Fitkin 1998). However, because efforts to locate family units have been unsuccessful, we are not sure whether wolves are reproducing in the North Cascades. Under this final rule, any animals outside the core recovery areas are protected by the Act as threatened wolves, and we will continue to provide protection recommendations for den and rendezvous sites to Federal agencies on a site-specific basis.

While habitat that could support wolves certainly exists in several areas, we have no plans to initiate new wolf restoration efforts for any areas in the western United States outside of those already underway in Montana, Idaho, Wyoming, and the southwestern States. However, this final rule continues the protections of the Act for any wolves in the wild within all States that are included within the boundaries of the Western DPS. Therefore, any new gray wolf restoration programs undertaken by States or tribes within the boundaries of the DPS would benefit from the protections of the Act as long as the DPS remains listed as threatened.

While we have no plans to actively pursue wolf restoration in other areas of the Western DPS, we will not act to routinely prevent natural wolf recolonization in such areas. Wolves that naturally disperse into other States will be managed on a case-by-case basis, and we have the authority to manage these wolves. Generally, if there are no conflicts with human activities, such wolves will likely not be returned to the area of their origin. If wolves move outside of the recovery areas and depredate livestock, they will be killed rather than moved. In addition, States or tribes considering wolf restoration planning for lands under their jurisdiction may request us to provide technical assistance for those efforts.

Reclassification and Recovery Goals for the Northern U.S. Rocky Mountains

The criteria for threatened and recovered wolf populations in the northern Rocky Mountains have been the subject of intense interest and several peer review efforts (Fritts and Carbyn 1995). The 1987 Northern Rocky Mountain Wolf Recovery Plan (Service 1987) defined a recovered wolf population as securing and maintaining a minimum of 10 breeding pairs in each of 3 recovery areas for a minimum of 3 successive years. A breeding pair was defined as "Two wolves of opposite sex and adequate age, capable of producing offspring." Recovery areas were relatively small and separate areas in northern Montana, central Idaho, and the Greater Yellowstone Area.

The 1994 environmental impact statement (EIS) review (Appendix 9, in Service 1994a) indicated that the 1987 recovery goal was, at best, a minimal recovery goal, and that modifications were warranted on the basis of more recent information about wolf distribution, connectivity, and numbers. Fritts (Appendix 9, in Service 1994a) specifically reviewed the issue of a viable wolf population in the EIS on wolf reintroduction. He concluded that "Thirty or more breeding pairs comprising some +300 wolves in a metapopulation with genetic exchange between subpopulations should have a high probability of long-term persistence." Further, Fritts stated, "My conclusion is that the 1987 wolf recovery plan's population goal of 10 breeding pairs of wolves in 3 separate recovery areas for 3 consecutive years is reasonably sound and would maintain a viable wolf population into the foreseeable future. The goal is somewhat conservative, however, and should be considered minimal." In his review, a breeding pair was defined as "An adult male and an adult female wolf that have produced at least 2 pups that survived until December 31 of the year of their birth, during the previous breeding season." His review was based upon abutting recovery areas that were much larger than those recommended in the 1987 plan. This proximity would allow wolves to occasionally move from one recovery population to another, thus producing the metapopulation structure that was inherent to Fritts' analysis, but was absent from the 1987 Recovery Plan goal.

The Service (Bangs 2002) conducted another review of what constitutes a recovered wolf population in late 2001 and early 2002. Relevant literature was reviewed, and responses were received and evaluated from 50 of 88 experts contacted. That review showed that there is a wide variety of professional opinion about wolf population viability. However, that review supported and reaffirmed Fritts' earlier conclusions that 30 breeding pairs of wolves (using Fritts' definition of a breeding pair) widely distributed in a metapopulation structure (that is, populations within dispersal distance to promote movement between recovery populations) throughout the mountainous portions of Montana, Idaho, and Wyoming for 3 successive years would exceed the minimum biological requirements of a viable and recovered wolf population. The experts also compared the 1987 recovery plan recommendation of a recovered wolf population with Fritts' recommendation and concluded that Fritts' definition was more likely to define a viable wolf population than the 1987 recovery plan definition.

Therefore, in place of the 1987 Recovery Plan goal, we have adopted the definition of wolf population viability and recovery developed in the 1994 EIS (Service 1994a). That definition is "Thirty breeding pairs of wolves (defined as an adult male and an adult female that raise at least 2 pups until December 31 of the year of their birth), comprising some +300

individuals in a metapopulation with some genetic exchange between subpopulations, for three successive years."

A minimum of 30 breeding pairs was first documented in 2000, and a minimum of 34 breeding pairs was documented in 2001. We fully expect to confirm in early 2003 that the wolf population in the northern Rocky Mountains will have again exceeded 30 breeding pairs in 2002, thus achieving the wolf population recovery goal. At that point the Service could propose to delist the wolf population.

The 1987 recovery plan recommended that wolves be downlisted to threatened status throughout the northern Rocky Mountains at the time each of 2 recovery areas had maintained a minimum of 10 breeding pairs for 3 successive years. In 2000, when the Service proposed to reclassify these wolves to threatened status, the year 2000 was the fourth successive year of having 20 or more breeding pairs in the northern Rocky Mountains. The Service considered this to fully meet the intent of the downlisting goal. Since that time, the wolf population has continued to grow even larger and should no longer be considered endangered.

L. Recovery Progress of the Southwestern (Mexican) Gray Wolf

The objectives of the Mexican Wolf Recovery Plan (Service 1982) are to maintain a captive breeding program and to reestablish a population of at least 100 Mexican wolves within its historical range. The plan contains no numerical criteria that would support either revision of the endangered status of the Mexican wolf to threatened or delisting. We consider the current recovery plan objective for the wild population to be an essential first step toward the eventual recovery of the Mexican wolf. A revised recovery plan for the Mexican wolf will contain numerical criteria for reclassifying to a threatened status and for delisting. Because recovery of the Mexican wolf is in its very early stages, we are establishing a Southwestern Gray Wolf DPS, but we are making no changes to the protective legal status of the Mexican gray wolf at this time.

Through managed breeding, the captive population of Southwestern (Mexican) gray wolves had increased to 247 animals as of August 2002. Forty-five zoos and wildlife sanctuaries throughout the United States and Mexico cooperate in the maintenance and breeding of the captive wolves. The Blue Range Wolf Recovery Area (BRWRA), an 18,000-sq km (7000-sq mi) area, has been designated for the re-establishment of a wild population of at least 100 wolves. This area includes all of the Apache and Gila National Forests in eastern Arizona and western New Mexico.

Re-establishment of a wild population began with the release of 13 captive-reared Mexican gray wolves in eastern Arizona in 1998. Releases have occurred each year since then, and as of August 2002, an additional 61 wolves, including uncollared pups, had been released in the BRWRA. A minimum of 24 Mexican wolves representing 8 packs were free-ranging in the wild as of January 2003. During 2002, we documented surviving wild-conceived offspring from the past 3 breeding seasons and documented the production of the first second-generation wild-conceived, wild-born offspring. Efforts are ongoing to capture uncollared wolves living in the population. The documentation of the birth of second-generation wild-born offspring and breeding pairs forming on their own are both key signs that a Mexican wolf population is establishing itself in the BRWRA. Additional releases are planned to occur as they are needed to reach the current goal of a wild population of 100 wolves. This reintroduced population of wolves, like those in central Idaho and the Greater Yellowstone Area, has been designated nonessential experimental (63 FR 1752–1772, January 12, 1998); these wolves can be legally killed by ranchers if the wolves attack livestock on private land. Other provisions of the special regulation designating the population as nonessential experimental give agency managers flexibility to address wolf-human conflicts. Defenders of Wildlife, a private conservation organization, compensates ranchers whose livestock are killed by these wolves.

Designation of Distinct Population Segments

Previously, the gray wolf was listed as threatened in Minnesota and as endangered in the other 47 conterminous States, effectively establishing a Minnesota DPS that was delimited by State boundaries in the absence of any other indications of discreteness (Map 1). This separate designation of Minnesota gray wolves as threatened was established in 1978, before our adoption of the 1996 Vertebrate Population Policy (61 FR 4722, February 7, 1996); this final rule brings the current listing of the gray wolf into compliance with the policy.

As discussed above in the *Distinct Population Segments Under Our Vertebrate Population Policy* section, our Vertebrate Population Policy requires that we consider the concepts of "discreteness" and "significance" when deciding if a vertebrate population meets the requirements for a DPS designation. If the population is determined to be discrete and significant, then we evaluate the conservation status of the population to determine if it is threatened or endangered. The discussion of discreteness and significance for each DPS follows the descriptions of the geographic area included in each DPS.

Based on the Vertebrate Population Policy, this rule reclassifies the gray wolf by establishing the following 3 DPSs within the conterminous 48 States (Map 3).

Eastern Gray Wolf Distinct Population Segment. Consisting of gray wolves within the States of North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, Ohio, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine; and those gray wolves in captivity that originated from, or whose ancestors originated from, this geographic area. This DPS includes all the areas that we proposed in July 2000 for the Western Great Lakes DPS and the Northeastern DPS, as well as 12 additional States.

Western Gray Wolf Distinct Population Segment. The exterior boundary of the Western DPS encompasses the States of California, Idaho, Montana, Nevada, Oregon, Washington, Wyoming, Utah north of U.S. Highway 50, and Colorado north of Interstate Highway 70. Gray wolves in this geographic area are included in the Western DPS, except for gray wolves that are part of an experimental population. Gray wolves in captivity that originated from, or whose ancestors originated from, this geographic area are also included in the Western DPS.

Southwestern Gray Wolf Distinct Population Segment. The exterior boundary of the Southwestern DPS encompasses the States of Arizona, New Mexico, Utah south of U.S. Highway 50, Colorado south of Interstate Highway 70, those parts of Oklahoma and Texas west of Interstate Highway 35, and Mexico. Gray wolves in this geographic area are included in the Southwestern DPS, except for gray wolves that are part of an experimental population. Gray wolves in captivity that originated from, or whose ancestors originated from, this geographic area are also included in the Southwestern DPS.

Discreteness. To date, we have no evidence that any wolves from any of these DPSs have dispersed across these DPS boundaries, although we expect such dispersals to occur. The current gray wolf populations within each of these DPSs are separated from the gray wolf populations in the other DPS by large areas that are not occupied by breeding populations of resident wild gray wolves. Although small numbers of dispersing individual gray wolves have been seen in some of these unoccupied areas, and it is possible that individual dispersing wolves can completely cross some of these gaps between occupied areas and may therefore join another wolf population, we believe that the existing geographic isolation of wolf populations in each of these three DPSs from the other far exceeds the Vertebrate Population Policy's criterion for discreteness of each DPS. (Refer to the *Change to the Boundary Between the Western DPS and the Southwestern DPS* section, below, for additional discussion on establishing these DPS boundaries.)

The Vertebrate Population Policy allows us to use international borders to delineate the boundaries of a DPS even if the current distribution of the species extends across that border. Therefore, we will continue to use the United States-Canada border to mark the northern portions of the boundaries of the Western and Eastern DPSs due to the difference in control of exploitation, conservation status, and regulatory mechanisms between the two countries. In general, wolf populations are more numerous and wide-ranging in Canada; therefore, wolves are not protected by Federal laws in Canada and are publicly trapped in most Canadian provinces.

Along our border with Mexico, the situation is quite different. Gray wolves have been extirpated, or nearly so, from Mexico. However, the captive animals that have been used to start the Mexican wolf recovery program in the United States are of Mexican origin, and Mexico is closely cooperating with the Service in the Mexican wolf recovery program in a number of ways. The current Mexican Wolf Recovery Plan (1982) is a bi-national recovery plan, signed by both the U.S. and Mexico. This bi-national recovery effort will continue with plans for Mexico and the Service to jointly revise the bi-national recovery plan for the Mexican wolf. Because of the cooperative gray wolf conservation efforts we have with Mexico across our southern border, our Southwestern DPS does not end at the Mexican border, but rather it includes all historical gray wolf range in Mexico.

Significance. We further believe that all three of these wolf populations satisfy the significance criterion of the Vertebrate Population Policy under examples 2 and 4, as provided in the Policy—significant range gaps and genetic characteristics.

In our Vertebrate Population Policy, example 2 states that "evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon" shows that the population meets the significance criterion. Loss of the discrete wolf populations in either the Eastern DPS, the Western DPS, or the Southwestern DPS would clearly produce huge gaps in current gray wolf distribution in the 48 States.

Our Vertebrate Population Policy also states (example 4) that "[E]vidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics" is another indication that the population satisfies the significance test. Although genetic studies are continuing, and the subspecific taxonomy of the gray wolf remains to be conclusively determined, several studies agree that these three recovery programs are recovering different evolutionary lineages of the gray wolf (Bogan and Mehlhop 1983, Nowak 1995, Wilson *et al.* 2000). Even various gray wolf subspecies maps, which show vastly different numbers and ranges of subspecies and are still being disputed, all agree that the wolves currently being recovered in the Midwest, the northern U.S. Rockies, and in the Southwest are of different subspecific origins (Bogan and Mehlhop 1983, Hall 1981, Nowak 1995, 2000, Young and Goldman 1944). At a minimum, even if these three groups of gray wolves are not separate subspecies, strong indications suggest that they are separate reservoirs of diversity that differ from each other and therefore are significant to the species (Bogan and Mehlhop 1983, Nowak 1995, Wilson *et al.* 2000).

The existence of large areas of potentially suitable wolf habitat and prey resources in parts of northern New York and northern New England, occurrence records of a few wolves or wolf-like canids during the 1990s, and the presence of wolf populations in neighboring areas of eastern Canada caused us to propose a DPS for the gray wolf in the Northeast (Map 2). At the time of the proposal, we had limited information on extant wolves in the Northeast, and we specifically requested additional data and other information on Northeastern wolves. However, no new data were provided to substantiate that a wolf population exists in the Northeast.

A wolf population must exist in an area in order for us to designate it as a DPS. Therefore, as discussed above in the *Taxonomy of Gray Wolves in the Eastern United States* section, we do not have sufficient data on the identity of historical northeastern United States wolves or the current existence of wolves in the Northeast to support the designation of a DPS there. However, we are retaining the listing of gray wolves in these States under the Act in order to preserve the ability to protect wolves that may occur there. Because a separate DPS cannot be designated in the Northeast due to the lack of evidence of an extant wolf population, this area is being combined with the proposed Western Great Lakes DPS and with other States, and is being designated as part of the Eastern Gray Wolf DPS. The future possibility of establishing a Service wolf recovery program in the Northeast remains possible if it is demonstrated to be necessary for the recovery of a wolf "species," as defined in the Act.

We emphasize that the expansion of the boundaries of these three DPSs from our July 2000 proposal does not reflect any intent of the Service to expand our current gray wolf recovery programs beyond their current geographic areas, or to initiate new gray wolf restoration efforts in these DPSs.

Peer Review

In accordance with our longstanding practice and with our July 1, 1994 (59 FR 34270), Interagency Cooperative Policy on Peer Review (Peer Review Policy), we requested the expert opinions of independent specialists regarding pertinent scientific or commercial data and assumptions relating to supportive biological and ecological information in the proposed rule. The purpose of such review is to ensure that our decision is based on scientifically sound data, assumptions, and analyses, including input from appropriate experts and specialists.

Our Peer Review Policy requires that we solicit expert opinions of three independent specialists. Because of the complexity, geographic scope, and expected controversial nature of the proposed actions, we requested reviews from 14 independent experts and received comments from 11 of them during the comment period. We contacted individuals who possess expertise on gray wolf biology and ecology, threats to wolves, and wolf health and diseases. In order to adhere to the Policy's requirement for independent reviewers, this peer review did not use employees of the Service, or of States that have a significant stake in the outcome of this rulemaking. The reviewers that we chose are from Alaska and Canada, as well as from across wolf range in the conterminous States. They

were asked to review the proposed rule and the supporting data, and to point out any mistakes in our data or analysis, and to identify any relevant data that we might have overlooked. We have incorporated their comments into the final rule, as appropriate, and have briefly summarized their observations below.

Of the peer reviewers who specifically expressed support for, or opposition to, our various proposed actions, all supported the DPS approach, that is, dividing the current listing into smaller geographic units that better reflect recovery progress and recovery needs, and providing the protections that are appropriate to that progress and those needs. All but one supported reclassification of the wolves in the western Great Lakes area to threatened status, and that dissenting reviewer recommended that we go a step further and delist those wolves instead of reclassifying them. Most peer reviewers supported reclassification of the Northern Rocky Mountain wolf population to threatened, but one questioned whether this is appropriate before the reclassification criteria of the 1984 Recovery Plan have been achieved. Another reviewer supported reclassification of the Western DPS, but stated that delisting should not occur until each of the 3 recovery segments exceed 10 breeding pairs. One reviewer suggested reducing the recovery goal for northwestern Montana to fewer than 10 breeding pairs.

Of those who specifically commented on it, all peer reviewers supported the proposed establishment of a separate Northeastern DPS. There was general support for gray wolf delisting in areas where wolf restoration was not necessary and not feasible, but there was some disagreement on where those areas were. Delisting in the Southeast was supported, but delisting in California and Nevada was opposed by two reviewers. Delisting the Dakotas (instead of reclassifying to threatened, as we proposed) was recommended by one reviewer. Five of the reviewers also recommended that the southern Rocky Mountains (Colorado, Utah, and the northern parts of Arizona and New Mexico) either be established as a separate DPS, or be included in the proposed endangered Southwestern (Mexican) DPS rather than in the threatened Western DPS. One reviewer recommended that a Northwestern DPS be established, composed of California and the western halves of Washington and Oregon.

Numerous suggestions for technical corrections were provided by the peer reviewers, and they also pointed out parts of the proposal that needed clarification.

The recommendations of the peer reviewers, as well as the comments we received from other sources during the comment period, are discussed in the following section. We also provide explanations for why the recommendations were, or were not, adopted in our final decision.

Summary of Comments and Recommendations

In our July 13, 2000, proposed rule and associated notifications, we requested that all interested parties submit comments, data, or other information that might aid in our decisions or otherwise contribute to the development of this final rule. The comment period for the proposed rule was open from July 13, 2000, through November 13, 2000. During that period we publicized and conducted 14 public hearings and numerous public informational meetings in order to explain the proposal, respond to questions concerning gray wolf protection and recovery, and receive input from interested parties. We contacted appropriate Federal, State, and tribal agencies, scientific organizations, agricultural organizations, outdoor user groups, environmental organizations, animal rights groups, and other interested parties and requested that they comment on the proposal. We conducted two national press conferences to promote wide coverage of our proposed rule in the print media, and we published legal notices in many newspapers across the range of the gray wolf announcing the proposal and hearings, and inviting comments. We posted the proposal and numerous background documents on our Web site, and we provided copies upon request by mail or E-mail and at our hearings and informational meetings. We established several methods for interested parties to provide comments and other materials, including verbally or in writing at public hearings, by letter, E-mail, facsimile, or on our Web site.

During the 4-month comment period and at our 14 public hearings we received nearly 16,000 separate comments, including comments from 329 individuals who spoke at public hearings and comments from 11 peer reviewers. We also received form letters and "petitions" with over 27,000 additional signatures. Comments originated from addresses in all 50 States, including the District of Columbia.

We revised and updated the proposed rule in order to make the final rule reflect comments and information we received during the comment period. In the following paragraphs we address the substantive comments that we received concerning various aspects of the proposed rule. Comments of a similar nature are grouped together under subject headings (referred to as "Issues" for the purpose of this summary) below, along with our response to each. In addition to the following discussion, refer to the *Changes from the Proposed Rule* section (also below) for more details.

A. Technical and Editorial Comments

Issue 1: Numerous technical and editorial comments and corrections were provided by respondents, including the peer reviewers. Clarification and consistent usage of terms such as "public lands," "tamed," "domesticated," and "breeding pair" was recommended.

Response: We have corrected and updated numbers and other data wherever appropriate. Wolf population estimates made during 1999 have been replaced with the final numbers calculated in late December 2001. We also clarified numerous discussion points and have provided clearer terminology in several locations. We have substituted "domesticated" for "tamed" and have standardized our use of the phrase "breeding pair."

Issue 2: Commenter pointed out inconsistencies between the text of the proposed Western DPS 4(d) rule, the text explaining that proposed rule, and the table that compared it to the experimental populations special rules and the normal protections of the Act. In addition, the phrase "public land" is used several times in the table but is not defined there.

Response: We have revised the table, the explanatory text, and the wording of that 4(d) rule to make sure they are consistent. For example, as defined in the 4(d) rule, the term public lands refers only to federally administered lands unless specifically defined otherwise in State or tribal wolf management plans (see issue U, "State Wolf Management Plans"). Other public lands such as city, county, or State lands would be treated the same as private land for the purposes of wolf management under the Western DPS 4(d) rule.

B. Compliance With Laws, Regulations, and Policies

Issue 1: Commenters expressed concern that the proposal was not in compliance with the Act and implementing regulations.

Response: We have carefully reviewed the requirements of the Act and its implementing regulations. We believe this final rule, as well as the process by which it was developed and finalized, complies with all provisions of the Act and applicable regulations. The Act requires that we identify and protect species that are endangered or threatened, develop and implement recovery programs for those species, and delist them when they are no longer threatened or endangered. These actions are not discretionary, but are mandated by the Act. We do this to the extent possible under the funds appropriated to us each year and in accordance with priorities established by Congress, and by us pursuant to the provisions of the Act. However, the Act does not require us to restore a species across its historical range, or to all remaining areas of suitable habitat. Rather, we restore it to the point that the threats to its continued existence are reduced to the point that it no longer is threatened or endangered. Our detailed analysis of the threats for each DPS is found in the *Summary of Factors Affecting the Species* section below.

Issue 2: A number of commenters stated that establishing numerical quotas for endangered or threatened species is contrary to the intent of the Act and that we should not use such quotas in reclassification or delisting decisions for the gray wolf.

Response: The Act (section 4(f)(1)) requires us to develop recovery plans that contain "objective, measurable criteria" that we are to use in making our determination of whether a species is recovered or is making significant progress toward recovery. Our longstanding practice is to include numerical criteria in our recovery plans as one means to trigger consideration of delisting or reclassification. However, we agree with the commenters that these numerical criteria should not be the sole basis for delisting or reclassification decisions. As required by the Act (section 4(a)(1)), we also conduct an evaluation of the factors (threats) that currently affect the species and the factors that would impact the species, or would increase their impact, if the species were to be delisted or reclassified.

Issue 3: Other commenters questioned our compliance with the Vertebrate Population Policy and stated that we must list more DPSs in order to comply with that Policy.

Response: The Act gives us the authority to list by species, subspecies, or DPS. However, Congress directed that we use our authority to list by DPS sparingly. The DPS policy identifies the criteria that must be met for a vertebrate group to qualify as a DPS, but it does not require that we designate a DPS in all cases where a vertebrate group meets the DPS criteria. The Service has the discretion to list, reclassify, or delist at the subspecies or species level instead of the DPS level, as we believe to be most appropriate to carry out our listing and recovery programs.

Issue 4: The Service should reclassify and delist the wolf on a State-by-State basis.

Response: The previous listing of the gray wolf, in which wolves in Minnesota were listed as threatened while wolves in adjacent States, including Wisconsin, are endangered, was done prior to our 1996 Vertebrate Population Policy, and that previous listing did not conform to the 1996 Policy. The Policy states that listings not in conformance with the Policy will be brought into conformance whenever the listing status of that taxon is changed.

While the policy allows us to use boundaries between States as boundaries of convenience between two populations if those populations are already discrete in relation to each other, we cannot use a boundary between States to subdivide a single biological population in an effort to artificially create a discrete population. Thus, although Minnesota wolves were listed separately in the past, we no longer list, or delist, them separately from the Wisconsin-Michigan wolf population because they are not biologically discrete. By reclassifying wolves throughout the Midwest from endangered to threatened status and joining them into a single DPS, we have brought the listing into conformance with the Vertebrate Population Policy and given the overall Midwest wolf population a threatened designation, which is biologically more appropriate than is an endangered designation.

Issue 5: One respondent believes that the proposal was in conflict with our mission statement, which is "working with others, to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people."

Response: We believe the proposal portrays an example of doing exactly what is intended by our mission statement. Gray wolf recovery programs involve many partners in the private and public sector, at all levels of government, and include numerous Federal agencies. The wolf recovery successes described in the proposal resulted from working with others to conserve, protect, and enhance gray wolf populations in several areas across their historical range. Those successes have now reached a point where several of those wolf populations no longer qualify for protection as endangered, so we are reclassifying them to threatened. Congress, through its enactment of the Endangered Species Act of 1973, stated that such programs benefit our nation and the American people. Furthermore, we have provided extensive opportunities and numerous pathways for all interested parties to become involved in the reclassification process.

Issue 6: A commenter believes that the proposal is not in compliance with our National Policy Issuance 96–06, which is also known as the "10-point Plan for the Endangered Species Act."

Response: The relevant points in this March 6, 1995 policy are these: base our listing/delisting decisions on sound and objective science; minimize social and economic impacts of our actions; treat landowners fairly and with consideration; promptly recover and delist threatened and endangered species; and provide State, tribal and local governments with opportunities to play a greater role in carrying out the provisions of the Act. To the extent allowed by the Act and other Federal laws and regulations, we have conducted gray wolf recovery and reclassification in a manner that fully adheres to the points of this Policy. We have used the best available scientific data, we have developed special regulations and depredation control programs that reduce social and economic impacts, we are reclassifying and intend to delist at the appropriate time, and we have provided State, tribal, and other governments many opportunities to participate in wolf recovery and in this rulemaking. In many ways, gray wolf recovery and this reclassification is an excellent example of following National Policy Issuance 96–06.

Issue 7: The proposal was not in compliance with National Policy Issuance 95–03 and Director's Order No. 110, both dealing with using the "ecosystem approach."

Response: This 1995 Policy and 1999 Order state that the Service will apply an ecosystem approach in carrying out our programs for fish and wildlife conservation. The goal of an ecosystem approach is for the Service, when carrying out its various mandates and functions, to strive to contribute to the effective conservation of natural biological diversity through perpetuation of dynamic, healthy ecosystems.

Preserving and recovering endangered and threatened species is one of the more basic aspects of an ecosystem approach to conservation. Successful

recovery of a rare species requires that the necessary components of its habitat and ecosystem be conserved, and that diverse partnerships be developed to ensure the long-term protection of those components. Thus, the recovery success demonstrated for gray wolves is also a demonstration of the ecosystem approach, including the various partnerships that are needed for success.

Issue 8: The Service has not adequately consulted with Native American tribes, as required by Secretarial Order 3206. (Refer to issue V, Native American Concerns, below, for additional Native American concerns.)

Response: During the development of the proposal and this final rule, we endeavored to consult with Native American tribes and Native American organizations in order both to provide them with a complete understanding of the proposed changes and also to enable ourselves to gain an appreciation of their concerns with those changes. Although we must base the decision on whether a species should be listed, reclassified, or delisted under the Act purely on scientific data concerning the threats and commercialization of the species, the manner in which we carry out listing, reclassification, or delisting vary so that we can address the cultural and spiritual importance of a species to Native Americans. As we have become aware of Native American concerns through consultation with them, we have tried to address those concerns to the extent allowed by the Act, the Administrative Procedures Act, and other Federal statutes.

For example, the proposed 4(d) rule for lethal control of depredating wolves in Wisconsin and Michigan has caused concern among several tribes that have, or expect to soon have, wolves living on their reservations. We are currently working with the Bad River Band and the WI DNR to develop a Memorandum of Understanding for the cooperative management of wolves in the area surrounding the Bad River Reservation (Wisconsin), in order to minimize the impacts that off-reservation depredation control actions by the WI DNR might have on reservation wolves. This agreement may serve as a prototype for other tribes and States.

We acknowledge that our early consultation efforts could be improved. Early consultation efforts were hampered primarily by the geographic scope and complexity of the proposal. We tried to remedy this issue by making additional efforts to contact and inform tribes during the comment period.

Issue 9: The Service should propose critical habitat for the gray wolf.

Response: Critical habitat was designated in 1978 for the gray wolf in parts of northeastern and north-central Minnesota and on Isle Royale, Michigan (43 FR 9607, March 9, 1978). We are not making any changes to the currently designated critical habitat, because we do not believe it is appropriate to do so.

The Endangered Species Act amendments of 1982 specified that, for any critical habitat designation for a species already listed as threatened or endangered at the time of enactment of the 1982 amendments, the procedures for revisions to critical habitat would apply (Pub. L. 97–304, section 2(b)(2)). Consequently, designation of critical habitat for the gray wolf is subject to the procedures for revisions to critical habitat. As such, it is not mandatory for the Service to designate critical habitat for the gray wolf. Section 4(a)(3)(B) provides that the Service "may" make revisions to critical habitat "from time-to-time * * * as appropriate" (16 U.S.C. 1533(a)(3)(B)). The Service has determined that there currently are no likely benefits to be derived from additional critical habitat designations, and it therefore is not appropriate to designate additional critical habitat. Wolf populations in both the Eastern and Western DPSs are at their numerical recovery goals as a result of past and current protections, but the currently designated critical habitat played a negligible role in wolf recovery. This is attributable to the fact that gray wolves are habitat generalists, and their numbers and range are not limited by a lack of suitable habitat or by any degradation of any essential habitat features. Designating critical habitat would be an inappropriate use of our limited listing funds if done for a species that is successfully recovering without such designation, and at a time when we have determined that it is more appropriate to reduce, rather than increase, the Federal protections for the species.

It should also be noted that the Act (section 10(j)(2)(C)(ii)) prohibits us from designating critical habitat for the nonessential experimental populations established in the Western DPS and the Southwestern DPS. Furthermore, 50 CFR 424.12(h) prohibits the designation of critical habitat in foreign countries.

Issue 10: The Service should have conducted additional public meetings and hearings, or extended the comment period to provide additional opportunities to learn more about the proposal and to provide comments. We should have used the postmark date, rather than the received date, to determine whether comments were made during the open comment period.

Response: The Act requires that we provide at least a 60-day comment period and that we conduct one public hearing if we are requested to do so. We recognized that the proposal would be controversial, would require more explanation than most of our proposals, and would result in a large number of comments. Therefore, we went well beyond the basic requirements of the Act and other Federal rulemaking procedures. We established a comment period that was twice the required length. We prearranged 14 hearings from Maine to Washington State. We conducted two national press conferences and two Congressional briefings. We conducted multiple informational meetings. We provided a variety of informational materials at hearings and meetings, by mail and e-mail, and on our Web site. We established mechanisms for interested parties to ask questions and to submit comments verbally, in writing, by e-mail or fax, and on our Web site.

Finally, while the Service sometimes uses the postmark date to determine whether comments were received before a deadline in rulemakings, our normal practice is to use the date of receipt, and our intent to use that cutoff method at the close of the 4-month comment period was clearly stated in all our documents that referred to comment submission. We believe we provided extensive, varied, and sufficient opportunities for interested partied to ask questions, obtain additional information, and provide input for our consideration.

Issue 11: The Service should conduct Population Viability Analyses (PVA) before reclassifying anywhere.

Response: The Act requires that we use the best scientific data available when we make decisions to list, reclassify, or delist a species. The Service recognizes that PVAs are a tool that can provide some insight into the vulnerability of species, and we have conducted PVAs for a number of species, usually as an aid in establishing recovery goals or identifying the most critical gaps in our knowledge in order to prioritize research needs. While we have found PVAs to be useful in some circumstances, in other cases the analyses provided little or no new information, or the outcome was not considered to be reliable.

PVAs can be a valuable as a tool to help us understand the population dynamics of a rare species (White 2000). They can be useful in identifying gaps in our knowledge of the demographic parameters that are most important to a species' survival, but they cannot tell us how many individuals are necessary to avoid extinction. The difficulty of applying PVA techniques to wolves has been discussed by Fritts and Carbyn (1995). Problems include our inability to provide accurate input information for the probability of occurrence of, and impact from, catastrophic events (such as a major disease outbreak or prey base collapse; we know of no catastrophic events that have significantly impacted large wolf populations except for human persecution), providing realistic inputs for the influences of environmental variation (such as annual fluctuations in winter severity and the resulting impacts on prey abundance and vulnerability), temporal variation, and individual heterogeneity, as well as dealing with the spatial aspects of extreme territoriality and the long-distance dispersals shown by wolves. Each of these factors can be a powerful determinant of the outcome of a gray wolf PVA, and relatively minor changes in any of these input values can result in vastly different outcomes.

PVAs are also useful for studying small populations. In a small-population study, the modeling exercise can provide clues to which demographic, genetic, or environmental parameters may have the greatest likelihood of influencing a species' survival, and thus possible insight into areas where initial conservation actions should be focused. However, for obviously recovering entities like the gray wolf populations of the Northern U.S. Rocky Mountains and the Midwest, PVA modeling exercises may largely be an exercise in quantifying the recovery of a species whose increases, and the reasons for them, are already qualitatively quite apparent. In the case of species like the gray wolf—a species that has been well studied and is well along the road to recovery—generally little is to be learned from a PVA.

The WI DNR conducted a PVA for the State's wolf population several years ago when its wolf population was considerably smaller than it is today. Most scenarios that were modeled by WI DNR (varying the probability of catastrophic events, reproductive rates, and environmental variability) resulted in very low probabilities of extinction even with the maximum wolf population limited to only 500 animals (WI DNR 1999a). The model treated the Wisconsin wolf population as a totally isolated population (that is, with no possibility of wolf immigration from Minnesota or Michigan), so even those low extinction probabilities were overestimates. Because this reclassification reduces Federal protection of wolves only slightly, a PVA would not be expected show any resultant significant change in the risk of extinction.

Finally, we note that none of the 11 peer reviewers of the proposal indicated that there was any need for the Service to conduct a PVA or minimum viable population analysis for the 2 gray wolf populations for which we proposed changes in July 2000. One reviewer stated that PVAs are of little value and may even be misleading.

Issue 12: The Service should prepare an Environmental Impact Statement for this rule.

Response: As stated in the proposal, the question of whether environmental assessments or environmental impact statements need to be prepared was addressed by our previous determination (48 FR 49244; October 25, 1983) in which we stated that such documents do not have to be prepared for regulations developed under section 4(a) of the Act.

Issue 13: A better notification process is needed for our public hearings.

Response: We did a great deal to alert interested parties to the details of public hearings. Public hearing times and locations were announced in the **Federal Register**, posted on our Web site, publicized in local and national press releases, and, in some areas of the Midwest, advertised on local radio stations. Notification letters were sent to numerous organizations so they could alert their memberships. In addition, parties who requested to be added to our wolf electronic mailing list received information on hearings and public meetings electronically. However, we acknowledge that, despite all these efforts, some interested parties did not learn of the hearings in time to attend. We are interested in receiving ideas to further improve our efforts to publicize our public hearings in the future. However, in this case there were numerous avenues, in addition to public hearings, for interested individuals to obtain information and submit comments on the proposal. All comments received during the comment period, whether presented at a public hearing or provided in another manner, received the same review and consideration.

Issue 14: The Service should consider how to delist nonessential experimental populations.

Response: For the gray wolf, the nonessential experimental populations in the Northern Rocky Mountains are part of a larger recovery program that also includes the northwestern Montana wolves. They will be delisted at whatever time the Western DPS is delisted.

Issue 15: One commenter stated that we cannot use wolves in experimental populations to count toward recovery or reclassification goals, because such populations can only be used for research purposes.

Response: The term "experimental" is used in the Act to describe these populations; however, this designation does not mean these populations may only be used for research purposes. Reintroductions of plants and animals are often experimental in the sense that they may use techniques that are newly developed, untested on that species or locality, or uncertain in success rate for other reasons. The authority to designate and establish experimental populations was added to the Act for the specific purpose of assisting the Service in establishing additional populations to further the recovery of the species. We have used this authority for many species to help achieve recovery goals by expanding occupied range. In the case of the two nonessential experimental populations (NEPs) in the northern U.S. Rockies, the final rule establishing those two NEPs indicated specifically that they were being established to help achieve the Western Plan's goals to establish viable wolf populations in central Idaho and the Greater Yellowstone Ecosystem.

C. Comments Regarding the Number of Distinct Population Segments and Recovery Programs Necessary for Gray Wolf Recovery

Issue: A large number of comments expressed the opinion that additional gray wolf DPSs should be established, and that the Service should initiate additional recovery programs in order to achieve gray wolf recovery as mandated by the Act. Additional DPSs and recovery programs were suggested for Nebraska, Kansas, Missouri, and Iowa; Virginia and Kentucky; the Carolinas, Georgia, and Tennessee; California and Nevada; Colorado, Utah, and the northern portions of New Mexico and Afizona; Oregon and Washington; the Pacific Coast; the Cascade Range; West Virginia; Missouri; Florida; and Utah. In addition, some respondents recommended that gray wolves should be reintroduced and recovered throughout their historical range or "in all States."

Response: These comments appear to reflect a misunderstanding of the purpose of the Act and confusion regarding the meaning of "recover" under the Act. The purpose of the Act is to provide for the conservation of endangered and threatened species. Conservation is defined as the use of all methods and procedures which are

necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. When a species no longer meets the definition of an endangered or threatened species under the Act, it is recovered, and we are to delist it.

The meaning given to "recover" in common conversational usage is "to restore to a previous, or to the original, condition." However, incorrectly ascribing this common meaning to "recover" as used in the Act has led some individuals to mistakenly believe the Act functions as a biodiversity restoration program. The goal of the Act—preventing species extinctions—is much narrower that the rangewide wolf restoration and biodiversity restoration goals implicit in these comments.

We have evaluated, in light of the conservation biology principles discussed previously, our three continuing recovery programs for the gray wolf in the context of its previous listing across the 48 conterminous States and Mexico. We have concluded that sufficient redundancy and resiliency will be achieved by establishing three separate viable wolf populations or metapopulations in widely spaced areas of that geographic area. If each of these three populations contains enough reproducing packs so that it is a viable and self-sustaining population, its numerical size and geographic extent will provide the resilience needed for it to bounce back from newly developing or expanding adverse factors (*e.g.*, disease, massive wildfire, or the temporary decline of a prey species' population) in the foreseeable future. Furthermore, if these three populations are widely spaced and somewhat isolated from one another it is very unlikely that all three populations would simultaneously, or in rapid sequence, suffer from the same catastrophic event.

Once they are completed, the Service's three current gray wolf recovery programs will result in wolf populations of sufficient size and relative isolation to provide the necessary resiliency and redundancy. For example, the Northern Rocky Mountain gray wolf population—now at recovery levels—exceeded 560 animals at the end of 2001, and preliminary results from the end of 2002 indicate a population of approximately 660 wolves (Tom Meier, Service, *in litt.* 2003). The Midwestern gray wolf population—which has exceeded the numerical goals of the Eastern Gray Wolf Recovery Plan—is estimated to be over 3000 wolves. (Final recovery goals have not yet been established for the Southwestern (Mexican) gray wolf recovery program, but they will be designed to ensure long-term viability of that wolf population.) The currently occupied areas of the Eastern and Northern Rockies populations are separated by approximately 1000 kilometers (600 mi), and a similar distance currently separates the Greater Yellowstone Area wolf packs from the reintroduced wolves in the Southwest. Each of these gray wolf populations will be viable and self-sustaining when their recovery programs are completed, and the distances between them, while not providing total isolation, will provide a great deal of protection from multi-population catastrophic events.

Both the Northern Rocky Mountain and Eastern gray wolf recovery programs—when all recovery goals are achieved—will each cover sufficient geographic area and have enough wolves in a population or metapopulation structure to be sufficiently resilient to respond to adverse factors that may arise in the future. The Southwestern (Mexican) gray wolf recovery program, when a final recovery goal is established and attained, similarly will have sufficient distribution and number of wolves. Thus, the conservation biology principle of resiliency is satisfied by the achievement of the respective recovery goals of these 3 recovery programs.

Commenters suggested that additional gray wolf populations should be established in the western United States in order to maximize the species' long-term survival and minimize the likelihood of extinction. However, the Act does not mandate maximizing species survival, nor does it require undertaking widespread species restorations to minimize extinction risk. Rather, as discussed above, its mandate is to recover species to the point that they are "not likely" to become in danger of extinction in the foreseeable future. We believe the "not likely" standard will be exceeded by establishing three geographically widespread gray wolf populations that are independently viable, because it is highly unlikely that future threats will endanger multiple widely separated wolf populations. Thus, the conservation biology principle of redundancy is satisfied by our three current recovery programs.

The concept of representation, when applied to the conservation of the gray wolf, argues that we should preserve enough of its remaining genetic diversity so that future genetic problems are unlikely to lead to its extinction. These problems may include genetic drift, inbreeding depression, and diminished ability to survive as new environmental conditions develop. The three current gray wolf recovery programs are preserving all of what remains of the species' genetic diversity in the 48 States and Mexico. The current genetic diversity of the wolves in the western Great Lakes is a product of the remnant wolf population that survived in northeastern Minnesota, Canadian wolves from southwestern Ontario and Manitoba that moved into Minnesota, as well as southern Ontario wolves that moved into the eastern portion of Michigan's Upper Peninsula. The Northern Rockies wolf population is a mixture of southern Canadian wolves that repopulated the Glacier National Park area and wolves from Alberta and British Columbia, Canada that were brought into central Idaho and Yellowstone National Park. These two recovery programs are preserving all the remaining genetic material of the gray wolves that formerly inhabited those areas. Both the Midwestern and Northern Rockies wolf populations are believed to contain sufficient genetic diversity to survive over the long term, even if they were to become completely and permanently isolated from neighboring wolves across the Canadian border.

The reintroduced Southwestern (Mexican) gray wolf population originated from small captive populations composed of individuals captured in the wild in Mexico and identified in captive facilities in Mexico and the United States (Hedrick *et al.* 1997). Detailed records and careful selection of captive breeding pairs has ensured the conservation of this founding Mexican wolf genome. This recovery program is utilizing all the remaining genetic material that has been preserved from the wild Southwestern and Mexican wolf population, and when completed, it will ensure the long-term survival of that unique genetic diversity and maximize the ability of this isolated population to cope with, adapt to, and evolve in response to environmental change.

Thus, our three current wolf recovery programs are doing all that can be done to preserve the remaining genetic material from the gray wolves that previously occupied the 48 conterminous States and Mexico. Establishing additional populations would provide no additional genetic benefits to wolf recovery under the Act (with the possible exception of the Northeast; see below). Therefore, the conservation biology principle of representation is satisfied by these three gray wolf recovery programs.

Based upon the above points, the Act's mandate to recover the gray wolf will be satisfied by the restoration of three viable populations of the species, located in the Midwest, Northern U.S. Rockies, and Southwest. Therefore, in order to recover the gray wolf, the Service intends to continue focusing its gray wolf recovery activities in the current core areas (*i.e.*, Minnesota, Wisconsin, Upper Peninsula of Michigan, Idaho, Montana, Wyoming, New Mexico, and Arizona) of those recovery programs.

We do not intend to initiate new gray wolf recovery programs in any area—except possibly the Northeast, pending ongoing genetic and taxonomic studies and efforts to locate a listable and recoverable wolf population there—because new recovery programs are not necessary to achieve recovery of the gray wolf under the Act either as formerly listed in the 48 States and Mexico or under the new listings established by this final rule.

Once wolf recovery goals are achieved in any one of the DPSs, we will proceed to delist the entire DPS, even if some of the States within the DPS lack wild gray wolves. The presence or absence of gray wolves outside of core recovery areas is not likely to have a bearing on the long-term viability of the three wolf populations after their recovery goals have been achieved, and therefore such presence or absence will not be a factor in our consideration of delisting each DPS.

We have determined that the level of threats faced by wolf populations in the Eastern DPS and in the Western DPS warrant reclassification of each DPS to threatened. These threatened DPS listings, along with the three retained nonessential experimental population designations and the retained endangered listing for the Southwestern DPS, will continue to provide the Act's protections to all wild gray wolves. Furthermore, we believe that the delisting criteria for the Eastern DPS and the Western DPS can be achieved without establishment of additional populations within each DPS.

The Act gives us the authority to list by species, subspecies, or DPS. The DPS policy identifies the criteria that must be met in order for a vertebrate group to qualify as a DPS. In order for us to designate a DPS, a population must exist. Most of the States have no wolves or in the States that do have some wolves, those wolves are part of a metapopulation. However, our DPS policy does not require that we designate a DPS in all cases where a vertebrate group meets the DPS criteria; Congress directed that we use our DPS authority sparingly. The Service has the discretion to list, reclassify, or delist at the subspecies, species, or DPS level, as we believe to be most appropriate to carry out our listing and recovery programs.

As described in the *Taxonomy of Gray Wolves in the Eastern United States* section above, there is a great deal of uncertainty regarding the identity of the large canid (or canids) that occurred historically in the Northeastern States. At the time our proposal was developed, we believed that the canid was likely a gray wolf, although we were uncertain as to its subspecific identity. However, subsequent molecular genetic and morphometric information has cast doubt on that interpretation of the evolutionary relationship of North American canids. Although far from certain at this time, increasing scientific evidence suggests that the historical large canid in the Northeastern States was more closely related to the red wolf than to the gray wolf. We will reevaluate our retained listing of the gray wolf in the Northeastern States at such time that we consider delisting Midwestern gray wolves, and at any time prior to that if significant new data become available.

D. Boundaries of Distinct Population Segments

Issue: We received comments expressing concerns with several aspects of the boundaries of the 4 proposed DPSs. Some commenters wanted the DPS boundaries to conform exactly with the geographic coverage of the existing gray wolf recovery plans, while other commenters wanted the boundaries expanded beyond those we proposed. Other commenters recommended that the boundaries be based solely on suitable wolf habitat and on physical barriers believed to subdivide that habitat. We also received comments suggesting that the boundary between the Southwestern and Western DPSs should be moved northward so that parts or all of Utah and Colorado are within the Southwestern DPS.

Comments that deal with the number of DPSs are addressed above in issue C, "Comments Regarding the Number of Distinct Population Segments and Recovery Programs Necessary for Gray Wolf Recovery"; those dealing with delisting wolves outside of DPSs are addressed below in issue E, "The Service Should Not Delist Outside of Distinct Population Segments"; and those dealing specifically with the boundaries of the proposed Northeastern DPS are covered below in issue S, "Use of Scientific Data." For a detailed discussion of DPSs, refer to the *Distinct Population Segments Under Our Vertebrate Population Policy* section above. Also refer to the *Distinct Population Segments and Experimental Populations* section above for additional discussion of the purposes of these designations.

Response: A DPS is a listed entity that is usually described geographically rather than biologically. Nothing in the Act or in our Vertebrate Population Policy requires DPS boundaries to correspond to recovery plans, habitat characteristics, or physical barriers. DPS boundaries identify a geographic area that includes and surrounds a vertebrate biological grouping that has a separate listing under the Act. The DPS boundaries must contain the biological grouping and cannot subdivide it, but they do not have to precisely correspond with its present location, suitable habitat, or other features of the environment. In general, DPSs can be better understood, protected, recovered, and administered if their boundaries are placed beyond the area currently occupied by the biological grouping of concern, and even beyond the areas they are most likely to disperse into or colonize in the foreseeable future. Such boundary placement minimizes the potential confusion caused by individual wolves frequently crossing the boundaries and thereby changing their legal status and protection under the Act, and provides more consistent protection to dispersers that may ultimately return to their original core recovery area and contribute to recovery there.

While the Vertebrate Population Policy prohibits our use of boundaries between States to subdivide an existing biological population to establish "discrete" populations, it does not prohibit our use of boundaries between States or other cultural features as "boundaries of convenience" to identify the area within which the DPS's legal designation applies. By using boundaries between States (or other features such as major highways) that are located beyond the area currently occupied by wolf populations, we are able to clearly identify the geographic extent of the DPS listing (and thereby facilitate law enforcement and promote public understanding of the listing) while avoiding splitting the existing biological unit that we intend to recover.

Our proposed DPS boundaries were intended to serve two purposes. The first purpose was to include the core areas where the respective wolf population is recovering, as well as a substantial surrounding "buffer area" in which wolves dispersing from the core

areas were reasonably likely to occur in the foreseeable future. The second purpose was to remove Federal gray wolf protection in some areas of the 48 States where we believed restoration of wolves was unnecessary. Thus, our proposed DPS boundaries were designed to include the areas into which most, but not all, gray wolf dispersal was expected to occur. For example, most dispersing Midwest wolves have moved into the Dakotas, which were included in the proposed Western Great Lakes DPS. The Michigan Upper Peninsula wolf that recently dispersed to northern Missouri moved well outside of the proposed boundary for its DPS, but it is the only Midwestern wolf known to have moved beyond the proposed DPS boundary.

However, as discussed in issue E (below), we have now expanded the areas covered by these gray wolf listings. These new boundaries will provide continued protection under the Act to all gray wolves that disperse to any location within the species' historical range in the conterminous 48 States. A portion of the boundary between the Western DPS and the Southwestern DPS has been moved northward to a location approximately midway between the core recovery populations in the northern Rockies and the Southwest, in order to be consistent with existing gray wolf dispersal data. These final boundaries continue to serve our purpose of including the core recovery areas along with those areas into which wolves from the respective core areas are most likely to disperse. (Refer to the *Changes from the Proposed Rules* section below for additional discussion on DPS boundary changes.)

The expansion of the DPS boundaries does not mean that we intend to broaden our current gray wolf recovery programs to additional areas within the DPS boundaries or that we will initiate new wolf restoration programs. The expansion of these boundaries is being done solely because the Act requires that we maintain the gray wolf's listing in these areas until the species or the DPS is recovered. Recovery within a DPS can be achieved by reestablishing gray wolves in a portion of the DPS at a level and under circumstances that ensure that the population will not become in danger of extinction in the foreseeable future.

E. The Service Should Not Delist Outside of Distinct Population Segments

Issue: We received comments from many individuals and organizations regarding our proposal to remove the Act's protections for the gray wolf in all or parts of 30 States that were outside of the boundaries of the proposed DPSs. The commenters recommended that gray wolves should not be delisted in areas where they have not recovered and do not currently exist.

Response: Our proposed delisting outside of the proposed DPS boundaries was based on our belief that, because restoration of gray wolves in these areas is unnecessary, and because we have no plans to restore gray wolves in those areas, there was no reason to maintain the Act's protection for any gray wolves that might turn up there. We believed it was reasonable and appropriate to remove any unnecessary Federal regulatory burden, and any perception of such a burden, by removing the listing in those areas. Furthermore, we thought it would be desirable to eliminate any uncertainty in those areas regarding Federal protection for escaped or released captive gray wolves, wolf-dog hybrids, or feral dogs that are mistaken for wolves.

However, further analysis of the Act and implementing regulations has led to our conclusion that the Act does not provide for delisting a species in parts of its listed historical range because restoration of wolves in these areas is unnecessary, even if wolf recovery is proceeding successfully in other areas. Delisting can occur only when a species (or subspecies or DPS) is recovered, when it is extinct, or when the original data or analysis that led to the listing was in error (50 CFR 424.11(d)).

Therefore, we have modified those portions of our proposal that would have delisted the gray wolf in any part of its historical range. This was done by expanding the boundaries of the remaining gray wolf DPSs so they now include all States within the historical range of the gray wolf. This has the biological benefit of continuing Federal protection for all long-distance dispersers that remain within the species' historical range, thus providing them a greater probability of surviving and rejoining the core population in that area, or even joining the population in another gray wolf recovery area.

As discussed above in the *Historical Range of the Gray Wolf* section, we have now delisted the gray wolf in 14 States and in the eastern portions of Oklahoma and Texas. These southeastern and mid-Atlantic States are not included within the boundaries of any listed gray wolf DPS, because they are outside the generally recognized historical range of the gray wolf (Hall 1981). These States should not have been included when the gray wolf was listed at the species level in 1978. Due to their close approximation of Hall's historical range boundaries, we have used State boundaries and an interstate highway as the boundaries around this delisted area to facilitate law enforcement efforts and public understanding of the areas now included and excluded in the three gray wolf DPSs.

F. The Service Should Delist Gray Wolves in Additional Areas

Issue 1: A large number of comments recommended that we delist gray wolves in areas that we proposed for inclusion in one of the proposed DPSs, and thus would remain listed as threatened, endangered, or part of an experimental population and subject to the protective regulations that apply to it. The reasons for the delisting recommendations include: wolves are common elsewhere (in other areas of the 48 States or in Alaska and Canada) so they are not threatened or endangered; wolves have recovered (in that area or elsewhere) so they should be delisted; wolves are extirpated from the State; and a State can manage a resident species better than the Federal government.

Response: The Act mandates that we identify, list, and protect those species, subspecies, plant varieties, and distinct vertebrate population segments that are threatened or endangered, and that we maintain the listing and protection until the entity is recovered or goes extinct, or until we determine that the original listing was done in error. Unless and until one of these occurs, the entity must remain a threatened or endangered species. Full management authority cannot be returned to States or tribes until recovery has occurred or an erroneous listing is removed.

For vertebrate species, the Act, as implemented by way of our 1996 Vertebrate Population Policy, allows us to use international borders to limit the geographic scope of the threats evaluation that is done when we are considering a species for listing as threatened or endangered. This is appropriate, as it allows us to protect from extirpation within the United States those vertebrate species that might be more common elsewhere (e.g., in Canada or Mexico). This approach has been successfully used for other species that are more common in Canada than in the United States, including the peregrine falcon, grizzly bear, and bald eagle, and we are witnessing similar success with the gray wolf.

In order to determine when a species is recovered, we must evaluate the current status of the species in comparison to recovery goals established for it in its recovery plan. We must also analyze the threats that still face the species, as well as the threats that might increase or develop if the species is delisted. Five categories of threats are specified in the Act: loss or degradation of habitat or range; overutilization for commercial, scientific, or other purposes; disease or predation; inadequacy of regulatory mechanisms; and, any other natural or manmade factors. At the time we developed our proposal and conducted this analysis of threats, we could not affirm that recovery goals had been met and also conclude that probable future threats had been sufficiently reduced so that recovery could be declared and delisting initiated for any of our gray wolf recovery programs. Therefore, we proposed a reduction of Federal protections via a reclassification to threatened in some area, but did not propose the delisting of any gray wolf population. Because we have not proposed delisting of any gray wolf populations, at this time we cannot finalize a rulemaking that would include such a delisting. We must first propose such a change and provide an opportunity for public review and comment on it. Given the continued recovery progress of gray wolves in the West and western Great Lakes States, and State wolf management plan development work that has happened subsequent to our reclassification proposal (see issue U, "State Wolf Management Plans"), we anticipate working on one or more gray wolf delisting proposals in the near future. However, we have determined that this reclassification action should be finalized first.

Since the gray wolf is not extinct in the United States, the species cannot be delisted for that reason.

The final reason that could justify a delisting-that the original listing was done in error-is discussed above in issue E, "The Service Should Not Delist Outside of Distinct Population Segments", and in the *Historical Range of the Gray Wolf* section. For this reason, we have delisted the gray wolf in all or parts of 16 States where the species should not have been listed originally because those areas are outside of the species' historical range.

Issue 2: Wolf management in the Western DPS needs to be transferred to the States.

Response: The Service agrees that a recovered wolf population is best managed by the respective States and tribes. The Service will propose to delist the Western DPS wolf population as soon as possible under the conditions specified by the Endangered Species Act. Two primary conditions have to be met for the western wolf population to be delisted. First the recovery goal of having a minimum of 30 breeding pairs of wolves distributed throughout Montana, Idaho, and Wyoming for a minimum of 3 successive years must be met. The Service is also required to make sure the factors that caused wolves to be listed are resolved. The one factor that applies most to wolves is that human-caused mortality be regulated so it does not cause wolf populations to become threatened or endangered again. The Service must be reasonably assured that adequate regulatory mechanisms are in place to conserve the wolf population so that it will not become threatened or endangered if the Act's protections are removed. The Service is working closely with the States of Montana, Idaho, and Wyoming as they develop wolf conservation plans that will meet this requirement. Upon confirmation in early 2003 that the wolf population has met the wolf population recovery goal for the Western DPS and if the States have finalized their wolf management plans (see issue U, "State Wolf Management Plans"), the Service could propose to delist the gray wolf throughout the Western DPS in early 2003.

G. Threats From Humans Need Additional Consideration

Issue: A large number of commenters described the past persecution of wolves and expressed the belief that similar persecution will resume if the proposed rule is adopted.

Response: We recognize that human persecution of wolves is the primary reason for the decline of wolves across North America, and we analyze the nature and magnitude of this threat before and after this final rule in factor "C. Disease or predation" under the *Summary of Factors Affecting the Species* section. We believe the protections of the Act, in combination with extensive public education efforts by the Service and numerous private and public partner organizations, have reduced human persecution and led to the increase in gray wolf numbers and range. Therefore, in order for wolf population to remain recovered or nearing recovery, those prelisting levels of human-caused mortality must be avoided.

For two reasons, this final rule is not expected to increase the level of human persecution of gray wolves. First, the reclassification of wolves in 2 DPSs to threatened does not remove the protections of the Act, nor does it eliminate the Federal penalties for illegally killing one of these gray wolves. Second, by providing additional mechanisms for the control of problem wolves, including allowing certain landowner harassment/control actions in the Western DPS, we believe the incentive for illegally killing wolves will be significantly reduced. Thus, we do not believe this reclassification action will increase the threats from human-caused mortality; conversely, the action may result in decreasing those threats.

At such time as we propose delisting gray wolves, we will again assess the threats from human-caused mortality.

H. Other Threats Need To Be Assessed

Issue 1: The Service should consider the impacts of genetic risks on gray wolf recovery, because low genetic diversity can cause problems for a rare species.

Response: We agree that low genetic diversity is a concern for species with small populations or that have gone through a population bottleneck. However, Midwestern gray wolf populations currently are showing no signs of diminished genetic diversity. These wolves came from a remnant wolf population in northeastern Minnesota and Canadian wolves that have moved across the international border from western and eastern Ontario and Manitoba. At its lowest level, the Minnesota wolf population was probably 350 wolves or more, a level well above that expected to potentially cause genetic problems, especially because there is frequent interaction with adjacent Canadian wolf populations.

Similarly, the recovering northern U.S. Rocky Mountain wolves are derived from several Canadian sources, which increased the genetic diversity of their founding populations. They are not expected to have genetic problems. In contrast, Southwestern (Mexican) wolves have all come from 7 founders, but through managed breeding of these founders during the past 22 years, 86 percent of the founding genetic diversity has been preserved. Moreover, no signs of inbreeding depression have been detected (Kalinowski *et al.* 1999).

Issue 2: For the northern Rocky Mountain gray wolves, the Service should consider the impacts of wildfire, catastrophic events, human harassment, or genetic risks to gray wolf recovery.

Response: The Service evaluated a host of impacts as required by the Act, including habitat modification, human harassment and killing, and genetic risks. A recent study of genetic diversity of wolves in the northern Rocky Mountains indicated that the population was genetically diverse, in fact as much so as its source populations in Canada. None of these factors were thought to pose a significant risk to wolf

population viability in the foreseeable future; none would affect the reclassification of the gray wolf in the northern Rocky Mountains. With regard to wildfires, which humans often view as catastrophic events, large mobile species such as wolves and their ungulate prey usually are not adversely impacted. Wildfires generally lead to an increase in ungulate food supplies, leading to an increase in ungulate numbers, which supports increased wolf numbers in the area in the years following a wildfire.

I. Recovery Goals and Progress in the Western DPS

Issue 1: Commenters recommended that the Service abide by the strictest interpretation of the reclassification and recovery criteria found in the Northern Rocky Mountain Wolf Recovery Plan.

Response: We acknowledge that the proposed rule did not adequately explain how our goals for gray wolf reclassification and recovery in the northern Rocky Mountains have evolved since the 1987 Recovery Plan was written. A complete explanation can now be found in the subsection *Reclassification and Recovery Goals* within the section Recovery Progress of the Rocky Mountain Gray Wolf.

Issue 2: Several comments indicated that restoration of wolves in Montana, Idaho, and Wyoming does not warrant changing the classification of wolves throughout the much larger Western DPS from endangered to threatened.

Response: Wolf recovery in the northern Rocky Mountains of the United States has been defined as a minimum of 30 breeding pairs of wolves (a breeding pair is defined as a male and a female wolf that raise at least 2 young that survived until December 31) that are distributed throughout the mountainous portion of western Montana, Idaho, and northwestern Wyoming for a minimum of 3 successive years (see previous issue). A review of that definition by a wide diversity of professional peer reviewers indicated that such a population would be comprised of about 300 individuals and that some minimum level of connectivity among the U.S. subpopulations and with the larger wolf population in Canada was necessary to guarantee long-term persistence. That peer review indicated that population viability is a function of the population and not the area it occupies. The reviewers felt that geographically expanding an area that a population occupies had no impact on that population's viability. The Service believes that the Western DPS wolf population in the northern Rocky Mountains of Montana, Idaho, and Wyoming is not in danger of extinction, and therefore is no longer endangered but rather warrants reclassification to threatened status.

Issue 3: Address how reclassification of gray wolves in the Western DPS eliminates the threat of extinction.

Response: Reclassifying a species from endangered to threatened is not intended to eliminate the threat of extinction; instead, it is done in recognition that the species no longer warrants endangered status. Such is the case for gray wolves in the Western DPS. There currently are about 563 wolves in 34 breeding pairs in the Western DPS. Many of those breeding pairs are in extensive and secure habitats under public ownership, such as Yellowstone National Park and several National Forests. The gray wolf in the northwestern United States has achieved a population that is rapidly approaching our recovery goal. Reclassifying wolves in the Western DPS to threatened status still maintains the Service's management authority and the Act's protection for those wolves. The Act's protections will continue to prevent the excessive human-caused mortality that caused wolf extirpations in the past. When the States have adequate regulatory mechanisms in place, the Act's protections will no longer be needed. The reasons that wolves are no longer endangered are described in more detail in the 5-factor analysis that is part of this rulemaking.

J. Recovery in Northwestern Montana

Issue: The Service should not reclassify wolves in northwestern Montana, because recovery has proceeded slowly and may have stopped. Thus, full protection under an endangered classification should be maintained.

Response: The estimated wolf population in northwestern Montana is 84 wolves in 7 breeding pairs, which is the highest level recorded to date. The final regulations will not cause any significant increase in wolf mortality that would impact wolf population levels or prevent additional recovery there. We anticipate that the wolf population in northwestern Montana will enjoy the same benefits from more flexible management under this rule as have the rapidly expanding wolf populations in the nonessential experimental population areas. In addition, that management flexibility will extend to areas where the Service currently has no plans to actively promote wolf restoration under the Act, but where wolves may occasionally disperse and may cause conflicts. That flexibility should help increase local public tolerance of wolves.

Maintaining the connectivity of the wolf population in the northern Rocky Mountains of the United States with the much larger Canadian wolf population is important to the long-term viability of western United States wolves. However, at the current time, research indicates that wolves in all three general recovery areas of Montana, Idaho, and Wyoming are as genetically diverse as the source populations in Canada. Long-term genetic and demographic viability of wolves in the northern Rocky Mountains will depend on long-term management by the States and tribes and their strategies for maintaining population characteristics such as genetic diversity. That management could involve maintaining natural connectivity between United States and Canadian wolf populations or by active management such as relocation. With about 563 wolves in 34 breeding pairs distributed throughout Montana, Idaho, and Wyoming, the gray wolf in the northern Rocky Mountains—including northwestern Montana—is clearly no longer endangered with extinction. The 4(d) rule is very similar to the nonessential experimental population rule, under which rule wolf populations in Idaho and Wyoming have flourished. The Service believes the increased management flexibility under threatened status and a 4(d) rule is appropriate and the increased management flexibility will assist in completing the species recovery.

K. Special Regulations Under Section 4(d) for the Western DPS

Issue 1: The Service should not encourage harassment of wolves in the Western DPS.

Response: The Western DPS 4(d) rule allows landowners and permittees on Federal grazing allotments to harass wolves in a noninjurious manner at any time. This type of harassment will not affect the wolf population other than by making some individual wolves more wary of people. Wolves are adept social learners. Harassing wolves that have begun to be comfortable around people will cause those wolves to become more wary. Wolves that are wary of people and places that are frequented by people may be less likely to be involved in livestock and pet depredations. Wolves that are not wary of people are more vulnerable to being illegally killed or being hit by cars and, in rare and the most extreme circumstances, wolves can become habituated to human foods and can become a potential threat to human safety.

In some situations the 4(d) rule also allows the injurious harassment (for example, by rubber bullets) of wolves under a permit from us. This type of harassment will permit management of situations (for example, loitering around vulnerable livestock, approaching humans, trying to attack pets) before they have escalated into a situation that calls for more drastic measures such as lethal control. To prevent abuse, this type of activity would be limited by case-by-case evaluation and controlled by a permit. In the experimental population areas, this type of management has been used in a few situations, and no wolves have been permanently injured.

Issue 2: The Service should only allow translocation (that is, livetrapping and releasing at a distant location) to control problem wolves.

Response: Translocation of wolves to reduce wolf-livestock conflicts can be a valuable management tool when wolf populations are low and empty habitat is available for translocated wolves. Wolves are territorial, and resident packs will kill wolves that are translocated to their territory. With the wolf population near recovery levels, few places are available to translocate wolves. It also appears that translocation of problem wolves is often not successful at preventing further problems, because the wolf has learned that livestock can be prey and carries that learned behavior to its new location and becomes a problem wolf there. Some wolves have traveled great distances after translocation and have returned to the area where they were captured. The Service primarily will rely on lethal control for management of wolves that attack livestock, because most habitat in Montana, Idaho, and Wyoming that does not have livestock is already occupied by resident wolf packs. However, translocation may continue to be used to resolve pet dog depredations and excessive depredation of native wild ungulate populations.

Issue 3: The Service should allow a limited wolf hunting season in Montana.

Response: Hunting is a valuable, efficient, and cost effective tool to manage wildlife populations. The Service has recommended that State wolf management programs in the West have regulated public hunting as part of their policy to conserve the wolf population. Conservation programs to restore large predators such as mountain lions and wolves are succeeding because of the historic restoration of wild ungulates, such as elk and deer, by State fish and game agencies and sportsmen. However, allowing public hunting of wolves while they are listed under the Act is unlikely. (A Service-proposed public trapping season for threatened Minnesota wolves in areas of high wolf depredation was prohibited by a Federal court in the mid-1980s.) Upon confirmation in early 2003 that the wolf population in Montana, Idaho, and Wyoming has met the recovery goal and when State wolf management plans are completed (see issue U, "State Wolf Management Plans"), the Service will move as quickly as possible to delist the wolf population. Following delisting, State-managed wolf hunting could be allowed by States if it is carefully managed and closely monitored.

Issue 4: The Service should relocate livestock if conflicts occur on public grazing allotments.

Response: Wolves and livestock, primarily cattle and horses, can live near one another for extended periods of time without significant conflict. Most wolves do not learn that livestock can be successfully attacked and do not view them as prey. However, when individual wolves learn to attack livestock, that behavior can quickly be learned by other wolves if it is not stopped. Since large portions of wild ungulates winter on private property, even wolves that prey on wild ungulates will be in close proximity to livestock during at least some portion of the year. Wolf recovery can occur without disruption of traditional western land-use practices and has successfully occurred without moving livestock off of public grazing allotments. Public lands can have both large predators and seasonal livestock grazing.

Furthermore, the Service does not have the authority to relocate livestock on either public or private land, except on lands within the National Wildlife Refuge System. Regulating or prohibiting livestock grazing on public lands is under the discretion of the respective land management agency.

Issue 5: The Service should emphasize nonlethal wolf control to resolve conflicts.

Response: We will continue to use nonlethal forms of wolf management, such as wolf harassment by landowners, injurious but nonlethal harassment by permitted individuals, use of scaring devices, working with conservation groups to provide fencing, alternative pasture, and guard animals and extra herders, and providing information on livestock management practices that can reduce conflicts with wolves. However, these methods are only effective in some circumstances, and no one tool is a cure for every problem. Wolf populations are at recovery levels, and wolf conflicts will increase as the population continues to grow. Most habitats in Montana, Idaho, and Wyoming, where conflicts between people and wolves are unlikely, are now occupied by wolves. The Service will rely on a variety of management tools including nonlethal approaches, but lethal control will often be used to resolve conflicts with livestock. Wolf populations can remain stable while withstanding 25–35 percent human-caused mortality per year. Agency lethal control of problem wolves was predicted to remove about 10 percent of the wolf population annually, and at that level it will not reduce the wolf population, but will minimize conflicts with livestock.

Issue 6: The special rule under section 4(d) should not exempt Federal agencies from the section 7 consultation requirements of the Act.

Response: The proposed rule does not exempt Federal agencies from their consultation requirements under the Act for threatened species. Federal agency consultation with the Service on their actions that may affect gray wolves is required, but under the special rule, it will not result in land-use restrictions unless these restrictions are needed to avoid take at active den sites between April 1 and June 30. Wolves are very adaptable, and Federal activities—unless they directly kill wolves—will have no significant effect on them. To date there have been virtually no land-use restrictions imposed for the benefit of wolves, and the wolf population has recovered quickly.

Issue 7: The Service should not loosen restrictions on lethal take; and we should base the take levels on scientific information.

Response: Wolf management, including the nearly identical forms of lethal wolf control included in the 4(d) rule, have been employed in the nonessential experimental population areas since 1995. The wolf population in those areas has rapidly expanded, and very few wolves have been taken under those provisions. Lethal take by agency personnel and lethal take under permits issued to the public are designed to target problem wolves and reduce the level of conflict with local rural residents. This level of take is unlikely to affect wolf population recovery and is based upon the biology of wolf populations. We have scientific data that show that such take is not excessive and allows the continuing growth of wolf populations.

Issue 8: The Service should allow wolves to be lethally taken for depredations on public land.

Response: The 4(d) rule allows wolves to be killed on public grazing allotments. Livestock producers can

receive a permit from us to shoot a wolf that is physically attacking livestock or guard and herding animals after we have confirmed that a wolf depredation has previously occurred. Comments on the environmental impact statement on wolf reintroduction, the experimental population designation process, and the proposal for this final 4(d) rule indicated that commenters believed that wolf management on public lands should be more closely controlled (that is, more protective of wolves) than on private land. To address this public concern and the legal responsibilities of Federal land management agencies to conserve listed species and provide a balance between the needs of wildlife and other uses, the 4(d) rule distinguishes between wolf management practices on Federal lands versus those on private land, while also addressing chronic wolf depredation. Under otherwise similar circumstances, the 4(d) rule will allow livestock producers to kill a gray wolf that is attacking their livestock on their private land without a Federal permit.

Issue 9: Commenters stated that the Service should deny a take permit to livestock producers who experience wolf depredation after improper disposal of livestock carcasses. Other commenters recommended that the Service redefine "problem wolf" to exclude those involved with acts of human carelessness or negligence.

Response: The Western DPS 4(d) rule states that wolves that attack livestock after being attracted to an area by artificial or intentional feeding, including livestock carcasses, may not be identified as problem wolves and may not be controlled, either by agencies or by permits to individuals. However, it would take an unusual situation to warrant withholding Service-authorized control of wolves that attacked livestock (that is, outside of the scope of traditional livestock management practices). In many instances, particularly in remote public land grazing allotments, it is nearly impossible to dispose of livestock carcasses. Wolves are very effective scavengers and will feed on livestock carcasses they discover. The fact that wolves feed on livestock carcasses does not mean that they will begin to depredate on livestock. Many biologists believe that the more familiar wolves become with livestock, even by feeding on carcasses, the greater the odds are that one could try to attack livestock. However, the bigger risk factor is that livestock carcasses may attract wolves to an areas near livestock which could increase the encounter rate and potential for depredation. The occasional discovery of a livestock carcass that would occur through traditional Western rangeland animal husbandry practices is unlikely to significantly increase the risk of wolf depredation on livestock. The Service does advise livestock producers of the potential for conflict that could occur when wolves are attracted to areas with livestock and, where possible, that livestock carcasses should be rendered or buried. The Service may determine not to control wolves until the attractants are removed.

Issue 10: The Service should increase the issuance of take permits on private, State, and Federal public lands.

Response: For the purposes of the Western DPS 4(d) rule, the Service considers State grazing leases to be treated the same as private property, unless a State management plan approved by the Service specifies otherwise (see issue U, "State Wolf Management Plans"). For instance, a permittee on a State livestock grazing allotment could shoot a wolf in the act of physically attacking livestock without a permit from the Service, just as he or she could do on private land. The 4(d) rule allows wolves to be noninjuriously harassed without a permit, injuriously harassed under permit, and killed in the act of attacking livestock or herding and guarding animals. In chronic problem situations, wolves can be shot on sight under permit. Furthermore, Federal, State, and tribal agencies can harass, move, and/or kill wolves to reduce conflicts with livestock, other domestic animals, and pets, and even big game populations. The Service does not plan to implement even more liberal practices for dealing with problem wolves at this time. More liberal management—for example, management through regulations allowing defense of property and public hunting—might be a part of State-run wolf conservation programs once the wolf population is delisted.

Issue 11: The Service should provide clear guidelines to residents regarding their rights under the 4(d) rule.

Response: The Service will do many public information announcements on the 4(d) rule. After the experimental population rule was completed, the Service prepared a summary of the special rule and distributed it to local landowners, livestock organizations, and the media to clarify what kinds of activities were allowed. We will do the same for this special regulation. In addition, the Service routinely conducts presentations and interacts with the public to clarify its regulations.

Issue 12: We should allow States and tribes outside a gray wolf recovery area to relocate wolves that are impacting ungulate populations.

Response: The 4(d) rule does allow any State and tribe to define an unacceptable impact resulting from wolf depredation in its State and tribal wolf plan and relocate wolves that are causing that impact. If 10 or more breeding pairs are in a State, the Service, in cooperation with the State or tribe, may decide to move wolves that are impacting State ungulate populations, even if the State or tribe does not have an approved wolf plan.

Issue 13: The Service should drop the provision to translocate western wolves if they are causing "unacceptable impacts" to wild ungulate populations. There is no evidence that Rocky Mountain wolves pose any significant threat to the ungulate populations in the region.

Response: In some situations, wolf predation, in combination with other factors, can contribute to dramatic localized declines in wild ungulate populations. Segments of the public and State fish and game agencies are very concerned that if these unusual conditions exist and wolf predation is contributing to dramatic declines in a localized ungulate population, then management of wolf predation, in addition to management of other factors, must be an available option. Moving wolves to resolve these types of situations can assist in ungulate management and ease local public and State game managers' fears about excessive unchecked wolf predation on native big game populations and hunter harvest.

Issue 14: The Service should define "abnormal" as it is used in the Western DPS 4(d) rule to allow taking of wild wolf-like canids that may be detrimental to gray wolf recovery.

Response: The 4(d) rule allows the Service or designated agencies to take any wolf or wolf-like wild canid that the Service determines has abnormal physical or behavioral characteristics. The primary purpose of these provision is to allow for the removal of free-ranging privately owned captive wolves or wolf-dog hybrids. There are a wide variety of traits that could be considered abnormal by the Service and each situation will be addressed on a case-by-case basis. However, physical examples of abnormal would be wolf-like canids that have spotted pelt patterns or highly curled tails or otherwise appear to have dog-like traits. Behavioral abnormalities would include a high affinity to humans or human dwellings, aggressive behavior toward humans, or displaying prolonged courtship or breeding behaviors with domestic dogs.

Issue 15: Provide expanded definitions of "wolf conflicts," "wolf problems," "persistent activity," and other related terms.

Response: Terms such as these necessarily need case-by-case application and situational definitions. A wolf pack living in an area and occasionally moving through livestock is routine and generally would not be considered to be a conflict or problem. However, a pack that also "tests" or runs livestock has crossed the line into a different category that may involve "wolf conflicts" and a need for some type of aversive conditioning. A wolf closely associated with a particular ranch for a short period of time may raise no specific concerns, whereas the same situation in proximity to a residential subdivision would. The Service believes that, because management flexibility will be required, wolf behavior can vary with individuals, and the number of situational variables is limitless, more-specific definitions of these terms are not necessary and would be unreasonably confining.

Issue 16: The Service should adhere to the Control Plan when targeting problem wolves.

Response: The Western DPS 4(d) rule now provides the regulatory framework under which problem wolves will be managed. The 1988 and 1999 Interim Wolf Control Plans have been replaced by the 4(d) rule.

Issue 17: Clarify the criteria that constitute opportunistic harassment.

Response: The definition of opportunistic harassment is provided in the Definitions section of the Western DPS 4(d) rule.

Issue 18: Clarify how wolf take rules apply to private land.

Response: The 4(d) rule has been slightly modified and does clearly State how wolves may be taken on private land. In addition, the comparison chart has been revised to clarify provisions of the Western DPS 4(d) rule as they apply to private and public land.

Issue 19: The Service should require verification of wolf depredation before allowing private control.

Response: The Western DPS 4(d) rule requires agency confirmation of wolf depredation before agency control or lethal take permits can be issued. The taking of a wolf that is physically attacking livestock on private land is allowed without a permit, but such take must be reported within 24 hours and evidence of a depredation (such as wounded livestock) must be present. We believe that these stipulations prevent abuse and focus control on specific problem wolves.

Issue 20: The Service should encourage ranchers to take measures to reduce the risk of wolf depredation.

Response: The Service works with USDA/APHIS-Wildlife Services, livestock organizations, and private groups to identify and publicize ways that livestock producers can reduce the risk of wolf depredation. In the past the Service and its cooperators have developed a host of tools that may help livestock producers prevent wolf-caused losses. The decision to utilize any of the tools offered is strictly voluntary on the part of the livestock producer, but in the past most of them have been very willing to voluntarily take steps to attempt to reduce the risk of wolf predation.

Issue 21: The Service should allow for the intentional harassment of gray wolves depredating on livestock.

Response: The Western DPS 4(d) rule allows all wolves on private land and those near livestock on public grazing allotments to be harassed at any time for any reason in a noninjurious manner. A permit to injuriously harass wolves can be issued on private and public lands. Wolves on private land that are actually seen depredating on livestock can be killed on private land without a permit, and on Federal grazing allotments a permit can be issued after a depredation has been confirmed.

Issue 22: The Service should allow landowners with inholdings within Federal lands to take wolves prior to suspicious activity or depredation.

Response: Wolves are very susceptible to human-caused mortality and were exterminated by excessive human persecution. Wolf populations could not persist in the face of unregulated human-caused mortality. Allowing any wolf seen to be shot on sight could significantly reduce wolf populations and jeopardize recovery. The States do not allow other large predators or wild ungulates that are much more common to be shot on sight for the same reason. Most large wildlife species, because of their relatively low reproductive rates and naturally high survival rates, will disappear in the face of unregulated human-caused mortality. A wolf that is simply on private property is not normally a problem animal, but wolves that attack livestock are aggressively controlled.

Issue 23: The Service should allow the intentional harassment of wolves on public lands.

Response: The Western DPS 4(d) rule allows any wolves near livestock to be harassed in a non-injurious manner on public lands.

Issue 24: The incidental take language in the proposed rule may undermine support by traditional wildlife users in Oregon, because it is dissimilar to the current rules for the nonessential experimental populations.

Response: The final special regulation for the Western DPS is intended to have similar incidental take provisions as those that have applied to the nonessential experimental populations, as specified in 50 CFR 17.84(i)(3)(viii). This is a change from the provisions of the previous endangered status, under which no incidental take of wolves was allowed outside of the nonessential experimental area.

Mistakenly shooting a wolf will not be classified as incidental take under the new special regulation; similarly, such an action has not been considered permissible as incidental take under the existing regulations for the nonessential experimental populations. One of the basic rules of hunter and gun safety is to be sure of your target. Just as is the case in current law in most States, a hunter who shoots a protected animal through mistaken identity is liable for that action. Both the new special regulation for the threatened Western DPS wolves and the existing regulation for the nonessential experimental populations stress the need for shooters to exercise reasonable due care to identify their target and avoid taking a gray wolf.

Issue 25: Under the permitting provisions of section 10(a)(1)(A) of the Act, the Service already has all the management flexibility it needs to deal with problem wolves in northwest Montana, so there is no need to reclassify those wolves to threatened and create a special regulation. The Service has not identified any additional flexibility that these changes would provide.

Response: We agree that the Service does have discretion to issue permits to manage wolves under the Act's 10(a)(1)(A) authority. However, that authority is not as broad or flexible as the provisions of this special 4(d) rule. The Service believes that the 4(d) rule clarifies the Service's intent and in some cases provides for the Service to allow management actions without the sometimes cumbersome process of issuing individual permits.

L. Nonessential Experimental Population Designations

Issue 1: Several respondents commented that the Service should review, delete, add to, and/or modify the NEP designations in central Idaho and the greater Yellowstone area. One peer reviewer recommended the NEP designations be removed, because they

are "no longer appropriate and create an overly complex regulatory structure."

Response: One of the alternatives considered in the draft proposal, but not selected for further analysis in that proposal, was removing the NEP designation in the central Idaho and Yellowstone areas, making all the Western DPS threatened, and managing all wolves in the Western DPS under this 4(d) rule. We chose to leave the NEP designations as they are, because in the 1994 rulemaking for the NEPs we stated we did not envision changing them until recovery occurred. In addition, several Federal agencies expressed concern over the potential of having to do section 7 consultation again, and the NEP rules are working well and are understood by most local residents in those areas. Instead, we have tried to make this 4(d) rule very similar to the special rule for the NEPs, thereby standardizing proven successful wolf management strategies throughout the Western DPS. While the NEP rules and this 4(d) rule are separate regulations, they are nearly identical, and they both address most public and agency concerns.

Issue 2: The Service should maintain NEP status for wolves that stray beyond NEP borders.

Response: Both the DPS and NEP designations are geographically based. Except for those wolves that are in captivity, gray wolves are listed and protected according to where they are located. However, the regulations for the three existing gray wolf NEPs do allow the Service to capture and return wolves known to be from the NEP areas if they move beyond the NEP boundaries. Thus, wolves that stray out of an NEP area can be moved back into the NEP area to further contribute to that recovery program.

Broadly applying all of the provisions of the NEP regulations to wolves that disperse and remain outside the NEPs would be equivalent to expanding the boundaries of the NEP. In our regulations establishing the Rocky Mountain gray wolf NEPs we stated we did not envision changing them until those wolf populations were delisted. We will not make such changes at this time in the absence of biological need and strong public support for such a change. Evidence of such need or support was not forthcoming during the comment period, even though we specifically requested comments on the two northern Rocky Mountain NEP regulations.

However, this final 4(d) rule applies provisions similar to those of the two Rocky Mountain NEPs to wolves outside of the NEPs. Thus, many of the provisions of the two Rocky Mountain NEPs will now be applied to wolves in the larger Western DPS.

M. Lethal Control of Gray Wolves

Issue 1: We received a number of comments that expressed varying degrees of opposition to the lethal control of gray wolves. Some commenters asked that we prohibit any form of lethal taking of wolves. Other comments supported killing of wolves only in defense of human life. Other viewpoints supported lethal control only if it is carried out by designated government agents, while some commenters feel that lethal control should not occur on public lands. The lethal control of wolves that kill only pets was opposed by some commenters.

Response: Current regulations under the Act that apply to both endangered and threatened species (50 CFR 17.21(a)(c)(2), § 17.21(a)(c)(3), § 17.31(a), and § 17.31(b)) provide the authority to lethally take endangered and threatened wildlife under several different scenarios. Furthermore, section 4(d) of the Act allows the promulgation of special regulations for threatened species if we determine that those regulations are "necessary and advisable to provide for the conservation of such species." These special regulations can include provisions for lethal taking of the species, if appropriate. In the case of experimental populations, special regulations can also be promulgated allowing lethal control. The common feature across these various regulations is that lethal take is allowed if it is necessary to protect human life and safety or is necessary for the conservation of the species.

The Service has had gray wolf regulations that allow lethal take under various scenarios in different parts of the country. Those regulations were necessary for wolf conservation, and they were tailored to meet the needs of the differing situations in their respective areas. In all cases they have two purposes: reducing threats, and the perceptions of those threats, to human safety; and reducing conflicts between wolves and humans in order to lessen the likelihood that individuals would act on their own to reduce perceived conflicts, likely leading to the deaths of more wolves than would result from regulated lethal control actions.

We believe the special regulations that have been used in Minnesota to control wolves depredating on livestock and other domestic animals have reduced wolf-human conflicts, have diminished the illegal killing of wolves, and thus have aided the continuing recovery of gray wolves in that State. The special regulations for Minnesota wolves provide for lethal control by designated government agents when wolf depredation has been verified and is likely to reoccur. These restrictions result in the control, including killing or permanent captivity, of those wolves that are taking domestic animals, but provide protection for wolves that are members of packs that hunt only wild prey. These regulations are biologically sound, and we believe they are consistent with wolf recovery in Minnesota. We have no information that would lead us to suspect that the similar regulations finalized in this rule will interfere with continued wolf recovery in Wisconsin and Michigan.

We are not making any changes to the current lethal control regulations for Minnesota gray wolves. We are allowing similar depredation control activities in most other States in the Eastern DPS, and providing the authority for tribes to salvage wolf parts for spiritual and cultural use and to conduct depredation control actions on reservation land without a Federal endangered/threatened species permit.

We have developed the two special regulations to provide the actions necessary to reduce human conflicts in the Western and Eastern DPSs. Each special regulation is designed to address the unique needs within the respective DPS, and to minimize adverse impacts on wolf recovery. Lethal depredation control is being authorized only to the extent that we believe is necessary to continue the recovery of the wolf populations to meet our recovery goals within those two DPSs.

We are providing lethal depredation control authority to most of the States and tribes within the Eastern DPS, including those States outside of the core recovery States of Minnesota, Wisconsin, and Michigan. (This authority is not being provided to States and tribes east of Ohio). It will be the decision of the respective tribes and States as to whether they want to utilize this authority to kill depredating threatened wolves in those rare incidents of verified depredation in those noncore areas.

In the Western DPS the 4(d) rule allows wolves that have been involved in livestock depredations to be killed by agencies and the public. This take will be highly regulated and is not expected to significantly impact the wolf population. To date about 6 percent of the wolf population in Montana, Idaho, and Wyoming is affected by Service wolf control actions, including lethal control under the continuing authority of the nonessential experimental population regulations. This level of human-caused mortality will not keep the northern Rocky Mountains wolf population from continuing its rapid expansion. As the wolf population has expanded rapidly, fewer areas of remote habitat remain for wolves to be moved to. Therefore, to resolve livestock depredations, the Service will be lethally controlling wolves in most situations.

Issue 2: A number of comments stressed that we should emphasize nonlethal depredation control measures and increase research efforts aimed at improved nonlethal control measures.

Response: The Service will continue to cooperate with USDA/APHIS-Wildlife Services, State DNRs, universities, and special interest groups to investigate ways to reduce the level of conflict between people, livestock, and wolves. To date we and our partners in wolf recovery have investigated and implemented the use of fencing; guard animals; extra herders; light, siren, and other scare devices, including those activated by wolf radio-collars; shock aversion conditioning; flagging; less-than-lethal munitions; offensive and repelling scents; supplemental feeding; harassing wolves at dens and rendezvous sites to move the center of wolf pack activity away from livestock; trapping and moving individual pack members or the entire pack; moving livestock and providing alternative pasture; investigating the characteristics of livestock operations that experience higher depredation rates; and research into the type of livestock and rate of livestock loss that are confirmed in remote public grazing allotments. We also correspond with and maintain professional contact with researchers and wildlife managers throughout the world to discuss and learn how they are dealing with similar problems. As a result of these attempts at nonlethal methods, we have not yet discovered a reliable method of nonlethal control. It is apparent that lethal control will remain an important tool for managing wolves that learn to depredate on livestock.

Lethal depredation control in the Western DPS is further discussed under section K. *Special Regulations under Section 4(d) for the Western DPS,* above.

N. Comments Regarding the Eastern DPS (composed of the proposed Western Great Lakes DPS and the proposed Northeastern DPS, as well as additional States)

Most comments regarding the Eastern DPS expressed opposition to delisting Midwestern wolves, addressed the proposed special regulation for the proposed Western Great Lakes DPS, or dealt with the proposed Northeastern DPS. Comments in the latter two categories are addressed in separate sections O and R, below. Other comments regarding the Eastern DPS follow:

Issue 1: Numerous comments expressed opposition to reclassifying Midwestern wolves to threatened status.

Response: Since our proposal was developed, we have received 2 additional years of data showing that wolf numbers in the Midwest are continuing to expand. We have reviewed, and have included in this rule, that additional population data, as well as updated information regarding disease occurrence and human-caused mortality. The additional information supports the reclassification from endangered to threatened.

Issue 2: The Service should support monitoring of gray wolves in the Midwest, and should improve wolf monitoring in the Lower Peninsula of Michigan.

Response: We have been partially funding wolf monitoring and research efforts by the Michigan and Wisconsin DNRs for many years. This support is expected to continue as long as the gray wolf is protected under the Act, and may continue to some extent for 5 years post-delisting.

Currently, we are not aware of any wild gray wolves in the Lower Peninsula of Michigan. While we understand the interest in identifying and protecting gray wolves that might occur in the Lower Peninsula, those wolves would be unnecessary to accomplishing gray wolf recovery under the Act. While we would provide technical assistance to initiate wolf monitoring and conservation in the Lower Peninsula if requested by the State and interested tribes, it is unlikely that we will be able to provide funding for wolf monitoring in the Lower Peninsula.

Issue 3: We should consider the potential impacts of hybridization with coyotes in the Midwest.

Response: We are concerned about gray wolf-coyote hybridization. There is mitochondrial DNA evidence that such hybridization may have occurred in the past (Lehman *et al.* 1991), but the nature of mitochondrial DNA provides little information on when, and how frequently, wolf-coyote hybridization may have occurred. There currently is no evidence that hybrid events have significantly changed the wolves in the Midwest. Morphologically, behaviorally, and ecologically they continue to look, act, and function as wolves, rather than like hybrids.

Issue 4: The Service should delist gray wolves in the Midwest.

Response: We recognize that wolf numbers in Minnesota, Wisconsin, and Michigan have surpassed the numerical goals of the Eastern Timber Wolf Recovery Plan. However, at the time our proposal was being prepared, we lacked reliable information on future wolf management in Minnesota, and we were therefore unable to evaluate the threats that might impact Minnesota wolves if they were delisted. See the Summary of Factors Affecting the Species section below under factor D., *The adequacy or inadequacy of existing regulatory mechanisms,* for additional discussion of Eastern DPS gray wolves.

The subsequent completion of the 2001 Minnesota Wolf Management Plan gives us the ability to better evaluate the extent of the threats that would likely be experienced by Minnesota gray wolves if they were delisted (see issue U, "State Wolf Management Plans"). Therefore, now that we have completed this rulemaking, we intend to reevaluate the threats to wolves in the Midwest, in light of current data and expected future wolf management by the States and tribes, in order to determine if the Eastern DPS constitutes a recovered entity. If we conclude that recovery under the Act has occurred, we will promptly publish a delisting proposal and open a public comment period. As we develop the proposal and take final action, we will again evaluate information on gray wolf presence in the northeastern United States.

O. Special Regulations Under 4(d) for Parts of the Eastern DPS (formerly the Western Great Lakes and Northeastern DPSs)

Issue 1: The government should not be involved in control of depredating wolves in Minnesota, Wisconsin, and Michigan. It should be the farmers' responsibility to keep their livestock out of the reach of wolves.

Response: Assisting farmers in reducing the adverse impacts of wildlife on agricultural activities has long been a program of the Federal Government, and currently is accomplished by the Wildlife Services program of the U.S. Department of Agriculture. In addition, the Service has a policy that directs us to minimize the adverse economic effects of our endangered and threatened species recovery programs. Thus, reducing wolf depredation on livestock by removing the offending wolves and wolf packs is an appropriate part of our wolf recovery programs, as long as those activities are consistent with gray wolf recovery. We believe that

controlling depredating wolves is consistent with wolf recovery.

Issue 2: Lethal control of depredating wolves on public lands should not be permitted.

Response: Trapping for depredating wolves on public land generally has not been done under the ongoing wolf depredation control program in Minnesota, and we do not expect such trapping to be commonly carried out in either Wisconsin or Michigan under the new special regulation (50 CFR 17.40(o)). Such trapping is restricted to within 1 mile of the depredation site, and the trapping usually can be effectively carried out on private lands. In addition, most Federal lands (National Parks, Lakeshores, and Riverways, and National Forests) in these States will not allow wolf trapping on their lands. However, the special regulation will allow wolf trapping on State, tribal, county, or other publicly owned lands. We believe that if wolf depredation has been verified, it is in the best interests of wolf recovery to remove the problem wolves in the most effective manner, so we will not put unnecessary restrictions on the trapping locations.

Issue 3: The Service should require evidence of conflict between livestock and wolves prior to initiating control measures.

Response: We agree with this comment. The special regulation (both as proposed and as finalized) requires a determination that "the depredation was likely to have been caused by a gray wolf" and that "depredation at the site is likely to continue" if the problem wolves are not removed.

Issue 4: The special regulation should allow depredation control measures for wolf depredation of game farm animals.

Response: The special regulation allows depredation control measures to be carried out in response to wolf depredations on "lawfully present livestock or domestic animals." The regulation does not specifically address game farm animals. However, if State or tribal wolf management plans (see issue U, "State Wolf Management Plans") define livestock to include game farm animals, our special regulation can be invoked in game farm depredation incidents. We expect such depredation control actions to occur in Wisconsin, because the Wisconsin Wolf Management Plan defines livestock to include "pen-raised animals raised on licensed game farm operations" (WI DNR 1999a).

Issue 5: We received a number of comments espousing various opinions on who should be allowed to conduct depredation control activities under the proposed special regulation that now applies to all midwestern States except for Minnesota. Opinions ranged from allowing private individuals, including farmers and animal owners, to take problem wolves, to allowing only qualified government agents to kill such wolves.

Response: We believe the depredation control program, as operated in Minnesota since the mid-1980s, has been highly successful in removing depredating wolves and thus greatly reducing domestic animal losses, while not unnecessarily impacting the continued growth of the Minnesota wolf population. Those regulations allow employees or designated agents of the Service or MN DNR to take depredating wolves. We have chosen to apply the proven success of this program to the other midwestern States, with only two minor changes. The first of those changes allows tribes or their designated agents to undertake depredation control actions on reservation lands without needing a Federal permit. The other change increases the area in which trapping can occur from the one-half mile allowed in Minnesota to 1 mile in Wisconsin and Michigan and 4 miles throughout the remaining area covered by the special regulation. We believe this approach will provide sufficient ability to control problem wolves without significantly impacting the ongoing wolf recovery in Wisconsin and Michigan.

Issue 6: The Service should require farmers to employ adequate animal husbandry practices in the Midwest as a prerequisite to being eligible for depredation control actions or compensation.

Response: While there is some evidence that supports the theory that certain animal husbandry practices will reduce the likelihood that a farm will experience wolf depredation, the only quantitative study on the subject in the Midwest to date did not find any clear connections between farm layout, animal husbandry practices, and wolf depredation incidents (Mech *et al.* 2000). Furthermore, even the most careful and protective livestock producer can still fall victim to wolf depredations. Given the uncertainty of success from "better" animal husbandry practices, we will not require such practices, but will continue to advocate for their use. Similarly, USDA/APHIS-Wildlife Services also recommends such practices and provides livestock producers with information on these practices.

Depredation compensation payments are made by State agencies or private organizations, not by the Service. The Service cannot dictate the criteria for such payments.

Issue 7: The special regulation for Michigan is too subjective. Depredation by a wolf should be proven beyond doubt, the identity of the depredating wolf should be identified, and only that individual wolf should be trapped and removed.

Response: The special regulation requires that "the depredation was likely to have been caused by a gray wolf" in order for trapping and removal operations to commence. Evidence, including tracks, location of bites, size and spacing of incisor punctures, and the presence and extent of subcutaneous hemorrhaging will usually allow trained depredation incident investigators to determine whether the predator was a wolf or coyote, and can even determine if a wolf killed the domestic animal or merely scavenged on it after it had died from other causes. If the evidence does not allow the investigator to conclude that a gray wolf likely was the cause of the mortality, then lethal depredation control actions cannot be carried out. The "likely to have been caused" standard has been used successfully in wolf depredation control activities in Minnesota for many years, and has allowed the wolf population in that State to continue to increase. We do not believe it will result in excessive wolf mortalities in Wisconsin and Michigan.

We agree that an ideal depredation control program would remove only the wolf that killed the domestic animal, and the remainder of the pack would then pursue only wild prey. However, this scenario is unrealistic for two main reasons. First, it is not possible to determine which pack member or members attacked and killed the domestic animal, short of capturing the entire pack and doing stomach content analysis within a few days of the depredation incident. This is not practical and in most cases it is impossible. Second, the wolf pack functions as a hunting unit and in many cases the entire pack, not just one member, develops the practice of preying on domestic animals. Thus, trapping and removing a single pack member will usually not stop the depredation problem.

Issue 8: The special regulations for Minnesota should be consistent with the special regulations for other areas of this DPS.

Response: We agree that the special regulations would be slightly easier to understand if they were identical across all the areas included within the Eastern DPS. However, the Act allows special regulations under section 4(d) to vary with the conservation needs of the species in that area. Therefore, we have established smaller lethal control distances (that is, the radius around the depredation site in which lethal control can be carried out) in Michigan and Wisconsin than in the other States covered by the same 4(d) rule, in order to reduce the likelihood that the wrong wolves might be trapped in those two States with high wolf population densities. In addition, this 4(d) rule does not apply to any of the States in the Eastern DPS that are east of Ohio.

With respect to the differences between the continuing special regulation for Minnesota wolves (50 CFR 17.40(d)) and this new special regulation for most of the Eastern DPS (50 CFR 17.40(o)), we chose to propose no changes to the pre-existing Minnesota special regulation, because it was the product of a court order and has been functioning well and reducing wolf depredation problems for over 15 years. Modifying its language in any way could require Federal Court approval. Any modifications that might be seen as significant would likely result in litigation, or might otherwise delay the implementation of this final rule. Therefore, we have chosen to defer any changes to the special regulation for gray wolves in Minnesota.

In order to minimize any confusion, we have made the special regulation for the Eastern DPS consistent within a State's boundaries, so that State agencies, or the designated agents of State agencies, will only have to be concerned with a single set of regulations for that State. Furthermore, where Native American reservation boundaries cross State boundaries, the gray wolf special regulations are identical on both sides of the State boundary, and thus are consistent within individual reservations. Thus, we believe the possibilities for confusion in complying with the 4(d) rule for the Eastern DPS have been minimized.

P. Habitat Protection for Gray Wolves

Issue: Numerous comments expressed the belief that suitable gray wolf habitat should receive additional protection prior to reclassification, or that we should reassess the threats of habitat destruction and modification. Most of these comments dealt with the proposed Western Great Lakes DPS and the proposed Northeastern DPS; some comments specifically suggested that we require additional protection of roadless habitat in Wisconsin.

Response: From a review of gray wolf population data in western Great Lakes States and the northern U.S. Rockies, it is clear that wolf populations have increased dramatically under the habitat protections that have existed over the last several decades. Even in the two areas (Wisconsin and northwestern Montana) where wolf population growth had slowed or had been temporarily stalled, inadequate habitat protection was not the causative factor, and population growth has resumed in both areas in the absence of additional habitat protection measures.

At such time as we consider the delisting of gray wolves, we will review changes in habitat protection that would result from the elimination of the protections of the Act. The impacts of those changes will be part of the threats analysis that will accompany any delisting proposal, and will be considered in any final decision on delisting. However, as the current action is a reclassification which retains the current habitat protections of the Act, we believe the concerns expressed for its adverse impacts on habitat protection are unfounded.

Q. Compensation for Depredation by Gray Wolves

Issue: Several concerns were expressed regarding the payment of compensation to the owners of domestic animals, including pets and livestock, that are reported as killed or injured by gray wolves. Some commenters opposed such compensation and recommended that compensation funds should instead be used to reduce or prevent wolf depredation. Other commenters supported compensation for livestock losses caused by wolves; some commenters also would like compensation to be available in instances of wolf depredation on pets. There were comments both supporting and opposing a requirement for verification of wolf depredation in order for an owner to receive compensation. Other comments dealt with the amount of compensation.

Response: The Service does not provide monetary compensation for damage caused by any wildlife, including financial losses resulting from domestic animals being killed or injured by gray wolves. All such compensation programs are run by State agencies or private organizations and are not funded in any way by the Service. In the northern Rockies and the Southwest, wolf depredation compensation payments are made by Defenders of Wildlife. In the Midwest, wolf depredation compensation payments are made by the Minnesota Department of Agriculture, WI DNR's Nongame Wildlife Fund, and MI DNR, with partial financial support from private conservation organizations.

As we are not involved in wolf depredation compensation payments and do not envision becoming financially involved in these programs, we recommend that such comments be sent to the appropriate State agencies and Defenders of Wildlife.

R. Comments Regarding the Proposed Northeastern DPS

Issue: We received a diverse array of comments dealing with various aspects of the proposed Northeastern DPS and the special regulation proposed for that DPS. The comments spanned a spectrum from strong support for establishing a Northeastern DPS and recovering gray wolves there, to intense opposition to any steps towards wolf restoration in the Northeast. Other issues include suggestions for changing the special regulation that was proposed for gray wolves in the Northeastern DPS (for example, the provisions for lethal take of wolves, wild ungulate impacts, and States' roles), comments on whether those wolves should be listed as threatened or endangered, the boundaries of the DPS, the taxonomy of the historically resident wolf and the potential of hybridization with coyotes, the use of an experimental population designation, threats to wolves from disease and human activity and development, the role of public versus private land, habitat suitability and protection, prey availability, fear of lawsuits resulting from the incidental take of gray wolves on private lands, the cost of wolf restoration, and the need for public education programs to promote wolf restoration in a Northeastern DPS.

Response: As discussed elsewhere in this document, when we drafted our gray wolf reclassification proposal, we believed there may have been sufficient information to support the establishment of a gray wolf DPS in the northeastern States of New York, Vermont, New Hampshire, and Maine. If such a gray wolf DPS were to be established, we stated that we would initiate recovery planning to determine the feasibility of restoring a viable gray wolf population in that area and the best way to accomplish such a restoration. We proposed that gray wolves in the Northeastern DPS should be classified as threatened, and we also proposed special regulations under section 4(d) of the Act for gray wolves in this DPS. Both threatened classification and the special regulations were intended to increase the management flexibility for the States, tribes, and the Service in order to more effectively accomplish gray wolf recovery there.

In our July 13, 2000, proposed rule, we specifically requested comments and

additional information on the proposed Northeastern DPS and the associated proposed special regulation. Since that time we have paid particular attention to two important issues—insufficient evidence of a resident population of wolves in the Northeast and the identity of any such wolves and the wolves that historically occupied the Northeast.

Regarding the first issue, despite ongoing efforts by individuals and several conservation organizations, no reliable data support the contention that a population of wild wolves currently exists in the northeastern States. While there were three individual wolves or wolf-like canids killed in Maine and Vermont within the last 10 years, their origins are unknown, and there have been no subsequent confirmed sightings of pairs or packs of wolves. Thus, in view of the lack of reliable data showing that a wolf population exists in this area, we are unable to designate a separate DPS there. We cannot list a DPS when we lack data showing that a population exists.

We believe the second issue—the identity of the recent and historical wolf of eastern North America—remains unresolved. Until scientific data and analysis can conclusively determine which large canid historically occupied the Northeast, we are unable to determine which wolf, if any, would be considered for restoration there. We currently are unconvinced that the gray wolf was not the historical wolf in at least a portion of the Northeast, so we will not delist the gray wolf in that region on the basis of the assumption that it was listed in error. At this time we will maintain the Act's protection by including this geographic area in a threatened Eastern Gray Wolf DPS that also includes the proposed Western Great Lakes DPS and several other States.

Because we are not finalizing a listing of the proposed Northeastern DPS and are not finalizing the proposed 4(d) rule that was intended to provide management flexibility in order to promote wolf restoration within that DPS, we will not further address the many comments that dealt with these issues. However, if we receive reliable information supporting the existence of a northeastern wolf population, or if we subsequently determine that the gray wolf was the historical resident wolf in the Northeast, we could again consider listing a separate gray wolf DPS in the Northeast. At that time we will review all the issues that were raised during this comment period and endeavor to address them in any DPS proposal that we might publish.

S. Use of Scientific Data

Issue 1: A number of commenters stressed that our decision should be based on sound scientific data and analysis. Some of these comments accused us of improperly considering economic, political, or other factors when developing the proposal. We were accused of improperly favoring livestock interests as well as allowing undue influence from environmental organizations.

Response: The commenters are correct in their assertion that our decision should be based on sound scientific data and analysis. The Act clearly requires us to use only scientific and commercial data that are relevant to the five categories of threats that might be affecting the species.

The Service has followed the requirements of the Act in coming to a decision on this final rule. We used the best scientific data available as we developed the proposal, and in this final rule we have updated (and corrected, as described in the Technical Corrections category, above) wolf population and mortality figures wherever appropriate. In addition, newly available scientific data resulted in our decision to not finalize the listing of a Northeastern DPS at this time and to make changes to the proposed special regulation for the Western DPS.

Special interest groups have not had any undue or improper influence on this rulemaking, nor have we considered economic factors in our reclassification decision. Some commenters who expressed such a concern may have come to that conclusion as a result of a misunderstanding of the applicability of our "Policy on Recovery Plan Participation and Implementation Under the Endangered Species Act" (59 FR 34272, July 1, 1994; available at *http://endangered.fws.gov/policy/pol002.html*). That policy states that we will minimize the social and economic impacts of implementing recovery actions and will consider such impacts as we develop recovery plans. However, the Act prohibits such economic considerations during the rulemaking process for listing, reclassification, and delisting actions, and the Administrative Procedures Act prohibits Federal agencies from providing special interest groups any special access to the rulemaking process. This rulemaking has complied with those prohibitions.

Issue 2: The Service should clarify the process by which wolf population estimates are determined.

Response: In the northern Rocky Mountains the wolf population estimate is primarily derived by counting wolves in packs that contain radio-collared members. The breeding pair count is also estimated by radio telemetry and by counting the number of wolf groups that contain an adult male and an adult female wolf that raise at least two pups that survive until December 31.

Descriptions of the methods used to estimate gray wolf populations in the midwestern States have been added to the sections that describe the recovery progress of gray wolves in that area.

T. Requests for Consideration of Factors Other Than Threats to the Species

Issue 1: We received comments that recommended that decisions on the Act's protections for gray wolves should be based on a wide variety of factors in addition to the threats to the species. These factors include economic considerations (depredation costs, funding for game habitat acquisition and restoration efforts, costs and benefits to local communities, agency budgets), threats (or the lack of threats) to human safety and to pets, impacts on the Carolina Dog, ecological impacts to all native wildlife (and specifically to wild ungulates), the intrinsic value of the species, the ecological benefits provided by wolves, the wolf's role as an indicator species, and ethical concerns.

Response: We understand these concerns and the intensity with which they are felt by the commenters. Economic concerns, threats to humans and domestic animals, ecological effects, and impacts on other species (especially rare and declining species) are all taken into consideration as we develop and implement recovery programs for listed species. However, the Act clearly states that our decisions to list, reclassify, and/or delist a species can only be based on scientific and commercial data that deal with threats to the species and its habitat. These threats are broken into five factors by the Act (section 4(a)(1)), which are individually addressed below. While we recognize that there are many direct and indirect benefits and costs that arise from the listing or delisting of a species, the Act prohibits us from considering any factors except the threats to the species.

Issue 2: When we implement recovery programs for listed predator species, we should, or should not, consider the impact of wolf predation on wild ungulate populations.

Response: When implementing recovery programs for the gray wolf, our 1994 Policy on Recovery Plan Participation and Implementation Under the Endangered Species Act (59 FR 34272) requires that we strive to minimize unnecessary social and economic impacts of those recovery actions. The Service is aware that while generally wolf predation is not expected to cause significant negative consequences to wild prey populations, there are conditions where it may. The 4(d) rule for the Western DPS allows for those wolves to be relocated should they cause significant negative effects on wild ungulate populations. The Service has initiated, and cooperated on a multitude of, wolf-ungulate relationship studies in Montana, Idaho, and Wyoming since the early 1980s to assess or detect the potential impact that wolf predation may have on various ungulate populations. Most of these projects were done by local university graduate students and in cooperation with other State and Federal resource management agencies. We will use the best scientific data available in future decisions involving actions to reduce wolf impacts on wild ungulate populations.

U. State Wolf Management Plans

Issue: A great deal of concern was expressed by a number of commenters about whether State protection and management of gray wolves would be adequate to ensure the continued viability of those wolf populations if Federal protections are reduced (via reclassification) or removed (via delisting). Some commenters stated that State protection will not be adequate or effective, and for that reason gray wolves cannot be delisted or reclassified to threatened. Other commenters want the Service to assist in the development of State wolf management plans, set minimum standards for such plans, and fund their implementation. Some commenters would like every State that has the potential for wolf recovery to be required to develop a management plan prior to delisting, even if no wolves currently reside in the State. The need for wolf management plans to be coordinated across State lines was another concern.

Response: When a species is listed as threatened or endangered, we develop a Federal recovery plan that describes the actions believed to be necessary to ensure the long-term survival of the species. Other Federal agencies, States, tribes, conservation organizations, and other affected parties are encouraged to assist in implementing these recovery actions, and in some cases non-Service entities take the leading role in carrying out these actions. For the gray wolf, the active and vigorous involvement of numerous State and tribal agencies and private conservation organizations has been instrumental in achieving the degree of wolf recovery that has already occurred.

States and other Federal agencies sometimes develop their own management plans that identify management actions they will take while the species is listed and/or after the species is delisted. If a State or other Federal agency is interested in assuming management responsibility for the species while the species is listed, the Service must approve the plan to ensure it is consistent with the recovery of the species and otherwise consistent with the Act prior to delegating management responsibility to that State or other Federal agency.

Even if a State or other Federal agency does not assume management responsibility for the species while it is listed, delisting of the species will require that we evaluate State or other Federal agency management of the species following removal of the protections of the Act. Section 4(a)(1) of the Act requires the Secretary to determine whether any species is an endangered species or a threatened species because of any of five factors including the "inadequacy of existing regulatory mechanisms." Section 4(b) establishes the basis for such determinations, which includes consideration of efforts being made by any State to protect the species. In the context of a delisting determination, the Service must show that a threat is no longer at a level warranting listing or, in the absence of the protections afforded by the Act, that other existing regulatory mechanisms will adequately remove or reduce the threat to the species. Such an analysis will often be greatly facilitated if there are approved State or tribal management plans that will be implemented following delisting.

We are willing to assist States and tribes with the development of their wolf management plans. We will encourage States and tribes to develop plans that provide for coordinated actions across State and reservation boundaries to the extent possible. For example, we are currently working directly with the Bad River Band of Chippewa Indians and the WI DNR to develop special management practices for Reservation wolves that might become involved in depredation incidents while off the Reservation.

Because management plans are not required by the Act or its implementing regulations, we cannot force States and tribes to develop them or to coordinate them across their boundaries. However, those States that are interested in gaining full management authority for gray wolves have already begun working on such plans. In most cases we have been involved to varying degrees in the development of these plans, and we are familiar with the level of the State's commitment to their implementation. For plans that have been completed and subsequently reviewed by the Service (MI DNR 1997, WI DNR 1999a, and MN DNR 2001), these plans will greatly assist our future evaluation of post-delisting threats to wolves in these States. However, because the Act overrides State laws, regulations, policies, and management plans, these State plans can only be implemented to the extent that they are consistent with the protections of the Act and any Federal regulations promulgated under the provisions of the Act. Therefore, many of the provisions of these State wolf management plans cannot be implemented while gray wolves are federally listed as threatened within the respective State. Specifically, this means that public hunting and trapping of wolves and preemptive lethal control of potentially depredating wolves without a Federal permit cannot be initiated by the States, nor will livestock producers or landowners be able to freely kill wolves while they are classified as threatened by the Service. The Act and the several NEP and 4(d) regulations will restrict take of gray wolves, regardless of the existence of State or tribal wolf management plans in the Midwest and West, until wolf populations are delisted.

At such time as we consider a proposal to delist the gray wolf, we will fully evaluate the impacts of State plan implementation. Those impacts will be discussed in any delisting proposal that we develop, and will be considered in any final decision on delisting. Regardless of whether or not State and tribal wolf management plans have been completed or are being developed, we must conduct a threats analysis as required by the Act. If completed wolf management plans exist, we will use them to assist in the threats analysis. If completed management plans are lacking, we will complete the threats analysis using whatever information is available to us. However, the absence of one or more State management plans may impair our threats analysis to the extent that delisting consideration might be deferred.

We have been funding, or partially funding, State and tribal wolf monitoring, research, and management planning efforts for gray wolves. Such funding has occurred in the Midwest, the northern Rockies, and the Southwest. We intend to continue such funding, as our annual budgets allow, for the reclassified wolf populations in the Midwest (Eastern DPS) and the

northern Rockies (Western DPS). However, the Service lacks any mandate to fund State and tribal management or monitoring actions for species that have been delisted.

V. Native American Concerns

A number of comments were received from Native American tribes and organizations and from individuals who identified themselves as Native Americans. While many of these comments have been addressed in other issue categories, the comments from Native American interests that are not addressed elsewhere are covered in this category.

Issue 1: The Service should consider the cultural value of wolves to Native Americans when making a reclassification or delisting decision for the gray wolf.

Response: During the development of this regulation, we contacted many tribes and Native American organizations to ensure that they were aware of the regulations we proposed on July 13, 2000, and to learn of their concerns with those proposed regulations. We will continue this dialogue, and expand these contacts as we proceed with our wolf recovery programs and ultimately propose the delisting of one or more gray wolf DPSs. In addition, we will followup with specific requests by several tribes for assistance with developing management plans, negotiating wolf protection agreements with States, and training, as described in the following responses. However, the Act provides no authority to extend its protections beyond the point at which a species no longer warrants a threatened or endangered status, so we cannot unreasonably delay or forgo reclassifying or delisting the wolf for cultural or spiritual reasons.

Issue 2: The Service should restrict or prohibit lethal take of wolves within treaty ceded areas and on and around certain reservations.

Response: We understand the desire of several tribes to retain strong protections for gray wolves both on reservations and on lands surrounding the reservations. While there is no provision within the Act to maintain such Federal protections for species which no longer warrant a classification as threatened or endangered, we will work with the interested tribes and the appropriate States and strive to develop protective agreements for gray wolves on or near reservations. These agreements would replace some or all of the protections currently provided by their current endangered or threatened listings. We are currently working with the Bad River Band of Lake Superior Chippewa Indians of Wisconsin and the WI DNR to develop such an agreement that might serve as a prototype agreement for other reservations. This agreement potentially will provide protection to threatened, but depredating, Wisconsin gray wolves beyond that provided by the new 4(d) regulation, and could continue to apply after Wisconsin gray wolves are federally delisted.

Issue 3: The Service should delay its reclassification and delisting decisions to allow time for the development of an intertribal management agreement among tribes in the 1836 Treaty Ceded Area.

Response: We appreciate the interest in developing wolf management plans both on reservations and across the areas ceded by treaty to the United States Government. Such plans would facilitate sharing expertise, exchanging data, and implementing cooperative research efforts and would lead to more effective wolf management programs. However, the Act requires that we base a species' listing status on the threats affecting it, and on whether the species meets the Act's definitions of threatened and endangered. Developing such an agreement is likely to be a lengthy process, involving discussions and negotiations with a number of agencies that have wildlife management authority in ceded areas. Therefore, while we are interested in assisting with the development of such a management agreement, we cannot delay this reclassification decision until such an agreement is completed.

Issue 4: The Service should provide depredation control training to the Mille Lacs Band (Minnesota Chippewa Tribe) conservation officers.

Response: Our proposal contained no changes to the listing of the gray wolf in Minnesota, nor to the special regulation that allows for the lethal control of Minnesota gray wolves depredating domestic animals. Currently, all wolf depredation control actions in Minnesota are carried out by the USDA/APHIS-Wildlife Services, but the special regulation allows us to designate agents to conduct depredation control activities. We will pursue this request by the Mille Lacs Band to become involved in depredation investigation and control activities to determine the extent of this interest and how any necessary training could be arranged.

Issue 5: The Service should require Minnesota DNR to coordinate with tribal governments in gray wolf management efforts.

Response: We agree that wolf management activities will be more effective and more efficient if they are coordinated across State and reservation boundaries. We will continue to encourage such cooperation, and will assist in the development of agreements to enhance this cooperative management.

Issue 6: The special regulation for most of the Eastern DPS should extend to tribes the authority to take, under section 6 cooperative agreements, for scientific research or conservation purposes.

Response: Section 6 of the Act gives us the authority for the development of endangered species cooperative agreements with any State that "establishes and maintains an adequate and active program for the conservation of endangered species and threatened species." Once such an agreement is approved, the State is eligible for cooperative endangered species grants, and gains some additional take authorities under the regulations at 50 CFR 17.21(c)(5) and 17.31(b). Subparagraph (2)(v) of the new special regulation at 50 CFR 17.40(d) contains parallel language for States with conservation agreements developed pursuant to section 6. However, tribes are not eligible for cooperative agreements under section 6, so we cannot extend to them any of the other benefits or authorities that come from such agreements. However, tribes can receive permits to take threatened wolves for scientific research or conservation purposes under 50 CFR 17.32.

However, the new special regulation for most of the Eastern DPS extends to tribes two significant new authorities. One provision allows them to salvage from within their area of jurisdiction, and without a permit from us, dead gray wolf specimens that may be useful for traditional, cultural, or spiritual purposes. The second provision allows a tribe to conduct lethal wolf depredation control activities within its area of coverage within reservation boundaries without a permit from us. Both of these provisions are available for the tribes to use at their discretion.

Issue 7: The proposed tribal salvage regulation for parts of the Eastern DPS should be expanded to provide tribal governments with half of the salvageable species that are taken from the ceded territories.

Response: While the gray wolf is listed as a threatened or endangered species under the Act, we are required to put salvaged wolves and wolf parts to those uses that best serve the species' conservation. However, due to the continuing recovery and increase in wolf numbers in the Midwest, we believe sufficient wolf carcasses are available to meet all remaining recovery needs while also giving tribes the authority to salvage carcasses and wolf parts found on reservations for traditional, cultural, or spiritual purposes. As is the case for wolves salvaged by State and Federal agents, the new special regulation under § 17.40(o) provides that these tribal-salvaged wolves will be reported to us and will be retained or disposed of "only in accordance with directions from the Service." We will routinely allow the tribes to retain such wolves and wolf parts. However, if an overriding conservation need arises—such as a disease outbreak that requires conducting standardized necropsies of dead wolves—we may need to use parts or all of some of those wolves for conservation purposes. Tribal-salvaged wolves not needed for such urgent conservation purposes will be retained by, or returned to, the tribes. During the time that the gray wolf remains protected by the Act, we cannot categorically provide salvaged wolves or wolf parts to non-conservation uses, but we will attempt to provide, and to allow the tribes to salvage and retain, sufficient wolf carcasses and wolf parts to meet their needs for traditional, cultural, or spiritual purposes.

We previously have authorized APHIS-Wildlife Services in Minnesota to make 50 percent of wolves trapped by that Federal agency for depredation control available to tribes for cultural purposes. That practice for Minnesota wolves will not be changed by the new regulation.

Issue 8: The Service should consult with tribes in the Dakotas to ensure that they have a role in the management of wolves on-reservation and within their State.

Response: We acknowledge the desire of many Native American tribes to have management authority for those wolves found on their reservations if the protections of the Act are removed in the future. The Department of the Interior (Department) will assist those tribes in this pursuit. The Department will also assist interested tribes in developing cooperative wolf management agreements with the appropriate State agencies for off-reservation wolves.

W. Captive Gray Wolves and Wolf-Dog Hybrids

Issue 1: One peer reviewer questioned what role captive gray wolves might have in our ongoing wolf recovery programs, and if that role was sufficient to warrant that captive wolves retain the Act's protections for as long as their source population is listed as threatened or endangered.

Response: We acknowledge that where our wolf recovery programs are nearing completion there may be only minor and largely speculative recovery roles remaining for captive gray wolves. Such roles would likely be for research, and such studies might be DPS-specific (for example, genetic or taxonomic studies, or disease resistence investigations). However, for the Southwestern (Mexican) gray wolf recovery program, many of the wolves currently in captivity retain great importance as potential subjects for reintroduction. For these reasons, we have chosen to continue to protect captive gray wolves according to their original source location in the wild.

Issue 2: Various respondents recommended that the Service address the potential problems associated with wolf-dog hybrids, regulate their breeding and commercialization, and provide public education on wolf-dog hybrid concerns.

Response: We are well aware of the potential problems that wolf-dog hybrids can cause for our various wolf recovery programs. This final rule does not extend the protections of the Act to wolf-dog hybrids, so such animals can be removed from the wild if their presence is detrimental to wolf recovery. However, the Act provides no authority for the Service to regulate their breeding and commercialization; these actions must be undertaken at the State and local level. We will continue to support State efforts that restrict or prohibit the release of wolf-dog hybrids in wolf recovery areas.

X. Other Comments Specific to Minnesota

Issue: Our proposal contained no suggested changes for Federal wolf protections in Minnesota. The proposed rule was developed in part to bring consistency to the legal protections afforded by the Act to all midwestern wolves by listing them all as threatened (as Minnesota wolves have been listed since 1978) and by applying to them a special regulation that is very similar to the special regulation that has applied to Minnesota wolves since the mid-1980s. The proposal stated that the Minnesota special regulation (50 CFR 17.40(d)) would continue to apply to Minnesota gray wolves.

However, we received numerous comments that either suggested changes or opposed any changes to the Act's current protections for Minnesota gray wolves. Minnesota-specific comments included recommendations to decrease, remove, or increase those Federal protections; opposition to lethal depredation control of Minnesota wolves; criticism of the MN DNR's wolf management plan (much of which cannot be implemented until the wolves are federally delisted); suggestions for wolf hunting in Minnesota; and recommendations for changes to the current special rule for Minnesota wolves.

Response: Our final rule follows the proposed rule in making no changes to the Federal regulations that apply to the gray wolf in Minnesota. Because the proposed rule did not contain proposed changes that would affect the Act's protections for Minnesota wolves, we cannot consider making any such regulatory changes at this time. Therefore, we are not addressing any of these comments in this document. However, these comments will be considered as we subsequently consider proposing additional regulatory changes that might affect the Act's protections for Minnesota wolves.

Y. Suggestions for Changes to Gray Wolf Recovery Programs

Issue: We received a large number of diverse comments which suggested changes to one or more gray wolf recovery programs. These comments included suggestions to maintain and expand recovery partnerships (for example, with Native American tribes, private wolf research centers, landowners, Canada, and Mexico), map wolf travel corridors, increase law enforcement and protection, and provide more public education, ideas for additional research, and ways to reduce conflicts with human activities.

Response: Because these comments did not address the proposed regulatory changes, but instead dealt with recovery actions and recovery plan implementation, they will not be discussed here. However, they will be referred to the appropriate Service gray wolf recovery teams or recovery coordinators for their consideration. Recovery programs and recovery plans are flexible and are intended to adapt to new knowledge, ideas, methods, and technology. Several of our gray wolf recovery plans may be reviewed for possible revision as a result of this rulemaking, and these comments will be considered for incorporation into those plans if they are revised. It is our policy to make drafts of revised recovery plans available for public review and comment, so there will be additional opportunities for input into our continuing gray wolf recovery programs.

Z. Miscellaneous Comments

Issue 1: Commenters suggested that we should reconsider alternatives that were discussed in our proposal but which were not our preferred alternative. The alternatives of keeping gray wolves listed as endangered wherever they are currently so listed, and retaining the endangered status only throughout the West, were specifically recommended for our reconsideration.

Response: As we reviewed the comments and addltional data that have become available since we drafted the proposed rule, we have reconsidered alternatives described in the proposal, as well as other alternatives that might be appropriate. With regard to the above two specific alternatives recommended for reconsideration, our evaluation of the current biological status and threats to gray wolves clearly indicates that both the Western and Eastern DPSs no longer warrant a classification as endangered, and are more appropriately classified under the Act as threatened species.

Our final rule is a modification of the proposed rule that now includes components of several other alternatives that were discussed in the proposal. One of those alternatives dealt with various boundary configurations for a DPS in the eastern United States and another included larger DPSs that included all of the 48 States.

Issue 2: How will the Service regulate wolf game farms and wolf pelt farms following reclassification?

Response: We are unaware of any existing wolf game farms or wolf pelt farms that use wolves that originated from within the 48 States or Mexico. Wolves in such farms would have been subject to the protection of the Act since 1978, and they could not have been legally killed for commercial purposes nor transported across State lines for commercial activities unless those purposes and activities promoted the species' recovery and were allowed under a permit we issued under 50 CFR 17.22 or § 17.32. This is an unlikely scenario, and we doubt that such wolf game farms or pelt farms exist. This situation will not change due to this reclassification, as the same Federal regulations will continue to apply to commercial use of threatened gray wolves.

Under this reclassification, gray wolves in captivity remain protected by the Act, on the basis of the locations at which they, or their ancestors, were removed from the wild, regardless of where they are being held. Thus, Mexican wolves that are in captivity in New Orleans remain endangered, while a wolf from Michigan held at the same New Orleans facility is classified as threatened. Captive wolves from Canada or Alaska remain unprotected by the Act, even if they are held in facilities in one of the gray wolf DPSs.

Facilities that breed gray wolves for use as pets, for exhibition, or for other nonrecovery purposes remain subject to the same legal requirements as they were before this regulatory change. Interstate commerce in such captive raised wolves continues to be prohibited by the Act, except under a Federal permit, if those wolves or their ancestors originated from within one of the DPSs. Intrastate commerce in such wolves is not regulated by the Act.

Issue 3: Several commenters expressed concern that wolf populations will decrease substantially if Federal protection is reduced or removed and recommended that we establish an expedited process to reclassify such wolves from threatened to endangered (or relist them if they had been delisted).

Response: Our analysis of the threats that gray wolves in the two reclassified DPSs will experience after their reclassification indicates that wolf populations will not decline if they are reclassified as threatened. However, wolf numbers and range will continue to be monitored at the same level of intensity as before this reclassification, so we will have data that will alert us if a population decline is occurring; Thus, we can reclassify wolves back to endangered status if necessary.

The Act clearly recognizes the possibility that the Service might reclassify or delist a species prematurely, or that unanticipated threats may cause a species to unexpectedly decline following a reclassification or a delisting. The Act directs the Service, in cooperation with the States, to monitor delisted recovered species for at least 5 years after they are delisted, and to relist them—including emergency relisting—if the monitoring indicates that such action is necessary. Thus, the Act already contains a process to relist a species, and to do so on an emergency basis, if necessary. Similarly, the Service also has the authority to reclassify a species from threatened to endangered if monitoring data indicate the need. An emergency reclassification from threatened to endangered is possible, if monitoring indicates this is necessary.

The new special regulations for the Western and Eastern DPSs both have reporting requirements for all wolves taken under their provisions. Thus, we will have information on any increased level of take that occurs as a result of these new rules, and we can promptly evaluate that level and make changes to the regulations, if appropriate.

In addition, the Act contains a provision (section 4(b)(3)) that allows an interested party to provide data to us and to petition to have a species listed, delisted, or reclassified. This petition process is a mechanism to direct our attention to species' data or to threats that we might otherwise overlook.

Issue 4: All costs of wolf monitoring, depredation control, and depredation mitigation efforts in Idaho should be paid by the Federal government.

Response: The Federal government currently funds all wolf-related activities in the Western DPS except for wolf depredation compensation payments, which are paid by Defenders of Wildlife. When the wolf population is recovered and delisted, and managed solely by the respective States and tribes, other sources of funding may be necessary. The Service cannot use its endangered species funding on species that are no longer listed under the Act, except to conduct the post-delisting monitoring required by section 4(g) of the Act. The States of Montana, Idaho, and Wyoming have stated that, if the wolf population is to be delisted and managed solely by the States, some form of Federal funding should be provided, or they would not support delisting. This issue still has to be resolved.

Issue 5: The Service should be responsible for any experimental population wolves that enter Wallowa County, Oregon.

Response: The Service can manage any wolves that leave the nonessential experimental population areas, including those that might disperse into Oregon. The experimental population rules allow us to retrieve or manage any wolf known to be an experimental population animal regardless of its location. The Service has stated that any wolf that disperses outside of the experimental population area and attacks livestock will be killed. A wolf that has not caused conflicts with people or livestock may be monitored, but it generally will not be captured or managed. The Service has no interest in spending time or funding on lone wolves that may have dispersed into other States and are not causing problems. The Service's only active recovery programs in the northern Rocky Mountains will be in Montana, Idaho, and Wyoming. The Service has no plans or interest in management for wolf restoration in adjacent States. After delisting, wolf populations and their management would be the ultimate responsibility of those respective State and tribal governments and their natural resource agencies.

AA. Nonsubstantive Comments

Comments Not Germane to this Rulemaking. We received numerous comments covering a broad spectrum of wolf-related issues that are not the subject of this rulemaking. Some of these merely are beyond the scope of this rulemaking, while others dealt with issues that are beyond the authority of Service and of the Act. These comments covered such subjects as support for the Conservation and Reinvestment Act and the Roadless Initiative; support for, and opposition to, grazing on public lands; wolf reintroduction in Scotland; listing Alaskan wolves as endangered; and the red wolf. Since these issues do not relate to the action we proposed, they will not be addressed here.

Another set of nongermane comments dealt with delisting wolves in the western Great Lakes States (now included in the Eastern DPS), and the conditions (legal, biological, and social) that should occur before and after such a delisting. We again emphasize that we have not proposed the delisting of these gray wolves, and we are not taking such action at this time. Therefore, comments relating to delisting western Great Lakes States wolves will not be further discussed in this document. However, we appreciate the concerns expressed in those comments, and we will review those concerns at such time as we begin working on a delisting proposal for those wolves.

Expressions of Support or Opposition. Finally, we received a large number of comments expressing support for, or opposition to, wolf recovery and the proposal (or parts of it) without further elaboration or explanation. Those comments, and the interest they represent, are appreciated; however, because they did not contain scientific data, information on threats, or any other substantive information, they will not be further addressed in this final rule.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for listing, reclassifying, and delisting species. Species may be listed as threatened or endangered if one or more of the five factors described in section 4(a)(1) of the Act threatens the continued existence of the species. A species may be delisted, according to 50 CFR 424.11(d), if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, or (3) error in the original data used for classification of the species. This analysis must be based upon the same five categories of threats specified in section 4(a)(1).

In a subsequent section of this rule, we describe the three DPSs that are now being given separate treatment under the Act (refer to the *Designation of Distinct Population Segments* section above). These DPSs are the Western DPS, the Eastern DPS, and the Southwestern DPS. Therefore, for consistency and clarity in discussing each threat, the following analysis of the five categories of threats contains separate discussions for wolves within the geographic areas encompassed within the three DPSs.

(Note that the Eastern DPS includes those areas that were identified in our July 13, 2000, proposal as the Western Great Lakes DPS and the Northeastern DPS. Refer to the *Designation of Distinct Population Segments* section above for a discussion of the reasons for combining the two proposed DPSs.)

For species that are already listed as threatened or endangered, this analysis of threats is primarily an evaluation of the threats that could potentially affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections. Our evaluation of the future threats to the gray wolf in the Eastern DPS-especially those threats to wolves in the Midwest that would occur after removal or reduction of the protections of the Act-is partially based upon the wolf management plans and assurances of the States and tribes in that area. If the gray wolf were to be federally delisted in the future, then State and tribal management plans will be the major determinants of wolf protection and prey availability, will set and enforce limits on human utilization and other forms of taking, and will determine the overall regulatory framework for conservation or exploitation of gray wolves.

Even in those areas where the gray wolf is now reclassified to threatened status, many aspects of State and tribal management plans cannot yet be implemented because of the remaining and overriding prohibitions of the Act. However, State and tribal plans, to the extent that they have been developed, can serve as significant indicators of public attitudes and agency goals, which, in turn, are evidence of the probability of continued progress toward full recovery under the Act. Such indicators of attitudes and goals are especially important in assessing the future of a species that was officially persecuted by government agencies as recently as 40 years ago and still is reviled by some members of the public. Therefore, below we provide some details on the components of the wolf management plans that currently exist and analyze their impact on gray wolves in light of the changes in Federal protection that arise from this rule.

After a thorough review of all available information and an evaluation of the following five factors specified in section 4(a)(1) of the Act, we are changing the Act's protections for the gray wolf across the conterminous 48 States, except for Minnesota, portions of several southwestern and southern Rocky Mountain States, Mexico, and the nonessential experimental populations in the northern U.S. Rocky Mountains and southwestern U.S. Significant gray wolf recovery has occurred, and continues as a result of the reduction of threats as described below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

General. A popular perception is that wolves inhabit only remote portions of pristine forests or mountainous areas, where human developments and other activities have produced negligible change to the natural landscape. Their extirpation south of Canada and Alaska, except for the heavily forested portions of northeastern Minnesota, reinforced this popular belief. However, wolves survived in those areas not because those were the only places with the necessary habitat conditions, but because only in those remote areas were they sufficiently free of the human persecution that elsewhere killed wolves faster than the species could reproduce (Mech 1995).

Wolf research, as well as the expansion of wolf range over the last 2 decades, has shown that wolves can successfully occupy a wide range of habitats, and they are not dependent on wilderness areas for their survival. In the past, gray wolf populations occupied nearly every type of habitat north of mid-Mexico that contained large ungulate prey species, including bison, elk, white-tailed deer, mule deer, moose, and caribou. An inadequate prey density and a high level of human persecution apparently are the only factors that limit wolf distribution (Mech 1995). Virtually any area that has sufficient prey and adequate protection from human-caused mortality could be considered potential gray wolf habitat.

Eastern DPS. In the western Great Lakes States, wolves in the densely forested northeastern corner of

Minnesota have expanded into the more agricultural portions of central and northwestern Minnesota, northern and central Wisconsin, and the entire Upper Peninsula of Michigan. Habitats currently being used by wolves span the broad range from the mixed hardwood-coniferous forest wilderness area of northern Minnesota; through sparsely settled, but similar habitats in Michigan's Upper Peninsula and northern Wisconsin; into more intensively cultivated and livestock-producing portions of central and northwestern Minnesota and central Wisconsin; and even approaching the fringes of the St. Paul, Minnesota, and Madison, Wisconsin, suburbs. Wolves are also dispersing from Minnesota into the agricultural landscape of North and South Dakota in increasing numbers (Licht and Fritts 1994, Straughan and Fain 2002). Similarly, a gray wolf that had been radio-collared in Michigan's Upper Peninsula was recently mistaken for a coyote and killed in north-central Missouri, presumably traveling through expanses of agricultural land along the way (Missouri Department of Conservation 2001).

Based upon computer modeling, Wisconsin and the Upper Peninsula of Michigan contain large tracts of wolf habitat, estimated at 15,052 sq km (5,812 sq mi) and 29,348 sq km (11,331 sq mi), respectively (Mladenoff *et al.* 1995; WI DNR 1999a). In Wisconsin, much of this suitable habitat is on public lands, with most of these public lands being National, State, and county forest lands.

Wisconsin DNR biologists conducted a population viability analysis (PVA) using the computer simulation model VORTEX. The purpose of a PVA is to estimate extinction probabilities by modeling long-term species' population changes that result from multiple interacting factors. The resulting extinction probabilities may be able to provide some limited insight into the effects that management alternatives, environmental fluctuation, and biological factors may have on rare species' populations over many years.

Under most of the scenarios that were modeled by WI DNR, the results of the PVA indicated that a wolf population of 300 to 500 animals would have a low probability of extinction over a 100-year timeframe. However, the modeling indicated that the population might decline to a level that might trigger relisting under State law (fewer than 80 wolves for 3 years). "[S]tate-relisting probabilities" ranged from 10 to 40 percent for those scenarios which looked at a combination of moderate environmental variability and a 5 percent probability of catastrophic events. Within-State extinction probabilities were only 1 percent for those same scenarios (WI DNR 1999a). However, at this stage of their development, PVA models must be used with great caution, and it would be unwise to base management decisions solely on their predictions. (Refer above to section Summary of Comments and Recommendations, section B, *Compliance with Laws, Regulations and Policies, Issue #11* for additional discussion on the problems of population viability analysis.)

The Wisconsin wolf population has increased at an average annual rate of 19 percent since 1985, and at 26 percent annually since 1993. Wisconsin had at least 320 wild gray wolves in early 2002 (WI DNR 2002, Wydeven *et al.* 2002). The Michigan wolf population (excluding Isle Royale) has increased at an average annual rate of about 24 percent in recent years and was at least 280 wolves in early 2002 (MI DNR 2002). Wolf survey methods in both States focus on wolf packs and may miss many lone individuals, thus underestimating the actual wolf populations. However, it is safe to say that the combined gray wolf population in the two States (excluding Isle Royale, MI) was at least 600 animals in late winter 2001–2002.

Final State wolf management plans for Michigan and Wisconsin, respectively, have identified habitat protection as one of their top priorities for maintaining a viable wolf population. Both State wolf management plans emphasize the need to manage human access to wolf areas by avoiding increasing road densities, protecting habitat corridors between larger tracts of wolf habitat, avoiding disturbance and habitat degradation in the immediate vicinity of den and rendezvous sites, and maintaining adequate prey species for wolves by suitable habitat and prey harvest regulations.

Both the Michigan Plan and the Wisconsin Plan establish wolf population goals that exceed the viable population threshold identified in the Federal recovery plan for isolated wolf populations, that is, a population of 200 or more wolves for 5 consecutive years (U.S. Fish and Wildlife Service 1992a). Each State adopted this "isolated population" approach to ensure the continued existence of a viable wolf population within its borders regardless of the condition or existence of wolf populations in adjacent States or Canada.

The Michigan Plan contains a long-term minimum goal of 200 wolves (excluding Isle Royale wolves) and identifies 800 wolves as the estimated carrying capacity of suitable areas on the Upper Peninsula (MI DNR 1997). ("Carrying capacity" is the number of animals that an area is able to support over the long term; for wolves it is primarily based on the availability of prey animals and competition from other wolf packs.)

The Wisconsin Plan identifies a management goal of 350 wolves, well above the 200 wolves specified in the Federal recovery plan for a viable isolated wolf population. After the Wisconsin wolf population reaches 250 (excluding wolves on Native American reservations), the species will be removed from the State's threatened and endangered species list (WI DNR 1999a). Wisconsin DNR is likely to begin the State delisting process in late 2002.

Three comparable surveys of wolf numbers and range in Minnesota have been carried out in recent decades. The first survey estimated a State wolf population of 1,235 in 1979 (Berg and Kuehn 1982). In 1989, 1,500 to 1,750 wolves were estimated in the State (Fuller *et al.* 1992). This represents an average annual increase of about 3 percent. The 1998 survey (Berg and Benson 1999) estimated that the State's wolf population was 2,445 animals, indicating an average annual growth rate of 4 to 5 percent during the intervening 9 years. While estimates of the wolf population that are made at about 10-year intervals do not provide any insight into annual fluctuations in wolf numbers that might be due to winter conditions, prey availability and vulnerability, legal depredation control actions, and illegal killing, these 3 population estimates clearly indicate that the Minnesota wolf population has continued to increase. As of the 1998 survey, the State's wolf population was approximately twice the planning goal for Minnesota, as specified in the Eastern Plan. (Refer to the *Recovery Progress of the Eastern Gray Wolf* section above, for additional details on the increase in numbers and range of Minnesota wolves.)

The MN DNR prepared a Wolf Management Plan and an accompanying legislative bill in early 1999 and submitted them to the Minnesota Legislature. However, the Legislature failed to approve the MN Plan in the 1999 session. In early 2000, the MN DNR released a second bill that would result in somewhat different wolf management and protection than would the 1999 bill. The Minnesota Legislature did not pass the 2000 Minnesota wolf management bill, but instead passed separate legislation directing the DNR to prepare a new management plan based upon various new wolf protection and wolf take provisions also contained in that bill. MN DNR, in cooperation with the MN Department of Agriculture, completed a Wolf Management Plan (MN Plan) in early 2001 (MN DNR 2001).

The MN Plan's stated goal is "to ensure the long-term survival of wolves in Minnesota while addressing wolf-human conflicts that inevitably result when wolves and people live in the same vicinity." It establishes a minimum goal of 1,600 wolves, with provisions to monitor the population and to take prompt corrective action if wolf numbers drop below that threshold. The MN Plan divides the State into 2 wolf management zones, designated as Zones A and B. Zone A corresponds to wolf management zones 1 through 4 in the Federal Eastern Recovery Plan, while Zone B constitutes zone 5 in the Federal Eastern Recovery Plan. Within Zone A, wolves would receive strong State protection, unless involved in attacks on domestic animals. In Zone B, more-liberal taking regulations would allow wolves to be killed to protect domestic animals under a much broader set of circumstances. However, neither the Zone A nor the Zone B regulations can be implemented while Minnesota gray wolves are federally listed as a threatened species.

When our July 13, 2000, proposed rule was being written, the Minnesota Legislature had not passed wolf management legislation, so we had little basis on which to evaluate the management and protection that Minnesota wolves would receive if we would remove their Federal protection. Therefore, we did not propose any change in Federal protection at that time. Because this final rule retains the Federal threatened listing and the associated protection for Minnesota gray wolves, and thus precludes the implementation of the MN Plan, we have not included a detailed review of the MN Plan in this rule. In the future, if and when we propose a change to the Federal protection of Minnesota gray wolves, we will evaluate and discuss the resulting affects of implementing the MN Plan in that proposed rule.

The complete text of the Wisconsin, Michigan, and Minnesota wolf management plans, as well as our summaries of those plans, can be found on our Web site (*see* **FOR FURTHER INFORMATION CONTACT**).

On the basis of discussions and written communications with Native American tribes and organizations prior to our proposal, and further supported by the comments we received from those sources during the comment period, we expect wolf populations to continue to be conserved on most, and probably all, Native American reservations in the western Great Lakes area. Those practices will augment the wolf population goals described above for the State DNRs. While we are unable to perform a comprehensive analysis of the likely future management and protection afforded to wolves on Native American reservations, we believe their traditional respect for the wolf, and its importance in Native American culture, will secure the species' future existence on most land under Native American control. At the time we consider initiating work on a proposal to delist or otherwise further reduce the Federal protection of gray wolves, we will again consult with Native American tribes and organizations to further discuss and evaluate their wolf management and protection plans and preferences.

The wolf retains great cultural significance and traditional value to many tribes and their members (Eli Hunt, Leech Lake Tribal Council, *in litt.* 1998; Mike Schrage, Fond du Lac Resource Management Division, *in litt.* 1998a). Some Native Americans view wolves as competitors for deer and moose, while others are interested in the harvest of the wolf as a furbearer (Schrage, *in litt.* 1998a). Many tribes intend to manage their natural resources, wolves among them, in a sustainable manner in order that they be available to their descendants. However, traditional natural resource harvest practices often include only a minimum amount of regulation by the tribal government (Hunt *in litt.* 1998).

In order to retain and strengthen these cultural connections, some tribes are opposed to the unnecessary killing of wolves on reservations and on ceded lands, even if wolves were to be delisted in the future. For example, because of the strong cultural significance of the wolf to their culture, the Ojibwa people support its protection (James Schlender, Great Lakes Indian Fish and Wildlife Commission, *in litt.* 1998). Additionally, the Tribal Council of the Leech Lake Band of Minnesota Ojibwe recently has adopted a resolution that describes the sport and recreational harvest of gray wolves as an inappropriate use of the animal. The resolution supports the limited harvest of wolves to be used for traditional or spiritual purposes by enrolled tribal members. This limited harvest would only be allowed by the tribe if it does not negatively affect the wolf population. Based on the Council's request, we will assist the Council with obtaining wolf pelts and parts that become available from other sources, such as depredation control activities. The Leech Lake Reservation is home to an estimated 75 to 100 gray wolves, the largest population of wolves on a Native American reservation in the 48 conterminous States (Hunt *in litt.* 1998).

The Red Lake Band of Chippewa Indians (Minnesota) has indicated that it is likely to develop a wolf management plan that will probably be very similar in scope and content to the plan developed by the MN DNR. The Band's position on wolf management is "wolf preservation through effective management," and the Band is confident that wolves will continue to thrive on their lands (Lawrence Bedeau, Red Lake Band of Chippewa Indians, *in litt.* 1998).

The Keweenaw Bay Indian Community (Michigan) has at least one wolf pack of four animals on its lands. They will continue to list the gray wolf as a protected animal under the Tribal Code even if federally delisted, with hunting and trapping prohibited (Mike Donofrio, Biological Services, Keweenaw Bay Indian Community, pers. comm. 1998). Other tribes, such as the Fond du Lac Band of Lake Superior Chippewa, have requested a slower pace to any wolf delisting process to allow more time for the preparation of tribal wolf management plans. The Fond du Lac Band has passed a resolution opposing Federal delisting and any other measure that would permit trapping, hunting, or poisoning of the gray wolf (Schrage *in litt.* 1998b).

Several Midwestern tribes (*e.g.*, the Bad River Band of Lake Superior Chippewa Indians and the Little Traverse Bay Bands of Odawa Indians) have expressed concern regarding the possibility of the reclassification (and a potential future delisting) resulting in increased mortality of gray wolves on reservation lands, in the areas immediately surrounding the reservations, and in lands ceded by treaty to the Federal government by the tribes (Kiogama *in litt.* 2000). Interest has also been expressed in having our assistance in developing tribal and intertribal wolf management plans prior to delisting.

The Great Lakes Indian Fish and Wildlife Commission (GLIFWC) has Stated its intent to work closely with the States to cooperatively manage wolves in the ceded territories in the Upper Midwest, and will not develop a separate wolf management plan. The Commission intends to work with us to ensure that State plans will adequately protect the wolf (Schlender *in litt.* 1998).

The tribes are very concerned with the details of any change in Federal

protection for the gray wolf. However, the GLIFWC's Voigt Task Force, representing the off-reservation treaty-reserved fish, wildlife, and gathering rights of 11 tribes in the Midwest, supports the reclassification to threatened status and the accompanying increased flexibility provided by the special regulation that will now apply to the growing wolf populations in Michigan and Wisconsin. Although few if any tribes are likely to take depredating wolves under the new regulations, they appreciate being granted these authorities (Schlender *in litt.* 2000).

The lands of national forests, and the prey species found in their various habitats, are important to wolf conservation and recovery in the western Great Lakes States. There are six national forests in that area that have resident wolves. Their wolf populations range from 3 on the Nicolet National Forest in northeastern Wisconsin to an estimated 300–400 on the Superior National Forest in northeastern Minnesota. The land base of the Chequamegon National Forest currently is used by nearly half of the wolves in Wisconsin. All of these national forests are operated in conformance with standards and guidelines in their management plans that follow the recommendations of the 1992 Recovery Plan for the Eastern Timber Wolf (Service 1992a). Reclassification to threatened status is not expected to change these standards and guidelines; in fact, the gray wolf is expected to remain classified as a sensitive species by the Regional Forester for U.S. Forest Service Region 9 at least for 5 years even after Federal delisting (Steve Mighton, U.S. Forest Service, pers. comm. 1998). This continuation of current national forest management practices will be an important factor in ensuring the long-term viability of gray wolf populations in Minnesota, Wisconsin, and Michigan.

Gray wolves regularly use four units of the National Park System in the western Great Lakes States and may occasionally use three or four other units. Although the National Park Service (NPS) has participated in the development of some of the State wolf management plans in this area, NPS is not bound by those plans. Instead, the NPS Organic Act and the NPS Management Policy on Wildlife give the agency a separate responsibility to conserve natural and cultural resources and the wildlife present within the parks. National Park Service management policies require that native species be protected against harvest, removal, destruction, harassment, or harm through human action, so management emphasis will continue to minimize the human impacts on wolf populations. Thus, because of their responsibility to preserve all wildlife, units of the National Park System can be more protective of wildlife than are State plans and regulations. In the case of the gray wolf, the NPS Organic Act and NPS policies will continue to provide protection to the wolf even after Federal delisting has occurred.

Voyageurs National Park, along Minnesota's northern border, has a land base of nearly 882 sq km (340 sq mi). Unpublished data from a 4-year wolf study indicate that there are a minimum of 6 to 9 packs that have at least a portion of their territory within the park. Management and protection of wolves within the park is not expected to change significantly after they are reclassified to threatened or even if delisted. Temporary closures around wolf denning and rendezvous sites will be enacted whenever they are discovered in Voyageurs National Park to reduce human disturbance. Sport harvest of wolves within the park will be prohibited, regardless of what may be allowed beyond park boundaries in future years. If there is a need to control depredating wolves (unlikely due to the current absence of agricultural activities adjacent to the park) the park will work with the State to conduct control activities outside the park to resolve the problem (Barbara West, Voyageurs National Park, *in litt.* 1999).

The wolf population in Isle Royale National Park is described above (see the *Recovery Progress of the Eastern Gray Wolf* section above). The NPS has indicated that it will continue to closely monitor and study these wolves, but at this time it does not plan to take any special measures to ensure their continued existence, regardless of their status under the Act. This wolf population is very small and isolated from the remainder of the western Great Lakes population; it is not considered to be significant to the recovery or long-term viability of the gray wolf (Service 1992a).

Two other units of the National Park System-Pictured Rocks National Lakeshore and St. Croix National Scenic Riverway—are regularly used by wolf packs. Pictured Rocks National Lakeshore is a narrow strip of land along Michigan's Lake Superior Shoreline; it contains wolves during the nonwinter months when deer populations are high. The Lakeshore intends to protect denning and rendezvous sites at least as strictly as the MI DNR Plan recommends (Brian Kenner, Pictured Rocks National Lakeshore, *in litt.* 1998). The St. Croix National Scenic Riverway, in Wisconsin and Minnesota, is also a mostly linear ownership, and it makes up portions of the territories of 3 to 5 packs of 10 to 40 wolves. The Riverway is likely to limit public access to denning and rendezvous sites, and to follow other management and protective practices outlined in the respective State wolf management plans (Robin Maercklein, St. Croix National Scenic Riverway, *in litt.* 1998).

In the western Great Lakes area, we currently manage seven units within the National Wildlife Refuge System with wolf activity. Primary among these are Agassiz National Wildlife Refuge (NWR) and Tamarac NWR in Minnesota, as well as Seney NWR in the Upper Peninsula of Michigan. Agassiz NWR has had as many as 20 wolves in 2 or 3 packs in recent years. Mange and illegal shootings reduced them to 5 wolves in a single pack and a separate single wolf in 1999, but in 2001, 2 packs with an estimated 11 members were using the refuge. Tamarac NWR has 2 packs, with approximately 18 wolves, using that refuge. Seney NWR currently has two packs, with a total of 4 wolves in the packs, plus several lone wolves also frequenting the refuge. Rice Lake NWR, in Minnesota, had 1 or 2 packs using the refuge in 2001. Late in the winter of 1998–99 a pair of gray wolves were located on Necedah NWR. By winter 2001–2002, there were 2 packs on the Refuge, with a total of at least 7 wolves in the packs. Sherburne NWR and Crane Meadows NWR, also in Minnesota, each have several individual wolves, but probably lack established wolf packs.

Gray wolves occurring on National Wildlife Refuges in the western Great Lakes States will be monitored, and refuge habitat management actions will maintain the current prey base for them while they are listed as threatened, and for a minimum of 5 years following any future delisting. Trapping or hunting by government trappers in response to depredation complaints will not be authorized on these refuges. However, because of the relatively small size of these NWRs, most, perhaps all, of these packs and individual wolves spend significant amounts of time off of these NWRs.

The extra protection afforded to resident and transient wolves, their den and rendezvous sites, and their prey by six national forests, two National Parks, and numerous National Wildlife Refuges in Minnesota, Wisconsin, and Michigan will further ensure the continuing recovery of wolves in the three States.

In summary, we believe that habitat or range destruction or degradation, or related factors that may affect gray wolf numbers, do not by themselves or in combination with other factors place the Eastern DPS of the gray wolf in danger of extinction. Recovery efforts over the past decade, as well as State, tribal, and Federal land management agency wolf management plans and practices will provide adequate protection for wolf populations, maintain their prey base, preserve denning sites and dispersal corridors, and are likely to keep wolf populations well above the numerical recovery criteria established in the Federal Recovery Plan for the Eastern Timber Wolf (Service 1992a).

Western DPS. The Recovery Plan (Service 1987) and the EIS for wolf reintroduction into Yellowstone and central Idaho (Service 1994a) recommended that wolf recovery efforts in the northern U.S. Rocky Mountains focus on areas that contained large blocks of public land, abundant wild ungulates, and minimal livestock to cause potential conflicts between people and wolves. Three primary recovery areas were identified: northwestern Montana, central Idaho, and the Greater Yellowstone Area (Service 1987). The northwestern Montana recovery area (more than 50,000 sq km (19,200 sq mi) is the area north of Interstate 90 and west of Interstate 15, and is a mixture of public land, primarily administrated by the USDA Forest Service, and private land. The economy and local culture is diverse and not as agriculturally based as in other parts of Montana (Bangs *et al.* 1995). The Greater Yellowstone Area and central Idaho areas, 64,000 sq km (24,600 sq mi) and 53,900 sq km (20,700 sq mi) respectively, are primarily composed of public lands (Service 1994a). These areas of potential wolf habitat are secure, and no foreseeable habitat-related threats prevent them from supporting a wolf population that exceeds recovery levels. There is already a demonstrated connectivity between occupied wolf habitat in Canada, northwestern Montana, Idaho, and Wyoming to ensure routine interchange of sufficient numbers of dispersing wolves to maintain demographic and genetic diversity in the wolf metapopulation. To date, natural connectivity between Idaho and northwestern Montana into the Greater Yellowstone Area appears to be more limited than that between Canada, northwestern Montana, and Idaho, but it does not appear to be a significant issue that would threaten wolf population viability in the Yellowstone segment of the northern Rocky Mountain wolf population. In addition, management actions have relocated about 120 wolves in and between Montana, Idaho, and Wyoming, including relocations between the various recovery areas. Wolf relocations will be used less often at higher wolf population levels because much of the most suitable wolf habitat is already occupied by resident wolf packs, but it will still occur and can further lessen the probability that genetic isolation could impact wolf population viability.

Wild ungulate populations in these three areas are composed mainly of elk, white-tailed deer, mule deer, moose, and (only in the Greater Yellowstone Area) bison. The States of Montana, Idaho, and Wyoming have managed resident ungulate populations for decades and maintain them at densities that would support a recovered wolf population. There is no foreseeable condition that would cause a decline in ungulate populations significant enough to affect a recovered wolf population. While 100,000 to 250,000 wild ungulates are estimated in each State, domestic ungulates, primarily cattle and sheep, are typically at least twice as numerous even on public lands (Service 1994a). The only areas large enough to support wolf packs, but lacking livestock grazing, are Yellowstone National Park and some adjacent USDA Forest Service Wilderness and parts of wilderness areas in central Idaho and northwestern Montana. Consequently, many wolf pack territories have included areas used by livestock, primarily cattle. While there is no livestock grazing in Glacier National Park, every wolf pack in northwestern Montana has interacted with some livestock, primarily cattle. Conflict between wolves and livestock has resulted in the annual removal of less than 6 percent of the wolf population (Bangs *et al.* 1995, Service *et al.* 2002). This level of removal by itself is not believed to cause declines in wolf populations.

In summary, we do not believe that habitat loss or deterioration, habitat fragmentation, or a decline in the abundance of wild prey will occur at levels that will affect wolf recovery and long-term population viability in the Western DPS.

Southwestern DPS. Sufficient suitable habitat exists in the Southwestern United States to support current recovery plan objectives for the Southwestern (Mexican) gray wolf. These habitats occur primarily on national forests and Native American reservations. Current and reasonably foreseeable management practices on these areas are expected to support ungulate populations at levels that will sustain wolf populations which meet or exceed recovery plan objectives. Habitat destruction or modification is not currently considered a threat or deterrent for restoration of Southwestern (Mexican) gray wolves.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

General. Since their listing under the Act, no gray wolves have been legally killed or removed from the wild in the conterminous 48 States for either commercial or recreational purposes. We acknowledge that some wolves may have been illegally killed for commercial use of the pelts and other parts, but illegal commercial trafficking in wolf pelts or wolf parts is believed to be rare. Illegal capture of wolves for commercial breeding purposes is also possible, but is believed to be rare. The large fines and prison sentences provided for by the Act for criminal violations are believed to substantially discourage and minimize the illegal killing of wolves for commercial or recreational purposes. These penalties will remain following the reclassification to threatened status, although the maximum fines and prison sentences are reduced to $25,000 and 6 months for the wolves reclassified to threatened.

The intentional or incidental killing, or capture and permanent confinement, of endangered or threatened gray wolves for scientific purposes can only legally occur under permits issued by us (for example, under section 10(a)(1)(A) and 10(a)(1)(B) of the Act), under an incidental take statement issued by us as part of a biological opinion evaluating the effects of an action by a Federal agency, under an incidental take permit issued by us pursuant to section 10(a)(1)(B), or by a State agency operating under a cooperative agreement with us pursuant to section 6 of the Act (50 CFR 17.21(c)(5) and 17.31(b)). Although exact figures are not available rangewide, such removals of wolves from the wild have been very limited and probably comprised an average of fewer than 2 animals per year since the species was first listed as endangered. These animals were either taken from the Minnesota wolf population during long-term research activities (about 15 gray wolves); were accidental takings as a result of research activities in Wisconsin (4–5 mortalities and 1 long-term confinement); were accidentally killed during routine capture, monitoring, and research efforts in Montana, Idaho, Wyoming, or Arizona (fewer than 6 wolves); were

removed from the endangered population in Mexico (5 wolves) to be used as breeding stock for reintroduction programs in the United States; or were previously released *Canis lupus baileyi* that were recaptured for probable permanent confinement after being judged unsuitable for the reintroduction program (9 wolves) (William Berg, MN DNR, *in litt.* 1998; Mech, *in litt.* 1998; Brian T. Kelly, U.S. Fish and Wildlife Service pers. comm. 2002; Wydeven 1998).

We believe that no wolves have been legally removed from the wild for educational purposes in recent years. Wolves that are used for such purposes are the captive-reared offspring of wolves that were already in captivity for other reasons.

Refer to the *Depredation Control Programs in the Midwestern States* and *Depredation Control Programs in the Western DPS* sections under the *Summary of Factors Affecting the Species* section, factor D. *The adequacy or inadequacy of existing regulatory mechanisms*, below, for discussions of additional wolf mortalities associated with wolf depredation control programs.

Eastern DPS. The taking of gray wolves that are now classified as threatened for commercial, recreational, scientific, or educational purposes remains generally prohibited under the Act, but can be authorized by Federal permit. In addition, the taking of threatened wolves for conservation purposes can be done without an authorizing permit, if that taking is done by an employee or agent of a State conservation agency having an approved conservation agreement under the provisions of section 6(c) of the Act. The wildlife management agencies of the States of Minnesota, Wisconsin, Michigan, North Dakota, and South Dakota each have such an approved conservation agreement, and therefore will be able to take gray wolves for conservation purposes. The amount of such take must be reported to us annually.

This reclassification to threatened status for the Eastern DPS will not result in any decrease in protection for gray wolves in Minnesota, because they already are classified as threatened there. Therefore, there will be no increase in the taking of Minnesota wolves for these purposes. The extremely small current level of such take has not affected the recovery of Minnesota wolves, and is not expected to do so in the future.

Gray wolves in Wisconsin, Michigan, North Dakota, South Dakota and any other State where they may occur in the Eastern DPS are now subject to a possible increase in take, due to this reclassification, by employees or agents of these States. However, this take must be for conservation purposes, and is thus likely to be either for research purposes or part of a wolf depredation control program. (Depredation control programs, and the take expected to result from them under the new section 4(d) special regulation that now applies to parts of the Eastern DPS, are discussed in the *Depredation Control Programs in the Midwestern States* section under the *Summary of Factors Affecting the Species* section, factor D, *The adequacy or inadequacy of existing regulatory mechanisms*, below.) Therefore, we believe that such take will be minimal and that exempting such take is consistent with the recovery of the wolf in the Eastern DPS. To date, there has been no take of wolves for conservation purposes in, and we do not anticipate such take unless one or more packs becomes established in, the Dakotas or other States within this DPS, except for Minnesota, Wisconsin, and Michigan. Existing regulations require that the take must be for conservation purposes, and must be consistent with gray wolf recovery.

In summary, the taking of wolves by tribes, Federal agencies, organizations, or private citizens for commercial, recreational, scientific, or educational purposes may increase slightly, because the Act allows us to issue take permits for zoological exhibition, educational purposes, and "special purposes consistent with the Act" for threatened but not for endangered wildlife. However, the requirement that such take must be consistent with the conservation of the threatened species means that the magnitude of the take will be small and cannot inhibit gray wolf recovery. In addition, any additional take, under the new 4(d) regulation, of threatened wolves by State conservation agency employees must be for scientific research or conservation programs, and therefore must be consistent with continued wolf recovery.

Western DPS. Since western gray wolves were listed as endangered and experimental, no legal commercial, recreational, or educational utilization or take of them has occurred. In the States where wolves are now reclassified to threatened status and are now covered by the new 4(d) special regulation, no legal take would be allowed for these purposes under the threatened classification or under the new special regulation.

We believe some wolf mortalities associated with the ongoing scientific studies of wolves will continue to occur. Some of these studies involve capturing and radio-collaring wolves. Wolf capture by trapping, helicopter netgunning, and darting has the potential to seriously injure or kill wolves. Rare, these unintentional mortalities generally average less than 2 percent of the wolves handled (Service 1994a). During the reintroduction of wolves from Canada, nearly 100 wolves were handled and 2 died. Since then, there have been fewer than 6 wolf mortalities out of over 400 wolves captured as part of routine trapping and radio-collaring for monitoring purposes in Montana, Idaho, and Wyoming.

Southwestern DPS. In Arizona, New Mexico, the southern half of Utah and Colorado, the western half of Oklahoma and Texas, and Mexico, gray wolves continue to be protected by section 9 of the Act under their endangered or nonessential experimental population classifications. These classifications prohibit any commercial or recreational take of gray wolves, and we are unaware of any such take of southwestern wolves since their reintroduction. Enforcement by us will continue to keep such take to minimal levels.

Take for scientific or recovery purposes, including educational purposes, will be available in these States, but such take can be authorized only by a permit from us, and it must promote the conservation of the species. Thus, in all cases, gray wolf take for scientific, educational, and conservation purposes must benefit the gray wolf and must promote its recovery. Therefore, any take of this nature will not negatively impact continuing wolf recovery.

We do not believe that these forms of intentional take comprise a threat to the southwestern gray wolves, nor will they significantly impede recovery progress.

C. Disease or Predation

Disease. Many diseases and parasites have been reported for the gray wolf, and several of them have had significant impacts during the recovery of the species in the 48 conterminous States (Brand *et al.* 1995). These diseases and parasites, and perhaps others, must be considered to be significant potential threats to gray wolf populations in the future. Thus, in order to avoid a disease/parasite-related decline in the gray wolf population, their presence and impacts require diligent monitoring and appropriate follow-up for the foreseeable future.

Eastern DPS. Canine parvovirus (CPV) is a relatively new disease that infects wolves, domestic dogs, foxes, coyotes, skunks, and raccoons. Recognized in the United States in 1977 in domestic dogs,

it appeared in Minnesota wolves (based upon retrospective serologic evidence) live-trapped as early as 1977 (Mech *et al.* 1986). However, Minnesota wolves may have been exposed to the virus as early as 1973 (Mech and Goyal 1995). Serologic evidence of gray wolf exposure to CPV peaked at 95 percent of a group of Minnesota wolves live-trapped in 1989 (Mech and Goyal 1993). In a captive colony of Minnesota wolves, pup and yearling mortality from CPV was 92 percent of the animals that showed indications of active CPV infections in 1983 (Mech and Fritts 1987), demonstrating the substantial impacts this disease can have on young wolves. It is believed that the population impacts of CPV occur via diarrhea-induced dehydration leading to abnormally high pup mortality (WI DNR 1999a).

There is no evidence that CPV has caused a population decline or has had a significant impact on the recovery of the Minnesota gray wolf population. However, Mech and Goyal (1995) found that high CPV prevalence in the wolves of the Superior National Forest in Minnesota occurred during the same years in which wolf pup numbers were low. Because the wolf population did not decline during the study period, they concluded that CPV-caused pup mortality was compensatory, that is, it replaced deaths that would have occurred from other causes, especially starvation of pups. They theorized that CPV prevalence affects the amount of population increase, and that a wolf population will decline when 76 percent of the adult wolves consistently test positive for CPV exposure. Their data indicate that CPV prevalence in adult wolves in their study area increased by an annual average of 4 percent during 1979–93 and was at least 80 percent during the last 5 years of their study (Mech and Goyal 1995). Additional unpublished data gathered since 1995 indicate that CPV reduced wolf population growth in that area from 1979 to 1989, but not since that period (Mech *in litt.* 1999). These data provide strong justification for continuing population and disease monitoring.

The disease probably stalled wolf population growth in Wisconsin during the early and mid-1980s. During those years, the Wisconsin wolf population declined or was static, and 75 percent of 32 wolves tested by the same method were positive for CPV. During the following years (1988–96) of population increase, only 35 percent of the 63 wolves tested positive for CPV (WI DNR 1999a. CPV exposure rates were at 50 percent in live-captured Wisconsin wolves in 1995–96 (WI DNR 1999a, but no necropsy evidence of CPV mortalities from Wisconsin wolves exists (Nancy Thomas, National Wildlife Health Laboratory, *in litt.* 1998). Of 13 Wisconsin wolves that died and were examined in 2000, none of the deaths were attributed to CPV (Wydeven *et al.* 2001a). Similarly, CPV is not a suspected cause of death for the 22 wolves with a suspected cause of death identified in 2001 (WI DNR unpublished data). However, the difficulty of discovering CPV-killed pups must be considered.

Canine parvovirus is considered to have been a major cause of the decline of the isolated Isle Royale, Michigan, population in the mid and late 1980s. The Isle Royale gray wolf population decreased from 23 and 24 wolves in 1983 and 1984, respectively, to 12 and 11 wolves in 1988 and 1989, respectively. The wolf population remained in the low to mid-teens through 1995. However, factors other than disease may be causing, or contributing to, a low level of reproductive success, including a low level of genetic diversity and a prey population composed of young healthy moose that may make it difficult to secure sufficient prey for pups. There are no data showing any CPV-caused population impacts to the larger gray wolf population on the Upper Peninsula of Michigan (Peterson *et al.* 1998, Hammill pers. comm. 2002).

Sarcoptic mange is caused by a mite infection of the skin. The irritation caused by the feeding and burrowing mites results in scratching and then severe fur loss, which in turn can lead to mortality from exposure during severe winter weather.

From 1991 to 1996, 27 percent of live-trapped Wisconsin wolves exhibited symptoms of mange. During the winter of 1992–93, 58 percent showed symptoms, and a concurrent decline in the Wisconsin wolf population was attributed to mange-induced mortality (WI DNR 1999a). Seven Wisconsin wolves died of mange from 1993 through October 15, 1998, and severe fur loss affected five other wolves that died from other causes. During that period, mange was the third largest cause of death in Wisconsin wolves, behind trauma (usually vehicle collisions) and shooting (Nancy Thomas *in litt.* 1998).

The prevalence of mange and its impacts on the wolf population have increased in Wisconsin. During the 12-month period from April 2000 through March of 2001, mange appeared to be the second-most common cause of mortality in 23 Wisconsin wolves that were found dead; mange-induced hypothermia caused the death of 4 wolves and contributed to the death of a fifth wolf. (Motor vehicle collisions caused the death of 10 Wisconsin wolves during this same period, while 2 were shot and 2 were killed by other wolves.) Wolves nearing death from mange generally crawl into dense cover and are difficult to discover if they are not radio-tracked. During the winter of 2000–2001, approximately 14 percent of the radio-collared wolves being tracked by WI DNR died from mange. Other observations showed that some mangy wolves are able to survive the winter (Wydeven *et al.* 2000b, 2001a).

Pup survival during their first winter is believed to be strongly affected by mange. However, estimated survival of Wisconsin pups from 2000 until late winter 2000–2001 was 28 percent, only slightly lower than the previous year's 31 percent pup survival, yet the State's wolf population increased by 21 percent from 1999 to 2000 and only 4 percent from 2000 to 2001 (Wydeven *et al.* 2000a, 2001a). This indicates that mange mortality may not be the primary determinant of wolf population growth in the State, yet the impacts of mange in Wisconsin need to be closely monitored. So far, mange has not caused a sustained decline in the State's wolf population, and the wolf population increased by about 26 percent from late winter 2000–2001 to 2001–2002 despite the continued prevalence of mange in Wisconsin wolves (Wydeven *et al.* 2002).

In a long-term Alberta wolf study, higher wolf densities were correlated with increased incidence of mange, and pup survival decreased as the incidence of mange increased (Brand *et al.* 1995). At least 7 wild Michigan wolves died from mange during 1993–97, making it the most common disease of Michigan wolves. From 1999–2001, mange-induced hypothermia was the cause of death for all 7 Michigan wolves whose cause of death was attributed to disease (Hammill *in litt.* 2002). The Michigan Wolf Management Plan acknowledges that mange may be slowing wolf population growth and specifies that captured wolves be treated with Ivermectin to combat the mites (MI DNR 1997). MI DNR currently treats all captured wolves with Ivermectin if they show signs of mange. In addition, MI DNR vaccinates all captured wolves against CPV and canine distemper virus (CDV), and administers antibiotics to combat potential leptospirosis infections.

Wisconsin wolves similarly had been treated with Ivermectin and vaccinated for CPV and CDV when captured, but

the practice was stopped in 1995 to allow the wolf population to experience more natural biotic conditions. Since that time, Ivermectin has been administered only to captured wolves with severe cases of mange. In the future, Ivermectin and vaccines will be used sparingly on Wisconsin wolves, but will be used to counter significant disease outbreaks (Wydeven *in litt.* 1998).

Mange has not been documented to be a significant disease problem in Minnesota. Several packs in the Ely and Park Rapids areas are known to suffer from mange, and a pack at Agassiz NWR in northwestern Minnesota was reduced from at least five wolves (the pack may have numbered six to eight in the early 1990s) to a single animal over the last few years, primarily resulting from mange.

Lyme disease, caused by a spirochete, is another relatively recently recognized disease, first documented in New England in 1975; it may have occurred in Wisconsin as early as 1969. It is spread by ticks, that pass along the infection to their various hosts during feeding episodes. Host species include humans, horses, dogs, white-tailed deer, white-footed mice, eastern chipmunks, coyotes, and wolves. The prevalence of Lyme disease in Wisconsin wolves averaged 70 percent of live-trapped animals in 1988–91, but dropped to 37 percent during 1992–97. While there are no data showing wolf mortalities from Lyme disease, it may be suppressing population growth through decreased wolf pup survival. Lyme disease has not been reported from wolves beyond the Great Lakes regions (WI DNR 1999a).

Other diseases and parasites, including rabies, canine distemper, canine heartworm, blastomycosis, brucellosis, leptospirosis, bovine tuberculosis, hookworm, dog lice, coccidiosis, and canine hepatitis, have been documented in wild gray wolves, but their impacts on future wild wolf populations are not likely to be significant (Brand *et al.* 1995, Johnson 1995, Mech and Kurtz 1999, Thomas *in litt.* 1998, WI DNR 1999a). However, continuing wolf range expansion likely will provide new avenues for exposure to several of these diseases, especially canine heartworm, rabies, and bovine tuberculosis (Thomas *in litt.* 2000), further emphasizing the need for vigilant disease monitoring programs.

In aggregate, diseases and parasites were the cause of 25 percent of the diagnosed wolf deaths from 1960 through 1997 in Michigan (MI DNR 1997) and 19 percent of the diagnosed mortalities of radio-collared wolves in Wisconsin from 1979 through 1998 (Wydeven 1998).

Since several of the diseases and parasites are known to be spread by wolf to wolf contact, their incidence may increase as wolf densities increase in newly colonized areas. However, because wolf densities generally are relatively stable following the first few years of colonization, wolf to wolf contacts will not likely lead to a continuing increase in disease prevalence (Mech *in litt.* 1998).

Disease and parasite impacts may increase because several wolf diseases are carried and spread by domestic dogs. This transfer of diseases and parasites from domestic dogs to wild wolves may increase as gray wolves continue to colonize non-wilderness areas (Mech *in litt.* 1998). Heartworm, CPV, and rabies are the main concerns (Thomas *in litt.* 1998).

Disease and parasite impacts are a recognized concern of the State DNRs. The Michigan Gray Wolf Recovery and Management Plan states that necropsies will be conducted on all dead wolves, and that all live wolves that are handled will be examined, with blood, skin, and fecal samples taken to provide disease information. All handled wolves will be vaccinated for CDV and CPV and treated for parasites before release (MI DNR 1997).

Similarly, the Wisconsin Wolf Management Plan has a section on wolf health monitoring. It states that as long as the wolf is State listed as a threatened or endangered species, the WI DNR will conduct necropsies of dead wolves and test a sample of live-captured wolves for diseases and parasites. The goal will be to capture and screen 10 percent of the State wolf population for diseases annually. Following State delisting (after the State wolf population grows to 250 animals), disease monitoring will be scaled back because the percentage of the wolf population that is live-trapped each year will decline, but periodic necropsy and scat analyses will continue to test for disease and parasite loads. The plan also recommends that all wolves live-trapped for other studies should have their health monitored and reported to the WI DNR wildlife health specialists (WI DNR 1999a).

In summary, several diseases have had significant impacts on wolf population growth in the Great Lakes region in the past. These impacts have been both direct, resulting in mortality of individual wolves, and indirect, by reducing longevity and fecundity of individuals or entire packs or populations. Canine parvovirus stalled wolf population growth in Wisconsin in the early and mid-1980s, and it has been implicated as a contributing factor in declines of the isolated Isle Royale population in Michigan. Sarcoptic mange has impacted wolf recovery in both Michigan's Upper Peninsula and in Wisconsin in this decade, and is recognized as a continuing problem. However, despite these and other diseases and parasites, the overall trend for wolf populations in the western Great Lakes States is upward. The wolf management plans of Minnesota, Michigan, and Wisconsin include monitoring components that are expected to identify future disease and parasite problems in time to allow corrective action to be taken to avoid a significant decline in overall population viability. We do not believe disease impacts will prevent the continuation of wolf recovery in these States. The reclassification of Wisconsin and Michigan wolves from endangered to threatened will not change the incidence or impacts of disease on these wolves.

Western DPS. Wolves in the northern U.S. Rocky Mountains are exposed to a wide variety of canid diseases, common throughout North America. Some of these diseases and parasites have been documented to significantly affect wolf populations, usually temporarily, in other areas of North America. To date, canine parvovirus, canine distemper, and mange have been documented in wolves from the northern Rocky Mountains. Wolves in the Yellowstone area have almost certainly been exposed to brucellosis. However, in the studies of wolves in Montana, Idaho, and Wyoming to date, disease and parasites have not appeared to be a significant factor affecting wolf population dynamics. Just like wolves in all other parts of North America, wolves, usually pups, in the northern Rocky Mountains will occasionally die from a wide variety of canid diseases. However, it is doubtful that wolf populations in the northern Rocky Mountains could be significantly impacted, because wolf exposure to these diseases has been occurring for decades. The EIS on gray wolf reintroduction identified disease impact as an issue but did not evaluate it further, because it appeared not to be significant (Service 1994a). Likewise, in the "Wolves for Yellowstone?" reports to Congress in 1992, Johnson (1992a and 1992b) reviewed the relationship between wolves and rabies, brucellosis, and tuberculosis and found canids were not likely to be a reservoir for those diseases.

Southwestern DPS. There is no evidence suggesting that disease was a significant factor in the decline of the Mexican wolf. Likewise, there is no reason to believe that disease will be a significant impediment to recovery of the Mexican wolf in the wild. Because the potential for disease and parasite transmission is much greater in captivity, especially in zoos, all captive Mexican wolves are vaccinated or treated for potential canine diseases and parasites that may exist in the captive environment.

As a result of captive disease and parasite prevention and treatment protocols, released wolves are in good health and physical condition when they enter the wild. Re-established Southwestern (Mexican) wolves will be monitored for disease or parasite-related problems, and all wild wolves captured for monitoring or management purposes will continue to be vaccinated indefinitely. To date, three Mexican wolf pups born in the wild have died from canine parvovirus. These pups were recaptured due to their parents killing livestock, and the pups subsequently died in captivity. This appears to be a limited occurrence and may have been associated with the pups being captured and placed in captivity.

Predation. There are no wild animals that habitually prey on gray wolves. Occasionally wolves will be killed by large prey such as deer or moose (Mech and Nelson 1989) or by a competing predator such as a mountain lion, but this has only been documented on rare occasions and is not believed to be a significant mortality factor. However, humans are highly effective predators of gray wolves.

Eastern DPS. Wolves are killed by other wolves, most commonly when a dispersing wolf encounters another pack and is attacked as an intruder, or when two packs encounter each other along their common territorial boundary. This form of mortality is likely to increase as more of the available wolf habitat becomes saturated with wolf pack territories, as is the case in northeastern Minnesota. Over the period from October 1979 through June 1998, 7 (13 percent) of the diagnosed mortalities of radio-collared Wisconsin wolves resulted from wolves being killed by other wolves (Wydeven 1998). However, this behavior is a normal part of the species' behavioral repertoire and should not be a cause for concern in healthy wolf populations, as it normally indicates that the wolf population is at, or approaching, the carrying capacity of the area.

Humans have functioned as highly effective predators of the gray wolf. We attempted to eliminate them from the landscape in earlier times: the United States Congress passed a wolf bounty that covered the Northwest Territories in 1817. Bounties on wolves subsequently became the norm for States across the species' range. In Michigan, an 1838 wolf bounty became the ninth law passed by the First Michigan Legislature; this bounty remained in place until 1960. A Wisconsin bounty was instituted in 1865 and then repealed about the time wolves were extirpated from the State in 1957. Minnesota maintained a wolf bounty until 1965.

Subsequent to the gray wolf's listing as a federally endangered species, the Act and State endangered species statutes prohibited the killing of wolves except under extenuating circumstances, such as in defense of human life, for scientific or conservation purposes, or under several special regulations intended to reduce wolf depredations of livestock. This reduction in human-caused mortality is the main cause of the wolf's comeback in parts of its historical range. However, it is clear that illegal killing of wolves continues.

Illegal killing of wolves occurs for a number of reasons. Some of these killings are accidental (*e.g.*, wolves are hit by vehicles, mistaken for coyotes and shot, or caught in traps set for other animals), and some of these accidental killings are reported to State, tribal, and Federal authorities. However, it is likely that most illegal wolf killings are intentional and are never reported to authorities. Such killings may be done because of frustration over wolf depredations of livestock or pets, fear for the safety of pets or children, hatred of the species, opposition to wolf recovery, a desire to protest against the government, or for other reasons. The number of illegal killings is difficult to estimate and impossible to accurately determine, because they generally occur in isolated areas and the evidence is quickly concealed.

Two Minnesota studies provide insight into the extent of human-caused wolf mortality before and after the species' listing. On the basis of bounty data from a period that predated wolf protection under the Act by 20 years, Stenlund (1955) found an annual human-caused mortality rate of 41 percent. Fuller (1989) provided 1980–86 data from a north-central Minnesota study area and found an annual human-caused mortality rate of 29 percent, a figure which includes 2 percent mortality from legal depredation control actions. However, drawing conclusions from these two data sets is difficult due to the confounding effects of habitat quality, exposure to humans, prey density, differing time periods, and vast differences in study design. While these figures provide support for the contention that human-caused mortality decreased subsequent to the wolf's protection under the Act, it is not possible at this time to determine if human-caused mortality (apart from mortalities from depredation control) has significantly changed over the 25-year period that the gray wolf has been listed as threatened or endangered.

Interestingly, when compared to his 1985 survey, Kellert's 1999 public attitudes survey showed an overall increase in the number of northern Minnesota residents who reported having killed, or knowing someone who had killed, a wolf. However, members of groups that are more likely to encounter wolves-farmers, hunters, and trappers-reported a decrease in the number of such incidents (Kellert 1985, 1999). Because of these apparently conflicting results, and differences in the methodology of the two surveys, drawing any clear conclusions on this issue is difficult.

It is important to note that despite the difficulty in measuring the extent of illegal killing of wolves, their population and range in the western Great Lakes States has continued to increase. During recent decades, all sources of wolf mortality, including legal (takings for research and depredation control activities) and illegal human-caused mortality, have not been of sufficient magnitude to stop the continuing growth of the wolf population, estimated at about 4 percent average annual increase in Minnesota, and about a 28 percent average annual increase in Wisconsin and Michigan since 1992–1993. This indicates that total gray wolf mortality continues to be exceeded by wolf recruitment (that is, reproduction and immigration) in these areas.

As the wolf population in Wisconsin and Michigan saturates the habitat or as the cultural carrying capacity is approached, the rapid population growth rates are expected to slow, and it is likely that growth will eventually stop. ("Cultural carrying capacity" differs from the biological or habitat carrying capacity in that it also incorporates the limits that will likely be imposed on the wolf population by human society, including both legal and illegal limiting measures.) At that time we should expect to see negative growth rates (that is, wolf population declines) in some years, due to short-term fluctuations in birth and mortality rates. However, adequate wolf monitoring programs, as identified in the Michigan, Wisconsin, and Minnesota wolf management plans, should be able to identify excessively high mortality rates

and/or low birth rates and to trigger timely corrective action when necessary. Michigan and Wisconsin DNRs are currently monitoring their wolf populations in this manner, and this level of monitoring will continue following this reclassification. The goals of all three State wolf management plans are to maintain a within-State wolf population that is well above the 200 animals identified in the Federal Eastern Recovery Plan as needed for viable isolated wolf populations.

In Wisconsin, human-caused mortalities accounted for 58 percent of the diagnosed mortalities on radio-collared wolves from October 1979 through June 1998. One-third of all the diagnosed mortalities, and 55 percent of the human-caused mortalities, were from shooting. Another 12 percent of all the diagnosed mortalities resulted from vehicle collisions. Vehicle collisions have increased as a percentage of radio-collared wolf mortalities. During the October 1979 through June 1995 period, only 1 of 27 known mortalities was from that cause; but from July 1995 through June 1998, 5 of the 26 known mortalities resulted from vehicle collisions (WI DNR 1999a, Wydeven 1998); and from April 2000 through March 2001, 10 of 23 known mortalities were from that cause (Wydeven *et al.* 2000b, 2001a). Only 2 of those 23 mortalities were from shootings, but an additional 4 Wisconsin wolves were shot during the State's 2001 deer hunting season (WI DNR 2001).

In the Upper Peninsula of Michigan, human-caused mortalities accounted for 75 percent of the diagnosed mortalities, based upon 34 wolves recovered from 1960 to 1997. Twenty-eight percent of all the diagnosed mortalities and 38 percent of the human-caused mortalities were from shooting. In the Upper Peninsula during that period, about one-third of all the known mortalities were from vehicle collisions (MI DNR 1997). During the 1998 Michigan deer hunting season, 3 radio-collared wolves were shot and killed, resulting in one arrest and conviction (Hammill *in litt.* 1999, Michigan DNR 1999b). During the subsequent 3 years, 8 additional wolves were killed in Michigan by gunshot, and the cut-off radio-collar from a ninth animal was located, but the animal was never found. These incidents resulted in 6 guilty pleas, with 3 cases remaining open. Data from that 1999–2001 period show that human-caused mortalities still account for the vast majority of the diagnosed mortalities (79 percent) in Michigan. However, deaths from vehicular collisions now greatly outnumber shootings. Twenty-seven percent of the diagnosed mortalities were from shootings (35 percent of the human-caused mortalities), while 48 percent of the diagnosed Michigan mortalities were from vehicular collisions (Hammill *in litt.* 2002). When viewing these figures it is important to remember that there is a much greater likelihood of finding a vehicle-killed wolf than there is of finding a wolf that has been illegally shot, unless the animal was being radio-tracked.

A continuing increase in wolf mortalities from vehicle collisions, both in actual numbers and as a percent of total diagnosed mortalities, is expected as wolves continue their colonization of areas with more human developments and a denser network of roads and vehicle traffic.

A significant portion of the intentional illegal mortalities may arise as a protest against the Federal government or from frustration arising from a perception of inadequate Federal or State depredation control programs or inadequate State compensation for depredated livestock and dogs. The application of this final rule in the Midwest—reclassifying Wisconsin and Michigan wolves to threatened and implementing a special regulation for lethal depredation control, with no change in the nearly identical protection currently provided to threatened Minnesota wolves—is expected to have both positive and negative impacts on illegal wolf mortality.

In Wisconsin and Michigan, the rapidly expanding wolf population is beginning to cause more depredation problems. For example, from 1991 through 1996 only 1 Wisconsin wolf was captured for depredation control. In 1997, 2 wolves were trapped and moved to eliminate depredation problems. In 1998, 4 wolves had to be captured as a result of verified depredation problems, and 8 were trapped (7 moved) in the first 9 months of 2001 (Wydeven *et al.* 2001b) in response to verified depredation incidents. Data from Michigan show a similar, but smaller, increase in confirmed wolf depredations on calves, cows, sheep, and dogs: 2 in 1996, 3 in 1998, 4 in 1999, 3 in 2000, and 6 in 2001 (Hammill *in litt.* 2002).

For Wisconsin and Michigan, the new special management regulations under section 4(d) of the Act provide increased flexibility and efficiency in dealing with these problem wolves (see the *Special Regulations Under Section 4(d) for Threatened Species* section below). This may result in greater public satisfaction with the States' abilities to promptly and effectively deal with depredation incidents, and may reduce the perception that wolves are out of control. Thus, the regulations may counter the viewpoint that vigilante action is needed to reduce their numbers. Such vigilante action is likely to result in the death of nondepredating wolves, and may impede recovery progress, at least locally.

Wolves were largely eliminated from the Dakotas in the 1920s and 1930s and were rarely reported from the mid-1940s through the late 1970s. Ten wolves were killed in these two States from 1981 to 1992; 5 of the mortalities were in 1991 and 1992 (Licht and Fritts 1994). Two more were killed in North Dakota since 1992, and in Harding County in extreme northwestern South Dakota, a wolf was killed in 2001. There have been other recent reported sightings of gray wolves, including a confirmed sighting by USDA/APHIS-Wildlife Services personnel in 1996 near Gary, South Dakota, (near the Minnesota border), and a 1994 confirmation of a den with pups in extreme north-central North Dakota near the Canadian border. Several other unconfirmed sightings have been reported from extreme northeastern and southeastern South Dakota. Wolves killed in North and South Dakota are most often shot by hunters after being mistaken for coyotes, or else they are killed by vehicles. The 2001 mortality in South Dakota was caused by an M–44 "coyote getter" device that had been properly set in response to complaints about coyotes. Genetic analysis of the Harding County mortality showed it to be a wolf from the Minnesota-Wisconsin-Michigan area (Straughan and Fain 2002).

Additional discussion of past and future wolf mortalities in the Eastern DPS arising from depredation control actions is found under the *Summary of Factors Affecting the Species* section, factor D, *The inadequacy of existing regulatory mechanisms.*

Despite human-caused mortalities of wolves in Minnesota, Wisconsin, and Michigan, it is clear that these wolf populations have continued to increase in both numbers and range. Under these new regulations, as long as other mortality factors do not increase significantly, and the wolf populations receive adequate and timely monitoring to document (and counteract, if necessary) the effects of excessive human-caused mortality, we believe the Minnesota and Wisconsin-Michigan wolf populations will not decline to nonviable levels, nor will recovery slow, in the foreseeable future resulting from human-caused killing or other forms of predation.

Western DPS. Since wolves have been monitored in Montana, Idaho, and Wyoming, only two wolves been confirmed to have been killed by another predator. They were both lone wolves killed by mountain lions. Wolves in the northern Rocky Mountains inhabit the same areas as mountain lions, grizzly bears, and black bears, but conflicts rarely result in the death of either species. Wolves are occasionally killed by prey that they are attacking, but those instances are rare. Since 1987, wolves in the northern Rocky Mountains have apparently died from wounds they received while attacking prey on about 6 occasions. This level of mortality will not significantly affect wolf recovery. Other wolves are the largest cause of natural predation among wolves. About a dozen mortalities have resulted from territorial conflicts. Wherever wolves occur, including Montana, Idaho, and Wyoming, some low level of mortality resulting from territorial conflict between wolves is common. Those incidents occur but are so infrequent that they do not cause a level of mortality that would significantly affect a wolf population that is at or above recovery levels.

Humans are the largest cause of wolf mortality and the only cause that can significantly affect wolf populations at recovery levels. The annual survival rate of immature wolves in northwestern Montana and adjacent Canada from 1984 to 1995 was 80 percent (Pletscher *et al.* 1997); 84 percent for resident wolves and 66 percent for dispersers. That study found 84 percent of immature wolf mortality to be human-caused. Fifty-eight wolves from northwestern Montana with functioning radio-collars have died between 1987 and 1996, and humans caused the death of 49 (84 percent). Trends in causes of wolf mortality seem to be similar since 1996. Wolves are more likely to be radio-collared if they come into conflict with people, so the proportion of mortality caused by agency depredation control actions could be overestimated by this study. People who illegally kill wolves may destroy the radio-collar so the proportion of illegal mortality could be under-estimated. However, the wolf population has continued to expand rapidly in the face of human-caused mortality.

As was typically the case elsewhere in North America, humans were the largest cause of wolf mortality in northwestern Montana. Wolf control was the leading cause of death for wolves since their return to northwestern Montana.

The EIS (Service 1994a) predicted that 10 percent of the reintroduced wolves would be removed annually for depredation control with an additional 10 percent dying annually from other causes. Known annual mortality has been below the 20 percent annual level that was predicted in the EIS. Compared to naturally colonizing wolves, reintroduced wolves had a lower proportion of human-caused mortality because they were released in remote areas where contact and conflicts with people were less likely. Relocated depredating wolves in northwestern Montana had a higher proportion of human-caused mortality (96 percent) than either reintroduced (61 percent) or naturally colonizing wolves in northwestern Montana (71 percent excluding legal harvest in Canada). In northwestern Montana, relocated depredating wolves traveled widely and often resettled in places similar to the areas that they had been removed from, typically private ranch land. Consequently they continued to come into conflict with people and livestock (Bangs *et al.* 1998).

The levels of documented human-caused mortality among wolves in the northern Rocky Mountains have not, at this time, been significant enough to cause declines in wolf populations or to slow overall wolf population growth. The protection of wolves under the Act appears sufficient to promote wolf population growth. Under the provisions of the experimental population rules for the central Idaho and Yellowstone areas, wolf population growth has been high. Although the new special management regulations under section 4(d) of the Act will allow some expanded take of problem wolves outside the experimental population areas, such regulations will still sufficiently protect wolves from human persecution. Continued steady growth towards recovery levels is therefore expected, and recovery targets should be achieved by the end of 2002 (see the *Special Regulations Under Section 4(d) for Threatened Species* section below).

Enforcement of the Act's prohibitions on taking wolves listed as "experimental" and "endangered" has been successful to date. Twelve wolves have been illegally killed in the experimental areas, and 6 cases have been resolved. In northwestern Montana, 9 wolves were known to have been illegally killed, and 4 cases have been resolved. Fines have ranged from $500 to $10,000, with jail sentences of up to 8 months incarceration and 1 year supervised release being imposed for some violators. The legal or illegal killing documented to date has not been at a level that could affect wolf population growth to recovery levels.

To date, 3 experimental wolves were legally killed (one in Montana and in Idaho) under the provisions of the experimental population special regulation by livestock producers who saw the wolves attacking livestock. They reported the shooting of the wolves to authorities within 24 hours as required. Investigations confirmed compliance with the experimental rules, and no further action was taken. Fewer than a dozen other wolves have been unintentionally killed in the northern Rockies by vehicles, coyote cyanide (M–44) devices, and traps, and during control and management actions, but investigations of these incidents concluded that prosecution was not warranted. These types of mortalities are relatively rare and will not affect wolf population growth to recovery levels.

Special management regulations under section 4(d) of the Act will allow for the legal take of wolves under more circumstances than the existing special regulation. The previous special management regulations under section 10(j) of the Act will continue to apply to the two nonessential experimental populations in the northern U.S. Rocky Mountains (see the *Special Regulations Under Section 4(d) for Threatened Species* section below). Therefore, we do not expect wolf mortality rates to change significantly as a result.

Southwestern DPS. Through January 2003, illegal killing has been confirmed as the cause of death of 11 of the 74 Mexican wolves that have been released to the wild. Two of the 74 wolves released died due to injuries sustained from other predators. However, there are now 8 packs in the wild, of which 7 appear to have produced pups in 2002, and 4 of those 7 litters were conceived and born in the wild. In addition, we continue to release additional gray wolves into the Blue Range Wolf Recovery Area (BRWRA) of New Mexico and Arizona. However, based on the current growth of the BRWRA population, releases will likely be scaled back or eliminated in the next few years. The rate of natural wolf population increase, combined with our continuing release of captive-raised wolves, is such that population growth is expected to continue despite these losses from human and animal-caused mortalities. Therefore, although predation may initially slow recovery, we do not believe that predation or illegal killing will preclude recovery of the Mexican wolf. Killing or capture and permanent confinement of gray wolves for scientific and educational purposes is discussed under Factor B, above.

D. The Adequacy or Inadequacy of Existing Regulatory Mechanisms

Upon being listed under the Act, the gray wolf immediately benefitted from a

Federal regulatory framework that includes prohibition of take, which is defined broadly under the Act to include killing, injuring, or attempting to kill or injure; prohibition of habitat destruction or degradation if such activities harm individuals of the species; the requirement that Federal agencies ensure their actions will not likely jeopardize the continued existence of the species; and the requirement that we develop and implement a recovery program for the species. In addition, the 1978 designation of critical habitat in Minnesota and Michigan (43 FR 9607) further requires Federal agencies to ensure that their actions do not result in the destruction or adverse modification of the primary constituent elements of the habitat in those designated areas. Many of these protective regulations and conservation measures have substantially improved the status of the gray wolf.

Eastern DPS. A June 29, 1998, announcement by then Secretary of Interior Bruce Babbitt and then Service Director Jamie Rappaport Clark described, in part, our intention to propose a delisting of gray wolves in the Western Great Lakes. That intention was based upon our belief that State wolf management plans for Minnesota, Wisconsin, and Michigan would either be completed, or would be sufficiently close to completion, so that our delisting and reclassification proposal could be based on an analysis of the protective mechanisms and management strategies and actions described in those three plans.

In late 1997 the Michigan wolf management plan was completed and received the necessary State approvals. The Wisconsin Natural Resources Board approved the Wisconsin wolf management plan in October of 1999. Our biologists have participated on the teams that developed these two State plans, so we are familiar with their evolution and likely future direction. We believe that these plans provide sufficient information for us to analyze the future threats to the gray wolf population in Wisconsin and Michigan after Federal delisting.

During the 1999 legislative session, the Minnesota Legislature failed to approve a State wolf management plan and regulatory bill that would have allowed us to evaluate the future of the Minnesota wolf population in the event it would be delisted and removed from the protections of the Act. Furthermore, as we finished work on our proposal in mid-February 2000, the Minnesota Legislature had not considered the wolf management bill produced by the MN DNR in early 2000. Therefore, in contrast to the June 1998 announcement by Babbitt and Clark, we did not propose to delist wolves in the Western Great Lakes. Rather we proposed to reclassify wolves in Wisconsin, Michigan, North Dakota, and South Dakota to threatened, bringing them to the same status that wolves in Minnesota were given in 1978.

The Minnesota Legislature subsequently passed wolf legislation and directed the MN DNR to complete a management plan in conformance with that legislation. MN DNR completed the Minnesota Wolf Management Plan (MN Plan) in early 2001. Although the Minnesota legislation and the MN Plan were not available in time to play a role in our July 2000 reclassification proposal, they will be carefully evaluated as we review all relevant information in preparation for a future proposal to delist gray wolves in the Eastern DPS.

Under this final rule, gray wolves will continue to be protected by the provisions of the Act throughout the Eastern DPS. The regulatory changes in that protection that will take place are twofold: (1) The recovering wolf populations in Wisconsin and Michigan, as well as wild wolves anywhere in the Eastern DPS, now will be protected as a threatened species, rather than as an endangered species: and (2) for the first time wolves in all but the eastern quarter of the DPS will be subject to routine, but limited, lethal depredation control measures under the terms of a special regulation under section 4(d) of the Act.

One change in protection that will result from a reclassification from endangered to threatened was discussed above, under the *Summary of Factors Affecting the Species* section, factor B, *Overutilization for commercial, recreational, scientific, or educational purposes* above. The change stems from the broader authority of Service or State employees, or their designated agents, to take a member of a threatened species without a need to obtain a permit from us. Furthermore, we can issue permits to take threatened species for a wider variety of purposes than for endangered species. The impact of this increased take authority on wolf recovery is believed to be insignificant; additional discussion is found in that earlier section.

The second impact of this reclassification is indirect, and it stems from our ability to implement special regulations under section 4(d) of the Act for threatened, but not endangered, species. We have used that authority to finalize a special regulation for the lethal control of depredating wolves in much of the Eastern DPS that is very similar to the lethal control currently authorized by the special regulation that has been in effect for Minnesota wolves since December 12, 1985 (50 FR 50792; see also 50 CFR 17.40(d)). That special regulation allows the killing of depredating wolves by certain government employees or agents, subject to several restrictions.

Depredation Control Programs in the Midwestern States. Wolves that are injuring and/or killing domestic animals in the Midwest have been controlled in different ways, depending upon their listing status under the Act and their importance to our gray wolf recovery programs. In Minnesota depredating wolves have been lethally controlled under a special regulation, because they are listed as threatened. Section 4(d) of the Act allows lethal take of threatened animals under a special regulation. (Details on the Minnesota depredation control program are provided later in this subsection.)

Depredating wolves in Wisconsin and Michigan, previously listed as endangered and therefore previously not eligible for a section 4(d) special regulation, have been trapped and released in a suitable and unoccupied area at some distance from the depredation location. The goal of this approach was to eliminate future depredations by moving the wolf or wolves to a suitable but vacant area at a location with adequate wild prey, and with minimal or no exposure to domestic animals. However, the results of this approach vary widely. In some cases the wolf will become resident at the new site and will not resume its previous habit of preying on domestic animals. In other cases the wolf attempts to return to its previous territory, continues its depredations of domestic animals at the new site, or is killed by nearby resident wolves. This approach has a greater chance of succeeding if there are several areas of suitable unoccupied habitat from which to choose for release of the wolf, so that a release location can be selected that is very remote from the wolf's previous territory.

However, the rapidly growing wolf populations in both Wisconsin and Michigan make it increasingly difficult to find suitable, but unoccupied, areas into which a depredating wolf can be successfully released. In one recent incident of the capture and translocation of a depredating wolf in Wisconsin, the animal left the release site and had traveled half of the distance back to its capture site before being mistaken for a coyote and shot

(Wydeven *in litt.* 1999). There is also growing opposition to the translocation of depredating wolves, and at least one county board has passed a resolution opposing the relocation of additional wolves to that county. Residents in the area to where these wolves are moved are concerned that the depredation problem will recur in their area.

Due to the decreasing effectiveness of, and increasing opposition to, translocation of depredating wolves, as well as the high monetary and labor costs of such attempts, the States of Wisconsin and Michigan have requested the authority to carry out lethal depredation control measures, similar to what has been done by USDA/APHIS-Wildlife Services in Minnesota. As the wolf population grows in number and expands in range in those two States, those wolves will increasingly occupy agricultural areas and will be exposed to additional domestic animals as potential prey. We believe that the new special management regulations under section 4(d) of the Act will provide increased flexibility and efficiency in managing wolves and are consistent with conservation of the gray wolf (see the *Special Regulations under Section 4(d) for Threatened Species* section below).

Based upon depredation control statistics from Minnesota, we expect the lethal control of depredating Wisconsin and Michigan wolves to be very small during the next few years. Data from Minnesota show that an expanding wolf population's increasing exposure to domestic animals will likely lead to increased depredation incidents, and the need for additional lethal control of those wolves. From 1980 to 1984, with a late winter wolf population of about 1,350 animals, an annual average of 2.2 percent of the Minnesota wolf population was killed by USDA/APHIS-Wildlife Services to reduce depredation problems. From 1985 to 1989, with a late winter wolf population averaging about 1,600 wolves, the annual average of wolves killed for depredation control increased to 3.0 percent. Additional increases have occurred in the 1990s.

With the Wisconsin and Michigan (Upper Peninsula) late winter wolf populations at about 250–350 in each State, we estimate that an average of about 2 to 3 percent of those wolves will be taken annually through lethal depredation control actions in response to attacks on livestock. This will be about 6 to 10 wolves in each State. Given the average annual population increases of 19 to 24 percent over recent years in each of these States, the effect of such levels of lethal depredation control will not prevent the continued growth of the wolf population in either State, and will probably be so small that it does not noticeably slow that growth over the next few years. Wolf recovery will not be affected in either State. Reporting (within 15 days) and monitoring requirements will ensure that the level of lethal depredation control is evaluated promptly and can be curtailed if necessary. Therefore, we do not believe that lethal livestock depredation control will be a significant threat to the future of wolves in either Michigan or Wisconsin, or that it will result in a need to reclassify those wolves back to endangered status in the foreseeable future.

In recent years there has been an increase in the number of dogs attacked by gray wolves in Wisconsin, with 17 killed and 1 injured in 2001. In almost all cases, these have been hunting dogs that were being used for, or being trained for, hunting bears and bobcats at the time they were attacked. It is believed that the dogs entered the territory of a wolf pack and may have been close to a den, rendezvous site, or feeding location, thus triggering an attack by wolves defending their territory or pups. As many as 7 or 8 wolf packs may have been involved in the 2001 attacks on hunting dogs (WI DNR unpublished data). The Wisconsin Wolf Management Plan States that "generally only wolves that are habitual depredators on livestock will be euthanized" (WI DNR 1999a). Furthermore, the State's draft guidelines for conducting depredation control actions on wolves that retain a Federal threatened status say that no control trapping will be conducted on wolves that kill "dogs that are free-roaming or roaming at large." Lethal control will only be conducted on wolves that kill dogs that are "leashed, confined, or under the owner's control on the owner's land" (Wisconsin Wolf Technical Committee 2002). Because of these State-imposed limitations, we do not believe that lethal control of wolves depredating on hunting dogs will be a significant additional source of mortality in Wisconsin.

Michigan has not experienced as high a level of dog attacks by wolves, although a slight increase in such attacks has occurred over the last decade. The number of verified attacks was one dog killed in 1996, three (two injured, one killed) in 1999, and three killed in 2001. Similar to Wisconsin, MI DNR does not intend to trap and move wolves that depredate on free-ranging dogs. However, trapping and relocation of wolves would be considered if wolves have killed confined pets and remain in the area where more pets are being held (Hammill *in litt.* 2002).

The new special regulation that authorizes depredation control in Wisconsin and Michigan requires that wolves killed for depredation control purposes be reported to us within 15 days. Thus, we will be promptly alerted if an unexpected number of depredating wolves are killed under the new special regulation, and we can initiate corrective action, if necessary.

Since wolves were protected under the Act, only one wolf has been killed for depredation control purposes in Wisconsin and Michigan. That adult wolf was killed by the WI DNR in 1999, under the provisions of a permit that we issued to deal with that specific instance. This was done to end a chronic depredation problem at a private deer farm after the failure of extensive efforts to live-trap and remove the wolf (WI DNR 1999b).

For both North Dakota and South Dakota we had anticipated potential wolf depredation problems associated with mostly single, dispersing wolves from the Minnesota and Manitoba populations. To cope with these anticipated depredations we have had a "Contingency Plan for Responding to Gray Wolf Depredations of Livestock" in place for each State for several years (Service 1992b, 1994b). In partnership with USDA/APHIS-Wildlife Services and State animal damage control agencies, the contingency plans provide for the capture and permanent transfer to American Zoo and Aquarium Association (AZA)-approved holding facilities, such as zoos, captive breeding centers, or research facilities, of all depredating or injured/sick wolves in North Dakota and South Dakota. The lethal control of depredating and injured/sick wolves is authorized by the plans only if no AZA-approved holding facilities could be identified. Verified wolf depredations occur approximately once every other year in North Dakota, with the most recent occurring in June of 1999; there have been no verified wolf depredations in South Dakota in recent decades. To date, in neither State has it been necessary to implement either the nonlethal or lethal control measures authorized under the contingency plans, although confirmed wolf sightings and some incidents of wolf depredation continue to occur.

North Dakota and South Dakota are recognized as lacking significant potential for restoration of the gray wolf, and neither our Eastern Recovery Plan nor our Northern Rockies Plan includes those States in its list of possible locations for restoration of gray wolf populations (Service 1987, 1992a). Therefore, lethal control of depredating wolves in these two States will not

adversely affect the Eastern DPS recovery program. We believe that the new special regulations finalized with this rule to allow lethal control of depredating wolves will help to promote greater public acceptance of the gray wolf recovery programs (see the *Special Regulations under Section 4(d) for Threatened Species* section below). Furthermore, such regulations will allow Federal, State, and tribal agencies in the Dakotas to be more responsive to depredation incidents, thus, minimizing conflicts between wolves and livestock production. In addition, such regulations will eliminate the costs, time, and facilities needed to capture, transport, and house live gray wolves.

We expect a much higher proportion of North Dakota and South Dakota wolves to become involved in depredation on domestic animals than the approximately 2 to 3 percent we expect in Wisconsin and Michigan. Thus, if the Minnesota wolf population continues to expand and provide additional dispersing wolves, lethal depredation control activities in North Dakota and South Dakota may also kill on the order of 4 or 5 wolves annually in each of these 2 States. These mortalities will neither slow the recovery of the Minnesota and Michigan-Wisconsin wolf populations nor delay the eventual delisting of the Eastern DPS, because the Eastern Plan does not rely on wolves in North Dakota or South Dakota to achieve any of its recovery criteria. If wolves in the Dakotas are not involved in depredations on domestic animals they retain all the normal protections of a threatened species. If they return to Minnesota or to the Wisconsin-Michigan population, they may contribute to the continuing growth of the core wolf populations in the Midwest.

Our proposal would have applied the special regulation for lethal depredation control to all States within the proposed Western Great Lakes DPS, except Minnesota, which already is subject to a very similar special regulation. Because this final rule geographically expands the relevant DPS to additional States and retains the Act's protections for wolves as threatened throughout much of the eastern United States, we are also providing coverage of the special regulation to most, but not all, of those additional States.

The special regulation provides the authority for lethal control of depredating wolves to all parts of the Eastern DPS that are west of Pennsylvania. Except for Wisconsin, and the Upper Peninsula of Michigan, gray wolves that occur in the areas covered by the new special regulation are not necessary for the recovery of the Eastern DPS, and if they attack domestic animals State and tribal authorities will have authority for lethal control.

The special regulation for the Eastern DPS and its provision for lethal control of depredating wolves do not apply to wolves in Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine. No wolves are currently known to occur in this area, nor are these States within anticipated dispersal distance of the gray wolf population recovering in the western Great Lakes area, so there is a low probability of gray wolf depredation in these States. Furthermore, several State wildlife agencies in the Northeast have expressed support for natural wolf recovery and indicated a willingness to protect wolves that disperse into this region from Canada. In addition, as described above, the species identity of wolves that might naturally appear in northeastern States is uncertain at this time, and each individual wolf might be important to future wolf recovery efforts that might be undertaken there.

This final rule will not affect the current section 4(d) special regulation for wolf depredation control in Minnesota, and we expect that program will continue unchanged as long as those wolves are listed as threatened under the Act. During the period from 1980–1998, the Federal Minnesota wolf depredation control program has annually euthanized from 20 (in 1982) to 216 (in 1997) gray wolves. The annual average was 30 wolves killed from 1980 to 1984, 49 from 1985 to 1989, 115 from 1990 to 1994, and 152 from 1995 to 1999. Based upon estimates of the Minnesota wolf population during these periods, these numbers represent an average annual removal of approximately 2.2 percent, 3.0 percent, 6.0 percent, and 6.7 percent of the total population during those four 5-year periods, respectively. The lowest annual percentage of Minnesota wolves destroyed by USDA/APHIS-Wildlife Services was 1.5 percent in 1982; the highest percentage was 9.4 in 1997 (Paul 2001).

There is no evidence that this level of wolf removal for depredation control purposes has halted the increase in wolf numbers or range in Minnesota, although it is quite possible that the depredation control program may have slowed wolf population growth, especially since the late-1980s. Because the Minnesota wolf population has continued to grow at an average annual rate of nearly 4 percent since 1989, we believe that it is highly likely that a viable wolf population will continue to exist in Minnesota if a lethal depredation control program of this magnitude is continued. However, monitoring of the wolf population will become increasingly important if the percentage of wolves killed for depredation control continues to increase, or if other mortality factors increase in magnitude. Annual monitoring may become necessary to enable timely corrective action, including reduction of lethal depredation control activities, if the Minnesota wolf population begins to decrease or to contract in geographic range. At this time, however, it appears that continuing the current magnitude of lethal depredation control under the existing special regulation will not suppress the Minnesota wolf population.

State and Tribal Management and Protection of Wolves. The Wisconsin Wolf Management Plan recommended immediate reclassification from State-endangered to State-threatened status because the State's wolf population has already exceeded the State reclassification criterion of 80 wolves for 3 years; that State reclassification has already occurred. The Plan further recommends the State manage for a gray wolf population of 350 wolves outside of Native American reservations, and states that the species should be delisted by the State once the population reaches 250 animals outside of reservations. Upon State delisting, the species would be classified as a "protected nongame species," a designation that would continue State prohibitions on sport hunting and trapping of the species. The Wisconsin Plan includes criteria that would trigger State relisting as threatened (a decline to fewer than 250 wolves for 3 years) or endangered (a decline to fewer than 80 wolves for 1 year). State delisting can occur while the wolf is still federally listed as either threatened or endangered, but the remaining stricter Federal protections would prevent the implementation of weaker State protections. Public taking of wolves will not occur while the wolf remains federally listed as threatened. The Wisconsin Plan will be reviewed annually by the Wisconsin Wolf Advisory Committee and will be reviewed by the public every 5 years.

Both the Wisconsin and Michigan Wolf Management Plans recommend managing wolf populations within each State as isolated populations that are not dependent upon frequent immigration of wolves from an adjacent State or Canada. Thus, even after Federal wolf delisting, each State will be managing for a wolf population at, or in excess of, the 200 wolves identified in the Federal Recovery Plan for the Eastern Timber Wolf as necessary for an isolated wolf population to be viable. We support this approach and believe it provides further assurance that the gray wolf will remain a viable component of the western Great Lakes ecosystem in the foreseeable future.

The Wisconsin and Michigan wolf management plans recommend similar high levels of protection for wolf den and rendezvous sites, whether on public or private land. Both State plans recommend that most land uses be prohibited at all times within 100 meters (330 feet) of active sites. Seasonal restrictions (March through July) should be enforced within 0.8 km (0.5 mi) of these sites, to prevent high-disturbance activities such as logging from disrupting pup-rearing activities. These restrictions should remain in effect even after State delisting occurs.

While the tribes do not yet have management plans specific to the gray wolf, several tribes have informed us that they have no plans or intentions to allow commercial or recreational hunting or trapping of the species on their lands even if gray wolves were to be federally delisted. As previously discussed in the Summary of Factors Affecting the Species section, factor B, *Overutilization for commercial, recreational, scientific, or educational purposes*, tribes are expected to continue to provide sufficient protection to gray wolves on reservation lands to preserve the species' long-term viability in the western Great Lakes area.

At the request of the Bad River Tribe of Lake Superior Chippewa Indians, we are currently working with their Natural Resource Division and WI DNR to develop a wolf management agreement for lands adjacent to the Bad River Reservation. The tribe's intent is to reduce the threats to reservation wolf packs when they are temporarily off the reservation. Under the draft agreement, the WI DNR would consult with the tribe before using lethal depredation control methods in those areas, and would defer to the tribe's recommendations for wolves known to be part of a reservation pack. However, this agreement is still being developed, so its protective measures must be considered speculative. Other tribes have expressed interest in such an agreement, and if this and similar agreements are implemented they will provide additional protection to certain wolf packs in the Midwest.

On the basis of information received from other Federal land management agencies in the western Great Lakes area, we expect National Forests, units of the National Park System, and National Wildlife Refuges will provide additional protections to threatened gray wolves beyond the protections that will be provided by the Act and its regulations, State wolf management plans, and State protective regulations. For details, refer to the discussion above under the *Summary of Factors Affecting the Species* section, factor A, *The present or threatened destruction, modification, or curtailment of its habitat or range.*

Western DPS. Previous to this new regulation, wolves in these States had two different listings under the Act: (1) Those wolves within the two nonessential experimental populations (all of Wyoming and most of Idaho and Montana) were, and continue to be, treated as threatened wolves for take purposes. However, for purposes of interagency cooperation (section 7 of the Act), those wolves are treated as species proposed for listing and receive limited consideration in the planning and implementation of Federal agency actions, unless those actions occur on units of the National Park System or the National Wildlife Refuge System, in which case the wolves are treated as a threatened species and are subject to the full protections of section 7. These wolves also were, and continue to be, subject to two special regulations that modify the normal protections of the Act for threatened species (under the nonessential experimental population designations in 59 FR 60252 and 60266; November 22, 1994). (2) Those wolves outside of the nonessential experimental populations were listed as endangered and were subject to the strictest protections afforded by the Act. This endangered status no longer applies to these wolves, and they are now classified as threatened.

The new special regulations finalized in this rule (see the *Special Regulations under Section 4(d) for Threatened Species* section below) will increase management flexibility for wolves in the Western DPS in areas outside of the experimental population areas, because they will allow take under additional circumstances. Wolves near livestock could be harassed in a noninjurious manner at any time on private land or on public land by the livestock permittee. Intentional or potentially injurious harassment could occur by permit on private land and public land. Wolves attacking not only livestock, but also dogs and guard animals, on private land could be taken without a permit if they are in the act of attacking such animals; on public land a permit will be required for such take. Permits could be issued by the Service to take wolves on private land if they are a risk to livestock, herding and guard animals, or dogs.

The increased management flexibility for take is expected to reduce and more quickly resolve conflicts between livestock producers and wolves by providing additional methods by which individual problem wolves can be removed from the wild population. We do not expect the take under these new special regulations finalized in this rule (see the *Special Regulations under Section 4(d) for Threatened Species* section below) to result in a significant increase in the removal of problem wolves.

Depredation Control Programs in the Western DPS. In the northern U.S. Rocky Mountain wolf recovery area, reports of suspected wolf-caused damage to livestock are investigated by USDA/APHIS-Wildlife Services specialists using standard techniques (Roy and Dorrance 1976, Fritts *et al.* 1992, Paul and Gipson 1994). If the investigation confirms wolf involvement, Wildlife Services specialists contact us and subsequently conduct the wolf control measures that we specify. If the incident occurred in Idaho, Wildlife Services also coordinates with Nez Perce Tribal personnel. The established process is for Wildlife Services to investigate the incident, we decide what control measures are appropriate, and then Wildlife Services personnel carry out those measures.

In 1988, the Service developed an interim wolf control plan that was based on the assumption that wolves which chronically attack livestock would not be tolerated by the local residents. The control plan initially applied to northwestern Montana and northern Idaho, and was later amended to include Washington State. Evidence showed that most wolves do not attack livestock, especially larger livestock, such as horses and cattle. We do not intend for our wolf recovery program to be based in part on wolves that have developed the practice of livestock depredation, because that would likely erode local tolerance for wolf recovery, possibly to the degree that recovery would be impossible. Therefore, we developed a set of guidelines under which depredating wolves could be harassed, moved, or even killed by agency officials to prevent a significant level of chronic livestock depredation from occurring. This interim control plan was based on the premise that agency wolf control actions would affect only a small number of wolves, while it would increase public tolerance for wolf recovery and enhance recovery success.

To date, our assumptions have been shown to be correct, as wolf depredation on livestock and subsequent agency control actions have remained at low levels, while the wolf population has expanded its distribution and numbers and is approaching recovery goals. Using this experience, we developed special regulations for the experimental population areas that would also promote wolf recovery while reducing wolf conflicts with livestock. Thus, we have incorporated important aspects of the interim control plan and the experimental population rules in the new 4(d) regulation that replaces the interim control plan.

In the areas that were covered by the interim wolf control plan and experimental population rules, control measures were continued until livestock depredations cease, even if all wolves in an area or a pack eventually had to be removed. When five or fewer breeding pairs are in a recovery area, wolves were relocated on their first offense. When at least six breeding pairs are present, wolves were killed after their first offense. Wolves that repeatedly depredated on livestock were killed.

In experimental areas, the more flexible special regulations allow landowners on private land and livestock producers on public land to harass wolves at any time. In the experimental areas, wolves attacking livestock on private land can be shot by landowners with a permit, and, after six breeding pairs are established, our permit can allow permittees to shoot wolves attacking livestock on public land. Special permits can be issued in areas of chronic livestock-wolf conflict that allow qualifying landowners and their adjacent neighbors to shoot a wolf on sight. In addition, other special permits can be issued to take wolves and approved State management plans can liberalize the conditions under which wolves may be taken. A private program has compensated ranchers full market value for confirmed and one-half market value for probable wolf-kills of livestock and livestock guard animals (Defenders of Wildlife 2002, Fischer 1989).

In northwestern Montana, and while wolves were listed as endangered, wolf control under a section 10(a)(1)(A) permit was conducted only when livestock were attacked. In the experimental areas, wolf control could also occur when other domestic animals, such as dogs, are attacked on private land more than once in a calendar year. Control in both of these situations consisted of the minimum actions believed necessary to reduce further depredations. The spectrum of control measures used included intensive monitoring of the wolves and livestock (including providing a telemetry receiver to the affected rancher), aversive conditioning (*i.e.*, capturing, radio-collaring, and releasing wolves on site or harassing wolves with noise-makers such as cracker shells), relocating or killing some wolves, or some combination of these approaches.

In northwestern Montana, agency wolf control removed 53 wolves from 1987 through 2002. Control actions removed an average of 6 percent of the population annually, with a range of 0 to 29 percent. In only 3 of those 15 years (1987: 29 percent, 1997: 20 percent, and 1999: 12 percent) did agency control actions remove more than 10 percent of the estimated wolf population in that area (Service *et al.* 2002). At no time did agency wolf control remove more than one-third of the wolf population annually, the human-caused mortality level that must be exceeded to prevent wolf population growth. The percentage of removal by agency control in northwestern Montana has been higher than in either the Idaho or Yellowstone areas, because northwestern Montana does not have similar large areas of refugia (millions of acres of contiguous public lands with year-round resident big game populations). This results in an overall lower wolf habitat and social carrying capacity and a higher level of conflicts than in either the Idaho or Yellowstone areas. We expect that under threatened status and the accompanying 4(d) rule, which replaces the interim wolf depredation control plan, the level of wolf mortality caused by agency and public control will be similar to that occurring (less than 10 percent annually) under the experimental population regulations in central Idaho and the Greater Yellowstone Area.

The control of problem wolves depredating livestock resulted in the removal of less than 5 percent of the wolf population in the northern Rocky Mountains from 1987 through 2002 (Service *et al.* 2002). During that period, a total of 148 wolves were killed by agency control because of chronic livestock depredation. Only in 1987 did wolf control remove more than 9 percent of the wolf population. Only 3 of the 150 wolves that have been removed were legally killed by landowners who saw them attacking their livestock on private land; the rest were removed by agency actions. Three wolves were also killed under permits to shoot wolves attacking livestock on public grazing allotments or under the permits that allow landowners to shoot a wolf on sight in areas of chronic wolf-livestock conflict. Human-caused mortality below 10 percent annually has not been shown to prevent a wolf population from growing. The EIS on wolf reintroduction predicated that about 10 percent of the wolf population would be removed by agency control actions annually. To date, agency control has been about half of the expected level, but that percentage may increase as the wolf population expands into areas where conflicts with domestic livestock are more likely.

At the end of 2002, nearly all of the most suitable wolf habitat in the northern Rocky Mountains of Montana, Idaho, and Wyoming was occupied by resident wolf packs. As the wolf population continues to expand, wolves will increasingly attempt to settle in areas intensively used for livestock production, a higher percentage of those wolves likely will become involved in conflicts with livestock, and a higher percentage will need to be removed. For the wolf population to become stabilized, human-caused mortality would have to remove 30 percent or more of the wolf population annually.

This final rule replaces the interim wolf control plan with the wolf control actions specified in the 4(d) rule for the Western DPS. While wolf control actions will continue to remove wolves that attack livestock in the Western DPS, we still expect that wolf population recovery was achieved by the end of 2002. Management of wolves under the management regulations finalized in this rule (see the *Special Regulations under Section 4(d) for Threatened Species* section below) is not expected to significantly increase wolf mortality rates, because relatively few wolves attack livestock.

The only significant difference in the management of problem wolves between the previous management under the interim control plan and the new management of wolves under the 4(d) rule once they have been reclassified from endangered to threatened outside the experimental population areas will be the taking of wolves in the act of attacking livestock or domestic animals on private land by private landowners. In the past 6 years in Idaho and Wyoming, only 3 nonessential experimental wolves have been legally taken under such circumstances by landowners, and we believe the level of take of nonexperimental threatened wolves under the new regulations will be similar. That level of take could not significantly increase wolf mortality rates or decrease the rate of wolf population recovery. Through the end of 2002, 15 lambs (in Utah), but no other livestock or pets, have been confirmed killed by a wolf in the Western DPS outside of Montana, Idaho, and Wyoming, and consequently, no wolves were removed from these areas by agency control actions.

During depredation control actions for problem wolves in Montana, Idaho, and Wyoming, individual wolves have incurred injuries from capture that ultimately resulted in their death or removal from the wild (four in Idaho and two in Montana). Mortality from capture is rare and not a significant portion of total mortality in the wolf population.

We have determined that effective control of problem wolves benefits the conservation of the species in the northern Rocky Mountains (Service 1999).

Southwestern DPS. The protection provided by the Act and the special regulation for the southwestern nonessential experimental population have been the most important factors in the successful reintroduction of gray wolves to the Southwest, and in the slow but steady growth of the wild wolf population there. The listing status of gray wolves in the Southwestern DPS does not change with this final regulation. They will remain endangered, except for the reintroduced population which retains its status as a nonessential experimental population, and they will continue their recovery as a result of the ongoing protection provided by these regulations.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Public Attitudes Toward the Gray Wolf. The primary determinant of the long-term status of gray wolf populations in the United States will be human attitudes toward this large predator. These attitudes are based on the conflicts between human activities and wolves, concern with the perceived danger the species may pose to humans, its symbolic representation of wilderness, the economic effect of livestock losses, the emotions regarding the threat to pets, the conviction that the species should never be a target of sport hunting or trapping, and the wolf traditions of Native American tribes.

We have seen a change in public attitudes toward the wolf over the last few decades. Public attitudes surveys in Minnesota and Michigan (Kellert 1985, 1990, 1999), as well as the citizen input into the wolf management plans of Minnesota, Wisconsin, and Michigan, have indicated strong public support for wolf recovery if the adverse impacts on recreational activities and livestock producers can be minimized (MI DNR 1997, MN DNR 1998, WI DNR 1999a). This increased public acceptance of wolves during the last 25 years also has reduced illegal persecution and killing of wolves. Another public attitudes survey is being planned to assess whether attitudes have changed in Michigan as the State's wolf population has expanded (Hammill, pers. comm. 2002).

Similar national support is evident for wolf recovery and reintroduction in the northern U.S. Rocky Mountains. With the continued help of private conservation organizations, States, and tribes, we can continue to foster public support to maintain viable wolf populations in the western Great Lakes area and the West, as well as for recovery of wolves in the Southwest. We believe that the special management regulations finalized in this rule (see the *Special Regulations under Section 4(d) for Threatened Species* section below) will further enhance public support for wolf recovery by providing more effective means for dealing with wolf—human conflicts as these conflicts-both real and imagined—increase along with expanding wolf populations.

Conclusion

We recognize that large portions of the historic range, including potentially still-suitable habitat within the DPSs, are not currently occupied by gray wolves. We emphasize that our determinations are based on the current status of, and threats faced by, the existing wolf populations within these DPSs. This approach is consistent with the 9th Circuit Court's decision in *Defenders of Wildlife et al.* v. *Norton et al.*, where the Court noted that "[a] species with an exceptionally large historical range may continue to enjoy healthy population levels despite the loss of a substantial amount of suitable habitat." Similarly, we believe that when an endangered species has recovered to the point where it is no longer in danger of extinction throughout all or a significant portion of its current range, it is appropriate to downlist the listed species to threatened even if a substantial amount of the historical range remains unoccupied. When it is not likely to become endangered in the foreseeable future throughout all or a significant portion of its current range, it should be delisted.

The wolf's progress toward recovery in the Eastern DPS, together with the threats that remain to the wolf within the DPS, indicates that the gray wolf is not in danger of extinction in its entire range within the DPS. Moreover, the progress towards recovery of each of the two populations that comprise the metapopulation within the western Great Lakes States demonstrates that the species is not in danger of extinction in any significant portion of the range of the species within the DPS. We therefore conclude that gray wolves are no longer properly classified as endangered in the Eastern DPS. Accordingly, we have determined that the Eastern DPS deserves status as a threatened species under the Act.

We also conclude, based both on the wolf's recovery progress in the Western DPS, and on our assessment of the threats that will remain to the wolf within the DPS once the wolf is reclassified as threatened (including the continuation of the nonessential experimental population designation and its special regulations), that the gray wolf is not in danger of extinction throughout its range within the Western DPS. Because the three initially isolated populations in the Western DPS now function as a single large metapopulation, and because there is no other population of wolves within the DPS, this conclusion applies to all parts of the wolf's range in the DPS, and so we also conclude that the wolf is not in danger of extinction within any significant portion of its range in the DPS. The gray wolf therefore is no longer endangered throughout all or a significant portion of its range in the Western DPS. Accordingly, we have determined that the Western DPS deserves status as a threatened species under the Act.

In contrast, the gray wolves in the Southwest are still in the initial stage of recovery. The population's growth rate is low in comparison to the growth rates shown by the gray wolf populations in the Western Great Lakes and the Northern U.S. Rocky Mountains. However, this is expected when establishing a wild population from captive-born animals. Recent data indicate that the population growth rate will increase in the near future. Nonetheless, even with the protections of the Act, the currently small population of Mexican wolves, combined with the lack of a recovery goal or measure of sustainability, is still threatened with extinction throughout all or a significant portion of its range. Therefore, we have not reduced the protections for these wolves, and we have retained their designation as a nonessential experimental population in portions of Arizona, New Mexico, and Texas, and as endangered in those parts of the Southwestern DPS that are outside the experimental population area.

The Service intends to continue and complete its Eastern, Northern Rockies, and Southwestern gray wolf recovery programs. Furthermore, we will continue to focus our recovery activities in the current core recovery areas (*i.e.*, Minnesota, Wisconsin, Upper Peninsula of Michigan, Idaho, Montana, Wyoming, New Mexico, and Arizona). Once wolf recovery goals are achieved in the recovery areas of any one of the DPSs, we will proceed to delist the entire DPS that contains that respective recovery area, even if some of the States within the DPS lack wild gray wolves. The presence of gray wolves outside of the recovery areas is not required for the Service to reclassify or delist the entire DPS pursuant to the requirements of the Act.

Need for Immediate Implementation

The wolf population in Wisconsin and Michigan has increased by 30 percent since the publication of our July 2000 proposed rule. The number of wolves captured and translocated after depredating on domestic animals has similarly increased; finding suitable locations to release these depredating wolves has become extremely challenging in Wisconsin. The Board of Supervisors of Forest County, where WI DNR has previously translocated most of their depredating wolves, has recently passed a resolution opposing any additional WI DNR releases of known depredating wolves in that county. Local residents and officials from several other Wisconsin counties have expressed similar opposition. WI DNR has been negotiating with the Menominee Indian Reservation to release several known depredating wolves on the reservation, but a single multi-wolf release will likely exhaust the wolf carrying capacity of the reservation. Another problem is the opposition of local officials from the areas surrounding the reservation; they are concerned that the wolves will move beyond the reservation into the surrounding dairy farm area and resume their attacks on livestock.

The WI DNR has run out of suitable places to release depredating wolves, and is now having to release them in less than ideal locations (that is, too close to the capture point, too close to other livestock operations, or in areas with low deer densities from which wolf dispersal is more likely), and repeat depredations are expected to occur from these releases. Two suspected instances of depredations following translocation have already occurred. Repeat depredations following capture and translocation of known depredating wolves is not likely to be tolerated by some local residents, and State and Federal agencies may be perceived as not taking wolf-human conflicts seriously. To date, wolf recovery efforts in Wisconsin have benefitted from strong public support, and we do not want to further strain that support.

An immediate effective date for the reclassification to threatened status for the Eastern DPS, and the associated special regulations under section 4(d) of the Act, maximizes the ability of WI and MI DNRs to promptly and efficiently remove depredating wolves. Such timely and effective response will reduce the incentive for vigilante wolf killings and should help to foster public support for continuing wolf population growth.

In the Western DPS, the special rule should be made effective immediately because the wolf population in the northern Rocky Mountains is continuing to rapidly expand its numbers and distribution. The peak of wolf dispersal is in fall and early winter so immediate implementation of the rule can provide important benefits for wolf conflict reduction and conservation in northwestern Montana and in areas surrounding the two NEPs. Wolves in northwestern Montana are becoming more numerous and many of those wolves will continue to live in and around people. The special rule provides the Service with additional management tools and flexibility as additional conflicts with people develop. Continued wolf population growth will also result in an increased probability that individual wolves will disperse into neighboring States from the northern Rockies recovery areas. Those wolves may need management by the Service if they become involved in conflicts with people. The finalization of this rule took much longer than anticipated, and its conservation measures are urgently needed to help with wolf restoration efforts and should not be delayed any further.

Therefore, we find there is good cause under 5 U.S.C. 553(d)(3) to implement these rules immediately.

Gray Wolves in Captivity

We recognize that there are many gray wolves being held in captivity for a variety of reasons. Some of these are being held for research, propagation, or educational projects that are part of gray wolf recovery programs; many others are considered pets or are held for other reasons. Those captive wolves potentially can be a valuable part of the recovery program for the areas from which they originated. For example, they may become useful in genetic or taxonomic studies, or serve as a potential source of wolves that could be released into the wild. This is especially true for our gray wolf recovery program in the Southwest. Captive-rearing facilities for this recovery program exist within the geographic boundaries of all three DPSs, as well as in the area that we have now delisted. We believe those captive wolves have sufficient potential importance in our future recovery efforts so that they warrant the continued protections of the Act at the same level as their wild counterparts, regardless of the location of their captivity.

Therefore, we are linking the listing status of captive gray wolves to the listing status of their geographic origin. We have defined the three DPSs to include wild gray wolves living within the boundaries of the DPSs, as well as those captive wolves that were removed from the wild, or whose ancestors were removed from the wild, from within the geographic boundaries of a DPS, regardless of where the captive wolves may be held. If a DPS is delisted in the future, those captive wolves that originated, or whose ancestors originated, from within that DPS will also be delisted at that time.

Other Alternatives Considered

Our proposal contained discussion of several other alternative actions that we considered as we developed the proposal. Among those other alternatives were creating larger or smaller DPSs in the eastern half of the United States and including more or all States within the DPSs. In the discussion of the latter alternative, we specifically mentioned examples such as including California, Nevada, New Jersey, Massachusetts, and Kansas in a DPS, in which case they would have the same threatened or endangered classification as the rest of the DPS. We described why those alternatives were not our proposed action; however, we requested comments and other information on those alternatives, as well as on other alternatives that we might not have considered at all. We received many comments on some of these alternatives, and we have reconsidered their implementation. We will not provide further discussion of those other alternatives in this final rule, except for the aspects of those alternatives that we have incorporated into this final rule. Those discussions are found within the appropriate parts of this document.

Changes From the Proposed Rule

As a result of comments or additional data received during the comment

period, or due to additional analysis on our part, several changes were made to the DPSs and the special regulations that we proposed on July 13, 2000 (refer to Maps 2 and 3 below). Some of these changes incorporate components of several of the alternatives that were discussed in our proposal and for which we requested comments. In addition, combining two DPSs and adopting alternate DPS boundaries necessarily resulted in our consideration of including the additional areas under the coverage of the special regulations we proposed under section 4(d) of the Act. The following paragraphs discuss these changes.

Overall, this final rule results in smaller changes in the previously provided protections of the Act than we had recommended in our July 2000 proposal. The final rule contains no changes to the Act's protection of the gray wolf that are more extensive than what we had proposed.

Combining Proposed Western Great Lakes DPS and Proposed Northeastern DPS—These two proposed DPSs have been combined into a larger DPS called the Eastern Gray Wolf DPS.

At the time we proposed the listing of a Northeastern Gray Wolf DPS, we were well aware that the taxonomy of wolves in eastern North America was under scrutiny and was potentially subject to revision. We were also aware that evidence for the existence of a wolf population in the Northeast—while increasing in the 1990s—was still insufficient to conclude that a resident gray wolf population existed there. However, at that time we believed the gray wolf likely was the historical wolf in the Northeast, and we expected to receive additional information supporting its continued existence there during the comment period.

Since our proposal was developed, we have received insufficient information to substantiate that a wolf population exists in the area we proposed for a Northeastern DPS. Furthermore, recent molecular genetics work (Wilson *et al.* 2000) advances the view that the wolf currently occurring in nearby southeastern Ontario and eastward into part of Quebec is the purported new canid species *Canis lycaon* and not a gray wolf (*C. lupus*).

Given these two factors—the lack of a current wolf population and the continuing uncertainty about the identity of the historical wolf—at this time, we cannot list a separate gray wolf DPS in the Northeastern States. Because the identity of the historical wolf in the Northeast is still unresolved and the gray wolf has not been ruled out as that entity, we are taking the conservative approach and are retaining protection for any gray wolves that might remain in, or move to, the Northeastern States by combining this geographic area with the proposed Great Lakes DPS and calling it the Eastern Gray Wolf DPS. The entire Eastern DPS is listed as threatened in recognition of the ongoing successful recovery progress shown by the Midwestern wolf populations.

We will reconsider this issue when we consider any listing, reclassification, or delisting action that affects the Eastern DPS.

Delisting Only in Areas Where Previously Listed in Error—The final rule delists the gray wolf in parts or all of 16 eastern and southern States, rather than parts or all of 30 States, as proposed.

We had proposed to delist the gray wolf in parts or all of 30 States, because we believed that gray wolf restoration is not necessary and not feasible in those areas. Therefore, we believed it would be appropriate to remove the Federal regulations pertaining to gray wolves in those areas. Such a change would have no impact on our current gray wolf recovery programs, and it seemed reasonable to remove regulations from those geographic areas where they provided no foreseeable benefits to the species.

However, neither the Act nor its implementing regulations allow the delisting of a portion of a listed species' historical range because restoration is not necessary and not feasible in that area. Delisting can only occur if the listed species is recovered, if the listed species is extinct, or if the original listing was based on data, or data interpretation, that were in error (50 CFR 424.11(d)).

As described in the *Historical Range of the Gray Wolf* section above, the species' historical range did not extend into many southern and eastern States. Therefore, our 1978 listing of the gray wolf throughout the 48 States and Mexico was partially in error. This final rule corrects the 1978 error by delisting the gray wolf in all or parts of 16 southern and eastern States that were not within the species' historical range. The remaining conterminous States and Mexico will remain in one of the listed DPSs until gray wolves in that DPS are recovered, the species becomes extinct, or the area is shown to have been listed in error.

Retaining Listings for Areas Previously Proposed for Delisting—California and Nevada have been added to the Western DPS. Nebraska, Kansas, Iowa, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New Jersey, Connecticut, Rhode Island, and Massachusetts have been added to the Eastern DPS (formerly the Western Great Lakes and Northeastern DPSs). Oklahoma west of Interstate 35 and Texas north of Interstate 40 have been added to the endangered Southwestern DPS that includes parts of the United States and Mexico.

Because we are delisting the gray wolf in 14 fewer States than we proposed, those 14 States must remain part of a listed entity. In general, we have added individual States to the DPS containing the core wolf population from which those States are most likely to receive dispersing gray wolves. For example, on the basis of several cases of probable Minnesota wolves dispersing into the Dakotas (including extreme western south Dakota (Licht and Fritts 1994; Straughan and Fain 2002)), and an absence of any evidence of Rocky Mountain wolves dispersing into those States, we have placed the western boundary of the Eastern DPS at the western borders of the Great Plains States.

Similarly, because of their great distance from core Midwestern wolf populations and their relative proximity to active Southwestern gray wolf recovery areas, western Oklahoma and northern Texas are included in the endangered Southwestern DPS instead of the threatened Eastern DPS. Thus, they retain their previous listing as endangered, as do those gray wolves in the Southwest United States and Mexico. While we believe there is only a low likelihood that wolves from New Mexico or Arizona will disperse to northern Texas or western Oklahoma, it is even less likely that Midwestern wolves will disperse there.

The entire States of California and Nevada have been added to the Western DPS. The northern portions of these States are a relatively short distance from the existing and expanding gray wolf populations in Idaho and Wyoming, and wolves dispersing from those populations have already moved to locations only a short distance from the California and Nevada State lines. Dispersal into California and Nevada may have already occurred, but has not yet been verified. Thus, the northern portions of these two States clearly belong in the Western DPS. While it may appear from a superficial consideration of a map and the known dispersal distances of wolves in other areas (refer to the following section for additional discussion) that Southwestern (Mexican) wolves are more likely to disperse to southern California and Nevada than are northern U.S. Rockies wolves, we do not believe this is necessarily correct. The Colorado

River will be a substantial obstacle to any wolves attempting to disperse westward from the reintroduced wolf population in Arizona, and the potential for wolves to disperse long distances across desert habitat is unknown. Therefore, we believe wolf dispersal to southern California and southern Nevada is similarly unlikely from either Arizona or the northern U.S. Rockies. Therefore, in the absence of clear biological support for either the inclusion or exclusion of southern California/Nevada in the Western DPS, we have decided to include these two States in the Western DPS for the sake of administrative convenience and to facilitate public understanding of the boundaries applicable to our new gray wolf regulations.

Therefore, as we have delineated them, the boundaries of these three gray wolf DPSs not only completely encompass the core gray wolf recovery populations and their recovery areas, but also include the known locations of all documented dispersers and the most likely locations for future dispersers from those core populations. While our Vertebrate Population Policy does not require the complete isolation of DPSs, it does require that they be "markedly separated" from each other and from other populations of the species. Based on documented wolf movements to date, these DPS boundary locations exceed that requirement.

Change to the Boundary Between the Western DPS and the Southwestern DPS—We proposed that the boundary between the Western DPS and the Southwestern DPS would be in northern Arizona and New Mexico, along the northern border of the experimental population area established for the nonessential experimental population of gray wolves in Arizona and New Mexico. This would have resulted in a large portion of the boundary between the Western DPS and the Southwestern DPS being less than 160 km (100 mi) from areas currently occupied by wolves in the Southwestern (Mexican) wolf recovery program, but being nearly 800 km (500 mi) from the southernmost wolf packs in the northern U.S. Rockies.

To date we have verified records of two northern U.S. Rocky Mountain wolves dispersing into northern Utah and no verified records of wolves dispersing into Colorado. Similarly, we have no verified records of Southwestern wolves dispersing into extreme northern Arizona or New Mexico, or into the southern half of Utah or Colorado. However, dispersal distance data from the Midwest and from other areas of the Rockies (Fritts 1983, Missouri Dept. of Conservation 2001, Ream *et al.* 1991) show that gray wolves disperse as far as 800 km (500 mi) from existing wolf populations. More routine long-distance movements probably are on the order of 400–480 km (250–300 mi).

Therefore, we have concluded that, in the final rule that establishes the Southwestern and Western DPSs, we should use a boundary that is more consistent with known and expected dispersal distances than was the boundary recommended in our July 13, 2000, proposed rule. U.S. Highway 50 in Utah and Interstate 70 in Colorado represent such a boundary. Furthermore, these highways are clear and convenient features on maps and on the landscape, and should facilitate implementing and enforcing these regulations on the ground. For these reasons, we are using these highways in Utah and Colorado to delineate a portion of the boundary between the Western Gray Wolf DPS and the Southwestern Gray Wolf DPS.

This boundary change also results in a larger area in which wolves will retain an endangered listing than was shown in our July 13, 2000, proposal. Gray wolves that disperse into the southern half of Utah and Colorado or into the portions of Arizona and New Mexico north of the nonessential experimental area will have entered the Southwestern DPS and will be protected as endangered wolves. However, if they are identifiable as having originated from one of the NEPs, they will be subject to the provisions for managing dispersing wolves as described in the appropriate experimental population rule at 50 CFR 17.84(i) or (k).

Changes to Proposed 4(d) Rule for the Western DPS—The conditions under which a private citizen can take a wolf in this final rule for the Western DPS are slightly more restrictive than those we proposed in July 2000. Under the proposal, a person could take a gray wolf on private land if it were seen physically attacking any domestic animal, if there was evidence of a wolf attack such as wounded domestic animals, and such taking was reported within 24 hours. In this final rule, such taking is allowed by a landowner, and without a permit, when a wolf is seen attacking any livestock (cattle, sheep, horses, or mules), livestock guarding or herding animals, or dogs on private land; such taking also can be done by permit on Federal grazing allotments. Some people commented that allowing wolves to be taken for attacking any domestic animal was too liberal and, in the case of small domestic animals, we would lack the type of documentation (physical evidence of wounds made by wolves) that would be needed to prevent abuse of this provision. Some types of domestic animals, such as rabbits or small fowl, are too small for us to be able to determine if they were attacked by wolves. In addition, since 1987, when the first wolf depredation on livestock occurred, until December 2001, only cattle (n=188), sheep (n=494), horses (n=3), llamas (n=4), and dogs (n=43) have been confirmed to have been attacked by wolves in the northern Rockies. Other types of domestic animals are extremely rare in the parts of the western United States where wolves may occur, and wolf depredation on those types of smaller animals is unlikely because they are usually kept in pens. This final rule gives private landowners or Federal grazing permittees the ability to protect the types of domestic animals that might be vulnerable to wolf depredation. The conditions under which wolves may be legally taken would minimize the number of wolves that would be killed by private citizens without reasonable cause.

Injurious harassment (that is, by using nonlethal ammunition, such as rubber bullets or bean bag projectiles issued by the Service after appropriate training) is also being allowed under Service-issued permits on public livestock grazing allotments to reduce the incidence of bold wolf behavior. Aversively conditioning wolves that have become bold or begin to closely associate with livestock could help reduce wolf-livestock conflicts and the need for subsequent agency lethal wolf control. Providing this management tool under permit for livestock producers on public land grazing allotments would allow its selective use, would prevent abuse, and is not expected to increase wolf mortality, and may decrease it.

The Service has also eliminated the 10 breeding pair per State requirement prior to allowing lethal take permits for private landowners. This was changed to increase the potential to implement this type of important wolf management tool on private lands that in the future might experience chronic depredation by wolves, especially in States adjacent to Montana, Idaho, and Wyoming. It is highly unlikely that any area or State outside of the experimental populations areas, other than Montana, will have 10 or more breeding pairs before wolves are delisted. The overall wolf reclassification and recovery goal is based upon the overall number of breeding pairs in the northern U.S. Rocky Mountains, rather than those in each State. Eliminating the 10 breeding pairs requirement will eliminate confusion over the number of wolves per State and how wolf breeding pairs that have home ranges across State or experimental population borders might be counted.

The requirement that previously confirmed wolf-caused domestic animal depredations have occurred in the current year as well as at least one previous year within the last 10 years, or twice in the current year, has been added to demonstrate a pattern of chronic wolf depredation on that area of private property. This additional requirement will also clarify that this provision of the special rule contains the same conditions as must be satisfied for us to grant the take permits that are currently authorized in the experimental population rules for Montana, Idaho, and Wyoming at 50 CFR 17.84(i)(3)(x).

Wider Geographic Application of Proposed 4(d) Rule for the Formerly Proposed Western Great Lakes DPS—The special regulation that we proposed for the States of Wisconsin, Michigan, North Dakota, and South Dakota now applies to all States within the Eastern DPS that are west of Pennsylvania, excluding Minnesota. It does not apply to Pennsylvania and other Eastern DPS States that are east of Ohio. Individual gray wolves that might appear in these area may be important to future wolf recovery efforts in the Northeast. Minnesota wolves continue to be covered by a preexisting special regulation at 50 CFR 17.40(d).

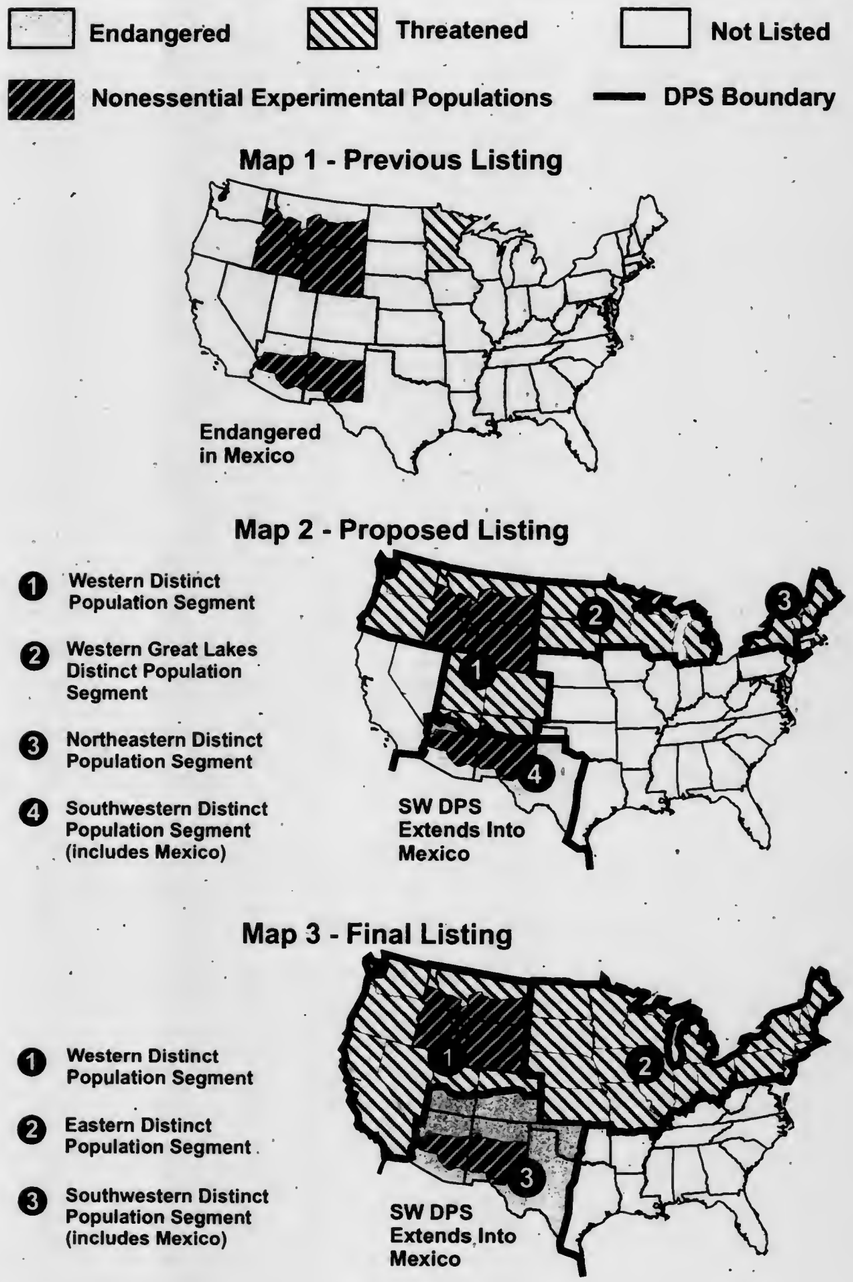
Our proposed special regulation for the proposed Western Great Lakes DPS was primarily intended to enable States and tribes outside of Minnesota to use lethal control measures, at their discretion, in a manner that would efficiently and effectively reduce wolf depredations on domestic animals. We believe this approach is consistent with the recovery of the wolf population in Minnesota, Wisconsin, and Michigan.

We are now applying these regulations to most States within the Eastern DPS, on the basis of our conclusion that very few, if any, wolves will be taken in these additional States, and that such take is consistent with recovery of the wolf in the Eastern DPS.

Northeastern wild wolves should not be subject to lethal depredation control until their origin and identity has been determined, or their potential recovery role is otherwise evaluated. Therefore, we are not including the States and tribes east of Ohio in the coverage of this special regulation. However, if such wolves are determined not to be important to wolf recovery in the Northeastern United States or elsewhere, we will take appropriate action to address the depredation problem.

We have also added wording to this 4(d) rule to clarify that wolves that threaten human safety may be taken, not only by employees of certain Federal, State, and tribal agencies, but also by agents of those agencies who have been designated in writing for that purpose. The phrase "demonstrable but nonimmediate" has been added to further specify the form of threat to human safety that could trigger such a taking. These additions ensure consistency with the similar regulation for endangered species at 50 CFR 17.21(c)(3)(iv).

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary. Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time we list a species.

Critical habitat was designated for the gray wolf in 1978 (43 FR 9607, March 9, 1978). That rule (50 CFR 17.95(a)) identifies Isle Royale National Park, Michigan, and Minnesota wolf management zones 1, 2, and 3, as delineated in 50 CFR 17.40(d)(1), as critical habitat. Wolf management zones 1, 2, and 3 comprise approximately 3,800 sq km (9,800 sq mi) in northeastern and north-central Minnesota. This rule does not affect those existing critical habitat designations.

The Endangered Species Act amendments of 1982 specified that, for any critical habitat designation for a species already listed as threatened or endangered at the time of enactment of the 1982 amendments, the procedures for revisions to critical habitat would apply (Pub. L. 97–304, section 2(b)(2)). Consequently, designation of critical habitat for the gray wolf is subject to the procedures for revisions to critical habitat. As such, it is not mandatory for the Service to designate critical habitat for the gray wolf. Section 4(a)(3)(B) provides that the Service "may" make revisions to critical habitat "from time-to-time * * * as appropriate" (16 U.S.C. 1533(a)(3)(B)). The Service has determined that there currently are no likely benefits to be derived from additional critical habitat designations, and it therefore is not appropriate to designate additional critical habitat. Wolf populations in both the Eastern and Western DPSs are at their numerical recovery goals as a result of past and current protections, but the currently designated critical habitat played a negligible role in wolf recovery. This is attributable to the fact that gray wolves are habitat generalists, and their numbers and range are not limited by a lack of suitable habitat or by any degradation of any essential habitat features. Designating critical habitat would be an inappropriate use of our limited listing funds if done for a species that is successfully recovering without such designation, and at a time when we have determined that it is more appropriate to reduce, rather than increase, the Federal protections for the species.

It should also be noted that the Act (section 10(j)(2)(C)(ii)) prohibits us from designating critical habitat for the nonessential experimental populations established in the Western and Southwestern DPSs. Furthermore, 50 CFR 424.12(h) prohibits the designation of critical habitat in foreign countries.

Special Regulations Under Section 4(d) for Threatened Species

General

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and agents of State conservation agencies.

Section 4(d) of the Act provides that whenever a species is listed as a threatened species, we shall issue regulations deemed necessary and advisable to provide for the conservation of the species. Section 4(d) also states that we may, by regulation, extend to threatened species the prohibitions provided for endangered species under section 9. The implementing regulations for threatened wildlife under the Act incorporate the section 9 prohibitions for endangered wildlife (50 CFR 17.31), except when a special regulation promulgated pursuant to section 4(d) applies (50 CFR 17.31(c)).

With this final rule we are retaining the special regulation under section 4(d) of the Act that has been crucial to conserving the gray wolf in Minnesota, and we are implementing a similar special regulation to provide similar authority for lethal control of depredating wolves in most of the Eastern DPS.

We are also implementing a special regulation to assist in managing the rapidly expanding gray wolf population in the Western DPS. It applies to wolves outside the boundaries of the currently designated nonessential experimental population areas. The existing 10(j) special regulations for the currently designated nonessential experimental populations in Montana, Idaho, and Wyoming will remain in effect.

The existing special regulation for the gray wolf nonessential experimental population in portions of Arizona, New Mexico, and Texas also remains unchanged.

Continuation of Existing Special Regulations for Minnesota Gray Wolves

In 1978 we developed special regulations under section 4(d) of the Act for gray wolves in Minnesota in order to reduce the conflicts between gray wolves and livestock producers. These regulations were modified in 1985 (50 FR 50792; December 12, 1985; 50 CFR 17.40(d)) and remain unchanged. The regulations divided the State into five management zones and established the conditions under which certain State or Federal employees or agents may trap and kill wolves that are likely to continue preying on lawfully present domestic animals. The intent of these regulations was to provide an effective means to reduce the economic impact of livestock losses due to wolves. We believed that by reducing these impacts, private citizens would have less incentive to resort to illegal and excessive killing of problem wolves, and that consequently the recovery of the wolf would be hastened in Minnesota.

We operated this Minnesota Wolf Depredation Control Program from 1976 into 1986. Congressional action in 1986 transferred the Animal Damage Control Program to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS). In 1997 the Animal Damage Control program was renamed "Wildlife Services." USDA/APHIS-Wildlife Services continues to operate the Wolf Depredation Control Program in Minnesota. This final rule will not change the special regulations that authorize these wolf depredation control activities in Minnesota.

New Special Regulations

Special regulations are being implemented for the gray wolf populations in the Western DPS and in much of the Eastern DPS (excluding Minnesota and States east of Ohio).

These special regulations are intended to be consistent with the conservation of the gray wolf in those areas by reducing actual and perceived conflicts with human activities, thus reducing the likelihood and extent of illegal killing of wolves.

In the case of the Western Gray Wolf DPS, the new section 4(d) regulation will apply only to wolves outside of the nonessential experimental population areas. The existing 1994 special regulations that apply to the two nonessential experimental population areas (50 CFR 17.84(i)) will remain in effect. The new special regulations finalized in this rule will allow similar, but increased, management flexibility for problem wolves in all areas of the Western DPS that are outside of the boundaries of the two experimental population areas. The existing experimental population special regulations will remain in effect.

New Western Gray Wolf DPS Special Regulations Under 4(d) (Refer to the following table for a comparison of these new regulations with the continuing regulations for the experimental population areas.)

The new 4(d) rule will expand the situations in which wolves that are in conflict with human activities may be taken by the Service or by private individuals. The Service is doing this to increase human tolerance of wolves in order to enhance the survival and recovery of the wolf population. The special rule for managing the threatened wolf population allows wolf control and management in a very similar manner to that allowed under the special regulations for the two nonessential experimental population areas in Montana, Idaho, and Wyoming. Those regulations have been in place since 1995, and have helped the wolf population grow rapidly to recovery levels with a low level of conflict with humans.

Any wolf that poses an immediate threat to human safety may be taken by anyone at that time and without any special permit. Any wolf that is a demonstrable but nonimmediate threat to human safety may be taken by us, by a Federal land management agency, by a State or tribal conservation agency, or by agents designated by these agencies. These types of taking are already generally permitted under 50 CFR 17.21(c) and 17.31(a) of the regulations implementing the Act, but are specifically mentioned again as being permitted by this rule for clarification. Such taking must be reported immediately (within 24 hours), and the wolf carcass must not be disturbed.

The new 4(d) rule allows private landowners and livestock grazing permittees to harass wolves in a noninjurious manner at any time and for any reason. In addition, landowners and grazing permittees on Federal lands, in certain conditions, may receive permits and training from the Service (or Service-authorized agencies or individuals) to intentionally harass wolves in a nonlethal but injurious manner, such as by rubber bullets or other Service-issued projectiles designed to be less-than-lethal to large mammals.

Under the final 4(d) rule, landowners on their private land may take a wolf that is observed in the act of physically attacking (biting, grasping, etc.) livestock (defined to include cattle, sheep, horses, mules, and livestock guarding or herding animals) and dogs. Such takings must be reported immediately, and evidence of a wolf attack must be present. Grazing permittees on Federal leases may receive a permit from us to take wolves in the act of attacking livestock or livestock herding or guarding animals after we have confirmed wolf depredation on their allotment.

In situations on private land where there have been repeated confirmed wolf depredations on livestock and dogs, private landowners may receive a permit from the Service to shoot a wolf or wolves on sight. The Service or Service-authorized agencies may remove wolves that attack livestock or other domestic animals.

In cases where the State or tribal wildlife management agency or the Service can reasonably demonstrate that wolf predation is having an unacceptable effect on big game herds, the Service can authorize wolf relocation to reduce predation by wolves.

The Service may also issue written permits for take of wolves as specified under 50 CFR 17.32, and we may also designate other agencies to take wolves under a variety of specific circumstances and conditions including for scientific purposes; to avoid conflict with human activities; to improve wolf survival and recovery; to aid or euthanize sick, injured, or orphaned individuals; to salvage specimens; and to aid law enforcement. The Service may also authorize agencies to take any wolf or wolf-like canid it determines is showing abnormal behavioral or physical characteristics.

TABLE 1.—COMPARISON OF THE NEW SPECIAL RULE FOR THE WESTERN GRAY WOLF DPS AND THE CONTINUING EXPERIMENTAL POPULATION SPECIAL RULES

[Refer to the regulations in 50 CFR for the complete wording and reporting requirements.]

Provision:	Experimental Populations Special Rules 50 CFR 17.40(n):	New Section 4(d) Special Rule 50 CFR 17.40(n):
Geographic area	This special rule applies only to wolves within the areas of two Nonessential Experimental Populations (NEP), which together include Wyoming, the southern portion of Montana, and Idaho south of Interstate 90.	This special rule will apply to any gray wolves that occur in those parts of the Western DPS (WDPS) that are outside of the NEP areas: Washington, Oregon, California, Nevada, northern Idaho, northern Montana, northern Utah, and northern Colorado.
Interagency Coordination (Sec. 7 consultation).	Federal agency consultation with the U.S. Fish and Wildlife Service on agency actions that may affect gray wolves is not required within the two NEPs, unless those actions are on lands of the National Park System or the National Wildlife Refuge System.	Federal agency consultation with the Service on agency actions that may affect gray wolves is required, but will not result in land-use restrictions on Federal land unless needed to avoid take at active den sites between April 1 and June 30, except in National Parks or National Wildlife Refuges where other restrictions may be applied.
Take in self defense	Any person may take a wolf in self defense or in defense of others.	Same as the current experimental population special rules.
Protection of human life and safety.	The Service, or agencies authorized by the Service, may promptly remove (that is, place in captivity or kill) any wolf determined by the Service or authorized agency to be a threat to human life or safety.	Similar to the current experimental population special rules, but applies to the Service, other Federal land management agencies, and State or tribal conservation agencies.

TABLE 1.—COMPARISON OF THE NEW SPECIAL RULE FOR THE WESTERN GRAY WOLF DPS AND THE CONTINUING EXPERIMENTAL POPULATION SPECIAL RULES—Continued

[Refer to the regulations in 50 CFR for the complete wording and reporting requirements.]

Provision:	Experimental Populations Special Rules 50 CFR 17.40(n):	New Section 4(d) Special Rule 50 CFR 17.40(n):
Opportunistic harassment	Landowners and grazing allotment holders can opportunistically harass gray wolves in a noninjurious manner without a Service permit.	Same as the current experimental population special rules.
Intentional harassment Permits.	No specific provision for intentional harassment permits	The Service can issue a 90-day permit to private landowners or to livestock producers for use on public grazing allotments after verified persistent wolf activity on their private land or public grazing allotment; permit would allow intentional and potentially injurious, but nonlethal, harassment of wolves.
Taking wolves "in the act" on PRIVATE land.	Livestock producers on their private land may take a gray wolf in the act of killing, wounding, or biting livestock. Injured or dead livestock must be in evidence to verify the wolf attack.	Similar to the current experimental population special rules, but this provision is broadened to also apply to gray wolves attacking dogs and livestock herding and guarding animals.
Permits for taking persistent problem wolves "in the act" on PUBLIC land.	If six breeding pairs of wolves are established in an NEP area, livestock producers and permittees with current valid livestock grazing allotments on public land can get a 45-day permit from the Service or other agencies designated by the Service, to take gray wolves in the act of killing, wounding, or biting livestock. The Service must have verified previous attacks by wolves, and must have completed agency efforts to resolve the problem.	Same permits are available, but they can be issued regardless of the wolf-population level. "Livestock" is defined to also include herding or guard animals. "Public land" is defined to include Federal land and any other public land designated in State and tribal wolf management plans.
Permits for additional taking by private citizens on their PRIVATE land for chronic wolf depredation.	No specific provision for such permits. However, see provision below for "Permits for recovery actions that include take of gray wolves".	If we confirm two separate depredation incidents on livestock or dogs on the subject private property or on an adjacent private property and we have confirmed that wolves are routinely present on the subject property and present a significant risk to livestock or dogs, a private landowner may receive a permit from the Service to take those wolves, under specified conditions.
Government take of PROBLEM WOLVES.	The Service or agencies designated by the Service may take wolves that attack livestock or that twice in a calendar year attack domestic animals other than livestock. When six or more breeding pairs are established in an NEP, lethal control of problem wolves or permanent placement in captivity may be authorized by the Service or agency designated by the Service. When five or fewer breeding pairs are established in an NEP, taking may be limited to nonlethal measures such as aversive conditioning, nonlethal control, and/or translocating wolves. If during depredation control activities on Federal or other public lands, prior to six breeding pairs becoming established in an NEP and prior to October 1, a female wolf having pups is captured, the female and her pups will be released at or near the site of capture. All problem wolves on private land, including female wolves with pups, may be removed (including lethal control) if continued depredation occurs. All chronic problem wolves (wolves that depredate on domestic animals after being moved once for previous domestic animal depredations) will be removed from the wild (killed or placed in captivity).	"Problem wolves" is defined to have the same meaning: wolves that (1) attack livestock or (2) twice in a calendar year attack domestic animals other than livestock. Criteria to determine when take will be initiated are similar to those for the NEP: (1) evidence of the attack, (2) reason to believe that additional attacks will occur, (3) no evidence of unusual wolf attractants, and (4) any previously specified animal husbandry practices have been implemented, if on public lands. No numerical threshold applies, so all control measures, including lethal control, can be used regardless of the number of breeding pairs in a State. No upper threshold of six breeding pairs limiting protection of females and their pups applies. Thus, females and their pups will be released if captured on public lands as defined above, prior to October 1, unless depredation continues. [Note: This is more restrictive than the experimental population regulations.] All problem wolves that attack domestic animals more than twice in a calendar year may be moved or removed from the wild, including females with pups.
Govt. translocation (capture and moving) of wolves to reduce impacts on wild ungulates.	States and tribes may capture and translocate wolves to other areas within the same NEP area, if the gray wolf predation is negatively impacting localized wild ungulate populations at an unacceptable level, as defined by the States and tribes. State/tribal wolf management plans must be approved by the Service before such movement of wolves may be conducted, and the Service must determine that such translocations will not inhibit wolf population growth toward recovery levels.	Similar to the current experimental population special rules, but moved wolves may be released to other areas within the Western DPS. Additionally: After 10 breeding pairs are established in the State, we, in cooperation with the States and tribes, may move wolves that we determine are impacting localized wild ungulate populations at unacceptable levels.
Incidental take	Any person may take a gray wolf if the take is incidental to an otherwise lawful activity, and is accidental, unavoidable, unintentional, and not resulting from negligent conduct lacking reasonable due care, and due care was exercised to avoid taking the wolf.	Similar to the current experimental population special rules.

TABLE 1.—COMPARISON OF THE NEW SPECIAL RULE FOR THE WESTERN GRAY WOLF DPS AND THE CONTINUING EXPERIMENTAL POPULATION SPECIAL RULES—Continued

[Refer to the regulations in 50 CFR for the complete wording and reporting requirements.]

Provision:	Experimental Populations Special Rules 50 CFR 17.40(n):	New Section 4(d) Special Rule 50 CFR 17.40(n):
Permits for recovery actions that include take of gray wolves.	Available for scientific purposes, enhancement of propagation or survival, zoological exhibition, educational purposes, or other purposes consistent with the Act (50 CFR 17.32).	Same as the current experimental population special rules.
Additional taking provisions for agency employees.	Any employee or agent of the Service or appropriate Federal, State, or tribal agency, who is designated in writing for such purposes by the Service, when acting in the course of official duties, may take a wolf from the wild, if such action is for: (A) Scientific purposes; (B) to avoid conflict with human activities; (C) to relocate a wolf within the NEP areas to improve its survival and recovery prospects; (D) to return wolves that have wandered outside of the NEP areas; (E) to aid or euthanize sick, injured, or orphaned wolves; (F) to salvage a dead specimen which may be used for scientific study; or (G) to aid in law enforcement investigations involving wolves.	Similar to the current experimental population special rules, except it has additional provisions that allow such take of wolves for "disposing of a dead specimen"; and for "preventing wolves with abnormal physical or behavioral characteristics, as determined by the Service, from passing on those traits to other wolves."
Land-use restrictions on Federal lands.	When five or fewer breeding pairs of wolves are in an experimental population area, temporary land-use restrictions may be employed on Federal public lands to control human disturbance around active wolf den sites. These restrictions may be required between April 1 and June 30, within 1 mile of active wolf den or rendezvous sites, and would only apply to Federal public lands or other such lands designated in State and tribal wolf management plans. When six or more breeding pairs are established in an experimental population area, no land-use restrictions may be employed on Federal public lands outside of National Parks or National Wildlife Refuges, unless that wolf population fails to maintain positive growth rates for two consecutive years.	Land-use restrictions may be employed for wolf recovery purposes on National Parks and National Wildlife Refuges. Between April 1 and June 30 land-use restrictions may be employed to prevent take of wolves at active den sites on Federal lands.

Under the new section 4(d) rule, landowners will be allowed to harass wolves from areas where potential conflicts are of greatest concern, such as private property and near grazing livestock. In addition to the authority for landowners and livestock producers to opportunistically harass gray wolves in a noninjurious manner (as already allowed by the current special regulations within the two experimental populations), the new 4(d) rule will allow us to issue temporary permits for deliberate harassment of wolves in an injurious manner under certain situations, as is also allowed under the experimental population rules. Harassment methods that will be allowed under this provision include rubber bullets and other specially designed less-than-lethal munitions. Since all such harassment would be nonlethal, and most is expected to be noninjurious to wolves, no effect on wolf population growth is expected to occur. This provision could make wolves more wary around people and human activity areas, reducing the potential for livestock depredations and subsequent agency control actions. Increased wariness and avoidance of humans could also possibly preclude the opportunity for people to illegally kill wolves. Fewer wolf depredations on livestock and pets should result from more focused and more unpleasant harassment of the problem wolves. Fewer depredations will result in fewer control actions, and consequently fewer wolves will be killed by management agencies. This provision allows us to work closely with the public to avoid conflicts between wolves and livestock or dogs, thereby reducing the need for wolf control. Because we will have to confirm persistent wolf activity, and each intentional harassment permit will contain the conditions under which such harassment could occur, there should be little potential for abuse of this management flexibility.

Under the new special regulation for the Western DPS, landowners will be allowed to take (kill or injure) wolves actually seen attacking their livestock on private land (as currently allowed by the existing special regulations for the two experimental populations). The new special regulation will also expand this provision so that it applies to wolves attacking livestock herding or guard animals or dogs on private land outside of the experimental areas. Furthermore, the new special regulation will allow us to issue permits to take wolves seen attacking livestock and livestock guard or herding animals on federally managed land. (The special regulations that will continue to apply to the two experimental population areas do not allow such permits to be issued for attacks on guard or herding animals, and do not allow such permits to be issued if there are fewer than six breeding pairs of wolves in the experimental population area.) Because such take has to be reported and confirmation of livestock attacks must be made by agency investigators, we anticipate that no additional significant wolf mortality will result from this provision. However, those few wolves that are killed will be animals with behavioral traits that were not conducive to the long-term survival and recovery of the wolf in the northern Rocky Mountains. The required confirmation process will greatly reduce the chances that wolves that have not attacked these types of domestic animals will be killed under this provision. Once a depredating wolf is shot, no further control on the pack will be implemented by the agencies unless additional livestock are attacked. This could result in even fewer wolves being taken in agency control actions, because the wolf that is killed will be the individual most likely to have been involved in the actual attack on livestock.

The new special regulation will allow us or other agencies and the public to continue to take wolves in the rare event that they threaten human life or safety. While this is a highly unlikely situation, and one that is already addressed by the Act and the current special regulation, emphasizing the Act's provision to defend human life and safety should reduce the public's concern about human safety.

The new special regulation will allow government agencies to remove problem wolves (wolves that attack livestock or twice in a year attack other domestic animals) outside the experimental areas using lethal methods regardless of the number of breeding pairs present in the area. (The previous special regulations that will continue to apply within the two experimental population areas allow lethal methods only if there are six or more breeding pairs present in that experimental population area.)

Prior to October 1 of each year, the new special regulation will require the release of trapped female wolves with pups that are involved in livestock depredations for the first time, regardless of the number of breeding pairs on federally managed land. (The previous special regulations that will continue to apply within the two experimental population areas require the release of such female wolves with pups only if there are fewer than six breeding pairs present in that experimental population area.)

The new special regulation will allow us to issue permits for private landowners to take wolves on their private lands if we have determined that wolves are routinely present on that land and present a significant risk to livestock, herding or guard animals, and dogs. (The previous special regulations that will continue to apply within the two experimental areas have no specific provision for this type of permit to take wolves, but such permits can potentially be issued under 50 CFR 17.32.)

The new special regulation addresses public concerns about the presence of wolves disrupting traditional human uses of Federal land. Except for within National Parks and National Wildlife Refuges, the only potential restrictions on federally managed lands may be seasonal restrictions to avoid the take of wolves at active den sites. These seasonal restrictions will likely run from April 1 to June 30 of each year and apply to land within one mile of the active den site. Our experience since 1987 with managing wolves in the northern Rocky Mountains has shown that successful wolf recovery does not depend upon land-use restrictions due to the wolves' ability to thrive in a variety of land uses. We believe there is little, if any, need for land-use restrictions to protect wolves in most situations, with the possible exception of temporary restrictions around active den sites on federally managed lands. Additionally, the public is much more tolerant of wolves if restrictive government regulations do not result from the presence of wolves. While the threatened status of wolves will require Federal agencies to consult under section 7, the new special regulation will simplify that process by stating that no land-use restrictions are likely to be required except to protect wolves at active den sites on federally managed lands, as described above.

Other provisions of the new section 4(d) special regulation for the Western DPS are identical or very similar to the previous special regulations that will continue to apply to the two nonessential experimental populations in the northern U.S. Rocky Mountains.

Prior to this rule, any western gray wolves that lived outside of, or dispersed beyond, those experimental areas were protected under the Act as endangered gray wolves; thus, wolves in and around Glacier National Park in northwestern Montana were endangered wolves. In contrast, the new reclassification to threatened status and the new section 4(d) special regulation will apply a degree of greater management flexibility across the rest of the area defined as the Western DPS, which includes all of seven States and portions of two others.

In conclusion, the new 4(d) rule for the Western Gray Wolf DPS will continue to protect wolves from human persecution outside of the two experimental population areas, but will improve and expand the management options for problem wolves. By focusing management efforts on the occasional problem wolf, we believe that the public will become more tolerant of nondepredating wolves. On the basis of our experience with wolf recovery in Minnesota, Michigan, Wisconsin, Montana, Idaho, and Wyoming, we expect this increased public tolerance to result in fewer illegal killings of Western DPS wolves and more opportunity for us to work with local agencies and the public to find innovative solutions to potential conflicts between wolves and humans. Overall, we believe that this new special regulation is consistent with the conservation of the gray wolf and that it will speed the species' recovery in the northern U.S. Rocky Mountains. Therefore, we find that this special rule is necessary and advisable to provide for the conservation of the Western DPS of the gray wolf.

New Special Regulations for Most of the Eastern DPS

The former endangered status of gray wolves restricted depredation control activities throughout the eastern half of the United States (except Minnesota) to capturing depredating wolves and releasing them at another location in the respective State. Wolves released in this manner may return to the vicinity of their capture and resume their depredating habits, begin pursuing domestic animals at their new location, or be killed by resident wolf packs in the release area. Thus, in order for translocation to have a reasonable probability of assisting wolf recovery, there must be unoccupied wolf habitat available within the State, but at a great distance from the depredation incident site, in order for the translocated wolf to survive and reproduce without causing additional depredation problems.

As the Michigan and Wisconsin wolf populations expand in number and range, the frequency of depredation incidents is increasing, yet there are fewer suitable release sites available. Releases of depredating wolves at marginal locations (that is, near existing wolf packs or too close to their capture site) are likely to fail. For example, a depredating wolf recently released into the Nicolet National Forest in Wisconsin at a location 46 miles from his initial capture had returned to within 23 miles of his capture location where he was mistaken for a coyote and shot only 13 days after his release. Further compounding the problem of successfully moving and releasing depredating wolves is the local opposition that has recently arisen to such releases in some Wisconsin counties, with at least one county board passing a resolution opposing releases by the DNR.

Similar problems with relocating depredating wolves have occurred in northwestern Montana. Between 1987 and the end of 2001, 117 wolves were relocated because of conflicts with livestock. Few of these wolves contributed toward wolf recovery and many often caused additional livestock depredations or did not survive long

VOL
68
ISS
62
AP
1
2003
UMI

enough to reproduce. A review of wolf relocation as a means of reducing depredations on livestock in northwestern Montana concluded that relocation should be discontinued and that both livestock losses and depredation control costs could be reduced by killing, instead of relocating, depredating wolves (63 FR 20212, April 23, 1998; Bangs 1998; Bangs *et al.* 1998).

This new special regulation allows us, the Michigan and Wisconsin DNRs, the wildlife management agencies of North Dakota, South Dakota, Nebraska, Kansas, Iowa, Missouri, Illinois, Indiana, and Ohio, or tribes within these States, or the designated agents of these agencies and tribes to carry out the full spectrum of depredation control actions, from nonlethal opportunistic harassment to lethal control of depredating wolves. The restrictions for lethal depredation control actions will be similar to those used for the Minnesota wolf depredation control program since 1985: (1) Wolf depredation on lawfully present domestic animals must be verified, (2) the depredation is likely to be repeated, (3) the taking must occur within one mile of the depredation site in Michigan and Wisconsin, and within 4 miles of the depredation site in other area of the Eastern DPS that are west of Pennsylvania, (4) taking, wolf handling, and euthanizing must be carried out in a humane manner, which includes the use of steel leghold traps, and (5) any young of the year trapped before August 1 must be released.

Lethal depredation control has been successful in reducing conflicts between the recovering wolf population and domestic animals in Minnesota. It resolves the immediate depredation problem without the removal of excessive numbers of wolves, and avoids removing any wolves when the depredation was not verified as being caused by wolves or is not likely to be repeated. It is significantly less expensive, less labor-intensive, and more effective than translocating such problem wolves, and thus is more appropriate for the rapidly expanding wolf populations that now exist in Michigan and Wisconsin.

Based upon Minnesota wolf depredation control data from the early 1980s when the wolf population was probably less than 1,500 animals, we estimate that a maximum of about 2 to 3 percent of Wisconsin and Michigan wolves will be taken annually under the provisions of this special regulation. At current population levels this will be about 6 to 9 wolves per State. This level of take should not appreciably affect the wolf population or its continued expansion in either of these States. As their wolf populations already exceed the Federal numerical delisting criterion, this take will have no effect on the recovery of wolves in the Eastern DPS. The level and effects of this take will be closely monitored by continuing the annual monitoring of wolf populations in these States and the required reporting of the lethal take within 15 days under this special regulation.

These new depredation control activities will be limited to an area within one mile of the depredation site in Wisconsin and Michigan. Because wolf pack territories are large (in Wisconsin and Michigan they range from 52 to 518 sq km (20 to 200 sq mi), and the locations of Wisconsin and Michigan wolf packs are much more precisely known (due primarily to the high percentage of radio-tracked packs in these States) than is the case for Minnesota wolf packs, it will be possible for depredation control actions to be directed at only the depredating pack. Thus, the one-mile limit is sufficiently large to enable depredation control trappers to focus their trapping within the activity areas of the target pack without being so large that it results in a significant risk of accidentally trapping wolves from nearby nondepredating packs.

The situation in North Dakota and South Dakota is quite different from that in Michigan or Wisconsin. Wolves that appear in North Dakota and South Dakota are dispersing individuals from Minnesota and Canada, or rarely may be from a pair or small pack along North Dakota's border with Canada. None of our recovery plans or recovery programs recommends actions to promote gray wolf restoration in either of these two States, and we do not believe the Act requires or encourages such recovery actions. We also recognize that, due to the more open landscape of these States, and the high likelihood that dispersing wolves will encounter livestock, wolves are more likely to become involved in depredations on domestic animals. Therefore, we believe we should provide a mechanism for prompt control of depredating wolves in these States. Because there are very few or no established wolf packs in these States, and there are very few wolves dispersing into these States, we believe there is minimal risk, when taking control actions under this special regulation, of accidentally trapping or shooting wolves from a nearby nondepredating pack or dispersers that are not involved in the depredation. For this reason, as well as recognition that the much more open landscape of North Dakota and South Dakota means that depredating wolves are likely to travel a greater distance from the depredation site to secure cover, we will allow lethal depredation control actions to be undertaken up to 4 miles from the depredation site.

The other Eastern DPS States that are west of Pennsylvania, and thus are subject to this special regulation, have had few reports of wolves in the last 100 years. The number of gray wolves that will be taken under its provisions will be very small, and will be of no consequence to ongoing wolf recovery programs. In the event that a gray wolf disperses into one of these States and attacks domestic animals, it will be important for the State or tribe to have this lethal control authority, because most of these areas have no suitable locations to release a depredating wolf. Due to the extremely low probability that a nondepredating wolf will be mistakenly taken instead of the depredating wolf, we are applying the 4-mile limit in these States, as well.

Therefore, because of the anticipated low level of additional mortality that will result from this special regulation, and the likely larger increase in illegal wolf killing and loss of public support for wolf recovery that we expect to be prevented by this 4(d) rule, we find that this special rule is necessary and advisable to provide for the conservation of the Eastern DPS of the gray wolf.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Most of these measures have already been successfully applied to gray wolves in the conterminous 48 States.

Under this final rule, the protections of the Act will continue to apply to the gray wolves in the endangered Southwestern Gray Wolf DPS, to the threatened Eastern and Western Gray Wolf DPSs, and to the gray wolves in the three nonessential experimental populations. The protections of the Act are removed only from parts or all of 16 States where gray wolves did not historically occur. This final rule does not modify or withdraw the existing special regulations or the nonessential experimental population designations for the reintroduced gray wolf populations in Idaho, Montana, Wyoming, Arizona, New Mexico, and Texas, nor does it make any changes to the threatened classification and existing section 4(d) special regulation for gray wolves in Minnesota. Similarly, the existing critical habitat designations for portions of Minnesota and Michigan will remain unchanged, and will continue to be considered during consultations with other Federal agencies under section 7 of the Act. This final rule does not affect the listing or protection of the red wolf (*Canis rufus*).

The protection required of Federal agencies and the prohibitions against taking and harm are discussed in the *Summary of Factors Affecting the Species* section, factor D, *The adequacy or inadequacy of existing regulatory mechanisms*, above.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any species listed as endangered or threatened, or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. If a Federal action is likely to jeopardize a species proposed to be listed as threatened or endangered or destroy or adversely modify proposed critical habitat, the responsible Federal agency must confer with us.

Federal agency actions that may require consultation or conferencing, as described in the preceding paragraph, include activities by the U.S. Forest Service, the National Park Service, the U.S. Geological Survey, USDA/APHIS-Wildlife Services, the Bureau of Land Management, the U.S. Department of Transportation, the U.S. Environmental Protection Agency, and activities that we may undertake.

However, under section 10(j)(2)(C) of the Act, for those three areas currently designated as nonessential experimental populations in Montana, Idaho, Wyoming, Arizona, New Mexico, and Texas, for the purpose of interagency consultation under section 7 of the Act the gray wolf will continue to be considered a species proposed for listing under the Act, except where the species occurs on an area within the National Wildlife Refuge System or the National Park System. For all other purposes of the Act, gray wolves that are currently designated as experimental populations shall continue to be treated as a threatened species. Furthermore, the existing special regulations found in 50 CFR 17.84(i) and 17.84(k) regarding the taking of wolves depredating on livestock in these experimental population areas continue to apply.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered and threatened wildlife. The prohibitions codified at 50 CFR 17.21 and 17.31 in part make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies. Additionally, as discussed above, special regulations promulgated under sections 4(d) and 10(j) of the Act provide additional exceptions to these general prohibitions for the gray wolf.

It is our policy (59 FR 34272; July 1, 1994) to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Activities that we believe could potentially harm or kill the gray wolf in the area where it will remain listed as threatened or endangered and may result in a violation of section 9 include, but are not limited to:

(1) Taking of gray wolves by any means or manner not authorized under the provisions of the existing special regulation established for the designated nonessential experimental population in Arizona, New Mexico, and Texas as long as that designation and special regulation remain in effect;

(2) Taking captive Southwestern (Mexican) gray wolves unless such taking results from implementation of husbandry protocols approved under the Mexican Wolf Species Survival Plan or are otherwise approved or permitted by the Service;

(3) Taking of gray wolves within the Western DPS in a manner not authorized under the provisions of the 4(d) special regulations finalized by this document, or in a manner not authorized under the existing experimental population regulations which will continue to apply to gray wolves in Wyoming and in parts of Idaho and Montana;

(4) Taking of gray wolves within the Eastern DPS in a manner not authorized in the existing section 4(d) special regulation for Minnesota, in the section 4(d) special regulation finalized by this document for other States in this DPS that are west of Pennsylvania, or in 50 CFR 17.31 for the Eastern DPS States east of Ohio;

(5) Intentional killing of a live-trapped wild canid that is demonstrably too large to be a coyote (that is, greater than 27 kg (60 lb)) in the Northeastern States that are included in the Eastern DPS; or

(6) Killing or injuring of, or engaging in the interstate commerce of, captive gray wolves which originated from, or whose ancestors originated from, the areas included within the Western, Eastern, or Southwestern DPSs, unless authorized in a Service permit.

We believe, based on the best available information, that the following actions will not result in a violation of section 9:

(1) Taking of a gray wolf in defense of human life, or a taking by designated agency personnel in response to a demonstrable, but nonimmediate threat to human safety;

(2) Taking of wild gray wolves in the 16–State area where we have delisted the gray wolf;

(3) Taking of gray wolves under the provisions of the existing special regulations established for the three designated nonessential experimental populations in Arizona, New Mexico, Texas, Wyoming, Idaho, and Montana as long as those designations and special regulations remain in effect;

(4) Taking of gray wolves under the provisions of the special regulations under section 4(d) of the Act, as finalized at this time for threatened gray wolves in the Western DPS or the Eastern Gray Wolf DPS States which are west of Pennsylvania and excluding Minnesota;

(5) Taking of gray wolves under the provisions of the existing special regulation at 50 CFR 17.40(d) for Minnesota wolves; or

(6) taking of captive Southwestern (Mexican) gray wolves in accordance with husbandry protocols approved under the Mexican Wolf Species Survival Plan or other approvals or permits issued by the Service.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 13, 17.22, 17.23, and 17.32. For endangered species such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and/or for economic hardship. For threatened species such permits are also available for zoological exhibition, educational purposes, and/or for special purposes consistent with the purposes of the Act, but not for economic hardship.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the nearest regional or Ecological Services field office of the Service. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to any Service Regional Office or to the Washington headquarters office. The location, address, and phone number of the nearest regional or Ecological Services field office may be obtained by calling us at 703–358–2171 or by using our World Wide Web site at: *http://www.fws.gov/where/index.html.*

This final rule is not an irreversible action on our part. Reclassifying either or both of the Eastern and Western DPSs back to endangered status is possible, and will be considered, should changes occur that alter the species' status or significantly increase the threats to the survival of either of these DPSs. Because changes in status or increases in threats might occur in a number of ways, it is unwise at this point to specify criteria that would trigger a reclassification proposal.

Required Determinations

Regulatory Planning and Review, Regulatory Flexibility Act, and Small Business Regulatory Enforcement Fairness

This rule was subject to Office of Management and Budget review under Executive Order 12866. Because this regulation is not expected to have a significant economic effect, only a qualitative assessment of the potential costs and benefits is included. Because of the added management flexibility provided by the 4(d) regulations, this regulation is expected to result in a small economic gain to some livestock producers within the wolf range.

Currently the vast majority of wolves that occur in the western Great Lakes area are found in the State of Minnesota where they are listed as threatened. A special regulation exists for Minnesota wolves that allows the Service, the MN DNR, other designated agencies, and their agents to manage wolves to ensure minimal economic impact. That current special regulation allows some direct "take" of wolves. A State program compensates livestock producers up to full market value if they suffer confirmed livestock losses by wolves. The value of the confirmed livestock losses amounted to an annual average of about $64,000 over the last five years (Paul 2001). Because this new regulation does not affect the existing special regulations for Minnesota wolves, there will be no resulting economic effect on livestock producers or other economic activities in Minnesota.

This regulation reclassifies wolves in Michigan and Wisconsin from endangered to threatened and provides special regulations similar to those already existing for Minnesota, as described above. Thus, specified State, tribal, and Federal agencies and their designated agents will be allowed to kill wolves that have been verified as killing or attacking domestic animals. Under the normal protections of the Act, that is, without the benefit of these special regulations for Michigan and Wisconsin, permits would be required. This special regulation benefits the small percentage of livestock producers in wolf range in Michigan and Wisconsin that experience wolf attacks on their animals. Since only about 1.2 percent of livestock producers in nearby Minnesota, where the wolf population is much greater (Minnesota contains more than 2,500 wolves, while Wisconsin and Michigan have 323 and 278 wolves, respectively), are adversely affected annually by wolves, the potential beneficial effect to livestock producers in Michigan and Wisconsin is small, but it may be important to a few producers. In addition, State programs in Michigan and Wisconsin compensate livestock producers if they suffer confirmed livestock losses by wolves. In Wisconsin, compensation is paid at full market value. Until recently, MI DNR provided partial compensation, but now is paying full compensation with the assistance of the International Wolf Center, Defenders of Wildlife, and other private funding sources. The net effect of the reclassification and 4(d) rule to livestock producers in Michigan and Wisconsin is that the control of depredating wolves will become more efficient and effective, thus reducing the economic burden of livestock producers resulting from wolf recovery in those States. Similar positive, but geographically scattered and minor, economic benefits will occur for livestock producers in the other Eastern DPS States west of Pennsylvania where this new 4(d) rule will also apply.

The majority of wolves in the West are protected under nonessential experimental population designations that cover Wyoming, most of Idaho, and southern Montana and that treat wolves as threatened species. A smaller, but naturally occurring population of about 84 wolves is found in northwestern Montana. The wolves with the nonessential experimental population designations were reintroduced into these States from Canada. Special regulations exist for these experimental populations that allow government employees and designated agents, as well as livestock producers, to take problem wolves. Because this final rule does not change the nonessential experimental designation or associated special regulations, it will have no economic impact on livestock producers or other entities in these areas. However, the naturally occurring wolves in northwestern Montana (outside of the nonessential experimental population areas) and wolves that may occur in other western States are now reclassified from endangered to threatened status. Under normal protections of the Act, that is, without the benefit of special regulations hereby put into place for the western States not included in the nonessential experimental designation, permits would be required for nearly all forms of take of these wolves. For example, prior to this final rule a private landowner on his or her own land in northwestern Montana could not take a wolf in the act of attacking livestock. This final rule allows such take without a permit. The reduction of the restrictions on taking problem wolves will make their control easier and more effective, thus reducing the economic losses that result from wolf depredation on livestock and guard animals and dogs. Furthermore, a private program compensates livestock producers if they suffer confirmed livestock losses by wolves. Since 1996, average compensation for livestock losses has been slightly over $10,000 in each recovery area per year. The potential effect on livestock producers in western States outside of the experimental population is small, but more flexible wolf management will be entirely beneficial to their operation.

We have delisted the gray wolf in all or parts of 16 States in this final rule, because this area is outside of the historical range of the gray wolf. These areas currently contain no wolves, and they should not have been included in the original listing of the species. Current regulations that protect wolves there are unnecessary and inappropriate. Livestock producers and other economic activities in these States have not been affected by the gray wolf and will not be affected by the actions in this final rule, because we are simply removing the current regulations which have no effect on landowners.

a. This regulation does not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. As explained above, this regulation will result in only minor positive economic effects for a small percentage of livestock producers.

b. This regulation will not create inconsistencies with other agencies' actions. This regulation reflects continuing success in recovering the gray wolf through long-standing cooperative and complementary programs by a number of Federal, State, and tribal agencies.

c. This regulation will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This regulation raises novel legal or policy issues, and for this reason, OMB has reviewed this rule.

This regulation will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As stated above, this regulation will result in minor positive economic effects for a very small percentage of livestock producers. Only 1.2 percent of the livestock producers are affected annually in Minnesota by the preexisting regulations, and a smaller number are expected to be affected by these new regulations in the other States.

This regulation will not be a major rule under 5 U.S.C. 801 *et seq.*, the Small Business Regulatory Enforcement Fairness Act.

a. This regulation will not produce an annual economic effect of $100 million. The majority of livestock producers within the range of the wolf are small family-owned dairies or ranches and the total number of livestock producers that may be affected by wolves is small. (For example, only about 1.2 percent of livestock producers in Minnesota is affected annually by wolves where the largest wolf population, by far, exists.) The finalized take regulations will further reduce the effect that wolves will have on individual livestock producers by reducing or eliminating permit requirements. Compensation programs are also in place to offset losses to individual livestock producers. Thus, even if livestock producers affected are small businesses, their combined economic effects will be minimal and the effects are a benefit to small business.

b. This regulation will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. This regulation will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. As stated above, this regulation will result in only minor positive economic effects for a very small percentage of livestock producers.

b. This regulation will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. This regulation will not impose any additional wolf management or protection requirements on the States or other entities.

Takings Implications Assessment

In accordance with Executive Order 12630, this regulation will not have significant implications concerning taking of private property by the Federal Government. This regulation will reduce regulatory restrictions on private lands and, as stated above, will result in minor positive economic effects for a small percentage of livestock producers.

Federalism Assessment

In accordance with Executive Order 13132, this regulation will not have significant Federalism effects. This regulation will not have a substantial direct effect on the States, on the relationship between the States and the Federal Government, or on the distribution of power and responsibilities among the various levels of government.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have coordinated this rule with the affected tribes. Throughout development of this rule, we endeavored to consult with Native American tribes and Native American organizations in order both to provide them with a complete understanding of the proposed changes and also to enable ourselves to gain an appreciation of their concerns with those changes. We fully considered all of their comments on the proposed gray wolf reclassification and delisting submitted during the public comment period and have tried to address those concerns to the extent allowed by the Act, the Administrative Procedures Act, and other Federal statutes.

Civil Justice Reform

In accordance with Executive Order 12988, this regulation does not unduly burden the judicial system.

Paperwork Reduction Act

This regulation does not contain any new collections of information other than those permit application forms already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires Federal agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

National Environmental Policy Act

We have analyzed this rulemaking in accordance with the criteria of the National Environmental Policy Act and 318 DM 2.2(g) and 6.3(D). We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the

Federal Register on October 25, 1983 (48 FR 49244).

Section 7 Consultation

We do not need to complete a consultation under section 7 of the Act for this rulemaking. The actions of listing, delisting, or reclassifying species under the Act are not subject to the requirements of section 7 of the Act. An intra-Service consultation is completed prior to the implementation of recovery or permitting actions for listed species.

References Cited

A complete list of all references cited in this document is available upon request from the U.S. Fish and Wildlife Service Region 3 Office at Ft. Snelling, Minnesota (see **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary author of this rule is Ronald Refsnider, U.S. Fish and Wildlife Service, Ft. Snelling, Minnesota Regional Office (see **ADDRESSES** section). Substantial contributions were also made by Service employees Michael Amaral (Concord, New Hampshire), Ed Bangs (Helena, Montana), Brian Kelly (Albuquerque, New Mexico), and Paul Nickerson (Hadley, Massachusetts).

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulation, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Section 17.11(h) is amended by removing the first two entries for the gray wolf (*Canis lupus*) under MAMMALS in the List of Endangered and Threatened Wildlife and adding in their place the following three entries, while retaining the current final two entries for the gray wolf, which designate nonessential experimental populations in Wyoming, Idaho, Montana, Arizona, New Mexico, and Texas:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
Wolf, gray	*Canis lupus*	Holarctic	Southwestern Distinct Population Segment-U.S.A. (AZ, NM, CO south of Interstate Highway 70, UT south of U.S. Highway 50, OK and TX, except those parts of OK and TX east of Interstate Highway 35; except where listed as an experimental population); Mexico.	E	1, 6, 13, 15, 35, 631, 735.	NA	NA
Do	do	do	Eastern Distinct Population Segment—U.S.A. (CT, IA, IL, IN, KS, MA, ME, MI, MN, MO, ND, NE, NH, NJ, NY, OH, PA, RI, SD, VT, and WI)	T	1, 6, 13, 15, 35,735.	17.95(a)	17.40(d) 17.40(o)
Do	do	do	Western Distinct Population Segment—U.S.A. (CA, ID, MT, NV, OR, WA, WY, UT north of U.S. Highway 50, and CO north of Interstate Highway 70, except where listed as an experimental population).	T	1, 6, 13, 15, 35, 561, 562, 735.	NA	17.40(n)

■ 3. The Service amends § 17.40 by adding new paragraphs (n) and (o) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(n) Gray wolf (*Canis lupus*) in Washington, Oregon, California, Idaho, Nevada, Montana, Utah north of U.S. Highway 50, and Colorado north of Interstate Highway 70, except where listed as an experimental population.

(1) *Application of this special rule to the experimental populations located in Idaho, Montana, and Wyoming.* Paragraphs (n) (2) through (6) of this section do not apply to gray wolves within the experimental populations areas in Idaho, Montana, and Wyoming established under section 10(j) of the Act and delineated in § 17.84(i).

(2) *Definitions of terms used in paragraph (n) of this section.*

(i) *Active den site.* A den or a specific aboveground site that is being used on a daily basis by wolves to raise newborn pups during the period April 1 to June 30.

(ii) *Breeding pair.* An adult male and an adult female wolf that, during the previous breeding season, have produced at least two pups that survived until December 31 of the year of their birth.

(iii) *Domestic animals.* Animals that have been selectively bred over many generations to enhance specific traits for their use by humans, including use as pets. This includes livestock (as defined below) and dogs.

(iv) *Livestock.* Cattle, sheep, horses, mules, and herding or guard animals (llamas, donkeys, and certain special-use breeds of dogs commonly used for guarding or herding livestock) or as otherwise defined in State and tribal wolf management plans as approved by the Service. This excludes dogs that are not being used for livestock guarding or herding.

(v) *Noninjurious.* Does not cause either temporary or permanent physical damage or death.

(vi) *Opportunistic harassment.* Harassment without the conduct of prior purposeful actions to attract, track, wait for, or search out the wolf.

(vii) *Problem wolves.* Wolves that attack livestock, or wolves that twice in a calendar year attack domestic animals other than livestock.

(viii) *Public land.* Federal land and any other public land designated in State and tribal wolf management plans as approved by the Service.

(ix) *Remove.* Place in captivity or kill or release in another location.

(x) *Wounded.* Exhibiting torn flesh and bleeding or other evidence of physical damage caused by a wolf bite.

(3) *Allowable forms of take of gray wolves.* The following activities, only in the specific circumstances described in paragraph (n) of this section, are allowed: opportunistic harassment; intentional harassment; taking on private land; taking on public land; taking in response to impacts on wild ungulates: taking in defense of human life; taking to protect human safety; taking by government agents to remove problem wolves; incidental take; taking under permits; and taking per authorizations for agency employees. Other than as expressly provided in this rule, all the prohibitions of § 17.31(a) and (b) apply, and all other take activities are considered a violation of section 9 of the Act. Any wolf, or wolf part, taken legally must be turned over to the Service unless otherwise specified in paragraph (n) of this section. Any taking of wolves must be reported to the Service as outlined in paragraph (n)(6) of this section.

(i) *Opportunistic harassment.* Landowners on their own land and livestock producers or permittees who are legally using public land under valid livestock grazing allotments may conduct opportunistic harassment of any gray wolf in a noninjurious manner at any time. Opportunistic harassment must be reported to the Service within 7 days as outlined in paragraph (n)(6) of this section.

(ii) *Intentional harassment.* After we or our designated agent have confirmed persistent wolf activity on privately owned land or on a public land grazing allotment, we may, pursuant to § 17.32, issue a 90-day permit, with appropriate conditions, to any landowner to harass wolves in a potentially injurious manner (such as by projectiles designed to be nonlethal to larger mammals). The harassment must occur as specifically identified in the Service permit.

(iii) *Taking by landowners on private land.* Landowners may take wolves on privately owned land in the following two additional circumstances:

(A) Any landowner may take a gray wolf that is in the act of biting, wounding, or killing livestock or dogs, provided that the landowner provides evidence of animal(s) freshly (less than 24 hours) wounded or killed by wolves, and we or our designated agent are able to confirm that the animal(s) were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(B) A private landowner may be issued a limited duration permit pursuant to § 17.32 to take a gray wolf on the landowner's private land if:

(1) This private property or an adjacent private property has had at least two depredations by wolves on livestock or dogs that have been confirmed by us or our designated agent; and

(2) We or our designated agent have determined that wolves are routinely present on that private property and present a significant risk to the health and safety of livestock or dogs. The landowner must conduct the take in compliance with the permit issued by the Service.

(iv) *Take on public land.* Under the authority of § 17.32, we may issue permits to take gray wolves under certain circumstances to livestock producers or permittees who are legally using public land under valid livestock grazing allotments. The permits, which may be valid for up to 45 days, can allow the take of a gray wolf that is in the act of killing, wounding, or biting livestock, after we or our designated agent have confirmed that wolves have previously wounded or killed livestock, and agency efforts to resolve the problem have been completed and were ineffective. We or our designated agent will investigate and determine if the previously wounded or killed livestock were wounded or killed by wolves. There must be evidence of livestock freshly wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(v) *Take in response to wild ungulate impacts.* If wolves are causing unacceptable impacts to wild ungulate populations, a State or tribe may capture and move wolves to other areas within the States identified in paragraph (n) of this section or experimental populations areas in Idaho, Montana, and Wyoming established under section 10(j) of the Act and delineated in § 17.84(i). In order for this provision to apply, the States or tribes must define in their wolf management plan such unacceptable impacts, describe how they will be measured, and identify possible mitigation measures. Before wolves can be captured and moved, we must approve these plans and determine that such actions will not inhibit wolf population growth toward recovery levels. In addition, if, after 10 breeding pairs are established in the State, we determine that wolves are causing unacceptable impacts to wild ungulate populations, we may, in cooperation with the appropriate State fish and game agencies or tribes, capture and move wolves to other areas within the States identified in paragraph (n) of this section or experimental populations areas in Idaho, Montana, and Wyoming.

(vi) *Take in defense of human life.* Any person may take a gray wolf in defense of the individual's life or the life of another person. The unauthorized taking of a wolf without an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(vii) *Take to protect human safety.* We or a Federal land management agency or a State or tribal conservation agency may promptly remove any wolf that we or our designated agent determines to be a demonstrable but nonimmediate threat to human life or safety.

(viii) *Take of problem wolves by Service personnel or our designated agent.* We or our designated agent may carry out aversive conditioning, nonlethal control, relocation, permanent placement in captivity, or lethal control of problem wolves. If nonlethal depredation control activities occurring on public lands result in the capture, prior to October 1, of a female wolf showing signs that she is still raising pups of the year (*e.g.*, evidence of lactation, recent sightings with pups), whether or not she is captured with her pups, then she and her pups may be released at or near the site of capture. Female wolves with pups may be removed if continued depredation occurs. Problem wolves that depredate on domestic animals more than twice in a calendar year, including female wolves with pups regardless of whether on public or private lands, may be moved or removed from the wild. To determine the presence of problem wolves, we or our agents will consider all of the following:

(A) Evidence of wounded livestock or other domestic animals or remains of a carcass that shows that the injury or death was caused by wolves;

(B) The likelihood that additional losses may occur if no control action is taken;

(C) Any evidence of unusual attractants or artificial or intentional feeding of wolves; and

(D) Evidence that, on public lands, if animal husbandry practices were previously identified in existing approved allotment plans and annual operating plans for allotments, they were followed.

(ix) *Incidental take.* Take of a gray wolf is allowed if the take was accidental and incidental to an otherwise lawful activity and if reasonable due care was practiced to avoid such taking. Incidental take is not allowed if the take is not accidental or if reasonable due care was not practiced to avoid such taking; we may refer such taking to the appropriate authorities for prosecution. Shooters have the responsibility to identify their target before shooting. Shooting a wolf as a result of mistaking it for another species is not considered accidental and may be referred to the appropriate authorities for prosecution.

(x) *Take under permits.* Any person with a valid permit issued by the Service under § 17.32 may take wolves in the wild, pursuant to terms of the permit.

(xi) *Additional taking authorizations for agency employees.* When acting in the course of official duties, any employee of the Service or appropriate Federal, State, or tribal agency, who is designated as an agent in writing for such purposes by the Service, may take a wolf or wolf-like canid for the following purposes; such take must be reported to the Service within 15 days as outlined in paragraph (n)(6) of this section and specimens may be retained or disposed of only in accordance with directions from the Service:

(A) Scientific purposes;

(B) Avoiding conflict with human activities;

(C) Improving wolf survival and recovery prospects;

(D) Aiding or euthanizing sick, injured, or orphaned wolves;

(E) Disposing of a dead specimen;

(F) Salvaging a dead specimen that may be used for scientific study;

(G) Aiding in law enforcement investigations involving wolves; or

(H) Preventing wolves with abnormal physical or behavioral characteristics, as determined by the Service, from passing on those traits to other wolves.

(4) *Prohibited take of gray wolves.*

(i) Any manner of take not described under paragraph (n)(3) of this section.

(ii) No person may possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or wolf part from the State of origin taken in violation of the regulations in paragraph (n) of this section or in violation of applicable State or tribal fish and wildlife laws or regulations or the Act.

(iii) In addition to the offenses defined in paragraph (n) of this section, we consider any attempts to commit, solicitations of another to commit, or actions that cause to be committed any such offenses to be unlawful.

(iv) *Use of unlawfully taken wolves.* No person, except for an authorized person, may possess, deliver, carry, transport, or ship a gray wolf taken unlawfully.

(5) *Federal land use.* Restrictions on the use of any Federal lands may be put in place to prevent the take of wolves at active den sites between April 1 and June 30. Otherwise, no additional land-use restrictions on Federal lands, except for National Parks or National Wildlife Refuges, will be necessary to reduce or prevent take of wolves solely to benefit gray wolf recovery under the Act. This prohibition does not preclude restricting land use when necessary to reduce negative impacts of wolf restoration efforts on other endangered or threatened species.

(6) *Reporting requirements.* Except as otherwise specified in paragraph (n) of this section or in a permit issued under § 17.32, any taking of a gray wolf must be reported to the Service within 24 hours. We will allow additional reasonable time if access to the site is limited. Report wolf takings, including opportunistic harassment, to U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator (100 N. Park, #320, Helena, MT 59601; 406–449–5225 extension 204; facsimile 406–449–5339), or a Service-designated representative of another Federal, State, or tribal agency. Unless otherwise specified in paragraph (n) of this section, any wolf or wolf part, taken legally must be turned over to the Service, which will determine the disposition of any live or dead wolves.

(o) Gray wolf (*Canis lupus*) in North Dakota, South Dakota, Nebraska, Kansas, Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, and Ohio.

(1) *Definitions of terms used in paragraph (o) of this section.*

(i) *Domestic animals.* Animals that have been selectively bred over many generations to enhance specific traits for their use by humans, including use as pets.

(ii) *Livestock.* Cattle, sheep, horses, and mules or as otherwise defined in State and tribal wolf management plans.

(2) *Allowable forms of take of gray wolves.* The following activities, in certain circumstances as described below, are allowed: Take in defense of human life; take to protect human safety; take to aid, salvage, or dispose; take for depredation control; take under cooperative agreements; and take under permit. As stated in § 17.31(c), the provisions of this paragraph (o) contain all the applicable take prohibitions and exceptions; all other take activities in these States are considered a violation of section 9 of the Act. Any wolf, or wolf part, taken legally must be turned over to the Service unless otherwise specified in paragraph (o) of this section. Any taking of wolves must be reported to the Service as outlined in paragraph (o)(4) of this section.

(i) *Take in defense of human life.* Any person may take a gray wolf in defense of the individual's life or the life of another person. The unauthorized taking of a wolf without an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(ii) *Take to protect human safety.* We or a Federal land management agency or a State or tribal conservation agency, or an agent of one of these agencies who is designated in writing for such purpose, may promptly remove any wolf that the agency determines to be a demonstrable but nonimmediate threat to human life or safety.

(iii) *Allowable take for aiding, salvaging, or disposing of specimens.* When acting in the course of official duties, any authorized employee or agent of the Service, any other Federal land management agency or the wildlife conservation agency of a State or of a federally recognized Native American tribe, who is designated by his/her agency for such purposes, may take a gray wolf in the person's area of jurisdiction without a Federal permit if such action is necessary for the following purposes; such take must be reported to the Service within 15 days as outlined in paragraph (o)(4) of this section, and specimens may be retained or disposed of only in accordance with directions from the Service:

(A) Aiding a sick, injured, or orphaned specimen;

(B) Disposing of a dead specimen; or

(C) Salvaging a dead specimen that may be useful for scientific study or for traditional cultural purposes by Native American tribes.

(iv) *Allowable take for depredation control.* When acting in the course of official duties, any authorized employee or agent of the Service, of the wildlife conservation agency of a State, or of a federally recognized Native American tribe, who is designated by his/her agency for such purposes, may take a gray wolf or wolves within the person's State or, in the case of a tribal employee, within that person's Reservation boundaries, in response to depredation by a gray wolf on lawfully present livestock or domestic animals. However, such taking must be preceded by a determination by one of the agencies listed in paragraph (o) of this section that the depredation was likely to have been caused by a gray wolf and depredation at the site is likely to continue in the absence of a taking. In addition, such taking must be performed in a humane manner and occur within 1 mile of the place where the depredation occurred if in Michigan or Wisconsin, and within 4 miles of the place where the depredation occurred if in the remaining area covered by paragraph (o) of this section. Any young of the year taken by trapping on or before August 1 of that year must be released. Any take for depredation control must reported to the Service within 15 days as outlined in paragraph (o)(4) of this section. The specimen may be retained or disposed of only in accordance with directions from the Service.

(v) *Take under section 6 cooperative agreements.* When acting in the course of official duties, any authorized employee or agent of the State wildlife conservation agencies in the area covered by paragraph (o) of this section, who is designated by his/her agency for such purposes under a cooperative agreement under section 6 of the Act, may take a gray wolf in his/her respective State to carry out scientific research or conservation programs. Such takings must be reported to the Service as specified in the reporting provisions of the cooperative agreement.

(vi) *Take under permit.* Any person who has a permit under § 17.32 may carry out activities as specified by the permit with regard to gray wolves in the area covered by paragraph (o) of this section.

(3) *Prohibited take of gray wolves.*

(i) Any form of taking not described in paragraph (o)(2) of this section is prohibited.

(ii) *Export and commercial transactions.* Except as may be authorized by a permit issued under§ 17.32, no person may sell or offer for sale in interstate commerce, import or export, or, in the course of a commercial activity, transport or receive any gray wolves from the States, or portions thereof, covered by paragraph (o) of this section.

(iii) In addition to the offenses defined in paragraph (o) of this section, we consider any attempts to commit, solicitations of another to commit, or actions that cause to be committed any such offenses to be unlawful.

(iv) *Use of unlawfully taken wolves.* No person, except for an authorized person, may possess, deliver, carry, transport, or ship a gray wolf taken unlawfully in the area covered by paragraph (o) of this section.

(4) *Reporting requirements.* Except as otherwise specified in paragraph (o) of this section or in a permit issued under § 17.32, any taking must be reported to the Service within 24 hours. Report wolf takings in North Dakota, South Dakota, Nebraska, and Kansas to 303–236–7540, and in Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, and Ohio to 612–713–5320, or a Service-designated representative of another Federal, State, or tribal agency. (Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337.) Unless otherwise specified in paragraph (n) of this section, any wolf or wolf part, taken legally must be turned over to the Service, which will determine the disposition of any live or dead wolves.

(5) *Take regulations for States in the Eastern Gray Wolf Distinct Population Segment (DPS) not covered by this paragraph (o).* This special rule does not apply to the States of Minnesota, Pennsylvania, New Jersey, New York, Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, and Maine. While these States are included in the Eastern DPS, this special regulation does not apply to the entire DPS, and it specifically does not apply to these 10 States. Gray wolves in these States, other than Minnesota, are covered by the prohibitions of § 17.31(a) and (b), which apply to all threatened species that are not subject to a special regulation. Gray wolves in Minnesota are covered by a separate special regulation in paragraph (d) of this section.

Dated: March 17, 2003.

Steve Williams,

Director.

[FR Doc. 03–7018 Filed 3–31–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ03

Endangered and Threatened Wildlife and Plants; Removing the Eastern Distinct Population Segment of Gray Wolf From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) announces our intention to conduct rulemaking under the Endangered Species Act of 1973, as amended (Act), to remove the Eastern Distinct Population Segment (DPS) of gray wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife in the near future. Specifically, we intend to propose to delist the gray wolf in the Midwest and Northeastern United States where it is presently listed. If this proposal is finalized, the gray wolf would be delisted in the Eastern Gray Wolf DPS, existing special regulations established under section 4(d) of the Act for the Eastern DPS would be abolished, and future management of this species would be conducted by the appropriate State and tribal wildlife agencies. As published concurrently in this **Federal Register**, the Service also intends to initiate proposed rulemakings to delist gray wolves in the Western Gray Wolf DPS and to remove all nonessential experimental population designations in the northern U.S. Rocky Mountains. Neither proposed rulemaking would affect the protection currently afforded by the Act to gray wolves in the Southwestern DPS, the nonessential experimental population in the Southwest DPS, or the red wolf (*Canis rufus*), a separate species found in the southeastern United States that is listed as endangered.

DATES: We are not seeking comments on this planned proposed rulemaking at this time. A public comment period, including the opportunity for public hearings and informational meetings, will follow the publication of the proposed rule to remove (or delist) the Eastern Gray Wolf DPS.

ADDRESSES: Gray Wolf Questions, U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111–4056l; Gray Wolf Phone Line—612–713–7337, facsimile—612–713–5292, or the general gray wolf electronic mail address—*GRAYWOLFMAIL@FWS.GOV*. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

FOR FURTHER INFORMATION CONTACT: Ron Refsnider, phone 612–713–5346. Additional information on gray wolf recovery in the Eastern DPS is available on our World Wide Web site at *http://midwest.fws.gov/wolf*. Direct all questions or requests for additional information to the Service (*see* **ADDRESSES** above).

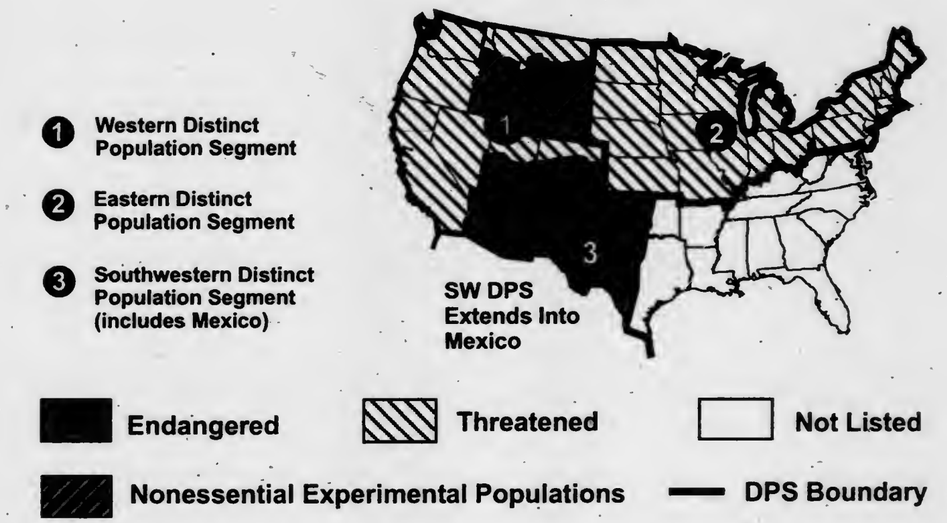
SUPPLEMENTARY INFORMATION:

Background

Published concurrently in today's **Federal Register** is our final rule establishing three Distinct Population Segments (DPSs) of gray wolves within the conterminous 48 States in accordance with our Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722, February 7, 1996) and reclassifying two of these DPSs based on the status of current wolf populations within these DPSs. The Eastern Gray Wolf DPS and Western Gray Wolf DPS are reclassified as threatened while the Southwestern Gray Wolf DPS remains endangered (*see* map). The final reclassification rule summarizes information on the biology and ecology of gray wolves, taxonomy, historical range, previous Federal action, DPS designations, recovery plans, and the recovery progress of gray wolves in the lower 48 States.

This advance notice of proposed rulemaking (ANPR) announces our intent to propose rulemaking to remove the Eastern Gray Wolf DPS from protection under the Act based on evidence, as described in the final reclassification rule, indicating that the gray wolf in the Eastern Gray Wolf DPS is exceeding its recovery goals and objectives and on our preliminary analysis of threats to the DPS. The Eastern Gray Wolf DPS consists of gray wolves within the States of North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, Ohio, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine, and those gray wolves in captivity that originated from, or whose ancestors originated from, this geographic area.

Status of the Gray Wolf in the Continental U.S.



In addition, this ANPR announces our intention to respond to petitions for delisting the gray wolves in the Midwest through this anticipated proposed rulemaking. As stated in the final reclassification rule published today, Mr. Lawrence Krak, of Gilman, Wisconsin, and the Minnesota Conservation Federation have petitioned us to delist gray wolves in Minnesota, Wisconsin, and Michigan, and in the Western Great Lakes DPS.

Conservation and Recovery of the Gray Wolf in the Eastern DPS

Understanding the Service's strategy for gray wolf recovery first requires an understanding of the meaning of "recover" and "conserve" under the Act. "Conserve" is defined in the Act itself (section 3(3)) while "recovery" is defined in the Act's implementing regulations at 50 CFR 402.02. Conserve is defined, in part, as "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." Recovery is defined as "improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act." Essentially, recover and conserve both mean to bring a species to the point at which it is no longer threatened or endangered and no longer needs the protections of the Act.

Critical to our analysis of whether a species is ready for delisting is the achievement of the species' recovery goals, the reduction of threats to the species that caused the species to become listed, and the reduction of any new threats that could cause the species to become endangered in the foreseeable future. To determine the appropriate goals for achieving recovery, we rely on a peer-reviewed Recovery Plan. As reported in the final reclassification rule, we believe the revised Eastern Timber Wolf Recovery Plan (Service 1992) to be adequate and sufficient to ensure long-term population viability (Peterson *in litt.* 1997). The population goal set within the Eastern Timber Wolf Recovery Plan was for a Minnesota wolf population of 1,250–1,400 animals to maintain the gray wolf's genetic diversity over the long-term and provide the resiliency to reduce the adverse impacts of unpredictable chance demographic and environmental events. The Minnesota wolf population currently is estimated to be double that numerical goal (Berg and Benson 1999; Mech 1998; Paul 2001).

In addition, the Eastern Timber Wolf Recovery Plan calls for establishing a second population of 100 gray wolves for 5 successive years in the Eastern United States. As documented in the final reclassification rule, such a second wolf population has developed in Wisconsin and the adjacent Upper Peninsula of Michigan and has exceeded its recovery goal since 1994 (Wisconsin Department of Natural Resources (WI DNR) 2002; Wydeven *et al.* 2002; Michigan Department of Natural Resources 2002). Wisconsin Department of Natural Resources preliminarily estimated that about 320 wolves in 70 to 80 packs were in the State in late winter 2001–2002 (WI DNR 2002, Wydeven *et al.* 2002).

As also described in the final reclassification rule, there is no convincing evidence in recent decades of another wild gray wolf population in the United States east of Michigan, so the area in the western Great Lakes States where the wolf currently exists represents the entire range of the species within the Eastern Gray Wolf DPS.

In making a delisting determination, the Service must assess the factors or threats that affect the species as required by section 4 of the Act and its implementing regulations (50 CFR part 424). For species that are already listed as threatened or endangered, this analysis of threats is primarily an evaluation of the threats that could potentially affect the species in the foreseeable future following delisting and removal of the Act's protections.

Our evaluation of the future threats to the gray wolf in the Eastern DPS, especially those threats to wolves in the Midwest that would occur after removal or reduction of the protections of the Act, will be partially based upon the wolf management plans and assurances of the States and tribes in that area. If the gray wolf is federally delisted, then State and tribal wolf management plans will be the major determinants of wolf protection and prey availability, will set and enforce limits on human utilization and other forms of taking, and will determine the overall regulatory framework for conservation of gray wolves.

State and tribal gray wolf management plans, to the extent that they have been developed, serve as significant indicators of public attitudes and agency goals, which, in turn, are evidence of the probability of continued conservation after protection under the Act is removed. Such indicators of attitudes and goals are especially important in assessing the future of a species that was officially persecuted by government agencies as recently as 40 years ago and still is reviled by some members of the public.

All three Midwestern States with wolf populations (Minnesota, Wisconsin, and Michigan) have completed wolf management plans. We believe that these plans provide sufficient information for us to analyze the future threats to the Eastern Gray Wolf DPS that will exist after Federal delisting. We will consult with Native American tribes and organizations to further discuss and evaluate their wolf management and protection plans prior to issuing a proposed delisting rule.

We recognize that large portions of the historic range, including potentially still-suitable habitat within the Eastern Gray Wolf DPS, are not currently occupied by gray wolves. We emphasize that our proposal to delist gray wolves in the Eastern DPS will be based on the current status of, and threats faced by, the existing wolf populations within this DPS. This approach is consistent with the 9th Circuit Court's decision in *Defenders of Wildlife et al.* v. *Norton et al.*, where the Court noted that "[a] species with an exceptionally large historical range may continue to enjoy healthy population levels despite the loss of a substantial amount of suitable habitat." Similarly, we believe that when a listed species has recovered to the point where it is no longer in danger of extinction, or likely to become endangered in the foreseeable future, throughout all or a significant portion of its current range, it is appropriate to delist the species even if a substantial amount of the historical range remains unoccupied.

The wolf's progress toward recovery in the Eastern Gray Wolf DPS, together with our preliminary determination that management of threats to the wolf within the DPS will be adequate, enables us to propose delisting in the near future.

Post-Delisting Monitoring

Upon removal of a species from the List of Endangered and Threatened Wildlife, section 4(g)(1) of the Act requires that the Secretary of the Interior, through the Service, implement a monitoring program in cooperation with the States for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If at any time during the post-delisting monitoring program, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

In anticipation of delisting this species, we also announce our intent to work with State resource agencies, tribes, and other partners to design an effective post-delisting monitoring program for the Eastern Gray Wolf DPS to be implemented upon delisting. A proposed post-delisting monitoring plan will be provided in the proposed rule for delisting the Eastern Gray Wolf DPS.

Effects of This Advance Notice of Proposed Rulemaking

This ANPR announces our intent to propose rulemaking removing protections afforded to gray wolves in the Eastern Gray Wolf DPS under the Act. If we make a final decision to delist the gray wolf in the Eastern DPS, the prohibitions and conservation measures provided by the Act would no longer apply to this DPS, and the critical habitat designation in the Eastern Gray Wolf DPS would be removed. Therefore, taking, interstate commerce, import, and export of gray wolves in the Eastern Gray Wolf DPS would no longer be prohibited under the Act once the DPS is delisted. In addition, Federal agencies would no longer be required to consult with us under section 7 of the Act to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of gray wolves in the Eastern Gray Wolf DPS or destroy or adversely modify designated critical habitat.

Until the Eastern Gray Wolf DPS is delisted, the take and use of gray wolves in the Eastern Gray Wolf DPS must comply with the Act and all other existing Federal, State, and local laws. Upon delisting, we anticipate that State and tribal gray wolf management plans, along with other appropriate Federal, State, and local laws and regulations, would guide gray wolf management in the Eastern DPS area.

This ANPR does not address gray wolves in the Western DPS, Southwestern DPS, or the current nonessential experimental population designations in those two DPSs.

No Request for Comment

The Service has not made a final decision as to any potential regulatory matter discussed herein and does not request any public comment on this ANPR. We will be following standard rulemaking procedure and anticipate publishing a proposed rule on the removal of the Eastern Gray Wolf DPS from the List of Endangered and Threatened Wildlife in the near future. A public comment period will open upon publication of the proposed rule in the **Federal Register**, and we anticipate conducting public hearings during the public comment period to discuss the proposed rulemaking with you.

References Cited

Berg, W.E., and S. Benson. 1999. Updated wolf population estimate for Minnesota, 1997–1998. Minnesota Department of Natural Resources Report. Grand Rapids, Minnesota. 14 pp.

Mech, L.D. 1998. Estimated costs of maintaining a recovered wolf population in agricultural regions of Minnesota. Wildl. Soc. Bull. 26:817–822.

Michigan Department of Natural Resources. 2002. Michigan's wolf population continues to rise. News release, dated April 30, 2002.

Paul, W.J. 2001. Wolf depredation on livestock in Minnesota, annual update of statistics—2000. U.S. Dep. of Agri., Animal & Plant Health Inspection Serv., Wildl. Serv. Grand Rapids, Minnesota. 13 pp.

U.S. Fish and Wildlife Service. 1992. Recovery plan for the eastern timber wolf. Twin Cities, MN 73 pp.

Wisconsin Department of Natural Resources. 2002. Wisconsin wolf population estimated at 320. News release, dated April 16, 2002.

Wydeven, A.P., J.E. Wiedenhoeft, R.N. Schultz, R.P. Thiel, S.R. Boles, and B.E. Kohn. 2002. Progress report of wolf population monitoring in Wisconsin for the period October 2001–March 2002. Unpublished report by Wisc. Dept. Natural Resources, Park Falls, WI. 43 pp.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: March 17, 2003.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–7020 Filed 3–31–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ04

Endangered and Threatened Wildlife and Plants; Removing the Western Distinct Population Segment of Gray Wolf From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) announces our intention to conduct rulemaking under the Endangered Species Act of 1973, as amended (Act), to remove the Western Distinct Population Segment (DPS) of gray wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife in the near future. Specifically, we intend to propose to delist the gray wolf in the Northern Rocky Mountains and western United States where it is presently listed. If this proposal is finalized, the gray wolf would be delisted in the Western Gray Wolf DPS, existing special regulations established under section 4(d) of the Act for the Western DPS would be abolished, the nonessential experimental designations for reintroduced gray wolves would be removed, and future management of this species would be conducted by the appropriate State and tribal wildlife agencies. As published concurrently in this **Federal Register**, the Service also intends to initiate proposed rulemaking to delist gray wolves in the Eastern Gray Wolf DPS. Neither proposed rulemaking would affect the protection currently afforded by the Act to gray wolves in the Southwestern DPS, the nonessential experimental population in the Southwest DPS, or the red wolf (*Canis rufus*), a separate species found in the southeastern United States that is listed as endangered.

DATES: We are not seeking comments on this planned proposed rulemaking at this time. A public comment period, including the opportunity for public hearings and informational meetings, will follow the publication of the proposed rule to remove (or delist) the Western Gray Wolf DPS.

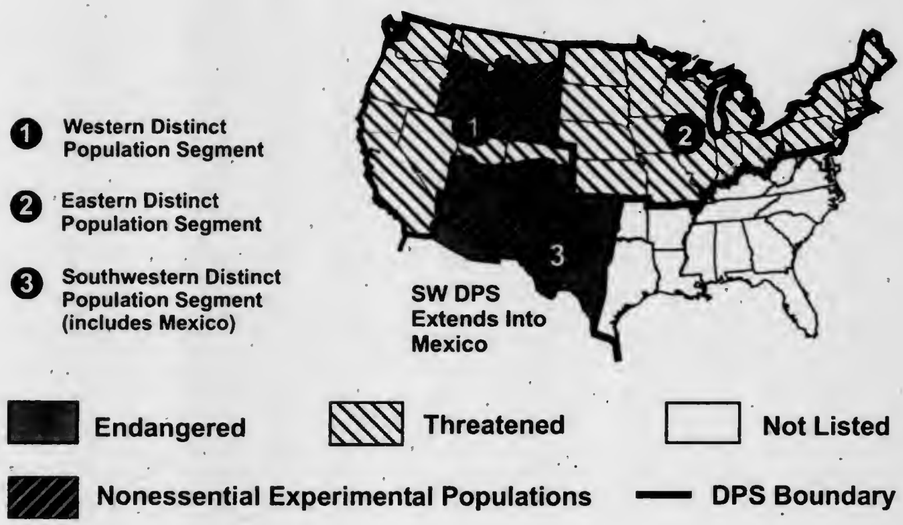
ADDRESSES: U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, 100 N. Park, #320, Helena, MT 59601; *WesternGrayWolf@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Ed Bangs, phone 406–449–5225 ext. 204. Additional information on gray wolf recovery in the Western DPS is available on our World Wide Web site at *http://westerngraywolf.fws.gov.* Direct all questions or requests for additional information to the Service (*see* **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Background

Published concurrently in today's **Federal Register** is our final rule establishing three Distinct Population Segments (DPSs) of gray wolves within the conterminous 48 States in accordance with our Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722, February 7, 1996) and reclassifying two of these DPSs based on the status of current wolf populations within these DPSs. The Eastern Gray Wolf DPS and Western Gray Wolf DPS are reclassified as threatened while the Southwestern Gray Wolf DPS remains endangered (*see* map). The final reclassification rule summarizes information on the biology and ecology of gray wolves, taxonomy, historical range, previous Federal action, DPS designations, recovery plans, and the recovery progress of gray wolves in the lower 48 States.



This advance notice of proposed rulemaking (ANPR) announces our intent to propose rulemaking to remove the Western Gray Wolf DPS from protection under the Act based on evidence, as described in the final reclassification rule, indicating that the gray wolf in the Western Gray Wolf DPS is exceeding its wolf population recovery goals and on our preliminary analysis of threats to the DPS. The exterior boundary of the Western DPS encompasses the States of California, Idaho, Montana, Nevada, Oregon, Washington, Wyoming, Utah north of U.S. Highway 50, and Colorado north of Interstate Highway 70. Gray wolves in this geographic area are included in the Western DPS, except for gray wolves that are part of an experimental population. Gray wolves in captivity that originated from, or whose ancestors originated from, this geographic area are also included in the Western DPS.

In addition, this ANPR also announces our intention to propose to remove the two nonessential experimental population designations (NEPs) for gray wolves in the northern Rocky Mountains. The final rule establishing those two NEPs in Idaho, Montana, and Wyoming indicated specifically that they were created to help establish viable wolf populations in central Idaho and the Greater Yellowstone Ecosystem (59 FR 60252 and 60266; November 22, 1994). Since these NEPs are part of the larger recovery program, these designations would be removed if the Western DPS is delisted.

In addition, this ANPR announces our intention to respond to a petition for delisting the gray wolves in the Rocky Mountains through this anticipated proposed rulemaking. As stated in the final reclassification rule published today, Mr. Karl Knuchel, on behalf of the Friends of Northern Yellowstone Elk Herd Inc., has petitioned us to delist gray wolves in the Rocky Mountains.

Conservation and Recovery of the Gray Wolf in the Western DPS

Understanding the Service's strategy for gray wolf recovery first requires an understanding of the meaning of "recover" and "conserve" under the Act. "Conserve" is defined in the Act itself (section 3(3)) while "recovery" is defined in the Act's implementing regulations at 50 CFR 402.02. Conserve is defined, in part, as "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." Recovery is defined as "improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act." Essentially, recover and conserve both mean to bring a species to the point at which it is no longer threatened or endangered and no longer needs the protections of the Act.

Critical to our analysis of whether a species is ready for delisting is the achievement of the species' recovery goals, the reduction of threats to the species that caused the species to become listed, and the reduction of any new threats that could cause the species to become endangered in the foreseeable future. To determine the appropriate goals for achieving recovery, we rely on a peer-reviewed Recovery Plan: The revised Northern Rocky Mountain Wolf Recovery Plan (Service 1987). In addition, we conducted another review of what constitutes a recovered wolf population in late 2001 and early 2002 to ensure long-term population viability of gray wolves in the northwestern United States (Bangs 2002). Based on the opinions of experts who responded in that review, we have adopted the definition of wolf population viability and recovery developed in the 1994 Environmental Impact Statement for the reintroduction of gray wolves to Yellowstone National Park and central Idaho (Service 1994) in place of the 1987 Recovery Plan goal. That definition is "Thirty breeding pairs of wolves (defined as an adult male and an adult female that raise at least 2 pups until December 31 of the year of their birth), comprising some +300 individuals in a metapopulation with some genetic exchange between subpopulations, for three successive years."

As documented in the final rule for reclassification of the gray wolf to threatened in the Western DPS (published concurrently), at least 300 wolves in a minimum of 30 packs since the end of 2000 have been well distributed across the 3 recovery areas, and at the end of 2001 there were 563 wolves in 34 packs in the Northern U.S. Rockies (Service *et al.* 2002). More than 200 wolves have existed in at least 20 packs since the end of 1997.

A minimum of 30 breeding pairs was first documented in 2000, and a minimum of 34 breeding pairs was documented in 2001. We fully expect to confirm in early 2003 that the wolf population in the northern Rocky Mountains will have again exceeded 30 breeding pairs in 2002, thus achieving the wolf population recovery goal as defined in the revised Northern Rocky Mountains Wolf Recovery Plan and the 1994 Environmental Impact Statement. Because the wolf population is continuing to expand since that time, we anticipate concluding that the gray wolves in the Western DPS have exceeded the numerical population goal required for delisting.

In making a delisting determination, the Service must assess the factors or threats that affect the species as required by section 4 of the Act and its implementing regulations (50 CFR part 424). For species that are already listed as threatened or endangered, this analysis of threats is primarily an evaluation of the threats that could potentially affect the species in the foreseeable future following delisting and removal of the Act's protections. Our evaluation of the future threats to the gray wolf in the Western DPS, especially those threats to wolves in the NEPs in Idaho, Montana, and Wyoming that would occur after removal or reduction of the protections of the Act, will be partially based upon the wolf management plans and assurances of the States and tribes in that area. If the gray wolf is federally delisted, then State and tribal wolf management plans will be the major determinants of wolf protection and prey availability, will set and enforce limits on human utilization and other forms of taking, and will determine the overall regulatory framework for conservation of gray wolves.

State and tribal gray wolf management plans, to the extent that they have been developed, serve as significant indicators of public attitudes and agency goals, which, in turn, are evidence of the probability of continued conservation after protection under the Act is removed. Such indicators of attitudes and goals are especially important in assessing the future of a species that was officially persecuted by government agencies as recently as 40 years ago and still is reviled by some members of the public.

The State of Idaho has already completed its gray wolf management plan. The Service is working closely with the States of Montana and Wyoming as they develop wolf management plans that will meet this requirement. We expect that these plans will be completed in the near future, and will enable us to propose delisting of the Western Gray Wolf DPS. We will also consult, if they request, with Native American tribes and organizations to further discuss and evaluate their wolf management and protection plans prior to issuing a proposed delisting rule.

We recognize that large portions of the historic range, including potentially still-suitable habitat within the Western Gray Wolf DPS, are not currently occupied by gray wolves. We emphasize that our proposal to delist gray wolves in the Western DPS will be based on the current status of, and threats faced by, the existing wolf populations within this DPS. This approach is consistent with the 9th Circuit Court's decision in *Defenders of Wildlife et al.* v. *Norton et al.*, where the Court noted that "[a] species with an exceptionally large historical range may continue to enjoy healthy population levels despite the loss of a substantial amount of suitable habitat." Similarly, we believe that when a listed species has recovered to the point where it is no longer in danger of extinction, or likely to become endangered in the foreseeable future, throughout all or a significant portion of its current range, it is appropriate to delist the species even if a substantial amount of the historical range remains unoccupied.

The wolf's progress toward recovery in the Western Gray Wolf DPS, together with our expectation that management of threats to the wolf within the DPS will be adequate, lead us to believe that we will be able to propose delisting of the Western DPS in the near future.

Post-Delisting Monitoring

Upon removal of a species from the List of Endangered and Threatened Wildlife, section 4(g)(1) of the Act requires that the Secretary of the Interior, through the Service, implement a monitoring program in cooperation with the States for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If at any time during the post-delisting monitoring program, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

In anticipation of delisting this species, we also announce our intent to work with State resource agencies, tribes, and other partners to design an effective post-delisting monitoring program for the Western Gray Wolf DPS to be implemented upon delisting. A proposed post-delisting monitoring plan will be provided in the proposed rule for delisting the Western Gray Wolf DPS.

Effects of This Advance Notice of Proposed Rulemaking

This ANPR announces our intent to propose rulemaking to remove the protections afforded to gray wolves in the Western Gray Wolf DPS under the Act. If we make a final decision to delist the gray wolf in the Western DPS, the prohibitions and conservation measures provided by the Act would no longer apply to this DPS, and the nonessential experimental population designations established to aid the recovery of gray wolves in the Western Gray Wolf DPS would be removed. Therefore, taking, interstate commerce, import, and export of gray wolves in the Western Gray Wolf DPS would no longer be prohibited under the Act once the DPS is delisted. In addition, Federal agencies would no longer be required to consult with us under section 7 of the Act to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of gray wolves in the Western Gray Wolf DPS.

Until the Western Gray Wolf DPS is delisted, the take and use of gray wolves in the Western Gray Wolf DPS must comply with the Act and all other existing Federal, State, and local laws and regulations. Upon delisting, we anticipate that State and tribal gray wolf management plans, along with other appropriate Federal, State, and local laws and regulations, would guide gray wolf management in the Western Gray Wolf DPS.

This ANPR does not address gray wolves in the Eastern DPS, Southwestern DPS, or the current nonessential experimental population designation in the Southwest.

No Request for Comment

The Service has not made a final decision as to any potential regulatory matter discussed herein and does not request any public comment on this ANPR. We will be following standard rulemaking procedures and anticipate publishing a proposed rule on the removal of the Western Gray Wolf DPS from the List of Endangered and Threatened Wildlife in the near future. A public comment period will open upon publication of the proposed rule in the **Federal Register**, and we anticipate conducting public hearings during the public comment period to discuss the proposed rulemaking with you.

References Cited

Bangs, E.E. 2002. Wolf population viability peer review—draft summary. U.S. Fish and Wildlife Service, Ecological Services, 100 N. Park, Suite 320, Helena, MT. 59601. Unpublished report. 9 pp.

U.S. Fish and Wildlife Service. 1987. Northern Rocky Mountain wolf recovery plan. Denver, CO 119 pp.

U.S. Fish and Wildlife Service. 1994. The reintroduction of gray wolves to Yellowstone National Park and central Idaho. Final Environmental Impact Statement. U.S. Fish and Wildlife Service, Helena, Montana.

U.S. Fish and Wildlife Service, Nez Perce Tribe, National Park Service, and USDA Wildlife Services. 2002. Rocky Mountain Wolf Recovery 2001 Annual Report. T. Meier, ed. U.S. Fish and Wildlife Service, Ecological Services, 100 N. Park, Suite 320, Helena, MT. 59601. 43 pp.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: March 17, 2003.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–7019 Filed 3–31–03; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
April 1, 2003

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, and 129
Collision Avoidance Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 129

[Docket No.: FAA–2001–10910; Amendment Nos. 121–286, 125–41, and 129–37]

RIN 2120—AG90

Collision Avoidance Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is revising the applicability of certain collision avoidance system requirements for airplanes. The current rules are based on passenger seating configuration and therefore exclude all-cargo airplanes. This final rule will use airplane weight and performance characteristics as the basis for collision avoidance system requirements to capture cargo airplanes weighing more than 33,000 pounds (lbs.) maximum certificated takeoff weight (MCTOW). This final rule is intended to reduce the risk of a mid-air collision involving a cargo airplane, which will increase safety for cargo crewmembers, the public on the ground, and occupants of airplanes that already have collision avoidance systems.

DATES: Effective May 1, 2003, except for the revisions of §§ 121.356, 125.224, and 129.18 which are effective January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Air Carrier Operations Branch, Flight Standards Service, AFS–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8321.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page *(http://dms.dot.gov/search);*

(2) Visiting the Office of Rulemaking's web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–19478) or you may visit *http://dms.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact SBREFA. You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us at *9–AWA–SBREFA@faa.gov.*

Background

Statement of the Problem

Current FAA rules do not require collision avoidance systems on all-cargo airplanes. When the FAA issued the traffic alert and collision avoidance system (TCAS) rules for passenger airplanes in 1987, the overnight cargo industry expansion was in its infancy, it operated few airplanes and those were primarily at night. Congress, in its legislation directing installation of TCAS in passenger airplanes, determined that those cargo airplanes did not represent a significant risk to passenger-carrying airplanes, which operated primarily during the day.

In promulgating the rules the FAA recognized that those few cargo airplanes would benefit some from the TCAS requirement for passenger airplanes because transponder-equipped cargo airplanes are displayed to pilots of TCAS-equipped passenger airplanes. Cargo airplanes also benefit because of the large number of passenger airplanes that are equipped with TCAS. In addition, the FAA determined that the cost/benefit analysis and risk level at that time did not support requiring cargo operators to equip their airplanes with TCAS.

Since those early days of TCAS, cargo operations have grown significantly and we now believe the increase in traffic presents an increased risk of a mid-air collision involving a cargo airplane. We are issuing this amendment to use airplane weight and performance characteristics to encompass cargo as well as passenger airplanes and to standardize and clarify the collision avoidance rules in parts 121, 125, and 129. The FAA believes this would reduce the risk of midair collisions, increasing public safety in the air and on the ground.

History

On April 5, 2000, the Wendell H. Ford Aviation Investment and Reform Act (AIR–21) was enacted (Pub. L. 106–181) and later codified at 49 U.S.C. 44716(g). That section directs the FAA to require all cargo airplanes of more than 15,000 kilograms (kg.) MCTOW to be equipped with collision avoidance equipment by December 31, 2002. It also provides for an extension of up to 2 years for safety or public interest reasons.

Section 44716(g) defines collision avoidance equipment as "equipment that provides protection from mid-air collisions using technology that provides cockpit-based detection and conflict resolution guidance, including display of traffic; and a margin of safety of at least the same level as provided by the collision avoidance system known as TCAS II."

Before Congress passed AIR–21, the FAA had been working on a proposal to require collision avoidance systems on cargo airplanes. The justification for that effort was:

- The large increases in all-cargo traffic volume (night and day operations),
- Two near mid-air collisions (NMACs) involving cargo airplanes,
- A petition for rulemaking to put TCAS on cargo airplanes from the Independent Pilots' Association (representing United Parcel Service pilots),
- The International Civil Aviation Organization (ICAO)'s recommendation to equip all airplanes with an airborne collision avoidance system (ACAS), which is equivalent to TCAS II, version 7.0, and
- The National Transportation Safety Board (NTSB)'s recommendation urging the FAA to require TCAS II and a Mode S transponder on certain airplanes.

The Proposed Rule

On November 1, 2001, the FAA published Notice of Proposed Rulemaking (NPRM) No. 01–12 (66 FR 55506) "Collision Avoidance Systems." That document proposed collision avoidance requirements for part 121, 125, and 129 operators of certain airplanes. Specifically, turbine-powered airplanes of more than 33,000 lbs. (15,000 kg.) MCTOW operated under part 121, 125, or 129 would be required to be equipped with TCAS II, or equivalent. Turbine-powered airplanes of 33,000 lbs. or less MCTOW operated under part 121, 125, or 129 would be required to be equipped with at least TCAS I, or equivalent. All piston-powered airplanes, regardless of weight, conducting operations under part 121 or 125 would be required to be equipped with at least TCAS I, or equivalent.

Discussion of Comments

The comment period for notice No. 01–12 ended on December 31, 2001. In response to that notice we received 465 comments. The overwhelming majority of commenters were strongly in support of the proposal. Cargo pilots from United Parcel Service (UPS) comprised the largest group of commenters, accounting for 238 comments in favor of the proposal. Other air cargo pilots from DHL, Fed Ex, Kittyhawk Aircargo, and Polar Air Cargo added approximately 100 more comments in favor of the proposal. Passenger carrier pilots, military pilots, and general aviation pilots also commented in favor. Other commenters represent pilot labor unions, pilot associations, air carriers, air carrier associations, an avionics manufacturer, a civil aviation authority, the NTSB, and many nonaffiliated individuals. The FAA reviewed and considered all comments during deliberations of this final rule.

We received approximately 280 comments, half of which were nearly identical in content, expressing very general support of the proposal. Most of these comments did not address specific issues except indicating that the rule would enhance safety for cargo pilots, for persons on the ground, and in the national airspace system. One person in this group of commenters states that there should be no distinction between cargo and passenger aircraft regarding the collision avoidance systems installed. Another commenter feels there is no equipment that exceeds the value of TCAS. One commenter adds that requiring consistent TCAS rules across all fleets just makes good sense. Several commenters echoed that sentiment citing the need for "one level of safety" for passenger and cargo airplanes, regardless of how many occupants are carried. Many of these commenters urge the FAA to issue the final rule as soon as possible and indicate that this rule is long overdue.

Nearly all commenters were supportive of the general concepts of the proposal; however, some included specific concerns related to: (1) The compliance period, (2) the requirement for TCAS II, version 7.0, (3) alternative systems to TCAS, (4) transponder requirements, (5) aircraft performance capability to respond to resolution alerts (RAs), and (6) the cost of the rule. The strongest criticism of the proposed rule came from four supporters of automatic dependent surveillance-broadcast (ADS-B) and from those who believe the rule is not necessary for some piston-powered airplanes. Some commenters urge us to seriously consider the capabilities of ADS-B as an alternative to TCAS. One commenter states the proposal would not improve safety in the national airspace system because the rule's restrictive nature could prevent the development of new and improved systems.

Below is the summary of the more specific comments. We introduce each topic with what the NPRM proposed, followed by a discussion of the comments and our response to those comments. Our response includes the FAA's decision to leave the rule as proposed or to change it.

Compliance Date

Proposed Rule

In notice No. 01–12, the FAA proposed that all airplanes without TCAS and weighing over 33,000 lbs. MCTOW install a collision avoidance system by October 31, 2003. Section 44716(g) of 49 U.S.C. directs the FAA to require collision avoidance equipment that has a margin of safety of at least the same level as provided by TCAS II by December 31, 2002, and allows a 2-year extension for public interest or safety. In the proposal, we felt that a compliance date of October 31, 2003, would provide adequate time for air carriers to schedule the installation of collision avoidance during a major C or D check.

Comments

Several commenters, all representing cargo carriers, disapproved of the compliance period and recommended that we extend it. We received an equivalent number of comments requesting that we not extend it. For example, the FedEx Pilots Association (FPA) recommended adopting Congress's earlier compliance date of December 31, 2002, and the NTSB, and various pilots requested that we not extend the compliance date beyond the proposed October 31, 2003. The NTSB strongly encourages the FAA to adhere to the equipment requirements and schedule contained in the proposed regulatory amendments and to expedite the implementation of these important rules.

Nearly 140 commenters (submitting similar form letters), representing the Coalition of Airline Pilots and primarily UPS pilots, believe the earlier Congressionally mandated date—December 31, 2002—is reasonable. They state that the December 2002 date coincides with ICAO recommendations, the hardware is readily available, most aircraft have approved installation procedures for TCAS, and many are prewired for TCAS. They suggest an extension to October 1, 2003, only in extenuating circumstances.

However, we heard from many air carriers indicating that the compliance schedule we proposed would be too difficult to comply with. Among the reasons cited were the schedules of individual carriers' C and D maintenance checks and various proposed Mode S modifications. FedEx Express, Supplemental Air Operations states that it would not complete a C or D check on its entire fleet before October 31, 2003, even without the collision avoidance rule. It states that the short compliance period does not allow time for operators to bid, select, engineer, schedule, and perform the work required for the installation of collision avoidance. It suggests a compliance date of March 29, 2005, to coincide with the terrain awareness warning system/enhanced ground proximity warning system (TAWS/EGPWS) compliance date and minimize disruptions to operations.

The Air Transport Association (ATA) recommends that we establish a compliance date when we issue the final rule to ensure the date coordinates with other regulatory initiatives, namely domestic and international transponder modifications. Its recommendation, echoed by Airborne Express and Northern Air Cargo, Inc., is to allow 24 months after the publication date of the rule for installation of collision avoidance. According to Airborne Express, the percentage of aircraft without collision avoidance during the last year of the compliance period would be small, which would have an insignificant effect on safety. Airborne Express also supports its request to extend the compliance date because it will have to install Mode S transponders on many of its airplanes.

FedEx Express, Air Operations Division (FedEx) also commented on the compliance date, stating that the short period would impose special down time with considerable operational impact to install collision avoidance on an estimated 41 airplanes that do not already have TCAS. Also, FedEx notes that security-related requirements for transponder system modifications will

affect the TCAS-related Mode S transponder. It believes that incorporating those requirements into the collision avoidance transponder requirements would avoid future retrofitting. FedEx recommends a compliance date of December 31, 2004, for those reasons.

Several other air carriers suggest a 24-month compliance period to install collision avoidance. The Cargo Airline Association (CAA) and UPS recommend December 31, 2004, but UPS earmarks the extension to allow the certification and orderly installation of ADS-B. The CAA also suggests that the FAA consider a phase-in compliance period, with a certain percentage of airplanes equipped with collision avoidance by October 31, 2003, and 100 percent compliance by December 31, 2004. One individual recommends a compliance date of December 31, 2004, but gives no reason for the extension. The Aerospace Industries Association (AIA) recommends 3 years to coincide with reduced vertical separation minimum (RVSM) operations, and USA Jet Airlines, Inc., recommends a 5-year compliance period to coincide with TAWS and RVSM. Evergreen International Airlines, Inc., recommends that the compliance date coincide with any hijack-mode modifications to transponders.

FAA's Response

When Congress mandated the FAA to require collision avoidance systems for cargo airplanes by December 31, 2002, it also allowed an extension of the compliance date to December 31, 2004. That extension is marked for "a safe and orderly transition to the operation of a fleet of cargo aircraft equipped with collision avoidance equipment; or other safety or public interest." Based on public comments and FAA's rulemaking experience, we have determined that an extension is needed for orderly installation and training associated with this new equipment. This extension meets the intent of Congress. Any suggested compliance date beyond December 31, 2004, is not allowed in the Congressional mandate.

This final rule will require affected operators to install a collision avoidance system on affected airplanes by December 31, 2004. The compliance date is 1 year and 2 months later than the proposed date of October 31, 2003.

As CAA suggested, we did consider a phase-in approach for collision avoidance system compliance, which we have used with other rulemaking projects. We used a phase-in compliance period, for example, the original TCAS rule, and the digital flight data recorder rule. We found that such a compliance mechanism is labor intensive and difficult to implement. The FAA believes that a phase-in approach is impractical in this case because this rule covers passenger-carrying and cargo airplanes. It is better to allow operators to schedule their own installations.

Grandfathering/Early Compliance

Proposed Rule

In the NPRM, we proposed to allow those operators that had installed TCAS II version 6.04A Enhanced before December 3, 2001 (which has been required for passenger-carrying airplanes for years), to continue operating with that system until it can no longer meet the TCAS II version 6.04A Enhanced technical standard order (TSO C–119a) ("grandfathering"). However, installation of TCAS II for the first time after December 3, 2001 (30 days after the publication date of the NPRM), would have to be TCAS II version 7.0 ("early compliance").

Comments

Some commenters disagree with using the NPRM publication date as a compliance date because it constitutes retroactive compliance. FedEx believes that it contradicts the spirit of due process and effectively reduces the rate of TCAS II installations. It states that some operators planning on installing TCAS II version 6.04A Enhanced on their aircraft may now have to defer installation based on the availability of version 7.0—working against the goal of early equipage. FedEx adds that this requirement would not affect them because they have been installing version 7.0 since December 1, 2001. The CAA also believes that requiring "early compliance" for version 7.0 goes against the interests of early equipage and enhanced safety. It adds that this requirement would cause TCAS II installations to stop or would cause version 6.04A Enhanced to become obsolete at a later date. It states that this compliance requirement would result in fewer TCAS-equipped airplanes in the short run and would disrupt carefully constructed industry compliance schedules.

Eurocontrol takes another point of view in its concern that TCAS II version 6.04A Enhanced units currently in service will not be upgraded on the compliance date or any defined schedule. Its position is that version 7.0 offers important safety and air traffic control (ATC) operational compatibility advantages. It also believes that all airplanes subject to the Congressional mandate should be required to install version 7.0 and that we should encourage passenger-carrying operators with airplanes already fitted with version 6.04A Enhanced to upgrade to version 7.0.

The Airline Pilots Association (ALPA) strongly supports the proposal to require version 7.0 for first-time installations and to include the early compliance date, crediting the operational improvements gained between version 6.04A Enhanced and 7.0.

AIA interprets the proposal to mean that all airplanes delivered after the publication date of the NPRM must be operated with TCAS II version 7.0. It indicates that Boeing is still delivering TCAS II version 6.04A Enhanced units to domestic carriers that have opted not to upgrade to TCAS II version 7.0. AIA recommends we delete early compliance and encourage operators to convert to version 7.0 as soon as practicable.

FAA's Response

We drafted the proposal so that no operator—passenger or cargo—would be required to retrofit its TCAS II unit to version 7.0 if version 6.04A Enhanced was installed before December 3, 2001. We included the "grandfathering" provision in the proposal as a compromise to requiring a retrofit to version 7.0 for all airplanes requiring TCAS II and have maintained it in the final rule.

The FAA included the "early compliance" provision to prevent new installations of older TCAS equipment, *i.e.*, allow new installations of version 6.04A Enhanced, instead of version 7.0 after the NPRM was published. Although the FAA concerns had validity, commenters have convinced us that the proposed date for early compliance is inappropriate. Consequently, we have amended that provision in the final rule. We believe that realistically, most airplanes will be equipped with version 7.0 before the final compliance date of this rule, even though grandfathering continues to be allowed. This is because many flights are in countries that require TCAS II version 7.0. Operators may also elect to conduct RVSM operations, which requires version 7.0 if the airplane has TCAS II installed.

Some commenters were concerned that the FAA was in effect writing a final rule in the NPRM by using a retroactive installation date for TCAS II version 7.0. We feel that because a newer, improved version is available, all first-time installations should be version 7.0. TCAS II version 7.0 includes a number of upgrades that improve the quality of TCAS II. Version 7.0 has the advantage of harmonizing with ICAO, improving ATC efficiency, accuracy, and RVSM capability. We believe that it will not be a burden for cargo carriers to buy version 7.0, rather than version 6.04 since they will have to buy one or the other. We researched availability of version 7.0 and are convinced that supplies are sufficient to support this rule.

Based on the comments, the FAA has decided to allow installation of version 6.04A Enhanced until 30 days after the publication of the final rule instead of the proposed 30 days after publication of the NPRM. This provision applies to operators that buy, sell, or lease airplanes with TCAS II version 6.04A Enhanced.

In response to AIA's comment regarding a manufacturer that continues to deliver airplanes with version 6.04A, the rule language only refers to the date the equipment is installed, not when it is delivered. Operators would be responsible for ensuring that its collision avoidance systems were installed before the required compliance date.

Alternative Collision Avoidance Systems and Other Equipment Issues

Proposed Rule

To accommodate any future technology that may be equivalent to TCAS I or II, we provided for alternatives in lieu of TCAS I or II in the proposal. An alternative system must be approved by the FAA.

Comments on ADS–B

One of the most popular issues that commenters addressed was comparing TCAS to ADS–B. Over 135 commenters (most via form letters from cargo pilots) believe that ADS–B eventually will be a "commendable" system, but until it is fully proven, TCAS should be the required collision avoidance system. Approximately 12 commenters indicate that ADS–B is not equivalent to TCAS. Three of those commenters, including Eurocontrol, indicate that this is because ADS–B does not provide conflict resolution capability. ALPA echoes those sentiments stating that "* * * other technologies are under development but lack the potential to operate independently in any part of the world. Any potential equivalent system must function independently from ground-based systems, demonstrate TCAS II capabilities, be interoperable with TCAS and assure the redundancy to perform as the pilots' last resort safety assurance system."

Eurocontrol supports allowing a truly equivalent system that is interoperable with TCAS. It believes ICAO is the appropriate forum to agree on equivalence at the international level; however, it is concerned that there does not currently exist an agreement among aviation authorities as to what constitutes equivalence.

Eurocontrol believes the FAA is overemphasizing the potential of ADS–B and finds FAA's description misleading and confusing. According to Eurocontrol, ADS–B, like Secondary Surveillance Radar (SSR), supports the surveillance infrastructure, which it indicates is more importantly used for separation rather than collision avoidance. Eurocontrol maintains that it is critical to keep distinct and separate the concepts of separation and collision avoidance. Eurocontrol indicates that the "primary use of ADS–B data should be for the provision of separation, and the system employing the data should be constructed to a level of performance and integrity, which would make collision avoidance virtually unnecessary."

Finally, Eurocontrol states that TCAS II provides collision avoidance protection based on an independent measurement of range and ADS–B does not.

ALPA supports the FAA's decision that any potential equivalent system must: (1) Function independently from ground-based systems, (2) demonstrate TCAS II capabilities, (3) be interoperable with TCAS, and (4) assure the redundancy to perform as the pilots' last resort safety assurance system. It adds that the FAA should proceed with a known, proven product.

On the other end of the spectrum are four supporters of ADS–B's potential. They believe that ADS–B is misrepresented in the NPRM and made suggestions for improvement. Many of the criticisms of the proposal stem from perceptions that the rule imposes onerous restrictions on non-TCAS systems, well beyond what Congress mandated.

The CAA states that AIR–21 requires an equivalent level of safety to TCAS II but does not necessarily require interoperability or coordinated maneuvers between any new system and TCAS. It concludes that the legislation was not technology-specific, which opens the door for alternative systems that do not have to be interoperable with TCAS. According to the CAA, the FAA's apparent prejudice against ADS–B violates the spirit of AIR–21.

The CAA asserts that the FAA provides no relevant analysis on the safety implications of the need for interoperability. It adds that RTCA SC–186, Working Group 1 has studied the issue and has provided alternatives to the "coordinated maneuvers" requirement.

The CAA argues that the FAA does not seriously consider the possibility of an alternative system based on ADS–B technology. It contends that the analysis contains inaccuracies and omissions that could preclude the certification of a system that is more accurate and could provide a significantly safer air transportation system than TCAS. It states that the FAA ignores the potential use of traffic information service-broadcast (TIS–B), which it indicates would allow ADS–B to "see" TCAS-equipped aircraft. The CAA recommends we delete and reexamine our analysis of the potential use of ADS–B to meet Congress's intent of encouraging, not discouraging, innovative solutions to the collision avoidance question.

United Parcel Service Airlines (UPS) supports the deployment of ADS–B as an alternative collision avoidance system and believes that it could address many shortcomings of TCAS. According to UPS, TCAS provides no information regarding target identification, speed, heading, type, or intent, whereas ADS–B does. In addition, it maintains that:

- ADS–B provides accurate target information below 1,000 feet above ground level (AGL) and on the ground,
- ADS–B derives altitude from GPS, thereby making vertical conflict resolution more reliable and less prone to error than TCAS,
- ADS–B displays range greater than 120 miles, whereas TCAS is typically 12 miles, and
- The bearing accuracy of ADS–B can support horizontal conflict resolution, which TCAS cannot.

UPS criticizes the collision avoidance proposal because it believes that it imposes restrictions on non-TCAS systems that prevent an applicant from pursuing an alternative technology. It lists examples of purported errors from the proposed rule that it believes support its claim that the FAA implicitly is requiring only TCAS as a collision avoidance system.

UPS also criticizes the FAA for not outlining standards to measure potential equivalent collision avoidance systems. It adds that the FAA must perform the necessary analysis to produce a uniform measurement of safety. This will allow the comparison of benefits provided by TCAS II and other collision avoidance technologies. UPS argues that in PL 106–181, Congress intended for the FAA

to create the yardstick to evaluate the margin of safety of TCAS alternatives. UPS further contends that, because PL 100–223 calls for the FAA to implement horizontal guidance and PL 106–181 requires conflict resolution guidance, Congress likely required the deployment of an ADS–B-based collision avoidance system. UPS states that TCAS has neither of these capabilities.

Finally, UPS makes suggestions to amend the proposed regulatory text. It recommends that we eliminate the requirement that an equivalent system be capable of coordinating with TCAS units. It suggests instead that an equivalent system reduce the risk of collision to a level equivalent to the reduction provided by a TCAS II that meets TSO C–119a. It also recommends that we add the requirement that any collision avoidance system used must comply with PL 100–223 and provide horizontal resolution.

One commenter believes the rule will not improve safety in the national airspace system (NAS), because its restrictive nature could prevent new and improved systems from being developed. More specifically, he contends that the rule will stifle the development of ADS–B's pertinent application, Airborne Conflict Management (ACM), which he says will improve safety and increase capacity in the NAS.

The commenter adds that TCAS does not resolve all potential collision encounters, but that ADS–B contains more information content, resulting in more effective collision avoidance maneuvers in both the horizontal and vertical planes. He believes that ADS–B can be used to develop a more effective collision avoidance system and traffic management system than TCAS. The commenter argues that TCAS is not totally independent from the ground-based secondary surveillance radar system because it shares the transponder and altimeter in the aircraft. According to the commenter, the altimeter is a common point of failure that can result in false TCAS resolution advisories.

The commenter disagrees with our proposal to require maneuver coordination for any equivalent system used in lieu of TCAS. He states that the ACM sub-group of RTCA–186 has been working on a system that could overcome some of the limitations of TCAS and has determined that coordination is not necessary. He concludes his comment with recommendations to change the regulatory text. He suggests that we eliminate the provisions that an equivalent system be capable of coordinating with TCAS units. In place of it, the commenter suggests adding that equivalent systems reduce the risk of collision to a level equivalent to the reduction provided by TCAS.

Another commenter also supports the potential of ADS–B as an equivalent system to TCAS. He believes that TCAS was the correct system for collision avoidance before the development of global positioning systems (GPS). However, according to the commenter, the FAA made two mistakes implementing TCAS requirements: (1) Not recognizing the contribution GPS would eventually make to traffic conflict and collision prevention, and (2) using Air Traffic Control Radar Beacon System (ATCRBS) Mode S as the vehicle for TCAS. He believes that these two mistakes caused collision avoidance to cost 10–100 times what it should and that it still experiences false alarms. According to the commenter, pilots ignore half of all TCAS resolution alerts (RAs) because they feel that although TCAS has prevented some collisions, it will eventually cause one.

The commenter argues that the Capstone project in Alaska shows that ADS–B is a mature system, capable of providing collision avoidance functions. (The Capstone project is an FAA-funded evaluation, in which ADS–B is installed on certain airplanes under controlled conditions. The Capstone project is further explained in the FAA's response to this comment below.) He states that the accuracy and integrity of ADS–B nearly eliminates the need for collision avoidance. He adds that the susceptibility of ADS–B to the loss of GPS will be eliminated when the FAA and other agencies adopt the existing Loran-C as the back-up navigation source.

The commenter makes suggestions to amend the proposed regulatory text. He recommends, identical to UPS, that we eliminate the requirement that an equivalent system be capable of coordinating with TCAS units. He suggests instead that an equivalent system reduce the risk of collision to a level equivalent to the reduction provided by a TCAS II that meets TSO C–119a. He also adds that the proposed rule document has too many errors to list and that RTCA would address those issues.

FAA's Response to ADS–B Comments

The FAA supports the development of ADS–B. The intent of the rule is to provide the opportunity for future equipment to be certified to either meet or exceed the collision avoidance function of the current TCAS system. The burden to show equivalence is on the applicant. The developers of ADS–B have not requested that FAA approve ADS–B as equivalent to TCAS. Some commenters referred to systems being studied by RTCA; however, the FAA did not receive comments from RTCA.

While the FAA has set out the elements it considers to be part of a TCAS equivalent such as interoperability, it is not appropriate in this rule to set specific technical standards for individual equipment. It is not the intent of the FAA to approve or disapprove equipment as equivalent to TCAS through this regulation. If, in the future, a collision avoidance system is presented to the FAA for certification and approval, we will examine the applicant's data to determine if the system is equivalent.

The FAA agrees with Eurocontrol that it would be beneficial for there to be agreement between Authorities as to what would constitute equivalence, and that ICAO would be the appropriate forum. An international agreement on equivalence could open the door for new technologies. The FAA, however, must have its own standard for findings of equivalency. It is our intent to then make every effort to harmonize these standards.

It is our position that an equivalent system to TCAS II must be interoperable with TCAS II, provide protection against the same population addressed by TCAS II, and coordinate with currently approved devices meeting the requirements of §§ 121.356, 125.224, and 129.18. This is what we interpret Congress to mean when it defined in 49 U.S.C. 44716(g)(3) collision avoidance equipment as "equipment that provides protection from mid-air collisions using technology that provides a margin of safety of at least that same level as provided by the collision avoidance system known as TCAS II." While Congress did not specifically use the term "interoperability," the FAA has determined that without interoperability, another alternative collision avoidance system would not be equivalent to TCAS.

Although commenters suggest that an alternative system to TCAS need only provide an equivalent reduction in collision risk, we are responding to a Congressional direction that requires more than just a reduction in collision risk. Congress mandated "collision avoidance equipment that provides protection from mid-air collisions using technology that provides cockpit-based collision detection and conflict resolution guidance, including display of traffic; * * *" Congress has defined collision avoidance equipment as technology equivalent to TCAS. At this time there is no system equivalent to TCAS.

This final rule provides the opportunity for future developments without requiring more rulemaking. It is not intended to discourage private-sector, on-going efforts. However, at this time, neither the FAA nor other regulatory authorities are sponsoring programs to develop alternatives to TCAS II/ACAS II (the international equivalent to TCAS II version 7.0) to meet U.S. or international requirements. Allowing for an equivalent system is meant to be helpful to affected parties.

The FAA is responding to Congress and cannot delay this rulemaking for future development. We have extended the compliance date as discussed; however, we cannot extend beyond the date imposed by Congress. It is not the FAA's intent to delay or cancel incentives for new development of systems. The FAA has established a commitment to the development of the ADS–B technologies and works in the international forum with ICAO, Eurocontrol, and others to further this promising technology.

In regard to the comment about Capstone, the FAA is very familiar with ADS–B use in Alaska under the Capstone program. FAA funds were used to equip certain airplanes in Bethel, Alaska, with ADS–B. So far there are approximately 150 participating airplanes. Other than the Cessna 208, which is turbine, all of the airplanes are piston-powered. Most are operated in accordance with part 135, which this rule does not address. Capstone is a demonstration under very controlled conditions where every airplane involved has the necessary equipment. Capstone has demonstrated the utility of an avionics suite containing GPS receivers, moving map display, terrain awareness feature and ADS–B. In Alaska, ADS–B has been approved for provision of radar like services by Air Traffic Control. The Capstone program is entering a second phase which will utilize the Wide Area Augmentation System (WAAS) to provide more precise and robust navigation capabilities and allow for new routes previously unavailable to operators and will continue to develop ADS–B capabilities.

In the lower 48 states, the Safe Flight 21 program office has entered into a joint government-industry effort to develop ADS–B applications that will provide an impetus for widespread equipage by commercial and general aviation operators in the United States. There are numerous applications of ADS–B that, when implemented, could improve safety through greatly enhanced situational awareness. ADS–B installations have been approved in transport category aircraft utilizing the 1090 MHz (transponder) data link. Installations in the Capstone program have utilized the Universal Access Transceiver (UAT) as the data link for ADS–B transmissions. We currently do not have sufficient evidence showing that ADS–B would be a substitute for TCAS.

One commenter's reference to non-compliance to RAs ignores data analysis that shows such non-compliance occurs when pilots acquire the other aircraft visually and determine that a threat does not exist. In other words, there are times when non-compliance with an RA may be appropriate. When the pilot is in instrument meteorological conditions, the only action available to the pilot is to respond to the alert. This same commenter stated that TCAS could cause collisions. However, his statements are unsupported and contrary to the numerous airline pilots' comments received and FAA's experience. The commenter did not provide any data to support his claim that nuisance or unnecessary alerts are costly.

Comments on Other Equipment

In addition to the system alternative issues, three commenters addressed Mode S transponder issues. One commenter indicates that a Mode S is sufficient for collision avoidance without TCAS because it can continuously provide a "squitter" of barometric and GPS position with heading and speed, giving all aircraft and ground listeners the opportunity to locate and avoid the transmitter. He says British Airways has implemented this technology on an experimental basis. According to the commenter, adding a Mode S squitter would increase receiver-equipped aircraft four-fold within 6 years. He believes military and public aircraft without transponders could listen to position reports using the low-cost, uncertified receivers. He requests that all future mandates for collision avoidance systems include Mode S squittering of altitude, latitude, and longitude.

For clarification, the term "squitter" refers to a system designed to transmit and receive signals from a transponder, without active interrogation of the transponder. It also refers to a signal transmitted by the system. TCAS II requires a Mode S transponder, which is interrogated by other TCAS II equipment and replies to that equipment. A squitter system would be able to transmit and receive any information from the transponders, but it would not actively interrogate other aircraft as a TCAS II would.

Ryan International Corporation (Ryan) suggests we include traffic advisory system (TAS) Class A as a less expensive equivalent alternative to TCAS I. It makes this suggestion on the basis of the high cost to install a Mode S transponder. Another commenter agrees with Ryan in that we should include a less expensive form of TAS in lieu of TCAS I. That commenter believes that while TCAS provides a very useful tool to improve the safety of our airways, it is also very costly.

Ryan also inquires as to whether Mode S is required for TCAS I installations. It states that that does not seem to be the case in the preamble of the proposal, but in the proposed regulatory text, it appears that Mode S is required for TCAS I, or equivalent.

FAA's Response Regarding Other Equipment

In response to Ryan's inquiry regarding whether Mode S is required for TCAS I, Mode S is not required for those airplanes that need only a TCAS I. It is not our intent to mandate Mode S in this rule for TCAS I installations because it is not an integral part of the TCAS I installation. The commenter's confusion may have resulted from the appearance of the table in the **Federal Register**.

It should be noted that there are Mode S requirements described in existing §§ 121.345(c)(2), 125.224(a), and 129.18(a)(2). In addition, an appropriate class of Mode S is required to be installed as a part of a TCAS II installation, which is consistent with the existing rule and the proposed rule. In the final rule, the Mode S reference will remain in §§ 121.356, 125.224, and 129.18 because it is a required element in a TCAS II system.

We did make one change to the Mode S reference from the proposed rule. We inserted, for clarification, that the Modes S must be an appropriate class. This is similar language to the existing TCAS II rule. There are multiple classes of Mode S transponders within TSO C–112 and currently TCAS II functions only with at least a class 2 Mode S transponder. At the time of the issuance of this final rule, there is still no system found to be equivalent to TCAS.

Exceptions/Applicability

Proposed Rule

The FAA proposed that part 121, 125, and 129 turbine-powered airplanes that weigh more than 33,000 lbs. MCTOW would require TCAS II, or equivalent. We proposed that part 121 and 125

turbine-powered airplanes weighing 33,000 lbs. MCTOW or less, and all 121 and 125 piston-powered airplanes would require at least a TCAS I, or equivalent. We proposed that part 129 turbine-powered airplanes weighing 33,000 lbs. MCTOW or less would require TCAS I, or equivalent.

Comments

Two commenters request that we except some airplanes from the collision avoidance rule. According to one of these commenters, older, piston-powered, large aircraft conducting all-cargo operations do not have the performance necessary for rapid climbs. He states that passenger aircraft already equipped with TCAS can more safely maneuver to avoid an aircraft in steady-state flight. He states that this rule is not in the public interest and will put small air cargo operators with these airplanes out of business.

The second commenter, Northern Air Cargo, agrees that its B727–100 aircraft should be TCAS II-equipped, but it requests that we except ADS–B-equipped DC–6 aircraft operating under the Capstone project within the State of Alaska. The commenter states that its DC–6 aircraft cruise at much lower altitudes and airspeeds and do not fly among other TCAS-equipped aircraft during most phases of flight. It adds that most of its DC–6 aircraft are Capstone-equipped and operate solely within the State of Alaska and, occasionally, into remote areas of Canada and the lower 48 states.

ALPA, on the other hand, suggests that the proposal could be more restrictive. It asserts that some turbine-powered airplanes weighing less than 33,000 lbs. MCTOW, and some piston-powered airplanes, could respond to TCAS II RAs. It does not agree that certain airplanes operated under part 129 are too small to operate practically with collision avoidance. It states that the same type of piston-powered airplanes could be operating in the same airspace under part 121, 125, or 129, but the piston-powered, part 129 airplane would not be required to have TCAS I. It believes that we should use only a performance threshold to capture all airplanes in parts 121, 125, and 129 uniformly.

Eurocontrol provides a preliminary study demonstrating that light airplanes can respond to RAs. Eurocontrol recommends that we require TCAS II version 7.0 for all airplanes, including those that we proposed to use TCAS I, or equivalent.

FAA's Response

The FAA has decided not to include cargo airplanes weighing 33,000 lbs. or less in this final rule. This is a change from the NPRM, in which we proposed collision avoidance requirements for all airplanes weighing 33,000 lbs. MCTOW or less. We made this decision to reduce a burden on the operators of these airplanes. However, the FAA did maintain the proposed TCAS I (or equivalent) requirement for piston-powered airplanes weighing more than 33,000 lbs.

We have already reduced the burden for the older piston-powered airplanes weighing more than 33,000 lbs. MCTOW. We proposed and will require only TCAS I, or equivalent, for those airplanes. Part 129 already excepts piston-powered airplanes from collision avoidance requirements. The FAA proposed to continue that exception and we have decided to adopt the rule as proposed.

The FAA received comments from ALPA and Eurocontrol requesting that we expand the scope of the proposal. The FAA did not propose TCAS II requirements for piston-powered airplanes because of the lack of performance capabilities for those airplanes. Although the commenters contend that there may be piston-powered airplanes that can effectively use TCAS II, they did not provide any specific make and model airplanes that they feel could safely respond to RAs. In further telephone discussion with ALPA, the FAA determined that the primary intent of the comment was to point out inconsistencies between the proposal and the existing passenger-carrying TCAS rule. ALPA wants "one level of safety."

The minimum rate of climb required to respond to a TCAS II RA is 1,500 feet per minute (f/m), with the ability to increase the rate to 2,500 f/m. The FAA did not conduct a study on the performance capabilities of piston-powered airplanes. However, the FAA does have extensive knowledge of and experience with piston-powered airplanes currently operating under part 121, weighing more than 33,000 lbs. MCTOW. (Most of those airplanes were manufactured in the 1940's and 1950's.) Based on that information, the FAA determined that those airplanes were not capable of meeting the performance standards to respond to a TCAS II RA under the worst-case situation for climb performance, *i.e.*, maximum gross weight, high temperature, high pressure altitude.

Further, the equipment and labor to install TCAS II can, in some cases, approach the value of the airplane. Most of those piston-powered airplanes are operated by small entities. For example, the conservative value of a DC–6 is approximately $500,000; whereas, the cost of installing TCAS II on that airplane could reach $180,000. That cost does not include down-time and training. This final rule provides a safe and economical solution for piston-powered airplanes weighing more than 33,000 lbs. MCTOW. The FAA has determined that it cannot justify including in this rule installation of TCAS II (or equivalent) on piston-powered cargo airplanes weighing more than 33,000 lbs. MCTOW and has adopted the rule as proposed.

Because the FAA will not include airplanes weighing 33,000 lbs. or less in this rule, we will maintain the existing passenger-seating rule language for any passenger-carrying airplanes other then those with more than 30 seats. As proposed, we updated the collision avoidance requirement for passenger-carrying airplanes to allow for collision avoidance systems equivalent to TCAS.

Eurocontrol advocates TCAS II for all airplanes, but recognizes that there could be operational differences between the United States and Europe that could support a need for TCAS I. In reference to the Eurocontrol study, the FAA appreciates Eurocontrol providing this preliminary study, which is in its beginning stages. We found the study interesting but are not convinced that these airplanes have the performance capability to respond to RAs as necessary. The FAA developed two levels of TCAS (TCAS I and TCAS II) since the 1980's for the sole purpose of relieving small airplanes from purchasing equipment that may not be more useful or safer for them. Many countries do not yet mandate TCAS at all, but those that do require TCAS II and only require it on those airplanes equivalent to our part 121 airplanes with more than 30 seats. In Europe, the first TCAS mandate for their largest airplanes did not occur until the year 2000. The next stage of the mandate occurs in 2005 when airplanes with more than 19 seats will be required to have TCAS II. They have not mandated anything for "light" aircraft. They are able to mandate ACAS II (TCAS II, version 7.0) for airplanes with more than 30 passenger seats (2000) and more than 19 passenger seats (2005) without a retrofit because it is the initial mandate in both cases.

Compared to Europe, the United States has a large community of smaller commercial airplanes transporting passengers and cargo. This rule to add cargo airplanes weighing more than 33,000 lbs. also includes the passenger-carrying airplanes because of the switch to weight; however, the seat definition in the current rule is compatible with the proposed weight definition. The decision has already been made to not require a retrofit of TCAS equipment from one version to another. Retrofits are very expensive and, in this case, the FAA does not find the benefit of a retrofit to be worth the cost.

In response to Northern Air Cargo's comment that we should accept all Capstone participants, we note that Capstone currently applies to Alaska only (specifically, Bethel, Alaska). Although the FAA is pleased with the progress made during the Capstone demonstration, ADS–B is not a collision avoidance system and we have not received any application for its FAA approval as a collision avoidance system. Currently, the ADS–B equipment installed for the Capstone project is not equivalent to TCAS I or TCAS II. It currently would not be an acceptable alternative to TCAS under this proposal either inside Alaska or outside Alaska.

Northern Air Cargo's DC–6 weighs more than 33,000 lbs. If the FAA had adopted the existing rule language and simply added cargo airplanes and used the weight threshold, the DC–6 would have needed TCAS II. This rule provides significant relief to operators of large piston-powered airplanes, including those that operate in Alaska by requiring only TCAS I.

Economic/Risk Analysis/Alternatives

Comments

Several commenters specifically address the costs and benefits of the rule, the risk analysis used, and some alternatives to reduce the cost of the rule.

Ryan suggests that our estimated cost of equipage for TCAS I is low, suggesting that the estimate left out the cost of the elements themselves. It also states that if Mode S is required for TCAS I installations, the costs would be even higher, and recommends that we remove the Mode S requirement for TCAS I installations.

The CAA suggests that we overstated the benefits and minimized the costs in our analysis. It quotes from the cost section of the NPRM that we did not include the cost of air carriers that have voluntarily equipped their fleets with TCAS or that are equipped with TCAS as required by foreign governments. However, it states that our benefits section assumes that no cargo aircraft are equipped with TCAS. It argues that the numbers used for the benefits section are either drawn from unknown sources or are misinterpretations of other existing documents. It recommends that we task MITRE Corporation to review the proposed rule and to submit comments on the benefits that the proposal might generate.

Another commenter indicates that the cost of installing TCAS on older piston-powered cargo aircraft is cost prohibitive. He believes this rule will ground these aircraft, putting small cargo aircraft companies out of business, depriving the public of much needed cargo service. He argues that these aircraft typically fly only a few hundred hours a year and are in their last 10 years' of service life.

USA Jet Airlines, Inc., questions the necessity of so many equipment requirements in the near future. It indicates that in the next 3 years, a DC–9 and Falcon operator will pay $250,000 per aircraft for TCAS II, $125,000 per aircraft for TAWS and a significant sum for the domestic RVSM system. It agrees that these systems have merit, but believes the cost of all the systems precludes implementation for many carriers.

UPS contends that the FAA misinterpreted the MITRE study, which the NPRM indicated that the risk of a mid-air collision with a passenger airplane in the United States would be reduced 17 percent if cargo airplanes were also equipped with TCAS. According to UPS, the study reported that the risk of a mid-air collision for passenger airplanes in the United States would be reduced by 1 percent. UPS criticizes the study for not calculating the reduction in the risk of passenger airplane runway incursion accidents if cargo airplanes were equipped with ADS–B.

UPS also believes that the benefits are uncorroborated. It believes that because the FAA did not quantify the benefit of TCAS equipage, it is not possible to calculate a cost-benefit. UPS further asserts that the mid-air collision risk over the next 20 years involving a cargo airplane (40 percent) is unsupported. It argues that because there has never been a mid-air collision in the United States involving a cargo airplane, it is difficult to comprehend how this value could have been computed.

FAA's Response

In response to Ryan's assertion that we left out the cost of TCAS I units, the FAA's cost estimate does include estimates for both equipment and installation costs. As noted above, TCAS I equipment does not need a Mode S to function, nor did we propose to require Mode S. Therefore, the cost of Mode S is not considered to be a cost imposed by this rule.

To address the CAA's comments, in the final rule regulatory evaluation, air-cargo carriers' voluntary compliance has now been factored into both the cost and benefit sections. A large percentage of air cargo carriers voluntarily complied with the rule, even before the publication of the NPRM. Both the costs and the benefits are reduced by the extent of voluntary compliance. The FAA finds it unnecessary to task MITRE Corporation since we have made the corrections.

In response to the individual operating older piston-powered cargo airplanes, as previously discussed, the FAA has reduced the burden for those airplanes from TCAS II to TCAS I as much as we can. In response to USA Jet Airlines, Inc., the FAA realizes there is a cumulative effect of rules; however, in this case, the FAA is required by Congressional mandate to issue this rule.

UPS questioned the validity of a 40-percent chance of at least one mid-air collision involving a cargo aircraft in the next 20 years. That probability refers to the value in the Poisson distribution table when the mean of the distribution is 0.5. The Poisson distribution is an accepted probability distribution for rare events. Just because a collision has not occurred does not mean that the probability of a collision occurring is zero. The economic evaluation discusses the impact of near-miss situations on the FAA's analysis.

The 17-percent and 1-percent reduction in risk estimates, as mentioned in the full regulatory evaluation, are both correct. The MITRE study, which is in the docket, reports (pages 49 and 50), "If cargo aircraft were TCAS-equipped this relative risk would drop to 0.058 (as compared to the pre-TCAS baseline situation when no aircraft was TCAS-equipped). This corresponds to a Risk Ratio of 0.058/0.070 = 0.828, which roughly corresponds to a 17-percent reduction compared to the current risk. The small proportion of encounters involving one passenger and one cargo aircraft means that equipping cargo aircraft with TCAS would only reduce the risk to the passenger aircraft by another one percent."

In response to UPS's assertion that the benefits of the rule are uncorroborated, the FAA sponsored a MITRE study to assist in the risk assessment of a mid-air collision. That report provided the basis of the safety benefits for collision avoidance for cargo aircraft. We made that study available in the docket, we provided a risk assessment, and we

presented a reasoned determination that the benefits justified the costs. It was not MITRE's task at the time of the study to address ADS–B.

Commenters responding to this rule have criticized us for not having enough accident data to justify the rule. In issuing this collision avoidance systems rule, we are being proactive about preventing accidents, rather than waiting for comprehensive mid-air collision data to give us overwhelming justification for this rule. Since the NPRM was published, a mid-air collision occurred in Germany on July 1, 2002, involving a DHL cargo Boeing B–757 and a passenger-carrying Tupelov Tu–154. Both aircraft were equipped with ACAS II (TCAS II version 7.0). German authorities also reported that data from the aircraft Cockpit Voice Recorders (CVR) and Flight Data Recorders (FDR) indicated that both ACAS II systems alerted the flight crews and displayed coordinated RAs. The B–757 descended in response to its RA, but the Tu–154 did not climb in response to its RA. Rather, it descended in response to air traffic control instructions. The accident is under investigation and the probable cause is unknown at this time.

Paperwork Reduction Act

Information collection requirements in the amendment to parts 121, 125, and 129 previously have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB control Nos. 2120–0008 and 2120–0085. The potential paperwork burden is any recordkeeping required to maintain the list of those pilots who have completed training and are certified as to their proficiency on the collision avoidance system operation. These recordkeeping requirements already are covered under the Paperwork Reduction Reports entitled "Operating Requirements; Domestic, Flag, and Supplemental Operations" and "Certification and operations: Airplanes having a seating capacity of 20 or more passengers or a maximum payload capacity of 6,000 lbs. or more; and rules governing persons on board such aircraft."

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

International Compatibility

International Standards and Recommended Practices (SARPs), Annex 6 to the Convention on International Civil Aviation, Part I, seventh edition, July 1998 has the following four recommendations addressing collision avoidance systems:

6.18 Aeroplanes Required to be Equipped with an Airborne Collision Avoidance System (ACAS II).

6.18.1 From 1 January 2003, all turbine-engined aeroplanes of a maximum certificated take-off mass in excess of 15,000 kg. or authorized to carry more than 30 passengers shall be equipped with an airborne collision avoidance system (ACAS II).

6.18.2 From 1 January 2005, all turbine-engined aeroplanes of a maximum certificated take-off mass in excess of 5,700 kg. or authorized to carry more than 19 passengers shall be equipped with an airborne collision avoidance system (ACAS II).

6.18.3 Recommendation.-All aeroplanes should be equipped with an airborne collision avoidance system (ACAS II).

6.18.4 An airborne collision avoidance system shall operate in accordance with the relevant provisions of Annex 10, Volume IV.

FAA Discussion of ICAO SARPs

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO SARPs to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the following differences.

The FAA agrees that ICAO should actively encourage the use of ACAS II, which is equivalent to TCAS II version 7.0, and agrees in principle with the SARPs. However, the FAA is concerned that some aspects of the SARPs may be unrealistic. ACAS II is appropriate for large, transport category airliners, which have been successfully using TCAS II version 6.04A Enhanced in the United States for several years. However, some small airplanes lack the performance capability to respond to RAs provided by ACAS II (TCAS II version 7.0) and therefore would receive no benefit from the recommendation. The FAA believes that this rule provides a reasonable alternative for those airplanes for which ACAS II would be inappropriate. The FAA has considered the aerodynamic capability of certain airplanes and does not agree that ACAS II/TCAS II is the appropriate level for smaller airplanes. The FAA currently mandates TCAS I for airplanes with 10–30 passenger seats and has done so for more than a decade. Many of the 10–30 passenger-seat airplanes currently equipped with TCAS I weigh less than 5,700 kg. (12,500 lbs.). The FAA also has considered the cost of installing equipment that cannot be fully utilized by certain airplane operators.

The FAA desires that all TCAS II/ACAS II users have the latest version (version 7.0) and the FAA believes that TCAS II version 7.0 has additional benefits. However, many airplanes currently required to have TCAS II have had version 6.04A Enhanced installed for several years. The purpose of this rule is to capture cargo airplanes for the first time, not to create retrofits for passenger airplanes. This rule allows airplanes that already are equipped with TCAS II version 6.04A Enhanced to continue using that version until those particular units can no longer be repaired to TSO C–119a standards. Air carriers that are installing TCAS II for the first time must equip their applicable airplanes with TCAS II version 7.0. Eventually, airplanes operating under parts 121, 125, and 129 that are required to have TCAS II would be required to be equipped with TCAS II version 7.0. This is because operators will need to replace version 6.04A Enhanced units when old units wear out, or they will choose to operate in RVSM airspace or in foreign countries that require version 7.0.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency proposing or adopting a regulation to first make a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreement Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this act requires agencies to consider international standards, and use them where appropriate as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs and benefits and other effects of proposed and final rules. An assessment must be prepared only for rules that impose a Federal mandate on State, local or tribal governments, or on the private sector, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation.)

In conducting these analyses, the FAA has determined:

(1) This rule has benefits that justify its costs. This rulemaking does not impose costs sufficient to be considered "significant" under the economic standards for significance under Executive Order 12866 or under DOT's Regulatory Policies and Procedures. Due to public interest, however, it is considered significant under the Executive Order and DOT policy.

(2) This rule will have a significant impact on a substantial number of small entities.

(3) This rule is in accord with the Trade Agreement Act.

(4) This rule does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

The FAA placed these analyses in the docket and summarizes them below.

Benefits of the Final Rule

Introduction

The implementation of this rule contributes to a long-standing effort by the Congress, the FAA, international aviation authorities, and industry to increase the use of Collision Avoidance Systems (CAS). Specifically, the expected benefit of this rule is a reduction in the risk of midair collisions involving at least one cargo airplane.

There are many levels of safety built into the Air Traffic Control System that guard against the risk of midair collision. However, when human errors by pilots or controllers, or equipment failures occur, safety margins erode. In some instances, separation between aircraft is lost. Many different factors apply in such cases. There are such a variety of circumstances that it appears no single measure can entirely eliminate the risk of midair collision.

Traffic Alert and Collision Avoidance System (TCAS) has been proven effective in providing additional protection against collision. TCAS was designed to supplement the safety margins of the ATC system by providing protection when other means fail. At present, TCAS is required in certain passenger-carrying airplanes and has also been voluntarily installed on some general aviation (primarily business) aircraft. In addition to the United States requirements, Europe, India and, recently China require collision avoidance systems. Within the air cargo industry, Northwest Airlines and Polar Air Cargo have already equipped their cargo airplanes with TCAS II and the all-cargo airlines Airborne Express and FedEx are voluntarily equipping their fleets with TCAS II. This voluntary compliance reduces the benefits of this final rule from those cited in the NPRM.

Commenters' reports, Near Midair Collision (NMAC) filings, and the National Transportation Safety Board (NTSB) recommendations attest to occasions where safety benefits improved by using TCAS equipment. Often, these reports suggest that TCAS served as the final safety net that prevented an accident. A pilot's and a controller's view of a situation may differ, particularly in the degree of imminent danger associated with a loss of separation.

The potential benefits of TCAS II have been studied by extensive computer simulations and validated by tens of millions of hours of operational experience. These safety benefits have been recognized by the International Civil Aviation Organization (ICAO) in its worldwide recommendation for TCAS II installation, which affects both passenger and cargo carriers.

The worst midair collision occurred between a cargo airplane and a passenger airplane in India with nearly 350 fatalities. At the time of this writing another midair collision occurred with a cargo airplane and a passenger airplane in Europe. This most recent accident is a painful reminder that such accidents do occur.

A Look at the Environment

Although no passenger air carrier airplanes have been involved in a midair collision since they were required to carry TCAS II, other types of airplanes continue to experience midair collisions. During the period 1994–1997, 61 midair collisions in the U.S. airspace have occurred resulting in 92 fatalities and 26 injuries. No collision involving a cargo airplane (which would be affected by this rule) occurred, but the following describes a recent near miss.

Two U. S. cargo airline airplanes nearly collided at flight level 330 over Kansas on March 2, 1999. A McDonnell Douglas cargo DC–10 had departed from Portland, Oregon, and was enroute to Tennessee. The other airplane was a cargo Lockheed L–1011 that had departed from Los Angeles, California, and was proceeding to Indiana. The minimum distance between the two airplanes at the time of the near-collision was reported as a quarter-mile (ATC recorded radar data) or 50–100 feet (crewmember estimate). The DC–10 captain reported that he never saw the L–1011 approaching. The L–1011 crewmembers saw the DC–10 to the left and slightly behind them at nearly the same altitude and took evasive action to avoid a collision.

The (NTSB)'s investigation of the NMAC determined that air traffic controllers in two different air route traffic control centers failed to properly transfer control and radio communications for each airplane to the next sector that the flights would fly through according to their flight plans. As a result, both airplanes were not on the proper radio frequency (were under no one's control) as their flight paths converged at the same altitude over Kansas. While ATC was aware of the pending conflict, the controllers were unable to issue control instructions to separate the two airplanes, because they could not communicate with the flight crews on the proper radio frequency.

The NMAC also highlighted a difference in the TCAS requirements between passenger and cargo airplanes. Currently, regulations require passenger carrying airplanes with more than 30 passenger seats operating in U. S. airspace to be equipped with TCAS II which alerts flight crews of potential conflicts and, if necessary, instructs them to climb or descend to resolve the conflict. Cargo airplanes receive no TCAS information because they are not currently required to be equipped with TCAS. This could cause a potential safety hazard because a cargo pilot without the advantage of a TCAS RA may inadvertently select the same response as the RA provided to the passenger airplane pilot.

Risk Assessment

The above discussion outlines in general terms the benefits of equipping airplanes with TCAS II. In an effort to place these benefits in a more quantified context, the FAA performed the following risk assessment based on a study performed by MITRE.[1]

The scant air cargo airplane data in the United States on midair collisions and NMACs does not allow a definitive analysis of the numbers of accidents likely to be avoided by installing TCAS on cargo airplanes. Fortunately, there has been no actual midair collisions in U.S. airspace involving cargo airplanes affected by this rulemaking action. However, it does not follow from this circumstance that the risk of a midair collision involving a cargo airplane is zero.

The following risk assessment attempts to arrive at a reasonable approximation of the risk of a MAC

[1] The Mitre study, "Assessment of Midair Collision Risk and Safety Benefits of TCAS II for Cargo Aircraft", June, 1999, is available in the public docket for this rulemaking action.

involving at least one cargo airplane under the following circumstances:

1. The current situation—no requirement for collision avoidance systems on cargo airplanes, and

2. The reduction in risk with the implementation of this final rule.

To do this, the FAA combined the risk reduction estimates developed by MITRE, with the FAA's estimate of risks.

Assumptions

The estimates derived by Mitre depend on a number of simplifying assumptions. These assumptions are believed to be consistent with the level of accuracy that can be achieved when estimating the probabilities of such rare events as midair collisions or NMACs.

The two major assumptions are:

1. Exposure to a possible midair or near-midair collision is assumed to be approximately proportional to the number of airplane pairs flying through the same airspace at about the same time. The number of pairs increases in proportion to the square of the number of airplanes.

2. The NMAC risk reduction estimates documented in the Safety Analysis of TCAS II Version 7, which were derived from airplane track data collected at major terminal areas for passenger flights, also apply to cargo airplanes.

Pre-TCAS II Accident Rates

This section discusses the risk of cargo airplane midair collisions (MAC)s. The risk is the expected number of cargo airplane MACs with another cargo airplane, a commercial passenger airplane, or a general aviation airplane. Due to general aviation data limitations and the fact that passenger airplanes are presently equipped with TCAS, this assessment of risk is limited to that of cargo/cargo MAC. While to date there has not been a MAC involving a cargo airplane in the United States, there were two near midair collisions (NMAC) with cargo airplanes in 1999. The FAA believes there is a small, but significant, risk. Several methodologies are presented below which provide an approximation of the number of cargo airplane MACs that may occur in the future if cargo airplanes are not equipped with collision avoidance devices.

Passenger midair accidents have occurred. In the FAA's 1988 regulatory analysis of TCAS on passenger airplanes, it was noted that during the 15 years before the use of TCAS on airplanes, two midair collisions occurred, each of which involved at least one large air carrier passenger airplane. Accordingly, at that time the rate of 2 MACs per 15 years was used as the estimate of future incidence in the absence of TCAS. By extending the time period to 20 years to coincide with the cost-analysis reference period of this analysis, the rate increased to 2.67. Because there are substantially fewer cargo airplanes than passenger airplanes operating in the United States, a rate of 2.67 defines the upper bound as the rate of MAC involving cargo airplanes. The actual rate is probably substantially less than this upper bound. The FAA has used this figure, however, as a basis for several different methods to approximate the actual risk. These methods include a direct ratio of numbers of aircraft, and proportions of pairs of both cargo aircraft and cargo operations. Taken together, the agency believes that the results of these methods define a reasonable approximation of the range of the actual risk.

In the next 15 years the average number of operating cargo airplanes is projected to be about 1,545, or nearly 50 percent of the average number of passenger airplanes (3,230) that operated between 1973 and 1987. If the MAC risk were solely a function of the number of airplanes, then the cargo MAC risk in the next 15 years could be considered to be 1.0 MAC (50 percent of 2.0). This approximation however is likely to overstate the actual risk, as cargo operations per airplane are lower than that of passenger airplanes. If the ratio of cargo to passenger departures-per-airplane remains roughly that of today (between .33 and .40), then multiplying the value of the departure-per-airplane ratios by 1.0 accidents results in range of .33 to .40 MACs for 15 years, or nearly .44 to .53 MACs over 20 years.

From a slightly different perspective, another approximation can be derived from information on the number of airplane pairs (a collision potential). As the number of years, and as the number of airplane pairs increase, the likelihood of a collision increases. The number of pairs can be calculated for the relevant period.[2] Over the 1973 to 1987 time period, the average annual number of in-service passenger airplanes was approximately 3,230. Over the fifteen-year period 2000 through 2014, the average number of cargo airplanes is projected to be about 1,545. Based upon the assumption that risk is a function of the number of aircraft squared, the estimate of a MAC risk to cargo airplanes not equipped with collision avoidance equipment is estimated as $2.0 * (1{,}545)^2/(3{,}230)^2 = 0.45$ accidents in 15 years, or approximately 0.60 accidents in 20 years.

A different application based on numbers of operations provides an effective lower bound of the likely range of risk for a cargo MAC. Total revenue departures summed from 1974 through 1988 (1973 data are not available) are 79.1 million. For a 15-year period from 2000 through 2014 total cargo airplane departures are assumed for this analysis to grow at a 5 percent annual rate on an estimated base of 645,000 departures in 1999. These total cargo departures sum to 14.6 million. Based upon the assumption that risk is a function of the number of operations squared, the estimate of a cargo MAC is approximated as $2.0 * (14.6)^2/(79.1)^2 = 0.07$ accidents in fifteen years. An additional five years raises this risk to nearly 0.1 accidents.

The above methodologies provide a range from 0.1 to 0.6 mid air collision involving a cargo airplane over twenty years. Admittedly, these models are simplified representations of complex interactions of many other excluded factors such as the time of day, weather, airway congestion, hub concentration, and perhaps pilot error or malfunctioning airplanes. It is clear, regardless of methodology that the risk is low, but it is not zero.

The Poisson probability distribution is often used to analyze rare and random events, and may be useful here. If 0.1 is assumed as the mean of a Poisson distribution, there is a 10 percent chance that there will be one or more mid air collisions involving a cargo airplane during the twenty-year period. If the actual risk rate is 0.6 MACs over 20 years, there is nearly a 50 percent probability that there will be at least one MAC, and slightly more than a 10 percent chance there will be two or more. Such a level of risk is unacceptable.

The benefit sensitivity section will show the potential range of outcomes reflecting the above accident rate variation discussion. For the purpose of the analysis and to ease presentation, the FAA uses a single estimated rate of 0.5 MACs involving a cargo airplane over the next 20 years if they are not equipped with collision avoidance devices.

Risk Reduction—Cargo Airplane Perspective

The following table (Table 4–11 of the MITRE report) shows the MITRE derived pair probabilities conditioned on encounters involving at least one cargo airplane as well as the relevant TCAS risk reduction factors.

[2] The number of pairs involving airplanes from the same population (cargo/cargo) can be calculated using the formula: $N = n(n - 1)/2$. For large numbers this formula can be approximated by: $N = nn/2$ for comparisons among different assumptions of the number of airplane pairs involved.

RISK REDUCTION FOR CARGO AIRPLANES

	Cargo/cargo	Cargo/GA	Cargo/passenger	Cargo/unspecified
Conditional pair probability	0.324	0.174	0.503	1.000
Risk—when cargo is *not* TCAS-equipped	1.000	1.000	0.092	0.544
Risk—when cargo *is* TCAS-equipped	0.023	0.092	0.023	0.035

The current risk to cargo airplanes when they are not TCAS equipped and passenger airplanes are equipped with TCAS II is 0.544 (as compared to the pre-TCAS baseline situation when no airplane was TCAS-equipped). This risk reduction occurs because the equipage of passenger airplanes with TCAS II has already reduced the risk to cargo airplanes. Even though the cargo airplanes are not equipped with TCAS II, the passenger airplanes can see the cargo airplanes on their cockpit displays. This reduces the risk to both passenger and cargo airplanes.

If cargo airplanes were to be TCAS II equipped, this remaining relative risk would drop to 0.035 (as compared to the pre-TCAS baseline situation when no airplane was TCAS-equipped). This results in a comparative risk ratio of 0.035/0.544=0.064, which roughly corresponds to a 94 percent reduction (0.544 " 0.035)/.544 = .936) compared to the present risk. In other words, cargo airplanes could experience a reduction in their NMAC risk by about 94 percent as compared to the current risk by installing TCAS II.

Risk Reduction—Passenger Airplane Perspective

For passenger airplanes that already have TCAS II, the perspective is considerably different because the cargo airplanes would represent only a small portion of their potential close encounter traffic. The following table (Table 4–12 in the MITRE study) shows the MITRE derived pair probabilities conditioned on encounters involving at least one passenger airplane as well as the relevant TCAS risk reduction factors.

RISK REDUCTION FOR PASSENGER AIRPLANES

	Passenger/c	Passenger/	Passenger/p	Passenger/u
Conditional pair probability	0.076	0.281	0.643	1.000
Risk—when cargo is not TCAS-equipped	0.092	0.092	0.023	0.070
Risk—when cargo is *not* TCAS-equipped	0.023	0.092	0.023	0.058

Combining these risks in a weighted manner according to the conditional pair probabilities shown in the first row of the above table, the risk to passenger airplanes when cargo airplanes are not TCAS-equipped is reduced by 93 percent to 0.070 (as compared to the pre-TCAS baseline situation when no airplane was TCAS-equipped). If cargo airplanes were to be TCAS-equipped this relative risk would drop to 0.058 (as compared to the pre-TCAS baseline situation when no airplane was TCAS-equipped). This corresponds to a Risk Ratio of 0.058/0.070=0.828, which roughly corresponds to a 17 percent reduction (0.070 " 0.058)/0.070 = 0.171) compared to the current risk to passenger airplanes.

The small proportion of encounters involving one passenger and one cargo airplane means that equipping cargo airplanes with TCAS would only reduce the risk to the passenger airplanes by another one percent (reducing the 0.070 risk by 17 percent) beyond the 93 percent already enjoyed through their TCAS equipage. Therefore, the total risk reduction for passenger airplanes from the installation of TCAS II on both passenger and cargo airplanes would be approximately 94%. Coincidentally, this is the same reduction as the risk reduction to cargo aircraft going to TCAS from no TCAS protection. This should be kept in mind to avoid confusion in understanding the following analyses.

Post-TCAS II On Cargo Airplanes Accident Rates

Without TCAS II on all-cargo airplanes, the approximated MAC rate adopted in the previous section, for this analysis, was 0.5 MACs per 20-year period for all-cargo airplanes. The above analysis indicated that the installation of TCAS II on all-cargo airplanes will reduce the risk of all-cargo airplane NMACs by 94 percent. This will reduce the MAC rate for all-cargo airplanes to 0.06×0.5 or 0.03 per 20-year period.

If this rule were implemented, MITRE estimates that passenger airplanes will experience approximately a 17 percent risk reduction, or the risk factor for passenger airplanes will be reduced from 0.07 to 0.058.

One way to make these probabilities more meaningful is through the use of a Poisson probability distribution, a statistical tool often employed to describe rare events. If the factors for cargo airplane midair collisions (0.5 for the cargo fleet without TCAS and 0.03 for the cargo fleet with TCAS) are assumed to be the mean values of the Poisson probability distribution, then those distributions imply that in the absence of this rule there will be a 40 percent chance that one or more midair collisions involving a cargo airplane will occur in the U.S. airspace within the next 20 years. On the other hand, this rule will reduce that likelihood of a midair collision involving cargo airplanes to a 1 percent chance.

If this rule were implemented, MITRE estimates that passenger airplanes will experience approximately a 17 percent risk reduction, or the risk factor for passenger airplanes will be reduced from 0.07 to 0.058. This small reduction in the risk of a passenger and cargo airplane colliding is a direct result of passenger airplanes already being equipped with collision avoidance systems (TCAS II) and because the cargo fleet is much smaller than the passenger fleet. None-the-less, a real reduction in the risk to passenger airplanes occurs when cargo airplanes are equipped with collision avoidance systems.

Risk Assessment Summary

The above calculations are probabilistic estimates and are not precise calculations. These estimates are intended to convey a sense of the reduced MAC risk that will result from this rule. The rule will result in reduced collision risk to all types of airplanes with the greatest risk reduction benefiting cargo airplanes.

Quantifiable Benefits of Collision Avoidance Systems for Air Cargo Airplanes

Introduction

This section quantifies, to the extent possible, the expected dollar benefits of installing CAS on cargo airplanes. The process is to determine the risk of a MAC between different types of airplanes, incorporate the expected number of accidents without the final rule, estimate the cost of potential accidents, and finally estimate the expected loss.

Accidents: Risk

Earlier in the benefits analysis the FAA estimated that the number of cargo airplane MAC's will be 0.5 accidents in a 20 year time period. The risk of a cargo airplane MAC with another airplane depends on the pairs of airplanes present in the same airspace at about the same time and whether such airplanes have a CAS. This section estimates the risk of a cargo airplane MAC with another airplane.

MITRE computes the conditional pair probabilities of three combinations of airplanes that fly in the same U.S. airspace at about the same time. In this case, a conditional pair probability is a pair of airplanes where at least one of the airplanes is a cargo airplane. It is assumed that the risk of a near midair collision (NMAC) is proportional to the pair probabilities. The risk of a NMAC is used rather than the risk of a MAC, because most of the statistical models used in studying the safety of TCAS II were derived from encounter data and not from MAC data. Accordingly, risk reduction estimates from equipping cargo airplanes can be obtained by multiplying the pair probability of each relevant pair by the risk reduction factor associated with collision avoidance equipage.

There are three cargo airplane potential MAC combinations: a cargo airplane and another cargo airplane, a cargo airplane and a general aviation airplane, and a cargo airplane and a passenger airplane. MITRE calculated that the conditional pair probability for two cargo airplanes is 0.324, for a cargo and general aviation airplane, 0.174, and for a cargo and passenger airplane, 0.503 (Row 1 of Table V–1 in the full Regulatory Evaluation).

These conditional pair probabilities are based on cargo airplane proximity with other airplanes. However, passenger airplanes are already equipped with CAS, thereby reducing their risk of a MAC. The cargo/passenger conditional pair probability is multiplied by the MITRE-estimated passenger-equipped CAS risk ratio of 0.092 to obtain the NMAC cargo/passenger conditional risk probability (Row 3 of Table V–1 in the full Regulatory Evaluation). This calculation results in a cargo/passenger NMAC probability of 0.046 and a total NMAC risk of 0.544 for all combinations (Row 3, Column 4 of Table V–1 in the full Regulatory Evaluation). Finally, the percentage of risk by equipment (Row 5) is determined by dividing the conditional pair probabilities (Row 3) by 0.544. Then, given that there is a cargo airplane MAC, approximately 60 percent of these accidents will be with a cargo airplane, 32 percent will be with a general aviation airplane, and 9 percent will be with a passenger airplane.

The expected number of accidents without the final rule has previously been estimated to be 0.5 over the next 20 years. Multiplying this expected number of cargo accidents by the percentage of risk (or probability in Table V–1 in the full Regulatory Evaluation) by equipment results in the expected number of accidents by equipment. Thus the expected number of cargo airplane MAC accidents without this final rule equals 0.298 with another cargo airplane; 0.160 with a general aviation airplane; and 0.043 with a passenger airplane.

Expected Costs of Accidents

The expected costs of a cargo airplane MAC is equal to the probability of such an accident with another airplane multiplied by the value of averted fatalities and equipment, plus the collateral damages. Unlike accidents occurring on an airport, it is assumed that a midair collision will result in fatalities for all passengers and crew, rather than some percentage attributed to various classifications of injuries. The value per averted fatality is estimated to be $3.0 million. This estimate increased from the $2.7 million used in the IRE because the Department of Transportation increased this value for benefit/cost analysis purposes. Cargo airplanes are valued here at $5 million each with 2 crew for each airplane resulting in an estimated benefit of $22 million per averted MAC. An averted cargo airplane MAC with a general aviation airplane is valued at $23.5 million, with the general aviation (GA) airplane valued at $500,000 with one GA pilot and with three GA passengers. Given the wide range of seating for commercial airplanes, herein the FAA uses a representative 150-seat airplane with a 75 percent load factor. With such a passenger airplane valued at $30 million dollars, then an averted midair collision with a cargo airplane is valued at $396.5 million. The expected averted value of a cargo airplane MAC then is the percent of expected accidents by equipment multiplied by the value of the averted accidents, summed for the three possible cases, or approximately $27 million in a 20 year time period.

Collateral damage is the damage on the ground that occurs as a result of a MAC. Collateral damage may be the greatest cost of a MAC. However, the costs of collateral damage are very dependent on where the accident occurs. If the MAC occurs over a relatively unpopulated area, the costs of the collateral damage may be relatively low. However, even in unpopulated areas collateral damage can be serious and costly. For example, collateral damage from a MAC could start a fire with ensuing damage. The FAA assumed a low collateral damage estimate of $1 million, essentially a couple of buildings and no loss of life.

The expected total averted loss equals the sum of expected accident loss by equipment plus the $1 million collateral damage. This estimate is very conservative in not including emergency response and legal/court costs estimated at approximately $120,000 per averted fatality. The total expected loss is approximately $28 million over twenty years. However, operators of approximately 65 percent of the existing cargo fleet have voluntarily equipped their airplanes with TCAS. Therefore, only 35 percent of the fleet will undergo the costs of installing TCAS purely as a result of this rule. Reflecting the voluntary compliance of 65 percent of the air cargo fleet, the total benefit of this rule is reduced to approximately $10 million ($28 million multiplied by .35).

Sensitivity Analysis

The estimated benefit of $10 million is the product of an expected accident rate, the percent of the fleet whose operators have not voluntarily complied, and the expected preventable loss of a midair collision with a cargo airplane and another airplane. As the above discussion just outlined the value of a preventable midair collision is many times greater than $10 million.

This section discusses how sensitive the benefit estimate is to changes in the expected number of accidents.

The above discussion uses a 0.5 expected number of accidents throughout. Earlier in the Pre-TCAS II Accident Rate section the FAA outlined four different methods to establish a reasonable expected number of midair collisions involving a cargo airplane. If the cargo accident rate equaled that of the passenger airplane rate used in the FAA 1988 regulatory analysis of TCAS on passenger airplanes, the expected number of midair collisions involving a cargo airplane was 2.67 accidents over 20 years. The FAA believes that figure is too high, nevertheless 2.67 was the high estimate. The lower bound estimate of 0.1 was based on total cargo departures.

If the accident rate equals 2.67 accidents, instead of 0.5, then the expected benefits increase from $10 million to $53.4 million. On the other hand if the accident rate is 0.1 the expected benefits decrease to $2.0 million.

To further develop the sensitivity range, the expected benefit is based just on a cargo airplane colliding with just one of the three possible airplane types. If the number of expected accidents is 2.67 and the cargo airplane collides with an average passenger airplane, the expected benefit is $370.5 million. If the number of expected accidents are 0.5 and the collision occurs between two cargo airplanes, the expected benefit is $4.9 million. If the expected accidents are 0.1 and the air cargo airplane collides with a general aviation airplane, the expected benefit is $1.1 million.

The sensitivity analysis reveals that various conservative changes to key parameters lower the expected benefits, but these values are relatively close to the base case of $10 million. On the other hand, changing the parameters to the high end of the range results in substantial increases in estimated benefits. Even though the FAA believes the higher estimates are not likely, the decision risk here is not to underestimate key parameters.

Number of Near Mid Air Collisions (NMAC's)

Unfortunately, the risk of a MAC as measured by NMACs has not declined. Table V–2 in the full Regulatory Evaluation shows the reported number of NMAC's involving at least one cargo plane during the ten year period 1992 through 2001. During this period, there has been a total of 28 NMAC's, or about 3 NMAC's per year. The number of NMAC's has ranged from a low of zero in 1993 and 1995 to a high of six in 2001. Six NMAC's is particularly troubling given the most recent MAC and the 1999 NMAC with the DC–10 and L1011 cargo airplanes where an eyewitness said that the airplanes were 50 to 100 feet apart.

Summary of Benefits

This final rule requires that all part 121, 125, and 129 airplanes with a MCTOW greater than 33,000 pounds, operating in the U.S. airspace be equipped with a collision avoidance system. The rule will provide an airspace where virtually all large airplanes are protected by Collision Avoidance Systems which, in turn, reduces the risk of mid-air collisions involving at least one cargo airplane. Further, this reduction in risk could avert an accident with a cost savings many times the greater than the cost of compliance. The recent midair collision in Europe is a sad reminder that reductions in probability and associated benefit estimates pale next to the human and monetary costs of an actual tragedy.

This final rule also responds to a Congressional mandate, responds to the petition for rulemaking from the Independent Pilots Association, responds to NTSB Safety Recommendations, and responds to the hundreds of professional airline pilots who commented on the NPRM requesting that this rule be implemented as soon as possible.

Costs of the Final Rule

Part 121 All-Cargo Operator Costs

The estimated part 121 cargo operator compliance costs include equipment, installation, additional maintenance and operating costs, and pilot training costs. After reviewing the information received from manufacturers and carriers, the FAA concluded that the original unit cost data used in the NPRM are still valid. However, since the NPRM was published, the affected fleet has changed and in the final rule the FAA extended and revised the compliance date from 3 years to an estimated 2 years October 31, 2003, to December 31, 2004. Therefore, the total cost of the final rule differs from that of the NPRM because of the change in the number of affected airplanes and the reduction in the compliance time.

The three TCAS II manufacturers reported that the average cost of TCAS II elements, as described above, for a transport category cargo airplane is between $130,000 and $200,000. One company indicated that if purchased in quantity, the cost of a TCAS II system would be between $80,000 to $145,000 per airplane. The manufacturers also estimated that it would cost between $50,000 and $70,000 (depending upon the specific airplane model) to install a TCAS II unit on an existing airplane. This resulted in a possible range of prices for a TCAS II system installed in an existing airplane of $130,000 to $270,000, or an average of $200,000. The actual price would depend on a number of factors, including: (1) The type of unit installed, (2) the number of units ordered, and (3) whether or not it was necessary to include a display unit in the purchase price. Some airplanes may not need a separate TCAS display unit because the TCAS information can be displayed on an airplane's existing EFIS (Electronic Flight Information Display System).

Based on these reported costs, for cost calculating purposes, the FAA used $211,000 for the initial costs of installing a TCAS II system into an existing airplane. This figure is estimated to include the necessary spare parts inventory.

To calculate the total discounted present value of the compliance costs of this final rule, the FAA assumed that, given a 2-year time period to install TCAS for the first time, the cargo air carrier would minimize its airplane's time out-of-service by installing TCAS II during a regularly scheduled major maintenance (C or D) check. The FAA further assumed that equipping the total existing air cargo fleet would be spread evenly over the entire 2-year compliance period due to potential maintenance scheduling conflicts and potential maintenance personnel overtime if every cargo air carrier were to try to schedule this installation in year 2. The FAA estimates that the undiscounted initial capital costs of retrofitting the existing part 121 turbine-powered all-cargo fleet with TCAS II will be approximately $67,000,000.

The three TCAS II manufacturers reported that the TCAS II element costs would be identical for new and for existing airplanes. The FAA estimates that the initial (equipment plus installation) cost per newly manufactured cargo part 121 turbine-powered airplane will be $171,000.

Based on 80 newly manufactured cargo airplane purchases over the 20-year analysis period, the FAA has estimated that the total non-discounted initial costs for purchasing and installing TCAS II in newly manufactured part 121 turbine-powered cargo airplanes will be approximately $14 million.

In addition to the initial costs of the TCAS II units, the air carriers will also incur annual operation and

maintenance (O&M) expenses. The FAA estimates the annual O&M expenses for TCAS II units to be $1 per flight hour. Based on an estimated utilization rate of 2,000 hours per airplane per year, and the fleet flight hours estimated in the Regulatory Evaluation, the FAA estimates that the total non-discounted O&M expenses for the existing fleet will be approximately $12,000,000 and $2,000,000 for the newly manufactured fleet.

The TCAS II equipment will increase the airplane's weight and, thereby, will increase the airplane's annual fuel costs to transport the additional weight. The FAA estimates that the incremental fuel costs resulting in the weight added by the TCAS II system will be approximately $0.36 per flight hour. This results in a total non-discounted incremental fuel cost of approximately $4,000,000 for the existing fleet and $605,000 for the newly manufactured fleet.

Air cargo flight crewmembers who have not trained on TCAS II will need such training to obtain the necessary knowledge, skills, and abilities to safely conduct operations in a TCAS II environment. The FAA estimates that the cost of pilot training will be approximately 0.05 times the cost of the TCAS unit itself. This results in a training cost of approximately $7,000 per unit per year. The total non-discounted cost of pilot training, for the 20-year analysis period, is estimated to be approximately $43,000,000 for the existing fleet and $6,000,000 for newly manufactured cargo airplanes.

The FAA estimates that the total undiscounted TCAS II costs of the final rule, for the existing part 121 turbine-powered all-cargo fleet, during the 20-year analysis period, will be approximately $127,000,000. We also estimate that the discounted present value of the total costs of the final rule, for the existing part 121 turbine-powered all-cargo fleet over the next 20 years, will be approximately $92,000,000.

The FAA estimates that the total undiscounted TCAS II costs of the final rule, for the newly manufactured part 121 turbine-powered all-cargo fleet, during the 20-year analysis period, will be approximately $22,000,000. We also estimate that the discounted present value of the total costs of the final rule, for the newly manufactured fleet over the next 20 years, will be approximately $11,000,000.

Thus, the FAA estimates that the total undiscounted costs of the final rule for the existing and future manufactured part 121 turbine-powered all-cargo fleet, during the 20-year analysis period, will be approximately $149,000,000. The discounted present value of the total costs of this portion of the final rule over the next 20 years will be approximately $102,000,000.

The final rule requires the installation of TCAS I, (or equivalent), on all part 121 piston-powered cargo airplanes with a MCTOW greater than 33,000 lbs. The FAA estimates that the total initial and installation costs of TCAS I on an existing part 121 cargo piston-powered airplane would be approximately $75,000. This figure is estimated to include the necessary spare parts inventory.

To calculate the total discounted present value of the compliance costs of the final rule, the FAA assumed that, given the 2-year time period to retrofit TCAS I equipment, the cargo air carrier would minimize its airplane's time out-of-service by installing TCAS I during a regularly scheduled major maintenance (C or D) check. The FAA further assumed that equipping the total air cargo fleet would be spread evenly over the entire 2-year compliance period due to potential maintenance scheduling conflicts and potential maintenance personnel overtime if every cargo air carrier were to try to schedule this installation in year 2. The FAA estimates that the undiscounted initial costs of retrofitting the existing part 121 piston-powered all-cargo fleet greater than 33,000 lbs. MCTOW with TCAS I will be approximately $2,000,000. In addition to the capital costs of the TCAS I units, the air carriers will also incur annual O&M expenses. The FAA estimates that the annual O&M expenses for TCAS I units to be $1 per flight hour. Based on an estimated utilization rate of 2,000 hours per airplane per year, the FAA estimates that the total non-discounted O&M expenses for the existing fleet will be approximately $1,000,000.

The TCAS I equipment will increase the airplane's weight and, thereby, will increase the airplane's annual fuel costs just to transport the additional weight. The FAA estimates that the incremental fuel costs resulting in the weight added by the TCAS I system will be approximately $0.36 per flight hour, based on the weight of TCAS II. This results in a total non-discounted incremental fuel cost of approximately $365,000 for the existing fleet.

Air cargo flight crewmembers who have not trained on TCAS I will need such training in order to obtain the necessary knowledge, skills, and abilities to safely conduct operations in a TCAS I environment.

The FAA estimates that the cost of pilot training will be approximately 0.05 times the cost of the TCAS unit itself. This results in a training cost of approximately $3,800 per unit per year. The total non-discounted cost of pilot training for the 20-year analysis period is estimated to be approximately $3,500,000 for the existing fleet.

The FAA estimates that the total undiscounted TCAS I costs of the final rule, for the existing part 121 piston-powered all-cargo fleet during the 20-year analysis period, will be approximately $7,000,000. The discounted present value of the total costs of the final rule for the existing fleet over the next 20 years will be approximately $4,000,000.

It is anticipated that the existing part 121 fleet that will require TCAS I installation as a result of this final rule will not change in the study period. Therefore, the FAA does not expect additional costs.

The FAA estimates that the total undiscounted costs of the final rule for the part 121 all-cargo fleet, during the 20-year analysis period, will be approximately $156,000,000. The discounted present value of the total costs of the final rule for part 121 all-cargo carriers over the next 20 years will be approximately $107,000,000.

Part 125 All-Cargo Commercial Operator Costs

Part 125 all-cargo operators compliance costs and methodology are the same as those used to develop the cost estimates for part 121 all-cargo operators. For the 25 part 125 airplanes requiring TCAS II (or equivalent) as a result of this rule, the total estimated cost is approximately $10 million with a present value of approximately $7 million. For the 27 part 125 airplanes requiring TCAS I (or equivalent) as a result of this rule, the total estimated cost is $5 million with a present value cost approximately equal to $4 million.

It is anticipated that no additional newly manufactured airplanes will be produced for part 125 commercial operators in the 20-year study period. Therefore, no additional compliance cost for newly manufactured airplanes is anticipated for part 125 operations.

The total non-discounted compliance costs of collision avoidance system requirements for the part 125 operators are estimated to be approximately $15,000,000. The corresponding present value costs are estimated to be approximately $11,000,000.

Total Incremental Costs of the Final Rule

The total non-discounted estimated compliance costs of collision avoidance system installations on part 121 all-cargo airplanes and part 125 all-cargo commercial operators, over the next 20 years, are estimated to be approximately $172,000,000. The corresponding present value costs are estimated to be approximately $118,000,000.

Benefits and Costs Comparison

The installation and use of TCAS for cargo airplanes is projected to reduce the probability of a cargo airplane MAC by 94% and a cargo/passenger MAC by 17%. To obtain this benefit will cost operators slightly under $118 million in present value terms over 20 years.

A 20 percent chance of a midair collision involving a cargo airplane can result in accident values from under $10 million to hundreds of millions of dollars. In the least costly case, a cargo airplane could have a midair collision with a general aviation airplane with no collateral damage. If a midair collision occurs over Los Angeles, San Diego, and other metropolitan areas, significant collateral damage can easily exceed hundreds of millions of dollars. MITRE estimated slightly more than 50 percent of all midair collisions are expected to occur over the suburbs or cities. With no collateral damage a collision with a large passenger airplane can result in costs well more than $300 million. The worst MAC occurred in 1996 with 349 fatalities. Preventing such an accident is worth over a billion dollars.

The benefits of the final rule of the proposed rule equal approximately $10,000,000. This benefit estimate is based upon avoiding a statistical 0.5 air cargo airplane midair collision with another airplane. If the expected number of accidents is reduced to 0.1 avoided midair collisions, then the estimated benefits decline to $1.1 million. Even though expected benefits are expressed in fractions of a preventable accident, a midair collision involves *two* airplanes with *no* survivors. If an accident does occur the benefits can easily exceed the cost of this rule.

Despite the estimated dollar benefits being less than the estimated costs, the FAA believes the qualitative benefits justify the costs. The facts are that collision avoidance devices have prevented MACs and that midair collisions with cargo airplanes have occurred. This final rule will help to reduce the risk of MACs and NMACs. This risk includes six NMACs in 2001, one NMAC of less than 100 feet in 1999 and now two MACs involving cargo and passenger airplanes. Given these circumstances it is not surprising there is substantial favorable public interest in this rule. This final rule responds to a Congressional mandate, responds to the petition for rulemaking from the Independent Pilots Association, and responds to NTSB safety recommendations. Hundreds of professional airline pilots who commented on the NPRM requested that this rule be implemented as soon as possible. Much of the air cargo fleet is already in compliance with the rule by voluntary action by the carriers and most of the remaining air cargo fleet is scheduled to be in compliance by December 31, 2004.

Therefore, the FAA believes that the benefits of this proposed rulemaking justify the projected costs.

Final Regulatory Flexibility Analysis

Introduction and Purpose of This Analysis

The Regulatory Flexibility Act of 1980 (RFA) establishes "* * * as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a "significant economic impact on a substantial number of small entities." If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

The FAA determined that this proposal results in a significant economic impact on a substantial number of small entities. The purpose of this analysis is to ensure that the agency has considered all reasonable regulatory alternatives that will minimize the rule's economic burdens for affected small entities, while achieving its safety objectives.

Reasons for the Rule

The Traffic Alert and Collision Avoidance System (TCAS) was developed to minimize the possibility of a midair collision by providing an on-board safety back-up system that operates independently of the air traffic control (ATC) system. Beginning December 30, 1990, in the United States, a TCAS II system was required in certain part 121, 125 and 129 airplanes with more than 30 passenger seats. After December 31, 1995, a TCAS I system was required in all part 121 airplanes with 10 to 30 passenger seats. Cargo airplanes were not covered.

This rule is being promulgated because the FAA believes that the risk of midair collisions and potential collateral damage after a collision involving a cargo airplane is too high and that this rule, if implemented, will reduce this risk. In addition, the 106th Congress enacted Pub. L. 106–18 that directs the FAA Administrator to require, in part, that certain cargo airplanes be equipped with collision avoidance technology by December 31, 2002. The law provides for an extension of up to 2 years.

Significant Issues Raised by the Public Comments in Response to the IRFA

There were no public comments that directly addressed the IRFA. However, a comment was made by a small entity. This comments is reproduced below.

USA Jet Airlines, said, in part, "Further, it is our position that a rash of mechanical and software technologies are becoming foisted upon aircraft without regard to fleet size, aircraft age or the existence of satisfactory equipment already on the aircraft. For example, in the next 3 years alone, a DC–9 and Falcon operator will, under proposed rules/regulations and existing rules/regulations pay $250,000 per aircraft for TCAS II, $125,000 per aircraft for the Terrain Awareness Warning System (TAWS) and a significant sum for the Domestic RVSM system being discussed by the FAA. We have not seen any indication of a need for these systems in the all-cargo industry.

While certainly any of these proposals have merit in that they each seek a positive goal, the cost of the implementation of all systems, precludes their very implementation for many carriers."

Several other individual respondents also expressed a concern about the cost of the proposed regulation. Some small entities expressed a desire for more time to implement the final rule. One of these small entities requested at least a five-year compliance period. Another commenter said this rule will put small firms out of business.

The FAA considers that these comment are reasonable for small firms. However, because the final rule is a Congressional Mandate, the FAA has little flexibility in changing the final rule. However, the FAA did reduce the TCAS requirement from TCAS II to TCAS I for piston-powered airplanes because the FAA does not believe that piston-powered airplanes have the

necessary performance to respond to RAs. In addition, the FAA eliminated the requirement, in the NPRM, for TCAS I in turbine-powered airplanes of less than 33,000 pounds MCTOW. The FAA also set the rule's compliance date at the latest date allowed by the Congressional Mandate.

Number and Types of Small Entities Impacted

Under the RFA, the FAA must determine whether or not a final rule significantly affects a substantial number of small entities. This determination is typically based on small entity size and cost thresholds that vary depending on the affected industry. The Small Business Administration (SBA) size standards are shown on their Web site *(http://www.sba.gov)* and are based on the North American Industry Classification (NAICS).

Entities potentially affected by the final rule include: scheduled freight air transportation (NAICS Subsector 481112) and nonscheduled chartered air transportation (NAICS Subsector 481212). The FAA used a guideline of 1,500 employees or less per firm as the criteria for the determination of a small business. This corresponds with the SBA's definition of a small business in these areas. It should be noted that the IRE used the SIC (Standard Industrial Classification) numbers to determine the size of a small business. However, the SIC has been replaced by the NAICS. In spite of this the size of a small business has remained the same, at 1,500 or less employees.

To determine which entities will be affected, the FAA segmented the various types of firms into four groups as follows:

1. Part 121 all-cargo air carriers operating turbine-powered airplanes with a MCTOW greater than 33,000 pounds. This definition was the same in the IRE and the FRE. There are 24 firms in Group 1.

2. Part 121 all-cargo air carriers operating turbine-powered airplanes of 33,000 pounds or less MCTOW and piston-powered airplanes regardless of weight. IRE)

As a result of the change in the rule from the NPRM, the definition of Group 2 changed to: Part 121 all-cargo air carriers operating piston-powered airplanes greater than 33,000 pounds MCTOW in the FRE.

There are 7 firms in Group 2.

3. Part 125 all-cargo commercial operators who fly turbine-powered airplanes with a MCTOW greater than 33,000 pounds. This definition was the same in the IRE and the FRE. There are 7 firms in Group 3.

4. Part 125 all-cargo commercial operators flying turbine-powered airplanes of 33,000 pounds or less MCTOW and piston-powered airplanes regardless of weight. (IRE)

As a result of the change in the rule from the NPRM, the definition of Group 4 changed to: Part 125 all-cargo air carriers operating piston-powered airplanes greater than 33,000 pounds MCTOW in the FRE.

There are 14 firms in Group 4.

For simplicity these entities will be referred to as Group 1, 2, 3, or 4 in the remainder of this study.

It should be noted that Groups 1 and 3 have the same definition in both the IRE and the FRE. However, the rule was modified between the NPRM and the Final Rule. The major change in the rule was the elimination of all airplanes with a MCTOW less than 33,000 pounds. Therefore, the definition of Groups 2 and 4 changed, as shown above. Groups 2 and 4 now contain only piston-powered airplanes with a MCTOW greater than 33,000 pounds. If the number of Group 2 and Group 4 small entities had remained the same between the IRE and the FRE the change in the rule would have eliminated thirteen Group 2 small entities and two Group 4 small entities. In practice, however, the combination of the change in the rule and other factors changed the number of small entities in each group.

Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The final rule does not add any specific projected reporting, record keeping, and other requirements.

Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities

FAA potentially reduced the economic impact on small entities in two ways. First, the FAA eliminated the NPRM TCAS1 requirement for turbine-powered airplanes with a MCTOW less than 33,000 pounds. Second, instead of a TCAS II requirement for piston-powered airplanes with a MCTOW greater than 33,000 pounds, the FAA required the use of TCAS I. The FAA determined that piston-powered airplanes of this weight lacked the performance to respond to TCAC II RAs. TCAS I cost less than TCASII. As small entities tend to be the primary operators of these airplanes, these two FAA actions are expected to benefit small entities.

Finally, the FAA allowed the maximum amount of time for compliance that the Congressional Mandate allowed.

Cost and Affordability for Small Entities

The FAA estimated the financial impact on Group 1 small entities in two steps. First, the FAA multiplied a compliance cost of $223,000 cost per airplane by the operator's fleet size to obtain an operator estimated one-year cost of this rulemaking. Then the FAA calculated an affordability measure by dividing this cost by the operator's 2001 (parent company) revenues. As 2 percent is often less than the annual rate-of-inflation, the FAA believes that a compliance cost of 2 percent or less is affordable.

Group 1 consists of 24 firms that qualify as small entities (see Table XI–1 in the full Regulatory Evaluation). Financial data was available for all but one of these firms. Two of these firms had recently or were emerging from Chapter 11 bankruptcy and were not included in the financial analysis. Seven of the Group 1 firms incur no financial impact because they did not operate aircraft that would be required to have TCAS. The remaining 14 firms 1 had compliance costs as a percentage of revenue ranging from 0.8% to 38.2%. Eleven of these firms are negatively impacted by the rule because their compliance cost as a percentage of revenue is 2 percent or greater. Of the 11 firms with a value above 2% for the ratio the percentage ranges from 2.9 percent to 38.2 percent.

In a similar fashion, the FAA estimated the impact on Group 2 small entities in two steps. In an effort to raise the safety standard and to minimize the impact on small firms, for firms in Group 2, the FAA proposed requirements are expected to be met by an investment of $82,000. For the first step, the FAA multiplied the cost per airplane of $82,000 by the operator's fleet size to obtain the estimated one-year compliance cost of this rulemaking for each operator. This estimated operator compliance cost is then divided by the operator's 2001 (parent company) revenues. This ratio provides a measure of affordability.

Group 2 consists of a total of 7 firms (Table XI–2 in the full Regulatory Evaluation) that qualified as small businesses, based on the criteria of 1,500 employees per firm. Financial data was available for all but one of these firms. The financial data indicated that five of the six firms were adversely impacted by this final rule. The value of this ratio of cost per revenue is 2 percent or less for 1 of the 7 Group 2 firms. For the remaining Group 2 firms the value of this ratio ranged from 2.2 percent to 9.4 percent.

The FAA estimates that for the firm with no public financial data available was also adversely affected by the rule. Therefore, the FAA estimates that six of the Group 2 firms were adversely affected by the final rule.

The FAA estimated the financial impact on Group 3 entities using the same methodology as that for Group 1. Group 3 consists of 7 firms (Table XI–3 in the full Regulatory Evaluation) that qualified as small entities. Financial data was available for two of the seven Group 3 firms. Neither of the two firms had a value of this ratio of less than 2%. The two firms had ratio values ranging from 5.9 percent to 25.5 percent. In both cases the financial data indicated that the firms will be adversely affected by the final rule. Therefore, the FAA estimates that all seven firms will be adversely impacted.

The FAA estimated the financial impact on Group 4 entities using the same methodology as that used for Group 2. Group 4 consists of 14 firms (Table XI–4 in the full Regulatory Evaluation) that qualified as small entities. Financial data was available for four of these fourteen 4 firms. One of the four firms had a value of this ratio of less than 2%. The remaining three firms had ratio values ranging from 10.9 percent to 32.8 percent. The FAA estimates that 13 of the 14 Group 4 firms will be adversely affected by the final rule.

Of the 33 firms considered to be small, and for which information was available, over 36 percent are estimated to have costs less than 2 percent of annual revenue. For these firms the FAA believes compliance is affordable. For the remaining 64 percent of the firms the FAA estimates that there will be a significant, negative economic impact.

Competitive Analysis

Nearly all of the firms considered to be small entities and with an affordability measure greater than 2 percent appear to operate in markets with little or no competition. These markets require very specialized service such as remote air delivery service. Of the 31 part 121 only two were headquartered in the same city and most were located in remote locations. All of the part 125 operators, by regulation, provide non-competitive services. Part 125 operators are restricted from offering for-hire services to the public, such as advertising or marketing. To provide for-hire services, these operators must, in effect, have the customer find them. Thus in terms of competition, this rulemaking is expected to have a minimal competitive impact.

Disproportionality Analysis

Relative to larger air cargo operators, smaller air cargo operators are likely to be disproportionately impacted by this rulemaking. Large cargo carriers' cost is a smaller percentage of their annual revenue, than those of the smaller cargo carriers.

Business Closure Analysis

Seven firms have an extremely high compliance cost per annual revenue ratios (compliance cost greater than 10% of annual revenue). Some or even many of these firms could potentially face a business closure due to this final rulemaking. The FAA does not have sufficient information to provide a more refined estimate of the potential business closures.

Analysis of Alternatives

The FAA acknowledges that the rule is likely to have a significant economic impact on a substantial number of small entities. For the final rule the FAA changed the NPRM requirements in way that may benefit small entities. The agency considered various four alternatives for the final rule. These alternatives are:

1. Issue the rule as proposed in the NPRM.

2. Exclude small entities.

3. Extend compliance deadline for small entities.

4. Establish lesser technical requirements for small entities.

Based upon safety considerations the FAA concludes that the option to exclude small entities from all the requirements of the final rule is not justified.

The FAA considered options that will lengthen the compliance period for small operators. The FAA believes that the compliance requirement will place only a modest burden on small entities. Small entities will have 2 years from the effective date of the rule to complete installation work. Further time extensions only provide modest cost savings and leave the system safety at risk. In addition, the Congressional Mandate does not provide for a time extension beyond December 31, 2004.

The FAA considered establishing lesser technical requirements for small entities. However, the FAA believes that this will result in a lower level of safety than will the implementation of the final rule. The FAA believes that the greatest safety benefits will come from a common collision avoidance system for all operators who fly in the same airspace under the same operating environment.

In contrast to the NPRM, the FAA eliminated the CAS requirement for the owners of turbine-powered airplanes weighing less than 33,000 MCTOW. Operators of these airplanes tend to be small entities.

The FAA considered alternatives that would lessen the economic burden to small entities and achieve the needed safety objectives. To that end the FAA removed the CAS requirement for turbine-powered airplanes weighing less than 33,000 MCTOW and the required only TCASI for piston-powered airplanes. Given the real safety concerns and the Congressional mandate, the FAA worked hard to provide additional flexibility to small entities and provide the safe operating environment expected.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential affect of this final rule and has determined it uses international standards as the basis for U.S. standards. Thus this final rule is in accord with the Trade Agreement Act.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the

Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This final rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any 1 year.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security measures.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 4901, 44903–44904, 44912, 46105.

■ 2. In § 121.356, revise the section heading and add paragraph (d) to read as follows, effective on May 1, 2003:

§ 121.356 Collision avoidance system.

* * * * *

(d) Effective May 1, 2003, if TCAS II is installed in an airplane for the first time after April 30, 2003, and before January 1, 2005, no person may operate that airplane without TCAS II that meets TSO C–119b (version 7.0), or a later version.

■ 3. Revise § 121.356 to read as follows, effective January 1, 2005:

§ 121.356 Collision avoidance system.

Effective January 1, 2005, any airplane you operate under this part must be equipped and operated according to the following table:

COLLISION AVOIDANCE SYSTEMS

If you operate any—	Then you must operate that airplane with—
(a) Turbine-powered airplane of more than 33,000 pounds maximum certificated takeoff weight.	(1) An appropriate class of Mode S transponder that meets Technical Standard Order (TSO) C–112, or a later version, and one of the following approved units: (i) TCAS II that meets TSO C–119b (version 7.0), or takeoff weight a later version. (ii) TCAS II that meets TSO C–119a (version 6.04A Enhanced) that was installed in that airplane before May 1, 2003. If that TCAS II version 6.04A Enhanced no longer can be repaired to TSO C–119a standards, it must be replaced with a TCAS II that meets TSO C–119b (version 7.0), or a later version. (iii) A collision avoidance system equivalent to TSO C–119b (version 7.0), or a later version, capable of coordinating with units that meet TSO C–119a (version 6.04A Enhanced), or a later version.
(b) Passenger or combination cargo/passenger (combi) airplane that has a passenger seat configuration of 10–30 seats.	(1) TCAS I that meets TSO C–118, or a later version, or (2) A collision avoidance system equivalent to has a TSO C–118, or a later version, or (3) A collision avoidance system and Mode S transponder that meet paragraph (a)(1) of this section.
(c) Piston-powered airplane of more than 33,000 pounds maximum certificated takeoff weight.	(1) TCAS I that meets TSO C–118, or a later version, or (2) A collision avoidance system equivalent to maximum TSO C–118, or a later version, or (3) A collision avoidance system and Mode S transponder that meet paragraph (a)(1) of this section.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 4. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 5. In § 125.224, revise the section heading and add paragraph (c) to read as follows, effective on May 1, 2003:

§ 125.224 Collision avoidance system.

* * * * *

(c) Effective May 1, 2003, if TCAS II is installed in an airplane for the first time after April 30, 2003, and before January 1, 2005, no person may operate that airplane without TCAS II that meets TSO C–119b (version 7.0), or a later version.

■ 6. Revise § 125.224 to read as follows, effective January 1, 2005:

§ 125.224 Collision avoidance system.

Effective January 1, 2005, any airplane you operate under this part 125 must be equipped and operated according to the following table:

COLLISION AVOIDANCE SYSTEMS

If you operate any . . .	Then you must operate that airplane with:
(a) Turbine-powered airplane of more than 33,000 pounds maximum certificated takeoff weight.	(1) An appropriate class of Mode S transponder that meets Technical Standard Order (TSO) C–112, or a later version, and one of the following approved units: (i) TCAS II that meets TSO C–119b (version 7.0), or a later version. (ii) TCAS II that meets' TSO C–119a (version 6.04A Enhanced) that was installed in that airplane before May 1, 2003. If that TCAS II version 6.04A Enhanced no longer can be repaired to TSO C–119a standards, it must be replaced with a TCAS II that meets TSO C–119b (version 7.0), or a later version. (iii) A collision avoidance system equivalent to TSO C–119b (version 7.0), or a later version, capable of coordinating with units that meet TSO C–119a (version 6.04A Enhanced), or a later version.
(b) Piston-powered airplane of more than 33,000 pounds maximum certificated takeoff weight.	(1) TCAS I that meets TSO C–118, or a later version, or (2) A collision avoidance system equivalent to TSO C–118, or a later version, or (1)(3) A collision avoidance system and Mode S transponder that meet paragraph (a)(1) of this section.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 7. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 41706, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

■ 8. In § 129.18, revise the section heading and add paragraph (c) to read as follows, effective on May 1, 2003:

§ 129.18 Collision avoidance system.

* * * * *

(c) Effective May 1, 2003, if TCAS II is installed in an airplane for the first time after April 30, 2003, and before January 1, 2005, no foreign air carrier may operate that airplane without TCAS II that meets TSO C–119b (version 7.0), or a later version.

■ 9. Revise § 129.18 to read as follows, effective January 1, 2005:

Effective January 1, 2005, any airplane you, as a foreign air carrier, operate under part 129 must be equipped and operated according to the following table:

COLLISION AVOIDANCE SYSTEMS

If you operate in the United States any . . .	Then you must operate that airplane with:
(a) Turbine-powered airplane of more than 33,000 pounds maximum certificated takeoff weight.	(1) An appropriate class of Mode S transponder that meets Technical Standard Order (TSO) C–112, or a later version, and one of the followign approved units; (i) TCAS II that meets TSO C–119b (version 7.0), or takeoff weight a later version. (ii) TCAS II that meets TSO C–119a (version 6.04A Enhanced) that was installed in that airplane before May 1, 2003. If that TCAS II version 6.04A Enhanced no longer can be repaired to TSO C–119a standards, it must be replaced with a TCAS II that meets TSO C–119b (version 7.0), or a later version. (iii) A collision avoidance system equivalent to TSO C–119b (version 7.0), or a later version, capable of coordinating with units that meet TSO C–119a (version 6.04A Enhanced), or a later version.
(b) Turbine-powered airplane with a passenger-seat configuration, excluding any pilot seat, or 10–30 seats.	(1) TCAS I that meets TSO C–118, or a later version, or (2) A collision avoidance system equivalent to excluding any TSO C–118, or a later version, or (3) A collision avoidance system and Mode S transponder that meet paragraph (a)(1) of this section.

Issued in Washington, DC, on March 24, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–7653 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
April 1, 2003

Part IV

Department of Housing and Urban Development

24 CFR Part 202

Revisions to FHA Credit Watch Termination Initiative; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 202

[Docket No. FR–4625–P–01]

RIN 2502–AH60

Revisions to FHA Credit Watch Termination Initiative

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would make several amendments to the Federal Housing Administration (FHA) Credit Watch Termination Initiative. The proposed rule provides for a fully computerized Credit Watch status notification process through use of the FHA Neighborhood Watch Early Warning System. A mortgagee will be considered to be on Credit Watch status if, at any time, it has a default and claim rate of higher than 150 percent of the normal rate, and its origination approval agreement has not been terminated. The proposed rule would also prohibit a mortgagee that has received a notice of proposed termination of its origination approval agreement from establishing a new branch for the origination of FHA-insured mortgages in the lending area covered by the proposed termination. In addition, the proposed rule would establish that the default and claim thresholds underlying the Credit Watch Termination Initiative apply to both underwriting and originating mortgagees. The proposed rule would also codify the definition of "underserved area" that is currently used under the Credit Watch Termination Initiative. Finally, the proposed rule would provide that, for purposes of Credit Watch Termination evaluation, the date of mortgage origination will be considered to be the date the loan transaction commences amortization, rather than the date of endorsement for FHA mortgage insurance.

DATES: *Comment Due Date:* June 2, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Phillip Murray, Director, Office of Lender Activities and Program Compliance, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B–133, Washington, DC 20410; telephone (202) 708–1515 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The FHA Credit Watch Termination Initiative

Homeownership rates in the United States have reached a record level, and the efficient management of the FHA mortgage insurance fund remains a cornerstone of HUD's strategy to further expand housing opportunities. By originating and underwriting insured single family mortgages in accordance with program guidelines, FHA-approved mortgagees are valuable participants in achieving greater access to the housing credit market, particularly for individuals and in geographic areas that have traditionally been under-served.

Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an origination approval agreement (the Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. Some mortgagees, however, have demonstrated high default and claim rates on their FHA-insured portfolios that, although not signifying violations of FHA requirements, are nonetheless unacceptable. As a result, HUD developed the Credit Watch Termination Initiative to identify mortgagees with unsatisfactory performance levels and take ameliorative action at an early stage. HUD's regulations for the Credit Watch Termination Initiative are found at 24 CFR 202.3.

Under the FHA Credit Watch Termination Initiative, FHA systematically reviews mortgagees' early default and claim rates, that is, defaults and claims on mortgagees' loans during the initial 24 months following endorsement. Mortgagees with excessive default and claim rates are considered to be on Credit Watch Status and, in cases of more severe performance deficiencies, HUD may terminate the mortgagee's loan origination approval authority. Credit Watch Status constitutes a warning to a mortgagee that its default and claim rates are in excess of permissible levels, and that failure to achieve improvement may lead to the termination of its Agreement. The Termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board for violations of FHA requirements under 24 CFR part 25.

In a May 17, 1999, **Federal Register** notice (64 FR 26769) HUD advised that it would publish a list of mortgagees that have had their Agreements terminated. HUD has periodically published such notices since May 1999.

II. This Proposed Rule

This proposed rule would make several amendments to HUD's regulations for the FHA Credit Watch Termination Initiative. The proposed changes would strengthen HUD's capacity to safeguard the FHA mortgage insurance fund. This section of the preamble describes the most significant amendments that would be made by the proposed rule.

A. Electronic Notification of Credit Watch Status

Consistent with the goals of the Administration regarding the increased use of technology in government, the proposed rule would allow for electronic Credit Watch monitoring and notification. Specifically, the proposed rule provides that HUD will, on an ongoing basis, review the FHA mortgage claim and default rate of each mortgagee in the geographic region served by a HUD field office. HUD will use its electronic Neighborhood Watch Early Warning System for this purpose. The Neighborhood Watch Early Warning System is available to mortgagees via the FHA Connection at *https://entp.hud.gov/clas/index.html*. This proposed regulatory change would codify the policy first announced in FHA Mortgagee Letter 2001–23, issued on October 21, 2001.[1] This Mortgagee Letter provides instructions for using the Neighborhood Watch Early Warning System for purposes of monitoring performance under the Credit Watch Termination Initiative. A copy of HUD Mortgagee Letter 2001–23 may be obtained through HUD's Client Information and Policy Systems (HUDCLIPS) Internet Home page at *http://www.hudclips.org*.

HUD will no longer provide mortgagees with written notification of placement on Credit Watch Status. Rather, each mortgagee will be responsible for using the Neighborhood Watch Early Warning System to monitor its performance. A mortgagee will be considered to be on Credit Watch Status if, at any time, it has a rate of defaults and claims on insured mortgages originated, underwritten or both in the geographic area served by a HUD field office which exceeds 150 percent of the normal rate, and its Agreement has not been terminated by HUD. Further, the Neighborhood Watch Early Warning System, which is updated monthly, will allow the ongoing tracking of mortgagee performance, allowing for the elimination of the current six-month tracking period for evaluating mortgagees placed on Credit Watch Status.

B. Default and Claim Rates for Placement on Credit Watch Status

Under the current regulation, a mortgagee may be placed on Credit Watch Status if it has a rate of defaults and claims on insured mortgages which exceeds "150 percent but not 200 percent of the normal rate." The regulation, therefore, establishes a "cap" on the default and claim rates for placing a mortgagee on Credit Watch Status. The existing regulation also authorizes HUD to terminate a mortgagee's Agreement if the mortgagee's default and claim rate exceeds 200 percent of the normal rate.

In the past, HUD has used its administrative discretion to focus its resources on those mortgagees with default and claim rates higher than the 200 percent threshold. This has had the potential to create a gap in HUD's Credit Watch monitoring and enforcement efforts, since mortgagees with default and claim rates falling between 200 percent of the normal rate and the higher threshold being used for terminations would neither be placed on Credit Watch Status nor have their Agreements terminated. HUD addressed this potential concern by issuing a series of regulatory waivers of the Credit Watch cap to authorize placement of such mortgagees on Credit Watch Status. This proposed rule would eliminate the need for these regulatory waivers by removing the cap, and providing that a mortgagee will be considered to be on Credit Watch Status if, at any time, it has a rate of defaults and claims on insured mortgages that exceeds 150 percent of the normal rate and its Agreement has not been terminated.

The proposed change would not restrict HUD's ability to terminate a mortgagee whose claim and default rate exceeds 200 percent of the normal rate, but merely provides that such mortgagees will be considered to be on Credit Watch Status unless HUD determines that termination may be appropriate.

C. Limitation on the Establishment of New Branches

In reviewing the Credit Watch Termination process, HUD learned that some mortgagees were establishing new branches for the origination of FHA-insured mortgages subsequent to receiving proposed termination notices for existing branches. The mortgagees would establish the new branches to replace the authority which was lost, or which might be lost, as a result of the proposed termination of the existing branches. The result was that these mortgagees were able to evade the intended effects of the Credit Watch Termination Initiative. HUD's interest is in the mortgagee determining the reasons for its high default and claim rate in a lending area and correcting the underlying causes that led to the termination before the mortgagee is allowed to establish a new branch for the origination of FHA-insured mortgages.

In order for FHA to effectively address this evasion of the intended effect of Credit Watch Termination, this proposed rule would prohibit a mortgagee that receives a notice of proposed termination of its Agreement from establishing a new branch for the origination of FHA-insured mortgages in the lending area covered by the proposed termination notice. Upon the effective date of this regulation at the final rule stage, a mortgagee that is in receipt of a notice of proposed termination may not establish any new branch in the location(s) cited in the proposed termination notice until either: (1) The proposed termination notice is rescinded; or (2) the Agreement for the affected branch or branches has been terminated for at least six months and the Secretary has determined that the underlying causes for termination have been remedied.

D. Inclusion of Underwriting Mortgagees

Under the current Credit Watch Termination regulation, HUD evaluates the performance of a mortgagee based solely on the loans it originates. HUD's Credit Watch Termination evaluation, therefore, excludes underwriting which is an important part of the mortgage loan process. While the mortgagee that originates a loan may also be the mortgagee that underwrites the loan, often there are two different entities involved. Specifically, an FHA approved loan correspondent only originates loans and does not underwrite. Rather, the loan correspondent has "sponsor mortgagees" that perform the underwriting function.

HUD's emphasis on accountability extends beyond the origination of loans to include the mortgagee that underwrites the loan. For example, HUD's regulations provide for the termination of a mortgagee's ability to underwrite FHA loans when the Agreement is terminated pursuant to the Credit Watch Termination Initiative (see 24 CFR 203.3(d)(2)(iv)). HUD has determined that to minimize the risk associated with the FHA single family mortgage insurance programs, HUD should also periodically evaluate the performance of underwriting mortgagees. Accordingly, this proposed rule would include underwriting mortgagees within the scope of the Credit Watch Termination Initiative. The proposed amendment would emphasize HUD's authority to terminate the ability of a mortgagee to originate or underwrite FHA-insured single family mortgages where the mortgagee has demonstrated an unacceptably high default and claim rate. HUD will analyze data for mortgagees that underwrite their own loans, and for mortgagees that underwrite loans for their loan correspondents as well as for mortgagees that underwrite both their own loans and loans for their loan correspondents.

E. Mortgage Origination Date

Under the current regulations for the Credit Watch Termination Initiative, a mortgage is considered to be originated in the same federal fiscal year in which HUD endorses it for FHA mortgage insurance. Although HUD requires that the mortgagee submit a mortgage for endorsement within 60 days after closing (*see* § 203.255(b)), there may be delays in the submission of the endorsement packages. Consequently, the endorsement dates for loans originated during the same period can vary greatly. Given these discrepancies in the timing of endorsement, linking the date of origination to the endorsement date does not allow for the most accurate comparison of loan performance.

This proposed rule would provide that, for purposes of the Credit Watch

[1] The availability of the Neighborhood Watch Early Warning System was first announced in Mortgagee Letter 2000–20, issued on June 6, 2000. Mortgagee Letter 2002–15, issued on July 17, 2002, announces the list of enhancements that have been made to the Neighborhood Watch Early Warning System since issuance of Mortgagee Letter 2000–20. Copies of both these Mortgagee Letters may be obtained via the Internet at *http://www.hudclips.org*.

Termination evaluation, the date of mortgage origination will be considered to be the date the loan transaction commences amortization, rather than the date of endorsement for FHA mortgage insurance. Unlike the date of endorsement, the beginning amortization date is not dependent on the filing of timely paperwork with HUD. Further, Credit Watch analysis is based on default and claim rates. The due date for mortgage payments is established pursuant to the closing date, and mortgage defaults are reported based on these payment due dates. Accordingly, HUD believes that focusing on the amortization date will provide for a more uniform starting date for Credit Watch evaluations and increase the effectiveness of the Credit Watch Termination Initiative.

F. Definition of Underserved Area

HUD's regulation provides that before notification of proposed termination is sent to a mortgagee, the Secretary will review the Census tract area concentrations of the default and claims. This provision of the existing regulations would not be modified by this proposed rule. If the Secretary determines that the excessive rate is the result of mortgage lending in underserved areas, the Secretary may determine not to terminate the origination approval agreement. HUD is aware, however, that predatory lending abuses may occur in underserved areas, and that the excessive rates may be the result of predatory lending. The Secretary will consider this factor, where appropriate, in making a determination.

HUD has announced in Mortgagee Letter 99–15 that, for purposes of the Credit Watch Termination Initiative, the term "underserved area" will have the same meaning as that provided in HUD's regulations for the Government Sponsored Enterprises at 24 CFR part 81. Specifically, § 81.2 of those regulations defines the term "underserved area", in part, to mean:

> [A] Census tract, a federal or state American Indian reservation or tribal or individual trust land, or the balance of a census tract excluding the area within any federal or state American Indian reservation or tribal or individual trust land, having:
> (i) A median income at or below 120 percent of the median income of the metropolitan area and a minority population of 30 percent or greater; or
> (ii) A median income at or below 90 percent of median income of the metropolitan area.

This proposed rule would codify the interpretation of "underserved area" provided in the Mortgagee Letter. Specifically, the proposed rule would amend § 202.3(c)(2) to specify that the term "underserved area" will have the same meaning as that provided in 24 CFR 81.2.

G. Informal Conference Prior to Termination

The regulations provide that prior to termination the mortgagee may request an informal conference with HUD. However, the regulations do not currently specify the timeframes for submission of such a request, nor for the holding of the informal conference. This proposed rule would specify that HUD must receive the written request for the informal conference no later than 30 calendar days after the date of the proposed termination notice. Unless HUD grants an extension, the informal conference must be held no later than 60 calendar days after the date of the proposed termination notice.

H. Reinstatement of Terminated Origination Approval Agreements

The proposed rule would also add a new § 202.3(e) describing the procedures a terminated mortgagee must follow to have its origination approval agreement reinstated. A mortgagee whose origination approval agreement has been terminated may apply for reinstatement if the origination approval agreement has been terminated for the affected branch or branches for at least six months and the mortgagee continues to be an approved mortgagee meeting the general standards of § 202.5 and the specific requirements of §§ 202.6, 202.7, 202.8 or 202.10, and 202.12.

The mortgagee's application for reinstatement must be accompanied by an independent analysis of the terminated office's operations and identifying the underlying cause of the mortgagee's unacceptable default and claim rate. The independent analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under the government auditing standards issued by the General Accounting Office. The application must also contain a corrective action plan addressing each of the issues identified in the CPA analysis and include evidence demonstrating that the mortgagee has implemented the corrective action plan. The Secretary will grant the mortgagee's application for reinstatement if the mortgagee's application is complete and the Secretary determines that the underlying causes for the termination have been satisfactorily remedied.

III. Small Business Concerns Related to Credit Watch Termination Initiative

With respect to termination of the mortgagee's Agreement, or taking other appropriate enforcement action against a mortgagee, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel." To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices that are provided to small business concerns at the time the enforcement action is undertaken. The language is as follows:

> **Your Comments Are Important**
>
> The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], you will find the necessary comment forms at *http://www.sba.gov.ombudsman* or call 1–888–REG–FAIR (1–888–734–3247).

In accordance with its notice describing HUD's actions on the implementation of SBREFA, which was published on May 21, 1998 (63 FR 28214), HUD will work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that this proposed rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows.

This proposed rule would make several amendments to HUD's regulations for the FHA Credit Watch Termination Initiative. First, consistent with the goals of the Administration regarding the increased use of technology in government, the proposed rule would allow for a fully computerized Credit Watch notification process through use of the FHA Neighborhood Watch Early Warning System. This proposed change would provide for a streamlined and more effective method of monitoring mortgagee performance and for notifying poor performing mortgagees that are in danger of having their Agreements terminated by HUD. The change would not impose an undue burden on small entities, since it merely codifies existing HUD policy previously announced through a Mortgagee Letter. Further, the majority of mortgagees (small and large) participating in the FHA mortgage insurance programs currently have access to the FHA Internet Connection that is used to provide such notification.

The proposed rule would also remove the regulatory cap on the Credit Watch default and claim rates, and providing that a mortgagee will be considered to be on Credit Watch Status if it has a default and claim rate on insured mortgages that exceeds 150 percent of the normal rate and its Agreement has not been terminated. This revision would not impose a significant economic impact on small entities, since the entities that would be affected by this change are poor performing mortgagees that are already subject to termination of their Agreements.

The proposed rule also would prohibit a mortgagee that has received a notice of proposed termination of its Agreement from establishing a new branch for the origination of FHA-insured mortgages in the lending area covered by the proposed termination. The mortgagees to which this change would be applicable are those that already have been notified by HUD that their default and claim rates exceed an acceptable standard in specified geographic areas and they are at risk of having their FHA mortgage origination approvals terminated. The appropriate logical response to a notice of proposed termination is not to have this same mortgagee open a new branch in the same lending area before risks have been mitigated and problems corrected. The intent of this rulemaking is to close a loophole used by mortgagees to evade HUD's existing procedure for reviewing losses to the insurance funds.

The proposed rule would also establish that the default and claim thresholds underlying the Credit Watch Termination Initiative apply to both underwriting and originating mortgagees. This amendment will ensure that the performance of all mortgagees involved in FHA-insured mortgage transactions is evaluated. To the extent that the proposed change would have an economic impact on small underwriting mortgagees who are presently not covered by Credit Watch Termination, it will be as a result of actions taken by the mortgagees themselves—that is, failure to undertake the sound business practices necessary to maintain default and claim rates at an acceptable level.

The proposed rule would also provide that, for purposes of the Credit Watch Termination evaluation, the date of mortgage origination would be considered to be the date the loan transaction commences amortization, rather than the date of endorsement for FHA mortgage insurance as provided in the current regulation. This proposed change would not impose any economic burden on small mortgagees. Rather, the change would improve the accuracy of Credit Watch Termination evaluations by conforming HUD's definition of the mortgage origination date to the beginning amortization date used to report defaults. Finally, the proposed rule would codify existing definition of the term "underserved area" for purposes of Credit Watch Termination determinations. This proposed amendment would merely codify existing policy and would, therefore, not impose any new economic burden on mortgagees.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

This proposed rule would not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c), this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number applicable to 24 CFR part 202 is 14.20.

List of Subjects in 24 CFR Part 202

Administrative practice and procedure, Home improvement, manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 202 as follows:

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

1. The authority citation for 24 CFR part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

2. Amend § 202.3 by revising paragraph (c)(2) and adding paragraph (e) to read as follows:

§ 202.3 Approval status for lenders and mortgagees.

* * * * *

(c) * * *

(2) *Termination of the origination approval agreement.* (i) *Scope and frequency of review.* The Secretary will review, on an ongoing basis, the number of defaults and claims on mortgages originated, underwritten, or both, by each mortgagee in the geographic area served by a HUD field office. HUD will make this rate information available to mortgagees and the public through electronic means and will issue instructions for accessing this information through a Mortgagee Letter. For this purpose, and for all purposes under paragraph (c) of this section, a mortgage is considered to be originated in the same federal fiscal year in which its amortization commences. The Secretary may also review the insured mortgage performance of a mortgagee's branch offices individually and may terminate the authority of the branch or the authority of the mortgagee's overall operation.

(ii) *Credit Watch Status.* Mortgagees are responsible for monitoring their default and claim rate performance. A mortgagee is considered to be on Credit Watch Status if, at any time, the mortgagee has a rate of defaults and claims on insured mortgages originated, underwritten, or both, in an area which exceeds 150 percent of the normal rate and its origination approval agreement has not been terminated. A poor performing mortgagee on Credit Watch Status is in danger of having its origination approval agreement terminated by HUD.

(iii) *Effect of default and claim rate determination.* (A) The Secretary may notify a mortgagee that its origination approval agreement will terminate 60 days after notice is given, if the mortgagee had a rate of defaults and claims on insured mortgages originated, underwritten, or both, in an area which exceeded 200 percent of the normal rate and exceeded the national default and claim rate for insured mortgages. The termination notice may be given without prior action by the Mortgagee Review Board.

(B) Before the Secretary sends the termination notice, the Secretary shall review the Census tract concentrations of the defaults and claims. If the Secretary determines that the excessive rate is the result of mortgage lending in underserved areas, as defined in 24 CFR 81.2, the Secretary may determine not to terminate the origination approval agreement.

(C) Prior to termination the mortgagee may submit a written request for an informal conference with the Deputy Assistant Secretary for Single Family Housing or that official's designee. HUD must receive the written request no later than 30 calendar days after the date of the proposed termination notice. Unless HUD grants an extension, the informal conference must be held no later than 60 calendar days after the date of the proposed termination notice. After considering relevant reasons and factors beyond the mortgagee's control that contributed to the excessive default and claim rates, the Deputy Assistant Secretary for Single Family Housing or designee may withdraw the termination notice.

(D) Upon receipt of a proposed termination notice, the mortgagee shall not establish a new branch or new branches for the origination of FHA-insured mortgages in the area or areas that are covered by the proposed termination notice. As of [effective date of final rule to be inserted at final rule stage] a mortgagee that is in receipt of a notice of proposed termination may not establish any new branch in the location or locations cited in the proposed termination notice until either:

(1) The proposed termination notice is rescinded; or

(2) The Secretary reinstates the mortgagee's origination approval agreement, in accordance with paragraph (e) of this section.

(iv) *Rights and obligations in the event of termination.* If a mortgagee's origination approval agreement is terminated, it may not originate or underwrite single family insured mortgages unless the origination approval agreement is reinstated by the Secretary in accordance with paragraph (e) of this section, notwithstanding any other provision of this part except § 202.3(c)(2)(iv)(A). Termination of the origination approval agreement shall not affect:

(A) The eligibility of the mortgage for insurance, absent fraud or misrepresentation, if the mortgagor and all terms and conditions of the mortgage had been approved before the termination by the Direct Endorsement or Lender Insurance mortgagee or were covered by a firm commitment issued by the Secretary; however, no other mortgages originated by the mortgagee shall be insured unless a new origination approval agreement is accepted by the Secretary;

(B) A mortgagee's obligation to continue to pay insurance premiums and meet all other obligations, including servicing, associated with insured mortgages;

(C) A mortgagee's right to apply for reinstatement of the origination approval agreement in accordance with paragraph (e) of this section; or

(D) A mortgagee's right to purchase insured mortgages or to service its own portfolio or the portfolios of other mortgagees with which it has a servicing contract.

* * * * *

(e) *Reinstatement of terminated origination approval agreement.* (1) *Reinstatement.* A mortgagee whose origination approval agreement has been terminated under paragraph (c) of this section may apply for reinstatement if:

(i) The origination approval agreement for the affected branch or branches has been terminated for at least six months; and

(ii) The mortgagee continues to be an approved mortgagee meeting the general standards of § 202.5 and the specific requirements of §§ 202.6, 202.7, 202.8 or 202.10, and 202.12.

(2) *Application for reinstatement.* The mortgagee's application for reinstatement must:

(i) Be in a format prescribed by the Secretary and signed by the mortgagee;

(ii) Be accompanied by an independent analysis of the terminated office's operations and identifying the underlying cause of the mortgagee's unacceptable default and claim rate. The independent analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under the government auditing standards issued by the General Accounting Office; and

(iii) Be accompanied by a corrective action plan addressing each of the issues identified in the independent analysis described in paragraph (e)(2)(ii) of this section, along with evidence demonstrating that the mortgagee has implemented the corrective action plan.

(3) *HUD action on reinstatement application.* The Secretary will grant the mortgagee's application for reinstatement if the mortgagee's application is complete and the Secretary determines that the underlying causes for the termination have been satisfactorily remedied.

Dated: March 2, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–7704 Filed 3–31–03; 8:45 am]

BILLING CODE 4210–27–P



Federal Register

Tuesday,
April 1, 2003

Part V

Department of Education

Office of Safe and Drug-Free Schools—Carol M. White Physical Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.215F]

Office of Safe and Drug-Free Schools—Carol M. White Physical Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The Carol M. White Physical Education Program provides grants to initiate, expand, or improve physical education programs, including after-school programs, for students in one or more grades from kindergarten through 12th grade in order to help students make progress toward meeting State standards for physical education.

For FY 2003 the competition for new awards focuses on a statutory requirement we describe in the Statutory Requirements section of this application notice.

Eligible Applicants: Local educational agencies (LEAs) and community-based organizations (CBOs), including faith-based organizations provided that they meet applicable statutory and regulatory requirements.

Applications Available: April 1, 2003.

Deadline for Transmittal of Applications: May 12, 2003.

Deadline for Intergovernmental Review: July 12, 2003.

Estimated Available Funds: $59.5 million.

Estimated Range of Awards: $100,000–$500,000.

Estimated Average Size of Awards: $300,000.

Estimated Number of Awards: 198.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99.

Statutory Requirements: We will award grants to LEAs and CBOs to pay the Federal share of the costs of initiating, expanding, or improving physical education programs (including after-school programs) for kindergarten through 12th grade students by—

(1) Providing equipment and support to enable students to participate actively in physical education activities, and

(2) Providing funds for staff and teacher training and education,

in order to make progress toward meeting State standards for physical education.

Administrative Costs

Not more than 5 percent of the grant funds made available to an LEA or CBO in any fiscal year may be used for administrative costs.

Federal Share

The Federal share for grants under this program may not exceed 90 percent of the total cost of a project.

Prohibition Against Supplanting

Grant funds made available under this program shall be used to supplement and not supplant other Federal, State, or local funds available for physical education activities.

Participation of Home-Schooled or Private School Students

An application for funds under this program may provide for the participation of students enrolled in private, nonprofit elementary or secondary schools and their parents and teachers, or home-schooled students and their parents and teachers.

Equitable Distribution

We will ensure, to the extent practicable, an equitable distribution of awards among applicants serving urban and rural areas.

Special Rule

Extracurricular activities, such as team sports and Reserve Officers' Training Corps (ROTC) program activities, shall not be considered as part of the curriculum of a physical education program.

SUPPLEMENTARY INFORMATION:

Novice Applicants

We encourage the participation of novice applicants, including faith-based organizations, in the Carol M. White Physical Education Program. Therefore, we will reserve up to 25 percent of available funds for grants to novice entities submitting high-quality applications. Applications submitted by eligible novice entities will be read, scored, ranked, and considered for funding separately from applications submitted by non-novice eligible entities.

Cap on Awards for Novice Applicants

The maximum award for which a novice applicant may apply is $150,000. Applications submitted for consideration under the novice provisions that request funding in excess of $150,000 will be read in the pool of applications submitted by non-novice entities.

Form Applications

An application under this program should address the specific needs of the population that the applicant proposes to serve, and activities should be designed to meet those needs. As a result, we strongly discourage applicants from using "form" applications or proposals that do not address the identified needs of their student population or that fail to provide a clear plan for helping students meet State standards for physical education.

Additional Awards

Contingent upon the availability of funds, we may make additional awards in FY 2004 from the rank-ordered list of unfunded applications from this competition.

Participation of Faith-Based Organizations

Faith-based organizations are eligible to apply for grants under this competition provided they meet all statutory and regulatory requirements.

Program Elements

A physical education program funded by the Carol M. White Physical Education Program may provide for one or more of the following:

(1) Fitness education and assessment to help students understand, improve, or maintain their physical well-being.

(2) Instruction in a variety of motor skills and physical activities designed to enhance the physical, mental, or social or emotional development of every student.

(3) Development of, and instruction in, cognitive concepts about motor skill and physical fitness that support a lifelong healthy lifestyle.

(4) Opportunities to develop positive social and cooperative skills through physical activity participation.

(5) Instruction in healthy eating habits and good nutrition.

(6) Opportunities for professional development for teachers of physical education to stay abreast of the latest research, issues, and trends in the field of physical education.

Definitions: For the purpose of this competition, terms used in this notice have the following meanings:

Local Educational Agency

(A) *General.* In general, the term local educational agency means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary or secondary schools.

(B) *Administrative control and direction.* The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(C) *BIA schools.* The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under the ESEA with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

(D) *Educational service agencies.* The term includes educational service agencies and consortia of those agencies.

(E) *State educational agency.* The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.

Community-based organization means a public or private nonprofit organization of demonstrated effectiveness that: (a) is representative of a community or significant segments of a community; and (b) provides educational or related services to individuals in the community.

Nonprofit as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Novice Applicant means—

(1) Any applicant for a grant from ED that—

(i) Has never received a grant or subgrant under the Carol M. White Physical Education program;

(ii) Has never been a member of a group application, submitted in accordance with §§ 75.127–75.129 of EDGAR, that received a grant under the Carol M. White Physical Education program; and

(iii) Has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under this competition.

(2) In the case of a group application submitted in accordance with §§ 75.127–129, a group that includes only parties that meet the requirements of paragraph (1) of this definition.

Note: A grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

Selection Criteria

We use the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) Need for project. (25 points)

In determining the need for the proposed project, the following factor is considered:

(a) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(Note: The specific gaps or weaknesses we will be looking for are gaps and weaknesses in meeting State standards for physical education.)

(2) Significance. (25 points)

In determining the significance of the proposed project, the following factors are considered:

(a) The likelihood that the proposed project will result in system change or improvement;

(b) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies; and

(c) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(Note: Under this criterion we will be looking at the applicant's approach to an integrated set of planned, sequential strategies and activities designed to help students understand, improve, or maintain their physical well-being and promote professional development for teachers of physical education.)

(3) *Quality of the Project Design.* (25 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the proposed activities constitute a coherent, sustained program of training in the field;

(b) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice;

(c) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable; and

(Note: Under this criterion we will be looking at the quality of the applicant's plan to help students make progress toward meeting State standards for physical education, including the linkage between proposed activities and State standards.)

(4) *Quality of the Project Evaluation.* (25 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible; and

(b) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf, you may call 1–877–576–7734. You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs/html.* Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.215F.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs, as well as

discretionary grant competitions. The Carol M. White Physical Education Program is one of the programs included in the pilot project. If you are an applicant under this grant competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We invite your participation in this pilot project. We will continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-Application pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED Form 424), Budget Information—Non-Construction Programs, (ED Form 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED Form 424) to the Application Control Center following these steps:

1. Print ED Form 424 from the e-Application system.
2. Make sure that the applicant's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-Application system. (You will receive an automatic acknowledgement, which will include a PR/Award number an identifying number unique to your application).
4. Place the PR/Award number in the upper right corner of ED Form 424.
5. Fax ED Form 424 to the Application Control Center within three business days of submitting your electronic application at (202) 260–1349.
6. We may request that you give us original signatures on all other forms at a later date.
7. *Closing Date Extension in the case of System Unavailability:* If you elect to participate in the e-Application pilot for the Carol M. White Physical Education Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application via e-Application, by mail, or by hand delivery. For us to grant this extension:

(1) you must be a registered user of e-Applications, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m. (ET), on the deadline date; or

(b) the e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m. (ET)) on the deadline date. The Department must acknowledge and confirm the period of unavailability before granting you an extension. To request this extension you must contact Ethel Jackson by e-mail at *Ethel.Jackson@ed.gov* or by telephone at (202) 205–5471 or the e-Grants help desk at (888) 336–8930.

You may access the electronic grant application for the Carol M. White Physical Education Program at: *http://e-grants.ed.gov.*

We have included additional information on the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

If you want to apply for a grant and be considered for funding, you must meet the deadline requirements included in this notice.

FOR FURTHER INFORMATION CONTACT: Ethel Jackson, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6123. Telephone: (202) 260–2812 or via Internet: *Ethel.Jackson@ed.gov.*

Individuals with disabilities may obtain this document, or an application package, in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed at the beginning of this section. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*

Program Authority: 20 U.S.C. 7261.

Dated: March 27, 2003.

Eric Andell,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 03–7970 Filed 3–31–03; 8:45 am]

BILLING CODE 4910–01–P

Federal Register

Tuesday,
April 1, 2003

Part VI

The President

Executive Order 13293—Amendment to Executive Order 10448, Establishing the National Defense Service Medal

Executive Order 13294—Regulations Relating to Hazardous Duty Incentive Pay, Aviation Career Incentive Pay, and Submarine Duty Incentive Pay

Federal Register
Vol. 68, No. 62
Tuesday, April 1, 2003

Presidential Documents

Title 3—

The President

Executive Order 13293 of March 28, 2003

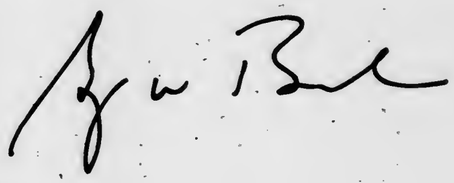
Amendment to Executive Order 10448, Establishing the National Defense Service Medal

By the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, and in order to extend eligibility for the award of the National Defense Service Medal to members in good standing in the Selected Reserve of the Armed Forces of the United States, it is hereby ordered that Executive Order 10448 of April 22, 1953, as amended, is further amended:

1. by inserting "or service in good standing in the Selected Reserve of the Armed Forces" after "active military service" each place it appears; and

2. by striking "additional period of active duty" and inserting in lieu thereof "additional period."

Nothing in this order shall be construed to impair or otherwise affect the exercise of authority granted by Executive Order 12776 of October 8, 1991.



THE WHITE HOUSE,
March 28, 2003.

[FR Doc. 03–8108
Filed 3–31–03; 11:33 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13294 of March 28, 2003

Regulations Relating to Hazardous Duty Incentive Pay, Aviation Career Incentive Pay, and Submarine Duty Incentive Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 301, 301a, and 301c of title 37, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. The Secretary of Defense, the Secretary of Commerce, the Secretary of Health and Human Services, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, with respect to members of the uniformed services under their respective jurisdictions, are hereby designated and empowered to exercise, without approval, ratification, or other action by the President, the authority vested in the President by sections 301, 301a, and 301c of title 37, United States Code. The Secretaries shall consult each other in the exercise of such authority to ensure similar treatment for similarly situated members of the uniformed services unless the needs of their respective uniformed services require differing treatment.

Sec. 2. Executive Order 11157 of June 22, 1964, as amended, and Executive Order 11800 of August 17, 1974, as amended, are hereby revoked.

Sec. 3. This order is not intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, employees, or any other person.

THE WHITE HOUSE,
March 28, 2003.

[FR Doc. 03–8109
Filed 3–31–03; 11:33 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 68, No. 62

Tuesday, April 1, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, APRIL

15653–15920..... 1

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 1, 2003

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton; futures contracts spot price quotations; published 12-17-02
Milk marketing orders:
Northeast et al.; published 2-12-03
Correction; published 3-20-03
Onions grown in—
Texas; published 3-31-03
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; published 1-31-03
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Federal-State Joint Board on Universal Service—
Interim Contribution Methodology Order; published 4-1-03
Radio services, special:
Fixed microwave services—
Telecommunications wireless services microwave applications processing and rulemaking petition; streamlining, clarification, and update; published 1-31-03
FEDERAL RESERVE SYSTEM
Membership of State banking institutions (Regulation H):
Reporting and disclosure requirements; published 1-28-03
Transactions between banks and their affiliates (Regulation W):
Miscellaneous interpretations; published 12-12-02
Statutory restrictions combined with Board interpretations and exemptions; published 12-12-02
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
Prescription drug marketing; effective date delay; published 2-13-02
HOMELAND SECURITY DEPARTMENT
Coast Guard
Great Lakes Pilotage regulations; rates update
Correction; published 4-1-03
Ports and waterways safety:
Vessels arriving in or departing from U.S. ports; notification requirements; published 2-28-03
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Gray wolf; published 4-1-03
PENSION BENEFIT GUARANTY CORPORATION
Single-employer plans:
Allocation of assets—
Interest assumptions for valuing and paying benefits; published 3-14-03
SOCIAL SECURITY ADMINISTRATION
Social security benefits:
Federal old-age, survivors, and disability insurance—
Facility-of-payment provision repeal; published 4-1-03
TREASURY DEPARTMENT
Thrift Supervision Office
Savings associations:
Transactions with affiliates; published 12-20-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Olives grown in—
California; comments due by 4-9-03; published 3-10-03 [FR 03-05561]
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Foot-and-mouth disease; disease status change—
Uruguay; comments due by 4-11-03; published 2-10-03 [FR 03-03228]
Noxious weeds:
Kikuyu grass cultivars; comments due by 4-11-03; published 2-10-03 [FR 03-03181]
Witchweed; regulated areas; comments due by 4-11-03; published 2-10-03 [FR 03-03182]
Plant-related quarantine, foreign:
Wheat and related products; flag smut import prohibitions; comments due by 4-8-03; published 2-7-03 [FR 03-03057]
Plant related quarantine; domestic:
Fire ant, imported; comments due by 4-7-03; published 2-5-03 [FR 03-02685]
AGRICULTURE DEPARTMENT
Forest Service
National Forest System land and resource management planning; comments due by 4-7-03; published 3-5-03 [FR 03-05116]
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 4-10-03; published 3-26-03 [FR 03-07252]
DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]
ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Energy conservation standards and test procedures—
Refrigerators and refrigerator-freezers; comments due by 4-7-03; published 3-7-03 [FR 03-05405]
Refrigerators and refrigerator-freezers; comments due by 4-7-03; published 3-7-03 [FR 03-05404]
ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
California; comments due by 4-10-03; published 3-11-03 [FR 03-05748]
Indiana; comments due by 4-10-03; published 3-11-03 [FR 03-05741]
New Hampshire; comments due by 4-7-03; published 3-6-03 [FR 03-05305]
New Jersey; comments due by 4-7-03; published 3-6-03 [FR 03-05320]
Rhode Island; comments due by 4-7-03; published 3-6-03 [FR 03-05307]
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-7-03; published 3-7-03 [FR 03-05325]
Iowa; comments due by 4-7-03; published 3-7-03 [FR 03-05309]
Small Business Liability Relief and Brownfields Revitalization Act; implementation:
Federal standards for conducting all appropriate inquiry; negotiated rulemaking committee; intent to establish; comments due by 4-7-03; published 3-6-03 [FR 03-05324]
FARM CREDIT ADMINISTRATION
Farm credit system:
Borrower rights; comments due by 4-7-03; published 2-4-03 [FR 03-02506]
FEDERAL COMMUNICATIONS COMMISSION
Radio frequency devices:
Unlicensed devices operating in additional frequency bands; feasibility; comments due by 4-7-03; published 1-21-03 [FR 03-01206]
Radio stations; table of assignments:
North Carolina and Virginia; comments due by 4-11-03; published 3-10-03 [FR 03-05333]
Oregon; comments due by 4-11-03; published 3-6-03 [FR 03-05334]
Various States; comments due by 4-11-03; published 3-6-03 [FR 03-05335]

FEDERAL MARITIME COMMISSION
Passenger vessel financial responsibility:
Performance and casualty rules, Alternative Dispute Resolution program, etc.; miscellaneous amendments; comments due by 4-8-03; published 12-27-02 [FR 02-32645]
FEDERAL RESERVE SYSTEM
Home mortgage disclosure (Regulation C):
Transition rules for applications; staff commentary; comments due by 4-8-03; published 3-7-03 [FR 03-05365]
GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]
HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare:
End-stage renal disease services; provider bad debt payment; comments due by 4-11-03; published 2-10-03 [FR 03-02974]
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Radiological health:
Diagnostic x-ray systems and their major components; performance standard; comments due by 4-9-03; published 12-10-02 [FR 02-30550]
HEALTH AND HUMAN SERVICES DEPARTMENT
Energy Employees Occupational Illness Compensation Program Act; implementation:
Special Exposure Cohort; classes of employees designated as members; procedures; comments due by 4-7-03; published 3-7-03 [FR 03-05604]
HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
New Jersey; comments due by 4-7-03; published 2-5-03 [FR 03-02696]
Pollution:
Ballast water management reports; non-submission penalties; comments due by 4-7-03; published 1-6-03 [FR 03-00100]
Vessel and facility response plans for oil; 2003 removal equipment requirements and alternative technology revisions
Meeting; comments due by 4-8-03; published 11-19-02 [FR 02-29168]
Ports and waterways safety:
Oahu, Maui, Hawaii, and Kauai, HI; security zones; comments due by 4-7-03; published 2-4-03 [FR 03-02523]
HOMELAND SECURITY DEPARTMENT
Lobbying restrictions; comments due by 4-7-03; published 3-6-03 [FR 03-05145]
Nondiscrimination on basis of disability in federally conducted programs or activities; comments due by 4-7-03; published 3-6-03 [FR 03-05142]
Nondiscrimination on basis of race, color, or national origin in programs or activities receiving Federal financial assistance; comments due by 4-7-03; published 3-6-03 [FR 03-05144]
Nondiscrimination on basis of sex in education programs or activities receiving Federal financial assistance; comments due by 4-7-03; published 3-6-03 [FR 03-05143]
Organization, functions, and authority delegations:
Immigration law enforcement; comments due by 4-7-03; published 3-6-03 [FR 03-05146]
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Public housing assessment system; changes; comments due by 4-7-03; published 2-6-03 [FR 03-02608]
JUSTICE DEPARTMENT
DNA identification system:
USA PATRIOT Act; implementation—
Federal offenders; DNA sample collection; comments due by 4-10-03; published 3-11-03 [FR 03-05861]
LABOR DEPARTMENT
Occupational Safety and Health Administration
Safety and health standards:
Commercial diving operations; comments due by 4-10-03; published 1-10-03 [FR 03-00372]
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]
PERSONNEL MANAGEMENT OFFICE
Federal Long Term Care Insurance Program; comments due by 4-7-03; published 2-4-03 [FR 03-02463]
Health benefits, Federal employees:
Health care providers; financial sanctions; comments due by 4-11-03; published 2-10-03 [FR 03-03125]
Homeland Security Act; implementation:
Voluntary separation incentive payments; comments due by 4-7-03; published 2-4-03 [FR 03-02766]
SECURITIES AND EXCHANGE COMMISSION
Securities:
Sarbanes-Oxley Act of 2002; implementation—
Attorneys; professional conduct standards; implementation; comments due by 4-7-03; published 2-6-03 [FR 03-02520]
OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States
Andean Trade Preference Act, as amended by Andean Trade Promotion and Drug Eradication Act; countries eligibility for benefits; petition process; comments due by 4-7-03; published 2-4-03 [FR 03-02705]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Aircraft products and parts; certification procedures:
Production Approval Holder's quality system; products and/or parts that have left system, performing work on; policy statement; comments due by 4-10-03; published 3-11-03 [FR 03-05128]
Airworthiness directives:
BAE Systems (Operations) Ltd.; comments due by 4-11-03; published 3-12-03 [FR 03-05859]
Bell; comments due by 4-8-03; published 2-7-03 [FR 03-03030]
Boeing; comments due by 4-10-03; published 2-24-03 [FR 03-04236]
Dornier; comments due by 4-11-03; published 3-12-03 [FR 03-05858]
General Electric Co.; comments due by 4-8-03; published 2-7-03 [FR 03-02995]
McDonnell Douglas; comments due by 4-7-03; published 2-20-03 [FR 03-04028]
Raytheon; comments due by 4-10-03; published 2-24-03 [FR 03-04234]
Sikorsky; comments due by 4-8-03; published 2-7-03 [FR 03-03031]
Turbomeca; comments due by 4-7-03; published 2-5-03 [FR 03-02633]
Turbomeca S.A.; comments due by 4-8-03; published 2-7-03 [FR 03-02996]
Jet routes; comments due by 4-7-03; published 2-19-03 [FR 03-03965]
TRANSPORTATION DEPARTMENT
Federal Highway Administration
Grants:
Operation of motor vehicles by intoxicated persons; withholding of Federal-aid highway funds; comments due by 4-7-03; published 2-6-03 [FR 03-02790]
TRANSPORTATION DEPARTMENT
Federal Motor Carrier Safety Administration
Motor carrier safety standards:
Intermodal container chassis and trailers; general inspection, repair, and maintenance requirements; negotiated rulemaking process; intent to consider; comments due by 4-10-03; published 2-24-03 [FR 03-04228]
TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Grants:

Operation of motor vehicles by intoxicated persons; withholding of Federal-aid highway funds; comments due by 4-7-03; published 2-6-03 [FR 03-02790]

TREASURY DEPARTMENT
Comptroller of the Currency
National banks:
Authority provided by American Homeownership and Economic Opportunity Act, and other miscellaneous amendments; comments due by 4-8-03; published 2-7-03 [FR 03-02641]

TREASURY DEPARTMENT
Community Development Financial Institutions Fund
Bank Enterprise Award Program; implementation; comments due by 4-7-03; published 2-4-03 [FR 03-02336]
Community Development Financial Institutions Program; implementation; comments due by 4-7-03; published 2-4-03 [FR 03-02335]

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Anti-money laundering programs for businesses engaged in vehicle sales; comments due by 4-10-03; published 2-24-03 [FR 03-04173]
Anti-money laundering programs for travel agencies; comments due by 4-10-03; published 2-24-03 [FR 03-04172]

VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
Cirrhosis of liver in former prisoners of war; presumptive service connection; comments due by 4-11-03; published 2-10-03 [FR 03-03175]
Loan guaranty:
Veterans Education and Benefits Expansion Act; implementation; comments due by 4-11-03; published 2-10-03 [FR 03-03176]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 395/P.L. 108–10

Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

Last List March 10, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 2003

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
April 1	April 16	May 1	May 16	June 2	June 30
April 2	April 17	May 2	May 19	June 2	July 1
April 3	April 18	May 5	May 19	June 2	July 2
April 4	April 21	May 5	May 19	June 3	July 3
April 7	April 22	May 7	May 22	June 6	July 7
April 8	April 23	May 8	May 23	June 9	July 7
April 9	April 24	May 9	May 27	June 9	July 8
April 10	April 25	May 12	May 27	June 9	July 9
April 11	April 28	May 12	May 27	June 10	July 10
April 14	April 29	May 14	May 29	June 13	July 14
April 15	April 30	May 15	May 30	June 16	July 14
April 16	May 1	May 16	June 2	June 16	July 15
April 17	May 2	May 19	June 2	June 16	July 16
April 18	May 5	May 19	June 2	June 17	July 17
April 21	May 6	May 21	June 5	June 20	July 21
April 22	May 7	May 22	June 6	June 23	July 21
April 23	May 8	May 23	June 9	June 23	July 22
April 24	May 9	May 27	June 9	June 23	July 23
April 25	May 12	May 27	June 9	June 24	July 24
April 28	May 13	May 28	June 12	June 27	July 28
April 29	May 14	May 29	June 13	June 30	July 28
April 30	May 15	May 30	June 16	June 30	July 29

Public Laws

108th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 108th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara1/nara005.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 108th Congress for $285 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 2/03

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $264.00
Six months: $132.00

Code of Federal Regulations:

Current year (as issued): $298.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5419**

Charge your order. It's Easy! VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $264 each ☐ Six months at $132.00

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $298 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

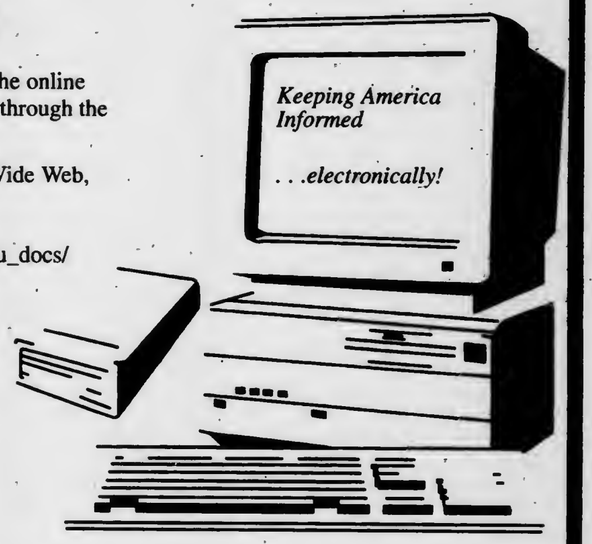
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

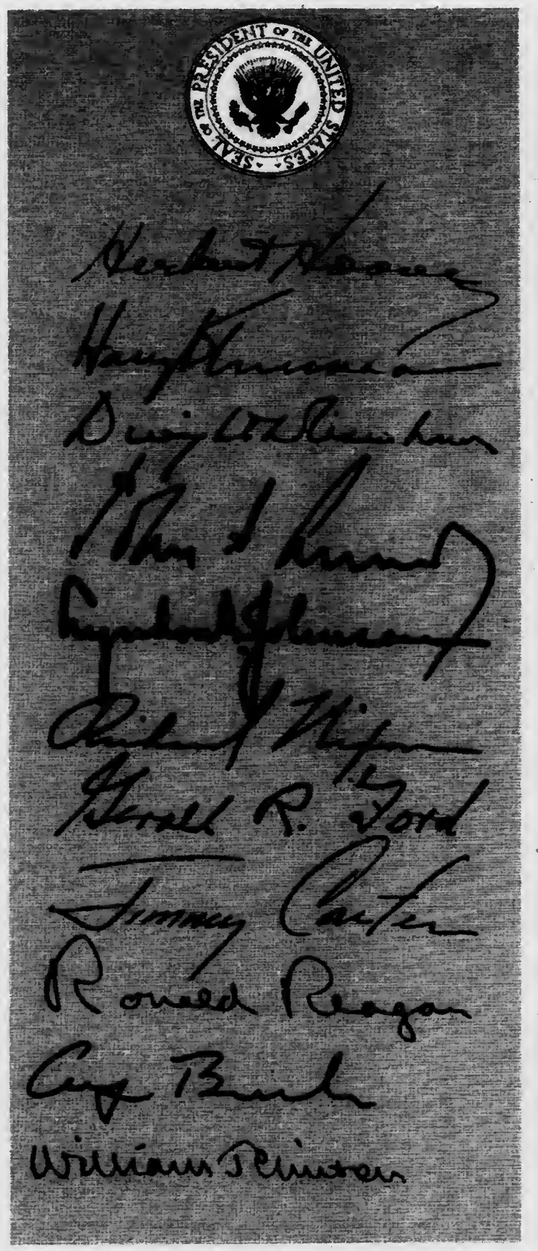
To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)



Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	$51.00
1993 (Book II)	$51.00
1994 (Book I)	$56.00
1994 (Book II)	$52.00
1995 (Book I)	$60.00
1995 (Book II)	$65.00
1996 (Book I)	$66.00
1996 (Book II)	$72.00
1997 (Book I)	$69.00
1997 (Book II)	$78.00
1998 (Book I)	$74.00
1998 (Book II)	$75.00
1999 (Book I)	$71.00
1999 (Book II)	$75.00
2000–2001 (Book I)	$68.50
2000–2001 (Book II)	$63.00
2000–2001 (Book III)	$75.00

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA (Rev. 6/02)

Order Now!

The United States Government Manual 2002/2003

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.



$49 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS ✦ PERIODICALS ✦ ELECTRONIC PRODUCTS

Charge your order. It's Easy! MasterCard VISA

Order Processing Code:
***7917**

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please send me ____ copies of **The United States Government Manual** 2002/2003,
S/N 069–000–00145–9 at $49 ($68.60 foreign) each.

Total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date) ***Thank you for your order!***

Authorizing signature 9/02

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $35 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $30 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.



Superintendent of Documents **Subscription** Order Form

Order Processing Code:
***5421**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscriptions for one year:

____ **LSA (List of CFR Sections Affected)**, (LCS) for $35 per year.
____ **Federal Register Index** (FRUS) $30 per year.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

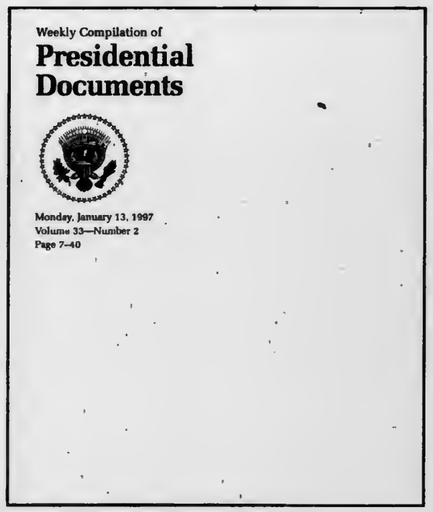
☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date) ***Thank you for your order!***

Authorizing Signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5420**

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $151.00 First Class Mail ☐ $92.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 4/00

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VOL
68
ISS
62
AP
1
2003
UMI



Printed on recycled paper

VOL
68
ISS
63
AP
2
003
MI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL
PUBLICATION MAY AFFECT THE QUALITY OF
THE MICROFORM EDITION.



Federal Register

4–2–03 Wednesday
Vol. 68 No. 63 Apr. 2, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
68

ISS
63

AP
2

003

MI



Federal Register

4–2–03 Wednesday
Vol. 68 No. 63 Apr. 2, 2003
Pages 15921–16164

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 202–512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 202–512–1800
Assistance with public single copies 1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES
Subscriptions:
Paper or fiche 202–741–6005
Assistance with Federal agency subscriptions 202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 63
Wednesday, April 2, 2003

Agricultural Marketing Service
RULES
Cherries (sweet) grown in—
Washington, 15923–15926
Raisins produced from grapes grown in—
California, 15926–15932
PROPOSED RULES
Cherries (tart) grown in—
Michigan et al., 15971

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Cooked meat and meat products imported from regions where rinderpest or foot-and-mouth disease exists, 15932–15936
NOTICES
Environmental statements; availability, etc.:
West Nile virus vaccine for use in horses; field testing, 15980–15981

Centers for Medicare & Medicaid Services
PROPOSED RULES
Medicaid:
Audiologists; provider qualifications, 15973–15978

Citizenship and Immigration Services Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16064–16065

Coast Guard
RULES
Drawbridge operations:
Florida, 15943–15945
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16065–16066
Committees; establishment, renewal, termination, etc.:
National Offshore Safety Advisory Committee, 16066

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See Technology Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 15981–15982

Committee for the Implementation of Textile Agreements
NOTICES
African Growth and Opportunity Act; implementation:
Light-and-medium-weight dyed warp pile cotton velvet for use in apparel articles; commercial availability; comment request; cancelled, 16004

Copyright Office, Library of Congress
PROPOSED RULES
Copyright office and procedures:
Prohibition of circumvention of copyright protection systems for access control technologies; exemption; public hearings, 15972–15973

Defense Department
NOTICES
Personnel management demonstration projects:
Science and Technology Reinvention Laboratories—
Demonstration project plans; amendment, 16119–16142

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Cambrex Charles City, Inc., 16088
Cambrex North Brunswick, Inc., 16088
Cedarburg Pharmaceuticals, LLC, 16088
Cody Laboratories, Inc., 16088–16089
ISP Freetown Fine Chemicals, Inc., 16089
Lonza Riverside, 16089
Mallinckrodt, Inc., 16089–16090
Noramco, Inc., 16090–16091
Novartis Pharmaceuticals Corp., 16091
Organichem Corp., 16091
Penick Corp., 16091
Rhodes Technologies, 16091–16092
Stepan Co., 16092

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals; correction, 16004–16006
Meetings:
Student Financial Assistance Advisory Committee, 16006–16007

Employment and Training Administration
NOTICES
Adjustment assistance:
A.O. Smith Electrical Products Co., 16095
Alaska Commercial Fisheries Entry Commission; Permit No. SO4T (Nick Timurphy), 16095
Allegheny Ludlum et al, 16095–16097
American Greetings Corp., 16097–16098
American Identity, 16098
American Tool Companies, Inc., et al., 16098–16100
Ametek Dixson Division, 16100
Caterpillar, Inc., 16100
Caterpillar Paving Products, Inc., 16100
Elliott Ebara Group, 16100
Fishing Vessel MISS MADDISON, 16100
General Electric, 16100
Hampton Distribution Companies, 16101
Ingersoll-Rand Co., 16101
Irving Forest Products, 16101
JJM, Ltd., 16101
Kuhn Tool & Die Co., 16101
Lacers Sport, Inc., 16101–16102
Mastercraft Fabrics, LLC, 16102
Material Handling Associates, 16102

Mitten Manufacturing, 16102
National Controls Corp., 16102
O.K. Industries, Inc., 16102
Pfizer, Inc., 16103
Sappi Fine Paper North America, 16103
Square D Co., 16103
TMD Friction, Inc., 16103
Adjustment assistance and NAFTA transitional adjustment assistance:
Fishing Vessel NETTA et al., 16093–16095
Metaldyne, Inc., 16092–16093
Grants and cooperative agreements; availability, etc.:
Workforce Investment Act—
Dislocated worker activities; State allotments, 16103–16107
NAFTA transitional adjustment assistance:
Specialty Machine Co., Inc., 16107

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Oak Ridge Reservation, TN—
Parcel ED-1; title transfer, 16007
Grants and cooperative agreements; availability, etc.:
Advanced melting or innovative casting processes for metal casting, 16007–16008

Energy Information Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16008–16009

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bacillus pumilus (GB 34), 15958–15963
Modified acrylic polymers, 15963–15967
S-metolachlor, 15945–15958
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16020–16025
Committees; establishment, renewal, termination, etc.:
National Pollution Prevention and Toxics Advisory Committee, 16026–16028
Pesticide, food, and feed additive petitions:
Interregional Research Project [No. 4), 16040–16050
Pesticide programs:
Risk assessments—
Carbaryl, 16030–16032
Tolerance reassessment decisions—
Diuron, 16032–16034
Tebuthiuron, 16038–15040
Pesticide registration, cancellation, etc.:
BASF Corp. et al., 16028–16030
Keller & Heckman LLP, 16034–16036
Monsanto Co., 16036–16038
Pesticides; experimental use permits, etc.:
Monsanto Co., 16050–16052

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Rolls-Royce Corp., 15937–15939
NOTICES
Commercial space transportation; U.S. launch range improvements and modernization; requirements request, 16114–16115

Federal Communications Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16052–16053

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Various States, 15967–15969
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16066–16071
Disaster and emergency areas:
Delaware, 16071–16072
Kentucky, 16072
Maine, 16073
Massachusetts, 16073
New Jersey, 16073–16074
New York, 16074
Ohio, 16074–16075
Pennsylvania, 16075
Tennessee, 16076
West Virginia, 16076–16077

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
FPL Energy Seabrook, LLC, et al., 16013–16015
Environmental statements; notice of intent:
Kinder Morgan Interstate Gas Transmission, LLC, 16015–16017
Hydroelectric applications, 16017–16020
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 16009
Colorado Interstate Gas Co., 16009–16010
Columbia Gas Transmission Corp., 16010
Columbia Gulf Transmission Co., 16010–16011
Florida Gas Transmission Co., 16011
Northern Border Pipeline Co., 16011
Overthrust Pipeline Co., 16012
Portland Natural Gas Transmission System, 16012
Transwestern Pipeline Co., 16012–16013
Wyckoff Gas Storage Co., LLC, 16013

Federal Highway Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16115

Federal Maritime Commission
PROPOSED RULES
Tariffs and service contracts:
Electronic transmission filing, 15978–15979
NOTICES
Agreements filed, etc., 16053
Ocean transportation intermediary licenses:
ITS International Container Lines Inc., et al., 16053–16054

Federal Trade Commission
NOTICES
Prohibited trade practices:
Laser Vision Institute, LLC, 16054–16055
LasikPlus, 16055–16056

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16059–16060
Harmonisation International Conference; guidelines availability:
M2 eCTD; Electronic Common Technical Document Specification, 16060–16061
Medical devices:
Patent extension; regulatory review period determination—
GYNECARE INTERGEL, 16061–16062
OP-1 IMPLANT, 16062–16063
Reports and guidance documents; availability, etc.:
Potassium iodide shelf life extension, 16063–16064

General Services Administration
NOTICES
Interagency Committee for Medical Records:
Medical examination report (SF 88); automation, 16056–16059

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Homeland Security Department
See Citizenship and Immigration Services Bureau
See Coast Guard
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16077–16080

Industry and Security Bureau
RULES
Export administration regulations:
Commerce Control List—
Missle Technology Control Regime, 16143–16159
NOTICES
Export privileges, actions affecting:
Talyi, Yaudat Mustafa, et al., 15982–15983

Interior Department
See National Park Service

Internal Revenue Service
RULES
Excise taxes:
Diesel fuel; blended taxable fuel, 15940–15942
Income taxes:
Education tax credit; correction, 15940
Income taxes, etc.:
Tax shelter regulations
Correction, 15942–15943

International Trade Administration
NOTICES
Antidumping:
Stainless steel plate in coils from—
Various countries; correction, 16117
Export trade certificates of review, 15983–15995
Grants and cooperative agreements; availability, etc.:
Special American Business Internship Training Program, 15995

International Trade Commission
NOTICES
Import investigations:
Data storage systems and components, 16086–16087

Justice Department
See Drug Enforcement Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16087–16088

Labor Department
See Employment and Training Administration
RULES
Grants, contracts, and other agreements, and States; audit requirements, 16161–16162
States, local governments, and non-profit organizations; audits, 16161–16163

Library of Congress
See Copyright Office, Library of Congress

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Cooper Tire & Rubber Co., 16115–16116

National Institute of Standards and Technology
NOTICES
Meetings:
Organic production and processing; certification bodies accreditation criteria; workshop, 15995

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
North Pacific Groundfish Observer Program; correction, 15969–15970
Pacific cod, 15969
NOTICES
Endangered and threatened species:
Anadromous fish take—
Cressey & Associates, El Cerrito, CA; salmonids, 16000–16001
Dynamac/USEPA, Corvallis, OR; California salmonids, 15995–15996
East Bay Municipal Utility District, Lodi, CA; Central Valley steelhead, 16003–16004
Fish First, Lewis River Basin, WA; salmon and steelhead, 15996–15997
Puget Sound Treaty Tribes et al., WA; chinook salmon, 16001–16002
Washington State Fish and Wildlife Department et al.; salmon and steelhead, 15997–16000
Permits:
Endangered and threatened species, 16002–16003
Marine mammals, 16002

National Park Service
NOTICES
Environmental statements; availability, etc.:
Fort Frederica National Monument, GA, 16080–16081
Jamestown Project Development Concept Plan, VA, 16081–16082
Rock Creek Park, Washington, DC, 16082
Environmental statements; notice of intent:
Bandelier National Monument, NM, 16083
National Register of Historic Places:
Pending nominations, 16083–16086

Nuclear Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16107
Meetings:
Reactor Safeguards Advisory Committee, 16107

Presidential Documents
PROCLAMATIONS
Gambia, Republic of The, and the Democratic Republic of Congo; designations under the African Growth and Opportunity Act (Proc. 7657), 15921–15922

Securities and Exchange Commission
RULES
Securities:
Sarbanes-Oxley Act of 2002; implementation—
Non-generally accepted accounting principles (GAAP) financial measures, conditions for use; and pension fund blackout periods, insider trades restriction, 15939–15940
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16107–16109
Securities:
Suspension of trading—
GreenWave, Inc., 16109
Self-regulatory organizations; proposed rule changes:
Pacific Exchange, Inc., 16109–16110
Philadelphia Stock Exchange, Inc., 16111–16113

Small Business Administration
PROPOSED RULES
Small business size standards:
Nonmanufacturer rule; waivers—
Small arms manufacturing, 15971–15972

State Department
NOTICES
Arms Export Control Act:
Determinations, 16113
Nonproliferation measures imposition:
North Korean entity, 16113
Pakistani entity, 16113–16114

Substance Abuse and Mental Health Services Administration
NOTICES
Grant and cooperative agreement awards:
Hawaii County Mayor's Office, 16064

Technology Administration
NOTICES
Commercial space transportation; U.S. launch range improvements and modernization; requirements request, 16114–16115

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Defense Department, 16119–16142

Part III
Commerce Department, Industry and Security Bureau, 16143–16159

Part IV
Labor Department, 16161–16163

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7657.....15921

7 CFR
923.....15923
989.....15926
Proposed Rules:
930.....15971

9 CFR
94.....15932

13 CFR
Proposed Rules:
121.....15971

14 CFR
39.....15937

15 CFR
740.....16144
742.....16144
774.....16144

17 CFR
228.....15939
229.....15939
244.....15939
249.....15939

26 CFR
1.....15940
40.....15940
48.....15940
49.....15940
602 (2 documents).....15940, 15942

29 CFR
96.....16162
99.....16162

33 CFR
117.....15943

37 CFR
Proposed Rules:
201.....15972

40 CFR
180 (3 documents).....15945, 15958, 15963

42 CFR
Proposed Rules:
440.....15973

44 CFR
64.....15967

46 CFR
Proposed Rules:
530.....15978

50 CFR
679 (2 documents).....15969

Federal Register
Vol. 68, No. 63
Wednesday, April 2, 2003

Presidential Documents

Title 3—

The President

Proclamation 7657 of March 28, 2003

To Take Certain Actions Under the African Growth and Opportunity Act With Respect to the Republic of The Gambia and the Democratic Republic of Congo

By the President of the United States of America

A Proclamation

1. Section 506A(a)(1) of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2466a(a)(1)), as added by section 111(a) of the African Growth and Opportunity Act (title I of Public Law 106–200) (AGOA), authorizes the President to designate a country listed in section 107 of the AGOA (19 U.S.C. 3706) as a "beneficiary sub-Saharan African country" if the President determines that the country meets the eligibility requirements set forth in section 104 of the AGOA (19 U.S.C. 3703), as well as the eligibility criteria set forth in section 502 of the 1974 Act (19 U.S.C. 2462).

2. Section 104 of the AGOA authorizes the President to designate a country listed in section 107 of the AGOA as an "eligible sub-Saharan African country" if the President determines that the country meets certain eligibility requirements.

3. Section 112(b)(3)(B) of the AGOA (19 U.S.C. 3721(b)(3)(B)) provides special rules for certain apparel articles imported from "lesser developed beneficiary sub-Saharan African countries."

4. Pursuant to section 104 of the AGOA and section 506A(a)(1) of the 1974 Act, I have determined that the Republic of The Gambia (The Gambia) meets the eligibility requirements set forth or referenced therein, and I have decided to designate The Gambia as an eligible sub-Saharan African country and as a beneficiary sub-Saharan African country.

5. Pursuant to section 104 of the AGOA, I have determined that the Democratic Republic of Congo (DROC) meets the eligibility criteria set forth therein, and I have decided to designate DROC as an eligible sub-Saharan African country.

6. I have further decided to authorize the United States Trade Representative (USTR) to exercise the authority provided to the President under section 506A(a)(1) of the 1974 Act with respect to DROC. The USTR shall announce any such exercise of authority in a notice published in the **Federal Register**.

7. The Gambia satisfies the criterion for treatment as a "lesser developed beneficiary sub-Saharan African country" under section 112(b)(3)(B) of the AGOA. DROC, if it is designated as a beneficiary sub-Saharan African country, would also satisfy the criterion for treatment as a "lesser developed beneficiary sub-Saharan African country" under section 112(b)(3)(B) of the AGOA.

8. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

9. With respect to any designation of DROC as a beneficiary sub-Saharan African country, I have decided to authorize the USTR to exercise the

authority provided to the President under section 604 of the 1974 Act to embody modifications and technical or conforming changes in the HTS.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including sections 506A and 604 of the 1974 Act and section 104 of the AGOA, do proclaim that:

(1) The Gambia is designated as an eligible sub-Saharan African country and as a beneficiary sub-Saharan African country.

(2) In order to reflect this designation in the HTS, general note 16(a) to the HTS is modified by inserting in alphabetical sequence in the list of beneficiary sub-Saharan African countries "Republic of The Gambia."

(3) DROC is designated as an eligible sub-Saharan African country.

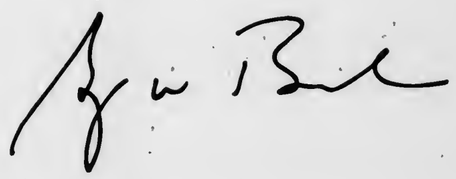
(4) The USTR is authorized to exercise the authority provided to the President under section 506A(a)(1) of the 1974 Act with respect to DROC. The USTR shall announce any such exercise of authority in a notice published in the **Federal Register**. To implement any designation of DROC as a beneficiary sub-Saharan African country, the USTR is authorized to exercise the authority provided to the President under section 604 of the 1974 Act to embody modifications and technical or conforming changes in the HTS.

(5) For purposes of section 112(b)(3)(B) of the AGOA, The Gambia is a lesser developed beneficiary sub-Saharan African country. If it is designated as a beneficiary sub-Saharan African country, DROC would also be a lesser developed beneficiary sub-Saharan African country for purposes of section 112(b)(3)(B) of the AGOA.

(6) Any provisions of previous proclamations and Executive Orders that are inconsistent with this proclamation are superseded to the extent of such inconsistency.

(7) The modification to the HTS made by this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of March, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–8160
Filed 4–1–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 68, No. 63
Wednesday, April 2, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. FV02–923–1 IFR]

Sweet Cherries Grown In Designated Counties In Washington; Establishment of Procedures To Allow the Grading or Packing of Sweet Cherries Outside the Production Area

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule allows the grading or packing of sweet cherries outside the production area established under the Washington sweet cherry marketing order (order). The order regulates the handling of sweet cherries grown in designated counties in Washington. Persons desiring to ship Washington sweet cherries for grading or packing outside the production area will apply and report to the Washington Cherry Marketing Committee (Committee) on forms provided by the Committee. The reporting requirement will provide the Committee with safeguard information on the grading or packing of sweet cherries outside the production area to assure that acceptable quality fruit is shipped. This rule will provide greater flexibility in the grading, packing, and marketing of Washington sweet cherries. In some cases, the facilities outside the production area are closer to where the fruit is produced, and the ability to grade and pack outside the production area would reduce costs. This rule was recommended unanimously by the Committee, the agency responsible for local administration of the order.

DATES: Effective April 3, 2003; comments received by June 2, 2003 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, suite 385, Portland, Oregon 97204; telephone (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 134 and Order No. 923, both as amended (7 CFR part 923), regulating the handling of sweet cherries grown in designated counties in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Minimum grade, size, maturity, container, pack and inspection requirements are currently established under the order. This rule establishes procedures and safeguard requirements that allow for the grading or packing of Washington sweet cherries outside the production area. Persons desiring to ship Washington sweet cherries for grading or packing outside the production area will apply and report to the Committee on forms provided by the Committee.

Consistent with the authorities and procedures outlined in the Act, the order was amended on November 21, 2001 (66 FR 58350). One of the amendments increased the size of the production area to include all counties east of the Cascade Range and provided authority in § 923.54 for the establishment of procedures to allow the shipment of Washington sweet cherries outside the production area for grading and packing. Section 923.54 also provides authority for the establishment of such safeguards as may be necessary to ensure the sweet cherries are handled in accordance with the order's provisions.

The Committee met on May 14, 2002, and unanimously recommended the establishment of procedures and safeguard requirements to allow the grading or packing of sweet cherries

outside the production area. Currently, all cherries are required to be graded and packed before leaving the production area. Committee members believe that this will give shippers an opportunity to choose those grading and packing facilities that will be most beneficial to their individual circumstances. The grading and packing costs that are charged to growers may be different among differenet handlers in the production area or packing facilities outside the production area. There may be differences in the type of packaging or other services offered by packing facilities within or outside the production area.

For example, a packing facility outside the area of production is experimenting with modified atmosphere packaging that increases the shelf life of sweet cherries. There are also Washington sweet cherry growers who are part owners of packing facilities that are located outside the area of production, and it may be advantageous for them to be able to deliver to those facilities for grading and packing. Finally, some of the facilities are closer to where the fruit is produced, and allowing these facilities to be used for grading, packing, or both could reduce producer and handler delivery costs.

The Committee believes that the minimum grade, size, maturity, container, and pack requirements established under the order are very important to the industry. The Committee believes such requirements create orderly marketing, are good for consumers, encourage repeat purchases, and ultimately improve returns to growers. Therefore, the Committee also recommended the establishment of safeguards to ensure that all sweet cherries graded and packed outside the production area are ultimately inspected and certified by the Federal or Federal-State Inspection Service as meeting the minimum grade, size, maturity, container, and pack requirements established under the order. Persons desiring to ship or receive sweet cherries for grading or packing outside the production area will apply to the Committee on a *Shippers/Receivers Application for Special Purpose Shipment Certificate*. Such applicants will submit an application each year prior to shipping or receiving sweet cherries for grading or packing outside the production area. Information collected on the application will include the date, name, address, phone number, signature of the applicant, and such other information as the Committee may require. The form includes a certification that all production are cherries graded or packed outside the production area will be inspected by the Federal or Federal-State Inspection Service and will meet the minimum grade, size, maturity, container, and pack requirements established under § 923.322 prior to shipment.

After the Committee approves an application, the applicant within the area of production and the applicant packing facility outside the area will be required to submit a weekly *Special Purpose Shipment Report* to the Committee when Washington sweet cherries are shipped out of the production area for grading or packing, along with inspection certificates, and other information required by the Committee for verification purposes. Information collected on the reports will include the names, addresses, telephone numbers, signatures of the applicants, names of the growers and handlers of such cherries, and the total quantities of each variety of cherries shipped or received. These reports will be submitted to the Committee at the close of business every Friday during those weeks when the shipper applicant has shipped or the receiver applicant has received sweet cherries for grading and packing outside the production area. The Committee estimates that each affected applicant will submit approximately 10 of these reports annually.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Based on Committee data, there are approximately 1,500 producers (growers) of sweet cherries in the production are and approximately 62 handlers subject to regulation under the order. The Committee estimates that there are about 6 prospective applicants that may take advantage of this marketing opportunity. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on Committee data, the average production of sweet cherries in Washington State for the last three years is 64,676 tons. Based on Washington Agricultural Statistics Service data, the average producer price for sweet cherries in Washington State for the last three years is $1,943 per ton. With a Committee estimated 1,500 sweet cherry producers of record, the average annual producer revenue is calculated to be approximately $83,777. Using Committee data regarding each individual handler's's total shipments during the 2001 marketing year and a Committee estimated average F.O.B. price of $24.00 per 20-pound container in 2001, 79 percent of the Washington sweet cherry handlers ship under $5,000,000 worth of sweet cherries and 21 percent ship over $5,000,000 worth of sweet cherries. Therefore, the majority of Washington sweet cherry producers and handlers may be classified as small entities. Also, there are an estimated 6 packing facilities or receivers that would be affected by this action. Although their size is not known, it is estimated that most would be considered small entities.

Committee meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Committee recommendations can be considered to represent the interests of small business entities in the industry.

This rule will allow persons to ship Washington sweet cherries outside the area of production for grading and packing. Applicants desiring to ship or receive sweet cherries for grading or packing outside the production area will be required to submit an application to the Committee. The applicants will certify that all production area cherries graded or packed outside the production area will be inspected by the Federal-State Inspection Service and will meet the minimum grade, size, maturity, container, and pack requirements established under § 923.322 prior to shipment. Persons who are approved by the Committee to ship or receive will report all production area sweet cherries shipped or received for grading or packing outside the production area at the close of business every Friday.

Regarding the impact of the proposed action on affected entities, this rule will impose minimal additional costs. As previously mentioned, the Committee estimates that about six prospective applicants may desire to ship or receive sweet cherries for grading or packing outside the production area during the marketing year. Such applicants will be required to submit a *Shippers/Receivers Application for Special Purpose Shipment Certificate* and receive approval from the Committee prior to shipping or receiving any production area sweet cherries each year for grading or packing. After the Committee approves an application, both applicants will be required to submit a weekly *Special Purpose Statement Report* to the Committee when Washington sweet cherries are shipped or received for grading or packing along with inspection certificates or other information required by the Committee for verification purposes. The Committee estimates that each affected applicant will submit about 10 of these reports annually. The annual industry burden associated with this information collection is estimated to total approximately 5 hours.

An alternative to this action would be to not allow Washington sweet cherries to be shipped outside the production area for grading or packing. This alternative would limit the flexibility of growers and handlers to make decisions related to the grading, packing, and marketing of Washington sweet cherries. Another alternative would be to allow shipments of such sweet cherries for grading or packing outside the production area, but not require any reporting. The Committee did not support this alternative because of the lack of any safeguards to ensure compliance with the handling requirements implemented under the order. Allowing the shipment of Washington sweet cherries outside the production area for grading or packing is a relaxation of order requirements and any costs related to additional reporting will be greatly outweighed by the benefits of allowing such shipments.

This rule will impose an additional reporting and recordkeeping burden on persons who ship or receive sweet cherries for grading or packing outside the production area. This action requires two new Committee forms. The information collection requirements are discussed in the following section.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the sweet cherry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 14, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS is seeking emergency approval for a new information collection request for Sweet Cherries Grown in Designated Counties in Washington, Marketing Order No. 923. The emergency request was necessary because insufficient time was available to follow normal clearance procedures. This collection will be merged with the forms currently approved for use under OMB No. 0581–0189 "Generic OMB Fruit Crops."

Title: Sweet Cherries Grown in Designated Counties in Washington, Marketing Order No. 923.

OMB Number: 0581–NEW.

Type of Request: New collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Washington sweet cherry marketing order program, which has been operating since 1957.

On May 14,2002, the Committee unanimously recommended the establishment of procedures and safeguard requirements to allow the grading or packing of sweet cherries outside the production area. This information will be reported on two new Committee forms. The safeguard requirements require an applicant to apply to the Committee on a *Shipper/Receivers Application for Special Purpose Shipment Certificate* form once a year, and receive approval from the Committee, prior to shipping or receiving sweet cherries for grading or packing outside the production area. After the Committee approves the application, the applicant will be required to submit weekly a *Special Purpose Shipment Report* to the Committee when Washington sweet cherries are shipped or received for grading or packing along with inspection certificates or other information required by the Committee for verification purposes. The new Committee forms will help ensure compliance with the regulations and assist the Committee and the USDA with oversight and planning.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized Committee employees. Authorized Committee employees are the primary users of the information and AMS is the secondary user.

The request for approval of the new information collections under the order is as follows:

Shippers/Receivers Application for special Purpose Shipment Certificate.

Estimate of Burden: Public reporting burden for this collection is estimated to average 2 minutes per response.

Respondents: Persons who ship or receive Washington sweet cherries for grading or packing outside the production area.

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual burden on Respondents: 0.18 hours.

Special Purpose Shipment Report.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Persons who ship or receive Washington sweet cherries for grading or packing outside the production area.

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 10.

Estimated Total Annual Burden on Respondents: 4.98 hours

Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information

on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW and the Marketing Order for Sweet Cherries Grown in Designated Counties in Washington and be sent to the USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. As mentioned before, because there was insufficient time for a normal clearance procedure and prompt implementation is needed, AMS has obtained emergency approval from OMB for the use of the new forms for the year. This collection will be merged with the forms currently approved for use under OMB No. 0581–0189 "Generic OMB Fruit Crops." As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

This rule allows the grading or packing of sweet cherries outside the production area established under the Washington sweet cherry marketing order. Persons desiring to ship or receive sweet cherries for grading or packing outside the production area will apply and report to the Washington Cherry Marketing Committee on forms provided by the Committee. The reporting requirement will provide the Committee with safeguard information to ensure compliance on the grading or packing of sweet cherries outside the production area.

Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The order amendments prompting these changes were implemented on November 21, 2001, after approval in a grower referendum;

(2) the Committee unanimously recommended these changes at a public meeting and all interested parties had an opportunity to provide input;

(3) Washington sweet cherry growers and handlers are aware of this rule and need no additional time to comply with the relaxed requirements;

(4) sweet cherries will begin being shipped in June; and

(5) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 923 is amended as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 923.322 is amended by redesignating paragraphs (f) and (g) as (g) and (h), respectively, and adding a new paragraph (f) to read as follows:

§ 923.322 Washington Cherry Regulation.

* * * * *

(f) *Grading or packing cherries outside the production area.* (1) Persons desiring to ship or receive cherries for grading or packing outside the production area shall apply to the committee on a "Shippers/Receivers Application for Special Purpose Shipment Certificate" form, and receive approval from the Committee. The application shall contain the following:

(i) Name, address, telephone number, and signature of applicant;

(ii) Certification by the applicant that cherries graded and packed outside the production area shall be inspected by the Federal-State Inspection Service and shall meet the grade, size, maturity, container, and pack requirements of this section prior to shipment; and

(iii) Such other information as the committee may require.

(2) Each approved applicant shall furnish to the committee, at the close of business every Friday, a report containing the following information on a "Special Purpose Shipment Report" form:

(i) Name, address, telephone number, and signature of applicant;

(ii) Names of growers and handlers of such cherries;

(iii) The total quantity of each variety of cherries; and

(iv) Such other information as the committee may require.

(3) The committee may rescind or deny to any applicant its approval of the "Shippers/Receivers Application for Special Purpose Shipment Certificate" if proof satisfactory to the committee is obtained that any cherries shipped or received by such applicant for grading or packing were handled contrary to the provisions of this section.

* * * * *

Dated: March 26, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–7846 Filed 4–1–03; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV03–989–4 IFR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2002–03 Crop Natural (Sun-Dried) Seedless and Zante Currant Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes final volume regulation percentages for 2002–03 crop Natural (sun-dried) Seedless (NS) and Zante Currant (ZC) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 53 percent free and 47 percent reserve for NS raisins, and 80 percent free and 20 percent reserve for ZC raisins. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

DATES: Effective April 3, 2003. The volume regulation percentages apply to acquisitions of NS and ZC raisins from the 2002–03 crop until the reserve raisins from that crop are disposed of under the marketing order. Comments received by June 2, 2003, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for NS and ZC raisins for the 2002–03 crop year, which began August 1, 2002, and ends July 31, 2003. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes final volume regulation percentages for 2002–03 crop NS and ZC raisins covered under the order. The volume regulation percentages are 53 percent free and 47 percent reserve for NS raisins, and 80 percent free and 20 percent reserve for ZC raisins. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. The Committee unanimously recommended ZC final percentages on January 29, 2003, and NS final percentages on February 13, 2003.

Computation of Trade Demands

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 14, 2002, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year, and adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for NS raisins shall equal the total shipments of free tonnage during August and September for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. For all other varietal types, including ZC raisins, the desirable carryout shall equal the total shipments of free tonnage during August, September and one-half of October for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three. In accordance with these provisions, the Committee computed and announced 2002–03 trade demands for NS and ZC raisins at 196,185 tons and 2,166 tons, respectively, as shown below.

COMPUTED TRADE DEMANDS

[Natural condition tons]

	NS raisins	ZC raisins
Prior year's shipments	298,133	3,441
Multiplied by 90 percent	0.90	0.90

COMPUTED TRADE DEMANDS—Continued
[Natural condition tons]

	NS raisins	ZC raisins
Equals adjusted base	268,320	3,097
Minus carryin inventory	132,135	1,910
Plus desirable carryout	60,000	978
Equals computed trade demand	196,185	2,166

Computation of Preliminary Volume Regulation Percentages

Section 989.54(b) of the order requires that the Committee announce, on or before October 5, preliminary crop estimates and determine whether volume regulation is warranted for the varietal types for which it computed a trade demand. That section allows the Committee to extend the October 5 date up to 5 business days if warranted by a late crop.

Due to a late 2002 crop, the Committee met on October 8, 2002, and announced a preliminary crop estimate for NS raisins of 407,996 tons, which is almost 18 percent higher than the 10-year average of 346,770 tons. NS raisins are the major varietal type of California raisin. Adding the carryin inventory of 132,135 tons, plus 18,000 tons of reserve raisins expected to be released to handlers this season for free use in an export program, plus the 407,996-ton crop estimate resulted in a total available supply of 558,131 tons, which was significantly higher (almost 285 percent) than the 196,185-ton trade demand. Thus, the Committee determined that volume regulation for NS raisins was warranted. The Committee announced preliminary free and reserve percentages for NS raisins, which released 65 percent of the computed trade demand since the field price (price paid by handlers to producers for their free tonnage raisins) had not been established. The preliminary percentages were 31 percent free and 69 percent reserve.

Also at its October 8, 2002, meeting, the Committee announced a preliminary crop estimate for ZC raisins at 4,544 tons, which is comparable to the 10-year average of 4,494 tons. Combining the carry-in inventory of 1,910 tons with the 4,544-ton crop estimate resulted in a total available supply of 6,454 tons. With the estimated supply significantly higher (almost three times) than the 2,166-ton trade demand, the Committee determined that volume regulation for ZC raisins was warranted. The Committee announced preliminary percentages for ZC raisins, which released 65 percent of the computed trade demand since field price had not been established. The preliminary percentages were 31 percent free and 69 percent reserve.

Field prices for both NS and ZC raisins were established on January 10, 2003, and preliminary percentages were revised on January 13, 2003, to 41 percent free and 59 percent reserve for NS and ZC raisins to release 85 percent of their trade demands.

In addition, preliminary percentages were announced for Other Seedless, Dipped Seedless, and Oleate and Related Seedless. It was ultimately determined that volume regulation was only warranted for NS and ZC raisins. As in past seasons, the Committee submitted its marketing policy to USDA for review.

Modification to Marketing Policy Regarding ZC Raisins

Pursuant to § 989.54(f) of the order, the Committee met on January 29, 2003, and revised its marketing policy regarding ZC raisins due to a major change in economic conditions. The Committee recommended, and USDA subsequently approved, an increase in the ZC trade demand from 2,166 to 3,302 tons. The Committee's rationale for this action was to take advantage of increased demand created by a short Greek crop. Greece's crop has been reduced due to adverse weather conditions, and the Committee hopes to be able to sell more California ZC raisins in world markets.

Computation of Final Volume Regulation Percentages

Pursuant to § 989.54(c), at its January 29, 2003, meeting, the Committee announced interim percentages for NS and ZC raisins to release slightly less than their full trade demands. Based on a revised NS crop estimate of 373,138 tons (down from the October estimate of 407,996 tons), interim percentages for NS raisins were announced at 52.75 percent free and 47.25 percent reserve. Based on a revised ZC crop estimate of 4,128 tons (down from the October estimate of 4,544 tons), interim percentages for ZC raisins were announced at 79.75 percent free and 20.25 percent reserve.

Pursuant to § 989.54(d), the Committee also recommended final percentages to release the full trade demands for NS and ZC raisins. Final percentages were recommended for ZC raisins at the Committee's January meeting at 80 percent free and 20 percent reserve. Final percentages for NS raisins were recommended by the Committee at a meeting on February 13, 2003, at 53 percent free and 47 percent reserve, based on a revised crop estimate of 373,680 tons (slightly up from the January estimate of 373,138 tons). The Committee's calculations to arrive at final percentages for NS and ZC raisins are shown in the table below:

FINAL VOLUME REGULATION PERCENTAGES
[Natural condition tons]

	NS Raisins	ZC Raisins
Trade demand	196,185	3,302
Divided by crop estimate	[1] 373,680	[2] 4,128
Equals free percentage	53	80
100 minus free percentage equals reserve percentage	47	20

[1] The crop estimate for NS raisins is underestimated, as acquisitions through the week ending February 22, 2003, were at 378,601 tons.

[2] The crop estimate for ZC raisins is underestimated, as acquisitions through the week ending February 22, 2003, were at 4,200 tons.

In addition, USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal will be met for NS and ZS raisins by the establishment of final percentages, which release 100 percent of the trade demands and the offer of additional reserve raisins for sale to handlers under the "10 plus 10 offers." As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins, which are made available to handlers during each season. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use. Handlers may sell their 10 plus 10 raisins to any market.

For NS raisins, the first "10 plus 10 offer" was held in February 2003. A total of 29,813 tons was made available to raisin handlers; all of the raisins were purchased. The second 10 plus 10 offer of 29,813 tons will be made available to handlers in May 2003. Adding the total figure of 59,626 tons of 10 plus 10 raisins to the 200,658 tons of free tonnage raisins acquired by handlers from producers through the week ending February 22, 2003, plus 132,135 tons of 2001–02 carryin inventory, plus 18,000 tons of reserve raisins released during the season through an export program, equates to 410,419 tons of natural condition raisins, or 385,207 tons of packed raisins, that are available to handlers for free use or primary markets. This is about 138 percent of the quantity of NS raisins shipped during the 2001–02 crop year (298,133 natural condition tons or 279,819 packed tons).

For ZC raisins, both "10 plus 10 offers" were held simultaneously in February 2003. A total of 688 tons was made available to handlers, and all of the raisins were purchased. Adding the 688 tons of 10 plus 10 raisins to the 3,360 tons of free tonnage raisins acquired by handlers from producers through the week ending February 22, 2003, plus 1,910 tons of 2001–02 carryin inventory equates to 5,958 tons of natural condition raisins, or about 5,268 tons of packed raisins, available to handlers for free use or primary markets. This is about 173 percent of the quantity of ZC raisins shipped during the 2001–02 crop year (3,441 tons natural condition tons or 3,043 packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments of a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. When implemented, the additional offers of reserve raisins make even more raisins available to primary markets, which is consistent with USDA's Guidelines.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

Since 1949, the California raisin industry has operated under a Federal marketing order. The order contains authority to, among other things, limit the portion of a given year's crop that can be marketed freely in any outlet by raisin handlers. This volume control mechanism is used to stabilize supplies and prices and strengthen market conditions.

Pursuant to § 989.54(d) of the order, this rule establishes final volume regulation percentages for 2002–03 crop NS and ZC raisins. The volume regulation percentages are 53 percent free and 47 percent reserve for NS raisins, and 80 percent free and 20 percent reserve for ZC raisins. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order.

Volume regulation is warranted this season for NS raisin acquisitions of 378,601 tons through the week ending February 22, 2003, combined with the carryin inventory of 132,135 tons, plus 18,000 tons of reserve raisins released for free use through an export program, results in a total available supply of 528,736 tons, which is about 270 percent higher than the 196,185-ton trade demand. Volume regulation is warranted for ZC raisins this season because acquisitions of 4,200 tons through the week ending February 22, 2003, combined with the carryin inventory of 1,910 tons results in a total available supply of 6,110 tons, which is about twice the 3,302-ton trade demand.

Many years of marketing experience led to the development of the current volume regulation procedures. These procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The current volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help reduce the burden of oversupplies in the domestic market.

Raisin grapes are a perennial crop, so production in any year is dependent upon plantings made in earlier years. The sun-drying method of producing raisins involves considerable risk because of variable weather patterns.

Even though the product and the industry are viewed as mature, the industry has experienced considerable change over the last several decades. Before the 1975–76 crop year, more than 50 percent of the raisins were packed and sold directly to consumers. Now, over 60 percent of raisins are sold in bulk. This means that raisins are now sold to consumers mostly as an ingredient in another product such as cereal and baked goods. In addition, for a few years in the early 1970's, over 50 percent of the raisin grapes were sold to the wine market for crushing. Since then, the percent of raisin-variety grapes sold to the wine industry has decreased.

In addition, the price wineries have offered for raisin grapes has dropped to $65 per ton.

California's grapes are classified into three groups—table grapes, wine grapes, and raisin-variety grapes. Raisin-variety grapes are the most versatile of the three types. They can be marketed as fresh grapes, crushed for juice in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. This type of situation introduces a certain amount of variability into the raisin market.

Although the size of the crop for raisin-variety grapes may be known, the amount dried for raisins depends on the demand for crushing. This makes the marketing of raisins a more difficult task. These supply fluctuations can result in producer price instability and disorderly market conditions.

Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, producer prices for NS raisins remained fairly steady between the 1992–93 through the 1997–98 seasons, although production varied. As shown in the table below, during those years, production varied from a low of 272,063 tons in 1996–97 to a high of 387,007 tons in 1993–94, or about 114,944 tons. According to Committee data, the total producer return per ton during those years, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $901 in 1992–93 to a high of $1,049 in 1996–97, or $148. Total producer prices for the 1998–99 and 1999–2000 seasons increased significantly due to back-to-back short crops during those years. Producer prices dropped dramatically for the last two seasons due to record-size production and large carry-in inventories.

NATURAL SEEDLESS PRODUCER PRICES

Crop Year	Deliveries (natural condition tons)	Producer Prices (per ton)
2001–02	377,328	[1] $554.40
2000–01	432,616	[2] 570.82
1999–2000	299,910	1,211.25
1998–99	240,469	[3] 1,290.00
1997–98	382,448	946.52
1996–97	272,063	1,049.20
1995–96	325,911	1,007.19
1994–95	378,427	928.27
1993–94	387,007	904.60
1992–93	371,516	901.41

[1] and [2] Return-to-date, reserve pools still open.
[3] No volume regulation.

There are essentially two broad markets for raisins—domestic and export. In recent years, both export and domestic shipments have been decreasing. Domestic shipments decreased from a high of 204,805 packed tons during the 1990–91 crop year to a low of 156,325 packed tons in 1999–2000. In addition, exports decreased from 114,576 packed tons in 1991–92 to a low of 91,600 packed tons in the 1999–2000 crop year.

In addition, the per capita consumption of raisins has declined from 2.07 pounds in 1988 to 1.46 pounds in 2001. This decrease is consistent with the decrease in the per capita consumption of dried fruits in general, which is due to the increasing availability of most types of fresh fruit throughout the year.

While the overall demand for raisins has been decreasing (as reflected in the decline in commercial shipments and per capita consumption), production has been increasing. Deliveries of NS dried raisins from producers to handlers reached an all-time high of 432,616 tons in the 2000–01 crop year. This large crop was preceded by two short crop years; deliveries were 240,469 tons in 1998–99 and 299,910 tons in 1999–2000. Deliveries for the 2000–01 crop year soared to a record level because of increased bearing acreage, yields, and growers drying more grapes for raisins. Deliveries for the 2001–02 crop year were at 377,328 tons, and deliveries through February 22, 2003, for the current year were at 378,601 tons. Three crop years of high production and a large 2001–02 carryin inventory has contributed to the industry's burdensome supply of raisins.

This type of surplus situation leads to serious marketing problems. Handlers compete against each other in an attempt to sell more raisins to reduce inventories and to market their crop. This situation puts downward pressure on growers' prices and incomes.

The order permits the industry to exercise supply control provisions, which allow for the establishment of free and reserve percentages, and establishment of a reserve pool. One of the primary purposes of establishing free and reserve percentages is to equilibrate supply and demand. If raisin markets are over-supplied with product, producer prices will decline.

Raisins are generally marketed at relatively lower price levels in the more elastic export market than in the more inelastic domestic market. This results in a larger volume of raisins being marketed and enhances producer returns. In addition, this system allows the U.S. raisin industry to be more competitive in export markets.

To assess the impact that volume control has on the prices producers receive for their product, an econometric model has been constructed. The model developed is for the purpose of estimating nominal prices under a number of scenarios using the volume control authority under the Federal marketing order. The price producers receive for the harvest and delivery of their crop is largely determined by the level of production and the volume of carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of reserve and free percentages for primary markets, and a reserve pool. The establishment of reserve petcentages impacts the production that is marketed in the primary markets.

The reserve percentage limits what handlers can market as free tonnage. Assuming the 53 percent reserve limits the total free tonnage to 200,658 natural condition tons (.53 x 378,601 tons delivered through February 22, 2003) and carryin is 132,135 natural condition tons, and purchases from reserve total 77,626 natural condition tons (which includes anticipated reserve raisins released through the export program and other purchases), then the total free supply is estimated at 410,419 natural condition tons. The econometric model estimates prices to be $142 per ton higher than under an unregulated scenario. This price increase is beneficial to all producers regardless of size and enhances producers' total revenues in comparison to no volume control. Establishing a reserve allows the industry to help stabilize supplies in both domestic and export markets, while improving returns to producers.

Regarding ZC raisins, ZC raisin production is much smaller than NS raisin production. Volume regulation has been implemented for ZC raisins during the 1994–95, 1995–96, 1997–98, 1998–99, 1999–2000, and 2000–01 seasons. Various programs to utilize reserve pool ZC raisins were implemented during those years. As shown in the table below, although production varied during those years, volume regulation helped to reduce inventories, and helped to strengthen total producer prices (free tonnage plus reserve ZC raisins) from $412.56 per ton in 1994–95 to a high of $1,034.03 per ton in 1998–99. The Committee is implementing an export program for ZC raisins, in addition to NS raisins. Through this program, the Committee plans to continue to manage its ZC supply, build and maintain export markets, and ultimately improve producer returns. Volume regulation helps the industry not only to manage oversupplies of raisins, but also maintain market stability.

ZC INVENTORIES AND PRODUCER PRICES DURING YEARS OF VOLUME REGULATION —(NATURAL CONDITION TONS)

Crop year	Deliveries	Inventory		Producer prices (per ton)
		Desirable	Physical	
2001–02	4,213	1,227	1,395	[1] $1,000.00
2000–01	4,848	1,227	1,109	851.55
1999–2000	3,683	573	1,906	669.14
1998–99	3,880	694	1,188	1,034.03
1997–98	4,826	788	1,679	710.08
1996–97	4,491	987	549	[2] 1,150.00
1995–96	3,294	782	2,890	711.32
1994–95	5,377	837	4,364	412.56

[1] and [2] No volume regulation.

Free and reserve percentages are established by varietal type, and usually in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, it has been determined that volume regulation is warranted this season for only two of the ten raisin varietal types defined under the order.

The free and reserve percentages established by this rule release the full trade demands and apply uniformly to all handlers in the industry, regardless of size. For NS raisins, with the exception of the 1998–99 crop year, small and large raisin producers and handlers have been operating under volume regulation percentages every year since 1983–84. There are no known additional costs incurred by small handlers that are not incurred by large handlers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action imposes no additional reporting or recordkeeping burdens on either small or large handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with other similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Further, Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members, including small business entities, and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments for a 60-day period on the establishment of final volume regulation percentages for 2002–03 crop NS and ZC raisins covered under the order. All comments received within the comment period will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 2002–03 crop year apply to all NS and ZC raisins acquired from the beginning of that crop year; (2) handlers are currently marketing their 2002–03 crop NS and ZC raisins and this action should be taken promptly to achieve the intended purpose of making the full trade demands available to handlers; (3) handlers are aware of this action, which was recommended at public meetings, and need no additional time to comply with these percentages; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 989 is amended to read as followed:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 989.256 is added to Subpart—Supplementary Regulations to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 989.256 Final free and reserve percentages for the 2002–03 crop year.

The final percentages for standard Natural (sun-dried) Seedless and Zante Currant raisins acquired by handlers during the crop year beginning on August 1, 2002, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

Varietal type	Free percentage	Reserve percentage
Natural (sun-dried) Seedless	53	47
Zante Currant	80	20

Dated: March 27, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–7938 Filed 4–1–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 99–032–2]

Importation of Cooked Meat and Meat Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products to allow meat cooked in plastic in processing establishments located in regions where rinderpest or foot-and-mouth disease exists to be further processed after cooking and before importation. Additionally, we are allowing the pink juice test to be used in determining whether ground meat cooked in such establishments has been adequately cooked. These amendments will provide foreign meat processing establishments with additional processing options while continuing to protect against the introduction of rinderpest and foot-and-mouth disease into the United States.

EFFECTIVE DATE: May 2, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Masoud Malik, Senior Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, swine vesicular disease, hog cholera, and African swine fever. These are dangerous and destructive communicable diseases of ruminants and swine.

Under § 94.4 of the regulations, the Animal and Plant Health Inspection Service (APHIS) prohibits the importation of cured and cooked meat from regions where rinderpest or FMD exists unless the cured or cooked meat fulfills the conditions prescribed in that section.

Meat Cut Into Cubes

Section 94.4(b)(8) requires that cooked ruminant or swine meat imported into the United States from regions where rinderpest or FMD exists be inspected at the port of arrival by an inspector of the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (Department) and be found to be thoroughly cooked. For meat that is cooked in plastic, thoroughness of cooking must be determined either by a temperature indicator device (TID) or by the pink juice test performed on a piece of meat known as an indicator piece. It is important for the FSIS inspector to be able to associate a TID or indicator piece with the plastic tube of cooked meat that it came from. Until now, that has meant that meat from various cooking tubes could not be combined after cooking for further processing at a foreign meat processing establishment before being exported to the United States.

On May 22, 2002, we published a proposed rule in the **Federal Register** (67 FR 35936–35939, Docket No. 99–032–1) in which we proposed to allow meat cooked in different plastic tubes in a single cycle of cooking to be combined after that cooking for further processing. Additionally, we proposed to allow the pink juice test to be used in determining whether ground meat cooked in foreign meat processing establishments has been adequately cooked.

We solicited comments concerning our proposal for 60 days ending July 22, 2002. We received 16 comments by that date. They were from livestock associations, food processing associations, a State department of agriculture, foreign and domestic meat processors, importers, manufacturers of packaged food products, and a meat science association. Three of the commenters opposed the proposed provisions, two supported the proposal as written, and the rest of the commenters recommended changes to the proposed rule. We discuss the issues raised by the commenters below.

Comments Received

In our proposed rule, we referred to meat that is cooked in the same cooking cycle as being part of the same "shift." A number of commenters stated that the word "shift" connotes the time worked by personnel, rather than a cooking

cycle, and recommended that we replace the word "shift" with "batch." In this final rule, we are changing our terminology to use "batch," as recommended by the commenters. In our discussion of the proposed rule in this background information, when we refer to text in the proposed rule that used the term "shift," we will use the term "batch" instead and follow it with the term "shift" in parentheses.

The regulations in part 94 require that meat cooked in plastic for exportation to the United States from regions where FMD or rinderpest exists be cooked in boiling water or a steam-fed oven. Several commenters stated that technology exists that makes it possible to carry out the required cooking by steam or boiling water in a continuous cooker, rather than in a single batch cooker. The commenters requested that the regulations specifically acknowledge that adequate cooking by steam or boiling water can be done in a continuous cooker and that, if such a continuous cooker is used, a batch be considered a designated period of time in the cooker. One commenter recommended that such a batch be limited to one metric ton of meat.

We agree that a steam-fed or boiling water continuous cooker can be used to cook meat to a temperature that will destroy the FMD and rinderpest agents, and consider a batch to be a unit of meat kept in the cooker for a minimum of 1.75 hours. We are adding language to § 94.4 to clarify that such a continuous cooker may be used. However, we do not consider it necessary to limit the amount of meat that may be cooked in a batch, provided all of the meat is cooked for the minimum required time.

Several commenters requested that APHIS eliminate the requirement in the regulations for any specific cooking method and either allow manufacturers to use alternative heat processing technologies that achieve the necessary time and temperature results, or provide that alternative cooking methods may be approved on a case-by-case basis.

We are making no changes based on this comment. The methods of cooking allowed by the regulations were approved after we determined them to be effective in destroying the FMD and rinderpest agents. Part of the process of determining the efficacy of those cooking methods was to allow members of the public to submit information regarding the effectiveness of the cooking methods. We will consider any requests to allow alternative cooking methods that are submitted to us along with supporting documentation regarding their effectiveness. If it appears the methods can be used to destroy the FMD and rinderpest agents, we will propose to add them to the cooking methods allowed under the regulations and will invite the general public to comment on the proposal. Based on all information we receive, we will determine whether to add such cooking methods to those allowed under the regulations.

Among the requirements we proposed regarding the further processing of meat after cooking was that one tube of cooked meat from each batch (shift) per cooker be randomly selected and that an indicator piece be cut from the cold spot of the tube to serve as the indicator piece for the entire batch (shift).

A number of commenters stated that all of the meat cooked in a particular batch per cooker cannot always be shipped together. The commenters recommended that the regulations allow indicator pieces or TID's to be taken from more than one cooking tube per batch of a cooker, in case the batch is split into more than one shipment. The commenters recommended that the regulations require that unused indicator pieces or TID'S taken from the batch be destroyed once the batch is loaded into a container.

With regard to the use of TID's, we did not specifically refer to them in our proposed provisions because current standard industry practice is not to use TID's. However, as indicated in § 94.4(b)(5), a TID is an acceptable method of confirming that meat cooked in plastic has been cooked to the required temperature. Therefore, in this final rule, § 94.4(b)(6) provides that meat that is further processed after cooking may be accompanied to the United States by either an indicator piece or a TID. With regard to the number of indicator pieces or TID's that may be taken from a batch for shipment to the United States, we are providing in this final rule that indicator pieces or TID's from up to two cooking tubes per batch of a cooker may be selected to accompany shipments of cooked meat to the United States. Following the loading of a batch of cooked meat into a container, any unused indicator pieces or TID's must be destroyed.

Section 94.4(b)(6) of the proposed rule stated that the provisions of that paragraph pertained to meat that is cooked and then cooled before further processing. Several commenters stated that we should not require that the meat be cooled before further processing.

Our reference to cooling before further processing was based on standard industry practice. However, such cooling is not necessary for the destruction of the FMD and rinderpest disease agents. Therefore, in this final rule, § 94.4(b)(6) will not refer to cooling the meat after cooking.

One commenter noted that proposed § 94.4(b)(6)(i) used the wording "tube or plastic container." The commenter recommended that, since the tubes that are used are made of plastic, it would be sufficient simply to refer to "plastic container."

Proposed § 94.4(b)(5) stated that meat to be cooked in tubes must be loaded into a flexible or semiflexible cooking tube constructed of plastic or other material approved by the U.S. Food and Drug Administration. The intent was to require that a tube be used, but not necessarily that the tube be made of plastic. Therefore, in this final rule, § 94.4(b)(6)(i) refers to the tube required under § 94.4(b)(5), and not to a plastic container. For the same reason, we have also changed the heading of paragraph (b)(5) from "Meat cooked in plastic" to "Meat cooked in tubes."

One commenter noted that proposed § 94.4(b)(6)(i) stated that the certificate accompanying meat that has been further processed must provide the date that the tube from which the indicator piece was taken was selected. The commenter recommended that the term "selected" be changed to "cooked," to eliminate the option of the indicator piece being collected at any time after cooking but before processing.

We do not consider the precise date that the tube was selected (*i.e.*, whether it was selected the day the meat was cooked or at some later date before the meat is further processed) as important as knowing that the indicator piece or piece containing a TID is, in fact, representative of the processed meat. Therefore, although we are not requiring that the indicator piece or piece containing a TID be selected the date the meat is cooked, we are adding a requirement in this final rule that the certificate include the date the meat was cooked, as well as the date of the selection of the tube. Additionally, we are requiring in § 94.4(b)(6) that the indicator piece or piece containing a TID be selected by random sampling after the meat has been cooked and before the meat undergoes any additional processing (*e.g.*, through cutting, slicing, or dicing), and that, once that processing is completed, the meat may not be processed further before being exported to the United States. We are requiring in § 94.4(b)(8) that the certificate that must accompany the meat to the United States indicate what type of processed product (*e.g.*, diced cubes of a particular size) the indicator piece or piece containing a TID represents.

Several commenters who opposed the proposed rule stated it would increase product handling and exposure to the environment and greatly increase the risk of contamination by pathogens. The commenters expressed further concern that the Department lacks the resources to guarantee that foreign plants are completely and consistently in compliance with Hazard Analysis and Critical Control Points (HACCP) systems and pathogen testing requirements, and stated that some foreign governments have not provided accurate information and documentation regarding sampling procedures.

Even under the regulations prior to this final rule, processing of meat intended for exportation to the United States from regions where FMD or rinderpest exists needed to be carried out in an establishment approved by APHIS and FSIS as one in which the facilities for processing raw meat are separate from the facilities used for processing cooked meat. The additional processing allowed by this final rule must be carried out in accordance with those existing safeguards against contamination. The HACCP system referred to by the commenter is one that FSIS has adopted with regard to human health concerns and does not directly pertain to the regulations in part 94. In addition to a departmental inspection of the establishment prior to approval, periodic inspections are carried out by the Department to ensure compliance with the regulations. If, at any time, the Department determines an establishment is acting contrary to APHIS regulations, APHIS will take corrective action. APHIS relies on foreign governments' inspection and supervision of sampling, recordkeeping, and documentation in the same way that those governments rely on U.S. inspection and supervision of sampling, recordkeeping, and documentation.

Several commenters expressed concern that any products brought into the United States because of the new regulations would be in direct competition with U.S. products.

As we stated in our proposed rule, we do not expect that the adoption of this rule will greatly increase the volume of meat imports, largely because most products that would be imported in accordance with this final rule are already being imported. The effect of this rule will be to alter only the sizes of these products. Further, the Department must operate in accordance with international trade agreements, which provide that restrictions may not be imposed on importations unless there is a science-based justification for imposing such restrictions.

Several commenters questioned why, with homeland security in mind, APHIS proposed a rule that the commenters stated would provide more opportunity for contamination or sabotage during meat processing.

All of the mitigation measures in the animal health regulations governing both domestic and international commerce take a science-based approach to reducing the risk of the introduction or spread of animal diseases. The assessment of unmitigated risk is based on scientific evidence, historical data, and projections of expected movements of animals and animal products. Based on that assessment of risk, measures to mitigate risk are applied where necessary. Safeguards against potential acts of terrorism are being dealt with through procedures other than those set forth in 9 CFR part 94.

Two commenters stated that, although proposed § 94.4(b)(6) referenced only cubes, slices, and anatomical cuts of meat as being eligible for further processing, the provisions should also include ground meat that meets the prescribed conditions.

We are making no changes based on these comments. The proposed rule was initiated based on a request and information specifically addressing the process of cutting larger pieces of meat into cubes prior to their being hard frozen for shipment to the United States. As such, the process is not relevant to cooked ground meat.

One commenter stated that the proposed rule failed to include an analysis of the risk associated with the importation of cooked meat products, the change in risk the proposal would effect, the statistical validity of taking one sample per cooking batch, and the impact thawing and refreezing of samples would have on the pink juice test methodology.

The existing provisions for cooking meat in tubes will not be substantively changed by this final rule. All meat intended for importation under this rule will need to be cooked according to the existing time and temperature requirements. Under the existing provisions, veterinary officials in the exporting country conduct a pink juice test and gauge the temperature of the meat. Meat is then frozen and shipped to the United States. Once it is thawed in this country, U.S. inspectors conduct their own pink juice test. This process will essentially remain the same, except that U.S. inspectors will conduct the pink juice test on an indicator piece, or inspect a piece containing a TID, that was randomly chosen in the exporting country by government representatives of the exporting country. This rule will simply allow for further processing of meat after the cooking. APHIS has historically considered taking one sample per cooking cycle for pink juice testing a valid method of determining the effectiveness of the cooker for that cycle.

Several commenters stated that the economic impact of introducing FMD into the United States would be enormous, and that, even if contaminated imported products were removed from store shelves, the accompanying publicity would severely affect sales of domestic meat and meat products.

We are aware of the potential negative economic effects of the introduction of any serious foreign animal disease into the United States, particularly FMD; and have established the cooking requirements in § 94.4 to mitigate the risk of such diseases being introduced in imported cooked meat. As noted above, all meat intended for importation under this rule will need to be cooked according to the existing time and temperature requirements.

One commenter expressed concern that the pink juice test might not be a reliable method of ensuring proper cooking.

We are making no changes based on this comment. The pink juice test is an existing regulatory provision that we did not propose to change in any way in this rulemaking. Further, the commenter did not provide any specific data to support concerns regarding the efficacy of the pink juice test.

One commenter recommended that officials of foreign governments responsible for randomly selecting tubes of meat for indicator pieces be Department-certified and bonded. We are making no change based on this comment. We currently rely on officials of foreign governments for numerous types of certification without requiring that such individuals be Department-certified and bonded, just as our trading partners do not require that U.S. officials be certified and bonded by their governments.

Ground Meat

Under the regulations prior to this final rule, the only allowable method of determining whether ground meat cooked in tubes had been cooked to the required temperature was by means of a TID, *i.e.*, the use of an indicator piece was not an option for ground meat. Because TID's have not been in common use, this has had the effect of restricting the importation of ground meat cooked in tubes. In our proposed rule, however, we proposed to provide that an indicator piece could be used in lieu of a TID for ground meat if the indicator piece is of sufficient size for a pink juice test to be performed (*i.e.*, 3.8 centimeters or larger in each dimension after cooking). We are making that provision final in this rule. This change may make it more feasible to import ground meat into the United States. Under these circumstances, we consider it necessary to clarify in the regulations that ground meat imported into the United States from regions where FMD exists after being cooked in plastic may include no cardiac muscle. Research has shown that when cardiac tissue that is virus-positive is cooked according to the provisions of § 94.4, the FMD virus can survive the cooking.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In this document, we are amending the regulations regarding meat cooked in processing establishments located in regions where rinderpest or FMD exists to allow for further processing of meat after cooking and before importation.

Although these amendments will apply to both ruminant and swine meat, the primary effect of the changes will be on beef. As described previously in this document, the regulations in § 94.4(b)(5) prior to this final rule provided for the importation of ruminant and swine meat cooked under conditions that are largely similar to those provided under this rule. However, only beef and veal have been imported into the United States under § 94.4(b)(5), primarily from Argentina, Brazil, and Uruguay. This rule will allow for quality improvements in these cubed beef and veal products and, therefore, expand their marketability. However, the potential effect on imports of beef and veal and the overall U.S. supply of beef and veal is expected to be small for several reasons.

The cooked ground meat, cubes of meat, slices of meat, and anatomical cuts of meat that have been imported under § 94.4(b)(5) were used primarily in the production of products such as stews and meat pies. This rule will allow for an improvement in the quality of the meat cubes by making them available in more sizes and in a more consistent size and shape. This will allow the products to have expanded marketability. However, cooked cubed beef and veal constitute a small portion of the U.S. beef and veal industry.

Imports of prepared beef, including beef cooked in tubes, but not cured, pickled, salted, dried, or made into sausages, account for about 7 percent of all U.S. imports of beef and veal, but less than 1 percent of total U.S. supply.

In addition, imports into the United States of fresh beef and veal from Argentina and Uruguay are no longer occurring, due to FMD outbreaks in those countries. Also, although Argentina, Brazil, and Uruguay are large producers of beef and veal, their total exports are small relative to U.S. supply. The production of beef and veal in these three countries in 2001 was about 80 percent of that of the United States, but their exports of these products to all countries, including the United States, equated to considerably less than 1 percent of the U.S. supply of beef and veal. Thus, the effect on price would be negligible even if these countries were willing and able to redirect all of their beef and veal exports to the production of cooked cubed beef and veal for export to the United States.

Because (1) Similar products are already being imported, (2) the rule will alter only the sizes of these products, and (3) other types of beef and veal imports from Argentina, Brazil, and Uruguay have stopped, we do not expect that the adoption of this rule will greatly increase the volume of beef and veal imports. These amendments may result in a change in the character of the imports, but should not greatly increase the volume of those imports.

Imports of these products will potentially offer competition for domestic producers of ground meat, cubes of meat, slices of meat, and anatomical cuts of meat. Producers of these products are meatpacking plants, both those that slaughter animals directly and those that process purchased meats. In addition, these imports will also compete with domestic ruminant farms that sell to meatpacking facilities.

The Small Business Administration's (SBA) definition of a small entity in the production of cattle is one whose total sales are under $750,000 annually. According to the most recently published U.S. Department of Agriculture "Census of Agriculture," in 1997, there were 656,181 cattle farms in the United States, of which 99 percent would be considered small entities. However, as was discussed above, we expect that the economic impact on these producers will be minimal.

The SBA's guidelines state that a small producer of beef and veal meat that is in the form of cooked ground meat, cubes, slices, or anatomical cuts is one employing fewer than 500 workers. According to the most recently published U.S. Department of Commerce "Economic Census," in 1997, 98 percent or 1,297 of the meatpacking establishments processing purchased meats in the United States were small. These small establishments accounted for approximately 78 percent of the total value of shipments of the industry, or approximately $25 billion. Also in 1997, 95 percent of 1,393 animal slaughtering establishments were considered small. These small establishments accounted for approximately 76 percent of the total value of shipments of the industry, or $41.6 billion.

Based on the above information, we do not expect that this rule will have a significant effect on the volume of imports of ruminant and swine meat, including ground meat, cubes of meat, slices of meat, and cuts of meat. Given that the volume of imports will be unlikely to increase substantially, we do not expect that the economic effects of this rule on domestic producers of these products, whether small or large, will be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 94.4 is amended as follows:
■ a. By revising paragraph (b)(5) to read as set forth below.
■ b. By redesignating paragraphs (b)(6) through (b)(8) as (b)(7) through (b)(9) and adding a new paragraph (b)(6) to read as set forth below.
■ c. By revising newly redesignated paragraph (b)(8) to read as set forth below.

§ 94.4 Cured or cooked meat from regions where rinderpest or foot-and-mouth disease exists.

* * * * *

(b) * * *

(5) *Meat cooked in tubes.* Ground meat (which must not include cardiac muscle), cubes of meat, slices of meat, or anatomical cuts of meat (cuts taken from the skeletal muscle tissue) weighing no more than 5 kg (11.05 lbs) must be loaded into a flexible or semiflexible cooking tube constructed of plastic or other material approved by the U.S. Food and Drug Administration. The meat must then be cooked in either boiling water or in a steam-fed oven, in either a batch cooker or a continuous cooker, to reach a minimum internal temperature of 79.4 °C (175 °F) at the cold spot after cooking for at least 1.75 hours. Thoroughness of cooking must be determined by a TID registering the target temperature at the cold spot, or by the pink juice test as follows:

(i) *Cubes of meat and ground meat.* For cubes of meat, at least 50 percent of meat pieces per tube must be 3.8 cm (1.5 in) or larger in each dimension after cooking or, if more than 50 percent of the cubes of meat pieces per tube are smaller than 3.8 cm (1.5 in) in any dimension after cooking, or if the meat is ground meat, an indicator piece consisting of a single piece of meat of sufficient size for a pink juice test to be performed (3.8 cm (1.5 in) or larger in each dimension after cooking) must have been placed at the cold spot of the tube.

(ii) *Slices of meat.* At least 50 percent of the slices of meat must be 3.8 cm (1.5 in) or larger in each dimension after cooking or, if more than 50 percent of meat pieces are smaller than 3.8 cm (1.5 in) in any dimension after cooking, an indicator piece of sufficient size for a pink juice test to be performed (3.8 cm (1.5 in) or larger in each dimension after cooking) must be placed at the cold spot of the tube.

(iii) *Anatomical cuts of meat.* An indicator piece removed from an anatomical cut of meat after cooking must be removed from the center of the cut, farthest from all exterior points and be 3.8 cm (1.5 in) or larger in each dimension for performance of the pink juice test.

(6) *Further processing of meat cooked in tubes.* Cubes of meat, slices of meat, or anatomical cuts of meat (cuts taken from the skeletal muscle tissue) cooked in tubes in accordance with paragraph (b)(5) of this section may be processed further after cooking if the following provisions are met:

(i) For meat that is cooked and is intended for further processing, up to two tubes from each batch per cooker must be randomly selected by the official of the National Government of the region of origin who is authorized to issue the meat inspection certificate required by § 327.4 of this title. If a TID is not used, a cylindrical or square piece of at least 3.8 cm (1.5 in) in each dimension must be cut from the cold spot of each tube. The cylindrical or square piece will be the indicator piece for the pink juice test. The indicator piece or piece containing the TID must be sealed in plastic or other material approved by the U.S. Food and Drug Administration, and be accompanied by a certificate issued by the official who selected the tube. The certificate must provide the date the tube was cooked and the cooker and batch number, and the date the tube was selected for sampling. Each batch per cooker must have at least one but no more than two indicator pieces or pieces containing TID's. All indicator pieces and pieces containing TID's must be individually sealed, properly labeled, and enclosed together in one sealed box that accompanies the shipment. Any indicator pieces or pieces containing TID's that are not used to accompany a shipment to the United States must be destroyed following loading of the batch into a container; and

(ii) After removing the indicator piece or piece containing a TID, all remaining meat from the same batch may be cut into smaller cubes and sealed in plastic or other material approved by the U.S. Food and Drug Administration. After being processed into smaller cubes once, the meat may not be further processed before shipment to the United States. The cubes of meat and the indicator piece or piece containing a TID must be accompanied to the United States by a certificate as provided in paragraph (b)(8) of this section.

* * * * *

(8) *Certificate.* (i) The cooked meat must be accompanied by a certificate issued by an official of the National Government of the region of origin who is authorized to issue the foreign meat inspection certificate required under § 327.4 of this title, stating: "This cooked meat produced for export to the United States meets the requirements of title 9, Code of Federal Regulations, § 94.4(b)." Upon arrival of the cooked meat in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

(ii) For cooked meat that is further processed in accordance with paragraph (b)(6) of this section, the certificate must include the following statement, in addition to the certification required under paragraph (b)(8)(i) of this section: "No more than two tubes were randomly selected per batch per cooker for cutting an indicator piece or obtaining a piece containing a TID. The indicator piece or piece containing a TID represents a shipment of (describe form of processed product—*e.g.*, diced cubes of a particular size). A piece containing a TID or a piece 3.8 cm (1.5 in) or larger in each dimension was cut from the cold spot of the tube, and was sealed and marked with the following cooking date, cooker, and batch: _____ and the following date of selection of the tube_____. The total number of indicator pieces or pieces containing TID's enclosed in a sealed box is_____."

* * * * *

Done in Washington, DC, this 26th day of March 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–7847 Filed 4–1–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–01–AD; Amendment 39–13098; AD 2003–07–02]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (Formerly Allison Engine Company) 501–D Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) 501–D series turboprop engines. This amendment requires removal from service of certain turbine rotor components at reduced life limits. This amendment is prompted by the result of recalculated material properties by the manufacturer. The actions specified by this AD are intended to prevent uncontained turbine rotor failure resulting in in-flight engine shutdown and possible damage to the airplane.

DATES: Effective May 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce Corporation, PO Box 420, Indianapolis, IN 46206–0420; telephone (317) 230–6400; fax (317) 230–4243. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7870; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) 501–D series turboprop engines was published in the **Federal Register** on October 18, 2002 (67 FR 64328). That action proposed to require removal from service of certain turbine rotor components at reduced life limits due to recalculated material properties by the manufactuer. As a result, the manufacturer has reduced the life limits of certain second-stage, third-stage, and fourth-stage turbine wheel assemblies, and certain 1st-2nd stage, 2nd-3rd stage, and 3rd-4th stage turbine spacer assemblies.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

AD Not Required

One commenter states that it is a waste of tax dollars to issue the AD when the life limits of Rolls-Royce Customer Service Letter (CSL) 1001, Revision 19, dated July 22, 2002, and the life limit reduction specified by the NRPM are the same. The commenter continues to say that the only possible difference the AD could address would be the "one time exception" permitted by the CSL to operate beyond the revised limits until March 31, 2003, and then only if the AD is adopted as a final rule before March 31, 2003. The commenter believes that the AD does not offer any new information except that the FAA may address the "one time exception" permitted by CSL 1001.

The FAA does not agree. Whenever the FAA lowers the life of critical service parts, an AD is required because the change in service life has become more restricted. The reason CSL 1001 and the NPRM are the same is because Rolls-Royce has already revised the CSL as a result of the NPRM. The AD is not addressing the "one time exception" in CSL 1001, Revision 19, dated July 22, 2002.

Expand the Applicability To Add Airbus Industrie 377S GT–F (Super Guppy)

One commenter requests that the Applicability statement be written to include the Airbus Industrie 377SGT–F (Super Guppy) model.

The FAA agrees. The Applicability statement is revised to reflect this change.

Add Assigned Rework Part Numbers to Table 2

One commenter requests that two additional part numbers (PNs) 23064854 and 23064858, be added to the Supplementary Information section "FAA's Determination of an Unsafe Condition and Proposed Actions" and that the same numbers be added to Table 2 501–D22 Series Life Limits. The two additional PNs are the assigned reworked PNs for 6844632 and 23033463. The reworked PNs have the same life limit as their prior part number; therefore, they should be added to the AD to prevent any confusion regarding their reduction in life limit to 4,700 cycles-in-service (CIS).

The FAA agrees. The assigned reworked PNs are added to Table 2; however the FAA's Determination of an Unsafe Condition and Proposed Actions section in the NPRM preamble does not appear in the final rule.

Original Life Limit for Part Number 6844794 Rev R and Greater

The same commenter requests an additional change to the Supplementary Information Section "FAA's Determination of an Unsafe Condition and Proposed Actions" and to Table 2. The commenter states that the life limit reduction for the PN 6844794, 3rd and 4th stage turbine spacer is only necessary for those parts which were manufactured prior to part number drawing 6844794 revision letter "R". Tighter dimensional control of the spacer critical life location which was implemented with PN 6844794 revision letter "R" allows PNs identified as Rev "R" and greater to remain at their previous life limits. Therefore, the commenter requests that delineation by PN 6844794 "with serial number (SN) less than and including KK22951 * * *" be replaced by "PN 6844794 prior to revision letter R".

The FAA agrees. Table 2 reflects the change in the AD; however, the FAA's Determination of an Unsafe Condition and Proposed Actions section in the NPRM preamble does not appear in the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 930 Rolls-Royce 501–D series turboprop engines of the affected design in the worldwide fleet. The FAA estimates that 684 engines installed on airplanes of U.S. registry will be affected by this AD. This AD does not impose any additional labor costs if performed at the time of scheduled engine overhaul. Required parts will cost approximately $45,000 per engine. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $30,780,000.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it

would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–07–02 Rolls-Royce Corporation: Amendment 39–13098. Docket No. 2001–NE–01–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) 501–D series turboprop engines. These engines are installed on, but not limited to Lockheed 188 series and 382 series turboprop airplanes, Airbus Industrie 377SG5–F (Super Guppy) airplanes, and Convair Models 340 and 440 airplanes which have Rolls-Royce corporation 501–D series turboprop engines installed under a Supplemental Type Certificate. These models are commonly referred to as Convair 580/580A or 5800 models.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent uncontained turbine rotor failure, resulting in in-flight engine shutdown and possible damage to the airplane, do the following:

501–D13 Series Engines

(a) For 501–D13 series engines, remove turbine wheels and spacers from service as specified in the following Table 1:

TABLE 1.—501–D13 SERIES LIFE LIMITS

Part name	Part No.	Life limit for wheels that have complied with commercial overhaul information letter (COIL) 401, dated May 1978	Life limit for wheels that have not complied with COIL 401, dated May 1978
(1) Second-stage turbine wheel assembly.	6847142 and 6876892	Remove from service before or upon accumulating 16,000 cycles-in-service (CIS).	Remove from service before or upon accumulating 12,000 CIS.
(2) Third-stage turbine wheel assembly.	6845883 and 6849743	Remove from service before or upon accumulating 13,000 CIS.	Remove from service before or upon accumulating 10,000 CIS.
(3) Fourth-stage turbine wheel assembly.	6876468	Remove from service before or upon accumulating 24,000 CIS.	Remove from service before or upon accumulating 18,000 CIS.

(b) Information on 501–D13 series engine turbine life limits can be found in Rolls-Royce Commercial Service Letter (CSL) No. CSL–120, Revision No. 52, dated July 22, 2002.

501–D22 Series Engines

(c) For 501–D22 series engines, remove turbine wheels and spacers from service as specified in the following Table 2:

TABLE 2.—501–D22 SERIES LIFE LIMITS

Part name	Part No.	Remove from service:
(1) Third-stage turbine wheel assembly	6855083	Before or upon accumulating 10,000 cycles-in-service (CIS).
(2) 1st-2nd-stage spacer assembly	6844632, 23033463, 23064854, and 23064858.	Before or upon accumulating 4,700 CIS.
(3) 1st-2nd-stage spacer assembly	23056966	Before or upon accumulating 8,000 CIS.
(4) 2nd-3rd-stage spacer assembly	23033456	Before or upon accumulating 4,000 CIS.
(5) 3rd-4th-stage spacer assembly	6844794 prior to revision letter "R"	Before or upon accumulating 5,100 CIS.

(d) Information on 501–D22 series engine turbine life limits can be found in Rolls-Royce Commercial Service Letter (CSL) No. CSL–1001, Revision No. 19, dated July 22, 2002.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Effective Date

(g) This amendment becomes effective on May 7, 2003.

Issued in Burlington, Massachusetts, on March 25, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–7743 Filed 4–1–03; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 244 and 249

[Release Nos. 33–8216; 34–47583; IC–25983; FR–69; File Nos. S7–43–02 and S7–44–02]

RIN 3235–AI69 and 3235–AI71

Filing Guidance Related to: Conditions for Use of Non-GAAP Financial Measures; and Insider Trades During Pension Fund Blackout Periods

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; interim guidance regarding Form 8–K Item 11 and Item 12 filing requirements.

SUMMARY: The Securities and Exchange Commission is issuing interim guidance regarding the filing of information pursuant to new Items 11 and 12 of Form 8–K. Item 11 requires a registrant to provide public notice of a pension fund blackout period. Final rules related to this disclosure item were published in the **Federal Register** on January 28, 2003 (68 FR 4337). Item 12 requires a registrant to furnish specified disclosure when the registrant, or any person acting on its behalf, makes any public announcement or release disclosing material non-public information regarding the registrant's results of operations or financial condition for a competed quarterly or annual fiscal period. Final rules related to this disclosure item were published in the **Federal Register** on January 30, 2003 (68 FR 4819).

EFFECTIVE DATE: March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew Thorpe, Special Counsel, with respect to the Form 8–K Item 11 information, or Joseph Babits, Special Counsel, with respect to the Form 8–K Item 12 information, at (202) 942–2910, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0402.

SUPPLEMENTARY INFORMATION: On January 22, 2003, the Commission issued two separate adopting releases. One of the releases contained final rules to clarify the application and prevent evasion of section 306(a) of the Sarbanes-Oxley Act of 2002.[1] Section 306(a) prohibits any director or executive officer of an issuer of any equity security from, directly or indirectly, purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that temporarily prevents plan participants or beneficiaries from engaging in equity securities through their plan accounts, if the director or executive officer acquired the equity security in connection with his or her service or employment as a director or executive officer. Among other things, the Commission created new Item 11 of Form 8–K, which requires a registrant to provide public notice of a pension fund blackout period. The Item 11 disclosure requirement is effective on March 31, 2003. The Commission deferred effectiveness until March 31 to allow time for Commission staff to program the addition of Item 11 to the Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system. In recognition of the fact that section 306(a) of the Sarbanes-Oxley Act of 2002, including the notice requirement, became effective on January 26, 2003, the release stated that between January 26 and March 31, 2003, a registrant could provide the required notice to the Commission by disclosing the information described in Item 11 under Item 5 ("Other Information") of Form 10–Q or 10–QSB, in the first quarterly period filed by the registrant after commencement of the blackout period.

The other release contained final rules and amendments to address public companies' disclosure or release of certain financial information that is calculated and presented on the basis of methodologies other than in accordance with generally accepted accounting principles.[2] Among other things, the Commission created new Item 12 of Form 8–K, that requires a registrant to furnish specified disclosure when the registrant, or any person acting on its behalf, makes any public announcement or release disclosing material non-public information regarding the registrant's results of operations or financial condition for a competed quarterly or annual fiscal period. The Item 12 disclosure requirement applies to earnings releases and similar announcements made after March 28, 2003.

Because the necessary programming to add Items 11 and 12 of Form 8–K to the EDGAR system is not yet complete, we are providing the following interim guidance regarding the filing requirement for these Items.

- Registrants should continue to disclose the information required by Item 11 under Item 5 ("Other Information") of Form 10–Q or 10–QSB in the first quarterly report filed by the registrant after commencement of the blackout period.
- Registrants should furnish the information required by Item 12 under Item 9 ("Regulation FD Disclosure") of Form 8–K.
- The text of Item 5 of the Form 10–Q that provides information required under Item 11 should indicate that information is being provided under Item 11.
- The caption in the Form 8–K that provides information required under Item 12 should indicate that information is being provided under Item 12, or under Items 9 and 12, as the case may be.

This procedural guidance does not affect the legal obligations or consequences of providing the information under these items. For example, the information in a Form 8–K report furnished pursuant to Item 9 is not deemed to be "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that section, except if the registrant specifically states that the information is to be considered "filed" under the Exchange Act or incorporates it by reference into a filing under the Securities Act of 1933 or the Exchange Act. As provided in the final rules, a registrant must furnish the information that is required by Item 12 under Item 9 of Form 8–K within five business days after the occurrence of an event specified in Item 12. Information provided under Item 12 also may be required to be provided under the requirements of Regulation FD; in this case, any earlier deadline for Item 9 under Regulation FD would apply.

This interim guidance will remain in effect until we announce that our EDGAR system permits registrants to file or furnish information using the

[1] Release No. 34–47225 (January 22, 2003) [68 FR 4337].

[2] Release No. 33–8176 (January 22, 2003) [68 FR 4819].

Item 11 and 12 designations. We will issue a statement and post it on the Commission's Web site to announce this date as soon as it becomes known.

By the Commission.

Dated: March 27, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7841 Filed 4–1–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9034]
RIN 1545–AW65

Education Tax Credit; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Thursday, December 26, 2002 (67 FR 78687), relating to the education tax credit.

DATES: This correction is effective December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Marilyn E. Brookens (202) 622–4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 25A of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9034), that were the subject of FR Doc. 02–32453, is corrected as follows:

§ 1.25A–3 [Corrected]

■ 1. On Page 78694, Column 2, § 1.25A–3(d)(2), *Example 4.*, line 1, the language "Prior to 1998, Student was not" is corrected to read "Prior to 1998, Student C was not".

§ 1.25A–5 [Corrected]

■ 2. On page 78696, Column 2, § 1.25A–5(c)(4), *Example 1.*, line 2, the language "A, who lives on X's campus, $3,000 for" is corrected to read "A, who lives on University X's campus, $3,000 for".

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Procedure & Administration).

[FR Doc. 03–7732 Filed 4–1–03; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40, 48, and 49

[TD 9051]

RIN 1545–AX97

Diesel Fuel; Blended Taxable Fuel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the tax on diesel fuel and the tax on blended taxable fuel. This document also makes clerical and clarifying changes to other excise tax regulations. These regulations affect persons that remove, enter, or sell diesel fuel or remove or sell blended taxable fuel.

DATES: *Effective Date:* These regulations are effective April 2, 2003.

Applicability Date: For date of applicability, *see* § 48.4081–3(g)(2)(ii).

FOR FURTHER INFORMATION CONTACT: Frank Boland, (202) 622–3130 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Manufacturers and Retailers Excise Tax Regulations (26 CFR part 48) relating to the definition of diesel fuel, the definition of refinery, and the application of the tax on blended taxable fuel.

On May 16, 2002, a notice of proposed rulemaking (REG–106457–00) was published in the **Federal Register** (67 FR 34882). Written comments were received but no public hearing was requested or held. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Definition of Diesel Fuel

Existing regulations generally define diesel fuel as any liquid that, without further processing or blending, is suitable for use as a fuel in a diesel-powered highway vehicle or diesel-powered train. The proposed regulations would add to existing regulations by providing that a liquid is suitable for use as diesel fuel if the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train.

One commentator suggested that the final regulations should provide that a liquid does not possess practical and commercial fitness solely by reason of its possible or rare use as a fuel in a vehicle or train. The final regulations adopt this suggestion. The final regulations also provide that a liquid may possess practical and commercial fitness even though the liquid is not predominantly used as a fuel in a vehicle or train.

The commentator also suggested that the final regulations should describe *practical and commercial fitness* in a manner similar to the description of the term in § 145.4051–1(a)(4) of the temporary regulations relating to the tax on the retail sale of certain heavy vehicles. The final regulations do not adopt this suggestion because Treasury and the IRS believe that such detail is not required to determine the classification of most liquids.

Definition of Refinery

Under existing regulations, refinery generally means a facility used to produce taxable fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons and from which taxable fuel may be removed by pipeline, by vessel, or at a rack. The proposed regulations would remove from the definition the references to the source of materials used to produce taxable fuel.

Taxable fuel includes finished gasoline and certain gasoline blendstocks. One commentator indicated that because gas processing plants and chemical plants produce small amounts of gasoline blendstocks, the plants would be considered refineries under the proposed definition. Thus, the commentator suggested, refinery should exclude gas processing plants and chemical plants that mainly produce products other than taxable fuel.

In fact, however, the gas processing plants and chemical plants described by the commentator are refineries under existing regulations. A facility does not lose its status as a refinery simply because it produces only small amounts of gasoline blendstocks. Thus, the final regulations do not adopt the commentator's suggestion.

Liability for Tax on Sale or Removal of Blended Taxable Fuel

Under section 4081(b), tax is imposed on taxable fuel removed or sold by the blender. Blended taxable fuel is taxable fuel that is created by mixing a liquid that has not been taxed with previously taxed taxable fuel. Under existing regulations, the blender is liable for tax on the sale or removal of blended taxable fuel. Generally, the blender is the person that owns the mixture immediately after it is created. Under the proposed regulations, a person would be jointly and severally liable for the tax on blended taxable fuel if the person sells a previously untaxed liquid as a taxed taxable fuel and that liquid becomes a part of a mixture that is blended taxable fuel.

Several commentators suggested that the regulations provide relief for certain unsuspecting blenders. For example, a wholesale distributor of petroleum products might offer to sell undyed diesel fuel (a taxed taxable fuel) to a retailer but actually deliver an untaxed liquid. Even though the retailer bought the liquid in good faith, the retailer would be liable for tax as a blender nevertheless because mixing the untaxed liquid with the preexisting inventory of undyed diesel fuel produces blended taxable fuel. Although the proposed regulations would impose joint and several liability on the dishonest wholesaler, the commentators are concerned that the unsuspecting retailer would still be liable for tax at the discretion of the IRS. To resolve this problem, the commentators generally suggested that the blender should be able to avoid liability for tax if the blender acted reasonably and in good faith when it relied on assurances of the seller as to the status of the liquid it bought.

Treasury and the IRS are concerned that the suggested rule may result in losses to the Highway Trust Fund. If retailers and wholesalers take inconsistent positions regarding the representations made by the wholesaler, the IRS might be unable to establish that either party is liable for the tax. Alternatively, even if the IRS is able to establish the wholesaler's liability, it may be unable to collect the tax from the wholesaler. In either case, the Highway Trust Fund would be inappropriately penalized for the retailer's choice of an untrustworthy supplier. Accordingly, the final regulations do not adopt the suggested rule. Although the final regulations allow the IRS to collect the tax from a person other than the blender in certain circumstances, blenders will remain liable (as under existing regulations) for the tax on the blended fuel.

Other Provisions

The final regulations also make clerical and clarifying changes to other excise tax regulations. For example, in the excise tax procedural regulations, the final regulations remove a redundant sentence. In the regulations relating to the taxes on communication services and air transportation, the final regulations remove obsolete provisions that refer to the district director.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Frank Boland, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Parts 40 and 48

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 49

Excise taxes, Reporting and recordkeeping requirements, Telephone, Transportation.

Adoption of Amendments to the Regulations

■ Accordingly, under the authority of 26 U.S.C. 7805, chapter 1 of 26 CFR is amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

■ 1. The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

■ 2. In § 40.6302(c)-3, paragraph (d) is amended as follows:

■ a. The heading is revised.

■ b. The first sentence is removed.

The revision reads as follows:

§ 40.6302(c)–3 Special rules for use of Government depositaries under chapter 33.

* * * * * *

(d) *Computation of net amount of tax that is considered as collected during a semimonthly period.* * * *

* * * * * *

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

■ 3. The authority citation for part 48 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

§ 48.4041–21 [Amended]

■ 4. Section 48.4041–21, paragraph (b)(1)(i), is amended by adding the language "by the buyer for a taxable use" after "covered by the statement is for use".

■ 5. Section 48.4081–1 is amended as follows:

■ a. Paragraph (b) is amended by:

■ 1. Removing the language "§ 48.4041–8(b)" in the definition of Diesel-powered highway vehicle and adding "§ 48.4061(a)–1(d)" in its place.

■ 2. Removing the language "from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons" in the first sentence of the definition of Refinery. b. Paragraph (c)(2)(i) is amended by adding three sentences to the end.

The addition reads as follows:

§ 48.4081–1 Taxable fuel; definitions.

* * * * * *

(c) * * *

(2) * * * (i) * * * A liquid is suitable for this use if the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train. A liquid may possess this practical and commercial fitness even though the specified use is not the liquid's predominant use. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train.

* * * * * *

■ 6. Section 48.4081–3 is amended by revising paragraphs (g)(2) and (g)(3) to read as follows:

§ 48.4081–3 Taxable fuel; taxable events other than removal at the terminal rack.

* * * * * *

(g) * * *

(2) *Liability for tax*—(i) *Liability of the blender.* The blender is liable for the tax imposed under paragraph (g)(1) of this section.

(ii) *Liability of seller of untaxed liquid.* On and after April 2, 2003, a person that sells any liquid that is used to produce blended taxable fuel is jointly and severally liable for the tax imposed under paragraph (g)(1) of this section on the removal or sale of that blended taxable fuel if the liquid—

(A) Is described in § 48.4081–1(c)(1)(i)(B) (relating to liquids on which tax has not been imposed under section 4081); and

(B) Is sold by that person as gasoline, diesel fuel, or kerosene that has been taxed under section 4081.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (g) and the definitions of *blended taxable fuel* and *diesel fuel* in § 48.4081–1(c):

Example 1. (i) *Facts.* W is a wholesale distributor of petroleum products and R is a retailer of petroleum products. W sells to R 1,000 gallons of an untaxed liquid (a liquid described in § 48.4081–1(c)(1)(i)(B)) and delivers the liquid into a storage tank (tank) at R's retail facility. However, W's invoice to R states that the liquid is undyed diesel fuel. At the time of the delivery, the tank contains 4,000 gallons of undyed diesel fuel, a taxable fuel that has been taxed under section 4081. The resulting 5,000 gallon mixture is suitable for use as a fuel in a diesel-powered highway vehicle because it has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle. The mixture does not satisfy the dyeing requirements of § 48.4082–1. R sells the mixture from the tank to a construction company for off-highway business use.

(ii) *Analysis*—(A) *Production of blended taxable fuel.* R is a blender within the meaning of § 48.4081–1 because R has produced blended taxable fuel, as defined in § 48.4081–1, by mixing 1,000 gallons of a liquid that has not been taxed under section 4081 with 4,000 gallons of diesel fuel that has been taxed under section 4081. The mixing occurs outside of the bulk transfer/terminal system and the resulting product is diesel fuel because it is suitable for use as a fuel in a diesel-powered highway vehicle.

(B) *Imposition of tax.* Under paragraph (g)(1) of this section, tax is imposed on R's sale of the 5,000 gallons of blended taxable fuel to the construction company. Even though the blended taxable fuel is sold for off-highway business use, which is a nontaxable use as defined in section 4082(b), the sale is not exempt from tax because the blended taxable fuel does not satisfy the dyeing requirements of § 48.4082–1. Tax is computed on 1,000 gallons, which is the difference between the number of gallons of blended taxable fuel R sells (5,000) and the number of gallons of previously taxed taxable fuel used to produce the blended taxable fuel (4,000).

(C) *Liability for tax.* R, as the blender, is liable for this tax under paragraph (g)(2)(i) of this section. W is jointly and severally liable for this tax under paragraph (g)(2)(ii) of this section because the blended taxable fuel is produced using an untaxed liquid that W sold as undyed diesel fuel (that is, as diesel fuel that was taxed under section 4081).

Example 2. (i) *Facts.* W, a wholesale distributor of petroleum products, buys 7,000 gallons of diesel fuel at a terminal rack. The diesel fuel is delivered into a tank trailer. Tax is imposed on the diesel fuel under § 48.4081–2 when the diesel fuel is removed at the rack. W then goes to another location where X, the operator of a chemical plant, sells W 1,000 gallons of an untaxed liquid (a liquid described in § 48.4081–1(c)(1)(i)(B)). However, X's invoice to W states that the liquid is undyed diesel fuel. This liquid is delivered into the tank trailer already containing the 7,000 gallons of diesel fuel. The resulting 8,000 gallon mixture is suitable for use as a fuel in a diesel-powered highway vehicle because it has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle. The mixture does not satisfy the dyeing requirements of § 48.4082–1. W sells the mixture to R, a retailer of petroleum products, and delivers the mixture into a storage tank at R's retail facility. R sells the mixture to its customers.

(ii) *Analysis*—(A) *Production of blended taxable fuel.* W is a blender within the meaning of § 48.4081–1 because W has produced blended taxable fuel, as defined in § 48.4081–1, by mixing 1,000 gallons of a liquid that has not been taxed under section 4081 with 7,000 gallons of diesel fuel that has been taxed under section 4081. The mixing occurs outside of the bulk transfer/terminal system and the resulting product is diesel fuel because it is suitable for use as a fuel in a diesel-powered highway vehicle. Thus, R has bought blended taxable fuel.

(B) *Imposition of tax.* Under paragraph (g)(1) of this section, tax is imposed on W's sale of the 8,000 gallons of blended taxable fuel to R. Tax is computed on 1,000 gallons, which is the difference between the number of gallons of blended taxable fuel W sells (8,000) and the number of gallons of previously taxed taxable fuel used to produce the blended taxable fuel (7,000). No tax is imposed on R's subsequent sale of the blended taxable fuel because tax is imposed only with respect to a removal or sale by the blender.

(C) *Liability for tax.* W, as the blender, is liable for this tax under paragraph (g)(2)(i) of this section. X is jointly and severally liable for this tax under paragraph (g)(2)(ii) of this section because the blended taxable fuel is produced using an untaxed liquid that X sold as undyed diesel fuel (that is, as diesel fuel that was taxed under section 4081). R has no liability for tax because R is not a blender and did not sell any untaxed liquid as a taxed taxable fuel. R only sold taxed taxable fuel, the blended taxable fuel bought from W.

* * * * *

§ 48.6427–8 [Amended]

■ 7. Section 48.6427–8, paragraph (d), introductory text, is amended by adding "or kerosene" after "diesel fuel".

PART 49—FACILITIES AND SERVICES EXCISE TAXES

■ 8. The authority citation for part 49 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

§ 49.4291–1 [Amended]

■ 9. Section 49.4291–1 is amended as follows:

■ a. The language "district director" is removed in the three places it appears and "Commissioner" is added in its place.

■ b. In the fourth sentence, the language "same district conference" is removed and "same conference" is added in its place.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: March 7, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–7812 Filed 4–1–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 602

[TD 9046]

RIN 1545–AX81; 1545–BB49; 1545–BB50; 1545–BB48; 1545–BB53; 1545–BB51; 1545–BB52; 1545–AW26; 1545–AX79

Tax Shelter Regulations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 9046) which were published in the **Federal Register** on Tuesday, March 4, 2003 (68 FR 10161), relating to tax shelter regulations.

DATES: This correction is effective March 4, 2003.

FOR FURTHER INFORMATION CONTACT: Tara P. Volungis or Charlotte Chyr at (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under sections 6011(a), 6111(d) and 6112 of the Internal Revenue Code.

Need for correction

As published, final regulations (TD 9046) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

■ Accordingly, the publication of final regulations (TD 9046), which was the subject of FR Doc. 03–4958, is corrected as follows:

§ 602.101 [Corrected]

■ 1. On page 10178, column 2, in the first table under § 602.101(b), the entry for 301.6112–1T in the table is corrected by removing the OMB number "1545–1686" and adding new OMB numbers to read as follows:

* * * * *

(b) * * *

CFR part or section where identifed and described	Current OMB control No.
301.6112–1T	1545–0865 1545–1686

■ 2. On page 10178, column 2, in the second table under § 602.101(b), the entry for 301.6112–1 in the table is corrected by removing the OMB number "1545–1686" and adding new OMB numbers to read as follows:

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
301.6112–1	1545–0865 1545–1686

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Procedure & Administration).

[FR Doc. 03–7733 Filed 4–01–03; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–02–077]

RIN 1625–AA09

Drawbridge Operation Regulations; Coronado Beach Bridge (SR 44), Intracoastal Waterway, New Smyrna Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Coronado Beach bridge (SR44), Intracoastal Waterway, mile 845, New Smyrna Beach, Florida. This rule requires the bridge to open on signal, except that from 7 a.m. until 7 p.m., each day of the week, the bridge need only open on the hour, twenty minutes past the hour and forty minutes past the hour. This action is intended to improve movement of vehicular traffic while not unreasonably interfering with the movement of vessel traffic.

DATES: This rule is effective May 2, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD7–02–077] and are available for inspection or copying at Commander (obr) Seventh Coast Guard District, 909 SE 1st Ave, Miami, Florida 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Manager, Seventh Coast Guard District, Bridge Branch, (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 7, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Coronado Beach Bridge (SR 44), Intracoastal Waterway, New Smyrna Beach, Florida in the **Federal Register** (67 FR 51157). We received twenty-four letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

On behalf of the City of New Smyrna Beach, the New Smyrna Beach Police Chief requested a change in regulations governing the operation of the Coronado Beach bridge (SR44) to ease vehicle traffic congestion on the causeway approaching the bridge and surrounding beachside intersections and roadways. The Coronado Beach bascule bridge is part of a two-lane, narrow, undivided arterial roadway. This roadway is severely congested due to insufficient vehicular capacity and year round tourism. The existing regulation for this bridge is published in 33 CFR 117.5 and requires the bridge to open on signal. The bridge has a vertical clearance of 24 feet at mean high water and a horizontal clearance of 90 feet. This rule will facilitate vehicle traffic by placing the bridge on a predictable 20-minute opening schedule from 7 a.m. until 7 p.m., each day of the week.

Discussion of Comments and Changes

We received twenty-four letters concerning the proposed rule. Twenty-two of the letters supported the proposal. One letter from a commercial fisherman requested that a fifteen-minute schedule be adopted for weekdays and that the bridge open on signal for weekends, with exceptions for U.S. documented vessels with Coast Guard fishery and commercial towing endorsements, and emergency and Coast Guard vessels when the bridge should open on signal. One letter from the American Canadian Caribbean Line, Inc., requested that scheduled passenger vessels be exempt from the twenty-minute schedule.

We have carefully considered the comments and decided not to change the proposed rule. We do not believe that a five-minute difference in scheduled bridge openings will significantly impact vessel traffic and the proposed rule meets the reasonable needs of navigation in the waterways surrounding the bridge. The Coast Guard does not believe there is a sufficient basis for excluding vessels with Coast Guard fishery and commercial towing endorsements from the twenty-minute schedule. Additionally, the weekend vessel traffic does not increase significantly while the vehicular traffic actually increases; therefore, the twenty-minute schedule is warranted for weekends too. Regularly scheduled passenger vessels should have no difficulties timing their departure to make one of the twenty-minute bridge openings.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and

Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary because this rule allows for three openings per hour from 7 a.m. until 7 p.m., each day, and openings on signal at all other times.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit under the Coronado Beach bridge from the hours of 7 a.m. until 7 p.m. daily, as well as people who drive vehicles over the bridge from 7 a.m. until 7 p.m. daily, and local business owners. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because this rule only slightly modifies the existing bridge operation schedule, the maximum waiting time for vessels to pass will be twenty-minutes from 7 a.m. until 7 p.m., daily, and the average cycle time for a bridge opening is approximately 6 minutes.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4307f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e) of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.261, add paragraph (h) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(h) *Coronado Beach bridge (SR 44), mile 845 at New Smyrna Beach.* The Coronado Beach bridge (SR 44), mile 845, shall open on signal, except that from 7 a.m. until 7 p.m., each day of the week, the draw need only open on the hour, twenty minutes past the hour and forty minutes past the hour.

* * * * *

Dated: March 21, 2003.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 03–7996 Filed 4–1–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0046; FRL–7299–8]

S-Metolachlor; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of *S*-metolachlor Acetamid, 2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)-, (*S*) and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound *S*-metolachlor in or on the raw agricultural commodities grass forage, grass hay, spinach, sugar beet, sugar beet molasses, sugar beet tops, sunflower seed, sunflower meal, and tomato. The Interregional Research Project No. 4 (IR-4) and Syngenta Crop Protection requested theses tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective April 2, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0046, must be received on or before June 2, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Joanne Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacture. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0046. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of January 29, 2003, (68 FR 4470–4475) (FRL–7281–3), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP 6E4638, 8E5011, 6F6751, and 7F4897) by the Interregional Research Project No. 4 (IR-4), and Syngenta Crop Protection, New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903 and 410 Swing Road, Greensboro, NC 27419. That notice included a summary of the petition prepared by IR-4 and Syngenta, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.368(a) be amended by establishing a tolerance for combined residues of the herbicide *S*-metolachlor Acetamid, 2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)-, (*S*) and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on the raw agricultural commodities grass forage at 12.0 parts per million (ppm), grass hay at 0.02 ppm, spinach at 0.5 ppm, sugar beet at 0.5 ppm, sugar beet dried pulp at 1.0 ppm, sugar beet molasses at 3.0 ppm, sugar beet tops at 15.0 ppm, sunflower at 0.5 ppm, sunflower meal at 1.0 ppm, and tomato at 0.1 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a

reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for combined residues of Acetamid, 2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-methoxy-1-methylethyl)-, (*S*) and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on the raw agricultural commodities; grass forage at 10.0 ppm; grass hay at 0.02 ppm; spinach at 0.5 ppm; sugar beet roots at 0.5 ppm; sugar beet molasses at 3.0 ppm; sugar beet tops at 15.0 ppm; sunflower seeds at 0.5 ppm; sunflower meal at 1.0 ppm; and tomato at 0.1 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

Metolachlor is a chloroacetanilide herbicide that was first registered for use in 1976. Racemic metolachlor consists of 50% each of the R-enantiomer (CGA 77101) and the *S*-enantiomer (CGA 77102, or alpha metolachlor). The *S*-enantiomer is the herbicidally active isomer. *S*-metolachlor is a racemic mixture comprised of 88% *S*-enantiomer and 12% *R*-enantiomer. Toxicity data has been submitted on both metolachlor and *S*-metolachlor. The Agency has determined that *S*-metolachlor has either comparable or decreased toxicity as compared to racemic metolachlor.

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by metolachlor are discussed in Table 1a below as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1A.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY FOR METOLACHLOR (PC CODE 108801)

Guideline No.	Study Type	Results
870.3100	90-Day oral toxicity rodents	NOAEL = 210 milligram/kilogram/day (mg/kg/day) for males LOAEL for males was not established NOAEL = 23.4 mg/kg/day for females LOAEL =259 mg/kg/day for females based on decreased body weight/body weight gain
870.3150	90-Day oral toxicity in nonrodents	NOAEL =8.77 mg/kg/day LOAEL = 29.42 mg/kg/day based on decreased body weight gain
870.3200	21-28 day dermal	Systemic NOAEL = 1,000 mg/kg/day Systemic LOAEL was not established dermal irritation NOAEL was not established dermal irritation LOAEL = 10 mg/kg/day based on very slight erythema, dry skin and fissuring (one animal)
870.3700	Prenatal developmental in rodents	Maternal NOAEL = 300 mg/kg/day Maternal LOAEL = 1,000 mg/kg/day based on an increased incidence of death, clinical signs of toxicity (clonic and/or toxic convulsions, excessive salivation, urine-stained abdominal fur and/or excessive lacrimation) and decreased body weight gain. Developmental NOAEL = 300 mg/kg/day Developmental LOAEL =1000 mg/kg/day based on slightly decreased number of implantations per dam, decreased number of live fetuses/dam, increased number of resorptions/dam and significant decrease in mean fetal body weight
870.3700	Prenatal developmental in nonrodents	Maternal Toxicity NOAEL = 120 mg/kg/day Maternal Toxicity LOAEL = 360 mg/kg/day based on an increased incidence of clinical observations (persistent anorexia) and decreased body weight gain Developmental Toxicity NOAEL = 360 mg/kg/day Developmental Toxicity LOAEL was not established

TABLE 1A.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY FOR METOLACHLOR (PC CODE 108801)—Continued

Guideline No.	Study Type	Results
870.3800	Reproduction and fertility effects	Parental Toxicity NOAEL = 75.8 mg/kg/day (F_0 males/females: 75.8/85.7 mg/kg/day; F_1 males/females: 76.6/84.5 mg/kg/day). Parental LOAEL was not established Reproductive toxicity NOAEL = 75.8 mg/kg/day (F_0 males/females: 75.8/85.7 mg/kg/day; F_1 males/females: 76.6/84.5 mg/kg/day). Reproductive toxicity LOAEL was not established Offspring NOAEL = 23.5 mg/kg/day (F_0 males/females: 23.5/ 26.0 mg/kg/day; F_1 males/females: 23.7/25.7 mg/kg/day) Offspring LOAEL = 75.8 mg/kg/day based on F_0 males/females: 75.8/85.7 mg/kg/day; F_1 males/females: 76.6/84.5 mg/kg/day) based on decreased body weight.
870.4100	Chronic toxicity dogs	NOAEL = 9.7 mg/kg/day for females LOAEL = 33mg/kg/day for females based on decreased body weight NOAEL =32.7 mg/kg/day for males. LOAEL for males was not established
870.4300	Chronic Toxicity/Carcinogenicity in Rodents	NOAEL = 15 mg/kg/day for females LOAEL = 150 mg/kg/day for females based on slightly decreased body weight gain and food consumption. The NOAEL =150 mg/kg/day for males. The LOAEL was not established for males. Administration of doses up to 3,000 ppm (150 mg/kg/day) was associated with statistically significant increases in liver adenomas and combined adenoma/carcinoma in female rats. In male rats, there was a statistically significant trend but not pair-wise significance for liver tumors.
870.4300	Carcinogenicity mice	NOAEL = 150 mg/kg/day LOAEL = 450 mg/kg/day based on possible treatment-related deaths in females and decreased body weight/body weight gain in males and females no evidence of carcinogenicity
870.5100	Gene mutation -bacterial reverse mutation	negative up to cytotoxic doses (1,000 µg/plate)
870.5300	Gene mutation - mouse lymphoma	no effect on the incidence of mutations in the presence or absence of metabolic activation
870.5395	Cytogenetics Micronucleus assey in Chinese hampsters	no effect of treatment on incidence of micronuclei induction
870.5450	Cytogenetics dominant lethal assey in mice	no effect on embryonic death, pre- and post-implantation or fertility rates in mated females
870.5550	Other Effects DNA Damage/Repair in rat hepatocytes	negative
870.5550	Other Effects DNA Damage/Repair in human fibroblasts	negative
870.5550	Other Effects Unscheduled DNA synthesis in rat hepatocytes	negative for induction of UDS; however, significant increases in percentage of cells in S-phase were observed in females dosed at 500 mg/kg (but not at 1,000 or 1,500 mg/kg) and sacrificed at 15 hours
870.7485	Metabolism and pharmacokinetics Unacceptable	The major metabolic pathway proposed from analysis of urinary as well as fecal metabolites is one of cleavage of the ether bond and subsequent oxidation to the carboxylic acid, as well as hydrolytic removal of the chlorine atom. Conjugation of CGA 24705 or metabolites with gluronic acid or sulfate does not appear to occur. Aqueous extractable urinary radioactivity contained 58% of the total urinary radioactivity and was composed of 5 different radioactive fractions, which were not identified. Current guideline recommendations as to dose levels and use of both sexes in metabolism studies were not followed. Thus, whether the metabolic pattern is altered with dose or repeated exposure cannot be evaluated from these data.

TABLE 1A.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY FOR METOLACHLOR (PC CODE 108801)—Continued

Guideline No.	Study Type	Results
870.7485	Metabolism and pharmacokinetics Unacceptable	Conclusions: Single low (1.5 mg/kg), single high (300 mg/kg) and repeated low (1.5 mg/kg/day for 15 days) oral doses of metolachlor were readily absorbed and eliminated by male and female rats. Urinary and fecal elimination of radioactivity associated with orally administered ^{14}C metolachlor was essentially complete within 48 to 72 hours after dosing. Low- and high-dose females eliminated ^{14}C more rapidly ($p<0.003$, half-lives of elimination, 16.6 and 15.6 hours, respectively) than low- and high-dose males and repeated-dose animals of both sexes (half-lives, 18.2 and 20.0 hours). Elimination by all animals followed first-order kinetics. Approximately one-half to two-thirds (48 to 64 percent) of the ^{14}C administered was recovered from the urine within 7 days; similar amounts were present in the feces. Low-dose males eliminated slightly more of the radioactive dose in the feces (55 percent) than the urine (48 percent). The opposite trend was seen in the low-dose females and repeated-dose rats of both sexes; these animals excreted approximately 58 to 64 percent of the ^{14}C dose in the urine and 42.5 to 46.5 percent in the feces within 7 days after dosing. High-dose animals excreted similar amounts (58 to 60 percent) of the radioactive dose in the urine and feces. Total recoveries of ^{14}C (urine, feces, and tissues) tended to be high and were between 105 and 122.5 percent.
870.7485	Metabolism and pharmacokinetics	In a rat metabolism study (MRID #431642–01), ^{14}C-Metolachlor was administered orally in PEG–200 HWI 6117–208 or corn oil ABR–94001 to groups (5 sex/dose) of male and female Sprague-Dawley rats at a low oral dose (1.5 mg/kg), repeated low oral dose (1.5 mg/kg x 14 days), and a single high dose (300 mg/kg). Control animals (1/sex) received blank formulation. Comparison of oral and intravenous data showed that of the administered dose, between 69.6% and 93.2% was absorbed. Distribution data showed that the only significant sites of residual radioactivity at 7 days post-dose were residual carcass (0.9 – 2.2% of the administered dose) and red blood cells (0.95 – 1.53 µg equivalents/gram in blood cells for all low dose male and female rats). Dosing regimen did not result in any apparent accumulation of residual radioactivity. Excretion data showed that urine and feces were both significant routes for elimination of metolachlor derived radioactivity. In the low dose groups, the urine appeared more of a predominant route for excretion in female rats than in males, whereas fecal excretion was slightly higher in males. However, at the high oral dose, there were no apparent sex-related differences in the pattern of urinary excretion. Examination of urinary excretion data as presented in graphical format indicated that at the 300 mg/kg dose, excretion was delayed vs the low oral dose, suggesting saturation of elimination.

The nature of the toxic effects caused by *S*-metolachlor are discussed in Table 1b below as well as the NOAEL and the LOAEL from the toxicity studies reviewed.

TABLE 1B.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY FOR S-METOLACHLOR (PC CODE 108800)

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	NOAEL = 15 milligram/kilogram/day (mg/kg/day) LOAEL = 150 mg/kg/day based on lower body weights/body weight gains, reduced food consumption and food efficiency and increased kidney weights in males
870.3100	90–Day oral toxicity rodents	NOAEL = 208 mg/kg/day in males and 236 mg/kg/day in females LOAEL was not defined.
870.3150	90–Day oral toxicity in nonrodents	NOAEL = 62 mg/kg/day in males and 74 mg/kg/day in females LOAEL = was not established
870.3700	Prenatal developmental in rodents	Maternal NOAEL = 50 mg/kg/day LOAEL = 500 mg/kg/day based on increased clinical signs of toxicity, decreased body weights/body weight gains, food consumption and food efficiency. Developmental NOAEL = 1,000 mg/kg/day LOAEL was not established
870.3700	Prenatal developmental in nonrodents	Maternal NOAEL = 20 mg/kg/day LOAEL =100 mg/kg/day based on clinical signs of toxicity Developmental NOAEL = 500 mg/kg/day LOAEL was not established

TABLE 1B.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY FOR S-METOLACHLOR (PC CODE 108800)—Continued

Guideline No.	Study Type	Results
870.5100	Gene Mutation Test	There was no indication that *S*-metolachlor technical induced a mutagenic effect in any tester strain either in the presence or the absence of S9 activation.
870.5395	Cytogenetics Micronucleus test	There was no evidence that *S*-metolachlor technical induced a clastogenic or aneugenic effect in either sex at any dose or sacrifice time.
870.5550	Other Effects Unscheduled DNA synthesis	*S*-metolachlor technical was negative for genotoxicity but positive for cellular proliferation when tested up to overtly toxic and cytotoxic doses in this *in vivo/in vitro* rat hepatocyte RDS/UDS assay.
870.7485	Metabolism and pharmacokinetics	*S*-metolachlor has a high affinity for and a long half-life in blood (especially RBC) which might contribute to the retarded depletion of tissue residues.
870.7485	Metabolism and pharmacokinetics Unacceptabler	The 72 hour mean recovery of radioactivity in urine, feces, and carcass following administration of 0.5 mg/kg of Phenyl-U-^{14}C CGA-24705 was 43.1%, 47.0%, and 7.4% in males and 54.0%, 39.4%, and 4.1% in females, respectively. In contrast, both sexes excreted more of the label in the feces (M:F 59.7%:53.4%) than in the urine (M:F 29.4%:39.8%) during the same period following administration of the same dose of Phenyl-U-^{14}C CGA–77102 (the *S*-enantiomer) (MRID 44491401).

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approachassumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. EPA's Health Effects Division's Cancer Assessment Review Committee has classified metolachlor as a Group C carcinogen with risk quantitated using a non-linear approach. The NOAEL of 15 mg/kg/day from the rat combined chronic toxicity/carcinogenicity study is based on neoplastic nodules/hepatocellular carcinomas seen at the highest dose tested of 150 mg/kg/day. The Agency notes that the tumor NOAEL of 15 mg/kg/day is comparable to the NOAEL of 9.7 mg/kg/day selected for establishing the chronic reference dose for metolachlor. It is assumed that the chronic dietary PAD is protective for cancer dietary risk. Therefore, a separate cancer aggregate risk assessment was not conducted, and cancer DWLOC values were not calculated. A summary of the toxicological endpoints for *S*-Metolachlor used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR METOLACHLOR/*S*-METOLACHLOR FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (all population subgroups)	NOAEL = 300 mg/kg/day UF = 100x	FQPA SF = 1X aPAD = 3.0 mg/kg/day	Prenatal developmental toxicity study in rats with metolachlor- death, clinical signs of toxicity (clonic and/or tonic convulsions, excessive salivation, urine-stained abdominal fur and/or excessive salivation) and decreased body weight gain
Chronic Dietary(All population subgroups)	NOAEL= 9.7 mg/kg/day UF = 100x	FQPA SF = 1x cPAD = 0.1 mg/kg/day	Chronic study in dogs with metolachlor- endpoint is decreased body weight in females
Incidental Oral, Short-term (one to 30 days)	NOAEL = 50	Target MOE = 100	Prenatal developmental toxicity study in rats with metolachlor- increased incidence of clinical signs, decreased body weight/body weight gain, food consumption, and food efficiency
Incidental Oral, Intermediate-term (one month to 180 days)	NOAEL = 8.8	Target MOE = 100	Subchronic (6 month) toxicity study in dogs with metolachlor-decreased body weight gain
Dermal, Short- and Intermediate-Term	No systemic toxicity was seen at the limit dose (1,000 mg/kg/day) following dermal applications	None	Hazard was not identified for quantification of risk.there is no concern for developmental toxicity in rats or rabbits.
Dermal, Long-Term[a] (greater than 180 days)	Oral NOAEL = 9.7	Target MOE = 100	chronic toxicity study in dogs with metolachlor-decreased body weight gain in females
Inhalation, Short-Term[b]	Oral NOAEL = 50	Target MOE = 100	Prenatal development toxicity study in rats with *S*-metolachlor-increased incidence of clinical signs, decreased body weight/body weight gain, food consumption, and food efficiency
Inhalation, Intermediate-Term[b]	Oral NOAEL = 8.8	Target MOE = 100	subchronic (6 month) toxicity study in dogs with metolachlor- decreased body weight gain
Inhalation, Long-Term[b]	Oral NOAEL = 9.7	Target MOE = 100	chronic toxicity study in dogs with metolachlor- decreased body weight gain in females
Cancer	Classification: Group C, possible human carcinogen with risk quantitated using a non-linear approach.		

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.
[a] Since an oral NOAEL was selected, a dermal absorption factor of 58% should be used in route-to-route extrapolation.
[b] Since an oral NOAEL was selected, an inhalation factor of 100% should be used in route-to-route extrapolation.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances for metolachlor currently cover residues of *S*-metolachlor on the same commodities for the same use pattern when the maximum labeled use rate of *S*-metolachlor is approximately 35 percent less than the historical use rate of metolachlor.

Tolerances have been established (40 CFR 180.368(a)) for the combined residues of metolachlor and *S*-metolachlor in or on a variety of raw agricultural commodities. Tolerances for residues of both metolachlor and s-metolachlor in or on raw agricultural commodities include the combined residues of (free and bound) metolachlor and its metabolites, determined as the derivatives, CGA–37913 and CGA–47951, each expressed as parent compound. Permanent tolerances for metolachlor/*S*-metolachlor residues have been established on various plant commodities ranging from 0.1 ppm in/on numerous commodities to 30.0 ppm in/on peanut forage and hay (40 CFR 180.368(a)). Time-limited tolerances associated with section 18 emergency exemptions have been established for metolachlor residues in/on grass forage and hay, spinach, and tomato commodities (40 CFR 180.368(b)). Tolerances associated with regional registrations have also been established for metolachlor residues in/on dry bulb onions, cabbage, and various peppers (chili, Cubanelle, and tabasco) (40 CFR 180.368(c)). Risk assessments were conducted by EPA to assess dietary exposures from *S*-metolachlor in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A conservative Tier I acute dietary exposure assessment was conducted for all labeled metolachlor and *S*-metolachlor food uses. Inputs for this assessment included tolerance-level residue values and an assumption that 100% of all labeled crops were treated with metolachlor/*S*-metolachlor. For all supported registered commodities, the acute dietary exposure estimates are below the Agency's level of concern (<100% aPAD) at the 95th exposure percentile for the general U.S. population and all population subgroups. The acute dietary risk estimate for the highest exposed population subgroup, children 1–6 years of age, is <1% of the aPAD. Acute dietary risk estimates are not of concern. Results of the acute dietary risk assessment are presented in Table 3 below.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A conservative Tier I chronic dietary exposure assessment was conducted for all supported metolachlor and *S*-metolachlor food uses. For all supported registered commodities, the chronic dietary exposure estimates are below the Agency's level of concern (<100% cPAD) for the general U.S. population and all population subgroups. The chronic dietary risk estimate for the highest exposed population subgroup, children 1–6 years of age, is 4% of the cPAD. Chronic dietary risk estimates are not of concern. Results of the chronic dietary risk assessment are presented in Table 3 below.

TABLE 3.—SUMMARY OF DIETARY EXPOSURE ESTIMATES FOR METOLACHLOR AND S-METOLACHLOR

Population Subgroup	Acute Dietary		Chronic Dietary		Cancer Risk
	Dietary Exposure (mg/kg/day)	% aPAD	Dietary Exposure (mg/kg/day)	% cPAD	
General U.S. Population	0.004111	<1	0.001643	2	NA
All Infants (<1 year old)	0.006855	<1	0.002280	2	N/A
Children 1–2 years old	0.008224	<1	0.004025	4	NA
Children 3–5 years old	0.006965	<1	0.003510	4	NA
Children 6–12 years old	0.005003	<1	0.002412	2	NA
Youth 13–19 years old	0.003309	<1	0.001515	2	NA
Adults 20–49 years old	0.002815	<1	0.001263	1	NA
Females 13–49 years old	0.002965	<1	0.001349	1	NA
Adults 50+ years old	0.002839	<1	0.001226	1	NA

NA = not applicable

The Agency notes that the conservative Tier I dietary assessments for metolachlor and *S*-metolachlor could be refined for more realistic dietary exposure estimates by using available percent crop treated estimates, field trial and monitoring data, and processing factors; however, the estimated dietary risk to metolachlor and *S*-metolachlor is not of concern for all populations in both the acute and chronic assessments. Further refinements are not warranted at this time.

2. *Dietary exposure from drinking water.* A drinking water assessment for metolachlor and *S*-metolachlor involved the analysis of surface and ground water monitoring data, prospective ground water study data, and Tier I (FIRST and screening concentration in ground water (SCI-GROW)) and Tier II (pesticide root zone modeling/exposure analysis modeling system (PRZM/EXAMS)) modeling results. This assessment includes concentrations of parent metolachlor/*S*-metolachlor and the degradates metolachlor ethanesulfonic acid (ESA) and metolachlor oxanilic acid (OA). Although it was determined by the Metabolism Assessment Review Committee that the ESA and OA metabolites appear to be less toxic than parent metolachlor/*S*-metolachlor, they are included in this risk assessment since they were found in greater abundance than the parent in water monitoring studies.

The Agency notes that a key assumption of the drinking water assessment is that reported monitoring data represent both racemic metolachlor and *S*-metolachlor. The analytical methods for surface and ground water monitoring data used in this assessment were unable to distinguish between metolachlor and *S*-metolachlor at the time monitoring was conducted. However, the Agency believes that the fate properties of racemic metolachlor and *S*-metolachlor are similar. Therefore, the EECs used in this risk assessment are representative of both racemic metolachlor and *S*-metolachlor.

The environmental fate data base is complete for metolachlor. Parent metolachlor/*S*-metolachlor appear to be moderately persistent to persistent, and range from mobile to highly mobile in different soils. Metolachlor/*S*-metolachlor have reportedly been detected as deep as the 36 to 48 inch soil layer (maximum sampled soil depth) in some studies. Degradation appears to be dependent on microbially mediated and abiotic processes. The frequency of detection of metolachlor/*S*-metolachlor from evaluated monitoring data suggest that contamination in drinking water sources may be widespread.

Environmental fate data comparing metolachlor and *S*-metolachlor indicate that both are expected to have similar degradation pathways and rates in soil and water environments, and both are expected to be mobile to highly mobile in soil and water environments.

i. *EECs for parent metolachlor/S-metolachlor.* No single surface or ground water monitoring study that was representative of the entire metolachlor/*S*-metolachlor use area was available for the drinking water assessment. As a result, the drinking water assessment for parent metolachlor/*S*-metolachlor is based primarily on monitoring data

from the following sources: the U.S. Geological Survey (USGS) National Water Quality Assessment (NAWQA) database, the US EPA STORET data base, the Acetochlor Registration Partnership (ARP) data base, and two USGS Reservoir Monitoring studies.

The acute estimated environmental concentration (EEC) of 77.6 parts per billion (ppb) was selected from the NAWQA database, and the chronic EEC of 4.3 ppb was selected from the maximum annual time weighted mean from the NAWQA data. These values are representative of the estimated concentration of parent metolachlor/*S*-metolachlor in monitored ambient surface water, and are supported by the metolachlor concentrations from the National Contaminant Occurrence Database representing analysis of treated drinking water, as well as from model predictions using PRZM/EXAMS.

Acute and chronic concentrations of parent metolachlor/*S*-metolachlor in ground water were modeled using SCI-GROW. SCI-GROW estimates the high-end ground water concentrations of pesticides likely to occur when the pesticide is used at the maximum allowable rate in areas with ground water vulnerable to contamination. Estimates were based on two applications to corn/turf for a total of 4 lbs ai/acre (the maximum application rate). In comparison to the SCI-GROW estimate of 5.5 ppb in shallow ground water, the Iowa NAWQA data have a maximum concentration of 15.4 ppb. However, it should be noted that the second highest concentration of parent metolachlor/*S*-metolachlor in the Iowa NAWQA data is 1.7 ppb. Since the detections in the National NAWQA data (32.8 ppb) and in the Iowa NAWQA data (15.4 ppb) were single values outside the range of the rest of the data, EPA determined that use of SCI-GROW was more appropriate for the risk assessment.

Additionally, recent data collected by the Suffolk County, New York Department of Health Services, Bureau of Groundwater Resources indicate that both metolachlor and *S*-metolachlor, and its degradates, have been detected in ground water. In data collected between 1997 and 2001, metolachlor/*S*-metolachlor was detected in 60 well samples with a maximum concentration of 83 ppb. No information was available on frequency of detection and only summary statistics were provided on these data; therefore, these data were not used quantitatively in the risk assessment. However, these data suggest that the SCI-GROW estimates for metolachlor/*S*-metolachlor are not overestimating the potential impact of metolachlor/*S*-metolachlor use on ground water. The SCI-GROW estimate of 5.5 ppb in ground water is appropriate for risk assessment purposes.

ii. *EECs for metolachlor ESA and OA degradates.* Only two small data sets were available on the ESA and OA degradates from the Iowa and Illinois NAWQA data. In the absence of more robust monitoring data for the degradates, upper-bound Tier I estimates for ESA and OA based on FIRST and SCI-GROW modeling were used to calculate EECs for the degradates. The modeling used conservative assumptions of selected fate parameters (aerobic soil metabolism rate constant and soil partitioning coefficient) as well as the maximum application rate of 4 lbs ai/acre on turf/corn.

Acute and chronic estimates of metolachlor ESA in surface water (based on FIRST modeling) are 31.9 ppb and 22.8 ppb, respectively. Acute and chronic estimates of metolachlor OA in surface water are 91.4 ppb and 65.1 ppb, respectively. The Agency notes that the application rate used for metolachlor ESA and OA in the model runs was estimated by converting maximum label rates for each use by the maximum percentage of degradate found in fate studies. In addition, each application rate was corrected for molecular weight differences of each degradate. However, a statistically significant relationship between parent metolachlor and degradates could not be established; therefore, the amount of degradate is an uncertainty in this assessment. This uncertainty was addressed in the screening level assessments using FIRST and SCI-GROW with conservative assumptions for model inputs. The model predictions for ESA and OA compare with the limited monitoring data available. The screening level predictions were higher than the available data suggesting that the predictions were likely upper bound and conservative. EPA determined that these upper bound predictions will not underestimate the potential exposures for infants and children from the use of metolachlor.

Acute and chronic estimates of metolachlor ESA in ground water (based on SCI-GROW modeling, turf/corn scenario) are not expected to exceed 65.8 ppb. This value is considered representative of both peak and long-term average concentrations because of the inherent transport nature of ground water (generally slow movement from the source of contamination both laterally and horizontally). Acute and chronic estimates of metolachlor OA in ground water (also based on the turf /corn scenario) are not expected to exceed 31.7 ppb. The Agency notes that these values exceed those detected in the Iowa NAWQA study (63.7 ppb for metolachlor ESA and 4.4 ppb for metolachlor OA), and also exceed those values detected in two PGW studies (metolachlor ESA was detected at a maximum concentration of 24 ppb while metolachlor OA was detected at a maximum concentration of 15.6 ppb). In addition, recent data collected by the Suffolk County, New York Department of Health Services, Bureau of Groundwater Resources indicate that both metolachlor and *S*-metolachlor, and its degradates, have been detected in ground water. In data collected between 1997 and 2001, metolachlor ESA was detected in 296 well samples with a maximum concentration of 39.7 ppb, while metolachlor OA was detected in 228 wells with a maximum concentration of 49.6 ppb. No information was available on frequency of detection and only summary statistics were provided on these data; therefore, these data were not used quantitatively in the risk assessment.

iii. *Drinking water levels of comparison (DWLOCs).* In the absence of chemical-specific monitoring data, the Agency uses drinking water levels of comparison to calculate aggregate risk. A drinking water level of comparison, or a DWLOC, is a theoretical upper limit on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and through residential uses. In other words, the DWLOC value represents the maximum theoretical exposure a person may have to pesticide residues through drinking water, after their exposure to the pesticide's residues through food and residential exposure have been taken into consideration. The Office of Pesticide Programs uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. DWLOC values are not regulatory standards for drinking water; however, they do have an indirect regulatory impact through aggregate exposure and risk assessments.

DWLOCs are calculated for each type of risk assessment as appropriate (acute, short-term, intermediate-term, chronic, and cancer) and compared to the appropriate estimated concentration of a pesticide in surface and ground water. If the DWLOC is greater than the estimated surface and ground water concentration, (i.e., if the DWLOC > EEC), the Agency concludes with reasonable certainty there is no drinking water risk of concern.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). *S*-Metolachlor is currently registered for use on the following residential non-dietary sites: lawn, turf (including sod farms), golf courses, sports fields, and ornamental gardens. Although not labeled as a restricted-use pesticide, the label indicates that it is not intended for use by homeowners but only for use by professional lawn care applicators. On this basis, a residential handler is not expected to be exposed to residues of *S*-metolachlor. Therefore, a residential handler assessment was not conducted.

There is potential for postapplication exposure to adults and children resulting from the use of *S*-metolachlor on residential lawns. Although the use sites for *S*-metolachlor vary from golf courses to ornamental gardens, the residential lawn scenario represents what the Agency considers the likely upper-end of possible exposure. Postapplication exposures from various activities following lawn treatment are considered to be the most common and significant in residential settings.

Postapplication exposure is considered to be short-term (1 to 30 days of exposure) only, based on a label specification of a 6–week interval before the re-application of *S*-metolachlor.

A short-term dermal endpoint was not selected, since no systemic toxicity was seen at the limit dose of 1,000 mg/kg/day; therefore, a dermal risk assessment was not conducted and dermal exposures are assumed to be minimal. Postapplication inhalation exposure is also expected to be minimal since *S*-metolachlor is only applied in an outdoor setting, the vapor pressure is low (2.8×10^{-5} mm Hg at 25 °C), and the label specifies that residents should not re-enter treated areas until after sprays have dried.

The following postapplication incidental oral scenarios following application to lawns and turf have been identified: (1) Short-term oral exposure to toddlers and children following hand-to-mouth exposure; (2) short-term oral exposure to toddlers and children following object-to-mouth exposure; and (3) short-term oral exposure to toddlers and children following soil ingestion. The term "incidental" is used to distinguish the inadvertent oral exposure of small children from exposure that may be expected from treated foods or residues in drinking water.

Since the FQPA safety factor for the protection of children and infants was reduced to 1X, a target MOE value of 100 has been identified for residential assessments. MOE values greater than 100 are not considered to be of concern to the Agency. MOE estimates are based on the dose level of 50 mg/kg/day established for short-term oral risk assessment.

The exposure and risk estimates for the three residential exposure scenarios are assessed for the day of application (day "0") since children will likely contact the lawn immediately following application.

The following estimates/assumptions were used in the risk assessment: (1) A single application at the maximum label rate of 2.47 lb ai/acre for *S*-metolachlor, (2) exposure duration for children is assumed to be 2 hours per day, (3) the exposed child's weight is 15 kg (33 pounds), and (4) turf transferable residue (TTR) value of 5%, and object-to-mouth residue value of 20% of the application rate assumed.

The exposure estimates for the three postapplication scenarios (object-to-mouth, hand-to-mouth, and incidental soil ingestion) were combined to represent the possible (if not likely) high-end oral exposure resulting from lawn (or similar use). Combined post-application oral risk estimates for *S*-metolachlor are not of concern. The following Table 4 summarizes the results of the residential postapplication assessment:

TABLE 4.—SUMMARY OF RESIDENTIAL POSTAPPLICATION MOE VALUES

Exposure Scenario[a]	*S*-Metolachlor[b]	Oral Dose (mg/kg/day)	Oral Short-term MOE[c]
Object-to-mouth	*S*-metolachlor	0.0092	5,400
Hand-to-mouth	*S*-metolachlor	0.037	1,400
Soil ingestion	*S*-metolachlor	0.00012	400,000
Combined exposure	*S*-metolachlor	0.046	1,100

[a] Exposure scenario represents oral exposure of children, with an assumed body weight of 15 kg.
[b] *S*-metolachlor application rate is 2.47 lb ai/acre.
[c] Short-term oral MOE = NOAEL/Dose, where short-term oral NOAEL = 50 mg/kg/day.

S-metolachlor may be used on sports and recreational fields, as well as golf courses. However, the Agency believes that children's exposure to residues of *S*-metolachlor remaining on residential lawns after treatment represents the likely upper-end of exposure. Furthermore, since dermal and inhalation risks are not of concern, and oral exposures from sports and recreational fields, as well as golf courses, are expected to be minimal, risks for these other non-occupational settings are expected to be insignificant.

The Agency has conducted a direct exposure assessment for the use of *S*-metolachlor on lawns, and determined that there is no risk of concern from this use. No additional risk from *S*-metolachlor is expected from spray drift.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

The chloroacetanilide pesticides represent a class of food use pesticides that have been given high priority by the Agency for the reassessment of tolerances in accordance with the mandates of FQPA. The group of chloroacetanilide pesticides covered by this review consists of acetochlor, alachlor, butachlor, metolachlor and propachlor. Various members of this group of chloroacetanilide pesticides have been shown to result in several different types of tumor responses in laboratory animals (e.g., nasal, thyroid, liver, and stomach tumors). Therefore, as part of the reassessment, EPA

scientists considered several different potential common mechanism of toxicity groupings for these chemicals.

In reviewing this issue, EPA scientists were guided by several relevant Agency science policies, including Guidance for Identifying Pesticide Chemicals and Other Substances that Have a Common Mechanism of Toxicity. Additionally, on March 19, 1997, the Agency presented to the FIFRA Scientific Advisory Panel (SAP) a draft case study illustrating the application of the Common Mechanism Guidance to the grouping of chloroacetanilide pesticides based on a common mechanism of toxicity. The SAP agreed with the Agency's conclusion that there is sufficient evidence to support the grouping of certain chloroacetanilides that cause nasal turbinate tumors by a common mechanism of toxicity.

Upon consideration of the SAP comments, EPA's own reviews and the data underlying these reviews, as well as additional information received by the Agency from registrants or presented in the open literature since the 1997 draft document, EPA has revised its science document discussing the potential grouping of chloroacetanilide pesticides, or a subgroup of them, based on a common mechanism of toxicity.

In the revised document entitled "The Grouping of a Series of Chloroacetanilide Pesticides Based on a Common Mechanism of Toxicity," EPA has concluded that only some of the pesticides that comprise the class of chloroacetanilides should be designated as a "Common Mechanism Group" based on the development of nasal turbinate tumors by metabolism to a highly, tissue reactive moiety, i.e., quinoneimine. Thus, only acetochlor, alachlor, and butachlor should be grouped based on a common mechanism of toxicity for nasal turbinate tumors. Although metolachlor does distribute to the nasal turbinates, and might produce a quinoneimine, it is not apparent from currently available data that it shares the same target site in the nasal tissue as acetochlor, alachlor and butachlor. Although propachlor does produce a precursor of a quinoneimine, the available data do not support its tumorigenicity to the nasal turbinates.

In conclusion, it is the Agency's position, that only some chloroacetanilides, namely acetochlor, alachlor, and butachlor should be considered as a "Common Mechanism Group" due to their ability to cause nasal turbinate tumors. For purposes of a cumulative risk assessment as a part of the tolerance reassessment process for acetochlor, alachlor, and butachlor, these three pesticides will be considered as a Common Mechanism Group. Following the initiation of a cumulative risk assessment, further analyses of new or existing data may occur which could impact the Agency's evaluation of specific members of this group or the group as a whole.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* Prenatal developmental studies in the rat and rabbit revealed no evidence of a qualitative or quantitative susceptibility in fetal animals.

3. *Conclusion.* There is a complete toxicity data base for *S*-metolchlor and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be removed. The FQPA Safety Factor Committee met on November 5, 2001 to evaluate the hazard and exposure data for metolachlor and *S*-metolachlor, and recommended that the FQPA Safety Factor for the protection of infants and children be reduced to 1x for the following reasons: (1) The toxicology database is complete for the FQPA assessment; (2) there is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to metolachlor in the available toxicity data; (3) a developmental neurotoxicity study is not required for metolachlor; and (4) the dietary (food and drinking water) and non-dietary exposure (residential) assessments will not underestimate the potential exposures for infants and children from the use of metolachlor.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* An acute aggregate risk assessment addresses potential exposure from combined residues of metolachlor/*S*-metolachlor on food and in drinking water (both surface and ground water). Potential residential exposures are not incorporated into an acute aggregate risk assessment. As shown in Table 5 below, the EECs are below the Agency's back-calculated DWLOC values for the parent compound, the ESA degradate, and the OA degradate. The combined value of the parent plus the degradates is also below the acute DWLOC value. The Agency concludes that acute aggregate risk estimates are not of concern for any population subgroup.

TABLE 5.—ACUTE DWLOC CALCULATIONS FOR METOLACHLOR/S-METOLACHLOR

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)*	Ground Water EEC (ppb)*	Acute DWLOC (ppb)
U.S. Population	3.0	1	200.9	103	1.0×10^5
Females 13–50	3.0	1	200.9	103	9.0×10^4
Children 1–6	3.0	1	200.9	103	3.0×10^4
Males 13–19	3.0	1	200.9	103	9.0×10^4

* Represents the combined value of parent plus the ESA and OA degradates.

2. *Chronic risk.* A chronic aggregate risk assessment considers chronic exposure from food, drinking water, and non-occupational (residential) pathways of exposure. For metolachlor and *S*-metolachlor, there are no chronic

(greater than 180 days of exposure) non-occupational exposure scenarios. Therefore, the chronic aggregate risk assessment will consider exposure from food and drinking water only. The EECs for ground water residues of the parent compound (5.5), the ESA degradate (65.8), and the OA degradate (31.7) are below the Agency's chronic DWLOC values for all population subgroups. The combined value of the parent plus degradates (103) is also below the chronic DWLOC value. The EECs for surface water residues of the parent compound (4.3), the ESA degradate (22.8), and the OA degradate (65.1) are below the Agency's chronic DWLOC values for all population subgroups. The combined value of the parent plus degradates (92.2) is also below the chronic DWLOC value. The Agency concludes that chronic aggregate risks are not of concern.

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO METOLACHLOR/S-METOLACHLOR

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)*	Ground Water EEC (ppb)*	Chronic DWLOC (ppb)
U.S. Population	0.1	2	92.2	103	3442.50
Females 13–50	0.1	1	92.2	103	2962.11
Children 1–6	0.1	4	92.2	103	959.75
Males 13–19	0.1	2	92.2	103	2954.55

* Represents the combined value of parent plus the ESA and OA degradates.

3. *Short-term risk.* A short-term aggregate risk assessment considers potential exposure from food, drinking water, and short-term, non-occupational (residential) pathways of exposure. For *S*-metolachlor, potential short-term, non-occupational risk scenarios include oral exposure of children to treated lawns. In this aggregate short-term risk assessment, exposure from food, drinking water, and residential lawns (*S*-metolachlor use only) has been considered. Since only children have the potential for non-occupational, short-term risk, they are the only population subgroup included below. Short-term DWLOC values have been calculated for *S*-metolachlor only, since Syngenta no longer holds any racemic metolachlor residential end-use products. EECs for the parent compound, the ESA degradate, and the OA degradate are below the short-term *S*-metolachlor DWLOC values for the population children (1 to 6 years old). The combined value of the parent plus the degradates is also below the short-term *S*-metolachlor DWLOC value. The Agency concludes that short-term aggregate risks from *S*-metolachlor are not of concern. The target MOE is 100, based on the 100x uncertainty factor, and the 1x FQPA safety factor. This MOE is not exceeded by the MOE for food which is 1.6×10^4 (short-term oral NOAEL (50 mg/kg/day)/chronic dietary exposure of children (0.003171 mg/kg/day); MOE for oral which is 1,100 (short-term oral NOAEL (50 mg/kg/day)/combined hand-to-mouth, object-to-mouth, and soil ingestion oral exposure (0.046 mg/kg/day *S*-metolachlor)); aggregate MOE for food and residential which is 1,000 (1 ÷ (1 ÷ MOE food) + (1 ÷ MOE oral)); or allowable water exposure which is 0.45 mg/kg/day (1 ÷ (1 ÷ Target Aggregate MOE) - (1 ÷ Aggregate MOE (food and residential)). The DWLOC is 4,000 ppb. The EEC for ground water is 103.3 ppb (parent 5.5, ESA metabolite 65.8 ppb and OA metabolite 32 ppb). The EEC for surface water is 92.2 ppb (parent 4.3, ESA metabolite 22.8 ppb and OA metabolite 65.1 ppb).

For informational purposes, it is noted that the EEC values for the parent compound, ESA degradate, and the OA degradate are below the metolachlor short-term DWLOC value for children. The combined value of the parent plus the degradates is also below the metolachlor short-term DWLOC value.

TABLE 7.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO METOLACHLOR/S-METOLACHLOR

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
Children 1 to 6	1,000	100	92.2	103.3	4,000

4. *Intermediate-term risk.* An intermediate-term aggregate risk assessment considers potential exposure from food, drinking water, and non-occupational (residential) pathways of exposure. However, for metolachlor/*S*-metolachlor, no intermediate-term non-occupational exposure scenarios (greater than 30 days exposure) are expected to occur. Therefore, intermediate-term DWLOC values were not calculated and an intermediate-term aggregate risk assessment is not required.

5. *Aggregate cancer risk for U.S. population.* An aggregate cancer risk assessment considers potential carcinogenic exposure from food, drinking water, and non-occupational (residential) pathways of exposure. However, as noted under Unit III.B., Toxicological Endpoints, the NOAEL that was established based on tumors in the rat (15 mg/kg/day, seen at the highest dose tested of 150 mg/kg/day) is comparable to the NOAEL of 9.7 mg/kg/day selected for establishing the chronic reference dose for metolachlor. It is assumed that the chronic dietary endpoint is protective for cancer dietary exposure. Therefore, a separate cancer aggregate risk assessment was not conducted, and cancer DWLOC values were not calculated.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children

from aggregate exposure to metolachlor/*S*-metolachlor residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The Pesticide Analytical Manual (PAM) Vol. II, lists a gas chromatography/nitrogen phosphorous detection (GC/NPD) method (Method I) for determining residues in/on plants and a gas chromatography/mass spectrometry detection (MSD) method (Method II) for determining residues in livestock commodities. These methods determine residues of metolachlor and its metabolites as either CGA–37913 or CGA–49751 following acid hydrolysis. Residue data from the most recent field trials and processing studies were obtained using an adequate GC/NPD method (AG–612), which is a modification of Method I. Adequate data are available on the recovery of metolachlor through Multi-residue Method Testing Protocols. The FDA PESTDATA database indicates that metolachlor is completely recovered through Method 302, PAM Vol. I (3rd ed., revised 10/97).

B. International Residue Limits

No maximum residue limits (MRLs) for either metolachlor or *S*-metolachlor have been established or proposed by Codex, Canada, or Mexico for any agricultural commodity; therefore, no compatibility questions exist with respect to U. S. tolerances.

C. Conditions

The need for a 28–day inhalation study has been identified for both metolachlor and *S*-metolachlor. Submission of this study would allow the Agency to improve characterization regarding the concern for toxicity via the inhalation route of exposure following application of metolachlor/*S*-metolachlor on multiple days in a commercial setting.

V. Conclusion

Therefore, the tolerance is established for combined residues or residues of *S*-metolachlor Acetamid, 2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)-, (*S*) and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound *S*-metolachlor in or on the raw agricultural commodities each expressed as the parent compound in or on the raw agricultural commodities grass forage at 10.0 ppm, grass hay at 0.02 ppm, spinach at 0.5 ppm, sugar beet at 0.5 ppm, sugar beet molasses at 3.0 ppm, sugar beet tops at 15.0 ppm, sunflower at 0.5 ppm, sunflower meal at 1.0 ppm, and tomato at 0.1 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0046 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 2, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0046, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption.

Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 25, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.368 is amended in paragraph (a) by designating the text following the paragraph heading "General," as paragraph (a)(1) and by adding new paragraph (a)(2) to read as follows:

§ 180.368 Metholachlor; tolerances for residues.

(a) *General.* (1) * * *

(2) Tolerances are established for combined residues of the herbicide *S*-metolachlor acetamid, 2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)-, (*S*) and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound *S*-metolachlor in or on the following raw agricultural commodities:

Commodity	Parts per million
Beet, sugar, molasses	2.0
Beet, sugar, roots	0.5
Beet, sugar, tops	15.0
Grass, forage	10.0
Grass, hay	0.2
Spinach	0.5
Sunflower, seed	0.5
Sunflower, meal	1.0
Tomato	0.1

* * * * *

[FR Doc. 03-7800 Filed 4-1-03; 8:45 am]
BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2002-0328; FRL-7286-9]

Bacillus pumilus GB 34; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Bacillus pumilus* GB 34 when used as a seed treatment in or on soybeans and soybeans after harvest. Gustafson LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus pumilus* GB 34.

DATES: This regulation is effective April 2, 2003. Objections and requests for hearings, identified by docket ID number OPP-2002-0328, must be received on or before June 2, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Anne Ball, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8717; e-mail address: *ball.anne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Industry (NAICS 111), *e.g.*, crop production
- Industry (NAICS 112), *e.g.*, animal production
- Industry (NAICS 311), *e.g.*, food manufacturing
- Industry (NAICS 32532, *e.g.*, pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2002-0328. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search" then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of December 31, 2001 (66 FR 67522) (FRL-6813-8), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e), as amended by FQPA (Public Law 104-170), announcing the filing of a pesticide tolerance petition (PP 1F6344) by Gustafson LLC, 1400 Preston Road, Suite 400, Plano, TX 75093. This notice included a summary of the petition prepared by the petitioner Gustafson LLC. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *B. Pumilus* GB 34.

III. Risk Assessment

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider "available information"

concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The *Bacillus pumilus* species was first described by Meyer and Gottheil in 1901. This naturally occurring species is one of the most numerous *Bacillus sp.* found on plant surfaces. The strain *Bacillus pumilus* GB 34 is a naturally occurring soil colonizer. The mode of action of the strain, an anti fungal agent, is to colonize the developing root system of the plant it is to protect, in this case the developing root system of the soybean plant. The organism *Bacillus pumilus* GB 34 then suppresses by competition, by the formation of a physical barrier, the continued formation of spores of the fungal diseases such as *Rhizoctonia and Fusarium.* Subsequently GB 34 colonizes the remaining fungal disease spores themselves, thereby destroying them. On the basis of Acute injection toxicity/Pathogenicity tests on rats, *Bacillus pumilus* GB 34 does not appear to be toxic, infective, and/or pathogenic in those mammals.

Toxicity studies submitted in support of this tolerance petition are summarized below. More detailed analyses of these studies may be found in the specific Agency reviews of the studies. Waivers requested and granted are, as well, noted.

Toxicity studies relating to the GB 34 Concentrate (End Use Product) and GB 34 Technical (Technical Grade Active Ingredient) are as follows:

1. *Acute oral toxicity*—i. *GB 34 Concentrate.* (Submitted to determine the adequacy of data to support an EUP, GB 34 Concentrate, and here, bridged to support a section 3 registration of the microbial product) (OPPTS 870.1100; OPP 152.30; Master record identification number (MRID) 452940-01). Five male and five female young adult Sprague-Dawley rats each received a single 5,000 milligrams/kilogram (mg/kg) gavage dose of GB 34 Concentrate, previously diluted to a 40% weight/weight (w/w) solution with distilled water at a dosing volume of 1 milliliter (mL)/100 grams (g). The rats were observed for morbidity, moribundity, and behavioral changes 1 and 3 hours after dosing and at least daily thereafter for 14 days. They were weighed on days 0, 7, and 14. At the end of the study, the rats were euthanized by CO_2 inhalation and necropsied. No morbidity, moribundity, or effects on body weight were found following treatment of rats with 5,000 mg/kg test material. Therefore, the Sprague Dawley rat oral lethal dose (LD_{50}) of GB 34 Concentrate for male, female, and male and female combined is >5,000 mg/kg, placing the test material in Toxicity Category IV.

ii. *Acute oral toxicity—GB 34 Technical.* (OPPTS 870.1100; OPP 152.30; MRID 454335-01 corrected as MRID 457225-01). Five male and five female Sprague-Dawley rats each received a single 5,000 mg/kg gavage dose of the GB 34 Technical, previously diluted to a 40% w/w solution with distilled water, at a dosing volume of 1 mL/100 g. The rats were observed for morbidity, moribundity, and behavioral changes 1 and 3 hours after dosing and at least daily thereafter for 14 days. They were weighed on days 0, 7, and 14. At the end of the study, the rats were euthanized by CO_2 inhalation and necropsied. No morbidity, moribundity, or effects on body weight were found following treatment of rats with 5,000 mg/kg test material. Therefore, the Sprague Dawley rat oral LD_{50} of GB 34 Technical for male, female, and male and female combined is >5000 mg/kg, placing the test material in Toxicity Category IV.

2. *Acute dermal toxicity—GB 34 Concentrate and GB 34 Technical.* ((OPPTS 870.1200 and OPPTS 885. 3100 (Acute dermal toxicity/ Pathogenicity); OPP 152.31; waiver request, no MRID)). A waiver was requested and granted for a seed treatment use. The rationale for the waiver is that the rate of application of the product is 0.1 ounce (oz.) per 100 pounds (lbs.) of seed. The seed treatment is to take place in a commercial seed treatment facility in which there is no exposure to the general population. After germination of the treated seed, the habit of the bacterium is to inhabit the root system of the plant. There is expected to be minimal, if any, dermal exposure for the general population in a seed treatment use of the microbial pesticide.

3. *Acute inhalation toxicity—GB 34 Concentrate and GB 34 Technical.* ((OPPTS 870.1300 and OPPTS 885. 3150 (Acute pulmonary toxicity/ Pathogenicity); OPP 152.32; waiver request, no MRID)). A waiver was requested and granted for a seed treatment use. The use of GB 34 is to be limited to that of a seed treatment which is to take place in a commercial seed treatment facility in which there is no potential inhalation exposure to the general population. The rate of application of the pesticide is 0.1 oz. per 100 lbs. of seed. The habit of the bacterium is to gravitate to the root system of the developing plant. For a seed treatment use of GB 34 there will most likely be a negligible, if any inhalation exposure.

4. *Acute oral toxicity/Pathgenicity—GB 34 Technical and GB 34 Concentrate.* (OPPTS 885.3050). A waiver was requested and granted for a seed treatment use. The rationales such as are the minimal increase of human oral exposure expected due to the low rate of application (0.1 oz. per 100 lbs. of seed), the minimal exposure to the general population since the seed treatment will take place in a commercial seed treating facility with mechanical treating equipment, and the results of the toxicity tests submitted to date (see item 1.ii.) which do not indicate that this strain is toxic or infective. Moreover the results would suggest that the GB 34 strain does not express the 6,500 molecular weight toxin discussed in two papers. See item 7 below. In addition, the habit of the bacterium to gravitate to the root system of the developing plant makes it unlikely that any would be present in the above ground parts of the mature plant, thus minimizingthe potential for oral exposure for humans.

5. *Primary eye irritation*—i. *GB 34 Concentrate.* ((Submitted to determine the adequacy of data to support an EUP, GB 34 Concentrate, and here, bridged to support a section 3 registration of the microbial product) (OPPTS 870.2400; OPP 152.35; MRID 452940-02)). Three male and three female young adult New Zealand white rabbits were used in the experiment. Prior to test material instillation, both eyes were treated with 2% fluorescein and examined under ultraviolet (UV) light for ocular abnormalities. The test material, 0.1 mL (equivalent to 0.05-0.07 g), was instilled into the everted lower lid of the right eye and the upper and lower lids held closed for 1 second. The contralateral eye served as control. The eyes were examined and scored acording to the

Draize method 1, 24, 48 and 72 hours after test material instillation. The 24 hour examination also included a fluorescein staining examination for corneal effects. All rabbits survived the study. All rabbits developed slight conjunctival irritation that cleared within 48 hours of treatment. No corneal opacity or iritis were noted. GB 34 Concentrate was minimally irritating to the eye and is placed in Toxicity Category IV.

ii. *Primary eye irritation—GB 34 Technical.* (OPPTS 870.2400; OPP 152.35; MRID 454335–02, corrected as 457225–02). Three male and three female young adult New Zealand white rabbits were, prior to test, treated in both eyes with 2% fluorescein and then examined under UV light for ocular abnormalities. The test material, in the amount of 0.1 mL, was instilled into the everted lower lid of the right eye and the upper and lower lids were held closed for 1 second. The contralateral eye served as control. The eyes were examined and scored according to the Draize method 1, 24, 48 and 72 hours after test material instillation. The 24 hour examination also included a fluorescein staining examination for corneal effects. All rabbits developed moderate conjunctival irritation that cleared up within 72 hours of treatment. No corneal opacity or iritis or non-ocular effects were noted. The GB technical test substance was mildly irritating to the eye and is placed in Toxicity Category III.

6. *Primary dermal irritation*—i. *GB 34 Concentrate.* (Submitted to determine the adequacy of data to support an EUP for GB 34 Concentrate, and here, bridged to support a section 3 registration of the microbial product) (OPPTS 870.2500; OPP 152.34; MRID 452940–03). Three male and three female young adult New Zealand white rabbits were received for the study. The fur on the dorso-lumbar area of each rabbit was clipped. The rabbits were given a single 0.5 g dose of test material applied under a under a 1 inch x 1 inch 4-ply gauze pad on a 6 cm^2 clipped site. The gauze pad is then secured and Elizabethan collars were placed on the animals. Four hours later these were removed and the sites wiped with a moistened towel. The application sites were observed for dermal irritation 1, 24, 48, and 72 hours after patch removal. In addition the rabbits were observed at least daily for clinical signs of toxicity during the 72–hour study period. All rabbits survived the study. No dermal irritation was observed on any rabbit at any site. Based on the study GB 34 Concentrate is non-irritating to the New Zealand white rabbit and is placed in Toxicity Category IV.

ii. *Primary dermal irritation—GB 34 Technical.* (OPPTS 870.2500; OPP 152.34; MRID 454335–03 corrected as MRID 457225–03). Three male and three female New Zealand albino rabbits were prepared by clipping the dorsal area and the trunk. Only healthy animals without preexisting skin irritation had been selected for the test. The test substance in the amount of 0.5 g was placed on a 1 inch x 1 inch, 4-ply gauze pad which was applied and secured on each rabbit. After 4 hours exposure to the test substance, the pads were removed and the test sites gently wiped with water and towel to remove any residual test substance. Individual dose sites were scored according to the Draize scoring system at approximately 1, 24, 48 and 72 hours after patch removal. The animals were observed for signs of gross toxicity and behavioral changes at least once daily during the test period. All animals appeared active and healthy. There were no signs of gross toxicity, adverse pharmacologic effects or abnormal behavior. No dermal irritation was noted at any test site during the study. Under the conditions of the study, the GB 34 Technical is classified as non-irritating to the skin and placed in Toxicity Category IV.

7. *Acute injection toxicity/Pathogenicity—GB 34 Technical.* (Submitted to determine the adequacy of data to support an EUP for GB 34, and here, bridged to support a section 3 registration of the microbial product) (OPPTS 885.3200; OPP 152.33; MRID 453416–01). A total of 39 male and 39 female rats were used in the tests. The results showed:

i. *Mortality.* No deaths were observed in any of the dosed or control groups prior to scheduled sacrifice.

ii. *Body and organ weights.* Overall, both male and female rats gained weight for the duration of the study, demonstrating the continued health of the animals.

iii. *Clinical Observation.* Overall, both male and female rats showed no abnormal clinical signs.

iv. *Gross necropsy.* No significant signs of abnormalities were seen except for a laceration on the left shoulder of a test substance treated male rat. An enlarged spleen was seen in one test substance treated male rat on day

The conclusion in the Data Evaluation report was that *Bacillus pumilus* GB 34 does not appear to be toxic, infective, and/or pathogenic in rats, when dosed at 1 x 10^7 cfu/animal. This test supports the requirements for both the TGAI (the technical) and the end use product (the concentrate).

A hypersensitivity study, or dermal sensitization study (OPP 152.36) is not required for registration of this product since the routes of use will not result "in repeated human contact by inhalation or dermal routes" as specified in footnote iii of the table in 40 CFR 158.740(c). Use of the product is limited to that of a seed treatment which takes place in a commercial facility using mechanical seed treatment equipment.

An Immune response study is not required for registration of this product because the Acute I.V., I. C., or I. P. Injection toxicity/Pathogenicity study, (OPPTS guideline 885.3200/OPP 153.33) submitted to determine the adequacy of data to support an EUP for GB 34, and here bridged support a section 3 registration of the microbial product, serves to address the endpoint of immune response. This injection study examines the normal functioning of the immune system when faced with the potentially most challenging exposure to this microbial pesticide active ingredient: Direct injection into the bloodstream. If the test animal is able to withstand and survive the introduction of such a large number of microbes, bypassing the normal protective barriers of the skin, the pulmonary macrophages and the gastrointestinal lymphoid tissues, then the immune system is functioning normally. The normal functioning of the immune system implies that it can recognize the introduced microbes as foreign and can clear them from the blood and other exposed organs. After the active ingredient, *Bacillus pumilus* GB 34 was intravenously injected into the test animals (rats), no deaths, adverse clinical signs or significant findings upon necropsy were seen 35 days after the injection. (See item 7).

The requirement for Tier II and Tier III data was not triggered because of the results of Tier I data which had been submitted or waived.

V. Aggregate Exposures

Section 408(b)(2)(D)(vi) of the FFDCA directs EPA to consider available information concerning aggregate exposures to consumers (and major identifiable subgroups of consumers) from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Bacillus pumilus GB 34 is a naturally occurring soil microorganism which inhabits the root system of plants and acts as an antifungal agent. Review of the available toxicology data submitted in support of registration indicate that it is non-toxic and non-pathogenic to animals and humans. In its proposed use as a soybean seed treatment, it is not foreseen to contribute any or more than a negligible amount of dietary exposure.

1. *Food.* The product is used only as a seed treatment and the organism inhabits the roots of the plants, in this case the soybean plant roots. The use of products which contain *B. pumilus* GB 34 is not anticipated to result in more than negligible, if any, any dietary exposure from food for humans. To date there have been no reports of any hypersensitivity incidents or reports of any known adverse reactions in humans resulting from exposure to *B. pumilus* GB 34.

2. *Drinking water exposure.* There is expected to be only insignificant or minimal human exposure to the organism in drinking water from its use in the treatment of seeds, its only use proposed. The treatment of seeds is expected to take place in a commercial seed treatment facility. The farmer then plants the seeds in the soil. Since the organism is non-toxic and non-pathogenic to humans, even if small amounts would seep into the ground water, there is expected to be no adverse effect on humans.

B. Other Non-Occupational Exposure

The possibility for non-dietary exposure to residues of this *B. pumilus* pesticide for the general population, including infants and children, is unlikely because the only proposed use site is in an agricultural setting, as a treatment on soybean seeds. Since the seed treatment is to take place in a commercial seed treating facility where mechanical treating equipment is used, it is not expected that dermal or inhalation exposure to residues will occur in the general population, including infants and children. *Bacillus pumilus* GB 34 is a ubiqutous bacterium commonly found in soil, water, air and decomposing plant tissue and which acts as an antifungal agent. The bacteria typically occur at 106 to 107 colony forming units (CFU's) per gram of soil. It is not known to be pathogenic or toxic to any animal or plant species. The added soil density from the proposed seed treatment use rates represents a very small proportion of the naturally occurring bacilli in the soil and therefore is not expected to add substantially to the effects of the naturally occurring *Bacillus.*

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires the Agency to considered the cumulative effect of exposure to *B. pumilus* GB 34 and to other substances that have a common mechanism of toxicity. These considerations include the possible cumulative effects of such residues on infants and children. *B. pumilus* does not appear to be toxic or pathogenic to humans. Thus, there is no indication that the bacteria we consider here share any common mechanisms of toxicity (metabolic mechanisms) with other substances.

VII. Determination of Safety for U.S. Population, Infants and Children

There is reasonable certainty that no harm will result from aggregate exposures to residues of *B. pumilus* GB 34, in its use as a seed treatment, to the U. S. population, including infants and children. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. As discussed previously, there is probably no potential for harm, from this bacterium in its use as a seed treatment via dietary exposure since the organism is non-toxic and non-pathogenic to animals and humans. The Agency has arrived at this conclusion based on the very low levels of mammalian toxicity (no toxicity at the maximum doses tested, Toxicity Categories III and IV). Moreover no inhalation or dermal exposure is expected. FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional ten-fold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. In this instance, based on all the available information, the Agency concludes that the bacterium, *B. pumilus* GB34, is non-toxic to mammals, including infants and children. Because there are no threshold effects of concern, the provision requiring an additional margin of safety does not apply. As a result, EPA has not used a margin of exposure (safety) approach to assess the safety of *B. pumilus* GB 34.

VIII. Other Considerations

A. Endocrine Disruptors

EPA is required under FFDCA section 408(p) to develop a screening process to determine whether pesticide chemicals (and any other substance that may have an effect that is cummulative to an effect of a pesticide chemical) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effects effect as the Administrator may designate." Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there was a scientific basis for including, as part of the program, the androgen-and thyroid hormone systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the Program include evaluations of potential effects in wildlife. For pesticide chemicals EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP).

When the appropriate screening and/or testing protocols being considered under the Agency's Endocrine Disruptor Screening Program have been determined, *B. pumilus* GB 34 may be subjected to additional screening and/or testing to better characterize any effects related to endocrine disruption. Based on the weight of the evidence of available data, no endocrine system-related effects have been identified for *B. pumilus* GB 34.

B. Analytical Method(s)

The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation. Accordingly, the Agency has concluded that analytical methods are not needed for enforcement purposes related to *B. pumilus* GB 34.

C. Codex Maximum Residue Level

There are no Codex Maximum Residue Levels nor any tolerances or exemptions issued for *B. pumilus* GB 34 outside the United States.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue

to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0328 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 2, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgment of the Administrator such a waiver or refund is equitable and not contrary to the purpose of FFDCA section 408(m)." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0328, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 12, 2003.

James Jones,

Acting Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(f) and 371.

■ 2. Section 180.1224 is added to subpart D to read as follows:

§ 180.1224 Bacillus pumilus GB 34; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the microbial pesticide *Bacillus pumilus* GB 34 when used as a seed treatment in or on soybeans and soybeans after harvest.

[FR Doc. 03–7638 Filed 4–1–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0079; FRL–7297–8]

Modified Acrylic Polymers; Revision of Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation revises an existing exemption from the requirement of a tolerance for modified acrylic polymers when used as an inert ingredient in a pesticide chemical formulation, including antimicrobial pesticide chemical formulations if such is used in accordance with good agricultural or manufacturing practices. Alco Chemical submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) requesting the revisions to the existing exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of modified acrylic polymers.

DATES: This regulation is effective April 2, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0079, must be received on or before June 2, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit XI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Treva Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8373; e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 25532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number

OPP–2003–0079. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search" then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of January 14, 2003 (68 FR 1846) (FRL–7286–5), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 3E6539) by Alco Chemical, 909 Mueller Drive, Chattanooga, TN 37406–0401. That notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.960 be amended by revising the existing exemption from the requirement of a tolerance for acrylic polymers composed of one or more of the following monomers: Acrylic acid, methyl acrylate, ethyl acrylate, butyl acrylate, hydroxyethyl acrylate, hydroxypropyl acrylate, hydroxybutyl acrylate, carboxyethyl acrylate, methacrylic acid, methyl methacrylate, ethyl methacrylate, butyl methacrylate, isobutyl methacyrlate, hydroxyethyl methacrylate, hydroxypropyl methacrylate, hydroxybutyl methacrylate, lauryl methacrylate, and stearyl methacrylate with none and/or one or more of the following monomers: Acrylamide, N-methyl acrylamide, N-octylacrylamide, maleic anhydride, maleic acid, monoethyl maleate, diethyl maleate, monooctyl maleate, dioctyl maleate, and their corresponding sodium, potassium, ammonium, isopropylamine, triethylamine, monoethanolamine, and/or triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu), 1,200 by including N,N-dimethyl acrylamide as one of the monomers. No CAS Reg. No. is associated with this tolerance exemption.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . ." and specifies factors EPA is to consider in establishing an exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk (see 40 CFR 723.250). Acrylic polymers composed of one or more of the following monomers: Acrylic acid, methyl acrylate, ethyl acrylate, butyl acrylate, hydroxyethyl acrylate, hydroxypropyl acrylate, hydroxybutyl acrylate, carboxyethyl acrylate, methacrylic acid, methyl methacrylate, ethyl methacrylate, butyl methacrylate, isobutyl methacyrlate, hydroxyethyl methacrylate, hydroxypropyl methacrylate, hydroxybutyl methacrylate, lauryl methacrylate, and stearyl methacrylate with none and/or one or more of the following monomers: Acrylamide, N-methyl acrylamide, N-octylacrylamide, maleic anhydride, maleic acid, monoethyl maleate, diethyl maleate, monooctyl maleate, dioctyl maleate, and their corresponding sodium, potassium, ammonium, isopropylamine, triethylamine, monoethanolamine, and/or triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu), 1,200 (also referred to as modified acrylic polymers) were previously determined to meet the set of criteria identifying categories of polymers that should present minimal or no risk (66 FR 53720; October 24, 2001).

These criteria of 40 CFR 723.250 would continue to be met with the addition of N,N-dimethyl acrylamide as one of the acrylic polymer monomers. Therefore, based on its conformance to the criteria for a polymer to be considered low risk under 40 CFR 723.250, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to modified acylic polymers.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that modified acrylic polymers could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average molecular weight of modified acrylic polymers is greater than 1,200 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since modified acrylic polymers conform to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." The Agency has not made any conclusions as to whether or not modified acrylic polymers share a common mechanism of toxicity with any other chemicals. However, modified acrylic polymers conform to the criteria that identify a low risk polymer. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of modified acrylic polymers.

VIII. Determination of Safety for Infants and Children

FFDCA section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of modified acylic polymers, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that modified acylic polymers is an endocrine disruptor.

B. Existing Exemptions from a Tolerance

An exemption from the requirement of a tolerance exists (see 40 CFR 180.960) for acrylic polymers composed of one or more of the following monomers: Acrylic acid, methyl acrylate, ethyl acrylate, butyl acrylate, hydroxyethyl acrylate, hydroxypropyl acrylate, hydroxybutyl acrylate, carboxyethyl acrylate, methacrylic acid, methyl methacrylate, ethyl methacrylate, butyl methacrylate, isobutyl methacyrlate, hydroxyethyl methacrylate, hydroxypropyl methacrylate, hydroxybutyl methacrylate, lauryl methacrylate, and stearyl methacrylate with none and/or one or more of the following monomers: Acrylamide, N-methyl acrylamide, N-octylacrylamide, maleic anhydride, maleic acid, monoethyl maleate, diethyl maleate, monooctyl maleate, dioctyl maleate, and their corresponding sodium, potassium, ammonium, isopropylamine, triethylamine, monoethanolamine, and/or triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu), 1,200.

C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for modified acylic polymers nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of modified acrylic polymers from the requirement of a tolerance will be safe.

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0079 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 2, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR

178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit XI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0079, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 25, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. The table to section 180.960 is amended by revising the entry which reads in part "Acrylic polymers composed of one or more of the following monomers:. . ." as follows:

§ 180.960 Polymers; Exemptions from the requirement of a tolerance.

Polymer	CAS No.
. . . . .	
Acrylic polymers composed of one or more of the following monomers: Acrylic acid, methyl acrylate, ethyl acrylate, butyl acrylate, hydroxyethyl acrylate, hydroxypropyl acrylate, hydroxybutyl acrylate, carboxyethyl acrylate, methacrylic acid, methyl methacrylate, ethyl methacrylate, butyl methacrylate, isobutyl methacrylate, hydroxyethyl methacrylate, hydroxypropyl methacrylate, hydroxybutyl methacrylate, lauryl methacrylate, and stearyl methacrylate; with none and/or one or more of the following monomers: Acrylamide, N-methyl acrylamide, N,N-dimethyl acrylamide, N-octylacrylamide, maleic anhydride, maleic acid, monoethyl maleate, diethyl maleate, monooctyl maleate, dioctyl maleate; and their corresponding sodium, potassium, ammonium, isopropylamine, triethylamine, monoethanolamine, and/or triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu), 1,200	None
. . . . .	

[FR Doc. 03–7974 Filed 4–1–03; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7805]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Mitigation Division, 500 C Street, SW.; Room 435, Washington, DC 20472, (202) 646–3443.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be

available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community no.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region I				
Maine: Allagash, Town of, Aroostook County.	230440	March 19, 1974, emerg.; August 5, 1985, reg.; April 2, 2003, susp..	4/2/03	4/2/03
Region V				
Ohio: Frankfort, Village of, Ross County	390484	July 11, 1975, emerg.; September 24, 1984, reg.; April 2, 2003, susp.	4/2/03	4/2/03
Region I				
Connecticut: Newtown, Town of, Fairfield County.	090011	August 28, 1975, emerg.; June 15, 1979, reg.; April 16, 2003, susp.	4/16/03	4/16/03
New Hampshire: Errol, Town of, Coos County..	330206	August 31, 1993, emerg.; June 1, 1995, reg.; April 16, 2003, susp.	4/16/03	4/16/03

Code for reading third column: emerg.—emergency; reg.—regular; susp.—suspension.

Dated: March 27, 2003.

Anthony S. Lowe,

Director, Mitigation Division.

[FR Doc. 03–7983 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 032703E]

Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod by Catcher Vessels 60 Feet (18.3 m) Length Overall and Longer Using Hook-and-line Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 feet (18.3 m) length overall (LOA) and longer using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2003 total allowable catch (TAC) of Pacific cod allocated to catcher vessels using hook-and-line gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 28, 2003, until 1200 hrs, A.l.t., June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2003 Pacific cod TAC allocated to catcher vessels using hook-and-line gear in the BSAI is 175 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the BSAI (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season apportionment of the 2003 Pacific cod TAC allocated as a directed fishing allowance to catcher vessels using hook-and-line gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 feet (18.3 m) length overall and longer using hook-and-line gear in the BSAI. Catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line gear in the BSAI may continue to participate in the directed fishery for Pacific cod under a separate Pacific cod allocation to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the A season apportionment of the 2003 Pacific cod TAC allocated to catcher vessels using hook-and-line gear in the BSAI, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 27, 2003.

Richard W. Surdi

Acting Director, Office of Sustainable Eisheries, National Marine Fisheries Service.

[FR Doc. 03–7960 Filed 3–28–03; 2:59 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011219306–3058–03; I.D. 110501A]

RIN 0648–AM44

Fisheries of the Exclusive Economic Zone off Alaska; Revisions to Observer Coverage Requirements for Vessels and Shoreside Processors in the North Pacific Groundfish Fisheries; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; Technical correction.

SUMMARY: This document corrects a January 7, 2003, final rule that implemented changes to regulations governing the North Pacific Groundfish Observer Program (Observer Program). The action is necessary to correct erroneous cross references and inaccurate amendatory language that occurred in the final rule.

DATES: Effective April 2, 2003.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION: A final rule implementing changes to regulations governing the Observer Program was published in the **Federal Register** January 7, 2003 (68 FR 715). The final rule contained five errors in cross references caused by renumbering of paragraphs. These errors are corrected by this action.

Need for Corrections

In this final rule, the renumbering of paragraphs affected cross references in three paragraphs that were not addressed in the final rule. Newly redesignated paragraph 679.50(d)(5)(i) is corrected by removing the reference to "(d)(4)(ii)" and by adding in its place "(d)(5)(ii)"; Newly redesignated paragraph 679.50(d)(5)(ii)(B) is corrected by removing reference to "(d)(4)(iii)", and by adding in its place "(d)(5)(iii)"; and paragraph 679.50(g)(2)(iii)(B)(2) is corrected by removing the reference to "(d)(3)" and by adding in its place "(d)(4)".

Amendatory instruction 2 of 68 FR 715 is corrected by removing the text "(d)(3) through (6)" and by adding in its place "(d)(3) through (5)" by removing the text "(d)(4) through (7)" and by adding in its place "(d)(4) through (6)" and by correcting the text

"paragraphs(i)(2)(vi) and (i)(2)(xii) are revised;" to read as "paragraph(i)(2)(vi) is revised; and paragraph (i)(2)(xii) is added;".

Classification

This action corrects paragraph numbering and cross references, a non-discretionary technical change with no substantive effects. Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), as such procedure would be unnecessary. Because this technical amendment does not constitute a substantive rule, it is not subject to the requirement for a 30–day delay in effective date under 5 U.S.C. 553(d). Because prior notice and opportunity to comment is not required for this action by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are not applicable.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 24, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ Accordingly, 50 CFR part 679 is corrected by making the following correcting amendments to the final rule published on January 7, 2003 (68 FR 715):

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub, L, 106–554.

§ 679.50 [Corrected]

■ 2. In § 679.50, correct the reference to paragraphs redesignated in the final rule 68 FR 715, January 7, 2003:

■ a. In paragraph (d)(5)(i), remove the reference "(d)(4)(ii)" and add in its place "(d)(5)(ii)".

■ b. In paragraph (d)(5)(ii)(B), remove the reference "(d)(4)(iii)" and add in its place "(d)(5)(iii)".

■ c. In paragraph (g)(2)(iii)(B)(2), remove the reference "(d)(3)" and add in its place "(d)(4)".

■ 3. On page 719 of 68 FR 715, third column, amendatory instruction 2:

■ a. Lines 1 and 2, remove "(d)(3) through (6)" and add in its place "(d)(3) through (5)".

■ b. Lines 2 and 3, remove "(d)(4) through (7)" and add in its place "(d)(4) through (6)".

■ c. Line 5 and 6, remove "paragraphs (i)(2)(vi) and (i)(2)(xii) are revised" and add in its place "paragraph (i)(2)(vi) is revised; and new paragraph (i)(2)(xii) is added;".

[FR Doc. 03–7517 Filed 4–1–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 63

Wednesday, April 2, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV02–930–3 PR]

Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rates; Withdrawal of a Proposed Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action withdraws a proposed rule published in the **Federal Register** on June 10, 2002 (67 FR 39637), which would have increased the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.00175 to $0.0021 per pound. It also would have increased the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.000875 to $0.00105 per pound. Both assessment rates would have applied to the 2002–2003 and subsequent fiscal periods. Since the proposed rule was published, the tart cherry marketing order was amended (August 8, 2002; 67 FR 51697). The provisions requiring the establishment of different assessment rates for different products were removed. In their place, the Cherry Industry Administrative Board (Board) is required to consider the volume of cherries used in making various products and the relative market value of those products in deciding whether the assessment rate should be a single, uniform rate applicable to all cherries or whether varying rates should be recommended for cherries manufactured into different products. At this time, it is the Board's intention to recommend one assessment rate applicable to all cherries so this action is no longer necessary.

DATES: The proposed rule published on June 10, 2002 (67 FR 39637) is withdrawn as of April 3, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, Room 2A38, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This action withdraws a proposed rule published in the **Federal Register** on June 10, 2002 (67 FR 39637), which would have increased the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.00175 to $0.0021 per pound. It also would have increased the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.000875 to $0.00105 per pound. Both assessment rates would have applied to the 2002–2003 and subsequent fiscal periods.

Since the proposed rule was published, the tart cherry marketing order was amended (August 8, 2002; 67 FR 51697). The provisions requiring the establishment of different assessment rates for different products were removed. The Cherry Industry Administrative Board (Board) now is required to consider the volume of cherries used in making various products and the relative market value of those products in deciding whether the assessment rate should be a single, uniform rate applicable to all cherries or whether varying rates should be recommended for cherries manufactured into different products. At this time, it is the Board's intention to recommend one assessment rate applicable to all cherries so this action is no longer necessary.

Therefore, the proposed rule regarding an increase in the assessment rates for cherries published in the **Federal Register** on June 10, 2002 (67 FR 39637), is hereby withdrawn.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

Authority: 7 U.S.C. 601–674.

Dated: March 27, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–7939 Filed 4–1–03; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR PART 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for small arms manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for small arms manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before April 21, 2003.

ADDRESSES: Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC, 20416, Tel: (202) 619–0422.

FOR FUTHER INFORMATION CONTACT: Edith Butler, Program Analyst, (202) 619–0422 FAX (202) 205–7280.

SUPPLEMENTARY INFORMATION: Pub. L. 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on six digit coding systems.

The first coding system is the Office of Management and Budget *North American Industry Classification System (NAICS)*. The second is the Product and Service Code established by the Federal Procurement Data System.

The U.S. Small Business Administration is currently processing a request to waive the Nonmanufacturer Rule for Small Arms Manufacturing, North American Industry Classification System (NAICS) 332994. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 03–7840 Filed 4–1–03; 8:45 am]

BILLING CODE 8025–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2002–4C]

Notice of Public Hearings: Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Public Hearings in Los Angeles, CA.

SUMMARY: The Copyright Office of the Library of Congress will be holding two days of public hearings in Los Angeles, California on the possible exemptions to the prohibition against circumvention of technological measures that control access to copyrighted works and is extending the due date for requests to testify in California.

DATES: Public hearings will be held at the UCLA School of Law on May 14 and 15, 2003, beginning at 9 a.m. Requests to testify for these California hearings must be received by 5 p.m. E.S.T. on April 8, 2003. *See* **SUPPLEMENTARY INFORMATION** for additional information on other requirements.

ADDRESSES: The Los Angeles, California round of public hearings will be held on May 14 and 15, 2003 in the Moot Court Room, Room 1310, of the UCLA School of Law, 405 Hilgard Avenue, Los Angeles, CA. *See* **SUPPLEMENTARY INFORMATION** for additional address information and other requirements.

FOR FURTHER INFORMATION CONTACT: Rob Kasunic, Senior Attorney, Office of the General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380; fax (202) 707–8366. Requests to testify must be sent by email to *1201@loc.gov*. Email inquiries regarding the hearings may be sent to *rkas@loc.gov*.

SUPPLEMENTARY INFORMATION: On October 15, 2002, the Copyright Office published a Notice of Inquiry seeking comments in connection with a rulemaking pursuant to section 1201(a)(1) of the Copyright Act, 17 U.S.C. 1201(a)(1), which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumventing a technological measure that controls access to a copyrighted work. For a more complete statement of the background and purpose of the rulemaking, please see the Notice of Inquiry and the full record of the previous rulemaking proceeding available on the Copyright Office's Web site at: *http://www.copyright. gov/1201/*.

On March 20, 2003, the Copyright Office announced that it would be holding public hearings relating to the rulemaking in Washington DC on April 11, April 15, April 30, and May 2, 2003, and that public hearings would subsequently be held in California in May, on dates and at a location to be announced later. 68 FR 13652 (March 20, 2003).

The Copyright Office is now announcing that the California hearings will be conducted on May 14 and 15, 2003 to hear testimony relating to the rulemaking. The hearings will be conducted in Room 1310 at the UCLA School of Law, located at 405 Hilgard Avenue, Los Angeles, California.

The March 20 notice invited interested parties to submit requests to testify at one of these hearings. Requests were to be submitted no later than April 1, 2003. Given the timing of this announcement on the precise dates and location of the California hearings, the Copyright Office is extending the due date for requests to testify at the Los Angeles, CA hearings only until 5 p.m., E.S.T., April 8, 2003.

Requirements for Persons Desiring To Testify

A request to testify must be submitted to the Copyright Office. All requests to testify must clearly identify:

- The name of the person desiring to testify,
- The organization or organizations represented, if any,
- Contact information (address, telephone, and email),
- The class of work to which your testimony is responsive (if you wish to testify on more than one proposed class of work, please state your order of preference),[1]
- A brief summary of your proposed testimony,
- A description of any audiovisual material or demonstrative evidence, if any, that you intend to present,
- Preferences as to dates on which you wish to testify. *Note*: Because the agenda will be organized based on subject matter, we cannot guarantee that we can accommodate requests to testify on particular dates.

The Copyright Office notes that it has already received many requests to testify that have not complied with these requirements, particularly the requirement to identify the class of work to which the testimony is responsive. Requests to testify that do not conform to these requirements will not be considered, since the hearing sessions will be structured around particular or related proposed classes of works to be exempted. Persons who submit a timely request to testify will receive a response by email or telephone by April 14, 2003. The Copyright Office will notify all witnesses of the date and expected time of their appearance, and the time allocated for their testimony.

At the UCLA School of Law, only limited on-site parking will be available for participants and the public. Persons wishing to attend the hearings are encouraged to make alternative transportation plans or to park in commercial parking lots located near UCLA. The Office will post additional information on parking at UCLA on the Copyright Office's Web site at *http://www.copyright.gov/1201/*.

[1] The 51 written comments proposing classes of works to be exempted and the 338 reply comments have been posted on the Office's Web site; *seehttp://www.copyright.gov/1201/*.

Addresses for Requests to Testify

All requests to testify must be sent by email to *1201@loc.gov* and must be received by 5 E.S.T. on April 8, 2003. Persons who are unable to send requests by email should contact Rob Kasunic, Senior Attorney, at (202) 707–8380 to make alternative arrangements for submission of their requests to testify.

Form and Limits on Testimony at Public Hearings

There will be time limits on the testimony allowed for persons testifying that will be established after receiving all requests to testify. In the written comment period, the Office received nearly 400 written comments. Given the time constraints, only a fraction of that number could possibly testify at the hearings. A timely request to testify does not guarantee an opportunity to testify at these hearings. The Copyright Office encourages parties with similar interests to select common representatives to testify on behalf of a particular position.

The Copyright Office stresses that factual arguments are at least as important as legal arguments and encourages persons who wish to testify to provide demonstrative evidence to supplement their testimony. While testimony from attorneys who can articulate legal arguments in support of or opposition to a proposed exempted class of works is useful, testimony from witnesses who can explain and demonstrate the facts is also solicited. Any electronic or audiovisual equipment necessary for a presentation or demonstration at these California hearings should be brought by the person testifying.

The Office intends to organize individual sessions of the hearings around particular or related classes of works proposed for exemption. If a request to testify involves more than one proposed exemption or related exemption, please specify, in order of preference, the proposed exemptions on which you would prefer to testify.

Following receipt of the requests to testify, the Copyright Office will inform all parties requesting to testify whether they have been accepted. The Copyright Office will also prepare an agenda of the hearings which will be posted on the Copyright Office Web site at *http://www.copyright.gov/1201/* and sent to persons who have been accepted to testify. To facilitate this process, it is essential that all of the required information listed above be included in a request to testify.

Dated: March 31, 2003.

David O. Carson,

General Counsel.

[FR Doc. 03–8147 Filed 4–1–03; 8:45 am]

BILLING CODE 1410–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 440

[CMS–2132–P]

RIN 0938–AM26

Medicaid Program; Provider Qualifications for Audiologists

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the requirements for audiologists furnishing services under the Medicaid program. In addition, it would create consistency with the Medicare requirements that define a qualified audiologist by recognizing the role of State licensure in determining provider qualifications. These revised standards would expand State flexibility in choosing qualified audiologists.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on June 2, 2003.

ADDRESSES: In commenting, please refer to file code CMS–2132–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail.

Mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2132–P, P.O. Box 3016, Baltimore, MD 21244–3016.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Linda Peltz, (410) 786–3399.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7195.

Copies: This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html*.

I. Background

A. Legislation

Medicaid Requirements

Title XIX of the Social Security Act (the Act) authorizes Federal grants to States for Medicaid programs that

provide medical assistance to low-income families, the elderly, qualified pregnant minors, and persons with disabilities. The Medicaid program is jointly financed by the Federal and State governments and administered by the States. Within Federal rules, each State chooses eligible groups of beneficiaries, types and ranges of services, payment levels for services, and administrative and operating procedures. The nature and scope of a State's Medicaid program is described in the State plan that the State submits to us for approval. The plan is amended whenever necessary to reflect changes in Federal or State law, changes in policy, or court decisions. Under section 1902(a)(10) of the Act, States must provide certain basic services. Section 1905(a)of the Act identifies categories of services States may provide as medical assistance.

Under the Medicaid program, services for individuals with speech, hearing, and language disorders historically have been permitted under the Secretary's discretionary authority under section 1905(a)(11) of the Act. In our regulations, at 42 CFR 440.110(c), we require that the beneficiary be referred by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under State law for services furnished by, or under the direction of, a qualified audiologist or speech pathologist. As currently defined at § 440.110(c)(2), an audiologist or speech pathologist is an individual who has a certificate of clinical competence from the American Speech-Language-Hearing Association (ASHA); completed the equivalent educational requirements and work experience necessary for the certificate; or completed the academic program and is acquiring supervised work experience to qualify for the certificate.

Medicare Requirements

Section 1861(ll)(2) of the Act defines audiology services to include hearing and balance assessment services furnished by a qualified audiologist, as the audiologist is legally authorized to perform under State law. Section 1861(ll)(3)(B) then identifies the minimum qualifications that a qualified audiologist must have to participate in the Medicare program by defining a "qualified audiologist" as an individual with a master's or doctoral degree and who—

- Is licensed as an audiologist by the State in which the individual furnished those services; or
- In the case of an individual who furnishes services in a State that does not license audiologists, has—
  - + Successfully completed 350 clock hours of supervised clinical practicum (or is in the process of accumulating that supervised clinical experience);
  - + Performed not fewer than 9 months of supervised full-time audiology services after obtaining a master's or doctoral degree in audiology or a related field; and
  - + Successfully completed a national examination in audiology approved by the Secretary.

B. Current Medicaid Program Experience

Since its inception, the Medicaid program has permitted States the option of providing services for individuals with speech, hearing, and language disorders. Audiology services may be provided in a variety of settings at the State discretion. States have the option of providing audiology services to their adult Medicaid population, but because of the mandatory Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) program, must provide audiology services to Medicaid eligible persons under 21 years of age who have been evaluated and found in need of the service. In fact, Medicaid pays for a substantial number of medical services provided to children with disabilities in schools ("school-based services") according to the Individuals with Disabilities Education Act (IDEA) (Pub. L. 105–17, enacted on June 4, 1997). Our current regulations at § 440.110(c)(2), require audiologists to hold a certificate of clinical competency from ASHA, or its equivalent, to furnish audiology services. Current regulations also permit services to be provided under the direction of a qualified (ASHA certified) audiologist.

C. Consistency with Medicare Program

Before the Social Security Amendments of 1994 (Pub. L. 103–432, enacted on October 31, 1994), the Medicare and Medicaid regulations both required speech pathologists and audiologists to meet the academic and clinical experience requirements for a Certificate of Clinical Competence granted by ASHA. In accordance with section 146 of the Social Security Amendments of 1994, Medicare revised its statutory requirements for speech pathologists and audiologists, removing the requirement for ASHA certification and placing primary reliance for determining provider qualifications on State licensure.

After the revision of the Medicare requirements in 1994, we began receiving letters from audiology professionals and interested parties recommending that we adopt the Medicare definition of qualified audiologists. In addition, the introductory text of the legislation entitled "The Medicaid Audiology Act of 1999" (H.R. 1068); and the Committee Report for FY 2001 Labor, Health and Human Services, and Education Appropriations bill (Report 106–645, page 108), recommended that we adopt the Medicare definition of "qualified audiologist" in the Medicaid program; that is, recognize the role of State licensure in determining provider qualifications. The proponents recommending the change stated that the Medicaid definition had not changed in over 20 years and predated the national trend toward greater reliance on State determinations of professional qualifications through licensure.

Last year, after repeated requests to reconcile the differing definitions, we agreed to consider possibilities for changing the Medicaid regulations to bring them into closer conformity with the Medicare requirements by recognizing State licensure in defining a qualified audiologist in a manner that would not compromise State flexibility and quality of care.

We began by conducting meetings with stakeholders and interviewing national organizations to determine the implications that this change would have on Medicaid programs, providers, and beneficiaries. Based on the information gained from those encounters, we now believe it is possible to enact a change to the Medicaid definition of qualified audiologist to recognize the role of State licensure, while simultaneously incorporating standards that address our concerns regarding quality standards of care.

The requirements proposed in this rule reflect our goal of maintaining Medicaid's quality standards while simultaneously being responsive to States, stakeholders, and beneficiaries. Our proposed provider standards recognize the role of State licensure in determining provider qualifications, while preserving the State's flexibility and professional industry standards that aid in ensuring quality services to all Medicaid beneficiaries.

II. Provisions of the Proposed Regulations

This proposed rule only addresses the qualifications of audiologists as defined under § 440.110(c)(2). At this time, we do not propose to change the requirements under this section pertaining to qualified speech-language pathologists.

We are proposing to make the following revisions to the regulations:

- In § 440.110(c)(2), to define audiologists separately from speech pathologists.
- To add a new § 440.110(c)(3) to define "qualified audiologist". "A qualified audiologist means an individual with a master's or doctoral degree in audiology who—

(i) Is licensed as an audiologist to perform those services by the State in which the individual furnishes those services, providing that the State licensure requirements meet or exceed the requirements in paragraph (c)(3)(ii)(A) or (c)(3)(ii)(B) of this section;".

(ii) In the case of an individual who furnishes audiology services in a state that does not license audiologists or that exempts audiologists practicing in specific institutions or settings from licensure, the individual must meet one of the following standards:

(A) Has a Certificate of Clinical Competence in Audiology granted by the American Speech-Language-Hearing Association; or

(B) Has successfully completed a minimum of 350 clock-hours of supervised clinical practicum (or is in the process of accumulating such supervised clinical experience under the supervision of a qualified master or doctoral-level audiologist), performed not less than 9 months of supervised full-time audiology services after obtaining a master's or doctoral degree in audiology, or a related field, and successfully completed a national examination in audiology approved by the Secretary.

Similar to Medicare's statutory revision in 1994, our proposed regulation will remove the requirement for ASHA certification as the sole standard for determining provider qualifications and will place primary reliance on State licensing.

Our goal in revising the Medicaid audiology provider qualification standards is to make both programs' requirements consistent where possible while also incorporating minimum clinical and academic requirements that reflect nationally recognized industry professional standards. In doing so, we seek to ensure that regardless of where the Medicaid beneficiary receives the audiology services, the services would be provided by highly trained professionals.

To accomplish this goal, our proposed requirements differ from Medicare's through the inclusion of minimum provider academic and clinical practicum standards applicable in States that license audiologists, as well as in States that either exempt audiologists from licensure or that do not license audiologists at all.

"Under the Direction of"

To afford States the flexibility they currently have under Medicaid to determine qualified providers, we plan to retain the alternative requirement for providers who are not themselves qualified audiologists to work "under the direction of" a qualified audiologist. Section 440.110(c)(1) allows for services to be furnished by or "under the direction of" a qualified audiologist. This means an individual who is working under the supervision of a Federally qualified audiologist may furnish Medicaid audiology services.

We interpret the "under the direction of" requirement to mean that a qualified audiologist who is directly affiliated with the entity providing audiology services must supervise each beneficiary's care. To meet this requirement, an audiologist must see the beneficiary initially, prescribe the type of care provided, and review the need for continued services throughout treatment. The audiologist must assume professional responsibility for the services provided and ensure that the services are medically necessary. The concept of professional responsibility implicitly supports face-to-face contact by the audiologist at least at the beginning of treatment and periodically thereafter. Thus, audiologists must spend as much time as necessary directly supervising services to ensure beneficiaries are receiving services in a safe and efficient manner in accordance with accepted standards of medical practice.

For an audiologist to be affiliated with an entity, there must be a contractual agreement or some other type of formal arrangement between the audiologist and the entity which enumerates the audiologist's supervisory obligations relating to the care provided to the beneficiaries. Moreover, documentation must be kept supporting the audiologist's supervision of services and ongoing involvement in the treatment. As stated above, we would retain the provision regarding services provided under the direction of an audiologist.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the provisions summarized below that contain information collection requirements:

§ 440.110 Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.

Section 440.100(c)(3)(iii) states that an individual who provides Medicaid audiology services must maintain documentation to demonstrate that they meet the standard(s) set forth in this section. While this requirement is subject to the PRA, we believe this requirement is a usual and customary business activity and the burden associated with this requirement is exempt from the PRA, as stipulated under 5 CFR 1320.3(b)(2) and (b)(3).

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Room N2–17–23, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: John Burke CMS–2132–P,

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn.: Brenda Aguilar, CMS–2132–P.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993), Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

• We are unable to provide a specific dollar estimate of the economic impact this proposed regulation would have on State and local governments and participating providers. Because the flexibility permitted under Medicaid allows States to provide audiology under various Medicaid benefits, it is not possible to capture accurate expenditure data.

We have determined, however, that this proposed rule is not a major rule under Executive Order 12866, and the Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. We have made this determination because while we believe this rule would permit States to have more flexibility in determining who is qualified to provide audiology services, we do not anticipate any increase in States' use of audiology services due to this regulation. Section 804(2) of title 5, United States Code (as added by section 251 of Pub. L. 104–121), specifies that a "major rule" is any rule that the Office of Management and Budget finds is likely to result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises in domestic and export markets.

In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we do not consider States or individuals to be small entities.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of the RFA, audiologists that generate total revenues of $6 million or less in any 1 year are considered to be small entities. The Small Business Administration categorizes small businesses for Audiologists along with physical, occupational, and speech therapists. The total number of providers within this category that have total revenues of between $5 million and $7.5 million or less in any one year is 23,823 that they consider small businesses. Those firms and establishments with total revenue above $7.5 million are not considered small businesses according to the SBA. Therefore, approximately 0.92 percent of audiologist would be considered small businesses. For further information on the SBA size standards see 65 FR 69432. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 100 beds. This rule will not have a significant impact on small rural hospitals. The Medicaid program permits States the flexibility to provide audiology services under a variety of mandatory and optional benefits. The majority of States do so, mainly as either independent practitioner services, as part of a nursing facility service or community-based clinic services, or as part of their home health or school-based services programs. In addition, current Medicaid rules permit States the flexibility to provide audiology services by, or under the direction of, a qualified audiologist. This provider flexibility is recognized by states and is widely used to provide audiology services to children through school-based services programs. Because the proposed rule retains the ability for audiology services to be provided "under the direction of," the changes proposed in this rule would not have an impact on how States currently provide services to their Medicaid populations. Therefore, small rural hospitals would not be affected.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We do not anticipate this rule would have an effect on the States, local or tribal governments, or on private sector costs. As we stated earlier, this regulation would give States more flexibility in determining qualified audiologists thereby giving them the ability to choose from a larger provider pool of "qualified" individuals. However, because we expect the primary users of Medicaid audiology services, such as, children and seniors, to remain fairly constant, we do not anticipate any significant increase in the use of audiology services due to this proposed rule. In addition, because Medicaid audiology services are optional for states to provide to their Medicaid populations, many states choosing to do so limit utilization in some manner. In addition, many states limit the use of optional services such as audiology in favor of mandatory Medicaid benefits. States providing audiology services to children under the EPSDT program primarily do so a part of their school-based services program under IDEA. Since all 50 states currently have a school based services program in operation, we do not anticipate this rule to have any significant effect on audiology services provided to Medicaid children. Additionally, recognizing that states currently use the flexibility permitted in the Medicaid law to provide audiology services "under the direction of" a qualified audiologist, we expect states will continue to do so by providing audiology services using individuals working under the supervision of qualified audiologists.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts a State law, or otherwise has federalism implications. We do not believe this proposed rule in any way would impose substantial direct compliance costs on State and local governments or preempts or supersedes State or local law. This proposed rule would permit States to use State licensed audiologists to provide Medicaid audiology services, thereby giving them increased flexibility in providing Medicaid audiology services. In addition, after researching national audiology usage and reviewing States' currently approved Medicaid States Plans, we anticipate that most, if not all, qualified audiologists currently enrolled in the Medicaid program would continue to be qualified as a result of the continued flexibility proposed in this rule. We also anticipate that States will continue to provide audiology services by using the additional flexibility already granted under the Medicaid program to provide audiology services using individuals meeting State provider qualifications and working within State practice acts "under the direction of" a qualified Medicaid audiologist. We believe the additional flexibility proposed in this rule to recognize State licensure will serve to enhance States ability to provide services. We do not, however, anticipate this rule will have a significant affect on the actual provision of audiology services in State Medicaid programs and therefore does not have Federalism implications.

B. Anticipated Effects

We anticipate this proposed rule will give States increased flexibility in determining who is a Medicaid qualified audiologist. We also anticipate that the quality care standards proposed in this rule would help ensure that Medicaid audiology services continue to be provided by, or under the direction of, highly qualified and trained individuals. Additionally, we believe conforming the Medicare and Medicaid provider requirements would help eliminate any confusion providers may experience in complying with Federal rules and help reduce or eliminate conflict where audiologists provide services to both the Medicaid and Medicare populations (such as in nursing facilities or through home health care agency providers). Additionally, this proposed rule also serves to eliminate inconsistencies in Medicaid provider standards by no longer recognizing equivalency rulings. Under the current Medicaid rules, states can seek equivalency rulings from their State Attorney General in instances where they believe State licensure is equivalent to ASHA certification. Since the proposed rule recognizes State licensure that meets Medicare-equivalent standards, equivalency rulings are no longer necessary or required. We believe States would look favorably on the elimination of equivalency rulings since they proved administratively burdensome and time-consuming to obtain.

C. Alternatives Considered

In developing the policies set forth in this proposed rule, we met with professional organizations and interested parties to solicit their ideas and concerns. We also worked with our national regional office Staffs to review currently approved Medicaid state plans for information on the provision of audiology services in States' Medicaid programs. We considered the role of audiology services in the Medicaid program and the potential impact changes in the standards for audiology providers would have overall. We considered several options that included (1) no change to the current Medicaid audiology requirements, (2) retain current requirements but issue updated policy guidance on issues such as provider equivalency authority, (3) rewrite the current Medicaid regulations to adopt the current Medicare requirements, and (4) rewrite the current Medicaid regulations to adopt the Medicare standards, but with minimum standards that would apply in States that do not license or that exempt some practitioners from State licensure requirements.

After much research and consideration of the impact of each of the options, we concluded that option 4—the standards proposed in this rule—best satisfy the commitment made by the Secretary and address the request raised by interested parties to conform the definition of a qualified audiologist under the Medicare and Medicaid programs by recognizing the role of state licensure as a Medicaid provider requirement. We also concluded that the standards proposed in this rule best continue to recognize states rights under Medicaid by retaining program flexibility while at the same time also building in quality standards that continue to ensure Medicaid services are provided to all Medicaid-eligible individuals by recognized, highly trained professionals.

D. Conclusion

For the reason stated above, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 440

Grant programs—Health, Medicaid.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services would amend 42 CFR chapter IV, part 440 as set forth below:

PART 440—SERVICES: GENERAL PROVISIONS

Subpart A—Definitions

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 440.110(c), the introductory text of paragraph (c)(2) is revised, and a new paragraph (c)(3) is added to read as follows:

§ 440.110 Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.

* * * * *

(c) *Services for individuals with speech, hearing, and language disorders.*

* * * * *

(2) A "speech pathologist" is an individual who—

* * * * *

(3) A "qualified audiologist" means an individual with a master's or doctoral degree in audiology who—(i) Is licensed as an audiologist to perform those services by the State in which the individual furnishes those services, providing that the State licensure requirements meet or exceed those in paragraph (c)(3)(ii)(A) or (c)(3)(ii)(B) of this section;

(ii) In the case of an individual who furnishes audiology services in a State that does not license audiologists, or that exempts audiologists practicing in specific institutions or settings from licensure, the individual must meet one of the following standards:

(A) Have a Certificate of Clinical Competence in Audiology granted by the American Speech-Language-Hearing Association; or

(B) Have successfully completed a minimum of 350 clock-hours of supervised clinical practicum (or is in the process of accumulating that supervised clinical experience under the supervision of a qualified master or doctoral-level audiologist), performed not fewer than 9 months of supervised

full-time audiology services after obtaining a master's or doctoral degree in audiology, or a related field, and successfully completed a national examination in audiology approved by the Secretary.

(iii) Individuals who provide Medicaid audiology services must maintain documentation to demonstrate that they meet the standard(s) set forth in this section.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: November 26, 2003.

Thomas A Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: January 28, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–8021 Filed 3–31–03; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL MARITIME COMMISSION

46 CFR Part 530

[Docket No. 03–03]

Proposed Amendment to Service Contract Regulations

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations on the electronic filing of service contracts for ocean transportation under the Shipping Act of 1984 ("Shipping Act") (46 U.S.C. app. 1701 *et seq.*), as amended by the Ocean Shipping Reform Act of 1998 ("OSRA"), to add a provision which would permit persons authorized to transmit electronically service contract filings for vessel-operating common carriers, conferences and agreements, to correct within 48 hours an original service contract filing or an amendment that is defective due to electronic transmission errors. The revision would allow a "corrected transmission" of the original service contract or amendment submission to be designated as such and filed in the Commission's electronic service contract filing system, SERVCON.

DATES: Submit comments no later than May 2, 2003. Submit an original and 15 copies of any comments (paper), or e-mail comments as an attachment in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications.

ADDRESSES: Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001; e-mail: *secretary@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Florence A. Carr, Director, Bureau of Trade Analysis, 202–523–5796, e-mail: *florence@fmc.gov.*

SUPPLEMENTARY INFORMATION: Section 8(c) of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 ("OSRA"), 46 U.S.C. app. 1707(c), and the Commission's current service contract regulations, 46 CFR part 530, subpart A, require service contracts between shippers and ocean common carriers in the foreign commerce of the United States to be filed electronically with the Commission on a confidential basis. Only an "authorized person," as defined in 46 CFR 530.3(c), can access the confidential section of the Commission's electronic service contract filing system, SERVCON, available via the Commission's website. Each individual service contract filer must register with the Commission to obtain a log-on identification and password. Some carriers use individual employees as the authorized person to file their service contracts; however, the majority of carriers authorize third parties to make their service contract filings. The filings may consist of an original service contract or an amendment to an existing service contract. There are currently more than 200 persons registered to transmit service contract filings on behalf of 150 vessel-operating common carriers.

Current regulations provide for the amendment, correction, and cancellation of service contract filings (46 CFR 530.10). The Commission, however, has become aware of a need to provide filers the ability to correct purely electronic "transmission errors" made when filing either the original service contract or an amendment to a service contract into SERVCON, or errors made in the process of converting the service contract filing into electronic format for submission to the SERVCON system. Since the start of SERVCON in May 1999, filers have withdrawn or overwritten these errors.

Under the proposed rule, only errors resulting from electronic transmission and data conversion for SERVCON format may be corrected. Corrections to an initial filing would be allowed within 48 hours from the time and date of receipt recorded in SERVCON (excluding Saturdays, Sundays and legal public holidays). For example, an initial filing received at 5 p.m. on a Friday must be corrected before 5 p.m. the following Tuesday. The SERVCON system currently has and will continue to have the ability to identify such corrected service contract filings. The Bureau of Trade Analysis will continue to monitor filers' use of the correction process; any abuse of the limited permission in the proposed rule would be considered a violation of the Commission's regulations. Unlike the current regulations which provide for a process to make a retroactive correction in the terms of a filed service contract due to an oversight by the service contract parties,[1] there is no Commission action involved in the process to correct electronic transmission errors that are caused by failures in the hardware or software used by the filers. Therefore, no fee is being proposed for use of this overwrite function in the SERVCON system.

Some examples of filer generated transmission errors that could be corrected under this restricted overwrite proposal are: Incorrect header information, a wrong service contract number, and a wrong file transmitted or uploaded. Examples of substantive service contract changes that would not be allowed under the new proposed 46 CFR 530.10(d) are: Changing rates, deletion of a port or point to be served or a commodity to be carried under the contract; addition or deletion of a shipper entitled to access the service contract, and modification of the duration or minimum quantity commitment of the contract. Instead, these types of changes should continue to be made as "amendments" under 46 CFR 530.10(b) or, if retroactivity is deemed necessary, by filing a request for permission to correct a clerical or administrative error in the terms of a filed service contract under 46 CFR 530.10(c).

Under the proposed rule, the SERVCON system would be modified to accept only corrected service contracts that the filer identifies as such and for which the filer provides a description of the changes being made by the correction process. A new field would be added to the online database as a checkbox for the filer to identify the submission as a corrected service contract. If the filer fails to use this new checkbox, the contract will be rejected because the SERVCON system will not accept service contracts that have duplicate file names, service contract or amendment numbers. The system would also flag resubmitted contracts and would give a unique internal file name to the corrected filing for FMC monitoring purposes. A new separate SERVCON field for filers to enter a description of the corrections being made is part of the proposed rule.

Comments are invited on the proposed rule, particularly from registered authorized persons who make electronic service contract filings in the SERVCON system for or on behalf of carriers. Comments identifying specific transmission and data conversion errors that result from a filer's use of SERVCON may enable the Commission to make SERVCON more user friendly. Comments are also solicited specifically on any technical issues related to the proposed 48-hour window for making a correction, as well as those arising from the proposed procedure to include a description of the changes being made in the corrected submission.

The Commission has determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. It also does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*). The Chairman certifies, pursuant to 5 U.S.C. 605, that the proposed rule would not have a significant impact on a substantial number of small entities.

List of Subjects in 46 CFR Part 530

Freight, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission proposes to amend 46 CFR part 530 as follows:

PART 530—SERVICE CONTRACTS

1. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1704, 1705, 1707, 1716.

2. Section 530.10 is amended by revising the section heading; by redesignating paragraphs (d) and (e) as paragraphs (e) and (f) and by adding a new paragraph (d) to read as follows:

§ 530.10 Amendment, correction, cancellation, and electronic transmission errors.

* * * * *

(d) *Electronic transmission errors.* An authorized person who experiences a purely technical electronic transmission error or a data conversion error in transmitting a service contract filing or an amendment thereto is permitted to file a Corrected Transmission ("CT") of that filing within 48 hours of the date and time of receipt recorded in SERVCON (excluding Saturdays, Sundays and legal public holidays). This time-limited permission to correct an initial defective service contract filing is not to be used to make changes in the original service contract rates, terms or conditions that are otherwise provided for in paragraphs (b) and (c) of this section. The CT tab box in SERVCON must be checked at the time of resubmitting a previously filed service contract, and a description of the corrections made must be stated at the beginning of the corrected service contract in a comment box. Failure to check the CT box and enter a description of the correction will result in the rejection of a file with the same name, since documents with duplicate file names, service contract and amendment numbers are not accepted by SERVCON.

* * * * * *

By the Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 03–7693 Filed 4–1–03; 8:45 am]

BILLING CODE 4730–01–P

[1] Either party to a service contract may request permission to correct a clerical or an administrative error in a filed service contract pursuant to 46 CFR 530.10(c). The request must be submitted within 45 days of the contract's filing and accompanied by a service fee of $276. Further, a letter of transmittal, affidavit, supporting documentation, and concurrence statement must be included with the request. Upon approval of a request for permission to correct a clerical error, an Order is issued (under delegated authority to the Director, Bureau of Trade Analysis) (*see* 46 CFR 501.26(n)). The party filing the contract then files an amendment providing for the retroactive correction of the incorrect material.

Notices

Federal Register
Vol. 68, No. 63
Wednesday, April 2, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–037–1]

Availability of an Environmental Assessment for Field Testing West Nile Virus Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed West Nile Virus Vaccine for use in horses. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensure.

DATES: We will consider all comments that we receive on or before May 2, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–037–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–037–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–037–1" on the subject line.

You may read the environmental assessment, the risk analysis (with confidential business information removed), and any comments that we receive in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

You may request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed) by writing to Dr. Eleanor V. Eagly, USDA, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010, or by calling (515) 232–5785. Please refer to the docket number, date, and complete title of this notice when requesting copies.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245; fax (301) 734–4314. For information regarding the environmental assessment or the risk analysis, contact Dr. Eleanor V. Eagly, USDA, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010; phone (515) 232–5785.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Merial Limited.

Product: West Nile Virus Vaccine, Live Canarypox Vector, Code 1991.R0.

Field Test Locations: Montana, Missouri, Oklahoma, Tennessee, Iowa, and Florida.

The above-mentioned product is a canarypox-vectored recombinant vaccine containing genes of the West Nile virus. The vaccine is for use in horses as an aid in the prevention of viremia associated with West Nile virus infection.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provision of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensure.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 27th day of March 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–7848 Filed 4–1–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Technology Administration.

Title: Commercial Space Launch Range User Requirements.

Form Number(s): None.

OMB Approval Number: 0692–0009.

Type of Review: Regular submission.

Burden Hours: 35.

Number of Respondents: 7.

Average Hours Per Response: 10.

Needs and Uses: The information collected would allow the DOC, Office of Space Commercialization (DOC/OSC) and the Federal Aviation Administration (FAA) to follow the terms of a Memorandum of Agreement (MOA) with the U.S. Air Force to ensure consideration of commercial space launch users' needs in the Air Force's range modernization planning. The collection instrument will be a **Federal Register** announcement.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; State, Local, or Tribal government.

Frequency: Biannually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: March 28, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–7954 Filed 4–1–03; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Office of the Secretary, Office of Civil Rights

Proposed Information Collection; Comment Request; Requests for Reasonable Accommodation

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 2, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Forms Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Brenda Brittain, Disability Program Manager, Office of Civil Rights, at 202 482–8183. In addition, written comments may be sent via the Internet to *BBrittain@doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the Rehabilitation Act of 1973, Federal agencies must provide reasonable accommodation to qualified employees or applicants with disabilities, unless to do so would cause the undue hardship. Unless an accommodation would pose an undue hardship, the Department will provide reasonable accommodation to a qualified individual with a disability who is an:

a. Applicant who needs an accommodation in order to be considered for a job (any change to a job application process that enables a qualified applicant with a disability to be considered for the position such qualified applicant desires);

b. Employee who needs an accommodation to enable him or her to perform the essential functions of the job or to gain access to the workplace (any change to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enables a qualified individual with a disability to perform the essential functions of that position); or

c. Employee who needs an accommodation to enjoy equal benefits and privileges of employment (that which enables an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities).

Executive Order 13164 requires Federal agencies to provide written procedures for reasonable accommodation for employees and applicants. Records must be maintained in order to evaluate the fair application of the procedures for the DOC. To do so, a form has been developed to comprise the report for each reasonable accommodation request.

In order to ensure that the DOC process requests for reasonable accommodation in a fair, timely and equitable manner, applicants for employment and current employees are asked to verify their requests in writing by using form CD 575.

II. Method of Collection

The information shall be collected through the use of a paper form and available on the Internet.

III. Data

OMB Number: None.

Form Numbers: CD Form 575.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 20.

Estimated Time Per Response: 7 minutes.

Estimated Total Annual Respondent Burden Hours: 2.

Estimated Total Annual Respondent Cost Burden: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 28, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–7955 Filed 4–1–03; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Yaudat Mustaffa Talyi, a.k.a. Joseph Talyi, and International Business Services, Ltd. and Top Oil Tools, Ltd.

In the matter of Yaudat Mustafa Talyi, a.k.a. Joseph Talyi, 888 Cross Gates Boulevard, Slidell, Louisiana 70458, and International Business Services, Ltd. 700 Gause Boulevard, Suite 304, Slidell, Louisiana 70458, and 41 Chamale Cove East, Slidell, Louisiana 70460, and 2301 Covington Highway 190, Slidell, Louisiana 70460, Respondents, and Top Oil Tools, Ltd., 41 Chamale Cove East, Slidell, Louisiana 70460, related person.

Renewal of Order Temporarily Denying Export Privileges

Through the Office of Export Enforcement ("OEE"), the Bureau of Industry and Security ("BIS"), U.S. Department of Commerce, has requested that I renew an order issued on September 30, 2002, pursuant to § 766.24 of the Export Administration Regulations (currently codified at 15 CFR parts 730–774(2002)) ("EAR"),[1] temporarily denying all U.S. export privileges of Yaudat Mustafa Talyi, a.k.a. Joseph Talyi, 800 Cross Gates Boulevard, Slidell, Louisiana 70458 ("Talyi"), and International Business Services, Ltd., 700 Gause Boulevard, Suite 304, Slidell, Louisiana 70458, 41 Chamale Cove East, Slidell, Louisiana 70460, and 2301 Covington Highway 190, Slidell, Louisiana 70460, ("IBS"). BIS has also requested, pursuant to §§ 766.24(c) and 766.23 of the EAR, that I continue the temporary denial order ("TDO") as to the following person who is related to IBS and Talyi: Top Oil Tools, Ltd., 41 Chamale Cove East, Slidell, Louisiana 70460. BIS states in its request that, based upon evidence previously adduced that was the basis for the issuance of the September 30, 2003, TDO and evidence developed since that time, it believes that Talyi, acting through his company IBS, has continued to export and participate in the attempted export of items in violation of the TDO in such a manner that suggests a likelihood that violations will occur again absent a renewal of the TDO. Specifically, the evidence indicates that after the TDO was issued on September 30, 2002, Talyi attempted to violate the terms of the TDO by attempting to engage in an export transaction and making it as one in which he played no role. *See* BIS's Request for TDO Renewal dated March 10, 2003, at 3–5 ("BIS's Request"). In fact, Talyi ordered and purchased the items, had them shipped to the business address of IBS, and attempted to conceal the items in a shipment of personal effects from a local gas station owned by his brother to his sister in the United Arab Emirates. *See id; see also* BIS's Response dated March 26, 2003, at 3–4 ("BIS's Response"). The evidence also establishes that on at least three occasions after the TDO was issued, Talyi attempted to convince a Louisiana oil field equipment broker to coordinate and manage exports of oil field parts on Talyi's behalf. *See* BIS's Request at 5–7; *see also* e-mails from Talyi to George Fortenberry dated Oct. 22, 2002, Nov. 11, 2002; and Dec. 13, 2002. Finally, BIS's evidence revealed an additional illegal export of oil field equipment in October of 2001. *See id.* at 7; *see also* BIS's Response at 4–5.

OEE established when the TDO was issued on September 30, 2002, that Top Oil Tools, Ltd., 41 Chamale Cove East, Slidell, Louisiana 70460, is related by its ownership, control, affiliation, and connection with Talyi and IBS such that it should be considered a related person under the terms of this order. *See* BIS's Request at 8; *see also* Articles of Incorporation of Top Oil Tools dated Dec. 10, 1999. Top Oil Tools, Ltd. is a business owned and operated by Talyi, it is located at the same address, and it has participated in some of the transactions in this matter. *See id.* This relationship continues to exist. *See* Certificate of Incorporation of Top Oil Tools from Louisiana Secretary of State dated Jan. 7, 2003. Consequently, it is necessary to continue to name Top Oil Tools, Ltd. as a person related to Talyi and IBS in order to prevent evasion of the terms and conditions of this order.

On March 24, 2003, an attorney representing Talyi filed a timely opposition to OEE's request that I renew the TDO. *See* letter from Frank G. DeSalvo to Lisa A. Prager dated March 24, 2003. that opposition questioned the weight of OEE's evidence that Talyi had violated the TDO and that Talyi has participated in a illegal export of oil field equipment in October 2001. *See id.* Talyi's opposition was terse, conclusory, and presented no evidence to rebut the need for a renewal of the TDO. *See id.*

In light of the evidence cited above, OEE's investigation demonstrates that Talyi, through his company IBS, has committed or attempted to commit repeated violations of U.S. export control laws, including the EAR and the TDO, that such violations have been deliberate and covert, and that, given the nature of the items shipped, future such violations could go undetected. In addition, a renewal of the TDO is needed to give notice to companies in the United States and abroad that they should cease dealing with Talyi or IBS in export transactions involving U.S.-origin items. such a TDO is clearly consistent with the public interest to preclude future violations of the EAR.

Accordingly, I am renewing this order because I have concluded that a TDO continues to be necessary, in the public interest, to prevent an imminent violation of the EAR.

It is therefore ordered: First, that Yaudat Mustafa Talyi, a.k.a. Joseph Talyi, 888 Cross Gates Boulevard, Slidell, Louisiana 70458 ("Talyi"), and International Business Services, Ltd., 700 Gause Boulevard, Suite 304, Slidell, Louisiana 70458, 41 Chamale Cove East, Slidell, Louisiana 70460, and 2301 Covington Highway 190, Slidell, Louisiana 70460 ("IBS") (hereinafter collectively referred to as the "denied persons"); and the following person subject to the Order by its relationship to the denied person, Top Oil Tools, Ltd., 41 Chamale Cove East, Slidell, Louisiana 70460 (the "related person") (together, the denied persons and the related person are "persons subject to this Order") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Export Administration Regulations ("EAR"), or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise serving in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a person subject to this Order any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a person subject to this order of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a person subject to this order acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a person subject to this order of any item subject to the EAR that has been exported from the United States.

D. Obtain from a person subject to this order in the Untied States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a person subject to this order, or service any item, of whatever origin, that is owned, possessed or controlled by a person subject to this order is such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, in addition to the related person named above, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of § 766.24(e) of the EAR, denied persons may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022. A related person may appeal to the Administrative Law Judge at the aforementioned address in accordance with the provisions of § 766.23(c) of the EAR.

This Order is effective immediately upon expiration of the order issued on September 30, 2002, or March 29, 2003, and shall remain in effect for 180 days.

In accordance with the provisions of § 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. Talyi or IBS may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on Talyi, IBS, and Top Oil Tools, Ltd., and shall be published in the **Federal Register**

Entered this 26th day of March, 2003.

Lisa A. Prager,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 03–7858 Filed 4–1–03; 8:45 am]

BILLING CODE 3510–DT–M

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive order 12924, which has been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Com. 397 (2001)), continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1701 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the notice of August 14, 2002 (67 FR 53721 (August 16, 2002)), has continued the EAR in effect under IEEPA.

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review.

SUMMARY: The Department of Commerce issued an amended Export Trade Certificate of Review ("Certificate") to the National Tooling and Machining Association ("NTMA") on March 26, 2003. The original Certificate was issued on October 18, 1988 (53 FR 43140, October 25, 1988), and last amended on March 7, 2002 (67 FR 11981, March 18, 2002).

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by phone at (202) 482–5131, (this is not a toll-free number) or by E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (2003).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certificate in the **Federal Register**. Under section 305(a) of the Export Trading Company Act of 1982 and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the grounds that the determination is erroneous.

Description of Amended Certificate

NTMA's Certificate has been amended so that the attached list constitutes the "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)). The effective date of the amended Certificate is January 6, 2003. A copy of the amended Certificate will be kept in the International Trade Administration's

Freedom of Information Records Inspection Facility.

Dated: March 27, 2003.

Jeffrey Anspacher,

Director, Office of Export Trading Company Affairs.

Attachment

b & b Tool Company, Inc., Rockford, IL
bmc Industries, Bakersfield, CA
A & A Industries, Inc., Peabody, MA
A & A Machine Company, Inc., Southampton, PA
A & A Machine Shop, Inc., La Marque, TX
A & B Aerospace, Inc., Azusa, CA
A & B Machine Shop, Rockford, IL
A & B Tool & Manufacturing Corp., Toledo, OH
A & D Precision, Fremont, CA
A & E Custom Manufacturing Technologies, Inc., Kansas City, KS
A & E Machine Shop, Inc., Lone Star, TX
A & G Machine, Inc., Auburn, WA
A & S Tool & Die Company, Inc., Kernersville, NC
A A Precisioneering, Inc., Meadville, PA
A B A Division, A B A—P G T, Inc., Manchester, CT
A B C O Tool & Engineering, Phoenix, AZ
A B Heller, Inc., Milford, MI
A B R Enterprises Inc., Temple City, CA
A C Machine, Inc., Akron, OH
A E Cole Die & Engraving, Columbus, OH
A E Machine Works, Inc., Houston, TX
A F C Tool Company, Inc., Subsidiary of F C Industries, Dayton, OH
A I M Tool & Die, Grand Haven, MI
A J L Manufacturing Company, Inc., Rochester, NY
A M C Precision, Inc., N. Tonawanda, NY
A M Machine Company, Inc., Baltimore, MD
A S C Corporation, Owings Mills, MD
A. C. Cut-Off, Inc., Azusa, CA
A-G Tool & Die, Div. of Seilkop Industries, Inc, Miamitown, OH
A-Line Tool & Die, Inc., Louisville, KY
A-RanD, Inc., Phoenix, AZ
Abbott Machine & Tool, Inc., Toledo, OH
Abbott Tool, Inc., Toledo, OH
Ability Tool Company, Rockford, IL
Able Wire EDM, Inc., Brea, CA
Abrams Airborne Manufacturing, Inc., Tucson, AZ
Absolute Grinding Co., Inc., Mentor, OH
Absolute Turning & Machine, Tucson, AZ
Acadiana Hydraulic Works, Inc., New Iberia, LA
Accu Die & Mold Inc., Stevensville, MI
Accu-Met Laser, Inc., Cranston, RI
Accu-Roll, Inc., Rochester, NY
Accudynamics, Inc., Middleboro, MA
Accura Industries, Inc., Rochester, NY
Accurate Grinding & Mfg. Corp., & Accurate Fishing Products, Corona, CA
Accurate Machine Co. Inc., Indianapolis, IN
Accurate Manufacturing Company, Glendale, CA
Accurate Products Co., Tucson, AZ
Accurite Machine & Mfg. Inc., Louisville, KY
Accutronics, Inc., Littleton, CO
Ace Manufacturing Company, Cincinnati, OH
Ace Specialty Company, Inc., Tonawanda, NY
Ackley Machine Corporation, Moorestown, NJ
Acme Metal Works, Gilbert, AZ
Acraloc Corporation, Oak Ridge, TN
Acro Industries, Inc., Rochester, NY
Acro Tool & Die Company, Inc., Akron, OH
Actco Tool & Mfg. Co., Meadville, PA
Action Die & Tool Inc., Wyoming, MI
Action Machine L.L.C., Glendale, AZ
Action Mold & Machining, Inc., Grand Rapids, MI
Action Precision Grinding Inc., North Tonawanda, NY
Action SuperAbrasive Products, Brimfield, OH
Action Tool and Manufacturing, Inc., Rockford, IL
Acucut, Inc., Southington, CT
Acutec Precision Machining Inc., Saegertown, PA
Adams Engineering, Division of Manufacturing Technology, Inc., South Bend, IN
Adaptive Technologies Inc., Springboro, OH
Addison Precision Mfg. Corp., Rochester, NY
Adena Tool Corporation, Dayton, OH
Admill Machine Company, Newington, CT
Adron Tool Corporation, Menomonee Falls, WI
Advance Manufacturing Corp., Cleveland, OH
Advanced Composite Products & Technology, Inc. (ACPT Inc.), Huntington Beach, CA
Advanced Machine Inc., Rochester, NY
Advanced Machine Programming, Morgan Hill, CA
Advanced Machining Corporation, Salisbury, NC
Advanced Measurement Labs, Inc., Sun Valley, CA
Advanced Mold & Tooling Inc., Rochester, NY
Advanced Precision Engineering, Ipswich, MA
Advanced Tooling Specialists Inc., Menasha, WI
Advanced Tooling Systems, Inc., Comstock Park, MI
Advantage Mold & Design, Meadville, PA
Aero Comm Machining, Wichita, KS
Aero Engineering & Mfg. Company, Valencia, CA
Aero Gear, Inc., Windsor, CT
Aerostar Aerospace Inc., Phoenix, AZ
Aetna Machine Company, Cochranton, PA
Aggressive Tool & Die, Inc., Buckner, KY
Aggressive Tool & Die, Inc., Coopersville, MI
Ahaus Tool & Engineering, Inc., Richmond, IN
Aimco Precision, Inc., Phoenix, AZ
Ajax Tool, Inc., Fort Wayne, IN
Akro Tool Co., Inc., Cincinnati, OH
Akron Steel Fabricators Company, Akron, OH
Akron Tool & Die Company, Inc., Akron, OH
Albert Seisler Machine Corp., Mohnton, PA
Albertson & Hein, Inc., Wichita, KS
Albion Machine & Tool Company, Albion, MI
Alco Manufacturing, Inc., Santa Ana, CA
Alfred Manufacturing Company, Denver, CO
Alger Machine Company, Inc., Rochester, NY
All Five Tool Company, Inc., Bristol, CT
All Tool Company, Union, NJ
All Tools Company, Oklahoma City, OK
All Tools Texas, Inc., Houston, TX
All Weld Machine, Milpitas, CA
All-Tech Machine & Eng., Inc., Fremont, CA
All-Tech Machining, Inc., Wilmer, AL
Allen Aircraft Products, Inc., Ravenna, OH
Allen Precision Industries, Inc., Asheboro, NC
Allen Precision Machining Co., Angleton, TX
Allen Randall Enterprises, Inc., Akron, OH
Alliance Machine Tool Co., Inc., Louisville, KY
Allied Mechanical, Ontario, CA
Allied Screw Products, Inc., Mishawaka, IN
Allied Tool & Die Company, LLC, Phoenix, AZ
Allied Tool & Die, Inc., Cleveland, OH
Allied Tool & Machine Company, Kernersville, NC
Allied Tool & Machine, Inc., Saginaw, MI
Allied Tools Of Texas, Houston, TX
Alloy Metal Products, Livermore, CA
Allstate Tool & Die, Inc., Rochester, NY
Alpha Mold West Inc., Broomfield, CO
Alpha Mold, LLC, Huber Heights, OH
Alpha Precision Machining Inc., Kent, WA
Alpha Tooling, Inc., Santa Fe Springs, CA
Alro Specialty Metals, St. Louis, MO
Alt's Tool & Machine, Inc., Santee, CA
Alton Products, Inc., Maumee, OH
Alves Precision Engineered Products Inc., Watertown, CT
Amatrol, Inc., Jeffersonville, IN
Ambel Precision Mfg. Corp., Bethel, CT
American Machine & Gundrilling Co., Inc., Maple Grove, MN
American Mfg. & Machining, Inc., Racine, WI
American Precision Machining, Inc., Phoenix, AZ
American Precision Technologies, Inc., San Fernando, CA
American Tool & Die, Inc., Toledo, OH
American Wire EDM, Inc., Placentia, CA
Amerimold, Inc., Mogadore, OH
Amity Mold Company, Tipp City, OH
Anchor Lamina Inc., Madison Heights, MI
Anders Machine and Engraving, Div. of Ad-Tech Machine & Tool, Rochester, NY
Andrew Tool Company, Inc., Plymouth, MN
Anglo-American Mold, Inc., Louisville, KY
Anmar Precision Components Inc., North Hollywood, CA
Anmerk Machine, Tempe, AZ
Anoplate Corporation, Syracuse, NY
Apex Machine Company, Ft. Lauderdale, FL
Apex Machine Tool Company, Farmington, CT
Apex Precision Technologies, Inc., Camby, IN
Apex Tool & Manufacturing, Inc., Evansville, IN
Apollo E.D.M. Company, Fraser, MI
Apollo Precision, Inc., Plymouth, MN
Apollo Products Inc., Willoughby, OH
Applegate EDM, Inc., Dallas, TX
Applied Engineering, Inc., Yankton, SD
Arc Drilling Inc., Garfield Heights, OH
Arco Industries, Inc., Dayton, OH
Arco Metals Corporation, Baltimore, MD
Ardekin Machine Company, Rockford, IL
Area Tool & Manufacturing, Inc., Meadville, PA
Argo Tool Corporation, Twinsburg, OH
Arkansas Tool & Die, Inc., No. Little Rock, AR
Arlington Machine & Tool Company, Fairfield, NJ
Armin Tool & Manufacturing Co., Inc., South Elgin, IL
Armstrong Machine Works, Inc., Rogersville, TN

Armstrong Mold, Machining Div., East Syracuse, NY
Armstrong-Blum Mfg. Co., Mt. Prospect, IL
Arnett Tool, Inc., New Paris, OH
Arro Tool & Die, Inc., Lakewood, NY
Arrow Diversified Tooling, Inc., Ellington, CT
Arrow Grinding, Inc., Tonawanda, NY
Arrow Sheet Metal Products Co., Denver, CO
Artisan Machining, Inc., Bohemia, NY
Ascension Industries, North Tonawanda, NY
Ash Machine Corporation, Pataskala, OH
Associated Electro-Mechanics, Inc., Springfield, MA
Associated Technologies, Brea, CA
Associated Toolmakers, Inc., Keokuk, IA
Astley Precision Machine Co., Irwin, PA
Astro Automation, Inc., Irwin, PA
Astro Machine Works Inc., Ephrata, PA
Atec Engineering, Phoenix, AZ
Athens Industries, Southington, CT
Atkins Tool Company, Riverton, NJ
Atlantic Precision Products Inc., Sanford, ME
Atlantic Tool & Die Company, Strongsville, OH
Atlas Machine & Supply, Inc., Louisville, KY
Atlas Tool, Inc., Roseville, MI
August Machine, Inc., Phoenix, AZ
Austin Machine Company Inc., O'Fallon, MO
Autocam Corporation, Kentwood, MI
Automated Cells & Equipment, Inc., Painted Post, NY
Automated EDM Incorporated, Ramsey, MN
Automation Tool & Die, Inc., Brunswick, OH
Automation Tool Company, Cookeville, TN
Axian Technology, Phoenix, AZ
Ay Machine Company, Ephrata, PA
Ay-Mac Precision, Inc., Yorba Linda, CA
ACMT, Inc. dba A C Tool & Machine, Co., Louisville, KY
ALKAB Contract Manufacturing, Inc., New Kensington, PA
B & B Machine & Grinding Service, Denver, CO
B & B Manufacturing Company, Largo, FL
B & B Precision Mfg., Inc., Avon, NY
B & G Quality Machine & Tool Company, Inc., Baltimore, MD
B & H Fabricators, Inc., Wilmington, CA
B & H Tool Co. Inc., San Marcos, CA
B & H Tool Works, Inc., of Rockcastle Co., Richmond, KY
B & L Tool and Machine Company, Plainville, CT
B & M Machine Corporation of Racine, Racine, WI
B C D Metal Products Inc., Malden, MA
B. Radtke & Sons, Inc., Round Lake Park, IL
B–W Grinding Service, Inc., Houston, TX
Bachman Machine Company, Inc., St. Louis, MO
Bachmann Precision Machine, Products Corp., South El Monte, CA
Badge Machine Products, Inc., Canandaigua, NY
Bahrs Die & Stamping Company, Inc., Cincinnati, OH
Baker Hill Industries, Inc., Coral Springs, FL
Banner Machine Inc., Phoenix, AZ
Barberie Mold, Gardena, CA
Barnes Aerospace-Apex Mfg., Phoenix, AZ
Baumann Engineering, Claremont, CA
Bawden Industries, Inc., Romulus, MI
Baxter Machine Products, Inc., Huntingdon, PA
Beach Mold & Tool, Inc., New Albany, IN
Beacon Tool Company, Inc., Whittier, CA
Beaver Tool & Machine Company, Inc., Feasterville, PA
Bechler Cams, Inc., Anaheim, CA
Becker, Inc., Kenosha, WI
Becksted Machine, Inc., Tucson, AZ
Bedard Machine, Inc., Brea, CA
Bel-Kur, Inc., Temperance, MI
Belgian Screw Machine Products, Inc., Concord, MI
Bell Engineering, Inc., Saginaw, MI
Bellco Precision Manufacturing, Inc., Melissa, TX
Beloit Precision Die Co. Inc., Beloit, WI
Benda Tool & Model Works, Hercules, CA
Bendon Gear Machine, Rockland, MA
Bennett Tool & Die Company, Nashville, TN
Bennett Tool & Machine, Fremont, CA
Benning Inc., Blaine, MN
Bent River Machine Inc., Clarkdale, AZ
Berman Tool & Die, Waldorf, MD
Bermar Associates, Inc., Troy, MI
Bertram Tool & Machine Co., Inc., Farrell, PA
Bertrand Products, Inc., South Bend, IN
Best Tool & Manufacturing Co., Inc., Kansas City, MO
Bestway Industries, Inc., Cleveland, OH
Beta Machine Co. Inc., Cleveland, OH
Bilar Tool & Die Corporation, Warren, MI
Billet Industries, Inc., York, PA
Bishop Steering Technology, Inc., Indianapolis, IN
Black Creek Mold & Tool, Rainbow City, AL
Blackwood Grinding Inc., Hurst, TX
Blandford Machine & Tool Co., Inc., Louisville, KY
Blue Chip Mold, Inc., Rochester, NY
Bluegrass Forging, Tool & Die, Shelbyville, KY
Bob's Tool & Cutter Grinding, Inc., Indianapolis, IN
Bohler Uddeholm North America, Santa Fe Springs, CA
Boice Industrial Corporation, Ruffsdale, PA
Bolt Industries, LLC, Phoenix, AZ
Bosma Machine & Tool, Corporation, Tipp City, OH
Boston Centerless Inc., Woburn, MA
Bourdelais Grinding Co. Inc., Chatsworth, CA
Bowden Manufacturing Corp., Willoughby, OH
Boyce Machine, Inc., Cuyahoga Falls, OH
Boyle, Inc., Freeport, PA
Bra-Vor Tool & Die Company, Inc., Meadville, PA
Bradford Machine Company Inc., Brattleboro, VT
Bradhart Products, Inc., Brighton, MI
Bramko Tool & Engineering, Inc., O'Fallon, MO
Bratt Machine Company Inc., No. Andover, MA
Brij Systems, Wichita, KS
Brinkman Tool & Die, Inc., Dayton, OH
Brittain Machine, Inc., Wichita, KS
Broadway Companies, Inc., Englewood, OH
Brogdon Tool & Die, Inc., Blue Springs, MO
Brookfield Machine, Inc., West Brookfield, MA
Brooklyn Machine & Mfg. Co. Inc., Cuyahoga Heights, OH
Brooklyn Scraping & Re-Machining, Inc., W. Lafayette, IN
Brooks Machine Tool Corporation dba, Time Machine & Stamping, Phoenix, AZ
Brown-Covey, Inc., Kansas City, MO
Brownstown Quality Tool & Design, Brownstown, IN
Budney Overhaul & Repair, LTD., Berlin, CT
Buerk Tool LLC, Buffalo, NY
Buiter Tool & Die, Inc., Grand Rapids, MI
Bundy Manufacturing Inc., El Segundo, CA
Burckhardt America, Inc., Greensboro, NC
Burger & Brown Engineering, Inc., Olathe, KS
Burgess Brothers, Inc., Canton, MA
BMCO Industries Inc., Cranston, RI
BPS Industries Inc., Baltimore, MD
BSB Products Corporation, Buffalo, NY
BT Laser, Inc., Santa Clara, CA
C & C Machine Company, Akron, OH
C & C Precision Machining Inc., Mesa, AZ
C & G Machine & Tool Co., Inc., Granby, MA
C & J Industries Inc., Meadville, PA
C & R Manufacturing, Inc., Shawnee, KS
C & S Machine & Manufacturing, Corporation, Louisville, KY
C A R Engineering & Mfg., Victor, NY
C B Kaupp & Sons, Inc., Maplewood, NJ
C B S Manufacturing Company, Inc., Windsor, CT
C D M Tool & Mfg. Co., Inc., Hartford, WI
C J Winter Machine Technologies, Inc., Rochester, NY
C M Gordon Industries Inc., Santa Fe Springs, CA
C M Industries, Inc., d/b/a Custom Marine, Inc., Old Saybrook, CT
C N C Precision Machining, Inc., Comstock Park, MI
C T D Machines, Inc., Los Angeles, CA
C V Tool Company, Inc., Southington, CT
C. G. Tech, Inc., Phoenix, AZ
C-Axis Inc., Hamel, MN
C-P Mfg. Corp., Van Nuys, CA
Caco Pacific Corporation, Covina, CA
Cadco Program & Machine, St. Charles, MO
Cal-Weld, Fremont, CA
Calder Machine Co. (C M C), Florence, SC
California Wire EDM, Santa Ana, CA
Calmax Technology, Inc., Santa Clara, CA
Cambridge Specialty Company, Inc., Kensington, CT
Cambridge Tool & Die Corp., Cambridge, OH
Cameron Machine Shop, Inc., Richardson, TX
Campbell Grinding & Machine, Inc., Lewisville, TX
Campro Manufacturing, Inc., Phoenix, AZ
Camtec, Inc., Traverse City, MI
Canto Tool Corporation, Meadville, PA
Capitol Technologies, Inc., South Bend, IN
Capitol Tool & Die, L. P., Madison, TN
Carboloy Inc., Warren, MI
Cardinal Machine Company, Inc., Strongsville, OH
Carius Tool Co., Inc., Cleveland, OH
Carlson Capital Manufacturing Co., Rockford, IL
Carlson Tool & Manufacturing Corp., Cedarburg, WI
Cass Screw Machine Products Company, Brooklyn Center, MN
Catalina Tool & Mold, Inc., Tucson, AZ
Cates Machine Shop, Inc., Tyler, TX
Cee-San Machine & Fabrication Co., Inc., Houston, TX
Centaur Tool & Die, Inc., Bowling Green, OH
Centennial Technologies, Inc., Saginaw, MI
Center Line Industries, Inc., West Springfield, MA
Center Line Machine Company, Lafayette, CO
Center Line Tool, Freeport, PA

Central Mass. Machine, Inc., Holyoke, MA
Central States Machine Service, Elkhart, IN
Central Tools, Inc., Cranston, RI
Century Mold Company, Inc., Rochester, NY
Century Tool & Engr., Inc., Indianapolis, IN
Cer-Mac Inc., Horsham, PA
CertainTeed, Auburn, WA
Certified Grinding & Machine, Inc., Rochester, NY
Certified Industries, II, LLC, Phoenix, AZ
Chadakoin Interactive, Thompsons Station, TN
Chance Tool & Die Co., Inc., Cincinnati, OH
Chandler Tool & Design Inc., Rockford, IL
Chapman Engineering, Inc., Santa Ana, CA
Charmilles Technologies Corporation, Lincolnshire, IL
Chase Machine & Mfg. Co., Rochester, NY
Chelar Tool & Die, Inc., Belleville, IL
Cherokee Industries, Hampshire, IL
Chicago Grinding & Machine Co., Melrose Park, IL
Chicago Mold Engineering Co., Inc., St. Charles, IL
Chickasha Manufacturing Company, Inc., Chickasha, OK
Chippewa Tool & Manufacturing Co., Woodville, OH
Chopper Guys Biker Products, Inc., Vallejo, CA
Christopher Tool & Manufacturing, Solon, OH
Cindex Industries Inc., Ludlow, MA
Circle-K-Industries, K-Form Inc., Sterling, VA
Clark Automation Manufacturing Company, Inc., Pleasanton, CA
Clark-Reliance Corporation, Strongsville, OH
Clarke Engineering, Inc., Clarke Gear Co., North Hollywood, CA
Class Machine & Welding, Inc., Akron, OH
Classic Tool, Inc., Saegertown, PA
Clay & Bailey Mfg. Co., Kansas City, MO
Cleveland Electric Laboratories Company, Inc., Twinsburg, OH
Clifton Automatic Screw, Machine Products, Inc., Lake City, PA
Cloud Company, San Luis Obispo, CA
Coast Cutters Company, Inc., South El Monte, CA
Cobak Tool & Manufacturing Co., St. Louis, MO
Coffey Associates, Washington, DC
Coil Pro Machinery, Southington, CT
Colbrit Manufacturing Co., Inc., Chatsworth, CA
Collins Instrument Company, Angleton, TX
Collins Machine & Tool Co., Inc., Madison, TN
Colonial Machine & Tool Co., Inc., Coventry, RI
Colonial Machine Company, Kent, OH
Colorado Surface Grinding, Inc., Denver, CO
Comet Tool, Inc., Hopkins, MN
Command Tooling Systems, Ramsey, MN
Commerce Grinding, Inc., Dallas, TX
Commercial Grinding Services, Inc., Cleveland, OH
Commonwealth Machine Co., Inc., Danville, VA
Competition Tooling, Inc., High Point, NC
Competitive Engineering Inc., Tucson, AZ
Complete Tool & Die, Inc., St. James, MO
Composidie, Inc., Apollo, PA
Compu Die, Inc., Wyoming, MI
Compumachine Incorporated, Wilmington, MA
Computech Manufacturing Co., Inc., No. Kansas City, MO
Computerized Machining Service, Inc., Englewood, CO
Conco Systems, Inc., Verona, PA
Condor Engineering, Inc., Colorado Springs, CO
Coney Tool Inc., Independence, MO
Connecticut Jig Grinding, Inc., New Britain, CT
Connolly Tool & Machine Co., Dallas, TX
Conroy & Knowlton, Inc., Los Angeles, CA
Consolidated Mold & Mfg. Inc., Kent, OH
Conti Tool & Die Company, Akron, OH
Continental Precision, Inc., Phoenix, AZ
Continental Tool & Machine, Strongsville, OH
Continental Tool & Manufacturing, Inc., Lenexa, KS
Cook Machine and Engineering Corporation, Gardena, CA
Coosa Machine Company, LLC, Rainbow City, AL
Corbitt Mfg. Company, St. Charles, MO
Cornerstone Design, LTD., Franksville, WI
Cornerstone Screw Machine Products, Burbank, CA
Corning Gilbert Inc., Glendale, AZ
Corry Custom Machine, Corry, PA
Cosar Mold, Inc., Brimfield, OH
Costa Machine, Inc., Akron, OH
Covert Manufacturing, Inc., Galion, OH
Cox Mfg. Co. Inc., San Antonio, TX
Cox Tool Company, Inc., Excelsior Spring, MO
Craig Machinery & Design, Inc., Louisville, KY
Creative Machining & Mfg., Inc., St. Petersburg, FL
Creative Precision, West, Phoenix, AZ
Creb Engineering, Inc., Pascoag, RI
Crenshaw Die & Manufacturing Corp., Irvine, CA
Crest Manufacturing Company, Lincoln, RI
Criterion Tool & Die, Inc., Brook Park, OH
Critical Operations, Inc., Santa Ana, CA
Cross Tool & Manufacturing, Inc., Flagstaff, AZ
Crossland Machinery, Kansas City, MO
CrossRidge Precision, Oak Ridge, TN
Crown Mold & Machine, Streetsboro, OH
Crucible Materials Corporation, Camillus, NY
Crush Master Grinding Corp., Walnut, CA
Custom Engineering, Inc., Evansville, IN
Custom Gear & Machine, Inc., Rockford, IL
Custom Machine, Inc., Woburn, MA
Custom Machine, Inc., Cleveland, OH
Custom Tool & Design, Inc., Erie, PA
Custom Tool & Grinding Inc., Washington, PA
Custom Tool & Model Corp., Frankfort, NY
Cut-Right Tools Corporation, Willoughby, OH
Czech Tool, Saegertown, PA
CB Quality Machining & Engineering Inc., Buffalo, MN
CDL Manufacturing, Inc., Rochester, NY
CHIPSCO, Inc., Meadville, PA
CNC Corp., Colorado Springs, CO
CNC Precision Manufacturing, Inc., Farmers Branch, TX
CPC Tooling Technologies, Columbus, OH
D & H Manufacturing Company, Fremont, CA
D & N Precision, Inc., San Jose, CA
D & S Manufacturing Corporation, Southwick, MA
D M E Company, Madison Heights, MI
D M Machine & Tool, Kennerdell, PA
D M Machine Company, Inc., Willoughby, OH
D P I, Inc., Huntingdon Vly, PA
D P Tool & Machine Inc., Avon, NY
D S A Precision Machining, Inc., Livonia, NY
D S Greene Company, Inc., Wakefield, MA
D. F. O'Brien Precision Machining & Tooling, Santa Fe Springs, CA
D-K Manufacturing Corporation, Fulton, NY
D-Velco Manufacturing, Phoenix, AZ
Daca Machine & Tool, Inc., Dutzow, MO
Dadeks Machine Works Corporation, Houston, TX
Daily Industrial Tools, Costa Mesa, CA
Dan McEachern Company, Alameda, CA
Danco Precision, Inc., Phoenixville, PA
Dane Systems, Inc., Stevensville, MI
Danly IEM, Div. of Connell Ltd. Partnership, Cleveland, OH
Data Machine, Inc., Adamsburg, PA
Data Mold & Tool, Inc., Walbridge, OH
Datum Industries, Kentwood, MI
David Engineering & Mfg., Corona, CA
Davis Machine & Manufacturing Company, Arlington, TX
Davis Tool & Die Company Inc., Fenton, MO
Dayton Progress Corporation, West Carrollton, OH
Dayton Reliable Tool & Mfg. Co., Dayton, OH
DaCo Precision Manufacturers, Sandy, UT
Dearborn Precision Tubular Products, Inc., Fryeburg, ME
Deck Brothers, Inc., Buffalo, NY
Deep Holdings, Inc., dba Deephole Machine, Houston, TX
Deeter's Tool & Mfg., Inc., Erie, PA
Dekalb Tool & Die, Inc., Tucker, GA
Delco Corporation, Akron, OH
Dell Tool, Penfield, NY
Delltronics, Inc., Englewood, CO
Deltron Engineering, Burbank, CA
Demaich Industries, Inc., Johnston, RI
Dependable Machine Company, Inc., Indianapolis, IN
Desert Precision Mfg., Inc., Tucson, AZ
Designs For Tomorrow, Inc., Maryland Heights, MO
Detroit Tool & Engineering Co., Lebanon, MO
Deutsch ECD, Hemet, CA
DeKing Screw Products Inc., Chatsworth, CA
Di-Matrix, Phoenix, AZ
Dial Machine Company, Andalusia, PA
Diamond Lake Tool, Inc., Anoka, MN
Diamond Tool & Engineering, Inc., Bertha, MN
Diamond Tool, Inc., Euclid, OH
Die Cast Die and Mold, Inc., Perrysburg, OH
Die Products Company, Minneapolis, MN
Die Quip Corp., Bethel Park, PA
Die Solutions, Inc., Washington, MO
Die Tech Industries, Ltd., Providence, RI
Die-Matic Corporation, Brooklyn Heights, OH
Die-Matic Tool and Die, Inc., Grand Rapids, MI
Die-Mension Corporation, Brunswick, OH
Die-Namic Inc., Taylor, MI
Diemaster Tool & Mold, Inc., Macedonia, OH
Dietooling, Div. of Diemolding, Wampsville, NY
Digital Tool & Die, Inc., Grandville, MI
Distefano Tool & Mfg. Company, Omaha, NE
Distinctive Machine Corporation, Grand Rapids, MI
Diversified Engraving Stamp & Machine Company, Akron, OH

Diversified Manufacturing, Incorporated, Lockport, NY
Diversified Tool & Die, Vista, CA
Diversified Tool, Inc., Mukwonago, WI
Dixie Tool & Die Co., Inc., Gadsden, AL
Double D Machine & Tool Company, Fremont, OH
Doyle Manufacturing, Inc., Holland, OH
Drabik Tool and Die Inc., Brook Park, OH
Drewco Corporation, Franksville, WI
Drill Masters Inc., Hamden, CT
Dugan Tool & Die Company, Toledo, OH
Dun-Rite Industries, Inc., Temperance, MI
Dunn & Bybee Tool Company, Inc., Sparta, TN
Dura-Metal Products Corporation, Irwin, PA
Durivage Pattern & Mfg. Co. Inc., Williston, OH
DuWest Tool & Die, Inc., Cleveland, OH
Dynamic Engineering, Inc., Minneapolis, MN
Dynamic Fabrication, Inc., Santa Ana, CA
Dynamic Machine & Fabricating, Phoenix, AZ
Dynamic Tool & Design, Inc., Menomonee Falls, WI
DynaGrind Precision, Inc., New Kensington, PA
Dysinger Incorporated, Dayton, OH
Dytran Instruments, Inc., Chatsworth, CA
E & S Precision Machine, LLC, Modesto, CA
E B & Sons Machine Inc., Aliquippa, PA
E C M Of Florida, Jupiter, FL
E J Codd Co. of Baltimore City &, Codd Fabricators & Boiler Co., Inc., Baltimore, MD
E K L Machine Company, Inc., Andalusia, PA
E R C Concepts Company, Inc., Sunnyvale, CA
E W Johnson Company, Inc., Lewisville, TX
E.T. Precision Optics Inc., Rochester, NY
E-Fab, Inc., Santa Clara, CA
Eagle Mold Company, Inc., Carlisle, OH
Eagle Precision Tooling Inc., Erie, PA
Eagle Technologies Group, St. Joseph, MI
Eagle Tool & Machine Company, Inc., Springfield, OH
East Side Machine, Inc., Webster, NY
East Texas Machine Works, Inc., Longview, TX
Ebway Corporation, Fort Lauderdale, FL
Eckert Enterprises Ltd., Tempe, AZ
Eckert Machining, Inc., San Jose, CA
Eclipse Mold, Inc., Clinton Township, MI
Eclipse Tool & Die, Inc., Wayland, MI
Edco, Inc., Toledo, OH
Edge-Tech, Inc., Redmond, WA
Edwardsville Machine & Welding Company, Inc., Edwardsville, IL
Egli Machine Company, Inc., Sidney, NY
Ehlert Tool Co., Inc., New Berlin, WI
Ehrhardt Tool & Machine Company, Granite City, IL
Eicom Corporation, Moraine, OH
Ejay's Machine Co., Inc., Fullerton, CA
Elcam Tool & Die, Inc., Wilcox, PA
Electra Form Industries Inc., Vandalia, OH
Electric Enterprise Inc., Stratford, CT
Electro-Freeto Manufacturing Co., Inc., Wayland, MA
Electro-Mechanical Products, Inc., Denver, CO
Electro-Tech Machining, Long Beach, CA
Electroform Co. Inc., Machesney Park, IL
Elite Tool & Machinery Systems, Inc, O'Fallon, MO
Elizabeth Carbide Die Co., Inc., McKeesport, PA
Elliot Tool & Manufacturing Co., St. Louis, MO
Elliott's Precision, Inc., Peoria, AZ
Ellis Machine and Fabrication Inc., Buffalo, NY
Ellis Tool & Machine, Inc., Tom Bean, TX
Elrae Industries, Alden, NY
Emmert Welding & Manufacturing, Inc., Independence, MO
Empire Die Casting Co., Inc., Macedonia, OH
Empire Manufacturing Corporation, Bridgeport, CT
Engineered Pump Services, Inc., Pasadena, TX
Entek Corporation, Norman, OK
Enterprise Tool & Die, Brooklyn Heights, OH
Ephrata Precision Parts, Inc., Denver, PA
Epicor Software Corporation, Minneapolis, MN
Erickson Tool & Machine Company, Rockford, IL
Erie Shore Machine Co., Inc., Cleveland, OH
Erie Specialty Products, Inc., Erie, PA
Estee Mold & Die, Inc., Dayton, OH
Esterle Mold & Machine Co., Stow, OH
Estul Tool & Manufacturing Co., Inc., Matthews, NC
Evans Tool & Die, Inc., Conyers, GA
Ever Fab, Inc., East Aurora, NY
Ever-Ready Tool, Inc., Largo, FL
Everett Pattern and Mfg., Inc., Middleton, MA
Ewart-Ohlson Machine Company, Cuyahoga Falls, OH
Ex-Cel Machine & Tool, Inc., Louisville, KY
Exact Cutting Service, Inc., Brecksville, OH
Exact Tool & Die, Inc., Brook Park, OH
Exacta Machine, Inc., Wichita, KS
Exacta Tech Inc., Livermore, CA
Exacto, Inc. of South Bend, South Bend, IN
Excaliber Precision Machining, Peoria, AZ
Excel Manufacturing Inc., Seymour, IN
Excel Manufacturing, Inc., Valencia, CA
Excel Precision, Inc., Tempe, AZ
Excel Stamping & Manufacturing, Inc., Houston, TX
Executive Mold Corporation, Huber Heights, OH
Ezell Precision Tool Company, Clearwater, FL
EDM Supplies, Inc., Downey, CA
EROWA Technology Inc., Arlington Hts., IL
EWT, Inc., Rockford, IL
F & F Machine Specialties, Mishawaka, IN
F & G Tool & Die Company, Dayton, OH
F & S Tool, Inc., Erie, PA
F D T Precision Machine Co., Inc., Taunton, MA
F G A Inc., Baton Rouge, LA
F H Peterson Machine Corporation, Stoughton, MA
F K Instrument Co., Inc., Clearwater, FL
F M Machine Company, Akron, OH
F N Smith Corporation, Oregon, IL
F P Pla Tool & Manufacturing Co., Buffalo, NY
F S G Inc, Mishawaka, IN
F T T Manufacturing Inc., Geneseo, NY
F Tinker & Sons Company, Pittsburgh, PA
F W Gartner Thermal Spraying Co., Houston, TX
F-Squared, Inc., Tarentum, PA
Fabricast, Inc., So. El Monte, CA
Fabritek Company, Inc., Winchester, VA
Fairbanks Machine & Tool, Raytown, MO
Fairview Machine Company, Inc., Topsfield, MA
Fairway Molds, Inc., Walnut, CA
Falls City Machine Technology, Louisville, KY
Falls Mold & Die, Inc., Stow, OH
Fame Tool & Manufacturing Co., Cincinnati, OH
FamPEC Technology LLC, Murfreesboro, TN
Fargo Machine Company, Inc., Ashtabula, OH
Farrar Corporation, Norwich, KS
Farzati Manufacturing Corp., Greensburg, PA
Faustson Tool Corp., Arvada, CO
Fay & Quartermaine Machining Corp., El Monte, CA
Fay Tool & Die, Inc., Orlando, FL
Feedall, Inc., Willoughby, OH
Feilhauer's Machine Shop Inc., Cincinnati, OH
Fenton Manufacturing, Inc., Ashtabula, OH
Fenwick Machine & Tool, Piedmont, SC
Feral Productions LLC., Newark, CA
Ferriot Inc., Akron, OH
First Interpational Bank, Hartford, CT
Fischer Precision Spindles, Inc., Berlin, CT
Fischer Tool & Die Corporation, Temperance, MI
Five Star Tool Company, Inc., Rochester, NY
Fleck Machine Company, Inc., Hanover, MD
Foresight Technologies, Tempe, AZ
Forster Tool & Mfg. Inc., Bensenville, IL
Fortner & Gifford, Inc., Prescott, AZ
Fostermation Inc., Meadville, PA
Fox Valley Tool & Die, Inc., Kaukauna, WI
Franchino Mold & Engineering, Lansing, MI
Frasal Tool Co., Inc., Newington, CT
Frazier Aviation, Inc., San Fernando, CA
Fre-Mar Industries, Inc., Brunswick, OH
Fredon Corporation, Mentor, OH
Free-MaDie Company, Kittanning, PA
Freeport Welding & Fabricating, Inc., Freeport, TX
Fries Machine & Tool, Inc., Dayton, OH
Frost & Company, Charlestown, RI
Fulton Industries, Inc., Rochester, IN
Furno Co. Inc., Pomona, CA
Future Fabricators, Phoenix, AZ
Future Tool & Die, Inc., Grandville, MI
Fyco Tool & Die, Inc., Houston, TX
FCMP, Inc., Buffalo, NY
FRB Machine Inc., Emlenton, PA
G & G Tool Company, Inc., Sidney, OH
G & K Machine Company, Denver, CO
G & L Tool Corp., Agawam, MA
G B F Enterprises, Inc., Santa Ana, CA
G B Tool Company, Warwick, RI
G H Tool & Mold, Inc., Washington, MO
G M T Corporation, Waverly, IA
G R McCormick, Inc., Burbank, CA
G S Precision, Inc., Brattleboro, VT
Gadsden Tool, Inc., Gadsden, AL
Gales Manufacturing Corporation, Racine, WI
Gambar Products Company, Inc., Warwick, RI
Garcia Associates, Arlington, VA
Gatco, Inc., Plymouth, MI
Gateway Metals Inc., Crestwood, MO
Gauer Mold & Machine Company, Tallmadge, OH
Gaum, Inc., Robbinsville, NJ
Gear Manufacturing, Inc., Anaheim, CA
Geiger Manufacturing, Inc., Stockton, CA
Gene's Gundrilling Inc., Alahambra, CA
General Aluminium Forgings, Colorado Springs, CO
General Engineering Company, Toledo, OH
General Grinding, Inc., Oakland, CA

General Machine Shop, Inc., Cheverly, MD
General Machine-Diecron, Inc., Griffin, GA
General Tool & Die Company, Inc., Racine, WI
General Tool Company, Cincinnati, OH
Genesee Manufacturing Company, Inc., Rochester, NY
Genesee Metal Stampings, Inc., West Henrietta, NY
Genesee Precision Mfg., Inc., Avon, NY
Gentec Manufacturing Inc., San Jose, CA
Geometric Tool & Machine Co., Inc., Piedmont, SC
George Welsch & Son Company, Cleveland, OH
German Machine, Inc., Rochester, NY
Germantown Tool & Machine Works, Inc., Huntingdon Valle, PA
Gibbs Die Casting Corporation, Henderson, KY
Gibbs Machine Company, Inc., Greensboro, NC
Gilbert Machine & Tool Company, Greene, NY
Gill Tool & Die, Inc., Grand Rapids, MI
Gillette Machine & Tool Co Inc., Rochester, NY
Girard Tool & Die/Jackburn Mfg., Inc., Girard, PA
Gischel Machine Company Inc., Baltimore, MD
Givmar Precision Machining, Mountain View, CA
Glaze Tool & Engineering, Inc., New Haven, IN
Glendale Machine Company, Inc., Solon, OH
Glendo Corporation, Emporia, KS
Glidden Machine & Tool, Inc., North Tonawanda, NY
Global Precision, Inc., Davie, FL
Global Shop Solutions, The Woodlands, TX
Godwin—SBO, L.P., Houston, TX
Golis Machine, Inc., Montrose, PA
Graham Tech Inc., Cochranton, PA
Grand Valley Manufacturing Company, Titusville, PA
Graybill's Tool & Die, Inc., Manheim, PA
Great Lakes E.D.M. Inc., Clinton Twp., MI
Great Lakes Metal Treating, Inc., Tonawanda, NY
Great Lakes Tooling Inc., Cleveland, OH
Great Western Grinding & Eng., Inc., Huntington Beach, CA
Grind-All Precision Tool Co., Inc., Clinton Township, MI
Grind-All, Inc., Cleveland, OH
Grindworks Inc., Glendale, AZ
Grosmann Precision, Ballwin, MO
Grover Gundrilling, Inc., Norway, ME
Guill Tool & Engineering Co., Inc., West Warwick, RI
Gulf South Machine/Drilex Corp., Houston, TX
Gurney Precision Machining, Saint Petersburg, FL
Gustav's Tool & Die, Inc., Seguin, TX
H & H Machine Company, Whittier, CA
H & H Machine Shop Of Akron, Inc., Akron, OH
H & H Machined Products, Inc., Erie, PA
H & K Machine Service Co. Inc., O'Fallon, MO
H & M Machining Inc., Machesney Park, IL
H & M Precision Machining, Santa Clara, CA
H & W Machine Company, Broomfield, CO
H & W Tool Company, Inc., Dover, NJ
H B Machine, Inc., Phoenix, AZ
H Brauning Company, Inc., Manassas, VA
H D & K Mold Company, Inc., Hilton, NY
H H Mercer, Inc., Mesquite, TX
H R M Machine, Inc., Costa Mesa, CA
Haberman Machine, Inc., St. Paul, MN
Haig Precision Mfg. Corp., Campbell, CA
Hal-West Technologies, Inc., Kent, WA
Hamblen Gage Corporation, Indianapolis, IN
Hamill Manufacturing Company, Trafford, PA
Hamilton Mold & Machine, Inc., Cleveland, OH
Hamilton Tool Company, Inc., Meadville, PA
Hammill Manufacturing Company, Toledo, OH
Hammon Precision Technologies, Hayward, CA
Hanover Machine Company, Ashland, VA
Hans Rudolph, Inc., Kansas City, MO
Hansen Engineering, Harbor City, CA
Hanson Mold, St. Joseph, MI
Hardy Machine Inc., Hatfield, PA
Hardy-Reed Tool & Die Co., Manitou Beach, MI
Haumiller Engineering Company, Elgin, IL
Hawkeye Precision, Inc., Gilbert, AZ
Hawkins Machine Company, Inc., Coventry, RI
Hawkinson Mold Engineering Co., Alhambra, CA
Hayden Corporation, West Springfield, MA
Heatherington Machine Corp., Orlando, FL
Heinhold Engineering & Machine Co., Inc., Salt Lake City, UT
Heitz Machine & Manufacturing Co., Maryland Heights, MO
Hellebusch Tool & Die, Inc., Washington, MO
Helm Precision, Ltd., Phoenix, AZ
Henman Engineering & Machine, Muncie, IN
Hercules Machine Tool & Die, Warren, MI
Herman Machine, Inc., Tallmadge, OH
Herrick & Cowell Company, Hamden, CT
Hetrick Mfg., Inc., Lower Burrell, PA
Heyden Mold & Bench Company, Tallmadge, OH
Hi Tech Manufacturing, LLC, Greensboro, NC
Hi-Tech Machining & Engineering LLC, Tucson, AZ
Hi-Tech Tool Industries, Inc., Sterling Heights, MI
Hiatt Metal Products Company, Muncie, IN
Hickory Machine Company, Inc., Newark, NY
High-Tech Industries, Holland, MI
Highland Mfg. Inc., Manchester, CT
Hill Engineering, Inc., A Mestek Co., Villa Park, IL
Hillcrest Precision Tool Co. Inc., Haverhill, MA
Hillcrest Tool & Die, Inc., Titusville, PA
Hilton Tool & Die Corporation, Rochester, NY
Hittle Machine & Tool Company, Indianapolis, IN
Hobson & Motzer, Inc., Durham, CT
Hodon Manufacturing Inc., Willoughby, OH
Hoffman Custom Tool & Die, Newport Beach, CA
Hoffstetter Tool & Die, Clearwater, FL
Holland USA, Muskegon, MI
Hollis Line Machine Co., Inc., Hollis, NH
Holmes Manufacturing Corporation, Cleveland, OH
Homeyer Tool and Die Co., Marthasville, MO
Hoppe Tool, Inc., Chicopee, MA
Horizon Industries, Columbia, PA
Howard Tool Co. Inc., Bangor, ME
Hubbell Machine Company, Inc., Cleveland, OH
Humboldt Instrument Company, San Leandro, CA
Hunt Machine & Manufacturing Co., Tallmadge, OH
Hyde Special Tools, Saegertown, PA
Hydrodyne Division Of FPI, Inc., Burbank, CA
Hydromat, Inc., St. Louis, MO
Hygrade Precision Technologies, Inc., Plainville, CT
Hytron Manufacturing Company, Inc., Huntington Beach, CA
Ideal Grinding Technologies, Inc, Chatsworth, CA
Ideal Tool Co. Inc., Meadville, PA
Imperial Die & Manufacturing Co., Strongsville, OH
Imperial Machine & Tool Company, Wadsworth, OH
Imperial Mfg., Santa Fe Springs, CA
Imperial Newbould, Meadville, PA
Imperial Tool & Manufacturing Co., Inc., Lexington, KY
Indiana Tool & Die Company, Die Sets Inc., Indiana, PA
Industrial Babbitt Bearing, Services, Inc., Gonzales, LA
Industrial Custom Automatic Machine (ICAM), Dayton, OH
Industrial Grinding, Inc., Dayton, OH
Industrial Machine & Tool Co., Inc., Nashville, TN
Industrial Machine Company, Oklahoma City, OK
Industrial Maintenance, & Electrical Corporation, Lavergne, TN
Industrial Mold + Machine, Twinsburg, OH
Industrial Molds, Inc., Rockford, IL
Industrial Precision Products, Inc., Oswego, NY
Industrial Tool & Machine Co., Cuyahoga Falls, OH
Industrial Tool, Die &, Engineering, Inc., Tucson, AZ
Industrial Tooling Technologies, Inc., Muskegon, MI
Ingersoll Contract Manufacturing, Company, Rockford, IL
Injection Mold & Machine Company, Akron, OH
Inland Tool & Manufacturing Co., Kansas City, KS
Inline Inc., Phoenix, AZ
Innex Industries, Inc., Rochester, NY
Integrated Aerospace, Santa Ana, CA
Integrated Fabrication and Machine, Sharpsville, PA
Integrated Machine Systems, Bethel, CT
Integrity Mfg. L.L.C., Farmington, CT
International Stamping Inc., Warwick, RI
Intrex Corporation, Louisville, CO
Iverson Industries, Inc., Wyandotte, MI
IDRAPRINCE, Holland, MI
ILM Tool, Inc., Hayward, CA
IMS, Inc., Decatur, AL
ISO Machining, Inc., Pleasanton, CA
ISYS Manufacturing, Inc., Concord, CA
ITM, Schertz, TX
J & A Tool Company, Inc., Franklin, PA
J & F Machine Inc., Cypress, CA
J & G Machine & Tool Co., Inc., Walworth, NY
J & J Tool Co., Inc., Louisville, KY

J & M Machine, Inc., Fairport Harbor, OH
J & M Unlimited, Ashland City, TN
J B Tool Die & Engineering, Inc., Fort Wayne, IN
J B Tool, Inc., Placentia, CA
J C B Precision Tool & Mold, Inc., Commerce City, CO
J D Kauffman Machine Shop, Inc., Christiana, PA
J F Fredericks Tool Company, Inc., Farmington, CT
J I Machine Company, Inc., San Diego, CA
J K Tool & Die, Inc., Apollo, PA
J M Mold South, Easley, SC
J M Mold, Inc., Piqua, OH
J M P Industries, Inc., Cleveland, OH
J M S Mold & Engineering Co., Inc., South Bend, IN
J S Die & Mold, Inc., Byron Center, MI
J W Harwood Company, Cleveland, OH
J.B.A.T. t/a Cherry Hill, Precision, Cherry Hill, NJ
Jacksonville Machine Inc., Jacksonville, IL
Jaco Engineering, Anaheim, CA
Jaquith Carbide Corporation, Ipswich, MA
Jasco Tools Inc., Cutting Tools Division, Rochester, NY
Jatco Machine & Tool Company, Inc., Pittsburgh, PA
Jena Tool Corporation, Dayton, OH
Jenkins Machine, Inc., Bethlehem, PA
Jennison Corporation, Carnegie, PA
Jergens Tool and Mold, Englewood, OH
Jergens, Inc., Cleveland, OH
Jesse Industries, Inc., Sparks, NV
Jet Products Co., Inc., Phoenix, AZ
Jet Products, Inc., East Bridgewater, MA
Jewett Machine Mfg. Co., Inc., Richmond, VA
Jig Grinding Service Company, Cleveland, OH
Jirgens Modern Tool Corporation, Kalamazoo, MI
JobBOSS Software/Exact, Edina, MN
Johnson Engineering Company, Indianapolis, IN
Johnson Precision, Inc., Buffalo, NY
Johnson Tool, Inc., Fairview, PA
Joint Production Technology, Inc., Macomb, MI
Joint Venture Acquisition Co., LLC, Saegertown, PA
Jonco Tool Company, Racine, WI
Juell Machine Company, Inc., Pomona, CA
JBK Manufacturing & Development, Co., Dayton, OH
J2 Precision CNC, Inc., Phoenix, AZ
K & E Mfg. Company, Lee's Summit, MO
K & H Mold & Machine Division, Akron, OH
K & H Precision Products, Inc., Honeoye Falls, NY
K & M Machine-Fabricating, Inc., Cassopolis, MI
K & S Tool & Die, Inc., Meadville, PA
K & S Tool & Mfg. Company, Inc., Jamestown, NC
K L H Industries, Inc., Germantown, WI
K M S Machine Works, Inc., Taunton, MA
K Mold & Engineering, Inc., Granger, IN
K V, Inc., Huntingdon Valle, PA
K.C.K. Tool & Die Co., Inc., Ferndale, MI
K–Form, Inc., Tustin, CA
Ka-Wood Gear & Machine Company, Madison Heights, MI
Kahre Brothers, Inc., Evansville, IN
Kalman Manufacturing, Morgan Hill, CA
Kansas City Screw Products Inc., Kansas City, MO
Karlee, Garland, TX
Karsten Precision, Phoenix, AZ
Kaskaskia Tool & Machine, Inc., New Athens, IL
Kaufhold Machine Shop, Inc., Lancaster, PA
Kearflex Engineering Company, Warwick, RI
Keck-Schmidt Tool & Die, South El Monte, CA
Kell-Strom Tool Company, Inc., Wethersfield, CT
Kellems & Coe Tool Corporation, Jeffersonville, IN
Keller Technology Corporation, Tonawanda, NY
Kelley Industries, Inc., Eighty Four, PA
Kelly & Thome, Pomona, CA
Kelm Acubar Company, Benton Harbor, MI
Kem-Mil-Co, Hayward, CA
Kemco Tool & Machine Company, Kirkwood, MO
Kenlee Precision Corporation, Baltimore, MD
Kennametal Inc., Latrobe, PA
Kennebec Tool & Die Co., Inc., Augusta, ME
Kennedy & Bowden Machine Company, La Vergne, TN
Kennick Mold & Die, Inc., Cleveland, OH
Kentucky Machine & Tool Company, Louisville, KY
Kern Special Tools Company, Inc., New Britain, CT
Keyes Machine Works, Inc., Gates, NY
Keystone Machine, Inc., Littlestown, PA
Kimberly Gear & Spline, Inc., Phoenix, AZ
King Machine & Engineering Co., Inc., Indianapolis, IN
King Systems Corporation, Plastics Technology Division, Noblesville, IN
Klein Steel Service, Inc., Rochester, NY
Knight Industries Precision Machining, Inc., Corona, CA
Knowlton Manufacturing Company, Norwood, OH
Knust—S B O, Houston, TX
Kordenbrock Tool & Die Company, Cincinnati, OH
Kovacs Machine & Tool Company, Inc., Wallingford, CT
Krause Tool, Inc., A–Z Corp. Div. of Krause Tool, Golden, CO
Kuhn Tool & Die Co., Meadville, PA
Kurt J. Lesker Company, Clairton, PA
L & L Machine, Inc., Ludlow, MA
L & L Tool & Die, Gardena, CA
L & P Machine, Inc., Santa Clara, CA
L A I Southwest, Inc., Phoenix, AZ
L H Carbide Corporation, Fort Wayne, IN
L P I Corporation, Hollywood, FL
L R G Corporation, Jeannette, PA
L R W Cutting Tools, Inc., Phoenix, AZ
L T L Company, Inc., Rockford, IL
L. P. Engineering Co., Carson, CA
Lake Manufacturing Co., Inc., Newburyport, MA
Lakeside Manufacturing Company, Stevensville, MI
Lamb Machine & Tool Company, Indianapolis, IN
Lamina, Inc., Farmington Hills, MI
Lampin Corporation, Uxbridge, MA
Lancaster Machine Shop, Lancaster, TX
Lancaster Metal Products Company, Lancaster, OH
Lancaster Mold, Inc., Lancaster, PA
Land Specialties Manufacturing Co., Inc., Raytown, MO
Lane Enterprise, Rochester, NY
Lane Punch Corporation, Salisbury, NC
Laneko Engineering Company, Ft. Washington, PA
Laneko Roll Form, Inc., Hatfield, PA
Lange Precision, Inc., Fullerton, CA
Langenau Manufacturing Company, Cleveland, OH
Laron Incorporated, Kingman, AZ
Las Cruces Machine Manufacturing &, Engineering, Las Cruces, NM
Laser Automation, Inc., Chagrin Falls, OH
Laser Fabrication & Machine Co., Inc., Alexandria, AL
Laser Tool, Inc., Saegertown, PA
Latva Machine, Inc., Newport, NH
Lavigne Manufacturing, Inc., Cranston, RI
Layke Incorporated, Phoenix, AZ
Layke Tool & Manufacturing, Inc., Meadville, PA
Ledford Engineering Company, Inc., Cedar Rapids, IA
Lee's Grinding, Inc., Cleveland, OH
Leech Industries, Inc., Meadville, PA
Lees Enterprise, Chatsworth, CA
Leese & Co., Inc., Greensburg, PA
Leggett & Platt, Inc., Whittier, CA
Leicester Die & Tool, Inc., Leicester, MA
Lenz Technology Inc., Mountain View, CA
Leonardi Manufacturing Co., Inc., Weedsport, NY
Lewis Aviation, Phoenix, AZ
Lewis Machine & Tool Co. Inc., Cuba, MO
Lewis Machine and Tool Company, Milan, IL
Liberty Precision Industries, Ltd., Rochester, NY
Libra Precision Machining, Tecumseh, MI
Ligi Tool & Engineering, Inc., Deerfield Beach, FL
Lilly Software Associates, Inc., Hampton, NH
Limmco, Inc., New Albany, IN
Linmark Machine Products, Inc., Union, MO
Little Rhody Machine Repair, Inc., Coventry, RI
Littlecrest Machine Shop, Inc., Houston, TX
Lloyd Company, Houston, TX
Lloyd Tool & Manufacturing Corp., Burton, MI
Lobart Company, Pacoima, CA
Loecy Precision Mfg., Mentor, OH
Lordon Engineering, Gardena, CA
Loud Engineering and Manufacturing, Inc., Ontario, CA
Loyal Machine Company, Inc., Chelsea, MA
Luick Quality Gage & Tool, Inc., Muncie, IN
Lunar Tool & Machinery Company, St. Louis, MO
Lunar Tool & Mold, Inc., North Royalton, OH
Lunquist Manufacturing Corp., Rockford, IL
Lux Manufacturing, Inc., Sunnyvale, CA
Lynn Welding Co. Inc., Newington, CT
Lyons Tool & Die Company, Meriden, CT
LOMA Automation Technologies, Inc., Louisville, KY
M & D Loe Manufacturing, Inc., Benicia, CA
M & H Engineering Company, Inc., Danvers, MA
M & H Tool & Die, Inc., Gadsden, AL
M & J Grinding & Tool Co., Holland, OH
M & J Valve Services, Inc., Lafayette, LA
M C Mold & Machine, Inc., Tallmadge, OH
M D F Tool Corporation, North Royalton, OH
M F Engineering Co. Inc., Bristol, RI
M H S Automation, Round Lake Beach, IL
M P E Machine Tool Inc., Corry, PA
M P Technologies, Inc., Brecksville, OH
M S Willett, Inc., Cockeysville, MD

M. R. Mold & Engineering Corp., Brea, CA
M-Ron Corporation, Glendale, AZ
M-Tron Manufacturing Company, Inc., San Fernando, CA
Mac Machine and Metal Works, Inc, Connersville, IN
Mac-Mold Base, Inc., Romeo, MI
Machine Incorporated, Stoughton, MA
Machine Specialties, Inc., Greensboro, NC
Machine Tooling, Inc., Cleveland, OH
Machine Works, Inc., Phoenix, AZ
Machinist Cooperative, Gilroy, CA
MacKay Manufacturing, Spokane, WA
Maddox Metal Works, Inc., Dallas, TX
Magdic Precision Tooling, Inc., East McKeesport, PA
Maghielse Tool Corporation, Grand Rapids, MI
Magna Machine & Tool Company, New Castle, IN
Magnum Manufacturing Center, Inc., Colorado Springs, CO
Magnus Precision Manufacturing, Inc., Phelps, NY
Mahuta Tool Corp., Germantown, WI
Main Tool & Mfg. Co., Inc., Minneapolis, MN
Maine Machine Products, South Paris, ME
Mainline Machine, Inc., Broussard, LA
Majer Precision Engineering, Inc., Tempe, AZ
Major Tool & Machine, Inc., Indianapolis, IN
Makino, Mason, OH
Malmberg Engineering, Inc., Livermore, CA
Manda Machine Company, Inc., Dallas, TX
Manetek, Inc., Broussard, LA
Manheim Special Machine Shop, Manheim, PA
Mann Tool Company, Inc., Pacific, MO
Manufacturing Machine Corp., Pawtucket, RI
Manufacturing Service Corp., West Hartford, CT
Marberry Machine, Inc., Houston, TX
Marco Manufacturing Company, Akron, OH
Mardon Tool & Die Company, Inc., Rochester, NY
Marini Tool & Die Company, Inc., Racine, WI
Marion Tool and Die, Inc., Terre Haute, IN
Maris Systems Design, Inc., Spencerport, NY
Markham Machine Co. Inc., Akron, OH
Marlin Tool, Inc., Cuyahoga Falls, OH
Marox Corporation, Holyoke, MA
Marquette Tool & Die Company, St. Louis, MO
Marshall Manufacturing Company, Minneapolis, MN
Martinelli Machine, San Leandro, CA
Masco Machine, Inc., Cleveland, OH
Massachusetts Machine Works Inc., Westwood, MA
Master Cutting & Engineering, Inc., Santa Fe Springs, CA
Master Industries Inc., Piqua, OH
Master Research & Manufacturing, Inc., Norwalk, CA
Master Tool & Mold, Inc., Grafton, WI
Mastercraft Mold, Inc., Phoenix, AZ
Mastercraft Tool & Machine Co., Inc., Southington, CT
Mastercraft Tool Co., St. Louis, MO
Matthews Gauge, Inc., Santa Ana, CA
Maudlin & Son Manufacturing Co., Inc., Kemah, TX
May Technology & Mfg., Inc., Kansas City, MO
May Tool & Die, Inc., North Royalton, OH
MaTech Machining Technologies, Inc., Hebron, MD
McAfee Tool & Die, Inc., Uniontown, OH
McCurdy Tool & Machine Inc., Caledonia, IL
McGill Manufacturing Company, Flint, MI
McKee Carbide Tool Division, Olanta, PA
McKenzie Automation Systems, Inc, Rochester, NY
McNeal Enterprises, Inc., San Jose, CA
McNeil Industries, Inc., Willoughby, OH
McNeill Manufacturing Company, Oakland, CA
McSwain Manufacturing Corp., Cincinnati, OH
Meadville Plating Company, Inc., Meadville, PA
Meadville Tool Grinding, Meadville, PA
Mechanical Drive Components, Inc, Chicopee, MA
Mechanical Manufacturing Corp., Sunrise, FL
Mechanical Metal Finishing Co., Gardena, CA
Mechanized Enterprises, Inc., Anaheim, CA
Medved Tool & Die Company, Elm Grove, WI
Menegay Machine & Tool Company, Canton, OH
Mercer Machine Company, Inc., Indianapolis, IN
Merit Gage, Inc., St. Louis Park, MN
Merritt Tool Company, Inc., Kilgore, TX
Metal Form Engineering, Redlands, CA
Metal Processors Inc., Stevensville, MI
Metal-Tek Machining Inc., Phoenix, AZ
Metalcraft, Inc., Tempe, AZ
Metallon, Inc., Thomaston, CT
Metalsa—Perfek, Novi, MI
Metco Manufacturing Company, Inc., Warrington, PA
Metplas, Inc., Natrona Heights, PA
Metric Machining, Monrovia, CA
Metro Manufacturing, Inc., Phoenix, AZ
Metz Tool & Die Works, Rockford, IL
Miami Tool & Die, Inc., Huntington, IN
Micro Facture LLC, Mountville, PA
Micro Instrument Corporation, Boulder City, NV
Micro Manufacturing, Caledonia, MI
Micro Matic Tool, Inc., Youngstown, OH
Micro Precision Company, Houston, TX
Micro Punch & Die Company, Rockford, IL
Micro Surface Engineering, Inc., Bal-tec Division, Los Angeles, CA
Micro Tool & Manufacturing, Inc., Meadville, PA
Micro-Tronics, Inc., Tempe, AZ
Mid-Central Manufacturing, Inc., Wichita, KS
Mid-Conn Precision Manufacturing LLC, Bristol, CT
Mid-Continent Engineering, Inc., Minneapolis, MN
Mid-State Manufacturing, Inc., Milldale, CT
Mid-States Forging Die & Tool, Co., Inc., Rockford, IL
Midland Precision Machining, Inc., Tempe, AZ
Midway Mfg. Inc., Elyria, OH
Midwest Tool & Die Corporation, Fort Wayne, IN
Midwest Tool & Engineering Co., Dayton, OH
Mikron Machine, Inc., Cranesville, PA
Milco Wire EDM, Inc., & Milco Waterjet, Huntington Beach, CA
Millat Industries Corp., Dayton, OH
Miller Equipment Corporation, Richmond, VA
Miller Mold Company, Saginaw, MI
Milrose Industries, Cleveland, OH
Milwaukee Precision Corporation, Milwaukee, WI
Milwaukee Punch Corporation, Greendale, WI
Minco Tool & Mold Inc., Dayton, OH
Mission Tool & Manufacturing Co., Inc., Hayward, CA
Mitchell Machine, Inc., Springfield, MA
Mitchum Schaefer, Inc., Indianapolis, IN
Mittler Brothers Machine & Tool, Division-Mittler Corporation, Foristell, MO
Mod Tech Industries, Inc., Shawano, WI
Model Machine Company, Inc., Baltimore, MD
Modern Industries Inc., Phoenix, AZ
Modern Machine Company, San Jose, CA
Modern Machine Company, Bay City, MI
Modern Technologies Corp., Xenia, OH
Mold Threads Inc., Branford, CT
Moldcraft, Inc., Depew, NY
Moldesign, Inc., Knoxville, TN
Monks Manufacturing Co., Inc., Wilmington, MA
Monroe Tool & Die Co., Rochester, NY
Monsees Tool & Die, Inc., Rochester, NY
Montgomery Machine Company, Houston, TX
Moon Tool & Die Inc., Conneaut Lake, PA
Moore Gear Mfg. Co., Inc., Hermann, MO
Moore Quality Tooling, Inc., Dayton, OH
Moore's Ideal Products, Covina, CA
Morlin Incorporated, Erie, PA
Morris Machine Co., Inc., Indianapolis, IN
Morton & Company, Inc., Wilmington, MA
Moseys' Production Machinists Inc., Anaheim, CA
Mound Laser and Photonics Center, Miamisburg, OH
Mountain States Automation, Inc., Englewood, CO
Mueller Machine & Tool Company, Berkeley, MO
Muller Tool Inc., Cheektowaga, NY
Multi-Tool, Inc., Saegertown, PA
Mutual Precision, Inc., West Springfield, MA
Mutual Tool & Die, Inc., Dayton, OH
Myers Industries, Akro-Mils Division, Akron, OH
Myers Precision Grinding Company Inc., Warrensville Hts, OH
Myles Tool Co., Inc., Sanborn, NY
MCD Plastics & Manufacturing Inc., Piqua, OH
MCTD, Inc., Michigan City, IN
MKR Fabricators, Saginaw, MI
MPC Industries, Inc., Irvine, CA
MRC Technologies, Buffalo, NY
N C Dynamics, Inc., Long Beach, CA
N E T & Die Company, Inc., Fulton, NY
Nashville Machine Company, Inc., Nashville, TN
National Carbide Die, McKeesport, PA
National Jet Company, Inc., LaVale, MD
National Tool & Machine Co. Inc., East St. Louis, IL
Nationwide Precision Products, Corp., Rochester, NY
Nelson Bros. & Strom Co., Inc., Racine, WI
Nelson Engineering, Garden Grove, CA
Nelson Grinding, Inc., Fullerton, CA
Nelson Precision Drilling Co., Glastonbury, CT
Nerjan Development Company, Stamford; CT
Neutronics, Inc., Phoenix, AZ
New Century Fabricators, Inc., New Iberia, LA
New England Die Co., Inc., Waterbury, CT
New England Precision Grinding, Inc., Holliston, MA

New Standard Corporation, York, PA
Newman Machine Company, Inc., Greensboro, NC
Niagara Punch & Die Corporation, Buffalo, NY
Nifty Bar, Inc., Penfield, NY
Niles Machine & Tool Works, Inc., Livermore, CA
Nixon Tool Co., Inc., Richmond, IN
Noble Tool Corporation, Dayton, OH
Norbert Industries, Inc., Sterling Heights, MI
Nordon Tool & Mold, Inc., Rochester, NY
Noremac Manufacturing Corp., Westboro, MA
Norman Noble, Inc., Cleveland, OH
North Canton Tool Company, Inc., Canton, OH
North Central Tool & Die, Inc., Houston, TX
North Coast Tool & Mold Corp., Cleveland, OH
North Easton Machine Co., Inc., North Easton, MA
Northeast E D M, Newburyport, MA
Northeast Manufacturing Co., Inc., Stoneham, MA
Northeast Tool & Manufacturing Co., Indian Trail, NC
Northern Machine Tool Company, Muskegon, MI
Northern Tool & Gage, Inc., North Royalton, OH
Northwest Machine Works, Inc., Grand Junction, CO
Northwest Tool & Die Company, Inc., Grand Rapids, MI
Northwest Tool & Die, Inc., Meadville, PA
Northwood Industries, Inc., Perrysburg, OH
Norwood Tool Company, Dayton, OH
Now-Tech Industries Inc., Lackawanna, NY
Nu-Tech Industries, Grandview, MO
Nu-Tool Industries, Inc., North Royalton, OH
Numeric Machine, Fremont, CA
Numeric Machining Co., Inc., West Springfield, MA
Numerical Concepts, Inc., Terre Haute, IN
Numerical Precision, Inc., Wheeling, IL
Numerical Productions, Inc., Indianapolis, IN
Numet Machine, Stratford, CT
NuTec Tooling Systems, Inc., Meadville, PA
O & S Machine Company, Inc., Latrobe, PA
O–A, Inc., Agawam, MA
O E M Industries, Inc., Dallas, TX
O E M, Inc., Corvallis, OR
O–D Tool & Cutter Inc., Mansfield, MA
O'Keefe Ceramics, Woodland Park, CO
Oakley Die & Mold Company, Inc., Mason, OH
Obars Machine & Tool Company, Toledo, OH
Oberg Industries Inc., Freeport, PA
Oconee Machine & Tool Company, Inc., Westminster, SC
Oconnor Engineering Laboratories, Costa Mesa, CA
Ohio Gasket & Shim Company, Akron, OH
Ohio Transitional Machine & Tool, Inc., Toledo, OH
Oilfield Die Manufacturing Co., Lafayette, LA
Omax Corporation, Kent, WA
Omega One, Inc., Maple Heights, OH
Omega Tool, Inc., Menomonee Falls, WI
Omni Machine Works, Inc., Covington, GA
Omni Tool, Inc., Winston Salem, NC
Optimized EDM, Santa Clara, CA
Osborn Products, Inc., Phoenix, AZ
Overland Bolling, Dallas, TX
Overton & Sons Tool & Die Co. Inc., Mooresville, IN
Overton Corporation, Willoughby, OH
P & A Tool & Die, Inc., Rochester, NY
P & N Machine Company, Inc., Houston, TX
P & P Mold & Die, Inc., Tallmadge, OH
P & R Industries, Inc., Rochester, NY
P I A Group, Inc., Cincinnati, OH
P. Tool & Die Company, Inc., N. Chili, NY
P–K Tool & Manufacturing Company, Chicago, IL
Pacific Bearing Company, Rockford, IL
Pacific Tool & Die, Inc., Brunswick, OH
Pahl Tool Services, Cleveland, OH
Palma Tool & Die Company, Inc., Lancaster, NY
Palmer Machine Company Inc., Conway, NH
Palmer Manufacturing Company, Malden, MA
Pankl Aerospace Systems, Cerritos, CA
Parallax, Inc., Largo, FL
Paramount Machine & Tool Corp., Fairfield, NJ
Parker Plastics Corporation, Pittsburgh, PA
Parr-Green Mold and Machine Co., North Canton, OH
Parris Tool & Die Company, Goodlettsville, TN
Parrish Machine, Inc., South Bend, IN
Pasco Tool & Die, Inc., Meadville, PA
Patco Machine & Fab, Inc., Houston, TX
Path Technologies, Inc., Mentor, OH
Patkus Machine Company, Rockford, IL
Patriot Machine, Inc., St. Charles, MO
Patten Tool & Engineering, Inc., Kittery, ME
Paul E. Seymour Tool & Die Co., North East, PA
Peerless Precision, Inc., Westfield, MA
Pegasus/Triumph Manufacturing, Inc., East Berlin, CT
Peko Precision Products, Rochester, NY
Pell Engineering & Manufacturing, Inc., Pelham, NH
Penco Precision, Fontana, CA
Pendarvis Manufacturing, Anaheim, CA
Pendleton Tool Company, Inc., Erie, PA
Peninsula Screw Machine Products, Inc., Belmont, CA
Penn State Tool & Die Corp., North Huntingdon, PA
Penn United Tech, Inc., Saxonburg, PA
Pennoyer-Dodge Company, Glendale, CA
Pennsylvania Crusher, Cuyahoga Falls, OH
Pennsylvania Tool & Gages, Inc., Meadville, PA
Pequot Tool & Mfg., Inc., Pequot Lakes, MN
Perfection Tool & Mold Corp., Dayton, OH
Perfecto Tool & Engineering Co., Anderson, IN
Perfekta, Inc., Wichita, KS
Performance Grinding & Manufacturing, Inc., Tempe, AZ
Performance Machining Inc., Irwin, PA
Perry Tool & Research Inc., Hayward, CA
Petersen Precision Engineering, LLC, Redwood City, CA
Peterson Jig & Fixture, Inc., Rockford, MI
Phil-Coin Machine & Tool Co., Inc., Hudson, MA
Philips Machining Company, Inc., Coopersville, MI
Phoenix Grinding, Div. of Cal-Disc Grinding Co., Phoenix, AZ
Phoenix Metallics, Phoenix, AZ
Phoenix Tool & Gage, Inc., Phoenix, AZ
Piece-Maker Company, Troy, MI
Pinnacle Manufacturing Co., Inc., Chandler, AZ
Pinnacle Precision Co., Glassport, PA
Pioneer Industries, Seattle, WA
Pioneer Precision Grinding, Inc., West Springfield, MA
Pioneer Tool & Die Company, Akron, OH
Pioneer Tool & Die, Inc., Meadville, PA
Piper Plastics, Inc., Chandler, AZ
Pitt-Tex, Latrobe, PA
Plano Machine & Instrument Inc., Gainesville, TX
Plastic Mold Technology Inc., Grand Rapids, MI
Plastipak Packaging, Inc., Package Development Plant 67, Medina, OH
Pleasanton Tool and Manufacturing, Inc., Pleasanton, CA
Plesh Industries, Inc., Buffalo, NY
Pol-Tek Industries, Ltd., Cheektowaga, NY
Polytec Products Corporation, Menlo Park, CA
Ponderosa Industries, Inc., Denver, CO
Popp Machine & Tool, Inc., Louisville, KY
Port City Machine & Tool Company, Muskegon Heights, MI
Portage Knife Company, Inc., Mogadore, OH
Post Products, Inc., Kent, OH
Powers Bros. Machine, Inc., Montebello, CA
Powill Manufacturing &, Engineering, Inc., Phoenix, AZ
Practical Machine Company, Barberton, OH
Precise Products Corporation, Minneapolis, MN
Precision Aircraft Components, Inc., Dayton, OH
Precision Aircraft Machining, Co., Inc. dba PAMCO, Sun Valley, CA
Precision Automation Co., Inc., Clarksville, IN
Precision Balancing & Analyzing Co., Mentor, OH
Precision Boring Company, Detroit, MI
Precision Components Group, Inc., Fremont, CA
Precision Die & Stamping Inc., Tempe, AZ
Precision Engineering & Mfg. Co., PEMCO, Haymarket, VA
Precision Engineering, Inc., Uxbridge, MA
Precision Gage & Tool Company, Dayton, OH
Precision Gage, Inc., Tempe, AZ
Precision Grinding & Mfg. Corp., Rochester, NY
Precision Grinding Inc., Phoenix, AZ
Precision Grinding, Inc., Birmingham, AL
Precision Identity Corporation, Campbell, CA
Precision Machine & Instrument Co., Houston, TX
Precision Machine & Tool Co., Longview, TX
Precision Machine Company, Lancaster, PA
Precision Machine Rebuilding, Inc., Rogers, MN
Precision Machine Works, Aiken, SC
Precision Manufacturing, Technologies, Inc., Grand Junction, CO
Precision Metal Crafters, Ltd., Greensburg, PA
Precision Metal Fabrication, Dayton, OH
Precision Metal Tooling, Inc., Oakland, CA
Precision Mold & Engineering, Inc., Warren, MI
Precision Mold Base Corporation, Tempe, AZ
Precision Mold Welding, Inc., Little Rock, AR
Precision Products Inc., Greenwood, IN
Precision Resource, California Division, Huntington Beach, CA
Precision Resource Tool & Machine, Division, Shelton, CT

Precision Resources, Hawthorne, CA
Precision Specialists, Inc., West Berlin, NJ
Precision Specialties, San Jose, CA
Precision Stamping & Tool, Inc., Irvine, CA
Precision Stamping, Inc., Farmers Branch, TX
Precision Technology, Inc., Chandler, AZ
Precision Tool & Mold, Inc., Clearwater, FL
Precision Tool Work, Inc., New Iberia, LA
Precision Wire EDM Service Inc., Grand Rapids, MI
Preferred Tool Company, Inc., Seymour, IN
Prescott Aerospace, Inc., Prescott Valley, AZ
Pressco Products, Kent, WA
Prestige Mold Incorporated, Rancho Cucamonga, CA
Price Products, Inc., Escondido, CA
Pride, dba Pride Industries, Brooklyn Park, MN
Prima Die Castings, Inc., Clearwater, FL
Prime-Co Tool Inc., East Rochester, NY
Primeway Tool & Engineering Co., Div. of Cleary Developments, Inc., Madison Heights, MI
Pro-Mold, Inc., Rochester, NY
Pro-Tech Machine, Inc., Burton, MI
Process Equipment Company, Tipp City, OH
Product Engineering Company, Columbus, IN
Production Machining & Mfg., Dallas, TX
Production Saw Works, Inc., North Hollywood, CA
Production Tool & Mfg. Co., Portland, OR
Producto Machine Company, Bridgeport, CT
Professional Instruments Co., Inc., Hopkins, MN
Professional Machine & Tool Co., Gallatin, TN
Proficient Machining Co., Inc., Mentor, OH
Profile Grinding, Inc., Cleveland, OH
Proformance Manufacturing, Inc., Corona, CA
Progressive Concepts Machining, Pleasanton, CA
Progressive Machine & Design, LLC, Victor, NY
Progressive Metallizing &, Machine Company, Inc., Akron, OH
Progressive Tool & Die, Inc., Meadville, PA
Progressive Tool & Die, Inc., Gardena, CA
Progressive Tool Company, Waterloo, IA
Promax Tool Co., Rancho Cordova, CA
Prompt Machine Products, Inc., Chatsworth, CA
Proper Cutter, Inc., Guys Mills, PA
Proper Mold & Engineering, Inc., Center Line, MI
Proto-Design, Inc., Redmond, WA
Protonics Engineering Corp., Cerritos, CA
ProMold, Inc., Cuyahoga Falls, OH
Puehler Tool Company, Valley View, OH
Pullbrite, Inc., Fremont, CA
PDQ Machine, Inc., Machesney Park, IL
PMR, Inc., Avon, OH
PQ Enterprise, L.L.C., Grand Rapids, MI
PR Machine Works, Inc., Mansfield, OH
Quality Centerless Grinding Corp., Middlefield, CT
Quality Grinding and Machine, Rainbow City, AL
Quality Machine Engineering, Inc., Santa Rosa, CA
Quality Machining Technology, Inc., Oakdale, CA
Quality Machining, Inc., Waunakee, WI
Quality Mold & Engineering, QME Inc., Baroda, MI
Quality Tool & Die Inc., Meadville, PA
Quality Tool Company, Toledo, OH
Quick-Way Stampings, Euless, TX
R & D Machine Shop, Dallas, TX
R & D Specialty/Manco, Phoenix, AZ
R & D Tool & Engineering, Lee's Summit, MO
R & G Precision Tool Inc., Thomaston, CT
R & H Manufacturing Inc., Edwardsville, PA
R & J Tool, Inc., Brookville, OH
R & M Machine Tool, Freeland, MI
R & M Manufacturing Company, Niles, MI
R & M Mold Manufacturing Co., Inc., Bloomsbury, NJ
R & S EDM, Inc., W. Springfield, MA
R & S Redco, Inc., Rockland, MA
R D C Machine, Inc., Santa Clara, CA
R Davis EDM, Anaheim, CA
R E F Machine Company, Inc., Middlefield, CT
R F Cook Manufacturing Co., Stow, OH
R G F Machining Technologies, Canon City, CO
R J S Corporation, Akron, OH
R M I, Van Nuys, CA
R S Precision Industries, Inc., Farmingdale, NY
R T R Slotting & Machine Inc., Cuyahoga Falls, OH
R W Machine, Inc., Houston, TX
R. W. Smith Company, Inc., Dallas, TX
Rainbow Tool & Machine Co., Inc., Gadsden, AL
Raloid Corporation, Reisterstown, MD
Ralph Stockton Valve Products, Inc., Houston, TX
Ram Tool, Inc., Grafton, WI
Rapid-Line Inc., Grand Rapids, MI
Rapidac Machine Corporation, Rochester, NY
Ratnik Industries, Inc., Victor, NY
Rawlings Engineering, Macon, GA
Re-Del Engineering, Campbell, CA
Realco Diversified, Inc., Meadville, PA
Reardon Machine Co., Inc., St. Joseph, MO
Reata Engineering & Machine, Works, Inc., Englewood, CO
Reber Machine & Tool Company, Muncie, IN
Reed Instrument Company, Houston, TX
Reese Machine Company, Inc., Ashtabula, OH
Reg-Ellen Machine Tool Corp., Rockford, IL
Reichert Stamping Company, Toledo, OH
Reitz Tool, Inc., Cochranton, PA
Reko International Sales, Inc., Troy, MI
Reliable EDM, Inc., Houston, TX
Remarc Manufacturing Inc., Hayward, CA
Remmele Engineering, Inc., New Brighton, MN
Reny & Company Inc., El Monte, CA
Repairtech International, Inc., Van Nuys, CA
Republic Industries, Louisville, KY
Republic-Lagun, Carson, CA
Research Tool Inc., East Haven, CT
Reuther Mold & Manufacturing Co., Attn: Accounts Payable, Cuyahoga Falls, OH
Reynolds Manufacturing Co., Inc., Rock Island, IL
Rheaco Inc., Grand Prairie, TX
Rhode Island Centerless, Inc., Johnston, RI
Rich Tool & Die Company, Scarborough, ME
Richard Manufacturing Company, Inc., Milford, CT
Richard Tool & Die Corporation, New Hudson, MI
Richard's Grinding, Inc., Cleveland, OH
Richards Machine Tool Company, Inc., Lancaster, NY
Richsal Corporation, Elyria, OH
Rick Sanford Machine Company, San Leandro, CA
Rickman Machine Company, Wichita, KS
Rid-Lom Precision Tool Corp., Rochester, NY
Ridge Machine & Welding Company, Toronto, OH
Riggins Engineering, Inc., Van Nuys, CA
Right Tool & Die, Inc., Toledo, OH
Rite-Way Industries Inc., Louisville, KY
Riverview Machine Company, Inc., Holyoke, MA
Riviera Tool Company, Grand Rapids, MI
Robert C. Reetz Company, Inc., Pawtucket, RI
Robert C. Weisheit Co., Franklin Park, IL
Roberts Tool & Die Company, Chillicothe, MO
Roberts Tool Company, Inc., Chatsworth, CA
Robrad Tool & Engineering, Mesa, AZ
Rochester Automated Systems, Inc., Rochester, NY
Rochester Gear, Inc., Rochester, NY
Rochester Manufacturing, Wellington, OH
Rochester Precision Machine, Inc., Rochester, MN
Rockburl Industries Inc., Rochester, NY
Rockford Process Control, Inc., Rockford, IL
Rockford Tool & Manufacturing Co., Rockford, IL
Rockford Toolcraft, Inc., Rockford, IL
Rockhill Machining Industries Inc., Barberton, OH
Rockstedt Tool & Die, Brunswick, OH
Rocon Manufacturing Corporation, Rochester, NY
Rogers Enterprises, Rochester, NY
Roll Kraft, Mentor, OH
Romold Inc., Rochester, NY
Ron Grob Company, Loveland, CO
Ronart Industries, Inc., Detroit, MI
Ronlen Industries, Inc., Brunswick, OH
Rons Racing Products, Inc., Tucson, AZ
Royalton Manufacturing, Inc., Cleveland, OH
Royster's Machine Shop, LLC, Henderson, KY
Rozal Industries, Inc., Farmingdale, NY
Ruoff & Sons, Inc., Runnemede, NJ
Ryan Industries Inc., York, PA
RRR Development Co., Inc., North Canton, OH
RTS Wright Industries, Nashville, TN
RTS Wright Industries, LLC, Gilbert, AZ
S & B Tool & Die Co., Inc., Lancaster, PA
S & R Tool Inc., Lakeville, NY
S C Manufacturing, Akron, OH
S G S Tool Company, Munroe Falls, OH
S L P Machine, Inc., Ham Lake, MN
S. C. Machine, Chatsworth, CA
Sabre Machining Center, Inc., Dayton, OH
Saeilo Manufacturing Industries, Blauvelt, NY
Sage Machine & Fabricating, Houston, TX
Sagehill Engineering, Inc., Menlo Park, CA
Saliba Industries, Inc., Lake Forest, IL
Sanders Tool & Mould Company, Hendersonville, TN
Sandor Tool & Manufacturing Co., Lawrence, MA
Satran Technical Enterprises, Mayer, AZ
Sattler Machine Products, Inc., Sharon Center, OH
Sawing Services Co., Chatsworth, CA
Sawtech, Lawrence, MA
Schaffer Grinding Company, Inc., Montebello, CA
Scheu & Kniss, The Elizabeth Companies, Louisville, KY
Schill Corp., Toledo, OH
Schmald Tool & Die Inc., Burton, MI

Schmiede Corporation, Tullahoma, TN
Schmitt Machine, Inc., Ventura, CA
Schneider & Marquard, Inc., Newton, NJ
Schuetz Tool & Die, Inc., Hiawatha, KS
Schulze Tool Company, Independence, MO
Schwab Machine, Inc., Sandusky, OH
Schwartz Industries, Inc., Warren, MI
Scientiam Machine Co., Harbor City, CA
Seaway Industrial Products, Inc., Erie, PA
Sebewaing Tool & Engineering Co., Sebewaing, MI
Select Manufacturing Company, Rainbow City, AL
Select Tool & Die—Tool Div., Dayton, OH
Select Tool & Eng. Inc., Elkhart, IN
Select Tool and Die, Toledo, OH
SelfLube, Coopersville, MI
Selzer Tool & Die, Inc., Elyria, OH
Sematool Mold & Die Co., Santa Clara, CA
Serrano Industries Inc., Santa Fe Springs, CA
Service Manufacturing and, Engineering, Norwalk, CA
Service Tool & Die, Inc., Henderson, KY
Setters Tools, Inc., Piedmont, SC
Sharon Center Mold & Die, Sharon Center, OH
Shaw Industries, Inc., Franklin, PA
Shear Tool, Inc., Saginaw, MI
Sheets Tool & Manufacturing, Inc., Saegertown, PA
Shelby Engineering Company, Inc., Indianapolis, IN
Sherer Manufacturing Incorporated, Clearwater, FL
Sherman Tool & Gage, Erie, PA
Shookus Special Tools, Inc., Raymond, NH
ShopTech Industrial Software Corp., Cincinnati, OH
Sibley Machine & Foundry Corp., South Bend, IN
Signal Machine Company, New Holland, PA
Silicon Valley Mfg., Fremont, CA
Sipco Molding Technologies, Meadville, PA
Sirois Tool Co. Inc., Berlin, CT
Six Sigma, Louisville, KY
Ski-Way Machine Products Company, 24460 Lakeland Blvd., Euclid, OH
Skillcraft Machine Tool Company, West Hartford, CT
Skulsky, Inc., Gardena, CA
Skyline Manufacturing Corp., Nashville, TN
Skylon Mold & Machining, Sugar Grove, PA
Smith-Renaud, Inc., Cheshire, CT
Smith's Machine, Cottondale, AL
Smithfield Manufacturing, Inc., Clarksville, TN
Snyder Systems, Benicia, CA
Solar Tool & Die, Inc., Kansas City, MO
Sonic Machine & Tool, Inc., Tempe, AZ
Sonoma Precision Mfg. Co., Santa Rosa, CA
Sonora Precision Molds, Inc., Mi Wuk Village, CA
South Bend Form Tool Company, South Bend, IN
South Eastern Machining, Inc., Pelzer, SC
Southampton Manufacturing, Inc., Feasterville, PA
Southeastern Technology, Inc., Murfreesboro, TN
Southern Manufacturing Technologies Inc., Tampa, FL
Southwest Mold, Inc., Tempe, AZ
Space City Machine & Tool Co., Houston, TX
Spalding & Day Tool & Die Co., Louisville, KY
Spark Technologies, Inc., Schenley, PA
Spartak Products Inc., Houston, TX
Specialty Machine & Hydraulics, Pleasantville, PA
Speed Precision Machining, Phoenix, AZ
Spenco Machine & Manufacturing, Temecula, CA
Spex Precision Machine Technologies, Rochester, NY
Spike Industries, North Lima, OH
Spiral Grinding Company, Culver City, CA
Springfield Manufacturing, LLC, Clover, SC
Springfield Tool & Die, Inc., Greenville, SC
Spun Metals, Inc., A Deakins Co., Brazil, IN
Standard Die Supply of Indiana, Inc., Indianapolis, IN
Standard Jig Boring Service, Inc., Akron, OH
Standard Machine Inc., Cleveland, OH
Standard Welding & Steel, Products, Inc., Medina, OH
Stanek Tool Corporation, New Berlin, WI
Stanley Machining & Tool Corp., Carpentersville, IL
Star Precision Products, Mentor, OH
Star Tool & Die, Inc., Elkhart, IN
Starn Tool & Manufacturing Co., Meadville, PA
State Industrial Products, Inc., Phoenix, AZ
Stauble Machine & Tool Company, Louisville, KY
Stelted Manufacturing, Inc., Tempe, AZ
Sterling Engineering Corporation, Winsted, CT
Sterling Tool Company, Racine, WI
Stevens Manufacturing Co., Inc., Milford, CT
Stewart Manufacturing Company, Phoenix, AZ
Stillion Industries, Ann Arbor, MI
Stillwater Technologies, Inc., Troy, OH
Stonewall Jackson Mold Inc., Annville, KY
Stoney Crest Regrind Service, Inc., Bridgeport, MI
Streamline Tooling Systems, Muskegon, MI
Strobel Machine, Inc., Worthington, PA
Stuart Tool & Die, Falconer, NY
Studwell Engineering, Inc., Sun Valley, CA
Subsea Ventures Inc., Houston, TX
Suburban Manufacturing Company, Eastlake, OH
Summit Machine Company, Scottdale, PA
Summit Precision, Inc., Phoenix, AZ
Sun EDM Inc., Gilbert, AZ
Sunbelt Plastics, Inc., Frisco, TX
Sunrise Tool & Die, Inc., Henderson, KY
Sunset Tool Inc., Saint Joseph, MI
Super Finishers II, Phoenix, AZ
Superbolt, Inc., Carnegie, PA
Superior Die Set Corporation, Oak Creek, WI
Superior Die Tool Machine Co., Columbus, OH
Superior Gear Box Company, Stockton, MO
Superior Jig, Inc., Anaheim, CA
Superior Mold Company, Ontario, CA
Superior Thread Rolling Company Inc., Arleta, CA
Superior Tool & Die Company, Bensalem, PA
Superior Tool & Die Company, Inc., Elkhart, IN
Superior Tool, Inc., Willow Street, PA
Supreme Tool and Die Company, Fenton, MO
Surface Manufacturing, Auburn, CA
Swiss Wire E D M, Costa Mesa, CA
Swissco, Inc., Bell Gardens, CA
Synergis Technologies Group, Grand Rapids, MI
Syst-A-Matic Tool & Design, Meadville, PA
Systems 3, Inc., Tempe, AZ
STADCO, Los Angeles, CA
STM Manufacturing, Holland, MI
T & S Industrial Machining Corp., Woburn, MA
T J Tool and Mold, Guys Mills, PA
T M Machine & Tool, Inc., Toledo, OH
T M S Inc., Technical Machining Services, Inc., Lincoln, RI
T R Jones Machine Company, Inc., Crystal Lake, IL
T. J. Karg Company, Inc., Akron, OH
T–K & Associates, Inc., La Porte, IN
T–M Manufacturing Corporation, Sunnyvale, CA
Talbar, Inc., Meadville, PA
Talent Tool & Die, Inc., Berea, OH
Tana Corporation, Toledo, OH
Tanner Oil Tools Inc., Houston, TX
Target Precision, Meadville, PA
Taurus Tool & Engineering, Inc., Muncie, IN
Team Tooling and Design, Incorporated, Shawnee, OK
Tech Industries, Inc., Cleveland, OH
Tech Manufacturing Company, Wright City, MO
Tech Mold, Inc., Tempe, AZ
Tech Tool & Mold, Inc., Meadville, PA
Tech-Etch, Inc., Plymouth, MA
Tech-Machine, Inc., Colorado Springs, CO
Techmetals, Inc., Dayton, OH
Techni-Cast Corporation, South Gate, CA
Techni-Products, Inc., East Longmeadow, MA
Technics 2000 Inc., Olathe, KS
Technodic, Inc., Providence, RI
Tecno Troqueles Industries, Laredo, TX
TecoMetrix, LLC, Tempe, AZ
Tedco, Inc., Cranston, RI
Teke Machine Corp., Rochester, NY
Tell Tool, Inc., Westfield, MA
Tenk Machine & Tool Company, Cleveland, OH
Tennessee Metal Works, Inc., Nashville, TN
Tennessee Tool Corporation, Charlotte, TN
Terrell Manufacturing Inc., Strongsville, OH
Testand Corporation, Pawtucket, RI
Tetco, Inc., Plainville, CT
Teter Tool & Die, Inc., La Porte, IN
Thaler Machine Company, Dayton, OH
The Baughman Group, Louisville, KY
The Bechdon Company, Inc., Upper Marlboro, MD
The Foster Group, Rochester, NY
The Goforth Corp., dba The Machine Shop, Fremont, CA
The Metalworking Group, Inc., Cincinnati, OH
The POM Group, Inc., Auburn Hills, MI
The Ryan Group, Franklin, NJ
The Sullivan Corporation, Hartland, WI
The Timken Company, Specialty Tooling & Rebuilding, Canton, OH
The Will-Burt Company, Orrville, OH
Therm, Inc., Ithaca, NY
Thiel Tool & Engineering Co., Inc., St. Louis, MO
Thomas Machine Works, Inc., Newburyport, MA
Thornhurst Manufacturing, Inc., Zephyrhills, FL
Three-Way Pattern, Inc., Wichita, KS
ThyssenKrupp Budd Company, Shelbyville, KY
Tipco Punch, Inc., Hamilton, OH
Tipp Machine & Tool, Inc., Tipp City, OH

Titan, Inc., Sturtevant, WI
Toledo Blank, Inc., Toledo, OH
Toledo Molding & Die, Toledo, OH
Tolerance Masters, Inc., Circle Pines, MN
Tomak Precision, Lebanon, OH
Tomco Tool & Die, Inc., Belding, MI
TomKen Tool & Engineering, Inc., Muncie, IN
Tool Gauge & Machine Works, Inc., Tacoma, WA
Tool Mate Corporation, Cincinnati, OH
Tool Specialties Company, Hazelwood, MO
Tool Specialty Company, Los Angeles, CA
Tool Tech Corporation, San Jose, CA
Tool Tech, Inc., Springfield, OH
Tool-Matic Company, Inc., City Of Commerce, CA
Tonlcomp Tooling & Components Co., Toledo, OH
Toolcraft of Phoenix, Inc., Glendale, AZ
Toolcraft Products, Inc., Dayton, OH
Toolex, Inc., Houston, TX
Tools Renewal Company, Birmingham, AL
Tools, Inc., Sussex, WI
Top Tool & Die, Inc., Cleveland, OH
Toth Industries, Inc., Toledo, OH
Toth Technologies, Pennsauken, NJ
Tower Tool & Engineering, Inc., Machesney Park, IL
Trace-A-Matic Corporation, Brookfield, WI
Tracer Tool & Die Company Inc., Grand Rapids, MI
Trademark Die & Engineering, Belmont, MI
Tram Tek Inc., Phoenix, AZ
Transmatic Manufacturing, Mesa, AZ
Treblig, Inc., Greenville, SC
Trec Industries, Inc., Brooklyn Heights, OH
Tree City Mold & Machine Co., Inc., Kent, OH
Treffers Precision, Inc., Phoenix, AZ
Tresco Tool, Inc., Guys Mills, PA
Tri Craft, Inc., Middleberg Heigh, OH
Tri-City Machine Products, Inc., Peoria, IL
Tri-City Tool & Die, Inc., Bay City, MI
Tri-Core Mold & Die, Machesney Park, IL
Tri-M-Mold, Inc., Stevensville, MI
Triad Plastic Technologies, Reno, NV
Triangle Tool Company, Erie, PA
Tribond Industries, Inc., Phoenix, AZ
Tricon Machine LLC, Rochester, NY
Tridecs Corporation, Hayward, CA
Trident Precision Manufacturing, Webster, NY
Trimac Manufacturing, Inc., Santa Clara, CA
Trimble Navigation Ltd. Engineering & Construction Division, Huber Heights, OH
Trimetric Specialties, Inc., Newark, CA
Trimline Tool, Inc., Grandville, MI
Trinity Tools, Inc., North Tonawanda, NY
Trio Manufacturing, Inc., Kenj, WA
Trio Tool & Die, Inc., Hawthorne, CA
Triple-T Cutting Tools Inc., West Berlin, NJ
Triplett Machine, Inc., Phelps, NY
Trojan Mfg. Co. Inc., Piqua, OH
Trotwood Corporation, Trotwood, OH
Tru Form Manufacturing Corp., Rochester, NY
Tru Tool, Inc., Sturtevant, WI
Tru-Cut, Inc.,,Sebring, OH
True Cut EDM Inc., Garland, TX
True-Tech Corporation, Fremont, CA
Trust Technologies, Willoughby, OH
Trutron Corporation, Troy, MI
Tschida Engineering, Inc., Napa, CA
Tucker Engineering Inc., Peabody, MA
Turn-Tech, Inc., Pinehurst, TX
Twin City Plating Company, Minneapolis, MN
Two-M Precision Co., Inc., Willoughby, OH
TAE Corporation, d/b/a T & E Manufacturing, Kent, WA
TCI Precision Metals, Gardena, CA
TMI Industries, Inc., Temperance, MI
TMK Manufacturing Inc., Santa Clara, CA
TMX Engineering & Manufacturing, Santa Ana, CA
UFE Incorporated, Stillwater, MN
UMC, Inc., Hamel, MN
US Machine & Tool, Inc., Murfreesboro, TN
Ugm, Inc., Salida, CA
Ultra Precision, Inc., Freeport, PA
Ultra Stamping & Assembly, Inc., Rockford, IL
Ultra Tool & Manufacturing, Inc., Menomonee Falls, WI
Ultra-Tech, Inc., Kansas City, KS
Ultramation, Inc., Waco, TX
Ultron, Long Beach, CA
Unique Machine Company, Montgomeryville, PA
Unique Tool & Manufacturing, Randleman, NC
Unitech, Inc., Kansas City, MO
United Centerless Grinding, East Hartford, CT
United Machine Co., Inc., Wichita, KS
United Plastics Group, Anaheim, CA
United Stars Aerospace, Inc., Kent, WA
United States Fittings, Inc., Warrensville Hgt, OH
United Tool & Engineering Co., South Beloit, IL
United Tool & Engineering, Inc., Mishawaka, IN
Universal Brixius, Milwaukee, WI
Universal Custom Process, Inc., Streetsboro, OH
Universal Precision Products Inc., Akron, OH
Upland Fab, Inc., Ontario, CA
UAB Manufacturing Co., Inc., Southampton, PA
USAeroteam, Dayton, OH
V & M Tool Company, Inc., Perkasie, PA
V & S Die & Mold, Inc., Lakewood, OH
VA Machine & Tools, Inc., Broussard, LA
V Ash Machine Company, Cleveland, OH
VI Mfg., Inc., Webster, NY
VRC, Inc., Berea, OH
V.A.W. of America, Inc., Phoenix, AZ
Valley Machine Works, Inc., Phoenix, AZ
Valley Tool & Die, Inc., North Royalton, OH
Valv-Trol Company, Stow, OH
Van Engineering, R Vandewalle, Inc., Cincinnati, OH
Van Os Machine Works, Inc., St. Louis, MO
Van Reenen Tool & Die Inc., Rochester, NY
Van-Am Tool & Engineering, Inc., St. Joseph, MO
Vanderveer Industrial Plastics, Inc., Placentia, CA
Vanpro, Inc., Cambridge, MN
Varco Systems, Orange, CA
Vaughn Manufacturing Company, Inc., Nashville, TN
Venango Machine Products, Inc., Reno, PA
Versacut Ind. Inc., Morenci, MI
VersaTool & Die Machining, and Engineering Inc., Beloit, WI
Vico Louisville, Louisville, KY
Viking Tool & Engineering, Whitehall, MI
Viking Tool & Gage, Inc., Conneaut Lake, PA
Vistek Precision Machine Company, Ivyland, PA
Vitron Manufacturing, Inc., Phoenix, AZ
Vitullo & Associates, Inc., Warren, MI
Vobeda Machine & Tool Company, Racine, WI
Vulcan Tool Corporation, Dayton, OH
W & H Stampings & Fineblanking, Inc., Hauppauge, NY
W D & J Machine & Engineering Inc., Fullerton, CA
W G Strohwig Tool & Die, Inc., Richfield, WI
W W G, Inc., Indianapolis, IN
W. C. Kirby & Son, Inc., Noblesville, IN
W.A.C. Consulting/Coss Systems Inc., Northboro, MA
Wagner Engineering, Inc., Gilbert, AZ
Wagner Engraving Co., Kirkwood, MO
Waiteco Machine, Inc., Devens, MA
Waltco Engineering, Inc., Gardena, CA
Walter Tool & Mfg. Inc., Elgin, IL
Warmelin Precision Products, Hawthorne, CA
Waukesha Tool & Stamping Inc., Sussex, WI
Wayne Manufacturing, Inc., Boulder, CO
Weco Metal Products, Ontario, NY
Wemco Precision Tool, Inc., Meadville, PA
Wentworth Company, Glastonbury, CT
Werkema Machine Company, Inc., Grand Rapids, MI
Wes Products, Madison Heights, MI
West Hartford Tool & Die Company, Newington, CT
West Pharmaceutical Services, Erie, PA
West Valley Milling, Inc., Chatsworth, CA
West Valley Precision Inc., San Jose, CA
Western Air Products, Tucson, AZ
Western Mass. MechTech, Inc., Ware, MA
Western Tap Manufacturing Co., Inc., Buena Park, CA
Westfield Manufacturing Corp., Westfield, IN
Westfield Tool & Die, Inc., Westfield, MA
Westlake Tool & Die Mfg., Avon, OH
Westool Corporation, Temperance, MI
White Machine, Inc., North Royalton, OH
Whitehead Tool & Design, Inc., Guys Mills, PA
Wiegel Tool Works, Inc., Wood Dale, IL
Wiesen EDM, Inc., Belding, MI
Wightman Engineering Services, Inc., Santa Clara, CA
Wilco Die Tool Machine Company, Maryland Heights, MO
Wilkinson Mfg., Inc., Santa Clara, CA
Willer Tool Corporation, Jackson, WI
William Sopko & Sons Co., Inc., Cleveland, OH
Williams Engineering &, Manufacturing, Inc., Chatsworth, CA
Williams Machine, Inc., Lake Elsinore, CA
Williams Machining Co., Edinboro, PA
Windsor Tool & Die, Inc., Cleveland, OH
Wintech Industries Inc., Tempe, AZ
Wire Cut Company, Inc., Buena Park, CA
Wire Tech E D M, Inc., Los Alamitos, CA
Wire-Tech, Inc., Tempe, AZ
Wirecut Technologies Inc., Indianapolis, IN
WireCut E D M, Inc., Dallas, TX
Wisconsin Engraving Company/Unitex, New Berlin, WI
Wise Machine Co., Inc., Butler, PA
Wolverine Bronze Company, Roseville, MI
Wolverine Tool & Engineering, Belmont, MI
Wolverine Tool Company, St. Clair Shores, MI
Woodruff Corporation, Torrance, CA
Wright Brothers Welding &, Sheet Metal, Inc., Hollister, CA
WADKO Precision, Inc., Eagle Lake, TX
WGI Inc., Southwick, MA
WSI Industries, Inc., Osseo, MN
X–L Machine Company, Inc., Three Rivers, MI
XLI Corporation, Rochester, NY
Yarde Metals, Inc., Bristol, CT
Yates Tool, Inc., Medina, OH
Yoder Die Casting Corporation, Dayton, OH
Youngberg Industries, Inc., Belvidere, IL
Youngers and Sons Manufacturing Company, Inc., Viola, KS
Youngstown Plastic Tooling &, Machinery, Inc., Youngstown, OH
Z & Z Machine Products Inc., Racine, WI
Z M D Mold & Die Inc., Mentor, OH
Zircon Precision Products, Inc., Tempe, AZ
Zuelzke Tool & Engineering, Milwaukee, WI
4 Axis Machining, Inc., Denver, CO

[FR Doc. 03–7839 Filed 4–1–03; 8:45 am]
BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 021220324–3072–03]

Special American Business Internship Training Program (SABIT)

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Correction of the notice of extension of funding availability for grants under the Special American Business Internship Training Program (SABIT). This notice also clarifies the deadline date of the application process. Applications are to be received in the SABIT office by the closing date. Applications postmarked by the closing date, but arriving after the closing date, will not be accepted.

SUMMARY: The International Trade Administration publishes this notice to correct the closing date for the Special American Business Internship Training Program (SABIT) from March 1, 2003 to April 7, 2003. The extension was published in the **Federal Register** on February 27, 2003. The correct closing date is April 7, 2003.

DATES: To be considered, applications must be received in the SABIT office by April 7, 2003. Processing of complete applications takes approximately three to four months. All awards are expected to be made by July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Liesel Duhon, Director, Special American Business Internship Training program, International Trade Administration, U.S. Department of Commerce, phone—(202) 482–0073, facsimile—(202) 482–2443. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: This Notice amends the **Federal Register** notice published on February 27, 2003 (68 FR 9061) extending the deadline for the availability of funds for the Special American Business Internship Training program (SABIT), for training business executives and scientists (also referred to as Ainterns") from Eurasia (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan). All applications must be received by SABIT by April 7, 2003. All information in the previous announcement remains current, except for the change of the closing date.

Dated: March 28, 2003.

Liesel C. Duhon,

Director, SABIT Program.

[FR Doc. 03–7956 Filed 4–1–03; 8:45 am]
BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Public Workshop for Developing Criteria for Accreditation of Certification Bodies Involved in Organic Production and Processing

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a two-hour workshop regarding the development of criteria for a sub-program of the National Voluntary Conformity Assessment System Evaluation (NVCASE) Program for recognition of accreditors of certification bodies involved in organic production and processing.

NVCASE program procedures require NIST to consult the public when establishing requirements to be applied in evaluations conducted within the scope of NVCASE programs. There is no fee for the workshop; however, all attendees must register in advance with the Workshop Coordinator no later than May 1, 2003. Due to limited space, the interested parties will be registered on a first-come first-served basis.

DATES: The workshop will be held on May 9, 2003, from 9 a.m. to 11 a.m.

ADDRESSES: The workshop will be held at National Institute of Standards and Technology (NIST—North), located at 820 W. Diamond Avenue, Room 152, Gaithersburg, Maryland 20878.

FOR FURTHER INFORMATION CONTACT: Contact Jogindar (Joe) Dhillon via telephone at (301) 975–5521. You may register for the workshop by e-mail at *dhillon@nist.gov* or by fax at (301) 975–5414. You may also register by U.S. mail addressed to NVCASE Workshop Coordinator, (Attention: Joe Dhillon), NIST, 100 Bureau Drive, Stop 2150, Gaithersburg, Maryland 20899–2150.

SUPPLEMENTARY INFORMATION: In accordance with Title 15 Part 286.2(b) of the Code of Federal Regulations, NIST will establish this program pursuant to a letter received from the International Organic Accreditation Service (IOAS) in which it expressed its interest to seek NIST recognition under the NVCASE program. IOAS is an accreditor of product certifiers for organic production and processing. Further information for IOAS is available at *http://www.ioas.org*. NIST may recognize IOAS and any other prospective candidate who will then accredit certification bodies for organic production and processing. This sub-program would use the norms of International Federation of Organic Agriculture Movements (IFOAM). You may access IFOAM Norms 2002 at *http://www.ifoam.org/standard/index.html*.

Due to heightened security concerns, interested parties who wish to attend the workshop should arrive 30 minutes prior to the beginning of the workshop and should bring two forms of identification.

A copy of NVCASE regulations is available at *http://ts.nist.gov/nvcase*. This program under NVCASE will allow the certification bodies to satisfy the conformity assessment requirements of international Guides/Standards and IFOAM norms.

Dated: March 28, 2003.

Arden Bement,

Director.

[FR Doc. 03–7885 Filed 4–1–03; 8:45 am]
BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032603A]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a scientific research/enhancement permit (1288) and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for a permit from Dynamac/USEPA in Corvallis, OR (1288). The permit would affect five Evolutionarily Significant Units (ESUs) of salmonids identified in the **SUPPLEMENTARY INFORMATION** section. This document serves to notify the public of the availability of the permit application for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the permit application must be received no later than 5 p.m. Daylight Savings Time on May 2, 2003.

ADDRESSES: Written comments on the modification request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment: For permit 1288: Diana Hines, Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404 6528 (ph: 707 575 6057, fax: 707 578 3435). Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 3226 (301 713 1401).

FOR FURTHER INFORMATION CONTACT: Diana Hines at phone number 707–575–6057, or e-mail: *diana.hines@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531 1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NMFS. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the following five threatened salmonid ESUs: threatened Southern Oregon/Northern California Coast coho salmon *O. kisutch*, threatened Central California Coast coho salmon, threatened Northern California Steelhead *O. mykiss*, threatened Central California Coast steelhead, and threatened California Coastal Chinook salmon *O. tshawytscha*.

Modification Request Received

Dynamac/USEPA requests permit 1288 for takes of juvenile ESA-listed coho salmon, steelhead and Chinook salmon associated with studies assessing presence and population abundances of species in selected streams throughout California. Dynamac/USEPA has proposed to use electrofishing as the method of capture. Permit 1288 will expire June 30, 2008.

Dated: March 28, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–7969 Filed 4–1–03; 8:45am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032703C]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Application for scientific research and enhancement of survival permit (1425).

SUMMARY: Notice is hereby given that NMFS has received an application for a scientific research and enhancement permit from Fish First, a non-profit organization, pursuant to the Endangered Species Act, as amended (ESA). The permit application is for the take of ESA-listed adult and juvenile salmon associated with enhancement and restoration of salmon habitat activities in the Lewis River basin in the State of Washington, more fully described below (see **SUPPLEMENTARY INFORMATION**).

DATES: Comments or requests for a public hearing on the permit application must be received at the appropriate address or fax number (see Address) no later than 5 p.m Pacific daylight time on May 2, 2003. Anyone requesting a hearing should state the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA.

ADDRESSES: Written comments on the application should be sent to Washington State Branch Office, Habitat Conservation Division, 510 Desmond Drive SE, Suite 103, Lacey, WA 98503. Comments may also be sent via fax to 360–753–9517. Comments will not be accepted if submitted via e-mail or the internet. Requests for the permit application should be directed to the Washington State Branch office (address above). The application also is available on the internet at *http://www.nwr.noaa.gov/* or it may be reviewed by appointment during business hours at the Washington State Branch office by calling 360–753–9530.

FOR FURTHER INFORMATION CONTACT: Stephanie Ehinger, Washington State Branch Office Habitat Division, Lacey, Washington (ph: 360–534–9341, e-mail: *stephanie.ehinger@noaa.gov*); or Dan Guy at the same office (ph: 360–534–9342; e-mail: *dan.guy@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Authority

Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term take under the ESA means harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). Under limited circumstances, NMFS may issue permits to take listed species, such as scientific research and enhancement permits issued under Section 10(a)(1)(A) of the ESA (16 U.S.C.1531 *et. seq.*) and Federal regulations found at 50 CFR 222.308. NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permit.

Species Covered in this Notice

The following listed species and evolutionary significant units (ESUs) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened Lower Columbia River (LCR),

Steelhead (*O. mykiss*): Threatened LCR, and

Chum salmon (*O.keta*): Threatened LCR.

Background

Fish First requests a 5–year permit for annual take of adult and juvenile threatened LCR chinook salmon, threatened LCR steelhead and threatened LCR chum salmon. Fish First is a 501(c)(3) non-profit organization created explicitly to aid in the enhancement and recovery of anadromous salmon populations - particularly the threatened LCR ESUs listed above - in the Lewis River Basin in the State of Washington. The organization proposes to undertake projects that will enhance and restore salmon habitat on private property adjacent to and in the Lewis River. The proposed activities would restore natural aquatic or riparian habitat processes or conditions, and selectively alter degraded habitat features to improve habitat conditions. All of Fish First's proposed projects were developed in response to a Limiting Factors Analysis completed in association with the Washington State Conservation Commission.

The enhancement projects proposed in the application include: (1) restoration of fish passage areas from which salmon have been blocked due to anthroprogenic activities; (2) obliteration of old roads and old road crossings to restore riparian and floodplain habitats; (3) riparian enhancements, such as planting native vegetation and restricting livestock access via fencing; (4) reconnecting off-channel habitat including old side channels, oxbows and wetlands to improve salmon rearing habitat and water quality; (5) nutrient enhancement by salmon carcass placement to improve watershed productivity; (6) placement of large woody debris to increase channel complexity and improve instream conditions for adult and juvenile salmon; (7) supplementing spawning gravel in stream reaches with limited gravel supply; (8) creating in-stream habitat and pool riffle sequences in stream reaches simplified and degraded by historic anthropogenic activities.

In addition, Fish First will undertake continuous watershed assessments and monitoring of restoration and enhancement project activities, their impacts on listed salmon, their structural stability, vegetation plantings and fish use. Fish First will provide annual reports of such assessments and monitoring to NMFS, so that the results of the actions can be measured and so that projects can be modified as needed. Fish First will also monitor all take and provide NMFS with annual reports indicating the type of take and amount of take, including whether any fish were killed.

The proposed activities by Fish First will be carried out solely for the benefit of listed salmon; that is, for the enhancement of survival of listed species as contemplated by section 10 (a)(1)(A) of the ESA. They are not activities incidental to some otherwise lawful actions. The proposed activities by Fish First may result in take of adult and juvenile LCR salmon, primarily in the form of harassment, but also some capture, handle, release. Fish First will take specific measures, such as designing, scheduling, and sequencing construction work, to minimize any impacts. In-water project work will occur during NMFS approved work windows. If fish capture is needed to de-water a work site, the capture, handle and release of fish will be done by qualified fisheries biologists according to the established procedures and conditions NMFS imposes in other scientific research permits for listed ESUs. However, the organization will try to do its work when fish are not present. Fish First will also comply with Washington State permits, including any intended to protect water quality. Because the habitat actions are designed specifically to enhance the survival of the listed salmon, the impacts of the habitat modifications will be beneficial to the survival and recovery of the listed LCR ESUs. Complete details of the proposed activities, specific locations and anticipated take are provided in the permit application.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA and Federal regulations. The final permit decision will not be made until after the end of the 30–day comment period and after NMFS has fully considered all public comments received. NMFS will publish notice of its final action in the **Federal Register**.

Dated: March 28, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–7966 Filed 4–1–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032703D]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Applications for four scientific research permits (1114, 1124, 1134, 1152) and four permit modifications (1290, 1291, 1322, 1376).

SUMMARY: Notice is hereby given that NMFS has received four permit applications and four applications to modify existing scientific research permits relating to Pacific salmon and steelhead. All of the proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide resource management and conservation efforts.

DATES: Comments or requests for a public hearing on the applications or modification requests must be received no later than 5 p.m. Pacific daylight savings time on May 2, 2003.

ADDRESSES: Written comments on the applications or modification requests should be sent to Protected Resources Division, NMFS, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments may also be sent via fax to 503–230–5435. Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: Chris Bill, Portland, OR (ph: 503–230–5403, Fax: 503–230–5435, e-mail *christopher.bill@noaa.gov*). Permit/modification applications, including amount of take requested are available at *http://www.nwr.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species and evolutionarily significant units (ESUs) are covered in this notice:

Sockeye salmon (*Oncorhynchus nerka*): endangered Snake River (SR).

Chinook salmon (*O. tshawytscha*): endangered natural and artificially

propagated upper Columbia River (UCR); threatened natural and artificially propagated SR spring/summer (S/S); threatened SR fall; threatened lower Columbia River (LCR); threatened upper Willamette River (UWR); threatened natural and artificially propagated Puget Sound (PS).

Chum salmon (*O. keta*): threatened Columbia River (CR).

Steelhead (*O. mykiss*): endangered natural and artificially propagated UCR; threatened SR; threatened middle Columbia River (MCR); threatened LCR.

Authority

Scientific research permits are issued in accordance with Section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR parts 222–226). NMFS issues permits and modifications based on findings that such permits and modifications: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA.

Permit/Modifcation Applications

Permit 1114

The Washington Department of Fish and Wildlife (WDFW) is requesting a 5–year permit for a study that would annually take juvenile and adult, natural and artificially-propagated, endangered UCR spring chinook salmon; and juvenile and adult, natural and artificially propagated, endangered UCR steelhead. Under this permit, the WDFW would capture juvenile, artificially propagated and natural UCR spring chinook salmon and steelhead as part of a long-term, ongoing smolt monitoring program at Rock Island Dam on the Columbia River in Washington State. The original permit was in place for 5 years (63 FR 20169) with three modifications (63 FR 43381, 65 FR 15314, 66 FR 38641); it expired on December 31, 2002. Under the new permit (as with the old) the captured smolts would be held for as long as 24 hours and all would be anesthetized, sampled for data relating to their species, size, origin (hatchery or natural), and examined for the presence of a coded wire tag (CWT) or passive integrated transponder (PIT) tag. Some of the captured fish would be examined for evidence of gas bubble trauma (GBT) and others would be implanted with a PIT tag. All captured fish would be allowed to recover before being released in the dam's tailrace. The WDFW also expects to capture a few downstream-migrating steelhead kelts during the course of the trapping operation. These fish would be anesthetized and immediately moved to the lower sections of the adult fishway where they could recover on their own and continue their migration. The WDFW does not intend to kill any of the fish being captured, but a small percentage may die as a result of the research activities.

The purpose of the research is to provide important information regarding what effects the annual mid- and upper (Columbia) river water allocation budget has on listed salmonids. The data being collected would be used to assess the effects of the water allocation plan, thereby improving smolt migration conditions (e.g., through releasing adequate amounts of upstream water during the migration period) and increasing listed spring chinook and steelhead survival rates. Another objective is to help resource managers develop the basin-wide database for PIT-tagged salmonids and thus increase what is known about smolt migration timing and behavior in the Columbia River system.

Permit 1124

The Idaho Department of Fish and Game (IDFG) is requesting a 5–year permit for seven study tasks that, among them, would annually take adult and juvenile threatened SR fall chinook salmon; adult and juvenile threatened spring/summer SR chinook salmon (natural and artificially propagated); and adult and juvenile endangered SR sockeye salmon in the Salmon and Clearwater Rivers in Idaho. The original Permit 1124 was in place for 5 years (63 FR 30199) with one amendment (67 FR 34909); it expired on December 31, 2002. It contained the same seven research tasks being requested under this permit application: Task 1 - General fish population inventory; Task 2 - Spring/summer chinook salmon natural production monitoring and evaluation; Task 3 - Spring/summer chinook salmon supplementation research; Task 4 - Redfish Lake, Pettit Lake, Alturas Lake kokanee/sockeye research; Task 5 - Salmon and steelhead fish health monitoring; Task 6 - Steelhead natural production monitoring and evaluation; and Task 7 - Steelhead supplementation research. Under these tasks, listed adult and juvenile salmon would be (a) observed/harassed during fish population and production monitoring surveys; (b) captured (using seines, trawls, traps, hook-and-line angling equipment, and electrofishing equipment) and anesthetized; (c) sampled for biological information and tissue samples, (d) PIT-tagged or tagged with radio transmitters or other identifiers, (e) and released. Some fish would die as a result of the research activities though the permit would include salvage and rescue operations as part of the allotted take (i.e., during some of the activities, listed fish would be collected and transported downriver to improve their survival). In addition, the IDFG is asking to lethally take a small number of juvenile SR sockeye and spring/summer chinook salmon during some of the research.

The research has many purposes and would benefit listed SR salmon in different ways. In general, the purpose of the research is to determine the distribution, abundance, and productivity of anadromous and resident fish stocks; measure the efficacy of harvest management strategies and the impact of proposed or existing habitat alteration projects; and monitor natural production levels, salmonid health, and the effectiveness of supplementation efforts. The research would benefit listed salmon by helping resource managers tailor land-altering activities (e.g., timber harvest, road building) to the needs of the fish; set harvest regimes so that they have minimal impacts on listed populations; prioritize projects in a way that gives maximum benefit to listed species; and design strategies and activities to help recover them.

Permit 1134

The Columbia River Inter Tribal Fish Commission (CRITFC) is requesting a 5–year permit covering five study projects that, among them, would annually take adult and juvenile threatened SR fall chinook salmon; adult and juvenile threatened SR spring/summer chinook salmon (natural and artificially propagated); and adult and juvenile threatened SR steelhead in the Snake River basin. The original permit was in place for 5 years (63 FR 30199) with one amendment (67 FR 43909); it expired on December 31, 2002. Over the years, there have been some changes in the research and they are reflected in this application (e.g., the aforementioned amendment and some reallocation of research activities and their associated

take to other permits), nonetheless, the projects proposed are largely continuations of ongoing research. They are: Project 1 Adult Spring/summer and Fall Chinook Salmon and Summer Steelhead Ground and Aerial Spawning Ground Surveys; Project 2 Cryopreservation of Spring/summer Chinook Salmon and Summer Steelhead Gametes; Project 3 Adult Chinook Salmon Abundance Monitoring Using Video Weirs, Acoustic Imaging, and PIT tag Detectors in the South Fork Salmon River; Project 4 Snorkel, Seine, Minnow Traps, and Electrofishing Surveys and Collection of Juvenile Chinook Salmon and Steelhead; and Project 5 Juvenile Anadromous Salmonid Emigration Studies Using Rotary Screw Traps. Under these projects, listed adult and juvenile salmon would be variously (a) observed/harassed during fish population and production monitoring surveys; (b) captured (using seines, trawls, traps, hook-and-line angling equipment, and electrofishing equipment) and anesthetized; (c) sampled for biological information and tissue samples, (d) PIT-tagged or tagged with other identifiers, (e) and released. The CRITFC does not intend to kill any of the fish being captured, but a small percentage may die as a result of the research activities.

The research has many purposes and would benefit listed salmon and steelhead in different ways. In general, the studies are part of ongoing efforts to monitor the status of listed species in the Snake River basin and to use that data to inform decisions about land- and fisheries management actions and to help prioritize and plan recovery measures for the listed species. The studies would continue to benefit listed species by generating population abundance estimates, allowing comparisons to be made between naturally reproducing populations and those being supplemented with hatchery fish, and helping preserve listed salmon and steelhead genetic diversity.

Permit 1152

The Oregon Department of Fish and Wildlife (ODFW) is requesting a 5–year permit covering six projects that, among them, would annually take juvenile and adult threatened SR spring/summer chinook salmon (natural and artificially propagated) and adult and juvenile threatened SR steelhead in Northeast Oregon. The original permit was in place for 5 years (63 FR 49336) with one modification (67 FR 34909); it expired on December 31, 2002. Over the years, there have been some changes in the research (e.g., the aforementioned modification) and they are reflected in this application, nonetheless, the projects proposed are largely continuations of ongoing research. They are: Project 1 Northeast Oregon Spring Chinook Salmon Spawning Ground Surveys; Project 2 Spring Chinook Salmon and Steelhead Life History in the Grande Ronde River Basin; Project 3 Residual hatchery Steelhead Monitoring in Northeast Oregon; Project 4 Passage and Irrigation Screening; Project 5 Bull Trout Migratory patterns, Population Structure, and Abundance in the Blue Mountains Province (does not target listed species but would indirectly take them); and Project 6 Fish Distribution and Abundance Monitoring in Northeast Oregon. Under these tasks, listed adult and juvenile salmon would be variously (a) observed/harassed during fish population and production monitoring surveys; (b) captured (using seines, trawls, traps, hook-and-line angling equipment, and electrofishing equipment) and anesthetized; (c) sampled for biological information and tissue samples, (d) PIT-tagged or tagged with radio transmitters or other identifiers, (e) and released. The ODFW does not intend to kill any of the fish being captured, but a small percentage may die as a result of the research activities.

The research has many purposes and would benefit listed salmon and steelhead in different ways. In general, the purpose of the proposed research is to gather information on the natural production, distribution, survival, resource and habitat use, and genetic and life history characteristics of listed chinook salmon and steelhead in Northeast Oregon. The research activities would provide ongoing benefits to listed salmon and steelhead by helping resource managers (a) guide recovery actions, (b) prioritize habitat protection and restoration projects, (c) monitor ongoing management activities, (d) evaluate supplementation efforts, and (d) provide effective screening on water diversions that might otherwise entrain, strand, and kill listed fish.

Permit 1290–Modification 1

The Northwest Fisheries Science Center (NWFSC), NMFS in Seattle, WA is requesting a modification to permit 1290 that would allow it to increase the number of fish taken in its research. Under the modification, the NWFSC would increase its annual take of juvenile threatened SR spring/summer chinook salmon (natural and artificially propagated); threatened SR fall chinook salmon; endangered UCR chinook salmon (natural and artificially propagated); threatened LCR chinook salmon; endangered UCR steelhead (natural and artificially propagated); and threatened MCR steelhead during the course of research being conducted in the Columbia River estuary. The NWFSC proposes to capture, handle, and release listed salmonids, and while most of the fish would be unharmed, some would die during the course of the research and a small number of them would be intentionally killed. Purse seines or beach seines would be the primary capture method. Captured fish would be anesthetized, identified, and measured.

The purpose of the research is to evaluate the importance of the Columbia River estuary to baitfish populations and salmonid marine survival, and the role of disease as a factor affecting survival of juvenile salmonids in the estuarine and marine environment. The research would benefit listed salmonids by contributing information on the extent to which baitfish populations and diseases affect the growth and survival of juvenile salmonids in the estuarine and early ocean environments.

Permit 1291 Modification 1

The United States Geological Survey (USGS) is requesting a modification to Permit 1291 that would allow it to use McNary Dam on the Columbia River as an alternate collection point for some of the fish used in their research. Under the modification, the USGS would annually take juvenile threatened SR spring/summer chinook salmon (natural and artificially propagated); threatened SR fall chinook salmon, endangered UCR chinook salmon (natural and artificially propagated); threatened LCR chinook salmon; threatened UWR chinook salmon; threatened LCR steelhead; threatened MCR steelhead; endangered UCR steelhead (natural and artificially propagated); threatened SR steelhead; and endangered SR sockeye salmon at up to three dam sites on the Columbia River. Under the modification, the listed juvenile fish would be either (1) captured by Smolt Monitoring Program (SMP) personnel at John Day Dam (and, if necessary at Bonneville and McNary Dams) handled, and released or (2) captured by SMP personnel and given to USGS personnel and implanted with radio transmitters, transported, held for as long as 24 hours, released, and tracked electronically. The USGS requests that SMP personnel be allowed to act as agents of the USGS under the proposed permit. The USGS does not intend to kill any of the fish being captured, but a small percentage may die as a result of the research activities.

The purpose of the research is to monitor (using radio telemetry) juvenile fish movement, distribution, behavior, and survival in the Columbia River. The research would benefit listed salmonids by providing information on spill effectiveness, forebay residence times, and guidance efficiency under various flow regimes that would allow Federal resource managers to adjust bypass/collection structures and thereby optimize downriver migrant survival at the hydropower projects.

Permit 1322 Modification 2

The NWFSC is requesting that NMFS modify Permit 1322 to increase the annual number of listed fish taken in its research. Under the modification, the NWFSC would increase its annual take of juvenile threatened SR spring/summer chinook salmon (natural and artificially propagated); threatened SR fall chinook salmon; endangered UCR chinook salmon (natural and artificially propagated); threatened LCR chinook salmon, threatened UWR chinook salmon, and threatened CR chum salmon while conducting research in the Columbia River estuary. The NWFSC proposes to capture, handle, and release listed salmonids, and while most of the fish would be unharmed, some would die during the course of the research and a small number of them would be intentionally killed. Purse seines, trap nets, and beach seines would be used to capture the fish. Captured fish would be anesthetized, identified, sampled for tissues, and measured. Some fish would be sacrificed to confirm species identification, catch composition, food habits, and timing of estuarine entry. The NWFSC is also requesting an increase in the number of fish that may unintentionally be killed during the research.

The purposes of the research are to (1) determine the presence and abundance of fall and spring chinook salmon, coho salmon, and chum salmon in the estuary and Lower Columbia River; (2) determine the relationship between juvenile salmon and Lower Columbia River estuarine habitat; and (3) obtain information about flow change, sediment input, and habitat availability for the development of a numerical model. The research would benefit listed fish by serving as a basis for estuarine restoration and preservation plans. The NWFSC requests authorization to transfer fish tissue samples to the University of Washington, College of Ocean and Fisheries, School of Fisheries and Aquatic Sciences; Oregon State University, Hatfield Marine Science Center; and Washington Department of Fish and Wildlife.

Permit 1376 Modification 1

The University of Washington (UW) is requesting that NMFS modify Permit 1376 to increase the number of threatened, juvenile and adult natural PS chinook salmon they can take annually during research conducted in Lakes Sammamish and Washington in Washington State. Permit 1376 was originally issued on July 31, 2002 (67 FR 17970). It authorized the UW to take threatened, juvenile natural PS chinook salmon in a study designed to illuminate food web interactions, identify sources of mortality, and determine the energetic requirements to sustain fish and zooplankton communities in each lake. The UW proposes to capture (using gillnets, trawls, hook-and-line, trot lines, minnow traps, beach seines, and backpack electrofishing equipment), anesthetize, handle, measure, weigh, examine the stomach contents using non-lethal evacuation, and release juvenile PS chinook salmon. The UW does not intend to kill any of the fish being captured, but a small number would die as a result of the research activities.

The study would help researchers identify and quantify factors limiting juvenile salmon (and other species') survival and growth. The increased take levels would help the UW gain more information on the prevalence and role of chinook salmon residualizing in this unique, lake-dominated watershed.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decision will not be made until after the end of the 30 day comment period. NMFS will publish notice of its final actions in the **Federal Register**.

Dated: March 28, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–7967 Filed 4–1–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092898B]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application to modify an existing scientific research/enhancement permit (1097) and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for a permit modification from Cressey and Associates in El Cerrito, CA (1097). The modified permit would affect two Evolutionarily Significant Units (ESUs) of salmonids identified in the **SUPPLEMENTARY INFORMATION** section of this document. This document serves to notify the public of the availability of the permit modification application for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the permit application must be received no later than 5 p.m. Daylight Savings Time on May 2, 2003.

ADDRESSES: Written comments on the modification request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment: For permit 1097: Daniel Logan, Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404 6528 (ph: 707 575 6053, fax: 707 578 3435). Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 3226 (301 713 1401).

FOR FURTHER INFORMATION CONTACT: Daniel Logan at phone number 707–575–6053, or e-mail: *dan.logan@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531 1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NMFS. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the following two threatened salmonid ESUs: threatened Central California Coast coho salmon *O. kisutch* and threatened Central California Coast steelhead *O. mykiss*.

Modification Request Received

Cressey and Associates requests a modification to permit 1097 for takes of juvenile ESA-listed coho salmon and steelhead associated with studies monitoring the ecology of salmonids in Austin Creek, a tributary of the Russian River in Sonoma County, CA. Cressey and Associates has proposed using electrofishing and snorkel surveys. Presently, permit 1097 authorizes take of adult and juvenile Central California Coast coho salmon, Southern Oregon/Northern California Coasts coho salmon, and Southern California steelhead associated with various scientific research projects in California. Without modification, permit 1097 expires June 30, 2003. This requested modification would add authorization for research activities in the Russian River watershed and extend the expiration of permit 1097 until June 30, 2008.

Dated: March 28, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–7968 Filed 4–1–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032803A]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comment.

SUMMARY: The Puget Sound Treaty Tribes and the Washington Department of Fish and Wildlife submitted to NMFS, pursuant to the protective regulations promulgated for Puget Sound chinook salmon under the Endangered Species Act (ESA), a jointly developed Resource Management Plan (RMP). The RMP specifies the future management of commercial, recreational and tribal salmon fisheries potentially affecting listed Puget Sound chinook salmon from May 1, 2003, through April 30, 2004. This document serves to notify the public of the availability for comment of the proposed evaluation of the Secretary of Commerce (Secretary) as to how the RMP addresses the criteria in the ESA.

DATES: Written comments on the Secretary's proposed evaluation must be received at the appropriate address or fax number (see ADDRESSES) no later than 5 p.m. Pacific Daylight Time on April 17, 2003.

ADDRESSES: Written comments and requests for copies of the proposed evaluation should be addressed to Keith Schultz, Sustainable Fisheries Division, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115–0070. Comments may also be sent via fax to 206/526–6736. The document is also available on the internet at *http://www.nwr.noaa.gov/*. Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: Susan Bishop, Puget Sound Team Leader, at phone number: 206/526–4587, or e-mail: *susan.bishop@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Puget Sound chinook salmon (*Oncorhynchus tshawytscha*) Evolutionarily Significant Unit (ESU).

Background

The Puget Sound Treaty Tribes and the Washington Department of Fish and Wildlife have provided to NMFS a jointly developed Resource Management Plan for Puget Sound chinook salmon. The RMP encompasses fisheries within the area defined by the Puget Sound Chinook Salmon ESU, as well as the western Strait of Juan de Fuca, which is not within the ESU. Harvest objectives specified in the RMP account for fisheries-related mortality throughout the migratory range of Puget Sound chinook salmon from Oregon and Washington to Southeast Alaska. The RMP also includes implementation, monitoring and evaluation procedures designed to ensure fisheries are consistent with these objectives.

As required by 50 CFR 223.203(b)(6) of the ESA 4(d) rule (50 CFR 223.203), the Secretary must determine pursuant to 50 CFR 223.209 and pursuant to the government-to-government processes therein whether the RMP for Puget Sound chinook salmon would appreciably reduce the likelihood of survival and recovery of the Puget Sound chinook salmon and other affected threatened ESUs. The Secretary must consider how the RMP addresses the criteria in 50 CFR 223.203(b)(4) in making that determination.

Authority

Under section 4(d) of the ESA, 16 U.S.C. 1533(d), the Secretary is required to adopt such regulations as he deems necessary and advisable for the conservation of the species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids or are governed by a program that adequately limits impacts on listed salmonids, and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to actions undertaken in compliance with a resource management plan developed jointly within the continuing jurisdiction of United States v. Washington by the Puget Sound Treaty Tribes and the State of Washington (joint plan) and determined by the Secretary to be in accordance with the provisions of 50 CFR 223.203(b)(6).

A condensed 15–day written comment period on the Secretary's proposed evaluation is necessary given the short time between the submission of the Resource Management Plan to NMFS on February 21, 2003, and the start of the fishing season on May 1, 2003.

Dated: March 28, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–7965 Filed 4–1–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030403A]

Marine Mammals; File No. 984–1587

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Terrie Williams, Long Marine Lab, Institute of Marine Sciences, University of California at Santa Cruz, 100 Shaffer Road, Santa Cruz, CA 95060, has requested an amendment to scientific research Permit No. 984–1587–02.

DATES: Written or telefaxed comments must be received on or before May 2, 2003.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 984–1587–02, issued on May 10, 2002 (67 FR 35102), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 984–1587–02 authorizes the permit holder to examine the physiological responses of two adult male dolphins (*Tursiops truncatus*) and three adult female California sea lions (*Zalophus californionus*) during swimming and diving. Testing involves measuring locomotor, thermal, and maintenance costs using voluntary behaviors through training at Long Marine Laboratory. Types of take for dolphins and sea lions include open flow respirometry, swimming, and voluntary breath holding. For the female sea lions, mating with an adult male on temporary loan, ultrasound, blood, milk, saliva, fecal, and urine sampling is also authorized to monitor pregnancy and test the hypothesis that physiological adaptations for the marine environment result in elevated energetic costs in otariids compared to terrestrial mammals.

This amendment request is to supplement the current research program on otariid reproductive energetics with two pregnant adult female California sea lions, which are to be transferred to the pinniped facility at Long Marine Laboratory, University of California at Santa Cruz for short-term holding (up to 16 months). These additions will allow the Permit Holder to fulfill the intent of the original permit, which is to evaluate the energetics of pregnant and lactating sea lions. These steps are necessary due to the non-pregnant status of the three sea lions identified in the original permit. All animals will follow the research protocols of the original permit. Additional research requested includes 1) the measurement of assimilation efficiency by dietary manganese, and 2) inclusion of the offspring in non-intrusive metabolic trials.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 20, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–7961 Filed 4–1–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030603A]

Endangered Species; File No. 1375

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Thomas J. Kwak, U.S. Geological Survey, North Carolina Cooperative Fish and Wildlife Research Unit, Box 7617, 201 David Clark Labs, North Carolina State University, Raleigh, NC 27695–7617 has been issued a permit to take shortnose sturgeon, *Acipenser brevirostrum*, for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and,

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727) 570–5301; fax (727) 570–5320.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Gene Nitta, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On April 18, 2002, notice was published in the **Federal Register** (67 FR 19166) that a request for a scientific research permit to take shortnose sturgeon, had been submitted by the above-named Dr. Thomas J. Kwak. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Restoring the shornose sturgeon population in the Roanoke/Albemarle River system in North Carolina is being considered; however, habitat suitability with respect to water quality is not known. This research study will deploy 1,000 hatchery-reared juvenile shortnose sturgeon in cages at 10 test sites within the Roanoke/Albemarle River system for 28 days. The fish will then be euthanized and their tissue analyzed for contaminants. The results of this study will provide needed information to determine if water quality is a limiting factor of the ecological success of shortnose sturgeon in this river system.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 24, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–7962 Filed 4–1–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032703H]

Endangered Species; File No. 1190

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for modification.

SUMMARY: Notice is hereby given that NMFS Southwest Region, 501 West Ocean Blvd., Long Beach, CA 90802–4213, has requested a modification to scientific research Permit No. 1190.

DATES: Written or telefaxed comments must be received on or before May 2, 2003.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Rm. 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941;

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Ruth Johnson, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 1190, issued on March 8, 1999, (64 FR 14432) and subsequently modified on September 21, 2000, (65 FR 58514) and February 20, 2001, (66 FR 14134), is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1190 authorizes the permit holder to document and evaluate the incidental take of sea turtles by the Hawaiian pelagic longline fishery. Trained observers placed on fishery vessels are authorized to examine, measure, weigh, biopsy sample, and tag up to 40 green (*Chelonia mydas*), 100 leatherback (*Dermochelys coriacea*), 600 loggerhead (*Caretta caretta*), 40 hawksbill (*Eretmochelys imbricata*), and 100 olive ridley (*Lepidochelys olivacea*) sea turtles annually. Of the sampled turtles, 50 hard-shelled turtles may have a transmitter attached. The incidental capture of the sea turtles by the fishery is covered by an incidental take statement in a biological opinion on the fishery, not by the scientific research permit. Permit No. 1190 expires on March 31, 2004. The permit holder requests authorization to expand observer programs in order to monitor all pelagic longline fisheries governed by Fisheries Management Plan for Pelagic Fisheries of the Western Pacific. The modification would allow observers to sample sea turtles in the manner described above from fisheries beyond that in Hawaiian waters, such as those in American Samoa, the Territory of Guam, and the Commonwealth of the Northern Marianas Islands. The permit holder also requests authority to import sea turtle samples as necessary. There is no change in the number of sea turtles that will be sampled annually or the type of sampling, only the geographic region.

Dated: March 27, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–7963 Filed 4–1–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031203B]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for scientific research permits (1414 and 1416) and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for scientific research from East Bay Municipal Utility District (EBMUD) in Lodi, CA (1414) and Fishery Foundation of California (Fishery Foundation) in Fair Oaks, CA (1416). These permits would affect the Central Valley steelhead Evolutionarily Significant Unit (ESU) as identified in the **SUPPLEMENTARY INFORMATION** section. This document serves to notify the public of the availability of the permit applications for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the permit applications must be received no later than 5 p.m. Pacific Standard Time on May 2, 2003.

ADDRESSES: Written comments on the permit application should be sent to the appropriate office. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review, by appointment, for permits 1414 and 1416: Protected Resources Division, NMFS, 650 Capitol Mall, Suite 8–300, Sacramento, CA 95814 (ph: 916–930–3600, fax: 916–930–3629). Documents

may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 3226 (301 713 1401).

FOR FURTHER INFORMATION CONTACT: Rosalie del Rosario at phone number 916–930–3600, or e-mail: *Rosalie.delRosario@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531 1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the federally-listed threatened ESU Central Valley steelhead (*Oncorhynchus mykiss*).

New Applications Received

EBMUD requests a five-year permit to conduct monitoring and research of anadromous (Central Valley steelhead) and resident fishes in the Lower Mokelumne River. The goals of the project include measuring the success of the Lower Mokelumne River Restoration Program and determining if the modifications of the Lower Mokelumne River Project are appropriate for conserving fish and wildlife resources in the Lower Mokelumne River.

Fishery Foundation requests a one-year permit to monitor Central Valley steelhead in the Lower Calaveras River to determine how many adults reach spawning grounds above and how many juveniles migrate downstream of Bellota Weir.

Dated: March 28, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–7964 Filed 4–1–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Cancellation of Request for Public Comments Due to the Withdrawal of Commercial Availability Petition under the African Growth and Opportunity Act (AGOA)

March 28, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Cancellation of the request for public comments on the commercial availability petition from Crystal Apparel Limited of Hong Kong and Sinotex Mauritius Limited in Mauritius regarding certain light-and medium-weight dyed warp pile cotton velvet, for use in apparel articles.

SUMMARY: On March 28, 2003, the Chairman of CITA was notified by Sandler, Travis and Rosenberg, counsel for Crystal Apparel Limited of Hong Kong and Sinotex Mauritius Limited in Mauritius, of the withdrawal of the commercial availability request concerning certain light-and medium-weight dyed warp pile cotton velvet, for use in apparel articles, due to technical errors in the request. Consequently, the notice published in the **Federal Register** on March 28, 2003 (68 FR 15154) is cancelled.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–8146 Filed 3–31–03; 2:06 pm]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 2, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: March 27, 2003.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension of a currently approved collection.

Title: Application for State Grants for Improving Teacher Quality.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 11.

Burden Hours: 2200.

Abstract: This application package is essential for States to apply for new awards under the Teacher Quality Enhancement Grants Program's State Grants component.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2230. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and the collection activity requirements should be directed to Joe Schubart at his e-mail address *joe.schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Postsecondary Education

Type of Review: Extension of a currently approved collection.

Title: Teacher Quality Enhancement Grants: A Guide for the Preparation of Partnership Grant Applications for Improving Teacher Education.

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary); businesses or other for-profit; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 275.

Burden Hours: 25800.

Abstract: This application package is essential for Partnerships to apply for new awards under the Teacher Quality Enhancement Grants Program.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2249. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *joe.schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Postsecondary Education

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Application Package for the Jacob K. Javits Fellowship Program (1890–0001) (JS).

Frequency: Annually.

Affected Public: Businesses or other for-profit (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 2000.

Burden Hours: 10000.

Abstract: These instructions and forms provide the U.S. Department of Education the information needed to select fellows for the Javits Program.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2246. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *joe.schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–7859 Filed 4–1–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 2, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate

of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 27, 2003.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: National Assessment of Educational Progress, 2003–2004 Long Term Trend.

Frequency: Other: one-time.

Affected Public: Individuals or household (primary); State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 86487.

Burden Hours: 23240.

Abstract: This clearance request is for the background questions for the National Assessment of Educational Progress Long-Term Trend. These are a series of surveys that have been conducted since 1986. This assessment will be conducted in 2003/2004. Since bridging studies will be required to relate the existing format to the newly adopted format, some questionnaires will still consist of all the existing questions, thus all are being submitted for clearance. In these assessments, students 9, 13 and 17 years of age are assessed.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the Browse Pending Collections link and by clicking on link number 2250. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–7860 Filed 4–1–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice/change of comment period.

SUMMARY: On March 27, 2003, the Department of Education published a 30-day public comment period notice in the **Federal Register** (page 14968, column 3) for the information collection, "Electronic Debit Payment Option for Student Loans". Comments were requested by March 26, 2003. Interested persons are invited to submit comments on or before May 2, 2003. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Joe Schubart at his e-mail address *Joe.Schubart@ed.gov*.

Dated: March 27, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 03–7861 Filed 4–1–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, and/or materials in alternative format) should notify Ms. Hope M. Gray at 202–219–2099 or via e-mail at *hope.gray@ed.gov* no later than Monday, April 14. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES: Tuesday, April 22, 2003, beginning at 9 a.m. and ending at approximately 5 p.m.

ADDRESSES: The Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., the Atrium Ballroom, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202–7582 (202) 219–2099.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act (HEA) of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the Committee has been charged with providing technical expertise with regard to systems of need analysis and application forms, making recommendations that result in the maintenance of access to postsecondary education for low-and middle-income students; conducting a study of institutional lending in the Stafford Student Loan Program; assisting with activities related to the 1992 reauthorization of the Higher Education Act of 1965; conducting a three-year evaluation of the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP) under the Omnibus Budget Reconciliation Act (OBRA) of 1993; and assisting Congress with the 1998 reauthorization of the Higher Education Act.

The congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under title IV of the Higher Education Act. The Committee traditionally approaches its work from a set of fundamental goals; promoting access; ensuring program integrity; integrating delivery across the title IV programs; eliminating or avoiding program complexity; and minimizing burden on students and institutions.

The most important charge of the Advisory Committee is to make recommendations to Congress and the Secretary that will lead to the maintenance and enhancement of access to postsecondary education for low- and middle-income students. In addition to carrying out its ongoing statutory charges, the Committee dedicated itself to articulating the current state of access by developing two reports on the condition of access, Access Denied: Restoring the Nation's Commitment to Equal Educational Opportunity and Empty Promises: The Myth of College Access in America. The Committee will build upon the findings in its access reports and prepare the reauthorization of the Higher Education Act by conducting follow on research that will assist in formulating recommendations to Congress and the Secretary of Education on student financial aid issues.

The proposed agenda includes round table discussion sessions with nationally recognized scholars focusing on (a) key dimensions of the core access/persistence problem and effective solutions, (b) assuring adequate information, financial access, academic preparation, and simple applications, (c) lowering unmet need and assuring both enrollment and persistence, and (d) implications for reauthorization of the HEA. Space is limited and you are encouraged to register early if you plan to attend. You may register through Internet at *ADV.COMSFA@ed.gov or Tracy.Deanna.Jones@ed.gov*. Please include your name, title, affiliation, complete address (including internet and e-mail—if available), and telephone and fax numbers. If you are unable to register electronically, you may mail or fax your registration information to the Advisory Committee staff office at (202) 219–3032. Also, you may contact the Advisory Committee staff at (202) 219–2099. The registration deadline is Wednesday, April 16, 2003.

The Advisory Committee will meet in Washington, DC on Tuesday, April 22, 2003, from 9 a.m. until approximately 5 p.m.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: March 27, 2003.

Dr. Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 03–7941 Filed 4–1–03; 8:45 am]

BILLING CODE 7000–01–M

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for the Title Transfer of Parcel ED–1, Oak Ridge Reservation, Oak Ridge, Tennessee

AGENCY: Oak Ridge Operations, U.S. Department of Energy (DOE).

ACTION: Notice of floodplain statement of findings.

SUMMARY: This is a floodplain statement of findings prepared in accordance with 10 CFR part 1022, Compliance with floodplain/wetlands environmental review requirements. A floodplain assessment was conducted and incorporated in an environmental assessment (EA) addendum that evaluated the potential impacts of transferring title to the developable portions of Parcel ED–1 located on the Oak Ridge Reservation, Roane County, Tennessee. The floodplain assessment describes the possible effects, alternatives, and measures designed to avoid or minimize potential harm to the affected floodplain or its flood storage potential. DOE will endeavor to allow 15 days of public review after publication of the Statement of Findings before implementation of the Proposed Action.

FOR FURTHER INFORMATION CONTACT: Mr. David R. Allen, NEPA Compliance Officer, U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, MS–SE–30–1, Oak Ridge, TN 37831, (865) 576–0411.

For Further Information On General DOE Floodplain/Wetlands Review Requirements, Contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: A Notice of Floodplain and Wetland Involvement was published in the **Federal Register** on June 20, 2002 (67 FR 41970) and a floodplain assessment was incorporated in the EA Addendum. DOE is proposing to transfer title to the developable portions of Parcel ED–1 to Horizon Center LLC for the continued development of an industrial/business park. Parcel ED–1 contains approximately 287 acres of the 100-year floodplain of East Fork Poplar Creek (EFPC). The portion of the EFPC floodplain within Parcel ED–1 is outside of the limits of the existing City of Oak Ridge Flood Insurance Rate Maps. Limited encroachment into the 100-year floodplain, which was covered under a U.S. Corps of Engineers Nationwide Permit (33 CFR part 330), has already occurred during construction activities associated with the initial development of Parcel ED–1 under the lease. No additional adverse direct or indirect impacts to the floodplain are expected except for potential minor encroachments into two small areas of the floodplain in the developable areas. These encroachments would be for construction of a parking area and road and bridge improvements. Alternatives to the proposed action that were considered included no action and mitigation (avoidance and minimization). The proposed action will conform to all applicable floodplain protection standards including regulation by the U.S. Army Corps of Engineers, Tennessee Department of Environment and Conservation, and if required, the Tennessee Valley Authority.

Mitigation of adverse impacts to the floodplain include minimizing the potentially impacted areas to the smallest amount practicable and implementing best management practices, such as sediment controls to reduce or prevent soil erosion and runoff and minimum grading requirements that reduce land disturbance on steep slopes adjacent to the floodplain and stream. The appropriate engineering studies will be completed and the appropriate permits obtained prior to any action in the floodplain. The amount of fill material potentially needed should not adversely impact the floodway or affect flooding conditions. Also, no critical actions, as defined in 10 CFR part 1022 will occur as a result of the proposed action.

Issued in Oak Ridge, Tennessee, on March 24, 2003.

James L. Elmore,

Alternate National Environmental Policy Act Compliance Officer.

[FR Doc. 03–7926 Filed 4–1–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Number DE–PS07–03ID14488]

Advanced Melting or Innovative Casting Processes for Metal Casting

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: The U.S. Department of Energy (DOE), Idaho Operations Office (ID) is seeking applications for advanced melting or innovative casting processes that have the potential to significantly improve energy efficiency in the areas of metal melting and the casting process. DOE is very interested in funding innovative, cost effective ideas that will reduce energy consumption. Crosscutting ideas from other industries or ideas that have crosscutting applications are also strongly encouraged. Advanced aluminum remelting furnace concepts are also of interest in this solicitation. Proposals dealing with product development R&D will not be funded. Proposals must address energy efficiencies in metal casting manufacturing not in the end-use applications.

DATES: The issuance date of Solicitation Number DE–PS07–03ID14488 will be on or about March 31, 2003. The deadline for receipt of applications will be approximately on May 30, 2003.

ADDRESSES: The solicitation in its full text will be available on the Internet at the following URL address: *http://e-center.doe.gov.* The Industry Interactive Procurement System (IIPS) provides the medium for disseminating solicitations, receiving financial assistance applications and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. An IIPS "User Guide for Contractors" can be obtained on the IIPS Homepage and then clicking on the "Help" button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov*

FOR FURTHER INFORMATION CONTACT: Seb Klein, Contract Specialist, *kleinsm@id.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE anticipates making 1 to 4 cooperative agreement(s) with duration of 3 years or less for these efforts. A minimum 50% non-federal cost share is required for research and development projects over the life of the project. First year cost share can be as low as 30% if subsequent years have sufficient cost share so that non-federal share totals at least 50%. However, it is important to note that in the event a multi-year project is not continued, then the awardee will be required to increase the cost share to meet the 50% requirement. The statutory authority for this program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on March 26, 2003.

Cheryl A. Thompson,

Acting Director, Procurement Services Division.

[FR Doc. 03–7925 Filed 4–1–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed Form EIA–902, "Annual Geothermal Heat Pump Manufacturers Survey."

DATES: Comments must be filed by June 2, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to James Holihan. To ensure receipt of the comments by the due date, submission by FAX to (202) 287–1946 or e-mail to *JHolihan@eia.doe.gov* is recommended. The mailing address is Office of Coal, Nuclear, Electric, and Alternate Fuels, EI–52, Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0650. Alternatively, Mr. Holihan may be contacted by telephone at (202) 287–1735.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Mr. Holihan at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

The Form EIA–902 collects information on shipments of geothermal heat pumps. The survey tracks shipments of the following three main types of geothermal heat pumps, as classified by the Air Conditioning & Refrigeration Institute (ARI), and the much smaller shipped volume of non-ARI rated systems. A brief description of the ARI-classified system is as follows:

ARI 320—Water-Source Heat Pumps (WSHP)—These systems are installed in commercial buildings, where a central chiller or boiler supplies chilled or heated water, respectively, to heat pumps installed in series. The heat pumps reject building heat to chilled water during the cooling season and, during the heating season, take heat from boiler water.

ARI 325—Ground Water-Source Heat Pumps (GWHP)—The GWHP is an open-Loop system in which ground water is drawn from an aquifer or other natural body of water into piping. At the heat pump, heat is drawn from or dumped to the water through a heat exchanger to the refrigerant in the heat pump. The heated or cooled water returns to its source.

ARI 330—Ground Source Closed-Loop Heat Pumps (GSHP)—A water or water/glycol (antifreeze) solution flows continuously through a closed loop of pipe buried underground. Ground heat is absorbed into or rejected from the solution flowing in the closed loop. At the heat pump, heat is drawn from or dumped to the closed loop solution via heat transfer through a heat exchanger, which passes heat to or removes heat from the refrigerant in the heat pump. Depending on the type of ground and land area, systems can either be installed horizontally or vertically.

Data are collected by model type, heat pump capacity, region of destination, customer type, and economic sector. Respondents are all U.S. geothermal heat pump manufacturers.

II. Current Actions

EIA will be requesting a three-year extension of Office of Management and Budget approval to continue using Form EIA–902 through 2003.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average 4 hours per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(b)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

Issued in Washington, DC, on March 26, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–7924 Filed 4–1–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–069]

ANR Pipeline Company; Notice of Negotiated Rate Filing

March 26, 2003.

Take notice that on March 20, 2003, ANR Pipeline Company (ANR), tendered for filing and approval an amendment to Rate Schedule ETS service agreement number 107887 between ANR and a subsidiary of We Energies, Wisconsin Electric Power Company (WEPCO).

ANR states that this amendment effectuates a change to the Primary Receipt and Delivery Points for the initial summer period (April 1, 2003—October 31, 2003) and a change to the Primary Delivery Point for the initial winter period (November 1, 2003—March 31, 2003) to accommodate the fact that the Guardian interconnect point is not yet in service. ANR requests that the Commission approve the amendment to go into effect on April 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 1, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7878 Filed 4–1–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–417–001]

Colorado Interstate Gas Company; Notice of Compliance Filing

March 26, 2003.

Take notice that on March 21, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part its FERC Gas Tariff, the following tariff sheets, with an effective date of March 1, 2003:

First Revised Volume No. 1
- Twenty-Third Revised Sheet No. 10
- Ninth Revised Sheet No. 12
- Sixth Revised Sheet No. 225
- Third Revised Sheet No. 378
- Third Revised Sheet No. 379

Original Volume No. 2
- Ninth Revised Sheet No. 1
- Second Revised Sheet No. 68

CIG states these tariff sheets are being filed in compliance with the Commission's December 26, 2002 Order to implement the pro forma tariff provisions contained in CIG's July 1,

2002 gathering abandonment proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7862 Filed 4–1–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–161–030]

Columbia Gas Transmission Corporation; Notice of Filing

March 26, 2003.

Take notice that on March 20, 2003, Columbia Gas Transmission Corporation (Columbia Gas) filed a report on the flow-back to customers of funds received from insurance carriers for environmental costs attributable to Columbia Gas' Docket No. RP91–161 settlement period.

Columbia Gas states that it allocated such recoveries among customers based on their fixed cost responsibility for services on the Columbia Gas system during the period December 1, 1991 through January 31, 1996, the period of the Docket No. RP91–161 settlement. Columbia Gas states further that it provided a copy of the report to all customers who received a share of the environmental insurance recoveries and all state commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 2, 3003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7876 Filed 4–1–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–051]

Columbia Gas Transmission Corporation; Notice of Filing

March 26, 2003.

Take notice that on March 20, 2003, Columbia Gas Transmission Corporation (Columbia Gas) filed a report on the flow-back to customers of funds received from insurance carriers for environmental costs attributable to Columbia Gas' Docket No. RP95–408 settlement period.

Columbia Gas states that it allocated such recoveries among customers based on terms of the Docket No. RP95–408 Phase II Settlement which state that customer allocations shall be based on customers' actual contributions to Remediation Program collections for the most recent February 1—January 31 period.

Columbia Gas states further that it provided a copy of the report to all customers who received a share of the environmental insurance recoveries and all state commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7877 Filed 4–1–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–160–030]

Columbia Gulf Transmission Company; Notice of Filing

March 26, 2003.

Take notice that on March 20, 2003, Columbia Gulf Transmission Company (Columbia Gulf) filed a report on the flow-back to customers of funds received from insurance carriers for environmental costs pursuant to Article I(A)(2)(d) of its Docket No. RP91–160 settlement.

Columbia Gulf states that it allocated such recoveries among customers based on their fixed cost responsibility for services rendered on the Columbia Gulf system during the period December 1, 199,1 through October 31, 1994, the period of the Docket No. RP91–160 settlement.

Columbia Gulf states further that it provided a copy of the report to all customers who received a share of the environmental insurance recoveries and all state commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7875 Filed 4–1–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–310–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 26, 2003.

Take notice that on March 21, 2003, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective April 1, 2003:

Fifty-Ninth Revised Sheet No. 8A
Fifty-First Revised Sheet No. 8A.01
Fifty-First Revised Sheet No. 8A.02
Ninth Revised Sheet No. 8A.04
Fifty-Fourth Revised Sheet No. 8B
Forty-Seventh Revised Sheet No. 8B.01
Fourth Revised Sheet No. 8B.02

FGT states that on February 28, 2003, in Docket No. RP03–288–000, FGT filed to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 3.49 % to become effective for the six-month Summer Period beginning April 1, 2003. FGT states that in the instant filing, it is filing a flex adjustment of (0.24%) to be effective April 1, 2003, which, when combined with the Base FRCP of 3.49% results in an Effective Fuel Reimbursement Charge Percentage of 3.25%. FGT states that this filing is necessary because it is currently experiencing lower fuel usage than will be recovered by the Base FRCP of 3.49%. FGT explains that decreasing the FRCP will reduce FGT's overrecovery of fuel and reduce the Unit Fuel Surcharge in the next Summer Period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7874 Filed 4–1–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–377–004]

Northern Border Pipeline Company; Notice of Negotiated Rates

March 26, 2003.

Take notice that on March 24, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 99A, to become effective April 1, 2003.

Northern Border states that the purpose of this filing is to implement a negotiated rate agreement between Northern Border Pipeline Company and Nicor Gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7870 Filed 4–1–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–398–003 and RP01–34–005]

Overthrust Pipeline Company; Notice of Tariff Filing

March 26, 2003.

Take notice that on March 24, 2003, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A , the following tariff sheets, with an effective date of April 1, 2003:

Sub. Fourth Revised Sheet No. 58
Sub. Fourth Revised Sheet No. 78E
Sub. First Revised Sheet No. 78I
Substitute Original Sheet No. 78J
Substitute Original Sheet No. 78K

Overthrust states that the filing is being made in compliance with the Commission's Order on Rehearing and Compliance Filing issued March 4, 2003 (March Order), in Docket Nos. RP00–398–001, RP00–398–002, RP01–34–003 and RP01–34–041.

In the March Order, the Commission granted in part and denied in part Overthrust's request for rehearing and granted the motion for an extension of time, and accepted all but two tariff sheets effective April 1, 2003, with conditions.

The Commission, in the March Order, directed Overthrust to make revisions to its tariff sheets and file revised tariff sheets within 20 days of the date of issuance of the order with an effective date of April 1, 2003. This filing is tendered to comply with the Commission's March Order.

Overthrust states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7869 Filed 4–1–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–13–007]

Portland Natural Gas Transmission System; Notice of Compliance Filing

March 26, 2003.

Take notice that on March 21, 2003, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Alternate Fourth Revised Sheet No. 100; and Alternate Second Revised Sheet No. 504, to become effective on March 1, 2003.

PNGTS states that the purpose of this filing is solely to correct the pagination on the referenced tariff sheets, in compliance with the Commission's March 13, 2003 Order in the above-captioned docket.

PNGTS states that copies of this filing are being served on all jurisdictional customers, applicable state commissions, and participants in Docket No. RP02–13–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7871 Filed 4–1–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–237–001]

Transwestern Pipeline Company; Notice of Compliance Filing

March 26, 2003.

Take notice that on March 24, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective February 21, 2003:

Substitute Twentieth Revised Sheet No. 5B.05
Substitute First Revised Sheet No. 5B.13
Substitute Fourth Revised Sheet No. 5C

Transwestern states that on February 20, 2003, the Commission issued an Order Accepting Tariff Sheets Subject to Conditions in Docket No. RP03–237–000. In the Order, the Commission required Transwestern to make changes to the tariff sheets as part of the Commission approval. Transwestern states that the instant filing is made in compliance with the Commission order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7872 Filed 4–1–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–307–001]

Transwestern Pipeline Company; Notice of Compliance Filing

March 26, 2003.

Take notice that on March 21, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifth Revised Sheet No. 18, to become effective April 14, 2003.

Transwestern states that the instant filing is to correct a pagination error in a tariff sheet filed on March 18, 2003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7873 Filed 4–1–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.CP03–33–000]

Wyckoff Gas Storage Company, LLC; Notice of Site Visit

March 26, 2003.

On April 15 through April 17, 2003, the Office of Energy Projects staff and representatives of Wyckoff Gas Storage Company, LLC (Wyckoff) will conduct a site visit of the Wyckoff Gas Storage Project in Steuben County, New York.

All interested parties may attend. Those planning to attend must provide their own transportation. Interested parties can meet staff on April 15, in the parking lot at the Radisson Hotel, 125 Denison Parkway East, Corning, New York. Staff will start on April 15 at about 1 p.m. Also, Mr. Edmond Knolle of Wyckoff can be contacted at telephone No. (713) 961–3204.

For further information, please contact the Office of External Affairs at (202) 502–8004.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7863 Filed 4–1–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–69–000, et al.]

FPL Energy Seabrook, LLC, et al.; Electric Rate and Corporate Filings

March 25, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. FPL Energy Seabrook, LLC and FPL Energy New England Transmission, LLC

[Docket No. EC03–69–000]

Take notice that on March 21, 2003, FPL Energy Seabrook, LLC and FPL Energy New England Transmission, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to section 203 of the Federal Power Act a request for authorization to engage in an intra-corporate transfer of jurisdictional facilities whereby FPL Energy Seabrook, LLC will transfer its undivided interest in the interconnecting transmission facilities for Seabrook Station to its direct, wholly-owned subsidiary FPL Energy New England Transmission, LLC.

Comment Date: April 11, 2003.

2. Almagre Power Holdings, LLC, Mesquite Colorado HoldCo, L.L.C., Mesquite Investors, L.L.C.

[Docket No. EC03–70–000]

Take notice that on March 21, 2003, Almagre Power Holdings, LLC (Almagre), Mesquite Colorado HoldCo, L.L.C. (Mesquite Colorado) and Mesquite Investors, L.L.C. (Mesquite Investors) (jointly, Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization to effectuate a transfer of all of Mesquite Colorado's membership interests in Front Range Power Company, L.L.C. (Front Range) from Mesquite Colorado to Almagre. Applicants also requested expedited consideration of the Application and privileged treatment for certain exhibits pursuant to 18 CFR 33.9 and 388.112.

Comment Date: April 11, 2003.

3. Jamaica Bay Peaking Facility, LLC

[Docket No. EG03–49–000]

Take notice that on March 20, 2003 Jamaica Bay Peaking Facility, LLC (the Applicant), with its principal offices at 700 Universe Boulevard, Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission (Commission) an application for a determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant states that it is a Delaware corporation and is the owner and operator of a nominal 54 megawatt dual fuel (oil and gas) fired simple cycle peak electric generating facility (Facility) to be located in Far Rockaway, Queens County, New York. The Facility will sell energy, capacity, and ancillary services into the wholesale generation market.

Comment Date: April 15, 2003.

4. FPL Energy New England Transmission, LLC

[Docket No. EG03–50–000]

Take notice that on March 21, 2003, FPL Energy New England Transmission, LLC, c/o FPL Energy, LLC, 700 Universe Boulevard, Juno Beach, FL 33408, filed with the Federal Energy Regulatory

Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The applicant states that it is a limited liability company that will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the United States. The applicant proposes to own an undivided interest in the interconnecting transmission facilities of the Seabrook Nuclear Generating Station, an undivided interest of which is owned by the applicant's parent, FPL Energy Seabrook, LLC.

Comment Date: April 15, 2003.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1420–003]

Take notice that on March 21, 2003, Oklahoma Gas and Electric Company (OGE) filed a Supplemental Status Report informing the Commission of recent developments with regard to OGE's efforts to join the Midwest ISO.

OGE states that a copy of the filing has been served on all parties to this proceeding, and on the Arkansas Public Service Commission and the Oklahoma Corporation Commission.

Comment Date: April 11, 2003.

6. ISO New England

[Docket No. ER02–2330–010]

Take notice that on March 20, 2003, ISO New England Inc., submitted a compliance filing providing a status report on the implementation of Standard Market Design in New England.

Comment Date: April 10, 2003.

7. ISO New England Inc.

[Docket No. ER02–2330–011]

Take notice that on March 20, 2003, ISO New England Inc. submitted a compliance report on its consideration of a Federal Energy Regulatory Commission (Commission) proposed scarcity premium proposal in response to the requirements of the Commission's Order dated December 20, 2002.

New England Inc., states that copies of said filing have been served upon all parties to this proceeding, and upon NEPOOL Participants.

Comment Date: April 10, 2003.

8. Northern Indiana Public Service Company

[Docket No. ER03–640–000]

Take notice that on March 21, 2003, Northern Indiana Public Service Company (Northern Indiana) filed a Service Agreement for Network Integration Transmission Service, a Network Operating Agreement, and Services Agreement with the Town of Argos, Indiana (Argos). Northern Indiana has requested an effective date of March 1, 2003.

Northern Indiana states that copies of this filing have been sent to Argos, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment Date: April 11, 2003.

9. Southern Company Services, Inc.

[Docket No. ER03–641–000]

Take notice that on March 21, 2003, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Operating Companies), tendered for Commission review information and replacement tariff sheets concerning the accrual of post-retirement benefits other than pensions as set forth in Statement of Financial Accounting Standard No. 106 by the Financial Accounting Standards Board in agreements and tariffs of the Operating Companies (jointly and individually). The following Commission approved rate schedules are affected:

Alabama Power—RateSchedule No. 145
Georgia Power—RateSchedule No. 803
Georgia Power—RateSchedule Nos. 824, 825 and 826
Georgia Power—RateSchedule Nos. 836, 837, and 838
Gulf Power—RateSchedule No. 82
Gulf Power—RateSchedule No. 84
Mississippi Power—RateSchedule No. 135
SoCos.—RateSchedule No. 15
SoCos.—RateSchedule No. 30
SoCos.—RateSchedule No. 33
SoCos.—RateSchedule No. 47
SoCos.—RateSchedule No. 51
SoCos.—RateSchedule No. 53
SoCos.—RateSchedule No. 59
SoCos.—RateSchedule No. 62
SoCos.—RateSchedule No. 70
SoCos.—RateSchedule No. 76
SoCos.—RateSchedule No. 77
SoCos—RateSchedule No. 93

Comment Date: April 11, 2003.

10. American Electric Power Service Corporation

[Docket No. ER03–642–000]

Take notice that on March 21, 2003, American Electric Power Service Corporation (AEPSC) on its own behalf and on behalf of AEP Texas Central Company (AEPTC), formerly Central Power and Light Company (CPL) submitted for filing to the Federal Energy Regulatory Commission (Commission) an interconnection agreement (Agreement) between CPL and the City of Brownsville, Texas (Brownsville) that includes a Facility Schedule No. 5 that provides for a new point of interconnection located at Brownsville's soon to be completed Palo Alto Substation. AEPSC states that no changes other than the addition of Facility Schedule No. 5 have been made to the interconnection agreement presently on file at the Commission that has been in effect since April 4, 2001. Additionally AEPSC has re-designated the Agreement to be a service agreement under the Open Access Transmission Service Tariff of the American Electric Power System whereby requiring it to cancel the interconnection agreement presently on file at the Commission that is designated as a CPL rate schedule.

AEPSC seeks an effective date of March 17, 2003 for the Agreement and the Notice of Cancellation. AEPSC seeks waiver of the Commission's notice requirements if the Palo Alto Substation is not energized on the expected date in June 2003. AEPSC states that it has served copies of the filing on Brownsville and the Public Utility Commission of Texas.

Comment Date: April 11, 2003.

11. New York Independent System Operator, Inc.

[Docket No.ER03–647–000]

Take notice that on March 21, 2003, the New York Independent System Operator, Inc. (NYISO) filed revisions to its ISO Market Administration and Control Area Services Tariff (the Services Tariff) to implement the "ICAP Demand Curve". The NYISO has requested that the Commission expedite its review of this filing to permit an effective date in less than sixty days. Accordingly, the NYISO has requested an effective date of May 21, 2003, or the date that the Commission issues an Order accepting the filing, whichever is earlier.

The NYISO states it has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff or the Services Tariff and upon the New York State Public Service Commission.

Comment Date: April 11, 2003.

12. ZWHC LLC

[Docket No. QF87–365–006]

Take notice that on March 20, 2003, ZWHC LLC (ZWHC) filed with the Federal Energy Regulatory Commission (Commission) an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing. ZWHC states that the facility is a 18 MW wind energy generating facility in the Tehachapi Mountains, Kern County, California. ZWHC also states that the facility is interconnected with the Southern California Edison Company. ZWHC further states that recertification is sought to reflect a change in the upstream ownership of the Facility.

Comment Date: April 21, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7865 Filed 4–1–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–39–000]

Kinder Morgan Interstate Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Cheyenne Market Center Project and Request for Comments on Environmental Issues

March 26, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Cheyenne Market Center Project involving construction and operation of facilities by Kinder Morgan Interstate Gas Transmission, LLC (Kinder Morgan) in Cheyenne and Kimball Counties, Nebraska and Weld County, Colorado.[1] These facilities consist of four new compressor units, ten new injection/withdrawal wells, two new storage field pipelines, construction of a new compressor station, and certain auxiliary or appurtenant facilities. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Kinder Morgan provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

[1] Kinder Morgan's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

Summary of the Proposed Project

Kinder Morgan is proposing to construct and operate certain storage and transportation facilities necessary to develop its proposed Cheyenne Market Center located in the vicinity of the Cheyenne Hub (Rockport) in Weld County, Colorado and the Huntsman Storage Facility located in Cheyenne County, Nebraska. The proposed project would create incremental storage capacity for up to 6,000,000 dekatherms (Dth), with an associated injection capability of about 38,400 Dth per day (Dthd) and an associated withdrawal deliverability of about 62,400 Dthd. The proposed project would provide customers with additional flexibility to store gas and utilize receipt and delivery points on short notice.

In order to create the capacity to perform the Cheyenne Market Center service, Kinder Morgan proposes to construct and operate the following facilities:

Compressor Facilities

- Rockport (Cheyenne Hub) Compressor Station—install two new addition 1,680-horsepower (hp) compressor units within the existing Rockport Compressor Station located in Weld County, Colorado.
- Kimball Junction Compressor Station—install two 1,151-hp compressor units at the existing Kimball Junction Interconnect located in Kimball County, Nebraska.
- Huntsman Compressor Station—install two new 3,550-hp compressor units adjacent to the existing Huntsman Compressor Station, and a central injection meter and a central withdrawal meter within the confines of the existing Huntsman Compressor Station located in Cheyenne County, Nebraska.

Injection/Withdrawal Wells

- Drill ten new injection/withdrawal wells at the existing Huntsman Storage Field located in Cheyenne County, Nebraska. The proposed well field design configuration is to drill these wells directionally (diverging directionally from a vertical well bore) from two new multiple wellhead surface location sites. Six wells would be drilled at Pad #1, located west and adjacent to the existing Huntsman Storage Field Well #9. Four wells would be drilled at Pad #2 in the northeast corner of the Huntsman Station.

Storage Field Lines

- Install about 2,000 feet of 12-inch-diameter pipeline loop [2] originating at the proposed multiple wellhead Pad #1 site and terminating at the existing Huntsman Compressor Station inlet header facilities. This new 12-inch-diameter pipeline would loop the existing 12-inch-diameter pipeline from Huntsman Storage Field Well #9 to the compressor station.
- Install about 1,800 feet of 8-inch-diameter pipeline loop originating at the proposed multiple wellhead Pad #2 site and terminating at the existing Huntsman Compressor Station inlet header facilities. This new 8-inch-diameter pipeline would start at Pad #2, tie into the existing 8-inch-diameter discharge pipeline at Huntsman Storage Field Well #23 and loop the existing 8-inch-diameter pipeline back to the compressor station.

Auxiliary Facilities

- Install computer-based supervisory type process control systems, a check meter and bi-directional flow control assembly, control valves, pigging and gas cleaning facilities, and an office building with septic system and water well.

The general location of Kinder Morgan's proposed facilities is shown on the map attached as appendix 1.

Land Requirements for Construction

Construction of Kinder Morgan's proposed facilities would require about 52.6 acres of land, including construction right-of-way for the storage field pipeline loops, and work areas needed at the compressor stations, the injection/withdrawal wells sites, and for pipe storage. The construction disturbance width for each storage field pipeline would be 75 feet and there would be no change to the unspecified use area for the operation of either of the looped storage field lines. Kinder Morgan indicates that about 11.9 acres of operational area would be maintained. Construction access would be via existing access roads.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and Soils
- Water Resources and Wetlands
- Vegetation and Wildlife
- Threatened and Endangered Species
- Socioeconomics
- Cultural Resources
- Land Use
- Reliability and Safety
- Air Quality and Noise

We will evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Kinder Morgan. This preliminary list of issues may be changed based on your comments and our analysis.

- Threatened and Endangered Species
  - —Potential impact on six Federally-listed bird species.
  - —Potential impact on two Federally-listed animal species.
  - —Potential impact on two Federally-listed plant species.
- Air and Noise
  - —Impacts to air quality from the proposed project.
  - —Impacts on noise levels from the proposed compressor units at nearest noise sensitive areas.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary Federal Energy Regulatory Commission 888 First St., NE., Room 1A Washington, DC 20426;
- Label one copy of the comments for the attention of Gas 1, PJ–11.1;
- Reference Docket No. CP03–39–000; and
- Mail your comments so that they will be received in Washington, DC on or before April 27, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7864 Filed 4–1–03; 8:45 am]

BILLING CODE 6717–01–P

[2] A loop is a segment of pipeline that is installed adjacent to an existing pipeline and connected to it on both ends. The loop allows more gas to be moved through the pipeline system.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

March 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12442–000.

c. *Date filed:* February 6, 2003.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Kentucky L&D #2 Hydroelectric Project would be located on the Kentucky River in Henry County, Kentucky. The proposed project would utilize an existing dam administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Kentucky Lock and Dam No. 2 and Reservoir, would consist of: (1) Six proposed 50-foot-long, 9-foot-diameter steel penstocks, (2) a proposed powerhouse containing six generating units with a combined installed capacity of 8.2 megawatts, (3) a proposed 200-foot-long, 14.7-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 50 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the applicant's address in item g above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The

term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7866 Filed 4–1–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To Prepare an Environmental Assessment, Conduct Scoping Meetings and Site Visit and Soliciting Scoping Comments

March 26, 2003.

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2726–012.

c. *Date filed:* July 29, 2002.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Upper and Lower Malad Hydroelectric Project.

f. *Location:* On the Malad River in the Town of Hagerman, Gooding County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Lewis Wardle, Relicensing Project Manager, Idaho Power Company, 1221 West Idaho Street, Boise, ID 83707, (208) 388–2964

i. *FERC Contact:* John Blair, (202) 502–6092, or *john.blair@FERC.gov.*

j. *Deadline for filing scoping comments:* June 7, 2003

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. *Description of the Project:* the project consists of (1) an upper diversion dam consisting of a gated spillway section 100 feet long and a flume section 123 long; (2) a concrete flume 4,635 feet long between the upper diversion dam and the upper intake structure; (3) the upper concrete intake structure 80.5 feet long and approximately 21 feet wide; (4) a steel penstock 10 feet in diameter and approximately 238 feet long connected to the upper powerhouse; (5) the upper reinforced concrete powerhouse containing one generating unit having an installed nameplate capacity of 8.27 megawatts; (6) a lower diversion dam consisting of a gated spillway section 163 feet long and a flume section 136 feet long; (7) a concrete flume 5,318 feet long between the lower diversion dam and the lower intake structure; (8) the lower concrete intake structure 85 feet long and approximately 23 feet wide; (9) a steel penstock 12 feet in diameter and approximately 301 feet long connected to the lower powerhouse; (10) the lower reinforced concrete powerhouse containing one generating unit having an installed capacity of 13.5 megawatts; and (11) other appurtenances.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. *Scoping Process:* The Commission intends to prepare an Environmental assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Public Scoping Meeting

Date: Tuesday, May 6, 2003.
Time: 7 p.m.–9 p.m.
Place: Hagerman Senior and Community Center.
Address: 140 East Lake, Hagerman, Idaho.

Agency Scoping Meeting

Date: Wednesday, May 7, 2003
Time: 9:30 a.m.–noon
Place: Idaho Power Company Headquarters Building
Address: 1221 West Idaho, Bosie, Idaho

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection at the address in item "h" above.

Site Visit

The Applicant and FERC staff will conduct a project site visit beginning at 1 p.m. on Tuesday, May 6, 2003. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at Idaho Power's Hagerman Maintenance Shop located just south of the Malad River Bridge, off Highway 30 north of Hagerman. All participants are responsible for their own transportation to the site. RSVP Lewis Wardle, Idaho Power Company, at (208) 388–2964, if you plan to attend the site visit.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7867 Filed 4–1–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos.477–024]

Notice of Intent To Prepare an Environmental Impact Statement and Soliciting Additional Scoping Comments

March 26, 2003.

Take notice that the following hydroelectric applications have been filed with Commission and are available for public inspection:

a. *Application Type:* Amendment of License, Surrender of License, Settlement Agreement and Decommissioning Plan.

b. *Project No.:* 477–024.

c. *Date Filed:* November 12, 2002.

d. *Applicant:* Portland General Electric Company (PGE).

e. *Name of Project:* Bull Run Hydroelectric Project.

f. *Location:* On the Sandy, Little Sandy, and Bull Run Rivers, near the Town of Sandy, Clackamas County, Oregon. The project is located on lands administered by the Forest Service (Mt. Hood National Forest) and the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r); Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Julie A. Keil, Director, Hydro Licensing and Water Rights, PGE, 121 SW Salmon Street, Portland, Oregon 97204, 503–464–8864.

i. *FERC Contact:* Alan Mitchnick, 202–502–6074; *alan.mitchnick@ferc.gov.*

j. *Deadline for filing additional scoping comments:* 30 days from date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. *Amendment Application:* PGE proposes to: (i) Extend the term of the license from November 16, 2004, to November 16, 2017; (ii) continue generation until removal of the Little Sandy dam in 2008; (iii) implement a program of geomorphological and water quality monitoring continuing until Marmot dam removal; (iv) continue operation of the fish ladder and sorting facility at Marmot dam until Marmot dam removal; and (v) modify the operation of the diversion canal at Marmot dam to provide protection of threatened fish species from November 2004 until November 2007.

Surrender Application: The Project works include: Marmot dam, located at River Mile (RM) 30 on the Sandy River; a 3.1-mile-long series of canals and tunnels leading from Marmot dam to the Little Sandy River just upstream of the Little Sandy diversion dam; the Little Sandy diversion dam, located at RM 1.7 on the Little Sandy River; a 2.8-mile-long box flume leading from the Little Sandy diversion dam to the manmade forebay, Roslyn Lake; two 1,200 foot penstocks; and a powerhouse containing four generators with a total capacity of 22 megawatts. The powerhouse discharges to the Bull Run River 1.5 miles above its confluence with the Sandy River at RM 18.4.

PGE proposes the complete removal of both Marmot and the Little Sandy diversion dams, starting in 2007, along with the dismantling of their associated water conveyance structures. In addition, Roslyn Lake would be drained, the powerhouse generating equipment would be disabled, and the powerhouse structure would be demolished. All PGE-owned lands within the existing project boundary would be conveyed to the Western

Rivers Conservancy once the license is surrendered and the project is removed, and used to protect and conserve fish and wildlife habitat, public access, and recreation opportunities in the Sandy River Basin. Project water rights would be relinquished and would revert to instream use.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

m. *Scoping Process:* The Commission intends to prepare an Environmental Impact Statement (EIS) on the project in accordance with the National Environmental Policy Act. The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

PGE and Commission staff conducted scoping prior to PGE's preparation of a draft environmental assessment that was filed with the Commission as part of the surrender application. Scoping document 1 was issued on July 30, 1999, and scoping document 2 was issued on November 4, 1999. Scoping meetings were held on September 1, 1999. We are requesting comments on any additional issues or alternatives that should be analyzed in the EIS.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7868 Filed 4–1–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0015; FRL–7475–7]

Agency Information Collection Activities; Submission of EPA ICR No. 1696.04 (OMB No. 2060–0297) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Fuels and Fuel Additives—Health-Effects Research Protocols—40 CFR part 79, subpart F. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 2, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Transportation and Regional Programs Division, Office of Transportation and Air Quality (6406J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9303; fax number: (202) 565–2085; e-mail address: *caldwell.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 12, 2002 (67 FR 76399), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0015, which is available for public viewing at the Office of Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: Fuels and Fuel Additives—Health-Effects Research Protocols—40 CFR part 79, subpart F, (OMB Control Number 2060–0297, EPA ICR Number 1696.04). This is a request to renew an existing approved collection that is scheduled to expire on May 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: In accordance with the regulations at 40 CFR part 79, subparts A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of gasoline and diesel fuel, and manufacturers (including importers) of additives for gasoline or diesel fuel, are required to have their products registered by EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, and certain technical, marketing, and health-effects information. The development of health-effects data, as required by 40 CFR part 79, subpart F, is the subject of this ICR. The information collection requirements for subparts A through D, and the supplemental notification requirement of subpart F (indicating how the manufacturer will satisfy the research requirements) are covered by a separate ICR (EPA ICR Number 0309.10, OMB Control Number 2060–0150). The health-effects information will be used to determine if there are any products whose evaporative or combustion emissions pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. This information is required for specific groups of fuels and additives as defined in the regulations. For example, all gasolines and gasoline additives which consist of only carbon, hydrogen, oxygen, nitrogen, and/or sulphur, and which involve a gasoline oxygen content of less than 1.5 weight percent, fall into a "baseline" group. Oxygenates, such as ethanol and methyl tertiary butyl ether (MTBE), when used in gasoline at oxygen levels of at least 1.5 weight percent, define separate "nonbaseline" groups for each oxygenate. Additives which contain elements other than carbon, hydrogen, oxygen, nitrogen, and/or sulphur fall into separate "atypical" groups. There are similar grouping requirements for diesel fuels and additives.

Manufacturers may perform the research independently or may join with other manufacturers to share in the costs for each applicable group. Several research consortiums (groups of manufacturers) have been formed. The largest consortium, organized by the American Petroleum Institute (API), represents most of the manufacturers of baseline and nonbaseline gasolines, diesel fuels, and additives. The research is structured into three tiers of requirements for each group. Tier 1 requires an emissions characterization and a literature search for information on the health effects of those emissions. Voluminous Tier 1 data were submitted by API and others in 1997. Tier 1 data were submitted for biodiesel and a water/diesel fuel emulsion in 1998 and 2000, respectively. Tier 2 requires short-term inhalation exposures of laboratory animals to emissions to screen for adverse health effects. Alternative Tier 2 testing can be required in lieu of the standard Tier 2 if EPA concludes that such testing would be more appropriate. The EPA reached that conclusion with respect to gasoline and gasoline-oxygenate blends, and alternative requirements have been established for the API consortium for baseline gasoline and six gasoline-oxygenate blends. A similar situation exists with the Ethyl Corporation and its manganese additive MMT, and alternative requirements have been established. The API submitted Tier 2 data for diesel in 1997. Tier 2 data were submitted for biodiesel and a water/diesel fuel emulsion in 2000 and 2002, respectively. Tier 3 provides for follow-up research, if necessary. No Tier 3 requirements have been established, and it is unlikely that any will be during the next three years. Thus, Tier 3 is not addressed in this ICR. Under section 211 of the Clean Air Act, (1) submission of the information is necessary for a manufacturer to obtain registration of a new fuel or additive, and thus be allowed to introduce that product into commerce, and (2) the information shall not be considered confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15,175 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers of Fuels and Fuel Additives.

Estimated Number of Respondents: 8.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 60,700.

Estimated Total Annual Cost: $6.8 million, includes $1.4 million annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 6,767 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to the incorrect allocation of hours to some of the capital/start-up costs and operating and maintenance costs in the previous ICR.

Dated: March 13, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–7971 Filed 4–1–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–1999–0050, FRL–7475–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Part B Permit Application, Permit Modifications, and Special Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Part B Permit Application, Permit Modifications, and Special Permits, EPA ICR # 1573.10, OMB No. 2050–0009, expires on March 31, 2003. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 2, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: David Eberly, Office of Solid Waste (5303W), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8645, or by e-mail at *eberly.david@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID No. RCRA–1999–0050, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use

EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by email to the *rcra-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, RCRA Docket, 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET.

Title: Part B Permit Application, Permit Modifications, and Special Permits, OMB Control No. 2050–0009, EPA ICR No. 1573.10, expiring on March 31, 2003. This is a request for extension of a currently approved collection. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Section 3005 of Subtitle C of RCRA requires treatment, storage or disposal (TSD) facilities to obtain a permit. To obtain the permit, the TSD must submit an application describing the facility's operation. There are two parts to the RCRA permit application—part A and part B. Part A defines the processes to be used for treatment, storage, and disposal of hazardous wastes; the design capacity of such processes; and the specific hazardous wastes to be handled at the facility. Part B requires detailed site specific information such as geologic, hydrologic, and engineering data. In the event that permit modifications are proposed by the applicant or EPA, modifications must conform to the requirements under sections 3004 and 3005.

This ICR provides a comprehensive discussion of the requirements for owner/operators of TSDFs submitting applications for a part B permit or permit modification. The information collections contained in this ICR are divided into three sections: demonstrations and exemptions from requirements (40 CFR part 264), contents of the part B application (40 CFR part 270), and permit modifications and special permits (40 CFR part.270).

Demonstrations and Exemptions From Requirements

40 CFR part 264 contains minimum standards for TSDFs consisting of both administrative and technical requirements. Owner/operators may obtain exemption from certain requirements by submitting demonstrations to EPA. In most cases, these demonstrations will be submitted along with the part B application. Section 264.90 allows owner/operators to submit a demonstration for exemption from the subpart F requirements regarding releases to the uppermost aquifer. In addition, owner/operators of tank systems, surface impoundments, waste piles, landfills, land treatment facilities and incinerators may apply for exemptions from certain technical requirements by submitting demonstrations under §§ 264.193, .221, .251, .272, .301 and .344, respectively.

Contents of the Part B Application 40 CFR part 270 contains requirements for owner/operators submitting a part B permit application. Section 270.1 allows owner/operators of certain facilities closing by removal or decontamination to petition for an exemption from post-closure permit requirements. Section 270.10 requires owner/operators of certain facilities to provide information on the potential for public exposure resulting from unit-related releases.

Part B of the permit application consists of the general and specific information requirements contained in §§ 270.14 through 270.29. These part B information requirements reflect the standards promulgated in 40 CFR part 264. Under § 270.14(a), owner/operators who can demonstrate that the information prescribed in part B cannot be provided to the extent required may receive case-by-case allowances from EPA.

General information requirements are outlined in § 270.14. Sections 270.14(b)(1)–(14) require owner/operators to provide information on compliance with general facility standards. Financial assurance information is required under §§ 270.15—.18. Section 270.14(b)(19) requires owner/operators to submit a topographical map, and § 270.14(b)(21) covers special requirements for owner/operators of land disposal facilities granted case-by-case extensions under § 268.5 or petitions under § 268.6. Information on ground-water quality and monitoring programs for land disposal facilities is discussed under §§ 270.14(c)(1)–(8). Section 270.14(d) establishes part B information requirements for solid waste management units.

In addition to the general part B information that must be submitted by all owner/operators of TSDFs, there are unique information requirements related to the type of unit for which the owner/operator is seeking a permit. The requirements under §§ 270.15–.21 and .23 address specific requirements for the following types of units: containers, tank systems, surface impoundments, waste piles, incinerators, land treatment units, landfills, boilers and industrial furnaces, and miscellaneous units. Sections 270.24 and 270.25 apply to facilities with process vents or equipment subject to the requirements of 40 CFR parts 264/265, subparts AA and BB, respectively. Section 270.26 applies to facilities with drip pads subject to the requirements of 40 CFR parts 264/265, subpart W.

Some owner/operators may also be required to submit a schedule of compliance leading to compliance with RCRA and regulations as part of their application. The requirements for schedules of compliance are contained in § 270.33.

Permit Modifications and Special Permits

Sections 270.40 through 270.42 address the requirements for permit modifications. Section 270.40 applies to owner/operators transferring ownership or operational control of a facility. These owner/operators must submit Class 1 permit modifications as well as a written agreement containing specific transfer information. Requirements for owner/operators submitting permit modifications at the request of the Agency are contained in § 270.41. Requirements for Class 1, 2, and 3 permit modifications submitted at the request of the permittee are contained in § 270.42(a)–(c). Section 270.42(d) allows permittees to request that the Agency determine the classification for a specific modification. Sections 270.42(e) and (g) discuss requirements for temporary authorization and permit modifications for newly regulated wastes and units, respectively.

In 40 CFR part 264, subpart S, EPA promulgated regulations for corrective action management units (CAMUs). 40 CFR 264.552(d) requires owner/operators to prepare and submit information that enables EPA to designate a CAMU.

Requirements for permit renewal are contained in §§ 270.50 and 270.51. In order to renew an expiring permit, owner/operators must submit an application containing the information required under § 270.14 and the applicable sections of §§ 270.15 through 270.29.

Sections 270.60 and 270.62 through 270.65 address the requirements associated with special types of permits. These include permits by rule (§ 270.60); hazardous waste incinerator permits (§ 270.62); permits for land treatment demonstrations using field test or laboratory analyses (§ 270.63); interim permits for UIC wells (§ 270.64); and research, development and demonstration permits (§ 270.65).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on July 23, 1999 (64 FR 39986); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 165 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Business.

Estimated Number of Respondents: 74.

Frequency of Response: Occasional.

Estimated Total Annual Hour Burden: 12,209 hours.

Estimated Total Annualized Capital, Operating/Maintenance Cost Burden: $2,468,000.

Changes in the Estimates: There is a decrease of 165,523 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This is due to a lower number of affected facilities.

Dated: March 25, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–7972 Filed 4–1–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0085; FRL–7290–2]

Product Registration Maintenance Fees; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): Product Registration Maintenance Fees (EPA ICR No. 1214.06, OMB Control No. 2070–0100). This is a request to renew an existing ICR that is currently approved and due to expire January 31, 2004. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPP–2003–0085, must be received on or before June 2, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *vogel.nancy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are an individual or entity engaged in activities related to the registration of a pesticide product. Potentially affected entities may include, but are not limited to:

- Pesticide and other agricultural chemical manufacturing (NAICS 325320), e.g., Pesticide registrants.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Copies of this Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0085. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The docket telephone number is (703) 305–5805.

B. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

III. How Can I Respond to this Action?

A. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit III.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0085. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0085. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit III.A. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0085.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0085. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit II.A.

B. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Product Registration Maintenance Fees.

ICR numbers: EPA ICR No. 1214.06, OMB Control No. 2070–0100.

ICR status: This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire January 31, 2004.

Abstract: This information collection will enable EPA to collect registration maintenance fees from pesticide registrants as required by law. Each affected firm is required to complete the filing form and submit their fee payment by January 15 of each year. Annually, the Agency provides registrants a list of the registered products currently registered with the Agency. Registrants are provided the opportunity to review the list, determine its accuracy, and pay the appropriate maintenance fee. The list of products has space identified for marking those products to be supported and those products that are to be canceled. The registrants are also instructed to identify any products on the list which are to be canceled or have been transferred to another company, and to add to the list any products which the company believes to be registered that are not on the Agency provided list. The failure to pay the required fee for a product will result in cancellation of that product.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 1,858 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Pesticide registrants.

Estimated total number of potential respondents: 1,977.

Frequency of response: Annual.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 1,858.

Estimated total annual burden costs: $188,210.40.

VI. Are There Changes in the Estimates from the Last Approval?

Total respondent costs associated with this program rose from $177,870.69 to $188,210.40. Changes to total costs associated with this program are due to the increase in labor rates, reflecting the most current estimates.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: March 25, 2003.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–7976 Filed 4–1–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0001; FRL–7298–5]

Request for Nominations to the National Pollution Prevention and Toxics Advisory Committee (NPPTAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for nominations.

SUMMARY: EPA is inviting nominations of qualified candidates to consider for appointment to the National Pollution Prevention and Toxics Advisory Committee (NPPTAC or Committee). The purpose of NPPTAC will be to provide advice and recommendations to EPA regarding the overall policy and operations of the programs of the Office of Pollution Prevention and Toxics (OPPT).

DATES: Nominations will be accepted until 5 p.m. on May 2, 2003.

ADDRESSES: Nominations may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To protect personal information from disclosure to the public do not submit nominations materials to the NPPTAC Docket or through any online electronic commenting system.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7404M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Mary Hanley, Designated Federal Official, Environmental Assistance Division (7401M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (202) 564–9891, fax (202) 564–0575; e-mail address: npptac.oppt@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of particular interest to those persons who have an interest in or may be required to manage pollution prevention and toxics programs, or individuals or groups concerned with children's health, animal welfare, or other members of the general public. Since various individuals or groups may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding this action, please consult the contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

Information about the Office of Pollution Prevention and Toxic Substances (OPPTS), and OPPTS related programs is available from http://www.epa.gov/opptintr/.

EPA has established an official public docket for the NPPTAC under docket identification (ID) number OPPT–2002–0001. The official public docket consists of the documents related to the activities of the committee and any public comments received. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. To protect personal information from disclosure to the public do not submit nominations materials in response to this Notice to the docket or through any online electronic commenting system. Instead, follow the instructions listed under Unit I.C.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

2. *In person.* The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

3. *By mail.* You may obtain copies of this document and other related documents from the technical contact person listed under **FOR FURTHER INFORMATION CONTACT.**

C. How Can I Nominate Potential Members to this Committee?

You may nominate qualified persons for membership to this Committee electronically, by mail, or in person. Nominations for membership should be submitted by the nominating organization, and must include a curriculum vitae of the nominee detailing his or her specific area of relevant expertise, as described below in Unit I.D., and a designation of the type of organization the candidate represents according to Unit II.C.

To protect personal information from disclosure to the public do not submit nominations materials to the NPPTAC Docket or through any online electronic commenting system. Submit your nomination, marked "Attention NPPTAC Nominations" by one of these methods:

1. *Electronically*: npptac.oppt@epa.gov.

2. *By mail*: Environmental Protection Agency, Confidental Business Information (CBIC), Mail Code 7407M, 1200 Pennsylvania Ave, NW., Washington DC, 20460.

3. *By courier*: Environmental Protection Agency, Confidential Business Information Center (CBIC), EPA East Building, Room 6428, 1201 Constitution Ave., Washington, DC 20004–3302, contact phone numbers: 202–564–8930 and 202–564–8940. The room at which submissions are accepted is only open until 4 p.m. If a courier service comes after that time the service will be turned away. Non-uniformed (bicycle, etc.) couriers will be met at the 1201 Constitution Ave. entrance by CBIC personnel. Uniformed couriers are admitted to deliver directly to the CBIC.

D. What Should I Consider When Making Nominations?

Potential candidates should have demonstrated leadership experience with environmental or public health policy, or issues, or research associated with chemicals, pollution prevention, human health, or the environment in State, national or international arenas.

Types of expertise might include:

- Chemistry
- Pollution prevention
- Toxicology
- Ecology
- Environmental science
- Risk assessment
- Risk communication
- Risk management
- Public health
- Environmental policy
- Environmental justice
- Socio-economic analysis
- Public health policy
- Animal welfare

Candidates with interdisciplinary training or experience are strongly encouraged to apply.

In addition, Committee candidates should be willing to:

- Commit to attend three meetings per year for 2 years, most of them in Washington, DC.
- Constructively assess OPPT programs and work collaboratively with fellow committee members to help OPPT be responsive to the needs of the affected public, non-governmental organizations, industry organizations, and State, Tribal, and local governments.
- Serve also on a subcommittee or working group, as needed.

Also, nominees not selected for the Committee may be considered for membership on subcommittees or working groups.

When making your nomination, please classify the candidate with respect to the types of organizations represented in Unit II.C. and identify the types of experience of the candidate according to the list above, including interdisciplinary training or experience.

II. Background

A. Introduction

EPA's OPPT is entrusted with the responsibility of ensuring that chemicals made available for sale and use in the United States do not pose any unreasonable risks to human health or to the environment. In addition, OPPT promotes pollution prevention as the national policy for controlling industrial pollution at its source.

OPPT focuses on the following four components: Promoting pollution prevention as the guiding principle for controlling industrial pollution; promoting safer chemicals through a combination of regulatory and voluntary efforts; promoting risk reduction to minimize exposure to existing substances such as lead, asbestos, mercury, perfluorooctyl sulfonate (PFOS), and promoting public understanding of risks by providing understandable, accessible, and complete information on chemical risks to the broadest audience possible.

While there are both formal and informal mechanisms in place to involve the public in OPPT decision-making activities, NPPTAC will bring together a broad cross-section of knowledgeable individuals from organizations representing diverse views to discuss regulatory, policy, and implementation issues. Dialogue with outside groups is essential if OPPT is to be responsive to the needs of the affected public; non-governmental organizations; industry organizations; and State, Tribal, and local governments.

B. Committee Purpose

NPPTAC is being established under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (Public Law 92–463), and copies of the Committee Charter have been filed with the appropriate committees of Congress and the Library of Congress. NPPTAC will provide advice and recommendations to the Agency regarding the overall policy and operations of OPPT programs. NPPTAC shall hold meetings, analyze issues, conduct reviews, produce reports, make necessary recommendations, and undertake other activities necessary to meet its responsibilities. The objectives of this Committee are to provide advice and recommendations to EPA in areas such as:

1. *Risk assessment/management.* Policies for implementation of regulatory and voluntary programs that are intended to identify, reduce, or eliminate potentially unreasonable risks. This may include such issues as gathering information and data relevant to the assessment of risks, including hazard and exposure information related to a particular chemical substance, as well as methods for evaluating, managing, and reducing potential risks. This would include policies for implementation of OPPT programs such as the High Production Volume (HPV) Challenge Program, the Voluntary Children's Health Testing Chemical Evaluation Program (VCCEP), and the Chemical Right-to-Know (ChemRTK) Initiative, as well as the establishment of policies to guide national program chemicals risk management activities for chemicals such as asbestos, lead, polychlorinated biphenyls, PFOS, and mercury.

2. *Risk communication.* Means to promote the public's right to know about chemicals in their communities, including risk communication and access to Agency information systems.

3. *Pollution prevention.* Policies to guide the chemical pollution prevention priorities and multimedia activities, including OPPT programs such as the Persistent Bioaccumulative and Toxic Initiative (PBTI), Green Chemistry, and the Design for the Environment (DfE) Program.

4. *Coordination.* EPA's framework for integrating its TSCA and pollution prevention programs with other EPA and other Federal, State, Tribal, and local government programs, and coordinating with non-governmental organizations, such as public health organizations, environmental justice organizations, children's advocates, animal welfare groups, industry, environmental organizations, and international groups, to ensure full input into the decision-making.

5. *Other issues as identified by EPA related to policies and the implementation of related programs within OPPT.* The Committee's activities will include efforts to provide advice on regulatory and non-regulatory approaches, develop options and, where appropriate, more clearly define critical policy and technical issues.

C. Composition and Organization

1. *Membership.* The Committee will be composed of approximately 15 members. EPA will have a balanced representation of members in terms of the points of view represented and the scope of activities of NPPTAC. An EPA employee will act as the Designated Federal Official (DFO) who will be responsible for providing the necessary staffing, operations, and support for the Committee.

The Agency is seeking qualified senior-level decision-makers from diverse sectors throughout the United States to be considered for membership on the Committee. The Agency is seeking representation from among the type of organizations listed below. Please indicate in your submittal the sector with which your nomination is most closely associated:

- State and local government agency.
- Federally recognized Tribe.
- Public health or environmental professional.
- Chemical manufacturer and/or user.
- Non-governmental organization, such as environmental group, environmental justice organization, children's advocate, and animal welfare organization.
- Other non-governmental entity, as deemed appropriate.

Establishing a balance and diversity of experience, knowledge, and judgement in membership is an important consideration in the selection of members.

In addition, the Committee will have up to approximately 15 technical advisors who will be Federal employees or national experts that will provide technical advice to the Committee. Technical advisors for the Committee may include representatives from the Occupational Safety and Health Administration (OSHA), Consumer Product Safety Commission (CPSC), and such additional officials of the U.S. Government who might be necessary for the Committee to carry out its functions.

2. *Subcommittees and workgroups.* Subcommittees and workgroups may be established on an as-needed basis consisting of Committee members, or supplemented with individuals qualified in the area of the subcommittee or workgroup.

3. *Meetings and public involvement.* All Committee meetings will be called, announced, and held in accordance with FACA requirements, including public notice of meetings in the **Federal Register**, open meetings, and an opportunity for interested persons to file comments before or after meetings, or to make statements during the public meetings to the extent time permits.

List of Subjects

Environmental protection, Chemicals, Chemical health and safety, Pollution prevention, National Pollution Prevention and Toxics Advisory Committee.

Dated: March 25, 2003.

Susan B. Hazen,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–7978 Filed 4–1–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0089; FRL–7297–5]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0089, must be received on or before May 2, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Adam Heyward, Product Manager 34, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6422; e-mail address: heyward.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0089. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0089. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0089. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2003–0089.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2003–0089. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 7969–ENG. *Applicant*: BASF Corporation, P.O. Box 13528, 26 Davis Drive, Research Triangle Park NC 27709–3528. *Product Name*: Fenpropimorph. Manufacture Use Product. *Active ingredient*:

Fenpropimorph: cis-4-(3-(4-(1,1dimethylethyl)phenyl-2-methylpropyl)-2,6-dimethylmorpholine at 96.00%. *Proposed classification/Use*: None. For manufacturing use only in formulating end-use wood preservative products.

2. *File Symbol*: 71406–U. *Applicant*: BASF Corp. *Product Name*: WOLSIN FL-35. *Active ingredient*: Fenpropimorph: cis-4-(3-(4-(1,1dimethylethyl)phenyl-2-methylpropyl)-2,6-dimethylmorpholine at 5.4%. *Proposed classification/Use*: None. A wood preservative for control of sapstain, mold, and decay of freshly cut lumber and wood products during storage and transit.

3. *File Symbol*: 1624–REI. *Applicant*: U.S. Borax, Inc., 26877 Tourney Road, Valencia, CA 91355–1847. *Product Name*: XPI-255. *Active ingredient*: Calcium hexaborate tetrahydrate at 100%. *Proposed classification/Use*: None. For use as a biocide fungicide/preservative additive in the manufacturing of wood composite products.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: March 14, 2003.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 03–7802 Filed 4–1–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0101; FRL–7299–5]

Carbaryl; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the revised risk assessments and related documents for the carbamate pesticide, carbaryl. In addition, this notice starts a 60–day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the U.S. Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for pesticides.

DATES: Comments, identified by docket ID number OPP–2003–0101, must be received by EPA on or before June 2, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Anthony Britten, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8179; e-mail address: *britten.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on carbaryl, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0101. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0101. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0101. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the following mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0101.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0101. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed, except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for the carbamate chemical, carbaryl. These documents have been developed as part of the public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). A goal of the public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of assessments and risk management decisions. EPA and USDA began implementing this process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the carbaryl preliminary risk assessments, which were released to the public August 28, 2002 (67 FR 55233) (FRL–7194–2), through a notice in the **Federal Register**.

In addition, this notice starts a 60–day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for carbaryl. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on carbaryl. Such comments and proposals could address ideas about how to manage dietary, residential, occupational, or ecological risks on specific carbaryl use sites or crops across the U.S. or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest ("pre-harvest intervals") modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For residential risk, commenters may suggest lowering application rates, modification in use, or other measures to reduce exposures to homeowners. For occupational risks, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commenters may suggest ways to reduce environmental exposure, for example, exposure to birds, fish, mammals, and other non-target organisms. All comments and proposals must be received by EPA on or before June 2, 2003 at the addresses given under Unit I. Comments and proposals will become part of the Agency record for carbaryl.

On February 24, 2003, EPA received from Bayer CropScience, the technical registrant for carbaryl, a submission titled "Evaluation of Potential Aggregate Human Health Risks Associated with Agricultural and Consumer Uses of Carbaryl." In this submission, Bayer estimates the potential aggregate human health risks associated with dietary (food) and residential exposures to carbaryl. Bayer conducted the analysis using the Cumulative and Aggregate Risk Evaluation System (CARES), version 1.3., which is a software model that provides a probabilistic assessment of human health risks. The software has been reviewed by the FIFRA Science Advisory Panel (SAP), and was found to be an acceptable model for assessing aggregate risks. EPA is currently reviewing the carbaryl-specific CARES assessment submitted by the registrant.

EPA did not receive this submission in time to completely or comprehensively review it prior to publishing this notice, but is releasing the Agency's revised human health risk assessment for carbaryl now to allow time for public comment before June 30, 2003, which is the court-ordered deadline for EPA to make a reregistration eligibility decision for carbaryl. Also, to allow as much time as possible for the public to comment on the registrant's submission, EPA has placed it in the official public docket for carbaryl and briefly discussed it in EPA's revised human health risk assessment.

Depending on the results of the Agency's full review of the registrant's submission and comments received from the public, EPA might further amend, at some future time, its revised human health risk assessment for carbaryl, particularly aggregate risks from food, drinking water, and residential exposures. Bayer's current submission does not include a dietary drinking water component in its aggregate assessment of carbaryl's human health risks, but the registrant has informed the Agency that this information will be submitted shortly, and EPA will also endeavor to make this information publically available as quickly as possible. However, because this information will not be received until later. EPA does not believe it will be able to provide an analysis of this information during the comment period.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: March 26, 2003.

Lois Ann Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–7982 Filed 4–1–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0249; FRL–7296–8]

Diuron; Availability of Risk Assessments; Tolerance Reassessment Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of risk assessments that were developed as part of EPA's process for making pesticide Reregistration Eligibility Decisions (REDs) and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996. These risk assessments are the human health and environmental fate and effects risk assessments and related documents for diuron. In addition, EPA is announcing the availability of the tolerance reassessment decision for diuron. This notice also starts a 60–day public comment period for the risk assessments and tolerance reassessment decision documents. By allowing access and opportunity for comment on the risk assessments and tolerance reassessment documents, EPA is seeking to strengthen stakeholder involvement and help ensure decisions made under FQPA are transparent and based on the best available information.

DATES: Comments, identified by the docket ID number OPP–2002–0249, must be received on or before June 2, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Diane Isbell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number (703) 308–8154; e-mail address: *isbell.diane@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the risk assessments for diuron, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0249. The official public docket consists of the documents specifically referenced in this action,

any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

II. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0249. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID Number OPP–2002–0249. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0249.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0249. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

B. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Action is the Agency Taking?

EPA is making available to the public the risk assessments that have been developed as part of the Agency's interim public participation process for tolerance reassessment and reregistration. During the next 60 days, EPA will accept comments on the human health and environmental fate and effects risk assessments and other related documents for diuron, available in the individual pesticide docket.

In addition, EPA has reassessed the risks associated with current and proposed food uses of the pesticide diuron, including the 81 existing tolerances, and reached a tolerance reassessment and interim risk management decision. The Agency is issuing for comment the resulting Tolerance Reassessment Decision for diuron, known as a TRED, as well as the summary, overview, and risk assessment documents. It should be noted that for diuron, a RED document will be issued in 2003. The diuron RED will address any possible risk to workers and the environment and list any further risk mitigation and confirmatory data needs. During the next 60 days, EPA will accept comments on the TRED. All comments received during the next 60 days will be considered by the Agency. If any comments significantly affect the Agency's decision, EPA will acknowledge and address them in the final RED document. In the absence of substantive comments, the tolerance reassessment decisions reflected in this TRED will be considered final.

EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the tolerances and exemptions included in the TRED.

Although some potential risks of concern have been identified, EPA is able to make a determination of reasonable certainty of no harm for diuron, based on further characterization of these risks, the registrant's commitment to mitigation measures designed to reduce exposure to diuron and its metabolites in drinking water and the development of data to confirm that the mitigation measures are adequate. Each risk of potential concern, related to the tolerance reassessment, with its characterization and the mitigation designed to address the concern is discussed in the tolerance reassessment document. It should be noted that when the Agency evaluates the ecological and worker risks during the development of the RED later in 2003, additional risk mitigation may be necessary.

Included in the public version of the official record are the Agency's risk assessments and related documents for diuron. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed. The diuron risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: March 14, 2003.

Betty Shackelford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–7979 Filed 4–1–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0091; FRL–7297–3]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0091, must be received on or before May 2, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Adam Heyward, Product Manager 34, Antimicrobials Registration Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6422; e-mail address: *heyward.adam@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0091. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0091. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID Number OPP–2003–0091. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access"

system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2003–0091.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2003–0091. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol:* 75269–R. *Applicant:* Keller and Heckman LLP., 1001 G St., NW., Suite 500 West, Washington, DC 20001, U.S. Agent for Rutgers Organic GmbH, Sandhofer Strasse, Postfach 31 01 60, D–68305 Mannheim, Germany. *Product Name:* Polymeric Betaine Technical Grade Active Ingredient Wood Preservative. *Active ingredient:* Didecyl-*bis*(2-hydroxyethyl) ammonium borate at 56.7%. *Proposed classification/Use:* None. For manufacturing use only in formulating end-use wood preservative products.

2. *File Symbol:* 75269–E. *Applicant:* Keller and Heckman LLP. *Product Name:* Impralit KDS. *Active ingredient:* Didecyl-*bis*(2-hydroxyethyl) ammonium borate at 5.54%. *Proposed classification/Use:* None. For vacuum-pressure treatment of wood to protect against insects, rot, and fungal decay.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: March 14, 2003.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 03–7801 Filed 4–1–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0351; FRL–7286–1]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing an active ingredient involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2002–0351, must be received on or before May 2, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in unit II of this notice. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0351. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0351. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0351. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic

submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0351.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0351. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received an application as follows to register a pesticide product containing an active ingredient involving a changed use pattern pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing an Active Ingredient Involving a Changed Use Pattern

File symbol: 524–LUL. *Applicant*: Monsanto Company, 700 Chesterfield Parkway North, St. Louis, MO 63198. *Product name*: YieldGard Plus Corn. *Product type*: Plant-incorporated protectant insecticide. *Active ingredients: Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production (Vector ZMIR13L) in corn and *Bacillus thuringiensis* Cry1Ab protein and the genetic material necessary for its production in corn. *Proposed classification/Use*: None. YieldGard Plus Corn has claims for protection against leaf and stalk damage caused by lepidopteran insects and root damage caused by corn rootworms (*Diabrotica spp.*)

The resulting hybrids were developed via conventional breeding techniques by crossing an inbred line of corn containing event MON 810 to an inbred line of corn containing event MON 863.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: March 21, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–7980 Filed 4–1–03; 8:45am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0146; FRL–7297–6]

Tebuthiuron; Tolerance Reassessment Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's tolerance reassessment decision and related documents for tebuthiuron including the Tebuthiuron Overview, Tebuthiuron Summary, Tebuthiuron Decision Document (TRED), and supporting risk assessment documents. EPA has reassessed the 15 tolerances, or legal limits, for residues of tebuthiuron in or on raw agricultural commodities. These tolerances are now considered safe under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: Comments, identified by docket ID number OPP–2002–0146, must be received on or before May 2, 2003. In the absence of substantive comments, the tolerance reassessment decision will be considered final.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0146 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Wilhelmena Livingston, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8025; e-mail address: *livingston.wilhelmena@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, but will be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides. The Agency has not attempted to describe all the persons or entities who may be interested in or affected by this action. If you have questions in this regard, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0146. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0146. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID Number OPP–2002–0146. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0146.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0146. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

This notice constitutes and announces the availability of the TRED for tebuthiuron. This decision has been developed as part of the public participation process that EPA and the U.S. Department of Agriculture (USDA) are using to involve the public in the reassessment of pesticide tolerances under FFDCA. EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure these existing pesticide residues limits for food and feed commodities meet the safety standard of the new law.

FFDCA requires EPA to review all the tolerances for registered chemicals in effect on or before the date of the enactment. In reviewing these tolerances, the Agency must consider, among other things, aggregate risks from non-occupational sources of pesticide exposure, whether there is increased susceptibility to infants and children, and the cumulative effects of pesticides with a common mechanism of toxicity. The tolerances are considered reassessed once the safety finding has been made or a revocation occurs.

FFDCA requires that the Agency, when considering whether to establish, modify, or revoke a tolerance, consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

As indicated above, the Agency will also evaluate the cumulative risk, if necessary, posed by the entire group of chemicals with which a common mechanism of toxicity is shared, and issues a final tolerance reassessment decision once the cumulative assessment for that group is completed. At this time, tebuthiuron has not been identified as sharing a common mechanism of toxicity and is not scheduled for a cumulative risk assessment.

The tolerance reassessment program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely tolerance decisions and to involve the public. Therefore, EPA is issuing this TRED as a final document with a 30–day comment period. All comments will be considered by the Agency. If any comment significantly affects a TRED, EPA will amend the TRED by publishing the amendment in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

The authority for this TRED is found in section 408(q) of the FFDCA, 21 U.S.C. 346a(q). Section 408(q) requires EPA to review tolerances and exemptions for pesticide chemical residues in effect on August 2, 1996, to determine whether the tolerance or exemption meets the requirements of 408(b)(2) or (c)(2). This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Chemicals, Pesticides and tolerances.

Dated: March 19, 2003.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–7981 Filed 4–1–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0097; FRL–7298–7]

Thiamethoxam; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0097, must be received on or before May 2, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dani Daniel, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5409; e-mail address: *daniel.dani@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultureal producer, food manufacturer, or pesticide manufactuer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *EPA Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0097. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0097. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID Number OPP–2003–0097. In contrast to EPA's

electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0097.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0097. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 24, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petitions was prepared by Interregional Research Project 4 (IR-4) and represents the view of the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project 4 (IR-4)

Syngenta Crop Ptotection Inc.

PP 2E6505, 2E6363, 2E6508, 3E6524, 1E6349, 9F5051 and 0F6142

This notice is a summary of pesticide petitions proposing the establishment/amendment of a regulation for residues of thiamethoxam and its metabolite in or on coffee (imported), pecans, leafy vegetable crop group, head and stem brassica subgroup, leafy brassica subgroup, succulent beans, stone fruit crop group, sunflower seed, peppermint tops and spearmint tops. This summary was prepared by the petitioners.

EPA has received seven pesticide petitions; four from Interregional Research Project 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390, PP 2E6505, 2E6363, 2E6508 and 3E6524 and three from Syngenta Crop Protection Inc., P.O. Box 18300, Greensboro, NC 27419–8300, PP 0F6142, 1E6349, and 9F5051 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.565 by establishing a tolerance for residues of the insecticide thiamethoxam [3-(chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-N-nitro-4H-1,3,5-oxadiazin-4-imine] (CAS Reg. No. 153719–23–4) and its metabolite N-(2-chloro-thiazol-5-ylmethyl)-N'-methyl -N'-nitro-guanidine) in or on the agricultural commodities:

A. IR-4 Petitions

1. PP 2E6505 proposes to establish tolerances for stone fruits, group 12 at 0.5 ppm.

2. PP 2E6363 proposes to establish tolerances for peppermint and spearmint, tops at 4.0 ppm.

3. PP 2E6508 proposes to establish tolerances for beans, succulent at 0.02 ppm.

4. PP 3E6524 proposes to establish tolerances for sunflower, seed at 0.02 ppm.

B. Syngenta Petitions

5. PP 0F6142 proposes to establish tolerances for pecans at 0.02 ppm.

6. PP 9F5051 proposes to establish tolerances for:

- Leafy vegetables, group 4 at 2.0 ppm
- Head and stem brassica vegetables, subgroup 5A at 1.0 ppm.
- Leafy brassica vegetables, subgroup 5B at 2.0 ppm.

7. PP 1E6349 proposes to establish tolerances for imported green and roasted coffee beans and instant coffee at 0.05 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism.* The primary metabolic pathways of thiamethoxam in plants (corn, rice, pears, and cucumbers) were similar to those described for animals, with certain extensions of the pathway in plants. Parent compound and CGA–322704 were the major residues in all crops. The metabolism of thiamethoxam in plants and animals is understood for the purposes of the proposed tolerances. Parent thiamethoxam and the metabolite, CGA–322704, are the residues of concern for tolerance setting purposes.

2. *Analytical method.* Syngenta Crop Protection Inc. has submitted practical analytical methodology for detecting and measuring levels of thiamethoxam in or on raw agricultural commodities. The method is based on crop specific cleanup procedures and determination by liquid chromatography with either ultraviolet (UV) or mass spectroscopy (MS) detection. The limit of detection (LOD) for each analyte of this method is 1.25 nanogram (ng) injected for samples analyzed by UV and 0.25 ng injected for samples analyzed by MS, and the limit of quantitation (LOQ) is 0.005 ppm for milk and juices and 0.01 ppm for all other substrates.

3. *Magnitude of residues.* IR-4 has submitted complete residue data for thiamethoxam on succulent beans, sunflower seed, peppermint and spearmint tops and stone fruits. Syngenta has submitted complete residue data for the proposed imported coffee, pecan, leafy vegetable, head and stem brassica vegetables, leafy brassica vegetables. Details of the Syngenta residue data on these crops were provided in previously published Notices of Filing.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral LD_{50} for thiamethoxam in the rat is 1,563 milligrams/kilogram body weight (mg/kg bwt). The acute dermal LD_{50} of thiamethoxam is >2000 mg/kg bwt. Thiamethoxam is non-toxic at atmospheric concentrations of 3.72 mg/L. Thiamethoxam is minimally irritating to the eye, non-irritating to skin and is not a dermal sensitizer.

In an acute neurotoxicity screening study in rats (OPPTS Harmonized Guideline 870.6200), the no observed aderse affect level (NOAEL) was 100 mg/kg/day with a NOAEL of 500 mg/kg/day based on drooped palpebral closure, decrease in rectal temperature and locomotor activity and increase in forelimb grip strength (males only). At higher dose levels, mortality, abnormal body tone, ptosis, impaired respiration, tremors, longer latency to first step in the open field, crouched over posture, gait impairment, hypo-arousal, decreased number of rears, uncoordinated landing during the righting reflex test, slight lacrimation (females only) and higher mean average input stimulus value in the auditory startle response test (males only).

2. *Genotoxicty.* In gene mutation studies with *S. typhimurium* and *E. coli* (OPPTS Harmonized Guidelines, 870.5100 and 870.5265), there was no evidence of gene mutation when tested up to 5,000 µg/plate and there was no evidence of cytotoxicity.

In a gene mutation study with chinese hamster V79 cells at hypoxanthine guanine phophoribosyl transferase (HGPRT) focus (OPPTS Harmonized Guideline 870.5300) there was no evidence of a gene mutation when tested up to the solubility limit.

In a CHO cell cytogenetics study (OPPTS Harmonized Guideline 870.5375) there was no evidence of chromosomal aberrations when tested up to cytotoxic or solubility limit concentrations.

An *in vivo* mouse bone marrow micronucleus study (OPPTS Harmonized Guideline 870.5395) was negative when tested up to levels of toxicity in whole animals; however, there was no evidence of target cell cytotoxicity. An unscheduled DNA synthesis (UDS) assay (OPPTS Harmonized Guideline 870.5550) was negative when tested up to precipitating concentrations.

3. *Reproductive and developmental toxicity.* A prenatal developmental study in the rat (OPPTS Harmonized Guideline 870.3700) resulted in maternal and developmental NOAELs of 30 mg/kg/day and 200 mg/kg/day, respectively. The maternal lowest observed adverse effect level (LOAEL) is 200 mg/kg/day based on decreased body weight, body weight gain and food consumption. The developmental LOAEL was 750 mg/kg/day based on decreased fetal body weight and an increased incidence of skeletal anomalies.

A prenatal developmental study in the rabbit (OPPTS Harmonized Guideline 870.3700) resulted in maternal and developmental NOAELs of 50 mg/kg/day. The maternal and developmental LOAEL is 150 mg/kg/day. The maternal LOAEL is based on maternal deaths, hemorrhagic discharge, decreased body weight and food intake during the dosing period. The developmental LOAEL is based on decreased fetal body weights, increased incidence of post-implantation loss and a slight increase in the incidence of a few skeletal anomolies/variations.

In a reproduction and fertility effects study in rats (OPPTS Harmonized Guideline 870.3800), the parental/systemic NOAEL is 1.84 (males), 202.06 (females) mg/kg/day; the reproductive NOAEL is 0.61 (males), 202.06 (females) mg/kg/day and the offspring NOAEL is 61.25 (males), 79.20 (females) mg/kg/day. The parental/systemic LOAEL is 61.25 (males), not determined (females) mg/kg/day based on increased incidence of hyaline change in renal tubules in F0 and F1 males. The reproductive LOAEL is 1.84 (males), not determined (females) mg/kg/day based on increased incidence and severity of tubular atrophy observed in testes of the F1 generation males. The offspring LOAEL is 158.32 (males), 202.06 (females) mg/kg/day based on reduced body weight gain during the lactation period in all litters.

4. *Subchronic toxicity.* A 90–day oral toxicity study in rats (OPPTS Harmonized Guideline 870.3100) resulted in a NOAEL of 1.74 males and 92.5 (females) mg/kg/day. The LOAEL is 17.64 (male) and 182.1 (female) mg/kg/day based on increased incidence of hyaline change of renal tubules epithelium (males), fatty change in adrenal gland of females, liver changes in females, all at the LOAEL.

A 90–day oral toxicity study in mice (OPPTS Harmonized Guideline 870.3100) resulted in an NOAEL of 1.41 (males) and 19.2 (females) mg/kg/day. The LOAEL was 14.3 (male) and 231 (female) mg/kg/day based on increased incidence of hepatocellular hypertrophy. At higher dose levels: Decrease in body weight and body weight gain, necrosis of individual hepatocytes, pigmentation of Kupffer cells, and lymphocytic infiltration of the

liver in both sexes; slight hematologic effects and decreased absolute and relative kidney weights in males; and ovarian atrophy, decreased ovary and spleen weights and increased liver weights in females.

In a 90–day oral toxicity study in dogs (OPPTS Harmonized Guideline 870.3150), the NOAEL is 8.23 (males) and 9.27 (females) mg/kg/day. The LOAEL is 32.0 (male) and 33.9 (female) mg/kg/day based on slightly prolonged prothrombin times and decreased plasma albumin and A/G ration (both sexes); decreased calcium levels and ovary weights and delayed maturation in the ovaries (female); decreased cholesterol and phospholipid levels, testis weights, spermatogenesis, and spermatic giant cells in testes (male).

In a 28–day dermal study in rats (OPPTS Harmonized Guideline 870.3200), the NOAEL was 250 (male) and 60 (female) mg/kg/day. The LOAEL was 1,000 (male) and 250 (female) mg/kg/day based on increased plasma glucose, triglyceride levels, and alkaline phosphatase activity and inflammatory cell infiltration in the liver and necrosis if single hepatocytes in females and hyaline change in renal tubules and a very slight reduction in body weight in males. At higher dose levels in females, chronic tubular lesions in the kidneys and inflammatory cell infiltration in the adrenal cortex were observed.

In a subchronic neurotoxicity screening study in rats (OPPTS Harmonized Guideline 870.6200) the NOAEL was 95.4 (male) and 216.4 (female) mg/kg/day, both at highest dose tested. The LOAEL was not determined. No treatment related observations at any dose level. LOAEL was not achieved. May not have been tested at sufficiently high dose levels; however, a new study is not required because the weight of the evidence from other toxicity studies indicates no evidence of concern.

5. *Chronic toxicity.* In a chronic toxicity study in dogs (OPPTS Harmonized Guideline 870.4100) the NOAEL was 4.05 (male) and 4.49 (female) mg/kg/day. The LOAEL was 21.0 (male) and 24.6 (female) mg/kg/day based on increase of creatinine in both sexes, transient decrease in food consumption in females, and occasional increase in urea levels, decrease in ALT, and atrophy of seminiferous tubules in males.

In a mouse carcinogenicity study (OPPTS Harmonized Guideline 870.4200), the NOAEL was 2.63 (male) and 3.68 (female) mg/kg/day. The LOAEL was 63.8 (male) and 87.6 (female) mg/kg/day based on hepatocyte hypertrophy, single cell necrosis, inflammatory cell infiltration, pigment deposition, foci of cellualr alteration, hyperplasia of kupffer cells and increased mitotic activity, also an increase in the incidence of hepatocellular adenoma (both sexes). At higher doses, there was an increase in the incidence of hepatocelluar adenocarcinoma (both sexes) and the number of animals with multiple tumors, evidence of carcinogenicity.

In a combined chronic caricinogenicity study in rats (OPPTS Harmonized Guideline 870.4300) the NOAEL was 21.0 (male) and 50.3 (female) mg/kg/day. The LOAEL was 63.0 (male) and 255 (female) mg/kg/day based on increased incidence of lymphocytic infiltration of the renal pelvis and chronic nephropathy in males and decreased body weight gain, slight increase in the severity of hemosiderosis of the spleen, foci of cellular alteration in liver and chronic tubular lesions in kidney in females. No evidence of carcinogenicity.

In a hepatic cell proliferation study in mice, the NOAEL was 16 (male) and 20 (female) mg/kg/day. The LOAEL was 72 (male) and 87 (female) mg/kg/day based on proliferative activity of hepatocytes. At higher dose levels, increases in absolute and relative liver weights, speckled liver, heptocellular glycogenesis/fatty change, heptocellular necrosis, apoptosis and pigmentation were observed.

In a 28–day feeding study to assess replicative DNA synthesis in the male rat, the NOAEL was 711 mg/kg/day. The LOAEL was not established. Immunohistochemical staining of liver sections from control and high dose animals for proliferating cell nuclear antigen gave no indication for a treatment related increase in the fraction of DNA syntesizing hepatocytes in S-phase. CGA–293343 did not stimulate hepatocyte cell proliferation in male rats.

In a special study to assess liver biochemistry in the mouse, the NOAEL was 17 (male) and 92 (female) mg/kg/day. The LOAEL was 74 (male), 92 (female) mg/kg/day based on marginal to slight increases in absolute and relative liver weights, a slight increase in the microsomal protein content of the livers, moderate increases in the cytochrome P450 content, slight to moderate increases in the activity of several microsomal enzymes, slight to moderate induction of cytosolic glutathionw S-transfersase activity. Treatment did not affect peroxisomal fatty acid B-oxidation.

6. *Animal metabolism.* The metabolism of thiamethoxam in rats and livestock animals is adequately understood. The residues of concern have been determined to be parent thiamethoxam and its metabolite N-(2-chloro-thiazol-5-ylmethyl)-N'methyl-N-nitro-guanidine.

7. *Metabolite toxicology.* For risk assessment purposes, residues of the metabolite corrected for molecular weight are considered to be toxicologically equivalent to parent thiamethoxam.

C. Aggregate Exposure

1. *Dietary exposure.* Permanent tolerances have been established (40 CFR 180.565) for the combined residues of the insecticide thiamethoxam, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-N-nitro-4H-1,3,5-oxadiazin-4-imine and its metabolite N-(2-chloro-thiazol-5-ylmethyl)-N'-methyl-N-nitro-guanidine, in or on a variety of raw agricultural commodities levels ranging from 0.02 parts per million (ppm) to 1.5 ppm (including barley, canola, corn, cotton, sorghum, wheat, cucurbit vegetables, fruiting vegetables, pome fruits, tuberous and corm vegetables and livestock commodities).

Pending tolerances include coffee (imported), grapes, raisins, grape juice, pecans, sunflower seed, stone fruits, succulent beans, peppermint and spearmint tops, head and stem brassica, leafy brassica greens and leafy vegetables.

Tier III chronic and Tier I acute dietary exposure evaluations were made using the Dietary Exposure Evaluation Model (DEEM™), version 7.76 from Exponent. All processing factors were taken from the EPA assessment of August 28, 2000 (DP Barcode D268606, PC Code 060109). These assessment results include all current tolerances and the proposed tolerances on stone fruit, mint, succulent beans, sunflower seed, pecans, leafy vegetables, leafy brassica vegetables, brassica head and stem vegetables and imported coffee.

For the Tier I acute assessment, the proposed tolerance residues for these commodities (stone fruit, 0.5 ppm; mint, 4.0 ppm; succulent beans, 0.02 ppm; sunflower seed, 0.02 ppm; pecans, 0.02 ppm; leafy vegetables, 2.0 ppm; leafy brassica vegetables, 2.0 ppm; brassica head and stem vegetables, 1.0 ppm; and imported coffee, 0.05 ppm) were used along with the published tolerances for all other commodities. One hundred percent of crop treated was assumed for all commodities in the acute assessment.

In the chronic assessments, residue values for secondary animal commodities, pome fruits, ginger, turmeric, peppers, potatoes, wheat and barley were taken from the EPA assessment of August 28, 2000 which uses average field trial residue data with ½ LOQ substitutions for all non-detectable residues. In addition, a residue value of 0.011 ppm (½ LOQ) and a percent crop treated value of 6.6% were used for all corn commodities. For the remaining registered and the proposed commodities listed above, the following residue data was used in the DEEM™: Cucurbit, leafy and brassica vegetables and tomatoes - average field trial residues from soil-only application residue studies; stone fruits, mint, succulent beans, sunflower seed, and coffee - average field trial residue data with ½ LOQ substitutions for non-detectable residues; and pecans - the proposed tolerance.

In regard to the cucurbit vegetables and tomatoes, the current tolerances are based upon soil and foliar uses; however, Syngenta is currently limiting the use of thiamethoxam in these crops to soil only applications - thus, the refinement in DEEM™ inputs described above. Likewise, the proposed tolerances on leafy vegetables, leafy brassica vegetables and head and stem brassica vegetables are based upon soil and foliar applications of thiamethoxam; however, Syngenta is currently pursuing only the soil application use - thus, the refinement of DEEM inputs described above. Syngenta will pursue foliar applications for these crops at a later date; therefore, the proposed and current tolerances on these crops remain based upon soil and foliar applications.

All consumption data for these assessments was taken from the USDA's Continuing Survey of Food Intake by Individuals (CSFII) with the 1994–96 consumption data base and the supplemental CSFII children's survey (1998) consumption data base. For the chronic assessments, the following percent of crop treated values were used for the proposed uses: Coffee, 16.7%; sunflower, 15%; mint, 10%; leaf lettuce, 24.6%; head lettuce, 32%; spinach and cress, 15.6%; all other leafy vegetables, 19.4%; broccoli, 26.2%, cabbage, 15.3%; all other brassica vegetables 17.2%; beans, 20%; stone fruits, 15%; and pecans, 100%. A percent crop treated value of 5% was used for apples and a value of 6.6% was used for all corn commodities. All other percent of crop treated values were taken from the August 28, 2000 EPA assessment.

i. *Food.* For the purposes of assessing the potential dietary exposure under the proposed tolerances, Syngenta Crop Protection has estimated aggregate exposure from all crops for which tolerances are established or proposed. The Tier I acute assessment utilized tolerance values and 100% of crop treated values. The Tier III chronic assessments utilized the residue and percent of crop treated values described above.

a. *Acute exposure.* An acute reference dose of 0.10 mg/kg bwt/day for all population subgroups was based on a NOAEL of 100 mg/kg bwt/day from an acute neurotoxicity study in rats and an uncertainty factor of 100X (100X for combined interspecies and intraspecies variability). An additional Food Quality Protection Act (FQPA) safety factor of 10X was applied to all population subgroups due to the absence of a developmental neurotoxicity study. For the purpose of aggregate risk assessment, the exposure value was expressed in terms of margin of exposure (MOE). The MOE was calculated by dividing the NOAEL by the exposure for each population subgroup. In addition, exposure was expressed as a percent of the acute reference dose (%aRfD). Acute exposure to the most exposed subpopulation (children 1–6 years old) resulted in a MOE of 6,452 (15.5% of the aRfD of 0.10 mg/kg/ bwt/day) at the 95th percentile of exposure. Since the benchmark MOE for this assessment was 1,000, and since EPA generally has no concern for exposures below 100% of the aRfD, Syngenta believes that there is a reasonable certainty that no harm will result from acute dietary (food) exposure to residues arising from the current and proposed uses for thiamethoxam chronic exposure.

b. *Chronic exposure.* The chronic reference dose (cRfD) for thiamethoxam is 0.0006 mg/kg/ bwt/day for all population subgroups and is based on a NOAEL of 0.6 mg/kg/bwt/day from a two generation rat reproduction study. An uncertainty factor of 100X (for combined interspecies and intraspecies variability) and an additional FQPA safety factor of 10X was applied due to evidence of increased susceptibility to young rats following prenatal/postnatal exposure. Exposure was expressed as MOE and percent of the reference dose (%RfD). Chronic exposure to the most exposed subpopulation (non-nursing infants) resulted in a MOE of 11,538 (8.6% of the cRfD of 0.0006 mg/kg/bw/day). Since the benchmark MOE for this assessment was 1,000 and since EPA generally has no concern for exposures below 100% of the RfD, Syngenta believes that there is a reasonable certainty that no harm will result from chronic dietary (food) exposure to residues arising from the current and proposed uses for thiamethoxam.

c. *Lifetime exposure.* The Q* value for thiamethoxam is 0.0377 $(mg/kg/day)^{-1}$ and is based on benign and malignant heptocellular tumors in mice in an 18–month carcinogenicity study. Lifetime exposure to the U.S. population resulted in a lifetime risk of 8.17×10^{-7} which represents 81.7% of EPA's lifetime risk limit of 1.0×10^{-6}.

ii. *Drinking water.* EPA used the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern. Based on the SCI-GROW and PRZM/EXAMS models, EPA calculated that estimated environmental concentrations of thiamethoxam at the highest use rate (0.125 lb a.i./acre) are 1.9 parts per billion (ppb) for acute and chronic exposure to ground water and 11.4 ppb and 0.77 ppb for acute and chronic exposure, respectively, to surface water. Based on field and laboratory data as well as on going prospective ground water monitoring studies, Syngenta believes that the potential exposure to ground water is much lower than that predicted by the conservative SCI-GROW model.

Preliminary results from the prospective ground water monitoring studies have indicated no detections of thiamethoxam in ground water. EPA determined estimated environmental concentrations (EECs) are used for comparison to Drinking Water Levels of Comparison (DWLOC).

a. *Acute drinking water risk.* Acute DWLOCs were calculated based on an acute populated adjusted dose (aPAD) of 0.1 mg/kg/day. For the acute assessment, the children (1–6 yrs) subpopulation generated the lowest acute DWLOC of approximately 845 ppb. EPA has determined that the surface water acute EEC is 11.4 ppb and the ground water EEC is 1.9 ppb. Since the surface water value is greater than the ground water value, the surface water value will be used for comparison purposes and will protect for any concerns for ground water concentrations. Since the acute DWLOC of 845 ppb is considerably higher than the acute EEC of 11.4 ppb, Syngenta believes that EPA should not have a concern for acute risk to either surface or ground water.

b. *Chronic drinking water risk.* Chronic DWLOCs were calculated based on a cPAD of 0.0006 mg/kg/day. For the chronic assessment, the non-nursing infants subpopulation generated the lowest chronic DWLOC of approximately 5.5 ppb. EPA has determined that the surface water chronic EEC is 0.77 ppb and the ground water EEC is 1.9 ppb. Since the ground water value is greater than the surface water value, the ground water value will be used for comparison purposes and will protect for any concerns for surface water concentrations. Since the chronic DWLOC of 5.5 ppb is higher than the chronic EEC of 1.9 ppb, Syngenta believes that EPA should not have a concern for chronic risk to either surface or ground water.

c. *Lifetime drinking water risk.* Based on currently registered and proposed uses for thiamethoxam, Syngenta has determined a DWLOC of 2.0 ppb. At the currently registered maximum use rate of 0.125 lbs. a.i. per acre per growing season, EPA has used the SCI-GROW model to predict a ground water EEC of 1.9 ppb. Thus, the ground water EEC is below the lifetime DWLOC for the general population. The Agency used a screening level model designed to estimate pesticide concentrations in shallow ground water. A number of factors demonstrate that the actual lifetime exposure through drinking water will be less than the lifetime DWLOC. These reasons are as follows:

- Thiamethoxam is a systemic pesticide. EPA's Tier I ground water model assumes that all of the product that is applied to the crop is available for run off. Syngenta has submitted data to show that a percentage (15–25%) of the product is absorbed by the plant, resulting in that much less product available to leach into ground water. Although, data submitted is on only two crops (beans and cucumbers), it is likely that the total amount of thiamethoxam available for ground water leaching is less than the amount EPA uses as a model input.
- Although, the Agency model is based on aerobic soil half lives, EPA's lifetime risk assessment is for lifetime exposure. Data indicate the anaerobic aquatic half-life for thiamethoxam is shorter than the aerobic soil half-life and longer than the aerobic aquatic half-life. Although, EPA is unable to predict, with a high degree of certainty, what happens to thiamethoxam ground water over time, this does provide some support for the expectation that concentrations in ground water will decline between annual applications.
- Shallow ground water modeling is not the perfect model for representing all drinking water from ground water sources. It is likely to be an over estimate of most drinking water concentrations, which tend to originate from deeper sources. EPA's experience is that the model is reasonably accurate for shallow drinking water, but it is less accurate for estimating concentrations in drinking water from deeper sources.
- The Agency has established conditions of registration for the previous uses that include two prospective ground water studies and a retrospective monitoring study, so that the reasonable certainty of no harm finding will be sustained. Preliminary results have indicated no detections of thiamethoxam in ground water.
- The dietary food risk is based on residue data derived from the average of field trials, which were performed at a higher application rate than what was accepted by EPA. It is not unusual in the Agency's experience for field trial data to be an order of magnitude above actual monitoring. Since thiamethoxam has only recently been registered, actual monitoring data are not yet available. It is likely that the actual risk contribution from food will be much lower than current data indicate, which would result in a larger lifetime DWLOC. Syngenta expects that this refined lifetime DWLOC would be larger than the EECs for the proposed uses. Based on the previous points, Syngenta does not expect that the general population would be exposed to levels exceeding the lifetime DWLOC.

2. *Non-dietary exposure.* Thiamethoxam is not currently registered for use on any sites that would result in residential exposure.

D. Cumulative Effects

The potential for cumulative effects of thiamethoxam and other substances that have a common mechanism of toxicity has also been considered. Thiamethoxam belongs to a new pesticide chemical class known as the neonicotinoids. There is no reliable information to indicate that toxic effects produced by thiamethoxam would be cumulative with those of any other chemical including another pesticide. Therefore, Syngenta believes it is appropriate to consider only the potential risks of thiamethoxam in an aggregate risk assessment.

E. Safety Determination

Syngenta concludes, as described above, that there is reasonable certainty that no harm to the U.S. population will result from aggregate acute or chronic dietary exposure to thiamethoxam residues including the proposed commodities.

F. International Tolerances

There are no codex MRLs established for residues of thiamethoxam.

[FR Doc. 03–7803 Filed 4–1–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0102; FRL–7299–6]

Fludioxonil; Notice of Filing Pesticide Petitions to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0102, must be received on or before May 2, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0102. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0102. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID number OPP–2003–0102. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office

of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0102.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0102. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 25, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner's summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petitions was prepared by the petitioner and represents the views of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed. The Interregional Research Project Number 4 (IR-4) prepared and submitted the pesticide petitions to EPA on behalf of Syngenta Crop Protection, Inc., the registrant.

Interregional Research Project Number 4

PP 2E6486, 2E6462, 3E6526, and 2E6448

EPA has received pesticide petitions 2E6486, 2E6462, 3E6526, and 2E6448, from the IR-4 Project, Center for Minor Crop Pest Management, Rutgers, The State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.516 by establishing tolerances for residues of fludioxonil, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-H-pyrrole-3-carbonitrile, in or on the following raw agricultural commodities:

1. *PP 2E6486* proposes tolerances as follows:
   - Brassica, head and stem subgroup 5a at 1.5 parts per million (ppm).
   - Brassica, leafy greens subgroup 5b at 9.0 ppm.
   - Turnip, greens at 9.0 ppm.
2. *PP 2E6462* proposes a tolerance for carrot at 0.5 ppm.
3. *PP 3E6526* proposes a tolerance for herb subgroup 19a at 33.0 ppm.
4. *PP 2E6448* proposes a tolerance for the following:
   - Longan at 2.0 ppm.
   - Lychee at 2.0 ppm.
   - Pulasan at 2.0 ppm.
   - Rambutan at 2.0 ppm.
   - Spanish lime at 2.0 ppm.

Pending PP 3E6526 proposes a tolerance for herb subgroup 19a at 33.0 ppm. A tolerance currently exist for fludioxonil on herbs and spices at 0.02 ppm (40 CFR 180.516). This notice proposes amending 40 CFR 180.516 as follows:

1. Delete existing herbs and spices tolerance of 0.02 ppm and establish a seperate herb subgroup 19a tolerance at 33.0 ppm.
2. Establish a seperate spice subgroup 19b tolerance at 0.02 ppm.

As the result of this proposed amendment, the pending herb subgroup 19a tolerance at 33.0 ppm precludes the need for the existing herbs tolerance of 0.02 ppm. Moreover, the existing spices tolerance of 0.02 ppm is changed to spice subgroup 19b at 0.02 ppm.

Additional data may be needed before EPA rules on the petitions. Syngenta Crop Protection, Inc., Greensboro, NC 27409 is the manufacturer of the chemical pesticide, fludioxinil. Syngenta prepared and submitted the following summary of information, data, and arguments in support of the pesticide petitions. This summary does not necessarily reflect the findings of EPA.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of fludioxonil is adequately understood for the purpose of the proposed tolerances.

2. *Analytical method.* Syngenta has developed and validated analytical methodology for enforcement purposes. This method (Syngenta Crop Protection Method AG-597B) has passed an Agency petition method validation for several commodities and is currently the enforcement method for fludioxonil. This method has also been forwarded to the Food and Drug Administration for inclusion into PAM II. An extensive data base of method validation data using this method on various crop commodities is available.

3. *Magnitude of residues.* Complete residue data for Brassica, head and stem (subgroup 5e.c.), Brassica leafy greens (subgroup 5e.c.), turnip, greens, herb (subgroup 19e.c.), and lychee, longan, rambutan, pulasan, and Spanish lime have been submitted. The requested tolerances are adequately supported by field research data.

B. Toxicological Profile

An assessment of toxic effects caused by fludioxonil is discussed in Unit III.A. and Unit III.B. of the **Federal Register** of August 2, 2002 (67 FR 50354) (FRL–7188–7).

1. *Animal metabolism.* The metabolism of fludioxonil in rats is adequately understood.

2. *Metabolite toxicology.* The residues of concern for tolerance setting purposes is fludioxonil, the parent compound. Consequently, there is no additional concern for toxicity of metabolites.

3. *Endocrine disruption.* Fludioxonil does not belong to a class of chemicals known for having adverse effects on the endocrine system. No estrogenic effects have been observed in the various short-term and long-term studies conducted with various mammalian species.

C. Aggregate Exposure

1. *Dietary exposure.* A Tier III acute and chronic dietary exposure evaluation was made using the Dietary Exposure Evaluation Model (DEEM™), version 7.76 from exponent. Empirically derived processing studies for apple juice (0.09X), apple pomace (6.77X), and grape juice (0.36X) were used in these assessments. The apple juice processing factor was used as a surrogate for pear juice and all other processing factors used DEEM™ defaults. All consumption data for these assessments were taken from the U.S. Department Agriculture (USDA) Continuing Survey of Food Intake by Individuals (CSFII) with the 1994–96 consumption data base and the Supplemental CSFII children's survey (1998) consumption data base. These exposure assessments included all registered uses and uses proposed in this submission: Brassica, head and stem (subgroup 5e.c.), Brassica, leafy greens (subgroup 5e.c.), turnip, greens, carrot, herbs (subgroup 19e.c.), lychee, longan, and Spanish lime. Secondary residues in animal commodities were estimated based on theoretical worst-case, yet nutritionally adequate animal diets and transfer information from feeding studies.

i. *Food.* For the purposes of assessing the potential dietary exposure under the proposed tolerances, Syngenta Crop Protection has estimated aggregate exposure from all crops for which tolerances are established or proposed. These assessments utilized residue data from field trials where fludioxonil was applied at the maximum intended use rate and samples were harvested at the minimum pre-harvest interval (PHI) to obtain maximum residues. Percent of crop treated (PCT) values were estimated based upon economic, pest and competitive pressures. The values used in these assessments were: All seed treatment uses, 100%; apricots and pistachios, 10%; cherries, 16%; nectarines, 49%; onions, 9%; peaches, 22%; plums, 25%; other stone fruit, 20%; strawberries, 42%; watercress, 95%; berries, 13%; salal, 13%; herbs, 80%; crop group 5e.c. and 5e.c., carrots, and lychee, turnips and longan 10%.

ii. *Acute exposure.* An acute reference dose (aRfD) of 1.0 milligram/kilogram body weight (mg/kg/bwt) day for the females 13–50 years subpopulation only was based on a no observed adverse effect level (NOAEL) of 100 mg/kg/bwt day from a rat teratology study and an uncertainty factor of 100X. No additional FQPA safety factor was applied. For the purpose of aggregate risk assessment, the exposure value was expressed in terms of margin of exposure (MOE) which was calculated by dividing the NOAEL by the exposure for each population subgroup. In addition, exposure was expressed as a percent of the aRfD. Acute exposure to the females 13–50 years subpopulation resulted in a MOE of 9,933 (1.01%) of the aRfD of the 1.0 mg/kg bwt/day. Since the benchmark MOE for the assessment was 100 and since EPA generally has no concern for exposures below 100% of the RfD, Syngenta believes that there is a reasonable certainty that no harm will result from dietary (food) exposure to residues arising from the current and proposed uses for fludioxonil.

iii. *Chronic exposure.* The chronic reference dose (cRfD) for fludioxonil is 0.033 mg/kg bwt/day and is based on a 1–year study in dogs with a NOAEL of 3.3 mg/kg bwt/day and an Uncertainty Factor (UF) of 100X. No additional Food Quality Protection Act (FQPA) safety factor was applied. The fludioxonil Tier III chronic dietary exposure assessment was based upon residue field trial results. For the purpose of aggregate risk assessment, the exposure values were expressed in terms of MOE which was calculated by dividing the NOAEL by the exposure for each population subgroup. In addition, exposure was expressed as a percent of the RfD. Chronic exposure to the most exposed subpopulation (children 1 and 2 years old) resulted in a MOE of 2,668 (3.75%) of the cRfD of 0.033 mg/kg bwt/day. Since the benchmark MOE for this assessment was 100 and since EPA generally has no concern for exposures below 100% of the RfD, Syngenta believes that there is a reasonable certainty that no harm will result from dietary (food) exposure to residues arising from the current and proposed uses for fludioxonil.

iv. *Drinking water.* Another potential source of exposure of the general population to residues of fludioxonil are residues in drinking water. Fludioxonil rapidly degrades via photolysis on the soil surface and in water. The half-lives are 1 day and 10 days, respectively. This potential for rapid degradation reduces the potential for ground water or surface water exposure. Fludioxonil soil/solution partition coefficients vary from 991 to 2,440 indicating a relatively high affinity for binding to soil. Estimated Environmental Concentrations (EECs) of fludioxonil in drinking water were determined for the highest use rate of fludioxonil (turfgrass use). Sceening Concentration in Ground Water (SCI-GROW) (Version 2.2) was used to determine acute and chronic ECCs in ground water and FQPA Index Reservior Screening Tool (FIRST) (Version 1.0) was used to determine acute and chronic estimated environmental concentrations in surface water. Based on the model outputs, the ECCs of fludioxonil are 0.174 parts per billion (ppb) for acute and chronic exposure to ground water and 70 ppb and 33 ppb for acute and chronic exposure, respectively, to surface water. Acute Drinking Water Levels of Comparison (DWLOC) were calculated based on an acute Populated Adjusted Dose (aPAD) of 1 mg/kg/day. For the acute assessment, the females (13–50 years) subpopulation generated an acute DWLOC of approximately 30,000 ppb. Thus, the acute DWLOC of 30,000 ppb is considerably higher than the acute EEC of 70 ppb. Chronic DWLOC were calculated based on a cRfD of 0.033 mg/kg/day. For the chronic assessment, the children 1 and 2 years old subpopulation generated the lowest chronic DWLOC of approximately 320 ppb. Thus, the chronic DWLOC of 320 ppb is considerably higher than the chronic EEC of 33 ppb.

2. *Non-dietary exposure.* There is a potential residential post-application exposure to adults and children entering residential areas treated with fludioxonil. Since the Agency did not select a short-term endpoint for dermal exposure, only intermediate dermal exposures were considered. Based on the residential use pattern, Syngenta believes that no long-term post-application residential exposure is expected.

3. *Chronic aggregate exposure.* Based on the completeness and reliability of the toxicity data supporting these petitions, Syngenta believes that there is a reasonable certainty that no harm will result from aggregate exposure to residues arising from all current and proposed fludioxonil uses, including anticipated dietary exposure from food, water, and all other types of non-occupational exposures.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." EPA does not have, at this time, available data to determine whether fludioxonil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, EPA has not assumed that fludioxonil has a common mechanism of toxicity with other substances.

E. Safety Determination

The chronic dietary exposure analysis (food only) showed that exposure from all established and proposed fludioxonil uses would be 3.75% of the cRfD for the most sensitive subpopulation, children 1 and 2 years old. Additionally, for females 13–50 years old, the acute dietary exposure analysis (food only) showed that exposure from all established and proposed fludioxonil uses would be 1.01% of the aPAD. EPA has determined that reliable data support using the standard MOE and uncertainty factor (100 for combined interspecies and intraspecies variability) for fludioxonil and that an additional safety factor of 10 is not necessary to be protective of infants and children.

Acute DWLOCs were calculated based on an aPAD of 1 mg/kg/day. For the acute assessment, the females (13–50 years) subpopulation generated an acute DWLOC of approximately 30,000 ppb. The acute EEC of 70 ppb is considerably less than 30,000 ppb. For the chronic assessment, the children 1 and 2 years old subpopulation generated the lowest chronic DWLOC of approximately 320 ppb. Thus, the chronic DWLOC of 320 ppb is considerably higher than the chronic EEC of 33 ppb. Syngenta has considered the potential aggregate exposure from food, water and non-occupational exposure routes and concluded that aggregate exposure is not expected to exceed 100% of the cRfD and that there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure to fludioxonil.

F. International Tolerances

There are no Codex maximum residue levels established for fludioxonil.

[FR Doc. 03–7977 Filed 4–1–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0352; FRL–7286–2]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 524–EUP–OA from Monsanto Company requesting an experimental use permit (EUP) for the *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production (vector ZMIR39) in corn. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket ID number OPP–2002–0352, must be received on or before May 2, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are interested in agricultural biotechnology or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0352. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0352. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID Number OPP–2002–0352. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0352.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0352. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

Monsanto has applied to test *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production (vector ZMIR39) in corn on 829 acres in 2003 and 2,299 acres in 2004 in Alabama, California, Colorado, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Virginia, and Wisconsin for breeding and observation nursery, inbred seed increase production, line per se and hybrid yield, insect efficacy, product characterization and performance/labeling, insect resistance management, non-target organism and benefit, seed treatment, swine growth and feed efficiency, dairy cattle feed efficiency, beef cattle growth and feed efficiency, and cattle grazing feed efficiency trials. This plant-incorporated protectant is being tested against corn rootworm species. The tolerance exemption under 40 CFR 180.1214 applies to this plant-incorporated protectant. A tolerance exemption in 40 CFR part 180 applies to the associated marker gene and its product, which the Agency considers a plant-incorporated protectant inert ingredient.

III. What Action is the Agency Taking?

Following the review of the Monsanto Company application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The specific legal authority for EPA to take this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: March 21, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–7975 Filed 4–1–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 27, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 2, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at Judith-*B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0168.
Title: Section 43.43, Reports of Proposed Changes in Depreciation Rates.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 10.
Estimated Time Per Response: 6,000 hours.
Frequency of Response: On occasion reporting requirement and recordkeeping requirement.
Total Annual Burden: 40,000 hours.
Total Annual Cost: N/A.
Needs and Uses: The Commission streamlined its depreciation prescription process by permitting summary filings and eliminating the prescription of depreciation rates for incumbent Local Exchange Carrier's (LECs), expanding the prescribed range for the digital switching plant account, and eliminating the theoretical reserve study requirement for mid-sized incumbent LECs. The Commission also established a waiver process whereby price cap incumbent LECs can free themselves of depreciation regulation. The Commission is submitting this information collection to OMB without any changes since the last approval and is seeking a three year clearance.

OMB Control No.: 3060–0233.
Title: Part 36, Separations.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit and state, local or tribal government.
Number of Respondents: 1,500 respondents; 5,600 responses.
Estimated Time Per Response: 2–22 hours.
Frequency of Response: On occasion, annual and quarterly reporting requirements and third party disclosure requirement.
Total Annual Burden: 157,125 hours.
Total Annual Cost: N/A.
Needs and Uses: In order to all determination of the study areas that are entitled to an expense adjustment, and

the wire centers that are entitled to support, each incumbent LEC must provide certain data to the National Exchange Carrier Association (NECA) annually and/or quarterly. State or local telephone companies who want to participate in the federal assistance program must make certain informational showings to demonstrate eligibility. The Commission is submitting this information collection to OMB without any changes since the last approval and is seeking a three year clearance.

OMB Control No.: 3060–0410.
Title: Forecast of Investment Usage Report and Actual Usage of Investment Report.
Form Nos.: FCC Forms 495A and 495B.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 150 respondents; 300 responses.
Estimated Time Per Response: 40 hours.
Frequency of Response: Annual reporting requirement.
Total Annual Burden: 12,000 hours.
Total Annual Cost: N/A.
Needs and Uses: The Forecast of Investment Usage and Actual Usage of Investment Reports are needed to detect and correct forecast errors that could lead to significant misallocation of network plant between regulated and non-regulated activities. The Commission's purpose is to protect the regulated ratepayer from subsidizing the non-regulated activities of rate regulated telephone companies. The Commission is submitting this information collection to OMB without any changes since the last approval and is seeking a three year clearance.

OMB Control No.: 3060–0931.
Title: Maritime Mobile Service Identity (MMSI).
Form Nos.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Individuals or households, business or other for-profit, federal government.
Number of Respondents: 2,000.
Estimated Time Per Response: .50 hours.
Frequency of Response: On occasion reporting requirement, third party disclosure requirement.
Total Annual Burden: 1,000 hours.
Total Annual Cost: N/A.
Needs and Uses: This information collection is necessary to require owners of marine VHF radios with Digital Selective Calling (DSC) capability to register information such as name, address, type of vessel with a private entity issuing marine mobile service identities (MMSI). The information would be used by search and rescue personnel to identify vessels in distress and to select the proper rescue units and search methods. The information is used by the private entities to maintain a database used to provide information about the vessel owner in distress using marine VHF radios with DSC capability. If the collection were not conducted, the U.S. Coast Guard would not have access to this information which would increase the time needed to complete a search and rescue operation. The Commission is submitting this information collection to OMB without any changes since the last approval and is seeking a three year clearance.

OMB Control No.: 3060–0936.
Title: Sections 95.1215, Disclosure Policies and 95.1217, Labeling Requirements.
Form Nos.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit and not-for-profit institutions.
Number of Respondents: 20.
Estimated Time Per Response: 1 hour.
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 20 hours.
Total Annual Cost: N/A.
Needs and Uses: The information collections contained in sections 95.1215 and 95.1217 require manufacturers of transmitters for the Medical Implant Communications Service (MICS) to include with each transmitting device a statement regarding harmful interference and to label the device in a conspicuous location on the device. The requirements will allow use of potential life-saving medical technology without causing interference to other users of the 402–405 MHz band. The Commission is submitting this information collection to OMB without any changes since the last approval and is seeking a three year clearance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–7881 Filed 4–1–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011648–007.
Title: APL/Crowley/Lykes/MLL Space Charter and Sailing Agreement.
Parties: American President Lines, Ltd., APL Co. PTE Ltd., Crowley Liner Service, Inc., Lykes Lines Limited, LLC, TMM Lines Limited, LLC.
Synopsis: The subject agreement modification adds Honduras to the Gulf/Caribbean portion of the agreement and expands the Gulf/East Coast of South America portion of the agreement to include the Atlantic Coast of Florida and Trinidad and Tobago. It also adds language to Article 5.2(a) stating that APL will not use slots within its allocation to move cargo to or from Puerto Cortes or Gulfport.

Agreement No.: 011847.
Title: The Pacific Gulf Express Agreement.
Parties: CMA CGM, S.A., P&O Nedlloyd Limited, P&O Nedlloyd B.V.
Synopsis: The agreement establishes a vessel-sharing and sailing agreement between the parties for the purpose of operating a weekly direct service between the U.S. Gulf and inland and coastal point served via such ports on the one hand and ports in the West Coast of Mexico, Panama, Jamaica and ports in the Japan/Hong Kong range (including the People's Republic of China and South Korea), including inland and Coastal points.

By Order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 03–7958 Filed 4–1–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

ITS International Container Lines Inc., 99 W. Hawthornie Ave., Suite 216, Valley Stream, NY 11580, Officers: Philip Lam, President (Qualifying Individual), Joseph Lam, Vice President.

Dynasty Freight Consolidator Inc., 100 North Hill Drive, #50, Brisbane, CA 94005, Officer: Hung Cheung Ng, President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

TGAX Logistics (USA) LLC, 182–16 149th Rd., Rm. 238, Springfield Garden, NY 11413, Officers: Bosco L. Man, Vice President (Qualifying Individual), Robert Mooney, President.

Boom U.S.A., Inc. dba B.G. Logistics, 2227 NW 79th Avenue, Miami, FL 33122, Officers: Julian Scattolini, Director (Qualifying Individual), Andres Nunez Sorensen, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

LCL Cargo Services, Inc., 8501 NW 17th Street, Miami, FL 33126, Officer: Ron Sonbeek, President (Qualifying Individual).

Inlogix Corp. dba Inlogix, Lot 6 Monterrey Avenue, Geoconsult Bldg., San Juan PR 00920, Officers: Lemuel Toledo Gonzalez, General Manager (Qualifying Individual), Pedro Toledo, Vice President.

Dated: March 28, 2003.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 03–7959 Filed 4–1–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

[File No. 022 3053]

The Laser Vision Institute, LLC; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 25, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Matthew Daynard, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2805.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC home page (for March 26, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/03/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from The Laser Vision Institute, LLC and its principals, Marco Musa, Max Musa, and Marc'Andrea Musa (collectively, "LVI").

The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged misleading representations about LASIK (laser assisted in situ keratomileusis) refractive surgery services designed to improve the focusing power of the eye by permanently changing the shape of the cornea (the clear covering of the front of the eye), thereby reducing patients' dependence on eyeglasses and contact lenses.

The complaint alleges that LVI failed to substantiate claims that its LASIK surgery services: (1) Eliminate the need for glasses and contacts for life; (2) eliminate the need for reading glasses; and (3) eliminate the need for bifocals. Among other reasons, the complaint alleges that LASIK surgery does not eliminate most peoples' need for reading glasses.

According to the FTC complaint, LVI falsely claimed that consumers will receive a free consultation that determines their candidacy for LASIK. In fact, the complaint alleges that consumers receive a free, initial meeting with an LVI representative during which consumers receive a quoted price for the procedure based on their prescription and other desired services, and are required to pay a $300 deposit before the risks and limitations of LASIK are disclosed to them and their candidacy is determined by a health care professional at a future time. The $300 deposit is non-refundable if, after the consultation, consumers elect not to undergo the procedure. Consumers are refunded $200 of the deposit if they are later rejected as medical candidates.

The proposed consent order contains provisions designed to prevent LVI from engaging in similar acts and practices in the future.

Part I of the order prohibits claims that LASIK surgery services or any other refractive surgery services: (1) Eliminate the need for glasses and contacts for life; (2) eliminate the need for reading glasses; or (3) eliminate the need for bifocals, unless the claims are substantiated by competent and reliable scientific evidence. "Refractive surgery services" are defined as any surgical procedure designed to improve the focusing power of the eye by permanently changing the shape of the cornea.

Part II of the order requires that future claims about the benefits, performance, efficacy, or safety of any refractive surgery service be substantiated by competent and reliable scientific evidence.

Part III of the order prohibits LVI from misrepresenting: (1) That consumers will receive a free consultation that determines their candidacy for LASIK or any other refractive surgery services; (2) the cost to consumers to have their candidacy for refractive surgery services determined; or (3) the information consumers will receive during a consultation for refractive surgery services.

Part IV of the order permits device claims approved by the FDA under any new medical device application.

Parts V and VI of the order require LVI to keep copies of relevant advertisements and materials substantiating claims made in the advertisements, and provide copies of the order to certain of its personnel.

Part VII of the order requires the corporate respondent to notify the Commission of changes in corporate structure.

Part VIII of the order requires the individual respondents to notify the Commission of their employment status in the eye care industry.

Part IX of the order requires LVI to file compliance reports with the Commission, and Part X provides that the order will terminate after 20 years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–7931 Filed 4–1–03; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 022 3098]

LCA-Vision, Inc. d/b/a LasikPlus; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 25, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Matthew Daynard, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3291.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 26, 2003), on the World Wide Web, at "*http://www.ftc.gov/os/2003/03/index.htm.*" A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from LCA-Vision, Inc. d/b/a LasikPlus ("LCA").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves allegedly misleading representations about LASIK (laser assisted in situ keratomileusis) refractive surgery services designed to improve the focusing power of the eye by permanently changing the shape of the cornea (the clear covering of the front of the eye), thereby reducing patients' dependence on eyeglasses and contact lenses.

According to the FTC complaint, LCA failed to have substantiation for the claims that its LASIK surgery services: (1) Eliminate the need for glasses and contacts for life; and (2) pose significantly less risk to patients' eye health than wearing glasses or contacts. Among other reasons, LASIK surgery does not eliminate most peoples' need for reading glasses, and the relative risks of LASIK surgery and wearing contact lenses over time are not readily comparable. The complaint further alleges that LCA did not have substantiation for its claim that its LASIK surgery services eliminate the risk of glare and haloing, a starburst effect around lights at night, that can be caused by the LASIK procedure.

The proposed consent order contains provisions designed to prevent LCA

from engaging in similar acts and practices in the future.

Part I of the order prohibits claims that LASIK surgery services or any other refractive surgery services: (1) Eliminate the need for glasses and contacts for life; (2) pose significantly less risk to patients' eye health than wearing glasses or contacts; or (3) eliminate the risk of glare and haloing, unless the claims are substantiated by competent and reliable scientific evidence. "Refractive surgery services" are defined as any surgical procedure designed to improve the focusing power of the eye by permanently changing the shape of the cornea.

Part II of the order requires that future claims about the benefits, performance, efficacy, or safety of any refractive surgery service be substantiated by competent and reliable scientific evidence.

Part III of the order permits device claims approved by the FDA under any new medical device application.

Parts IV, V, VI, and VII of the order require LCA to keep copies of relevant advertisements and materials substantiating claims made in the advertisements, to provide copies of the order to certain of its personnel, to notify the Commission of changes in corporate structure, and to file compliance reports with the Commission. Part VIII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–7930 Filed 4–1–03; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR); Automation of Medical Standard Form 88

AGENCY: Office of Communications, GSA.

ACTION: Guideline on automating medical standard forms.

BACKGROUND: The Interagency Committee on Medical Records (ICMR) is aware of numerous activities using computer-generated medical forms, many of which are not mirror-like images of the genuine paper Standard/Optional form. With GSA's approval to ICMR eliminated the requirement that every electronic version of a medical Standard/Optional form be reviewed and granted an exception. The committee proposes to set required fields standards and that activities developing computer-generated versions adhere to the required fields but not necessarily to the image. The ICMR plans to review medical Standard/Optional forms which are commonly used and/or commonly computer-generated. We will identify those fields which are required, those (if any) which are optional, and the required format (if necessary). Activities may not add or delete data elements that would change the meaning of the form. This would require written approval from the ICMR. Using the process by which overprints are approved for paper Standard/Optional forms, activities may add other data entry elements to those required by the committee. With this decision, activities at the local or headquarters level should be able to develop electronic versions which meet the committee's requirements. This guideline controls the "image" or required fields but not the actual data entered into the field.

SUMMARY: With GSA's approval, the Interagency Committee of Medical Records (ICMR) eliminated the requirement that every electronic version of a medical Standard/Optional form be reviewed and granted any exception. The following fields must appear on the electronic version of the following form:

ELECTRONIC ELEMENTS FOR SF 88

Item	Placement*
Report of Medical Examination	Top of form.
Standard Form 88 (Rev. 8/2001) (Form ID)	Bottom right corner of form.
Data Entry Fields:	
1. Date of Exam	
2. Last Name.	
2. First Name	
2. Middle Name	
3. Identification Number	
4. Grade of Position	
4. Component of Position	
5. Home Address (Number, street or RDFD, city or town, state and ZIP code)	
6. Emergency Contact (Name)	
6. Emergency Contact (address)	
7. Date of Birth	
8. Age	
9. Sex—Female (Checkbox)	
9. Sex—Male (Checkbox)	
10. Relationship of Contact	
11. Place of Birth	
12. Agency	
13. Organization Unit	
14a. Total Years Government Service—Military	
14b. Total Years Government Service—Civilian	
15. Name of Examining Facility or Examiner	
15. Address of Examining Facility or Examiner	
16. Rating or Specialty of Examiner	
17. Purpose of Examination	
18. Clinical Evaluation—Check each item in appropriate columns; enter "NE" if not evaluated	Above below listed items
a. Head, Face, Neck and Scalp—Normal (Checkbox)	

ELECTRONIC ELEMENTS FOR SF 88—Continued

Item	Placement*
a. Head, Face, Neck and Scalp—Abnormal (Checkbox)	
b. Ears-General (Internal Canals) (auditory acuity under item 39)—Normal (Checkbox)	
b. Ears-General (Internal Canals) (auditory acuity under item 28t)—Abnormal (Checkbox)	
c. Drums (Perforations)—Normal (Checkbox)	
c. Drums (Perforations)—Abnormal (Checkbox)	
d. Nose—Normal (Checkbox)	
d. Nose—Abnormal (Checkbox)	
e. Sinuses—Normal (Checkbox)	
e. Sinuses—Abnormal (Checkbox)	
f. Mouth and Throat—Normal (Checkbox)	
f. Mouth and Throat—Abnormal (Checkbox)	
g. Eyes—General (Visual acuity and refraction under item 28li–28s)—Normal (Checkbox)	
g. Eyes—General (Visual acuity and refraction under item 28li–28s)—Abnormal (Checkbox)	
h. Ophtalmoscopic—Normal (Checkbox)	
h. Ophtalmoscopic—Abnormal (Checkbox)	
i. Pupils (Equality and reaction)—Normal (Checkbox)	
i. Pupils (Equality and reaction)—Abnormal (Checkbox)	
j. Ocular Motility (Associated parallel movements nystagmus)—Normal (Checkbox)	
j. Ocular Motility (Associated parallel movements nystagmus)—Abnormal (Checkbox)	
k. Lungs and Chest—Normal (Checkbox)	
k. Lungs and Chest—Abnormal (Checkbox)	
l. Heart (Thrust, size, rhythm, sounds)—Normal (Checkbox)	
l. Heart (Thrust, size, rhythm, sounds)—Abnormal (Checkbox)	
m. Vascular System—Normal (Checkbox)	
m. Vascular System—Abnormal (Checkbox)	
n. Abdomen and Viscera (Include hernia)—Normal (Checkbox)	
n. Abdomen and Viscera (Include hernia)—Abnormal (Checkbox)	
o. Prostate (Over 40 or clinically indicated)—Normal (Checkbox)	
o. Prostate (Over 40 or clinically indicated)—Abnormal (Checkbox)	
p. Testicular—Normal (Checkbox)	
p. Testicular—Abnormal (Checkbox)	
q. Anus and Rectum (Hemorrhoids, Fistulae) (Hemocult Results)—Normal (Checkbox)	
q. Anus and Rectum (Hemorrhoids, Fistulae) (Hemocult Results)—Abnormal (Checkbox)	
r. Endocrine System—Normal (Checkbox)	
r. Endocrine System—Abnormal (Checkbox)	
s. G–U System—Normal (Checkbox)	
s. G–U System—Abnormal (Checkbox)	
t. Upper Extremities (Strength, range of motion)—Normal (checkbox)	
t. Upper Extremities (Strength, range of motion)—Abnormal (Checkbox)	
u. Feet—Normal (Checkbox)	
u. Feet—Abnormal (Checkbox)	
v. Lower Extremities (Except feet) (Strength, range of motion)—Normal (Checkbox)	
v. Lower Extremities (Except feet) (Strength, range of motion)—Abnormal (Checkbox)	
w. Spine, Other Musculoskeletal—Normal (Checkbox)	
w. Spine, Other Musculoskeletal—Abnormal (Checkbox)	
x. Identifying Body Marks, scars, Tattoos (Explain in Notes)—Normal (Checkbox)	
x. Identifying Body Marks, scars, Tattoos (Explain in Notes)—Abnormal (Checkbox)	
y. Skin, Lymphatics—Normal (Checkbox)	
y. Skin, Lymphatics—Abnormal (Checkbox)	
z. Neurologic (Equilibrium tests under item 28t)—Normal (Checkbox)	
z. Neurologic (Equilibrium tests under item 28t)—Abnormal (Checkbox)	
aa. Psychiatric (Specify any personality deviation)—Normal (Checkbox)	
aa. Psychiatric (Specify any personality deviation)—Abnormal (Checkbox)	
bb. Breasts—Normal (Checkbox)	
bb. Breasts—Abnormal (Checkbox)	
cc. Pelvic (Females only)—Normal (Checkbox)	
cc. Pelvic (Females only)—Abnormal (Checkbox)	
19. Notes (Describe every abnormality in detail. Enter pertinent item number before each comment. Continue in item 29 and use additional sheets if necessary)	
20. Dental—Acceptable (Checkbox)	
20. Dental—Not Acceptable (Checkbox)	
20. Dental—Not Acceptable (if checked, explain)	
20. Dental—Dental Examination not done by Dental Officer	
21. Remarks and Additional Dental Defects and Diseases	
22. Test Results (Copies of results are preferred as attachments)	Above below listed items.
22a. Urinalysis—Specific Gravity	
22a. Urine Albumin	
22a. Urine Sugar	
22b. Syphilis Serology (Specify test used and results)	
22c. EKG	
22d. Blood Type and RH Factor	

ELECTRONIC ELEMENTS FOR SF 88—Continued

Item	Placement*
22e. Chest X-Ray or PPD (Place, date, film number and result)	
22f. Other Tests	
23. Relationship to Sponsor	
24a. Sponsor's Name—Last	
24b. Sponsor's Name—First	
24c. Sponsor's Name—MI	
24c. Sponsor's ID Number (SSN or Other)	
25. Depart./Service	
26. Hospital or Medical Facility	
27. Records Maintained At	
Last Name—First Name—Middle Name	Top of back page.
Identification Number	Top of back page.
Number of Sheets Attached	Top of back page.
28. Measurements and Other Findings	Above below listed items.
28a. Height	
28b. Weight	
28c. Color Hair	
28d. Color Eyes	
28e. Build—Slender (Checkbox)	
28e. Build—Medium (Checkbox)	
28e. Build—Heavy (Checkbox)	
28e. Build—Obese (Checkbox)	
28f. Temperature	
28g(1). Blood Pressure (Arm at heart level)—Sitting—Sys.	
28g(1). Blood Pressure (Arm at heart level)—Sitting—Dias.	
28g(2). Blood Pressure (Arm at heart level)—Recumbent—Sys.	
28g(2). Blood Pressure (Arm at heart level)—Recumbent—Dias.	
28g(3). Blood Pressure (Arm at heart level)—Standing (5 minutes)—Sys.	
28g(3). Blood Pressure (Arm at heart level)—Standing (5 minutes)—Dias.	
28h(1). Pulse (Arm at heart level)—Sitting	
28h(2). Pulse (Arm at heart level)—Recumbent	
28h(3). Pulse (Arm at heart level)—Standing—3 minutes	
28h(4). Pulse (Arm at heart level)—After Exercise	
28h(5). Pulse (Arm at heart level)—2 minutes after exercise	
28i(1). Distant Vision—Right 20/ (number)	
28i(1). Distant Vision—Right—Corrected to 20/ (number)	
28i(2). Distant Vision—Left 20/ (number)	
28i(2). Distant Vision—Left Corrected to 20/ (number)	
28j(1). Refraction—Right—By	
28j(1). Refraction—Right—S	
28j(1). Refraction—Right—CX	
28j(2). Refraction—Left—By	
28j(2). Refraction—Left—S	
28j(2). Refraction—Left—CX	
28k(1). Near Vision—Right (Number)	
28k(1). Near Vision—Right—Corrected To (Number)	
28k(1). Near Vision—Right—By (Number)	
28k(2). Near Vision—Left (Number)	
28k(2). Near Vision—Left—Corrected To (Number)	
28k(2). Near Vision—Left—By (Number)	
28l(1). Heterophoria (Specify Distance)—ESO	
28l(2). Heterophoria (Specify Distance)—EXO	
28l(3). Heterophoria (Specify Distance)—RH	
28l(4). Heterophoria (Specify Distance)—LH	
28l(5). Heterophoria (Specify Distance)—Prism Division	
28l(6). Heterophoria (Specify Distance)—Prism Conv. Ct.	
28l(7). Heterophoria (Specify Distance)—PC	
28l(8). Heterophoria (Specify Distance)—PD	
28m(1). Accommodation—Right	
28m(2). Accommodation—Left	
28n(1). Field of Vision—Right	
28n(2). Field of Vision—Left	
28o. Color Vision (Test used and result)	
28p. Night Vision (Test used and result)	
28q(1). Depth Perception (Test used and score)—Uncorrected	
28q(2). Depth Perception (Test used and score)—Corrected	
28r. Red Lens Test	
28s(1). Intraocular Tension—Right	
28s(2). Intraocular Tension—Left	
28t. Audiometer—Right Ear—500–512	
28t. Audiometer—Right Ear—1000–1024	

ELECTRONIC ELEMENTS FOR SF 88—Continued

Item	Placement*
28t. Audiometer—Right Ear—2000–2048	
28t. Audiometer—Right Ear—3000–3096	
28t. Audiometer—Right Ear—4000–4096	
28t. Audiometer—Right Ear—6000–6144	
28t. Audiometer—Left Ear—500–512	
28t. Audiometer—Left Ear—100–1024	
28t. Audiometer—Left Ear—2000–2048	
28t. Audiometer—Left Ear—3000–3096	
28t. Audiometer—Left Ear—4000–4096	
28t. Audiometer—Left Ear—6000–6144	
28u. Psychological and Psychomotor (Tests used and score)	
29. Notes (Continued) and Significant or Interval History	
30. Summary of Defects and Diagnoses (List diagnoses with item numbers)	
31. Recommendations—Further Specialist Examinations Indicated (Specify)	
32. Physical Profile—P	
32. Physical Profile—U	
32. Physical Profile—L	
32. Physical Profile—H	
32. Physical Profile—E	
32. Physical Profile—S	
33. Examinee—Is Qualified for (Checkbox)	
33. Examinee—Is Qualified for Explanation	
33. Examinee—Is Not Qualified for (Checkbox)	
33. Examinee—Is Not Qualified for Explanation	
34. Physical Category—A	
34. Physical Category—B	
34. Physical Category—C	
34. Physical Category—E	
35. If Not Qualified, List Disqualifying Defects by Item Number	
36. Typed or Printed Name of Physician	
36. Signature of Physician	
37. Typed or Printed Name of Physician	
37. Signature of Physician	
38. Typed or Printed Name of Dentist or Physician (Indicate which)	
38. Signature of Dentist or Physician	
39. Typed or Printed Name of Reviewing Officer or Approving Authority	
39. Signature of Reviewing Officer or Approving Authority	

*If no specific placement, data element may be in any order.

FOR FURTHER INFORMATION CONTACT: CDR Katherine Ciacco Palatianos, Indian Health Service, Department of Health and Human Services, Rockville, MD 20857 or e-mail at *kciacco@hqe.ihs.gov*.

Dated: March 21, 2003.

Katherine Ciacco Palatianos,

Chairperson, Interagency Committee on Medical Records.

[FR Doc. 03–7927 Filed 4–1–03; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0354]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; The Evaluation of Long-Term Antibiotic Drug Therapy for Persons Involved in Anthrax Remediation Activities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the information collection provisions by May 2, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to *sshapiro@omb.eop.gov* or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

The Evaluation of Long-Term Antibiotic Drug Therapy for Persons Involved in Anthrax Remediation Activities—(OMB Control Number 0910–0494)—Extension

Due to a terrorist event during the fall of 2001, approximately 1,200 decontamination workers were placed on long-term antibiotic therapy to protect them from environmental anthrax spores. Through the services of a contractor the FDA is currently administering a survey to all 1,200 decontamination workers to collect important health information pertaining to long term use of antibiotics. This information is critical to the agency's mission in protecting the public health and failure of the FDA to adequately follow up on these workers will reduce the agency's ability to apply lessons learned from the current situation to provide guidance during future public health emergencies should they occur. This could result, not only, in the loss of time and dollars but also in the loss of life if patients stop taking their medicines because they think the drug therapy is responsible for a health problem when in fact it is not. This type of population is likely to never be available for assessment again until a future terrorist event occurs. It would be unacceptable for FDA not to obtain drug experience information from this group to assist in any future public health response to a terrorist attack.

FDA is requesting an extension of the OMB approval of a survey to help FDA's Center for Drug Evaluation and Research evaluate the long-term antibiotic drug therapy in persons involved in anthrax remediation activities. The reason for the extension is to allow for more time to complete the survey, which has been delayed for two reasons. The first reason relates to the delays in cleaning up some of the contaminated sites. Primarily the cleanup of the Brentwood Post Office in Washington, DC, which accounts for approximately 400 of the decontamination workers, was delayed. The clean up at Brentwood is almost complete and it is anticipated that final medical examinations of the Brentwood cleanup workers can begin in earnest in the February/March 2003 timeframe. Once the final medical examination is completed then Market Facts, the contractor hired to conduct the survey, can begin to administer the questionnaire to these workers. The second reason is the result of having to obtain authorization from approximately 35 subcontractor firms (who employed the decontamination workers) to release contact information on the remediation workers. To date, only contact information for approximately 300 workers has been released and further efforts are on going to obtain permission to release the remaining information. The medical service subcontractor is working diligently to obtain the necessary authorizations.

In the **Federal Register** of January 17, 2003 (68 FR 2561), the agency requested comments on the proposed collections of information. The agency received no comments to the notice.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Type of Survey	No. of Respondents	Annual Frequency/ Response	Total Annual Responses	Hours per Response	Total Hours
Telephone	1,200	1	1,200	.25	300
Total					300

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated annual reporting burden is based on the Centers for Disease Control and Prevention's administration, in 2001 and 2002, of a similar questionnaire to individuals who were exposed to anthrax spores dispersed during a terrorist event.

Dated: March 26, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–7821 Filed 4–1–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0435]

International Conference on Harmonisation; Guidance on Electronic Common Technical Document Specification; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "M2 eCTD: Electronic Common Technical Document Specification." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance defines the means for industry-to-agency transfer of regulatory information that will facilitate the creation, review, life cycle management, and archiving of the electronic submission. The guidance is intended to assist industry in transferring electronically their marketing applications for human drug and biological products to a regulatory authority.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Requests and comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Robert Yetter, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373, or Timothy M. Mahoney, Center for Drug Evaluation and Research (HFD–73), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3540.

Regarding the ICH: Janet Showalter, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0865.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labour, and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada's Health Products and Food Branch, and the European Free Trade Area.

In accordance with FDA's good guidance practices (GGPs) regulation (21 CFR 10.115), this document is being called a guidance, rather than a guideline.

To facilitate the process of making ICH guidances available to the public, the agency has changed its procedure for publishing ICH guidances. As of April 2000, we no longer include the text of ICH guidances in the **Federal Register**. Instead, we publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance is be placed in the docket and can be obtained through regular agency sources (see **ADDRESSES**). Draft guidances are left in the original ICH format. The final guidance is reformatted to conform to the GGP style before publication.

In the **Federal Register** of June 14, 2002 (67 FR 40948), FDA announced the availability of a second draft guidance entitled "Electronic Common Technical Document Specification." The notice gave interested persons an opportunity to submit comments by August 1, 2002.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in September 2002.

The eCTD guidance describes the recommended method for industry-to-agency electronic transfer of marketing applications for human drug and biological products. The guidance defines the means for industry-to-agency transfer of regulatory information that will facilitate the creation, review, life cycle management, and archiving of the electronic submission. The guidance is intended to assist industry in transferring their marketing applications for human drug and biological products to a regulatory authority. The guidance includes the following changes:

- The Document Type Definition (DTD) and specificaton version numbers were harmonized to 3.0.
- Throughout the guidance, references to Common Technical Document (CTD) sections were updated to reflect the current CTD specifications.
- Path names in Appendix 4 were abbreviated to avoid exceeding maximum path character limits.
- The Glossary of Terms was updated.
- Technical errors discovered during testing were corrected.

This guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/ohrms/dockets/default.htm, http://www.fda.gov/cder/guidance/index.htm, or http://www.fda.gov/cber/publications.htm.

Dated: March 25, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–7818 Filed 4–1–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02E–0150]

Determination of Regulatory Review Period for Purposes of Patent Extension; GYNECARE INTERGEL

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for GYNECARE INTERGEL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device GYNECARE INTERGEL. GYNECARE INTERGEL is indicated for use in patients undergoing open, conservative gynecologic surgery as an adjunct to good surgical technique to reduce postsurgical adhesions. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for GYNECARE INTERGEL (U.S. Patent No. 5,532,221) from Lifecore Medical, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 31, 2001, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of GYNECARE INTERGEL represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for GYNECARE INTERGEL is 2,438 days. Of this time, 1,453 days occurred during the testing phase of the regulatory review period, while 985 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: March 17, 1995. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective March 17, 1995.

2. *The date an application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: March 8, 1999. The applicant claims March 5, 1999, as the date the premarket approval application (PMA) FOR GYNECARE INTERGEL (PMA P990015) was initially submitted. However, FDA records indicate that PMA P990015 was submitted on March 8, 1999.

3. *The date the application was approved:* November 16, 2001. FDA has verified the applicant's claim that PMA P990015 was approved on November 16, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 867 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by June 2, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by Septemebr 29, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 6, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–7819 Filed 4–1–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02E–0147]

Determination of Regulatory Review Period for Purposes of Patent Extension; OP–1 IMPLANT

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for OP–1 IMPLANT and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device OP–1 IMPLANT. OP–1 IMPLANT is indicated for use as an alternative to the patient's own bone (autograft) in recalcitrant long bone nonunions where autograft is unfeasible and alternative treatments have failed. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for OP–1 IMPLANT (U.S. Patent No. 5,258,494) from Stryker Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 31, 2001, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of OP–1 IMPLANT represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for OP–1 IMPLANT is 3,627 days. Of this time, 3,485 days occurred during the testing phase of the regulatory review period, while 142 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: November 14, 1991. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective November 14, 1991.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: May 29, 2001. The applicant claims May 25, 2001, as the date the premarket approval application (PMA) for OP–1 IMPLANT (PMA HO10002/A01) was initially submitted. However, FDA records indicate that PMA HO10002/A01 was submitted on May 29, 2001.

3. *The date the application was approved*: October 17, 2001. FDA has verified the applicant's claim that PMA HO10002/A01 was approved on October 17, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,837 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may by submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by June 2, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 29, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 7, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–7820 Filed 4–1–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0111]

Draft Guidance for Federal Agencies and State and Local Governments; Potassium Iodide Shelf Life Extension; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for Federal agencies and State and local governments entitled "Potassium Iodide Shelf Life Extension." This document is intended to provide guidance to Federal agencies and to State and local governments on testing to extend the shelf life of stockpiled potassium iodide (KI) tablets. The draft guidance discusses FDA recommendations on the requisite testing for KI tablet shelf life extensions, the qualifications of laboratories suitable to conduct the tests, and issues regarding notification of holders of stockpiled KI tablets as well as end users about changes to batch shelf life once testing has been successfully conducted.

DATES: Submit written or electronic comments on the draft guidance by June 2, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Richard Adams, Center for Drug Evaluation and Research (HFD–643), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5849.

SUPPLEMENTARY INFORMATION:

I. Background

In November 2001, FDA provided guidance on the safe and effective use of KI tablets as an adjunct to other public health protective measures in the event that radioactive iodine is released into the environment (66 FR 64046, December 11, 2001). The guidance entitled "Potassium Iodide as a Thyroid Blocking Agent in Radiation Emergencies" updated FDA's 1982 recommendations for the use of KI tablets to reduce the risk of thyroid cancer in radiation emergencies involving the release of radioactive iodine. The recommendations in that guidance addressed KI dosage and the projected radiation exposure at which the drug should be used. In April 2002, FDA issued another guidance, "Frequently Asked Questions on Potassium Iodide (KI)." Additional information was provided for emergency pediatric dosing in "Home Preparation Procedure for Emergency Administration of Potassium Iodide Tablets to Infants and Small Children," updated on July 3, 2002.

This draft guidance entitled "Potassium Iodide Shelf Life Extension," is intended to provide Federal agencies and State and local governments information on testing to extend the shelf life of stockpiled potassium iodide (KI) tablets. The agency has developed this document in response to several State inquiries on this topic. This draft guidance discusses FDA recommendations on the requisite testing for such shelf life extensions, the qualifications of laboratories suitable to conduct the tests, and issues regarding notification of holders of stockpiled KI tablets as well as end users about changes to batch shelf life once testing has been successfully conducted.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statues and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: March 25, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–7817 Filed 4–1–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Planned Grant Award to Hawaii County's Office of the Mayor

AGENCY: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Availability of grant funds to Hawaii County's Office of the Mayor.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) intends to award approximately $300,000 (total costs) per year for 3 years to Hawaii County's Office of the Mayor. The first year's award will be made in fiscal year 2003 if the application is scored by the initial review group and concurred with by the CSAT National Advisory Council.

Hawaii County's Office of the Mayor has been selected to receive a single source award due to the devastating impact that crystal methamphetamine, also known as "ice," abuse has had on the youth of Hawaii. The effects of this problem on children on the Island of Hawaii are profound, with some of the highest rates of drug use among youth in the State of Hawaii. According to the 2000 Hawaii Student Alcohol, Tobacco and other Drug Use Study conducted by the Department of Health, Alcohol and Drug Abuse Division, 10.6 percent of Hawaii County high school seniors answered in the affirmative to "frequent drug use—more than 20 times in the past 30 days," compared to just 5.6 percent statewide. This study reports that the State of Hawaii has the highest use of "ice" by 12th graders in the Nation and that Hawaii County has the highest use of "ice" in the State. Findings further reveal that Hawaii County has one-third more 8th graders and one-third more 10th graders using "ice" than the rest of the State. There are currently no residential or intensive outpatient treatment services available on the Big Island and State resources are able to provide substance abuse treatment to only 1,500 youth. This funding will address the serious health and public safety threat that "ice" has on the Hawaii County youth by supporting the expansion of adolescent methamphetamine abuse treatment services to a full continuum of care.

Authority: The grant award will be made under the authority of section 509 of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.243.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Gallagher, Project Officer, CSAT, SAMHSA, Rockwall II, 7th Floor, 5600 Fishers Lane, Rockville, MD 20857; telephone: (301) 443–7259; e-mail *cgallagh@samhsa.gov*.

Dated: March 25, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–7822 Filed 4–1–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information collection under review: Checklist for on-site review of schools; OMB–35.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously approved by OMB under emergency review proceedings on September 13, 2002 and the agency was granted temporary approval.

The BCIS intends to request an extension of this information collection. Therefore, the purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 2, 2003.

This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Checklist for On-Site Review of Schools.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File No. OMB–35, Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The data is used by the agency when conducting on-site visits at schools that submitted certification applications in SEVIS after the preliminary enrollment period.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 responses at 65 (1.083) minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,830 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Citizenship and Immigration Services, Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Dated: March 27, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

[FR Doc. 03–7893 Filed 4–1–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2003–14779]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 1625–0070, 1625–0047, 1625–0077, and 1625–0084

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of four information Collection Requests (ICRs). The ICRs comprise (1) Vessel Identification System, (2) Vital System Automation, (3) Security of Passenger Vessels and Passenger Terminals, and (4) Audit Reports under the International Safety Management Code. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before June 2, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2003–14779] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2003–14779], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Vessel Identification System. *OMB Control Number:* 1625–0070.

Summary: The Coast Guard must establish a nationwide vessel-identification system (VIS) and centralize certain vessel-documentation functions. VIS provides participating States and territories with access to data on vessels numbered by States and territories. Participation in it is voluntary.

Need: 46 U.S.C. 12501 mandates the establishment of a VIS. 33 CFR Part 187 prescribes the requirements of VIS.

Respondents: Governments of States and territories.

Frequency: Daily.

Burden: The estimated burden is 6,045 hours a year.

2. *Title:* Vital System Automation.

OMB Control Number: 1625–0047.

Summary: This collection pertains to the vital-system automation on commercial vessels that is necessary to protect personnel and property on board U.S.-flag vessels.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to promulgate rules for the safety of personnel and property on board vessels. Various sections within parts 52, 56, 58, 62, 110, 111, and 113 of Title 46 of the Code of Federal Regulations contain these rules.

Respondents: Designers, manufacturers, and owners of vessels and shipyards.

Frequency: On occasion.

Burden: The estimated burden is 57,375 hours a year.

3. *Title:* Security of Passenger Vessels and Passenger Terminals.

OMB Control Number: 1625–0077.

Summary: The purpose of rules on the security of passenger vessels and passenger terminals is to deter or mitigate the results of terrorism and other unlawful acts against these vessels and terminals. The rules should reduce the likelihood of such acts and should reduce the damage to property and injury to persons, if such acts occur.

Need: 33 U.S.C. 1231 authorizes the Coast Guard to issue rules for the safety of ports and waterways. 33 CFR Parts 120 and 128 contain these rules.

Respondents: Owners, operators, and charterers of passenger vessels and passenger terminals.

Frequency: On occasion.

Burden: The estimated burden is 3,549 hours a year.

4. *Title:* Audit Reports under the International Safety Management Code.

OMB Control Number: 1625–0084.

Summary: This information helps to determine whether U.S. vessels, subject to SOLAS 74, engaged in international trade, are in compliance with that treaty. Organizations recognized by the Coast Guard conduct ongoing audits of vessels' and companies' safety-management-systems.

Need: 46 U.S.C. 3203 authorizes the Coast Guard to prescribe rules regarding safety-management systems. 33 CFR part 96 contains the rules for those systems and hence the safe operation of vessels.

Respondents: Owners and operators of vessels, and organizations authorized to issue certificates of compliance with the ISM Code for the United States.

Frequency: On occasion.

Burden: The estimated burden is 8,440 hours a year.

Dated: March 25, 2003.

Clifford I. Pearson,

Director of Information and Technology.

[FR Doc. 03–7995 Filed 4–1–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–14790]

National Offshore Safety Advisory Committee; charter renewal

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Secretary of Transportation renewed the charter for the National Offshore Safety Advisory Committee (NOSAC) for 2 years from January 17, 2003 until January 17, 2005. This charter was renewed before the Coast Guard moved to the Department of Homeland Security under the Homeland Security Act of 2002. NOSAC is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Coast Guard on safety, security and environmental protection issues relating to the offshore mineral and energy industries.

ADDRESSES: You may request a copy of the charter by writing to Commandant (G–MSO), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–0214; or by faxing 202–267–4570. This notice and the charter are available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Captain Michael Brown, Executive Director of NOSAC, or Mr. Jim Magill, Assistant to the Executive Director, telephone 202–267–1082, fax 202–267–4570.

Dated: March 26, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 03–7994 Filed 4–1–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public, state, local, or tribal governments and other Federal agencies to take this opportunity to comment on the proposed collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments on the Application for Community Disaster Loan.

SUPPLEMENTARY INFORMATION: The Community Disaster Loan (CDL) Program is authorized by section 417 of the Disaster Relief Act of 1974 (Pub. L. 93–288), as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (Pub. L. 100–707), and implemented by FEMA regulation 44 CFR, subpart K, Community Disaster Loans, Section 206.364. The CDL Program offers loans to local governments that have suffered a substantial loss of tax or other revenues as a result of a major disaster or emergency and demonstrates a need for Federal financial assistance in order to perform their governmental functions. The loan must be justified on the basis of need and be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and the three succeeding fiscal years.

Collection of Information

Title: Application for Community Disaster Loan .

Type of Information Collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0034.

Form Number: FEMA Form 90–7.

Abstract: The local government may submit an Application for Community Disaster Loan through the Governor's Authorized Representative. The loan must be justified on the basis of need and be based on the actual and projected expenses, as a result of a major disaster declaration, for the fiscal year in which the disaster occurred and for the 3 succeeding fiscal years.

Affected Public: State, Local, or Tribal Governments.

Estimated Total Annual Burden Hours: 30.

Number of Respondents: 5.

Frequency of Response: On occasion.

Hour Burden Per Response: 6 hours.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Gerry Miederhoff at (202) 646–3683 for additional information regarding this information collection. You may contact Ms. Anderson for copies of the proposed information collection at (202) 646–2625, facsimile number (202) 646–3347, or by e-mail at *InformationCollections@fema.gov.*

Dated: March 26, 2003.

Vernon Adler,

Acting Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–7789 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the Mortgage Portfolio Protection Program (MPPP) that is a mechanism used by lending institutions, mortgage servicing companies, and others servicing mortgage loan portfolios to bring their mortgage loan portfolios into compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) authorized by Public Law 90–448 (1968) and expanded by Public Law 93–234 (1973) provides Federally backed flood insurance for existing buildings exposed to flood risk. In accordance with Public Law 93–234, the purchase of flood insurance is mandatory when Federal and Federally related financial assistance is being provided for acquisition or construction of buildings located or to be located within FEMA identified special flood hazard areas of communities which are participating in the program.

Collection of Information

Title: Mortgage Portfolio Protection Program (MPPP).

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The Mortgage Portfolio Protection Program (MPPP) is a mechanism used by lending institutions, mortgage servicing companies, and others servicing mortgage loan portfolios to bring their mortgage loan portfolios into compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973. Implementation of the various requirements of the MPPP should result in mortgagors, following receipt of notification of the need for flood insurance, showing evidence of such a policy or purchasing the necessary coverage through their local insurance agent or appropriate Write Your Own (WYO) Company. It is intended that flood insurance policies be written under the MPPP only as a last resort, and only on mortgages whose mortgagors have failed to respond to the various notifications required by the program. The requirements of the MPPP are contained in FEMA regulation 44 CFR 62.23(l).

Affected Public: Individuals and households; businesses or other for-profit; not-for-profit institutions; farms; small businesses or organizations; Federal agencies or employees; and State, local or tribal governments.

Estimated Total Annual Burden Hours: 6,093 hours.

Respondents	Number of respondents (A)	Frequency of response (B)	Hours per response (minutes) (C)	Annual burden hours (A × B × C)
Lenders	250	As required	30	125
Mortgagors	11,936	One-time	30	5,968
Total	12,186			6,093

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of

the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Neil Furst, Mitigation Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate at (202) 646–3428 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625, facsimile number (202) 646–3347, or e-mail address at *InformationCollections@fema.gov.*

Dated: March 26, 2003.

Vernon Adler,

Acting Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–7790 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revised information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A), this notice seeks comments concerning the revised application for Crisis Counseling Immediate Services Program assistance under Section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Act), Public Law 93–288, as amended. The Immediate Services application has been revised to reduce the paperwork burden on the State applicant.

SUPPLEMENTARY INFORMATION: Section 416 of the Act authorizes the President to provide financial assistance to state and local governments for professional counseling services to victims of major disasters in order to relieve mental health problems caused or aggravated by a major disaster or its aftermath. FEMA regulation 44 CFR part 206, subpart F, section 206.171 implements the provisions of the Act.

Collection of Information

Title: Crisis Counseling Assistance and Training Program—Immediate Services Program and Reporting.

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0166.

Form Numbers: Standard Form 424 Request for Federal Assistance.

FEMA Form (TBD)—Immediate Services Program Application

Abstract: The Immediate Services Program provides funding in response to a State request for the period immediately following a Presidentially declared disaster, and includes community outreach, consultation and public education and counseling techniques. The program is available for a limited period of time not to exceed 60 days, unless an application for regular program funding is submitted. FEMA provides funds in the form of a Federal grant through the State emergency management office to the State Mental Health Authority or other mental health organization designated by the Governor to provide crisis-counseling services to the Presidentially declared communities. Once the application has been approved and a grant is awarded, the State applicant must provide quarterly progress and financial reports to FEMA.

Affected Public: State, local or tribal government.

Estimated Total Annual Burden Hours: 1360.

FEMA form	Number of respondents (A)	Frequency of response (B)	Average hours per response (C)	Annual burden hours (A × B × C)
SF 424 and Immediate Services Program Application	17	2	40	1360
Total	17	2	40	1360

Estimated Cost: $38,448.

Comments:

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Victoria Childs, Program Specialist, Community and Family Services Branch, Recovery Division, Readiness, Response and Recovery Directorate, (202) 646–3844 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at (202) 646–2625, facsimile number (202) 646–3347, or email address: *informationcollection@fema.gov.*

Dated: March 26, 2003.

Vernon Adler,

Acting Division Director, Information Resource Management Division, Information Technology Services Directorate.

[FR Doc. 03–7791 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed new information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the application process for Citizen Corps affiliate programs and organizations.

SUPPLEMENTARY INFORMATION: Citizen Corps, an initiative launched by President George W. Bush in January 2002, has a mission to harness the power of every individual through education, training, and volunteer service to make communities safer, stronger, and better prepared for the threats of terrorism; crime, public health issues, and disasters of all kinds. In order to fulfill its mission, Citizen Corps Councils will coordinate service and training activities at the state, local, and tribal levels. The Citizen Corps Individual Registration form asks those interested in participating in Citizen Corps for their fields of interest and expertise, as well as geographical location, in order to allow Citizen Corps Council personnel to better plan and coordinate activities.

Collection of Information

Title: Citizen Corps Individual Volunteer Registration.

Type of Information Collection: Existing collection in use without an OMB control number.

OMB Number: 1660–New.

Abstract: Citizen Corps requests information from individuals who would like to support the Citizen Corps program as volunteers. The requested information will allow Citizen Corps to group potential volunteers by their fields of interest and expertise, as well as by their geographical location. This information will be used primarily by local Citizen Corps Councils in order for them to plan and coordinate activities.

Affected Public: Individuals or households.

Estimated Total Annual Burden Hours: 3333 hours.

Number of Respondents: 40,000.

Frequency of Response: One-Time.

Hour Burden Per Response: 5 minutes.

Comments:

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Branch Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Suzann Gallagher, Program Specialist, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, at (202) 646–3737 for additional information. You may contact Ms. Anderson for copies of the proposed information collection at email address *informationcollections@fema.gov.*

Dated: March 26, 2003.

Vernon Adler,

Acting Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–7792 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed new information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the application process for Citizen Corps affiliate programs and organizations.

SUPPLEMENTARY INFORMATION: Citizen Corps, an initiative launched by President George W. Bush in January 2002, has a mission to harness the power of every individual through education, training, and volunteer service to make communities safer, stronger, and better prepared for the threats of terrorism, crime, public health issues, and disasters of all kinds. In order to fulfill its mission, Citizen Corps seeks to establish a network of state, local, and tribal councils that will coordinate activities at these levels. The Citizen Corps Council registration form will allow Citizen Corps personnel to ensure that proposed Councils have the support of the appropriate government officials in their area and will have a

dedicated member assigned to the coordination of Council activities.

Collection of Information

Title: Citizen Corps Council Registration.

Type of Information Collection: New Collection.

OMB Number: 1660–New.

Abstract: Citizen Corps requests information from state, local, and tribal based groups that would like to support the Citizen Corps program through becoming recognized Citizen Corps Councils. The requested information will ensure that Citizen Corps Councils are sponsored by the appropriate governmental officer and are capable of supporting its mission.

Affected Public: State, Local, and Tribal Governments; Not-For-Profit Institutions.

Number of Respondents: 1,000.

Frequency of Response: One-Time.

Hour Burden Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 167 hours.

Comments

Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Branch Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Suzann Gallagher, Program Specialist, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, at (202) 646–3737 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at email address: *InformationCollections@fema.gov.*

Dated: March 26, 2003.

Vernon Adler,

Acting Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–7793 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed new information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the use of the Mapping Needs Update Support System (MNUSS) Data Worksheet to collect data on flood hazard mapping needs.

SUPPLEMENTARY INFORMATION: Public Law 103–325, The Riegle Community Development and Regulatory Improvement Act of 1994, Title V—National Flood Insurance Reform, section 575, Updating of Flood Maps (also known as section 575 of the National Flood Insurance Reform Act (FNIRA) of 1994), mandates that at least once every five years, the Federal Emergency Management Agency (FEMA) will assess the need to revise and update all floodplain areas and flood risk zones identified, delineated, or established under section 1360 of the National Flood Insurance Act of 1968.

Collection of Information

Title: National Flood Insurance Program—Mapping Needs Update Support System (MNUSS) Data Worksheet.

Type of Information Collection: Existing collection in use without an OMB control number.

OMB Number: 1660–New.

Abstract: To fulfill the mandate specified in section 575 of the NFIRA, FEMA established the Mapping Needs Assessment process and the MNUSS database in order to effectively identify and document data regarding community flood hazard mapping needs. MNUSS is designed to store mapping needs at the community level. The current version of MNUSS is an interactive, web-enabled password protected database. In order to facilitate the identification and collection of communities' current flood hazard mapping needs for input into MNUSS, FEMA developed the MNUSS Data Worksheet.

Flood hazard mapping needs information enables FEMA to be more responsive to ongoing changes affecting flood hazard areas that occur in communities participating in the NFIP. The changes include, but are not limited to, new corporate limit boundaries, changes in the road network, and changes in flood hazard areas, which affect communities' flood risks. The information is also used in providing justification for FEMA when requesting funding for flood map updates and is used along with other information to prioritize the flood hazard mapping needs of all mapped communities participating in the NFIP to assist in the allocation of annual funds for flood hazard map updates.

Affected Public: State, Local, and Tribal Governments.

Number of Respondents: 1,800.

Frequency of Response: Once every five years.

Hour Burden Per Response: 4.5.

Estimated Total Annual Burden Hours: 8,400.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Cynthia Croxdale, Mitigation Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, at (202) 646–3458 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at e-mail address: *InformationCollections@fema.gov.*

Dated: March 26, 2003.

Vernon Adler,

Acting Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–7794 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public, state, local, or tribal governments and other Federal agencies to take this opportunity to comment on the proposed collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments on the cancellation of Federal assistance loans to any local governments.

SUPPLEMENTARY INFORMATION: The Community Disaster Loan (CDL) Program is authorized by section 417 of the Disaster Relief Act of 1974 (Pub. L. 93–288), as amended by the Robert T. Stafford Disaster Relief and Emergency Act of 1988 (Pub. L. 100–707), and implemented by FEMA regulation 44 CFR, subpart K, Community Disaster Loans, section 206.366. The CDL Program offers loans to local governments that have suffered a substantial loss of tax or other revenues as a result of a major disaster or emergency and demonstrates a need for Federal financial assistance in order to perform their governmental functions. The loan must be justified on the basis of need and be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and the three succeeding fiscal years.

Collection of Information.

Title: Application for Loan Cancellation.

Type of Information Collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0026.

Form Number: FEMA Form 90–5.

Abstract: Local governments may submit an Application for Loan Cancellation through the Governor's Authorized Representative to the FEMA Regional Director prior to the expiration date of the loan. FEMA has the authority to cancel repayment of all or part of a Community Disaster Loan to the extent that a determination is made that revenues of the local government during the three fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating character. Operating budget means actual revenues and expenditures of the local government as published in the official financial statements of the local government.

Affected Public: State, Local, or Tribal Governments.

Estimated Total Annual Burden Hours: 30.

Number of Respondents: 5.

Frequency of Response: On occasion.

Hour Burden Per Response: 6 hours.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Gerry Miederhoff at (202) 646–3683 for additional information regarding this information collection. You may contact Ms. Anderson for copies of the proposed information collection at (202) 646–2625, facsimile number (202) 646–3347, or by e-mail at *InformationCollections@fema.gov.*

Dated: March 26, 2003.

Vernon Adler,

Acting Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–7795 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3183–EM]

Delaware; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Delaware (FEMA–3183–EM), dated March 20, 2003, and related determinations.

EFFECTIVE DATE: March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 20, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Delaware, resulting from the record/near record snow on February 14–19, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of Delaware.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended by Executive Order 13286, Thomas Davies of the Federal Emergency Management Agency is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Delaware to have been affected adversely by this declared emergency:

Kent, New Castle, and Sussex Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–7993 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1454–DR]

Commonwealth of Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1454–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: March 14, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 14, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky, resulting from severe winter ice and snow storms, heavy rain, flooding, tornadoes, and mud and rock slides on February 15–26, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended by Executive Order 13286, Gracia Szczech of the Federal Emergency Management Agency is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Kentucky to have been affected adversely by this declared major disaster:

Breathitt, Carter, Clarke, Fayette, Floyd, Greenup, Johnson, Knott, Leslie, Letcher, Lewis, Martin, Owsley, Perry, and Pike Counties for Individual Assistance.

Anderson, Bath, Bourbon, Boyd, Bracken, Breathitt, Breckenridge, Carter, Clark, Clay, Elliott, Estill, Fayette, Fleming, Floyd, Grant, Grayson, Green, Greenup, Harrison, Jessamine, Johnson, Knott, Knox, Lawrence, Lee, Leslie, Letcher, Lewis, Magoffin, Martin, Mason, Meade, Menifee, Mercer, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Robertson, Rowan, Scott, Shelby, Spencer, Washington, Whitley, Wolfe, and Woodford Counties for Public Assistance.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–7985 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3174–EM]

Maine; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Maine (FEMA–3174–EM), dated March 11, 2003, and related determinations.

EFFECTIVE DATE: March 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 11, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Maine, resulting from the record/ near record snow on February 2–4, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected area for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended by Executive Order 13286, James N. Russo of the Federal Emergency Management Agency is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following area of the State of Maine to have been affected adversely by this declared emergency:

Aroostook County for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–7989 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3175–EM]

Massachusetts; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Massachusetts (FEMA–3175–EM), dated March 11, 2003, and related determinations.

EFFECTIVE DATE: March 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 11, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the Commonwealth of Massachusetts, resulting from the record/near record snow on February 17–18, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the Commonwealth of Massachusetts.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended by Executive Order 13286, James N. Russo of the Federal Emergency Management Agency is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the Commonwealth of Massachusetts to have been affected adversely by this declared emergency:

Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, and Worcester Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–7990 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3181–EM]

New Jersey; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New Jersey (FEMA–3181–EM), dated March 20, 2003, and related determinations.

EFFECTIVE DATE: March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 20, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of New Jersey, resulting from the record/near record snow on February 16–17, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended by Executive Order 13286, Peter Martinasco of the Federal Emergency Management Agency is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New Jersey to have been affected adversely by this declared emergency:

Atlantic, Bergen, Burlington, Camden, Cape May, Cumberland, Essex, Gloucester, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Sussex, Union, and Warren Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–7992 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3173–EM]

New York; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3173–EM), dated February 25, 2003, and related determinations.

EFFECTIVE DATE: February 25, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 25, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206c (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of New York, resulting from the record/near record snowstorms on December 25–26, 2002, and January 3–4, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 96 hours for the 11 counties so designated and 48 hours for the 6 counties so designated. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Marianne Jackson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared emergency:

FEMA intends to provide assistance for emergency protective measures (Category B) under the Public Assistance program to save lives, protect public health and safety, and property.

This emergency assistance will be provided for a period of 96 hours for Albany, Chenango, Columbia, Delaware, Greene, Herkimer, Montgomery, Otsego, Schenectady, Sullivan, and Ulster Counties.

Emergency assistance will be provided for a 48-hour period for Broome, Fulton, Oneida, Orange, Saratoga, and Schoharie Counties.

(Catalog of Federal Domestic Assistance No. 83.544, Disaster Assistance)

Joe M. Allbaugh,

Director.

[FR Doc. 03–7988 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1453–DR]

Ohio; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA–1453–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: March 14, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 14, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Ohio, resulting from a severe winter storm and record/near record snow on February 14, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, all categories of Public Assistance in the designated areas, emergency assistance (emergency protective measures, Category B under the Public Assistance program) for a period of 48 hours in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended by Executive Order 13286, Ron Sherman of the Federal Emergency Management Agency is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Ohio to have been affected adversely by this declared major disaster:

Adams, Jackson, Lawrence, Pike, and Scioto Counties for Individual Assistance.

Adams, Gallia, Jackson, Lawrence, Meigs, Pike, Scioto, and Vinton Counties for Public Assistance.

Fayette, Franklin, Greene, Guernsey, Madison, Monroe, and Muskingum Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

All counties within the State of Ohio are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–7984 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3180–EM]

Pennsylvania; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Pennsylvania (FEMA–3180–EM), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: March 14, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 14, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the Commonwealth of Pennsylvania, resulting from the record/near record snow on February 14–19, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended by Executive Order 13286, Thomas Davies of the Federal Emergency Management Agency is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the Commonwealth of Pennsylvania to have been affected adversely by this declared emergency:

Adams, Bedford, Berks, Blair, Cambria, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Fayette, Franklin, Fulton, Greene, Lancaster, Lebanon, Lehigh, Lycoming, Montour, Montgomery, Northampton, Perry, Philadelphia, Schuylkill, Somerset, Union, Westmoreland, and York Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–7991 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1456–DR]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1456–DR), dated March 20, 2003, and related determinations.

EFFECTIVE DATE: March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 20, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Tennessee, resulting from severe storms and flooding from February 14–26, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended by Executive Order 13286, Charles M. Butler of the Federal Emergency Management Agency is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

Anderson, Bledsoe, Campbell, Cannon, Carter, Claiborne, Cumberland, Decatur, Fentress, Grainger, Hancock, Houston, Humphreys, Jackson, Johnson, Lewis, Loudon, Marion, Meigs, Rhea, Roane, Scott, Sequatchie, Stewart, Union and Van Buren for Public Assistance.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–7987 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1455–DR]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1455–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: March 14, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 14, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of West Virginia resulting from a severe winter storm, record/near record snow, heavy rains, flooding, and landslides on February 16, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, all categories of Public Assistance in the designated areas, emergency assistance (emergency protective measures, Category B under the Public Assistance program) for a period of 48 hours in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended by Executive Order 13286, Louis Botta of the Federal Emergency Management Agency is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of West Virginia to have been affected adversely by this declared major disaster:

Cabell, Jackson, Kanawha, Lincoln, Mingo, Roane, and Wayne Counties for Individual Assistance.

Braxton, Cabell, Calhoun, Clay, Gilmer, Greenbrier, Jackson, Lewis, Lincoln, Logan, Mason, McDowell, Mercer, Mingo, Monroe, Nicholas, Putnam, Raleigh, Roane, Upshur, Wayne, Webster, Wirt, and Wyoming Counties for Public Assistance.

Berkeley, Grant, Hampshire, Jefferson, Mineral, Morgan, Pocahontas, and Preston Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

Cabell, Kanawah, Lincoln, Mingo, and Wayne Counties are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83,558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–7986 Filed 4–1–03; 8:45 am]

BILLING CODE 6718–02–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4529–N–07]

Notice of Proposed Information Collection: Comment Request; Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgages to the Secretary

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 2, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Patricia A. Wash, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 10245, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Millicent Potts, Assistant General Counsel for Multifamily Mortgage Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 9230, Washington, DC 20410, telephone (202) 708–4090 (this is not a toll-free number) for copies of the proposed guide.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD Guide for Counsel to the Mortgagor and HUD Guide to Counsel to Owner.

OMB Control Number, if applicable: 2510–0006.

Description of the need for the information and proposed use:

Mortgagees of HUD-insured mortgages may receive mortgage insurance benefits upon assignment of mortgages to HUD. In connection with the assignment, legal documents (*e.g.*, mortgage, mortgage note, security agreement, title insurance policy) must be submitted to the Department. The proposed form describes the documents to be submitted and the procedures for submission.

Agency form numbers, if applicable: Guide.

Members of affected public: Mortgagees when applying for insurance benefits from HUD.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents	Burden hours	Frequency of response	Total burden hours
359	26	1	9,334

Status of the proposed information collection: Expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: March 27, 2003.

Camille Acevedo,

Associate General Counsel.

[FR Doc. 03–7851 Filed 4–1–03; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–14]

Notice of Proposed Information Collection: Comment Request; Application for the Transfer of Physical Assets

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: June 2, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB

Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly J. Miller, Director, Office of Multifamily Asset Management, Department of Housing and Urban Developoment, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3730 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Application for the Transfer of Physical Assets.

OMB Control Number, if applicable: 2502–0275.

Description of the need for the information and proposed use: The information collection is completed and submitted to HUD by prospective purchasers of properties with mortgages either HUD-insured or HUD-held before the transfer. HUD needs the information for approval of a transfer of physical assets. HUD uses the information to ensure that the project is not placed in physical, financial, or managerial jeopardy by the transfer.

Agency form numbers, if applicable: HUD–92266.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 32,200; the number of respondents is 350 generating approximately 350 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 92 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 26, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner

[FR Doc. 03–7852 Filed 4–1–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–13]

Notice of Proposed Information Collection: Comment Request; Management Review Report for Unsubsidized Multifamily Housing Programs

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 2, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly J. Miller, Director, Office of Multifamily Asset Management Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3730 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Management Review Report for Unsubsidized Multifamily Housing Programs.

OMB Control Number, if applicable: 2502–0259.

Description of the need for the information and proposed use: This information is necessary to ensure that lenders evaluate and monitor the ongoing management operations and procedures of multifamily housing projects.

Agency form numbers, if applicable: HUD–9838.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 6,300; the number of respondents is 900 generating approximately 900 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 7 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 26, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 03–7853 Filed 4–1–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–12]

Notice of Proposed Information Collection: Comment Request; Direct Endorsement Underwriter/HUD Reviewer—Analysis of Appraisal Report

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 2, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410, or *Wayne_Eddins@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Direct Endorsement Underwriter HUD Reviewer—Analysis of Appraisal Report.

OMB Control Number, if applicable: 2502–0477.

Description of the need for the information and proposed use: The Department will collect information on appraisal reports considered deficient by the underwriter and to document efforts to resolve any discrepancies. The information collected is used by HUD to monitor the quality of the lender's analysis of the appraisal report, identify areas of weakness for future training, and remove lenders that consistently exhibit careless underwriting and subsequently affect a risk to the Department.

Agency form numbers, if applicable: HUD–54114.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 375,000 generating approximately 375,000 annual responses; the frequency of response is on occasion; the estimated time needed to prepare the response is 3 minutes; and estimated annual burden hours requested is 18,750.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 26, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 03–7854 Filed 4–1–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–11]

Notice of Proposed Information Collection: Comment Request; Management Documents for Multifamily Housing Projects

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 2, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly J. Miller, Director, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3730 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Management Documents for Multifamily Housing Projects.

OMB Control Number, if applicable: 2502–0305.

Description of the need for the information and proposed use: Owners of insured and assisted multifamily properties submit these information

collections to HUD. The information is needed to assist HUD in determining the acceptability of a proposed management agent. Without these documents, HUD's ability to screen out unacceptable management agents and control fraud would be limited, and the incidents of defaults and unauthorized use of subsidy funds would increase.

Agency form numbers, if applicable: HUD–9832, HUD–9839A, HUD–9839B, & HUD–9839C.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 4,350; the number of respondents is estimated to be from 900 to 3,600 generating approximately 10,800 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response varies from 10 minutes to 2 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 26, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–7855 Filed 4–1–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–10]

Notice of Proposed Information Collection: Comment Request; Mortgagee's Certification and Application for Interest Reduction Payments

AGENCY: Office of the Assistant Secretary for housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: the proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: June 2, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Beverly, J. Miller, Director, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3730 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgagee's Certification and Application for Interest Reduction payments.

OMB Control Number, if applicable: 2502–0445.

Description of need for the information and proposed use: This information is necessary to authorize and disburse monthly interest reduction payments to approved HUD mortgagees servicing non-insured multifamily mortgages.

Agency form numbers, if applicable: HUD–3111.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: the estimated number of respondents is 100 generating approximately 1,200 annual responses; the frequency of response is monthly; the estimated time to prepare the information collection is 1 hour; and the estimated total annual burden is 1,200 hours.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: the Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 24, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 03–7856 Filed 4–1–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Record of Decision for the Final General Management Plan/Environmental Impact Statement, Fort Frederica National Monument, Georgia

SUMMARY: On November 15, 2002, the Director, Southeast Region, approved the Record of Decision for the Final General Management Plan (GMP) and Environmental Impact Statement (EIS) for Fort Frederica National Monument. The purpose of the Record of Decision (ROD) is to document the National Park Service (NPS) selection of the proposed action for the final GMP/EIS. The plan is designed to afford a high level of protection to the national monument's resources and to provide for appropriate types and levels of high quality visitor experiences. This will be accomplished through management zoning and suitable interpretive methods and strategies including but not limited to costumed demonstrations, encampments, ghost structures, period landscape plantings, and living history demonstrations.

Management zones will provide guidance for managing specific areas for desired resource conditions and visitor experiences. The Historic Preservation zone, which encompasses the entire historic town site as well as Old Military Road and the burial ground, will be the focus of the greatest visitor activities including ranger led tours, encampments, crafts demonstrations, and costumed interpretation. The marshes on the northwest side of the National Monument as well as the western side of the Frederica River will be a Natural Resource Protection zone in which natural processes and natural ecosystem succession will predominate. The same will be true of the marshy areas and the wooded area on the northeast corner of the Bloody Marsh Memorial site. Other management zones will provide for potential natural resource based recreation, park administrative, visitor service, and maintenance purposes.

The selected management alternative will emphasize the daily life, lifestyles and events associated with the inhabitants of Fort Frederica, and the colonial military settlement on Saint Simons Island. The goal will be to give the visitor some idea (within the context of current laws regarding sanitation, solid waste disposal, air/water pollution, etc.) of the sights, sounds, smells, and other experiences that would have been typical in this bustling British Army outpost. Since the 1940s, at least 40 archeological field investigations at Fort Frederica have been conducted to reveal vital information about the people and events associated with this military settlement. Thousands of artifacts that were recovered through archeological investigations are housed in the Monument's museum collection and the storage facilities of the Southeast Archeological Center in Tallahassee, Florida. These artifacts, along with other information obtained through the field investigations, play an important role in telling the story of Fort Frederica to the visitor.

Archeological field investigations will continue to be an important attribute of this alternative. There will be a strong archeological research effort to provide information on landscape elements, lifestyles, important events, and other features of the settlement.

The plan designates the area presently occupied by the visitor center/administrative complex and the parking lot as part of the Historic Preservation Zone. As a result, when the current visitor center/administrative complex becomes functionally obsolete, the National Monument will seek authority and funding to demolish the facility and build a new visitor center in a currently developed or previously disturbed area that is not visible from the historic town site. The area formerly occupied by the visitor center, entrance drive, and parking would be cleared and reforested. Existing park residences would be converted to office and administrative space.

Entrance and access to the site would then more accurately mirror colonial conditions and experience. Although the relocated visitor center might be as much as 200–300 yards more distant from the town site than the present one, the enhanced visitor experience will more than counterbalance the slightly greater distance. This alternative envisions a visitor walking down a wooded path from the visitor center to the town site, gradually leaving the sights and sounds of the modern visitor center and parking lot and entering a different place and time where views in all directions would be uninterrupted by modern structures, vehicles or other intrusions on the historic scene. Although there will be no attempt to recreate the palisades, homes and other elements of the colonial settlement, the setting will be similar to that experienced by the original British colonists when they first arrived. Americans with Disabilities Act concerns could be addressed by developing a new and improved visitor center film or video, new exhibits and displays, active interpretive efforts by park staff and volunteer costumed interpreters.

The NPS has identified and incorporated into the selected action all practical measures to avoid or minimize environmental impacts that could result from its implementation. These measures are presented in detail in the Final General Management Plan/ Environmental Impact Statement.

The full ROD includes a statement of the decision made, synopses of other alternatives considered, the rationale for the decision, a description of the environmentally preferred alternative, a determination of non-impairment of park resources and values, a listing of measures to minimize environmental harm, an overview of public involvement in the decision-making process, and a statement regarding section 7 of the Endangered Species Act.

Basis for Decision

In reaching its decision to select the preferred alternative, the NPS considered the purposes for which Fort Frederica National Monument was established, and other laws and policies that apply to lands in the monument, such as the National Park Service Organic Act, National Environmental Policy Act, and the NPS Management Policies. The NPS also carefully considered public comments received during the planning process.

To develop a preliminary preferred alternative, the planning team evaluated three action alternatives that were reviewed by the public as well as the required no-action alternative. To minimize the influence of individual biases and opinions, the team used an objective analysis process called "Choosing by Advantages." This process has been used extensively by government agencies and the private sector.

DATES: The Record of Decision for the Final General Management Plan (GMP) and Environmental Impact Statement (EIS) for Fort Frederica National Monument was signed by the Director, Southeast Region for the National Park Service on November 15, 2002.

ADDRESSES: Fort Frederica National Monument, Route 9, Box 286C, St. Simons Island, Georgia 31522.

FOR FURTHER INFORMATION CONTACT: Superintendent, Fort Frederica National Monument, (912) 638–3639.

SUPPLEMENTARY INFORMATION: A copy of the Record of Decision on the Final General Management Plan for Fort Frederica National Monument can be obtained via the Internet by visiting the NPS Web site at *http://planning.den.nps.gov/* or by calling 404–562–3124, ext. 685.

Dated: December 18, 2002.

Patricia A. Hooks,

Acting Regional Director, Southeast Region.

[FR Doc. 03–7952 Filed 4–1–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Jamestown Project Development Concept Plan, Final Environmental Impact Statement, Colonial National Historical Park, Jamestown Unit, Jamestown, Virginia, and Jamestown National Historic Site, Jamestown, VA

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Jamestown Project Development Concept Plan, Colonial National Historic Park, Jamestown Unit, and Jamestown National Historic Site.

SUMMARY: Pursuant to National Environmental Policy Act of 1969, 42 U.S.C. 4332(c), the National Park Service announces the availability of Final Environmental Impact Statement for the Jamestown Project Development Concept Plan, Colonial National Historical Park, Jamestown Unit, Jamestown, Virginia, and Jamestown National Historic Site, Jamestown, Virginia

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the notice of availability of the Final Environmental Impact Statement.

ADDRESSES: Information will be available for public review in the office

of the Superintendent, Colonial National Historical Park, Yorktown, Virginia, in the administrative offices located below the Yorktown Visitor Center. It will also be available at the following locations: Jamestown Visitor Center, Jamestown, VA, Colonial National Historical Park, Gloucester County Library, Hampton City Library, James City County Library, John D. Rockefeller, Jr. Library, Newport News City Library, Surry County Library, Williamsburg Regional Library, York County Public Library.

FOR FURTHER INFORMATION CONTACT: Mike Litterest, Information Officer, Colonial National Historical Park, 757/898–2409.

Dated: March 14, 2003

Marie Rust,

Director, Northeast Region, National Park Service.

[FR Doc. 03–7945 Filed 4–1–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of an Environmental Assessment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of availability of an Environmental Assessment (EA) evaluating the potential impacts to the human and natural environment from two existing cellular communications towers located within Rock Creek Park, Washington, DC.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), Council of Environmental Quality regulations, and National Park Service policy, this notice announces the availability, starting April 2, 2003, of an Environmental Assessment (EA) evaluating the potential impacts to the human and natural environmental from two existing cellular communications towers located within Rock Creek Park, Washington, DC.

Copies of this document are available at *www.nps.gov/rocr* and the following public libraries: Martin Luther King Memorial Library, 901 G Street NW., Washington, DC, 2001; Chevy Chase Library, 5625 Connecticut Avenue NW., Washington, DC 20015; Cleveland Park Library, 3310 Connecticut Avenue, NW., Washington, DC, 2008; Georgetown Library, 3260 R Street NW., Washington, DC, 2007; Juanita Thorton Shepard Park Branch Library, 7420 Georgia Avenue NW., Washington, DC, 20012; Langston Community Library, 2600 Bennet Road NE., Washington, DC, 20019; Mt. Pleasant Library, 1600 Lamont Street, NW., Washington, DC 20010; Northeast Branch Library, 330 7th Street NE., Washington, DC, 20002; Petworth Branch Library, 4200 Kansas Avenue NW., Washington, DC, 20011; Tenly-Friendship Branch Library, 4450 Wisconsin Avenue NW., Washington, DC 20016; Watha T. Daniel Library, 1701 8th Street NW., Washington, DC, 20001; Woodbridge Library, 1801 Hamlin Street NE., Washington, DC, 20018; Library of Congress, 101 Independence Avenue SE., Washington, DC, 20540; Palisades, 4901 V Street NW., Washington, DC, 20007; Sursum Corda Community Library, 135 New York Avenue NW., Washington, DC, 20001. You may also request a hard copy at (202) 895–6000.

DATES: There will be a 30-day public review period for comment on this document. Comments on the EA should be received by May 2, 2003, or 30 days from the publication of this notice, whichever is later. The National Park Service will be making its decision on this EA by June 20, 2003.

ADDRESSES: Comments on the EA should be submitted via mail or hand delivery to: Superintendent, Rock Creek Park, 3545 Williamsburg Lane NW., DC., 20008–1207. You may also submit comments via e-mail at *ROCR@den.nps.gov*. it is the practice of the National Park Service to make comments, including names and addresses of respondents, available for public review. However, individual respondents may request that the National Park Service withhold their address from the record, which the National Park Service will honor to the extent allowable by law. If you wish for your name and address to be withheld, you must state this prominently at the beginning of your comment. The National Park Service will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: In 1998, pursuant to the Telecommunications Act of 1996, Bell Atlantic Mobile, Inc. (now Verizon Wireless) filed applications for permits to locate two cellular towers along with their associated equipment shelters from Rock Creek Park. In 1999, pursuant to NEPA, the National Park Service prepared an EA that considered the environmental impacts of siting the two towers inside the park. After completing the EA, the National Park Service concluded that the towers would not have a significant impact to the quality of the human environment, and issued a Finding of No Significant Impact. The National Park Service subsequently issued the permits necessary for Bell Atlantic to construct and operate within Rock Creek Park one 100-foot monopole at the Tennis Center, and one 130-foot monopole in the Maintenance Yard. Both towers have since been built and are currently in use. In 2000, suite was filed opposing these cellular towers, and on July 2, 2002 the Federal District Court for the District of Columbia, in *Audubon Naturalist Society of the Central Atlantic States* v. *the National Park Service and Bell Atlantic Mobile*, ordered the National Park Service to prepare this new EA. The schedule for this EA was set by the court. As part of this process, the National Park Service held a public scoping meeting on December 11, 2002.

This EA evaluates the potential environmental consequences of two action alternatives, alternatives B and C, along with a Non Action Alternative, Alternative A. Alternative A would allow the towers to continue operating at the tennis center and maintenance yard as currently permitted. Alternative B, the preferred alternative, would also allow for the continued operation of the towers at the tennis center and maintenance yard as currently permitted, with additional mitigation to further protect and study park resources. The mitigation measures called for in Alternative B would require the National Park Service to develop telecommunications facilities guidance to assist the park in protecting its resources and values, and also require the park to establish a bird-monitoring program to precisely determine the potential impacts of the towers on migratory birds. Alternative C describes and considers various scenarios for siting towers at alternative locations outside Rock Creek Park. In addition to Alternatives A, B, and C, the EA contains a discussion of those alternatives that were considered but rejected.

For further information contact Adrienne Coleman, Superintendent, Rock Creek Park, at 3545 Williamsburg Lane NW., Washington, DC 20008–1207, or by telephone at (202) 895–6004.

Dated: April 14, 2003.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 03–7946 Filed 4–1–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Ecological Restoration Plan, Environmental Impact Statement, Bandelier National Monument, NM

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the Ecological Restoration Plan, Bandelier National Monument.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (C), the National Park Service is preparing an environmental impact statement for the ecological restoration plan for Bandelier National Monument. Human activities in the late 1800s and early 1900s, including historic overgrazing and fire suppression, have led to the large-scale loss or alteration of Bandelier's vegetation communities (grasslands, woodlands and forests), soils, and the erosion and potential loss of integrity of an estimated 2,500 archeological sites. This planning effort will help guide the Monument in restoring healthy, sustainable vegetative communities on the land it manages as well as protect archeological sites. The objectives of this planning effort are to: (1) Increase native perennial herbaceous cover in woodlands to reduce runoff, erosion, and further loss of cultural resources, (2) create conditions that support a fire regime within the natural range of variability, (3) reduce conifer encroachment on montane meadow and aspen stands, (4) manage vegetative communities using an active program of research and monitoring, and (5) sustain support for and actively share information about vegetative management actions and research efforts through interpretation, education, consultation, and collaboration with partners, neighbors, pueblos, and communities. The National Park Service will be looking at a variety of ways to achieve these objectives during the public scoping process.

Major issues include:

- The noise and presence of human activity and other activities and their temporary effects on designated wilderness in the monument (approximately 70% of monument area) or on other monument lands during treatment of vegetation.
- The displacement and disturbance of some species of wildlife by management activities and the attraction of other wildlife during treatment.
- In the long term, vegetative communities would return to a state where ecosystem processes operate within the natural range of variability. This will likely mean changes in wildlife species, reduced erosion, reduced risk of devastating crown fires, stabilization of the monument's archeological resources, and a decrease in surface water runoff.

A scoping brochure has been prepared that details the issues identified to date. The brochure may be obtained from the monument's Web site or from the address and phone number included at the end of this notice.

DATES: The Park Service will accept comments from the public for 30 days from the date this notice is published in the **Federal Register**. In addition, the National Park Service intends to conduct public scoping open houses at two locations, in Los Alamos and Santa Fe, New Mexico. Please check local newspapers, the monument's Web site *www.nps.gov/BAND* or contact the name listed below to find out when and where these open houses will be held.

ADDRESSES: Information will be available for public review and comment in the office of the Superintendent, Steven D. Bone, Bandelier National Monument, Los Alamos, New Mexico 87544, (505) 672–3861 x 502.

FOR FURTHER INFORMATION CONTACT: Ecological Restoration EIS, c/o John A. Mack, Bandelier National Monument, HCR 1, Box 1, Suite 15, Los Alamos, New Mexico 87544. Phone (505) 672–3861, extension 563.

SUPPLEMENTARY INFORMATION: If you wish to comment on the scoping brochure or on any other issues associated with the plan, you may submit your comments by any one of several methods. You may mail comments to John A. Mack at the address above. You may also comment via the Internet to *bandeis@nps.gov*. Please submit Internet comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: ECOLOGICAL RESTORATION PLAN EIS" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact us directly at (505) 672–3861, extension 563. Finally, you may hand-deliver comments to the Park Visitor Center, Bandelier National Monument, Los Alamos, New Mexico, 87544. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: January 24, 2003.

Karen P. Wade,

Director, Intermountain Region, National Park Service.

[FR Doc. 03–7949 Filed 4–1–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 8, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–343–1836. Written or faxed comments should be submitted by April 17, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ALABAMA

Jefferson County

Federal Reserve Bank of Atlanta—Birmingham Branch, 1801 Fifth Ave. N, Birmingham, 03000230

Mountain Brook Estates Building, 2803 Cahaba Rd., Mountain Brook, 03000232

Lee County

Cullars Rotation, Woodfield Dr., E of US 29, Auburn, 03100231

Wilcox County

Ackerville Baptist Church of Christ, AL 89, Ackerville, 03000228

COLORADO

Douglas County

Santa Fe Railway Water Tank (Railroads in Colorado, 1858–1948 MPS), US 85 W of jct. with CO 67, Sedalia, 03000237

Jefferson County

South Ranch, Address Restricted, Lakewood, 03000227

Larimer County

Kaplan—Hoover Site, Address Restricted, Windsor, 03000229

CONNECTICUT

Fairfield County

Bradley—Hubbell House, 535 Black Rock Turnpike, Easton, 03000235

Hartford County

Thompson, William H., Farmstead, 215 and 219 Melroase Rd., East Windsor, 03000234

New Haven County

Woodbridge Green Historic District, 3,4,7,11 Meetinghouse Ln.; 4, 10 Newton Rd., Woodbridge, 03000233

Tolland County

Andover Center Historic District, Roughly along Herbron Rd., Boston Hill Rd., and US 6, Andover, 03000236

DELAWARE

New Castle County

Delaware Academy of Medicine, 1925 Lovering Ave., Wilmington, 03000240
Delaware Trust Building, 900–912 N. Market St., Wilmington, 03000238

KENTUCKY

Bourbon County

Champ, Thomas, House, Lexington and Maysville Rd., Paris, 03000256
Pocket Rural Historic District, Along See Rd., KY 57 and KY 1198, Sharpsburg vicinity, 03000257

Bracken County

Barkley, George W., Farm, KY 8, Augusta, 03000259
Bradford School House, KY 8 and 1109, Foster, 03000263

Clark County

Civil War fort at Boonesboro, 0.6 mi. N of Ford, W of Fort Hampton Rd., Ford, 03000262

Fayette County

Liggett and Myers Tobacco Re-handling Facility, 200 Bolivar St., Lexington, 03000261

Jefferson County

Axton—Fisher Tobacco Company Warehouse, 1405 W. Broadway, Louisville, 03000260
Finzer, J., and Brothers Company Building, 419 Finzer St., Louisville, 03000264
Louisville Grocery Company Building, 231 E. Main St., Louisville, 03000258

MISSOURI

Greene County

Netter—Ullman Building, 317 Park Central East, Springfield, 03000255

NEW JERSEY

Bergen County

Reformed Dutch Church of Wyckoff, 580 Wyckoff Ave., Wyckoff Township, 03000250

NEW YORK

Delaware County

Ulster and Delaware Railroad Depot and Mill Complex, Depot St., Roxbury, 03000254

Dutchess County

National Biscuit Company Carton Making and Printing Plant, 3 Beekman St., Beacon, 03000253
Neher—Elseffer House, 6196 US 9, Rhinebeck, 03000246

Jefferson County

Dexter Universalist Church, Brown and Kirby Sts., Dexter, 03000249
Emerson Place, 20–30 Emerson Place, Watertown, 03000241

Onondaga County

Drover's Tavern, 4065 Pompey Hollow Rd., Oran, 03000265

Oswego County

Oak Street School, 205 Oak St., Fulton, 03000243

Rensselaer County

Haskell School, 150 Sixth Ave., Troy, 03000244

Suffolk County

Cedar Island Lighthouse, Cedar Point Rd., Sag Harbor, 03000248
Hallock—Bilunas Farmstead, 733 Herricks Ln., Jamesport, 03000251

Westchester County

Copland, Aaron, House, 1538 Washington St., Cortlandt Manor, 03000245
Rye Town Park—Bathing Complex and Oakland Beach, Forrest Ave., bet. Rye Beach and Dearborn Ave., Rye, 03000252
St. Thomas' Episcopal Church Complex, 158–168 W. Boston Post Rd., Mamaroneck, 03000242
White Plains Rural Cemetery, 167 N. Broadway, White Plains, 03000247

NORTH CAROLINA

Ashe County

Greer, R.T., and Company Root and Herb Warehouse, 7181 Railroad Grade Rd., jct. of Todd Railroad Grad Rd. at Cranbery Springs Rd., Todd, 03000269

Bertie County

Ashland, NC 45, 0.25 N of jct. with NC 1360, Ashland, 03000268

Buncombe County

Bledsoe Building, 771–783 Haywood Rd., Asheville, 03000267

Carteret County

Morehead City Historic District, Roughly along Fisher St. and Bridges St., from N. 5th St. to N. 12th St., Morehead, 03000266

OHIO

Licking County

Johnstown Jail, 66 W. Pratt St., Johnstown, 03000274

SOUTH CAROLINA

Newberry County

Little Mountain Historic District, Along portions of Pomaria, Church, Main and Mountain Sts., Little Mountain, 03000275

Pickens County

Liberty Colored High School, Jct. of SC 93 and Rosewood St., Liberty, 03000270

Spartanburg County

American Legion Building, 94 W. Park Dr., Spartanburg, 03000271

Union County

McWhirter House, 415 Pacolet St., Jonesville, 03000272

York County

Hill Complex Historic District, York and Shannon Sts., Sharon, 03000273

TENNESSEE

Cumberland County

Crossville Tennessee Highway Patrol Building, 39 Main St., Crossville, 03000281

Davidson County

Woodmont Terrace Apartments, 920 Woodmont, Nashville, 03000280

TEXAS

Dallas County

Chevrolet Motor Company Building, 3221 Commerce, Dallas, 03000277

Ellis County

Highway Garage (Waxahachie MRA), 315 W. Main, Waxahachie, 03000278

Hidalgo County

Casa de Palmas, 101 N. Main St., McAllen, 03000276

Travis County

Connelly—Yerwood House, 1115 E 12th St., Austin, 03000279

Requests for removal have been made for the following resources:

ILLINOIS

Champaign County

Chi Psi Fraternity House (Fraternity and Sorority Houses at the Urbana—Champaign Campus of the University of Illinois MPS), Champaign, 90000115

Clark County

Millhouse Blacksmith Shop, Main and Poplar Sts., Clarksville, 86003156

Kane County

Elgin Milk Condensing Co./Illinois Condensing Co., Brook and Waters Sts., Elgin, 85000267

Sangamon County

Wheeland Haven, E of Riverton on I–72, Riverton, 85000557

KENTUCKY

Hart County

Battle of Munfordville (Boundary Increase) (Munfordville MRA), Mostly W of U.S. 31W near Munfordville, Munfordville vicinity, 01001254

TENNESSEE

Hamilton County

East Side Junior High School 2200 E. Main St., Chattanooga, 87000392

[FR Doc. 03–7948 Filed 4–1–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 22, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–343–1836. Written or faxed comments should be submitted by April 17, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARIZONA

Pima County

Binghampton Rural Historic Landscape, approx. jct. of N. Dodge Blvd. and E. River Rd., Tucson, 03000316
Blenman—Elm Historic District, Bounded by Grant, Country Club, Speedway and Campbell, Tucson, 03000318
Catalina Vista Historic District, Bounded by Grant, Tucson Blvd., Elm St., and Campbell Ave., Tucson, 03000317

CALIFORNIA

Monterey County

Monterey County Jail, 142 W. Alisal St., Salinas, 03000337

CONNECTICUT

Litchfield County

March Route of Rochambeau's Army: Ridgebury Road, (Rochambeau's Army in Connecticut, 1780–1782 MPS), Ridgebury Road, from intersection with Old Stagecoach S, Ridgefield, 03000313

New Haven County

Ives—Baldwin House, 474 Baldwin Ave., Meriden, 03000308
New Haven Lawn Club, 193 Whitney Ave., New Haven, 03000309
Norcross Brothers Granite Quarry, Quarry Rd., Branford, 03000315

Windham County

March Route of Rochambeau's Army: Old Canterbury Road, (Rochambeau's Army in Connecticut, 1780–1782 MPS) Old Canterbury Rd: Canterbury Rd. from Jct. with Old Canterbury Rd., Plainfield, 03000310
March Route of Rochambeau's Army: Palmer Road (Rochambeau's Army in Connecticut, 1780–1782 MPS), Palmer Rd, from intersection with Miller Rd. to E of jct. with Pudding Hill Rd., Scotland, 03000311
March Route of Rochambeau's Army: Plainfield Pike (Rochambeau's Army in Connecticut, 1780–1782 MPS), Plainfield Pike from intersection with Industrial Dr., E to jct. with Ledge Hill Rd., Plainfield, 03000312
March Route of Rochambeau's Army: Scotland Road (Rochambeau's Army in Connecticut, 1780–1782 MPS), Scotland Rd., from intersection with Back Rd. to 80 Scotland Rd., Windham, 03000314

MISSOURI

Greene County

College Apartments (Springfield, Missouri MPS AD II), 408 E. Walnut St., Springfield, 03000319I
St. Louis Independent City, North Riverfront Industrial Historic District, Roughly bounded by Dickson, Lewis, O'Fallon, 2nd, Ashley, Biddle and Mississippi River, St. Louis (Independent City), 03000320

MONTANA

Missoula County

Evaro School, 6688 Grooms Rd., Evaro, 03000321

NORTH CAROLINA

Cleveland County

Hull, James Heyward, House, 710 N. Lafayette St., Shelby, 03000338

Dare County

Daniels, John T., House, 960 Burnside Rd., Manteo, 03000339

Durham County

Lakewood Park Historic District, 1601–1907 W. Lakewood Ave., 2001–2112 Chapel Hill Rd., 1406–1601 James St. and 1809–1819 Bivins St., Durham, 03000340

Mecklenburg County

Sykes, Joseph, Brothers Company Building, 1445 S. Mint St., Charlotte, 03000343

New Hanover County

Wilmington Historic District (Boundary Increase), Roughly bounded by Harnett, 7th, 3rd, Howard; Campbell, 9th, 12th, Princess; Dock, Castle 8th, 14th; 9th, Wright, Greenfield, Wilmington, 03000344

Rockingham County

McCollum, Reuben Wallace, House, 2203 S. Scales St., Reidsville, 03000341

Rowan County

Salisbury Railroad Corridor Historic District (Boundary Increase), 300 and 400 blks of N. Lee St., Salisbury, 03000342

OHIO

Athens County

Athens County Infirmary, 13183 OH 13, Millfield, 03000323

Cuyahoga County

Rich, N.J., and Co. Building, 1974 E. 61st St., Cleveland, 03000322

Erie County

Independent Order of Odd Fellows Temple, 231 W. Washington Row, Sandusky, 03000327

Lorain County

Dowtown Oberlin Historic District, Roughly include W and E College St., within 1 blk of S. Main and S. Main from College to approx. Vine St., Oberlin, 03000324

Richland County

Springfield Township School, 3560 Park Ave. W, Ontario, 03000325

OREGON

Linn County

Wigle, Abraham and Mary, House, 34050 Belts Dr., Harrisburg, 03000345

TEXAS

Carson County

Atchison, Topeka and Santa Fe Railway Depot, Panhandle, One Main St., Panhandle, 03000326

Harris County

Pomeroy Homestead, 202 and 204 S. Main St., Pasadena, 03000329

Jones County

Jones County Courthouse, 1100 12th St., Anson, 03000330

Rains County

Rains County Courthouse, 100 E Quitman St., Emory, 03000333

San Patricio County

San Jacinto County Courthouse, #1 TX 150 at Byrd Ave., Coldspring, 03000332

San Saba County

San Saba County Courthouse, 500 E. Wallace, San Saba, 03000328

Tarrant County

South Center Street Historic District, 500–600 blks of S. Center St., Arlington, 03000334

Williamson County

Preslar—Hewitt Building, 321–323 N. Main, Taylor, 03000331

WEST VIRGINIA

Berkeley County

Colston, Edward, House, 1598 Tice Rd., Falling Waters, 03000347

Hancock County

Baker's Fort Massacre Site, 0.5 mi. NW of jct. of WV 2 and WV 208, Newell, 03000336

Jefferson County

Allemong, Christian, House, 35 Hardestry Rd., Summit Point, 03000346

Marion County

Morgan, George Pinkney, House, Cty. 19/3, Rivesville, 03000348

Mercer County

Virginian Railway Yard Historic District, 0.5 mi. N of jct. of WV 20 and RR tracks, Princeton, 03000351

Morgan County

Hovermale, Clarence, House, 167 Wilkes St., Berkeley Springs, 03000350

Wood County

Smith, W.H., Hardware Company Building, 119 3rd St., Parkersburg, 03000349

WISCONSIN

Dane County

East Park Historic Park, 108–324 S. Lynn St., 700–816 Park St., and East Park, Stoughton, 03000335

[FR Doc. 03–7950 Filed 4–1–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 15, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–343–1836. Written or faxed comments should be submitted by April 17, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

COLORADO

Alamosa County

St. Thomas Episcopal Church, 607 Fourth St., Alamosa, 03000285

GEORGIA

Chatham County

Sea View Apartments, 7 18th St., Tybee Island, 03000286

LOUISIANA

Iberia Parish

LeJeune's Bakery, 1510 W. Main St., Jeanerette, 03000287

MAINE

Androscoggin County

West Durham Methodist Church, 17 Runaround Pond Rd., West Durham, 03000291

Franklin County

Whitney, Capt. Joel, House, 8 Pleasant St., Phillips, 03000293

Kennebec County

Maine Industrial School for Girls Historic District, Winthrop St., 0.5 mi. W of jct. with Water St., Hallowell, 03000289

Stone, Capt. Nathaniel, House, 268 Maine Ave., Farmingdale, 03000292

Oxford County

Hutchins, Moses, House, Jct. of ME 6 and Old Stage Rd., Lovell, 03000290

Penobscot County

Bradford Farm Historic District, 100 Main St., Patten, 03000294

Piscataquis County

Hathaway Barn, 135 Nortons Corner Rd., Willimantic, 03000288

MISSOURI

Jackson County

Goodenow Textiles Company Building, 3710 Main St., Kansas City, 03000297

Johnson County

Miller Building, Matthews Hardware, Metropolitan Building, 800–810 E. Broadway Blvd., Columbia, 03000298

Osage County

Chamois Public School, 402 S. Main St., Chamois, 03000295

St. Louis Independent City, Smith Academy and Manuel Training School, 5351 Enright Ave., St. Louis (Independent City), 03000296

NORTH CAROLINA

Granville County

Peace, John Mask, House, NC 1613, approx. 0.5 mi. SE of jct. with NC 1615 at Peace's Chapel, Fairport, 03000301

Guilford County

Deucley, James Benson, Senior High School and Gymnasium (Greensboro MPS), 1200 Lincoln St., Greensboro, 03000302

Haywood County

Howell, Alden and Thomasené, House, 129 Woolsey Heights, Waynesville, 03000300

Macon County

Cabin Ben, 115 Cullasaja Dr., Highlands, 03000299

TENNESSEE

Shelby County

Green Meadows—Poplar Glen Historic District, Roughly along Union Ave. Ext., Patricia Dr., Madison Ave., Ashlawn Rd., Ashlawn Cove, and Alicia Dr., Memphis, 03000304

Sumner County

Maple Shade, 1755 TN 31E, Gallatin, 03000303

WASHINGTON

Whatcom County

Berthusen Barn and Privy, 8837 Bethusen Rd., Lynden, 03000306

Chicago, Milwaukee, St. Paul and Pacific Railroad: South Cle Elum Yard, Near Milwaukee Rd. and Reservoir Canyon Rd., Lynden, 03000305

WISCONSIN

Dane County

Brown—Sewell House, 101 S. Fifth St., Stoughton, 03000307

[FR Doc. 03–7951 Filed 4–1–03; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–471]

Certain Data Storage Systems and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting a joint motion to terminate the above-captioned investigation on the basis of a settlement agreement. The Commission has also determined that ALJ Order No. 47, which granted respondents' motion for summary determination of non-infringement of asserted claims 5–8 of U.S. Patent No. 6,108,748 ("the '748 patent"), is moot in view of the termination of the investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 9, 2002, based on a complaint filed by EMC Corporation of Hopkinton, Massachusetts ("EMC"), against Hitachi, Ltd. of Tokyo, Japan, and Hitachi Data Systems Corporation of Santa Clara, California ("Hitachi"). 67 FR 34472 (2002). The complaint alleges violations of section 337 in the importation and sale of certain data storage systems or components thereof by reason of infringement of certain claims of complainant's U.S. Patent Nos. 5,742,792; 5,544,347; 6,092,066; 6,101,497; 5,909,692, and the '748 patent.

On January 24, 2003, the administrative law judge ("ALJ") issued an ID (Order No. 47) granting respondents" motion for summary determination of non-infringement of asserted claims 5–8 of the '748 patent. On January 30, 2003, EMC and Hitachi entered into a memorandum of understanding ("MOU") which provides for the settlement of the investigation. On February 12, 2003, EMC, Hitachi, and the Commission investigative attorney ("IA") filed a joint motion to stay the procedural schedule in order to provide sufficient time for EMC and Hitachi to conclude their settlement agreement and to file a motion to terminate the investigation. On February 14, 2003 the Commission, *sua sponte*, extended the administrative deadline for determining whether to review Order No. 47 by sixty two (62) days, *i.e.*, until April 28, 2003.

On February 27, 2003, EMC and Hitachi filed a joint motion to terminate the investigation on the basis of the agreed settlement outlined in the MOU. The IA supported the joint motion. On March 11, 2003, the ALJ issued an ID (Order No. 51) granting the motion to terminate the investigation. No party petitioned for review of Order No. 51.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: March 28, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–7997 Filed 4–1–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Extension of currently approved collection; Making Officer Redeployment Effective (MORE) Grant Progress Report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 2, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collections instrument with instructions or additional information, please contact Gretchen DePasquale, (202) 305–7780, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Making Officer Redeployment Effective (MORE) Grant Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* COPS. *Form number:* Not applicable.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: MORE 2001 award recipients Other: None Abstract: The currently approved collection instrument targeted MORE award recipients to gather data on equipment purchased and/or civilians hired under the MORE '98 program. The questions used to gather data on the equipment purchases will be used by the COPS Office to track summary data on the equipment purchased with COPS funding and to monitor the progress of the MORE '01 award recipients in implementing their grant. The questions used to gather data on civilians will be deleted.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* This will be a one-time, targeted collection to 541 respondents. The estimated amount of time required for the average respondent to respond is 1.5 hours.

(6) *An estimate of the additional public burden (in hours) associated with the collection:* The total estimated

burden on the public is 1,082 hours annually.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: March 27, 2003.

Brenda Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–7823 Filed 4–1–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Import of Controlled Substances; Notice of Registration

By notice dated April 24, 2002, and published in the **Federal Register** on May 17, 2002 (67 FR 35136), Salsbury Chemicals, Inc., 1205 11th Street, Charles City, Iowa 50616–3466, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II. The firm's legal name has since changed to Cambrex Charles City, Inc.

The firm plans to import phenylacetone to manufacture amphetamine for distribution to its customers.

Objections and a request for hearing were timely filed and then withdrawn. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Salsbury Chemicals, Inc., is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Salsbury Chemicals, Inc. (now Cambrex Charles City, Inc.) to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security system, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed.

Dated: March 14, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–7837 Filed 4–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By notice dated March 12, 2002, and published in the **Federal Register** on March 25, 2002 (67 FR 13664), Chiragene, Inc., 7 Powder Horn Drive, Warren, New Jersey 07059, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II. The Company's legal name has since changed to Cambrex North Brunswick, Incorporated.

The firm plans to import phenylacetone to manufacture amphetamine.

Objections and a request for hearing were timely filed and then withdrawn. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Cambrex North Brunswick, Inc., to import phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Cambrex North Brunswick, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed.

Dated: March 14, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–7838 Filed 4–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 22, 2003, Cedarburg Pharmaceuticals, LLC, 870 Badger Circle, Grafton, Wisconsin 53204, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of dihydromorphine (9145), a basic class of controlled substance listed in Schedule I.

The firm plans to use this substance in the conversion processes to produce Schedule II hydromorphone.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Drug Operations Section, Domestic Drug Unit (ODOD) and must be filed no later than June 2, 2003.

Dated: March 14, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–7824 Filed 4–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 22, 2002, October 9, 2002, and November 7, 2002, Cody Laboratories, Inc., 331 33rd Street, Cody, Wyoming 82414, made application by three separate letters to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of Schedule I and II controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Methamphetamine (1105)	II
Amphetamine (1100)	II

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phenylacetone (8501)	II
Oxycodone (9143)	II

The firm plans to produce bulk product and finished dosage units for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Drug Operations Section, Domestic Drug Unit (ODOD) and must be filed no later than June 2, 2003.

Dated: March 11, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–7825 Filed 4–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 17, 2002, ISP Freetown Fine Chemicals Inc., 238 South Main Street, Assonet, Massachusetts 02702, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Levorphanol (9220) a basic class of controlled substance listed in Schedule II.

The firm plans to produce bulk product providing an alternate supply of an active pharmaceutical ingredient to its customer.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Drug Operations Section, Domestic Drug Unit (ODOD) and must be filed no later than June 25, 2003.

Dated: March 11, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–7830 Filed 4–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated February 19, 2002, and published in the **Federal Register** on March 5, 2002, (67 FR 9988), ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Assonet, Massachusetts 02702, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone to manufacture amphetamine.

Objections and a request for hearing were timely filed and then withdrawn. DEA has considered the factors in Title 21, United States Code, 823(a) and determined that the registration of ISP Freetown Fine Chemicals, Inc., is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated ISP Freeman Fine Chemicals, Inc. to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, certification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 14, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–7835 Filed 4–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 7, 2002, and published in the **Federal Register** on June 20, 2002, (67 FR 42059), Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

Objections and a request for hearing were timely filed and then withdrawn. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Lonza Riverside to import phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed.

Dated: March 14, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–7833 Filed 4–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 14, 2003, Mallinckrodt, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substance listed below:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Codeine-N-oxide (9053)	I
Diprenorphine (9058)	II

Drug	Schedule
Etorphine HCl (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9160)	II
Dihydromorphine (9145)	I
Hydromorphone (9150)	II
Difenoxin (9168)	I
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Heroin (9200)	I
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II
Metopon (9260)	II
Dextropropoxyphene, bulk (9273)	II
Morphine (9300)	II
Morphine-N-oxide (9307)	I
Nicomorphine (9312)	I
Normorphine (9313)	I
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Norlevorphanol (9634)	I
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II
Tetrahydrocannabinols (7370)	I

The firm plans to manufacture the controlled substances as analytical reference standards to be used internally and for sale to other companies.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Drug Operations Section, Domestic Drug Unit (ODOD) and must be filed no later than 60 days from publication.

Dated: March 14, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–7826 Filed 4–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under section 1002(a) authorizing the importation of such a substance, provide manufactures holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 14, 2003, Mallinckrodt, Inc., Mallinckrodit & Second Streets, St. Louis, Missouri, 63147, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substance listed below.

Drug	Schedule
Phenylaceton (8501)	II
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

The firm plans to import the listed controlled substance to bulk manufacture controlled substances.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 is such form as prescribed by 21 CFR 1316.47.

Any such comments, objections of requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with an independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 11, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–7832 Filed 4–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 26, 2002, and published in the **Federal Register** on December 10, 2002, (67 FR 75863), Noramco, Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by letter to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Sufentanil (9740)	II

The firm plans to manufacture the listed controlled substance for sale to a customer.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Noramco, Inc., to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Noramco Inc., to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 11, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–7834 Filed 4–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 18, 2002, Novartis Pharmaceuticals Corporation, Attn: Security Department, Building 103, Room 335, 59 Route 10, East Hanover, New Jersey 07936, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of controlled substance listed below:

Drug	Schedule
Methylphenidate (1724)	II

The firm plans to produce bulk product and finished dosage units for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Drug Operations Section, Domestic Drug Unit (ODOD) and must be filed no later than June 2, 2003.

Dated: March 11, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–7829 Filed 4–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 11, 2002, Organichem Corporation, 33 Riverside Avenue, Rensselaer, New York, 12144, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substance listed below:

Drug	Schedule
Amphetamine (1100)	II
Pentobarbital (2270)	II
Methylphenidate (1724)	II
Meperidine (9230)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Drug Operations Section, Domestic Drug Unit (ODOD), and must be filed no later than June 2, 2003.

Dated: March 11, 2003

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–7831 Filed 4–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 29, 2002, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9040)	II
Ecgonine (9180)	II

The firm plans to manufacture the listed controlled substance for the manufacture of a non-controlled substance flavor extract.

Any other such applicant and any person who is presently registered with the DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administrator, United States Department of Justice, Washington, DC 20537, Attention: Drug Operations Section, Domestic Drug Unit (ODOD) and must be filed no later than June 2, 2003.

Dated: March 11, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–7828 Filed 4–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 9, 2003, Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, made application by renewal and by letters dated January 28, 2003 and February 26, 2003, to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of Schedule I and II controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Thebaine (9333)	II
Methylphenidate (1724)	II
Tetrahydrocannabinols (7370)	I
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Fentanyl (9801)	II
Noroxymorphone (9668)	II
Dihydrocodeine (9120)	II

The firm plans to produce bulk products for conversion and distribution to its customers.

Any other such applicant and any person who is presently registered with

DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Drug Operations Section, Domestic Drug Unit (ODOD) and must be filed no later than 60 days from publication.

Dated: March 14, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–7827 Filed 4–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated June 24, 2002, and published in the **Federal Register** on July 10, 2002 (67 FR 45765), Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

The firm plans to manufacture bulk controlled substances for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Stepan Company to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Stepan Company on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–7836 Filed 7–1–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,831 and NAFTA–06338]

Metaldyne, Inc., Formerly Accura Tool & Mold Co., Inc., Crystal Lake, IL; Notice of Negative Determination Regarding Application for Reconsideration

By application of December 18, 2002 (postmark date), a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) under petition TA–W–41,831 and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) under petition NAFTA–6338. The TAA and NAFTA–TAA denial notices applicable to workers of Metaldyne, Inc., formerly Accura Tool & Mold Co., Inc., Crystal Lake, Illinois were signed on November 22, 2002, and November 25, 2002, and published in the **Federal Register** on December 23, 2002 (67 FR 78257 and 78258, respectively).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Metaldyne, Inc., formerly Accura Tool & Mold Co., Inc., Crystal Lake, Illinois, was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. Most of the molds and dies manufactured at Crystal Lake were sent internally within the subject corporation. Only a relatively minor amount of the plastics operation was supplied to outside customers. Accura Tool & Mold Co., Inc/Metaldyne Inc. did not increase imports of automotive transmission and powertrain molds and dies from 2000 through July 2002 when the plant shut down. Production of metal moldings was transferred to another affiliated domestic facility. The plastics operation was abandoned due to the closure of the plant.

The NAFTA–TAA petition for the same worker group was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. There was no shift in production from the workers' firm to Mexico or Canada during the relevant period. Imports from Canada or Mexico did not contribute importantly to worker separations. The factors as addressed in the TAA denial were also discussed in the NAFTA decision.

The petitioner appears to indicate that the Department of Labor made errors in the description of the type of work that was done at the Accura Tool & Mold Co., Inc./Metaldyne plant. When contacted, the petitioner clarified that he suspected that the petitioning worker group produced more than just molds and dies for components other than powertrains and transmissions, as the workers were not always informed about the end use of their production.

A review of the data supplied in the initial investigation and recent follow up contact with the company indicates that the subject plant primarily produced powertrain and transmission molds and dies. The subject firm also produced plastic molds, but this constituted a relatively small portion of overall plant production.

The petitioner also alleged that there were "errors in the correlation of definitions of what Metaldyne's description and functions of Accura Tool and Die were." The petitioner also attached various documents in an attempt to depict the allegation. When contacted for clarification on this allegation, the petitioner stated that workers skilled in mold and die production can produce molds and dies for a wide variety of metal parts. He also asserted that any mold and die facility had workers that could easily produce products competitive with those produced at the subject firm, and that there were many cheaper facilities in Mexico and Canada capable of this production. It appears that he believes that, if the high transferability of the petitioning worker group's skills were properly understood, then the worker group would be considered eligible for trade adjustment assistance.

In its investigation to assess the eligibility of petitioning worker groups for trade adjustment assistance, the Department considers the actual products produced by subject firm workers, and whether or not like or directly competitive products were imported in the relevant period. Thus, the "functions" as represented by the petitioner, are irrelevant. The overwhelming amount of mold and die production was transferred to another affiliated domestic location. As indicated in the initial investigation, the subject firm also produced plastic molds, but this constituted a relatively small portion of overall plant production. The plastics mold operation was abandoned at the time of plant closure, as it was a residual business of facility's previous owners, and not in line with the business experience and interests of Metaldyne. Recent contact with a company official confirmed that the company did not import products competitive with those produced at the subject firm during the relevant period.

The petitioner also indicates that additional plants located in foreign locations perform the same kind of work and production.

An examination of the attachments provided by the petitioner show various products (*i.e.*, precision die casting as rough castings, machined casting, assemblies and modules) made on a company wide basis from various locations, including foreign locations. The import of these products to the United States is not relevant to the TAA or NAFTA investigations that were filed on behalf of workers producing molds and dies. The product imported must be "like or directly" competitive with what the subject firm produced and the imports (including Canada and/or Mexico as it relates to NAFTA) must "contribute importantly" to the layoffs at the subject plant to meet the eligibility requirements for adjustment assistance under section 222 of the Trade Act of 1974 or NAFTA–TAA under section 250 of the Trade Act of 1974.

The petitioner further appears to state that there has been little consideration for present economical factors that point to the current trend of thousands of manufacturing plant closures and massive layoffs due to overseas trade agreements resulting in the Accura Tool and Dye plant closing.

Economic conditions are not criteria in determining eligibility for worker adjustment assistance pursuant to the Trade Act of 1974. Increased imports (imports from Canada or Mexico as it relates to NAFTA) of products like or directly competitive with what the subject plant produced must contribute importantly to the layoffs at the subject plant to meet the eligibility requirements of TAA or NAFTA. Also, a shift in production to Canada or Mexico could have qualified the workers for NAFTA. In any event, none of these events occurred thus the criteria were not met for the workers of Metaldyne, Inc., formerly Accura Tool & Mold Co., Inc., Crystal Lake, Illinois.

Conclusion

After review of the application and investigative findings, I conclude that there has been no misinterpretation of the law or of the facts which would justify reconsideration of the Department of labor's prior decisions. Accordingly, the application is denied.

Signed in Washington, DC, this 13th day of March, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–7918 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of March 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

None.

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production from a foreign country) have not been met.

TA–W–50,996; Fishing Vessel (F/V) Netta, Naknek, AK.

TA–W–50,165; Fishing Vessel (F/V) Jenni Lee, Aleknagik, AK.

TA–W–50,131; Fishing Vessel (F/V) Raymond Thorsen, Dillingham, AK.

TA–W–51,057; Fishing Vessel (F/V) Bucko, Dillingham, AK.

TA–W–51,040; Emcee Broadcast Products, White Haven, PA.

TA–W–50,993; Fishing Vessel (F/V) Darcie Michelle, Dillingham, AK.

TA–W–50,919; Southern Farm Fish Processors, Inc., a Div. of Farmland Industries, Inc., Eudora, AR.

TA–W–50,911; Benton Veneer Co., Benton, AR.

TA–W–50,897; Fishing Vessel (F/V) Miss Kari, Yankeetown, FL.

TA–W–50,793; Fishing Vessel (F/V) Matthew Thorson, Dillingham, AK.

TA–W–50,768; Fishing Vessel (F/V) Maya Ann, Anchorage, AK.

TA–W–50,759; Fishing Vessel (F/V) Cape Menemikof, Dillingham, AK.

TA–W–50,756; Fishing Vessel (F/V), Camelot, Togiak, AK.

TA–W–50,754; Fishing Vessel (F/V) Areil Rochelle, Nushagak, AK.

TA–W–50,710; Fishing Vessel (F/V) Kona Rose, Seattle, WA.

TA–W–50,691; State of Alaska Commercial Fisheries Entry Commission Permit #SO3T65910I, Newhalen, AK.

TA–W–50,621; Fishing Vessel (F/V) Frances A, Naknek, AK.

TA–W–50,630; Fishing Vessel (F/V) Alicia Dawn, Togiak, AK.

TA–W–50,360; Ocean State Finishing Co., Woonsocket, Rhode Island.

TA–W–50,340; Lear Corp., Electrical and Electronics Div. (Leed), Plant 074, Peru, IN.

TA–W–51,512; Fishing Vessel (F/V) Millie Jo, Chignik Lagoon, AK.

TA–W–51,428; South Bend Acquisition Corp., South Bend, IN.
TA–W–50,593; Exemplar Manufacturing Co., Ypsilanti, MI.
TA–W–50,537; Brillion Iron Works, Inc., Brillion, WI.
TA–W–50,220; Trus Joist, a Weyerhaeuser Business, Stayton, OR.
TA–W–50,389; Fishing Vessel (F/V) Three Wind, Dillingham, AK.
TA–W–50,464; Central Chair Co., Asheboro, NC.
TA–W–50,645; Sinsitl Fisheries, Kodiak, AK.
TA–W–50,703; Versa-Tool, Inc., Meadville, PA.
TA–W–50,748; Fishing Vessel (F/V) Aldebaran, Ketchikan, AK.
TA–W–50,769; Magic Fish Co., False Pass, AK.
TA–W–50,795; Purl Knit Fabric Corp., Brooklyn, NY.
TA–W–50,985; S.B. Foot Tanning Co., Texas Div., Dumas, TX.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–50,463; McCormick Enterprises, Inc., Delton, MI.
TA–W–51,048; Kayser-Roth Corp., Creedmoor Facility, Creedmoor, NC.
TA–W–51,001; e-Gain Communications Corp., Novato, CA.
TA–W–50,940; Olympic Security Services, Inc., Will Rogers World Airport, Oklahoma City, OK.
TA–W–50,942; Specialty Merchandise Corp (SMC), Chatsworth, CA.

The investigation revealed that criteria (2) has not been met. The workers' firm (or subdivision) is not an upstream supplier or components for trade-affected companies.

TA–W–50,458; Smurfit-Stone Container Corp., Corrugated Container Div., Spartanburg, SC.

The investigation revealed that criterion (a)(2)(A)(I.A) (no employment declines) has been met.

TA–W–50,524; Fishing Vessel (F/V) Jessica, Anchorage, AK.
TA–W–50,734; Genesis Designs, Bend, OR.
TA–W–50,467; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T–60471B, Homer, AK.
TA–W–51,061; Fishing Vessel (F/V) Pauline Marie, Manokotak, AK.
TA–W–50,625; Fishing Vessel (F/V) Thunderbird, Anchorage, AK.

The investigation revealed that criterion (a)(2)(A)(I.B) (sales or production, or both did not decline) and (a)(2)(A)(II.B) (no shift in production to a foreign country) have not been met.

TA–W–50,843; Fishing Vessel (F/V) My Girls, Port Heiden, AK.
TA–W–51,169; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T608705, Egegik, AK.
TA–W–50,351; Top Gun Tool, Inc., Erie, PA.
TA–W–50,818; Hitchiner Manufacturing Co., Ferrous Div., Littleton, NH.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,180; Hy-Lift, LLC, Muskegon, MI: September 17, 2001.
TA–W–42,360; Precision Twist Drill Co., Rhinelander, WI: September 16, 2001.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–50,540; Gaylord Container Corp., d/b/a Inland Paperboard and Packaging, Inc., Antioch, CA: December 3, 2001.
TA–W–50,064; Cerro Fabricated Products, a Div. of Cerro Metal Products Co., Bristol, CT: November 12, 2001.
TA–W–50,275; Chinook Sailing Products, Cascade Locks, OR: November 25, 2001.
TA–W–50,478; Maysteel, LLC, Mayville, WI: December 27, 2001.
TA–W–50,525; Cincinnati Machine, Div. of Unova, Inc., Cincinnati, OH: January 7, 2002.
TA–W–50,554; Scotty's Fashions, Palmerton, PA: January 6, 2002.
TA–W–50,663; Blackman Uhler, a Div. of Synalloy Corp., Spartanburg, SC: January 15, 2002.
TA–W–50,685: Elm Tex, Inc., West Springfield, MA: January 24, 2002.
TA–W–50,885 & A,B; Flying J. Oil and Gas, Inc., North Salt Lake, UT, Sidney, MT and Gilette, WY: February 7, 2002.
TA–W–50,943; Tree Top, Inc., Consumer Packaged Goods Div. Selah, WA: February 13, 2002.
TA–W–50,955; Specialized Bicycle Components, Salt Lake City Facility, Salt Lake City, UT: February 20, 2002.
TA–W–50,280, A,B,C,D; The Holmes Group, Rival Div., Golding Drive Location, Clinton, MO, South Orchard Location, Clinton, MO, Kansas City, MO, Jackson, MS and Sweet Springs, MO: December 9, 2001.
TA–W–50,956; Woodbridge Sanitary Pottery, a subsidiary of Gerber Plumbing Fixtures Crop, Woodbridge, NJ: February 14, 2002.
TA–W–50,418; Plastx World, a subsidiary of Clayfield Management, LTD (UK), including leased workers of Express Personnel, Wharton, NJ: December 17, 2001.
TA–W–50,770; Warp Knit Mills, Inc., Lincolnton, NC: February 3, 2002.
TA–W–50,773; Crystal Dyeing Finishing, Hickory, NC: February 3, 2002.
TA–W–50,666; John Crowley, Inc., Jackson, MI: January 22, 2002.
TA–W–50,192; Smith and Wesson Corp., Springfield, MA: December 13, 2002.

The following certification has been issued. The requirement of upstream supplier to trade certified primary firm has been met.

TA–W–50,689; Fishing Vessel (F/V) Wendy Ann, Kodiak, AK: January 23, 2002.
TA–W–50,306; Nevamar Co., Particleboard Div., Stuart, VA: December 4, 2001.
TA–W–50,840; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T57684H, Manokotak, AK: January 30, 2002.
TA–W–50,794; Santa Rosa, Inc., Kodiak, AK: February 3, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–50,731; The Protectoseal Co., Bensenville, IL: January 7, 2002.
TA–W–50,579; Thomson 60 Case, LLC, a subsidiary of Thomson Industries, Inc., Lancaster, PA: January 3, 2002.
TA–W–50,680; Avery Dennison, Milford, MA: January 16, 2002.
TA–W–50,712; Fishing Vessel (F/V), Mikna Rene, Manokotak, AK: January 21, 2002.
TA–W–50,715; Fishing Vessel (F/V) Aaron and Eric, Manokotak, AK: January 21, 2002.
TA–W–50,751; Fishing Vessel (F/V) Anuskat, Manokotak, AK: January 21, 2002.
TA–W–50,877; Fishing Vessel (F/V) Number One, Manokotak, AK: January 22, 2002.
TA–W–50,933; Fishing Vessel (F/V) Marilynn, Cook Inlet, AK: February 18, 2002.
TA–W–50,944; Honeywell International, Aerospace-West Coast Support Operations, Burbank, CA: February 7, 2002.
TA–W–50,971; Imco Recycling of Idaho, Post Falls, ID: February 14, 2002.
TA–W–50,396; Sherwood Tool, a Div. of Sweetheart Cup Co., Inc., Commercial Manufactured Parts Div., Kensington, CT: and Assembled Equipment Div., Kensington, CT: December 11, 2001.
TA–W–50,701; Midwest Electric Products, Inc., a wholly-Owned subsidiary of General Electric Corp., Mankato, MN: January 24, 2002.
TA–W–50,093A; Kane Magnetics International, Inc., Galeton, PA: November 6, 2001.
TA–W–50,029; State of Alaska Commercial Fisheries Entry Commission Permit #SO4K618440, Kodiak, AK: November 5, 2001.
TA–W–50,585; Skillers USA, C and S Apparel, Inc., Butler, PA: December 10, 2001.
TA–W–50,623; Arimon Technologies, Inc., Montello, WI: January 17, 2002.

Also, pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), subchaper D, chapter 2, title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of March 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

None.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

None.

Affirmative Determinations NAFTA–TAA

None.

I hereby certify that the aforementioned determinations were issued during the month of March 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 21, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–7919 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,777]

A.O. Smith, Electrical Products Company, Ripley, TN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 4, 2003, in response to a petition filed by a company official on behalf of workers at A.O. Smith, Electrical Products Company, Ripley, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 17th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7905 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,761]

State of Alaska Commercial Fisheries Entry Commission Permit # SO4T (Nick Timurphy), Dillingham, AK; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 30, 2003 in response to a petition filed by a company official on behalf of the group of workers covered by the State of Alaska Commercial Fisheries Entry Commission Permit # SO4T (Nick Timurphy), Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC this 18th day of March, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7904 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners of any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment

Assistance, at the address shown below, not later than April 14, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 14, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 17th day of March 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 03/10/2003 and 03/14/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,099	Allegheny Ludlum (Wkrs)	Houston, PA	03/10/2003	02/27/2003
51,100A	HMH Transportation, Inc (Comp)	Forest Park, GA	03/10/2003	03/03/2003
51,100B	HMH Transportation, Inc (Comp)	Los Angeles, CA	03/10/2003	03/03/2003
51,100	HMH Transportation Inc. (Comp)	Hazlehurst, GA	03/10/2003	03/03/2003
51,101	Agilent Technologies (Wkrs)	Fort Collins, CO	03/10/2003	03/05/2003
51,102	Jeld Wen—Pozzi Window (OR)	Bend, OR	03/10/2003	03/06/2003
51,103	Toshira America Electronic (OR)	Beaverton, OR	03/10/2003	03/07/2003
51,104	Johnstown Leather Corporation (UNITE)	Johnstown, NY	03/10/2003	02/26/2003
51,105	Dinaire, LLC (Comp)	Buffalo, NY	03/10/2003	02/25/2003
51,106	CertainTeed Corporation (Wkrs)	Nesquehoning, PA	03/10/2003	03/06/2003
51,107	Halex Company (IBT)	Cleveland, OH	03/10/2003	02/20/2003
51,108	Defender, Inc./Starr Supporter (Wkrs)	Philadelphia, PA	03/10/2003	02/27/2003
51,109	MCI Worldcom Network Services (Wkrs)	Hunt Valley, MD	03/10/2003	02/15/2003
51,110	Moll Industries, Inc. (Wkrs)	Newberg, OR	03/10/2003	03/05/2003
51,111	General Magnetics Technology, Inc. (Wkrs)	Lake Worth, FL	03/10/2003	02/25/2003
51,112	Osram Sylvania (Comp)	Maybrook, NY	03/10/2003	02/21/2003
51,113	Toppan Electronics, Inc. (Comp)	San Diego, CA	03/10/2003	02/25/2003
51,114	Celestica (Comp)	Fort Collins, CO	03/10/2003	03/07/2003
51,115	MeadWestvaco Corporation (DWU)	Luke, MD	03/10/2003	03/07/2003
51,116	Dura Automotive (Wkrs)	Livonia, MI	03/10/2003	02/21/2003
51,117	Square D Company (Comp)	Asheville, NC	03/10/2003	03/07/2003
51,118	Electrolux Home Products (Comp)	Edison, NJ	03/10/2003	03/03/2003
51,119	Worzalla Publishing (Wkrs)	Stevens Point, WI	03/10/2003	03/07/2003
51,120	Sun Apparel of Texas (Comp)	El Paso, TX	03/11/2003	01/08/2003
51,121	Mirro Corporation (USWA)	Manitowoc, WI	03/11/2003	02/07/2003
51,122	Emerson Appliance Controls (Wkrs)	Frankfort, IN	03/11/2003	03/05/2003
51,123	Spectra—Star (Wkrs)	Yuma, AZ	03/11/2003	03/04/2003
51,124	Pass and Seymour (Comp)	Concord, NC	03/11/2003	03/06/2003
51,125	Symantec Corporation (Wkrs)	Beaverton, OR	03/11/2003	03/06/2003
51,126	Kelly Industries, Inc. (Wkrs)	Eighty Four, PA	03/11/2003	03/05/2003
51,127	Omega Worldwide, Inc. (MI)	Ann Arbor, MI	03/11/2003	02/14/2003
51,128	DT Precision Assembly Industries (Wkrs)	Erie, PA	03/11/2003	03/10/2003
51,129	Cerf Brothers Bag Company (Comp)	Vandalia, MO	03/11/2003	03/10/2003
51,130	Tyler Refrigeration (UAW)	Waxahachie, TX	03/11/2003	03/07/2003
51,131	Fishing Vessel (F/V) Raymond Thorson (Comp).	Dillingham, AK	03/11/2003	03/05/2003
51,132	4–C's Fisheries (Comp)	Kodiak, AK	03/11/2003	03/06/2003
51,133	Relizon (Wkrs)	Newark, OH	03/14/2003	03/13/2003
51,134	Vanity Fair (NC)	Wilson, NC	03/14/2003	03/13/2003
51,135	Advance USA, LLC (Wkrs)	New Stanton, PA	03/14/2003	03/12/2003
51,136	Wing-Lynch, Inc. (OR)	Beaverton, OR	03/14/2003	03/12/2003
51,137	Sasol North America (MD)	Baltimore, MD	03/14/2003	03/13/2003
51,138	Drexel Heritage, #60 (Wkrs)	Morganton, NC	03/14/2003	03/07/2003
51,139	Embraer Aircraft Corporation (Wkrs)	Ft. Worth, TX	03/14/2003	03/14/2003
51,140	Verizon (FL)	Temple Terrace, FL	03/14/2003	03/03/2003
51,141	Werner Company (USWA)	Greenville, PA	03/14/2003	03/12/2003
51,142	Vaisala (Wkrs)	Sunnyvale, CA	03/14/2003	12/13/2002
51,143	Tyco Healthcare Retail Group, Inc. (Comp)	Harmony, PA	03/14/2003	03/13/2003
51,144	IBM (Wkrs)	McLeansville, NC	03/14/2003	03/03/2003
51,145	Halliburton Security (USWA)	Dallas, TX	03/14/2003	03/11/2003
51,146	Garan, Inc. (Wrks)	Church Point, LA	03/14/2003	03/12/2003
51,147	Manitowoc Boom Trucks (Wkrs)	York, PA	03/14/2003	03/10/2003
51,148	Torque-Traction Manufacturing (Comp)	Syracuse, IN	03/14/2003	03/25/2003
51,149	Applied Industrial Technologies (MN)	Cloquet, MN	03/14/2003	03/11/2003
51,150	Logan Stampings, Inc. (Comp)	Logans Port, IN	03/14/2003	03/11/2003
51,151	North Star Steel Company (Wkrs)	Kingman, AZ	03/14/2003	03/07/2003
51,152	Asco Valve Manufacturing (Wrks)	Ft. Mill, SC	03/14/2003	03/01/2003
51,153	Esteves—DWD, LLC (Comp)	Danville, KY	03/14/2003	03/10/2003
51,154	Progress Casting Group, Inc. (MN)	Albert Lea, MN	03/14/2003	03/07/2003
51,155	Buckbee-Mears (Comp)	St. Paul, MN	03/14/2003	03/10/2003

APPENDIX—Continued

[Petitions instituted between 03/10/2003 and 03/14/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,156	Pacific Precision Metals (Comp)	Laverne, CA	03/14/2003	03/11/2003
51,157	DBM Technologies (MI)	Corunna, MI	03/14/2003	03/10/2003
51,158	Stewart Apparel, Inc. (Comp)	Greensboro, GA	03/14/2003	03/06/2003
51,159	Zosel Lumber (WA)	Oroville, WA	03/14/2003	03/11/2003
51,160	Parkson Corporatioln (FL)	Pompano, FL	03/14/2003	03/11/2003
51,161	Allura Corporation (UNITE)	Lorane-Reading, PA	03/14/2003	03/04/2003
51,162	F/V/ J.C. (Comp)	Aleknagik, AK	03/14/2003	03/11/2003
51,163	F/V Yo Yo (Comp)	Aleknagik, AK	03/14/2003	03/11/2003
51,164	Melody Lynn (Comp)	Aleknagik, AK	03/14/2003	03/11/2003
51,165	F/V Jenni Lee (Comp)	Aleknagik, AK	03/14/2003	03/11/2003
51,166	F/V Double Eagle (Comp)	Dillingham, AK	03/14/2003	03/11/2003
51,167	Robert Allen (Comp)	Kokiak, AK	03/14/2003	03/08/2003
51,168	F/V Vaness (Comp)	Kodiak, AK	03/14/2003	03/10/2003
51,169	Kathleen Lange (Comp)	Homer, AK	03/14/2003	03/13/2003

[FR Doc. 03–7890 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,972]

American Greetings Corporation, Corbin, KY; Notice of Negative Determination Regarding Application for Reconsideration

By application of November 25, 2001, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on October 10, 2001, and published in the **Federal Register** on November 5, 2001 (67 FR 67422).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of American Greetings Corporation, Corbin, Kentucky was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met.

The petitioners allege that criterion (3) was acknowledged as having been met by the Department, as established by a determination in connection with TA–W–41,255 regarding subject firm workers. To provide proof of this, they attach an untitled page of this determination.

In fact, this page was extracted from a determination which was issued as a "Notice of Negative Determination Regarding Application for Reconsideration", issued as the result of an investigation that followed the original "Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance." However, in this determination, the word "not" was inadvertently omitted in the statement "increased imports did contribute importantly to worker separations." A corrected republication in full explaining the inadvertent omission was issued and published in the **Federal Register** on July 24, 2002 (67 FR 48484).

The petitioners allege that "we have been told from various sources of management that approximately nine percent of the work done at the Corbin plant has been outsourced to other countries." They also claim that "American Greetings plans to outsource 75 percent of the work previously done at the Corbin plant to foreign countries within the next two years.

A review of the initial investigation revealed that somewhat less than nine percent of greeting card sheet production has been outsourced to offshore facilities. However, as subject firm workers are not separately identifiable, the production of party goods, gift wrap and bows (ribbons), and candles must also be taken into consideration when looking at the percentage of plant production affected by this outsourcing. When considering imports of greeting card sheets in context with the total plant production, imports constitute a negligible percentage. In regard to any future outsourcing referenced by the petitioners, any future imports are beyond the relevant period.

The petitioners also assert that sales and production have "declined in the last eight years" and that "we have been told the record shows that imported goods * * * hurt the company sales." At one point, they allege that layoffs have been occurring for the last three years, and recommend that the Department look at the last five years in assessing company trends.

In establishing worker eligibility for trade adjustment assistance, the Department considers declines that occurred in the year preceding the date of the petition. To establish whether the declines exist, the investigation requires the most recent two years of data for corresponding periods in order to ascertain whether declines have occurred in the most recent period relative to the previous period. Thus periods of five and eight years are not relevant. Further, a review of the initial investigation revealed that all sales and production declines of party goods, gift wrap and bows (ribbons) and candles that occurred in the relevant period are attributable to domestic transfer. Production of greeting card sheets increased in 2001 relative to 2000, but began to decline in January through March, 2002 relative to the corresponding period of 2001. As mentioned above, imports of greeting card sheets were negligible relative to overall production.

The petitioners also assert that laid-off company personnel are united in the belief that import impact affected layoffs, and state that "the records and

data have proved" that imports contributed importantly.

No "records and data" were made available in regard to this request for reconsideration. In regard to attachments to the petition and request for reconsideration provided in a previous investigation for this worker group (TA–W–41,255) regarding competitive company imports (a company email discussing offshore shipments, labels indicating import shipments), the Department contacted the company, which provided specific information as to whether competitive imports had occurred, where production had been shifted, and specific percentages of import volume versus total plant production. In all cases where competitive imports occurred, the volume of imports was deemed negligible. It was on the basis of this specific information that the determination was made.

Finally, the petitioners enumerate the three criteria for eligibility and assert that they meet all three criteria.

As noted above, an investigation of the information available reveals that subject firm workers of American Greetings Corporation, Corbin, Kentucky do not meet the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 7th day of March, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–7917 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,960, TA–W–50,960A, and TA–W–50,960B]

American Identity, Formerly Doing Business as Dunbrooke Industries, Inc. Marcus, IA, Hawarden IA, Orange City, IA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 24, 2003, in response to a worker petition filed by a company official on behalf of workers at American Identity, formerly doing business as Dunbrooke Industries, Inc., Marcus, Iowa, Hawarden, Iowa, and Orange City, Iowa.

The petitioning group of workers is covered by an active certification issued on May 3, 2001 (TA–W–38,985). Consequently, the investigation has been terminated.

Signed at Washington, DC, this 11th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7914 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners of any other person showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 14, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 14, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311 , 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 14th day of March 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 03/03/2003 and 03/07/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,026	American Tool Companies, Inc. (Comp)	Cumberland, WI	03/03/2003	02/25/2003
51,027	Crescent Lighting (NJ)	Bannington, NJ	03/03/2003	02/28/2003
51,028	Pliant Corporation (CA)	Merced, CA	03/03/2003	01/06/2003
51,029	Vinonics, Inc. (Wkrs)	Fort Worth, TX	03/03/2003	02/27/2003
51,030	ESCO Corporation (Comp)	Danville, IL	03/03/2003	02/24/2003
51,031	National Presto Industries, Inc. (Comp)	Eau Claire, WI	03/03/2003	02/24/2003
51,032	Wheeling-Pittsburgh Steel Corp. (Comp)	Allenport, PA	03/03/2003	02/14/2003
51,033	F/V R.D. and J (Comp)	Pilot Point, AK	03/03/2003	02/27/2003
51,034	F/V Tianna Sea (Comp)	Port Heiden, AK	03/03/2003	02/27/2003
51,035	F/V Michelle Dawn (Comp)	Pilot Point, AK	03/03/2003	02/27/2003
51,036	F/V White Eagle (Comp)	Pilot Point, AK	03/03/2003	02/27/2003

APPENDIX—Continued

[Petitions instituted between 03/03/2003 and 03/07/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,037	Jabil Global Services (Comp)	Tampa, FL	03/04/2003	02/27/2003
51,038	Tubertronics (KS)	Wichita, KS	03/04/2003	03/03/2003
51,039	Calvin Klein, Ltd. (UNITE)	New York, NY	03/04/2003	03/03/2003
51,040	Emcee Broadcast Products (Wkrs)	White Haven, PA	03/04/2003	03/03/2003
51,041	Yoshida Group (Wkrs)	Portland, OR	03/04/2003	03/07/2003
51,042	Micron Technologies, Inc. (Wkrs)	Boise, ID	03/04/2003	02/21/2003
51,043	Mount Vernon (CA)	Fresno, CA	03/04/2003	02/28/2003
51,044	Greenlee (Wkrs)	Fairmont, MN	03/04/2003	03/03/2003
51,045	Precision Cast Parts (Wkrs)	Portland, OR	03/04/2003	02/12/2003
51,046	Western Geco (Wkrs)	Denver, CO	03/04/2003	02/23/2003
51,047	Search Resources (MN)	Grand Rapids, MN	03/04/2003	03/03/2003
51,048	Kayser-Roth Corporation (Comp)	Creedmoor, NC	03/04/2003	02/27/2003
51,049	Raytheon Aircraft Co. (KS)	Wichita, KS	03/04/2003	03/03/2003
51,050	JJA, Inc. (NH)	Hampstead, NH	03/04/2003	03/03/2003
51,051	Carbone Kirkwood LLC (Comp)	Cleveland, OH	03/04/2003	03/03/2003
51,052	Leggett and Platt, Inc. (Comp)	Fremont, IN	03/04/2003	02/28/2003
51,053	Eastman Kodak (Wkrs)	Oakdale, MN	03/04/2003	02/28/2003
51,054	Sonic Blue (Wkrs)	Santa Clara, CA	03/04/2003	02/17/2003
51,055	F/V Miss Adube (Comp)	Manokotak, AK	03/04/2003	03/03/2003
51,056	F/V Mariam (Comp)	Dillingham, AK	03/04/2003	03/03/2003
51,057	Fishing Vessel (F/V) Bucko (Comp)	Dillingham, AK	03/04/2003	03/03/2003
51,058	F/V Kasandra Faye (Comp)	Aleknagik, AK	03/04/2003	03/03/2003
51,059	F/V Kathy Ann (Comp)	Dillingham, AK	03/04/2003	03/03/2003
51,060	F/V Jeweline M (Comp)	Manokotak, AK	03/04/2003	03/03/2003
51,061	Fishing Vessel (F/V) Pauline Marie (Comp)	Manakotak, AK	03/04/2003	03/03/2003
51,062	Ethan Allen, Inc. (Comp)	Dudley, MA	03/05/2003	02/25/2003
51,063	Ingersoll—Rand (CO)	Colorado Spring, CO	03/05/2003	02/10/2003
51,064	Dynamet, Inc. (Wkrs)	Washington, PA	03/05/2003	01/17/2003
51,065	GE Interlogix (Comp)	N. St. Paul, MN	03/05/2003	03/04/2003
51,066	KOMAG, Inc. (CA)	Santa Rosa, CA	03/05/2003	01/14/2003
51,067	TRW Automotive (Comp)	Greenville, NC	03/05/2003	03/04/2003
51,068	JJM, Ltd. (Comp)	Corvallis, OR	03/05/2003	03/03/2003
51,069	Mickon Technology Inc. (Wkrs)	Lehi, UT	03/05/2003	03/03/2003
51,070	New World Pasta (Comp)	Lousiville, KY	03/05/2003	02/27/2003
51,071	Nova Chemicals, Inc. (Wkrs)	Moon Township, PA	03/05/2003	03/05/2003
51,072	Set Net (Comp)	Dillingham, AK	03/05/2003	03/04/2003
51,073	3M—HIS (Wkrs)	Wellingford, CT	03/06/2003	02/26/2003
51,074	Elliott Turbomachinery Co., Inc. (Comp)	Jeannette, PA	03/06/2003	02/21/2003
51,075	Philips Semiconductor (Comp)	San Antonio, TX	03/06/2003	03/03/2003
51,076	Key Plastics (Wkrs)	Chesterfield, MI	03/06/2003	02/24/2003
51,077	Advanced Technology Services, Inc. (Comp)	Mt. Clemens, MI	03/06/2003	02/28/2003
51,078	Adecco Staffing Services (MN)	Rochester, MN	03/06/2003	03/05/2003
51,079	Atlantic Precision Products (Wkrs)	Sanford, ME	03/06/2003	02/28/2003
51,080	H and L Tool Co. (Comp)	Erie, PA	03/06/2003	03/05/2003
51,081	Plexus Corporation (Comp)	Bothell, WA	03/06/2003	02/24/2003
51,082	Center Partners (Wkrs)	Yukon, OK	03/06/2003	03/03/2003
51,083	Fernbrook & Company (UNITE)	Palmerton, PA	03/06/2003	03/06/2003
51,084	Gilinsky Logging, Inc. (Comp)	Rogue River, OR	03/06/2003	03/01/2003
51,085	Fluor Daniel (Wkrs)	Rochester, MN	03/06/2003	01/03/2003
51,086	F/V Golda June (Comp)	Dillingham, AK	03/06/2003	03/05/2003
51,087	Wacker (OR)	Portland, OR	03/07/2003	03/06/2003
51,088	Farley Sathers Confections (Wkrs)	Brooklyn, NY	03/07/2003	02/26/2003
51,089	Fairweather E and P (Wkrs)	Anchorage, AK	03/07/2003	02/04/2003
51,090	Liberty West (OR)	Wilsonville, OR	03/07/2003	01/10/2003
51,091	Ingersoll Products Company (Comp)	Chicago, IL	03/07/2003	02/27/2003
51,092	Adecco, N. American, LLC (Wkrs)	Ft. Worth, TX	03/07/2003	02/20/2003
51,093	Mitten Manufacturing (Comp)	Syracuse, NY	03/07/2003	02/27/2003
51,094	Quebecor World Kingsport, Inc. (USWA)	Franlkin, TN	03/07/2003	02/28/2003
51,095	HMX Tailored (UNITE)	Buffalo, NY	03/07/2003	02/21/2003
51,096	DCB Corporation (Comp)	Madisonville, TN	03/07/2003	02/26/2003
51,097	Webb Triax Company (The) (IBT)	Chardon, OH	03/07/2003	02/20/2003
51,098	Colonial Tanning Corporation (UNITE)	Gloversville, NY	03/07/2003	02/25/2003

[FR Doc. 03–7891 Filed 4–1–03; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,018]

Ametek Dixson Division, Grand Junction, CO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 28, 2003 in response to a worker petition which was filed by a company official on behalf of workers at Ametek Dixson Division, Grand Junction, Colorado.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 13th day of March, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7911 Filed 4–1–03; 8:45 am]
BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,814]

Caterpillar Paving Products, Inc., A Subsidiary of Caterpillar of America Brooklyn Park, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 6, 2003 in response to a petition filed on behalf of workers at Caterpillar Paving Products, Inc., a subsidiary of Caterpillar of America, Brooklyn Park, Minnesota.

The petitioning workers have requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 18th day of March, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7906 Filed 4–1–03; 8:45 am]
BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,949]

Caterpillar, Inc., Leland Transmission Facility, Leland, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 24, 2003, in response to a worker petition filed by a company official on behalf of workers at Caterpillar, Inc., Leland Transmission Facility, Leland, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 10th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7912 Filed 4–1–03; 8:45 am]
BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,181]

Elliott Ebara Group, Jeanette, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 17, 2003, in response to a worker petition filed on behalf of workers at Elliott Ebara Group, Jeanette, Pennsylvania.

The petitioning group of workers is covered by an earlier petition filed on March 6, 2003 (TA–W–51,074) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 17th day of March 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7900 Filed 4–1–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,695]

Fishing Vessel (F/V) Miss Maddison, Mercer Island, WA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 28, 2003 in response to a petition filed by a company official on behalf of Fishing Vessel (F/V) Miss Maddison, Mercer Island, Washington.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC this 19th day of March, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7903 Filed 4–1–03; 8:45 am]
BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,951]

General Electric, Jonesboro, AR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 24, 2003 in response to a petition filed by the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers—Communication Workers of America, AFL–CIO, Local 747 on behalf of workers at General Electric, Jonesboro, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 18th day of March, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7907 Filed 4–1–03; 8:45 am]
BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,967]

Hampton Distribution Companies (HDC), Formerly CMI Northwest, A Division of Hampton Affiliates, Portland, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 25, 2003 in response to a worker petition filed by a company official on behalf of workers at Hampton Distribution Companies (HDC), formerly CMI Northwest, a division of Hampton Affiliates, Portland, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed in Washington, DC, this 18th day of March, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7901 Filed 4–1–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,014]

Ingersoll-Rand Company, Campbellsville, KY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 27, 2003 in response to a worker petition filed by a company official on behalf of workers at Ingersoll-Rand Company, Campbellsville, Kentucky.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC this 18th day of March, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7895 Filed 4–1–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,765]

Irving Forest Products, Pinkham Sawmill, Ashland, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 31, 2003 in response to a union petition filed by Paper, Allied-Industrial, Chemical and Energy Workers International Union (PACE), AFL–CIO, Local 1–1310 on behalf of workers at Irving Forest Products, Pinkham Sawmill, Ashland, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of March, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7913 Filed 4–1–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,068]

JJM, Ltd., Mega Tech of Oregon Division, Corvallis, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 5, 2003, in response to a worker petition filed by a company official on behalf of workers at JJM, Ltd., Mega Tech of Oregon Division, Corvallis, Oregon.

The petitioning group of workers is covered by an earlier petition filed on February 13, 2003 (TA–W–50,889) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 20th day of March, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7897 Filed 4–1–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,947]

Kuhn Tool and Die Company, Meadville, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 24, 2003, in response to a worker petition filed by a company official on behalf of workers at Kuhn Tool and Die Company, Meadville, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7909 Filed 4–1–03; 8:45 am]
BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,536]

Lacers Sport, Inc., a/k/a Diport USA, Including Leased Workers of ADP Totalsource Florida XVII, Inc., Miami, FL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 29, 2003, applicable to workers of Lacers Sport, Inc., a/k/a Diport USA, Miami, Florida. The notice was published in the **Federal Register** on February 24, 2002 (68 FR 8620).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State shows that leased workers of ADP Totalsource Florida XVII, Inc. were employed at Lacers Sports, Inc., a/k/a Diport, USA to produce men's golf shirts at the Miami, Florida location of the subject firm.

Based on these findings, the Department is amending the certification to include leased workers of ADP Totalsource Florida XVII, Inc. who were employed at Lacers Sport, Inc., a/k/a Diport USA, Miami, Florida.

The intent of the Department's certification is to include all workers of Lacers Sport, Inc., a/k/a Diport USA who were adversely affected by increased imports of men's golf shirts.

The amended notice applicable to TA–W–50,536 is hereby issued as follows:

All workers of Lacers Sports, Inc., a/k/a Diport USA, Miami, Florida including leased workers of ADP Totalsource Florida XVII, Inc. engaged in employment related to the production of men's golf shirts at Lacers Sport, Inc., a/k/a Diport USA, Miami, Florida, who became totally or partially separated from employment on or after December 31, 2001, through January 29, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 17th day of March 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7916 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,892]

Mastercraft Fabrics, LLC, Morgantown, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 13, 2003 in response to a worker petition filed by a company official on behalf of workers at Mastercraft Fabrics, LLC, Morgantown, North Carolina.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 10th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7910 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,990]

Material Handling Associates, Greene, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 26, 2003 in response to a petition filed on behalf of workers at Material Handling Associates, Greene, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 18th day of March, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7894 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,093]

Mitten Manufacturing, Syracuse, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 7, 2003 in response to a worker petition which was filed by a company official on behalf of workers at Mitten Manufacturing, Syracuse, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 18th day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7898 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,019]

National Controls Corporation, A Division of Ametek Dixson Division, West Chicago, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 28, 2003 in response to a worker petition which was filed by a company official on behalf of workers at National Controls Corporation, a division of Amatec Dixson Division, West Chicago, Illinois

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 18th day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7896 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,853]

O.K. Industries Incorporated, Fort Smith, AR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 11, 2003 in response to a worker petition filed by a state dislocated worker unit on behalf of workers at O.K. Industries, Inc., Ft. Smith, Arkansas.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7908 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,763]

Pfizer, Inc., Groton Manufacturing Plant, Groton, CT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 31, 2003, in response to a worker petition filed the State of Connecticut on behalf of workers at Pfizer, Inc., Groton Manufacturing Plant, Groton, Connecticut

All workers were separated from the subject firm more than one year before the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 21st day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7920 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,929]

S.D. Warren Co., d/b/a Sappi Fine Paper North America, Somerset Operations, Skowhegan, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 19, 2003 in response to a petition filed by a company official on behalf of workers at S.D. Warren Company, d/b/a Sappi Fine Paper North America, Somerset Operations, Skowhegan, Maine. Workers at the subject firm produce lightweight coated paper.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 13th day of March, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7915 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,117]

Square D Company, Asheville, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 10, 2003 in response to a worker petition which was filed by a company official on behalf of workers at Square D Company, Asheville, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 18th day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7899 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,552]

TMD Friction, Inc., Dublin, VA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 14, 2003 in response to a petition filed on behalf of workers at TMD Friction, Inc., Dublin, Virginia.

The workers have requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 17th day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–7902 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act, 1998

AGENCY: Employment and Training Administration.

ACTION: Notice on reallotment of Workforce Investment Act (WIA) Title I formula allotted funds for dislocated worker activities for program year (PY) 2002.

SUMMARY: Pub. L. 105–220, the Workforce Investment Act (WIA), requires the Secretary to conduct reallotment of dislocated worker formula allotted funds based on state financial reports submitted as of the end of the prior program year. This notice publishes the dislocated worker PY 2002 funds for recapture by state and the amount to be reallotted to eligible states.

EFFECTIVE DATE: This notice is effective April 2, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Grace Kilbane, Administrator, U.S. Department of Labor, Office of Workforce Investment, Employment and Training Administration, Room S–4231, 200 Constitution Avenue, NW., Washington, DC. Telephone (202) 693–3200; Fax (202) 693–3229.

SUPPLEMENTARY INFORMATION: WIA section 132(c) requires the Secretary to reallot excess unobligated dislocated worker funds based on financial reports submitted by states as of the end of the prior program year. The procedures the Secretary uses for recapture and reallotment of funds are described in WIA regulation at 20 CFR 667.150. Training and Employment Guidance Letter (TEGL) 13–01, dated March 15, 2002, advised states that reallotment of funds under WIA will occur during PY 2002 based on state obligations made in PY 2001. There were no recapture and reallotment of WIA funds in PY 2001.

Excess unobligated state funds in the amount of $2,867,639 will be recaptured from PY 2002 formula allotted funds for the dislocated worker program from four states and distributed by formula to PY 2002 dislocated worker funds for eligible states. The methodology used for the recapture/reallotment and the distribution of the changes to PY 2002 formula allotments for dislocated worker activities are attached. We will not recapture any PY 2002 funds for Adult and Youth programs because in no case do unobligated funds exceed the statutory requirement of 20 percent of state unobligated funds.

WIA section 132(c) requires the Governor to prescribe equitable procedures for making funds available from the state and local areas in the event that the state is required to make funds available for reallotment.

Signed at Washington, DC, this 6th day of February, 2003.

Grace Kilbane,

Administrator, Office of Workforce Investment.

BILLING CODE 4510-30-M

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
WIA Dislocated Worker Activities
PY 2002 Reallotment to States

	Excess Unobligated PY 2001 Funds for Recapture in PY 2002	PY 2001 Allotments for Eligible States	PY 2002 Reallotment Amount for Eligible States	Total PY 2002 Allotments	Total Adjustment to PY 2002 (Recapture/ Reallotment)	Revised Total PY 2002 Allotments
Alabama	$0	$14,548,680	$43,937	$22,896,931	$43,937	$22,940,868
Alaska	269,472	0	0	9,671,503	(269,472)	9,402,031
Arizona *	0	11,901,318	35,942	12,606,123	35,942	12,642,065
Arkansas	0	6,081,477	18,366	7,550,450	18,366	7,568,816
California	0	250,387,781	756,171	218,507,541	756,171	219,263,712
Colorado	0	7,490,875	22,622	7,378,805	22,622	7,401,427
Connecticut	0	6,970,121	21,050	5,384,702	21,050	5,405,752
Delaware	0	2,115,681	6,389	2,554,637	6,389	2,561,026
District of Columbia	0	7,877,186	23,789	8,837,081	23,789	8,860,870
Florida	0	36,561,581	110,416	40,106,859	110,416	40,217,275
Georgia	0	18,996,363	57,369	19,039,241	57,369	19,096,610
Hawaii	0	5,247,723	15,848	4,243,014	15,848	4,258,862
Idaho	0	3,642,116	10,999	6,382,042	10,999	6,393,041
Illinois	0	39,391,994	118,964	91,853,295	118,964	91,972,259
Indiana	0	10,042,254	30,328	12,270,152	30,328	12,300,480
Iowa	0	5,135,122	15,508	4,837,782	15,508	4,853,290
Kansas	0	5,029,188	15,188	6,395,111	15,188	6,410,299
Kentucky	0	10,160,997	30,686	11,215,137	30,686	11,245,823
Louisiana	1,750,970	0	0	44,343,903	(1,750,970)	42,592,933
Maine	0	3,035,548	9,167	3,368,375	9,167	3,377,542
Maryland	0	16,182,456	48,871	16,962,636	48,871	17,011,507
Massachusetts	0	14,670,614	44,305	12,321,163	44,305	12,365,468
Michigan	0	21,159,042	63,900	27,662,181	63,900	27,726,081
Minnesota	0	10,127,132	30,584	11,439,858	30,584	11,470,442
Mississippi	0	29,257,614	88,358	19,710,556	88,358	19,798,914
Missouri	0	11,150,062	33,673	15,805,346	33,673	15,839,019
Montana	0	6,875,983	20,765	3,291,112	20,765	3,311,877
Nebraska	0	2,855,323	8,623	2,775,031	8,623	2,783,654
Nevada	0	4,924,750	14,873	6,647,377	14,873	6,662,250
New Hampshire	0	1,765,100	5,331	2,261,165	5,331	2,266,496
New Jersey	0	27,989,446	84,528	26,515,582	84,528	26,600,110
New Mexico *	0	20,109,872	60,732	17,696,491	60,732	17,757,223
New York	0	88,354,904	266,832	67,370,751	266,832	67,637,583
North Carolina	0	15,499,843	46,810	27,209,712	46,810	27,256,522
North Dakota	0	1,190,277	3,595	1,196,337	3,595	1,201,932
Ohio	57,858	0	0	34,226,768	(57,858)	34,168,910
Oklahoma	0	5,845,396	17,653	6,478,067	17,653	6,495,720
Oregon	0	27,362,814	82,636	29,731,969	82,636	29,814,605
Pennsylvania	0	35,040,205	105,821	41,663,107	105,821	41,768,928
Puerto Rico	789,339	0	0	122,346,374	(789,339)	121,557,035
Rhode Island	0	2,752,896	8,314	2,680,820	8,314	2,689,134
South Carolina	0	11,048,018	33,365	11,995,901	33,365	12,029,266
South Dakota	0	1,236,104	3,739	965,071	3,739	968,810
Tennessee	0	11,806,099	35,654	13,927,456	35,654	13,963,110
Texas	0	58,380,521	176,309	50,784,453	176,309	50,960,762
Utah	0	4,262,839	12,873	4,334,469	12,873	4,347,342
Vermont	0	1,222,837	3,692	1,306,764	3,692	1,310,456
Virginia	0	11,435,422	34,535	11,111,384	34,535	11,145,919
Washington	0	25,288,914	76,312	68,485,602	76,312	68,561,914
West Virginia	0	23,114,403	69,805	15,231,828	69,805	15,301,633
Wisconsin	0	12,493,336	37,730	15,314,830	37,730	15,352,560
Wyoming	0	1,550,365	4,682	1,285,545	4,682	1,290,227
STATE TOTAL	$2,867,639	$949,559,093	$2,867,639	$1,239,200,000	$0	$1,239,200,000

* Includes Navajo Nation

Dislocated Worker State Formula
PY 2002 Reallotment Methodology

Source data: State WIA 6/30/02 financial status reports
(including Navajo Nation reports for Dislocated Worker program) --
Statewide Activities (plus State Administrative breakout)
Rapid Response Activities
Local Administration
Local Dislocated Worker Program
Dislocated Worker program = sum of:
Estimated Dislocated Worker portion of Statewide Activities (less State Administrative portion)
Rapid Response Activities
Estimated Dislocated Worker portion of Local Administration
Local Dislocated Worker program

Years covered: PY 2001 and FY 2002

Methodology for disaggregating Statewide Activities/Local Admin report data by program:

	Statewide Activities – 15%	Local Administration – 10%
Auth	Fed NOO $ to State by pgm less est Local Admin Auth by pgm less rptd Local Pgm Auth by pgm less rptd Rapid Response Auth (DW only)	Prorated using reported Local Program Auth by program
Oblig	Prorated using Statewide Auth est by pgm	

Reallotment calculations:

(1) Each State's obligated balance of PY 2001 (including FY 2002) funds for the Dislocated Worker (DW) program is calculated. State obligations are considered to be the total of the estimated DW share of statewide activities obligations, Rapid Response obligations, 100% of local DW program authorized, and 100% of estimated DW portion of local admin authorized. The DW total unobligated balance is the DW 2000 allotment amount less the calculated total DW obligations. (Navajo Nation funds are added back to the New Mexico and Arizona for reallotment purposes and treated like a local area.)

(2) Section 667.150 of the regulations provide that the reallotment calculations exclude the reserve for State administration. Therefore, additional data on State administrative amounts included in the PY 2001 and FY 2002 Statewide Activities amounts authorized and obligated as of 6/30/02 are obtained (not normally available on WIA financial reports) from the States potentially liable for recapture.

(3) For those States potentially liable for recapture, the DW portion of the State administrative amounts authorized and obligated is estimated using the DW estimated relative share of the Statewide authorized amount (above methodology). The DW total allotment for these States is reduced by the estimated DW portion of the State administrative amount authorized and the DW total obligations for these States are reduced by the estimated DW portion of the State administrative amounts obligated. These calculations are done separately for PY 2001 and FY 2002.

(4) States (including those adjusted by State administrative data) with unobligated balances for combined PY 2001/FY 2002 exceeding 20% of the combined PY2001/FY2002 DW allotment will have their DW 2002 funding reduced (recaptured) by the amount of the excess.

(5) As calculated above, States with unobligated balances not exceeding 20% will receive a share of the total recaptured amount based on their share of the total PY 2001/FY2002 DW allotments for all such States.

[FR Doc. 03–7889 Filed 4–1–03; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6244]

Specialty Machine Company, Inc., Gastonia, NC; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Specialty Machine Company, Inc., Gastonia, North Carolina. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA–6244; Specialty Machine Company, Inc. Gastonia, North Carolina (February 4, 2003)

Signed at Washington, DC, this 12th day of February 2003.

Edward A. Tomchick,
Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–7892 Filed 4–1–03; 8:45 am]
BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 110, Rules and Regulations for the Export and Import of Nuclear Equipment and Material.

2. *Current OMB approval number:* 3150–0036.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Any person in the U.S. who wishes to export: (a) Nuclear equipment and material subject to the requirements of a specific license, (b) radioactive waste subject to the requirements of a specific license, and (c) incidental radioactive material that is a contaminant of shipments of more than 100 kilograms of non-waste material using existing NRC general licenses.

5. *The estimated number of annual respondents:* 140.

6. *The estimated number of hours needed annually to complete the requirement or request:* 303 hours (Reporting, 135 hours and Recordkeeping, 168 hours).

7. *Abstract:* 10 CFR part 110 provides application, reporting, and recordkeeping requirements for export and imports of nuclear material and equipment subject to the requirements of a specific license or a general license and exports of incidental radioactive material. The information collected and maintained pursuant to 10 CFR part 110 enables the NRC to authorize only imports and exports which are not inimical to U.S. common defense and security and which meet applicable statutory, regulatory, and policy requirements.

Submit, by June 2, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 25th day of March, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,
NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–7923 Filed 4–1–03; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Safeguards and Security; Notice of Meeting

The ACRS Subcommittee on Safeguards and Security will hold a closed meeting on April 24, 2003, in the NRC Auditorium, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be closed to public attendance to protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

The agenda for the subject meeting shall be as follows:

Thursday, April 24, 2003—8:30 a.m. until the conclusion of business

The Subcommittee will hear presentations from an individual Commissioner, representatives of the NRC staff, and the nuclear Industry and gather information on the NRC staff's proposed guidance for performing risk-informed vulnerability assessments and the design basis threat among other issues. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Further information contact: Mr. Richard K. Major (telephone: 301–415–7366) or Dr. Richard P. Savio (telephone: 301–415–7363) between 7:30 a.m. and 4:15 p.m. (E.T.).

Dated: March 25, 2003.

Sher Bahadur,
Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–7922 Filed 4–1–03; 8:45 am]
BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission,

Office of Filings, and Information Services 450 Fifth Street, NW., Washington, DC. 20549.

Extension: Form N–17f–2. SEC File No. 270–317. OMB Control No. 3235–0360.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form N–17f–2 is entitled "Certificate of Accounting of Securities and Similar Investments in the Custody of Management Investment Companies." Form N–17f–2 is the cover sheet for the accountant examination certificates filed under rule 17f–2 of the Investment Company Act of 1940 by registered management investment companies ("funds") maintaining custody of securities or other investments. Form N–17f–2 facilitates the filing of the accountant's examination certificates. The use of the form allows the certificates to be filed electronically, and increases the accessibility of the examination certificates to both the Commission's examination staff and interested investors by ensuring that the certificates are filed under the proper SEC file number and the correct name of a fund.

Under rule 17f–2, each fund is required to file Form N–17f–2 at least three times a year with the Commission. Commission staff estimates that it takes approximately 1 hour per response to prepare and file a Form N–17f–2 with the Commission. Thus, the total annual burden of Form N–17f–2's paperwork requirement is estimated to be approximately 405 burden hours.[1] The entire hour burden will be borne by clerical staff at $16 per hour, for a total cost of approximately $6,480 (405 burden hours × $16 = $6,480). The increase in burden hours from 92 to 405 is attributable to updated estimates of the burden hours that reflect additional time spent by professionals and clerical staff in their compliance efforts.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Complying with the collection of information requirements of the rule is mandatory for those funds that maintain custody of their own assets. The information provided to the Commission by the fund's independent public accountants about each verification of the fund's assets will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 25, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7842 Filed 4–1–03; 8:45 am]

BILLING CODE 8010–01–P

[1] The Commission staff estimates that there are 135 funds that file Form N–17f–2 each year. Each fund is required to make three responses per year, and each response requires 1 hour to prepare. The hour burden is calculated as follows: 135 (respondents) × 3 (responses per fund per year) × 1 (hours per response) = 405 hours.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549.

Extension: Rule 17f–2 [17 CFR 270.17f–2]. SEC File No. 270–233. OMB Control No. 3235–0223.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–2 under the Investment Company Act of 1940 (17 CFR 270.17f–2) is entitled: "Custody of Investments by Registered Management Investment Company." Rule 17f–2 establishes safeguards for arrangements in which a registered management investment company ("fund") is deemed to maintain custody of its own assets, such as when the fund maintains its assets in a facility that provides safekeeping but not custodial services. The rule includes several recordkeeping or reporting requirements. The fund's directors must prepare a resolution designating not more than five fund officers or responsible employees who may have access to the fund's assets. The designated access persons (two or more of whom must act jointly when handling fund assets) must prepare a written notation providing certain information about each deposit or withdrawal of fund assets, and must transmit the notation to another officer or director designated by the directors. Independent public accountants must verify the fund's assets at least three times a year, and two of the examinations must be unscheduled.

The requirement that directors designate access persons is intended to ensure that directors evaluate the trustworthiness of insiders who handle fund assets. The requirements that access persons act jointly in handling fund assets, prepare a written notation of each transaction, and transmit the notation to another designated person are intended to reduce the risk of misappropriation of fund assets by access persons, and to ensure that adequate records are prepared, reviewed by a responsible third person, and available for examination by the Commission. The requirement that auditors verify fund assets without notice twice each year is intended to provide an additional deterrent to the misappropriation of fund assets and to detect any irregularities.

The Commission staff estimates that approximately 135 funds rely upon rule 17f–2.[1] The Commission staff estimates that each fund offers an average of 3.7 separate series or portfolios subject to rule 17f–2. Each fund makes an average of 97.4 responses each year under the rule, including 1 response (requiring .2 burden hours) per fund to draft director resolutions, 89 responses per fund to prepare notations of transactions[2] (requiring one hour each), and 7.4 responses[3] per fund for fund personnel to assist the independent public accountants when they perform unscheduled verifications (requiring 10 burden hours each). Thus, the total hour burden per fund is estimated to 163.2 hours[4] Commission staff estimates that each fund therefore spends approximately .2 burden hours of professional time at $60 per hour annually in drafting resolutions by directors (.2 x $60 = $12), 89 hours[5] of professional time at $60 per hour annually in preparing transaction notations (89 x $60 = $5,340), and 74 hours[6] of clerical time at $16 per hour annually in assisting independent public accounts perform unscheduled verifications of assets (74 × $16 = $1,184).[7] The total annual burden of rule 17f–2's paperwork requirements thus is estimated to be approximately 22,032 hours[8] at an annual cost of $882,360.[9]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Complying with the collection of information requirements of the rule is mandatory for those funds that maintain custody of their own assets. The information provided to the Commission by the fund's independent public accountants about each verification of the fund's assets will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 25, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7843 Filed 4–1–03; 8:45 am]

BILLING CODE 8010–01–P

[1] The Commission's records indicate that approximately 135 funds filed Form N–17f–2 with the Commission during calendar year 2002.

[2] This number results from 24 responses per portfolio multiplied by 3.7 portfolios in the average fund (24 × 3.7 = 88.8).

[3] This number results from 2 unscheduled verifications per portfolio multiplied by 3.7 portfolios in the average fund (2 × 3.7 = 7.4 responses per fund).

[4] (1 response × .2 burden hours) + (89 responses × 1 burden hour) + (7.4 responses × 10 burden hours) = 163.2 burden hours.

[5] 89 transaction notations per fund × 1 hour = 89 hours.

[6] 7.4 verifications per fund × 10 hours = 74 hours.

[7] Each of these hour burden estimates is based upon conversations with attorneys and accountants familiar with the information collection requirements of the rule. Commission staff relied upon the Securities Industry Association, Report on Management and Professional Earnings in the Securities Industry (2002) to determine the hourly wage rates used in the calculation of this estimate. Professional time is based on the estimated average wage for associate and general counsel in the securities industry.

[8] 163.2 hours per fund × 135 funds = 22,032 total annual burden.

[9] ($12 (for drafting resolutions) + $5,340 (for transaction notations) + $1,184 (for unscheduled verifications)) × 135 funds = $882,360. The annual burden for rule 17f–2 does not include time spent preparing Form N–17f–2. The burden for Form N–17f–2 is included in a separate collection of information.

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

AR Associates, Inc. d/b/a Greenwave, Inc.; Order of Suspension of Trading

March 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AR Associates, Inc. d/b/a GreenWave, Inc. ("ARAI"), a company with its principal place of business in Calgary, Alberta, Canada. Questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the identity of the persons in control of the common stock issued by ARAI.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of ARAI.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of AR Associates, Inc. is suspended for the period from 9:30 a.m. EST, March 31, 2003, through 11:59 p.m. April 11, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8107 Filed 3–31–03; 2:06 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47577; File No. SR–PCX–2003–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend the Regulatory Fees Portion of its Schedule of Fees and Charges To Add a Designated Options Examining Authority Fee for Member Firms That Conduct a Public Options Business

March 26, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 3, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On February 28, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On March 24, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend the regulatory fees portion of its Schedule of Fees and Charges to add a Designated Options Examining Authority ("DOEA") fee for member firms that conduct a public options business.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original Form 19b–4 in its entirety.

[4] *See* letter from Tania J. Cho, Attorney, Regulatory Policy, PCX, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated March 21, 2003. Amendment No. 2 made non-substantive, editorial changes to the proposed rule text to clarify application of the new fee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is proposing to make the following modification to its Schedule of Fees and Charges in order to recover costs associated with conducting options sales practice examinations of its member firms that conduct public options business. The current regulatory fees schedule includes a Designated Examining Authority ("DEA") fee of $2000 per month for each member organization for which the Exchange is the DEA. Due to recent developments in DOEA examinations, the Exchange proposes to add a $2000 per month DOEA fee[5] to apply to firms that conduct a public options business. The new fee would be applicable only to members and member firms for which the Exchange is the DOEA.

In 1983, the Options Self-Regulatory Council ("OSRC") submitted to the SEC an agreement allocating regulatory responsibilities with respect to common members. The purpose of the agreement was to reduce regulatory responsibility duplication for options-related sales practice matters and to designate the following self-regulatory organizations ("SROs") as DOEAs: The American Stock Exchange, the Chicago Board Options Exchange, NASD, and the New York Stock Exchange. Since establishing this agreement, the DOEAs have been conducting options sales practice examinations on behalf of applicable participants. Due to the increase in costs associated with conducting such examinations, the OSRC has proposed a means to allow for an allocation of regulatory costs incurred in fulfilling obligations under the agreement among all current and future DOEA and non-DOEA participants. As such, the OSRC has proposed to allocate a portion of the costs borne by the SROs based on the percentage of their overall expense pool.

As an alternative, the Exchange proposes to develop an examination program to review member firms that conduct public options business in-house. As a newly designated DOEA,[6] the Exchange would develop an examination program to review options sales practices as they relate to the public (*e.g.*, advertising, sales literature, risk disclosures, approval of new accounts and risk tolerances for individuals) for member firms that are assigned to it by the OSRC. By conducting the options sales practice examinations in-house, the Exchange would be able to pass these expenses directly to the firms that require an examination. In the absence of any PCX initiative, the Exchange will be allocated a certain portion of the DOEA costs borne by other SROs, which would increase the Exchange's overhead without cost recovery. Thus, the Exchange's proposal for in-house examinations would allow for recovery of the regulatory costs in a fair and equitable manner.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[7] of the Act in general and section 6(b)(4)[8] of the Act, in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee or other charge imposed by the Exchange, has become effective pursuant to section 19(b)(3)(A)[9] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder.[10] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on February 28, 2003, when Amendment No. 1 was filed.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–03 and should be submitted by April 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7935 Filed 4–1–03; 8:45 am]

BILLING CODE 8010–01–P

[5] To avoid duplicative billing, the DOEA fee charged to a member firm that conducts public options business will not apply if the Exchange is the DEA for such member firm.

[6] The Exchange has been designated as a DOEA as of January 1, 2003.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] *See* notes 3 and 4, *supra*.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47561; File No. SR–Phlx–2003–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Charges to Exchange Members for Orders Entered Through the Intermarket Options Linkage

March 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the Exchange. On March 21, 2003, Phlx submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend its schedule of dues, fees and charges to adopt charges applicable to Principal Orders ("P Orders") sent via the Intermarket Options Linkage (the "Linkage") under the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage ("Plan").[4]

The Exchange intends to implement this fee on a pilot basis, ending January 31, 2004, for transactions settling on or after the first day of the next calendar month following the Commission's approval of the proposal.[5]

The text of the proposed rule change is below. Proposed language is italicized; deleted language is in brackets.

* * * * *

Summary of Equity Option Charges (p. 1/2)

Option Comparison Charge I (Applicable to All Trades—Except Specialist Trades)

Registered Option Trader: $.03 per contract
Firm/Proprietary[6]: $.04 per contract
Customer Executions, *Linkage Orders, Broker-Dealer Orders:* No charge

Option Transaction Charge I (Other Than Intermarket Option Linkage Charges Set Forth Below)

Customer Executions: No charge
Firm/Proprietary[7]: $.15 per contract
Firm/Proprietary Facilitation Transaction[8]: $.08 per contract
Registered Option Trader (on-floor): $.16 per contract
Specialist: $.18 per contract
Broker/Dealer[9] (non–AUTO–X): $.35 per contract
Broker/Dealer[10] (AUTO–X): $.45 per contract

Intermarket Option Linkage Charge I[11]

Satisfaction Order: No charge
Principal Acting as Agent (P/A) Orders—Inbound: No charge
Principal Acting as Agent (P/A) Orders—Outbound: No charge
Principal (P) Orders—Inbound: $.35 per contract

Summary of Equity Option Charges (p. 2/2)

Option Floor Brokerage Assessment I

5% of net floor brokerage income.

Floor Brokerage Transaction Fee I

$.05 per contract, for floor brokers executing transactions for their own member firms

Specialist Deficit (Shortfall) Fee I

$.35 per contract for specialists trading any Top 120 Option if the following total national monthly contract volume for such Top 120 Option is not effected on the PHLX: 11% for the period January through March 2002; 12% for the period April through June 2002; 13% for the period July through September 2002; and 14% for the period October through December 2002.

Specialist Deficit (Shortfall) Fee Credit

A credit of $.35 per contract may be earned by options specialists for all contracts traded in excess of the following volume thresholds in eligible issues for the monthly periods commencing September 1, 2001. These credits may be applied against previously imposed "shortfall fees" for the preceding six months for issues that in the month the deficit occurred, the equity option traded in excess of 10 million contracts per month: 11% for the period January through March 2002; 12% for the period April through June 2002; 13% for the period July through September 2002; and 14% for the period October through December 2002.

Real-Time Risk Management Fee I

$.0025 per contract for firms/members receiving information on a real-time basis See Appendix A for additional fees.

I denotes fee eligible for monthly credit of up to $1,000.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Jennifer Lewis, Attorney, Division of Market Regulation, Commission, dated March 20, 2003 ("Amendment No. 1"). In Amendment No. 1, Phlx proposed a new footnote to its fee schedule to indicate that the proposed fees would be subject to a pilot program scheduled to expire January 31, 2004.

[4] *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). The Plan was subsequently amended on June 27, 2001, May 30, 2002, January 29, 2003, and January 31, 2003. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003); and 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003).

[5] For example, if the Commission approves the proposal on April 20, 2003, the Exchange intends to implement this fee for transactions settling on or after May 1, 2003.

[6] For the purpose of this Summary of Equity Option Charges, the Firm/Proprietary comparison or transaction charge applies to members for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customer. Firms will be required to verify this amount to the Exchange by certifying that they have reached this threshold and by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). In the event that a firm has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted.

[7] *See* footnote [4] *6.*

[8] Equity Option Transaction Charges continue to apply to facilitation transactions involving Exchange-traded options subject to licensing agreements.

[9] For the purpose of this Summary of Equity Option Charges, this charge applies to members for orders, received from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes orders for the account of an ROT entered from off-floor.

[10] *See* footnote [8] 9.

[11] Subject to a pilot program scheduled to expire January 31, 2004.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx represents that the purpose of the proposed rule change is to raise revenue for the Exchange by charging Exchange members for transactions involving inbound P Orders sent by such members via the Linkage pursuant to the Plan.[12]

The Exchange will charge Exchange members for P Orders sent to the Exchange over the Linkage from the floor of another exchange $.35 per contract executed.[13] The Exchange will not charge fees for other types of Linkage Orders.[14]

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act[15] in general, and furthers the objectives of section 6(b)(4) of the Act[16] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members who avail themselves of the Linkage, consistent with other fees charged by the Exchange for non-Linkage Orders.[17]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission shall:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–16 and should be submitted by April 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7844 Filed 4–1–03; 8:45 am]

BILLING CODE 8010–01–P

[12] Under the Plan and Exchange Rule 1083(k), which tracks the language of the Plan, a "Linkage Order" means an Immediate or Cancel order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

(i) "Principal Acting as Agent ("P/A") Order," which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;

(ii) "Principal ("P") Order," which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and

(iii) "Satisfaction Order," which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

The Exchange will not assess any charges for P/A Orders and Satisfaction Orders.

[13] Currently, for non-Linkage off-floor broker-dealer orders sent via the Philadelphia Stock Exchange Automated Options Market ("AUTOM"), which is the Exchange's electronic order delivery, routing, execution and reporting system, the Exchange charges $.35 per contract to the sending off-floor broker-dealer for non-AUTO–X trades, and $.45 per contract for trades executed by AUTO–X, the automatic execution feature of AUTOM.

[14] *See supra* note 6.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

[17] *See supra* note 7.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47582; File No. SR–PHLX–2002–18]

Self Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Make Permanent a PACE Automatic Price Improvement Pilot Program and a PACE Order Execution and Price Protection Pilot Program

March 27, 2003.

On March 11, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] a proposed rule change to make permanent two Philadelphia Stock Exchange Automated Communication and Execution System ("PACE") pilot programs that were introduced with the advent of decimal pricing in the securities industry. The first pilot program consists of an automated price improvement feature that incorporates a percentage of the spread between the bid and the offer, and has been in effect since January 30, 2001.[3] The second pilot program incorporates immediate execution of certain market orders through the Public Order Exposure System ("POES") and mandatory double-up/double-down price protection, and has been in effect since August 25, 2000.[4]

The proposed rule change was published for comment in the **Federal Register** on March 22, 2002.[5] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of section 6 of the Act[7] and the rules and regulations thereunder. The Commission finds

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001) (SR–Phlx–2001–12).

[4] *See* Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000) (SR–Phlx–2000–08).

[5] *See* Securities Exchange Act Release No. 45580 (March 18, 2002), 67 FR 13399.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[8] because it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–PHLX–2002–18), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7936 Filed 4–1–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4325]

Bureau of Nonproliferation; Determination Under the Arms Export Control Act

AGENCY: Department of State.

ACTION: Notice.

Pursuant to section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Under Secretary of State for Arms Control and International Security has made a determination pursuant to section 73 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: March 27, 2003.

John S. Wolf,

Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 03–7942 Filed 4–1–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

Bureau of Nonproliferation

[Public Notice 4326]

Imposition of Missile Proliferation Sanctions Against a North Korean Entity

AGENCY: Bureau of Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that a North Korean entity has engaged in activities that require the imposition of measures pursuant to the Arms Export Control Act, as amended, and the Export Administration Act of 1979, as amended (as carried out under Executive Order 13222 of August 17, 2001).

EFFECTIVE DATE: March 24, 2003.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State (202–647–4931). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State, (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1)); section 11B(b)(1) of the Export Administration Act of 1979 (50 U.S.C. app. 2401b(b)(1)), as carried out under Executive Order 13222 of August 17, 2001 (hereinafter cited as the "Export Administration Act of 1979"); and Executive Order 12851 of June 11, 1993; the U.S. Government determined on March 24, 2003 that the following foreign person has engaged in missile technology proliferation activities that require the imposition of the sanctions described in section 73(a)(2)(B) and (C) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(B) and (C) and section 11B(b)(1)(B)(ii) and (iii) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(ii) and (iii) on this person:

Changgwang Sinyong Corporation (North Korea) and its sub-units and successors.

Accordingly, the following sanctions are being imposed on this person:

(A) Denial of all new individual licenses for the export to the sanctioned entities of all items on the United States Munitions List and CCL for two years;

(B) Denial of all USG contracts with the sanctioned entities for two years; and

(C) Denial of all imports into the United States of products produced by the sanctioned entity for two years.

With respect to items controlled pursuant to the Export Administration Act of 1979, the export sanctions only apply to exports made pursuant to individual export licenses.

Additionally, because North Korea is a country with a non-market economy that is not a former member of the Warsaw pact (as referenced in the definition of "person" in section 74(8)(B) of the Arms Export Control Act), the following sanctions shall be applied to all activities of the North Korean government relating to the development or production of missile equipment or technology and all activities of the North Korean government affecting the development or production of electronics, space systems or equipment, and military aircraft:

(A) New individual licenses for export to the government activities described above of equipment or technology controlled pursuant to the Arms Export Control Act will be denied for two years; and

(B) No new U.S. Government contracts involving the government activities described above will be entered into for two years.

These measures shall be implemented by the responsible departments and agencies of the United States Government as provided in Executive Order 12851 of June 11, 1993.

Dated: March 27, 2003.

John S. Wolf,

Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 03–7943 Filed 4–1–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

Bureau of Nonproliferation

[Public Notice 4327]

Imposition of Nonproliferation Measures on a Foreign Entity, Including a Ban on U.S. Government Procurement

AGENCY: Bureau of Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: The U.S Government has determined that a foreign entity has engaged in proliferation activities that require the imposition of measures pursuant to Executive Order 12938 of November 14, 1994, as amended by Executive Order 13094 of July 28, 1998. The U.S. Government has also determined that, pursuant to Section 38 of the Arms Export Control Act and section 126.7 of the International Traffic in Arms Regulations, all licenses and other approvals for defense article and defense services involving this entity are suspended, effective immediately. Notice is further given that it is the policy of the United States to deny licenses, other approvals, exports and temporary imports of defense articles and defense services destined for this entity.

EFFECTIVE DATE: March 24, 2003.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: On general issues: Vann H. Van Diepen, Office of Chemical, Biological, and Missile Nonproliferation, Bureau of Nonproliferation, Department of State, (202–647–1142). On import ban issues: Loren Dohm, Director, Policy Planning and Program Management, Office of Foreign Assets Control, Department of the Treasury, (202–622–2500). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State, (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to the authorities vested in the President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), and section 301 of title 3, United States Code, and Executive Order 12938 of November 14, 1994, as amended, the U.S. Government determined on March 24, 2003 that the following person has engaged in proliferation activities that require the imposition of measures pursuant to sections 4(b), 4(c), and 4(d) of Executive Order 12938:

Khan Research Laboratories (Pakistan)

Accordingly, pursuant to the provisions of Executive Order 12938, the following measures are imposed on this entity, its subunits, and successors for two years (unless subsequently modified):

1. All departments and agencies of the United States Government shall not procure or enter into any contract for the procurement of any goods, technology, or services from these entities, and shall terminate any existing contracts;

2. All departments and agencies of the United States government shall not provide assistance to these entities, and shall not obligate further funds for such purposes; and

3. The Secretary of the Treasury shall prohibit the importation into the United States of any goods, technology, or services produced or provided by these entities, other than information or informational materials within the meaning of section 203(b)(3) of International Emergency Powers Act (50 U.S.C. 1702(b)(3)).

These measures shall be implemented by the responsible departments and agencies as provided in Executive Order 12938.

In addition, pursuant to section 126.7(a)(1) of the International Traffic in Arms Regulations, it is deemed that suspending the above-named entity from participating in any activities subject to section 38 of the Arms Export Control Act would be in furtherance of the national security and foreign policy of the United States. Therefore, until further notice, the Department of State is hereby suspending all licenses and other approvals for: (a) Exports and other transfers of defense articles and defense services from the United States; (b) transfers of U.S.-origin defense articles and defense services from foreign destinations; and (c) temporary import of defense articles to or from the above-named entity.

Moreover, it is the policy of the United States to deny licenses and other approvals for exports and temporary imports of defense articles and defense services destined for this entity.

Dated: March 27, 2003.

John S. Wolf,

Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 03–7944 Filed 4–1–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No. 030325071–3071–01]

Request for Commercial Requirements for U.S. Launch Range Improvements and Modernization

AGENCIES: Federal Aviation Administration (FAA); Department of Commerce, Technology Administration, Office of Space Commercialization.

ACTION: Notice and request for information.

SUMMARY: The Department of Transportation (DOT) and the Department of Commerce (DOC) request input from the U.S. commercial space transportation sector regarding U.S. launch base and range support and modernization. Specifically, DOT and DOC seek to collect range support and modernization requirements from current or future commercial users of the Eastern Range at Cape Canaveral Air Force Station, Florida, and the Western Range at Vandenberg Air Force Base, California.

DATES: Responses must be received no later than June 2, 2003.

ADDRESSES: Please submit responses to this announcement to both the FAA and DOC, Office of Space Commercialization. Responses submitted in writing must be submitted in duplicate to the FAA and the Office of Space Commercialization, respectively, as follows: Docket No. 030325071–3071–01, Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Docket No. 030325071–3071–01, Office of Space Commercialization, Room 4800–B, U.S. Department of Commerce, Herbert C. Hoover Building, 14th & Constitution Ave., NW., Washington, DC 20230. If you wish to receive confirmation that FAA and DOC received your comments, include a self-addressed, stamped postcard.

You also have the option to submit comments electronically through the Internet to the FAA at *http://dms.dot.gov*. Information and/or data considered to be proprietary should be labeled appropriately and should not be filed electronically. You may review the public docket containing responses to this announcement in person in the Department of Transportation Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kelvin Coleman (FAA), (202) 267–7972, or Paula Trimble (DOC), (202) 482–4574.

SUPPLEMENTARY INFORMATION: The February 2000 White House report on the Future Use and Management of the U.S. Space Launch Bases and Ranges documented a national strategy to enhance and expand the government-industry partnership for management and use of the Eastern and Western ranges (EWR). This strategy included a recommendation to allow commercial users of the Eastern and Western ranges adequate opportunity to communicate their requirements so they could be actively considered and factored into Air Force decisions on range improvements and modernization.

Further, the report recommended that the government establish an ongoing process for collecting, communicating, and considering commercial requirements for EWR support and modernization. Thus, the Departments of Transportation and Commerce seek to work with U.S. commercial space sector users of the EWR to collect commercial launch range requirements, especially those common to multiple users, for launch range support and modernization. Responses to this announcement should include the following:

1. A detailed explanation of the requirement;

2. Technical and economic rationale, as well as, overall importance; and

3. Key dimensions of performance, with threshold and objective requirements if possible.

A threshold requirement is a minimum acceptable value for a system capability or characteristic, which, in the user's judgment, is necessary to provide an operational capability. An objective requirement is a value beyond the threshold that could have a measurable and beneficial impact on the system capability, supportability, or operational concept of employment. (For example, "The imaging subsystem must be capable of maintaining coverage on space launch vehicles from first motion through powered flight as a threshold and orbital insertion as an objective.")

Subsequent to collecting these requirements, DOT and DOC will consolidate and prioritize requirements, with consultation from the commercial sector, and prepare a report. This report will contain commercial requirements for EWR support and modernization, and will be provided to the Air Force such that commercial sector requirements for range support and modernization can be considered in the Department of Defense (DOD) requirements process.

This request is applicable to requirements for EWR support and modernization only, and not to mission specific requirements that may be appropriately handled via the Universal Documentation System (UDS), per Air Force Space Command Instruction 21–104.

Dated: March 27, 2003.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation, Federal Aviation Administration.

Dated: March 28, 2003.

Benjamin H. Wu,

Deputy Under Secretary for Technology, Department of Commerce.

[FR Doc. 03–7934 Filed 4–1–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for review and approval. We published a Federal Register Notice with a 60-day public comment period on this information collection on August 6, 2002. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by June 2, 2003.

ADDRESSES: You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

SUPPLEMENTARY INFORMATION:

Title: Survey of Drivers' Attitudes on Speeding and Speed Limits.

Abstract: The FHWA plans to enter into a cooperative agreement with the State of Massachusetts to initiate a project entitled "Demonstration and Evaluation of Rational Speed Limits," to be performed by the Governor's Highway Safety Bureau of the Commonwealth of Massachusetts. As part of this cooperative agreement, information on local drivers' attitudes towards speeding, speed limits and enforcement will be gathered through a survey. A survey will be performed both before and after engineering, enforcement and educational measures to reduce speeding are implemented. The information obtained from the survey will help the FHWA understand the effectiveness of the measures and drivers' responses to them. The responses to the survey will be voluntary and will not involve information that is required by regulations. There will be not direct costs to the respondents other than their time.

Respondents: Drivers in Natick, Massachusetts.

Estimated Total Annual Burden: The burden hours per response will be approximately 10 minutes. We estimate that a total of 800 drivers (400 "before" and 400 "after") will be involved in the survey. Therefore, the total estimate is 133 burden hours.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Alicandri, 202–366–6409, Office of Highway Safety, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:00 a.m. to 3:30 p.m., Monday through Friday, except Federal holidays.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 303–512–1661. Internet users may reach the **Federal Register** home page at *http://www.nara.gov//fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara*.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: February 7, 2003.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 03–7352 Filed 4–1–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–13356; Notice 2]

Cooper Tire & Rubber Company, Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

Cooper Tire & Rubber Company (Cooper) has determined that approximately 956 Cooper Lifeliner Touring SLE tires in the 185/70R14 size do not meet the labeling requirements mandated by Federal Motor Vehicle

Safety Standard (FMVSS) No. 109, "New Pneumatic Tires." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Cooper has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of the application was published, with a 30-day comment period, on October 7, 2002, in the **Federal Register** (67 FR 62522). NHTSA received no comment on this application.

FMVSS No. 109 (S4.3.2) requires that each tire be labeled with the name of the manufacturer, or the brand name and number assigned to the manufacturer in the manner specified in part 574 (S574.6, Identification mark).

Cooper's Texarkana, Arkansas, tire manufacturing facility had one mold involved in production during the twelfth and thirteenth production weeks of 2002, in which the identification mark was incorrectly stated. The subject tires were molded "DOT VT." The correct identification mark for the Texarkana, Arkansas, plant identification code should have been "DOT UT." The incorrect identification mark was removed from the mold and the correct plant identification code inserted.

Cooper supports its application for inconsequential noncompliance by stating that all of the subject tires meet all requirements of FMVSS No. 109, except the for the correct manufacturer's assigned identification mark. The purpose of NHTSA's tire identification mark is to identify a tire so that, if necessary, the appropriate action can be taken in the interest of public safety—such as a safety recall notice.

The agency believes that in the case of a tire labeling noncompliance, the true measure of its inconsequentiality to motor vehicle safety is whether the mislabeling would affect the manufacturer's ability to locate them, if the tires were to be recalled for a performance-related noncompliance or safety-related defect. Cooper can identify the involved tires with the incorrect manufacturer's assigned identification mark of "VT." The tires have a unique DOT identification that would permit Cooper to notify the purchasers of these tires, if registered, should they be recalled for safety reasons. The involved tires produced from this mold during the aforementioned production period comply with all other requirements of 49 CFR 571.109.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety. Accordingly, its application is granted and the applicant is exempted from providing the notification of the noncompliance as required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

Issued on: March 21, 2003.

Roger A. Saul,

Acting Associate Administrator for Rulemaking.

[FR Doc. 03–7550 Filed 4–1–03; 8:45 am]

BILLING CODE 4910–59–P

Corrections

Federal Register

Vol. 68, No. 63

Wednesday, April 2, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808, A–122–830, A–475–822, A–580–831, A–791–805, A–583–830]

Notice of Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan

Correction

In notice document 03–5891 beginning on page 11520 in the issue of Tuesday, March 11, 2003, make the following correction:

On page 11521, in the table, in the second column, under "Cash deposit rate", in the fourth entry from the bottom, "77%1[1]" should read "37.77%[1]".

[FR Doc. C3–5891 Filed 4–1–03; 8:45 am]

BILLING CODE 1505–01–D

VOL
68
ISS
63
AP
2
003
MI



Federal Register

Wednesday,
April 2, 2003

Part II

Department of Defense

Office of the Secretary

Science and Technology (S&T) Reinvention Laboratory Personnel Management Demonstration Program; Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology (S&T) Reinvention Laboratory Personnel Management Demonstration Program

AGENCY: Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy), DoD.

ACTION: Notice of amendment of demonstration project plans.

SUMMARY: Section 342 of the National Defense Authorization Act for Fiscal Year 1995, as amended by Section 1114 of the National Defense Authorization Act for Fiscal Year 2001, authorizes the Secretary of Defense to conduct personnel demonstration projects at Department of Defense (DoD) laboratories designated as Science and Technology (S&T) Reinvention Laboratories. The above-cited statute authorizes the Department of Defense to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management.

DATES: This amendment to the listed demonstration project plans may be implemented as early as the date of publication of the final notice of this change in the **Federal Register**. Implementation strategies will be developed over time as appropriate. Upon implementation, and upon completion of appropriate bargaining obligations for applicable bargaining units, the changes in this amendment shall supersede all previously published **Federal Register** notices that established or modified demonstration projects at one or more DoD S&T reinvention laboratories. The Department of Defense will consider written comments if received no later than May 2, 2003.

ADDRESSES: Send written comments to Patricia M. Stewart, CPMS–AF, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144.

FOR FURTHER INFORMATION CONTACT: Patricia M. Stewart, CPMS–AF, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION:

1. Background

In March 2002, the Under Secretary of Defense (Personnel and Readiness) (USD(P&R)) directed the establishment of the Department of Defense (DoD) Human Resources Best Practices Task Force. The Task Force, consisting of representatives from both the human resources and functional communities, was chartered to review all demonstration projects in the Federal government, plus alternative personnel systems such as the one in operation within the National Institute of Standards and Technology (NIST).

The purpose of this review was to compile best practices that show promise in terms of DoD's civilian human resources strategy. The Task Force identified best practices by reviewing initiatives that have been subject to testing and evaluation in demonstrations and alternative personnel systems (APSs). The demonstrations and APSs the Task Force reviewed are listed in Figure 1.

FIGURE 1.—DEMONSTRATION PROJECTS AND APSS REVIEWED

Demonstration or APS	Type of demonstration or APS	Department or agency	Name of project or APS
Demonstration	Workforce	Defense	Civilian Acquisition Workforce (AcqDemo).
Demonstration	Science and technology reinvention lab (STRL).	Army	Army Research Laboratory (ARL).
Demonstration	STRL	Army	Aviation & Missile Research, Development, & Engineering Center (AMRDEC).
Demonstration	STRL	Army	Engineer Research & Development Center (ERDC).
Demonstration	STRL	Army	Medical Research & Materiel Command (MRMC).
Demonstration	STRL	Navy	Naval Research Laboratory (NRL).
Demonstration	STRL	Navy	Naval Warfare Centers (NWC).
Demonstration	STRL	Air Force	Air Force Research Laboratory (AFRL).
Demonstration	Civilian agency	Commerce	Department of Commerce (DoC).*
APS	Workforce	Defense	National Imagery & Mapping Agency (NIMA).
APS	Civilian agency	Commerce	National Institute of Standards & Technology (NIST).

*This demonstration covers units within the following four organizations: Economics and Statistics Administration, National Oceanic and Atmospheric Administration, National Telecommunications and Information Administration, and Technology Administration.

Some current APSs are not shown in Figure 1. For instance, the APS at the General Accounting Office (GAO) was not fully implemented by mid-April 2002, and the APSs for the Federal Aviation Administration (FAA), Internal Revenue Service (IRS), and Bureau of Alcohol, Tobacco, and Firearms (ATF) were either recently implemented or limited in application. Finally, in addition to demonstrations and APSs, the Task Force considered the outcome of the 1997 Personnel System Initiative (PSI), a DoD-initiated collaborative effort that involved the Department of Defense, the Office of Personnel Management (OPM), and union representatives.

In May 2002, USD(P&R) and the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) communities received the Task Force's in-process review briefing, followed in July 2002 by the Task Force's final briefing. From August through December 2002, a steering group of senior leaders reviewed, revised, and approved Task Force products with the intention of broadly applying these results as best practices.

2. Overview

Personnel demonstration project best practices encompass the following areas: (1) Pay banding; (2) classification; (3) hiring and appointment authorities; (4) pay administration; (5) pay-for-performance evaluation system; (6) expanded sabbatical authority; (7) volunteer emeritus program; and (8) revised reduction-in-force (RIF) procedures.

Dated: March 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Table of Contents

I. Participating Organizations and Collective Bargaining Requirements
A. Participating Organizations
B. Labor-Management Responsibilities
II. Mass Conversion to Personnel Demonstration Project Best Practices (BP)
A. Conversion of General Schedule (GS) Employees
1. Determination of Career Group (CG)
2. Determination of Pay Band Level
3. Pay Setting
4. Fair Labor Standards Act (FLSA) Exemption
5. Employees on Grade Retention
6. Employees on Pay Retention
7. Employees on Temporary Promotion
B. Conversion of Employees in Organizations with Pay Banding or Broadbanding
1. Determination of Career Group (CG)
2. Determination of Pay Band Level
3. Pay Setting
4. Fair Labor Standards Act (FLSA) Exemption
5. Titling of Positions
6. Employees on Pay Retention
7. Temporarily Promoted Employees
C. One-Time Mass Conversion Exception Rule
III. Pay Banding
A. Career Groups
B. Nonsupervisory Pay Banding Architecture
1. Architecture Graphic
2. Nonsupervisory Descriptors
C. Supervisory Architecture
1. Determination of Supervisory Status
2. Supervisory Descriptors
IV. Classification System
A. Occupational Series
B. Classification Standards
C. Classification Authority
D. Position Descriptions
E. Fair Labor Standards Act (FLSA)
F. Pay Category Reconsideration
V. Hiring and Appointment Authorities
A. Definitions
1. Job Change—Higher Earning Potential
2. Job Change—No Higher Earning Potential
3. Job Change—Lower Earning Potential
B. Internal Placement
1. Competition Upon Job Change
2. Expanded Forms of Competition
3. Exceptions to Competition
4. Probation Upon Competitive Job Change
5. Temporary Job Change
C. External Hiring and Appointment Authorities
1. Delegated Examining Unit (DEU) Authority
2. Appointing Authorities
D. DoD Alternative Qualifications or Criteria
VI. Pay Administration
A. Special Pay Rules
1. Supervisory Pay Tables
2. Special Salary Rate Supplements
3. Pay Retention
B. Pay Setting
1. Upon Accession (After Mass Conversion of the Organization)
2. Upon Job Change—No Higher Earning Potential
3. Upon Job Change—Lower Earning Potential
4. Upon Job Change—Higher Earning Potential
5. Upon Assignment to and From a Supervisory Position Outside the Existing Pay Band Level
VII. Pay-for-Performance (PFP) Evaluation System
A. Overview
B. Performance Objectives
C. Performance Factors
1. Technical Competence/Problem Solving
2. Cooperation/Teamwork
3. Communication
4. Customer Care
5. Resource Management
6. Leadership/Supervision
7. Contribution to Mission Accomplishment
D. Benchmark Performance Standards
E. Performance Rating Process
1. Duration of the Rating Cycle
2. Minimum Rating Period
3. Communication at the Beginning of the Rating Cycle
4. Feedback During the Rating Cycle
5. End-of-Cycle Evaluation
F. Payout Process
1. Basic Pay Increases and Performance Incentives
2. College Cooperative Education Program
3. Awards
G. Grievance Procedures
VIII. Performance That Fails to Meet Expectations
A. Notice to Employee and Performance Improvement Plan
B. Action Upon Completion of Performance Improvement Period
IX. Expanded Sabbatical Authority
X. Volunteer Emeritus Program
XI. Revised Reduction-in-Force (RIF) Procedures
A. Competitive Area
B. Retention Level
C. Retention List
D. Retention Standing
1. Tenure
2. Performance
3. Veterans' Preference
E. Credit for Performance
1. First Cycle
2. Second Cycle
3. Third Cycle
4. Accessions After First Cycle
5. Cutoff Dates
F. Assignment Rights
XII. Evaluation Plan
XIII. Project Duration
XIV. Required Waivers and Adaptations of Law and Regulation
Appendix A. Occupational Series in Career Group 2, Professional and Administrative Management
Appendix B. Occupational Series in Career Group 3, Engineering, Scientific, and Medical Support
Appendix C. Occupational Series in Career Group 4, Business and Administrative Support
Appendix D. Supervisory Pay Tables

I. Participating Organizations and Collective Bargaining Requirements

A. Participating Organizations

This amendment applies to all current and future organizational entities designated as DoD science and technology reinvention laboratories by the Secretary of Defense or by any future applications required by law. Currently, there are eight science and technology reinvention laboratory demonstration projects, as follows:

Department of the Army—Army Research Laboratory; Aviation and Missile Research,

Development, and Engineering Center; Communications-Electronics Command Research,

Development, and Engineering Community; Engineer Research and Development Center; Medical Research and Materiel Command;

Department of the Navy—Naval Research Laboratory; Naval Sea Systems Warfare Centers; and

Department of the Air Force—Air Force Research Laboratory.

B. Labor-Management Responsibilities

Participating organizations must fulfill any collective bargaining obligations to unions that represent employees covered by the personnel demonstration project best practices (hereafter referred to as "best practices" or "BP"). Employees within a unit for which a labor organization is accorded exclusive recognition under chapter 71 of title 5, United States Code, shall not be covered by this amendment unless the exclusive representative and the participating organization have entered into a written agreement covering participation in and implementation of the personnel demonstration project best practices.

II. Mass Conversion to Personnel Demonstration Project Best Practices (BP)

Procedures under II, Mass Conversion to BP, apply only to DoD employees upon initial conversion of their organization, or a portion thereof, into BP.

A. Conversion of General Schedule (GS) Employees

These procedures apply only to GS employees upon initial mass organization-wide conversion into BP.

1. Determination of Career Group (CG)

General Schedule employees will be converted into the CG that corresponds with the occupational series (and in some cases, GS grade) of their GS position, in accordance with III.A. and III.B.

2. Determination of Pay Band Level

General Schedule employees will be converted into the pay band level, within the appropriate CG, that

corresponds with their existing GS grade.

3. Pay Setting

Initial entry into BP will ensure each employee is placed in the appropriate CG and pay band level without loss of pay.

a. Concurrent Geographic Move. For any employee who incurs a concurrent geographic move on the date of mass conversion, pay entitlements shall be based on the new geographic area.

b. Concurrent Pay Actions. Any pay actions (*e.g.*, within-grade increase (WGI)) effective on the date of conversion will be processed before the conversion.

c. Within-Grade Increase (WGI) Buy-In. Employees whose existing rate of basic pay is less than step 10 of the applicable GS grade before conversion will receive a prorated "buy-in" of a WGI, unless documented performance is not at an acceptable level of competence. Employees in a pay retention status at the time of conversion will not receive a within-grade buy-in adjustment.

The WGI buy-in will be funded from the BP initial year's pay pool (which consists of the general pay increase). This "buy-in" is applicable to employees only at the initial entry of the employee's organization into BP.

On the effective date of conversion, the employee's rate of basic pay will be adjusted by an amount equal to the prorated value of a WGI. The amount to be added to the employee's rate of basic pay is computed by determining the value of the elapsed creditable days in the employee's current waiting period toward the next WGI and adding that amount to the employee's existing rate of basic pay. Using the following formula, the WGI buy-in is calculated:

(Elapsed days in waiting period Number of days in waiting period) × Value of WGI = Prorated value

Prorated value + Existing basic pay = New basic pay upon mass conversion into BP

d. Special Salary Rates (SSRs). When the maximum special salary rate (SSR) of the GS grade (that matches the highest GS grade incorporated into a pay band level) exceeds the maximum rate, adjusted for locality, of the pay band level, the maximum rate of the pay band level is extended to equal the maximum SSR for the occupational series and geographic area covered. Employees in such positions will receive a special salary rate supplement in lieu of a locality factor for the geographic area. SSR procedures described at VI.A.2. will be followed.

Existing SSRs will no longer apply to a BP employee when the maximum SSR of the GS grade that matches the highest GS grade incorporated into a pay band level is equal to or less than the maximum rate, adjusted for locality, for the pay band level. The pay of employees in such positions will be recomputed upon conversion to include the full locality factor for the geographic area.

Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change to employee total pay.

4. Fair Labor Standards Act (FLSA) Exemption

Employees will be converted using their existing FLSA exemption status.

5. Employees on Grade Retention

Grade retention will terminate upon mass conversion into BP. Before conversion into the BP, the employee's pay will be adjusted by an amount equal to the prorated value of a WGI for the retained grade, using procedures under II.A.3.c. The employee will be placed in the CG and pay band level that correspond to the new GS grade. If the employee's adjusted pay exceeds the rate range for the assigned pay band level, the employee will be placed on pay retention not to exceed 2 years, effective on the date of conversion into BP.

6. Employees on Pay Retention

Employees on pay retention at the time of mass conversion are converted into BP to the CG and pay band level that correspond to their GS occupational series and grade. If the existing rate of pay exceeds the maximum rate of the assigned pay band level, the employee is placed in a pay retention status, not to exceed 2 years from the date of conversion into BP, under provisions found in VI.A.3.

7. Employees on Temporary Promotion

An employee in a temporary promotion status will be returned to the permanent position of record before conversion. When the temporary promotion is cancelled, the employee's pay will be computed based on the employee's permanent position of record, with adjustments for any pay actions otherwise due during the temporary promotion. The employee is converted to BP with a rate of pay that includes any such adjustments.

B. Conversion of Employees in Organizations With Pay Banding or Broadbanding

These procedures apply only to initial mass conversion into BP of organizations where pay banding or broadbanding currently exists.

1. Determination of Career Group (CG)

Employees will be converted into the career group that corresponds with the occupational series of their position, in accordance with III.A. and III.B.

2. Determination of Pay Band Level

a. Direct Conversion. Where an organization's existing GS-equivalent banded level matches exactly a BP pay band level in the appropriate CG, such employees are converted directly from the existing demonstration project or alternative personnel system (APS) into BP, without change in pay.

b. Conversion Using Applicable Conversion-Out Procedures. Where GS grades included in a BP career group and pay band level do not correspond directly to GS grades included in a banded level in an existing demonstration project, employees in such demonstration project positions will be converted to the GS using the applicable conversion out procedures, for purposes of determining GS grade only. Such employees will then be converted into the BP CG and pay band level that correspond with the derived GS grade, without change in pay.

3. Pay Setting

Initial entry into BP will ensure each employee a place in the appropriate career group and pay band level without loss of pay.

a. Concurrent Geographic Move. For any employee who incurs a concurrent geographic move on the date of mass conversion, pay entitlements shall be based on the new geographic area. b. Concurrent Pay Actions. Any pay actions effective on the date of conversion will be processed before the conversion. Pay will be set under II.B.2.a. and under II.B.2.b. at the same rate of pay as the employee received under the demonstration project or APS from which the employee was converted. Demonstration project or APS procedures to place an employee "on-step" in a GS grade will not be used.

4. Fair Labor Standards Act (FLSA) Exemption

Employees will be converted using their existing FLSA exemption status.

5. Titling of Positions

Positions with titles other than those authorized by OPM classification standards will be re-titled to the appropriate, authorized title upon conversion into BP.

6. Employees on Pay Retention

Employees on pay retention at the time of mass conversion are converted into BP to the CG and pay band level that correspond to the occupational series and demonstration project pay band level, using procedures in II.B.2.a. or II.B.2.b., as appropriate. If the existing retained rate of pay exceeds the maximum rate of the assigned pay band level under BP, the employee is placed in a pay retention status not to exceed 2 years from the date of conversion, under provisions found in VI.A.3.

7. Temporarily Promoted Employees

Employees in a temporary promotion status will be returned to the permanent position of record before conversion. When the temporary promotion is cancelled, the employee's pay will be computed based on the employee's permanent position of record, with adjustments for any pay actions otherwise due during the temporary promotion. The employee is converted to BP with a rate of pay that includes any such adjustments.

C. One-Time Mass Conversion Exception Rule

The mass conversion procedures defined in this section apply to current DoD employees who will be covered by BP. If application of the mass conversion procedures would otherwise result in loss of pay for any employee, the employee is entitled to retain the existing rate of pay, notwithstanding any other provision in this section..

III. Pay Banding

White-collar occupations in the Department of Defense were analyzed to determine appropriate associations into career groups (CGs). Career groups under BP are established according to similarity in type of work and common qualifications and advancement patterns. Each CG contains discrete pay band levels.

A. Career Groups

Occupations with similar characteristics are grouped together into five CGs under BP. The BP CGs are described in this section.

Career Group 1 (CG 1), Scientific and Engineering Research, includes positions in professional scientific, engineering, or medical occupations that meet the criteria of the OPM Research Grade Evaluation Guide or Part III of the OPM Equipment Development Grade Evaluation Guide (both available at *http://www.opm.gov/fedclass*) (or equivalent successor OPM standards or guides).

Career Group 2 (CG 2), Professional and Administrative Management, includes positions in professional occupations that are excluded from CG 1 and positions in administrative occupations, in addition to certain other positions that exceed established pay band levels in CGs 3 and 4. A comprehensive list of occupations included in CG 2 is at Appendix A.

Career Group 3 (CG 3), Engineering, Scientific, and Medical Support, includes positions in occupations that are associated with support of professional engineering, scientific, and medical occupations. A comprehensive list of occupations included in CG 3 is at Appendix B.

Career Group 4 (CG 4), Business and Administrative Support, includes positions in occupations that are associated with support of business, financial, and administrative positions, in addition to certain other occupations, such as Firefighters, Security Guards, and Police. A comprehensive list of occupations included in CG 4 is at Appendix C.

Career Group 5 (CG 5), College Cooperative Education Program, includes positions in occupational series in any of the various "XX99" student trainee series (*e.g.*, GS–899, Engineering and Architecture Student Trainee Series).

B. Nonsupervisory Pay Banding Architecture

Pay banding will replace the current GS system of 15 grades (used for classification and pay setting). In each career group, pay band levels are designated. These pay band levels are designed to facilitate pay progression and to allow for more competitive recruitment of quality candidates at differing rates. Career groups have either three or four pay band levels that incorporate some or all of the 15 GS grades, as appropriate. Comparison to the GS grades was used in setting the upper and lower dollar limits of each pay band level, except for the above GS–15 levels in CGs 1 and 2.

The pay range for pay band level 3 of CG 1 and for pay band level 4 of CG 2 is a minimum of 120 percent of the minimum rate of basic pay for GS–15; and a maximum of the rate of basic pay for Senior Executive Service (SES) level 4 (ES–4).

Once employees are converted into BP, GS grades will no longer apply.

1. Architecture Graphic

The five career groups and their associated pay band levels are as follows:

FIGURE 2.—ARCHITECTURE GRAPHIC

Career Group (CG)	Career Group Name	Level 1	Level 2	Level 3	Level 4
CG 1	Science and Engineering Research	GS 5–12 *	GS 13–15	Above GS–15	Not applicable
CG 2	Professional and Administrative Management.	GS 5–11 *	GS 12–13	GS 14–15	Above GS–15
CG 3	Engineering, Scientific, and Medical Support.	GS 1–4	GS 5–7	GS 8–11	(GS–12 & above to CG 2)
CG 4	Business and Administrative Support	GS 1–4	GS 5–7	GS 8–10	(GS–11 & above to CG 2)
CG 5	College Cooperative Education Program	GS 1–5	GS 6–8	GS 9–11	GS–12

* There is no level incorporating GS 1–4, as these grades do not represent continuing DoD work.

2. Nonsupervisory Descriptors

Nonsupervisory pay band level descriptors are used under BP instead of grading criteria in OPM classification standards and guides. Nonsupervisory pay band level descriptors articulate characteristics of positions at the top of the pay band level. Nonsupervisory descriptors are established by the Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy) (ODUSD(CPP)).

C. Supervisory Architecture

1. Determination of Supervisory Status

a. Allocation to Pay Band Level and Supervisory Level. Determining whether a position is allocated to a supervisory pay schedule is predicated on supervisory level (*i.e.*, meeting the narrative criteria in the supervisory descriptors A, B, C, or D (*see* III.C.2.) and base level of work supervised).

The CG and pay band level of a supervisory position are predicated upon the CG and level of the nonsupervisory workforce in the supervisor's organization. The difficulty and worth of a supervisory position are directly related to the difficulty and worth of the work accomplished by the subordinate workforce. A supervisory position in an administrative occupation may supervise work of a professional nature.

The CG and pay band level of a full deputy are normally the same CG, supervisory level, and supervisory pay table as the supervisory position to which it reports. Pay for the full deputy position may be set at any point within the pay table range management deems appropriate. There is no requirement that the deputy's pay equal the pay of the supervisory position. Where a full deputy reports to a position outside this system (*e.g.*, military officer or member of the SES), the full deputy position will be compared directly to the supervisory descriptors and criteria for base level determination to decide the supervisory pay table.

b. Substantive Work. It is necessary to determine the functions that best represent the substantive work of the supervisor's organization, *i.e.*, the work that accomplishes the organization's primary mission. Substantive work can be performed by Federal civilian employees, as well as by contractor personnel and military personnel. In determining the substantive work of the organization, do not include positions that perform services that facilitate the substantive work of the unit, such as clerical support positions in an administrative unit, or budget or information technology positions in an engineering design unit.

c. Base Level of Work. Base level is defined as the highest CG and pay band level of nonsupervisory work that meets both of the following criteria: (1) It is performed by two or more subordinate positions; and (2) it constitutes at least 25 percent of the organization's substantive positions.

d. Determination of Base Level. i. If all subordinate positions are in a single CG, base level is determined by application of III.C.1.c.(1). and III.C.1.c.(2).

ii. Where subordinate positions perform substantive work in two or more CGs, first determine which CG and pay band level represent the base level of the substantive work of the supervisor's organization. This would include the primary occupational knowledge requirement for the supervisory position. To determine the appropriate base level, first eliminate all support positions.

(a) If the remaining substantive positions are all in one CG, use III.C.1.c.(1). and III.C.1.c.(2). to determine which pay band level of the CG constitutes the base level of work.

(b) If the remaining substantive positions are in two or more CGs, apply III.C.1.c.(1). and III.C.1.c.(2). to all substantive positions in the supervisor's organization to determine which CG and pay band level constitute the base level of work.

Once the base level is determined, the position's supervisory functions are compared to supervisory descriptors (*see* III.C.2.) to determine the appropriate level, *i.e.*, A, B, C, or D. Career group and pay band level of the base level, in combination with supervisory level, determines the supervisory pay schedule that applies (see Appendix D). Supervisory descriptors are established by ODUSD(CPP).

e. Adjustment to Supervisory Pay Table. When application of base level criteria results in assignment to a supervisory pay table with a lower maximum rate of basic pay than one subordinate employee, the maximum rate of the supervisory pay table may be extended to match or exceed the maximum rate of pay of the highest CG and level supervised by up to ten percent. When a subordinate employee is on pay retention, and the appropriate supervisory pay table does not exceed that subordinate's retained rate of pay, management has the discretion to set the supervisor's pay (including supervisory adjustment) ten percent above the pay of the employee for the duration of the period that the subordinate employee remains on pay retention.

f. Allocation Based on Nonsupervisory Duties. Some supervisory positions perform nonsupervisory work in addition to their supervisory functions. When application of base level criteria to a supervisor A or B position results in a supervisory pay schedule with a maximum rate lower than the maximum rate of pay for the CG and pay band level of nonsupervisory work performed, the supervisor's career group and level will be set by the nonsupervisory functions, while the position will be titled and coded as supervisory (or other authorized title designating supervision).

2: Supervisory Descriptors

Supervisory descriptors define limited supervision (supervisor A), first-level (supervisor B), second-level (supervisor C), and third-level managerial (supervisor D), respectively. To be assigned a supervisory level, a position must meet the narrative criteria in the descriptor and perform such supervisory functions a significant portion of the time. Supervisory descriptors are established by ODUSD(CPP).

IV. Classification System

Personnel Demonstration Project Best Practices uses OPM occupational series and titles for allocation of positions. Allocation of BP positions to the appropriate pay band level and supervisory pay table uses BP criteria instead of OPM grading criteria.

A. Occupational Series

OPM occupational series definitions, series codes, and authorized titles will be used under BP, as well as the OPM designations of white-collar occupational series as professional, administrative, technical, clerical, or other.

B. Classification Standards

The present system of OPM classification standards will be used for determination of occupational series and position titles in BP. References in the OPM position classification standards to grading criteria will not be used. Rather, the nonsupervisory and supervisory descriptors (in combination with base level determinations) will be used for the purpose of determining pay band level and pay table. The nonsupervisory descriptors are derived from the OPM Primary Standard of the Factor Evaluation System. Under this system, each pay band level and supervisory level is represented by a descriptor, against which individual positions are compared in order to establish the appropriate level. Consequently, the need for use of OPM grading criteria is eliminated.

C. Classification Authority

Under BP, classification authority flows from the Secretary of Defense to the Secretaries of the Military Departments, heads of the Defense agencies, and heads of DoD Field Activities with independent appointing authority. This authority may be redelegated.

D. Position Descriptions

Position descriptions are used to document major duties in writing. A position description is a statement of duties that accurately describes the level of work of a position; has been certified (signed) by the supervisor; and is adequate for determination of occupational series, title, career group, pay band level, and supervisory schedule.

E. Fair Labor Standards Act (FLSA)

Fair Labor Standards Act (FLSA) exemption determinations will be made consistent with criteria in Title 5 of the Code of Federal Regulations (CFR), part 551. All employees are covered by the FLSA unless they meet criteria for exemption. Exemption status of individual positions will be evaluated by comparing duties and responsibilities assigned, the pay band level descriptors, and the 5 CFR part 551 FLSA criteria.

F. Pay Category Reconsideration

An employee may request reconsideration of the pay system, occupational series, title, or pay band level of his/her own position at any time. An employee must raise the areas of concern to the first-line supervisor, a supervisor at supervisor level B or above, or military equivalent. Employees who are not satisfied with the supervisor's response may then request a DoD decision-level reconsideration of the pay category determination. The DoD Civilian Personnel Management Service (CPMS), Field Advisory Services (FAS) Division, is the final level of pay category reconsideration under BP. Decisions by DoD CPMS FAS are final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Department of Defense.

Employees may file a request for pay category reconsideration at any time. However, when the issue involves a loss in pay, employees must request reconsideration no later than 15 calendar days after the effective date of the subject personnel action in order to preserve any entitlement to retroactive correction. Employees must submit requests for pay category reconsideration through the supporting human resources office. Supporting human resources offices will forward case files to the Department of Defense for decision within 30 days of receipt of the employee's formal request for pay category reconsideration, unless DoD deciding officials grant a longer period of time. The Department of Defense will make final pay category determination decisions within 60 calendar days from date of receipt of a complete file. Pay category reconsideration decisions will use OPM criteria to determine pay system, occupational series, and title. Career group and pay band level decisions under the pay category reconsideration process will be based on BP career group definitions, pay band level descriptors, and other BP criteria, as appropriate.

Under a request to DoD CPMS for BP pay category reconsideration, an employee may not request review of the accuracy of his/her position description, the BP allocation or pay-setting criteria, the propriety of a salary schedule, or matters grievable under an administrative or negotiated grievance procedure or an alternative dispute resolution procedure.

V. Hiring and Appointment Authorities

A. Definitions

The current terms of promotion, reassignment, and change to lower grade that are used to describe an employee's movement from one position to another will be replaced with the following to describe more appropriately movement within a pay banded environment.

1. Job Change—Higher Earning Potential

Movement to a position with higher earning potential (*e.g.*, CG 2, level 1 to CG 1, level 1; CG 1, level 1 to CG 1, level 2).

2. Job Change—No Higher Earning Potential

Movement from one position to another with no higher earning potential (*e.g.*, CG 3, level 2 to CG 4, level 2).

3. Job Change—Lower Earning Potential

Movement from one position to another with lower earning potential (*e.g.*, CG 1, level 1 to CG 2, level 1).

A position is defined by career group, pay band level, title, and series. Job change does not include assignment or termination of supervisory or locality pay.

B. Internal Placement

The following rules will be used to determine when competitive procedures are required for job change and when they are not. Job change does not include assignment of supervisory or locality pay.

1. Competition Upon Job Change

Competition, or an exception to competitive procedures, is required for a job change—higher earning potential. Competition is not required for a job change—no higher earning potential. Competition is not required for a job change—lower earning potential.

2. Expanded Forms of Competition

Competitive procedures and plans under 5 CFR 335 will be supplemented by the procedures listed below.

a. Assessment Boards. Boards of individuals with appropriate levels of knowledge may convene to assess candidates for current and future advancement and distinguish among them for job changes to positions and duties with higher earning potential. Ranking and selection criteria must distinguish among employees. Employees selected must meet qualification standards. An assessment board may be held in conjunction with the annual performance appraisal process or convened on an ad hoc basis. Candidates will be assessed based on order of merit, and can be assigned to positions with higher earning potential without further competitive procedures.

b. Alternative Certification Process (ACP). Two alternative certification processes are described:

i. Management may name request an individual using an ACP. Since management has the right to consider candidates from any appropriate source of agency employees, an employee may be selected, absent formal certification, provided the employee is within the highest quality group for referral for the position. Documentation to support the action includes the source of candidates, name request, and documentation showing the individual meets the required criteria.

ii. A second ACP allows positions to be filled competitively without issuing a formal vacancy announcement. This process may be used when the work unit from which the position will be filled is such that the selecting official has had the opportunity to observe and assess all potential applicants, thus enabling the selecting official to evaluate each candidate equitably. The selecting official must possess enough information about the knowledges, skills, abilities, and experience of each of the candidates being considered to ensure they are assessed fairly. The selecting official must also know that there will be a sufficient number of qualified candidates to consider without formally announcing the vacancy. This determination will be made in conjunction with the human resources office.

3. Exceptions to Competition

Job change (higher earning potential) will be processed under competitive procedures in accordance with merit

principles and requirements of merit promotion plans and procedures of the BP. The following actions are excepted from such competitive procedures:

a. Job change to a position that is in the same pay band/level and career group (or equivalent in another pay system) as the employee previously held on a permanent basis within the competitive service.

b. Job change to a position having higher earning potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

c. Job change without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

d. Temporary job change for 1 year (and any approved extension as provided for in V.B.5.) to a position with higher earning potential.

e. Job change based on employee's position being officially established at a higher earning level because of additional duties and responsibilities.

f. Job change resulting from the correction of an initial classification or pay category or level error, or the issuance of new classification standards or supervisory and nonsupervisory descriptors.

g. Job change of a candidate not given proper consideration in a competitive action.

h. Individual conversion into system: Job change into a career group/level with higher earning potential within the employee's current series for movements into the system after the mass conversion, *e.g.*, GS–201–12 employee with FAA entering CG–201–2, level 2 position. Absent this provision, there is no equivalent grade to which the employee could be assigned noncompetitively. (This is equal to movement provided employees upon mass conversion).

i. Job change from one career group to another when the series appears in two different career groups, *e.g.*, CG 2, level 1 into CG 1, level 1.

j. Job change of an employee one level above the pay category of the position when the employee adds a significant value to the organization that goes beyond the classifiable duties of the position.

k. Job change as a result of a decision in a negotiated or agency grievance procedure, or by a court or administrative forum with authority to issue such decisions, as the result of the equal employment opportunity (EEO) complaint process, or written settlement agreement that has the approval of the appropriate local authority.

4. Probation Upon Competitive Job Change

a. Basic Requirements. An employee is required to serve a 1-year probationary period upon each competitive job change to a position with higher earning potential. This probationary period will apply to all competitive job changes. For a job change to a position with higher earning potential which is identified as an exception to competitive procedures the selecting official, in coordination with the human resources office, may, at his/her discretion, require an employee to serve a probationary period of up to 1 year.

An employee who has an additional job change to a position with no higher earning potential following the competitive job change will be required to complete the 1 year probationary period, except for those serving on the discretionary probationary period. An employee serving on a discretionary probationary period as a result of a job change to a position with higher earning potential (made as an exception to competitive procedures) will be considered to have completed the probationary period.

This requirement does not apply upon assignment of supervisory duties within the same CG and pay band level.

The duration of the probationary period may be extended only under exceptional circumstances.

The employee is to be given notice of the probationary period requirement before entering the position.

b. Failure to Complete the Probationary Period. Satisfactory completion of the probationary period is a prerequisite for continued service in the position. An employee who, for reasons of performance, does not satisfactorily complete the probationary period is entitled to placement in a position no lower than the CG and pay band level (or equivalent from another pay system) the employee left before accepting the position.

c. Relationship to Other Probationary Period Requirements. In the event an employee is serving the initial probationary period for career appointment (see V.C.2.a.) concurrently with the probation upon competitive job change, the initial probationary period takes precedence.

For an employee who has a job change while serving a probationary period based on a previous job change, that probationary period is considered to have been met and the employee starts the new probationary period on the effective date of the assignment.

No employee will be required to serve the probationary period for competitive job change upon initial mass conversion of their organization, or a portion thereof, into BP.

d. Appeals. An employee who is returned to a position from which competitively assigned is not entitled to appeal rights.

e. A job change returning an employee to his/her former CG/pay band level may include pay increase, pay decrease, or no change in pay.

5. Temporary Job Change

Temporary job changes may be made to cover time-limited needs. Temporary job changes (higher earning potential) are permitted for up to 1 year and may be extended for up to 1 additional year with the approval of the second level supervisor. Temporary job changes effected under this authority may not be made permanent. A temporary job change may include pay increase, pay decrease, or no change in pay. If the job change is voluntary and results in a decrease in pay, appeal rights do not apply.

C. External Hiring and Appointment Authorities

1. Delegated Examining Unit (DEU) Authority

Examining processes under the DEU authority may be used to fill positions, with the exception of the following: positions in the SES or the Executive Assignment System; Senior Level (SL) and Scientific or Professional (ST) positions; positions at CG 1, level 3 and CG 2, level 4; Administrative Law Judge positions; and positions subject to any examining process covered by court order.

a. Referral of All Candidates. At management's option, all qualified candidates may be referred to the selecting official by the human resources support organization.

When there are no veterans' preference eligible applicants and when requested by management, all qualified candidates are referred for consideration. Managers must document the basis for selection.

When there are applicants entitled to 5 or 10 point veterans' preference, other than those with a compensable service-connected disability of 10 percent or more, evaluation, including adding veterans' preference points, will be accomplished by the human resources office before referral to selecting officials. For scientific and professional positions equivalent to GS–9 or higher, evaluation, including adding veterans' preference points, will be accomplished by the human resources office before referral to selecting officials. For all other positions, where there are disabled veterans who have a compensable service-connected disability of 10 percent or more, they shall be listed at the top of the list in order of their ratings, including preference points. The names of preference eligibles shall be entered ahead of others having the same rating. Where a preference eligible is listed above a nonpreference eligible on any referral list, the preference eligible cannot be passed over for selection without application of passover procedures as authorized by the Department of Defense.

b. Categorical Rating, Ranking, and Referral. When rating and ranking is accomplished, candidates who meet basic (minimum) qualifications shall be assigned to one of three previously defined quality group categories (best qualified, highly qualified, or qualified), depending upon the quality and relevance of their qualifications to the job. Candidates may be further ranked within each quality group. Veterans' preference points will be added to the candidate's overall score. Addition of veterans' preference points does not impact the quality group assignment. For other than scientific and professional positions equivalent to GS–9 or higher, qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed at the top of their quality group. For all positions, candidates will be referred by quality group.

Selecting officials should be provided with a reasonable number of qualified candidates from which to choose. All candidates in the highest quality group will be referred for consideration. If management determines there are insufficient numbers of candidates in the highest group, candidates in the next lower group(s) may also be referred. When more than one group is referred, candidates shall be identified in group order from the best-qualified to the qualified group.

Where a preference eligible is listed above a nonpreference eligible on any referral list, the preference eligible cannot be passed over for selection without application of passover procedures as authorized by the Department of Defense.

2. Appointing Authorities

a. Career Appointment and Initial Probationary Period. Personnel Demonstration Project Best Practices will use the career appointment authority for employees upon initial appointment other than to temporary, term, or indefinite positions in the competitive service. An employee on his/her initial career appointment under this authority is appointed as a career employee subject to an initial probationary period of up to 3 years to allow supervisors an adequate amount of time to fully evaluate an employee's performance and conduct.

The Department of Defense shall utilize the probationary period as fully as possible to determine the fitness of the employee. An employee who fails to demonstrate fitness or whose work performance is unsatisfactory shall be separated. The employee will be notified in writing why a separation action is being taken and the effective date of the action. The information in the notification shall, at a minimum, consist of conclusions as to the inadequacies of performance or conduct.

i. *Permanent Status:* A newly appointed employee must serve for up to 3 years of substantially continuous creditable service as a probationary employee. A single break in creditable service of more than 30 calendar days will require the beginning of a new probationary period of up to 3 years upon reappointment. Permanent status is acquired only under a permanent appointment in the competitive service after completing the probationary period.

ii. *Creditable Service:* Prior Federal civilian service (including nonappropriated fund, temporary, or modified term service) will count toward the completion of the probationary period as long as there has been no break in service.

The following provisions apply to the completion of an initial probationary period under special circumstances:

Excepted service employment leading to career status in the competitive service will count toward the completion of the initial probationary period as long as there has been no break in service of more than 30 calendar days.

Intermittent employment, *i.e.*, employment without a regularly scheduled tour of duty, will count toward completion of the initial probationary period of up to 3 years, calculating each day or part of a day in pay status as 1 day of credit toward the requirement of up to 780 days in a pay status.

Employees serving on career conditional appointments in other agencies will not be converted to permanent status until they have met the requirement for up to 3 years of substantially continuous service. The length of time served on career conditional appointment will count toward the probationary requirement.

iii. *Completion of Probationary Period:* The probationary period ends when the employee completes the scheduled tour of duty on the day before the applicable anniversary date of the employee's appointment. For example, when the last workday is a Friday and the anniversary date is the following Monday, the probationer must be separated before the end of the tour of duty on Friday.

Employees who have served continuously the length of time required for probation on a competitively filled modified term appointment will be considered to have met the probationary period upon conversion to permanent status.

iv. *Extensions:* The probationary period required for new appointments is up to 3 years and may be extended only under rare circumstances as provided for in DoD guidance.

v. *Tenure:* Probationary career employees are in tenure group I for reduction in force purposes.

vi. *Appeals:* A probationary employee may appeal to the Merit Systems Protection Board (MSPB) an agency decision to terminate the employee as outlined in 5 CFR 315.806.

b. Modified Term Appointment. The modified term appointment is designed to be used to augment the existing workforce; for special projects, staffing new or existing programs of limited duration; filling a position in activities undergoing review for reduction or closure; and replacing permanent employees who have been temporarily assigned to other positions, are on extended leave, or have entered military service. Modified term appointments differ from term appointments as described in 5 CFR part 316 in that initially they are for a period of over one year but not to exceed 5 years, rather than the traditional 4 years. The appointing official is authorized to extend the modified term for 1 additional year to a maximum length of 6 years.

Absent any DoD specific eligibility or qualifications criteria, appointees must meet OPM qualifications and eligibility requirements for the pay band level and occupation to which appointed.

i. *Noncompetitive modified term appointments.* For time-limited needs, term appointments may be made noncompetitively for up to 5 years, with extensions authorized for up to 1 additional year. Further extensions will not be permitted using the

noncompetitive authority. Notice of positions to be filled under the noncompetitive term appointment authority shall be made to ensure the merit principle of fair and open competition. Employees appointed under this authority may not be converted to career appointments. Time served may be used to satisfy the probationary period service requirement consistent with probationary period guidance. Any candidate who is eligible for veterans' preference under Title 5 of the United States Code (U.S.C.), Section 2108 shall be considered ahead of candidates who are not eligible for preference.

ii. *Competitive modified term appointments.* Rating, ranking, and referral for competitive modified term appointments will be conducted in accordance with provisions contained in V.C.1. Employees hired under this modified term appointment authority may be eligible for conversion to career appointments without further external competition.

To be eligible for conversion to a career appointment, the employee must:

(a) Have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position(s) may be eligible for conversion to career appointment at a later date;

(b) Have served 1 year of continuous service in the term position; and

(c) Have a current assessment documenting adequate performance.

Conversion to a career appointment may be made:

(a) To a permanent position in the same occupational series, CG, and pay band level, or

(b) *Through internal merit procedures.* New modified term employees shall serve the initial probationary period of up to 3 years currently in use for career appointments under this personnel system. Service under the modified term appointment immediately preceding a permanent appointment without a break in service shall count toward the probationary period requirements of the permanent position provided performance is adequate.

c. *Noncompetitive Temporary Appointment.* For time-limited needs, temporary appointments may be made noncompetitively for up to 1 year, with extensions authorized for up to 1 additional year. Further extensions will not be permitted using the noncompetitive authority. Advance notice of positions to be filled under the noncompetitive temporary appointment authority shall be made to ensure the merit principle of fair and open competition.

Absent any DoD specific eligibility or qualifications criteria, appointees must meet OPM qualifications and eligibility requirements for the pay band level and occupation to which appointed.

Any candidate who is eligible for veterans' preference under 5 U.S.C. 2108 shall be considered ahead of candidates who are not eligible for preference.

Appointments made under this authority do not confer competitive status. Time served may be used to satisfy the probationary period service requirement consistent with probationary period guidance above.

d. Scholastic Achievement Appointment. The scholastic achievement appointment provides an alternative examining process to appoint candidates with bachelor or advanced degrees. Advance notice of scholastic achievement appointment and positions to be filled shall be made to ensure the merit principle of fair and open competition. A candidate may be appointed under this procedure if:

i. The candidate meets the minimum standards for the positions as (a) published in OPM's Operating Manual, "Qualification Standards for General Schedule Positions," (available at www.opm.gov/qualifications) or (b) established in DoD alternative qualifications or criteria for specific occupations and/or tailored to the pay banding architecture;

ii. The candidate meets any selective placement factors stated in the vacancy announcement; and

iii. The candidate has an overall grade point average of 3.0 or better on a 4.0 scale (or equivalent on a different scale) grade point average overall, or has either a 3.5 or better cumulative grade point average on a 4.0 scale (or the equivalent on a different scale) in the field of study qualifying for the occupation, or is ranked in the upper 10 percent of the major college or subdivision attended.

Scholastic achievement appointments may also be made on the basis of graduate education, provided the criteria in V.C.2.d.i. through V.C.2.d.iii. are met.

Any candidate who is eligible for veterans' preference under 5 U.S.C. 2108 shall be considered ahead of candidates who are not eligible for preference.

e. On-the-spot hiring. Candidates may be directly appointed using the on-the-spot appointing authority to positions for which it has been determined that one or more of the following conditions apply:

i. There is a severe shortage of candidates;

ii. The position is unique and/or has special qualifications;

iii. The position has a historically high turnover rate;

iv. The occupation is covered by a special salary rate;

v. An exceptional need exists. Requirements for determining exceptional need will be detailed in DoD guidance.

In all cases, the servicing personnel office, in consultation with the activity/organization manager, will determine if a position or group of positions meets the established criteria and will authorize the use of on-the-spot hiring. All determinations must be documented.

Advance notice of on-the-spot appointing authority and positions for which it may be used shall be made to ensure the merit principle of fair and open competition.

Absent any DoD specific eligibility or qualifications criteria, appointees must meet OPM qualifications and eligibility requirements for the pay band level and occupation to which appointed.

Any candidate who is eligible for veterans' preference under 5 U.S.C. 2108 shall be considered ahead of candidates who are not eligible for preference.

f. Use of Other Appointing Authorities. Nothing in BP shall prohibit use of existing competitive service appointing authorities cited in various provisions of 5 CFR (*e.g.*, a preference eligible under Veterans' Employment Opportunity Act (5 CFR 315.611), a family member who served 52 weeks overseas (5 CFR 315.608)) except to the extent that career-conditional appointments shall not be used. Conditions for granting such appointments must be fully met.

Nothing in BP shall prohibit use of existing excepted service appointing authorities cited in 5 CFR 213 (*e.g.*, Veterans' Readjustment Appointment, Student Educational Employment Program). Conditions for granting such appointments must be fully met.

g. Noncitizen Hires. The Department of Defense will have the authority to approve the hiring of noncitizens when qualified United States citizens are not available. As with current 5 CFR requirements, a noncitizen may be appointed only if it has been determined there are no qualified United States citizens. If a noncitizen is the only qualified candidate for the position, the candidate may be appointed. The selection is subject to approval by the appointing official. All security requirements otherwise applicable to the position continue to apply.

D. DoD Alternative Qualifications or Criteria

DoD has authority to develop qualification standards consistent with the pay banding architecture of the BP or to meet unique position requirements.

VI. Pay Administration

As the rates of the General Schedule are increased due to GS pay increases, the minimum and maximum rates of nonsupervisory pay band levels and supervisory pay tables will also increase. No adjustments in employees' pay are automatic, other than locality adjustments.

A. Special Pay Rules

1. Supervisory Pay Tables

Once the base level of work and supervisor level (A, B, C, or D) are determined, the table at Appendix D is used to determine the salary range (basic pay and supervisory adjustment) for the supervisory position. For supervisory positions in occupational series covered by a special salary rate supplement, as defined in VI.A.2., the maximum rate of the applicable supervisory pay table may be extended to equal the maximum special salary rate for the corresponding grade. A supervisor's pay may be set at any point within the supervisory pay table range that management determines appropriate. The supervisory rate ranges include a supervisory adjustment that corresponds to the supervisory level (*i.e.*, 10, 20, 30, or 45 percent supervisory adjustment for supervisor A, B, C, or D, respectively). The supervisor's total pay will not exceed the maximum rate of the applicable supervisory pay table, adjusted for locality, except under circumstances that meet III.C.1.e., Adjustment to Supervisory Pay Tables. Supervisory adjustments are considered basic pay for purposes of retirement, life insurance, premium pay and for such other purposes as may be expressly provided for by law.

If the employee moves to another position, the supervisory adjustment shall be increased, reduced, or terminated as required under conditions set forth by the agency. The supervisory adjustment shall terminate when the employee moves to a position that does not qualify for a supervisory adjustment and the adjustment shall be recomputed when the employee moves to a supervisory position at a different supervisory level. The reduction or elimination of a supervisory adjustment upon movement to a new position is not appealable.

If levels of supervision are established that the supervisory pay tables at Appendix D do not anticipate, *e.g.*, a supervisor B position over CG 1, level 1 base level, or a supervisor C position over CG 3, level 1 base level, the supervisory pay adjustment may be set up to 20 percent above the maximum rate of pay established for the base level supervised.

2. Special Salary Rate Supplements

When a maximum SSR rate of a GS grade exceeds the maximum rate of the corresponding pay band level under BP, the maximum rate of that pay band level is extended to equal the maximum SSR rate for that grade. Such extension will apply only to occupational series and geographic areas covered by the corresponding GS SSR. Affected employees will be eligible for pay increases up to the maximum of the applicable pay band level table extension. Total pay for these employees will include an SSR supplement.

a. Formula Upon Conversion. When an employee is eligible for an SSR supplement upon conversion into BP, the BP total pay will include an SSR supplement that is determined by applying an SSR factor to the employee's total GS pay.

b. Formula After Conversion. After conversion, when an employee enters a position that is covered by an SSR pay band level extension, the employee will receive the salary set by the supervisor as the BP total pay. The BP total pay will incorporate an SSR supplement.

c. Applicability. Special salary rate supplements do not apply when the maximum SSR of a corresponding GS grade is equal to or less than the maximum rate of a corresponding pay band level. Total pay, in this case, will consist of basic pay plus locality pay.

3. Pay Retention

A nonsupervisory employee, under appointment other than temporary or modified term, is entitled to pay retention when placed involuntarily into a new position for reasons other than those listed under VI.B.3.b. and the employee's current pay is above the maximum rate applicable to the new position. The pay retention entitlement is not to exceed 2 years, or until the rate range of the new position encompasses the employee's retained rate of pay, whichever occurs first. During pay retention, an employee is not eligible for any permanent pay increases, other than locality adjustments.

Employees paid from a supervisory pay table are not eligible for pay retention. (*See* VI.A.1.)

B. Pay Setting

1. Upon Accession (After Mass Conversion of the Organization)

Management may establish pay at any rate up to the maximum of the pay band level, any applicable SSR extension, or any applicable rate from a supervisory pay table. The hiring official will determine starting pay based on available labor market considerations; special qualifications requirements; scarcity of qualified applicants; program needs; education or experience of the candidate; and other criteria, as appropriate.

2. Upon Job Change—No Higher Earning Potential

An employee who moves to a position with the same maximum rate of pay (irrespective of a SSR extension) will have pay set at the existing rate of pay, or with a pay increase up to 5 percent of the existing rate, not to exceed the maximum of the pay band level or the applicable SSR extension.

3. Upon Job Change-Lower Earning Potential

a. Voluntary. An employee may request a voluntary change to a position with a lower maximum rate of pay. The employee's pay may be set at any point within the level but not more than 5 percent above the employee's current base pay. The new salary shall not exceed the maximum rate of the applicable pay table for the position to which assigned.

b. Involuntary-Adverse Action. When an employee is changed, due to an adverse personnel action based on either misconduct or poor performance, to a position with a lower maximum rate of pay, pay retention will not apply. The employee's pay must be reduced by up to five percent. However, in no case will pay be set above the maximum rate of the new range.

c. Involuntary—Inadequate Pay Progression. As a consequence of the administration of the performance payout process, an employee's basic pay may fall below the minimum rate of basic pay for the pay band level to which he/she is assigned. In such cases, supervisors shall initiate an involuntary change to lower level promptly after the pay pool manager approves the annual payout; the employee's position description shall be redescribed accordingly. The employee's rate of basic pay shall remain unchanged. Change to a lower pay band level due

to inadequate pay progression is not considered an adverse action.

d. Involuntary-Management Action. If a job change is the result of a management directed action, *e.g.*, reduction in force or pay category reconsideration, a nonsupervisory employee is entitled to his/her current rate of pay if it is at or below the maximum of the applicable pay table for the new position. If the employee's rate of basic pay exceeds the maximum applicable rate for the new position, the employee is entitled to pay retention not to exceed 2 years. (*See* VI.B.5.a. and VI.B.5.c. for job change—lower earning potential involving supervisors.)

4. Upon Job Change—Higher Earning Potential

When an employee moves to a position with a higher maximum rate of pay, the pay upon job change may include a pay increase, a pay decrease, or no change in pay. The pay will be at least the minimum of the pay band level, and may not exceed the maximum of the applicable pay table. If the job change is voluntary and results in a decrease in pay, it is not considered an adverse action; therefore, appeal rights do not apply.

5. Upon Assignment to and from a Supervisory Position Outside the Existing Pay Band Level

a. Supervisory to Nonsupervisory Position. When an employee paid from a supervisory pay table moves to a nonsupervisory position, the supervisory adjustment will not be retained. Pay will be set at the employee's existing rate of basic pay or at the employee's rate of basic pay in a nonsupervisory position immediately preceding the prior movement to the supervisory position, whichever is higher. If the employee's rate of basic pay exceeds the new rate range, pay will be set at the maximum of the pay band level.

b. Nonsupervisory to Supervisory Position. When an employee paid from a nonsupervisory pay table moves to a supervisory position, pay will be set at the employee's existing rate of basic pay, or a rate determined by management not to exceed the maximum of the applicable supervisory pay table. If the employee's existing rate of pay exceeds the maximum of the applicable supervisory pay table, and the employee is placed involuntarily for reasons other than VI.B.3.b., the employee's pay will be set not to exceed 20 percent above the maximum rate payable for the subordinate base level for a period not to exceed 2 years, as a supervisory adjustment.

c. Supervisory to Supervisory Position. When an employee paid from a supervisory pay table moves to another position paid from a supervisory pay table, pay will be within the applicable new rate range to include a supervisory adjustment that corresponds to the supervisory level (*i.e.*, 10, 20, 30, or 45 percent for supervisor A, B, C, or D, respectively).

VII. Pay-for-Performance (PFP) Evaluation System

A. Overview

The purpose of the PFP evaluation system is to provide an equitable method for appraising and compensating covered employees. It is essential for the development of a highly productive workforce and to provide management, at the lowest practical level, the authority, control, and flexibility needed to accomplish the mission and meet organizational goals, including the requirements of the organization's strategic plan. PFP allows for more employee involvement in the evaluation process, increases communication between supervisor and employee, promotes a clear accountability of contribution by each employee, facilitates employee progression by linking individual employee performance to mission accomplishment, and provides an understandable basis for salary and structural changes.

B. Performance Objectives

Performance objectives are an individual's job assignments or position responsibilities that contribute to accomplishing the mission and goals of the organization during the rating cycle. Performance objectives deal with outputs and outcomes of a particular job. At the beginning of the rating cycle, employees and supervisors will jointly develop performance objectives that reflect the types of duties and responsibilities expected at the respective pay band level. These objectives are to be based on the work unit's mission and goals and must be consistent with the employee's position description. Performance objectives will be tailored to each individual employee's job assignments or position responsibilities. The supervisor makes the final decision concerning the development of performance objectives.

The performance objectives, representing joint efforts of employees and their rating chains, should be in place within 30 days from the beginning of each rating cycle. Performance objectives may be modified and/or changed as appropriate during the rating cycle. It is appropriate to change objectives when mission or workload changes occur. How well performance objectives are accomplished will be measured by a series of performance factors, which may be weighted.

C. Performance Factors

Performance factors are used to evaluate accomplishment of performance objectives. The use of factors for scoring purposes helps to ensure comparable scores are assigned while accommodating diverse individual objectives that contribute to accomplishment of the mission and goals of the organization. The DoD Component has the discretion to weight performance factors based on the importance in accomplishing an individual's performance objectives. This discretion may be redelegated.

When weighting performance factors, each performance factor used is assigned a weight within a specified range. Where performance factors are not weighted, it is understood that all factors used are of equal point value. The total value of all performance factors used, weighted or unweighted, is 100 points.

The seven performance factors used to evaluate accomplishment of performance objectives are as follows: Technical Competence/Problem Solving; Cooperation/Teamwork; Communication; Customer Care; Resource Management; Leadership/Supervision; and Contribution to Mission Accomplishment. Additional factors may not be created without Office of the Secretary of Defense approval. However, management may exclude any performance factor that does not apply to a specific position. These seven performance factors are generally described:

1. Technical Competence/Problem Solving

Demonstrates the knowledge and skills required to execute the position's assigned duties and responsibilities; ability to apply the knowledge and skills to solve problems. Exhibits and maintains current technical knowledge, skills, and abilities to produce timely and quality work with the appropriate level of supervision. Makes prompt, technically sound decisions and recommendations that add value to mission priorities and needs. Flexibility, adaptability, and decision-making are exercised appropriately.

2. Cooperation/Teamwork

Demonstrates traits of flexibility, adaptability, and decisiveness and the ability to exhibit and foster cooperation in team efforts and organizational settings. Personal and organizational interactions exhibit and foster cooperation and teamwork. Accepts personal responsibility for assigned tasks. Is considerate of others' views and open to compromise on areas of difference. Exercises tact and diplomacy and maintains effective relationships, particularly in immediate work environment and/or teaming situations. Readily/willingly gives assistance. Shows appropriate respect and courtesy.

3. Communication

Demonstrates effective listening, writing, and oral communication skills. Provides or exchanges oral/written ideas and information that are timely, accurate, and easily understood. Listens effectively so that resultant actions show understanding of what was said. Coordinates so that all relevant individuals and functions are included in, and informed of, decisions and actions.

4. Customer Care

Demonstrates effective interactions with internal and external customers. Demonstrates care for customers through respectful, courteous, reliable, and conscientious actions. Seeks out, develops, and/or maintains solid working relationships with customers to identify their needs, quantifies those needs, and develops practical solutions. Keeps customer informed. Within the scope of job responsibility, seeks out and develops new programs and/or reimbursable customer work.

5. Resource Management

Demonstrates effective use/management of personal and organizational resources such as time, personnel, equipment, and/or funds. Meets schedules and deadlines, and accomplishes work in order of priority (set by the employee's supervisor or team leader); generates and accepts new ideas and methods for increasing work efficiency; effectively utilizes and properly controls available resources; supports organization's resource development and conservation goals.

6. Leadership/Supervision

This factor (VII.C.6.a. and VII.C.6.b.) is mandatory for supervisory/designated team leader positions. This factor is optional for all other employees using description VII.C.6.a. only.

a. Demonstrates effective individual and organizational leadership to assess situations realistically; identifies and recommends or implements needed changes. Actively furthers the mission of the organization. Exercises leadership skills within the environment to include sensitivity to diversity and to ensure equity and fairness, as appropriate. (Description VII.C.6.a. may be applied to all employees, *e.g.*, employee leads work group on special projects ensuring organizational mission and program success; employee effectively represents the interests of the organization on inter-agency groups, etc.)

b. Works toward recruiting, developing, motivating, and training quality employees; initiates timely/appropriate personnel actions; applies EEO/merit principles; communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers employees. (Description VII.C.6.b. may only be applied to supervisory/designated team leader positions.)

7. Contribution to Mission Accomplishment

Executes the position's assigned duties in a manner that contributes to the successful outcome of strategic goals and objectives. Within the scope of job responsibility, develops approaches or solutions to tasks and problems impacting mission in a positive manner.

D. Benchmark Performance Standards

Benchmark performance standards are descriptors that are used to measure, evaluate, and score each performance factor with regard to the accomplishment of performance objectives. Benchmark performance standards for each performance factor are established by ODUSD(CPP). The descriptors for these benchmark performance standards indicate the level of performance appropriate for the high end of each score range for the performance factor. These performance standards will assist the supervisor in determining the percentage of the performance factor that the employee actually attained. The DoD Component has the discretion to supplement standards to describe levels of performance throughout the score range. This discretion may be redelegated.

E. Performance Rating Process

1. Duration of the Rating Cycle

The duration of the rating cycle will be 12 months. The rating cycle shall be October 1 through September 30 each year.

2. Minimum Rating Period

In order to provide for meaningful evaluation of an employee's performance, the minimum rating period will be 90 days.

3. Communication at the Beginning of the Rating Cycle

Within 30 days from the beginning of each rating cycle, the performance factors and benchmark performance standards should be provided to employees, so that they know the basis on which their performance and contributions will be assessed. At this time, employees and supervisors will jointly develop performance objectives as noted in VII.B. Supervisors are encouraged to cite specific examples to each employee of how to achieve the benchmark performance standards at each level of performance. The supervisor will define or clarify key terms for the employee.

4. Feedback During the Rating Cycle

The supervisor may provide on-going feedback as necessary to employees on how well they are accomplishing performance objectives. Additionally, employees may request periodic feedback on how well they are performing. If the supervisor judges that the employee is not performing at an acceptable level on one or more performance factors, the supervisor must inform the employee and document the problem. This feedback will be provided at any time during the rating cycle. Deficiencies identified will be accompanied by a plan, if necessary, to correct them as noted in section VIII.

5. End-of-Cycle Evaluation

a. Performance Feedback. At the end of the rating period, the supervisor may request that the employee provide narrative comments describing accomplishment of his/her performance objectives throughout the year. These narrative comments will permit the supervisor to evaluate more fully the performance of the employee during the rating period.

The supervisor must communicate to the employee the supervisor's appraisal of the employee's performance on performance objectives, and the employee's performance score and rating on performance factors. Communication may occur through use of, but is not limited to, a performance review meeting to discuss job performance and accomplishments.

b. Performance Scores. Following a review of the employee's accomplishments, the supervisor will score each relevant performance factor by assigning a value to each performance factor. Using the benchmark performance standards as a guideline, the supervisor will determine the level of performance actually performed or accomplished by the

employee and assign the appropriate point value to arrive at a total performance score. This performance score may total as high as 100 points. In addition to determining the employee's performance score, a supervisor may provide a narrative evaluation of an employee's potential to perform in positions of greater responsibility or for other appropriate matters. Such narrative evaluations of potential may only be provided in accordance with DoD Component policy.

c. Score Ranges and Shares for Payout. The overall score is the sum of the individual performance factor scores. The scores will be used to determine basic pay increases and/or performance incentives.

FIGURE 3.—SCORE RANGES AND SHARES FOR PAYOUT

Score range	Performance payout (shares)
98–100	13, 14, 15, or 16
95–97	11 or 12
91–94	9 or 10
86–90	7 or 8
81–85	5 or 6
66–80	3 or 4
51–65	1 or 2
0–50	0

An employee will receive a performance payout as a percentage of current basic pay. This percentage is based on the number of shares that equate to his/her final rating score. After a rating has been assigned, the rater will recommend the number of shares that should be granted. The rater has discretion in determining the recommended number of shares within the framework listed above. The rater will take into consideration several factors, *e.g.*, the score, the employee's current basic pay, and overall funding availability. The shares earned by an employee will be used in calculating the employee's performance payout as outlined in the payout formula in VII.F.1.

d. Use of Performance Review Board. A performance review board or an equivalent process for oversight will be established for reviewing supervisors' preliminary scores and recommendations for the number of shares to be granted. The DoD Components may determine the composition of the review board. This review process gives raters the opportunity to verify that their evaluations and approach to scoring conform to that of other raters within the pay pool and ensures that performance assessments of employees are comparable and equitable within the pay pool. An order of merit listing will be developed by each rater and provided to the performance review board. Each listing will include all employees supervised by the rater, their corresponding scores, and recommended shares. This listing will be ordered from highest scores received to lowest scores received to facilitate the review process. If there are employees with identical scores, the rater will differentiate between these employees and prioritize them in the appropriate order on the listing. Consistent with BP requirements in this notice, this order of merit listing may be considered in determining such matters as reduction in force, promotions, training assignments, basic pay determinations or other matters deemed appropriate by the DoD Component. Listings may be developed for each career group to facilitate making distinctions between occupations if necessary. Operating procedures for the performance review board will be developed by each DoD Component.

F. Payout Process

Each Component shall determine the pay pool structure. Authority to determine pay pool structure may be redelegated. Generally, pay pools are combinations of organizational elements (*e.g.* Divisions, Branches, etc.) that are defined for purposes of determining performance payouts under the PFP system. Typically, pay pools may range from as small as 25 to as large as 500 employees. Decisions regarding the amount of the performance payout are based on the established performance payout calculations. Each DoD Component shall establish a pay pool manager for each pay pool. The pay pool manager is responsible for ensuring that distribution of funds is based upon employees' performance and contributions. A pay pool manager's final yearly pay adjustment decisions may still be subject to higher management review. Generally, supervisors will be placed in a pay pool separate from their employees.

1. Basic Pay Increases and Performance Incentives

The amount of money available for performance payouts is divided into two elements, basic pay increases and performance incentives. The payouts made to employees from the performance pay pool will be basic pay increases and/or performance incentive payments, subject to the amounts available in the respective funds.

The amount of money available within a pay pool for basic pay increases is determined by the general pay increase (GPI) and the money that would have been available for quality step increases, within-grade increases, and promotions between grades that are banded. This amount will be established at a certain percentage of the total of basic pay salaries in the pay pool (typically 2 to 2.4 percent plus the GPI), as determined by the pay pool manager. Performance incentive payments are funded separately, but the amount of money available for performance incentive payments must be equivalent to a minimum of 1 percent of total salary dollars (typically 1.3 to 1.8 percent). The sum of these two factors is referred to as the pay pool payout factor (*e.g.*, 4.0 percent performance basic pay, including the GPI, +1.3 percent performance incentive).

Performance pay increases (*i.e.*, basic pay increases) will not be granted to employees at the top of their pay band or in a pay retention status. In these cases, payouts earned as a function of performance may be paid as a performance incentive to the maximum authorized. A local activity may reallocate to employees not at the top of their pay band (uncapped employees) some or all of any unexpended basic pay funds for employees at the top of their pay band (capped employees). This reallocation is placed back into the pay pool and distributed to the uncapped employees based on shares earned. Any increase in an uncapped employee's basic pay as a result of this reallocation will be offset by an equivalent reduction in the employee's performance incentive payment. Thus, the uncapped employee's total performance payout is unchanged.

Consistent with the requirements of DoD Component policy, the pay pool payout factor may be adjusted as necessary. Performance payouts will be calculated and administered so that a pay pool manager will not exceed the resources that are available in the pay pool.

In making the annual performance payouts, the amount of that year's pay pool and share value will be determined as follows:

a. The pay pool payout factor must be determined first. The pay pool payout factor is the percentage amount budgeted for basic pay increases and performance incentives. For purposes of illustration, assume that the organization has budgeted 4.2 percent for basic pay increases and 1.2 percent for performance incentive payments. Therefore, the pay pool payout factor is 5.4 percent.

b. Next, the pay pool value is determined by multiplying the pay pool payout factor determined in VII.F.1.a. by the sum of the combined basic pay salaries of all employees in the pay pool as follows:

Pool Value = Pay pool payout factor × Total Salaries of all employees

Continuing the illustration from VII.F.1.a., assume there are 40 employees in the pay pool with total combined basic pay salaries of $2,377,888. The total combined salaries is multiplied by the pay pool payout factor of 5.4 percent to provide an available total pay pool of $128,406 for basic pay increases and performance incentive payments. Based on the percentages budgeted by the organization in VII.F.1.a., $ 98,871 would be for basic pay increases with the remaining $28,535 for performance incentive payments.

c. Next, the share value is calculated. Each individual employee's basic pay salary is multiplied by the number of shares awarded to that employee (Salary × Shares). The sum total of (Salary × Shares) for all employees in the pay pool is divided into the pool value to arrive at the share value as follows:

Share Value = Pool Value/(Sum Total (Salary × Shares))

The share value represents a fixed percentage basic pay increase for each employee. The value of a share cannot be exactly determined until the rating and review board process is complete. Continuing the illustration from VII.F.1.b., the pay pool amount of $128,406 is divided by 2,377,888 (which represents the sum total of each individual employee's basic pay multiplied by the number of shares awarded to that employee). This results in a share value of 0.00847059 or 0.85%.

d. An employee's total performance payout is the share value multiplied by the employee's end-of-rating cycle basic pay salary multiplied by the number of shares earned by the employee.

Employee Performance Payout = Salary × Shares × Share Value

This is illustrated by highlighting the performance payout of one of the employees in the example pay pool. The employee's end-of rating cycle basic pay salary is $75,112. The employee earned 15 shares. The salary is multiplied by the number of shares (15) multiplied by the share value (0.00847059). This results in a total performance payout of $9,544 with $7,423 as a basic pay increase and $2,121 as a performance incentive payout based on the percentages budgeted by the organization in VII.F.1.a.

2. College Cooperative Education Program

Career group 5 employees shall not be assigned to any pay pool and shall not participate in PFP payouts. Salary adjustments, including the GPI, will be funded outside of the pay pools. CG 5 employees will be placed in the PFP system for payout purposes when they successfully complete the college cooperative education program and are converted to a career appointment.

3. Awards

Awards may be used to acknowledge an employee's extraordinary contributions or exceptional accomplishments. Consistent with current DoD Component/activity awards authorities and delegations, awards may be granted to employees, either as individuals or as members of a team, consistent with DoD Component awards regulations. Awards are not part of the PFP system. The granting of such awards shall be based on a suggestion, invention, superior accomplishment, productivity gain, or other personal effort that contributes to the efficiency, economy, or other improvement to Government operations or achieves a significant reduction in paperwork. The award itself may be monetary, non-monetary, informal recognition, honorary, time-off, or a combination thereof.

The awards budget is separate from money used for base pay increases and performance incentives. The amount of money available for awards must be equivalent to a minimum of one-half percent of total salary dollars.

G. Grievance Procedures

An employee may grieve the performance score. If an employee is covered by a negotiated grievance procedure that permits grievances over performance scores, then the employee must resolve a grievance over the performance score under that procedure (*i.e.*, that procedure is the sole and exclusive procedure for resolving such grievances for bargaining unit employees). If an employee is not in a bargaining unit, or is in a bargaining unit but grievances over performance scores are not covered under the negotiated grievance procedure, then the employee may use the appropriate administrative grievance procedure. Base pay increases and performance incentive payments will not be delayed as a result of an employee filing a grievance concerning the performance score. Any decisions on the grievance shall not affect other employees' performance payouts.

VIII. Performance That Fails To Meet Expectations

A. Notice to Employee and Performance Improvement Plan

Informal employee performance reviews will be provided on an on-going basis, so that corrective action, to include placing an employee on a performance improvement plan (PIP), may be taken at any time during the rating cycle. Whenever a supervisor determines that an employee's overall performance score falls below 51 points, the supervisor will immediately inform the employee. The reasons for the unacceptable performance will be identified and communicated to the employee as follows.

The supervisor will provide written notification outlining the unacceptable performance to the employee. At this point, an opportunity to improve will be structured in a PIP. The employee will be required to identify to the supervisor what actions the employee will take to improve the items identified by the supervisor as needing correction or improvement. The employee will also recommend a time frame for making such corrections or improvements. The supervisor makes the final determination on the actions necessary to correct or improve the employee's performance and the required time frame. If the employee's unacceptable performance impacts the employee's performance payout, the PIP shall be a minimum of 90 days. In all other instances, PIPs should generally be no less than 30 days. The employee will be provided with any available assistance, as appropriate. The supervisor will monitor the employee's progress during the PIP, counsel the employee, and document all counseling sessions. If the employee fails to achieve a level of performance that is at least equal to that of an overall performance score of 51 points or higher following completion of the PIP, the supervisor will take appropriate action as outlined in VIII.B.

B. Action Upon Completion of Performance Improvement Period

If the employee's performance is acceptable at the conclusion of the PIP, no further action is necessary. If a PIP ends before the end of the annual rating cycle and the employee's performance improves to an acceptable level, the employee is appraised at the end of the annual rating cycle.

If the employee fails to improve during the PIP, the employee will be given written notice of the proposed personnel action. This action may include reduction in pay, reduction in pay band level, change in position or

occupational family at a lower rate of pay, or removal from the Federal Service. The advance written notice period will be a minimum of 15 calendar days, and the employee will have 7 calendar days in which to reply. The employee will be given a written notice of decision to include all applicable grievance and appeal rights, as appropriate.

Employees who fail to improve performance to a level that is at least equal to that of an overall performance score of 51 points or higher may not remain at their current salary and may be reduced in pay, pay band level or removed from Federal service. Reductions in salary within the same pay band or changes to a lower pay band will be up to 5 percent of base pay.

All relevant documentation concerning a reduction in pay or removal based on unacceptable performance will be preserved and made available for review by the affected employee or a designated representative. As a minimum, the record will consist of a copy of the notice of proposed personnel action and the employee's written reply, if any, or a summary when the employee makes an oral reply. Additionally, the record will contain the written notice of decision and the reasons therefore, along with any supporting material (including documentation regarding the opportunity afforded the employee to demonstrate improved performance and any input the employee provided on what actions the employee would take to correct or improve their performance).

With regard to an employee who successfully completes a performance improvement period, management may reduce in pay, reduce in pay band level, change in position or occupational family at a lower rate of pay, or remove the employee with no additional improvement opportunity within 2 years following successful completion of the PIP if the employee's performance deteriorates to an overall performance score less than 51 points or the employee fails to perform at an acceptable level in a performance factor. The employee will be given written notice of the proposed personnel action. The advance written notice period will be a minimum of 15 calendar days, and the employee will have 7 calendar days in which to reply. The employee will be given a written notice of decision to include all applicable grievance and appeal rights, as appropriate.

IX. Expanded Sabbatical Authority

DoD activities have the authority to grant paid sabbaticals to career employees to permit them to engage in study or uncompensated work experience that will contribute to their development and effectiveness. One developmental opportunity for a sabbatical (3–12 months in duration) may be granted to an employee in any 10-year period. Employees will be eligible after completion of 7 years of full-time Federal service. Each opportunity must result in a product, service, report, or study that will benefit the DoD activity mission as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered, such as advanced academic teaching; study; research; self-directed or guided study; and on-the-job work experience with a public, private commercial, or private nonprofit organization. Employees approved for a paid sabbatical must sign a service obligation agreement to continue in service for a period equivalent to the length of the sabbatical. If an employee voluntarily leaves Federal service before this service obligation is completed, the employee is liable for repayment of any expenses associated with the sabbatical. Conflict of interest laws and regulations continue to apply.

X. Volunteer Emeritus Program

The volunteer emeritus program will provide continued quality experience and technical support while reducing the overall salary line by allowing higher paid individuals to accept retirement incentives with the opportunity to retain a presence in the organization. Each activity head will have the authority to offer retired or separated individuals volunteer assignments in support of the continuance of specialized work projects or to retain corporate knowledge as advisors or mentors, but not to perform duties that would otherwise be performed by DoD employees, including the duties that the separated or retired employee performed before leaving the Department of Defense. Volunteer emeritus program assignments are not considered employment by the Federal Government (except for purposes of injury compensation). Thus, such assignments do not affect an employee's entitlement to buy-outs or severance payments based on an earlier separation from Federal Service. This program will be of most benefit during manpower reductions, as senior members of the workforce could accept retirement and return to provide valuable on-the-job training or mentoring to less experienced employees.

Volunteer service shall not be used to replace any employee, or interfere with career opportunities of employees. In addition, an employee may not continue to perform his/her former duties as a volunteer emeritus.

To be accepted into the emeritus corps, a volunteer must be recommended by a supervisor and approved by the activity head. An individual wanting consideration for the emeritus corps may submit a request to his/her decision-making authority; however, no one who applies is entitled to a volunteer assignment.

The volunteer's Federal retirement pay (whether military or civilian) will not be affected while serving in a volunteer capacity. Retired or separated Federal employees may accept an emeritus position without a break in service or mandatory waiting period.

Volunteer emeritus corps members will not be permitted to perform any inherently Governmental functions, including monitoring contracts on behalf of the Government. The volunteers may be required to submit a financial disclosure form annually and will not be permitted to participate on any contracts or other activities where a conflict of interest exists. The same rules that currently apply to source selection members will apply to volunteers.

In each case, there must be a written agreement between the volunteer, the decision-making authority, and the personnel servicing activity stating the volunteer's duties and agreement by the volunteer that he or she is not entitled to any pay or compensation for performance of volunteer duties. The agreement must be finalized before the assumption of duties.

XI. Revised Reduction-in-Force (RIF) Procedures

RIF shall be conducted according to the following provisions.

Policy: The DoD policy is to accomplish required civilian personnel reductions through attrition whenever practicable. Involuntary separation or furlough of employees will occur only when other prudent actions cannot accomplish the required results.

Competition in RIF: Employees compete for retention within their retention levels and the next lower retention level for positions with the same title and in the same series during RIF competition. When positions are abolished, employees are released from their retention levels in inverse order of their retention standing, beginning with the employee having the lowest standing. If an employee is reached for release from a retention level, he or she could have a right to be assigned to another position in the next lower retention level containing positions with the same title and series. If so, the employee must be offered that position or an equivalent one.

A. Competitive Area

The competitive area may be determined by career groups, lines of business, product line(s), organizational unit(s), funding lines and/or geographical location, or a combination of these elements, and must include all employees within the defined competitive area. Descriptions of all competitive areas must be made readily available for review.

B. Retention Level

1. Separate retention levels are established for all positions, based on the following:

a. Service (competitive and excepted service).

b. Within the excepted service, for each different appointment authority (*e.g.*, Veterans' Readjustment Appointment, Schedule A authority).

c. Career group.

d. Title/specialization, series, pay band level (may include primary functional code, as appropriate).

e. Work schedule (full-time, part-time, intermittent, seasonal, or on-call basis). No distinction may be made on the basis of number of hours or weeks scheduled to be worked.

f. Trainee status (formally designated trainee or development program having all the characteristics covered in 5 CFR 351.702(e)(1) through (e)(4)). Trainees may be placed in a separate competitive area.

2. Factors that do not justify establishment of separate retention levels:

a. Rotating shift requirements.

b. Supervisory positions.

Supervisors compete in the career group and level of the work supervised, or the technical work accomplished, that forms the basis for the classification of the position.

C. Retention List

The retention list consists of all positions in a retention level and contains the name of each competing employee who is officially assigned to that level in retention standing order. Retention determinations are based on each employee's official position, not the employee's personal qualifications.

D. Retention Standing

Competing employees shall be listed on the retention list according to their retention standing. Preference eligibles with a service-connected disability of 30 percent or more and whose current performance score exceeds 50 will be listed at the top of the list for the retention level according to their tenure group in individual performance score order. If there is more than one preference eligible with a service-connected disability of 30 percent or more in a tenure group, they shall be ordered by individual performance score.

Retention standing for all other employees shall be based on the following factors:

1. Tenure

Tenure group I includes all career employees, including those serving on an initial probationary period. Tenure group II includes those employees on indefinite appointments, temporary appointments for more than 12 months pending establishment of a register, status quo appointments, term appointments, and any other nonstatus nontemporary appointments, which meet the definition of provisional appointments contained in 5 CFR 316.401 and 316.403. The tenure group provisions apply equally to employees in both the competitive and excepted services.

2. Performance

Within each tenure group, employees will be listed in individual performance score order. Employees with performance scores between 0 and 50 are ineligible to compete in RIF, regardless of tenure or preference.

3. Veterans' Preference

Within each performance score, employees will be sorted by veterans' preference. The A sort includes preference eligibles other than those with a service-connected disability of 30 percent or more. Sort B includes nonpreference eligibles.

Ties will be broken first by RIF service computation date and second by order of merit ranking.

E. Credit for Performance

Prior to the initial rating of record under the BP schema, employees are entitled to retention credit based on 5 CFR 351.504, "Credit for performance."

After the initial rating of record under the BP PFP management system, employees are entitled to retention credit based on the employee's performance scores. (*See* VII.E.5.d.) This includes employees converted during system stand-up and all employees converted at a later time. Employees receive retention credit for up to a maximum of three performance scores received during the 4-year period before the date of the issuance of RIF notices or cut-off date, as follows:

1. First Cycle

After completion of the first rating cycle, employees will be provided credit for performance based on their actual performance scores.

2. Second Cycle

After completion of the second rating cycle, employees will be provided performance credit based on the average of their first two performance scores.

3. Third Cycle

After completion of the third rating cycle, employees will be provided performance credit based on the average of their last three performance scores.

4. Accessions After First Cycle

Employees entering this system after the first rating cycle has been accomplished will be assigned a performance score based on the modal score range for the competitive area. This includes employees who have not been in this system 90 days and have not received a rating during any cycle.

5. Cutoff Dates

To provide adequate time to determine employee retention standing, organizations may provide for a cutoff date, a specified number of days prior to the issuance of RIF notices, after which no new ratings of record will be used. When a cutoff date is used, an employee will receive performance credit for the three most recent performance scores received during the 4-year period before the cutoff date. Regardless of the number of applicable ratings, the average will be used to determine retention standing, unless only a modal rating has been assigned. In this circumstance, only the modal rating will be used.

To be creditable for retention standing, a performance score must have been issued to the employee, with all appropriate reviews and signatures, and must be on record (*i.e.*, the performance score is available for use by the office responsible for establishing retention lists).

F. Assignment Rights

Employees can displace other employees with lower retention standing in the same or next lower retention level for positions with the same title and series within the competitive area of the RIF. When a tenure group I competitive service employee with a current performance score of 51 or higher is reached for

release from the retention list for that employee's retention level, an offer of assignment shall be made to another competitive service position which requires no reduction, or the least possible reduction, in earning potential.

Vacancies may be used (within the employee's assignment rights). Additionally, an employee reached for release from the retention list shall be offered assignment (as defined in XI.F.) to another position encumbered by an employee with lower retention standing. If the employee accepts, the employee shall be assigned to the position offered. If the employee has no assignment right or does not accept an offer of assignment, the employee shall be furloughed or separated.

Employees reached for release who qualify for positions occupied by employees with lower retention may displace a lower standing employee as long as undue interruption does not occur, except that they may not displace employees who occupy positions with higher earning potential. Undue interruption means the degree of interruption that would prevent the completion of required work by the employee 90 days after the employee has been placed in a different position.

If there is no placement within the employee's retention level, a displaced employee may be assigned to a position in the next lower retention level (level determined on same retention level factors including same title and series) from which the employee is being displaced in accordance with the assignment rights designated as follows.

Assignment rights are determined by retention level and may be defined by (1) the pay band level within a given career group and (2) the pay schema (*e.g.*, displacement within a pay band level may extend no lower than 75 percent of the affected employee's current base pay). When the assignment range (*e.g.*, 75 percent of base pay) exceeds the pay band level, assignment may be made in a lower pay band level within a retention level defined by the same factors. If assignment is offered into a lower pay band level, employees (other than 30 percent compensably disabled veterans) may displace only within the highest 25 percent of the salary rate range for the career group and lower pay band level. Thirty percent compensably disabled veterans may displace within a range of 100 percent of basic pay within their current career group and pay band level; additionally, when the range exceeds the current pay band level, such veterans may displace within the highest 50 percent of the salary rate range for the level lower and within the retention level defined by the same factors.

XII. Evaluation Plan

Chapter 47 of 5 U.S.C. requires that an evaluation be performed to measure the results of a demonstration project and its impact on improving public management (5 U.S.C. 4703(h)). A comprehensive evaluation plan for the entire science and technology (S&T) reinvention laboratory demonstration program was developed by a joint OPM/DoD Evaluation Committee in 1995, and the resultant final summative evaluation report covering 1997–2001 (the first 5 years of operation) was issued in August 2002. As noted in the Supplementary Information section of this notice, best practices were identified through a review of initiatives that have been subject to testing and evaluation in demonstrations and alternative personnel systems (APSs). An evaluation plan is established by ODUSD(CPP) to assess program results as the S&T reinvention laboratory demonstrations continue in operation under best practices. Under this plan, evaluation of S&T laboratory demonstration program results and the program's impact on improving DoD human resources management will continue to address six general issues, as follows:

A. The degree to which the program's purpose and goals are met;
B. Cost;
C. Project implementation and operation;
D. Impact on veterans, minorities, and women;
E. Impact on merit system principles and prohibited personnel practices; and
F. Degree of potential applicability of the program to other groups within the Department of Defense.

XIII. Project Duration

Section 342 of Pub. L. 103–337 removed any mandatory expiration date for the S&T reinvention laboratory demonstration project program. Major changes and modifications to the demonstration project plan contained in this amendment can be made through announcement in the **Federal Register**.

XIV. Required Waivers and Adaptations of Law and Regulation

Section 342 of Pub. L. 103–337, as amended, gave the Department of Defense the authority to experiment with several personnel management innovations in the Department of Defense science and technology (S&T) reinvention laboratories. In addition to the authorities granted by the law, the following are waivers and adaptations of law and regulation that will be necessary for implementation of best practices in the S&T reinvention laboratory demonstration project program. In due course, additional laws and regulations may be identified for waiver.

Those personnel policies, programs, and entitlements not included as part of the demonstration project best practices (*e.g.*, discipline, benefits, and entitlements) will be administered in accordance with existing statutes and regulations. The following waivers and adaptations of certain provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under demonstration project best practices.

Waivers and Adaptations of Title 5, United States Code (U.S.C.)

Chapter 5, Section 552a: Records Maintained on Individuals. This section is adapted only to the extent necessary to allow volunteers under the volunteer emeritus program to be treated as "Federal personnel," as that term is defined in this section.

Chapter 31, Section 3132: The Senior Executive Service; Definitions and Exclusions. This section is adapted to the extent necessary to allow creation of pay band level 3, CG 1, Science and Engineering Research, and pay band level 4, CG 2, Professional and Administrative Management.

Chapter 33, Section 3308: Competitive Service; Examinations; Educational Requirements Prohibited; Exceptions. This section is waived with respect to the scholastic achievement appointment authority.

Chapter 33, Section 3317(a): Competitive Service; Certification from Registers. This section is waived to eliminate the "rule of three."

Chapter 33, Section 3318(a): Competitive Service; Selection from Certificates. This section is waived to eliminate the "rule of three" and to allow preference eligibles to be passed over.

Chapter 33, Section 3319: Alternative Ranking and Selection Procedures. This section is adapted only to the extent necessary to give the Department of Defense authority to use alternative ranking and selection procedures without OPM regulation, and to allow rating, ranking, and referral by quality groups of all candidates, including disabled veterans with a compensable service-connected disability of 10 percent or more.

Chapter 33, Section 3321(a)(2): This section is waived to eliminate the requirement for probationary period before initial appointment as a supervisor or manager.

Chapter 33, Section 3324: Appointment to Positions Classified Above GS–15. This section is waived to allow creation of pay band level 3, CG 1, Science and Engineering Research, and pay band level 4, CG 2, Professional and Administrative Management.

Chapter 33, Section 3341: Details; Within Executive or Military Departments. This section is adapted to allow details to extend beyond 120 days.

Chapter 35, Section 3502(c): This section is waived to allow performance score as a retention factor before veterans' preference.

Chapter 43, Section 4301(3): Definitions. This section is waived to allow a different definition of the term, "unacceptable performance."

Chapter 43, Section 4302: Establishment of Performance Appraisal Systems. This section is adapted to allow pay banding and to accommodate performance-focused pay features of the PFP evaluation system.

Chapter 43, Section 4302(a)(3): Establishment of Performance Appraisal Systems. This section is adapted to replace the term "grade" with "pay band level" and accommodate best practices procedures for taking actions on unacceptable performance.

Chapter 43, Section 4302(b)(1): Establishment of Performance Appraisal Systems. This section is waived to accommodate demonstration project best practices establishment of benchmark performance standards.

Chapter 43, Section 4302(b)(2): Establishment of Performance Appraisal Systems. This section is adapted only to the extent necessary to replace the term "critical elements" with "performance objectives and performance factors."

Chapter 43, Sections 4303(a), (b), and (c): Actions Based on Unacceptable Performance. These sections are adapted to replace the term "grade" with "pay band level" and accommodate demonstration project best practices procedures for taking actions based on unacceptable performance. Appeal rights apply as provided for in BP requirements.

Chapter 43, Sections 4304(b)(1) and (3): Responsibilities of the Office of Personnel Management. These sections are waived to reflect changes in responsibilities authorized by section 342 of Pub. L. 103–337, as amended by section 1114 of Pub. L. 106–398.

Chapter 51, Sections 5101–5115: Classification. These sections regarding classifying and grading positions are waived to permit allocation of demonstration project best practices positions to pay band levels on the basis of descriptors.

Chapter 53, Sections 5301; 5302(1), (8), and (9); 5303; and 5304: Pay Comparability System. These sections are adapted to: (1) Allow employees in CG 1, level 3, Science and Engineering Research, and CG 2, level 4, Professional and Administrative Management, to be treated as ST employees; (2) allow supervisor B and C employees of CG 1, level 2; supervisor D employees of CG 2, level 2; and supervisor B and C of CG 2, level 3, to be treated as ST employees; (3) allow all other demonstration project best practices employees to be treated as GS employees; and (4) allow basic rates of pay under demonstration project best practices to be treated as scheduled rates of basic pay. These adaptations do not apply to ST employees, who will continue to be covered by these title 5 statutory provisions, as appropriate.

Chapter 53, Section 5305: Special Pay Authority. This section is waived to make special salary rates inapplicable to BP employees after their conversion into demonstration project best practices and to allow special salary rate supplements only when specifically incorporated through the use of the SSR supplement provisions of demonstration project best practices.

Chapter 53, Section 5305 Special Pay Authority Reference to Federal Employees Pay Comparability Act of 1990 (Public Law 101–509): Federal Law Enforcement Pay Reform. This title is adapted only to allow law enforcement officers covered by demonstration project best practices to be treated as law enforcement officers under the GS.

Chapter 53, Section 5306: Pay Fixed By Administrative Action. This section is adapted to the extent that pay may not be paid, through the exercise of authority under this section, at a rate in excess of the rate of basic pay payable for SES level 4 (ES–4).

Chapter 53, Sections 5331–5338: General Schedule Pay Rates. These sections are waived to allow career groups and pay band levels and accommodate performance-focused pay features of demonstration project best practices.

Chapter 53, Sections 5361–5366: Grade and Pay Retention. These sections are waived to: (1) Eliminate grade retention; (2) eliminate pay retention provisions for reductions in pay due solely to the removal or reduction of supervisory pay upon leaving a supervisory position; (3) provide that pay retention provisions apply to nonsupervisory employees for a maximum of two years after pay is reduced; (4) provide that pay retention provisions do not apply to conversions from GS special rates to demonstration project best practices pay, as long as total pay is not reduced; (5) provide that pay retention does not apply to reduction in basic pay due solely to the reallocation of demonstration project best practices pay rates in the implementation of a SSR supplement; (6) provide that, for employees assigned to level 3, CG 1, Science and Engineering Research, and employees assigned to level 4, CG 2, Professional and Administrative Management, pay retention is not applicable and pay retention provisions are modified so that no rate established under these provisions may exceed the rate of basic pay for GS–15, step 10 (*i.e.*, there is no entitlement to retained rate); and (7) otherwise allow demonstration project best practices employees to be treated as GS employees. These adaptations do not apply with respect to coverage for ST employees, except when an ST employee moves to a GS-equivalent position within demonstration project best practices under conditions that trigger entitlement to pay retention.

Chapter 55, Sections 5542(a)(1)–(2): Overtime Rates; Computation. These sections are adapted only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a demonstration project best practices employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions in 5 U.S.C. 5542.

Chapter 55, Section 5543: Compensatory Time Off. This section is adapted only to the extent necessary to provide that the GS–10 maximum special rate (if any) for the special rate category to which a demonstration project best practices employee belongs is deemed to be the "applicable special rate" in applying the compensatory time off provisions in 5 U.S.C. 5543.

Chapter 55, Section 5545(d): Hazardous Duty Differential. This section is adapted to allow demonstration project best practices employees to be treated as GS employees. However, this adaptation does not apply to ST employees or employees in CG 1, level 3, Science and Engineering Research, and CG 2, level 4, Professional and Business Management; supervisor B and C employees of CG 1, level 2; supervisor D employees of CG 2, level 2; and supervisor B and C of CG 2, level 3. They are excluded from coverage under 5 U.S.C. 5545(d).

Chapter 55, Section 5547(a)–(b): Limitation on Premium Pay. These sections are adapted only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the

special rate category to which a project employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions in 5 U.S.C. 5547.

Chapter 57, Sections 5753, 5754, and 5755: Recruitment and Relocation Bonuses; Retention Allowances; and Supervisory Differentials. These sections are adapted only to: (1) Allow employees in CG 1, level 3, Scientific and Engineering Research, and CG 2, level 4, Professional and Business Management; (supervisor B and C employees of CG 1, level 2; supervisor D employees of CG 2, level 2; and supervisor B and C of CG 2, level 3 to be treated as ST employees; (2) allow all other demonstration project best practices employees to be treated as GS employees; and (3) allow basic rates of pay under demonstration project best practices to be treated as scheduled rates of basic pay. However, these adaptations do not apply to ST employees, who will continue to be covered by these Title 5 statutory provisions, as appropriate.

Chapter 59, Section 5941: Allowances Based on Living Costs and Conditions of Environment; Employees Stationed Outside Continental United States or in Alaska. This section is adapted only to the extent necessary to provide that cost of living allowances (COLAs) paid to employees under demonstration project best practices are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 71: Labor-Management Relations. This chapter is waived only to the extent that its provisions (*e.g.*, 5 U.S.C. 7103(a)(12) and 7116) would prohibit management or the union from unilaterally terminating negotiations over whether employees represented by the union will be converted into this demonstration project.

Chapter 75, Section 7512(3) and (4): Adverse Actions. These sections are adapted only to the extent necessary (1) to replace "grade" with "pay band level," (2) to provide that reductions in pay band level not accompanied by a reduction in pay are not covered by chapter 75, subchapter II, (3) to ensure that adverse action provisions do not apply (a) to conversions from GS special rates to demonstration project pay or from other demonstration project pay to this demonstration project pay, as long as total pay is not reduced, and (b) to supervisory pay when an employee moves to a lower level supervisory position or to a nonsupervisory position, and (4) to otherwise accommodate demonstration project best practices features.

Chapter 75, Section 7513: Cause and Procedure. This section is adapted only to the extent necessary to accommodate demonstration project best practices features.

Waivers and Adaptations of Title 5, Code of Federal Regulations (CFR)

Section 213.3102(bb): Excepted Schedules. This section is adapted to eliminate the requirement for prior OPM approval.

Sections 300.601–300.605: Time-in-Grade Restrictions. These sections are waived to eliminate time-in-grade restrictions under this demonstration project.

Sections 315.801 and 315.802: Probationary Period. These sections are adapted only to the extent necessary to allow extended probationary periods up to three years, as specified in the project plan for this demonstration project.

Section 315.901–315.909: Probation on Initial Appointment to a Supervisory or Managerial Position. These sections are waived to eliminate supervisory probationary period.

Section 316.301: Term Employment; Purpose and Duration. This section is adapted to allow modified term employee appointments to cover a maximum period of 6 years.

Section 316.303: Tenure of Term Employees. This section is adapted to allow employees on demonstration project modified term employee appointments to compete for permanent status through local merit promotion plans.

Section 332.402: Regular Order of Certification for Appointment: This section is waived.

Section 332.404: Order of Selection from Certificates. This section is adapted to eliminate the "rule of three" under this demonstration project.

Section 332.406: Objections to Eligibles. This section is adapted only to the extent necessary to allow the Department of Defense to act on objections to eligibles.

Part 333: Recruitment and Selection for Temporary and Term Appointments Outside the Register. This section is adapted to allow noncompetitive temporary and term appointments.

Section 335.103 (c)(i): Agency Promotion Programs. This section is adapted only to the extent necessary to allow temporary job changes of 2 years or less to a position in a higher pay band level and to expand discretionary exemptions to agency promotion programs.

Section 339.306: Processing Medical Eligibility Determinations on Certificates of Eligibles. Adapted to allow the Department of Defense to make the necessary medical determinations.

Part 351: Reduction in Force. This part is adapted to the extent necessary to allow provisions of the RIF plan as described in this **Federal Register** notice for this demonstration project. Specific adaptations and waivers include:

Section 351.203: Definitions. This section is adapted to conform to **Federal Register** notice and best practices.

Section 351.205: Authority of OPM. This section is waived.

Section 351.402(b): Competitive Area. This section is waived only to the extent necessary to allow competitive area to be defined by career group, line of business, product line, organization unit, funding line, and/or geographic location.

Section 351.403: Competitive Level. This section is waived.

Section 351.404: Retention Register. This section is eliminated to allow establishment of retention levels and retention register as provided in this **Federal Register** notice for this demonstration project.

Sections 351.501–351.504: These sections are waived.

Section 351.701: Assignment Involving Displacement. This section is waived.

Part 430, Subpart B: Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees. This subpart is waived to accommodate the establishment of this demonstration project's pay for performance evaluation system.

Part 432: Performance Based Reduction in Grade and Removal. This part is adapted to (1) allow employees to be removed, reduced in pay band level with a reduction in pay, reduced in pay without a reduction in pay band level, and reduced in pay band level without a reduction in pay based on unacceptable performance, (2) eliminate performance standards and critical elements, (3) incorporate what constitutes "acceptable performance" and "unacceptable performance," as defined in the demonstration project plan, (4) replace the term "grade" with "pay band level," and (5) provide that, for employees who are reduced in pay band level without a reduction in pay, Sections 432.105 and 432.106(a) do not apply.

Section 432.102: Coverage. This section is adapted to the extent necessary to replace "grade" with "pay band level."

Sections 432.104 and 432.105: Addressing Unacceptable Performance; Proposing and Taking Action Based on Unacceptable Performance. These sections are waived to allow the establishment of alternative procedures

under the pay for performance evaluation system.

Part 511, Sections 511.101–511.703: Classification Under the General Schedule. These sections are waived to: (1) Permit allocation of best practices positions to pay band levels on the basis of pay band level descriptors; (2) permit reconsideration of pay system, occupational series, title, or pay band level according to the procedures established by the BP.

Part 530, Subpart C: Special salary rates. This subpart is waived to the extent necessary to provide that special salary rates are inapplicable to BP employees after their conversion into BP.

Part 531, Subpart C: Special Pay Adjustments for Law Enforcement Officers. This subpart is adapted only to: (1) Allow law enforcement officers in CG 2, level 4, Professional and Administrative Management, to be treated as ST employees; (2) allow all other law enforcement officers to be treated as GS employees; and (3) allow basic rates of pay under BP to be treated as scheduled rates of basic pay. However, these adaptations do not apply to ST employees, who will continue to be covered by these Title 5 regulatory provisions, as appropriate.

Part 531, Subparts B, D and E: Determining Rates of Basic Pay; Within-Grade Increases; and Quality Step Increases. These subparts are waived to allow pay banding and accommodate performance-focused pay features of this demonstration project's pay for performance evaluation system.

Part 531, Subpart F: Locality-Based Comparability Payments. This subpart is adapted only to the extent necessary to: (1) Allow employees in CG 1, level 3, Scientific and Engineering Research, and CG 2, level 4, Professional and Administrative Management, to be treated as ST employees; (2) allow supervisor B and C employees of CG 1, level 2; supervisor D employees of CG 2, level 2; and supervisor B and C employees of CG 2, level 3 to be treated as ST employees; (3) allow all other BP employees to be treated as GS employees; and (4) allow basic rates of pay under best practices to be treated as scheduled rates of basic pay. However, these adaptations do not apply to ST employees, who will continue to be covered by these Title 5 regulatory provisions, as appropriate.

Part 536: Grade and Pay Retention. This part is adapted to: (1) Eliminate grade retention; (2) eliminate pay retention provisions for reductions in pay due solely to the removal of or reduction in a supervisory adjustment upon leaving a supervisory position for another supervisory position or a nonsupervisory position; (3) provide that pay retention provisions do not apply to conversions from GS special rates to BP pay, as long as total pay is not reduced; (4) provide that pay retention provisions do not apply to reductions in basic pay due solely to the reallocation of BP pay rates in the implementation of a SSR supplement; (5) provide that pay retention provisions apply to nonsupervisory employees for a maximum of two years after pay is reduced; and (6) ensure that for employees of CG 1, level 3, Scientific and Engineering Research, and CG 2, level 4, Professional and Administrative Management, pay retention is not applicable and pay retention provisions are modified so that no rate established under these provisions may exceed the rate of basic pay for GS–15, step 10 (*i.e.*, there is no entitlement to retained rate). These adaptations do not apply with respect to coverage for ST employees, except when an ST employee moves to a GS-equivalent position within BP under conditions that trigger entitlement to pay retention.

Part 550, Sections 550.105–550.106: Biweekly and Annual Maximum Earnings Limitations. These sections are adapted only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a BP employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions in 5 U.S.C. 5547.

Part 550, Section 550.113(a): Computation of Overtime Pay. This section is adapted only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a BP employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions in 5 U.S.C. 5542.

Section 550.703: Definitions. This section is adapted only to the extent necessary to modify the definition of "reasonable offer" by replacing "two grade or pay levels" with "one pay band level" and "grade or pay level" with "pay band level."

Section 550.902: Hazardous Duty Differential. This section is adapted only to the extent necessary to allow BP employees to be treated as GS employees. However, this adaptation does not apply to ST employees or employees in CG 1, level 3, Scientific and Engineering Research; CG 2, level 4, Professional and Administrative Management; supervisor B and C employees of CG 1, level 2; supervisor D employees of CG 2, level 2; and supervisor B and C employees of CG 2, level 3. They are excluded from coverage under section 550.902.

Part 575, Subparts A, B, C, and D: Recruitment Bonuses; Relocation Bonuses; Retention Allowances; and Supervisory Differentials. These subparts are adapted only to the extent necessary to: (1) Allow employees in CG 1, level 3, Scientific and Engineering Research; CG 2, level 4, Professional and Administrative Management; supervisor B and C employees of CG 1, level 2; supervisor D employees of CG 2, level 2; and supervisor B and C employees of CG 2, level 3, to be treated as ST employees; (2) allow all other BP employees to be treated as GS employees; and (3) allow basic rates of pay under BP to be treated as scheduled rates of basic pay. However, these adaptations do not apply to ST employees, who will continue to be covered by these Title 5 regulatory provisions, as appropriate.

Part 591, Subpart B: Cost-of-Living Allowances and Post Differential—Nonforeign Areas. This subpart is adapted only to the extent necessary to allow BP employees to be treated as employees under the GS, and employees in CG 1, level 3, Scientific and Engineering Research; CG2, level 4, Professional and Administrative Management; supervisor B and C employees of CG 1, level 2; supervisor D employees of CG 2, level 2; and supervisor B and C employees of CG 2, level 3, to be treated as ST employees.

Section 731.202: Criteria. Adapted to allow DoD to make all suitability determinations.

Part 752, Subpart D: Regulatory Requirements for Removal, Suspension for More than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less. This subpart is waived.

Appendix A: Occupational Series in Career Group 2, Professional and Administrative Management

Series	Occupational series title
0006 ..	Correctional Institution Administration.
0018 ..	Safety and Occupational Health Management.
0020 ..	Community Planning.
0023 ..	Outdoor Recreation Planning.
0025 ..	Park Ranger.
0028 ..	Environmental Protection Specialist.
0030 ..	Sports Specialist.
0050 ..	Funeral Directing.
0060 ..	Chaplain.
0062 ..	Clothing Design.
0072 ..	Fingerprint Identification.
0080 ..	Security Administration.
0082 ..	US Marshall.
0101 ..	Social Science.
0110 ..	Economist.
0130 ..	Foreign Affairs.

Series	Occupational series title
0131 ..	International Relations.
0132 ..	Intelligence.
0135 ..	Foreign Agricultural Affairs.
0142 ..	Manpower Development.
0150 ..	Geography.
0160 ..	Civil Rights Analysis.
0170 ..	History.
0180 ..	Psychology.
0184 ..	Sociology.
0185 ..	Social Work.
0188 ..	Recreation Specialist.
0190 ..	General Anthropology.
0193 ..	Archeology.
0201 ..	Human Resources Management.
0222 ..	Occupational Analysis.
0223 ..	Salary and Wage Administration.
0243 ..	Apprenticeship and Training.
0246 ..	Contractor Industrial Relations.
0249 ..	Wage and Hour Compliance.
0260 ..	Equal Employment Opportunity.
0301 ..	Miscellaneous Administration and Program.
0334 ..	Computer Specialist.
0340 ..	Program Management.
0341 ..	Administrative Officer.
0342 ..	Support Services Supervisor.
0343 ..	Management and Program Analysis.
0346 ..	Logistics Management.
0360 ..	Equal Opportunity Compliance.
0391 ..	Telecommunications.
0401 ..	General Biological Science.
0403 ..	Microbiology.
0405 ..	Pharmacology.
0408 ..	Ecology.
0410 ..	Zoology.
0413 ..	Physiology.
0414 ..	Entomology.
0415 ..	Toxicology.
0430 ..	Botany.
0434 ..	Plant Pathology.
0435 ..	Plant Physiology.
0437 ..	Horticulture.
0440 ..	Genetics.
0454 ..	Rangeland Management.
0457 ..	Soil Conservation.
0460 ..	Forestry.
0470 ..	Soil Science.
0471 ..	Agronomy.
0480 ..	General Fish and Wildlife Administration.
0482 ..	Fishery Biology.
0486 ..	Wildlife Biology.
0487 ..	Animal Science.
0493 ..	Home Economics.
0501 ..	Financial Administration and Program.
0505 ..	Financial Management.
0510 ..	Accounting.
0511 ..	Auditing.
0526 ..	Tax Specialist.
0560 ..	Budget Analysis.
0592 ..	Tax Examining Series.
0601 ..	General Health Science.
0603 ..	Physician's Assistant.
0610 ..	Nurse.
0630 ..	Dietitian and Nutritionist.
0631 ..	Occupational Therapist.
0633 ..	Physical Therapist.
0638 ..	Recreation/Creative Arts Therapist.
0639 ..	Educational Therapist.
0644 ..	Medical Technologist.
0660 ..	Pharmacist.
0662 ..	Optometrist.
0665 ..	Speech Pathology and Audiology.
0668 ..	Podiatrist.
0669 ..	Medical Records Administration.
0670 ..	Health System Administration.
0671 ..	Health System Specialist.
0673 ..	Hospital Housekeeping Management.
0680 ..	Dentist.
0685 ..	Public Health Program Specialist.
0688 ..	Sanitarian.
0690 ..	Industrial Hygiene.
0701 ..	Veterinary Medical Science.
0801 ..	General Engineering.
0803 ..	Safety Engineering.
0804 ..	Fire Protection Engineering.
0806 ..	Materials Engineering.
0807 ..	Landscape Architecture.
0808 ..	Architecture.
0810 ..	Civil Engineering.
0819 ..	Environmental Engineering.
0828 ..	Construction Analyst.
0830 ..	Mechanical Engineering.
0840 ..	Nuclear Engineering.
0850 ..	Electrical Engineering.
0854 ..	Computer Engineering.
0855 ..	Electronics Engineering.
0858 ..	Biomedical Engineering.
0861 ..	Aerospace Engineering.
0871 ..	Naval Architecture.
0873 ..	Ship Surveying.
0881 ..	Petroleum Engineering.
0890 ..	Agricultural Engineering.
0892 ..	Ceramic Engineering.
0893 ..	Chemical Engineering.
0894 ..	Welding Engineering.
0896 ..	Industrial Engineering.
0901 ..	General Legal and Kindred Administration.
0904 ..	Law Clerk.
0905 ..	General Attorney.
0930 ..	Hearings and Appeals.
0950 ..	Paralegal Specialist.
0967 ..	Passport and Visa Examining.
0991 ..	Workers' Compensation Claims Examining.
1001 ..	General Arts and Information.
1008 ..	Interior Design.
1010 ..	Exhibits Specialist.
1015 ..	Museum Curator.
1016 ..	Museum Specialist and Technician.
1020 ..	Illustrating.
1035 ..	Public Affairs.
1040 ..	Language Specialist.
1051 ..	Music Specialist.
1054 ..	Theater Specialist.
1056 ..	Art Specialist.
1060 ..	Photography.
1071 ..	Audiovisual Production.
1082 ..	Writing and Editing.
1083 ..	Technical Writing and Editing.
1084 ..	Visual Information.
1101 ..	General Business and Industry.
1102 ..	Contracting.
1103 ..	Industrial Property Management.
1104 ..	Property Disposal.
1130 ..	Public Utilities Specialist.
1140 ..	Trade Specialist.
1144 ..	Commissary Store Management.
1150 ..	Industrial Specialist.
1152 ..	Production Control.
1160 ..	Financial Analysis.
1163 ..	Insurance Examining.
1170 ..	Realty.
1171 ..	Appraising.
1173 ..	Housing Management.
1176 ..	Building Management.
1221 ..	Patent Adviser.
1222 ..	Patent Attorney.
1301 ..	General Physical Science.
1306 ..	Health Physics.
1310 ..	Physics.
1313 ..	Geophysics.
1315 ..	Hydrology.
1320 ..	Chemistry.
1321 ..	Metallurgy.
1330 ..	Astronomy and Space Science.
1340 ..	Meteorology.
1350 ..	Geology.
1360 ..	Oceanography.
1361 ..	Navigational Information.
1370 ..	Cartography.
1372 ..	Geodesy.
1373 ..	Land Surveying.
1382 ..	Food Technology.
1384 ..	Textile Technology.
1386 ..	Photographic Technology.
1397 ..	Document Analysis.
1410 ..	Librarian.
1412 ..	Technical Information Services.
1420 ..	Archivist.
1510 ..	Actuary.
1515 ..	Operations Research.
1520 ..	Mathematics.
1529 ..	Mathematical Statistician.
1530 ..	Statistician.
1550 ..	Computer Science.
1601 ..	General Facilities and Equipment.
1630 ..	Cemetery Administration.
1640 ..	Facility Management.
1654 ..	Printing Management.
1658 ..	Laundry and Dry Cleaning Plant Management.
1667 ..	Steward.
1670 ..	Equipment Specialist.
1701 ..	General Education and Training.
1702 ..	Education and Training Technician.
1710 ..	Education and Vocational Training.
1712 ..	Training Instruction.
1720 ..	Education Program.
1725 ..	Public Health Educator.
1740 ..	Education Services.
1750 ..	Instructional Systems.
1801 ..	General Inspection, Investigation, and Compliance.
1810 ..	General Investigating.
1811 ..	Criminal Investigating.
1812 ..	Game Law Enforcement.
1815 ..	Air Safety Investigating.
1825 ..	Aviation Safety.
1831 ..	Securities Compliance Examining.
1890 ..	Customs Inspection.
1910 ..	Quality Assurance.
1980 ..	Agricultural Commodity Grading.
2001 ..	General Supply.
2003 ..	Supply Program Management.
2010 ..	Inventory Management.
2030 ..	Distribution Facilities and Storage Management.
2032 ..	Packaging.
2050 ..	Supply Cataloging.
2101 ..	Transportation Specialist.
2110 ..	Transportation Industry Analysis.
2123 ..	Motor Carrier Safety.
2130 ..	Traffic Management.
2150 ..	Transportation Operations.
2152 ..	Air Traffic Control.
2161 ..	Marine Cargo.
2181 ..	Aircraft Operation.
2183 ..	Air Navigation.

Series	Occupational series title
2185 ..	Aircrew Technician.
2210 ..	Information Technology Management.

Appendix B: Occupational Series in Career Group 3, Engineering, Scientific, and Medical Support

Series	Occupational series title
0102 ..	Social Science Aid and Technician.
0119 ..	Economics Assistant.
0181 ..	Psychology Aid and Technician.
0186 ..	Social Services Aid and Assistant.
0187 ..	Social Services.
0404 ..	Biological Science Technician.
0455 ..	Range Technician.
0458 ..	Soil Conservation Technician.
0462 ..	Forestry Technician.
0620 ..	Practical Nurse.
0621 ..	Nursing Assistant.
0625 ..	Autopsy Assistant.
0636 ..	Rehabilitation Therapy Assistant.
0640 ..	Health Aid and Technician.
0642 ..	Nuclear Medicine Technician.
0644 ..	Medical Technologist.
0645 ..	Medical Technician.
0646 ..	Pathology Technician.
0647 ..	Diagnostic Radiologic Technician.
0648 ..	Therapeutic Radiologic Technician.
0649 ..	Medical Instrument Technician.
0651 ..	Respiratory Therapist.
0661 ..	Pharmacy Technician.
0667 ..	Orthotist and Prosthetist.
0681 ..	Dental Assistant.
0682 ..	Dental Hygiene.
0683 ..	Dental Laboratory Aid and Technician.
0698 ..	Environmental Health Technician.
0704 ..	Animal Health Technician.
0802 ..	Engineering Technician.
0809 ..	Construction Control.
0817 ..	Surveying Technician.
0818 ..	Engineering Drafting.
0856 ..	Electronics Technician.
0895 ..	Industrial Engineering Technician.
1311 ..	Physical Science Technician.
1316 ..	Hydrologic Technician.
1341 ..	Meteorological Technician.
1371 ..	Cartographic Technician.
1374 ..	Geodetic Technician.
1521 ..	Mathematics Technician.
1531 ..	Statistical Assistant.

Appendix C: Occupational Series in Career Group 4, Business and Administrative Support

Series	Occupational series title
0019 ..	Safety Technician.
0021 ..	Community Planning Technician.
0025 ..	Park Ranger.
0029 ..	Environmental Protection Assistant.
0081 ..	Fire Protection and Prevention.
0083 ..	Police.
0085 ..	Security Guard.
0086 ..	Security Clerical and Assistance.
0090 ..	Guide.
0120 ..	Food Services.
0134 ..	Intelligence Aid and Clerk.
0189 ..	Recreation Aid and Assistant.
0203 ..	Human Resources Assistance.
0302 ..	Messenger.
0303 ..	Miscellaneous Clerk and Assistant.
0304 ..	Information Receptionist.
0305 ..	Mail and File.
0309 ..	Correspondence Clerk.
0312 ..	Clerk-Stenographer and Reporter.
0313 ..	Work Unit Supervising.
0318 ..	Secretary.
0319 ..	Closed Microphone Reporting.
0322 ..	Clerk-Typist.
0326 ..	Office Automation Clerical and Assistance.
0332 ..	Computer Operation.
0335 ..	Computer Clerk and Assistant.
0342 ..	Support Services Supervisor.
0344 ..	Management and Program Clerical and Assistance.
0350 ..	Equipment Operator.
0351 ..	Printing Clerical.
0355 ..	Calculating Machine Operation.
0356 ..	Data Transcriber.
0357 ..	Coding.
0361 ..	Equal Opportunity Assistance.
0382 ..	Telephone Operating.
0390 ..	Telecommunications Processing.
0392 ..	General Telecommunications.
0394 ..	Communications Clerical.
0503 ..	Financial Clerical and Technician.
0525 ..	Accounting Technician.
0530 ..	Cash Processing.
0540 ..	Voucher Examining.
0544 ..	Civilian Pay.
0545 ..	Military Pay.
0561 ..	Budget Clerical and Assistance.
0622 ..	Medical Supply Aide and Technician.
0664 ..	Restoration Technician.
0675 ..	Medical Records Technician.
0679 ..	Medical Support Assistance.
0962 ..	Contact Representative.
0963 ..	Legal Instruments Examining.
0986 ..	Legal Assistance.
0994 ..	Unemployment Compensation Claims Examining.
0995 ..	Dependent and Estate Claims Examining.
0998 ..	Claims Assistance and Examining.
1001 ..	General Arts and Information.
1021 ..	Office Drafting.
1046 ..	Language Clerical.
1087 ..	Editorial Assistance.
1101 ..	General Business and Industry.
1105 ..	Purchasing.
1106 ..	Procurement Clerical and Technician.
1107 ..	Property Disposal Clerical and Technician.
1182 ..	Retail Manager.
1202 ..	Patent Technician.
1411 ..	Library Technician.
1421 ..	Archives Technician.
1702 ..	Education and Training Technician.
1802 ..	Compliance Inspection and Support.
1860 ..	Public Health Inspection.
1863 ..	Food Inspection.
1890 ..	Customs Inspection.
1897 ..	Customs Aid.
2005 ..	Supply Clerical and Technician.
2091 ..	Sales Store Clerical.
2102 ..	Transportation Clerk and Assistant.
2111 ..	Transportation Rate and Tariff Examining.
2131 ..	Freight Rate.
2135 ..	Transportation Loss and Damage Claims Examining.
2144 ..	Cargo Scheduling.
2151 ..	Dispatching.
2154 ..	Air Traffic Assistance.

Appendix D: Supervisory Pay Tables

(Based on 2003 Basic General Schedule Salary Table)

The supervisory rate ranges include basic pay and supervisory adjustment in the following percentages:

Supervisor A—10%
Supervisor B—20%
Supervisor C—30%
Supervisor D—45%

Locality pay adjustments will apply to the nonsupervisory and supervisory pay ranges, as appropriate

Career Group 1	Level 1 rate range $23,442–$66,961	Level 2 rate range $61,251–$110,682	Level 3 rate range $102,168–$133,800	Level 4 does not exist in this Career Group
Supervisor A	N/A	N/A	N/A	
Supervisor B	N/A	$61,241–$129,498	N/A	
Supervisor C	N/A	$61,251–$150,865 **	N/A	
Supervisor D	N/A	N/A	N/A	

Career Group 2	Level 1 rate range $23,442–$55,873	Level 2 rate range $51,508–$79,629	Level 3 rate range $72,381–$110,682	Level 4 rate range $102,168–$133,800
Supervisor A	$23,442–$61,460	$51,508–$87,592	N/A	N/A
Supervisor B	$23,442–$66,961	$51,508–$94,098	$72,381–$129,498	N/A

Career Group 2	Level 1 rate range $23,442–$55,873	Level 2 rate range $51,508–$79,629	Level 3 rate range $72,381–$110,682	Level 4 rate range $102,168–$133,800
Supervisor C	$23,442–$79,629	$51,508–$110,682	$72,381–$150,865 **	N/A
Supervisor D	$23,442–$94,098	$51,508–$129,498	N/A	N/A

Career Group 3	Level 1 rate range $15,214–$27,234	Level 2 rate range $23,442–$37,749	Level 3 rate range $32,158–$55,873	Level 4 does not exist in this Career Group
Supervisor A	$15,214–$28,868	$23,442–$40,014	$32,158–$61,460	
Supervisor B	$15,214–$30,471	$23,442–$41,806	$32,158–$66,961	
Supervisor C	N/A	$23,442–$46,175	$32,158–$79,629	
Supervisor D	N/A	$23,442–$50,851	N/A	

Career Group 4	Level 1 rate range $15,214–$27,234	Level 2 rate range $23,442–$37,749	Level 3 rate range $32,158–$50,851	Level 4 does not exist in this Career Group
Supervisor A	$15,214–$28,868	$23,442–$40,014	$32,158–$55,936	
Supervisor B	$15,214–$30,471	$23,442–$41,806	$32,158–$61,021	
Supervisor C	N/A	$23,442–$46,175	$32,158–$66,961	
Supervisor D	N/A	$23,442–$50,851	N/A	

Career Group 5 Does Not Have Associated Supervisory Tables.

** Not to exceed SES level 4 (ES–4 = $133,800)

Note: The basis for "N/A" is that establishment of supervisory positions at these levels is not anticipated. However, if a supervisory position is established at such a level, the maximum rate of pay is 20 percent above the maximum rate for the base level supervised (see VI.A.1). However, in no case will pay exceed the rate of basic pay for SES level 4 (ES–4).

[FR Doc. 03–7816 Filed 3–27–03; 4:11 pm]

BILLING CODE 5001–08–P

Federal Register

Wednesday,
April 2, 2003

Part III

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 740, et al.

Revisions to the Export Administration Regulations Related to the Missile Technology Control Regime (MTCR); Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR parts 740, 742, and 774

[Docket No. 030304054–3054–01]

RIN 0694–AC22

Revisions to the Export Administration Regulations Related to the Missile Technology Control Regime (MTCR)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Commerce Control List (CCL) to reflect the reformatted Missile Technology Control Regime (MTCR) Annex of October 14, 1999. This final rule also amends Country Group A:2, MTCR, to add the Czech Republic, Korea (Republic of), Poland, Turkey, and Ukraine to reflect their membership in the MTCR. This revision also corrects the control text in 9B106 that erroneously captures standalone altitude chambers, and corrects the MT/NP reason for control of spin forming and flow forming machines described in 2B009.

DATES: This rule is effective April 2, 2003.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: The Missile Technology Control Regime (MTCR) is an export control arrangement among 33 nations including the world's most advanced suppliers of ballistic missiles and missile-related materials and equipment. The regime is designed to stem the spread of rockets and unmanned air vehicles systems capable of delivering weapons of mass destruction by establishing a common export control policy (the Guidelines) and a shared list of controlled items (the Annex) that each country implements with its own national legislation.

While the MTCR was originally meant to prevent the spread of missiles capable of carrying a nuclear warhead, it was expanded in January 1993 to also cover delivery systems for chemical and biological weapons. The only absolute prohibition in the regime's Guidelines is on the transfer of complete "production facilities" for specially designed items in Category I of the MTCR Annex.

Unlike the Nuclear Non-Proliferation Treaty, which seeks to prevent the spread of nuclear weapons, the MTCR is neither an international treaty nor a legally binding agreement. MTCR members voluntarily pledge to adopt the regime's export Guidelines and to restrict the export of items contained in the regime's Annex. Except for production facilities specially designed for Category I items, trade of MTCR controlled items is not absolutely prohibited by the Guidelines, but is constrained by national export control laws and policies.

Membership

The current membership of the MTCR includes: Argentina, Australia, Austria, Belgium, Brazil, **Canada**, the Czech Republic, Denmark, Finland, **France**, **Germany**, Greece, Hungary, Iceland, Ireland, *Italy, Japan,* Korea (Republic of), Luxembourg, The Netherlands, New Zealand, Norway, Poland, Portugal, Russia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, **United Kingdom**, and **United States** (original members in bold).

While all nations have been encouraged to abide by the MTCR's terms, not all states have been invited to become formal regime members. Membership decisions, like all other regime decisions, are made only by consensus. Regime partners attend annual meetings, share information about other nations' export control programs and proliferation concerns, conduct export control workshops and are involved in revising and updating the regime's Guidelines and technical Annex. Meetings are not public due to the sensitive nature of the discussions.

This final rule amends Country Group A:2, Missile Technology Control Regime (MTCR), to add the Czech Republic, Korea (Republic of), Poland, Turkey, and Ukraine. Country Groups are used to identify groups of countries for ease of reference when stating license requirements, license review policy or eligibility for License Exceptions. These countries were admitted to the MTCR. Consequently, the Export Administration Regulations (EAR) are amended to reflect the new status of these countries.

This rule also amends the Commerce Control List (CCL) to reflect the reformatted MTCR Annex of October 14, 1999 (Noordwijk/TEM). The reformatting of the MTCR Annex was an exercise in redrafting the Annex to conform to the former CoCom List structure that contains five individual groupings for the "Equipment, Assemblies and Components", "Test and Production Equipment", "Materials", "Software" and "Technology". Most of our MTCR partners are intimately familiar with such a list structure and it facilitates ease in translating the MTCR Annex changes to national legislation. This is the same structure used in the CCL and European Union List. As a result of reformatting and the need to succinctly separate software and technology controls, the revisions in this rule provide clarity and ensure consistent interpretations. The MTCR adopted a software definition, general software note and general technology note, consistent with those outlined in the Wassenaar Arrangement. The reformatted MTCR Annex includes adopted changes to clarify the equipment intended to be controlled by the MTCR for testing, calibrating and aligning inertial equipment (*e.g.*, balancing machines, motion simulators/rate tables, positioning tables, etc.), production equipment for manufacturing propellants, and control of certain specialty steels for manufacturing missiles. These changes were published in the **Federal Register**/Vol. 64, No. 25 on February 8, 1999. However, our MTCR partners chose to wait for the adoption of the reformatted Annex before publishing these changes. Consequently, in this revision to the EAR, several Export Control Classification Numbers (ECCNs) had to be renumbered and/or subdivided into multiple entries. For example, the balancing machines, motion simulators/rate tables, positioning tables, and centrifuges controlled in 7B104.a through .e have been moved to new individual entries under 2B119 through 2B122. Continuous mixers and fluid energy mills controlled in 1B117 have been moved to new ECCNs 1B118 and 1B119, respectively. Other revisions to the EAR include relaxation in the controls of certain metal fuels described in 1C111 by reducing their particle size. The metal fuels include magnesium, beryllium, boron, zirconium and spherical aluminum powders. For spherical aluminum powder an additional parameter on particle size distribution has been introduced to ensure that a sufficient amount of such powder with small enough particle sizes remains controlled. This revision also corrects the control text in 9B106 that erroneously captures standalone altitude chambers, and corrects the MT/NP reason for control of spin forming and flow forming machines described in 2B009.

This rule replaces references to the "Office of Defense Trade Controls" with the "Directorate of Defense Trade Controls," because the State Department realigned responsibilities for administering defense trade controls, on January 16, 2003.

The summary of changes listed here shows those ECCNs that are impacted by the reformatting and is not intended to be a comprehensive list of changes.

Newly Added Export Control Classification Numbers (ECCNs)

1A101—Devices for reduced observables (previously 1C101).
1B102—Metal powder "production equipment" (formerly 1B117.d).
1B118—Continuous mixers (formerly 1B117.b).
1B119—Fluid energy mills (formerly 1B117.c).
1C102—Resaturated pyrolized carbon-carbon materials (previously 1A102)
2B119—Balancing machines and related equipment (previously 7B104.a and b)
2B120—Motion simulators or rate tables (equipment capable of simulating motion) (previously 7B104.c)
2B121—Positioning tables (equipment capable of precise rotary position in any axis), other than those controlled in 2B120 (previously 7B104.d)
2B122—Centrifuges able to imparting accelerations above 100 g and having slip rings capable of transmitting electrical power and signal information (previously 7B104.e)
6A103—Radomes usable in protecting rockets against nuclear effects. (DTC jurisdiction)
9C110—Resin impregnated fiber prepeg materials (previously 9A110)
9D104—Moved former 9D102 to this new entry and removed "use" software for those composite structures and prepregs controlled in 9A110.
9D105—Software which coordinates the function of more than one subsystem. (new entry under DTC jurisdiction).

Deleted ECCN's

1D102—Removed "development" and "production" software in 1D102 for items in 1A, 1B and 1C. Other specially designed software for the "use" of MT items in 1A, 1B and 1C are now covered in 1D101.
3D102—No MT controls on development and production software for radiation hardened IC's (3A001.a.1.a) or accelerators (3A101).
4D102—No MT controls on software for the development, production, and use of equipment in 4A101.
5E111—Moved technology for the development, production and use of software controlled by 5D101, to 5E101.
6D104—Removes "use" software controls for optical detectors (6A002), cameras (6A003), gravity meters & gravity gradiometers (6A007), radiation hardened detectors (6A102) and radar cross section measurement systems (6B108).
6E102—No MT controls on "use" technology for 6D001 & 6D002.
7B104—Moved specific production equipment for inertial systems to 2B119 through 2B122.
9D102—"Use" software combined into 9D104.

Revisions

1A102—Moves materials to 1C102. This entry now controls carbon-carbon components, only.
1B101—Expands heading to clarify that this entry also controls equipment for the "production" of fibers, prepregs or preforms.
1B115—Combines 1B115 with 1B117.e and .f. This entry formerly controlled liquid propellant production equipment; but now controls both liquid and solid propellant production equipment, n.e.s.
1B117—Splits entry. This entry formerly controlled solid propellant production equipment; but now controls only batch mixers (previously 1B117.a) [.b moved to 1B118; .c moved to 1B119; .d moved to 1B102; .e moved to 1B115.b; and .f moved to heading of 1B115]
1C010—Adds 9C110 to the Related Controls paragraph.
1C101—Splits the "devices" from this ECCN and moved them to 1A101.
1C107—Harmonizes list of items controlled with MTCR.
1C111—Relaxes controls on certain metal fuels, by reducing particle size for certain metal fuels.
1C118—Revises the heading, and harmonized the numbering with the EU list.
1D002—Removes MT controls, the MTCR does not control software for the development of organic matrix, metal matrix, or carbon matrix laminates or composites.
1D101—Adds MT controls for "use" software for propellant production equipment described in 1B102, 1B115, 1B117 to 1B119.
1D103—Revises the Heading, and adds a note in the Related Controls paragraph of the List of Items Controlled section that alerts exporters that similar items are controlled on the USML in the ITAR and clarifies what is controlled in this entry.
1E001—Conforming changes to MT controls.
1E101—Conforming changes to heading, added 1A101, 1B102, 1B115, 1B118, and 1B119.
1E102—Adds a note from the MTCR (17E1) to the Related Controls paragraph.
1E103—Clarifies the technology control to harmonize with the MTCR Annex (6.E.2).
1E104—Harmonizes the heading with the EU and MTCR Annex (7.E.1).
2B009—Corrects the MT reason for control.
2B104—Adds a technical note to the related definitions section.
2B109—Adds components to units paragraph and moves ECCN Notes to Technical notes.
2B116—Moves the definition of "bare table" from the Related Definitions paragraph to a technical note below paragraph .d in the list of items.
2D101—Adds software controls for the use of 2B119 to 2B122.
2E001, 2E002—Adds MT controls to technology for items controlled by 2B119 to 2B122.
2E101—Revised to make conforming change, because of revisions to 7B104 and 2B104, and adds 2D002 to heading and NP controls paragraph.
3A001—Clarifies MT control.
3A101—Harmonizes 3A101.b with MTCR Annex (15.b.5), to clarify that this commodity is controlled when usable in "missiles" or subsystems for "missiles."
3D101—Revises the heading by adding the phrase "or modified" to conform with the MTCR Annex.
3E101—Revises the heading to clarify controls for 3A001 and adds 3D101.
4D001—Removed MT controls on software for the development, production and use of equipment in 4A001 to 4A003, as this software is not on the MTCR annex.
4D002—Removed MT controls on software for the development, production and use of technology controlled by 4E that was controlled for MT reasons, as this software is not on the MTCR annex.
4D994—Adds 4A101 to the heading.
4E001—Removes MT controls on technology for the development, production and use of equipment in 4A001.b, 4A002, 4A003, and software in 4D001, 4D002 & 4D102.
5A101—Adds clarifying language.
5D101—Removes MT controls on development and production software for telemetry equipment. Retained MT controls on the "use" software.

5E101—Adds technology for the development, production and use of software controlled by 5D101 (formerly 5E111).
6A002 & 6A102—Clarifies language for MT controls.
6A107—Adds harmonization language to heading and reformatted entry.
6A108—Adds clarifying language to .b.1.
6B108—Adds clarifying language.
6D102—Adds clarifying language to heading.
6D103—Adds clarifying language to heading.
6E101—Clarifies language in note 2 of the Related Definitions paragraph.
7B001—Clarifies language in the Related Controls paragraph.
7B003—Added related control to reference 7B994.
7B101—Makes conforming change, because 7B104 moved to 2B119 to 2B122.
7B102—Replaces the word "measurement" with "threshold" in the list of items.
7D101—Adds 7A116 to heading.
7D102—Limits integration software for inertial navigation systems to those that are specially designed.
7E001 & 7E101—Added a reference to 7D101, 7D102.a and 7D103 in "Related Controls."
7E104—Adds clarifying language to the heading.
9A106—Adds harmonization language to heading.
9A110—Moves materials described in heading to 9C110.
9A115—Adds clarifying language.
9A117—Adds clarifying language.
9B005—Removes MT controls.
9B106—Restructures the control text to capture specific environmental and anechoic chambers to conform to the MTCR Annex. This correction clarified the controls on standalone altitude chambers which are now properly classified as EAR99.
9B116—Add 9A012 to Heading.
9D001 & 9D002—Removes MT controls for development and production software that was not reflected on the MTCR Annex.
9D101—Adds the word "modified", and changes the word "goods" to "commodities" in the heading.
9D102—Moves to 9D104, and removed MT controls on "use" software for those composite structures and prepregs controlled in 9A110.
9E101—Revises Heading and Related Controls to reflect movement of 9A120 to 9A012, adds technology controls for 9D101 and 9D103 to reflect MTCR Annex controls; and adds new entries 9D104 and 9D105.
9E102—Revises Heading to harmonize with European Union List with regard to 9A004, revises Related Controls to reflect movement of 9A120 to 9A012, and adds new ECCN entries 9D104 and 9D105.

Saving Clause

This rule revises the numbering and structure of certain entries on the Commerce Control List. For items under such entries and for July 1, 2003, BIS will accept license applications for items described either by the entries in effect immediately before April 2, 2003 or the entries described in this rule. Shipments of items removed from License Exception eligibility or NLR authorization as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on April 2, 2003, pursuant to actual orders for export to a foreign destination, may proceed to that destination under the previous License Exception eligibility or NLR authorization provisions so long as they have been exported from the United States before June 2, 2003. Any such items not actually exported before midnight, on June 2, 2003, require a license in accordance with this regulation.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001), as extended by the Notice of August 14, 2002 (67 FR 53721, August 16, 2002), continues the Regulations in effect under the International Emergency Economic Powers Act.

Rule Making Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a current valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088. There are neither additions nor subtractions to these collections due to this rule.

3. This rule does not contain policies with Federalism as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Parts 742 and 774

Exports, Foreign trade.

■ Accordingly, parts 740, 742, and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR., 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 2. Supplement No. 1 to part 740, Country Groups, Country Group A, is amended in Column A:2, Missile Technology Control Regime, by adding an "X" for countries: "Czech Republic", "Korea, South", "Poland", "Turkey", and "Ukraine".

PART 742—[AMENDED]

■ 3. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR., 2001 Comp., p. 783; Notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 4. Section 742.5 is amended by revising the phrase "ECCN 1B115.a" to read "ECCN 1B117" in paragraph (c)(1).

PART 774—[AMENDED]

■ 5. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR., 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins) is amended by adding Export Control Classification Number (ECCN) 1A101, to read as follows:

1A101 Devices for reduced observables such as radar reflectivity, ultraviolet/infrared signatures and acoustic signatures, for applications usable in "missiles" and their subsystems.

License Requirements

Reason for Control: MT, AT

Control(s)	Country Chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value
Related Controls: See also 1C101. For commodities that meet the definition of defense articles under 22 CFR 120.3 of the International Traffic in Arms Regulations (ITAR), see also 22 CFR 121.16, Item 17-Category II of the (ITAR), which describes similar commodities under the jurisdiction of the Department of State, Directorate of Defense Trade Control.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins) is amended by revising the heading of Export Control Classification Number (ECCN) 1A102, to read as follows:

1A102 Resaturated pyrolized carbon-carbon components designed for "missiles." (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins) is amended by revising the heading and the Related Definitions paragraph of the List of Items Controlled section of Export Control Classification Number (ECCN) 1B101, to read as follows:

1B101 Equipment, other than that controlled by 1B001, for the "production" of structural composites, fibers, prepregs or preforms as follows (see List of Items Controlled); and specially designed components, and accessories therefor.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: Examples of components and accessories for the machines controlled by this entry are molds, mandrels, dies, fixtures and tooling for the preform pressing, curing, casting, sintering or bonding of composite structures, laminates and manufactures thereof.
Items:
* * * * *

■ 9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins) is amended by adding Export Control Classification Number (ECCN) 1B102 to follow ECCN 1B101, to read as follows:

1B102 Metal powder "production equipment," other than that specified in 1B002, and components as follows (see List of Items Controlled).

License Requirements

Reason for Control: MT, AT

Control(s)	Country Chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: * * *
Related Controls: For the control of batch mixers, continuous mixers and fluid energy mills, see 1B117, 1B118 and 1B119.
Related Definitions: * * *
Items:
a. "Production equipment" for the "production", handling or acceptance testing of liquid propellants or propellant constituents controlled by 1C011.a, 1C011.b, 1C111 or on the U.S. Munitions List;

Control(s)	Country Chart
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Equipment in number; components in $ value
Related Controls: 1.) See also 1B115.b.
Related Definitions: N/A
Items:
a. Metal power "production equipment usable for the "production," in a controlled environment, of spherical or atomized materials specified in 1C011.a, 1C011.b, 1C111.a.1, 1C111.a.2, or on the U.S. Munitions List.
b. Specially designed components for "production equipment" specified in 1B002 or 1B102.a.

Note: 1B102 includes:
a. Plasma generators (high frequency arc-jet) usable for obtaining sputtered or spherical metallic powders with organization of the process in an argon-water environment;
b. Electroburst equipment usable for obtaining sputtered or spherical metallic powders with organization of the process in an argon-water environment;
c. Equipment usable for the "production" of spherical aluminum powders by powdering a melt in an inert medium (*e.g.*, nitrogen).

■ 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins), Export Control Classification Number (ECCN) 1B115 is amended by revising the Heading, and the Related Controls and Items paragraphs in the List of Items Controlled section, to read as follows:

1B115 Equipment, other than that controlled in 1B002 or 1B102, for the "production" of propellant or propellant constituents, and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: For the control of batch mixers, continuous mixers and fluid energy mills, see 1B117, 1B118 and 1B119.
Related Definitions: * * *
Items:
a. "Production equipment" for the "production", handling or acceptance testing of liquid propellants or propellant constituents controlled by 1C011.a, 1C011.b, 1C111 or on the U.S. Munitions List;

b. "Production equipment," for the production, handling, mixing, curing, casting, pressing, machining, extruding or acceptance testing of solid propellants or propellant constituents described in 1C011.a, 1C011.b or 1C111, or on the U.S. Munitions List.

Note: 1B115.b does not control batch mixers, continuous mixers or fluid energy mills. For the control of batch mixers, continuous mixers and fluid energy mills see 1B117, 1B118, and 1B119.

Note 1: [RESERVED].

Note 2: 1B115 does not control equipment for the "production," handling and acceptance testing of boron carbide.

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins), Export Control Classification Number (ECCN) 1B117 is amended by revising the Heading and the *Related Controls*, the *Related Definitions*, and the *Items* paragraphs in the List of Items Controlled section, to read as follows:

1B117 Batch mixers with provision for mixing under vacuum in the range from zero to 13.326 kPa and with temperature control capability of the mixing chamber and having all of the following characteristics (see List of Items Controlled), and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: N/A

Related Definitions: N/A

Items:

a. A total volumetric capacity of 110 liters (30 gallons) or more; and

b. At least one mixing/kneading shaft mounted off center.

■ 12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins) is amended by adding Export Control Classification Number (ECCN) 1B118 to follow ECCN 1B117, to read as follows:

1B118 Continuous mixers with provision for mixing under vacuum in the range from zero to 13.326 kPa and with temperature control capability of the mixing chamber and having all of the following characteristics (see List of Items Controlled), and specially designed components therefor.

License Requirements

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Equipment in number; components in $ value
Related Controls: N/A
Related Definitions: N/A
Items:
a. Two or more mixing/kneading shafts; and
b. Capability to open the mixing chamber.

■ 13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins) is amended by adding Export Control Classification Number (ECCN) 1B119 to follow ECCN 1B118, to read as follows:

1B119 Fluid energy mills usable for grinding or milling propellant or propellant constituents specified in 1C011.a, 1C011.b or 1C111, or on the U.S. Munitions List, and specially designed components therefor.

License Requirements

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Equipment in number; components in $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

■ 14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins) is amended by revising the Related Controls paragraph in the List of Items Controlled section of Export Control Classification Number (ECCN) 1C010, to read as follows:

1C010 "Fibrous or filamentary materials" which may be used in organic "matrix", metallic "matrix" or carbon "matrix" "composite" structures or laminates, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: (1) See ECCNs 1E001 ("development" and "production") and 1E201 ("use") for technology for items controlled by this entry. (2) Also see ECCNs 1C210 and 1C990. (3) See also 9C110 for material not controlled by 1C010.e, as defined by notes 1 or 2.
Related Definitions: * * *
Items:

* * * * *

■ 15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins) is amended by revising the Heading and the *Unit*, the *Related Controls*, and the *Items* paragraphs in the List of Items Controlled section of Export Control Classification Number (ECCN) 1C101, to read as follows:

1C101 Materials for reduced observables such as radar reflectivity, ultraviolet/infrared signatures and acoustic signatures (i.e., stealth technology), other than those controlled by 1C001, for applications usable in "missiles" and their subsystems.

* * * * *

List of Items Controlled

Unit: $ value
Related Controls: (1) Materials controlled by this entry include structural materials and coatings (including paints), specially designed for reduced or tailored reflectivity or emissivity in the microwave, infrared or ultraviolet spectra. (2) This entry does not control coatings (including paints) when specially used for the thermal control of satellites. (3) For commodities that meet the definition of defense articles under 22 CFR 120.3 of the International Traffic in Arms Regulations (ITAR), see 22 CFR 121.16, Item 17-Category II of the (ITAR), which describes similar commodities under the jurisdiction of the Department of State, Directorate of Defense Trade Control.
Related Definitions: * * *
Items: The list of items controlled is contained in the ECCN heading.

■ 16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins) is amended by adding Export Control Classification Number (ECCN) 1C102 to follow ECCN 1C101, to read as follows:

1C102 Resaturated pyrolized carbon-carbon materials designed for space launch vehicles specified in 9A004 or sounding rockets specified in 9A104. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

■ 17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins) is amended by revising the *Related Controls* paragraph and the *Items* paragraph in the List of Items Controlled of Export Control Classification Number (ECCN) 1C107, to read as follows:

1C107 Graphite and ceramic materials, other than those controlled by 1C007, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: (1) See also OC005 and 1C004. (2) For commodities that meet the definition of defense articles under 22 CFR 120.3 of the ITAR, see 22 CFR 121.16, Item 8-Category II of the International Traffic in Arms Regulations (ITAR), which describes similar commodities under the jurisdiction of the Department of State, Directorate of Defense Trade Control.
Related Definitions: * * *
Items:
a. Fine grain recrystallized bulk graphites with a bulk density of 1.72 g/cm^3 or greater, measured at 288 K (15 °C), and having a particle size of 100 micrometers or less, usable for rocket nozzles and reentry vehicle nose tips as follows:
a.1. Cylinders having a diameter of 120 mm or greater and a length of 50 mm or greater;
a.2. Tubes having an inner diameter of 65 mm or greater and a wall thickness of 25 mm or greater and a length of 50 mm or greater;
a.3. Blocks having a size of 120 mm x 120 mm x 50 mm or greater.
b. Pyrolytic or fibrous reinforced graphites, usable for rocket nozzles and reentry vehicle nose tips;
c. Ceramic composite materials (dielectric constant less than 6 at frequencies from 100 Hz to 10 GHz), for use in "missile" radomes; and
d. Bulk machinable silicon-carbide reinforced unfired ceramic, usable for nose tips.

■ 18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins) is amended by revising the Heading and the *Related Controls* and the *Items* paragraphs in the List of Items Controlled section of Export Control Classification Number (ECCN) 1C111, to read as follows:

1C111 Propellants and constituent chemicals for propellants, other than those specified in 1C011, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: Butacene as defined by 1C111.c.1 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (See 22 CFR 121.12.(b)(6), other ferrocene derivatives)
Related Definitions: * * *
Items:
a. Propulsive substances:
a.1. Spherical aluminum powder, other than that specified on the U.S. Munitions List, with particles of uniform diameter of less than 200 micrometer and an aluminum content of 97% by weight or more, if at least 10 percent of the total weight is made up of particles of less than 63 micrometer, according to ISO 2591:1988 or national equivalents such as JIS Z8820.
Technical Note: A particle size of 63 micrometer (ISO R–565) corresponds to 250 mesh (Tyler) or 230 mesh (ASTM standard E–11).
a.2. Metal fuels, other than that controlled by the U.S. Munitions List, in particle sizes of less than 60 x 10^{-6} m (60 micrometers), whether spherical, atomized, spheroidal, flaked or ground, consisting 97% by weight or more of any of the following:
a.2.a. Zirconium;
a.2.b Beryllium;
a.2.c Magnesium; or
a.2.d Alloys of the metals specified by a.2.a to a.2.c above.

Technical Note: The natural content of hafnium in the zirconium (typically 2 % to 7%) is counted with the zirconium.

a.3. Liquid oxidizers, as follows:
a.3.a. Dinitrogen trioxide;
a.3.b. Nitrogen dioxide/dinitrogen tetroxide;
a.3.c. Dinitrogen pentoxide;
b. Polymeric substances:
b.1. Carboxy-terminated polybutadiene (CTPB);
b.2. Hydroxy-terminated polybutadiene (HTPB), other than that controlled by the U.S. Munitions List;
b.3. Polybutadiene-acrylic acid (PBAA);
b.4. Polybutadiene-acrylic acid-acrylonitrile (PBAN);
c. Other propellant additives and agents:
c.1. Butacene ;
c.2. Triethylene glycol dinitrate (TEGDN);
c.3. 2-Nitrodiphenylamine;
c.4. Trimethylolethane trinitrate (TMETN);
c.5. Diethylene glycol dinitrate (DEGDN).

■ 19. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins), Export Control Classification Number (ECCN) 1C118 is amended by revising the Heading and the Items paragraph in the List of Items Controlled section, to read as follows:

1C118 Titanium-stabilized duplex stainless steel (Ti-DSS), having all of the following characteristics (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:
a. Having all of the following characteristics:
a.1. Containing 17.0–23.0 weight percent chromium and 4.5–7.0 weight percent nickel;
a.2. Having a titanium content of greater than 0.10 weight percent; *and*
a.3. A ferritic-austenitic microstructure (also referred to as a two-phase microstructure) of which at least 10 percent is austenite by volume (according to ASTM E–1181–87 or national equivalents), *and*
b. Having any of the following forms:
b.1. Ingots or bars having a size of 100 mm or more in each dimension;
b.2. Sheets having a width of 600 mm or more and a thickness of 3 mm or less; *or*
b.3. Tubes having an outer diameter of 600 mm or more and a wall thickness of 3 mm or less.

■ 20. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins) is amended by removing ECCN 1D102.

■ 21. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins) is amended by revising the License Requirements section and the License Exceptions section of Export Control Classification Number (ECCN) 1D002, to read as follows:

1D002 "Software" for the "development" of organic

"matrix", metal "matrix" or carbon "matrix" laminates or "composites".

License Requirements

Reason for Control: NS, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under Exceptions.

License Exceptions

CIV: Yes
TSR: Yes

* * * * *

■ 22. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins), Export Control Classification Number (ECCN) 1D101 is amended by revising the Heading, to read as follows:

1D101 "Software" specially designed or modified for the "use" of commodities controlled by 1B101, 1B102, 1B115, 1B117, 1B118, or 1B119.

* * * * *

■ 23. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins), Export Control Classification Number (ECCN) 1D103 is amended by revising the Heading, and Related Controls paragraph of the List of Items Controlled section, to read as follows:

1D103 "Software" specially designed for reduced observables such as radar reflectivity, ultraviolet/infrared signatures and acoustic signatures, for applications usable in "missiles" or their subsystems.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: (1) This entry includes "software" specially designed for analysis of signature reduction. (2) For software that meets the definition of defense articles under 22 CFR 120.3 of the International Traffic in Arms Regulations (ITAR), see 22 CFR 121.16, Item 17-Category II of the (ITAR), which describes similar software that are under the jurisdiction of the Department of State, Directorate of Defense Trade Control.
Related Definitions: * * *
Items: * * *

■ 24. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins), Export Control Classification Number (ECCN) 1E001 is amended by revising the Heading, and the License Requirements section, to read as follows:

1E001 "Technology" according to the General Technology Note for the "development" or "production" of items controlled by 1A001.b, 1A001.c, 1A002, 1A003, 1A005, 1A101, 1B, or 1C (except 1C355, 1C980 to 1C984, 1C988, 1C990, 1C991, 1C992, and 1C995).

License Requirements

Reason for Control: NS, MT, NP, CB, AT

Control(s)	Country chart
NS applies to "technology" for items controlled by 1A001.b and .c, 1A002, 1A003, 1A005, 1B001 to 1B003, 1B018, 1C001 to 1C010, or 1C018.	NS Column 1
MT applies to "technology" 1 for items controlled by 1A101, 1B001, 1B101, 1B102, 1B115 to 1B119, 1C001, 1C007, 1C011, 1C101, 1C102, 1C107, 1C111, 1C116, 1C117, or 1C118 for MT reasons.	MT Column
NP applies to "technology" for items controlled by 1A002, 1B001, 1B101, 1B201, 1B225 to 1B233, 1C002, 1C010, 1C116, 1C202, 1C210, 1C216, 1C225 to 1C240 for NP reasons.	NP Column 1
CB applies to "technology" for items controlled by 1C351, 1C352, 1C353, or 1C354.	CB Column 1
CB applies to "technology" for materials controlled by 1C350.	CB Column 2
AT applies to entire entry.	AT Column 1

License Requirements Note: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

■ 25. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins) is amended by revising the Heading of Export Control Classification Number (ECCN) 1E101, to read as follows:

1E101 "Technology", in accordance with the General Technology Note, for the "use" of commodities and software controlled by 1A101, 1A102, 1B001, 1B101, 1B102, 1B115 to 1B119, 1C001, 1C007, 1C011, 1C101, 1C107, 1C111, 1C116, 1C117, 1C118, 1D001, 1D101, or 1D103.

* * * * *

■ 26. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins), Export Control Classification Number (ECCN) 1E102 is amended by revising the Heading, and the Related Controls paragraph of the List of Items Controlled section, to read as follows:

1E102 "Technology" according to the General Technology Note for the "development" of software controlled by 1D001, 1D101 or 1D103.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: This entry includes databases specially designed for analysis of signature reduction.
Related Definitions: * * *
Items: * * *

■ 27. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins), Export Control Classification Number (ECCN) 1E103 is amended by revising the Heading, to read as follows:

1E103 "Technical data" (including processing conditions) and procedures for the regulation of temperature, pressure or atmosphere in autoclaves or hydroclaves, when used for the "production" of "composites" or partially processed "composites", usable for equipment or materials specified in 1C007, 1C102, 1C107, 1C116, 1C117, 1C118, 9A110, and 9C110.

* * * * *

■ 28. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms," and Toxins), Export Control Classification Number (ECCN) 1E104 is amended by revising the Heading and the Related Controls paragraph in the List of Items Controlled section, to read as follows:

1E104 Technology" for the "production" of pyrolytically derived materials formed on a mold, mandrel or other substrate from precursor gases which decompose in the 1,573 K (1,300°C) to 3,173 K (2,900°C) temperature range at pressures of 130 Pa (1 mm Hg) to 20 kPa (150 mm Hg), including "technology" for the composition of precursor gases, flow-rates and process control schedules and parameters.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: N/A
Related Definitions: * * *
Items: * * *

■ 29. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2 (Materials Processing), ECCN 2B009 is amended by revising the License Requirements and the *Related Controls* paragraph and the *Items* paragraphs in the List of Items Controlled section, to read as follows:

2B009 Spin-forming machines and flow-forming machines, which, according to the manufacturer's technical specifications, can be equipped with "numerical control" units or a computer control and having all the characteristics (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, NP, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 2
MT applies to: spin-forming machines combining the functions of spin-forming and flow-forming; and flow-forming machines that meet or exceed the parameters of 2B009.a and 2B109.	MT Column 1
NP applies to flow-forming machines, and spin-forming machines capable of flow-forming functions, that meet or exceed the parameters of 2B209.	NP Column 1
AT applies to entire entry	AT Column 1

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: (1) See ECCN 2D001 for "software" for items controlled under this entry. (2) See ECCNs 2E001 ("development"), 2E002 ("production"), and 2E101 ("use") for technology for items controlled under this entry. (3) Also see ECCNs 2B109 and 2B209 for additional flow-forming machines for MT and NP reasons.
Related Definitions: N/A
Items:

a. Two or more controlled axes of which at least two can be coordinated simultaneously for "contouring control"; *and*

b. A roller force more than 60 kN.

Technical Note: Machines combining the function of spin-forming and flow-forming are for the purpose of 2B009 regarded as flow-forming machines.

■ 30. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2 (Materials Processing), ECCN 2B104 is amended by revising the *Related Definitions* paragraph in the List of Items Controlled section, to read as follows:

2B104 "Isostatic presses", other than those controlled by 2B004, having all of the following characteristics (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: The inside chamber dimension is that of the chamber in which both the working temperature and the working pressure are achieved and does not include fixtures. That dimension will be the smaller of either the inside diameter of the pressure chamber or the inside diameter of the insulated chamber, depending on which of the two chambers is located inside the other.
Items: * * *

■ 31. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2 (Materials Processing), ECCN 2B109 is amended by removing the *ECCN Controls* paragraph in the List of Items Controlled section and by revising the *Unit* paragraph, the *Related Controls* paragraph, and the *Items* paragraph in the List of Items Controlled section, to read as follows:

2B109 Flow-forming machines, other than those controlled by 2B009, and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: Equipment in number; components in $ value.
Related Controls: (1) See ECCN 2D101 for "software" for items controlled under this entry. (2) See ECCNs 2E001 ("development"), 2E002 ("production"), and 2E101 ("use") for technology for items controlled under this entry. (3) Also see ECCNs 2B009 and 2B209.
Related Definitions: * * *
Items:

a. Flow-forming machines having all of the following:

a.1. According to the manufacturer's technical specification, can be equipped with "numerical control" units or a computer control, even when not equipped with such units at delivery; *and*

a.2. Have more than two axes which can be coordinated simultaneously for "contouring control."

b. Specially designed components for flow-forming machines controlled in 2B009 or 2B109.a.

Technical Notes: 1. Machines combining the function of spin-forming and flow-forming are for the purpose of 2B109 regarded as flow-forming machines.

2. 2B109 does not control machines that are not usable in the "production" of propulsion components and equipment (*e.g.* motor cases) for systems in 9A005, 9A007.a, or 9A105.a.

■ 32. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2 (Materials Processing), ECCN 2B116 is amended by revising the *Related Definitions* paragraph and the *Items* paragraph in the List of Items Controlled section, to read as follows:

2B116 Vibration test systems, equipment and components therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: Vibration test systems incorporating a digital controller are those systems, the functions of which are, partly or entirely, automatically controlled by stored and digitally coded electrical signals.
Items:

a. Vibration test systems employing feedback or closed loop techniques and incorporating a digital controller, capable of vibrating a system at 10 g RMS or more over the entire range 20 Hz to 2,000 Hz and imparting forces of 50 kN (11,250 lbs.), measured "bare table", or greater;

b. Digital controllers, combined with specially designed vibration test "software", with a real-time bandwidth greater than 5 kHz and designed for use with vibration test systems described in 2B116.a;

c. Vibration thrusters (shaker units), with or without associated amplifiers, capable of imparting a force of 50 kN (11,250 lbs.), measured 'bare table', or greater, and usable in vibration test systems described in 2B116.a;

d. Test piece support structures and electronic units designed to combine multiple shaker units into a complete shaker system capable of providing an effective combined force of 50 kN,

measured 'bare table', or greater, and usable in vibration test systems described in 2B116.a.

Technical Note: 'bare table' means a flat table, or surface, with no fixture or fitting.

■ 33. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2 (Materials Processing) is amended by adding ECCNs 2B119, 2B120, 2B121, and 2B122, following ECCN 2B117, to read as follows:

2B119 Balancing machines and related equipment, as follows (see List of Items Controlled).

License Requirements

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value
Related Controls: See also 2B219, 7B101.
Related Definitions: N/A
Items:

a. Balancing machines having all the following characteristics:

a.1. Not capable of balancing rotors/assemblies having a mass greater than 3 kg;

a.2. Capable of balancing rotors/assemblies at speeds greater than 12,500 rpm;

a.3. Capable of correcting unbalance in two planes or more; and

a.4. Capable of balancing to a residual specific unbalance of 0.2 g mm per kg of rotor mass.

Note: 2B119.a. does not control balancing machines designed or modified for dental or other medical equipment.

b. Indicator heads designed or modified for use with machines specified in 2B119.a.

Note: Indicator heads are sometimes known as balancing instrumentation.

2B120 Motion simulators or rate tables (equipment capable of simulating motion), having all of the following characteristics (see List of Items Controlled).

License Requirements

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT column 1
AT applies to entire entry	AT column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value
Related Controls: (1) Rate tables not controlled by 2B120 and providing the characteristics of a positioning table are to be evaluated according to 2B121. (2) Equipment that has the characteristics specified in 2B121, which also meets the characteristics of 2B120 will be treated as equipment specified in 2B120. (3) See also 2B008, 2B121, 7B101 and 7B994.
Related Definitions: N/A
Items:

a. Two axes or more;

b. Slip rigs capable of transmitting electrical power and/or signal information; *and*

c. Having any of the following characteristics:

c.1. For any single axis having all of the following:

c.1.a. Capable of rates of rotation of 400 degrees/s or more, or 30 degrees/s or less, *and*

c.1.b. A rate resolution equal to or less than 6 degrees/s and an accuracy equal to or less than 0.6 degrees/s; or

c.2. Having a worst-case rate stability equal to or better (less) than plus or minus 0.05% averaged over 10 degrees or more; *or*

c.3. A positioning accuracy equal to or better than 5 arc-second.

Note: 2B120 does not control rotary tables designed or modified for machine tools or for medical equipment. For controls on machine tool rotary tables see 2B008.

2B121 Positioning tables (equipment capable of precise rotary position in any axis), other than those controlled in 2B120, having all the following characteristics (See List of Items Controlled).

License Requirements

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value
Related Controls: (1) Equipment that has the characteristics specified in 2B121, which also meets the characteristics of 2B120 will be treated as equipment specified in 2B120.
(2) See also 2B008, 2B120, 7B101 and 7B994.
Related Definitions: N/A
Items:

a. Two axes or more; *and*

b. A positioning accuracy equal to or better than 5 arc-second.

Note: 2B121 does not control rotary tables designed or modified for machine tools or for medical equipment. For controls on machine tool rotary tables see 2B008.

2B122 Centrifuges capable of imparting accelerations above 100 g and having slip rings capable of transmitting electrical power and signal information.

License Requirements

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value
Related Controls: See also 7B101.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

■ 34. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2 (Materials Processing) is amended by revising the Heading of ECCN 2D101, to read as follows:

2D101 "Software" specially designed or modified for the "use" of equipment controlled by 2B104, 2B105, 2B109, 2B116, 2B117, or 2B119 to 2B122.

* * * * *

■ 35. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2 (Materials Processing), ECCN 2E001 is amended by revising the License Requirements section, to read as follows:

2E001 "Technology" according to the General Technology Note for the "development" of equipment or "software" controlled by 2A (except 2A991, 2A993, or 2A994), 2B (except 2B991, 2B993, 2B996, 2B997, or 2B998), or 2D (except 2D991, 2D992, or 2D994).

License Requirements

Reason for Control: NS, MT, NP, CB, AT

Control(s)	Country chart
NS applies to "technology" for items controlled by 2A001, 2B001 to 2B009, 2D001, or 2D002.	NS Column 1
MT applies to "technology" for items controlled by 2B004, 2B009, 2B018, 2B104, 2B105, 2B109, 2B116, 2B117, 2B119 to 2B122, 2D001, or 2D101 for MT reasons.	MT Column 1
NP applies to "technology" for items controlled by 2A225, 2A226, 2B001, 2B004, 2B006, 2B007, 2B009, 2B104, 2B109, 2B116, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B232, 2D001, 2D002, 2D101, 2D201 or 2D202 for NP reasons.	NP Column 1
NP applies to "technology" for items controlled by 2A290 to 2A293, 2B290, or 2D290 for NP reasons.	NP Column 2
CB applies to "technology" for equipment controlled by 2B350 to 2B352.	CB Column 3
AT applies to entire entry	AT Column 1

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

■ 36. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2 (Materials Processing), ECCN 2E002 is amended by revising the License Requirements section, to read as follows:

2E002 "Technology" according to the General Technology Note for the "production" of equipment controlled by 2A (except 2A991, 2A993, or 2A994) or 2B (except 2B991, 2B993, 2B996, 2B997, or 2B998).

License Requirements

Reason for Control: NS, MT, NP, CB, AT

Control(s)	Country chart
NS applies to "technology" for equipment controlled by 2A001, 2B001 to 2B009.	NS Column 1
MT applies to "technology" for equipment controlled by 2B004, 2B009, 2B018, 2B104, 2B105, 2B109, 2B116, 2B117, or 2B119 to 2B122 for MT reasons.	MT Column 1
NP applies to "technology" for equipment controlled by 2A225, 2A226, 2B001, 2B004, 2B006, 2B007, 2B009, 2B104, 2B109, 2B116, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B232 for NP reasons.	NP Column 1
NP applies to "technology" for equipment controlled by 2A290 to 2A293, 2B290 for NP reasons.	NP Column 2
CB applies to "technology" for equipment controlled by 2B350 to 2B352.	CB Column 3
AT applies to entire entry	AT Column 1

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

■ 37. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2 (Materials Processing), ECCN 2E101 is amended by revising the Heading, the License Requirements section, and the Related Controls paragraph of the List of Items Controlled section, to read as follows:

2E101 "Technology" according to the General Technology Note for the "use" of equipment or "software" controlled by 2B004, 2B009, 2B104, 2B105, 2B109, 2B116, 2B117, or 2B119 to 2B122, 2D001, 2D002 or 2D101.

License Requirements

Reason for Control: MT, NP, AT

Control(s)	Country chart
MT applies to "technology" for items controlled by 2B004, 2B009, 2B104, 2B105, 2B109, 2B116, 2B117, 2B119 to 2B122, 2D001, or 2D101 for MT reasons.	MT Column 1
NP applies to "technology" for items controlled by 2B004, 2B009, 2B104, 2B109, 2B116, 2D001, 2D002 or 2D101 for NP reasons.	NP Column 1
AT applies to entire entry.	AT Column 1

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: (1) This entry controls only "technology" for 2B009 and 2B109 for spin forming machines combining the functions of spin forming and flow forming, and flow forming machines.
Related Definitions: * * *
Items: * * *

■ 38. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3 (Electronics), ECCN 3A001 is amended by revising the License Requirement section, to read as follows:

3A001 Electronic components, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, NP, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 2
MT applies to 3A001.a.1.a when usable in "missiles"; and to 3A001.a.5.a when "designed or modified" for military use, hermetically sealed and rated for operation in the temperature range from below −54°C to above +125°C.	MT Column 1
NP applies to pulse discharge capacitors in 3A001.e.2 and superconducting solenoidal electromagnets in 3A001.e.3 that meet or exceed the technical parameters in 3A201.a and 3A201.b, respectively.	NP Column 1
AT applies to entire entry	AT Column 1

* * * * *

■ 39. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3 (Electronics), ECCN 3A101 is amended by revising the Items paragraph in the List of Items Controlled section to read as follows:

3A101 Electronic equipment, devices and components, other than those controlled by 3A001, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Analog-to-digital converters, usable in "missiles", designed to meet military specifications for ruggedized equipment;

b. Accelerators capable of delivering electromagnetic radiation produced by

bremsstrahlung from accelerated electrons of 2 MeV or greater, and systems containing those accelerators, usable for the "missiles" or the subsystems of "missiles".

Note: 3A101.b above does not include equipment specially designed for medical purposes.

■ 40. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3 (Electronics) is amended by removing ECCN 3D102.

■ 41. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3 (Electronics) is amended by revising the heading of ECCN 3D101, to read as follows:

3D101 "Software" specially designed or modified for the "use" of equipment controlled by 3A101.b.

* * * * *

■ 42. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3 (Electronics), ECCN 3E101 is amended by revising the Heading, to read as follows:

3E101 "Technology" according to the General Technology Note for the "use" of equipment or "software" controlled by 3A001.a.1 or .2, 3A101, or 3D101.

* * * * *

■ 43. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4 (Computers), ECCN 4D001 is amended by revising the License Requirements and License Exceptions sections, to read as follows:

4D001 "Software" specially designed or modified for the "development", "production" or "use" of equipment or "software" controlled by 4A001 to 4A004, or 4D (except 4D980, 4D993 or 4D994).

License Requirements

Reason for Control: NS, CC, AT, NP, XP

Control(s)	Country chart
NS applies to "software" for commodities or software controlled by 4A001 to 4A004, 4D001 to 4D003.	NS Column 1
CC applies to "software" for computerized fingerprint equipment controlled by 4A003 for CC reasons.	CC Column 1
AT applies to entire entry	AT Column 1

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to "software" for computers with a CTP greater than 28,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See § 742.12 of the EAR for additional information.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions

CIV: N/A

TSR: (a) N/A for:

(1) "Software" for equipment or "software" requiring a license; or

(2) "Software" described by TSR paragraph (b)(1)(ii) of this License Exception section, when exported or reexported to a destination not included in TSR paragraph (b)(1)(i) of this License Exception section.

(b) Yes for:

(1) "Software":

(i) Exported or reexported to Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, or the United Kingdom; and

(ii) Specially designed for the "development" or "production" of any of the following:

(A) "Digital" computers controlled by 4A003.b and having a CTP exceeding than 33,000 MTOPS; or

(B) "Electronic assemblies" controlled by 4A003.c and capable of enhancing performance by aggregation of "computing elements" so that the CTP of the aggregation exceeds 33,000 MTOPS; and

(2) All other "software" not described in TSR paragraphs (a) or (b)(1) of this License Exception section.

* * * * *

■ 44. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4 (Computers), ECCN 4D002 is amended by revising the License Requirements and the License Exceptions sections, to read as follows:

4D002 "Software" specially designed or modified to support "technology" controlled by 4E (except 4E980, 4E992, and 4E993).

License Requirements

Reason for Control: NS, AT, NP, XP

Control(s)	Country chart
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to "software" for computers with a CTP greater than 28,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See § 742.12 of the EAR for additional information.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions

CIV: N/A

TSR: Yes, except N/A for "software" specifically designed or modified to support "technology" for computers requiring a license.

* * * * *

■ 45. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4 (Computers) is amended by removing ECCN 4D102.

■ 46. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4 (Computers), ECCN 4D994 is amended by revising the Heading, to read as follows:

4D994 "Software" specially designed or modified for the "development", "production", or "use" of equipment controlled by 4A101, 4A994, 4B994, and materials controlled by 4C994.

* * * * *

■ 47. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4 (Computers), ECCN 4E001 is amended by revising the License Requirements section, to read as follows:

4E001 "Technology" according to the General Technology Note, for the "development", "production" or "use" of equipment or "software" controlled by 4A (except 4A980, 4A993 or 4A994) or 4D (except 4D980, 4D993, 4D994).

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

Control(s)	Country chart
NS applies to "technology" for commodities or software controlled by 4A001 to 4A004, 4D001 to 4D003.	NS Column 1
MT applies to "technology" for items controlled by 4A001.a and 4A101 for MT reasons.	MT Column 1
CC applies to "technology" for computerized fingerprint equipment controlled by 4A003 for CC reasons.	CC Column 1
AT applies to entire entry	AT Column 1

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to "technology" for computers with a CTP greater than 28,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use, however, XP does not apply to Canada. See § 742.12 of the EAR for additional information.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

■ 48. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5 (Telecommunications and "Information Security"), Part I. (Telecommunications), ECCN 5A101 is amended by revising the Heading and the Items paragraph in the List of Items Controlled section, to read as follows:

5A101 Telemetering and telecontrol equipment as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Usable for unmanned air vehicles or rocket systems; *and*

b. Usable for "missiles."

Note: 5A101 does not control telecontrol equipment specially designed to be used for remote control of recreational model planes, boats or vehicles and having an electric field strength of not more than 200 microvolts per meter at a distance of 500 meters.

■ 49. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5 (Telecommunications and "Information Security"), Part I. (Telecommunications), ECCN 5D101 is amended by revising the Heading, to read as follows:

5D101 "Software" specially designed or modified for the "use" of items controlled by 5A101.

* * * * *

■ 50. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5 (Telecommunications and "Information Security"), Part I. (Telecommunications) is amended by removing 5E111.

■ 51. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5 (Telecommunications and "Information Security"), Part I. (Telecommunications), ECCN 5E101 is amended by revising the Heading, to read as follows:

5E101 "Technology" according to the General Technology Note for the "development," "production" or "use" of equipment or software controlled by 5A101 or 5D101.

* * * * *

■ 52. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6 (Sensors and Lasers), ECCN 6A002 is amended by revising the License Requirements section, to read as follows:

6A002 Optical sensors.

License Requirements

Reason for Control: NS, MT, CC, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry	NS Column 2
MT applies to optical detectors in 6A002.a.1, a.3, or .e that are specially designed or modified to protect "missiles" against nuclear effects (*e.g.*, Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects), and usable for "missiles".	MT Column 1
RS applies to 6A002.a.1, a.2, a.3, .c, and .e.	RS Column 1
CC applies to police-model infrared viewers in 6A002.c.	CC Column 1
AT applies to entire entry	AT Column 1
UN applies to 6A002.a.1, a.2 a.3 and c.	Rwanda.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

■ 53. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6 (Sensors and Lasers), ECCN 6A102 is amended by revising the Heading, to read as follows:

6A102 Radiation hardened detectors, other than those controlled by 6A002, specially designed or modified for protecting against nuclear effects (e.g., Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects) and usable for "missiles," designed or rated to withstand radiation levels which meet or exceed a total irradiation dose of 5 x 10^5 rads (silicon).

* * * * *

■ 54. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6 (Sensors and Lasers) is amended by adding ECCN 6A103, to read as follows:

6A103 Radomes designed to withstand a combined thermal shock greater than 100 cal/sq cm accompanied by a peak over pressure of greater than 50 kPa, usable in protecting "missiles" against nuclear effects (e.g., Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects), and usable for "missiles." (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

■ 55. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6 (Sensors and Lasers), ECCN 6A107 is amended by revising the Heading and the Items paragraph in the List of Items Controlled section, to read as follows:

6A107 Gravity meters (gravimeters) and specially designed components for gravity meters and gravity gradiometers, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Gravity meters (gravimeters), other than those controlled by 6A007.b, designed or modified for airborne or marine use, and having a static or operational accuracy of 7 x 10^{-6} m/s^2 (0.7 milligal) or better, and having a time to steady-state registration of two minutes or less, usable for "missiles";

b. Specially designed components for gravity meters controlled in 6A007. b or 6A107.a and gravity gradiometers controlled in 6A007.c.

■ 56. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6 (Sensors and Lasers), ECCN 6A108 is amended by revising the Items paragraph in the List of Items Controlled section, to read as follows:

6A108 Radar systems and tracking systems, other than those controlled by 6A008, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Radar and laser radar systems designed or modified for use in "missiles";

Note: 6A108.a includes the following:

a. Terrain contour mapping equipment;

b. Imaging sensor equipment;

c. Scene mapping and correlation (both digital and analog) equipment;

d. Doppler navigation radar equipment.

b. Precision tracking systems, usable for "missiles", as follows:

b.1. Tracking systems which use a code translator installed on the rocket or

unmanned air vehicle in conjunction with either surface or airborne references or navigation satellite systems to provide real-time measurements of in-flight position and velocity;

b.2. Range instrumentation radars including associated optical/infrared trackers with all of the following capabilities:

b.2.a. Angular resolution better than 3 milliradians (0.5 mils);

b.2.b. Range of 30 km or greater with a range resolution better than 10 m rms;

b.2.c. Velocity resolution better than 3 m/s.

■ 57. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6 (Sensors and Lasers), ECCN 6B108 is amended by revising the Heading, to read as follows:

6B108 Systems, other than those controlled by 6B008, specially designed for radar cross section measurement usable for "missiles" and their subsystems.

* * * * *

■ 58. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6 (Sensors and Lasers), ECCN 6D102 is amended by revising the Heading, to read as follows:

6D102 "Software" specially designed or modified for the "use" of goods controlled by 6A108.

* * * * *

■ 59. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6 (Sensors and Lasers), ECCN 6D103 is amended by revising the Heading, to read as follows:

6D103 "Software" that processes post-flight, recorded data, enabling determination of vehicle position throughout its flight path, specially designed or modified for "missiles".

* * * * *

■ 60. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6 (Sensors and Lasers) is amended by removing ECCN 6D104.

■ 61. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6 (Sensors and Lasers) is amended by removing ECCN 6E102.

■ 62. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6 (Sensors and Lasers), ECCN 6E101 is amended by revising the Related Definitions paragraph of the List of Items Controlled section, to read as follows:

6E101 "Technology" according to the General Technology Note for the "use" of equipment or "software" controlled by 6A002, 6A007.b and .c, 6A008, 6A102, 6A107, 6A108, 6B108, 6D102 or 6D103.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: (1) This entry only controls "technology" for equipment controlled by 6A008 when it is designed for airborne applications and is usable in "missiles". (2) This entry only controls "technology" for items in 6A002.a.1, a.3, and .e that are specially designed or modified to protect "missiles" against nuclear effects (*e.g.*, Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects), and usable for "missiles." (3) This entry only controls "technology" for items in 6A007.b and .c when the accuracies in 6A007.b.1 and b.2 are met or exceeded.

Items: * * *

■ 63. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7 (Navigation and Avionics), ECCN 7B001 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

7B001 Test, calibration or alignment equipment specially designed for equipment controlled by 7A (except 7A994).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) See also 7B101, 7B102 and 7B994. (2) This entry does not control test, calibration or alignment equipment for Maintenance level I.

Related Definition: * * *

Items: * * *

■ 64. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7 (Navigation and Avionics), ECCN 7B003 is amended by revising the Related Controls paragraph of the List of Items Controlled section, to read as follows:

7B003 Equipment specially designed for the "production" of equipment controlled by 7A (except 7A994).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) See also 7B103, (this entry is subject to the licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (*see* 22 CFR part 121)) and 7B994. (2) This entry includes: Inertial Measurement Unit (IMU module) tester; IMU platform tester; IMU stable element handling fixture; IMU platform balance fixture; gyro tuning test station; gyro dynamic balance station; gyro run-in/motor test station; gyro evacuation and fill station; centrifuge fixtures for gyro bearings; accelerometer axis align station; and accelerometer test station.

Related Definitions: * * *

Items: * * *

■ 65. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7 (Navigation and Avionics), ECCN 7B101 is amended by revising the Heading and the Related Controls paragraph in the List of Items Controlled section, to read as follows:

7B101 "Production equipment", and other test, calibration, and alignment equipment, other than that described in 2B119 to 2B122, 7B003, and 7B102, designed or modified to be used with equipment controlled by 7A001 to 7A004 or 7A101 to 7A104.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) *See also* 2B119 to 2B122, 7B003, 7B102, and 7B994. (2) This entry includes: inertial measurement unit (IMU module) tester; IMU platform tester; IMU stable element handling fixture; IMU platform balance fixture; gyro tuning test station; gyro dynamic balance stations; gyro run-in/motor test stations; gyro evacuation and filling stations; centrifuge fixtures for gyro bearings; accelerometer axis align stations; and accelerometer test stations.

Related Definitions: * * *

Items:

a. Scatterometers having a threshold accuracy of 10 ppm or less (better).

b. Reflectometers having a threshold accuracy of 50 ppm or less (better).

c. Prolifometers having a threshold accuracy of 0.5nm (5 angstrom) or less (better).

■ 67. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7 (Navigation and Avionics) is amended by removing ECCN 7B104.

■ 68. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7 (Navigation and Avionics), ECCN 7D101 is amended by revising the Heading, to read as follows:

7D101 "Software" specially designed or modified for the "use" of equipment controlled by 7A001 to 7A006, 7A101 to 7A106, 7A115, 7A116, 7B001, 7B002, 7B003, 7B101, 7B102, or 7B103.

* * * * *

■ 69. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7 (Navigation and Avionics), ECCN 7D102 is amended by revising the Heading and the Items paragraph of the List of Items Controlled section, to read as follows:

7D102 Integration "software", as follows (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Integration "software" for the equipment controlled by 7A103.b.

b. Integration "software" specially designed for the equipment controlled by 7A003 or 7A103.a.

■ 70. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7 (Navigation and Avionics) is amended by revising the *Reason for Control* paragraph in the License Requirements section, the Related Controls paragraph in the List of Items Controlled section, and removing the second Related Controls paragraph that reads "Related Controls: N/A" of ECCN 7E001, to read as follows:

7E001 "Technology" according to the General Technology Note for the "development" of equipment or "software" controlled by 7A (except 7A994), 7B (except 7B994) or 7D (except 7D994).

License Requirements

Reason for Control: NS, MT, RS, AT

Control(s)	Country chart
. . . . .	. . . . .

List of Items Controlled

Unit: * * *

Related Controls: (1) See also 7E101 and 7E994. (2) The "technology" related to 7A003.b, 7A005, 7A007, 7A103.b, 7A105, 7A106, 7A115, 7A116, 7A117, 7B103, software in 7D101 specified in the Related Controls paragraph of ECCN 7D101, 7D102.a, or 7D103 are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Control (see 22 CFR part 121).

Related Definitions: * * *

Items: * * *

■ 71. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7 (Navigation and Avionics), ECCN 7E101 is amended by revising the Heading and the Related Controls paragraph of the List of Items Controlled section, to read as follows:

7E101 "Technology", according to the General Technology Note for the "use" of equipment controlled by 7A001 to 7A006, 7A101 to 7A106, 7A115 to 7A117, 7B001, 7B002, 7B003, 7B101, 7B102, 7B103, or 7D101 to 7D103.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) The "technology" related to 7A003.b, 7A005, 7A103.b, 7A105, 7A106, 7A115, 7A116, 7A117, 7B103, software specified in the Related Controls paragraph of ECCN 7D101, 7D102.a, or 7D103 are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.) (2) "Technology" for inertial navigation systems and inertial equipment, and specially designed components therefor, not for use on civil aircraft are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.)

Related Definitions: * * *

Items: * * *

■ 72. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7 (Navigation and Avionics), revise ECCN 7E104, to read as follows:

7E104 Design "Technology" for the integration of the flight control, guidance, and propulsion data into a flight management system, designed or modified for "missiles", for optimization of rocket system trajectory. (This entry is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

■ 73. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 (Propulsion Systems, Space Vehicles and Related Equipment), ECCN 9A106 is amended by revising the Heading, to read as follows:

9A106 Systems or components, other than those controlled by 9A006, usable in "missiles", as follows (see List of Items Controlled), and specially designed for liquid rocket propulsion systems.

* * * * *

■ 74. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 (Propulsion Systems, Space Vehicles and Related Equipment), ECCN 9A110 is amended by revising the Heading and the Related Controls paragraph of the List of Items Controlled section, to read as follows:

9A110 Composite structures, laminates and manufactures thereof, other than those controlled by entry 9A010, specially designed for use in "missiles" or the subsystems controlled by entries 9A005, 9A007, 9A105.a, 9A106 to 9A108, 9A116, or 9A119.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) See also 1A002. (2) "Composite structures, laminates, and manufactures thereof, specially designed for use in missile systems are under the licensing authority of the Directorate of Defense Trade Controls, U.S. Department of State, except those specially designed for non-military unmanned air vehicles controlled in 9A012.

Related Definitions: * * *

Items: * * *

■ 75. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 (Propulsion Systems, Space Vehicles and Related Equipment), revise ECCNs 9A115 and 9A117, to read as follows:

9A115 Apparatus, devices and vehicles, designed or modified for the transport, handling, control, activation and launching of "missiles". (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

* * * * *

9A117 Staging mechanisms, separation mechanisms, and interstages therefor, usable in "missiles". (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

■ 76. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 (Propulsion Systems, Space Vehicles and Related Equipment), ECCN 9B005 is

amended by revising the License Requirements section, to read as follows:

9B005 On-line (real time) control systems, instrumentation (including sensors) or automated data acquisition and processing equipment, specially designed for use with any of the following wind tunnels or devices (see List of Items Controlled).

License Requirements

Reason for Control: NS, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

* * * * *

■ 77. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 (Propulsion Systems, Space Vehicles and Related Equipment), ECCN 9B106 is amended by revising the Items paragraph of the List of Items Controlled section, to read as follows:

9B106 Environmental chambers and anechoic chambers, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Environmental chambers capable of simulating all of the following flight conditions:

a.1. Vibration environments of 10 g RMS or greater between 20 Hz and 2,000 Hz imparting forces of 5 kN or greater; *and*

a.2. Any of the following:

a.2.a. Altitude of 15,000 m or greater; *or*

a.2.b. Temperature range of at least 223 K (−50oC) to 398 K (+125°C);

b. Anechoic chambers capable of simulating all of the following flight conditions:

b.1. Acoustic environments at an overall sound pressure level of 140 dB or greater (referenced to 2×10^{-5} N/m^2) or with a rated power output of 4kW or greater; *and*

b.2. any of the following:

b.2.a. Altitude of 15,000 m or greater; *or*

b.2.b. Temperature range of at least 223K (−50°C) to 398 K (+125°C).

■ 78. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 (Propulsion Systems, Space Vehicles and Related Equipment), ECCN 9B116 is amended by revising the Heading, to read as follows:

9B116 Specially designed "production facilities" for the systems, subsystems, and components controlled by 9A004 to 9A009, 9A011, 9A012, 9A101, 9A104 to 9A109, 9A111, 9A116 to 9A119.

* * * * *

■ 79. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 (Propulsion Systems, Space Vehicles and Related Equipment) is amended by adding ECCN 9C110 in Product Group C, Materials, to read as follows:

9C110 Resin impregnated fiber prepregs and metal coated fiber preforms therefor, for composite structures, laminates and manufactures specified in 9A110, made either with organic matrix or metal matrix utilizing fibrous or filamentary reinforcements having a specific tensile strength greater than 7.62×10^4 m and a specific modulus greater than 3.18×10^6 m.

License Requirements

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: Kilograms

Related Controls: (1) See also 1C010 and 1C210.c. (2) The only resin impregnated fiber prepregs controlled by entry 9C110 are those using resins with a glass transition temperature (T_g), after cure, exceeding 418 K (145 °C) as determined by ASTM D4065 or national equivalents.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

■ 80. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 (Propulsion Systems, Space Vehicles and Related Equipment), ECCN 9D001 is amended by revising the License Requirements section, and the Related Controls paragraph of the List of Items Controlled section, to read as follows:

9D001 "Software" specially designed or modified for the "development" of equipment or "technology" controlled by 9A (except 9A018, 9A990 or 9A991), 9B (except 9B990 or 9B991) or 9E003.

License Requirements

Reason for Control: NS, MT, AT

Control(s)	Country chart
NS applies to "software" for items controlled by 9A001 to 9A003, 9A012, 9B001 to 9B009, and 9E003.	NS Column 1
MT applies to "software" for equipment controlled by 9A106.a and .b, or 9B116 for MT reasons.	MT Column 1
AT applies to entire entry	AT Column 1

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) "Software" "required" for the "development" of items controlled by 9A004 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (*See* 22 CFR part 121.) (2) "Software" "required" for the "development" of equipment or "technology" subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls is also subject to the same licensing jurisdiction. (*See* 22 CFR part 121.)

Related Definitions: * * *

Items: * * *

■ 81. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 (Propulsion Systems, Space Vehicles and Related Equipment), ECCN 9D002 is amended by revising the Heading and the License Requirements section, to read as follows:

9D002 "Software" specially designed or modified for the "production" of equipment controlled by 9A (except 9A018, 9A990, or 9A991) or 9B (except 9B990 or 9B991).

License Requirements

Reason for Control: NS, MT, AT

Control(s)	Country chart
NS applies to "software" for equipment controlled by 9A001 to 9A003, 9A012, 9B001 to 9B009, or 9E003.	NS Column 1
MT applies to "software" for equipment controlled by 9B116 for MT reasons.	MT Column 1
AT applies to entire entry	AT Column 1

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

■ 82. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 (Propulsion Systems, Space Vehicles and Related Equipment), ECCN 9D101 is amended by revising the Heading, to read as follows:

9D101 "Software" specially designed or modified for the "use" of commodities controlled by 9B105, 9B106, 9B116, or 9B117.

* * * * *

■ 83. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 (Propulsion Systems, Space Vehicles and Related Equipment) is amended by removing ECCN 9D102.

■ 84. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 (Propulsion Systems, Space Vehicles and Related Equipment) is amended by adding ECCN 9D104 to follow 9D103, to read as follows:

9D104 "Software" specially designed and modified for the "use" of equipment controlled by 9A001, 9A005, 9A006.d, 9A006.g, 9A007.a, 9A008.d, 9A009.a, 9A010.d, 9A011, 9A012 (for MT controlled items only), 9A101, 9A105, 9A106.c and .d, 9A107, 9A108.c, 9A109, 9A111, 9A115.a, 9A116.d, 9A117, or 9A118.

License Requirements

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

License Exceptions

CIV: N/A
TSR: N/A

List of Items Controlled

Unit: $ value
Related Controls: "Software" for commodities controlled by 9A005 to 9A011, 9A105, 9A106.c, 9A107 to 9A109, 9A111, 9A115, 9A116, 9A117, and 9A118 are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

■ 85. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 (Propulsion Systems, Space Vehicles and Related Equipment) is amended by adding ECCN 9D105 to follow the new ECCN 9D104, to read as follows:

9D105 "Software" that coordinates the function of more than one subsystem, specially designed or modified for "use" in "missiles." (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

■ 86. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 (Propulsion Systems, Space Vehicles and Related Equipment), ECCN 9E101 is amended by revising the Heading, and the Related Controls paragraph of the List of Items Controlled section, to read as follows:

9E101 "Technology" according to the General Technology Note for the "development" or "production" of commodities or software controlled by 9A012, 9A101, 9A104 to 9A111, 9A115 to 9A119, 9D101, 9D103, 9D104 or 9D105.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: "Technology" controlled by 9E101 for items in 9A012, 9A101.b, 9A104, 9A105, to 9A109, 9A110 that are specially designed for use in missile systems and subsystems, 9A111, 9A115, 9A116 to 9A119, 9D103, and 9D105 are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: * * *

Items: * * *

■ 87. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 (Propulsion Systems, Space Vehicles and Related Equipment), ECCN 9E102 is amended by revising the Heading, and the Related Controls paragraph of the List of Items Controlled section, to read as follows:

9E102 "Technology" according to the General Technology Note for the "use" of space launch vehicles specified in 9A004, or commodities or software controlled by 9A005 to 9A012, 9A101, 9A104 to 9A111, 9A115 to 9A119, 9B105, 9B106, 9B115, 9B116, 9B117, 9D101, 9D103, 9D104 or 9D105.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) For the purpose of this entry, "use" "technology" is limited to items controlled for MT and their subsystems. (2) "Technology" controlled by 9E102 for commodities or software subject to the export licensing jurisdiction of the Department of State in 9A004 to 9A012, 9A101.b, 9A104, 9A105, 9A106.a to .c, 9A107 to 9A109, 9A110 that are specially designed for use in missile systems and subsystems, 9A111, 9A115 to 9A119, 9B115, 9B116, 9D103, specified software in 9D104, and 9D105 are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: * * *

Items: * * *

Dated: March 25, 2003.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 03–7695 Filed 4–1–03; 8:45 am]

BILLING CODE 3510–33–P

VOL
68

ISS
63

AP

2

003

MI

Federal Register

Wednesday,
April 2, 2003

Part IV

Department of Labor

29 CFR Parts 96 and 99
Audit Requirements for Grants, Contracts, and Other Agreements; Audits of States, Local Governments, and Non-profit Organizations; Final Rules

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 96

RIN 1291–AA26

Audit Requirements for Grants, Contracts, and Other Agreements

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule; no material change.

SUMMARY: The Department of Labor hereby finalizes its regulation on "Audit Requirements For Grants, Contracts, and Other Agreements," to ensure consistency with previously published amendments to "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations" and "Uniform Administrative Requirements for Grants, and Cooperative Agreements to State and Local Governments."

EFFECTIVE DATE: Effective May 2, 2003.

FOR FURTHER INFORMATION CONTACT: Jeff Saylor, Acting Director, Division of Acquisition Management Services, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5425, Washington, DC 20210. Telephone (202) 693–7285. E-mail: *OASAMRegComments@dol.gov.*

SUPPLEMENTARY INFORMATION: The Single Audit Act Amendments of 1996, (Public Law 104–156, 110 Stat. 1396), and the June 24, 1997, revision of OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations" (62 FR 35278, June 30, 1997), required agencies to adopt in codified regulations the standards in the revised Circular A–133 by August 29, 1997, so that they will apply to audits of fiscal years beginning after June 30, 1996. The revised Circular A–133 co-located audit requirements for States, local governments, and non-profit organizations. As a consequence, OMB rescinded OMB Circular A–128, "Audits of State and Local Governments." The Department's interim final rule has been in effect since March 25, 1999 (64 FR 14539). No comments were received on this rule. Accordingly, the interim rule amending 29 CFR part 96 is being adopted as a final rule without change.

Paperwork Reduction Act

This regulation is subject to the Paperwork Reduction Act. Information is submitted on the Standard Form SF–SAC, entitled "Data Collection Form for Reporting on Audits of States, Local Governments, and Non-Profit Organizations for Fiscal Year Ending Dates On or After January 1, 2001." The U.S. Census Bureau is acting as the collection agent for OMB. OMB has issued approval number 0348–0057 for this data collection.

Executive Order 12866 and Significant Regulatory Actions

This rule is considered by the Department of Labor to be a "significant regulatory action" under section 3(f) of E.O. 12866. Accordingly this rule has been submitted to and approved by the Office of Management and Budget.

This rule will not have a significant economic impact on a substantial number of small entities. This final rule does not affect the amount of funds provided in the covered programs, but rather increases the threshold for non-Federal entities subject to audit, thereby reducing burden on some small entities. Accordingly, the Department determined that this rule will not have a significant economic impact on a substantial number of small entities. The Department certified to this effect to the Chief Counsel for Advocacy of the U.S. Small Business Administration when the interim rule was published. Therefore, no Regulatory Flexibility Analysis was required. No comments were received on any aspect of the rule or these conclusions as set forth in the interim rule.

Small Business Regulatory Enforcement Fairness Act

This rule is not a "major rule" under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effects on Families

This rule has been assessed under section 654 of the Treasury and General Government Appropriations Act, 1999, for its effect on family well-being and we hereby certify that the rule will not adversely affect the well-being of families.

Consistent with the Small Business Regulatory Enforcement Act of 1996, DOL will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will note the Office of Management and Budget's determination that this rule does not constitute a major rule under that Act 5 U.S.C. 801, 804.

List of Subjects in 29 CFR Part 96

Audit Requirements For Grants, Contracts, And Other Agreements.

Signed at Washington, DC, on March 26, 2003.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 03–7887 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 99

RIN 1291–AA27

Audits of States, Local Governments, and Non-Profit Organizations

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule; no material change.

SUMMARY: The Department of Labor hereby finalizes its regulation on "audits of states, local governments, and non-profit organizations" which codifies in (DOL) regulations the revised Office of Management and Budget (OMB) Circular A–133 in its entirety.

EFFECTIVE DATE: Effective May 2, 2003.

FOR FURTHER INFORMATION CONTACT: Jeff Saylor, Acting Director, Division of Acquisition Management Services, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5425, Washington, DC 20210. Telephone (202) 693–7285. E-mail: *OASAMRegComments@dol.gov.*

SUPPLEMENTARY INFORMATION: The Single Audit Act Amendments of 1996, (Public Law 104–156, 110 Stat. 1396), and the June 24, 1997, revision of OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations" (62 FR 35278, June 30, 1997), required agencies to adopt in codified regulations the standards in the revised Circular A–133 by August 29, 1997, so that they will apply to audits of fiscal years beginning after June 30, 1996. The Department's interim final rule has been in effect since March 25, 1999 (64 FR 14539). No comments were received on the rule. Accordingly, the interim rule adding 29 CFR part 99 which was published at 64 FR 14539 on March 25, 1999 is being adopted as a final rule without change.

Paperwork Reduction Act

This regulation is subject to the Paperwork Reduction Act. Information is submitted on the Standard Form SF–SAC, entitled "Data Collection Form for Reporting on Audits of States, Local Governments, and Non-Profit Organizations for Fiscal Year Ending Dates On or After January 1, 2001." The U.S. Census Bureau is acting as the collection agent for OMB. OMB has issued approval number 0348–0057 for this data collection.

Executive Order 12866 and Significant Regulatory Actions

This rule is considered by the Department of Labor to be a "significant regulatory action" under section 3(f) of E.O. 12866. Accordingly this rule has been submitted to and approved by the Office of Management and Budget.

This rule will not have a significant economic impact on a substantial number of small entities. This final rule does not affect the amount of funds provided in the covered programs, but rather increases the threshold for non-Federal entities subject to audit, thereby reducing burden on some small entities. Accordingly, the Department determined that this rule will not have a significant economic impact on a substantial number of small entities. The Department certified to this effect to the Chief Counsel for Advocacy of the U.S. Small Business Administration when the interim rule was published. Therefore, no Regulatory Flexibility Analysis was required. No comments were received on any aspect of the rule or these conclusions as set forth in the interim rule.

Small Business Regulatory Enforcement Fairness Act

This rule is not a "major rule" under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) because it is not likely to result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effects on Families

This rule has been assessed under section 654 of the Treasury and General Government Appropriations Act, 1999, for its effect on family well-being and we hereby certify that the rule will not adversely affect the well-being of families.

Consistent with the Small Business Regulatory Enforcement Act of 1996, DOL will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will note the Office of Management and Budget's determination that this rule does not constitute a major rule under that Act 5 U.S.C. 801, 804.

List of Subjects in 29 CFR Part 99

Audits of States, Local Governments, and Non-Profit Organizations.

Signed at Washington, DC, on March 26, 2003.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 03–7888 Filed 4–1–03; 8:45 am]

BILLING CODE 4510–23–P

Reader Aids

Federal Register

Vol. 68, No. 63

Wednesday, April 2, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, APRIL

15653–15920..... 1
15921–16164..... 2

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR
Executive Orders:
10448 (Amended by 13293)..... 15917
11157 (Revoked by 13294)..... 15919
11800 (Revoked by 13294)..... 15919
13293..... 15917
13294..... 15919
Proclamations:
7657..... 15921

7 CFR
923..... 15923
989..... 15926
Proposed Rules:
930..... 15971

9 CFR
94..... 15932

13 CFR
Proposed Rules:
121..... 15971

14 CFR
39..... 15653, 15937
93..... 15657
121..... 15884
125..... 15884
129..... 15884
Proposed Rules:
39..... 15682, 15684, 15687

15 CFR
740..... 16144
742..... 16144
774..... 16144

17 CFR
228..... 15939
229..... 15939
244..... 15939
249..... 15939
Proposed Rules:
240..... 15688

20 CFR
404..... 15658

24 CFR
Proposed Rules:
202..... 15906

26 CFR
1..... 15940
40..... 15940
48..... 15940
49..... 15940
602..... 15940, 15942
Proposed Rules:
1..... 15801
49..... 15690

29 CFR
96..... 16162
99..... 16162

30 CFR
Proposed Rules:
70..... 15691
72..... 15691
75..... 15691
90..... 15691

33 CFR
117..... 15943
Proposed Rules:
110..... 15691
165..... 15694

37 CFR
Proposed Rules:
201..... 15972

38 CFR
1..... 15659

40 CFR
52..... 15661, 15664
180..... 15945, 15958, 15963
Proposed Rules:
52..... 15696

42 CFR
Proposed Rules:
440..... 15973

44 CFR
Ch.1..... 15666
61..... 15666
64..... 15967

46 CFR
Proposed Rules:
401..... 15697
530..... 15978

47 CFR
54..... 15669

49 CFR
665..... 15672

50 CFR
17.....15804
224.....15674
230.....15680
679.....15969
Proposed Rules:
17.....15876, 15879

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 2, 2003

COMMERCE DEPARTMENT
Industry and Security Bureau
Export administration regulations:
Commerce Control List—
Missle Technology Control Regime; published 4-2-03

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Aiaska; fisheries of Exclusive Economic Zone—
North Pacific Groundfish Observer Program; technical correction; published 4-2-03
Western Alaska Community Development Quota Program; halibut; published 3-3-03

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Practice and procedure:
Critical energy infrastructure information; public availability restrictions; published 3-3-03

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Indiana; published 3-3-03
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Antimicrobial formulations; published 12-3-02
Bacillus pumilus GB 34; published 4-2-03
Modified Acrylic polymers; published 4-2-03
S-metolachlor; published 4-2-03

FEDERAL COMMUNICATIONS COMMISSION
Radio services, special:
Personal radio services—
Garmin International, Inc.; Family Radio Service units transmitting global positioning system location information, etc., for brief text messages; published 3-3-03

TRANSPORTATION DEPARTMENT
Personnel:
Board for Correction of Coast Guard Military Records; application procedures clarification, etc.; published 3-3-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bell; published 3-18-03
Dassault; published 3-18-03
General Electric Co.; published 3-18-03

TREASURY DEPARTMENT
Internal Revenue Service
Excise taxes:
Diesel fuel; blended taxable fuel; published 4-2-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Olives grown in—
California; comments due by 4-9-03; published 3-10-03 [FR 03-05561]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Foot-and-mouth disease; disease status change—
Uruguay; comments due by 4-11-03; published 2-10-03 [FR 03-03228]
Noxious weeds:
Kikuyu grass cultivars; comments due by 4-11-03; published 2-10-03 [FR 03-03181]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Noxious weeds:
Witchweed; regulated areas; comments due by 4-11-03; published 2-10-03 [FR 03-03182]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Wheat and related products; flag smut import prohibitions; comments due by 4-8-03; published 2-7-03 [FR 03-03057]
Plant related quarantine; domestic:
Fire ant, imported; comments due by 4-7-03; published 2-5-03 [FR 03-02685]

AGRICULTURE DEPARTMENT
Forest Service
National Forest System land and resource management planning; comments due by 4-7-03; published 3-5-03 [FR 03-05116]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 4-10-03; published 3-26-03 [FR 03-07252]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Energy conservation standards and test procedures—
Refrigerators and refrigerator-freezers; comments due by 4-7-03; published 3-7-03 [FR 03-05405]

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Energy conservation standards and test procedures—
Refrigerators and refrigerator-freezers; comments due by 4-7-03; published 3-7-03 [FR 03-05404]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
California; comments due by 4-10-03; published 3-11-03 [FR 03-05748]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Indiana; comments due by 4-10-03; published 3-11-03 [FR 03-05741]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Indiana; comments due by 4-10-03; published 3-11-03 [FR 03-05742]
New Hampshire; comments due by 4-7-03; published 3-6-03 [FR 03-05305]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Hampshire; comments due by 4-7-03; published 3-6-03 [FR 03-05306]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Jersey; comments due by 4-7-03; published 3-6-03 [FR 03-05320]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Jersey; comments due by 4-7-03; published 3-6-03 [FR 03-05321]
Rhode Island; comments due by 4-7-03; published 3-6-03 [FR 03-05307]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Rhode Island; comments due by 4-7-03; published 3-6-03 [FR 03-05308]
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-7-03; published 3-7-03 [FR 03-05325]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-7-03; published 3-7-03 [FR 03-05326]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Iowa; comments due by 4-7-03; published 3-7-03 [FR 03-05309]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Iowa; comments due by 4-7-03; published 3-7-03 [FR 03-05310]
ENVIRONMENTAL PROTECTION AGENCY
Small Business Liability Relief and Brownfields Revitalization Act; implementation:
Federal standards for conducting all appropriate inquiry; negotiated rulemaking committee; intent to establish; comments due by 4-7-03; published 3-6-03 [FR 03-05324]
FARM CREDIT ADMINISTRATION
Farm credit system:
Borrower rights; comments due by 4-7-03; published 2-4-03 [FR 03-02506]
FEDERAL COMMUNICATIONS COMMISSION
Radio frequency devices:
Unlicensed devices operating in additional frequency bands; feasibility; comments due by 4-7-03; published 1-21-03 [FR 03-01206]
Radio stations; table of assignments:
North Carolina and Virginia; comments due by 4-11-03; published 3-10-03 [FR 03-05333]
Oregon; comments due by 4-11-03; published 3-6-03 [FR 03-05334]
Various States; comments due by 4-11-03; published 3-6-03 [FR 03-05335]
FEDERAL MARITIME COMMISSION
Passenger vessel financial responsibility:
Performance and casualty rules, Alternative Dispute Resolution program, etc.; miscellaneous amendments; comments due by 4-8-03; published 12-27-02 [FR 02-32645]
FEDERAL RESERVE SYSTEM
Home mortgage disclosure (Regulation C):
Transition rules for applications; staff commentary; comments due by 4-8-03; published 3-7-03 [FR 03-05365]
GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]
HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare:
End-stage renal disease services; provider bad debt payment; comments due by 4-11-03; published 2-10-03 [FR 03-02974]
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Radiological health:
Diagnostic x-ray systems and their major components; performance standard; comments due by 4-9-03; published 12-10-02 [FR 02-30550]
HEALTH AND HUMAN SERVICES DEPARTMENT
Energy Employees Occupational Illness Compensation Program Act; implementation:
Special Exposure Cohort; classes of employees designated as members; procedures; comments due by 4-7-03; published 3-7-03 [FR 03-05604]
HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
New Jersey; comments due by 4-7-03; published 2-5-03 [FR 03-02696]
Pollution:
Ballast water management reports; non-submission penalties; comments due by 4-7-03; published 1-6-03 [FR 03-00100]
Vessel and facility response plans for oil; 2003 removal equipment requirements and alternative technology revisions
Meeting; comments due by 4-8-03; published 11-19-02 [FR 02-29168]
Ports and waterways safety:
Oahu, Maui, Hawaii, and Kauai, HI; security zones; comments due by 4-7-03; published 2-4-03 [FR 03-02523]
HOMELAND SECURITY DEPARTMENT
Lobbying restrictions; comments due by 4-7-03; published 3-6-03 [FR 03-05145]
HOMELAND SECURITY DEPARTMENT
Nondiscrimination on basis of disability in federally conducted programs or activities; comments due by 4-7-03; published 3-6-03 [FR 03-05142]
HOMELAND SECURITY DEPARTMENT
Nondiscrimination on basis of race, color, or national origin in programs or activities receiving Federal financial assistance; comments due by 4-7-03; published 3-6-03 [FR 03-05144]
Nondiscrimination on basis of sex in education programs or activities receiving Federal financial assistance; comments due by 4-7-03; published 3-6-03 [FR 03-05143]
Organization, functions, and authority delegations:
Immigration law enforcement; comments due by 4-7-03; published 3-6-03 [FR 03-05146]
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Public housing assessment system; changes; comments due by 4-7-03; published 2-6-03 [FR 03-02608]
JUSTICE DEPARTMENT
DNA identification system:
USA PATRIOT Act; implementation—
Federal offenders; DNA sample collection; comments due by 4-10-03; published 3-11-03 [FR 03-05861]
LABOR DEPARTMENT
Occupational Safety and Health Administration
Safety and health standards:
Commercial diving operations; comments due by 4-10-03; published 1-10-03 [FR 03-00372]
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]
PERSONNEL MANAGEMENT OFFICE
Federal Long Term Care Insurance Program; comments due by 4-7-03; published 2-4-03 [FR 03-02463]
PERSONNEL MANAGEMENT OFFICE
Health benefits, Federal employees:
Health care providers; financial sanctions; comments due by 4-11-03; published 2-10-03 [FR 03-03125]
PERSONNEL MANAGEMENT OFFICE
Homeland Security Act; implementation:
Voluntary separation incentive payments; comments due by 4-7-03; published 2-4-03 [FR 03-02766]
SECURITIES AND EXCHANGE COMMISSION
Securities:
Sarbanes-Oxley Act of 2002; implementation—
Attorneys; professional conduct standards; implementation; comments due by 4-7-03; published 2-6-03 [FR 03-02520]
OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States
Andean Trade Preference Act, as amended by Andean Trade Promotion and Drug Eradication Act; countries eligibility for benefits; petition process; comments due by 4-7-03; published 2-4-03 [FR 03-02705]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Aircraft products and parts; certification procedures:
Production Approval Holder's quality system; products and/or parts that have left system, performing work on; policy statement; comments due by 4-10-03; published 3-11-03 [FR 03-05128]
Airworthiness directives:
BAE Systems (Operations) Ltd.; comments due by 4-11-03; published 3-12-03 [FR 03-05859]
Bell; comments due by 4-8-03; published 2-7-03 [FR 03-03030]
Boeing; comments due by 4-10-03; published 2-24-03 [FR 03-04236]
Dornier; comments due by 4-11-03; published 3-12-03 [FR 03-05858]
General Electric Co.; comments due by 4-8-03; published 2-7-03 [FR 03-02995]
McDonnell Douglas; comments due by 4-7-03; published 2-20-03 [FR 03-04028]
Raytheon; comments due by 4-10-03; published 2-24-03 [FR 03-04234]
Sikorsky; comments due by 4-8-03; published 2-7-03 [FR 03-03031]
Turbomeca; comments due by 4-7-03; published 2-5-03 [FR 03-02633]
Turbomeca S.A.; comments due by 4-8-03; published 2-7-03 [FR 03-02996]
Jet routes; comments due by 4-7-03; published 2-19-03 [FR 03-03965]
TRANSPORTATION DEPARTMENT
Federal Highway Administration
Grants:
Operation of motor vehicles by intoxicated persons; withholding of Federal-aid highway funds; comments due by 4-7-03; published 2-6-03 [FR 03-02790]
TRANSPORTATION DEPARTMENT
Federal Motor Carrier Safety Administration
Motor carrier safety standards:
Intermodal container chassis and trailers; general inspection, repair, and maintenance requirements; negotiated rulemaking process; intent to consider; comments due by 4-10-03; published 2-24-03 [FR 03-04228]
TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Grants:
Operation of motor vehicles by intoxicated persons; wtihholding of Federal-aid highway funds; comments due by 4-7-03; published 2-6-03 [FR 03-02790]
TREASURY DEPARTMENT
Comptroller of the Currency
National banks:
Authority provided by American Homeownership and Economic Opportunity Act, and other miscellaneous amendments; comments due by 4-8-03; published 2-7-03 [FR 03-02641]
TREASURY DEPARTMENT
Community Development Financial Institutions Fund
Bank Enterprise Award Program; implementation; comments due by 4-7-03; published 2-4-03 [FR 03-02336]
Community Development Financial Institutions Program; implementation; comments due by 4-7-03; published 2-4-03 [FR 03-02335]
TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Anti-money laundering programs for businesses engaged in vehicle sales; comments due by 4-10-03; published 2-24-03 [FR 03-04173]
Anti-money laundering programs for travel agencies; comments due by 4-10-03; published 2-24-03 [FR 03-04172]
VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
Cirrhosis of liver in former prisoners of war; presumptive service connection; comments due by 4-11-03; published 2-10-03 [FR 03-03175]
VETERANS AFFAIRS DEPARTMENT
Loan guaranty:
Veterans Education and Benefits Expansion Act; implementation; comments due by 4-11-03; published 2-10-03 [FR 03-03176]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 395/P.L. 108–10

Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

Last List March 10, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AEB SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFRDO SMITH212J                  DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy! VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $764 each per year.

____ subscriptions to **Federal Register**, *daily only* (FRDO), at $699 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date) *Thank you for your order!*

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

108th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 108th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara1/nara005.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

Charge your order. It's Easy! VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

____ subscriptions to **PUBLIC LAWS** for the 108th Congress for $285 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date) *Thank you for your order!*

Authorizing signature 2/03

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...



Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $264.00
Six months: $132.00

Code of Federal Regulations:

Current year (as issued): $298.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code
* 5419

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ **Federal Register** (MFFR) ☐ One year at $264 each ☐ Six months at $132.00

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $298 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

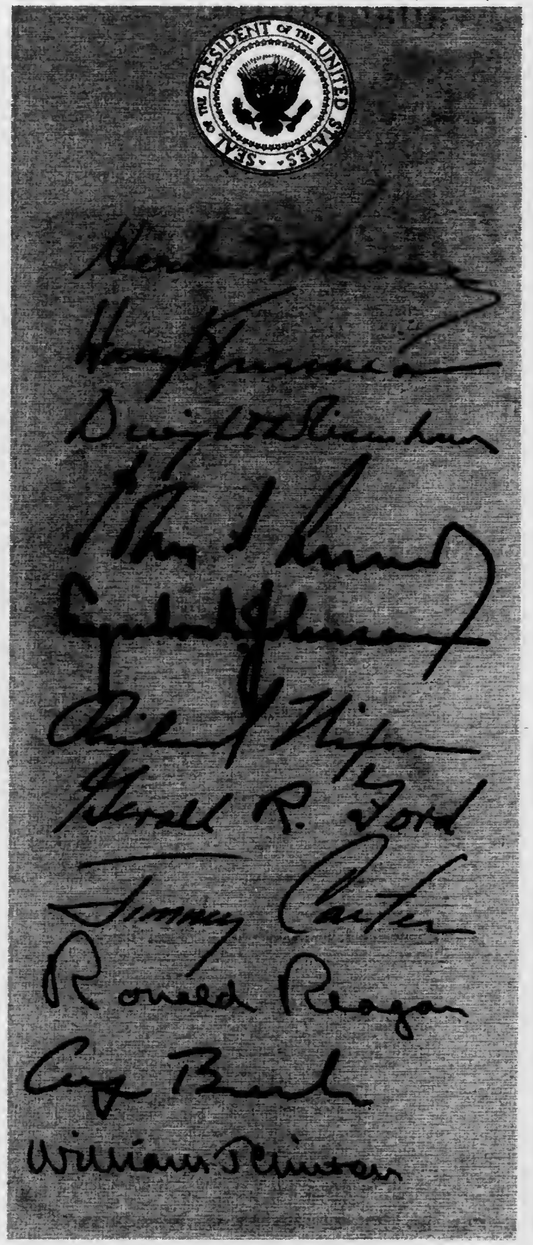
Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	**$51.00**
1993 (Book II)	**$51.00**
1994 (Book I)	**$56.00**
1994 (Book II)	**$52.00**
1995 (Book I)	**$60.00**
1995 (Book II)	**$65.00**
1996 (Book I)	**$66.00**
1996 (Book II)	**$72.00**
1997 (Book I)	**$69.00**
1997 (Book II)	**$78.00**
1998 (Book I)	**$74.00**
1998 (Book II)	**$75.00**
1999 (Book I)	**$71.00**
1999 (Book II)	**$75.00**
2000–2001 (Book I)	**$68.50**
2000–2001 (Book II)	**$63.00**
2000–2001 (Book III)	**$75.00**

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA (Rev. 5/02)

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

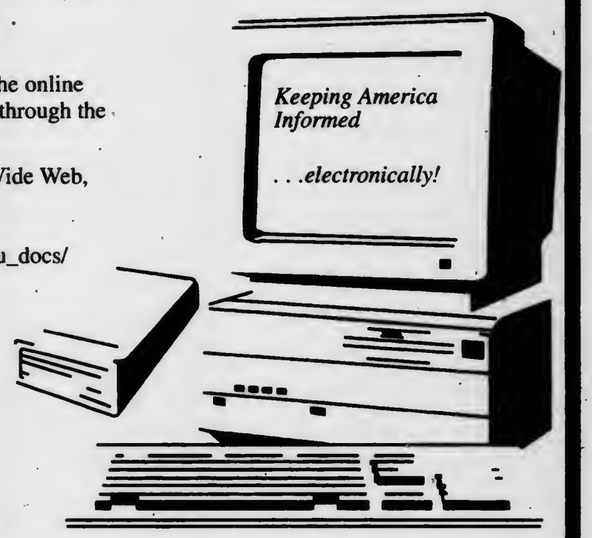
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

Order Now!

The United States Government Manual 2002/2003

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.



$49 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS ★ PERIODICALS ★ ELECTRONIC PRODUCTS

Order Processing Code:
***7917**

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please send me ____ copies of **The United States Government Manual** 2002/2003,
S/N 069–000–00145–9 at $49 ($68.60 foreign) each.

Total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

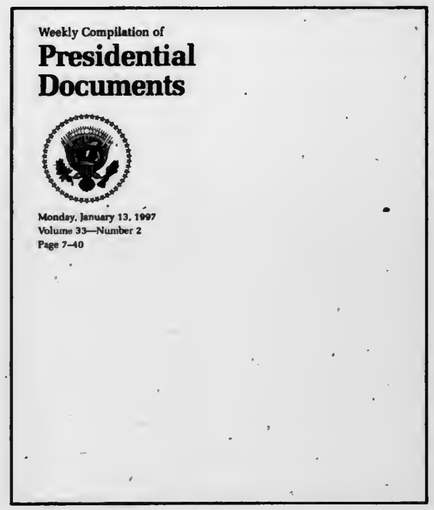
Thank you for your order!

Authorizing signature 9/02

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
* 5420

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $151.00 First Class Mail ☐ $92.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature

4/00

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VOL
68
ISS
63
AP
2
003
MI



Printed on recycled paper

VOL
68
ISS
64
AP
3
003
MI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL
PUBLICATION MAY AFFECT THE QUALITY OF
THE MICROFORM EDITION.



Federal Register

4–3–03 Thursday
Vol. 68 No. 64 Apr. 3, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
68
ISS
64
AP
3
003
MI



Federal Register

4–3–03 Thursday
Vol. 68 No. 64 Apr. 3, 2003
Pages 16165–16402

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	202–512–1806
General online information	202–512–1530; 1–888–293–6498
Single copies/back copies:	
Paper or fiche	202–512–1800
Assistance with public single copies	1–866–512–1800 (Toll-Free)
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	202–741–6005
Assistance with Federal agency subscriptions	202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 64
Thursday, April 3, 2003

Actuaries, Joint Board for Enrollment
See Joint Board for Enrollment of Actuaries

Agency for Toxic Substances and Disease Registry
NOTICES
Grants and cooperative agreements; availability, etc.:
Public Health Conference Support Program, 16287

Agriculture Department
See Commodity Credit Corporation
See Farm Service Agency
See Forest Service
See Natural Resources Conservation Service
RULES
Rural empowerment zones and enterprise communities, 16169–16170

Army Department
NOTICES
Reports and guidance documents; availability, etc.:
Historic properties protection—
Capehart and Wherry Era Army Family Housing, etc. (1949-1962), 16266–16267

Broadcasting Board of Governors
NOTICES
Meetings; Sunshine Act, 16260

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16284–16287
Grants and cooperative agreements; availability, etc.:
Public Health Conference Support Program, 16287
Public Health Laboratory Biomonitoring Implementation Program, 16287–16292

Chemical Safety and Hazard Investigation Board
NOTICES
Meetings; Sunshine Act, 16260–16262

Coast Guard
NOTICES
Meetings:
Great Lakes Pilotage Advisory Committee, 16299

Commerce Department
See Industry and Security Bureau
See National Oceanic and Atmospheric Administration

Commodity Credit Corporation
RULES
Loan and purchase programs:
Acreage reporting and common provisions, 16170–16185
NOTICES
Grants and cooperative agreements; availability, etc.:
Farmland Protection Program, 16253–16258

Community Development Financial Institutions Fund
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16347–16349

Defense Department
See Army Department
PROPOSED RULES
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Anesthesiologist's assistants inclusion as authorized providers and cardiac rehabilitation in freestanding cardiac rehabilitation facilities coverage, 16247–16249
Federal Acquisition Regulation (FAR):
Central contractor registration, 16365–16371
Privacy Act; implementation, 16249–16250
NOTICES
Environmental statements; availability, etc.:
Air Force Memorial, Arlington, VA, 16264
Privacy Act:
Systems of records, 16264–16266

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Educational research and improvement—
Charter School Facilities Credit Enhancement Program, 16267–16270
Leveraging Educational Assistance Partnership and Special Leveraging Educational Assistance Partnership Programs, 16270–16271
Special education and rehabilitative services—
Small Business Innovation Research Program, 16271–16274

Employee Benefits Security Administration
RULES
Organization, functions, and authority delegations:
Pension and Welfare Benefits Administration; agency name change to Employee Benefits Security Administration, 16398–16401

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16282–16283

Executive Office of the President
See Presidential Documents

Farm Service Agency
RULES
Farm marketing quotas, acreage allotments, and production adjustments:
Acreage reporting and common provisions, 16170–16185

Federal Aviation Administration
RULES
Airworthiness directives:
Air Tractor, Inc., 16198–16200
Boeing, 16200–16203
British Aerospace, 16195–16197

Raytheon, 16203–16207
Stemme GmbH & Co. KG, 16190–16192
Twin Commander Aircraft Corp., 16192–16195
Class E airspace, 16207–16208
Class E airspace; correction, 16351
PROPOSED RULES
Aircraft:
New aircraft; standard airworthiness certification, 16217–16220
Airworthiness directives:
Airbus, 16225–16227
Iniziative Industriali Italiane S.p.A., 16220–16225
Class E2 airspace, 16229–16230
Class E5 airspace, 16230–16231
Class E airspace, 16227–16229
NOTICES
Advisory circulars; availability, etc.:
Air carrier maintenance programs, 16339–16340
Transport category airplanes—
Seat restraint systems and occupant protection; dynamic evaluation, 16340
Air traffic operating and flight rules, etc.:
Oceanic airspace designation, 16340–16342
Grants and cooperative agreements; availability, etc.:
Airport Improvement Program, 16342
Passenger facility charges; applications, etc.:
William R. Fairchild International Airport, WA, 16342–16343

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Telephone Consumer Protection Act; implementation—
Do-Not-Call Implementation Act, 16250–16252

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 16283

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Connecticut, 16299
District of Columbia, 16300
Guam, 16300
Maryland, 16300–16301
Micronesia, 16301
New Hampshire, 16301–16302
New York, 16302
Northern Mariana Islands, 16302–16303
Ohio, 16303
Meetings:
National Fire Academy Board of Visitors, 16303

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Virginia Electric & Power Co. et al., 16276–16278
Environmental statements; availability, etc.:
Alabama Power Co., 16278–16279
ANR Pipeline Co., 16279–16280
Hackberry LNG Terminal, L.L.C., 16280–16281
Hydroelectric applications, 16281
Practice and procedure:
Off-the-record communications, 16281–16282
Applications, hearings, determinations, etc.:
Atmos Energy Corp., 16274
Boundary Gas, Inc., 16274–16275
Calpine Energy Services, L.P., 16275
Enbridge Pipelines (Louisiana Intrastate) LLC, 16275
Equitrans, L.P., 16275–16276
Texas Eastern Transmission, LP, 16276
Wisconsin Public Service Corp., 16276

Federal Reserve System
RULES
Truth in lending (Regulation Z):
Official staff commentary; amendments, 16185–16190
NOTICES
Banks and bank holding companies:
Change in bank control, 16283
Formations, acquisitions, and mergers, 16284

Federal Trade Commission
PROPOSED RULES
Appliances, consumer; energy consumption and water use information in labeling and advertising:
Comparability ranges—
Clothes washers, 16231–16237
Telemarketing sales rule:
National do-not-call registry; user fees, 16238–16247

Federal Transit Administration
NOTICES
Environmental statements; notice of intent:
New York City, NY; Fulton Street Transit Center, 16343–16346

Fish and Wildlife Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16304–16305
Endangered and threatened species:
Recovery plans—
Southern sea otter, 16305–16306

Food and Drug Administration
NOTICES
Meetings:
Pharmaceutical Science Advisory Committee, 16292
Reports and guidance documents; availability, etc.:
Nasal aerosols and nasal sprays; bioavailability and bioequivalence studies, 16292–16293

Forest Service
NOTICES
Meetings:
Willamette Provincial Advisory Committee, 16258

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Central contractor registration, 16365–16371
NOTICES
Federal travel:
eTravel initiative; correction, 16351

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16293–16294
Meetings:
Migrant Health National Advisory Council, 16294

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16303–16304

Industry and Security Bureau
RULES
Export administration regulations:
Explosives detection equipment and related software and technology, exports and reexports; foreign policy controls imposition and expansion, 16208–16214
NOTICES
Meetings:
Information Systems Technical Advisory Committee, 16262

Inter-American Foundation
NOTICES
Meetings; Sunshine Act, 16304

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Reclamation Bureau
RULES
Native American Graves Protection and Repatriation Act; implementation:
Civil penalties on museums that fail to comply with Act, 16353–16364

Internal Revenue Service
RULES
Procedure and administration:
Damages caused by unlawful tax collection actions; civil cause of action
Correction, 16351

Joint Board for Enrollment of Actuaries
NOTICES
Meetings:
Actuarial Examinations Advisory Committee, 16253

Justice Department
See Justice Programs Office

Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16308

Labor Department
See Employee Benefits Security Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration
RULES
Organization, functions, and authority delegations:
Pension and Welfare Benefits Administration; agency name change to Employee Benefits Security Administration, 16397–16399
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16308–16311

Land Management Bureau
NOTICES
Environmental statements; notice of intent:
Fayette County, AL, et al.; oil and gas exploration and development, 16306–16307
Resource management plans, etc.:
Malheur and Jordan Resource Areas, OR, 16307–16308

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Dakota Westmoreland Corp.; correction, 16311
HB Coal Co., Inc., et al., 16311

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Central contractor registration, 16365–16371

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 16346–16347

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16294–16295
Meetings:
Interagency Autism Coordinating Committee, 16295–16296
National Eye Institute, 16296
National Institute of Allergy and Infectious Diseases, 16297–16298
National Institute of Dental and Craniofacial Research, 16296
National Institute of Environmental Health Sciences, 16297
National Institute of Neurological Disorders and Stroke, 16296–16297
National Library of Medicine, 16298–16299

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic highly migratory species—
Swordfish, 16216
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
Minerals Management Service; seismic surveys in Gulf of Mexico; sperm whales, etc., 16262–16263
Permits:
Endangered and threatened species, 16263–16264

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
Lingle-Ft. Laramie Water Quality Project, WY, 16258–16260
Grants and cooperative agreements; availability, etc.:
Farmland Protection Program, 16253–16258

Nuclear Regulatory Commission
PROPOSED RULES
Fee schedules revision; 94% fee recovery (2003 FY), 16373–16395
NOTICES
Operating licenses, amendments; no significant hazards, considerations; biweekly notices; correction, 16313
Applications, hearings, determinations, etc.:
PSEG Nuclear, LLC, 16312–16313

Occupational Safety and Health Administration
NOTICES
Nationally recognized testing laboratories, etc.:
NSF International, 16311–16312

Presidential Documents
ADMINISTRATIVE ORDERS
East Timor; security assistance, certification and report (Presidential Determination No. 2003-19), 16167
Iraq; authorization for assistance (Presidential Determination No. 2003-18), 16165

Reclamation Bureau
RULES
Public conduct on Reclamation lands and projects, 16214–16215

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16313–16314
Intermarket Trading System; plan amendments, 16319–16320
Investment Company Act of 1940:
Deregistration applications—
John Hancock Cash Reserve, Inc., et al., 16320–16321
Exemption applications—
FSA Capital Management Services LLC, 16321–16323
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 16323–16334
New York Stock Exchange, Inc., 16334–16337
Options Clearing Corp., 16337
Applications, hearings, determinations, etc.:
Landesbank Baden-Wurttemberg, 16314
Public utility holding company filings, 16314–16319

State Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Tunisia; Educational Partnerships Program, 16337–16339

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Aviation Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
RULES
Organization, functions, and authority delegations:
Administrator, Maritime Administration, 16215–16216

Treasury Department
See Community Development Financial Institutions Fund
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16349
Meetings:
Cemeteries and Memorials Advisory Committee, 16349
Special Medical Advisory Group, 16349–16350

Separate Parts In This Issue

Part II
Interior Department, 16353–16364

Part III
Defense Department; General Services Administration; National Aeronautics and Space Administration, 16365–16371

Part IV
Nuclear Regulatory Commission, 16373–16395

Part V
Labor Department, 16397–16399

Part V
Labor Department, Employee Benefits Security Administration, 16398–16401

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determinations:
No. 2003-18 of March 24, 2003 16165
No. 2003-19 of March 28, 2003 16167

5 CFR
5201 16398

7 CFR
25 16169
718 16170
723 16170
1412 16170
1413 16170

10 CFR
Proposed Rules:
170 16374
171 16374

12 CFR
226 16185

14 CFR
39 (7 documents) 16190, 16192, 16195, 16198, 16200, 16203, 16205
71 (2 documents) 16207, 16351
Proposed Rules:
21 16217
39 (3 documents) 16220, 16222, 16225
71 (3 documents) 16227, 16229, 16230

15 CFR
740 16208
742 16208
762 16208
774 16208

16 CFR
Proposed Rules:
305 16231
310 16238

26 CFR
301 16351

29 CFR
70 16398
71 16398
2509 16399
2510 16399
2520 16399
2550 16399
2560 16399
2570 16399
2575 16399
2582 16399
2584 16399
2589 16399
2590 16399

32 CFR
Proposed Rules:
199 16247
312 16249

43 CFR
10 16354
423 16214

47 CFR
Proposed Rules:
64 16250

48 CFR
Proposed Rules:
2 16366
4 16366
13 16366
32 16366
52 16366

49 CFR
1 16215

50 CFR
635 16216

Federal Register
Vol. 68, No. 64
Thursday, April 3, 2003

Presidential Documents

Title 3—

The President

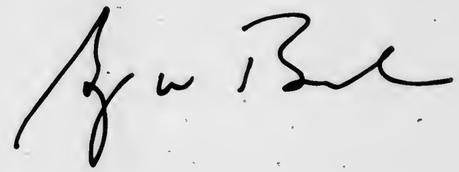
Presidential Determination No. 2003–18 of March 24, 2003

Assistance for Iraq

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 507 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003, Division E of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7), I hereby determine that the provision of assistance or other financing for Iraq is important to the national security interests of the United States. I hereby authorize the furnishing of this assistance or other financing.

You are hereby authorized and direct to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, March 24, 2003.

[FR Doc. 03–8247
Filed 4–2–03; 8:45 am]
Billing code 4710–10–M

Presidential Documents

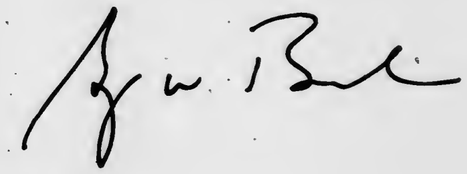
Presidential Determination No. 2003–19 of March 28, 2003

Security Assistance to East Timor: Certification and Report Pursuant to Section 637(a)(2) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228)

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 637(b)(2) of the Foreign Relations Authorization Act, Fiscal Year 2003, I hereby certify that East Timor has established an independent armed forces; and that the provision to East Timor of military assistance in the form of excess defense articles and international military education and training is in the national security interests of the United States, and will promote both human rights in East Timor and the professionalization of the armed forces of East Timor.

You are hereby authorized and directed to report this certification, accompanying memorandum of justification, and report on East Timor security assistance to the Congress, and to arrange for the publication of this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, March 28, 2003.

[FR Doc. 03–8248
Filed 4–2–03; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 68, No. 64
Thursday, April 3, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 25

Rural Empowerment Zones and Enterprise Communities

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Secretary of the U.S. Department of Agriculture acting through the Under Secretary, Rural Development, revises the regulations for the rural empowerment zone program to amend the definition of designation date to include the designation date for two rural empowerment zones authorized by the Community Renewal Tax Relief Act of 2000 (Round III).

EFFECTIVE DATE: April 3, 2003.

FOR FURTHER INFORMATION CONTACT: Deputy Administrator for Community Development, USDA Rural Development, Office of Community Development, STOP 3203, 1400 Independence Ave., SW., Washington, DC 20024–3203, telephone 1–800–645–4712, or by sending an Internet e-mail message to "*feedback@ocdx.usda.gov*". For hearing- and speech-impaired persons, information concerning this program may be obtained by contacting USDA's Target Center at (202) 720–2600 (Voice and TDD).

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be non-significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Programs Affected

The Catalog of Federal Domestic Assistance Program affected by this action is 10.772, Empowerment Zone Program.

Program Administration

The program is administered through the Office of Community Development within the Rural Development mission area of the Department of Agriculture.

Paperwork Reduction Act

There are no reporting or recordkeeping requirements associated with this rule.

Intergovernmental Review

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given to this rule and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing litigation challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

It is the determination of the Secretary that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, and 7 CFR part 25, an Environmental Impact Statement is not required.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, USDA must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Therefore this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132, Federalism

The policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs or other effects on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of governments. Thus, it has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Background

On December 21, 2000, the Community Renewal Tax Relief Act (Pub. L. 106–554) was signed into law, authorizing the designation of two additional rural empowerment zones, bringing the total authorized rural empowerment zones to ten. The eligibility criteria for Round III are exactly the same as for the rural empowerment zones authorized by the Taxpayer Relief Act of 1997 (Pub. L. 105–34).

The Secretary announced on January 11, 2002 that the Northern Maine

Development Commission, Inc. (Aroostook County) in Maine and Middle Rio Grande FUTURO Communities in Texas were designated as rural empowerment zones pursuant to the Round III authorizing legislation.

It is important to establish with certainty the beginning date of the period that runs with empowerment zone designation for these communities. It is particularly relevant to bond counsels which provide opinions on the validity of tax preferential bonds issued under the empowerment zone provisions in the Internal Revenue Code. Accordingly, this final rule amends the definition of designation date to include the designation date for Round III empowerment zones in addition to the other relevant designation dates.

This regulation is being published as a final rule without a Notice of Prior Rulemaking because the change being made is a matter of historical fact and is not subject to change in response to comments. Therefore, public comment is unnecessary and impracticable and contrary to the public interest. For this same reason, this final rule will be effective immediately upon publication.

Delegation of Authority

In the Final Rule published on March 25, 2002 (67 FR 13553), the Secretary of Agriculture delegated to the Under Secretary, Rural Development, authority to promulgate regulations for 7 CFR part 25.

List of Subjects in 7 CFR Part 25

Community development, Economic development, Empowerment zones, Enterprise communities, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Rural development.

■ In accordance with the reasons set out in the preamble, 7 CFR part 25 is amended as follows:

PART 25—RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

■ 1. The authority citation for part 25 is revised to read as follows:

Authority: 5 U.S.C. 301; 26 U.S.C. 1391; Pub. L. 103–66, 107 Stat. 543; Pub L. 105–34, 111 Stat. 885; Sec. 766, Pub. L. 105–277, 112 Stat. 2681–37; Pub. L. 106–554 [Title I of H.R. 5562], 114 Stat. 2763.

Subpart A—General Provision

■ 2. Amend § 25.3 by revising the definition of "designation date" to read as follows:

§ 25.3 Definitions.

* * * * *

Designation date means December 21, 1994, in the case of Round I designations, December 24, 1998, in the case of Round II and Round IIS designations and January 11, 2002, in the case of Round III designations.

* * * * *

Dated: March 25, 2003.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 03–8039 Filed 4–2–03; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR 718 and 723

Commodity Credit Corporation

7 CFR 1412 and 1413

RIN 0560–AG79

Acreage Reporting and Common Provisions

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule implements provisions of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) by making changes to Agency regulations that govern provisions common to multiple programs, including acreage report requirements, farm constitution, and monitoring compliance with those provisions. Other provisions of the 2002 Act will be implemented under separate rules. The intent of this rule is to implement statutory requirements for reports of acreage and conform the regulations with changes in other Agency programs.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Dan McGlynn, Production, Emergencies and Compliance Division, United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Ave. SW., Washington, DC 20250–0517. Telephone: (202) 720–3463. Electronic mail: *Dan_McGlynn@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the 2002 Act requires that the regulations needed to implement Title I of the 2002 Act are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

This final rule has a potential impact on all programs listed in the Catalog of Federal Domestic Assistance in the Agency program index under the Department of Agriculture, Farm Service Agency.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because FSA and CCC are not required by 5 U.S.C. 553 or any law to publish a notice of proposed rulemaking for this rule.

Environmental Assessment

The environmental impacts of this final rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. FSA has concluded the rule is categorically excluded from further environmental review and documentation as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. This rule preempts State laws that are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, administrative remedies must be exhausted.

Executive Order 12372

The provisions of this rule are not subject to Executive Order 12372, which required intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC and FSA are not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for this rule. Further, this rule imposes no mandates, as defined in sections 202 and 205 of UMRA, on State, local or tribal governments, or the private sector.

Paperwork Reduction Act

Sections 1601(c) and 2702(b) of the 2002 Act provide that the promulgation of regulations and the administration of Title I and II of the 2002 Act shall be done without regard to chapter 35 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Background

This rule amends CCC and FSA regulations that govern how marketing quotas, allotments, and base acres are maintained, monitored, divided, and reallocated. These regulations determine an agricultural producer's ability to market certain crops and their eligibility to receive marketing loans, support prices, and other CCC and FSA program benefits.

The 2002 Act authorizes the establishment of base acres on a farm and the issuance of direct payments and counter-cyclical payments for covered commodities and peanuts. Requirements are provided that must be met as a condition of receipt of these payments. Among other changes, the 2002 Act also terminates marketing quota programs for peanuts.

Sections 1105(c) and 1305(c) of the 2002 Act require producers on a farm to submit annual acreage reports with respect to all cropland on the farm as a condition of the receipt of any direct payments, counter-cyclical payments, marketing assistance loans and loan deficiency payments. In the recent past, the reporting of only certain planted acres by a farmer has been required for some FSA and CCC programs. In addition, sections 1105(a)(2) and 1305(a)(2) authorize the Secretary to issue such rules as the Secretary considers necessary to ensure producer compliance with the following requirements: subtitles B and C of title XII the Food Security Act of 1985; planting flexibility requirements of sections 1106 and 1306; the requirement to use farmland in a quantity equal to the attributable base acres for the farm for an agricultural or conserving use; the requirement to control noxious weeds and maintain the land using sound agricultural practices, if the agricultural or conserving use involves the non-cultivation of any base acres.

Under section 1101 of the 2002 Act, owners of a farm will be provided a one-time opportunity to elect the method by which base acres are to be calculated. This election applies to the farm, as it is constituted for CCC program purposes. Many FSA farms are comprised of land with divided ownership held by multiple owners. All owners of a farm must agree to the method by which base acres on the farm are calculated. Therefore, what constitutes a distinct farm operation for these purposes (the constitution of a "farm") is vital to the ability of CCC to implement the 2002 Act.

The regulations at 7 CFR part 718 are being amended in their entirety to make the changes required by the 2002 Act, and to incorporate the use of Geographic Information Systems. The changes made in this rule are expected to improve overall program administration, provide requirements and procedures for program participants, and allow for increased program support from new technologies.

The amendments to part 718 do not impact farm program participation or payment levels. Also, there are no expected impacts on acres planted, prices, or program payments. Therefore, net farm income and consumer costs will be unchanged and Federal outlays will remain within parameters established in the 2002 Act.

Additions to the regulations have also been made to cover ownership questions where current public records may be inadequate or where there is some other dispute about ownership. The rule will allow certifications to be used and allow claims to be barred where there is such a certification and there has been a failure of other claimants to act promptly or where the current public records are inadequate to readily resolve ownership issues. Not allowing such certifications would make it difficult for a number of small farms to receive prompt payments due to changes in ownership over the years which may not be reflected in the current public records and which may not be easily be corrected. While the rule could result in a bar to some claims that might otherwise be established, the rule in effect imposes a burden on all owners to ensure that their interests in the property are made known to FSA so that programs can be run in a timely manner and without excessive research and effort with the many farms that have to be serviced.

In addition, the rule provides for the Bureau of Indian Affairs of the Department of Interior to make certain decisions on behalf of farms entrusted to them or under their management. This follows current practice. The rule also provides that in the event of the need to collect a refund or claim in connection with these BIA-related farms, the sum, among other remedies, may be collected by an offset against the particular beneficiaries or by an offset against the farm itself. This collection provision reflects that the FSA may not, on many occasions, know who the beneficiaries of such farms are and that such adjustment as may be needed among individual interested parties can best be made by the BIA. This rule also makes a corrections to the hard white wheat regulations of 7 CFR Part 1413 published on February 3, 2003, 68 FR 5205. Specifically the applicability section of that rule is changed in this rule in keeping with the intent of that rulemaking so as not to limit 1413 to only "winter" varieties of hard white wheat. Further, a numbering correction is made to another section. These changes are exempt from comment for the same reasons as exempted the original rules from comment and because they are corrective in nature.

List of Subjects

7 CFR Part 718

Acreage allotments, Agricultural commodities, Marketing quotas.

7 CFR Part 723

Acreage allotments, Agricultural commodities, Marketing quotas, Price support programs, Tobacco.

7 CFR Part 1412

Agriculture, Feed Grains, Grains, Oilseeds, Price support programs.

7 CFR Part 1413

Agricultural commodities, Feed grains, Grains.

■ Accordingly, 7 CFR parts 718, 723, 1412 and 1413 are amended as set forth below.

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

■ 1. The authority for part 718 is revised to read as follows:

Authority: 7 U.S.C. 1311 *et seq.*, 1501 *et seq.*, 1921 *et seq.*, 7201 *et seq.*, 15 U.S.C. 714b.

■ 2. Subpart A is revised to read as follows:

Subpart A—General Provisions

Sec.

718.1 Applicability.
718.2 Definitions.
718.3 State committee responsibilities.
718.4 Authority for farm entry and providing information.
718.5 Rule of fractions.
718.6 Controlled substance.
718.7 Furnishing maps.
718.8 Administrative county.
718.9 Signature requirements.
718.10 Time limitations.

§ 718.1 Applicability.

(a) This part is applicable to all programs set forth in chapters VII and XIV of this title which are administered by the Farm Service Agency (FSA). This rule governs how FSA monitors marketing quotas, allotments, base acres and acreage reports. The regulations affected are those that establish procedures for measuring allotments and program eligible acreage, and determining program compliance.

(b) The provisions of this part will be administered under the general supervision of the Administrator, FSA, and shall be carried out in the field by State and county FSA committees (State and county committees).

(c) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any regulations in this part.

(d) No provisions or delegation herein to a State or county committee shall preclude the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

§ 718.2 Definitions.

Except as provided in individual parts of chapters VII and XIV of this title, the following terms shall be as defined herein:

Administrative variance (AV) means the amount by which the determined acreage of tobacco may exceed the effective allotment and be considered in compliance with program regulations.

Allotment means an acreage for a commodity allocated to a farm in accordance with the Agricultural Adjustment Act of 1938, as amended.

Allotment crop means any tobacco crop for which acreage allotments are established pursuant to part 723 of this chapter.

Barley means barley that follows the standard planting and harvesting practice of barley for the area in which the barley is grown.

Base acres means the quantity of acres established according to part 1413 of this title.

CCC means the Commodity Credit Corporation.

Combination means consolidation of two or more farms or parts of farms, having the same operator, into one farm.

Common ownership unit means a distinguishable parcel of land consisting of one or more tracts of land with the same owners, as determined by FSA.

Constitution means the make-up of the farm before any change is made because of change in ownership or operation.

Controlled substances means the term set forth in 21 CFR part 1308.

Corn means field corn or sterile high-sugar corn that follows the standard planting and harvesting practices for corn for the area in which the corn is grown. Popcorn, corn nuts, blue corn, sweet corn, and corn varieties grown for decoration uses are not corn.

County means the county or parish of a state. For Alaska, Puerto Rico and the Virgin Islands, a county shall be an area designated by the State committee with the concurrence of the Deputy Administrator.

County committee means the FSA county committee.

Crop reporting date means the latest date the Administrator, FSA will allow the farm operator, owner, or their agent to submit a crop acreage report in order for the report to be considered timely.

Cropland. (a) Means land which the county committee determines meets any of the following conditions:

(1) Is currently being tilled for the production of a crop for harvest. Land which is seeded by drilling, broadcast or other no-till planting practices shall be considered tilled for cropland definition purposes;

(2) Is not currently tilled, but it can be established that such land has been tilled in a prior year and is suitable for crop production;

(3) Is currently devoted to a one-row or two-row shelter belt planting, orchard, or vineyard;

(4) Is in terraces that, were cropped in the past, even though they are no longer capable of being cropped;

(5) Is in sod waterways or filter strips planted to a perennial cover;

(6) Is preserved as cropland in accordance with part 1410 of this title; or

(7) Is land that has newly been broken out for purposes of being planted to a crop that the producer intends to, and is capable of, carrying through to harvest, using tillage and cultural practices that are consistent with normal practices in the area; provided further that, in the event that such practices are not utilized other than for reasons beyond the producer's control, the cropland determination shall be void retroactive to the time at which the land was broken out.

(b) Land classified as cropland shall be removed from such classification upon a determination by the county committee that the land is:

(1) No longer used for agricultural production;

(2) No longer suitable for production of crops;

(3) Subject to a restrictive easement or contract that prohibits its use for the production of crops unless otherwise authorized by the regulation of this chapter;

(4) No longer preserved as cropland in accordance with the provisions of part 1410 of this title and does not meet the conditions in paragraphs (a)(1) through (a)(6) of this definition; or

(5) Converted to ponds, tanks or trees other than those trees planted in compliance with a Conservation Reserve Program contract executed pursuant to part 1410 of this title, or trees that are used in one-or two-row shelterbelt plantings, or are part of an orchard or vineyard.

Current year means the year for which allotments, quotas, acreages, and bases, or other program determinations are established for that program. For controlled substance violations, the current year is the year of the actual conviction.

Deputy Administrator means Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or their designee.

Determination means a decision issued by a State, county or area FSA committee or its employees that affects a participant's status in a program administered by FSA.

Determined acreage means that acreage established by a representative of the Farm Service Agency by use of official acreage, digitizing or planimetering areas on the photograph or other photographic image, or computations from scaled dimensions or ground measurements.

Direct and counter-cyclical program (DCP) cropland means land that currently meets the definition of cropland, land that was devoted to cropland at the time it was enrolled in a production flexibility contract in accordance with part 1413 of this title and continues to be used for agricultural purposes, or land that met the definition of cropland on or after April, 4, 1996, and continues to be used for agricultural purposes and not for nonagricultural commercial or industrial use.

Division means the division of a farm into two or more farms or parts of farms.

Entity means a corporation, joint stock company, association limited partnership, irrevocable trust, estate, charitable organization, or other similar organization including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

Extra Long Staple (ELS) Cotton means cotton that meets all of the following conditions:

(1) American-Pima, Sea Island, Sealand, all other varieties of the Barbandense species of cotton and any hybrid thereof, and any other variety of cotton in which 1 or more of these varieties is predominant; and,

(2) The acreage is grown in a county designated as an ELS county by the Secretary; and,

(3) The production from the acreage is ginned on a roller-type gin.

Family member means an individual to whom a person is related as spouse, lineal ancestor, lineal descendant, or sibling, including:

(1) Great grandparent;
(2) Grandparent;
(3) Parent;
(4) Child, including a legally adopted child;
(5) Grandchild
(6) Great grandchildren;
(7) Sibling of the family member in the farming operation; and
(8) Spouse of a person listed in paragraphs (1) through (7) of this definition.

Farm means a tract, or tracts, of land that are considered to be a separate operation under the terms of this part provided further that where multiple tracts are to be treated as one farm, the tracts must have the same operator and must also have the same owner except that tracts of land having different owners may be combined if all owners agree to the treatment of the multiple tracts as one farm for these purposes.

Farm inspection means an inspection by an authorized FSA representative using aerial or ground compliance to determine the extent of producer adherence to program requirements.

Farm number means a number assigned to a farm by the county committee for the purpose of identification.

Farmland means the sum of the DCP cropland, forest, acreage planted to an eligible crop acreage as specified in 1437.3 of this title and other land on the farm.

Field means a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, permanent waterways, woodlands, and croplines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features.

GIS means Geographic Information System or a system that stores, analyzes, and manipulates spatial or geographically referenced data. GIS computes distances and acres using stored data and calculations.

GPS means Global Positioning System or a positioning system using satellites that continuously transmit coded information. The information transmitted from the satellites is interpreted by GPS receivers to precisely identify locations on earth by measuring distance from the satellites.

Grain sorghum means grain sorghum of a feed grain or dual purpose variety (including any cross that, at all stages of growth, having characteristics of a feed grain or dual purpose variety) that follows the standard planting and harvesting practice for grain sorghum for the area in which the grain sorghum was planted. Sweet sorghum is not considered a grain sorghum.

Ground measurement means the distance between 2 points on the ground, obtained by actual use of a chain tape, GPS with an minimum accuracy level as determined by the Deputy Administrator, or other measuring device.

Joint operation means a general partnership, joint venture, or other similar business organization.

Landlord means one who rents or leases farmland to another.

Measurement service means a measurement of acreage or farm-stored commodities performed by a representative of FSA and paid for by the producer requesting the measurement.

Measurement service after planting means determining a crop or designated acreage after planting but before the farm operator files a report of acreage for the crop.

Measurement service guarantee means a guarantee provided when a producer requests and pays for an authorized FSA representative to measure acreage for FSA and CCC program participation unless the producer takes action to adjust the measured acreage. If the producer has taken no such action, and the measured acreage is later discovered to be incorrect, the acreage determined pursuant to the measurement service will be used for program purposes for that program year.

Minor child means an individual who is under 18 years of age. State court proceedings conferring majority on an individual under 18 years of age will not change such an individual's status as a minor.

Nonagricultural commercial or industrial use means land that is no longer suitable for producing annual or perennial crops, including conserving uses, or forestry products.

Normal planting period means that period during which the crop is normally planted in the county, or area within the county, with the expectation of producing a normal crop.

Normal row width means the normal distance between rows of the crop in the field, but not less than 30 inches for all crops.

Oats means oats that follows the standard planting and harvesting practice of oats for the area in which the oats are grown.

Operator means an individual, entity, or joint operation who is determined by the FSA county committee to be in control of the farming operations on the farm.

Owner means one who has legal ownership of farmland, including:

(1) Any agency of the Federal Government, however, such agency shall not be eligible to receive any payment pursuant to such contract;

(2) One who is buying farmland under a contract for deed;

(3) One who has a life-estate in the property; or

(4) For purposes of enrolling a farm in a program authorized by chapters VII and XIV of this title:

(i) One who has purchased a farm in a foreclosure proceeding; and

(A) The redemption period has not passed; and

(B) The original owner has not redeemed the property.

(ii) One who meets the provisions of paragraph (d)(1)(i) of this definition shall be entitled to receive benefits in accordance with an agency program only to the extent the owner complies with all program requirements.

(5) One who is an heir to property but cannot provide legal documentation to confirm ownership of the property, if such heir certifies to the ownership of the property and the certification is considered acceptable, as determined by the Deputy Administrator. Upon a false or inaccurate certification the Deputy Administrator may impose liability on the certifying party for additional cost that results—however such a certification may be taken by the Deputy Administrator as a bar to other claims where there has been a failure of other persons claiming an interest in the property to act promptly to protect or declare their interest or where the current public records do not accurately set out the current ownership of the farm.

Partial reconstitution means a reconstitution that is made effective in the current year for some crops, but is not made effective in the current year for other crops. This results in the same farm having two or more farm numbers in one crop year.

Participant means one who participates in, or receives payments or benefits in accordance with any of the programs administered by FSA.

Pasture means land that is used to, or has the potential to, produce food for grazing animals.

Person means an individual, or an individual participating as a member of a joint operation or similar operation, a corporation, joint stock company, association, limited stock company, limited partnership, irrevocable trust, revocable trust together with the grantor of the trust, estate, or charitable organization including any entity participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity, or a State, political subdivision or agency thereof. To be considered a separate person for the purpose of this part, the individual or other legal entity must:

(1) Have a separate and distinct interest in the land or the crop involved;

(2) Exercise separate responsibility for such interest; and

(3) Be responsible for the cost of farming related to such interest from a fund or account separate from that of any other individual or entity.

Producer means an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm, or would have shared had the crop been produced. A producer includes a grower of hybrid seed.

Quota means the pounds allocated to a farm for a commodity in accordance with the Agricultural Adjustment Act of 1938, as amended.

Random inspection means an examination of a farm by an authorized representative of FSA selected as a part of an impartial sample to determine the adherence to program requirements.

Reconstitution means a change in the land constituting a farm as a result of combination or division.

Reported acreage means the acreage reported by the farm operator, farm owner, farm producer, or their agent on a Form prescribed by the FSA.

Required inspection means an examination by an authorized representative of FSA of a farm specifically selected by application of prescribed rules to determine adherence to program requirements or to verify the farm operator's, farm owner's, farm producer, or agent's report.

Rice means rice excluding sweet, glutinous, or candy rice such as Mochi Gomi.

Secretary means the Secretary of Agriculture of the United States, or a designee.

Sharecropper means one who performs work in connection with the production of a crop under the supervision of the operator and who receives a share of such crop for its labor.

Skip-row or strip-crop planting means a cultural practice in which strips or rows of the crop are alternated with strips of idle land or another crop.

Staking and referencing means determining an acreage before planting by:

(1) Measuring or computing a delineated area from ground measurements and documenting the area measured; and, (2) Staking and referencing the area on the ground.

Standard deduction means an acreage that is excluded from the gross acreage in a field because such acreage is considered as being used for farm equipment turn-areas. Such acreage is established by application of a prescribed percentage of the area planted to the crop in lieu of measuring the turn area.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Subdivision means a part of a field that is separated from the balance of the field by temporary boundary, such as a cropline which could be easily moved or will likely disappear.

Tenant means:

(1) One who rents land from another in consideration of the payment of a specified amount of cash or amount of a commodity; or

(2) One (other than a sharecropper) who rents land from another person in consideration of the payment of a share of the crops or proceeds therefrom.

Tolerance means a prescribed amount within which the reported acreage and/or production may differ from the determined acreage and/or production and still be considered as correctly reported.

Tract means a unit of contiguous land under one ownership, which is operated as a farm, or part of a farm.

Tract combination means the combining of two or more tracts if the tracts have common ownership and are contiguous.

Tract division means the dividing of a tract into two or more tracts because of a change in ownership or operation.

Turn-area means the area across the ends of crop rows which is used for operating equipment necessary to the production of a row crop (also called turn row, headland, or end row).

Upland cotton means planted and stub cotton that is produced from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominate. For program purposes, brown lint cotton is considered upland cotton.

Wheat means wheat for feed or dual purpose variety that follows the standard planting and harvesting practice of wheat for the area in which the wheat is grown.

§ 718.3 State committee responsibilities.

(a) The State committee shall, with respect to county committees:

(1) Take any action required of the county committee, which the county committee fails to take in accordance with this part;

(2) Correct or require the county committee to correct any action taken by such committee, which is not in accordance with this part;

(3) Require the county committee to withhold taking any action which is not in accordance with this part;

(4) Review county office rates for producer services to determine equity between counties;

(5) Determine, based on cost effectiveness, which counties will use aerial compliance methods and which counties will use ground measurement compliance methods; or

(6) Adjust the per acre rate for acreage in excess of 25 acres to reflect the actual cost involved when performing measurement service from aerial slides or digital images.

(b) The State committee shall submit to the Deputy Administrator requests to deviate from deductions prescribed in § 718.108, or the error amount or percentage for refunds of redetermination costs as prescribed in § 718.111.

§ 718.4 Authority for farm entry and providing information.

(a) This section applies to all farms that have a tobacco allotment or quota under part 723 of this chapter and all farms that are currently participating in programs administered by FSA.

(b) A representative of FSA may enter any farm that participates in an FSA or CCC program in order to conduct a farm inspection as defined in this part. A program participant may request that the FSA representative present written authorization for the farm inspection before granting access to the farm. If a farm inspection is not allowed within 30 days of written authorization:

(1) All FSA and CCC program benefits for that farm shall be denied;

(2) The person preventing the farm inspection shall pay all costs associated with the farm inspection;

(3) The entire crop production on the farm will be considered to be in excess of the quota established for the farm; and

(4) For tobacco, the farm operator must furnish proof of disposition of:

(i) All tobacco which is in addition to the production shown on the marketing card issued with respect to such farm; and

(ii) No credit will be given for disposing of excess tobacco other than that identified by a marketing card unless disposed of in the presence of FSA in accordance with § 718.109 of this part.

(c) If a program participant refuses to furnish reports or data necessary to determine benefits in accordance with paragraph (a) of this section, or FSA determines that the report or data was erroneously provided through the lack of good faith, all program benefits relating to the report or data requested will be denied.

§ 718.5 Rule of fractions.

(a) Fractions shall be rounded after completion of the entire associated computation. All mathematical calculations shall be carried to two decimal places beyond the number of decimal places required by the regulations governing each program. In rounding, fractional digits of 49 or less beyond the required number of decimal places shall be dropped; if the fractional digits beyond the required number of decimal places are 50 or more, the figure at the last required decimal place shall be increased by "1" as follows:

Required decimal	Computation	Result
Whole numbers.	6.49 (or less)	6
	6.50 (or more)	7
Tenths	7.649 (or less)	7.6
	7.650 (or more).	7.7
Hundredths	8.8449 (or less).	8.84
	8.8450 (or more).	8.85
Thousandths ..	9.63449 (or less).	9.634
	9.63450 (or more).	9.635
0 thousandths	10.993149 (or less).	10.9931
	10.993150 (or more).	10.9932

(b) The acreage of each field or subdivision computed for tobacco and CCC disaster assistance programs shall be recorded in acres and hundredths of an acre, dropping all thousandths of an acre. The acreage of each field or subdivision computed for crops, except tobacco, shall be recorded in acres and tenths of an acre, rounding all hundredths of an acre to the nearest tenth.

§ 718.6 Controlled substance.

(a) The following terms apply to this section:

(1) *USDA benefit* means the issuance of any grant, contract, loan, or payment by appropriated funds of the United States.

(2) *Person* means an individual.

(b) Notwithstanding any other provision of law, any person convicted under Federal or State law of:

(1) Planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year shall be ineligible for any payment made under any Act, with respect to any commodity produced during the crop year of conviction and the four succeeding crop years, by such person.

(2) Trafficking a controlled substance shall be, at the discretion of the court, ineligible for any or all USDA benefits as follows:

(i) For up to 5 years after the first conviction;

(ii) For up to 10 years after a second conviction; and

(iii) Permanently for a third conviction.

(3) Possession of a controlled substance shall be ineligible for any or all UDSA benefits for:

(i) Up to one year upon the first conviction;

(ii) For up to 5 years after a second or subsequent conviction for such an offense as determined by the court.

(c) USDA benefits subject to paragraph (b) of this section include:

(1) Any payments or benefits under the Direct and Counter Cyclical Program (DCP) in accordance with part 1413 of this title;

(2) Any payments or benefits for losses to trees, crops, or livestock covered under disaster programs administered by FSA;

(3) Any price support loan available in accordance with part 1464 of this title;

(4) Any price support or payment made under the Commodity Credit Corporation Charter Act;

(5) A farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act or any other Act;

(6) Crop Insurance under the Federal Crop Insurance Act;

(7) A loan made or guaranteed under the Consolidated Farm and Rural Development Act or any other law formerly administered by the Farmers Home Administration; or

(d) If a person denied benefits under this section is a shareholder, beneficiary, or member of an entity or joint operation, benefits for which the entity or joint operation is eligible shall be reduced, for the appropriate period, by a percentage equal to the total interest of the shareholder, beneficiary, or member.

§ 718.7 Furnishing maps.

A reasonable number, as determined by FSA, of reproductions of photographs, mosaics and maps shall be available to the owner of a farm insurance companies reinsured by the Federal Crop Insurance Corporation (FCIC), private party contractors performing their official duties on behalf of FSA, CCC, and other USDA agencies. To all others, reproductions shall be made available at the rate FSA determines will cover the cost of making such items available.

§ 718.8 Administrative county.

(a) If all land on the farm is physically located in one county, the farm shall be administratively located in such county. If there is no FSA office in the county or the county offices have been consolidated, the farm shall be administratively located in the contiguous county most convenient for the farm operator.

(b) If the land on the farm is located in more than one county, the farm shall

be administratively located in either of such counties as the county committees and the farm operator agree. If no agreement can be reached, the farm shall be administratively located in the county where the principal dwelling is situated, or where the major portion of the farm is located if there is no dwelling.

(c) The State committee shall submit all requests to deviate from regulations specified in this section to the Deputy Administrator.

§ 718.9 Signature requirements.

(a) When a program authorized by this chapter and parts 1410 and 1413 of this title requires the signature of a producer; landowner; landlord; or tenant, a husband or wife may sign all such FSA or CCC documents on behalf of the other spouse, unless such other spouse has provided written notification to FSA and CCC that such action is not authorized. The notification must be provided to FSA with respect to each farm.

(b) Except a husband or wife may not sign a document on behalf of a spouse with respect to:

(1) Program document required to be executed in accordance with part 3 of this title;

(2) Easements entered into under part 1410 of this title;

(3) Power of attorney;

(4) Such other program documents as determined by FSA or CCC.

(c) An individual; duly authorized officer of a corporation; duly authorized partner of a partnership; executor or administrator of an estate; trustee of a trust; guardian; or conservator may delegate to another the authority to act on their behalf with respect to FSA and CCC programs administered by USDA service center agencies by execution of a Power of Attorney, or such other form as approved by the Deputy Administrator. FSA and CCC may, at their discretion, allow the delegations of authority by other individuals through use of the Power of Attorney or such other form as approved by the Deputy Administrator.

(d) Notwithstanding another provision of this regulation or any other FSA or CCC regulation in this title, a parent may execute documents on behalf of a minor child unless prohibited by a statute or court order.

(e) Notwithstanding any other provision in this title, an authorized agent of the Bureau of Indian Affairs (BIA) of the United States Department of Interior may sign as agent for landowners with properties affiliated with or under the management or trust of the BIA. For collection purposes, such payments will be considered as being made to the persons who are the beneficiaries of the payment or may, alternatively, be considered as an obligation of all persons on the farm in general. In the event of a need for a refund or other claim may be collected, among other means, by other monies due such persons or the farm.

§ 718.10 Time limitations.

Whenever the final date prescribed in any of the regulations in this title for the performance of any act falls on a Saturday, Sunday, national holiday, State holiday on which the office of the county or State Farm Service Agency committee having primary cognizance of the action required to be taken is closed, or any other day on which the cognizant office is not open for the transaction of business during normal working hours, the time for taking required action shall be extended to the close of business on the next working day. Or in case the action required to be taken may be performed by mailing, the action shall be considered to be taken within the prescribed period if the mailing is postmarked by midnight of such next working day. Where the action required to be taken is with a prescribed number of days after the mailing of notice, the day of mailing shall be excluded in computing such period of time.

■ 3. Subpart B is revised to read as follows:

Subpart B—Determination of Acreage and Compliance

Sec.

718.101 Measurements.
718.102 Acreage reports.
718.103 Late-filed reports.
718.104 Revised reports.
718.105 Tolerances, variances, and adjustments.
718.106 Inaccurate acreage reports.
718.107 Acreages.
718.108 Measuring acreage including skip row acreage
718.109 Deductions.
718.110 Adjustments.
718.111 Notice of measured acreage.
718.112 Redetermination.

§ 718.101 Measurements.

(a) Measurement services include, but are not limited to, measuring land and crop areas, quantities of farm-stored commodities, and appraising the yields of crops in the field when required for program administration purposes. The county committee shall provide measurement service if the producer requests such service and pays the cost, except that service shall not be provided to determine total acreage or production of a crop when the request is made:

(1) After the established final reporting date for the applicable crop, unless a late filed report is accepted as provided in § 718.103;

(2) After the farm operator has furnished production evidence when required for program administration purposes except as provided in this subpart; or

(3) In connection with a late-filed report of acreage, unless there is evidence of the crop's existence in the field and use made of the crop, or the lack of the crop due to a disaster condition affecting the crop.

(b) The acreage requested to be measured by staking and referencing shall not exceed the effective farm allotment for marketing quota crops or acreage of a crop that is limited to a specific number of acres to meet any program requirement.

(c) When a producer requests, pays for, and receives written notice that measurement services have been furnished, the measured acreage shall be guaranteed to be correct and used for all program purposes for the current year even though an error is later discovered in the measurement thereof, if the producer has taken action with an economic significance based on the measurement service, and the entire crop required for the farm was measured. If the producer has not taken action with an economic significance based on the measurement service, the producer shall be notified in writing that an error was discovered and the nature and extent of such error. In such cases, the corrected acreage will be used for determining program compliance for the current year.

(d) When a measurement service reveals acreage in excess of the permitted acreage and the allowable tolerance as defined in this part, the producer must destroy the excess acreage and pay for FSA to verify destruction, in order to keep the measurement service guarantee.

§ 718.102 Acreage reports.

(a) In order to be eligible for benefits, participants in the programs specified in paragraphs (b)(1) through (b)(6) of this section must annually submit accurate information as required by these provisions.

(b)(1) Participants in the programs governed by part 1412 of this title must report the acreage of fruits and vegetables planted for harvest on a farm enrolled in such program;

(2) Participants in the programs governed by parts 1421 and 1427 of this title must report the acreage planted to a commodity for harvest for which a marketing assistance loan or loan deficiency payment is requested;

(3) Participants in the programs governed by part 1410 of this title must report the use of land enrolled in such programs;

(4) All participants in the programs governed by part 1437 of this title must report all acreage in the county of the eligible crop in which the producer has a share;

(5) Participants in the programs governed by part 723 of this chapter and part 1464 of this title must report the acreage planted to tobacco by kind on all farms that have an effective allotment or quota greater than zero;

(6) All participants in the programs governed by parts 1412, 1421, and 1427 of this title must report the use of all cropland on the farm.

(c) The reports required under paragraph (a) of this section shall be timely filed by the farm operator, farm owner, producer of the crop on the farm, or a duly authorized representative with the county committee by the final reporting date applicable to the crop as established by the county committee and State committee.

§ 718.103 Late-filed reports.

(a) A report may be accepted after the required date if the crop or identifiable crop residue is in the field.

(b) The farm operator shall pay the cost of a farm inspection unless the County Committee determines that failure to report in a timely manner was beyond the producer's control.

§ 718.104 Revised reports.

(a) The farm operator may revise a report of acreage with respect to 2002 and subsequent years to change the acreage reported if:

(1) The county committee determines that the revision does not have an adverse impact on the program;

(2) The acreage has not already been determined by FSA; and

(3) Actual crop or residue is present in the field.

(b) Revised reports shall be filed and accepted:

(1) At any time for all crops if the crop or residue still exists in the field for inspection to verify its existence and use made of the crop, the lack of the crop, or a disaster condition affecting the crop; and

(2) If the requirements of paragraph (a) of this section have been met and the producer was in compliance with all other program requirements at the reporting date.

§ 718.105 Tolerances, variances, and adjustments.

(a) Tolerance is the amount by which the determined acreage for a crop may differ from the reported acreage or allotment for the crop and still be considered in compliance with program requirements under §§ 718.102(b)(1), (b)(3) and (b)(5).

(b) Tolerance rules apply to those fields for which a staking and referencing was performed but such acreage was not planted according to those measurements or when a measurement service is not requested for acreage destroyed to meet program requirements.

(c) Tolerance rules do not apply to:

(1) Program requirements of §§ 718.102(b)(2), (b)(4) and (b)(6);

(2) Official fields when the entire field is devoted to one crop;

(3) Those fields for which staking and referencing was performed and such acreage was planted according to those measurements; or

(4) The adjusted acreage for farms using measurement after planting which have a determined acreage greater than the marketing quota crop allotment.

(d) An administrative variance is applicable to all allotment crop acreages. Allotment crop acreages as determined in accordance with this part shall be deemed in compliance with the effective farm allotment or program requirement when the determined acreage does not exceed the effective farm allotment by more than an administrative variance determined as follows:

(1) For all kinds of tobacco subject to marketing quotas, except dark air-cured and fire-cured the larger of 0.1 acre or 2 percent of the allotment; and

(2) For dark air-cured and fire-cured tobacco, an acreage based on the effective acreage allotment as provided in the table as follows:

Effective acreage allotment is within this range	Administrative variance
0.01 to 0.99	0.01
1.00 to 1.49	0.02
1.50 to 1.99	0.03
2.00 to 2.49	0.04
2.50 to 2.99	0.05
3.00 to 3.49	0.06
3.50 to 3.99	0.07
4.00 to 4.49	0.08
4.50 and up	0.09

(e) A tolerance applies to tobacco, other than flue-cured or burley, if the measured acreage exceeds the allotment by more than the administrative variance but by not more than the tolerance. Such excess acreage of tobacco may be adjusted to the effective farm acreage allotment to avoid marketing quota penalties or receive price support.

(f) If the acreage report for a crop is outside the tolerance for that crop:

(1) FSA may consider the requirements of §§ 718.102 (b)(1), (b)(3) and (b)(5) not to have been met, and;

(2) Participants may be ineligible for all or a portion of payments or benefits subject to the requirements of §§ 718.102 (b)(1), (b)(3) and (b)(5).

§ 718.106 Non-compliance and fraudulent acreage reports.

Participants that knowingly and willfully provide false or inaccurate acreage reports may be ineligible for some or all payments or benefits subject to the requirements of §§ 718.102 (b)(1), (b)(3) and (b)(5):

(a) The county committee determines that the acreage report filed according to §§ 718.102 (b)(1), (b)(3) and (b)(5) is inaccurate, and;

(b) A good-faith effort to accurately report the acreage was not made because the report was knowingly and willfully falsified.

§ 718.107 Acreages.

(a) If an acreage has been established by FSA-for an area delineated on an aerial photograph or within a GIS, such acreage will be recognized by the county committee as the acreage for the area until such time as the boundaries of such area are changed. When boundaries not visible on the aerial photograph are established from data furnished by the producer, such acreage shall not be recognized as official acreage until an authorized representative of FSA verifies the boundaries.

(b) Measurements of any row crop shall extend beyond the planted area by the larger of 15 inches or one-half the distance between the rows.

(c) The entire acreage of a field or subdivision of a field devoted to a crop shall be considered as devoted to the crop subject to a deduction or adjustment except as otherwise provided in this part.

§ 718.108 Measuring acreage including skip row acreage.

(a) When one crop is alternating with another crop, whether or not both crops have the same growing season, only the acreage that is actually planted to the crop being measured will be considered to be acreage devoted to the measured crop.

(b) Subject to the provisions of this paragraph and section, whether planted in a skip row pattern or without a pattern of skipped rows, the entire

acreage of the field or subdivision may be considered as devoted to the crop only where the distance between the rows, for all rows, is 40 inches or less. If there is a skip that creates idle land wider than 40 inches, or if the distance between any rows is more than 40 inches, then the area planted to the crop shall be considered to be that area which would represent the smaller of; a 40 inch width between rows, or the normal row spacing in the field for all other rows in the field—those that are not more than 40 inches apart. The allowance for individual rows would be made based on the smaller of actual spacing between those rows or the normal spacing in the field. For example, if the crop is planted in single, wide rows that are 48 inches apart, only 20 inches to either side of each row (for a total of 40 inches between the two rows) could, at a maximum, be considered as devoted as the crop and normal spacing in the field would control. Half the normal distance between rows will also be allowed beyond the outside planted rows not to exceed 20 inches and will reflect normal spacing in the field.

(c) In making calculations under this section, further reductions may be made in the acreage considered planted if it is determined that the acreage is more sparsely planted than normal using reasonable and customary full production planting techniques.

(d) The Deputy Administrator has the discretionary authority to allow row allowances other than those specified in this section in those instances in which crops are normally planted with spacings greater or less than 40 inches, such as in case of tobacco, or where other circumstances are present which the Deputy Administrator finds justifies that allowance.

(e) Paragraphs (a) through (d) of this section shall apply with respect to the 2003 and subsequent crops. For preceding crops, the rules in effect on January 1, 2002, shall apply.

§ 718.109 Deductions.

(a) Any contiguous area which is not devoted to the crop being measured and which is not part of a skip-row pattern under § 718.108 shall be deducted from the acreage of the crop if such area meets the following minimum national standards or requirements:

(1) A minimum width of 30 inches;

(2) For tobacco—three-hundredths (.03) acre. Turn areas, terraces, permanent irrigation and drainage ditches, sod waterways, non-cropland, and subdivision boundaries each of which is at least 30 inches in width may be combined to meet the 0.03-acre minimum requirement; or

(3) For all other crops and land uses—one-tenth (.10) acre. Turn areas, terraces, permanent irrigation and drainage ditches, sod waterways, non-cropland, and subdivision boundaries each of which is at least 30 inches in width and each of which contain 0.1 acre or more may be combined to meet any larger minimum prescribed for a State in accordance with this subpart.

(b) If the area not devoted to the crop is located within the planted area, the part of any perimeter area that is more than 217.8 feet (33 links) in width will be considered to be an internal deduction if the standard deduction is used.

(c) A standard deduction of 3 percent of the area devoted to a row crop and zero percent of the area devoted to a close-sown crop may be used in lieu of measuring the acreage of turn areas.

§ 718.110 Adjustments.

(a) The farm operator or other interested producer having excess tobacco acreage (other than flue-cured or burley) may adjust an acreage of the crop in order to avoid a marketing quota penalty if such person:

(1) Notifies the county committee of such election within 15 calendar days after the date of mailing of notice of excess acreage by the county committee; and

(2) Pays the cost of a farm inspection to determine the adjusted acreage prior to the date the farm visit is made.

(b) The farm operator may adjust an acreage of tobacco (except flue-cured and burley) by disposing of such excess tobacco prior to the marketing of any of the same kind of tobacco from the farm. The disposition shall be witnessed by a representative of FSA and may take place before, during, or after the harvesting of the same kind of tobacco grown on the farm. However, no credit will be allowed toward the disposition of excess acreage after the tobacco is harvested but prior to marketing, unless the county committee determines that such tobacco is representative of the entire crop from the farm of the kind of tobacco involved.

§ 718.111 Notice of measured acreage.

Notice of measured acreage shall be provided by FSA and mailed to the farm operator. This notice shall constitute notice to all parties who have ownership, leasehold interest, or other, in such farm.

§ 718.112 Redetermination.

(a) A redetermination of crop acreage, appraised yield, or farm-stored production for a farm may be initiated by the county committee, State committee, or Deputy Administrator at any time. Redetermination may be requested by a producer with an interest in the farm if they pay the cost of the redetermination. The request must be submitted to FSA within 15 calendar days after the date of the notice described in §§ 718.110 or 718.111, or within 5 calendar days after the initial appraisal of the yield of a crop, or before the farm-stored production is removed from storage. A redetermination shall be undertaken in the manner prescribed by the Deputy Administrator. A redetermination shall be used in lieu of any prior determination.

(b) The county committee shall refund the payment of the cost for a redetermination when, because of an error in the initial determination:

(1) The appraised yield is changed by at least the larger of:

(i) Five percent or 5 pounds for cotton;

(ii) Five percent or 1 bushel for wheat, barley, oats, and rye; or

(iii) Five percent or 2 bushels for corn and grain sorghum; or

(2) The farm stored production is changed by at least the smaller of 3 percent or 600 bushels; or

(3) The acreage of the crop is:

(i) Changed by at least the larger of 3 percent or 0.5 acre; or

(ii) Considered to be within program requirements.

■ 4. Subpart C is revised to read as follows:

Subpart C—Reconstitution of Farms, Allotments, Quotas, and Bases

Sec.

718.201 Farm constitution.
718.202 Determining the land constituting a farm.
718.203 County committee action to reconstitute a farm.
718.204 Reconstitution of allotments, quotas, and bases.
718.205 Substantive change in farming operation, and changes in related legal entities.
718.206 Determining farms, tracts, allotments, quotas, and bases when reconstitution is made by division.
718.207 Determining allotments, quotas, and bases when reconstitution is made by combination.

§ 718.201 Farm constitution.

(a) In order to implement agency programs and monitor farmer compliance with regulations, the agency must have records on what land is being farmed by a particular producer. This is accomplished by a determination of what land or groups of land 'constitute' an individual unit or farm. Land, which has been properly constituted under prior regulations, shall remain so constituted until a reconstitution is required under paragraph (c) of this section. The constitution and identification of land as a farm for the first time and the subsequent reconstitution of a farm made hereafter, shall include all land operated by an individual entity or joint operation as a single farming unit except that it shall not include:

(1) Land under separate ownership unless the owners agree in writing and the labor, equipment, accounting system, and management are operated in common by the operator but separate from other tracts;

(2) Land under a lease agreement of less than 1 year duration;

(3) Land in different counties when the tobacco allotments or quotas established for the land involved cannot be transferred from one county to another county by lease, sale, or owner. However, this paragraph shall not apply if:

(i) All of the land is contiguous;

(ii) The land is located in counties that are contiguous in the same State if:

(A) A burley or flue-cured tobacco quota is established for one or more of the tracts; and

(B) The county committee determines that the tracts will be operated as a single farming unit as set forth in § 718.202; or

(iii) Because of a change in operation, tracts or parts of tracts will be divided from the parent farm that currently has land in more than one county, and there is no change in operation and ownership of the remainder of the farm, or if there is a change in ownership, the new owner agrees in writing to the constitution of the farm.

(4) Federally-owned land;

(5) State-owned wildlife lands unless the former owner has possession of the land under a leasing agreement; and

(6) Land constituting a farm which is declared ineligible to be enrolled in a program under the regulations governing the program; and

(7) For acreage base crops, land located in counties that are not contiguous. However, this paragraph shall not apply if:

(i) Counties are divided by a river;

(ii) Counties do not touch because of a correction line adjustment; or

(iii) The land is within 20 miles, by road, of other land that will be a part of the farming unit.

(b)(1) If all land on the farm is physically located in one county, the farm shall be administratively located in such county. If there is no FSA office in the county or the county offices have been consolidated, the farm shall be administratively located in the contiguous county most convenient for the farm operator.

(2) If the land on the farm is located in more than one county, the farm shall be administratively located in either of such counties as the county committees and the farm operator agree. If no agreement can be reached, the farm shall be administratively located in the county where the principal dwelling is situated, or where the major portion of the farm is located if there is no dwelling.

(c) A reconstitution of a farm either by division or by combination shall be required whenever:

(1) A change has occurred in the operation of the land after the last constitution or reconstitution and as a result of such change the farm does not meet the conditions for constitution of a farm as set forth in paragraph (a) of this section except that no reconstitution shall be made if the county committee determines that the primary purpose of the change in operation is to establish eligibility to transfer allotments subject to sale or lease, or increase amount of program benefits received;

(2) The farm was not properly constituted the previous time;

(3) An owner requests in writing that the land no longer be included in a farm composed of tracts under separate ownership;

(4) The county committee determines that the farm was reconstituted on the basis of false information;

(5) The county committee determines that tracts included in a farm are not being operated as a single farming unit.

(d) Reconstitution shall not be approved if the county committee determines that the primary purpose of the reconstitution is to:

(1) Circumvent the provisions of part 12 of this title; or

(2) Circumvent any other chapter of this title.

§ 718.202 Determining the land constituting a farm.

(a) In determining the constitution of a farm, consideration shall be given to provisions such as ownership and operation. For purposes of this part, the following rules shall be applicable to determining what land is to be included in a farm.

(b) A minor shall be considered to be the same owner or operator as the parent, court-appointed guardian, or other person responsible for the minor child, unless the parent or guardian has no interest in the minor's farm or production from the farm, and the minor:

(1) Is a producer on a farm;

(2) Maintains a separate household from the parent or guardian;

(3) Personally carries out the farming activities; and

(4) Maintains a separate accounting for the farming operation.

(c) A minor shall not be considered to be the same owner or operator as the parent or court-appointed guardian if the minor's interest in the farming operation results from being the beneficiary of an irrevocable trust and ownership of the property is vested in the trust or the minor.

(d) A life estate tenant shall be considered to be the owner of the property for their life.

(e) A trust shall be considered to be an owner with the beneficiary of the trust; except a trust can be considered a separate owner or operator from the beneficiary, if the trust:

(1) Has a separate and distinct interest in the land or crop involved;

(2) Exercises separate responsibility for the separate and distinct interest; and

(3) Maintains funds and accounts separate from that of any other individual or entity for the interest.

(f) The county committee shall require specific proof of ownership.

(g) Land owned by different persons of an immediate family living in the same household and operated as a single farming unit shall be considered as being under the same ownership in determining a farm.

(h) All land operated as a single unit and owned and operated by a parent corporation and subsidiary corporations of which the parent corporation owns more than 50 percent of the value of the outstanding stock, or where the parent is owned and operated by subsidiary corporations, shall be constituted as one farm.

§ 718.203 County committee action to reconstitute a farm.

Action to reconstitute a farm may be initiated by the county committee, the farm owner, or the operator with the concurrence of the owner of the farm. Any request for a farm reconstitution shall be filed with the county committee.

§ 718.204 Reconstitution of allotments, quotas, and bases.

(a) Farms shall be reconstituted in accordance with this subpart when it is determined that the land areas are not properly constituted and, to the extent practicable, shall be based on the facts and conditions existing at the time the change requiring the reconstitution occurred.

(b) Reconstitutions of farms subject to a direct and counter-cyclical program contract in accordance with part 1413 of this title will be effective for the current year if initiated on or before August 1 or prior to the issuance of DCP payments for the farm or farms being reconstituted.

(c) For tobacco farms, a reconstitution will be effective for the current year for each crop for which the reconstitution is initiated before the planting of such crop begins or would have begun.

(d) Notwithstanding the provisions of paragraph (c) of this section, a reconstitution may be effective for the current year if the county committee determines, and the State committee concurs, that the purpose of the request for reconstitution is not to perpetrate a scheme or device designed to evade the requirements governing programs found in this title.

§ 718.205 Substantive change in farming operation, and changes in related legal entities.

(a) Land that is properly constituted as a farm shall not be reconstituted if:

(1) The reconstitution request is based upon the formation of a newly established legal entity which owns or operates the farm or any part of the farm and the county committee determines there is not a substantive change in the farming operation;

(2) The county committee determines that the primary purpose of the request for reconstitution is to:

(i) Obtain additional benefits under one or more commodity programs;

(ii) Avoid damages or penalties under a contract or statute;

(iii) Correct an erroneous acreage report; or

(iv) Circumvent any other program provisions. In addition, no farm shall remain as constituted when the county committee determines that a substantive change in the farming operation has occurred which would require a reconstitution, except as otherwise approved by the State committee with the concurrence of the Deputy Administrator.

(b) In determining whether a substantive change has occurred with respect to a farming operation, the county committee shall consider factors such as the composition of the legal entities having an interest in the farming operation with respect to management, financing, and accounting. The county committee shall also consider the use of land, labor, and equipment available to the farming operations and any other relevant factors that bear on the determination.

(c) Unless otherwise approved by the State committee with the concurrence of the Deputy Administrator, when the county committee determines that a corporation, trust, or other legal entity is formed primarily for the purpose of obtaining additional benefits under the commodity programs of this title, the farm shall remain as constituted, or shall be reconstituted, as applicable, when the farm is owned or operated by:

(1) A corporation having more than 50 percent of the stock owned by members of the same family living in the same household;

(2) Corporations having more than 50 percent of the stock owned by stockholders common to more than one corporation; or

(3) Trusts in which the beneficiaries and trustees are family members living in the same household.

(d) Application of the provisions of paragraph (c) of this section shall not limit or affect the application of paragraphs (a) and (b) of this section.

§ 718.206 Determining farms, tracts, allotments, quotas, and bases when reconstitution is made by division.

(a) The methods for dividing farms, tracts, allotments, quotas, and bases in order of precedence, when applicable, are estate, designation by landowner, contribution, cropland, DCP cropland, default, and history. The proper method shall be determined on a crop by crop basis.

(b)(1) The estate method is the pro-rata distribution of allotments, quotas, and bases for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the allotments, quotas, and bases for that tract shall be determined according to paragraphs (c) through (h) of this section.

(2) Allotments, quotas, and bases shall be divided in accordance with a will, but only if the county committee determines that the terms of the will are such that a division can reasonably be made by the estate method.

(3) If there is no will or the county committee determines that the terms of a will are not clear as to the division of allotments, quotas, and bases, such allotments, quotas, and bases shall be apportioned in the manner agreed to in writing by all interested heirs or devisees who acquire an interest in the property for which such allotments, quotas, and bases have been established. An agreement by the administrator or executor shall not be accepted in lieu of an agreement by the heirs or devisees.

(4) If allotments, quotas, and bases are not apportioned in accordance with the provisions of paragraphs (b)(2) or (b)(3) of this section, the allotments, quotas, and bases shall be divided pursuant to paragraphs (d) through (h) of this section, as applicable.

(c)(1) If the ownership of a tract of land is transferred from a parent farm, the transferring owner may request that the county committee divide the allotments, quotas, and bases, including historical acreage that has been double cropped, between the parent farm and the transferred tract, or between the various tracts if the entire farm is sold to two or more purchasers, in a manner designated by the owner of the parent farm subject to the conditions set forth in paragraph (c)(3) of this section.

(2) If the county committee determines that allotments, quotas, and bases cannot be divided in the manner designated by the owner because of the conditions set forth in paragraph (c)(3) of this section, the owner shall be notified and permitted to revise the designation so as to meet the conditions in paragraph (c)(3) of this section. If the owner does not furnish a revised designation of allotments, quotas, and bases within a reasonable time after such notification, or if the revised designation does not meet the conditions of paragraph (c)(3) of this section, the county committee will divide the allotments, quotas, and bases in a pro-rata manner in accordance with paragraphs (d) through (h) of this section.

(3) A landowner may designate a manner in which allotments, quotas, and bases are divided according to this paragraph.

(i) The transferring owner and transferee shall file a signed written memorandum of understanding of the designation with the county committee before any CCC or FSA prescribed form, letter or contract providing an allotment, base or quota is issued and before a subsequent transfer of ownership of the land. The landowner shall designate the allotments, quotas, and bases that shall be permanently reduced when the sum of the allotments, quotas, and bases exceeds the cropland for the farm.

(ii) Where the part of the farm from which the ownership is being transferred was owned for a period of less than 3 years, the designation by landowner method shall not be available with respect to the transfer unless the county committee determines that the primary purpose of the ownership transfer was other than to retain or to sell allotments, quotas, or bases. In the absence of such a determination, and if the farm contains land which has been owned for less than 3 years, that part of the farm which has been owned for less than 3 years shall be considered as a separate farm and the allotments, quotas, or bases, shall be assigned to that part in accordance with paragraphs (d) through (h) of this section. Such apportionment shall be made prior to any designation of allotments, quotas, and bases with respect to the part that has been owned for 3 years or more.

(4) The designation by landowner method is not applicable to crop allotments or quotas which are restricted to transfer within the county by lease, sale, or by owner, when the land on which the farm is located is in two or more counties.

(5) The designation by landowner method may be applied at the owner's request to land owned by any Indian Tribal Council which is leased to two or more producers for the production of any crop of a commodity for which an allotment, quota, or base has been established. If the land is leased to two or more producers, an Indian Tribal Council may request that the county committee divide the allotments, quotas, and bases between the applicable tracts in the manner designated by the Council. The use of this method shall not be subject to the conditions of paragraph (c)(3) of this section.

(d)(1) The contribution method is the pro-rata distribution of a parent farm's allotments and quotas to each tract as the tract contributed to the allotments and quotas at the time of combination and may be used when the provisions of paragraphs (b) and (c) of this section do not apply.

(2) The county committee determines and the State committee or a representative thereof concurs, that the use of the contribution method would not result in an equitable distribution of allotments and quotas, considering available land, cultural operations, and changes in type of farming.

(e) The cropland method is the pro-rata distribution of allotments and quotas to separate tracts proportionately to the tract's contribution to the cropland for the parent tract. This method shall be used if paragraphs (b) through (d) of this section do not apply unless the county committee determines that division by the history method would result in more representative allotments and quotas than the cropland method, taking into consideration the operation normally carried out on each tract for the commodities produced on the farm.

(f)(1) The history method is the pro-rata distribution of allotments and quotas to separate tracts on the basis of the operation normally carried out on each tract of the parent farm. The county committee may use the history method of dividing allotments and quotas when it:

(i) Determines that this method would result in a more accurate pro-rata distribution of allotments and quotas based on actual contribution of the tract to the totals of the parent farm than the cropland method would; and

(ii) Obtains written consent of all owners to use the history method.

(2) The county committee may waive the requirement for written consent of the owners for dividing allotments and quotas if the county committee determines that the use of the cropland method would result in an inequitable division of the parent farm's allotments and quotas and the use of the history method would provide more favorable results for all owners.

(g) The DCP cropland method is the pro-rata distribution of bases to the resulting tracts in the same proportion to the DCP cropland that each resulting tract bears to the DCP cropland for the parent tract. This method of division shall be used if paragraphs (b) and (c) of this section do not apply.

(h) The default method is the separation of tracts from a farm with each tract maintaining the bases attributed to the tract when the reconstitution is initiated. (i)(1) Allotments, quotas, and bases apportioned among the resulting farms pursuant to paragraphs (d) through (h) of this section may be increased or decreased with respect to a farm by as much as 10 percent of the parent farm's allotment, quota, or base determined under such subsections for the parent farm if:

(i) The owners agree in writing; and

(ii) The county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in an allotment, quota, or base with respect to a tract pursuant to this paragraph shall be offset by a corresponding decrease for such allotments, quotas or bases established with respect to the other tracts which constitute the farm.

(2) Farm program payment yields calculated for the resulting farms of a division may be increased or decreased if the county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in a farm program payment yield on a resulting farm shall be offset by a corresponding decrease on another resulting farm of the division.

(j) If a farm with burley tobacco quota is divided through reconstitution and one or more of the farms resulting from the division are apportioned less than 1,000 pounds of burley tobacco quota, the owners of such farms shall take action as provided in part 723 of this chapter to comply with the 1,000 pound minimum by July 1 of the current year or the quota shall be dropped. Exceptions to this are farms divided:

(1) Among family members;

(2) By the estate method; and

(3) When no sale or change in ownership of land occurs; or

(4) With one resulting farm receiving all of the quota.

§ 718.207 Determining allotments, quotas, and bases when reconstitution is made by combination.

When two or more farms or tracts are combined for a year, that year's allotments, quotas, and bases, with respect to the combined farm or tract, as required by applicable commodity regulations, shall not be greater than the sum of the allotments, quotas, and bases for each of the farms or tracts comprising the combination, subject to the provisions of § 718.204.

PART 723—TOBACCO

■ 5. The authority citation for part 723 continues to read as follows:

Authority: 7 U.S.C. 1301 *et seq.*; 7 U.S.C. 1421; 7 U.S.C. 1445–1 and 1445–2.

■ 6. Subpart B is amended by adding §§ 723.221, 723.222, and 723.223 to read as follows:

Subpart B—Allotments, Quotas, Yields, Transfers, Release and Reapportionment, History Acreages, and Forfeitures

* * * * *

§ 723.221 Eminent domain acquisitions.

(a) This section provides a uniform method for reallocating tobacco with respect to land involved in eminent domain acquisitions. An eminent domain acquisition is a taking of title to land, an easement to impound water on the land (impoundment), or an easement to flood the land (flowage), under the power of a Federal, State, or other agency. Acquisition may be by court condemnation of the land or by negotiation between the agency and the owner. This section does not apply to acquisition of land by an agency by a method other than eminent domain acquisition. All land acquired, including surrounding land acquired as a package acquisition, shall be considered an eminent domain

acquisition if the agency expended funds using its power of eminent domain.

(b) In this section, owner means a person having title to the land for a period of at least 12 months immediately before the date of transfer of title or grant of the impoundment or flowage easement under the eminent domain acquisition. If a person has owned the land for less than such 12-month period, they may still be considered the owner if the State committee determines they acquired the land for farming and not for obtaining status as an owner under this section. However, no person shall be considered the owner if he acquired the land subject to a pending eminent domain acquisition contract to an agency or an option by an agency or subject to pending condemnation proceedings. When the current titleholders are not the owner according to this section, the State committee shall determine who previously had title to the land and who is the owner according to this paragraph.

(c) Tobacco may be pooled for the benefit of an owner whose farm is acquired by eminent domain. Pooling shall be for a 3-year period from the date of displacement or during a period. The displaced owner may request transfer of allotments and quotas from the pool to other farms owned by such person.

(d) The owner shall be considered displaced from a farm by eminent domain acquisition on the date:

(1) The owner loses possession of the land;

(2) The owner is voluntarily displaced if a binding contract for acquisition has been executed;

(3) The owner, in the case of a flowage easement, determines it is no longer practical to conduct farming operations on the land; or

(4) The owner loses possession of the land as lessee under a lease from the agency that provided uninterrupted possession to the owner from the date of acquisition to the end of the lease.

(e) The owner shall notify the county committee in writing of the eminent domain acquisition and furnish the date of displacement within 30 days so that tobacco may be pooled in accordance with this section. Failure to so notify the county committee shall result in the loss of the ability of the owner to extend the 3-year period provided in paragraph (c) of this section.

(f) If the county committee is notified or otherwise determines that an owner has been displaced from the farm, the county committee shall establish a pool for the tobacco eligible under this section for a 3-year period beginning on the date of displacement. Pooled tobacco shall be considered fully planted and, for each year in the pool, shall be established in accordance with applicable regulations.

(g) There shall be no pooling of an tobacco if:

(1) The county committee determines that an agency has eminent domain power to acquire a farm for the continued production of an tobacco, and

(i) The agency acquires a farm only for such purpose; and

(ii) The agency files a written notice with the county committee designating the tobacco to be produced on the farm.

(2) An agency acquires and retains the land in an agricultural or related activity. The tobacco for such land will be in accordance with applicable regulations.

(3) A displaced owner voluntarily waives the right to have all the tobacco or any part pooled and requests that the tobacco be retained on the agency acquired land;

(4) Agency acquired cropland will not be farmed and represents less than 15 percent of the total cropland on the farm. The tobacco shall be retained on the portion of the farm not acquired by the agency.

(5) An agency acquires land that will not be farmed and the cropland it contains is less than 15 percent of the total on the farm, the entire tobacco for the acquired land shall be retained on the land not acquired by the agency. The owner must file a written request with the county committee for such retention. The tobacco to be retained on the farm cannot exceed the land devoted to an agriculture related activity. Tobacco that is not retained shall be pooled; or

(6) If, prior to pooling, an owner requests transfer of the tobacco to other farms they own in the same county, the county committee may approve a transfer without establishment of a pool, subject to the requirements of paragraph (j) of this section. This paragraph shall govern the release and reapportionment of pooled tobacco notwithstanding other provisions of applicable commodity regulations.

(h) Pooled tobacco may be released on an annual basis by the owner to a county committee during any year in which tobacco is pooled and not otherwise transferred from the pool. The county committee may reapportion the released tobacco to other farms in the same county that have tobacco for the same commodity. Pooled tobacco shall not be released on a permanent basis or surrendered after release to the State committee for reapportionment in other counties. Reapportionment shall be on the basis of past acreage of the commodity, land, labor, and equipment available for the production of the commodity, crop rotation practices, and other physical factors affecting the production of the commodity. Pooled tobacco that is released shall be considered to have been fully planted in the pool and not on the farm to which such tobacco is reapportioned.

(i) Pooled tobacco that may be transferred on a permanent or temporary basis by sale, lease, or by owner designation may be transferred permanently from the pool by the owner or temporarily for the duration of the pooled tobacco, subject to the terms and conditions for such transfers in the applicable commodity regulations. The transfer of tobacco acreage allotment or marketing quota shall be approved acre for acre.

(j)(1) Displaced owners may request a transfer of all or part of the pooled tobacco to any other farm in the United States that is owned by the displaced owner, but only if there are farms in the receiving county with tobacco, for the particular commodity or, if there are no such farms, the county committee determines that farms in the receiving county are suited for the production of the commodity. For purposes of this paragraph:

(i) Receiving farm means the farm to which transfer from the pool is to be made;

(ii) Receiving State and county committee mean those committees for the State and county in which the receiving farm is located; and

(iii) Transferring State and county committees mean those committees for the State and county in which the agency acquired farm is located.

(2) The displaced owner shall file with the receiving county committee written application for transfer of tobacco from the pool within 3 years after the date of displacement. The application shall contain a certification from the owner that no agreement has been made with any person for the purpose of obtaining tobacco from the pool for a person other than for the displaced owner. The owner shall attach to the application all pertinent documents pertaining to the current ownership or purchase of land and any leasing arrangements, such as the deed of trust or mortgage, a warranty deed, a note, sales agreement, and lease.

(3) The receiving county committee shall consider each application and determine whether the transfer from the pool shall be approved. Before an application is acted upon by the receiving county committee, the owner shall personally appear before the receiving county committee after reasonable notice, bring any additional pertinent documents as may be requested for examination by the receiving county committee, and answer all pertinent questions bearing on the proposed transfer. Such personal appearance requirement may be waived if the receiving county committee determines from facts presented to it on behalf of the owner that such personal appearance would unduly inconvenience the owner on account of illness or other good cause and such personal appearance would serve no useful purpose. Any action by the receiving county committee shall be subject to the approval required under paragraph (j)(5) of this section.

(4) The transfer from the pool will be approved by the receiving county committee only if the county committee determines that the owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish farming operations. The elements of such an acquisition shall include, but are not limited to, the following:

(i) Appropriate legal documents must establish title to the receiving farm;

(ii) If the displaced owner was the operator of the acquired farm at the date of displacement, such owner must personally operate and be the operator of the receiving farm for the first year that the tobacco is transferred;

(iii) If the displaced owner was not the operator of the acquired farm at the date of displacement and was not a producer on that farm because the leasing or rental agreement provided for cash, fixed rent, or standing rent payment, such owner shall not be required to operate personally and be the operator of the receiving farm, but at least 75 percent of the allotments for the receiving farm must be planted on the receiving farm during the first year of the transfer. With respect to a commodity for which a quota is applicable but for which there is no acreage allotment, an acreage that is equal to the result of dividing the quota transferred to the receiving farms by the receiving farm's yield, multiplied by 75 percent must be planted during the first year of the transfer;

(iv) If the displaced owner was not the operator of the acquired farm at the date of displacement but was a producer on that farm at the date of displacement as the result of having received a share of the crops produced on the acquired farm, such displaced owner shall not be required to be the operator of the receiving farm but must be a producer on the receiving farm during the first year that tobacco is transferred;

(v) The agreement between the displaced owner and the seller of the receiving farm must not contain a requirement that the receiving farm be leased to the seller or a person designated by or subject to the control of the seller. The seller or a person designated by or subject to the control of the seller may not lease the receiving farm for the first year the tobacco is transferred; and

(vi) The agreement under which the receiving farm was purchased or leased must be customary in the community where the receiving farm is located with respect to purchase price and timing and amount of purchase or rental payments.

(5) The approval by the receiving county committee of a transfer from the pool under this paragraph shall be effective upon concurrence by the State committee of the receiving State. The receiving State committee may authorize a transfer from the pool in any case where the owner presents evidence satisfactory to the receiving State committee that:

(i) The eligibility requirements of paragraphs (j)(4)(ii) through (j)(4)(iv) of this section cannot be met without substantial hardship because of illness, old age, multiple farm ownership, or lack of a dwelling on the farm to which an allotment or quota is to be transferred; or

(ii) The owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish farming operations for the displaced owner, even if the farm is leased to the seller of the farm for the first year for which the tobacco is transferred.

(6) Upon approval under this paragraph, the receiving county committee shall issue a notice of tobacco under the applicable commodity regulations, taking into consideration the land, labor, and equipment available for the production of the commodity, crop rotation practices, and the soil and other physical factors. In determining the tobacco available for transfer, the receiving county committee shall consider the receiving tract as a separate ownership. The acreage transferred from the pool shall not exceed the tobacco most recently established for the acquired farm placed in the pool. When all or a part of the tobacco placed in the pool is transferred and used to establish or increase the tobacco for other farms owned or purchased by the owner, all of the proportionate part of the past acreage history for the acquired farm shall be transferred to and considered for purposes of future tobacco to have been planted on the receiving farm for which tobacco, are established or increased under this section. If only a part of the available tobacco is transferred from the pool, the remaining part of the tobacco, shall remain in the pool for transfer to other farms of the owner until all such tobacco has been transferred or until the period of eligibility for establishing or increasing tobacco under this section has expired.

(7) If any tobacco is transferred under this section and it is later determined by the receiving county or State committee, or by the Deputy Administrator, that the transfer was obtained by misrepresentation, or that the conditions of paragraph (j)(4) of this section are not met, the tobacco for the receiving farm shall be reduced for each year the transfer purportedly was in effect by the amount attributable to the tobacco transferred from the pool. If the time for the transfer of the tobacco from the pool has not expired, the tobacco initially transferred from the pool shall be returned to the pool after the period of time has expired in which the displaced owner could request administrative review. Cancellation of the transfer of tobacco by the receiving county committee requires approval by the receiving State committee. The receiving county committee shall issue a notice of marketing quota and penalty in accordance with applicable commodity regulations.

(8) If the displaced owner requests transfer of pooled tobacco, within the prescribed period, but the request for transfer is filed during a year or a part of the pooled tobacco was released to the transferring county committee pursuant to paragraph (h), the request will be processed in the usual manner but the amount released shall not be effective until the succeeding year. When a request for transfer of pooled tobacco involves a transfer from one State to another, the receiving State committee shall ask the transferring State committee whether any of the tobacco for which transfer is requested has been released to the transferring county committee for the current year.

(k)(1) When the displaced owner leases part but not all of the agency acquired land, such part shall be constituted as a separate farm on the date of the displacement of the owner from the land not so leased.

(2) If a parent farm consists of separate ownership tracts, each such tract being acquired in whole or in part shall be considered as a separate farm for purposes of paragraphs (g)(3) and (g)(4) of this section.

(3) If a portion of a farm is acquired by an agency and the owner is displaced

therefrom, the acquired portion shall be constituted as a separate farm on the date of displacement unless the tobacco is retained on the portion not acquired as provided in paragraphs (g)(3) and (g)(4) of this section, in which case the farm shall not be reconstituted but the farmland and cropland data shall be corrected on all appropriate records for the parent farm.

(l)(1) The displaced owner may request from the county committee a written designation of beneficiary of the rights in the tobacco attributable to the acquired land in the event of the death of the displaced owner, and may revise such designation from time to time. The beneficiary of a deceased owner may continue a lease or negotiate a lease with the agency, transfer rights with respect to farms owned by the beneficiary, and release, sale, lease, and owner transfer rights under this section.

(2) If the displaced owner does not file a designation of beneficiary under paragraph (l)(1) of this section and the displaced owner dies before displacement or after pooling occurs, the following persons shall be considered the beneficiary with applicable rights:

(i) The surviving joint owner of the farm where two persons own the farm as joint tenants with right of survivorship; and

(ii) The persons who succeed to the deceased displaced owner's interest under a will or by intestate succession. However, in the case of intestate succession, the person shall be limited to the surviving spouse, parent, sibling or child of the deceased displaced owner. In the settlement of the estate of the deceased displaced owner, the heirs may file a written agreement with the county committee for the division of the deceased displaced owner's rights under this section.

(m)(1) No transfer from the pool under paragraphs (h), (i), or (j) of this section shall be approved if there remains any unpaid marketing quota penalty due with respect to the marketing of the commodity from the acquired farm by the displaced owner, or if any of the commodity produced on the agency acquired farm has not been accounted for as required under applicable regulations.

(2) If tobacco for an acquired farm next established after the date of displacement would have been reduced because of false or improper identification of the commodity produced on or marketed from the farm, or as the result of a false acreage report, the tobacco shall be reduced in the pool accordance to applicable regulations.

§ 723.222 Exempting Federal prison farms and Federal wildlife refuges.

A marketing penalty shall not be assessed with respect to any commodity that is produced on a Federal prison farm or Federal wildlife refuge. This exception does not apply to penalties incurred by an individual who has a separate interest in a crop that is subject to marketing quotas and was produced on a Federal prison farm or Federal wildlife refuge.

§ 723.223 Transfer of allotments and quotas—State public lands.

(a) Transfers of allotments and quotas between farms in the same county may be permitted where both farms are lands owned by the State.

(b) An application requesting the transfer of one or more of the allotments and quotas on a farm entirely comprised of lands owned by a State shall be filed with the county committee by the State. The application shall identify the farms as being within the same county, show that each farm is entirely comprised of lands owned by the State, and list the allotments and quotas requested to be transferred. Additional information about the farm operations, including leases, shall also be included in the application.

(c) The State committee shall establish the closing date for filing applications under paragraph (b) of this section, for each year, which shall be no later than the general planting date in the county for the commodity involved in the transfer.

(d)(1) Each transfer of an allotment and quota shall be adjusted for differences in farm productivity if the yield projected for the year the transfer is to take effect for the farm to which transfer is made exceeds by more than ten percent the yield projected for the year the transfer is to take effect for the farm from which transfer is made. The county committee shall determine the amount of the allotment and quota to be transferred where a productivity adjustment is required to be made by dividing:

(i) The product of the yield for the farm from which the transfer is made and the acreage to be transferred from such farm, by

(ii) The yield for the farm to which the transfer is made.

(2) Acreage for the farm receiving the allotment or quota shall be adjusted by the same percentage as the allotment or quota being transferred is adjusted. The allotment and quota and related acreage transferred from the farm from which the transfer is made shall be the full amount, but the amount of all allotment or quota and related acreage for the farm to which the transfer is made shall be the adjusted amount.

(e) The amount of allotment and quota on a farm after a transfer under this section is made shall not exceed the average amount of allotment or quota of at least three farms with acreage of cropland similar to the farm receiving the transfer in the community having the applicable allotment acreage and quota on these farms.

(f) Each transfer of any allotment and quota shall be require that acreage equal to the allotment and quota transferred shall be devoted to and maintained in permanent vegetative cover on the farm from which the transfer is made before any productivity adjustment. The acreage to be devoted to and maintained in permanent vegetative cover with respect to quota crops shall be determined by dividing the quota transferred by the yield of the farm from which the quota is transferred.

(g) Transfer of an allotment and quota under this section shall only be approved if:

(1) The county committee determines that a timely filed application has been received and that the provisions of this section have been met; and

(2) A representative of the State committee also determines that the provisions of this section have been met. If a transfer is approved, the county committee shall issue revised notices of the allotment or quota for each farm affected. If a county committee determines that requirements for a transfer were not met, a report shall be provided to the State committee. If the State committee agrees that requirements were not met, the transfer will be canceled, and the allotment and quota shall be transferred back to the original farm. Where a cancellation and transfer back is required, the county committee shall issue revised notices of the allotment or quota showing the reasons for the cancellation.

PART 1412—DIRECT AND COUNTER CYCLICAL PROGRAM AND PEANUT QUOTA BUYOUT PROGRAMS

7. Amend § 1412.407 as follows:

■ A. By revising paragraph (d)(2) to read as set forth below.

■ B. Amend paragraph (e) by adding Houston County, Alabama, Tazewell County, Illinois, and Clinton County, Pennsylvania as State Committee-established regions within the respective states.

§ 1412.407 Planting flexibility.

* * * * *

(d) * * *

(2) The farm has a history of planting fruits, vegetables, or wild rice, as determined by the CCC, in any one of the crop years 1991 through 1995 or 1998 through 2001, in which case the payment acres for the farm shall be reduced on an acre-for-acre basis; or

* * * * *

PART 1413—HARD WHITE WHEAT INCENTIVE PROGRAM

■ 8. Amend § 1413.101 by revising paragraph (b) to read as follows:

§ 1413.101 Applicability.

* * * * *

(b) A production payment incentive shall be available only for hard white wheat that grades U.S. # 2 grade or higher, established by the Federal Grain Inspection Service, that is produced and harvested in the United States.

* * * * *

§ 1413.105 [Amended]

■ 9. Amend § 1413.105 by redesignating the second paragraph (c)(1) and paragraph (c)(2) as paragraphs (c)(2) and (c)(3) respectively.

Signed in Washington, DC, on February 19, 2003.

James R. Little,

Administrator, Farm Service Agency and Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 03–8025 Filed 3–31–03; 3:45 pm]

BILLING CODE 3410–05–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1136]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff commentary.

SUMMARY: This final rule revises the official staff commentary to Regulation Z, which implements the Truth in Lending Act. The commentary interprets the requirements of Regulation Z. The revisions state the rules for disclosing fees to expedite a payment or delivery of a card. The revisions interpret the rules for replacing an accepted credit card to permit an issuer, under certain conditions, to replace an accepted card with more than one card. The revisions also discuss the treatment of private mortgage insurance payments in disclosing the payment schedule and the selection of Treasury security yields for determining whether a mortgage loan is covered by provisions in Regulation Z that implement the Home Ownership and Equity Protection Act.

DATES: This rule is effective April 1, 2003; the date for mandatory compliance is October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Krista P. DeLargy or Dan S. Sokolov, Attorneys, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by providing for uniform disclosures about its terms and cost. TILA gives consumers the right to rescind certain transactions that involve a lien on their principal dwelling, and it requires additional disclosures and imposes substantive restrictions on certain home-secured loans with rates or fees above a certain amount. The act also addresses the rights and responsibilities of credit card issuers and cardholders.

TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board has delegated to officials in the Board's Division of Consumer and Community Affairs authority to issue official staff interpretations of Regulation Z. Good faith compliance with the commentary affords creditors protection from liability under section 130(f) of TILA. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise.

In December 2002, the Board published for comment proposed changes to the commentary (67 FR 72,618, December 6, 2002). The revisions discuss the rules for disclosing fees to expedite a payment or delivery of a card; replacing an accepted credit card; including private mortgage insurance premiums in the payment schedule disclosure; and selecting Treasury security yields for determining whether a mortgage loan is covered by the Home Ownership and Equity Protection Act. The Board received approximately 350 comment letters, most on the inquiry about overdraft or "bounced check" services. About 280 of the comments were from financial institutions, other creditors, and their representatives. The remaining comment letters were from consumer groups, individuals, and one state agency.

With one exception, the final rule is being adopted substantially as proposed; the proposed comment concerning expedited payment fees has not been adopted. In addition, some changes have been made for clarity in response to commenters' suggestions.

In addition to the proposed commentary revisions, the Board's staff requested information on overdraft or "bounced check" protection services. Institutions provide the service in lieu of establishing a traditional overdraft line of credit for the customer. Under these programs, even though the institution generally reserves the right not to pay particular items, a dollar limit is typically established for the account holder and then the institution routinely pays overdrafts on the account up to that amount without a case-by-case assessment. The staff solicited comment and information from the public about how these services are designed and operated, to determine the need for additional guidance to financial institutions under Regulation Z or other laws.

About 300 of the comment letters responded to the request to provide information about the various ways that depository institutions offer bounced check protection services. The comment letters describe programs being offered to depository institutions by a number of vendors. The programs vary from vendor to vendor, and also appear to vary in their implementation from institution to institution. The Board's staff is continuing to gather information on these services, which are not addressed in the final rule.

II. Commentary Revisions

Subpart B—Open-End Credit

Section 226.6—Initial Disclosure Statement

6(b) Other Charges

Representatives of the credit card industry requested official guidance on the rules for disclosing two fees charged to consumers in connection with open-end credit plans—a fee imposed when a consumer requests that an individual payment be expedited, and a fee imposed when a consumer requests expedited delivery of a credit card. Because the proper characterization of these fees under TILA previously has been unclear, the staff proposed to revise comment 6(b) to provide guidance.

Under Regulation Z, creditors must disclose fees that are "finance charges," which are defined as "charges payable

directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." For open-end credit plans, fees that are not finance charges but that may be imposed as part of the plan must also be disclosed; these are commonly referred to as "other charges." The commentary interprets this requirement to apply to "significant charges related to the plan." Regulation Z does not require disclosure of charges that are not considered either finance charges or "other charges."

Fee To Expedite a Payment on a Credit or Charge Card Account

Card issuers increasingly have been making expedited payment services available to consumers. The expedited payment service provides consumers an alternative to mailing a payment that might not reach the card issuer by the due date. Typically to avoid being assessed a late fee, consumers request expedited payment service for a lesser charge.

Comment 6(b)–1 provides examples of "other charges" that must be disclosed to consumers under Regulation Z; the list of examples is not exhaustive. A revision to comment 6(b)–1 was proposed indicating that a fee imposed for expediting an individual payment at the consumer's request should be disclosed as an "other charge." The proposed comment only covered an expedited payment service where that method of payment was not established in advance as the regular payment method for the account. Under the proposal, changes in the amount of the fee would not trigger a change-in-terms notice.

Generally, consumer groups agreed with the proposal to treat the fee for an expedited payment service as an "other charge" subject to the condition that creditors document consumers knowing and voluntary assent to the fee. Otherwise, they believed the fee is a finance charge. They also advocated that the change-in-terms notice requirements apply.

Most industry commenters opposed the proposed comment on expedited payment fees. They asserted that the fee should not be disclosed under TILA as an "other charge" because in their view the payment service is not part of the credit plan and is not significant in its occurrence or in amount. Industry commenters disagreed that the fee resembles a late charge or substitutes for it. They noted that the fee is disclosed to consumers at the time they request the payment service and, therefore, they believe consumers will not benefit materially from disclosure of the fee on account-opening disclosures or on periodic statements under TILA. More generally, industry commenters believe that because there is another reasonable payment option available to the consumer without paying a charge, the expedited payment fee should not be disclosed either as a finance charge or as an "other charge" under TILA. They contend that the creditor's fee should be considered separate from the credit plan as though it were imposed by a third-party courier or wire transfer service. Some commenters expressed concern about the potential effect of treating an expedited payment fee as part of the credit plan for home-equity lines of credit; they believe the fee should not be considered a term of the plan subject to the rules in § 226.5b that limit unilateral changes.

The proposal was intended to address fees charged to consumers who request an expedited payment service as an alternative to mailing a payment that might not reach the card issuer by the due date. This service typically allows consumers to avoid being assessed a late fee, which typically is higher than the fee imposed for the expedited payment service. The expedited payment service covered by the proposal is not a payment method established in advance as the expected method for making regular payments on the account. Where a card issuer offers an expedited payment service, it is usually available to all account holders; the proposal was not directed to situations where the issuer makes an ad hoc accommodation to satisfy the request of a particular customer. The proposal also was not intended to address electronic payment options that are not offered as an alternative to paying a late fee, or bill-payment services offered in connection with a consumer's deposit account that might be used to pay credit card bills as well as other bills.

For the reasons discussed in the proposal, expedited payment fees, as currently constructed and described above, are not finance charges under TILA and Regulation Z because the consumer has a reasonable means for making payment on the account without paying a fee to the creditor. As noted above, the act and regulation also require disclosure by the creditor of the amount of any charge other than a finance charge "that may be imposed as part of the plan * * *." 15 U.S.C. 1637(a)(5); 12 CFR 226.6(b). The official staff commentary interprets this requirement to apply to "significant charges related to the plan (that are not finance charges)" and provides examples of charges that are "other charges" under this standard as well as charges that are not "other charges" under this standard. *See* comments 6(b)–1 and –2.

Based on the record established by the comment letters, the fee for expediting a payment that was described in the proposal does not clearly meet the standard for treatment as an "other charge." Accordingly, the proposed revision to comment 6(b)–1, classifying the fee as an "other charge," is not being adopted. In order to provide clear compliance guidance, comment 6(b)–2 is being revised to indicate that, at this time, creditors are not required to disclose the fee under TILA and Regulation Z. Creditors should continue their current practice of informing consumers of the amount of the charge at the time the service is requested. In addition, when the fee is charged to the credit account, creditors must include the cost on the periodic statement for that billing cycle. *See* § 226.7(b).

In response to the request for comment on the proper classification of this fee and the fee to expedite delivery of a credit card discussed below, commenters suggested that the Board adopt a general rule for classifying fees under TILA. In their view, the adoption of such a rule would aid creditors' compliance, particularly when determining how new fees should be treated under TILA. There is significant merit in reviewing this area to assess whether general principles can be articulated for determining the appropriate treatment of creditors' fees. Accordingly, in connection with a broader review of Regulation Z, the staff plans to recommend that the Board undertake such an assessment to determine if a general rule can be established consistent with the requirements of TILA. This review would include assessing the treatment of existing fees to determine if a different classification for individual fees is appropriate.

Fees for Expediting Delivery of a Credit or Charge Card

Comment 6(b)–2 provides examples of charges that are neither finance charges nor "other charges." A revision to comment 6(b)–2 was proposed to add, as an example, a card issuer's fee for expediting delivery of a card upon request, provided the issuer does not charge for delivery by standard mail service. The proposed comment is being adopted substantially as proposed. A minor revision has been made to clarify that the comment also applies when the card is delivered without a fee by a means other than standard mail service that is at least as fast as standard mail service.

Industry commenters uniformly agreed that fees for expedited credit card delivery should not have to be disclosed under TILA as long as the consumer can obtain the card without paying a fee; some of these commenters believe it should be sufficient if the card issuer sends the card without a fee by any "reasonable method." Consumer groups contended that the fee should be disclosed as an "other charge" if the creditor documents consumers' knowing and voluntary assent to the fee, the fee charged for expediting delivery is reasonably related to the actual cost of delivery, and the card is available without a fee by first-class mail or faster. If these conditions are not satisfied, consumer advocates believe the fee should be disclosed as a finance charge.

The final comment reflects the view that a fee for expedited delivery of a credit card is not incidental to the extension of credit and thus is not a finance charge where the consumer requests the service and the card is also available by standard mail service (or another means that is at least as fast) without a fee. In those circumstances, the amount of the voluntary charge for expedited delivery in relation to the creditor's cost is not a factor in determining whether the fee is a finance charge.

In addition, the fee does not appear to be an "other charge" under Regulation Z. An expedited card delivery service does not appear to be significant or related to the credit plan because the service is provided only occasionally, such as when a consumer seeks to replace a lost or stolen credit card and requests expedited delivery. Finally, nothing in the record suggests the need for additional documentation to demonstrate that the consumer's assent to the service is knowing and voluntary.

Section 226.9—Subsequent Disclosure Requirements

9(c) Change in Terms

A revision to comment 9(c)(2)–1 was proposed to address expedited payment fees consistent with the proposed revision to comment 6(b)–1. Because expedited payment fees are not being classified as "other charges" at this time, the proposed revision to comment 9(c)(2)–1 is unnecessary and is not being adopted.

Section 226.12—Special Credit Card Provisions

12(a) Issuance of Credit Cards

Under the proposal, comment 12(a)(2)–6 would be revised to allow card issuers, subject to certain conditions, to replace an accepted credit card with one or more replacement cards. Most commenters supported the proposed commentary provision with some suggested revisions, as discussed below. The proposal is adopted with revisions.

Section 132 of TILA, which is implemented by § 226.12(a) of Regulation Z, generally prohibits creditors from issuing credit cards except in response to a request or application. Section 132 explicitly exempts from this prohibition credit cards issued as renewals of or substitutes for previously accepted credit cards. Existing comment 12(a)(2)–5, the "one-for-one rule," interprets these statutory and regulatory provisions by providing that, in general, a creditor may not issue more than one credit card as a renewal of or substitute for an accepted card (as that term is defined under Regulation Z). The existing staff commentary does not, however, construe Section 132 as requiring one-for-one replacement in all circumstances. *See* comment 12(a)(2)–6.

Advances in technology used for information transmittal have enabled card issuers to issue credit cards in different sizes and formats. These new cards may enhance consumer convenience. A merchant's card reading equipment determines, however, whether a consumer can use a particular credit card with that merchant. For example, some merchants' equipment and some automated teller machines require insertion of a "full-size" credit card. Certain cards that are reduced in size may require different card readers than those presently used for "full-size" cards. Some card issuers have requested guidance on the issuance of cards using new technologies, which are intended to supplement but not necessarily replace a cardholder's existing card.

To address these developments, under the proposal, comment 12(a)(2)–6 would be revised to provide additional guidance, consistent with the statute and legislative purpose. The proposed comment indicated that a card issuer may replace an accepted credit card with more than one renewal or substitute card on the same account where: (1) The replacement cards access only the account of the accepted card; (2) all cards issued under the account are governed by the same terms and conditions; and (3) the consumer's total liability for unauthorized use with respect to the account does not increase.

Several industry commenters requested that the first condition be revised to require only that any replacement card access the same "credit plan" as the accepted card. This suggested revision is too broad. For example, some open-end credit plans might include multiple accounts, such as a credit card account and a home equity line of credit (HELOC), where the consumer's credit card does not access the HELOC account. The commenters' suggestion to broaden the comment would permit creditors to replace an accepted card with one that accesses the credit card account and another that accesses the HELOC. Because the consumer did not previously have credit card access to the HELOC, adding such access on an unsolicited basis would be inconsistent with the legislative purposes of Section 132. Accordingly, the final comment provides that the replacement cards should access only the accounts previously accessed by the consumer's accepted card. Minor revisions have been made to this part of the final comment for clarity; no change in meaning is intended.

Some industry commenters requested a clarification in the final rule that a supplemental card need not access all of the features of the consumer's existing card account. Neither the proposal nor the final comment requires that all replacement cards issued access all of the account features of the accepted card.

Commenters also requested a clarification that issuers would not be prevented from issuing multiple replacement cards when there is a substitution due to a change in the card issuer's name or account number, or where there is a successor card issuer. The requirement that supplemental cards must access the same account as the accepted card does not preclude issuers from issuing multiple replacement cards as part of a proper substitution. *See, e.g.*, comments 12(a)(2)–2 and –3.

Some industry commenters opposed the second condition—that all cards issued in connection with a renewal or substitution be subject to the same terms and conditions. Some commenters noted that for safety and soundness reasons, an issuer might limit use of a supplemental access device to low-dollar sales transactions (such as purchases at a vending machine or gas pump); limit the availability of credit on a supplemental card (such as a card for the cardholder's dependent child); or limit use of particular access devices to transactions with merchants that employ special security procedures or agree to special risk-sharing arrangements. Other commenters requested clarification that all credit features accessible with a supplemental card need not be subject to the same terms, for example, a different APR

might apply to purchase transactions and cash advances.

As proposed, the final comment provides that where a card issuer replaces an accepted card with more than one renewal or substitute card on an unsolicited basis, all replacement cards must be issued subject to the same terms and conditions. The final comment clarifies that this requirement applies only to terms and conditions that are required to be disclosed under § 226.6 of Regulation Z, except that a creditor may vary terms for which no change-in-terms notice is required under § 226.9(c). For example, a card issuer could issue a supplemental card that has a lower APR, has a lower credit limit, can only be used for small dollar transactions or for a subset of merchants, or is subject to different security procedures than the accepted card. Moreover, the comment does not suggest that all the credit features available with the unsolicited supplemental card must be subject to the same terms; for example, the APRs for purchase transactions and cash advances might differ for the supplemental card to the same extent that these terms differ for the accepted card.

Commenters generally supported the third condition, that the consumer's total liability for unauthorized use of the account must not increase as a result of the creditor's issuance of a supplemental card. That condition is adopted without revision in the final comment.

Several consumer groups advocated adding a condition that either the replacement cards all be mailed in the same envelope to deter identity theft or the consumer be given written notice seven days before the mailing of an additional card. They also recommended requiring other security measures, such as consumer-initiated card activation.

Card issuers typically send cards that are not activated and employ security procedures requiring the consumer to verify receipt of the card, to avoid or limit monetary losses from the theft of credit cards sent through the mail. These measures have become increasingly common and are used on a substantial portion of cards now issued. It is expected that industry will continue these practices, which should be as effective when replacing an accepted card with one or more renewal or substitute cards.

Comment was also solicited on whether it would be appropriate to allow the unsolicited issuance of supplemental cards for an existing account on the conditions specified above even when there is no renewal of or substitution for the cardholder's existing card. Industry commenters stated that allowing additional cards to be sent outside of renewal or substitution would reduce card issuers' costs by eliminating the need to produce and distribute unnecessary replacement cards. They also noted that the issuance of supplemental cards alone (as opposed to issuance in connection with a renewal or substitution) would not result in increased risk of liability for unauthorized use of the cards. Consumer advocates opposed the unsolicited issuance of more than one card on an existing account (when there is no renewal or substitution) unless consumers are notified by mail seven days before an additional card is sent and security measures such as consumer-initiated card activation are required, to protect against any added risk of theft and unauthorized use.

Based on the comments received, staff plans to recommend that the Board consider amending § 226.12(a) to allow the unsolicited issuance of additional cards on an existing account outside of renewal or substitution under certain conditions. Also, consideration may be given to whether changes to Regulation E's restrictions on the unsolicited issuance of additional debit cards on a consumer's existing asset account are warranted.

Subpart C—Closed-End Credit

Section 226.18—Content of Disclosures

18(g) Payment Schedule

The disclosures for closed-end loans must include the number, amounts, and timing of payments scheduled to repay the obligation. Premiums paid for insurance that protects the creditor against the consumer's default or other credit loss (sometimes referred to as private mortgage insurance) are finance charges that must be included in the payment schedule. The payment schedule should reflect the fact that, under the Homeowners Protection Act of 1998 (HPA), such insurance generally must terminate before the term of the loan expires.

With some revisions for clarity, changes to comment 18(g)–5 are adopted as proposed to provide additional guidance on how mortgage insurance premiums should be disclosed on the payment schedule when some premiums are collected and escrowed at the time the loan is closed. Creditors are required to disclose a payment schedule based on the borrower's legal obligation. The comment provides an example to facilitate compliance.

Commenters generally supported the proposal. Several commenters noted that the loan documents might be silent on how the termination of insurance premiums will be implemented under the HPA. TILA disclosures must be based on the legal obligation, which is determined by applicable state or other law, and not solely by the parties' written agreement. *See* comment 17(c)(1)–1. Comment 18(g)–5 has been revised to reflect this guidance.

Two commenters sought clarification that the rules for disclosing mortgage insurance premiums under TILA would not affect the rules for escrow accounts under the Real Estate Settlement Procedures Act (RESPA). The text of the final comment has been modified to allay those concerns; the comment in no way affects creditors' compliance with RESPA's aggregate escrow accounting rules.

Section 226.19—Certain Residential Mortgage Transactions

19(b) Certain Variable-Rate Transactions

A technical amendment to comment 19(b)(1)–2 is adopted, as proposed, to change the citation to comment 19(b)–5, as amended (65 FR 17129, March 31, 2000). No substantive change is intended.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

Section 226.32 implements the Home Ownership and Equity Protection Act of 1994 (HOEPA), which is part of the Truth in Lending Act. HOEPA requires additional disclosures and provides substantive protections for certain home-secured loans carrying rates or fees above specified triggers. HOEPA covers mortgage loans for which the annual percentage rate (APR) exceeds the yield on Treasury securities with a comparable maturity by a specified number of percentage points (8 for first-lien loans, 10 for subordinate-lien loans). The APR is compared with the yield on Treasury securities as of the 15th day of the month immediately preceding the month of application.

Revisions to comment 32(a)(1)(i)–4 were proposed to clarify how creditors should determine the applicable yield on Treasury securities. The proposal provided that creditors should not use results of Treasury auctions. Instead, creditors should use yields on actively traded issues adjusted to constant maturities that are listed on the Board's "Selected Interest Rates" (statistical release H–15). The H–15 is published daily and is posted on the Board's Internet Web site at *http://www.federalreserve.gov/releases/h15*.

The proposed comment also clarified that for purposes of HOEPA's rate-based trigger, creditors should compare the APR on 30-year loans (and other loans of 20 or more years) with the yield reported on the H–15 for a 20-year constant maturity. The Department of the Treasury recently ceased auctioning 30-year securities. Creditors asked for additional guidance since the H–15 lists a 20-year constant maturity and a long-term average of the yields for Treasury securities with terms to maturity of 25 or more years, and refers to a Treasury formula for estimating a 30-year yield.

Commenters generally supported the proposed revisions as enhancing uniformity and easing compliance. However, several credit unions that commented preferred having flexibility to use any figure on the H–15 comparable to a loan's maturity, including the Treasury formula for estimating a 30-year yield. Other commenters, while concurring with the guidance to use 20-year constant-maturities to calculate the APR trigger for 30-year loans, encouraged the Board to explore alternatives and make further revisions to the commentary if more suitable alternatives become available. One commenter requested guidance on the effect of an irregular first payment period on the loan's maturity.

The comment has been adopted substantially as proposed, with a minor revision for clarification. Requiring that all creditors use the yields on the H–15 for Treasury constant maturities should ensure uniform application of HOEPA. The final comment clarifies that for purposes of determining a loan's maturity under HOEPA's rate-based trigger, creditors may rely on the rules in § 226.17(c)(4). Under the rule, creditors may ignore the effect of first payment periods that are slightly longer or shorter than other scheduled payment periods.

List of Subjects in 12 CFR Part 226

Consumer protection, Disclosures, Federal Reserve System, Truth in lending.

Text of Revisions

■ Comments are numbered to comply with **Federal Register** publication rules. For the reasons set forth in the preamble, the Board amends 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

■ 2. In Supplement I to Part 226:

■ a. Under *Section 226.6—Initial Disclosure Statement*, under *6(b) Other charges*, paragraph 2. is revised.

■ b. Under *Section 226.12—Special Credit Card Provisions*, under *Paragraph 12(a)(2)*, paragraph 6. is revised.

■ c. Under *Section 226.18—Content of Disclosures*, under *18(g) Payment schedule*, paragraph 5. is revised.

■ d. Under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *Paragraph 19(b)(1)*, paragraph 2. is amended by removing "comment 19(b)–4" and adding "comment 19(b)–5" in its place.

■ e. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages*, under *Paragraph 32(a)(1)(i)*, paragraph 4. is revised.

Supplement I To Part 226—Official Staff Interpretations

* * * * *

Subpart B—Open-End Credit

* * * * *

Section 226.6—Initial Disclosure Statement

* * * * *

6(b) Other charges.

* * * * *

2. *Exclusions.* The following are examples of charges that are not "other charges":

i. Fees charged for documentary evidence of transactions for income tax purposes.

ii. Amounts payable by a consumer for collection activity after default; attorney's fees, whether or not automatically imposed; foreclosure costs; post-judgment interest rates imposed by law; and reinstatement or reissuance fees.

iii. Premiums for voluntary credit life or disability insurance, or for property insurance, that are not part of the finance charge.

iv. Application fees under § 226.4(c)(1).

v. A monthly service charge for a checking account with overdraft protection that is applied to all checking accounts, whether or not a credit feature is attached.

vi. Charges for submitting as payment a check that is later returned unpaid (*see* commentary to § 226.4(c)(2)).

vii. Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system. (*See* also comment 7(b)–2.)

viii. Taxes and filing or notary fees excluded from the finance charge under § 226.4(e).

ix. A fee to expedite delivery of a credit card, either at account opening or during the life of the account, provided delivery of the card is also available by standard mail service (or other means at least as fast) without paying a fee for delivery.

x. A fee charged for arranging a single payment on the credit account, upon the consumer's request (regardless of how frequently the consumer requests the service), if the credit plan provides that the consumer may make payments on the account by another reasonable means, such as by standard mail service, without paying a fee to the creditor.

* * * * *

Section 226.12—Special Credit Card Provisions

12(a) Issuance of credit cards.

* * * * *

Paragraph 12(a)(2).

* * * * *

6. *One-for-one rule—exceptions.* The regulation does not prohibit the card issuer from:

i. Replacing a debit/credit card with a credit card and another card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E.

ii. Replacing an accepted card with more than one renewal or substitute card, provided that:

A. No replacement card accesses any account not accessed by the accepted card;

B. For terms and conditions required to be disclosed under § 226.6, all replacement cards are issued subject to the same terms and conditions, except that a creditor may vary terms for which no change in terms notice is required under § 226.9(c); and

C. Under the account's terms the consumer's total liability for unauthorized use with respect to the account does not increase.

* * * * *

Subpart C—Closed-End Credit

* * * * *

Section 226.18—Content of Disclosures

* * * * *

18(g) Payment schedule.

* * * * *

5. *Mortgage insurance.* The payment schedule should reflect the consumer's

mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. The payment schedule must reflect the legal obligation, as determined by applicable state or other law. For example, assume that under applicable law, mortgage insurance must terminate after the 130th scheduled monthly payment, and the creditor collects at closing and places in escrow two months of premiums. If, under the legal obligation, the creditor will include mortgage insurance premiums in 130 payments and refund the escrowed payments when the insurance is terminated, the payment schedule should reflect 130 premium payments. If, under the legal obligation, the creditor will apply the amount escrowed to the two final insurance payments, the payment schedule should reflect 128 monthly premium payments. (For assumptions in calculating a payment schedule that includes mortgage insurance that must be automatically terminated, see comments 17(c)(1)–8 and 17(c)(1)–10.)

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.32—Requirements for Certain Closed-End Home Mortgages

* * * * *

32(a) Coverage.

Paragraph 32(a)(1)(i).

* * * * *

4. *Treasury securities.* To determine the yield on comparable Treasury securities for the annual percentage rate test, creditors may use the yield on actively traded issues adjusted to constant maturities published in the Board's "Selected Interest Rates" (statistical release H–15). Creditors must use the yield corresponding to the constant maturity that is closest to the loan's maturity. If the loan's maturity is exactly halfway between security maturities, the annual percentage rate on the loan should be compared with the yield for Treasury securities having the lower yield. In determining the loan's maturity, creditors may rely on the rules in § 226.17(c)(4) regarding irregular first payment periods. For example:

i. If the H–15 contains a yield for Treasury securities with constant maturities of 7 years and 10 years and no maturity in between, the annual percentage rate for an 8-year mortgage loan is compared with the yield of securities having a 7-year maturity, and the annual percentage rate for a 9-year mortgage loan is compared with the yield of securities having a 10-year maturity.

ii. If a mortgage loan has a term of 15 years, and the H–15 contains a yield of 5.21 percent for constant maturities of 10 years, and also contains a yield of 6.33 percent for constant maturities of 20 years, then the creditor compares the annual percentage rate for a 15-year mortgage loan with the yield for constant maturities of 10 years.

iii. If a mortgage loan has a term of 30 years, and the H–15 does not contain a yield for 30-year constant maturities, but contains a yield for 20-year constant maturities, and an average yield for securities with remaining terms to maturity of 25 years and over, then the annual percentage rate on the loan is compared with the yield for 20-year constant maturities.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, March 28, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–8022 Filed 4–2–03; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–52–AD; Amendment 39–13101; AD 2003–07–05]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Models S10 and S10–V Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Stemme GmbH & Co. KG (Stemme) Models S10 and S10–V sailplanes. This AD requires you to modify the engine compartment fuel and oil system and firewall. This AD is the result of FAA's determination that the actions required in AD 2002–22–04 should also be accomplished on other sailplanes of similar type design. The actions specified by this AD are intended to reduce the potential for a fire to ignite in the engine compartment and to increase the containment of an engine fire in the engine compartment. A fire in the engine compartment could lead to loss of control of the sailplane.

DATES: This AD becomes effective on May 22, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 22, 2003.

ADDRESSES: You may get the service information referenced in this AD from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–52–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, reported an incident of an in-flight fire on a Model S10–VT sailplane. The accident investigation revealed that the fire was not contained in the engine compartment. The manufacturer conducted a design review and determined that modifications to the fuel and oil system and the firewall design will significantly reduce the potential for a fire to ignite in the engine compartment and increase the containment of an engine fire in the engine compartment.

This condition caused us to issue AD 2002–22–04, Amendment 39–12928 (67 FR 66547, November 1, 2002). AD 2002–22–04 requires the following on certain Model S10–VT sailplanes:

—Modify the engine compartment fuel and oil system; and

—Modify the firewall by sealing all gaps.

Although Stemme Models S10 and S10–V sailplanes have a different engine installation (non-turbocharged), they are of similar type design as Stemme Model S10–VT sailplanes. We have determined that similar modifications should also be incorporated on these sailplanes. The LBA has determined that these modifications are not mandatory for

sailplanes registered outside of the United States.

What Is the Potential Impact if FAA Took No Action?

If this condition is not prevented, there is potential for a fire to ignite in the engine compartment and spread into the cockpit. Such a condition could lead to loss of control of the sailplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Stemme Models S10 and S10–V sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 14, 2003 (68 FR 1805). The NPRM proposed to require you to modify the engine compartment fuel and oil system and firewall.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We received one comment in support of the NPRM.

FAA's Determination

What Is FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Sailplanes Does This AD Impact?

We estimate that this AD affects 15 sailplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Sailplanes?

We estimate the following costs to accomplish the modifications:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
10 workhours × $60 per hour = $600	$620	$1,220	$1,220 × 15 = $18,300.

What is the Compliance Time of This AD?

The compliance time of this AD is "within the next 50 hours time-in-service (TIS) or 6 months after the effective date of this AD, whichever occurs first."

Why Is the Compliance Time of This AD Presented in Both Hours TIS and Calendar Time?

The unsafe condition on these sailplanes is not a result of the number of times the sailplane is operated. Sailplane operation varies among operators. For example, one operator may operate the sailplane 50 hours TIS in 6 months while it may take another operator 12 months or more to accumulate 50 hours TIS. For this reason, the FAA has determined that the compliance time of this AD will be specified in both hours TIS and calendar time in order to ensure this condition is not allowed to go uncorrected over time.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–07–05 Stemme GmbH & Co. KG: Amendment 39–13101; Docket No. 2002–CE–52–AD.

(a) *What sailplanes are affected by this AD?* This AD affects Models S10 and S10–V sailplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the sailplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to reduce the potential for a fire to ignite in the engine compartment and to increase the containment of an engine fire in the engine compartment. A fire in the engine compartment could lead to loss of control of the sailplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
Modify the firewall by sealing all gaps and modify the fuel and oil lines in the engine compartment.	Within the next 50 hours time-in-service (TIS) or 6 months after May 22, 2003 (the effective date of this AD), whichever occurs first.	Modify the firewall in accordance with Stemme Service Bulletin A31–10–057, dated June 7, 2001, as specified in Stemme Service Bulletin A31–10–063, dated September 11, 2002. Modify the fuel and oil lines in accordance with Stemme Service Bulletin A31–10–063, dated September 11, 2002, and Stemme Installation Instruction A34–10–063E, dated August 26, 2002.

(e) Can I comply with this AD in any other way? To use an alternative method of compliance or adjust the compliance time, use the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Stemme Service Bulletin A31–10–057, dated June 7, 2001; Stemme Service Bulletin A31–10–063, dated September 11, 2002; and Stemme Installation Instruction A34–10–063E, dated August 26, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *When does this amendment become effective?* This amendment becomes effective on May 22, 2003.

Issued in Kansas City, MO, on March 25, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7744 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–56–AD; Amendment 39–13099; AD 2003–07–03]

RIN 2120–AA64

Airworthiness Directives; Twin Commander Aircraft Corporation Models 690D, 695A, and 695B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Twin Commander Aircraft Corporation (TCAC) Models 690D, 695A, and 695B airplanes. This AD requires you to initially inspect and modify and repetitively inspect areas of the wing and fuselage structure for fatigue damage and modify or replace any damaged parts. This AD is the result of tests that show that the service life of certain airplane parts cannot be reached unless an inspection and modification program (with any necessary replacements or modifications if fatigue damage is found) is incorporated. The actions specified by this AD are intended to detect and correct fatigue damage in the wing and fuselage areas without reducing the service life of the airplane. Such undetected and uncorrected damage could result in structural failure with consequent loss of control of the airplane.

DATES: This AD becomes effective on May 16, 2003. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 16, 2003.

ADDRESSES: You may get the service information referenced in this AD from Twin Commander Aircraft Corporation, 19010 59th Drive NE., Arlington, Washington 98223–7832; telephone: (360) 435–9797; facsimile: (360) 435–1112. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–56–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Della Swartz, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4065; telephone: (425) 687–4246; facsimile: (425) 687–4248.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received results of fatigue testing of the wing and fuselage structure on Models 690D, 695A, and 695B airplanes. These results reveal that fatigue damage could occur prior to the published service lives.

TCAC has developed an inspection and modification program to detect and correct fatigue damage in the wing and fuselage areas without reducing the service life of the airplanes.

What Is the Potential Impact if FAA Took No Action?

Such fatigue damage, if not detected and corrected, could result in structural failure with consequent loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain TCAC Models 690D, 695A, and 695B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 3, 2002 (67 FR 71904). The NPRM proposed to require you to repetitively inspect areas of the wing and fuselage structure for fatigue damage and modify or replace any damaged parts.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 108 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to do the inspection for TCAC Models 690D, 695A, and 695B airplanes:

Inspection only labor cost for each airplane	Total inspection cost on U.S. operators
Minimum 270 workhours × $60 per hour = $16,200	Minimum: $1,749,600.
Maximum 416 workhours × $60 each hour = $24,960	Maximum: $2,695,680.

We estimate the following costs to do any necessary modifications that will be required based on the results of the inspection. We have no way of finding out the number of airplanes that may need modifications:

Costs	Minimum	Maximum
Labor Costs	81 workhours × $60 per hour = $4,860	2,790 workhours × $60 per hour = $167,400.
Estimated Parts Cost	$2,847	$65,978.
Estimated Total Cost for Each Airplane	$7,707	$233,378.
Total Cost on U.S. Operators	$832,356	$25,204,824.

Compliance Time

Why Is the Initial Compliance Time Presented in Hours Time-in-Service (TIS) and Calendar Time?

Normally, fatigue problems carry a compliance time based solely upon hours TIS, *e.g.*, upon accumulating a certain amount of hours TIS. However, the number of airplanes that still need to have the initial actions of this AD accomplished compared to the number of authorized repair centers justifies a compliance time of both hours TIS and calendar time, whichever occurs first.

TCAC estimates 125 airplanes worldwide (about 87 percent of the worldwide fleet) that still need to have the initial inspections accomplished. This 87 percent would amount to 94 of the 108 U.S.-registered airplanes with only 7 authorized service centers accredited to do the work. The FAA has worked with TCAC in establishing a compliance table that categorizes the airplanes based upon the amount of hours TIS each airplane has accumulated.

This will ensure that the service centers have adequate time to accomplish the actions required by this AD.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–07–03 Twin Commander Aircraft Corporation: Amendment 39–13099; Docket No. 2000–CE–56–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following Twin Commander Aviation Corporation (TCAC) airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
690D	15001 through 15036 and 15038 through 15040.
695A	96001 through 96062, 96065 through 96068, 96070, 96071, 96073, 96074, 96076, 96077, and 96079 through 96084, 96086, 96087, and 96089 through 96100.
695B	96063, 96069, 96075, 96078, 96085, and 96204 through 96208.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct fatigue damage in the wing and fuselage areas without reducing the service life of the airplane. Such undetected and uncorrected damage could result in structural failure with consequent loss of control of the airplane.

(d) *What must I do to address this problem?* To address this problem, you must initially inspect and modify the wing and fuselage areas (Part 1 Inspection/Modifications as identified in Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000) and repetitively inspect with necessary modification or replacement of damaged parts (Part 2 Recurrent Inspections as identified in Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000) in accordance with the following schedules:

(1) *Part 1 Initial Inspections/Modifications:* Initially (unless already done) accomplish the Part 1 Inspections/Modifications at whichever compliance time in paragraph (d)(1)(i) or (d)(1)(ii) of this AD that occurs later:

(i) the compliance times presented in Part 1 Table 1 of Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000; Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 1, Release Date: April 19, 2000; and Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 2, Release Date: May 21, 2001; or

(ii) the Table A compliance times presented on page 1 of the service information and replicated below:

Current airframe hours time-in-service (TIS)	Initial compliance time
(A) 0000 through 1,700	Upon accumulating 2,700 hours TIS or within the next 36 months after May 16, 2003 (the effective date of this AD), whichever occurs first.
(B) 1,701 through 2,500	Upon accumulating 3,400 hours TIS or within the next 36 months after May 16, 2003 (the effective date of this AD), whichever occurs first.
(C) 2,501 through 3,000	Upon accumulating 3,800 hours TIS or within the next 36 months after May 16, 2003 (the effective date of this AD), whichever occurs first.
(D) 3,001 through 5,000	Upon accumulating 5,500 hours TIS or within the next 30 months after May 16, 2003 (the effective date of this AD), whichever occurs first.
(E) 5,001 through 6,000	Upon accumulating 6,400 hours TIS or within the next 24 months after May 16, 2003 (the effective date of this AD), whichever occurs first.
(F) 6,001 through 7,500	Upon accumulating 7,800 hours TIS or within the next 18 months after May 16, 2003 (the effective date of this AD), whichever occurs first.
(G) Over 7,500	Within the next 12 months after May 16, 2003 (the effective date of this AD).

(2) *Part 2 Recurring Inspections:* Repetitively inspect as referenced in Part 2 Recurring Inspections on page 62 of Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000; Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 1, Release Date: April 19, 2000; and Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 2, Release Date: May 21, 2001.

(3) *Mandatory Replacements and Modifications:* If any damage is found during any inspection required by paragraphs (d), (d)(1), and (d)(2) of this AD, prior to further flight, replace or modify the part as specified in the following:

(i) Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000;

(ii) Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 1, Release Date: April 19, 2000; and

(iii) Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 2, Release Date: May 21, 2001.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Seattle Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Della Swartz, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW, Renton, Washington 98055–4065; telephone: (425) 687–4246; facsimile: (425) 687–4248.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000; Twin Commander Aircraft Corporation Service Bulletin No. 214, Revision 1, Release Date: April 19, 2000; and Twin Commander Aircraft Corporation Service Bulletin No. 214, Revision 2, Release Date: May 21, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Twin Commander Aircraft Corporation, 19010 59th Drive N.E., Arlington, Washington 98223–7832; telephone: (360) 435–9797; facsimile: (360) 435–1112. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on May 16, 2003.

Issued in Kansas City, MO, on March 25, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7745 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–56–AD; Amendment 39–13102; AD 2003–07–06]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. This AD requires you to inspect the steering jack piston rod for cracks and replace if necessary; measure the torque setting of the steering jack piston rod end fitting and stop bolt; and measure the thickness of the tab washers. This AD also requires you to calculate a new safe life limit for the steering jack piston rod based on the results of the inspection and the measurements. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to detect, correct, and prevent cracks in the steering jack piston rod, which could result in failure of the steering jack piston rod. Such failure could lead to loss of steering control of the airplane during takeoff, landing, and taxi operations.

DATES: This AD becomes effective on May 22, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 22, 2003.

ADDRESSES: You may get the service information referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–56–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. The CAA reports that the steering jack piston rod failed on one of the affected airplanes while in service. The CAA determined that the failure of the piston rod was caused by fatigue cracking on the piston rod end fitting. Fatigue cracking was caused by applying excessive torque to the steering jack piston rod end fitting during assembly.

The safe life limit for the steering jack piston rod is currently 45,000 ground-air-ground (GAG) cycles. Failure of the above-mentioned steering jack piston rod occurred at 2,132 GAG cycles. Because of the possibility that excessive torque had been applied to the steering jack piston rod during assembly, the safe life limit for this part has been reduced.

What Is the Potential Impact if FAA Took No Action?

This condition, if not detected and corrected, could result in failure of the steering jack piston rod. Such failure could lead to loss of steering control of the airplane during takeoff, landing, and taxi operations.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 27, 2003 (68 FR 3832). The NPRM proposed to require you to inspect the steering jack piston rod for cracks and replace if necessary; measure the torque setting of the steering jack piston rod end fitting and stop bolt; and measure the thickness of the tab washers. The NPRM also proposed to require you to calculate a new safe life limit for the steering jack piston rod based on the results of the proposed inspection and the proposed measurements.

Was the Public Invited to Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs

FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 250 airplanes in the U.S. registry.

What Is the Cost Impact of this AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	No parts required	$60	$60 × 250 = $15,000

We estimate the following costs to accomplish any necessary replacements of the steering jack piston rod that would be required based on the results of the inspection and/or measurements. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
8 workhours × $60 = $240	$5,300	$240 + $5,300 = $5,540

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

The compliance time of this AD is "within the next 90 days or 200 ground-air-ground (GAG) cycles after the effective date of this AD, whichever occurs first."

Why Is the Compliance Time Presented in Calendar Time and Operational Time?

Failure of the steering jack piston rod is only unsafe during airplane operation; this condition is not a result of the number of times the airplane is operated. The cause of the unsafe condition is the result of incorrect torque settings used on the steering jack piston rod end fitting during assembly. We have no way of determining when the unsafe condition occurred on the affected airplanes. For this reason, the FAA has determined that a compliance time based on calendar time and operational time should be utilized in this AD in order to assure that the unsafe condition is not allowed to go uncorrected over time.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–07–06 British Aerospace: Amendment 39–13102; Docket No. 2002–CE–56–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect, correct, and prevent cracks in the steering jack piston rod, which could result in failure of the steering jack piston rod. Such failure could lead to loss of steering control of the airplane during takeoff, landing, and taxi operations.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the steering jack piston rod for cracks. (i) If cracks are found, replace the cracked steering jack piston rod. Install the new steering jack piston rod using a torque setting of 175 lbf (pound force) inch or 20 Nm (Newton meters) when tightening the end fitting and stop bolt. (ii) If no cracks are found, determine the torque setting of the steering jack piston rod end fitting and stop bold.	Inspect within the next 90 days or 200 ground-air-ground (GAG) cycles after May 22, 2003 (the effective date of this AD), whichever occurs first. Replace cracked steering jack piston rods or determine torque settings prior to further flight.	In accordance with the procedures in APPH Ltd. Service Bulletin 32–76 (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002.
(2) If the torque setting of the steering jack piston rod end fitting or stop bolt is greater than 175 lbf inch or 20 Nm and is equal to or less than 435 lbf inch or 49 Nm: (i) calculate the new safe life limit for the steering jack piston rod; and (ii) incorporate the following into the Aircraft Logbook: "In accordance with AD 2003–07–06, the steering jack piston rod is life limited to ___."	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with the procedures in APPH Ltd. Service Bulletin 32–76, (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002.
(3) If the torque setting of the steering jack piston rod end fitting or stop bolt is greater than 435 lbf inch or 49 Nm, measure the deformation thickness of the tab washers. (i) If the tab washer deformation thickness is greater than 0.001 inch and is equal to or less than 0.005 inch, calculate a new safe life limit for the steering jack piston rod, and incorporate the following into the Aircraft Logbook: "In accordance with AD 2003–07–06, the steering jack piston rod is life limited to ___." (ii) If the tab washer deformation thickness is greater than 0.005 inch, replace the steering jack piston rod using the torque settings specified in paragraph (d)(1) of this AD.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with the procedures in APPH Ltd. Service Bulletin 32–76, (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002.
(4) Do not install any steering jack piston rod unless it has been inspected, determined to be free of cracks, and the safe life limit has been established.	As of May 22, 2003 (the effective date of this AD).	In accordance with the procedures in APPH Ltd. Service Bulletin 32–76, (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002.

Note 1: If the owners/operators of the affected airplanes have not kept track of ground-air-ground (GAG) cycles, hours time-in-service (TIS) may be substituted by calculating 1.5 GAG cycles per hour TIS. For example, 3,000 GAG cycles would equal 2,000 hours TIS.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, use the procedures in 14 CFR 39.19. Send these requests to the Standards Office Manager, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with APPH Ltd. Service Bulletin 32–76 (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrsbire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

(g) *When does this amendment become effective?* This amendment becomes effective on May 22, 2003.

Issued in Kansas City, Missouri, on March 25, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7746 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–59–AD; Amendment 39–13100; AD 2003–07–04]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–300, AT–400, AT–400A, AT–401, AT–401B, AT–402, AT–402A, AT–402B, AT–501, AT–502, and AT–502B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Air Tractor, Inc. (Air Tractor) Models AT–300, AT–400, AT–400A, AT–401, AT–401B, AT–402, AT–402A, AT–402B, AT–501, AT–502, and AT–502B airplanes. This AD requires you to repetitively inspect the vertical fin front spar fitting for cracks and replace any cracked fitting found. This AD also requires you to install a steel doubler as a terminating action for the repetitive inspections. This AD is the result of a report of failure of a ¼-inch thick vertical fin front spar fitting. The actions specified by this AD are intended to prevent failure of the vertical fin front spar fitting, which could result in failure of the rear spar fitting. Such failures could lead to loss of directional control of the airplane.

DATES: This AD becomes effective on May 22, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 22, 2003.

ADDRESSES: You may get the service information referenced in this AD from Air Tractor, Inc., PO Box 485, Olney, Texas 76374. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–59–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andy McAnaul, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

What Events have Caused This AD?

The FAA received reports of two incidents, one in 1994 and one in 1995, in which the vertical fin front spar fitting and rear spar fitting failed, while in flight, on an Air Tractor Model AT–402 and a Model AT–502 airplane. Failure of the vertical fin front spar fitting causes the rear spar fitting to fail. These failures result in the vertical tail lying over against the elevator creating difficulty in controlling the airplane.

These vertical fin front spar fittings were made of 3/16-inch thick aluminum. Investigation revealed that Air Tractor models with the 3/16-inch front spar attach plates installed were subject to fatigue failure.

This unsafe condition was addressed in AD 95–20–06, Amendment 39–9384. AD 95–20–06 applied to airplanes with 3/16-inch thick and ¼-inch thick aluminum fin front spar fittings installed.

In 1997, we issued AD 97–14–05, Amendment 39–10063, that supersedes AD 95–20–06. Further investigation revealed that only Air Tractor models with a 3/16-inch thick fin front spar fitting installed were developing cracks. Therefore, we issued AD 97–14–05 to remove Air Tractor models with a ¼-inch thick fin front spar fitting installed from the applicability.

Recently, a Model AT–502 airplane was found with a cracked ¼-inch thick fin front spar fitting. The crack was found during a routine inspection. The rear spar had not yet failed. This recent finding demonstrates that Air Tractor models with a ¼-inch thick fin front spar fitting are subject to fatigue failure.

What Is the Potential Impact if FAA Took No Action?

This condition, if not detected and corrected, could result in structural failure of the vertical fin front spar fitting and eventually the rear spar fitting. Such failure could result in loss of directional control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Air Tractor Models AT–300, AT–400, AT–400A, AT–401, AT–401B, AT–402, AT–402A, AT–402B, AT–501, AT–502, and AT–502B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 27, 2002 (67 FR 79008). The NPRM proposed to require you to repetitively inspect the vertical fin front spar fitting for cracks and replace any cracked fitting found. The NPRM also proposed to require you to install a steel doubler as a terminating action for the repetitive inspections.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comment received on the proposal and FAA's response:

Comment Issue: Change the Serial Number Applicability for Certain Affected Airplane Models

What Is the Commenter's Concern?

The commenter states that the serial number affectivity for Air Tractor Models AT–401 and AT–401B should include the notation that specifically designates serial numbers that have been converted to turbine powerplants as specified in Snow Engineering Co. Service Letter #155, Revised November 27, 2002.

What Is FAA's Response to the Concern?

We concur with the commenter and will change the final rule AD action to incorporate this change.

FAA's Determination

What Is FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 440 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 workhours × $60 = $240	No parts required	$240	$240 × 440 = $105,600

We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane
7 workhours × $60 = $420	Parts will be provided by Air Tractor at no charge to the customer	$420

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–07–04 Air Tractor, Inc.: Amendment 39–13100; Docket No. 2000–CE–59–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
AT–300, AT–400, and AT–400A	All serial numbers with a turbine powerplant and is retrofitted with a ¼inch thick aluminum vertical fin front spar fitting and an all-metal rudder.
AT–401 and AT–401B	401–0737 through 401–1015 and 401B–0737 through 401B–1015 that have been converted to turbine powerplants.
AT–402, AT–402A, and AT–402B	402–0737 through 402B–1015.
AT–501	501–0031 and subsequent that have been converted to turbine powerplants.
AT–502 and AT–502B	502–0031 through 502B–0398.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the vertical fin front spar fittings, which could result in failure of the rear spar fitting. Such failures could lead to loss of directional control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the vertical fin front spar fitting for cracks.	Upon the accumulation of 2,000 hours time-in-service (TIS) on the vertical fin front or spar fitting next 100 hours TIS after May 22, 2003 (the effective date of this AD), whichever occurs later. If no cracks are found, repetitively inspect thereafter at intervals not to exceed 100 hours TIS.	In accordance with Snow Engineering Co. Service Letter #155, Revised November 27, 2002.
(2) If cracks are found during any inspection required in paragraph (d)(1) of this AD, replace the vertical fin front spar fitting.	Prior to further flight after the crack is found. Continue with the repetitive inspection requirements in paragraph (d)(1) of this AD until the terminating action is accomplished.	In accordance with Snow Engineering Co. Service Letter #155, Revised November 27, 2002.
(3) Modify the vertical fin front spar fitting by installing a steel doubler.	Within the next 2,000 hours TIS after May 22, 2003 (the effective date of this AD). Installing the steel doubler is considered terminating action for the repetitive inspection requirements of this AD. The installation may be accomplished at any time provided the vertical fin front spar fitting is crack free.	In accordance with Snow Engineering Co. Service Letter #155, Revised November 27, 2002.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, use the procedures in 14 CFR 39.19. Send these requests to the Manager, Ft. Worth Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Andy McAnaul, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Snow Engineering Co. Service Letter #155, Revised November 27, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *When does this amendment become effective?* This amendment becomes effective on May 22, 2003.

Issued in Kansas City, Missouri, on March 25, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7747 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–315–AD; Amendment 39–13104; AD 2003–07–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, 757–200CB, and 757–200PF Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200, 757–200CB, and 757–200PF series airplanes. This action requires repetitive detailed inspections to detect horizontal or vertical movement of the shims at the joint of the mid-bulkhead and the upper link fittings, and corrective action if necessary; or certain alternative actions that will terminate the requirement for the repetitive inspections. This action is necessary to detect and correct migration of shims at the joint of the mid-bulkhead and the upper link fittings, which could result in cracking of the strut and consequent loss of the strut and engine.

DATES: Effective April 18, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 18, 2003.

Comments for inclusion in the Rules Docket must be received on or before June 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–315–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–315–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6450; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA has received several reports of cracking of the strut in the mid-bulkhead on certain Boeing Model 757–200, 757–200CB, and 757–200PF series airplanes. Investigation revealed that the shims at the joint of the mid-bulkhead and the upper link fittings had migrated out of position. The investigation also revealed that the shim's movement was possibly caused by movement of the fittings and the installation of thin laminated shims at the joint. The holes in the fittings rely on the action of the sleevebolts for alignment. If complete alignment does not occur, the joint could move and cause the shim to delaminate, resulting in the shim migrating away from the joint. Such migration of the shims, if not corrected, could result in cracking of the strut and consequent loss of the strut and engine.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin (ASB) 757–54A0039, Revision 1, dated June 20, 2002. Part I of the Accomplishment Instructions of that ASB describes procedures for performing repetitive detailed inspections of the laminated shims at the joint of the mid-bulkhead and upper link fittings to detect any vertical or horizontal movement of the shims. Part II of the Accomplishment Instructions of the ASB describes follow-on corrective actions (Figure 3 of the ASB) for shims that have migrated within certain limits (*e.g.*, replacing the laminated shims with new solid shims, replacing the existing sleevebolts with new oversized sleevebolts, performing visual and high frequency eddy current inspections (HFEC) to detect cracking and deformation in the sleevebolt holes and in the fittings, and corrective actions if necessary). The ASB recommends that operators contact Boeing if any shims cannot be removed. Additionally, Part III of the Accomplishment Instructions of the ASB describes procedures for performing a one-time HFEC inspection of the bolt holes (Figure 9 of the ASB) in the mid-bulkhead, and describes repair procedures for cracking.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct migration of shims at the joint of the mid-bulkhead and the upper link fittings, which could result in cracking of the strut and consequent loss of the strut and engine. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the ASB and This AD

Revision 1 of the ASB recommends that operators who have accomplished the inspections and actions described in Boeing ASB 757–54A0039, November 2, 2000, perform a one-time non-destructive testing (NDT) and/or HFEC inspection to detect cracking of the mid-bulkhead as shown in Figure 9 of the ASB, and repair if necessary. Operators should note that this AD requires those operators to perform a detailed inspection to detect cracking rather than an NDT and/or HFEC inspection. We have determined that, for airplanes on which the inspections specified in Parts I and II of Boeing ASB 757–54A0039, dated November 2, 2000, have been previously accomplished, a detailed inspection to detect cracks, and repair if necessary, within 90 days of the effective date of this AD, are adequate to continue to provide an acceptable level of safety for this interim action.

Operators also should note that Boeing ASB 757–54A0039, Revision 1, dated June 20, 2002, does not specify procedures for operators to add previously recorded measurements of the shim movement to the current measurement of shim movement. However, this AD requires those actions to ensure that the cumulative or progressive movement is measured and recorded to encompass total movement of the shim.

Additionally, operators also should note that, although the ASB specifies that the manufacturer may be contacted for further instructions if a shim cannot be removed or for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Interim Action

This is considered to be interim action. We are currently considering requiring HFEC inspections for cracking in and around the bolt holes of the left and right side of the mid-bulkhead strut, and repair if necessary, which would constitute terminating action for the repetitive inspections required by this AD. However, the planned compliance time for the HFEC inspections is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–315–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–07–08 Boeing: Amendment 39–13104. Docket 2002–NM–315–AD.

Applicability: Model 757–200, 757–200CB, and 757–200PF series airplanes, line numbers 1 through 735 inclusive, equipped with Rolls Royce Model RB211 engines, as listed in Boeing Alert Service Bulletin 757–54A0039, Revision 1, dated June 20, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct migration of shims at the joint of the mid-bulkhead and the upper link fittings, which could result in cracking of the strut and consequent loss of the strut and engine; accomplish the following:

Inspection for Movement of Shims and Corrective Actions

(a) With the exception of the airplanes specified in paragraph (e) of this AD: Within 90 days after the effective date of this AD, perform a detailed inspection to detect horizontal or vertical movement of the shims at the joint of the mid-bulkhead and the upper link fittings, per Boeing Alert Service Bulletin (ASB) 757–54A0039, Revision 1, dated June 20, 2002.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) If all laminated shims have not moved, or if all laminated shims have moved less than 0.25 inch, before further flight, perform the actions specified in either paragraph (b)(1) or (b)(2) of this AD, per Boeing Alert Service Bulletin (ASB) 757–54A0039, Revision 1, dated June 20, 2002.

(1) Perform the actions specified in paragraph 3.B.6 of the Accomplishment Instructions of the ASB (e.g., measure and record movement of the shim, cut the exposed plies, and seal adjacent surfaces and edges), and repeat the detailed inspections at intervals not to exceed 12,000 flight cycles or 72 months, whichever occurs first. At each inspection interval, the previously recorded measurement must be added to the current measurement so that the cumulative total movement of the shim is recorded. If the cumulative total movement exceeds 0.25 but is less than 0.90, before further flight, perform the actions specified in paragraph (c) of this AD. If the cumulative total movement measures 0.90 inch or more: Before further flight, perform the actions specified in paragraph (d) of this AD. Or,

(2) Perform the actions specified in paragraphs (g) and (h) of this AD.

(c) If any laminated shim has moved 0.25 inch or more but less than 0.90 inch: Before further flight, perform the actions specified in paragraph (c)(1) or (c)(2) of this AD, per Boeing Alert Service Bulletin (ASB) 757–54A0039, Revision 1, dated June 20, 2002.

(1) Before further flight, perform the actions specified in paragraph 3.B.6 of the Accomplishment Instructions of the ASB (e.g., measure and record movement of the shim, cut the exposed plies and seal adjacent surfaces and edges), and repeat the detailed inspections at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first. At each inspection interval, the previously recorded measurement must be added to the current measurement so that the cumulative total movement of the shim is recorded. If the cumulative total movement measures 0.90 inch or more, before further flight, perform the actions specified in paragraph (d) of this AD. Or,

(2) Perform the actions specified in paragraphs (g) and (h) of this AD.

(d) If any laminated shim has moved 0.90 inch or more, before further flight, perform the actions specified in paragraphs (g) and (h) of this AD.

Inspection of Lower Mid-Spar Bolts

(e) For airplanes on which the actions specified in Boeing Alert Service Bulletin (ASB) 757–54A0039, dated November 2, 2000, have been accomplished prior to the effective date of this AD: Within 90 days after the effective date of this AD, perform a detailed inspection for cracking around the four bolt heads, nuts, washers, and radius fillers specified in Figure 9 of Boeing Alert Service Bulletin (ASB) 757–54A0039, Revision 1, dated June 20, 2002.

(1) If no cracking is found, repeat the detailed inspection at intervals not to exceed 3,000 flight cycles.

(2) If any cracking is found, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA: or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Optional Terminating Action

(f) Accomplishment of the actions specified in paragraphs (g) and (h) of this AD constitutes terminating action for the repetitive inspection requirements of this AD.

(g) Replace any laminated shim with a solid shim; replace existing sleevebolts with new, oversized sleevebolts; and perform a general visual and high-frequency eddy current (HFEC) inspection to detect cracking and deformation in the sleevebolt holes and in the fittings, as shown in Part II, Figure 3, of Boeing Alert Service Bulletin 757–54A0039, Revision 1, dated June 20, 2002. If any shim cannot be removed, or if any cracking or deformation is found: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair to be approved, the approval must specifically reference this AD. No further action is required by this paragraph.

(h) Perform a one-time HFEC inspection for cracking in and around the bolt holes of the left and right side of the mid-bulkhead strut as shown in Part III, Figure 9, of Boeing Alert Service Bulletin (ASB) 757–54A0039; Revision 1, dated June 20, 2002.

(1) If no cracking is found during any inspection specified in paragraph (h) of this AD, before further flight, install oversized bolts per Figure 10 of the ASB. No further action is required by this AD.

(2) If any cracking is found during any inspection specified in paragraph (h) of this AD that is within the limits specified in the ASB: Before further flight, repair per the ASB.

(3) If any cracking is found during any inspection specified in paragraph (h) of this AD that is outside the limits specified by the ASB, and the ASB specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(j) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(k) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 757–54A0039, Revision 1, dated June 20, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(l) This amendment becomes effective on April 18, 2003.

Issued in Renton, Washington, on March 26, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7748 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–13–AD; Amendment 39–13150; AD 2003–07–09]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 390 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Model 390 airplanes. This AD requires you to incorporate information into the FAA-approved Airplane Flight Manual (AFM) that would add requirements for "Landing Performance for Operation of the Airplane with Lift Dump Inoperative." This AD is the result of two accidents on the affected airplanes where a contributing factor was the lift dump spoilers failing to deploy when commanded after the initial landing. The actions specified by this AD are intended to require the use of necessary flight information to prevent runway overruns based on insufficient aerodynamic and wheel braking if the lift dump spoilers do not operate after landing touchdown. This could result in reduced or loss of control of the airplane.

DATES: This AD becomes effective on April 7, 2003.

The Director of the Federal Register approves the incorporation by reference of certain publications listed in the regulation as of April 7, 2003.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before May 17, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–13–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–13–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–13–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Derek Morgan, Flight Test Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4172; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received information of an unsafe condition on Raytheon Model 390 airplanes. The current procedure for an annunciated lift dump failure is to increase landing distance by a factor of 1.53. In two recent accidents of these airplanes, the lift dump spoilers failed to deploy when commanded after touchdown.

Whether loss of lift dump is annunciated or unannunciated after touchdown, the pilot (in most instances) does not have enough time to take effective corrective action.

What Are the Consequences If the Condition Is Not Corrected?

Without requiring the use of necessary flight information, runway overruns based on insufficient aerodynamic and wheel braking could occur if the lift dump spoilers do not operate after landing touchdown. This could result in reduced or loss of control of the airplane.

Is There Service Information That Applies to This Subject?

Raytheon has issued Temporary Change to the FAA Approved Airplane Flight Manual P/N 390–590001–0003BTC5A1, revised March 24, 2003. This document:

—Replaces the existing landing distance and brake energy charts with ones that reflect landing performance without the effects of lift dump spoilers; and

—Modifies all operating limitations to specify the use of these landing charts in determining the maximum landing weight.

Raytheon is working toward a design that would eliminate the need for this Temporary AFM Change.

The FAA's Determination and an Explanation of the Provisions of This AD

What Has FAA Decided?

The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Raytheon Model 390 airplanes of the same type design;
—The information specified in the previously-referenced service information should be incorporated into the FAA-approved AFM; and
—AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to incorporate the previously-referenced service information into the FAA-approved AFM, which would add requirements for "Landing Performance for Operation of the Airplane with Lift Dump Inoperative."

As specified previously, Raytheon is working toward a design that would eliminate the need for these requirements. If completed, FAA will evaluate and determine whether additional regulatory action is necessary.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Because the owner/operator holding an appropriate pilot's license may accomplish the action of this AD and because the compliance time is 5 hours time-in-service (TIS) after the AD effective date, FAA is not allowing special flight permits in this AD. We have included a paragraph in the AD to communicate this information.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in reduced or loss of control of the airplane during landing operations, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the AD I Should Pay Attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–13–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2003–07–09 Raytheon Aircraft Company: Amendment 39–13150; Docket No. 2003–CE–13–AD.

(a) *What airplanes are affected by this AD?* This AD applies to Model 390 airplanes with the following serial numbers and are certificated in any category:
(1) RB–4 through RB–17.
(2) RB–25 through RB–59.
(3) RB–64.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to require the use of necessary flight information to prevent runway overruns based on insufficient aerodynamic and wheel braking if the lift dump spoilers do not operate after landing touchdown. This could result in reduced or loss of control of the airplane.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance
(1) Incorporate information into the FAA-approved Airplane Flight Manual (AFM) that would add requirements for "Landing Performance for Operation of the Airplane with Lift Dump Inoperative." Accomplish this action by inserting Raytheon Temporary Change to the FAA Approved Airplane Flight Manual P/N 390–590001–0003BTC5A1, revised March 24, 2003.	Within the next 5 hours time-in-service (TIS) after April 7, 2003 (the effective date of this AD).
(2) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may incorporate into the AFM the information specified in paragraphs (d)(1) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within the next 5 hours TIS after April 7, 2003 (the effective date of this AD).

(e) *Are special flight permits authorized for this AD?* Special flight permits are not authorized for this AD. On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. Part of this amendment to 14 CFR part 39 authorized special flight permits for all ADs, unless specified otherwise. Because the owner/operator holding an appropriate pilot's license may accomplish the action of this AD and the compliance time is 5 hours TIS after the AD effective date, FAA has determined that special flight permits are not necessary for this AD.

(f) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Derek Morgan, Flight Test Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4172; facsimile: (316) 946–4407.

(g) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Temporary Change to the FAA Approved Airplane Flight Manual P/N 390–590001–0003BTC5A1, revised March 24, 2003. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) *When does this amendment become effective?* This amendment becomes effective on April 7, 2003.

Issued in Kansas City, Missouri, on March 27, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8066 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–268–AD; Amendment 39–13103; AD 2003–07–07]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model BAe.125 Series 800A, 800A (C–29A), 800A (U–125), and 800B Airplanes; Model BH.125 Series 400A Airplanes; Model DH.125 Series Airplanes; Model Hawker 800, 800 (U–125A), and 800XP Airplanes; and Model HS.125 Series F3B, F3B/RA, F400B, F403B, 1B, 1B–522, 1B/R–522, 1B/S–522, 3B, 3B/R, 3B/RA, 3B/RB, 3B/RC, 400B, 400B/1, 401B, 403A(C), and 403B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon airplanes, that requires inspection of the main landing gear (MLG) wheels to determine the part numbers of the tie-bolt nuts, and replacement of nuts that have the incorrect part number with nuts that have the correct part number. The actions specified by this AD are intended to prevent separation of an MLG wheel due to loose or missing tie-bolts or tie-bolt nuts, with consequent damage to airplane structure or systems, decompression, loss of full braking ability, or injury to personnel on the ground. This action is intended to address the identified unsafe condition.

DATES: Effective May 8, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 8, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Department 62, PO Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Ostrodka, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4129; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon airplanes was published in the **Federal Register** on January 3, 2003 (68 FR 322). That action proposed to require inspection of the main landing gear (MLG) wheels to determine the part numbers of the tie-bolt nuts, and replacement of nuts that have the incorrect part number with nuts that have the correct part number.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 166 airplanes of the affected design in the worldwide fleet. The FAA estimates that 84 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $5,040, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–07–07 Raytheon Aircraft Company: Amendment 39–13103. Docket 2002–NM–268–AD.

Applicability: The following airplanes, certificated in any category:

TABLE—AIRPLANE MODELS, SERIAL NUMBERS, AND EQUIPMENT

Model—	Serial No.—	Equipped with—
BAe.125 series 800A	All	none.
BAe.125 series 800A (C–29A)	All	none.
BAe.125 series 800A (U–125)	All	none.
BAe.125 series 800B	All	none.
BH.125 series 400A	All	none.
DH.125 series airplanes	All	none.
Hawker 800	All	none.
Hawker 800 (U–125A)	Up to and including serial numbers 258493.	none.
Hawker 800XP	Up to and including serial numbers 258581.	Dunlop wheels part numbers AH51909, AH52075, AH52286, AH52206, AHA1287, AHA1606, or AHA1814.
HS.125 series F3B	All	none.
HS.125 series F3B/RA	All	none.
HS.125 series F400B	All	none.
HS.125 series F403B	All	none.
HS.125 series 1B	All	none.
HS.125 series 1B–522	All	none.
HS.125 series 1B/R–522	All	none.
HS.125 series 1B/S–522	All	none.
HS.125 series 3B	All	none.
HS.125 series 3B/R	All	none.
HS.125 series 3B/RA	All	none.
HS.125 series 3B/RB	All	none.
HS.125 series 3B/RC	All	none.
HS.125 series 400B	All	none.
HS.125 series 400B/1	All	none.
HS.125 series 401B	All	none.
HS.125 series 403A(C)	All	none.
HS.125 series 403B	All	none.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Complionce: Required as indicated, unless accomplished previously.

To prevent separation of a main landing gear (MLG) wheel due to loose or missing tie-bolts or tie-bolt nuts, with consequent damage to airplane structure or systems, decompression, loss of full braking ability, or injury to personnel on the ground, accomplish the following:

Inspection

(a) Within 10 landings or 12 days after the effective date of this AD, whichever comes first, inspect the MLG wheels to determine the part numbers (P/Ns) of the tie-bolt nuts; per Raytheon Service Bulletin SB 32–3522, dated September 2002, excluding Service Bulletin/Kit Drawing Report Fax.

Replacement

(b) If any tie-bolt nut having P/N NAS1804 is found installed during the inspection required by paragraph (a) of this AD, before further flight, replace the tie-bolt nut with a new nut having P/N FN22A524, (or with a new tie-bolt nut having a Dunlop P/N H5227C–5CW, SN407C–054, or LH13318–5, which are P/Ns authorized by Raytheon); per Raytheon Service Bulletin SB 32–3522, dated September 2002, excluding Service Bulletin/Kit Drawing Report Fax.

Parts Installation

(c) As of the effective date of this AD, no person shall install any MLG wheel having a tie-bolt nut with P/N NAS1804, on any airplane.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Unless otherwise provided by this AD, the actions shall be done per Raytheon Service Bulletin SB 32–3522, dated September 2002, excluding Service Bulletin/Kit Drawing Report Fax. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Department 62, PO Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on May 8, 2003.

Issued in Renton, Washington, on March 28, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certificotion Service.

[FR Doc. 03–8064 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14657; Airspace Docket No. 03–ACE–26]

Modification of Class E Airspace; St. Louis, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for St. Louis, MO has revealed discrepancies in the Spirit of St. Louis Airport airport reference point used in the legal description for the St. Louis, MO Class E airspace. This action corrects the discrepancies by modifying the St. Louis, MO Class E airspace area. It also incorporates the revised Spirit of St. Louis Airport airport reference point in the St. Louis, MO Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003. Comments for inclusion in the Rules Docket must be received on or before May 15, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14657/Airspace Docket No. 03–ACE–26, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at St. Louis, MO. It also brings the legal descriptions of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by

submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14657/Airspace Docket No. 03–ACE–26." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal AviationAdministration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 St. Louis, MO

Lambert-St. Louis International Airport, MO
(Lat. 38°44′52″ N., long. 90°21′36″ W.)
Spirit of St. Louis Airport, MO
(Lat. 38°39′44″ N., long. 90°39′07″ W.)
St. Louis Regional Airport, Alton, IL
(Lat. 38°53′25″ N., long. 90°02′46″ W.)
St. Charles County Smartt Airport, St. Charles, MO
(Lat. 38°55′47″ N., long. 90°25′48″ W.)
St. Louis VORTAC
(Lat. 38°51′39″ N., long. 90°28′57″ W.)
Foristell VORTAC
(Lat. 38°41′40″ N., long. 90°58′17″ W.)
ZUMAY LOM
(Lat. 38°47′17″ N., long. 90°16′44″ W.)
OBLIO LOM
(Lat. 38°48′01″ N., long. 90°28′29″ W.)
Civic Memorial NDB
(Lat. 38°53′32″ N., long. 90°03′23″ W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of the Lambert-St. Louis International Airport and within 4 miles southeast and 7 miles northwest of the Lambert-St. Louis International Airport Runway 24 ILS localizer course extending from the airport to 10.5 miles northeast of the ZUMAY LOM and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis International Airport Runway 12R ILS localizer course extending from the airport to 10.5 miles northwest of the OBLIO LOM and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis International Airport Runway 30L ILS localizer course extending from the airport to 8.7 miles southeast of the airport and within a 6.8 mile radius of Spirit of St. Louis Airport and within 2.6 miles each side of the 098° radial of the Foristell VORTAC extending from the 6.8-mile radius of Spirit of St. Louis Airport to 8.3 miles west of the airport and within a 6.4-mile radius of St. Charles County Smartt Airport and within a 6.9-mile radius of St. Louis Regional Airport and within 4 miles each side of the 014° bearing from the Civic Memorial NDB extending from the 6.9 mile radius of the St. Louis Regional Airport to 7 miles north of the airport and within 4.4 miles each side of the 190° radial of the St. Louis VORTAC extending from 2 miles south of the VORTAC to 22.1 miles south of the VORTAC.

* * * * *

Issued in Kansas City, MO, on March 21, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8126 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, 762 and 774

[Docket No. 030213032–3032–01]

RIN 0694–AB87

Exports and Reexports of Explosives Detection Equipment and Related Software and Technology; Imposition and Expansion of Foreign Policy Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations to expand the scope of explosives detection equipment controlled under Export Classification Control Number (ECCN) 2A983, previously 2A993, to include equipment that detects the presence of explosives, explosive residue, or detonators. BIS is also expanding controls on the export and reexport of such explosives detection equipment by imposing regional stability (RS) controls and clarifying the previously-existing anti-terrorism (AT) controls on this equipment. BIS is also imposing RS and AT controls on related software and technology, previously EAR99, but now classified under newly created ECCNs 2D983 and 2E983. This rule makes available for most destinations the use of License Exception Servicing and Replacement of Parts and Equipment (RPL) for one-for-one replacement of parts, and servicing and replacement of explosives detection equipment controlled under ECCN 2A983 that was legally exported or reexported and related software controlled under ECCN 2D983. License Exception Technology and Software—Unrestricted (TSU) may also be used to export or reexport certain operation technology and software controlled under ECCNs 2D983 and 2E983. Special records must be maintained when utilizing such License Exceptions. License Exception Governments, International Organizations, and International Inspections Under the Chemical Weapons Convention (GOV) also is available to export and reexport items controlled under ECCNs 2A983, 2D983 and 2E983 for official use by personnel and agencies of the U.S. Government.

DATES: Effective Date: This rule is effective April 3, 2003.

Comment Dates: Comments on this rule must be received on or before May 19, 2003.

ADDRESSES: Written comments on this rule should be sent to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, or to E-mail address *squarter@bis.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Controls Division, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, Telephone: (202) 482–0171, E-mail: *jroberts@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Imposition and Expansion of Foreign Policy Controls

The Bureau of Industry and Security (BIS), in this rule, amends the Export Administration Regulations (EAR) by expanding the scope of explosives detection equipment controlled under Export Control Classification Number (ECCN) 2A983, previously 2A993, to include equipment that detects the presence of explosives, explosive residue, or detonators. This rule also creates new ECCNs 2D983 and 2E983 for software and technology designed or modified for the "development", "production" or "use" of explosives detection equipment controlled under 2A983. This software and technology was previously classified as EAR99. The change in the second digit of the ECCN for explosives detection equipment, from 2A993 to 2A983, more accurately indicates the expanded number of countries to which BIS will control the equipment and related software and technology.

Regional Stability Controls

This rule imposes regional stability (RS) controls on exports and reexports of explosives detection equipment controlled under ECCN 2A983, as well as software and technology controlled under ECCNs 2D983 and 2E983, to all destinations except countries in Country Group A:1, The Czech Republic, Hungary, Iceland, New Zealand and Poland. This is noted in the Country Chart, Supplement 1 to Part 738, by an X in RS column 2. Applications will be reviewed on a case-by-case basis, consistent with the licensing policy set forth for these items in section 742.6 of the EAR.

Anti-Terrorism Controls

Anti-terrorism controls for explosives detection equipment classified under ECCN 2A983, previously 2A993, remain in effect for Iran, North Korea, Sudan, Syria, Cuba and Libya. With the creation of new ECCNs 2D983 and 2E983, BIS is imposing new license requirements for exports or reexports of such related software and technology to Iran, North Korea, Sudan and Syria for anti-terrorism reasons. Controls are maintained on this software and technology with respect to Cuba and Libya, since these items, previously classified as EAR99, were controlled to these countries under part 746 of the EAR. Applications to export or reexport such items to Cuba, Libya, Iran, North Korea, Sudan, and Syria are subject to a general policy of denial. Applications to export items controlled for more than one reason are reviewed under all applicable licensing policies, as provided in § 742.1(f).

Respective Licensing Responsibilities of BIS and the Department of the Treasury

With regard to licensing jurisdiction and licensing responsibilities of BIS and the Department of the Treasury's Office of Foreign Assets Control (OFAC) for exports to embargoed countries, this rule does not affect exports to destinations subject to comprehensive export restrictions—Cuba, Libya, Iran, Iraq and Sudan—since a general policy of denial already applies to such exports. For most of these destinations, BIS and OFAC have allocated licensing responsibility so that exporters need to obtain a license from only one agency. Exporters need a license only from OFAC for exports and reexports to Iraq and Iran, and for exports to Libya. A license is required from both OFAC and BIS for exports and reexports of items controlled under 2A983, 2D983 and 2E983 to Sudan and reexports involving U.S. persons to Libya. Exporters need a license only from BIS for exports and reexports of items controlled under 2A983, 2D983 and 2E983 to Cuba and for reexports of such items by non-U.S. persons to Libya. Exporters need a license only from BIS for exports and reexports of items controlled under 2A983, 2D983 and 2E983 to North Korea and Syria, non-embargoed countries.

BIS will consider transactions involving contracts predating March 21, 2003 for exports or reexports of 2A983, 2D983 and 2E983 items to countries other than those in Country Group E (Supplement 1 to part 740) as set forth in section 742.6(c), as revised herein. For exports of such items to Iran, North Korea, Syria and Sudan, contract sanctity will apply as set forth in Supplement 2 of part 742.

Available License Exceptions—RPL, TSU and GOV

License Exception Servicing and Replacement of Parts and Equipment (RPL) may be used to export and reexport one-for-one replacement parts, and servicing and replacement of equipment to most destinations. The use of RPL, as provided in section 740.10, is restricted to the repair or servicing of explosives detection equipment controlled under ECCN 2A983 and related software controlled under ECCN 2D983 that were previously legally exported or reexported. As set forth in new section 740.10(a)(3)(v), the one-for-one replacement of parts provision set forth in section 740.10(a) may not be used for exports of explosives detection equipment controlled under ECCN 2A983 and related software controlled under ECCN 2D983 to countries in Country Group E:1. Also, as currently set forth in paragraph 740.10(b)(2)(iv), repaired equipment or software may not be exported or reexported to countries in Country Group E:1. Also note that as provided in paragraph 740.10(b)(3)(i)(D), shipments may not be made to Country Group E:1 or to any other destinations to replace defective or otherwise unusable equipment owned or controlled by, or leased or chartered to, a national of any E:1 country.

In addition, License Exception Technology and Software—Unrestricted (TSU), as provided in section 740.13(a), may be used to export and reexport operation technology and software controlled under ECCNs 2D983 and 2E983. This operation technology is the minimum technology necessary for the installation, operation, maintenance (checking), and repair of those products legally exported or reexported that are controlled under 2A983. TSU section 740.13(c) may be used to export and reexport software updates only to correct errors ("fixes" to "bugs") in software controlled under 2D983 legally exported or reexported (original software). The software updates may be exported or reexported only to the same consignee to whom the software was originally exported or reexported and the software updates may not enhance

the functional capabilities of the original software.

License Exception Governments, International Organizations, and International Inspections Under the Chemical Weapons Convention (GOV) may be used to export and reexport items controlled under ECCNs 2A983, 2D983 and 2E983. This exception is restricted to export and reexport of items for official use by U. S. Government personnel and agencies, as set forth in § 740.11(b)(2)(ii).

To ensure accountability while allowing practical maintenance, special records must be maintained when utilizing License Exception RPL to repair or service previously legally exported or reexported items controlled under ECCNs 2A983 and 2D983. The same requirement applies when utilizing License Exception TSU to export or reexport operation technology and software controlled under ECCNs 2D983 and 2E983. The special recordkeeping requirements are described in sections 740.10(c) and 740.13(f), respectively.

BIS is taking this action after consultation with, and upon the recommendation of, the Secretary of State. Consistent with the provisions of the Export Administration Act (EAA), as amended, BIS submitted a foreign policy report to Congress indicating the imposition of new foreign policy controls for regional stability reasons on March 21, 2003.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001), as extended by Notice of August 14, 2002 (67 FR 53721, August 16, 2002), continues the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Saving Clause

Shipments of items removed from License Exception eligibility or No License Required (NLR) status as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on April 3, 2003, pursuant to actual orders for export to a foreign destination, may proceed to that destination under the previous License Exception eligibility or NLR status provisions so long as they have been exported from the United States before May 5, 2003. Any such items not actually exported before midnight on May 5, 2003 require a license in accordance with this regulation.

Rulemaking Requirements

1. This interim rule has been determined not to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 40 minutes per electronic submission and 45 minutes for a manual submission. This burden hour estimate takes into consideration the reporting time for new license requirements for explosives detection equipment and related software and technology imposed through this final rule, and includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Public comment is sought regarding whether the proposed collection of information requirements are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of technology. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (*See* 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under Title 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and BIS will consider comments in the development of the final regulations.

Accordingly, the Department of Commerce (the Department) encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close May 19, 2003. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The public record concerning this regulation will be maintained in the Bureau of Industry and Security Freedom of Information Records Inspection Facility, Room 6881, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from the Bureau of Industry and Security Freedom of Information Officer, at the above address or by calling (202) 482–0500.

List of Subjects

5 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Foreign trade.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business infromation, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 740, 742, 764 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

■ 1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

PART 740—[AMENDED]

■ 2. Section 740.2 is amended by adding paragraph (a)(8) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(8) The item is controlled under ECCNs 2A983, 2D983 or 2E983 and the License Exception is other than:

(i) RPL, under the provisions of § 740.10, including § 740.10(a)(3)(v), which prohibits exports and reexports of replacement parts to countries in Country Group E:1 (see Supplement 1 to part 740));

(ii) GOV, restricted to eligibility under the provisions of § 740.11(b)(2)(ii); or

(iii) TSU, under the provisions of § 740.13(a) and (c).

■ 3. Section 740.10 is amended:

■ a. By redesignating paragraph (a)(3)(v) as (a)(3)(vi) and by adding new paragraph (a)(3)(v) and

■ b. By adding new paragraph (c) to read as follows:

§ 740.10 Servicing and Replacement of Parts and Equipment (RPL).

* * * * *

(a) * * *

(3) * * *

(v) No replacement parts may be exported to countries in Country Group E:1 if the commodity to be repaired is explosives detection equipment controlled under ECCN 2A983 or related software controlled under ECCN 2D983.

* * * * *

(c) *Special recordkeeping requirements: ECCNs 2A983 and 2D983.* (1) In addition to any other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this section, for any items exported or reexported pursuant to License Exception RPL to repair or service previously legally exported or reexported items controlled under ECCNs 2A983 and 2D983. The following information must be specially maintained for each such export or reexport transaction:

(i) A description of the equipment replaced, repaired or serviced;

(ii) The type of repair or service;

(iii) Certification of the destruction or return of equipment replaced;

(iv) Location of the equipment replaced, repaired or serviced;

(v) The name and address of who received the items for replacement, repair or service;

(vi) Quantity of items shipped; and

(vii) Country of ultimate destination.

(2) Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR.

■ 4. Section 740.13 is amended by adding paragraph (f) to read as follows:

§ 740.13 Technology and Software—Unrestricted (TSU).

* * * * *

(f) *Special recordkeeping requirements: ECCNs 2D983 and 2E983.* In addition to any other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this paragraph, when exporting operation software or technology controlled under ECCNs 2D983 and 2E983, respectively, under License Exception TSU. Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR. The following information must be specially maintained for each export or reexport transaction, under License Exception TSU, of operation software and technology controlled by ECCNs 2D983 and 2E983:

(1) A description of the software or technology exported or reexported, including the ECCN, as identified on the CCL;

(2) A description of the equipment for which the software or technology is intended to be used, including the ECCN, as indentified on the CCL;

(3) The intended end-use of the software or technology;

(4) The name and address of the end-user;

(5) The quantity of software shipped; and

(6) The location of the equipment for which the software or technology is intended to be used, including the country of destination.

■ 5. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Publ. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

PART 742—[AMENDED]

■ 6. Section 742.6 is amended:

■ a. By revising paragraph (a)(2);

■ b. By adding paragraph (b)(3); and

■ c. By revising paragraph (c) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(2) As indicated in the CCL and in RS Column 2 of the Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to any destination except countries in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR), The Czech Republic, Hungary, Iceland, New Zealand and Poland for items described on the CCL under ECCNs 2A983, 2D983 and 2E983, and for military vehicles and certain commodities (specially designed) used to manufacture military equipment, described on the CCL in ECCNs 0A018.c, 1B018.a, 2B018, and 9A018.a and .b.

* * * * *

(b) * * *

(3) For terrorist-designated countries, the applicable licensing policies are found in parts 742 and 746 of the EAR.

* * * * *

(c) *Contract sanctity date:* March 21, 2003. This contract sanctity date applies only to items controlled under ECCNs. 2A983, 2D983 and 2E983 destined for

countries not listed in Country Group E (Supplement 1 to part 740). See parts 742 and 746 for the contract sanctity requirements applicable to exports and reexports to countries listed in Country Group E.

* * * * *

■ 7. Section 742.8 is amended by revising the phrase "through (c)(43)" in paragraph (a)(4)(ii) to read "through (c)(44)".

■ 8. Section 742.9 is amended:
■ a. By revising the phrase "through (c)(43)" in paragraph (a)(3)(ii) to read "through (c)(44)";
■ b. By revising paragraph (b)(1)(vi);
■ c. By redesignating paragraph (b)(1)(vii) as (b)(1)(ix) and (b)(1)(viii) as (b)(1)(x); and
■ d. By adding new paragraphs (b)(1)(vii), (b)(1) (viii) and (b)(1)(xi) to read as follows:

§ 742.9 Anti-terrorism: Syria.

(b) * * *
(1) * * *
(vi) Explosives detection equipment controlled under ECCN 2A983.
(vii) "Software" (ECCN 2D983) specially designed or modified for the "development", "production" or "use" of explosives detection equipment controlled by 2A983.
(viii) "Technology" (ECCN 2E983) specially designed or modified for the "development", "production" or "use" of explosives detection equipment controlled by 2A983.
* * * * *
(xi) Technology for the production of Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals controlled under ECCN 1E355.

■ 9. Section 742.10 is amended:
■ a. By revising the phrase "through (c)(43)" in paragraph (a)(4)(ii) to read "through (c)(44)";
■ b. By revising paragraph (b)(1)(vi);
■ c. By redesignating (b)(1)(vii) as (b)(1)(ix), (b)(1)(viii) as (b)(1)(x) and (b)(1)(ix) as (b)(1)(xi); and
■ d. By adding new paragraphs (b)(1)(vii) and (b)(1)(viii) to read as follows:

§ 742.10 Anti-terrorism: Sudan.

* * * * *
(b) * * *
(1) * * *
(vi) Explosives detection equipment controlled under ECCN 2A983.
(vii) "Software" (ECCN 2D983) specially designed or modified for the "development", "production" or "use" of explosives detection equipment controlled by 2A983.
(viii) "Technology" (ECCN 2E983) specially designed or modified for the "development", "production" or "use" of explosives detection equipment controlled by 2A983.
* * * * *

■ 10. Section 742.19 is amended:
■ a. By revising the phrase "(c)(6) through (c)(44)" in paragraph (a)(3)(ii) to read "(c)(6) through (c)(45)";
■ b. By revising paragraph (b)(1)(xi);
■ c. By redesignating paragraphs (b)(1)(xii) through (b)(1)(xviii) as (b)(1)(xiv) through (b)(1)(xx);
■ d. By adding new paragraphs (b)(1)(xii), (b)(1)(xiii) and (b)(1)(xxi); and
■ e. By revising the phrase "and (c)(44)" in paragraph (b)(3) to read "and (c)(45)" to read as follows:

§ 742.19 Anti-terrorism: North Korea.

* * * * *
(b) * * *
(1) * * *
(xi) Explosives detection equipment controlled under ECCN 2A983.
(xii) "Software" (ECCN 2D983) specially designed or modified for the "development", "production" or "use" of explosives detection equipment controlled by 2A983.
(xiii) "Technology" (ECCN 2E983) specially designed or modified for the "development", "production" or "use" of explosives detection equipment controlled by 2A983.
* * * * *
(xxi) Technology for the production of Chemical Weapons Convention (CWC) Schedule 2 and 3 Chemicals controlled under ECCN 1E355.

* * * * *

■ 11. Supplement No. 2 to part 742 is amended:
■ a. By revising paragraph (b)(3)(ii);
■ b. By revising paragraph (c)(39);
■ c. By adding a new paragraph (c)(40);
■ d. By redesignating paragraphs (c)(41) through (c)(44) as (c)(42) through (c)(45); and
■ e. By adding a new paragraph (c)(41) to read as follows:

Supplement No. 2 to Part 742—Anti-Terrorism Controls: Iran, North Korea, Syria and Sudan Contract Sanctity Dates and Related Policies

* * * * *
(b) * * *
(3) * * *
(ii) The following items to all end-users: for Iran, items in paragraphs (c)(6) through (c)(44) of this Supplement; for North Korea, items in paragraph (c)(6) through (c)(45) of this Supplement; for Sudan, items in paragraphs (c)(6) through (c)(14), and (c)(16) through (c)(44) of this Supplement; for Syria, items in paragraphs (c)(6) through (c)(8), (c)(10) through (c)(14), (c)(16) through (c)(19), and (c)(22) through (c)(44) of this Supplement.
* * * * *
(c) * * *
(39) Explosives detection equipment described in ECCN 2A983.
(i) Explosives detection equipment described in ECCN 2A983, controlled prior to April 3, 2003 under ECCN 2A993.
(A) *Iran.* Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date: January 19, 1996.
(B) *Syria.* Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: January 19, 1996.
(C) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date: January 19, 1996.
(D) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied.
(ii) Explosives detection equipment described in ECCN 2A983, not controlled prior to date April 3, 2003 under ECCN 2A993.
(A) *Iran.* Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.
(B) *Syria.* Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: March 21, 2003.
(C) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.
(D) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: March 21, 2003.
(40) "Software" described in ECCN 2D983 specially designed or modified for the "development", "production" or "use" of explosives detection equipment.
(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.
(ii) *Syria.* Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: March 21, 2003.
(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.
(iv) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: March 21, 2003.
(41) "Technology" described in ECCN 2E983 specially designed or modified for the "development", "production" or "use" of explosives detection equipment.
(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.
(ii) *Syria.* Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: March 21, 2003.
(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.
(iv) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: March 21, 2003.
* * * * *

■ 12. The authority citation for part 762 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

PART 762—[AMENDED]

■ 13. Section 762.2 is amended:
By redesignating paragraphs (b)(4) through (41) as (b)(6) through (43) and by adding new paragraphs (b)(4) and (5) to read as follows:

§ 762.2 Records to be retained.

* * * * *
(b) * * *
(4) § 740.10(c), Servicing and replacement of parts and equipment (RPL);
(5) § 740.13(f), Technology and software—unrestricted (TSU);
* * * * *

■ 14. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

PART 774—[AMENDED]

■ 15. In Supplement No. 1 to part 774, the Commerce Control List, Category 2 (Materials Processing, Chemicals, Microorganisms, and Toxins), is amended by removing Export Control Classification Number (ECCN) 2A993 and adding a new ECCN 2A983 reading as follows:

2A983 Explosives or detonator detection equipment, both bulk and trace based, consisting of an automated device, or combination of devices for automated decision making to detect the presence of different types of explosives, explosive residue, or detonators; and parts and components, n.e.s.

License Requirements

Reason for Control: RS, AT

Control(s)	Country chart
RS applies to entire entry	RS Column 2
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Equipment in number
Related Controls: N/A
Related Definitions: (1) For the purpose of this entry, automated decision making is the ability of the equipment to detect explosives or detonators at the design or operator-selected level of sensitivity and provide an automated alarm when explosives or detonators at or above the sensitivity level are detected. This entry does not control equipment that depends on operator interpretation of indicators such as inorganic/organic color mapping of the items(s) being scanned. (2) Explosives and detonators include commercial charges and devices controlled by 1C018 and 1C992 and energetic materials controlled by ECCNs 1C011, 1C111, 1C239 and 22 CFR 121.1 Category V.
Items:

Note: Explosives or detonation detection equipment in 2A983 includes equipment for screening people, documents, baggage, other personal effects, cargo and/or mail.

a. Explosives detection equipment for automated decision making to detect and identify bulk explosives utilizing, but not limited to, x-ray (*e.g.*, computed tomography, dual energy, or coherent scattering), nuclear (*e.g.*, thermal neutron analysis, pulse fast neutron analysis, pulse fast neutron transmission spectroscopy, and gamma resonance absorption), or electromagnetic techniques (*e.g.*, quadropole resonance and dielectrometry).

b. Explosives detection equipment for automated decision making to detect and identify the presence of explosive residues utilizing, but not limited to, explosives trace detection techniques (*e.g.*, chemiluminesence, ion mobility spectroscopy and mass spectroscopy).

c. Detonator detection equipment for automated decision making to detect and identify initiation devices (*e.g.* detonators, blasting caps) utilizing, but not limited to, x-ray (*e.g.* dual energy or computed tomography) or electromagnetic techniques.

■ 16. In Supplement No. 1 to part 774, the Commerce Control List, Category 2 (Materials Processing, Chemicals, Microorganisms, and Toxins), is amended by adding new Export Control Classification Number (ECCN) 2D983 reading as follows:

2D983 "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 2A983.

License Requirements

Reason for Control: RS, AT

Control(s)	Country chart
RS applies to entire entry	RS Column 2
AT applies to entire entry	AT Column 1

License Exceptions

CIV: N/A
TSR: N/A

List of Items Controlled

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

■ 17. In Supplement No. 1 part 774, the Commerce Control List, Category 2 (Materials Processing, Chemicals, Microorganisms, and Toxins), is amended by revising the heading of Export Control Classification Number (ECCN) 2E001 reading as follows:

2E001 "Technology" ACCORDING TO THE GENERAL TECHNOLOGY NOTE FOR THE "DEVELOPMENT" OF EQUIPMENT OR "SOFTWARE" CONTROLLED BY 2A (EXCEPT 2A983, 2A991, OR 2A994), 2B (EXCEPT 2B991, 2B993, 2B996, 2B997, OR 2B998), OR 2D (EXCEPT 2D983, 2D991, 2D992, OR 2D994).

* * * * *

■ 18. In Supplement No. 1 part 774, the Commerce Control List, Category 2 (Materials Processing, Chemicals, Microorganisms, and Toxins), is amended by revising the heading of Export Control Classification Number (ECCN) 2E002 reading as follows:

2E002 "Technology" according to the General Technology Note for the "production" of equipment controlled by 2A (except 2A983, 2A991, or 2A994), or 2B (except 2B991, 2B993, 2B996, 2B997, or 2B998).

* * * * *

■ 19. In Supplement No. 1 to part 774, the Commerce Control List, Category 2 (Materials Processing, Chemicals, Microorganisms, and Toxins), is amended by adding new Export Control Classification Number (ECCN) 2E983 reading as follows:

2E983 "Technology" specially designed or modified for the "development", "production" or "use" of equipment controlled by 2A983, or the "development" of software controlled by 2D983.

License Requirements

Reason for Control: RS, AT

Control(s)	Country chart
RS applies to entire entry	RS Column 2
AT applies to entire entry	AT Column 1

License Exceptions

CIV: N/A
TSR: N/A

List of Items Controlled

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

Dated: March 24, 2003.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 03–7696 Filed 4–2–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 423

RIN 1006–AA46

Public Conduct on Bureau of Reclamation Lands and Projects; Extension of Expiration Date

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: This rule extends the expiration date for the rule governing public conduct on Reclamation lands and projects to April 17, 2005. The rule is currently set to expire on April 17, 2003. The additional time will allow the Bureau of Reclamation to prepare and publish a more comprehensive rule.

EFFECTIVE DATE: Effective April 3, 2003, the expiration date of 43 CFR part 423, Public Conduct on Bureau of Reclamation Lands and Projects, is extended from April 17, 2003, to April 17, 2005.

ADDRESSES: Address any questions concerning this rule to Larry Todd, Director, Security, Safety, and Law Enforcement, Bureau of Reclamation, 6th and Kipling, Building 67, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Gary Anderson, Safety, and Law Enforcement, Bureau of Reclamation, 6th and Kipling, Building 67, Denver, CO 80225. Telephone (303) 445–2891

SUPPLEMENTARY INFORMATION:

I. Background

On September 11, 2001, terrorists launched attacks on targets within the United States. Following the terrorist attacks, on November 12, 2001, Congress enacted Public Law 107–69 (now codified at 43 U.S.C. 373b and 373c), for the purpose of providing law enforcement authority within Reclamation projects and on Reclamation lands. Section 1(a) of Public Law 107–69 law requires Reclamation to "issue regulations necessary to maintain law and order and protect persons and property within Reclamation projects and on Reclamation lands." Pursuant to that statutory requirement, Reclamation issued a final rule, 43 CFR part 423, Public Conduct on Bureau of Reclamation Lands and Projects, on April 17, 2002 (now codified at 43 CFR 423.1–423.10). That rule's preamble set the rule to expire on April 17, 2003, based on Reclamation's intent to develop a more comprehensive public conduct rule by that date.

A more comprehensive rule is currently under development, but additional time is needed to complete that rulemaking. In order to avoid a period during which no rule is in place addressing public conduct on our lands and facilities, Reclamation has decided to extend the expiration date of the existing rule from April 17, 2003, to April 17, 2005.

II. Procedural Requirements

A. Determination To Issue Final Rule Without Notice and Comment, and Effective in Less Than 30 Days

The Administrative Procedure Act (APA) generally requires agencies to provide advance notice and an opportunity to comment on agency rulemakings. However, the APA allows an agency to promulgate rules without notice and comment when an agency, for good cause, finds that notice and public comment are "impracticable, unnecessary, or contrary to the public interest." (5 U.S.C. 553(b)(3)(B)). To the extent that 5 U.S.C. section 553 applies to the rule, good cause exists to exempt this rulemaking from advance notice and comment.

Allowing a period for advance notice could result in the expiration of the existing rule before this rule, which extends the expiration date, goes into effect. A period without a rule in place addressing public conduct on Reclamation lands and projects would result in a serious disruption in the protection of Reclamation facilities and property, with accompanying confusion to employees and the public. Such disruption and confusion would be contrary to public and national security interests.

We expect to issue a comprehensive rule that would supersede the existing rule in the near future. Establishing a public comment period for the extension of the existing rule's expiration date is likely to create significant public confusion in that such a comment period might closely coincide with the comment period on the proposed comprehensive rule.

Finally, the existing rule which was issued on April 17, 2002, generated virtually no public reaction. Despite our request for comments on the rule, we received only one nonsubstantive comment. Therefore, it is not reasonable to expect that mere extension of the rule's expiration date would result in substantive comments from the public.

For the foregoing reasons, we conclude it is impracticable, unnecessary, and contrary to the public interest to request public comment on this rule.

We have also determined that good cause exists to waive the requirement of publication 30 days in advance of the rule's effective date under 5 U.S.C. 553(d)(3). As discussed above, it is essential that the existing rule's expiration date be extended before the rule expires. If the rule expired without any additional action, Reclamation would face a situation in which no rule exists governing public conduct on Reclamation facilities and property. Such a situation would be harmful to the security of Reclamation facilities and property and therefore not in the public interest, as well as national security interests. Also, a period during which no rule was in effect would create both legal and public confusion. Finally, even if the 30-day period were to end prior to the existing rule's expiration date, the effective result would be identical to having the expiration date removed immediately. Because an immediate effective date will sustain security, reduce the opportunity for legal and public confusion, and have no negative consequences, good cause exists for making this rule effective immediately as allowed by 5 U.S.C. 553(d)(3).

B. Review Under Procedural Statutes and Executive Orders

We have reviewed this final rule under the following statutes and executive orders governing rulemaking procedures: the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*; the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*; the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.*; the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*; Executive Order 12630 (Takings); Executive Order 12866 (Regulatory Planning and Review); Executive Order 12988 (Civil Justice Reform); Executive Order 13132 (Federalism); Executive Order 13175 (Tribal Consultation); and Executive Order 13211 (Energy Impacts). Since this rule merely extends the expiration date of the existing 43 CFR part 423, the information in the compliance statements that we published on April 17, 2002, with the existing rule continue to apply.

List of Subjects in 43 CFR part 423

Dams, Security measures, Irrigation.

Dated: March 27, 2003.

R. Thomas Weimer,

Deputy Assistant Secretary, Water and Science.

[FR Doc. 03–8110 Filed 4–2–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

RIN 9991–AA35

[OST Docket No. OST–1999–6189]

Organization and Delegation of Powers and Duties; Delegation to the Administrator, Maritime Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) delegates to the Maritime Administrator the authority to implement section 109 of the Maritime Transportation Security Act of 2002, which requires the Secretary, not later than 6 months after the date of enactment, to develop standards and curriculum to allow for the training and certification of maritime security professionals. Training opportunities provided under section 109 may be available to any Federal, State, local, and private law enforcement or maritime security personnel in the United States or to personnel employed in foreign ports used by a vessel with United States citizens as passengers or crewmembers. An annual report is to be submitted to the Senate Committee on Commerce, Science and Transportation, and the House of Representatives Committee on Transportation and Infrastructure on the expenditure of appropriated funds and the training under this section. The Maritime Administrator may further redelegate this authority.

EFFECTIVE DATE: This rule is effective on April 3, 2003.

FOR FURTHER INFORMATION CONTACT: Christine Gurland, Office of the Chief Counsel, MAR–225, (202) 366–5724, Department of Transportation, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590. Linda Lasley, Office of the General Counsel, (202) 366–9314, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

You can view and download this document by going to the webpage of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on "search." On the next page, type in the last four digits of the docket number shown on the first page of this document. Then click on "search." You may also download an electronic copy of this document by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The Secretary is delegating to the Maritime Administrator the authority under section 109 of the Maritime Transportation Security Act of 2002, Public Law 107–295, 116 Stat. 2064, at 2090 to develop standards and curriculum to allow for the training and certification of maritime security professionals. The Maritime Administration (MARAD) has the expertise and staff to develop and implement a program for the training and certification of maritime security professionals within its area of responsibility and to make funding decisions in accordance with the statutory requirements. The standards for training and certification established shall include training and certification of maritime security professionals in accordance with accepted law enforcement and security guidelines, policies, and procedures; training of students and instructors in all aspects of prevention, detection, investigation, and reporting of criminal activities in the international maritime environment; and the provision of off-site training and certification courses and certified personnel at United States and foreign ports used by U. S.-flagged vessels, or by foreign-flagged vessels with U.S. citizens as passengers or crew members, to develop and enhance security awareness and practices. MARAD may make the training opportunities provided under this section available to any Federal, State, local, and private law enforcement or maritime security personnel in the United States or to personnel employed in foreign ports used by vessels with United States citizens as passengers or crewmembers.

Since this amendment relates to Departmental organization, procedure, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b). Efficient execution of section 109 is instrumental to the timely development and implementation of training for maritime security professionals. Thus, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for this final rule to be effective on the date of publication in the **Federal Register**.

Regulatory Evaluation

Regulatory Assessment

This rulemaking is a non-significant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that Order. This rule is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it is determined that this action does not have a substantial direct effect on the States, or a relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will not limit the policymaking discretion of the States nor preempt any State law or regulation.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended, effective upon publication, to read as follows:

PART 1—[AMENDED]

■ 1. The authority citation for part 1 continues to read as follows:

Authority: Pub. L. 107–295.

■ 2. In § 1.66, add paragraph (ff) to read as follows:

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(ff) Carry out the functions and exercise the authority vested in the Secretary by section 109 of the Maritime Transportation Security Act of 2002, Public Law 107–295, 116 Stat. 2064, provide training for maritime security professionals. This authority may be redelegated.

Issued on: March 26, 2003.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03–8132 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 082902A]

Atlantic Highly Migratory Species; Swordfish Quota Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Adjustment of annual catch quotas; correction.

SUMMARY: NMFS is correcting a document published March 24, 2003, concerning the North Atlantic swordfish quota for the 2002 fishing year. A paragraph containing the total quota amount for the fishing year was inadvertently omitted. This document provides the total adjusted swordfish quota and how it is allocated for the 2002 fishing year.

DATES: Effective April 3, 2003.

FOR FURTHER INFORMATION CONTACT: Tyson Kade at 301–713–2347; Fax: 301–713–1917.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** issue of March 24, 2003, on page 14168, in the first column, following the second paragraph and before the South Atlantic Swordfish heading, add the following paragraph: "The underharvest from the 2000 and 2001 fishing years, 1,144.5 mt dw, can be added to the base 2002 fishery quota of 2,219.0 mt dw for an adjusted North Atlantic swordfish quota of 3,363.5 mt dw. The reserve category is allocated 139.1 mt dw, the incidental category is allocated 300 mt dw, and the remaining quota is divided into two equal semiannual quotas of 1,462.2 mt dw for the periods of June 1, 2002, through November 30, 2002, and December 1, 2002, through May 31, 2003. In 2002, the dead discard allowance is 120 mt dw."

Classification

This action is taken under 50 CFR 635.27(c)(3)(ii) and (c)(3)(iii) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: March 28, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8120 Filed 4–2–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 64
Thursday, April 3, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2003–14825; Notice No. 03–06]

RIN 2120–AH90

Standard Airworthiness Certification of New Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The FAA seeks public comments in advance of a specific proposal to amend the regulations for issuing a standard airworthiness certificate to certain new aircraft manufactured in the United States. The proposal would address a concern that under the current regulations, certain new aircraft are eligible for a standard airworthiness certificate without meeting the requirements of a type certificate and without having been manufactured under an FAA production approval. The intended effect is to increase efficiency by ensuring that all new aircraft manufactured in the United States receive a standard airworthiness certificate only after the aircraft have been type certificated and manufactured under an FAA production approval.

DATES: Send your comments to reach us by June 2, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 7th Street, SW., Washington, DC 20590–0001. You must identify the docket number at the beginning of your comments, and you should send two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also send comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Frank P. Paskiewicz, Production and Airworthiness Division, AIR–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of this advance notice, explain the reason for any recommendation, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this advance notice. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this advance notice. The docket is open between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before issuing a notice of proposed rulemaking or taking other rulemaking action, we will consider all comments we receive before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal because of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this advance notice, include with your comments a preaddressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

- Searching the Department of Transportation's electronic Docket Management System (DMS) web page *(http://dms.dot.gov/search)*;
- Visiting the Office of Rulemaking's web page at *http://www.faa.gov/avr/arm/index.cfm*; or
- Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this advance notice.

Background

14 CFR 21.183(d), Other aircraft

Section 21.183(d) applies to applicants for standard airworthiness certificates for aircraft not covered by § 21.183(a), (b), or (c). An applicant under § 21.183(d) is entitled to a standard airworthiness certificate if he or she presents evidence the aircraft conforms to a type design approved under a type certificate or a supplemental type certificate and to applicable Airworthiness Directives. The Administrator must also find, after inspection, that the aircraft conforms to the type design and is in condition for safe operation. The aircraft covered by paragraphs (a) and (b) of § 21.183 are (a) new aircraft manufactured under a production certificate and (b) new aircraft manufactured under a type certificate only.[1]

The requirements of § 21.183(d) were originally adopted in 1959 as an amendment to § 1.67(d) of the Civil Air Regulations (CAR), which were issued by the FAA's predecessor, the Federal Aviation Agency. CAR Amendment 1–2,

[1] Section 21.183(c) applies to airworthiness certificates for import aircraft. Although such aircraft are not produced under a U.S. type certificate/production certificate process, they are produced under similar regulations and processes enacted by the countries in which the aircraft were manufactured, which establishes similar assurances of compliance with airworthiness standards.

dated September 1, 1959 (24 FR 7065), added a new paragraph (d), entitled "Other aircraft." Amendment 1–2 provided for the airworthiness certification of aircraft that were used in military service and later released for civil use, and for other aircraft that had not had their airworthiness status maintained. The amendment stated that the regulation was created for other than newly manufactured aircraft. Section 21.183(d) has remained substantially unchanged since 1959.

The plain language of the regulation, however, does not limit the applicability of § 21.183(d) to surplus military aircraft, aircraft that have not had their airworthiness status maintained, or other than newly manufactured aircraft. Limited data and historical records show that, until recently, only a few newly manufactured aircraft have received standard airworthiness certificates on a case-by-case basis under § 21.183(d). These newly manufactured aircraft "arrive" at the airworthiness certification process as new aircraft that were not produced under an FAA production approval. On the other hand, the practice of issuing standard airworthiness certificates to surplus military aircraft released for civil use and aircraft that have not had their airworthiness status maintained has been ongoing for many years. Surplus military aircraft and aircraft that have not had their airworthiness status maintained "arrive" at the airworthiness certification process as used aircraft (those that have had time in service).

In 1966, the FAA proposed to amend § 21.183 by separating newly manufactured aircraft not manufactured under a type certificate or a production certificate from paragraph (d). *See* 31 FR 8075, June 8, 1966. Public comments received in response to the proposal showed a misunderstanding of the proposal's intent. Commenters mistakenly believed the FAA intended a broad change to past certification practices of issuing airworthiness certificates to surplus military aircraft and aircraft that had not had their airworthiness status maintained. Since the FAA did not intend such a broad change, and since few new aircraft fell within the intended scope of the change, the FAA decided to abandon the proposed change. *See* 32 FR 14925, Oct. 28, 1967. The FAA did state that although we would not adopt the proposed change, we would continue to issue standard airworthiness certificates to newly manufactured aircraft under § 21.183(d).

The System for Production of New Duplicate Aircraft

For the FAA to have confidence in the certification system of new aircraft manufactured in the United States, and the authenticity of their production, the FAA has created a three-step system of type certification, production certification, and airworthiness certification based on Title 49 of the United States Code. Type certification examines the basic design of the aircraft against the applicable airworthiness standards. Issuance of a type certificate (TC) is FAA approval that the design meets the applicable airworthiness standards of the Code of Federal Regulations. Production certification examines whether the system used to produce duplicate aircraft will result in products [2] that meet the design provisions of the pertinent TC. Issuance of a production certificate (PC) is a finding by the FAA that the quality control system of a manufacturer will reliably produce duplicate versions of a product that conforms to an approved type design. The FAA issues a standard airworthiness certificate to individual aircraft after finding that the aircraft conforms to the type design and is in condition for safe operation.

Sofety Benefits Assumed by the Linkage of the Type Certificate and the Production Certificate

A connection between the TC and the PC provides an individual and a cumulative benefit. The individual benefit applies to an aircraft produced for initial airworthiness certification. For these aircraft, any deviation from the approved type design that is found during the conformity inspection can be evaluated by comparison to the supporting data that supports issuance of the TC and any changes made after the initial TC issuance. This evaluation assures the standard airworthiness certificate means the individual aircraft satisfies all the airworthiness standards identified by the TC.

The cumulative benefit applies to evaluating the cumulative effect of changes made after the initial issuance of the TC. The linkage of the PC to the TC supporting data enables the aircraft manufacturer to evaluate the cumulative effect of many changes made over time. The manufacturer can also determine that a changed aircraft presented for original airworthiness certification continues to comply with the airworthiness standards identified in the TC. The FAA requests comments from manufacturers on how, for an aircraft presented for original standard airworthiness certification, they evaluate the interactive and cumulative effect of changes on the aircraft's compliance with all the airworthiness standards identified in the TC.

The Level of Safety Assumed for Newly Manufactured Aircraft

Nearly all new aircraft manufactured in the United States are eligible for airworthiness certificates since they are produced under the TC and PC processes that ensure the aircraft conform to a type design and are in condition for safe operation. The FAA, the manufacturer, civil aviation authorities of other countries, and the public rely on the TC and PC processes to accurately produce multiple copies of an aircraft that meet airworthiness standards. Paragraphs (a) and (b) of § 21.183 recognize this process in issuing standard airworthiness certificates to aircraft produced in this manner. Also, as stated in the next section of this advance notice, entitled "Discussion," the TC and PC holders have certain responsibilities connected with holding these privileges.

New aircraft presented for standard airworthiness certification under § 21.183(d) do not have the same level of certitude as newly manufactured aircraft produced under the TC and PC processes. Section 21.183(d) aircraft presented for airworthiness certification do not have the advantage of prior examination and approval by the FAA of a production quality system, and a finding by the FAA of accurate reproduction is difficult. The applicant for an airworthiness certificate must make a detailed, aircraft-by-aircraft showing to support the entitlement to individual airworthiness certificates, placing a great burden on both the applicant and the FAA.

Discussion

Readers should note that we are directing this Discussion section and the issues and proposals described in this advance notice at aircraft that are issued standard airworthiness certificates. We do not intend for this advance notice to apply to the proposed category of light-sport aircraft, which is the subject of a recent notice of proposed rulemaking (67 FR 5368, February 5, 2002).

The FAA's Aircraft Certification Service has recently learned that people are, or plan to be, engaged in manufacture or assembly of new aircraft, intending to obtain standard airworthiness certificates under 14 CFR 21.183(d). The builders of these aircraft do not hold a TC, supplemental type certificate (STC), or a PC, nor would they have authorization from the original TC holder to use the TC in the manufacture of new aircraft. These people intend to build aircraft that match a type design under a previously approved TC, but without the permission of the TC holder to use the design, and without a PC.

Because these aircraft builders do not hold a PC, the FAA has no assurance preceding issuance of a standard airworthiness certificate that the individual aircraft produced conforms to the type design. Each aircraft must be individually evaluated, compared to type design data, and determined to be in condition for safe operation, which is often difficult to do. Even assuming the builder can meet this burden for each aircraft produced, the resulting burden on the FAA to make the evaluations is significant. Given the limited resources available to the FAA, such a process is unworkable.

Also, since the builder does not hold a TC, several of the regulatory responsibilities of a TC holder do not apply. For example, without a TC, builders of new aircraft who apply for standard airworthiness certificates under paragraph (d) do not have to:

1. Have access to the supporting data originally used to show compliance to the airworthiness standards;
2. Provide instructions for continued airworthiness;
3. Establish and maintain an FAA production approval;
4. Report failures, malfunctions, or defects; and
5. Develop design changes to address safety issues identified by an Airworthiness Directive.

As a result, safety may be compromised, or an undue burden placed on the FAA to oversee or independently fulfill these functions which legitimately should remain with the builder of the aircraft.

Obtaining type and production certificates for manufacturing new products is a fundamental concept in the regulatory framework. Inherent in this concept is the entitlement for a PC holder to obtain a standard airworthiness certificate without further showing to the FAA. However, building new aircraft for the issuance of standard airworthiness certificates under § 21.183(d) is not consistent with the regulatory framework or with the requirements for obtaining standard airworthiness certificates under § 21.183(a), New aircraft manufactured under a production certificate or § 21.183(b), New aircraft manufactured under type certificate only.

As mentioned in the "Background" discussion, the FAA recognized this issue in 1966 when it first proposed a change to § 21.183(d) to remove newly manufactured aircraft from its scope. In part, the FAA ended the 1966 rulemaking because the size of the problem was insignificant. But recent applications for standard airworthiness certificates for newly built aircraft under § 21.183(d) show that the FAA must now address the issue.

Lastly, another issue involves Annex 8 to the Convention on International Civil Aviation (ICAO Annex 8). Each standard airworthiness certificate issued to an aircraft contains the statement that the aircraft meets ICAO Annex 8 requirements allowing them to be eligible for export. ICAO Annex 8, Section 2.2.3, states, "When approving production of aircraft or aircraft parts, a Contracting State shall ensure that it is performed in a controlled manner including the use of a quality system so that construction and assembly are satisfactory." The FAA is considering whether production and standard airworthiness certification of new aircraft under § 21.183(d) meets ICAO quality system requirements. A change to § 21.183(d), using the formal FAA production approval process, might be necessary to definitively ensure new aircraft production tracks this ICAO provision and the aircraft produced are eligible for export.

Proposed Definitions, Regulations, and Policy Changes

This advance notice proposes the following new definitions and regulation and policy changes:

Definitions

The FAA seeks public comments on the definitions of the following terms:

Manufacturer means the person who holds (or has a license or similar rights to) the approved type certificate and who controls the quality of the product (aircraft, engine, propeller, or appliance) or article produced (or to be produced, in the case of an application), including the parts of them or any processes or services related to them that are procured from an outside source; and who holds a production approval issued by the FAA.

New aircraft means an aircraft may be considered new as long as the manufacturer, distributor, or dealer retains ownership; if there are no intervening private owner, lease, or time-sharing arrangements; and the aircraft has not been used in any Armed Force, pilot school, or air taxi operation. Aircraft operated for conducting flight tests to meet the requirements for production flight testing are considered new.

Spare part means an accessory, appurtenance, or part of an aircraft, aircraft engine, propeller, or appliance that is to be installed at a later time in an aircraft, aircraft engine, propeller, or appliance. An aircraft engine, propeller, or appliance is not considered a spare part to the next higher level assembly. A spare part must be produced under an appropriate FAA production approval.

Surplus part means an accessory, appurtenance, or part of an aircraft, aircraft engine, propeller, or appliance that has been released as surplus by the military, manufacturer, owner/operator, repair facility, or any other parts supplier. An aircraft engine, propeller, or appliance is not considered a surplus part to the next higher level assembly. A surplus part must be produced under an appropriate FAA production approval or have been produced under contract to the Armed Forces.

Used aircraft means aircraft with "time in service" that have held an airworthiness certificate or have been operated by the Armed Forces. "Time in service" does not include operations for the purpose of conducting production flight testing. Used aircraft do not include aircraft that have been classified as "demolished" on the National Transportation Safety Board (NTSB) Form 6120.1/2, Pilot/Operator Aircraft Accident Report.

Regulations and Policy Changes

The FAA seeks public comments on the following possible changes. The FAA also seeks suggestions on other methods to address the problem.

1. Amend 14 CFR part 21 to require a person to hold a TC (or license to it) and a production approval to be eligible for a standard airworthiness certificate for new aircraft manufactured in the United States. Standard airworthiness certificates will only be issued to these aircraft under existing § 21.183(a), New aircraft manufactured under a production certificate, or § 21.183(b), New aircraft manufactured under type certificate only.
2. Amend 14 CFR part 21 to specify that only used aircraft will be eligible for standard airworthiness certificates under § 21.183(d). Used aircraft that are eligible and would continue to be eligible under § 21.183(d) include: a. Surplus military aircraft; and b. Used aircraft that have not had their airworthiness status maintained, which includes aircraft reassembled from spare and surplus parts.
3. Revise the associated FAA policy and guidance to reflect the proposed changes in #1 and #2 above.

These proposed changes would ensure the proper assignment of type

[2] The term "products" means aircraft, engines, propellers, or appliances.

certificate and production approval holder responsibilities to the manufacturers of new aircraft produced in the United States. This advance notice does not propose any changes to § 21.183(a), New aircraft manufactured under a production certificate, § 21.183(b), New aircraft manufactured under type certificate only, or § 21.183(c), Import aircraft.

Economic Impact

Proposed changes to Federal regulations must undergo several economic analyses. Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulations justify its cost. In addition, the Regulatory Flexibility Act of 1980, as amended, required agencies to analyze the economic impact of regulatory changes on small entities. Other analyses are also required.

To aid the FAA in performing these analyses in the event that we propose a regulation, we request responses to the following questions:

1. If you are manufacturing or assembling in the United States new aircraft that received standard airworthiness certification under § 21.183(d), or if you expect to apply for airworthiness certification under § 21.183(d) to produce new aircraft'

- What is the name of your company?
- How many people does your company employ?
- How many new aircraft certificated under § 21.183(d) do you expect to produce in the future? If possible, give annual production estimates.

2. If you are producing or plan to produce new aircraft that are or would be airworthiness certificated under § 21.183(d), what do you estimate the cost of airworthiness certification under § 21.183(a) or (b) would be relative to airworthiness certification under § 21.183(d)? Please be as specific as possible in identifying additional required tests, analyses, and demonstrations and their estimated costs.

3. If you are producing or plan to produce new aircraft airworthiness certificated under § 21.183(d), what do you estimate the cost of manufacture (per aircraft) would be if the aircraft were airworthiness certificated under § 21.183(a) or (b) compared with airworthiness certification under § 21.183(d)? Please be as specific as possible in identifying required changes in equipment, materials, and manufacturing methods and their estimated costs.

4. If you are producing or plan to produce new aircraft airworthiness certificated under § 21.183(d), and you had to wait for the FAA to issue the airworthiness certificate for each aircraft, what do you estimate the cost would be (per day) once the aircraft was ready for certification?

5. Please provide any other specific information, data, or analyses that you believe may be useful in estimating the costs associated with a potential rulemaking action to preclude the standard airworthiness certification of new aircraft under § 21.183(d).

Issued in Washington, DC, on March 31, 2003.

John J. Hickey,

Director, Aircraft Certification Service, AIR–1.

[FR Doc. 03–8124 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–11–AD]

RIN 2120–AA64

Airworthiness Directives; Iniziative Industriali Italiane S.p.A. Models Sky Arrow 650 TC and 650 TCN Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Iniziative Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes. This proposed AD would require you to modify the nose gear support bulkhead (STA600). This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this proposed AD are intended to prevent failure of the nose gear support bulkhead (STA600). Such failure could lead to loss of control of the airplane during landing or take-off.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before May 9, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–11–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–11–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Iniziative Industriali Italiane S.p.A., Corso Trieste, n. 150, 00198 Rome, Italy; telephone: 06 84.15.821; facsimile: 06 855.71.62. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–11–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Ente Nazionale per l'Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA that an unsafe condition may exist on certain Iniziative Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes. The ENAC reports that data collected on in-service airplanes show that cracks have been detected on the nose gear support bulkhead (STA600) of several airplanes with high operating time on grass airfields and at flight schools where activity of hard landings have occurred.

What Are the Consequences if the Condition Is Not Corrected?

If not corrected, the nose gear support bulkhead (STA600) could fail. Such failure could lead to loss of control of the airplane during landing or take-off.

Is There Service Information That Applies to This Subject?

Iniziative Industriali Italiane S.p.A. (3I) has issued 3i Service Bulletin SB–C No. 02/02, dated October 15, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for modifying the nose gear support bulkhead (STA600).

What Action Did the ENAC Take?

The ENAC classified this service bulletin as mandatory and issued Italian AD Number 2002–591, dated November 29, 2002, in order to ensure the continued airworthiness of these airplanes in Italy.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in Italy and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the ENAC has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the ENAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Iniziative Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 10 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators.
19 workhours × $60 = $1,140	$100	$1,240	$12,400.

The proposed modification to the nose gear support bulkhead (STA600) would require 39 hours for cure and post cure time.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Iniziative Industriali Italiane S.P.A.: Docket No. 2003–CE–11–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplanes that are certificated in any category:

Model	Serial No.
Sky Arrow 650 TC	C001 through C004, C006 through C008, and C011.
Sky Arrow 650 TCN	CN001 through CN006 and CN008.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the nose gear support bulkhead (STA600). Such failure could lead to loss of control of the airplane during landing or take-off.4

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following, unless already accomplished:

Actions	Compliance	Procedures
Modify the nose gear support bulkhead (STA600).	Within the next 100 hours time-in-service (TIS) after the effective date of this AD.	In accordance with Iniziative Industriali Italiane S.p.A. 3i Service Bulletin SB–C No. 02–02, dated October 15, 2002.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Iniziative Industriali Italiane S.p.A., Corso Trieste, n. 150, 00198 Rome, Italy; telephone: 06 84.15.821; facsimile: 06 855.71.62. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note: The subject of this AD is addressed in Italian AD Number 2002–591, dated November 29, 2002.

Issued in Kansas City, Missouri, on March 26, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8047 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–10–AD]

RIN 2120–AA64

Airworthiness Directives; Iniziative Industriali Italiane S.p.A. Models Sky Arrow 650 TC and 650 TCN Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Iniziative Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes. This proposed AD would require you to repetitively inspect the engine mount for cracks and modify or replace the engine mount if cracks are found. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this proposed AD are intended to detect and correct cracks in the engine mount, which could result in failure of the engine mount. Such failure could lead to separation of the engine from the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before May 9, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–10–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2003–CE–10–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Iniziative Industriali Italiane S.p.A., Corso Trieste, n. 150, 00198 Rome, Italy; telephone: 06 84.15.821; facsimile: 06 855.71.62. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–10–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Ente Nazionale per l'Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA that an unsafe condition may exist on all Iniziative Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes. The ENAC reports that data collected on in-service airplanes shows that cracks have been detected on the engine mount of several airplanes with high operating time on grass airfields and at flight schools where activity of hard landings have occurred.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not detected and corrected, could result in failure of the engine mount. Such failure could lead to separation of the engine from the airplane.

Is There Service Information That Applies to This Subject?

Iniziative Industriali Italiane S.p.A. has issued 3i Service Bulletin SB–C No. 01/02, dated October 15, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—Repetitively inspecting the engine mount for cracks; and

—Modifying the engine mount if cracks are found.

What Action Did the ENAC Take?

The ENAC classified this service bulletin as mandatory and issued Italian AD Number 2002–590, dated November 29, 2002, in order to ensure the continued airworthiness of these airplanes in Italy.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in Italy and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the ENAC has kept FAA informed of the situation described above.

What Are the Differences Between This Proposed AD, the ENAC AD, and the Service Information?

The ENAC AD and the service information requires (on Italian-registered airplanes) inspection within the next 10 hours time-in-service (TIS) after the effective date of the AD. We propose a requirement that you inspect within the next 50 hours TIS after the effective date of this proposed AD. We do not have justification to require this action within the next 10 hours TIS.

We use compliance times such as 10 hours TIS when we have identified an urgent safety of flight situation. We believe that 50 hours TIS will give the owners or operators of the affected airplanes enough time to have the proposed actions accomplished without compromising the safety of the airplanes.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the ENAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Iniziative Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 10 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	No parts required	$60	$60 × 10 = $600.

We estimate the following costs to accomplish the necessary modification:

Labor cost	Parts cost	Total cost per airplane
14 workhours × $60 = $840	$100	$940

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
11 workhours × $60 = $660	$500	$1,160

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Iniziative Industriali Italiane S.P.A.: Docket No. 2003–CE–10–AD.

(a) *What airplanes are affected by this AD?* This AD effects Models Sky Arrow 650 TC and 650 TCN airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the engine mount, which could result in failure of the engine mount. Such failure could lead to separation of the engine from the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the engine mount for cracks	Initially inspect within the next 50 hours time-in-service (TIS) after the effective date of this AD. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the modification or replacement specified in paragraph (d)(2) or (d)(3) of this AD is incorporated.	In accordance with Iniziative Industriali Italiane S.p.A. 3i Service Bulletin SB–C No. 01–02, dated October 15, 2002.
(2) If cracks are found during any inspection required in paragraph (d)(1) of this AD and the cracks are 20 millimeters (mm) or less in size, modify the engine mount.	Prior to further flight after the inspection in which the cracks are found. Incorporating the manufacturer's modification kit terminates the repetitive inspection requirements of this AD.	In accordance with Iniziative Industriali Italiane S.p.A. 3i Service Bulletin SB–C No. 01–02, dated October 15, 2002.
(3) If cracks are found during the inspection required in paragraph (d)(1) of this AD and the cracks are more than 20 millimeters in length, the engine mount must be replaced with a new, already modified engine mount.	Prior to further flight after the inspection in which the cracks are found. Replacing the engine mount with a new, already modified engine mount terminates the repetitive inspection requirements of this AD.	In accordance with Iniziative Industriali Italiane S.p.A. 3i Service Bulletin SB–C No. 01–02, dated October 15, 2002.

Actions	Compliance	Procedures
(4) After any inspection required in paragraph (d)(1) of this AD, and no cracks are found, you may incorporate the modification or install a new, already modified engine mount as referenced in paragraph (d)(2) and (d)(3) of this AD. This modification terminates the repetitive inspection requirements of this AD.	N/A	In accordance with Iniziative Industriali Italiane S.p.A. 3i Service Bulletin SB–C No. 01–02, dated October 15, 2002.
(5) Do not install any engine mount unless it has been modified as specified in paragraph (d)(2) of this AD.	As of the effective date of this AD	Not applicable.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Iniziative Industriali Italiane S.p.A., Corso Trieste, n. 150, 00198 Rome, Italy; telephone: 06 84.15.821; facsimile: 06 855.71.62. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note: The subject of this AD is addressed in Italian AD Number 2002–590, dated November 29, 2002.

Issued in Kansas City, Missouri, on March 26, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8048 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–02–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A330 and A340 series airplanes. This proposal would require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate life limits for the servo-controls located on the ailerons and replacement of the servo-controls with new servo-controls when they have reached their operational life limits. This action is necessary to prevent hydraulic leakage and failure of the servo-controls due to cracks in the end caps and along the barrel, which could result in loss of the ailerons and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 5, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–02–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–02–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–02–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–02–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the

airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus A330 and A340 series airplanes. The DGAC advises that the operational life limits for the servo-controls located on the ailerons, which are listed in Revision 8, chapter 05–11–00, configuration 1, of the Aircraft Maintenance Manual (AMM), dated September 15, 1999, are not addressed by section 9 of the Airworthiness Limitations Section (ALS), which replaces chapter 05–11–00 of the AMM. When the servo-controls have reached their operational life limits, it is necessary to remove and replace them with new servo-controls to prevent hydraulic leakage and failure due to cracks in the end caps and along the barrel, which could result in loss of the ailerons and consequent reduced controllability of the airplane.

Explanation of Action Taken by the DGAC

The DGAC issued French airworthiness directives 2001–529(B) and 2001–530(B), both dated November 14, 2001, to require operational life limits for the inboard and outboard aileron servo-controls operating in the active mode. The French airworthiness directives also require the replacement of the servo-controls with new servo-controls when the operational life limits have been reached.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a revision to the ALS of the Instructions for Continued Airworthiness to incorporate life limits for servo-controls located in the ailerons and replacement of the servo-controls with new servo-controls when the operational life limits have been reached.

Clarification of Compliance Time

French airworthiness directives 2001–529(B) and 2001–530(B) both include a note that provides a formula for calculating the remaining life (in the present configuration) for parts that have been used in several airplane models or type configurations. This proposed AD mirrors the compliance times specified in paragraphs (A) and (B) of the French airworthiness directives, but does not provide the formula specified in the note of the French airworthiness directives. However, we would consider a request for approval to use the specified formula, under the provisions of paragraph (d) of this proposed AD, provided that appropriate substantiating data accompany the request.

Cost Impact

The FAA estimates that 9 Model A330 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided to the operators at no cost. Based on these figures, the cost impact of the proposed AD on U.S. operators of Model A330 series airplanes is estimated to be $2,700, or $300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Currently, there are no Airbus Model A340 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 5 work hours to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would be provided to the operators at no cost. Based on these figures, the cost impact of this AD for Model A340 operators would be $300 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2002–NM–02–AD.

Applicability: All Model A330 and A340 series airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR Part 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR part 91.403(c), the operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Compliance: Required as indicated, unless accomplished previously.

To prevent hydraulic leakage and failure of the servo-controls located on the ailerons due to cracks in the end caps and along the barrel, which could result in loss of the ailerons and consequent reduced controllability of the airplane, accomplish the following:

Airworthiness Limitations Revision and Replacement of Servo-Control Units

(a) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness by inserting a copy of this AD into the ALS.

(b) Replace the servo-control units operating in the active mode at the times specified in the following table, counted from the date of initial installation on the airplane, as applicable:

TABLE—PART NUMBERS AND REPLACEMENT LIFE LIMITS

For model—	Replace servo-controls having the following part numbers with new parts having the same part numbers:	Replace before
(1) A330 series airplanes.	(i) 3337457–21, –22, and –23 (inboard) ..	6,000 flight hours.
	(ii) 3337457–25, –26, and –27 (inboard)	18,000 flight hours.
	(iii) 3337457–30, –31, –34, –35, –36, –37, and –38 (inboard).	21,000 flight cycles or 32,000 flight hours, whichever occurs first.
	(iv) 3337457–59 and –60 (inboard)	60,000 flight hours. This is a temporary and life limit; if the operator wants to use the parts beyond 60,000 flight hours the accumulated flight hours of the parts since their origin must be tracked and a request submitted for an alternative method of compliance in accordance with paragraph (d) of this AD.
	(v) 3337458–30, –31, –34, –35, –36, –37, and –38 (outboard).	21,000 flight cycles or 32,000 flight hours, whichever occurs first.
	(vi) 3337458–59 and –60 (outboard)	60,000 flight hours. This is a temporary life limit; if the operator wants to use the parts beyond 60,000 flight hours the accumulated flight hours of the parts since their origin must be tracked and a request submitted for an alternative method of compliance in accordance with paragraph (d) of this AD.
(2) A340 series airplanes.	(i) 3337457–21, –22, and –23 (inboard) ..	9,000 flight hours.
	(ii) 3337457–25, –26, and –27 (inboard)	27,000 flight hours.
	(iii) 3337457–30, –31, –34, –35, –36, –37, and –38 (inboard).	16,400 flight cycles or 65,600 flight hours, whichever occurs first.
	(iv) 3337457–59 and –60 (inboard)	80,000 flight hours. This is a temporary and life limit; if the operator wants to use the parts beyond 80,000 flight hours the accumulated flight hours of the parts since their origin must be tracked and a request submitted for an alternative method of compliance in accordance with paragraph (d) of this AD.
	(v) 3337458–30, –31, –34, –35, –36, –37, and –38 (outboard).	16,400 flight cycles or 65,600 flight hours, whichever occurs first.
	(vi) 3337458–59 and –60 (outboard)	80,000 flight hours. This is a temporary and life limit and if the operator wants to use the parts beyond 80,000 flight hours must track the accumulated flight hours of the parts since their origin and request approval for an alternative method of compliance in accordance with paragraph (d) of this AD.

(c) Except as provided by paragraph (d) of this AD: After the actions specified in paragraphs (a) and (b) of this AD have been accomplished, no alternative life limits may be approved for the components specified in paragraph (b) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 2001–529(B) and 2001–530(B), both dated November 14, 2001.

Issued in Renton, Washington, on March 28, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8065 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14608; Airspace Docket No. 03–AAL–2]

Proposed Amendment of Class E Airspace; Ambler, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class E airspace at Ambler, AK. Two new Standard Instrument Approach Procedures (SIAP) are being published for the Ambler Airport. Existing Class E airspace at Ambler is insufficient to contain aircraft executing the new SIAPs. The new approach procedure design will require a Terminal Arrival Area (TAA). Adoption of this proposal would result in the

addition of 1,200 ft. Class E airspace at Ambler, AK.

DATES: Comments must be received on or before May 19, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14608/ Airspace Docket No. 03–AAL–2, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.CTR.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14608/Airspace Docket No. 03–AAL–2." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by adding to Class E airspace at Ambler, AK. The intended effect of this proposal is to extend Class E airspace, from 1,200 feet above the surface, to contain Instrument Flight Rules operations at Ambler, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Ambler Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Z Runway (RWY) 36, original; and (2) RNAV (GPS) Y Runway 36, original. New Class E controlled airspace extending upward from 1,200 feet above the surface within a 47 mile radius of the Ambler Airport would be created by this action. This amount of Class E airspace is needed to provide for a Terminal Arrival Area (TAA) and to eliminate small portions of unusable Class G airspace that have been created by past rule-making actions. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Ambler Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Ambler, AK [Amended]

Ambler Airport, AK
(Lat. 67°06'23" N., long. 157°51'27" W.)
Ambler NDB
(Lat. 67°06'24" N., long. 157°51'29" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Ambler Airport and within 3.5 miles each side of the 193° bearing of the Ambler NDB extending from the 6.3 mile radius to 7.2 miles southwest of the airport; and that airspace extending upward from 1,200 feet above the surface within a 47 mile radius of the Ambler Airport.

* * * * *

Issued in Anchorage, AK, on March 26, 2003.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–8143 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003–14673; Airspace Docket No. 03–ASO–2]

Proposed Establishment of Class E2 Airspace; Elizabeth City, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E2 airspace at Elizabeth City, NC. The Elizabeth City Coast Guard Air Station has requested to conduct Special Visual Flight Rules (VFR) operations at the Elizabeth City CGAS/Municipal Airport. The Elizabeth City Airport Traffic Control Tower is a part time facility. In order to conduct these operations when the control tower is closed, Class E2 surface area must be established. This action would establish Class E2 surface area airspace with a 4.1 mile-radius of the airport.

DATES: Comments must be received on or before May 5, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14673/ Airspace Docket No. 03–ASO–2, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14673/Airspace Docket No. 03–ASO–2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E2 airspace at Elizabeth City, NC. Class E airspace designations for airspace areas designated as surface areas are published in paragraph 6002 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO MS E2 Elizabeth City [NEW]

Elizabeth City CGAS/Municipal Airport, NC
(Lat. 36°15′38″ long. 76°10′29″)

That airspace extending upward from the surface within a 4.1-mile radius of the Elizabeth City CGAS/Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on March 24, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–8127 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003–14268; Airspace Docket No. 03–ASO–1]

Proposed Establishment of Class E5 Airspace; Tunica, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Tunica, MS. A Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 35 Standard Instrument Approach Procedure (SIAP) has been developed for Tunica Municipal Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and other Instrument Flight Rules (IFR) operations at Tunica Municipal Airport. The operating status of the airport would change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before May 5, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14268/Airspace Docket No. 03–ASO–1, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket FAA–2003–14268/Airspace Docket No. 03–ASO–01." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Tunica, MS. Class E airspace designations for airspace areas extending upward 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11035; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO MS E5 Tunica, MS [NEW]

Tunica Municipal Airport, MS
(Lat. 36°24′47″ long. 83°30′00″)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Tunica Municipal Airport.

* * * * *

Issued in College Park, Georgia, on March 24, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–8129 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Proposed rule and proposed conditional exemption.

SUMMARY: The Federal Trade Commission ("Commission") seeks public comment on a proposed rule change and exemption request submitted by the Association of Home Appliance Manufacturers ("AHAM") related to certain testing and labeling requirements of the Appliance Labeling Rule for clothes washers.

DATES: Written comments on the proposed exemption and the proposed rule must be submitted on or before May 5, 2003.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned "16 CFR part 305—Appliance Labeling Rule." To encourage prompt and efficient review and dissemination of the comments to the public, comments should also be submitted, if possible, in electronic form to: *appliance@ftc.gov*. AHAM's request and written public comments will be posted to the extent possible on the Commission's Web site (*www.ftc.gov*) and will otherwise be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations on normal business days from 8:30 a.m. to 5 p.m. at the Federal Trade Commission, 6th St. and Pennsylvania Ave., NW., Room 130, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–2889).

SUPPLEMENTARY INFORMATION:

I. Background

A. FTC Requirements

The Commission issued the Appliance Labeling Rule in 1979, 44 FR 66466 (Nov. 19, 1979) ("Rule"), in response to a directive in the Energy Policy and Conservation Act of 1975 ("EPCA") (42 U.S.C. 6294). EPCA also requires the Department of Energy ("DOE") to develop test procedures that measure how much energy certain appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

The Rule covers, among other things, eight categories of major household appliances: refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, furnaces, and central air conditioners. The Rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. The Rule requires manufacturers to include, on labels, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models similar to the labeled model.

The Rule requires manufacturers, after filing an initial report, to report annually the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. 16 CFR 305.8(b). Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the database from which the ranges of comparability are calculated is constantly changing. Under § 305.10 of the Rule, to keep the required information on labels consistent with these changes, the Commission publishes new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission publishes a statement that the prior ranges remain in effect for the next year.

B. New DOE Test Procedure and Energy Standards for Clothes Washers

New energy conservation standards and a new DOE test procedure for clothes washers will become effective on January 1, 2004. The new energy

conservation standard requires that all new residential clothes washers manufactured after January 1, 2004 be 22% more efficient than today's minimally compliant clothes washer.[1] Accordingly, the 2004 energy standard will render a substantial portion of the existing clothes washer market obsolete.

The new DOE test procedure for clothes washers, which also will become effective on January 1, 2004, is found at 10 CFR part 430, Subpart B, Appendix J1.[2] Application of the new test procedure (sometimes referred to as the "J1" test or the "Modified Energy Factor" test) will likely produce energy consumption figures different from those yielded by the old ("J") test procedure (10 CFR part 430, subpart B, Appendix J).[3] Because these test results are used to determine energy use information that appears on the FTC EnergyGuide label, consumers may not be able effectively to compare the energy performance of clothes washers if the labels are based on the two different test procedures.

II. AHAM's Request

To ease the transition to the new energy efficiency standard and new (J1) test procedure, AHAM[4] wrote to FTC staff on February 7, 2003, requesting permission to begin using that test for labeling clothes washers during 2003, before the test becomes effective. In addition, AHAM's letter requests that the Commission allow its members to provide special wording on the EnergyGuide labels for these models to help consumers in distinguishing washers tested under the new (J1) procedure from those tested under the old (J) procedure (see Prototype Label 2 at the end of this document). AHAM's proposed label would display a banner across the top stating: "This Model has been Tested to the 2004 Test Procedure. Compare only with Models with this Notice." AHAM requested that the Commission allow its members to begin using the new (J1) test and modified labels on May 1, 2003, and that the labeling changes be made "permanent."[5] To grant AHAM's request, the Commission would have to grant an exemption from certain EnergyGuide testing and labeling requirements for the remainder of this year and issue Rule amendments to make the requested labeling changes a permanent requirement for all manufacturers after January 1, 2004.

AHAM submitted its request because it asserts that the transition to clothes washers compliant with the new 2004 energy efficiency standard and new test procedure, with respect to testing and labeling, could be unduly burdensome to manufacturers and confusing to consumers. According to AHAM, there will be hundreds of new energy efficient models introduced throughout the course of 2003. Under current requirements, manufacturers will have to test and rate these new models first under the old (J) procedure for 2003, and then again under the new (J1) procedure in order to distribute them in 2004. AHAM stated that, since several samples of each basic model need to be tested to determine statistically valid ratings, such duplicative testing would result in tremendous laboratory and manufacturer staff resources for hundreds of new models. Also, AHAM states that retail floor models are not changed frequently. Thus, without action by the FTC, retail display units for new models introduced this year will have energy labels based on the old (J) test well into 2004 and beyond. AHAM is concerned that these display units could be very confusing and misleading as consumers seek to compare units tested under different procedures in a single showroom without any notice that differences exist.

III. Discussion

AHAM's request raises two procedural matters: (1) A request for an exemption from certain testing and labeling requirements for clothes washers from May through December 31, 2003 (to permit testing and labeling pursuant to the new (J1) test); and (2) a proposed "permanent" rule change, effective January 1, 2004, to conform existing label content and format requirements to label changes permitted by the 2003 exemption. The Commission is seeking public comment on both the exemption request and the proposed rule.

A. Proposed Conditional Exemption for 2003

AHAM's request implicates several provisions of the Appliance Labeling Rule. The Rule requires that, for the purposes of the EnergyGuide label, manufacturers use the estimated annual energy consumption as derived from the DOE clothes washer test procedures in 10 CFR part 430 (*see* 16 CFR 305.5(a) and 305.11(a)(5)(i)(E)). Because the new (J1) test for clothes washers will not become effective until January 1, 2004, the Rule does not authorize the use of that test for energy consumption information on EnergyGuide labels until that date. By granting the requested exemption, the Commission would allow manufacturers to begin using the new test results on EnergyGuide labels before 2004. In addition, the Rule does not allow any marks or identification other than those specified in the Rule to appear on the label except for some limited exceptions not applicable here (*see* 16 CFR 305.11(a)(5)(i)(K)). Accordingly, absent an exemption, the Rule does not allow the kind of explanatory information proposed by AHAM (*e.g.*, "Compare the Energy Use of this Clothes Washer only with other Models tested to the 2004 Test Procedure").

Because most consumers use the showroom models for EnergyGuide information, the Commission believes that there are benefits to allowing manufacturers to begin changing over to the new labels and test results sooner. First, as AHAM indicates, this would allow manufacturers to avoid testing their new products multiple times pursuant to two test procedures. It is the Commission's understanding that AHAM's members intend to test new models under the new (J1) test procedure and use limited testing under the old (J) procedure to develop data for the purposes of DOE and FTC reporting requirements during the remainder of 2003. Under this proposal, consumers would obtain information based on the new test sooner. The Commission also believes that AHAM's proposed label changes would minimize consumer confusion resulting from the use of the new test in 2003 by alerting consumers that the energy use information on some models is derived from a new test procedure.

The Commission proposes to grant AHAM's request for an exemption from the requirements in 16 CFR 305.5(a) and 305.11(a) only to the extent required to allow manufacturers to:

(1) Use the test procedure in 10 CFR part 430, subpart B, Appendix J1 for determining the energy use figure printed on EnergyGuide labels of clothes washers distributed between May 1 and December 31, 2003; and

(2) For such models, use EnergyGuide labels that contain the following modifications to the format and content requirements in 16 CFR 305.11, as illustrated in Prototype Label 2 at the end of this document:

(a) The use of the statement "Compare the Energy Use of this Clothes Washer only with other Models tested to the 2004 Test Procedure" in lieu of the statement "Compare the Energy Use of this Clothes Washer with Others Before You Buy";

(b) the use of the statement "This Model has been Tested to the 2004 Test Procedure. Compare only with Models with this Notice." at the top of the label; and

(c) the use of a label 8 inches (20.32 cm.) in length to accommodate statements specified in (b) above instead of the 7⅜ inch (18.73 cm.) currently required by § 305.11(a)(1) of the Rule.

The Commission proposes to grant the exemption on the following conditions: (1) That any manufacturers using this exemption must use it for all clothes washer models introduced between May 1, 2003 and December 31, 2003 (they may use it for existing models that meet the new conservation standard), and (2) that the modified EnergyGuide label must be used if the new (J1) test is used to derive energy use information on the EnergyGuide label for clothes washers. The manufacturers would remain obliged to comply with all other Rule requirements. Manufacturers not specifically named in AHAM's request would be able to use this exemption as long as they follow the conditions specified by the Commission.

The Commission is seeking comment on the exemption proposal. In particular, the Commission would like input on whether the differences between the results yielded by the new and the old DOE tests for clothes washers are significant enough to warrant AHAM's proposed label change. In addition, the Commission seeks comment on whether AHAM's proposed label changes are appropriate and will help consumers in their purchasing decisions. For instance, it is possible that the reference to the year "2004" in referring to the test procedure will confuse consumers who are reading the label in subsequent years (*e.g.*, 2005 or 2006). The Commission has offered alternative language and specific questions for comment in Section IV below.[6]

B. Proposed Rule Change for EnergyGuide Labels for 2004 and Beyond

If the Commission grants AHAM's exemption request, it is probable that many new clothes washers distributed for sale in the United States for the remainder of 2003 will have labels containing the proposed advisory language that "This Model has been Tested to the 2004 Test Procedure. Compare only with Models with this Notice." Once this change is made to EnergyGuide labels on units distributed in 2003, a return to the conventional label in the future may cause consumer confusion because the units with the modified label will stay on showroom floors into 2004 and beyond. Given these considerations, AHAM has asked the Commission to make its proposed label changes permanent. The Commission is seeking public comment on a proposed rule change that would incorporate AHAM's suggested label changes (see Prototype Label 2 and Sample Label 3) and require these changes for all clothes washers distributed for sale in the United States beginning January 1, 2004. The Commission's proposed amendments to this effect appear at the end of this document.

The Commission believes that it is preferable that any permanent changes to the EnergyGuide label match the label modifications used during the exemption period. It could be confusing to consumers to allow advisory language on the label during the exemption period that is different from advisory language required by the Rule after January 1, 2004. Accordingly, the Commission believes that, if the exemption is granted and the Rule is also amended, the modified label language should be identical in both instances. The Commission seeks comment on alternatives to the label language proposed by AHAM. Section IV contains some possible alternatives and specific questions regarding these proposed amendments.

IV. Request for Comment

The Commission requests that interested persons submit written comments on any issue of fact, law or policy that may bear upon the proposed rule and conditional exemption. Although the Commission welcomes comments on any aspect of these matters, the Commission is particularly interested in comments on the questions listed in this section. All written comments should state clearly the question or issue, or the specific condition, that the commenter wishes to address.

The Commission requests that commenters provide representative factual data in support of their comments. Experiences of individual firms are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Comments opposing the proposed conditional exemption and proposed Rule amendments should, if possible, suggest specific alternatives. Proposals for alternative conditions should include reasons and data that indicate why the alternatives would better serve the requirements of the Appliance Labeling Rule. The Commission is particularly interested in comments addressing the following questions and issues:

1. Should the Commission grant the requested exemption and permit manufacturers to begin testing and labeling clothes washers to the new (J1) test in 2003? Are there alternatives to the proposed conditional exemption and rule change that would better accomplish the same objectives?

2. Are the differences between the results yielded by the new (J1) and old (J) tests significant enough to warrant special advisory language on the EnergyGuide labels? Are the differences unbiased, or does one test yield consistently higher or lower results than the other?

3. If the Commission grants AHAM's exemption request, should the Commission amend the rule to incorporate label changes as a permanent requirement?

4. Are AHAM's proposed changes to the label, such as the content, size, and placement of the modified language on the EnergyGuide, appropriate? Will the proposed language on the EnergyGuide label help consumers in their purchasing decisions or will it cause undue confusion? Will the reference to the year "2004" on the label create confusion in subsequent years if the proposed change becomes a permanent fixture on the label? Should the explanatory language be required on both the top and the bottom of the label?

5. Are there additional, or different, changes that should be made to the label related to AHAM's request?

6. Would either of the following alternatives be preferable to the language proposed by AHAM:

Alternative 1: Statement at Top of Label—"This Model has been Tested to

---

[1] 66 FR 3314, 3315 (Jan. 12, 2001). A second amended energy efficiency standard, slated to take effect on January 1, 2007, requires that all new residential clothes washers manufactured after that date be 35% more efficient than today's minimally compliant clothes washer.

[2] The EnergyStar program, run by DOE and the U.S. Environmental Protection Agency, already requires use of the new (J1) test to certify clothes washers under that program.

[3] According to AHAM, the clothes washer test procedures were revised to better reflect current usage habits by incorporating updated temperature utilization factors that are more appropriate for today's designs.

[4] The manufacturers identified in AHAM's request are Alliance Laundry Systems, Electrolux Home Products, Fisher & Paykel Ltd., GE Appliances, Maytag Appliances, Miele Corp., and Whirlpool Corp. Subsequently, AHAM informed Commission staff that BSH, Gonrenje, and Asko also are participating in AHAM's request. According to AHAM, these manufacturers produce roughly 98% of the clothes washers sold in the United States.

[5] AHAM also requested that the Commission change the reporting date in the Rule from March 1 to October 1 for each year. The Commission has already addressed the requested date change for data submission in an earlier **Federal Register** document (see 68 FR 8448 (Feb. 21, 2003)).

[6] Given the limited duration of this proposed exemption, the Commission does not plan to incorporate the exemption into the text of the Rule (see § 305.19).

the "J1" Test Procedure. Compare only with Models displaying this Notice." Statement at the Middle of Label—"Compare the Energy Use of this Clothes Washer only with other Models tested to the J1 Test Procedure."

Alternative 2: Statement at Top of Label—"This Model has been Tested to the Modified Energy Factor Test Procedure. Compare only with Models displaying this Notice." Statement at the Middle of Label—"Compare the Energy Use of this Clothes Washer only with other Models tested to the Modified Energy Factor Test Procedure."

7. Would the implementation of AHAM's proposal cause consumer confusion for those units with EnergyGuide labels adjoining energy labels required by Mexico or Canada?

8. Are the conditions under which the Commission proposes the exemption appropriate? Are there additional, or different, conditions that also would be appropriate?

9. What would be the economic impact on manufacturers of the proposed exemption, each of the proposed conditions for use of the exemption, and proposed rule?

10. What would be the benefits of the proposed conditional exemption and the proposed rule? Who would receive those benefits?

11. What would be the benefits and economic impact of the proposed exemption, each of the proposed conditions, and the proposed rule change on small businesses?

V. Preliminary Regulatory Analysis and Regulatory Flexibility Act Requirements

Under section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule only when it: (1) Estimates that the amendment will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has preliminarily determined that the proposed exemption and amendments to the Rule will not have such effects on the national economy, on the cost of covered products, or on covered parties or consumers. The Commission, however, requests comment on the economic effects of the proposed amendments.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–12, requires that the agency conduct an analysis of the anticipated economic impact of the proposed amendments on small businesses. The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

There are approximately 20 manufacturers of clothes washers sold in the United States. Most of these manufacturers are very large. Because the clothes washer requirements of the Appliance Labeling Rule cover a limited number of manufacturers, most of which are large, the Commission does not believe the proposed amendments or exemption will affect a substantial number of small businesses. In addition, the proposed amendments and exemptions are unlikely to have a significant economic impact upon such entities. Specifically, the proposed rule and exemption involve minor text changes to labels already required by the Rule. The content of these labels must be changed in response to new ranges of comparability published by the Commission from time to time. In the Commission's view, the proposed amendments and exemption should not have a significant or disproportionate impact on the costs of small manufacturers and retailers.

Based on available information, therefore, the Commission certifies that amending the Appliance Labeling Rule as proposed and granting the requested exemptions will not have a significant economic impact on a substantial number of small businesses. To ensure that no significant economic impact is being overlooked, however, the Commission requests comments on this issue. The Commission also seeks comments on possible alternatives to the proposed amendments (and exemptions) to accomplish the stated objectives. After reviewing any comments received, the Commission will determine whether a final regulatory flexibility analysis is appropriate.

VI. Paperwork Reduction Act

In a 1988 notice (53 FR 22113), the Commission stated that the Rule contains disclosure and reporting requirements that constitute "information collection requirements" as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act.[7] The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget ("OMB") and assigned OMB Control No. 3084–0068. OMB has again reviewed the Rule and extended its approval for its recordkeeping and reporting requirements until September 30, 2004. The exemptions approved here do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

VII. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. *Written communications,* including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. *Oral communications,* not including oral communications from members of Congress, are permitted only when such oral communications are transcribed, verbatim or summarized, at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. *Oral communications from members of Congress* shall be transcribed or summarized, at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications.

List of Subjects in 16 CFR part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

VIII. Proposed Rule Language

For the reasons set out in the preamble, 16 CFR part 305 is proposed to be amended as follows:

[7] 44 U.S.C. 3501–3520.

PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Amend § 305.11 by revising paragraphs (a)(1) and (a)(5)(i)(A) and adding paragraph (a)(5)(i)(L) to read as follows:

§ 305.11 Labeling for covered products.

(a) * * * (1) *Layout.* All energy labels for each category of covered product shall use one size, similar colors and typefaces with consistent positioning of headline, copy and charts to maintain uniformity for immediate consumer recognition and readability. Trim size dimensions for all labels shall be as follows: width must be between 5¼ inches and 5½ inches (13.34 cm. and 13.97 cm.); length must be 7⅜ inches (18.73 cm.) except for clothes washer labels, which must be 8 inches (20.32 cm.) in length. Copy is to be set between 27 picas and 29 picas and copy page should be centered (right to left and top to bottom). Depth is variable but should follow closely the prototype labels appearing at the end of this part illustrating the basis layout. All positioning, spacing, type sizes and line widths should be similar to and consistent with the prototype labels.

* * * * *

(5) * * *

(i) * * *

(A) Headlines and texts, as illustrated in the Prototype Labels in Appendix L to this Part, are standard for all labels except clothes washer labels, which must have the text and features described in paragraph (a)(5)(i)(L) of this section.

* * * * *

(L) Clothes washer labels must have the headlines and texts as illustrated in Prototype Label 2 of Appendix L of this Part. In particular, clothes washer labels must have the following headline as illustrated in Prototype Label 2: "Compare the Energy Use of this Clothes Washer only with other Models tested to the 2004 Test procedure." In addition to the requirements for other labels, clothes washer labels must have a 19/16 inch (1.59 cm.) in height, process black bar across the top which contains the following text in process yellow as illustrated in Prototype Label 2: "This Model has been Tested to the 2004 Test Procedure. Compare only with Models displaying this Notice."

* * * * *

4. Appendix L to part 305 is amended by revising Prototype Label 2 and Sample Label 3 to read as follows:

Appendix L to Part 305—Sample Labels

* * * * *

BILLING CODE 6750–01–U

All copy Arial Narrow Regular or Bold as below.
Helvetica Condensed series typeface or other equivalent also acceptable.

All copy x 28 pi.

10/16 inches (1.59cm)

13.5/14 Arial Narrow Bold Yellow

This Model has been Tested to the 2004 Test Procedure
Compare only with Models with this Notice

10/12 Arial Narrow → Based on standard U.S. Government tests

ENERGYGUIDE

12/14 Arial Narrow Bold → Clothes Washer
Capacity: Standard

XYZ Corporation
Model(s) Mr328, XL12, NAA83 ← 12/14 Arial Narrow Bold

Compare the Energy Use of this Clothes Washer only with other Models tested to the 2004 Test Procedure. ← 16.5/19 Arial Narrow Bold

14/14 Arial Narrow →

This Model Uses
873kWh/year ← 10 Arial Narrow

1pt. Rule →

24pt. Rule →

Energy use (kWh/year) range of all similar models ← 16 Arial Narrow Bold

Uses Least Energy	Uses Most Energy
177	1298

14/14 Arial Narrow Bold

10/12 Arial Narrow Use bold where indicated → **kWh/year (kilowatt-hours per year)** is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size clothes washers are used in this scale.

1pt. Rule →

Clothes washers using more energy cost more to operate.
This model's estimated yearly operating cost is: ← 14/14 Arial Narrow Bold

18Arial Narrow Bold →

$70 when used with an electric water heater

$33 when used with a natural gas water heater ← Box 24 pt. Tall

10/12 Arial Narrow → Based on eight loads of clothes a week and a 2000 U.S. Government national average cost of 8.03¢ per kWh for electricity and 68.8¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

6/8 Arial Narrow → Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Prototype Label 2

* * * * *

This Model has been Tested to the 2004 Test Procedure
Compare only with Models with this Notice

Based on standard U.S. Government tests

ENERGYGUIDE

Clothes Washer
Capacity: Standard

XYZ Corporation
Model(s) Mr328, XL12, NAA83

Compare the Energy Use of this Clothes Washer only with other Models tested to the 2004 Test Procedure.

This Model Uses
873kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy	Uses Most Energy
177	1298

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size clothes washers are used in this scale.

Clothes washers using more energy cost more to operate.
This model's estimated yearly operating cost is:

$70 when used with an electric water heater

$33 when used with a natural gas water heater

Based on eight loads of clothes a week and a 2000 U.S. Government national average cost of 8.03¢ per kWh for electricity and 68.8¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 3

* * * * *

By direction of the Commission.
Donald S. Clark,
Secretary.

[FR Doc. 03–7933 Filed 4–2–03; 8:45 am]
BILLING CODE 6750–01–C

FEDERAL TRADE COMMISSION

16 CFR Part 310

Telemarketing Sales Rule Fees

AGENCY: Federal Trade Commission.

ACTION: Revised notice of proposed rulemaking and request for public comment.

SUMMARY: The Federal Trade Commission (the "Commission" or "FTC") is issuing a Revised Notice of Proposed Rulemaking ("Revised Fee NPRM") to amend the FTC's Telemarketing Sales Rule ("TSR") by adding a new section that would impose fees on entities accessing the national do-not-call registry. This Revised Fee NPRM invites written comments on the issues raised by the proposed changes, and seeks answers to the specific questions set forth in Section X.

The Commission is also announcing that full compliance with § 310.4(b)(1)(iii)(B), the "do-not-call" registry provision of the Amended TSR, will be required on October 1, 2003.

DATES: Written comments will be accepted until May 1, 2003. Time is of the essence to promulgate the proposed fees. Thus, the Commission does not anticipate providing any extension to this comment period.

ADDRESSES: The Commission encourages comments to be submitted electronically to the following e-mail address: *feerule@ftc.gov*. Alternatively, commenters may submit an original plus two paper copies of their comments to the Office of the Secretary, Room 159, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all paper comments should also be submitted, if possible, in electronic form, on a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs should be submitted in ASCII text format to be accepted.) Individual members of the public filing comments need not submit multiple copies or comments in electronic form.

All comments and any electronic versions (*i.e.*, computer disks) should be identified as "Telemarketing Rulemaking—Revised Fee NPRM Comment. FTC File No. R411001." The Commission will make this NPRM and, to the extent possible, all comments received in electronic form in response to this NPRM, available to the public through the Internet at the following address: *http://www.ftc.gov*.

Comments on proposed revisions bearing on the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, DC 20503, ATTN.: Desk Officer for the Federal Trade Commission, as well as to the FTC Secretary at the address above.

FOR FURTHER INFORMATION CONTACT: David M. Torok, (202) 326–3075, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 2002, the FTC published a Notice of Proposed Rulemaking to amend the FTC's TSR and to request public comment on the proposed changes. 67 FR 4492 (Jan. 30, 2002) ("the Rule NPRM"). Among other provisions, the Rule NPRM proposed to establish a national do-not-call registry, to be maintained by the FTC, that would permit consumers who prefer not to receive telemarketing calls to contact one centralized registry to effectuate this preference. On May 29, 2002, the FTC published another Notice of Proposed Rulemaking to further amend the TSR by imposing user fees on sellers and telemarketers for their access to the proposed national do-not-call registry. 67 FR 37362 (May 29, 2002) ("the User Fee NPRM"). In issuing the User Fee NPRM, the Commission was guided by the Independent Offices Appropriations Act of 1952, 31 U.S.C. 9701, and the Office of Management and Budget Circular No. A–25. The Commission received 34 comments submitted in response to the User Fee NPRM.[1]

The Commission issued final amendments to the TSR on December 18, 2002. 68 FR 4580 (Jan. 29, 2003). Among the changes made to the TSR, the Commission adopted the proposal to establish a national do-not-call registry, permitting consumers to register, via either a toll-free telephone number or the Internet, their preference not to receive telemarketing calls. When full compliance with the do-not-call provisions of the Amended TSR is required, on October 1, 2003, telemarketers will be required to refrain from calling consumers who have placed their numbers on this registry. 16 CFR 310.4(b)(1)(iii)(B). To ensure compliance with this requirement, telemarketers will be required to access the national registry at least once every three months in order to remove from their telemarketing lists those consumers who have placed their telephone numbers on the national registry. 16 CFR 310.4(b)(3)(iv). When it issued the Amended TSR, the Commission reserved its decision on the issues raised in the User Fee NPRM, stating that it would issue a revised Notice of Proposed Rulemaking to seek further comment on the issues raised in that proceeding. See 68 FR 4580, 4640 n. 716.

On February 20, 2003, the President signed into law the Consolidated Appropriations Resolution of 2003, Public Law 108–7 (2003) ("the Appropriations Act"), which appropriated funds for the operation of the FTC during fiscal year 2003. In the same Act, Congress also authorized the agency to collect fees sufficient to implement and enforce the do-not-call provisions of the TSR. Congress further estimated the costs for fiscal year 2003 at $18,100,000. Id. at Division B, Title II. See also The Do-Not-Call Implementation Act, Public Law 108–10 (2003) ("the Implementation Act") at section 2. Pursuant to the Appropriations Act and the Implementation Act, as well as the Telemarketing Fraud and Abuse Prevention Act, 15 U.S.C. 6101–08 ("the Telemarketing Act"), the FTC is issuing this Revised Fee NPRM.[2]

[1] A list of commenters to the User Fee NPRM and the Rule NPRM, and the acronyms used to identify those entities, was included in Attachment B to the Statement of Basis and Purpose for the Amendments to the TSR, 68 FR 4677–78 (Jan. 29, 2003) ("TSR SBP"). Comments submitted in response to the User Fee NPRM will be cited in this Notice as "[Name of Commenter]-User Fee at [page number]." Comments submitted in response to the Rule NPRM will be cited as "[Name of commenter]-Rule NPRM at [page number]."

[2] Many commenters to the User Fee NPRM claimed that the FTC lacked the authority to impose a user fee based on the Independent Offices Appropriations Act of 1952. *See, e.g.*, ABA-User Fee at 1–3; Ameriquest-User Fee at 1–5; Discover-User Fee at 1–4; DMA-User Fee at 1–7 ("If the FTC wants to collect fees for its regulation of non-deceptive and non-abusive telemarketing, it must obtain approval from Congress to do so"). DMA's comments were supported by ERA, PMA, and MPA. Other commenters suggested that consumers should be charged the fee necessary to implement the national registry. See, *e.g.*, ARDA-User Fee at 1–4; ATA-User Fee at 3–6; Idaho Realtors-User Fee at 1–2; Infocision-User Fee at 4; ITC-User Fee at 3–5; MBNA-User Fee at 3; NEMA-User Fee at 2–3; SBC-User Fee at 2–5. But see NASUCA-User Fee at 2; NCL-User Fee at 1; TRA-User Fee at 3. Still other commenters suggested that the User Fee NPRM was premature, and that they had insufficient information available to properly comment on the proposal. See, *e.g.*, CBA-User Fee at 1; Household-User Fee at 3; MasterCard-User Fee at 1–3. With the passage of the Appropriations Act, the Implementation Act, and the Amended TSR, these comments are moot.

II. Access to the Do-Not-Call Registry

A. Entities That Are Allowed Access

In the User Fee NPRM, the Commission proposed limiting access to the national do-not-call registry to telemarketers in order to maintain the security of the information included in the registry.[3] In addition, because the proposed amendments to the TSR prohibited the use of information in the national registry for any purpose other than compliance with the do-not-call provisions of the Proposed Rule, the Commission believed that only telemarketers would need to access that information.

A number of commenters stated that broader access to the national registry is necessary. In particular, some commenters suggested that sellers[4] should be allowed to gain access to evaluate telemarketing campaigns run on their behalf and to evaluate telemarketers' Rule compliance.[5] Others suggested that "outside compliance firms" and "list scrubbers" should be given access, since they provide a valuable service for telemarketers.[6] Still others stated that telemarketers and sellers who are exempt from the FTC's jurisdiction would have no access to the list even if they want to voluntarily suppress calls. These commenters suggested that the FTC make the registry available to any entity provided that the information in the registry is used solely for the purpose of preventing telephone calls to numbers on that list.[7]

The Commission agrees that broader access to the national do-not-call registry may be necessary to effectuate more fully the primary purpose of the do-not-call regulations; namely, to enable consumers to stop unwanted telemarketing calls. Limiting access only to telemarketers, as defined by the Amended TSR, would prevent those entities that are exempt from the FTC's jurisdiction, but that want to scrub their calling lists as a matter of customer service, from obtaining the information necessary to do so. Such limited access also may prevent sellers from engaging in thorough Rule compliance, and may unnecessarily hinder the services provided to the telemarketing industry by list brokers and others. At the same time, the Commission agrees with the comment of NASUCA that the information in the national registry should be used for no other purpose than to stop unwanted telemarketing calls.[8] As a result, the Commission now proposes, at Section 310.8(e), to allow access to the national registry by telemarketers, sellers, others engaged in or causing others to engage in telephone calls for commercial purposes, and service providers acting on behalf of such persons.[9] Prior to gaining such access, a person would be required to certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent calls to telephone numbers on the registry.

B. Entities That Are Required To Pay the Fee

The User Fee NPRM proposed requiring telemarketers who gained access to the national do-not-call registry to pay for that access. In addition, the User Fee NPRM proposed requiring telemarketers who engage in telemarketing on behalf of sellers or other telemarketers, or who use the information included in the registry to remove telephone numbers from the telemarketing lists of sellers and other telemarketers, to pay a fee for each such seller or telemarketer.[10]

A number of commenters criticized this provision, claiming that it would result in sellers, telemarketers, and list brokers paying the proposed user fee multiple times for the same information.[11] Some commenters pointed out that many sellers use more than one telemarketer in any given year, and such sellers would be required to purchase access to the national registry many times over.[12] As one commenter stated, a "seller who uses only one telemarketer all year for nationwide telemarketing campaigns should not be more favorably treated than another who uses several telemarketers to conduct similar campaigns."[13] Other commenters maintained that telemarketers calling on behalf of multiple clients "should pay only one user fee and not a fee for every client on whose behalf they perform this service."[14] On the other hand, NCL commented that if list brokers are allowed access to the registry, their payments should be based upon the number of clients they represent. "Charging them only for the total number of area codes they obtain would be unfair to telemarketers that do not use list brokers and would undermine the economic viability of the registry."[15]

The Commission does not intend to charge the same company multiple times for access to the national registry, and has gained much relevant and important information from comments on its original proposal. At the same time, the Commission is now guided by congressional authority permitting it to cover the costs of implementing and enforcing the do-not-call provisions of the Amended TSR, estimated at $18.1 million this fiscal year. The Commission seeks to raise those funds as equitably as possible, to ensure that the burden of the fees is fairly divided among the entire business community that benefits from the making of outbound telephone calls.

To avoid billing entities twice for the same information, and to divide the fees among the industry in an equitable manner, the Commission is now proposing that each seller must pay, on an annual basis, the appropriate fee for accessing the national registry prior to initiating, or causing a telemarketer to initiate, an outbound telephone call.[16]

[3] User Fee NPRM at 37365 and proposed § 310.9(c).

[4] The Amended TSR defines a "seller" as "any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration." 16 CFR 310.2(z).

[5] See CBA–User Fee at 4; Discover-User Fee at 4–5; MasterCard-User Fee at 5.

[6] *See* ARDA–User Fee at 5; NEMA-User Fee at 4.

[7] *See* Discover-User Fee at 4–5; Household-User Fee at 5–6; MBNA–User Fee at 3.

[8] *See* NASUCA–User Fee at 7–8.

[9] Proposed Section 310.8(e) also permits access to the national registry by any government agency that has the authority to enforce a federal or state do-not-call statute or regulation. Such agencies will access information in the national registry through a dedicated, secure website available only to them.

[10] User Fee NPRM at 37363 and proposed § 310.9(a).

[11] DMA also maintained that the payment structure proposed in the User Fee NPRM may violate the Paperwork Reduction Act, 44 U.S.C. 3506 *et seq.* ("PRA"), which prohibits federal agencies from restricting or regulating the use, resale, or re-dissemination of public information by the public, and Section 105 of the Copyright Act, 17 U.S.C. 105, which expressly bars the federal government from copyrighting its own works. The Commission disagrees with the DMA's interpretations of these laws. First, the registry list of telephone numbers of consumers who express a preference not to be called by telemarketers is not "public information," as that term is used in the PRA. In fact, dissemination of the list to the public is a violation of the Amended TSR. See 16 CFR 310.4(b)(2). Second, the Commission is in no way attempting to copyright the information contained in the national registry.

[12] See, *e.g.*, MasterCard-User Fee at 5; CBA-User Fee at 4; Discover-User Fee at 4; Household-User Fee at 6; VISA-User Fee at 2.

[13] CBA-User Fee at 4. *See also* ITC-User Fee at 6 ("Service bureaus like our company typically represent multiple clients. It is also typical for our clients to use multiple telemarketing companies as vendors. Therefore, several telemarketing companies would end up paying the fee several times for the same seller.")

[14] MBNA-User Fee at 3–4. *See also* ABA-User Fee at 3–4 (separate fees for both sellers and telemarketers unnecessarily complicates the payment schedule); ARDA-User Fee at 4 (there is "no legitimate reason for each seller that uses a single telemarketer to pay the same fee for scrubbing against the same list").

[15] NCL-User Fee at 1.

[16] The TSR defines an "outbound telephone call" as "a telephone call initiated by a telemarketer to

Continued

After paying the appropriate fee each annual period,[17] the seller will be provided with a unique account number, and can use that number to gain direct access to the national registry at any time during its annual period. In addition, the seller can provide its account number to any telemarketer or list broker with which it does business, which in turn will permit that telemarketer or list broker to gain access to the information to which the seller has subscribed.[18] The Commission proposes that such a revised fee structure is more appropriate than its original proposal. Under this revised fee structure, each seller would be charged only one time annually for access to the information included in the national registry, and would be allowed to transfer its ability to access the national registry to whatever telemarketers or list brokers it wishes to employ on its behalf.

In a further effort to avoid requiring an entity to pay twice for access to the same information, the Commission now proposes that telemarketers who are not also sellers—*i.e.*, entities that engage in telemarketing only on behalf of others—should not have to pay a separate fee for their access to the national registry.[19] Charging such "pure" telemarketers for access in effect would cause their seller-clients to pay twice for access to the national registry. Instead, under the instant proposal, such telemarketers would be required to ensure that their seller-clients have paid for access to the national do-not-call registry prior to initiating outbound telephone calls on their behalf. Telemarketers would gain this assurance by obtaining and using the seller's unique account number to the national registry.

As previously stated, the Commission seeks to spread the fee burden equitably across all entities that engage in telemarketing. Sellers are the ultimate beneficiaries of telemarketing campaigns, and all covered sellers must access the national registry to remain in compliance with the do-not-call provisions of the Amended TSR. As a result, all sellers should pay an appropriate fee for that access, but should pay that fee only one time during each annual period. The Commission does not agree with those commenters that suggested the agency should charge only telemarketers, and not their clients, for access to the national registry.[20] By only charging telemarketers for access to the national registry, and charging them only once for their access on behalf of multiple clients, the fee structure would unfairly benefit those sellers that employ a telemarketer with multiple clients, since those sellers would pay less of a fee for access to the same information than sellers that engage in their own telemarketing without hiring a telemarketer. Thus, the Commission is proposing to charge sellers and not telemarketers or list brokers for access to the national registry.[21]

Proposed § 310.8(a) of the Rule would make sellers directly liable for initiating, or causing a telemarketer to initiate, an outbound telephone call without first paying the appropriate fee for access to the national registry. Proposed Section 310.8(b) would make telemarketers directly liable for initiating an outbound telephone call on behalf of a seller without first ensuring that their seller-clients have paid for up-to-date access to the national do-not-call registry. The Commission proposes to impose this liability under the authority of the Appropriations Act and the Implementation Act, in addition to the Telemarketing Act, which provides the authority for the other portions of the Amended TSR. The Commission believes such direct liability on sellers and telemarketers is necessary to effectuate fairly the mandate of the Appropriations Act and the Implementation Act, which authorize the Commission to collect fees sufficient to cover the costs of implementing and enforcing the do-not-call provisions of the Amended TSR. Without such direct liability, the Commission is concerned that not all entities that obtain information from the national registry will pay their fair share of the fees for that registry, resulting in increased fees for those entities that do pay. As a result of the proposed imposition of this direct liability, the failure of a seller to pay the appropriate fee prior to initiating or causing another entity to initiate an outbound telephone call, and the failure of a telemarketer to ensure that a seller has paid the appropriate fee prior to initiating an outbound telephone call on its behalf, would be a violation of the Amended TSR, subject to all remedies available for such violations.

C. Corporate Divisions, Subsidiaries, and Affiliates

In the User Fee NPRM, the Commission proposed following the compliance guide for the original TSR by requiring that distinct corporate divisions of a single corporation be considered separate sellers for the purposes of payment of the annual fees. Factors used to determine if corporate divisions would be treated as separate sellers would include whether there is substantial diversity between the operational structure of the divisions, and whether the goods or services sold by the divisions are substantially different from each other.

In response to this proposal, some commenters suggested that the Commission treat divisions of the same corporation as one seller and allow the sharing of the registry among them.[22] Another suggested the same treatment for a "family" of affiliated companies.[23] Wells Fargo stated that this treatment would allow a company to purchase a single copy of the list to maintain "a centralized scrub service that would be available to its affiliates. While this may reduce revenues somewhat, it would greatly increase compliance.[24]

The Commission is concerned that any such treatment of corporate divisions, subsidiaries, or affiliates could greatly diminish the number of entities that will pay for access to the national registry, provide an unfair advantage to larger, multi-divisional corporations, and potentially increase the fees required to be paid by smaller, less complex corporate entities. As a result, the Commission proposes to treat each separate division, subsidiary, or affiliate of a corporation as a separate seller for purposes of § 310.8. The Commission notes that such treatment will not diminish the effectiveness of corporate "centralized scrub services." In effect, such centralized services can still be performed, provided that each corporate division, subsidiary, or affiliate has paid the appropriate fee for access to the national registry. It should be noted that divisions, subsidiaries, or affiliates of a seller that must pay for access to the national registry need not individually download the information in the registry on their own behalf. They need to pay only for the requisite access, and would be able to provide their unique account number to another division, subsidiary, or affiliate to perform the actual downloading of information and corporate list scrubbing. *See* section IV, below, for further discussion of the proposed operation of the fee collection system.

III. Calculation of Fees

A. Number of Entities Accessing the National Registry

To establish the appropriate fees to charge entities that access consumer telephone numbers included in the national registry, the Commission must first estimate the number of such entities that would be required to pay the proposed fee. As stated in the User Fee NPRM, this step is among the most difficult, given the dearth of information about the number of sellers currently in the marketplace who make outbound telemarketing calls to consumers.[25] In the User Fee NPRM, the Commission determined, after examining relevant industry literature and the record in this and past TSR rulemaking proceedings, that the most pertinent information for determining the number of firms that would be required to pay the proposed user fee would be the number of firms that access state do-not-call registries. At that time, the most telemarketing firms that accessed any individual state registry was 2,932. Thus, in order to propose a realistic fee structure that would ensure sufficient funds would be collected to cover the costs of a national registry, the Commission estimated in the User Fee NPRM that 3,000 entities would pay for access to the information in the national registry.[26] The Commission sought comment and evidence to determine whether this estimate was realistic and appropriate.

Only one of the 34 comments received in response to the User Fee NPRM provided any information relevant to this inquiry.[27] That commenter, DialAmerica Marketing, Inc. ("DialAmerica"), stated that it has 700 clients for which it would have to obtain access to the entire national do-not-call registry.[28] In other words, DialAmerica's client base would comprise over 23 percent of all entities that the Commission estimated would be required to access the national registry.[29] This information casts doubt on the original estimate. The Commission is therefore proposing a new estimate of the number of firms that will access the national registry, developed through a calculation using the limited information provided in the comments, combined with relevant industry-wide data that the Commission has been able to identify. This calculation makes a number of significant assumptions based on the best information available to the agency at this time. In Section X, below, the Commission asks specific questions about each of these assumptions, seeking information as to their reliability. The Commission asks commenters to provide any information they can about any and all of these assumptions, including company-specific information and data that could help the agency to refine its estimates of the number of firms that will need to access the national registry.

Since scrubbing against the do-not-call registry is only required on outbound calls made to consumers,[30] the Commission begins its calculation with the assumption that DialAmerica has 700 clients for which it makes these types of calls. According to the Winterberry Group, DialAmerica has revenues of $300 million per year, and outbound calls account for 90 percent of its call volume.[31] Assuming that DialAmerica's revenues per call are the same for inbound and outbound calls, its revenues from outbound calls would total $270 million (90 percent of $300 million).

According to Customer Interaction Solutions, 85 percent of DialAmerica's business involves sales to consumers.[32] If the Commission assumes that the 85 percent of DialAmerica's business that involves sales to consumers is 90 percent outbound, consumer outbound sales calls would account for $229.5 million in revenue (85 percent of $270 million). If DialAmerica receives $229.5 million in revenue from its 700 clients for whom it does outbound calling to consumers, this implies that the average revenue per client is about $328,000 ($229.5 million/700).

According to the Winterberry Group, total expenditures on teleservices were $147.7 billion in 2000. Of this, 48.1 percent was spent on outbound calling, and 49.6 percent was spent on sales calls to consumers.[33] Assuming that the same percentage of expenditures on calls to businesses and calls to consumers are for outbound calls would imply that just under 24 percent of the total spent on teleservices is spent on outbound calls to consumers (48.1 percent × 49.6 percent = 23.9 percent).

Also, according to the Winterberry Group, total expenditures on third-party teleservices providers amounted to $19.2 billion—13 percent of the $147.7 billion total expenditures on such services—in 2000.[34] If the Commission

---

induce the purchase of goods or services or to solicit a charitable contribution." 16 CFR 310.2(u). A "telemarketer," in turn, is "any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor." 16 CFR 310.2(bb). Finally, "telemarketing" is defined as a "plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones, and which involves more than one interstate telephone call." 16 CFR 310.2(cc). Thus, sellers engaging in a plan, program, or campaign involving only intrastate telemarketing calls would not be required to pay a fee or access the national registry pursuant to the TSR. In addition, solicitations to induce charitable contributions via outbound telephone calls are not covered by the do-not-call requirements of the TSR. 16 CFR 310.6(a). As a result, sellers involved only in such solicitations similarly would not be required to pay a fee or access the national registry. Of course, entities engaged in conducting surveys are not seeking to induce the purchase of goods or services and therefore are not engaged in "telemarketing" nor subject to the TSR. Similarly, political fund raising is not "telemarketing" and is not covered.

[17] The fee that would be charged for access to the national registry is discussed in Section III.D, below. A seller's "annual period" is discussed in Section IV, below.

[18] VISA suggested a similar type of pricing structure, in which the FTC could "license" the registry to individual sellers, which in turn could employ a telemarketer to use the registry, if they desire, subject to confidentiality and use restrictions. VISA-User Fee at 2.

[19] Similarly, list brokers who develop and/or scrub the calling lists for their seller-clients would not have to pay for their individual access to the national registry. Instead, they also would have to certify that their seller-clients have paid for access to the national registry prior to gaining access to the national registry.

[20] *See, e.g.*, ABA-User Fee at 3–4; MBNA-User Fee at 3–4; ITC-User Fee at 6.

[21] ABA stated that a single fee to telemarketers would enhance the privacy and security of the national registry by discouraging seller-clients from accessing the national registry individually in order to scrub their calling lists. Instead, sellers would allow their telemarketers to access the registry on their behalf. ABA-User Fee at 3–4. As stated above, the Commission believes that charging only telemarketers would be inequitable. The Commission also believes that the certification required of sellers who access the national registry, as discussed in Section II.A, above, will help to address the security and privacy concerns raised by ABA. Moreover, telemarketers would still be allowed to access the registry on behalf of their seller-clients under the current proposal, using their seller-clients' account number.

[22] *See, e.g.*, ARDA-User Fee at 5; CBA-User Fee at 4.

[23] Household-User Fee at 2.

[24] Wells Fargo-User Fee at 2.

[25] *See* User Fee NPRM at 37363–64.

[26] The Commission previously had estimated, in the notice of amended application to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, that there were 40,000 telemarketing industry members affected by the TSR in the United States. *See* the Rule NPRM, 67 FR at 4534. As explained in the User Fee NPRM, the Commission does not believe that prior estimate is representative in the instant context. *See* User Fee NPRM at 37364, n. 7.

[27] The Commission also received some company-specific information from another commenter in response to the Rule NPRM. CDI-Rule NPRM at 1.

[28] DialAmerica-User Fee at 2. According to Customer interaction Solutions, a monthly magazine of the teleservices industry, DialAmerica is the second-largest outbound teleservices agency in the United States. *See http://www.tmcnet.com/cis/0302/0302top50a.htm* (visited 4 February, 2003).

[29] Moreover, DialAmerica stated that its annual fees for obtaining access on behalf of all of its clients would result in that company alone paying for 70 percent of the total amount that was to be raised by the User Fee NPRM.

[30] *See* 16 CFR §§ 310.4(b)(1)(iii)(B); 310.6(b)(7).

[31] Winterberry Group, Industry Map: Teleservice Industry—Multi-Channel Marketing Drives Universal Call Centers 16 (January 2001)("Winterberry Group"). The Winterberry Group is a consulting firm that works with the direct marketing industry. See http://www.winterberrygroup.com (visited 25 March 2003).

[32] Customer Interaction Solutions: Outsourcing, *http://www.tmcnet.com/cis/0302/0302top50a.htm* (visited 4 February, 2003).

[33] Winterberry Group at 2, 8, 9.

[34] Id. at 9.

assumes that, as with overall expenditures on teleservices, roughly 24 percent of expenditures on third-party providers was for outbound calling to consumers, expenditures on third-party outbound calls to consumers would total $4.59 billion (23.9 percent of $19.2 billion).

If the Commission assumes that the DialAmerica figure of $328,000 in revenues per client is representative of third-party providers of outbound calls to consumers in general, this would imply that there are approximately 14,000 such telemarketer-client relationships ($4.59 billion/$328,000 = 13,994).[35]

If the Commission assumes that the average firm that uses third-party service providers uses three different providers for different campaigns over the course of a year, there would only be about 4,650 firms using such third-party providers (13,965 firms/3 = 4,655), and the average firm that uses third-party telemarketers would spend an average of $984,000 per year on outbound telemarketing to consumers ($328,000 × 3).

None of these figures accounts for firms that do their calling using their own staff and their own in-house equipment, which account for $128.5 billion—87 percent of total expenditures—spent on teleservices.[36] Again assuming that roughly 24 percent of expenditures by companies using their own resources to make calls are for outbound calling to consumers, total expenditures on these services would be $30.71 billion (23.9 percent of $128.5 billion). These firms are probably larger on average—and probably do more telemarketing—than the firms that use third-party service providers. If the Commission assumes that they spend, on average, five times as much as firms that use third-party telemarketers, they would be spending $4.92 million per firm ($984,000 × 5). This would suggest that there are another 6,250 firms who do their own telemarketing ($30.71 billion/$4.92 million = 6,242 firms).

In total, this would suggest that there are some 10,900 firms doing outbound calling to consumers—4,650 firms using third-party telemarketers, plus 6,250 doing their own calling. Of course, some of these firms would not be required to scrub against the FTC list because they are either engaged in charitable solicitations or are calling on behalf of an industry that is exempt from FTC regulation. Other firms that make only intrastate calls would likewise not need to obtain the list. The firms that only make intrastate calls are likely to be the smaller firms that tend to use third-party providers to make their calls.

If the Commission assumes that 40 percent of firms that use third-party providers and 25 percent of firms that do their own telemarketing are exempt from coverage,[37] approximately 2,800 firms that use third party providers (60 percent of 4,655 = 2,793) and 4,700 firms that do their own telemarketing (75 percent of 6,231 = 4,682) would be required to access the national do-not-call registry. Thus, the total number of firms accessing the registry would be 7,500.

B. Amount of Information for Which an Entity Would Be Charged

In the User Fee NPRM, the Commission proposed a fee structure based on the number of different area codes of data that an entity wished to use annually.[38] The Commission proposed charging for access to the registry per area code because that charge most closely approximated the cost of operating the national registry. The Commission also determined that many telemarketers and sellers engage in regional rather than nationwide calling campaigns, and therefore would not need consumer registration data for the entire nation.

A number of commenters that addressed this issue supported using area codes as a basis for assessing the fee.[39] In fact, SBA noted that the flexibility inherent in allowing entities to access the national registry by area code "would be beneficial to small businesses."[40] On the other hand, other commenters suggested that imposing fees based on the number of area codes accessed, rather than imposing a flat fee, would create "unnecessary administrative complications."[41] However, the Commission has determined that it is not overly complex, from a system implementation prospective, to provide access to and collect fees for the national registry by area code. In fact, providing the entire national registry to every entity that seeks access, even if that entity will not need all of that information, would put a significantly larger strain on the resources necessary to deliver that information, resulting in an unnecessary increase in system costs. Another commenter stated that the "management of tracking user fees for area codes that each individual client calls for a sales campaign would be an extremely burdensome task for larger telemarketers."[42] The Commission acknowledges that charging for access to the national registry by area code may entail some complexity for large telemarketers. On balance, however, the Commission believes that the countervailing benefits of allowing access to the registry by area code outweigh any potential costs. As a result, the Commission continues to propose providing access to the national registry based on the number of area codes of information sought.[43]

[35] The only other comment providing any information of assistance in determining the number of entities that would pay a fee to access the national registry came from CDI. CDI stated that it specializes in outbound calling for daily and weekly newspapers ranging in size from 5,000 subscribers to over 1 million subscribers, makes calls on behalf of 140 different clients each month, and employs over 400 people. CDI-Rule NPRM at 1. Unlike DialAmerica, however, the Commission was unable to discover any information about CDI's revenues, making its company-specific information less useful in formulating assumptions regarding the number of industry members. owever, by comparing CDI's 400 employees to the 11,000 people employed by DialAmerica (approximately 3.6 percent of the size of DialAmerica), and assuming that sales per employee are the same for the two firms, one might estimate CDI's revenues are around $11 million (approximately 3.6 percent of DialAmerica's $300 million in annual revenue). If CDI has revenues around $11 million and calls on behalf of 140 clients during the entire year, their per-client revenues would be only about $78,500 per year. (Of course, the fact that CDI calls on behalf of 140 clients each month does not mean that they have only 140 clients during the entire year. They may have different clients each month, which would make the revenue per client even lower.) If the figures for CDI are representative of a significant share of the telemarketing industry and if, as a result, the average revenue per firm is significantly lower than what DialAmerica realizes, the estimated number of telemarketer-client relationships would increase proportionally. This NPRM is specifically seeking information and comment about these figures from the industry.

[36] *See* Winterbery Group at 2.

[37] Firms that are exempt from coverage include those engaged only in intrastate telemarketing or in making solicitations to induce charitable contributions. *See* footnote 16, above. In addition, firms outside of the FTC's jurisdiction that make their own telemarketing calls, such as common carriers, banks, savings and loans, as well as companies that engage in the business of insurance, are also exempt from coverage and not included in our estimate of the number of firms that will have to access the national registry.

[38] *See* User Fee NPRM at 37364.

[39] *See* ARDA-User Fee at 4; NCL-User Fee at 1; AARP-User Fee at 2.

[40] SBA-User Fee at 4.

[41] ABA-User Fee at 3. Accord Household-User Fee at 4; ITC-User Fee at 6; MBNA-User Fee at 2; TRA-User Fee at 3.

[42] DialAmerica-User Fee at 2.

[43] One commenter requested clarification that if access to the entire registry is requested, the requestor will not have to input a list of all area codes. Household at 6. That is correct. An entity seeking access to the entire national registry will simply have to check a box indicating that preference, without having to list any area codes. In addition, the registry will offer the same access capabilities for the area codes within each state, so that entities will be able to select all area codes within a certain state simply by requesting access to information for that state.

C. Small Business Access

In the User Fee NPRM, the Commission proposed providing free registry access to any firm wishing to obtain data from only one to five area codes.[44] The Commission proposed such free access to limit the burden placed on small businesses that only require access to a small portion of the national registry. The Commission noted that its proposal was consistent with the mandate of the Regulatory Flexibility Act, 5 U.S.C. 601, which requires that to the extent, if any, a rule is expected to have a significant economic impact on a substantial number of small entities, agencies should consider regulatory alternatives to minimize such impact.[45]

A number of commenters supported this small business exemption.[46] Others opposed it for various reasons. Household stated that any fee should be assessed to all entities obtaining access to the national registry because there is no rational basis to do otherwise, and "telemarketers and sellers should not have to subsidize the telemarketing activities of other telemarketers or sellers, regardless of their size."[47] ITC stated that the number of area codes purchased is a poor indicator of the extent of actual use, and a structure without exemptions is simpler and easier to administer.[48] TRA stated that "the area or population served by five or fewer area codes could be enormous," and that all telemarketers should be required to help defray the cost of the national registry.[49] SBSC maintained that the five area code exemption does not provide sufficient protections for small businesses, since many small businesses are located in geographic areas with many area codes, and some small businesses may actually be national in scope.[50] Finally, NASUCA expressed concern that telemarketers may "game" the system to avoid paying for access—especially by treating "distinct corporate divisions of a single corporation" as separate entities, thus allowing each division to gather five area codes and pool the numbers among themselves. NASUCA also stated that there can be variations in the number of customers within an area code and the number of area codes within a state, creating inconsistencies in the amount of data for which a telemarketer will be paying.[51]

After evaluating these comments, the Commission still believes that it is appropriate to provide access to a small portion of the data in the national registry for free. The Commission agrees with the comments that stated the imposition of fees may be unduly burdensome, and could have a disproportionate impact, on small businesses.[52] The Commission is attempting to alleviate that burden to the greatest extent possible, while still collecting the necessary fees in as equitable manner as possible. By providing free access to a small portion of the national registry, the Commission is attempting to alleviate some of the disproportionally heavier burdens faced by small businesses. The Commission recognizes that not all small businesses will be able to enjoy the benefits of this proposal, since some small businesses may engage in telemarketing in a geographic area larger than five area codes. However, the Commission believes that most entities that will benefit from this proposal will be small businesses. Moreover, providing this free access does not significantly increase the complexity of implementing the national registry.[53]

The Commission also believes its proposal will prevent companies from "gaming" the system to gain free access on a large scale. It would be a violation of the proposed fee rule for a telemarketer, or a seller to cause a telemarketer, to initiate outbound telephone calls in an area of the country for which it did not pay for access to the national registry. Thus, distinct corporate divisions of the same company that acquire only five area codes of data could not make outbound telephone calls outside of those five area codes without violating the proposed rule. As a practical matter, it is unlikely that any company would organize its divisions by limiting each division's telemarketing to five area codes, just to avoid the proposed fee. The Commission believes that the costs associated with trying to "game" the system in such a manner would be much larger than the benefits of avoiding the proposed fees.

While the Proposed Rule provides free access to a small portion of the national registry, the Commission continues to seek comment on other alternatives that would balance the burdens faced by small businesses with the need to raise appropriate fees to fund the registry in an equitable manner.

As for the appropriate level of free access, the Commission continues to seek comment on this issue as well.[54] Absent evidence to the contrary, the Commission believes that five area codes is an appropriate compromise between the goals of equitably and adequately funding the national registry, on the one hand, and providing appropriate relief for small businesses, on the other. While the Commission understands that five area codes could provide free access to a significant geographic area, the Commission also is attempting to address those small businesses that work in large metropolitan areas, which often have multiple area codes within a relatively small geographic area. Furthermore, while the Commission is mindful of the possible variations in the number of telephone numbers included in each area code, the Commission believes the only more equitable way to divide access to the national registry, other than by area code, might be by individual telephone number. Such a fine gradation, assuming its feasibility,

[44] *See* User Fee NPRM at 37364.

[45] *But see* section IX, below, where the Commission determines that the instant proposed Rule would not have a significant economic impact on a substantial number of small entities.

[46] *See, e.g.*, NCL-User Fee at 1; SBA-User Fee at 1, 4; AARP-User Fee at 2.

[47] Household-User Fee at 3–4.

[48] ITC-User Fee at 6.

[49] TRA-User Fee at 6.

[50] Small Business Survival Committee ("SBSC")-User Fee at 2.

[51] NASUCA-User Fee at 3–6.

[52] *See* ICTA-User Fee at 1–2; Ameriquest-User Fee at 6; Celebrity Prime Foods-User Fee at 1.

[53] In the Commission's view, an alternative approach that would provide small business with exemptive relief more directly tied to size status would not balance the private and public interests at stake any more equitably or reasonably than the approach currently proposed by the Commission. For example, an across-the-board exemption from all fees for small businesses, no matter how many area codes they access, would shift the entire cost of the registry to larger businesses and require assessing them even higher access fees, while giving the small business community access to the registry without any cost-sharing responsibility whatsoever. Compared to the Commission's current proposal, which requires small businesses that telemarket beyond five area codes to pay access fees, a categorical small-business exemption would not be as consistent with the general legislative mandate that the Commission recover the registry's costs from those telemarketing entities obtaining access to the registry. Alternatively, it might be argued that allowing small businesses to pay reduced rates across the entire fee schedule could achieve substantially the same level and balance of exemptive relief and cost recoupment as the current proposal to provide free access to five area codes or fewer. A reduced fee schedule based on small business size, however, would still ultimately require a certification and determination of that status to implement and enforce, and thus would present greater administrative, technical, and legal costs and complexities than the Commission's current exemptive proposal, which does not require any proof or verification of that status.

[54] SBA commented that it had insufficient information to determine whether five area codes is an appropriate level of free access, and recommended that the FTC contact small telemarketers to inquire how many area codes they commonly access in a given year during the course of business. SBA-User Fee at 4. ICTA suggested that the number of area codes of data that could be acquired without paying a fee be increased from five to ten, but provided no rationale for this suggestion. ICTA-User Fee at 1–2.

would significantly increase the complexity of the system, both in terms of accessing and delivering the data. The Commission believes the increase in the complexity weighs against such an approach. Thus, the Commission continues to propose that access to five or fewer area codes of data in the national registry be provided for free.

D. Fees for Access

As previously discussed, both the Appropriations Act and the Implementation Act authorize the Commission to raise fees sufficient to cover the costs of implementing and enforcing the do-not-call provisions of the Amended TSR, estimated at $18.1 million for fiscal year 2003. The Commission anticipates that it will need to raise the entire estimated $18.1 million authorized to cover the costs associated with those efforts in this fiscal year. Costs fall primarily in three broad categories. First are the actual estimated contract costs along with associated agency costs to develop and operate the do-not-call registry. These cover things like the registration procedures and handling of complaints, the transfer of registration information from state lists to the registry, telemarketer access to the registration information, and the management and operation of law enforcement access to appropriate information. The second category of costs relates to enforcement efforts. These costs will include law enforcement initiatives, both domestic and international, to identify targets and challenge alleged violators. Enforcement costs also include consumer and business education, which are critical complements to enforcement in securing compliance with the do-not-call provisions. The third category of costs covers agency infrastructure and administration costs, including information technology structural supports. In particular, the Consumer Sentinel system (the agency's repository for all consumer fraud-related complaints) and its attendant infrastructure must be upgraded to handle the anticipated increased demand from state law enforcers for access to do-not-call complaints. Further, the Consumer Sentinel system will require substantial changes so that it may handle the significant additional volume of complaints that are expected.

In order to raise $18.1 million this fiscal year, and assuming that 7,500 firms will pay for that access, the Commission proposes charging an annual fee of $29 for each area code of data accessed.[55] There would be no fee charged for access to five or fewer area codes of data. In addition, the Commission continues to propose placing a cap on the maximum annual fee that would be charged an entity that wants access to the entire national database. That maximum fee would be $7,250, which would be charged for using 250 area codes of data or more. As a result of this revised proposed fee schedule, there would be no charge for obtaining only five area codes of data; six area codes of data would cost $174; twenty-five area codes would cost $725; two hundred area codes would cost $5,800; and access to the data from all area codes would be capped at $7,250 annually.

As stated above, these proposed fees are based on certain assumptions and estimates.[56] The Commission anticipates that whatever fees may be adopted would be reexamined periodically and would likely need to be adjusted, in future rulemaking proceedings, to reflect actual experience with operating the registry.

IV. Operation of the National Registry for the Telemarketing Industry

The Commission is developing a fully-automated, secure Web site dedicated to providing members of the telemarketing industry with access to the registry's list of telephone numbers, sorted by area code. The first time a company accesses the system, it will be asked to provide certain limited identifying information, such as company name and address, company contact person, and the contact person's telephone number and e-mail address. If an entity is accessing the registry on behalf of a client-seller, the entity will also need to identify that client.

The only consumer information that companies will receive from the national registry is a registrant's telephone number.[57] Those telephone numbers will be sorted and available by area code. Companies will be able to access as many area codes as desired, by selecting, for example, all area codes within a certain state. Of course, companies will also be able to access the entire national registry, if desired. In addition, after providing the required identifying information and paying the appropriate fee, if any, companies will be allowed to check, via interactive Internet pages, a small number of telephone numbers (less than ten) at a time to permit small volume callers to observe the do-not-call requirements of the TSR without having to download a potentially large list of all telephone numbers within a particular area.

When a seller first submits an application to access registry information, the company will be asked to specify the area codes that it wants to access. As discussed above, each seller accessing the registry data will be required to pay an annual fee for that access, based on the number of area codes of data the seller accesses. Fees will be payable via credit card (which will permit the real-time transfer of data) or electronic funds transfer (which will require the seller to wait approximately one day for the funds to clear before data access will be provided). A seller must pay these fees prior to gaining access to the registry.

Sellers will be able to access data as often as they like during the course of one year (defined as their "annual period") for those area codes that are selected with the payment of the related annual fee.[58] If, during the course of the year, sellers need to access data from more area codes than those initially selected, they would be required to pay for access to those additional area codes. For purposes of these additional payments, the annual period is divided into two semi-annual periods of six-months each. Obtaining additional data from the registry during the first semi-annual, six-month period will require a payment of $29 for each new area code. During the second semi-annual, six-month period, the charge of obtaining data from each new area code requested during that six-month period is $15. These payments for additional data would provide sellers access to those additional areas of data for the remainder of their initial annual term.

After payment is processed, the seller will be given a unique account number and permitted access to the appropriate portions of the registry. That account number will be used in future visits to the Web site, to shorten the time needed to gain access. On subsequent visits to the Web site, sellers will be able to download either an entire updated list of numbers from their selected area codes, or a more limited list, consisting only of additions to or deletions from the registry that have occurred since the company's last download. This would limit the amount of data that a company needs to download during each visit.

Telemarketers, list brokers, and other entities working on behalf of sellers will need to submit their client-seller's account number to gain access to the national registry. The extent of their access will be limited by the area codes requested and paid for by their client-sellers. They also will be permitted to access the registry as often as they wish for no additional cost, once the annual fee has been paid by their client-sellers.[59] As indicated in the Rule NPRM discussion of section 310.4(b)(3)(iv), however, the Rule requires a seller or telemarketer to employ a version of the do-not-call registry obtained from the Commission no more than three months prior to the date any telemarketing call is made.

V. Date By Which Full Compliance With the Do-Not-Call Provisions of the Amended TSR Will Be Required

In the Statement of Basis and Purpose to the Amended TSR, the Commission stated that it would announce at a future time the date by which full compliance with § 310.4(b)(1)(iii)(B), the do-not-call registry provision, would be required.[60] At that time, the Commission anticipated that full compliance with the do-not-call provision would be required approximately seven months from the date a contract is awarded to create the national registry.

On March 1, 2003, the Commission awarded the contract to create the national do-not-call registry to AT&T Government Solutions, Inc. Accordingly, the Commission is now announcing that full compliance with § 310.4(b)(1)(iii)(B), the "do-not-call" registry provision of the Amended TSR, will be required on October 1, 2003.

Companies will be able to begin accessing the national do-not-call registry on September 1, 2003. As a result, to remain in compliance with the do-not-call provisions of the Amended TSR, all covered sellers will be required to access the national registry for the first time between September 1–30, 2003. During that same time frame, all covered sellers or entities working on their behalf must download the portions of the national registry for those areas of the country in which they will either initiate an outbound telephone call or cause a telemarketer to initiate an outbound telephone call on their behalf.

VI. Invitation to Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments concerning these proposed changes to the Commission's Telemarketing Sales Rule. The Commission invites written comments to assist it in ascertaining the facts necessary to reach a determination as to whether to adopt as final the proposed changes to the Rule. The Commission encourages comments to be submitted electronically to the following e-mail address: *feerule@ftc.gov*. Alternatively, commenters may submit an original plus two paper copies of their comments to the Office of the Secretary, Room 159, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. All comments must be submitted on or before May 1, 2003. Time is of the essence to promulgate these proposed fees. Thus, the Commission does not anticipate providing any extension to this comment period.

Comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission Rules of Practice, on normal business days between the hours of 9 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission will make this NPRM and, to the extent possible, all comments received in response to this NPRM, available to the public through the Internet at the following address: *http://www.ftc.gov*.

VII. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. *See* 16 CFR 1.26(b)(5).

VIII. Paperwork Reduction Act

This Revised Fee NPRM does not involve any new collection of information requirements that were not already proposed in the User Fee NPRM. However, the Commission has raised its estimate of the number of firms subject to this collection of information, which increases accordingly the cumulative paperwork burden presented by this proposed revision. The Commission informed the Office of Management and Budget about this proposed burden increase.

The Commission continues to propose requiring those firms that access the national do-not-call registry to submit minimal identifying information that the operator of the registry deems necessary to collect the proposed fee, as outlined in section IV, above. The information to be collected from those firms, and the frequency of that collection, has not changed from the User Fee NPRM.[61] The Commission estimated, in the User Fee NPRM, that it should take no longer than two minutes for each firm to submit this basic information, and that each firm would have to submit the information annually.[62] Given current estimates that there are approximately 7,500 firms that will have to access the information in the national registry, the Commission estimates that this revised proposal will result in 250 burden hours (7,500 firms x 2 minutes per firm = 15,000 minutes, or 250 hours). In addition, the Commission continues to estimate that possibly one-half of those firms may need, during the course of their annual period, to submit their identifying information more than once in order to obtain additional area codes of data. This would result in an additional 125 burden hours (3,750 telemarketers x 2 minutes per telemarketer = 7,500 minutes, or 125 hours). Thus, the Commission estimates that the revised fee provision will impose a total paperwork burden of approximately 375 hours per year.

The Commission anticipates that clerical employees (or other low-level administrative personnel) of affected entities will fulfill the function of supplying company-identifying information to the registry contractor. Assuming a clerical hourly wage of $10 per hour, the cumulative annual labor cost to respondents to provide the requisite information is $3,750 (375 hours x $10 per hour).

---

[55] Only two commenters responded to questions in the User Fee NPRM as to whether an annual or a monthly fee would be a more preferable, efficient, and appropriate method of fee collection. Both supported the use of an annual fee, as opposed to monthly one. *See* Household-User Fee at 4; MBNA-User Fee at 4.

[56] In addition to the assumptions set forth in Section III.A, above, concerning the number of firms that will access the national registry, the Commission continues to assume that, on average, sellers will pay to obtain information from 83 area codes in the national registry. *See* User Fee NPRM at 37368, question 5.

[57] In fact, that is the only personal identifying information submitted by consumers that will be maintained in the national registry. The registry will also maintain other information about the registration for law enforcement purposes, such as the date and method of registration, but that information will not be available to companies accessing the registry.

[58] To protect system integrity, a company will be permitted to download the entire national registry only once in any 24-hour period.

[59] Telemarketers, list brokers, and other entities working on behalf of sellers will also be limited to downloading the entire national registry only once in any 24-hour period.

[60] *See* 68 FR at 4664.

[61] *See* User Fee NPRM at 37365–66.

[62] *Id.* at 37366. As stated in the User Fee NPRM, this estimate is likely to be conservative for PRA purposes. The OMB regulation defining "information" generally excludes disclosures that require persons to provide facts necessary simply to identify themselves, *e.g.*, the respondent, the respondent's address, and a description of the information the respondent seeks in detail sufficient to facilitate the request. *See* 5 CFR 1320.3(h)(1).

The Commission once again invites comment that will enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;

2. Evaluate the accuracy of the Commission's estimates of the burdens of the proposed collections of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and validity of the information to be collected; and

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

IX. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 604(a), requires an agency either to provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The FTC does not expect that the final rule concerning fees will have the threshold impact on small entities. As discussed in section III.C, above, this NPRM specifically proposes charging no fee for access to data included in the registry from one to five area codes. As a result, the Commission anticipates that many small businesses will be able to access the national registry without having to pay any annual fee. Thus, it is unlikely that there will be a significant burden on small businesses resulting from the adoption of the proposed fees.

The Commission reached a similar conclusion in the User Fee NPRM.[63] Nonetheless, the Commission determined that it was appropriate to publish an IRFA in the User Fee NPRM, in order to inquire into the impact on small entities of both the amendments to the TSR proposed in the User Fee NPRM, as well as the proposed amendments to the TSR set forth in the Rule NPRM. The Commission welcomed comment on any significant alternatives that would further minimize the impact on small entities, consistent with the objectives of the Telemarketing Act, the proposed amendments to the TSR set forth in the Rule NPRM, and the requirements of the User Fee Statute.

In response to this request for comment, SBA commended the FTC on its regulatory flexibility analysis and supported permitting small firms to access a limited number of area codes per year without a charge, but noted that overlapping federal and state do-not-call registries may create undue burdens for small businesses.[64] SBA included a number of suggestions to minimize the impact of multiple do-not-call registries on small businesses.[65] As indicated in the TSR SBP, the Commission is working with the states to develop a single, national do-not-call registry—a "one-stop shop" for consumers to register their preference not to receive telemarketing calls, and for sellers and telemarketers to gain access to that registration information.[66] To further those goals, the Commission will allow all states, and the DMA if it so desires, to download into the national registry—at no cost to the states or the DMA—the telephone numbers of consumers who have registered with them their preference not to receive telemarketing calls. Telemarketers and sellers will be allowed to access that data through the national registry as the information is received. Such harmonization will decrease significantly any burdens imposed by the multiple do-not-call registries that currently exist.

The Commission continues to welcome comment on any significant alternatives to those proposed in the instant NPRM that would further minimize the impact on small entities, consistent with the objectives stated herein and with the Amended TSR, the Appropriations Act, and Implementation Act.

X. Questions for Comment on the Proposed Rule

The Commission seeks comment on the various aspects of the proposed revisions to the TSR set forth in this NPRM. Without limiting the scope of issues on which it seeks comment, the Commission is particularly interested in receiving comments on the questions that follow. In responding to these questions, include detailed, factual supporting information whenever possible.

1. This Revised Fee NPRM estimates that there are 7,500 firms that will access the national do-not-call registry. Is that estimate realistic and appropriate? What evidence, if any, do you have concerning the number of sellers that either directly engage in, or hire telemarketers to engage in, "outbound telephone calls" to consumers?

2. In estimating the number of firms that will access the national do-not-call registry, the Commission made a number of assumptions, including the following:

a. The average revenue per client for telemarketers making outbound telemarketing calls to consumers is about $328,000;

b. It is reasonable to estimate the level of expenditures on outbound calls to consumers by taking the product of published figures on the percentage of total telemarketing expenditures that involve outbound calls—including both calls to consumers and to businesses—and published figures on the percentage of expenditures that are for calls to consumers—including both inbound and outbound calling. This figure, approximately 24 percent, can then be used to estimate the level of outbound calling to consumers both by (1) firms that use third-party telemarketers to do their calling and (2) those firms that do their own calling;

c. Sellers that use third-party telemarketers on average employ three different telemarketers to make outbound calls to consumers over the course of a year;

d. Sellers using their own resources to make telemarketing calls spend, on average, five times as much on telemarketing as do firms that use third-party telemarketers;

e. Approximately 40 percent of sellers that use third-party telemarketers and 25 percent of sellers that engage in their own telemarketing will not be required to access the national do-not-call registry, either because they are engaged in charitable solicitations, are making only intrastate calls, or are calling on behalf of an industry that is exempt from FTC jurisdiction.

Are these estimates, and others used in arriving at a figure for the number of firms that will be required to access to the national do-not-call registry, realistic and appropriate? What evidence can you provide to support the view that these estimates are reasonable or that they should be different?

3. How many area codes of data will the average firm accessing the national do-not-call registry purchase? How many firms will require access to 250 of more area codes of data? How many will need access to 5 or fewer area codes?

4. Is it appropriate to require each separate corporate division, subsidiary, and affiliate that engages in outbound telemarketing to pay a separate fee to access the national registry? Why or why not? If a separate fee is not appropriate, what is a better way to differentiate between large and small enterprises? Would that alternative method maintain the fairness of the fee collection system while not significantly decreasing the number of entities that will pay for access to the national registry?

[63] *See* User Fee NPRM at 37366–67.

[64] See SBA-User Fee at 1. *See also* Section III.C, above, for a discussion of other comments the Commission received on its approach to minimizing the impact of this rulemaking on small businesses.

[65] *Id.* at 5–6. SBA also responded to our request for information concerning the number of small businesses that might be subject to the proposed User Fee Rule by provided information from the North American Industry Classification System ("NAICS"). According to the NAICS, there are 2,305 firms identified as "Telemarketing Bureaus" (NAICS Code 561422), 1,279 of which qualify as a small business (one with annual receipts of $5 million or less). SBA also noted "that 1,127 telecommunications firms have receipts under $1 million, which makes them particularly small and vulnerable to burdensome costs of Federal regulations." *Id.* at 3. The FTC appreciates this information. However, as discussed in Section II.B, above, "telemarketing bureaus" no longer would be required to pay a fee to access the national registry. Instead, sellers would be required to pay the fee. Therefore, to determine the number of small businesses affected by the instant NPRM, the Commission is seeking information on the number of small business sellers that engagé in outbound telemarketing and that are subject to the FTC's jurisdiction. Unfortunately, the NAICS does not provide this level of detailed industry classification.

[66] *See* TSR SBP at 4641.

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

XI. Proposed Rule

Accordingly, for the reasons set forth in the preamble, the Commission proposes to amend part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108.

2. Add § 310.8 to read as follows:

§ 310.8 Fee for access to do-not-call registry.

(a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller first has paid the annual fee, required by § 310.8(c), for access to telephone numbers within that area code that are included in the national do-not-call registry maintained by the Commission under § 310.4(b)(1)(iii)(B).

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller first has paid the annual fee, required by § 310.8(c), for access to the telephone numbers within that area code that are included in the national do-not-call registry.

(c) The annual fee, which must be paid prior to obtaining access to the do-not-call registry, is $29 per area code of data accessed, up to a maximum of $7,250; provided, however, that if a seller obtains no more than five (5) area codes of data annually, there shall be no charge for this information.

(d) After a seller pays the fees set forth in § 310.8(a), the seller will be provided a unique account number which will allow that seller, or an entity designated by that seller, to access the registry data for the selected area codes at any time for twelve months following the first day of the month in which the seller paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, the seller must first pay $29 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, the seller must first pay $15 for each additional area code of data not initially selected. The payment of the additional fee will permit the seller or the seller's designee to access the additional area codes of data for the remainder of the annual period.

(e) Access to the do-not-call registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls for commercial purposes, service providers acting on behalf of such persons, and any government agency that has the authority to enforce a federal or state do-not-call statute or regulation. Prior to accessing the do-not-call registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of other sellers, that person also must identify each of the other sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the other sellers will be using the information gathered from the registry solely to comply with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–7932 Filed 4–2–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA76

TRICARE Program; Inclusion of Anesthesiologist's Assistants as Authorized Providers; Coverage of Cardiac Rehabilitation in Freestanding Cardiac Rehabilitation Facilities

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes a new category of provider as an authorized TRICARE provider, and it increases the settings where cardiac rehabilitation can be covered as a TRICARE benefit. It recognizes anesthesiologist's assistants as authorized providers under certain circumstances. It also authorizes cardiac rehabilitation services, which are already a covered TRICARE benefit when provided by hospitals, to be provided in freestanding cardiac rehabilitation facilities.

DATES: Public comments must be received by June 2, 2003.

ADDRESSES: Forward comments to: TRICARE Management Activity (TMA), Medical Benefits and Reimbursements Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Medical Benefits and Reimbursement Systems, TMA, (303) 676–3572.

SUPPLEMENTARY INFORMATION:

A. Inclusion of Anesthesiologist's Assistants as Authorized Providers

At present only two types of anesthesia providers may provide services to TRICARE beneficiaries—anesthesiologists and certified registered nurse anesthetists (CRNAs). In some areas of the country, anesthesiologist's assistants, after completing the specified training, being accredited, and being licensed by the state also provide anesthesia services. The Centers for Medicare and Medicaid Services (CMS) already recognizes anesthesiologist's assistants as authorized providers (42 CFR 410.69).

We propose to recognize anesthesiologist's assistants as authorized providers under the same conditions applied by CMS. That is:

(1) They must work only under the direct supervision of an anesthesiologist;

(2) They must comply with all applicable requirements of state law and be licensed, where applicable, by the state in which they practice; and

(3) They must have completed the appropriate educational requirements. This includes graduation from a Master's level medical school-based anesthesiologist's assistant program that is accredited by the Committee on Allied Health Education and Accreditation and includes approximately two years of appropriate specialized basic science and clinical education in anesthesia. This program must build on a premedical undergraduate science background.

Recognition of anesthesiologist's assistants will not increase the costs of anesthesia to the Program. This is, payment for anesthesia services provided by an anesthesiologist and an anesthesiologist's assistant under the anesthesiologist's direct supervision will never exceed what would have been paid if the services were provided only by the anesthesiologist.

Since anesthesiologist's assistants may not practice independently, they also may not bill independently for their services. All claims for their services must be submitted by their employer, whether it is a hospital, a physician, or some other similar entity. Such claims must indicate that the services were provided by an anesthesiologist's assistant.

B. Coverage of Cardiac Rehabilitation in Freestanding Cardiac Rehabilitation Centers

On October 19, 1990, the Office of the Secretary of Defense published a final rule in the **Federal Register** (55 FR 42366) establishing cardiac rehabilitation as a TRICARE benefit when used in the treatment of certain cardiac events. The following rationale was provided for limiting cariac rehabilitation services to TRICARE authorized hospitals:

> As a national program, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) strives for uniformity and equity in benefits to ensure beneficiary safety. Toward this end, CHAMPUS relies on the existing nationwide infrastructure for accreditation and professional regulatory oversight. With the large variety of freestanding cardiac rehabilitation clinics throughout the country, it is incumbent upon CHAMPUS to seek out national standards to provide a clear line of demarcation on CHAMPUS requirements. Currently, there is no organized national accreditation agency for accrediting freestanding cardiac rehabilitation clinics, nor does there appear to be standardized state licensure, or certification procedures in existence which address standards for freestanding cardiac rehabilitation clinics. Since OCHAMPUS does not have the resources to conduct its own accreditation activities, the requirement for national accreditation is at least a minimum assurance that a facility or specialized treatment facility meets some standards of quality.
>
> However, since incorporation of this restriction (*i.e.*, cardiac rehabilitation services being restricted to hospital based facilities/programs) there has been an evolution of alternative freestanding delivery programs whose efficacy and safety have been recognized by the medical community and other third-party payers. Freestanding cardiac rehabilitation programs are examples of this evolutionary trend. With the establishment of standardized licensure and accreditation procedures, many of these freestanding programs have been recognized and approved for participation under TRICARE.
>
> Currently TRICARE provides coverage/payment for inpatient or outpatient services and/or supplies provided in connection with a cardiac rehabilitation program when provided by a TRICARE authorized hospital. Outpatient cardiac rehabilitation treatment programs affiliated with TRICARE authorized hospitals are reimbursed an all-inclusive allowable charge per session that includes all related professional services provided during a rehabilitation session. Inpatient programs are paid based upon the reimbursement system in place for the hospital where the services are provided. Separate cost-sharing is allowed for initial evaluation and testing and related professional services.
>
> Since hospital based cardiac rehabilitation is already an established benefit under TRICARE, its benefit and reimbursement structure can be applied to freestanding cardiac rehabilitation programs. Claims for freestanding outpatient cardiac rehabilitation treatment will be reimbursed in the same manner as outpatient cardiac rehabilitation treatment programs affiliated with TRICARE authorized hospitals. That is, they will be reimbursed based upon an all inclusive allowable charge per session that includes all related professional services provided during the rehabilitation session.

Regulatory Procedures

Executive Order (EO) 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one which would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts.

The Regulatory Flexibility Act requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule is not economically significant and will not significantly affect a substantial number of small entities.

"This rule has been designated as significant and has been reviewed by the Office Management and Budget as required under the provisions of E.O. 12866."

Paperwork Reduction Act

This rule imposes no burden as defined by the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

Accordingly, 32 CFR part 199 is proposes to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.4 is proposed to be amended by revising paragraph (e)(18)(iv) as follows:

§ 199.4 Basic program benefits.

(e) * * *

(18) * * *

(iv) *Providers.* A provider of cardiac rehabilitation services must be a TRICARE authorized hospital (*see* Section 199.6 paragraph (b)(4)(i)) or a freestanding cardiac rehabilitation facility that meets the requirements of Section 199.6 paragraph (f). All cardiac rehabilitation services must be ordered by a physician.

* * * * *

3. Section 199.6 is proposed to be amended by redesignating paragraph (c)(3)(iii)(I) as paragraph (c)(3)(iii)(J) and adding a new paragraph (c)(3)(iii)(I) as follows:

§ 199.6 Authorized Providers.

(c) * * *

(3) * * *

(iii) * * *

(I) *Anesthesiologist's Assistant.* An anesthesiologist's assistant may provide covered anesthesia services, if the anesthesiologist's assistant:

(1) Works under the direct supervision of an anesthesiologist, and the anesthesiologist bills for the services;

(2) Is in compliance with all applicable requirements of state law, including any licensure requirements the state imposes on nonphysician anesthetists; and

(3) Is a graduate of a Master's level medical school-based anesthesiologist's assistant educational program that:

(i) Is accredited by the Committee on Allied Health Education and Accreditation; and

(ii) Includes approximately two years of specialized basic science and clinical education in anesthesia at a level that builds on a premedical undergraduate science background.

* * * * *

Dated: March 28, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–8014 Filed 4–2–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

32 CFR Part 312

Office of the Inspector General; Privacy Act; Implementation

AGENCY: Office of the Inspector General, DoD.

ACTION: Proposed rule.

SUMMARY: The Inspector General, DoD is proposing to exempt an existing system of records in its inventory of systems of records pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The exemptions are needed because during the course of a Freedom of Information Act (FOIA) and Privacy Act action, exempt materials from other systems of records may in turn become part of the case records in the system. To the extent that copies of exempt records from those "other" systems of records are entered into the Freedom of Information Act and/or Privacy Act case records, the Inspector General, DoD, hereby claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary systems of records which they are a part. Therefore, the Inspector General, DoD is proposing to add exemptions to an existing system of records.

DATES: Comments must be received on or before June 2, 2003 to be considered by this agency.

ADDRESSES: Send comments to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Caucci at (703) 604–9786.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Office of the Inspector General of the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Office of the Inspector General of the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Office of the Inspector General of the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Office of the Inspector General of the Department of Defense impose no information requirements beyond the Office of the Inspector General and that the information collected within the Office of the Inspector is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act'

It has been determined that the Privacy Act rulemaking for the Office of the Inspector General of the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Office of the Inspector General of the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 312

Privacy.

1. The authority citation for 32 CFR part 312 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 312.3 is revised to read as follows:

§ 312.3 Procedure for requesting information.

Individuals should submit written inquiries regarding all OIG files to the Administration and Logistics Services Directorate, ATTN: FOIA/PA Office, 400 Army Navy Drive, Arlington, VA 22202–4704. Individuals making a request in person must provide acceptable picture identification, such as a current driver's license.

3. Section 312.9 paragraph (a) is revised read as follows:

§ 312.9 Appeal of initial amendment decision.

(a) All appeals on an initial amendment decision should be addressed to the Administration and Logistics Services Directorate, ATTN: FOIA/PA Office, 400 Army Navy Drive, Arlington, VA 22202–4704. The appeal should be concise and should specify the reasons the requester believes that the initial amendment action by the OIG was not satisfactory. Upon receipt of the appeal, the designated official will review the request and make a determination to approve or deny the appeal.

* * * * *

4. Section 312.12 is amended by adding paragraph (h) to read as follows:

§ 312.12, Exemptions.

* * * * *

(h) *System Identifier:* CIG 01.

(1) *System name:* Privacy Act and Freedom of Information Act Case Files.

(2) *Exemption:* During the processing of a Freedom of Information Act (FOIA) and Privacy Act (PA) request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those other systems of records are entered into this system, the Inspector General, DoD, claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary system of which they are a part.

(3) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(4) *Reasons:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: March 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–8018 Filed 4–2–03; 8:45 am]

BILLING CODE 5001–08–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278, FCC 03–62]

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on The Do-Not-Call Implementation Act (Do-Not-Call Act), which requires the Federal Communications Commission (FCC or Commission) to issue final rules in the Telephone Consumer Protection Act (TCPA) proceeding within 180 days, to maximize consistency with the Federal Trade Commission's (FTC) rules, and to issue reports to Congress within 45 days of the promulgation of final rules, and annually thereafter.

DATES: Comments are due May 5, 2003 and reply comments are due May 19, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. See supplementary information for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon or Richard D. Smith, Policy Division, Consumer & Governmental Affairs Bureau, (202) 418–2512.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in CG Docket No. 02–278, FCC 03–62, released March 25, 2003. The full text of this document is available on the Commission's Electronic Comment Filing System at *http://www.fcc.gov/e-file/ecfs.html*, and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

Synopsis of Further Notice of Proposed Rulemaking

1. On March 11, 2003, the Do-Not-Call Act was signed into law requiring the Commission to issue a final rule in the above-captioned proceeding within 180 days of March 11, 2003, and to consult with the FTC to maximize consistency with the rule promulgated by the FTC in 2002. The Do-Not-Call Act also requires the Commission to issue reports to Congress within 45 days after the promulgation of final rules in this proceeding, and annually thereafter. In this FNPRM, we seek comment on these requirements.

2. On December 20, 1991, Congress enacted the Telephone Consumer Protection Act of 1991 (TCPA) in an effort to address a growing number of telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and even a risk to public safety. The statute restricts the use of automatic telephone dialing systems, artificial and prerecorded messages, and telephone facsimile machines to send unsolicited advertisements. The TCPA specifically authorizes the Commission to "require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations." In 1992, the Commission adopted rules implementing the TCPA but declined to create a national database of telephone subscribers who do not wish to receive calls from telemarketers. The Commission opted instead to implement an alternative scheme—one involving company-specific do-not-call lists. In 1995 and 1997, the Commission released orders (60 FR 42068, August 15, 1995; 62 FR 19686, April 23, 1997) addressing petitions for reconsideration of the *TCPA Order* (57 FR 48333, October 23, 1992).

3. On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) and Memorandum Opinion and Order (67 FR 62667, October 8, 2002) seeking comment on whether the Commission's rules need to be revised in order to carry out more effectively Congress's directives in the TCPA. Specifically, we sought comment on whether to revise or clarify our rules governing unwanted telephone solicitations and the use of automatic telephone dialing systems, prerecorded or artificial voice messages, and telephone facsimile machines. We also sought comment on the effectiveness of company-specific do-not-call lists. In addition, we sought comment on whether to revisit the option of establishing a national do-not-call list and, if so, how such action might be taken in conjunction with the FTC's proposal to adopt a national do-not-call list and with various state do-not-call lists. In considering ways in which we might improve our TCPA rules, our goal is to enhance consumer privacy protections while avoiding imposing unnecessary burdens on the telemarketing industry, consumers, and regulators. Lastly, we sought comment on the effect proposed policies and rules would have on small business entities, including *inter alia* those who engage in telemarketing activities and those who rely on telemarketing as a method to solicit new business.

4. On December 18, 2002, the FTC released an order establishing a national do-not-call registry and making other changes to its Telemarketing Sales Rule (68 FR 4580, January 29, 2003). Congress approved funding for the FTC's do-not-call registry as part of the 2003 omnibus budget. Furthermore, the FTC has announced that it will begin to take registrations for a do-not-call registry on July 1, 2003, and that the registry will go into effect on October 1, 2003.

5. In the Do-Not-Call Act, Congress requires this Commission to issue final rules in the above-captioned proceeding by September 7, 2003. The Do-Not-Call Act provides that the FCC shall consult and coordinate with the FTC to maximize consistency with the rule promulgated by the FTC. Congress also requires the Commission to transmit a report on regulatory coordination to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation. The Commission is required to provide:

(1) An analysis of the telemarketing rules promulgated by both the Federal Trade Commission and the Federal Communications Commission;

(2) An analysis of any inconsistencies between the rules promulgated by each Commission and the effect of any such inconsistencies on consumers, and persons paying for access to the registry; and

(3) Proposals to remedy any such inconsistencies.

The Do-Not-Call Act also requires the Commission to file an annual report to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science and Transportation, which includes:

(1) An analysis of the effectiveness of the "do-not-call" registry as a national registry;

(2) The number of consumers who have placed their telephone numbers on the registry;

(3) The number of persons paying fees for access to the registry and the amount of such fees;

(4) An analysis of the progress of coordinating the operation and enforcement of the "do-not-call" registry with similar registries established and maintained by the various States;

(5) An analysis of the progress of coordinating the operation of the "do-not-call" registry with the enforcement activities of the Commission pursuant to the TCPA; and

(6) A review of the enforcement proceedings by the Commission under the TCPA.

6. As stated above, the Do-Not-Call Act requires the FCC, in the course of the above-captioned proceeding, to "maximize consistency" with the FTC's recent amendments to its Telemarketing Sales Rule. We seek comment on how the FCC can maximize consistency with the FTC's rules. We encourage commenters to review the rules promulgated by the FTC and to comment on how the FCC should consider amending its rules, given the new statutory directive. We seek comment on how the goals and principles identified in the Do-Not-Call Act should affect our implementation of the Act and how to harmonize the requirements of the Do-Not-Call Act with our statutory mandate in the TCPA. We also seek comment on how the FCC can best fulfill the reporting requirements contained in the statute. On December 20, 2002, the Consumer & Governmental Affairs Bureau issued a Public Notice (67 FR 78763, December 26, 2002) extending the reply comment period in the TCPA proceeding until January 31, 2003, to ensure that all interested parties had ample opportunity to comment on possible Commission action in light of the FTC's new rules. Parties are advised not to reiterate comments previously filed in this proceeding because any previously filed comments will be duly considered.

Procedural Issues

A. Ex Parte Presentations

7. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that presentations are disclosed as provided in the Commission's rules.

B. Filing of Comments and Reply Comments

8. We invite comment on the issues and questions set forth above. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before May 5, 2003, and reply comments on or before May 19, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings* (63 FR 24121, May 1, 1998).

9. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Kelli Farmer, Federal Communications Commission, Room 4-C740, 445 12th Street, SW., Washington, DC 20554.

10. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov*.

Ordering Clauses

11. The Further Notice of Proposed Rulemaking is adopted.

List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 03–8077 Filed 4–2–03; 8:45 am]
BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 68, No. 64
Thursday, April 3, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on April 28, 2003, from 8:30 am to 5 pm.

ADDRESSES: The meeting will be held at the Mercer Human Resource Consulting, at 1166 Avenue of the Americas, Conference Room, 30th Floor, New York, NY.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1891.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Mercer Human Resource Consulting, 1166 Avenue of the Americas, Conference Room, 30th Floor, New York, NY on Monday, April 28, 2003, from 8:30 am to 5 pm.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 25, 2003.
Patrick W. McDonough,
Executive Director, Joint Board for the Enrollment of Actuaries.
[FR Doc. 03–8028 Filed 4–2–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farmland Protection Program

AGENCY: Commodity Credit Corporation, Department of Agriculture (USDA).

ACTION: Notice of request for proposals.

SUMMARY: Section 2503 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) amended the Food Security Act of 1985 to include the Farmland Protection Program (FPP), providing up to $100 million in financial assistance in fiscal year 2003, for the purposes described in FPP. Congress delegated authority for FPP to the Chief of the Natural Resources Conservation Service (NRCS). NRCS, on behalf of the Commodity Credit Corporation (CCC) and using its authorities, requests proposals from Federally recognized Indian tribes, States, units of local government, and nongovernmental organizations to cooperate in the acquisition of conservation easements on farms and ranches. Eligible land includes farm and ranch land that has prime, unique, or other productive soil, or that contains historical or archaeological resources. These lands must also be subject to a pending offer from eligible entities for the purpose of protecting topsoil by limiting conversion of that land to nonagricultural uses.

DATES: Proposals must be received in the NRCS State Office within May 19, 2003.

ADDRESSES: Written proposals should be sent to the appropriate NRCS State Conservationist, Natural Resources Conservation Service, USDA. The telephone numbers and addresses of the NRCS State Conservationists are in the appendix of this notice.

FOR FURTHER INFORMATION CONTACT: Denise Coleman, NRCS; phone: (202) 720–9476; fax: (202) 720–0745; or e-mail: *denise.coleman@usda.gov;* Subject: FPP or consult the NRCS Web site at: *http://www.nrcs.usda.gov/programs/farmbill/2002/PubNotc.html.*

SUPPLEMENTARY INFORMATION:

Background

Urban sprawl continues to threaten the Nation's farm and ranch land, as social and economic changes over the past three decades have influenced the rate at which land is converted to non-agricultural uses. Population growth, demographic changes, preferences for larger lots, expansion of transportation systems, and economic prosperity have contributed to increases in agricultural land conversion rates.

The amount of farm and ranch land lost to development and the quality of farmland being converted are significant concerns. In most States, prime farmland is being converted at two to four times the rate of other, less-productive agricultural land.

There continues to be an important national interest in the protection of farmland. Land use devoted to agriculture provides an important contribution to environmental quality, protection of the Nation's historical and archaeological resources, and scenic beauty.

Availability of Funding

Effective on the publication date of this notice, NRCS announces the availability of up to $100 million for FPP, until September 30, 2003. The NRCS State Conservationist must receive proposals for participation within 45 days of the date of this notice. State, Tribal, and local government entities and nongovernmental organizations may apply. Selection will be based on the criteria established in this notice, and additional criteria developed by the applicable State Conservationist. Pending offers by an eligible entity must be for acquiring an easement for perpetuity, except where State law prohibits a permanent easement.

Under the Farmland Protection Program, NRCS may provide up to 50 percent of the appraised fair market value of the conservation easement. Landowner donations up to 25 percent of the appraised fair market value of the conservation easement may be considered part of the entity's matching offer. For the entity, two cost-share options are available when providing its matching offer. One option is for the

entity to provide in cash at least 25 percent of the appraised fair market value of the conservation easement. The second option is for the entity to provide at least 50 percent of the purchase price in cash, of the conservation easement. The second option may be preferable to an entity in the case of a large bargain sale by the landowner. If the second option is selected, the NRCS share cannot exceed the entity's contribution.

The following two examples illustrate how these two cost-share options may function. Under Option 1 where 25 percent of the appraised fair market value is selected by the entity, the total appraised fair market value of the conservation easement is $1 million. The landowner chooses to donate 40 percent of the appraised fair market value, resulting in the actual easement purchase price being $600,000. In this case, the cooperating entity contributes $250,000 and NRCS contributes $350,000. Option 2, where 50 percent of the purchase price is selected, would occur when a landowner makes a large charitable donation, where 25% of the appraised fair market value exceeds 50 percent of the purchase price. For example, the total appraised fair market value of the conservation easement is $1 million. The landowner chooses to donate 60 percent of the appraised fair market value, resulting in the actual easement purchase price being $400,000. In this case, NRCS and the cooperating entity both contribute $200,000.

Definitions

For the purposes of this notice, the following definitions apply:

Chief means the Chief of NRCS, USDA.

Conservation plan is the document that—

- Applies to highly erodible cropland;
- Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules; and
- Is approved by the local soil conservation district in consultation with the local committees as established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) and by NRCS for purposes of compliance with 7 CFR part 12.

Eligible entities means Federally recognized Indian tribes, States, units of local government, and nongovernmental organizations that have pending offers for acquiring conservation easements for the purpose of protecting agricultural use.

Eligible land is land on a farm or ranch that has prime, unique, Statewide, or locally important soil, or contains historical or archaeological resources, and is subject to a pending offer by an eligible entity. Eligible land includes cropland, rangeland, grassland, pastureland, and forest land that is an incidental part of an agricultural operation. Other incidental land that would not otherwise be eligible, but when considered as part of a pending offer, may be considered eligible if inclusion of such land would significantly augment protection of the associated eligible farmland. Eligible land must be owned by landowners who certify that they do not exceed the adjusted gross income limitation eligibility requirements set forth in section 1604 of the Farm Security and Rural Investment Act of 2002. As defined by section 1604 of the Farm Security and Rural Investment Act of 2002, a landowner's adjusted gross income cannot exceed $2.5 million for the three tax years immediately preceding the payment disbursement, which occurs when the conservation easement deed is executed.

Fair market value of the conservation easement is ascertained through standard real property appraisal methods. Fair market value is the amount in cash for which in all probability the easement would have sold on the effective date of the appraisal, after a reasonable exposure of time on the open competitive market, given a willing and reasonably knowledgeable seller and a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal.

Field Office Technical Guide (FOTG) contains the official NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Historic and archaeological resources are:

- Listed in the National Register of Historic Places established under the National Historic Preservation Act (NHPA), 16 U.S.C. 470, *et seq.*, or
- Formally determined eligible for listing in the National Register of Historic Places by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and the Keeper of the National Register in accordance with section 106 of the NHPA, or
- Formally listed in the State or Tribal Register of Historic Places of the SHPO that is designated under section 101(b)(1)(B) of the NHPA, or the THPO that is designated under section 101(d)(1)(C) of the NHPA.

Land Evaluation and Site Assessment (LESA) system is a land evaluation site assessment system, approved by the NRCS State Conservationist, used to rank land for farm and ranchland protection purposes. The ranking is based on soil potential for agriculture, as well as social and economic factors, such as location, access to markets, and adjacent land use.

Nongovernmental organization is any organization that:

- Is organized for, and at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986; and
- Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code; and
- Is described in section 509(a)(2) of that Code; or
- Is described in section 509(a)(3) of that Code and is controlled by an organization described in section 509(a)(2) of that Code.

Pending offer is a written bid, contract, commitment, or option extended to a landowner by one or more eligible entities to acquire a conservation easement for the purpose of protecting topsoil by limiting nonagricultural uses of the land.

Prime soils are soils that have the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion, as determined by the Secretary.

Soils that are of Statewide or local importance are soils used to produce food, feed, fiber, forage, or oilseed crops. The appropriate State or local government agency determines statewide or locally important farmland with concurrence from the Secretary.

State conservationist refers to an NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, (Puerto Rico and the Virgin Islands) or the Pacific Basin Area (Guam, American Samoa, and the Commonwealth of the Northern Marianna Islands).

Unique soils are soils other than prime soils that are used for the production of specific high-value food and fiber crops, as determined by the Secretary. They have a special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in section 1540(c)(1) of the Farmland Protection Policy Act (Public Law 97–98) (7 U.S.C. 4201, *et seq.*) and 7 CFR part 658.

Overview of the Farmland Protection Program

The CCC, acting through NRCS, will accept proposals submitted to the NRCS State Offices from eligible entities, including Federally recognized Indian tribes, States, units of local government, and nongovernmental organizations that have pending offers for acquiring conservation easements for the purposes of protecting topsoil by limiting nonagricultural use of the land and/or protecting historical and archaeological sites on farm and ranch lands. Reference information regarding the FPP can be found in the "Catalog of Federal Domestic Assistance #10.913."

All proposals must be submitted to the appropriate NRCS State Conservationist within 45 days from the date of this notice. The NRCS State Conservationist may consult with the State Technical Committee (established pursuant to 16 U.S.C. 3861) to evaluate the merits of the proposals.

The NRCS State Conservationist will review and evaluate the proposals based on State, Tribal or local government or nongovernmental organization eligibility, land eligibility, and the extent to which the proposal adheres to the objectives outlined in the NRCS State FPP plan. Proposals must provide adequate proof of a pending offer for the subject land. Adequate proof includes a written bid, contract, commitment, or option extended to a landowner. Pending offers based upon appraisals completed and signed by State-certified or licensed appraisers will receive higher priority for FPP funding. Proposals submitted directly to the NRCS National Office will not be accepted, and will be returned to the submitting entity.

Development of the State Farmland Protection Program Plan

Funding awards to participants will be based on National and State criteria. FPP will be available in those States for which an NRCS State Office submits a State FPP Plan to the NRCS National Office. At a minimum, the State FPP Plan contains the following:

- Acreage of prime and important farm and ranch land estimated to be protected;
- Acreage of prime and important farm and ranch land converted to nonagricultural uses;
- Number or acreage of historic and archaeological sites estimated to be protected on farm or ranch lands;
- Degree of development pressure;
- Percentage of funding guaranteed to be provided by cooperating entities;
- History of cooperating entities' commitments to conservation planning and implementing conservation practices;
- Participating entities' histories of acquiring, managing, holding, and enforcing easements (including average annual farmland protection expenditures over the past five years, accomplishments, and staff);
- Amount of FPP funding requested; and
- Participating entities' estimated unfunded backlog of conservation easements on prime, unique, and important farmland acres.

At the State level, each State Conservationist will develop a State FPP Plan to submit to NRCS National Office. This State FPP Plan may be completed in consultation with the State Technical Committee, and it will include ranking considerations used by the State, including the above-mentioned NRCS National criteria and other NRCS State ranking criteria. The following examples of NRCS State ranking criteria may be used to evaluate and rank specific parcels, including but not limited to proximity to protected clusters, viability of the agricultural operations, parcel size, type of land use, maximum cost expended per acre, an entity's commitment to assuring farm and ranch succession and transfer to viable farming operations, and percentage of funding guaranteed to be provided by cooperating entities. State ranking criteria will be developed on a State-by-State basis and will be available to interested participating entities before proposal submission. Interested entities should contact their State Conservationist for a complete listing of applicable National and State ranking criteria.

The National Office will allocate funds to States based on the information provided in the State FPP Plan. Within 30 days after the Request for Proposal deadline has closed, the NRCS State Conservationist may make awards to eligible entities based on the funds provided. Once selected, eligible entities must work with the appropriate NRCS State Conservationist to finalize and sign cooperative agreements, incorporating all FPP requirements.

The conveyance document (*i.e.*, conservation easement deed or conservation easement deed template) used by the eligible entity must be reviewed and approved by the USDA Office of General Counsel before being recorded. Since title to the easement is held by an entity other than the United States, the conveyance document must contain a clause that all rights conveyed by the landowner under the document will become vested in the United States should the Federally recognized Indian tribe, State, local unit of government, or nongovernmental organization (*i.e.*, the participant(s) abandon, fail to enforce, or attempt to terminate the conservation easement). As a condition of participation, all highly erodible land in the easement shall be included in a conservation plan. The conservation plan will be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12, unless otherwise determined by the State Conservationist, in partnership with the eligible entity. The conservation plan will be implemented in a timely manner, as determined by the State Conservationist, following FPP enrollment.

Organization and Land Eligibility Selection Criteria

To be eligible, a Federally recognized Indian tribe, State, unit of local government, or nongovernmental organization must have a farmland protection program that purchases conservation easements for the purpose of protecting prime, unique, or other productive soil or historical and archaeological resources by limiting conversion of farm or ranch land to nonagricultural uses.

Criteria for Proposal Evaluation

Proposals must contain the information set forth below in order to receive consideration for assistance:

1. *Organization and programs:* Eligible entities must describe their farmland protection program and their record of acquiring and holding permanent agricultural land protection easements or other interests. Information provided in the proposal should:

(a) Demonstrate a commitment to long-term conservation of agricultural lands through the use of voluntary easements or other interests in land that

protect farmland from conversion to nonagricultural uses;

(b) Demonstrate the capability to acquire, manage, and enforce easements;

(c) Demonstrate the number and ability of staff that will be dedicated to monitoring easement stewardship;

(d) Demonstrate the availability of funds. The purchase price may not exceed the appraised fair market value of the conservation easement. If a landowner donation is included in the entity's match, the entity must demonstrate the availability of 25 percent of the appraised fair market value or 50 percent of the purchase price; and

(e) Include pending offer(s). A pending offer is a written bid, contract, commitment, or option extended to a landowner by an eligible entity to acquire a conservation easement that limits nonagricultural uses of the land before the legal title to these rights has been conveyed. The primary purpose of the pending offers must be for protecting topsoil by limiting conversion to nonagricultural uses. Pending offers having appraisals completed and signed by State-certified general appraisers will receive higher funding priority by the NRCS State Conservationist. Appraisals completed and signed by a State-certified or licensed general appraiser must contain a disclosure statement by the appraiser. The disclosure statement should include at a minimum the following: The appraiser accepts full responsibility for the appraisal, the enclosed statements are true and unbiased, the value of the land is limited by stated assumptions only, the appraiser has no interest in the land, and the appraisal conforms to the Uniform Standards of Professional Appraisal Practice, the Uniform Appraisal Standards for Federal Land Acquisitions, or another land valuation system used by the State, where the land transaction will occur, in purchasing real estate.

2. *Lands to be acquired:* The proposal must describe the lands to be acquired with assistance from FPP. Specifically, the proposal must include the following:

(a) A map showing the proposed protected area(s);

(b) The amount and source of funds currently available for each easement to be acquired;

(c) The criteria used to set the acquisition priorities; and

(d) A detailed description of the land parcels, including:

(i) The priority of the offers;

(ii) The names of the landowners;

(iii) The address and location maps of the parcels;

(iv) The size of the parcels, in acres;

(v) The acres of the prime, unique, or State-wide and locally important soil in the parcels;

(vi) The number or acreage of historical or archaeological sites, if any, proposed to be protected, and a brief description of the sites' significance;

(vii) A map showing the location of other protected parcels in relation to the land parcels proposed to be protected;

(viii) Estimated cost of the easement(s): The consideration to be paid to any landowners for the conveyance of any lands or interests in lands cannot be more than the fair market value of the land or interests conveyed, as determined by an appraiser licensed in the State.

(ix) An example of the cooperating entity's proposed easement deed used to prevent agricultural land conversion;

(x) Indication of the accessibility to markets;

(xi) Indication of an existing agricultural infrastructure, on- and off-farm, and other support system(s);

(xii) Statement regarding the level of threat from urban development;

(xiii) A description of the eligible entity's farmland protection strategy and how the FPP proposal submitted by the entity corresponds to the entity's strategic plan;

(xiv) Other factors from an evaluation and assessment system used to set priorities. If the eligible entity used the LESA system or a similar land evaluation system as its tool, include the scores for the land parcels slated for acquisition;

(xv) Other partners involved in acquisition of the easement and their estimated financial contribution; and

(xvi) Other information that may be relevant as determined by the NRCS State Conservationist.

Ranking Considerations

When the NRCS State Office has assessed organization eligibility and the merits of each proposal, the NRCS State Conservationist will determine whether the farm or ranch land is eligible for financial assistance from FPP. NRCS will use the National, as well as State criteria, which may include a LESA system or other similar system, to evaluate the land and rank the parcels.

NRCS will only consider enrolling eligible land in the program that is of sufficient size and has boundaries that allow for efficient management of the area. The land must have access to markets for its products and an infrastructure appropriate for agricultural production. NRCS will not enroll land in FPP that is owned in fee title by an agency of the United States, is publicly-owned land, or land that is already subject to an easement or deed restriction that limits agricultural viability. NRCS will not enroll otherwise eligible lands if NRCS determines that the protection provided by the FPP would not be effective because of onsite or offsite conditions. For example, a proposal may nominate an agricultural parcel surrounded by a developed area or a parcel that contains hazardous material, or a parcel that lies within a local government's long-term plan earmarking the parcel for future development. The parcel's isolation from other farms and the local government's position, expressed in either its land use plan or zoning, may cause NRCS to determine that the use of FPP funds is not appropriate.

NRCS will place a priority on acquiring easements that provide permanent protection from conversion to nonagricultural use. NRCS will place a higher priority on easements acquired by entities that have extensive experience in managing and enforcing easements. NRCS may place a higher priority on lands and locations that help create a large tract of protected area for viable agricultural production and that are under increasing urban development pressure. NRCS may place a higher priority on lands and locations that correlate with the efforts of Federal, State, Tribal, local, or nongovernmental organizations' efforts that have complementary farmland protection objectives (*e.g.*, open space or watershed and wildlife habitat protection). NRCS may place a higher priority on lands that provide special social, economic, and environmental benefits to the region. A higher priority may be given to certain geographic regions where the enrollment of particular lands may help achieve National, State, and regional goals and objectives, or enhance existing government or private conservation projects.

Cooperative Agreements

The CCC, through NRCS, enters into a cooperative agreement with a selected eligible entity to document participation in FPP. The cooperative agreement will address, among other subjects—

(1) The easement type, terms and conditions;

(2) The management and enforcement of the rights acquired;

(3) The role and responsibilities of NRCS and the cooperating entity;

(4) The responsibilities of the easement manager on lands acquired with FPP assistance; and

(5) Other requirements deemed necessary by the CCC, acting through NRCS, to protect the interests of the United States.

The cooperative agreement will also include an attachment listing the pending offers accepted in FPP, landowners' names, addresses, location map(s), and other relevant information. An example of a cooperative agreement may be obtained from the NRCS State Conservationist.

Signed in Washington, DC, on March 17, 2003.

Bruce I. Knight,

Vice President, Commodity Credit Corporation, and Chief, Natural Resources Conservation Service.

NRCS State Conservationists

Alabama: Robert N. Jones, 3381 Skyway Drive, Post Office Box 311, Auburn, AL 36830; phone: (334) 887–4500; fax: (334) 887–4552; *robert.jones@al.usda.gov.*

Alaska: Shirley Gammon, Atrium Building, Suite 100, 800 West Evergreen, Atrium Building, Suite 100, Palmer, AK 99645–6539; phone: (907) 761–7760; fax: (907) 761–7790; *sgammon@ak.nrcs.usda.gov.*

Arizona: Michael Somerville, Suite 800, 3003 North Central Avenue, Phoenix, AZ 85012–2945; phone: (602) 280–8810; fax: (602) 280–8809 or 8805; *msomervi@az.nrcs.usda.gov.*

Arkansas: Kalven L. Trice, Federal Building, Room 3416, 700 West Capitol Avenue, Little Rock, AR 72201–3228; phone: (501) 301–3100; fax: (501) 301–3194; *kalven.trice@ar.usda.gov.*

California: Charles W. Bell, Suite 4164, 430 G Street, Davis, California 95616–4164; phone: (530) 792–5600; fax: (530) 792–5790; *charles.bell@ca.usda.gov.*

Colorado: James Allen Green, Room E200C, 655 Parfet Street, Lakewood, CO 80215–5521; phone: (720) 544–2810; fax: (720) 544–2965; *james.green@co.usda.gov.*

Connecticut: Margo L. Wallace, 344 Merrow Road, Tolland, Connecticut 06084; phone: (860) 871–4011; fax: (860) 871–4054; *margo.wallace@ct.usda.gov.*

Delaware: Elesa K. Cottrell, Suite 101, 1203 College Park Drive, Suite 101, Dover, DE19904–8713; phone: (302) 678–4160; fax: (302) 678–0843; *elesa.cottrell@de.usda.gov.*

Florida: T. Niles Glasgow, 2614 N.W. 43rd Street, Gainesville, FL 32606–6611, or Post Office Box 141510, Gainesville, FL 32606–6611; phone: (352) 338–9500; fax: (352) 338–9574; *niles.glasgow@fl.usda.gov.*

Georgia: Leonard Jordan, Federal Building, Stop 200, 355 East Hancock Avenue, Athens, GA 30601–2769; phone: (706) 546–2272; fax: (706) 546–2120; *leonard.jordan@ga.usda.gov.*

Guam: Joan B. Perry, Director, Pacific Basin Area, Suite 301, FHB Building, 400 Route 8, Maite, G U 96927; phone: (671) 472–7490; fax: (671) 472–7288; *joan.perry@pb.usda.gov.*

Hawaii: Lawrence Yamamoto, Acting, Room 4–118, 300 Ala Moana Boulevard, Post Office Box 50004, Honolulu, HI 96850–0002; phone: (808) 541–2600; fax: (808) 541–1335; *lyamamoto@hi.nrcs.usda.gov.*

Idaho: Richard W. Sims, Suite C, 9173 West Barnes Drive, Boise, ID 83709; phone: (208) 378–5700; fax: (208) 378–5735; *richard.sims@id.usda.gov.*

Illinois: William J. Gradle, 2118 W. Park Court, Champaign, IL 61821; phone: (217) 353–6600; fax: (217) 353–6676; *bill.gradle@il.usda.gov.*

Indiana: Jane E. Hardisty, 6013 Lakeside Boulevard, Indianapolis, IN 46278–2933; phone: (317) 290–3200; fax: (317) 290–3225; *jane.hardisty@in.usda.gov.*

Iowa: Leroy Brown, 693 Federal Building, Suite 693, 210 Walnut Street, Des Moines, IA 50309–2180; phone: (515) 284–6655; fax: (515) 284–4394; *leroy.brown@ia.usda.gov.*

Kansas: Harold Klaege, 760 South Broadway, Salina, KS 67401–4642; phone: (785) 823–4565; fax: (785) 823–4540; *harold.klaege@ks.usda.gov.*

Kentucky: David G. Sawyer, Suite 110, 771 Corporate Drive, Lexington, KY 40503–5479; phone: (859) 224–7350; fax: (859) 224–7399; *dsawyer@ky.usda.gov.*

Louisiana: Donald W. Gohmert, 3737 Government Street, Alexandria, LA 71302; phone: (318) 473–7751; fax: (318) 473–7626; *don.gohmert@la.usda.gov.*

Maine: Russell A. Collett, Suite #3, 967 Illinois Avenue, Bangor, ME 04401; phone: (207) 990–9100, ext. #3; fax: (207) 990–9599; *russ.collett@me.usda.gov.*

Maryland: David P. Doss, John Hanson Business Center, Suite 301, 339 Busch's Frontage Road, Annapolis, MD 21401–5534; phone: (410) 757–0861; fax: (410) 757–0687; *david.doss@md.usda.gov.*

Massachusetts: Cecil B. Currin, 451 West Street, Amherst, MA 01002–2995; phone: (413) 253–4351; fax: (413) 253–4375; *cecil.currin@ma.usda.gov.*

Michigan: Ronald C. Williams, Suite 250, 3001 Coolidge Road, East Lansing, MI 48823–6350; phone: (517) 324–5270; fax: (517) 324–5171; *ron.williams@mi.usda.gov.*

Minnesota: William Hunt, Suite 600, 375 Jackson Street, St. Paul, MN 55101–1854; phone: (651) 602–7900; fax: (651) 602–7913 or 7914; *william.hunt@mn.usda.gov.*

Mississippi: Homer L. Wilkes, Suite 1321, Federal Building, 100 West Capitol Street, Jackson, MS 39269–1399; phone: (601) 965–5205; fax: (601) 965–4940; *hwilkes@ms.nrcs.usda.gov.*

Missouri: Roger A. Hansen, Parkade Center, Suite 250, 601 Business Loop 70, West Columbia, MO 65203–2546; phone: (573) 876–0901; fax: (573) 876–0913; *roger.hansen@mo.usda.gov.*

Montana: David White, Federal Building, Room 443, 10 East Babcock Street, Bozeman, MT 59715–4704; phone: (406) 587–6811; fax: (406) 587–6761, *dwhite@mt.nrcs.usda.gov.*

Nebraska: Stephen K. Chick, Federal Building, Room 152, 100 Centennial Mall, North Lincoln, NE 68508–3866 phone: (732) 246–1171; fax: (732) 246–2358; *steve.chick@ne.usda.gov.*

Nevada: Richard Vigil, Acting, Building F, Suite 201, 5301 Longley Lane, Reno, NV 89511–1805; phone: (775) 784–5863; fax: (775) 784–5939; *rvigil@nv.usda.gov.*

New Hampshire: Richard D. Babcock, Federal Building, 2 Madbury Road, Durham, NH 03824–2043; phone: (603) 868–7581; fax: (603) 868–5301; *rbabcock@nh.nrcs.usda.gov.*

New Jersey: Anthony J. Kramer, 1370 Hamilton Street, Somerset, NJ 08873–3157; phone: (732) 246–1171; fax: (732) 246–2358; *tdrewes@nj.nrcs.usda.gov.*

New Mexico: Rosendo Trevino III, Suite 305, 6200 Jefferson Street, N.E., Albuquerque, NM 87109–3734; phone: (505) 761–4400; fax: (505) 761–4462; *rosendo.trevino@nm.usda.gov.*

New York: Joseph R. DelVecchio, Suite 354, 441 South Salina Street, Syracuse, NY 13202–2450; phone: (315) 477–6504; fax: (315) 477–6550; *joseph.delvecchio@ny.usda.gov.*

North Carolina: Mary K. Combs, Suite 205, 4405 Bland Road, Raleigh, NC 27609–6293; phone: (919) 873–2101; fax: (919) 873–2156; *mary.combs@nc.usda.gov.*

North Dakota: Thomas E. Jewett, Room 278, 220 E. Rosser Avenue, Post Office Box 1458, Bismarck, ND 58502–1458; phone: (701) 530–2000; fax: (701) 530–2110; *tom.jewett@nd.usda.gov.*

Ohio: J. Kevin Brown, Room 522, 200 North High Street, Columbus, OH 43215–2478; phone: (614) 255–2500; fax: (614) 255–2548; *kevin.brown@oh.usda.gov.*

Oklahoma: M. Darrel Dominick, USDA Agri-Center Building, Suite 203, 100 USDA, Stillwater, Oklahoma 74074–2655; phone: (405) 742–1204; fax: (405) 742–1126; *darrel.dominick@ok.usda.gov.*

Oregon: Robert Graham, Suite 1300, 101 SW Main Street, Portland, OR 97204–3221; phone: (503) 414–3200; fax: (503) 414–3103; *bob.graham@or.usda.gov.*

Pennsylvania: Robin E. Heard, Suite 340, 1 Credit Union Place, Harrisburg, PA 17110–2993; phone: (717) 237–2202; fax: (717) 237–2238; *robin.heard@pa.usda.gov.*

Puerto Rico: Juan A. Martinez, Director, Caribbean Area, IBM Building, Suite 604, 654 Munoz Rivera Avenue, Hato Rey, PR 00918–4123; phone: (787) 766–5206; fax: (787) 766–5987; *juan.martinez@pr.usda.gov.*

Rhode Island: Judith Doerner, Suite 46, 60 Quaker Lane, Warwick, RI 02886–0111; phone: (401) 828–1300; fax: (401) 828–0433; *judith.doerner@ri.usda.gov.*

South Carolina: Walter W. Douglas, Strom Thurmond Federal Building, Room 950, 1835 Assembly Street, Columbia, SC 29201–2489; phone: (803) 253–3935; fax: (803) 253–3670; *walt.douglas@sc.usda.gov.*

South Dakota: Janet L. Oertly, Federal Building, Room 203, 200 Fourth Street, SW., Huron, SD 57350–2475; phone: (605) 352–1200; fax: (605) 352–1288; *janet.oertly@sd.nrcs.usda.gov.*

Tennessee: James W. Ford, 675 U.S. Courthouse, 801 Broadway, Nashville, TN 37203–3878; phone: (615) 277–2531; fax: (615) 277–2578; *jford@tn.nrcs.usda.gov.*

Texas: Lawrence Butler, W.R. Poage Building, 101 South Main Street, Temple, TX 76501–7682; phone: (254) 742–9800; fax: (254) 742–9819; *larry.butler@tx.usda.gov.*

Utah: Phillip J. Nelson, W.F. Bennett Federal Building, Room 4402, 125 South State Street, Salt Lake City, UT 84138, Post Office Box 11350, Salt Lake City, UT 84147–0350, phone: (801) 524–4550, fax: (801) 524–4403, *skip.nelson@ut.usda.gov.*

Vermont: Francis M. Keeler, 69 Union Street, Winooski, VT 05404–1999; phone: (802) 951–6795; fax: (802) 951–6327; *fran.keeler@vt.usda.gov.*

Virginia: M. Denise Doetzer, Culpeper Building, Suite 209, 1606 Santa Rosa Road, Richmond, VA 23229–5014; phone: (804) 287–1691; fax: (804) 287–1737; *denise.doetzer@va.usda.gov.*

Washington: Raymond L. "Gus" Hughbanks, Rock Pointe Tower II, Suite 450, W. 316 Boone Avenue, Spokane, WA 99201–2348; phone: (509) 323–2900; fax: (509) 323–2909; *raymond.hughbanks@wa.usda.gov.*

West Virginia: Lillian Woods, Room 301, 75 High Street, Morgantown, WV 26505; phone: (304) 284–7540; fax: (304) 284–4839; *lillian.woods@wv.usda.gov.*

Wisconsin: Patricia S. Leavenworth, Suite 200, 6515 Watts Road, Madison, WI 53719–2726; phone: (608) 276–8732; fax: (608) 276–5890; *pat.leavenworth@wi.usda.gov.*

Wyoming: Lincoln E. Burton, Federal Building, Room 3124, 100 East B Street, Casper, WY 82601–1911; phone: (307) 261–6453; fax: (307) 261–6490; *ed.burton@wy.usda.gov.*

[FR Doc. 03–8029 Filed 4–2–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Province Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Williamette Province Advisory Committee (PAC) will meet in Salem, Oregon. The purpose of the meeting is to discuss issues pertainent to the implementation of the Northwest Forest Plan and to provide advice to federal land managers in the Province. The specific topics to be covered at the meeting include background information of he Northwest Forest Plan for new members and updated on the on-going revisions to the NFP.

DATES: The meeting will be held April, 17, 2003.

ADDRESSES: The meeting will be held at the Salem District Office of the Bureau of Land Management, 1717 Farby Road, Salem, Oregon. Send written comments to Neal Forrester, Willamette Province Advisory Committee, c/o Willamette National Forest, P.O. Box 106078, Eugene, Oregon 97440, (541) 225–6436 or electronically to *nforrester@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Neal Forrester, William National Forest, (541) 225–6436.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to PAC members. However, persons who wish to bring matters to the attention of the Community may file written statements with the PAC staff before or after the meeting. A public forum will be provided and individuals will have the opportunity to address the PAC. Oral comments will be limited to three minutes.

Dated: March 27, 2003.

Dallas J. Emich,

Forest Supervisor, Willamette National Forest.

[FR Doc. 03–8061 Filed 4–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Lingle-Ft. Laramie Water Quality Project, Goshen County, WY

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lingle-Ft. Laramie Water Quality Project, Goshen County, Wyoming.

FOR FURTHER INFORMATION CONTACT: Lincoln E. Burton, State Conservationist, Natural Resources Conservation Service, Room 3124, Federal Building, 100 East B Street, Casper, Wyoming 82601, telephone (307) 261–6453.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the human environment. As a result of these findings, Lincoln E. Burton, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes have been changed to include Wildlife Habitat Improvement. Project purposes are: (1) *Agricultural Water Management*—the on-site treatment of agricultural related pollutants for off-site benefits. The planned works of improvement include accelerated technical assistance for land treatment, accelerated financial assistance to treat 8,300 acres to reduce the amount of nitrogen available to be leached to the groundwater, 25 animal waste management facilities, and 35 abandoned wells will be decommissioned. (2) *Wildlife Habitat Improvement*—on-site treatment will increase wildlife habitat units by about 1,100 units.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency (EPA) and to various federal, state, and local agencies, and interested parties. A limited number of copies of the FONSI is available to fill

single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Lincoln E. Burton.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**. The Environmental Assessment will then be signed and funding authorization requested. All plans will be written within five years, and implementation will continue for up to ten years.

Dated: March 21, 2003.

Lincoln E. Burton,

State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials.)

Finding of No Significant Impact for Lingle-Ft. Laramie Water Quality Project; Goshen County, Wyoming

Introduction

The Lingle-Ft. Laramie Water Quality Project is a federally assisted action authorized for planning under Pub. L. 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, state, and federal agencies, including section 7(a)(2) of the Endangered Species Act of 1973, as amended (50 CFR 402.13) consultation, as well as with interested organization and individuals. Data developed during the assessment is available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, Room 3124 Federal Building, 100 East B Street, Casper, Wyoming 82601–1969.

Recommended Action—Alternative 2: Accelerated Land Treatment

Proposed is the development of about 48 conservation plans that will provide for land treatment and wildlife habitat improvement measures to be applied on farms for the reduction of the agricultural contribution to nitrate contamination of the groundwater and habitat improvement. The proposed plan will treat 8,300 acres with increased irrigation efficiency to reduce the amount of nitrogen available to be leached to the groundwater. Twenty-five animal waste management facilities and application practices will be installed in the watershed. Thirty-five abandoned wells will be decommissioned. Wildlife habitat units will be increased by 1,100 units.

Costs were updated from 2000 Draft EA to 2003 costs, due to a change in discount rates. Federal cost share will be at 65 percent for a total financial assistance of $3,534,020. Average annual benefits equals $1,017,170, with average annual costs equal to $801,333, for a benefit: cost ratio of 1.27:1. FT 2003 Water Resources discount rate at 5.785 percent.

Effect of Recommended Action

The recommended action will improve groundwater quality, improve human health and safety, improve irrigation efficiency, reduce irrigation labor, and increase wildlife habitat. Nitrates available for leaching will be reduced through installation of fertilizer injection systems, nutrient management, and irrigation water management.

The proposed action will reduce the amount of nitrogen available to be leached. It is estimated at full implementation, there will be a 33 percent reduction of nitrate leached below the root zone, which equals about 81 pounds of nitrate per acre each year over the entire project area at a 60 percent participation rate. Nitrogen reduction is considered not to be a controversial issue.

The proposed action will install 25 animal waste management systems to collect and store run-off from feed lots until it can be safely applied to the agricultural fields.

The proposed action will improve on farm irrigation efficiency, which will increase the water available to meet crop consumptive use.

The proposed action will increase the number of wildlife habitat units by about 1,100 units as treatments are installed.

A literature review and search of the State Historic Preservation Office (SHPO) records were conducted for the project area. The effect of project installation will be determined for each individual project contract according to Natural Resource Conservation Service, Northern Plains Region procedures.

It is likely that more sites will be discovered during the planning and installation of the accelerated land treatment practices. Since project practices will be installed on a "voluntary participation" basis, location of ground disturbances is presently unknown. Most surface disturbances below the plow zone will occur as a result of installing ag waste facilities, pipelines, land leveling, grading, and shaping. NRCS cultural resources procedures, as described in the NRCS Northern Plains Region procedures, will be followed when ground disturbances are planned.

Compliance with National Environmental Policy Act (NEPA) protection rules for each farm will follow the procedures in the NRCS General Manual, Section 190 and 420, respectively.

The proposed action will have little or no effect on wetlands. With on farm improved irrigation efficiencies some reduction in tail water run-off will occur, but with the sandy soils in the watershed most of the run-off has gone to groundwater and not surface water. Wetland restoration, creation and enhancement will increase a total of about 24 acres as operator's contracts are developed. A 2 acre-foot depletion will be offset by a debit from the National Fish and Wildlife Foundation account.

No wilderness areas are in the watershed.

There is potential habitat for the threatened Ute ladies' tresses (Spiranthes diluvialis) and Preble's meadow jumping mouse (Zapus hudsonius preblei), but none have been identified within the watershed, the determination of "may affect, but not likely to adversely affect" for both species, was arrived at with section 7(a)(2) of the Endangered Species Act of 1973, as amended (50 CFR 402.13) consultation. The habitat will not be adversely impacted. There are no known resident threatened or endangered animals within the watershed area.

The proposed action will increase vegetative cover suitable for wildlife as a result of the application of conservation practices that include vegetative components. Wildlife habitat units will increase by about 1,100 units. Fish habitat will not be effected.

The proposed action will not disproportionately affect any protected groups.

No significant adverse environmental impacts will result from installation of the proposed action.

Alternatives

Based on the above summary of effects (as discussed in the EA), I have determined the alternative that I have selected, will not have significant affect on the human environment. For that reason, no environmental impact statement needs to be prepared.

The planned action is the most practical means of reducing the agricultural contribution of nitrate to the groundwater. Because no significant adverse environmental impacts will

result from the installation of the on farm conservation measures, no other alternatives, other than the no action alternative, were considered.

Consultation—Public Participation

On June 17, 1996, the North Platte Valley Conservation District, and the Lingle-Fort Laramie Conservation District Boards of Supervisors, filed an application for Pub. L. 83–566 assistance in developing a plan for the Goshen County, Lingle-Ft. Laramie Water Quality Project. The State of Wyoming Governor's Office referred the application to the Wyoming Board of Agriculture for ranking and approval. On September 18, 2000, the board gave the project a ranking of high and approved the request to be submitted to the NRCS. Acceptance was acknowledged by the State Conservationist, and appropriate agencies and Sponsors were notified. The town of Torrington and the Goshen County Commissioners were later added to the list of Sponsors.

The Sponsors held two interagency and two public meetings to determine the extent of the problem. The Sponsors requested that NRCS analyze alternative solutions and prepare a preliminary investigation report. In September 2000, a preliminary investigation report was completed for the Lingle-Ft. Laramie Water Quality Project.

Numerous newspaper articles, newsletters, and radio public service announcements have been aired in order to provide public information. Public meetings, with the news media in attendance, were held to gain public input and inform the public.

On October 24, 1996, an interagency meeting was held to determine concerns of the other agencies.

June 14, 2000, a public scoping meeting was held to determine public concerns and opinions. A public response analysis was completed on the responses.

On October 18, 2000, another public meeting was held to review the alternatives developed and obtain further public input.

On June 11, 2001, the Sponsors met to review the Draft Plan-EA.

On July 25, 2002, the Sponsors held a public meeting to begin the Public/Interagency review of the Draft Plan-EA. Written comments were requested from agencies, organizations, and groups identified in the planning process as interested. The comments were reviewed and responses prepared on each comment. The comments and responses are contained in the Final Plan Environmental Assessment.

Written comments were requested from 70 agencies, organizations, and groups identified in the planning process.

Agency consultation and public participation to date have shown no unresolved conflicts with the implementation of the selected plan. Section 7(a)(2) of the Endangered Species Act of 1973, as amended (50 CFR 402.13) consultation has been completed and incorporated.

Conclusion

The Environmental Assessment summarized above indicates that this federal action will not cause significant local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Lingle-Ft. Laramie Water Quality Project Plan is not required.

Additional Information or questions can be directed to: George W. Cleek IV, Assistant State Conservationist, USDA–NRCS, 100 East B Street, Room 3124, Casper, WY 82601–1969, Phone: 307–261–6457, e-mail: *george.cleek@wy.usda.gov.*

Dated: March 21, 2003.

Lincoln E. Burton,

State Conservationist.

[FR Doc. 03–8030 Filed 4–2–03; 8:45 am]

BILLING CODE 3410–16–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: April 8, 2003; 2 p.m.–3 p.m.

PLACE: Broadcasting Board of Governors, 330 Independence Avenue, SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: March 31, 2003.

Carol Booker,

Legal Counsel.

[FR Doc. 03–8188 Filed 4–1–03; 9:39 am]

BILLING CODE 8230–01–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting; Public Hearing: Kaltech Industries Group, Inc. Incident

AGENCY: Chemical Safety and Hazard Investigation Board (CSB).

ACTION: Notice announcing Sunshine Act public hearing and requesting public comment and participation.

SUMMARY: The CSB will hold a public hearing to examine findings and preliminary conclusions resulting from its investigation into a building fire explosion at Kaltech Industries Group, Inc., an architectural sign manufacturer located at 123 West 19th Street, New York City. The explosion that occurred April 26, 2002, injured 31 people, including 14 persons who were not employed by Kaltech. This notice provides information regarding the CSB investigation into the chemical incident, a request for comments on specific issues raised by the investigation, and the date, time, location and agenda for the public hearing. At the end of the staff and panel presentations, the Board has also allocated time to take comments from the public.

DATES: The Public Hearing will be held on Wednesday April 16, 2003, from 9 a.m. to 1 p.m. at the Fashion Institute of Technology (SUNY), 7th Avenue at 27th Street, New York City, New York.

Pre-Registration: The event is open to the public and there is no fee for attendance. However, attendees are strongly encouraged to pre-register, to ensure adequate seating arrangements. If you would like to provide oral comments to the Board, please state your intention to do so when pre-registering. Time for public comments is limited. Speakers will be limited to approximately 4 minutes. Those unable to present oral testimony because of time restrictions are urged to file written comments. To pre-register, please e-mail your name and affiliation by April 11, 2003, to *Don.Holmstrom@csb.gov.*

Written Comments: The public is encouraged to submit written comments to the Chemical Safety Board. Individuals, organizations, businesses, or local, state or federal government agencies may submit written comments. Such comments must be filed on or before May 5, 2003. For further instructions on submitting comments, please see the "Form and Availability of Comments" section below.

ADDRESSES: Written comments and requests to provide oral comments at the Public Hearing should be submitted to: Mr. Don Holmstrom, U.S. Chemical Safety and Hazard Investigation Board, 2175 K Street, NW., Washington, DC 20037. Alternatively, they may be e-mailed to to *Don.Holmstrom@csb.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Selk, Office of Investigations and Safety Programs, 202.261.7622.

SUPPLEMENTARY INFORMATION:

A. Introduction
B. Background
C. Key Questions
D. Request for comments
E. Agenda
F. Sunshine Act Notice

A. Introduction

The CSB is an independent federal agency established in 1998 with the mission to protect workers, the public, and the environment by investigating and preventing chemical accidents. The CSB determines the root causes of these accidents and makes safety recommendations to government agencies, companies, and other organizations.

The CSB is nearing completion of its investigation into an incident on April 26, 2002, involving an explosion and fire that occurred in a 10-story mixed use building in the Chelsea district in Manhattan, New York City. A public hearing will be held on April 16, 2003, at 9 a.m., at the Fashion Institute of Technology (SUNY), 7th Avenue at 27th Street, New York City, New York. CSB staff will present preliminary findings and conclusions from this investigation to the Board. Major issues involved in this investigation include hazard communication, hazardous waste handling, and municipal oversight. The hearing provides a forum for interested parties to provide input prior to CSB's formulation of final recommendations and issuance of a report. Interested parties will provide presentations to the Board, and at the conclusion of these formal presentations, there will be an opportunity for public comment.

B. Background

On April 26, 2002, an explosion and fire occurred in a 10-story mixed-use commercial building in the Chelsea district of Manhattan, New York City. The structure was built in 1902. It was occupied by a variety of tenants, including commercial, professional service, and manufacturing firms. At the time of the incident, Kaltech Industries Group Inc. occupied the basement of the building and portions of the mezzanine and first floor. Kaltech had leased space in the building for about ten years. The incident originated in the basement space leased by Kaltech Industries Group Inc.

Kaltech typically accumulated waste chemicals onsite and arranged for them to be picked up periodically by a hazardous waste disposal contractor. The day of the incident, Kaltech employees had just finished consolidating hazardous waste from smaller containers into two larger drums, when a violent chemical reaction started to take place in one of the 55-gallon drums. An explosion occurred seconds later. The highly confined environment of the basement offered limited pathways for the explosion to vent. The blast was partially relieved via the building's center hall stairway and the freight elevator. The explosion injured 31 people, including 14 persons who were not employed by Kaltech. Following the explosion, the New York City Building Department issued an order to vacate the building pending a structural evaluation. A few days later the structure was determined to be sound and tenants were permitted to return. Operations at Kaltech, however, remained suspended. The Fire Marshall retained control of Kaltech space while a hazardous environment remediation contractor analyzed and removed the chemicals and decontaminated the area.

Because of the serious nature of this incident and the fact that a chemical reaction was probably involved, the U.S. Chemical Safety & Hazard Investigation Board (CSB) initiated an investigation to determine the root and contributing causes of the incident and to issue recommendations to help prevent similar occurrences.

At the Public Hearing on April 16th, the CSB staff will present preliminary findings regarding causes of this incident. No factual analyses, conclusions or findings should be considered final.

After the Hearing the Board will allow time for public comment. This comment period will close on May 5, 2003. Following the conclusion of the public comment period, the CSB will review and carefully consider all comments. The staff will then submit a final report on this incident for Board consideration, including specific recommendations targeted to prevent a similar accident like this from occurring elsewhere.

The Board will carefully review the report from the staff and will vote either in open public session or in a notation memorandum to accept the report, its findings and recommendations. When a report and its recommendations are approved, this will begin CSB's process for disseminating the findings and recommendations of the report not only to the recipients of recommendations but also to other public and industry sectors. The CSB believes that this process will ultimately lead to the adoption of recommendations and the growing body of safety knowledge in the industry, which, in turn, should save future lives and property.

C. Key Questions

Questions for Panel Presenters

(1) How does the New York City Fire Prevention Code function to control the handling of incompatible materials such as nitric acid and flammable liquids? What are the requirements of the Code's permitting provisions, and are they sufficient to prevent the mixing of incompatible materials?

(2) In light of the Kaltech incident are there changes to the New York City Fire Prevention Code that would enhance the safe handling of hazardous materials such as nitric acid? If so, what areas should be addressed? In responding, consider the following topics:

a. Hazardous material identification and labeling.

b. Permitting requirements such as the submission of management plans and inventory statements.

c. MSDS availability to the workforce.

d. Worker training.

e. The safe separation of incompatible materials in manufacturing facilities.

(3) Do model fire codes such as the International Code Council's International Fire Code and National Fire Protection Association's National Fire Code present a more comprehensive approach to hazardous materials management in these areas? Are there other cities or states that have adopted more effective hazardous material provisions in their fire code? How do the requirements of the New York State Uniform Fire Prevention and Building Code Act affect the fire code obligations of New York City?

(4) By what means do the New York City Fire Department and the Department of Environmental Protection

exchange information concerning facilities' use and storage of hazardous materials? Are there ways in which they can communicate more effectively concerning hazardous material inventory and labeling requirements?

Comments should address the questions listed above. CSB will accept verbal comments at the public hearing. Verbal comments must be limited to 4 minutes. Those wishing to make verbal comments should pre-register by April 11, 2003. To pre-register, send your name and a brief outline of your comments to the person listed in **ADDRESSES.**

D. Request for Comments

The CSB requests that interested parties submit written comments on the above questions to facilitate greater understanding of the issues. Comments should indicate the number(s) of the specific question(s) being answered, provide responses to questions in numerical order, and use a separate page for each question answered. Comments should be captioned "Kaltech Incident —Comments," and must be filed on or before May 5, 2003.

Parties sending written comments should submit an original and two copies of each document. To enable prompt review and public access, paper submissions should include a version on diskette in PDF, ASCII, or Microsoft Word format. Diskettes should be labeled with the name of the party, and the name and version of the word processing program used to create the document. Alternatively, comments may be mailed to *Don.Holmstrom@csb.gov*. Written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and CSB regulations.

E. Agenda (9 a.m.–1 p.m.)

I: CSB Introduction (1 hour)
II. New York City panel (1 hour)
III. Fire Safety Experts' panel (1hour)
IV. Comments from interested parties and the public (1 hour)

F. Sunshine Act Notice

The United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Hearing beginning on Wednesday April 16, 2003, from 9 a.m. to 1 p.m. at the Fashion Institute of Technology (SUNY), 7th Avenue at 27th Street, New York City, New York. Topics will include: CSB's investigation of the Kaltech Industries Group. The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, 10 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of Congressional and Public Affairs, 202–261–7600, or visit our Web site at: *www.csb.gov*.

Christopher W. Warner,
General Counsel.
[FR Doc. 03–8182 Filed 3–31–03; 4:15 pm]
BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on April 23 & 24, 2003, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

April 23

Public Session

1. Comments or presentations by the public.
2. Discussion on Category 3B (electronics—test, inspection and production equipment) controls and proposed study.
3. Discussion on oscilloscope controls and suggested changes.
4. Discussion on Ultra-Wide Band equipment proposal.

April 23 & 24

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to the address listed below:

Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S. Department of Commerce, 15th St. & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 7, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

For more information, contact Lee Ann Carpenter on 202–482–2583.

Dated: March 31, 2003.
Lee Ann Carpenter,
Committee Liaison Officer.
[FR Doc. 03–8101 Filed 4–2–03; 8:45 am]
BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012903A]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Conducting Oil and Gas Exploration Activities in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of extension of comment deadline.

SUMMARY: Under the Marine Mammal Protection Act (MMPA), on March 3, 2003, NMFS published a notice of receipt of an application for the harassment of marine mammals incidental to conducting seismic surveys by the U.S. oil and gas industry in the Gulf of Mexico. By this document, NMFS announces an extension of the comment deadline.

DATES: Comments and information must be postmarked no later than April 16, 2003.

ADDRESSES: Comments should be addressed to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the application and a list of references used in this document may be obtained by writing to this address, or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, 301–713–2055, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

On March 3, 2003 (68 FR 9991), NMFS announced that it had received a request from the U.S. Minerals Management Service of the Department of the Interior, for authorization to harass small numbers of marine mammals, principally the sperm whale, incidental to conducting seismic surveys in the GOM. As a result of that request, NMFS is considering whether to propose regulations that would govern the incidental taking of small numbers of marine mammals under Letters of Authorization (LOAs) issued to members of the seismic industry that might have interactions with sperm whales. In order to promulgate regulations and issue LOAs, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals. By this document, NMFS extends the comment period on the preliminary application and suggestions on the content of the regulations comment until April 16, 2003.

Dated: March 28, 2003.
Laurie K. Allen,
Acting Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 03–8119 Filed 3–31–03; 3:45 pm]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032703G]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for renewal of scientific research permit 1027 and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for renewal of scientific research permit 1027 from U.S. Fish and Wildlife Service (USFWS) in Sacramento, CA. The permit would affect federally endangered Sacramento River winter-run Chinook salmon. This document serves to notify the public of the availability of the permit renewal application for review and comment.

DATES: Written comments on the permit applications must be received at the appropriate address or fax number (see ADDRESSES) no later than 5 p.m. Pacific Standard Time on May 5, 2003.

ADDRESSES: Written comments on this request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review by appointment, for permit 1027: Protected Resources Division, NMFS, 650 Capitol Mall, Suite 8-300, Sacramento, CA 95814 (ph: 916–930–3600, fax: 916–930z63629). Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 3226 (301 713 1401).

FOR FURTHER INFORMATION CONTACT: Rosalie del Rosario at phone number 916-930-3600, or e-mail: *Rosalie.delRosario@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531 1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the federally endangered Sacramento River Winter-run Chinook salmon (*Oncorhynchus tshawytscha*).

Applications Received

USFWS requests a renewal of permit 1027, a 5–year permit that authorized take of adult and juvenile endangered Sacramento River winter-run Chinook salmon ESU associated with artificial production and captive broodstock programs. The broodstock collection target for winter-run Chinook is 15 percent of the estimated upriver escapement, up to a maximum of 120 natural-origin winter-run Chinook broodstock per brood year (i.e., run sizes >800). In that effort, up to 400 winter-run Chinook may be captured annually and the remaining 280 adults will be tagged and returned to the Sacramento River to spawn naturally. To maintain genetic diversity, no fewer than 20 adults will be taken for the broodstock collection regardless of run size (i.e., run sizes <135). Based on three years of trapping data (e.g., 2000–2002), mortality is expected to be <2 percent of total captured, and pre-spawning mortality is expected to be <10 percent of 120 fish retained for spawning. To minimize potential negative effects resulting from natural selection in the hatchery (i.e., domestication), the number of hatchery-origin winter-run Chinook incorporated as broodstock will not exceed 10 percent of the total number of winter-run Chinook spawned (not including captive broodstock crosses). No more than 250,000 pre-smolt winter-run Chinook will be released annually. Post-release contribution potential of progeny derived from captive broodstock adults that were reared to maturity is also

being evaluated. The effects of the artificial production and captive broodstock programs on federally threatened Central Valley spring-run Chinook salmon and threatened Central Valley steelhead are being considered under ESA section 7 interagency consultation on Coleman National Fish Hatchery and Livingston Stone National Fish Hatchery actions.

Dated: March 28, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–8121 Filed 4–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of Environmental Assessment for the Air Force Memorial

AGENCY: Washington Headquarters Services, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of Defense (DoD) Washington Headquarters Services (WHS) announces that an Environmental Assessment (EA) for the Air Force Memorial is available for public review and comment within 30 days of the date of this publication. The Memorial is planned for the Naval Annex Site, Columbia Pike and Southgate Road, near the Pentagon in Arlington, VA. The Naval Annex is also known as the Navy Annex, Arlington Annex, and Federal Office Building No. 2 (FOB2).

The EA documents an evaluation of the environmental effects of the proposed Memorial in accord with the National Environmental Policy Act of 1969, as amended (NEPA, 42 U.S.C. 4321 to 4370b), Council of Environmental Quality (CEQ) implementing regulations (Title 40, Code of Federal Regulations parts 1500–1508), and DoD Instruction 4715.9, Environmental Planning and Analysis. The EA identifies the proposed action, purpose and need for the project, project alternatives, affected environment, environmental consequences, and proposed mitigation measures. Environmental consequences examined include potential impacts on socio-economic conditions, cultural and visual resources, transportation systems, physical and biological resources, utilities and infrastructure, and cumulative impact.

The Air Force Memorial Foundation (AFMF) proposes to establish the Air Force Memorial on three acres of the Naval Annex Site, as authorized by Congress, to honor the men and women who have served in the U.S. Air Force and its predecessors. The main element of the Memorial would be three curving vertical spires, from 200 to 270 feet high, that symbolize Air Force core values, people, and key mission ingredients. At the base of the spires, complementary elements would include an Honor Guard Sculpture, Contemplation Chamber, Air Force Members Chamber, seating area, pedestrian walkways, and parking area. The proposed action, as directed by Congress, requires demolition of Wing 8 of FOB2.

The EA is available on the Internet at *http://www.dtic.mil/ref/Safety/index.htm* and *http://www.airforcememorial.org* and in paper copy at the following libraries:

- Arlington County Central Library, 1015 N. Quincy Street, Arlington, VA 22201.
- Aurora Hills Library, 735 S. 18th St., Arlington, VA 22202.
- Columbia Pike Library, 816 S. Walter Reed Dr., Arlington, VA 22204.
- Shirlington Library, 2786 S. Arlington Mill Dr., Arlington, VA 22206.

For those with access or escort, copies are also available in the FOB2 Building Managers Office, Room 1030, and in the Pentagon Library Reference Center on the Pentagon Concourse.

DATES: Public comments are invited and must be either e-mailed or postmarked on or before May 5, 2003.

ADDRESSES: To request a copy of the EA or provide comments, contact Dr. Brian Higgins at telephone: 703–697–5066, e-mail: *bhiggins@ref.whs.mil*, or WHS Real Estate and Facilities Directorate, 1155 Defense Pentagon, Room 3B200, Washington, DC 20301–1155. Individuals also may download the EA from the Web sites

FOR FURTHER INFORMATION CONTACT: For additional information on the EA, contact Dr. Brian Higgins at telephone: 703–697–5066, or e-mail: *bhiggins@ref.whs.mil.*

Dated: March 27, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–8015 Filed 4–2–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Inspector General; Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Inspector General, DoD is proposing to alter an existing system of records in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration consists of adding exemptions to the existing system of records CIG 01, entitled "Privacy Act and Freedom of Information Act Case Files".

The exemptions are needed because during the course of a Freedom of Information Act (FOIA) and Privacy Act action, exempt materials from other systems of records may in turn become part of the case records in the system. To the extent that copies of exempt records from those "other" systems of records are entered into the Freedom of Information Act and/or Privacy Act case records, the Inspector General, DoD, hereby claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary systems of records which they are a part. Therefore, the Inspector General, DoD is proposing to add exemptions 5 U.S.C. 552a(j)(2), (k)(1) through (k)(7) to an existing system of records.

DATES: This proposed action will be effective without further notice on May 5, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph E. Caucci at (703) 604–9786.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General, DoD notice for system of records subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 20, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal

Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG–01

SYSTEM NAME:

Privacy Act and Freedom of Information Act Files (February 22, 1993, 58 FR 10213).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "Privacy Act and Freedom of Information Act Case Files."

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "All individuals who submit Freedom of Information Act (FOIA) and Privacy Act (PA) requests and administrative appeals to the Office of the Inspector General (OIG), DoD and other activities receiving administrative FOIA and Privacy Act support from the OIG; individuals whose FOIA and Privacy Act requests and/or records have been referred by other Federal agencies to the OIG for release to the requester; attorneys representing individuals submitting such requests and appeals, individuals who are the subjects of such requests and appeals, and/or the OIG personnel assigned to handle such requests and appeals."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Records created or compiled in response to FOIA and Privacy Act requests and administrative appeals, *i.e.*, original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and copies of requested records and records under administrative appeal."

* * * * *

PURPOSE(S):

Delete entry and replace with "Information is being collected and maintained for the purpose of processing FOIA and Privacy Act requests and administrative appeals; for participating in litigation regarding agency action on such requests and appeals; for amendment to records made under the Privacy Act and to document OIG actions in response to these requests; and for assisting the Office of the Inspector General, DoD in carrying out any other responsibilities under the FOIA.

Also, information may be provided to the appropriate OIG element when further action is needed to verify assertions of the requester or to obtain permission to release information obtained from sources."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Retrieved by individual's name, subject matter, date of document, and request number."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "FOIA and Privacy Act paper records that are granted in full are destroyed 2 years after the date of reply. Paper records that are denied in whole or part, no records responses, responses to requesters who do not adequately describe records being sought, do not state a willingness to pay fees, and records which are appealed or litigated, are destroyed 6 years after final FOIA action and 5 years after final Privacy Act action, or three years after final adjudication by courts, whichever is later. Electronic records are deleted within 180 or when no longer needed to support office business needs."

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with "During the course of a FOIA and Privacy Act action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those "other" systems of records are entered into this FOIA or Privacy Act case record, Office of the Inspector General hereby claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager."

* * * * *

CIG–01

SYSTEM NAME:

Privacy Act and Freedom of Information Act Case Files.

SYSTEM LOCATION:

Freedom of Information and Privacy Act Office, Administrative Services Division, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who submit Freedom of Information Act (FOIA) and Privacy Act (PA) requests and administrative appeals to the Office of the Inspector General (OIG), DoD and other activities receiving administrative FOIA and Privacy Act support from the OIG; individuals whose FOIA and Privacy Act requests and/or records have been referred by other Federal agencies to the OIG for release to the requester; attorneys representing individuals submitting such requests and appeals, individuals who are the subjects of such requests and appeals, and/or the OIG personnel assigned to handle such requests and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records created or compiled in response to FOIA and Privacy Act requests and administrative appeals, *i.e.*, original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and copies of requested records and records under administrative appeal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 552a, as amended; DoD 5400.11–R, Department of Defense Privacy Program; 5 U.S.C. 552, The Freedom of Information Act, as amended; and DoD 5400.7–R, DoD Freedom of Information Act Program.

PURPOSE(S):

Information is being collected and maintained for the purpose of processing FOIA and Privacy Act requests and administrative appeals; for participating in litigation regarding agency action on such requests and appeals; for amendment to records made under the Privacy Act and to document OIG actions in response to these requests; and for assisting the Office of the Inspector General, DoD in carrying out any other responsibilities under the FOIA.

Also, information may be provided to the appropriate OIG element when

further action is needed to verify assertions of the requester or to obtain permission to release information obtained from sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system may be provided to other Federal agencies and state and local agencies when it is necessary to coordinate responses or denials.

The DoD "Blanket Routine Uses" set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

Retrieved by individual's name, subject matter, date of document, and request number.

SAFEGUARDS:

Records are stored in locked security containers accessible only to authorized personnel.

RETENTION AND DISPOSAL:

FOIA and Privacy Act paper records that are granted in full are destroyed 2 years after the date of reply. Paper records that are denied in whole or part, no records responses, responses to requesters who do not adequately describe records being sought, do not state a willingness to pay fees, and records which are appealed or litigated, are destroyed 6 years after final FOIA action and 5 years after final Privacy Act action, or three years after final adjudication by courts, whichever is later. Electronic records are deleted within 180 or when no longer needed to support office business needs.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Freedom of Information Act and Privacy Act Office, Administrative Services Division, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Freedom of Information Act and Privacy Act Office, Administrative Services Division, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.

Please include full information regarding the previous request such as date, subject matter, and if available, copies of the previous OIG reply.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Freedom of Information Act and Privacy Act Office, Administrative Services Division, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.

Please include full information regarding the previous request such as date, subject matter, and if available, copies of the previous OIG reply.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individuals on whom records are maintained and official records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a FOIA and Privacy Act action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those "other" systems of records are entered into this FOIA or Privacy Act case record, Office of the Inspector General hereby claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

[FR Doc. 03–8017 Filed 4–2–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Program Comment for Capehart and Wherry Era Army Family Housing and Associated Structures and Landscape Features (1949–1962), from the Advisory Council on Historic Preservation

AGENCY: Department of the Army, DoD.

ACTION: Notice of comment.

SUMMARY: This provides notice of the Advisory Council on Historic Preservation's Program Comment to the Department of the Army for Capehart and Wherry Era Army Family Housing and Associated Structures and Landscape Features (1949–1962), in accordance with 36 CFR 800.14(e)(5)(i), "Protection of Historic Properties; Final Rule."

ADDRESSES: To obtain copies of the Program Comment, contact the U.S. Army Environmental Center, ATTN: SFIM-AEC-PA (Mr. Robert DiMichele), Aberdeen Proving Ground, MD 21010–5401.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Foster, 703–693–0675.

SUPPLEMENTARY INFORMATION: On May 31, 2002, the Advisory Council on Historic Preservation approved and issued to the Department of the Army, Program Comment for Capehart and Wherry Era Army Family Housing and Associated Structures and Landscape Features (1949–1962). The Program Comment pertains to all Army family housing constructed between 1949 and 1962 (i.e., the Capehart and Wherry Era), and includes treatment measures for the following undertakings for Capehart and Wherry Era housing, associated structures, and landscape features: maintenance and repair; rehabilitation; layaway and mothballing; renovation, demolition; demolition and replacement; and transfer, sale or lease out of Federal control. The Department of the Army has taken into account the Advisory Council on Historic Preservation's Program Comment for Capehart and Wherry Era (1949–1962) Army Family Housing, Associated Structures, and Landscape Features, and accepts and adopts that Program Comment. The Department of the Army ensures that the effects of these undertakens on this category of historic property is taken into account by execution of the steps identified as treatment measures in the Program Comment, Section II.b. Treatment measures include an expanded Historic Context of Capehart and Wherry Era Army Family Housing, Neighborhood Design Guidelines, and Video Documentation. The full text of the Program Comment can be found in the Council's Notice of Approval, published in the **Federal Register** on June 7, 2002, Vol. 167, No. 110, pp. 39332–39335.

Dated: March 25, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I&E).

[FR Doc. 03–8122 Filed 4–2–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.354A]

Office of Innovation and Improvement; Credit Enhancement for Charter School Facilities Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: This program will provide grants to eligible entities to permit them to enhance the credit of charter schools so that they can access private-sector and other non-Federal capital to acquire, construct, and renovate facilities at a reasonable cost. Grant projects awarded under this program will be of sufficient size, scope, and quality to enable the grantees to implement effective strategies.

Eligible Applicants: (A) A public entity, such as a State or local governmental entity; (B) A private, nonprofit entity; or (C) A consortium of entities described in (A) and (B).

Applications Available: April 3, 2003.

Deadline for Transmittal of Applications: June 3, 2003.

Deadline for Intergovernmental Review: August 2, 2003.

Estimated Available Funds: $25,000,000.

Estimated Range of Awards: $2.5 million–$10 million.

Estimated Average Size of Awards: $8.3 million.

Estimated Number of Awards: 3–5.

The Secretary will make, if possible, at least one award in each of the three categories of eligible applicants.

Note: The Department is not bound by any estimates in this notice.

Project Period: From the start date indicated on the grant award document until the Federal funds and earnings on those funds have been expended for the grant purposes or until financing facilitated by the grant has been retired, whichever is later.

Page Limit: We have found that reviewers are able to conduct the highest-quality review when applications are concise and easy to read. Applicants are encouraged to limit their applications to no more than 50 double-spaced pages (not including the required forms and tables), to use a 12-point or larger-size font with one-inch margins at the top, bottom, and both sides, and to number pages consecutively. Furthermore, applicants are strongly encouraged to include a table of contents that specifies where each required part of the application is located.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION:

Application Content

Each Credit Enhancement for Charter School Facilities Program application must include the following specific program elements:

1. A statement identifying the activities proposed to be undertaken with grant funds (the "grant project") and the timeline for the activities, including how the applicant will determine which charter schools will receive assistance, how much and what types of assistance these schools will receive, the type of schools to be served, and what procedures the applicant will use for documenting grant project procedures and results.

2. A description of the involvement of charter schools in the application's development and design of the proposed grant project.

3. A description of the applicant's expertise in capital markets financing and its organizational capacity to implement the proposed grant project successfully. (Consortium applicants must list information for each of the participating organizations.)

4. A description of how the proposed grant project will leverage the maximum amount of private-sector and other non-Federal capital relative to the amount of Credit Enhancement for Charter School Facilities Program funding used, the definition of "leverage" the applicant has used in developing that description, the type of assistance to be provided, how the assistance would sufficiently reduce the costs that charter schools face so that it would enable them to obtain or improve school facilities that they would not be able to obtain or improve absent the assistance, and how the proposed activities will otherwise enhance credit available to charter schools.

5. In the case of an application submitted by a State governmental entity, a description of current and planned State funding policy and other forms of financial assistance that will help charter schools meet their facility needs.

Use of Funds

Grant recipients, in accordance with State and local law, directly or indirectly, alone or in collaboration with others, must deposit the grant funds received under this program (other than funds used for administrative costs) in a reserve account established and maintained by the grantee for this purpose. Amounts deposited in such account shall be used by the grantee for one or more of the following purposes in order to assist charter schools in accessing private-sector and other non-Federal capital:

(1) Guaranteeing, insuring, and reinsuring bonds, notes, evidences of debt, loans, and interests therein.

(2) Guaranteeing and insuring leases of personal and real property.

(3) Facilitating financing by identifying potential lending sources, encouraging private lending, and other similar activities that directly promote lending to, or for the benefit of, charter schools.

(4) Facilitating the issuance of bonds by charter schools, or by other public entities for the benefit of charter schools, by providing technical, administrative, and other appropriate assistance (such as the recruitment of bond counsel, underwriters, and potential investors and the consolidation of multiple charter school projects within a single bond issue).

Funds received under this program and deposited in the reserve account must be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities. Investments must be designed to preserve principal.

Any earnings on funds, including fees, received under this program must be deposited in the reserve account and be used in accordance with the requirements of this program.

An eligible entity receiving a grant under this program must use the funds deposited in the reserve account to assist multiple charter schools in accessing capital to accomplish one or both of the following objectives:

(1) The acquisition (by purchase, lease, donation, or otherwise) of an interest (including an interest held by a third party for the benefit of a charter school) in improved or unimproved real property that is necessary to commence or continue the operation of a charter school.

(2) The construction of new facilities, or the renovation, repair, or alteration of

existing facilities, necessary to commence or continue the operation of a charter school.

Grantees must ensure that all costs incurred using funds from the reserve account are reasonable. The burden of proof is upon the grantee, as a fiduciary under its agreements with the Secretary, to establish that costs are reasonable. Each grantee must also clearly indicate with respect to each financial obligation it enters into pursuant to this grant program that the full faith and credit of the United States is not pledged to the payment of funds under such obligation.

Grantee Performance Agreements and Reporting Requirements

Applicants that are selected to receive an award must enter into a written Performance Agreement with the Department prior to drawing down funds, unless the grantee receives written permission from the Department in the interim to draw down a specific limited amount of funds. A key element of the Performance Agreement is the performance goals for the grant. These performance goals will include the program's two performance indicators: (1) The amount of funding grantees leverage for charter schools to acquire, construct, and renovate school facilities and (2) the number of charter schools served. In developing performance goals, Department staff and each applicant will rely on the applicant's annual projections submitted under the Business/Organizational Capacity section of the application and the objectives established in the approved application. The Performance Agreement will also describe the ways in which the Department and the grantee will work together to accomplish the purposes of the program.

The Secretary, in accordance with chapter 37 of title 31, United States Code, will collect all of the funds in the reserve account established with grant funds (including any earnings on those funds) if the Secretary determines that the grantee has permanently ceased to use all or a portion of the funds in such account to accomplish the purposes described in the authorizing statute and the Performance Agreement or, if not earlier than two years after the date on which the entity first received these funds, the entity has failed to make substantial progress in undertaking the grant project.

During each fiscal year that the grantee's obligation to the Federal Government remains in effect, grantees will submit reports (as detailed below) to the Department. The grantee's commitment continues for the duration of the project period.

Applicants selected for funding will be required to submit the following reports to the Department:

1. An annual report that includes—

a. A copy of the most recent financial statements and any accompanying opinion on such statements prepared by the independent public accountant reviewing the financial records of the grantee;

b. A copy of any report made on an audit of the financial records of the grantee conducted during the reporting period;

c. An evaluation by the grantee of the effectiveness of its use of the Federal funds in leveraging private-sector and other non-Federal funds;

d. A description of the characteristics of lenders and other financial institutions participating in the activities undertaken by the grantee during the reporting period;

e. A narrative description of the grantee's activities in support of the objectives of the program and its performance goals, including a listing and description of the charter schools served during the reporting period; and

f. Such other information as the Secretary may require.

2. Semiannual reports that include internal financial statements and other information as the Secretary may require in the Performance Agreement.

Grantees must also cooperate and assist the Department with any periodic financial and compliance audits of the grantee, as determined necessary by the Department. The specific Performance Agreement between the grantee and the Department may contain additional reporting requirements.

Grantees must maintain and enforce standards of conduct governing the performance of their employees, officers, directors, trustees, and agents engaged in the selection, award, and administration of contracts or agreements related to this grant. The standards of conduct must, at a minimum, require disclosure of direct and indirect financial or other interests, mandate disinterested decision-making, and indicate corrective actions to be taken in the event of violation.

Limitation on Administrative Costs

A grantee may use not more than 0.25 percent (one quarter of one percent) of the grant funds for the administrative costs of the grant.

Charter Schools Eligible to Benefit From This Program

The charter schools that a grantee selects to benefit from this program must meet the definition of a charter school, as defined in the Public Charter Schools Program authorizing statute in section 5210(1) of the Elementary and Secondary Education Act of 1965 (ESEA). This definition is repeated as follows in this application notice for the convenience of the applicant.

(1) A charter school is a public school that—

(A) In accordance with a specific State statute authorizing the granting of charters to schools, is exempted from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph [paragraph (1) of ESEA section 5210];

(B) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(C) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(D) Provides a program of elementary or secondary education, or both;

(E) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(F) Does not charge tuition;

(G) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and part B of the Individuals with Disabilities Education Act;

(H) Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;

(I) Agrees to comply with the same Federal and State audit requirements as do other elementary and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program [the Public Charter Schools Program];

(J) Meets all applicable Federal, State, and local health and safety requirements;

(K) Operates in accordance with State law; and

(L) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

Competitive Preference Priority

Under 34 CFR 75.105(c)(2)(i) the Secretary awards additional points to an application that proposes to increase the capacity of charter schools to offer public school choice in those communities with the greatest need for this choice. The Secretary awards up to an additional 15 points to an application, depending on how well the application addresses the following factors:

- The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under Title I of the Elementary and Secondary Education Act as amended by the No Child Left Behind Act;
- The extent to which the applicant would target services to geographic areas in which a large proportion of students perform poorly on State academic assessments; and
- The extent to which the applicant would target services to communities with large proportions of low-income students.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary will use the following project selection criteria. The Secretary gives distinct weight to the listed criteria. Within each criterion, the Secretary evaluates each factor equally.

The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parenthesis.

The selection criteria address two important questions:

A. Does the applicant have the ability to carry out the proposed grant project?

B. Has the applicant proposed a grant project that will make a significant contribution toward meeting the purpose of the Credit Enhancement for Charter School Facilities Program and thereby increase charter schools' access to facilities financing?

A. The selection criteria related to the applicant's capacity to carry out the proposed grant project include:

1. *The business and organizational capacity of the applicant to carry out the grant project (35 points).*

- The amount and quality of experience the applicant has in carrying out the activities it proposes to undertake in its application, such as enhancing the credit on debt issuances, guaranteeing leases, and facilitating financing;
- The applicant's financial stability;
- The adequacy of the applicant's policies and procedures regarding loan underwriting, portfolio monitoring, and financial management to protect against unwarranted risk;
- The adequacy of the applicant's standards of conduct and organizational structure to prevent conflicts of interest; and
- The resources to be contributed by each co-applicant (consortium member), partner, or other grant project participant to the implementation and success of the grant project.
- For State governmental entities, the extent to which steps have or will be taken to help charter schools within the State obtain adequate facilities.

2. *The grant project team (15 points).*

- The qualifications, including relevant training and experience, of the project manager and other members of the grant project team, including consultants or subcontractors; and
- The adequacy and appropriateness of the applicant's staffing plan for the grant project.
- For non-profits only, an IRS Form 990 and the qualifications, including relevant training and experience, and independence of members of the board of directors.

B. The selection criteria related to the potential contribution of the proposed grant project to achieving the purpose of the Credit Enhancement for Charter School Facilities Program include:

1. *The quality of the design and potential significance of the proposed grant project (35 points).*

- The extent to which the grant project goals, objectives, and timeline are clearly specified, measurable, and appropriate for the purpose of the Credit Enhancement for Charter School Facilities Program;
- The extent to which the grant project implementation plan and activities, including the partnerships established, are likely to achieve the objectives sought by the project;
- The extent to which the proposed grant project is likely to produce results that will be documented and helpful to others nationally in providing facilities financing assistance to charter schools;
- The extent to which the grant project will use appropriate criteria for selecting charter schools for assistance and for determining the type and amount of assistance to be given;
- The importance or magnitude of the results or outcomes likely to be attained by the proposed grant project (*e.g.*, the number and variety of charter schools assisted that would not have been able to meet their school facility needs absent the assistance and the amount of capital leveraged); and
- The extent to which the requested grant amount and the project costs are reasonable in relation to the objectives, design, and potential significance of the proposed grant project.

2. *The quality of the services (15 points).*

- The extent to which the services to be provided by the proposed grant project reflect the needs of the charter schools to be served;
- The extent to which charter schools and chartering agencies were involved in the design of, and demonstrate support for, the grant project;
- The extent to which the technical assistance and other services to be provided by the proposed grant project involve the use of cost-effective strategies for increasing charter schools' access to facilities financing; and
- The extent to which the services to be provided by the proposed grant project are focused on assisting quality charter schools that have the greatest needs for assistance under the program.

Waiver of Proposed Rulemaking: It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt from rulemaking requirements rules governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). This program authority was substantially revised under the No Child Left Behind Act of 2001 and this would be the first grant competition under that revised authority. The Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forego public comment in order to ensure timely grant awards. These rules would apply to the FY 2003 grant competition only.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD) you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.354A.

FOR FURTHER INFORMATION CONTACT: Jim Houser, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C140, Washington, DC 20202–6140. Telephone: (202) 401–0307 or via Internet: *Jim.Houser@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

The Department intends to offer further information about the program at the following Internet site: *http://www.ed.gov/offices/OII/portfolio/facilities.html.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: Elementary and Secondary Education Act of 1965, title V, part B, subpart 2, as amended by the No Child Left Behind Act, 2001 (20 U.S.C. 7223–7223j).

Dated: March 31, 2003.

Nina S. Rees,

Deputy Under Secretary for Innovation and Improvement.

[FR Doc. 03–8133 Filed 4–2–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.069]

Federal Student Aid; Leveraging Educational Assistance Partnership and Special Leveraging Educational Assistance Partnership Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for receipt of State applications for Award Year 2003–2004 funds.

SUMMARY: This is a notice of the closing date for receipt of State applications for Award Year 2003–2004 funds under the Leveraging Educational Assistance Partnership (LEAP) and Special Leveraging Educational Assistance Partnership (SLEAP) programs.

The LEAP and SLEAP programs, authorized under Title IV, Part A, Subpart 4 of the Higher Education Act of 1965 as amended (HEA), assist States in providing aid to students with substantial financial need to help them pay for their postsecondary education costs through matching formula grants to States. Under section 415C(a) of the HEA, a State must submit an application to participate in the LEAP and SLEAP programs through the State agency that administered its LEAP Program as of July 1, 1985, unless the Governor of the State has subsequently designated, and the Department has approved, a different State agency to administer the LEAP Program.

DATES: To receive an allotment under the LEAP and SLEAP programs for Award Year 2003–2004, applications submitted electronically must be received by 11:59 p.m. (Eastern time) May 30, 2003. Paper applications must be received by May 23, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Gerrans, LEAP Program Manager, Financial Partners, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Room 111H1, Washington, DC 20202. Telephone: (202) 377–3304.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities also may obtain a copy of the application in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

SUPPLEMENTARY INFORMATION: Only the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands may submit an application for funding under the LEAP and SLEAP programs.

State allotments for each award year are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallotment, in addition to its basic allotment, which is contingent upon the availability of such additional funds.

In Award Year 2002–2003, 47 States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands received funds under the LEAP Program. Additionally, 34 States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands received funds under the SLEAP Program.

On-Line Application Submitted Electronically: The Financial Partners Channel within Federal Student Aid has automated the LEAP and SLEAP application process in the Financial Management System (FMS). Applicants are encouraged to use the web-based form (Form 1288–E OMB 1845–0028) which is available on the FMS LEAP on-line system at the following Internet address: *http://fms.sfa.ed.gov*

Paper Application Delivered by Mail: States or territories may request a paper version of the application (Form 1288 OMB 1845–0028) by contacting Mr. Greg Gerrans, LEAP Program Manager, at (202) 377–3304 or by E-mail at *greg.gerrans@ed.gov.* A paper version will be mailed to you. An application sent by mail must be addressed to: Mr. Greg Gerrans, LEAP Program Manager, Financial Partners, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Room 111H1, Washington, DC 20202.

The Department of Education encourages applicants that are completing a paper application to use certified or at least first-class mail when sending the application by mail to the Department. Applications that are mailed must be received by the Department no later than May 23, 2003.

A late applicant cannot be assured that its application will be considered for Award Year 2003–2004 funding.

Paper Applications Delivered by Hand: Applications that are hand-delivered must be delivered to Mr. Greg Gerrans, LEAP Program Manager, Financial Partners, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Room 111H1, Washington, DC. Hand-delivered applications will be accepted between 8 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Applicable Regulations: The following regulations are applicable to the LEAP and SLEAP programs:

(1) The LEAP and SLEAP Program regulations in 34 CFR part 692.

(2) The Student Assistance General Provisions in 34 CFR part 668.

(3) The Regulations Governing Institutional Eligibility in 34 CFR part 600.

(4) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), part 86 (Drug-Free Schools and Campuses) and part 99 (Family Educational Rights and Privacy Act).

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1070c *et seq.*

Dated: March 31, 2003.

Theresa S. Shaw,

Chief Operating Officer Federal Student Aid.

[FR Doc. 03–8131 Filed 4–2–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.133S and 84.017S]

Office of Special Education and Rehabilitative Services (OSERS) and the Office of Postsecondary Education (OPE); Small Business Innovation Research (SBIR) Program—Phase I Notice Inviting Grant Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The purpose of this program is to stimulate technological innovation in the private sector, strengthen the role of small business in meeting Federal research or research and development (R/R&D) needs, increase the commercial application of Department of Education (ED) supported research results, and improve the return on investment from Federally-funded research for economic and social benefits to the Nation.

For FY 2003, we encourage applicants to present activities that focus on the invitational priorities in the *Priorities* section of this application notice.

Eligible Applicants: Each organization submitting an application must qualify as a small business concern as defined by the Small Business Administration (SBA) at the time of the award. This definition is included in the application package.

Firms with strong research capabilities in educational and assistive technologies, science, or engineering in any of the priority areas listed are encouraged to participate. Consultative or other arrangements between these firms and universities or other non-profit organizations are permitted, but the small business must serve as the grantee.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under circumstances in which eligibility is unclear, we will not make an SBIR award until the SBA makes a determination.

Applications Available: April 3, 2003.

Deadline for Transmittal of Applications: June 3, 2003.

Estimated Available Funds: Up to $4,176,000 for new Phase I awards.

The estimated amount of funds available for new Phase I awards is based upon the estimated threshold SBIR allocation for OSERS and OPE, minus prior commitments for Phase II continuation awards. The actual funds available could be less, should an office make any new Phase II awards in FY 2003.

Estimated Average Size of Awards: Up to $75,000 for Priority 1 and $60,000 for Priority 2.

Maximum Award: We will reject any application that proposes a budget exceeding $75,000 for Priority 1 or $60,000 for Priority 2 for a project period of up to 6 months.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 6 months.

Page Limits: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit your application narrative to the equivalent of no more than 25 pages, excluding any documentation of prior multiple Phase II awards, if applicable; and required forms. The following standards should be used:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Single space all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller that 10 pitch (characters per inch). Standard black type should be used to permit photocopying.
- Draw all graphs, diagrams, tables, and charts in black ink. Do not include glossy photographs or materials that cannot be photocopied in the body of the application.

The application package will provide instructions for completing all components to be included in the application. Each application must include an application cover sheet (ED Standard Form 424); budget requirements (ED Form 524) and other required forms; an abstract, certifications, and statements; a technical content project narrative; and related application(s) or award(s) and documentation of multiple Phase II awards, if applicable.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Statutes and Regulations

(a) *Statutes.* The Small Business Reauthorization Act of 2000, Pub. L. 106–554 (15 U.S.C. 631 and 638); Title

II of the Rehabilitation Act of 1973, as amended, Pub. L. 105–220 (29 U.S.C. 760–764); Title VI, Section 605 of the Higher Education Act, as amended (20 U.S.C 1125).

(b) *Regulations—General Applicability.* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, 97, and 98.

Note on Peer Review Procedures: OSERS and OPE will apply requirements that are contained in 29 U.S.C. 760 and 762(f).

Priorities

For FY 2003, we have selected 7 invitational priorities for the SBIR program. SBIR projects are encouraged to look to the future by exploring uses of technology to ensure equal access to education and promote educational excellence throughout the Nation.

The application package will include a number of examples to illustrate the kinds of activities that could be funded under each priority. Specific examples are listed only as examples of advanced applications or basic research of interest to us, and they are not to be interpreted as exclusive. We intend to provide sufficient flexibility to obtain the greatest degree of creativity and innovation possible, consistent with overall SBIR and ED program objectives.

An application must be limited to one priority listed in this notice. When an application is relevant to more than one priority, the applicant must decide which priority is most relevant and submit it under that priority only. However, there is no limitation on the number of different applications that an applicant may submit under this competition, even to the same priority. A firm may submit separate applications on different priorities, or different applications on the same priority, but each application should respond to only one priority. Duplicate applications will be returned without review.

Invitational Priorities

We are particularly interested in applications that meet one of the following priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets one of these priorities a competitive or absolute preference over other applications.

CFDA Number 84.133S: The Office of Special Education and Rehabilitative Services (OSERS)

Priority 1—This priority supports research to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most significant disabilities; or improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

The following six invitational priorities relate to innovative research utilizing new technologies (including nanotechnologies and biotechnologies) to address the needs of individuals with disabilities and their families.

Invitational Priority 1—Development of Technology to Support Access or Promote Integration of Individuals with Disabilities in the Community, Workplace, or Educational Setting.

Invitational Priority 2—Development of Technology to Enhance Sensory or Motor Function of Individuals with Disabilities.

Invitational Priority 3—Development of Technology to Improve School to Work Transition and Employment Outcomes for Individuals with Disabilities.

Invitational Priority 4—Development of Technology to Promote Community Integration or Support Independent Living for Individuals with Disabilities.

Invitational Priority 5—Development of Technology to Support Early Intervention for Infants, Toddlers, and Small Children.

Invitational Priority 6—Development of Technology to Support Service Delivery, Training, or Evaluation of Interventions in the Clinical or Community-Based Rehabilitation Settings.

CFDA Number 84.017S: The Office of Postsecondary Education (OPE)

Priority 2—This priority supports research that contributes to achieving the purposes of part A of Title VI of the Higher Education Act—International Education Program.

Invitational Priority 7—Development of Interactive CD–ROMs in the Pashto and Farsi (Iranian) Languages with Glossaries, for use in Multi-Platforms (e.g., PC, Mac) at the 1 to 1+ Proficiency Levels according to the ACTFL–ILR Proficiency Scales. The language materials must include items drawn from native speakers and from mass information media, including recent events and authentic cultural materials. The overall objective would be the creation of highly practical communicative instruments for the two languages.

Selection Criteria: Under 34 CFR 75.210, we use the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) Significance (25 points).

(b) Quality of the Project Design (50 points).

(c) Quality of Project Personnel (15 points).

(d) Adequacy of Resources (10 points).

We will make awards based upon these selection criteria and the availability of funds. In the evaluation and handling of applications, we will make every effort to protect the confidentiality of the application and any evaluations.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998, (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999, (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants for FY 2003 under Phase I SBIR program be submitted electronically using e-Application available through the Education Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

Applicants who are unable to submit an application through the e-GRANTS system may apply for a waiver to the electronic submission requirement. To apply for a waiver, applicants must explain the reason or reasons that prevent them from using the Internet to submit their applications. The reasons must be outlined in a letter addressed to: Priority 1: Kristi Wilson, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 330 "C" Street, SW., room 3433—MES, Washington, DC 20202–2704; and, for Priority 2: José Martinez, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., room 6016, Washington, DC 20006–8521. We must receive your letter no later than two weeks before the closing date.

Any application that receives a waiver to the electronic submission requirement will be given the same consideration in the review process as an electronic application.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The FY 2003 Phase I SBIR program [CFDA 84.133S and 84.017S] is one of the programs included in the pilot project. If you are an applicant under the Phase I SBIR program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. The data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. (Submission of applications in paper format is only acceptable if a waiver is granted as described above.) When you enter the e-Application system, you will find information about its hours of operation.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and
2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

We have included additional information about the e-Application pilot project (*see* Parity Guidelines between Paper and Electronic Applications) in the application package.

SUPPLEMENTARY INFORMATION:

Background

The Small Business Reauthorization Act (the "Act") of 2000 was enacted on December 21, 2000. The Act requires certain agencies, including the Department of Education, to establish SBIR programs by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for research or R&D through a uniform, highly competitive three-phase process.

The three phases of the SBIR program are:

Phase I: Phase I is to determine, insofar as possible, the scientific or technical merit and feasibility of ideas submitted under the SBIR program. The application should concentrate on research that will significantly contribute to proving the scientific or technical feasibility of the approach or concept and that would be prerequisite to further ED support in Phase II.

Phase II: Phase II is to expand on the results of and to further pursue the development of Phase I projects. Phase II is the principal research or R&D effort. It requires a more comprehensive application, outlining the effort in detail including the commercial potential. Phase II applicants must be Phase I awardees with approaches that appear sufficiently promising as a result of Phase I. Awards are for periods up to 2 years in amounts up to $500,000 for Priority 1 awardees and $300,000 for Priority 2 awardees.

Phase III: In Phase III, the small business must use non-SBIR capital to pursue commercial applications of the research or research and development. Also, under Phase III, Federal agencies may award non-SBIR follow-on funding for products or processes that meet the needs of those agencies.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: *For General Information:* Lee Eiden, U.S. Department of Education, 555 New Jersey Avenue, NW., room 508D, Washington, DC 20208–5644. Telephone (202) 219–2004 or via Internet: *lee.eiden@ed.gov.*

For Priority 1 (OSERS): Kristi Wilson, U.S. Department of Education, 330 "C" Street, SW., room 3433, Washington, DC 20202–2572. Telephone (202) 260–0988 or via Internet: *kristi.wilson@ed.gov.*

For Priority 2 (OPE): José Martinez, U.S. Department of Education, 555 New Jersey Avenue, NW., room 6016, 1990 K Street, NW., Washington, DC 20006–8521. Telephone (202) 502–7635 or via Internet: *jose.martinez@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to either of the program contact persons listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package

in an alternative format by contacting one of the contact persons listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on the GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: Pub. L. 106–554 [The Small Business Reauthorization Act of 2000); Pub. L. 105–220 (Title II of the Rehabilitation Act of 1973, as amended, Title VI of the Higher Education Act).

Dated: March 31, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 03–8130 Filed 4–2–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–10–000]

Atmos Energy Corporation Notice of Information Rate Filing

March 28, 2003.

Take notice that on March 14, 2003, Atmos Energy Corporation (Atmos) filed an information rate filing pursuant to the Commission's March 17, 2000 Order on Remand in Docket Nos. CP00–56–000 and CP00–60–000.

Atmos states that the purpose of the filing is to present information consistent with the Commission's authority under 15 U.S.C. 717i(a) in order to allow the Commission to monitor Atmos' jurisdictional rates under section 5 of the Natural Gas Act. Atmos further states that it seeks no change in its existing rates and charges or the previously approved terms and condition upon which it provides service.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits I the docket number field to access the document. For Assistant, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See* 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8092 Filed 4–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–63–000]

Boundary Gas, Inc.; Notice of Abbreviated Application for Authority to Abandon Service

March 27, 2003.

Take notice that on March 13, 2003, Boundary Gas, Inc. (Boundary), filed an abbreviated application in Docket No. CP03–63–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's Regulations for authority to abandon service effective January 15, 2003, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Boundary states that the purpose of this filing is to abandon service because the Phase 2 Gas Sales Agreement (Sales Agreement), the long term sales contract under which Boundary's customers purchased gas from Boundary, terminated in accordance with its terms on January 15, 2003, and none of Boundary's current customers have chosen to receive service from Boundary after January 15, 2003. Because the Sales Agreement is incorporated into Boundary's FERC Gas Tariff, Boundary has also made a separate filing to cancel its FERC Gas Tariff. Boundary states that, because Boundary is simply an administrative conduit and has never owned or operated any facilities in connection with its service under the Sales Agreement, it will not be abandoning any facilities and there will be no environmental impact as a result of this abandonment.

Boundary states that copies of this filing were served upon each of Boundary's customers and the state commissions in Connecticut, Massachusetts, New Hampshire, New Jersey, New York and Rhode Island.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8087 Filed 4–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–312–000]

Calpine Energy Services, L.P., Complainant, v. Southern Natural Gas Company, Respondent; Notice of Complaint

March 28, 2003.

Take notice that on March 26, 2003, Calpine Energy Services, L.P. (CES) filed a Complaint against Southern Natural Gas Company (Sonat) requesting that the Federal Energy Regulatory Commission (Commission) find that (1) Sonat's collateral demands on CES regarding the South System II project contravene the terms of its Service Agreement with CES; (2) that Sonat's collateral demands contravene the Sonat tariff; (3) that Commission creditworthiness policies permit pipelines to demand collateral assurances up to twelve months of demand charges during the construction period under appropriate circumstances only if authorized by the pipeline's tariff or otherwise approved by the Commission; (4) that the Service Agreement and Sonat's tariff do not authorize collateral assurances in excess of three months of demand charges; (5) that, as described in the Commission's order approving the South System II project, the circumstances underlying the project do not justify collateral in excess of three months of demand charges; and (6) that the Service Agreement, Sonat's tariff, and Commission creditworthiness policies do not permit Sonat to demand collateral in excess of three months' demand charges once service has commenced.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: April 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8097 Filed 4–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–11–000]

Enbridge Pipelines (Louisiana Intrastate) LLC; Notice of Petition for Rate Approval

March 28, 2003.

Take notice that on March 19, 2003, Enbridge Pipelines (Louisiana Intrastate) LLC (Enbridge), formerly Creole Gas Pipeline Corporation, filed, pursuant to section 311 of the Natural Gas Policy Act and § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting a maximum interruptible transportation rate of $0.1652 per Dth, plus an in-kind fuel rate of 2.25%.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits I the docket number field to access the document. For Assistant, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See* 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8093 Filed 4–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–462–004 and RP01–37–006]

Equitrans, L.P.; Notice of Compliance Filing

March 28, 2003.

Take notice that on December 11, 2002, Equitrans, L.P. (Equitrans)

tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 268 to become effective on November 1, 2002:

Equitrans states that the purpose of this tariff filing is to comply with the Commission's Order issued October 10, 2002, on the compliance by Equitrans with Commission Order Nos. 637, 587–G and 587–L.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8095 Filed 4–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–468–007, RP01–25–006, and RP03–175–001]

Texas Eastern Transmission, LP; Notice of Compliance Filing

March 28, 2003.

Take notice that on March 25, 2003, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the revised tariff sheets listed in appendices A and B, attached to the filing, reflecting effective dates of April 1, 2003 and July 1, 2003, respectively.

Texas Eastern states that the purpose of this filing is to comply with the Commission's February 24, 2003, Order on Rehearing and Compliance Filings in Texas Eastern's Order No. 637 proceeding.

Texas Eastern states that copies of this filing have been mailed to all affected customers and interested state commissions, as well as to all parties on the service lists compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8096 Filed 4–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2525–051, 2546–068, 2560–047, 2522–074,and 2595–065]

Wisconsin Public Service Corporation; Notice of Telephone Conference

March 28, 2003.

a. *Date of Meeting:* April 11, 2003.

b. *Time of Meeting:* 10 a.m. to 12 p.m. (East Coast Time).

c. *FERC Contact:* Jean Potvin at (202) 502–8928; *jean.potvin@ferc.gov.*

d. *Purpose of the Meeting:* The Federal Energy Regulatory Commission, the Wisconsin Historical Society, Wisconsin Department of Natural Resources, and the Wisconsin Public Service Corporation intend to discuss cultural resources issues related to Wisconsin Public Service Corporation's Application to Amend Licenses to Change Project Boundaries for five hydroelectric projects (Caldron Falls, P–2525–051; Sandstone Rapids, P–2546–068; Potato Rapids, P–2560–047; Johnson Falls, P–2522–074; and High Falls, 2595–065) located on the Peshtigo River in Marinette and Oconto Counties, Wisconsin.

e. All local, state, and Federal agencies, Indian Tribes, and interested parties, are hereby invited to attend this meeting as participants. If you want to participate by teleconference, please contact Jean Potvin at the number listed above no later than April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8089 Filed 4–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1737–004, et al.]

Virginia Electric and Power Company, et al.; Electric Rate and Corporate Filings

March 26, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Virginia Electric and Power Company

[Docket No. ER00–1737–004]

Take notice that, on March 24, 2003, Dominion Resources, Inc. (DRI) submitted a three-year market update for its regulated subsidiary, Virginia Electric and Power Company (Dominion Virginia Power), which has the authorization to sell power at market-based rates for sales outside its service territory. DRI asks that the next three-year update for Dominion Virginia Power be due three years from the date of acceptance of this filing.

Comment Date: April 14, 2003.

2. New York Independent System Operator, Inc.

[Docket No. ER03–18–001]

Take notice that on March 21, 2003, the New York Independent System Operator, Inc. (NYISO) together with Astoria Generating Company, L.P. (Astoria) and Consolidated Edison Company of New York, Inc. (Con Edison) jointly tendered for filing a compliance filing in connection with the Commission's December 3, 2002, Order Rejecting Proposed Tariff in the above-referenced docket.

NYISO states that copies of this filing have been served on all parties listed on the official service list maintained by the Secretary of the Commission in these proceedings. The NYISO states that they have also served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission, and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: April 11, 2003.

3. Midwest Independent Transmission System Operator, Inc.

[Docket

Nos. ER03–366–003 and ER03–368–004]

Take notice that on March 24, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) proposed revisions to the Midwest ISO Open Access Transmission Tariff (Tariff), FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's Order in Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,181. The Midwest ISO respectfully requests that the Commission grant the original effective date of January 1, 2003, for the proposed revisions to the Midwest ISO Tariff submitted herewith.

The Midwest ISO states it has served copies of its filing on all affected customers. In addition, the Midwest ISO also states, that it has electronically served a copy of this filing, without attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participant, as well as all state commissions within the region. In addition, Midwest ISO advises that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO states that it will provide hard copies to any interested parties upon request.

Comment Date: April 14, 2003.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–422–002]

Take notice that on March 24, 2003, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) tendered for filing proposed revisions to Schedule 10 (ISO Cost Recovery Adder) of the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1. The Midwest ISO requests an effective date of March 25, 2003.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO states it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: April 14, 2003.

5. DTE East China, LLC; DTE Energy Trading, Inc.

[Docket No. ER03–470–001]

Take notice that on March 24, 2003, DTE East China, LLC and DTE Energy Trading, Inc., tendered for filing a compliance filing pursuant to the Commission's Order dated February 28, 2003, in the above-captioned docket.

Comment Date: April 14, 2003.

6. Westar Energy, Inc.

[Docket ER03–578–001]

Take notice that on March 24, 2003, Kansas Gas & Electric Company, Inc. and Westar Energy, Inc. (collectively Westar) submitted for filing First Revised Sheet No. 1 for Rate Schedule FERC Nos.166, 167, 210, 212 and 246, in the format required by Order 614.

Westar states that copies of this filing were served on the City of Iola, Kansas; City of Fredonia, Kansas; City of Waterville, Kansas; City of Scranton, Kansas; City of Alma, Kansas and the Kansas Corporation Commission.

Comment Date: April 14, 2003.

7. Duke Energy St. Lucie, LLC

[Docket No. ER03–643–000]

Take notice that, on March 24, 2003, Duke Energy St. Lucie, LLC, tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, in order to reflect the cancellation of its market-based rate tariff, designated as FERC Electric Tariff, Original Volume No. 1, originally accepted for filing in Docket No. ER00–2225–000.

Comment Date: April 24, 2003.

8. Southern California Edison Company

[Docket No. ER03–644–000]

Take notice that on March 24, 2003, Southern California Edison Company (SCE) tendered for filing a revised Reliability Management System Agreement (Revised RMS Agreement) between SCE and High Desert Power Project, LLC (HDPP). SCE respectfully requests the Revised RMS Agreement to become effective on April 18, 2003. SCE states that the Revised RMS Agreement supersedes in its entirety the Reliability Management System Agreement between SCE and High Desert Power Trust (HDPT) which previously has been accepted for filing by the Commission as FERC Electric Tariff, First Revised Original Volume No. 6, Service Agreement No. 14 (Existing RMS Agreement). SCE states that the only substantive difference between the Existing RMS Agreement and the Revised RMS Agreement is the contracting party.

SCE states that the Revised RMS Agreement sets forth terms and conditions intended to maintain the reliable operation of the Western Interconnection through the generator's commitment to comply with certain reliability standards.SCE also states, that copies of this filing were served upon the Public Utilities Commission of the State of California and HDPP.

Comment Date: April 14, 2003.

9. Duquesne Light Company

[Docket No. ER03–645–000]

Take notice that on March 24, 2003, Duquesne Light Company tendered for filing amendments to its Open Access Transmission Tariff to implement revised credit review procedures for transmission customers.

Comment Date: April 14, 2003.

10. MidAmerican Energy Company

[Docket No. ER03–646–000]

Take notice that on March 24, 2003, MidAmerican Energy Company (MidAmerican), filed with the Federal Energy Regulatory Commission (Commission) an amended Interconnection, Interchange and Joint Construction Agreement originally dated August 21, 1968, entered into by MidAmerican's predecessor, Iowa Power and Light Company, with Interstate Power and Light Company's predecessor, Iowa Southern Utilities Company, and amended by First

Amendment to the Agreement, dated November 21, 2002.

MidAmerican states it has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: April 14, 2003.

11. Victory Garden Phase IV Partnership

[Docket No. QF90–43–006]

Take notice that on March 20, 2003, Victory Garden Phase IV Partnership (VGIV) filed with the Federal Energy Regulatory Commission (Commission) an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing. VGIV states that the facility is a 22 MW wind energy generating facility in the Tehachapi Mountains, Kern County, California. VGIV also states that the facility is interconnected with the Southern California Edison Company. VGIV further states that recertification is sought to reflect a change in the upstream ownership of the Facility.

Comment Date: April 21, 2003.

12. Sky River Partnership

[Docket No. QF91–59–007]

Take notice that on March 20, 2003, Sky River Partnership (Sky River) filed with the Federal Energy Regulatory Commission (Commission) an application for recertification of a facility as a qualifying small power production facility pursuant to section 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing. Sky River states that the facility is a 77.5 MW wind energy generating facility in the Tehachapi Mountains, Kern County, California. Sky River also states that the facility is interconnected with the Southern California Edison Company. Sky River further states that recertification is sought to reflect a change in the upstream ownership of the Facility.

Comment Date: April 21, 2003.

13. Cabazon Power Partners LLC

[Docket No. QF95–186–006]

Take notice that on March 20, 2003, Cabazon Power Partners LLC (Cabazon) filed with the Federal Energy Regulatory Commission (Commission) an application for recertification of a facility as a qualifying small power production facility pursuant to section 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing. Cabazon states that the facility is a 39.75 MW wind energy generating facility in Cabazon, Riverside County, California. Cabazon also states that the facility is interconnected with the Southern California Edison Company. Cabazon further states that recertification is sought to reflect a change in the upstream ownership of the Facility.

Comment Date: April 21, 2003.

14. Victory Garden Power Partners I LLC

[Docket No. QF99–92–002]

Take notice that on March 20, 2003, Victory Garden Power Partners I LLC (VGI) filed with the Federal Energy Regulatory Commission (Commission) an application for recertification of a facility as a qualifying small power production facility pursuant to section 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing. VGI states that the facility is a 6.75 MW wind energy generating facility in the Tehachapi Mountains, Kern County, California. VGI also states that the facility is interconnected with the Southern California Edison Company. VGI further states that recertification is sought to reflect a change in the upstream ownership of the Facility.

Comment Date: April 21, 2003.

15. PJM Interconnection, L.L.C.

[Docket No. RT01–2–006]

Take notice that on March 20, 2003, PJM Interconnection, L.L.C. (PJM) tendered for filing with the Federal Energy Regulatory Commission (Commission) in compliance with the Commission's order of December 20, 2002, in the captioned proceeding, 100 FERC ¶ 61,345, (1) revised pages to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. and to the PJM Open Access Transmission Tariff, and (2) complete, revised volumes of the PJM Tariff, Operating Agreement, Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area and the PJM West Reliability Assurance Agreement.

PJM states that copies of this filing, excluding the full revised PJM Tariff, Operating Agreement, RAA and West RAA, have been served on all parties, as well as on all PJM Members and the state electric utility regulatory commissions in the PJM region. PJM states that it will promptly post the complete revised volumes of the PJM Tariff, Operating Agreement, RAA and West RAA on PJM's Web site (*http://www.pjm.com*) and will deliver a hard copy of any or all of those documents to any person upon request. PJM requests that the Commission waive the service requirements of its Rule 2010(a), 18 CFR 385.2010(a), to the extent necessary to accommodate these arrangements.

Comment Date: April 21, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8088 Filed 4–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Alabama Power Company; Notice of Availability of Environmental Assessment

March 28, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects' staff has prepared an Environmental Assessment (EA) for an application requesting Commission approval to permit Russell Lands, Inc. the use of project lands to renovate a golf course at Willow Point Golf and Country Club located at the Martin Dam Hydroelectric Project. The project is located on the Tallapoosa River in the counties of Coosa, Elmore, and Tallapoosa, Alabama. The Willow Point Golf and Country Club site does not involve federal or tribal lands.

The EA contains staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the proposal would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the order, issued on March 28, 2003, and the EA are available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number (prefaced by P-) and excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

For further information, contact Jean Potvin at (202) 502–8928.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8091 Filed 4–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–434–000]

ANR Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Westleg Project

March 28, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by ANR Pipeline Company (ANR) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project ("WestLeg Project"), with appropriate mitigating measures as recommended, would not constitute a major Federal action significantly affecting the quality of the human environment. The EA evaluates alternatives to the proposal, including the no-action alternative, major route alternatives, and route variations.

The EA assesses the potential environmental effects of the construction, operation, and abandonment of facilities in Illinois and Wisconsin. The purpose of the WestLeg Project is to increase ANR's capacity to supply gas to the Madison and Janesville, Wisconsin market areas by 220,000 dekatherms per day (Dth/d), with 86,500 Dth/d of this capacity used to replace volumes currently provided by Northern Natural Gas Company. ANR reports that 60,000 Dth/d would be made available to Wisconsin Power and Light Company to supply gas to fuel a new 600-megawatt power plant currently being constructed by Calpine Corporation in Beloit, Wisconsin.

The proposed project would install and/or replace the following facilities:

- *Madison Lateral Loop:* ANR's existing Madison Lateral easement contains two pipelines (a 10- and 12-inch-diameter pipeline). In the WestLeg Project, ANR would construct 26.3 miles of 30-inch-diameter loop within the existing easement. The Madison Lateral Loop would extend from McHenry County, Illinois, into Walworth and Rock Counties, Wisconsin.
- *Beloit Lateral Replacement:* ANR would abandon by removal two 6.5-mile-long, 4- and 6-inch-diameter laterals that parallel each other in Rock County. ANR would replace them with one new 20-inch-diameter lateral.
- ANR would also construct one new mainline valve on the Madison Lateral in Rock County; expand four existing valves on the Madison Lateral in McHenry, Walworth, and Rock Counties; expand one existing valve on the Beloit Lateral; construct one new meter station on the Beloit Lateral, and make minor modifications to two meter stations in Dane County, Wisconsin.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, state, and local agencies; public interest groups; interested individuals; newspapers; libraries; and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please follow these instructions carefully to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1;
- Reference Docket No. CP02–434–000; and
- Mail your comments so that they will be received in Washington, DC on or before May 2, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to be a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs,

[1] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*)using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8086 Filed 4–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–374–000, CP02–376–000, CP02–377–000 and CP02–378–000]

Hackberry LNG Terminal, L.L.C.; Notice of Availability of and Public Comment Meetings on the Draft Environmental Impact Statement for the Proposed Hackberry LNG Project

March 28, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) on the construction and operation of the liquified natural gas (LNG) import terminal and natural gas pipeline facilities proposed by Hackberry LNG Terminal, L.L.C (Hackberry LNG) in the above-referenced dockets.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The draft EIS also evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives.

The draft EIS addresses the potential environmental effects of the construction and operation of the following facilities in Cameron, Calcasieu, and Beauregard Parishes, Louisiana:

- A ship unloading slip with two berths, each equipped with mooring and breasting dolphins, three liquid unloading arms, and one vapor return arm;
- three LNG storage tanks, each with a usable volume of 1,006,000 barrels (3.5 billion standard cubic feet of gas equivalent);
- nine first-stage pumps, each sized for 250 million standard cubic feet per day (MMscf/d);
- ten second-stage pumps, each sized for 188 MMscf/d;
- twelve submerged combustion vaporizers, each sized for 150 MMscf/d;
- a boil-off gas compressor and condensing system;
- an LNG circulation system;
- a natural gas liquids recovery unit;
- ancillary utilities, buildings, and service facilities at the LNG terminal; and
- a 35.4-mile, 36-inch-diameter natural gas sendout pipeline.

The purpose of these facilities is to transport approximately 1.5 billion cubic feet per day of imported natural gas to the United States market. As part of the proposed project, Hackberry LNG plans to remove the existing liquefied petroleum gas facilities and associated dock at the proposed terminal site.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and are properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP02–374–000;
- Label one copy of your comments for the attention of the Gas 1, PJ–11.1;
- Mail your comments so that they will be received in Washington, DC on or before May 19, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create an account by clicking on "Login to File" and then "New User Account."

In addition to or in lieu of sending written comments, we invite you to attend the public comment meeting that staff will conduct in the project area. The time and location for this meeting is listed below: April 22, 2003, 7 pm, Holiday Inn Express, 102 Mallard Street, Sulphur, Louisiana 70665, Telephone: (337) 625–2500.

Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meetings will be prepared.

After these comments are reviewed, any significant new issues are investigated, and necessary modifications are made to the draft EIS, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (Title 18 Code of Federal Regulations, part 385.214). Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above. You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and is available for public inspection at: Federal Regulatory Energy Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies of the draft EIS are available from the Public Reference and Files Maintenance Branch identified above. In addition, the draft EIS has been mailed to Federal, state, and local agencies; elected officials; public interest groups; affected landowners; public libraries; newspapers; parties to the proceeding; and individuals who requested a copy of the draft EIS.

Additional information about the proposed project is available from the Commission's Office of External Affairs at 1–866–208-FERC (1–866–208–3372) or on the FERC Web site (*www.ferc.gov*). Click on the "FERRIS" link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. The application and supplemental filings in these dockets are available for viewing on FERRIS. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8085 Filed 4–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

March 28, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–287–009.

c. *Date filed:* April 8, 2002.

d. *Applicant:* Midwest Hydro Inc.

e. *Name of Project:* Dayton Hydroelectric Project.

f. *Location:* On the Fox River, near the City of Dayton, in La Salle County, Illinois. The project does not affect any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Charles Alsberg, Executive Vice President, North American Hydro, PO Box 167, Neshkoro, WI 54960, (920) 293–4628 ext. 11.

i. *FERC Contact:* Tom Dean, (202) 502–6041, *thomas.dean@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Dayton Hydroelectric Project consists of: (1) 594-foot-long arch-buttress uncontrolled fixed crest overflow concrete dam; (2) a 200-foot-long earthen embankment on the east side; (3) a 200 acre impoundment with a normal pool elevation of 498.90 msl; (4) a concrete head gate structure with four 15.5-foot-wide and 9.5 foot-high wooden gates located at the west abutment; (5) a 900-foot-long, 135-foot-wide, 10-foot-deep power canal; (6) a powerhouse containing three turbines with a total installed capacity of 3,680 kW; (7) a 150-foot-long, 2.4 kV transmission line; and (8) appurtenant facilities. The average annual generation is 14,200 megawatthours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. The EA will have at least a 30 day period for entities to file comments, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to this proposal, they should file comments during the comment period stipulated in item j above, briefly explaining the basis for their objection.*Issue Scoping Document:* April 2003.*Notice that application is ready for environmental analysis:* June 2003.*Notice of the availability of the EA:* October 2003.*Ready for Commission decision on the application:* December 2003.

o. Anyone may submit a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title "PROTEST" or "Motion to Intervene;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8090 Filed 4–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications Public Notice

March 28, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in

reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.*Exempt:*

Docket No.	Date filed	Presenter or requester
1. CP03–1–000	3–10–03 ..	Jennifer Kerrigan.
2. Project No. 1927–008.	3–25–03 ..	John Smith.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8094 Filed 4–2–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0009, FRL–7476–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Pretreatment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Pretreatment Program (OMB Control No. 2040–0009; EPA ICR No. 0002.11), expiring 09/30/2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 2, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Tracy Hudak, Office of Water, Office of Wastewater Management, Water Permits Division, Mail code: 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–0651; fax number: 202–564–6431; email address: *hudak.tracy@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2003–0009, which is available for public viewing at the Office of Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method); (2) by email to *OW-Docket@epamail.epa.gov;* or, (3) by mail to: EPA Docket Center, Environmental Protection Agency, Office of Water Docket, Mail code: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Affected entities: Entities potentially affected by this action are those subject to the regulations under 40 CFR part 403, including private industries and State, local and Federal governments.

Title: National Pretreatment Program (OMB Control Number 2040–0009; EPA ICR Number 0002.11), expiring 09/30/2003.

Abstract: This Information Collection Request (ICR) calculates the burden and costs associated with managing the National Pretreatment Program, mandated by sections 402(a) and (b) and 307(b) of the Clean Water Act. This ICR is a renewal of the Revision of the Information Collection Request for the National Pretreatment Program (OMB Control No. 2040–009, EPA ICR No. 0002.09).

EPA's Office of Wastewater Management (OWM) in the Office of Water (OW) is responsible for the management of the pretreatment program. The Clean Water Act requires EPA to develop national pretreatment standards to control discharges from Industrial Users (IUs) into Publicly Owned Treatment Works (POTWs). These standards limit the level of certain pollutants allowed in non-domestic wastewater that is discharged to a POTW. EPA administers the pretreatment program through the National Pollutant Discharge Elimination System (NPDES) permit program. Under the NPDES permit program, EPA may approve State or individual POTW implementation of the pretreatment standards at their respective levels. Data collected from IUs during implementation of the pretreatment program include the mass, frequency, and content of IU discharges and IU schedules for installing pretreatment equipment. Data also include actual or anticipated IU discharges of wastes that violate pretreatment standards, have the potential to cause problems at the POTW, or are considered hazardous under the Resource Conservation and Recovery Act (RCRA). OWM uses the data collected under the pretreatment program to monitor and enforce compliance with the pretreatment regulations, as well as to authorize program administration at the State or local (POTW) level. States and POTWs applying for approval of their pretreatment programs submit data concerning their legal, procedural, and administrative bases for establishing such programs. This information may include surveys of IUs, local limits for pollutant concentrations, and schedules for completion of major project requirements. IUs and POTWs submit written reports to the approved state or EPA. These data may then be entered into the NPDES databases by the approved state or by EPA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The information collection would involve an estimated 32,675 respondents at an annual cost of $95,126,953 to those respondents. The total annual cost to both respondents and government (excluding Federal government) is estimated at $99,022,998. The annual number of responses would be 248,539 or 7.61 responses per respondent. The time required for a response ranges from 15 minutes to 400 hours, with an average response time of approximately 10.0 hours per year. An estimated 32,675 respondents would be required to keep records at an average annual burden of 6.80 hours per record keeper. The pretreatment program would entail 222,217 hours of record keeping, 2,107,586 hours of reporting, 114,706 hours for government (excluding Federal government) administration and 11,262 hours for EPA as users of the data, for a total of 2,485,770 burden hours at a cost of $99,387,774. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 28, 2003.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 03–8156 Filed 4–2–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

DATE AND TIME: Tuesday, April 8, 2003 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

Note: The open meeting scheduled for Thursday, April 10, 2003, has been prescheduled to Wednesday, April 9, 2003.

DATE AND TIME: Wednesday, April 9, 2003 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Legislative Recommendations for 2003.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–8223 Filed 4–1–03; 11:34 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 17, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Francis E. Powers, Defiance, Iowa; to acquire voting shares of Union Bancorporation, Defiance, Iowa, and thereby indirectly acquire voting shares of Defiance State Bank, Defiance, Iowa.

Board of Governors of the Federal Reserve System, March 28, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–8023 Filed 4–2–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 28, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Midwest Banc Holdings, Inc., Melrose Park, Illinois; to acquire 100 percent of the voting shares of CoVest Banshares, Inc., Des Plaines, Illinois, and thereby indirectly acquire voting shares of CoVest Banc, National Association, Des Plaines, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Pulaski Investment Corporation, Little Rock, Arkansas; to acquire 100 percent of the voting shares of The Munford Union Bank, Munford, Tennessee.

Board of Governors of the Federal Reserve System, March 28, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–8024 Filed 4–2–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–56]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Assessment of Exposure to Arsenic through Household Water, OMB No. 0920–0472—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background

Arsenic is a naturally occurring element present in food and water as both organic and inorganic complexes. Epidemiologic evidence shows a strong link between ingestion of water containing inorganic arsenic and an increase in certain cancers (e.g., bladder cancer, lung cancer). Although consumption of arsenic-contaminated food is the major source of arsenic exposure for the majority of U.S. citizens, in some areas of the United States, elevated levels of arsenic occur frequently in water. In such areas, ingestion of water can be the primary source of arsenic exposure. Currently, point-of-use (POU) devices are the preferred method of treatment of private domestic well water containing elevated levels of arsenic. Bottled water and POU treatment systems are considered effective means of managing arsenic exposure based on the assumption that people's other water exposures, such as bathing, brushing of teeth, cooking, and drinking occasionally from other taps, contribute relatively minor amounts to a person's total daily intake of arsenic. We propose to conduct a study to methodically test the validity of the commonly made assumption that secondary water exposures, such as bathing, will not result in a significant increase in arsenic exposure above background dietary levels. Specifically, we are interested in assessing total urine arsenic levels and levels of organic and inorganic arsenic species among people in areas in which ingestion of arsenic-containing water is controlled by either POU treatment or use of bottled water. Potential participants who are interested in being part of the study will be interviewed by telephone. Recruited participants will be asked to participate in a survey interview about potential exposures to arsenic. Participants in the study will use short-term diaries to record diet, water consumption, and bathing frequency. In addition, we will assess long-term arsenic exposure by analyzing toenail samples for total arsenic.

This request is for a 4-year extension. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Prescreeing postcard completion	12,850	1	5/60	1071
Initial recruiting postcard completion	2,955	1	5/60	246

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Recruiting telephone interview	975	1	15/60	244
Survey interview (in person)	780	1	30/60	390
Short-term diary completion	780	1	15/60	195
Biologic specimen collection	780	1	10/60	130
Toenail analysis phone call	260	1	5/60	22
Toenail analysis consent form	260	1	5/60	22
Total				2,320

Dated: March 27, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–8043 Filed 4–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–33–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: National Coal Workers' Autopsy Study (NCWAS) Consent Release and History Form 0920–0021—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention.

Background

Under the Federal Coal Mine Health and Safety Act of 1977, Pub. L. 91–173 (amended the Federal Coal Mine and Safety Act of 1969), the Public Health Service has developed a nationwide autopsy program (NCWAS) for underground coal miners. The NCWAS is a service program to aid surviving relatives in establishing eligibility for black lung compensation. The Consent Release and History Form is primarily used to obtain written authorization from the next-of-kin to perform an autopsy on the deceased miner. Because a basic reason for the post-mortem examination is research (both epidemiological and clinical), a minimum of essential information is collected regarding the deceased miners, including occupational history and smoking history. The data collected will be used by the staff at NIOSH for research purposes in defining the diagnostic criteria for coal workers' pneumoconiosis (black lung) and pathologic changes that will be correlated with x-ray findings.

It is estimated that only 5 minutes is required for the pathologist to put a statement on the invoice affirming that no other compensation is received for the autopsy. From past experience, it is estimated that 15 minutes is required for the next-of-kin to complete the Consent Release and History Form. Since an autopsy report is routinely completed by a pathologist, the only additional burden is the specific request of abstraction of the terminal illness and final diagnosis relating to pneumoconiosis. Therefore, only 5 minutes of additional burden is estimated for the autopsy report. The annual burden for this data collection is 21 hours, a decrease of 41 hours.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)
Pathologist Invoice	50	1	5/60
Pathologist Report	50	1	5/60
Next-of-Kin	50	1	15/60

Dated: March 27, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–8044 Filed 4–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–34–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: 2004 National Health Interview Survey: 2004 Basic Module with Topical Module, (0920–0214)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

The annual National Health Interview Survey (NHIS) is a basic source of

general statistics on the health of the U.S. population. In accordance with the 1995 initiative to increase the integration of surveys within the Department of Health and Human Services, respondents to the NHIS serve as the sampling frame for the Medical Expenditure Panel Survey. This survey is conducted by the Agency for Healthcare Research and Quality. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally mandated "Health US" and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, "Healthy People 2010."

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a shift from paper questionnaires to computer assisted personal interviews (CAPI). These redesigned elements were partially implemented in 1996 and fully implemented in 1997. This clearance is for the eighth full year of data collection using the core questionnaire on CAPI, for the implementation of a supplement on children's mental health, and for a software field test to evaluate a switch from CASES software to Blaise software. The field test for the new software is scheduled for June 2003. The data collection for the full survey is planned for January–December 2004, and will result in publication of new national estimates of health statistics, release of public use micro data files, and a sampling frame for other integrated surveys. The total annual burden for this data collection is 39,870 hours.

Questionnaire (respondents)	Number of respondents	Number of responses/ respondent	Average burden per response (in hrs.)
Family Core (Adult Family Member)	39,000	1	21/60
Adult Core and Topical Module (sample adult)	32,000	1	42/60
Child Core and Topical Module (adult family member)	13,000	1	15/60
Re-interview Survey	3,250	1	5/60
Software and Systems Field Test	300	1	60/60

Dated: March 27, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–8045 Filed 4–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–35–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Minimum Data Elements (MDEs)/System for Technical Assistance Reporting (STAR) for the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) OMB No. 0920–0571—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

The NBCCEDP was established in response to the Congressional Breast and Cervical Cancer Mortality Prevention Act of 1990. This act mandates a program that will provide early detection of breast and cervical cancer screening services for under-served women.

CDC proposes to aggregate breast and cervical cancer screening, diagnostic and treatment data from NBCCEDP grantees at the state, territory and tribal level. These aggregated data will include demographic information about women served through funded programs. The proposed data collection will also include infrastructure data about grantee management, public education and outreach, professional education, and service delivery.

Breast cancer is a leading cause of cancer-related death among American women. The American Cancer Society estimates that 203,500 new cases will be diagnosed among women in 2002, and 39,600 women will die of this disease. Mammography is extremely valuable as an early detection tool because it can detect breast cancer well before the woman can feel the lump, when it is still in an early and more treatable stage. Women older than age 40 that receive annual mammography screening reduce their probability of breast cancer mortality and increase their treatment options.

Although early detection efforts have greatly decreased the incidence of invasive cervical cancer during the last four decades, an estimated 13,000 new cases will be diagnosed in 2002 and 4,100 women will die of this disease. Papanicolaou (Pap) tests effectively detect precancerous lesions in addition to invasive cervical cancer. The detection and treatment of precancerous lesions can prevent nearly all cervical cancer-related deaths.

Because breast and cervical cancer screening, diagnostic and treatment data are already collected and aggregated at the state, territory and tribal level, the additional burden on the grantees will be small. Implementation of this program will require grantees to report a minimum data set (MDE) on screening and follow-up activities electronically to the CDC on a semi-annual basis. The program will require grantees to report infrastructure data (STAR) to the CDC annually using a web-based system. Information collected will be used to obtain more complete breast and cervical cancer data, promote public education of cancer incidence and risk, improve the availability of screening and diagnostic services for under-served women, ensure the quality of services provided to women, and develop outreach strategies for women that are never or rarely screened for breast and cervical cancer. The annual burden for this data collection is 2,343 hours.

Report	Number of respondents	Responses per respondent	Average burden per response (in hours)
Infrastructure Report (STAR)	71	1	25
Screening and Follow-up (MDE)	71	2	4

Dated: March 27, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–8046 Filed 4–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

[Program Announcement 03012]

Public Health Conference Support Cooperative Agreement Program; Notice of Availability of Funds Amendment

A notice announcing the availability of Fiscal Year 2003 funds for a cooperative agreement program to support public health conferences was published in the **Federal Register** dated January 10, 2003, Volume 68, Number 7, pages 1463–1467. The notice is amended as follows:

Page 1466, first column, section "G. Submission and Deadline," remove the sentence, "Expected Award date: July 1, 2003."

Page 1466, first column, subsection "Deadline," remove the sentence, "There will be one conference support review this year and awards will be made in the month of July, 2003."

Dated: March 28, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–8063 Filed 4–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03034]

Public Health Laboratory Biomonitoring Implementation Program; Notice of Availability of Funds

Application Deadline: July 2, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317 of the Public Health Service Act, 42 U.S.C. 241 and 247b, as amended. The catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for cooperative agreements to establish or expand state public health laboratory biomonitoring capacity. This program addresses the "Healthy People 2010" focus areas of Environmental Health and Public Health Infrastructure. This program builds upon biomonitoring planning conducted by State public health laboratories during FY 2001 and FY 2002 under Program Announcement (PA) 01072, Public Health Laboratory Biomonitoring Planning Grant. PA 01072 can be viewed at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=01–11215–filed.*

The purpose of this program is to implement and expand State laboratory-based biomonitoring programs to assess human exposure to environmental toxicants, help prevent disease resulting from exposure to toxic substances, and determine estimates of background exposure to naturally occurring and industrial chemicals that have the potential to cause harm.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for Environmental Health (NCEH):

1. Develop laboratory capacity to monitor human exposures to environmental chemicals.

2. Periodically determine the number of Americans exposed to environmental chemicals and the degree of their exposure.

3. Increase the capacity of State and local health departments to deliver environmental health services in their communities.

C. Eligible Applicants

Assistance will be provided only to public health laboratories of States or lead States of consortia that were recipients of CDC grants for biomonitoring planning in FY2001 and FY2002 under PA 01072 (*see* Attachment 3 as posted on the CDC Web site for a listing of funded grantees under PA 01072). No other applications are solicited.

Applications are only sought from those grantees under PA 01072, who have developed a biomonitoring plan and the necessary relationships and contacts to implement their plan. These grantees have spent two years on the development of their biomonitoring plans. New applicants would not have those plans in place, and therefore would not be ready to move into the implementation phase being funded by this new announcement.

States, territories, or protectorates that do not meet the preceding requirement may participate by entering into a consortium or other agreement with an eligible State or an eligible consortium of States.

Only one application per State or consortium may be submitted. A State may apply as an individual State or as the lead member of a consortium, but not both. Members of a consortium may not apply as individual States.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $5,000,000 is available in FY 2003 to fund approximately ten awards. Funding will range from $200,000, up to $3,000,000 per award. Funding estimates may change. It is expected that the awards will begin on or about September 15, 2003, and will be made for an initial 9-month budget period, which will end on June 30, 2004. Future budget periods will be 12 months in duration for a total project period of up to four years and nine months.

Continuation awards within an approved project period will be made on the basis of the availability of funds and satisfactory progress as evidenced by required reports.

Funding will be awarded in two categories:

Individual States: Maximum award of up to $1,000,000 for individual States.

Consortia: Maximum award of up to $3,000,000 based upon the number of States within the consortium. A range of $200,000–$600,000 per State consortium member is anticipated.

Applications exceeding the foregoing maxima will be returned without review. Eligible applicants are only allowed to apply for one of the two categories described above.

Use of Funds

Funds may be used to develop and implement a biomonitoring program, conduct demonstration projects, purchase equipment and supplies, hire and train personnel, conduct appropriate and relevant travel, hire consultants, pay for services, and renovate or modify existing laboratory areas. Funds provided by CDC under this cooperative agreement may not be used for construction of new laboratory space. Funds may not be used to support activities otherwise funded, or eligible to be funded, through the Superfund Program or the Agency for Toxic Substances and Disease Registry. However, because toxicants from Superfund sites may contribute to the total exposures of a given population, funds may be used to assess the exposure status of populations not already addressed under Superfund.

Funding Preferences

Preference for awards will be given to ensure geographic diversity, distribution, and balance among laboratories which serve people living in various settings such as urban, rural, agricultural, and industrial communities; among laboratories that have various levels of expertise, experience, capacity, and need for biomonitoring. Preference will be given to applications with the greatest need for biomonitoring expansion or implementation based on documented or suspected environmental toxicant exposures among persons living within the applicant's area of responsibility.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities:

a. Implement and apply biomonitoring laboratory capacity by following, as closely as possible, the biomonitoring plan(s) that the recipient developed with funding under PA 01072, Public Health Laboratory Biomonitoring Planning Grant.

b.Address the needs for, and proposed application of, biomonitoring within the community served by the applicant and distinguish between those needs that are single issue and those that exist on an on-going basis. Collaborate with other public health partners, including public health physicians and epidemiologists, in making this needs assessment. Special consideration should be given to evaluating exposures in under-served population groups that may be at increased risk from exposure. (*E.g.* minorities, the very young, and the elderly may have a greater risk of exposure or harmful effects.)

c. Incorporate the application of laboratory data to respond to important public health issues as listed in items 1. through 6. of Attachment 2, "Biomonitoring and Complementary Programs." Please see all attachments referenced in this announcement as posted with the full announcement on the CDC Web site: *http://www.cdc.gov/od/pgo/funding/grantmain.htm.* Uses may include population based or targeted health exposure surveys, health effects studies, sentinel monitoring of at-risk populations, case-control studies, studies involving analyses of stored specimens, or other recognized epidemiologic tools. The applicant must develop complete study protocols after award of a cooperative agreement and prior to commencing the study.

d. Meet requirements for local Institutional Review Board (IRB) or Human Subjects review and obtain approval for any such projects which constitute research as defined in 45 CFR part 46. (*See http://ohrp.osophs.dhhs.gov/humansubjects/guidance/45cfr46.htm#46.102*)

e. Biomonitoring research projects that the applicant plans to undertake without substantial CDC involvement do not require CDC IRB approval. However, the applicant will be required to submit a copy of their proposed protocol and a copy of their IRB approval letter (and all subsequent approval renewals) to CDC. Research projects that applicants wish to undertake with substantial CDC involvement will require joint development of detailed protocols with CDC and approval from both CDC IRB and the applicant's local IRB. **Note:** CDC IRB may defer to the local IRB or the local IRB may defer to CDC IRB. Because funds currently available to support the biomonitoring implementation program under this cooperative agreement are limited and are primarily intended for biomonitoring capacity building, applicants are discouraged from relying on this agreement to fund complex and costly epidemiologic studies. Rather, activities should be limited to demonstration projects, pilot surveys, and preliminary investigations. More detailed and costly epidemiologic studies employing biomonitoring should be developed jointly and in detail among the interested laboratories, their epidemiology partners, and others with funding sought from other sources as stand-alone projects.

f. Implement the plan for developing (or expanding) and applying biomonitoring capacity in the public health laboratory. This implementation must follow the specific, measurable, and time-framed goals and objectives presented in the plan.

g. Develop an evaluation plan by which the recipient may conduct periodic and on-going assessments of progress in expanding the laboratory's biomonitoring capacity and to assess the impact of biomonitoring measurements on addressing the identified public health needs within the state(s) or community.

h. Participate in external proficiency testing and quality control programs, perform biomonitoring pilot and demonstration studies (including performance of biomonitoring analyses on previously collected samples), participate in the prospective planning and conduct of biomonitoring research projects or population exposure surveys, and perform other activities that enhance the recipient's ability to implement a biomonitoring program.

2. CDC Activities:

a. Provide technical assistance, guidance, and training in biomonitoring, including information about analytical methods and instrumentation used by CDC for biomonitoring.

b. Provide information about sources for reagents, supplies, standards, quality assurance materials, equipment, etc. These sources may include commercial vendors, other Federal, State, or international agencies, professional societies or standard-setting bodies, contractors to CDC, and CDC laboratories, as appropriate.

c. Provide analytical support as requested for biomonitoring studies initiated by the recipient (subject to availability and competing national priorities).

d. Assist in the development of a research protocol for projects in which CDC provides a staff member to serve as principal investigator or co-investigator or when CDC conducts sample analysis. IRB approval will be required from all institutions participating in the research. CDC IRB must review and approve the protocol initially and at least on an annual basis until the research project is completed. For those research projects that do not have a CDC staff member serving as the principal investigator or co-investigator, technical assistance in the form of advice, recommendations, and expert opinions will be provided.

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than one page, single-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. The LOI will be used for CDC planning purposes. The LOI must indicate whether the applicant plans to apply as an individual state applicant or as the lead member of a consortium and should identify the states that are anticipated to be consortium partners.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Content, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 25 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of, at a minimum, a Workplan, Objectives, Methods, Personnel, Evaluation Scheme, and Budget. A two- to three-page executive summary of the applicant's plan developed under PA 01072 shall be included preceding the narrative. The application must also include, as an attachment, a full copy of the plan from the planning grant. The page limitation is exclusive of the attached copy of the plan.

The application must also:

1. Discuss how the recipient will develop, implement, and apply biomonitoring laboratory capacity by following the biomonitoring plan that was developed with funding under PA 01072.

2. Outline how biomonitoring will be applied within the community served by the applicant and distinguish between those needs that are single issue and those that exist on an on-going basis. Describe how collaboration with other public health partners, including public health physicians and epidemiologists in making this needs assessment will be accomplished. Special consideration should be given to evaluating exposures in under-served population groups that may be at increased risk from exposure.

3. Discuss how the program will use biomonitoring laboratory data to answer the important public health questions as listed in items 1. through 6. of Attachment 2 as posted on the CDC Web site. The application should not include complete study protocols, as they will be developed after award of a cooperative agreement and prior to commencing the study.

4. Tell how requirements for local IRB or Human Subjects review will be met and how approval for any such projects which constitute research as defined in 45 CFR part 46 will be obtained. (*See http://ohrp.osophs.dhhs.gov/humansubjects/guidance/45cfr46.htm#46.102.*)

5. Provide an inventory of existing biomonitoring methods in use by the applicant, and for each method specify: Toxic substance(s) measured; method of measurement (*e.g.*, GC–MS, atomic absorption); current instrumentation used; the limit of detection for each analyte (and how the limit of detection was determined); known interferences; description of method's quality control; any external proficiency testing program in which the laboratory currently participates for the method; an approximate sample throughput per day; and the approximate number of human specimens analyzed in the past 12 months. Emphasize in this section how the existing biomonitoring capacity will be used to address needs identified in the paragraphs above. As part of this explanation, specify the collaborations with public health partners (State and local health officials, schools of public health, academic centers, community groups, etc.) who will work with the laboratory to use biomonitoring data to help address these public health needs. Include documentation from each public health partner of its willingness to collaborate. Acceptable documentation may be letters of support or formal agreements among partners.

6. For each new biomonitoring method needed, describe additional requirements for personnel, instrumentation, and facilities modification or expansion. Provide cost estimates for facilities modification or expansion, if applicable.

7. Describe specimen management and security protocols that are in place or that are to be implemented to support the biomonitoring program.

8. Describe the data management and communications resources and plans available or needed to support the biomonitoring program. The relationship (or lack thereof) with other public health data management and communications initiatives (*e.g.*, National Electronic Disease Surveillance System, Health Alert Network, etc.) should be discussed.

9. Discuss requirements for compliance with the Clinical Laboratory Amendments of 1988 (CLIA).

10. Develop an evaluation plan to provide periodic and on-going assessment of progress in expanding the laboratory's biomonitoring capacity and to assess the impact of biomonitoring measurements on addressing the identified public health needs within the State(s) or community.

11. Applications from consortia must provide documentation from each member of the consortium of their willingness to collaborate, to share resources, and/or to perform work within the consortium under reciprocal arrangements, to pool data from each site in their proposed consortium as appropriate to the goals of the consortium, and to participate in periodic meetings (or conferences via electronic media) among consortium laboratories for the purpose of planning, conduct of consortium business, training, and technology transfer. Acceptable documentation may be letters of support or formal agreements among the consortium members.

12. Discuss anticipated problems with the implementation of the biomonitoring plan and outline proposed solutions. Potential problems might include state restrictions on

hiring of personnel, travel restrictions, and shortages of qualified personnel.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before May 5, 2003, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of PHS Form 5161—

1. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. eastern time on July 2, 2003. Submit the application to: Technical Information Management—PA03034, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Atlanta, GA 30341–4146. Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. eastern time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received up to two weeks after the closing date, due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Understanding the Requirements for Implementing a Biomonitoring Plan (30 Percent)

Does the application reflect the biomonitoring plan developed by the applicant and is a copy of the biomonitoring plan included as an attachment? (**Note:** If the application is from a consortium that includes members previously funded as individual planning grantees, the application must reflect the planning of those consortium members and discuss how those plans will be integrated.) The extent to which the applicant describes the need for a biomonitoring program, and an understanding of the purpose of conducting exposure assessment by measurement of human biological samples (blood, hair, urine, saliva) to identify internal human dose from contact with hazardous environmental chemicals. The applicant's understanding of the analytical challenges associated with identifying the extent of exposure based on data obtained from human samples, especially challenges presented by the differences in physiological makeup of individuals, specimen collection, and pharmacokinetic and pharmacodynamic factors. The demonstration of understanding the problems related to estimating or extrapolating "internal dose" from "external dose" data, and the value of biomonitoring through direct measurement of samples from humans to provide information that is more meaningful.

2. Goals and Objectives (20 Percent)

The extent to which the applicant clearly states biomonitoring program goals and objectives which are consistent with the Purpose and Program Requirements sections as presented in this announcement, and the degree to which the goals and objectives reflect an understanding of the need to reach beyond the laboratory to achieve balanced input from the broader public health community in implementation of the biomonitoring plan. These goals and objectives shall include a discussion of the implementation of biomonitoring laboratory capacity and application of this capacity to specific environmental chemical exposure problems.

3. Program and Methodology (20 Percent)

Describe in detail how the biomonitoring laboratory plan will be implemented. This must include a description of space allocation, staffing requirements and training, instrumentation and instrumentation maintenance, analytical methods, specimen storage and security, supply accession, facilities, quality assurance and quality control, logistical support and data management. The applicant shall provide a phased timeline of activities leading to implementation or expansion of a biomonitoring program by the applicant. Does this description of activities fully cover the anticipated four-year, nine-month project period? Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

a. The proposed plan for the inclusion of both sexes and under-served populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Collaborative Efforts (15 Percent)

Describe anticipated collaborative efforts related to this program among the applicant laboratory(ies), other components of the public health structure of the community, including epidemiologists, environmental health professionals, other state or local health agencies, health services providers, and academic institutions such as schools of public health, medicine, university departments of chemistry or biochemistry, community and citizens groups, and other interested parties. Letters of support from anticipated collaborators must be provided as attachments to the application package. The page limitation is exclusive of the attached letters of support. The applicant must discuss how collaborators propose to employ biomonitoring to address public health issues/concerns. The applicant shall discuss complementary and competing programs if applicable, such as environmental testing programs, terrorism preparedness programs, environmental public health tracking programs, and other activities that may add to or detract from biomonitoring capacity.

5. Evaluation Plan (10 Percent)

The extent to which the applicant describes how progress towards achieving the applicant's goals and objectives will be evaluated, and how, during the implementation phase, new public health needs will be assessed and the program (and the underlying plan) will be modified to adjust to these changing public health needs and priorities. The application's approach to evaluating the impact of the program on environmental health and human exposure issues in the applicant's community will also be evaluated.

6. Staffing, Management System, and Facilities (5 Percent)

The extent to which the applicant describes the staff that is available or anticipated to conduct these activities and how they will be managed and evaluated. The applicant must describe the organizational setting and facilities available to support the biomonitoring program; to access, transport, store, inventory, process and manage biological specimens from people; and to accumulate, process, store, and analyze data and other information related to the implementation of this program. Applicants must also describe planning to provide IRB review when biomonitoring programs are implemented, and discuss the impact of the requirements of CLIA on their plan.

7. Budget (Not Scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and program activities.

You are encouraged to use Out-of-State travel funds to send one staff person to attend the sixth National Environmental Health Conference to be held on December 3–5, 2003, at the Hilton Atlanta, 255 Courtland Street, NE., Atlanta, GA. If additional written justification is needed to support attendance at the above meeting, please contact your project officer. Review the CDC/NCEH Web site for additional information concerning the conference: *http://www.cdc.gov/nceh/default.htm.*

8. Human Subjects (Not Scored)

Does the application adequately address the requirements of title 45 CFR part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

I. Other Requirements

OMB Clearance Requirements

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as a non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, *see* Attachment 1 of the program announcement as posted on the CDC Web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.*

Click on "Funding" then "Grants and Cooperative Agreements".

For interested applicants, a telephone conference call for pre-application technical assistance will be held on April 21, 2003, at 1 p.m. eastern time. Potential applicants are requested to call in using only one telephone line. The conference can be accessed by calling 1–800–311–3437 or 404–639–3277 and entering conference code 824087 when prompted. The purpose of the conference call is to help potential applicants to:

1. Understand the scope and intent of the Program Announcement for the Public Health Laboratory Biomonitoring Implementation Program.

2. Be familiar with the Public Health Services funding policies and application and review procedures.

Participation in this conference call is not mandatory. At the time of the call, if problems are encountered accessing the conference call, please call 404–639–7550. For further information, please contact Charles Buxton at (770) 488–4160 or Barry E. Smith at (770) 488–7968.

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For business management and budget assistance, contact: Mildred S. Garner, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, (MS E–13), Atlanta, GA 30341–4146. Telephone: (770) 488–2745. E-mail address: *mqg4@cdc.gov.*

For program technical assistance, contact: Charles H. Buxton, MT(ASCP)SBB, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, NE. (MS F–20), Atlanta, GA 30341–3724. Telephone: (770) 488–4160. E-mail address: *zpl1@cdc.gov.*

Or:

Barry E. Smith, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, NE. (MS F–20),

Atlanta, GA 30341–3724. Telephone: (770) 488–7968. E-mail address: *bas4@cdc.gov.*

Dated: March 27, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–8062 Filed 4–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 22, 2003, from 8:30 a.m. to 5 p.m. and April 23, 2003, from 8:30 a.m. to 12:30 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5600 Fishers Lane, Rockville, MD.

Contact Person: Kathleen Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301-827–7001, e-mail: REEDYK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On April 22, 2003, the subcommittee will discuss: (1) Quantitative risk-benefit analysis using exposure-response for determining dose adjustment for special populations; and (2) pediatric population pharmacokinetics study design template and analyses of the FDA pediatric database. On April 23, 2003, the subcommittee will discuss: (1) Pharmacogenetics: improvement of existing drug treatments, and (2) drug interactions: metabolism and transport-based.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by April 15, 2003. Oral presentations from the public will be scheduled between approximately 12:45 p.m. and 1:15 p.m. on April 22, 2003, and 11:30 a.m. to 12 noon on April 23, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 15, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kathleen Reedy at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 25, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–8011 Filed 4–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1738]

Draft Guidance for Industry: Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action." This draft document provides recommendations to applicants planning product quality studies to document bioavailability (BA) or bioequivalence (BE) in support of new drug applications (NDAs), or abbreviated new drug applications (ANDAs) for locally acting drugs in nasal aerosols (metered-dose inhalers) and nasal sprays (metered-dose spray pumps). The draft guidance was originally issued for comment on June 24, 1999. Since many substantive changes have been made to the guidance, it is being reissued for comment as a level 1 draft guidance.

DATES: Submit written or electronic comments on the draft guidance by July 2, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance for industry to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Wallace P. Adams, Center for Drug Evaluation and Research (HFD–350), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5651.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action." This draft guidance provides recommendations to applicants planning product quality studies to document BA or BE in support of NDAs or ANDAs for locally acting drugs in nasal aerosols and nasal sprays. This guidance addresses BA and BE studies of prescription corticosteroids, antihistamines, anticholinergic drug products, and the over-the-counter (OTC) mast-cell stabilizer cromolyn sodium. The guidance does not address studies of nasal sprays included in applicable OTC monographs or studies of: (1) Metered-dose products intended to deliver drugs systemically via the nasal route, or (2) drugs in nasal nonmetered dose atomizer (squeeze) bottles that require premarket approval.

Because many substantive changes were made to the guidance after it issued in 1999, the guidance is being reissued at this time for comment as a level 1 draft guidance. We encourage applicants to submit any evidence that supports or refutes the approaches outlined in this guidance to the docket number given in brackets in the heading of this document.

The changes made were based on the following: (1) Public comments submitted to the original docket, (2) the outcome of April 2000 and July 2001 meetings of the Orally Inhaled and Nasal Drug Products Subcommittee of the FDA Advisory Committee for Pharmaceutical Science (ACPS), (3) a July 2001 meeting of the ACPS, and (4) internal discussions within the Center for Drug Evaluation and Research. Changes include reduction in the recommended extent of in vitro testing, elimination of two of the three options for rhinitis study design, and elimination of the recommendation to demonstrate a dose-response relationship from the recommended rhinitis study design (traditional 2-week study). The latter two changes are based on ACPS recommendations. A section on reserve samples for BA and BE testing has also been added. The statistical information that was previously part of the original draft has now been consolidated into appendices that will be published at a later date.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on BA and BE product quality information related to nasal inhalation aerosols and nasal metered-dose spray pumps. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. Alternative approaches to documentation of BA and BE may be used if such approaches satisfy the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch written or electronic comments regarding this document. Submit a single copy of electronic comments to http://www.fda.gov/dockets/ecomments or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be indentified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: March 25, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–8010 Filed 4–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Uniform Progress Report (UPR) for HRSA Continuation Training Grants (OMB No. 0915–0061)—Revision

The HRSA Progress Reports for Continuation Training Grants are used for the preparation and submission of continuation applications for Titles VII and VIII health professions and nursing education and training programs. The Uniform Progress Report measures grantee success in meeting (1) the objectives of the grant project and (2) the cross-cutting outcomes developed for the Bureau's education and training programs. Part I of the progress report is designed to collect information to determine whether sufficient progress has been made on the approved project objectives, as grantees must demonstrate satisfactory progress to warrant continuation of funding. Part II collects information on activities specific to a given program. Part III, Comprehensive Performance Management System, collects data on overall project performance related to the Bureau of Health Professions' strategic goals, objectives, outcomes and indicators. Progress will be measured based on the objectives of the grant project and outcome measures and indicators developed by the Bureau to meet requirements of the Government Performance and Results Act (GPRA).

To respond to the requirements of GPRA, the Bureau developed goals, outcomes and indicators that provide a framework for collection of outcome data for its Titles VII and VIII programs. An outcome-based performance system is critical for measuring whether program support is meeting national health workforce objectives. At the core of the performance measurement system are found cross-cutting goals with respect to workforce quality, supply, diversity and distribution of the health professions workforce. A demonstration project to assess availability of the data needed to support the indicators was conducted, and data from this project are currently being analyzed.

The grantees were able to obtain and submit progress reports electronically for fiscal year 2001.

The burden estimate is as follows:

Form	Number of respondents	Response per respondent	Total responses	Hours per response	Total burden hours
Progress Report	1,550	1	1,550	21.5	33,325

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 27, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–8012 Filed 4–2–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: April 30, 2003, 9:30 a.m. to 5 p.m., May 1, 2003, 8:30 a.m. to 12 noon.

Place: San Carlos Hotel, 202 North Central Avenue, Phoenix, Arizona 85004, Phone: (602) 253–4121 Fax (602) 253–6668.

Status: The meeting will be open to the public.

Agenda: The agenda includes an overview of general Council business activities and priorities. Topics to be addressed will include orientation of new Council members and restructuring subcommittees. In addition, the Council will begin preliminary work on the 2003 recommendations to the Secretary. Finally, the Council will attend the National Association of Community Health Centers' 2003 National Farmworker Health Conference, which is also being held in Phoenix at this time. Agenda items are subject to change as priorities indicate.

For Further Information Contact: Anyone requiring information regarding the Council should contact: Benito Velazquez or Gladys Cate, Migrant Health Program, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone (301) 594–4064.

Dated: March 27, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–8013 Filed 4–2–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request: Request for Generic Clearance To Conduct Voluntary Customer/Partner Surveys

SUMMARY: Under the provisions of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Library of Medicine (NLM), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on, December 6, 2002, in Volume 67, No. 235, page 72692 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Library of Medicine may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Voluntary Customer Satisfaction Surveys.

Type of Information Collection Request: Extension. OMB Control No. 0925–0476, with an expiration date of March 31, 2003.

Need and Use of Information Collection: Executive Order 12962 directs agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. Additionally, since 1994, the NLM has been a "Federal Reinvention Laboratory" with a goal of improving its methods of delivering information to the public. An essential strategy in accomplishing reinvention goals is the ability to periodically receive input and feedback from customers about the design and quality of the services they receive.

The NLM provides significant services directly to the public including health providers, researchers, universities, other federal agencies, state and local governments, and to others through a range of mechanisms, including publications, technical assistance, and web sites. These services are primarily focused on health and medical information dissemination activities. The purpose of this submission is to obtain OMB's generic approval to conduct satisfaction surveys of NLM's customers. The NLM will use the information provided by individuals and institutions to identify strengths and weaknesses in current services and to make improvements where feasible. The ability to periodically survey NLM's customers is essential to continually update and upgrade methods of providing high quality service.

Frequency of Response: Annually or biennially.

Affected Public: Individuals or households; businesses or other for profit; state or local governments; Federal agencies; non-profit institutions; small businesses or organizations.

Type of Respondents: Organizations, medical researchers, physicians and other health care providers, librarians, students, and the general public.

Annual reporting burden is as follows:

Estimated Number of Respondents: 18,400.

Estimated Number of Responses per Respondent: 1.

Average Burden Hours Per Response: .122.

Estimated Total Annual Burden Hours Requested: 2246.

The annualized cost to respondents is estimated at $30,256. There are no capital costs to report. There are no operating or maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed collection of information contact: Ronald F. Stewart, National Library of Medicine, Building 38, Room 2N07, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll free number (301) 496–6491. you may also e-mail your request to: *ron_stewart@mail.nlm.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their effect if received within 30 days of the date of this publication.

Dated: March 26, 2003.

Jon G. Retzlaff,

Executive Officer, National Library of Medicine.

[FR Doc. 03–8058 Filed 4–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Pretesting of NCI Office of Communications Messages

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Pretesting of NCI Office of Communications Messages.

Type of Information Collection Request: EXTENSION (OMB# 0925–0046, expires 8/31/03).

Need and Use of Information Collection: In order to carry out NCI's legislative mandate to educate and disseminate information about cancer prevention, detection, diagnosis, and treatment to a wide variety of audiences and organizations (*e.g,* cancer patients, their families, the general public, health providers, the media, voluntary groups, scientific and medical organizations), the NCI Office of Communications (OC) needs to pretest its communications strategies, concepts, and messages while they are under development. The primary purpose of this pretesting, or formative evaluation, is to ensure that the messages, communication materials, and information services created by OC have the greatest capacity of being received, understood, and accepted by their target audiences. By utilizing appropriate qualitative and quantitative methodologies, OC is able to (1) understand characteristics of the intended target audience—their attitudes, beliefs, and behaviors—and use this information in the development of effective communication tools and strategies; (2) produce or refine messages that have the greatest potential to influence target audience attitudes and behavior in a positive manner; and (3) expend limited program resource dollars wisely and effectively.

Frequency of Response: On occasion.

Affected Public: Individuals or households; businesses or other for profit; not-for-profit institutions; Federal Government; State, Local, or Tribal Government.

Type of Respondents: Adult cancer patients; members of the public; health care professionals; organizational representatives. The annual reporting burden is as follows:

Estimated Number of Respondents: 13,780;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours Per Response: 1458, and

Estimated Total Annual Burden Hours Requested: 2,010.

There are no Capital Costs, Operating Cost, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ellen Eisner, Consumer Research Manager, OC Director's Office, NCI, NIH, Building 31, Room 10A03, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 435–7783 or e-mail your request, including your address to: *eisnere@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: March 24, 2003.

Reesa Nichols,

Project Clearance Liaison, NCI.

[FR Doc. 03–8059 Filed 4–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting; Interagency Autism Coordinating Committee

The National Institutes of Health (NIH) hereby announces a meeting of the Interagency Autism Coordinating Committee (IACC) to be held on May 13, 2003 on the NIH campus in Bethesda, Maryland.

The Children's Health Act of 2000 (Pub. L. 106–310), title I, section 104, mandated the establishment of an Interagency Autism Coordinating Committee (IACC) to coordinate autism research and other efforts within the Department of Health and Human Services (DHHS). In April 2001, Secretary Tommy Thompson delegated the authority to establish the IACC to the National Institutes of Health (NIH). The National Institute of Mental Health (NIMH) at the NIH has been designated the lead for this activity.

The IACC meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

Name of Committee: Interagency Autism Coordinating Committee.

Date: May 13, 2003.
Time: 8:30 a.m. to 5:15 p.m.
Agenda: Discussion of autism activities across Federal agencies.
Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10 (6th floor), Bethesda, MD 20892.
Contact Person: Ann Wagner, Ph.D., Division of Services and Intervention Research, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 7142, MSC 9633, Bethesda, MD 20892, E-mail: *owagner@mail.nih.gov*, Phone: (301) 443–4283.

Any member of the public interested in presenting oral comments to the committee may notify the contact person listed on this notice at least 5 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Presentations may be limited to 5 minutes; both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding his/her statement to the contact person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information about the meeting is also available on-line on the NIMH Home page at *http://www.nimh.nih.gov/iacc/index.cfm.*

Dated: March 26, 2003.

Raynard Kington,

Deputy Director, National Institutes of Health.

[FR Doc. 03–8057 Filed 4–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, R01 applications related to Melanosome Biogenesis and Ocular Albinism.

Date: April 2, 2003.
Time: 4 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Eye Institute, Executive Plaza South, 6120 Executive Blvd., Suite 350, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Anne E Schaffner, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, 6120 Executive Blvd., Suite 350, Bethesda, MD 20892. 301–451–2020.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 28, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8052 Filed 4–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–42, Review of R01s.
Date: April 23, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892. (301) 594–2372.
Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–51, Review of R13s.
Date: May 6, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892. (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: March 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8049 Filed 4–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Developmental Neuroscience Program Review.
Date: April 24, 2003.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone conference call.)
Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–594–0635.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8051 Filed 4–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Messenger R&A Protection.
Date: April 30, 2003.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: DHHS/NIH/NIAID/DEA/SRP, 6700 B Rockledge Drive, 2156, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 2156, Bethesda, MD 20892–7616. (301) 402–4598. *clopham@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 28, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8053 Filed 4–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel SBIR Phase II, Topic 87—Development of Novel Approaches to Proteomics.
Date: May 1, 2003.
Time: 1 p.m. to 3 p.m.
Agendo: To review and evaluate contract proposals.
Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexandra Drive, EC 3162, Research Triangle Park, NC 27709 (Telephone Conference Call).
Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of Conference Grant Applications (R13s).
Date: May 21, 2003.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122, Research Triangle Park, NC 27709 (Telephone Conference Call).
Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: March 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8054 Filed 4–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Planning Grants for Regional Centers of Excellence for Biodefense & Emerging Infectious Diseases Research (P–RCE).
Date: April 30–May 1, 2003.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.
Contact Person: Adriana Costero, PhD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, 6700B Rockledge Drive, MSC07616, Room 2148, Bethesda, MD 20892–276, 301–451–4573, *acostero@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 26, 2003.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 03–8055 Filed 4–2–03; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.
Date: June 12–13, 2003.
Open: June 12, 2003, 9 a.m. to 11 a.m.
Agenda: Administrative reports and program discussions.
Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20814.
Closed: June 12, 2003, 11 a.m. to 5 p.m.
Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.
Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20814.
Closed: June 13, 2003, 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.
Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20814.
Contact Person: Sheldon Kotzin, MLS, Chief, Bibliographic Services Division, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Bldg 38A/Room 4N419, Bethesda, MD 20894.

Any interested person may file written comments with the Committee by forwarding the statement to the Contact Person listed on this Notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 27, 2003.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy, NIH.
[FR Doc. 03–8050 Filed 4–2–03; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine, Extramural Programs Subcommittee.
Date: May 12, 2003.
Closed: 4 PM to 6 PM.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20894.
Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.
Name of Committee: Board of Regents of the National Library of Medicine Subcommittee on Outreach and Public Information.
Date: May 13, 2003.
Open: 7:30 AM to 8:45 AM.
Agenda: Outreach Activities for the National Library of Medicine.
Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20894.
Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.
Name of Committee: Board of Regents of the National Library of Medicine.
Date: May 13–14, 2003.
Open: May 13, 2003, 9:00 AM to 4:30 PM.
Agenda: Administrative Reports and Program Discussion.
Place: National Library of Medicine, Building 38, Board Room, 2E17, 8600 Rockville Pike, Bethesda, MD 20894.
Closed: May 13, 2003, 4:30 PM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, Building 38, Board Room, 2E17, 8600 Rockville Pike, Bethesda, MD 20894.
Open: May 14, 2003, 9 AM to 12 PM.
Agenda: Administrative Reports and Program Discussion.
Place: National Library of Medicine, Building 38, Board Room, 2E17, 8600 Rockville Pike, Bethesda, MD 20894,
Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nlm.nih.gov/od/bor/bor.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 26, 2003.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 03–8056 Filed 4–02–03; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–14814]

Great Lakes Pilotage Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.
ACTION: Notice of meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) will meet to discuss various issues relating to pilotage on the Great Lakes. The meeting will be open to the public.

DATES: The GLPAC will meet on Monday, May 5, 2003, from 2 p.m. to 5:30 p.m. and on Tuesday, May 6, 2003, from 8 a.m. to 4 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before May 1, 2003. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before May 1, 2003.

ADDRESSES: GLPAC will meet at the Maritime Institute of Technology Training and Conference Center, Room Deck A, 5700 Hammonds Ferry Road, Linthicum Heights, MD 21090. Send written material and requests to make oral presentations to Margie Hegy, Commandant (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Margie Hegy, Executive Director of GLPAC, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda

The agenda includes the following:
(1) Ratemaking Methodology.
(2) Pilot Attrition.
(3) Briefing on Maritime Security on the Great Lakes.
(4) Develop Notice for Public Input on Cost Saving Reform Strategies for Great Lakes Pilotage.
(5) Update on Coast Guard Great Lakes Pilotage Activities and Work List for Near Future.
(6) 2003 Shipping Season Issues.
(7) Briefing on Determining Pilotage Rate by Vessel Size.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than May 1, 2003. Written material for distribution at the meeting should reach the Coast Guard no later than May 1, 2003. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 10 copies to Margie Hegy at the address in the **ADDRESSES** section no later than April 28, 2003.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: March 27, 2003.
Paul J. Pluta,
Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.
[FR Doc. 03–8134 Filed 4–2–03; 8:45 am]
BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3176–EM]

Connecticut; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Department of Homeland Security.
ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Connecticut (FEMA–3176–EM), dated March 11, 2003, and related determinations.

EFFECTIVE DATE: March 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 11, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Connecticut, resulting from the record/near record snow on February 17–18, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of Connecticut.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended by Executive Order 13286, James N. Russo of the Federal Emergency Management Agency is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Connecticut to have been affected adversely by this declared emergency:

Fairfield, Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, and Windham Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Michael D. Brown,
Acting Under Secretary, Emergency Preparedness and Response.
[FR Doc. 03–8069 Filed 4–2–03; 8:45 am]
BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3178–EM]

District of Columbia; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the District of Columbia of (FEMA–3178-EM), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: March 14, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 14, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in the District of Columbia, resulting from the record/near record snow on February 16–17, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the District of Columbia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended by Executive Order 13286, Thomas Davies of the Federal Emergency Management Agency is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the District of Columbia to have been affected adversely by this declared emergency:

The District of Columbia for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–8067 Filed 4–2–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1446–DR]

Guam; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Department of Homeland Security, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Territory of Guam, (FEMA–1446–DR), dated December 8, 2002, and related determinations.

EFFECTIVE DATE: March 14, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the authority of Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, consistent with the Insular Areas Act, 48 U.S.C. 1469a(d), and the President's declaration letter dated December 8, 2002, Federal funds for Public Assistance, including direct Federal assistance, and Hazard Mitigation Grant Programs, and for Other Needs Assistance under the Individuals and Households Program are authorized at 90 percent of total eligible costs for the Territory of Guam.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–8076 Filed 4–2–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3179–EM]

Maryland; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Maryland (FEMA–3179–EM), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: March 14, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 14, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Maryland, resulting from the record/near record snow on February 14–17, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of Maryland.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended by Executive Order 13286, Thomas Davies of the Federal Emergency Management Agency is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Maryland to have been affected adversely by this declared emergency:

Allegany, Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, Talbot, and Washington Counties, and the City of Baltimore for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–8068 Filed 4–2–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1449–DR]

Federated States of Micronesia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Federated States of Micronesia, (FEMA–1449-DR), dated January 6, 2003, and related determinations.

EFFECTIVE DATE: March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Federated States of Micronesia is hereby amended to include Categories C through G under the Public Assistance program for Chuuk State determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 2003:

Chuuk State for Categories C through G under the Public Assistance program (already designated for Categories A and B including direct Federal assistance at 75 percent Federal funding).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–8074 Filed 4–2–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3177–EM]

New Hampshire; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New Hampshire (FEMA–3177–EM), dated March 11, 2003, and related determinations.

EFFECTIVE DATE: March 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 11, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of New Hampshire, resulting from the record/near record snow on February 17–18, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended by Executive Order 13286, James N. Russo of the Federal Emergency Management Agency is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared emergency:

Cheshire, Hillsborough, Merrimack, Rockingham, and Strafford Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–8070 Filed 4–2–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3173–EM]

New York; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Department of Homeland Security, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of New York, (FEMA–3173–EM), dated February 25, 2003, and related determinations.

EFFECTIVE DATE: March 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of February 25, 2003:

Rensselaer County for emergency protective measures (Category B) under the Public Assistance program for a period of 96 hours.

Schoharie County for emergency protective measures (Category B) under the Public Assistance program for a period of 96 hours (already designated for a 48-hour period).

Tioga County for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–8072 Filed 4–2–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1447–DR]

Commonwealth of the Northern Mariana Islands; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Department of Homeland Security, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of the Northern Mariana Islands, (FEMA–1447–DR), dated December 11, 2002, and related determinations.

EFFECTIVE DATE: March 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the authority of Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, consistent with the Insular Areas Act, 48 U.S.C. 1469a(d), and the President's declaration letter dated December 11, 2002, Federal funds for Public Assistance, including direct Federal assistance, and Hazard Mitigation Grant Programs, and for Other Needs Assistance under the Individuals and Households Program are authorized at 90 percent of total eligible costs for the Commonwealth of the Northern Mariana Islands.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–8073 Filed 4–2–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1430–DR]

Commonwealth of the Northern Mariana Islands; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Department of Homeland Security, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of the Northern Mariana Islands, (FEMA–1430–DR), dated August 6, 2002, and related determinations.

EFFECTIVE DATE: March 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the authority of Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, consistent with the Insular Areas Act, 48 U.S.C. 1469a(d), and the President's declaration letter dated August 6, 2002, Federal funds for the Public Assistance and Hazard Mitigation Grant Programs are authorized at 90 percent of total eligible costs for the Commonwealth of the Northern Mariana Islands.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–8075 Filed 4–2–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1453–DR]

Ohio; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–1453–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: March 18, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective March 18, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–8071 Filed 4–2–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: Fire Administration (USFA), Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy.

Dates of Meeting: April 28–29, 2003.

Place: Building H, Room 300, National Emergency Training Center, Emmitsburg, Maryland.

Time: April 28, 2003, 10:30 a.m.–5 p.m., April 29, 2003, 8:30 a.m.–5 p.m.

Proposed Agenda: April 28–29, Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before April 23, 2003.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

Dated: March 31, 2003.

R. David Paulison,

U.S. Fire Administrator, Director of the Preparedness Division.

[FR Doc. 03–8123 Filed 4–2–03; 8:45 am]

BILLING CODE 6718–08–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–15]

Notice of Submission of Proposed Information Collection to OMB: Home Mortgage Disclosure Act (HMDA) Loan/Application Register

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 5, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0539) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including

number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Home Mortgage Disclosure Act (HMDA) Loan/Application Register.

OMB Approval Number: 2502–0539.

Form Numbers: FR HMDA–LAR.

Description of the Need for the Information and Its Proposed Use:

This report collects information from mortgage lenders on application for, and originations and purchases of mortgage and home improvement loans. None-depository mortgage lending institutions are required to use the report as a running log throughout the calendar year, and send the report to HUD by March 1 of the following calendar year.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion and annually.

REPORTING BURDEN

Number of respondents	Annual responses	×	Hours per response	=	Burden hours
1,800	1		98.6		177,777

Total Estimated Burden Hours: 177,777.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 28, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–8027 Filed 4–2–03; 8:45 pm]

BILLING CODE 4210–72–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meeting; Inter-American Foundation Meeting of the Board of Directors and Advisory Council

TIME AND DATE: April 24, 2003, 9:30 a.m. to 3 p.m.

PLACE: Inter-American Foundation, 901 N. Stuart Street, 10th Floor, Arlington, VA 22203.

STATUS: Open session.

MATTERS TO BE CONSIDERED

- Approval of the Minutes of the December 2, 2002, Meeting of the Board of Directors
- President's Report
- IAF 2002 Grant Results Report
- Investment Initiative
- Corporate Foundation Network

CONTACT PERSON FOR MORE INFORMATION: Carolyn Karr, General Counsel, (703) 306–4350.

Dated: March 27, 2003.

David Valenzuela,

President, Inter-American Foundation.

[FR Doc. 03–8246 Filed 4–1–03; 2:10 am]

BILLING CODE 7025–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Declaration for Importation or Exportation of Fish or Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) will submit the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. If you wish to obtain copies of the information collection requirements, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address or telephone number listed below.

DATES: We will accept comments until June 2, 2003.

ADDRESSES: Mail your comments on this information collection renewal request to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203; or e-mail *Anissa_Craghead@fws.gov*.

Form 3–177 (with instructions for its completion) is available for electronic submission at the following Web site: *https://edecs.fws.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirements, related forms, or explanatory material, contact Anissa Craghead at telephone number (703) 358–2445, or electronically at *Anissa_Craghead@fws.gov*.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)).

We will submit a request to OMB to renew its approval of the collection of information included on Form 3–177, Declaration For Importation or Exportation of Fish or Wildlife. The current OMB control number for Form 3–177 is 1018–0012, and the OMB approval for this collection of information expires on October 31, 2003. This form (with instructions for its completion) is now available for electronic submission at the following Web site: *https://edecs.fws.gov*. We are requesting a three year term of approval for this information collection activity. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Endangered Species Act (16 U.S.C. 1531 *et seq.*) makes it unlawful to import or export fish, wildlife, or plants without filing a declaration or report deemed necessary for enforcing the Act or upholding the Convention on International Trade in Endangered Species (CITES) (see 16 U.S.C. 1538(e)). The U.S. Fish and Wildlife Service's Form 3–177, Declaration for Importation or Exportation of Fish or Wildlife, is the declaration form required of any business or individual importing into or exporting from the United States any fish, wildlife, or wildlife products. The information collected is unique to each wildlife shipment and enables us to accurately inspect the contents of the shipment; enforce any regulations that pertain to the fish, wildlife, or wildlife products contained in the shipment; and maintain records of the importation and exportation of these commodities. Additionally, since the United States is a member of CITES, much of the collected information is compiled in an annual report that is forwarded to the CITES Secretariat in Geneva, Switzerland. Submission of an annual report on the number and types of imports and exports of fish, wildlife, and wildlife products is one of our treaty obligations under CITES. We also use the information obtained from Form 3–177 as an enforcement tool and management aid in monitoring the international wildlife market and detecting trends and changes in the commercial trade of fish, wildlife, and wildlife products. Our Division of Scientific Authority and Division of Management Authority use this information to assess the need for additional protection for native species. In addition, nongovernment organizations, including the commercial wildlife community, request information from us that we obtain from Form 3–177.

You must file Form 3–177 with us at the time and port where you request clearance of your wildlife import or export. In certain instances, Form 3–177 may be filed with the U.S. Customs Service. The standard information collection includes the name of the importer or exporter and broker, the scientific and common name of the fish or wildlife, permit numbers (if a permit is required), a description of the fish or wildlife, quantity and value of the fish or wildlife, and natural country of origin of the fish or wildlife. In addition, certain information, such as the airway bill or bill of lading number, the location of the fish or wildlife for inspection, and the number of cartons containing fish or wildlife, assists our wildlife inspectors if a physical examination of the shipment is required.

Title: Declaration for Importation or Exportation of Fish or Wildlife.

Approval Number: 1018–0012.

Service Form Number: 3–177.

Frequency of Collection: Whenever clearance is requested for an importation or exportation of fish, wildlife, or wildlife products.

Description of Respondents: Businesses or individuals that import or export fish, wildlife, or wildlife products; scientific institutions that import or export fish or wildlife scientific specimens; government agencies that import or export fish or wildlife specimens for various purposes.

Total Annual Responses: Approximately 116,000 individual Form 3–177s are filed with us in a fiscal year.

Total Annual Burden Hours: The total annual burden is approximately 22,601 hours. We estimate the reporting burden to average 14 minutes per response when completed by hand. We estimate that approximately one-third (33%) of responses received will be submitted electronically, with a reporting burden of about seven minutes per response for electronic submissions. The estimate of electronic responses we expect to receive is based upon a recent pilot program of the electronic declaration (eDecs) system. We anticipate that the use of the eDecs system will expand in the future, which would further reduce the burden on the public.

We invite comments concerning this renewal on: (1) Whether the collection of information is useful and necessary for us to do our job, (2) the accuracy of our estimate of the burden on the public to complete the form; (3) ways to enhance the quality and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. This information collection is part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There may also be limited circumstances in which we would withhold a respondent's identity from the rulemaking record, as allowable by law. If you wish us to withhold your name and/or address, you must state this clearly at the beginning of your comment. We will not consider anonymous comments. We generally make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: March 11, 2003.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 03–8102 Filed 4–2–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Revised Recovery Plan for the Southern Sea Otter (*Enhydra lutris nereis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the final revision of the southern sea otter recovery plan. This species occurs along the central coast of California from Half Moon Bay south to Point Conception.

ADDRESSES: Copies of the final revised recovery plan are available by written request addressed to the Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. Recovery plans may also be obtained from: Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814, 301–429–6403 or 1–800–582–3421. The fee for the plan varies depending on the number of pages of the plan. This final revised recovery plan will be made available on the World Wide Web at *http://www.r1.fws.gov/ecoservices/endangered/recovery/default.htm*.

FOR FURTHER INFORMATION CONTACT: Carl Benz at the above Ventura address (telephone 805–644–1766).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate the time and costs of implementing recovery actions.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. Information presented during the public

comment period has been considered in the preparation of this final revised recovery plan, and is summarized in the appendix to the plan. As we move forward to implement the final recovery plan, we welcome public input and comment regarding our implementation efforts.

The southern (California) sea otter was listed as threatened on January 14, 1977 (42 FR 2968). It is also recognized as a depleted population pursuant to the Marine Mammal Protection Act. Reduced range and population size, vulnerability to oil spills, and the oil spill risk from coastal tanker traffic were the primary reasons listing of the sea otter. The southern sea otter population contains about 2,150 individuals and ranges between Half Moon Bay and Point Conception, California. Approximately 27 otters, including pups, are at San Nicolas Island as a result of translocation efforts to establish an experimental population. After review of new biological information, we, with the assistance of the Southern Sea Otter Recovery Team, drafted a revised recovery plan for public review and comment in 1991. A second draft revision was released for public review in 1996. After review of public comments on those drafts, and review of new technical information regarding oil spill risk to southern sea otters, we, with the assistance of the Southern Sea Otter Recovery Team and technical consultants, completed a new draft revised recovery plan, which was released to the public for comment in January 2000. Public comments were reviewed by the Southern Sea Otter Recovery Team and us, and changes based on these comments are incorporated into this final revised recovery plan.

The objective of the final revised recovery plan is to delist the southern sea otter through implementation of a variety of recovery measures including: Monitoring otter populations; implementing plans to minimize the risk of, and impacts from, oil spills; minimizing incidental and intentional take of sea otters; assessing and minimizing other threats; evaluating the sea otter translocation program; improving captive management techniques; and implementing an outreach program and providing information to the public.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 29, 2003.

Daniel S. Walsworth,

Acting Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–8060 Filed 4–2–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–01–1310–EI]

Notice of Intent to Prepare Planning Analyses/Environmental Assessments

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare Planning Analyses/Environmental Assessments.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM), Jackson Field Office, Eastern States intends to prepare Planning Analyses/Environmental Assessments (PA/EA) to consider leasing scattered tracts of Federal mineral estate for oil and gas exploration and development. The PA/EA will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria can be submitted in writing to the address listed below. Due to the limited scope of this PA/EA process, public meetings are not scheduled. BLM will, however, consider requests for one or more public meetings.

ADDRESSES: Send comments to: Bureau of Land Management, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, MS 39206.

FOR FURTHER INFORMATION CONTACT: John Reiss, Lead for PA/EA, Jackson Field Office, (601–977–5400).

SUPPLEMENTARY INFORMATION: The BLM has responsibility to consider nominations to lease Federal mineral estate for oil and gas exploration and development. An interdisciplinary team will be used in the preparation of the PA/EAs. Preliminary issues, subject to change as a result of public input, are (1) potential impacts of oil and gas exploration and development on the surface resources and (2) consideration of restrictions on lease rights to protect surface resources. The number of separate analyses that will be prepared for the tracts will depend on their proximity to each other. Tract locations, along with acreage, are listed below.

Alabama, Fayette County, Huntsville Meridian

T16S, R9W,
Sec. 20, NWNE;
Sec. 23, SW;
Sec. 25, E2SW, SWSW;
Sec. 26, NESE, S2SW;
Sec. 30, SWNW;
Sec. 36, NENW, SESW.
T16S, R10W,
Sec. 1, SWNW;
Sec. 10, NESE;
Sec. 13, SWNW;
Sec. 24, NWNE.

Alabama, Lamar County, Huntsville Meridian

T 15S, R 15W,
Sec. 13, SESE.

Alabama, Tuscaloosa County, Huntsville Meridian

T17S, R9W,
Sec. 14, E2NW;
Sec. 34, NESE.
T17S, R10W,
Sec. 1, NENE;
Sec. 8, SESW;
Sec. 10, SENE.
T18S, R7W,
Sec. 7, NWNW.
T18S, R9W,
Sec. 3, NWNE, NESE.

Alabama, Walker County, Huntsville Meridian

T16S, R8W,
Sec. 21, NESW.
T17S, R7W,
Sec. 6, NWSW.

Arkansas, Franklin County, Fifth Principal Meridian

T10N, R26W,
Sec. 2, SESE, SESW, NENW, NWNE.

Louisiana, Bienville Parish, Louisiana Meridian

T16N, R10W,
Sec. 4, lots 5–8;
Sec. 5, lot 1:
Sec. 8, lots 1–6:
Sec. 9, lots 8–10:

Louisiana, Bossier Parish, Louisiana Meridian

T 16N, R 11W,
Sec. 14, W2NW, SENW, E2SW, NWSW.

MS Wayne Mississippi, Wayne County, St Stephens Meridian

T7N, R7W,
Sec. 2, W2NWNW, N2SWNW;
Sec. 3, E2NENE.
T8N, R9W,
Sec. 4, NWSW;
Sec. 19, SWNE.

Bruce E. Dawson,

Field Manager, Jackson Field Office.

[FR Doc. 03–8080 Filed 4–2–03; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–02–1610–DR: GP 2–0358]

Notice of Availability of the Record of Decision for the Southeastern Oregon Resource Management Plan and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Vale District.

ACTION: Notice of availability of the Record of Decision (ROD) for the Southeastern Oregon Resource Management Plan (SEORMP) and Final Environmental Impact Statement (EIS).

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (40 CFR 1550.2), and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has issued a ROD for the Proposed SEORMP EIS. The ROD documents approval of BLM's plan to manage the public lands within the Jordan and Malheur Resource Areas of the Vale District during the next 15–20 years and beyond. The SEORMP establishes direction for management on approximately 4.6 million acres of BLM administered public lands in southeast Oregon. The SEORMP is the same as the Proposed SEORMP published in November 2001.

EFFECTIVE DATES: Two protests were submitted during the 30-day protest period for the Proposed SEORMP. Both of the protests were responded to and resolved by the Director of the BLM. Resolution of the protests, signing of the ROD, and publication of this notice allows for immediate implementation of the approved SEORMP.

ADDRESSES: The approved plan is being published and will be mailed to all persons or groups who are on the current RMP mailing list. Additional copies will be available upon request at the District Office. The document will also be available on line at *http://www.or.blm.gov/Vale/*, and on compact disks available at the Vale District Office, 100 Oregon Street, Vale, OR 97918.

FOR FURTHER INFORMATION CONTACT: Jerry Taylor, Jordan Field Manager; or Tom Dabbs, Malheur Field Manager by telephone at (541) 473–3144.

SUPPLEMENTARY INFORMATION: The SEORMP is a general land use plan that establishes guidance for managing a broad spectrum of land uses and allocations and contains resource objectives, land use allocations, management actions and direction needed to achieve program and multiple use goals. The Record of Decision documents selection of the preferred alternative as presented in the Proposed SEORMP and Final EIS issued November 2001, with associated Appendices, Tables and Maps, as the approved RMP.

The following are the major components of the approved RMP:

—Direction to meet or exceed Air Quality Standards.
—Provide opportunities for exploration and development of energy and mineral resources while protecting other sensitive resources.
—Provide for an appropriate management response on all wildfires, while providing for fire fighter and public safety and protecting resource values.
—Recognize and utilize fire as a critical natural process to protect, maintain, and enhance resources.
—Restore, protect, and enhance the diversity and distribution of desirable vegetation communities.
—Manage big sagebrush cover in seedings and on native rangeland to meet the life history requirements of sagebrush-dependent wildlife.
—Control the introduction and proliferation of noxious weed species and reduce the extent and density of established weed species to within acceptable limits.
—Manage ponderosa pine, Douglas fir, and western larch communities to emphasize forest health.
—Manage western juniper and aspen woodlands to restore and promote productivity.
—Manage public land to maintain, restore, or enhance populations and habitats of special status plant and animal species.
—Manage public lands by ensuring that surface water and ground water influenced by BLM activities comply with or are making progress toward achieving State of Oregon water quality standards for beneficial uses as established per stream by the Oregon Department of Environmental Quality.
—Manage riparian/wetland areas for the restoration, maintenance, or improvement of riparian vegetation, habitat diversity, and associated watershed function to achieve healthy and productive riparian areas and wetlands.
—Restore, maintain, or improve habitat to provide for diverse and self-sustaining communities of fishes and other aquatic organisms.
—Manage upland habitats so that the forage, water, cover, and structure necessary for wildlife are available on public land.
—Maintain and manage wild horse herds in seven established herd management areas (HMA's) of Vale District and Heath Creek-Sheephead HMA of Burns District at appropriate management levels (AML's) to ensure a thriving natural ecological balance between wild horse populations, wildlife, livestock, vegetation resources, and other resource values.
—Provide for a sustained level of livestock grazing consistent with other resource objectives and public land use allocations.
—Provide and enhance developed and undeveloped recreation opportunities, while protecting resources, to manage the increasing demand for resource-dependent recreation activities.
—Manage off-highway vehicle (OHV) use to protect resource values, promote public safety, provide OHV use opportunities where appropriate, and minimize conflicts among various users. Designate public lands for OHV use as "Open" on 2,615,066 acres, "Limited" on 2,004,369 acres, and "Closed" on 15,826 acres.
—Manage public land actions and activities in a manner to be consistent with visual resource management (VRM) class objectives. Designate and manage 1,308,297 acres as VRM Class I, 217,226 acres as VRM Class II, 639,657 acres as VRM Class III, and 2,469,509 acres as VRM Class IV.
—Retain and/or designate 26 areas totaling 206,257 acres as Areas of Critical Environmental Concern (ACECs).
—Manage the congressionally designated Main Owyhee (120 miles, 35,240 acres), West Little Owyhee (58 miles, 12,520 acres) and North Fork Owyhee (10 miles, 1,247 acres) components of the National Wild and Scenic Rivers System.
—Recommend and manage four river segments (42.5 miles) as administratively suitable for designation as wild and scenic rivers. Release from further wild and scenic river consideration 145.5 miles of eligible study river segments determined to be non-suitable for wild and scenic river designation.
—Continue managing 32 wilderness study areas (WSA's—1,273,015 acres) under BLM's "Interim Management Policy for Land under Wilderness Review" (IMPLWR).

—Manage public land and pursue partnerships to provide social and economic benefits to local residents, businesses, visitors, and future generations.
—Provide for the protection and conservation of cultural and paleontological resources.
—Consult and coordinate with American Indian groups to ensure their interests are considered and their traditional religious sites, landforms and resources are taken in to account.
—Meet public needs for use authorizations such as rights-of-way, leases and permits consistent with other resource objectives.
—Acquire and maintain legal public access to public land consistent with other resource objectives.
—Lands are identified for retention and acquisition to consolidate public land holdings while retaining and acquiring land with high and public resource values.

David R. Henderson,
District Manager.
[FR Doc. 03–8079 Filed 4–2–03; 8:45 am]
BILLING CODE 4310–33–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection; under review: extension of a currently approved collection; National Corrections Reporting Program.

The Department of Justice (DOJ), Office of Office of Justice Programs has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** volume 68, number 15, page 3273 on January 23, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 5, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *Title of the form/collection:* National Corrections Reporting Program. The collection includes the forms: Prisoner Admission Report (all States), Prisoner Release Report (all States), Parole Release Report (all States), and Prisoner in Custody at Year-end Report (only for States submitting data electronically).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form number(s): NCRP–1A, NCRP–1B, NCRP–1C, and NCRP–1D. Corrections Statistics Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The National Corrections Reporting Program (NCRP) is the only national data collection furnishing annual individual-level information for State prisoners admitted or released during the year, those in custody at year-end, and persons discharged from parole supervision. The NCRP collects data on sentencing, time served in prison and on parole, offense, admission/release type, and demographic information. BJS, the Congress, researchers, and criminal justice practitioners use these data to described annual movements of adult offenders through State correctional systems. Providers of the data are personnel in the State Departments of Corrections and Parole.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* BJS anticipates 44 respondents for report year 2003 with a total annual burden of 2.491 hours. Magnetic media or other electronic formats are expected from 41 respondents and 3 respondents are expected to report annually. The respondents who have an automated data system will require an estimated 24 hours of time supply the information for their annual caseload and an additional 2 hours documenting or explaining the data. The estimate of respondent burden for these States includes time required for modifying computer programs, preparing input data, and documenting the tape format and record layout. The estimated average amount of time required to manually complete the NCRP–1A, NCRP–1B, and NCRP–1C questionnaire are 10 minutes, 5 minutes, and 3 minutes per inmate, respectively. The responded burden is directly related to the number of cases reported. For 2000, the three manually reporting States submitted about 3,100 completed questionnaire for the NCRP–1A, about 2,700 for the NCRP–1B, and about 580 for the NCRP–1C. The estimated total burden for these respondents who submitted data manually was 771 hours. We expect no additional manual reporters in the future; and we expect an insignificant amount of increase in the number of prison admissions, prison releases and parole exists in the three States that currently report manually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,491 burden hours annually associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: March 28, 2003.

Brenda E. Dyer,
Department Deputy Clearance Officer, United States Department of Justice.
[FR Doc. 03–8041 Filed 4–2–03; 8:45 am]
BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 25, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 or e-mail: *King.Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Type of Review: Extension of a currently approved collection.

Title: Roof Control Plans.

OMB Number: 1219–0004.

Frequency: On occasion.

Type of Response: Recordkeeping and Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 893.

Requirement	Annual responses	Average response time (hours)	Annual burden hours
New roof control plans	47	24	1,128
Revised roof control plans	957	5	4,785
Plotting unplanned roof or rib fall, and coal or rock burst on a mine map	1,753	.08	140
Total:	2,757		6,053

Total Annualized Capital/startup Costs: $0.

Total Annual (operating/maintaining systems or purchasing services): $5,020.

Description: MSHA standards located at 30 CFR 75.215, 75.220, 75.221, 75.222, and 75.223, require that a roof control plan and revisions thereof suitable to the roof conditions and mining system of each coal mine be approved by MSHA before implementation by the mine operator. Mine operators are also required to plot on a mine map each unplanned roof or rib fall and coal or rock burst that occurs in the active workings when certain criteria are met. These information collection requirements are necessary to protect the health and safety of underground coal miners.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 03–8081 Filed 4–2–03; 8:45 am]
BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 26, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or e-mail: *King.Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Revision of a currently approved collection.

Title: Unemployment Compensation for Former Federal Employees Handbook No. 391.

OMB Number: 1205–0179.

Affected Public: Individuals or households; State, Local, or Tribal Government; and Federal Government.

Type of Response: Recordkeeping and Reporting.

Frequency: On occasion—use of forms is dependent on level of unemployment.

Form	Annual responses	Average response time (hours)	Annual burden hours
ETA–931	87,000	0.05	72
ETA–931A	21,750	0.05	18
ETA–933	4,350	0.05	4
ETA–934	8,700	0.05	7

Form	Annual responses	Average response time (hours)	Annual burden hours
ETA–935	87,000	0.08	116
Total:	208,800		217

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Federal law (5 U.S.C. 8501–8509) provides unemployment insurance protection to former or partially unemployed Federal civilian employees. The forms contained throughout the Handbook No. 391 are used in conjunction with the provision of this benefit assistance.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–8082 Filed 4–2–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 27, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 or e-mail: *King.Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: Presence Sensing Device Initiation (PSDI).

OMB Number: 1218–0143.

Affected Public: Business or other for-profit; Federal Government; and State, Local, or Tribal Government.

Frequency: On occasion, initially, and annually.

Type of Response: Recordkeeping and Third party disclosure.

Number of Respondents: 0.

Number of Annual Responses: 0.

Estimated Time Per Response: 0 minutes.

Total Burden Hours: 1.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: A number of paragraphs in OSHA's Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)) (the "Standard") contain paperwork requirements that are necessary to validate employer and manufacturer certifications that their PSDI equipment and practices meet the requirements of the Standard.

These requirements include: Certifying brake-monitor adjustments, alternatives to photoelectric Presence Sensing Devices (PSDs), safety-system design and installation, and employee training; annual recertification of safety systems; establishing and maintaining the original certification and validation records, as well as the most recent recertification and revalidation records; affixing labels to test rods and to certified and recertified presses; and notifying an OSHA-recognized third-party validation organization when a safety system component fails, the employer modifies the safety system, or a point-of-operation injury occurs. In addition, Appendix A of § 1910.217 provides detailed information and procedures required to meet the certification/validation provisions, as well as the design requirements, contained in the Standard. Accordingly, Appendix A supplements and explains the certification/validation provisions of the PSDI Standard, and does not specify new or additional paperwork requirements for employers. Appendix C § 1910.217 describes the requirements and procedures for obtaining OSHA recognition as a third-party validation organization; therefore, the paperwork requirements specified by this appendix do not impose burden hours or cost directly on employers who use PSDs.

By complying with these paperwork requirements, employers ensure that PSDI-equipped mechanical power presses are in safe working order, thereby preventing severe injury and death to press operators and other employees who work near this equipment. In addition, these records provide the most efficient means for an OSHA compliance officer to determine that an employer performed the requirements and that the equipment is safe.

OSHA is proposing to extend OMB approval of the information-collection requirements specified by the Standard even though the Agency can attribute no burden hours and cost to these requirements—to date, no such presses appear to be in use, either because employers selected other stroke-control devices for mechanical power presses, or because no third-party organization is available to validate employer and manufacturer certifications that their PSDI equipment and practices meet the requirements of the Standard. Therefore, the Standard does not currently affect any known employer; accordingly, the paperwork requirements currently result in no burden hours or cost to employers.

On August 28, 2002, OSHA published a **Federal Register** notice (67 FR 55181, Docket No. S225A) that initiated a Regulatory Flexibility Act review of the Presence Sensing Device Initiation (PSDI) requirements of the Mechanical Power Press Standard, pursuant to Section 610 of the Regulatory Flexibility Act and Section 5 of Executive Order 12866 on Regulatory Planning and Review.

The purpose of this review is to determine, while protecting worker safety, whether there are ways to modify this standard to make implementation more practical, to reduce regulatory burden on small business and to improve its effectiveness.

OSHA is proposing that OMB extend its approval of the information-collection requirements specified by the Standard so that the Agency can enforce these requirements if employers begin using PSDI.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–8083 Filed 4–2–03; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

This notice revises the safety standard number referenced in a petition for modification notice that was published in the **Federal Register** on February 4, 2003 (68 FR 5664), for the Dakota Westmoreland Corporation, Beulah Mine. In a letter from the petitioner dated March 7, 2003, the petitioner requests that the safety standard in its petition for modification, docket number M–2003–005–C, be changed from 30 CFR 77.405(b) to 30 CFR 77.803. The petitioner's request is to modify the existing safety standard, 30 CFR 77.803, to allow an alternative method to permit its boom/mast machine to be raised or lowered during initial dragline assembly or disassembly at construction sites. The petitioner asserts that its proposed alternative method would not result in a diminution of safety to the miners but would provide at least the same measure of protection as the existing standard.

Dated in Arlington, Virginia, this 26th day of March, 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–8019 Filed 4–2–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. HB Coal Co., Inc.

[Docket No. M–2003–021–C]

HB Coal Co., Inc., 22 Mary Ann Dr., Gray, Kentucky 40734 has filed a petition to modify the application of 30 CFR 75.342 (Methane monitors) to its No. 1 Mine (MSHA I.D. No. 15–18606) located in Whitley County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen detectors in lieu of machine mounted methane monitors on three-wheel tractors with drag bottom buckets. The petitioner asserts that the operator will be qualified in the proper use of said detector and that application of the existing standard would reduce the safety of the miners.

2. HB Coal Co., Inc.

[Docket No. M–2003–022–C]

HB Coal Co., Inc., 22 Mary Ann Dr., Gray, Kentucky 40734 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i) (Escapeways; bituminous and lignite mines) to its No. 1 Mine (MSHA I.D. No. 15–18606) located in Whitley County, Kentucky. The petitioner proposes to use two ten-pound portable chemical fire extinguishers in the operator's deck of each Mescher tractor operated at its No. 1 Mine. The petitioner states that the equipment operator will inspect each fire extinguisher on a daily basis prior to entering the primary escapeway. The petitioner further states that a record of the daily inspection will be kept at the mine, and a sufficient number of spare fire extinguishers will be maintained at the mine in case a defective fire extinguisher is detected. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Bowie Resources Limited

[Docket No. M–2003–023–C]

Bowie Resources Limited, P.O. Box 483, Paonia, Colorado 81428 has filed a petition to modify the application of 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility) to its Bowie No. 2 Mine (MSHA I.D. No. 05–04591) located in Delta County, Colorado. The petitioner requests a modification of the standard to allow the use of permissible high-voltage continuous miners inby the last open crosscut and within 150 feet of the pillar workings. The petitioner states that the high-voltage continuous miner will be used to develop longwall gateroads and mains. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before May 5, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 27th day of March, 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–8020 Filed 4–2–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL2–98]

NSF International, Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of NSF International for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on April 3, 2003 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while NSF remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Sherrey Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of NSF International (NSF) as a Nationally Recognized Testing Laboratory (NRTL). NSF's expansion covers the use of

additional test standards. OSHA's current scope of recognition for NSF may be found in the following informational web page: *http://www.osha-slc.gov/dts/otpca/nrtl/nsf.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

NSF submitted its application, dated June 25, 2002 (see Exhibit 10), to expand its recognition to use 12 additional test standards. The NRTL Program staff performed the on-site review (assessment) of the facility and provided a positive recommendation on the expansion in their report (see Exhibit 11). OSHA published the notice of its preliminary findings on the expansion request in the **Federal Register** on December 26, 2002 (67 FR 248). The notice requested submission of any public comments by January 10, 2003. OSHA did not receive any comments pertaining to the application.

The previous notice published by OSHA for NSF's recognition covered an expansion of recognition, which became effective on June 28, 2000 (65 FR 39944).

The current address of the NSF facility (site) already recognized by OSHA is: NSF International, 789 Dixboro Road, Ann Arbor, MI 48105

Final Decision and Order

The NRTL Program staff has examined the application, the assessor's report, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that NSF International has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include the additional test standards, subject to the limitation and conditions, listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of NSF, subject to this limitation and these conditions.

Limitation

Expansion for Additional Standards

OSHA limits the expansion to testing and certification of products for demonstration of conformance to the following 12 test standards, and OSHA has determined the standards are "appropriate," within the meaning of 29 CFR 1910.7(c).

UL 73 Motor-Operated Appliances
UL 399 Drinking-Water Coolers
UL 466 Electric Scales
UL 514B Fittings for Cable and Conduit
UL 514C Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
UL 514D Cover Plates for Flush-Mounted Wiring Devices
UL 541 Refrigerated Vending Machines
UL 751 Vending Machines
UL 982 Motor-Operated Household Food Preparing Machines
UL 1453 Electric Booster and Commercial Storage Tank Water Heaters
UL 1563 Electric Spas, Equipment Assemblies, and Associated Equipment
UL 1795 Hydromassage Bathtubs

A few of the test standards listed above, are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we often use the designation of the standards developing organization (*e.g.*, UL 751) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 751). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact "NSSN" (*http://www.nssn.org*), an organization partially sponsored by ANSI, to find out whether or not a test standard is currently ANSI-approved.

Conditions

NSF must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to NSF's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If NSF has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

NSF must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, NSF agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

NSF must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

NSF will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

NSF will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC, this 20th day of March, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–8098 Filed 4–2–03; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

PSEG Nuclear, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission or NRC) has granted the request of PSEG Nuclear, LLC, (the licensee) to withdraw its April 16, 2002, application for proposed amendment to Facility Operating License No. NPF–57 for the Hope Creek Generating Station, Unit No. 1, located in Salem County, New Jersey.

The proposed amendment would have revised the Technical Specifications to delete the primary containment isolation valves and instrumentation associated with the permanent removal of the reactor vessel head spray piping.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 29, 2002 (67 FR 66013). However, by letter dated March 19, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 16, 2002, and the licensee's letter dated March 19, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 28th day of March 2003.

For the Nuclear Regulatory Commission.

George F. Wunder,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–8111 Filed 4–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority; Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of issuance of amendment; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on March 18, 2003 (68 FR 12958), that referenced the incorrect year of Date of Amendment Request. This action is necessary to correct an erroneous date.

FOR FURTHER INFORMATION CONTACT: K. Jabbour, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1496, e-mail: *knj@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 12958, in the second column, third line up from bottom of page, it is corrected to read from "2003" to "2002."

Dated in Rockville, Maryland, this 27th day of March 2003.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–8112 Filed 4–2–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47591; File No. S7–30–02]

RIN 3235–AI60

Regulation Analyst Certification

AGENCY: Securities and Exchange Commission.

ACTION: Notice of OMB approval of collections of information.

SUMMARY: The Securities and Exchange Commission ("Commission") adopted new Regulation Analyst Certification ("Regulation AC") (17 CFR 242.500 through 242.505) under the Securities Exchange Act (17 U.S.C. 78, *et seq.*) on February 20, 2003. Regulation AC requires that brokers, dealers, and certain persons associated with a broker or dealer include in research reports certifications by the research analyst that the views expressed in the report accurately reflect his or her personal views, and disclose whether or not the analyst received compensation or other payments in connection with his or her specific recommendations or views. Broker-dealers would also be required to obtain periodic certifications by research analysts in connection with the analyst's public appearances. Certain provisions of the Regulation contain "collection of information" requirements within the meaning of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and the Commission submitted the proposed collections of information to the Office of Management and Budget (OMB) for review. OMB has approved the collection of information requirements contained in Regulation AC.

EFFECTIVE DATE: April 14, 2003.

FOR FURTHER INFORMATION CONTACT: James Brigagliano, Thomas Eidt, or Racquel Russell, at (202) 942–0772 in the Office of Risk Management and Control in the Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION:

I. Regulation Analyst Certification

Regulation Analyst Certification requires that broker-dealers and covered persons include in their research reports:

- A statement by the research analyst certifying that the views expressed in the research report accurately reflect such research analyst's personal views about the subject securities or issuers; and
- A statement by the research analyst certifying that no part of his or her compensation was, is, or will be directly or indirectly related to the specific recommendation or views contained in the research report; or
- A statement by the research analyst certifying that part or all of his or her compensation was, is, or will be directly or indirectly related to the specific recommendation or views contained in the research report. If the analyst did receive such related compensation, the statement must include the source and amount of such compensation, and the purpose of the compensation, and further disclose that such compensation may influence the recommendation in the research report.

Additionally, under Regulation AC, broker-dealers must make a record related to public appearances by research analysts. Specifically, a broker-dealer who publishes, circulates, or provides a research report prepared by a research analyst it or a covered person employs, would be required to make a record within thirty days after each calendar quarter in which the research analyst made the public appearance, that includes:

- A written statement by the research analyst certifying that the views expressed in each public appearance accurately reflected such research analyst's personal views about the subject securities or issuers; and
- A written statement by the research analyst certifying that no part of such research analyst's compensation was, is, or will be directly or indirectly related to any specific recommendations or views expressed in any public appearance.

In cases where the broker or dealer does not obtain a statement by the research analyst in connection with public appearances as described above, the broker-dealer must promptly notify its examining authority, designated

pursuant to section 17(d) of the Exchange Act and rule 17d–2 thereunder, that the analyst did not provide certification in connection with public appearances. In addition, for 120 days following such notification, the broker-dealer must disclose in any research report it distributes authored by that analyst that the analyst did not provide certification specified in rule 502(a) of Regulation AC. Further, broker-dealers must keep and maintain these records pursuant to Rule 17a–4(b).

II. Collection of Information Requirements

Certain provisions of Regulation AC contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[1] In proposing Regulation AC, the Commission estimated the burden hours for these collection of information requirements and solicited comments on the collection of information requirements and the burden estimate. The Commission submitted the proposed collection of information requirements to OMB for review as required pursuant to 44 U.S.C. 3507 and 5 CFR 1320.11. The Commission received one comment letter on the collection of information and has revised estimates in response to that comment.[2]

The purpose of requiring that research analysts certify that the views expressed in research reports and public appearances reflect their personal views, and requiring disclosure of information regarding whether analyst compensation is related to those specific recommendations or views, is to help bolster investor confidence in the quality of research. This, in turn, should help bolster investor confidence in the securities markets. The Commission estimates that the annual paperwork burden in hours is 11,296 for a cost in dollars of approximately $1,372,464.[3]

On March 5, 2003, OMB approved the collections of information contained in Regulation AC. Regulation AC (OMB Control No. 3235–0575) was adopted pursuant to the Securities Exchange Act of 1934 (17 U.S.C. 78, *et seq.*) on February 20; 2003. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. We are providing this Notice to inform the public that the Commission has received OMB approval and OMB has issued a control number for this collection.

Dated: March 28, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8105 Filed 4–2–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 44 U.S.C. 3501 *et seq.*

[2] The Commission intends to submit a change sheet to OMB in order to reflect changes.

[3] The Commission estimates that the proposed regulation would result in a total annual time burden of approximately 11,296 hours (10,950 hours to comply with research report requirements + 346 hours to comply with public appearance requirements), and a total annual cost in dollars of approximately $1,372,464 ($1,330,425 to comply with the research report requirements + $42,039 to comply with the public appearance requirements).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Landesbank Baden-Württemberg to Withdraw Its 7 7/8% Subordinated Notes (Due April 15, 2004), From Listing and Registration on the New York Stock Exchange, Inc. File No. 1–10836

March 28, 2003.

Landesbank Baden-Württemberg, a German bank ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and rule 12d2–2(d) thereunder,[2] to withdraw its 7 7/8% Subordinated Notes (due April 15, 2004)("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Board of Managing Directors of the Issuer ("Board") approved a resolution on September 24, 2002 to withdraw the Issuer's Security from listing on the NYSE. In making its decision to withdraw the Security from the Exchange, the Issuer states the following: On September 25, 2002, 85.69% of the outstanding amount of the Security was held by 60 note holders who are institutional investors and the volume of trading in the Security is very small. According to the NYSE, in the period from January 1, 2001 to September 25, 2002, the Security was not traded once on the NYSE. In addition, according to Bloomberg professional, in the period from September 2, 2001 to September 25, 2002, the Security was traded seven times in the secondary market. The Issuer also states that substantial costs incurred each year for the preparation of reporting forms can be avoided.

The Issuer stated in its application that it has complied with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before April 21, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–8031 Filed 4–2–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27661]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 28, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 22, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 22, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Transmission Company, LLC, et al. (70–10108)

American Transmission Company, LLC ("ATC"), an electric transmission public utility company subsidiary of Alliant Energy Corporation ("Alliant"), a registered holding company, and ATC Management, Inc. ("ATCMI"), a public utility company, corporate manager of ATC, and holding company subsidiary of Alliant, claiming exemption from registration under section 3(a)(1) by rule 2 of the Act, both located at N19 W23993 Ridgeview Parkway, West Waukesha, Wisconsin 53188 (together, "Applicants") have filed an declaration ("Declaration") under sections 6(a) and 7 of the Act and rule 54 under the Act.

I. Introduction

In 1999, the state of Wisconsin enacted legislation ("Transco Legislation") that facilitated the formation of for-profit transmission companies ("Transcos"). ATC was created under the Transco Legislation and ATCMI was created to be the general manager of ATC. The legislation obligates these Transcos to construct, operate, maintain, and expand transmission facilities to provide adequate, reliable transmission services under an open-access transmission tariff.

II. ATC and ATCMI

By order dated December 29, 2000 (HCAR No. 27331) ("December Order"), the Commission authorized ATC to acquire the transmission assets of the subsidiaries of four investor owned public utility holding companies with service areas in Wisconsin and adjacent areas in Illinois and Michigan. The following utility companies transferred ownership and operation of their transmission assets to ATC in exchange for member interests ("Member Interests") in ATC: Wisconsin Power and Light Company ("WPL") and South Beloit Water, Gas and Electric Company ("South Beloit");[1] Wisconsin Electric Power Company and Edison Sault Electric Company ("Edison Sault");[2] Madison Gas and Electric Company;[3] and Wisconsin Public Service Corp.[4] Wisconsin Public Power Inc. ("WPPI"), a Wisconsin municipal electric company, contributed cash in exchange for an equity interest in ATC proportional to WPPI's load ratio share in Wisconsin.[5] These entities together are referred to as the "Initial Members."

Applicants state that as a limited liability company, ATC may be formed to be "member managed" or "manager managed" according to Wisconsin law. Applicants state that it was decided that ATC would be "manager managed" by ATCMI. In the December Order, the Commission authorized ATCMI to acquire a nominal interest in ATC and operate as the sole manager of ATC. Due to the extent of the operational control ATCMI has over the utility assets of ATC, the Commission found that both ATC and ATCMI were jurisdictional public utilities under the Act. ATCMI is also an intermediate holding company by virtue of its ownership interest in ATC and claims exemption from registration by rule 2 under section 3(a)(1) of the Act.

As of December 31, 2002, eighteen more contributors, including twelve municipal utilities, six cooperatives, one public power entity, and one investor owned utility invested transmission assets and/or cash in ATC. These members are referred to as the "Additional Members," and along with the Initial Members, the "Member Utilities." Effective February 1, 2001, ATC transferred operational control of its facilities to the Midwest Independent Transmission System Operator, Inc.

Applicants state that ATCMI's ownership structure consists of Class A non-voting shares and Class B voting shares of stock.[6] Upon transference of transmission assets to ATC, each Member Utility purchased Class A shares in proportion to the value of the transmission assets it transferred to ATC. In addition, each Initial Member received one Class B share of stock.[7] The December Order indicated that, in the future, ATCMI plans to commence an initial public offering ("IPO") of its stock. The Commission reserved jurisdiction over the issuance of any equity securities in connection with a potential IPO by ATCMI.

III. Financing

A. Existing Authorization

The December Order authorized ATC and ATCMI to engage in various financing activities through June 30, 2004 ("Authorization Period") in an aggregate amount not to exceed $900 million as follows: (1) Short-term debt financing by ATC not to exceed $125 million in the form of borrowings under a revolving credit agreement, issuance of commercial paper, or other forms of short term financing; (2) long-term debt financing by ATC in the form of debentures or other forms of long-term debt financing, with the total short- and long-term debt not to exceed $400 million; (3) equity financing of up to $500 million in the form of preferred stock of ATCMI; and (4) interest rate hedging transactions.

B. Current Request

Applicants now request authority for various financing transactions in addition to their outstanding financing authority as follows: Applicants request authority for ATCMI to issue and sell preferred securities and for ATC to issue long-term and short-term debt in an amount not to exceed $710 million at any one time outstanding during the Authorization Period Applicants state that short-term debt will not exceed $200 million at any one time outstanding. In addition to the $710 million of securities as described above, Applicants request authorization for ATC to issue Member Interests and ATCMI to issue Class A and Class B stock in an aggregate amount of up to $393 million. Applicants state that the underwriting fees, commissions or other similar remuneration paid in connection

[1] *See* December Order. WPL and South Beloit (which are both subsidiary companies of Alliant) are together treated as a single member.

[2] *See Wisconsin Energy Corp.*, HCAR No. 27329 (Dec. 28, 2000). Wisconsin Electric Power Company and Edison Sault Electric Company (which are both subsidiaries of Wisconsin Energy Corp., dba We Energies, an exempt holding company) are together treated as a single member.

[3] *See Madison Gas and Electric Co.*, HCAR No. 27326 (Dec. 28, 2000). As a result of the acquisition, Madison Gas and Electric Company is both a public-utility company and an exempt holding company.

[4] *See WPS Resources Corporation*, HCAR No. 27330 (Dec. 28, 2000). Wisconsin Electric Power Company is a subsidiary of WPS Resources Corporation, an exempt holding company.

[5] WPPI is exempt from all provisions of the Act under section 2(c).

[6] Class B shareholders are currently entitled to approve by majority vote: (1) Any amendment to the articles of incorporation and (ii) any merger, consolidation, or sale of all or substantially all of ATCMI's assets.

[7] Applicants stated in the December Order that this structure was designed to ensure that the Member Utilities had economic interests in proportion to the value of their contribution of assets to the ATC, while maintaining the desired per capita voting arrangement. South Beloit and Edison Sault did not receive a Class B share because their respective corporate parents hold their shares.

with the non-competitive issue, sale or distribution of securities issued under this Application will not exceed 7% of the principal or total amount of the securities being issued.

C. Short-Term Debt

Applicants request authority for ATC to arrange short term financing, including institutional borrowings, commercial paper and privately placed notes. Applicants state that the maturity of short-term debt would not exceed one year and that any short-term debt security or credit facility would have designations, aggregate principal amount, interest rate(s) or methods of determining the same, terms of payment of interest, collateral, redemption provisions, non-refunding provisions, sinking fund terms, conversion or put terms and other terms and conditions as ATC and ATCMI might determine at the time of issuance, provided that, in no event, however, would the effective cost of money on short-term debt exceed 300 basis points over the London Interbank Offered Rate for maturities of one year or less in effect at the time.

Applicants propose that ATC sell commercial paper or privately placed notes ("Commercial Paper") from time to time, in established domestic or European commercial paper markets. Commercial Paper may be sold at a discount or bear interest at a rate per annum prevailing at the date of issuance for Commercial Paper of a similarly situated company.

Applicants propose that ATC maintain back up lines of credit in connection with one or more Commercial Paper programs in an aggregate amount not to exceed the amount of authorized Commercial Paper, without these credit lines counting against the limit on short-term debt financing set forth above. Applicants propose that ATC use credit lines for general corporate purposes, to support Commercial Paper, to obtain letters of credit, or to borrow against, from time to time, as it is deemed appropriate or necessary.

D. Long-Term Debt

Applicants request authority for ATC to issue long-term debt securities including notes or debentures under one or more indentures or long-term indebtedness under agreements with banks or other institutional lenders directly or indirectly. Applicants state that ATC's long-term debt may be secured or unsecured. Applicants further state that the maturity of long-term debt would not exceed fifty years. Applicants assert that specific terms of any borrowings will be determined at the time of issuance but that the interest rate on long-term debt would not exceed 500 basis points over the yield-to-maturity of a U.S. Treasury security having a remaining term approximately equal to the average life of that debt. Applicants ask the Commission to reserve jurisdiction over the issuance of convertible securities except as described in section 3 below.

E. Preferred Securities and Equity Interest

Applicants request authority for ATCMI to issue preferred stock or other types of preferred securities. Applicants request authority for preferred stock or other types of preferred securities to be issued in one or more series with such rights, preferences, and priorities as may be designated in the instrument creating each such series, as determined by ATCMI's board of directors, or a pricing committee or other committee of the board performing similar functions. Preferred securities may be redeemable or may be perpetual in duration. Applicants state that the dividend rate on any series of preferred securities issued by ATCMI would not exceed 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of that series of preferred securities at the time of issuance. Applicants further state that dividends or distributions on preferred securities would be made periodically and to the extent funds are legally available for that purpose, but may be made subject to terms which allow Applicants to defer dividend payments for specified periods. Preferred securities may be sold directly through underwriters or dealers in any manner.

Applicants contemplate that from time to time ATC may require an additional equity infusion. In such situations, ATC could reduce the amount of distributions to Member Utilities. Each Member Utilities' equity would be increased by the amount of the undistributed earnings on a *pro rata* basis. Alternatively, there could be a capital call for Member Utilities to make additional cash contributions on a pro rata basis. If a Member Utility opts not to make an additional contribution, any other Member Utility could make the requested contribution. Member Utilities do not, however, have the obligation to make additional contributions. Another possibility, therefore, would be for ATC to issue preferred securities that are convertible into Member Interests and/or Class A shares and/or Class B shares. These convertible preferred securities would have a stated par value and dividend rate and would be convertible into Member Interests and/or Class A and/or Class B shares based on a predetermined ratio or formula. Applicants will seek additional authority as may be required in connection with the exercise of the conversion feature. Applicants also ask the Commission to reserve jurisdiction over the issuance of preferred member interests or convertible member interests other than as described above.

In the event Applicants determine to seek capital through equity or to acquire new facilities in exchange for equity interests, Applicants request authority for ATC to issue Member Interests and ATCMI to issue Class A and B shares in an aggregate amount not to exceed $393 million plus the face value of any outstanding Member Interests and Class A and B shares at any one time outstanding through the Authorization Period.[8]

Applicants request authority for ATC to issue Member Interests in exchange for cash or the transfer of transmission facilities to ATC by current or future Member Utilities. The entities transferring transmission assets and their transferring asset values have not yet been determined. Applicants further state that in order to maintain its 50/50 debt to equity ratio; ATC would reimburse the contributors for 50% of the net book value of the transmission assets contributed. In addition, ATCMI will issue to each new Member Utility of ATC, Class A shares in an amount that is proportional to that Member Utility's interest in the ATC, with a par value of $0.01 per share and a sales price of $10 per share.

Additionally, Applicants state that it is anticipated that ATC will issue Member Interests and ATCMI will issue Class A shares to Wisconsin Public Service Corporation or its affiliate in exchange for that company's contribution of 50% of the ongoing cash requirements of the Arrowhead to Weston Transmission Line Project ("Project"). Applicants state that current cost estimates are $400 million over the 2002–2004 period.[9]

[8] In the case of equity securities, Applicants request that the aggregate amount be based on new issuance and exclude issuances for any undistributed earnings. Applicants state that as of December 31, 2002, the value of outstanding Class A and B Shares was $103,560. Also at that date, there were 26,127,075 outstanding Member Interests. At that time a Member Interest was valued at $10.77. The total value of Member Interest was $302,811,729. The value on a Member Interest is based on the amount of the initial contribution and any undistributed earnings and so will vary from time to time.

[9] Arrowhead-Weston is a 220-mile transmission line connecting Duluth, Minnesota, with Wausau, Wisconsin. Applicants state that the line is needed to accommodate electric load growth in northern Wisconsin and to improve reliability of the electric transmission system in the region. Applicants state that this acquisition of utility assets is subject to approval by the Public Service Commission of Wisconsin and so exempt from section 9(a)(1) under the 1935 Act.

F. Guarantees

Applicants request authorization to guarantee or assume certain obligations of its affiliates or Member Utilities. Accordingly, Applicants request authorization to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the obligations of their affiliates or Member Utilities in the ordinary course of Applicants' business, in an amount not to exceed $125 million outstanding at any one time during the Authorization Period.

Applicants state that certain of the guarantees may be in support of obligations that are not capable of exact quantification. In these cases, Applicants state that exposure under the guarantee will be by appropriate means including estimation of exposure based on loss experience or projected potential payment amounts. These estimates will be made in accordance with generally accepted accounting principles and/or sound financial practices.

G. Financial Representations

Applicants represent that at all times during the Authorization Period, ATCMI and ATC will each maintain common equity of at least 30% of its consolidated capitalization. Applicants further represent that, other than Class A and Class B shares and Member Interests, no security may be issued in reliance upon this order, unless: (i) The security to be issued, if rated, is rated investment grade; (ii) all outstanding rated securities of the issuer are rated investment grade; and (iii) all outstanding rated securities of ATCMI are rated investment grade. For purposes of this condition, a security will be considered rated investment grade if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the 1934 Act. Applicants request that the Commission reserve jurisdiction over the issuance by ATCMI or ATC of any securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of the securities for which authority is sought herein or any guarantee authority at any time that the conditions set forth in clauses (i) through (iii) above are not satisfied.

Progress Energy, Inc. and Piedmont Natural Gas Company, Inc. (70–10115)

Progress Energy, Inc. ("Progress Energy"), a registered holding company, 410 South Wilmington Street, Raleigh, NC 27602, and Piedmont Natural Gas Company, Inc. ("Piedmont"), a gas utility company, 1915 Rexford Road, Charlotte, NC 28211, have filed a joint application-declaration under sections 3(a)(2) and 12(d) of the Act and rules 44 and 54 under the Act.

Progress Energy seeks approval to sell all of the issued and outstanding common stock of North Carolina Natural Gas Company ("NCNG") and its 50% share of the common stock of Eastern North Carolina Natural Gas Company ("Eastern NCNG") and preferred stock and other rights and interests in Eastern NCNG that it holds to Piedmont. Piedmont requests an order under section 3(a)(2) of the Act exempting it and its subsidiaries from all provisions of the Act except section 9(a)(2).

Progress Energy is a registered holding company that owns, directly or indirectly, all of the issued and outstanding common stock of two electric utility subsidiary companies, Carolina Power & Light Company ("CP&L") and Florida Power Corporation ("Florida Power"). CP&L generates, transmits, purchases and sells electricity in parts of North Carolina and South Carolina. Florida Power generates, transmits, purchases and sells electricity in parts of Florida. Together, CP&L and Florida Power provide electric utility service to approximately 2.7 million retail, commercial and industrial customers in an area having a population of more than 9 million people.

Progress Energy also owns all of the issued and outstanding common stock of NCNG, a gas utility company which serves approximately 176,000 residential, commercial, industrial and municipal customers primarily in eastern and south central North Carolina. NCNG's facilities include more than 1,000 miles of transmission pipeline and more than 2,900 miles of distribution mains.

NCNG has three direct, wholly-owned, non-utility subsidiaries: Cape Fear Energy Corporation ("Cape Fear"), which was previously engaged in purchasing natural gas for resale to large industrial and commercial users and the municipalities served by NCNG, as well as the business of providing energy management services, but is now inactive; NCNG Cardinal Pipeline Investment Corporation, which holds a 5% membership interest in Cardinal Pipeline Company, LLC, an intrastate pipeline; and NCNG Pine Needle Investment Corporation, which holds a 5% membership interest in Pine Needle LNG Company, LLC, which owns a liquefied natural gas project in North Carolina.[10]

Progress Energy also owns 50% of the issued and outstanding common stock and 100% of the Series A preferred stock of Eastern NCNG, a North Carolina company that was granted a certificate of public convenience and necessity by the North Carolina Utilities Commission to construct a new natural gas distribution system and provide gas service to customers in 14 counties in eastern North Carolina. Albermarle Pamlico Economic Development Corporation ("APEC"), a North Carolina nonprofit corporation created to encourage infrastructure and economic development in eastern North Carolina, owns the remaining 50% of Eastern NCNG's issued and outstanding common stock.

For the twelve months ended December 31, 2002, Progress Energy had total operating revenues of $7,945,120,000, of which $6,600,689,000 (83.08%) were derived from electric utility operations and $1,344,431,000 (16.92%) from other, unregulated, businesses, including sales of electricity by Progress Energy's exempt wholesale generator subsidiaries. At December 31, 2002, Progress Energy had total consolidated assets of $21,352,704,000, including net utility plant of $10,656,234,000. (As of December 31, 2002, NCNG's results of operations and assets and liabilities were reported as "discontinued operations" and, therefore, are not included in Progress Energy's year-end consolidated operating revenues and utility plant accounts.)

Piedmont, a North Carolina corporation, is a gas utility company that is engaged in the distribution of natural gas to 740,000 residential, commercial and industrial customers in parts of North Carolina, South Carolina and Tennessee.

For the fiscal year ended October 31, 2002, Piedmont reported on a consolidated basis total operating revenues of $832,028,000, net operating revenues (operating revenues less cost of gas) of $335,794,000, operating income of $90,127,000, and net income of $62,217,000 (including net income, reported on an equity basis, from non-utility businesses). At October 31, 2002,

[10] Prior to the proposed sale of NCNG to Piedmont, the common stock of Cape Fear will be transferred by NCNG to Progress Energy or another non-utility subsidiary of Progress Energy. The other two companies will remain as subsidiaries of NCNG.

Piedmont had $1,445,088,000 in total consolidated assets, including net utility plant of $1,158,523,000.

Progress Energy and Piedmont entered into a Stock Purchase Agreement, dated October 16, 2002, under which Progress Energy agreed to sell and Piedmont agreed to purchase all of the issued and outstanding common stock of NCNG, $0.10 par value per share ("NCNG Shares"), and all of the shares of common stock and Series A preferred stock of Eastern NCNG that are held by Progress Energy, representing, respectively, 50% and 100% of the total number of shares of common stock and Series A preferred stock that are issued and outstanding (together, "ENCNG Shares"). In addition, Piedmont will assume all of Progress Energy's rights and obligations under a subscription letter, dated January 5, 2001, under which Progress Energy is committed to purchase from Eastern NCNG the remaining authorized but unissued shares of Series A preferred stock, and a shareholders' agreement, dated as of January 5, 2001, by and among Eastern NCNG, Progress Energy and APEC ("ENCNG Rights and Obligations"). Progress Energy requests approval under section 12(d) of the Act for the sale and transfer of the NCNG Shares, the ENCNG Shares and the ENCNG Rights and Obligations to Piedmont ("Transaction").

Under the Stock Purchase Agreement, Piedmont has agreed to pay $417,500,000 in cash for the NCNG Shares, plus or minus the working capital on the balance sheet of NCNG for the end of the most recent month immediately preceding the closing of the Transaction. In addition, Piedmont has agreed to pay $7,500,000 for the ENCNG Shares and the ENCNG Rights and Obligations.

Progress Energy states the sale of NCNG and Eastern NCNG will enable Progress Energy to strengthen its balance sheet and focus itself on its core electric utility business. Progress Energy states that the cash proceeds of the Transaction will be used by Progress Energy to pay down debt.

Piedmont states that, immediately following the purchase of the NCNG Shares, it will cause NCNG to be merged with and into Piedmont, with Piedmont as the surviving corporation. Piedmont will acquire and hold Eastern NCNG as a 50%-owned subsidiary company and will therefore become a holding company within the meaning of section 2(a)(7)(A) of the Act with respect to Eastern NCNG. Accordingly, Piedmont requests that the Commission issue an order under section 3(a)(2) of the Act exempting Piedmont and its subsidiary companies as such from all provisions of the Act, except section 9(a)(2). Piedmont states that, following the Transaction, Piedmont will remain predominantly a public-utility company whose operations will be confined to North Carolina, its state of incorporation, and South Carolina and Tennessee, which are contiguous to North Carolina.

Gulf Power Company (70–10117)

Gulf Power Company ("Gulf"), One Energy Plaza, Pensacola, Florida 32520, a wholly owned electric utility subsidiary of The Southern Company ("Southern"), a registered holding company under the Act, has filed an application-declaration ("Application") under sections 6(a), 7, 9(a), 10 and 12(d) of the Act and rule 54 under the Act.

Gulf proposes to incur, from time to time or at any time on or before March 31, 2006 ("Authorization Period"), obligations in connection with the issuance and sale by public instrumentalities of one or more series of pollution control revenue bonds ("Revenue Bonds") in an aggregate principal amount of up to $180,000,000. Gulf further proposes to issue and sell, from time to time or at any time on or before the Authorization Period, one or more series of its senior debentures, senior promissory notes or other senior debt instruments (individually, "Senior Note" and collectively, "Senior Notes"), one or more series of its first mortgage bonds and one or more series of its preferred stock in an aggregate amount of up to $450,000,000 in any combination of issuance.

The Revenue Bonds will be issued for the benefit of Gulf to finance or refinance the costs of certain air and water pollution control facilities and sewage and solid waste disposal facilities at one or more of Gulf's electric generating plants or other facilities located in various counties. It is proposed that each such county or the otherwise appropriate public body or instrumentality ("County") will issue Revenue Bonds to finance or refinance the costs of the acquisition, construction, installation and equipping of said facilities at the plant or other facility located in its jurisdiction ("Project"). It is proposed that the Revenue Bonds will mature not more than 40 years from the first day of the month in which they are initially issued and may, if it is deemed advisable for purposes of the marketability of the Revenue Bonds, be entitled to the benefit of a mandatory redemption sinking fund calculated to retire a portion of the aggregate principal amount of the Revenue Bonds prior to maturity.

Gulf proposes to enter into a Loan or Installment Sale Agreement with each County ("Agreement"), issuing such Revenue Bonds. Under the Agreement, the issuing County will loan to Gulf the proceeds of the sale of the County's Revenue Bonds, and Gulf may issue a non-negotiable promissory note ("Note"), or the County will undertake to purchase and sell the related Project to Gulf. The proceeds from the sale of the Revenue Bonds will be deposited with a Trustee ("Trustee") under an indenture to be entered into between the County and the Trustee ("Trust Indenture"), under which the Revenue Bonds are to be issued and secured, and will be applied by Gulf to payment of the cost of construction of the Project or to refund outstanding pollution control revenue obligations.

The Trust Indenture and the Agreement may give the holders of the Revenue Bonds the right, during such time as the Revenue Bonds bear interest at a fluctuating rate or otherwise, to require Gulf to purchase the Revenue Bonds from time to time, and arrangements may be made for the remarketing of any such Revenue Bonds through a remarketing agent. Gulf also may be required to purchase the Revenue Bonds, or the Revenue Bonds may be subject to mandatory redemption, at any time if the interest thereon is determined to be subject to federal income tax. Also in the event of taxability, interest on the Revenue Bonds may be effectively converted to a higher variable or fixed rate, and Gulf also may be required to indemnify the bondholders against any other additions to interest, penalties and additions to tax.

In order to obtain the benefit of ratings for the Revenue Bonds equivalent to the rating of Gulf's first mortgage bonds outstanding under the indenture dated as of September 1, 1941 between Gulf and JP Morgan Chase Bank (formerly The Chase Manhattan Bank), as trustee, as supplemented and amended ("Mortgage"), Gulf may determine to secure its obligations under the Note and/or the Agreement by delivering to the Trustee, to be held as collateral, a series of its first mortgage bonds ("Collateral Bonds"). The aggregate principal amount of the Collateral Bonds would be equal to either: (i) The principal amount of the Revenue Bonds or (ii) the sum of such principal amount of the Revenue Bonds plus interest payments thereon for a specified period.

As a further alternative to, or in conjunction with, securing its obligations through the issuance of the Collateral Bonds, Gulf may: (i) Cause an irrevocable Letter of Credit or other credit facility ("Letter of Credit") of a bank or other financial institution to be delivered to the Trustee; and/or (ii) cause an insurance company to issue a policy ("Policy") guaranteeing the payment of the Revenue Bonds. In the event that the Letter of Credit is delivered to the Trustee as an alternative to the issuance of the Collateral Bonds, Gulf may also convey to the County a subordinated security interest in the Project or other property of Gulf as further security for Gulf's obligations under the Agreement and the Note.

The effective cost to Gulf of any series of the Revenue Bonds will not exceed the greater of (i) 200 basis points over comparable term U.S. Treasury securities, or (ii) a gross spread over such Treasury securities which is consistent with comparable securities. Such effective cost will reflect the applicable interest rate or rates and any underwriters' discount or commission.

Gulf also proposes to issue and sell, at any time during the Authorization Period: One or more series of its (a) Senior Notes; (b) first mortgage bonds ("First Mortgage Bonds"); and (c) preferred stock in an aggregate amount of up to $450 million, in any combination of issuance. The Senior Notes will have a maturity that will not exceed approximately 50 years. The interest rate on each issue of Senior Notes may be either a fixed rate or an adjustable rate to be determined on a periodic basis by auction or remarketing procedures, in accordance with formula or formulae based upon certain reference rates, or by other predetermined methods. The Senior Notes will be direct, unsecured and unsubordinated obligations of Gulf ranking pari passu with all other unsecured and unsubordinated obligations of Gulf. The Senior Notes will be effectively subordinated to all secured debt of Gulf, including its First Mortgage Bonds. The Senior Notes will be governed by an indenture or other document. The effective cost of money to Gulf on the Senior Notes will not exceed the greater of (i) 300 basis points over comparable term U.S. Treasury securities, or (ii) a gross spread over such Treasury securities which is consistent with comparable securities.

The First Mortgage Bonds will have a term of not more than 40 years and will be sold for the best price obtainable, but not less than 98% or more than 101¾% of the principal amount, plus any accrued interest. Gulf may enhance the marketability of the First Mortgage Bonds by purchasing an insurance policy to guarantee the payment when due of the First Mortgage Bonds.

Gulf proposes that each issuance of Gulf's preferred stock, par or stated value of up to $100 per share ("new Preferred Stock"), will be sold for the best price obtainable (after giving effect to the purchasers' compensation) but for a price to Gulf (before giving effect to such purchasers' compensation) of not less than 100% of the par or stated value per share.

Gulf states that it may determine to use the proceeds from the sale of the Revenue Bonds, the Senior Notes, the First Mortgage Bonds and the new Preferred Stock to redeem or otherwise retire its outstanding senior notes, first mortgage bonds, pollution control bonds and/or preferred stock. Gulf also proposes that it may use the proceeds from the sale of the Senior Notes, the First Mortgage Bonds and new Preferred Stock, along with other funds, to pay a portion of its cash requirements to carry on its electric utility business. Gulf further states that it may determine to use the proceeds from the sale of the Revenue Bonds, the Senior Notes, the new Bonds and the new Preferred Stock to redeem or otherwise retire its outstanding senior notes, first mortgage bonds, pollution control bonds and/or preferred stock if such use is considered advisable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8103 Filed 4–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47578; File No. 4–208]

Intermarket Trading System; Notice of Filing of the Twentieth Amendment to the ITS Plan Relating to the Recognition of the Use by the Chicago Board Options Exchange, Inc. of the Regional Computer Interface and the Description of Commitment Acceptance Applicable to Specialists of the Boston Stock Exchange, Inc.

March 26, 2003.

Pursuant to section 11A of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on March 14, 2003, the Intermarket Trading System Operating Committee ("ITSOC") submitted to the Securities and Exchange Commission ("Commission") a proposed amendment ("Twentieth Amendment") to the restated ITS Plan.[3] The purpose of the proposed plan amendment is to recognize the use by the Chicago Board Options Exchange, Inc. ("CBOE") of the Regional Computer Interface ("RCI"); and to revise the description of commitment acceptance applicable to specialists of the Boston Stock Exchange, Inc. ("BSE"). The Commission is publishing this notice to solicit comment on the proposed amendment from interested persons.

I. Description of the Amendment

The ITSOC proposes to amend the ITS Plan to recognize the CBOE's use of the RCI; and revise the description of commitment acceptance applicable to BSE specialists. Specifically, the ITSOC proposes to amend Section 1(34A) of the ITS Plan to include the CBOE as an RCI participant. In addition, the ITSOC proposes to amend Section 6(a)(ii)(B) ("Description Applicable to the BSE") to provide an example of an ITS transaction represented by one or more BSE Registered specialists.

II. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] The ITS is a National Market System ("NMS") plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

The ITS Participants include the American Stock Exchange LLC (Amex"), the BSE, the CBOE, the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") ("Participants").

available for inspection and copying in the Commission's Public Reference Room. Copies of such proposed Plan Amendment will also be available for inspection and copying at the principal office of the ITS. All submissions should refer to File No. 4–208 and should be submitted by April 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8038 Filed 4–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25984]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

March 28, 2003.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of March, 2003. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 22, 2003, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

John Hancock Cash Reserve, Inc.

[File No. 811–2995]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 7, 2001, applicant transferred its assets to John Hancock U.S. Government Cash Reserve, a series of John Hancock Current Interest, based on net asset value. Expenses of $16,000 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Date: The application was filed on March 20, 2003.

Applicant's Address: 101 Huntington Ave., Boston, MA 02199–7603.

Global Investment Portfolio

[File No. 811–8454]

Summary: Applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On September 10, 2001, applicant distributed all of its assets in-kind to AIM Global Consumer Products and Services Fund, applicant's feeder fund. Expenses of $153,338 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on March 17, 2003.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046–1173.

Amadeo Trust

811–9409]

Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On December 18, 2002, applicant made a liquidating distribution to its unitholders, based on net asset value. Expenses of $19,000 incurred in connection with the liquidation were paid by Amadeo, Inc.

Filing Dates: The application was filed on January 31, 2003, and amended on March 24, 2003.

Applicant's Address: 233 South Fourth Street, Suite 305–11, Las Vegas, NV 89101.

PIC Technology Portfolio

[File No. 811–10149]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 31, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on February 5, 2003, and amended on March 18, 2003.

Applicant's Address: 300 N. Lake Ave., Pasadena, CA 91101.

Emerging Markets Debt Portfolio (Formerly Known as Global High Income Portfolio)

[File No. 811–7302]

Summary: Applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On June 19, 2000, applicant's feeder fund redeemed in-kind its interest in applicant based on net asset value. Expenses of $126,977 incurred in connection with the liquidation were paid by applicant's adviser, AIM Advisors, Inc.

Filing Dates: The application was filed on March 9, 2001, and amended on March 17, 2003.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046–1173.

Growth Portfolio

[File No. 811–7363]

Summary: Applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On September 11, 2000, applicant's feeder fund redeemed in-kind its interest in applicant based on net asset value. Expenses of $152,114 incurred in connection with the liquidation were paid by applicant's adviser, AIM Advisors, Inc.

Filing Dates: The application was filed on March 9, 2001, and amended on March 17, 2003.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046–1173.

Dessauer Global Equity Fund

[File No. 811–7691]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 25, 2002, applicant transferred its assets to Dessauer Global Equity Fund, a series of the Advisors Series Trust, based on net asset value. Expenses of $118,780 incurred in connection with the reorganization were paid by applicant's investment adviser, McIntyre, Freedman & Flynn, and applicant's administrator, U.S. Bancorp Fund Services, LLC.

Filing Date: The application was filed on March 6, 2003.

Applicant's Address: McIntyre, Freedman & Flynn, 4 Main St., P.O. Box 1689, Orleans, MA 02653.

FSP Investment Trust

[File No. 811–10611]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 25, 2003, and February 26, 2003, applicant distributed its assets to its shareholders, based on net asset value. Expenses of approximately $31,700 incurred in connection with the liquidation were paid by applicant. Any additional expenses will be paid by Franklin Street Advisors, Inc., applicant's investment adviser.

Filing Date: The application was filed on February 28, 2003.

Applicant's Address: 116 South Franklin St., P.O. Box 69, Rocky Mount, NC 27802–0069.

Credit Suisse Institutional U.S. Core Equity Fund, Inc.

[File No. 811–8919]

Credit Suisse Global New Technologies Fund, Inc.

[File No. 811–9961]

Credit Suisse Global Financial Services Fund, Inc.

[File No. 811–9963]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By October 23, 2002, November 25, 2002, and February 15, 2003, respectively, all shareholders of each applicant had redeemed their shares at net asset value. Applicants incurred no expenses in connection with the liquidations.

Filing Date: The applications were filed on March 3, 2003.

Applicants' Address: 466 Lexington Ave., New York, NY 10017.

NBP TrueCrossing Funds

[File No. 811–9509]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By November 26, 2002, all shareholders of applicant had redeemed their shares at net asset value. Expenses of $10,348 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on February 14, 2003.

Applicant's Address: Two Portland Sq., Portland, ME 04101.

Impact Management Investment Trust

[File No. 811–8065]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 17, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $31,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on February 14, 2003.

Applicant's Address: 333 West Vine St., Suite 206, Lexington, KY 40507.

First Eagle Funds

[File No. 811–4935].

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 31, 2002, applicant transferred its asset to First Eagle Fund of America, a series of First Eagle Funds, Inc. (formerly, First Eagle SoGen Funds, Inc.), based on net asset value. Expenses of $150,000 incurred in connection with the reorganization were paid pro rata by applicant and the acquiring fund.

Filing Date: The application was filed on February 14, 2003.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

LaCrosse Funds, Inc.

[File No. 811–9051]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 26, 2002, applicant transferred its assets to Mosaic Equity Trust, based on net asset value. Expenses of $132,604 incurred in connection with the reorganization were paid by LaCrosse Advisers, LLC, applicant's investment adviser.

Filing Date: The application was filed on February 11, 2003.

Applicant's Address: 311 Main St., LaCrosse, WI 54602.

Rupay-Barrington Funds, Inc.

[File No. 811–8516]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By December 31, 2000, applicant had made a liquidating distribution to all of its shareholders, based on net asset value. All expenses incurred in connection with the liquidation were paid by The Rupay-Barrington Financial Group, Inc.

Filing Dates: The application was filed on June 8, 2000, and amended on June 9, 2000, and March 3, 2003.

Applicant's Address: 1000 Ballpark Way, Suite 302, Arlington, TX 76011.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8032 Filed 4–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25986; 812–12704]

FSA Capital Management Services LLC; Notice of Application

March 28, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from all provisions of the Act.

SUMMARY OF APPLICATION: FSA Capital Management Services LLC ("Applicant") requests an order to permit Applicant to issue and sell certain debt securities and use the proceeds to finance the business activities of Financial Security Assurance Holdings Ltd. ("FSAH") and its direct and indirect subsidiaries.

FILING DATES: The application was filed on December 4, 2001, and amended on March 26, 2003.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 22, 2003, and should be accompanied by proof of service on applicant, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant: 350 Park Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at 202–942–0567, or Mary Kay Frech, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicant's Representations

1. Applicant is a Delaware limited liability company and direct wholly-

[4] 17 CFR 200.30–3(a)(29).

owned subsidiary of FSAH, a New York corporation.[1] FSAH is a holding company primarily engaged, through its direct wholly-owned subsidiary, Financial Security Assurance Inc. ("FSA"), in the financial guarantee insurance business. FSAH is an indirect, approximately 98.9%-owned subsidiary of Dexia S.A., a publicly owned Belgium corporation ("Dexia"), the shares of which are listed and traded on Euronext Brussels, Euronext Paris and the Luxembourg stock exchange. Dexia is primarily engaged through its operating subsidiaries in the banking and investment management business in Europe.

2. FSA is a New York stock insurance corporation that is a leading insurer of asset-backed and municipal obligations. FSA is licensed to do business as an insurance company in all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam and the U.S. Virgin Islands. FSAH depends primarily on dividends and other payments from FSA to pay dividends on its capital stock, to pay principal and interest on its indebtedness and to pay its operating expenses.

3. Applicant was organized to issue and sell municipal investment contracts and similar investment agreements (together, the "MICs"). Applicant presently sells MICs on a private placement basis primarily to state or local government entities or agencies and trustees for bond issues of such entities or agencies (collectively, the "MIC holders") for the investment of proceeds from municipal bond offerings.

4. MICs are debt securities that provide for an agreed-upon rate of return on the principal invested. MICs may be collateralized by U.S. Treasury or other high quality securities. Municipal bond issuers find MICs attractive because their bonds are often issued to finance projects for which the issuer does not need the full proceeds of the issue immediately. A MIC holder may also purchase a MIC as a means of investing amounts on deposit in debt service reserve funds and other similar funds held by the MIC holder. MICs provide the municipal bond issuer with a guaranteed yield that is advantageous relative to the interest rate on the bonds and can be structured to provide draw-downs to meet the municipality's needs.

5. Because of restrictions on their permitted investments, some municipalities are expected to request that Applicant enter into MICs styled as repurchase agreements (each, a "Repo"), which would provide such municipalities with the economic equivalent of entering into a collateralized MIC. Applicant considers entering into such Repos to be equivalent to issuing a MIC in the form of a collateralized investment contract and will treat the proceeds generated thereby the same as any other proceeds raised in a debt issuance (hereinafter, any reference to "MIC" shall include such Repos).

6. The proceeds of MIC sales will be loaned to FSAH and/or its direct and indirect subsidiaries (collectively, the "Recipients") for use in financing their respective business activities. It is anticipated that substantially all of the proceeds from the MICs will be loaned by Applicant to the Recipients contemporaneously with the issuance of the related MIC, but in no event will less than 85 percent of such proceeds be loaned later than six months after Applicant's receipt of such proceeds. It also is anticipated that substantially all loans to Recipients will be collateralized by the Recipients themselves.

7. Pursuant to an insurance and indemnity agreement with FSA (the "Agreement"), Applicant's obligations under each MIC issued by it will be fully insured by a financial guarantee policy (each, a "Policy") issued by FSA. The Policy provides that in the event of default by Applicant on the payment of principal, premium (if any) and interest on the MIC, FSA will make the scheduled payment. In addition, the MIC holder may institute legal proceedings directly against FSA to enforce such payment without first proceeding against Applicant. The Agreement requires Applicant to reimburse FSA for any payments made by FSA under the Policies.

8. In order to secure its performance under the Agreement, Applicant will rehypothecate all collateral received in respect of loans of proceeds to Recipients either directly to FSA or to one or more trustees, custodians, collateral agents or other similar agents acting for the benefit of FSA under one or more trust, custody, collateral agency or other similar agency agreements. With respect to MICs in the form of collateralized investment contracts or Repos, however, the collateral pledged to secure the related loan of proceeds will be rehypothecated to the MIC holder.

9. Applicant may come within the definition of investment company under section 3(a) of the Act to the extent that its loans to FSAH and the other Recipients may be considered as investing or reinvesting in debt securities of FSAH and the other Recipients. Applicant currently is relying on the exception from the Act provided by section 3(c)(1). It will be unable to continue to do so, however, at such time as the 100 owner limit contained therein is exceeded or if Applicant were to make a public offering of its securities.

Applicant's Legal Analysis

1. Applicant requests an order under section 6(c) of the Act for an exemption from all provisions of the Act. Rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a–5(b)(2)(i) in relevant part defines a "parent company" to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a). Applicant states that because FSAH relies on an exception in section 3(c)(6) of the Act as an insurance holding company, FSAH would not qualify as an eligible parent company under rule 3a–5.

3. Rule 3a–5(b)(3)(i) in relevant part defines a "company controlled by the parent company" to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) of the Act or that is excepted or exempted by order from the definition of investment company by section 3(b) of the Act or by the rules and regulations under section 3(a). FSAH engages in certain activities (including certain investment activities) through wholly-owned subsidiaries that have no outstanding securities other than those owned directly or indirectly by FSAH. Such subsidiaries would be eligible for exemption under rule 3a–3 under the Act, except that FSAH, as a section 3(c)(6) exempt company, is not an eligible parent of a rule 3a–3 exempt company.[2] In addition, Applicant might choose in the future to lend the proceeds of its MIC offerings to FSA, which, as an insurance company, is excluded from the definition of investment company under section 3(c)(3) of the Act and to any other insurance company subsidiaries now or hereafter controlled by FSAH that derive their non-investment company status under section 3(c)(3) (such insurance companies, including but not limited to FSA, "FSAH's Insurance Company Subsidiaries").

4. Rule 3a–5(a)(1) requires that any debt securities of a finance subsidiary issued to or held by the public be unconditionally guaranteed by the parent company. Rule 3a–5(a)(3) requires that any parent guarantee provide that, in the event of a default in payment of amounts due under such debt securities, the holders of those securities be allowed to proceed directly against the parent company without first having to proceed against the finance company.

5. Applicant states that the Policies to be issued by FSA covering the MICs serve the underlying objectives of the rule 3a–5 guarantee, because the MIC holders will be provided with benefits substantially similar to those provided by the guarantee requirement of rule 3a–5. Each Policy will be an unconditional and irrevocable guarantee of payment of all amounts due under the MICs. Applicant asserts that there are no differences in the procedures that would be followed by the MIC holders to recover for any loss in the event of Applicant's default on a MIC as compared to the procedures for recovery in the event of a default under a rule 3a–5 guarantee. Applicant further states that FSA is subject to a comprehensive scheme of regulation and supervision under the insurance laws of each U.S. jurisdiction where it is licensed to do business, so that there is higher likelihood that FSA would be able to meet it obligations.

6. Applicant further asserts that the receipt of a Policy from FSA in lieu of an FSAH guarantee increases the likelihood that the MIC holders will be paid in full because creditors of FSAH are in effect structurally subordinated to creditors of FSA (and its subsidiaries). This is because FSAH's equity interest in FSA (including its subsidiaries) is approximately 68% of FSAH's assets and FSAH's only significant source of funds with which to make payments is dividends or other payments from FSA.

7. Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant submits that its exemptive request meets the standards set out in section 6(c).

Applicant's Condition

Applicant agrees that any order issued on the application shall be subject to the following condition:

Applicant will comply with all of the provisions of rule 3a–5 under the Act, except: (1) In lieu of the parent guarantee requirement in rule 3a–5(a)(1), Applicant's obligations under each MIC will be fully insured by a Policy issued by FSA; (2) FSAH will not meet the portion of the definition of "parent company" under rule 3a–5(b)(2)(i) solely because it is excluded from the definition of investment company under section 3(c)(6) of the Act; (3) Applicant will be permitted to make loans to each of FSAH's Insurance Company Subsidiaries, which do not meet the portion of the definition of "company controlled by the parent company" in rule 3a–5(b)(3)(i) solely because they are excluded from the definition of investment company under section 3(c)(3) of the Act; and (4) Applicant will be permitted to make loans to subsidiaries of FSAH that do not meet the portion of the definition of "company controlled by the parent company" solely because they would be excluded from the definition of investment company by virtue of rule 3a–3 under the Act, but FSAH's status as their parent company.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8104 Filed 4–2–03; 8:45 am]

BILLING CODE 8010–01–P

[1] Applicant also requests relief for any other wholly-owned finance subsidiary of FSAH that FSAH establishes in the future. Applicant is the only wholly-owned finance subsidiary of FSAH that presently intends to rely on the requested order. Any other wholly-owned finance subsidiary of FSAH that subsequently relies on the requested order will comply with the terms and condition stated in the application.

[2] Rule 3a–3 generally exempts an issuer from the definition of investment company if all of its outstanding securities (other than short-term paper, directors' qualifying shares, and debt securities owned by the Small Business Administration) are owned by an eligible parent company. A parent company generally is eligible if it meets certain asset and income tests and it is (i) not an investment company as defined in section 3(a) of the Act; (ii) excluded from the definition of investment company by section 3(b) of the Act; or (iii) deemed not to be an investment company under rule 3a–1 under the Act.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47588; File No. SR–NASD–2003–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto by the National Association of Securities Dealers, Inc. to Permanently Expand Order Entry Firm Access to SIZE in Nasdaq's SuperMontage System

March 28, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 12, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by Nasdaq. On March 26, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to make permanent its current pilot allowing NNMS Order Entry Firms ("OE Firms") to enter non-marketable limit orders into SuperMontage using the SIZE Market Maker Identifier ("SIZE MMID" or "SIZE").[4] In addition, this filing also makes permanent a number of non-substantive corrections to the written rules of the NNMS. The text of the proposed rule change is available at the NASD, the Office of the Secretary, and the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Thomas Moran, Office of General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 25, 2003 ("Amendment No. 1"). Nasdaq submitted Amendment No. 1 to reflect that File No. NASD–2003–39, relating to anti-internalization qualifier values, had become immediately effective, and to delete dates in the rule text that are no longer applicable.

[4] SIZE is an anonymous identifier that represents the aggregate size of all Non-Attributable Quotes and Orders entered by market participants in Nasdaq at a particular price level. Non-Attributable Quotes and Orders are not displayed in the Nasdaq Quotation Montage using the market participant's MMID. Instead, such interest is displayed next to the SIZE MMID.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 31, 2003, the Commission approved File No. SR–NASD–2002–173 on a 90-pilot basis, which allowed OE Firms to enter non-marketable limit orders into Nasdaq's SuperMontage system using SIZE.[5] This filing seeks to make permanent the ability of OE Firms to enter orders into SuperMontage under essentially the same terms and conditions approved in the pilot program.[6]

Under the pilot, OE Firms are able to voluntarily enter non-marketable limit orders into SuperMontage without an IOC designation and have them be retained for potential execution[7] through display in SIZE. OE Firms may enter multiple orders (with or without reserve size) at single or multiple price levels, use any available execution algorithm (price/time, price/time-with-fee-consideration, or price/size). Non-marketable limit orders entered by OE Firms are subject to the automatic execution functionality of the system. Orders of OE Firms on opposite sides of the market are not permitted to automatically interact, if at the best price level, like those of Nasdaq Quoting Market Participants.[8] If elected by the OE Firm, its quotes/orders on opposite sides of the market will match off against each other only if such interaction would result based on the execution algorithm selected.[9] Alternatively, OE Firms may elect not to interact with its orders on the opposite side of the market.[10] Quotes/Orders entered by OE Firms that create a locked/crossed market, will be processed like other locking/crossing quotes/orders as set forth in NASD rule 4710(b)(3).

As stated in the filing creating the pilot program, Nasdaq believes that the proposal is an important step in Nasdaq's ongoing process to make its systems more accessible to all NASD member firms while ensuring that market participants who undertake the burdens of continuous liquidity provision are provided benefits commensurate with their activities. Nasdaq believes that most important, however, are the improvements to market quality that can be expected from the proposal's permanent approval. Nasdaq believes that in addition to enhanced liquidity and informational benefits, retention of non-marketable limit orders from OE Firms in SuperMontage, the proposal can be expected to reduce fragmentation of trading interest, thereby improving execution quality and speed and shrinking the costs market participants now incur when searching for trading partners in multiple venues. Finally, to the extent that any previously rejected OE Firm order is retained, Nasdaq believes the proposal will reduce the potential for locked/crossed markets that can occur if such rejected trading interest is subsequently displayed in an unlinked market center without the benefit of SuperMontage processing to eliminate locks or crosses among all quotes and orders residing in the system. Nasdaq notes that the permanent change proposed here was originally suggested as part of the original public comment process on the SuperMontage proposal, and believes its adoption should have the effect of reducing barriers to access to the SuperMontage system.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[11] in general and with section 15A(b)(6) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–37, and should be submitted by April 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8034 Filed 4–2–03; 8:45 am]

BILLING CODE 8010–01–P

[5] See Securities Exchange Act Release No. 47301 (January 31, 2003), 68 FR 6236 (February 6, 2003). The 90-day pilot commenced on February 10, 2003.

[6] Prior to the pilot period, OE Firms were required to designate all limit orders they entered into SuperMontage as Immediate-or-Cancel ("IOC"). This designation, while allowing such orders to potentially execute if marketable when they reached the front of the SuperMontage processing queue, also instructed the system to return them to the OE Firm if their price precluded an immediate execution. In short, OE Firms could enter market orders and marketable limit orders, but could not enter non-marketable limit orders and have them retained in the system for potential display and/or execution.

[7] NNMS Order Entry Firms will be able to designate orders as IOC, "Good-till-Cancelled," or "Day" orders.

[8] Similarly, OE Firms will not be able to use SuperMontage's self-preferencing feature and have buy and sell interest interact on a basis other than a natural interaction based solely on the selected order execution algorithm.

[9] See Securities Exchange Release Act No. 47554 (March 21, 2003), 68 FR 15024 (March 27, 2003) (Notice of Filing and Immediate Effectiveness of SR–NASD–2003–39).

[10] *Id.* Change made pursuant to March 27, 2003, telephone conversation between Thomas Moran, Office of General Counsel, Nasdaq, and Terri Evans, Assistant Director, Division, Commission.

[11] 15 U.S.C. 78o–3.

[12] 15 U.S.C. 78o–3(b)(6).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47590; File No. SR–NASD–2003–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Proposed Interpretive Material Regarding the Use of Investment Analysis Tools

March 28, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on February 3, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the NASD. On February 27, 2003, the NASD amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to adopt a new Interpretive Material ("IM") to NASD rule 2210(d)(2)(N), to allow NASD member firms to use certain investment analysis tools that show the probability that investing in specific securities or mutual funds may produce a desired result. The text of the proposed rule change is below. Proposed new language is in italics.[4]

IM–2210–6. Requirements for the Use of Investment Analysis Tools

(a) General Considerations

This Interpretive Material provides a limited exception to NASD Rule 2210(d)(2)(N).[1]

No member may imply that NASD endorses or approves the use of any investment analysis tool or any recommendation based on such a tool. A member that intends to offer an investment analysis tool under this Interpretive Material (whether customers use the member's tool independently or with assistance from the member) must, at least 30 days prior to first use, (1) provide NASD's Advertising Regulation Department (Department) access to the investment analysis tool and (2) file with the Department any template for written reports produced by, or sales material concerning, the tool.[2] *The member also must provide any supplemental information requested by the Department. If the Department requests changes to the investment analysis tool, written-report template or sales material, the member may not offer or use the tool, written-report template or sales material until all changes specified by the Department have been made by the member and approved by the Department. In addition, as in all cases, a member's compliance with this Interpretive Material does not mean that the member is acting in conformity with other applicable laws and rules. A member that offers an investment analysis tool under this Interpretive Material (whether customers use the member's tool independently or with assistance from the member) is responsible for ensuring that use of the investment analysis tool and all recommendations based on the investment analysis tool (whether made via the automated tool or a written report) comply with NASD's suitability rule (rule 2310), the other provisions of rule 2210, and the other applicable federal securities laws and Securities and Exchange Commission and NASD rules.*

(b) Definition

For purposes of this Interpretive Material and any interpretation thereof, an "investment analysis tool" is an interactive technological tool that produces simulations and statistical analyses that present a range of probabilities that various investment outcomes might occur, thereby serving as an additional resource to investors in the evaluation of the potential risks of and returns on particular investments.

(c) Use of Investment Analysis Tools and Related Written Reports and Sales Material

A member may provide an investment analysis tool (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tool and related sales material[3] *only if:*

(1) the tool presents a range of probabilities that various investment outcomes might occur and does not state that a particular investment outcome will, in fact, occur;

(2) the tool prominently presents a fair and balanced representation of the range of possible investment outcomes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See February 27, 2003 letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, and attachments ("Amendment No. 1"). The original proposed rule change was inadvertently submitted without page 5, and contained some technical deficiencies. In Amendment No. 1, the NASD removed pages 1–25 of the original filing and replaced them with new pages 1–25. The Commission did not require the NASD to re-file pages 26–230.

[4] The Commission notes for purposes of clarification that all of the proposed rule language is new language. While some of the language appears in brackets, this does not signify language that is being removed, as is normally the case in proposed rule language that is published in the **Federal Register**.

[1] *NASD rule 2210(d)(2)(N) prohibits NASD member firms from making predictions or projections of specific investment results to the public. In the past, the rule also had been interpreted as prohibiting members from providing customers access to investment analysis tools that show the probability that investing in specific securities or mutual funds will produce a desired result. This Interpretive Material allows member firms to offer such tools (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tools and related sales material in certain circumstances.*

Rule 2210(d)(2)(N) does not prohibit, and this Interpretive Material does not apply to, automated educational tools that are hypothetical or general in nature. For instance, rule 2210(d)(2)(N) generally does not prohibit, and this Interpretive Material does not cover, portfolio-based planning tools that merely generate a suggested mix of asset classes, broad categories of securities or funds, or probabilities as to how classes of financial assets or styles of investing might perform.

[2] *Sales material that members disseminate to the public must be in the same form in which it was submitted to NASD for review and approval. Members cannot redact or alter such sales material after receiving NASD approval and must file with the Department any modified version of the sales material, at least 30 days prior to first use of the modified version of the sales material.*

[3] *Sales material that contains only an incidental reference to an investment analysis tool (e.g., a brochure that merely mentions a member's tool as one of the services offered by the member) does not need to include the disclosures required by this Interpretive Material and does not need to be filed with the Department, unless otherwise required by another rule 2210 provision.*

that the tool's algorithm determines have a reasonable probability of occurrence;[4]

(3) the tool uses a mathematical process that can be audited and reviewed;

(4) the member describes the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;

(5) the member explains that results may vary with each use and over time;

(6) the member describes the universe of investments considered in the analysis, explains how the tool determines which securities to select, discloses if the tool favors certain securities[5] *and, if so, explains the reasons for the selectivity, and states that other investments not considered may have characteristics similar or superior to those being analyzed; and*

(7) the member displays the following additional disclosure: "IMPORTANT: The projections or other information generated by [name of investment analysis tool] regarding the probabilities that various investment outcomes might occur are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results. [Name of investment analysis tool] only presents a range of possible outcomes."

(d) Disclosures

The disclosures and other required information discussed in paragraph (c) must be written, clear and prominent.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD proposes to allow NASD member firms to use certain investment analysis tools that show the probability that investing in specific securities or mutual funds may produce a desired result. Under the proposed IM, members could offer investment analysis tools and written reports showing the results of such tools (and use related sales material) only if the tools, reports or sales material present a range of probabilities that various investment outcomes might occur and do not state that a particular investment outcome will; in fact, occur; present a fair and balanced representation of the range of possible investment outcomes that the tool's algorithm determines have a reasonable probability of occurrence; use a mathematical process that can be audited and reviewed; describe the criteria and methodology used, including the tool's limitations and key assumptions; explain that results may vary with each use and over time; and describe the universe of investments considered in the analysis, explain how the tool determines which securities to select, disclose if the tool favors certain securities and, if so, explain the reason for the selectivity, and state that other investments not considered may have characteristics similar or superior to those being analyzed.

In addition, the following disclosure must be displayed: "Important: The projections or other information generated by [name of investment analysis tool] regarding the probabilities that various investment outcomes might occur are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results. [Name of investment analysis tool] only presents a range of possible outcomes."

The proposed IM also would require members to provide NASD's Advertising Regulation Department with access to the tool (as well as any template for written reports showing the results of the tool or sales material concerning such tool) at least 30 days prior to first use. The review and approval are not merit-based, but rather focus on whether the member has complied with the disclosure requirements and the other requirements of NASD rule 2210, such as the prohibitions on exaggerated, unwarranted and misleading statements and claims. Finally, the IM makes clear that, to the extent that these tools produce recommendations, the NASD's suitability rule would apply.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6)[5] of the Act, which requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. As discussed above, the proposed IM requires members to disclose various material aspects of the investment analysis tools and reports that they generate. The proposed IM also would require members to provide access to the tool (as well as any template for written reports showing the results of the tool or sales material concerning such tool) to the Advertising Regulation Department at least 30 days prior to first use. In addition, the proposal reminds firms of their suitability obligations. The NASD believes that these restrictions will enable firms to provide investment analysis tools to investors while making clear to investors the limitations of such tools. As such, the investment analysis tools should allow investors to make educated judgments about how particular strategies or investments might perform.

[4] *The entire range of investment outcomes would encompass a range of numbers that, as a practical matter, cannot be calculated accurately. The IM therefore requires that the tool, written report of the tool's results or related sales material show the range of possible investment outcomes that the tool's algorithm determines have a reasonable probability of occurrence."*

The tool, written report of the tool's results or related soles material must depict a "fair and balanced representation" of this range. A "fair and balanced representation" would include, at a minimum, the "upside," "downside" and "median" projections of estimated outcomes, but would nat require a depiction of every outcome in between. Any representation that, in light of all the facts and circumstances, is misleading will not be considered a "fair and balanced representation" of the range. For example, the presentation of a range of possible outcomes skewed to depict only or to weigh in favor of positive market performance would not be a "fair and balanced representation" of the range. In this regard, whenever the tool, written report of the tool's results or related sales material shows an outcome that the investor has a certain chance of achieving on the "upside," the tool, written report, or related sales material must also show the corresponding outcome on the "downside." Moreover, the tool, written report or related sales material should make clear that the dollar amount representing the "downside" is not the worst-case scenario, and it must include a prominent statement of the estimated probability (for example, a "5% chance" or "1 in 20 chance") that the investor will end up with less than the "downside" amount that the tool generates.

[5] *This disclosure must indicate, among other things, whether the investment analysis tool searches, analyzes or in any way favors certain securities within the universe of securities considered based on revenue received by the member in connection with the sale of those securities or based on relationships or understandings between the member and the entity that created the investment analysis tool. The disclosure also must indicate whether the investment analysis tool is limited to searching, analyzing or in any way favoring securities in which the member makes a market or has any other direct or indirect interest. Members are not required to provide a "negative" disclosure (i.e., a disclosure indicating that the tool does not favor certain securities).*

[5] 15 U.S.C. 78o–3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed IM was published for comment in NASD *Notice to Members 02–51* (August 2002). Fifty-six comments were received in response to the *Notice*. A copy of the *Notice to Members* is attached as Exhibit 2. Copies of the comment letters received in response to the *Notice* are attached as Exhibit 3. Of the 56 comment letters received, 50 were generally in favor of allowing members to provide customers access to investment analysis tools and five were opposed. (One of the comments received was non-responsive.) Numerous commenters noted that other financial service providers have used these types of tools for years without any customer confusion.

The NASD both clarified and modified certain aspects of the IM as a result of some of the comments that it received. For instance, a number of commenters requested that the NASD clarify the types of tools that rule 2210(d)(2)(N) currently prohibits and that would be eligible for the IM's limited exception. The IM now explains that NASD staff has interpreted rule 2210(d)(2)(N) as prohibiting members from providing customers with access to investment analysis tools that show the probability that investing in specific securities or mutual funds may produce a desired result. Such tools would be permitted under the proposed IM if they adhere to the IM's requirements. The revised proposed IM also states that rule 2210(d)(2)(N) does not prohibit and the proposed IM thus does not apply to automated educational tools that are hypothetical or general in nature. Rule 2210(d)(2)(N), for example, generally does not prohibit and the proposed IM does not cover portfolio-based planning tools that merely generate a suggested mix of asset classes, broad categories of securities or funds, or probabilities regarding how classes of financial assets or styles of investing might perform.

Some commenters also requested that the NASD broaden the IM to include an exception for written reports indicating the results of the tools' analyses, which the NASD did not expressly discuss in the proposed IM that was distributed for comment. In general, these commenters opined that members should be able to provide reports to customers so that the customers have the opportunity to review the results and to ask follow-up questions or otherwise consult with a registered representative about the results. The IM now provides such an exception. Members may provide customers with such written reports if they fulfill the requirements set forth in the IM for members' use of the tools, including the first-use filing requirement, which could be accomplished by filing a template with the NASD (rather than by filing each individual report).

In addition, a number of commenters who reviewed the IM that previously was published for comment asked for clarification of the provision that required members to "prominently disclose the range of all possible investment outcomes generated by the investment analysis tool." In general, the commenters stated that providing a range of "all possible outcomes" would be cumbersome, confusing and impractical given the number of variables. Indeed, one commenter opined that it would be virtually impossible to depict all possible outcomes. Several commenters suggested that members should not be required to provide the range of all possible outcomes, but rather the range of outcomes that can be determined with a high degree of certainty.

In response to these comments, the NASD modified the provision. The IM explains that the entire range of investment outcomes would encompass a range of numbers that, as a practical matter, cannot be calculated accurately. The IM therefore requires a "fair and balanced representation" of the range of possible investment outcomes that the tool's algorithm determines have a "reasonable probability of occurrence." For example, a range of outcomes for which there is at least a one in 20 chance of occurrence on both the "upside" of the range and on the "downside" of the range would be deemed a range of outcomes that have a "reasonable probability of occurrence." This requirement will allow tools to eliminate the statistically insignificant outcomes (for example, those for which there is less than a one in 20 chance of occurrence), while still guaranteeing that the tool will show a range of likely investment outcomes that illustrates the relationship between risk and return. The tool should measure the outcomes that have a "reasonable probability of occurrence" with adequate precision to ensure a high degree of confidence in their accuracy.

However, the tool, written report of the tool's results or related sales material must depict a "fair and balanced representation" of this range. A "fair and balanced representation" would include, at a minimum, the "upside," "downside" and "median" projections of estimated outcomes, but would not require a depiction of every outcome in between. Any representation that, in light of all the facts and circumstances, is misleading will not be considered a "fair and balanced representation" of the range. For example, the presentation of a range of possible outcomes skewed to depict only or to weigh in favor of positive market performance would not be a "fair and balanced representation" of the range. In this regard, whenever the tool, written report of the tool's results or related sales material shows an outcome that the investor has a certain chance of achieving on the "upside," the tool, written report or related sales material must also show the corresponding outcome on the "downside." Moreover, the tool, written report or related sales material should also make clear that the dollar amount representing the "downside" is not the worst-case scenario, and it must include a prominent statement of the estimated probability (for example, a "5% chance" or "one in 20 chance") that the investor will end up with less than the "downside" amount that the tool generates.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission specifically seeks comment on whether the fund advertising rules or any other Commission rules are implicated by the use of the investment analysis tools described in this proposed rule change. Persons making

written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–13 and should be submitted by April 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8035 Filed 4–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47587; File No. SR–NASD–2000–42]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Requirements for Recording and Reporting of Certain Quotation Data; Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Change

March 27, 2003.

I. Introduction

On July 3, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish requirements for the recording and reporting of certain quotation data. On October 5, 2000, the proposed rule change was published for comment in the **Federal Register**.[3] The Commission received one comment letter in response to the proposed rule change.[4] The NASD responded to the comment letter and amended the proposed rule change on January 4, 2001.[5] On June 14, 2001, the NASD submitted a letter clarifying a limitation on its proposed use of quotation data submitted in response to the proposed rule.[6] On September 21, 2001, the NASD further amended its proposed rule change by filing Amendment No. 2.[7] On February 27, 2003, the NASD filed Amendment No. 3 to its proposed rule change.[8] This notice and order solicits comment on Amendment Nos. 1, 2 and 3 and approves the proposed rule change, as amended, on an accelerated basis.

II. Description of Proposed Rule Change

According to the NASD, in September 1999, the Electronic Pink Sheets ("EPS") began displaying real-time, on-line stock quotations for approximately 5,000 securities, including over-the-counter ("OTC") equity securities. Prior to the availability of EPS, quotations were published weekly in hardcopy lists known as the "pink sheets." These lists were updated via daily facsimile transmission to subscribers. To obtain more current quotations for securities published in the pink sheets, market participants would communicate directly with broker-dealers publishing quotations in that medium, including unpriced indications of interest for the particular security.

NASD Regulation represents that because quotations for OTC equity securities now are displayed on a real-time basis in inter-dealer quotation systems, such as the pink sheets, NASD Regulation staff requires access to data pertaining to those quotations in order to surveil adequately for member compliance with applicable rules and regulations and, when necessary, to reconstruct market activity.

Therefore, the NASD proposed NASD Rule 6630 to require its members to: (1) Record specified information pertaining to quotations for OTC equity securities displayed in an inter-dealer quotation system[9] that permits real-time quotation updates, unless such system is operated by a registered securities association, a national securities exchange or an NASD member; (2) preserve the quotation information for the period of time and accessibility set forth in Rule 17a–4(a) under the Act;[10] and (3) report the quotation information to the NASD upon request.

Under the proposed rule, NASD members that publish quotations in inter-dealer quotation systems covered by the rule ("covered quotation systems") would be required to record, among other things, the time of the quotation's display, the bid price and quotation size, the offer price and quotation size, and the prevailing inside bid and offer in the quotation system at the time of the quotation.[11] The proposed rule would apply to priced quotes and unpriced indications of interest. The NASD proposal would permit members to enter into an agreement with a third party that would act as the agent for fulfilling the member's obligations under the rule.

NASD Regulation represents that it would use quotation data obtained pursuant to the proposed rule to surveil,

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43367 (September 27, 2000), 68 FR 59482.

[4] *See* letter from R. Cromwell Coulson, Chairman and CEO, Pink Sheets LLC ("Pink Sheets") to Jonathan G. Katz, Secretary, Commission, dated October 26, 2000 ("Pink Sheets Letter").

[5] *See* letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Katherina A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 4, 2001 ("NASD Response to Comments and Amendment No. 1"). NASD Response to Comments and Amendment No. 1: (1) Addressed comments submitted by Pink Sheets; and (2) amended the proposed rule's text to clarify the conditions under which a member would be required to withdraw its quotations for non-compliance with the proposed rule's requirements.

[6] *See* letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated June 14, 2001 ("NASD Letter"). The NASD Letter clarified that quotation data provided to the NASD pursuant to the proposed rule would not be provided to The Nasdaq Stock Market, Inc.

[7] *See* letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 21, 2001. ("Amendment No. 2"). In Amendment No. 2, the NASD revised the proposed rule's text to state expressly that the rule would not apply to quotations on inter-dealer quotation systems operated by a registered securities association or national securities exchange.

[8] *See* letter from Stephanie M. Dumont, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated February 26, 2003. ("Amendment No. 3"). The amendment clarified that the NASD will not use an inside bid and/or offer that is calculated and submitted by the Reporting Agent for any commercial purposes.

[9] Rule 15c2–11(e) of the Act defines inter-dealer quotation system as "any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers." 17 CFR 240.15c2–11(e).

[10] 17 CFR 240.17a–4(a). Pursuant to Rule 17a–4(a) under the Act, members would be required to preserve records of such data for at least six years. During the first two of the six years, members would be required to maintain the records "in an easily accessible place."

[11] *See* Amendment No. 3, *supra* note 8, which clarifies that a member should not consolidate quotation information from other systems or markets that are quoting the security.

for example, for compliance with NASD Rule 3320, *Offers at Stated Prices*, which requires that a member's quotation be "firm,"[12] and NASD Rule 6750, *Minimum Quotation Size Requirements for OTC Equity Securities*, which requires that every member firm that functions as a market maker in OTC equity securities on an inter-dealer quotation system that permits quotations to be updated on a real-time basis must honor those quotations for the minimum size applicable to the member firm's firm bid or ask price. NASD Regulation represents that although it has access to trade execution data through existing trade reporting requirements and systems, it does not otherwise have access to historical quotation activity at the time of trades.

As originally proposed, the rule change would not apply to quotations displayed on an inter-dealer quotation system that is qualified pursuant to section 17B of the Act.[13] In Amendment No. 2, the NASD proposed revising the rule text to state expressly that the exclusion applies to quotations on an inter-dealer quotation system that is operated by a registered securities association or national securities exchange. NASD Regulation observed that the registered securities association or national securities exchange operating such an inter-dealer quotation system would have access to quotation information displayed on that system. Therefore, the NASD would not require members to record and report information pertaining to quotations entered into inter-dealer quotation systems operated by a registered securities association or national securities exchange. NASD Regulation noted that, under this exclusion, members would not need to record and report quotation information for quotations on the OTC Bulletin Board, which is sponsored and regulated by the NASD.

The proposed rule change also would not apply to an inter-dealer quotation system operated by a member of the NASD. The NASD indicated that if an NASD member were to operate an inter-dealer quotation system, the NASD would be able to receive the pertinent quotation data (or, in some cases, the display of limit orders) directly from the NASD member operating the system.

The proposed rule change would permit a member to use an agent to provide the quotation data to the NASD ("Reporting Agent").[14] The NASD believes that most or all members that would be required to provide quotation data under the proposed rule would use the services of a Reporting Agent, which likely would be the operator of the inter-dealer quotation system.

NASD Regulation anticipates that if a system operator agrees to be a member's Reporting Agent, the system operator would provide all relevant quotation data directly to NASD Regulation on a daily or ongoing basis. Notwithstanding a member's use of a Reporting Agent to furnish quotation information, the member would remain responsible for compliance with all requirements of the proposed rule. If a member knew or had reason to believe that it or its Reporting Agent was not in compliance with the proposed rule, the member would be required to withdraw its quotations or unpriced indications of interest from the inter-dealer quotation system until the member was satisfied that quotation data is being properly recorded and reported.[15] In this regard, NASD Regulation stated that it would expect members that use a Reporting Agent to periodically review or monitor its activities in order to ensure continued compliance with the proposed rule.

Under the NASD's original proposed rule change, if a member knew or had reason to believe that its Reporting Agent was not in compliance with the proposed rule, the member would be required to *immediately* withdraw its priced quotations and unpriced indications of interest. In response to concerns that problems with data systems could interfere with the ability of a member or its Reporting Agent to comply with the proposed rule, the NASD proposed removing the word "immediately" from the proposed rule's text,[16]

To ensure that its members have adequate time to implement the proposed rule, the NASD represented that, if approved, it will announce the operative date of the proposed rule change in a Notice to Members to be published no later than 60 days following the date of Commission approval. The operative date will be 30 days following publication of the Notice to Members.

III. Summary of Comments and NASD Response

The Commission received one comment letter in response to the proposed rule change. The letter, from Pink Sheets: (1) Expressed concern regarding the NASD's proposal to obtain quotation information based on regulation of NASD members rather than through the negotiation of a private contract between NASD Regulation and Pink Sheets; (2) stated that NASD Regulation must acknowledge Pink Sheets' private property rights in the data and provide assurances that this data will be protected, and not redistributed in competition with Pink Sheets; (3) stated that NASD members should not bear the entire responsibility for ensuring that the NASD receives the proper information; (4) stated that NASD members should not be required to withdraw quotations without time to address data systems problems when such problems are the cause of non-compliance; (5) asserted that the proposed rule should set forth the form in which required data must be provided; and (6) questioned the basis of the proposed rule's exclusion for systems operated by a registered securities association or national securities exchange.[17] Pink Sheets also noted its view that the proposed rule change is overly restrictive and should apply to bond quotation services and order routing and negotiation services in addition to electronic quotation services. These comments are discussed below, along with NASD Regulation's responses contained in NASD Response to Comments and Amendment No. 1.

A. Approach to Obtaining Quotation Data

Pink Sheets asserted that it has an intellectual property interest in the data that NASD members would be required to ensure was recorded, preserved, and provided to the NASD upon request. Pink Sheets posited that the negotiation

[12] NASD Rule 3320 states: "No member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell." A member is expected to buy or sell at least a normal unit of trading in the quoted stock at its then prevailing quotations, unless the quotation is designated clearly as not firm or as firm for less than a normal unit of trading. NASD Firmness of Quotations Rule, IM–3320.

[13] 15 U.S.C. 78q–2. Section 17B states that "[t]he Commission shall facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks* * *with a view toward establishing, at the earliest feasible time, one or more automated quotation systems that will collect and disseminate information regarding all penny stocks."

[14] NASD Rule 6630(e) would define "Reporting Agent" as "a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member's obligations under this Rule."

[15] *See* NASD Response to Comments and Amendment No. 1, *supra* note 5.

[16] NASD Response to Comments and Amendment No. 1. A literal reading of the original proposed rule text would have required a member to withdraw its quotations only if the member knew or had a reasonable belief that its Reporting Agent was not complying with the proposed rule. The NASD proposed a revision to the rule text clarifying that the member also must withdraw its quotes if the member itself is not complying with the proposed rule. *Id.*

[17] Pink Sheets Letter, *supra* note 4.

of a private contract between the NASD and the owner of an automated inter-dealer quotation system would more adequately address the needs of both the NASD and the system. In addition, Pink Sheets sought assurances that quotation data provided to the NASD pursuant the proposed rule would not be redistributed in competition with Pink Sheets.

NASD Regulation has noted that it cannot rely on a contractual arrangement with the Pink Sheets. Because the NASD's jurisdiction extends only to its members and not to Pink Sheets and other inter-dealer quotation services, NASD Regulation believed that it could not impose a requirement on Pink Sheets to provide quotation data, and, therefore, Pink Sheets at any time could refuse to provide the quotation data. NASD Regulation stated that, although it could pursue legal action against the system operator for breach of such contract, it would be at risk of not having quotation data in the interim and thus would be unable to surveil effectively and monitor for compliance with applicable rules and regulations. Finally, NASD Regulation noted that it requires access to the quotation data for regulatory purposes and intends to use that data only for this purpose.[18] Further, in its letter dated June 14, 2001, NASD Regulation specifically represented that quotation data submitted to the NASD or NASD Regulation under the proposed rule will not be provided to The Nasdaq Stock Market by the NASD or NASD Regulation.[19] Also, in Amendment No. 3, the NASD represented that to the extent the member's Reporting Agent calculates an inside bid and/or offer and submits that inside bid and/or offer to the NASD, the NASD will not use this inside bid and/or offer for any commercial purposes.[20]

B. Responsibility for Compliance

In the proposed rule change, the NASD stated that an NASD member would be fully responsible for compliance with the proposed rule whether or not the member used a Reporting Agent to provide quotation information. Pink Sheets argued that requiring NASD members to bear the responsibility for ascertaining whether the NASD is receiving quotation data would impose an undue burden on NASD members. Pink Sheets therefore suggested that the proposed rule be amended to require the NASD to notify its members or their Reporting Agents if the NASD knows or has reason to believe that the NASD is not receiving quotation data.

NASD Regulation responded that it believes member firms must be responsible for compliance with the proposed rule and must put procedures in place to ensure proper reporting of quotation information. NASD Regulation stated, however, that it would be willing, upon request, to confirm whether it is receiving quotation information submitted pursuant to the proposed rule.

C. Withdrawal of Quotations

As originally proposed, non-compliance with the proposed rule would require a member to immediately withdraw its priced quotations and unpriced indications of interest. Pink Sheets expressed concern that this might require NASD members to immediately withdraw their quotations where non-compliance is the result of data systems problems.

NASD Regulation responded that it recognizes members or their Reporting Agents may experience systems problems that temporarily restrict their ability to record and report quotation information. Therefore, NASD Regulation stated that if a member or its Reporting Agent were unable to record or report quotation information due to a systems problem, the member would not be required to withdraw its quotations or unpriced indications of interest, as long as the problem did not extend beyond one trading day. NASD Regulation further noted that if the systems problem extended beyond one trading day, the proposed rule would require that the member withdraw its quotations or unpriced indications of interest, if the member is unable to use an alternative means to comply with the proposed rule. Reflecting this approach, the NASD amended the proposed rule so that it no longer requires quotations to be withdrawn immediately.[21]

Pink Sheets also expressed concern that market makers required to withdraw their quotations and unpriced indications of interest might lose their "piggyback" status under Rule 15c2–11 of the Act.[22] Pink Sheets asserted that in order to avoid this possible result, the proposed rule should be amended so that, in the case of non-compliance, members would only be required to withdraw their quotations, not their unpriced indications of interest. NASD Regulation responded that if quotation information, including unpriced indications of interest, is not properly recorded and reported, the NASD could not ensure that its members are in compliance with applicable rules.

D. Data Standards

The proposed rule would require members to record and report quotation data "in such form as is prescribed by the Association from time to time." The proposed rule, however, specifies the items of information the quotation activity must contain. Pink Sheets argued that no quotation system should be held to "such a subjective standard." NASD Regulation responded that, under the proposed rule, the NASD would, in a Notice to Members, prescribe the form in which it would require data to be transmitted to the Association. NASD Regulation stated that its staff has met with a representative of Pink Sheets to discuss data transmission alternatives. Further, NASD Regulation stated that if it were to now stipulate the use of a specific transmission method, the NASD would not have the ability, should it be necessary, "to address varying systems transmissions capabilities."

E. Inter-Dealer Quotation Systems Covered by the Rule

As amended, proposed NASD Rule 6630 would not require the recording and reporting of quotations that are displayed on an inter-dealer quotation system that is either: (1) Operated by a registered securities association or national securities exchange; or (2) operated by an NASD member. In addition, since the rule applies only to OTC equity securities, it would not apply to electronic bond quotation services. Pink Sheets objected to the proposed rule's original exclusion of systems qualified pursuant to section 17B of the Act, which, by definition, are operated by either a national securities association or a national securities exchange.[23] Pink Sheets expressed concern that there is no rule that requires members to remove their

[18] NASD Response to Comments and Amendment No. 1, *supra* note 5.

[19] NASD Letter, *supra* note 6.

[20] Amendment No. 3, *supra* note 8.

[21] If a systems problem extends beyond one trading day, causing quotation data to not be recorded or reported for a particular member, that member would then be required to withdraw from the quotation system. *See* NASD Response to Comments and Amendment No. 1, *supra* note 5.

[22] Rule 15c2–11 requires a broker-dealer to review current information about an issuer before it publishes a quotation for the issuer's security in the non-Nasdaq OTC markets. Because of the rule's "piggyback" provision, generally only the first broker-dealer is required to review this information. Once the security is quoted regularly for 30 days, other broker-dealers can "piggyback" off of those quotations, *i.e.*, submit quotations without reviewing information about the issuer. 17 CFR 24.15c2–11(f)(3).

[23] Amendment No. 2, *supra* note 7, revised the text of this exclusion to expressly exclude quotations displayed on an inter-dealer quotation system operated by a registered securities association or national securities exchange.

quotations from any of the exempt systems if the member believes or has reason to believe that the data is not being properly maintained by the exempt system. Pink Sheets expressed concern that the NASD could force market makers on the OTCBB that also quote in the EQS to abandon their use of the EQS. In addition, Pink Sheets inquired why the proposed rule would not apply to electronic bond quotation services.

With regard to the original proposal to exclude systems qualified under section 17B of the Act, NASD Regulation stated that, because those systems are sponsored and regulated by either a national securities association or national securities exchange, the association or exchange would be able to obtain quotation data directly from those systems. Regarding electronic bond quotation services, NASD Regulation stated that it does not currently require historical quotation information for regulation of the OTC component of the bond market. NASD Regulation represented, however, that it will continue to monitor bond market activity to determine whether it is necessary to impose, in that area, requirements similar to those described in the proposed rule change.

IV. Discussion

The Commission has carefully considered the proposed rule change and amendments thereto, along with the comment letter from Pink Sheets, as well as the response letter from NASD Regulation and the NASD Letter. The Commission finds that the NASD proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act,[24] which requires the rules of a national securities association to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, the Commission finds that the proposed rule change is consistent with section 15A(b)(2) of the Act,[25] which requires that a national securities association be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and enforce compliance by its members and persons associated with its members, with the Act and rules and regulations thereunder and the rules of the association.

The Commission finds that the proposed rule change is designed to ensure that the NASD receives quotation information that is necessary to adequately surveil member activity in OTC equity securities quoted on inter-dealer quotation systems that permit quotation updates on a real-time basis and that are not operated by a registered national securities association, a registered national securities exchange, or an NASD member. The required quotation information must be recorded and reported by the member itself or, on the member's behalf, though a Reporting Agent. The Commission believes that this quotation information is necessary for the NASD, through NASD Regulation, to adequately surveil member compliance with applicable rules and regulations in a trading environment where quotations for OTC equity securities are displayed on a real-time basis in those inter-dealer quotation systems for which the NASD does not otherwise have access to quotation data. Because these OTC equity securities often are microcap securities that can be the subject of fraud and manipulation, the Commission believes that it is vital for the NASD to have access to quotation information for these securities so that the NASD can properly carry out its regulatory responsibilities with respect to this market sector.

In considering this proposed rule change, the Commission observes that the NASD has amended the proposed rule change to address, and has clarified a number of points in response to, issues raised in the Pink Sheets Letter. Specifically, in response to comments made in the Pink Sheets Letter, the NASD revised the proposal with respect to the circumstances under which a member would be required to withdraw its quotes from the inter-dealer quotation system in the event of non-compliance with the rule's provisions. The Commission believes that the NASD's revisions address the Pink Sheets' concerns that an NASD member would be required to immediately withdraw its quotes where non-compliance is the result of a temporary data systems problem. The NASD also responded to the Pink Sheets' concern about the specificity of the standards in which the NASD would require data to be submitted by indicating that it would publish information regarding the prescribed form for recording and reporting the quotation information in a Notice to Members. Finally, the NASD responded to the Pink Sheets' objection that the proposed rule did not cover electronic bond quote services by indicating that it would monitor activities to determine whether NASD Rule 6630 should in the future cover a broader range of securities. The Commission does not believe that the NASD's obligations as a self-regulatory organization ("SRO") to enforce compliance by its members with the Act requires it to apply the same rules to all the varied activities of its members. Instead, the Commission believes that, in many cases, it is appropriate for an SRO to tailor its rules to aid it in fulfilling its responsibilities with respect to a particular market segment. The Commission believes that this proposal is appropriately tailored to surveil a market segment that historically has experienced repeated instances of fraud and manipulation.

There are two issues raised by Pink Sheets that the Commission wishes to address further. First, Pink Sheets claimed that NASD Rule 6630 is anti-competitive because it excludes systems that are sponsored and regulated by a registered securities association or national securities exchange, and is unfairly targeted at EQS and its users. The Commission finds that the proposed rule's exclusion of quotations displayed in inter-dealer quotation systems operated by a registered national securities association or national securities exchange is consistent with the Act. To qualify for the exclusion, the system must be operated by an SRO registered with, and regulated by, the Commission. These SROs have responsibilities under the Act to surveil systems they operate. Accordingly, it is unnecessary, and would be needless and redundant, for the NASD to require its members to record and report information regarding quotations on such systems. On the other hand, the Commission believes that it is necessary for the NASD, as the principal regulator of the OTC equity market, to have the requisite information regarding quotations displayed by members in covered quotation systems to enable it to carry out its functions as an SRO. The Commission also believes that the NASD appropriately places the burden to provide the quotation information on its members, because it is these members over which the NASD is obligated to enforce compliance with the Act's provisions.[26] To reduce the costs and burdens on its members, however, the NASD will permit members to enter into an agreement

[24] 15 U.S.C. 78o–3(b)(6).

[25] 15 U.S.C. 78o–3(b)(2).

[26] 15 U.S.C. 78o–3(b)(2).

with a Reporting Agent to provide the information on the member's behalf.

Second, Pink Sheets expressed concern that quotation information provided to the NASD pursuant to the proposed rule could be used to compete against Pink Sheets. Pink Sheets also suggested that the NASD might use the quotation information in some way to advantage its OTC Bulletin Board, to the detriment of EQS. The Commission notes that NASD Regulation specifically represented that it requires access to this quotation data for regulatory purposes and intends to use the data only for this purpose[27] and that quotation data submitted to the NASD or NASD Regulation under the proposed rule change will not be provided to The Nasdaq Stock Market by the NASD or NASD Regulation.[28] Also, in Amendment No. 3, the NASD represented that to the extent the member's Reporting Agent calculates an inside bid and/or offer and submits that inside bid and/or offer to the NASD, the NASD will not use this inside bid and/or offer for any commercial purposes.[29]

V. Accelerated Approval of Amendment Nos. 1, 2, and 3

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Under Amendment No. 1, the NASD clarified when a member must withdraw its quotes from an inter-dealer quotation system under the rule.

The Commission also finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. By expressly excluding from application of the proposed rule quotations entered into inter-dealer quotation systems that are operated by a registered national securities association or national securities exchange, Amendment No. 2 clarifies the proposed rule's scope. In addition, the Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of filing thereof in the **Federal Register**. By clarifying that the terms "prevailing inside bid" and "prevailing inside offer" refer to the prevailing inside bid and offer of the system under which the participant has a responsibility to provide quotation activity under the proposed rule, Amendment No. 3 makes it clear that it is not necessary for a member to consolidate quotation information from other systems or markets that are quoting the same security. Amendment No. 3 also clarifies that the NASD will not use the inside bid/offer quotations collected and submitted by the Reporting Agent for any commercial purposes.

For these reasons, the Commission finds good cause, consistent with sections 15A(b)(2), 15A(b)(6) and 19(b)(2) of the Act, to accelerate approval of Amendment Nos. 1, 2, and 3 to the proposed rule change.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, and 3, including whether Amendment Nos. 1, 2, and 3 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2000–42 and should be submitted by April 24, 2003.

VII. Conclusion

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,[30] that the proposed rule change (SR–NASD–00–42) be and hereby is, approved, and Amendment Nos. 1, 2, and 3 are approved on an accelerated basis.[31]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8037 Filed 4–2–03; 8:45 am]

BILLING CODE 8010–01–P

[27] See NASD Response to Comments and Amendment No. 1, *supra* note 3.

[28] See NASD Letter, *supra* note 6.

[29] See Amendment No. 3, *supra* note 8.

[30] 15 U.S.C. 78s(b)(2).

[31] In approving the proposed rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation.

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47592; File No. SR–NASD–2003–03]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Waive Fees Assessed Under NASD Rule 7010(s) for New Subscribers to Nasdaq PostData

March 28, 2003.

I. Introduction

On January 9, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to waive for two months the fees assessed under NASD Rule 7010(s) for each new subscriber to Nasdaq PostData. The proposed rule change was published for notice and comment in the **Federal Register** on January 27, 2003.[3] The Commission received one comment on the proposal.[4] On March 20, 2003, Nasdaq responded to the comment letter.[5] This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 47209 (January 17, 2003), 68 FR 3911.

[4] See February 7, 2003 letter from Joseph L. Magill, Managing Director AutEx, Thomson Financial Banking and Brokerage ("Thomson"), to Jonathan G. Katz, Secretary, Commission, and attachments ("Thomson Letter"). The Thomson Letter includes as an attachment a January 10, 2003 letter, also from Joseph L. Magill to Jonathan G. Katz, commenting on SR–NASD–2002–184, a proposed rule change the NASD filed and later withdrew. Because the issues Thomson raised in its January 10, 2003 letter are also raised in the instant proposed rule change, Thomson submitted its January 10, 2003 letter as an attachment to its February 7, 2003 letter as a comment to SR–NASD–2003–03. When citing to page numbers of the Thomson Letter in this order, the Commission is referencing the page numbers of Thomson's January 10, 2003 letter.

[5] See March 19, 2003 letter from Jeffrey S. Davis, Nasdaq, to Alden S. Adkins, Associate Director, Division of Market Regulation, Commission ("Nasdaq Letter").

II. Summary of Comments

While the instant proposed rule change is limited to the question of a two-month waiver of fees associated with PostData for new subscribers, the commenter's concerns are broader in scope. The following is an overview of the concerns the commenter raised.

- *Nasdaq Has Failed To Evaluate Its Fee Structure*

The commenter believes that Nasdaq is able to effectively present an analysis of the PostData fees, despite Nasdaq's assertion to the contrary, by calculating the cost of operating, enhancing, and marketing the product.[6] Additionally, the commenter notes that the fees for PostData are imposed on a per-user basis, which may provide relevant price data, as well as some basis for estimating the anticipated average number of paying users per firm.[7]

- *Cost of Enhancements to PostData*

The commenter disagrees with Nasdaq's position that enhancements to PostData do not entail any additional fees.[8] The commenter believes that Nasdaq, by adding material enhancements to PostData "whose costs are not defrayed by the fees charged for the service" may be a burden on competition.[9] The commenter raises the question of whether such a revenue shortfall is being offset by fees generated by the self-regulatory organization's regulatory activities.[10]

- *PostData Wholesale Fees Are Improper*

The commenter believes that Nasdaq's wholesale fees must "reflect only those costs that the SRO would incur if it just collected information and passed it on to private vendors."[11] Citing *NASD* v. *SEC*,[12] the commenter believes that Nasdaq's fee structure cannot mandate that vendors pay costs related to Nasdaq's own commercial service, such as costs relating to formatting PostData reports and any operating and overhead costs attributed to the retail version of PostData.[13]

III. Nasdaq's Response to Comments

Nasdaq says that the commenter has not alleged that Nasdaq's PostData product is an undue burden on competition, and that the inference that one should draw from the commenter's failure to allege such harm is that PostData has been neither a burden on competition, nor a burden on the commenter's business.[14]

In response to the commenter's claim that Nasdaq should evaluate its fee structure, Nasdaq states that its fee structure is proper, and that the proposal "clearly identifies the costs attributable to market data vendors and the separate, incremental costs that are attributable to direct subscribers.[15] Regarding the fees themselves, Nasdaq believes that the fees at their current levels "equitably allocate Nasdaq's costs for offering PostData to members and non-members."[16]

Nasdaq acknowledges that it has expanded the amount of market data available through PostData since approval of its original pilot program. However, Nasdaq does not believe that raising the PostData fees is proper because the new data "does not materially affect the costs that Nasdaq is permitted to include in the PostData fees, such as the maintenance, operation or marketing of PostData, or the operation of the web security infrastructure."[17]

Finally, Nasdaq asks the Commission to reject the commenter's argument that the wholesale fees associated with PostData are improper, because the Commission found in its approval order for the original PostData pilot program that the fees "are equitably allocated among members and non-members, and that the price differential between retail and wholesale fees offer market data vendors the opportunity to compete effectively" with Nasdaq.[18]

IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letter, and Nasdaq's response to the comment letter, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[19] and, in particular, the requirements of sections 15A(b)(5) and (6) of the Act.[20] Section 15A(b)(5)[21] requires the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that a national securities association operates or controls. Section 15A(b)(6)[22] requires that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission finds that the proposal is consistent with both of these sections of the Act.

Specifically, the Commission, in its original approval of the PostData pilot,[23] found that the fees that Nasdaq would charge for both the retail and the wholesale distribution of PostData are equitably allocated among members and non-members. In the instant proposed rule change, Nasdaq has not changed the differential between the retail and wholesale fees permanently—instead, Nasdaq seeks only to offer a waiver of those fees for two months for new subscribers to encourage such persons to use the service. The waiver will apply to subscribers that deal directly with Nasdaq (retail subscribers), as well as subscribers who are vendors (wholesale subscribers). If subscribers do take on this opportunity and like the service, they will pay for the service at the approved rates. The Commission believes, therefore, that such a waiver is reasonable.

Furthermore, the Commission believes the information contained in PostData may help to foster cooperation and coordination with persons engaged in facilitating transactions in securities, by providing consistent, reliable, and verified market data to market participants who choose to subscribe to the service or purchase the information from market data vendors. The Commission believes that investors will benefit by the timely dissemination of this reliable market data.[24] The Commission believes that the two month fee waiver places no undue burden on competition, and in fact, may

[6] Thomson Letter at 8.

[7] *Id.*

[8] *Id.*

[9] *Id.* at 9.

[10] *Id.*

[11] *Id.*

[12] 801 F.2d at 1419.

[13] Thomson Letter at 9–10.

[14] Nasdaq Letter at 1–2. The Commission notes, however, that the commenter, in arguing that Nasdaq could not have materially enhanced PostData without incurring any additional fees, states that adding enhancements without charging additional fees to defray the costs "can place a significant burden on competition. * * *" Thomson Letter at 8–9.

[15] *Id.* at 2.

[16] *Id.*

[17] *Id.* at 3.

[18] *Id.*

[19] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78o–3(b)(5) and (6).

[21] 15 U.S.C. 78o–3(b)(5).

[22] 15 U.S.C. 78o–3(b)(6).

[23] See Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002) (SR–NASD–99–12).

[24] In this regard, the Commission reminds Nasdaq of its representation that Nasdaq generally will provide the PostData information to vendors approximately five minutes before it posts the information on the web site for direct end-users.

foster competition, as market data vendors obtain verified data from PostData, provide enhancements to the data, and in turn, sell the enhanced data to retail customers.[25]

The Commission expects that Nasdaq will continue to examine the fees and fee structure of PostData, and will take whatever steps are necessary to ensure that the fees remain consistent with the mandate established in section 15A(b)(5) of the Act,[26] so that the fees associated with PostData remain equitable. The Commission also expects that Nasdaq will provide the Commission with the information the Commission requested in its original approval order of the PostData pilot[27] as soon as practicable.

V. Conclusion

It is therefore Ordered, pursuant to section 19(b)(2) of the Act[28], that the proposed rule change (SR–NASD–2003–03) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8106 Filed 4–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47584; File No. SR–NYSE–2002–35]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 3 to a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Business Continuity and Contingency Planning

March 27, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") Amendment No. 3[3] to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The NYSE submitted the proposed rule change to the Commission on August 16, 2002, and it was published in the **Federal Register** on September 9, 2002 ("Original Notice").[4] The NYSE subsequently submitted amendments to the proposed rule change on January 13, 2003,[5] and March 7, 2003.[6] Amendment No. 3 incorporates and replaces Amendments Nos. 1 and 2 in their entirety. The Commission is publishing Amendment No. 3 to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to clarify that proposed new NYSE Rule 446 ("Business Continuity and Contingency Plans")—which would require members and member organizations to develop, maintain, review, and update business continuity and contingency plans that establish procedures to be followed in the event of an emergency or significant business disruption—also would require such plans to be reasonably designed to enable members and member organizations to continue their businesses in the event of a significant business disruption.

Below is the text of the proposed rule change, as amended. The base text is that provided in the Original Notice. Language added by Amendment No. 3 is in italics; language deleted by Amendment No. 3 is in brackets:

* * * * *

Business Continuity and Contingency Plans

New Rule 446

(a) Members and member organizations must develop and maintain a written business continuity and contingency plan establishing procedures [to be followed in the event of] *relating to* an emergency or significant business disruption. *Such procedures must be reasonably designed to enable members and member organizations to continue their businesses in the event of a future significant business disruption.*

(b) Members and member organizations must conduct, *at a minimum*, a yearly review of their business continuity and contingency plan to determine whether any modifications are necessary in light of changes to the member's or member organization's operations, structure, business or location. *In the event of a material change to a member's or member organization's operations, structure, business or location, the member or member organization must promptly update its business continuity and contingency plan.*

(c) The [requirements of] *elements that comprise* a business continuity and contingency plan shall be tailored to the size and needs of a member or member organization *so as to enable the member or member organization to continue its business in the event of a future significant business disruption.* Each plan, however, must, at a minimum, address, if applicable:

(1) books and records back-up and recovery (hard copy and electronic);

(2) identification of all mission critical systems and back-up for such systems;

(3) financial and operational risk assessments;

(4) alternate communications between customers and the firm;

(5) alternate communications between the firm and its employees;

(6) alternate physical location of employees;

(7) business constituent, bank and counter-party impact;

(8) regulatory reporting; and

(9) communications with regulators.

To the extent that any of the above items is not applicable, the member's or member organization's business continuity and contingency plan must specify the item(s) and state the rationale for not including each such item(s) in its plan. If a member or member organization relies on another entity for any of the above-listed categories or any mission critical system, the member's or member organization's business continuity and contingency plan must address this relationship.

(d) The term "mission critical system," for purposes of this Rule, means any system that is necessary, depending on the nature of a member's or member organization's business, to ensure prompt and accurate processing of securities transactions, including order taking, entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, access to customer accounts and the delivery of funds and securities.

(e) The term "financial and operational risk assessments," for purposes of this Rule, means a set of written procedures that allow members and member organizations to identify changes in their operational, financial, and credit risk exposure.

(f) Members and member organizations must designate a senior officer, as defined in Rule 351(e), to approve the Plan, who shall also be responsible for the required annual review, as well as an Emergency Contact Person(s). Such individuals must be identified to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number). Prompt notification must be given to the Exchange of any change in such designations.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this amendment is to clarify that the language of proposed NYSE Rule 446 is intended to require not only that members and member organizations conduct a planning process to create a written business continuity and contingency plan, but also that the plan resulting from such process be reasonably designed to enable members and member organizations to continue their businesses in the event of a future significant business disruption.

As described in detail in the Original Notice, the tragic events of September 11, 2001, and their disruptive impact on the manner in which the securities industry operates have re-emphasized the need for greater contingency planning for business continuity. Accordingly, the Exchange has proposed new NYSE Rule 446 which would require members and member organizations to develop, maintain, review, and update business continuity and contingency plans that establish procedures to be followed in the event of an emergency or significant business disruption. Members and member organizations would be required to make such plans available to the Exchange upon request. The proposed rule also would require that members and member organizations designate and notify the Exchange of a senior officer designated to approve and annually review the plans and to designate an emergency contact person(s).

The purpose of Amendment No. 3 is to address concerns that a literal reading of proposed NYSE Rule 446, as set forth in the Original Notice, could suggest that the rule would require members and member organizations only to create, maintain and periodically review a business continuity and contingency plan, but would not obligate members and member organizations to develop a plan that is effective in enabling the member or member organization to continue its business in the event of a future significant business disruption. The Exchange did not intend to propose a rule which limits the scope of its members' and member organizations' responsibilities in establishing such plans. In this regard, in its description of the purpose of the proposed rule change, the Exchange stated that the "disruptive impact" of September 11, 2001 "re-emphasized the need for greater contingency planning for business continuity." Implicit in planning for "business continuity" is the requirement that members" and member organizations' business plans make it possible for them to continue operating in the event of a significant business disruption. Accordingly, the NYSE believes that members and member organizations should be obligated to develop a business continuity and contingency plan that is reasonably designed, in light of particular characteristics of the firm, to allow the firm to recover as early as practicable in the event of a future significant business interruption.

Accordingly, the Exchange is amending the language of proposed NYSE Rule 446 to clarify that the proposed rule change is intended to require the creation of not only a written business continuity and contingency plan, but also a reasonably effective plan. In light of the concerns regarding the clarity of the original proposed rule text, the Exchange believes that this amendment to the proposed rule change should be published for comment to ensure that interested persons are given notice of the clarification and an opportunity to comment thereon.

2. Statutory Basis

The NYSE believes that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)(5) of the Act.[7] Under that section, the rules of the Exchange must be designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulation Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NYSE received three written comment letters in response to the Original Notice. In response to the comment letters, the Exchange identified the following issues that warranted amendment and/or further clarification:[8]

Annual Review of Business Continuity and Contingency Plans ("BCPs")

Proposed NYSE Rule 446(b) would require members and member organizations to conduct a yearly review of their business continuity and contingency plans to determine whether any modifications are necessary in light of changes to the member's or member organization's operations, structure, business or location. Some commenters believed that the yearly review requirement was inadequate. Although commenters cited different events that should trigger an update of a BCP, most commenters who dissented believed that the plans should be updated more frequently.

The Exchange believes that BCPs must be updated whenever there is a

---

[25] The Commission notes that PostData relates to enhanced data that is not integral to the ability of a broker-dealer or customer to trade. *Cf. NASD* v. *SEC*, footnote 12, *supra*.

[26] 15 U.S.C. 78o–3(b)(5).

[27] *See* footnote 23, *supra*.

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Katherine A. England, Division of Market Regulation, Commission, dated March 26, 2003 ("Amendment No. 3").

[4] Securities Exchange Act Release No. 46443 (August 30, 2002), 67 FR 57264.

[5] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Division of Market Regulation, Commission, dated January 10, 2003 ("Amendment No. 1").

[6] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Katherine A. England, Division of Market Regulation, Commission, dated March 6, 2003 ("Amendment No. 2").

[7] 15 U.S.C. 78f(b)(5).

[8] This discussion was originally provided in Amendment No. 1.

material change in a firm's operations, structure, business, or location that affects the information set forth in the BCP. In response to industry comments, the Exchange is amending the proposed rule to expand upon this requirement to include the following language:

Members and member organizations must conduct, at a minimum, a yearly review of their business continuity and contingency plan. In the event of a material change to a member's or member organization's operations, structure, business or location, the member or member organization must promptly update its business continuity and contingency plan.

This added language emphasizes that this requirement would be in addition to the yearly review.

Minimum Requirements of a BCP

Proposed Rule 446(c) would set forth the minimum requirements that a BCP must address. Plans would, at a minimum, be required to address: Books and records back-up and recovery (hard copy and electronic); identification of all mission critical systems and back-up for such systems; financial and operational risk assessments; alternate communications between customers and the firm; alternate communications between the firm and its employees; alternate physical location of employees; business constituent, bank, and counter-party impact; regulatory reporting; and communications with regulators.

One commenter stated that all of the items listed above may not be applicable to all members and member organizations. In response to industry comments, the Exchange is amending proposed NYSE Rule 446(c) to include the language "if applicable." In addition, the rule would require that, if an item is not applicable, a member's or member organization's BCP would have to specify the item(s) and state the rationale for not including such item(s) in its plan. Further, the rule would state that, if a member or member organization relies on another entity for any of the above-listed categories or any mission critical system, the member's or member organization's business continuity and contingency plan must address this relationship.

Business Constituent, Bank and Counterparty Impact

Proposed NYSE Rule 446(c)(7) would require that a member's or member organization's BCP address "business constituent, bank and counterparty impact." A commenter asked for clarification of this category. Under this proposed category, members and member organizations would be required to establish procedures that assess the impact that a significant business disruption has on business constituents (businesses with which a member or member organization has an on-going commercial relationship pertaining to the support of the member's or member organization's operating activities), banks (lenders), and counter-parties (such as other broker-dealers or institutional customers). In addition, members and member organizations would be required to provide for alternative actions or arrangements with respect to their contractual relationships with business constituents, banks, and counter-parties upon the occurrence of a material business disruption to either party. An Exchange Information Memo announcing adoption of the rule will provide the guidance described above with regard to this requirement of the rule.

Emergency Contact Information

Proposed NYSE Rule 446(f) would require members and member organizations to designate and identify to the Exchange a senior officer to approve and review BCPs, as well as an emergency contact person(s). Prompt notification would have to be given to the Exchange in the event of a change in such designations. While commenters supported this requirement, one commenter suggested that the SROs take a "proactive role in the gathering of this contact information." The Exchange believes that it has taken a proactive approach in that regard. The Exchange previously required (effective August 30, 2002) that members and member organizations furnish BCP contact information to the Exchange in addition to contact information on other key personnel and that such information be reviewed and updated on a quarterly basis. Such changes in designation are made by members and member organizations through the Exchange's Electronic Filing Platform ("EFP"). The Exchange also established a new emergency notification telephone line (1–866–NYSEDIAL) and website (www.nyse.com/memberinfo) for members and member organizations to access and obtain up-to-date information concerning a disruption to normal NYSE business operations.

Participotion in a Corporate-Wide BCP

One commenter raised an issue that, when a member or member organization participates in a corporate-wide BCP of its parent corporation (non-member or member organization) that satisfies the proposed rule requirements, this requirement inappropriately imposes Exchange rules upon non-member organization parents. The Exchange believes that if a member or member organization chooses to participate in a parent company's corporate-wide business continuity plan, the record-keeping, supervision, creation, execution, or updating of that plan must comply with NYSE rules. Participating in a corporate-wide continuity plan is an alternative and is intended to give firms greater flexibility in complying with the proposed rule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or with such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–NYSE–2002–35 and should be submitted by April 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8036 Filed 4–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47586; File No. SR–OCC–2001–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Intraday Margin Deposits

March 27, 2003.

I. Introduction

On September 7, 2001, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–OCC–2001–11 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on April 26, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The purpose of the proposed rule change is to add language to Rule 609 to make explicit OCC's policies with respect to required deposits of intraday margin. OCC can require a deposit of intraday margin for a variety of reasons. Most often, deposits of intraday margin are required in response to changes in market conditions that affect the value of clearing members' positions and/or collateral. Currently, rule 609 states that OCC's Chairman, Management Vice Chairman, and President are each authorized to require any clearing member to make such deposits within such time period as the officer may prescribe.

Pursuant to a long-standing policy, required deposits of intraday margin must be satisfied in immediately available funds within one hour of OCC's issuance of a debit instruction against the applicable bank account of a clearing member. This policy will now be explicitly set forth in Rule 609 although the authority to prescribe a different settlement time, including a shorter settlement time, will be preserved. In order to expedite processing, the individuals authorized to require intraday margin deposits will now include any officer of OCC so authorized by the Chairman, Management Vice Chairman, or President.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of OCC.[3] By making explicit certain OCC procedures related to required deposits of intraday margin, the proposed rule change adds certainty and clarity to OCC's rules and operations related to the collection of intraday margin and as such should help OCC provide for which the safeguarding of securities and funds in its custody or control. Therefore, the Commission finds that the rule change is consistent with section 17A and the rules and regulations thereunder.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2001–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8033 Filed 4–2–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4328]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Educational Partnerships Program for Tunisia

Summary: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program to support the development of programs of instruction and faculty training at universities in Tunisia in business management, public administration, information technology, computer science, or other fields with significant potential to support the modernization of the Tunisian economy. Accredited, post-secondary educational institutions meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may apply to pursue institutional or departmental objectives in partnership with one or more Tunisian institutions with support from the Educational Partnerships Program for Tunisia.

The means for achieving the objectives of the applicant and its partner(s) may include mentoring, teaching, consultation, research, distance education, internship training, and professional outreach to public sector managers or private sector entrepreneurs.

Program Information

Overview and Project Objectives: The program is designed to assist Tunisian universities to develop modern curricula and programs of instruction in business management, public administration, and related fields; to facilitate the development of business activity; and to improve the quality, efficiency, and integrity of management in the private and public sectors. Proposals emphasizing practical strategies to assist Tunisian faculty and administrators to develop new curricula, teaching methodologies and programs are encouraged. Pending availability, funds will be awarded for a period of three years to assist with the costs of exchanges, of providing educational materials, of increasing library holdings, and of improving Internet connections.

The project should pursue these objectives through a strategy that coordinates the participation of junior and senior level faculty, administrators, or graduate students in appropriate combinations of teaching, mentoring, internships, in-service training, outreach, and exchange visits ranging from one week to an academic year. Visits of one semester or more for participants from Tunisia are strongly encouraged and program activities must be tied to the goals and objectives of the project. Proposals may also include English language training for selected participants whose existing English skills need to be strengthened or refreshed.

---

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 45787, (April 19, 2002), 67 FR 20859.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 17 CFR 200.30–3(a)(12).

U.S. Institution and Participant Eligibility

The lead institution and grant recipient must be an accredited U.S. college or university. Applications from community colleges, institutions serving significant minority populations, undergraduate liberal arts colleges, comprehensive universities, research universities, and combinations of these types of institutions are eligible. The lead U.S. organization in a consortium or other combination of cooperating institutions is responsible for submitting the application. Each application must document the lead organization's authority to represent all U.S. cooperating partners. Secondary U.S. partners may include governmental or non-governmental organizations at the federal, state, or local levels as well as non-profit service, community and professional organizations.

With the exception of translators and outside evaluators, participation is limited to teachers, advanced graduate students, and administrators from the participating-U.S. institution(s).

Tunisian Institution and Participant Eligibility

In Tunisia, the partner must be a recognized institution(s) of post-secondary education, including state-supported and independent universities, research institutes, relevant governmental organizations, and private non-profit organizations with project-related educational objectives. Except for translators and evaluators, participation is limited to teachers, administrators, researchers, or advanced students from the participating foreign institution(s). Any advanced student participant must either have teaching or research responsibilities or be preparing for such responsibilities. Foreign participants must be both qualified to receive U.S. J–1 visas and willing to travel to the U.S. under the provisions of a J–1 visa during the exchange visits funded by this Program. Foreign participants may not be U.S. citizens.

Budget Guidelines

The Bureau anticipates awarding up to two grants in amounts not to exceed approximately $195,000 each under this grant competition. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. There must be a summary budget as well as breakdowns reflecting both the program and administrative budgets. A narrative that provides justification for the amount requested should accompany the summary and detailed program and administrative budgets. Administrative costs should be kept to a reasonable level. Cost sharing will be considered an important indicator of institutional commitment. Please refer to the POGI for complete budget guidelines and formatting instructions.

Grant Duration

Grant activities should begin on or around September 1, 2003 and should last approximately three years

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title "Educational Partnerships Program for Tunisia" and numberECA/A/S/U–03–27.

For Further Information Contact: The Office of Global Educational Programs, ECA/A/S/U, Room 349, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone (202) 619–5289; fax (202) 401–1433; or *fchery@pd.state.gov* to request a solicitation package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps*. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on May 23, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 7 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/U–03–27, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process.

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office and the Public Affairs Section of the U.S. Embassy in Tunis will review eligible proposals. Eligible proposals will be subject to compliance with federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance grant awards resides with the Bureau's Grants Officer.

Review Criteria

All reviewers will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be reviewed competitively according to these criteria, which are not rank-ordered or weighted.

(1) Broad and Enduring Significance of Institutional Objectives: Project objectives should have significant and ongoing results for the Tunisian partner institutions and for their surrounding societies or communities by providing a deepened understanding of critical issues in one or more of the eligible fields. Project objectives should relate clearly to institutional and societal needs.

(2) Creativity and Feasibility of Strategy to Achieve Project Objectives: Strategies to achieve project objectives should be feasible and realistic within the projected budget and timeframe. These strategies should utilize and reinforce exchange activities creatively to ensure an efficient use of program resources. Relevant factors include: The availability of a sufficient number of faculty and/or administrators willing and able to participate in project activities, and faculty and/or administrators with Arabic or French language skills.

(3) Institutional Commitment to Cooperation: Proposals should demonstrate significant understanding by each institution of its own needs and capacities and of the needs and capacities of its proposed partner(s), together with a strong commitment by the partner institutions, during and after the period of grant activity, to cooperate with one another in the mutual pursuit of institutional objectives. Proposals should describe projected benefits to the institutions involved as well as to wider communities of educators and practitioners in Tunisia.

(4) Project Evaluation: Proposals should outline a methodology for determining the degree to which a project meets its objectives, both while the project is underway and at its conclusion. The final project evaluation should include an external component and should provide observations about the project's influence within the participating institutions as well as their surrounding communities or societies, and observations about anticipated long-term impact on the Tunisian economy.

(5) Cost-effectiveness: Administrative and program costs should be reasonable and appropriate with cost sharing provided by all participating institutions within the context of their respective capacities. We view cost sharing as a reflection of institutional commitment to the project.

(6) Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity are included in project objectives for all institutional partners. Issues resulting from differences of race, ethnicity, gender, religion, geography, socio-economic status, or physical challenge should be addressed during project implementation. In addition, project participants and administrators should reflect the diversity within the societies that they represent (see the section of this document on "Diversity, Freedom, and Democracy Guidelines"). Proposals should also discuss how the various institutional partners approach diversity issues in their respective communities or societies.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the U.S. North African Economic Partnership (USNAEP).

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: March 25, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–8145 Filed 4–2–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 120–16D, Air Carrier Maintenance Programs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the issuance and availability of Advisory

Circular (AC) 120–16D, "Air Carrier Maintenance Programs". AC 120–16D is written in plain language format and represents a major revision and update of the earlier version. The AC identifies and describes in detail the functions of the nine elements of the air carrier maintenance programs described in 14 CFR part 119, part 121, and part 135. It explains the background as well as the Federal Aviation Administration's (FAA) regulatory requirements for these programs. As with all advisory Circulars, the material is not a regulation, nor does it establish minimum standards. However, where terms such as "must," "shall," and "will" are used in AC 120–16D, such use reflects actual regulatory requirements.

DATES: Advisory Circular 120–16D, Air Carrier Maintenance Programs was issued by the Office of the Director, Flight Standards Service, AFS–1 on March 18, 2003.

FOR FURTHER INFORMATION CONTACT: Russell S. Unangst, Jr., Technical Advisor for Aircraft Maintenance, AFS–304, Federal Aviation Administration, Aircraft Maintenance Division, Flight Standards Service, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3786; facsimile (202) 267–5115, e-mail *russell.unangst@faa.gov*.

SUPPLEMENTARY INFORMATION: How To Obtain a Copy of the AC *How To Obtain Copies:* This AC can be read or downloaded from the Internet at *http://www2.faa.gov/avr/afs/index.cfm* under the "All Advisory Circulars" hyperlink. Paper copies of the AC will be available in approximately 6–8 weeks from the U.S. Department of Transportation, Subsequent Distribution Office,
SVC–121.23, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785.

Issued in Washington, DC on March 27, 2003.

David E. Cann,

Manager, Aircraft Maintenance Division, Flight Standards Service.

[FR Doc. 03–8128 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Revision to Advisory Circular 25.562–1A, Dynamic Evaluation of Seat Restraint Systems and Occupant Protection on Transport Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed revision to advisory circular; extension of comment period.

SUMMARY: On January 2, 2003, the FAA published a request for public comment on a proposed revision to Advisory Circular (AC) 25.562–1A, Dynamic Evaluation of Seat Restraint Systems and Occupant Protection on Transport Airplanes. The revised AC provides guidance on an improved procedure for selection of test articles, as well as criteria for determining whether analysis or testing is appropriate for substantiation. The comment period closes April 2, 2003; however, the FAA is extending the comment period to allow additional time to review the draft AC and develop comments in response to the notice.

DATES: Comments must be received on or before May 2, 2003.

ADDRESSES: You should send your comments on the proposed revision to the Federal Aviation Administration, Attention: Jeff Gardlin, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056. You may also submit comments electronically to: *jeff.gardlin@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin at the above address, telephone (425) 227–2136, facsimile 425–227–1149, or e-mail *jeff.gardlin@faa.gov*.

SUPPLEMENTARY INFORMATION:

How Do I Obtain a Copy of the Proposed Advisory Circular Revision?

You may obtain an electronic copy of the draft advisory circular identified in this notice at the following Internet address: *http://www.airweb.faa.gov/DraftAC*. If you do not have access to the Internet, you may request a copy by contacting Jeff Gardlin at the address or phone number listed earlier in this announcement.

How Do I Submit Comments on the Draft Advisory Circular?

You are invited to comment on the proposed advisory material by submitting written comments, data, or views. You must identify the title of the AC and submit your comments in duplicate to the address specified above. We will consider all comments received on or before the closing date for comments before issuing the final advisory material.

Discussion

We have determined that due to the size and scope of the AC revision, a longer comment period is warranted. The comment period is therefore extended for 30 days to May 2, 2003, to allow commenters additional time to review the AC and submit comments.

Issued in Renton, Washington, on March 24, 2003.

K.C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8125 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–14824; Airspace Docket No. 00–AWA–3]

RIN 2120–AA66

Designation of Oceanic Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of provision of air traffic services in oceanic airspace.

SUMMARY: By this action the FAA informs airspace users of the type of air traffic control (ATC) service provided in the oceanic airspace controlled by the United States of America (U.S.). This notice is consistent with U.S. obligations under the Convention on International Civil Aviation (Chicago Convention), including, that all Contracting States disseminate information regarding the types of ATC services provided in oceanic airspace under their control.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

International Civil Aviation Organization (ICAO)

The Chicago Convention was adopted to promote the safe and orderly development of international civil aviation. The Chicago Convention also created the International Civil Aviation Organization (ICAO), which promulgates uniform international Standards and Recommended Practices (SARPs) aimed at standardizing international civil aviation operational practices and services. Currently, these SARPs are detailed in 18 annexes to the Chicago Convention. Annex 11, Air Traffic Services, and Annex 15, Aeronautical Information Services, are of particular relevance to this notice as they address civil aircraft operations, the establishment of airspace, ATC services in international airspace, and the dissemination of aeronautical information.

Most recently ICAO recommended, and the FAA concurred, that all Contracting States take action to define their oceanic airspace, and inform those interested as to the type of ATC services that would be provided.

By this action the FAA gives notice to those interested parties operating in the oceanic airspace controlled by the U.S. of the type of ATC services provided within the airspace.

ATC Services/Procedures Provided

Pursuant to the Chicago Convention, the U.S. accepted responsibility for providing ATC services over the domestic U.S. and within certain areas of the western half of the North Atlantic, the Gulf of Mexico, the Caribbean, and the North Pacific. In the airspace over the contiguous U.S. and out to 12 nautical miles (NM) from the U.S. shores, domestic ATC separation is applied (with certain limitations) along with additional services (*e.g.*, traffic advisories, bird activity information, weather and chaff information, etc.).

The U.S. also manages airspace areas outside of the domestic U.S. These areas are called Control Areas (CTA) and Flight Information Regions (FIR). Within these CTA/FIR the U.S. applies oceanic separation procedures consistent with ICAO regional procedures.

The FAA may also apply, per Annex 11, domestic ATC procedures within designated Offshore/Control airspace areas provided certain conditions are met. Specifically, these airspace areas must be within signal coverage of domestic radio navigational aid or ATC radar coverage from the 12–NM limit outward to the inner oceanic CTA/FIR boundaries. The Chicago Convention permits the application of domestic ATC procedures even though this is international airspace. However, within the oceanic CTA/FIR area itself, ICAO oceanic ATC procedures are used instead of domestic procedures.

Article of Exemption

Article 3 of the Chicago Convention provides that the Chicago Convention, and its annexes, are not applicable to state-aircraft (which includes military aircraft). However, article 3 requires states, when issuing regulations for their state aircraft, to have due regard for the safety of navigation of civil aircraft. The U.S., as a Contracting State, complies with this provision.

Further, article 12 obligates each Contracting State to adopt measures to ensure that persons operating an aircraft within its territory will comply with that state's air traffic rules, and with Annex 2, Rules of the Air, when operating over the high seas. The U.S. has satisfied this responsibility through Title 14, Code of Federal Regulations (14 CFR) part 91, General Operating and Flight Rules, which requires that operators of aircraft comply with U.S. operating rules when in the U.S. and that U.S.-registered aircraft comply with Annex 2 when over the high seas (*see* 14 CFR 91.703).

Section 91.703 applies only to civil aircraft. State aircraft operating outside the U.S. are only subject to the "due regard" provisions of article 3 of the Chicago Convention. The SARPs in Annex 11, apply to airspace under the jurisdiction of a Contracting State that has accepted the responsibility of providing air traffic services over the high seas (oceanic airspace), or in airspace of undetermined sovereignty.

U.S. Controlled Oceanic Airspace

The ICAO classes of airspace and associated services provided, as described in Annex 11, to be used by the U.S. within their delegated Oceanic/Arctic CTA/FIR areas are: (1) Class A airspace area (instrument flight rules (IFR) flights only are permitted, all flights are provided with ATC service and are separated from each other); (2) Class E airspace area (IFR and visual flight rules (VFR) flights are permitted, IFR flights are provided with ATC service and are separated from other IFR flights); and (3) Class G airspace area (IFR and VFR flights are permitted, IFR flights are provided with ATC service and are separated from other IFR flights). All flights in these airspace areas would receive traffic information as far as is practical.

Anchorage Oceanic CTA/FIR

Aircraft operating in the Anchorage Oceanic CTA/FIR can expect to receive ATC services associated with the following types of airspace areas and associated altitudes:

Class G—below FL 55;
Class A—FL 55 to FL 600, inclusive except less than 100 NM seaward is Class E below FL 180;
Class E—above FL 600.

Anchorage Arctic CTA/FIR

Aircraft operating in the Anchorage Arctic CTA/FIR can expect to receive ATC services associated with the following types of airspace areas and associated altitudes:

Class G—below FL 230;
Class A—FL 230 to FL 600, inclusive;
Class E—above FL 600.

Houston Oceanic CTA/FIR

Aircraft operating in the Houston Oceanic CTA/FIR can expect to receive ATC services associated with the following types of airspace areas and associated altitudes:

Class G—below FL 15;
Class E—FL 15 to, but not including FL 180;
Class A—FL 180 to FL 600, inclusive;
Class E—above FL 600.

Miami Oceanic CTA/FIR

Aircraft operating in the Miami Oceanic CTA/FIR can expect to receive ATC services associated with the following types of airspace areas and associated altitudes:

Class G—below FL 25;
Class—FL 25 to, but not including FL 180;
Class A—FL 180 to FL 600, inclusive;
Class E—above FL 600.

New York Oceanic CTA/FIR, Excluding That Portion of the Airspace Delegated to NAVCANADA

Aircraft operating in the New York Oceanic CTA/FIR, excluding that portion of the airspace delegated to NAVCANADA can expect to receive ATC services associated with the following types of airspace areas and associated altitudes:

Class G—below FL 55;
Class A—FL 55 to FL 600, inclusive;
Class E—above FL 600.

Oakland Oceanic CTA/FIR

Aircraft operating in the Oakland Oceanic CTA/FIR can expect to receive ATC services associated with the following types of airspace areas and associated altitudes:

Class G—below FL 55;
Class A—FL 55 to FL 600, inclusive except less than 100 NM seaward from the shoreline within controlled airspace, sunrise to sunset, is Class E below FL 200;
Class E—above FL 600.

Oakland/Nauru UTA Airspace Area Delegated to Oakland Center Above FL245

Aircraft operating in the Oakland/Nauru UTA airspace area delegated to Oakland Center above FL 245 can expect to receive ATA services associated with the following types of airspace and associated altitudes:

Class A—above FL 245 to FL 600, inclusive except less than 100 NM seaward from the shoreline within controlled airspace, sunrise to sunset, is Class E below FL 200;
Class E—above FL 600.

Oakland/Tokyo UTA Airspace Area Delegated to Oakland Center at and Above FL 55

Aircraft operating in the Oakland/Tokyo UTA delegated airspace to Oakland Center at and above FL 55 can expect to receive ATC services associated with the following types of airspace and associated altitudes:

Class A—FL 55 to FL 600, inclusive except less than 100 NM seaward from the shoreline within controlled airspace, sunrise to sunset, is Class E below FL 200;
Class E—above FL 600.

San Juan Oceanic CTA/FIR

Aircraft operating in the San Juan Oceanic CTA/FIR can expect to receive ATC services associated with the following types of airspace and associated altitudes:

Class G—below FL 25;
Class E—FL 25 to, but not including FL 180;
Class A—FL 180 to FL 600, inclusive;
Class E—above FL 600.

Accordingly, the U.S. designation of ICAO classes of Oceanic Airspace and associated altitudes, as described in this notice will be reflected on the appropriate aeronautical charts.

Issued in Washington, DC, on March 28, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–8139 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Deadline for Notification of Intent to Use the Airport Improvement Program (AIP) Sponsor Entitlement, Cargo Funds, and Nonprimary Entitlement Funds for Fiscal Year 2003

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces May 1, 2003, as the deadline for each airport sponsor to notify the FAA that it will use its fiscal year 2003 entitlement funds to accomplish projects identified in the Airports Capital Improvement Plan that was formulated in the spring of 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Molar, Manager, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP–500, on (202) 267–3831.

SUPPLEMENTARY INFORMATION: Section 47105(f) of Title 49, United States Code, provides that the sponsor of each airport to which funds are apportioned shall notify the Secretary by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for the funds apportioned to it (entitlements). This notice applies only to those airports that have received such entitlements, except those nonprimary airports located in designated Block Grant States. Notification of the sponsor's intent to apply during fiscal year 2003 for any of its available entitlement funds including those unused from prior years, shall be in the form of inclusion of projects for fiscal year 2003 in the Airports Capital Improvement Plan.

This notice is promulgated to expedite and prioritize grants in the final quarter of the fiscal year. Absent an acceptable application by May 1, 2003, FAA will defer an airport's entitlement funds until the next fiscal year. Pursuant to the authority and limitations in section 47117(f), FAA will issue discretionary grants in an aggregate amount not to exceed the aggregate amount of deferred entitlement funds. Airport sponsors may request unused entitlements after September 30, 2003.

Issued in Washington, DC, on March 28, 2003.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 03–8140 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–06–C–00–CLM To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at William R. Fairchild International Airport, Submitted by the Port of Port Angeles, William R. Fairchild International Airport, Port Angeles, WA.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at William R. Fairchild International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 5, 2003.

ADDRESSES: Comments on this application may be mailed or delivered to triplicate to the FAA at the following address: Mr. J. Wade Bryant, manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW. Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jeffery Robb, Airport Manager, at the following address: PO Box 1350, Port Angeles, WA 98362.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to William R. Fairchild International Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Regulation; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 03–06–C–00–CLM to impose and use PFC revenue at William R. Fairchild International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 27, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Port Angeles, William R. Fairchild International Airport, Port Angeles, Washington, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 28, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 2003.

Proposed charge expiration date: June 1, 2008.

Total requested for use approval: $313,484.

Brief description of proposed project: Drainage System Construction; GA Site Development; Obstruction Removal; Taxiway Restriping and Reflector Installation; Runway 26 Safety Area.

Class or classes of air carriers that the public agency has requested not be required to collect PFC's: none.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Regulation, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, a notice and other documents germane to the application in person at the William R. Fairchild International Airport.

Issued in Renton, Washington on March 27, 2003.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 03–8144 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the Fulton Street Transit Center in New York, NY

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The FTA, in cooperation with the Metropolitan Transportation Authority (MTA) and New York City Transit (NYCT), intends to prepare an Environmental Impact Statement (EIS) on a proposal to create the Fulton Street Transit Center in Lower Manhattan, New York, NY. The proposed project would consist of six distinct elements: (1) A new mass transit "Center" at street and subsurface levels on Broadway between Fulton and John Streets that would provide consolidated access to, and transfers between nine different subway lines; (2) rehabilitation of the 4/5 line Fulton Street Station and the 2/3 line Fulton Street Station; (3) improvements to the mezzanines and platform access at the A/C line Fulton Street Station that would facilitate way-finding, circulation and access to the street and to the platform; (4) an underground concourse below Dey Street between Broadway and Church Street that would connect the N/R line and the area west of Church Street with the 4/5 line and the area east of Broadway; (5) a pedestrian and passenger connection located beneath Church Street that would link the Cortlandt Street Station on the N/R line with the E line terminal station at the former World Trade Center site and include a new transfer between N/R platforms; and (6) various improvements to street entrances to the subway to provide better access for all users, including Americans with Disabilities Act (ADA) compliant access. The location for these proposed improvements is in Lower Manhattan in the area bounded by Church Street to the west, William Street to the east, Fulton Street to the north and Dey Street and John Street to the south.

The EIS is being prepared in accordance with the National Environmental Policy Act of 1969 (NEPA) and the applicable regulations implementing NEPA, as set forth in 23 CFR part 771 and 40 CFR parts 1500–1508. As co-sponsors of the proposed project, the MTA and NYCT will ensure that the EIS and the environmental review process also satisfy the requirements of the New York State Environmental Quality Review Act (SEQRA) as may be applicable.

The EIS will evaluate a No Action Alternative, various Build Alternatives, and any additional alternatives generated by the scoping process. Scoping will be accomplished through meetings and correspondence with interested persons, organizations, and Federal, state, regional, and local agencies.

DATES: The public is invited to participate in project scoping on April 29, 2003 from 6 p.m. to 9 p.m. at the location identified under **ADDRESSES** below to ensure that all significant issues are identified and considered. Poster boards depicting the project concept will be available for review at the meeting location from 4 p.m. to 6 p.m. A formal presentation by MTA and NYCT regarding the project will be made at 6 p.m., followed by the opportunity for the public to ask questions and make comments on the scope of the EIS. MTA and NYCT representatives will be available for informal questions and comments during the 4 to 6 p.m. poster session. Those wishing to speak are requested to register at the meeting location before 7 p.m. Additional speakers will be invited until there are no more requesting to be heard. Subsequent opportunities for public involvement will be announced on the Internet, by mail, and through other appropriate mechanisms, and will be conducted throughout the study area. Additional project information may be obtained from the MTA Web site: *http://www.mta.info* (click "Inside the MTA" then "Planning Studies," and "Fulton Street Transit Center"). Written comments on the scope of the EIS should be sent to the MTA Project Manager by May 13, 2003 at the address given under **ADDRESSES** below.

ADDRESSES: The public scoping meeting will be held at The Alexander Hamilton U.S. Custom House, One Bowling Green, Lower Level Auditorium, New York, NY. The scoping meeting site is accessible to mobility-impaired people and interpreter services will be provided for hearing-impaired people upon request. Written comments will be taken at the meeting or may be sent to the following address at any time during the scoping period: Mr. William Wheeler, Director, Special Project Development and Planning, Fulton Street Transit Center, C/O Government and Community Relations, MTA New York City Transit, 130 Livingston Street, Brooklyn, New York, NY 11201. The scoping packet may also be requested by writing to this address or by calling (718) 694–5160. Requests to be placed on the project mailing list may also be made by calling this number or by writing to the project address above.

FOR FURTHER INFORMATION CONTACT: Susan E. Schruth, Director, Lower Manhattan Recovery Office, Federal Transit Administration, One Bowling Green, Room 429, New York, NY 10004; Telephone: (212) 668–1770.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and MTA/NYCT invite interested individuals, organizations, and Federal, state, and local agencies to provide comments on the scope of the Fulton Street Transit Center EIS. During the scoping process, comments should focus on specific social, economic, or environmental issues to be evaluated, and on suggesting alternatives that may be less costly or have fewer

environmental impacts while achieving similar transportation objectives. To assist interested parties in formulating their comments, a scoping information packet has been prepared and is available on the MTA Web site address noted above, or upon request from the MTA representative identified above. The scoping information packet includes the project's purpose and need, goals and objectives, a preliminary list of alternatives, and environmental areas that will be addressed during the course of the study. An outline of the on-going public participation program is also contained in the information packet and on the Internet site given above.

II. Description of the Project Area

The MTA/NYCT subway system is the largest in North America, serving 4.6 million trips daily and is the main public transit service to Lower Manhattan. The largest and most heavily used subway lines providing access to Lower Manhattan converge at or near the Fulton Street—Broadway Nassau Subway Station Complex in Lower Manhattan. This station complex consists of four separate stations serving a total of nine subway lines, including: (1) The 4/5 line Fulton Street Station below Broadway; (2) the A/C line Broadway Nassau Station below Fulton Street; (3) the J/M/Z line Fulton Street Station below Nassau Street; and (4) the 2/3 line Fulton Street Station below William Street. In combination, this station complex is the ninth largest of over 400 stations citywide, serving over 225,000 movements (passengers entering, exiting or transferring) each day, and is among the oldest in the City. The complex is one block (450 feet) east of the site of the former World Trade Center (WTC).

One block (approximately 450 feet) to the west of this station complex is the N/R line Cortlandt Street Station below Church Street, immediately adjacent to the WTC site. Two blocks (approximately 400 feet) further to the north, the E line below Church Street terminates in a station at the WTC site. Immediately west of the study area is the 1/9 line Cortlandt Street Station at the WTC site. None of these stations have underground connections to each other or to the Fulton Street—Broadway Nassau Subway Station Complex. Also located to the west is the proposed restoration of Port Authority Trans-Hudson (PATH) service and the existing trans-Hudson ferry service at the World Financial Center, neither of which is directly connected to any of the subway lines.

III. Problem Identification

The four separate stations comprising the Fulton Street—Broadway Nassau Subway Station Complex were built at different times since the early 1900s. Because these stations were separately conceived and were connected after their construction, a series of inefficient and circuitous connections were constructed between the individual stations. This group of stations is further characterized by: Crowded corridors, mezzanines and train platforms; lack of prominent surface visibility to aid customer entry and exit; and inadequate connections to other nearby subway and transit services. Despite the extraordinary density of transit services at the existing Fulton Street—Broadway Nassau Subway Station Complex, there is no quick and easy access to, from and among the other heavily-used subway lines in the vicinity or efficient connections between the subway network and the street. Given these deficiencies, the existing Fulton Street—Broadway Nassau Subway Station Complex is cumbersome to workers and, others who access Lower Manhattan daily. Its improvement would address a long-standing obstacle to better transit access to Lower Manhattan.

The importance of addressing Lower Manhattan transit access was further reinforced by the devastating impact of the terrorist attacks on Lower Manhattan on September 11, 2001. These events caused serious disruption to the economy, infrastructure and quality of life, and have made travel to and from Lower Manhattan difficult and time consuming. Residents, businesses and jobs have been displaced, and there is a compelling need to restore and improve the transportation infrastructure and functionality in Lower Manhattan to allow for a full economic recovery.

Millions of visitors are expected to visit Lower Manhattan as the planned World Trade Center memorial is anticipated to become one of the most important destinations in the United States. With 85% of all downtown access trips made by transit, Lower Manhattan urgently needs a clear, easily navigable, "connected" subway complex and visible gateway to support its economic recovery and provide access to the prospective WTC Memorial and other cultural resources for tourists.

Because of the pivotal role that the Fulton Street—Broadway Nassau Subway Station Complex currently plays in providing transit access to Lower Manhattan, its existing deficiencies need to be addressed in order to improve upon the overall access to Lower Manhattan and in supporting its economic recovery and future growth.

IV. Purpose and Need for the Proposed Action

The purpose of the Fulton Street Transit Center is to create a functionally and visually unified transit facility with a central distinguishing portal by improving the existing Fulton Street—Broadway Nassau Subway Station Complex. This would reduce congestion at the existing subway platforms, improve the overall experience of transit users and provide improved pedestrian connectivity within the subway complex and with other subway and transit services to the west. In doing so, the proposed action would address the need for improved access to Lower Manhattan in support of economic recovery and resumed growth.

Addressing the deficiencies at the Fulton Street—Broadway Nassau Subway Station Complex would create a facility that is less congested and circuitous, ADA accessible, easily identifiable at street level, and provide direct pedestrian access and streamlined transfers with other subway services. The proposed Fulton Street Transit Center would be designed to adequately accommodate present customer demands and anticipated 2020 levels of demand for movement to, from, and within the existing Fulton Street—Broadway Nassau Subway Station Complex.

V. Goals and Objectives

In conjunction with the purpose and need for the proposed action, the following goals and objectives have been identified in support of improving transit access to Lower Manhattan and economic revitalization.

The specific goals for the proposed action are to provide a prominent and effective downtown transit center that:

- Facilitates access, improves wayfinding, and streamlines transfers;
- Allows for intermodal connectivity (PATH, ferry service);
- Promotes system flexibility in the event of service disruption;
- Improves east-west pedestrian connectivity across Lower Manhattan;
- Promotes safety and reduces congestion at heavily trafficked street crossings;
- Supports current land use, and recovery and rebuilding of Lower Manhattan; and,
- Improves travelers' experience and transit's overall attractiveness.

In support of the above goals, the objectives are to:

- Create a Transit Center to better serve the complex of four stations located between Broadway and William Street: *i.e.*, the 4/5, J/M/Z and 2/3 Fulton Street Stations and the A/C Broadway Nassau Station;
- Add a concourse beneath Dey Street to link the new Transit Center with the N/R Cortlandt Street Station, and allow for a connection with a proposed Port Authority of New York and New Jersey (PANYNJ) sponsored concourse that would continue into the WTC site, connect to the PATH and the 1/9 line Cortlandt Street Station, and potentially extend to the World Financial Center and trans-Hudson ferries;
- Provide a visual presence by creating a street-level building and prominent point of access to the subway system;
- Improve street access to the 4/5 line Fulton Street Station and the N/R line Cortlandt Street Station;
- Improve the transfer between the 4/5 and A/C lines in particular, and all adjacent services in general;
- Establish both a paid and unpaid connection between the N/R line Cortlandt Street Station and the E line Terminal at the WTC site;
- Reduce dwell time and exposure to dwell delays for 4/5 and A/C trains at the Fulton Street Station;
- Reduce commuter access time from the WTC site/World Financial Center and PATH to locations and subway stations east of Church Street;
- Create Americans with Disabilities Act (ADA) compliant access;
- Improve wayfinding; and
- Improve safety.

The proposed Fulton Street Transit Center project will be closely coordinated with the proposed PATH station reconstruction at the WTC site, the proposed WTC Transportation Hub project and the redevelopment of the WTC site.

VI. Alternatives

The EIS will evaluate alternatives and options for the proposed action which will: (1) Be feasible and cost-effective, and provide beneficial transit improvements that enhance connections to the existing transportation system and Lower Manhattan land uses; (2) meet the anticipated increase in transit use in Lower Manhattan; and (3) enhance Lower Manhattan and the region's economic vitality and quality of life.

Based on previous planning studies, and with the cooperation of public and agency work groups, a preliminary list of alternatives has been developed to address the purpose and need of this facility. The alternatives identified to date, which may be supplemented or further developed during the scoping process, have been organized as follows: (A) No Action Alternative; (B) Transit Center and Concourse Full Build Alternative; (C) Partial Build Alternatives. The Full Build Alternative under consideration includes a transit center building with a subsurface passenger concourse connecting several existing subway stations. The Partial Build Alternatives include: a subsurface passenger concourse connecting several existing subway stations without a transit center building; and a combination of improvements, rehabilitations, and enhancements to existing stations. The full set of project alternatives are further described as follows:

A. *No Action Alternative.* This alternative provides for minor improvements, repairs, and other maintenance actions to the existing Fulton Street—Broadway Nassau Subway Station Complex and the N/R line Cortlandt Street Station.

B. *Transit Center and Concourse Full Build Alternative.* This alternative provides for construction of the following six main elements:

1. A new transit "Center" at street and subsurface levels on Broadway between Fulton and John Streets. The "Center" would serve the large ridership of Lower Manhattan, facilitate pedestrian access and transfer between subway lines, reduce 4/5 and A/C train platform congestion and dwell times, improve wayfinding between stations, improve street access and street-level visibility, and provide consolidated downtown access.

2. Rehabilitation of the 4/5 line Fulton Street Station and the 2/3 line Fulton Street Station. This element would incorporate the necessary measures to bring these stations to a state of good repair and provide operational and infrastructure improvements consistent with NYCT station planning, accessibility and design guidelines.

3. Improvements to the mezzanines and platform access at the A/C line Fulton Street Station. These improvements would facilitate wayfinding, circulation and access to the street and to the platform for all users, including those subject to the Americans with Disabilities Act (ADA). They would address current and future overcrowded circulation conditions.

4. An underground concourse beneath Dey Street between Broadway and Church Street. This concourse would connect the N/R line with the 4/5 line and the area west of Church Street with the area east of Broadway. The concourse would improve pedestrian connectivity between subway lines, particularly east-west across Lower Manhattan, and pedestrian safety, comfort, and convenience, and would provide intermodal connectivity between NYCT services and prospective PATH services west of Church Street.

5. A pedestrian and passenger connector between N/R and E service. This connector would improve west side access to Lower Manhattan and would improve operational flexibility by permitting customers to transfer between the services without payment of additional fares. This connector would run along Church Street, linking the northern end of the N/R line Cortlandt Street Station with the southern end of the E line terminal at the World Trade Center, and would include a new transfer between N/R platforms.

6. Improved street access to the subway. This element would provide better access for all users through the provision of wider and more direct stairways, access for disabled customers and new street entrances from the 4/5 and N/R platforms.

In combination, the above-stated six elements encompass the Transit Center and Concourse Full Build Alternative.

C. *Partial Build Alternatives.* Various combinations of subsets of the six project elements described under the Full Build Alternative above will be considered. For example, one possibility is construction of only the underground concourse beneath Dey Street between Broadway and Church Street. This partial-build alternative would connect the N/R and 4/5 subway lines with a fully accessible subsurface concourse under Dey Street. FTA and MTA/NYCT specifically seek comment during scoping on appropriate combinations of project elements that should be evaluated as detailed alternatives in the EIS.

Although compatible with and contributing to the functionality of the overall Transit Center, some elements of the Full Build Alternative, such as the station rehabilitation elements, are functionally independent of the other elements of the proposed action. Although the current plan is to evaluate all of these geographically contiguous elements in the EIS, as the project elements are developed and as schedules and construction phasing plans develop, it is possible that some of the independent elements may be advanced via separate environmental evaluations under NEPA.

VII. Potential Adverse Effects

Upon its completion, the proposed Fulton Street Transit Center is

anticipated to eliminate the existing deficiencies in Lower Manhattan subway service noted above and generate positive impacts for Lower Manhattan businesses, residents, workers, and visitors. In light of this, and in consideration of other new construction activity that is expected to occur in Lower Manhattan over the next decade, it is anticipated that construction-related impacts from the proposed project may be the most important aspect of the environmental evaluation under NEPA. Potential effects associated with the construction phase include noise, business disruption, and impacts on pedestrian and vehicular traffic, air quality, and historic resources. The cumulative effects of construction of this project and other Lower Manhattan recovery projects will be a major focus of the evaluation.

The long-term operational issues and impacts of the alternatives to be considered in the EIS include economic development; land acquisition; historic, archaeological, and cultural resources; visual and aesthetic qualities; air quality; noise and vibration; safety and security; utilities; and transportation impacts. In addition, the EIS will describe the methodology used to assess impacts; identify the affected environment; and identify opportunities and measures for mitigating adverse impacts. Principles of environmental construction management, resource protection and mitigation measures, and NYCT's "Design for the Environment" guidelines (2002) will be considered for incorporation into the Build Alternatives.

VIII. FTA Procedures

During the NEPA process, FTA will also comply with the requirements of the National Historic Preservation Act, Section 4(f) of the Department of Transportation Act (49 U.S.C. 303), the Clean Air Act, and other applicable environmental statutes, rules, and regulations, in accordance with FTA procedures.

Through the NEPA scoping process and as project development advances, it will be determined whether certain elements of the Full Build Alternative should be advanced independently or in combination with other elements, or be deferred for evaluation at a future time, in order to meet the transportation needs of redeveloping Lower Manhattan with minimal impact and in a timely manner.

If there are no major changes to the proposed action, a Draft EIS will be prepared and made available for public and agency review and comment. One or more public hearings will be held on the Draft EIS. On the basis of the Draft EIS and the public and agency comments thereon, a locally preferred alternative will be selected and will be fully described and further developed in the Final EIS.

Issued on: March 31, 2003.

Susan E. Schruth,

Director, Lower Manhattan Recovery Office.

[FR Doc. 03–8136 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13219; Notice 2]

Decision That Nonconforming 2002 Ferrari 360 Passenger Cars Manufactured Before September 1, 2002, Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 2002 Ferrari 360 Passenger Cars manufactured before September 1, 2002, are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 2002 Ferrari 360 passenger cars manufactured before September 1, 2002, that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 2002 Ferrari 360 passenger car manufactured before September 1, 2002), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90–007) petitioned NHTSA to decide whether 2002 Ferrari 360 passenger cars manufactured before September 1, 2002, are eligible for importation into the United States. NHTSA published notice of the petition on September 10, 2002 (67 FR 57479), to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of petition, from a law firm representing Ferrari North America, Inc. ("FNA"), the U.S. representative of the vehicle's manufacturer. In this comment, FNA took issue with the extensiveness of the modification described in the petition as necessary to conform non-U.S. certified 2002 Ferrari 360 passenger cars manufactured before September 1, 2002, to certain of the Federal motor vehicle safety standards. FNA contended that if import eligibility were to be granted to those vehicles, that decision, insofar as it involved conformity with the Federal motor vehicle safety standards, would have to be made on the same basis as the decision to grant import eligibility to the non-U.S. certified 2001 Ferrari 360 that was published on April 10, 2002, at 67 FR 17483 (Docket No. NHTSA–2001–9628).

FNA also noted that G&K had stated in the petition that it would modify non-U.S. certified Ferrari 360 passenger cars manufactured before September 1, 2002, to the Bumper Standard at 49 CFR part 581, but stated in a subsequent letter to the agency that "[a]t this time we will be replacing the bumpers with U.S. bumpers instead of modifying them." Expressing a lack of understanding of the phrase "at this time," as used in G&K's letter, FNA asserted that the agency should require the replacement of the bumpers on all nonconforming 2002 Ferrari 360s with U.S.-model bumpers, and should not permit G&K or other importers to change their means for conforming the vehicles to the standard at some undisclosed future time.

After it was given an opportunity to respond to FNA's comments, G&K requested that the 2002 model be accorded import eligibility on the same terms as the 2001 model.

For the reader's convenience, those terms are set forth below with respect to each standard that was discussed in the eligibility decision for the 2001 Ferrari 360:

Standard No. 108 Lamps, Reflective Devices, and Associated Equipment: Modification of the tail lamp assembly wiring on the non-U.S. certified vehicle so that the tail lamps will operate in the same manner as those on the U.S. certified version.

Standard No 118 Power-Operated Window Systems: Installation of a relay to the power window system so that the power windows will not operate when the ignition switch is in the "off" position.

Standard No. 201 Occupant Protection in Interior Impacts: Replacement of the occupant compartment padding components with U.S.-model components as necessary to meet the upper interior component requirements of the standard.

Standard No. 208 Occupant Crash Protection: Replacement of seat belts and modification or replacement of the bumpers with U.S.-model components.

Standard No. 225 Child Restraint Anchorage Systems: Installation of U.S.-model top tether anchorages for child restraints on the rear frame of the non-U.S. certified vehicles.

Standard No. 301 Fuel System Integrity: (a) Replacement of the fuel/vapor separator, rollover valve, filler neck, vapor lines, evaporative (charcoal) canister, air pump, and associated hardware on non-U.S. certified versions of the vehicle to make them identical to those in the U.S. certified version; (b) modification of the U.S.-model filler neck so that it can be attached to the non-U.S.-model tank; (c) relocation of the charcoal canister, air pump, fuel filler neck, and rollover valve so that they are in essentially the same position as those components found on the U.S. certified vehicle.

In the eligibility decision for the 2001 Ferrari 360, the agency noted that these modifications would entail the replacement, with U.S.-model parts, of all non-U.S.-model parts except for the fuel tanks and bumpers that are necessary to bring non-U.S. certified Ferrari 360 vehicles into compliance with the applicable Federal Motor Vehicle Safety Standards and with the Bumper Standard in part 581.

NHTSA has considered FNA's comments and G&K's response. In view of FNA's assertion that non-U.S. certified 2002 Ferrari 360 passenger cars manufactured before September 1, 2002, should be judged on the same terms, and conformed in the same manner, as set forth in the agency's eligibility decision for the 2001 version of the vehicle, and G&K's request that the 2002 version be granted import eligibility on the same terms as the 2001 version, NHTSA has decided to grant the petition. The agency notes, however, that on account of the petitioner's stated intention to replace the bumpers on non-U.S. certified 2002 Ferrari 360 passenger cars manufactured before September 1, 2002, with U.S.-model components, those bumpers will have to be replaced, and not merely modified to conform to the Bumper Standard in 49 CFR part 581, as was allowed for the 2001 version of the vehicle.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–402 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 2002 Ferrari 360 Passenger Cars manufactured before September 1, 2002, that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 2002 Ferrari 360 Passenger Cars manufactured before September 1, 2002, that were originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 31, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–8135 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the "Fund"), within the Department of the Treasury, is soliciting comments concerning the Native American CDFI Development (NACD) Program Application.

DATES: Written comments should be received on or before June 2, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda G. Davenport, Acting Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622–7754.

FOR FURTHER INFORMATION CONTACT: The NACD Program Application may be obtained from the Fund's Web site at *http://www.cdfifund.gov*. Requests for additional information should be directed to: Linda G. Davenport, Acting Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; or by phone to (202) 622–8662.

SUPPLEMENTARY INFORMATION:

Title: Native American CDFI Development (NACD) Program Application.

OMB Number: 1559–0013.

Abstract: The Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001

(Pub. L. 106–377) authorizes the Fund to provide technical assistance (TA) to promote economic development in Native American, Alaska Native and/or Native Hawaiian communities by creating new CDFIs or building the capacity of existing CDFIs that serve Native American, Alaska Native or Native Hawaiian communities. The Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7) authorizes the Fund to provide financial assistance, technical assistance and training programs to benefit Native American, Alaska Native, and Native Hawaiian communities in the coordination of community development strategies designed to increase access to equity investments and loans for development activities.

The NACD Program specifically provides TA to two categories of entities that propose to establish a new CDFI(s) that will serve a Native American, Alaska Native or Native Hawaiian population(s): Category (1) including Tribes, Tribal Entities, or Non-Profit Organizations that primarily serve Native American and Alaska Native and/or Native Hawaiian populations; and Category (2) including TA providers or other suitable providers.

Current Action: Currently receiving applications.

Type of Review: Extension.

Affected Public: Not-for-profit institutions; State, local or tribal government and tribal entities; and businesses or other for-profit institutions.

Estimated Number of Respondents: 40.

Estimated Annual Time Per Respondent: 65 hours.

Estimated Total Annual Burden Hours: 2,600 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Fund, including whether the information shall have practical utility; (b) the accuracy of the Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: Pub. L. 106–377; Pub. L. 108–7.

Dated: March 28, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–8148 Filed 4–2–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the "Fund") within the Department of the Treasury is soliciting comments concerning the Community Development Financial Institutions ("CDFI") Program; Technical Assistance (incorporating Native American Technical Assistance) Component Application.

DATES: Written comments should be received on or before June 2, 2003, to be assured of consideration.

ADDRESSES: Direct all comments to Linda G. Davenport, Acting Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622–7754.

FOR FURTHER INFORMATION CONTACT: The Technical Assistance Component application may be obtained from the Fund's Web site at *http://www.cdfifund.gov*. Requests for additional information should be directed to Linda G. Davenport, Acting Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or call (202) 622–8662.

SUPPLEMENTARY INFORMATION:

Title: The Community Development Financial Institutions Program—Technical Assistance Component Application.

OMB Number: 1559–0006.

Abstract: The purpose of the CDFI Program is to promote economic revitalization and community development through investment in and assistance to certified community development financial institutions (CDFIs). Through the Technical Assistance Component of the CDFI Program, the Fund provides technical assistance in the form of grants to competitively selected CDFIs and entities proposing to become CDFIs. The Fund provides such assistance to such entities to enhance their capacity to address the community development and capital access needs of their particular target markets, including Native American, Alaska Native, and Native Hawaiian communities.

The Technical Assistance Component is also designed to meet the unmet capacity needs of early stage CDFIs, or entities proposing to become CDFIs, who have significant potential for increasing their community development impact.

Current Action: Currently receiving applications.

Type of review: Extension.

Affected Public: Not-for-profit institutions, businesses or other for-profit institutions and tribal entities.

Estimated Number of Respondents: 100.

Estimated Annual Time Per Respondent: 55 hours.

Estimated Total Annual Burden Hours: 5,500 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Fund, including whether the information shall have practical utility; (b) the accuracy of the Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: March 28, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–8149 Filed 4–2–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0642]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to reimburse veterans insured by United Services Automobile Association (USAA) and Hartford Life Insurance for co-payments paid to VA for their medical care.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 2, 2003.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov*. Please refer to "OMB Control No. 2900–0642" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Copayment Refund—USAA/Hartford Claim Form, VA Form 10–0406.

OMB Control Number: 2900–0642.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0406 will be used to reimburse veterans insured by USAA/Hartford Life Insurance for co-payments they paid to VA for medical care from January 1, 1995, through December 31, 2001. Such insured veterans will have a one year time period from the initial notification date on a first-come-first-served basis, to file claim with VA for refund of their co-payments. The information collected will be used to determine the validity of such claims.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 12,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 24,000.

Dated: March 25, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–8157 Filed 4–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Cemeteries and Memorials will be held April 30–May 1, 2003, at the Wyndham Milwaukee Center Hotel, 129 East Kilbourn Avenue, Milwaukee, WI. The meeting will begin at 8 a.m. and conclude at 4:30 p.m. on both days. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, and the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee will make recommendations the Secretary regarding these activities.

On April 30, the Committee will discuss issues relating to Wood National Cemetery, the Southern Wisconsin State Veterans Cemetery and the State Cemetery Grants Program. In the afternoon, the Committee will tour Wood National Cemetery and the Southern Wisconsin State Veterans Cemetery. On May 1, the Committee will receive updates on National Cemetery Administration's Operational Standards and Measures, construction of new national cemeteries, legislative initiatives, meeting veterans' burial needs, and other issues related to the administration and maintenance of national cemeteries. The Committee will conclude with discussions of any unfinished business, make recommendations for future programs, meeting sites, and agenda topics.

No time will be allocated for receiving for oral presentations from the public. Any member of the public wishing to attend the meeting is requested to contact Ms. Paige Lowther, Designated Federal Officer, at (202) 273–5164. The Committee will accept written comments. Comments can be transmitted electronically to the Committee at *paige.lowther@mail.va.gov* or mailed to National Cemetery Administration (40), 810 Vermont Avenue, NW., Washington, DC 20420. In their Communications with the Committee, the writer must identify themselves and state the organizations, associations, or person(s) they represent.

Dated: March 26, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–8158 Filed 4–2–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Special Medical Advisory Group (SMAG) will

be held on Tuesday, April 22, 2003. The meeting will convene at 9 a.m. and end at 2 p.m. The meeting will be held at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 830, Washington, DC 20420. The meeting is open to the public.

The purpose of SMAG is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on matters relating to the care and treatment of veterans and other matters pertinent to the operations of the Veterans Health Administration (*i.e.*, research, education and training of health manpower, and VA/DOD contingency planning).

The meeting will focus on discussions of various strategic clinical issues affecting VA's delivery of health care services. Those issues include ongoing emergency preparedness activities and plans to carry out VA's mission as a health care back up to the Defense Department during certain national emergencies.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties can provide written comments for review by the Committee in advance to the meeting to Ms. Terrie Brown, Designated Federal Officer, Department of Veterans Affairs, Veterans Health Administration (10B), 810 Vermont Avenue, NW., Washington, DC 20420. Those wishing to attend should contact Ms. Sylvia Best, Office of the Under Secretary for Health, Department of Veterans Affairs, at (202) 273–5806.

Dated: March 26, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–8159 Filed 4–2–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 68, No. 64

Thursday, April 3, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 2003–B1]

eTravel Initiative

Correction

In notice document 03–6662 beginning on page 13710 in the issue of Thursday, March 20, 2003, make the following corrections:

1. On page 13710, in the second column, the fifth line "Of" should read, "If".

2. On the same page, in the same column, under the heading **Attachment**, in paragraph 2. *Background*, in the second line "governmentside" should read, "governmentwide".

3. On the same page, in the third column, in paragraph 4. *Government Interest*, in the second line "outline" should read, "online".

4. On the same page, in the same column, under paragraph 4., in paragraph e., in the fourth line, "achieve" should read, "achieved".

5. On the same page, in the same column, under the same paragraph, in paragraph f., in the first line, "I" should read, "If".

6. On the same page, in the same column, under paragraph 5. *Agency Planning*, in paragraph c., in the fifth line, "transaction" should read, "transactions".

7. On page 13711, in the first column, in paragraph 7. *Expiration Date*, in the second line, "services" should read, "service".

[FR Doc. C3–6662 Filed 4–2–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14597; Airspace Docket No. 03–ACE–20]

Modification of Class E Airspace; Hampton, IA

Correction

In rule document 03–7660 beginning on page 15349 in the issue of Monday, March 31, 2003, make the following correction:

On page 15349, in the third column, in the **EFFECTIVE DATE** section, in the second line, "July 20, 2003" should read, "July 10, 2003."

[FR Doc. C3–7660 Filed 4–2–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9050]

RIN 1545–AY08

Civil Cause of Action for Damages Caused by Unlawful Tax Collection Actions, Including Actions Taken in Violation of Section 362 or 524 of the Bankruptcy Code

Correction

In rule document 03–6597 beginning on page 14316 in the issue of Tuesday, March 25, 2003, make the following correction:

§301.7430–1 [Corrected]

On page 14319, in §301.7430–1, in the third column, in Par. 3, in the fourth line "revising the phrase 'paragraph (e)(1), (e)(2), (e)(3), or (e)(4) of this section'" should read "in newly-designated paragraph (f) revising the phrase 'paragraph (e)(1), (e)(2), (e)(3), or (e)(4) of this section'".

[FR Doc. C3–6597 Filed 4–2–03; 8:45 am]

BILLING CODE 1505–01–D

VOL
68
ISS
64
AP
3
003
UMI

Federal Register

Thursday,
April 3, 2003

Part II

Department of the Interior

43 CFR Part 10

Native American Graves Protection and Repatriation Act Regulations—Civil Penalties; Final Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 10

RIN 1024–AC84

Native American Graves Protection and Repatriation Act Regulations—Civil Penalties

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule relates to regulations implementing the Native American Graves Protection and Repatriation Act of 1990 ("the Act" or "NAGPRA"). This section outlines procedures for assessing civil penalties on museums that fail to comply with applicable provisions of the Act.

EFFECTIVE DATE: This final rule becomes effective on May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. John Robbins, Assistant Director, Cultural Resources Stewardship and Partnerships, National Park Service, 1849 C Street NW (2253), Washington, DC 20240. Telephone: (202) 354-2269.

SUPPLEMENTARY INFORMATION: On November 16, 1990, President George Bush signed the Act into law. The Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony with which they are affiliated. Section 13 of the Act requires the Secretary of the Interior ("the Secretary") to promulgate regulations to carry out provisions of the Act [25 U.S.C. 3011]. Final regulations implementing the Act were published in the Federal Register on December 4, 1995, and went into effect on January 3, 1996. The final regulations had five sections reserved for later publication.

Section 9 of the Act authorizes the Secretary to assess a civil penalty against any museum that fails to comply with the requirements of the Act [25 U.S.C. 3007]. Such penalties must be assessed according to procedures established by the Secretary through regulation. An interim rule establishing civil penalty procedures was published in the Federal Register on January 13, 1997 (62 FR 1820), and went into effect on February 12, 1997. Written comments on the interim rule were solicited from Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and members of the public. The extended period between the receipt of comments and publication of this final rule is attributed to administrative processing delays and National NAGPRA program organizational changes. Despite the delay, the comments continue to be relevant as there has been no significant developments regarding NAGPRA civil penalties since publication of the interim rule.

Twenty-four written comments were received representing 28 organizations and individuals. These included one Indian tribe, four Native American organizations, eight museums, one university, three national scientific organizations, three state agencies, two Federal agencies, four other organizations, and two individuals. Several letters represented more than one organization. Comments addressed most of the interim rule. All comments were fully considered when revising the interim rule for publication as a final rule.

Primary Changes

There are two primary changes to the interim rule.

The first change concerns the relationship between the notice of failure to comply and the notice of assessment. As explained in the preamble of the interim rule, the administrative procedures for providing notice, holding a hearing, appealing an administrative decision, and issuing a final administrative decision were patterned after the regulatory procedures currently used in assessing civil penalties under the Archaeological Resources Protection Act (ARPA). Further consideration revealed a statutory distinction between the ARPA and NAGPRA civil penalty procedures, particularly regarding the relationship between the notice of failure to comply and the notice of assessment. ARPA specifies that no penalty may be assessed until the person who violates the ARPA is given notice and opportunity for a hearing [16 U.S.C. 470 ff (a)(1)]. Regulations implementing the ARPA civil penalty provisions require that the notice of violation include a proposed penalty amount, which may be addressed at the hearing [43 CFR 7.15 (b)(3)]. NAGPRA is different. Section 9 (a) of NAGPRA stipulates that both the determination and assessment of the penalty can occur only after the museum has an opportunity for an agency hearing [25 U.S.C. 3007]. The regulatory text has been revised to indicate that the notice of failure to comply must be issued first, followed by a period during which the museum may request a hearing. A notice of assessment may be issued after the first period for requesting a hearing has expired. The possibility of a second hearing on the notice of assessment has been added to the regulations. Figure 1 outlines the civil penalty hearing and appeal process. If the museum consents, the Secretary may also combine the two notices, in which case the two opportunities for hearing will also be combined.

The second change concerns the amount of the per-day penalty that may be assessed if the museum continues to violate NAGPRA after the date of the final administrative decision on the notice of assessment. Several commenters considered the $100-per-day amount too low. Others recommended that the Secretary should have some discretion depending on the nature of failure to comply and the human remains, funerary object, sacred object, or object of cultural patrimony in question. The amount has been changed from a set $100 per day to a range not to exceed $1,000 per day.

Section-by-Section

General

Five commenters offered no specific changes to the text. Two commenters encouraged the Department of the Interior to remain flexible in its application of civil penalties and to refrain from penalizing museums that have attempted, in good faith, to comply with the Act. Whether a museum has failed to comply is determined under a strict liability standard. Mitigating factors, such as whether the museum has made a good faith attempt to comply, may be used by the Secretary to determine the penalty amount.

Paragraph 10.12 (a)

This paragraph outlines the Secretary's authority to assess civil penalties. Several comments concerned applicability of the rule to specific types of institutions. One commenter recommended amending the rule to apply to Federal agencies that fail to comply with provisions of the Act. One commenter recommended amending the rule to apply to non-Federally-funded institutions that refuse to return human remains, funerary objects, sacred objects, or objects of cultural patrimony controlled by a Federal agency or museum. One commenter recommended amending the rule to apply to museums in other countries that control human remains, funerary objects, sacred objects, and objects of cultural patrimony.

Section 9 of the Act authorizes the Secretary to assess civil penalties on any museum that fails to comply with the requirements of the Act [25 U.S.C. 3007]. Section 2 (8) of the Act defines a "museum" as any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony [25 U.S.C. 3001 (8)]. The definition of museum specifically excludes the Smithsonian Institution or any other Federal agency. The definition of museum is further clarified by regulation [paragraph 10.2 (a)(3) of this part]. The Act does not authorize the Secretary to assess civil penalties on a Federal agency that fails to comply with the Act. Section 15 of the Act does specifically grant the United States district courts jurisdiction over any action brought by any person alleging a violation of the Act, including violations by a Federal agency [25 U.S.C. 3013]. Institutions that do not receive Federal funds are not required to comply with the Act. However, human remains, funerary objects, sacred objects, and objects of cultural patrimony recovered from Federal lands generally fall under provisions of the Act regardless of where they currently are curated.

One commenter recommended amending the definition of the term "you" to exclude "the museum official designated responsible for matters related to implementation of the Act." The term is used in the rule only to advise the museum official designated responsible for matters related to implementation of the Act of actions that they may take in the notification and appeal process. Section 9 of the Act authorizes the Secretary to assess civil penalties on any museum that fails to comply with the requirements of the Act, not on an individual employee of that institution.

Paragraph 10.12 (b)

This paragraph defines the term "failure to comply."

Paragraph 10.12 (b)(1)(i) of this section stipulates that a museum has failed to comply if, after November 16, 1990, the museum sells or otherwise transfers human remains, funerary objects, sacred objects, or objects of cultural patrimony in violation of the Act, including, but not limited to, an unlawful sale or transfer to any individual or institution that is not required to comply with the Act. Six commenters recommended inserting the word "knowingly" before the phrase "sells or otherwise transfers" to be consistent with the criminal provisions in section 4 of the Act [18 U.S.C. 1170]. The criminal provisions in section 4 of the Act require mens rea or criminal intent. The civil penalty provisions in section 9 of the Act do not include such a requirement. Nothing precluded Congress from specifically requiring an element of knowledge or intent to the civil penalty provisions, but this was not done. The text has not been changed.

One commenter recommended deleting the phrase "or otherwise transfers," as this concept does not appear in the Act. Another commenter recommended clarifying that this phrase applies to transfers where the intent was avoiding compliance with the Act. This phrase is intended to identify instances where human remains, funerary objects, sacred objects, or objects of cultural patrimony are conveyed from one party to another, without reciprocal financial consideration, to avoid compliance with provisions of the Act. The phrase has been retained.

One commenter considered use of the term "in violation of" to be tautological, that is, defining a term with reference to itself. The term has been replaced with "contrary to provisions of."

One commenter recommended deleting the word "unlawful" referring to the sale or transfer of human remains, funerary objects, sacred objects, or objects of cultural patrimony. Since museums may sell or otherwise transfer such items if they can prove a right of possession, the term has been retained to distinguish sales or transfers that violate provisions of the Act from sales or transfers of items for which the museum has right of possession.

One commenter recommended adding provisions to specifically prohibit the sale or transfer of human remains, funerary objects, sacred objects, or objects of cultural patrimony across State lines. The criminal provisions of the Act already apply to the sale, purchase, use for profit, or transport for sale or profit of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony within the United States. Transfer across a State boundary is not a necessary element of this crime.

One commenter questioned whether assessing civil penalties on museums that acquire items that are otherwise widely available for sale to the general public might actually encourage the growth of private collections and restrict Federally funded institutions from adding to their collections. Section 4 of the Act makes it a crime under certain conditions to knowingly sell, purchase, use for profit, or transport for sale or profit Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony. The rule in part provides an alternative administrative mechanism to prosecute museums that violate these criminal provisions.

No comments were received regarding paragraphs 10.12 (b)(1)(ii), (b)(1)(iii), or (b)(1)(iv) of this section.

Paragraph 10.12 (b)(1)(v) of this section stipulates that a museum has failed to comply if it refuses to repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony to a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization pursuant to the requirements of the Act. Two commenters requested clarification of the relevant requirements of the Act, particularly as it applies to disputes. The section has been rewritten to apply to any museum that, absent any of the exemptions specified at paragraph 10.10 (c) of this part, refuses to repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony to a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization.

Paragraph 10.12 (b)(1)(vi) of this section stipulates that a museum has failed to comply if it repatriates human remains, funerary objects, sacred objects, or objects of cultural patrimony before publication of a notice in the Federal Register as required by the Act. One commenter pointed out that the regulations require publication of two separate types of notice, depending on the type of cultural item. Publication of a notice of intent to repatriate is required prior to repatriation of an unassociated funerary object, sacred object, or object of cultural patrimony [paragraph 10.10 (a)(3) of this part]. Publication of a notice of inventory completion is required prior to repatriation of human remains or an associated funerary object [paragraph 10.10 (b)(2) of this part]. The text has been rewritten to refer to publication of the required notice in the Federal Register. Another commenter suggested deleting this section since the Secretary ultimately is responsible for publication of notices in the Federal Register, not the submitting museum. The Secretary is responsible for publishing the museum's notice in the Federal Register. However, as the regulations make clear, repatriation may not occur until at least 30 days after the notice is published [paragraphs 10.10 (a)(3) and (b)(2) of this part]. The section has been retained.

One commenter recommended that failure to adequately consult with the relevant lineal descendants, Indian tribe officials, and traditional religious leaders also should constitute a "failure to comply." Other sections of the

regulations already require museum and Federal agency officials to consult with Indian tribe officials and traditional religious leaders by the completion of the summary process [paragraph 10.8 (d)(2) of this part]. The regulations also require museum and Federal agency officials to consult with lineal descendants, Indian tribe officials, and traditional religious leaders at the point in the inventory process when investigation into the cultural affiliation is being conducted [paragraph 10.9 (b)(2) of this part], and prior to repatriation in order to determine the place and manner of repatriation [paragraph 10.10 (d) of this part]. Text has been added as paragraph 10.12 (b)(1)(vii) of this section specifically identifying as a failure to comply a museum official's failure to consult with lineal descendants, Indian tribe officials, and traditional religious leaders as required.

Text also has been added as paragraph 10.12 (b)(1)(viii) of this section specifically identifying as a failure to comply a museum official's failure to inform the recipients of repatriations of any presently known treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects as required in paragraph 10.10 (e) of this part.

One commenter asked whether failure to comply with regulations regarding the curation of Federally owned and administered archeological collections would constitute a failure to comply under 36 CFR Part 79. Federal agencies are responsible for the administration of all collections within their control, including Federal collections in the possession of non-Federal repositories. This includes the curation of archeological collections -- artifacts, objects, specimens, and other physical evidence -- that are excavated or removed under the authority of the Antiquities Act [16 U.S.C. 431-433], the Reservoir Salvage Act [16 U.S.C. 469-469c], the National Historic Preservation Act [16 U.S.C. 470-2], or the Archaeological Resources Protection Act [16 U.S.C. 40aa-mm]. Federal agencies also are responsible for completion of summaries and inventories, publication of notices, and other activities under the Native American Graves Protection and Repatriation Act [25 U.S.C. 3001 *et seq.*]. A Federal agency's failure to comply with curation regulations is a matter separate and unrelated to compliance with NAGPRA.

Paragraph 10.12 (b)(2) of this section stipulates that each violation constitutes a separate offense. One commenter requested clarification of what would constitute separate violations. Determination of the number of separate violations of unlawful sale or transfer [paragraph 10.12 (b)(1)(i) of this section], refusal to repatriate [paragraph 10.12 (b)(1)(v) of this section], or repatriate prior to publication of the required notice [paragraph 10.12 (b)(1)(vi) of this section] will be based on the number of human remains, funerary objects, sacred objects, or objects of cultural patrimony involved. Determination of the number of separate violations of failure to provide summaries [paragraph 10.12 (b)(1)(ii) of this section], inventories [paragraph 10.12 (b)(1)(iii) of this section], notifications [paragraph 10.12 (b)(1)(iv) of this section], consultations [paragraph 10.12 (b)(1)(vii) of this section], or information regarding potentially hazardous human remains, funerary objects, sacred objects, or objects of cultural patrimony [paragraph 10.12 (b)(1)(viii) of this section] will be based on the number of lineal descendants, Indian tribes, or Native Hawaiian organizations involved.

Paragraph 10.12 (c)

This paragraph explains how to notify the Secretary of a failure to comply.

Paragraph 10.12 (c) of this section stipulates that any person may bring an allegation of failure to comply to the Secretary's attention. One commenter suggested requiring the person who makes the allegation to provide credible evidence of a failure to comply. Text has been added stipulating that allegations must be in writing, and should include documentation of the alleged failure to comply. This documentation might include evidence that: the museum has possession or control of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony; receives Federal funds; and has failed to comply with specific provisions of the Act. "Possession" is defined in paragraph 10.2 (a)(3)(i) of this section. "Control" is defined in paragraph 10.2 (a)(3)(ii) of this section. "Native American," "human remains," "funerary objects," "sacred objects," and "objects of cultural patrimony" are defined in paragraph 10.2 (d) of this section. "Receives Federal funds" is defined in paragraph 10.2 (b) of this section.

Paragraph 10.12 (d)

Paragraph 10.12 (d) of this section, designated paragraph 10.12 (c)(2) in the interim rule, explains what steps the Secretary must take upon receiving an allegation.

One commenter requested that the person making the allegation be notified that the allegation has been received. Text specifying this required action has been added to paragraph 10.12 (d)(1) of this section. Six commenters requested that the Secretary also be required to notify the museum that the allegation has been received. It is anticipated that the Secretary usually will notify the museum upon receipt of an allegation. However, this decision must be made on a case-by-case basis in order to avoid jeopardizing investigation of the alleged failure to comply or any other ongoing law enforcement investigation.

Paragraph 10.12 (d)(2) of this section, designated paragraph 10.12 (c)(2) in the interim rule, outlines the steps that the Secretary may take upon receiving an allegation of failure to comply. These include: (i) reviewing the alleged failure to comply; (ii) identifying the specific provisions of the Act with which the museum allegedly failed to comply; (iii) determining if the institution of a civil penalty action is in the public interest; and (iv) if appropriate, estimating the proposed penalty.

Seven commenters requested clarification of the procedures by which the Secretary will investigate an allegation of failure to comply. One commenter stressed that such an investigation must be conducted fully and fairly before the Secretary commences with the determination of the penalty. Investigation of an allegation of failure to comply must necessarily be done on a case-by-case basis. Paragraph 10.12 (d)(2) of this section outlines the basic steps necessary to complete such an investigation.

One commenter considered the language in paragraph 10.12 (d)(2)(i) of this section, designated paragraph 10.12 (c)(2)(i) in the interim rule, too vague and offered revised wording. One commenter objected that no provision was made to involve the alleging party in the process. Text has been added to this section to indicate that additional information may be requested from the person making the allegation, the museum that has allegedly failed to comply, and other parties. Subpoenas may be issued if the Secretary's request for information is resisted.

Section 9 (a) of the Act stipulates that the penalty may only be determined after the museum is provided with an opportunity for an agency hearing [25 U.S.C. 3007 (a)]. Paragraph 10.12 (c)(2)(iv) of the interim rule has been deleted.

One commenter objected to the investigatory procedure's being at the Secretary's discretion. Section 9 (a) of the Act makes it clear that assessment of a civil penalty is completely at the Secretary's discretion [25 U.S.C. 3007 (a)]. However, consistent with the Department of the Interior's continuing responsibility to keep constituents and the general public informed of its activities [43 DM 1.1], the regulations require certain investigatory steps.

Six commenters requested that the Secretary be required to provide notification if, after consideration of the allegation, no further action will be taken. Text has been added as paragraph 10.12 (d)(3) of this section requiring notification of the person making the allegation and the museum if the available evidence does not show a failure to comply.

One commenter requested clarification of how long the Secretary might take in determining whether a museum has failed to comply. Generally, a civil penalty must be assessed within five years of when facts material to the failure to comply become known, unless the assessment: 1) is founded upon a tort on behalf of a Federally recognized Indian tribe [28 U.S.C. 2415 (b)], or 2) is intended to establish title to, or right of possession of, a human remains, funerary object, sacred object, or object of cultural patrimony [28 U.S.C. 2415 (c)], in which case a longer period may apply.

Paragraph 10.12 (e)

This section explains how the Secretary notifies the museum and potentially aggrieved parties if the alleged failure to comply is verified.

One commenter recommended that written notice of failure to comply be explicitly required. The word "written" has been inserted before phrase "notice of failure to comply" in paragraph 10.12 (e)(1) of this section.

Section 9 (a) of the Act stipulates that the determination of the penalty may only occur after the museum is provided with an opportunity for an agency hearing [25 U.S.C. 3007 (a)]. Paragraph 10.12 (e)(1)(iii) of this section has been deleted and subsequent sections renumbered.

Paragraph 10.12 (e)(1)(iii) of this section, designated paragraph 10.12 (e)(1)(iv) in the interim rule, has been revised to reflect the options available in paragraph 10.12 (f) of this section.

Paragraph 10.12 (e)(2) of this section allows the Secretary, with the consent of the museum, to combine the notice of failure to comply and notice of assessment.

Paragraph 10.12 (f)

This Paragraph outlines the actions that the museum may take upon receipt of a notice of failure to comply. Four options were outlined in the interim rule: (1) seek informal discussions with the Secretary; (2) file a petition for relief; (3) take no action and await the Secretary's notice of assessment; or (4) accept the proposed penalty.

Paragraphs 10.12 (f)(1) and (f)(3) of this section have been retained. Paragraph 10.12 (f)(2) of this section described the process for filing a petition for relief of the penalty amount. Because the Notice of Failure to Comply will not necessarily include a determination of penalty amount, paragraph 10.12 (f)(2) of this section has been deleted and replaced with the option of requesting a hearing. The process for requesting a hearing is described in paragraph 10.12 (j) of this section. Paragraph 10.12 (f)(4) of the interim rule, which also dealt with the proposed penalty, has been deleted.

Paragraph 10.12 (g)

This paragraph, designated paragraph 10.12 (d) in the interim rule, explains how the Secretary determines the penalty amount.

Section 9 (b) of the Act stipulates that the amount of a penalty assessed must be determined taking into account, in addition to other factors: (1) the archeological, historical, or commercial value of the item involved; (2) the damages suffered, both economic and non-economic, by an aggrieved party; and (3) the number of violations [25 U.S.C. 3007 (b)].

The interim rule outlined a two-stage approach to implementing these statutory criteria. The first stage, outlined in paragraph 10.12 (g)(1) of this section, designated paragraph 10.12 (d)(1) in the interim rule, stipulated that the initial assessment is based on an amount equal to .25 percent of the museum's annual budget, or $5,000, whichever is less, plus an additional sum determined after taking into account: (1) the archeological, historical, and commercial value of the human remains, funerary object, sacred object, or object of cultural patrimony, including, but not limited to, consideration of their importance to performing traditional practices; (2) damages suffered, both economic and non-economic, by the aggrieved party or parties including, but not limited to, the costs of attorney and expert witness fees, investigations, and administrative expenses related to efforts to compel compliance with the Act; and (3) the number of violations that have occurred. The second stage, outlined in paragraph 10.12 (g)(2) of this section, designated paragraph 10.12 (d)(2) in the interim rule, provided for an additional penalty amount of $100 per day if the museum continues to violate the Act after the date that the final administrative decision takes effect.

Five commenters considered the base penalty amount stipulated in paragraph 10.12 (g)(1) of this section, designated paragraph 10.12 (d)(1) in the interim rule, insufficient to encourage compliance. One commenter considered the base penalty amount too severe. While the base penalty amount of $5000 or less might be considered overly modest by some, the Secretary is authorized to assess a penalty based on the sum of the listed factors. This amount might be substantial depending on the situation.

Three commenters requested clarification of the process by which the archeological, historical, or commercial value of the human remains, funerary object, sacred object or object of cultural patrimony in paragraph 10.12 (g)(1)(i) of this section, designated paragraph 10.12 (d)(1)(i) in the interim rule, will be determined by the Secretary. In calculating civil penalties, the Secretary will consider the value to be the benefit derived by the museum through control of the particular human remains, funerary object, sacred object, or object of cultural patrimony. This value can be calculated in a variety of ways. Archeological and historical values focus on the benefits derived by the museum through the study or exhibition of the human remains, funerary object, sacred object, or object of cultural patrimony. These values might include research fees and grants obtained to study the cultural items, admission fees or donations obtained for the public display of the human remains, funerary object, sacred object, or object of cultural patrimony, and royalties obtained from publication of information related to or images of the cultural items. Commercial value means the price a willing buyer would pay, and a willing seller accept, for the human remains, funerary object, sacred object, or object of cultural patrimony in the open market.

One commenter objected to using the value of the cultural item in calculating part of the penalty amount and the subsequent assumption that, after paying such a penalty, the museum also will be forced to relinquish control of the cultural item. The Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated. By failing to comply with the Act, the museum is depriving lineal descendants, Indian

tribes, and Native Hawaiian organizations of these rights. The value portion of the penalty calculation is intended to deprive the museum of any benefit derived through control of the particular cultural item. This assessment in no way reduces the lineal descendant's, Indian tribe's, or Native Hawaiian organization's right to the cultural item.

One commenter questioned whether the importance of a cultural item to performing traditional practices is a reasonable criterion for calculating its archeological, historical, or commercial value. We agree that consideration of the importance of a cultural item should not be used in calculating its archeological, historical, or commercial value. The phrase has been deleted.

One commenter requested clarification of how the damages suffered by aggrieved parties in paragraph 10.12 (g)(ii) of this section, designated paragraph 10.12 (d)(ii) in the interim rule, will be calculated. Section 9 (b)(2) of the Act stipulates that both economic and non-economic damages suffered by an aggrieved party be taken into account in determining the penalty amount.

Two classes of aggrieved parties must be considered. The first class consists of lineal descendants, Indian tribes, or Native Hawaiian organizations that are denied access, by the museum's failure to comply, to human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated. The museum's failure to comply with the Act denies these parties a property right that may result in both economic and non-economic damages. Economic damages might include expenditures by the aggrieved party to compel the museum to comply with the Act, such as the cost of activities taken after November 16, 1993, to compel the museum to complete the required summary. Non-economic damages might include loss of use of or damage to the cultural item. One commenter recommended that non-Federally recognized Indian groups also must be consulted in determining the penalty amount. The Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations. While a non-Federally recognized Indian group also may have a property interest in cultural item, the Act and these regulations do not directly address that interest.

The second class of aggrieved parties consists of the people of the United States who, due to the museum's failure to comply, are burdened with an obligation to investigate and, if appropriate, assess a civil penalty against a museum that has failed to comply. This burden could include expenditures by the Department of the Interior related to assessing the archeological, historical, or commercial value of a cultural item and the economic and non-economic damages to the aggrieved lineal descendants, Indian tribes, or Native Hawaiian organizations.

Two commenters objected to including attorney's fees in calculating economic damages. One commenter cited the case of Alyeska Pipeline Service Company v. Wilderness Society [421 U.S. 247, 250 (1975)] in which the court found that parties must bear all of their own costs of litigation absent a specific fee-shifting statute. Another commenter recommended that a museum must be required to pay all attorney fees, expert witness fees, investigation costs, and any other expenses that are required to compel compliance if the museum was found to be in noncompliance. The example in paragraph 10.12 (g)(1)(ii) of this section, designated paragraph 10.12 (d)(1)(ii) in the interim rule, has been revised to omit explicit reference to attorney's fees and rewritten as "expenditures by the aggrieved party to compel the museum to comply with the Act." We recognize that such activities may in fact include expenditures for an attorney or other staff to prepare, review, and file documents, but do not intend that this category include litigation costs.

Two commenters considered requiring the museum to pay damages unreasonably punitive. Section 9 (b)(2) requires that both economic and non-economic damages to the aggrieved party must be taken into account in assessing the penalty amount. We consider this requirement a strong indication that Congress intended museums to comply with the Act. The damages component of the penalty amount is, in fact, purely compensatory, being explicitly based on the expenditures of the aggrieved parties. Punitive damages would be damages assessed over and above the compensatory amount, such as additional penalties based on the number of violations that have occurred as authorized in section 9 (b)(3) of the Act. Two commenters requested that museums lose Federal funding if they are identified as failing to comply with the Act. The legislative history of the Act indicates that although Congress considered such a penalty, loss of Federal funding was not included in the final bill. We generally are precluded from including a provision in regulation that previously was considered and rejected by Congress.

Three commenters requested clarification of the process by which an additional penalty amount will be assessed after the day that the final administrative decision takes effect if the museum continues to violate the Act. One commenter identified this provision as imposing prohibitive costs upon a museum that seeks judicial review of the final administrative decision. Another commenter considered the $100-per-day penalty insufficient to compel compliance with the Act, recommending instead a flexible amount ranging from $100 to $10,000 per day. Another commenter considered this provision to be punitive rather than serving to compel further compliance with the Act. The drafters agree that the per-day assessment is in fact a punitive damage intended to compel compliance with the Act, but not based on any actual damage to an aggrieved party. The per-day assessment will not be imposed until the final administrative decision, providing ample opportunity to participate in an agency hearing, request a hearing before an administrative law judge, appeal the administrative law judge's decision, or comply with the Act. The penalty amount has been increased to $1,000 maximum per day in order to provide the Secretary with some flexibility in tailoring a penalty to the situation.

Paragraph 10.12 (g)(4) of this section, designated paragraph 10.12 (d)(3) in the interim rule, outlined provisions by which the Secretary may reduce the penalty amount. Reasons for reducing the amount include: 1) the failure to comply is determined to be not willful; 2) the museum agrees to adequately mitigate the violation; 3) the museum demonstrates a hardship or inability to pay; or 4) the penalty would constitute excessive punishment under the circumstances.

The provision in paragraph 10.12 (g)(3)(i) of this section, designated paragraph 10.12 (d)(3)(i) in the interim rule, allows the Secretary to reduce the penalty if it is determined that the museum did not willfully fail to comply with the Act. Three commenters felt that the provisions did not go far enough. One commenter requested an explicit statement that a penalty must be imposed only on museums that willfully and knowingly fail to comply with the Act. Evidence of a good faith effort to comply with the Act must be considered when deciding whether the penalty amount should be reduced.

The provision in paragraph 10.12 (g)(3)(ii) of this section, designated paragraph 10.12 (d)(3)(ii) in the interim rule, allows the Secretary to reduce the penalty if the museum agrees to mitigate the violation by, among other things, paying restitution to the aggrieved party or parties. One commenter felt that the Secretary should pay all actual damages to the aggrieved parties. Another commenter recommended that the Secretary seek an amendment to the Act that would permit the Secretary to distribute collected penalties via the NAGPRA grants program. Direct payment of restitution by the United States to an aggrieved party generally requires explicit statutory authority. Absent such authority, and when appropriate, the Secretary may mitigate the penalty amount when the museum agrees to pay restitution directly to that aggrieved party. In their 1995-1997 and 1998 reports to Congress, the Native American Graves Protection and Repatriation Review Committee recommended amending the Act to provide monies collected as civil penalties to the Secretary to further enforcement activities.

One commenter requested clarification of how hardship will be defined in paragraph 10.12 (g)(3)(iii) of this section, designated paragraph 10.12 (d)(3)(iii) in the interim rule. The sentence has been rewritten to clarify that the Secretary may reduce the penalty amount if the museum is unable to pay, provided that this factor will not apply if the museum has previously failed to comply with these regulations.

One commenter requested clarification of how excessive punishment will be defined in paragraph 10.12 (g)(3)(iv) of this section, designated paragraph 10.12 (d)(3)(iv) of this section in the interim rule. The eighth amendment to the Constitution of the United States prohibits excessive fines. A civil penalty might be considered excessive if it seriously impairs the museum's capacity of gaining a business livelihood.

One commenter questioned how the funds collected from the fines and penalties would be used. Another commenter questioned whether funds collected from civil penalty fines could be directed towards helping to bring museums into compliance or channeled into an account to fund Federal actions pertaining to the Act. Under the current statutory authority, civil penalties must be paid directly to the United States Treasury.

Paragraph 10.12 (h)

This paragraph, designated paragraph 10.12 (g) in the interim rule, explains how the Secretary assesses the penalty.

One commenter recommended text acknowledging that ongoing legal proceedings would be sufficient to delay a museum's response to a notice of failure to comply. A museum may have recourse to the Federal courts regarding the Secretary's issuance of a notice of failure to comply. However, the Secretary is not bound by the status of ongoing litigation when assessing a civil penalty on a museum for failing to comply with the Act.

One commenter recommended that written notice be required if the Secretary concludes that the museum has not failed to comply. The phrase "in writing" has been added after the phrase "the Secretary notified you" in paragraph10.12 (h)(3) of this section.

Paragraph 10.12 (j)

This paragraph, combining two paragraphs in the interim rule designated as 10.12 (h) and (i), describes how the museum may request a hearing regarding a notice of failure to comply or a notice of assessment.

One commenter recommended adding a provision that would allow for the involvement of lineal descendants, culturally affiliated tribes, and/or the complaining party or parties in the hearing process where appropriate. The involvement of lineal descendants, tribal representatives, or the complaining person may be necessary as determined by the parties in the hearing. Participation of these and other persons can be compelled by means of a subpoena [25 U.S.C. 3007 (d)]. Agency hearings generally are open to the public.

Paragraph 10.12 (h)(4)(iv) of the interim rule, which dealt with the amount of the civil penalty assessment, has been deleted.

Paragraph 10.12 (k)

This paragraph, designated paragraph 10.12 (j) in this interim rule, explains how a hearing decision may be appealed.

Paragraph 10.12 (l)

This paragraph, designated paragraph 10.12 (k) in this interim rule, explains what constitutes a final administrative action regarding a notice of assessment.

Paragraph 10.12 (m)

This paragraph, designated paragraph 10.12 (l) in this interim rule, explains how a museum pays the civil penalty. The sentence authorizing the Secretary to start civil penalty action in U.S. District Court without the authorization of the Attorney General of the United States has been deleted. In Mehle v. American Management Systems, Inc., [01-1544 (JR), D. D.C. Nov 30, 2001] the district court ruled that the Attorney General must represent the United States, an agency, or officer thereof in litigation, unless Congress has expressly directed otherwise. NAGPRA does not confer independent litigating authority on the Secretary.

Drafting Information

This final rule was prepared by Dr. C. Timothy McKeown in consultation with the Native American Graves Protection and Repatriation Review Committee as directed by section 8 (c)(7) of the Act.

Compliance with Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Order 12866)

This rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. We expect to assess civil penalties on a small number of museums that have failed to comply with the Act. The Secretary may exercise discretion to reduce the penalty amount if it seriously impairs the museum's capacity of gaining a business livelihood.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Section 9 of the Act delegates exclusive responsibility for implementing the civil penalty provisions to the Secretary. This rule has been reviewed by the U.S. Department of the Interior, Office of the Solicitor and the Office of Hearings and Appeals, and the U.S. Department of Justice.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs, or the rights or obligations of their recipients. Assessment of civil penalties under this rule is limited to museums that fail to comply with the requirements of the Act. Consistent with the legislative history of the Act, museums that have failed to comply continue to be eligible for Federal funds.

(4) This rule does not raise novel legal or policy issues. All substantive comments received on the interim rule have been addressed in the preamble and changes made in the regulatory text if necessary.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We expect to assess civil penalties on a small number of museums that have failed to comply with the Act. The Secretary may exercise discretion to reduce the penalty amount if it seriously impairs the museum's capacity of gaining a business livelihood.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804 (2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(1) Does not have an annual effect on the economy of $100 million or more.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local or tribal government agencies, or geographic regions;.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. We expect to assess civil penalties on a small number of museums that have failed to comply with the Act. The Secretary may exercise discretion to reduce the penalty amount if it seriously impairs the museum's capacity of gaining a business livelihood.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Museums are only required to repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony for which they can not prove right of possession [25 U.S.C. 3005 (c)]. This rule applies to museums that fail to comply with the administrative provisions of the Act.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3 (a) and 3 (b) of the order.

Paperwork Reduction Act

This final rule does not require an information collection of 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship with Tribes

In accordance with Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249), the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), and 512 DM 2 we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects. NAGPRA makes provisions for the return to lineal descendants, Indian tribes and Native Hawaiian organizations of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. Native American organizations participated in the drafting of this rule.

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Hawaiian Natives, Historic preservation, Indians --Claims, Museums, Reporting and record-keeping requirements.

■ In consideration of the forgoing, 43 CFR Subpart A is amended as follows:

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT REGULATIONS

■ 1. The authority citation for Part 10 continues to read as follows:

Authority: 25 U.S.C. 3001 *et seq.*

■ Part 10 is amended by adding § 10.12 to read as follows:

§ 10.12 Civil penalties.

(a) *The Secretary's Authority to Assess Civil Penalties.* The Secretary is authorized by section 9 of the Act to assess civil penalties on any museum that fails to comply with the requirements of the Act. As used in this Paragraph, "failure to comply with requirements of the Act" also means failure to comply with applicable portions of the regulations set forth in this Part. As used in this Paragraph "you" refers to the museum or the museum official designated responsible for matters related to implementation of the Act.

(b) *Definition of "failure to comply."* (1) Your museum has failed to comply with the requirements of the Act if it:

(i) After November 16, 1990, sells or otherwise transfers human remains, funerary objects, sacred objects, or objects of cultural patrimony contrary to provisions of the Act, including, but not limited to, an unlawful sale or transfer to any individual or institution that is not required to comply with the Act; or

(ii) After November 16, 1993, has not completed summaries as required by the Act; or

(iii) After November 16, 1995, or the date specified in an extension issued by the Secretary, whichever is later, has not completed inventories as required by the Act; or

(iv) After May 16, 1996, or 6 months after completion of an inventory under an extension issued by the Secretary, whichever is later, has not notified culturally affiliated Indian tribes and Native Hawaiian organizations; or

(v) Refuses, absent any of the exemptions specified in § 10.10(c) of this part, to repatriate human remains, funerary object, sacred object, or object of cultural patrimony to a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian; or

(vi) Repatriates a human remains, funerary object, sacred object, or object of cultural patrimony before publishing the required notice in the Federal Register;

(vii) Does not consult with lineal descendants, Indian tribe officials, and traditional religious leaders as required; or

(viii) Does not inform the recipients of repatriations of any presently known treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects.

(2) Each instance of failure to comply will constitute a separate violation.

(c) *How to Notify the Secretary of a Failure to Comply.* Any person may bring an allegation of failure to comply to the attention of the Secretary. Allegations must be in writing, and should include documentation

identifying the provision of the Act with which there has been a failure to comply and supporting facts of the alleged failure to comply. Documentation should include evidence that the museum has possession or control of Native American cultural items, receives Federal funds, and has failed to comply with specific provisions of the Act. Written allegations should be sent to the attention of the Director, National Park Service, 1849 C Street, NW, Washington, D.C. 20240.

(d) *Steps the Secretary may take upon receiving such an allegation.* (1) The Secretary must acknowledge receipt of the allegation in writing.

(2) The Secretary also may:

(i) Compile and review information relevant to the alleged failure to comply. The Secretary may request additional information, such as declarations and relevant papers, books, and documents, from the person making the allegation, the museum, and other parties;

(ii) Identify the specific provisions of the Act with which you have allegedly failed to comply; and

(iii) Determine if the institution of a civil penalty action is an appropriate remedy.

(3) The Secretary must provide written notification to the person making the allegation and the museum if the review of the evidence does not show a failure comply.

(e) *How the Secretary notifies you of a failure to comply.* (1) If the allegations are verified, the Secretary must serve you with a written notice of failure to comply either by personal delivery or by registered or certified mail (return receipt requested). The notice of failure to comply must include:

(i) A concise statement of the facts believed to show a failure to comply;

(ii) A specific reference to the provisions of the Act and/or these regulations with which you allegedly have not complied; and

(iii) Notification of the right to request an informal discussion with the Secretary or a designee, to request a hearing, as provided below, or to await the Secretary's notice of assessment. The notice of failure to comply also must inform you of your right to seek judicial review of any final administrative decision assessing a civil penalty.

(2) With your consent, the Secretary may combine the notice of failure to comply with the notice of assessment described in paragraph (h) of this section.

(3) The Secretary also must send a copy of the notice of failure to comply to:

(i) Any lineal descendant of a known Native American individual whose human remains, funerary objects, or sacred objects are in question; and

(ii) Any Indian tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony in question.

(f) *Actions you may take upon receipt of a notice of failure to comply.* If you are served with a notice of failure to comply, you may:

(1) Seek informal discussions with the Secretary;

(2) Request a hearing. Figure 1 outlines the civil penalty hearing and appeal process. Where the Secretary has issued a combined notice of failure to comply and notice of assessment, the hearing and appeal processes will also be combined.

(3) Take no action and await the Secretary's notice of assessment.

BILLING CODE 4310-70-S

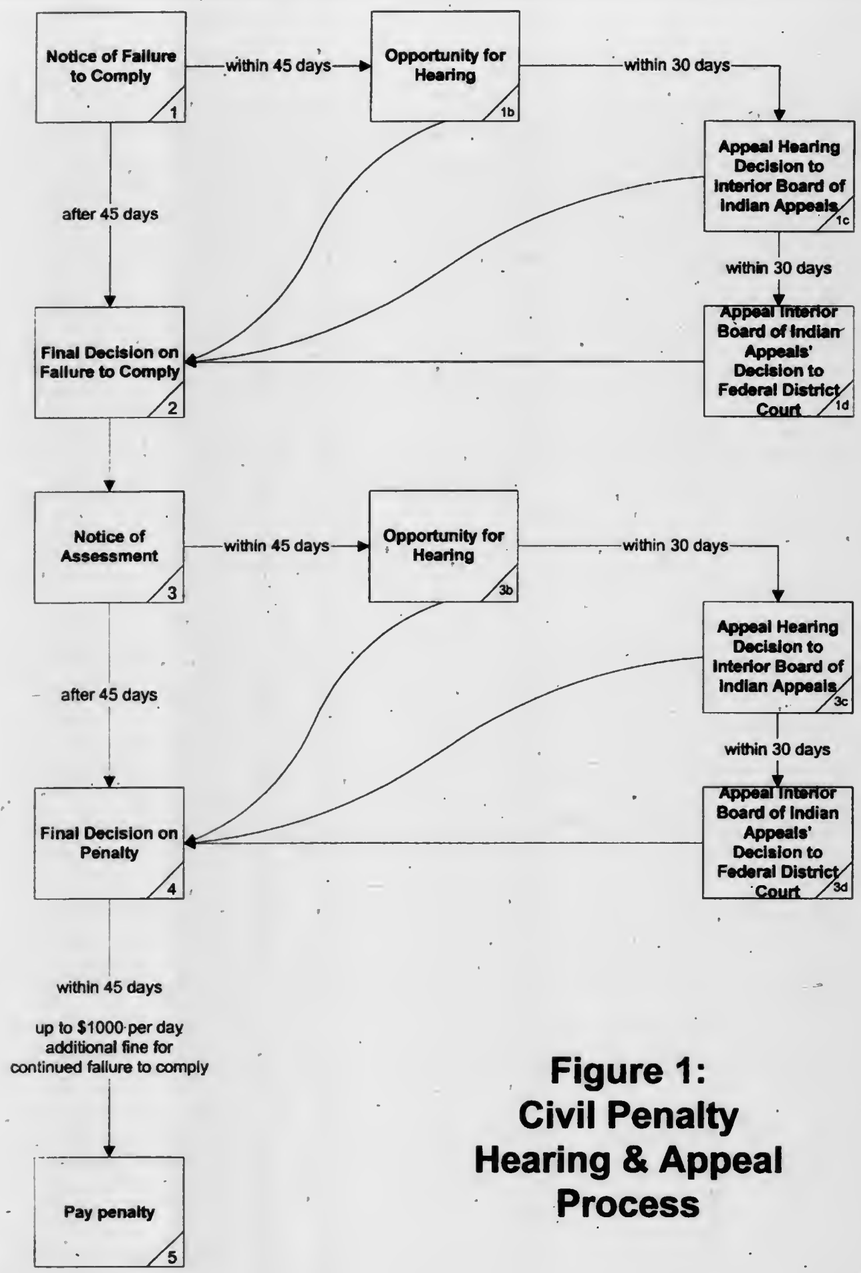


Figure 1: Civil Penalty Hearing & Appeal Process

BILLING CODE 4310–70–C

(g) *How the Secretary determines the penalty amount.*

(1) The penalty amount must be determined on the record;

(2) The penalty amount must be .25 percent of your museum's annual budget, or $5,000, whichever is less, and such additional sum as the Secretary may determine is appropriate after taking into account:

(i) The archeological, historical, or commercial value of the human remains; funerary object, sacred object, or object of cultural patrimony involved; and

(ii) The damages suffered, both economic and non-economic, by the aggrieved party or parties including, but not limited to, expenditures by the aggrieved party to compel the museum to comply with the Act; and

(iii) The number of violations that have occurred at your museum.

(3) An additional penalty of up to $1,000 per day after the date that the final administrative decision takes effect may be assessed if your museum continues to violate the Act.

(4) The Secretary may reduce the penalty amount if there is:

(i) A determination that you did not willfully fail to comply; or

(ii) An agreement by you to mitigate the violation, including, but not limited to, payment of restitution to the aggrieved party or parties; or

(iii) A determination that you are unable to pay, provided that this factor may not apply if you have been previously found to have failed to comply with these regulations; or,

(iv) A determination that the penalty constitutes excessive punishment under the circumstances.

(h) *How the Secretary assesses the penalty.* (1) The Secretary considers all available information, including information provided during the process of assessing civil penalties or furnished upon further request by the Secretary.

(2) The Secretary may assess the civil penalty upon completing informal discussions or when the period for requesting a hearing expires, whichever is later.

(3) The Secretary notifies you in writing of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The notice of assessment includes:

(i) The basis for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(ii) Notification of the right to request a hearing, including the procedures to follow, and to seek judicial review of any final administrative decision that assesses a civil penalty.

(i) *Actions that you may take upon receipt of a notice of assessment.* If you are served with a notice of assessment, you may do one of the following:

(1) Accept in writing or by payment of the proposed penalty, or any mitigation or remission offered in the notice of assessment. If you accept the proposed penalty, mitigation, or remission, you waive the right to request a hearing.

(2) Seek informal discussions with the Secretary.

(3) File a petition for relief. You may file a petition for relief with the Secretary within 45 calendar days of receiving the notice of assessment. Your petition for relief may request the Secretary to assess no penalty or to reduce the amount. Your petition must be in writing and signed by an official authorized to sign such documents. Your petition must set forth in full the legal or factual basis for the requested relief.

(4) Request a hearing. Figure 1 outlines the civil penalty hearing and appeal process.

(i) In addition to the documentation required in paragraph (g) of this section, your request must include a copy of the notice of assessment and must identify the basis for challenging the assessment.

(ii) In this hearing, the amount of the civil penalty assessed must be determined in accordance with paragraph (h) of this section, and will not be limited to the amount assessed by the Secretary or any offer of mitigation or remission made by the Secretary.

(j) *How you request a hearing.* (1) You may file a written, dated request for a hearing on a notice of failure to comply or notice of assessment with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203-1923. You must enclose a copy of the notice of failure to comply or the notice of assessment. Your request must state the relief sought, the basis for challenging the facts used as the basis for determining the failure to comply or fixing the assessment, and your preference of the place and date for a hearing. You must serve a copy of the request on the Solicitor of the Department of the Interior personally or by registered or certified mail (return receipt requested) at the address specified in the notice of failure to comply or notice of assessment. Hearings must take place following procedures set forth in 43 CFR part 4, subparts A and B.

(2) Your failure to file a written request for a hearing within 45 days of the date of service of a notice of failure to comply or notice of assessment waives your right to a hearing.

(3) Upon receiving a request for a hearing, the Hearings Division assigns an administrative law judge to the case, gives notice of assignment promptly to the parties, and files all pleadings, papers, and other documents in the proceeding directly with the administrative law judge, with copies served on the opposing party.

(4) Subject to the provisions of 43 CFR 1.3, you may appear by representative or by counsel, and may participate fully in the proceedings. If you fail to appear and the administrative law judge determines that this failure is without good cause, the administrative law judge may, in his/her discretion, determine that this failure waives your right to a hearing and consent to the making of a decision on the record.

(5) Departmental counsel, designated by the Solicitor of the Department of the Interior, represents the Secretary in the proceedings. Upon notice to the Secretary of the assignment of an administrative law judge to the case, this counsel must enter his/her appearance on behalf of the Secretary and must file all petitions and correspondence exchanges by the Secretary and the respondent that become part of the hearing record. Thereafter, you must serve all documents for the Secretary on his/her counsel.

(6) Hearing administration. (i) The administrative law judge has all powers accorded by law and necessary to preside over the parties and the proceedings and to make decisions under 5 U.S.C. 554-557.

(ii) The transcript of testimony; the exhibits; and all papers, documents, and requests filed in the proceedings constitute the record for decision. The administrative law judge renders a written decision upon the record, which sets forth his/her findings of fact and conclusions of law, and the reasons and basis for them.

(iii) Unless you file a notice of appeal described in these regulations, the administrative law judge's decision constitutes the final administrative determination of the Secretary in the matter and takes effect 30 calendar days from this decision.

(k) *How you appeal a decision.* (1) Either you or the Secretary may appeal the decision of an administrative law judge by filing a "Notice of Appeal" with the Interior Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203-1954, within 30 calendar days of the date of the

administrative law judge's decision. This notice must be accompanied by proof of service on the administrative law judge and the opposing party.

(2) To the extent they are not inconsistent with these regulations, the provisions of the Department of the Interior Hearings and Appeals Procedures in 43 CFR part 4, subpart D, apply to such appeal proceedings. The appeal board's decision on the appeal must be in writing and takes effect as the final administrative determination of the Secretary on the date that the decision is rendered, unless otherwise specified in the decision.

(3) You may obtain copies of decisions in civil penalty proceedings instituted under the Act by sending a request to the Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203-1954. Fees for this service are established by the director of that office.

(l) *The final administrative decision.* (1) When you have been served with a notice of assessment and have accepted the penalty as provided in these regulations, the notice constitutes the final administrative decision.

(2) When you have been served with a notice of assessment and have not filed a timely request for a hearing as provided in these regulations, the notice of assessment constitutes the final administrative decision.

(3) When you have been served with a notice of assessment and have filed a timely request for a hearing as provided in these regulations, the decision resulting from the hearing or any applicable administrative appeal from it constitutes the final administrative decision.

(m) *How you pay the penalty.* (1) If you are assessed a civil penalty, you have 45 calendar days from the date of issuance of the final administrative decision to make full payment of the penalty assessed to the Secretary, unless you have filed a timely request for appeal with a court of competent jurisdiction.

(2) If you fail to pay the penalty, the Secretary may request the Attorney General of the United States to collect the penalty by instituting a civil action in the U.S. District Court for the district in which your museum is located. In these actions, the validity and amount of the penalty is not subject to review by the court.

(3) Assessing a penalty under this section is not a waiver by the Secretary of the right to pursue other available legal or administrative remedies.

Dated: December 16, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–7947 Filed 4–2–03; 8:45 am]

BILLING CODE 4310–70–S



Federal Register

Thursday,
April 3, 2003

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 2, et al.
Federal Acquisition Regulation; Central Contractor Registration; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 2, et al.

[FAR Case 2002–018]

RIN 9000–AJ61

Federal Acquisition Regulation; Central Contractor Registration

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to require contractor registration in the Central Contractor Registration (CCR) database prior to award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement. In addition, the rule requires contracting officers to modify existing contracts whose period of performance extends beyond September 30, 2003, to require contractors to register in the CCR database by September 30, 2003. The rule also revises the source list of supplies at FAR 13.102 to reflect statutory changes in 15 U.S.C. 644(g).

DATES: Interested parties should submit comments in writing on or before June 2, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2002–018@gsa.gov*. Please submit comments only and cite FAR case 2002–018 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAR case 2002–018.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes to amend the Federal Acquisition Regulation (FAR) to require contractor registration in a Central Contractor Registration (CCR) database prior to the award of a contract, basic agreement, basic ordering agreement, blanket purchase agreement, and the modification of all existing contracts, basic agreements, basic ordering agreements, blanket purchase agreements, or orders by September 30, 2003.

Certain agencies, *e.g.*, DoD, currently require in their regulations that contractors register in the CCR database. For other agencies, under current FAR regulations, contractors are required to submit the same information to various contracting and payment offices. Under the proposed rule, contractors are required to provide certain business information, including their Taxpayer Identification Number (TINs) and Electronic Funds Transfer (EFT) information only once into a common Governmentwide data source. The Government will use this common Governmentwide data source to more efficiently meet the requirements of the Debt Collection Improvement Act of 1996 (section 31001 of Pub. L. 104–134). This proposed rule will not create a total electronic commerce environment, but will help provide a basic framework or foundation that will allow migration to a total electronic commerce environment. There are other projects that are completed (FedBizOpps) or in the planning stages, which are complementary and will also become part of the total electronic commerce initiative.

The "Business Partner Network" definition in the FAR coverage has been limited to contractors because the regulation is directed towards contractors. It should be noted that Government use of the Business Partner Network is broader in scope and includes contractors, grantees, and others.

Also, the source list of supplies at FAR 13.102 has been revised to reflect statutory changes in 15 U.S.C. 644(g).

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The analysis is summarized as follows:

Certain agencies, *e.g.*, DoD, currently require in their regulations that contractors register in the CCR database. For other agencies, under current FAR regulations, contractors are required to submit the same information to various contracting and payment offices. Under the proposed rule, contractors are required to provide certain business information, including their Taxpayer Identification Number (TINs) and Electronic Funds Transfer (EFT) information only once into a common Governmentwide data source. The Government will use this common Governmentwide data source to more efficiently meet the requirements of the Debt Collection Improvement Act of 1996 (section 31001 of Pub. L. 104–134). This proposed rule will not create a total electronic commerce environment, but will help provide a basic framework or foundation that will allow migration to a total electronic commerce environment. There are other projects that are completed (FedBizOpps) or in the planning, which are complementary and will also become part of the total electronic commerce initiative.

To date, no supporting data has been collected; therefore, there is no available estimate of the number of small businesses that will be subject to the rule. However, some agencies (*e.g.*, DoD) already have this requirement and there does not appear to be any adverse impact on small business. Based on Federal Procurement Data System information, approximately, 54,199 businesses (42,675 small businesses, 11,524 large businesses) were awarded contracts of $25,000 or more in fiscal year 2001. It is estimated that a majority of them will be subject to the rule. Many of these businesses are already among the over 200,000 registrants in CCR. Information is not available to identify the additional number of small businesses that were awarded contracts of less than $25,000, or were awarded basic agreements, basic ordering agreements, or blanket purchase agreements. All small entities will be subject to the rule unless their contract, basic agreements, basic ordering agreements, and blanket purchase agreements fall within one of the five exceptions. Administrative or financial personnel, who have general knowledge of the contractor's business, including the contractor's bank account and financial agent, are able to register by providing the pertinent information into the CCR database. Existing regulations require contractors to submit, with each offer, or as a term of each basic agreement, basic ordering agreement, and blanket purchase agreement, the same information.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 2, 4, 13, 32, and 52 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 2002–018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. Accordingly, the FAR Secretariat has submitted a request for approval of a new information collection requirement concerning Central Contractor Registration to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Annual Reporting Burden

The paperwork burden analysis takes into account the burden required for current registrants to keep the information current, complete and accurate and the burden required for new registrants to review instructions, search existing data sources, gather and maintain the data needed, and completing and reviewing the collection of information. Public reporting burden for this collection of information is estimated to average 1 hour per response for new and current registrants.

The annual reporting burden is estimated as follows:

Respondents: 54,199.
Responses per respondent: 1.
Total annual responses: 54,199.
Preparation hours per response: 1.
Total response burden hours: 54,199.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than June 2, 2003, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–00XX, Central Contractor Registration, in all correspondence.

List of Subjects in 48 CFR Parts 2, 4, 13, 32, and 52

Government procurement.

Dated: March 27, 2003.

Ralph J. De Stefano,

Acting Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 4, 13, 32, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 13, 32, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101(b) by adding, in alphabetical order, the definitions "Central Contractor Registration (CCR) database", "Data Universal Numbering System (DUNS) number", "Data Universal Numbering System +4 (DUNS+4) number", and "Registered in the CCR database" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Central Contractor Registration (CCR) database means the primary Government repository for contractor information required for the conduct of business with the Government.

* * * * *

Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by Dun and Bradstreet plus a 4-character suffix that may be assigned by a business concern. This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (*see* Subpart 32.11) for the same concern.

* * * * *

Registered in the CCR database means that—

(1) The contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated mandatory data fields and has marked the record "Active".

* * * * *

PART 4—ADMINISTRATIVE MATTERS

3. Amend section 4.603 by revising paragraph (a)(1) to read as follows:

4.603 Solicitation provisions.

(a)(1) The contracting officer shall insert the provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations that—

(i) Are expected to result in a requirement for the generation of an SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report (see 4.602(c)), or a similar agency form; and

(ii) Do not contain the clause at 52.204–XX, Central Contractor Registration.

* * * * *

4. Add subpart 4.11 to read as follows:

Subpart 4.11—Central Contractor Registration

Sec.

4.1100 Scope.
4.1101 Definitions.
4.1102 Policy.
4.1103 Procedures.
4.1104 Solicitation provision and contract clauses.

4.1100 Scope.

This subpart prescribes policies and procedures for requiring contractor registration in the Central Contractor Registration (CCR) database, a part of the Business Partner Network (BPN) to—

(a) Increase visibility of vendor sources (including their geographical locations) for specific supplies and services; and

(b) Establish a common source of vendor data for the Government.

4.1101 Definitions.

As used in this subpart—

Agreement means basic agreement, basic ordering agreement, or blanket purchase agreement.

Business Partner Network means an integrated electronic infrastructure the Government uses to manage (*i.e.*, collect, validate, access and maintain) the information it needs to transact business with its contractors.

4.1102 Policy.

(a) Prospective contractors shall be registered in the CCR database prior to award of a contract or agreement, except for—

(1) Purchases that use a Governmentwide commercial purchase card as the purchasing mechanism;

(2) Classified contracts or purchases (*see* 4.401) when registration in the CCR database, or use of CCR data, could compromise the safeguarding of classified information or national security;

(3) Contracts awarded by—

(i) Deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(7); or

(ii) Contracting officers in the conduct of emergency operations, such as responses to natural or environmental disasters or national or civil emergencies, *e.g.*, Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121);

(4) Contracts to support unusual or compelling needs (*see* 6.302–2); and

(5) Awards made to foreign vendors for work performed outside the United States, if it is impractical to obtain CCR registration before award.

(b) If practical, the contracting officer shall modify the contract or agreement awarded under paragraph (a)(3) or (a)(4) of this section to required CCR registration.

(c)(1)(i) If a contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the contractor shall provide the responsible contracting officer a minimum of one business day's written notification of its intention to change the name in the CCR database; comply with the requirements of 42.12; and agree in writing to the timeline and procedures specified by the responsible contracting officer. The contractor must provide with the notification sufficient documentation to support the "legally" changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of the FAR clause at 52.204–XX, CCR, or fails to perform the agreement at FAR 52.204–XX(g)(1)(i)(3), and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the contractor to be other than the contractor indicated in the contract will be considered to be incorrect information within the meaning of the "suspension of payment" paragraph of the EFT clause of this contract.

(2) The contractor shall not change the name or address for electronic funds transfer payments (EFT) or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (*see* Subpart 32.8, Assignment of Claims).

Assignees shall be separately registered in the CCR database. Information provided to the contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that contractor will be considered to be incorrect information within the meaning of the "suspension of payment" paragraph of the EFT clause of this contract.

4.1103 Procedures.

(a) Unless the acquisition is exempt under 4.1102, the contracting officer—

(1) Shall verify that the prospective contractor is registered in the CCR database (*see* paragraph (b) of this section) before awarding a contract or agreement;

(2) Should use the DUNS number or, if applicable, the DUNS+4 number, to verify registration—

(i) Via the Internet at *http://www.ccr.gov;*

(ii) By calling toll-free: 1–888–227–2423, commercial: (616) 961–5757, or DSN: 932–5757; or

(iii) As otherwise provided by agency procedures; and

(3) Shall modify a contract or agreement that does not already include the requirement to be registered in the CCR database and maintain registration until final payment, and whose period of performance extends beyond September 30, 2003—

(i) To incorporate, as appropriate, the clause at 52.204–XX, Central Contractor Registration, and its Alternate 1, or, for a contract for commercial items, an addendum to 52.212–4, Contract Terms and Conditions—Commercial Items, that requires the contractor to be registered in the CCR database by September 30, 2003, and maintain registration until final payment; and

(ii) In sufficient time to permit CCR registration by September 30, 2003.

(b) Need not verify registration before placing an order or call if the contract or agreement includes the clause at 52.204.XX, or 52.212–4(t), or a similar agency clause.

(c) If the contracting officer, when awarding a contract or agreement, determines that a prospective contractor is not registered in the CCR database and an exception to the registration requirements for the award does not apply (*see* 4.1102), the contracting officer shall—

(1) If the needs of the requiring activity allow for a delay, make award after the apparently successful offeror has registered in the CCR database. The contracting officer shall advise the offeror of the number of days it will be allowed to become registered. If the offeror does not become registered by the required date, the contracting officer shall award to the next otherwise successful registered offeror following the same procedures (*i.e.*, if the next apparently successful offeror is not registered, the contracting officer shall advise the offeror of the number of days it will be allowed to become registered, etc.); or

(2) If the needs of the requiring activity do not allow for a delay, proceed to award to the next otherwise successful registered offeror, provided that written approval is obtained at one level above the contracting officer.

(d) Agencies shall protect against improper disclosure of contractor CCR information.

(e) The contracting officer shall, on contractual documents transmitted to the payment office, provide the DUNS number, or, if applicable, the DUNS+4, in accordance with agency procedures.

4.1104 Solicitation provision and contract clauses.

Except as provided in 4.1102(a), use the clause at 52.204–XX Central Contractor Registration, in solicitations and contracts that require contractors to be registered in the CCR database. If modifying a contract, or an agreement to require registration, use the clause with its Alternate I.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

5. Amend section 13.102 by revising the introductory text of paragraph (a); and adding paragraphs (a)(4) and (a)(5) to read as follows:

13.102 Source list.

(a) Each contracting office should maintain a source list (or lists, if more convenient). A list of new supply sources may be obtained from the Central Contractor Registration database (*see* 4.11) at *http://www.ccr.gov* or the Procurement Marketing and Access Network (PRO–Net) of the Small Business Administration. Either list should identify the status of each source (when the status is made known to the contracting office) in the following categories:

* * * * *

(4) HUBZone small business.

(5) Service-disabled veteran-owned small business.

* * * * *

PART 32—CONTRACT FINANCING

6. Amend section 32.805 by adding paragraph (d)(4) to read as follows:

32.805 Procedure.

* * * * *

(d) * * *

(4) The assignee is registered separately in the Central Contractor Registration unless one of the exceptions in 4.1102 applies.

* * * * *

32.1103 [Amended]

7. Amend section 32.1103 by removing the word "where" from paragraph (d).

8. Amend section 32.1110 by revising the introductory text of paragraph (a), (a)(1), and (a)(2)(i) to read as follows:

32.1110 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at—

(1) 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, in solicitations and contracts that include the clause at 52.204–XX, Central Contractor Registration, or an agency clause that requires a contractor to be registered in the CCR database and maintain registration until final payment, unless—

(i) Payment will be made through a third party arrangement (see 13.301 and paragraph (d) of this section); or

(ii) An exception listed in 32.1103(a) through (i) applies.

(2)(i) 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, in solicitations and contracts that require EFT as the method for payment but do not include the clause at 52.204–XX, Central Contractor Registration, or a similar agency clause that requires the contractor to be registered in the CCR database.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Amend section 52.204–6 by revising the date of the provision and paragraph (b); and removing paragraph (c). The revised text reads as follows:

52.204–6 Data Universal Numbering System (DUNS) Number.

* * * * *

Data Universal Numbering System (DUNS) Number (Date)

* * * * *

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) If located within the United States, by calling Dun and Bradstreet at 1–800–333–0505 or via the Internet at *http://www.dnb.com;* or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet Information Services Office.

(2) The offeror should be prepared to provide the following information:

(i) Company name.

(ii) Company address.

(iii) Company telephone number.

(iv) Line of business.

(v) Chief executive officer/key manager.

(vi) Date the company was started.

(vii) Number of people employed by the company.

(viii) Company affiliation.

(End of provision)

10. Add section 52.204–XX to read as follows:

52.204–XX Central Contractor Registration.

As prescribed in 4.1104(a), use the following clause:

Central Contractor Registration (Date)

(a) Definitions. As used in this clause—

Central Contractor Registration (CCR) database means the primary Government repository for Contractor information required for the conduct of business with the Government.

Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by Dun and Bradstreet plus a 4-character suffix that may be assigned by a business concern. This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (*see* FAR 32.11) for the same parent concern.

Registered in the CCR database means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields and has marked the record "Active".

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS or DUNS+4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) If located within the United States, by calling Dun and Bradstreet at 1–800–333–0505 or via the Internet at *http://www.dnb.com;* or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet Information Services Office.

(2) The offeror should be prepared to provide the following information:

(i) Company name.

(ii) Company address.

(iii) Company telephone number.

(iv) Line of business.

(v) Chief executive officer/key manager.

(vi) Date the company was started.

(vii) Number of people employed by the company.

(viii) Company affiliation.

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered offeror.

(e) Processing time should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)(1)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not

completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the Contractor shall provide the responsible contracting officer a minimum of one business day's written notification of its intention to (1) Change the name in the CCR database; (2) comply with the requirements of subpart 42.12; and (3) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the "legally" changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(3) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for electronic funds transfer (EFT) payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (*see* FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the Internet at *http://www.ccr.gov* or by calling 1–888–227–2423 or 616–961–5757.

(End of clause)

Alternate I (DATE). As prescribed in 4.1104(a), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b)(1) The Contractor shall be registered in the CCR database by _____ [*Contracting Officer shall insert a date no later than September 30, 2003*]. The Contractor shall maintain registration during performance and through final payment of this contract.

(2) The Contractor shall enter, in the block with its name and address on the cover page of the Standard Form 30, Amendment of Solicitation/Modification of Contract, the annotation "DUNS" or "DUNS+4" followed by the DUNS or DUNS+4 number that identifies the Contractor's name and address exactly as stated in this contract. The DUNS number will be used by the Contracting Officer to verify that the Contractor is registered in the CCR database.

11. Amend section 52.212–1 by revising date of the provision and paragraph (j); and adding a new paragraph (k) to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (Date)

* * * * *

(j) *Data Universal Numbering System (DUNS) Number.* (Applies to all offers exceeding $25,000, and offers of $25,000 or less if the solicitation requires the Contractor to be registered in the Central Contractor Registration (CCR) database. The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS or DUNS+4 number that identifies the offeror's name and address. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (*see* FAR 32.11) for the same parent concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1–800–333–0505 or via the Internet at *http://www.dnb.com*. An offeror located outside the United States must contact the local Dun and Bradstreet Information Services Office for a DUNS number.

(k) *Central Contractor Registration.* Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered offeror. Offerors may obtain information on registration and annual confirmation requirements via the Internet at *http://www.ccr.gov* or by calling 1–888–227–2423 or 616–961–5757.

(End of provision)

12. Amend section 52.212–4 by revising date of the clause; and adding a new paragraph (t) to read as follows:

52.212–4 Contract Terms and Conditions—Commercial Items

* * * * *

Contract Terms and Conditions—Commercial Items (Date)

* * * * *

(t) *Central Contractor Registration (CCR).* (1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2) The Contractor shall not change the name or address for electronic funds transfer (EFT) payments or manual payments as appropriate in the CCR record to reflect an assignee for the purpose of assignment of claims (*see* FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(3) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the Internet at *http://www.ccr.gov* or by calling 1–888–227–2423 or 616–961–5757.

(End of clause)

52.213–4 [Amended]

13. Amend section 52.213–4 by removing from the clause heading "(SEPT 2002)" and in paragraph (b)(1)(ix) "(MAY 1999)" and adding in their places "(DATE)".

14. Amend section 52.232–33 by—

a. Revising the date of clause;

b. Removing paragraph (e);

c. Redesignating paragraphs (f) through (j) as (e) through (i), respectively; and

d. Revising the newly designated paragraph (g) to read as follows:

52.232–33 Payment by Electronic Funds Transfer—Central Contractor Registration.

* * * * *

Payment by Electronic Funds Transfer—Central Contractor Registration (Date)

* * * * *

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

* * * * *

[FR Doc. 03–7928 Filed 4–2–03; 8:45 am]
BILLING CODE 6820–EP–P

VOL
68

ISS
64

AP
3

003

MI

Federal Register

Thursday,
April 3, 2003

Part IV

Nuclear Regulatory Commission

10 CFR Parts 170 and 171
Revision of Fee Schedules; Fee Recovery for FY 2003; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150–AH14

Revision of Fee Schedules; Fee Recovery for FY 2003

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires that the NRC recover approximately 94 percent of its budget authority in fiscal year (FY) 2003, less the amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 2003 is approximately $526.3 million.

DATES: The comment period expires May 5, 2003. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA–90 requires that the NRC collect the FY 2003 fees by September 30, 2003, requests for extensions of the comment period will not be granted.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301–415–1966). Comments may be faxed to (301) 415–1101.

Comments may also be submitted via the NRC's rulemaking Web site (*http://ruleforum.llnl.gov*). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the NRC's rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov*.

With the exception of restricted information, documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

In addition to being available in ADAMS, the agency workpapers that support these proposed changes to 10 CFR parts 170 and 171 may also be examined during the 30-day comment period at the NRC Public Document Room, Room O–1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Robert Carlson, telephone 301–415–8165; or Ann Norris, telephone 301–415–7807; Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed Action
III. Plain Language
IV. Voluntary Consensus Standards
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Analysis
IX. Backfit Analysis

I. Background

For FYs 1991 through 2000, OBRA–90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for agency budgeted costs that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. As a result, the NRC is required to recover approximately 94 percent of its FY 2003 budget authority, less the amounts appropriated from the NWF, through fees. In the Energy and Water Development Appropriation Act, 2003, contained in the Consolidated Appropriations Resolution, 2003 (Public Law 108–7), Congress appropriated $584.6 million to the NRC for FY 2003. The total amount NRC is required to recover for FY 2003 is approximately $526.3 million.

The NRC assesses two types of fees to meet the requirements of OBRA–90, as amended. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses, and for certain types of existing licenses, the review of renewal applications, the review of amendment requests, and inspections. Second, annual fees established in 10 CFR part 171 under the authority of OBRA–90, recover generic and other regulatory costs not otherwise recovered through 10 CFR part 170 fees.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 94 percent of its FY 2003 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF. The NRC's total budget authority for FY 2003 is $584.6 million, of which approximately $24.7 million has been appropriated from the NWF. Based on the 94 percent fee recovery requirement, the NRC must recover approximately $526.3 million in FY 2003 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2003 is $46.8 million more than the amount estimated for recovery in FY 2002.

The NRC estimates that approximately $124.7 million will be recovered in FY 2003 from part 170 fees and other offsetting receipts. For FY 2003, the NRC also estimates a net adjustment of approximately $1.9 million for FY 2003 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2003 for FY 2002 invoices. The remaining $399.7 million would be recovered through the part 171 annual fees, compared to $345.6 million for FY 2002.

A primary reason for the increase in total fees, as well as the annual fee amount, for FY 2003 compared to FY 2002 is that the amount to be recovered for FY 2003 includes $29.3 million for homeland security activities, whereas the FY 2002 funding for homeland security was excluded from fees. While the President's FY 2003 budget requested that NRC's funding for homeland security activities continue to be excluded from the fee base, the Energy and Water Development Appropriations Act, 2003, contained in the Consolidated Appropriations Resolution, 2003 (Public Law 108–7), included NRC's budget for homeland security activities in the fee base. Therefore, the proposed FY 2003 fees include the $29.3 million budgeted for NRC's homeland security activities. Other reasons for the fee increases include the 2003 Federal pay raise, and the increased workload for new reactor licensing activities and reactor license renewal.

Table I summarizes the budget and fee recovery amounts for FY 2003. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2003

[Dollars in millions]

Total Budget Authority	$584.6
Less NWF	−24.7
Balance	$559.9
Fee Recovery Rate for FY 2003	× 94.0%
Total Amount to be Recovered For FY 2003	$526.3
Less Carryover from FY 2002	−0
Amount to be Recovered Through Fees and Other Receipts	$526.3
Less Estimated Part 170 Fees and Other Receipts	−124.7
Part 171 Fee Collections Required	$401.6
Part 171 Billing Adjustments:	
Unpaid FY 2003 Invoices (estimated)	2.4
Less Payments Received in FY 2003 for Prior Year Invoices (estimated)	−4.3
Subtotal	−1.9
Adjusted Part 171 Collections Required	$399.7

The FY 2003 final fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2003 would become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2003 final rule. For these licensees, payment would be due on the effective date of the FY 2003 rule. Those materials licensees whose license anniversary date during FY 2003 falls before the effective date of the final FY 2003 rule would be billed for the annual fee during the anniversary month of the license at the FY 2002 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2003 rule would be billed for the annual fee at the FY 2003 annual fee rate during the anniversary month of the license, and payment would be due on the date of the invoice.

As a matter of courtesy, the NRC plans to continue mailing the proposed fee rule to all licensees, although, in accordance with its FY 1998 announcement, the NRC has discontinued mailing the final fee rule to all licensees as a cost-saving measure. Accordingly, the NRC does not plan to routinely mail the FY 2003 final fee rule or future final fee rules to licensees. However, the NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at *fees@nrc.gov*. The NRC plans to publish the final fee rule in June 2003. In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://ruleforum.llnl.gov* for at least 90 days after the effective date of the final rule.

The NRC is proposing to make changes to 10 CFR parts 170 and 171 as discussed in Sections A and B below.

A. Amendments to 10 CFR part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

The NRC is proposing to establish the hourly rates used to calculate fees and to adjust the part 170 fees based on the proposed hourly rates and the results of the agency's biennial review of fees required by the Chief Financial Officer (CFO) Act of 1990 (Pub. L. 101–578, November 15, 1990, 104 Stat. 2838). Additionally, the NRC is proposing to revise fee category 15.A. of § 170.31 to cover all categories of radioactive waste import license applications and to revise category 15.B. to remove the radioactive waste import license applications.

The proposed amendments are as follows:

1. Hourly Rates

The NRC is proposing to establish in § 170.20 the two professional hourly rates for NRC staff time. These proposed rates would be based on the number of FY 2003 direct program full time equivalents (FTEs) and the FY 2003 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF. These rates are used to determine the part 170 fees. The proposed rate for the reactor program is $156 per hour ($276,661 per direct FTE). This rate would be applicable to all activities for which fees are assessed under § 170.21 of the fee regulations. The proposed rate for the materials program (nuclear materials and nuclear waste programs) is $158 per hour ($280,876 per direct FTE). This rate would be applicable to all activities for which fees are assessed under § 170.31 of the fee regulations. In the FY 2002 final fee rule, the reactor and materials program rates were $156 and $152, respectively.

A major reason for the 4 percent increase to the materials program rate is the salary and benefits increase that results primarily from the Government-wide pay raise. While salary and benefits also increase for the reactor

program, the increase is offset by a reduction in the average overhead cost per direct FTE.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for the reactor program and the materials program (nuclear materials and nuclear waste programs).

b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are charged directly through the various categories of fees.

c. All other program costs (*i.e.*, Salaries and Benefits, Travel) represent "in-house" costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and for the Office of the Inspector General, are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE II.—FY 2003 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

	Reactor program	Materials program
Direct Program Salaries & Benefits (millions)	$134.1	$34.4
Overhead Salaries and Benefits, Program Travel and Other Support (millions)	62.3	17.1
Allocated Agency Management and Support (millions)	118.5	31.1
Subtotal (millions)	$314.9	$82.6
Less offsetting receipts (million)	−0.1	−0.00
Total Budget Included in Hourly Rate (millions)	$314.8	$82.6
Program Direct FTEs	1,138.0	294.1
Rate per Direct FTE	$276,661	$280,876
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	$156	$158

As shown in Table II, dividing the $314.8 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1138.0) results in a rate for the reactor program of $276,661 per FTE for FY 2003. The Direct FTE Hourly Rate for the reactor program would be $156 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($276,661) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A–76, "Performance of Commercial Activities." Similarly, dividing the $82.6 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (294.1) results in a rate of $280,876 per FTE for FY 2003. The Direct FTE Hourly Rate for the materials program would be $158 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($280,876) by the number of productive hours in one year (1,776 hours).

2. Fee Adjustments

The NRC is proposing to adjust the current part 170 fees in §§ 170.21 and 170.31 to reflect both the proposed hourly rates and the results of the biennial review of part 170 fees required by the CFO Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a new license application for those materials licensees whose fees are based on the average cost method, or "flat" fees. This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that fees based on the average number of professional staff hours required to complete licensing actions in the materials program should be increased in some categories and decreased in others to more accurately reflect current costs incurred in completing these licensing actions. The data for the average number of professional staff hours needed to complete new licensing actions was last updated in FY 2001 (66 FR 32452; June 14, 2001). Thus, the revised average professional staff hours in this proposed fee rule reflect the changes in the NRC licensing review program that have occurred since FY 2001.

As a result of the biennial review, the proposed licensing fees that are based on the average professional staff hours reflect an increase in average time for new license applications for six of the 33 materials program fee categories, a decrease in average time for eight fee categories, and the same average time for the remaining 19 fee categories. Similarly, the average time for applications for new export and import licenses and for amendments to export and import licenses remained the same for eight fee categories in §§ 170.21 and 170.31, and decreased for two other fee categories.

The proposed licensing fees for fee categories K.1 through K.5 of § 170.21, and fee categories 1C, 1D, 2B, 2C, 3A through 3P, 4B through 9D, 10B, 15A through 15E, and 16 of § 170.31 are based on the revised average professional staff hours needed to process the licensing actions multiplied by the proposed materials program professional hourly rate for FY 2003.

The biennial review also included the "flat" fee for the general license registrations covered by fee Category 3.Q. As a result of this review, the proposed fee per registration is $620, compared to the current fee of $450. The proposed fee is based on the current estimated number of registrants, current annual resource estimates for the program, and the FY 2003 materials program FTE rate. This increase to the current fee of $450 is based on experience with the registrations to date, which indicates that the average cost per registrant is higher than originally estimated. The next biennial review of the registration fee will be included in the FY 2005 fee rule; however, the registration fee may change in the FY 2004 fee rule if there is a change to the materials program FTE rate for FY 2004.

The amounts of the materials licensing "flat" fees are rounded as follows: fees under $1,000 are rounded to the nearest $10, fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100, and fees that are greater than $100,000 are rounded to the nearest $1,000. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

The NRC is also proposing to expand fee Category 15.A. of § 170.31 to include all categories of radioactive waste import license applications, and to modify Category 15.B. of § 170.31 to exclude these types of import license applications. This change is being proposed because all applications for the import of radioactive waste must be reviewed by the Executive Branch and require the involvement of all states and compacts, as well as extensive coordination within the NRC. Therefore, the NRC efforts for the waste import license applications are more closely aligned with the efforts for the other types of export and import licenses currently covered by Category 15.A.

In summary, the NRC is proposing to amend 10 CFR part 170 to—

1. Establish the materials and reactor programs FTE hourly rates;

2. Revise the licensing fees to be assessed to reflect the reactor and materials program hourly rates and to comply with the CFO Act requirement that fees be reviewed biennially and revised as necessary to reflect the cost to the agency;

3. Revise Category 15.A. of § 170.31 to include radioactive waste import licenses, and exclude these types of applications from Category 15.B.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

The NRC proposes to revise the annual fees for FY 2003 as follows.

1. Annual Fees

The NRC is proposing to establish rebaselined annual fees for FY 2003. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995), and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), determined that base annual fees will be re-established (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licenses. The fees were last rebaselined in FY 2002. Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebaselining fees would result in increased annual fees compared to FY 2002 for four classes of licenses (power reactors, spent fuel storage/reactor decommissioning, fuel facilities, and rare earth facilities), and decreased annual fees for two classes (non-power reactors and uranium recovery). For the small materials users and transportation classes, some categories of licenses would have increased annual fees and others would have decreased annual fees.

The annual fees in §§ 171.15 and 171.16 would be revised for FY 2003 to recover approximately 94 percent of the NRC's FY 2003 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF. The total amount to be recovered through annual fees for FY 2003 is $399.7 million, compared to $345.6 million for FY 2002.

Within the fee classes, the proposed FY 2003 annual fees would increase for many categories of licenses, decrease for other categories, and for one category remain the same from the previous year. The two largest categories of materials licensees (which together include nearly 3,500 of NRC's approximately 4,900 materials user licenses) show annual fee decreases compared to FY 2002 of 7.4 percent and 9.8 percent. The increases in annual fees range from approximately 1.0 percent (for licenses authorizing receipt of radioactive waste for packaging and transfer to others for disposal) to approximately 175 percent (for rare earth facilities). The decreases in annual fees range from approximately 1.0 percent for DOE's transportation activities to approximately 53 percent for materials licenses authorizing possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies (other than field flooding). The fees remain the same for materials licenses authorizing possession and use of byproduct material in sealed sources for irradiation of materials where the source is not removed from its shield.

Factors affecting the changes to the annual fee amounts include adjustments in budgeted costs for the different classes of licenses (including the addition of budgeted costs for NRC's homeland security activities), the reduction in the fee recovery rate from 96 percent for FY 2002 to 94 percent for FY 2003, the estimated part 170 collections for the various classes of licenses, the increased hourly rate for the materials and waste program, and decreases in the numbers of licensees for certain categories of licenses. In addition, there is no carryover from FY 2002 to reduce the FY 2003 fees. The FY 2002 fees were reduced by a $1.7 million carryover from FY 2001.

Table IV below shows the proposed rebaselined annual fees for FY 2003 for representative categories of licenses.

TABLE IV.—REBASELINED ANNUAL FEES FOR FY 2003

Class/category of licenses	Proposed FY 2003 Annual fee
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	$3,278,000
Spent Fuel Storage/Reactor Decommissioning	309,000
Nonpower Reactors	68,300
High Enriched Uranium Fuel Facility	5,836,000
Low Enriched Uranium Fuel Facility	1,957,000
UF_6 Conversion Facility	839,000
Uranium Mills	64,800
Transportation:	
Users/Fabricators	75,000
Users Only	7,000

TABLE IV.—REBASELINED ANNUAL FEES FOR FY 2003—Continued

Class/category of licenses	Proposed FY 2003 Annual fee
Typical Materials Users:	
Radiographers	12,300
Well Loggers	4,700
Gauge Users	2,500
Broad Scope Medical	24,900

The annual fees assessed to each class of licenses include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licenses, but must be recovered from licensees to comply with the requirements of OBRA–90, as amended. Based on the FY 2001 Energy and Water Appropriations Act which amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005, the total surcharge costs for FY 2003 will be reduced by about $33.6 million. The total FY 2003 budgeted costs for these activities and the reduction to the total surcharge amount for fee recovery purposes are shown in Table V. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE V.—SURCHARGE COSTS

[Dollars in millions]

Category of costs	FY 2003 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	$10.3
b. Agreement State oversight	8.8
c. Low-level waste disposal generic activities	2.7
d. Site decommissioning management plan activities not recovered under part 170	3.6
2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy:	
a. Fee exemption for nonprofit educational institutions	6.7
b. Licensing and inspection activities associated with other Federal agencies	2.9
c. Costs not recovered from small entities under 10 CFR 171.16(c)	4.5
3. Activities supporting NRC operating licensees and others:	
a. Regulatory support to Agreement States	13.4
b. Generic decommissioning/reclamation (except those related to power reactors)	4.9
Total surcharge costs	57.8
Less 6 percent of NRC's FY 2003 total budget (less NWF)	−33.6
Total Surcharge Costs to be Recovered	$24.2

As shown in Table V, $24.2 million would be the total surcharge cost allocated to the various classes of licenses for FY 2003. The NRC would continue to allocate the surcharge costs, except Low-Level Waste (LLW) surcharge costs, to each class of licenses based on the percent of the budget for that class. The NRC would continue to allocate the LLW surcharge costs based on the volume of LLW disposed of by certain classes of licenses. The proposed surcharge costs allocated to each class would be included in the annual fee assessed to each licensee. The FY 2003 proposed surcharge costs that would be allocated to each class of licenses are shown in Table VI. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE VI.—ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge
	Percent	$,M	Percent	$,M	$,M
Operating Power Reactors	74	2.0	79.3	17.1	19.1
Spent Fuel Storage/Reactor Decomm.	.....	.....	8.2	1.8	1.8
Nonpower Reactors	.....	.....	0.1	0.0	0.0
Fuel Facilities	8	0.2	6.7	1.4	1.6
Materials Users	18	0.5	3.8	0.8	1.3
Transportation	.....	.....	1.2	0.3	0.3
Rare Earth Facilities	.....	.....	0.2	0.0	0.0
Uranium Recovery	.....	.....	0.7	0.1	0.1

TABLE VI.—ALLOCATION OF SURCHARGE—Continued

	LLW surcharge		Non-LLW surcharge		Total surcharge
	Percent	$,M	Percent	$,M	$,M
Total Surcharge	100	2.7	100.0	21.5	24.2

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in A. through H. below. The workpapers which support this proposed rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The workpapers are available electronically at the NRC's Electronic Reading Room on the Internet at Web site address *http://www.gov/reading-rm/adams.html*. During the 30-day public comment period, the workpapers may also be examined at the NRC Public Document Room located at One White Flint North, Room O–1F22, 11555 Rockville Pike, Rockville, MD 20852–2738.

a. Fuel Facilities. The proposed annual fees for the fuel facility class reflect increased budgeted costs for activities that are not subject to cost recovery under part 170, primarily homeland security activities related to fuel facilities. Such activities include the issuance and follow-up of orders directing the fuel facility licensees to take interim compensatory measures to increase security, and a series of risk-informed vulnerability assessments the NRC is conducting on fuel facilities.

The FY 2003 budgeted costs of approximately $27.0 million to be recovered in annual fees assessed to the fuel facility class is allocated to the individual fuel facility licensees based on the effort/fee determination matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In the matrix (which is included in the NRC workpapers that are publicly available), licensees are grouped into five categories according to their licensed activities (*i.e.*, nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

The methodology is adaptable to changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate in such a way (*e.g.*, decommissioning or license termination) that results in them not being subject to part 171 costs applicable to the fee class, then the budgeted costs for the safety and/or safeguards components would be spread among the remaining fuel facility licensees/certificate holders, resulting in higher fees for those affected licensees.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities, and the relative generic regulatory programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (*i.e.*, scope, depth and rigor) level of effort.

The effort factors for the various subclasses of fuel facility licenses are summarized in Table VII.

TABLE VII.—EFFORT FACTORS FOR FUEL FACILITIES

Facility type	Number of facilities	Effort factors	
		Safety	Safeguards
High Enriched Uranium Fuel	2	91 (36.0%)	76 (57.1%)
Enrichment	2	70 (27.7%)	34 (25.6%)
Low Enriched Uranium Fuel	3	66 (26.1%)	18 (13.5%)
UF_6 Conversion	1	12 (4.7%)	0 (0%)
Limited Operations Facility	1	8 (3.2%)	3 (2.3%)
Others	1	6 (2.4%)	2 (1.5%)

Applying these factors to the safety, safeguards, and surcharge components of the $27.0 million total annual fee amount for the fuel facility class results in the proposed annual fees for each licensee within the subcategories of this class summarized in Table VIII.

TABLE VIII.—PROPOSED ANNUAL FEES FOR FUEL FACILITIES

Facility type	Proposed FY 2003 annual fee
High Enriched Uranium Fuel	$5,836,000

TABLE VIII.—PROPOSED ANNUAL FEES FOR FUEL FACILITIES—Continued

Facility type	Proposed FY 2003 annual fee
Uranium Enrichment	3,634,000

TABLE VIII.—PROPOSED ANNUAL FEES FOR FUEL FACILITIES—Continued

Facility type	Proposed FY 2003 annual fee
Low Enriched Uranium	1,957,000
UF6 Conversion	839,000
Limited Operations Facility	769,000
Others	559,000

b. Uranium Recovery Facilities. The FY 2003 budgeted costs, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately $1.5 million. Approximately $1.0 million of this amount would be assessed to DOE. The remaining $0.5 million would be recovered through annual fees assessed to conventional mills, in-situ leach solution mining facilities, and 11e.(2) mill tailings disposal facilities.

Consistent with the change in methodology adopted in the FY 2002 final fee rule (67 FR 42612; June 24, 2002), the total annual fee amount, less the amounts specifically budgeted for Title I activities, is allocated equally between Title I and Title II licensees. This would result in an annual fee being assessed to DOE to recover the costs specifically budgeted for NRC's Title I activities plus 50 percent of the remaining annual fee amount, including the surcharge, for the uranium recovery class. The remaining surcharge, generic, and other costs would be assessed to the NRC Title II program licensees that are subject to annual fees. The costs to be recovered through annual fees assessed to the uranium recovery class are shown below. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

DOE Annual Fee Amount (UMTRCA Title I and Title II general licenses):	
UMTRCA Title I budgeted costs	$393,227
50% of generic/other uranium recovery budgeted costs	495,513
50% of uranium recovery surcharge	70,829
Total Annual Fee Amount for DOE	959,569
Annual Fee Amount for UMTRCA Title II Specific Licenses:	
50% of generic/other uranium recovery budgeted costs	495,513
50% of uranium recovery surcharge	70,829
Total Annual Fee Amount for Title II Specific Licenses	566,342

The costs allocated to the various categories of Title II specific licensees are based on the uranium recovery matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). The methodology for establishing part 171 annual fees for Title II uranium recovery licensees has not changed and is as follows:

(1) The methodology identifies three categories of licenses: conventional uranium mills (Class I facilities), uranium solution mining facilities (Class II facilities), and mill tailings disposal facilities (11e.(2) disposal facilities). Each of these categories benefits from the generic uranium recovery program efforts (*e.g.*, rulemakings, staff guidance documents);

(2) The matrix relates the category and the level of benefit by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements was further divided into three subelements;

(5) The three major subelements of generic activities associated with uranium facility operations are regulatory efforts related to the operation of mills, handling and disposal of waste, and prevention of groundwater contamination. The three major subelements of generic activities associated with uranium facility closure are regulatory efforts related to decommissioning of facilities and land clean-up, reclamation and closure of tailings impoundments, and groundwater clean-up. Weighted values were assigned to each program element and subelement considering health and safety implications and the associated effort to regulate these activities. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various subclasses of specifically licensed Title II uranium recovery licensees are as follows:

TABLE IX.—WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

Facility type	Number of facilities	Category weight	Level of Benefit, Total weight	
			Value	Percent
Class I (conventional mills)	3	770	2,310	34
Class II (solution mining)	6	645	3,870	58
11e.(2) disposal	1	475	475	7
11e.(2) disposal incident to existing tailings sites	1	75	75	1

Applying these factors to the $0.5 million in budgeted costs to be recovered from Title II specific licensees results in the following proposed annual fees:

TABLE X.—ANNUAL FEES FOR TITLE II SPECIFIC LICENSES

Facility type	Proposed FY 2003 annual fee
Class I (conventional mills)	$64,800
Class II (solution mining)	54,300
11e.(2) disposal	40,000
11e.(2) disposal incidental to existing tailings sites	6,300

In the FY 2001 final rule (66 FR 32478; June 14, 2001), the NRC revised § 171.19 to establish a quarterly billing schedule for the Class I and Class II licensees, regardless of the annual fee amount. Therefore, as provided in § 171.19(b), if the amounts collected in the first three quarters of FY 2003 exceed the amount of the revised annual fee, the overpayment will be refunded; if the amounts collected in the first three quarters are less than the final revised annual fee, the remainder will be billed after the FY 2003 final fee rule is published. The remaining categories of Title II facilities are subject to billing based on the anniversary date of the license as provided in § 171.19(c).

c. Power Reactors. The approximately $308.8 million in budgeted costs to be recovered through FY 2003 annual fees assessed to the power reactor class, which includes NRC's budgeted costs for homeland security activities related to power reactors, would be divided equally among the 104 power reactors licensed to operate. This results in a proposed FY 2003 annual fee of $2,969,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the proposed FY 2003 spent fuel storage/reactor decommissioning annual fee of $309,000. This would result in a total FY 2003 annual fee of $3,278,000 for each power reactor licensed to operate.

d. Spent Fuel Storage/Reactor Decommissioning. For FY 2003, budgeted costs of approximately $37.3 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. The costs would be divided equally among the 121 licensees, resulting in a proposed FY 2003 annual fee of $309,000 per licensee.

e. Non-power Reactors. Approximately $273,000 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licenses for FY 2003. This amount would be divided equally among the four non-power reactors subject to annual fees. This results in a proposed FY 2003 annual fee of $68,300 for each licensee.

f. Rare Earth Facilities. The FY 2003 budgeted costs of approximately $377,000 for rare earth facilities to be recovered through annual fees would be divided equally among the two licensees who have a specific license for receipt and processing of source material. Prior to the beginning of FY 2003, one rare earth facility permanently ceased operations and requested that its license be amended to authorize decommissioning activities only. Consequently, this license is no longer subject to annual fees. The result is a proposed FY 2003 annual fee of $189,000 for each of the two remaining rare earth facilities.

g. Materials Users. To equitably and fairly allocate the $23.9 million in FY 2003 budgeted costs to be recovered in annual fees assessed to the approximately 5,000 diverse materials users and registrants, the NRC has continued to use the FY 1999 methodology to establish baseline annual fees for this class. The annual fees are based on the part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on how much it costs the NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses. The annual fee for these categories of licenses is developed as follows:

Annual fee = Constant × [Application Fee + (Average Inspection Cost divided by Inspection Priority)] + Inspection Multiplier × (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately $18.0 million in general costs and is 1.18 for FY 2003. The inspection multiplier is the multiple necessary to recover approximately $4.5 million in inspection costs for FY 2003, and is 0.92 for FY 2003. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2003, approximately $65,300 in budgeted costs for the implementation of revised part 35, Medical Use of Byproduct Material (unique costs), has been allocated to holders of NRC human use licenses.

The annual fee assessed to each licensee also includes a share of the $800,000 in surcharge costs allocated to the materials user class of licenses and, for certain categories of these licenses, a share of the approximately $500,000 in LLW surcharge costs allocated to the class. The proposed annual fee for each fee category is shown in § 171.16(d).

h. Transportation. Off the approximately $5.0 million in FY 2003 budgeted costs to be recovered through annual fees assessed to the transportation class of licenses (including homeland security costs), approximately $1.4 million would be recovered from annual fees assessed to DOE based on the number of part 71 Certificates of Compliance that it holds. Of the remaining $3.6 million, approximately 25 percent would be allocated to the 89 quality assurance plans authorizing use only and the 40 quality assurance plans authorizing use and design/fabrication. The remaining 75 percent would be allocated only to the 40 quality assurance plans authorizing use and design/fabrication. This results in a proposed annual fee of $7,000 for each of the holders of quality assurance plans that authorize use only, and a proposed annual fee of $75,000 for each of the holders of quality assurance plans that authorize use and design/fabrication.

2. Small Entity Annual Fees

The NRC stated in the FY 2001 fee rule (66 FR 32452; June 14, 2001), that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act. Accordingly, the NRC has re-examined the small entity fees, and does not believe that a change to the small entity fees is warranted for FY 2003. The revision to the small entity fees in FY 2000 (65 FR 36946; June 12, 2000) was based on the 25 percent increase in average total fees assessed to other materials licensees in selected categories since the small entity fees were first established and changes that had occurred in the fee structure for materials licensees over time.

Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Instead, the reduced fees for small entities are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from them some of the agency's costs for activities that benefit them. The costs not recovered from small entities for activities that benefit them must be recovered from other licensees. Given the reduction in annual fees and the relative low inflation rates, the NRC has determined that the current small entity fees of $500 and $2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the costs that benefit them.

Therefore, the NRC is proposing to retain the $2,300 small entity annual fee and the $500 lower tier small entity

annual fee for FY 2003. The NRC plans to re-examine the small entity fees again in FY 2005.

In summary, the NRC is proposing to—

1. Establish rebaselined annual fees for FY 2003;

2. Retain the current reduced fees for small entities.

III. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language (63 FR 31883; June 10, 1998). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments on the language used should be sent to the NRC as indicated under the **ADDRESSES** heading.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 94 percent of its budget authority in FY 2003 as is required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the proposed regulation. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association v. Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The NRC's fee recovery amount for FY 2003 is 94 percent. To comply with this statutory requirement and in accordance with § 171.13, the NRC is publishing the proposed amount of the FY 2003 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA–90, provides that—

(1) The annual fees be based on approximately 94 percent of the Commission's FY 2003 budget of $584.6 million less the amounts collected from part 170 fees and funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

10 CFR part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended, to recover approximately 94 percent of its FY 2003 budget authority through the assessment of user fees. This act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule would establish the schedules of fees that are necessary to implement the Congressional mandate for FY 2003. The proposed rule would result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2003.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct, or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER

REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: Sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902).

2. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

(a) Reactor Program (§ 170.21 Activities)—$156 per hour

(b) Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities)—$158 per hour

3. In § 170.21, Category K in the table is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

* * * * *

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1, 2]
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR part 110.	
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b). This category includes application for import of radioactive waste.	
Application-new license	$10,300
Amendment	$10,300
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8). This category includes application for the export of radioactive waste.	
Application-new license	$6,000
Amendment	$6,000
3. Application for export of components requiring foreign government assurances only.	
Application-new license	$1,900
Amendment	$1,900
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances.	
Application-new license	$1,300
Amendment	$1,300

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees [1, 2]
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review.	
Amendment	$240

[1] Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

* * * * *

6. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of materials licenses or import and export licenses shall pay fees for the following categories of services. The following schedule includes fees for health and safety and safeguards inspections where applicable:

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
Licensing and Inspection	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI):	
Licensing and inspection	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application	$730.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application	$1,500.
E. Licenses or certificates for construction and operation of a uranium enrichment facility:	
Licensing and inspection	Full Cost.
2. Source material:	
A. (1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, and ion exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
Licensing and inspection	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2A(1):	
Licensing and inspection	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(1):	
Licensing and inspection	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding:	
Application	$170.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
C. All other source material licenses:	
Application	$6,200.
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$7,400.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$2,900.
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). These licenses are covered by fee Category 3D.	
Application	$6,100.
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application	$2,700.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application	$1,800.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$3,700.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$8,800.
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	$4,300.
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	$4,300.
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	$1,100.
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	$650.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application	$6,200.
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application	$3,000.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application	$3,300.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations:	
Application	$3,300.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Registration	$1,200.
Q. Registration of a device(s) generally licensed under part 31 of this chapter:	
Application	$620.
4. Waste disposal and processing:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
Licensing and inspection	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$1,900.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$2,800.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application	$2,000.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
Licensing	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application	$12,600.
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$6,900.
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$4,900.
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$1,900.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application	$360.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$5,700.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$5,700.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$1,800.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$600.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Licensing and inspections	Full Cost.
B. Evaluation of 10 CFR part 71 quality assurance programs:	
Application	$2,100.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Licensing and inspection	Full Cost.
12. Special projects:	
Approvals and preapplication/Licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Licensing	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter:	
Licensing and inspection	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite.	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for import of radioactive waste.	
Application—new license	$10,300.
Amendment	$10,300.
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export of radioactive waste.	
Application—new license	$6,000.
Amendment	$6,000.
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.	
Application—new license	$1,900.
Amendment	$1,900.
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license	$1,300.
Amendment	$1,300.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.	
Amendment	$240.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	$1,500.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, generally licensed device registrations, and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

7. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

8. In § 171.15 paragraphs (b), (c), (d), and (e) are revised to read as follows:

§ 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2003 annual fee for each operating power reactor which must be collected by September 30, 2003, is $3,278,000.

(2) The FY 2003 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2003 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the FY 2003 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2003 base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors, except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, *e.g.*, updating part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2003 annual fee for each power reactor holding a part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage part 72 licensee who does not hold a part 50 license is $309,000.

(2) The FY 2003 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 2003 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2003 spent fuel storage/reactor decommissioning rebaselined annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 2003 surcharge are as follows:

(i) Low level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licenses (*e.g.*, international cooperative safety program and international safeguards activities, support for the Agreement State program, and site decommissioning management plan (SDMP) activities); and

(iii) Activities not currently subject to 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy, *e.g.*, reviews and inspections conducted of nonprofit educational institutions, licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

(2) The total FY 2003 surcharge allocated to the operating power reactor class of licenses is $19.1 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2003 operating power reactor surcharge to be assessed to each operating power reactor is approximately $183,300. This amount is calculated by dividing the total operating power reactor surcharge ($19.1 million) by the number of operating power reactors (104).

(3) The FY 2003 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is $1.8 million. The FY 2003 spent fuel storage/reactor decommissioning surcharge to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage part 72 licensee who does not hold a part 50 license is approximately $14,900. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel on site, and part 72 licensees who do not hold a part 50 license.

(e) The FY 2003 annual fees for licensees authorized to operate a non-power (test and research) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor—$68,300
Test reactor—$68,300

12. In § 171.16, paragraphs (c), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300.
Less than 35 employees	500.
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	2,300
Less than 35 employees	500

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (*See* 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. NRC Form 526 can be accessed through the NRC's Web site at *http://www.nrc.gov*. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR–0238, which is enclosed with each annual fee billing. The form can also be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at <*fees@nrc.gov.*>

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is $2,300 for each category applicable to the license(s).

(d) The FY 2003 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2003 surcharge are shown for convenience in paragraph (e) of this section. The FY 2003 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
1. Special of nuclear material:	
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
BWX Technologies SNM–42	$5,836,000
Nuclear Fuel Services SNM–124	5,836,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Global Nuclear Fuel SNM–1097	1,957,000
Framatome ANP Richland SNM–1227	1,957,00
Westinghouse Electric Company SNM–1107	1,957,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations:	
Framatome ANP SNM–1168	769,000
(b) All Others:	
General Electric SNM–960	559,000
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI).	[11] N/A
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,900
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	4,600
E. Licenses or certificates for the operation of a uranium enrichment facility	3,634,000
2. Source material:	
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	839,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities [4]	64,800
Class II facilities [4]	54,300
Other facilities [4]	189,000
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2A(2) or Category 2A(4)	40,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees[1][2][3]
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(2)	6,300
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	730
C. All other source material licenses	11,500
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	22,000
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	6,600
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct stmaterial. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). These licenses are covered by fee Category 3D	11,000
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license	4,800
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,600
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	6,700
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	24,200
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	6,100
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	6,200
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	2,200
K. Licenses issued under Subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	1,400
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	11,900
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution	5,600
N. Licenses that authorize services for other licensees, except:.	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	6,200
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license	12,300
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,500
Q. Registration of devices generally licensed pursuant to part 31 of this chapter	[13] N/A
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	10,400

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees[1][2][3]
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,500
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	4,700
B. Licenses for possession and use of byproduct material for field flooding tracer studies	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	23,300
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	11,200
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	24,900
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	4,600
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,400
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	7,000
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	7,000
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	2,200
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	740
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers:	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Quality assurance program approvals issued under part 71 of this chapter:	
Users and Fabricators	75,000
Users	7,000
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[12] N/A
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter	[7] N/A
15. Import and Export licenses	[6] N/A
16. Reciprocity	[6] N/A
17. Master materials licenses of broad scope issued to Government agencies	230,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,359,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	960,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 2002, and permanently ceased licensed activities entirely by September 30, 2002. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (*e.g.*, human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.
[6] Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.
[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.
[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.
[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.
[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.
[11] *See* § 171.15(c).
[12] *See* § 171.15(c).
[13] No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or class(es) of licenses; *e.g.*, international cooperative safety program and international safeguards activities; support for the Agreement State program; Site Decommissioning Management Plan (SDMP) activities; and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR part 170 based on existing law or Commission policy (*e.g.*, reviews and inspections of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*)

Dated at Rockville, Maryland, this 27th day of March, 2003.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A to This Proposed Rule—Draft Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 *et seq.*) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.810). These size standards were established on the basis of the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this proposed rule are based on the NRC's size standards.

From FY 1991 through FY 2000, the Omnibus Budget Reconciliation Act (OBRA–90), as amended, required that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The amount to be recovered for FY 2003 is approximately $526.3 million.

OBRA–90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to be recovered from the NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since FY 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, in order to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licenses, the annual fee base would be recalculated.

In FY 1999, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licenses and established rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would continue to adjust the annual fees by the percent change method established in FY 1995, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licenses, in which case the annual fee base would be reestablished.

Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline its part 171 annual fees again in FY 2003. Rebaselining fees would result in increased annual fees for a majority of the categories of licenses, decreased annual fees for other categories (including many materials licensees), and no change for one category.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis (RFA) and the small entity compliance guide (Attachment 1) have been prepared for the FY 2003 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 24 percent of these licensees (approximately 1,200 licensees for FY 2002) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified:

1. Large firms would gain an unfair competitive advantage over small entities.

Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Approximately 3,000 license, approval, and registration terminations have been requested since the NRC first established annual fees for materials licenses. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA, in developing each of its fee rules since FY 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (*e.g.*, number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (*e.g.*, volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity; therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States, Washington, Texas, Illinois, Nebraska, New York, and Utah, were used as benchmarks in the establishment of the maximum small entity annual fee in FY 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of $3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's FY 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the $3,800 ceiling.

In FY 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800 while those in the lower tier paid an annual fee of $400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000, and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991 as well as changes in the fee structure for materials licensees. The structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. As a result, the maximum small entity annual fee increased from $1,800 to $2,300 in FY 2000. By increasing the maximum annual fee for small entities from $1,800 to $2,300, the annual fee for many small entities was reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the maximum annual fee of $2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from $400 to $500 in FY 2000.

The NRC examined the small entity fees again in FY 2001 (66 FR 32452; June 14, 2001), and determined that a change was not warranted to the small entity fees established in FY 2000. The NRC stated in the Regulatory Flexibility Analysis for the FY 2001 final fee rule that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act.

Accordingly, the NRC has re-examined the small entity fees for FY 2003, and does not believe that a change to the small entity fees is warranted this year. Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Instead, the reduced fees for small entities are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from them some of the agency's costs for activities that benefit them. The costs not recovered from small entities for activities that benefit them must be recovered from other licensees. Given the reduction in annual fees and the relative low inflation rates, the NRC has determined that the current small entity fees of $500 and $2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the costs that benefit them.

Therefore, the NRC is proposing to retain the $2,300 small entity annual fee and the $500 lower tier small entity annual fee for FY 2003. The NRC plans to re-examine the small entity fees again in FY 2005.

IV. Summary

The NRC has determined that the 10 CFR part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 94 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of $2,300 for small entities and a lower-tier small entity annual fee of $500 for small

businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees, and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions previously established remain valid for FY 2003.

Attachment 1 to Appendix A—U.S. Nuclear Regulatory Commission Small Entity Compliance Guide Fiscal Year 2003

Contents

Introduction
NRC Definition of Small Entity
NRC Small Entity Fees
Instructions for Completing NRC Form 526

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, is considered a "major" rule under SBREFA. Therefore, in compliance with the law, this guide has been prepared to assist NRC material licensees in complying with the FY 2003 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2003 annual fees assessed under 10 CFR part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must submit a completed NRC Form 526 "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR part 171" to qualify for the reduced annual fee. This form can be accessed on the NRC's Web site at *http://www.nrc.gov*. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR–0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees@nrc.gov*. The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

1. *Small business*—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last 3 completed fiscal years;

2. *Manufacturing industry*—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. *Small organizations*—a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less;

4. *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. *Small educational institution*—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees.[1]

To further assist licensees in determining if they qualify as a small entity, we are providing the following guidelines, which are based on the Small Business Administration's regulations (13 CFR part 121).

1. A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.

2. The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (*i.e.*, not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).

3. Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (*i.e.*, not solely receipts from NRC licensed activities).

4. A licensee who is a subsidiary of a large entity does not qualify as a small entity.

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. The fees are as follows:

	Maximum annual fee per licensed category
Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small Governmental Jurisdictions (including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	2,300
Less than 35 employees	500

To pay a reduced annual fee, a licensee must use NRC Form 526. Licensees can access this form on the NRC's Web site at *http://www.nrc.gov*. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. Those licensees that qualify as a "small entity" under the NRC size standards at 10 CFR part 2.810 can complete the form in accordance with the instructions provided, and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR–0238, which is enclosed with each annual fee invoice. Alternatively, licensees may obtain the form by calling the fee staff at 301–415–7544, or by e-mailing us at *fees@nrc.gov*.

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

Instructions for Completing NRC Small Entity Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code must be entered if known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526, or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard for which the licensee qualifies as a small entity. Check only one box. Note the following:

(1) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(2) The size standards apply to the licensee, including all parent companies and affiliates—not the individual authorized users listed in the license or the particular segment of the organization that uses licensed material.

(3) Gross annual receipts means all revenue in whatever form received or accrued from whatever sources—not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income; proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS); and amounts collected for another entity by a travel agent, real estate agent, advertising agent, or conference management service provider.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either $2,300 or $500 depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first six months of the fiscal year, and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year, pay only 50 percent of the annual fee for that year. Such an invoice states the "Amount Billed Represents 50% Proration." This means the amount due from a small entity is not the prorated amount shown on the invoice, but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either $1150 or $250 for each fee category billed, instead of the full small entity annual fee of $2,300 or $500.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new Form 526 must be completed and returned in order for the fee to be reduced to the small entity fee amount. Licensees will not be issued a new invoice for the reduced amount. The completed NRC Form 526, the payment of the appropriate small entity fee, and the "Payment Copy" of the invoice should be mailed to the U. S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please call the license fee staff at 301–415–7554, e-mail the fee staff at *fees@nrc.gov*, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.* NRC's implementing regulations are found at 10 CFR part 13.

[FR Doc. 03–7814 Filed 4–2–03; 8:45 am]
BILLING CODE 7590–01–P

VOL
68

ISS
64

AP
3

003

MI

Federal Register

Thursday,
April 3, 2003

Part V

Department of Labor

Employee Benefits Security Administration

5 CFR Part 5201

29 CFR Part 70, et al.

Technical Amendments Due to Change of Agency Name; Final Rules

DEPARTMENT OF LABOR

Office of the Secretary of Labor

5 CFR Part 5201

29 CFR Parts 70 and 71

Technical Amendments Due to Change of Agency Name

AGENCY: Office of the Secretary of Labor, Department of Labor.

ACTION: Final rule.

SUMMARY: This document revises all references to the Pension and Welfare Benefits Administration in 5 CFR part 5201 and in 29 CFR parts 70 and 71 to reflect the change of that agency's name to the Employee Benefits Security Administration. 5 CFR part 5201 contains standards of ethical conduct for Department of Labor employees. 29 CFR part 70 relates to the production or disclosure of information by the Department, and 29 CFR part 71 relates to the maintenance of systems of records in accordance with the Privacy Act. 5 U.S.C. 552a. All the changes made in this rule are strictly technical.

DATES: *Effective date:* This rule is effective on April 3, 2003.

FOR FURTHER INFORMATION CONTACT: William W. Taylor, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, (202) 693–5583. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Summary of Rule

On February 3, 2003, the Secretary of Labor published in the **Federal Register** Secretary of Labor's Order No. 1–2003 (68 FR 5374). This order renamed the Pension and Welfare Benefits Administration (PWBA) as the Employee Benefits Security Administration (EBSA). The title, "Assistant Secretary for Pension and Welfare Benefits" became "Assistant Secretary for Employee Benefits Security." All the functions formerly carried out by PWBA and this Assistant Secretary remain unchanged. As a result of this name change, we are revising all references to "Pension and Welfare Benefits Administration" that appear in these parts. The Department has previously published similar amendments to chapter XXV of title 29 of the CFR.

II. Administrative Procedure Act

Because this regulation merely implements a change in the name of government agency and in the titles of certain government officers, it relates only to agency organization, procedure or practice; requirements for prior notice and public comment do not apply. 5 U.S.C. 553(b)(3)(A). The limited purpose and effect of this rule also justifies the finding for good cause, pursuant to 5 U.S.C. 553(d)(3) that the rule should take effect immediately.

III. Paperwork Reduction Act

This final rule does not include or modify a collection of information as defined in 44 U.S.C. 3502(3) of the Paperwork Reduction Act of 1995.

IV. Regulatory Flexibility Act

Because the Department is issuing this rule without a proposal and an opportunity for comments, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply. In any event, the technical amendments made by this regulation will not have a significant impact on a substantial number of small entities.

V. Congressional Review Act

This regulation is a rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties. It is therefore not subject to the Congressional Review Act pursuant to 5 U.S.C. 801 and 804(1).

VI. Executive Order 12866

We have consulted the Office of Management and Budget and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866.

VII. Federalism

This rule does not have Federalism implications under Executive Order 13132.

■ For the reasons set forth in the preamble, there are amended the following parts of the Code of Federal Regulations:

(a) Part 5201 of Title 5, Code of Federal Regulations (5 CFR part 5201);

(b) Part 70 of Title 29, Code of Federal Regulations (29 CFR part 70); and

(c) Part 71 of Title 29, Code of Federal Regulations (29 CFR part 71).

Title 5—Administrative Personnel

PART 5201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF LABOR

■ 1. The authority citation for part 5201 continues to read as follows:

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act); E.O. 12674, 54 FR 15159, 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., 5 CFR 2635.105, 2635.203(a) , 2635.403(a), 2635.803.

§ 5201.102 [Amended]

■ 2. In § 5201.102, paragraph (a)(6) is revised to read "Employee Benefits Security Administration (EBSA)."

§ 5201.103 [Amended]

■ 3. In § 5201.103, paragraph (e) is revised to read "Employee Benefits Security Administration."

■ 4. In § 5201.103, example 2, the term "Pension and Welfare Benefits Administration" is revised to read "Employee Benefits Security Administration" and the term "PWBA" is revised to read "EBSA."

Title 29—Labor

PART 70—PRODUCTION OR DISCLOSURE OF INFORMATION OR MATERIALS

■ 5. In the table of contents for Part 70, at the reference to § 70.54, the term "Pension and Welfare Benefits Administration" is revised to read "Employee Benefits Security Administration."

§ 70.54 [Amended]

■ 6. All references to "Pension and Welfare Benefits Administration § 70.54 are revised to read "Employee Benefits Security Administration."

Appendix A [Amended]

■ 7. Appendix A to part 70 is amended as follows:

■ a. In paragraph (a)(13), the term "Pension and Welfare Benefits Administration" is revised to read "Employee Benefits Security Administration."

■ b. In paragraph (b)(1), all references to "Pension and Welfare Benefits Administration "are revised to read "Employee Benefits Security."

Appendix B [Amended]

■ 8. Appendix B to part 70 is amended as follows:

■ (a) The term "Pension and Welfare Benefits" is revised to read "Employee Benefits Security Administration;"

■ (b) The term "PWBA" is revised to read "EBSA;" and

■ (c) The name "June Patron" is revised to read "Sharon Watson;"

■ (d) The telephone number "219–6999" is revised to read "693–8630."

PART 71—PROTECTION OF INDIVIDUAL PRIVACY AND ACCESS TO RECORDS UNDER PRIVACY ACT OF 1974

■ 9. The authority citation for part 71 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 552a as amended; Reorganization Plan No. 6 of 1950, 5 U.S.C. Appendix.

§ 71.50 [Amended]

■ 10. In § 71.50, paragraph (a)(7), the term "DOL/PWBA–2" is revised to read "DOL/EBSA–2," and the term "Pension and Welfare Benefits Administration" is revised to read "Employee Benefits Security Administration."

§ 71.51 [Amended]

■ 11. Sec.71.51, is amended as follows:

■ (a) In paragraph (a)(30), the term "DOL/PWBA–2" is revised to read "DOL/EBSA–2," and the term "Pension and Welfare Benefits Administration (PWBA)" is amended to read "Employee Benefits Security Administration (EBSA);"

■ (b) In paragraph (a)(31), the term "DOL/PWBA–7" is revised to read "DOL/EBSA–7" and the term "PWBA" is revised to read "EBSA;"

Appendix A [Amended]

■ 12. In appendix A to part 71, all references to "Pension and Welfare Benefits Administration" are revised to read "Employee Benefits Security Administration."

Signed at Washington, DC this 28th day of March, 2003.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 03–8100 Filed 4–2–03; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2509, 2510, 2520, 2550, 2560, 2570, 2575, 2582, 2584, 2589 and 2590

Change of Agency Name; Technical Amendments

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule; nomenclature change and technical amendments.

SUMMARY: In accordance Secretary of Labor Order 1–2003, which changed the name of the Pension and Welfare Benefits Administration to the Employee Benefits Security Administration, this document revises all references to the "Pension and Welfare Benefits Administration" in chapter XXV of title 29 of the Code of Federal Regulations. This document also makes conforming changes to all references to "PWBA," "Assistant Secretary for Pension and Welfare Benefits," and similar references in chapter XXV. In addition, this document updates authority citations in chapter XXV to reflect the Secretary of Labor's Order 1–2003. Finally, this document makes certain other corrections to agency telephone numbers and addresses in chapter XXV. All the changes made in this rule are strictly technical.

DATES: *Effective date:* This rule is effective on April 3, 2003. *Applicability date:* The changes made by this rule to §§ 2520.102–3 and 2520.104b–10 are applicable to any disclosures required to be furnished on or after January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Shelly Mui, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, (202) 693–8523 (not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Summary of Rule

On February 3, 2003, the Secretary of Labor published in the **Federal Register** Secretary of Labor's Order No. 1–2003 (68 FR 5374). This order renamed the Pension and Welfare Benefits Administration (PWBA) as the Employee Benefits Security Administration (EBSA). The title, "Assistant Secretary for Pension and Welfare Benefits" became "Assistant Secretary for Employee Benefits Security." All the functions formerly carried out by PWBA and this Assistant Secretary remain unchanged. As a result of this name change, we are revising all references to "Pension and Welfare Benefits Administration," "PWBA," "Assistant Secretary for Pension and Welfare Benefits" and similar references in chapter XXV of the Code of Federal Regulations. In addition, because the Secretary of Labor's Order 1–2003 supersedes Secretary of Labor's Order 1–87, this document updates the authority citations for certain parts of this chapter. Finally, this document makes certain other corrections to agency telephone numbers and addresses.

II. Administrative Procedure Act

Because this regulation merely implements a change in the name of a government agency and in the titles of certain government officers, it relates only to agency organization, procedure or practice, and, accordingly, requirements for prior notice and public comment do not apply. 5 U.S.C. 553(b)(3)(A). In any event, the Department for good cause finds, pursuant to 5 U.S.C. 553(b)(3)(B), that notice and public comment thereon are unnecessary. In addition, and for the same reasons, the Department for good cause finds, pursuant to 5 U.S.C. 553(d)(3), that this rule should take effect immediately.

III. Paperwork Reduction Act

This final rule does not include a collection of information as defined in 44 U.S.C. 3502(3) of the Paperwork Reduction Act of 1995. This rule will require modification of the content of disclosures specified in 29 CFR 2520.102–3, pertaining to Summary Plan Descriptions, and § 2520.104b–10, pertaining to Summary Annual Reports. The information collection provisions of those sections are currently approved under OMB control numbers 1210–0039 and 1210–0040, respectively. Required changes in the references to the agency name are not substantive or material modifications to the existing collections of information. The delayed applicability date for these changes should further limit any associated burden. Accordingly, the modifications to these collections of information have not been submitted to OMB for review.

IV. Regulatory Flexibility Act

Because this regulation is being promulgated without a proposal and an opportunity for public comments, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply. In any event, the technical amendments made by this regulation will not have a significant impact on a substantial number of small entities.

V. Congressional Review Act

This regulation is a rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties. It is therefore not subject to the Congressional Review Act pursuant to 5 U.S.C. 801 and 804(1).

VI. Executive Order 12866—Regulatory Planning and Review

We have consulted the Office of Management and Budget and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866.

VII. Executive Order 13132—Federalism

This rule does not have Federalism implications under Executive Order 13132.

■ For the reasons set forth in the preamble, the Department of Labor amends chapter XXV of title 29 of the Code of Federal Regulations as follows:

CHAPTER XXV—EMPLOYEE BENEFITS SECURITY ADMINISTRATION, DEPARTMENT OF LABOR

■ 1. Revise the heading for chapter XXV to read as set forth above.

■ 2. In addition to the other amendments herein, in chapter XXV:

■ a. Revise all references to "Pension and Welfare Benefits Administration" to read "Employee Benefits Security Administration";

■ b. Revise all references to "PWBA" to read "EBSA";

■ c. Revise all references to "Assistant Secretary for Pension and Welfare Benefits" to read "Assistant Secretary for Employee Benefits Security"; and

■ d. Revise all references to *"http://www.dol.gov/dol/pwba"* to read *"http://www.dol.gov/ebsa"*.

SUBCHAPTER A—GENERAL

PART 2509—INTERPRETIVE BULLETINS RELATING TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

■ 3. The authority citation for part 2509 is revised to read as follows:

Authority: 29 U.S.C. 1135 and Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Secs. 2509.75–10 and 2509–75–2 issued under 29 U.S.C. 1052, 1053, 1054.

SUBCHAPTER B—DEFINITIONS AND COVERAGE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2510—DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F AND G OF THIS CHAPTER

■ 4. The authority citation for part 2510 is revised to read as follows:

Authority: 29 U.S.C. 1002(2), 1002(21), 1002(37), 1031, and 1135; Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2510.3–101 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978); 3 CFR 1978 Comp. 332, and 29 U.S.C. 1135 note. Sec. 2510.3–102 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR 1978 Comp. 332.

SUBCHAPTER C—REPORTING AND DISCLOSURE UNDER THE EMPLOYEE RETIRMENT INCOME SECURITY ACT OF 1974

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

■ 5. The authority citation for part 2520 is revised to read as follows:

Authority: 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134 and 1135; Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003,1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788.

§ 2520.104–22 [Amended]

■ 6. Amend section 2520.104–22 as follows:

■ a. Remove from paragraph (c) the phrase "Room N–5664" wherever it appears and add, in its place, the phrase "Room N–1513", and

■ b. Remove from paragraph (c) the phrase "Division of Reports, Office of Program Services, Pension and Welfare Benefits Administration" and add, in its place, the phrase "Employee Benefits Security Administration."

§ 2520.104–23 [Amended]

■ 7. Amend section 2520.104–23 as follows:

■ a. Remove from paragraph (c) the phrase "Room N–5664" wherever it appears and add, in its place, the phrase "Room N–1513", and

■ b. Remove from paragraph (c) the phrase "Division of Reports, Office of Program Services, Pension and Welfare Benefits Administration" and add, in its place, the phrase "Employee Benefits Security Administration".

§ 2520.104b–10 [Amended]

■ 8. Amend section 2520.104b–10 by revising the last sentence of both paragraphs (d)(3) and (d)(4) under the heading "Your Rights to Additional Information" to read "Requests to the Department should be addressed to: Public Disclosure Room, Room N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.".

SUBCHAPTER F—FIDUCIARY RESPONSIBILITY UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 9. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135, and Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), 3 CFR, 1978 Comp. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), 3 CFR 1978 Comp. 332. Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404c–1 also issued under 29 U.S.C. 1104. Sec. 2550.407c–3 also issued under 29 U.S.C. 1107. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR 1978 Comp. 332. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

SUBCHAPTER G—ADMINISTRATION AND ENFORCEMENT UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

■ 10. The authority citation for part 2560 is revised to read as follows:

Authority: 29 U.S.C. 1132, 1135, and Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2560.503–1 also issued under 29 U.S.C. 1133.

PART 2570—PROCEDURAL REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

■ 11. The authority citation in part 2570 is revised to read as follows:

Authority: 5 U.S.C. 8477, 29 U.S.C. 1021, 1108, 1132, 1135, sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), 3 CFR 1978 Comp. 332; Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb.3, 2003).

§ 2570.82 [Amended]

■ 12. Revise the reference to "Area Directors for Pension and Welfare Benefits" in paragraph (e) of section 2570.82 to read "Regional Directors for Employee Benefits Security."

PART 2575—ADJUSTMENT OF CIVIL PENALTIES UNDER ERISA TITLE I

■ 13. The authority citation in part 2575 is revised to read as follows:

Authority: 29 U.S.C. 1135; 28 U.S.C. 2461 note; Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

SUBCHAPTER J—FIDUCIARY RESPONSIBILITY UNDER THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

PART 2582—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 14. The authority citation in part 2582 is revised to read as follows:

Authority: 5 U.S.C. 8478 and 8478 note; Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

PART 2584—RULES AND REGULATIONS FOR THE ALLOCATION OF FIDUCIARY RESPONSIBILITY

■ 15. The authority citation in part 2584 is revised to read as follows:

Authority: 5 U.S.C. 8477(e)(1)(E) and Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

PART 2589—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

■ 16. The authority citation for part 2589 is revised to read as follows:

Authority: 5 U.S.C. 8477(e)(1)(B) and (f); Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

SUBCHAPTER L—HEALTH INSURANCE PORTABILITY AND RENEWABILITY FOR GROUP HEALTH PLANS

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLAN REQUIREMENTS

■ 17. The authority citation in part 2590 is revised to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c, 42 U.S.C. 651 note; Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

Signed at Washington, DC this 28th day of March 2003.

Ann L. Combs,

Assistant Secretary for Employee Benefits Security, U.S. Department of Labor.

[FR Doc. 03–8099 Filed 4–2–03; 8:45 am]

BILLING CODE 4510–29–P

Reader Aids

Federal Register

Vol. 68, No. 64

Thursday, April 3, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, APRIL

15653–15920..... 1
15921–16164..... 2
16165–16402..... 3

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7657.....15921

Executive Orders:
10448 (Amended by 13293).....15917
11157 (Revoked by 13294).....15919
11800 (Revoked by 13294).....15919
13293.....15917
13294.....15919

Administrative Orders:
Presidential Determinations:
No. 2003–18 of March 24, 2003.....16165
No. 2003–19 of March 24, 2003.....16167

5 CFR

5201.....16398

7 CFR

25.....16169
718.....16170
723.....16170
923.....15923
989.....15926
1412.....16170
1413.....16170

Proposed Rules:
930.....15971

9 CFR

94.....15932

10 CFR

Proposed Rules:
170.....16374
171.....16374

12 CFR

226.....16185

13 CFR

Proposed Rules:
121.....15971

14 CFR

39.....15653, 15937, 16190, 16192, 16195, 16198, 16200, 16203, 16205
71.....16207, 16351
93.....15657
121.....15884
125.....15884
129.....15884

Proposed Rules:
21.....16217
39.....15682, 15684, 15687, 16220, 16222, 16225
71.....16227, 16229, 16230

15 CFR

740.....16144, 16208
742.....16144, 16208
762.....16208
774.....16144, 16208

16 CFR

Proposed Rules:
305.....16231
310.....16238

17 CFR

228.....15939
229.....15939
244.....15939
249.....15939

Proposed Rules:
240.....15688

20 CFR

404.....15658

24 CFR

Proposed Rules:
202.....15906

26 CFR

1.....15940
40.....15940
48.....15940
49.....15940
301.....16351
602.....15940, 15942

Proposed Rules:
1.....15801
49.....15690

29 CFR

70.....16398
71.....16398
96.....16162
99.....16162
2509.....16399
2510.....16399
2520.....16399
2550.....16399
2560.....16399
2570.....16399
2575.....16399
2582.....16399
2584.....16399
2589.....16399
2590.....16399

30 CFR

Proposed Rules:
70.....15691
72.....15691
75.....15691

90.....15691

32 CFR

Proposed Rules:
199.....16247
312.....16249

33 CFR

117.....15943

Proposed Rules:
110.....15691
165.....15694

37 CFR

Proposed Rules:
201.....15972

38 CFR

1.....15659

40 CFR

52.....15661, 15664
180.....15945, 15958, 15963

Proposed Rules:
52.....15696

42 CFR

Proposed Rules:
440.....15973

43 CFR

10.....16354
423.....16214

44 CFR

Ch.1.....15666
61.....15666
64.....15967

46 CFR

Proposed Rules:
401.....15697
530.....15978

47 CFR

54.....15669

Proposed Rules:
64.....16250

48 CFR

Proposed Rules:
2.....16366
4.....16366
13.....16366
32.....16366
52.....16366

49 CFR

1.....16215
665.....15672

50 CFR

635.....16216
17.....15804
224.....15674
230.....15680
679.....15969

Proposed Rules:
17.....15876, 15879

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 3, 2003

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (sweet) grown in—
Washington; published 4-2-03
Raisins produced from grapes grown in—
California; published 4-2-03

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Loan and purchase programs:
Conservation Security Program; published 3-21-03

AGRICULTURE DEPARTMENT
Rural empowerment zones and enterprise communities; published 4-3-03

COMMERCE DEPARTMENT
Industry and Security Bureau
Export administration regulations:
Explosives detection equipment and related software and technology, exports and reexports; foreign policy controls imposition and expansion; published 4-3-03

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic highly migratory species- -
Swordfish quota adjustment; published 4-3-03

INTERIOR DEPARTMENT
Reclamation Bureau
Public conduct on Reclamation lands and projects; published 4-3-03

LABOR DEPARTMENT
Employee Benefits Security Administration
Organization, functions, and authority delegations:
Pension and Welfare Benefits Administration; agency name change to Employee Benefits Security Administration; published 4-3-03

LABOR DEPARTMENT
Organization, functions, and authority delegations:
Pension and Welfare Benefits Administration; agency name change to Employee Benefits Security Administration; published 4-3-03

POSTAL SERVICE
Domestic Mail Manual:
Bound printed matter; flat-size mail co-packaging and co-sacking; published 3-28-03

TRANSPORTATION DEPARTMENT
Organization, functions, and authority delegations:
Administrator, Maritime Administration; published 4-3-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Aircraft registration:
Registration requirements; court of competent jurisdiction; term clarification; published 3-4-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Olives grown in—
California; comments due by 4-9-03; published 3-10-03 [FR 03-05561]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Foot-and-mouth disease; disease status change—
Uruguay; comments due by 4-11-03; published 2-10-03 [FR 03-03228]
Noxious weeds:
Kikuyu grass cultivars; comments due by 4-11-03; published 2-10-03 [FR 03-03181]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Noxious weeds:
Witchweed; regulated areas; comments due by 4-11-03; published 2-10-03 [FR 03-03182]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Wheat and related products; flag smut import prohibitions; comments due by 4-8-03; published 2-7-03 [FR 03-03057]
Plant related quarantine; domestic:
Fire ant, imported; comments due by 4-7-03; published 2-5-03 [FR 03-02685]

AGRICULTURE DEPARTMENT
Forest Service
National Forest System land and resource management planning; comments due by 4-7-03; published 3-5-03 [FR 03-05116]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 4-10-03; published 3-26-03 [FR 03-07252]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Energy conservation standards and test procedures—
Refrigerators and refrigerator-freezers; comments due by 4-7-03; published 3-7-03 [FR 03-05405]

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Energy conservation standards and test procedures—
Refrigerators and refrigerator-freezers; comments due by 4-7-03; published 3-7-03 [FR 03-05404]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
California; comments due by 4-10-03; published 3-11-03 [FR 03-05748]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Indiana; comments due by 4-10-03; published 3-11-03 [FR 03-05741]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Indiana; comments due by 4-10-03; published 3-11-03 [FR 03-05742]
New Hampshire; comments due by 4-7-03; published 3-6-03 [FR 03-05305]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Hampshire; comments due by 4-7-03; published 3-6-03 [FR 03-05306]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Jersey; comments due by 4-7-03; published 3-6-03 [FR 03-05320]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Jersey; comments due by 4-7-03; published 3-6-03 [FR 03-05321]
Rhode Island; comments due by 4-7-03; published 3-6-03 [FR 03-05307]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans

for designated facilities and pollutants:
Rhode Island; comments due by 4-7-03; published 3-6-03 [FR 03-05308]
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-7-03; published 3-7-03 [FR 03-05325]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-7-03; published 3-7-03 [FR 03-05326]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Iowa; comments due by 4-7-03; published 3-7-03 [FR 03-05309]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Iowa; comments due by 4-7-03; published 3-7-03 [FR 03-05310]

ENVIRONMENTAL PROTECTION AGENCY
Small Business Liability Relief and Brownfields Revitalization Act; implementation:
Federal standards for conducting all appropriate inquiry; negotiated rulemaking committee; intent to establish; comments due by 4-7-03; published 3-6-03 [FR 03-05324]

FARM CREDIT ADMINISTRATION
Farm credit system:
Borrower rights; comments due by 4-7-03; published 2-4-03 [FR 03-02506]

FEDERAL COMMUNICATIONS COMMISSION
Radio frequency devices:
Unlicensed devices operating in additional frequency bands; feasibility; comments due by 4-7-03; published 1-21-03 [FR 03-01206]
Radio stations; table of assignments:
North Carolina and Virginia; comments due by 4-11-03; published 3-10-03 [FR 03-05333]
Oregon; comments due by 4-11-03; published 3-6-03 [FR 03-05334]
Various States; comments due by 4-11-03; published 3-6-03 [FR 03-05335]

FEDERAL MARITIME COMMISSION
Passenger vessel financial responsibility:
Performance and casualty rules, Alternative Dispute Resolution program, etc.; miscellaneous amendments; comments due by 4-8-03; published 12-27-02 [FR 02-32645]

FEDERAL RESERVE SYSTEM
Home mortgage disclosure (Regulation C):
Transition rules for applications; staff commentary; comments due by 4-8-03; published 3-7-03 [FR 03-05365]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare:
End-stage renal disease services; provider bad debt payment; comments due by 4-11-03; published 2-10-03 [FR 03-02974]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Radiological health:
Diagnostic x-ray systems and their major components; performance standard; comments due by 4-9-03; published 12-10-02 [FR 02-30550]

HEALTH AND HUMAN SERVICES DEPARTMENT
Energy Employees Occupational Illness Compensation Program Act; implementation:
Special Exposure Cohort; classes of employees designated as members; procedures; comments due by 4-7-03; published 3-7-03 [FR 03-05604]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
New Jersey; comments due by 4-7-03; published 2-5-03 [FR 03-02696]
Pollution:
Ballast water management reports; non-submission penalties; comments due by 4-7-03; published 1-6-03 [FR 03-00100]
Vessel and facility response plans for oil; 2003 removal equipment requirements and alternative technology revisions
Meeting; comments due by 4-8-03; published 11-19-02 [FR 02-29168]
Ports and waterways safety:
Oahu, Maui, Hawaii, and Kauai, HI; security zones; comments due by 4-7-03; published 2-4-03 [FR 03-02523]

HOMELAND SECURITY DEPARTMENT
Lobbying restrictions; comments due by 4-7-03; published 3-6-03 [FR 03-05145]

HOMELAND SECURITY DEPARTMENT
Nondiscrimination on basis of disability in federally conducted programs or activities; comments due by 4-7-03; published 3-6-03 [FR 03-05142]

HOMELAND SECURITY DEPARTMENT
Nondiscrimination on basis of race, color, or national origin in programs or activities receiving Federal financial assistance; comments due by 4-7-03; published 3-6-03 [FR 03-05144]
Nondiscrimination on basis of sex in education programs or activities receiving Federal financial assistance; comments due by 4-7-03; published 3-6-03 [FR 03-05143]
Organization, functions, and authority delegations:
Immigration law enforcement; comments due by 4-7-03; published 3-6-03 [FR 03-05146]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Public housing assessment system; changes; comments due by 4-7-03; published 2-6-03 [FR 03-02608]

JUSTICE DEPARTMENT
DNA identification system:
USA PATRIOT Act; implementation—
Federal offenders; DNA sample collection; comments due by 4-10-03; published 3-11-03 [FR 03-05861]

LABOR DEPARTMENT
Occupational Safety and Health Administration
Safety and health standards:
Commercial diving operations; comments due by 4-10-03; published 1-10-03 [FR 03-00372]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]

PERSONNEL MANAGEMENT OFFICE
Federal Long Tenn Care Insurance Program; comments due by 4-7-03; published 2-4-03 [FR 03-02463]

PERSONNEL MANAGEMENT OFFICE
Health benefits, Federal employees:
Health care providers; financial sanctions; comments due by 4-11-03; published 2-10-03 [FR 03-03125]

PERSONNEL MANAGEMENT OFFICE
Homeland Security Act; implementation:
Voluntary separation incentive payments; comments due by 4-7-03; published 2-4-03 [FR 03-02766]

SECURITIES AND EXCHANGE COMMISSION
Securities:
Sarbanes-Oxley Act of 2002; implementation—
Attorneys; professional conduct standards; implementation; comments due by 4-7-03; published 2-6-03 [FR 03-02520]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States
Andean Trade Preference Act, as amended by Andean Trade Promotion and Drug Eradication Act; countries eligibility for benefits; petition process; comments due by 4-7-03; published 2-4-03 [FR 03-02705]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Aircraft products and parts; certification procedures:
Production Approval Holder's quality system; products and/or parts that have left system, performing work on; policy statement; comments due by 4-10-03; published 3-11-03 [FR 03-05128]
Airworthiness directives:
BAE Systems (Operations) Ltd.; comments due by 4-11-03; published 3-12-03 [FR 03-05859]
Bell; comments due by 4-8-03; published 2-7-03 [FR 03-03030]
Boeing; comments due by 4-10-03; published 2-24-03 [FR 03-04236]
Dornier; comments due by 4-11-03; published 3-12-03 [FR 03-05858]
General Electric Co.; comments due by 4-8-03; published 2-7-03 [FR 03-02995]
McDonnell Douglas; comments due by 4-7-03; published 2-20-03 [FR 03-04028]
Raytheon; comments due by 4-10-03; published 2-24-03 [FR 03-04234]
Sikorsky; comments due by 4-8-03; published 2-7-03 [FR 03-03031]
Turbomeca; comments due by 4-7-03; published 2-5-03 [FR 03-02633]
Turbomeca S.A.; comments due by 4-8-03; published 2-7-03 [FR 03-02996]
Jet routes; comments due by 4-7-03; published 2-19-03 [FR 03-03965]

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Grants:
Operation of motor vehicles by intoxicated persons; withholding of Federal-aid highway funds; comments due by 4-7-03; published 2-6-03 [FR 03-02790]

TRANSPORTATION DEPARTMENT
Federal Motor Carrier Safety Administration
Motor carrier safety standards:
Intermodal container chassis and trailers; general inspection, repair, and maintenance requirements; negotiated rulemaking process; intent to consider; comments due by 4-10-03; published 2-24-03 [FR 03-04228]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Grants:
Operation of motor vehicles by intoxicated persons; wtihholding of Federal-aid highway funds; comments due by 4-7-03; published 2-6-03 [FR 03-02790]

TREASURY DEPARTMENT
Comptroller of the Currency
National banks:
Authority provided by American Homeownership and Economic Opportunity Act, and other miscellaneous amendments; comments due by 4-8-03; published 2-7-03 [FR 03-02641]

TREASURY DEPARTMENT
Community Development Financial Institutions Fund
Bank Enterprise Award Program; implementation; comments due by 4-7-03; published 2-4-03 [FR 03-02336]
Community Development Financial Institutions Program; implementation; comments due by 4-7-03; published 2-4-03 [FR 03-02335]

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Anti-money laundering programs for businesses engaged in vehicle sales; comments due by 4-10-03; published 2-24-03 [FR 03-04173]
Anti-money laundering programs for travel agencies; comments due by 4-10-03; published 2-24-03 [FR 03-04172]

VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
Cirrhosis of liver in former prisoners of war; presumptive service connection; comments due by 4-11-03; published 2-10-03 [FR 03-03175]

VETERANS AFFAIRS DEPARTMENT
Loan guaranty:
Veterans Education and Benefits Expansion Act; implementation; comments due by 4-11-03; published 2-10-03 [FR 03-03176]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 395/P.L. 108–10
Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

Last List March 10, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFR SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFRDO SMITH212J                  DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code
* 5468

Charge your order. It's Easy!

☐ **YES**, enter my subscription(s) as follows:

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $764 each per year.

____ subscriptions to **Federal Register**, *daily only* (FRDO), at $699 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954. Pittsburgh. PA 15250–7954

Public Laws

108th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 108th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara1/nara005.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
* 6216

Charge your order. It's Easy!

☐ **YES**, enter my subscription(s) as follows:

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

____ subscriptions to **PUBLIC LAWS** for the 108th Congress for $285 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 2/03

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $264.00
Six months: $132.00

Code of Federal Regulations:

Current year (as issued): $298.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code
* 5419

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ **Federal Register** (MFFR) ☐ One year at $264 each ☐ Six months at $132.00

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $298 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

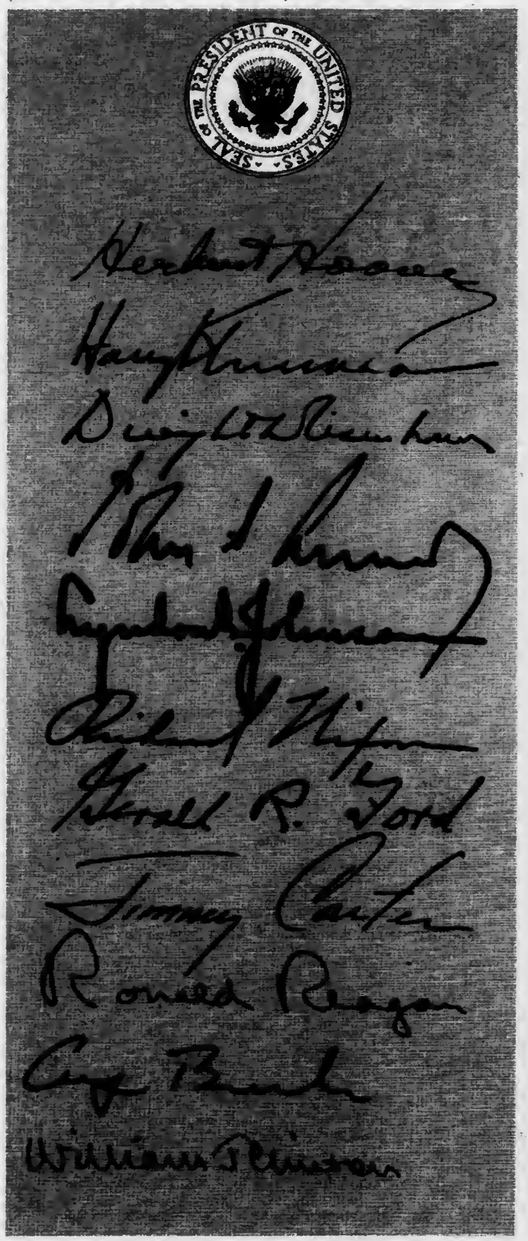
Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	**$51.00**
1993 (Book II)	**$51.00**
1994 (Book I)	**$56.00**
1994 (Book II)	**$52.00**
1995 (Book I)	**$60.00**
1995 (Book II)	**$65.00**
1996 (Book I)	**$66.00**
1996 (Book II)	**$72.00**
1997 (Book I)	**$69.00**
1997 (Book II)	**$78.00**
1998 (Book I)	**$74.00**
1998 (Book II)	**$75.00**
1999 (Book I)	**$71.00**
1999 (Book II)	**$75.00**
2000–2001 (Book I)	**$68.50**
2000–2001 (Book II)	**$63.00**
2000–2001 (Book III)	**$75.00**

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA (Rev. 5/02)

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

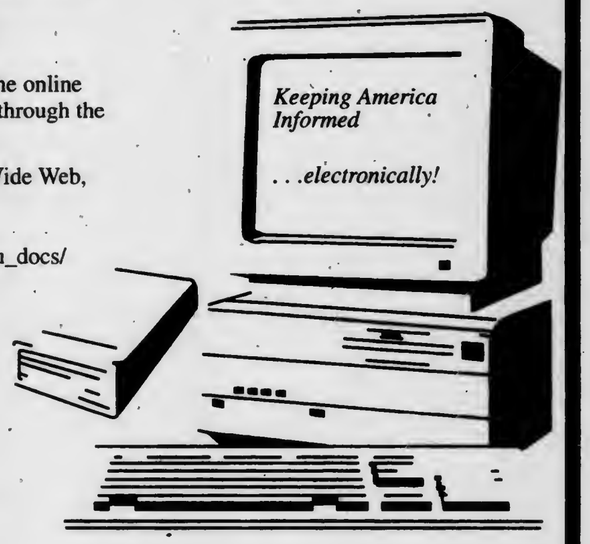
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

VOL
68

ISS
64

AP
3

2003

UMI



Printed on recycled paper

VOL
68
ISS
65
AP
4
003
UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL
PUBLICATION MAY AFFECT THE QUALITY OF
THE MICROFORM EDITION.



Federal Register

4–4–03 Friday
Vol. 68 No. 65 Apr. 4, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
68

ISS
65

AP
4

003

UMI



Federal Register

4–4–03 Friday
Vol. 68 No. 65 Apr. 4, 2003
Pages 16403–16714

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 202–512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 202–512–1800
Assistance with public single copies 1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES
Subscriptions:
Paper or fiche 202–741–6005
Assistance with Federal agency subscriptions 202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 65
Friday, April 4, 2003

Agriculture Department
See Forest Service

Antitrust Division
NOTICES
National cooperative research notifications:
eManufacturing Security Framework, 16552
Global Climate and Energy Project, 16552–16553
Spray Drift Task Force, 16553

Army Department
NOTICES
Meetings:
Armed Forces Institute of Pathology Scientific Advisory Board, 16484
Command and General Staff College Advisory Committee, 16484
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Topical ointment for vesicating chemical warfare agents, 16484
Privacy Act:
Systems of records, 16484–16501

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Meetings:
Immunization Practices Advisory Committee, 16516

Centers for Medicare & Medicaid Services
RULES
Medicare:
Medicare+Choice appeal and grievance procedures; improvements, 16651–16669
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16516–16517

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Massachusetts, 16468
Wisconsin, 16468
Meetings; Sunshine Act, 16468

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Commission of Fine Arts
NOTICES
Meetings, 16481

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 16466–16467
Reports and guidance documents; availability, etc.:
Information disseminated by Federal agencies; quality, objectivity, utility, and integrity guidelines, 16467–16468

Corporation for National and Community Service
RULES
Debt collection, 16437–16446

Defense Department
See Army Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16481–16483
Meetings:
National Security Education Board Group of Advisors, 16483
Science Board, 16483–16484

Drug Enforcement Administration
RULES
Schedules of controlled substances:
Alpha-methyltryptamine and 5-methoxy-N,N-diisopropyltryptamine; temporary placement into Schedule I, 16427–16430

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
One-Stop delivery system; faith-based and community-based non-profit organizations—
Intermediaries, 16564–16576
Small grassroots organizations, 16554–16564

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 16576–16578

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Paducah Gaseous Diffusion Plant, KY, 16501

Environmental Protection Agency
RULES
Grants and other Federal assistance:
Fellowships, 16707–16713
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Lactic acid, ethyl ester, and lactic acid, n-butyl ester; correction, 16436–16437

PROPOSED RULES
Air pollution control:
Interstate ozone transport reduction—
Nitrogen oxides budget trading program; Section 126 petitions; findings of significant contribution and rulemaking; withdrawal provision, 16643–16650
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16505–16510
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 16510–16511
Weekly receipts, 16511–16512
Meetings:
Science Advisory Board, 16512–16513
Water supply:
Public water supply supervision program—
New York, 16513

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Class E airspace, 16409–16411
Standard instrument approach procedures, 16411–16414
PROPOSED RULES
Airworthiness directives:
Pilatus, 16458–16460
Airworthiness standards:
Transport category airplanes—
Applicable aircraft systems certification, 16458

Federal Communications Commission
RULES
Common carrier services:
Satellite communications—
Non-geostationary satellite orbit, fixed satellite service systems cofrequency with geostationary satellite orbit and terrestrial systems in KU-Band, 16446–16448
NOTICES
Meetings:
Consumer Advisory Committee, 16513–16515

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
ITC Holdings Corp. et al., 16502–16503
Tenaska Alabama II Partners, L.P., et al., 16503–16504
Hydroelectric applications, 16504–16505
Applications, hearings, determinations, etc.:
PJM Interconnection, L.L.C., 16501–16502

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 16515

Federal Reserve System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16515–16516
Banks and bank holding companies:
Change in bank control, 16516

Federal Retirement Thrift Investment Board
PROPOSED RULES
Thrift Savings Plan:
Catch-up contributions by participants age 50 and over, and new record keeping system, 16449–16450

Federal Trade Commission
RULES
Telemarketing sales rule
Compliance date stay, 16414–16415

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Florida manatee; additional protection areas, 16601–16641
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Boulder County, CO; Preble's meadow jumping mouse, 16543–16544
Florida manatees, 16544–16545

Food and Drug Administration
PROPOSED RULES
Administrative practice and procedure:
Citizen petitions; miscellaneous amendments; withdrawn, 16461
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16517–16519
Human drugs:
Drug products withdrawn from sale for reasons other than safety or effectiveness—
Albuterol sulfate inhalation solution 0.5% (Ventolin), 16519–16520
Reports and guidance documents; availability, etc.:
Decorative contact lenses; sampling or detention without physical examination; guidance for FDA staff, 16520–16522
E-mail submission of protocol, 16522–16523
Guidance documents; annual agenda, 16523–16541
Juice processing; HACCP procedures; small entity compliance guide, 16541–16542
Source animal, product, preclincal, and clinical issues concerning use of xenotransplantation products in humans, 16542–16543

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Ohio, 16468

Forest Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16463–16464
Environmental statements; notice of intent:
Bighorn National Forest, WY, 16464–16465
Clearwater National Forest, ID, 16465–16466

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration

Housing and Urban Development Department
PROPOSED RULES
Public and Indian housing:
Public housing assessment system; changes, 16461–16462
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 16543
HOPE VI Demolition Program, 16671–16705

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Stock dispositions; suspension of losses
Correction, 16430–16432
PROPOSED RULES
Income taxes:
Stock dispositions; suspension of losses; cross-reference
Correction, 16462

International Trade Administration
NOTICES
Antidumping:
Preserved mushrooms from—
Indonesia, 16469–16471
Countervailing duties:
In-shell pistachios from—
Iran, 16473–16477
Applications, hearings, determinations, etc.:
Health and Human Services Department et al., 16471–16472
Northwestern University, 16472
University of—
Colorado, 16472–16473
Kentucky, 16473

International Trade Commission
NOTICES
Import investigations:
Power amplifier chips, broadband tuner chips, transceiver chips, and products containing same, 16551–16552

Justice Department
See Antitrust Division
See Drug Enforcement Administration

Labor Department
See Employment and Training Administration
See Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16553–16554

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Farmington Resource Area, NM, 16545–16546
Glamis Marigold Mining Co./Marigold Mine Millennium Expansion Project, NV, 16546
Lea County, NM, et al.; refined petroleum products pipeline right-of-way, 16546–16547
Withdrawal and reservation of lands:
South Dakota; cancellation, 16547–16548

Maritime Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16596

Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation
NOTICES
Meetings; Sunshine Aot, 16578

National Archives and Records Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16578

National Credit Union Administration
PROPOSED RULES
Credit unions:
Member business loans; miscellaneous amendments, 16450–16458

National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16477–16478
Grants and cooperative agreements; availability, etc.:
Educational Partnership Program—
Minority Serving Institutions; Environmental Entrepreneurship Program, 16479
Meetings:
National Sea Grant Review Panel, 16479–16480
Permits:
Endangered and threatened species, 16479

National Park Service
RULES
Special regulations:
Virgin Islands Coral Reef and Buck Island Reef National Monuments; prohibition on extractive uses, 16432–16436
NOTICES
Environmental statements; availability, etc.:
Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway, WY, MT, and ID, 16548
Environmental statements; notice of intent:
Lassen Volcanic National Park, CA, 16548–16549
Native American human remains and associated funerary objects:
Field Museum of Natural History, Chicago, IL—
Brotherton Indians wampum belt, 16549–16550
Franklin Pierce College, NH—
Inventory from Smyth Site, Merrimack River, Hillsborough County, NH, 16550–16551

Nuclear Regulatory Commission
NOTICES
Meetings:
Nuclear Waste Advisory Committee, 16578–16579
Reactor Safeguards Advisory Committee, 16579
Reports and guidance documents; availability, etc.:
Consolidated line item improvement process; mode change limitations; requirements modification; technical specification improvement; model application, 16579–16593

Overseas Private Investment Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16593–16594

Patent and Trademark Office
NOTICES
Committees; establishment, renewal, termination, etc.:
Patent Public Advisory Committee and Trademark Public Advisory Committee, 16480–16481

Presidential Documents
PROCLAMATIONS
Special observances:
National Donate Life Month (Proc. 7658), 16403–16404

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Cincinnati Stock Exchange, Inc., 16594–16595

Small Business Administration
RULES
Small business size standards:
Tour operators, 16405–16409
NOTICES
Interest rates; quarterly determinations, 16595
Meetings:
Regulatory Fairness Boards—
Region VI; hearing, 16595
Region VI; Public Roundtable, 16595

Social Security Administration
RULES
Special veterans benefits; World War II veterans, 16415–16427

State Department
NOTICES
Organization, functions, and authority delegations:
Assistant Secretary for Educational and Cultural Affairs, 16595–16596

Surface Transportation Board
NOTICES
Railroad services abandonment:
CSX Transportation, Inc., 16596–16597

Transportation Department
See Federal Aviation Administration
See Maritime Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16597–16599

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 16601–16641

Part III
Environmental Protection Agency, 16643–16650

Part IV
Health and Human Services Department, Centers for Medicare & Medicaid Services, 16651–16669

Part V
Housing and Urban Development Department, 16671–16705

Part VI
Environmental Protection Agency, 16707–16713

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7658.....16403

5 CFR
Proposed Rules:
1600.....16449
1605.....16449
1606.....16449
1655.....16449

12 CFR
Proposed Rules:
702.....16450
704.....16450
712.....16450
723.....16450

13 CFR
121.....16405

14 CFR
71 (2 documents).....16409, 16410
97 (2 documents).....16411, 16412
Proposed Rules:
25.....16458
39.....16458

16 CFR
310.....16414

20 CFR
408.....16415

21 CFR
1308.....16427
Proposed Rules:
10.....16461

24 CFR
Proposed Rules:
902.....16461

26 CFR
1.....16430
602.....16430
Proposed Rules:
1.....16462

36 CFR
7.....16432

40 CFR
9.....16708
46.....16708
180.....16436
Proposed Rules:
52.....16644

42 CFR
422.....16652
489.....16652

45 CFR
2506.....16437

47 CFR
25.....16446

50 CFR
Proposed Rules:
17.....16602

Federal Register
Vol. 68, No. 65
Friday, April 4, 2003

Presidential Documents

Title 3—

The President

Proclamation 7658 of April 1, 2003

National Donate Life Month, 2003

By the President of the United States of America

A Proclamation

Advances in medical research and technology are helping our citizens to live longer and better lives. An important aspect of these improvements is transplant technology. Today, up to 50 lives can be saved or enhanced by just one organ and tissue donor. During National Donate Life Month, we honor living and deceased donors and their families across our Nation who have renewed the lives of others, and we call upon more Americans to follow their example.

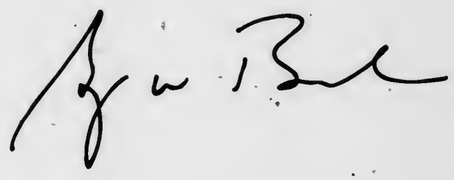
Through our Nation's organ and tissue donor programs, thousands of Americans have given the gift of life. In 2002, 24,851 organ transplants and 32,744 corneal transplants were performed in the United States. In addition, the National Bone Marrow Donor Registry facilitated an average of 173 transplants each month. These donors' spirit of giving reflects the compassion of our great Nation.

Unfortunately, the current rate of donation is inadequate to meet the growing needs of our fellow Americans. Nearly 81,000 of our citizens are on the national organ transplant waiting list. Each day, an average of 68 of these individuals receive an organ transplant, yet another 17 on the waiting list die. As a Nation, we must strive to meet the needs of all Americans awaiting such donations.

Through the "Gift of Life Donation Initiative," my Administration is working to educate our Nation about the importance of becoming a donor. During National Donate Life Month, more than 6,000 partners, including Federal agencies, State governments, private industries, unions, fraternal organizations, and associations have committed to promoting organ and tissue donation awareness. As a result, millions of Americans will learn about the many ways they can help those in need and save lives.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2003 as National Donate Life Month. I call upon our citizens to sign an organ and tissue donor card and to be screened for bone marrow donation. I also urge healthcare professionals, volunteers, educators, government agencies, and private organizations to help raise awareness of the important need for organ and tissue donors in communities throughout our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this First day of April, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–8429
Filed 4–3–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 68, No. 65
Friday, April 4, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN: 3245–AE98

Small Business Size Standards; Tour Operators

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is adopting its proposed modification to the way average annual receipts are calculated for firms in the Tour Operators industry (North American Industry Classification System 561520). This change excludes funds received in trust for unaffiliated third parties from the calculation of a tour operator's receipts. The SBA is retaining the current size standard of $6 million in average annual receipts, as proposed.

DATES: This rule is effective May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Economist, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: On October 2, 2002, in response to industry requests, the SBA issued a proposed rule that would modify the way average annual receipts are calculated for firms in the Tour Operators industry (North American Industry Classification System (NAICS) 561520), while retaining the size standard of $6 million (67 FR 61829). Under the SBA's Small Business Size Regulations (13 CFR 121.104), the receipts of a firm are based on information reported on a firm's Federal tax returns. Generally, receipts reported to the Internal Revenue Service (IRS) include a firm's gross receipts from the sale of goods and services and all other sources of income. The SBA proposed to exclude from the calculation of average annual receipts, those receipts that are collected for other parties (primarily to the actual transportation and lodging providers) for purposes of determining the size and eligibility of a tour operator for the SBA's assistance. Based on a review of industry practices, the SBA agreed with industry commentators that certain types of receipts should be excluded from the calculation of size for firms in this industry.

Related to this issue, the SBA also considered whether the current size standard continues to be appropriate if receipts collected for third party reimbursement are excluded from a firm's gross receipts. Based on a review of industry data discussed in the proposed rule, the SBA believes the current size standard is appropriate even if size is measured on an adjusted basis rather than by gross receipts. For more information on the size standard analysis of the Tour Operators industry, and the justification for excluding receipts held in trust for payment to transportation and lodging providers, see the October 2, 2002, proposed rule.

Comments on the proposed rule all supported the revised method of calculating the average annual receipts of a tour operator and retaining the $6 million size standard. Accordingly, the SBA is revising its size standard measure for the Tour Operators industry by excluding funds received in trust for unaffiliated third parties, while retaining the size standard of $6 million.

Discussion of Comments on the Proposed Rule

The SBA received six comments to the proposed rule. Four comments were from firms in the industry, one comment was from a travel agency, and one was from members of Congress (six U.S. Representatives co-signed a single comment letter).

In summary, all six commentators supported the change to $6 million in adjusted annual receipts. They all, however, had the following two additional recommendations:

(1) The SBA should extend the application period for its Economic Injury Disaster Loan (EIDL) Program for 60 days after the size standard is revised; and

(2) The SBA should clarify that trust receipts do not refer to formal legal trusts.

Response to Issues Raised by the Comments

The comments expressed the concern that many tour operators continue to need assistance as a result of the September 11, 2001, terrorist attacks, but had not applied for EIDL assistance because they exceeded the gross receipts size standard. The EIDL program provides assistance to businesses that have suffered substantial economic injury, regardless of physical damage, and is located in a declared disaster area. The SBA extended the deadline for submitting an application for EIDL assistance for the September 11, 2001, terrorist attacks until January 31, 2003, for businesses located in the presidentially designated disaster areas of New York and Northern Virginia. However, for areas outside of the area of the physical declaration, the SBA's extension period expired on September 30, 2002. With a revision to the size standard, the commentators recommended that the SBA extend the EIDL application deadline for 60 days after the implementation of the size standard, to afford the newly eligible tour operators an opportunity to apply for EIDL assistance.

The SBA will not grant an extension of the EIDL deadline for tour operators. The SBA carefully considered the reasons presented by the commentators to extend the application deadline, but has elected not to adopt that recommendation.

The comments also recommended that the SBA clarify that "trust receipts" do not require the creation of a formal legal trust. In determining the receipts of a tour operator and other specifically identified activities, footnote 10 of the size standards table allows for the exclusion of "funds received in trusts for an unaffiliated third party, such as books subject to commissions" (13 CFR 121.201). The language of this provision does not require the creation of a legal trust. The SBA follows the "law of agency" in determining whether receipts may be excluded. If money is received under a claim of right, it must be included as the firm's receipts. If, on the other hand, it is received as an agent for another, the money is excluded (see Size Appeal of Mid-Columbia Engineering, SBA No. 4134, (1996)). Thus, the current provision does not require that the excludable funds be passed through a legal trust.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that this final rule is a "significant" regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose new reporting or record keeping requirements. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

1. Is There a Need for the Regulatory Action?

The SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, the SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of the proposed rule explained the approach the SBA follows when analyzing a size standard for a particular industry as well as the criteria used to determine whether to use adjusted receipts. Based on that analysis, the SBA believes that a change in the way receipts are measured for businesses in the Tour Operators industry is needed to better reflect their size and activities.

2. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. Under this rule, 238 additional firms generating 21 percent of sales in the industry will obtain small business status and become eligible for these programs. These include the SBA's financial assistance programs, economic injury disaster loans and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those awarded through full and open competition after application of the HUBZone or small disadvantaged business price evaluation preference or adjustment. Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

Other Federal agencies also use the SBA size standards for a variety of regulatory and program purposes. However, discussions with industry representatives identified no other uses of the SBA's tour operators size standard. If such a case exists where the SBA's size standard is not appropriate, an agency may establish its own size standards with the approval of the SBA Administrator (*see* 13 CFR 121.902).

The benefits of a size standard change to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the higher size standards that also use small business assistance programs; (2) growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the higher size standard; and (3) Federal agencies that award contracts under procurement programs that require small business status. Although there may be some procurements that are awarded to tour operators, the SBA's research was unable to find any Federal contracting awards reported during the last 3 fiscal years.

Newly defined small businesses could benefit from the SBA's 7(a) Guarantee Loan Program. The SBA estimates that three additional loans totaling approximately $0.6 million in new Federal loan guarantees would be made to these newly defined small businesses. This represents 21 percent (the percentage increase in coverage of sales in the industry by firms under the higher "real" size standard) of the $2.9 million yearly average in loans that were guaranteed by the SBA in this industry under these two financial programs from fiscal years 1999 to 2001. These additional loan guarantees, because of their limited magnitude, will have virtually no impact on the overall availability of loans for the SBA's loan programs, which have averaged about 50,000 loans totaling more than $12 billion per year in recent years.

The newly defined small businesses would also benefit from the SBA's EIDL program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected from future disasters. However, for the terrorist attacks of September 11, 2001, the SBA has declined 11 applicants based on size. Many of these companies would likely qualify if pass-through receipts were excluded from a firm's measure of size in this industry. In addition, out of the newly eligible tour operators, six more loans would likely be approved. Based on an analysis of the September 11, 2001, EIDL assistance, this rule may result in $607,000 in additional loans.

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. However, no Federal contracting has been reported for fiscal years 1999–2001 in the Tour Operators industry and there will be no procurement gains from a higher size standard in this industry for Federal agencies if this pattern continues.

To the extent that up to 238 additional firms could become active in Federal small business programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net data base program. Among businesses in this group seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental administrative costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts as a result of this rule. However, any analysis of costs is dependent on contracting in this industry and the last three fiscal years have had no Federal contracting in this industry. The SBA is assuming that this trend will continue and there will be no contracting activity in this industry in the near future.

The SBA believes that there will be no distributional effects among large and small businesses, nor will there be any equity or uncertainty considerations as a result of this rule. With the small amount of lending to tour operators discussed above, it is unlikely that they would be denied SBA financial assistance due to a larger pool of eligible small businesses. Also, there is little or no Federal contracting in this industry to have an effect on another business.

The revision to the current size standard for tour operators is consistent with the SBA's statutory mandate to assist small business. This regulatory action promotes the Administrator's objectives. One of the SBA's goals in support of the Administrator's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, state and local governments have voluntarily adopted the SBA's size standards for their programs to eliminate the need to establish an administrative mechanism to develop their own size standards.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities engaged in the Tour Operators industry. As described in the Regulatory Impact Analysis, this rule may impact small entities seeking SBA (7a) Guaranteed Loans or EIDL loans, but it is unlikely to affect SBA's procurement preference programs because of the absence of Federal contracting in this industry. Newly defined small businesses would benefit from the SBA's 7(a) Guaranteed Loan Program. The SBA estimates that three additional loans totaling approximately $0.6 million in new Federal loan guarantees could be made to these newly defined small businesses. This represents 21 percent (the percentage increase in coverage of sales in the industry by firms under the higher "real" size standard) of the $2.9 million yearly average in loans that were guaranteed by the SBA in this industry under these two financial programs in fiscal years 1999–2001. These additional loan guarantees, because of their limited magnitude, will have virtually no impact on the overall availability of loans for SBA's loan programs, which have averaged about 50,000 loans totaling more than $12 billion per year in recent years.

The size standard may also affect small businesses participating in programs of other agencies that use the SBA size standards. As a practical matter, however, the SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. However, discussions with a major tour operators association indicate that there are no Federal laws or regulations using SBA's size standards for defining small tour operators. In cases where an SBA size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs. (13 CFR 121.902(b)(4)).

Immediately below, SBA sets forth a final regulatory flexibility analysis (RFA) of this rule on the Tour Operators industry addressing the reasons and objectives of the rule; the SBA's description and estimate of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate, overlap or conflict with the rule; and alternatives to the final rule considered by the SBA that minimize the impact on small businesses.

(1) What Is the Need for and Objective of the Rule?

The revision to the size standard for tour operators to exclude third party reimbursements more accurately measures the magnitude of operations of a tour operator. The SBA has developed five criteria to assess whether businesses in an industry should be allowed to exclude funds held in trust for third parties. These five criteria were discussed in detail in the October 2, 2002, proposed rule. Tour Operators met the test for each criterion. The SBA found that tour operators consistently act as agents for their clients by arranging travel and related activities provided by third parties. Well over a majority of a tour operator's receipts collected from clients are provided to third party providers. Therefore, a size standard allowing for the exclusion of third party reimbursements is considered a better measure of a tour operator's size than gross receipts.

(2) What Significant Issues Were Raised by the Public Comments in Response to the Initial Regulatory Flexibility Act (IRFA)?

All of the commentators suggested that the SBA should extend the application period for its EIDL program for 60 days after this size standard is revised. The SBA is considering this suggestion. However, this decision is not related to this rule which focuses on the measure of size and the appropriate size standard for the Tour Operators industry. All of the commentators also recommended that the SBA clarify that "trust receipts" do not require the creation of a formal legal trust. However, there is no reference in the SBA's regulations requiring a formal legal trust, and the SBA follows the law of agency in determining whether receipts are excluded. Thus, the current provision does not require that excludable funds be passed through a legal trust.

(3) What Is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

Within the Tour Operators industry, 2,722 businesses out of 3,222 (84.5 percent) have been defined as small using unadjusted annual receipts. The SBA estimates 238 additional tour operators would be considered small as a result of this rule based on the U.S. Census Bureau's special tabulation of the 1997 Economic Census for SBA's Office of Size Standards. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements. Firms becoming eligible for SBA assistance as a result of this rule cumulatively generate $600 million in this industry, out of a total of $2.8 billion in annual receipts. The small business coverage in this industry would increase by 21 percent of total industry receipts and by 7.4 percent of the total number of tour operators. Only a small proportion of these newly eligible businesses are likely to utilize SBA programs, however, almost exclusively in the area of financial assistance. For fiscal years 1999—2001, only 63 loans totaling $8.7 million were made under SBA's 7(a) program. As a result of the terrorist attacks of September 11, 2001, the SBA made 121 EIDL loans totaling $12.3 million.

(4) Will This Rule Impose Any Additional Reporting or Record Keeping, or Other Compliance Requirements on Small Business?

A new size standard does not impose any additional reporting, record keeping

or other compliance requirements on small entities for SBA programs. A change in a size standard would not create additional costs on a business to determine whether or not it qualifies as a small business. A business needs to only examine existing information to determine its size, such as Federal tax returns, payroll records, and accounting records. Size standards determines "voluntary" access to the SBA and other Federal programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior. In addition, this rule does not impose any new information collecting requirements from the SBA which requires approval by OMB under the Paperwork Reduction Act of 1980, U.S.C. 3501–3520.

(5) What Are the Steps the SBA Has Taken To Minimize the Significant Economic Impact on Small Business?

Most of the economic impact on small businesses will be positive. The most significant benefits to businesses that will obtain small business status as a result of this rule are eligibility for SBA's financial assistance programs such as 7(a) business loans, 504 business loans, and EIDL assistance. Normally, firms gain from eligibility for the Federal Government's procurement preference programs for small businesses. In this case, however, the SBA anticipates no impact based on the fact that there has been no Federal contracting in this industry over the last three completed fiscal years. In addition, the projected increase in 7(a) business loans of three additional loans totaling approximately $0.6 million in new Federal loan guarantees will have virtually no impact on the overall availability of loans for SBA's loan programs, which have averaged about 50,000 loans totaling more than $12 billion per year in recent years.

(6) What Alternatives Were Considered by the SBA To Accomplish Its Regulatory Objectives While Minimizing the Impact on Small Entities?

The SBA initially considered two alternatives in its proposed rule (67 FR 61829, dated October 2, 2002). First, it considered the $3 million size standard proposed for the Travel Agencies industry that the SBA also measures on an adjusted receipts basis. The SBA also considered retaining gross receipts to measure the size of a tour operator and adjusting the size standard to a higher level. These two alternatives were discussed in the proposed rule.

The SBA decided not to adopt either of these alternatives in this final rule. The industry characteristics of the Tour Operators industry clearly show that a $3 million size standard is too low. Also, an appropriate size standard based on gross receipts may harm small businesses. The SBA calculates the size of a tour operator from its Federal tax returns. Some tour operators may report receipts differently for tax purposes, which could result in two tour operators doing the same amount of business being treated differently for small business status. No comments were received, however, in favor of these alternatives, and all of the commentators supported the change in receipts definition.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business. Loan programs'business, Small businesses.

■ For the reasons set forth in the preamble, the U.S. Small Business Administration amends part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub.L. 103–403, 108 Stat.4175, 4188.

■ 2. In § 121.201, in the table under "Small Business Size Standards by NAICS Industry":

a. Under the heading Subsector 561—Administrative and Support Services, revise entry 561520 to read as follows; and

b. Revise footnote 10 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
	Subsector 561—Administrative and Support Services		
561520	Tour Operators[10]	[10] $6.0	

* * * * *

Footnotes

* * * * *

10. NAICS codes 488510 (part) 531210, 541810, 561510, 561520, and 561920—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenues.

* * * * *

Dated: March 6, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–8169 Filed 4–3–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14600; Airspace Docket No. 03–ACE–23]

Modification of Class E Airspace; Knoxville, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Knoxville, IA revealed a discrepancy in the legal description for the Knoxville, IA Class E airspace. This action corrects the discrepancy by modifying the Knoxville, IA Class E airspace and by incorporating the change into the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 15, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14600/ Airspace Docket No. 03–ACE–23, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Knoxville, IA. It brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14600/Airspace Docket No. 03–ACE–23." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule", and Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30,

2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Knoxville, IA

Knoxville Municipal Airport, IA
(Lat. 41°17'56" N., long. 93°06'50" W.)
Knoxville NDB
(Lat. 41°17'45" N., long. 93°06'51" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Knoxville Municipal Airport and within 2.6 miles each side of the 145° bearing from the Knoxville NDB extending from the 6.8-mile radius to 7 miles southeast of the airport and within 2.6 miles each side of the 340° bearing from the Knoxville NDB extending from the 6.8-mile radius to 7 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on March 24, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8142 Filed 4–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14601; Airspace Docket No. 03–ACE–24]

Modification of Class E Airspace; Marshalltown, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Marshalltown, IA revealed a discrepancy in the legal description for the Marshalltown, IA Class E airspace. This action corrects the discrepancy by modifying the Marshalltown, IA Class E airspace and by incorporating the change into the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 15, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14601/Airspace Docket No. 03–ACE–24, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Marshalltown, IA. It correctly identifies the facilities which are used to define Marshalltown, IA Class E airspace area and brings the legal description of this airspace asrea into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14601/Airspace Docket No. 03–ACE–24." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Marshalltown, IA

Marshalltown Municipal Airport, IA
(Lat. 42°06'46" N., long. 92°55'04" W.)
Elmwood VOR/DME
(Lat. 42°06'41" N., long. 92°54'32" W.)
Marshalltown NDB
(Lat. 42°06'36" N., long 92°55'01" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Marshalltown Municipal Airport and within 2.6 miles each side of the 135° radial of the Elmwood VOR/DME extending from the 6.4-mile radius to 7 miles southeast of the airport and within 2.6 miles each side of the 313° bearing from the Marshalltown NDB extending from the 6.4-mile radius to 7 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on March 24, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8141 Filed 4–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30361; Amdt. No. 3052

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 4, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: PO Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances

which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on March 28, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENTS APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV, SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective upon publication*

FDC Date	State	City	Airport	FDC Number	Subject
03/12/03	CA	Calipatria	Cliff Hatfield Memorial	3/2008	RNAV (GPS) Rwy 8, Orig.
03/13/03	WV	Huntington	Tri-State/Milton J. Ferguson Field	3/2029	ILS Rwy 30, Amdt 48.
03/17/03	SC	Columbia	Columbia Metropolitan	3/2104	RNAV (GPS) Rwy 11, Orig.
03/18/03	MD	Elkton	Cecil County	3/2137	RNAV (GPS) Rwy 31, Orig–A.
03/18/03	MD	Elkton	Cecil County	3/2138	VOR/DME Rwy 31, Orig–A.
03/19/03	OK	Tulsa	Richard Lloyd Jones, Jr.	3/2150	ILS Rwy 1L, Orig–A.
03/19/03	OK	Tulsa	Richard Lloyd Jones, Jr.	3/2151	VOR/DME–A, Amdt 6A.
03/19/03	OK	Tulsa	Richard Lloyd Jones, Jr.	3/2189	VOR Rwy 1L, Amdt 4A.
03/20/03	MN	Brainerd	Brainerd Lakes Regional	3/2235	ILS Rwy 23, Amdt 6.
03/20/03	OH	Cleveland	Cleveland–Hopkins Intl	3/2257	RNAV (GPS) Z Rwy 6L, Orig–A.
03/21/03	VT	Burlington	Burlington Intl	3/2273	ILS/DME Rwy 33, Orig–D.
03/21/03	NH	Portsmouth	Pease Intl Tradeport	3/2275	ILS Rwy 16, Orig.
03/21/03	NH	Portsmouth	Pease Intl Tradeport	3/2288	ILS Rwy 34, Amdt 1B.
03/24/03	NY	Plattsburgh	Plattsburgh Intl	3/2334	ILS Rwy 17, Amdt 1.
03/25/03	IL	Belleville	Scott AFB/Midamerica	3/2350	ILS Rwy 14R, Orig.
03/25/03	UT	Kanab	Kanab Muni	3/2356	RNAV (GPS) Rwy 1, Orig.
03/25/03	OK	Sand Springs	William R. Pogue Muni	3/2370	GPS Rwy 35, Orig–A.
03/26/03	PA	Johnstown	John Murtha Johnstown-Cambria County.	3/2401	RNAV (GPS) Rwy 33, Orig.
03/27/03	IL	Chicago	Chicago Midway Intl	3/2411	ILS Rwy 4R, Amdt 9B.

[FR Doc. 03–8138 Filed 4–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30360; Amdt. No. 3051]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 4, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 4, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: PO Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 997) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on March 28, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs; identified as follows:

** * * Effective April 17, 2003*

Buffalo, NY, Buffalo Niagara Intl, RNAV (GPS) RWY 14, Orig.
Portland, OR, Portland-Hillsboro, ILS RWY 12, Amdt 7.

** * * Effective May 15, 2003*

Show Low, AZ, Show Low Muni, NDB–A, Amdt 1.
Show Low, AZ, Show Low Muni, RNAV (GPS) RWY 24, Orig.
Blythe, CA, Blythe, VOR/DME–A, Orig.
Blythe, CA, Blythe, VOR OR GPS–A, Amdt 6B, Cancelled.
Blythe, CA, Blythe, VOR/DME RWY 26, Amdt 6.
Blythe, CA, Blythe, RNAV (GPS) RWY 26, Orig.
Port Lauderdale, FL, Fort Lauderdale Executive, RNAV (GPS) RWY 26, Orig.
Orlando, FL, Orlando Sanford, NDB–B, Orig.
Orlando, FL, Orlando Sanford, NDB–C, Orig.
Orlando, FL, Orlando Sanford, NDB RWY 9L, Amdt 1, Cancelled.
Orlando, FL, Orlando Sanford, NDB RWY 27R, Amdt 1, Cancelled.
Agana, Guam, Guam International, ILS RWY 6L, Amdt 3
Agana, Guam, Guam International, RNAV (GPS) Y RWY 6L, Orig.
Agana, Guam, Guam International, RNAV (GPS) Z RWY 6L, Orig.
Agana, Guam, Guam International, RNAV (GPS) Y RWY 6R, Orig.

Agana, Guam, Guam International, RNAV (GPS) Z RWY 6R, Orig.
Agana, Guam, Guam International, RNAV (GPS) RWY 24L, Orig.
Agana, Guam, Guam International, RNAV (GPS) RWY 24R, Orig.
Agana, Guam, Guam International, GPS RWY 6L, Orig. Cancelled.
Agana, Guam, Guam International, GPS RWY 24R, Orig. Cancelled.
Lihue, HI, Lihue, ILS RWY 35, Amdt 6.
Lihue, HI, Lihue, RNAV (GPS) RWY 17, Orig.
Lihue, HI, Lihue, RNAV (GPS) RWY 21, Orig.
Lihue, HI, Lihue, RNAV (GPS) RWY 35, Orig.
Mansfield, MA, Mansfield Muni, NDB RWY 32, Admt 7.
Mansfield, MA, Mansfield Muni, RNAV (GPS) RWY 32, Orig.
Mansfield, MA, Mansfield Muni, GPS RWY 32, Orig, Cancelled.
Cheboygan, MI, Cheboygan County, VOR RWY 9, Amdt 8.
Cheboygan, MI, Cheboygan County, RNAV (GPS) RWY 9, Orig.
Cheboygan, MI, Cheboygan County, RNAV (GPS) RWY 27, Orig.
Fargo, ND, Hector Intl, RNAV (GPS) RWY 13, Orig, Cancelled.
Fargo, ND, Hector Intl, RNAV (GPS) RWY 31, Orig, Cancelled.
Bradford, PA, Bradford Regional, VOR RWY 14, Orig.
Bradford, PA, Bradford Regional, VOR/DME RWY 14, Amdt 9.
Bradford, PA, Bradford Regional, ILS RWY 32, Amdt 11.
Bradford, PA, Bradford Regional, RNAV (GPS) Y RWY 14, Orig.
Bradford, PA, Bradford Regional, RNAV (GPS), Z WY 14, Orig.
Bradford, PA, Bradford Regional, RNAV (GPS) RWY 32, Orig.
Lock Haven, PA, William T. Piper Memorial, RNAV (GPS)–A Orig.
Selinsgrove, PA, Penn Valley, RNAV (GPS) RWY 17, Orig, Cancelled.
Babelthuap Island, PS, Babelthuap/Koror, GPS RWY 9, Amdt 1B, Cancelled.
Babelthuap Island, PS, Babelthuap/Koror, GPS RWY 27, Amdt 1B, Cancelled.
Fort Atkinson, WI, Fort Atkinson Muni, VOR–A, Orig-B.
Fort Atkinson, WI, Fort Atkinson Muni, RNAV (GPS) RWY 3, Orig.
Fort Atkinson, WI, Fort Atkinson Muni, GPS RWY 3, Orig, Cancelled.
Fort Atkinson, WI, Fort Atkinson Muni, RNAV (GPS) RWY 21, Orig.

[FR Doc. 03–8137 Filed 4–3–03; 8:45 am]
BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 310

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.
ACTION: Stay of compliance date.

SUMMARY: In this document, the Federal Trade Commission ("FTC" or "Commission") announces that in response to supplemental petitions from the Direct Marketing Association ("DMA") and the American Teleservices Association ("ATA"), the Commission has decided to extend the date by which it will require full compliance with the amended Telemarketing Sales Rule ("amended TSR" or "amended Rule"), until October 1, 2003.

DATES: The rule amending the TSR, published January 29, 2003 (68 FR 4580), became effective March 31, 2003. The Commission will require full compliance with §§ 310.4(b)(1)(iv) and § 310.4(b)(4) on October 1, 2003.

ADDRESSES: Requests for copies of the amended Rule and this document should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Catherine Harrington-McBride, (202) 326–2452, Karen Leonard, (202) 326–3597, Michael Goodman, (202) 326–3071, or Carole Danielson, (202) 326–3115, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On January 29, 2003, the Federal Trade Commission published the amended TSR, 16 CFR part 310, and its Statement of Basis and Purpose in the **Federal Register**.[1] The document stated that the Amended Rule would become effective March 31, 2003; that full compliance with § 310.4(a)(7), the caller identification transmission provision, would be required by January 29, 2004; and that the Commission would announce at a future time the date by which full compliance with § 310.4(b)(1)(iii)(B), the "do-not-call" registry provision, would be required.

In response to petitions filed February 27, 2003, by DMA and February 27, 2003, by ATA, the Commission determined to extend the date by which it will require full compliance with § 310.4(b)(4)(iii) (the recording requirement of the call abandonment safe harbor provision) until October 1, 2003. The Commission also stayed until October 1, 2003, the date by which it will require full compliance with the safe harbor record retention requirement, § 310.4(b)(4)(iv), to the extent it would require record keeping to document the use of a recorded message in instances of call abandonment.

At that time, the Commission determined not to stay the requirement of full compliance with the prohibition on call abandonment (§ 310.4(b)(1)(iv)) or the other requirements of the call abandonment safe harbor provision (§§ 310.4(b)(4)(i), (ii) & (iv)) because the petitioners had not demonstrated that telemarketers would be unable to comply with these call abandonment provisions.

Subsequently, on March 25, 2003, DMA renewed its request to stay the compliance date of the call abandonment provisions.[2] DMA submitted numerous affidavits from manufacturers and users of predictive dialers containing information not previously submitted to the Commission, either in the rulemaking proceeding or in the initial petitions to stay various provisions of the amended TSR. These affidavits stated that, as a practical matter, compliance with the call abandonment safe harbor by March 31, 2003, would be very difficult or impossible for some telemarketers. Specifically, these affidavits stated that it is difficult if not impossible to set some predictive dialer equipment currently in use to a maximum abandonment rate of 3% of answered calls, as required by § 310.4(b)(4)(i). According to the DMA petition and supporting affidavits, this equipment incorporates hardware or software designed to calculate the abandonment rate on the basis of all calls placed, not all calls answered. This means that the equipment cannot, or cannot easily, be set to abandon no more than 3% of all calls answered by the called consumer, as required by § 310.4(b)(i). According to DMA, additional time is therefore necessary for some telemarketers to comply with § 310.4(b)(4)(i), given this limitation on their current predictive dialer equipment. The ATA supplemental petition echoes similar arguments.

Based on information newly submitted by DMA, together with information obtained from other sources, the Commission has determined that full compliance with the requirement in the call abandonment safe harbor that no more than 3% of all calls answered by a consumer be abandoned (§ 310.4(b)(4)(i)) by March 31, 2003, may constitute an undue burden on some telemarketers and sellers, who need to reprogram or purchase software for their equipment, or replace their current equipment.

The Commission weighs the burden on industry against the reasons for implementing the amended Rule provisions. Evidence on the record establishes that abandoned calls "frighten consumers, invade their privacy, cause some of them to struggle to answer the phone only to be hung up on, and waste the time and resources of consumers working from home." 68 FR 4580, 4642 (Jan. 29, 2003) (footnotes omitted). The Commission therefore determined that the abandoned call provisions of the amended TSR are necessary to remedy the abusive practice of call abandonment that can result from the use of predictive dialers.

Given the information on the record, however, the Commission concludes that the economic harm to industry that is likely to occur narrowly outweighs the harm to consumers of a brief delay in implementing the abandoned call provision. Therefore, the Commission has determined to extend the date by which it will require full compliance with §§ 310.4(b)(1)(iv) and § 310.4(b)(4) until October 1, 2003.[3]

Given the impact on consumers of abandoned calls, the Commission encourages the industry to use its best efforts to come into full compliance with the abandoned call provisions as soon as possible. After six months (*i.e.*, October 1, 2003), the Commission believes that the balance of equities weighs in favor of preventing further consumer harm by requiring compliance with the abandoned call provisions; and, therefore, it is unlikely that the Commission will provide a further stay of their implementation. The additional six months should give industry ample time to make the changes in their operations necessary to comply with the recording requirement of the call abandonment safe harbor.

The Commission has now announced that it will require full compliance on October 1, 2003 with: (1) § 310.4(b)(1)(iv) (the prohibition on abandoned calls); (2) § 310.4(b)(4) (the safe harbor for call abandonment) as well as any record keeping requirements associated with the safe harbor; and (3) § 310.4(b)(1)(iii)(B) (the national "do-not-call" registry provisions of the amended Rule). The Commission will require full compliance on January 29, 2004 with § 310.4(a)(7) (the caller identification provisions). Full compliance with all other provisions of the amended TSR will be required by the date on which the amended Rule is effective, March 31, 2003.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 03–8233 Filed 4–3–03; 8:45 am]
BILLING CODE 6750–01–P

[1] 68 FR 4580 (Jan. 29, 2003).

[2] On March 26, 2003, the United States District Court for the Western District of Oklahoma denied petitioner DMA's motion for a preliminary injunction based on the same arguments and facts presented here. *U.S. Security* v. *FTC*, Case No. CIV–03–122–W. Although the Commission believes that this was the correct decision under the legal standards for obtaining a preliminary injunction, the Commission notes that it has broad discretionary authority to grant a stay where it believes that the goals of the rule making will be served.

[3] The decision to stay the requirement of full compliance with two key components of the safe harbor provision (§§ 310.4(b)(4)(i) & (iii)) as well as the record keeping component of the safe harbor insofar as it would require records of compliance with the two stayed components, compels that full compliance with the prohibition on call abandonment, § 310.4(b)(1)(iv) also be stayed. Otherwise, industry members would be liable for a rule violation if they abandoned any calls and would have no safe harbor enabling them to continue use of predictive dialers. As noted in the Statement of Basis and Purpose, "a total ban on abandoned calls, which would amount to a ban on predictive dialers, would not strike the proper balance between addressing an abusive practice and allowing for the use of a technology that provides substantially reduced costs for telemarketers." 68 FR 4643 (Jan. 29, 2003). Further, having stayed the requirement of full compliance with the prohibition on call abandonment, the final element of the safe harbor, § 310.4(b)(4)(ii) (requiring that the seller or telemarketer allow the telephone to ring for at least fifteen seconds or four rings before disconnecting an unanswered call) would have no application. The requirement of full compliance with the entire safe harbor provision, § 310.4(b)(4), is therefore stayed until October 1, 2003.

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 408

[Regulation No. 8]

RIN 0960–AF61

Special Benefits for Certain World War II Veterans

AGENCY: Social Security Administration (SSA).
ACTION: Final rules.

SUMMARY: We are adding to our regulations a new part 408 that sets forth our rules applicable to claims for special veterans benefits (SVB) under title VIII of the Social Security Act (the Act). The title VIII program was effective in May 2000 and provides monthly benefits to certain World War II (WWII) veterans who were previously eligible for supplemental security income (SSI) payments under title XVI of the Act and reside outside the United States. These final rules include five new subparts that describe: what the new part is about, how we determine whether you qualify for and are entitled to SVB, how you file for SVB, how we evaluate evidence under the SVB program, and how we compute and pay SVB.

In addition to these subparts, we are developing additional proposed subparts describing other aspects of the title VIII program that we will publish at a later date.

EFFECTIVE DATES: These regulations are effective May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0020 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet site, Social Security Online, at *http://www.ssa.gov*.

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** on the internet site for the Government Printing Office: *http://www.access.gpo.gov/sudocs/aces/aces140.html*. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://www.ssa.gov/regulations*.

SUPPLEMENTARY INFORMATION:

Statutory Provisions

Section 251 of the Foster Care Independence Act of 1999 (Pub. L. 106–169), enacted on December 14; 1999, added a new title VIII to the Act (Special Benefits for Certain World War II Veterans). Title VIII authorizes SSA to pay special veterans benefits (SVB) to certain WWII veterans who reside outside the United States. Establishing SVB entitlement is a two-step process: first, you need to show that you meet certain qualifying requirements; once we determine that you qualify for SVB, you will be entitled to SVB payments after you begin residing outside the United States.

How to Qualify for SVB

Section 802 of the Act provides that, in order to be entitled to SVB, you must first establish that you are a "qualified individual." You qualify for SVB if you file an application for SVB and are:

- Age 65 on or before December 14, 1999 (the date the title VIII program was enacted);
- A WWII veteran;
- Eligible for SSI for both December 1999 (the month of enactment) and the month you file your application for SVB; and
- Receiving total monthly benefit income from other sources that is less than 75 percent of the Federal benefit rate (FBR) under SSI (title XVI of the Act).

However, even if you meet all the above requirements, section 804 of the

Act specifies certain conditions that will still prevent you from qualifying for SVB or, if you have already qualified for SVB, will prevent us from paying you benefits. Specifically, the following events will prevent you from qualifying for or receiving SVB:

- Removal (including deportation) from the United States under section 237(a) or 212(a)(6)(A) of the Immigration and Nationality Act.
- Flight to avoid prosecution, or custody or confinement after conviction, for a crime or an attempt to commit a crime that is a felony under the laws of the United States or the jurisdiction of the United States from which you fled or, in the case of the State of New Jersey, is a high misdemeanor.
- Violation of a condition of probation or parole imposed under Federal or State law.
- Residence in a country to which payments are withheld by the Treasury Department under 31 U.S.C. 3329.

WWII Veteran Status

As explained above, section 802 of the Act specifies that you must be a WWII veteran to qualify for SVB. Section 812(1) of the Act defines a WWII veteran as a person who served during WWII in:

- The active military, naval, or air service of the United States during the period beginning on September 16, 1940 and ending on July 24, 1947; or
- The organized military forces of the Government of the Commonwealth of the Philippines, while the forces were in the service of the U.S. Armed Services under the military order of the President dated July 26, 1941, including organized guerrilla forces under commanders appointed by the Commander in Chief, Southwest Pacific Area, or other competent authority in the U.S. Army. This service must have been rendered at any time during the period beginning July 26, 1941 and ending on December 30, 1946.

In addition to meeting either of these requirements, you must have been discharged or released from this service under conditions other than dishonorable after serving at least 90 days or, if your service was less than 90 days, because of a disability or injury incurred or aggravated in the line of active duty.

How We Evaluate Evidence

Sections 806 and 810 of the Act authorize us to establish rules about the kinds of information you must give us to show that you qualify for SVB and that you are entitled to receive benefits. Section 806 also specifies that we cannot pay you SVB based only on your statements about whether you qualify for benefits. Instead, you must give us documents or other evidence that we will verify with independent sources.

How We Calculate and Pay SVB

Section 805 of the Act specifies that your monthly SVB payment is equal to 75 percent of the Federal benefit rate (FBR) under title XVI of the Act, reduced by the amount of any other benefit income you receive for that month. As used in title VIII, "other benefit income" means any recurring payments you receive such as an annuity, pension, retirement, or disability benefit, but only if you received a similar payment from the same (or a related) source during the 12-month period before the month you file an application for SVB.

Applying for SVB

As indicated above, section 802 of the Act requires you to file an application in order to establish that you qualify for SVB. Section 806 of the Act authorizes SSA to prescribe the requirements for filing such an application. In order to maintain consistency throughout the benefit programs we administer, we have attempted, where possible, to use the same requirements we use for filing applications under the titles II and XVI programs. These rules were established in order to ensure that individuals have every reasonable opportunity to file a claim for benefits at the earliest possible time without loss of benefits, and we believe those same considerations apply to claims for title VIII benefits.

Explanation of New Part 408

New part 408 will initially consist of 5 subparts. (As indicated above, we will propose additional subparts in a subsequent notice of proposed rulemaking (NPRM).) Following is a list of each subpart that includes a brief description of the contents of each section in the subpart.

Subpart A (Introduction, General Provision and Definitions)

- Section 408.101 introduces the title VIII program and contains a list of each subpart in part 408, and gives a brief description of the topics covered in those subparts.
- Section 408.105 briefly explains the purpose of the title VIII program and that the program is administered by SSA.
- Section 408.110 defines certain terms that are used throughout part 408.
- Section 408.120 explains how we calculate time periods in which you must take a required action under the SVB program when they end on a day, any part of which is a nonworkday for Federal employees. This is the same as the rule we use under both the title II and title XVI programs.

Subpart B (SVB Qualification and Entitlement)

As explained above, you must meet certain requirements to qualify for SVB (*i.e.*, you must be age 65 on or before December 14, 1999, a WWII veteran, SSI eligible for December 1999 and the month in which you file for SVB, not receiving other benefit income that is 75% or more of the SSI FBR, and you must file an application for SVB). In addition, even if you meet these requirements, certain other conditions will prevent you from qualifying for SVB or, if you are already qualified, will prevent us from making SVB payments to you. Subpart B discusses these qualifying and entitlement requirements. Specifically:

- Section 408.201 describes what subpart B is about and gives a general explanation of how you qualify for and establish entitlement to SVB payments.
- Section 408.202 gives a list of the specific requirements you must meet to qualify for SVB.
- Section 408.204 describes the conditions that will prevent you from qualifying for SVB or prevent you from being entitled to receive SVB payments even if you meet the requirements in § 408.202.
- Section 408.206 explains that when you apply for SVB, we will first determine if you qualify for benefits. If you do not qualify, we will deny your claim. If you do qualify, we will send you a written notice of qualification that explains you have 4 calendar months after the date of the notice in which to begin residing outside the U.S. or we will deny your claim. If you begin residing outside the U.S. within that 4-month period, your SVB payments will begin with the first full month in which you resided outside the U.S. on the first day of the month.
- Section 408.208 explains that, if you begin residing outside the U.S. within 4 calendar months after the date of the written notice of SVB qualification, we will send you a notice of SVB entitlement, including the date your entitlement begins, the amount of your monthly SVB payment, and the amount of any reduction in your payment because you are receiving other benefit income.
- Section 408.210 explains that if you do not begin residing outside the U.S. within 4 calendar months after the date of the written notice of SVB qualification, we will deny your SVB claim.

- Section 408.212 explains what happens if you are residing outside the U.S. at the time you file for SVB. If you meet all the requirements for qualification and none of the SVB disqualifying events applies to you, we will ask you for evidence of your residence outside the U.S. After your foreign residence is established, we will send you a notice of SVB entitlement, including the date your entitlement begins, the amount of your monthly SVB payment, and the amount of any reduction in your payment because you are receiving other benefit income.
- Section 408.214 explains that, in order to qualify for SVB, you must have been age 65 on or before December 14, 1999.
- Section 408.216 explains the service and discharge requirements you must meet to be considered to be a WWII veteran.
- Section 408.218 explains what we mean by eligible for SSI. Under this section, anyone whose SSI eligibility has not been terminated or whose SSI benefits are not subject to a penalty under § 416.1340 of our SSI regulations will be considered to be eligible for SSI, whether or not the person is actually receiving SSI payments.
- Section 408.220 explains what we mean by "other benefit income" and includes examples of payments we consider to be "other benefit income." It also explains that your other benefit income will only affect your entitlement to SVB if you received a similar payment from the same or a related source at any time during the 12-month period before you file for SVB.
- Section 408.222 explains how your other benefit income affects SVB qualification and the amount of your SVB payment. If you are receiving other benefit payments when you file for SVB, we will deny your claim if these payments equal or exceed 75 percent of the FBR payable to individual SSI recipients with no income; otherwise we will reduce your monthly SVB payment by the amount of the other benefit income you receive in that month.
- Section 408.224 explains how we determine the monthly payment of your other benefit income if the payments are not made on a monthly basis.
- Section 408.226 explains that, once you begin receiving SVB, we will reduce your SVB payments if you begin receiving additional other benefit income, but only if you received similar benefits from the same or a related source during the 12-month period before you applied for SVB.
- Section 408.228 explains when we will consider you to be residing outside the U.S. It also explains that, for SVB purposes, you can be a resident of only one country at a time.
- Section 408.230 explains when you must establish residence outside the U.S. Under the rulemaking authority provided by the law, we propose to establish a 4-month time limit within which you need to establish residence outside the U.S. Generally, the 4-month period would begin with the month after the month in which the notice that you qualify for SVB is dated. However, this section also explains that we will extend the 4-month period if you are in the U.S. to appeal a decision on your title VIII claim or on a title II and/or a title XVI claim that affects your SVB qualification. We believe this 4-month time period takes into account the fact that you generally need to be residing in the U.S. in order to be SSI eligible (and therefore are residing in the U.S. when you apply for SVB) but still gives you sufficient time in which to make arrangements to leave the U.S. and to begin residing outside the U.S.
- Section 408.232 explains that you lose your foreign resident status and we will stop paying you SVB if you enter the U.S. and stay here for more than 1 full calendar month. We will not resume your SVB payments until you establish that you are again residing outside the U.S. In recognition of the fact that many individuals receiving SVB benefits may wish to return to the U.S. for short periods (*e.g.*, to visit friends or relatives), we propose to permit them to continue receiving SVB while in the U.S. provided they do not stay in the U.S. for more than 1 full calendar month.
- Section 408.234 explains that you may continue to receive SVB payments even if you are in the U.S. for more than 1 full calendar month if you are prevented from returning to your home abroad by circumstances beyond your control or you are in the U.S. to appeal an SSA decision on a claim filed under title II, VIII, or XVI of the Act.

Subpart C (Filing Applications)

This subpart contains our rules on filing applications under the SVB program. Specifically:

- Section 408.301 explains what subpart C is about.
- Section 408.305 explains that you must file an application to receive SVB.
- Section 408.310 explains what makes an application a claim for SVB.
- Section 408.315 explains that you must file your own application for SVB unless you are mentally incompetent or physically unable to sign your own application. In that case, certain other individuals may sign the application on your behalf.
- Section 408.320 explains the kinds of evidence an individual must give us to show that he or she has authority to sign an application on your behalf.
- Section 408.325 explains when we consider you to have filed your application.
- Section 408.330 explains how long your application for SVB will remain in effect.
- Section 408.340 explains when we will use the date of a written statement as your application filing date.
- Section 408.345 explains the circumstances under which we will establish your filing date based on an oral inquiry about qualifying for SVB.
- Section 408.351 explains the circumstances under which we will establish your filing date if we give you misinformation about qualifying for SVB.
- Section 408.355 explains what happens if you request to withdraw your application for SVB.
- Section 408.360 explains how you can cancel your request to withdraw your application for SVB.

Subpart D (Evidence Requirements)

Subpart D sets forth the rules we will use to evaluate evidence under the title VIII program. Specifically:

- Section 408.401 explains that, in addition to your statements, we may need documentary evidence to confirm that you meet all the SVB qualification requirements and ensure that we pay you the correct amount of benefits.
- Section 408.402 explains when you need to give us evidence.
- Section 408.403 explains where you should give us the evidence we need to process your SVB claim.
- Section 408.404 explains if you fail to give us evidence we need in connection with your claim by a specified date, we may decide you do not qualify for SVB or, if you are already receiving SVB, we may stop or reduce your payments until we receive the necessary evidence. This section also explains when we will give you more time to give us the evidence.
- Section 408.405 explains that when you need to give us evidence to establish that you qualify for SVB or may continue receiving SVB payments, the evidence must be an original document or record or a certified copy of the original document or record. In the case of certified copies, this section also includes a list of the people who may certify the document or record to be a true and exact copy of the original. The section also explains that when you give us an original record, we will

photocopy it and return the original record to you.

- Section 408.406 explains how we evaluate the evidence you give us.
- Section 408.410 explains that you must submit evidence of your age to qualify for SVB unless we have already established your age in connection with a claim for benefits under title II or title XVI of the Act.
- Section 408.412 explains what kinds of documents you need to give us to show that you were born on or before December 15, 1934.
- Section 408.413 explains how we evaluate the evidence of age you give us.
- Section 408.420 explains that your evidence of WWII service must show your name, your branch of service, the dates of your service, your military service number, the character of your discharge and, if you were in the organized military forces (including organized guerrilla forces) of the Government of the Commonwealth of the Philippines, that your service is considered to have been in the service of the U.S. Armed Forces. This section also explains the kind of evidence you can give us to show you are a WWII veteran.
- Section 408.425 explains that we will use our data records to determine your SSI eligibility.
- Section 408.430 explains that we need evidence of your other benefit income if the income is less than 75 percent of the FBR.
- Section 408.432 explains what is evidence of your other benefit income.
- Section 408.435 explains the evidence you need to give us to show that you are residing outside the U.S.
- Section 408.437 explains the evidence you need to give us to show that you had good cause for remaining in the U.S. for more than one full month after you begin receiving SVB. It includes a description of the kinds of evidence you can give to show both that you made a good faith effort to return to your home abroad and the circumstances that prevented you from doing so.

Subpart E (Amount and Payment of Benefits)

Subpart E explains how we determine the amount of and pay SVB. Specifically:

- Section 408.501 explains what subpart E is about.
- Section 408.505 explains that the maximum SVB payment is equal to 75 percent of the SSI FBR for an individual with no income. It explains that whenever there is a cost-of-living allowance (COLA) increase in the FBR, we will increase your SVB to reflect the COLA increase. It also explains that we will reduce the maximum SVB payable by the amount of your other benefit income.
- Section 408.510 explains that, when you are receiving other benefit income, we do not round the amount of your SVB payment. This section also explains that the minimum SVB payable is $1.00.
- Section 408.515 explains that we make SVB payments on the first day of the month for which they are due. We also explain that when the first day of the month is a Saturday, Sunday, or Federal legal holiday, we will make your payment on the first preceding day that is not a Saturday, Sunday or Federal legal holiday.

Public Comments

On August 30, 2002, we published an NPRM in the **Federal Register** at 67 FR 55744 and provided a 60-day period for interested individuals and organizations to comment on the proposed rules. We received only the following comment from an individual.

Comment: The commenter recommends that we revise § 408.420, which deals with evidence of military service, to specify that we will accept only such evidence from a United States Government source.

Response: We are adopting this comment. In order to qualify for benefits, the applicant must be a World War II (WWII) veteran as described in § 408.216. That section provides, in part, that a WWII veteran is someone who served in the U.S. Armed Forces or in the military forces of the Commonwealth of the Philippines, while those forces were in the service of the U.S. Armed Forces. Since the requirement is service in the U.S. Armed Forces or Philippine forces that were in service to the U.S. Armed Forces, it is appropriate that evidence of such service is acceptable only if it is issued by a U.S. Government agency. We have revised § 408.420 accordingly.

We have also made some editorial changes for purposes of clarification. We have not made any additional substantive changes to the NPRM.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these final rules will not have a significant impact on a substantial number of small entities because they affect only individuals filing for benefits under title VIII of the Act. Therefore, a regulatory flexibility analysis, as provided for in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules contain information collection requirements in subparts B, C, and D of part 408 that require clearance from OMB. These requirements were approved by OMB under OMB No. 0960–0658, which expires on November 30, 2005.

(Catalog of Federal Domestic Assistance Program No. 96.020, Special Benefits for Certain World War II Veterans)

List of Subjects in 20 CFR Part 408

Administrative practice and procedure, Aged, Reporting and recordkeeping requirements, Social security, Special veterans benefits, Veterans.

Dated: March 27, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are adding a new part 408 to chapter III of title 20 of the Code of Federal Regulations as follows:

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

Subpart A—Introduction, General Provision and Definitions

Sec.
408.101 What is this part about?
408.105 Purpose and administration of the program.
408.110 General definitions and use of terms.
408.120 Periods of limitations ending on Federal nonworkdays.

Subpart B—SVB Qualification and Entitlement

408.201 What is this subpart about?
408.202 How do you qualify for SVB?
408.204 What conditions will prevent you from qualifying for SVB or being entitled to receive SVB payments?
408.206 What happens when you apply for SVB?
408.208 What happens if you establish residence outside the United States within 4 calendar months?
408.210 What happens if you do not establish residence outside the United States within 4 calendar months?
408.212 What happens if you are a qualified individual already residing outside the United States?

Age
408.214 Are you age 65?

Military Service
408.216 Are you a World War II veteran?

SSI Eligibility
408.218 Do you meet the SSI eligibility requirements?

Other Benefit Income
408.220 Do you have other benefit income?
408.222 How does your other benefit income affect your SVB?
408.224 How do we determine the monthly amount of your other benefit income?
408.226 What happens if you begin receiving other benefit income after you become entitled to SVB?

Residence Outside the United States
408.228 When do we consider you to be residing outside the United States?
408.230 When must you begin residing outside the United States?
408.232 When do you lose your foreign resident status?
408.234 Can you continue to receive SVB payments if you stay in the United States for more than 1 full calendar month?

Subpart C—Filing Applications

Filing Your Application
408.301 What is this subpart about?
408.305 Why do you need to file an application to receive benefits?
408.310 What makes an application a claim for SVB?
408.315 Who may sign your application?
408.320 What evidence shows that a person has authority to sign an application for you?
408.325 When is your application considered filed?
408.330 How long will your application remain in effect?

Filing Date Based on Written Statement or Oral Inquiry
408.340 When will we use a written statement as your filing date?
408.345 When will we use the date of an oral inquiry as your application filing date?

Deemed Filing Date Based on Misinformation
408.351 What happens if we give you misinformation about filing an application?

Withdrawal of Application
408.355 Can you withdraw your application?
408.360 Can you cancel your request to withdraw your application?

Subpart D—Evidence Requirements

General Information
408.401 What is this subpart about?
408.402 When do you need to give us evidence?
408.403 Where should you give us your evidence?
408.404 What happens if you fail to give us the evidence we ask for?
408.405 When do we require original records or copies as evidence?
408.406 How do we evaluate the evidence you give us?

Age
408.410 When do you need to give us evidence of your age?
408.412 What kinds of evidence of age do you need to give us?
408.413 How do we evaluate the evidence of age you give us?

Military Service 408.420 What evidence of World War II military service do you need to give us?

SSI Eligibility
408.425 How do we establish your eligibility for SSI?

Other Benefit Income
408.430 When do you need to give us evidence of your other benefit income?
408.432 What kind of evidence of your other benefit income do you need to give us?

Residence
408.435 How do you prove that you are residing outside the United States?
408.437 How do you prove that you had good cause for staying in the United States for more than 1 full calendar month?

Subpart E—Amount and Payment of Benefits

408.501 What is this subpart about?
408.505 How do we determine the amount of your SVB payment?
408.510 How do we reduce your SVB when you receive other benefit income?
408.515 When do we make SVB payments?

Subpart A—Introduction, General Provision and Definitions

Authority: Secs. 702(a)(5) and 801–813 of the Social Security Act (42 U.S.C. 902(a)(5) and 1001–1013).

§ 408.101 What is this part about?

The regulations in this part 408 (Regulation No. 8 of the Social Security Administration) relate to the provisions of title VIII of the Social Security Act as added by Pub. L. 106–169 enacted December 14, 1999. Title VIII (Special Benefits for Certain World War II Veterans) established a program for the payment of benefits to certain World War II veterans. The regulations in this part are divided into the following subparts according to subject content.

(a) Subpart A contains this introductory section, a statement of the general purpose underlying the payment of special benefits to World War II veterans, general provisions applicable to the program and its administration, and defines certain terms that we use throughout part 408.

(b) Subpart B contains the requirements for qualification and entitlement to monthly title VIII benefits.

(c) Subpart C contains the provisions relating to the filing and withdrawal of applications.

(d) Subpart D contains the provisions relating to the evidence required for establishing qualification for and entitlement to monthly title VIII benefits.

(e) Subpart E contains the provisions about the amount and payment of monthly benefits.

§ 408.105 Purpose and administration of the program.

The purpose of the title VIII program is to assure a basic income level for certain veterans who are entitled to supplemental security income (SSI) and who want to leave the United States to live abroad. The title VIII program is administered by the Social Security Administration.

§ 408.110 General definitions and use of terms.

(a) *Terms relating to the Act and regulations.* (1) *The Act* means the Social Security Act as amended (42 U.S.C. Chap.7).

(2) *Title* means the title of the Act.

(3) *Section or §* means a section of the regulations in part 408 of this chapter unless the context indicates otherwise.

(b) *Commissioner; Appeals Council; Administrative Law Judge defined.* (1) *Commissioner* means the Commissioner of Social Security.

(2) *Appeals Council* means the Appeals Council of the Office of Hearings and Appeals of the Social Security Administration or a member or members of the Council designated by the Chairman.

(3) *Administrative Law Judge* means an Administrative Law Judge in the Office of Hearings and Appeals in the Social Security Administration.

(c) *Miscellaneous.* (1) *A calendar month.* The period including all of 24 hours of each day of January, February, March, April, May, June, July, August, September, October, November, or December.

(2) *Federal benefit rate (FBR).* The amount of the cash benefit payable under title XVI for the month to an eligible individual who has no income. The FBR does not include any State supplementary payment that is paid by the Commissioner pursuant to an agreement with a State under section 1616(a) of the Act or section 212(b) of Public Law 93–66.

(3) *Qualified individual.* An individual who meets all the requirements for qualification for SVB in § 408.202 and does not meet any of the conditions that prevent qualification in § 408.204.

(4) *Special veterans benefits (SVB).* The benefits payable to certain veterans of World War II under title VIII of the Act.

(5) *State.* Unless otherwise indicated, this means:

(i) A State of the United States

(ii) The District of Columbia; or

(iii) The Northern Mariana Islands.

(6) *Supplemental Security Income (SSI).* SSI is the national program for providing a minimum level of income to aged, blind, and disabled individuals under title XVI of the Act.

(7) *United States.* When used in the geographical sense, this is:

(i) The 50 States;

(ii) The District of Columbia; and

(iii) The Northern Mariana Islands.

(8) *We, us* or *our* means the Social Security Administration (SSA).

(9) *World War II.* The period beginning September 16, 1940 and ending on July 24, 1947.

(10) *You* or *your* means, as appropriate, the person who applies for benefits, the person for whom an application is filed, or the person who is considering applying for benefits.

§ 408.120 Periods of limitations ending on Federal nonworkdays.

Title VIII of the Act and the regulations in this part require you to take certain actions within specified time periods or you may lose your right to a portion or all of your benefits. If any such period ends on a Saturday, Sunday, Federal legal holiday, or any other day all or part of which is declared to be a nonworkday for Federal employees by statute or Executive Order, you will have until the next Federal workday to take the prescribed action.

Subpart B—SVB Qualification and Entitlement

Authority: Secs. 702(a)(5), 801, 802, 803, 804, 806, 810 and 1129A of the Social Security Act (42 U.S.C. 902(a)(5), 1001, 1002, 1003, 1004, 1006, 1010 and 1320a–8a); Sec. 251, Pub. L. 106–169, 113 Stat. 1844.

§ 408.201 What is this subpart about?

You are qualified for SVB if you meet the requirements listed in § 408.202 and if none of the conditions listed in § 408.204 exist. However, you cannot be entitled to receive benefits for any month before the first month in which you reside outside the United States on the first day of the month and meet all the qualification requirements. You must give us any information we request and evidence to prove that you meet these requirements. You continue to be qualified for SVB unless we determine that you no longer meet the requirements for qualification in § 408.202 or we determine that you are not qualified because one of the conditions listed in § 404.204 of this chapter exists. You continue to be entitled to receive benefits unless we determine you are no longer residing outside the United States.

§ 408.202 How do you qualify for SVB?

You qualify for SVB if you meet all of the following requirements.

(a) *Age.* You were age 65 or older on December 14, 1999 (the date on which Pub. L. 106–169 was enacted into law).

(b) *World War II veteran.* You are a World War II veteran as explained in § 408.216.

(c) *SSI eligible.* You were eligible for SSI, as explained in § 408.218, for both December 1999 (the month in which Pub. L. 106–169 was enacted into law) and for the month in which you file your application for SVB.

(d) *Application.* You file an application for SVB as explained in subpart C of this part.

(e) *Other benefit income.* You do not have other benefit income, as explained in § 408.220, which is equal to, or more than, 75 percent of the current FBR.

§ 408.204 What conditions will prevent you from qualifying for SVB or being entitled to receive SVB payments?

(a) *General rule.* Even if you meet all the qualification requirements in § 408.202, you will not be qualified for SVB for or entitled to receive SVB payments for any of the following months.

(1) *Removal from the United States.* Any month that begins after the month in which we are advised by the Attorney General that you have been removed (including deported) from the United States pursuant to section 237(a) or 212(a)(6)(A) of the Immigration and Nationality Act and before the month in which you are subsequently lawfully admitted to the United States for permanent residence.

(2) *Fleeing felon.* Any month during any part of which you are fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the United States or the jurisdiction in the United States from which you fled, for a crime or an attempt to commit a crime that is a felony under the laws of the place from which you fled, or in the case of the State of New Jersey, is a high misdemeanor.

(3) *Parole violation.* Any month during any part of which you violate a condition of probation or parole imposed under Federal or State law.

(4) *Residence in certain countries.* Any month during which you are not a citizen or national of the United States and reside in a country to which payments to residents of that country are withheld by the Treasury Department under section 3329 of title 31, United States Code.

(b) *Condition occurs before we determine that you are qualified.* If one of the conditions in paragraph (a) of this section occurs before we determine that you are qualified, we will deny your claim for SVB.

(c) *Condition occurs after we determine that you are qualified.* If one of the conditions in paragraph (a) of this section occurs after we determine that you are qualified for SVB, you cannot receive SVB payments for any month in which the condition exists.

§ 408.206 What happens when you apply for SVB?

(a) *General rule.* When you apply for SVB, we will ask you for documents and other information that we need to determine if you meet all the requirements for qualification. You must give us complete information (*see* subpart D of this part for our rules on evidence). If you do not meet all of the requirements for qualification listed in § 408.202, or if one of the conditions listed in § 408.204 exists, we will deny your claim.

(b) *If you are a qualified individual residing in the United States.* If you meet all the requirements for qualification listed in § 408.202 and if none of the conditions listed in §408.204 exist, we will send you a letter telling you the following:

(1) You are qualified for SVB;

(2) In order to become entitled to SVB, you will have to begin residing outside the United States by the end of the fourth calendar month after the month in which your notice of qualification is dated. For example, if our letter is dated May 15, you must establish residence outside the United States before October 1 of that year; and

(3) What documents and information you must give us to establish that you are residing outside the United States.

§ 408.208 What happens if you establish residence outside the United States within 4 calendar months?

If you begin residing outside the United States within 4 calendar months after the month in which your SVB qualification notice is dated, we will send you a letter telling you that you are entitled to SVB and the first month for which SVB payments can be made to you. The letter will also tell you the amount of your monthly benefit payments, whether your payments are reduced because of your other benefit income, and what rights you have to a reconsideration of our determination.

§ 408.210 What happens if you do not establish residence outside the United States within 4 calendar months?

If you do not establish residence outside the United States within 4 calendar months after the month in which your SVB qualification notice is dated, we will deny your SVB claim. We will send you a notice explaining what rights you have to a reconsideration of our determination. You will have to file a new application and meet all the requirements for qualification and entitlement based on the new application to become entitled to SVB.

§ 408.212 What happens if you are a qualified individual already residing outside the United States?

If you meet all the requirements for qualification listed in § 408.202 and if none of the conditions listed in § 408.204 exist, we will ask you for documents and information to establish your residence outside the United States. If you establish that you are residing outside the United States, we will send you a letter telling you that you are entitled to SVB and the first month for which SVB payments can be made to you. The letter will also tell you the amount of your monthly benefit payments, whether your payments are reduced because of your other benefit income, and what rights you have to a reconsideration of our determination.

Age

§ 408.214 Are you age 65?

You become age 65 on the first moment of the day before the anniversary of your birth corresponding to age 65. Thus, you must have been born on or before December 15, 1934 to be at least age 65 on December 14, 1999 and to qualify for SVB.

Military Service

§ 408.216 Are you a World War II veteran?

(a) Service requirements. For SVB purposes, you are a World War II veteran if you:

(1) Served in the active military, naval or air service of the United States during World War II at any time during the period beginning on September 16, 1940 and ending on July 24, 1947; or

(2) Served in the organized military forces of the Government of the Commonwealth of the Philippines, while the forces were in the service of the U.S. Armed Forces pursuant to the military order of the President dated July 26, 1941, including among the military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the U.S. Army. This service must have been rendered at any time during the period beginning July 26, 1941 and ending on December 30, 1946.

(b) *Discharge requirements.* You must have been discharged or released from this service under conditions other than dishonorable after service of 90 days or more or, if your service was less than 90 days, because of a disability or injury incurred or aggravated in the line of active duty.

SSI Eligibility

§ 408.218 Do you meet the SSI eligibility requirements?

For SVB purposes, you are eligible for SSI for a given month if all of the following are met:

(a) You have been determined to be eligible for SSI (except as noted in paragraph (c) of this section); you do not have to actually receive a payment for that month;

(b) Your SSI eligibility has not been terminated for that month; and

(c) Your SSI benefits are not subject to a penalty under § 416.1340 of this chapter. This includes months in which a penalty has been imposed, as well as months in which a penalty cannot be imposed because you are in SSI nonpay status for some other reason.

Other Benefit Income

§ 408.220 Do you have other benefit income?

(a) *Description of other benefit income.* Other benefit income is any regular periodic payment (such as an annuity, pension, retirement or disability benefit) that you receive. For other benefit income to affect your SVB eligibility, you must have been receiving the other benefit income in any part of the 12-month period before the month in which you filed your application for SVB. Payments received after you become entitled to SVB can be included as other benefit income only if you received a similar payment from the same or a related source during any part of the 12-month period before the month in which you filed your application for SVB.

(b) *When other benefit payments are considered to be similar payments from the same or a related source.* Payments are similar payments from the same or a related source if they are received from sources substantially related to the sources of income received before you became entitled to SVB. For example, if you received U.S. Social Security spouse's benefits in the 12-month period before you filed your application for SVB and these were changed to widower's benefits after you became entitled to SVB, we would consider this to be from the same or a related source.

(c) *Examples of other benefit income.* Other benefit income can come from a source inside or outside the United States. It includes, but is not limited to, any of the following:

(1) Veterans' compensation or pension,

(2) Workers' compensation,

(3) U.S. or foreign Social Security benefits (not including SSI payments from the U.S.),

(4) Railroad retirement annuity or pension,

(5) Retirement or disability pension,

(6) Individual Retirement Account (IRA) payments, and

(7) Unemployment insurance benefit.

(d) *If you receive a lump-sum payment.* Regular periodic payments can also include lump-sum payments made at your request or as an administrative convenience or practice in place of more frequent payments. See § 408.224(e) for an explanation of how we determine the monthly amount of your benefit income if you receive a lump-sum payment.

§ 408.222 How does your other benefit income affect your SVB?

(a) *Income began before you qualify for SVB.* If, at the time you file your application for SVB, your other benefit income is equal to, or more than, the maximum SVB payment possible (see § 408.505), we will deny your SVB claim. If it is less, we will reduce any monthly SVB payments you become entitled to by the amount of your other benefit income (see § 408.510 for a description of how we make the reduction).

(b) *Income begins after you qualify for SVB.* If you have been determined to be qualified for SVB, we will reduce any monthly SVB payments you become entitled to by the amount of your other benefit income (see § 408.510 for a description of how we make the reduction).

§ 408.224 How do we determine the monthly amount of your other benefit income?

If your other benefit income is paid in other than monthly amounts, we will compute the equivalent monthly amount as follows:

(a) *Weekly payments.* We multiply the amount of the weekly payment by 52 and divide by 12 to determine the equivalent monthly payment amount.

(b) *Bi-weekly payments.* We multiply the amount of the bi-weekly payment by

26 and divide by 12 to determine the equivalent monthly payment amount.

(c) *Quarterly payments.* We multiply the amount of the quarterly payment by 4 and divide by 12 to determine the equivalent monthly payment amount.

(d) *Semi-annual payments.* We multiply the amount of the semi-annual payment by 2 and divide by 12 to determine the equivalent monthly payment amount.

(e) *Lump sum payment.* If the paying agency will not prorate the lump sum to determine the monthly amount, we will compute the amount as follows:

(1) *If the payment is for a specific period.* We divide the lump sum by the number of months in the period for which the payment was made to determine the equivalent monthly payment amount.

(2) *If the payment is for a lifetime or for an unspecified period.* We divide the lump sum amount by your life expectancy in months at the time the lump sum is paid.

§ 408.226 What happens if you begin receiving other benefit income after you become entitled to SVB?

If you begin receiving other benefit income after you become entitled to SVB, we will reduce your SVB by the amount of those payments only if you were receiving similar benefits from the same or a related source during the 12-month period before you filed for SVB. (See § 408.220(b) for a description of when we consider other benefit income to be from the same or a related source.)

Residence Outside the United States

§ 408.228 When do we consider you to be residing outside the United States?

(a) *Effect of residency on SVB eligibility.* You can be paid SVB only for those months in which you are residing outside the United States but you can not be paid for a month that is earlier than the month in which you filed your application for SVB. You are residing outside the United States in a month only if you reside outside the United States on the first day of that month. For SVB purposes, you can be a resident of only one country at a time. You cannot, for example, maintain a residence in the United States and a residence outside the United States at the same time.

(b) *Definition of residing outside the United States.* We consider you to be residing outside the United States if you:

(1) Have established an actual dwelling place outside the United States; and.

(2) Intend to continue to live outside the United States.

(c) *When we will assume you intend to continue living outside the United States.* If you tell us, or the evidence shows, that you intend to reside outside the United States for at least 6 months, we will assume you meet the intent requirement in paragraph (b)(2) of this section. Otherwise we will assume, absent convincing evidence to the contrary, that your stay is temporary and that you are not residing outside the United States.

§ 408.230 When must you begin residing outside the United States?

(a) *4-month rule:* Except as provided in paragraph (b) of this section, you must begin residing outside the United States by the end of the fourth calendar month after the month in which the notice explaining that you are qualified for SVB is dated, as explained in § 408.206. If you do not establish residence outside the United States within this 4-month period, we will deny your claim for SVB. You will have to file a new application and meet all the requirements for qualification and entitlement based on the new application to become entitled to SVB.

(b) *When we will extend the 4-month period.* We will extend the 4-month period for establishing residence outside the United States if you are in the United States and are appealing either:

(1) A determination that we made on your SVB claim, or

(2) A determination that we made on a title II and/or a title XVI claim but only if the determination affects your SVB qualification.

(c) *How we extend the 4-month period.* If the requirements in paragraph (b) of this section are met, the 4-month period begins with the month after the month in which your notice of our decision on your appeal is dated or the month in which your appeal rights have expired.

§ 408.232 When do you lose your foreign resident status?

(a) *General rule.* We consider you to have lost or abandoned your residence outside the United States if you:

(1) Enter the United States and stay for more than 1 full calendar month (see § 408.234 for exceptions to this rule);

(2) Tell us that you no longer consider yourself to be residing outside the United States; or

(3) Become eligible (as defined by title XVI) for SSI benefits.

(b) *Resumption of SVB following a period of U.S. residence.* Once you lose or abandon your residence outside the United States, you cannot receive SVB again until you meet all the requirements for SVB qualification and reestablish your residence outside the United States.

Example: You leave your home outside the United States on June 15 to visit your son in the United States and return to your home abroad on August 15. Your SVB payments will continue for the months of June and July. However, because you were in the United States for the entire calendar month of July (*i.e.*, all of the first day through all of the last day of July), you are not entitled to an SVB payment for the month of August. Your SVB payments resume with September, the month you reestablished your residence outside the United States.

§ 408.234 Can you continue to receive SVB payments if you stay in the United States for more than 1 full calendar month?

(a) *When we will consider your foreign residence to continue.* We will continue to consider you to be a foreign resident and will continue to pay you SVB payments even if you have been in the United States for more than 1 full calendar month if you—

(1) Made a good faith effort to return to your home abroad within that 1-month period but were prevented from doing so by circumstances beyond your control (*e.g.*, sickness, a death in the family, a transportation strike, etc.); or

(2) Are exercising your option to be personally present in the United States to present testimony and other evidence in the appeal of an SSA decision on a claim filed under any SSA-administered program. This extension applies only as long as you are participating in activities where you are providing testimony and other evidence in connection with a determination or decision at a specific level of the appeals process (*e.g.*, a hearing before an administrative law judge).

(b) *When you must return to your home abroad.* When the circumstance/event that was the basis for the continuation of your SVB payments ceases to exist, you must return to your home abroad within 1 full calendar month. If you do not return to your home abroad within this 1-calendar-month period, we will consider you to have lost or abandoned your foreign resident status for SVB purposes and we will stop your SVB payments with the first day of the month following the first full calendar month you remain in the United States.

Subpart C—Filing Applications

Authority: Secs. 702(a)(5), 802, 806, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1102, 1106 and 1110); Sec. 251, Pub. L. 106–169, 113 Stat. 1844.

Filing Your Application

§ 408.301 What is this subpart about?

This subpart contains our rules about filing applications for SVB. It explains what an application is, who may sign it, where and when it must be signed and filed, the period of time it is in effect, and how it may be withdrawn. This subpart also explains when a written statement or an oral inquiry may be considered to establish your application filing date.

§ 408.305 Why do you need to file an application to receive benefits?

In addition to meeting other requirements, you must file an application to become entitled to SVB. If you believe you may be entitled to SVB, you should file an application. Filing an application will—

(a) Permit us to make a formal decision on whether you qualify for SVB;

(b) Assure that you receive SVB for any months you are entitled to receive payments; and

(c) Give you the right to appeal if you are dissatisfied with our determination.

§ 408.310 What makes an application a claim for SVB?

To be considered a claim for SVB, an application must generally meet all of the following conditions:

(a) It must be on the prescribed SVB application form (SSA–2000–F6, Application for Special Benefits for World War II Veterans).

(b) It must be completed and filed with SSA as described in § 408.325.

(c) It must be signed by you or by someone who may sign an application for you as described in § 408.315.

(d) You must be alive at the time it is filed.

§ 408.315 Who may sign your application?

(a) *When you must sign.* If you are mentally competent, and physically able to do so, you must sign your own application.

(b) *When someone else may sign for you.* (1) If you are mentally incompetent, or physically unable to sign, your application may be signed by a court-appointed representative or a person who is responsible for your care, including a relative. If you are in the care of an institution, the manager or principal officer of the institution may sign your application.

(2) If it is necessary to protect you from losing benefits and there is good cause why you could not sign the application, we may accept an application signed by someone other than you or a person described in paragraph (b)(1) of this section.

Example: Mr. Smith comes to a Social Security office a few days before the end of a month to file an application for SVB for his neighbor, Mr. Jones. Mr. Jones, a 68-year-old widower, just suffered a heart attack and is in the hospital. He asked Mr. Smith to file the application for him. We will accept an application signed by Mr. Smith because it would not be possible to have Mr. Jones sign and file the application until the next calendar month and a loss of one month's benefits would result.

§ 408.320 What evidence shows that a person has authority to sign an application for you?

(a) A person who signs an application for you will be required to give us evidence of his or her authority to sign the application for you under the following rules:

(1) If the person who signs is a court-appointed representative, he or she must give us a certificate issued by the court showing authority to act for you.

(2) If the person who signs is not a court-appointed representative, he or she must give us a statement describing his or her relationship to you. The statement must also describe the extent to which the person is responsible for your care.

(3) If the person who signs is the manager or principal officer of an institution which is responsible for your care, he or she must give us a statement indicating the person's position of responsibility at the institution.

(b) We may, at any time, require additional evidence to establish the authority of a person to sign an application for you.

§ 408.325 When is your application considered filed?

(a) *General rule.* We consider an application for SVB filed on the day it is received by an SSA employee at one of our offices, by an SSA employee who is authorized to receive it at a place other than one of our offices, or by any office of the U.S. Foreign Service or by the Veterans Affairs Regional Office in the Philippines.

(b) *Exceptions.* (1) When we receive an application that is mailed, we will use the date shown by the United States postmark as the filing date if using the date we receive it would result in your entitlement to additional benefits. If the postmark is unreadable, or there is no United States postmark, we will use the date the application is signed (if dated) or 5 days before the day we receive the signed application, whichever date is later.

(2) We consider an application to be filed on the date of the filing of a written statement or the making of an oral inquiry under the conditions in §§ 408.340 and 408.345.

(3) We will establish a deemed filing date of an application in a case of misinformation under the conditions described in § 408.351. The filing date of the application will be a date determined under § 408.351(b).

§ 408.330 How long will your application remain in effect?

Your application for SVB will remain in effect from the date it is filed until we make a final determination on it, unless there is a hearing decision on your application. If there is a hearing decision, your application will remain in effect until the hearing decision is issued.

Filing Date Based on Written Statement or Oral Inquiry

§ 408.340 When will we use a written statement as your filing date?

If you file with us under the rules stated in § 408.325 a written statement, such as a letter, indicating your intent to claim SVB, we will use the filing date of the written statement as the filing date of your application. If the written statement is mailed, we will use the date the statement was mailed to us as shown by the United States postmark. If the postmark is unreadable or there is no United States postmark, we will use the date the statement is signed (if dated) or 5 days before the day we receive the written statement, whichever date is later, as the filing date. In order for us to use your written statement to protect your filing date, the following requirements must be met:

(a) The statement indicates your intent to file for benefits.

(b) The statement is signed by you, your spouse, or a person described in § 408.315.

(c) You file an application with us on an application form as described in § 408.310(a), or one is filed for you by a person described in § 408.315, within 60 days after the date of a notice we will send advising of the need to file an application. The notice will say that we will make an initial determination of your qualification if an application form is filed within 60 days after the date of the notice. We will send the notice to you. However, if it is clear from the information we receive that you are mentally incompetent, we will send the notice to the person who submitted the written statement.

(d) You are alive when the application is filed.

§ 408.345 When will we use the date of an oral inquiry as your application filing date?

We will use the date of an oral inquiry about SVB as the filing date of your

application for SVB if the following requirements are met:

(a) The inquiry asks about your entitlement to SVB.

(b) The inquiry is made by you, your spouse, or a person who may sign an application on your behalf as described in § 408.315.

(c) The inquiry, whether in person or by telephone, is directed to an office or an official described in § 408.325(a).

(d) You, or a person on your behalf as described in § 408.315, file an application on a prescribed form within 60 days after the date of the notice we will send telling of the need to file an application. The notice will say that we will make an initial determination on whether you qualify for SVB if an application form is filed within 60 days after the date of the notice. However, if it is clear from the information we receive that you are mentally incompetent, we will send the notice to the person who made the inquiry.

(e) You are alive when the prescribed application is filed.

Deemed Filing Date Based on Misinformation

§ 408.351 What happens if we give you misinformation about filing an application?

(a) *General rule.* You may have considered applying for SVB, for yourself or another person and you may have contacted us in writing, by telephone or in person to inquire about filing an application for SVB. It is possible that in responding to your inquiry, we may have given you misinformation about qualification for such benefits that caused you not to file an application at that time. If this happened and use of that date will result in entitlement to additional benefits, and you later file an application for SVB with us, we may establish an earlier filing date as explained in paragraphs (b) through (f) of this section.

(b) *Deemed filing date of an application based on misinformation.* Subject to the requirements and conditions in paragraphs (c) through (f) of this section, we may establish a deemed filing date of an application for SVB under the following provisions.

(1) If we determine that you failed to apply for SVB because we gave you misinformation about qualification for or entitlement to such benefits, we will deem an application for such benefits to have been filed with us on the later of—

(i) The date on which we gave you the misinformation; or

(ii) The date on which all of the requirements for qualification to SVB were met, other than the requirement of filing an application.

(2) Before we may establish a deemed filing date of an application for SVB under paragraph (b)(1) of this section, you or a person described in § 408.315 must file an application for such benefits.

(c) *Requirements concerning the misinformation.* We apply the following requirements for purposes of paragraph (b) of this section.

(1) The misinformation must have been provided to you by one of our employees while he or she was acting in his or her official capacity as our employee. For purposes of this section, an employee includes an officer of SSA, an employee of a U.S. Foreign Service office, and an employee of the SSA Division of the Veterans Affairs Regional Office in the Philippines who is authorized to take and develop Social Security claims.

(2) Misinformation is information which we consider to be incorrect, misleading, or incomplete in view of the facts which you gave to the employee, or of which the employee was aware or should have been aware, regarding your particular circumstances. In addition, for us to find that the information you were given was incomplete, the employee must have failed to provide you with the appropriate, additional information which he or she would be required to provide in carrying out his or her official duties.

(3) The misinformation may have been provided to you orally or in writing.

(4) The misinformation must have been provided to you in response to a specific request by you to us for information about your qualification for SVB.

(d) *Evidence that misinformation was provided.* We will consider the following evidence in making a determination under paragraph (b) of this section.

(1) *Preferred evidence.* Preferred evidence is written evidence which relates directly to your inquiry about your qualification for SVB and which shows that we gave you misinformation which caused you not to file an application. Preferred evidence includes, but is not limited to, the following—

(i) A notice, letter or other document which was issued by us and addressed to you; or

(ii) Our record of your telephone call, letter or in-person contact.

(2) *Other evidence.* In the absence of preferred evidence, we will consider other evidence, including your statements about the alleged misinformation, to determine whether we gave you misinformation, which caused you not to file an application. We will not find that we gave you misinformation, however, based solely on your statements. Other evidence which you provide or which we obtain must support your statements. Evidence which we will consider includes, but is not limited to, the following—

(i) Your statements about the alleged misinformation, including statements about—

(A) The date and time of the alleged contact(s);

(B) How the contact was made, e.g., by telephone or in person;

(C) The reason(s) the contact was made;

(D) Who gave the misinformation; and

(E) The questions you asked and the facts you gave us, and the questions we asked and the information we gave you, at the time of the contact;

(ii) Statements from others who were present when you were given the alleged misinformation, e.g., a neighbor who accompanied you to our office;

(iii) If you can identify the employee or the employee can recall your inquiry about benefits—

(A) Statements from the employee concerning the alleged contact, including statements about the questions you asked, the facts you gave, the questions the employee asked, and the information provided to you at the time of the alleged contact; and

(B) Our assessment of the likelihood that the employee provided the alleged misinformation;

(iv) An evaluation of the credibility and the validity of your allegations in conjunction with other relevant information; and

(v) Any other information regarding your alleged contact.

(e) *Information which does not constitute satisfactory proof that misinformation was given.* Certain kinds of information will not be considered satisfactory proof that we gave you misinformation which caused you not to file an application. Examples of such information include—

(1) General informational pamphlets that we issue to provide basic program information;

(2) General information which we review or prepare but which is disseminated by the media, *e.g.*, radio, television, magazines, and newspapers; and

(3) Information provided by other governmental agencies, *e.g.*, the Department of Veterans Affairs (except for certain employees of the SSA Division of the Veterans Affairs Regional Office in the Philippines as provided in paragraph (c)(1) of this section), the Department of Defense, State unemployment agencies, and State and local governments.

(f) *Claim for benefits based on misinformation.* You may make a claim for SVB based on misinformation at any time. Your claim must contain information that will enable us to determine if we did provide misinformation to you about qualification for SVB which caused you not to file an application. Specifically, your claim must be in writing and it must explain what information was provided, how, when and where it was provided and by whom, and why the information caused you not to file an application. If you give us this information, we will make a determination on such a claim for benefits if all of the following conditions are also met.

(1) An application for SVB is filed with us by you or someone described in § 408.315 who may file. The application must be filed after the alleged misinformation was provided. This application may be—

(i) An application on which we have made a previous final determination or decision awarding SVB, but only if the claimant continues to be entitled to benefits based on that application;

(ii) An application on which we have made a previous final determination or decision denying the benefits, but only if such determination or decision is reopened; or

(iii) A new application on which we have not made a final determination or decision.

(2) The establishment of a deemed filing date of an application for benefits based on misinformation could result in entitlement to benefits or payment of additional benefits.

(3) We have not made a previous final determination or decision to which you were a party on a claim for benefits based on alleged misinformation involving the same facts and issues. This provision does not apply, however, if the final determination or decision may be reopened.

Withdrawal of Application

§ 408.355 Can you withdraw your application?

(a) Request for withdrawal filed before a determination is made. You may withdraw your application for SVB before we make a determination on it if—

(1) You, or a person who may sign an application for you under § 408.315, file a written request for withdrawal at a place described in § 408.325; and

(2) You are alive at the time the request is filed.

(b) *Request for withdrawal filed after a determination is made.* An application may be withdrawn after we make a determination on it if you repay all benefits already paid based on the application being withdrawn or we are satisfied that the benefits will be repaid.

(c) *Effect of withdrawal.* If we approve your request to withdraw your application, we consider that the application was never filed. If we disapprove your request for withdrawal, we treat your application as though you did not file a request for withdrawal.

§ 408.360 Can you cancel your request to withdraw your application?

You may request to cancel your request to withdraw your application and have your application reinstated if all of the following requirements are met:

(a) You, or someone who may sign an application for you under § 408.315, file a written request for cancellation at a place described in § 408.325;

(b) You are alive at the time you file your request for cancellation; and

(c) A cancellation request received after we have approved your withdrawal must be filed no later than 60 days after the date of the notice of approval.

Subpart D—Evidence Requirements

Authority: Secs. 702(a)(5), 806, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1006, and 1010); sec. 251, Pub. L. 106–169, 113 Stat. 1844.

General Information

§ 408.401 What is this subpart about?

We cannot determine your entitlement to SVB based solely on your statements about your qualification for benefits or other facts concerning payments to you. We will ask you for specific evidence or additional information. We may verify the evidence you give us with other sources to ensure that it is correct. This subpart contains our rules about the evidence you need to give us when you claim SVB.

§ 408.402 When do you need to give us evidence?

When you apply for SVB, we will ask you for any evidence we need to make sure that you meet the SVB qualification and entitlement requirements. After you begin receiving SVB, we may ask you for evidence showing whether your SVB payments should be reduced or stopped. We will help you get any documents you need but do not have. If your evidence is a foreign-language record or document, we can have it translated for you. The evidence you give us will be kept confidential and not disclosed to anyone but you except under the rules set out in part 401 of this chapter. You should also be aware that section 811 of the Act provides criminal penalties for misrepresenting the facts or for making false statements to obtain SVB payments for yourself or someone else, or to continue entitlement to benefits.

§ 408.403 Where should you give us your evidence?

You should give your evidence to the people at a Social Security Administration office. In the Philippines, you should give your evidence to the people at the Veterans Affairs Regional Office. Elsewhere outside the United States, you should give your evidence to the people at the nearest U.S. Social Security office or a United States Foreign Service Office.

§ 408.404 What happens if you fail to give us the evidence we ask for?

(a) *You have not yet qualified for SVB.* Generally, we will ask you to give us specific evidence or information by a certain date to prove that you qualify for SVB or to prove your foreign residence. If we do not receive the evidence or information by that date, we may decide that you do not qualify for SVB or may not receive SVB and deny your claim.

(b) *You have qualified for or become entitled to SVB.* If you have already qualified for or become entitled to SVB, we may ask you to give us information by a specific date to decide whether you should receive benefits or, if you are already receiving benefits, whether your benefits should be stopped or reduced. If you do not give us the requested evidence or information by the date given, we may decide that you are no longer entitled to benefits or that your benefits should be stopped or reduced.

(c) *If you need more time.* You should let us know if you are unable to give us the evidence or information within the specified time and explain why there will be a delay. If this delay is due to illness, failure to receive timely evidence you have asked for from another source, or a similar circumstance, we will give you additional time to give us the evidence.

§ 408.405 When do we require original records or copies as evidence?

(a) *General rule.* To prove your qualification for or continuing entitlement to SVB, you may be asked to show us an original document or record. These original documents or records will be returned to you after we have photocopied them. We will also accept copies of original records that are properly certified and some uncertified birth certifications. These types of

records are described in paragraphs (b) and (c) of this section.

(b) *Certified copies of original records.* You may give us copies of original records or extracts from records if they are certified as true and exact copies by:

(1) The official custodian of the record;

(2) A Social Security Administration employee authorized to certify copies;

(3) A Veterans Affairs employee if the evidence was given to that agency to obtain veteran's benefits;

(4) An employee of the Veterans Affairs Regional Office, Manila, Philippines who is authorized to certify copies; or

(5) A U.S. Consular Officer or employee of the Department of State authorized to certify evidence received outside the United States.

(c) *Uncertified copies of original birth records.* You may give us an uncertified photocopy of a birth registration notification as evidence of age where it is the practice of the local birth registrar to issue them in this way.

§ 408.406 How do we evaluate the evidence you give us?

When you give us evidence, we examine it to see if it is convincing evidence. This means that unless we have information in our records that raises a doubt about the evidence, other evidence of the same fact will not be needed. If the evidence you give us is not convincing by itself, we may ask you for additional evidence. In evaluating whether the evidence you give us is convincing, we consider such things as whether:

(a) The information contained in the evidence was given by a person in a position to know the facts;

(b) There was any reason to give false information when the evidence was created;

(c) The information in the evidence was given under oath, or with witnesses present, or with the knowledge that there was a penalty for giving false information;

(d) The evidence was created at the time the event took place or shortly thereafter;

(e) The evidence has been altered or has any erasures on it; and

(f) The information contained in the evidence agrees with other available evidence including our records.

Age

§ 408.410 When do you need to give us evidence of your age?

To qualify for SVB you must establish that you were age 65 or older on December 14, 1999, the date on which Public Law 106–169 was enacted into law. If we have already established your age or date of birth in connection with your claim for other benefit programs that we administer, you will not have to give us evidence of your age for your SVB claim. If we have not established your age or date of birth, you must give us evidence of your age or date of birth. In the absence of information to the contrary, we generally will not ask for additional evidence of your age or date of birth if you state that you are at least age 68, and you submit documentary evidence that is at least 3 years old when the application is filed and supports your statement.

§ 408.412 What kinds of evidence of age do you need to give us?

For a description of the kinds of evidence of age you may need to give us, see § 416.802 of this chapter.

§ 408.413 How do we evaluate the evidence of age you give us?

In evaluating the evidence of age you give us, we use the rules in § 416.803 of this chapter.

Military Service

§ 408.420 What evidence of World War II military service do you need to give us?

(a) *Kinds of evidence you can give us.* To show that you are a World War II veteran as defined in § 408.216, you can give us any of the documents listed in § 404.1370(b)(1) through (5) of this chapter that were issued by a U.S. Government agency. However, depending on the type of document you give us and what the document shows, we may verify your military service, or the dates of your service, with the National Personnel Records Center (NPRC) in St. Louis, Missouri. If we do, we will use the information in NPRC's records to determine whether you meet the military service requirements for SVB.

(b) *What the evidence must show.* When you file an application for SVB, you must give us evidence of your World War II military service. The evidence you give us must show:

(1) Your name;

(2) The branch of service in which you served;

(3) The dates of your military service;

(4) Your military service serial number;

(5) The character of your discharge; and

(6) If your service was in the organized military forces of the Government of the Commonwealth of the Philippines (including the organized guerrilla forces), the period of your service that was under the control of U.S. Armed Forces.

SSI Eligibility

§ 408.425 How do we establish your eligibility for SSI?

To qualify for SVB, you must have been eligible for SSI for the month of December 1999, the month in which Public Law 106–169 was enacted, and for the month in which you filed your application for SVB. You do not have to submit evidence of this. We will use our SSI record of your eligibility to determine if you meet these requirements.

Other Benefit Income

§ 408.430 When do you need to give us evidence of your other benefit income?

If you tell us or if we have information indicating that you are receiving other benefit income that could affect your qualification for or the amount of your SVB payments, we will ask you to give us evidence of that income as explained in § 408.432.

§ 408.432 What kind of evidence of your other benefit income do you need to give us?

As evidence of your other benefit income, we may require a document such as an award notice or other letter from the paying agency or written notification from the former employer, insurance company, etc. The evidence should show the benefit payable, the current amount of the payment, and the date the payment began.

Residence

§ 408.435 How do you prove that you are residing outside the United States?

(a) *General rule.* To establish that you are residing outside the United States for SVB purposes, you must give us all of the following:

(1) Evidence of the date on which you arrived in the country in which you are residing;

(2) A statement signed by you showing the address at which you are living and that you intend to continue living there; and

(3) Evidence that you are actually living at the address given in your signed statement.

(b) *Evidence of the date you entered the foreign country.* To establish the date you arrived in the country in which you are residing, you can give us evidence such as:

(1) A visa or passport showing the date you entered that country;

(2) Your plane ticket showing the date you arrived in that country; or

(3) An entry permit showing the date you entered that country.

(c) *Evidence of your actual place of residence.* To establish your actual place of residence, you can give us evidence such as:

(1) A lease agreement showing where you live;

(2) Rental or mortgage receipts;

(3) Utility or other bills addressed to you at the address where you live;

(4) A signed statement from a local official showing that he or she knows where you live, when you began living there and how he or she knows this information; or

(5) A Standard Form 1199A, Direct Deposit Sign-Up Form, showing your address abroad and signed by an official of the financial institution after the date you arrived in the country in which you will be residing.

§ 408.437 How do you prove that you had good cause for staying in the United States for more than 1 full calendar month?

(a) *General rule.* If you believe that you meet the requirements in § 408.234 and that you should continue to receive SVB payments even though you have been in the United States for more than 1 full calendar month, you must give us evidence that you had good cause for staying in the United States.

(b) *Circumstances prevent you from returning to your home abroad.* To prove that you had good cause for staying in the United States for more than 1 full calendar month, you must give us evidence of your good faith effort to return to your home abroad before the 1-month period had elapsed and of the circumstances/event which prevented your return to your home abroad.

(1) *Evidence of your good faith effort to return to your home abroad.* Evidence of your plans to return to your home abroad can include, but is not limited to:

(i) A plane ticket showing that you intended to return to your home abroad before the expiration of 1 full calendar month; or

(ii) Notice from a travel agency or airline confirming the cancellation of your reservation to return to your home abroad on a date within 1 full calendar month.

(2) *Evidence of the circumstances preventing your return to your home abroad.* The evidence we will accept from you to support the circumstance or event that prevented you from returning to your home abroad will depend on the reason you are staying in the United States. It can include, but is not limited to, a:

(i) Newspaper article or other publication describing the event or natural disaster which prevented your return; or

(ii) Doctor's statement, etc. showing that you are unable to travel; or

(iii) Death certificate or notice if you are staying in the United States to attend the funeral of a member of your family.

(c) *You are appealing a decision we made.* To establish that you had good cause to stay in the United States for more than 1 full calendar month because you want to appear in person at the appeal of a decision on a claim filed under a program administered by the Social Security Administration, you must submit evidence of this. The evidence must identify the appeal proceeding and the dates you are scheduled to attend.

(d) *When we may ask for more evidence.* If you stay in the United States for several months, we may ask you to give us more evidence to prove that you are still unable to return to your home abroad.

Subpart E—Amount and Payment of Benefits

Authority: Secs. 702(a)(5), 801, 805, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1001, 1005, and 1010); Sec. 251, Pub. L. 106–169, 113 Stat. 1844.

§ 408.501 What is this subpart about?

This subpart explains how we compute the amount of your monthly SVB payment, including how we reduce your payments if you receive other benefit income. It also explains how we pay benefits under the SVB program.

§ 408.505 How do we determine the amount of your SVB payment?

(a) *Maximum SVB payment.* The maximum monthly SVB payment is equal to 75% of the FBR for an individual under title XVI of the Act. See § 416.410 of this chapter.

(b) *Cost-of-living adjustments in the FBR.* The maximum SVB amount will increase whenever there is a cost-of-living increase in the SSI FBR under the provisions of § 416.405 of this chapter. The basic SVB amount following such an increase is equal to 75 percent of the increased FBR.

(c) *When we will reduce the amount of your basic benefit.* We will reduce your basic benefit by the amount of the other benefit income you receive in that month, as explained in § 408.510.

§ 408.510 How do we reduce your SVB when you receive other benefit income?

(a) *Amount of the reduction.* If you receive other benefit income as defined in § 408.220, we will reduce your SVB payment by the amount of the other benefit income you receive in that month. The reduction is on a dollar-for-dollar and cents-for-cents basis. We do not round SVB payment amounts except as described in paragraph (b) of this section.

(b) *Minimum benefit amount.* If the reduction described in paragraph (a) of this section results in a benefit amount that is greater than zero but less than $1.00, we will pay you a benefit of $1.00 for that month.

§ 408.515 When do we make SVB payments?

SVB payments are made on the first day of each month and represent payment for that month. If the first day of the month falls on a Saturday, Sunday, or Federal legal holiday, payment will be made on the first day preceding such day that is not a Saturday, Sunday, or Federal legal holiday.

[FR Doc. 03–8168 Filed 4–3–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–238F]

Schedules of Controlled Substances: Temporary Placement of alpha-methyltryptamine and 5-methoxy-N,N-diisopropyltryptamine into Schedule I

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: The Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this final rule to temporarily place alpha-methyltryptamine (AMT) and 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT) into Schedule I of the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of the CSA. This final action is based on a finding by the DEA Deputy Administrator that the placement of AMT and 5-MeO-DIPT into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. As a result of this rule, the criminal sanctions and regulatory controls of Schedule I substances under the CSA will be applicable to the manufacture, distribution, and possession of AMT and 5-MeO-DIPT.

EFFECTIVE DATE: April; 4. 2003.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Under What Authority Are AMT and 5-MeO-DIPT Being Temporarily Scheduled?

The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473), which was signed into law on October 12, 1984, amended section 201 of the CSA (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA for one year without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid an imminent hazard to the public safety. The Attorney General may extend the temporary scheduling up to 6 months. A substance may be temporarily scheduled under the emergency provisions of the CSA if that substance is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no exemption or approval in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of DEA (28 CFR 0.100). The Administrator has redelegated this function to the Deputy Administrator, pursuant to 28 CFR 0.104.

A notice of intent to temporarily place AMT and 5-MeO-DIPT into Schedule I of the CSA was published in the **Federal Register** on January 28, 2003 (68 FR 4127). The Deputy Administrator transmitted notice of his intention to temporarily place AMT and 5-MeO-DIPT into Schedule I of the CSA to the Assistant Secretary for Health of the Department of Health and Human Services (HHS). In response to this notification, the Food and Drug Administration has advised DEA that there are no exceptions or approvals in effect under 21 U.S.C. 355 of the Food, Drug and Cosmetic Act for AMT and 5-MeO-DIPT and HHS has no objection to DEA's intention to temporarily place alpha-methyltryptamine and 5-methoxy-N,N-diisopropytryptamine into Schedule I of the CSA.

What Factors Were Considered in the Determination To Temporarily Schedule AMT and 5-MeO-DIPT?

As set forth under 21 U.S.C. 811(h), the Deputy Administrator has considered the available data and the following three factors under the CSA (21 U.S.C. 811(c)) that are required for a determination to temporarily schedule a substance:

4. Its history and current pattern of abuse;

5. The scope, duration, and significance of abuse; and

6. What, if any, risk there is to the public health.

Additionally, DEA has considered the three criteria for placing a substance into Schedule I of the CSA (21 U.S.C. 812). The data available and reviewed for AMT and 5-MeO-DIPT indicate that they have a high potential for abuse, no currently accepted medical use in treatment in the United States and are not safe for use under medical supervision.

What Are AMT and 5-MeO DIPT?

Alpha-methyltryptamine (AMT) and 5-methosy-N, N-diisopropytryptamine (5-MeO-DIPT) are tryptamine (indoleethylamine) derivatives and share several similarities with the Schedule I tryptamine hallucinogens, alpha-ethyltryptamine (AET) and N, N-demethyltryptamine (DMT), respectively. Several other tryptamines also produce hallucinogenic/stimulant effects and are controlled as Schedule I substances under the CSA (bufotenine, diethyltryptamine, psilocybin and psilocyn). Although tryptamine itself appears to lack consistent hallucinogenic/stimulant effects, substitutions on the indole ring and the ethylamine side-chain of this molecule result in pharmacologically active substances (McKenna and Towers, J. Psychoactive Drugs, 16:347–358, 1984).

The chemical structures of AMT and 5-MeO-DIPT possess the critical features necessary for hallucinogenic/stimulant activity. Thus, both AMT and 5-MeO-DIPT are likely to have a pharmacological profile substantially similar to other Schedule I tryptamine derivatives such as DMT and AET. In drug discrimination studies, both AMT and 5-MeO-DIPT substitute for 1-(2,5-dimethosy-4-methylphenyl)-aminopropane (DOM), a phenethylamine-based hallucinogen in Schedule I of the CSA. The potencies of DOM-like discriminative stimulus effects of these and several other similar tryptamine derivatives correlate well with their hallucinogenic potencies in humans (Glennon *et al.*, Eur. J. Pharmacol. 86: 453–459, 1983).

AMT shares other pharmacological properties with Schedule I hallucinogens such as AET, AMT increases systolic and diastolic arterial blood pressures. The behavioral effects of orally administered AMT (20 mg) in humans are slow in onset, occurring after 3 to 4 hours, and gradually subsiding after 12 to 24 hours, but may last up to 2 days in some subjects. The majority of the subjects report nervous tension, irritability, restlessness, inability to sleep, blurry vision, mydriasis and equate the effects of a 20 mg dose to those of 50 micrograms of lysergic acid diethylamide (LSD) (Hollister *et al.*, J. Nervous Ment. Dis., 131:428–434, 1960; Murphree et al., Clin. Pharmacol. Ther., 2: 722–726, 1961). AMT also produces hallucinations and dextroamphetamine-like mood elevating effects.

5-MeO-DIPT also produces pharmacological effects similar to those of other Schedule I hallucinogens such as DMT. The synthesis and preliminary human psychopharmacology study on 5-MeO-DIPT was first published in 1981 (Shulgin and Carter, Comm. Physhopharmacol. 4: 363–369, 1981), 5-MeO-DIPT is an orally active hallucinogen. Following oral administration of 6–10 mg. 5-MeO-DIPT produces subjective effects with an onset at about 20–30 minutes, a peak at about 1–1.5 hours and a duration of about 3–6 hours. Subjects who have been administered 5-MeO-DIPT are talkative and disinhibited. 5-MeO-DIPT causes mydriasis. High doses of 5-MeO-DIPT produce nausea, jaw clenching, muscle tension and overt hallucinations with both auditory and visual distortions.

Why Are AMT and 5-MeO-DIPT Being Controlled?

The continued trafficking and abuse of AMT and 5-;MeO-DIPT pose an imminent hazard to public safety. The popularity and use of hallucinogenic/stimulant substances at raves (all-night dance parties) and other social venues have been a major problem in Europe since the 1990s. In the past several years, this activity has spread to the United States. The Schedule I controlled substance 3,4-methylendioxymethamphetamine (MDMA or Ecstasy) and its analogues are the most frequently abused drugs at these raves. Their abuse has been associated with both acute and long-term public health and safety problems. Raves have also become venues for the trafficking and abuse of new, non-controlled substances distributed as legal substitutes for, or in addition to, MDMA. 5-MeO-DIPT and AMT belong to such a group of substances.

Data gathered from published studies, supplemented by reports on Internet websites indicate that these are often administered orally at doses ranging from 15–40 mg for AMT ant 6–20 mg for 5-MeO-DIPT . Other routes of administration include smoking and snorting. Data from law-enforcement officials indicate that 5-MeO-DIPT is often sold as "Foxy" or "Foxy Methoxy", while MAT has been sold as "Spirals" at lease in one case. Both substances have been commonly encountered in tablet and capsule forms.

According to forensic laboratory data, the first encounter of AMT and 5-MeO-DIPT occurred in 1999. Since then, law enforcement officials in Arizona, California, Colorado, Delaware, Florida, Idaho, Illinois, Iowa, New Jersey, Oregon, Texas, Virginia, Washington, Wisconsin and the District of Columbia have encountered these substances. According to the Florida Department of Law Enforcement (FDLE), the abuse by teens and young adults of AMT and 5-MeO-DIPT is an emerging problem. There have been reports of abuse of AMT and 5-MeO-DIPT at clubs and raves in Arizona, California, Florida and New York. Many tryptamine-based substances are illicitly available from United States and foreign chemical companies and from individuals through the Internet. A gram of AMT or 5-MeO-DIPT as bulk powdered costs less than $150 from illicit sources on the Internet. DEA is not aware of any legitimate medical or scientific use of AMT and 5-MeO-DIPT. There is recent evidence suggesting the attempted clandestine production of AMT and 5-MeO-DIPT in Nevada, Virginia and Washington, DC.

AMT and 5-MeO-DIPT share substantial chemical and pharmacological similarities with other Schedule I tryptamine-based hallucinogens in Schedule I of the CSA (AET and DMT). This makes it likely that these drugs cause similar health hazards. Tryptamine, the parent molecule of AMT and 5-MeO-DIPT, is known to produce convulsions and death in animals (Tedeschi *et al.*, J. Pharmacol. Exp. Ther. 126:223–232, 1959). AMT and 5-MeO-DIPT, similar to other tryptamine- or phenethylamine-based hallucinogens, through the alteration of sensory perception and judgement can pose serious health risks to the user and the general public. further, there have been several self-reports on Internet Web sites describing the reported abuse of these substances in combination with other controlled drugs, namely MDMA, marijuana, gamma hydroxybutyric acid (GHB) and 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7). This practice of drug abuse involving combinations poses additional health risks to the users and the general public. Available information indicates that AMT and 5-MeO-DIPT lack any approved therapeutic use in the United States. The safety of these substances for use in humans has not been studied.

What Is the Effect of This Final Rule?

With the issuance of this final order, AMT and 5-MeO-DIPT become subject to regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importing and exporting of a Schedule I controlled substance.

1. *Registration.* Any person who manufactures, distributes, dispenses, imports or exports AMT and 5-MeO-DIPT or who engages in research or conducts instructional activities with respect to AMT and 5-MeO-DIPT or who proposes to engage in such activities must submit an application for Schedule I registration in accordance with part 1301 of Title 21 of the Code of Federal Regulations (CFR) by May 5, 2003.

2. *Security.* AMT and 5-MeO-DIPT are subject to Secheule I security requirements and must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(a), (c), and (d), 1301.73, 1301.74, 1301.75 (a) and (c) and 1301.76 of Title 21 Code of Federal Regulations.

3. *Labeling and packaging.* All labels and labeling for commercial containers of AMT and 5-MeO-DIPT which are distributed on or after May 5, 2003 shall comply with requirements of §§ 1302.03–1302.07 of Title 21 of the Code Federal Regulations.

4. *Quotas.* Quotas for AMT and 5-MeO-DIPT are established pursuant to part 1303 of title 21 of the code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records who possesses any quantity of AMT and 5-MeO-DIPT is required to keep inventory of all stocks of the substances on hand pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations. Every registrant who desires registration in Schedule I for AMT and 5-MeO-DIPT shall conduct an inventory of all stocks of AMT and 5-MeO-DIPT on or before May 5, 2003.

6. *Records.* All registrants are required to keep records pursuant to §§ 1304.03, 1304.04 and §§ 1304.21–1304.23 of Title 21 of the Code of Federal Regulations.

7. *Reports.* All registrants required to submit reports in accordance with §§ 1304.31 through §§ 1304.33 of Title 21 of the Code Federal Regulations shall do so regarding AMT and 5-MeO-DIPT.

8. *Order Forms.* All registrants involved in the distribution of AMT and 5-MeO-DIPT must comply with the order form requirements of part 1305 of Title 21 of the Code of Federal Regulations.

9. *Importation and Exportation.* All importation and exportation of AMT and 5-MeO-DIPT shall be in compliance with part 1312 of Title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* Any activity with AMT and 5-MeO-DIPT not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act occurring on or after April 4, 2003 is unlawful.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This action temporarily places AMT and 5-MeO-DIPT into Schedule I of the Controlled Substances Act.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive order 12988 Civil Justice Reform.

Executive Order 13132 Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs, Reporting and Record keeping requirements.

■ Under the authority vested in the Attorney General by section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Administrator of the DEA by 28 CFR 0.100, and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES [Amended]

■ 1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871b, unless otherwise noted.

■ 2. Section 1308.11 is amended by adding paragraphs (g)(6) and (g)(7) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(6) Alpha-methyltryptamine (AMT), its isomers, salts and salts of isomers—7432.

(7) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts and salts of isomers—7439.

Dated: March 27, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03–8171 Filed 4–3–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9048]

RIN 1545–BB95

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Corrections to final and temporary regulations.

SUMMARY: This document corrects final and temporary regulations published in the **Federal Register** on March 14, 2003 (68 FR 12287). The final and temporary regulations redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain transfers of such stock and certain deconsolidations of a subsidiary member and also suspend certain losses recognized on the disposition of stock of a subsidiary member.

DATES: This document is effective on March 14, 2003.

FOR FURTHER INFORMATION CONTACT: Aimee K. Meacham, (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of these corrections are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations contain errors that may prove to be misleading and are in need of clarification. In particular, this document supplies text omitted from § 1.1502–35T(b)(3)(i)(C) and (b)(3)(ii)(C), and clarifies § 1.1502–35T(f)(1). In addition, the final and temporary regulations inadvertently removed the text for §§ 1.1502–21T(b)(3)(ii)(C) and 1.1502–32T(b)(4)(v). The missing text is supplied.

Correction of Publication

Accordingly, the publication of the final and temporary regulations [TD 9048] that were the subject of FR Doc. 03–6119, is corrected as follows:

■ 1. On page 12288, column 3, second full paragraph, in the preamble under the paragraph heading *"Basis Reduction Rule for Worthless Stock and Stock of a Subsidiary With No Separate Return Year"*, second full paragraph, lines 17 and 18 from the bottom of the paragraph, the language "as expired, but not as absorbed by the group, as of the beginning of the group's" is corrected to read "as expired, but not as a noncapital, nondeductible expense for purposes of § 1.1502–32,".

■ 2. On page 12291, column 2, § 1.1502–21T, paragraphs (b)(2) through (b)(3)(iv) is corrected to read as follows:

§ 1.1502–21T Net operating losses (temporary).

* * * * *

(b)(2) through (b)(3)(ii)(B) [Reserved]. For further guidance, see § 1.1502–21(b)(2) through (b)(3)(ii)(B).

(b)(3)(ii)(C) *Partial waiver of carryback period for 2001 and 2002 losses—(1) Application.* The acquiring group may make the elections described in paragraphs (b)(3)(ii)(C)(*2*) and (*3*) of this section with respect to an acquired member or members only if it did not file a valid election described in § 1.1502–21(b)(3)(ii)(B) with respect to such acquired member or members on or before May 31, 2002.

(*2*) *Partial waiver of entire pre-acquisition carryback period.* If one or more members of a consolidated group become members of another consolidated group after June 25, 1999, then, with respect to all consolidated net operating losses attributable to the member for the taxable year ending during either 2001 or 2002, or both, the acquiring group may make an irrevocable election to relinquish the portion of the carryback period for such losses for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver and that the conditions of this paragraph are satisfied. The acquiring group cannot make the election described in this paragraph with respect to any consolidated net operating losses arising in a particular taxable year if any carryback is claimed, as provided in paragraph (b)(3)(ii)(C)(*4*) of this section, with respect to any such losses on a return or other filing by a group of which the acquired member was previously a member and such claim is filed on or before the date the election described in this paragraph is filed. The election must be made in a separate statement entitled "THIS IS AN ELECTION UNDER SECTION 1.1502–21T (b)(3)(ii)(C)(*2*) TO WAIVE THE PRE-[insert first day of the first taxable year for which the member (or members) was a member of the acquiring group] CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members]." Such statement must be filed as provided in paragraph (b)(3)(ii)(C)(*5*) of this section.

(*3*) *Partial waiver of pre-acquisition extended carryback period.* If one or more members of a consolidated group become members of another consolidated group, then, with respect to all consolidated net operating losses attributable to the member for the taxable year ending during either 2001 or 2002, or both, the acquiring group may make an irrevocable election to relinquish the portion of the carryback period for such losses for which the corporation was a member of another group to the extent that such carryback period includes one or more taxable years that are prior to the taxable year that is 2 taxable years preceding the taxable year of the loss, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver and that the conditions of this paragraph are satisfied. The acquiring group cannot make the election described in this paragraph with respect to any consolidated net operating losses arising in a particular taxable year if a carryback to one or more taxable years that are prior to the taxable year that is 2 taxable years preceding the taxable year of the loss is claimed, as provided in paragraph (b)(3)(ii)(C)(*4*) of this section, with respect to any such losses on a return or other filing by a group of which the acquired member was previously a member and such claim is filed on or before the date the election described in this paragraph is filed. The election must be made in a separate statement entitled "THIS IS AN ELECTION UNDER SECTION 1.1502–21T (b)(3)(ii)(C)(*3*) TO WAIVE THE PRE-[insert first day of the first taxable year for which the member (or members) was a member of the acquiring group] EXTENDED CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members]." Such statement must be filed as provided in paragraph (b)(3)(ii)(C)(*5*) of this section.

(*4*) *Claim for a carryback.* For purposes of paragraphs (b)(3)(ii)(C)(*2*) and (*3*) of this section, a carryback is claimed with respect to a consolidated net operating loss if there is a claim for refund, an amended return, an application for a tentative carryback adjustment, or any other filing that claims the benefit of the net operating loss in a taxable year prior to the taxable year of the loss, whether or not subsequently revoked in favor of a claim based on a 5-year carryback period.

(*5*) *Time and manner for filing statement.* A statement described in paragraph (b)(3)(ii)(C)(*2*) or (*3*) of this section that relates to consolidated net operating losses attributable to a taxable year ending during 2001 must be filed with the acquiring consolidated group's timely filed (including extensions) original or amended return for the taxable year ending during 2001, provided that such original or amended return is filed on or before October 31, 2002. A statement described in paragraph (b)(3)(ii)(C)(*2*) or (*3*) of this section that relates to consolidated net operating losses attributable to a taxable year ending during 2002 must be filed with the acquiring consolidated group's timely filed (including extensions) original or amended return for the taxable year ending during 2001 or 2002, provided that such original or amended return is filed on or before September 15, 2003.

(b)(3)(iii) and (b)(3)(iv) [Reserved]. For further guidance, see § 1.1502–21(b)(3)(iii) and (b)(3)(iv).

* * * * *

■ 3. On page 12292, column 1, § 1.1502–32T, paragraphs (b)(4) through (b)(4)(v) is corrected to read as follows:

§ 1.1502–32T Investment adjustments (temporary).

* * * * *

(b)(4) through (b)(4)(iv) [Reserved]. For further guidance, see § 1.1502–32(b)(4) through (b)(4)(iv).

(b)(4)(v) *Special rule for loss carryovers of a subsidiary acquired in a trasaction for which an election under § 1.1502–20T(i)(2) is made—*(A) *Expired losses.* Notwithstanding § 1.1502–32(b)(4)(iv), to the extent that S's loss carryovers are increased by reason of an election under § 1.1502–20T(i)(2) and such loss carryovers expire or would have been properly used to offset income in a taxable year for which the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which S receives the notification described in § 1.1502–20T(i)(3)(iv) and at all times thereafter, the group will be deemed to have made an election under § 1.1502–32(b)(4) to treat all of such expired loss carryovers as expiring for all Federal income tax purposes immediately before S became a member of the consolidated group.

(B) *Available losses.* Notwithstanding § 1.1502–32(b)(4)(iv), to the extent that S's loss carryovers are increased by reason of an election under § 1.1502–20T(i)(2) and such loss carryovers have not expired and would not have been properly used to offset income in a taxable year for which the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which S receives the notification described in § 1.1502–20T(i)(3)(iv) and at all times thereafter, the group may make an election under § 1.1502–32(b)(4) to treat all or a portion of such loss carryovers as expiring for all Federal income tax purposes immediately before S became a member of the consolidated group. Such election must be filed with the group's original return for the taxable year in which S receives the notification described in § 1.1502–20T(i)(3)(iv).

(C) *Effective date.* This paragraph (b)(4)(v) is applicable on and after March 7, 2002.

* * * * *

§ 1.1502–35T [Corrected]

■ 4. On page 12293, column 1, § 1.1502–35T, paragraph (b)(3)(i)(C), line 2 from the bottom of the paragraph, the language "distributee), section 351, or section 361" is corrected to read "distributee), section 351, section 354, or section 361".

■ 5. On page 12293, column 1, § 1.1502–35T, paragraph (b)(3)(ii)(B), line 3 from the bottom of the paragraph, the language "of subsidiary member stock that they" is corrected to read "of the subsidiary member stock that they".

■ 6. On page 12293, column 1, § 1.1502–35T, paragraph (b)(3)(ii)(C) is correctly designated paragraph (b)(3)(ii)(D).

■ 7. On page 12293, column 1, § 1.1502–35T, new paragraph (b)(3)(ii)(C) is added to read as follows.

■ 8. On page 12293, column 2, § 1.1502–35T, paragraph (b)(6)(ii), line 2 from the bottom of the paragraph, the language "and paragraph (c) of this section are" is corrected to read "and paragraphs (c) and (f) of this section are".

■ 9. On page 12295, column 2, § 1.1502–35T, paragraph (e), the first sentence is revised to read as follows.

■ 10. On page 12297, column 2, § 1.1502–35T, paragraph (f)(1), lines 4 and 5 from the bottom of the paragraph, the language "as expired, but not as absorbed by the group, as of the beginning of the group's" is corrected to read "as expired, but shall not be treated as a noncapital, nondeductible expense for purposes of § 1.1502–32(b)(3)(iii), as of the beginning of the group's".

§ 1.1502–35T Transfers of subsidiary member stock and deconsolidations of subsidiary members (temporary).

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) The members of the group are allowed a worthless stock loss under section 165(g) with respect to all of the shares of the subsidiary member stock that they own immediately before the deconsolidation; or

* * * * *

(e) *Examples.* For purposes of the examples in this section, unless otherwise stated, all groups file consolidated returns on a calendar-year basis, the facts set forth the only corporate activity, all transactions are

between unrelated persons, and tax liabilities are disregarded. * * *

* * * * *

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 03–8312 Filed 4–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC89

Virgin Islands Coral Reef National Monument and Buck Island Reef National Monument

AGENCY: National Park Service, Interior.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule relates to the prohibition on extractive uses contained in Presidential Proclamation No. 7399, which established the Virgin Islands Coral Reef National Monument (VICR), and Presidential Proclamation No. 7392, which expanded the boundaries of the existing Buck Island Reef National Monument (BUIS). This interim rule prohibits extractive uses, with some exceptions, and anchoring within VICR. For the purposes of protecting the objects identified in BUIS, Proclamation No. 7392 supersedes the limited authorization for extractive uses that was included in Proclamation 3443 of December 28, 1961, which created BUIS. Pursuant to Proclamation No. 7392, this interim rule prohibits all extractive uses and boat anchoring within BUIS except in deep sand areas or in emergencies (all other anchoring is subject to permit). This interim rule replaces the BUIS regulations stated in 36 CFR 7.73, which allowed for certain types of fishing and collecting, operation of watercraft, and anchoring. Proclamation Nos. 7399 and 7392 require the National Park Service to prepare management plans, which are to include guidelines for the management of vessels in the monument, within three years for VICR and two years for BUIS.

DATES: This interim rule becomes effective on May 5, 2003. This interim rule will remain in effect until final regulations are adopted. Written comments on this interim rule are solicited from all interested parties, and these comments will be considered in developing the General Management Plans (GMP) and final regulations. Final regulations will be adopted upon completion of the GMPs and review of all comments.

ADDRESSES: Comments should be addressed to: John H. King, Superintendent, Virgin Islands National Park, 1300 Cruz Bay Creek, St. John, Virgin Islands 00830. E-mail: *John_H_King@nps.gov*. Mr. Joel A. Tutein, Superintendent, Buck Island Reef National Monument, 2100 Church Street, Lot #100, Christiansted, St. Croix, Virgin Islands 00820–4611. E-mail: *CHRI_Superintendent@nps.gov*.

FOR FURTHER INFORMATION CONTACT: For Virgin Islands Coral Reef: Contact Superintendent's Office, Virgin Islands National Park, between 8 a.m. and 5 p.m., Monday–Friday by phone at 340/776–6201 or by Fax at 340/693–9301. For Buck Island: Contact Superintendent's Office, Buck Island Reef National Monument, between 8 a.m. and 5 p.m., Monday–Friday, at 340/773–1460.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 2001, President Clinton established Virgin Islands Coral Reef National Monument (VICR) and enlarged and modified Buck Island Reef National Monument (BUIS). Presidential Proclamation Nos. 7399 and 7392, respectively.

In establishing VICR, Proclamation No. 7399 assigns management to the Secretary of the Interior through the National Park Service (NPS) under its existing authorities, but subject to the overriding purpose of protecting the monument's objects of historic or scientific interest. The acreage included is the smallest area compatible with the proper care and management of the objects to be protected. Proclamation No. 7399 contains six major provisions:

(1) It reserves only lands owned or controlled by the United States in the area.

(2) It is subject to valid existing rights in the federal lands or resources within the area, if any, although the exercise of those rights could be regulated in order to protect the purposes of the monument.

(3) The area is withdrawn from mineral and geothermal entry, location, sale, leasing or other disposition.

(4) Boat anchoring is prohibited, except for emergency and authorized administrative uses.

(5) All extractive uses are prohibited, except for bait fishing at Hurricane Hole and for blue runner (hardnose) line fishing in the area south of St. John, both by permit only. The Secretary may issue permits only "to the extent that such fishing is consistent with the protection of the objects identified in this proclamation."

(6) A management plan, including vessel management planning, is to be prepared within three years.

Proclamation No. 7392, the "Buck Island Reef National Monument Boundary Enlargement", added approximately 18,135 marine acres to the existing Buck Island Reef National Monument. This acreage is the smallest area compatible with the proper care and management of the objects to be protected. The Proclamation added extensive coral reef and fisheries resources not originally within the monument boundaries including deep reefs, sea grass beds, shelf edge communities, and oceanic habitats. The area also contains significant cultural and historic objects including possible shipwrecks from the slave era. The Buck Island Proclamation states that:

> For the purposes of protecting the objects identified above, the Secretary shall prohibit all boat anchoring, provided that the Secretary may permit exceptions for emergency or authorized administrative purposes, and may issue permits for anchoring in deep sand bottom areas, to the extent that it is consistent with the protection of the objects.
>
> For the purposes of protecting the objects identified above, the Secretary shall prohibit all extractive uses. This prohibition supersedes the limited authorization for extractive uses included in Proclamation 3443 of December 28, 1961.

The Proclamations give the Secretary limited discretion in what activities and uses she may allow. She must prohibit all extractive uses, but she may allow very limited fishing in two areas at VICR and may permit certain very limited kinds of boat anchoring at BUIS.

The Proclamations differ from current regulations governing the areas. Note that NPS general regulations prohibit all commercial fishing in any unit of the National Park System except where specifically authorized by federal statutory law. However, NPS regulations at 36 CFR 2.3 allow recreational fishing under state law in all park units unless otherwise prohibited. The Proclamations and this interim regulation are generally more restrictive for both VICR and BUIS.

Commercial and recreational fishing were previously authorized by Territorial Government permit within the boundaries of the area that now constitutes VICR, with regulations on the taking of some species (*i.e.*, area and seasonal closures, size limits, gear restrictions, etc.) and prohibitions on the harvest or possession of others. Title 12, chapter 9A VIRR. The harvest of certain pelagic species (*e.g.*, swordfish, shark and tuna), was generally regulated by the National Marine Fisheries Service. Mooring and anchoring within the boundaries of VICR were previously authorized by the Territory pursuant to title 25, chapter 16 VIRR.

This interim rule prohibits all extractive uses including fishing within VICR, except for bait fishing at Hurricane Hole and blue runner (hardnose) line fishing in the area south of St. John as permitted by the Secretary (and only where consistent with the protection of the objects identified in Proclamation No. 7399). The interim rule also prohibits dredging, excavations, or filling operations; protects all wrecks or abandoned waterborne craft and cargo; regulates boats and anchoring to prevent them from causing any damage to any underwater features; and requires boats to follow Coast Guard and Territorial regulations. Although this regulation does not specifically prohibit the use of personal watercraft (PWC) within these units, under the PWC regulations located at 36 CFR 3.24, PWC are prohibited from operating within these units and have been prohibited since April 2000. The interim rule does permit anchoring in emergency situations to protect life and property.

BUIS originally permitted the continuation of "the existing fishing (including the landing of boats and the laying of fishpots outside of the marine garden), bathing or recreational privileges by inhabitants of the Virgin Islands". Proclamation No. 3443. The regulations for BUIS, codified at 36 CFR 7.73, have prohibited dredging, excavations, or filling operations; protected all wrecks or abandoned waterborne craft and cargo; regulated boats and anchoring to prevent them from causing any damage to any underwater features, prevented boats from anchoring or maneuvering near marked swimming trails, and required boats to follow Coast Guard and Territorial regulations. The previous regulations provided that fishing was prohibited except by handheld rod or line or conventional Virgin Islands fish pots or traps, or nets for bait fish; use or possession of spearfishing equipment was banned; special rules and limits applied to Florida spiny lobster, whelk, and conch; and all fishing was prohibited in the "Marine Garden".

This interim rule leaves in place the existing regulatory provisions regarding dredging, protection of wrecks, and boat regulation. It adds a prohibition of all anchoring except as authorized by the Superintendent in deep sand bottom areas, in emergencies, or for limited administrative purposes. It also adds a prohibition on all extractive uses. The interim rule eliminates the previous provisions on fishing, and instead prohibits all fishing and bans the use or possession of fishing equipment within BUIS.

Because the Secretary's discretion under the Proclamations is limited, and because the Proclamations supersede existing law over the areas, it is in the public interest to promulgate these interim regulations in order to provide notice to interested and affected parties of the designations, prohibitions, and change in management, and to carry out the Proclamations' purpose to protect objects of historic and scientific interest. The National Park Service finds that this interim rule is both necessary and prudent in order to achieve the goals stated in the Proclamations and make them effective.

Impairment Finding

NPS Management Policies 1.4 requires the Superintendent to consider the impacts of a proposed action before approving it and determine, in writing, that the activity will not lead to an impairment of park resources and values.

Fishing Exceptions

Exceptions to the prohibitions established for VICR include bait fishing at Hurricane Hole by permit and for blue runner (hardnose) line fishing, also by permit, in the area south of St. John. These exceptions are determined to produce no impairment of the objects protected by the proclamation.

The bait fish found in Hurricane Hole are seasonal, migratory species using this area for refuge. This is not a reproductive site for these species and limited harvest, by permit, will not depopulate this resource. This rule establishes limits on harvest to three gallons of bait fish per fisherman per day, and require that nets not be used within ten feet of the seaward edge of the mangrove prop root system (to avoid disturbing the invertebrate communities that live on the prop roots).

The hardnose found south of St. John are a coastal migratory pelagic fish. These fish stay primarily near the surface while feeding and migrating through the Monument. Harvest, by permit, of this pelagic resource will not impair objects protected under the designation. The most effective way to fish for hardnose involves anchoring. Since anchoring in this area is not allowed, the NPS will be installing several moorings for use by fishermen.

Anchoring/Mooring

Hurricane Hole has long been used by the marine community as a safe shelter for vessels during hurricanes. Pursuant to maritime law and practice, access to this shelter cannot be denied during an emergency situation. The establishment of a hurricane mooring system in these bays would resolve conflicts between resource protection and hurricane shelter for boats. The installation of a mooring system, after survey for submerged cultural resources, would not impair protected objects.

The Proclamation for BUIS does not have any exceptions to the prohibition except that boat anchoring may be permitted for emergency or authorized administrative purposes, and the Superintendent "may issue permits for anchoring in deep sand bottom areas, to the extent that is consistent with the protection of the objects". This ensures that any such anchoring would not impair protected objects.

This impairment determination will sunset upon adoption of the respective GMPs, which will further evaluate impacts to monument resources and values.

The GMP process will evaluate further the exceptions to the general prohibition on extractive uses. The public will have further opportunity to comment on extractive uses during the GMP process, however, the Secretary's discretion under the Proclamations is limited and only a few exceptions can be modified.

Public Participation: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Superintendent, Virgin Islands National Park; 1300 Cruz Bay Creek, St. John, Virgin Islands 00830, or Superintendent, Buck Island Reef National Monument; 2100 Church Street, Lot #100; Christiansted, VI 00820. You may also comment via the Internet to: *John_H_King@nps.gov* or *CHRI_Superintendent@nps.gov*. Please also include "Attn: RIN 1024–AC89", your name and return address in your Internet message. Finally, you may hand-deliver comments to the Virgin Islands National Park Visitor Information Center, Cruz Bay, St. John or to the Buck Island Reef National Monument Superintendent's Office at the Danish Customs House, Christiansted, St. Croix. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the

rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment and state the reason for your request. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. All comments will be considered as part of the GMP process. There will be further opportunity for public comment during the GMP process. Final regulations will be adopted after the completion of the GMP process.

Drafting Information: The principal authors of this interim rule are John H. King, Superintendent, Virgin Islands National Park and Joel A. Tutein, Superintendent, Buck Island Reef National Monument.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(a) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(b) This rule does not interfere with actions taken or planned by another agency. The Territorial Submerged Lands Act of 1974 transferred the waters surrounding the Virgin Islands from the Department of the Interior to the Government of the Virgin Islands; however, all submerged lands adjacent to federal lands from mean high water out to three miles remained the property of the Department of the Interior. The Proclamations authorize NPS to manage these lands around VICR and BUIS for the American people.

The Proclamation for BUIS complements plans of the Territorial government to ban all fishing within the monument waters according to the St. Croix Coral Reef System Area of Particular Concern Management Plan (1993) (APC Plan) approved by the Government of the Virgin Islands, Department of Planning and Natural Resources. The APC Plan states, on page 40:

> Move to establish, as part of the territorial marine park system, an expanded protected area around the Buck Island Reef National Monument to provide increased protection to the coral reef and fishery resources of the Monument. It is recommended that all forms of fishing be prohibited within the core and expanded area.

The Territory is willing to work with NPS to establish Memoranda of Agreement to specify resource management goals, objectives, standard protocol, and agency responsibilities. The Proclamations have declared the monument areas as non-extractive, coinciding with Territorial plans for the same action. The Territory is also in the process of developing a Virgin Islands Marine Park, which will abut both new monuments and hopefully provide further protection for the natural resources in the area.

(c) This rule does not alter the budgetary effects of entitlements, grants, user fees, or monetary loan programs or the rights or obligations of their recipients. The Proclamations establishing VICR and enlarging BUIS do not affect current NPS-authorized concession operations (concession fees) or other commercial operations (*e.g.*, day use excursions) occurring in the monuments. These operations are non-extractive in nature, provide the public the means to experience these unique and delicate marine resources, and allow the public a first-hand opportunity to see the benefits of a fully protected coral reef area.

(d) This rule does not raise novel legal or policy issues. It implements two validly issued Presidential Proclamations, which leave little discretion as to the purposes for the creation of the monuments or uses of the area.

Regulatory Flexibility Act

The Department of the Interior certifies that this interim rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The economic effects of this rule are local in nature and negligible in scope.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The Department has determined that this rule meets the applicable standards provided in section 3(a) and 3(b)(2) of Executive Order 12988.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. No property acquisition or impacts on private property owners are expected due to the administrative nature of the rule. The Proclamations identify federal submerged lands surrounding Virgin Islands National Park and around the original Buck Island Reef National Monument for management by the National Park Service. These lands were held in reservation in the Submerged Lands Act of 1974 and not transferred to the Territorial government.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The NPS is exercising jurisdiction over submerged federal lands for which control has never been relinquished.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties. It does not require submissions under the Paperwork Reduction Act or OMB form 83–I. This rule does not require any outside party to submit any information to the Department of the Interior.

National Environmental Policy Act

The NPS has determined that this rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase human uses that would compromise the nature and characteristics of any park area or cause physical damage to any park area;

(b) Introduce incompatible uses that compromise the nature and characteristics of any park area or cause physical damage to it;

(c) Conflict with ownerships adjacent to parks or land uses adjacent to parks; or

(d) Cause a nuisance to owners or occupants of areas adjacent to parks.

Based upon this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental Guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared specifically for this rule. The GMPs will be accompanied by proper NEPA documentation.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249), the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), and 512 DM 2 we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Administrative Procedures Act

The Secretary of the Interior has determined under 5 U.S.C. 553(b)(B) and 318 DM 5.3 that it is not in the public interest to delay the effective date of this interim regulation to accommodate notice and comment procedures. There are 4 reasons for this decision:

(a) The Proclamations clearly outline the limits of the Secretary's discretion in disallowing extractive uses at the Monuments. This regulation simply codifies the prohibitions of extractive uses outlined in the Proclamations and public comment will be useful only as to the few narrow exceptions allowed under the Proclamations.

(b) Delaying implementation of the Proclamations may lead to confusion about what law applies in the units and could result in harm to the objects protected by the Proclamations.

(c) Immediate action is necessary in order to effectuate the purpose for which the Proclamations were issued; that is, protecting the objects within the monuments.

(d) Immediate action is necessary in order to implement the exceptions providing for limited, permitted extraction in VICR.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); sec. 7.96 also issued under DC Code 8–137 (1981) and DC Code 40–721 (1981).

■ 2. Add § 7.46 to read as follows:

§ 7.46 Virgin Islands Coral Reef National Monument.

(a) *Extractive uses.* (1) All extractive uses are prohibited within the boundaries of the Monument, including, but not limited to, harvest or collection of fish, coastal migratory pelagic fish, baitfish, lobsters, conch, whelk, corals, sponges and all associated reef invertebrates, and sand, water, plants, seeds, fruit, marine mammals, marine birds, gas, minerals, and rocks.

(2) All submerged cultural resources are protected under the Archeological Resource Protection Act and the Abandoned Shipwrecks Act.

(b) *Exceptions.* (1) Exceptions to prohibited extractive uses are limited to bait fishing at Hurricane Hole and blue runner (hardnose) line fishing in the area south of St. John. The Superintendent shall issue permits for such uses.

(2) Bait fishing shall be permitted with cast net at a distance greater than ten feet from the seaward edge of the mangrove prop root system.

(3) A maximum of three gallons of baitfish is allowed per fisherman per day.

(4) Blue runner shall be caught using hand lines and chum (a mixture of ground up baitfish and sand to attract the fish).

(5) Any fish caught other than blue runner shall be released.

(6) Vessels involved in the catch of blue runner may use moorings designated for that purpose.

(c) *Marine Operations.* No dredging, excavating, or filling operations of any kind are permitted, and no equipment, structures, by-product or excavated materials associated with such operations may be deposited in or on the waters or ashore within the boundaries of the monument.

(d) *Wrecks.* No person shall destroy or molest, remove, deface, displace or tamper with wrecked or abandoned waterborne craft of any type or condition, submerged cultural resources, or any cargo pertaining thereto, unless permitted in writing by an authorized official of the National Park Service.

(e) *Boats.* (1) No watercraft shall operate in such a manner, nor shall anchors or any other mooring device be cast or dragged or placed, so as to strike or otherwise cause damage to any underwater feature.

(2) All watercraft, carrying passengers, for hire, shall comply with applicable regulations and laws of the U.S. Coast Guard and Territory of the Virgin Islands.

(3) Anchoring will only be permitted in emergency situations to protect life and property.

(4) Anchoring shall only be permitted from 48 hours prior to landfall of the hurricane to 48 hours following passage of the hurricane.

(5) No lines or ropes shall be attached to mangroves or other shoreline vegetation.

■ 3. Amend § 7.73 to add paragraph (a), and revise paragraphs (d) and (e) to read as follows:

§ 7.73 Buck Island Reef National Monument.

(a) *Extractive uses.* All extractive uses are prohibited within the boundaries of the Monument, including but not limited to harvest or collection (on the land or in the water) of fish for any use, marine mammals, coastal migratory pelagic fish, baitfish, lobsters, conch, whelk, hermit crabs (soldier crabs), seashells, corals, dead coral, sea fans, sponges and all associated reef invertebrates, plants, fruits and seeds, firewood, driftwood, rocks, sand, gas, oil, and minerals.

* * * * *

(d) *Boats.* (1) No watercraft shall operate in such a manner, nor shall anchors or any other mooring device be cast or dragged or placed, so as to strike or otherwise cause damage to any underwater features.

(2) Anchoring or maneuvering watercraft within the waters that contain underwater marked swimming trails and interpretive signs is prohibited.

(3) Anchoring is prohibited except by permit issued by the Superintendent for

deep sand bottom areas or for administrative purposes.

(4) Anchoring will be allowed in emergency situations only to protect life and property.

(5) All watercraft, carrying passengers, for hire, shall comply with applicable regulations and laws of the U.S. Coast Guard and Territory of the Virgin Islands.

(e) *Fishing.* (1) All forms of fishing are prohibited including, but not limited to, spearfishing, rod and reel, hand-line, nets, gill or trammel, traps or pots, snares, hooks, poison, cast nets, trawl, seine, and long-line.

(2) The use or possession of any type of fishing equipment or any of the items listed in paragraph (a) of this section is prohibited within the boundaries of the Monument.

Dated: February 12, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–8190 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0217; FRL–7298–4]

Lactic acid, ethyl ester and Lactic acid, n-butyl ester; Exemptions from the Requirement of a Tolerance; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of September 3, 2002, establishing tolerance exemptions for lactic acid, ethyl ester and lactic acid, n-butyl ester. In the codified text of that document, the CAS number for lactic acid, ethyl ester was incorrectly listed. This document is being issued to correct the CAS number for lactic acid, ethyl ester.

DATES: This document is effective on April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–6304; e-mail address: *boyle.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the September 3, 2002 final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0217. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_ 40/40cfr[180]_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Does this Correction Do?

A tolerance exemption for lactic acid, ethyl ester was established in the **Federal Register** of September 3, 2002 (67 FR 56225) (FRL– 7196–6) (OPP–2002–0217). In the codified text of that document, the CAS number was incorrectly listed as "197–64–3." The CAS number should have read "97–64–3" as expressed in the preamble.

III. Why is this Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment, because EPA is merely correcting a typographical error. The CAS number for lactic acid, ethyl ester was correctly listed in the preamble, but erroneously listed in the codified text. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Regulatory Assessment Requirements Apply to this Action?

This final rule implements a technical correction to the CFR, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical correction is not a "significant regulatory action" subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Nor does this final rule contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). Since the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute (see Unit III.), this action is not subject to provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). This final rule will not have substantial direct effects on the States or on one or more Indian tribes, on the relationship between the national government and the States or one or more Indian tribes, or on the distribution of power and responsibilities among the various levels of government or between the Federal government and Indian tribes. As such, this action does not have any "federalism implications" as described in Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), or any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Since this direct final rule is not a "significant regulatory action" as defined by Executive Order 12866, it does not require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), and is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This action does not involve any technical standards that require the Agency's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). This action will not result in environmental justice related issues and does not, therefore, require special consideration under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988). In issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

V. Congresssional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States prior to publication of this final rule in the **Federal Register.** This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 21, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is corrected as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.950 is amended by revising the entry for "Lactic acid, ethyl ester" in paragraph (e) to read as follows:

§ 180.950 Tolerance exemptions for minimal risk active and inert ingredients.

* * * * *

(e) * * *

Chemical Name	CAS No.
* * * *	*
Lactic acid, ethyl ester	97–64–3
* * * *	*

[FR Doc. 03–7973 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2506

RIN 3045–AA20

Debt Collection

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") is issuing regulations governing the collection of debts owed to it and other Federal agencies. Federal agencies are required to try to collect debts owed to the Federal government. These regulations describe actions that the Corporation may take to collect debts; they apply, with certain exceptions, to any person or entity. These regulations conform the Corporation's interim regulations to the amended procedures in the revised Federal Claims Collection Standards (FCCS) issued by the Department of the Treasury (Treasury) and the Department of Justice (DOJ) and adopt by reference Treasury's administrative wage garnishment procedures. These regulations also provide that the Corporation has entered into a cross-servicing agreement with Treasury under which Treasury will take authorized action to collect amounts owed to the Corporation.

DATES: This rule is effective on May 5, 2003.

ADDRESSES: Comments must be sent to Corporation for National and Community Service, William L. Anderson, III, Deputy Chief Financial Officer, 1201 New York Avenue, NW., Room 7207, Washington, DC 20525, e-mail *WAnderso@cns.gov*, telefax number (202) 565–2780; the TTY number is (202) 565–2799.

FOR FURTHER INFORMATION CONTACT: Suzanne Dupré, telephone number (202) 606–5000, extension 396; *sdupre@cns.gov*; or telefax number (202) 565–2796.

SUPPLEMENTARY INFORMATION: Under these regulations, the Corporation may collect debts owed to it through a number of actions, including the following:

- Making offsets against amounts, including salary payments, owed to the debtor by the Corporation or other Federal agencies;
- Referring the debt to a private collection contractor;
- Referring the matter to the U.S. Department of Justice (DOJ) for initiation of a judicial proceeding against the debtor; and
- Referring the matter to the Treasury to take all of the above-listed actions to collect debts for the Corporation, pursuant to a cross-servicing agreement.

In addition, these regulations describe the actions necessary for the Corporation to take collection actions on behalf of another Federal agency. These actions could include making offsets against the salary of a Corporation employee or against any other amounts owed by the Corporation to the debtor. These regulations implement the requirements of the Federal Claims Collection Act of 1966 (Pub. L. 89–508, 80 Stat. 308) as amended by the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749) and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321, 31 U.S.C. 3720A). These regulations are issued in conformity with the Federal Claims Collection Standards issued by DOJ and

the Treasury (31 CFR Chapter IX, parts 900–904, 65 FR 70390 (11/22/2000)). The regulations in this part are also issued in conformity with the regulations of the Office of Personnel Management (OPM) on offsets against Federal employee salaries (5 CFR part 550, subpart K), and the Treasury regulations on Administrative Wage Garnishment (31 CFR 285.11).

The Corporation has determined that these regulations pertain to agency practice and procedure and are interpretative in nature. The procedures contained in these regulations for salary, tax refund, and administrative offsets and for administrative wage garnishment are mandated by law and by regulations promulgated by OPM, the Treasury Financial Management Service, and jointly by the DOJ and the Treasury. Therefore, under 5 U.S.C. 553(b)–(d), these regulations are not subject to the Administrative Procedures Act (APA) and the requirements of the APA for a notice and comment period and a delayed effective date.

Comments on proposed rule. On January 29, 1999 (64 FR 4315), the Corporation published interim claims collection regulations that conformed to the DCIA and to the FCCS. The comment period expired on March 29, 1999. No comments were received on the interim regulations. These regulations are somewhat expanded to be more clear; and they incorporate by reference the procedures for administrative wage garnishment in Treasury regulations. There are no other substantive changes.

This rule is a significant regulatory action for the purpose of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that these regulations will not have a significant economic impact on a substantial number of small entities. This rule has no federalism implications. This rule is not a major rule.

List of Subjects in 45 CFR Part 2506

Administrative practice and procedures; Claims; Debts; Government employees; Garnishment of Wages; Salaries; Wages.

■ For the reasons stated in the preamble, the Corporation revises part 2506 of 45 CFR Chapter XXV to read as follows:

PART 2506—COLLECTION OF DEBTS

Subpart A—Introduction

Sec.

2506.1 Why is the Corporation issuing these regulations?
2506.2 Under what authority does the Corporation issue these regulations?
2506.3 What definitions apply to the regulations in this part?
2506.4 What types of debts are excluded from these regulations?
2506.5 If a debt is not excluded from these regulations, may it be compromised, suspended, terminated, or waived?
2506.6 What is a claim or debt?
2506.7 Why does the Corporation have to collect debts?
2506.8 What action might the Corporation take to collect debts?
2506.9 What rights do I have as a debtor?

Subpart B—General Provisions

2506.10 Will the Corporation use its cross-servicing agreement with Treasury to collect its debts?
2506.11 Will the Corporation refer debts to the Department of Justice?
2506.12 Will the Corporation provide information to credit reporting agencies?
2506.13 How will the Corporation contract for private collection services?
2506.14 What should I expect to receive from the Corporation if I owe a debt to the Corporation?
2506.15 What will the notice tell me regarding collection actions that might be taken if the debt is not paid within 60 days of the notice, or arrangements to pay the debt are not made within 60 days of the notice?
2506.16 What will the notice tell me about my opportunity for review of my debt?
2506.17 What must I do to obtain a review of my debt, and how will the review process work?
2506.18 What interest, penalty charges, and administrative costs will I have to pay on a debt owed to the Corporation?
2506.19 How can I resolve my debt through voluntary repayment?
2506.20 What is the extent of the Chief Executive Officer's authority to compromise debts owed to the Corporation, or to suspend or terminate collection action on such debts?
2506.21 May the Corporation's failure to comply with these regulations be used as a defense to a debt?

Subpart C—Salary Offset

2506.30 What debts are included or excluded from coverage of these regulations on salary offset?
2506.31 May I ask the Corporation to waive an overpayment that otherwise would be collected by offsetting my salary as a Federal employee?
2506.32 What are the Corporation's procedures for salary offset?
2506.33 How will the Corporation coordinate salary offsets with other agencies?
2506.34 Under what conditions will the Corporation make a refund of amounts collected by salary offset?
2506.35 Will the collection of a debt by salary offset act as a waiver of my rights to dispute the claimed debt?

Subpart D—Tax Refund Offset

2506.40 Which debts can the Corporation refer to Treasury for collection by offsetting tax refunds?
2506.41 What are the Corporation's procedures for collecting debts by tax refund offset?

Subpart E—Administrative Offset

2506.50 Under what circumstances will the Corporation collect amounts that I owe to the Corporation (or some other Federal agency) by offsetting the debt against payments that the Corporation (or some other Federal agency) owes me?
2506.51 How will the Corporation request that my debt to the Corporation be collected by offset against some payment that another Federal agency owes me?
2506.52 What procedures will the Corporation use to collect amounts I owe to a Federal agency by offsetting a payment that the Corporation would otherwise make to me?
2506.53 When may the Corporation make an offset in an expedited manner?
2506.54 Can a judgment I have obtained against the United States be used to satisfy a debt that I owe to the Corporation?

Subpart F—Administrative Wage Garnishment

2506.55 How will the Corporation collect debts through Administrative Wage Garnishment?

Authority: 5 U.S.C. 5514; 31 U.S.C. 3701–3720A, 3720D; 44 U.S.C. 2104(a).

Subpart A—Introduction

§ 2506.1 Why is the Corporation issuing these regulations?

(a) The Corporation is issuing these regulations to inform the public of procedures that may be used by the Corporation for the collection of debt.

(b) These regulations provide that the Corporation will attempt to collect debts owed to it or other Government agencies either directly, or by other means including salary offsets, administrative offsets, tax refund offsets, or administrative wage garnishment.

(c) These regulations also provide that the Corporation has entered into a cross-servicing agreement with the U.S. Department of the Treasury (Treasury) under which the Treasury will take authorized action to collect amounts owed to the Corporation.

§ 2506.2 Under what authority does the Corporation issue these regulations?

(a) The Corporation is issuing the regulations in this part under the authority of 31 U.S.C. chapter 37, 3701–3720A and 3720D. These sections implement the requirements of the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996.

(b) The Corporation is also issuing the regulations in this part to conform to the Federal Claims Collection Standards (FCCS), which prescribe standards for handling the Federal Government's claims for money or property. The FCCS are issued by the Department of Justice (DOJ) and the Treasury at 31 CFR chapter IX, parts 900–904. The Corporation adopts those standards without change. The regulations in this part supplement the FCCS by prescribing procedures necessary and appropriate for the Corporation's operations.

(c) The Corporation is also issuing the regulations in this part to conform to the standards for handling Administrative Wage Garnishment processing by the Federal Government. The standards are issued by the Treasury at 31 CFR 285.11. The Corporation adopts those standards without change. The regulations in this part supplement the standards by prescribing procedures necessary and appropriate for the Corporation's operations.

(d) The Corporation is further issuing the regulations in this part under the authority of 5 U.S.C. 5514, and the salary offset regulations published by the Office of Personnel and Management at 5 CFR part 550, subpart K.

(e) All of these debt collection regulations are issued under the Corporation's authority under 42 U.S.C. 12651c(c).

§ 2506.3 What definitions apply to the regulations in this part?

As used in this part:

Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt.

Administrative wage garnishment means a process whereby a Federal agency may, without first obtaining a court order, order an employer to withhold up to 15 percent of your disposable pay for payment to the Federal agency to satisfy a delinquent non-tax debt.

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of government, including a government corporation.

Certification means a written statement received by a paying agency or disbursing official from a creditor agency that requests the paying agency or disbursing official to offset the salary of an employee and specifies that required procedural protections have been afforded the employee.

Chief Executive Officer means the Chief Executive Officer of the Corporation, or his or her designee.

Claim (see definition of *Debt* in this section).

Compromise means the settlement of a debt for less than the full amount owed.

Corporation means the Corporation for National and Community Service.

Creditor agency means the agency to which the debt is owed, including a debt collection center when acting on behalf of the creditor agency.

Cross-servicing agreement is a letter of agreement entered into between the Corporation and the Financial Management Service (FMS) of the Treasury in which the Corporation has authorized FMS to take all appropriate actions to enforce collection of debts or groups of debts referred to FMS by the Corporation. These debt collection services are provided by FMS on behalf of the Corporation in accordance with all statutory and regulatory requirements.

Day means calendar day. To count days, include the last day of the period unless it is a Saturday, a Sunday, or a Federal legal holiday.

Debt and claim are deemed synonymous and interchangeable. These terms mean an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity except another Federal agency. For the purpose of administrative offset under 31 U.S.C. 3716 and subpart E of these regulations, the terms, "debt" and "claim" also include money, funds or property owed by a person to a State (including past-due support being enforced by a State); the District of Columbia; American Samoa; Guam; the United States Virgin Islands; the Commonwealth of the Northern Mariana Islands; or the Commonwealth of Puerto Rico.

Debt collection center means the Treasury or any other agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies.

Debtor means a person, organization, or entity, except another Federal agency, who owes a debt. Use of the terms "I," "you," "me," and similar references to the reader of the regulations in this part are meant to apply to debtors as defined in this paragraph.

Delinquent debt means a debt that has not been paid by the date specified in the Corporation's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

Disposable pay means the part of an employee's pay that remains after deductions that are required to be withheld by law have been made.

Employee means a current employee of an agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

Federal Claims Collection Standards (FCCS) means the standards currently published by DOJ and the Treasury at 31 CFR parts 900–904.

Paying agency means any agency that is making payments of any kind to a debtor. In some cases, the Corporation may be both the creditor agency and the paying agency.

Payroll office means the office that is primarily responsible for payroll records and the coordination of pay matters with the appropriate personnel office.

Person includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, state or local government, or other entity that is capable of owing a debt to the United States; however, agencies of the United States are excluded.

Private collection contractor means a private debt collector under contract with an agency to collect a non-tax debt owed to the United States.

Salary offset means a payroll procedure to collect a debt under 5 U.S.C. 5514 and 31 U.S.C. 3716 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

Tax refund offset means the reduction of a tax refund by the amount of a past-due legally enforceable debt owed to the Corporation or any other Federal agency.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body.

§ 2506.4 What types of debts are excluded from these regulations?

The following types of debts are excluded:

(a) Debts or claims arising under the Internal Revenue Code (26 U.S.C. 1 *et seq.*) or the tariff laws of the United States, or the Social Security Act (42 U.S.C. 301 *et seq.*); except as provided under sections 204(f) and 1631 (42 U.S.C. 404(f) and 1383(b)(4)(A)).

(b) Any case to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies;

(c) Any case where collection of a debt is explicitly provided for or provided by another statute, *e.g.*, travel advances under 5 U.S.C. 5705 and employee training expenses under 5 U.S.C. 4108, or, as provided for by title 11 of the United States Code, when the claims involve bankruptcy;

(d) Any debt based in whole or in part on conduct in violation of the antitrust laws or involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, as described in the FCCS, unless DOJ authorizes the Corporation to handle the collection;

(e) Claims between Federal agencies;

(f) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be initiated more than 10 years after the Government's right to collect the debt first accrued. (Exception: The 10-year limit does not apply if facts material to the Federal Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts.) The 10-year limitation also does not apply to debts reduced to a judgment; and

(g) Unless otherwise stated, debts which have been transferred to the Treasury or referred to the DOJ will be collected in accordance with the procedures of those agencies.

§ 2506.5 If a debt is not excluded from these regulations, may it be compromised, suspended, terminated, or waived?

Nothing in this part precludes:

(a) The compromise, suspension, or termination of collection actions, where appropriate under the FCCS, or the use of alternative dispute resolution methods if they are consistent with applicable law and regulations.

(b) An employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716; or any debtor from questioning the amount or validity of a debt, in the manner set forth in this part.

§ 2506.6 What is a claim or debt?

A claim or debt is an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity except another Federal agency (see § 2506.3).

§ 2506.7 Why does the Corporation have to collect debts?

Federal agencies are required to try to collect claims or debts of the Federal Government for money, funds, or property arising out of the agency's activities.

§ 2506.8 What action might the Corporation take to collect debts?

(a) There are a number of actions that the Corporation is permitted to take when attempting to collect debts. These actions include:

(1) Salary, tax refund or administrative offset, or administrative wage garnishment (see subparts C, D, E, and F of this part respectively); or

(2) Using the services of private collection contractors.

(b) In certain instances, usually after collection efforts have proven unsuccessful, the Corporation transfers debts to the Treasury for collection or refers them to the DOJ for litigation (see §§ 2506.10 and 2506.11).

§ 2506.9 What rights do I have as a debtor?

As a debtor you have several basic rights. You have a right to:

(a) Notice as set forth in these regulations (see § 2506.14);

(b) Inspect the records that the Corporation has used to determine that you owe a debt (see § 2506.14);

(c) Request review of the debt and possible payment options (see § 2506.17);

(d) Propose a voluntary repayment agreement (see § 2506.19); and/or

(e) Question if the debt is excluded from these regulations (see § 2506.5(b)).

Subpart B—General Provisions.

§ 2506.10 Will the Corporation use its cross-servicing agreement with Treasury to collect its debts?

(a) The Corporation entered into a cross-servicing agreement on March 26, 1999, with Treasury Financial Management Services (FMS) that authorizes the Treasury to take the collection actions described in this part on behalf of the Corporation (see § 2506.3). The Corporation will refer debts or groups of debts to FMS for collection action. The debt collection procedures that the Treasury FMS uses are based on 31 U.S.C. chapter 37 and this part.

(b) The Corporation must transfer to the Treasury any debt that has been delinquent for a period of 180 days or more, so that the Secretary of the Treasury may take appropriate action to collect the debt or terminate collection action. This is pursuant to § 901.3 of the FCCS.

(c) Paragraph (b) of this section will not apply to any debt or claim that:

(1) Is in litigation or foreclosure;

(2) Will be disposed of under an approved asset sales program;

(3) Has been referred to a private collection contractor for collection for a period of time acceptable to the Secretary of the Treasury;

(4) Is at a debt collection center for a period of time acceptable to the Secretary of the Treasury;

(5) Will be collected under internal offset procedures within 3 years after the date the debt or claim is first delinquent; or

(6) Is exempt from this requirement based on a determination by the Secretary of the Treasury.

§ 2506.11 Will the Corporation refer debts to the Department of Justice?

The Corporation will refer to DOJ for litigation debts on which aggressive collection actions have been taken, but which could not be collected, compromised, suspended, or terminated. Referrals will be made as early as possible, consistent with aggressive Corporation collection action, and within the period for bringing a timely suit against the debtor.

§ 2506.12 Will the Corporation provide information to credit reporting agencies?

(a) The Corporation will report certain delinquent debts to appropriate consumer credit reporting agencies by providing the following information:

(1) A statement that the debt is valid and overdue;

(2) The name, address, taxpayer identification number, and any other information necessary to establish the identity of the debtor;

(3) The amount, status, and history of the debt; and

(4) The program or pertinent activity under which the debt arose.

(b) Before disclosing debt information to a credit reporting agency, the Corporation:

(1) Takes reasonable action to locate the debtor if a current address is not available;

(2) Provides the notice required under § 2506.14(a) if a current address is available; and

(3) Obtains satisfactory assurances from the credit reporting agency that it complies with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) and other Federal laws governing the provision of credit information.

(c) At the time debt information is submitted to a credit reporting agency, the Corporation provides a written statement to the reporting agency that all required actions have been taken. In addition, the Corporation thereafter ensures that the credit reporting agency is promptly informed of any substantive change in the conditions or amount of the debt, and promptly verifies or corrects information relevant to the debt.

(d) If a debtor disputes the validity of the debt, the credit reporting agency refers the matter to the appropriate Corporation official. The credit reporting agency excludes the debt from its reports until the Corporation certifies in writing that the debt is valid.

(e) The Corporation may disclose to a commercial credit bureau information concerning a commercial debt, including the following:

(1) Information necessary to establish the name, address, and employer identification number of the commercial debtor;

(2) The amount, status, and history of the debt; and

(3) The program or pertinent activity under which the debt arose.

§ 2506.13 How will the Corporation contract for private collection services?

The Corporation uses the services of a private collection contractor when it determines that such use is in the Corporation's best interest. When the Corporation determines that there is a need to contract for private collection services, the Corporation:

(a) Retains sole authority to:

(1) Resolve any dispute with the debtor regarding the validity of the debt;

(2) Compromise the debt;

(3) Suspend or terminate collection action;

(4) Refer the debt to the DOJ for litigation; and

(5) Take any other action under this part;

(b) Requires the contractor to comply with the:

(1) Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m);

(2) Fair Debt Collection Practices Act (15 U.S.C. 1692–1692o); and

(3) Other applicable Federal and State laws pertaining to debt collection practices and applicable regulations of the Corporation in this part;

(c) Requires the contractor to account accurately and fully for all amounts collected; and

(d) Requires the contractor to provide to the Corporation, upon request, all data and reports contained in its files related to its collection actions on a debt.

§ 2506.14 What should I expect to receive from the Corporation if I owe a debt to the Corporation?

(a) The Corporation will send you a written notice when we determine that you owe a debt to the Corporation. The notice will be hand-delivered or sent to you at the most current address known to the Corporation. The notice will inform you of the following:

(1) The amount, nature, and basis of the debt;

(2) That a designated Corporation official has reviewed the debt and determined that it is valid;

(3) That payment of the debt is due as of the date of the notice, and that the debt will be considered delinquent if you do not pay it within 30 days of the date of the notice;

(4) The Corporation's policy concerning interest, penalty charges, and administrative costs (see § 2506.18), including a statement that such assessments must be made against you unless excused in accordance with the FCCS and this part;

(5) That you have the right to inspect and copy disclosable Corporation records pertaining to your debt, or to receive copies of those records if personal inspection is impractical;

(6) That you have the opportunity to enter into an agreement, in writing and signed by both you and the designated Corporation official, for voluntary repayment of the debt (see § 2506.19);

(7) The address, telephone number, and name of the Corporation official available to discuss the debt;

(8) Possible collection actions that might be taken if the debt is not paid within 60 days of the notice, or arrangements to pay the debt are not made within 60 days of the notice (see § 2506.15 for a fuller description of possible actions);

(9) That the Corporation may suspend or revoke any licenses, permits, or other privileges for failure to pay a debt; and

(10) Information on your opportunity to obtain a review concerning the existence or amount of the debt, or the proposed schedule for offset of Federal employee salary payments (*see* § 2506.16).

(b) The Corporation will respond promptly to communications from you.

(c) Exception to entitlement to notice, hearing, written responses, and final decisions. With respect to the regulations covering internal salary offset collections (*see* § 2506.32), the Corporation excepts from the provisions of paragraph (a) of this section—

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

§ 2506.15 What will the notice tell me regarding collection actions that might be taken if the debt is not paid within 60 days of the notice, or arrangements to pay the debt are not made within 60 days of the notice?

The notice provided under § 2506.14 will advise you that, within 60 days of the date of the notice, your debt (including any interest, penalty charges, and administrative costs) must be paid or you must enter into a voluntary repayment agreement. If you do not pay the debt or enter into the agreement within that deadline, the Corporation may enforce collection of the debt by any or all of the following methods:

(a) By transferring the debt to the Treasury for collection, including under a cross-servicing agreement with the Treasury (*see* § 2506.10);

(b) By referral to a credit reporting agency (*see* § 2506.12), private collection contractor (*see* § 2506.13), or the DOJ (*see* § 2506.11);

(c) If you are a Corporation employee, by deducting money from your disposable pay account until the debt (and all accumulated interest, penalty charges, and administrative costs) is paid in full (*see* subpart C of this part). The Corporation will specify the amount, frequency, approximate beginning date, and duration of the deduction. 5 U.S.C. 5514 and 31 U.S.C. 3716 govern such proceedings;

(d) If you are an employee of a Federal agency other than the Corporation, by initiating certification procedures to implement a salary offset by that Federal agency (*see* subpart C of this part). 5 U.S.C. 5514 governs such proceedings;

(e) By referring the debt to the Treasury for offset against any refund of overpayment of tax (*see* subpart D of this part);

(f) By administrative offset (*see* subpart E of this part);

(g) By administrative wage garnishment (*see* subpart F of this part); or

(h) By liquidation of security or collateral. The Corporation has the right

to hold security or collateral, liquidate it, and apply the proceeds to your debt through the exercise of a power of sale in the security instrument or a foreclosure. The Corporation will not follow the procedures in this paragraph (h) if the cost of disposing of the collateral will be disproportionate to its value.

§ 2506.16 What will the notice tell me about my opportunity for review of my debt?

The notice provided by the Corporation under §§ 2506.14 and 2506.15 will also advise you of the opportunity to obtain a review within the Corporation concerning the existence or amount of the debt or the proposed schedule for offset of Federal employee salary payments. The notice will also advise you of the following:

(a) The name, address, and telephone number of a Corporation official whom you may contact concerning procedures for requesting a review;

(b) The method and time period for requesting a review;

(c) That the filing of a request for a review on or before the 60th day following the date of the notice will stay the commencement of collection proceedings;

(d) The name and address of the Corporation official to whom you should send the request for a review;

(e) That a final decision on the review (if one is requested) will be issued in writing at the earliest practical date, but not later than 60 days after the receipt of the request for a review, unless you request, and the review official grants, a delay in the proceedings;

(f) That any knowingly false or frivolous statements, representations, or evidence may subject you to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statute or regulations;

(2) Penalties under the False Claims Act (31 U.S.C. 3729–3733) or any other applicable statutory authority; and

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority;

(g) Any other rights available to you to dispute the validity of the debt or to have recovery of the debt waived, or remedies available to you under statutes or regulations governing the program for which the collection is being made; and

(h) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt that are later waived or found not owed will be promptly refunded to you.

§ 2506.17 What must I do to obtain a review of my debt, and how will the review process work?

(a) *Request for review.* (1) You have the right to request a review by the Corporation of the existence or the amount of your debt, the proposed schedule for offset of Federal employee salary payments, or whether the debt is past due or legally enforceable. If you want a review, you must send a written request to the Corporation official designated in the notice (*see* § 2506.16(d)).

(2) You must sign your request for review and fully identify and explain with reasonable specificity all the facts, evidence, and witnesses that support your position. Your request for review should be accompanied by available evidence to support your contentions.

(3) Your request for review must be received by the designated officer or employee of the Corporation on or before the 60th calendar day following the date of the notice. Timely filing will stay the commencement of collection procedures. The Corporation may consider requests filed after the 60-day period provided for in this section if you:

(i) Can show that the delay was the result of circumstances beyond your control; or

(ii) Did not receive notice of the filing deadline (unless you had actual notice of the filing deadline).

(b) *Inspection of the Corporation records related to the debt.* (1) If you want to inspect or copy the Corporation records related to the debt (*see* § 2506.14(a)(5)), you must send a letter to the Corporation official designated in the notice. Your letter must be received within 30 days of the date of the notice.

(2) In response to the timely request described in paragraph (b)(1) of this section, the designated Corporation official will notify you of the location and time when you may inspect and copy records related to the debt.

(3) If personal inspection of the Corporation records related to the debt is impractical, reasonable arrangements will be made to send you copies of those records.

(c) *Review official.* (1) When required by Federal law or regulation, such as in a salary offset situation, the Corporation will request an administrative law judge, or hearing official from another agency who is not under the supervision or control of the Chief Executive Officer, to conduct the review. In these cases, the hearing official will, following the review, submit the review decision to the Chief Executive Officer for the issuance of the Corporation's final decision (*see* paragraph (f) of this section for content of the review decision).

(2) When Federal law or regulation does not require the Corporation to have the review conducted by an administrative law judge, or by a hearing official from another agency who is not under the supervision or control of the Chief Executive Officer, the Corporation has the right to appoint a hearing official to conduct the review. In these cases, the hearing official will, following the review, submit the review decision to the Chief Executive Officer for the issuance of the Corporation's final decision (see paragraph (f) of this section for the content of the review decision).

(d) *Review procedure.* If you request a review, the review official will notify you of the form of the review to be provided. The review official will determine whether an oral hearing is required, or if a review of the written record is sufficient, in accordance with the FCCS. Although you may request an oral hearing, such a hearing is required only when a review of the documentary evidence cannot determine the question of indebtedness, such as when the validity of the debt turns on an issue of credibility or truthfulness. In either case, the review official will conduct the review in accordance with the FCCS. If the review will include an oral hearing, the notice sent to you by the review official will set forth the date, time, and location of the hearing.

(e) *Date of decision.* (1) The review official will issue a written decision, based upon either the written record or documentary evidence and information developed at an oral hearing. This decision will be issued as soon as practical, but not later than 60 days after the date on which the Corporation received your request for a review, unless you request, and the review official grants, a delay in the proceedings.

(2) If the Corporation is unable to issue a decision within 60 days after the receipt of the request for a hearing:

(i) The Corporation may not issue a withholding order or take other action until the review (in whatever form) is held and a decision is rendered; and

(ii) If the Corporation previously issued a withholding order to the debtor's employer, the Corporation must suspend the withholding order beginning on the 61st day after the receipt of the review request and continuing until a review (in whatever form) is held and a decision is rendered.

(f) *Content of review decision.* The review official will prepare a written decision that includes:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The review official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedule, if applicable.

(g) *Interest, penalty charge, and administrative cost accrual during review period.* Interest, penalty charges, and administrative costs authorized by law will continue to accrue during the review period.

§ 506.18 What interest, penalty charges, and administrative costs will I have to pay on a debt owed to the Corporation?

(a) *Interest.* (1) The Corporation will assess interest on all delinquent debts unless prohibited by statute, regulation, or contract.

(2) Interest begins to accrue on all debts from the date that the debt becomes delinquent. The Corporation will not recover interest if you pay the debt within 30 days of the date on which interest begins to accrue. The Corporation will assess interest at the rate established annually by the Secretary of the Treasury under 31 U.S.C. 3717, unless a different rate is either necessary to protect the interests of the Corporation or established by a contract, repayment agreement, or statute. The Corporation will notify you of the basis for its finding when a different rate is necessary to protect the interests of the Corporation.

(3) The Chief Executive Officer may extend the 30-day period for payment without interest when he or she determines that such action is in the best interest of the Corporation. A decision to extend or not to extend the payment period is final and is not subject to further review.

(b) *Penalty.* The Corporation will assess a penalty charge of 6 percent a year on any portion of a debt that is delinquent for more than 90 days.

(c) *Administrative costs.* The Corporation will assess charges to cover administrative costs incurred as a result of your failure to pay a debt before it becomes delinquent. Administrative costs include the additional costs incurred in processing and handling the debt because it became delinquent, such as costs incurred in obtaining a credit report or in using a private collection contractor, or service fees charged by a Federal agency for collection activities undertaken on behalf of the Corporation.

(d) *Allocation of payments.* A partial or installment payment by a debtor will be applied first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to the outstanding debt principal.

(e) *Additional authority.* The Corporation may assess interest, penalty charges, and administrative costs on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under common law or other applicable statutory authority.

(f) *Waiver.* (1) The Chief Executive Officer may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty charges, or administrative costs, if he or she determines that collection of these charges would be against equity and good conscience or not in the best interest of the Corporation.

(2) A decision to waive interest, penalty charges, or administrative costs may be made at any time before a debt is paid. However, and unless otherwise stated in these regulations, where these charges have been collected before the waiver decision, they will not be refunded. The Chief Executive Officer's decision to waive or not waive collection of these charges is final and is not subject to further review.

§ 2506.19 How can I resolve my debt through voluntary repayment?

(a) In response to a notice of debt, you may propose to the Corporation that you be allowed to repay the debt through a voluntary repayment agreement in lieu of the Corporation taking other collection actions under this part.

(b) Your request to enter into a voluntary repayment agreement must:

(1) Be in writing;

(2) Admit the existence of the debt; and

(3) Either propose payment of the debt (together with interest, penalty charges, and administrative costs) in a lump sum, or set forth a proposed repayment schedule.

(c) The Corporation will collect debts in one lump sum whenever feasible. However, if you are unable to pay your debt in one lump sum, the Corporation may accept payment in regular installments that bear a reasonable relationship to the size of the debt and your ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in three years or less.

(d) The Corporation will consider a request to enter into a voluntary repayment agreement in accordance with the FCCS. The Chief Executive Officer may request additional information from you, including financial statements if you request to make payments in installments, in order to determine whether to accept a voluntary repayment agreement. It is within the Chief Executive Officer's discretion to accept a repayment agreement instead of proceeding with other collection actions under this part, and to set the necessary terms of any voluntary repayment agreement. No repayment agreement will be binding on the Corporation unless it is in writing and signed by both you and the Chief Executive Officer. At the Corporation's option, you may be required to provide security as part of the agreement to make payments in installments. Notwithstanding the provisions of this section, 31 U.S.C. 3711 will govern any reduction or compromise of a debt.

§ 2506.20 What is the extent of the Chief Executive Officer's authority to compromise debts owed to the Corporation, or to suspend or terminate collection action on such debts?

(a) The Chief Executive Officer may compromise, suspend, or terminate collection action on those debts owed to the Corporation that do not exceed $100,000 excluding interest, in conformity with the Federal Claims Collection Act of 1966, as amended. The Corporation will follow the policies in § 902.2 of the FCCS.

(b) The uncollected portion of a debt owed to the Corporation that is not recovered as the result of a compromise will be reported to the Internal Revenue Service (IRS) as income to the debtor in accordance with IRS procedures if this uncollected amount is at least $600.00.

§ 2506.21 May the Corporation's failure to comply with these regulations be used as a defense to a debt?

No, the failure of the Corporation to comply with any standard in the FCCS or these regulations will not be available to any debtor as a defense.

Subpart C—Salary Offset

§ 2506.30 What debts are included or excluded from coverage of these regulations on salary offset?

(a) The regulations in this subpart provide the Corporation procedures for the collection by salary offset of a Federal employee's pay to satisfy certain debts owed to the Corporation or to other Federal agencies.

(b) The regulations in this subpart do not apply to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) Nothing in the regulations in this subpart precludes the compromise, suspension, or termination of collection actions under the Federal Claims Collection Act of 1966, as amended, or the FCCS.

(d) A levy imposed under the Internal Revenue Code takes precedence over a salary offset under this subpart, as provided in 5 U.S.C. 5514(d).

§ 2506.31 May I ask the Corporation to waive an overpayment that otherwise would be collected by offsetting my salary as a Federal employee?

Yes, the regulations in this subpart do not preclude you from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory provisions pertaining to the particular debts being collected.

§ 2506.32 What are the Corporation's procedures for salary offset?

(a) The Corporation will coordinate salary deductions under this subpart as appropriate.

(b) If you are a Corporation employee who owes a debt to the Corporation, the Corporation's payroll office in Human Resources will determine the amount of your disposable pay and will implement the salary offset.

(c) Deductions will begin within three official pay periods following receipt by the Corporation's payroll office of certification of debt from the creditor agency.

(d) The Notice provisions of these regulations do not apply to certain debts arising under this section (*see* § 2506.14(c)).

(e) Types of collection. (1) *Lump-sum offset.* If the amount of the debt is equal to or less than 15 percent of disposable pay, the debt generally will be collected through one lump-sum offset.

(2) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and your ability to pay. However, the amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made unless you have agreed in writing to the deduction of a greater amount. If possible, installment payments will be sufficient in size and frequency to liquidate the debt in three years or less.

(3) *Deductions from final check.* A deduction exceeding the 15 percent of disposable pay limitation may be made from any final salary payment under 31 U.S.C. 3716 and the FCCS in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Deductions from other sources.* If an employee subject to salary offset is separated from the Corporation and the balance of the debt cannot be liquidated by offset of the final salary check, the Corporation may offset later payments of any kind against the balance of the debt, as allowed by 31 U.S.C. 3716 and the FCCS.

(f) *Multiple debts.* In instances where two or more creditor agencies are seeking salary offsets, or where two or more debts are owed to a single creditor agency, the Corporation's payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

§ 2506.33 How will the Corporation coordinate salary offsets with other agencies?

(a) *Responsibilities of the Corporation as the creditor agency (i.e. when the debtor owes a debt to the Corporation and is an employee of another agency).* Upon completion of the procedures established in this subpart and pursuant to 5 U.S.C. 5514 and 31 U.S.C. 3716, the Corporation must submit a claim to a paying agency or disbursing official.

(1) In its claim, the Corporation must certify, in writing, the following:

(i) That the employee owes the debt;

(ii) The amount and basis of the debt;

(iii) The date the Corporation's right to collect the debt first accrued;

(iv) That the Corporation's regulations in this subpart have been approved by OPM under 5 CFR part 550, subpart K; and

(v) That the Corporation has met the certification requirements of the paying agency.

(2) If the collection must be made in installments, the Corporation's claim will also advise the paying agency of the amount or percentage of disposable pay to be collected in each installment. The Corporation may also advise the paying agency of the number of installments to be collected and the date of the first installment, if that date is other than the next officially established pay period.

(3) The Corporation will also include in its claim:

(i) The employee's written consent to the salary offset;

(ii) The employee's signed statement acknowledging receipt of the procedures required by 5 U.S.C. 5514; or

(iii) Information regarding the completion of procedures required by 5 U.S.C. 5514, including the actions taken and the dates of those actions.

(4) If the employee is in the process of separating and has not received a final salary check or other final payment(s) from the paying agency, the Corporation must submit its claim to the paying agency or disbursing official for collection under 31 U.S.C. 3716. The paying agency will (under its regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), certify the total amount of its collection on the debt and notify the employee and the Corporation. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the debtor is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments that may be due the debtor employee from other Federal government sources, then (under its regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), the paying agency will provide written notice of the outstanding debt to the agency responsible for making the other payments to the debtor employee. The written notice will state that the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. However, the Corporation must submit a properly certified claim under this paragraph (a)(4) to the agency responsible for making the other payments before the collection can be made.

(5) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Corporation may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be administratively offset to collect the debt.

(6) *Employee transfer.* When an employee transfers from one paying agency to another paying agency, the Corporation will not repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. The Corporation will submit a properly certified claim to the new paying agency and will subsequently review the debt to ensure that the collection is resumed by the new paying agency.

(b) *Responsibilities of the Corporation as the paying agency (i.e., when the debtor owes a debt to another agency and is an employee of the Corporation).*

(1) Complete claim. When the Corporation receives a certified claim from a creditor agency (under the creditor agency's regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), deductions should be scheduled to begin within three officially established pay intervals. Before deductions can begin, the Corporation sends the employee a written notice containing:

(i) A statement that the Corporation has received a certified claim from the creditor agency;

(ii) The amount of the debt;

(iii) The date salary offset deductions will begin; and

(iv) The amount of such deductions.

(2) Incomplete claim. When the Corporation receives an incomplete certification of debt from a creditor agency, the Corporation will return the claim with a notice that the creditor agency must:

(i) Comply with the procedures required under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, and

(ii) Properly certify a claim to the Corporation before the Corporation will take action to collect from the employee's current pay account.

(3) The Corporation is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) Employees who transfer from the Corporation to another paying agency. If, after the creditor agency has submitted the claim to the Corporation, the employee transfers from the Corporation to a different paying agency before the debt is collected in full, the Corporation will certify the total amount collected on the debt and notify the employee and the creditor agency in writing. The notification to the creditor agency will include information on the employee's transfer.

§ 2506.34 Under what conditions will the Corporation make a refund of amounts collected by salary offset?

(a) If the Corporation is the creditor agency, it will promptly refund any amount deducted under the authority of 5 U.S.C. 5514, when:

(1) The debt is waived or all or part of the funds deducted are otherwise found not to be owed (unless expressly prohibited by statute or regulation); or

(2) An administrative or judicial order directs the Corporation to make a refund.

(b) Unless required or permitted by law or contract, refunds under this section will not bear interest.

§ 2506.35 Will the collection of a debt by salary offset act as a waiver of my rights to dispute the claimed debt?

No, your involuntary payment of all or any portion of a debt under this subpart will not be construed as a waiver of any rights that you may have under 5 U.S.C. 5514 or other provisions of a law or written contract, unless there are statutory or contractual provisions to the contrary.

Subpart D—Tax Refund Offset

§ 2506.40 Which debts can the Corporation refer to Treasury for collection by offsetting tax refunds?

(a) The regulations in this subpart implement 31 U.S.C. 3720A, which authorizes the Treasury to reduce a tax refund by the amount of a past-due, legally enforceable debt owed to a Federal agency.

(b) For purposes of this section, a past-due, legally enforceable debt referable to the Treasury for tax refund offset is a debt that is owed to the Corporation and:

(1) Is at least $25.00;

(2) Except in the case of a judgment debt, has been delinquent for at least three months and will not have been delinquent more than 10 years at the time the offset is made;

(3) With respect to which the Corporation has:

(i) Given the debtor at least 60 days to present evidence that all or part of the debt is not past due or legally enforceable;

(ii) Considered evidence presented by the debtor; and

(iii) Determined that an amount of the debt is past due and legally enforceable;

(4) With respect to which the Corporation has notified or has made a reasonable attempt to notify the debtor that:

(i) The debt is past due, and

(ii) Unless repaid within 60 days of the date of the notice, the debt may be referred to the Treasury for offset against any refund of overpayment of tax; and

(5) All other requirements of 31 U.S.C. 3720A and the Treasury regulations relating to the eligibility of a debt for tax return offset (31 CFR 285.2) have been satisfied.

§ 2506.41 What are the Corporation's procedures for collecting debts by tax refund offset?

(a) The Corporation's Accounting and Financial Management Services Division will be the point of contact with the Treasury for administrative matters regarding the offset program.

(b) The Corporation will ensure that the procedures prescribed by the Treasury are followed in developing information about past-due debts and submitting the debts to the Treasury.

(c) The Corporation will submit to the Treasury a notification of a taxpayer's liability for past-due legally enforceable debt. This notification will contain the following:

(1) The name and taxpayer identification number of the debtor;

(2) The amount of the past-due and legally enforceable debt;

(3) The date on which the original debt became past due;

(4) A statement certifying that, with respect to each debt reported, all of the requirements of § 2506.40(b) have been satisfied; and

(5) Any other information as prescribed by Treasury.

(d) For purposes of this section, notice that collection of the debt is stayed by a bankruptcy proceeding involving the debtor will bar referral of the debt to the Treasury.

(e) The Corporation will promptly notify the Treasury to correct data when the Corporation:

(1) Determines that an error has been made with respect to a debt that has been referred;

(2) Receives or credits a payment on the debt; or

(3) Receives notice that the person owing the debt has filed for bankruptcy under title 11 of the United States Code and the automatic stay is in effect or has been adjudicated bankrupt and the debt has been discharged.

(f) When advising debtors of the Corporation's intent to refer a debt to the Treasury for offset, the Corporation will also advise debtors of remedial actions (*see* §§ 2506.9 and 2506.14 through 2506.16 of this part) available to defer the offset or prevent it from taking place.

Subpart E—Administrative Offset

§ 2506.50 Under what circumstances will the Corporation collect amounts that I owe to the Corporation (or some other Federal agency) by offsetting the debt against payments that the Corporation (or some other Federal agency) owes me?

(a) The regulations in this subpart apply to the collection of any debts you owe to the Corporation, or to any request from another Federal agency that the Corporation collect a debt you owe by offsetting your debt against a payment the Corporation owes you. Administrative offset is authorized under section 5 of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3716). The Corporation will carry out administrative offset in accordance with the provisions of the Federal Claims Collection Standards. The regulations in this subpart are intended only to supplement the provisions of the FCCS.

(b) The Chief Executive Officer, after attempting to collect a debt you owe to the Corporation under section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset only after giving you:

(1) Written notice of the type and amount of the debt, the intention of the

Chief Executive Officer to collect the debt by administrative offset, and an explanation of the rights of the debtor;

(2) An opportunity to inspect and copy the records of the Corporation related to the debt;

(3) An opportunity for a review within the Corporation of the decision of the Corporation related to the debt; and

(4) An opportunity to make a written agreement with the Chief Executive Officer to repay the amount of the debt.

(c) No collection by administrative offset will be made on any debt that has been outstanding for more than 10 years, unless facts material to the Corporation's or the requesting Federal agency's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting the debt.

(d) The regulations in this subpart do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly prohibited by statute; or

(2) Debts owed to the Corporation by Federal agencies.

§ 2506.51 How will the Corporation request that my debt to the Corporation be collected by offset against some payment that another Federal agency owes me?

The Chief Executive Officer may request that funds due and payable to you by another Federal agency instead be paid to the Corporation to satisfy a debt you owe to the Corporation. The Corporation will refer debts to the Treasury for centralized administrative offset in accordance with the FCCS and the procedures established by the Treasury. Where centralized offset is not available or appropriate, the Corporation may request offset directly from the Federal agency that is holding funds for you. In requesting administrative offset, the Corporation will certify in writing to the Federal agency that is holding funds for you:

(a) That you owe the debt;

(b) The amount and basis of the debt; and

(c) That the Corporation has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations in this subpart, the applicable administrative offset regulations of the agency holding the funds, and the applicable provisions of the FCCS with respect to providing you with due process.

§ 2506.52 What procedures will the Corporation use to collect amounts I owe to a Federal agency by offsetting a payment that the Corporation would otherwise make to me?

(a) Any Federal agency may request that the Corporation administratively offset funds due and payable to you in order to collect a debt you owe to that agency. The Corporation will initiate the requested offset only upon:

(1) Receipt of written certification from the creditor agency stating:

(i) That you owe the debt;

(ii) The amount and basis of the debt;

(iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of the FCCS, including providing you with any required hearing or review; and

(2) A determination by the Chief Executive Officer that offsetting funds payable to you by the Corporation in order to collect a debt owed by you would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such an offset would not otherwise be contrary to law.

(b) *Multiple debts.* In instances where two or more creditor agencies are seeking administrative offsets, or where two or more debts are owed to a single creditor agency, the Corporation may, in its discretion, allocate the amount it owes to you to the creditor agencies in accordance with the best interest of the United States as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 2506.53 When may the Corporation make an offset in an expedited manner?

The Corporation may effect an administrative offset against a payment to be made to you before completion of the procedures required by §§ 2506.51 and 2506.52 if failure to take the offset would substantially jeopardize the Corporation's ability to collect the debt and the time before the payment is to be made does not reasonably permit the completion of those procedures. An expedited offset will be followed promptly by the completion of those procedures. Amounts recovered by offset, but later found not to be owed to the United States, will be promptly refunded.

§ 2506.54 Can a judgment I have obtained against the United States be used to satisfy a debt that I owe to the Corporation?

Yes. Collection by offset against a judgment obtained by a debtor against the United States will be accomplished in accordance with 31 U.S.C. 3728 and 31 U.S.C. 3716.

Subpart F—Administrative Wage Garnishment

§ 2506.55 How will the Corporation collect debts through Administrative Wage Garnishment?

The Corporation will collect debts through Administrative Wage Garnishment in accordance with the Administrative Wage Garnishment regulations issued by the Treasury. The Corporation adopts, for purposes of this subpart, the Treasury's Administrative Wage Garnishment regulations in 31 CFR 285.11. This procedure allows the Corporation to garnish the disposable pay of a debtor without first obtaining a court order.

Dated: March 29, 2003.

Michelle Guillermin,

Chief Financial Officer.

[FR Doc. 03–8185 Filed 4–3–03; 8:45 am]

BILLING CODE 6050–$$–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[ET Docket 98–206; FCC 03–24]

Permit Operation of NGSO FSS Systems Co-Frequency With GSO and Terrestrial Systems in the Ku-Band Frequency Range

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses petitions for reconsideration of its rules for sharing between geostationary satellite orbit service providers and non-geostationary satellite orbit service providers in the Ku-Band frequency range. The Commission amends several rule sections affecting the demonstration non-geostationary satellite orbit service providers must make to establish that they can meet equivalent power flux density limits designed to protect incumbent geostationary satellite orbit service providers.

DATES: Effective May 5, 2003.

FOR FURTHER INFORMATION CONTACT: J. Mark Young, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418–0762 or via the Internet at *myoung@fcc.gov*. For additional information concerning the information collections contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Memorandum Opinion and Order* in ET Docket No. 98–206, FCC 03–24, adopted February 3, 2003, and released February 6, 2003. The complete text of this *Third Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898 or via e-mail *qualexint@aol.com*. It is also available on the Commission's Web site at *http://www.fcc.gov*.

Summary of the Third Memorandum Opinion and Order

1. In a December 2000 *Report and Order*, 66 FR 7607 (1/24/2001) the Federal Communications Commission adopted technical sharing rules to allow operation of non-gesotationary satellite orbit, fixed satellite service (NGSO FSS) co-frequency with incumbent Ku-Band geostationary satellite orbit (GSO), fixed satellite service providers. Co-frequency operation of the two services is made possible by a set of limits on equivalent power flux density from NGSO FSS systems into GSO antennas. On reconsideration of that *Report and Order*, the Commission amends several sub-parts of its rules regarding demonstration that NGSO FSS systems can meet the power limits specified in Commission rules.

2. Licensees of geostationary satellite orbit fixed satellite service and broadcast satellite service systems may submit up to 10 earth station test points for in the demonstration that NGSO FSS applicants can meet operational equivalent power flux density limits. The same licensees may also submit up to 10 earth station test points for the comparable demonstration that NGSO FSS applicants can meet additional operational equivalent power flux density limits. If they choose to submit earth station test points, geostationary satellite orbit licensees must do so by January 1 of each year.

Ordering Clauses

4. Pursuant to sections 4(i), 7(a), 301, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 301, 303(c), 303(f), 303(g), and 303(r), this *Third Memorandum Opinion and Order is adopted*, and part 25 of the Commission's rules *is amended*.

5. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Third Memorandum Opinion and Order*, including the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A); and shall also send a copy of this *Third Memorandum Opinion and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 605(b).

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sections 4, 301, 302, 303; 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 2. Section 25.146 is amended by revising paragraphs (a)(1)(iii), (a)(1)(v), (a)(2)(iii), (a)(2)(v), (b)(1)(v), (b)(2), (c), (f) to read as follows:

§ 25.146 Licensing and operating authorizations provisions for the non-geostationary satellite orbit satellite service (NGSO FSS) in the bands 10.7 GHz to 14.5 GHz.

(a) * * *

(1) * * *

(iii) If a computer program that has been approved by the ITU for determining compliance with the single-entry $EPFD_{down}$ validation limits is not yet available, the applicant shall provide a computer program for the single-entry $EPFD_{down}$ validation computation, including both the source code and the executable file. This computer program shall be developed in accordance with the specification stipulated in Recommendation ITU–R S.1503 (2000). If the applicant uses the ITU approved software, the applicant shall indicate the program name and the version used.

* * * * *

(v) Provide the result, the cumulative probability distribution function of EPFD, of the execution of the computer program described in paragraph (a)(1)(iii) of this section by using only the input parameters contained in paragraphs (a)(1)(i) and (a)(1)(iv) of this section.

(2) * * *

(iii) If a computer program that has been approved by the ITU for determining compliance with the single-entry $EPFD_{up}$ validation limits is not yet available, the applicant shall provide a computer program for the single-entry $EPFD_{up}$ validation computation, including both the source code and the executable file. This computer program shall be developed in accordance with the specification stipulated in Recommendation ITU–R S.1503 (2000). If the applicant uses the ITU approved software, the applicant shall indicate the program name and the version used.

* * * * *

(v) Provide the result of the execution of the computer program described in paragraph (a)(2)(iii) of this section by using only the input parameters contained in paragraphs (a)(2)(i) and (a)(2)(iv) of this section.

(b) * * *

(1) * * *

(v) Provide the result, the cumulative probability distribution function of EPFD, of the execution of the verification computer program described in paragraph (b)(1)(iii) of this section by using only the input parameters contained in paragraphs (b)(1)(i) and (b)(1)(iv) of this section for each of the submitted test points provided by the Commission. These test points are based on information from U.S.-licensed geostationary satellite orbit fixed-satellite service and broadcast satellite service operators in the bands 10.7 GHz to 14.5 GHz. Each U.S.-licensed geostationary satellite orbit fixed satellite service and broadcast satellite service operator in the bands 10.7 GHz to 14.5 GHz may submit up to 10 test points for this section containing the latitude, longitude, altitude, azimuth, elevation angle, antenna size, efficiency to be used by non-geostationary satellite orbit fixed-satellite service licensees in the bands 10.7 GHz to 14.5 GHz during the upcoming year.

(2) Operational equivalent power flux-density, space-to-Earth direction, (operational $EPFD_{down}$) limits. Using the information contained in (b)(1) of this section plus the measured space station

antenna patterns, provide the result of the execution of the computer simulation for the anticipated in-line operational $EPFD_{down}$ levels for each of the submitted test points provided by the Commission. Submitted test points are based on inputs from U.S.-licensed geostationary satellite orbit fixed-satellite service and broadcast satellite service operators in the bands 10.7 GHz to 14.5 GHz. Each U.S.-licensed geostationary satellite orbit fixed-satellite service and broadcast satellite service operator in the bands 10.7 GHz to 14.5 GHz may submit up to 10 test points for this section containing the latitude, longitude, altitude, azimuth, elevation angle, antenna size, efficiency to be used by non-geostationary satellite orbit fixed-satellite service licensees in the bands 10.7 GHz to 14.5 GHz during the upcoming year.

(c) The NGSO FSS system licensee shall, on June 30 of each year, file a report with the International Bureau and the Commission's Columbia Operations Center in Columbia, Maryland, certifying that the system continues to operate within the bounds of the masks and other input parameters specified under 25.146(a) and 25.146(b) as well as certifying the status of the additional operational $EPFD_{down}$ levels into the 3 m and 10 m geostationary satellite orbit fixed-satellite service receiving Earth station antennas, the operational $EPFD_{down}$ levels into the 3 m, 4.5 m, 6.2 m and 10 m geostationary satellite orbit fixed-satellite service receiving Earth station antennas and the operational $EPFD_{down}$ levels into the 180 cm geostationary satellite orbit broadcast satellite service receiving Earth station antennas in Hawaii and 240 cm geostationary satellite orbit broadcast satellite service receiving Earth station antennas in Alaska.

* * * * *

(f) Coordination will be required between NGSO FSS systems and GSO FSS earth stations in the frequency band 10.7–12.75 GHz when all of the following threshold conditions are met:

(1) Bandwidth overlap; and

(2) The satellite network using the GSO has specific receive earth stations which meet all of the following conditions: earth station antenna maximum isotropic gain greater than or equal to 64 dBi; G/T of 44 dB/K or higher; and emission bandwidth of 250 MHz; and the $EPFD_{down}$ radiated by the satellite system using the NGSO into the GSO specific receive earth station, either within the U.S. for domestic service or any points outside the U.S. for international service, as calculated using the ITU software for examining compliance with EPFD limits set forth in Article 22 of the ITU Radio Regulations exceeds −174.5 dB(W/(m2/40kHz)) for any percentage of time for NGSO systems with all satellites only operating at or below 2500 km altitude, or −202 dB(W/(m2/40kHz)) for any percentage of time for NGSO systems with any satellites operating above 2500 km altitude.

(3) If there is no ITU software for examining compliance with EPFD limits set forth in Article 22 of the ITU Radio Regulations, then the $EPFD_{down}$ coordination trigger is suspended and the requirement for coordination will be based on bandwidth overlap and the satellite network using the GSO has specific receive earth stations which meet all of the following conditions: earth station antenna maximum isotropic gain greater than or equal to 64 dBi; G/T of 44 dB/K or higher; and emission bandwidth of 250 MHz.

* * * * *

■ 3. In § 25.208, paragraph (l) is amended by adding Footnote 5 to the heading of Table 1L and paragraph (m) is amended by adding Footnote 5 to the heading of Table 1M to read as follows:

§ 25.208 Power flux density limits.

* * * * *

(l) * * *

[5] For each reference antenna diameter, the limit consists of the complete curve on a plot which is linear in decibels for the EPFD levels and logarithmic for the time percentages, with straight line joining the data points.

* * * * *

(m) * * *

[5] For each reference antenna diameter, the limit consists of the complete curve on a plot which is linear in decibels fer the EPFD levels and logarithmic for the time percentages, with straight line joining the data points.

* * * * *

[FR Doc. 03–7557 Filed 4–3–03; 8:45 am]
BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 65
Friday, April 4, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1600, 1605, 1606, and 1655

Employee Elections To Contribute to the Thrift Savings Plan, Correction of Administrative Errors, Lost Earnings Attributable to Employing Agency Errors, Loans

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice of proposed rulemaking, and request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) proposes to revise the Board's regulations to permit the making of catch-up contributions by TSP participants who are age 50 and over, and to reflect the processes of the Thrift Savings Plan's new record keeping system.

DATES: Comments must be received on or before April 25, 2003.

ADDRESSES: Comments may be sent to: Elizabeth S. Woodruff, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The Board's FAX is (202) 942–1676.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest on (202) 942–1660.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)). Sums in a TSP participant's account are held in trust for the participant.

In 1996, Congress amended FERSA by enacting the Thrift Savings Plan Act of 1996, Public Law 104–208, 110 Stat. 3009, which permitted the Executive Director to offer, among other things, new withdrawal options to TSP participants. In order to accommodate these new withdrawal options and to make a number of benefits arising from recent technological advances available to TSP participants, the Board redesigned its record keeping system.

On June 25, 2002, the Board published a proposed rule with request for comments in the **Federal Register** (67 FR 42856), proposing to amend the TSP regulations that will be affected by the new record keeping system.

The Executive Director proposes further amendments to the Board's regulations to implement a recent amendment to FERSA, and to explain how the Board will compute lost earnings and administer the TSP loan program when the new system is implemented.

Description of Subjects and Issues Involved

On November 27, 2002, Congress enacted Public Law 107–304. Section 1 of the Act, which will be codified at 5 U.S.C. 8351(b)(2)(C), 8432(a)(3), and 8440f, authorizes a program of additional "catch-up" contributions for TSP participants age 50 and over who are already contributing to the TSP the maximum amount or percentage of basic pay they are permitted by statute to contribute. The maximum allowable amount for catch-up contributions for 2003 is $2,000. This dollar limitation will increase in $1,000 yearly increments until it reaches $5,000 in 2006. Eligible participants will be able to elect catch-up contributions beginning in July 2003 (for 2003), or thereafter (for subsequent years). The Executive Director proposes to add a new provision to part 1600 of the Board's regulations to explain how eligible participants can elect to make these contributions.

Under 5 U.S.C. 8432a(a)(1) and (b), the Board is required to issue regulations to govern how the TSP will credit late contributions, and in some cases makeup contributions, with the investment gains and losses they would have earned had the contributions been timely made. The loss incurred or the gain realized on late or makeup contributions is called "breakage," and it is computed under the rules codified at 5 CFR parts 1605 and 1606. The Board's June 25, 2002, proposed rule explains how breakage will be computed after implementation of the new record keeping system, with one exception. Specifically, the proposed rule states that late contributions (and some makeup contributions) will be credited with breakage based on the contributions allocation for the participant's account at the time the contributions should have been made. However, when the new record keeping system is implemented, it will contain only three years of converted contribution allocation history and contribution records for each participant. Therefore, if the TSP corrects an error that occurred more than three years before implementation of the new system, the TSP will compute breakage based on a calculated rate of investment return derived by the record keeping system, instead of basing breakage on the participant's actual investment experience. The calculated rate of return will be either the Government Securities Investment Fund (G Fund) rate, or the average of the rates of return for all of the TSP investment funds, whichever rate is greater. The Executive Director proposes to amend 5 CFR parts 1605 and 1606 to reflect this practice.

The Board has developed a loan program, as required by 5 U.S.C. 8433(g), and the Board's loan regulations are codified at 5 CFR part 1655. Although retirement plan loans are offered by 401(k) plans, which are the private-sector equivalent of the TSP, the Board did not base the TSP loan program on the private sector model. However, the Board has built its new record keeping system around a widely used commercial-off-the-shelf (COTS) software package, and some elements of the current TSP loan program are incompatible with the capabilities of the COTS program. Specifically, a participant who misses loan payments in the current system is given 90 days to recommence loan payment to avoid defaulting on the loan. No interest accrues on the missed loan payments during that 90 day period, and, when payments recommence, the period of missing payments is added onto the length of the loan. In contrast, the COTS software package incorporates the requirements of Treasury Department regulations by requiring a participant who misses loan payments to

recommence those payments by the end of the next calendar quarter, and make up all missed payments (rather than add them to the end of the loan term). In addition, interest accrues on missed loan payments. The use of the COTS software package will permit the Board to quickly adapt the administration of the TSP to the ever-changing legal and programmatic requirements affecting the TSP and defined contribution plans. Therefore, to more fully benefit from this adaptability and to minimize the need for customization of the COTS package, the Executive Director proposes to conform the loan program to the private-sector model and to amend the Board's regulations to codify these changes.

Authority Under Which the Rule Is Proposed

The rule proposed in this notice will be issued under the authority of 5 U.S.C. 8351(e), 8432(a)(3), 8432a(a)(1), 8432a(b), 8433(g)(2), 8433(h)(4), 8474(b)(5), and 8474(c)(1).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees and former employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Public Law 104–4, section 201, 109 Stat. 48, 64, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

James B. Petrick,

Executive Director (Acting), Federal Retirement Thrift Investment Board.

[FR Doc. 03–8245 Filed 4–3–03; 8:45 am]

BILLING CODE 6760–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702, 704, 712, and 723

Prompt Corrective Action; Corporate Credit Unions; Credit Union Service Organizations; Member Business Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: NCUA is proposing to amend its member business loan (MBL) regulation by: changing certain requirements for construction and development loan equity requirements, personal guarantees by principals, and unsecured MBLs; revising and clarifying provisions regarding MBL aggregate loan limits, loan-to-value requirements, loans to credit unions and credit union service organizations (CUSOs), experience requirements, and MBL documentation requirements; and simplifying or removing confusing or unnecessary provisions in the MBL regulation. In addition, NCUA proposes to amend the prompt corrective action (PCA) rule regarding the risk weighting of MBLs and the CUSO rule to permit CUSOs to originate business loans.

DATES: Comments must be received on or before June 3, 2003.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to *regcomments@ncua.gov. Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: David M. Marquis, Director, Office of Examination and Insurance, at the above address or telephone (703) 518–6360; or Chrisanthy J. Loizos, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA adopted its first MBL rule in April 1987 and has subsequently amended the rule, including the most recent, substantive amendments made to conform to the limitations imposed by the Credit Union Membership Access Act (CUMAA). 12 U.S.C. 1757a, Pub. L. 105–219, 112 Stat. 913 (1998). Under the current rule, the Board may exempt federally insured, state-chartered credit unions (FISCUs) in a state from NCUA's MBL rule if the Board determines the state has developed an MBL rule that minimizes risk and accomplishes the overall objectives of NCUA's rule. 12 CFR 723.20. The Board has approved seven state MBL rules. 7 Tex. Admin. Code § 91.709; Mo. Code Regs. Ann. tit. 4, § 100–2.045; Wash. Admin. Code § 208–460–010 to –170; Md. Regs. Code tit. 9, § 09.03.01.14; Wis. Admin. Code § 72.01–.18; Conn. Agencies Regs. § 59; Or. Admin. R. § 441–720–0300 to –0380.

In reviewing state rules, the Board has approved some rule provisions that relaxed some of NCUA's requirements, concluding that they did not create an undue risk to the National Credit Union Share Insurance Fund (NCUSIF). The Board believes it should amend NCUA's MBL rule in three areas it liberalized in approving state rules: construction and development loan equity requirements, personal guarantees by principals, and unsecured MBLs. The Board believes that, by incorporating these provisions and adopting certain other proposed amendments, NCUA's rule will allow credit unions greater opportunities to meet the small business loan needs of their members without creating undue risk to the NCUSIF. The NCUA Board will continue to be responsive to changes in the MBL marketplace, either by approving state specific rules or considering future changes to this rule.

The Board is proposing several amendments to revise and clarify certain provisions that have caused confusion or created unnecessary regulatory burden. These amendments relate to: the dollar amount that triggers compliance with the rule, the loans to one borrower limit, the aggregate MBL limit, loan-to-value requirements, MBL documentation requirements, and the loan loss reserve requirements. The Board also proposes that credit unions that purchase participation interests in MBLs made to credit union members need not count the purchase against the credit union's own limit.

In addition, the Board is proposing an amendment to the PCA rule related to business lending. The Board proposes to expand the current standard risk-based net worth component for MBLs in Part 702.

Finally, the Board proposes to amend the CUSO rule to permit CUSOs to make business loans. During prior rulemakings, commenters asked the Board to authorize business loan origination as a permissible CUSO activity. 66 FR 40575, Aug. 3, 2001; 63 FR 10743, Mar. 3, 1998. Previously, the Board believed that permitting CUSOs to offer business loans, a core credit union function, could negatively affect affiliated credit union services. The Board has reconsidered its position and believes that, by authorizing CUSOs to engage in business loan origination,

credit union members, particularly small businesses, will have a greater opportunity to obtain loans that their credit union may not be able to grant.

B. Section-by-Section Analysis

Outstanding Loan Balance, Sections 723.1, 723.3, 723.8, 723.16, 723.21

The Board proposes to adopt the phrase "outstanding member business loan balance" as a new definition in § 723.21 and use it in various sections in the rule, including §§ 723.1, 723.3, 723.8, and 723.16. The proposed definition for "outstanding member business loan balance" is:

> [T]he outstanding loan balance and any unfunded commitments, excluding any portion of the loan that is secured by shares in the credit union, or by shares or deposits in other financial institutions, or by a lien on the member's primary residence, or fully or partially insured or guaranteed by any agency of the Federal Government, a State or any political subdivision of such state, or subject to an advance commitment to purchase by any agency of the federal government, a state or any political subdivision of such state, or sold as a participation interest without recourse.

This definition reflects NCUA's interpretation of various provisions in the MBL rule since the current rule was issued and incorporates several exclusions derived from CUMAA. This definition is key to determining: whether a loan qualifies as an MBL; which portion of an MBL is included in the calculation of the loans to one borrower limit; and which portion of an MBL is included in the calculation of a credit union's total aggregate MBL limit.

One example of an interpretation that the Board proposes to include in the definition of outstanding MBL balance concerns participation interests sold without recourse. The Board addressed this issue during the agency's 1999 MBL rulemaking in the final rule's preamble, rather than in the regulation's text. In the preamble, the Board agreed with a commenter that, when participating out loan interests, an originating credit union should count only the amount of the loan it holds towards its aggregate loan limit, provided that the loan participation sold is without recourse. 64 FR 28721, 28727, May 27, 1999. The Board has determined that the proposed rule should include this interpretation, as well as other interpretations and CUMAA exclusions, so that credit unions can easily ascertain the factors that are involved in calculating outstanding MBL balances.

The Board believes the rule should use outstanding MBL balance throughout the rule for uniformity and to avoid confusion. Clarifying the use of outstanding MBL balances in the rule incorporates the Board's positions stated in past rulemakings and interpretations provided in NCUA legal opinions.

As part of the proposal to adopt the definition of "outstanding MBL balance," the Board also proposes to delete and reserve § 723.9, which addresses calculation of the limit on loans to one borrower. The proposed definition of "outstanding MBL balance" contains all of the rule's exclusions from this calculation, making § 723.9 unnecessary.

Loan Participations

The Board has reconsidered its position regarding the treatment of loan participations by purchasing credit unions and proposes to exclude participation interests from the calculation of the aggregate MBL limit. The Federal Credit Union Act expressly requires a credit union to include only MBLs it makes to its members in calculating its statutory aggregate MBL limit. 12 U.S.C. 1757a(a). Participation interests purchased by a credit union from an originating eligible organization are not loans made by the participating credit union. The Board, therefore, proposes that these loans need not be included in calculating the participating credit union's aggregate loan limits.

The Board believes CUMAA's legislative history supports this interpretation as consistent with the congressional goal that credit unions fulfill their mission of meeting the credit and savings needs of consumers. Selling MBL participations without recourse permits an originating credit union to obtain additional liquidity enabling it to meet the demand for both consumer and small business loans to members. A credit union that purchases participation interests in loans from other originating lenders does so as a means of investing its excess funds and bases its participation decision on normal investment considerations, including safety and return. As a member-owned and controlled lender, a credit union will purchase participation interests only after meeting its members' own lending needs. The due diligence analysis by the purchasing credit union enhances the overall creditworthiness process in credit union business lending. In addition, these participations diversify the risk of MBLs within the credit union system, ultimately making credit unions safer and better able to meet the needs of both consumer and small business members.

While the Board believes that purchased MBL participation interests need not be included in the aggregate loan limit, a purchased participation interest is a business loan asset and carries the associated risks. A participating credit union, therefore, must otherwise comply with part 723 and subject these loans to the PCA risk-weighting standards under part 702 as though the credit union had originated the MBLs. This means that a participating credit union must have an MBL policy, employ an individual or use the services of an independent third-party with the requisite lending experience, perform the appropriate due diligence, and comply with the collateral requirements and loans to one borrower limit in part 723, in addition to all other provisions of the MBL rule when purchasing a MBL participation interest from any eligible organization.

Finally, the Board notes that, in order for a participating credit union to exclude participation interests it has purchased, the purchase must be a *bona fide* transaction to fulfill a business purpose. The sale and purchase of participation interests in MBLs among credit unions cannot be used as a means to circumvent the regulation's aggregate loan limit. For example, credit unions may not enter into participation agreements that, in effect, permit them to swap portions or all of their MBL portfolios and, thereby, claim that the participation interests are excluded from the aggregate loan limit.

Loans to Credit Unions and CUSOs, Section 723.1

The Board proposes to amend § 723.1 to clarify that loans made by Federal, natural person credit unions to other natural person credit unions and CUSOs are not MBLs. The Federal Credit Union Act grants federal credit unions (FCUs) distinct, express authority to lend to credit unions and CUSOs, independent from their authority to make MBLs. 12 U.S.C. 1757(5)(C), (D). While CUMAA placed limitations on a federally insured credit union's authority to make MBLs to members, 12 U.S.C. 1757a, the law did not alter an FCU's authority to lend to credit unions or CUSOs and did not impose limits on the amount an FCU could lend to these entities beyond the statutory conditions that pre-dated CUMAA. 12 U.S.C. 1757(5)(C), (D).

The proposed rule also permits FISCUs to exclude loans to credit unions and CUSOs in calculating their aggregate MBL limit if the state supervisory authority determines that state law grants distinct authority to lend to credit unions and CUSOs separately from the authority to make MBLs. In the absence of authority similar to that in the Federal Credit Union Act, a FISCU's loans to credit

unions and CUSOs are subject to the MBL rule.

The Board also proposes to amend NCUA's corporate credit union rule to conform with the MBL rule regarding loans to corporate CUSOs by removing the requirement that a corporate credit union's loans to corporate CUSOs comply with the MBL rule's aggregate loan limit. 12 CFR 704.11(b)(4).

Construction and Development Lending, Section 723.3

The Board proposes to lower the MBL rule's mandatory equity requirements for construction and development loans by requiring a borrower to have a minimum of a 25%, rather than a 35%, equity interest in any construction or land development project. Currently, the MBL rule requires a borrower to have a 35% equity interest or receive a waiver from an NCUA regional director. 12 CFR 723.3(b). The Board has permitted three states to lower the minimum equity interest required in land development loans to 30% and four states to lower the equity interest in loans for construction projects and combination land development and construction projects to 25%. It found the lowered equity requirements were consistent with NCUA's safety and soundness considerations. The Board believes an equity interest of 25% should provide sufficient collateral for a credit union and adequate incentive for a borrower to complete a project.

The Board also proposes certain other changes related to financing the construction of single-family residential properties to lessen the regulatory burden for members engaged in this business. First, in the case of a loan to finance the construction of a single-family residence where a contract already exists between the builder, who is a member-borrower, and a prospective homeowner, who will purchase and reside in the property, the Board proposes that such a loan not be subject to the aggregate 15% of net worth limit of § 723.3(a) or the proposed new 25% equity interest requirement. These loans would instead be subject to the normal MBL collateral requirements of § 723.7. Second, the Board proposes that this same relief from the aggregate net worth limit and the equity interest requirement be provided for one construction or development loan per member-borrower or group of associated member-borrowers for a single-family residence, irrespective of the existence of a contract with a prospective homeowner. The Board recognizes that losses in credit unions from construction and development lending have historically resulted from large development projects, both commercial and residential. The Board believes there is minimal risk in removing the additional regulatory requirements for those loans where a prospective homeowner is contractually obligated to the member-borrower or for one construction or development loan for a single-family residence per member-borrower. These proposed changes will afford added flexibility to insured credit unions in meeting the needs of members who own small businesses engaged in building individual residential properties.

Direct Experience Requirement, Section 723.5

The Board proposes to make two amendments to § 723.5 that emphasize the need for experienced and impartial individuals to evaluate MBLs. The rule requires credit unions to use the services of an individual, whether the individual is an employee or third-party contractor, with lending experience that is directly related to the type of MBLs the credit union offers. The proposed amendment provides that this individual must understand the complexity and risk exposure of the credit union's MBLs. This requirement is critical to a successful MBL program because of the vast array of businesses, types of collateral, and underwriting procedures associated with MBLs.

The second proposed amendment provides that a credit union may obtain the services of a third-party to meet the direct experience requirements of § 723.5 if the third-party has no interest or involvement in the MBL transaction. The independence of the third-party is fundamental to ensuring that the credit union performs its due diligence before originating an MBL or purchasing an interest in an MBL. The proposal provides, therefore, that the third-party may not have an interest in the transaction other than providing its impartial expertise to the credit union.

Member Business Loan Policy, Section 723.6

The Board proposes to amend § 723.6 to allow a credit union to adopt analysis and documentation requirements in its MBL policy that are appropriate for the type or types of MBLs the credit union intends to make. Currently, the rule requires the same documentation for every MBL regardless of size, business, or loan type. The Board recognizes that documentation and underwriting criteria for an MBL may vary depending on the type of business requesting the loan and type of loan requested.

Loan-to-Value Ratio, Section 723.7

The Board proposes to make several amendments to this section. First, the Board proposes a minor technical amendment in the format of § 723.7 by removing the chart used to establish the rule's collateral requirements and providing an explanation in plain English. Second, the Board proposes to exclude MBLs made for the purchase of vehicles from the rule's loan-to-value requirements if the vehicle is a car, van, pick-up truck, or sports utility vehicle that is used for commercial purposes. The Board proposes to exclude these loans because loans a credit union makes to purchase these vehicles for consumer use are not subject to the loan-to-value ratios required under the MBL rule and this standard represents the current business market. The Board believes these MBLs present little or only minimally greater risk than a comparable consumer loan and that credit unions should establish lending terms, including collateral requirements, for these loans that reflect best industry practices. The Board intends that this exclusion will be used to finance combined personal/business use vehicles and not, for example, to finance fleet purchases.

The Board also proposes to remove the principal liability and guarantee requirement from this section. The MBL rule currently requires principals to provide their personal liability or guarantee on MBLs unless the credit union receives a waiver from its regional office. 12 CFR 723.7(b). The Board has approved six state rules that do not require guarantees by principals and NCUA's regional offices have approved numerous waivers allowing credit unions to make MBLs without requiring principal guarantees. The Board also notes that the Office of the Comptroller of the Currency and the Office of Thrift Supervision do not require national banks and savings associations to obtain a principal's guarantee before extending credit to a business. The Board recognizes that some credit unions lend to cooperative entities with hundreds of members, making it impractical to obtain personal guarantees from every principal. Credit unions may still require loan applicants to provide principal guarantees as a risk-reducing business practice.

Finally, the Board proposes to amend this section to permit credit unions to make unsecured MBL loans, in addition to credit card line of credit programs offered to nonnatural person members, subject to certain limits. Under the current rule, all MBLs must be secured by collateral in accordance with the rule's loan-to-value ratios, except for nonnatural person member credit cards. 12 CFR 723.7(a), (c). The Board has approved four state rules that permit credit unions with a net worth of at least 7% to make other unsecured MBLs under various conditions.

Under the proposal, a credit union may make unsecured MBLs if: (1) The credit union is "well-capitalized" as defined in 12 CFR 702.102(a)(1); (2) the aggregate of unsecured MBLs to one borrower does not exceed the lesser of $100,000 or 2.5% of the credit union's net worth; (3) the aggregate of all of the credit union's unsecured MBLs does not exceed 10% of the credit union's net worth; and (4) the credit union addresses unsecured loans in its written MBL policy. The Board also proposes that the rule permit a credit union to apply for waivers from the unsecured loans to one borrower limitation and the aggregate unsecured loan limitation under this section. In connection with adding these provisions to § 723.10 on waivers, § 723.10 has been reorganized and revised to make it easier to follow.

Reserves for Classified Loans, Sections 723.14 and 723.15

The Board proposes to delete and reserve §§ 723.14 and 723.15, which address classification of loans for losses and reserving requirements. The Board recently adopted the Interpretive Ruling and Policy Statement on Allowance for Loan and Lease Losses (ALLL) Methodologies and Documentation for Federally-Insured Credit Unions (IRPS 02–3). 67 FR 37445, May 29, 2002. IRPS 02–3 supercedes the current regulatory provisions.

IRPS 02–3 provides federally insured credit unions guidance on the design and implementation of ALLL methodologies and supporting documentation practices consistent with existing GAAP. NCUA requires all credit unions to follow GAAP with regard to loan loss estimates to meet the requirements of full and fair disclosure. 12 CFR 702.402(d)(1). IRPS 02–3 recognizes that credit unions should adopt methodologies and documentation practices appropriate for their size and complexity. Federally insured credit unions should follow IRPS 02–3 to develop and maintain an appropriate, systematic, and consistently applied process to determine the amounts of the ALLL and provisions for loan losses, regardless of loan type. These sections in the MBL rule about loan loss reserves are no longer applicable.

Standard Risk-Based Net Worth Component for MBLs

The Board proposes to expand the current standard risk-based net worth component for MBLs in Part 702. For purposes of PCA, one of the eight risk portfolios used to calculate an applicable risk-based net worth (RBNW) requirement consists of a credit union's balance of outstanding MBLs. 12 CFR 702.104(b). The standard RBNW component presently divides the portfolio of MBLs by a single threshold—12.25% of total assets. The amount of MBLs less than or equal to that threshold is risk-weighted at 6%; the amount in excess of the threshold is risk-weighted at 14%. 12 CFR 702.106(b). To recognize finer increments of risk, an alternative RBNW component is available that divides MBLs by fixed and variable-rate and then categorizes them by remaining maturity among a set of four, corresponding risk-weighting buckets. 12 CFR 702.107(b). *See* Appendix D in rule text below. The difference in interest rate risk between variable-rate and fixed-rate MBLs is reflected in the two-percentage point risk-weighting discount that the alternative component generally gives the former compared with the latter.

Among other factors, credit unions' loss experience with MBLs since part 702 was first enacted warrants reconsidering the risk-weighting schedule of the standard RBNW component. First, contrary to expectations, the loss history of MBLs has remained remarkably consistent at 0.1% net charge-offs since 1998. Second, compared to the standard component for long-term real estate loans, 12 CFR 702.106(a), the risk-weighting for MBLs arguably climbs too prematurely and too dramatically. According to December 2001 Call Report data, more than half of all MBLs are real estate loans. In view of this fact, the disparity in risk of loss is insufficient to justify triggering the 14% risk weighting at 12.25% of total assets in the case of MBLs, but at 25% of assets in the case of long-term real estate loans. Commercial real estate is typically more volatile in price than residential real estate. In addition, if the member backs the loan with his or her primary residence, the loan is not an MBL. Third, it is widely recognized that default risk and interest rate risk generally increase as maturity increases, all other factors being constant. But field staff experience indicates that credit union MBLs generally are relatively short-term, maturing in 5 years or less, thereby limiting exposure to these risks, as demonstrated by MBLs' low loss history in recent years. While both real estate loans and MBLs trigger a 14% risk weighting at 25% of assets under this proposal, the risks being addressed are somewhat different. The purpose of this risk weighting for real estate loans is primarily to target interest rate risk, whereas the target for MBLs is credit risk. Finally, recent research indicates that credit union MBLs carry less risk, on average, than do analogous commercial bank loans, which are risk-weighted at a uniform 8% regardless of percentage of total assets. 12 U.S.C. 325, Pt. 3, App A. *See* David M. Smith & Stephen A. Woodbury, *Differences in Bank and Credit Union Capital Needs* (Filene Research Institute 2001). Therefore, risk-weighting a middle range of the balance of MBLs at less than 14% would not present a material risk to the NCUSIF. On balance, these factors justify moderating the upward slope of the risk-weighting schedule for MBLs.

Accordingly, the Board proposes to expand the standard component to three tiers divided by a 15% and a 25% threshold, respectively. The bottom tier, risk-weighted at 6%, would consist of the amount of MBLs less than or equal to 15% of total assets. The middle tier, risk-weighted at 8%, would consist of the amount of MBLs greater than 15%, but less than or equal to 25%, of total assets. The top tier, risk-weighted at 14%, would consist of the amount of MBLs in excess of 25% of total assets. This is set out in line (b) in Table 3 and Appendix A in rule text below.

CUSO Business Loan Origination, Section 712.5

The Board proposes to add business loan origination to the CUSO regulation's list of permissible activities. 12 CFR 712.5. The Board believes that by authorizing CUSOs to engage in business loan origination, CUSOs will better serve credit union members by offering loans to members that their credit unions may be unable to grant. CUSOs are a good vehicle for these loans because the MBL rule and safe and sound underwriting practices require specialized lending experience.

The MBL rule requires credit unions to use the services of an individual with at least two years direct experience with the type of loans the credit union offers. 12 CFR 723.5. The rule permits a credit union to use the services of a CUSO with the appropriate lending experience to meet this requirement. *Id.* As the Board noted in 1998, a credit union "using the CUSO for back office business loan functions can use the CUSO's staff to fulfill its obligations to

have an experienced lender on [its] staff. * * * In other words, [credit unions] are permitted to leverage their members business loan expertise with CUSO business loan personnel." 63 FR 10743, 10752, Mar. 3, 1998. The MBL and CUSO rules, therefore, have allowed CUSOs to engage in the mechanics of business loan origination for several years.

Business loans require specialized lending staff, experienced in the due diligence and underwriting standards necessary for originating good loans. Many credit unions do not have the lending personnel on staff with the experience required to make a variety of MBLs and may not find it prudent to outsource this expertise. By authorizing CUSOs to originate business loans, credit unions can benefit from economies of scale by pooling their investments into a business lending CUSO, thus affording their small business members access to MBLs that may otherwise be unavailable through the credit union or other lenders. The Board notes, however, that credit unions cannot circumvent the intent of the statutory limitations placed on credit unions under CUMAA by purchasing an unreasonable amount of MBL participation interest from their CUSOs. As the Board notes above, in order for a participating credit union to exclude participation interests it has purchased, including those from a credit union organization as defined in § 701.22(a)(4), the purchase must be a *bona fide* transaction to fulfill a business purpose.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under $1 million in assets). The proposed amendments to the member business loan rule relax some of the rule's existing standards or clarify current requirements. In addition, most small credit unions do not grant member business loans. The NCUA Board, therefore, has determined and certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed regulation does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed rule liberalizes current requirements and standards applicable to all federally insured credit unions and will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 704

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 712

Credit, Credit unions.

12 CFR Part 723

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on March 27, 2003.

Becky Baker,

Secretary of the Board.

For the reasons stated in the preamble, NCUA proposes to amend 12 CFR chapter VII as set forth below:

PART 702—PROMPT CORRECTIVE ACTION

1. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

2. Amend § 702.106 as follows:

a. Revise paragraph (b) to read as set forth below; and

b. Revise Table 4 following paragraph (h) to read as set forth below:

§ 702.106 Standard calculation of risk-based net worth requirement.

* * * * *

(a) * * *

(b) *Member business loans outstanding.* The sum of:

(1) Six percent (6%) of the amount of member business loans outstanding less than or equal to fifteen percent (15%) of total assets;

(2) Eight percent (8%) of the amount of member business loans outstanding greater than fifteen percent (15%), but less than or equal to twenty-five percent (25%), of total assets; and

(3) Fourteen percent (14%) of the amount in excess of twenty-five percent (25%) of total assets;

* * * * *

TABLE 4.—§ 702.106 STANDARD CALCULATION OF RBNW REQUIREMENT

Risk portfolio	Amount of risk portfolio (as percent of quarter-end total assets) to be multiplied by risk weighting	Risk weighting
(a) Long-term real estate loans	0 to 25.00%	.06
	over 25.00%	.14
(b) MBLs outstanding	0 to 15.00%	.06
	>15.00% to 25.00%	.08
	over 25.00%	.14

TABLE 4.—§ 702.106 STANDARD CALCULATION OF RBNW REQUIREMENT—Continued

Risk portfolio	Amount of risk portfolio (as percent of quarter-end total assets) to be multiplied by risk weighting	Risk weighting
(c) Investments (by weighted-average life):	0 to 1 year	.03
	>1 year to 3 years	.06
	>3 years to 10 years	.12
	>10 years	.20
(d) Low-risk assets	All %	.00
(e) Average-risk assets	All %	.06
(f) Loans sold with recourse	All %	.06
(g) Unused MBL commitments	All %	.06
(h) Allowance	Limited to equivalent of 1.50% of total loans (expressed as a percent of total assets).	(1.00)

A credit union's RBNW requirement is the sum of eight standard components. A standard component is calculated for each of the eight risk portfolios, equal to the sum of each amount of a risk portfolio times its risk weighting. A credit union is classified "undercapitalized" if its net worth ratio is less than its applicable RBNW requirement.

3. Revise Appendix A to Subpart A of Part 702 to read as follows:

APPENDIX A.—EXAMPLE STANDARD COMPONENTS FOR RBNW REQUIREMENT, § 702.106

[Example calculation in bold]

Risk portfolio	Dollar balance	Amount as percent of quarter-end total assets	Risk weighting	Amount times risk weighting (percent)	Standard component (percent)
Quarter-end total assets	**200,000,000**	**100.0000**			
(a) Long-term real estate loans	**60,000,000**	**30.0000=**			**2.20**
Threshold amount: 0 to 25%		**25.0000**	.06	**1.5000**	
Excess amount: over 25%		**5.0000**	.14	**0.7000**	
(b) MBLs outstanding	**35,000,000**	**17.5000**			**1.10**
Threshold amount: 0 to 15%		**15.0000**	.06	**0.9000**	
Intermediate tier: 15% to 25%		**2,5000**	.08	**0.2000**	
Excess amount: over 25%		**0.0**	.14	**0.0**	
(c) Investments	**50,000,000=**	**25.0000=**			**1.51**
Weighted-average life:					
0 to 1 year	**24,000,000**	**12.0000**	.03	**0.3600**	
>1 year to 3 years	**15,000,000**	**7.5000**	.06	**0.4500**	
>3 years to 10 years	**10,000,000**	**5.0000**	.12	**0.6000**	
>10 years	**1,000,000**	**0.5000**	.20	**0.1000**	
(d) Low-risk assets	**4,000,000**	**2.0000**	.00		**0**
Sum of risk portfolios (a) through (d) above	**149,000,000**	**74.5.000**			
(e) Average-risk assets	**51,000,000**	**25.5000** [a]	.06		**1.53**
(f) Loans sold with recourse	**40,000,000**	**20.0000**	.06		**1.20**
(g) Unused MBL commitments	**5,000,000**	**2.5000**	.06		**0.15**
(h) Allowance	**2,040,000.00** [b]	**1.0200**	(1.00)		**(1.02)**
Sum of standard components: RBNW requirement [c]					**6.67**

[a] *The Average-risk assets risk portfolio percent of quarter-end total assets equals 100 percent minus the sum of the percentages in the four risk portfolios above i.e., Long-term real estate loans, MBLs outstanding, Investments, and Low-risk assets).*

[b] *The Allowance risk portfolio is limited to the equivalent of 1.50 percent of total loans. For an example computation of the permitted dollar balance of Allowance, see worksheet in Appendix B below.*

[c] *A credit union is classified "undercapitalized" if its net worth ratio is less than its applicable RBNW requirement. The dollar equivalent of RBNW requirement may be computed for informational purposes as the RBNW requirement percent of total assets.*

4. Revise Appendix D to Subpart A of Part 702 to read as follows:

APPENDIX D—EXAMPLE OF MEMBER BUSINESS LOANS ALTERNATIVE COMPONENT, § 702.107(B)

[Example calculation in bold]

Remaining maturity	Dollar balance of MBLs by remaining maturity	Percent of total assets by remaining maturity	Alternative risk weighting	Alternative component (percent)
Fixed-rate MLBs 0 to 3 years	**6,000,000**	**3.0000**	.06	**0.1800**
> 3 years to 5 years	**4,000,000**	**2.0000**	.09	**0.1800**
> 5 years to 7 years	**2,000,000**	**1.0000**	.12	**0.1200**
> 7 years to 12 years	**0**	**0.0000**	.14	**0.0000**
> 12 years	**0**	**0.0000**	.16	**0.0000**
Variable-rate MBLs 0 to 3 years	**17,000,000**	**8.5000**	.06	**0.5100**
> 3 years to 5 years	**4,000,000**	**2.0000**	.08	**0.1600**
> 5 years to 7 years	**2,000,000**	**1.0000**	.10	**0.1000**
> 7 years to 12 years	**0**	**0.0000**	.12	**0.0000**
>12 years	**0**	**0.0000**	.14	**0.0000**
Sum of above equals Alternative component*				**1.25**

* Substitute for standard component if lower.

5. Revise Appendix H to Subpart A of Part 702 to read as follows:

APPENDIX H.—EXAMPLE RBNW REQUIREMENT USING ALTERNATIVE COMPONENTS

[Example calculation in bold]

Risk portfolio	Standard component	In percent	
		Alternative component	Lower of standard or alternative component
(a) Long-term real estate loans	**2.20**	**2.85**	**2.20**
(b) MBLs outstanding	**1.10**	**1.25**	**1.10**
(c) Investments	**1.51**	**1.37**	**1.37**
(f) Loans sold with recourse	**1.20**	**1.03**	**1.03**
(d) Low-risk assets			[1] **0**
(e) Average-risk assets			[1] **1.53**
(g) Unused MBL commitments			[1] **0.15**
(h) Allowance			[1] **(1.02)**
RBNW requirement [2] Compare to Net Worth Ratio			[1] **6.53**

[1] Standard components.
[2] A credit union is "undercapitalized" if its net worth ration is less than its applicable RBNW requirement.

PART 704—CORPORATE CREDIT UNIONS

6. The authority citation for part 704 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1781, 1789.

7. Amend § 704.7 paragraph (e)(2) by revising the sentence as follows:

§ 704.7 Lending.

* * * * *

(e) * * *

(2) Corporate CUSOs are not subject to part 723 of this chapter.

* * * * *

8. Amend § 704.11 by removing paragraph (b)(4).

PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

9. The authority citation for part 712 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D) and (7)(I), 1766, 1782, 1784, 1785, and 1786.

10. In § 712.5, redesignate paragraphs (c) to (q) as paragraphs (d) to (r) and add new paragraph (c) to read as follows:

(c) Business loan origination;

PART 723—MEMBER BUSINESS LOANS

11. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

12. Amend § 723.1 as follows:

a. Add the phrase "the outstanding member business loan balances are" after the word "when" in paragraph (b)(3);

b. Add paragraphs (c) and (d).

§ 723.1 What is a member business loan?

* * * * *

(c) *Loans to credit unions and credit union service organizations.* This part does not apply to loans made by federal credit unions to credit unions and credit union service organizations. This part does not apply to loans made by a federally insured, state-chartered credit union to credit unions and credit union service organizations if the credit union's state supervisory authority determines that state law grants independent authority to lend to these entities.

(d) *Loan participations.* Any interest obtained in participation loans is excluded from a purchasing credit union's aggregate member business loan limit, but the purchasing credit union must otherwise comply, as if it had originated the loan, with both the requirements of this part and the risk-weighting standards under part 702 of this chapter.

13. Amend § 723.3 by revising paragraph (a) and paragraph (b) to read as follows:

§ 723.3 What are the requirements for construction and development lending?

* * * * *

(a) The aggregate of the outstanding member business loan balances for all construction and development loans must not exceed 15% of net worth. In determining the aggregate balances for purposes of this limitation, a credit union may exclude any loan made to finance the construction of a single-family residence if a prospective homeowner has contracted to purchase and reside in the property and may also exclude a loan to finance the construction of one single-family residence per member-borrower or group of associated member-borrowers, irrespective of the existence of a contractual commitment from a prospective homeowner to purchase and reside in the property.

(b) The borrower must have a minimum of 25% equity interest in the project being financed, except that this requirement shall not apply in the case of a loan made to finance the construction of a single-family residence if a prospective homeowner has contracted to purchase and reside in the property and in the case of one loan to a member-borrower or group of associated member-borrowers to finance the construction of a single-family residence, irrespective of the existence of a contractual commitment from a prospective homeowner to purchase and reside in the property. Instead, the collateral requirements of § 723.7 shall apply; and

* * * * *

§ 723.5 [Amended]

14. Amend § 723.5 as follows:

a. Add the following sentence after the word "in":

The experience should provide the credit union sufficient expertise given the complexity and risk exposure of the loans in which the credit union intends to engage.

b. Add the following sentence after the word "parties":

Any third-party used by a credit union to meet the requirements of this section must be independent from the transaction and may not benefit from the making of the loan or the sale of a participation interest which the third-party is hired to review, except to the extent of providing a service to the credit union.

§ 723.6 [Amended]

15. Amend § 723.6 as follows:

a. Add the phrase "secured and unsecured" before the word "business" in paragraph (c);

b. Add "§ 723.7(b)(2) and" after the words "subject to" in paragraph (e);

c. Add the phrase "consistent with appropriate underwriting and due diligence standards, which also addresses the need for periodic financial statements, credit reports, and other data when necessary to analyze future lines of credit, such as, borrower's history and experience, balance sheet, cash flow analysis, income statements, tax data, environmental impact assessment, and comparison with industry averages, depending upon the loan purpose" after the word "loan" in paragraph (g);

d. Remove paragraphs (h) and (i) and redesignate paragraphs (j) to (m) as (h) to (k).

16. Amend § 723.7 by revising paragraph (a) and paragraph (b), and by adding paragraph (d) to read as follows:

§ 723.7 What are the collateral and security requirements?

(a) Unless your Regional Director grants a waiver, all member business loans, except those made under paragraphs (b), (c), and (d), must be secured by collateral as follows:

(1) The minimum loan-to-value ratio for all liens must not exceed 80% unless the value in excess of 80% is covered through private mortgage insurance or equivalent type of insurance, or insured, guaranteed, or subject to advance commitment to purchase by an agency of the federal government, an agency of a state or any of its political subdivisions, but in no case may the ratio exceed 95%;

(2) A borrower may not substitute any insurance, guarantee, or advance commitment to purchase by any agency of the federal government, a state or any political subdivision of such state for the collateral requirements of this paragraph.

(b) You may make unsecured member business loans under the following conditions:

(1) You are well-capitalized as defined by § 702.102(a)(1) of this chapter;

(2) The aggregate of the unsecured outstanding member business loans to any one member or group of associated members does not exceed the lesser of $100,000 or 2.5% of your net worth; and

(3) The aggregate of all unsecured outstanding member business loans does not exceed 10% of your net worth.

* * * * *

(d) Federally insured credit unions may make vehicle loans under this part without complying with the loan-to-value ratios in this section, provided that the vehicle is a car, van, pick-up truck, or sports utility vehicle.

17. Amend § 723.8 by adding the words "loan balances" after the word "business" and removing the word "loans (including any unfunded commitments)."

18. Remove and reserve § 723.9.

19. Revise § 723.10 to read as follows:

§ 723.10 What waivers are available?

You may seek a waiver for a category of loans in any of the following areas:

(a) Appraisal requirements under § 722.3;

(b) Aggregate construction and development loans limits under § 723.3(a);

(c) Minimum borrower equity requirements for construction and development loans under § 723.3(b);

(d) Loan-to-value ratio requirements for business loans under § 723.7(a);

(e) Maximum unsecured business loans to one member or group of associated members under § 723.7(b)(2);

(f) Maximum aggregate unsecured member business loan limit under § 723.7(b)(3); and

(g) Maximum aggregate outstanding member business loan balance to any one member or group of associated members under § 723.8.

20. Remove and reserve § 723.14.

21. Remove and reserve § 723.15.

22. Revise the first sentence of § 723.16 as follows:

§ 723.16 What is the aggregate member business loan limit for a credit union?

The aggregate limit on a credit union's outstanding member business loan balances, excluding any interest obtained in participation loans, is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. * * *

23. Add the following definition to § 723.21:

§ 723.21 Definitions.

* * * * *

Outstanding Member Business Loan Balance means the outstanding loan balance and any unfunded commitments, excluding any portion of the loan that is secured by shares in the credit union, or by shares or deposits in other financial institutions, or by a lien in the member's primary residence, or fully or partially insured or guaranteed by any agency of the Federal Government, a state or any political subdivision of such state, or subject to an advance commitment to purchase by any agency of the federal government, a state or any political subdivision of such

state, or sold as a participation interest without recourse.

[FR Doc. 03–8040 Filed 4–3–03; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

Draft Proposed Changes to 14 CFR 25.1329 and Draft Advisory Circular 25.1329

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Aviation Rulemaking Advisory Committee (ARAC) recommendations.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of the ARAC-recommended draft proposed changes to 14 CFR 25.1329 and draft Advisory Circular 25.1329 for potential use, upon request, in the certification of applicable aircraft systems. The said ARAC recommendations have not yet been adopted by the FAA.

DATES: The FAA received the ARAC submittal on March 21, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Gregg Bartley, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane and Flight Crew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2889; fax (425) 227–1320; e-mail: *Gregg.Bartley@faa.gov.*

SUPPLEMENTARY INFORMATION: *Reference:* FAA policy memorandum 00–113–1034 "Use of ARAC (Aviation Rulemaking Advisory Committee) Recommended Rulemaking not yet formally adopted by the FAA, as a basis for equivalent level of safety or exemption to part 25."

This policy memorandum describes a standardized, streamlined approach for the use of draft FAA/JAA harmonized regulations as a basis for an equivalent level of safety finding or an exemption to part 25. It may be found on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/document/final/aracesf/index.htm.*

Background

After a multi-year review of the current 25.1329 rule and AC 25.1329–1A, the ARAC submitted to the FAA their recommendations for a rule amendment and revised advisory materials in March 2002. The ARAC-recommended draft proposed changes to 14 CFR 25.1329 and draft AC 25.1329 are available on the Internet at the following address: *http://www1.faa.gov/avr/arm/aracflightguide recommendation.cfm?nav=6.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The procedure for using ARAC-recommended rules that are not yet adopted by the FAA is described in the FAA policy memorandum 00–113–1034 referenced above. The memorandum describes the process for requesting an equivalent safety finding, as well as petitioning for an exemption.

Issued in Renton, Washington, on March 20, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7666 Filed 4–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–6 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Pilatus Aircraft Ltd. (Pilatus) Model PC–6 airplanes. This proposed AD would require you to inspect the integral fuel tank wing ribs for cracks and the top and bottom wing skins for distortion and repair before further flight, and accomplish a fuel tank ventilating system installation. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to detect and correct cracks in the ribs of the inboard integral fuel tanks in the left and right wings, which could lead to wing failure during flight.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before May 12, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–12–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–12–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each

contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–12–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on all Pilatus Model PC–6 airplanes. The FOCA reports an incident where cracks have been found in the ribs of the inboard integral fuel tanks in the left and right wings of a Model PC–6 airplane. Investigation revealed that the cracks can occur when there are excessive pressure differentials between the ambient air pressure and that of the fuel tanks. The effect of this differential can be to compress the wing in the area of the fuel tank and cause distortion of the related structure. This distortion may result in fatigue cracks on ribs within the wing.

What are the consequences if the condition is not corrected? These fatigue cracks on the ribs within the wing could lead to wing failure during flight.

Is there service information that applies to this subject? Pilatus has issued the following:

—Service Bulletin (SB) No. 57–002, dated November 27, 2002; and

—SB No. 118, dated December 1972.

What are the provisions of this service information? The service bulletins include procedures for:

—Inspecting the ribs in the left and right inboard fuel tanks;

—Repairing a rib;

—Inspecting to determine if the inboard fuel tank vent system is installed; and

—Installing the inboard fuel tank vent system.

What action did the FOCA take? The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB 2003–092, dated February 17, 2003, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was this in accordance with the bilateral airworthiness agreement? This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What has FAA decided? The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Pilatus Model PC–6 airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletins.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 35 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish this proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 workhours × $60 per hour = $300	Not applicable	$300	$300 × 35 = $10,500.

We estimate the following costs for each rib to accomplish any necessary rib repair that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need such repair.

Labor cost	Parts cost	Total cost per rib per airplane
3 workhours × $60 per hour = $180 per rib	$50 per rib	$230 per rib.

We estimate the following costs to install any inboard fuel tank vent system that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need such installation.

Labor cost	Parts cost	Total cost per airplane
12 workhours × $60 per hour = $720	$200	$920

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 2003–CE–12–AD

(a) *What airplanes are affected by this AD?* This AD affects Model PC–6 airplanes, all manufacturer serial numbers (MSN) up to and including 939, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the ribs of the inboard integral fuel tanks in the left and right wings, which could lead to wing failure during flight.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect: (i) The ribs in the inboard integral fuel tanks and related structure in the left and right wings for crack damage;. (ii) The upper and lower wing skins for damage; and. (iii) To determine if the inboard fuel tank vent system is installed.	Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 57–002, dated November 27, 2002, and the applicable manual.
(2) If crack damage is found: (i) Correct the crack damage designated as repairable in the service bulletin.	Prior to further flight after the inspections required in paragraph (d)(1) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 57–002, dated November 27, 2002, and the applicable maintenance manual.
(ii) For other crack damage, obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (e) of this AD and incorporate this repair scheme.		
(3) If wing distortion is found, obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (e) of this AD and incorporate this repair scheme.	Prior to further flight after the inspections required in paragraph (d)(1) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 57–002, dated November 27, 2002, and the applicable maintenance manual.
(4) If the inboard fuel tank vent system is not installed, install the inboard fuel tank vent system.	Prior to further flight after the inspections required in paragraph (d)(1) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 118, dated December 1972, and the applicable maintenance manual.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note: The subject of this AD is addressed in Swiss AD Number HB 2003–092, dated February 17, 2003.

Issued in Kansas City, Missouri, on March 28, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8199 Filed 4–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. 99N–2497]

Citizen Petitions; Actions That Can Be Requested by Petition; Denials, Withdrawals, and Referrals for Other Administrative Action; Withdrawal

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing a proposed rule that appeared in the **Federal Register** of November 30, 1999 (64 FR 66822). The proposal would have modified the types of actions that can be requested through a citizen petition; revised certain content requirements for citizen petitions; and permitted the agency to refer citizen petitions for other administrative action, seek clarification of a petitioner's request, withdraw certain petitions, and combine petitions. We proposed these changes to improve the citizen petition process by making it more efficient and reducing the backlog of pending requests. We believe the proposed rule is no longer needed because we have made other improvements to our process for responding to citizen petitions.

DATES: The proposed rule is withdrawn on April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy and Planning (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION: FDA's citizen petition regulations at 21 CFR 10.30 provide a formal means for the public to contact FDA and seek its action or response on a particular matter. For example, the petition process can be used by a drug company to request a change in the approval standards for a generic competitor, a food trade association can request that we establish exemptions from certain package labeling requirements, or a consumer group can petition us to tighten regulation of a particular product. Citizen petitions are submitted to our Dockets Management Branch for processing and referral to the appropriate office, and our regulations require us to issue a tentative or final response within 180 days after receiving the citizen petition.

While the citizen petition process has benefited both FDA and the public, reviewing and responding to citizen petitions is often resource intensive and time consuming. We must research the petition, examine scientific, medical, legal, and sometimes economic issues, and coordinate internal agency review and clearance of the response. Petitioners occasionally sue over unfavorable responses or delays in issuing a response. This litigation consumes additional resources and time.

Historically, we have received more citizen petitions than we have been able to answer. We receive nearly 290 citizen petitions annually, and, in most years, the number of incoming citizen petitions exceeded the number of responses that we would issue. In the past, the response rate was approximately 100 responses per year. This resulted in a steadily growing backlog of citizen petitions.

Faced with a growing backlog of petitions and increasing demands on our resources, on November 30, 1999, we proposed to amend our citizen petition regulations to make the citizen petition system more efficient and responsive (64 FR 66822). The major changes under the proposal would:

- Limit the types of actions that could be requested through a citizen petition to: (1) Requests to issue, amend, or revoke a regulation; (2) requests to amend or revoke an order that FDA had issued or published; and (3) requests for any other action specifically authorized by another FDA regulation.
- Revise the content requirements to include a certification that, to the petitioner's best knowledge and belief, its citizen petition "includes all information and views on which the petition relies, that it is well grounded in fact and is warranted by existing laws or regulations, that it is not submitted for any improper purpose, such as to harass or to cause unnecessary delay, and that it includes representative data and information known to the petitioner which are unfavorable to the petition."
- Allow us to refer petitions for other administrative action, seek clarification of a petitioner's requests, withdraw certain petitions, and combine petitions.

The preamble to the proposed rule emphasized that, while we were redefining the types of actions that could be the subject of a citizen petition, interested parties would still have other means of contacting or communicating with us.

We received nearly 20 comments on the proposed rule, with most comments opposing the rule in whole or in part. The comments opposed to the rule came from industry and public interest groups and stated that citizen petitions are a valuable means for communicating with us or for allowing public participation in agency actions. They expressed concern that the changes would unduly restrict the use of citizen petitions. Nonetheless, several comments supported the underlying goal of the proposal, and some of its relatively minor changes, pointing to the still-unanswered petitions they had submitted earlier as evidence that improvements were needed.

Two comments supported the proposal. These comments agreed with us that the proposal would prevent misuse of the citizen petition process (particularly with respect to approvals of generic drugs), and they suggested additional changes to strengthen the citizen petition process.

As we evaluated the comments, we continued efforts to improve our handling of citizen petitions. These efforts have led to a marked increase in the number of citizen petition responses, and our current annual response rate is equal to, and sometimes even exceeds, the number of citizen petitions that we receive. Given this progress, we believe that a revision of the citizen petition regulations is not warranted at this time. Consequently, we are withdrawing the proposed rule.

Dated: March 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–8165 Filed 4–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 902

[Docket No. FR–4707–N–07]

Public Housing Assessment System (PHAS) Proposed Rule: Notice of Extension of Public Comment Period

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of extension of public comment period.

SUMMARY: This notice extends, for an additional sixty days, the public comment period for the proposed rule that would amend the regulations for the Public Housing Assessment System (PHAS).

DATES: Comment Due Date: June 8, 2003.

FOR FURTHER INFORMATION CONTACT: For further information contact the Office of Public and Indian Housing Real Estate

Assessment Center (PIH–REAC), Attention: Wanda Funk, Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024; telephone Technical Assistance Center at (888) 245–4860 (this is a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number). Additional information is available from the PIH–REAC Internet site, *http://www.hud.gov/reac.*

SUPPLEMENTARY INFORMATION: On February 6, 2003 (68 FR 6262), HUD issued a proposed rule that would amend the Public Housing Assessment System (PHAS) regulations, codified at 24 CFR part 902, to provide additional information on PHAS procedures, revise certain procedures, and establish new procedures for the assessment of the physical condition, financial condition, management operations, and resident services and satisfaction with services provided to public housing residents. HUD intended to publish proposed revised grading notices at the time that it published the PHAS proposed rule. These notices will be published soon. In order to allow the public housing agencies (PHAs) and the public the benefit of reviewing the grading notices in relation to the PHAS proposed rule, HUD is extending the public comment period for an additional 60 days to coincide with the public comment period for the grading notices. The public comment due date for the February 6, 2003, PHAS proposed rule is extended to June 8, 2003.

Dated: March 28, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–8175 Filed 4–3–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131478–02]

RIN 1545–BB25

Guidance Under Section 1502: Suspension of Losses on Certain Stock Dispositions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document corrects a notice of proposed rulemaking published in the **Federal Register** March 14, 2003 (68 FR 12324). The proposed regulations redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain transfers of such stock and certain deconsolidations of a subsidiary member and suspend certain losses recognized on the disposition of stock of a subsidiary member.

FOR FURTHER INFORMATION CONTACT: Aimee K. Meacham, (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, the proposed regulation contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (REG–131478–02) that were the subject of FR Doc. 03–6118, is corrected to read as follows:

On page 12325, column 1, in the preamble under the caption "SUMMARY", third line from the bottom of the caption, the language "regulations. This document also" is corrected to read "regulations. Elsewhere in this issue of the **Federal Register** are technical corrections to § 1.1502–35T. The technical corrections supply text omitted from § 1.1502–35T(b)(3)(i)(C), (b)(3)(ii)(C), and clarify § 1.1502–35T(f)(1). This document".

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 03–8313 Filed 4–3–03; 8:45 am]

BILLING CODE 4830–01–P

Notices

Federal Register

Vol. 68, No. 65

Friday, April 4, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Recreation Fee Permit Envelope

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of the information collection, Recreation Fee Permit Envelope (Form FS–2300–26).

DATES: Comments must be received in writing on or before June 3, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Forest Service, USDA, Attn: Fee Program Manager, Recreation, Heritage, and Wilderness Resources Staff, Mail Stop 1125, 1400 Independence Avenue, SW., Washington, DC 20250–1125. Comments also may be submitted via facsimile to (202) 205–1145 or by e-mail to: tcleeland@fs.fed.us.

The public may inspect comments received at the Office of the Director, Recreation, Heritage, and Wilderness Resources Staff, Sidney R. Yates Building, 1400 Independence Avenue, Washington, DC, during normal business hours. Visitors are encouraged to call ahead to (202) 205–1169 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Teri Cleeland, Fee Program Manager, Recreation, Heritage, and Wilderness Resources Staff, (202) 205–1169.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Recreation Fee Permit Envelope.

OMB Number: 0596–0106.

Expiration Date of Approval: April 30, 2003.

Type of Request: Extension.

Abstract: This information collection will help the Forest Service ensure that visitors to National Forest System recreational sites comply with Forest Service policies and regulations and pay user fees when required. The data will also help the agency evaluate how well it meets the recreational needs of its visitors.

Each year, millions of people visit National Forest System recreational sites. The Land and Water Conservation Fund Act of 1965, section 4(b), the Forest Service regulations at Title 36, Code of Federal Regulations (CFR), section 291.2, and Section 315 of Public Law 104–134 (Omnibus Consolidated Rescissions and Appropriations Act of 1996), as amended, authorize National Forest and Grassland recreational sites to collect fees from visitors. The Forest Service uses the Recreation Fee Permit Envelope to collect these fees.

The agency will analyze the collected data to evaluate visitor use of recreational sites to determine the staffing needs for law enforcement, cleaning, maintenance, inspection, and other needs at these recreational sites. The Forest Service also will use the collected information to track demographic data (such as a visitor's length of stay at a specific recreational site, a visitor's recreational activities, or the recreational sites most frequented) and to ensure that visitors on National Forest System recreational sites comply with the agency's fee payment policies and regulations at 36 CFR 261.15.

Visitors pick up self-service fee envelopes at recreational sites that charge fees, such as campgrounds or other facilities. The visitors complete the blocks of information requested and place the money in the envelope, which they deposit in a secure collection box or fee tube, generally located at the entrance to the site. As part of the fee collection process, the Forest Service asks visitors to provide the following information: The amount of money enclosed, the number of days for which they paid, the date and time period for which they paid, their vehicle license plate number, the State in which they live, their camp unit number, the number of people in their party, and their planned date of departure. The envelope also asks for comments on how the Forest Service can improve the facilities or services at the site. The agency will use the collected data to evaluate accessibility for all visitors based on actual reported need rather than agency assumptions. For example, visitors could report that they were unable to get a wheelchair to a picnic table or restroom or that signs weren't available in braille.

To determine the estimate of burden, six Forest Service employees were requested to pick up fee envelopes at a Forest Service campground, read the directions, complete the form, place the fee in the envelope, deposit the envelope in a fee tube, and place the stubs on their dashboards. The estimate of burden is based on the average time it took the six employees to complete the fee payment process.

Data collected in this information collection are not available from other sources.

Estimate of Annual Burden: 3 minutes.

Type of Respondents: Individuals and groups using National Forests and Grasslands recreational sites at which fees are collected.

Estimated Annual Number of Respondents: 400,000. This estimate is based on the number of fee envelopes that are printed and placed in recreational sites annually.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 20,000 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. In submitting

this proposal to the Office of Management and Budget for approval, the Forest Service will summarize and respond to comments received.

Dated: March 28, 2003.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. 03–8187 Filed 4–3–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bighorn National Forest; Wyoming; Woodrock Project EIS.

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of travel management, timber harvest, fuels reduction, and watershed rehabilitation primarily in the South Tongue Watershed on the Tongue Ranger District of the Bighorn National Forest, in Sheridan County, Wyoming. The project area is located approximately 25 air miles southwest of Sheridan, Wyoming.

DATES: Written comments concerning the scope of the analysis, issues, the alternatives, and evaluation of alternatives should be received within 45 days of the date of publication of this notice in the **Federal Register**. The Forest Service estimates the Draft EIS will be filed in June of 2003. The Final EIS will be filed within 3 months of that date, approximately September of 2004. A draft document will be provided upon request. Scoping comments previously submitted for this project do not need to be submitted again.

ADDRESSES: Send written comments to Craig Yancey, District Ranger, Tounge District, Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, WY, 82801. Send electronic comments to *Mailroom_R2_Bighorn@notes.fs.fed.us;* include Woodrock Project as the subject.

FOR FURTHER INFORMATION CONTACT: Scott Hill, EIS Team Leader Woodrock Project, Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, WY, 82801; Electronic mail: *shill02@fs.fed.us,* phone: (307) 674–2649.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Woodrock Project is being proposed to implement the Forest Plan. The project includes: implementation of Forest Plan allocations, implementing past forest management decisions and silvicultural prescriptions, improve watershed conditions, improve travel management and existing road systems, and improve or maintain the forested vegetation within the forest plan standard and guidelines and other legal requirements.

Proposed Action

The Forest Service proposes to: improve diversity of forested vegetation by mimicking scale and intensity of natural disturbance patterns within the project area; reduce impacts to watershed conditions from roads and trails by changing travel management restrictions, reconstructing, restricting travel, or decommissioning existing roads where problems cannot be mitigated; on roads and trails; harden, relocate, or close dispersed campsites to meet Forest Plan direction; timber harvest of stands to produce wood fiber and reduce the spread of forest pests on approximately 1,800 acres.

Responsible Official

The responsible official for this decision is Bill Bass, Forest Supervisor, Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, WY 82801.

Nature of Decision To Be Made

The Forest Supervisor will decide: if changes should be made to the transportation system within the area; whether and where timber harvest should be implemented; if timber harvest occurs, what silvicultural systems and size of openings would be created; what noncommercial vegetation and fuels treatments should be taken; and what watershed improvements should be undertaken. He will decide when, or if, any management activities would take place, what mitigation measures would be implemented to address concerns, and whether the action requires amendment(s) to the Bighorn Forest Plan.

Scoping Process

The Woodrock project was initially developed as an Environmental Assessment. Scoping notices were sent on September 2, 1997 inviting comments from Federal, State and local agencies, special interest groups and individuals who had expressed interest in National Forest projects in the area. Scoping notices were sent to newspapers across northern Wyoming. A field trip was held on September 30, 1997. A public meeting addressing travel management in the Woodrock area was held at Bear Lodge on October 7, 2000. The project has been listed in the Quarterly Schedule of Proposed Actions from 1997 to the present.

Preliminary Issues

Issues associated with this project that have been identified during scoping and development of proposed action include the impacts of the proposed activities on wildlife and plant species and their habitat and effects of travel management on water quality and riparian habitat.

Comment Requested

A 45-day review period for comments on the Draft EIS will be provided. Comments received will be considered and included in documentation of the Final EIS. The public is encouraged to take part in the process and to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service has sought and will continue to seek information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Due to these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection (**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: March 25, 2003.

Ronald H. Stellingwerf,

Acting Forest Supervisor.

[FR Doc. 03–8042 Filed 4–3–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Suction Dredging EIS—Clearwater National Forest; Clearwater National Forest, Clearwater County and Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of proposed suction dredge mining activities in portions of Lolo Creek and Moose Creek (tributary to Kelly Creek). The proposed action would authorize issuance of permits for 29 recreational mining operations. In 2002, Clearwater National Forest biological analyses determined that the proposed suction dredging was likely to adversely affect steelhead trout in the Lolo Creek drainage and bull trout in the Moose Creek drainage.

Forest Service regulations at 36 CFR 228 subpart A sets forth rules and procedures for use of the surface of National Forest System Lands in connection with mineral operations. The regulations direct the Forest Service to prepare the appropriate level of National Environmental Policy Act (NEPA) analysis and documentation when proposed operations may significantly affect surface resources. These regulations do not allow the Forest Service to deny entry or preempt the miners' statutory right granted under the 1872 Mining Law. The 36 CFR 228 regulations include requirement for reclamation.

The purpose of this proposed action is to authorize suction dredge operations on Lolo Creek and Moose Creek with minimal adverse environmental effects, and to efficiently fulfill the requirement in 36 CFR 228.4(f) for conducting environmental analyses on mining Plans of Operations to determine reasonable measures to protect surface resources on National Forest System lands within the context of the laws. The need for the action is to facilitate efficient and timely approval of Plans of Operation for suction dredging, while minimizing or preventing adverse impacts related to or incidental to mining by imposing reasonable conditions that do not materially interfere with operations.

Preliminary issues identified by the interdisciplinary team include the effects of the proposed action on tribal treaty rights, recreation, all species within fisheries habitat (including threatened species), the adjacent riparian area, and water quality. Terms and conditions, and alternatives to the proposed action will be analyzed to address these issues and others that may surface during public scoping.

DATES: Comments concerning the scope of the analysis should be received in writing within 30 days from publication of this notice to receive timely consideration in the preparation of the draft EIS. The draft EIS is expected to be filed with the Environmental Protection Agency in September 2003. The final EIS and Record of Decision are expected to be issued in December 2003.

ADDRESSES: Send written comments to Forest Supervisor, Clearwater National Forest, ATTN: Vern Bretz, 12730 Highway 12, Orofino, Idaho 83544.

FOR FURTHER INFORMATION CONTACT: Vern Bretz at the above address or telephone (208) 476–8322, fax (208) 476–8329.

Responsible Official: The responsible official for decisions regarding this analysis is Larry J. Dawson, Clearwater National Forest Supervisor. His address is 12730 Highway 12, Orofino, Idaho, 83544. He will decide which set of terms and conditions, when included as operational procedures in suction dredge Plan of Operations, will allow for increased protection of threatened fish species, stream channel features, and water quality while still providing for the type of mining most claimants pursue on this Forest.

SUPPLEMENTARY INFORMATION: The twenty-nine suction dredge proposals being analyzed are "recreational classed" dredges with nozzle diameters of 5 inches or less and are equipped with 15 horsepower motor or less.

In 1997, steelhead trout were listed as a threatened species under the Endangered Species Act; bull trout were listed as threatened in 1998. Because of the potential significance of suction dredging in waters with threatened species, suction dredge operators are required to file a plan of operations with the Forest Service. Forest Service regulations, found in 36 CFR 228, require that each plan of operation be analyzed to determine terms and conditions necessary for protection of surface resources prior to approval of the plan. The Clearwater National Forest is also required under section 7 of the Endangered Species Act to consult with National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (FWS) about any activity that may affect a listed species; in this case, the effect of suction dredging in streams and rivers with threatened steelhead trout and bull trout. NMFS and FWS 2003 Biological Opinions further state that although recreational classed suction dredges are likely to adversely affect the listed fish, dredging with small suction dredges would not jeopardize either species if several terms and conditions were adhered to. For example, the terms and conditions may include, but are not limited to:

1. A July 1 to August 15 dredge season. The timing of the dredge activity from July 1 to August 15 minimizes the likelihood of steelhead trout or bull trout being present.
2. Dredge sites will be located in areas of large substrate not preferred for spawning steelhead trout and bull trout.
3. A Forest Service fisheries biologist will inspect proposed dredge sites prior to dredging.
4. No mechanized equipment will be allowed to operate below the mean high water mark except for the dredge itself and any life support system necessary to operate the dredge.
5. Dredging shall be done in a manner so as to prevent the undercutting of stream banks.
6. Only one mining site per one hundred (100) lineal feet of stream channel shall be worked at one time.
7. Such dredges will not operate in the gravel bar areas at the tails of pools.
8. Suction dredge operators will not operate in such a way that fine sediment from the dredge discharge blankets gravel bars.
9. Dredge operators will not operate in such a way that the current is directed into the bank causing erosion or destruction of the natural form of the channel.

10. Dredging and processing of stream bank materials will not be permitted, and large woody debris cannot be moved during mining operations.

11. All petroleum products will be stored in spill proof containers at a location that minimizes the opportunity for accidental spillage.

13. Dredge operators will anchor the suction dredge to the stream bank when refueling in the water. To minimize accidental spillage, transfer no more that one-gallon of fuel at a time during refilling, and place absorbent material under the tank while refueling to catch any spillage.

14. Dredge operators will disperse all dredge piles and back-fill all dredge holes by the end of the operating season (August 15).

Public participation will be an important part of this analysis. Issues that emerge from public scoping will be used to develop additional alternatives to this proposal. Methods being used to solicit public comment include news releases, weekly radio interviews, and newsletters. A web page for this project can be accessed by logging on to: *http://www.fs.fed.us/rl/clearwater*

The lead agency for this project is the U.S. Forest Service. The Forest Service will consult with the Nez Perce Tribe, County, State, and Federal agencies that display an interest in the project.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519.553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215.

Dated: March 20, 2003.

Larry J. Dawson,

Forest Supervisor.

[FR Doc. 03–8176 Filed 4–3–03; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 4, 2003.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 6, 2002, January 10, January 17, January 24, and February 7, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 72640, 68 FR 1434, 2498, 3508, and 6403) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Protective Combat Uniform (Requirements for Natick Only)
8415–00–NSH–0626, Level 1, T-Shirt
8415–00–NSH–0627, Level 1, Boxer
8415–00–NSH–0628, Level 1, Long Sleeve Shirt
8415–00–NSH–0629, Level 1, Pant
8415–00–NSH–0630, Level 2, Long Sleeve Shirt
8415–00–NSH–0631, Level 2, Pant
NPA: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, Kentucky.
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.
Product/NSN: Protective Combat Uniform (Requirements for Natick Only)
8415–00–NSH–0632, Level 3, Jacket.
NPA: Southside Training Employment Placement Services, Inc., Victoria, Virginia.
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.
Product/NSN: Protective Combat Uniform (Requirements for Natick Only)
8415–00–NSH–0659, Level 4, Windshirt.
8415–00–NSH–0633, Level 5, Soft-shell Jacket.
8415–00–NSH–0634, Level 5, Soft-shell Pant.
8415–00–NSH–0635, Level 6, Wet Weather Jacket.
8415–00–NSH–0636, Level 6, Wet Weather Pant.
NPA: ORC Industries, Inc., La Crosse, Wisconsin.
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.
Product/NSN: Protective Combat Uniform (Requirements for Natick Only)
8415–00–NSH–0637, Level 7, Pant.
8415–00–NSH–0638, Level 7, Vest.
8415–00–NSH–0690, Level 7, Jacket.
NPA: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, Kentucky.
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.

Services

Service Type/Location: Custodial Service, James M. Hanley Federal Building and U.S. Courthouse, Syracuse, New York.
NPA: Oswego Industries, Inc., Fulton, New York.
Contract Activity: GSA/PBS Upstate New York Service Center, Syracuse, New York.
Service Type/Location: Electronic Service Customer Representative Service. Securities & Exchange Commission Library, Washington, DC
NPA: Columbia Lighthouse for the Blind, Washington, DC.
Contract Activity: U.S. Securities and Exchange Commission, Alexandria, Virginia.
Service Type/Location: Janitorial/Custodial, Area Maintenance Support Activity (AMSA) #110, New Castle, Pennsylvania.
NPA: Lark Enterprises, Inc., New Castle, Pennsylvania.
Contract Activity: 99th Regional Support Command, Coraopolis, Pennsylvania.
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Cincinnati, Ohio.
NPA: CRI, Cincinnati, Ohio
Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota.
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Duluth, Minnesota.
NPA: Goodwill Industries Vocational Enterprises, Inc., Duluth, Minnesota.
Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–8252 Filed 4–3–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: May 4, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: 2 in 1 Scrubber Squeegee M.R. 1036
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia
Product/NSN: Amazing Micro Mop M.R. 1049
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–8253 Filed 4–3–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Information Quality Guidelines

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Notice of availability of final guidelines.

SUMMARY: The Committee announces that its final Information Quality Guidelines have been posted on the Committee's Web site, *http://www.jwod.gov*.

DATES: These Guidelines are effective October 1, 2002.

ADDRESSES: Comments may be mailed to the Committee for Purchase from People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Suite 10800, Arlington, VA 22202. Comments can also be e-mailed to *info@jwod.gov*.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, Director, Information Management, Committee for Purchase from People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Suite 10800, Arlington, VA 22202, (703) 603–7740.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Pub. L. 106–554) requires each Federal agency to publish guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of the information its disseminates to the public. Agency guidelines must conform to government-wide guidelines issued by the Office of Management and Budget (OMB). In compliance with this statutory requirement and OMB instructions, the Committee has posted

its Information Quality Guidelines on its Web site (*http://www.jwod.gov*).

The Guidelines describe the Committee's procedures for ensuring the quality of information that it disseminates and the procedures by which an affected person may obtain correction of information disseminated by the Committee that does not comply with the Guidelines. Persons who cannot access the Guidelines through the Internet may request a paper or electronic copy by contacting the Committee.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–8251 Filed 4–3–03; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 5 p.m. on April 4, 2003, at the University of Massachusetts—Boston Graduate College of Education conference room, Wheatley Building, 1st floor, room 075, 100 Morrissey Boulevard, Boston, Massachusetts 02125–3393. The purpose of the meeting is orientation and planning future program activity.

Persons desiring additional information, or planning a presentation to the Committee, should contact Aonghas St-Hilaire, of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, March 19, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–8186 Filed 4–3–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wisconsin Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Wisconsin Advisory Committee to the Commission will convene a planning meeting via conference call on Wednesday, April 2, 2003 from 1 p.m. until 3 p.m. The purpose of the meeting is to discuss an upcoming project: "Police Protection of Minority Communities in Milwaukee".

This conference call is available to the public through the following call-in number: 1–800–497–7709, access code: 161187514. Any interested member of the public may call this number and listen to the meeting. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines, persons are asked to register by contacting Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights at (312) 353–8311 (TDD 312–353–8362), by 4 p.m. on Tuesday, April 1, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, on March 25, 2003.

Dawn Sweet,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 03–8244 Filed 4–3–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: Commission on Civil Rights.

DATE AND TIME: Friday, April 11, 2003 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of March 21, 2003 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Report: The Grand Junction Report—Issues of Equality in Mesa Valley (Colorado)
VI. Presentations from Eastern Regional State Advisory Committee Members Representing the District of Columbia, Maryland, and Virginia
VII. Future Agenda Items

FOR FURTHER INFORMATION CONTACT: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 03–8432 Filed 4–2–03; 4:01 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1272]

Termination of Foreign-Trade Subzone 138A; Richwood, OH

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board has adopted the following order:

Whereas, on July 3, 1991 the Foreign-Trade Zones Board issued a grant of authority to the Rickenbacker Port Authority (RPA), authorizing the establishment of Foreign-Trade Subzone 138A at the Wascator Manufacturing Company plant in Richwood, Ohio (Board Order 523, 56 FR 31377, July 10, 1991);

Whereas, RPA advised the Board on April 10, 2002 (FTZ Docket 3–2003), that zone procedures were no longer needed at the facility and requested voluntary termination of Subzone 138A;

Whereas, the request has been reviewed by the FTZ Staff and Customs officials, and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone 138A, effective this date.

Signed at Washington, DC, this 21st day of March, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–8236 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–802]

Certain Preserved Mushrooms From Indonesia: Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty New Shipper Review.

SUMMARY: In response to timely requests by two manufacturers/exporters, the Department of Commerce is conducting a new shipper review of the antidumping duty order on certain preserved mushrooms from Indonesia. The respondents in this review are PT Eka Timur Rays ("Etira") and PT Karya Dompos Bagas ("KKB"). The petitioner, the Coalition for Fair Preserved Mushroom Trade,[1] did not comment. The period of review is February 1, 2002, through July 31, 2002.

The Department preliminarily determines that, during the period of review ("POR"), neither Etira nor KKB made sales of the subject merchandise at less than normal value ("NV") (*i.e.*, they made sales at zero or *de minimis* dumping margins). If these preliminary results are adopted in the final results of this new shipper review, we will instruct the U.S. Customs Service to liquidate appropriate entries without regard to antidumping duties.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Sophie Castro or Rebecca Trainor, Office 2, AD/CVD Enforcement Group I, Import Administration-Room B–099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202 482–0588 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

[1] The Coalition for Fair Preserved Mushroom Trade includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushrooms Farms, Inc., Toughkernamon, PA; Monterrey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp.; Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

Background

On December 31, 1998, the Department published in the **Federal Register** (63 FR 72268), the final affirmative antidumping duty determination of sales at less than fair value ("LTFV") on certain preserved mushrooms from Indonesia. We published an antidumping duty order on February 19, 1999 (64 FR 8310). On August 29, 2002, we received properly filed requests from Etira and KKB for a new shipper review of the antidumping order on certain preserved mushrooms from Indonesia.

Section 351.214(b) of the Department's regulations requires that the exporter or producer requesting a new shipper review include the following in its request: (i) A statement from such exporter or producer that it did not export subject merchandise to the United States during the period of investigation (POI); (ii) certification that, since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI; and documentation establishing: (a) The date on which the subject merchandise was first entered, or withdrawn from warehouse, for consumption, or, if this date cannot be established, the date on which the exporter or producer first shipped the subject merchandise for export to the United States; (b) the volume of that shipment and subsequent shipments; and (c) the date of the first sale to an unaffiliated customer in the United States. Etira's and KKB's new shipper review requests were accompanied by information and certifications establishing the date on which they first shipped and entered preserved mushrooms for consumption in the United States, the volume of the shipments, and the dates of first sale to unaffiliated customers in the United States. They also certified that they did not export preserved mushrooms to the United States during the POI and were not affiliated with any company that had done so during the POI. Consequently, on September 30, 2002, we initiated a new shipper review of Etira and KKB covering the period February 1, 2002, through July 31, 2002. *See Certain Preserved Mushrooms From Indonesia: Initiation of New Shipper Antidumping Duty Review*, 67 FR 62437 (October 7, 2002).

On October 3, 2002, we issued antidumping questionnaires to Etira and KKB. We issued supplemental questionnaires on December 26, 2002. We received timely responses to our original and supplemental questionnaires on November 27, 2002, and January 28, 2003, respectively.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms;" (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States [2] (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Fair Value Comparisons

To determine whether sales to the United States of certain preserved mushrooms by Etira and KKB were made at less than NV, we compared export price to the NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the export prices of individual U.S. transactions to the weighted-average NV of the foreign like

[2] Prior to January 1, 2002, the HTS codes were as follows: 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000.

product where were sales made in the ordinary course of trade.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Etira and KKB, covered by the description in the "Scope of the Order" section, above, and sold by the respondents in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the first U.S. sale until two months after the last sale in the POR. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: Preservation method, container type, mushroom style, weight, grade, container solution and label type. *See* "Normal Value" section below for further discussion.

Export Price

For both respondents, we used the export price calculation methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by the producer/exporter in Indonesia to the first unaffiliated purchaser in the United States prior to importation and constructed export price ("CEP") treatment was not otherwise indicated.

We calculated export price based on the packed FOB seaport prices charged to the first unaffiliated customer in the United States. We made deductions, where appropriate, for foreign inland freight and brokerage and handling, in accordance with section 772(c)(2)(A) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act.

Etira's and KKB's aggregate volumes of home market sales of the foreign like product were greater than five percent of their respective aggregate volumes of U.S. sales of the subject merchandise. Therefore, we determined that the home market provides a viable basis for calculating NV for both companies, in accordance with section 773(a)(1)(B)(ii)(II) of the Act.

Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the export price or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also, Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Cut-to-Length Plate from South Africa*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chair of distribution"), including selling functions, class of customer ("customer category"), and the level of selling expenses incurred for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for export price and comparison market sales (*i.e.*, NV based on either home market or third country prices [3]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing export price or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Cut-to-Length Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We obtained information from Etira and KKB regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Company-specific LOT findings are summarized below.

All of Etira's sales in the home market were to distributors, comprising a single LOT. Etira provided no services such as inventory maintenance, technical advice, warranty services, or advertising for home market customers.

In the U.S. market, Etira made only export price sales to trading companies. As in the home market, Etira did not provide any services, such as inventory maintenance, technical advice, or advertising to its U.S. customers, but did incur expenses to transport the merchandise to the port of exportation. Accordingly, there is only one LOT for U.S. sales.

KKB's home market sales were exclusively to trading companies, constituting a single LOT. KKB provided no services such as inventory maintenance, technical advice, warranty services, or advertising for home market customers.

In the U.S. market, KKB made only export price sales to trading companies. Although KKB incurred freight costs in delivering the product to the port, it did not provide any other services, such as inventory maintenance, technical advice, or advertising in selling to its U.S. customers. Accordingly, there is only one LOT for U.S. sales.

For both companies, we compared the export price LOT to the home market LOT and concluded that the selling functions performed for home market customers were essentially the same as those performed for U.S. customers. Accordingly, we considered the export price and home market LOTs to be the same. Consequently, we compared export price sales to sales at the same LOT in the home market of both companies.

Price-to-Price Comparisons

For Etira and KKB, we based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and at the same LOT as the export price, as defined by section 773(a)(1)(B)(i) of the Act.

Home market prices were based on ex-factory prices. We reduced NV for packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i), and increased NV to account for U.S. packing expenses in accordance with section 773(a)(6)(A). We also made adjustments for differences in circumstances of sale (COS) in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, by deducting home market direct selling expenses (*i.e.*, imputed credit) and adding U.S. direct selling expenses (*i.e.*, imputed and bank charges, where applicable).

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the weighted-average dumping margins for the period February 1, 2002, though July 31, 2002, are as follows:

Manufacture/exporter	Margin (percent)
PT Eka Timur Raya	0.00
PT Karya Kompos Bagas	0.00

We will disclose calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the date of publication of this notice, or the first work day thereafter.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. *See* 19 CFR 351.309(c) and (d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this new shipper review, including the results of its analysis of issues raised in any written briefs, not later than 90 days after the date of publication of this notice.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we do not have the actual entered values for all sales made by Etira. Accordingly, we intend to calculate customer-specific assessment rates by aggregating any dumping margins calculated for all of Etira's U.S. sales examined and dividing the respective amount by the total quantity of the sales examined. To determine whether the duty assessment rates are de minimis (*i.e.*, less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific ad valorem ratios based on export prices. With respect to KKB, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating any dumping margins calculated for the examined sales and dividing this amount by the total entered value of the sales examined.

The Department will issue appropriate appraisement instructions directly to the Customes Service upon completion of this review. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, less than 0.50 percent). *See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from Etira or KKB of certain preserved mushrooms from Indonesia entered or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review. Furthermore, the following cash deposit requirements will be effective upon publication of the final results of the new shipper review for all shipments of subject merchandise from Etira or KKB entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) for subject merchandise manufactured and exported by Etira or KKB, no cash deposit will be required if the cash deposit rates calculated in the final results are zero or *de minimis;* and (2) for subject merchandise exported by Etira or KKB but not manufacture by them, the cash deposit rate will be 11.26 percent, the "All Others" rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) ot file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act and 19 CFR 351.214.

Dated: March 27, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–8234 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–DS–M

[3] Where NV is based on constructed value, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses and profit for constructed value, where possible.

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and

be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–014. *Applicant:* Department of Health and Human Services, NIH/NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Instrument:* Electron Microscope, Model Tecnai G² 12 BioTWIN, BioTWIN Upgrade, and Accessories. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to examine the ultrastructure of biological tissues from control animals (usually rats and mice) and those genetically altered or chemically treated to induce possible aberrations similar to those seen in various human diseases exemplified by cancer, liver malfunction and growth, maturation and neuronal anomalies. Objectives of the experimentation will be to understand the cellular and subcellular processes involved in the progression of the disease state, make recommendations for future studies, and suggest possible treatments or preventive therapies. *Application accepted by Commissioner of Customs:* March 11, 2003.

Docket Number: 03–015. *Applicant:* North Carolina State University, Campus Box 7212, Raleigh, NC 27695–7212. *Instrument:* Electron Beam Melting Machine, Model EBM S12. *Manufacturer:* Arcam AB, Sweden. *Intended Use:* The instrument is intended to be used to fabricate three-dimensional metallic-components having arbitrarily complex geometries. Several new materials will be developed with the aim of achieving strength-to-weight ratios that were not previously possible. Research investigating the fabrication of novel geometric shapes includes:

(1) Design and testing of conformal cooling in production tools with the aim of reducing cycle time and improving geometric accuracy.

(2) Design and testing of non-random cellular structures for weight reduction of metal components for aerospace and military applications using aluminum and titanium.

(3) Design and fabrication of custom biomedical implants using titanium and cobalt-chromium.

(4) Design, development and testing of novel fuel cell material compositions.

In addition, the instrument will be used for educational purposes in courses such as:

(1) IE 216, Manufacturing Engineering Practicum.

(2) IE 316, Manufacturing Engineering I—Processes.

(3) IE 514, Product Engineering.

(4) IE 589U, Biomodeling and Fabrication.

Application accepted by Commissioner of Customs: March 10, 2003.

Docket Number: 03–016. *Applicant:* University of Wisconsin-Eau Claire, 105 Garfield Avenue, Eau Claire, WI 54701. *Instrument:* Automatic Fusion Machine, Model AutoFluxer 4. *Manufacturer:* Breitlander Eichproben und Labormaterial GmbH, Germany. *Intended Use:* The instrument is intended to be used to fuse sample whole rock powder for geochemical analysis. The instrument produces fused glass beads which present a homogeneous smooth surface to the X-Ray Florescence Spectrometer for analysis of major elements (Si, Al, Fe, Mn, Mg, Ca, K, P). In addition, the instrument will be used in the following university courses:

(1) Geology 312—Mineralogy and Petrology I.

(2) Geology 313—Mineralogy and Petrology II.

(3) Geology 320—Sedimentation and Stratigraphy.

(4) Geology 330—Geochemistry.

Application accepted by Commissioner of Customs: March 10, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–8238 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Northwestern University, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–005. *Applicant:* Northwestern University, Chicago, IL 60637. *Instrument:* MSM System Series 300 Yeast Manipulator and Micro Zapper. *Manufacturer:* Singer Instrument Company Limited, United Kingdom. *Intended Use:* See notice at 68 FR 8210, February 20, 2003.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides a complete computer-controlled workstation for micromanipulation in yeast genetics by performing tetrad dissection, pedigree analysis, cell and zygote isolation, cell progression and other automated functions. The National Institutes of Health advises in its memorandum of February 26, 2003, that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–8240 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Colorado, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–002. *Applicant:* University of Colorado, JILA, Boulder, CO 80309–0440. *Instrument:* DFB Fiber Laser with Amplifier, Model Y10. *Manufacturer:* Koheras A/S, Denmark. *Intended Use:* See notice at 68 FR 6415, February 7, 2003.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides 1.0 W of laser light at the vacuum wavelength of 1126.275 nm with a linewidth of less than 20 kHz to probe the super narrow transition in a single trapped and laser cooled mercury ion for development of stable optical frequency standards. A domestic manufacturer of similar equipment advised March 25, 2003, that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–8237 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Kentucky; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–004.

Applicant: University of Kentucky, Lexington, KY 40506.

Instrument: IR Image Furnace, Model SCII-MDH–11020.

Manufacturer: NEC Machinery Corporation, Japan.

Intended Use: See notice at 68 FR 8210, February 20, 2003.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a dual mirror image furnace with a homogeneous temperature gradient around the horizontal plane with a simultaneous steeper temperature gradient along the vertical portion for growth of various large single crystals. The National Aeronautics and Space Administration advised May 8, 2002 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use (comparable case).

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–8239 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–507–501]

Certain In-shell Pistachios from the Islamic Republic of Iran: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain in-shell pistachios from the Islamic Republic of Iran (Iran) for the period January 1, 2001, through December 31, 2001. If the final results remain the same as the preliminary results of this administrative review, we will instruct the U.S. Customs Service (Customs) to assess countervailing duties as detailed in the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results. (*See* the "Public Comment" section of this notice.)

EFFECTIVE DATE: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Darla Brown, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2849.

SUPPLEMENTARY INFORMATION

Background

On March 11, 1986, the Department published in the **Federal Register** the countervailing duty order on certain in-shell pistachios from Iran. *See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: In-shell Pistachios from Iran,* 51 FR 8344 (March 11, 1986) (*In-shell Pistachios*). On March 1, 2001, the Department published a notice of "Opportunity to Request an Administrative Review" (67 FR 9438). On March 22, 2002, we received a timely request for an administrative review from Cyrus Marketing, the exclusive representative of the Rafsanjan Pistachio Producers Cooperative (RPPC), the respondent company in this proceeding. On April 24, 2002, we initiated an administrative review covering the period of review (POR) January 1, 2001, through December 31, 2001 (67 FR 20089).

On June 11, 2002, we issued our initial questionnaire to the Government of Iran (GOI) and RPPC. On September 17, 2002, we issued a supplemental questionnaire to RPPC.

On October 23, 2002, we extended the period for the completion of the *Preliminary Results* pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act). *See Certain In-shell Pistachios from the Islamic Republic of Iran: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review,* 67 FR 65091 (October 23, 2002).

On February 20, 2003, we issued a supplemental questionnaire to the GOI. On March 5, 2003, we issued a second supplemental questionnaire to RPPC. On March 19, 2003, we received from the GOI a partial response to the Department's February 20, 2002, supplemental questionnaire.

On March 20, 2003, we sent a letter to the GOI, extending for the second time the time limit for the submission of its full response to the supplemental questionnaire issued by the Department on February 20, 2003. The due date of the supplemental questionnaire was extended until March 25, 2003. However, we stated in the letter that, given the proximity of this extended due date to the date of our preliminary results (*i.e.*, March 31, 2003), we could not guarantee that we would be able to analyze the information contained in the supplemental response in time to incorporate that information in our preliminary results.

On March 21, 2003, we sent a letter to RPPC, extending for the second time the time limit for the submission of its response to the second supplemental questionnaire issued by the Department on March 5, 2003. The due date of the supplemental questionnaire was extended until March 25, 2003. However, we stated in the letter that, given the proximity of this extended due date to the date of our preliminary results (*i.e.*, March 31, 2003), we could not guarantee that we would be able to analyze the information contained in

the supplemental response in time to incorporate that information in our preliminary results.

On March 25, 2003, we did not receive the GOI's supplemental questionnaire response. *See* March 25, 2003 Memorandum to the File from the team. Therefore, as discussed below in the "Use of Facts Available" section of this notice, we have resorted to the facts otherwise available employing an adverse inference. (*See* section 776 of the Act.)

Also on March 25, 2003, we did not receive the second supplemental questionnaire response from RPPC. *See* March 25, 2003 Memorandum to the File from the team. Therefore, as discussed below in the "Use of Facts Available" section of this notice, we have resorted to the facts otherwise available, employing an adverse inference. (*See* section 776 of the Act.)

In accordance with 19 CFR 351.213 (2002), this administrative review covers only those producers or exporters for which a review was specifically requested. Accordingly, this administrative review covers RPPC and nine programs.

Scope of Review

The product covered by this administrative review is in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and edible meat, as currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under item number 0802.50.20.00. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Use of Facts Available

During the course of this proceeding, we have repeatedly sought information pertaining to all companies that are cross-owned and/or affiliated with RPPC, the producer of subject merchandise, and RPPC's shareholders. *See* pages III–3 through III–4 of the Department's June 11, 2002, questionnaire, page 1 of the Department's September 17, 2002, supplemental questionnaire, and page 1 of the Department's March 5, 2003, second supplemental questionnaire. In addition, we have repeatedly requested information concerning the total sales and sales of subject merchandise made by RPPC during the POR. *See* pages III–3 through III–4 of the Department's June 11, 2002, questionnaire, page 1 of the Department's September 17, 2002 supplemental questionnaire, and page 1 of the Department's March 5, 2003, second supplemental questionnaire. Moreover, we have repeatedly asked for specific information concerning RPPC's and its members' usage of the following programs: Provision of Fertilizer and Machinery, Provision of Water and Irrigation Equipment, Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Exported Goods, Program to Improve the Quality of Exports of Dried Fruit, Tax Exemptions, Technical Assistance from the GOI, and Provision of Credit. *See* pages III–9 through III–12 of the Department's June 11, 2002, questionnaire, pages 3 through 6 of the Department's September 17, 2002, supplemental questionnaire, and pages 3 through 4 of the Department's March 5, 2003, second supplemental questionnaire.

In response to these repeated inquiries relating to affiliation, sales data, and the seven aforementioned programs, RPPC repeatedly failed to answer specific questions, provided incomplete answers, and did not provide useable information regarding these seven programs.

In addition, we have sought, without success, information from the GOI regarding details about RPPC's and its growers' usage of the programs under review. *See* the Department's June 11, 2002, initial questionnaire. Moreover, we specifically asked the GOI to provide copies of relevant legislation proving that certain programs subject to this administrative review have been terminated. *See* the Department's February 20, 2003, supplemental questionnaire. The GOI failed to provide the requested legislation and only answered one of the Department's supplemental questions (*see* the GOI's March 19, 2003, submission).

Section 776(a) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. As described above, RPPC and the GOI have failed to provide information regarding these programs in the manner explicitly and repeatedly requested by the Department; therefore, we must resort to the facts otherwise available.

Furthermore, section 776(b) of the Act provides that in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability. The Department finds that by not providing necessary information specifically requested by the Department, despite numerous opportunities, the GOI and RPPC have failed to cooperate to the best of their ability. Therefore, in selecting from among the facts available, the Department determines that an adverse inference is warranted.

When employing an adverse inference in an administrative review, the statute indicates that the Department may rely upon information derived from: (1) The petition, a final determination in a countervailing duty or an antidumping investigation, any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (2) any other information placed on the record. *See* 19 CFR 351.308(c). Thus, in applying adverse facts available, we have used information on the record of this administrative review as well as information from the final determinations of *In-shell Pistachios* and *Certain In-shell Pistachios and Certain Roasted In-shell Pistachios from the Islamic Republic of Iran: Final Results of New Shipper Countervailing Duty Reviews*, 68 FR 4997 (January 31, 2003) (*Pistachios New Shipper Reviews*).

If the Department relies on secondary information (*e.g.*, data from a petition) as facts available, section 776(c) of the Act provides that the Department shall, "to the extent practicable," corroborate such information using independent sources reasonably at its disposal.[1] The SAA further provides that to corroborate secondary information means that the Department will satisfy itself that the secondary information to be used has probative value. *See* also, 19 CFR 351.308.

Thus, in those instances in which it determines to apply adverse facts available, the Department, in order to satisfy itself that such information has probative value, will examine, to the extent practicable, the reliability and relevance of the information used. However, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. The only source for such information normally is administrative determinations. In the instant case, no evidence has been presented or obtained which contradicts the reliability of the evidence relied upon in previous segments of this proceeding.

[1] The Statement of Administrative Action accompanying the URAA clarifies that information from the petition is "secondary information." *See* Statement of Administrative Action, accompanying H.R. 5110 (H. Doc. No. 103–316) (1994) (SAA) at 870.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render benefit data not relevant. *See Cotton Shop Towels from Pakistan: Final Results of Countervailing Duty Administrative Review*, 66 FR 42514 (August 13, 2001). Where circumstances indicate that the information is not appropriate as adverse facts available, the Department will not use it. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996). In the instant case, no evidence has been presented or obtained which contradicts the relevance of the benefit data relied upon in previous segments of this proceeding. Thus, in the instant case, the Department finds that the information used has been corroborated to the extent practicable.

Analysis of Programs

I. Programs Preliminarily Determined To Confer Subsidies

A. Export Certificate Voucher Program

The GOI and RPPC explain that prior to calendar year 2000, there were three exchange rates in effect: (1) The oil-notional rate, available exclusively to the GOI for its own budgetary requirements; (2) the non-oil export rate, also referred to as the "export rate," available to importers and exporters for their foreign exchange transactions; and (3) the "free-market" rate, which was itself tied to the Tehran Stock Exchange (TSE). According to information from the GOI, during the months leading up to the POR, the export rate and the "free-market" rate, although similar to each other, were significantly different from the oil-notional rate.

Under this system, the GOI required exporters to deposit a certain percentage of their anticipated export revenue with the Central Bank of Iran (CBI). Deposit rates varied across industries. In the case of the pistachio industry, the deposit requirement was 100 percent of the export sale. Also, the GOI required exporters to obtain, for a nominal fee, an export certificate. In addition, the GOI required exporters to return the foreign exchange earned on the sale to the CBI.

Provided that the exporter conducted the transaction through an Iranian bank, the CBI issued, upon return of the foreign exchange earnings, an export certificate voucher to the exporter. The export certificate voucher, in turn, gave the exporter three options: (1) Use the dollars earned on the export sale, within three months of receipt, to purchase dollar-denominated imports; (2) use the voucher to convert the amount of foreign exchange listed on the export certificate into rials at the export rate; or (3) sell the voucher, within three months of receipt, on the open market at slightly higher margins (*i.e.*, the margin between the export rate and "free market" rate) to buyers in Iran that had a need to acquire U.S. dollars.

According to the GOI, this exchange rate system was revised pursuant to Iran's adoption of its third five-year development plan in March of 2000. Under the new system, the GOI abolished the export rate, thus leaving only two rates, the oil-notional rate and the "free market" rate. However, according to the GOI, participants in the export certificate voucher program were eligible to utilize a third rate that more closely tracked but, nonetheless, was still below the "free market" rate.

Under this revised exchange rate system, exporters must return their foreign currency to the CBI within eight months of the sale. As an added incentive, the CBI offers an early deposit reward to holders of export certificate vouchers equal to one percent of the sale for every month the exporter returns the foreign currency prior to the termination of the eight month deadline. This reward is capped at six percent of the sale. The exporter is then free to sell the "awarded" foreign exchange at the "free market" rate.

According to the GOI, the exchange rate system adopted under the third five-year development plan was, itself, abolished by the CBI in March of 2002. Under the new 2002 system, the GOI claims that it has completely unified its exchange rate system.

According to RPPC, it utilized the export certificate voucher program during the POR, selling the vouchers on the open market at slightly higher margins (*i.e.*, the margin between the export rate and "free market" rate) (*see* page 11 and Exhibit 7 of RPPC's August 19, 2002, questionnaire response). Moreover, RPPC used the early deposit reward program during the POR (*see* page 4 of RPPC's October 15, 2002, questionnaire response). To calculate the benefit from the export certificate voucher program, we subtracted the exchange rate listed on each export certificate RPPC sold during the POR from the free market exchange rate that was in effect as of the date of the export certificate. We then multiplied this difference, in rials per dollar, by the dollar value listed on each export certificate. Next, we summed each of the products to arrive at the total benefit in rials. We then divided the total benefit by RPPC's export sales during the POR. We note that, as BIA, we used RPPC's total sales of export certificates in rials for RPPC's export sales, as RPPC did not provide us with its export sales. On this basis, we preliminarily determine, for liquidation purposes, a net countervailable subsidy of 1.14 percent *ad valorem* for RPPC.

We calculated a benefit for RPPC's early deposit rewards by dividing the total amount of RPPC's early deposit rewards in rials by the same export sales figure discussed above. On this basis, we preliminarily determine, for liquidation purposes, a net countervailable subsidy of 2.72 percent *ad valorem* for RPPC.

However, we found in the *Pistachios New Shipper Reviews* that the export certificate voucher program in its entirety was terminated as of March 21, 2002 (*see* Comment 13 of the Issues and Decision Memorandum). Therefore, for cash deposit purposes, the rate is 0.00 percent *ad valorem* for RPPC. For further discussion, *see* "Preliminary Results of Review" section below.

B. Provision of Fertilizer and Machinery

Petitioners have alleged that under this program the GOI provides fertilizer and machinery to the pistachio industry at preferential prices. Although RPPC itself stated that it did not receive any inputs from the GOI during the POR, RPPC did not provide any information regarding the usage of this program by the 70,000 members of RPPC. Therefore, as adverse facts available, we preliminarily determine a net countervailable subsidy of 7.11 percent *ad valorem*, from *In-shell Pistachios*, for RPPC.

C. Provision of Water and Irrigation Equipment

Petitioners have alleged that the GOI undertakes the construction of soil dams, flood barriers, canals, and other irrigation projects on behalf of pistachio farmers. Although RPPC itself stated that it did not receive any funding from the GOI during the POR with respect to this program, RPPC did not provide any information regarding the usage of this program by the 70,000 members of RPPC. Therefore, as adverse facts available, we preliminarily determine a net countervailable subsidy of 7.11 percent *ad valorem*, from *In-shell Pistachios*, for RPPC.

D. Program to Improve Quality of Exports of Dried Fruit

Petitioners have alleged that pursuant to the Budget Act of 2001–2002, the GOI provides financial assistance to exporters of dried fruit and pistachios to

assist them in the production of export quality goods. RPPC did not respond to questions regarding its or its members' usage of this program. Therefore, as adverse facts available, we preliminarily determine a net countervailable subsidy of 7.11 percent *ad valorem*, from *In-shell Pistachios*, for RPPC.

E. Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Exported Goods

Petitioners have alleged that pursuant to the Third Five Year Development Plan (TFYDP) enacted by the GOI, duties and levies paid in connection with the importation of intermediate materials used in the production of the exported commodities and goods are refunded to exporters. RPPC did not answer any of our questions with respect to this program. Therefore, as adverse facts available, we preliminarily determine a net countervailable subsidy of 7.11 percent *ad valorem*, from *In-shell Pistachios*, for RPPC.

F. Tax Exemptions

Petitioners have alleged that the GOI provides tax exemptions to agricultural producers who are exporters. During the verification of the new shipper reviews, the Department learned that section 141 of the Direct Taxation Act exempts exporters of agricultural goods from income taxes (*see* December 4, 2002 memorandum to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI from Alicia Kinsey, Case Analyst, Verification of the Questionnaire Responses Submitted by the GOI (GOI Verification Report) at page 6, which has been placed on the record of this administrative review). RPPC stated that it was not subject to income taxation during the POR. However, RPPC has failed to provide relevant tax information for any of the 70,000 growers that are members of its cooperative. Therefore, as adverse facts available, we preliminarily determine a net countervailable subsidy of 7.11 percent *ad valorem*, from *In-shell Pistachios*, for RPPC.

G. Technical Assistance from the GOI

Petitioners have alleged that pistachio growers receive technical support as part of the GOI's program to facilitate agricultural development. Although RPPC itself stated that it did not receive any technical assistance from the GOI during the POR with respect to this program, RPPC did not provide any information regarding the usage of this program by the 70,000 members of RPPC. Therefore, as adverse facts available, we preliminarily determine a net countervailable subsidy of 7.11 percent *ad valorem*, from *In-shell Pistachios*, for RPPC.

H. Provision of Credit

Petitioners have alleged that the GOI provides loans at below market interest rates to members of the agricultural sector. RPPC states that it did not receive any loans from the GOI. In the course of this administrative review, we requested that RPPC submit financial statements for the POR. RPPC submitted financial statements covering the year ending March 19, 2001. These financial statements include a line item for "loans" and do not contain any explanatory notes. RPPC claims that these financial statements are complete and are the most current.

We find that RPPC failed to provide us with complete financial statements for the POR, as the financial statements that RPPC submitted cover only one quarter of the POR. We note that RPPC is one of the largest pistachio producers in the world and, thus, should be able to provide the Department with at least some form of financial information (*e.g.*, unaudited financial statements) for the remaining nine and one-half months of the POR, as we are well into 2003. Therefore, we preliminarily determine that there is not enough evidence on the record to confirm that RPPC's outstanding loans were not provided by the GOI, as RPPC did not submit any ledgers or journals as supporting documentation, nor did it submit any financial statements or records for the majority of the POR.

Therefore, as adverse facts available, we preliminarily determine a net countervailable subsidy of 7.11 percent *ad valorem*, from *In-shell Pistachios*, for RPPC.

II. Program Determined to Be Not Countervailable

A. Price Supports and/or Guaranteed Purchase of All Production

Based on information obtained in the course of the recently-completed new shipper reviews of in-shell pistachios and in-shell roasted pistachios from Iran, we determined that this program is not countervailable (*see Pistachios New Shipper Reviews* and the accompanying Issues and Decision Memorandum at Comment 5). No information was submitted in the instant review to warrant the Department to reconsider its determination. Therefore, we continue to find this program not countervailable.

Preliminary Results of Review

In accordance with section 751(a)(1)(A) of the Act, we determined an individual rate for each producer/exporter of the subject merchandise participating in this administrative review. We preliminarily determine the total estimated net countervailable subsidy rate to be:

Producer/Exporter
Rafsanjan Pistachio Producers Cooperative (RPPC).
Net Subsidy Rate
53.63 percent *ad valorem*.

Under section 351.526 of the Department's regulations, the Department can adjust cash deposit rates to account for program-wide changes. During the recently-completed new shipper reviews of in-shell pistachios and in-shell roasted pistachios from Iran, the Department verified that the export certificate voucher program has been terminated subsequent to the POR (*see Pistachios New Shipper Reviews* and the accompanying Issues and Decision Memorandum at Comment 13). Therefore, we are adjusting the cash deposit rate to take into account this program-wide change. Thus, in determining the cash deposit rate listed below, we have deducted the subsidies found for this program from the overall subsidy rate calculated for RPPC.

Producer/Exporter
Rafsanjan Pistachio Producers Cooperative (RPPC).
Cash Deposit Rate
49.77 percent *ad valorem*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct Customs to assess countervailing duties as indicated above. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties as indicated above as a percentage of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 351.212(c)(ii)(2)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 2001, through December 31, 2001, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Upon completion of this administrative review, the Department will determine, and Customs shall assess, countervailing duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(2), we have calculated a company-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct Customs to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the company's entries during the review period.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary results. Any such hearing is tentatively scheduled to be held 37 days from the date of publication of these preliminary results, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. Parties may file case briefs pursuant to 19 CFR 351.309(c)(ii). Six copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than 30 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Parties may also submit rebuttal briefs pursuant to 19 CFR 351.309(d). Six copies of the business proprietary version and six copies of the non-proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days from the date of filing of the case briefs. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Further written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: March 31, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–8235 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration.

[I.D. 033103A]

Proposed Information Collection; Comment Request; Southwest Center Freshwater Salmon and Steelhead Angler Survey.

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 3, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Cindy Thomson, National Marine Fisheries Service, Southwest Fisheries Science Center, 110 Shaffer Road, Santa Cruz, CA 95060, phone 831–420–3911, Cindy.Thomson@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Data on fishery participation, expenditures and demographics will be collected from freshwater salmon and steelhead anglers in California. The data will used to evaluate the economic effects of potential changes in fishery regulations, hatchery practices, and other actions that may be considered to protect chinook, coho, and steelhead stocks listed as threatened or endangered under the Endangered Species Act.

II. Method of Collection

Telephone interviewers will contact a random sample of steelhead report card holders to ask if they had gone steelhead fishing in California in the previous season. Those who were active in the previous season will be asked additional

questions regarding their fishing experiences, expenditures, and demographics. Because names and telephone numbers of salmon anglers are not available, a different method of identifying potential salmon respondents will be used. Specifically, names/telephone numbers of individuals who live in central and northern California and identify fishing as one of their interests will be purchased from a company that specializes in special purpose random digit samples. Telephone interviewers will contact individuals in the special purpose sample to ask if they had gone freshwater salmon fishing in California in the previous season. Those who were active in the previous season will be asked additional questions regarding their fishing experiences, expenditures, and demographics.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 7,565.

Estimated Time Per Response: Two minutes each for the 7,565 respondents to the screening questions; 15 minutes each for the 710 anglers identified in the screening questions as having fished for salmon or steelhead in the previous season.

Estimated Total Annual Burden Hours: 430 hours.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 28, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–8271 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033103B]

Proposed Information Collection; Comment Request; Northwest Region Logbook Family of Forms.

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 3, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Becky Renko, 206–526–6140, or at Becky.Renko@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection contains certain reporting and recordkeeping requirements for vessels in the Pacific Coast Groundfish Fishery in the Exclusive Economic Zone for the northwest. These requirements affect fish processing vessels over 125 feet in length and catcher vessels that deliver their catch to motherships. NOAA also proposes to merge the requirement currently cleared under OMB Control Number 0648–0419 into this clearance. This requirement is for a report of intent to off-load non-whiting groundfish in excess of trip limits for purposes of donating that groundfish to a hunger-relief agency.

The information collected is needed to monitor catch, effort, and production for fishery management purposes.

II. Method of Collection

Forms are used for most requirements. These may be submitted by computer or by facsimile machine. Off-load notifications are made be telephone.

III. Data

OMB Number: 0648–0271.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 70.

Estimated Time Per Response: 13 minutes per day for a Daily Fishing and Cumulative Production Log (DFCPL) from a catcher vessel; 26 minutes per day for a DFCPL from a catcher-processor; 13 minutes per day for a Daily Report of Fish Received and Cumulative Production Log from a mothership; 4.3 minutes per day for a Weekly/Daily Production Report; 20 minutes for a Product Transfer/Offloading Logbook; 1.25 minutes for a Start or Stop Notification Report; and 5 minutes for an off-load notification.

Estimated Total Annual Burden Hours: 1,382.

Estimated Total Annual Cost to Public: $8,890.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 28, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–8272 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 013003C]

Endangered Species; Files No.1266–01 and 1388

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for modification.

SUMMARY: Notice is hereby given that the following applicants have applied in due form for a permit modification to take sea turtles for purposes of scientific research/enhancement:

REMSA, Inc., 12829 Jefferson Ave., Suite 108, Newport News, VA 23608 (John Glass, Principal Investigator) (File No. 1266–01); and

Dr. David Nelson, U.S. Army Research and Development Center, Waterways Experiment Station, 4104 Freetown Rd., Vicksburg, MS 39183 (File No. 1388).

DATES: Written or telefaxed comments must be received on or before May 5, 2003.

ADDRESSES: The modification requests and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on these requests should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular modification requests would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject modifications are requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1266–01 authorizes REMSA, Inc. to capture via trawl, handle, flipper and PIT tag, and release sea turtles while removing them from the path of hopper dredges. Annually, 350 loggerhead, 150 green, 150 Kemp's ridley, 10 hawksbill and 10 leatherback sea turtles may be taken in this manner. Research is conducted in the Atlantic Ocean and the Gulf of Mexico. In this modification, the permit holder requests authorization to biopsy sample sea turtles. A maximum of 350 loggerhead, 150 green, 150 Kemp's ridley, 10 hawksbill, and 10 leatherback sea turtles could be biopsy sampled annually until the permit's expiration on April 30, 2006. Biopsy sampling will follow the protocol for tissue collection established by the NMFS Southeast Fisheries Science Center and will only be performed by trained personnel.

Permit No. 1388 authorizes Dr. David Nelson to conduct sea turtle research in the northwestern Atlantic Ocean and the Gulf of Mexico. The first project involves relocation trawling in association with hopper dredge activity. A total of 200 loggerhead, 100 green, 30 Kemp's ridley, 2 hawksbill, and 2 leatherback sea turtles are authorized to be captured, handled, measured, flipper and PIT tagged, and released. The second project uses a subset of the turtles caught via relocation trawling to investigate large-scale movements and diving behavior. Twenty loggerhead, 5 Kemp's ridley, and 5 green turtles will be satellite tagged in addition to the above activities before being released. The third project is an abundance and habitat survey of green sea turtles along the shoreline of Cape Canaveral. A total of 75 green sea turtles may be captured, handled, flipper and PIT tagged, and fitted with a radio/sonic transmitter or a time-depth recorder/radio transmitter, before being released. The permit holder requests authorization to biopsy sample 30 of the 200 loggerhead turtles that may be captured annually during relocation trawls in association with dredging activity. Biopsy sampling will follow the protocol for tissue collection established by the NMFS Southeast Fisheries Science Center and will only be performed by trained personnel.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: March 28, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–8273 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020325069–2311–02]

Request for Proposals for FY 2003—NOAA Educational Partnership Program With Minority Serving Institutions: Environmental Entrepreneurship Program

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA). Commerce.

ACTION: Notice of an extension of deadline.

SUMMARY: This notice is an addendum to, and hereby extends only the deadline in, **Federal Register** Notice, Vol. 68., No. 2, January 3, 2003 for full proposals under the "NOAA Institutions: Environmental Entrepreneurship Program" to no later than 5 p.m. (Eastern Daylight Savings Time) on April 24, 2003.

Mark Brown,

Chief Financial/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 03–8270 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–KD–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant

Review Panel. The meeting will have several purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, education and extension, science and technology programs, and other matters as described below:

DATES: The announced meeting is scheduled during two days: Saturday, April 26 and Wednesday, April 30, 2003.

ADDRESSES: (To be held in conjunction with the national "Sea Grant Week" Meetings April 26–30, 2003), Moody Gardens Hotel, Seven Hope Boulevard, Galveston, Texas 77554, Telephone: (409) 741–8484.

FOR FURTHER INFORMATION CONTACT: Dr. Francis M. Schuler, Designated Federal Official, National Sea Grant College program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11837, Silver Spring, Maryland 20910, (301) 713–2445.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice. The agenda for the meeting is as follows:

Saturday, April 26, 2003

10 a.m. to 5 p.m.

Executive Committee Report.
NOAA/Sea Grant Update.
Sea Grant Association President's Report.
Program Evaluation.
New Panel Business.
Adjourn.

Wednesday, April 30, 2003

8:30 a.m. to 10 a.m.

National Sea Grant Office and Review Panel Wrap-up.

This meeting will be open to the public.

Dated: March 27, 2003.

Mark Brown,

Chief Financial Administrative Officer, Office of Oceanic and Atmospheric Research.

[FR Doc. 03–8269 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2003–C–015]

Public Advisory Committees

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice and request for nominations.

SUMMARY: On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (the "Act"), Pub. L. 106–113, Appendix I, Title IV, Subtitle G, 113 Stat. 1501A–572, which, among other things, established two Public Advisory Committees to review the policies, goals, performance, budget and user fees of the United States Patent and Trademark Office (USPTO) with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee, and to advise the Director on these matters. The USPTO is requesting nominations for three (3) members to each Public Advisory Committee for terms that begin July 13, 2003.

DATES: Nominations must be received or electronically transmitted on or before May 12, 2003.

ADDRESSES: Persons wishing to submit nominations should send the nominee's resume to Chief of Staff, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Washington, DC 20231; by electronic mail to: *PPACnominations@uspto.gov* for the Patent Public Advisory Committee or *TPACnominations@uspto.gov* for the Trademark Patent Public Advisory Committee; by facsimile transmission marked to the Chief of Staff's attention at (703) 305–8664; or by mail marked to the Chief of Staff's attention and addressed to the Office of the Under Secretary and Director of the USPTO, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Chief of Staff by facsimile transmission marked to his attention at (703) 305–8664, or by mail marked to his attention and addressed to the Office of the Under Secretary and Director of the USPTO, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Under the Act, the then-Acting Secretary of Commerce appointed members to the Patent and Trademark Public Advisory Committees on July 12, 2000. The Advisory Committees' duties include:

- Review and advise the Under Secretary and Director of the USPTO on matters relating to policies, goals, performance, budget, and user fees of the USPTO relating to patents and trademarks, respectively; and
- Within 60 days after the end of each fiscal year: (1) Prepare an annual report on matters listed above; (2) transmit a report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and (3) publish the report in the Official Gazette of the USPTO.

Members of the Patent and Trademark Public Advisory Committees are appointed by and serve at the pleasure of the Secretary of Commerce for three (3)-year terms.

Advisory Committees

The Public Advisory Committees are each composed of nine (9) voting members who are appointed by the Secretary of Commerce (the "Secretary") and who have substantial backgrounds and achievement in finance, management, labor relations, science, technology, and office automation." 35 U.S.C. 5(b)(3). The Public Advisory Committee members must be United States citizens and represent the interests of diverse users of the USPTO both large and small entity applicants in proportion to the number of such applications filed. In the case of the Patent Public Advisory Committee, at least twenty-five (25) percent of the members must represent "small business concerns, independent inventors, and nonprofit organizations," and at least one member must represent the independent inventor community. 35 U.S.C. 35(b)(2). Each of the Public Advisory Committees also includes three (3) non-voting members representing each labor organization recognized by the USPTO.

Procedures and Guidelines of the Patent and Trademark Public Advisory Committees

Each newly appointed member of the Patent and Trademark Public Advisory Committees will serve for a term of three years. Members appointed in the current fiscal year shall serve from July 13, 2003, through July 12, 2006. As required by the Act, members of the Patent and Trademark Public Advisory Committees will receive compensation for each day while the member is attending meetings or engaged in the business of that Advisory Committee. The rate of compensation is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code. While away from home or regular place of business, each member will be allowed travel expenses, including per diem in lieu of subsistence, as authorized by Section 5703 of Title 5, United States Code. The USPTO will provide the necessary administrative support, including technical assistance for the Committees.

Applicability of Certain Ethics Laws

Members of each Public Advisory Committee shall be special Government employees within the meaning of Section 202 of Title 18, United States Code. The following additional information assumes that members are not engaged in Public Advisory Committee business more than sixty days during each calendar year:

- Each member will be required to file a confidential financial disclosure form within thirty (30) days of appointment. 5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party, 18 U.S.C. 205(c), in a particular matter that came before the member's committee and that involved at least one specific party. *See* also 18 U.S.C. 207 for post-membership bars. A member also must not act on a matter in which the member (or any of certain closely related entities) has a financial interest. 18 U.S.C. 208.
- Representation of foreign interests may also raise issues. 35 U.S.C. 5(a)(1) and 18 U.S.C. 219.

Meetings of the Patent and Trademark Public Advisory Committees

Meetings of each Advisory Committee will take place at the call of the Chair to consider an agenda set by the Chair. Meetings may be conducted in person, electronically through the Internet, or by other appropriate means. The meetings of each Advisory Committee will be open to the public except each Advisory Committee may, by majority vote, meet in executive session when considering personnel or other confidential matters. Nominees must also have the ability to participate in Committee business through the Internet.

Procedures for Submitting Nominations

Submit resumes for nomination for the Patent Public Advisory Committee and the Trademark Public Advisory Committee to: Chief of Staff, United States Patent and Trademark Office, Washington, DC 20231.

Dated: March 31, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–8216 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–16–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts, that was scheduled for 17 April 2003 has been rescheduled for 22 April 2003 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *www.cfa.gov*. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call (202) 504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated In Washington, DC, on the 31st of March, 2003.

Charles H. Atherton,

Secretary.

[FR Doc. 03–8194 Filed 4–3–03; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, Defense Reutilization and Marketing Service, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Logistics Agency, Defense Reutilization and Marketing Service (DRMS) announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 3, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Commander, Defense Reutilization and Marketing Service, Attn: Ms. Nancy Olson-Butler, 74 Washington Ave., N., Battle Creek, MI 49017–3092.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call DRMS, Office of Corporate Planning, at (616) 961–7433.

Title; Associated Form; and OMB Number: Defense Reutilization and Marketing Service Customer Comment Card.

Needs and Uses: The information collection requirement is necessary to obtain customer rating and comments on the service of a Defense Reutilization and Marketing store.

Affected Public: Individuals; Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 100.

Number of Respondents: 400.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are customers who obtain, or visit a store to obtain, surplus or excess property. The customer comment card is a means for customers to rate and comment on DRMS Facilities, Receipt/Store/Issue services, Reutilization/Transfer/Donation services, Demil services, Environmental services, Usable property sales, and scrap sales. The completed card is an agent for service improvement and determining whether there is a systemic problem.

Dated: March 27, 2003.
Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 03–8208 Filed 4–3–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 5, 2003.

Title, Form Number, and OMB Number: United States Air Force Academy Candidate Writing Sample; USAFA Form O–878; OMB Number 0701–0147.

Type of Request: Extension.

Number of Respondents: 4,100.

Responses Per Respondent: 1.

Annual Responses: 4,100.

Average Burden Per Response: 60 minutes (average).

Annual Burden Hours: 4,100 hours.

Needs and Uses: This form is used to collect a writing sample on candidates applying to the United States Air Force Academy. The writing sample is used to evaluate background and aptitude for commissioned service.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 28, 2003.
Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 03–8209 Filed 4–3–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Reinstatement of Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed reinstatement of public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency' estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 3, 2003.

ADDRESSES: Written comments and recommendations on the reinstatement of information collection should be sent to TRICARE Management Activity, Medical benefits and Reimbursement System, 16401 East Centretech Parkway, ATTN: Marty Maxey, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed reinstatement of information collection, please write to the above address or call TRICARE Management Activity, Medical benefits and Reimbursement Systems at (303) 676–3627.

Title Associated with Form, and OMB Number: Request for Reimbursement of Capital and Direct Medical Education Costs.

Needs and Uses: The TRICARE/CHAMPUS contractors will use the information collected to reimburse hospitals for TRICARE/CHAMPUS' share of capital and direct medical education costs.

Affected Public: Individuals; business or other for profit.

Annual Burden Hours: 5,532.

Number of Respondents: 5,400.

Responses Per Respondent: 1.

Average Burden Per Response: 5 minutes for physicians.

Frequency: On occasioin.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Department of Defense Authorization Act, 1984, Pub. L. 98–94 amended Title 10, section 1079(j)(2)(A) of the U.S.C. and provided the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) with the statutory authority to reimburse institutional providers based on diagnosis-related groups (DRGs). The CHAMPUS DRG-based payments apply only to hospital's operating costs and do not include any amounts for hospitals' capital or direct medical education costs. Any hospital subject to the DRG-based payment system, except for children's hospitals (whose capital and direct medical education costs are incorporated in the children's hospital differential), who want to be reimbursed for allowed capital and direct medical education costs must submit a request for payment to the TRICARE/CHAMPUS contractor. The request allows TRICARE to collect the information necessary to properly reimburse hospitals for its share of these costs. The information can be submitted in any form, most likely in the form of a letter. The contractor will calculate the TRICARE/CHAMPUS share of capital and direct medical education costs and make a lump-sum payment to the hospital.

The TRICARE/CHAMPUS DRG-based payment system is modeled on the Medicare Prospective Payment System (PPS) and was implemented on October 1, 1987. Initially, under 42 CFR 412.46 of the Medicare regulations, physicians was required to sign attestation and acknowledgment statements. These requirements were implemented to ensure a means of holding hospitals and physicians accountable for the information they submit on the Medicare claim forms. Being modeled on the Medicare PPS, CHAMPUS also adopted these requirements. The physicians attestation and physician acknowledgment required by Medicare under 42 CFR 412.46 are also required for CHAMPUS as a condition for payment and may be satisfied by the same statements as required for Medicare, with substitution or addition of "CHAMPUS" when the word "Medicare" is used. Physicians sign a physician acknowledgement, maintained by the institution, at the time the physician is granted admitting privileges. This acknowledgement indicates the physician understands the importance of a correct medical record,

and misrepresentation may be subject to penalties.

Dated: March 19, 2003.
Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 03–8210 Filed 4–3–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received 60 days from publication of this notice in the **Federal Register.**

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Program Integration) (Legal Policy), ATTN: Lt Col Patrick W. Lindenmann, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 697–3387; facsimile (703) 693–6708.

Title, Associated Form, and OMB Control Number: Application for Review of Discharge or Separation from the Armed Forces of the United States; DD Form 293; OMB Control Number 0704–004.

Needs and Uses: Former members of the Armed Forces who received an administrative discharge have the right to appeal the characterization or reason for separation. Title 10 of the U.S.C., section 1553, and DoD Directive 1332.28 established a Board of Review consisting of five members to review appeals of former members of the Armed Forces. The DD Form 293, Application for Review of Discharge or Separation from the Armed Forces of the United States, provides the respondent a vehicle to present to the Board their reasons/justifications for a discharge upgrade as well as providing the Services the basic data needed to process the appeal.

Affected Public: Individuals or households.

Annual Burden Hours: 6,000.

Number of Respondents: 8,000.

Responses per Respondent: 1.

Average Burden Per Response: 45 minutes.

Frequency: One-time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Under Title 10 U.S.C., section 1553, the Secretary of a Military Department established a Board of Review, consisting of five members, to review appeals of former members of the Armed Forces. This information collection allows an applicant to request a change in the type of military discharge issued. Applicants are former members of the Armed Forces who have been discharged or dismissed (other than a discharge or dismissal by sentence of a general court-martial), or if the former member is deceased or incompetent, the surviving spouse, next-of-kin, or legal representative who is acting on behalf of the former member. The DD Form 293, Application for Review of Discharge or Separation from the Armed Forces of the United States, provides the former member an avenue to present to their respective Service Discharge Review Board their reasons/justifications for a discharge upgrade as well as providing the Services the basic data needed to process the appeal.

Dated: March 20, 2003.
Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 03–8211 Filed 4–3–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Group of Advisors Meeting

AGENCY: National Defense University.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board Group of Advisors. The purpose of the meeting is to review and make recommendations to the Board concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATES: April 28–29, 2003.

ADDRESSES: The Marriott University Park, 880 East Second Street, Tucson, AZ 85719.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Director for Programs, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu.*

SUPPLEMENTARY INFORMATION: The National Security Education Board Group of Advisors meeting is open to the public.

Dated: March 27, 2003.
Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 03–8212 Filed 4–3–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting date change.

SUMMARY: On Friday, March 21, 2003 (68 FR 13906), the Department of Defense announced closed meetings of the Defense Science Board Task Force on Missile Defense, Phase III—Modeling and Simulation. The meeting originally planned for May 1–2, 2003, has been rescheduled to May 12, 2003, at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, VA.

Dated: March 31, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–8213 Filed 4–3–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Institute of Pathology Scientific Advisory Board

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following open meeting:

Name of Committee: Scientific Advisory Board (SAB).

Dates of Meeting: May 22–23, 2003.

Place: The Armed Forces Institute of Pathology (AFIP), Building 54, 14th St. & Alaska Ave., NW., Washington, DC 20306–6000.

Time: 1 p.m.–5 p.m. (May 22, 2003); 8:30 a.m.–12 p.m. (May 23, 2003).

FOR FURTHER INFORMATION CONTACT: Mr. Ridgely Rabold, Office of the Principal Deputy Director (PDD), AFIP, Building 54, Washington, DC 20306–6000, phone (202) 782–2553.

SUPPLEMENTARY INFORMATION:

General function of the board: The SAB provides scientific and professional advice and guidance on programs, policies and procedures of the AFIP.

Agenda: The Board will hear status reports from the AFIP Director, Principal Deputy Director, and each of the pathology sub-specialty departments, which the Board members will visit during the meeting.

Open board discussions: Reports will be presented on all visited departments. The reports will consist of findings, recommended areas of further research, improvement, and suggested solutions. New trends and/or technologies will be discussed and goals established. The meeting is open to the public.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–8231 Filed 4–3–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Command and General Staff College Advisory Committee

AGENCY: Department of the Army, DOD

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of Committee: U.S. Army Command and General Staff College (CGSC) Advisory Committee.

Date of Meeting: April 28–30, 2003.

Place of Meeting: Bell Hall, Room 113, Fort Leavenworth, KS 66027–1352.

Time of Meeting: 5 p.m.–10 p.m. (April 28, 2003); 7:30 a.m.–9 p.m. (April 29, 2003); and 7:30 a.m.–2 p.m. (April 30, 2003).

Proposed Agenda: Review of CGSC educational program (April 28–30,2003); Executive Session (10:30 a.m.–11:30 a.m., April 30, 2003); and Report to Commandant (11:30 a.m.–12:30 p.m., April 30, 2003).

FOR FURTHER INFORMATION CONTACT: Dr. Philip J. Brookes, Committee's Executive Secretary, USACGSC Advisory Committee, 1 Reynolds Ave., Bell Hall, Room 119, Fort Leavenworth, KS 66027–1352; or phone (913) 684–2741.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the Advisory Committee to examine the entire range of college operations and, where appropriate, to provide advice and recommendations to the College Commandant and faculty.

The meeting will be open to the public to the extent that space limitations of the meeting location permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary at the above address or phone number.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–8230 Filed 4–3–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Topical Ointment for Vesicating Chemical Warfare Agents

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention described in U.S. Provisional Patent Application No. 60/439,919 entitled "Topical Ointment for Vesicating Chemical Warfare Agents," filed January 14, 2003. The United States Government, as presented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates to a biologically active composition for treating sulfur mustard gas skin injuries and a method for treating the same.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–8232 Filed 4–3–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending 15 systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The amendments are required to alert the users of these systems of records of the additional requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as implemented by DoD 6025.18-R, DoD Health Information Privacy Regulation. Language being added under the "Routine Use" category is as follows:

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

DATES: This proposed action will be effective without further notice on May 5, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/ Privacy Act Office, U.S. Army Records Management and Declassification Agency, Attn: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137/DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 0405.11

SYSTEM NAME:

Individual Health Records (August 9, 1996, 61 FR 41577).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry "**NOTE:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

AAFES 0405.11

SYSTEM NAME:

Individual Health Records.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598; HQ Army and Air Force Exchange Service-Europe, Pinder Barracks, Schwabacherster 20 8502 Zirndorf.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Army and Air Force Exchange Service (AAFES).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, organizational location, date of birth, medical data recorded by treating nurse/physician, information provided by individual's personal physician regarding diagnosis, prognosis, and return to duty status, and similar relevant data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army and 8013; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and Non-appropriated Fund Instrumentalities; and Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To provide health care and medical treatment to employees who become ill or are injured during working hours.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked file cabinets.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in the dispensary, available only to assigned medical personnel.

RETENTION AND DISPOSAL:

Records are maintained for 6 years following termination of individual's employment; then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, Attn: Director, Administrative Services, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual must furnish full name, details concerning injury or illness and date and location of such, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, Attn: Director, Administrative Services, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual must furnish full name, details concerning injury or illness and date and location of such, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the employee; his/her physician; witnesses to an injury/accident.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0409.01

SYSTEM NAME:

AAFES Accident/Incident Reports (August 9, 1996, 61 FR 41579).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry "**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

AAFES 0409.01

SYSTEM NAME:

AAFES Accident/Incident Reports.

SYSTEM LOCATION:

Safety and Security Offices of Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

Army and Air Force Exchange Service—Europe Region, Building 4001, In der Witz 14–18, 55252 Mainz-Kastel, Germany; Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in accidents, incidents, or mishaps resulting in theft or reportable damage to Army and Air Force Exchange Service (AAFES) property or facilities; individuals injured or become ill as a result of such accidents, incidents, or mishaps.

CATEGORIES OF RECORDS IN THE SYSTEM:

AAFES Accident Report, AAFES Incident Report, record of injuries and illnesses; physicians' reports; witness statements; investigatory reports; similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 60–21, Personnel Policies; E.O. 12196, Occupational Safety and Health Programs for Federal Employees; and E.O. 9397 (SSN).

PURPOSE(S):

To record accidents, incidents, mishaps, fires, theft, etc., involving Government property; and personal injuries/illnesses in connection therewith, for the purposes of recouping damages, correcting deficiencies, initiating appropriate disciplinary action; filing of insurance and/or workmen's compensation claims therefore; and for managerial and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Labor to support workmen's compensation claims.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By name of individual involved or injured and Social Security Number.

SAFEGUARDS:

Records are accessed only by designated individuals having official need therefore in the performance of their duties, within buildings protected by security guards.

RETENTION AND DISPOSAL:

Paper records are retained for 2 years following which it is destroyed by shredding; information on microfiches is retained for 3 years; computer tapes reflecting historical data are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, Attn: Director, Loss Prevention Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, present address and telephone number; sufficient details concerning the accident, mishap, or attendant injury to permit locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, Attn: Director, Loss Prevention Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, present address and telephone number; sufficient details concerning the accident, mishap, or attendant injury to permit locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; medical facilities; investigating official; State Bureau of Motor Vehicles, State and local law enforcement authorities; witnesses; victims; official Department of Defense records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0027–20a DAJA

SYSTEM NAME:

U.S. Army Claims Service Management Information System (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry "**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0027–20a DAJA

SYSTEM NAME:

U.S. Army Claims Service Management Information System.

SYSTEM LOCATION:

U.S. Army Claims Service, Office of the Judge Advocate General, ATTN: JACS–Z, 4411 Llewellyn Avenue, Fort Meade, MD 20755–5360. Segments exist at subordinate field operating agencies and at Staff Judge Advocate Offices at Army installations throughout the world. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, corporations, associations, countries, states, territories, political subdivisions presenting a claim against the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of claimant, claim file number, type of claim presented, reports of investigation, witness statements, police reports, photographs, diagrams, bills, estimates, expert opinions, medical records and similar reports, copy of correspondence with claimant, potential claimants, third parties, and insurers of claimants or third parties, copies of finance vouchers evidencing payment of claims, and similar relevant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 31 U.S.C. 3711, Collection and Compromise; Army Regulation 27–20, Claims; and E.O. 9397 (SSN).

PURPOSE(S):

To develop and preserve all relevant evidence about incidents, which generate claims against or in favor of the Army. Evidence developed is used as a legal basis to support the settlement of claims. Data are also used as a management tool to supervise claims operations at subordinate commands worldwide.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Internal Revenue Service for tax purposes.

To the Department of Justice for assistance in deciding disposition of claims filed against or in favor of the Government and for considering criminal prosecution, civil court action or regulatory orders.

To the U.S. Claims Court and the Court of Appeals for the Federal Circuit, to support legal actions, considerations or evidence to support proposed legislative or regulatory changes, for budgetary purposes, for quality control or assurance type studies, or to support action against a third party.

To Foreign governments for use in settlements of claims under the North Atlantic Treaty Organization Status of Forces Agreement or similar international agreements.

To the State governments for use in defending or prosecuting claim by the state or its representatives.

To the Department of Labor, for consideration in determining rights under Federal Employees Compensation Act or similar legislation.

To civilian and Government experts for assistance in evaluating the claim.

To the Office of Management and Budget for preparation of private relief bills for presentation to the Congress.

To Government contractors for use in defending or settling claims filed against them, including recovery actions, arising out of the performance of a Government contract.

To Federal and state workmen's compensation agencies for use in adjudicating claims.

To private insurers with a legal interest in the same case.

To potential joint tort-feasors or their representatives for the purpose of prosecuting or defending claims for contribution or indemnity.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By last name, Social Security Number, or claim number.

SAFEGUARDS:

Records are accessible only by authorized personnel who are properly instructed in the permissible use of the information, buildings housing records are locked after normal business hours.

RETENTION AND DISPOSAL:

Destroyed when no longer needed (claims reports); after 5 years (claims journals); after 6 years, 3 months (investigative reports, except those relating to medical malpractice); or 10 years (medical malpractice investigative reports, claims files).

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, 2200 Army Pentagon, Washington, DC 20310–2200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Claims Service, 4411 Llewellyn Avenue, Fort Meade, MD 20755–5360.

Individual should provide full name, current address and telephone number, claim number if known, date and place of incident giving rise to the claim, and any other personal identifying data that would assist in determining location of the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Claims Service, 4411 Llewellyn Avenue, Fort Meade, MD 20755–5360.

Individual should provide full name, current address and telephone number, claim number if known, date and place of incident giving rise to the claim, and any other personal identifying data that would assist in determining location of the records.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records contesting contents, and

appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; investigative reports originating in the Department of the Army, Federal Bureau of Investigation, and/or foreign, state, or local law enforcement agencies; medical treatment facilities; Armed Forces Institute of Pathology; relevant records and reports in the Department of Defense.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–5a DASG

SYSTEM NAME

DoD Health Surveillance/Assessment Registries (August 5, 2002, 67 FR 50655).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry "**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0040–5a DASG

SYSTEM NAME:

DoD Health Surveillance/Assessment Registries.

SYSTEM LOCATION:

U.S. Army Center for Health Promotion and Prevention Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403; and Army Medical Surveillance Activity, Building T–20, Room 213, 6900 Georgia Avenue, NW., Washington, DC 20307–5001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual that participates in a DoD health survey.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system of records originates from health surveys/assessments (*e.g.*, Pentagon Post Disaster Health Assessment) conducted by or for the Department of Defense. Records being maintained include individual's name, Social Security Number, date of birth, sex, branch of service, home address, age, medical treatment facility, condition of medical and physical health and capabilities, responses to survey questions, register number assigned, and similar records, information and reports, relevant to the various registries, (*e.g.*, cancer, Human Immunodeficiency Virus (HIV), serum repository).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 3013, Secretary of the Army, 10 U.S.C. 8013, Secretary of the Air Force, 10 U.S.C. 5013, Secretary of the Navy; DoD Instruction 1100.13, Surveys of DoD Personnel; DoD Directive 6490.2, Joint Medical Surveillance; DoD Directive 6490.3, Implementation and Application of Joint Medical Surveillance for Deployments; and E.O. 9397 (SSN).

PURPOSE(S):

To record, store and document injury, illness and exposure to chemical/biochemical elements, and collect data for statistical purposes. To enhance efficient management practices and effective analysis and comparisons of statistical data utilized in the public health assessment data registry.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Information is retrieved by individual's name, Social Security Number, and registry number.

SAFEGUARDS:

Records are maintained within secured buildings in areas accessible only to persons having official need, and who therefore are properly trained and screened. Automated segments are protected by controlled system passwords governing access to data.

RETENTION AND DISPOSAL:

Records are destroyed when no longer needed for reference and for conducting business.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Center for Health Promotion and Prevention Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Center for Health Promotion and Prevention Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.

For verification purposes, individual should provide the full name, Social Security Number, details which will assist in locating record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Center for Health Promotion and Prevention Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.

For verification purposes, individual should provide the full name, Social Security Number, details which will assist in locating record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and mortality reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–31b DASG

SYSTEM NAME:

Research and Experimental Case Files (August 7, 1997, 62 FR 42530).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry "**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.".

* * * * *

A0040–31b DASG

SYSTEM NAME:

Research and Experimental Case Files.

SYSTEM LOCATION:

U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010–5425.

SYSTEM LOCATION:

Individual research/test/medical documents (paper records) are contained in individual's health record which, for reserve and retired military members, is at the U.S. Army Reserve Components Personnel and Administration Center, St. Louis, MO; for other separated military members, is at the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132–5200; for military members on active duty, is at the servicing medical facility/center; for civilians (both Federal employees and prisoners) is in a special file at the National Personnel Records Center.

As paper records are converted to microfiche, the original (silver halide) and 1 copy of the microfiche will be located at the Washington National Records Center; 1 copy will be located at Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, Attn: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013; 1 copy will reside with the Army contractor—the National Academy of Sciences; and 1 copy retained at the U.S. Army Medical Research Institute of Chemical Defense.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteers (military members, Federal civilian employees, state prisoners) who participated in Army tests of potential chemical agents and/or antidotes from the early 1950's until the program ended in 1975.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual pre-test physical examination records and test records of performance and biomedical parameters measured during and after test exposure.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 40–31, Armed Forces Institute of Pathology and Armed Forces Histopathology Centers; and E.O. 9397 (SSN).

PURPOSE(S):

To follow up on individuals who voluntarily participated in Army chemical/biological agent research projects for the purpose of assessing risks/hazards to them, and for retrospective medical/scientific evaluation and future scientific and legal significance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Veterans Affairs in connection with benefits determinations.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in individual's medical file folders and electronic storage media.

RETRIEVABILITY:

Paper records in individual's health record are retrieved by surname and/or service number/Social Security Number. Microfiche are retrieved by individual's surname.

SAFEGUARDS:

Records are maintained in secured areas accessible only to authorized individuals having official need therefore in the performance of assigned duties.

RETENTION AND DISPOSAL:

Paper medical records in an individual's health record are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, Attn: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010–5400.

Individual should provide full name, Social Security Number, current address and telephone number of the requester.

For personal visits, the individual should be able to provide acceptable identification such as valid driver's license, employer or other individually identifying number, building pass, *etc.*

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010–5400.

Individual should provide full name, Social Security Number, current address and telephone number of the requester.

For personal visits, the individual should be able to provide acceptable identification such as valid driver's license, employer or other individually identifying number, building pass, *etc.*

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and

appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual through test/questionnaire forms completed at test location; from medical authorities/sources by evaluation of data collected previous to, during, and following tests while individual was in this research program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–66b DASG

SYSTEM NAME:

Health Care and Medical Treatment Record System (April 13, 2001, 66 FR 19151).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry "**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0040–66b DASG

SYSTEM NAME:

Health Care and Medical Treatment Record System.

SYSTEM LOCATION:

Army Medical Department facilities and activities. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members of the Armed Forces (both active and inactive); family members; civilian employees of the Department of Defense; members of the U.S. Coast Guard, Public Health Service, and National Oceanic and Atmospheric Agency; cadets and midshipmen of the military academies; employees of the American National Red Cross; and other categories of individuals who receive medical treatment at Army Medical Department facilities/activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records (of a permanent nature) used to document health; psychological and mental hygiene consultation and evaluation; medical/dental care and treatment for any health or medical condition provided an eligible individual on an inpatient and/or outpatient status to include but not limited to: health; clinical (inpatient); outpatient; dental; consultation; and procurement and separation x-ray record files; and Human Immunodeficiency Virus (HIV) blood sampling results to identify Acquired Immune Deficiency Syndrome (AIDS); and Psychological Assessment and Selection Case records.

Subsidiary medical records (of a temporary nature) are also maintained to support records relating to treatment/observation of individuals. Such records include but are not limited to: Social work case files, inquiries/complaints about medical treatment or services rendered by the medical treatment facility, and patient treatment x-ray and index files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 1071–1085, Medical and Dental Care; 50 U.S.C. Supplement IV, Appendix 454, as amended, Persons liable for training and service; 42 U.S.C. Chapter 117, Sections 11131–11152, Reporting of Information; 10 U.S.C. 1097a and 1097b TRICARE Prime and TRICARE Program; 10 U.S.C. 1079, Contracts for Medical Care for Spouses and Children; 10 U.S.C. 1079a, CHAMPUS; 10 U.S.C. 1086, Contracts for Health Benefits for Certain Members, Former Members, and Their Dependents; E.O. 9397 (SSN); DoD Instruction 6015.23, Delivery of Healthcare at Military Treatment Facilities (MTFs); DoD Directive 6040.37, Confidentiality of Medical Quality Assurance (QA) Records; DoD 6010.8–R, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Army Regulation 40–66, Medical Record Administration and Health Care Documentation.

PURPOSE(S):

To provide health care and medical treatment of individuals; to establish tuberculosis/tumor/cancer/Human Immunodeficiency Virus (HIV) registries; for research studies; compilation of statistical data and management reports; to implement preventive medicine, dentistry, and communicable disease control programs; to adjudicate claims and determine benefits; to evaluate care rendered; determine professional certification and hospital accreditation; and determine medical and psychological suitability of persons for service or assignment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Veterans Affairs to adjudicate veterans' claims and provide medical care to Army members.

National Research Council, National Academy of Sciences, National Institutes of Health, Armed Forces Institute of Pathology, and similar institutions for authorized health research in the interest of the Federal Government and the public. When not essential for longitudinal studies, patient identification data shall be eliminated from records used for research studies. Facilities/activities releasing such records shall maintain a list of all such research organizations and an accounting disclosure of records released thereto.

To local and state government and agencies for compliance with local laws and regulations governing control of communicable diseases, preventive medicine and safety, child abuse, and other public health and welfare programs.

Third party payers per 10 U.S.C. 1095 as amended by Pub. L. 99–272, and guidance provided to the DoD health services by DoD Instruction 6015.23, for the purpose of collecting reasonable inpatient/outpatient hospital care costs incurred on behalf of retirees or dependents.

To former DoD health care providers, who have been identified as being the subjects of potential reports to the National Practitioner Data Bank as a result of a payment having been made on their behalf by the U.S. Government in response to a malpractice claim or litigation, for purposes of providing the provider an opportunity, consistent with the requirements of DoD Instruction 6025.15 and Army Regulation 40–68, to provide any pertinent information and to comment on expert opinions, relating to the claim for which payment has been made.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD "Blanket Routine Uses" do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; x-ray film preservers; and electronic storage media.

RETRIEVABILITY:

By patient or sponsor's surname or by sponsor's Social Security Number.

SAFEGUARDS:

Records are maintained in buildings that employ security guards and are accessed only by authorized personnel having an official need-to-know. Automated segments are protected by controlled system passwords governing access to data.

RETENTION AND DISPOSAL:

Military health/dental and procurement/separation x-ray records are permanent. Clinical (inpatient), outpatient, dental and consultation record files for military members are destroyed after 50–75 years.

All records (except the Military Health/Dental records) which are active while individual is on active duty, then retired with individual's Military Personnel Records Jacket and the procurement/separation x-ray records which are forwarded to the National Personnel Records Center on an accumulation basis) are retained in an active file while treatment is provided and subsequently held for a period of 1 to 5 years following treatment before being retired to the National Personnel Records Center. Subsidiary medical records, of a temporary nature, are normally not retained long beyond termination of treatment; however, supporting documents determined to have significant documentation value to patient care and treatment are incorporated into the appropriate permanent record file. Until the National Archives and Records Administration approves the disposition of Psychological Assessment and Selection Case records, treat as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Medical Command, Suite 13, 2050 Worth Road, Fort Sam Houston, TX 78234–6010.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the medical facility where treatment was provided. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Red Cross employees may write to the Medical Officer, American National Red Cross, 1730 E Street, NW., Washington, DC 20006. For verification purposes, the individual should provide the full name, Social Security Number of sponsor, and current address and telephone number. Inquiry should include name of the hospital, year of treatment and any details that will assist in locating the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the medical facility where treatment was provided. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Red Cross employees may write to the Medical Officer, American National Red Cross, 1730 E Street, NW., Washington, DC 20006. For verification purposes, the individual should provide the full name, Social Security Number of sponsor, and current address and telephone number. Inquiry should include name of the hospital, year of treatment and any details that will assist in locating the records.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Subject individual, personal interviews and history statements from the individuals; abstracts or copies of pertinent medical records; examination records of intelligence, personality, achievement, and aptitude; reports from attending and previous physicians and other medical personnel regarding results of physical, dental, and mental examinations, treatment, evaluation, consultation, laboratory, x-ray and special studies and research conducted to provide health care and medical treatment; and similar or related documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0070–45 DASG

SYSTEM NAME:

Medical Scientific Research Data Files (December 1, 2000, 65 FR 75249).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry "**NOTE:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0070–45 DASG

SYSTEM NAME:

Medical Scientific Research Data Files.

SYSTEM LOCATION:

Primary locations: U.S. Army Medical Research and Development Command, 504 Scott Street, Fort Detrick, MD 21701–5009. U.S. Army Chemical Research, Development, and Engineering Center, Aberdeen Proving Ground, MD 21010–5423;

Secondary locations: Letterman Army Institute of Research, Presidio of San Francisco, CA 94129–6800;

Walter Reed Army Institute of Research, Washington, DC 20307–5104;

U.S. Army Aeromedical Research Laboratory, Fort Rucker, AL 36362–5000;

U.S. Army Institute of Dental Research, Washington, DC 20307–5300;

U.S. Army Institute of Dental Research, Fort Sam Houston, TX 78234–6200;

U.S. Army Medical Bioengineering Research and Development Laboratory, Fort Detrick, MD 21701–5010;

U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010–5425;

U.S. Army Medical Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702–5011;

U.S. Army Research Institute of Environmental Medicine, Natick, MA 01760–5007; and

U.S. Army Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702–5011.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteers who participate in the Sandfly Fever (Clinical Research Data) studies at the U.S. Army Medical Research Institute of Infectious Diseases; individuals who participate in research sponsored by the U.S. Army Medical Research and Development Command and the U.S. Army Chemical Research, Developments, and Engineering Center; and individuals at Fort Detrick who have been immunized with a biological product or who fall under the Occupational Health and Safety Act or Radiologic Safety Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Participant's name, Social Security Number, age, race, date of birth, occupation, titers, body temperature, pulse, blood pressure, respiration, urinalysis, immunization, schedules, blood serology, amount of dosage, reaction to immunization radiologic agents, exposure level, health screening result, health test schedule, test protocols, challenge materials, inspection, after action reports, medical support plans, summaries of pre and post test physical exams parameter and other related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C., Chapter 55, Medical and Dental Care; Army Regulation 70–25, Use of Volunteers as Subjects of Research; Army Regulation 70–45, Scientific and Technical Information Program; Occupational Safety and Health Administration Act of 1970; and E.O. 9397 (SSN).

PURPOSE(S):

To create a database of immunological or vaccinal data for research purposes.

To answer inquiries and provide data on health issues of individuals who participated in research conducted or sponsored by U.S. Army Medical Research Institute of Infectious Diseases, U.S. Army Medical Research and Development Command, and U.S. Army Chemical Research, Development, and Engineering Center.

To provide individual participants with newly acquired information that may impact their health.

To maintain and manage scheduling of health screening tests immunizations, physicals, safety and immunogenicity and other special procedures for a given vaccine or biosurveillance program, radiologic safety program and occupational health safety program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veteran Affairs to assist in making determinations relative to claims for service connected disabilities; and other such benefits.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice..

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets and automated computer systems that are backed up daily.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Computerized and paper records are maintained in controlled areas. Access is restricted to authorized personnel only.

RETENTION AND DISPOSAL:

Special Immunization System Records are permanent; Research Volunteer Registry records are maintained for 65 years then destroyed; and Clinical Research Data records are maintained until they have no further research value then destroyed.

SYSTEMS MANAGER(S) AND ADDRESS:

Commander, U.S. Army Medical Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702–5011 for special immunization records.

Office of The Surgeon General, Headquarters, Department of Army, 5109 Leesburg Pike, Falls Church, VA 22041–3258 for all other records maintained in this system of records.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the appropriate system manager.

For verification purposes the individual should provide full name, Social Security Number, military status or other information verifiable from the record itself.

For personal visits, the individual should be able to provide acceptable identification such as valid driver's license, employer, or other individually identifying number, and building pass.

Individual should provide his/her full name, address and telephone number, Social Security Number, date of birth, and any other personal data which would assist in identifying records pertaining to him/her.

RECORD SOURCE CATEGORIES:

From quantitative data obtained from investigative staff, research/test results, individuals concerned, interviews, clinical laboratory results/reports, immunization results, records and other relevant tests.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From quantitative data obtained from investigative staff and clinical laboratory reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351 DASG

SYSTEM NAME:

Army School Student Files: Physical Therapy Program (March 23, 1999, 64 FR 13972).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry "**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0351 DASG

SYSTEM NAME:

Army School Student Files: Physical Therapy Program.

SYSTEM LOCATION:

Commandant, Academy of Health Services, Physical Therapy Branch, 3151 Scott Road, Suite 1230, Fort Sam Houston, TX 78234–6138.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Graduates of the U.S. Army Physical Therapy Program since 1928.

CATEGORIES OF RECORDS IN THE SYSTEM:

Academic grades only on graduates from 1973 to present. Academic grades and varying amounts and types of anecdotal information on performance: 1945–1972.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army and Army Regulation 40–1, Composition, Mission, and Functions of the Army Medical Department.

PURPOSE(S):

To provide certification of graduation from an approved physical therapy program to the individual graduate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders:

RETRIEVABILITY:

By last name of graduate.

SAFEGUARDS:

Records are in closed files, accessible only to designated officials having need therefore in the performance of their duties.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, Academy of Health Services, Physical Therapy Branch, 3151 Scott Road, Suite 1230, Fort Sam Houston, TX 78234–6138.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant, Academy of Health Services, Physical Therapy Branch, Attn: MCCS HMT, 3151 Scott Road, Suite 1230, Fort Sam Houston, TX 78234–6138.

For verification purposes, the individual should provide the full name, maiden name if married, year of graduation, current address, institution and complete address to which transcript is to be mailed if other than that of individual concerned.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Staff and faculty of appropriate school and/or training hospital responsible for presentation of instruction.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351a DASG

SYSTEM NAME:

U.S. Army Medical Department School and Academy of Health Sciences Academic Records (August 12, 2002, 67 FR 52456).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry "**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0351a DASG

SYSTEM NAME:

U.S. Army Medical Department School and Academy of Health Sciences Academic Records.

SYSTEM LOCATION:

U.S. Army Medical Department Center and School, Academy of Health Sciences, Department of Academic Support, 2250 Stanley Road, Fort Sam Houston, TX 78234–6100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Resident and correspondence students enrolled in courses at the Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student's name, Social Security Number, grade/rank, academic qualifications, progress reports, academic grades, ratings attained, aptitudes and personal qualities, including corporate fitness results; faculty board records pertaining to class standing/rating/classification/proficiency of students; class academic records maintained by instructors indicating attendance and progress of class members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 351–3, Professional Education and Training Programs of the Army Medical Department; and E.O. 9397 (SSN).

PURPOSE(S):

To determine eligibility for enrollment/attendance, monitor student progress, record accomplishments, and serve as record of courses which may be prerequisite for other formal courses of instruction, licensure, certification, and employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to civilian medical institutions for the purpose of accrediting the individual's training and instruction.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, microfiche, cards, magnetic tape and/or disc, and computer printouts.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Access to all records is restricted to designated individuals whose official duties dictate the need therefore.

RETENTION AND DISPOSAL:

Academic records are maintained 40 years at the Academy of Health Sciences. Except for the master file, automated data are erased after the fourth updating cycle.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234–6000.

For verification purposes, individual should provide the full name, Social Security Number, date attended/enrolled, current address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234–6000.

For verification purposes, individual should provide the full name, Social Security Number, date attended/enrolled, current address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and Academy of Health Sciences' staff and faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–1b TAPC

SYSTEM NAME:

Line of Duty Investigations (March 13, 2001, 66 FR 14559).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry "**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0600–8–1b TAPC

SYSTEM NAME:

Line of Duty Investigations (March 13, 2001, 66 FR 14559).

SYSTEM LOCATION:

Personnel Plans and Actions Branch, Personnel Service Center at Army Installations; Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–0601; U.S. Total Army Personnel Command, Alexandria, VA 22332–0400; U.S. Army Reserve Personnel Center, 9700 Page Avenue, St. Louis, MO 63132–5200; National Personnel Records Center (Military), 9700 Page Avenue, St. Louis, MO 63132–5200; National Guard Bureau, 5109 Leesburg Pike, Falls Church, VA 22041–3258; and Regional Support Centers for U.S. Army Reserve. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, Reserve and National Guard members who have been injured, diseased or deceased and who are in a duty status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statement of Medical Examination and Duty Status; Report of Investigation-Line of Duty and Misconduct Status; approval/disapproval authority memoranda, and other relevant supporting documents such as military police reports, accident reports, witness statements, and appointment instruments, and action on appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 972, Members: Effect of time lost; 10 U.S.C. 1204, Members, on Active Duty for 30 days or less or on inactive duty training: retirement; 10 U.S.C. 1207, Disability from intentional misconduct of willful neglect: separation; 10 U.S.C. 3013, Secretary of the Army; 37 U.S.C. 802, Forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs; Army Regulation 600–8–1, Army Casualty Operation/Assistance/Insurance; and E.O. 9397 (SSN).

PURPOSE(S):

To review facts and circumstances of service member's death, injury or disease and render decisions having the effect of approving/denying certain military benefits, pay and allowances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be provided to the Department of Veterans Affairs for the purpose of determining the service member's entitlement to benefits.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfiche and electronic storage media.

RETRIEVABILITY:

By Social Security Number and by service member's surname.

SAFEGUARDS:

Paper records in file folders are maintained in file cabinets accessible only to authorized personnel in the performance of their duties. Electronic storage media accessible to authorized personnel with password capability.

RETENTION AND DISPOSAL:

Documents related to determining line of duty status and incident investigation concerning individual Army members are maintained for 5 years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–0601 (For enlisted personnel on active duty); Commander, U.S. Total Army Personnel Command, Alexandria, VA 22332–0400 (For officers on active duty); Commander, U.S. Army Reserve Personnel Center, 9700 Page Avenue, St. Louis, MO 63132–5200 (For Army reserve personnel); National Personnel Records Center (Military), 9700 Page Avenue, St. Louis, MO 63132–5200 (For separated enlisted and officer personnel); National Guard Bureau, 5109 Leesburg Pike, Falls Church, VA 22041–3258 (For full-time National Guard Duty under 32 U.S.C., those in federalized status, or those attending active Army service school).

Individuals should provide the full name, Social Security Number, present address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–0601 (For enlisted personnel on active duty); Commander, U.S. Total Army Personnel Command, Alexandria, VA 22332–0400 (For officers on active duty); Commander, U.S. Army Reserve Personnel Center, 9700 Page Avenue, St. Louis, MO 63132–5200 (For Army reserve personnel); National Personnel Records Center (Military), 9700 Page Avenue, St. Louis, MO 63132–5200 (For separated enlisted and officer personnel); National Guard Bureau, 5109 Leesburg Pike, Falls Church, VA 22041–3258 (For full-time National Guard Duty under 32 U.S.C., those in federalized status, or those attending active Army service school).

Individuals should provide the full name, Social Security Number, present address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

Appeals of determinations by authority of the Secretary of the Army are governed by AR 600–8–1, Army Casualty and Memorial Affairs and Line of Duty Investigations; collateral review of decided cases is limited to questions of completeness of the records of such determinations.

RECORD SOURCE CATEGORIES:

From the individual, medical records, service member's commander, official Army records and reports, witness statements, civilian and military law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–85 DAPE

SYSTEM NAME:

Army Substance Abuse Program (July 31, 2002, 67 FR 49678).

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry "**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0600–85 DAPE

SYSTEM NAME:

Alcohol and Drug Abuse Rehabilitation Files.

SYSTEM LOCATION:

Primary location: Army Substance Abuse Program (ASAP) rehabilitation/counseling facilities (*e.g.*, Community Counseling Center/ASAP Counseling Facilities) at Army installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices. Secondary location: Army Center for Substance Abuse Program, ATTN: PEDA, Suite 320, 4501 Ford Avenue, Alexandria, VA 22302–1460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eligible military members, civilians employees, family members of military members and retirees who are screened and/or enrolled in the Army Substance Abuse Program (ASAP), federal civilians in testing designated positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Primary location: Copies of patient intake records, progress reports, psychosocial histories, counselor observations and impressions of patient's behavior and rehabilitation progress, copies of medical consultation and laboratory procedures performed, results of biochemical urinalysis for alcohol/drug abuse, Patient Intake/Screening record-PIR (DA Form 4465–R); Patient Progress Report-PPR (DA Form 4466–R); Resource and Performance Report (DA Form 3711–R); and Specimen Custody Document-Drug Testing (DD Form 2624), and similar or related documents.

Secondary location: Copies of Patient Intake/Screening record-PIR (DA Form 4465–R); Patient Progress Report-PPR (DA Form 4466–R); Resource and Performance Report (DA Form 3711–R); and Specimen Custody Document-Drug Testing (DD Form 2624), and demographic composites thereof.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 290dd–2; Federal Drug Free Workplace Act of 1988; Army Regulation 600–85, Army Substance Abuse Program; and E.O. 9397 (SSN).

PURPOSE(S):

To identify alcohol and drug abusers within the Army; to treat, counsel, and rehabilitate individuals who participate in the Army Substance Abuse Program; to judge the magnitude of drug and alcohol abuse in the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices do not apply to this system.

The Patient Administration Division at the medical treatment facility with jurisdiction is responsible for the release of medical information to malpractice insurers in the event of malpractice litigation or prospect thereof.

Information is disclosed only to the following persons/agencies:

To health care components of the Department of Veterans Affairs furnishing health care to veterans.

To medical personnel to the extent necessary to meet a bona fide medical emergency.

To qualified personnel conducting scientific research, audits, or program evaluations, provided that a patient may not be identified in such reports, or his or her identity further disclosed by such personnel.

In response to a court order based on the showing of good cause in which the need for disclosure and the public's interest is shown to exceed the potential harm that would be incurred by the patient, the physician-patient relationship, and the Army's treatment program. Except as authorized by a court order, no record may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

Note: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 to the extent that disclosure is more limited. However, access to the record by the individual to whom the record pertains is governed by the Privacy Act.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked metal containers; computer database; computer magnetic discs/tapes.

RETRIEVABILITY:

By patient's surname; Social Security Number or other individually identifying characteristics.

SAFEGUARDS:

Records are maintained in storage areas in locked file cabinets where access is restricted to authorized persons having an official need-to-know.

RETENTION AND DISPOSAL:

Primary location: Records are destroyed 5 years after termination of the patient's treatment, unless the Army Medical Department Activity/Facility commander authorizes retention for an additional 6 months.

Secondary location: Manual records are retained up to 18 months or until information taken there from and entered into computer records is transferred to the "history" file, whichever is sooner. Disposal of manual records is by burning or shredding. Computer records are retained permanently for historical and/or research purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army (DAPE–HR–PR), 300 Army Pentagon, Washington, DC 20320–3000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the Army Center for Substance Abuse Programs, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the Army Center for Substance Abuse Programs, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

Denial to amend records in this system can be made only by the Deputy Chief of Staff for Personnel in coordination with The Surgeon General.

RECORD SOURCE CATEGORIES:

From the individual by interviews and history statement; abstracts or copies of pertinent medical records; abstracts from personnel records; results of tests; physicians' notes, observations of client's behavior; related notes, papers, and forms from counselor, clinical director, and/or commander.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0601–141 DASG

SYSTEM NAME:

Applications for Appointment to Army Medical Department (December 4, 2001, 66 FR 63048).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry "**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0601–141 DASG

SYSTEM NAME:

Applications for Appointment to Army Medical Department.

SYSTEM LOCATION:

Primary location: Commander, U.S. Army Recruiting Command, Health Services Directorate, Fort Knox, KY 40121–2726. Secondary locations: Army Medical Department Health Care Recruiting Teams/Stations. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Potential healthcare professional applicants, to include civilian, active duty and reserve duty personnel, applying for appointment in the U.S. Army and the U.S. Army Reserve with or without concurrent call to active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Health Care Recruiter interview, resume, Curriculum Vitae, autobiography, letters of recommendation, selection/non-selection letters, Special Orders, correspondence to, from, and about applicant; Selection Board/Committee results, Statement of Interests, Objectives and Motivation, Letter of Appointment, service agreement, Application for Appointment, oath of office, professional degrees, license certifications, quality assurance documents, prior service records, physical examination, National Practitioner, and birth certificate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 601–100, Appointment of Commissioned and Warrant Officers in the Regular Army; and E.O. 9397 (SSN).

PURPOSE(S):

To evaluate an applicant's acceptability and potential for appointment in the U.S. Army Reserve of the Army Medical Department; to evaluate qualifications for assignment to various career areas; to determine educational and experience background for award of constructive service credit; to determine dates of service and seniority to document service agreement with the U.S. Army; to provide, statistical information for effective management of the Army Medical Department Recruiting Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By applicant's name and/or Social Security Number.

SAFEGUARDS:

Records are restricted to designated officials having a need-to-know in the performance of official duties.

RETENTION AND DISPOSAL:

Records of selected applicants are held for 1 year before being destroyed by shredding; those for applicants not selected are held 1 year and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Recruiting Command, Health Services Directorate, Fort Knox, KY 40121–2726.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Recruiting Command, Health Services Directorate, Fort Knox, KY 40121–2726.

For verification purposes, the individual should provide full names, Social Security Number, sufficient details to permit locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Recruiting Command, Health Services Directorate, Fort Knox, KY 40121–2726.

For verification purposes, the individual should provide full name, Social Security Number, sufficient details to permit locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; academic transcripts; faculty evaluations; employer evaluations; military supervisor evaluations; American Testing Program; Educational Testing Service; selection board/committee records; prior military service records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0601–210a USAREC

SYSTEM NAME:

Enlisted Eligibility Files (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry "**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0601–210a USAREC

SYSTEM NAME:

Enlisted Eligibility Files.

SYSTEM LOCATION:

U.S. Army Recruiting Command, Fort Knox, KY 40121–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for the Regular Army who have requested a waiver of moral eligibility for a juvenile or adult felony; determination of medical/Military Occupational Specialty qualifications, determination of Stripes for Skills qualification; exceptions to policy; determination of enlistment eligibility, and prior service personnel requesting a mental retest.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's request, evaluation documents, decisions, replies concerning approval/disapproval.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 504, Persons not qualified; and Army Regulation 601–210, Regular Army and Army Reserve Enlistment Program.

PURPOSE(S):

To make determinations on the moral, medical, and administrative waivers of applicants for the Regular Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessed only by designated individuals having official need therefore in the performance of assigned duties.

RETENTION AND DISPOSAL:

Destroyed after 2 years, by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Recruiting Command, Fort Knox, KY 40121–5000.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them is contained in this system of records should write to the Commander, U.S. Army Recruiting Command, Attn: USARCRM–M, Fort Knox, KY 40121–5000, furnishing full name, Military Status, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records about themselves should write to the Commander, U.S. Army Recruiting Command, Attn: USARCRM–M, Fort Knox, KY 40121–5000, furnishing full name, Military Status, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, employers, probation officials, law enforcement officials, school officials, personal references, transcripts, medical records, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0608–18 DASG

SYSTEM NAME

Army Family Advocacy Program Files (August 21, 2001, 66 FR 43847).

CHANGES:

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add to end of entry "**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0608–18 DASG

SYSTEM NAME:

Army Family Advocacy Program Files.

SYSTEM LOCATION:

Primary location: Director, U.S. Army Patient Administration Systems and Biostatistics Activity, Attn: MCHS–ISF, 1216 Stanley Road, Fort Sam Houston, TX 778234–5053.

Secondary location: Any Army medical treatment facility which supports the Family Advocacy Program (FAP). Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eligible military members and their family, and DoD civilians who participate in the Family Advocacy Program (FAP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Family Advocacy Case Review Committee (CRC) records of established cases of child/spouse abuse or neglect to include those occurring in Army sanctioned or operated activities. Files may contain extracts of law enforcement investigative reports, correspondence, Case Review Committee reports, treatment plans and documentation of treatment, follow-up and evaluative reports, supportive data relevant to individual family advocacy Case Review Committee files, summary statistical data reports and similar relevant files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 *et seq.*, Victims' Rights, as implemented by Department of Defense Instruction 1030.2, Victim and Witness Assistance Program; Army Regulation 608–18, The Family Advocacy Program; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain records that identify, monitor, track and provide treatment to alleged offenders, eligible victims and their families of substantiated spouse/child abuse, and neglect. To manage prevention programs to reduce the incidence of abuse throughout the Army military communities.

To perform research studies and compile statistical data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to departments and agencies of the Executive Branch of government in performance of their official duties relating to coordination of family advocacy programs, medical care and research concerning child abuse and neglect, and spouse abuse.

The Attorney General of the United States or his authorized representatives in connection with litigation or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

To federal, state, or local governmental agencies when it is deemed appropriate to use civilian resources in counseling and treating individuals or families involved in child abuse or neglect or spouse abuse; or when appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement; or when a state, county, or municipal child protective service agency inquires about a prior record of substantiated abuse for the purpose of investigating a suspected case of abuse.

To the National Academy of Sciences, private organizations and individuals for health research in the interest of the Federal government and the public and authorized surveying bodies for professional certification and accreditation such as Joint Commission on the Accreditation of Health Care Organizations.

To victims and witnesses of a crime for purposes of providing information consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By the sponsor's Social Security Number of an abused victim.

SAFEGUARDS:

Records are maintained in various kinds of filing equipment in specified monitored or controlled areas. Public access is not permitted. Records are accessible only to authorized personnel who are properly screened and trained, and have an official need-to-know. Computer terminals are located in supervised areas with access controlled by password or other user code system.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration has approved the retention and disposal of these records, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Community Family Support, 4700 King Street, Alexandria, VA 22302–4420.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the local Patient Administration Division Office; to the commander of the medical center or hospital where treatment was received; or to the Director, Patient Administration Systems and Biostatistics Activity, 126 Stanley Road, Fort Sam Houston, TX 78234–5053. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, the individual should provide the full name, Social Security Number of the patient's sponsor, and current address, date and location of treatment, and any details that will assist in locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this record system should address written inquiries to the local Patient Administration Division Office; to the commander of the medical center or

hospital where treatment was received; or to the Director, Patient Administration Systems and Biostatistics Activity, 126 Stanley Road, Fort Sam Houston, TX 78234–5053. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, the individual should provide the full name, Social Security Number of the patient's sponsor, and current address, date and location of treatment, and any details that will assist in locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations by the concerned individual are published in the Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, educational institutions, medical institutions, police and investigating officers, state and local government agencies, witnesses, and records and reports prepared on behalf of the Army by boards, committees, panels, auditors, etc. Information may also derive from interviews, personal history statements, and observations of behavior by professional persons (*i.e.*, social workers, physicians, including psychiatrists and pediatricians, psychologists, nurses, and lawyers).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0621–1 DASG

SYSTEM NAME:

Long-Term Civilian Training Student Control Files (July 27, 1993, 58 FR 40115).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry "**NOTE:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

A0621–1 DASG

SYSTEM NAME:

Long-Term Civilian Training Student Control Files.

SYSTEM LOCATION:

U.S. Army Health Professional Support Agency, 5109 Leesburg Pike, Falls Church, VA 22041–3258.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army Medical Department personnel currently participating in long-term civilian training on a fully funded basis.

CATEGORIES OF RECORDS IN THE SYSTEM:

Enrollment applications, notification of acceptance/rejection, contract between the Army and the civilian college or university, similar relevant documents and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 4301, Members of Army: Detail as students, observers, and investigator at educational institutions, industrial plants and hospitals; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 621–1, Training of Military Personnel at Civilian Institutions; and E.O. 9397 (SSN).

PURPOSE(S):

To negotiate contract between the Army and a civilian academic institution for the purpose of sending Army Medical Department officer and enlisted personnel for long-term civilian training under fully funded programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Individual's name and/or Social Security Number.

SAFEGUARDS:

All records are maintained in secured offices in secured buildings. Electronic key required to access elevators to floor housing records during non-duty hours.

RETENTION AND DISPOSAL:

Records destroyed 2 years after an individual has completed training or has been canceled or withdrawn from the program.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Surgeon General, Headquarters, Department of the Army, 5109 Leesburg Pike, Falls Church, VA 22041–3258.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Health Professional Support Agency, Attn: SGPS–EDT, 5109 Leesburg Pike, Falls Church, VA 22044–3258.

For verification purposes, the individual should provide the full names, Social Security Number, current address, current unit of assignment (if on active duty), sponsoring program and calendar years in training, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Health Professional Support Agency, Attn: SGPS–EDT, 5109 Leesburg Pike, Falls Church, VA 22044–3258.

For verification purposes, the individual should provide the full names, Social Security Number, current address, current unit of assignment (if on active duty), sponsoring program and calendar years in training, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, or appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, correspondence with the selecting academic institution.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–8016 Filed 4–3–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 17, 2003, 5:30 p.m.–9:15 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer (DDFO), Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6 p.m.—Call to Order; Introductions; Approve March Minutes; Review Agenda
6:10 p.m.—DDFO's Comments
- Budget Update
- ES & H Issues
- EM Project Updates
- Citizen Advisory Board (CAB) Recommendation Status
- Other

6:30 p.m.—Ex-officio Comments
6:40 p.m.—Public Comments and Questions
6:50 p.m.—Review of Action Items
7:05 p.m.—Break
7:15 p.m.—Presentation
- Scrap Metal Removal Project Update
- C–410 Decontamination and Decommissioning Update
- Denver Chairs' Meeting Report

8:15 p.m.—Public Comments and Questions
8:25 p.m.—Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

8:55 p.m.—Administrative Issues
- Review of Workplan
- Review of Next Agenda
- Federal Coordinator Comments
- Final Comments

9:15 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed above or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy'sEnvironmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC, on March 31, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–8217 Filed 4–3–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RT01–2–007]

PJM Interconnection, L.L.C.; Notice of Filing

March 31, 2003.

Take notice that on March 27, 2003, PJM Interconnection, L.L.C. (PJM), tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its March 20, 2003 compliance filing in the above-captioned proceeding.

Consistent with the effective date proposed in the March 20, 2003 compliance filing, PJM requests an effective date of March 20, 2003 for the amended compliance filing.

PJM states that it will promptly post the amended compliance filing on the PJM Web site (*http://www.pjm.com*) and will deliver a hard copy of the compliance filing to any person upon request. PJM requests that the Commission waive the service requirements of its Rule 2010(a) to the extent necessary to accommodate these arrangements.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: April 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8221 Filed 4–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–40–002, et al.]

ITC Holdings Corp., et al.; Electric Rate and Corporate Filings

March 27, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. ITC Holdings Corp., ITC Holdings Limited Partnership, DTE Energy Company, International Transmission Company, The Detroit Edison Company

[Docket Nos. EC03–40–002 and ER03–343–002]

Take notice that on March 24, 2003, ITC Holdings Corp. and International Transmission Company tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing pursuant to the Commission's February 20, 2003 order issued in the above-referenced proceedings (102 FERC ¶ 61,182).

Comment Date: April 14, 2003.

2. Green Country Energy, LLC

[Docket No. EC03–71–000]

Take notice that on March 25, 2003, Green Country Energy, LLC (Green Co. Energy) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for approval of the transfer of 100 percent of the membership interests in Green Co. Energy to Newco, LLC (Newco) and the simultaneous effective transfer of a 90 percent indirect non-managing membership interest in Green Co. Energy to GESF I and GESF II (together, GESF Members). Green Co. Energy states that GESF Members are indirect, wholly-owned subsidiaries of GE Structured Finance. Green Co. Energy states it owns 100 percent interest in a 795 MW (summer rated) generating facility (Facility) located in Jenks, Oklahoma.

Comment Date: April 15, 2003.

3. American Ref-Fuel Company of Essex County, American Ref-Fuel Company of Hempstead, SEMASS Partnership, American Ref-Fuel Company of Delaware Valley, L.P., MSW Energy Holdings LLC

[Docket No. EC03–72–000]

Take notice that on March 25, 2003, American Ref-Fuel Company of Essex County (ARC-Essex), American Ref-Fuel Company of Hempstead (ARC-Hempstead), SEMASS Partnership (SEMASS), American Ref-Fuel Company of Delaware Valley, L.P. (ARC-Delaware Valley and together with ARC-Essex, ARC-Hempstead and SEMASS, the Project Companies) and MSW Energy Holdings LLC (MSW) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby the applicants would affect a change in control over the Project Companies. Each of the Project Companies is a qualifying facility under the Public Utility Regulatory Policies Act of 1978, as amended.

The applicants are requesting approval of: (1) Several transfers of an aggregate fifty percent interest in ARC-Essex, ARC-Hempstead, ARC-Delaware Valley, and a forty-five percent interest in SEMASS (Transferred Interests) to upstream affiliates of the Project Companies that are wholly owned subsidiaries of Duke Energy Global Markets, Inc. (Duke GMI); (2) the indirect transfer by Duke GMI and one of these affiliates of the Transferred Interests, through a two-stage sale, to MSW and (3) additional internal transfers of the Transferred Interests by the upstream owners of MSW. The applicants are requesting confidential treatment pursuant to 18 CFR 388.112 (2002) for Exhibits F (wholesale power sales and unbundled transmission customers), I (the written instruments associated with the proposed transfer), M and N (QF contracts). Further, applicants respectfully request that the Commission approve this transfer on an expedited basis and no later than May 31, 2003.

Comment Date: April 15, 2003.

4. Athens Generating Company, L.P.

[Docket No. ER99–4282–003

Covert Generating Company, LLC

[Docket No. ER01–520–003

Harquahala Generating Company, LLC

[Docket No. ER01–748–003

Millennium Power Partners, L.P.

[Docket No. ER98–830–007

Take notice that on March 19, 2003, Athens Generating Company, L.P., Covert Generating Company, LLC, Harquahala Generating Company, LLC and Millennium Power Partners, L.P. (collectively, the Applicants) tendered for filing a request that the Commission place in abeyance the Applicants' notice of change in status filed on November 18, 2002 in the above-referenced proceedings.

Comment Date: April 9, 2003.

5. Armstrong Limited Energy Partnership, LLP, Dominion Energy Marketing, Inc., Dominion Nuclear Connecticut, Inc., Dominion Nuclear Marketing I, Inc., Dominion Nuclear Marketing II, Inc., Dominion Nuclear Marketing III, Inc., Dresden Energy, LLC, Elwood Energy, LLC, Fairless Energy, LLC, Kincaid Generation, LLC, Pleasants Energy, LLC, State Line Energy, LLC, Troy Energy, LLC

[Docket Nos. ER02–24–002, ER01–468–001, ER00–3621–02, ER00–3620–002, ER00–3619–002, ER00–3746–003, ER02–22–002, ER99–1695–002, ER02–23–002, ER99–1432–002, ER02–26–002, ER96–2869–005, ER02–1342–001, and ER02–25–002]

Take notice that, on March 24, 2003, Dominion Resources, Inc. (DRI) submitted a three-year market update for its unregulated subsidiaries that have authorizations to sell power at market-based rates. These subsidiaries include: Armstrong Limited Energy Partnership, LLLP; Dominion Energy Marketing, Inc.; Dominion Nuclear Connecticut, Inc.; Dominion Nuclear Marketing I, Inc.; Dominion Nuclear Marketing II, Inc.; Dominion Nuclear Marketing III, LLC; Dresden Energy, LLC; Elwood Energy, LLC; Fairless Energy, LLC; Kincaid Generation, LLC; Pleasants Energy, LLC; State Line Energy, LLC; and Troy Energy, LLC (collectively, the DRI Affiliates). DRI asks that the next three-year update for the DRI Affiliates be due three years from the date of acceptance of this filing.

Comment Date: April 14, 2003.

6. Michigan Electric Transmission Company, LLC

[Docket No. ER03–649–000]

Take notice that on March 25, 2003, Michigan Electric Transmission Company, LLC (METC) submitted an executed Interconnection Facilities Agreement Between METC and Lowell Light and Power (Facilities Agreement and Lowell, respectively). METC requests an effective date of March 6, 2003 for the Facilities Agreement.

Comment Date: April 15, 2003.

7. Jersey Central Power & Light Company

[Docket No. ER03–650–000]

Take notice that on March 25, 2003, Jersey Central Power & Light Company (Jersey Central) tendered for filing a complete revised Interconnection Agreement between Jersey Central and Atlantic City Electric Company (Atlantic City), which revises a component of the rate for service relating to Jersey Central's Operating and Maintenance (O&M) expenses for 2002. Also submitted for filing was a revised rate schedule sheet reflecting changes to Jersey Central's O&M expenses for 2003.

Jersey Central states that a copy of this filing has been served upon the New Jersey Board of Public Utilities and Atlantic City.

Comment Date: April 15, 2003.

8. Wilbur Power LLC .

[Docket No.QF03–79–000]

Take notice that on March 25 2003, Wilbur Power LLC, filed with the Federal Energy Regulatory Commission (Commission) an Application for Certification as a Qualifying Cogeneration Facility, Request for Waiver of QF Operating and Efficiency Standards, and Request for Expedited Treatment, pursuant to Sections 292.207(b) and 292.205" of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

Wilbur Power LLC, states that the facility is a 49 MW, natural gas fired, topping-cycle cogeneration facility (the Facility) located in Antioch, California, and the Facility is interconnected with the electric system of Pacific Gas and Electric Company and power from the Facility will be sold to Pacific Gas and Electric Company.

Comment Date: April 24, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8218 Filed 4–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–51–000, et al.]

Tenaska Alabama II Partners, L.P., et al.; Electric Rate and Corporate Filings

March 28, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Tenaska Alabama II Partners, L.P.

[Docket No. EG03–51–000]

Take notice that on March 26, 2003, Tenaska Alabama II Partners, L.P., 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Alabama II), filed with the Federal Energy Regulatory Commission (Commission) an application for redetermination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: April 18, 2003.

2. Tenaska Alabama Partners, L.P.

[Docket No. EG03–52–000]

Take notice that on March 26, 2003, Tenaska Alabama Partners, L.P., 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Alabama), filed with the Federal Energy Regulatory Commission (Commission) an application for redetermination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: April 18, 2003.

3. Southern Company Services, Inc.

[Docket No. ER03–641–001]

Take notice that on March 25, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern), filed a supplement to SCS's March 21, 2003, filing of Southern's Annual Filing of Revised Accruals for Post-Retirement Benefits Other Than Pensions (PBOP). SCS states that the supplement consists of Southern's 2002 actuarial reports, which describe the actuarial assumptions and serve as a basis for the 2003 projections.

Comment Date: April 15, 2003.

4. Pacific Gas and Electric Company

[Docket No. ER03–651–000]

Take notice that on March 26, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing revisions to Exhibit II to the Comprehensive Agreement Between Pacific Gas and Electric Company and the California Department of Water Resources (CDWR), Pacific Gas and Electric Company First Revised Rate Schedule FERC No. 77.

PG&E states that the revisions to Exhibit II reflect a decrease in the Contract Coincidental Rate of Delivery of backbone transmission due to CDWR's sale of the Bottle Rock Powerplant, the elimination of transmission loss energy factors, and revised California Public Utilities Commission (CPUC) Electric Rule 2 Rates for Special Facilities, which result in a decrease in revenue to PG&E.

PG&E has requested certain waivers. PG&E also states that this filing has been served upon CDWR, the CPUC, and the California Independent System Operator Corporation.

Comment Date: April 16, 2003.

5. Commonwealth Edison Company

[Docket No. ER03–654–000]

Take notice that on March 25, 2003, Commonwealth Edison Company (ComEd) tendered for filing amendments to an Interconnection Agreement with Kendall New Century Development, L.L.C. (Kendall). ComEd requests an effective date of March 26, 2003, and accordingly seeks waiver of the Commission's notice requirements.

ComEd states that copies of the filing were served on Kendall and the Illinois Commerce Commission.

Comment Date: April 15, 2003.

6. Commonwealth Edison Company

[Docket No. ER03–655–000]

Take notice that on March 25, 2003, Commonwealth Edison Company (ComEd) tendered for filing an amendment to an Interconnection Agreement with Chicago Heights Energy Partners, L.L.C. (CHEP). ComEd requests an effective date of March 26, 2003, and accordingly seeks waiver of the Commission's notice requirements.

ComEd states that copies of the filing were served on CHEP and the Illinois Commerce Commission.

Comment Date: April 15, 2003.

7. Commonwealth Edison Company

[Docket No. ER03–656–000]

Take notice that on March 25, 2003, Commonwealth Edison Company (ComEd) tendered for filing with the Federal Energy Regulatory Commission (Commission), amendments to an Interconnection Agreement with Titan Land Development Company, L.L.C. (Titan). ComEd requests an effective date of March 26, 2003, and accordingly seeks waiver of the Commission's notice requirements.

ComEd states that copies of the filing were served on Titan and the Illinois Commerce Commission.

Comment Date: April 15, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8219 Filed 4–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, and Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions

March 31, 2003.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 2233–043.

c. *Date filed:* December 27, 2002.

d. *Applicant:* Portland General Electric.

e. *Name of Project:* Willamette Falls Hydroelectric Project.

f. *Location:* On the Willamette River, in Clackamas County, Oregon.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Julie A. Keil, Portland General Electric Company, 121 SW Salmon Street, Portland, Oregon 97204, (503) 464–8864; Bruce Martin, Blue Heron Paper Company, 419 Main Street, Oregon City, Oregon.

i. *FERC Contact:* John Blair (202) 502–6092 or john.blair@FERC.gov.

j. Deadline for filing motions to intervene and protests, comments, and final recommendations, terms and conditions, and prescriptions: 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted; but is not ready for environmental analysis at this time.

l. *Description of the Project:* Portland General Electric (PGE) and Blue Heron Paper Company (BHPC) propose to continue operation of the Willamette Falls Hydroelectric Project on the Willamette River. The dam is a 2300 feet long horseshoe shaped concrete structure that caps the crest of Willamette Falls. The Project is operated run-of-river. It is comprised of two separate hydroelectric generating developments located on the east (Oregon City) and west (West Linn) sides of Willamette Falls. The Project has a total generation capacity of 17.5 megawatts (MW); 16 MW at PGE's T.W. Sullivan plant and 1.5 MW at BHPC. T.W. Sullivan powerhouse contains 13 vertical turbine generators; BHPC powerhouse contains 2 horizontal turbine generators.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

The Commission directs, pursuant to section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application and APEA be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8220 Filed 4–3–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0041, FRL–7475–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Environmental Radiation Ambient Monitoring System (ERAMS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Environmental Radiation Ambient Monitoring System (ERAMS): EPA ICR No.0877.08; OMB Control No. 2060–0015; Expiration date, 08/31/03. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 3, 2003.

ADDRESSES: National Air and Radiation Environmental Laboratory, 540 South Morris Avenue, Montgomery, Alabama 36115–2601. Limited number of copies available at this address. ICR available electronically at *www.epa.gov/narel.*

FOR FURTHER INFORMATION CONTACT: Charles M. Petko, Office of Radiation and Indoor Air, National Air and Radiation Environmental Laboratory, 540 South Morris Ave., Montgomery, AL 36115–2601. TEL: (334) 270–3411; FAX: (334) 270–3454; e-mail: *petko.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0041, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by email to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are sample collectors.

Title: Environmental Radiation Ambient Monitoring System (ERAMS) (OMB Control Number 2060–0015; EPA ICR Number 0877.08, expiring 08/31/2003.

Abstract: The Environmental Radiation Ambient Monitoring System (ERAMS) is a national network of stations collecting sampling media that include air, precipitation, drinking water, and milk. Samples are sent to EPA's National Air and Radiation

Environmental Laboratory (NAREL) in Montgomery, AL, where they are analyzed for radioactivity. ERAMS provides emergency response/homeland security and ambient monitoring information on levels of environmental radiation across the nation. All stations, usually operated by state and local personnel, participate in ERAMS voluntarily. Station operators complete information forms that accompany the samples. The forms request descriptive information related to sample location, *e.g.*, sample type, sample location, length of sampling period, and volume represented. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 1.3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Sample Collectors, who are usually employed by states or, in a few cases, local government.

Estimated number of respondents: 249.

Frequency of Response: From twice weekly, to four times annually, depending upon type of media being sampled.

Estimated Total Annual Burden: 8363.4 hours.

Estimated Total Annualized Cost Burden: $224,999.59.

Dated: March 27, 2003.

Edwin L. Sensintaffar,

Director, National Air and Radiation Environmental Laboratory.

[FR Doc. 03–8255 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2003–0001; FRL–7477–2]

Agency Information Collection Activities; Submission of EPA ICR No. 2109.01 to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Seven County Study of Air Quality and Birth Defects: Computer-Assisted Telephone Questionnaire for Subset of Study Population (EPA ICR No. 2109.01) The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 5, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Dr. Pauline Mendola, U.S. EPA/NHEERL, Human Studies Division, MD 58 A, Research Triangle Park, NC 27711; telephone number: (919) 966–6953; fax (919) 966–7584; e-mail address: *mendola.pauline@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 23, 2002 (67 FR 78227) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. ORD–2003–0001 which is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1753. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Seven County Study of Air Quality and Birth Defects: Computer-Assisted Telephone Questionnaire for Subset of Study Population (EPA ICR Number 2109.01). This is a request for a new collection. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The questionnaire contains a maximum of 28 questions categorized into 6 sections: Residential History, Work History, Time Spent Outside the Home (Weekdays), Time Spent Outside the Home (Weekends), Multivitamin Use, and Tobacco Use. Study participants are the mothers of babies born with and without birth defects in 1999 in seven Texas counties and will be randomly selected from a larger case-control study of air pollution and birth defects in the state. Potential participants will be first contacted by mail to provide basic information about the questionnaire. Within two weeks of receipt of the letter, they will be telephoned and invited to complete the questionnaire over the telephone. Participation in the telephone interview is completely voluntary. The study investigators will use this data to help estimate the association between air pollution exposure and the risk of selected birth defects. The questionnaire seeks to gather information on individual-level behaviors that have never been collected in studies published in this area of research. If it proves useful, it will indicate a need for such supplemental data collection in future studies. Confidentiality of the participants will be maintained by keeping all electronic forms and datasets on password protected computers, and any CDs or floppy disks in locked filing cabinets of the study investigators. No participant will be identifiable through any publications including EPA reports, dissertation manuscripts and journal articles.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Individuals or households.

Estimated Number of Respondents: 1000.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 167.

Estimated Total Annual Cost: $2,458.24.

Dated: March 27, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–8256 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0005; FRL–7477–3]

Agency Information Collection Activities; Submission of EPA ICR No. 1838.02 (OMB No. 2040–0213) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Industry Detailed Questionnaire: Phase III Cooling Water Intake Structures (OMB Control No. 2040–0213, EPA ICR No. 1838.02) The ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 5, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION**

FOR FURTHER INFORMATION CONTACT: Jennifer Chan, Office of Water, Office of Science and Technology, mailcode 4303T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; by phone at (202) 566–1078, by e-mail at *chan.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 12, 2002 (67 *FR* 76400), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment and has adopted many of the suggestions made by the commentor.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0005, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives

them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: Industry Detailed Questionnaire: Phase III Cooling Water Intake Structures (OMB Control No. 2040–0213, EPA ICR Number 1838.02). This is a request to renew an existing approved collection that is scheduled to expire on March 31, 2003. Note that the Agency is substituting the term "Phase III" for "Phase II", in the title of the original ICR, to correspond to the revised structure of the rulemaking. Under the PRA regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: In accordance with the PRA, this notice announces the submission of a revised ICR from the EPA to the OMB for review and approval. EPA requests approval to contact 80 respondents from the original survey for clarifications of their responses and to request their 316(b) environmental studies. EPA also requests approval to conduct a survey of two industries (offshore and coastal oil and gas extraction facilities (OCOGEFs) and seafood processing vessels) potentially subject to Section 316(b) of the Clean Water Act (CWA), 33 U.S.C. 1326(b). EPA was made aware of these two industries from public comments received on the proposed Phase I rule (65 FR 49060). These industries were not surveyed in the original information collection. For this request, EPA has revised the original ICR questionnaires to customize them for the OCOGEFs and Seafood Processing Vessels. Responses to this Industry Detailed Questionnaire will help EPA better characterize the design, location, construction, and operation of cooling water intake structures at industrial facilities throughout the U.S.

Section 316(b) provides that any standard established pursuant to Sections 301 or 306 of the CWA and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. EPA is developing regulations implementing Section 316(b) of the CWA, 33 U.S.C. 1326(b) pursuant to a Consent Decree in *Riverkeeper* v. *Whitman* [93 civ.0314 (AGS)]. The baseline data will help EPA frame regulatory options and define further research needs regarding the relationship of cooling water intake structures, intake technologies, and environmental impacts. The economic and financial information will help EPA to assess facility-level and firm-level impacts of complying with the proposed regulations and also enable EPA to carry out required economic analyses, including Regulatory Impact Analysis (RIA), cost/benefit analysis, and small business analysis. In order to fully evaluate costs associated with a proposed Section 316(b) regulations, EPA will consider the costs associated with performing Section 316(b) demonstration studies, additions and modifications to cooling water intake structures and equipment, and operating and monitoring costs associated with the regulations.

EPA has the authority to collect this information under Section 308 of the CWA (33 U.S.C. 1318). Accordingly, responses to the questionnaires (Industry Technical Questionnaire and Industry Economic Questionnaire) would be mandatory. In accordance with 40 CFR part 2, subpart B, Section 2.203, the survey will inform respondents of their right to claim information as confidential. The survey provides instructions on the procedures for making Confidential Business Information (CBI) claims, and the respondents also will be informed of the terms and rules governing protection of CBI obtained under the CWA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1 hour per response for the follow-up effort, 8 hours per response for the Industry Technical Questionnaire, and 50 hours per response for the Industry Economic Questionnaire. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Offshore and Coastal Oil and Gas Extraction Facilities, Seafood Processing Vessels, and 80 respondents surveyed in the original ICR.

Estimated Number of Respondents: 281.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 7,021 hours.

Estimated Total Annual Cost: $453,648, includes $1,123 annualized O&M costs.

Changes in the Estimates: There is a decrease of 121,715 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to less number of respondents in this ICR.

Dated: March 27, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–8257 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[SFUND–2003–0004, FRL–7477–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Brownfields Program Revitalization Grantee Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Brownfields Program—Revitalization Grantee Reporting, EPA ICR Number 2104.01. This information collection request applies to the reporting and recordkeeping requirements that apply to recipients of assessment, revolving loan fund, cleanup and job training grants awarded under subtitle A of the Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107–118). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 3, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: James Maas, Office of Solid Waste and Emergency Response (OSWER), Office of Brownfields Cleanup and Redevelopment (OBCR) 5105T, U.S. EPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 566–2778; fax number: (202) 566–2757; e-mail address: *maas.james@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number SFUND–2003–0004, which is available for public viewing at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, and according to the following detailed instructions: Submit your comments to EPA online using EDOCKET (our preferred method), by E-mail to *superfund.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, OSWER Docket, 5202T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Affected entities: Entities potentially affected by this action are states, tribes, local governments, and certain non-governmental organizations that apply for and receive grants from EPA to support the cleanup and redevelopment of brownfields properties.

Title: Brownfields Program—Revitalization Grantee Reporting Information Collection Request; (OMB Control Number 2050–NEW; EPA ICR Number 2104.01).

Abstract: The Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107–118) ("the Brownfields Amendments") was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and authorizes EPA to award grants to states, tribes, local governments, and other eligible entities to assess and clean up brownfields sites. Under the Brownfields Amendments, a brownfields site means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. For grant funding purposes, EPA uses the term "brownfields property(ies)" synonymously with the term "brownfields sites." The Brownfields Amendments authorize EPA to award several types of grants to eligible entities on a competitive basis. Under subtitle A of the Small Business Liability Relief and Brownfields Revitalization Act, States, tribes, local governments, and other eligible entities can receive assessment grants to inventory, characterize, assess, and conduct planning and community involvement related to brownfields properties; cleanup grants to carry out cleanup activities at brownfields properties; grants to capitalize revolving loan funds and provide subgrants for cleanup activities; and job training grants to support the creation and implementation of environmental job training and placement programs.

Grant recipients have general reporting and record keeping requirements as a condition of their grant that result in burden. A portion of this reporting and record keeping burden is authorized under 40 CFR parts 30 and 31 and identified in the EPA's general grants ICR (OMB Control Number 2030–0020). EPA requires Brownfields program grant recipients to maintain and report additional information to EPA on the uses and accomplishments associated with the funded brownfields activities. EPA has prepared several forms to assist grantees in reporting the information and to ensure consistency of the information collected. EPA will use this information to meet Federal stewardship responsibilities to manage and track how program funds are being spent, to evaluate the performance of the Brownfields Cleanup and Redevelopment Program, to meet the Agency's reporting requirements under the Government Performance Results Act, and to report to Congress and other program stakeholders on the status and accomplishments of the grants program. This ICR addresses the burden imposed on grant recipients that are associated with those reporting and recordkeeping requirements that are specific to grants awarded under Subtitle A of the Small Business Liability Relief and Brownfields Revitalization Act. This ICR does not address the burden imposed on grant recipients who are awarded grants under Subtitle C of the Small Business Liability Relief and Brownfields Revitalization Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.*, permitting electronic submission of responses).

Burden Statement: The annual reporting and record keeping burden for this collection of information is estimated to average 7 hours per response for job training grant recipients, and 3.25 hours per response for assessment, cleanup, and revolving loan fund grant recipients. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Estimated Number of Respondents: 203.

Frequency of Response: Quarterly.

Estimated Total Annual Hour Burden: 9866.

Estimated Total Annual Cost: $291,733.

Dated: March 27, 2003.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.

[FR Doc. 03–8258 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6639–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

Summary of Rating Definitions

Environmental Impact of the Action

LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

Draft EIS

ERP No. D–AFS–F65036–WI Rating EC2, Hoffman-Sailor West Project, Timber Harvest, Regeneration Activities, Connected Road Construction and Decommissioning, Chequamegon-Nicolet National Forest, Medford/Park Falls Ranger District, Price County, WI.

Summary: EPA expressed environmental concerns with project impacts and overall forest health, including commutative impacts. The Final EIS should address how the emphasis on managing for aspen and the potential for overpopulation of species that could impact forest in and outside the project area and especially how roadless and wilderness areas will be managed.

ERP No. D–AFS–J65375–MT Rating EC2, Sheep Creek Range Analysis, Grazing and Special Use Allotments Reorganization, Grazing and Special Use Permits Issuance, Lewis and Clark National Forest, White Sulphur Springs Ranger District, Meagher and Cascade Counties, MT.

Summary: While EPA supports the proposed grazing improvements and preferred alternative, EPA did express environmental concerns regarding potential impacts to the watershed, effects on wetlands and springs and stream flows from proposed water development. Uncertainties with the availability of adequate funds and resources to implement proposed range improvements and the proposed riparian monitoring program should be addressed in the final EIS.

ERP No. D–NPS–G65085–AR Rating LO, Arkansas Post National Memorial General Management Plan, Implementation, Osotouy Unit, Arkansas and Mississippi Rivers, Arkansas County, AR.

Summary: EPA has no objection to the management plan.

Final EIS

ERP No. F–BLM–L65391–OR, Lakeview Resource Management Plan, Unified Land Use Plan to Replace All or Portions of Three nearly Twenty Year Old Existing Land Use Plans, Implementation, Lake and Bend Counties, OR.

Summary: EPA expressed environmental concerns with the adequacy of information on noxious weeds, water quality, protection of tribal cultural sites, air quality and impacts from new roads. These issues and a mitigation strategy from future energy development activities should be addressed in the final EIS.

ERP No. F–FHW–F40405–IL, US 34/FAP–313 Transportation Facility Improvement Project, U.S. 34 from the Intersection of Carman Road east of Gulfport to Monmouth, Funding and US Army COE Section 404 and NPDES Permits Issuance, Henderson and Warren Counties, IL.

Summary: EPA has determined that FHWA has adequately addressed previous concerns related to Botanical Site #3. However, EPA continues to have environmental concerns regarding impacts to impaired waters as well as to the adequacy of water quality information.

ERP No. FS–AFS–J65295–MT, Clancy-Unionville Vegetation Manipulation and Travel Management Project, Updated and New Information concerning Cumulative Effects and Introduction of Alternative F, Clancy-Unionville Implementation Area, Helena National Forest, Helena Ranger District, Lewis and Clark and Jefferson Counties, MT.

Summary: EPA expressed environmental concerns with the potential continued impacts to the watershed and wildlife habitat from road impacts and suggested the action incorporate lower road densities.

Dated: April 1, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–8260 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6638–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliane/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed March 24, 2003, through March 28, 2003,

Pursuant to 40 CFR 1506.9.

EIS No. 030131, Draft EIS, AFS, VT, Greendale Project, To Establish the Desired Condition stated in the Green Mountain National Forest Land and Resource Management Plan, Manchester Ranger District, Town of Western, Windor County, VT, Comment Period Ends: May 19, 2003, Contact: Jay Strand (802) 767–4261. This document is available on the Internet at: *http://www.fs.fed.us/r9/gm/.*

EIS No. 030132, Draft EIS, AFS, CO, Green Ridge Mountain Pine Beetle Analysis Project, Proposal to Reduce the Spread of Mountain Pine Beetle and Associated Tree Mortality, Medicine Bow-Routt National Forest & Thunder Basin National Grassland, Parks Ranger District, Jackson County, CO, Comment Period Ends: May 19, 2003, Contact: Terry Delay (307) 326–2518. This document is available on the Internet at: *http://www.fs.fed.us/mrnf.*

EIS No. 030133, Final Supplement, NPS, NV, Great Basin National Park General Management and Development Concept Plans, Implementation, White Pine County, NV, Wait Period Ends: May 5, 2003, Contact: Alan Schmierer (510) 817–1441.

EIS No. 030134, Draft EIS, COE, FL, Miami Harbor Navigation Improvement Project, Provide Greater Navigation Safety and Accommodating Larger Vessels, Port of Miami, Miami-Dade County, FL , Comment Period Ends: May 19, 2003, Contact: James McAdams (904) 232–2117.

EIS No. 030135, Draft EIS, AFS, GA, Chattahoochee-Oconee National Forests Revised Land and Resource Management Plan, Implementation, Several Counties, GA, Comment Period Ends: July 3, 2003, Contact: Ron Stephens (770) 297–3000. This document is available on the Internet at: *http://www.fs.fed.us/conf/.*

EIS No. 030136, Draft EIS, AFS, AL, Alabama National Forests Revised Land and Resource Management Plan, Implementation, Bankhead National Forest, Lawrence, Winston and Franklin Counties, AL, Comment Period Ends: July 3, 2003, Contact: Felicia Humphrey (334) 832–4470.

EIS No. 030137, Final EIS, AFS, ID, North Kennedy-Cottonwood Stewardship Project, Existing Transportation System Modifications and Forest Health Improvements through Vegetation Management both Commercial and Non-Commercial Methods, Boise National Forest, Emmett Ranger District, Gem and Valley Counties, ID, Wait Period Ends: May 05, 2003, Contact: Terry Hardy (208) 373–4235.

EIS No. 030138, Draft EIS, BLM, NM, New Mexico Products Pipeline (NMPP) Project, Build and Operate a Refined Petroleum Products Pipeline System from Odessa, Texas, to Bloomfield, NM, Comment Period Ends: May 19, 2003, Contact: Joseph Jaramillo (505) 761–8779. This document is available on the Internet at: *http://www.nm.blm.gov.*

EIS No. 030139, Draft EIS, AFS, ID, East Beaver and Miner's Creek Timber Sales and Prescribed Burning Project, Conduct a Timber Sale and Provide Forest Products, Caribou-Targhee National Forest, Clark County, ID, Comment Period Ends: May 19, 2003, Contact: Melissa Jenkin (208) 624–3151.

EIS No. 030140, Final EIS, SFW, NM, Rio Grande Silvery Minnow (Hybognathus amarus) Critical Habitat Designation, Implementation, Bernalillo, Sandoval, Socorro and Valencia Counties, NM, Wait Period Ends: May 5, 2003, Contact: Joy Nicholopoulos (505) 346–2525.

EIS No. 030141, Draft EIS, COE, TX, Gulf Intracoastal Waterway in the

Laguna Madre, Maintenance Dredging from the JFK Causeway to the Old Queen Isabella Causeway, Nueces, Kleberg, Kenedy, Willacy and Cameron County, TX , Comment Period Ends: May 19, 2003, Contact: Dr. Terry Roberts (409) 766–3035.

EIS No. 030142, Draft EIS, AFS, CA, Combined Array for Research in Millimeter-wave Astronomy (CARMA) Project, Construction, Reconstruction and Operation 23 Antennas at the Juniper Flat Site, Special-Use-Permit, Inyo Mountain, Inyo National Forest, Inyo County, CA, Comment Period Ends: May 19, 2003, Contact: Colleen (Chaz) O'Brien (760) 873–2490. This document is available on the Internet at: *http://www.r5.fs.fed.us/inyo/.*

EIS No. 030143, Final EIS, BLM, NM, Farmington Resource Management Plan, Implementation, Managing Public Lands within the Farmington Field Office (FFO) Boundaries and Federal Oil and Gas Resources within the New Mexico Portion of San Juan Basin, San Juan, McKinley, Rio Arriba and Sandoval Counties, NM, Wait Period Ends: May 5, 2003, Contact: James Ramakka (505) 599–6307.

EIS No. 030144, Draft EIS, DOC, ME, VT, CT, NY, DE, NH, MA, RI, NJ, MD, VA, NC, Essential Fish Habitat Components of Amendment 13 to the Northeast Multispecies Fishery Management Plan, To Select the best Method of Minimizing the Impacts of Groundfish Fishing on Essential Fish Habitat, New England Fishery Management Council, ME, VT, CT, NY, DE, NH, MA, RI, NJ, MD, VA and NC, Comment Period Ends: July 2, 2003, Contact: Paul J. Howard (978) 465–0492.

EIS No. 030145, Draft EIS, FRC, LA, Hackberry Liquified Natural Gas (LNG) Terminal and Natural Gas Pipeline Facilities, Construction and Operation, Cameron, Calcasieu, and Beauregard Parishes, La, Comment Period Ends: May 19, 2003, Contact: Carlton Jackson (202) 502–8581.

EIS No. 030146, Final EIS, AFS, UT, WY, Wasatch-Cache National Forest Revised Land and Resource Management Plan, Implementation, several counties, UT and Uinta County, WY, Wait Period Ends: May 5, 2003, Contact: Julie Hubbard (801) 524–3907.

EIS No. 030147, Final EIS, SFW, FL, Proposed Rulemaking for: The Incidental Take of Small Numbers of Florida Manatees (Trichechus manatus latirostris) Resulting from Government Programs Related to Watercraft Access and Watercraft Operation in the State of Florida, FL, Wait Period Ends: May 5, 2003, Contact: Kevin Moody (404) 679–7089.

Dated: April 1, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–8261 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7477–4]

Science Advisory Board; Notification of Public Advisory Committee Meeting Ecological Processes and Effects Committee (EPEC) Conference Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board (SAB), Ecological Processes and Effects Committee (EPEC) is announcing a planning teleconference meeting to discuss several proposed self-initiated projects for Fiscal Year 2004.

DATES: The conference call meeting will take place on Wednesday, April 21, 2003 from 2 p.m. to 4 p.m. Eastern Standard Time. Participation will be by teleconference only.

ADDRESSES: Members of the public who wish to obtain the call-in number and access code to participate must contact Ms. Sandra Friedman, EPA Science Advisory Board Staff Office; telephone/voice mail at (202) 564–4526 or via e-mail at *friedman.sandra@epa.gov* in order to register.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information about this conference call meeting should contact Mr. Lawrence Martin, Designated Federal Officer, by telephone/voice mail at (202) 564–6497 or via e-mail at *martin.lawrence@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

1. *Summary:* The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) is providing this notification of an upcoming teleconference call meeting of the Ecological Processes and Effects Committee (EPEC).

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. This committee of the SAB will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB policies and procedures.

During the public conference call meeting, to take place at the date and time noted above, the EPEC will discuss its proposals for self-initiated projects to be considered by the SAB in FY 2004. Self-initiated projects are scientific and technical projects proposed outside of the normal mechanism of Agency-requested consultations, advisories, and peer reviews. Such projects are intended to address critical needs for anticipatory or cross-cutting scientific and technical advice. All SAB self-initiated projects will be evaluated by the SAB's Executive Committee (EC) during a public conference call to be announced in May 2003.

2. *Availability of Meeting Materials:* A copy of the draft agenda for the meeting that is the subject of this notice will be posted on the SAB Web site (*www.epa.gov/sab*) (under the AGENDAs subheading) approximately 10 days before the conference call meeting. Other materials that may be available, such as draft proposals for SAB self-initiated projects to be considered at the EPEC conference call meeting will also be posted on the SAB Web site in this time-frame, linked to the calendar entry for this meeting (*http://www.epa.gov/sab/mtgcal.htm.*)

3. *Providing Oral or Written Comments at SAB Meetings:* It is the policy of the EPA Science Advisory Board (SAB) to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the Designated Federal Official (DFO) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers may attend the meeting and provide comment up to the meeting time. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted below in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution. Should comment be provided at the meeting and not in advance of the meeting, they should be in-hand to the DFO up to and immediately following the meeting.

4. *Meeting Access:* Individuals requiring special accommodation to access this meeting, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 28, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–8259 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7476–1]

Public Water Supply Supervision Program Revision for the State of New York

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative approval and solicitation of request for a public hearing.

SUMMARY: Notice is hereby given that the United States Environmental Protection Agency (EPA) has determined to approve an application by the State of New York to revise its Public Water Supply Supervision Primacy Program to incorporate regulations no less stringent than the EPA's National Primary Drinking Water Regulations (NPDWR) for the following: Final Rule (Primacy Revisions), promulgated by EPA on April 28, 1998 (63 FR 23362), defining a public water system and Consumer Confidence Reports; Final Rule, promulgated by EPA on August 19, 1998 (63 FR 44512), along with 4 separate Technical Corrections to the Consumer Confidence Reports, promulgated as follows: May 4, 2000 (65 FR 25981), December 16, 1998 (63 FR 69475 and 63 FR 69516), June 29, 1999 (64 FR 34732) and September 14, 1999 (64 FR 49671). The application demonstrates that New York State has adopted drinking water regulations which satisfy the NPDWRs for the above. The USEPA has determined that New York State's regulations are no less stringent than the corresponding Federal Regulations and that New York State continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

DATES: This determination to approve New York State's primacy program revision application is made pursuant to 40 CFR 142.12(d)(3). It shall become final and effective May 5, 2003 unless (1) a timely and appropriate request for a public hearing is received or (2) the Regional Administrator elects to hold a public hearing on her own motion. Any interested person, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the Regional Administrator at the address shown below by May 5, 2003. If a substantial request for a public hearing is made within the requested thirty day time frame, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective May 5, 2003.

Any request for a public hearing shall include the following information: (1) Name, address and telephone number of the individual organization or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region 2, 290 Broadway, New York, New York 10007–1866.

All documents relating to this determination are available for inspection between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Bureau of Public Water Supply Protection, New York State Department of Health Flanigan Square, 547 River Street, Troy, New York 12180–2216.

U.S. Environmental Protection Agency—Region 2, 24th Floor Drinking Water Section, 290 Broadway, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Michael J. Lowy, Drinking Water Section, U.S. Environmental Protection Agency—Region 2, (212) 637–3830.

Authority: (Section 1413 of the Safe Drinking Water Act, as amended, 40 U.S.C. 300g–2, and 40 CFR 142.10, 142.12(d) and 142.13).

Dated: March 24, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03–8155 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–876]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the first meeting date, agenda, and membership of the Consumer Advisory Committee (hereinafter "the Committee"), whose purpose is to make recommendations to the Federal Communications Commission ("FCC" or "Commission") regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as Native Americans and persons living in rural areas) in proceedings before the Commission. Additional meeting dates for calendar year 2003 are also announced.

DATES: The first meeting of the Committee will take place on Friday, April 25, 2003, from 9 a.m. to 5 p.m. Additional meetings for calendar year 2003 will occur at the same time on July 11 and November 20.

ADDRESSES: The Committee will meet at the Commission's headquarters building, Room TW–C305, 445 12th Street, SW., Washington, DC 20554. Additional meetings during calendar 2003 will be held at the same location.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, 202–418–2809 (voice) or 202–418–0179 (TTY), E-mail: *cac@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice DA 03–876, released March 28, 2003. The Commission announced the first meeting date, meeting agenda, and membership of its Consumer Advisory Committee. Additional meeting dates for calendar year 2003 were also announced. The rechartering of the Committee had been announced by Public Notice dated December 31, 2002 (*see* DA 02–3606) as published in the **Federal Register**, 68 FR 2047, January 15, 2003.

Purpose and Functions

The purpose of the committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as Native Americans and persons living in rural areas) in proceedings before the Commission.

During its two year term, the Committee will address a number of topics including, but not limited to, the following areas:

- Consumer protection and education (*e.g.*, cramming, slamming, consumer friendly billing, detariffing, bundling of services, Lifeline/Linkup programs, customer service, privacy, telemarketing abuses, and outreach to underserved populations, such as American Indians and persons living in rural areas).
- Access by people with disabilities (*e.g.*, telecommunications relay services, closed captioning, accessible billing, and access to telecommunications products and services).
- Impact upon consumers of new and emerging technologies (*e.g.*, availability of broadband, digital television, cable, satellite, low power FM, and the convergence of these and emerging technologies).
- Implementation of Commission rules and consumer participation in the FCC rulemaking process.

Members

The Commission received over one hundred (100) applications for membership on the Committee, from twenty-eight (28) states and the District of Columbia. After a careful review of these applications, thirty-five (35) members were appointed to the Committee (thirty organizational members and five individual members). This selected group is designed to be represented of the Commission's many constituencies, and the expertise and diversity selected will provide a balanced point of view as required by the Federal Advisory Committee Act. In addition, in accordance with Section K. of the Committee's Charter, Chairman Michael K. Powell hereby appoints Shirley L. Rooker, President, Call For Action, as the Committee's Chairperson. All appointments are effective immediately and shall terminate November 20, 2004 or until the committee is terminated, whichever is earlier.

The roster of the Committee, as appointed by Chairman Powell, is as follows:

1. AARP, Jeff Kramer, Senior Legislative Representatives;
2. Affiliated Tribes of NW Indians Economic Development Corp., Cheryl Johnson, Tribal Telephone Outreach Coordinator;
3. Alliance for Public Technology, Matthew D. Bennett, Public Policy Director;
4. American Council of the Blind, David Poehlman, Technology Access Consultant;
5. AT&T Corp., Michael F. del Casino, Regulatory Director;
6. Bell South, Cindy Cox, Senior Director-Regulatory & External Affairs, Retail Markets;
7. Brugger Consulting, David Brugger, President & CEO;
8. Call For Action, Shirley L. Rooker, President;
9. Cellular Telecommunications and Internet Association, Andrea Williams, Assistant General Counsel;
10. Cingular Wireless, Susan Palmer, Director, Federal Regulatory Affairs;
11. Consumer Policy Consulting, Debra Berlyn, President.
12. Consumer First, Inc., Jim Conran, President.
13. Deaf and Hard of Hearing Consumer Action Network, Claude Stout;
14. Mike Duke (representing interests of blind or visually impaired persons, licensed radio amateur operators, and management of audio information services for the blind);
15. Fight Back Foundation for Consumer Education, David Horowitz, Chairman;
16. Stephen Gregory (representing interests of persons with hearing loss and small business owners);
17. Hamilton Telephone Company, dba Hamilton Relay Service, Dixie Ziegler, Director of Relay;
18. Hometown Online, subsidiary of Warwick Valley Telephone Company, Donald Snoop, Managing Director;
19. Rebecca Ladew (representing the interests of users of speech-to-speech technology);
20. League for the Hard of Hearing, Joseph Gordon, Chair, Telecommunications Committee;
21. LTC Consulting/Teletruth, Thomas Allibone, President and Director of Auditing;
22. MCI, Annette Cleckner, Senior Manager Consumer Affairs;
23. Media Access Group, WGBH, Larry Goldberg, Director;
24. National Association of Broadcasters, Karen Kirsch, Vice President of Regulatory Affairs;
25. National Association of Consumer Agency Administrators, Ronald Mallard, Director, Fairfax County Department of Cable Communications & Consumer Protection;
26. National Association of State Relay Administration, Brenda Kelly-Frey, TRS Administrator-State of Maryland;
27. National Association of State Utility Consumer Advocates, Joy M. Ragsdale, Assistant People's Counsel, Washington, DC;
28. National Consumers League, Susan Grant, Vice President for Public Policy;
29. National Translator Association, Byron W. St. Clair, President;
30. National Urban League, Milton J. Little, Jr., Executive Vice President & Chief Operating Officer;
31. Mark Pranger (representing the interests of academia and consumers concerned with telecommunication service in rural America);
32. San Carlos Apache Telecommunications Utility, Inc., Vernon R. James, General Manager;
33. Telecommunications Industry Association, Eugene Seagriff, Product Accessibility Manager, Product Safety & Compliance Division, Panasonic Techologies, Inc.;
34. Verizon Communications, Richard T. Ellis, Director, Federal Regulatory Advocacy; and
35. Linda West (representing the interests of the Native American community and other consumers concerned with telecommunication services in rural America).

Meeting Dates and Agenda

The first meeting of the Committee will take place on Friday, April 25, 2003, 9 a.m. to 5 p.m., at the Commission's headquarters Building, Room TW–C305, 445 12th Street, SW., Washington, DC 20554. Additional meetings for calendar year 2003 will be held on July 11 and November 20, at the same time and location.

At its April 25, 2003 meeting, the Committee will address matters of internal business and organization, including the establishment of working groups, and will consider consumer issues within the jurisdiction of the Commission.

Availability of Copies and Electronic Accessibility

A copy of the March 28, 2003 Public Notice is available in alternate formats (Braille, cassette tape, large print or diskette) upon request. It is also posted on the Commission's Web site at *http://www.fcc.gov/cgb/cac*. The Committee meetings will be broadcast on the Internet in Real Audio/Real Video format with captioning at *http://www.fcc.gov/cgb/cac*. Meetings will be sign language interpreted, and real-time transcription and assistive listening devices will be also available. The meeting site is fully accessible to people with disabilities. Copies of meeting agendas and handout materials will also be provided in accessible formats. Meeting minutes will be available for public inspection at the FCC headquarters building and will be posted on the Commission's Web site at *http://www.fcc.gov/cgb/cac*.

The Committee meeting will be open to the public and interested persons may attend the meeting and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee. Written comments for the Committee may also be sent to the Committee's Designated Federal Officer, Scott Marshall.

Federal Communications Commission.

K. Dane Snowden,

Chief, Consumer & Government Affairs Bureau.

[FR Doc. 03–8201 Filed 4–3–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

TIME AND DATE: The meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, April 9, 2003.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Appointment of Federal Home Loan Bank Directors. Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427) requires the Federal Housing Finance Board to appoint public interest directors to the boards of directors of the Federal Home Loan Banks.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at 202/408–2826 or by electronic mail at *gottliebm@fhfb.gov*.

By the Federal Housing Finance Board.

Arnold Intrater,

General Counsel.

[FR Doc. 03–8433 Filed 4–2–03; 4:01 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice.

SUMMARY: Background. Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer —Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

Report title: Interagency Notice of Change in Bank Control, Interagency Notice of Change in Director or Senior Officer, and Interagency Biographical and Financial Report

Agency form number: FR 2081a, FR 2081b, and FR 2018c

OMB Control number: 7100–0134

Frequency: On occasion

Reporters: Financial institutions and certain of their officers and shareholders

Annual reporting hours: Interagency Notice of Change in Bank Control–3,900 hours; Interagency Notice of Change in Director or Senior Officer–130 hours; Interagency Biographical and Financial Report–4,420 hours

Estimated average hours per response: Interagency Notice of Change in Bank Control–30 hours; Interagency Notice of Change in Director or Senior Officer–2 hours; Interagency Biographical and Financial Report–4 hours

Number of respondents: Interagency Notice of Change in Bank Control–130; Interagency Notice of Change in Director or Senior Officer–65; Interagency Biographical and Financial Report–1,105

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1817(j) and 12 U.S.C. 1831(q)) and is not given confidential treatment.

Abstract: The information collected assists the Federal Reserve Board, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS) in fulfilling their statutory responsibilities. These regulatory agencies use the information to evaluate a depository institution's controlling ownership interests and its senior officers and directors. The information collected in the Interagency Notice of Change in Bank Control (FR 2081a) is supplied by persons proposing to make significant investments in bank holding companies or depository institutions. The information collected in the Interagency Notice of Change in Director or Senior Executive Officer (FR 2081b) is required under Section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The notice is completed, under certain circumstances, by a bank holding company or depository institution making changes in its board of directors or senior executive officers. The Interagency Biographical and Financial Report (FR 2081c) is not a stand–alone report; it is used as a companion report with other reports to gather required information about the individuals involved in certain types of applications and notifications.

Board of Governors of the Federal Reserve System, March 31, 2003.

Jennifer J. Johnson
Secretary of the Board.
[FR Doc. 03–8173 Filed 4–3–03; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 18, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. L. Jackson McConnell, Sr., Patricia McConnell, The L. Jackson McConnell, Jr. Family Trust, the L.Jackson McConnell Sr. Retained Annuity Trust, L. Jackson McConnell, Jr. as custodian for Lawson C.McConnell, L. Jackson McConnell, Jr. as custodian for Mary Margaret McConnell, all of Elberton, Georgia, The Kathleen L. Korotzer Family Trust, Kathleen L. Korotzer as custodian for Turner J. Korotzer, Kathleen L. Korotzer as custodian for Nicholas C. Korotzer, all of Walnut Creek, California, Alice M. Eberhardt, Linton W. Eberhardt, III, The Linton W. Eberhardt, IV Family Trust, the Laura Eberhardt Stille Family Trust, and the Alice M. Eberhardt Retained Annuity Trust, all of Royston, Georgia, to retain voting shares of Pinnacle Financial Corporation, Elberton, Georiga, and thereby indirectly retain voting shares of Pinnacle Bank, Elberton, Georgia.

Board of Governors of the Federal Reserve System, March 31, 2003.

Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 03–8172 Filed 4–3–03; 8:45 am]
BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following joint conference call meeting of the Advisory Committee on Immunization Practices and its Smallpox Vaccine Safety Working Group.

Name: Advisory Committee on Immunization Practices (ACIP) and ACIP Smallpox Vaccine Safety Working Group.

Time and Date: 2 p.m.–4 p.m., March 28, 2003.

Place: The conference call will originate at the National Immunization Program (NIP), in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to Be Discussed: The Advisory Committee on Immunization Practices and its Smallpox Vaccine Safety Working Group will convene by conference call to discuss whether to recommend to CDC that persons with a history of cardiac disease be deferred from smallpox vaccination during the pre-event phase of the national smallpox vaccination program.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 2 p.m., Eastern Standard Time. To participate in the conference call, please dial 1–888–849–8924 and reference passcode ACIP. You will then be automatically connected to the call.

As provided under 41 CFR 102–3.150(b), the public health urgency of this agency business requires that the meeting be held prior to the first available date for publication of this notice in the **Federal Register**.

CONTACT PERSON FOR MORE INFORMATION: Demetria Gardner, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE., (E–61), Atlanta, Georgia 30333, telephone 404/639–8096, fax 404/639–8616.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: March 31, 2003.

Alvin Hall,
Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).
[FR Doc. 03–8195 Filed 4–3–03; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–216 and CMS–10079]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Organ Procurement Organization/ Histocompatibility Laboratory Statement of Reimbursable Costs, Manual Instructions and Supporting Regulations in 42 CFR, 413.20 and 413.24; *Form No.:* CMS–216 (OMB# 0938–0102); *Use:* This form is required by statute and regulation for participation in the Medicare program. The information is used to determine payment for Medicare. Organ Procurement Organizations and Histocompatibility Laboratories are the users; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 108; *Total Annual Responses:* 108; *Total Annual Hours:* 4,860.

2. *Type of Information Collection Request:* New Collection: *Title of Information Collection*: Hospital Wage Index Occupational Mix Survey; *Form No.:* CMS–10079 (OMB# 0938-NEW); *Use:* In the May 4, 2001 Proposed Rule (66 FR 22674), CMS proposed to conduct a special survey to collect data from a sample of occupational categories that provide a valid measure of wage rates within a geographical area. In the August 1, 2001 Final Rule (66 FR 39860), we responded to comments from the Proposed Rule and stated that, CMS will conduct a special survey of all short-term acute-care hospitals that are required to report wage data to collect these data. Section 304 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 requires CMS to collect wage data on hospital employees by occupational category. The collection is to be completed by September 30, 2003 and to be used to adjust the wage index by October 1, 2004; *Frequency:* Other: once every three years; *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 4,800; *Total Annual Responses:* 4,800; *Total Annual Hours:* 768,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 27, 2003.

Dawn Willinghan,
Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.
[FR Doc. 03–8177 Filed 4–3–03; 8:45 am]
BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–284]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Medicaid Statistical Information System (MMIS); *Form No.:* CMS–R–0284 (OMB# 0938–0345); *Use:* State data are reported by a Federally mandated process known as MSIS. These data are the basis for Medicaid actuarial forecasts for service utilization and costs; Medicaid legislative analysis and cost savings estimates; and for responding to requests for information from CMS components, the Department, Congress, and other customers. The national MSIS database will contain details that will allow constructive or predictive analysis of today's Medicaid issues (*e.g.*, pregnant women, and infants); *Frequency:* Quarterly; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 53; *Total Annual Responses:* 212; *Total Annual Hours:* 7,420.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 27, 2003.

Dawn Willinghan,
Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.
[FR Doc. 03–8178 Filed 4–3–03; 8:45 am]
BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0106]

Agency Information Collection Activities; Proposed Collection; Comment Request; Submission of Petitions: Food Additive, Color Additive (Including Labeling), and Generally Recognized as Safe Affirmation; and Electronic Submission Using FDA Forms 3503 and 3504

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the

Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a proposed consolidation of four existing submissions of petitions.

DATES: Submit written or electronic comments on the collection of information by June 3, 2003.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Submission of Petitions: Food Additive, Color Additive (Including Labeling), and GRAS Affirmation; Electronic Submission Using FDA Forms 3503 and 3504 (OMB Control Number 0910–0016)—Extension

This notice solicits comments on a proposed collection of the following four existing submissions of petitions: (1) Food Additive and Food Additive Petitions (FAPs) (OMB Control Number 0910–0016), (2) Affirmation of Generally Recognized as Safe (GRAS) Status (OMB Control Number 0910–0132), (3) Labeling Requirements for Color Additives (Other Than Hair Dyes) and Petitions (CAPs) (OMB Control Number 0910–0185), and (4) Electronic Submission of Food and Color Additive Petitions (OMB Control Number 0910–0480).

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)) provides that a food additive shall be deemed to be unsafe, unless: (1) The additive and its use, or intended use, are in conformity with a regulation issued under section 409 of the act that describes the condition(s) under which the additive may be safely used; (2) the additive and its use, or intended use, conform to the terms of an exemption for investigational use; or (3) a food contact notification submitted under section 409(h) of the act is effective. FAPs are submitted by individuals or companies to obtain approval of a new food additive or to amend the conditions of use permitted under an existing food additive regulation. Section 171.1 (21 CFR 171.1) specifies the information that a petitioner must submit in order to establish that the proposed use of a food additive is safe and to secure the publication of a food additive regulation describing the conditions under which the additive may be safely used. Parts 172, 173, 175 through 178, and 180 (21 CFR parts 172, 173, 175 through 178, and 180) contain labeling requirements for certain food additives to ensure their safe use.

Section 721(a) of the act (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f) of the act. CAPs are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is already approved. Section 71.1 specifies the information that a petitioner must submit in order to establish the safety of a color additive and to secure the issuance of a regulation permitting its use. FDA's color additive labeling requirements in § 70.25 (21 CFR 70.25) require that color additives that are to be used in food, drugs, devices, or cosmetics be labeled with sufficient information to ensure their safe use.

Under authority of sections 201, 402, 409, and 701 of the act (21 U.S.C. 321, 342, 348, and 371), FDA reviews petitions for affirmation as GRAS that are submitted on a voluntary basis by the food industry and other interested parties. Specifically under section 201(s) of the act, a substance is GRAS if it is generally recognized among experts qualified by scientific training and experience to evaluate its safety, to be safe through either scientific procedures or common use in food. The act has historically been interpreted to permit food manufacturers to make their own determination that use of a substance in food is GRAS. To implement the GRAS provisions of the act, FDA has issued procedural regulations under 21 CFR 170.35(c)(1).

In the **Federal Register** of July 31, 2001 (66 FR 39517), FDA announced the availability of a draft guidance entitled "Draft Guidance for Industry on Providing Regulatory Submissions to Office of Food Additive Safety in Electronic Format for Food Additive and Color Additive Petitions." This guidance describes the procedures for electronic submission of FAPs and CAPs using FDA Form No. 3503 entitled "Food Additive Petition Submission Application" and FDA Form No. 3504 entitled "Color Additive Petition Submission Application."

FDA scientific personnel review food and color additive and GRAS affirmation petitions to ensure the safety of the intended use of the substance in or on food, or of a food additive that may be present in food as a result of its use in articles that contact food (or for color additives, its use in food, drugs, cosmetics, or medical devices). Respondents are businesses engaged in the manufacture or sale of food, food ingredients, color additives, or substances used in materials that come into contact with food.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/ FDA Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Average Hours per Response	Total Operating & Maintenance Costs	Total Hours
CAPs						
70.25	0	1	0	0	0	0
71.1	2	1	2	1,652	$5,600	3,304
FDA Form 3504	1	1	1	1	0	1
GRAS Affirmation Petitions						
170.35	1	1	1	2,598		2,598
FAPs						
171.1	7	1	7	3,640		25,480
FDA Form 3503	2	1	2	1		2
Total					$5,600	31,385

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of burden for FAPs and CAPs is based on the average number of new FAPs and CAPs received in calendar years 2000 through 2002 and the total hours expended in preparing the petitions. Although the burden varies with the type of petition submitted, an average FAP or CAP, or GRAS affirmation petition, involves analytical work and appropriate toxicological studies, as well as the work of drafting the petition itself. The burden varies depending on the complexity of the petition, including the amount and types of data needed for scientific analysis.

Electronic submissions of petitions contain the same petition information required for paper submission. The agency estimates that up to 30 percent of the petitioners for both food and color additives will take advantage of the electronic submission process. By using the guidelines and forms that FDA is providing, the petitioner will be able to organize the petition to focus on the information needed for FDA's safety review. Therefore, we estimate that petitioners will only need to spend approximately 1 hour completing the electronic submission application form (Form 3503 or 3504, as appropriate) because they will have already used the guidelines to organize the petition information needed for the submission.

The labeling requirements for food and color additives were designed to specify the minimum information needed for labeling in order that food and color manufacturers may comply with all applicable provisions of the act and other specific labeling acts administered by FDA. Label information does not require any additional information gathering beyond what is already required to assure conformance with all specifications and limitations in any given food or color additive regulation. Label information does not have any specific recordkeeping requirements unique to preparing the label. Therefore, because labeling requirements under § 70.25 for a particular color additive involve information required as part of the CAP safety review process, the estimate for number of respondents is the same for § 70.25 and § 71.1, and the burden hours for labeling are included in the estimate for § 71.1. Also, because labeling requirements under parts 172, 173, 175 through 178, and 180 for particular food additives involve information required as part of the FAP safety review process under § 171.1, the burden hours for labeling are included in the estimate for § 171.1.

Dated: March 31, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–8265 Filed 4–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02P–0057]

Determination That Albuterol Sulfate Inhalation Solution 0.5% Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that albuterol sulfate inhalation solution 0.5% (Ventolin) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for albuterol sulfate inhalation solution 0.5%.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (21 CFR 314.161(a)(1)). FDA may not approve an ANDA that does not refer to a listed drug.

Albuterol sulfate inhalation solution 0.5% is the subject of NDA 19–269 held by GlaxoSmithKline. Albuterol sulfate inhalation solution 0.5% is indicated for the relief of bronchospasm in patients with reversible obstructive airway disease and acute attacks of bronchospasm.

On February 1, 2002, Nephron Pharmaceuticals Corp. submitted a citizen petition (Docket No. 02P–0057) under 21 CFR 10.30 to FDA requesting that the agency determine whether albuterol sulfate inhalation solution 0.5% was withdrawn from sale for reasons of safety or effectiveness. The agency has determined that albuterol sulfate inhalation solution 0.5% was not withdrawn for reasons of safety or effectiveness. In support of that finding, we note that GlaxoSmithKline notified the agency in July 2001 that albuterol sulfate inhalation solution 0.5% was being withdrawn from sale because of a decline in sales. FDA has independently evaluated relevant literature and data for adverse event reports and has found no information that would indicate that this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing its records, FDA determines that, for reasons outlined previously, albuterol sulfate inhalation solution 0.5% was not withdrawn for reasons of safety or effectiveness. Accordingly, the agency will continue to list albuterol sulfate inhalation solution 0.5% in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued for reasons other than safety or effectiveness. ANDAs that refer to albuterol sulfate inhalation solution 0.5% may be approved by the agency.

Dated: March 28, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–8264 Filed 4–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0118]

Guidance for FDA Staff on Sampling or Detention Without Physical Examination of Decorative Contact Lenses (Import Alert #86–10); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance for FDA Staff on Sampling or Detention Without Physical Examination of Decorative Contact Lenses (Import Alert #86–10)." The guidance document includes FDA's guidance to FDA district offices for sampling or detention without physical examination of plano (zero-powered or noncorrective) contact lenses intended solely to change the appearance of the normal eye in decorative fashion, when these products are presented for importation into the United States.

DATES: Submit written or electronic comments on the guidance by June 3, 2003.

ADDRESSES: Submit written requests for single copies of the Import Alert #86–10, to the Division of Import Operations and Policy (HFC–170), Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request. You may fax your request to 301–594–0413. Submit written comments on this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Thaddeus J. Poplawski, Division of Import Operations and Policy (HFC–170), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6553.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has been receiving reports that certain commercial entities are planning to distribute or may already be distributing plano (zero-powered or noncorrective) contact lenses intended solely to change the normal appearance of the eye in decorative fashion (decorative contact lenses). FDA understands that these products are intended to be distributed without a prescription, without fitting by a qualified eye care professional, and without ongoing professional supervision.

FDA believes that, like other contact lenses, decorative contact lenses can cause a variety of eye injuries and conditions. Lens wear has been associated with corneal ulcer, for example, which can progress rapidly, leading to internal ocular infection if left untreated. Uncontrolled infection can lead to corneal scarring, which can lead to vision impairment. In extreme cases, corneal ulcer can result in blindness and eye loss. Other risks include conjunctivitis; corneal edema; allergic reaction; abrasion from poor lens fit; and reduction in visual acuity, contrast sensitivity, and other visual functions, resulting in interference with driving and other activities.

FDA believes that these risks cannot be sufficiently controlled unless: (1) The wearer obtains advice from an eye care professional; (2) the lenses are fitted by or under the supervision of such a professional; and (3) the wearer remains under appropriate professional supervision. Eye care professional involvement is legally required (21 CFR 801.109) for contact lenses intended for medical purposes (i.e., prosthetic use or vision correction). These products are regulated by FDA as medical devices under the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*). [1] Such control is not available for decorative contact lenses because these products are cosmetics under section 201(i) of the act (21 U.S.C. 321(i)).

Section 201(i) of the act defines "cosmetic" to include "articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance * * * " (21 U.S.C. 321(i)(1)). Decorative contact lenses are articles intended to be introduced into the eye, which is a part of the body, to beautify the wearer, promote the attractiveness of the wearer, or alter the wearer's appearance. They are claimed to achieve this cosmetic result by changing the apparent color of the iris; by appearing to add a design to the iris (e.g., a professional sports team insignia); or by imparting a nonhuman or otherwise nonnormal appearance to the eye (e.g., cat's eye). Provided they are not marketed with claims [2] that they effect physical or physiological change, decorative contact lenses are properly regulated as cosmetics under the act (cf. *United States* v. *An Article* * * * *"Sudden Change,"* 409 F.2d 734 (2d Cir. 1969) ("claiming to affect the structure of the skin in some physiological way" makes a product a "drug"); 21 CFR 700.35 ("sunscreen" claims make a product a drug)).

The fact that contact lenses are "devices" in the colloquial sense does not preclude cosmetic status under the act. FDA has previously determined that section 201(i) of the act applies to appearance-enhancing devices such as wigs, hair brushes, stockings and toothpicks (Refs. 1 through 3).

Moreover, the fact that a product is intended to come into contact with the eye does not make it ineligible for cosmetic regulation (Ref. 4). Indeed, the legislative history accompanying the original 1938 act demonstrates that Congress enacted the cosmetic adulteration provisions to address the risk to users presented by cosmetic products that may cause blindness and other serious injuries (S. Rept. 74–361 at 21 (1935)).

On October 22, 2002, FDA issued Import Alert #86–10, with respect to decorative contact lenses. We are now publishing a revised Import Alert #86–10 in the **Federal Register**. The Import Alert #86–10 does not cover contact lenses that are intended for vision correction or for prosthetic or other medical use.

Section 801(a) of the act (21 U.S.C. 381(a)) authorizes FDA to refuse admission to articles that appear to be adulterated or misbranded. Based on the available evidence, FDA believes that decorative contact lenses presented for importation may appear to be adulterated under section 601(a) of the act (21 U.S.C. 361(a)), in that they contain a deleterious substance that is dangerous to wearers of the lenses when they are put to a labeled, customary, or usual use. The deleterious substance is the matrix in which colorants are embedded. This material can cause the potentially vision-threatening eye conditions discussed previously, particularly if the wearer fails to obtain appropriate professional counseling, fitting, and ongoing supervision; if the wearer trades lenses, fails to use proper disinfection and other care techniques; or if the wearer wears lenses for longer than the recommended period. Consequently, FDA believes that decorative contact lenses appear to be adulterated under section 601(a).

Decorative contact lenses may also be subject to refusal if they appear to contain unsafe color additives (21 U.S.C. 381(a) and 361(e)). FDA understands that certain overseas manufacturers or distributors might have selected color additives for use in decorative contact lenses intended for U.S. distribution based on the fact that they have been approved by FDA for use in medical devices. To be used lawfully in decorative contact lenses, a color additive must be approved by FDA for use in eye area cosmetics. Not all color additives approved for use in medical devices have been approved for eye area use in cosmetics. Consequently, decorative contact lenses may also appear to be adulterated under section 601(e) of the act.

Finally, decorative contact lenses may be subject to refusal on the ground that they are misbranded under section 602(a) of the act (21 U.S.C. 362(a)) because their labeling is false or misleading "in any particular." Under the act, labeling can be misleading by failing to disclose "facts * * * material with respect to consequences which may result" from use of a product under customary, usual, or labeled conditions (21 U.S.C. 321(n)). As noted previously, decorative contact lenses may cause serious health problems, including (in extreme cases) blindness. FDA believes these risks are material. If they are not disclosed in labeling, then the labeling would be misleading, and the product would appear to be misbranded under section 602(a) of the act and subject to refusal under section 801(a) of the act.

II. Guidance

FDA's district offices may sample or detain without physical examination decorative contact lenses presented for U.S. importation.

The Import Alert #86–10 applies to contact lenses that are: (1) Intended to change the appearance of the normal eye in decorative fashion; and (2) intended for distribution directly to the wearer, without the involvement of a qualified eye care professional. It does not cover contact lenses that are intended for vision correction or for prosthetic or other medical or therapeutic use and that are, therefore, properly regulated as medical devices under the act.

III. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the sampling or detention without physical examination of decorative contact lenses that appear to be adulterated under section 601(a) and (e) of the act because they contain a deleterious substance that is harmful to users and/or contain an unapproved color additive, or appear to be misbranded under section 602(a) because their labeling is false or misleading. It does not create or confer

[1] There are some lenses currently on the market under cleared 510(k)s covering contact lenses intended for both vision correction use and for solely decorative purposes. The sponsors in these cases voluntarily included a plano lens in the range of corrective powers described in the 510(k) submissions.

[2] *American Health Prods Co.* v. *Hoyes*, 574 F. Supp. 1498, 1505 (S.D.N.Y. 1983), *off'd on other grounds*, 744 F.2d 912 (2d Cir. 1984) (The courts "have always read the * * * statuatory definitions employing the term 'intended' to refer to specific marketing representations.").

any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute and regulations.

This guidance is effective immediately because prior public participation is not feasible or appropriate due to the risks to the public health presented by these products.

IV. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this guidance. Such comments will be considered when determining whether to amend the current guidance. Two paper copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.fda.gov/ora/fiars/ora_import_ia8610.html*.

VI. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Food and Drug Administration (FDA), Compliance Policy Guide (CPG) 7128.04 (revised August 1996) (hair brushes); (*http://www.fda.gov/ora/compliance_ref/cpg/cpgfod/cpg590-400.htm*).

2. FDA, CPG 7128.05 (revised September 1, 1986) (wigs); (http://www.fda.gov/ora/compliance_ref/cpg/cpgfod/cpg590-600.htm).

3. Hutt, Peter Barton, "Reconciling the Legal, Medical, and Cosmetic Chemist Approach to the Definition of a 'Cosmetic,' " *Cosmetic, Toiletry, and Fragrance Association Cosmetic Journal*", vol. 3, 1971 (excerpted in Peter Barton Hutt & Richard A. Merrill, Food and Drug Law: Cases and Materials, p. 824–825 (2d ed. 1991)).

4. FDA, CPG 7128.03 (revised August 1996) (mascara is an eye-contact cosmetic); (*http://www.fda.gov/ora/compliance_ref/cpg/cpgfod/cpg590-300.htm*).

Dated: April 1, 2003.

John R. Marzilli,

Acting, Associate Commissioner for Regulatory Affairs.

[FR Doc. 03–8315 Filed 4–2–03; 11:42 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0057]

Guidance for Industry: How to Use E-mail to Submit a Protocol; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry (#107) entitled "How to Use E-mail to Submit a Protocol." This guidance describes how sponsors can use e-mail to submit protocols for studies intended to be conducted in support of New Animal Drug Applications (NADAs) to the Center for Veterinary Medicine (CVM). Electronic submission is part of CVM's ongoing initiative to provide a method for paperless submissions. This guidance is intended to implement provisions of the Government Paperwork Elimination Act (GPEA).

DATES: General comments on agency guidance documents are welcome at any time.

Submit written or electronic comments on the information collection requirements by June 3, 2003.

ADDRESSES: Submit written requests for single copies of the guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments should be identified with the full title of the guidance document and the docket number found in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the collection of information requirements to the Dockets Management Branch. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth L. Parbuoni, Center for Veterinary Medicine (HFV–16), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–3845, e-mail: *eparbuon@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 20, 1997 (62 FR 13430), FDA published the electronic records and electronic signatures final regulation. This regulation, part 11 (21 CFR part 11), sets forth the criteria under which the agency considers electronic records, electronic signatures, and handwritten signatures executed to electronic records to be trustworthy, reliable, and generally equivalent to paper records and handwritten signatures executed on paper. Electronic records that meet the requirements of part 11 and are identified in public docket 92S–0251 as being the type of submission the agency will accept in electronic format may be used in lieu of paper records unless paper records are specifically required. CVM has identified protocols in this public docket. The public docket is accessible on the Internet at *http://www.fda.gov/ohrms/dockets/dockets/92s0251/92s0251.htm*.

Establishing a process for acceptance of the electronic submission of protocols for studies conducted by sponsors in support of NADAs is part of CVM's ongoing initiative to provide a method for paperless submissions. Upon request, CVM reviews protocols for safety and effectiveness studies. This protocol review facilitates the animal drug review process by improving the likelihood that the study design will be relevant to NADA approval.

Currently, sponsors submit protocols to CVM in paper format. CVM is publishing this guidance to give sponsors the option to submit a protocol as an e-mail attachment via the Internet. This guidance implements provisions of the GPEA. The GPEA requires Federal agencies, by October 21, 2003, to provide: (1) For the option of the electronic maintenance, submission, or disclosure of information, if practicable, as a substitute for paper; and (2) for the use and acceptance of electronic signatures, where applicable.

In order to submit a protocol for an NADA study by e-mail, sponsors should first register and follow the general instructions in guidance #108 entitled "How to Use E-mail to Submit Information to the Center for Veterinary Medicine."

II. Significance of Guidance

This level 2 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking about using e-mail to submit a protocol. The document does not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternative methods may be used as long as they satisfy the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60–day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: How to Use E-mail to Submit a Protocol

Description: CVM may review protocols for safety and effectiveness studies of new animal drugs submitted by sponsors. The review of protocols facilitates the drug review and approval processes.

Protocols for nonclinical laboratory studies (safety studies) are required under 21 CFR 58.120. Protocols for effectiveness studies are required under § 514.117(b). The burden hours associated with preparing the protocols and appendices were reported and approved under OMB control number 0910–0119 for nonclinical laboratory studies and OMB control number 0910–0346 for adequate and well-controlled effectiveness studies. In this guidance document CVM is giving sponsors the option to submit a protocol as an attachment via the Internet.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form FDA No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3536	190	0.52	100	0.20	20

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate was calculated as the time it takes to submit the protocol which consists of filling out the form and pressing the "insertsubmission" button, adding the password and pressing the "mail to" button, since the burden for protocol is already estimated under OMB control number 0910–0119 for nonclinical laboratory studies and OMB control number 0910–0346 for efficacy studies. The number of approved sponsors is 190, we routinely receive about 100 protocols a year, and the 12 minutes (.2 *60 minutes/hour) is an estimate based on talking to participating sponsors and our testing the use of the form.

IV. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Written comments concerning the information collection requirements must be received by the Dockets Management Branch by June 3, 2003. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Electronic comments on the guidance document may be submitted on the Internet at *http://www.fda.gov/dockets/ecomments*. Once on the Internet site, select "03D–0057 How to Use E-mail to Submit a Protocol" and follow the directions. A copy of this document may be obtained on the Internet at *http://www.fda.gov/cvm*.

Dated: March 21, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–8166 Filed 4–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0094]

Annual Guidance Agenda

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing its annual guidance document agenda. FDA committed to publishing, on an annual basis, a list of possible topics for future guidance document development or revision during the next year, and seeking public comment on additional ideas for new guidance documents or revisions of existing ones. This commitment was made in FDA's September 2000 good guidance practices (GGPs) final rule, which sets forth the agency's policies and procedures for the development, issuance, and use of guidance documents. This list is intended to seek public comment on possible topics for guidance documents and possible revisions to existing guidance.

DATES: Submit written or electronic comments on this list and on agency guidance documents at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: For general information regarding FDA's GGPs contact: Diane Sullivan-Ford, Office of Policy (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3480. For information regarding specific topics or guidance, please see contact persons listed in the table in the **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of September 19, 2000 (65 FR 56468), FDA published a final rule announcing its GGPs, which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents. The agency adopted the GGPs to ensure public involvement in the development of guidance documents and to enhance public understanding of the availability, nature, and legal effect of such guidance.

As part of FDA's effort to ensure meaningful interaction with the public regarding guidance documents, the agency committed to publishing an annual guidance document agenda of possible guidance topics or documents for development or revision during the coming year. The agency also committed to soliciting public input regarding these and additional ideas for new topics or revisions to existing guidance documents (65 FR 56468 at 56477, 21 CFR 10.115(f)(5)).

The agency is neither bound by this list of possible topics nor required to issue every guidance document on this list or precluded from issuing guidance documents not on the list set forth in this document.

The following list of guidance topics or documents represents possible new topics or revisions to existing guidance documents that the agency is considering. The agency solicits comments on the topics listed in this document and also seeks additional ideas from the public.

The guidance topic or documents are organized by the issuing center or office within FDA and are further grouped by topic categories. The agency's contact persons are listed for each guidance in the following table.

TITLE/TOPIC OF GUIDANCE	CONTACT
I. CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)	
CATEGORY—COMPLIANCE AND INSPECTION	
Guidance for Industry: Reprocessing, Reworking and Blending of Biological Drug Substances and Drug Products	Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210
Guidance for Industry: Process Validation Considerations for Biological Drug Substances and Biological Drug Products	Same as above (Do)
Guidance for Industry: Sterile Drug Products Produced by Aseptic Processing	Do
Guidance for Industry: Design, Installation and Operation of Heating, Ventilation and Air Conditioning (HVAC) Systems Used in the Manufacture of Products Regulated by the Center for Biologics Evaluation and Research and the Center for Drug Evaluation and Research	Do
Guidance for Industry: Content and Format of the Warnings/Precautions Section of Labeling for Drugs and Biologics	Do
Guidance for Industry: Content and Format of the Pregnancy and Lactation Sections of Labeling for Drugs and Biologics	Do
Guidance for Industry and Reviewers: Measuring Patient Reported Outcomes to Support Medical Product Claims in Labeling and Advertising	Do
Compliance Program 7341.001 Inspections of Licensed Therapeutic Drug Products	Do
Compliance Program 7341.002—Inspection of Tissue Establishments	Do
Compliance Program 7342.001—Inspection of Licensed and Unlicensed Blood Banks, Brokers, Reference Laboratories, and Contractors	Do
Compliance Program 7342.002—Inspection of Source Plasma Establishments	Do
Compliance Program 7342.006—Inspection of Plasma Derivatives of Human Origin	Do
Compliance Program 7342.008—Inspections of Licensed Viral Marker Test Kits	Do

TITLE/TOPIC OF GUIDANCE	CONTACT
Compliance Program 7345.001—Inspection of Licensed Allergenic Products	Do
Compliance Program 7345.002—Inspection of Licensed Vaccines	Do
CATEGORY—THERAPEUTICS	
Submission of Information for the National Xenotransplantation Database (NXD)	Do
Guidance for Reviewers: Instructions and Template for Chemistry, Manufacturing, and Controls Reviewers of Human Gene Therapy Investigational New Drug Applications	Do
Guidance for Reviewers: Instructions and Template for Chemistry, Manufacturing, and Controls Reviewers of Human Somatic Cell Therapy Investigational New Drug Applications	Do
Potency Assays for Therapeutic Vaccines	Do
Good Review Practices—Track IV	Do
Submission of Information for Adverse Event and Annual Reports for Gene Therapy Investigational New Drug Applications	
Mechanisms of Regulation for Products Used in the Manufacture of Cellular Products	Do
Submission of Chemistry, Manufacturing, and Controls Information for a Therapeutic Recombinant DNA-Derived Product or a Monoclonal Antibody for In Vivo Use	Do
Submission of Chemistry, Manufacturing, and Controls Information for Synthetic Peptide Substances	Do
Submission of Chemistry, Manufacturing, and Controls Information and Establishment Description for Autologous Somatic Therapy Products	Do
CATEGORY—BLOOD AND BLOOD COMPONENTS	
Blood Establishment Software	Do
Apheresis Guidance	Do
Uniform Donor History Questionnaire	Do
Quality Control of Bacterial Contamination	Do
Content of Premarket Submissions (Instruments)	Do
Medication Deferrals	Do
Validation of Computer Crossmatch	Do
Blood Contact Materials	Do
Red Blood Cell Repositories	Do
Rapid Human Immunodeficiency Virus Tests	Do
Submission of Chemistry, Manufacturing, and Controls and Establishment Description Information for Human Plasma-Derived Biological Products, Animal Plasma or Serum-Derived Products Blood Donor Testing for Syphilis Format and Content of a Biologics License Application for Immune Globulin Intravenous Recommendations for Deferral of Donors of Vaccinated With Smallpox Nucleic Acid Testing for Human Immunodeficiency Virus and Hepatitis C Virus; Testing, Product Disposition, Donor Deferral and Reentry	Do
CATEGORY—VACCINES	
Guidance for Industry: Characterization and Qualification of Cell Substances and Viral Seeds Used to Produce Viral Vaccines	Do

TITLE/TOPIC OF GUIDANCE	CONTACT
Guidance for Industry: Preclinical Toxicity Studies for Prophylactic Vaccines	Do
Guidance for Industry: Immunization Human Plasma Donors to Obtain Source Plasma for Preparation of Specific Immune Globulins	Do
Guidance for Industry: Content and Format of Chemistry, Manufacturing, and Controls Information and Establishment Description Information for a Vaccine or Related Product	Do
Guidance for Industry on the Content and Format of Chemistry, Manufacturing, and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test	Do
CATEGORY—OTHER	
Providing Regulatory Submission in Electronic Format—Stability	Do
Environmental Assessment/National Environmental Policy Act	Do
Requests for Engagement of Independent Consultant	Do
Eligibility Determination for Donors of Human Cells, Tissue and Cellular and Tissue-Based Products (HCT/Ps)	Do
Filing and Application When the Applicant Protests a Refusal to File Action	Do
Guidance for Industry: Multi-Product Manufacturing With Spore-Forming Microorganisms	Do
II. CENTER FOR DEVICES AND RADIOLOGICAL HEALTH (CDRH)	
CATEGORY—PREMARKET REVIEW—PROCEDURAL	
Delegation of Investigational Device Exemption (Withdrawal)	Joanne R. Less, Center for Devices and Radiological Health (HFZ–403), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190
Overdue Investigational Device Exemption Annual Progress Report Procedures (Withdrawal)	Do
Humanitarian Device Exemptions (HDE) Regulation: Questions and Answers (Revised)	Do
Guidance for the Medical Device Industry on Premarket Approval Application Shell Development and Modular Review (Revised)	Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186
Modifications to Devices Subject to Premarket Approval Application—The Premarket Approval Application Supplement Decision Making Process (Final)	Do
Real-Time Review Program for Premarket Approval Application (PMA) Supplements (Revised)	Do
Pre-Premarket Approval Application Meetings	Do
A New 510(k) Paradigm—Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications (Revised)	Heather Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190
Frequently Asked Questions on the New 510(k) Paradigm (Revised)	Do
New Section 513(f)(2)—Evaluation of Automatic Class III Designation (Revised)	Do
Implementation of Third Party Programs Under the Food and Drug Modernization Act of 1997 (Revised)	Ronald Parr, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 109
Statistical Guidance on Reporting Results From Studies Evaluating Diagnostic Tests: Draft Guidance for Industry and FDA Reviewers	Kristen Meier, Center for Devices and Radiological Health (HFZ–542), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–4369

TITLE/TOPIC OF GUIDANCE	CONTACT
CATEGORY—PREMARKET REVIEW ANESTHESIOLOGY, DENTAL, INFECTION CONTROL, AND GENERAL HOSPITAL DEVICES	
Biological Indicator (Final)	Chiu S. Lin, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913
Chemical Indicator (Draft)	Do
Medical Sterilization Packaging (Final)	Do
Antimicrobial Coated Medical Devices (Draft)	Do
Surgical Masks (Final)	Do
Surgical Drapes and Gowns (Draft)	Do
Disinfectants to Reprocess Hemodialyzer Machine and Water Treatment Systems (Draft)	Do
Medical Glove Expiration Dating (Final)	Do
Chemotherapy Glove (Draft)	Do
Intraoral Snoring and Sleep Apnea Devices (Final)	Kevin Mulry, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283, ext. 185
Sonography and Jaw Tracking (Final)	Mary S. Runner, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283
Precious Metal Dental Alloys	Mike Adjodha, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283
Base Dental Alloys	Do
Dental Curing Light	Do
Periodontal Membrane Guidance	Robert Betz, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283
Guidance for Bone Filling and Augmentation Devices	Pam Scott, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283
Cutaneous O_2 and CO_2 Monitors (Final)	Joanna Weitershausen, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8611
General Anesthesia Guidance Document	Do
Pulse Oximeter Guidance Document (Revised)	Do
Vascular Access Flush Devices	Patricia Cricenti, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1287, ext. 169
Needleless Injection Devices	Von Nakayama, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1287
CATEGORY—PREMARKET REVIEW FOR CARDIOVASCULAR DEVICES	
Intravascular Stents (Revised)	Ashley Boam, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243
Percutaneous Transluminal Coronary Angioplasty Catheters, Class II Special Control Guidance	Do

TITLE/TOPIC OF GUIDANCE	CONTACT
Cardiovascular Intravascular Filters (Revised)	Elisa Harvey, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8262
Arrhythmia Detectors	Elias Mallis, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517
Medical Device Labeling—Suggested Format and Content (Withdrawal)	Robert Gatling, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190, ext. 140
Class II Special Control Guidance Document: Extracorporeal Life Support Devices (Draft)	Dina J. Fleischer, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517, ext. 176
CATEGORY—PREMARKET REVIEW FOR CLINICAL LABORATORY DEVICES	
Over-the-Counter (OTC) Drugs of Abuse	Arleen Pinkos, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1243
Glucose Test Systems	Pat Bernhardt, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1243
Automated Coagulation Devices	Valerie Dada, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1293
Analytical and Clinical Validation of Multiplex Tests for Heritable DNA Markers and/or Mutations	Elizabeth Mansfield and Michele Schoonmaker, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1293
Class II Special Controls Guidance Document: Specific Bacteriophage, Antibody Conjugates, and Antigens for Antibody Detection for *Bacillus anthracis* and *Yersinia pestis*	Roxanne Shively, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2096
Class II Special Controls Guidance Document: Antimicrobial Susceptibility Test (AST) Systems (Final)	Sally Selepak, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2096
Draft Guidance on In Vitro Diagnostic (IVD) Device Studies	Jean Toth-Allen, Center for Devices and Radiological Health (HFZ–312), Food and Drug Administration, 2904 Gaither Rd., Rockville, MD 20850, 301–594–4723, ext. 141
CATEGORY—PREMARKET REVIEW FOR GENERAL, RESTORATIVE AND NEUROLOGICAL DEVICES	
Guidance for Thermal Ablation Device 510(k)s; Draft Guidance for Industry and FDA	Binita Ashar, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1307
Class II Exempt Special Controls Guidance for Various Orthopedic Fixation Devices; Final Guidance for Industry	Hollace Rhodes, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036
Class II Special Controls Guidance Document: Knee Joint Patellofemorotibial and Femorotibial Metal/Polymer Porous-Coated Uncemented Prostheses	Peter Allen, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036
Class II Special Controls Guidance Document: Surgical Suture	Anthony Watson, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090
Class II Special Controls Guidance Document: Processed Human Dura Mater (Draft)	Charles Durfor, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090
Class II Special Controls Guidance Document: Vascular and Neurological Embolization Devices (Draft)	Stephen Rhodes, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090

TITLE/TOPIC OF GUIDANCE	CONTACT
Guidance for Saline, Silicone Gel, and Alternative Breast Implants (Revised)	Samie Allen, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090
Class II Special Controls Guidance Document: Resorbable Calcium Salt Bone Void Filler Device (Final)	Nadine Sloan, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1296
Class II Special Controls Guidance Document: Transcutaneous Electrical Stimulator for Cosmetic Use (Draft)	Robert DeLuca, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1296
Class II Special Controls Guidance Document: Cutaneous Electrode (Draft)	Do
Class II Special Controls Guidance Document: Electroconductive Media (Draft)	Do
Class II Special Controls Guidance Document: Powered Muscle Stimulator for Muscle Conditioning (Draft)	Do
Class II Special Controls Guidance Document: Powered Muscle Stimulator for Rehabilitation (Draft)	Do
Class II Special Controls Guidance Document: Transcutaneous Electrical Nerve Stimulator for Pain Relief (Draft)	Do
Special Control Guidance for Premarket Notifications for Totally Implanted Spinal Cord Stimulators for Pain Relief (Withdrawal)	Kristen Bowsher, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1296
Guidance for Technical Reporting in the Submission of Research and Marketing Applications for Totally Implanted Spinal Cord Stimulators (Draft)	Do
CATEGORY—PREMARKET REVIEW FOR OPHTHALMIC AND ENT DEVICES	
Class II Special Controls Guidance Document: Rigid Gas Permeable (RGP) by Contact Lens Finishing Laboratories	James F. Saviola, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1744
Premarket Notification (510(k)) Guidance Document for Class II Daily Wear Contact Lenses (Revised)	Do
Class II Special Controls Guidance Document: Artificial Eye Care Products	Do
Class II Special Controls Guidance Document: Intraocular Gases for Retina Tamponade	Do
Retinal Implants: Guidance for Investigational Device Exemptions (IDE) and Premarket Approval (PMA) Applications (Draft)	Do
Guidance for Premarket Approval Applications of Class III Extended Wear Contact Lenses	Do
Guidance for Post Approval Studies of Class III Extended Wear Contact Lenses Worn Beyond Seven Continuous Nights	Do
Labeling Guidance for Ultraviolet Absorbing Contact Lenses	Do
Intraocular Lens Guidance Document	Donna R. Lochner, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053
Refractive Implants Guidance Document	Do
Guidance Document for Keratomes and Keratome Blades	Everette T. Beers, Chief, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2018

TITLE/TOPIC OF GUIDANCE	CONTACT
Implantable Middle Ear Hearing Device (Final)	Eric C. Mann, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2018
Tinnitis Masking Devices	Do
Laryngoplastic Phonosurgery Devices	Do
Ear Plug Devices	Do
CATEGORY—PREMARKET REVIEW FOR REPRODUCTIVE, ABDOMINAL AND RADIOLOGICAL DEVICES	
Devices for Assisted Reproduction Technologies (ART)	Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, ext. 115
Embolization Agents for Uterine Fibroid Embolization	Do
Condoms	Do
Menstrual Tampons	Do
Devices for Vacuum Assisted Delivery	Do
Device Systems for Endometrial Ablation	Do
Class II Special Controls Guidance Document: External Penile Rigidity Devices	Janine Morris, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194, ext. 117
Guidance for the Treatment of Prostate Cancer	Do
Guidance for Urethral Stents	Do
Class II Special Controls Guidance for Home Uterine Activity Monitors (Revised)	Do
Ultrasound Coupling Gel	Robert A. Phillips, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212, ext. 130
Diagnostic Ultrasound	Do
Cleaning and Disinfection of Radiological Devices	Do
Sheaths and Covers for Ultrasound Transducers	Do
Bone Sonometers (Revised)	Do
Class II Special Controls Guidance Document: Sorbent Hemoperfusion Systems (Draft) Bone Sonometers (Revised)	Carolyn Neuland, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1220; ext. 131
Content of Premarket Notification Submissions for Conventional and High Permeability Hemodialyzers, Hemoconcentrators, Hemofilters and Hemodiafilters (Revised)	Do
Guidance for the Content of Premarket Notifications for Hemodialysis Delivery Systems	Do
Automated Blood Cell Separators for Therapeutic Purposes (Draft)	Do
Blood Access Devices for Hemodialysis (Draft)	Do
CATEGORY—COMPLIANCE AND INSPECTIONS	
Impact Resistance Lenses: Questions and Answers	Walter Snesko, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 120
Medical Device Quality Systems Manual for Small Entities (Update)	Joseph Puleo, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 116

TITLE/TOPIC OF GUIDANCE	CONTACT
Medical Glove Guidance Manual (Update)	Arthur Yellin, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 146
Draft Guidance on Cabinet X-ray Systems Performance Specifications	Daniel Kassidy, Center for Devices and Radiological Health (HFZ–342), Food and Drug Administration, 2904 Gaither Rd., Rockville, MD 20850, 301–594–4654, ext. 141
Final Guidance on Civil Money Penalties	Casper Uldriks, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2904 Gaither Rd., Rockville, MD 20850, 301–594–4692
Draft Guidance on the Reports of Corrections and Removals Regulation	Do
Draft Guidance for Field Clinical Engineers	Marian Surge, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2904 Gaither Rd., Rockville, MD 20850, 301–594–4720, ext. 139
Draft Guidance on Good Laboratory Practice (GLP) for Nonclinical Laboratory Studies	Rodney Allnutt, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2904 Gaither Rd., Rockville, MD 20850, 301–594–4723, ext. 140
Draft Guidance on the Submission of Abbreviated Reports on Bone Densitometer Devices Utilizing Electronic Product Radiation	Tom Jakub, Center for Devices and Radiological Health (HFZ–333), Food and Drug Administration, 2904 Gaither Rd., Rockville, MD 20850, 301–594–4591, ext. 151
Implementation of the Third Party Domestic Quality System Program	Ronald Parr, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 109
CATEGORY: CONSUMER INFORMATION	
Breast Implants: An Information Update	Nancy Leonard, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 141
Modifications and Additions to the Policy Guidance Help System #6	Charles A. Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–0009
Modifications and Additions to the Policy Guidance Help System #7	Do
Modifications and Additions to the Policy Guidance Help System #8	Do
Modifications and Additions to the Policy Guidance Help System #9	Do
Modifications and Additions to the Policy Guidance Help System #10	Do
CATEGORY—MEDICAL DEVICE REPORTING	
Needlesticks; Medical Device Reporting Guidance for User Facilities, Manufacturers, and Importers	Sharon Kapsch, Center for Devices and Radiological Health (HFZ–533), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2982
CATEGORY—POSTMARKET SURVEILLANCE	
Preparing a Postmarket Surveillance Plan: Guidance for Manufacturers	Laura Alonge, Center for Devices and Radiological Health (HFZ–510), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3060
CATEGORY—OTHER	
Hospital Bed System Dimensional and Assessment Guidance to Reduce Entrapment: For Industry and Health Care Facilities	Jay A. Rachlin, Center for Devices and Radiological Health (HFZ–230), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3174
III. CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)	
CATEGORY—ADVERTISING	
Advertising and Labeling of Treatment Investigational New Drug Application Protocols	Nancy E. Derr, Center for Drug Evaluation and Research (HFD–5), Food and Drug Administration, 1451 Rockville Pike, Rockville, MD 20852, 301–594–5400

TITLE/TOPIC OF GUIDANCE	CONTACT
Patient Reported Outcomes	Do
Promotion of Combination Oral Contraceptive Products	Do
CATEGORY—BIOPHARMACEUTICS	
Clozapine Tablets—In Vivo Bioequivalence and In Vitro Dissolution Testing	Do
CATEGORY—CHEMISTRY	
Documentation for Antibiotics and Other Cellular Metabolites Produced by Microorganisms Modified Using Recombinant DNA Technology	Do
Drug Products: Chemistry, Manufacturing, and Control Documentation	Do
Drug Substance: Chemistry, Manufacturing, and Control Documentation	Do
CATEGORY—CLINICAL/MEDICAL	
Acne Vulgaris	Do
Analgesics	Do
Clinical Development Programs for Metered Dose Inhaler and Dry Powder Inhalers Products—Revised	Do
Clinical Evaluation of Drugs for the Treatment of Acute Coronary Syndrome	Do
Clinical Evaluation of Combination Estrogen/Progestin-Containing Drug Products Used for Hormone Replacement Therapy in Postmenopausal Women—Revised	Do
Clinical Evaluation of Drugs for Neuropathic Pain	Do
Clinical Evaluation of Drugs for the Treatment of Heart Failure	Do
Collection and Use of Race and Ethnicity Data in Clinical Trials for FDA Regulated Products	Do
Development of New Opiate Formulations	Do
Developing Antiviral Drug for the Mitigation of Complication Associated Vaccine Immunization	Do
Developing Antiviral Drugs for the Treatment of Smallpox	Do
Drug-Coated Cardiovascular Stents	Do
Evaluation of New Treatments for Diabetes Mellitus	Do
Gingivitis	Do
Safety Review of Clinical Data	Do
CATEGORY—CLINICAL/PHARMACOLOGY	Do
Content and Format of the Clinical Pharmacology Section	Do
Content and Format of the Warnings and Precautions, Contradictions and Boxed Warning Sections of Prescription Drugs	Do
Immediate Release to Modified Release Dosage Forms	Do
In Vitro Drug Metabolism/Drug Interaction—Guidance for Reviewers	Do
CATEGORY—COMPLIANCE	
Current Good Manufacturing Practices for Compressed Medical Gases—Revised	Do
Maintaining Adequate and Accurate Records During Clinical Investigations	Do

TITLE/TOPIC OF GUIDANCE	CONTACT
National Drug Code Number and Drug Product Labels	Do
Describing How Positron Emission Tomography Drug Products May Comply With New Current Good Manufacturing Process Requirements—Revised	Do
Sterile Drug Products Produced by Aseptic Processing	Do
CATEGORY—ELECTRONIC SUBMISSIONS	
Providing Electronic Submissions to the Division of Drug Marketing, Advertising, and Communications	Do
Providing Electronic Submissions in Electronic Format: Marketing Applications and Related Submissions	
Providing Regulatory Submissions in Electronic Format—Annual Reports for Approved New Drug Applications	Do
Providing Regulatory Submissions in Electronic Format—General Considerations	Do
Providing Regulatory Submissions in Electronic Format: Postmarketing Periodic Adverse Drug Experience Report	Do
Scope and Implementation of 21 CFR Part 11: Archiving	Do
Scope and Implementation of 21 CFR Part 11: Audit Trails	Do
Standards for Clinical Data Submissions	Do
CATEGORY—GENERICS	
Bioequivalence Studies With Clinical Endpoints for Vaginal Antifungal Drug Products	Do
Chemistry, Manufacturing, and Controls Documentation Unique to Radiopharmaceuticals Submitted in Abbreviated New Drug Applications	Do
Generic Drug Labeling When Pediatric Labeling Information Has Been Added to the Innovator Labeling	Do
CATEGORY—GOOD REVIEW PRACTICES	
General Clinical Review Template	Do
CATEGORY—INVESTIGATIONAL NEW DRUG APPLICATIONS	
Consumer Product Safety Commission—Tamper Resistant Packaging for Investigational New Drug Applications	Do
Pediatric Safety and Efficacy Data in Investigational New Drug Applications	Do
CATEGORY—LABELING	
Drug Names and Dosage Forms	Do
Pregnancy Labeling Revisions	Do
Submitting Proprietary Names for Evaluation	Do
CATEGORY–OVER–THE–COUNTER	
Actual Use Trials	Do
Labeling Comprehension Studies for Over-the-Counter Drug Products	Do
Labeling for Over-the-Counter Human Drug Products	Do
Labeling Over-the-Counter Human Drug Products; Questions and Answers	Do
Time and Extent Applications	Do

TITLE/TOPIC OF GUIDANCE	CONTACT
CATEGORY—PRESCRIPTION DRUG USER FEE AMENDMENTS OF 2002	
Continuous Marketing Application: Pilot 1—Reviewable Units for Fast Track Products Under the Prescription Drug User Fee Amendments of 2002	Do
Continuous Marketing Application: Pilot 2—Scientific Feedback and Interactions During Drug Development of Fast Track Products Under the Prescription Drug User Fee Amendments of 2002	Do
First Cycle Review Performance: Good Review Management Principles	Do
CATEGORY—PHARMACOLOGY/TOXICOLOGY	
Drug-Induced Vasculitis in Nonclinical Studies	Do
Estimating the Safe Starting Dose for Clinical Trials of Therapeutics in Adult Healthy Volunteers	Do
Immunotoxicology Evaluation of Investigational New Drug Applications	Do
Nonclinical Safety Evaluation of Pediatric Drug Products	Do
CATEGORY—PROCEDURAL	
Assessment of Abuse Potential of Drugs	Do
Dispute Resolution Involving Pediatric Labeling	Do
Exocrine Pancreatic Insufficiency Drug Products—New Drug Application Requirements	Do
Process for Contracts and Written Requests Under the Best Pharmaceuticals for Children Act	Do
Qualifying for Pediatric Exclusivity Under Section 505a of the Federal Food, Drug, and Cosmetic Act	Do
Reports on the Status of Postmarketing Studies—Implementation of Section 130 of the Food and Drug Administration Modernization Act of 1997	Do
IV. CENTER FOOD SAFETY AND APPLIED NUTRITION (CFSAN)	
CATEGORY: OFFICE OF PLANTS, DAIRY FOODS, AND BEVERAGES	
Final Guidance on Juice Transport	Amy Green, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2025
Draft Guidance on Use of Food Allergen Test Kits	Jennifer Burnham, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2030
Draft Guidance to Harmonize U.S. Aflatoxin Levels in Peanuts With Codex Levels	Lauren Posnick, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1639
Compliance Policy Guide for Lead Levels in Food Based on Levels Adopted by Codex	Do
Additional Questions and Answers on Juice Hazard Analysis and Critical Control Point	Samir Assar, Center for Food Safety and Applied Nutrition (HFS–235), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1636
Update the Pesticide Compliance Policy Guide to Bring It in Line With the Food Quality Protection Act of 1996 and Changes in Pesticide Programs and Policy Over the Past Few Years	Mike Kashtock, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2022
Guidance for Industry: Standardized Training Curriculum for Application of Hazard Analysis and Critical Control Point Principles to Juice Processing	Do

TITLE/TOPIC OF GUIDANCE	CONTACT
Listeria monocytogenes Draft Guidance	Andreas Keller, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2029
Fresh-Cut Produce Draft Guidance	Julie Schrimpf, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. 301–436–2031
Small Entities Guide for the Juice Hazard Analysis and Critical Control Point Regulations	Amy Green, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2025
Juice Hazard Analysis and Critical Control Point Compliance Program	Dale Wohlers, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2029
Final Compliance Policy Guide 555.600 Filth From Insects, Rodents, and Other Pests in Food	Douglas Park, Center for Food Safety and Applied Nutrition (HFS–345), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2401
Draft Compliance Policy Guide 555.525—Fly Infestations	Do
Draft Compliance Policy Guide 555.500—Classification of Establishment Inspection Report	Do
Draft Compliance Policy Guide 580.100—Pest Infestations	Do
Rescind Compliance Policy Guide 527.600 Use of Dichlorvos Strips in Milk Houses and Milk Rooms	Esther Lazar, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1485
Rescind Compliance Policy Guide 527.450 Milk and Milk Products Containing Penicillin	Do
Update Compliance Policy Guide 527.400 Whole Milk, Low Fat Milk, Skim Milk—Aflatoxin M1	Do
Update Compliance Policy Guide 527.300 Pathogens in Dairy Products	Do
Update Compliance Policy Guide 527.200 Cheese and Cheese Products—Adulteration With Filth	Do
New Compliance Policy Guide on Vitamins A and D in Milk Products	Monica Metz, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2041
New Compliance Policy Guide on Vat Pasteurization	Do
New Compliance Policy Guide on High Temperature/Short Time Pasteurization	Do
New Compliance Policy Guide on Soft Cheeses	Do
We may either update or rescind the following:	Do
Compliance Policy Guide 527.250 Cheese Misbranding Due to Moisture and Fat	To be determined (TBD)
Compliance Policy Guide 527.500 Malted Milk	TBD
Compliance Policy Guide 527.100 Butter—Adulteration Involving Insufficient Fat Content	TBD
Compliance Policy Guide 527.250 Cheese and Cheese Products: Misbranding Involving Net Weights	TBD
CATEGORY: OFFICE OF FIELD PROGRAMS	
Allergen Questions and Answers	Donald Kautter, Center for Food Safety and Applied Nutrition (HFS–615), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1629

TITLE/TOPIC OF GUIDANCE	CONTACT
Allergen Recall Classification Guidance	Do
Juice Hazard Analysis and Critical Control Point Regulator Guide and Training	Do
Spice Reconditioning Inspection Guidance	Do
Spice Reconditioning Industry Guidance	Do
Interstate Travel Handbooks on Sanitation of: • Railroad Servicing Areas • Vessels in Operation • Vessel Construction • Vessel Watering Points • Buses • Airlines Railroad Passenger Cars	Do (pending Office of Field Programs reorganization)
International Travel Program—Guide to Inspections of Interstate Carriers and Support Facilities	Do
Compliance Programs for Milk, Retail Food, and Molluscan Shellfish	Faye Feldstein, Center for Food Safety and Applied Nutrition (HFS–615), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1564
Electronic Inspection System With Model Code Database, Model Inspection Form, Users' Manual	Do
Food Recovery Guidelines	Do
Permanent Outdoor Cooking Guidelines	Do
Temporary Food Establishments Guidance	Do
Voluntary National Retail Regulatory Program Standards and Annexes	Do
Program Standards Clearinghouse Questions and Answers	Do
Conference Position Papers (Shellfish and Milk for 2003)	Do
Food Code Supplements	Do
Center for Food Safety and Applied Nutrition Response to Conference for Food Protection Recommendations	Do
Food Code Interpretations; Questions and Answers	Do
Opinion Letters in Response to Correspondence	Do
Backgrounders	Do
Program Information Manual Additions and Revised	Do
Letters to Industry Alerting Them to a Commodity Problem, Emerging Situations, and How to Respond	Do
Managing Food Safety: A Regulator's Guide for Applying Hazard Analysis and Critical Control Point Principles to Risk-Based Retail and Food Service Inspections	Do
Managing Food Safety: A Guide for the Voluntary Use of Hazard Analysis and Critical Control Point Principles for Operators of Food Service and Retail Establishments	Do
Combined Pasteurized Milk and Dry Milk Ordinance	Do
Annual Report Regarding State Program Evaluations (Milk and Shellfish)	Do
Rescind Guidance Regarding Blending of Milk Products (Compliance Policy Guide?)	Office of Plant and Dairy Foods and Beverages
Compliance Policy Guide—Criteria for Refusal for Entry of Food Products From Firms That Refuse to Allow Inspections	Do

TITLE/TOPIC OF GUIDANCE	CONTACT
Listeria Action Plan	Donald Kautter, Center for Food Safety and Applied Nutrition (HFS–615), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1629
Food Registration Implementation	Do
Molluscan Shellfish: Guide for the Control of Molluscan Shellfish • Model Ordinance • Public Health Reasons and Program Requirements for State Administrative Procedures; Laboratory Procedures; Growing Area Survey and Classification; Controlled Relaying; Patrol of Shellfish Harvesting Areas; Control of Harvesting; Aquaculture; Harvesting, Handling and Shipping Shellfish; Shellfish Processing • Guidance Documents on Growing Areas, Harvesting, Processing, and Distribution • Suggested Forms • Manual of FDA Interpretations of Model Ordinance Requirements	Faye Feldstein, Center for Food Safety and Applied Nutrition (HFS–615), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1564
Program No. 7303.003: Import Acidified and Low Acid Canned Foods Program	TBD
Program No. 7303.037: Domestic and Imported Cheese and Cheese Products	TBD
Program No. 7303.039: National Drug Residue Milk Monitoring Program	TBD
Program No. 7303.803: Domestic Food Safety	TBD
Program No. 7303.803A: Domestic Acidified and Low-Acid Canned Foods	TBD
Program No. 7303.819: Import Foods—General Program	TBD
Program No. 7303.842: Domestic Fish and Fishery Products Inspection Program (Fiscal Years 2001 and 2002)	TBD
Program No. 7303.844: Import Seafood Products	TBD
Program No. 7304.004: Pesticides and Industrial Chemicals in Domestic Foods	TBD
Program No. 7304.016: Pesticides and Industrial Chemicals in Imported Foods	TBD
Program No. 7304.018: Chemotherapeutic in Seafood Compliance Program	TBD
Program No. 7304.019: Toxic Elements in Foods and Foodware Import and Domestic	TBD
Program No. 7304.839: Total Diet Study	TBD
Program No. 7304.803: Domestic Food Safety Program—Primary Project Filed in Chapter 3	TBD
Program No. 7307.001: Mycotoxins in Domestic Foods	TBD
Program No. 7307.002: Mycotoxins in Imported Foods	TBD
Program No.7309.006: Imported Foods and Color Additives	TBD
Program No. 7309.803: Domestic Food Safety Program—Primary Project Filed in Chapter 3)	TBD
Program No. 7309.808: Good Laboratory Practice (Nonclinical Laboratories)—Primary Project Filed in Chapter 48	TBD
Program No. 7309.809: Institutional Review Board Program—Primary Project Filed in Chapter 48	TBD

TITLE/TOPIC OF GUIDANCE	CONTACT
Program No. 7309.810: Sponsors, Contract Research Organizations and Monitors—Compliance With Regulations—Primary Project Filed in Chapter 48	TBD
Program No. 7309.811: Clinical Investigators—Primary Project Filed in Chapter 48	TBD
Program No. 7318.002: Retail Food Protection—State	TBD
Program No. 7318.003: Milk Safety Program	TBD
Program No. 7318.004: Molluscan Shellfish Evaluation	TBD
Program No. 7318.029: Interstate Travel Program	TBD
Program No. 7321.002: Medical Foods—Import and Domestic	TBD
Program No. 7321.005: Domestic Nutrition Labeling and Education Act of 1990, Nutrient Sample Analysis, General Food Labeling Program	TBD
Program No. 7321.006: Infant Formula Program—Import and Domestic	TBD
Program No. 7321.007: Nutrition Labeling and Education Act of 1990 and Enforcement—Imports	TBD
Program No. 7321.008: Dietary Supplements—Imports and Domestic	TBD
Program No. 7329.001: Domestic Cosmetics Program	TBD
Program No. 7329.002: Imported Cosmetics Compliance Program	TBD
CATEGORY: OFFICE OF NUTRITION, PRODUCTS, LABELING AND DIETARY SUPPLEMENTS	
Soy Formulas and Preterm Infants—Draft Guidance	Shawne Suggs-Anderson, Center for Food Safety and Applied Nutrition (HFS–831), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1783
Petition Process for Requesting Labeling of Foods That Have Been Treated With Irradiation—Final Guidance published October 7, 2002	Loretta Carey, Center for Food Safety and Applied Nutrition (HFS–822), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371
Voluntary Labeling Indicating Whether Foods Have or Have Not Been Developed Using Bioengineering—Final Guidance	Cataline Ferre-Hockensmith, Center for Food Safety and Applied Nutrition (HFS–822), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371
Compliance Programs	John Foret, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1761
Summary of Regulatory Requirements for Dietary Supplements	Robert Moore, Center for Food Safety and Applied Nutrition (HFS–811), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1441
Dietary Supplement Labeling Guide	Do
CATEGORY: OFFICE FOOD ADDITIVE AND SAFETY	
Points to Consider for the Use of Recycled Plastics in Food Packaging: Chemistry Considerations	Kristina Paquette, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–436–3020
Guidance for Industry: Testing Protocols for Determining Exposure to Radiolysis Products From Packaging Materials Irradiated in Contact With Food	Do
Revised of Four Chapters of "Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food" (Redbook 2000)	Carolyn Young, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3059

TITLE/TOPIC OF GUIDANCE	CONTACT
Guidance to Industry: Evaluation of Allergenicity of Proteins Introduced into Bioengineered Foods	Kathleen Jones, Center for Food Safety and Applied Nutrition (HFS–013), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1856. Guidance document reassigned with Kathleen Jones Office of Regulation and Policy (HFS–013)
Preparing a Color Additive Petition for Submission to the Center for Food Safety and Applied Nutrition for Color Additives Used in or on Contact Lenses	Judy Kidwell, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3354
Compliance Policy Guideline on Chloropropanols in Soy Sauces and Hydrolyzed Vegetable Protein	Do
Guidance for Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submissions to the Center for Food Safety and Applied Nutrition	Layla Batarseh, Center for Food Safety and Applied Nutrition (HFS–245), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3016
Guidance for Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submissions to the Center for Food Safety and Applied Nutrition (Appendix D)	Do
Guidance for Industry: Submission of Food Contact Notifications in Electronic Format	Ken McAdams, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3392
Submission of Premarket Biotechnology Notices (PBNs) to FDA's Office of Food Addictive Safety—Electronic Copies in Portable Document Format (PDF)	Linda Kahl, Center for Food Safety and Applied Nutrition (HFS–255) Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3101
Submission of Premarket Biotechnology Notices (PBNs) to FDA's Office of Food Addictive Safety—Electronic Copies in Hypertest Markup Language (HTML)	Do
Providing Food and Color Additive Petitions in Electronic Format	Do
Guidances Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Title III, Subtitle A	
CATEGORY: OFFICE OF COSMETICS AND COLORS	
Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients—Draft Guidance	Julie Barrows, Center for Food Safety and Applied Nutrition (HFS–105), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3407
Cosmetics Handbook for Industry—Draft Guidance	Beth Meyers, Center for Food Safety and Applied Nutrition (HFS–105), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3174
Strategy for Enforcement of 21 CFR 740.10: Required Warning Statement for Cosmetics With Insufficient Data to Substantiate Safety—Draft Guidance	Do
V. CENTER FOR VETERINARY MEDICINE (CVM)	
CATEGORY—HUMAN FOOD SAFETY	
Evaluating the Safety of Antimicrobial New Animal Drugs With Regard to Their Microbiological Effects on Bacteria of Human Health Concern	William Flynn, Center for Veterinary Medicine (HFV–2), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4514
Mass Spectroscopy Spectrometry for Confirmation of the Identity of Drug Residues	David Heller, Center for Veterinary Medicine (HFV–511), Food and Drug Administration, 8401 Muirkirk Rd., Beltsville, MD 20855, 301–827–8156
Assessment of the Effects of Antimicrobial Drug Residues From Food of Animal Origin on the Human Intestinal Flora	Haydee Fernandez, Center for Veterinary Medicine (HFV–153), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6981
Studies to Evaluate the Utility of Anti-Salmonella Chemical Food Additives in Feed	Henry Ekperigin, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0174
CATEGORY—NEW ANIMAL DRUG APPLICATIONS	

TITLE/TOPIC OF GUIDANCE	CONTACT
Development of Supplemental Applications for Approved New Animal Drugs (Section 403(b) of the Food and Drug Administration Modernization Act of 1997)	Marilyn Martinez, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7577
Administrative New Animal Drug Application Process	Gail Schmerfeld, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0205
CATEGORY—LABELING	
Manufacture and Labeling of Raw Meat Diets for Consumption by Dogs, Cats, and Captive Non-Companion Animal Carnivores and Omnivores	William Burkholder, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0179
Labeling and Professional Flexible Labeling	Douglass Oeller, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0131
CATEGORY—TARGET ANIMAL SAFETY	
New Drug Dosage or Dosage Range Characterization	Gail Schmerfeld, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0205
Use of Field Studies to Demonstrate the Effectiveness of a New Animal Drug	Steven Vaughn and Gail Schmerfeld, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7584
CATEGORY—STATUTORY REQUIREMENTS	
Dispute Resolution—Food and Drug Administration Modernization Act of 1997	Marcia Larkins, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4535
CATEGORY—INTERNATIONAL HARMONIZATION	
Guidance GL27 International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products	William Flynn, Center for Veterinary Medicine (HFV–2), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4514
VI. OFFICE OF THE COMMISSIONER, OFFICE FOR GOOD CLINICAL PRACTICE (OGCP)	
CATEGORY—GOOD CLINICAL PRACTICE; GUIDANCE FOR INSTITUTIONAL REVIEW BOARDS AND CLINICAL INVESTIGATORS	
Cooperative Arrangements for Institutional Review Board's Review of Research	Bonnie M. Lee, Office of the Commissioner, Office for Good Clinical Practice (HF–34), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3340
Institutional Review Board's Review of Research Conducted at Other Sites	Do
Continuing Review After Study Approval	Do
Dates of Continuing Review	Do
Interactions Among FDA, Sponsor, Investigator, and Institutional Review Board	Do
Acceptance of Clinical Studies Conducted Outside the United States	Do
Charging for Investigational Products	Do
Recruiting Study Subjects	Do
Payment to Research Subjects	Do
Screening Tests Prior to Study Enrollment	Do
A Guide to Informed Consent	Do
Use of Investigational Products When Subjects Enter a Second Institution	Do

TITLE/TOPIC OF GUIDANCE	CONTACT
Personal Importation of and Use of Drug Products Not Approved in the United States	Do
Investigational Use of Marketed Drugs, Biologics, and Medical Devices	Do
Emergency Use: Exceptions From the Requirements for Institutional Review Board (IRB) Review and Informed Consent	Do
Emergency Use of an Investigational Drug or Biologic Under 21 CFR Part 312	Do
Expanded Access of Investigational Drugs	Do
Waiver of Institutional Review Board Requirements for Drug and Biologic Studies	Do
Drug Study Designs	Do
Evaluation of Gender Differences in Clinical Investigations	Do
Medical Devices 21 CFR Part 812	Do
Significant Risk and Nonsignificant Risk Medical Device Studies	Do
Emergency Use of Unapproved Medical Devices	Do
FDA Institutional Review Board Inspections	Do
Clinical Investigator Regulatory Sanctions	Do
Recordkeeping in Clinical Investigations	Do
Significant Differences in FDA's and the Department of Health and Human Services' Regulations	Do
A Self-Evaluation Checklist for Institutional Review Boards	Do
VII. OFFICE OF REGULATORY AFFAIRS (ORA)	
INSPECTION GUIDES	
Techniques for Detecting False Data During Bioresearch Monitoring Inspections	Gerald Miller, Division of Field Investigations (HFC–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5655
Guide to Inspections of Bulk Pharmaceutical Chemicals	Do
Guide to International Inspections and Travel	Rebecca Hackett, Division of Field Investigations, (HFC–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD, 20857, 301–827–3777
Guide to Produce Farm Investigations	Ellen Morrison, Emergency Operations (HFC–160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5660

Dated: March 28, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–8262 Filed 4–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0093]

Small Entity Compliance Guide: "Juice HACCP"; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a small entity compliance guide (SECG) for a final rule published in the **Federal Register** of January 19, 2001, entitled "Hazard Analysis and Critical Control Point (HACCP); Procedures for the Safe and Sanitary Processing and Importing of Juice." This SECG, entitled "Juice HACCP," is intended to set forth in plain language the requirements of that final rule and to help small businesses understand the regulation.

DATES: Submit written or electronic comments on the SECG at any time.

ADDRESSES: Submit written comments concerning this SECG to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers

Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* Submit written requests for single copies of the SECG to Amy Green, Center for Food Safety and Applied Nutrition (CFSAN) (see **FOR FURTHER INFORMATION CONTACT**). Send one self-adhesive address label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT: Amy Green, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2025, FAX 301–436–2651.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 19, 2001 (66 FR 6138), FDA issued a final rule to ensure the safe and sanitary processing of fruit and vegetable juices. The regulations in part 120 (21 CFR part 120) mandate the application of HACCP principles to the processing of these foods. HACCP is a preventive system of hazard control. The effective dates of the final rule are staggered and based on the size of the business. For very small businesses (as defined in § 120.1(b)(1), the effective date is January 20, 2004. For small businesses, the effective date was January 21, 2003, and for all other size businesses the effective date was January 22, 2002.

FDA examined the economic implications of that final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–602). The agency determined that the final rule would have a significant economic impact on a substantial number of small entities.

In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121), FDA is making available this SECG stating in plain language the requirements of the juice HAACP regulations.

FDA is issuing this SECG as level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the agency's current thinking on the subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the SECG entitled "Juice HACCP." Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of SECG and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

The SECG also may be viewed on a personal computer with access to the Internet at *http://www.cfsan.fda.gov/guidance.html.*

Dated: March 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–8263 Filed 4–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1662]

"Guidance for Industry: Source Animal, Product, Preclinical, and Clinical Issues Concerning the Use of Xenotransplantation Products in Humans;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Source Animal, Product, Preclinical, and Clinical Issues Concerning the Use of Xenotransplantation Products in Humans" dated April 2003. The document provides guidance on the production, testing, and evaluation of products intended for use in xenotransplantation. The guidance announced in this notice finalizes the draft guidance document of the same title dated February 2001.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written or electronic requests for single copies of this guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Source Animal, Product, Preclinical, and Clinical Issues Concerning the Use of Xenotransplantation Products in Humans" dated April 2003. The document provides guidance on the production, testing, and evaluation of products intended for use in xenotransplantation. The guidance document announced in this notice was revised based on public comments received on the draft guidance, and it finalizes the draft document of the same title dated February 2001 (66 FR 9348, February 7, 2001).

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance document represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments to the Dockets Management Branch (see **ADDRESSES**) regarding this guidance document. Two copies of any mailed comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm.*

Dated: March 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–8167 Filed 4–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–14]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD

ACTION: Notice

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1998 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 27, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–7857 Filed 4–3–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Mayhoffer/Singletree Trail, Boulder County, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: Boulder County Parks and Open Space Department (Applicant) has applied to the Fish and Wildlife Service (Service) for an Incidental Take Permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The permit would authorize the incidental take of Preble's meadow jumping mouse (*Zapus hudsonius preblei*) ("Preble's"), Federally listed as threatened, and loss and modification of its habitat associated with the construction and use of a multiple use trail on the Mayhoffer/Singletree Property, located near the Town of Superior, in unincorporated Boulder County. The permit would be in effect for 10 years from the date of issuance, to allow for construction of the proposed project and all associated mitigation activities.

We announce the receipt of the Applicant's Incidental Take Permit application that includes a combined proposed Habitat Conservation Plan (HCP) and Environmental Assessment (EA) for the Preble's on the Mayhoffer/Singletree property. The proposed HCP/EA is available for public comment. It fully describes the proposed project and the measures the Applicant would undertake to minimize and mitigate project impacts to the Preble's.

The Service requests comments on the HCP/EA for the proposed issuance of an Incidental Take Permit. We provide this notice pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments on the HCP and permit application will become part of the administrative record and will be available to the public.

DATES: Written comments on the permit application, HCP, and EA should be received on or before June 3, 2003.

ADDRESSES: Comments regarding the permit application and HCP/EA should be addressed to LeRoy Carlson, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the HCP/EA and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the Lakewood, Colorado, Field Office (*see* **ADDRESSES** above).

Background

Section 9 of the Act and Federal regulation prohibit the "take" of a species listed as endangered or threatened. Take is defined under the Act, in part, as to kill, harm, or harass a Federally listed species. However, the Service may issue permits to authorize "incidental take" of listed species under limited circumstances. Incidental Take is defined under the Act as take of a listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The Applicant plans to develop a multiple-use trail on the Mayhoffer/Singletree property in the vicinity of Coal Creek near Superior, Boulder County, Colorado, within portions of the property that may constitute habitat for the Preble's. Of the 32 hectares (80 acres) of potential Preble's habitat on the Mayhoffer/Singletree property, the project would impact a total of 0.27 hectare (0.67 acre) of potential Preble's habitat permanently and 0.34 hectare (0.85 acre) temporarily during construction. This reach of the Coal Creek corridor is considered to be viable Preble's habitat by the Service. Preble's have been found near this creek in 1999, approximately 0.8 kilometer (0.5 mile) upstream from the proposed project area, along the Hake Ditch running north of the creek. As discussed below, the Applicant proposes a number of measures to mitigate possible impacts of the proposed action.

Alternatives considered were—no action; alternative trail alignment, which would have taken the trail through a large prairie dog colony and

an important raptor conservation area; and the preferred alternative, with the alignment and mitigation per the proposed HCP. None of these alternatives, except no action, eliminated potential take of Preble's.

To mitigate impacts that may result from incidental take, the HCP provides for the following mitigation: All temporarily impacted areas resulting from trail construction will be mitigated onsite at a minimum of 1.5:1 ratio by replanting these areas into similar native vegetation to what existed prior to trail construction. Primarily, these areas are currently in weedy vegetation and will, instead, be planted back into native grasses. Shrub habitat will be replaced with identical native shrub species. Additional mitigation activities for temporary take will include weed control at a ratio of 8:1 onsite. Mitigation activities for permanent take will be in the form of weed control at a ratio of 15:1 and also will occur onsite.

The County is committed to providing the necessary staff time and resources to support the implementation of the HCP/EA and currently has adequate staff to do so.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the HCP, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the Preble's in conjunction with the construction and use of the proposed trail. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: March 11, 2003.

John A. Blankenship,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 03–8197 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AH86

Final Environmental Impact Statement (FEIS) for the Florida Manatees; Incidental Take Rule Under the Marine Mammal Protection Act During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of the FEIS that assesses effects from proposing regulations to authorize the incidental, unintentional take of small numbers of Florida manatees (*Trichechus manatus latirostris*) resulting from government activities related to watercraft and watercraft access facilities within three regions of Florida for the next five years. This FEIS analyzes the environmental and socioeconomic consequences of the proposed action, and alternatives to the proposed action, as required under section 102(2)(c) of the National Environmental Policy Act.

DATES: The Fish and Wildlife Service will execute a Record of Decision based on the FEIS, no sooner than May 3, 2003, or 30 days after the date of publication of this Notice of Availability in the **Federal Register**, and after publication of the related notice by the Environmental Protection Agency.

ADDRESSES: Information regarding this FEIS is available in alternative formats upon request. Comments and materials received on the proposed EIS, as well as supporting documentation used in the preparation of this FEIS, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m. Monday through Friday at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216. You may obtain copies of this document online at *http://northflorida.fws.gov*, by electronic mail request to *manatee@fws.gov* or by calling Chuck Underwood of the Jacksonville Field Office at (904) 232–2580 (extension 109).

SUPPLEMENTARY INFORMATION:

Background

The MMPA of 1972 (16 U.S.C. 1361–1407) sets a general moratorium, with certain exceptions, on the taking and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. "Take" as defined by the MMPA and its implementing regulations (50 CFR part 18) means "to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal, including, without limitation, any of the following—the collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal."

"Harassment" is defined under the MMPA as, "any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering."

The prohibitions on take apply to all persons, including Federal, State, and local government agencies with the exception of humane taking (including euthanasia) by government officials while engaged in their official duties, if such taking is (1) for the protection or welfare of a marine mammal; (2) for the protection of the public health and welfare; or (3) the non-lethal removal of nuisance animals. When feasible, steps designed to ensure return of such animals to their natural habitat, if not killed in the course of such taking, must be implemented (16 U.S.C. 1379(h)).

Section 101(a)(5)(A) of the MMPA allows the Secretary of the Department of the Interior, through the Director of the Service, upon request, to authorize by specific regulation the incidental, unintentional take of small numbers of marine mammals by U.S. citizens engaged in specific identified activities (other than commercial fishing) within specific geographic areas. This is the mechanism by which incidental, but not intentional, take of small numbers of marine mammals may be authorized in accordance with Federal law for activities other than commercial fishing if certain findings are made and regulations are enacted pursuant to 50 CFR 18.27. The Director must find that the total of such taking during the specified time period (which cannot be more than five consecutive years) will have no more than a negligible impact on the species or stock and will not have an unmitigable impact on the availability of such species or stock for subsistence uses. The subsistence provision is not applicable to Florida manatees.

The regulations implementing the MMPA define negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 18.27(c)). If negligible impact findings are made, we establish specific regulations identifying permissible methods of taking by such activity, means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements for monitoring and reporting such taking. If a finding cannot be made that the total taking will have a negligible impact on the species or stock, the negative finding and the basis for denying the request for the incidental take must be published in the **Federal Register** pursuant to 50 CFR 18.27(d)(4).

We have defined the specified geographic area for this action to be the species range within the State of Florida. Long-term studies suggest four regional populations of manatees in Florida—Northwest, Upper St. Johns River (from Palatka south), Atlantic (including the St. Johns River north of Palatka), and Southwest, and we have defined these populations as stocks.

Based upon the best available scientific information, we concluded in the November 14, 2002, proposed rule and draft Environmental Impact Statement (66 FR 69078) that the total expected takings of Florida manatees resulting from government activities that authorize or regulate watercraft or watercraft access facilities would have a negligible impact on three of the four stocks. In accordance with 50 CFR 18.27, we will publish a final determination on each of the four stocks in the **Federal Register** upon finalization of a record of decision at the close of the waiting period.

If we determine that these activities will have negligible impact, government agencies who engage in the specified activities in the specified area could apply for a Letter of Authorization (LOA), which, if granted, would authorize incidental take associated with the applicant's activities. In return for committing to specific measures that minimize the applicant's impact on the stock and ensure that the total taking remains at the negligible level, the applicant receives authorization for any remaining take that occurs and that would otherwise be unlawful under the MMPA. General procedures for obtaining an LOA are described at 50 CFR 18.27(f).

Author

The primary author of this notice is Pete Benjamin (904/232–2580).

Authority

The authority to establish regulations that would authorize for the next five years the incidental, unintentional take of small numbers of Florida manatees is provided by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

Dated: March 26, 2003.

Judy Pulliam,

Acting Regional Director.

[FR Doc. 03–8274 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–1610–DQ]

Notice of Availability of the Farmington Proposed Resource Management Plan and Final Environmental Impact Statement, Farmington Field Office, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Farmington Proposed Resource Management Plan (PRMP) and Final Environmental Impact Statement (FEIS).

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Farmington PRMP Revision and FEIS for the Farmington Field Office (FFO) and portions of the Albuquerque Field Office (AFO), New Mexico. This document identifies and analyzes land use planning options for managing approximately 2 million acres of public lands and just over 3 million acres of Federal mineral estate administered by the FFO and the San Juan Basin portion of the AFO in New Mexico. The planning area for the PRMP/FEIS includes all of San Juan County and portions of McKinley, Rio Arriba, and Sandoval Counties in northwest New Mexico. The PRMP revises and will replace the previous 1988 RMP.

DATES: The Farmington PRMP/FEIS will be available for a 30-day protest period in accordance with BLM's land use planning regulations (43 CFR 1610.5–2). These regulations state that any person who participated in the planning process and has an interest which may be adversely affected may protest. A protest may raise only those issues which were submitted for the record during the planning process. Instructions for filing of protests are described in the PRMP/FEIS and included in the Supplementary Information section of this notice.

FOR FURTHER INFORMATION, CONTACT: RMP Project Manager, Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, NM 87401–8754. Copies of the PRMP/FEIS have been sent to affected Federal, State, and Local Government agencies and to interested parties. Copies of the PRMP/FEIS are available for public inspection at the Bureau of Land Management, Farmington Field Office, 1235 La Plata Highway, Farmington, New Mexico 87401. Interested persons may also review the PRMP/FEIS on the Internet at *http://www.nm.blm.gov*.

SUPPLEMENTARY INFORMATION: The PRMP/FEIS pertains to public lands in the FFO area, except where a small portion of the San Juan Oil and Gas Basin lies within the administrative boundary of the AFO. The PRMP/FEIS fulfills the requirements of the Federal Land Policy and Management Act and the National Environmental Policy Act. The preferred alternative from the Draft RMP was carried forward in the FEIS as the proposed RMP and focuses on the comprehensive management of the public lands and the resolution of five key issues, identified during the planning process. The five major issues are: (1) Oil and gas leasing and development; (2) landownership adjustments; (3) specially designated areas; (4) off-highway vehicle (OHV) use; and (5) coal leasing suitability assessment.

Specific to Each Issue the Proposed RMP Would

1. Continue to make lands available for oil and gas development. The FEIS documents the analysis of approximately 9,942 new oil and gas wells on public lands over the next 20 years for the PRMP.

2. Make available a total of 340,118 acres of public lands for disposal while another 178,237 acres are identified for possible acquisition.

3. Place a total of 649,901 acres in Specially Designated Areas (Research Natural Areas, Areas of Critical Environmental Concern, Wilderness Areas, Recreation, Paleontological, and Wildlife Areas). The PRMP includes removal of the Areas of Critical Environmental Concern (ACECs) designated on four areas totaling 2,765 acres because the designation is no longer necessary (three are within a Wilderness Area, and one was for a plant species that is more widely spread than previously known), designating 14 new ACECs totaling 16,884 acres, and changing the size or use limitations of 42 existing ACECs.

4. Place in the Limited OHV use category 1,353,301 acres of public lands until OHV activity plans are prepared. A total of 57,369 acres would remain closed to OHV use. Within the limited category, 5,806 acres have the potential to be placed in the open category pending the development of OHV activity plans.

5. Make approximately 378,275 acres of Federal minerals available for coal leasing. Comments on the Draft RMP/Draft EIS received from the public and internal BLM review comments were incorporated into the proposed plan. Public comments resulted in the addition of clarifying text, but did not significantly change proposed land use decisions.

Instructions for filing a protest with the Director of the BLM regarding the PRMP may be found at 43 CFR 1610.5. Any person who participated in the planning process and has an interest, which is or may be affected by the approval of the proposed Resource Management Plan, may protest such approval. A protest may raise only those issues that were submitted for the record during the planning process. Protests must be in writing and must be filed with the Director within 30 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. E-mail protests will not be accepted. Faxed protests will be considered as potential valid protests provided (1) that the signed faxed letter is received by the Washington Office protest coordinator by the closing date of the protest period and (2) that the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Please direct faxed protests to "BLM Protest Coordinator" at (202) 452–5112. Please direct the follow-up letter to the appropriate address provided below. The protest must contain:

i. The name, mailing address, telephone number, and interest of the person filing the protest;

ii. A statement of the issue or issues being protested;

iii. A statement of the part or parts of the plan or amendment being protested;

iv. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

v. A concise statement explaining why the State Director's decision is believed to be wrong.

The Director will promptly render a decision on the protest. The decision will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the Director shall be the final decision of the Department of the Interior. File written protest by Surface mail: U.S. Department of the Interior, Bureau of Land Management, Director (210), Attn: Brenda Williams, PO Box 66538, Washington, DC 20035 or Overnight mail: U.S. Department of the Interior, Bureau of Land Management, Director (210), Attn: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

Dated: February 11, 2003.

Linda S.C. Rundell,

New Mexico State Director.

[FR Doc. 03–5895 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1990–EX]

Draft Environmental Impact Statement; Glamis Marigold Mining Company/Marigold Mine Millennium Expansion Project, Humboldt Co., NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is given that the Winnemucca Field Office of the Bureau of Land Management (BLM) has prepared, by third party contractor, a Draft Supplemental Environmental Impact Statement on the Glamis Marigold Mining Company/Marigold Mine Millennium Expansion Project, located in Humboldt County, Nevada.

EFFECTIVE DATES: The Draft Supplemental Environmental Impact Statement will be distributed and made available to the public on April 4, 2003. The period of availability for public review for the Final Environmental Impact Statement ends June 5, 2003. At that time public comments will be reviewed and a response prepared.

ADDRESSES: A copy of the Draft Supplemental Environmental Impact Statement can be obtained from: Bureau of Land Management, Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Johnson, Project Manager, at the above Winnemucca Field Office address or telephone (775) 623-1500.

SUPPLEMENTARY INFORMATION: The Draft Supplemental Environmental Impact Statement analyzes the direct, indirect and cumulative impacts related to expansion of existing mine facilities (pits, overburden dumps & heap leach pads) and development of the Millennium Projects. Development includes construction of five new pits, overburden disposal areas, two additional heap leach facilities, drainage diversions, haul and exploration roads and ancillary facilities. Alternatives analyzed include (1) Moving the Trout Creek Diversion toward the west, farther from the Red Rock Pit, (2) increase backfilling along the west high wall of the Red Rock Pit, and (3) the No Action.

Dated: March 27, 2003.

Jeffrey D. Johnson,

Field Manager.

[FR Doc. 03–7882 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–5101–ER–G043–NMNM 106570]

Notice of Availability of the Draft Environmental Impact Statement for a Proposed Refined Petroleum Products Pipeline Right-of-Way Across Land in Lea, Eddy, Chaves, Lincoln, Guadalupe, Torrance, Sandoval, McKinley and San Juan Counties, NM; Ector and Winkler Counties, TX

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement (DEIS).

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, a Draft Environmental Impact Statement (DEIS) has been prepared for the Bureau of Land Management, New Mexico State Director, under the administrative direction of the Albuquerque Field Office. The DEIS was prepared to analyze the impacts of issuing a Right-of-Way (ROW) for the conversion of an existing pipeline and construction of a new pipeline and above ground structures for the transportation of refined petroleum products across public lands in New Mexico and Texas. The proposed pipeline will cross land managed by BLM, the National Forest System, the State, as well as private lands. This notice initiates the public review process for the DEIS.

DATES: Written comments on the DEIS will be accepted for 45 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. Future meetings or hearings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, the NM BLM Web site (*http://www.nm.blm.gov*), and/or mailings. Written and oral comments will be accepted at public meetings.

ADDRESSES: Written comments should be addressed to NMPP Project Manager, Bureau of Land Management, Albuquerque Field Office, 435 Montano Road, NE, Albuquerque, NM 87107–4935. Comments, including names and street addresses of respondents, will be available for public review at the BLM Albuquerque Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the final EIS and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the FOIA, you must state this definitively at the beginning of your written comments. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be available for public inspection in their entirety. Copies of the DEIS are available for review at the following repositories: Albuquerque City Library; Government Public Dept., UNM Library; Aztec Public Library; Carlsbad Public Library; Cuba Public Library; Edgewood Community Library; Farmington Public Library; Roswell Public Library; and Woolworth Community Library (Odessa, TX). Copies are also available at the following BLM Offices: Albuquerque, Field Office, 435 Montano Road NE, Albuquerque, NM 87107–4935; Roswell Field Office, 2909 West Second Street, Roswell NM 88201–2019; Farmington Field Office, 1235 La Plata Highway, Farmington, NM 87401; Carlsbad Field Office, 620 E. Greene St. Carlsbad, NM 88220–6292; New Mexico State Office, 1474 Rodeo Road, Santa Fe, NM 87505. The DEIS is also accessible at BLM's Web site *http://www.nm.blm.gov*.

FOR FURTHER INFORMATION: Please contact Joseph Jaramillo, (505) 761–8700, *Joe_Jaramillo@blm.gov*

SUPPLEMENTARY INFORMATION: Shell Pipeline Company LP (Shell) is the successor-in-interest to Equilon Pipeline Company LLC, the project proponent listed in the Notice of Intent to prepare an EIS published in the **Federal Register** on December 27, 2001. Shell filed a ROW application with BLM to convert an existing 406-mile pipeline and to construct approximately 93 miles of new pipeline to carry refined petroleum products, such as gasoline, diesel, and aviation fuel, from Odessa, Texas to Bloomfield, New Mexico.

Shell's existing 406-mile, 16-inch pipeline was formerly used to carry crude oil from Bisti, New Mexico to Jal, New Mexico. Shell intends to extend the length of this pipeline, reverse its direction of flow, and convert it to refined products service. The approximately 93 miles of new pipeline will be constructed in two segments: (1) A segment from Odessa to Jal of approximately 60 miles and (2) a Bisti to Bloomfield segment of approximately 33 miles. Twenty miles of the Bisti to Bloomfield segment will be located within an existing utility corridor. Thirteen miles of new pipeline would extend beyond the established corridor.

In addition to the new pipeline segments, a number of new facilities will be constructed, including a new truck loading terminal in Moriarty, New Mexico; new block and check valves; new pump stations; new pressure control stations; a new metering station at the terminus of the pipeline at Bloomfield; and other equipment at the pump stations and along the pipeline, such as meters, launchers and receivers, cathodic protection systems, and aerial markers. The project will require approximately 700 worksites for construction and maintenance activities along the existing pipeline, construction of the new pipeline segments, and construction of the new facilities required for the operation of the pipeline.

The BLM considered issues and concerns identified during the scoping process in the preparation of the DEIS. These issues can be broadly categorized as issues related to the protection of public safety, water quality, threatened and endangered species and the human environment. The DEIS analyzes the proposed action, a no-action alternative, and three action alternatives, namely pipeline replacement in sensitive areas, pipeline reroute in sensitive areas, and the proposed action with enhanced mitigation. The pipeline replacement alternative was developed to address public concerns about the existing pipeline's integrity and the potential effects of leaks on groundwater resources. It would involve the installation of new pipe in sensitive areas parallel to the existing pipe within the existing ROW. The existing pipe in those areas would be abandoned in place. Under the pipeline reroute alternative, portions of the existing pipeline would be relocated to less developed areas to reduce the risk to public safety. The new route would reduce the number of residences in close proximity to the pipeline and would minimize new disturbance by utilizing other existing ROW corridors as much as possible.

In the proposed action with enhanced mitigation alternative, the BLM identifies several additional mitigation measures to address the protection of public safety, water quality, threatened and endangered species and the human environment.

The purpose of the DEIS is to disclose to the public and agency decision makers the environmental impacts of constructing and operating the proposed project. If the project is approved, the BLM, as lead agency, would sign the necessary Record of Decision (ROD) for the issuance of a single ROW under the Mineral Leasing Act, which would consolidate and replace the eleven ROW grants that currently authorize the existing pipeline and would authorize the additional project features described above occurring on public lands.

Dated: December 12, 2002.

Richard A. Whitley,

Acting State Director.

[FR Doc. 03–8078 Filed 4–2–03; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–ET; SDM 87066]

Cancellation of Proposed Withdrawal; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice cancels a withdrawal application affecting .25 acre of National Forest System land for the National Park Service for construction of temporary quarters for summer seasonal employees. The segregative effect of the application was previously terminated and the land was opened to surface entry and mining, subject to other segregations of record. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, Bureau of Land Management, Montana State Office, PO Box 36800, Billings, Montana 59107, 406–896–5052.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Withdrawal was published in the **Federal Register** March 20, 1998 (63 FR 13687). This action will terminate the proposed withdrawal. The land was described as follows:

Black Hills Meridian

T. 3 S., R. 4 E.,
Sec. 23, portion of the S½ of lot 19.

The area described contains .25 acre in Custer County.

The segregative effect associated with the application terminated March 19, 2000, in accordance with the notice published as FR Doc. 00–3267 in the **Federal Register** (65 FR 7057–8) dated February 11, 2000.

Dated: January 21, 2003.

Howard A. Lemm,

Acting Deputy State Director, Division of Resources.

[FR Doc. 03–8170 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Record of Decision (ROD) on the Final Supplemental Environmental Impact Statement for the Winter Use Plans for Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway

AGENCY: National Park Service, Department of the Interior.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969, Pub. L. 91–190, 83 Stat. 852, 853, codified as amended at 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the Winter Use Plans for Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway; Wyoming, Montana, and Idaho. On March 24, 2003, the Director, Intermountain Region approved the Record of Decision for the project with the decision effective at 12 noon m.s.t. on March 25, 2003. Beginning in the winter of 2003–2004, the National Park Service will implement this Decision although certain provisions will not apply until implementing regulations are promulgated or until the winter of 2004–2005. The following course of action will occur under alternative 4, the preferred alternative, as modified in the ROD: the use of snowmobiles in the parks and the parkway will be permitted, provided all machines meet best available technology (BAT) standards for sound and air emissions. All snowmobile users in Yellowstone will be required to be to be accompanied by NPS permitted guides. Monitoring and adaptive management strategies will allow for the adjustment of oversnow vehicle numbers should monitoring and carrying capacity studies indicate that standards are not being met.

This specific course of action was not included as an alternative in the Draft Supplemental Environmental Impact Statement, but was included and analyzed, along with 4 additional alternatives, in the Final Supplemental Environmental Impact Statement. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding regarding impairment of park resources and values, a listing of measures to minimize environmental harm, an overview of public involvement in the decision-making process, and a Statement of Findings.

FOR FURTHER INFORMATION CONTACT: John Sacklin, Yellowstone National Park, PO Box 168, Yellowstone, WY 82190, (307) 344–2020, *John_Sacklin@nps.gov.*

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *nps.gov/grte/winteruse/winteruse.htm.*

Dated: March 25, 2003.

Karen Wade,

Director, Intermountain Region, National Park Service.

[FR Doc. 03–8191 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Dream Lake Dam Management Plan; Lassen Volcanic National Park, Plumas County, California; Notice of Intent to Prepare an Environmental Impact Statement

SUMMARY: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Council on Environmental Quality regulations (40 CFR 1502.9(c)), the National Park Service intends to prepare an Environmental Impact Statement for a Management Plan for the Dream Lake Dam in the Warner Valley area of Lassen Volcanic National Park. Notice is hereby given that a public scoping process has been initiated with the purpose of eliciting public comment regarding current issues and concerns, a suitable range of alternatives, the nature and extent of potential environmental impacts, appropriate mitigating measures, and other matters that should be addressed in the forthcoming draft Environmental Impact Statement (EIS).

Background: Dream Lake Dam was built by Alex Sifford in 1932, prior to the National Park Service (NPS) acquiring the land on which the lake sits. The lake was built by Sifford to provide scenic benefits and recreational opportunities to guests at the nearby Drakesbad Guest Ranch, which Sifford owned. Drakesbad Guest Ranch is over 100 years old and is still in operation to this day. It is owned by the National Park Service and is located within the boundaries of Lassen Volcanic National Park. Drakesbad is operated by the Park's concessioner, California Guest Services. Drakesbad, with nearby Dream Lake, is a popular destination and has been visited by many generations of families. Dream Lake is a contributing feature to the cultural landscape of Drakesbad Guest Ranch, which has been nominated for placement on the National Register of Historic Places.

Dream Lake Dam is an earthfill embankment that forms a lake with a surface area of approximately 2 acres, containing approximately 11 acre-feet of water. The dam was examined by the Bureau of Reclamation (BOR) on July 21, 1999 and found to have numerous deficiencies including sloughing, sinkholes, settlements, and seepage. The BOR states in its November 6, 2000 *Condition Survey Report* that "the seepage and sinkholes could endanger the stability of the dam, and should be investigated and necessary corrective action should be performed * * *" The BOR, in its *Downstream Hazard Classification* stated that "without maintenance the failure of the dam in the next few years is likely." The BOR went on the make a recommendation that one of two alternatives be implemented. Those alternatives included: (1) repairing the dam and/or lowering and widening the spillway or (2) in a planned and controlled manner, breach the dam so that no water is stored in the lake and the area reverts back to pre-lake conditions.

Lassen Volcanic National Park will be preparing a draft EIS because of the conflict between natural and cultural resource management issues in determining the future of Dream Lake Dam. The park currently does not have a preferred alternative. The park is looking for public input as to what alternatives, in addition to those recommended by the BOR, should be examined. In order to move forward with a decision regarding the future management of Dream Lake Dam, a plan must first be developed and that plan will be fully scoped for public input and comment and it will contain a full environmental impact analysis for all of the viable alternatives.

As a key step in the overall conservation planning and environmental impact analysis process, the NPS is seeking public comments and relevant information to guide the preparation of the Draft EIS. The objectives of this public scoping effort are to:

Inform all interested parties of the scope of the problem and the need to find a solution;

Identify a preliminary range of management alternatives that may include those posted by the BOR;

Identify substantive environmental and cultural issues which warrant detailed environmental impact analysis, and identify any issues or topics which may not require analysis;

Identify potential environmental and cultural consequences and suitable mitigation strategies.

Comment Process: The public will be invited to participate from the outset of the scoping process through completion of the draft and final EIS. The initial scoping period has already begun and public meetings have been held in order to: (1) Present information developed to date, (2) answer questions about the planning process, and (3) solicit and accept comments from the public. To initiate this collaboration, four scoping meeting were held during the month of November, 2002 as follows: November 4 (Chico), November 5 (Red Bluff), November 6 (Redding), and November 7 (Chester). The exact locations and times of the meetings were announced via regional and local news media, direct mailings, and on the Park's webpage at *http://www.nps.gov/lavo.* All interested individuals, organizations, and agencies were invited to attend these meetings and/or provide written comments or suggestions during the scoping period.

While the public meetings have already been held, the scoping period remains open. All scoping comments should be submitted in writing, and must be postmarked or transmitted no later than 30 days from the date of publication of this notice in the **Federal Register** (as soon as this date has been determined, it will be announced on the park's website). Please send all comments to: Superintendent, Lassen Volcanic National Park, PO Box 100, Mineral, CA 96063 (Attn: Dream Lake Dam Management Plan). Electronic comments may be transmitted to *LAVO_DreamLake@nps.gov.*

All parties wishing to express concerns, ideas, support, or provide information about management issues which should be addressed in the forthcoming conservation planning and environmental impact analysis process are strongly encouraged to submit written comments. All comments will become part of the public record. If individuals who submit comments request that their name and/or address be withheld from public disclosure, the request will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always, the NPS will make available to public inspection all submission from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses. Anonymous comments may not be considered.

Decision Process: Availability of the Draft EIS for review and comment will be announced by formal Notice in the **Federal Register**, through local and regional news media, the Park's Webpage (listed above), and direct mailing. At this time, the Draft EIS is anticipated to be available for public review and comment in the Fall of 2003. Comments on the Draft EIS will be fully considered as an aid in preparing a Final EIS as appropriate. At this time, it is anticipated that the Final EIS will be completed in the spring of 204. As a delegated EIS, the official responsible for the decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation is the Superintendent, Lassen Volcanic National Park.

Dated: March 7, 2003.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 03–8189 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate a Cultural Item: Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, Sec. 7, of the intent to repatriate a cultural item in the possession of the Field Museum of Natural History, Chicago, IL, that meets the definition of "cultural patrimony" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5(d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural item is a wampum belt, which is composed of purple beads with white beads forming the design of four pairs of diamonds. It is interwoven with buckskin and has fringe at the ends. The wampum belt measures 3 feet 8⅛ inches long without the fringe.

The Field Museum of Natural History purchased the wampum belt in 1900 from Henry Hysen of Wisconsin. The Field Museum of Natural History assessioned the wampum belt into its collection the same year (catalog number 68567). Museum records indicate that Mr. Hysen purchased the wampum belt "from the owner who lived on the Stock Ridge Reservation, one of the Brotherton Indians whose family had held the belt since it was sent to them by Chief Black Hawk as a message to the tribes of the Michigan and Wisconsin Indians assembled at Travers bay to hold them in control during his warfare." A separate catalog entry, that is neither attributed nor dated, identifies the belt as the Peace and Friendship Belt sent by "Black Hawk war chief of the Sauk tribe of Indians in the year A.D. 1832 to the Ottawa tribe, residing near Traverse Bay, Michigan, asking them to remain neutral in the war which Black Hawk was about to wage against the American Government." It further provides that the belt had "been kept in the family of the old chief Ta-ko-se-gun and by his son-in-law presented to G.T. Wendell."

The wampum belt is culturally affiliated with the Brotherton Indians. Expert opinion submitted to the Field Museum of Natural History by the Stockbridge Munsee Community, Wisconsin supports the finding that any Brotherton Indian living on the Stockbridge Reservation at the time the wampum belt was acquired would have been considered a full member of the Stockbridge tribe (now called the Stockbridge Munsee Community, Wisconsin). The determination of cultural affiliation was also confirmed by the Field Museum of Natural History's consulting with an outside expert familiar with wampum belts of this time period. The Field Museum of Natural History has determined that the large size, composition, and design of the wampum belt indicates that it is an important "historical" belt, meaning that the belt was a record of a historical event marked and remembered by the tribe, and as such would qualify as an

object having ongoing historical, traditional, or cultural importance central to the Stockbridge Munsee Community, Wisconsin. Consultation evidence presented by representatives of the Stockbridge Munsee Community, Wisconsin also indicates that no individual had or has the right to alienate a wampum belt.

Officials of the Field Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001, Sec. 2(3)(D), this cultural item has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the Field Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2(2), there is a relationship of shared group identity that can be reasonably traced between the wampum belt and the Brotherton Indians as full members of the Stockbridge Munsee Community, Wisconsin.

Officials of the Field Museum of Natural History assert that, pursuant to 25 U.S.C. 3001, Sec. 2(13), the Field Museum of Natural History has right of possession of the wampum belt. Officials of the Field Museum of Natural History also recognize that the wampum belt is significant to the Stockbridge Munsee Community, Wisconsin and have reached an agreement with the Stockbridge Munsee Community, Wisconsin that allows the Field Museum of Natural History to return the wampum belt to the tribe voluntarily, pursuant to the compromise of claim provisions of the Field Museum of Natural History's repatriation policy.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object of cultural patrimony should contact Jonathan Haas, MacArthur Curator of North American Anthropology, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7829, before May 5, 2003. Repatriation of this object of cultural patrimony to the Stockbridge Munsee Community, Wisconsin may proceed after that date if no additional claimants come forward.

The Field Museum of Natural History is responsible for notifying the Brotherton Indians of Wisconsin (a nonfederally recognized Indian group); Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; and Stockbridge Munsee Community, Wisconsin that this notice has been published.

Dated: February 28, 2003.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 03–8193 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Franklin Pierce College, Rindge, NH

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Franklin Pierce College, Rindge, NH. These human remains were removed from the Smyth site (NH38-4), on the upper terrace of the eastern bank of the Merrimack River above Amoskeag Falls, Manchester, Hillsborough County, NH.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by professional staff and consultants of Franklin Pierce College, in consultation with the Abenaki Nation of Missisquoi, representing a coalition of Western Abenaki groups, consisting of the Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire (all nonfederally recognized Indian groups); the Wampanoag Confederation, representing Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Tribe (a nonfederally recognized group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized group); and the Wabanaki Confederacy, representing Aroostook Band of Micmac Indians of Maine, Houlton Band of Maliseet Indians of Maine, Indian Township Reservation of the Passamaquoddy Tribe of Maine, Penobscot Tribe of Maine, and Pleasant Point Reservation of the Passamaquoddy Tribe of Maine.

In 1968, human remains representing a minimum of eight individuals were removed from the Smyth site (NH 38-4) in Manchester, Hillsborough County, NH. Museum documentation indicates that the human remains were removed during salvage excavation at the construction site of the Amoskeag bridge, and were curated at Franklin Pierce College. No known individuals were identified. No associated funerary objects are present.

In 1997, the remains of two of these individuals were transferred from Franklin Pierce College to the New Hampshire Division of Historical Resources (NHDHR). The NHDHR determined that the two individuals in its possession could not be affiliated with an Indian tribe as defined in 25 U.S.C. 3001 (2), and presented a disposition proposal to the Native American Graves Protection and Repatriation Review Committee. According to the Review Committee's charter, the Review Committee is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. The proposal presented by the NHDHR was considered by the Review Committee at its May 1999 meeting, during which the Review Committee recommended disposition of the human remains of the two individuals to the Abenaki Nation of Missisquoi, representing a coalition of Western Abenaki groups, consisting of the Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire (all nonfederally recognized Indian groups). A Notice of Inventory Completion for the repatriation of the human remains of the two individuals was published in the Federal Register on July 9, 2002 (67 FR 45536-39).

In September 2001, Franklin Pierce College presented another disposition proposal to the Review Committee to repatriate five sets of human remains from the Smyth site that are in the possession of Franklin Pierce College to the Abenaki Nation of Missisquoi. The remains of another individual are reported in the archeological report prepared at the time of excavation of the Smyth site, but have not been located at Franklin Pierce College.

At its November 2001 meeting, the Review Committee recommended disposition of an additional five sets of human remains to the Abenaki Nation of Missisquoi contingent upon the museum's meeting four requirements, which were confirmed in a September 3, 2002, letter from the Manager, National NAGPRA program to Franklin Pierce College. The Review Committee required that the museum submit an inventory of culturally unidentifiable human remains containing information set forth in 43 CFR 10.9 (c); that the inventory be sent to the Wabanaki Confederacy, representing Aroostook Band of Micmac Indians of Maine, Houlton Band of Maliseet Indians of Maine, Indian Township Reservation of the Passamaquoddy Tribe of Maine, Penobscot Tribe of Maine, and Pleasant Point Reservation of the Passamaquoddy Tribe of Maine; and the Wampanoag Confederation, representing Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Tribe, and the Assonet Band of the Wampanoag Nation; that both the Wabanaki Confederacy and the Wampanoag Confederation provide written concurrence with the proposed disposition; and that a Notice of Inventory Completion be published in the Federal Register.

Franklin Pierce College, in a January 14, 2003, letter to the Review Committee, documented that three of the requirements had been met, noting that the fourth requirement would be met with the publication of this Notice of Inventory Completion.

Additional analysis, completed between November 2001 and January 2003, showed that the human remains from the five burials, which were originally reported as five sets of human remains, represent a minimum of eight individuals. The completed inventory reports a minimum of eight individuals, and correspondence from the Wabanaki Confederacy and the Wampanoag Confederation concurs with the proposed disposition of eight individuals.

The archeological and stratigraphic context for the Smyth site burials indicates a Middle or Late Woodland period date (A.D. 1-1500). Archeological, historical, and ethnographic sources, along with the oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (3000-1000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and the First Nation of New Hampshire (all nonfederally recognized Indian groups).

Officials of Franklin Pierce College have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. Officials of Franklin Pierce College also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Abenaki Nation of Missisquoi, representing a coalition of Western Abenaki groups, consisting of the Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire (all nonfederally recognized Indian groups).

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Robert G. Goodby, Assistant Professor, Department of Anthropology, Franklin Pierce College, PO Box 60, College Road, Rindge, NH 03461, telephone (603) 899-4362, before May 5, 2003. Repatriation of these human remains to the Abenaki Nation of Missisquoi, representing a coalition of Western Abenaki groups, consisting of the Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire (all nonfederally recognized Indian groups), may proceed after that date if no additional claimants come forward.

Franklin Pierce College is responsible for notifying the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Aroostook Band of Micmac Indians of Maine, Assonet Band of the Wampanoag Nation, Cowasuck Band of the Pennacook-Abenaki People, First Nation of New Hampshire, Houlton Band of Maliseet Indians of Maine, Indian Township Reservation of the Passamaquoddy Tribe of Maine, Mashpee Wampanoag Tribe, Penobscot Tribe of Maine, Pleasant Point Reservation of the Passamaquoddy Tribe of Maine, Wabanaki Confederacy, Wampanoag Confederation, and Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts that this notice has been published.

Dated: February 27, 2003.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 03–8192 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–490]

In the Matter of Certain Power Amplifier Chips, Broadband Tuner Chips, Transceiver Chips, and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 3, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Broadcom Corporation of Irvine, California. Supplements to the Complaint were filed on March 19 and 28, 2003. The Complaint, as supplemented, alleges violations of section 337 in the importation into the United States and the sale within the United States after importation of certain power amplifier chips, broadband tuner chips, transceiver chips and products containing same, by reason of infringement of claim 1 of U.S. Patent No. 6,445,039 and claim 2 of U.S. Patent No. 5,682,379. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–II) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 31, 2003 *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain power amplifier chips, broadband tuner chips, transceiver chips or products containing same, by reason of infringement of claim 1 of U.S. Patent No. 6,445,039 or claim 2 of U.S. Patent No. 5,682,379, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Broadcom Corporation, 16215 Alton Parkway, Irvine, California 92618.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Microtune, Inc., 2201 Tenth Street, Plano, Texas 75074.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.
Issued: March 31, 2003.

Marilyn R. Abbott,
Secretary to the Commission.
[FR Doc. 03–8200 Filed 4–3–03; 8:45 am]
BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—eManufacturing Security Framework (Formerly Semiconductor Equipment and Materials International)

Notice is hereby given that, on March 5, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Equipment and Materials International has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its name and membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Semiconductor Equipment and Materials International, San Jose, CA, has been dropped as a party to this venture and Advanced Micro Devices, Inc. (AMD), one of the partners, has assumed the principal investigation and administrative role in the research and development project. In addition, the venture has been renamed and will henceforth be called the eManufacturing Security Framework.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and eManufacturing Security Framework (formerly Semiconductor Equipment and Materials International (SEMI)) intends to file additional written notification disclosing all changes in membership.

On January 8, 2002, eManufacturing Security Framework (formerly Semiconductor Equipment and Materials International (SEMI)) filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2002 (67 FR 10762).

The last notification was filed with the Department on July 3, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 13, 2002 (67 FR 52746).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 03–8266 Filed 4–3–03; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Global Climate and Energy Project

Notice is hereby given that, on March 12, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Global Climate and Energy Project has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identifies of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Leland Stanford Junior University, Stanford, CA; Exxon Mobil Corporation, Irving, TX; General Electric Company, Fairfield, CT; and Schlumberger Technology Corporation, Sugarland, TX. The nature and objectives of the venture are to conduct long-term pioneering research to identify options for commercially viable, technological systems for energy supply and use with substantially reduced net greenhouse emissions; to identify presently existing barriers to commercializing those options (barriers such as cost, performance, safety, regulation, and consumer acceptance); to identify potential solutions to those barriers; to conduct pre-commercial research to explore those options, barriers, and potential solutions; and to publicize such options, barriers, solutions, and research, including fundamental science and pre-commercial research in the following topics: low greenhouse gas electric power production, storage, and distribution, advanced transportation techniques; production, distribution, and use of hydrogen; production, distribution and use of biomass fuels; advanced nuclear technologies; renewable energy supplies; carbon sinks, carbon dioxide separation and storage; coal utilization; enabling infrastructure; materials, and combustion and systems science; and geo-engineering.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 03–8268 Filed 4–3–03; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Spray Drift Task Force

Notice is hereby given that, on March 3, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Spray Drift Task Force has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the membership held by Aventis CropScience LP, Research Triangle, NC has been transferred to Nippon Soda Company, Ltd., Tokyo, JAPAN; and Chimac-Agriphar S.A., Ougree, BELGIUM has become a party to the venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Spray Drift Task Force intends to file additional written notification disclosing all changes in membership.

On May 15, 1990, Spray Drift Task Force filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 5, 1990 (55 FR 27701).

The last notification was filed with the Department on February 26, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 27, 2002 (67 FR 14731).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 03–8267 Filed 4–3–03; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

DATES: March 28, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or e-mail: *King.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: State Unified Plan Planning Guidance for State Unified Plans and Unified Plan Modifications submitted under Section 501 of the Workforce Investment Act of 1998.

OMB Number: 1205–0407.

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Frequency: As needed.

Number of Respondents: 57.

Total Annual Responses: 57.

Average Response Time: 25 hours.

Total Annual Burden Hours: 1,425.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $15.00.

Description: Title V, Section 501 of the Workforce Investment Act of 1998 provides an optional model for States to submit a single plan for up to 16 Federal education and training programs. While not required, following the model outlined in this guidance will reduce burden on the State and ensure that the State has met the individual program state planning requirements. This information request deals with modifications to these plans that are submitted in accordance with 20 CFR 661.230 and 661.240.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 03–8225 Filed 4–3–03; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 31, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or by E-Mail *King.Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer OASAM, Office of Management and Budget, Room

10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Office of the Assistant Secretary for Administration and Management (OASAM), Civil Rights Center.

Type of Review: Extension of a currently approved collection.

Title: Compliance Information Report—29 CFR part 37 Nondiscrimination-Workforce Investment Act of 1998.

OMB Number: 1225–0077.

Affected Public: State, Local, or Tribal Government.

Frequency: On occasion.

Type of Response: Recordkeeping and Reporting.

Number of Respondents: 1,662.

Requirement	Annual responses	Average response time (hours)	Annual burden hours
Data Collection & Maintenance:			
Demographic data	40,720,528	0.006	226,225
Employment data	0	0	0
Data maintenance	0	0	0
Complaint log	1,662	0.05	83
Administrative Findings	1	0.33	0.3
Methods of Administration:			
Initial development	0	0	0
Notification of changes	5	0.5	2.5
Two-year re-certification	58	3	174
Complaint Information Form	1,500	0.25	375
Written Justifications	20	2	40
Totals	40,723,774		226,900

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $166,200.

Description: The information collection requirements of 29 CFR part 37 provide DOL with data to ensure that grantees do not discriminate. The information collected on the form DL–1–2014A (Compliant Information Form) provides a basis for conducting investigations of complaints.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–8226 Filed 4–3–03; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

Grants for Small Faith-Based and Community-Based Non-Profit Organizations SGA/DFA 03–105

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA). This notice contains all of the necessary information and forms needed to apply for grant funding.

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor (DOL) announces the availability of $250,000 to award grants to eligible "grass-roots" organizations with the ability to connect to the local One-Stop delivery system. The term "grassroots" is defined under the Eligibility Criteria.

The selected grantees will be expected to achieve the following objectives:

- Apply the grant resources to meet defined community needs through provision of a variety of workforce services to specific populations and/or through the provision of particular supportive services not currently provided through the One-Stop delivery system;
- Expand the access of faith-based and community-based organizations' clients and customers to the training, job and career services offered by the local One-Stops;
- Thoroughly document the impact and outcomes of these grant investments through quarterly and annual reporting; and,
- Establish methods and mechanisms to ensure sustainability of these partnerships and participation levels beyond the life of the grant.

DATES: Applications will be accepted commencing on April 4, 2003. The closing date for receipt of applications under this announcement is May 9, 2003. Applications must be received by 4 p.m. (e.t.) at the address below: no exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications must be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Linda Forman, SGA/DFA 03–105, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210. Telefacsimile (FAX) applications will not be accepted. Applicants are advised that mail in the Washington area may be delayed due to mail decontamination procedures.

FOR FURTHER INFORMATION CONTACT: Linda Forman, Grants Management Specialist, Division of Federal Assistance, Telephone (202) 693–3301 (this is not a toll free-number). You must specifically ask for Linda Forman.

Questions can also be faxed to Linda Forman, Telephone (202) 693–2879, please include the SGA/DFA 03–105, a contact name, fax and phone numbers. This announcement will be also published on the Employment and Training Administration (ETA) Web page at *http://www.doleta.gov/usworkforce*. This Web page will also provide responses to questions that are raised by applicants during the period of grant application preparation. Award notifications will also be announced on this Web page.

SUPPLEMENTARY INFORMATION:

Part I. Delivery of Applications

1. Late Applications. Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it:

- Was sent by U.S. Postal Service registered or certified mail not later than May 9, 2003; or
- Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to addressee, not later than 5 p.m. at the place of mailing two working days before May 9, 2003. The term "working days" excludes weekends and U.S. Federal holidays. "Post-marked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

2. Withdrawal of Applications. Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

3. Hand Delivered Proposals. It is preferred that applications be mailed at least five days before the closing date. To be considered for funding, hand-delivered applications must be received at the designated address by 4 p.m., (e.t.) May 9, 2003. All overnight mail will be considered to be hand delivered and must be received at the designated place by the specified closing date and time. Telegraphed, e-mailed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for determination of non-responsive.

Part II. Authorities

These grants are made under the following authorities:

- The Workforce Investment Act of 1998 (WIA or the Act) (Pub. L. 105–220, 29 U.S.C. 2801 *et seq.*)
- The WIA final rule, 20 CFR parts 652, 660–671 (65 FR 49294 (August 11, 2000));
- Executive Order 13198; "Rallying the Armies of Compassion";
- Training and Employment Guidance Letter 17–01 ("Incorporating and Utilizing Grassroots, Community-Based Organizations Including Faith-Based Organizations in Workforce Investment Activities and Programs");
- Executive Order 13279; "Equal Protection of the Laws for Faith-Based and Community Organizations."

Part III. Background

The Workforce Investment Act of 1998 (WIA) established a comprehensive reform of existing Federal job training programs with amendments impacting service delivery under the Wagner-Peyser Act, Adult Education and Literacy Act, and the Rehabilitation Act. A number of other Federal programs are also identified as required partners in the One-Stop delivery system to provide comprehensive services for all Americans to access the information and resources available that can help in the achievement of their career goals. The intention of the One-Stop system is to establish a network of programs and providers in co-located and integrated settings that are accessible for individuals and businesses alike in approximately 600 workforce investment areas established throughout the nation. There are currently over 1,900 comprehensive Centers and over 1,600 affiliated Centers across the United States.

WIA established State and Local Workforce Investment Boards focused on strategic planning, policy development, and oversight of the workforce investment system, and accorded significant authority to the nation's Governors and local chief elected officials to further implement innovative and comprehensive delivery systems. The vision, goals and objectives for workforce development under the WIA decentralized system are fully described in the State strategic plan required under section 112 of the legislation. This State strategic workforce investment plan—and the operational experience gained by all the partners to date in implementing the WIA-instituted reforms—help identify the important "unmet needs" and latent opportunities to expand access to One-Stop by all the population segments within the local labor market.

Engagement of Faith-Based and Community Organizations Under the Workforce Investment Act

On January 29, 2001, President George W. Bush issued Executive Order 13198, creating the Office for Faith-Based and Community Initiatives in the White House and centers in the departments of Labor, Health and Human Services (HHS), Housing and Urban Development (HUD), Education (ED), Justice (DOJ). President Bush charged the Cabinet centers with identifying statutory, regulatory, and bureaucratic barriers that stand in the way of effective faith-based and community initiatives, and to ensure, consistent with the law, that these organizations have equal opportunity to compete for federal funding and other support.

In early 2002, the Department's Center for Faith-Based and Community Initiatives (CFBCI) and ETA developed and issued Solicitations for Grant Applications (SGAs) to engage intermediary and grass-roots organizations in our workforce system-building. These grants were designed to involve the faith-based and community-based organizations in service delivery, strengthen their existing partnership with the local One-Stop delivery system, while providing additional points of entry for customers into that system.

These 2002 grants embodied the Department's principal strategy for implementing the Executive Order by creating new avenues through which qualified organizations can more fully participate under the Workforce Investment Act while applying their particular strengths and assets in service provision to our customers. These grants also proceeded from an ETA–CFBCI mutual premise: That the involvement of community-based organizations and faith-based organizations can both complement and supplement the efforts of local workforce investment systems in providing universal access and serving the training, job and career-support needs of many of our citizens.

Both ETA and CFBCI are committed to bringing new Intermediary and grass-roots organizations to workforce system-building through the issuance of a new solicitation in 2003. This new solicitation draws on "lessons learned" in 2002 while introducing several "promising practices" introduced by other ETA grantees. The new solicitation also places significant emphasis on performance outcomes—documenting and quantifying the additional value the Intermediary and its sub-grantees bring to the One-Stop delivery system in the community.

Through this competition, ETA seeks to ensure that an important Workforce Investment Act tenet—universal access to the programs and services offered under WIA—is further rooted in the customer-responsive delivery systems already established by the Governors, local elected officials and local Workforce Investment Boards. ETA also reaffirms its continuing commitment to those customer-focused reforms instituted by State and local governments which help Americans access the tools they need to manage their careers through information and high quality services, and to help U.S. companies find skilled workers.

Faith-based and community-based organizations present strong credentials for full partnership in our mutual system-building endeavors. Faith-based and community-based organizations are trusted institutions within our poorest neighborhoods. Faith-based and community-based organizations are home to a large number of volunteers who bring not only the transformational power of personal relationships to the provision of social service but also a sustained allegiance to the well-being and self-sufficiency of the participants they serve. Through their daily work and specific programs, these organizations strive to achieve some common purposes shared with government—reduction of welfare dependency, attainment of occupational skills, entry and retention of all our citizens in good-paying jobs. Through this solicitation, ETA and CFBCI strive to leverage these programs, resources and committed staff into the workforce investment strategies already embodied in State and local strategic plans.

Application of the Establishment Clause of the First Amendment of the United States Constitution

The Establishment Clause of the First Amendment of the United States Constitution prohibits the government from directly funding religious activity.* These grants may not be used for instruction in religion or sacred literature, worship, prayer, proselytizing or other inherently religious practices. The services provided under these grants must be secular and non-ideological. Neutral, secular criteria that neither favor nor disfavor religion must be employed in their selection of sub-grantees. In addition, under the WIA and DOL regulations implementing the Workforce Investment Act, a recipient may not train a participant in religious activities, or permit participants to construct, operate, or maintain any part of a facility that is primarily used or devoted to religious instruction or worship. Under WIA, "no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief."

* The term "direct" funding is used to describe funds that are provided "directly" by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term "direct" funding may be used to refer to those funds that an organization receives directly from the Federal government (also known as "discretionary" funding), as opposed to funding that it receives from a State or local government (also known as "indirect" or "block grant" funding). In this SGA, the term "direct" has the former meaning.

Part IV. Funding Availability and Period of Performance

ETA has identified $250,000 from the FY 2002 appropriation for One-Stop/America's Labor Market Information System. The agency expects to award 10–12 grants. The grant amount for each grass-roots organization is expected to range between $20,000 and $25,000. The period of performance is one year, beginning July 1, 2003 and ending on June 30, 2004.

Part V. Eligible Applicants

For purposes of this announcement, eligible grassroots organizations must be non-profits which:

1. Have social services as a major part of their mission;
2. Are headquartered in the local community to which they provide these services;
3. Have a total annual operating budget of $300,000 or less, or
4. Have 6 or fewer full-time equivalent employees.

Note: For purposes of this announcement local affiliates of national social service organizations are not considered "grassroots" and are not be eligible to apply.

Part VI. Government Requirements/ Statement of Work

Applicants must submit one copy with an original signature and two additional copies of their proposal. The Statement of Work must be limited to 5 pages. The only attachments permitted will be agreements with or letters of support from local Workforce Investment Boards and/or local One-Stop operators. The application must be double-spaced, and on single-sided, numbered pages. A font size of at least twelve (12) pitch is required with one-inch margins (top, bottom and sides.)

There are three required sections:

- Section I—Application for Federal Assistance (SF 424A)
- Section II—Budget Information (SF 424B)
- Section III—Statement of Work

Section I—Application for Federal Assistance

The SF–424A is included in the announcement as Attachment A. It must be signed by a representative authorized by the governing body of the applicant to enter into grant agreement.

Section II—Budget Information

The SF–424B is included in the announcement as Attachment B.

Note: Except as specifically provided, DOL/ETA acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, the OMB circulars require that an entity's procurement procedures must require that all procurement transactions must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition.

Section III—Statement of Work (Not To Exceed 5 Pages)

The Statement of Work sets forth a strategic plan for the use of awarded funds and establishes measurable goals for increasing organizational participation in the One-Stop service delivery system to more fully serve the clientele and members of community-based and faith-based organizations. Below are the required elements of the Statement of Work and the rating criteria that reviewers will use to evaluate the proposal.

1. Organizational History and Description of Community Need (15 Points)

- Describe the structure of the applicant's organization. Describe the history of the organization in meeting community needs including a brief listing of services provided.
- Describe the overall community need, *i.e.*, how will these resources allow your organization to address a need which the One-Stop Career Center is not fully addressing? (This description should include coverage of population(s) to be served and the services to be provided. Populations could include ex-offenders, immigrants, limited English-speaking, homeless and individuals with disabilities. Services can include soft-skills training, pre- and post-job placement mentoring, translation services, and job coaching. Other populations and services can be identified.)

Rating Criteria

- Does the description reflect a clear understanding of a community need? Does the description of need reflect an understanding of the resources provided by the One-Stop delivery system in the community?

2. Description of Partnerships and Linkages (20 Points)

- Please describe your plans to work as partners with the One-Stop Delivery system to help the target population enter and succeed in the Workforce. If you have not previously worked with the One-Stop, please describe actions you have taken to develop the relationships as you developed this grant. If you have worked with the One-Stop, please describe what actions you have taken to further develop your relationship.
- Please describe the relationships you have with other non-profit organizations who provide similar or complementary services and how you will leverage pre-existing relationships and partnerships to help achieve your goals for the population you will service and how you will avoid duplication.

Rating Criteria

- Does the narrative describe an approach and process by which the organization will successfully partner with the One-Stop delivery system to address the unmet need?
- Does the applicant present evidence of discussions with the One-Stop delivery system (*e.g.*, a signed letter from the Local Board or other One-Stop delivery system principals)?
- Does the organization's history of collaboration with other non-profits in the community support the conclusion that these grant activities will be successful?

3. Presentation of Strategic Plan, Goals, and Timeline (50 Points)

- The applicant should describe the methodology for providing services, including any training curriculum or other tools to be used. Describe the staff/volunteer positions that will be providing services under this grant.
- The applicant must present a timeline of major, measurable tasks and activities to be undertaken. The timeline should include how many people will receive services and/or participate and complete classes detailed in the training curriculum.
- The applicant should also describe specifically measurable outcomes and other goals, which will be achieved by these grant activities. Measurable outcomes can include how many individuals will enter employment or retain employment or complete an educational certificate because they have received services provided under this grant in conjunction with services provided by the One-Stop Career Centers and other partners.

Rating Criteria

- Do the activities and tasks presented on the timeline appear to be achievable with the likelihood of project success given available resources?
- Does the applicant provide tangible outcome measures and goals for success for both the organization and Department to gauge the impact of the activities on meeting the community need? Do these goals include tracking employment outcomes and/or retention outcomes for those served?

4. Description of Measurements of Success (15 Points)

- Describe what mechanisms you will develop, in partnership with the One-Stop delivery system, to track your success in achieving promised goals and outcomes.
- Describe any other methods you will use for evaluating your project's success.

Rating Criteria

- Does this applicant reflect an understanding of what it would need to do in order to track progress and success?

Part VII. Review Process of the Evaluation Criteria

The technical review panel will make careful evaluation of applications against the criteria. The review panel recommendations are advisory. The ETA grant officer will fully consider the panel recommendations and take into account geographic balance to ensure the most advantageous award of these funds to accomplish the system-building purposes outlined in the Summary and Statement of Work. The grant officer may consider any information that comes to his or her attention. The grant officer reserves the right to award without negotiation.

Part VIII. Reporting

Grantees will be required to submit quarterly financial and narrative progress reports. Financial reporting will be required quarterly using the on-line electronic reporting system for the Standard Form 269–Financial Status Report (FSR). A narrative progress report will be required quarterly.

Part IX. Resources for the Applicant

The Department of Labor maintains a number of web-based resources that may be of assistance to applicants. The Web page for the Department's Center for Faith-Based & Community Initiatives (*http://www.dol.gov/cfbci*) is a valuable source of background on this initiative. America's Service Locator (*www.servicelocator.org*) provides a directory of our nation's One-Stop Career Centers. The National Association of Workforce Boards maintains a Web page (*www.nawb.org/asp/wibdir.asp*), which contains contact information for the State and local Workforce Investment boards. Applicants are encouraged to review "Understanding the Department of Labor Solicitation for Grant Applications and How to Write an Effective Proposal" (*http://www/dol.gov/cfbci/sgabrochure.htm*). "Questions and Answers" regarding this solicitation will be posted and updated on the Web (*www.doleta.gov/usworkforce*). For a basic understanding of the grants process and basic responsibilities of receiving Federal grant support, please see "Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government (*www.fbci.gov*).

Signed in Washington, DC, this 1st day of April, 2003.

James W. Stockton,

Grant Officer.

Attachments:

Appendix A—SF–424

Appendix B—Budget Form

Appendix C—Survey of Ensuring Equal Opportunity for Applicants

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE | **APPENDIX "A"** | **OMB Approval No. 0348-0043**

1. TYPE OF SUBMISSION: Application / Preapplication; Construction / Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name, telephone number and fax number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipa; D. Township; E. Interstate; F. Intermunicipal; G. Special District; N. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: New / Continuation / Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. PROGRAM IS NOT COVERED BY E.O. 12372

OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

Yes If "Yes," attach an explanation. No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: **Entry:**

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable)

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided.

   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

12. List only the largest political entities affected (e.g., State, counties, cities.

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Item: **Entry:**

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories **APPENDIX "B"**

	(A)	(B)	(C)
1. Personnel	$		
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

SECTION A - Budget Summary by Categories

1. **Personnel:** *Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. **Fringe Benefits:** *Indicate the rate and amount of fringe benefits.*

3. **Travel:** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. **Equipment**: *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. **Supplies:** *Include the cost of consumable supplies and materials to be used during the project period.*

6. **Contractual:** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. **Other:** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. **Total, Direct Costs:** *Add lines 1 through 7.*

9. **Indirect Costs:** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. **Training /Stipend Cost:** *(If allowable)*

11. **Total Federal funds Requested:** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Survey on Ensuring Equal Opportunity for Applicants

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?

❑ Yes ❑ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

❑ 3 or Fewer ❑ 15-50
❑ 4-5 ❑ 51-100
❑ 6-14 ❑ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

❑ Less Than $150,000
❑ $150,000 - $299,999
❑ $300,000 - $499,999
❑ $500,000 - $999,999
❑ $1,000,000 - $4,999,999
❑ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

❑ Yes ❑ No

5. Is the applicant a non-religious community-based organization?

❑ Yes ❑ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

❑ Yes ❑ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

❑ Yes ❑ No

8. Is the applicant a local affiliate of a national organization?

❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1225-0083**. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

[FR Doc. 03–8227 Filed 4–3–03; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Grants for Intermediaries; SGA/DFA 03–104

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA). This notice contains all of the necessary information and forms needed to apply for grant funding.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces the availability of $3.5 million to award grants to eligible intermediary organizations. Under this 2003 competition, eligible "intermediaries" are defined as those non-profit, community, and/or faith-based organizations with established connections and working relationships to grassroots faith-based and community organizations with the ability to connect those smaller organizations and the people they serve to the local One-Stop delivery system.

In achieving the grant purposes, the intermediary is expected to sub-grant a substantial portion of its award to eligible local grass-roots organizations. In their collaboration, the intermediaries will achieve the following objectives:

- Organize collaboration between sub-grantees and workforce boards to address a well-defined unmet community need by leveraging the resources of both faith-based and community organizations and the One-Stop Career Center system. The faith-based and community organizations resources may include, but are not limited to, services such as mentoring, soft skills training, transportation, childcare, or use of space and volunteer hours. "Soft skills" commonly refers to skills and characteristics that allow individuals to succeed in the workplace, such as a strong work ethic, an ability to work in teams, self-discipline, self-confidence, punctuality and courtesy.
- Increase the number of faith-based and community-based organizations serving as committed and active partners in the One-Stop delivery system.
- Establish methods and mechanisms to ensure sustainability of these partnerships and participation levels beyond the life of the grant.
- Expand the access of faith-based and community-based organizations' clients and customers to the training, job and career services offered by the local One-Stops.
- Tthoroughly document the impact and outcomes of these grant investments through quarterly and annual reporting.

DATES: Applications will be accepted commencing on April 4, 2003. The closing date for receipt of applications under this announcement is May 5, 2003. Applications must be received by 4 p.m. (ET) at the address below: No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications must be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Denise Roach, SGA/DFA 03–104, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210. Telefacsimile (FAX) applications will not be accepted. Applicants are advised that mail in the Washington area may be delayed due to mail decontamination procedures.

FOR FURTHER INFORMATION CONTACT: Denise Roach, Grants Management Specialist, Division of Federal Assistance, Telephone (202) 693–3301 (this is not a toll free-number). You must specifically ask for Denise Roach. Questions can also be faxed to Denise Roach, Telephone (202) 693–2879, please include the SGA/DFA 03–104, a contact name, fax and phone numbers. This announcement will be also published on the Employment and Training Administration (ETA) Web page at *http://www.doleta.gov/usworkforce*. This Web page will also provide responses to questions that are raised by applicants during the period of grant application preparation. Award notifications will also be announced on this Web page.

Part I. Delivery of Applications

1. *Late Applications.* Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it:

- Was sent by U.S. Postal Service registered or certified mail not later than May 5, 2003 (*e.g.*, an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been post marked by the 15th of the that month); or
- Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to addressee, not later than May 5, 2003 by 5 p.m. at the place of mailing two working days before to the deadline date specified for receipt of applications. The term "working days" excludes weekends and U.S. Federal holidays. "Post-marked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

2. *Withdrawal of Applications.* Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

3. *Hand Delivered Proposals.* It is preferred that applications be mailed at least five days before to the closing date. To be considered for funding, hand-delivered applications must be received at the designated address by 4 p.m., (ET). All overnight mail will be considered to be hand delivered and must be received at the designated place by the specified closing date and time. Telegraphed, e-mailed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for determination of non-responsiveness.

Part II. Authorities

These grants are made under the following authorities:

- The Workforce Investment Act of 1998 (WIA or the Act) (Public Law 105–220, 29 U.S.C. 2801 *et seq.*)
- The WIA Final Rule, 20 CFR parts 652, 660–671 (65 FR 49294 (August 11, 2000));
- Executive Order 13198; "Rallying the Armies of Compassion"
- Training and Employment Guidance Letter 17–01 ("Incorporating and Utilizing Grassroots, Community-Based Organizations Including Faith-Based Organizations in Workforce Investment Activities and Programs")
- Executive Order 13279; "Equal Protection of the Laws for Faith-Based and Community Organizations"

Part III. Background

The Workforce Investment Act of 1998 (WIA) established a comprehensive reform of existing

Federal job training programs with amendments impacting service delivery under the Wagner-Peyser Act, Adult Education and Literacy Act, and the Rehabilitation Act. A number of other Federal programs are also identified as required partners in the One-Stop delivery system to provide comprehensive services for all Americans to access the information and resources available that can help in the achievement of their career goals. The intention of the One-Stop system is to establish a network of programs and providers in co-located and integrated settings that are accessible for individuals and businesses alike in approximately 600 workforce investment areas established throughout the nation. There are currently over 1,900 comprehensive Centers and over 1,600 affiliated Centers across the United States.

WIA established State and Local Workforce Investment Boards focused on strategic planning, policy development, and oversight of the workforce investment system, and accorded significant authority to the nation's Governors and local chief elected officials to further implement innovative and comprehensive delivery systems. The vision, goals and objectives for workforce development under the WIA decentralized system are fully described in the State strategic plan required under section 112 of the legislation. This State strategic workforce investment plan—and the operational experience gained by all the partners to date in implementing the WIA-instituted reforms—help identify the important "unmet needs" and latent opportunities to expand access to One-Stop by all the population segments within the local labor market.

Engagement of Faith-Based and Community Organizations Under the Workforce Investment Act

On January 29, 2001, President George W. Bush issued Executive Order 13198, creating the Office for Faith-Based and Community Initiatives in the White House and centers in the departments of Labor, Health and Human Services (HHS), Housing and Urban Development (HUD), Education (ED), Justice (DOJ). President Bush charged the Cabinet centers with identifying statutory, regulatory, and bureaucratic barriers that stand in the way of effective faith-based and community initiatives, and to ensure, consistent with the law, that these organizations have equal opportunity to compete for federal funding and other support.

In early 2002, the Department's Center for Faith-Based and Community Initiatives (CFBCI) and ETA developed and issued Solicitations for Grant Applications (SGAs) to engage intermediary and grass-roots organizations in our workforce system-building. These grants were designed to involve the faith-based and community-based organizations in service delivery, strengthen their existing partnership with the local One-Stop delivery system, while providing additional points of entry for customers into that system.

These 2002 grants embodied the Department's principal strategy for implementing the Executive Order by creating new avenues through which qualified organizations can more fully participate under the Workforce Investment Act while applying their particular strengths and assets in service provision to our customers. These grants also proceeded from an ETA–CFBCI mutual premise: that the involvement of community-based organizations and faith-based organizations can both complement and supplement the efforts of local workforce investment systems in providing universal access and serving the training-, job- and career-support needs of many of our citizens.

Both ETA and CFBCI are committed to bringing new Intermediary and grass-roots organizations to workforce system-building through the issuance of a new solicitation in 2003. This new solicitation draws on "lessons learned" in 2002 while introducing several "promising practices" introduced by other ETA grantees. While many Statement of Work elements in the 2002 solicitation have been preserved, the 2003 competition also sharply focuses on the ability of the Intermediary grantee and its sub-grantees to bridge the "gaps" in types of service provision and/or meeting the needs of historically hard-to-serve populations reached in the community (Note: While several of the Intermediary grantees in 2002 served multiple jurisdictions in various States, the 2003 competition focuses on the ability of the Intermediary to serve a single defined geographic area or contiguous geographic areas.) The new solicitation also places significant emphasis on performance outcomes—documenting and quantifying the additional value the Intermediary and its sub-grantees bring to the One-Stop delivery system in the community.

Through this competition, ETA seeks to ensure that an important Workforce Investment Act tenet—universal access to the programs and services offered under WIA—is further rooted in the customer-responsive delivery systems already established by the Governors, local elected officials and local Workforce Investment Boards. ETA also reaffirms its continuing commitment to those customer-focused reforms instituted by State and local governments which help Americans access the tools they need to manage their careers through information and high quality services, and to help U.S. companies find skilled workers.

Faith-based and community-based organizations present strong credentials for full partnership in our mutual system-building endeavors. Faith-based and community-based organizations are trusted institutions within our poorest neighborhoods. Faith-based and community-based organizations are home to a large number of volunteers who bring not only the transformational power of personal relationships to the provision of social service but also a sustained allegiance to the well-being and self-sufficiency of the participants they serve. Through their daily work and specific programs, these organizations strive to achieve some common purposes shared with government—reduction of welfare dependency, attainment of occupational skills, entry and retention of all our citizens in good-paying jobs. Through this solicitation, ETA and CFBCI strive to leverage these programs, resources and committed staff into the workforce investment strategies already embodied in State and local strategic plans.

Legal Rules That Apply to Faith-Based Organizations That Receive Government Funds

The government is prohibited from directly funding religious activity.* These grants may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious practices. Neutral, secular

criteria that neither favor nor disfavor religion must be employed in the selection of grant and sub-grant recipients. In addition, under the WIA and DOL regulations implementing the Workforce Investment Act, a recipient may not train a participant in religious activities, or permit participants to construct, operate, or maintain any part of a facility that is primarily used or devoted to religious instruction or worship. Under WIA, "no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief."

* The term "direct" funding is used to describe funds that are provided "directly" by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term "direct" funding may be used to refer to those funds that an organization receives directly from the Federal government (also known as "discretionary" funding), as opposed to funding that it receives from a State or local government (also known as "indirect" or "block grant" funding). In this SGA, the term "direct" has the former meaning.

Part IV. Funding Availability and Period of Performance

ETA has identified $3.5 million from the FY 2002 appropriation for One-Stop/America's Labor Market Information System for achieving these objectives. The agency expects to award 7 to 12 grants. The grant amount for each intermediary organization is expected to range from $300,000 to $500,000. Final award amounts may be negotiated at the discretion of the grant officer. The period of performance is one year, beginning July 1, 2003 and ending on June 30, 2004.

Grant funds awarded through this competition are not intended to replace or supplant existing activities or resources that are currently offered ("maintenance of effort"), but to augment the range of services available in the community. Organizations, which have not previously partnered with the One-Stop delivery system are the specific target for these Federal investments.

Part V. Eligible Applicants

For purposes of this announcement, "intermediaries" are defined as those non-profit, community, and/or faith-based organizations with existing connections to grassroots faith-based and community organizations, and the demonstrated ability to connect those organizations to the local workforce investment system. These Intermediary organizations must possess strong financial and grant management skills, and the ability to mentor smaller organizations to increase their capacity to fully participate in One-Stop service delivery. (Note: Intermediary organizations that received grants in 2002 are not eligible to apply for these resources.) For the purposes of this grant, neither Workforce Investment Boards nor One-Stop operators qualify as intermediaries. The intermediary should issue sub-grants to non-profit grassroots organizations which:

1. Have social services as a major part of their mission;
2. Are headquartered in the local community to which they provide these services;
3. Have a total annual operating budget of $300,000 or less, or
4. Have 6 or fewer full-time equivalent employees.

Note: For purposes of this competition, local affiliates of national social service organizations are not considered "grassroots" and are not eligible for a sub-grant award.

Part VI. Government Requirements/ Statement of Work

Applicants must submit one copy with an original signature and two additional copies of their proposal. The application must be double-spaced, and on single-sided, numbered pages. A font size of at least twelve (12) pitch is required throughout.

There are five required sections:

Section I—Application for Federal Assistance (SF 424A)
Section II—Budget Information (SF 424B)
Section III—Executive Summary
Section IV—Statement of Work

Section I—Application for Federal Assistance

The SF–424A is included in the announcement as Attachment A. It must be signed by the representative authorized by the governing body of the applicant to enter into grant agreement.

Section II—Budget Information

The SF–424B is included in the announcement as Attachment B.

Note: Except as specifically provided, DOL/ETA acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, the OMB circulars require that an entity's procurement procedures must require that all procurement transactions must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition.

Section III—Executive Summary

A one to two page "Executive Summary" reflecting the timeline and focusing on the outcomes to be achieved under this grant is also required. This Executive Summary does not count against the overall page limitation. The Executive Summary should include:

- The name of the local investment workforce area in the State proposed to be served through the activities of this grant. (If you plan to serve two or more contiguous areas, please identify in this Section.)
- Years of intermediary's service to the residents in this area.
- The "need to be addressed"—*i.e.*, the services to be provided and populations to be served that may not fully be addressed by the local workforce investment system.
- Intermediary and sub-grantee projects and activities that address the defined needs with twelve-month timelines for their accomplishment.
- Summary of outcomes, benefits and value added by the project.

Section IV—Statement of Work (Not To Exceed 15 Pages Including Attachments)

The Statement of Work represents the applicant's plans to address the previously documented unmet need(s) in the community, including the opportunity to serve specific populations (*e.g.*, ex-offenders, limited English-speaking, immigrants, displaced homemakers, homeless) and/or offer specific services critical to obtaining employment for disadvantaged populations (*e.g.*, soft-skills training, pre- and post-job placement mentoring, translation services, job coaching). (This description should include coverage of population(s) to be served and the services to be provided. Populations could include ex-offenders, immigrants, limited English-speaking, homeless and individuals with disabilities. Services can include soft-skills training, pre- and post-job placement mentoring, translation services, and job coaching. Other populations and services can be identified.) The Department expects that the intermediary and its sub-grantees can complement, augment and supplement the services currently provided through the local One-Stop delivery system.

The intermediary will assist the sub-grantees, as appropriate, in administrative tasks so that maximum efforts can be focused on providing direct assistance to their service population(s), The Department expects the intermediary's staff to provide mentoring and technical assistance to build the smaller organizations' capacity to be a permanent contributor to the local One-Stop system as well as compete successfully for future governmental grants and private funding opportunities.

The Statement of Work will specifically include:

(1) Performance History with Grants Management and the One-Stop System.

(2) Description of the proposed plan and activities of the intermediary and its sub-grantees.

(3) Enumeration of evaluation criteria, measure(s), outcomes and reporting/ tracking.

(4) Mechanisms for both intermediary and sub-grantees.

1. Performance History With Grants Management and the One-Stop System (15 points)

Each applicant must provide a statement of its performance history with the management of resources under governmental grants-in-aid programs, including:

- Relevant history of the applicant in managing resources through grant awards from Federal Departments (particularly those from the Departments of Labor, Justice, Education, Housing and Urban Development, and Health and Human Services), State governments, units of local governments or private foundations.
- Relevant history of the applicant in working with small organizations. (Note: Be sure to include past experience in developing technical assistance and developing other organizations' capacity for social service delivery, competing for grants, managing grants, conducting information campaigns.)
- Recent participation of the intermediary in the One-Stop Stop delivery system for employment and training services. Describe any current working relationship with the local Workforce Investment Board(s). If your organization did not previously work with a Local Board, please describe how the applicant worked with the Local Board in the development of this grant proposal.

The Department will evaluate this narrative based on the scope, strength, and "record of achievement."

2. Description of the proposed plan and activities of the intermediary and its sub-grantees (50 points)

This section of the narrative provides the applicant's strategy for addressing the community's unmet workforce investment needs, and the prospects for strengthening the local One-Stop system through an expanded set of relationships with smaller grass-roots organizations. This section of the narrative should fully describe the specific needs in the community that the intermediary and grassroots organization partnerships will address. The proposal's narrative should:

- Describe the unmet service needs and conditions of unemployed or underemployed workers that the applicant will organize sub-grantees and other partners to address. The narrative should include how the applicant identified this need, including consultation with grassroots and faith-based and community organizations and the One-Stop delivery system;
- Document existing networks of faith-based and community groups, the organization's relationship with these networks, and plans for additional outreach to identify additional faith-based and community-based organizations. The emphasis should be on outreach to those groups that can help the grantee address the identified community need(s).
- Describe the methodology for awarding sub-grants. Describe how the applicant will organize the sub-grantees to address the community's need including what resources and services it will solicit from sub-grantees.
- Describe technical assistance the applicant will provide to potential sub-grantees before and after grant award. This should include activities to help FBOs/CBOs apply for sub-grant award.
- Describe the activities that have and will be undertaken to build the administrative capacity of the sub-grantees.
- Describe how the applicant and sub-grantees will use One-Stop system resources and collaborate with the local Workforce Investment Board to address the identified community issues.
- Submit a timeline for the tasks and activities beginning July 1.

The Department will evaluate the proposal against the following criteria:

- The activities associated with outreach and identification of grassroots organizations eligible for sub-grant awards appear appropriate, reasonable and achievable within the first months of the grant period.
- The defined set of inter-relationships among intermediary, grass-roots organizations and the local One-Stop delivery system during the life of the grant suggest that the grant objectives will be successfully met.
- The approaches and strategies for meeting the unmet workforce investment needs in the community appear appropriate, reasonable and achievable within the grant period.

3. Description of evaluation criteria, measure(s), outcomes and reporting/ tracking mechanisms for both intermediary and sub-grantees (35 points) The narrative should specifically and carefully define how grant success will be determined by the intermediary and the Department. The review panels should be able to answer three key questions: What will be different once the project is complete? What value will be added to the local One-Stop delivery system? How will the "competitive" posture (i.e., capabilities to deliver services/act as partner) of the sub-grantees in the local One-Stop delivery system be enhanced? The narrative, therefore, should:

- Define the measurable outcomes and other goals for both the intermediary and its sub-grantees in executing the proposed tasks and activities. These outcomes include how many individuals will obtain and retain employment, or complete an educational certificate. Other goals may include how many individuals will receive job training, life-skills training or other services, which remove specific barriers to employment.
- Describe how the intermediary organization will track and report outcomes for those assisted under the sub-grants. Describe any formal agreement with the local One-Stop delivery system to track such outcomes or other mechanisms that have been established for this purpose.
- Define how the intermediary will determine its overall success in improving the posture of the sub-grantees in increasing their administrative capacity to remain active in local workforce development and compete for future funding opportunities.

The Department will evaluate the proposal against the following criteria:

- Are the goals and objectives, and the plans and procedures for achieving them, innovative, worthwhile, achievable and measurable?
- Are the methods and activities to achieve the objectives adequately described?

Note: These should be consistent with the timeline; and present the order and the date of completion (month or quarter) for the accomplishment of the intermediary's and sub-grantees' tasks.

- Is there evidence that the intermediary's technical assistance efforts will enhance the posture of the

sub-grantees by increasing their administrative capacity and their ability to remain active in the local workforce development system and to compete for other funding opportunities?

Part VII. Reporting

Grantees will be required to submit quarterly financial and narrative progress reports. Financial reporting will be required quarterly using the on-line electronic reporting system for the Standard Form 269–Financial Status Report (FSR). A narrative progress report will be required quarterly.

Part VIII. Review Process and Evaluation Criteria

The technical review panel will make careful evaluation of applications against the rating criteria. The review panel recommendations are advisory. The ETA grant officer will fully consider the panel recommendations and take into account geographic balance to ensure the most advantageous award of these funds to accomplish the system-building purposes outlined in the Summary and Statement of Work. The grant officer may consider any information that comes to his or her attention. The grant officer reserves the right to award without negotiation.

Part IX. Resources for Applicant

The Department of Labor maintains a number of web-based resources that may be of assistance to applicants. The webpage for the Department's Center for Faith-Based & Community Initiatives (*http://www.dol.gov/cfbci*) is a valuable source of background on this initiative. America's Service Locator (*http://www.servicelocator.org*) provides a directory of our nation's One-Stop Career Centers. The National Association of Workforce Boards maintains a webpage (*http://www.nawb.org/asp/wibdir.asp*), which contains contact information for the State and local Workforce Investment boards. Applicants are encouraged to review "Understanding the Department of Labor Solicitation for Grant Applications and How to Write an Effective Proposal" (*http://www/dol.gov/cfbci/sgabrochure.htm*). "Questions and Answers" regarding this solicitation will be posted and updated on the web (*http://www.doleta.gov/usworkforce*). For a basic understanding of the grants process and basic responsibilities of receiving Federal grant support, please see "Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government" (*http://www.fbci.gov*).

Signed at Washington, DC, this 1st day of April, 2003.

James W. Stockton,

Grant Officer.

Attachments:

Appendix A: SF–424A—Application for Federal Assistance
Appendix B: Budget Form
Appendix C: Survey on Ensuring Equal Opportunity for Applicants
Appendix D: Checklist (whether the applicant is a Faith-Based organization or a Community-Based organization)

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX "A"

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application / Construction / Non-Construction; Preapplication / Construction / Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name, telephone number and fax number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):
☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipe
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
New / Continuation / Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award
B. Decrease Award
C. Increase Duration
D. Decrease Duration
Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:
☐☐-☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b. Applicant	$ .00	
c. State	$ .00	b. NO. PROGRAM IS NOT COVERED BY E.O. 12372 OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? Yes If "Yes," attach an explanation. No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	a. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: **Entry:**

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable)

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided.

   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

Item: **Entry:**

12. List only the largest political entities affected (e.g., State, counties, cities.

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories **APPENDIX "B"**

	(A)	(B)	(C)
1. Personnel	$		
2. Fringe Benefits (Rate .)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: *Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).*

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?
   - ☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*
   - ☐ 3 or Fewer ☐ 15-50
   - ☐ 4-5 ☐ 51-100
   - ☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*
   - ☐ Less Than $150,000
   - ☐ $150,000 - $299,999
   - ☐ $300,000 - $499,999
   - ☐ $500,000 - $999,999
   - ☐ $1,000,000 - $4,999,999
   - ☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?
   - ☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?
   - ☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?
   - ☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?
   - ☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?
   - ☐ Yes ☐ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1225-0083**. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Appendix D

Application for funding under SGA/DFA 03-104 "Grants for Intermediaries"

Name of Applicant:_____

(MUST CHECK ONE)

___ Faith Based Organization

___ Community Based Organization

[FR Doc. 03–8228 Filed 4–3–03; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR part 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decision being modified.

Volume I

Connecticut
CT020001 (Mar. 1, 2002)
CT020002 (Mar. 1, 2002)
CT020003 (Mar. 1, 2002)
CT020004 (Mar. 1, 2002)
New York
NY020002 (Mar. 1, 2002)
NY020003 (Mar. 1, 2002)
NY020004 (Mar. 1, 2002)
NY020005 (Mar. 1, 2002)
NY020007 (Mar. 1, 2002)
NY020008 (Mar. 1, 2002)
NY020010 (Mar. 1, 2002)
NY020011 (Mar. 1, 2002)
NY020012 (Mar. 1, 2002)
NY020013 (Mar. 1, 2002)
NY020014 (Mar. 1, 2002)
NY020015 (Mar. 1, 2002)
NY020016 (Mar. 1, 2002)
NY020017 (Mar. 1, 2002)
NY020018 (Mar. 1, 2002)
NY020019 (Mar. 1, 2002)
NY020020 (Mar. 1, 2002)
NY020021 (Mar. 1, 2002)
NY020022 (Mar. 1, 2002)
NY020025 (Mar. 1, 2002)
NY020026 (Mar. 1, 2002)
NY020031 (Mar. 1, 2002)
NY020032 (Mar. 1, 2002)
NY020033 (Mar. 1, 2002)
NY020034 (Mar. 1, 2002)
NY020036 (Mar. 1, 2002)
NY020037 (Mar. 1, 2002)
NY020039 (Mar. 1, 2002)
NY020040 (Mar. 1, 2002)
NY020041 (Mar. 1, 2002)
NY020042 (Mar. 1, 2002)
NY020043 (Mar. 1, 2002)
NY020044 (Mar. 1, 2002)
NY020045 (Mar. 1, 2002)
NY020046 (Mar. 1, 2002)
NY020048 (Mar. 1, 2002)
NY020049 (Mar. 1, 2002)
NY020051 (Mar. 1, 2002)
NY020060 (Mar. 1, 2002)
NY020066 (Mar. 1, 2002)
NY020071 (Mar. 1, 2002)
NY020072 (Mar. 1, 2002)
NY020075 (Mar. 1, 2002)
NY020076 (Mar. 1, 2002)
NY020077 (Mar. 1, 2002)
Rhode Island
RI020001 (Mar. 1, 2002)

Volume II

District of Columbia
DC020001 (Mar. 1, 2002)
DC020003 (Mar. 1, 2002)
Maryland
MD020002 (Mar. 1, 2002)
MD020006 (Mar. 1, 2002)
MD020010 (Mar. 1, 2002)
MD020016 (Mar. 1, 2002)
MD020021 (Mar. 1, 2002)
MD020028 (Mar. 1, 2002)
MD020029 (Mar. 1, 2002)
MD020037 (Mar. 1, 2002)
MD020039 (Mar. 1, 2002)
MD020042 (Mar. 1, 2002)
MD020046 (Mar. 1, 2002)
MD020048 (Mar. 1, 2002)
MD020050 (Mar. 1, 2002)
MD020056 (Mar. 1, 2002)
MD020057 (Mar. 1, 2002)
MD020058 (Mar. 1, 2002)
Virginia
VA020014 (Mar. 1, 2002)
VA020049 (Mar. 1, 2002)
VA020064 (Mar. 1, 2002)
VA020099 (Mar. 1, 2002)

Volume III

Florida
FL020001 (Mar. 1, 2002)
FL020009 (Mar. 1, 2002)
FL020046 (Mar. 1, 2002)
Kentucky
KY020001 (Mar. 1, 2002)
KY020002 (Mar. 1, 2002)
KY020003 (Mar. 1, 2002)
KY020004 (Mar. 1, 2002)
KY020005 (Mar. 1, 2002)
KY020006 (Mar. 1, 2002)
KY020007 (Mar. 1, 2002)
KY020025 (Mar. 1, 2002)
KY020027 (Mar. 1, 2002)
KY020028 (Mar. 1, 2002)
KY020029 (Mar. 1, 2002)
KY020032 (Mar. 1, 2002)
KY020035 (Mar. 1, 2002)
KY020039 (Mar. 1, 2002)
KY020044 (Mar. 1, 2002)
South Carolina
SC020003 (Mar. 1, 2002)

Volume IV

Indiana
IN020001 (Mar. 1, 2002)
IN020002 (Mar. 1, 2002)
IN020003 (Mar. 1, 2002)
IN020004 (Mar. 1, 2002)
IN020005 (Mar. 1, 2002)
IN020006 (Mar. 1, 2002)
IN020006 (Mar. 1, 2002)
IN02011 (Mar. 1, 2002)
IN02012 (Mar. 1, 2002)
IN02014 (Mar. 1, 2002)
IN02015 (Mar. 1, 2002)
IN02019 (Mar. 1, 2002)
IN020020 (Mar. 1, 2002)
IN020021 (Mar. 1, 2002)
Michigan
MI020001 (Mar. 1, 2002)
MI020002 (Mar. 1, 2002)
MI020003 (Mar. 1, 2002)
MI020004 (Mar. 1, 2002)
MI020005 (Mar. 1, 2002)
MI020007 (Mar. 1, 2002)
MI020008 (Mar. 1, 2002)
MI020010 (Mar. 1, 2002)
MI020011 (Mar. 1, 2002)
MI020012 (Mar. 1, 2002)
MI020013 (Mar. 1, 2002)
MI020015 (Mar. 1, 2002)
MI020016 (Mar. 1, 2002)
MI020017 (Mar. 1, 2002)
MI020020 (Mar. 1, 2002)
MI020027 (Mar. 1, 2002)
MI020031 (Mar. 1, 2002)
MI020035 (Mar. 1, 2002)
MI020036 (Mar. 1, 2002)
MI020050 (Mar. 1, 2002)
MI020052 (Mar. 1, 2002)
MI020060 (Mar. 1, 2002)
MI020062 (Mar. 1, 2002)
MI020064 (Mar. 1, 2002)
MI020065 (Mar. 1, 2002)
MI020066 (Mar. 1, 2002)
MI020067 (Mar. 1, 2002)
MI020068 (Mar. 1, 2002)
MI020069 (Mar. 1, 2002)
MI020070 (Mar. 1, 2002)
MI020071 (Mar. 1, 2002)
MI020072 (Mar. 1, 2002)
MI020073 (Mar. 1, 2002)
MI020074 (Mar. 1, 2002)
MI020075 (Mar. 1, 2002)
MI020076 (Mar. 1, 2002)
MI020077 (Mar. 1, 2002)
MI020078 (Mar. 1, 2002)
MI020079 (Mar. 1, 2002)
MI020080 (Mar. 1, 2002)
MI020081 (Mar. 1, 2002)
MI020082 (Mar. 1, 2002)
MI020083 (Mar. 1, 2002)
MI020084 (Mar. 1, 2002)
MI020085 (Mar. 1, 2002)
MI020086 (Mar. 1, 2002)
MI020087 (Mar. 1, 2002)
MI020088 (Mar. 1, 2002)
MI020089 (Mar. 1, 2002)
MI020090 (Mar. 1, 2002)
MI020091 (Mar. 1, 2002)
MI020092 (Mar. 1, 2002)
MI020093 (Mar. 1, 2002)
MI020094 (Mar. 1, 2002)
MI020095 (Mar. 1, 2002)
MI020096 (Mar. 1, 2002)
MI020097 (Mar. 1, 2002)
MI020105 (Mar. 1, 2002)
Ohio
OH020001 (Mar. 1, 2002)
OH020002 (Mar. 1, 2002)
OH020003 (Mar. 1, 2002)
OH020006 (Mar. 1, 2002)
OH020007 (Mar. 1, 2002)
OH020008 (Mar. 1, 2002)
OH020009 (Mar. 1, 2002)
OH020018 (Mar. 1, 2002)
OH020020 (Mar. 1, 2002)
OH020023 (Mar. 1, 2002)
OH020028 (Mar. 1, 2002)
OH020029 (Mar. 1, 2002)
OH020037 (Mar. 1, 2002)
Wisconsin
WI020022 (Mar. 1, 2002)
WI020029 (Mar. 1, 2002)

Volume V

Iowa
IA020002 (Mar. 1, 2002)
IA020003 (Mar. 1, 2002)
IA020004 (Mar. 1, 2002)
IA020005 (Mar. 1, 2002)
IA020007 (Mar. 1, 2002)
IA020008 (Mar. 1, 2002)
IA020009 (Mar. 1, 2002)
IA020010 (Mar. 1, 2002)
IA020013 (Mar. 1, 2002)
IA020014 (Mar. 1, 2002)
IA020018 (Mar. 1, 2002)
IA020020 (Mar. 1, 2002)
IA020028 (Mar. 1, 2002)
IA020029 (Mar. 1, 2002)
IA020040 (Mar. 1, 2002)
IA020045 (Mar. 1, 2002)
IA020047 (Mar. 1, 2002)
IA020054 (Mar. 1, 2002)
IA020056 (Mar. 1, 2002)
IA020059 (Mar. 1, 2002)
IA020060 (Mar. 1, 2002)
New Mexico
NM020001 (Mar. 1, 2002)
NM020005 (Mar. 1, 2002)
Oklahoma
OK020013 (Mar. 1, 2002)
OK020015 (Mar. 1, 2002)
OK020018 (Mar. 1, 2002)
OK020035 (Mar. 1, 2002)
Texas
TX020003 (Mar. 1, 2002)
TX020005 (Mar. 1, 2002)
TX020007 (Mar. 1, 2002)
TX020010 (Mar. 1, 2002)
TX020014 (Mar. 1, 2002)
TX020015 (Mar. 1, 2002)
TX020055 (Mar. 1, 2002)
TX020060 (Mar. 1, 2002)
TX020061 (Mar. 1, 2002)
TX020062 (Mar. 1, 2002)
TX020121 (Mar. 1, 2002)

Volume VI

Colorado
CO020004 (Mar. 1, 2002)
CO020017 (Mar. 1, 2002)
South Dakota
SD020002 (Mar. 1, 2002)
SD020005 (Mar. 1, 2002)
SD020006 (Mar. 1, 2002)
SD020007 (Mar. 1, 2002)
SD020008 (Mar. 1, 2002)
SD020010 (Mar. 1, 2002)
Utah
UT020001 (Mar. 1, 2002)
UT020004 (Mar. 1, 2002)
UT020007 (Mar. 1, 2002)
UT020034 (Mar. 1, 2002)
Wyoming
WY020004 (Mar. 1, 2002)
WY020008 (Mar. 1, 2002)
WY020023 (Mar. 1, 2002)

Volume VII

Hawaii
HI020001 (Mar. 1, 2002)
Nevada
NV020003 (Mar. 1, 2002)
NV020009 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Act". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determination issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2069. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 27th day of March, 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determination.

[FR Doc. 03–7886 Filed 4–3–03; 8:45 am]

BILLING CODE 4510–27–M

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Sunshine Act Meeting

TIME AND DATE: 9 a.m. to 3 p.m., Friday, April 25, 2003.

PLACE: The offices of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

STATUS: This meeting will be open to the public, unless it is necessary for the Board to consider items in executive session.

MATTERS TO BE CONSIDERED: (1) A report on the U.S. Institute for Environmental Conflict Resolution; (2) A report from the Udall Center for Studies in Public Policy; (3) A report on the Native Nations Institute; (4) Program Reports; (5) A report on the Udall Archives; and (6) A Report from the Management Committee.

PORTIONS OPEN TO THE PUBLIC: All sessions with the exception of the session listed below.

PORTIONS CLOSED TO THE PUBLIC: Executive session.

CONTACT PERSON FOR MORE INFORMATION: Christopher L. Helms, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 670–5529.

Dated: April 1, 2003.

Christopher L. Helms,

Executive Director, Morris K. Udall Scholarship and Excellence in Naitonal Environmental Policy Foundation, and Federal Register Liaison Officer.

[FR Doc. 03–8326 Filed 4–2–03; 10:42 am]

BILLING CODE 6820–FN–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before May 5, 2003, to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Brooke Dickson, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on January 16, 2003 (68 FR 2368). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Records Management Conference Electronic Registration Form and Records Management Training Class Registration Form.

OMB number: 3095–NEW.

Agency form number: NA Forms 14123 and 14124.

Type of review: Regular.

Affected public: Business or for-profit, nonprofit organizations and institutions, and Federal, State and local government agencies.

Estimated number of respondents: 400.

Estimated time per response: 5 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 33 hours.

Abstract: Each year NARA conducts a records management conference and a variety of records management training classes. Federal government employees and interested state and local government and private sector individuals such as contractors and vendors also attend the records management conference and training classes. Attendees are required to pre-register for both the records management conference and for the records management training classes and these forms provide for standardized collection of necessary registration and payment information.

Dated: March 28, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–8164 Filed 4–3–03; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on April 22, 2003, Room T–2B1, 11545 Rockville Pike; Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Tuesday, April 22, 2003—8:30 a.m.–10 a.m.*

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Howard J. Larson (Telephone: (301) 415–6805) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: March 28, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–8206 Filed 4–3–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Meeting of the ACRS Subcommittee on Materials and Metallurgy; Notice of Meeting

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on April 22–23, 2003, Commissioners' Conference Room O–1G16, 11555 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday and Wednesday, April 22–23, 2003—8:30 a.m. until the conclusion of business

The purpose of this meeting is to review NRC inspection requirements and guidance, Wastage Research, and the Electric Power Research Institute Materials Reliability Program (EPRI/MRP) and industry efforts related to vessel head penetration cracking and reactor pressure vessel head degradation. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the EPRI/MRP, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301/415–3151) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8 a.m. and 5:30 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 28, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–8205 Filed 4–3–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Meeting of the Subcommittee on Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Reactor Fuels will hold a meeting on April 21, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, April 21, 2003—10 a.m. until the conclusion of business

The purpose of this meeting is to review the Duke Cogema Stone & Webster construction application request resubmittal for a mixed oxide (MOX) fuel fabrication facility. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Duke Cogema Stone & Webster, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301/415–3151) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8 a.m. and 5:30 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 28, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–8207 Filed 4–3–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Application Concerning Technical Specification Improvement To Modify Requirements Regarding Mode Change Limitations Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model application relating to the modification of requirements regarding technical specifications (TS) mode change limitations. The purpose of this model is to permit the NRC to efficiently process amendments that propose to modify requirements for TS mode change limitations as generically approved by this notice. Licensees of nuclear power reactors to which the model applies could request amendments utilizing the model application.

DATES: The NRC staff issued a **Federal Register** Notice (67 FR 50475, August 2, 2002) which provided a model safety evaluation relating to modification of requirements regarding TS mode change limitations; [1] similarly, the NRC staff, herein provides a Model Application, including a revised model safety evaluation. The NRC staff can most efficiently consider applications based upon the Model Application, which reference the model safety evaluation, if the application is submitted within a year of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Robert Dennig, Mail Stop: O–12H4, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1161.

[1] [In conjunction with the proposed change, technical specifications (TS) requirements for a bases control program, consistent with the TS Bases Control Program described in Section 5.5 of the applicable vendor's standard TS (STS), shall be incorporated into the licensee's TS, if not already in the TS. Similarly, the STS requirements of SR 3.0.1 and associated bases shall be adopted by units that do not already contain them.]

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, "Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors," was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency of NRC licensing processes. This is accomplished by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to technical specifications are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. The included model safety evaluation provides the justification for the changes, stands alone, and is not an endorsement of the TSTF–359, Revision 8, Change Description and Justification. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable NRC rules and procedures.

This notice involves the modification of requirements regarding mode change limitations in technical specifications. The change referenced in the **Federal Register** Notice (FRN) 67 FR 50475, of August 2, 2002, is TSTF–359, Revision 7. TSTF–359, Revision 8, incorporates most, but not all responses to the public comments. Two additional changes to TSTF–359, Revision 8, are required and discussed in this notice. TSTF–359, Revision 7; TSTF–359, Revision 8; and TSTF–359, Revision 8, as modified; can all be viewed on the NRC's Web page at *http://www.nrc.gov/reactors/operating/licensing/techspecs/changes-issued-for-adoption.html.*

Applicability

This proposed change to modify technical specification requirements for TS mode change limitations is applicable to all licensees who currently have or who will adopt, in conjunction with the proposed change, technical specification requirements for a bases control program consistent with the Technical Specifications (TS) Bases Control Program described in section 5.5 of the applicable vendor's STS, and STS Surveillance Requirement (SR) 3.0.1 and associated bases.

To efficiently process the incoming license amendment applications, the staff requests each licensee applying for the changes addressed by TSTF–359, Revision 8, as modified, using the CLIIP to include bases for the proposed technical specification consistent with the bases proposed in the TSTF–359, Revision 8, as modified by staff responses to public comments 8 and 20 below. In addition, for those licensees that have not adopted requirements for a bases control program or STS SR 3.0.1 by converting to the improved STS or by other means, the staff requests that they include the requirements for a bases control program and STS SR 3.0.1 and associated bases consistent with the STS, in your request for the proposed change. The need for a bases control program stems from the need for adequate regulatory control of some key elements of the proposal that are contained in the proposed bases for Limiting Condition for Operation (LCO) 3.0.4, SR 3.0.4, and SR 3.0.1. The staff is requesting that the bases be included with the proposed license amendments because, in this case, the changes to the technical specifications and changes to the associated bases form an integrated change to a plant's licensing basis. To ensure that the overall change, including the bases, includes the appropriate regulatory controls, the staff plans to condition the issuance of each license amendment on incorporation of the changes to the bases document and on ensuring the licensee's TS have a bases control program for controlling changes to the bases. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested bases and bases control program. Variations from the approach recommended in this notice may, however, require additional justification, additional review by the NRC staff and may increase the time and resources needed for the review.

Public Notices

The staff issued a **Federal Register** Notice (67 FR 50475, August 2, 2002) that requested public comment on the NRC's pending action to approve modification of technical specification (TS) requirements regarding mode change limitations. In particular, following an assessment and draft safety evaluation by the NRC staff, the staff sought public comment on proposed changes to the standard technical specifications (STS), designated as TSTF–359, Revision 7. TSTF–359, Revision 8, incorporates most, but not all responses to the public comments. Two additional changes to TSTF–359, Revision 8, are required and discussed in this notice. TSTF–359, Revision 7; TSTF–359, Revision 8; and TSTF–359, Revision 8, as modified; can all be viewed on the NRC's Web page at, *http://www.nrc.gov/reactors/operating/licensing/techspecs/changes-issued-for-adoption.html.* The TSTF–359, Revision 7, change request, the TSTF–359, Revision 8, change request, the TSTF–359, Revision 8, change request as modified by this notice, as well as the NRC staff's safety evaluation may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Library component on the NRC Web site, (the Electronic Reading Room).

In response to the notice soliciting comments from interested members of the public about modifying the TS requirements regarding mode change limitations, the staff received eight sets of comments (three from individual licensees, one from an industry contractor, and four from members of the public). Specific comments on the model SE are discussed below:

1. *Comment*: The last sentence of the first paragraph of Section 3.0, "Technical Evaluation" states, "Good practice should dictate that such transitions should normally be initiated only when all required equipment is operable and that mode transition with inoperable equipment should be the exception rather than the rule." If the required risk evaluation determines that it is acceptable to enter a Mode with certain required equipment inoperable, then this restriction is unnecessary. There may be some situations that recur routinely where the plant would benefit by changing modes with certain equipment inoperable. If the risk evaluation has determined that this change in modes is acceptable, then it should not matter if it is done routinely or as an "exception rather than the rule."

Staff Response: The statement reiterates a longstanding staff position. On June 4, 1987, Generic Letter 87–09 provided the first step in mode change flexibility, allowing mode changes where action requirements permitted continued operation for an indefinite period (the starting point for the current increase in flexibility). As part of the discussion, that letter stated:

> For an LCO that has Action Requirements permitting continued operation for an unlimited period of time, entry into an operational mode or other specified condition of operation should be permitted in accordance with those action requirements * * *. However, nothing in this staff position should be interpreted as endorsing or encouraging a plant startup with inoperable equipment. The staff believes that good practice should dictate that plant startup should normally be initiated only when all required equipment is operable and that startup with inoperable equipment must be the exception rather than the rule.

Any risk, whether large or small, should be incurred only when necessary. With appropriate planning, it should not be necessary to "routinely" start up with inoperable equipment.

2. *Comment*: Section 2.0, first paragraph, second to last sentence: Change "provide" to "provides."

Staff Response: The staff agrees.

3. *Comment*: Section 3.0, second paragraph, third sentence: Change "plants" to "plant's."

Staff Response: The staff agrees.

4. *Comment*: Section 3.0, second paragraph, fourth sentence: Change "allowances" to "allowance."

Staff Response: The staff agrees.

5. *Comment*: Section 3.1.1, fifth paragraph, third sentence: Change "the systems/components not to be granted the LCO 3.0.4 or SR 3.0.4 allowances for the various modes listed" to "the systems/components not to be granted the LCO 3.0.4 or SR 3.0.4 allowances for the various modes are listed."

Staff Response: The staff agrees.

6. *Comment:* Section 3.1.2, first paragraph, second sentence: change "delta DCDF" to "delta CDF."

Staff Response: The staff agrees.

7. *Comment:* Section 2.1 Proposed Change to LCO 3.0.4 and SR 3.0.4 where it talks about SR 3.0.4 wording changes (about halfway through 5th paragraph on page 50478): The revised new wording, "The revised SR 3.0.4 will conform to the changes to LCO 3.0.4 and read: "Entry into a MODE or other specified condition in the Applicability of an LCO shall not be made unless the LCO's Surveillances have been met within their specified frequency." is incompatible with TSTF 359 regarding the new SR 3.0.3 on missed surveillances that the NRC recently approved.

New SR 3.0.4 requires Surveillances to be met within their specified Frequency prior to entry into a MODE or other specified condition in the Applicability. If SR 3.0.3 is applied to a missed Surveillance and a risk evaluation supports a delay beyond 24 hours, new SR 3.0.4 would only allow this delay to be applied in the MODE or other specified condition in the Applicability in which the plant is operating at the time of discovery that the Surveillance has been missed. While this provision does not prevent a shutdown, it would prevent entry into a higher MODE of operation with a Surveillance that had not been performed within its specified Frequency.

To address this situation, SR 3.0.4 needs to be modified to state that SR 3.0.4 prohibits entry into a MODE or other specified condition in the Applicability of an LCO unless the associated Surveillances have been met within their specified Frequency, except as provided by SR 3.0.3. The bases for SR 3.0.4 need to be modified also to provide the flexibility for entry into higher MODES with a missed Surveillance since the equipment is still OPERABLE and the risk evaluation is still valid for this situation. SR 3.0.3 evaluation considers missed surveillance equipment to be still OPERABLE, and new SR 3.0.4 would allow going up in MODES except that it specifically says no mode entry "unless the LCO's Surveillances have been met within their specified frequency." and doesn't talk about OPERABLE equipment.

To fix this, reword new SR 3.0.3 to say, "Entry into a MODE or other specified condition in the Applicability of an LCO shall not be made unless the LCO's Surveillances have been met within their specified frequency, except as provided by SR 3.0.3." (And add the bases wording indicated above.)

Rev. 7 of TSTF 359 had addressed this issue but it does not appear to be addressed by the NRC in the FR notice. *Staff Response:* The staff agrees. SR 3.0.4 will be modified to included the phrase, "* * *, except as provided by SR 3.0.3." The bases wording will be modified accordingly.

In reviewing LCO 3.0.4 and SR 3.0.4, the redundancy in stating the criteria (items a, b and c) for allowing entry into a Mode or other specified condition in the Applicability is unnecessary. The listing of the criteria (items a, b and c) are more appropriately stated in LCO 3.0.4, since it controls the Mode transition; the LCO is not met due to a SR not being met. Therefore, to eliminate the redundancy and make the statements more accurate, SR 3.0.4 is changed to read, in its' entirety:

> "Entry into a MODE or other specified condition in the Applicability of an LCO shall only be made when the LCO's Surveillances have been met within their specified frequency, except as provided by SR 3.0.3. When an LCO is not met due to Surveillances not having been met, entry into a MODE or other specified condition in the Applicability shall only be made in accordance with LCO 3.0.4.
>
> This provision shall not prevent entry into MODES or other specified conditions in the Applicability that are required to comply with ACTIONS or that are part of a shutdown of the unit."

Related consistency changes are made throughout the SE.

8. *Comment*: If the NRC requires a Revision 8 be prepared before the Notice of Availability is published, then the Notice of Availability should use that revision (#8) as the basis for licensee applications.

Staff Response: The staff agrees; the staff will reference the latest approved TSTF–359 revision; TSTF–359, Revision 8, as modified by the response to Comment 20 below and the following modification to the TSTF–359 Revision 8 LCO 3.0.4 bases Insert. The 11th paragraph shall be re-written to read:

> "Upon entry into a MODE or other specified condition in the Applicability with the LCO not met, LCO 3.0.1 and LCO 3.0.2 require entry into the applicable Conditions and Required Actions for no more than the duration of the applicable ACTIONS Completion Time or until the LCO is met or the unit is not within the Applicability of the TS."

9. *Comment*: For Boiling Water Reactors (BWRs) with Mark 1 containments, the Table lists the Hardened Wetwell Vent as such a SSC that should be excluded. However, the Hardened Wetwell Vent is not a SSC included within Technical Specifications (TS). Thus, the proposed TSTF implies that TS Actions should be applied to a non-TS SSC. This is inappropriate and not necessary to properly manage overall risk. The existing plant programs that implement paragraph (a)(4) of the Maintenance Rule (10 CFR 50.65) are the appropriate mechanism for this specific SSC. Consequently, we request that TSTF–359 be clarified to not include the Hardened Wetwell Vent.

Staff Response: The tables included in TSTF–359 and the draft safety evaluation were provided by the BWR Owners Group as a result of generic analysis, which the staff has reviewed and accepted. The analysis and tables are comprehensive and do cover systems that are not in TS. The staff does not believe that the presence in the analysis and tables implies that TS actions are required for those systems such as the Hardened Wetwell Vent system.

10. *Comment*: Second, this table and the accompanying mark-up of the actual TS pages for BWRs included in TSTF–359, Revision 7, state that the Limiting Conditions for Operation (LCO) 3.0.4.b exclusion note should be added to the TS LCO 3.4.9, Residual Heat Removal (RHR) Shutdown Cooling System-Cold Shutdown, such that a MODE change from MODE 5 to MODE 4 would be precluded with LCO 3.4.9 not met. However, LCO 3.0.4 only applies to MODE changes in MODES 1, 2, or 3. Thus, the proposed change to LCO 3.4.9 is inconsistent with the existing wording of the LCO 3.0.4 applicability. Therefore, we believe that the LCO 3.0.4 Note to LCO 3.4.9 should not be included in the proposed changes.

Staff Response: The notes limiting the applicability (to Modes 1, 2, 3, and 4 for PWRS, and to Modes 1, 2, and 3 for BWRs) of the current STS LCO 3.0.4 and STS SR 3.0.4 are holdovers from the existing Standard Technical Specifications (STS). The notes limiting the applicability of LCO 3.0.4 and SR 3.0.4 are no longer needed and are removed by TSTF–359, Revision 8. The industry owners groups' analyses would subsequently support adding notes to various TS, as defined by the tables of higher risk systems in the FRN, precluding entry into Modes 5 and 6 for PWRs, and Modes 4 and 5 for BWRs. However, the addition of notes in these cases is made unnecessary by action statements that require immediate completion times, which means that entry into the Mode or other specified condition in the Applicability is not allowed and the notes would be superfluous.

11. *Comment*: Two editorial corrections to TSTF–359, Revision 7, are needed. First, in INSERT 6 (SR 3.0.4 BASES) the word "that" in the second line, after the word "Surveillance," should be deleted. Second, the second sentence to INSERT 8 (RCS SPECIFIC ACTIVITY BASES) should be deleted, since it is redundant to the existing Bases and therefore need not be included.

Staff Response: The staff agrees.

12. *Comment*: Reliance on a licensee's 50.65 (a)(4) "program" appears to be a flawed basis. While this proposed change to the TS as well as the previous one for surveillance interval and completion time extensions (66 FR 49714) rely on the "program", that program is not required by 50.65 (a)(4) to be a written program, it's not required by the regulation to meet the risk management objectives of RG 1.177 or any other standard, nor does it require a licensee to find any particular level of risk to be unacceptable. It, in fact, only requires that the risk be assessed (without specifying a method, a degree of rigor or even that the assessment be documented) and managed (with no definition what that means). While Page 23 of the document states "Risk assessments will be conducted using the procedures and guidance endorsed by Regulatory Guide 1.182, "Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants.", licensee adherence to this standard or the NUMARC guidance it endorses is neither required in the regulation nor are any licensees committed to those documents through their license or FSAR. The fact that licensees will be inspected in this area using IP 71111.13 and Supplemental IP 62709 is of little value if those inspections are not being done against specific standards that the licensees are required to meet rather than the general standard of (a)(4) which has the limitations discussed above.

Staff Response: A licensee adopting this change will be required to commit in the bases to the Technical Specifications to follow Regulatory Guide 1.182. In addition, the licensee will be required to adopt a bases control program identical to that contained in the Standard Technical Specifications. Regulatory Guide 1.182, "Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants," endorses NUMARC 93–01 Section 11, "Assessment of Risk Resulting from Performance of Maintenance Activities," which provides risk assessment and management "methods that are acceptable to the NRC staff for complying with the provision of 10 CFR 50.65 (a)(4)." NUMARC 93–01 Section 11 requires that this assessment process be proceduralized. Furthermore, Inspection Procedure 71111.13 provides inspection guidance on, among other things, the verification of the performance of maintenance risk assessments, the adequacy of risk assessments and the management of the resulting risk.

13. *Comment*: It is noted that the Standard TS Bases for the revised TS 3.0.4 has not been provided for comment. Are the standards above such as Reg Guide 1.182 being included in the TS Bases and therefore subject to the bases control program? If not, why not?

Staff Response: The proposed STS bases are included in TSTF–359 and were open for comment. The portion of the question related to the TS Bases and bases control program was answered in the response to comment 12 above.

14. *Comment*: Notwithstanding statements like "Good practice should dictate that such transitions should normally be initiated only when all required equipment is operable and that mode transition with inoperable equipment should be the exception rather than the rule" and "* * * the expected low frequency of the proposed mode changes with inoperable equipment * * *", isn't it just as likely (and perfectly acceptable under this proposed change) that once the licensee has justified a mode change with a certain piece of equipment inoperable during a particular startup, that during subsequent startups the licensee could actually plan into the startup the return of that equipment after the Mode change it was required for, by using that previous assessment? What would prevent the licensee from doing that (assuming other system alignments are equivalent)? Taking it a step further, what will prevent the licensee from, over time, developing a whole combination of assessments that justify not having multiple pieces of equipment operable during a particular mode change and routinely using those assessments in subsequent startups? Similarly, wouldn't the proposed TS allow multiple mode changes in the same startup with same piece(s) of inoperable equipment as long as the assessment covers each mode? Is that what was intended?

Staff Response: See the response to comment 1 above. It is acceptable for licensees to utilize pre-existing risk assessments, as long as they adequately address the existing plant conditions. The applicability of TS frequently covers multiple modes, and therefore mode changes within the applicability of the TS would be allowed, as long as the risk assessment is re-evaluated prior to each mode change.

15. *Comment*: [Page 21][The SE] states "For systems and components which are not higher risk, any temporary risk increase associated with the proposed allowance will be smaller than what is considered acceptable when the same systems and components are inoperable at power. This is due to the fact that the CTs associated with the majority of TS systems and components were developed for power operation and pose smaller plant risk for action statement entries initiated or occurring at lower modes operation as compared to power operations." The first sentence above is only restricted by whether something is higher or lower risk but the justifying statement only applies to the majority of TS systems which are associated with power operations. What is the minority of TS systems for which plant risk is higher in lower modes of operation? Are all those systems on the list of higher risk systems? If all those systems are not included on the list of high risk systems how is the first quoted sentence true?! How do the lists of high and low risk systems at power and in lower modes discussed in this proposal compare with the results of the shutdown risk analysis the NRC now has underway? If there are differences what is the justification?

Staff Response: The "minority of TS systems for which plant risk is higher in lower modes of operation," are those systems identified in the analyses and listed in the SE. These systems are determined by a qualitative analysis that compares risk in the shutdown mode with that at power. The qualitative analysis also takes into account potential risk increases (*e.g.*, due to realignments and human errors) when entering a new mode or configuration. Those systems that have a potential to be more important to risk in the lower modes, are conservatively selected and mode changes are precluded when there is an inoperability associated with any of these potentially higher risk systems. The lists of "higher risk" systems, being based on both deterministic and probabilistic arguments with conservative assumptions, are not expected to conflict with the results of any shutdown risk analysis.

16. *Comment*: Appendix A Examples—In a number of the examples it says "if there is reasonable assurance" that the inoperable component will be restored within the CT, a risk assessment has been done, and the requisite risk management actions have been taken. Where does this need for "reasonable assurance" come from and how does the LCO require it? If a component is inoperable, what in the new LCO prevents the licensee from assuming the full CT in the risk assessment, managing the risk for that full time and simply hoping (whether that is reasonable or not) that they will get the component back before the end of the CT?

Staff Response: Unplanned reactor scrams and unplanned power changes are two of the Reactor Safety Performance Indicators that the ROP utilizes to assess licensee performance and inform the public. Thus, the ROP provides a disincentive to entering a mode or other specified condition in the applicability of an LCO and moving up into power operation (Mode 1), when there is a significant likelihood that the mode would have to be subsequently exited due to failure to restore the unavailable equipment within the completion time. Additional disincentives are the 10 CFR 50.72(b)(2)(i) and 10 CFR 50.73(a)(2)(i)(A) reporting requirements. NUREG–1022, "Event Reporting Guidelines 10 CFR 50.72 and 50.73," makes it clear that a report is required when a nuclear plant shutdown required by Technical Specifications is initiated or completed.

17. *Comment:* Carrying the logic above a step further—What in the LCO (not in some voluntary cumulative risk monitoring) will prevent a licensee from changing Mode without a piece of equipment after doing the assessment and management of risk, reaching the CT, returning to a nonapplicable mode doing another assessment for the same piece of equipment that is still inoperable, changing Mode again with the proper management of the risk and simply hoping that the equipment is operable before the CT expires yet again?

Staff Response: While feasible from a legalistic perspective, such actions by a licensee would be indication of a poorly run plant and should result in close scrutiny by plant management and the NRC. Such licensee actions would constitute clear evidence of poor performance that would be reviewed by the performance based ROP, and management corrective oversight should result. Also, see the related response to comment 16 above.

18. *Comment:* Are the provisions of SR 3.0.2 applicable if a licensee changes mode without first doing a required surveillance? If the provisions are to be applicable, there appears to be a problem in the language of SR 3.0.2. For example, if the surveillance has a 7-day frequency but has not been performed for some months, the wording of SR 3.0.2 would require that the surveillance be performed within 1.25 times "as measured from the previous performance or as measured from the time a specified condition of Frequency is met." Given that the surveillance had last been performed months before application of 1.25 from the previous performance would appear problematic. The language of SR 3.0.2 appears to assume (based on the present requirements of SR 3.0.4 that the surveillance be successfully performed within the required frequency before the mode change) that there will be a previous "in-frequency" performance of the surveillance from which the 1.25 can be measured. Assuming that the 1.25 interval is supposed to be available, it should start from the time of entry into the applicable Mode, however that does not appear to be "a specified condition of Frequency" as now defined in TS usage examples or bases.

Staff Response: SR 3.0.2 (25% extension) does not apply; the SR must be met within the required action completion time, except as provided by SR 3.0.3.

19. *Comment:* Is the "which ever is greater" provision of SR 3.0.3 meant to apply to cases where a licensee changes modes without performing a surveillance? While the word "discover" would appear to argue against such a use, the first sentence of the Bases for SR 3.0.3 make it less clear "* * * when a surveillance has not been met * * *"?

Staff Response: See the response to Comment 7 above. The applicable portion of SR 3.0.4 will be reworded to say, "Entry into a MODE or other specified condition in the Applicability of an LCO shall only be made when the LCO's Surveillances have been met within their specified frequency, except as provided by SR 3.0.3."

20. *Comment:* Section 3.1.3 states "It should be noted that, the risk assessment, for the purposes of LCO 3.0.4(b) and SR 3.0.4(b), must take into account all inoperable TS equipment regardless of whether the equipment is included in the licensee's normal 10 CFR 50.65(a)(4) risk assessment scope." How is the NRC going to require this "must" provision if it is not incorporated into the requirements of 10 CFR 50.65(a)(4), the TS themselves, the license or the plant FSAR?

Staff Response: If TS equipment is not covered by the 10 CFR 50.65(a)(4) program, in order to transition up in mode with that TS equipment inoperable, the licensee would have to incorporate it into the program. The following sentence is to be added to the one-sentence fourth paragraph of the LCO 3.0.4 bases insert that begins, "The risk assessment may use quantitative, qualitative, or blended approaches * * *":

The risk assessment, for the purposes of LCO 3.0.4 (b), must take into account all inoperable TS equipment regardless of whether the equipment is included in the licensee's normal 10 CFR 50.65(a)(4)risk assessment scope."

21. *Comment:* Similarly Section 3.1.3 goes on to state "The requirements associated with the proposed change are established to ensure that such conditions will not occur." What is the legal basis for calling voluntary conformance with the guidelines of RG 1.174, 1.177 and 1.182, a set of requirements? Will findings under the ROP that find deviations from implementation of these standards constitute legal violations?

Staff Response: Paragraph (a)(4) of 10 CFR 50.65, by itself, does not prohibit putting a plant in high-risk configurations due to maintenance activities. It only requires that maintenance-related risk be assessed

and managed. The industry guidance for implementation of (a)(4), the revised Section 11 of NUMARC 93–01, as endorsed by NRC Regulatory Guide 1.182, is more restrictive. Section 11 states that configurations for which the incremental core damage probability (ICDP) is greater than 10EXP–5 should not be entered voluntarily. While the regulatory guidance is not a regulatory requirement with respect to compliance with 10 CFR 50.65(a)(4), the requirements associated with the proposed change to TS 3.0.4 are a different matter.

Unlike (a)(4), the revised TS 3.0.4 is intended to ensure that high-risk configurations are not allowed; although like (a)(4), the TS is also intended to ensure that any risk that is allowed is adequately managed. Therefore, mode changes with a potentially "higher-risk system" inoperable (see definition of "higher risk system" in the SE) are prohibited by the TS; and in addition to this restriction, the revised TS 3.0.4 will also require licensees to comply in all other respects with their programs established to implement 10 CFR 50.65(a)(4). Note that the Commission has determined that such a program is a satisfactory replacement for a configuration risk management program (CRMP). With regard to the basis for treatment of RG 1.182 provisions, it is noted that: (1) The regulatory guide is one way to meet the TS requirements; (2) the licensee would commit to follow RG 1.182 in the TS Bases (see also the staff's response to Comment No. 12); and, (3) if the licensee did not follow RG 1.182, the ROP would inspect the licensees process for acceptability.

With regard to ROP inspection findings in support of the requirements in the proposed change to TS 3.0.4, the associated TS Bases will reference the provisions of certain regulatory guides and the industry guidance that they endorse. This will, in effect, make a licensee's compliance with the provisions of certain otherwise voluntary industry guidance documents be governed by the TS Bases Control Program. It is envisioned that the significance of this potential TS violation, to the extent that the violation involves inadequate risk assessment and/or inadequate risk management, will be determined in a manner similar to that in which the significance of (a)(4) violations is determined. When issued, the specialized significance determination process (SDP) designed for (a)(4) violations would be used under such circumstances.

Dated at Rockville, Maryland, this 28th day of March 2003.

For the Nuclear Regulatory Commission.

William D. Beckner,

Program Director, Operating Reactor Improvements Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

Model Safety Evaluation

1.0 Introduction

On July 17, 2002, the Nuclear Energy Institute (NEI) Risk Informed Technical Specifications Task Force (RITSTF) submitted proposed change, TSTF–359, Revision 7, to the standard technical specifications (STS) (NUREGs 1430–1434) on behalf of the industry. TSTF–359, Revision 7, is a proposal to change the STS Limiting Condition for Operation (LCO) 3.0.4 and Surveillance Requirement (SR) 3.0.4 requirements regarding mode change limitations. The proposed change would modify LCO 3.0.4 and SR 3.0.4 by risk informing limitations on entering the mode of applicability of a LCO. The first Consolidated Line Item Improvement Process (CLIIP) **Federal Register** Notice with respect to this change was published on August 2, 2002, requesting public comments. In response to the public comments, the NRC staff decided that TSTF–359, Revision 7, be revised. The RITSTF submitted TSTF–359, Revision 8, on December 4, 2002. Two additional changes were deemed necessary. The NRC staff has prepared this revised model safety evaluation incorporating changes resulting from public comments. TSTF–359, Revision 8, as modified, provides the complete approved change. This proposal is one of the industry's initiatives under the risk-informed technical specifications program. These initiatives are intended to maintain or improve safety while reducing unnecessary burden and to make technical specification requirements consistent with the Commission's other risk-informed regulatory requirements, in particular the maintenance rule.

The current technical specifications (TS) specify that a nuclear power plant cannot go to higher modes of operation [2] (*i.e.*, move towards power operation) unless all TS systems, normally required for the higher mode, are operable. This limitation is included (with several exceptions for some plants) in LCO 3.0.4 and SR 3.0.4. LCO 3.0.4 and SR 3.0.4 in the STS currently state in part that when an LCO or SR is not met, "entry into a MODE or other specified condition in the applicability shall not be made except when the associated actions to be entered permit continued operation in the MODE or other specified condition in the applicability for an unlimited period of time." The industry believes that this requirement is unnecessarily restrictive and can unduly delay plant startup while considerable resources are being used to resolve startup issues that are risk insignificant or low risk. A maintenance activity that takes longer than planned can delay a mode change and adversely impact a utility's orderly plant startup and return to power operation. The objective of the proposed change is to provide additional operational flexibility without compromising plant safety.

The proposed changes to LCO 3.0.4 and SR 3.0.4 would allow, for systems and components, mode changes into a TS condition that has a specific required action and completion time. The licensee will utilize the LCO 3.0.4 and SR 3.0.4 allowances only when they determine that there is a high likelihood that the LCO will be satisfied within the LCO completion time (CT), after the mode change. In addition, the LCO 3.0.4 and SR 3.0.4 allowances can be applied to values and parameters in specifications when explicitly stated in the TS (non-system/component TS such as: Reactor Coolant System Specific Activity). These changes are in addition to the current mode change allowance when a required action has an indefinite completion time. The LCO 3.0.4 and SR 3.0.4 mode change allowances are not permitted for the systems and components (termed "higher risk") listed in Section 3.1.1, "Identification of Risk-Important TS Systems and Components," for the modes specified. Two examples are: (1) Westinghouse plants cannot transition from Mode 5 to Mode 4 without a High Head Safety Injection System train operable; and, (2) Westinghouse plants cannot transition up into any mode with an inoperable required emergency diesel generator.

2.0 Regulatory Evaluation

In 10 CFR 50.36, the Commission established its regulatory requirements related to the content of TS. Pursuant to 10 CFR 50.36, TS are required to include items in the following five specific categories related to station operation: (1) Safety limits, limiting safety system settings, and limiting control settings; (2) limiting conditions for operation (LCOs); (3) surveillance requirements (SRs); (4) design features; and (5) administrative controls. The rule does not specify the particular requirements to be included in a plant's TS. As stated in 10 CFR 50.36(c)(2)(i), the "Limiting conditions for operation

[2] MODE numbers decrease in the transition "up to a higher mode of operation;" power operation is MODE 1.

are the lowest functional capability or performance levels of equipment required for safe operation of the facility. When a limiting condition for operation of a nuclear reactor is not met, the licensee shall shut down the reactor or follow any remedial action permitted by the technical specification * * *" By convention, the LCOs are contained in Sections 3.1 through 3.10 of the TS. TS Section 3.0, on "LCO and SR Applicability," provides details or ground rules for complying with the LCOs. LCO 3.0.4 and SR 3.0.4 address requirements for LCO compliance when transitioning between modes of operation.

Technical specifications have taken advantage of risk technology as experience and capability have increased. Since the mid-1980's, the NRC has been reviewing and granting improvements to technical specifications that are based, at least in part, on probabilistic risk assessment (PRA) insights. In its final policy statement on technical specification improvements of July 22, 1993, the Commission stated that it expects that licensees will utilize any plant specific PRA or risk survey in preparing their technical specification-related submittals. In evaluating these submittals, the staff applies the guidance in RG 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," dated July 1998 and in RG 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications," dated August 1998. The staff has appropriately adapted this guidance to assess the acceptability of upward mode changes with equipment inoperable. This review had the following objectives:

- To ensure that the plant risk does not increase unacceptably during the actual implementation of the proposed change (*e.g.*, when the plant enters a higher mode while an LCO is not met). This risk increase is referred to as "temporary."
- To compare and assess the risk impact of the proposed change to the acceptance guidelines of the Commission's Safety Goal Policy Statement, as documented in RG 1.174. The risk impact, which is measured by the average yearly risk increase associated with the change, aims at minimizing the "cumulative" risk associated with the proposed change so that the plant's average baseline risk is maintained within a minimal range.
- To assess the licensee's ability to identify risk-significant configurations resulting from maintenance or other operational activities and take appropriate compensatory measures to avoid such configurations.

The staff reviewed the reliance on 10 CFR 50.65(a)(4) for the non-higher-risk systems and components, and related guidance to assess and manage the risk of upward mode changes. The Commission has found that compliance with the industry guidance for implementation of 10 CFR 50.65(a)(4), as endorsed by RG 1.182 and mandated by LCO 3.0.4, SR 3.0.4 and SR 3.0.3, satisfies the configuration risk management objectives of RG 1.177 for technical specification surveillance interval and completion time extensions. Reliance on 10 CFR 50.65(a)(4) processes that are consistent with the provisions of the NRC-endorsed industry guidance was also found adequate for managing risk of missed surveillances as described in the **Federal Register** on September 28, 2001 (66 FR 49714).

The staff review also had the objective of ensuring that existing inspection programs have the necessary controls in place to allow NRC staff to oversee the implementation of the proposed change, reliance on 10 CFR 50.65(a)(4) processes or programs, and the ability to adequately assess the licensee's performance associated with risk assessments. The review encompassed inspection procedures (*i.e.*, NRC Inspection Procedure 62709 (12/28/00), "Configuration Risk Assessment and Risk Management Process," and NRC Inspection Procedure 71111.13 (1/17/02), "Maintenance Risk Assessments and Emergent Work Control"), the significance determination process (SDP) (*i.e.*, draft "Maintenance Risk Assessment and Risk Management Significance Determination Process"), enforcement guidance (*i.e.*, draft Enforcement Manual Section 8.1.11, "Actions Involving the Maintenance Rule"), and the associated reactor oversight process.

2.1 Proposed Change to LCO 3.0.4 and SR 3.0.4

Currently LCO 3.0.4 does not allow entrance into a higher mode (or other specified condition) in the applicability when an LCO is not met, except when the associated actions to be entered permit continued operation in that mode or condition indefinitely or a specific exception is granted. Similarly, when an LCO's surveillances have not been met within their specified frequency, entry into a higher mode (or other specified condition) is not allowed by SR 3.0.4. The current STS [3] LCO 3.0.4 reads:

"When an LCO is not met, entry into a MODE or other specified condition in the Applicability shall not be made except when the associated ACTIONS to be entered permit continued operation in the MODE or other specified condition in the Applicability for an unlimited period of time. This Specification shall not prevent changes in MODES or other specified conditions in the Applicability that are required to comply with ACTIONS or that are part of a shutdown of the unit.

Exceptions to this Specification are stated in the individual Specifications. These exceptions allow entry into MODES or other specified conditions in the Applicability when the associated ACTIONS to be entered allow unit operation in the MODE or other specified condition in the Applicability only for a limited period of time.

LCO 3.0.4 is only applicable for entry into a MODE or other specified conditions in the Applicability in [MODES 1, 2, 3, and 4 {for PWRs}][MODES 1, 2, and 3 {for BWRs}]."

The revised LCO 3.0.4 will read:

"When an LCO is not met, entry into a MODE or other specified condition in the Applicability shall only be made

(a) When the associated Actions to be entered permit continued operation in that MODE or other specified condition in the Applicability for an unlimited period of time, or

(b) After performance of a risk assessment addressing inoperable systems and components, consideration of the results, determination of the acceptability of entering the MODE or other specified condition in the Applicability, and establishment of risk management actions, if appropriate; exceptions to this Specification are stated in the individual Specifications, or

(c) When an allowance is stated in the individual value or parameter Specification.

This Specification shall not prevent changes in MODES or other specified conditions in the Applicability that are required to comply with ACTIONS or that are part of a shutdown of the unit."

The current STS [4] SR 3.0.4 reads:

"Entry into a MODE or other specified condition in the Applicability of an LCO shall not be made unless the LCO's Surveillances have been met within their specified frequency. This provision shall not prevent entry into MODES or other specified conditions in the Applicability that are required to comply with ACTIONS or that are part of a shutdown of the unit.

SR 3.0.4 is only applicable for entry into a MODE or other specified conditions in the Applicability in [MODES 1, 2, 3, and 4 {for PWRs}][MODES 1, 2, and 3 {for BWRs}]."

The revised SR 3.0.4 will conform to the changes to LCO 3.0.4 and read:

[3] Plant specific wording for current equivalent LCO 3.0.4 is similar to current STS LCO 3.0.4 wording.

[4] Plant specific wording for current equivalent SR 3.0.4 is similar to current STS SR 3.0.4 wording.

"Entry into a MODE or other specified condition in the Applicability of an LCO shall only be made when the LCO's Surveillances have been met within their specified frequency, except as provided by SR 3.0.3. When an LCO is not met due to Surveillances not having been met, entry into a MODE or other specified condition in the Applicability shall only be made in accordance with LCO 3.0.4.

This provision shall not prevent entry into MODES or other specified conditions in the Applicability that are required to comply with ACTIONS or that are part of a shutdown of the unit."

The proposed LCO 3.0.4(a) retains the current allowance for when the required actions allow indefinite operation. The proposed LCO 3.0.4(b) allows entering modes or other specified conditions in the applicability except when higher-risk systems and components (listed in Section 3.1.1), for the mode being entered, are inoperable. The decision for entering a higher mode or condition in the applicability of the LCO will be made by plant management after the required risk assessment has been performed and requisite risk management actions established, through the program established to implement 10 CFR 50.65(a)(4). Entry into the modes or other specified conditions in the applicability of the TS shall be for no more than the duration of the applicable required actions completion time, or until the LCO is met. Current notes in individual specifications that permitted mode changes are now encompassed by LCO 3.0.4(b) and can be removed. Notes that prohibit mode changes under LCO 3.0.4(b) must be added (*i.e.*, for higher-risk systems and components). The proposed LCO 3.0.4(b) allowance can involve multiple components in a single LCO or in multiple LCOs; however, use of the LCO 3.0.4(b) provisions are always contingent upon completion of a 10 CFR 50.65(a)(4) based risk assessment.

The notes limiting the applicability (to Modes 1, 2, 3, and 4 for PWRS, and to Modes 1, 2, and 3 for BWRs) of the current STS LCO 3.0.4 and STS SR 3.0.4 are holdovers from the existing Standard Technical Specifications (STS). The notes limiting the applicability of LCO 3.0.4 and SR 3.0.4 are no longer needed and are removed by TSTF–359, Revision 8. The industry owners groups analyses would subsequently support adding notes to various TS, as defined by the tables of higher-risk systems, precluding entry into Modes 5 and 6 for PWRs, and Modes 4 and 5 for BWRs. However, the addition of notes in these cases is made unnecessary by action statements that require immediate completion times, which means that entry into the Mode or other specified condition in the Applicability is not allowed and the notes would be superfluous.

LCO 3.0.4 allowances related to values and parameters of TS are not typically addressed by LCO 3.0.4(b) risk assessments, and are therefore addressed by a new LCO 3.0.4 (c). LCO 3.0.4 (c) refers to allowances already in the TS and annotated in the individual TS. LCO 3.0.4 (c) also allows for entry into the modes or other specified conditions in the applicability of a TS for no more than the duration of the applicable required actions completion time or until the LCO is met or the unit is not within the Applicability of the TS.

3.0 Technical Evaluation

During the development of the current STS, improvements were made to LCO 3.0.4, such as clarifying its applicability with respect to plant shutdowns, cold shutdown mode and refueling mode. In addition, during the STS development, almost all the LCOs with completion times greater than or equal to 30 days, and many LCOs with completion times greater than or equal to 7 days, were given individual LCO 3.0.4 exceptions. During some conversions to the STS, individual plants provided acceptable justifications for other LCO 3.0.4 exceptions. All of these specific LCO 3.0.4 exceptions allow entry into a mode or other specified condition in the TS applicability while relying on the TS required actions and associated completion times. The proposed change under evaluation would provide standardization and consistency to the use and application of LCO 3.0.4, both internal to and between each of the specifications and STS NUREGs. This proposed change will also ensure consistency through the utilization of appropriate levels of risk assessment of plant configurations for application of LCO 3.0.4. However, nothing in this safety evaluation should be interpreted as encouraging upward mode transition with inoperable equipment. Good practice should dictate that such transitions should normally be initiated only when all required equipment is operable and that mode transition with inoperable equipment should be the exception rather than the rule.

The current LCO 3.0.4(a) allowances are retained in the proposal and do not represent a change in risk from the current situation. The LCO 3.0.4(b) allowances apply to systems and components, and require a risk assessment prior to utilization to ensure an acceptable level of safety is maintained. The LCO 3.0.4(c) allowances apply to parameters and values which have been previously approved by the NRC in a plant's specific TS. The licensee will provide in their TS Bases a discussion and list of each NRC-approved, LCO 3.0.4(c)-specific value and parameter allowance. The bases of LCO 3.0.4 will be revised to explain the new allowances and their utilization.

The staff did a qualitative assessment of the risk impact of the proposed change in LCO 3.0.4(b) allowances by evaluating how the licensee's implementation of the proposed risk-informed approach is expected to meet the requirements of the applicable RGs. The staff referred to the guidance provided in RG 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," and in RG 1.177, "An approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications." RG 1.177 provides the staff's recommendations on utilizing risk information to assess the impact of proposed changes to nuclear power plant technical specifications on the risk associated with plant operation. Although RG 1.177 does not specifically address the type of generic change in this proposal, the staff considered the approach documented in RG 1.177 in evaluating the risk information provided in support of the proposed changes in LCO 3.0.4.

The staff's evaluation of how the implementation of the proposed risk-informed approach, used to justify LCO 3.0.4(b) allowances, agrees with theobjectives of the guidance outlined in RG 1.177 is discussed in Section 3.1. Oversight of the risk-informed approach associated with the LCO 3.0.4(b) allowances is discussed in Sections 3.2.

3.1 Evaluation of Risk Management

Both the temporary and cumulative risk of the proposed change are adequately limited. The temporary risk is limited by the exclusion of higher-risk systems and components, and completion time limits contained in technical specifications (Section 3.1.1). The cumulative risk is limited by the temporary risk limitations and by the expected low frequency of the proposed mode changes with inoperable equipment (Section 3.1.2). Adequate NRC oversight of the licensee's ability to use the LCO 3.0.4(b) provisions under appropriate circumstances, *i.e.*, to identify risk-significant configurations when entering a higher mode or condition in the applicability of an LCO (Section 3.1.3) is provided by NRC inspection of the licensee's implementation of 10 CFR 50.65(a)(4) as applied to the proposed change.

3.1.1 Temporary Risk Increases

RG 1.177 proposes the incremental conditional core damage probability (ICCDP) and the incremental conditional large early release probability (ICLERP) as appropriate measures of the increase in probability of core damage and large early release, respectively, during the period of implementation of a proposed TS change. In addition, RG 1.177 stresses the need to preclude potentially high risk configurations introduced by the proposed change. The ICCDP associated with any specified plant condition, such as the condition introduced by entering a higher mode with plant equipment inoperable, is expressed by the following equation:

$$ICCDP = \Delta R\, d = (R_1 - R_0)\, d \qquad (1)$$

Where:

ΔR = the conditional risk increase, in terms of core damage frequency (CDF), caused by the specified condition

d = the duration of the specified plant condition

R_1 = the plant CDF with the specified condition permanently present

R_0 = the plant CDF without the specified condition

The same expression can be used for ICLERP by substituting the measure of risk, *i.e.*, large early release frequency (LERF) for CDF. The magnitude of the ICCDP and ICLERP values associated with plant conditions applicable to LCO 3.0.4(b) allowances can be managed by controlling the conditional risk increase, ΔR (in terms of both CDF and LERF) and the duration, d, of such conditions. The following sections discuss how the key elements of the proposed risk-informed approach, used to justify LCO 3.0.4(b) allowances, are expected to limit ΔR and d and, thus, prevent any significant temporary risk increases.

Identification of Risk-Important TS Systems and Components

A major element that limits the risk of the proposed mode change flexibility is the exclusion of certain systems and associated LCOs for the mode change allowance. Technical specifications allow operation in Mode 1 (power operation) with specified levels of inoperability for specified times. This provides a benchmark of currently acceptable risk against which to measure any incremental risk inherent in the proposed LCO 3.0.4(b). If a system inoperability accrues risk at a higher rate in one or more of the transition modes than it would in Mode 1, then an upward transition into that mode should not be allowed without demonstration of a high degree of experience and sophistication in risk management. However, the risk management process evaluated in Section 3.1.3 is adequate if higher-risk systems/components are excluded from the scope of LCO 3.0.4(b).

The importance of most TS systems in mitigating accidents increases as power increases. However, some TS systems are relatively more important during lower power and shutdown operations, because:

- Certain events are peculiar to modes of plant operation other than power operation,
- Certain events are more probable at modes of plant operation other than power operation,
- Some modes of plant operation have less mitigation system capability than power operation.

The risk information submitted in support of the proposed changes to LCO 3.0.4 and SR 3.0.4 includes qualitative risk assessments performed by each owners group to identify higher risk systems and components at the various modes of operation, including transitions between modes, as the plant moves upward from the refueling mode of operation toward power operation. The owners groups' generic qualitative risk assessments are included as attachments to TSTF–359, Revision 8. Each of the owners groups' generic qualitative risk assessments discuss the technical approach used and the systems/components subsequently determined to be of higher risk significance; the systems/components not to be granted the LCO 3.0.4 allowances for the various modes are listed. The owners groups generic qualitative risk assessments are:

- BWR owners' group Risk-Informed Technical Specification Committee, "Technical Justification to Support Risk-Informed Improvements to Technical Specification Mode Restraints for BWR Plants," General Electric Company GE–NE A13–00464 (Rev[2])
- "B&W owners group Qualitative Risk Assessment for Increased Flexibility in MODE Restraints," Framatome Technologies BAW–2383
- Combustion Engineering owners group (CEOG) Task 1181, "Qualitative Risk Assessment for Relaxation of Mode Entry Restraints," CE Nuclear Power LLC, CE NPSD–1207 (Rev[0])
- "WOG Qualitative Risk Assessment Supporting Increased Flexibility in MODE Restraints."

Following interactions with the staff, all owners groups used the same systematic approach in their qualitative risk assessments to identify the higher-risk systems in the STS, consisting of the following steps:

- Identification of plant conditions (*i.e.*, plant parameters and availability of key mitigation systems) associated with changes in plant operating modes while returning to power
- Identification of key activities that have the potential to impact risk and which are in progress during transitions between modes while the plant is returning to power
- Identification of applicable accident initiating events for each mode or other specified condition in the applicability
- Identification of the higher-risk systems and components by combining the information in the first three steps (qualitative risk assessment)

The risk assessments properly used the results and insights from previous deterministic and probabilistic studies to systematically search for plant conditions in which certain key plant components are more important in mitigating accidents than during operation at power (Mode 1). This search was systematic, taking the following factors into account for the various stages of returning the plant to power:

- The status of accident mitigation and normally operating systems
- The status of key plant parameters such as reactor coolant system pressure
- The key activities that are in progress during transitions between modes which have the potential to impact risk (*e.g.*, the transfer from auxiliary to main feedwater at some PWR plants when Mode 1 is entered)
- The applicable accident initiating events for each mode of plant operation
- Design and operational differences among plants or groups of plants

The following systems and components were identified by each of the four owners groups as higher-risk systems and components, when the plant is entering a new mode.

System	BWR type	Entering mode
Boiling Water Reactor Owners Group (BWROG) Plants		
High Pressure Coolant Injection (HPCI) System	BWR 3 & 4	2, 1.
High Pressure Core Spray (HPCS)	BWR 5 & 6	2, 1.
Reactor Core Isolation Cooling (RCIC) System	BWR 3, 4, 5 & 6	2, 1.
Isolation Condenser	BWR 2	2, 1.
Diesel Generators (including other Emergency/Shutdown AC Power Supplies).	All	All.
Hardened Wetwell Vent System	BWR 2, 3 & 4 with Mark I Containment	3, 2, 1.
Residual Heat Removal System	All	4.

System	Entering mode
Babcock & Wilcox Owners Group (B&WOG) Plants	
Emergency Diesel Generators (EDG) & Hydro-Electric Units for Oconee	5, 4, 3, 2, 1.
Emergency Feedwater (EFW) System	1;
Decay Heat Removal (DHR) System	5, 4.
Combustion Engineering Owners Group (CEOG) Plants	
Emergency Diesel Generators (EDGs)	5, 4, 3, 2, 1.
Auxiliary Feedwater/Emergency Feedwater (AFW/EFW) System	4, 3, 2, 1.
High Pressure Safety Injection (HPSI) System	4, 3 (below 1700 psia).
LTOP/PORVs (when used for Low Temperature Overpressure Protection (LTOP))	5, 4 (below set temperature)
Shutdown Cooling System (Low Pressure Safety Injection (LPSI) pumps)	5.
Westinghouse Owners Group (WOG) Plants	
Emergency Diesel Generators (EDGs)	5, 4, 3, 2, 1.
Auxiliary Feedwater (AFW) System (for plants depending on AFW for startup)	4, 3, 2, 1.
High Head Safety Injection System	4.
Cold Overpressure Protection System	5, 4.
Residual Heat Removal (RHR) System	5.

If a licensee identifies a higher-risk system for only some of the modes of applicability, the TS for that system would be modified by a note that reads, for example, "LCO 3.0.4(b) is not applicable when entering MODE 1 from MODE 2." Systems identified as higher risk for Modes 5 and 6 for PWRs, and Modes 4 and 5 for BWRs, are also excluded from transitioning up to the mode of higher risk, and as previously discussed, notes for those transitions are superfluous. In addition, mode transitions for Modes 5 and 6 for PWRs, and Modes 4 and 5 for BWRs, will be addressed by administrative controls.

In summary, the staff's review of the owners groups qualitative risk assessments finds that they are of adequate quality to support the application (*i.e.*, they identify the higher-risk systems and components) associated with entering higher modes of plant operation with equipment inoperable while returning to power. [Plant Specific changes will be described here.]

Limited Time in TS Required Actions

Any temporary risk increase will be limited by, among other factors, duration constraints imposed by the TS CTs of the inoperable systems. For the systems and components which are not higher risk, any temporary risk increase associated with the proposed allowance will be smaller than what is considered acceptable when the same systems and components are inoperable at power. This is due to the fact that CTs associated with the majority of TS systems and components were developed for power operation and pose a smaller plant risk for action statement entries initiated or occurring at lower modes of operation as compared to power operation.

The LCO 3.0.4(b) allowance will be used only when the licensee determines that there is a high likelihood that the LCO will be satisfied following the mode change. This will minimize the likelihood of additional temporary risk increases associated with the need to exit a mode due to failure to restore the unavailable equipment within the CT. In most cases, licensees will enter into a higher mode with the intent to move up to Mode 1 (power operation). As discussed in Section 3.2, the revised reactor oversight process monitors unplanned power changes as a performance indicator. The reactor oversight process thus discourages licensees from entering a mode or other specified condition in the applicability of an LCO, and moving up in power, when there is a likelihood that the mode would have to be subsequently exited due to failure to restore the unavailable equipment within the CT. Another disincentive for licensees to enter a higher mode when an LCO is not met is related to reporting requirements. 10 CFR 50.72 and 50.73 make it clear that a report is required when a nuclear plant shutdown or mode change is required by TS. The NRC's oversight program will provide the framework for inspectors and other staff to follow the history at a specific plant of entering higher modes while an LCO is not met, and use such information in assessing the licensee's actions and performance.

3.1.2 Cumulative Risk Increases

The cumulative risk impact of the change to allow the plant to enter a higher mode of operation with one or more safety-related components unavailable (as proposed here), is measured by the average yearly risk increase associated with the change. In general, this cumulative risk increase is assessed in terms of both CDF and LERF (*i.e.*, ΔCDF and ΔLERF, respectively). The increase in CDF due to the proposed change is expressed by the following equation, which integrates the risk impact from all expected specified conditions (*i.e.*, all expected plant conditions caused by mode changes with various TS systems and components unavailable).

$$\Delta CDF = \sum(\Delta CDF_i) = \sum ICCDP_i \, f_i \qquad (2)$$

Where:

ΔCDF_i = the CDF increase due to specified condition i

$ICCDP_i$ = the ICCDP associated with specified condition i

f_i = the average yearly frequency of occurrence of specified condition i

A similar expression can be used for ΔLERF by substituting the measure of risk, *i.e.*, LERF for CDF. The magnitude of the ΔCDF and ΔLERF values associated with plant conditions applicable to LCO 3.0.4(b) allowances can be managed by controlling the temporary risk increases, in terms of both CDF and LERF (*i.e.*, ICCDP and ICLERP), and the frequency (f), of each of such conditions. In addition to the points made in the previous section regarding temporary risk increases, the following points put into perspective how the key elements of the proposed risk-informed approach, used to justify an LCO 3.0.4(b) allowance, are expected to prevent significant cumulative risk increases by limiting the frequency of its use:

- The frequency of risk significant conditions will be limited by not providing the LCO 3.0.4(b) allowances to the higher risk systems and components.
- The frequency of risk significant conditions will be limited by the requirement to assess the likelihood that the LCO will be satisfied following the mode change.
- The frequency of risk significant conditions is limited by the fact that such conditions can occur only when the plant is returning to power following shutdown, *i.e.*, during a small fraction of time per year (data over the past five years indicate that the plants are averaging 2.1 startups per year).

The addition of the proposed LCO 3.0.4(b) allowances to the plant maintenance activities is not expected to change the plant's average (cumulative) risk significantly.

3.1.3 Risk Assessment and Risk Management of Mode Changes

With all safety systems and components operable, a plant can transition up in mode to power operation. With one or more system(s) or component(s) inoperable, this change permits a plant to transition up in mode to power operation if the inoperable system(s) or component(s) are not in the pre-analyzed higher risk category, a 10 CFR 50.65(a)(4) based risk assessment is performed prior to the mode transition, and the requisite risk management actions are taken. The proposed TS Bases state, "When an LCO is not met, LCO 3.0.4 also allows entering MODES or other specified conditions in the Applicability following assessment of the risk impact and determination that the impact can be managed. The risk assessment may use quantitative, qualitative, or blended approaches, and the risk assessment will be conducted using the plant program, procedures, and criteria in place to implement 10 CFR 50.65(a)(4), which requires that risk impacts of maintenance activities to be assessed and managed." It should be noted that, the risk assessment, for the purposes of LCO 3.0.4(b), must take into account all inoperable TS equipment regardless whether the equipment is included in the licensee's normal 10 CFR 50.65(a)(4) risk assessment scope. The risk assessments will be conducted using the procedures and guidance endorsed by Regulatory Guide 1.182, "Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants." The results of the risk assessment shall be considered in determining the acceptability of entering the MODE or other specified condition in the Applicability, and any corresponding risk management actions. * * * A risk assessment and establishment of risk management actions, as appropriate, are required for determination of acceptable risk for entering MODES or other specified conditions in the Applicability when an LCO is not met. Elements of acceptable risk assessment and risk management actions are included in Section 11 of NUMARC 93–01 "Assessment of Risk Resulting from Performance of Maintenance Activities," as endorsed by RG 1.182, which addresses general guidance for conduct of the risk assessment, gives quantitative and qualitative guidelines for establishing risk management actions, and provides example risk management actions. These risk management actions include actions to plan and conduct other activities in a manner that controls overall risk, actions to increase risk awareness by shift and management personnel, actions to reduce the duration of the conditions, actions to minimize the magnitude of risk increases (establishment of backup success paths or compensatory measures), and determination that the proposed MODE change is acceptable.

The guidance references state that a licensee's risk assessment process should be sufficiently robust and comprehensive to assess risk associated with maintenance activities during power operation, low power and shutdown conditions (all modes of operation), including changes in plant conditions. NUMARC 93–01 states that the risk assessment should include consideration of: the degree of redundancy available for performance of the safety function(s) served by the out-of-service equipment; the duration of the out-of-service condition; component and system dependencies that are affected; the risk impact of performing the maintenance during shutdown versus at power; and, the impact of mode transition risk. For power operation, key plant safety functions are those that ensure the integrity of the reactor coolant pressure boundary, ensure the capability to shut down and maintain the reactor in safe shutdown condition, and ensure the capability to prevent or mitigate the consequences of accidents that could result in potentially significant offsite exposures.

While the inoperabilities permitted by the completion times of technical specification required actions take into consideration the safety significance and redundancy of the system or components within the scope of an LCO, the completion times generally do not address or consider concurrent system or component inoperabilities in multiple LCOs. Therefore, the performance of the 10 CFR 50.65(a)(4) risk assessment which looks at the entire plant configuration is essential (and required) prior to changing operational mode. The 10 CFR 50.65(a)(4) based risk assessment will be used to confirm (or reject) the appropriateness of transitioning up in mode given the actual status of plant safety equipment.

The risk impact on the plant condition of invoking an LCO 3.0.4(b) allowance will be assessed and managed through the program established to

implement 10 CFR 50.65(a)(4). This program is consistent with RG 1.177 and RG 1.174 in its approach. The implementation guidance for paragraph (a)(4) of the Maintenance Rule addresses controlling temporary risk increases resulting from maintenance activities. This guidance, consistent with guidance in RG 1.177, establishes action thresholds based on qualitative and quantitative considerations and risk management actions. Significant temporary risk increases following an LCO 3.0.4(b) allowance are unlikely to occur unless:

- High-risk configurations are allowed (*e.g.*, certain combinations of multiple component outages), or
- Risk management of plant operation activities is inadequate.

The requirements associated with the proposed change are established to ensure that such conditions will not occur.

The thresholds of the cumulative (aggregate) risk impacts, assessed pursuant to 10 CFR 50.65(a)(4) and the associated implementation guidance, are based on the permanent change guidelines in NRC RG 1.174. Therefore, licensees will manage the risk exercising LCO 3.0.4 in conjunction with the risk from other concurrent plant activities to ensure that any increase, in terms of core damage frequency (CDF) and large early release frequency (LERF) will be small and consistent with the Commission's Safety Goal Policy Statement.

3.2 Oversight

The reactor oversight process (ROP) provides a means for assessing the licensee's performance in the application of the proposed mode change flexibility. The adequacy of the licensee's assessment and management of maintenance-related risk is addressed by existing inspection programs and guidance for 50.65(a)(4). Although the current versions of that guidance do not specifically address application of the licensee's (a)(4) program to support risk-informed technical specifications, it is expected that in most cases, risk assessment and management associated with risk-informed technical specifications would be required by (a)(4) anyway because maintenance activities will be involved.

Adoption of the proposed change will make failure to assess and manage the risk of an upward mode change with inoperable equipment covered by technical specifications, prior to commencing such a mode change, a violation of technical specifications. Further, as explained above in general, under most foreseeable circumstances, such a change in configuration would also require a risk assessment under 10 CFR 50.65(a)(4). Inoperable systems or components will necessitate maintenance to restore them to operability, and hence a 10 CFR 50.65(a)(4) risk assessment would be performed prior to the performance of those maintenance actions (except for immediate plant stabilization and restoration actions if necessary). Further, before altering the plant's configuration, including plant configuration changes associated with mode changes, the licensee must update the existing (a)(4) risk assessment to reflect those changes.

The Federal Register Notice issuing a revision to the maintenance rule, 10 CFR 50.65, (**Federal Register**, Vol 64 No 137, Monday, July 19, 1999, pg 38553), along with NRC Inspection Procedure 71111.13, and Section 11, dated February 22, 2000, "Assessment of Risk Resulting from Performance of Maintenance Activities," of NUMARC 93–01, all indicate that to determine the safety impact of a change in plant conditions during maintenance, a risk assessment must be performed before changing plant conditions. The bases for the proposed TS change mandate that the risk assessment and management of upward mode changes will be conducted under the licensee's program and process for meeting 10 CFR 50.65(a)(4). Oversight of licensee performance in assessing and managing the risk of plant maintenance activities is conducted principally by inspection in accordance with Reactor Oversight Program Baseline Inspection Procedure (IP) 71111.13, "Maintenance Risk Assessment and Emergent Work Control." Supplemental IP 62709, "Configuration Risk Assessment and Risk Management Process," is utilized to evaluate the licensee's process, when necessary.

The ROP is described in overview in NUREG–1649, Rev 3, "Reactor Oversight Process," and in detail in the NRC Inspection Manual. Inspection Procedure 71111.13 requires verification of performance of risk assessments when they are required by 10 CFR 50.65(a)(4) and in accordance with licensee procedures. The procedure also requires verification of the adequacy of those risk assessments and verification of effective implementation of licensee-prescribed risk management actions. The rule itself requires such assessment and management of risk prior to maintenance activities, including preventive maintenance, surveillance and testing, (and promptly for emergent work) during all modes of plant operation. The guidance documents for both industry implementation of (a)(4) and NRC oversight of that implementation indicate that changes in plant configuration (which would include mode changes) in support of maintenance activities must be taken into account in the risk assessment and management process. Revisions to NRC inspection guidance and licensee implementation procedures will be needed to address oversight of risk assessment and management required by TS in support of mode changes that are not already required under the circumstances by (a)(4). This consideration provides performance-based regulatory oversight of the use of the proposed flexibility, and a disincentive to use the flexibility without the requisite care in planning.

In addition, the staff is in the process of developing detailed significance determination process (SDP) guidance for use in assessing inspection findings related to 10 CFR 50.65(a)(4). This guidance was issued in draft for comment and is anticipated to become final during 2003. The ROP considers inspection findings and performance indicators in evaluating licensee ability to operate safely. The SDP is used to determine the significance of inspection findings related to licensee assessment and management of the risk associated with performing maintenance activities under all plant operating or shutdown conditions. Unplanned reactor scrams and unplanned power changes are two of the Reactor Safety Performance Indicators that the ROP utilizes to assess licensee performance and inform the public. The ROP will provide a disincentive to entering into power operation (Mode 1), when there is a significant likelihood that the mode would have to be subsequently exited due to failure to restore the unavailable equipment within the completion time.

3.3 Summary

The industry, through the Nuclear Energy Institute (NEI) Risk Informed Technical Specifications Task Force (RITSTF), has submitted a proposed technical specification (TS) change to allow entry into a higher mode of operation, or other specified condition in the TS applicability, while relying on the TS conditions, and associated required actions and completion times, provided a risk assessment is performed to confirm the acceptability of that action. The proposal revises standard technical specification (STS) LCO 3.0.4 and SR 3.0.4, and their application to the TS. New paragraphs (a), (b), and (c) are proposed for LCO 3.0.4.

The proposed LCO 3.0.4(a) retains the current allowance, permitting the mode change when the TS required actions allow indefinite operation.

Proposed LCO 3.0.4(b) is the change to allow entry into a higher mode of operation, or other specified condition in the TS applicability, while relying on the TS conditions and associated required actions and completion times, provided a risk assessment is performed to confirm the acceptability of that action for the existing plant configuration. The staff review finds that the process proposed by industry for assessing and managing risk during the implementation of the proposed LCO 3.0.4(b) allowances, meets Commission guidance for technical specification changes. Key elements of this process are listed below.

- A risk assessment shall be performed before any LCO 3.0.4(b) allowance is invoked.
- The risk impact on the plant condition of invoking an LCO 3.0.4(b) allowance will be assessed and managed through the program established to implement 10 CFR 50.65(a)(4) and the associated guidance in RG 1.182. Allowing entry into a higher mode or condition in the applicability of an LCO after an 10 CFR 50.65(a)(4) based risk assessment and appropriate risk management actions are taken for the existing plant configuration will ensure that plant safety is maintained.
- The LCO 3.0.4(b) allowance will be used only when the licensee determines that there is a high likelihood that the LCO will be satisfied within the required action's completion time.
- TS systems and components which may be of higher risk during mode changes have been identified generically by each owner's group for each plant operational mode or condition. Licensees will identify such plant-specific systems and components in the individual plant TS. The proposed LCO 3.0.4(b) allowance does not apply to these systems and components for the mode or condition in the applicability of an LCO at which they are of higher risk.
- Plants adopting LCO 3.0.4(b) will ensure that plant procedures in place to implement 10 CFR 50.65(a)(4) address the situation where entering a mode or other specified condition in the applicability is contemplated with plant equipment inoperable. Such plant procedures typically follow the guidance in NUMARC 93–01, Section 11, as revised in February 2000 and endorsed by NRC RG 1.182.

The NRC's reactor oversight process provides the framework for inspectors and other staff to oversee the implementation of 10 CFR 50.65(a)(4) requirements at a specific plant and assess the licensee's actions and performance.

The LCO 3.0.4(b) allowance does not apply to values and parameters of the technical specifications that have their own respective LCOs (*e.g.*, Reactor Coolant System Specific Activity), but instead those values and parameters are addressed by LCO 3.0.4(c). The TS values and parameters for which mode transition allowances apply, will have a note that states LCO 3.0.4(c) is applicable.

The objective of the proposed change is to provide additional operational flexibility without compromising plant safety.

4.0 State Consultation

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20 and change surveillance requirements. [For licensees adding a bases control program: The amendment also changes record keeping, reporting, or administrative procedures or requirements.] The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards considerations, and there has been no public comment on the finding [insert FR number]. Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9) [and (c)(10)]. Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

6.0 Conclusion

The Commission has concluded, on the basis of the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: A change is proposed to the standard technical specifications (STS)(NUREGs 1430 through 1434) and plant specific technical specifications (TS), to allow entry into a mode or other specified condition in the applicability of a TS, while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). LCO 3.0.4 exceptions in individual TS would be eliminated, and SR 3.0.4 revised to reflect the LCO 3.0.4 allowance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS Limiting Conditions for Operation (LCO). The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The following example of an application was prepared by the NRC staff to facilitate use of the consolidated line item improvement process (CLIIP). The model provides the expected level of detail and content for an application to revise technical specifications regarding mode change limitations (and adoption of a technical specification bases control program)* using CLIIP. Licensees remain responsible for ensuring that their actual application fulfills their administrative requirements as well as Nuclear Regulatory Commission Regulations.

U.S. Nuclear Regulatory Commission,
Document Control Desk, Washington, D.C. 20555.
Subject: Plant Name
Docket No. 50–
Application for technical specification change regarding mode change limitations (and adoption of a technical specifications bases control program, and STS SR 3.0.1 and associated bases)* using the consolidated line item improvement process

Gentleman: In accordance with the provisions of 10 CFR 50.90 [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.].

The proposed amendment would modify TS requirements for mode change limitations in LCO 3.0.4 and SR 3.0.4, (and, in conjunction with the proposed change, TS requirements for a bases control program consistent with TS Bases Control Program described in Section 5.5 of the applicable vendor's Standard Technical Specifications, and STS SR 3.0.1 and associated bases.)

Attachment 1 provides a description of the proposed change (including a table of affected TS with a brief descriptor of the change), the requested confirmation of applicability, and plant-specific verifications. Attachment 2 provides the existing TS pages marked up to show the proposed change. Attachment 3 provides revised (clean) TS pages. Attachment 4 provides a summary of the regulatory commitments made in this submittal. Attachment 5 provides the existing TS Bases pages marked up to show the proposed change.

[LICENSEE] requests approval of the proposed License Amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS].

In accordance with 10 CFR 50.91, a copy of this application, with attachments, is being provided to the designated [STATE] Official.

* If not already in the facility Technical Specifications

I declare under penalty of perjury under the laws of the United Stats of America that I am authorized by [LICENSEE] to make this request and that the foregoing s true and correct. (Note that request may be notarized in lieu of using this oath or affirmation statement).

If you should have any questions regarding this submittal, please contact [NAME, TELEPHONE NUMBER]

Sincerely,

[Name, Title]

Attachments:
1. Description and Assessment
2. Proposed Technical Specification Changes
3. Revised Technical Specification Pages
4. If applicable: Regulatory Commitments
5. Proposed Technical Specification Bases Changes

cc:
NRC Project Manager
NRC Regional Office
NRC resident Inspector
State Contact

Attachment 1—Description and Assessment

1.0 Description

The proposed amendment would modify technical specifications (TS) requirements for mode change limitations in LCO 3.0.4 and SR 3.0.4.[5]

The changes are consistent with Nuclear Regulatory Commission (NRC) approved Industry/Technical Specification Task Force (TSTF) STS change TSTF–359 Revision 8, as modified by the notice in the **Federal Register** published on [DATE]. That Federal Register notice announced the availability of this TS improvement through the consolidated line item improvement process (CLIIP).

2.0 Assessment

2.1 Applicability of Published Safety Evaluation

[LICENSEE] has reviewed the safety evaluation dated [DATE] as part of the CLIIP. This review included a review of the NRC staff's evaluation, as well as the supporting information provided to support TSTF–359 Revision 8. [LICENSEE] has concluded that the justifications presented in the TSTF proposal and the safety evaluation prepared by the NRC staff are applicable to [PLANT, UNIT NOS.] and justify this amendment for the incorporation of the changes to the [PLANT] TS.

2.2 Optional Changes and Variations

[LICENSEE] is not proposing any variations or deviations from the TS changes described in the modified TSTF–359 Revision 8 and the NRC staff's model safety evaluation dated [DATE].

[5] [In conjunction with the proposed change, technical specifications (TS) requirements for a bases control program, consistent with the TS Bases Control Program described in Section 5.5 of the applicable vendor's standard TS (STS), shall be incorporated into the licensee's TS, if not already in the TS. Similarly, the STS requirements of SR 3.0.1 and associated bases shall be adopted by units that do not already contain them.]

3.0 Regulatory Analysis

3.1 No Significant Hazards Consideration Determination

[LICENSEE] has reviewed the proposed no significant hazards consideration determination (NSHCD) published in the **Federal Register** as part of the CLIIP. [LICENSEE] has concluded that the proposed NSHCD presented in the Federal Register notice is applicable to [PLANT] and is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

3.2 Verification and Commitments

As discussed in the notice of availability published in the **Federal Register** on [DATE] for this TS improvement, plant-specific verifications were performed as follows:

The licenses has established TS Bases for [LCO 3.0.4 and SR 3.0.4] which state that use of the TS mode change limitation flexibility established by [LCO 3.0.4 and SR 3.0.4] is not to be interpreted as endorsing the failure to exercise the good practice of restoring systems or components to operable status before entering an associated mode or other specified condition in the TS Applicability.

The modification also includes changes to the bases for [LCO 3.0.4 and SR 3.0.4] that provide details on how to implement the new requirements. The bases changes provide guidance for changing Modes or other specified conditions in the Applicability when an LCO is not met. The bases changes describe in detail how: [LCO 3.0.4.a] allows entry into a MODE or other specified condition in the Applicability with the LCO not met when the associated ACTIONS to be entered permit continued operation in the MODE or other specified condition in the Applicability for an unlimited period of time; [LCO 3.0.4.b] allows entry into a MODE or other specified condition in the Applicability with the LCO not met after performance of a risk assessment addressing inoperable systems and components, consideration of the results, determination of the acceptability of entering the MODE or other specified condition in the Applicability, and establishment of risk management actions, if appropriate; and [LCO 3.0.4.c] allows entry into a MODE or other specified condition in the Applicability with the LCO not met based on a Note in the Specification, which is typically applied to Specifications which describe values and parameters (*e.g.*, [Containment Air Temperature, Containment Pressure, MCPR, Moderator Temperature Coefficient]), though it may be applied to other Specifications based on NRC plant-specific approval. The bases also state that any risk impact should be managed through the program in place to implement 10 CFR 50.65(a)(4) and its implementation guidance, NRC Regulatory Guide 1.182, "Assessing and Managing Risks Before Maintenance Activities at Nuclear Power Plants," and that the results of the risk assessment shall be considered in determining the acceptability of entering the MODE or other specified condition in the Applicability, and any corresponding risk management actions. In addition, the bases state that upon entry into a Mode or other specified condition in the Applicability with the LCO not met, LCO 3.0.1 and LCO 3.0.2 require entry in to the applicable Conditions and Required Actions for no more than the duration of the applicable Completion Time or until the LCO is met or the unit is not within the Applicability of the TS. The bases also state that SR 3.0.4 does not restrict changing MODES or other specified conditions of the Applicability when a Surveillance has not been performed within the specified Frequency, provided the requirement to declare the LCO not met has been delayed in accordance with SR 3.0.3. Finally, the licensee is expected to have a bases control program consistent with Section 5.5 of the STS, and the equivalent of STS SR 3.0.1 and associated bases.

4.0 Environmental Evaluation

[LICENSEE] has reviewed the environmental evaluation included in the model safety evaluation dated [DATE] as part of the CLIIP. [LICENSEE] has concluded that the staff's findings presented in that evaluation are applicable to [PLANT] and the evaluation is hereby incorporated by reference for this application.

Attachment 2—Proposed Technical Specification Changes (Mark-Up)

Attachment 3—Proposed Technical Specification Pages

Attachment 4—List of Regulatory Commitments

The following table identifies those actions committed to by [LICENSEE] in this document. Any other statements in this submittal are provided for information purposes and are not considered to be regulatory commitments. Please direct questions regarding these commitments to [CONTACT NAME].

Regulatory commitments	Due date/event
[LICENSEE] will establish the Technical Specification Bases for TS 3.0.3 as adopted with the applicable license amendment.	[Complete, implemented with amendment OR within X days of implementation of amendment]

Attachment 5—Proposed Changes to Technical Specification Bases Pages

[FR Doc. 03–8203 Filed 4–3–03; 8:45 am]
BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission.

At OPIC's request, OMB is reviewing this information collection for emergency processing for 90 days, under OMB control number 3420–0015.

Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 30 calendar days of this notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Bruce

Campbell, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202–336–8563.

Summary Form Under Review

Type of Request: Revised form.
Title: Application for Financing.
Form Number: OPIC 115.
Frequency of Use: Once per investor per project.
Type of Respondents: Business or other institution (except farms); individuals.
Standard Industrial Classification Codes: All.
Description of Affected Public: U.S. companies or citizens investing overseas.
Reporting Hours: 3.5 hours per project.
Number of Responses: 300 per year.
Federal Cost: $15,750.
Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act. of 1961, as amended.
Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and the project's eligibility for debt financing, assess the environmental impact and developmental effects of the project, measure the economic effects for the U.S. and the host country economy, and collect information for underwriting analysis.

Dated: March 12, 2003.

Eli Landy,

Senior Counsel and FOIA Director.

[FR Doc. 03–8224 Filed 4–3–03; 8:45 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47596; File No. SR–CSE–2003–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc., To Extend its Liquidity Provider Fee and Rebate Pilot Program

March 28, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2003, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has filed this proposal pursuant to section 19(b)(3)(A) of the Act[3] and rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its pilot program for the Liquidity Provider Fee and Rebate ("Program") through September 30, 2003. The Program, as originally proposed in SR–CSE–2002–16,[5] is set to expire on March 31, 2003. The CSE proposes no substantive changes to the Program, other than extending its operation through September 30, 2003. The text of the proposed rule change is available at the CSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CSE proposes to extend the Program through September 30, 2003. Under the Program, the Exchange amended CSE rule 11.10A(g)(1) by adding subparagraph (B) to charge the liquidity taker, *i.e.*, the party executing against a previously displayed quote/order, $0.004 per share. The Exchange then passes on to the liquidity provider, *i.e.*, the party providing the displayed quote/order, $0.003 per share, with the Exchange retaining $0.001 per share.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[6] in general, and furthers the objectives of section 6(b)(5)[7] in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The CSE believes that the proposed rule change is also consistent with section 6(b)(4) of the Act,[8] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CSE members by crediting members on a pro rata basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received in connection with the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and rule 19b–4(f)(6)[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue without interruption. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CSE–2003–03 and should be submitted by April 25, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8183 Filed 4–3–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A).
[4] 17 CFR 240.19b–4(f)(6).
[5] Securities Exchange Act Release No. 46848 (November 19, 2002), 67 FR 70793 (November 26, 2002).
[6] 15 U.S.C. 78f(b).
[7] 15 U.S.C. 78f(b)(5).
[8] 15 U.S.C. 78f(b)(4).
[9] 15 U.S.C. 78s(b)(3)(A).
[10] 17 CFR 240.19b–4(f)(6).
[11] For purposes only of accelerating the operative date of the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.500 (4½) percent for the April–June quarter of FY 2003.

LeAnn M. Oliver,

Deputy Associate Administrator for Financial Assistance.

[FR Doc. 03–8243 Filed 4–3–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Roundtable; Region VI Regulatory Fairness Board

The Small Business Administration Region VI Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Tuesday, April 22, 2003, at 8:30 a.m. at the State Chamber at 330 NE., 10th Street, Oklahoma City, OK 73104, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Darla Booker in writing or by fax, in order to be put on the agenda. Darla Booker, U.S. Small Business Administration, Oklahoma District Office, 210 Park Avenue, Suite 1300, Oklahoma City, OK 73102, phone (405) 231–5521 Ext. 243, fax (405) 231–4876, e-mail: *Darla.Booker@sba.gov.*

For more information, *see* our Web site at *http://www.sba.gov/ombudsman.*

Dated: March 31, 2003

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–8241 Filed 4–3–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region VI Regulatory Fairness Board

The Small Business Administration Region VI Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Thursday, April 24, 2003, at 8:30 a.m. at the Southern Methodist University's Cox School of Business, Fincher Building Gallery, 6212 Bishop Blvd., Dallas, Texas 75205, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Glenda Schufford in writing or by fax, in order to be put on the agenda. Glenda Schufford, U.S. Small Business Administration, Dallas/Fort Worth District Office, 4300 Amon Carter Boulevard, Suite 114, Fort Worth, TX 76155, phone (817) 684–5500 Ext. 5526, fax (817) 684–5543, e-mail *Glenda.Schufford@sba.gov.*

For more information, *see* our Web site at *http://www.sba.gov/ombudsman.*

Dated: March 31, 2003.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–8242 Filed 4–3–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Delegation of Authority 255]

Delegation by the Deputy Secretary of State to the Assistant Secretary for Educational and Cultural Affairs of All Authorities Normally Vested in the Under Secretary for Public Diplomacy and Public Affairs

By virtue of the authority vested in me by the laws of the United States, including the Mutual Educational and Cultural Exchange Act of 1961, the United States Information and Educational Exchange Act of 1948, and the State Department Basic Authorities Act of 1956, and pursuant to Delegation of Authority No. 245 (April 23, 2001), I hereby delegate to the Assistant Secretary for Educational and Cultural Affairs, to the extent authorized by law, all authorities vested in the Under Secretary for Public Diplomacy and Public Affairs, including all authorities vested in the Secretary that have been delegated to that Under Secretary by Delegation of Authority No. 234 (October 1, 1999), or that may be delegated or re-delegated to that Under Secretary.

Any authorities covered by this delegation may also be exercised by the Secretary and the Deputy Secretary of State.

Any act, executive order, regulation or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation or procedure as amended from time to time.

This delegation shall enter into effect on March 29, 2003, and shall expire upon the appointment and entry upon duty of a new Under Secretary for Public Diplomacy and Public Affairs.

Any re-delegation of authority by the Under Secretary for Public Diplomacy

and Public Affairs to the Assistant Secretary for Educational and Cultural Affairs, pursuant to Delegation of Authority No. 234, shall remain in effect.

This delegation shall be published in the **Federal Register**.

Dated: March 25, 2003.

Richard L. Armitage,

Deputy Secretary of State, Department of State.

[FR Doc. 03–8249 Filed 4–3–03; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2003–14836]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before June 3, 2003.

FOR FURTHER INFORMATION CONTACT: James Zok, Maritime Administration (MAR–500), 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–0364, FAX: 202–366–9580, or e-mail: *jim.zok@marad.dot.gov*.

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Customer Service Survey.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0528.

Form Numbers: MA–1016, MA–1017, and MA–1021.

Expiration Date of Approval: Three years from date of approval.

Summary of Collection of Information. Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and the level of satisfaction with existing services. This collection provides the instruments used to collect the information regarding MARAD programs and services.

Need and Use of the Information: Responses to the Customer Service Questionnaire (Form MA–1016) are needed to obtain prompt customer feedback on the quality of specific services/products provided to the customer by MARAD. Responses to the Program Performance Survey (Form MA–1017) are needed to obtain customers' views on MARAD's major programs and activities with which the customers were involved during the preceding year. Responses to the Conference/Exhibit Survey (Form MA–1021) will be used to obtain prompt responses from attendees at MARAD-sponsored conferences, exhibits and other maritime industry events.

Description of Respondents: Individuals receiving goods and services from MARAD.

Annual Responses: 6,650 responses.

Annual Burden: 256 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

By Order of the Maritime Administrator.

Dated: April 1, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–8250 Filed 4–3–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub No. 622X)]

CSX Transportation, Inc.—Abandonment Exemption—in Pike County, OH

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon an approximately 4.14 mile line of railroad at Teays Industrial Track between milepost CES–0.00 and milepost CES–4.14 in Pike County, OH. The line traverses United States Postal Zip Codes 45661, 45613 and 45690.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employees adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protect affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 6, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 14, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 24, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to CSX's representative: Natalie S. Rosenberg, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 11, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by April 4, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

Decided: March 28, 2003.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–8229 Filed 4–3–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 24, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

Departmental Offices/Federal Consulting Group

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: American Customer Satisfaction Index Survey.

Description: The objectives of surveying customers of Federal Agencies as part of the American Customer Satisfaction Index are: (1) To make the agencies part of the national measure of customer satisfaction; (2) to benchmark against other agencies and companies; and (3) to provide information for improving satisfaction.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 46,000.

Estimated Burden Hours Per Respondent: 17 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 7,799 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 03–8161 Filed 4–3–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 25, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 5, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0064.

Form Number: IRS Form 4029.

Type of Review: Extension.

Title: Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.

Description: Form 4029 is used by members of recognized religious groups to apply for exemption from Social Security and Medicare taxes under IRC sections 1402(g) and 3127. The information is used to approve or deny exemption from social security and Medicare taxes.

Respondents: Individual or household.

Estimated Number of Respondents/Recordkeepers: 3,754.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	6 min.
Learning about the law or the form.	11 min.
Preparing the form	11 min.
Copying, assembling, and sending the form to the SSA.	34 min.

Frequency of Response: Other (one time).

Estimated Total Reporting/Recordkeeping Burden: 4,017 hours.

OMB Number: 1545–0132.

Form Number: IRS Form 1120X.

Type of Review: Extension.

Title: Amended U.S. Corporation Income Tax Return.

Description: Domestic corporations use Form 1120X to correct a previously filed Form 1120 or 1120A. The data is used to determine if the correct tax liability has been reported.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 16,699.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	13 hr., 9 min.
Learning about the law or the form.	1 hr., 14 min.
Preparing the form	3 hr., 22 min.
Copying, assembling, and sending the form to the IRS.	32 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 305,425 hours.

OMB Number: 1545–0202.

Form Number: IRS Forms 5310 and 6088.
Type of Review: Revision.
Title: IRS Form 5310: Application for Determination for Terminating Plan; and IRS Form 6088: Distributable Benefits from Employee Pension Benefit Plan.
Description: Employers who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. IRS uses the data on Forms 5310 and 6088 to determine whether a plan still qualifies and whether there is any discrimination in benefits.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 30,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 5310	Form 6088
Recordkeeping	64 hr., 19 min.	6 hr., 27 min.
Learning about the law or the form.	21, 35 min.	1hr., 12 min.
Preparing, Copying, assembling, and sending the form to the IRS.	25 hr., 59 min.	1 hr., 21 min.

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 1,813,650 hours.
OMB Number: 1545–0387.

Form Number: IRS Form 4419.
Type of Review: Extension.
Title: Application for Filing Information Returns Magnetically/Electronically.
Description: Under section 6011(e)(2)(a) of the Internal Revenue Code, any person, including corporations, partnerships, individuals, estates and trusts, who is required to file 250 or more information returns must file such returns magnetically/electronically. Payers required to file on magnetic media or electronically must complete Form 4419 to receive authorization to file.
Respondents: State, local or tribal government, business or other for-profit, not-for-profit institutions, Federal government.
Estimated Number of Respondents: 15,000.
Estimated Burden Hours Per Respondent: 26 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 6,500 hours.
OMB Number: 1545–0957.
Form Number: IRS Form 8508.
Type of Review: Revision.
Title: Request for Waiver From Filing Information Returns Magnetically (Forms W–2, W–2G, 1042–S, 1098, 1099 Series, 5498–MSA, and 8027).
Description: Certain filers of information returns are required by law to file on magnetic media. In some instances, waivers from this requirement are necessary and justified. Form 8508 is submitted by the filer and provides information on which IRS will base its waiver determination.
Respondents: Business or other for-profit, not-for-profit institutions, farms, Federal government, state, local or tribal government.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Respondent: 45 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 750 hours.
OMB Number: 1545–1225.
Form Number: IRS Form 5310-A.
Type of Review: Revision.
Title: Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business.
Description: Plan administrators are required to notify IRS of any plan mergers, consolidations, spinoffs, or transfer of plan assets or liabilities to another plan. Employers are required to notify IRS of separate lines of business for their deferred compensation plans. Form 5310-A is used to make these notifications.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 15,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Recordkeeping	Learning about the law or the form	Preparing, copying, assembling,and sending the form to the IRS
Form 5310-A, Part I	2 hr., 9 min	1 hr., 3 min	2 hr., 20 min.
Form 5310-A, Part II	3 hr., 21 min	35 min.	40 min.
Form 5310-A, Part III	4 hr., 32 min	35 min.	42 min.

Frequency of Response: On occasion.
Estimated Total Reporting Burden: 158,800 hours.
OMB Number: 1545–1347.
Regulation Project Number: FI–1–94 and FI–36–92 Final.
Type of Review: Extension.
Title: Arbitrage Restrictions on Tax-Exempt Bonds.
Description: The Code limits the ability of state and local government issuers of tax-exempt bonds to earn and/or keep arbitrage profits earned with bond proceeds. This regulation requires recordkeeping of certain interest rate hedges so that the hedges are taken into account in determining those profits.
Respondents: State, local or tribal government.
Estimated Number of Respondents/Recordkeepers: 3,100.
Estimated Burden Hours Per Respondent/Recordkeeper: 14 hours, 34 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 42,050 hours.
OMB Number: 1545–1510.
Revenue Procedure Number: Revenue Procedure 96–60.
Type of Review: Extension.
Title: Procedure for Filing Forms W–2 in Certain Acquisitions.
Description: Information is required by the Internal Revenue Service to assist predecessor and successor employers in complying with the reporting requirements under Code sections 6051 and 6011 for Forms W–2 and 941.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 553,500.
Estimated Burden Hours Per Respondent: 12 minutes.
Estimated Total Reporting Burden: 110,700 hours.
OMB Number: 1545–1528.
Revenue Procedure Number: Revenue Procedure 97–15.
Type of Review: Extension.
Title: Section 103—Remedial Payment Closing Agreement Program.
Description: This information is required by the Internal Revenue Service to verify compliance with sections 57, 103, 141, 142, 144, 145 and 147 of the Internal Revenue Code of 1986, as applicable (including any corresponding provision, if any, of the Internal Revenue Code of 1954). This information will be used by the Service to enter into a closing agreement with the issuer of certain state or local bonds and to establish the closing agreement amount.
Respondents: Not-for-profit institutions, State, local or tribal government.
Estimated Number of Respondents/Recordkeepers: 50.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 30 minutes.
Estimated Total Reporting/Recordkeeping Burden: 75 hours.
OMB Number: 1545–1667.
Revenue Procedure Number: Revenue Procedure 99–50.
Type of Review: Extension.
Title: Combined Information Reporting.
Description: The revenue procedure permits combined information reporting by a successor "business entity" (*i.e.*, a corporation, partnership, or sole proprietorship) in certain situations following a merger or an acquisition. The successor must file a statement with the Internal Revenue Service indicating what forms are being filed on a combined basis.
Respondents: Business or other for-profit, not-for-profit institutions, farms.
Estimated Number of Respondents: 6,000.
Estimated Burden Hours Per Respondent: 5 minutes.
Estimated Total Reporting Burden: 500 hours.
OMB Number: 1545–1669.
Notice Number: Notice 2000–3.
Type of Review: Extension.
Title: Guidance on Cash or Deferred Arrangements.
Description: This notice provides guidance to employers maintaining, or who are contemplating establishing, cash or deferred arrangements (CODAs) for their employees. It permits some degree of flexibility in using the safe harbor methods, described in sections 401(k)(12) and 401(m)(11) of the Code, to satisfy the nondiscrimination tests normally applicable to CODAs. As indicated in section III, Q&As 1 and 2, of the notice to take advantage of this flexibility, employers must amend their CODAs accordingly and provide employees written notices of the benefits available to them under the CODA.
Respondents: Business or other for-profit, not-for-profit institutions.
Estimated Number of Respondents: 6,000.
Estimated Burden Hours Per Respondent: 1 hour, 20 minutes.
Estimated Total Reporting Burden: 8,000 hours.
OMB Number: 1545–1671.
Regulation Project Number: REG–209709–94 Final.
Type of Review: Extension.
Title: Amortization of Intangible Property.
Description: The information is required by the IRS to aid it in administering the law and to implement the election provided by section 197(f)(9)(B) of the Internal Revenue Code. The information will be used to verify that a taxpayer is properly reporting its amortization and income taxes.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 3 hours.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1,500 hours.
Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW.,Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 03–8162 Filed 4–3–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 27, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 5, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0260.
Form Number: IRS Form 706–CE.
Type of Review: Revision.
Title: Certificate of Payment of Foreign Death Tax.
Description: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that the estate may claim the foreign death tax credit allowed by IRS section 2014. The information is used by IRS to verify that the proper tax credit has been claimed.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 2,250.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	45 min.
Learning about the law or the form.	4 min.
Preparing and sending the form	25 min.
Copying, assembling, and sending the form to the IRS.	27 min.

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 3,870 hours.
OMB Number: 1545–1516.
Form Number: IRS Form 8832.
Type of Review: Extension.
Title: Entity Classification Election.
Description: An eligible entity that chooses not be classified under the default rules or that wishes to change its current classification must file Form 8832 to elect a classification.
Respondents: Business or other for-profit, farms.
Estimated Number of Respondents/Recordkeepers: 5,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	1 hr., 49 min.
Learning about the law or the form.	2 hr., 7 min.
Preparing and sending the form to the IRS.	23 min.

Frequency of Response: On occasion, other (for year of sale of home).
Estimated Total Reporting/Recordkeeping Burden: 21,650 hours.
Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW.,Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental Reports, Management Officer.
[FR Doc. 03–8163 Filed 4–3–03; 8:45 am]
BILLING CODE 4830–01–P

VOL
68
ISS
65
AP
4
003
MI

Federal Register

Friday,
April 4, 2003

Part II

Deparment of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Establishment of Three Additional Manatee Protection Areas in Florida; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ06

Endangered and Threatened Wildlife and Plants; Establishment of Three Additional Manatee Protection Areas in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to establish three additional manatee protection areas in Florida. We are proposing this action under the Endangered Species Act of 1973, as amended (ESA), and the Marine Mammal Protection Act of 1972, as amended (MMPA), to further recovery of the Florida manatee (*Trichechus manatus latirostris*) by reducing the number of takings. We are proposing to designate areas in Lee, Duval, Clay, St. Johns, and Volusia Counties as manatee refuges in which certain waterborne activities would be regulated. Specifically, watercraft would be required to operate at idle, slow speed, 40 kilometers per hour (25 mph), or 48 kilometers per hour (30 mph) in areas described in the proposed rule. We also announce the availability of a draft environmental assessment for this action.

DATES: We will consider comments on both the proposed rule and the draft environmental assessment that are received by June 3, 2003. We will hold public hearings on Tuesday, May 13, in Ft. Myers, FL; Wednesday, May 14, in Daytona Beach, FL; and Thursday, May 15, in Jacksonville, FL. See additional information on the public comment process in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Formal public hearings will be held from 6:30 p.m. to 9 p.m. at the following locations:

Ft. Myers, FL, on Tuesday, May 13, at the Harborside Convention Hall, 1375 Monroe St.; Daytona Beach, FL, on Wednesday, May 14, at the Ocean Center, 101 N. Atlantic Ave.; Jacksonville, FL, on Thursday, May 15, at The University Center, University of North Florida campus, 4567 St. Johns Bluff Rd. South.

If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information by mail to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, Attn: Proposed Manatee Refuges, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

2. You may hand-deliver written comments to our Jacksonville Field Office, at the above address, or fax your comments to 904/232–2404.

3. You may send comments by electronic mail (e-mail) to *manatee@fws.gov*. For directions on how to submit electronic comment files, see the "Public Comments Solicited" section.

We request that you identify whether you are commenting on the proposed rule or draft environmental assessment. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m., at the above address. You may obtain copies of the draft environmental assessment from the above address or by calling 904/232–2580, or from our Web site at *http://northflorida.fws.gov*.

FOR FURTHER INFORMATION CONTACT: David Hankla, Peter Benjamin, or Jim Valade (see **ADDRESSES** section), telephone 904/232–2580; or visit our Web site at *http://northflorida.fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The West Indian manatee is federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and the species is further protected as a depleted stock under the MMPA (16 U.S.C. 1361–1407). Florida manatees, a subspecies of the West Indian manatee (Domning and Hayek, 1986), live in freshwater, brackish, and marine habitats in coastal and inland waterways of the southeastern United States. The majority of the population can be found in Florida waters throughout the year, and nearly all manatees use the waters of peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm water temperatures generally above 20° Celsius (68° Fahrenheit) to survive during periods of cold weather. During the winter months, most manatees rely on warm water from industrial discharges and natural springs for warmth. In warmer months, they expand their range and occasionally are seen as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Status of the Florida Manatee

Long-term studies, as described below, suggest that there are four relatively distinct regional populations of manatees in Florida—(a) the Northwest Region, along the Gulf of Mexico from Escambia County east and south to Hernando County; (b) the Upper St. Johns River Region, consisting of Putnam County from Palatka south to Lake and Seminole counties; (c) the Atlantic Region, consisting of counties along the Atlantic coast from Nassau County south to Miami-Dade County and that portion of Monroe County adjacent to the Florida Bay and the Florida Keys; and counties along the lower portion of the St. Johns River north of Palatka, including Putnam, St Johns, Clay and Duval counties; and (d) the Southwest Region, consisting of counties along the Gulf of Mexico from Pasco County south to Whitewater Bay in Monroe County.

Despite significant efforts dating back to the late 1970s and early 1980s, scientists have been unable to develop a useful means of estimating or monitoring trends in the size of the overall manatee population in the southeastern United States (O'Shea, 1988; O'Shea *et al.*, 1992; Lefebvre *et al.*, 1995). Even though many manatees aggregate at warm-water refuges in winter and most, if not all, such refuges are known, direct counting methods (*i.e.*, by aerial and ground surveys) are unable to account for uncertainty in the number of animals that may be away from these refuges at any given time, the number of animals not seen because of turbid water, and other factors. The use of mark-resighting techniques to estimate manatee population size based on known animals in the manatee photo-identification database has also been impractical, as the proportion of unmarked manatees cannot be estimated.

The only data on population size include un-calibrated indices based on maximum counts of animals at winter refuges made within one or two days of each other. Based on such information in the late 1980s, the total number of manatees throughout Florida was originally thought to include at least 1,200 animals (Service, 2001). Because aerial and ground counts at winter refuges are highly variable depending on the weather, water clarity, manatee behavior, and other factors (Packard *et al.*, 1985; Lefebvre *et al.*, 1995), interpretation of these data to assess short-term trends is difficult (Packard and Mulholland, 1983; Garrott *et al.*, 1994).

Beginning in 1991, the State of Florida initiated a statewide, synoptic, aerial survey program to count manatees in potential winter habitat during periods of severe cold weather

(Ackerman, 1995). These surveys are much more comprehensive than those used to estimate a minimum population during the 1980s. The highest statewide, minimum count from these surveys was 3,276 manatees in January 2001; the highest count on the east coast of Florida included 1,814 animals (January 2003) and the highest on the west coast included 1,756 (January 2001).

Due to the problems mentioned above, we do not know what proportion of the total manatee population is counted in these surveys. These uncorrected counts do not provide a basis for assessing population trends, although trend analyses of temperature-adjusted aerial survey counts may provide insight to general patterns of population growth in some regions (Garrott *et al.*, 1994, 1995; Craig *et al.*, 1997; Eberhardt *et al.*, 1999).

It is possible, however, to monitor the number of manatees using the Blue Spring (Volusia County) and Crystal River (Citrus County) warm-water refuges. At Blue Spring (in the Upper St. Johns River Region), with its unique combination of clear water and confined spring area, it has been possible to count the number of resident animals by identifying individual manatees from scar patterns. The data indicate that this group of animals has increased steadily since the early 1970s when it was first studied. During the 1970s the number of manatees using the spring increased from 11 to 25 (Bengtson, 1981). In the mid-1980s about 50 manatees used the spring (Service, 2001), and by the winter of 1999–2000, the number had increased to 147 (Hartley, 2001).

In the Northwest Region, the clear, shallow waters of Kings Bay (Citrus County) have made it possible to monitor the number of manatees using this warm-water refuge at the head of Crystal River. Large aggregations of manatees apparently did not exist there until recent times (Service, 2001). The first careful counts were made in the late 1960s. Since then, manatee numbers have increased significantly. From 1967 to 1968, Hartman (1979) counted 38 animals in Kings Bay. By 1981–1982, the maximum winter count had increased to 114 manatees (Powell and Rathbun, 1984), and in November 2000, the maximum count was 301 (Service, 2003).

Both births and immigration of animals from other areas have contributed to the increases in manatee numbers at Crystal River and Blue Spring. Animals may be further attracted to these areas because of local manatee protection areas. Three manatee sanctuaries (areas in which waterborne activities are prohibited) in Kings Bay were established in 1980; an additional three were added in 1994, and a seventh in 1998. The increases in counts at Blue Spring and Crystal River are accompanied by estimates of adult survival and population growth that are higher than those determined for the Atlantic coast (Eberhardt and O'Shea, 1995; Langtimm *et al.*, 1998; Eberhardt *et al.*, 1999).

While aircraft synoptic surveys provide a "best estimate" of the minimum Florida manatee population size, there are no confidence intervals (derived through reliable, statistically based, population-estimation techniques) for these estimates. With the exception of a few places where manatees may aggregate in clear, shallow water, not all manatees can be seen from aircraft because of water turbidity, depth, surface conditions, variable times spent submerged, and other considerations. Thus, results obtained during typical manatee synoptic surveys yield unadjusted partial counts. While these results are of value in providing information on where manatees occur, likely relative abundance in various areas, and seasonal shifts in manatee abundance, they do not provide good population estimates, nor can they reliably measure trends in the manatee population. Consequently, the Florida Manatee Recovery Plan (Service, 2001) concludes that "despite considerable effort in the early 1980s, scientists have been unable to develop a useful means of estimating or monitoring trends in size of the overall manatee populations in the southeastern United States."

Population models employ mathematical relationships based on survival and reproduction rates to estimate population growth and trends in growth. A deterministic model (a model in which there are no random events) that uses classical mathematical approaches and various computational procedures with data on reproduction and survival of living, identifiable manatees suggests a maximum population growth rate of about 7 percent per year, excluding emigration or immigration (Eberhardt and O'Shea, 1995). This maximum was based on studies conducted between the late 1970s and early 1990s in the well-protected winter aggregation area at Crystal River and did not require estimation of the population size. The analysis showed that the chief factor affecting the potential for population growth is survival of adults.

Estimated adult survival in the Atlantic Region (a larger region with less protection) has suggested slower or no population growth between the late 1970s and early 1990s. This modeling shows the value of using survival and reproduction data obtained from photo-identification studies of living manatees to compute population growth rates with confidence intervals, providing information that can be used to infer long-term trends in the absence of reliable population size estimates. Collection of similar data has been initiated only recently in that area of Florida from Tampa Bay to the Caloosahatchee River (beginning in the mid-1990s) and none is available for many of the remaining areas used by manatees in southwestern Florida (Southwest Region).

A population viability analysis (PVA), in which random events, such as red tide and extremely cold winters, are incorporated into a model, was carried out for manatees based on age-specific mortality rates estimated from the age distribution of manatees found dead throughout Florida from 1979 through 1992 (Marmontel *et al.*, 1997). This method of estimating survival relied on certain assumptions that were not fully testable; despite this, the results again pointed out the importance of adult survival to population persistence. Given a population size that reflected a 1992 minimum population estimate, the PVA showed that if adult mortality as estimated for the study period were reduced by a modest amount (for example, from 11 percent down to 9 percent), the Florida manatee population would likely remain viable for many years. However, the PVA also showed that slight increases in adult mortality would result in extinction of manatees within the next 1,000 years.

The above review demonstrates that using statewide population size "estimates" of any kind is scientifically weak for estimating population trends in manatees. The weight of scientific evidence suggests that the potential for population increases over the last two decades is strong for two protected aggregation areas. New population analyses, based on more recent (since 1992) information, are not yet available in the peer-reviewed literature.

In 2001, the Manatee Population Status Working Group (MPSWG) provided a statement summarizing what they believed to be the status of the Florida manatee at that time (Wildlife Trust, 2001). The MPSWG stated that, for the Northwest and Upper St. Johns River regions, available evidence indicated that there had been a steady increase in animals over the last 25 years. The statement was less optimistic for the Atlantic Region due to an adult survival rate that was lower than the rate necessary to sustain population

growth. The MPSWG believed that this region had likely been growing slowly in the 1980s; but then may have leveled off or even possibly declined. They considered the status of the Atlantic Region to be "too close to call." Such finding was consistent with high levels of human-related and, in some years, cold-related deaths in this region. Regarding the Southwest Region, the MPSWG acknowledged that further data collection and analysis would be necessary to provide an assessment of the manatee's status in this region. Preliminary estimates of adult survival available to the MPSWG at that time indicated that the Southwest Region was similar to the Atlantic Region and "substantially lower than [the adult survival estimates] for the Northwest and Upper St. Johns Regions." The Southwest Region was cited as having had high levels of watercraft-related deaths and injuries and natural mortality events (*i.e.*, red tide and severe cold).

Recent information suggests that the overall manatee population has grown since the species was listed in 1967 (50 CFR 17.11). Based on data provided at the April 2002 Manatee Population Ecology and Management Workshop, we believe that the Northwest and Upper St. Johns River regions and are approaching demographic benchmarks established in the Florida Manatee Recovery Plan (Service, 2001) for reclassification from endangered to threatened status. We also believe that the Atlantic Region is close to meeting the downlisting benchmark for adult survival, at a minimum, and is close to meeting or exceeding other demographic criteria. We are less optimistic, however, regarding the Southwest Region. Although data are still insufficient or lacking to compare the Southwest Region's status to the downlisting/delisting criteria, preliminary data for adult survival indicate that this Region is below the benchmarks established in the recovery plan.

Although we are optimistic about the potential for recovery in three out of the four regions, it is important to clarify that in order to downlist or delist the manatee, pursuant to the ESA, all four regions must simultaneously meet the appropriate criteria as described in the Florida Manatee Recovery Plan (Service, 2001). Additionally, either action would necessarily be based on a status assessment for the species throughout its range (including the United States and Caribbean) and would consider the factors, as described in section 4(a)(1) of the ESA, that determine whether any species is categorized as endangered or threatened.

In order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA. That is, threats to the species must be reduced or eliminated such that the species no longer fits the definitions of threatened or endangered. While suggestions of increasing population size are very encouraging, there has been no confirmation that significant threats to the species, including human-related mortality, injury, and harassment, and habitat alteration, have been reduced or eliminated to the extent that the Florida manatee may be reclassified from endangered to threatened status. Pursuant to our mission, we continue to assess this information with the goal of meeting our manatee recovery objectives.

Threats to the Species

Human activities, and particularly waterborne activities, are resulting in the take of manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm means an act which kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass includes intentional or negligent acts or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

The MMPA sets a general moratorium, with certain exceptions, on the take and importation of marine mammals and marine mammal products (section 101(a)) and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment is defined under the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased dramatically as a result of residential growth and increased visitation. This phenomenon is particularly evident in the State of Florida. The human population of Florida has grown by 246 percent since 1970, from 6.8 million to 16.7 million residents (U.S. Census Bureau, 2003), and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a report by the Florida Office of Economic and Demographic Research (2000), it is expected that, by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has increased dramatically. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998. In concert with this increase of human population growth and visitation is the increase in the number of watercraft that travel Florida waterways. In 2002, 961,719 vessels were registered in the State of Florida (Division of Highway Safety and Motor Vehicles, 2003). This represents an increase of 59 percent since 1993. The Florida Department of Community Affairs estimates that, in addition to boats belonging to Florida residents, between 300,000 and 400,000 boats registered in other States use Florida waters each year.

Increases in the human population and the concomitant increase in human activities in manatee habitat compound the effect of such activities on manatees. Human activities in manatee habitat include direct and indirect effects. Direct impacts include injuries and deaths from watercraft collisions, deaths from water control structure operations, lethal and sublethal entanglements with recreational and commercial fishing gear, and alterations of behavior due to harassment. Indirect effects include habitat alteration and destruction, which include such activities as the creation of artificial warm water refuges, decreases in the quantity and quality of warm water in natural spring areas, changes in water quality in various parts of the State, the introduction of marine debris, and other, more general disturbances.

Manatee mortality has continued to climb steadily. Average annual total mortality in the 1990s (227.9) was nearly twice that of the 1980s (118.2). In 2002, 305 manatee deaths were documented in Florida. Total deaths over the past 5 years are almost three times greater than they were in the first half of the 1980s. Although a large part of this increase may be due to an increase in manatee abundance, rapid growth in human activities and development may also be significant factors. Over the past 5 years, human-related manatee mortality has accounted for 33 percent of all manatee deaths, with watercraft-related deaths accounting for 28 percent of the total. These rates are about 5 to 7 percent higher than the early 1980s, when about 28 percent of all deaths were human-related and 21 percent were due to watercraft.

The continuing increase in the number of recovered dead manatees throughout Florida has been interpreted as evidence of increasing mortality rates (Ackerman *et al.*, 1995). Between 1976 and 1999, the number of carcasses collected in Florida increased at a rate of 5.8 percent per year, and deaths caused by watercraft strikes increased by 7.2 percent per year (Service, 2002). Because the manatee has a low reproductive rate, a decrease in adult survivorship due to watercraft collisions could contribute to a long-term population decline (O'Shea *et al.*, 1985). It is believed that a 1 percent change in adult survival likely results in a corresponding change in the rate of population growth or decline (Marmontel *et al.*, 1997).

Collisions with watercraft are the largest cause of human-related manatee deaths. Data collected during manatee carcass salvage operations in Florida indicate that a total of 1,145 manatees (from a total carcass count of 4,545) are confirmed victims of collisions with watercraft (1978 to 2002). This number may underestimate the actual number of watercraft-related mortalities, since many of the mortalities listed as "undetermined causes" show evidence of collisions with vessels. Collisions with watercraft comprise approximately 25 percent of all manatee mortalities since 1978. Approximately 75 percent of all watercraft-related manatee mortality has taken place in 11 Florida counties (Brevard, Lee, Collier, Duval, Volusia, Broward, Palm Beach, Charlotte, Hillsborough, Citrus, and Sarasota) (FWCC: Florida Marine Research Institute (FMRI) Manatee Mortality Database, 2003). The last 5 years have been record years for the number of watercraft-related mortalities.

The second largest cause of human-related manatee mortality is entrapment in water control structures and navigation locks (FWCC: FMRI Manatee Mortality Database, 2003). Manatees may be crushed in gates and locks or may be trapped in openings where flows prevent them from surfacing to breathe. Locks and gates were responsible for 164 manatee deaths between 1978 and 2002, or approximately 4 percent of all deaths during this period. While there are no well-defined patterns characterizing these mortalities, it is believed that periods of low rainfall increase the likelihood of manatees being killed in these structures. These periods require more frequent, large-scale movements of water, which require more frequent gate openings and closings in areas that attract manatees searching for fresh water. We have been working, through an interagency task force, with various Federal and State agencies to retrofit these structures with reversing mechanisms that prevent manatee crushings.

Manatees are also affected by other human-related activities. Impacts resulting from these activities include deaths caused by entrapment in pipes and culverts; entanglement in ropes, lines, and nets; ingestion of fishing gear or debris; vandalism; and poaching. These activities have accounted for 124 manatee deaths since 1978, an average of more than 4 deaths per year. As with watercraft-related mortalities, these deaths also appear to be increasing, with 40 of these deaths occurring between 1998 and 2002 (an average of 8 deaths per year over the last 5 years).

Manatee Protection Areas

To minimize the number of injuries and deaths associated with watercraft activities, we and the State of Florida have designated manatee protection areas at sites throughout coastal Florida where conflicts between boats and manatees have been well documented and where manatees are known to frequently occur. These areas include posted signs to inform the boating public about restrictions and prohibitions. We propose to enhance existing protection areas by establishing three additional manatee refuges in five Florida counties.

Federal authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA, and is codified in 50 CFR, part 17, subpart J. We have discretion, by regulation, to establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees (that is, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct). In accordance with 50 CFR 17.106, areas may be established on an emergency basis when such takings are imminent.

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR 17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to, a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to, a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredge and fill activities.

Relationship to Manatee Lawsuit

On January 13, 2000, several organizations and individuals filed suit against the Service and the U.S. Army Corps of Engineers alleging violations of the ESA, the MMPA, the National Environmental Policy Act, and the Administrative Procedure Act. Four groups representing development and boating interests intervened. Following extensive negotiations, the suit was resolved by a Settlement Agreement dated January 5, 2001. On October 24, 2001, the plaintiffs filed a Formal Notice of Controversy alleging that the Service had violated provisions of the Settlement Agreement. On April 17, 2002, the plaintiffs filed an Expedited Motion to enforce the Settlement Agreement, and on July 9, 2002, the Court found that the Service had not fulfilled its settlement requirements to designate refuges and sanctuaries throughout peninsular Florida. On August 1, 2002, and November 7, 2002, the Court ordered the Federal defendants to show cause why they should not be held in contempt for violating the Court's orders of January 5, 2002, January 17, 2002, and August 1, 2002.

To resolve these controversies, the plaintiffs and Federal defendants entered into a Stipulated Order wherein the Service agreed to submit to the **Federal Register** for publication a proposed rule for the designation of additional manatee protection areas. The areas in this notice represent those areas that the Service has determined, based on the current, best available data,

should be considered for designation as manatee refuges.

Site Selection Process and Criteria

In order to establish a site as a manatee protection area, we must determine that there is substantial evidence showing such establishment is necessary to prevent the take of one or more manatees. In documenting historic manatee use and harm and harassment, we relied on the best available information (although some data are admittedly sparse), including aerial survey and mortality data and additional information from FMRI and the U.S. Geological Survey's Sirenia Project, manatee experts, as well as the public, and our best professional judgment.

Definitions

The following terms are used in 50 CFR 17.108. We present them here to aid in understanding this proposed rule.

Idle speed means the minimum speed needed to maintain watercraft steerage.

Planing means riding on or near the water's surface as a result of the hydrodynamic forces on a watercraft's hull, sponsons (projections from the side of a ship), foils, or other surfaces. A watercraft is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

Slow speed means the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Watercraft must not be operated at a speed that creates an excessive wake. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A watercraft is *not* proceeding at slow speed if it is—(1) on a plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft is proceeding at slow speed if it is fully off plane and completely settled in the water, not plowing or creating an excessive wake.

Slow speed (channel exempt) designates a larger area where slow speed is required, through which a maintained, marked channel is exempt from the slow speed requirement.

Slow speed (channel included) means that the slow-speed designation applies to the entire marked area, including within the designated channel.

Wake means all changes in the vertical height of the water's surface caused by the passage of a watercraft, including a vessel's bow wave, stern wave, and propeller wash, or a combination of these.

Areas Proposed for Designation as Manatee Refuges

Caloosahatchee River—San Carlos Bay Manatee Refuge

We are proposing to establish a manatee refuge in the Caloosahatchee River and San Carlos Bay in Lee County (in the Southwest Region) for the purpose of regulating vessel speeds, from the Seaboard Coastline Railroad trestle, downstream to Channel Marker "93," and from Channel Marker "99" to the Sanibel Causeway. Except as provided in 50 CFR 17.105, watercraft will be required to proceed as follows:

a. from the Seaboard Coastline Railroad trestle at Beautiful Island, downstream to a point 152 meters (500 feet) east of the Edison Bridge, a distance of approximately 7.2 km (4.5 miles), slow speed in the marked navigation channel from November 15 to March 31 and not more than 40 kilometers (km) per hour (25 miles per hour (mph)) in the channel from April 1 to November 14;

b. from a point 152 meters (500 feet) east of the Edison Bridge downstream to a point 152 meters (500 feet) west of the Caloosahatchee Bridge, approximately 1.1 km (0.7 miles) in length, slow speed year-round, shoreline-to-shoreline including the marked navigation channel;

c. from a point 152 meters (500 feet) west of the Caloosahatchee Bridge downstream to a point 152 meters (500 feet) northeast of the Cape Coral Bridge, a distance of approximately 10.9 km (6.8 miles), year-round, slow speed shoreline buffers extending out to a distance of approximately 91 meters (300 feet) from the marked navigation channel. (In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than 0.4 km (0.25 mile), the slow speed buffer will extend to the edge of the marked navigation channel.) Vessel speeds between these buffers (including the marked navigation channel) are limited to not more than 40 km per hour (25 mph) throughout the year;

d. from a point 152 meters (500 feet) northeast of the Cape Coral Bridge downstream to a point 152 meters (500) feet southwest of the Cape Coral Bridge, a distance of approximately 0.3 km (0.2 mile), slow speed, channel included, year-round;

e. from a point 152 meters (500 feet) southwest of the Cape Coral Bridge to Channel Marker "72," a distance of approximately 1.9 km (or 1.2 miles), slow speed year-round, shoreline buffers extending out to a distance of approximately 91 meters (300 feet) from the marked navigation channel. (In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than ¼ mile, the slow speed buffer will extend to the edge of the marked navigation channel.) Vessel speeds between these buffers (including the marked navigation channel) are limited to not more than 40 km per hour (25 mph);

f. from Channel Marker "72" to Channel Marker "82" (in the vicinity of Redfish Point), for a distance of approximately 3.1 km (1.9 miles) in length, slow speed year-round shoreline-to-shoreline, including the marked navigation channel;

g. from Channel Marker "82" to Channel Marker "93," a distance of approximately 3.9 km (2.4 miles), in length, slow speed year-round, shoreline buffers extending out to a distance of approximately 91 meters (300 feet) from the marked navigation channel. (In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than 0.4 km (0.25 mile), the slow speed buffer will extend to the edge of the marked navigation channel.) Vessel speeds between these buffers, including the marked navigation channel, are limited to not more than 40 km per hour (25 mph);

h. from Channel Marker "99" to the Sanibel Causeway, slow speed year-round in San Carlos Bay within the following limits: a northern boundary described by the southern edge of the marked navigation channel, a line approximately 2.9 km (1.8 miles) in length; a southern boundary described by the Sanibel Causeway (approximately 1.9 km or 1.2 miles in length); a western boundary described by a line that connects the western end of the eastern most Sanibel Causeway island and extending northwest to the western shoreline of Merwin Key (approximately 3.1 km or 1.9 miles in length); the eastern boundary includes the western limit of the State-designated manatee protection area (68C–22.005) near Punta Rassa (approximately 2.9 km or 1.8 miles in length). Speeds are unrestricted in the channel and bay waters to the west of this area.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program (Florida Fish and Wildlife Conservation Commission (FWCC, 2000). Per these studies, it is apparent the Caloosahatchee River is used throughout its length throughout the year by manatees. Primary winter-use areas include the Florida Power and Light Company's Fort Myers Power Plant and Matlacha Pass, upstream and downstream (respectively) of the proposed refuge. The power plant is a major winter refuge for manatees. On January 6, 2001, 434 manatees were observed wintering in this region (FWCC: FMRI Aerial Survey Database, 2003).

In warmer months, manatees use the river as a travel corridor between upstream fresh water, foraging, and resting sites and downstream foraging areas. Manatees use the canal systems in Fort Myers and Cape Coral (between the Edison Bridge upstream and Shell Point) to rest and drink fresh water (Weigle, *et al.*, 2002). Manatees travel west of Shell Point to feed in the seagrass beds in San Carlos Bay and adjacent waterways.

An analysis of the telemetry data indicates that manatees appear to travel along shallow areas relatively close to shore and cross the river in narrow areas near Redfish Point and Shell Point. The Redfish and Shellfish Point sections of the river represent specific areas where manatees and boats overlap during their travels (Weigle *et al.*, 2002). The funneling of high speed watercraft and manatees through these narrow areas increases the likelihood of manatee-watercraft collisions in this area. Four watercraft-related manatee mortalities occurred in this area since January 2001 (FWCC: FMRI Manatee Mortality Database, 2003). Given this history, we designated Shell Island (the area around Shell Point) as a manatee refuge on November 8, 2002 (67 FR 68450).

The number of registered vessels in Lee County has increased by 25 percent over the past 5 years (from 36,255 vessels in 1998 to 45,413 in 2002) (FWCC, 2002). According to the FWCC's recent study of manatee mortality, manatee habitat, and boating activity in the Caloosahatchee River (FWCC, 2002), vessel traffic increases as the day progresses and doubles on the weekends compared to weekdays. The highest volumes of traffic were recorded in the spring and lowest volume in the winter. Highest vessel traffic densities occurred at Shell Point where the Caloosahatchee River and San Carlos Bay converge. Many of the boats in the lower Caloosahatchee River originate from the Cape Coral canal system and head toward the Gulf of Mexico.

Presently, there are State-designated, manatee speed zones throughout most of Lee County. Seasonal speed zones were established in the Caloosahatchee and Orange rivers around the Fort Myers power plant in 1979 (68C–22.005 FAC). Additional speed zones were established in the Caloosahatchee River downstream of the power plant in November 1989 (68C–22.005 FAC). Speed zones were established countywide in November 1999 (68C–22.005 FAC). The majority of these zones include shoreline buffers that provide protection in nearshore areas frequented by manatees. All zones were to be posted with the appropriate signage by July 2001 (68C–22.004 and 68C–22.005 FAC). Compliance with speed zones in the Caloosahatchee averaged only 57 percent (FWCC, 2002).

According to FWCC: FMRI's manatee mortality database, 764 manatee carcasses were recorded in Lee County from 1974 to 2002 (FWCC: FMRI Manatee Mortality Database, 2003). Of this total, 163 manatee deaths were watercraft-related (21 percent of the total number of deaths in Lee County). Over the past 13 years, the County's rate of increase in watercraft-related manatee mortality is higher than the rates of increase in watercraft-related mortality in southwest Florida and in watercraft-related deaths statewide. Areas east of the Edison Bridge and west of Shell Point are areas with recent increases in watercraft-related mortality; eight watercraft-related deaths have occurred east of the railroad trestle and seven have occurred in San Carlos Bay since 2000, including two watercraft-related deaths in San Carlos Bay since July 2001, when State speed zones were marked (FWCC: FMRI Manatee Mortality Database, 2003).

We believe the measures in this proposed regulation will improve manatee protection and are necessary to prevent the take of at least one manatee by harassment, injury, and/or mortality by extending coverage to currently unprotected areas used by manatees. The increased width of the shoreline buffers downstream of the Caloosahatchee Bridge will provide a greater margin of safety for manatees in this important manatee area.

Lower St. Johns River Manatee Refuge

We are proposing to establish a manatee refuge for the purpose of regulating waterborne vessel speeds in portions of the St. Johns River (in the Atlantic Region) and adjacent waters in Duval, Clay, and St. Johns Counties from Reddie Point upstream to the mouth of Peter's Branch (including Doctors Lake) in Clay County on the western shore, and to the southern shore of the mouth of Julington Creek in St. Johns County on the eastern shore. Except as provided in 50 CFR 17.105, watercraft will be required to proceed as follows:

a. From Reddie Point upstream to the Main Street Bridge, a distance of approximately 11.6 km (or 7.2 miles), slow speed, year-round, outside the navigation channel and not more than 40 km per hour (25 mph) in the channel (from Channel Marker "81" to the Main Street Bridge, the channel is defined as the line of sight extending west from Channel Markers "81" and "82" to the center span of the Main Street Bridge);

b. From the Main Street Bridge to the Fuller Warren Bridge, a distance of approximately 1.6 km (or 1.0 miles) slow speed, channel included, year-round;

c. Upstream of the Fuller Warren Bridge, a 305-meter (1,000-foot), slow speed, year-round, shoreline buffer to the south bank of the mouth of Peter's Branch in Clay County along the western shore (approximately 31.1 km or 19.3 miles); and in Doctors Lake in Clay County, slow speed, year-round, along a 274-meter (900-foot) shoreline buffer (approximately 20.8 km or 12.9 miles); and a 305-meter (1,000-foot), slow speed, year-round, shoreline buffer to the south bank of the mouth of Julington Creek in St. Johns County along the eastern shore (approximately 32.5 km or 20.2 miles) to a line north of a western extension of the Nature's Hammock Road North.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Manatees occur throughout the proposed manatee protection area; the extent of use varies by habitat type and time of year (White *et al.*, 2002). Telemetry and aerial survey data indicate that peak numbers occur between March and June with heaviest use along the St. Johns River shorelines upstream of the Fuller Warren Bridge and along the southeast shoreline of Doctors Lake. The latter appears to correlate with the highest quality feeding habitat. Recent studies demonstrate little use during the December through February period (White *et al.*, 2002). While there were warm water discharges (*i.e.*, power plant and industrial effluents) located within the area of the proposed refuge, these man-made attractants no longer exist.

Vessel speeds are currently restricted throughout the proposed manatee protection area. In 1989, boating restricted areas were adopted by Duval County and established by the State of Florida for portions of the St. Johns River. These include a bank-to-bank, slow-speed zone between the Florida East Coast Railroad Bridge and the Main Street Bridge and a "slow down/minimum wake when flashing" zone

between the Main Street and Hart Bridges, activated during special events at the discretion of the Jacksonville Sheriff's Office (16N–24.016 Duval County Boating Restricted Areas). The first manatee protection areas were adopted in 1989 by Duval County and in 1994 by the State of Florida. These measures included a slow-speed, channel exempt zone from Reddie Point to the Main Street Bridge and a 91-meter (300-foot) shoreline buffer in portions of the St. Johns River upstream of the Fuller Warren Bridge. The manatee protection areas were reconfigured in 2001. Current protection measures consist of shoreline buffers that vary in width from 91 to 274 meters (300 to 900 feet). There are provisions downstream of the Fuller Warren Bridge that include a shoreline buffer of 152 meters (500 feet) or 61 meters (200 feet) from the end of docks, whichever is greater (an expansion of the 1989 91-meter (300-foot) buffer) (68C–22.027 FAC). We believe that the variable shoreline buffers are not adequately posted, which makes these areas hard to enforce and difficult for the boating public to understand and comply with these measures.

Overall, 270 manatee deaths were recorded in Duval County between 1974 and 2002 (FWCC: FMRI Manatee Mortality Database, 2003). Ninety-four of these deaths included deaths caused by watercraft collision. Fifty-one watercraft-related manatee deaths occurred within the proposed manatee protection area. Of these, 24 were recovered between Reddie Point and the Matthews Bridge, 10 were recovered between the Hart and Acosta bridges, 6 were recovered between the Fuller Warren and Buckman bridges, and 11 were recovered upstream of the Buckman Bridge. Most of these deaths have occurred in that portion of the river where manatees and boats are most constricted (FWCC, 2000). From 1994 to 2001, when the area was protected under the initial State rule, manatee deaths averaged two per year between Reddie Point and the Fuller Warren Bridge. In 2002, subsequent to adoption of the current rule, one watercraft-related death was documented in this area; a single watercraft-related death was documented upstream of the Fuller Warren Bridge in 2001.

We believe the proposed measures in this regulation will improve manatee protection and are necessary to prevent the taking of at least one manatee through harassment, injury, and/or mortality by extending coverage to currently unprotected areas used by manatees, by improving the ability of the public to understand and, thus, comply with the vessel operation restrictions, and by improving the ability of law enforcement personnel to enforce the restrictions. The proposed configuration should be less complicated, easier to post, and will reduce reliance on waterway users to judge distances from the shoreline or the ends of docks and piers. The increased width of the shoreline buffers upstream of the Fuller Warren Bridge will also provide a greater margin of safety for manatees between areas of high speed boating activity and highest manatee use. The proposal will not detract from operation of the boater safety zone downstream of the Main Street Bridge during special events.

Halifax and Tomoka Rivers Manatee Refuge

We are proposing to establish a manatee refuge in the Halifax River and associated waterbodies in Volusia County (in the Atlantic Region) for the purpose of regulating vessel speeds, from the Volusia/Flagler county line to New Smyrna Beach. Except as provided in 50 CFR 17.105, watercraft will be required to proceed as follows:

a. From the Volusia County/Flagler County line at Halifax Creek south to Channel Marker "9", a distance of approximately 11.3 km (7.0 miles) in length, slow speed, year-round outside the marked channel with not more than 40 km per hour (25 mph) in the channel;

b. From Channel Marker "9" to a point 152 meters (500 feet) north of the Granada Bridge (State Road 40) (including the Tomoka Basin), a distance of approximately 5.0 km (3.1 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 km per hour (25 mph) in areas between the buffers (and including the marked navigation channel);

c. In the Tomoka River, all waters upstream of the U.S. 1 bridge, a distance of approximately 7.2 km (4.5 miles) in length, slow speed, year-round, shoreline to shoreline; from the U.S. 1 bridge downstream to Latitude 29°19′00″, a distance of approximately 2.1 km (1.3 miles) in length, idle speed, year-round, shoreline to shoreline; from Latitude 29°19′00″ downstream to the confluence of Strickland Creek and the Tomoka River, and including Strickland, Thompson, and Dodson creeks, a combined distance of approximately 9.7 km (6 miles) in length, slow speed, year-round, shoreline to shoreline; from the confluence of Strickland Creek and the Tomoka River downstream to the mouth of the Tomoka River, a distance of approximately 1.4 km (0.9 miles) in length, idle speed, year-round, shoreline to shoreline;

d. From 152 meters (500 feet) north to 305 meters (1,000 feet) south of the Granada Bridge (State Road 40), a distance of approximately 0.5 km (0.3 miles) in length, slow speed, year-round, channel included;

e. From a point 305 meters (1,000 feet) south of the Granada Bridge (State Road 40) to a point 152 meters (500 feet) north of the Seabreeze Bridge, a distance of approximately 6.4 km (4.0 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 km per hour (25 mph) in areas between the buffers, and including the marked navigation channel;

f. From 152 meters (500 feet) north of the Seabreeze Bridge, to Channel Marker "40," a distance of approximately 3.7 km (2.3 miles) in length, slow speed, year-round, channel included;

g. From Channel Marker "40" to a point 152 meters (500 feet) north of the Dunlawton Bridge, a distance of approximately 14.5 km (9 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 km per hour (25 mph) in areas between the buffers, and including the marked navigation channel;

h. From 152 meters (500 feet) north to 152 meters (500 feet) south of the Dunlawton Bridge, a distance of approximately 0.3 km (0.2 miles) in length, slow speed, year-round, channel included;

i. From 152 meters (500 feet) south of the Dunlawton Bridge to Ponce Inlet, a distance of approximately 10.5 km (6.5 miles) in length, slow speed, year-round outside of marked channels with not more than 40 km per hour (25 mph) in the channel; in Wilbur Bay, a distance of approximately 2.7 km (1.7 miles) in length, slow speed, year-round, shoreline to shoreline; along the western shore of the Halifax River, a distance of approximately 3.1 km (1.95 miles), slow speed, year-round, with not more than 40 km per hour (25 mph) in the marked channels; in Rose Bay, a distance of approximately 2.7 km (1.7 miles), slow speed, year-round, with not more than 40 km per hour (25 mph) in the marked channels; in all waters of Mill Creek, Tenmile Creek, and Dead End Creek, a combined distance of approximately 5.1 km (3.2 miles) in length, slow speed, year-round, shoreline to shoreline; in Turnbull Bay, a distance of approximately 3.9 km (2.4 miles), slow speed, year-round, with not more than 40 km per hour (25 mph) in the marked channels; in Spruce Creek, for a distance of approximately 5.6 km (3.5 miles), shoreline to shoreline, April 1 to August 31, slow speed, and from September 1 through March 31, not more than 40 km per hour (25 mph);

j. In waters north of Ponce Inlet, between Live Oak Point and Channel Marker "2," a distance of approximately 2.9 km (1.8 miles), slow speed, year-round, shoreline to shoreline; in waters adjacent to Ponce Inlet, slow speed, year-round outside of the marked navigation channel and other marked access channels, with not more than 40 km per hour (25 mph) in the marked channels; in waters within Ponce Inlet, speeds are restricted to not more than 48 km per hour (30 mph);

k. In the Intracoastal Waterway from Redland Canal to the A1A Bridge (New Smyrna Beach), for a distance of approximately 5.3 km (3.3 miles) in length, slow speed, year-round, channel included.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program (FWCC, 2000). In general, manatees primarily use the Halifax River as a travel corridor (Deutsch, 1998, 2000); manatees use the downtown Daytona Beach area marinas as a source of drinking water and may calve here. The Tomoka River system is a known calving area, as evidenced by observations of calving manatees (McNerney, 1982) and aerial observations of significant numbers of cow and calf pairs (FWCC, 2000). Other activities observed throughout these systems include playing and/or engaging in sexual activity, feeding, and resting. Manatees are known to occur in these areas throughout the year (Deutsch, 1998, 2000), although they are more abundant during the warmer months of the year (FWCC, 2000).

Two hundred and eight manatee deaths occurred in Volusia County between 1974 and 2002 (FWCC: FMRI Manatee Mortality Database, 2003). This number includes 60 watercraft-related deaths. Of these, 30 watercraft-related deaths occurred in coastal Volusia County, (including 6 deaths in the Tomoka River system and 16 in the Halifax River). Twenty of these deaths have occurred over the past 10 years and seven of these over the past 2 years. Three of the watercraft-related deaths occurred in the Tomoka River in 2001. Carcass recovery sites for manatees known to have died as a result of watercraft collision include the lower Tomoka River and tributaries, the Halifax River in downtown Daytona Beach, areas to the south of Channel Marker "40" and the Dunlawton Bridge, and areas to the south of Ponce Inlet. Watercraft-related deaths occur between the months of March and October, with most occurring in May, June, and July.

The existing, State-designated manatee protection areas in coastal Volusia County were adopted by the State of Florida in 1994 (68C–22.012 FAC). These measures include slow and idle speed restrictions in the Tomoka River and associated waterbodies (except for in those areas upstream and downstream of Alligator Island), 91-meter (300-foot) shoreline buffers along most of the Halifax River (with maximum speeds varying between 40 and 48 km per hour (25 and 30 mph) outside of the buffers), slow speeds in the downtown Daytona Beach area (except for a watersports area to the south of Seabreeze Bridge), and a complex of varying restrictions between the Dunlawton Bridge and New Smyrna Beach. The existing State measures include 10 different types of restrictions that are used to restrict 30 discrete areas within the area of the proposed refuge. Fifteen watercraft-related manatee deaths were documented within the area of the proposed refuge since the protection areas were first adopted. Seven of these deaths occurred in 2001, and no watercraft-related deaths were known to have occurred in 2002.

We believe the proposed measures in this regulation will improve manatee protection and will prevent the take of at least one manatee through harassment, injury, and/or mortality by extending coverage to currently unprotected areas used by manatees, and by improving the ability of the public to understand and thus, comply, with protection measures through simplification of restrictions. The increased width of the shoreline buffers along the Halifax River will provide a greater margin of safety for manatees.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why any of these areas should or should not be designated as manatee refuges, including data in support of these reasons;

2. Current or planned activities in the subject areas and their possible effects on manatees;

3. Any foreseeable economic or other impacts resulting from the proposed designations;

4. Potential adverse effects to the manatee associated with designating manatee protection areas for the species; and

5. Any actions that could be considered in lieu of, or in conjunction with, the proposed designations that would provide comparable or improved manatee protection.

Comments submitted electronically should be embedded in the body of the e-mail message itself or attached as a text-file (ASCII), and should not use special characters and encryption. Please also include "Attn: RIN 1018–AJ06," your full name, and return address in your e-mail message. Comments submitted to *manatee@fws.gov* will receive an automated response confirming receipt of your message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Jacksonville Field Office (see **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such a review is to ensure that our decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the comment period, on the specific assumptions and conclusions regarding the proposed designation of these manatee protection areas.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking and will refine this proposal if and when appropriate. Accordingly, the final decision may differ from this proposal.

Public Hearings

We have scheduled three formal public hearings to receive oral comments on the proposed Federal manatee protection areas. Each hearing will run from 6:30 p.m. to 9 p.m. These hearings will afford the general public and interested parties an opportunity to hear information and make formal comments.

Formal public hearings will be held at the following locations:

Tuesday, May 13, in Ft. Myers, FL, at the Harborside Convention Hall, 1375 Monroe St.

Wednesday, May 14, in Daytona Beach, FL, at the Ocean Center, 101 N. Atlantic Ave.

Thursday, May 15, in Jacksonville, FL, at The University Center, University of North Florida campus, 4567 St. Johns Bluff Rd. South.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Chuck Underwood of the Jacksonville Field Office at 904/232–2580, extension 109, or via e-mail to *chuck_underwood@fws.gov*, as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing.

Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to the following address: *Execsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. This proposed rule will not have an annual economic impact of over $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required. It is not expected that any significant economic impacts would result from the establishment of three manatee refuges (approximately 185 river km (115 river miles)) in five counties in the State of Florida.

The purpose of this rule would be to establish three manatee protection areas in Florida. The three areas are located in the Caloosahatchee River in Lee County, the St. Johns River in Duval, Clay and St. Johns Counties, and the Halifax River and Tomoka River in Volusia County. We are proposing to reduce the level of take of manatees by controlling certain human activity in these three areas. For the three manatee refuges, the areas would be year-round slow speed with certain site-specific exceptions, including 40 km per hour (25 mph) in most channels. Affected waterborne activities would include transiting, cruising, water skiing, fishing, and the use of all water vehicles. This rule could result in impacts on recreational boaters, commercial charter boats, and commercial fishermen, primarily in the form of restrictions on boat speeds in specific areas. We could experience increased administrative costs due to this proposed rule. In addition, the rule would be expected to produce economic benefits for some parties as a result of increased manatee protection and decreased boat speeds in the manatee refuge areas.

Regulatory impact analysis requires the comparison of expected costs and benefits of the proposed rule against a "baseline," which typically reflects the regulatory requirements in existence prior to the rulemaking. For purposes of this analysis, the baseline assumes that we take no additional regulatory actions to protect the manatee. In fact, even with no further activity by us, an extensive system of State-designated manatee protection areas is already in place in each of the proposed manatee refuges. Thus, the proposed rule will have only an incremental effect. As discussed below, the net economic impact is not expected to be significant, but cannot be monetized given available information.

The economic impacts of this rule would be due to the changes in speed zone restrictions in the proposed manatee refuge areas. These speed zone changes are summarized below.

In Lee County, in the Caloosahatchee River area, the designation of the proposed Caloosahatchee-San Carlos Bay Manatee Refuge would result in the following changes:

- The portion of the channel upstream of the Edison Bridge (to Beautiful Island) would change from a 40 km per hour (25 mph) limit to seasonal slow speed (*i.e.*, 6.4 to 12.9 km per hour (4 to 8 mph) depending on hull design) from November 15 to March 31.
- The portion of the channel 152 meters (500 feet) east and west of the Edison/ Caloosahatchee Bridge complex would change from 40 km per hour (25 mph) to slow speed year-round.
- Between the Edison/Caloosahatchee Bridge complex and Cape Coral Bridge, shoreline buffers would change from slow speed within 0.4 km (0.25 mile) of shore to variable width, approximating within 91 meters (300 feet) of the marked navigation channel at varying locations. This change eliminates two unprotected shoreline areas along the north shore at and below the Edison/ Caloosahatchee Bridge complex.
- The shore to shore, channel-included buffer, 152 meters (500 feet) east and west of Cape Coral Bridge would change from 40 km per hour (25 mph) year-round to slow speed year-round.
- Between the Cape Coral Bridge and the Shell Island Manatee Refuge, the slow speed, shoreline buffer, year-round would change from 0.4 km (0.25 mile) in width to a variable width, generally approximating within 91 meters (300 feet) of the marked navigation channel at varying locations. The channel is included in portions of this area, between channel markers "72" and "82."
- The area to the west of the Shell Island Manatee Refuge, south of the Intracoastal Waterway, north of the Sanibel Causeway, to a line extending southwest from the southern tip of Merwin Key, would change from unregulated to slow speed year-round.

Speed zones have been in existence in the Caloosahatchee River since 1979. Since 1989, almost all of the near shore waters of the Caloosahatchee have been under a slow speed restriction year-round. The proposed Caloosahatchee River Manatee Refuge would affect approximately 35.4 km (22 river miles) overall. For the most part, the proposed regulation would widen existing slow speed areas by varying widths, dependent upon various factors. The greatest width of the affected area is approximately 2.4 km (1.5 miles), along the western shore north of Fourmile Point.

In Duval, Clay, and St. Johns Counties, in the St. Johns River and tributaries (including Doctor's Lake), the proposed designation of the Lower St. Johns River Manatee Refuge would result in the following changes from the current speed restrictions:

- In the downtown Jacksonville area, between Reddie Point and the Main Street Bridge, slow speed zones would be extended out to the channel from 91 to 274 meter (300- to 900-foot) shoreline buffers. The channel would be changed from unrestricted speed to a 40 km per hour (25 mph) limit.
- Between the Main Street Bridge and the Fuller Warren Bridge, slow speed shoreline buffers would change from variable width, slow speed (currently variable width along the western and northern shore and 183 meters (600 feet) on the eastern shore) to bank to bank, channel included, slow speed.
- South of the Fuller Warren Bridge to the southern bank of the mouth of Julington Creek (St. Johns County) on the eastern shore and to the mouth of Peter's Creek (Clay County) along the western shore, slow speed shoreline buffers would change from variable width (152 meters (500 feet) from shore or 61 meters (200 feet) from the end of docks) to 305 meters (1,000 feet), minimum. Boat speed remains unregulated outside of the buffer.
- In Doctors Lake and Inlet, slow speed shoreline buffers would be extended from variable width (152 meter (500 feet) minimum or 61 meters (200 feet) beyond docks), to a 274 meter (900-foot) minimum buffer along both shorelines.

Overall, the proposed St. Johns River Manatee Refuge would affect approximately 66 km (41 miles) of the St. Johns River and adjacent waters. In areas upstream of the Fuller Warren Bridge, newly protected areas would include extending existing slow speed areas out an additional 91 to 152 meters (300 to 500 feet). Downstream of the Fuller Warren Bridge, shoreline buffers would be extended from their variable widths to the channel. The greatest width of the shoreline buffer in this area is approximately 1.6 km (1 mile).

In Volusia County, for the Halifax and Tomoka Rivers Manatee Refuge including the Halifax River and tributaries (including Halifax Creek and the Tomoka River Complex), the Ponce Inlet area, and Indian River North, the proposed rule would result in the following changes from current speed restrictions:

- The channel in Halifax Creek would change to 40 km per hour (25 mph) from 48 km per hour (30 mph) (40 km per hour (25 mph) at night).

The two reaches of the Tomoka River upstream of U.S. Highway 1, where the speed restriction was 40 km per hour (25 mph) for part or all of the year, would change to a year-round slow speed restriction.

- In the Halifax River from the Tomoka River Basin and the southern extent of Halifax Creek to Seabreeze Bridge, the 91-meter (300-foot) slow speed shoreline buffer would be extended to 305 meters (1,000 feet), and the speed limit would change from 48 km per hour (30 mph) (40 km per hour (25 mph) at night) outside the buffer and marked navigation channel to 40 km per hour (25 mph).
- In the vicinity of the Granada Bridge, the current shore to shore, channel-included buffer, 152 meters (500 feet) north and 305 meters (1,000 feet) south of the SR 40 Bridge (Granada Bridge) would change from a 91-meter (300-foot) slow speed buffer (56 km per hour (35 mph) outside of buffer) to slow speed.
- The area between Seabreeze and Channel Marker "40" would change from slow speed channel included (excepting a watersports area south of Seabreeze Bridge) to slow speed channel included (including the watersports area south of Seabreeze Bridge).
- The shoreline buffers in the Halifax River from Channel Marker "40" to the Dunlawton Bridge would change from 91 meters (300 feet) to 305 meters (1,000 feet). The speed limit would change from 48 km per hour (30 mph) (40 km per hour (25 mph) at night) outside the buffer and marked navigation channel to 40 km per hour (25 mph).
- The shore to shore, channel-included buffer, 152 meters (500 feet) north and south of the Dunlawton Bridge would change from a 91-meter (300-foot) slow speed buffer 56 km per hour (35 mph outside of buffer) to slow speed. Waters between the Dunlawton Bridge and Ponce Inlet will change from variable zones with 48 km per hour (30 mph) within the channel to slow speed year-round outside the channel, 40 km per hour (25 mph) within the channel.
- The waters within Ponce Inlet and adjacent waterbodies would change from variable zones with 48 km per hour (30 mph) within the channel to. year-round, slow speed shoreline to shoreline zones outside of marked channels (except for maintenance of the existing seasonal slow speed zone in the headwaters of Spruce Creek), including 40 km per hour (25 mph) within the marked channels. The existing 48 km per hour (30 mph) limit within Ponce Inlet would remain unchanged.
- The waters within the Indian River North, running north to south along the eastern shore of the river immediately south of Ponce Inlet would change from 48 km per hour (30 mph) to slow speed.

Overall, the Halifax River and Tomoka River Manatee Refuge would affect approximately 85 km (53 miles) of Volusia County's waterways. The majority of the changes would include extending the shoreline buffers within the Halifax River from 91 meters (300) to 305 meters (1,000 feet). Given the confusing nature of the existing State restrictions in this area, the overall impact of the proposed changes would be to make the speed restrictions more consistent and clear.

In addition to speed zone changes, the proposed rule would no longer allow for the speed zone exemption process in place under State regulations. Currently, Florida's Manatee Sanctuary Act allows the State to provide exemptions from speed zone requirements for certain activities, including fishing and events such as high-speed boat races. Under State law, commercial fishermen and professional fishing guides can apply for permits granting exemption from speed zone requirements in certain counties. However, speed zone exemptions have not been authorized in most of the areas affected by the proposed rule. Speed zone exemption permits for commercial fishing and professional fishing guides are not available for affected areas in Duval County, coastal Volusia County, and in the Caloosahatchee River (except along a small portion of San Carlos Bay/ Matlacha Pass, at the mouth of the river) (FWCC, 2003g). Exceptions to these proposed Federal speed zones would require a formal rulemaking (including publishing the proposed rule in the **Federal Register**, public review, and comment) prior to the Service making a final decision. Based on available information, there have been very few events permitted in the affected areas in the past 5 years (Service, 2003c; Lee County, 2003). Therefore, the lack of a process for speed zone exemptions is not likely to have much impact.

In order to gauge the economic effect of this proposed rule, both benefits and costs must be considered. Potential economic benefits related to this rule would include increased manatee protection and tourism related to manatee viewing, increased property values, increased boater safety, increased fisheries health, and decreased seawall maintenance costs. Potential economic costs are related to increased administrative activities related to implementing the rule and affected waterborne activities. Economic costs will be measured primarily by the number of recreationists who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. In addition, there may be some impact on commercial fishing because of the need to maintain slower speeds in some areas. While the State of Florida has 19,312 km (12,000 miles) of rivers and 1.21 million hectares (3 million acres) of lakes, this rule would affect less than 185 km (115 river miles). The extension of slower speed zones as proposed in this rule would not be expected to affect enough waterborne activity to create a significant economic impact (*i.e.*, an annual impact of over $100 million).

Economic Benefits

We believe that the designation of the three manatee refuges proposed in this rule would increase the level of manatee protection in these areas. Two studies have examined the public's willingness to pay for protection of the manatee (Bendle and Bell, 1995; Fishkind & Associates, 1993). Based on these contingent valuation studies, it is believed that there is large public support for manatee protection regulations such as this proposed rule.

It is difficult to apply the results of these studies to this proposed rule, because neither study measures an impact similar to that associated with this rulemaking. For example, the Fishkind study was designed to gauge the economic impact of the Florida Manatee Sanctuary Act. First, the estimates of economic benefit are predicated on a different baseline in terms of both the manatee population being protected at that time versus now and the regulatory conditions in existence, such as current manatee protection areas. Second, the Fishkind study is not clear about the type and extent of manatee protection. The study does not clearly state if protection refers simply to the establishment of speed zones, or whether implementation and enforcement are included. Nor does the study clearly state whether residents are providing a willingness to pay for manatee protection for a specific region or for the entire manatee population in the State of Florida. While neither of these studies are specific enough to apply to this proposed rule, they provide an indication that the public holds substantial value for the protection of the manatee.

Another potential economic benefit is increased tourism that could result from an increase in manatee protection. To the extent that some portion of Florida's tourism is due to the existence of the manatee in Florida waters, the protection provided by this rule may result in an economic benefit to the tourism industry. We are not able to make an estimate of this benefit given available information.

Florida waterfront property owners may benefit from manatee protection areas such as the three proposed manatee refuges. Bell and McLean (1997) showed that speed zone enforcement may provide an economic benefit to adjacent landowners. Bell and McLean studied the impact of posted manatee speed zones on the property values of waterfront homes in Fort Lauderdale, Broward County, Florida. The authors found a strong relationship between property values and slow speed zones, and found evidence that slow speed zones may have a positive impact on home sale price. Slow speed zones were found to correlate with as much as a 15 to 20 percent increase in sale price, although this result has not been corroborated by other studies. The authors speculated that speed zones may increase property values by reducing noise and fast traffic, as well as making it easier for boats to enter and leave primary waterways. In each of the three manatee refuge areas there are stretches of river where residential property owners may experience these benefits.

In addition, due to reductions in boat wake associated with speed zones, property owners may experience some economic benefits related to decreased expenditures for maintenance and repair of shoreline stabilization structures (*i.e.*, seawalls along the water's edge). Speed reductions may also result in increased boater safety. Another potential benefit of slower speeds is that fisheries in these areas may be more productive because of less disturbance. These types of benefits cannot be quantified with available information.

Based on previous studies, we believe that this rule would produce some economic benefits. However, given the lack of information available for estimating these benefits, the magnitude of these benefits is unknown.

Economic Costs

The economic impact of the designation of three manatee protection areas would result from the fact that in certain areas, boats will be required to go slower than under current conditions. As discussed above, an extensive system of manatee speed zones promulgated by the State exists in each of the areas covered under this rule. The rule would add to these areas by extending shoreline buffers and reducing speed limits slightly in some channels. Some impacts may be felt by recreationists who would have to use alternative sites for their activity or who would have a reduced quality of the waterborne activity experience at the designated sites because of the proposed rule. For example, the extra time required for anglers to reach fishing grounds could reduce onsite fishing time and could result in lower consumer surplus for the trip. Other impacts of the rule may be felt by commercial charter boat outfits, commercial fishermen, and agencies that perform administrative activities related to implementing the rule.

Affected Recreational Activities

For some boating recreationists, the inconvenience and extra time required to cross additional slow speed areas may reduce the quality of the waterborne activity, or cause them to forgo the activity. This will manifest in a loss of consumer surplus to these recreationists. In addition, to the extent that recreationists forgo recreational activities, this could result in some regional economic impact. In this section, we examine the waterborne activities taking place in each area and the extent to which they may be affected by designation of the proposed manatee refuge. The resulting potential economic impacts are discussed below for each manatee refuge area. These impacts cannot be quantified because the number of recreationists and anglers using the designated sites is not known.

Caloosahatechee River Area: In the proposed Caloosahatchee River Manatee Refuge, affected waterborne activities include transiting, fishing, sailing, waterskiing, and personal watercraft use. The number of registered recreational vessels in Lee County in 2002 was 45,413 (Division of Highway Safety and Motor Vehicles, 2003). Based on aerial surveys and boat traffic surveys conducted in 1997 and 1998, the highest number of vessels observed on the Caloosahatchee River sites on a given day was 477 vessels. Based on aerial, boat traffic, and boater compliance surveys of the Caloosahatchee River, over 60 percent of vessels observed were small powerboats, while less than seven percent were personal watercraft (*e.g.*, jet skis) (Gorzelany, 1998). Waterskiing and personal watercraft use in the Caloosahatchee primarily occurs between the Caloosahatchee and Cape Coral Bridges (Lee County, 2003). Shell Point and Redfish Point are also popular access areas where personal watercraft use may be affected (FWCC, 2002). The Caloosahatchee River area is also a popular location for recreational guiding for snook and redfish fishing, particularly at night (FWCC, 2003c). The extra time required for anglers to reach fishing grounds could reduce onsite fishing time and could result in lower consumer surplus for the trip. The number of anglers on the Caloosahatchee, and their origins and destinations are currently unknown. One study indicates that approximately 70 percent of the boat traffic on the Caloosahatchee originates from the Cape Coral Canal system (FWCC, 2002). Another boat traffic survey indicated that the majority of boat traffic exits the Caloosahatchee River in the morning and enters the river in the afternoon. The majority of vessels leaving the Caloosahatchee River travel south toward the Sanibel Causeway and Gulf of Mexico. Approximately 94 percent of vessel traffic on the Caloosahatchee was reported as "traveling," while less than one percent was engaged in "skiing" based on boater compliance observations at 10 sites along the Caloosahatchee River (Gorzelany, 1998).

Based on these trends, it appears that most recreational waterborne activity on the Caloosahatchee River will be affected by the proposed manatee refuge. While the proposed designation will cause an increase in travel time, it is unlikely that the increase will be great enough to cause a significant economic dislocation. Much of the boat traffic on the Caloosahatchee likely originates from the Cape Coral Canal system (FWCC, 2002), and would experience added travel time of approximately 25 minutes (from Cape Coral Bridge to Sanibel Causeway) for a trip that currently lasts 50 minutes. At most, a boat traveling from Beautiful Island to the Sanibel Causeway will experience added travel time of 40 minutes to 1 and a half hours (depending on time of the year) due to the proposed designation; currently this trip would take approximately 1 and one-quarter hours.

The small percentage of recreational boaters using the river for waterskiing or personal watercraft use will choose either to go to alternative sites such as San Carlos Bay or Pine Island Sound or to forgo the activity. The amount of added travel time to get to an alternative site will depend on the origin of the trip and whether the trip originates from a dock or a ramp. For example, ramp users may choose to trailer their boats to a different location, closer to the alternative site and may experience little added travel time. For dock users, under the proposed rule, travel time on the Caloosahatchee from the Cape Coral Bridge to the Sanibel Causeway could be approximately 1 and one-quarter hours. The amount of added travel time and the expected quality of the experience will likely influence the recreationists' choice of whether to travel to an alternative site or forgo the activity. The number of recreationists who will use alternative sites or forgo recreational activities is unknown, but it is not expected to be a large enough number to result in a significant economic impact.

St. Johns River Area: In the proposed St. Johns River Manatee Refuge, the affected recreational waterborne activities are likely to include cruising, fishing, and waterskiing. Based on a survey of boat ramp users in Duval County, these three activities were the most popular reasons cited as the primary purpose of the trip. Recreational fishing was cited as the primary purpose by 62 percent of those surveyed, while cruising was cited by 19 percent and waterskiing was cited by 7 percent (Jacksonville University, 1999). The total number of recreational vessels registered in Duval, Clay, and St. Johns counties in 2002 is 57,388 (Division of Highway Safety and Motor Vehicles, 2003). The portion of these vessels using the St. Johns River area covered by the proposed designation is unknown. Recreational fishing for bass, redfish, sea trout, croaker, and flounder, as well as shrimping with nets, are popular activities in the near shore waters of the St. Johns River south of the Fuller Warren Bridge. Because the submerged aquatic vegetation near shore provides food, and docks provide protection for the fish, this is where the fishing activity primarily takes place (FWCC, 2003c). Because recreational fishing is likely occurring primarily in existing slow speed areas, the extension of slow speed zones out 152 meters (500 feet) further will not have a significant effect. Recreationists engaging in fishing or cruising are unlikely to experience much impact due to the proposed regulation. The expanded/extended buffers are not expected to increase travel times by any more than about 8 minutes (one way). The proposed designation will cause some inconvenience in travel time, but alternative sites within the proximity of proposed designated areas are available for all waterborne activities. Because the designated areas are part of larger waterbodies where large areas remain unrestricted, the impact of the proposed designation on recreational waterborne activities in the St. Johns River and adjacent waterbodies will be limited. Recreationists engaging in cruising, fishing, and waterskiing may experience some inconvenience by having to go slower or use un-designated areas; however, the extension of slow speed zones is not likely to result in a significant economic impact.

Halifax River and Tomoka River Area: In the proposed Halifax River and Tomoka River Manatee Refuge, affected waterborne activities include fishing, traveling, cruising, waterskiing, and personal watercraft use. Based on a boating activity study that relied on a variety of survey mechanisms, the two most popular activities in the Intracoastal Waterway in Volusia County were recreational fishing and traveling (Volusia County Environmental Management Services, 1996). Recreationists engaging in fishing or traveling are unlikely to experience much impact due to the proposed regulation. Rather, these boaters will be able to utilize the channel for transiting the river or moving to the next fishing ground. The two most popular destinations are the Mosquito Lagoon and the Ponce Inlet area (Volusia County Environmental Management, 2002). Recreationists engaging in fishing or traveling may experience some inconvenience by having to go slower or use marked channels; however, small changes in boater behavior due to the extension of slow speed zones should not result in a significant economic impact.

For the Tomoka River, the primary activity that will be affected by the designation is waterskiing. A ski club uses the river in an area currently designated at 40 km per hour (25 mph). Under the proposed designation, this will be changed to slow speed. The nearest alternative site where these recreationists can water ski is at least 11 to 16 km (7 to 10 miles) away (Volusia County, 2003). It is estimated that the on-the-water travel time for the skiers to reach the nearest alternative site could be up to 2½ hours. The proposed regulation may cause some water skiers to forgo this activity, or may reduce the quality of their experience. The number of skiers that may be affected and the number of trips per year are not

currently known. With additional information on the number of affected individuals, we could estimate the impact of lost or diminished skiing days given the value of a waterskiing day published in the literature. One study by Bergstrom and Cordell (1991) suggested the lost surplus value may be $38/day (2002$) for a day of waterskiing. They applied a multi-community, multi-site travel cost model to estimate demand equations for 37 outdoor recreational activities and trip values, including water skiing. The analysis was based on nationwide data from the Public Area Recreational Visitors Study collected between 1985 and 1987 and several secondary sources.

In the Halifax River, one of the activities that may be affected by the proposed designation is personal watercraft (PWC) use. These activities are primarily taking place in the recreational zones located south of the Seabreeze Bridge and north of the Dunlawton Bridge. PWC likely represent a very small portion of vessels on the Intracoastal Waterway in Volusia County. Based on a boating activity study from 1994 to 1995, less than two percent of observations in the Intracoastal Waterway area were PWCs (based on 12,000 observations during aerial, boat ramp and shoreline, and mailing surveys) (Volusia County Environmental Management Services, 1996). The number of pleasure PWC in Volusia County in 2000 was 2,432, with 204 rental PWC (FWCC, 2000a). The nearest alternative site for using personal watercraft is near the Dunlawton Bridge, where an area remains unrestricted between the channel and the shoreline buffer, or in the Ponce Inlet vicinity, approximately 20 km (12.5 miles) downriver. Under the proposed rule, travel time from the Daytona Beach watersports area (south of Seabreeze Bridge) to the Ponce Inlet area would be approximately one hour. Added travel time to reach alternative sites would depend on the origin of the trip, which is currently unknown. The proposed regulation may cause some personal watercraft users to forgo this activity, or may reduce the quality of their experience. The number of PWC users that may be affected and the number of trips per year are not currently known. To the extent that these recreationists choose to forgo the activity, this could also impact local businesses that rent personal watercraft.

Currently, not enough data are available to estimate the loss in consumer surplus that water skiers in the Tomoka River or PWC users in the Halifax River will experience. While some may use substitute sites, others may forgo the activity. The economic impact associated with these changes on demand for goods and services is not known. However, given the number of recreationists potentially affected, and the fact that alternative sites are available, it is not expected to amount to a significant economic impact.

Affected Commercial Charter Boat Activities

Various types of charter boats use the waterways in the affected counties, primarily for fishing and nature tours. The number of charter boats using the Caloosahatchee, Halifax, and St. Johns Rivers, and their origins and destinations are currently unknown. For nature tours, the extension of slow speed zones is unlikely to cause a significant impact, because they are likely traveling at slow speeds. The extra time required for commercial charter boats to reach fishing grounds could reduce onsite fishing time and could result in fewer trips. The fishing activity is likely occurring at a slow speed and will not be affected. In the Caloosahatchee and St. Johns Rivers, fishing charters may experience some impact from the extension of slow speed zones, depending on their origins and destinations. Added travel time may affect the length of a trip, which could result in fewer trips overall, creating an economic impact. In the Halifax River, it is likely that most fishing charters are heading offshore or to the Mosquito Lagoon, and will experience little impact from the proposed rule (Volusia County, 2003).

Affected Commercial Fishing Activities

Several commercial fisheries may experience some impact due to the proposed regulation. Specifically, the blue crab fishery and, to a lesser extent, mullet fishing, along the Caloosahatchee River; the crab and shrimp industries in the St. Johns River; and the crab and mullet fishing industries in Volusia County may experience some economic impact. To the extent that the proposed regulation establishes additional speed zones in commercial fishing areas, this may increase the time spent on the fishing activity, affecting the efficiency of commercial fishing. While limited data are available to address the size of the commercial fishing industry in the proposed manatee refuges, county-level data generally provide an upper bound estimate of the size of the industry and potential economic impact. This section first provides some background on the blue crab industry in Florida, and then addresses the impact of the proposed rule on the commercial fishing industry for each manatee refuge area.

One industry in particular that may be affected by the proposed rule is the blue crab fishery, which represents a sizeable industry in the State of Florida. Based on a study done for the Florida Fish and Wildlife Commission, Division of Marine Fisheries (Murphy *et al.*, 2001), between 1986 and 2000 the average annual catch statewide was 6.4 million kilograms (14.1 million pounds) (39.7 million crabs). However, year to year fluctuation is significant, including highs of 8.2 million kilograms (18 million pounds) statewide in 1987 and 1996 and a low of 2.5 million kilograms (5.5 million pounds) statewide in 1991. In the last 3 years, blue crab landings have been depressed throughout the East Coast and Gulf of Mexico, though specific reasons for this are unknown at this time (FWCC, 2003d). Landings in 2001 were approximately 3.4 million kilograms (7.4 million pounds) statewide. Based on a 2001 weighted average price of $1.06 per 0.5 kilograms (pound) of crab, this represents just under $8 million (FWCC: FMRI, 2003). Data from 2001 on marine fisheries landings from FWCC: FMRI is preliminary and subject to revision.

Caloosahatchee River Area: Lee County, where the proposed Caloosahatchee River Manatee Refuge is located, had 157 licensed blue crab boat operators in 2001 (FWCC: FMRI, 2003). Crabbing in the Caloosahatchee is likely to be impacted by the extension of slow speed areas because crab boats may have to travel at slower speeds between crab pots, thereby potentially reducing the number of crabs landed on a daily basis. For example, to the extent that crab boat operators frequently change fish pot locations in search of optimal fishing grounds, this activity could be affected by extension of existing slow speed zones (FWCC, 2003a). The extension of slow speed zones will likely cause fishermen to have to travel out to the channel and back rather than travel in direct lines across and throughout the river. The affected crabbing area in the Caloosahatchee River is approximately 27 km (17 miles) long (from the Edison Bridge to Merwin Key in San Carlos Bay) and just under 2.4 km (1.5 miles) wide at its widest point.

In 2001, blue crab landings in Lee County were 175,805 kilograms (387,585 pounds), and the weighted average price was $1.06 per 0.5 kilograms (pound) for blue crab statewide. The entire value of the blue crab fishery in Lee County is estimated to be $411,167 (FWCC: FMRI, 2003). Only a small portion of this value is likely to be affected, as the activity will still occur but with some changes due to additional speed zones. In addition, this figure includes landings for all of Lee County. The number of crab boats operating and the amount of blue crab landings occurring in areas that would be newly designated speed zones under this proposed rule is unknown. Crabbing likely occurs in parts of Lee County outside of the Caloosahatchee River, including Charlotte Harbor, San Carlos Bay, Estero Bay, etc. (FWCC, 2003e). The county-wide figures provide an upper bound estimate of the economic impact on this fishery; this would assume that the proposed regulation closed down the entire fishery, which is not the case.

In Lee County, commercial mullet fishing is also occurring in the proposed Caloosahatchee River Manatee Refuge area. These fishermen may also be impacted by slower commuting times from boat launch (*e.g.*, dock or ramp) to fishing grounds. However, fishing activity associated with mullet fishing generally includes slow net casting within a relatively small geographic area (FWCC, 2003e). Therefore, speed limits are less likely to affect mullet fishing, relative to the blue crab fishery. In 2001, based on mullet landings in Lee County of 997,903 kilograms (2.2 million pounds), and the weighted average price of $0.66 for mullet statewide, the value of the mullet fishery in Lee County is estimated to be $1.4 million (FWCC: FMRI, 2003). Only a small portion of these values is likely to be affected, as the activity will still occur but with some changes due to additional speed zones. In addition, this figure includes landings for all of Lee County. The amount of mullet fishing occurring in areas that would be newly designated speed zones under this proposed rule is unknown.

St. Johns River Area: In the St. Johns River Manatee Refuge, most of which is in Duval County, current commercial fishing can be divided into activity south and north of the Fuller Warren Bridge. Commercial fishing north (*i.e.*, downstream) of the bridge consists primarily of shrimping, while commercial fishing activity south of the bridge consists primarily of blue crab fishing. Commercial net shrimping is not allowed south of the Fuller Warren Bridge (Jacksonville Port Authority, 2003).

Commercial blue crab fishing occurs both north and south of the Fuller Warren Bridge. Crab fishing is likely to be impacted by the proposed manatee refuge. The extension of the shoreline buffer zone may impact fishing operations because the majority of crabbing activity takes place in the submerged aquatic vegetation, which is located along the immediate shoreline (FWCC, 2003b). Therefore, when crabbers enter and exit these shoreline areas, they will be required to travel slowly (*i.e.*, 6.4 to 12.9 km per hour (4 to 8 mph)) for approximately 152 additional meters (500 feet) (incremental to the existing variable width shoreline buffer). In addition, travel between pots within the buffer will also be slowed, thereby potentially reducing the number of crabs landed on a daily basis. However, once outside the shoreline buffer, boats can travel up to 40 km per hour (25 mph) in areas downstream of the Fuller Warren Bridge, and at unrestricted speeds upstream.

There were 61 commercial licences for blue crab issued in Duval County in 2001 (FWCC: FMRI, 2003). In 2001, based on blue crab landings in Duval County of 506,401 pounds, and the weighted average price of $1.06 per 0.5 kilogram (pound) for blue crab statewide, the value of the blue crab fishery in Duval County is estimated to be $537,213 (FWCC: FMRI, 2003). Only a small portion of this value is likely to be affected, as the activity will still occur but with some changes due to additional speed zones. In addition, this figure includes landings for all of Duval County. The number of crab boats operating and the amount of blue crab landings occurring in areas that would be newly designated speed zones under this proposed rule is unknown. The county-wide figures provide an upper bound estimate of the economic impact on this fishery; this would assume that the proposed regulation closed down the entire fishery, which is not the case.

Commercial shrimping north of the Fuller Warren Bridge in the St. Johns River is likely to receive minimal impact due to the extension of year-round slow speed areas outside of the marked channels. Impacts to this industry are likely to be minimal because shrimp boats tend to trawl at a slow speed. Nonetheless, shrimp boats will still be required to travel at slower speeds between fishing grounds, thereby potentially increasing the time it takes to access fishing areas and reducing shrimp landed on a daily basis (Jacksonville Port Authority, 2003).

The majority of commercial shrimping activity in the St. Johns River occurs between the mouth of Trout River and the Fuller Warren Bridge, which closely approximates the proposed northern limit of the St. Johns Manatee Refuge (Jacksonville Port Authority, 2003). Commercial shrimping activity in Duval County also occurs along the Nassau River, which represents the border between Duval and Nassau County, and, to a lesser extent, along the Intracoastal Waterway (FWCC, 2003f). Shrimp landings in Clay County are negligible, based on the fact that commercial shrimping is not allowed upriver of the Fuller Warren Bridge. Shrimp landings in St. Johns County most likely represent activity along the Intracoastal Waterway and not in the St. Johns River area. While there is some limited commercial bait shrimping activity along this stretch of river, the vast majority of commercial shrimping in this area is related to the harvest of shrimp for food production (FWCC, 2003e). In 2001, based on shrimp landings in Duval County of 997,903 kilograms (2.2 million pounds), and the weighted average price of $2.33 for shrimp statewide, the value of the shrimp fishery in Duval County is estimated to be about $5.2 million (FWCC: FMRI, 2003). Less than one percent of commercial shrimp landings in 2001 in Duval County are related to bait shrimp (FWCC: FMRI, 2003); therefore, these figures represent only food shrimp harvest. Only a small portion of this value is likely to be affected, as the activity will still occur but with some changes due to additional speed zones. In addition, this figure includes landings for all of Duval County. The number of shrimp boats operating and the amount of shrimp landings occurring in areas that would be newly designated speed zones under this proposed rule is unknown. The county-wide figures provide an upper bound estimate of the economic impact on this fishery; this would assume that the proposed regulation closed down the entire fishery, which is not the case.

Halifax River and Tomoka River Area: In Volusia County, the proposed Halifax River and Tomoka River Manatee Refuge includes a variety of waterways, including the Tomoka River, the Tomoka Basin, Halifax Creek, the Halifax River, Ponce de Leon Inlet, and Spruce Creek. In these areas, it is likely that blue crab and mullet fishing activities will be impacted by the proposed expanded speed zones. As discussed above for Lee County, crab boats will have to travel at slower speeds in some locations between crab pots, thereby potentially reducing the number of crabs landed on a daily basis. The speed limits may also slow transit speeds between fishing grounds for both crab and mullet fishing boats. As noted above, mullet fishing activity generally includes slow net casting and, therefore, such activities are unlikely to receive much impact. Note also that along the Halifax River, a channel is available for boats to travel up to 25 mph. The

proposed manatee refuge area along the Halifax River stretches from the Flagler-Volusia County line in Halifax Creek past the Ponce de Leon Inlet to the South Causeway Bridge (New Smyrna Beach), a distance of approximately 43.5 km (27 miles). The waterbody ranges from 0.5 km (0.3 miles) to just over 1.6 km (1 mile) in width. The manatee refuge also includes tributaries and river basins of varying length and width. The number of fishing boats operating and the amount of blue crab and mullet landings occurring in areas that will be newly designated speed zones under this proposed rule is unknown.

There were 128 licensed blue crab operators in Volusia County in 2001. In 2001, based on blue crab landings in Volusia County of 230,577 kilograms (508,337 pounds), and the weighted average price of $1.06 for blue crab statewide, the value of the blue crab fishery in Volusia County is estimated to be $539,266 (FWCC: FMRI, 2003). In 2001, based on mullet landings in Volusia County of 188,675 kilograms (415,958 pounds), and the weighted average price of $0.66 for mullet statewide, the value of the mullet fishery in Volusia County is estimated to be $272,591 (FWCC: FMRI, 2003). Only a small portion of these values is likely to be affected, as the crabbing and fishing activities will still occur but with some changes due to additional speed zones. In addition, crabbing and mullet fishing occur in parts of Volusia County outside of the proposed manatee refuge area, including Mosquito Lagoon, St. Johns River, Lake George, etc. (Ponce Inlet Authority, 2003). The county-wide figures provide an upper bound estimate of the economic impact on these fisheries; this would assume that the proposed regulation closed down the entire fishery, which is not the case.

Given available data, the impact on the commercial fishing industry of extending slow speed zones in portions of the Caloosahatchee, St. Johns, and Halifax Rivers cannot be quantified. The proposed designation will likely affect commercial fishermen by way of added travel time, which may result in an economic impact. However, because the proposed manatee refuge designations will not prohibit any commercial fishing activity, and because there is a channel available for boats to travel up to 40 km per hour (25 mph) in most affected areas, it is unlikely that the proposed rule will result in a significant economic impact on the commercial fishing industry. It is important to note that in 2001, the total annual value of potentially affected fisheries is approximately $8.3 million (2001$); this figure represents the economic impact on commercial fisheries in these counties in the unlikely event that the fisheries would be entirely shut down, which is not the situation associated with this rule.

Agency Administrative Costs

The cost of implementing the rule has been estimated based on historical expenditures by the Service for manatee refuges and sanctuaries established previously. The Service expects to spend approximately $600,000 (2002$) for posting and signing 15 previously designated manatee protection areas. This represents the amount that the Service will pay contractors for creation and installation of manatee signs. While the number and location of signs needed to post the proposed manatee refuges is not known, the cost of manufacturing and posting signs to delineate the manatee refuges proposed in this rule are not expected to exceed the amount being spent to post previously designated manatee protection areas (Service, 2003a). In addition, the Service anticipates that it will spend $1.7 million (2002$) for enforcement of newly designated manatee refuges annually. These costs are overstated because they represent the cost of enforcing 13 new manatee refuges and sanctuaries designated earlier on November 8, 2002, as well as the 3 manatee refuges included in this rule. The costs of enforcement include hiring and training five new law enforcement agents and two special agents, and the associated training, equipment, upkeep and clerical support (Service, 2003b). Finally, there may be some costs for education and outreach to inform the public about these new manatee refuge areas.

While the State of Florida has 19,312 km (12,000 miles) of rivers and 1.21 hectares (3 million acres) of lakes, the proposed rule will affect less than 185 kilometers (115 river miles). The speed restrictions on approximately 185 km (115 miles) proposed as manatee refuges in this rule will cause inconvenience due to added travel time for recreationists and commercial charter boats and fishermen. As a result, the rule will impact the quality of waterborne activity experiences for some recreationists, and may lead some recreationists to forgo the activity. The extension of existing State speed zones for 185 km (115 miles) is not expected to affect waterborne activity to the extent that it would have a significant economic impact. The proposed rule does not prohibit recreationists from participating in any activities. Alternative sites are available for all waterborne activities that may be affected by this rule. The distance that recreationists may have to travel to reach an un-designated area varies. Waterskiers in the Tomoka River will likely experience the greatest inconvenience in terms of added travel time, as travel to the nearest alternative site would take approximately 2½ hours. The regulation will likely impact some portion of the charter boat and commercial fishing industries in these areas as well. The inconvenience of having to go somewhat slower outside of marked channels may result in changes to commercial and recreational behavior, resulting in some regional economic impacts. Given available information, the net economic impact of designating the three manatee refuges is not expected to be significant (*i.e.*, an annual economic impact of over $100 million). While the level of economic benefits that may be attributable to the manatee refuges is unknown, these benefits would cause a reduction in the economic impact of the rule.

b. The precedent to establish manatee protection areas has been established primarily by State and local governments in Florida. We recognize the important role of State and local partners and continue to support and encourage State and local measures to improve manatee protection. We are proposing to designate areas where existing State and local designations are considered minimal protection and where existing designations are confusing and/or unenforceable.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Minimal restriction to existing human uses of the proposed sites would result from this rule, but the restriction is believed to enhance manatee viewing opportunities. No entitlements, grants, user fees, loan programs or the rights and obligations their recipients are expected to occur.

d. This rule will not raise novel legal or policy issues. We have previously established other manatee protection areas.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." *See* 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. This section presents a screening level analysis of the potential effects of the proposed designation of three manatee protection areas on small entities. We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

In order to determine whether the rule will have a significant economic effect on a substantial number of small entities, we utilize available information on the industries most likely to be affected by the proposed designation of three manatee refuges. Currently no information is available on the specific number of small entities that are potentially affected. This rule will add travel time to boating recreationists and commercial activities resulting from extension of existing speed zones. Because the only restrictions on recreational activity result from added travel time, and alternative sites are available for all waterborne activities, we believe that the economic effect on small entities resulting from changes in recreational use patterns will not be significant. The economic effects on small business resulting from this rule are likely to be indirect effects related to reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, and boats can continue to travel up to 40 km per hour (25 mph) in marked channels in most areas, we believe that any economic effect on small commercial fishing or charter boat entities will not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant. Based on an analysis of public comment, further refinement of the impact on small entities may be possible.

In order to determine whether small entities will be affected significantly, we examined county-level earnings data. We compared personal income data for the counties potentially affected to statewide averages to provide some background information about each county's economic situation. Because specific information about earnings of small entities potentially affected (both the total level and the amount of earnings potentially affected by the rule) is not available, we examined county-level earnings for industries potentially impacted by the proposed designation. We further analyzed county business patterns data to examine the numbers of establishments in the affected counties that have a small number of employees. As stated above, economic impacts are believed to be minor and mostly will not interfere with the existing operation of small businesses in the affected counties.

Selected economic characteristics of the five affected counties are shown in Table 1. As demonstrated in the table, all counties except St. Johns have a lower per capita income than the State average. Growth in total personal income is slower than the statewide average in Duval, Lee, and Volusia counties. St. Johns County greatly exceeds the statewide average in growth in both total and per capita personal income. For all five counties, the services sector represents the industry with the greatest earnings. The proportion of industry earnings attributable to amusement and recreation (a subcategory of the services industry potentially impacted by the rule) was relatively low for each county, ranging from one to five percent of total industry earnings. As a result, a small impact to the recreation sector is unlikely to have a significant effect on county-level income. Similarly, the proportion of industry earnings related to the fishing sector was less than 0.2 percent for each county. Thus, a small impact to the fishing sector is unlikely to adversely affect county-level income.

TABLE 1.—ECONOMIC CHARACTERISTICS OF THE FIVE AFFECTED COUNTIES IN FLORIDA—2000

Counties	Per capita personal income 2000 ($)	10-year annual growth of per capita income [1] (percent)	Total Personal income 2000 (000$)	10-year annual growth of total personal income [1] (percent)	Total earnings by industry—all industries (000$)	Amusement and recreation industry earnings		Fishing industry earnings	
						Thousands of $'s	Percent of total	Thousands of $'s	Percent of total
Clay	25,421	3.8	3,601,576	8.4	1,225,569	18,565	1.5	73	0.01
Duval	27,084	4.1	21,118,751	6.3	19,916,074	194,900	1.0	3,440	0.02
Lee	26,655	3.0	11,833,528	7.0	6,379,956	106,875	1.7	10,619	0.17
St Johns	40,635	7.7	5,057,864	15.9	1,553,900	82,280	5.3	581	0.04
Volusia	22,574	3.6	10,046,808	6.2	4,748,268	128,280	2.7	[2]	NA
State of Florida	27,764	4.0	445,739,968	7.2	282,260,357	5,392,786	1.9	85,609	0.03

[1] Growth rates were calculated from 1990 and 2000 personal income data.
[2] BEA has withheld this information in order to avoid disclosure of confidential information.
Source: Bureau of Economic Analysis (BEA), Regional Economic Information System, Regional Accounts Data, Local Area Personal Income *(http://www.bea.doc.gov/bea/regional/reis/)*

The employment characteristics of the five affected counties are shown in Table 2. The latest available published data for the total number of establishments broken down by industry and county are from 1997. We included the following SIC (Standard Industrial Classification) categories, because they include businesses most likely to be directly affected by the designation of the proposed manatee refuges:

- Fishing, hunting, trapping (SIC 09)
- Water transportation (SIC 44)
- Miscellaneous retail (SIC 59)
- Amusement and recreation services (SIC (79)

• Non-classifiable establishments (NCE)

TABLE 2.—EMPLOYMENT CHARACTERISTICS OF THE FIVE AFFECTED COUNTIES IN FLORIDA—1997

[(includes SIC Codes 09, 44, 59, 79, and NCE [1])

Counties	Total mid-March employment [2] (all industries)	Mid-March employment [2] (select SIC codes)	Total establishments (all industries)	Select SIC codes (includes SIC codes 09, 44, 59, 79, and NCE) [1]				
				Total establishments	No. of establishments (1–4 employees)	No. of establishments (5–9 employees)	No. of establishments (10–19 employees)	No. of establishments (20+ employees)
Clay	28,106	1,940	2,747	255	158	48	30	19
Duval	361,302	14,459	21,016	1,510	877	330	164	139
Lee	135,300	7,734	11,386	974	602	193	92	87
St Johns	33,173	1,971	3,127	273	177	58	24	14
Volusia	127,948	7,116	10,716	989	643	188	73	85

[1] Descriptions of the SIC codes included in this table as follows: SIC 09—Fishing, hunting, and trapping; SIC 44—Water transportation; SIC 59—Miscellaneous retail service division; SIC 79—Amusement and recreation services; NCE—non-classifiable establishments division.
[2] Table provides the high-end estimate whenever the Census provides a range of mid-March employment figures for select counties and SIC codes.
Source: U.S. Census County Business Patterns (*http://www.census.gov/epcd/cbp/view/cbpview.html*)

As shown in Table 2, the vast majority (over 80 percent) of these business establishments in each of the five affected counties have less than ten employees, with the largest number of establishments employing less than four employees. In addition, in 1997, only four to seven percent of total mid-March employment for industries in the affected counties was in the industries likely to be affected by the proposed rule. Any economic impacts associated with this rule will affect some proportion of these small entities.

Since the proposed designation is for the development of manatee refuges, which only require a reduction in speed, we do not believe the designation would cause significant economic effect on small businesses. For example, because the manatee refuge designations will not prohibit any commercial fishing activity, and because there is a channel available for boats to travel at up to 40 km per hour (25 mph) in most areas, it is unlikely that the rule will result in a significant economic impact on commercial fishing entities. Currently available information does not allow us to quantify the number of small business entities such as charter boats or commercial fishing entities that may incur direct economic impacts due to the inconvenience of added travel times resulting from the rule. An examination of county level information indicates that these economic impacts will not be significant for the affected counties. Based on an analysis of public comment, further refinement of the impact on small entities may be possible. In addition, the inconvenience of slow speed zones may cause some recreationists to change their behavior, which may cause some loss of income to some small businesses. The number of recreationists that will change their behavior, and how their behavior will change is unknown; therefore the impact on potentially affected small business entities cannot be quantified. However, because boaters will experience only minimal added travel time in most affected areas, we believe that this proposed designation will not cause a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5. U.S.C. 804 (2). This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more. As shown above, this rule may cause some inconvenience in the form of added travel time for recreationists and commercial fishing and charter boat businesses because of speed restrictions in manatee refuge areas, but this should not translate into any significant business reductions for the many small businesses in the five affected counties. An unknown portion of the establishments shown in Table 2 could be affected by this rule. Because the only restrictions on recreational activity result from added travel time, and alternative sites are available for all waterborne activities, we believe that the economic impact on small entities resulting from changes in recreational use patterns will not be significant. The economic impacts on small business resulting from this rule are likely to be indirect effects related to reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, and boats can continue to travel up to 40 km per hour (25 mph) in marked channels in most areas, we believe that any economic impact on small commercial fishing or charter boat entities will not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant. Based on an analysis of public comment, further refinement of the impact on small entities may be possible.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It is unlikely that there are unforeseen changes in costs or prices for consumers stemming from this rule. The recreational charter boat and commercial fishing industries may be affected by lower speed limits for some areas when traveling to and from fishing grounds. However, because of the availability of 40 km per hour (25 mph) channels in most areas, this impact is likely to be limited.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, this rule may generate some level of inconvenience to recreationists due to added travel time, but the resulting economic impacts are believed to be minor and will not interfere with the normal operation of businesses in the affected counties. Added travel time to traverse some areas is not expected to be a major factor that will impact business activity.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is not a significant regulatory action under Executive Order 12866 and it only requires vessels to proceed at slow or idle speeds in 185 km (115 miles) of waterways in Florida, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges imposes no substantial new obligations on State or local governments.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. The proposed manatee protection areas are located over State- or privately-owned submerged bottoms. Any property owners in the vicinity will have navigational access to and the wherewithal to maintain their property.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. We coordinated with the State of Florida to the extent possible on the development of this proposed rule.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The regulation would not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A draft environmental assessment has been prepared and is available for review upon request by writing to the Field Supervisor (*see* **ADDRESSES** section).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175 and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Jacksonville Field Office (*see* **ADDRESSES** section).

Author

The primary author of this document is Jim Valade (*see* **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.108 by adding paragraphs (c)(12) through (c)(14) as follows:

§ 17.108 List of designated manatee protection areas.

* * * * *

(c) * * *

(12) *The Caloosahatchee River—San Carlos Bay Manatee Refuge.*

(i) The Caloosahatchee River—San Carlos Bay Manatee Refuge is described as all waters of the Caloosahatchee River and San Carlos Bay downstream of the Seaboard Coastline trestle at Beautiful Island to Channel Marker "93" and from Channel Marker "99" to the Sanibel Causeway, in Lee County. A map showing the refuge and four maps showing specific areas in the refuge are at paragraph (12)(x) of this section.

(ii) From the Seaboard Coastline Railroad trestle at Beautiful Island, downstream to a point 152 meters (500 feet) east of the Edison Bridge, a distance of approximately 7.2 kilometers (4.5 miles), watercraft are required to proceed at slow speed in the marked navigation channel from November 15 to March 31 and at not more than 40 kilometers per hour (25 miles per hour) in the channel from April 1 to November 14. *See* map of "Edison Bridge Area" in paragraph (12)(x) of this section.

(iii) From a point 152 meters (500 feet) east of the Edison Bridge downstream to a point 152 meters (500 feet) west of the Caloosahatchee Bridge, approximately 1.1 kilometers (0.7 mile) in length, shoreline-to-shoreline (including the marked navigation channel), watercraft are required to proceed at slow speed channel included, year-round. *See* map of "Edison Bridge Area" in paragraph (12)(x) of this section.

(iv) From a point 152 meters (500 feet) west of the Caloosahatchee Bridge downstream to a point 152 meters (500 feet) northeast of the Cape Coral Bridge, a distance of approximately 10.9 kilometers (6.8 miles), watercraft are required to proceed year-round at slow speed, while traveling within shoreline buffers extending out from the shore to a distance of approximately 91 meters (300 feet) from the marked navigation channel. In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than

0.4 kilometers (0.25 mile), the slow speed buffer will extend to the edge of the marked navigation channel. Watercraft are required to proceed at not more than 40 kilometers per hour (25 miles per hour) throughout the year between these buffers (including the marked navigation channel). *See* map of "Cape Coral Bridge Area" in paragraph (12)(x) of this section.

(v) From a point 152 meters (500 feet) northeast of the Cape Coral Bridge downstream to a point 152 meters (500 feet) southwest of the Cape Coral Bridge, a distance of approximately 0.4 kilometer (0.25 mile), shoreline-to-shoreline (including the marked navigation channel), watercraft are required to proceed at slow speed, channel included, year-round. *See* map of "Cape Coral Bridge Area" in paragraph (12)(x) of this section.

(vi) From a point 152 meters (500 feet) southwest of the Cape Coral Bridge to Channel Marker "72," a distance of approximately 1.9 kilometers (1.2 miles), watercraft are required to proceed at slow speed year-round, within shoreline buffers that extend out to a distance of approximately 91 meters (300 feet) from the marked navigation channel. In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than 0.4 kilometers (0.25 mile), the slow speed buffer will extend to the edge of the marked navigation channel. Watercraft are required to proceed at not more than 40 kilometers per hour (25 miles per hour) throughout the year between these buffers (including the marked navigation channel). *See* map of "Cape Coral Bridge Area" in paragraph (12)(x) of this section.

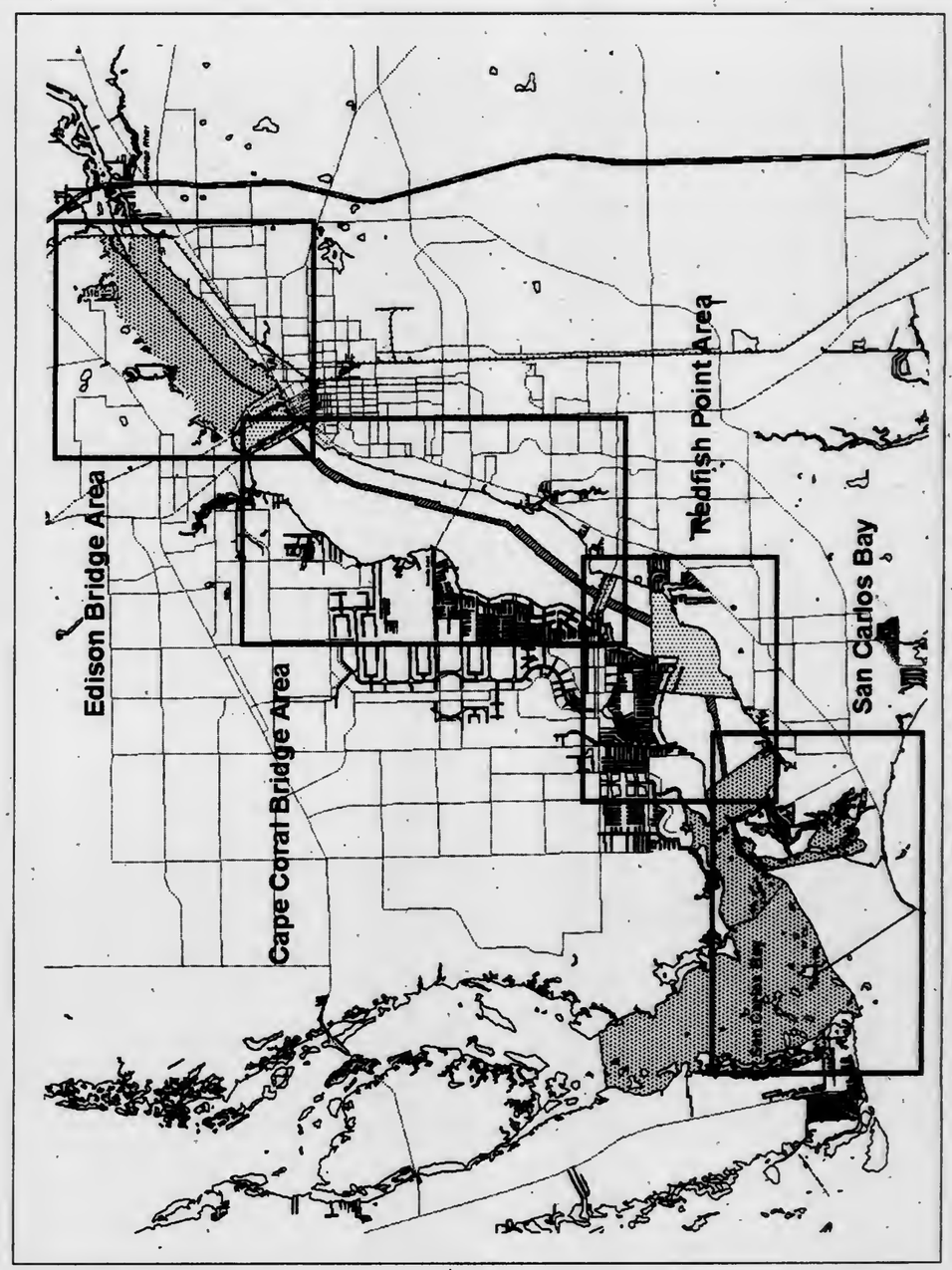
(vii) From Channel Marker "72" to Channel Marker "82" (in the vicinity of Redfish Point), for a distance of approximately 3.1 kilometers (1.9 miles) in length, shoreline-to-shoreline (including the marked navigation channel), watercraft are required to proceed at slow speed, year-round. *See* map of "Redfish Point Area" in paragraph (12)(x) of this section.

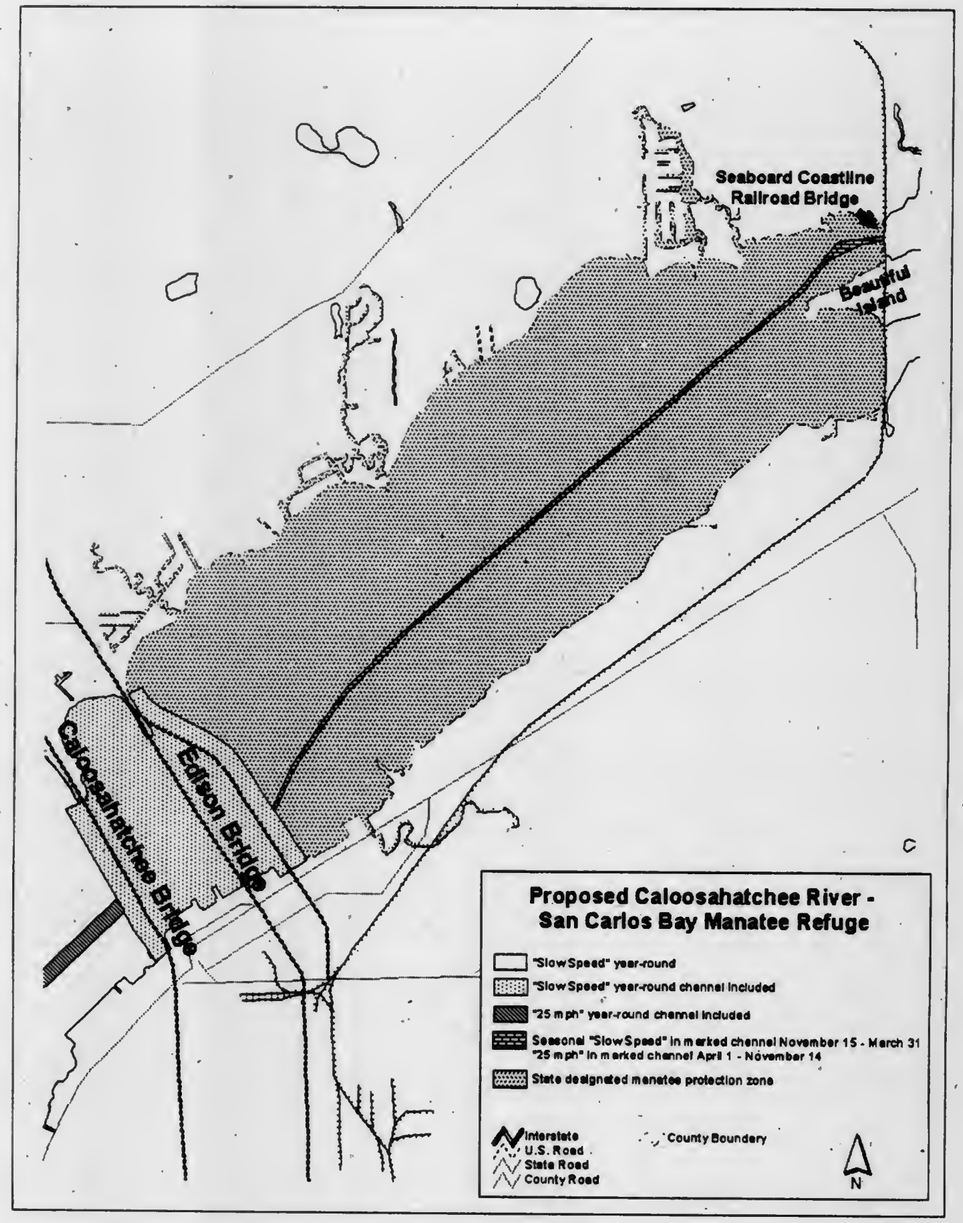
(viii) From Channel Marker "82" to Channel Marker "93," a distance of approximately 3.9 kilometers (2.4 miles) in length, watercraft are required to proceed at slow speed year-round, when operating within shoreline buffers that extend out to a distance of approximately 91 meters (300 feet) from the marked navigation channel. In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than 0.4 kilometers (0.25 mile), the slow speed buffer will extend to the edge of the marked navigation channel. Watercraft are required to proceed at not more than 40 kilometers per hour (25 miles per hour) when operating between these buffers. *See* map of "Redfish Point Area" in paragraph (12)(x) of this section.

(ix) From Channel Marker "99" to the Sanibel Causeway, watercraft are required to proceed at slow speed year-round in San Carlos Bay within the following limits: a northern boundary described by the southern edge of the marked navigation channel, a line approximately 2.9 kilometers (1.8 miles) in length; a southern boundary described by the Sanibel Causeway (approximately 1.9 kilometers (1.2 miles) in length); a western boundary described by a line that connects the western end of the easternmost Sanibel Causeway island and extending northwest to the western shoreline of Merwin Key (approximately 3.1 kilometers (1.9 miles) in length); the eastern boundary includes the western limit of the State-designated manatee protection area (68C–22.005) near Punta Rassa (approximately 2.9 kilometers (1.8 miles) in length). Speeds are unrestricted in the channel and bay waters to the west of this area: *See* map of "San Carlos Bay" in paragraph (12)(x) of this section.

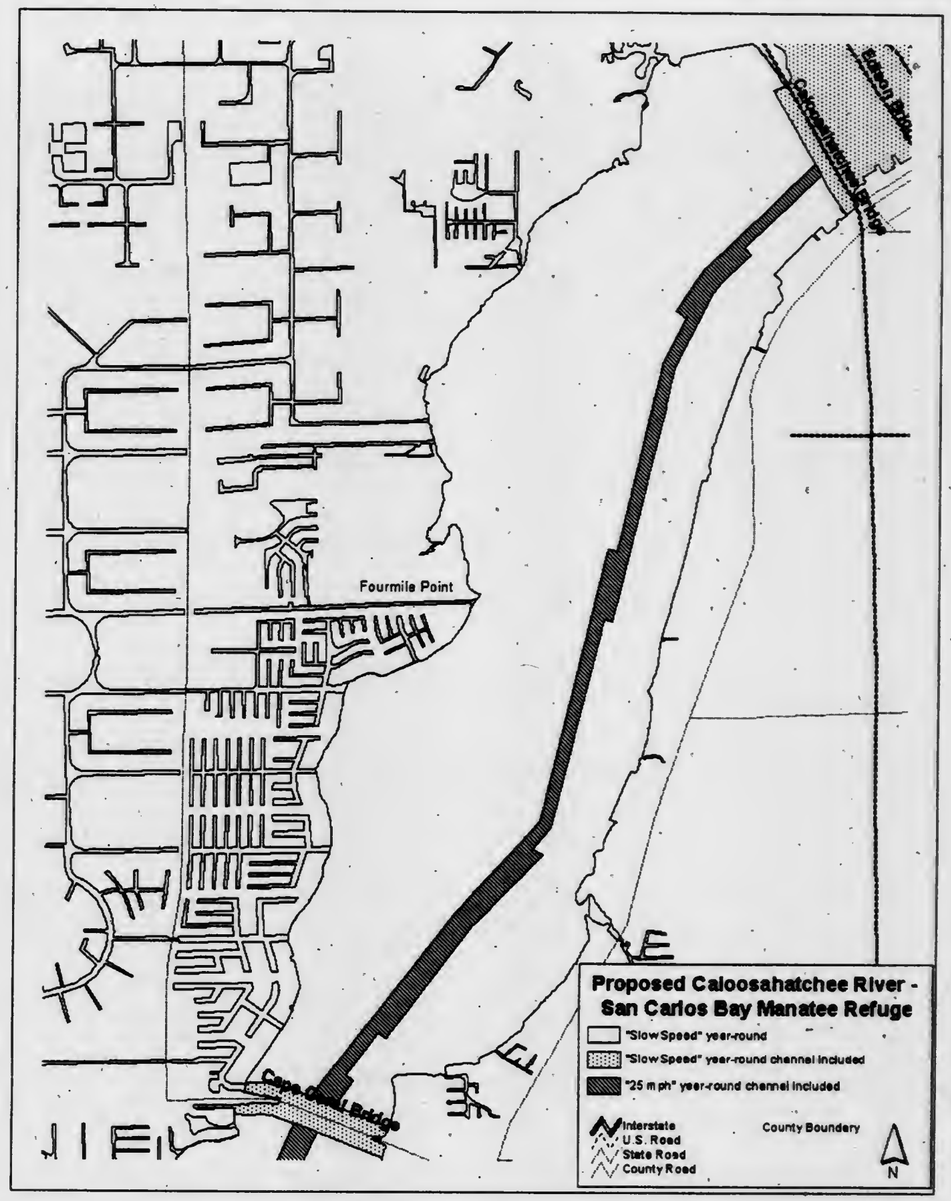
(x) Five maps of the Caloosahatchee River—San Carlos Bay Manatee Refuge follow:

BILLING CODE 4310–55–P

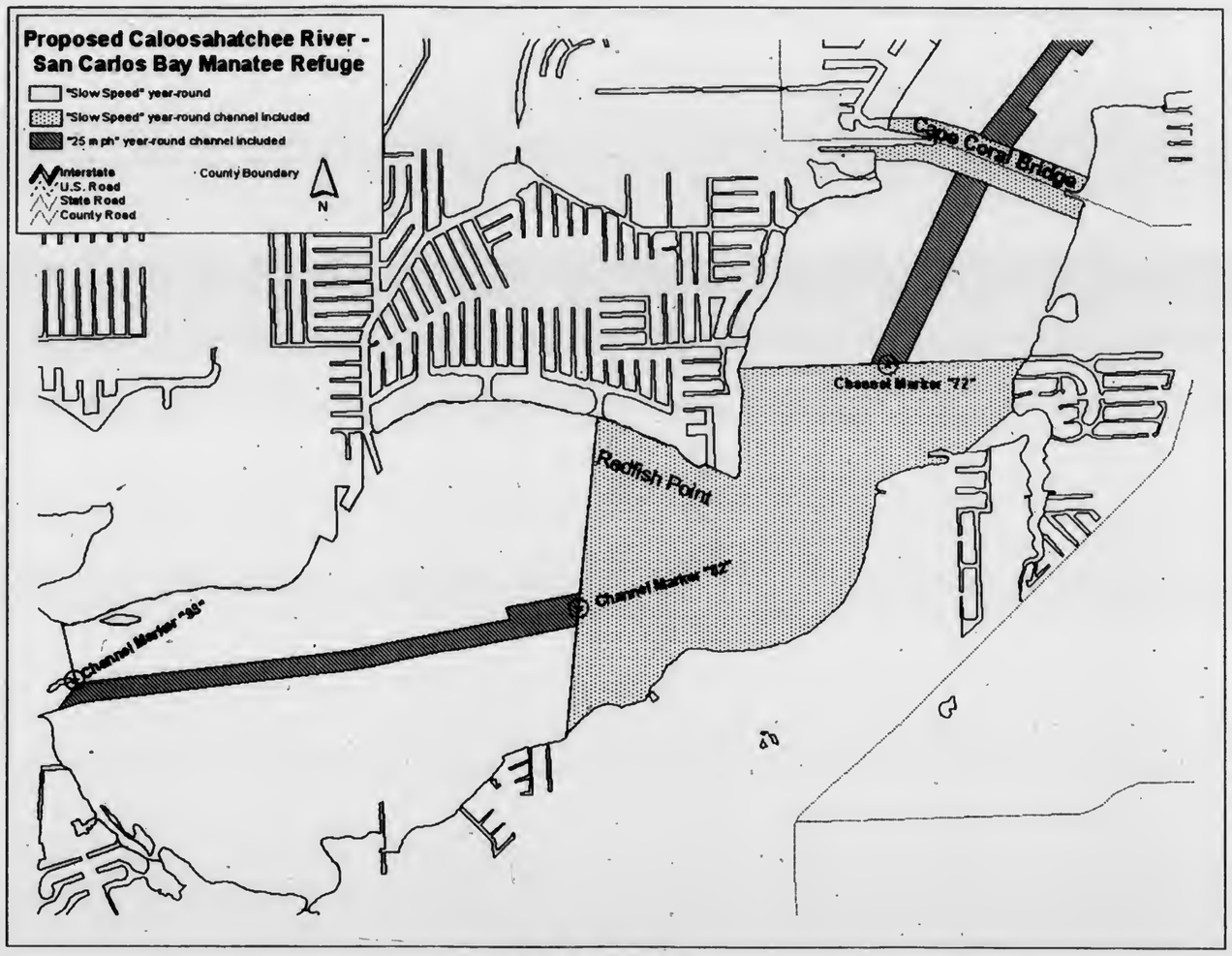




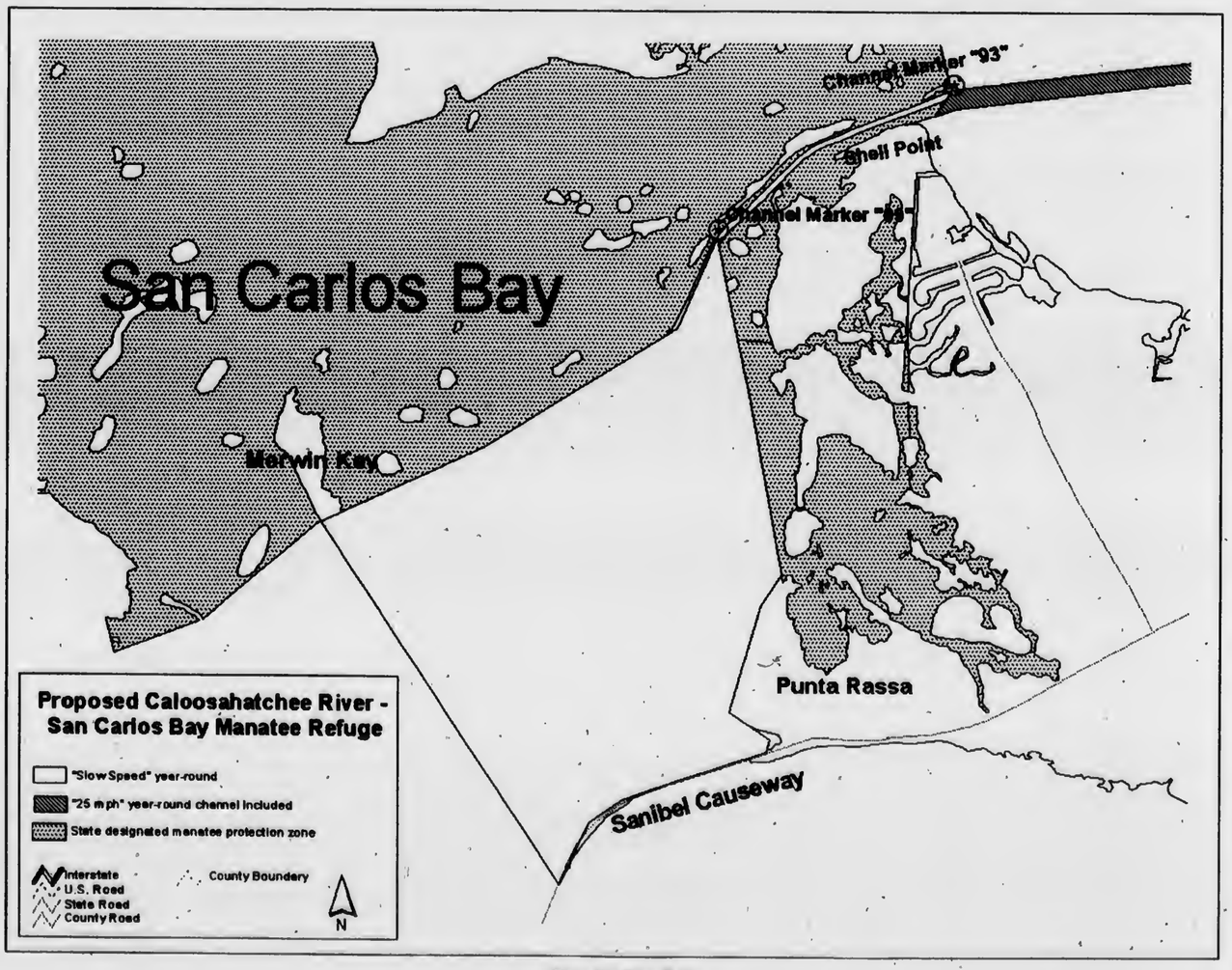
Edison Bridge Area



Cape Coral Bridge Area



Redfish Point Area



San Carlos Bay

(13) *The Lower St. Johns River Manatee Refuge.*

(i) The Lower St. Johns River Manatee Refuge is described as portions of the St. Johns River and adjacent waters in Duval, Clay, and St. Johns Counties

from Reddie Point upstream to the mouth of Peter's Branch, including Doctors Lake, in Clay County on the western shore, and to the southern shore of the mouth of Julington Creek in St. Johns County on the eastern shore. A map showing the refuge and two maps showing specific areas of the refuge are at paragraph (13)(v) of this section.

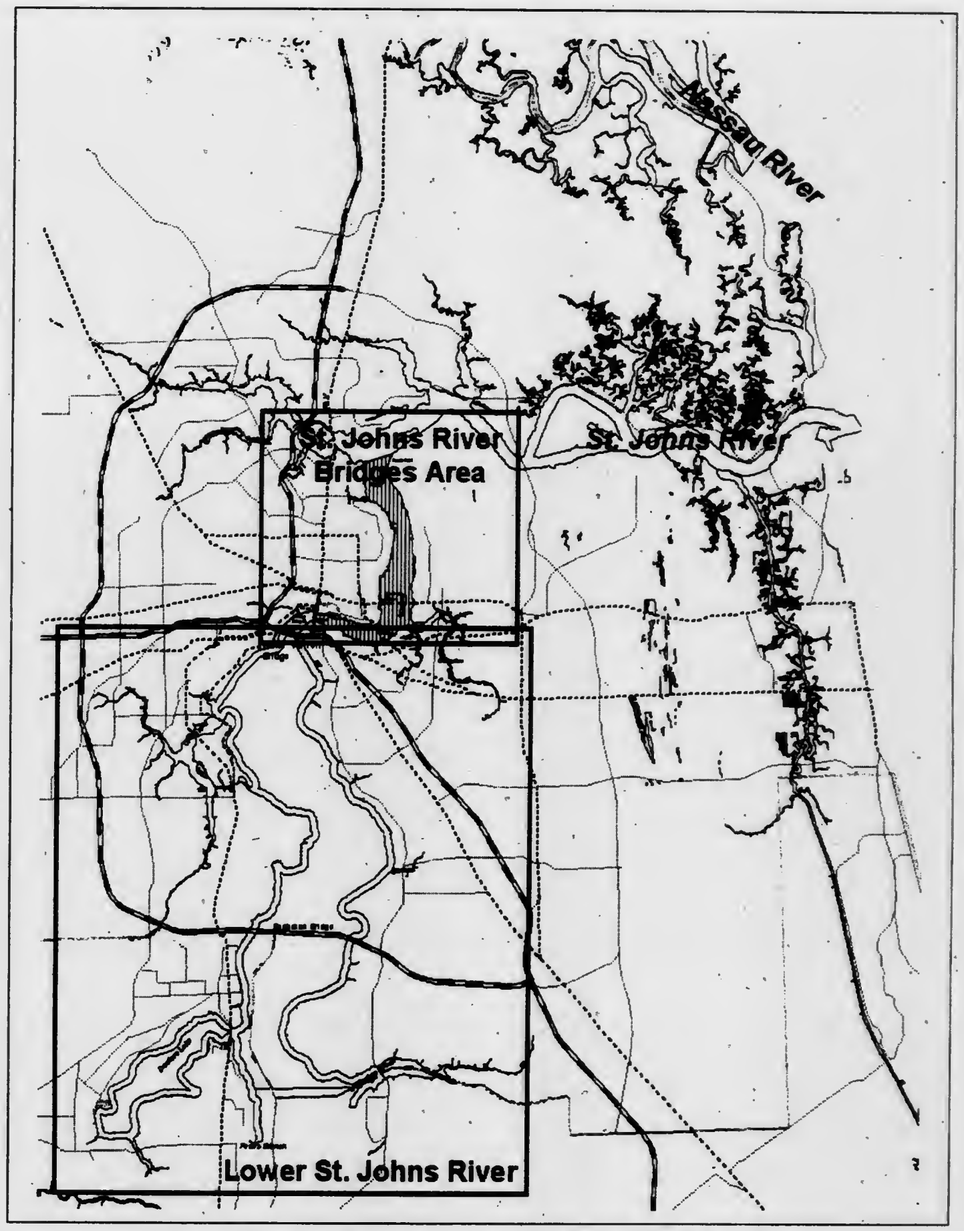
(ii) From Reddie Point upstream to the Main Street Bridge, a distance of approximately 11.6 kilometers (or 7.2 miles), watercraft are required to proceed at slow speed, year-round, outside the marked navigation channel and at speeds of not more than 40 kilometers per hour (25 miles per hour) in the marked channel (from Channel Marker "81" to the Main Street Bridge, the channel is defined as the line of sight extending west from Channel Markers "81" and "82" to the center span of the Main Street Bridge). *See* map of "St. Johns River Bridges Area" in paragraph (13)(v) of this section.

(iii) From the Main Street Bridge to the Fuller Warren Bridge, a distance of approximately 1.6 kilometers (1.0 mile), shore-line to shore-line, watercraft are required to proceed at slow speed (channel included), year-round. *See* map of "St. Johns River Bridges Area" in paragraph (13)(v) of this section.

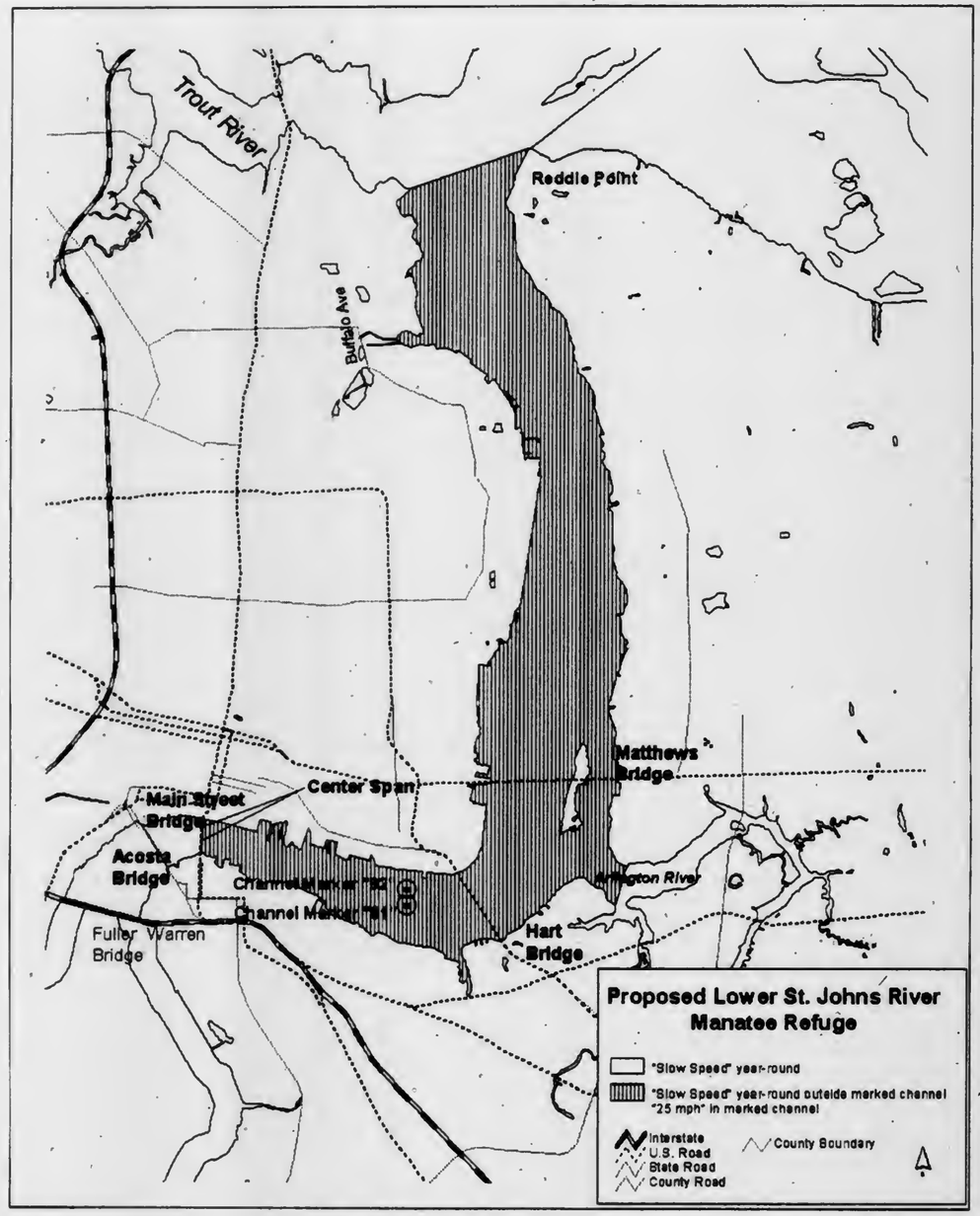
(iv) Upstream of the Fuller Warren Bridge, a 305-meter (1,000-foot), slow speed, year-round, shoreline buffer to the south bank of the mouth of Peter's Branch in Clay County along the western shore (approximately 31.1 kilometers (19.3 miles)); and in Doctors Lake in Clay County, slow speed, year-round, along a 274-meter (900-foot) shoreline buffer (approximately 20.8 kilometers (12.9 miles)); and a 305-meter (1,000-foot), slow speed, year-round, shoreline buffer to the south bank of the mouth of Julington Creek in St. Johns County along the eastern shore (approximately 32.5 kilometers (20.2 miles)) to a line north of a western extension of the Nature's Hammock Road North. Watercraft are required to proceed at slow speed within these buffer areas. *See* map of "Lower St. Johns River" in paragraph (13)(v) of this section.

(v) Three maps of the Lower St. Johns River Manatee Refuge follow:

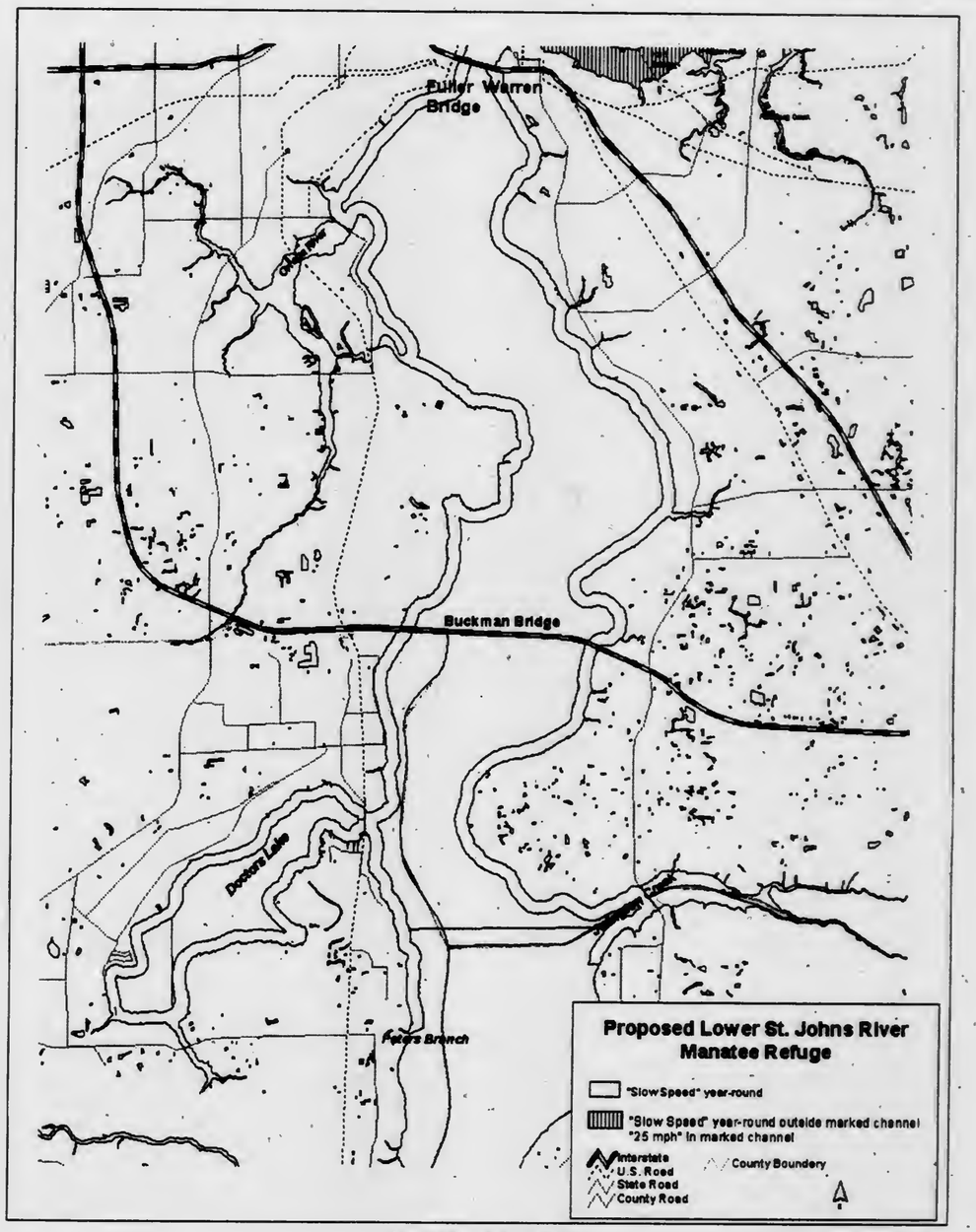
BILLING CODE 4310–55–P



Proposed Lower St. Johns River Manatee Refuge



St. Johns River Bridges Area



Lower St. Johns River

(14) *The Halifax and Tomoka Rivers Manatee Refuge.*

(i) The Halifax and Tomoka Rivers Manatee Refuge is described as the Halifax River and associated waterbodies in Volusia County, from the

Volusia County—Flagler County line to New Smyrna Beach. A map showing the refuge and eight maps showing specific areas in the refuge are at paragraph (14)(xiii) of this section.

(ii) From the Volusia County/Flagler County line at Halifax Creek south to Channel Marker "9," a distance of approximately 11.3 kilometers (7.0 miles) in length, watercraft are required to proceed at slow speed, year-round outside the marked channel and at not more than 40 kilometers per hour (25 miles per hour) in the channel. *See* maps of "Halifax Creek" and "Tomoka River Basin" in paragraph (14)(xiii) of this section.

(iii) From Channel Marker "9" to a point 152 meters (500 feet) north of the Granada Bridge (State Road 40) (including the Tomoka Basin), a distance of approximately 5.0 kilometers (3.1 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (and including the marked navigation channel). Watercraft are required to proceed at slow speed within the buffers and not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (and including the marked navigation channel). *See* maps of "Tomoka River Basin" and "Tomoka River" in paragraph (14)(xiii) of this section.

(iv) In the Tomoka River, all waters upstream of the U.S. 1 bridge, a distance of approximately 7.2 kilometers (4.5 miles) in length, slow speed, year-round, shoreline to shoreline; from the U.S. 1 bridge downstream to Latitude 29° 19′ 00″, a distance of approximately 2.1 kilometers (1.3 miles) in length, idle speed, year-round, shoreline to shoreline; from Latitude 29° 19′ 00″ downstream to the confluence of Strickland Creek and the Tomoka River, and including Strickland, Thompson, and Dodson creeks, a combined distance of approximately 9.7 kilometers (6 miles) in length, slow speed, year-round, shoreline to shoreline; from the confluence of Strickland Creek and the Tomoka River downstream to the mouth of the Tomoka River, a distance of approximately 1.4 kilometers (0.9 miles) in length, idle speed, year-round, shoreline to shoreline. Watercraft are required to proceed at idle speed within the described idle speed areas and at slow speed within the described slow speed areas. *See* map of "Tomoka River" in paragraph (14)(xiii) of this section.

(v) From 152 meters (500 feet) north to 305 meters (1,000 feet) south of the Granada Bridge (State Road 40), a distance of approximately 0.5 kilometers (0.3 miles) in length, slow speed, year-round, shoreline to shoreline. Watercraft are required to proceed at slow speed when operating within these areas. *See* map of "Halifax River A" in paragraph (14)(xiii) of this section.

(vi) From a point 305 meters (1,000 feet) south of the Granada Bridge (State Road 40) to a point 152 meters (500 feet) north of the Seabreeze Bridge, a distance of approximately 6.4 kilometers (4.0 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers, and including the marked navigation channel. Watercraft are required to proceed at slow speed within the buffers and not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (and including the marked navigation channel). *See* map of "Halifax River A" in paragraph (14)(xiii) of this section.

(vii) From 152 meters (500 feet) north of the Seabreeze Bridge, to Channel Marker "40," a distance of approximately 3.7 kilometers (2.3 miles) in length, slow speed, channel included, year-round. Watercraft are required to proceed at slow speed when operating within these areas. *See* map of "Halifax River B" in paragraph (14)(xiii) of this section.

(viii) From Channel Marker "40" to a point 152 meters (500 feet) north of the Dunlawton Bridge, a distance of approximately 14.5 kilometers (9 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers, and including the marked navigation channel. Watercraft are required to proceed at slow speed within the buffers and not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (and including the marked navigation channel). *See* map "Halifax River B" in paragraph (14)(xiii) of this section.

(ix) From 152 meters (500 feet) north to 152 meters (500 feet) south of the Dunlawton Bridge, a distance of approximately 0.3 kilometers (0.2 miles) in length, slow speed, channel included, year-round, shoreline to shoreline. Watercraft are required to proceed at slow speed when operating within these areas. *See* map of "Halifax River B" in paragraph (14)(xiii) of this section.

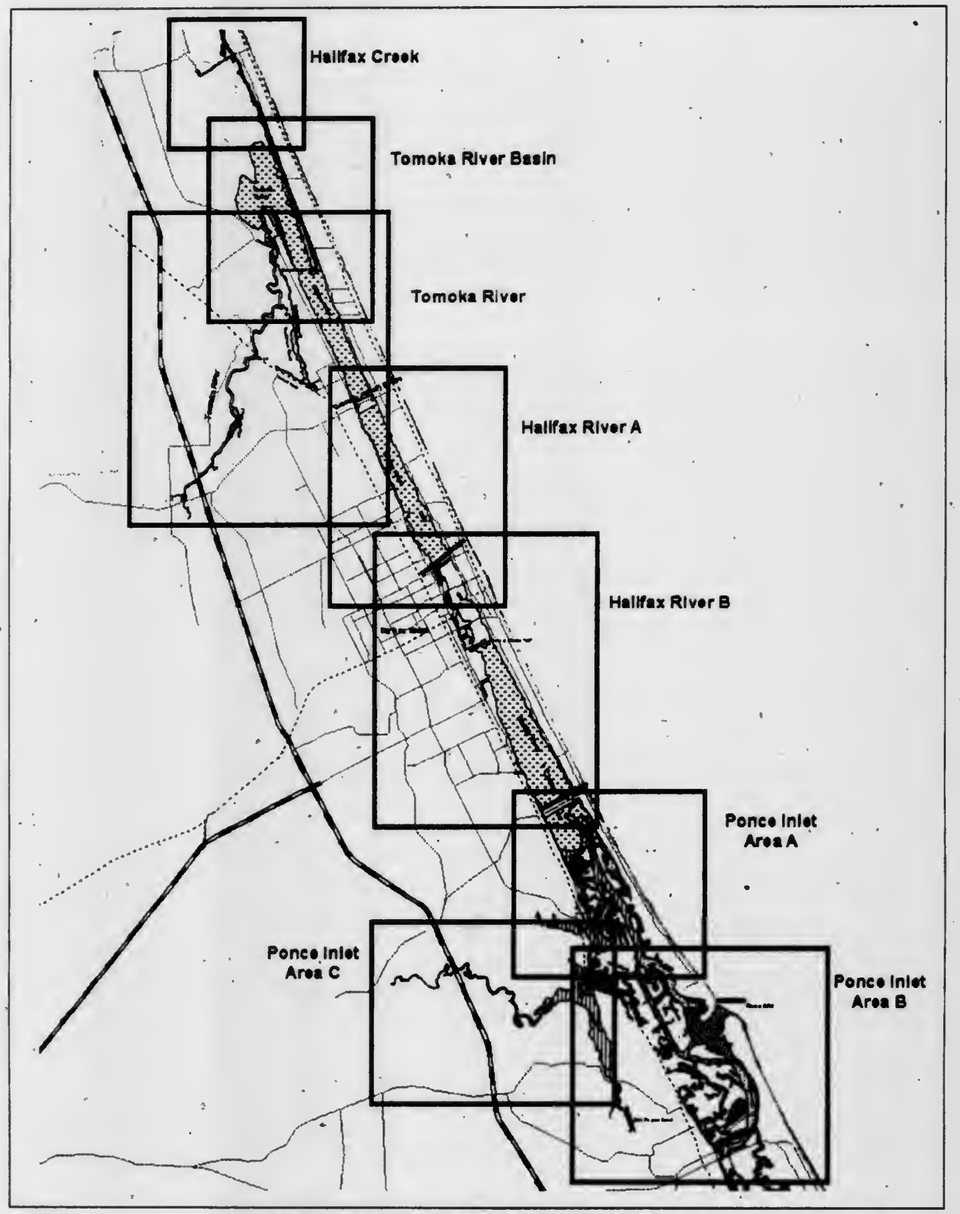
(x) From 152 meters (500 feet) south of the Dunlawton Bridge to Ponce Inlet, a distance of approximately 10.5 kilometers (6.5 miles) in length, slow speed, year-round outside of marked channels with not more than 40 kilometers per hour (25 miles per hour) in the channel; in Wilbur Bay, a distance of approximately 2.7 kilometers (1.7 miles) in length, slow speed, year-round, shoreline to shoreline; along the western shore of the Halifax River, a distance of approximately 3.1 kilometers (1.95 miles), slow speed year-round, with not more than 40 kilometers per hour (25 miles per hour) in the marked channels; in Rose Bay, a distance of approximately 2.7 kilometers (1.7 miles), slow speed year-round, with not more than 40 kilometers per hour (25 miles per hour) in the marked channels; in all waters of Mill Creek, Tenmile Creek, and Dead End Creek, a combined distance of approximately 5.1 kilometers (3.2 miles) in length, slow speed, year-round, shoreline to shoreline; in Turnbull Bay, a distance of approximately 3.9 kilometers (2.4 miles), slow speed year-round, with not more than 40 kilometers per hour (25 miles per hour) in the marked channels; in Spruce Creek, for a distance of approximately 5.6 kilometers (3.5 miles), shoreline to shoreline, April 1 to August 31, slow speed, and from September 1 through March 31, not more than 40 kilometers per hour (25 miles per hour). Watercraft are required to proceed at slow speed within the buffers and not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (including within marked channels). *See* maps of "Ponce Inlet Area A," "Ponce Inlet Area B," and "Ponce Inlet Area C" in paragraph (14)(xiii) of this section.

(xi) In waters north of Ponce Inlet, between Live Oak Point and Channel Marker "2," a distance of approximately 2.9 kilometers (1.8 miles), slow speed, channel included, year-round; in waters adjacent to Ponce Inlet, slow speed, year-round outside of the marked navigation channel and other marked access channels, with not more than 40 kilometers per hour (25 miles per hour) in the marked channels. Watercraft are required to proceed at slow speed within the buffers and not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (including within marked channels). In the waters of Ponce Inlet, watercraft are required to proceed at speeds of not more than 48 kilometers per hour (30 miles per hour). *See* map of "Ponce Inlet Area B" in paragraph (14)(xiii) of this section.

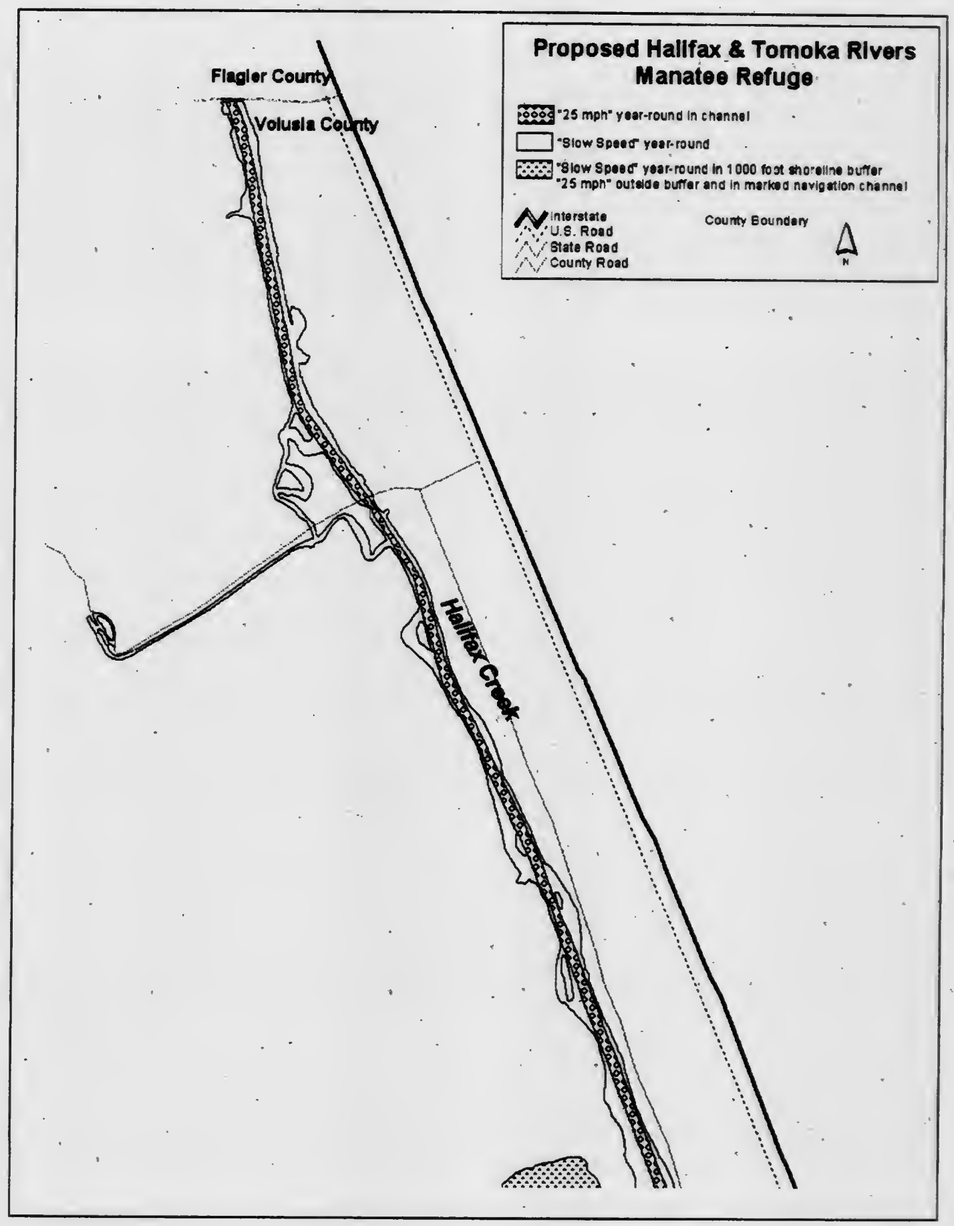
(xii) In the Intracoastal Waterway from Redland Canal to the A1A Bridge (New Smyrna Beach, for a distance of approximately 5.3 kilometers (3.3 miles) in length, slow speed, channel included, year-round. Watercraft are required to proceed at slow speed when operating within this area. *See* map of "Ponce Inlet Area B" in paragraph (14)(xiii) of this section.

(xiii) Nine maps of the Halifax and Tomoka Rivers Manatee Refuge follow:

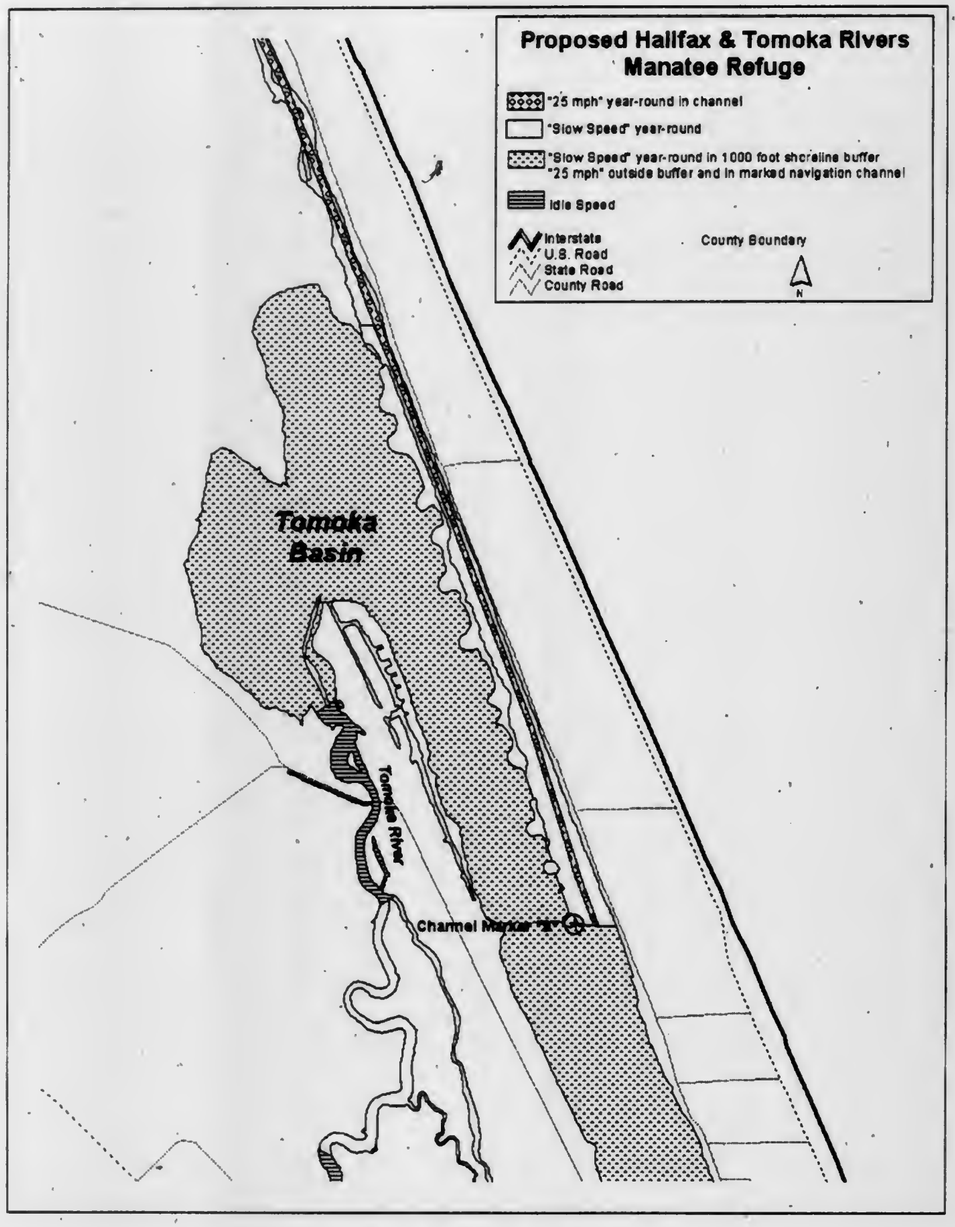
BILLING CODE 4310–55–P



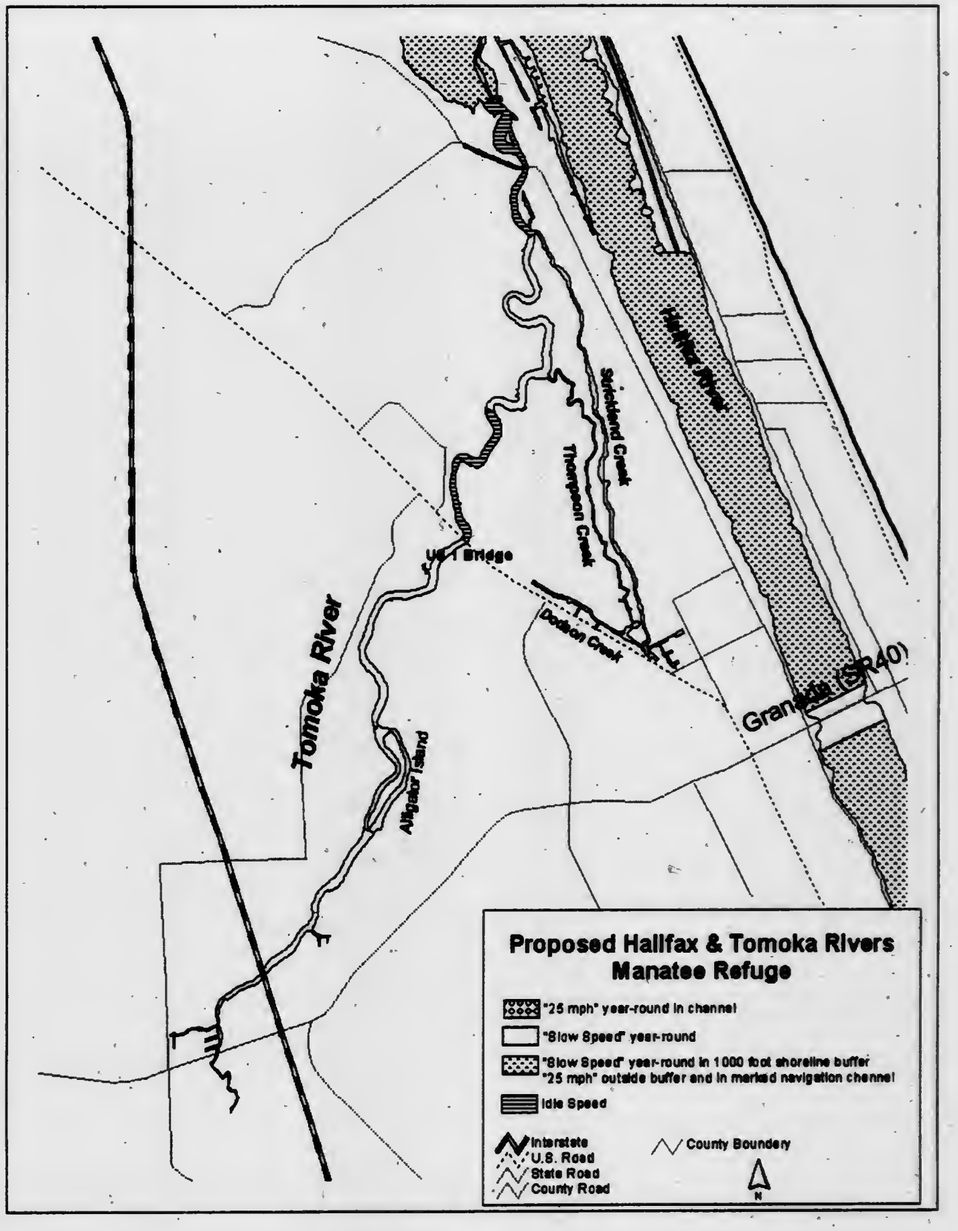
Proposed Halifax & Tomoka Rivers Manatee Refuge



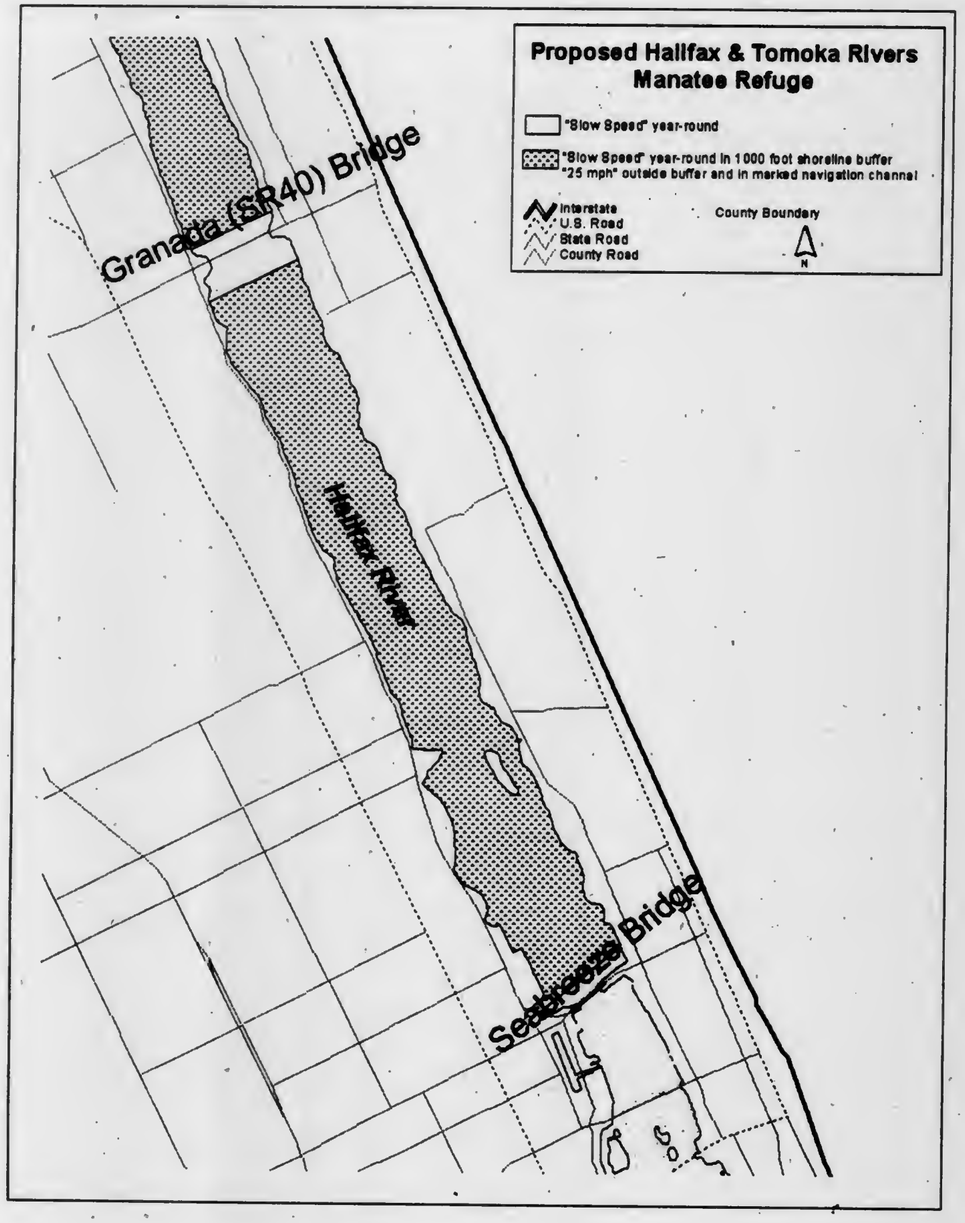
Halifax Creek



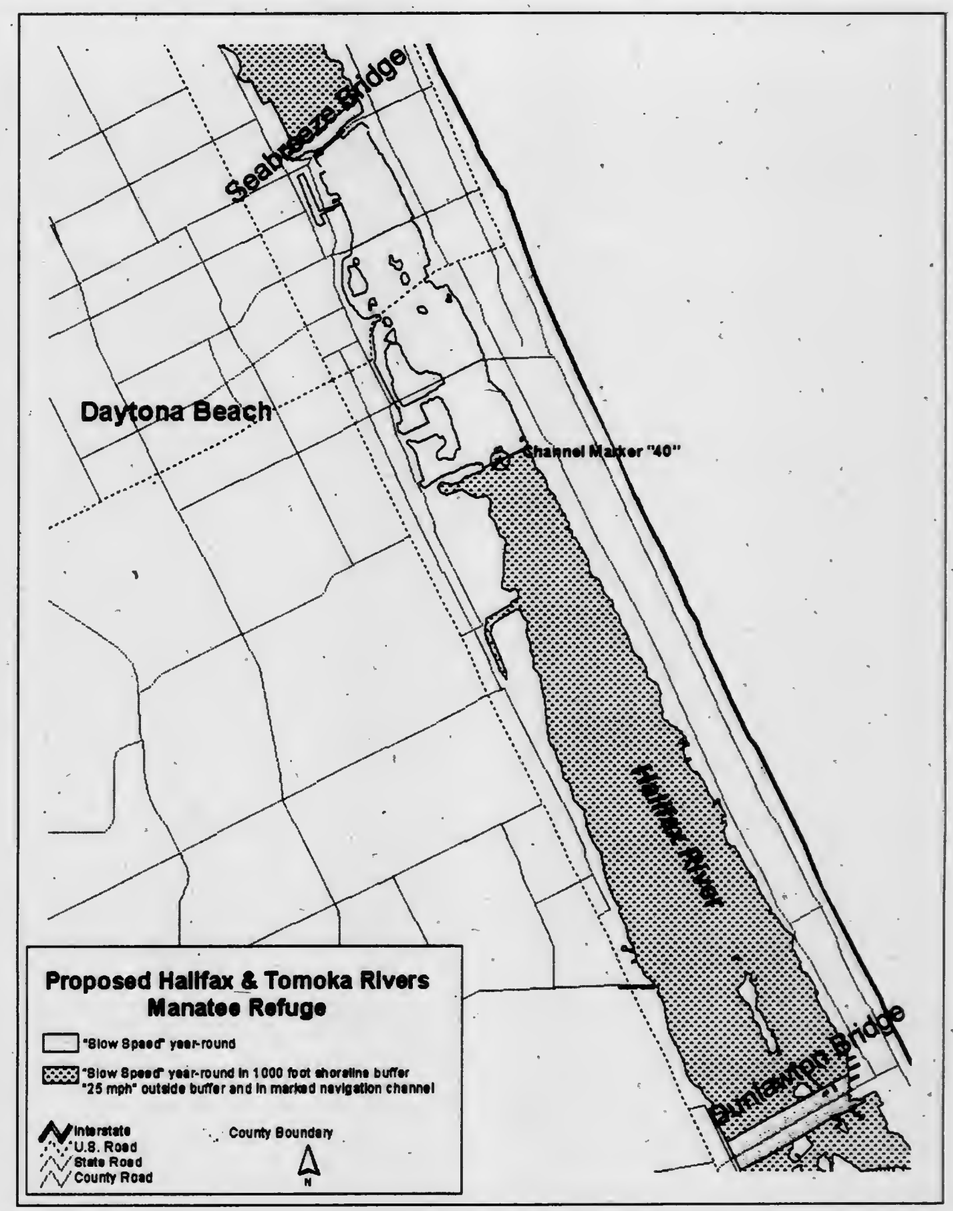
Tomoka River Basin



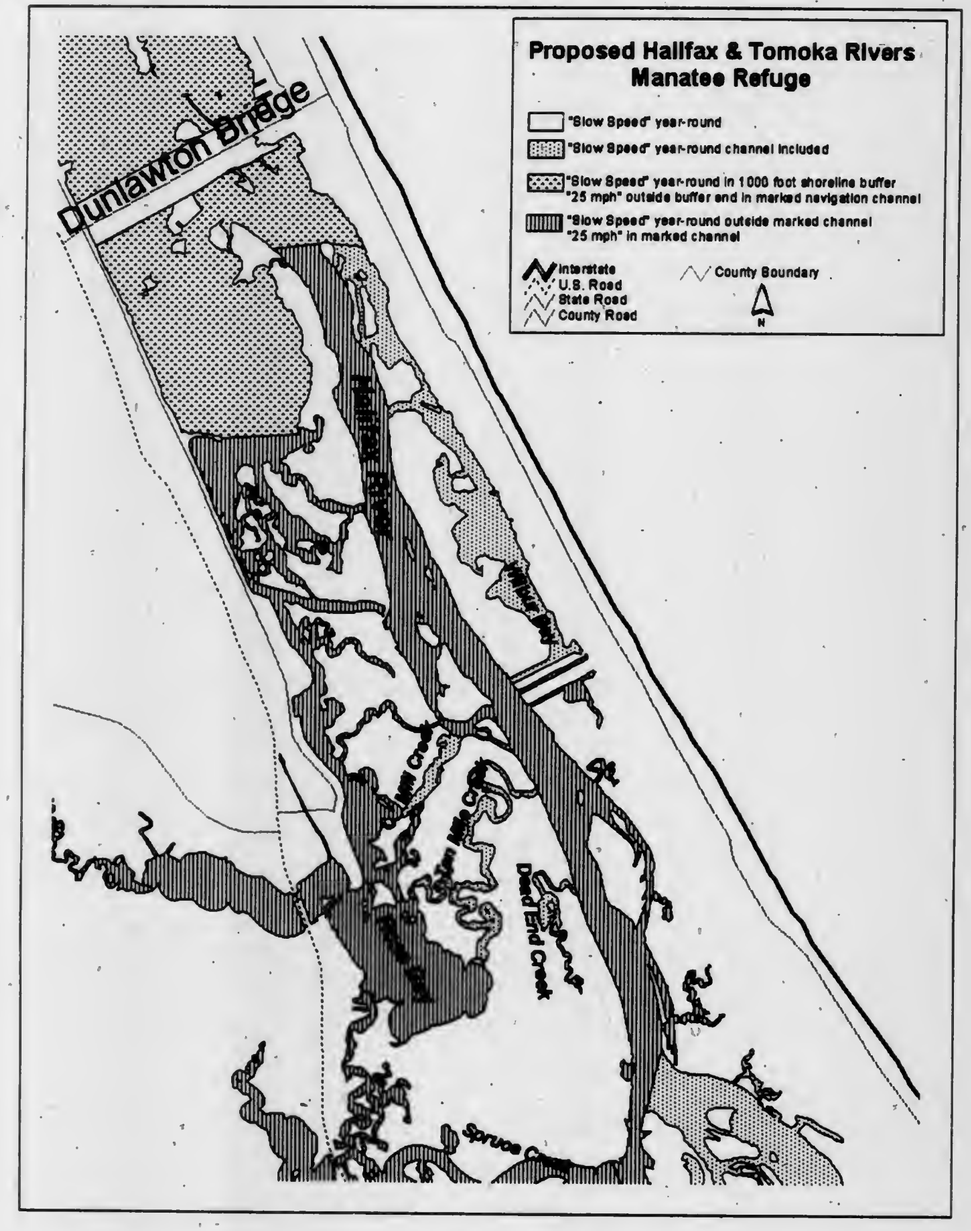
Tomoka River



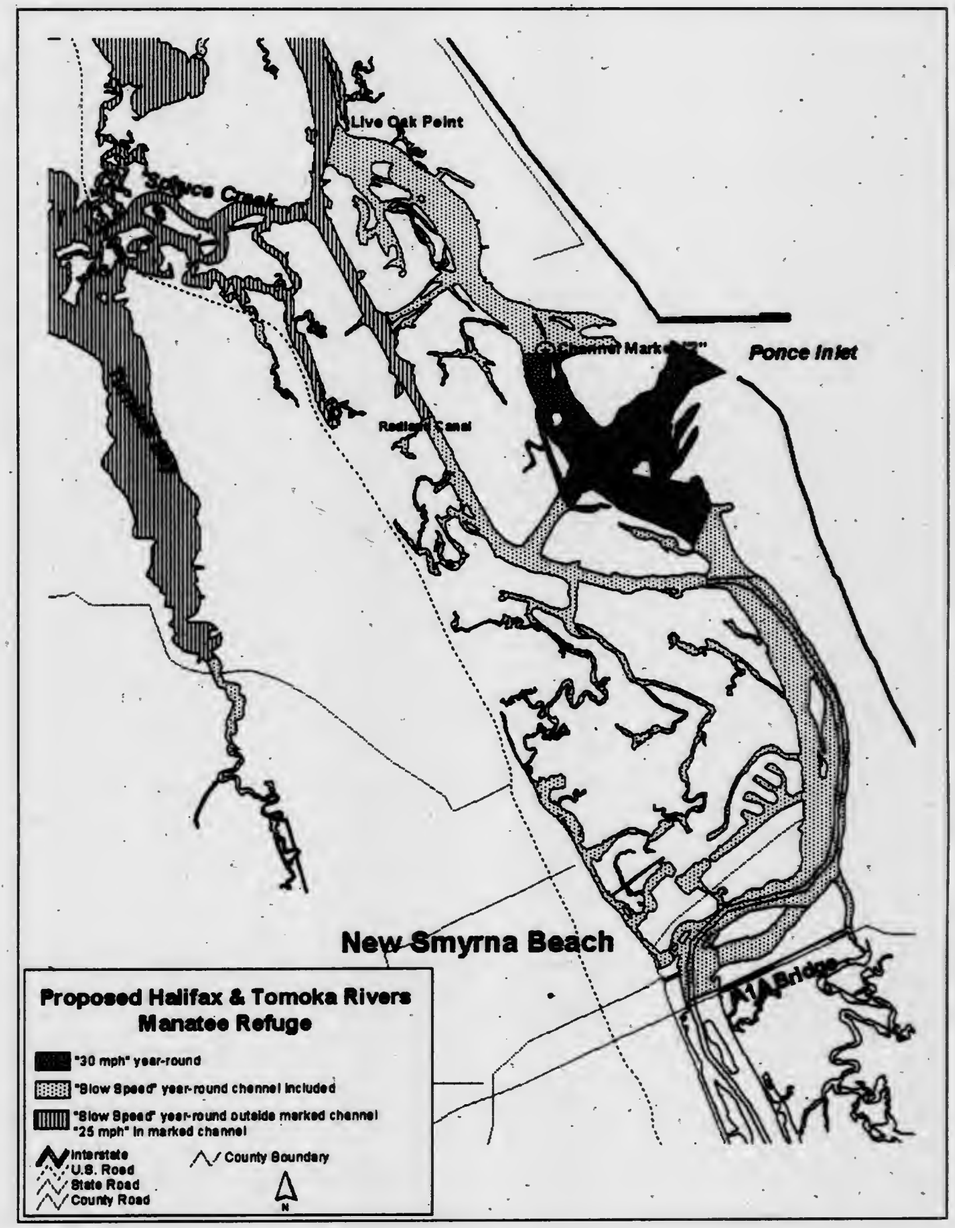
Halifax River A



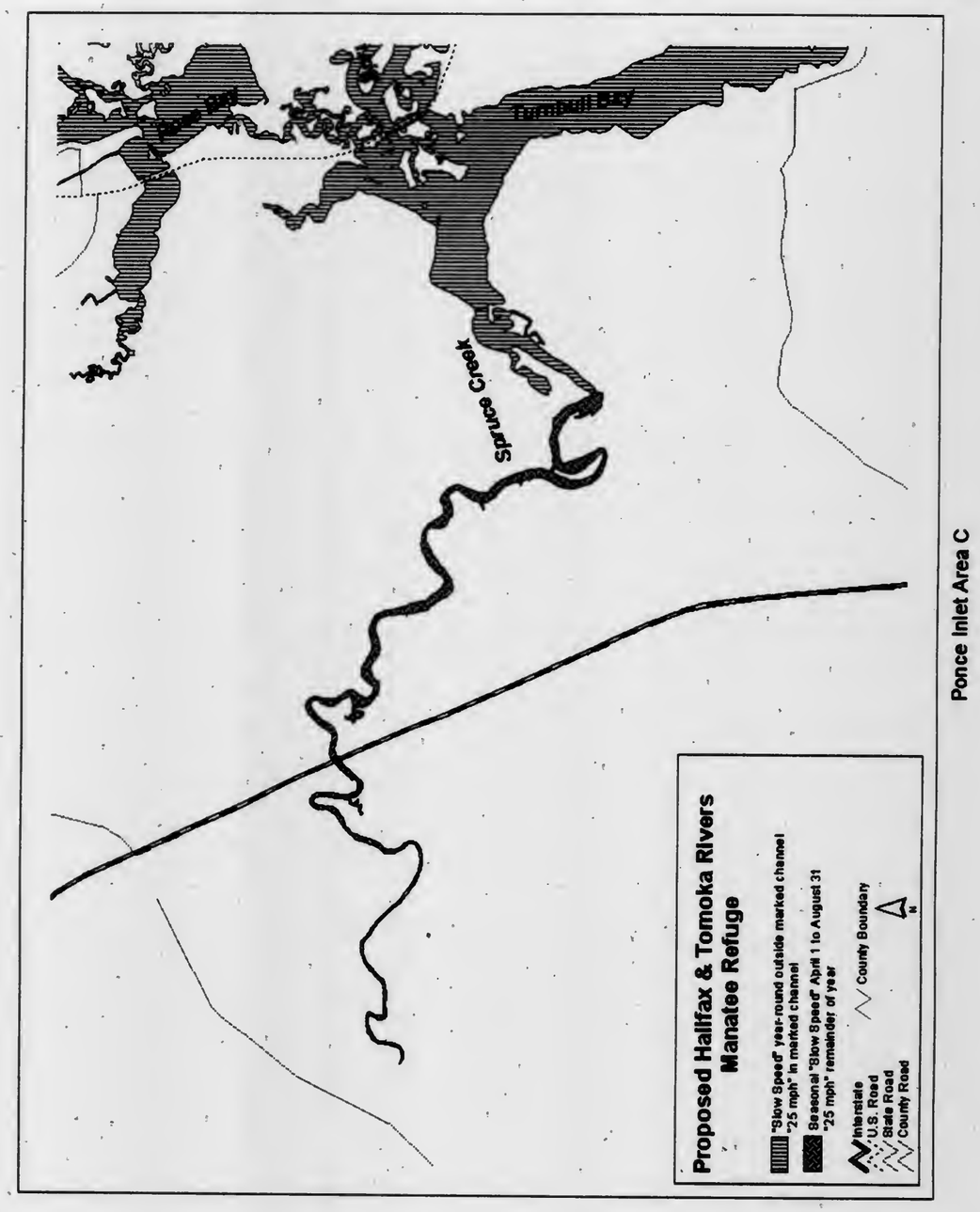
Halifax River B



Ponce Inlet Area A



Ponce Inlet Area B



Dated: March 26, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–8179 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–55–C

VOL
68

ISS
65

AP
4

003

MI

Federal Register

Friday,
April 4, 2003

Part III

Environmental Protection Agency

40 CFR Part 52
Section 126 Rule: Withdrawal Provision; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–7476–3]

RIN 2060–AK41

Section 126 Rule: Withdrawal Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In today's action, EPA is proposing to revise one narrow aspect of a final rule published on January 18, 2000, known as the Section 126 Rule. The EPA promulgated the rule in response to petitions submitted by four Northeastern States under section 126 of the Clean Air Act (CAA) for the purpose of mitigating interstate transport of nitrogen oxides (NO_X) and ozone. Nitrogen oxides are one of the main precursors of ground-level ozone pollution. The Section 126 Rule requires electric generating units (EGUs) and non-electric generating units (non-EGUs) located in 12 eastern States and the District of Columbia to reduce their NO_X emissions through a NO_X cap-and-trade program.

Originally, EPA harmonized the Section 126 Rule with a related ozone transport rule, known as the NO_X State implementation plan call (NO_X SIP Call), which also addresses NO_X and ozone transport in the eastern United States. The EPA established the same compliance date for both rules, May 1, 2003. Where States adopted, and EPA approved, SIPs meeting the NO_X SIP Call, and with a May 1, 2003 compliance date, EPA would withdraw the Section 126 requirements for sources in that State. This was a practical way to address the overlap between the two rules. As a result of court actions, the compliance dates for the Section 126 Rule and the NO_X SIP Call have now been delayed until May 31, 2004. In addition, the NO_X SIP Call has been divided into two phases. Therefore, EPA is proposing to revise the Section 126 withdrawal provision so that it will operate under these new circumstances. In today's action, EPA is proposing to withdraw the Section 126 Rule if a State adopts, and EPA approves, a SIP with a May 31, 2004 compliance date that meets either the full NO_X SIP Call or Phase 1 where the State is regulating the Section 126 sources to the same stringency as the Section 126 Rule.

DATES: The comment period on this proposal ends on May 24, 2003. Comments must be postmarked by the last day of the comment period and sent directly to the Docket Office listed in **ADDRESSES** (in duplicate form if possible). A public hearing will be held on April 24, 2003 in Washington, DC, if one is requested by April 10, 2003. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and hearing.

ADDRESSES: Comments may be submitted through the U.S. Postal Service to the following address: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460, Attention: Docket No. A–97–43. To mail comments or documents through Federal Express, UPS, or other courier services, the mailing address is: U.S. Environmental Protection Agency, EPA Docket Center (Air Docket), 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20004. The telephone number for the Air Docket is (202) 566–1742 and the fax number is 202–566–1741. The EPA encourages electronic submission of comments and data following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No confidential business information should be submitted through e-mail.

Documents relevant to this action are available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room B102, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

The public hearing, if requested, will be held at Ariel Rios North, Room 1332, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Questions concerning today's action should be addressed to Carla Oldham, EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–02, Research Triangle Park, NC 27711, telephone (919) 541–3347, e-mail at *oldham.carla@epa.gov*.

SUPPLEMENTARY INFORMATION:

Public Hearing

The EPA will conduct a public hearing on this proposal on April 24, 2003 beginning at 9 a.m., if requested on or before April 10, 2003. The EPA will not hold a hearing if one is not requested. Please check EPA's Web page at *http://www.epa.gov/ttn/naaqs/ozone/rto/rto_whatsnew.html* on April 11, 2003 for the announcement of whether the hearing will be held. If there is a public hearing, it will be held at Ariel Rios North, Room 1332, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The Metro stop is Federal Triangle. If you want to request a hearing and present oral testimony at the hearing, you should notify, on or before April 10, 2003, JoAnn Allman, EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–02, Research Triangle Park, NC 27711, telephone (919) 541–1815, e-mail *allman.joann@epa.gov*. Oral testimony will be limited to 5 minutes each. The hearing will be strictly limited to the subject matter of the proposal, the scope of which is discussed below. Any member of the public may file a written statement by the close of the comment period. Written statements (duplicate copies preferred) should be submitted to Docket No. A–97–43 at the addresses given above for submittal of comments. The hearing schedule, including the list of speakers, will be posted on EPA's Web page at *http://www.epa.gov/ttn/naaqs/ozone/rto/rto_whatsnew.html*. A verbatim transcript of the hearing, if held, and written statements will be made available for copying during normal working hours at the EPA Docket Center address given above for inspection of documents.

Availability of Related Information

The official record for this rulemaking, as well as the public version, has been established under docket number A–97–43 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information, is available for inspection from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. In addition, the **Federal Register** rulemaking actions and associated documents are located at *http://www.epa.gov/ttn/naaqs/ozone/rto/126/index.html*.

The EPA has issued a separate rule on NO_X transport entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone." The rulemaking docket for that rule (Docket No. A–96–56), hereafter referred to as the NO_X SIP Call, contains information and analyses that EPA has relied upon in the section 126 rulemaking, and hence documents in that docket are part of the rulemaking record for this rule. Documents related to the NO_X SIP Call rulemaking are available for inspection in docket number A–96–56 at the address and times given above.

Submitting Electronic Comments

Electronic comments are encouraged and can be sent directly to EPA at *A-and-R-Docket@epa.gov*. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket number A–97–43. Electronic comments may be filed online at many Federal Depository Libraries.

Outline

I. What is the Relationship Between the Section 126 Rule and the NO_X SIP Call?
II. What is the History of the Section 126 Rule Withdrawal Provision?
III. Why Does the Section 126 Rule Withdrawal Provision Need to be Revised?
  A. Under What Circumstances Does the Section 126 Rule Withdrawal Provision Currently Operate?
  B. How Have Court Actions Affected the Circumstances Upon Which the Section 126 Rule Withdrawal Provision Was Based?
    1. Court Actions on the NO_X SIP Call.
    2. Court Actions on the Section 126 Rule.
IV. What is EPA's Proposal to Revise the Section 126 Rule Withdrawal Provision?
  A. What is EPA's Proposal Related to the SIP Compliance Date?
  B. What is EPA's Proposal Related to Withdrawing the Section 126 Rule Based on a Phase 1 SIP?
V. What is the Current Status of the NO_X SIPs Under the NO_X SIP Call and EPA's Proposed Action to Withdraw the Section 126 Rule in a State?
VI. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
  H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer Advancement Act

I. What Is the Relationship Between the Section 126 Rule and the NO_X SIP Call?

In the past several years, EPA has been engaged in two separate rulemakings to address the interstate ozone transport problem in the eastern half of the United States. These rules, known as the NO_X SIP Call and the Section 126 Rule, both require reductions in NO_X emissions, which are precursors to ground-level ozone formation.

On October 27, 1998 (63 FR 57356), EPA promulgated the NO_X SIP Call thereby requiring 22 Eastern States and the District of Columbia to reduce statewide NO_X emissions to a specified level (NO_X budget).[1] The States have the flexibility to choose the particular mix of control measures necessary to meet the NO_X budget. The primary statutory provision for the NO_X SIP Call is CAA section 110(a)(2)(D)(i), under which, in general, each SIP is required to include provisions to assure that sources within the State do not emit pollutants in amounts that significantly contribute to nonattainment or interfere with maintenance problems downwind.

In 1997, while EPA was in the process of developing the NO_X SIP Call, eight Northeastern States submitted petitions under section 126 of the CAA seeking to mitigate significant interstate transport of NO_X and ozone. Section 126 refers to State obligations under CAA section 110(a)(2)(D)(i) as does the NO_X SIP Call. Section 126 authorizes a State to petition EPA to make a finding that any major source or group of stationary sources in upwind States are significantly contributing to nonattainment, or interfering with maintenance, in the petitioning State. If EPA makes such a finding, EPA is authorized to establish Federal emission limits for the affected sources. The petitions requested that EPA make such findings and establish control requirements for certain sources in about 30 States.

The EPA took action on the Section 126 petitions in final rules issued on May 25, 1999 and January 18, 2000 (together known as the Section 126 Rule) (64 FR 28250 and 65 FR 2674). In acting on the section 126 petitions, EPA relied on analyses and information used in the NO_X SIP Call rulemaking, including the linkages it drew between specific upwind States and nonattainment and maintenance problems in specific downwind States. The EPA determined that large EGUs and large industrial boilers and turbines (non-EGUs) in 12 States and the District of Columbia were significantly contributing to nonattainment problems in four of the petitioning States under the 1-hour ozone national ambient air quality standard.[2] The EPA required these sources to reduce their NO_X emissions through a Federal NO_X cap-and-trade program.

The Section 126 Rule overlaps considerably with the NO_X SIP Call. Both the Section 126 Rule and the NO_X SIP Call are based on much the same set of facts regarding the same pollutants. Both rely on section 110(a)(2)(D)(i) of the CAA. All of the sources affected by the Section 126 Rule are located in States that are covered by the NO_X SIP Call. Therefore, as discussed below, EPA coordinated its actions under the two transport rules. (*See* the May 25, 1999 and January 18, 2000 Section 126 Rules for a detailed history of the relationship between the NO_X SIP Call and the Section 126 Rule.)

II. What Is the History of the Section 126 Rule Withdrawal Provision?

When EPA issued the May 25, 1999 Section 126 Rule, there was an existing requirement under the NO_X SIP Call for States to reduce their NO_X emissions and an explicit and expeditious schedule to do so. Therefore, EPA was able to coordinate, or harmonize, the Section 126 Rule with the NO_X SIP Call. The EPA established the same compliance date, May 1, 2003 for both rules. Then, EPA structured its action on the section 126 petitions to give a State the opportunity to address its NO_X transport first under the NO_X SIP Call before EPA would directly regulate sources in the State under the Section 126 Rule. Thus, in the May 25, 1999 Section 126 Rule, EPA made technical determinations as to which sources were significantly contributing to the petitioning States but deferred making the Section 126 findings, which would trigger the control requirements, as long as States and EPA stayed on track to meet the NO_X SIP Call obligations. The EPA included a withdrawal provision in the Section 126 Rule under which the Section 126 Rule for sources in a State would be automatically withdrawn if that State submitted and EPA approved a NO_X SIP fully meeting the NO_X SIP Call (*see* 64 FR 28271–28274; May 25, 1999). Thus, the section 126 control requirements would not go into place if

[1] As a result of a court decision, EPA will now only be including 21 States and the District of Columbia in the SIP Call.

[2] Several of the petitions also requested that EPA also make findings under the 8-hour ozone standard. The EPA made technical determinations under the 8-hour standard in the May 25, 1999 rule but later stayed that portion of the rule in light of litigation on the 8-hour standard (65 FR 2674; January 18, 2000).

a State took timely action under the NO_X SIP Call. This gave upwind States the flexibility to address the ozone transport problem themselves, but would not delay implementation of the NO_X transport remedy beyond the May 1, 2003 Section 126 Rule compliance date.[3] This was a practical way to address the overlap between the actions that would be required under the NO_X SIP Call and under the rulemaking on the section 126 petitions. (The basis for the withdrawal provision is discussed below in section III.A. For a more detailed discussion of the basis for harmonizing the two rules and the interplay of the underlying statutory provisions, see the May 25, 1999 final rule.)

The NO_X SIP Call originally required States to submit their NO_X SIPs to EPA by September 30, 1999. On May 25, 1999, in response to a request by States challenging the NO_X SIP Call, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit or the court) issued a stay of the SIP submission deadline pending further order of the court. *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir., 2000), *cert. denied*, 121 S. Ct. 1225 (2001) (order granting stay in part). Inasmuch as the compliance date is linked with the SIP submission date, the stay created uncertainty regarding the compliance date. Because there was no longer a schedule for the NO_X SIP Call, and therefore, no assurance that transport would be addressed by May 1, 2003, EPA no longer had a basis for deferring action under the Section 126 Rule. Therefore, in a final rule published on January 18, 2000, EPA moved forward to make the findings with respect to the 1-hour ozone standard and activate the control requirements under the Section 126 Rule (65 FR 2674).[4] However, the Section 126 Rule continued to contain a provision (§ 53.34(i)) whereby the section 126 requirements would be automatically withdrawn for sources in a State if EPA approved a State's SIP that provided for the NO_X SIP Call emission reduction requirements by May 1, 2003.

[3] This approach of "harmonizing" the Section 126 Rule and the NO_X SIP Call was provided as a rulemaking option in a consent decree developed by the petitioning States and EPA.

[4] Because of the stay on the Section 126 Rule with respect to the 8-hour standard, EPA did not make findings under the 8-hour standard at that time. EPA plans to complete it's actions on the 8-hour petitions in a future rulemaking.

III. Why Does the Section 126 Rule Withdrawal Provision Need To Be Revised?

A. Under What Circumstances Does the Section 126 Rule Withdrawal Provision Currently Operate?

Section 52.34(i) of the Section 126 Rule currently provides that:

> * * * a finding [under the Section 126 Rule] as to a particular major source or group of stationary sources in a particular State will be deemed to be withdrawn, and the corresponding part of the relevant petition(s) denied, if the Administrator issues a final action putting in place implementation plans that comply with the requirements of §§ 51.121 and 51.122 [the NO_X SIP Call] of this chapter for such State.

As discussed in the Section 126 Rule (65 FR 2682–2684), the premise for the automatic withdrawal provision was that once a SIP (or Federal implementation plan (FIP)) controls the full amount of significant contribution from a State, the section 126 sources in that State could no longer be significantly contributing to downwind nonattainment, and hence the basis for the section 126 findings would no longer be present. Further, the provision would ensure that the downwind petitioning States receive the emission reduction benefits they are entitled to under section 126 by May 1, 2003, which was then the compliance date, either under the Section 126 Rule or under a Federally enforceable SIP or FIP (65 FR 2684). Thus, EPA's rationale for adopting the automatic withdrawal provision depended upon a May 1, 2003 compliance date for sources under the SIP that would substitute for the control remedy under the Section 126 Rule. Accordingly, EPA interpreted section 52.34(i) to apply only where EPA approves a SIP revision (or promulgates a FIP) meeting the full requirements of the NO_X SIP Call and including a May 1, 2003 compliance date for sources (See 65 FR 2683). The automatic withdrawal provision does not address any other circumstances.

B. How Have Court Actions Affected the Circumstances Upon Which the Section 126 Rule Withdrawal Provision Was Based?

Both the NO_X SIP Call and the Section 126 Rule were challenged in court. As a result of court actions, certain circumstances upon which the Section 126 withdrawal provision was based have changed—the deadlines for the NO_X SIP Call and the Section 126 Rule have been delayed and the SIP Call has been divided into 2 phases (known as Phase 1 and Phase 2).

1. Court Actions on the NO_X SIP Call

On March 3, 2000, a panel of the D.C. Circuit largely upheld the NO_X SIP Call but remanded a few issues to EPA for further consideration. (*See Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir., 2000), *cert. denied*, 121 S. Ct. 1225 (2001).) As discussed in section II above, during the litigation, the court issued a stay of the SIP submission deadline. On June 22, 2000, in response to a motion by EPA, the court lifted the stay and established a new SIP submission date of October 30, 2000. On August 30, 2000, the D.C. Circuit ordered that the deadline for implementation of the NO_X SIP Call be extended from May 1, 2003 to May 31, 2004. The NO_X SIP Call then had a later compliance date and was no longer harmonized with the Section 126 Rule.

As a result of the court decision, EPA divided the NO_X SIP Call into two phases. Phase 1 represents the portion of the rule that was upheld by the court and accounts for approximately 90 percent of the total emissions reductions called for by the original NO_X SIP Call. The court-established SIP submission date and compliance date apply to Phase 1. Phase 2 of the NO_X SIP Call is addressing issues remanded by the court. The EPA proposed the Phase 2 requirements on February 22, 2002 (67 FR 8396). The SIP submission date and compliance date for the Phase 2 will be established through that rulemaking action.

The EPA promulgated the January 2000 Section 126 Rule at the time when the NO_X SIP Call stay was in place. In the preamble to the rule, EPA noted that if EPA prevailed in the NO_X SIP Call litigation, the court or EPA would need to establish a new deadline for SIP submission and the delay from the original September 1999 SIP deadline could require a shift in the date for achieving the NO_X SIP Call emissions reductions beyond May 1, 2003 (65 FR 2683). The EPA indicated that when and if such a situation were to arise, EPA would address through rulemaking the effects of the new NO_X SIP Call deadline on the Section 126 withdrawal provision.

2. Court Actions on the Section 126 Rule

On May 15, 2001, the court ruled on a number of challenges to EPA's Section 126 Rule. *See Appalachian Power* v. *EPA*, 249 F.3d 1032 (D.C. Cir. 2001). The court largely upheld the Section 126 Rule, but remanded two issues to EPA. The court directed EPA to: (1) Properly justify either the current or a new set of EGU heat input growth rates to be used in estimating State heat input in 2007, and (2) either properly justify or alter its categorization of cogenerators that sell electricity to the electric grid as EGUs.[5]

On August 24, 2001, the D.C. Circuit Court tolled (suspended) the compliance period for EGUs under the Section 126 Rule as of the May 15, 2001 decision pending EPA's response to the remand related to EGU growth rates. *Appalachian Power* v. *EPA*, 249 F.3d 1052 (D.C. Cir 2001), Order (August 24, 2001). The EPA issued its response in a notice published on May 1, 2002 (67 FR 21868). Because of the time needed to fully respond to the growth factor remand, the tolling of the compliance period resulted in a delay in the implementation of the Section 126 Rule until the 2004 ozone season. This created a need for EPA to once again harmonize the Section 126 Rule with the NO_X SIP Call. Therefore, on April 30, 2002, EPA issued a final rulemaking to revise the Section 126 Rule compliance date and other related dates (67 FR 21522). The new compliance date is May 31, 2004, which is the same compliance date for Phase 1 of the NO_X SIP Call, but slightly more than a year later than the compliance date upon which the Section 126 Rule withdrawal provision was based.

IV. What Is EPA's Proposal To Revise the Section 126 Rule Withdrawal Provision?

A number of reasons supported structuring the May 25, 1999 Section 126 Rule to provide for an automatic withdrawal of the section 126 findings upon approval of a SIP revision complying with the NO_X SIP Call. As discussed above, EPA believes it is appropriate, when consistent with the relevant statutory provisions, to structure the Section 126 Rule to allow for State rather than Federal regulation when either would be equally effective in implementing the statutory goal of producing timely emissions reductions. The withdrawal provision also avoids the overlap of the Federal requirements under section 126 and State measures in response to the NO_X SIP Call. However, due to the changes that have occurred to the Section 126 Rule and the NO_X SIP Call as a result of court actions, the Section 126 Rule withdrawal provision is now out of date. Therefore, it is necessary to revise and update the withdrawal provision so that it will function as originally intended.

[5] The EPA is responding to the remand related to the categorization of cogenerators in a rulemaking that was proposed on February 22, 2002 (67 FR 8396).

A. What Is EPA's Proposal Related to the SIP Compliance Date?

As discussed in Section III.A. above, EPA interprets the current Section 126 Rule withdrawal provision to operate only when the SIP has a May 1, 2003 compliance date. Because the Section 126 Rule compliance deadline is now May 31, 2004, a NO_X SIP to pre-empt or replace the Section 126 Rule requirements would not need to be implemented until May 31, 2004. Therefore, in today's action, EPA is proposing that the section 126 findings for sources in a State will be deemed to be withdrawn, and the corresponding portion of the relevant petition will be denied, if EPA approves a NO_X SIP that meets the NO_X SIP Call requirements of 40 CFR 51.121 and 51.122 (or Phase 1 requirements under the circumstances discussed below) by May 31, 2004 rather than by May 1, 2003.

B. What Is EPA's Proposal Related to Withdrawing the Section 126 Rule Based on a Phase 1 SIP?

The current withdrawal provision requires a State to meet the full NO_X SIP Call. If a State controls its statewide significant contribution under the NO_X SIP Call, it necessarily must have addressed the significant contribution from the section 126 sources in that State. This provided the basis for EPA to revoke the section 126 findings and requirements as to those sources.

At the time EPA promulgated the Section 126 Rule, the NO_X SIP Call had not yet been divided into two phases. Therefore, EPA did not address the question of whether something less than a full NO_X SIP, that is, a Phase 1 SIP, could adequately substitute for the section 126 requirements. Phase 1 of the NO_X SIP Call provides around 90 percent of the SIP Call reductions. States are required to achieve the Phase 1 reductions by May 31, 2004, the same compliance date as the Section 126 Rule. In February of this year, EPA proposed the Phase 2 requirements. The Phase 2 compliance date will be established in a future final rule. Because EPA expects that the Phase 2 compliance date will be later than the 2004 ozone season, States will be required to achieve only the Phase 1 reductions in 2004 and not the full NO_X SIP Call reductions. Therefore, in order to avoid having sources be subject to two different sets of transport requirements in 2004 under the NO_X SIP Call and the Section 126 Rule, EPA is proposing criteria for withdrawing the Section 126 Rule based on a Phase 1 SIP.

Although the Phase 1 SIP would achieve the vast majority of the SIP Call reductions, there is no guarantee that a Phase 1 SIP would, in all cases, control at least the same amount of emissions as the Section 126 Rule in a State or that the State would choose to regulate all the identified Section 126 sources. Therefore, EPA is not proposing that simply meeting the Phase 1 reductions would provide a basis for automatic withdrawal of the Section 126 requirements. Instead, EPA is proposing that the Section 126 Rule be withdrawn in a State under the more limited circumstances where EPA determines that an approved Phase 1 SIP is requiring at least the same total quantity of emissions reductions from the same group of sources as controlled under the Section 126 Rule by May 31, 2004. In this situation, the SIP would retain the environmental benefits that section 126 would have provided and the section 126 sources would no longer be significantly contributing to downwind nonattainment problems.

The process for withdrawing the Section 126 Rule based on a Phase 1 SIP would differ slightly from the situation where a State adopts a SIP meeting the full NO_X SIP Call requirements in that a second step would be involved. In the latter case, the Section 126 Rule would be automatically withdrawn upon SIP approval. In the case of the Phase 1 SIP, the Section 126 Rule would be withdrawn upon EPA's determination that the approved Phase 1 SIP regulates the group of section 126 sources to the same or greater stringency as the Section 126 Rule.

Based on the review of SIPs to date, EPA believes it is likely that all of the Phase 1 SIPs from States affected by the Section 126 Rule will regulate all of the section 126 sources to the same stringency as the Section 126 Rule. However, not all of the Phase 1 SIPs have been fully approved yet and one affected State has not yet submitted its SIP. Therefore, EPA is still considering whether there are other circumstances under which it would be appropriate to withdraw the Section 126 Rule. The EPA is soliciting comments on alternative approaches for withdrawing the Section 126 Rule based on an approved Phase 1 SIP.

V. What Is the Current Status of the NO_X SIPs Under the NO_X SIP Call and EPA's Proposed Action To Withdraw the Section 126 Rule in a State?

The January 2000 Section 126 Rule affected sources located in the District of Columbia and the following 12 States: Delaware, Indiana, Kentucky, Maryland, Michigan, New Jersey, New York, North

Carolina, Pennsylvania, Ohio, Virginia, and West Virginia.[6] All of these States are required to submit Phase 1 SIPs under the NO_X SIP Call. To date, EPA has given final approval to NO_X SIPs from ten of the thirteen jurisdictions (all but Michigan, Ohio, and Virginia).

The District of Columbia, Maryland, New Jersey, and New York voluntarily adopted SIPs that meet the original full NO_X SIP Call budgets (65 FR 11222; March 2, 2000) and include a May 1, 2003 compliance date. Therefore, these SIPs meet the criteria for the current Section 126 withdrawal provision and the Section 126 Rule already has been automatically withdrawn for sources in those four jurisdictions.[7]

North Carolina adopted a SIP meeting the original full NO_X SIP Call budget with a May 31, 2004 compliance date. If EPA finalizes today's action as proposed, the Section 126 Rule under the 1-hour standard will be automatically withdrawn for sources in that State upon the effective date of the final rule.

The EPA is today proposing that the approved Phase 1 SIPs from Delaware, Indiana, Kentucky, Pennsylvania, and West Virginia regulate the total group of section 126 sources in the respective States to the same stringency as the Section 126 Rule and include a compliance date no later than May 31, 2004. If EPA finalizes today's rule revision as proposed, the Section 126 Rule under the 1-hour standard will be withdrawn for sources in those States upon the effective date of the final rule.

The EPA proposed to conditionally approve the Virginia and Ohio SIPs. In today's action, EPA is proposing that once Virginia and Ohio satisfy the conditions identified in their respective SIP proposal actions and EPA fully approves the SIPs, each SIP would regulate the total group of section 126 sources in the respective State to the same stringency as the Section 126 Rule. If EPA finalizes today's rule revision as proposed and fully approves the Virginia and Ohio SIPs, the Section 126 Rule under the 1-hour standard will be withdrawn for sources in those States upon the later of the effective date for the final rule based on today's proposal and the effective date for final SIP approval.

We expect Michigan to submit a Phase 1 SIP shortly. The EPA will address the removal of the Section 126 Rule in Michigan in a separate rulemaking action once EPA receives and proposes action on the Michigan SIP.

The EPA notes that this proposal to withdraw the Section 126 Rule only affects the portion of the Section 126 Rule based on the 1-hour ozone standard. In evaluating the section 126 petitions, EPA made separate determinations under the 1-hour and 8-hour standards. In light of the litigation on the 8-hour standard, EPA previously stayed the 8-hour portion of the Section 126 Rule. Recently, EPA issued its final response to a U.S. Court of Appeals for the D.C. Circuit remand of the 8-hour standard. After a careful review, EPA has reaffirmed the 8-hour ozone standard and is moving forward to implement the standard. Therefore, EPA will be initiating a rulemaking to lift the 8-hour stay on the Section 126 Rule. In that rulemaking, EPA will complete its action on the 8-hour petitions.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under Executive Order 12866, this proposed action is not a "significant regulatory action" and is therefore not subject to review by OMB. The January 2000 Section 126 Rule (65 FR 2674) establishes control requirements for certain sources in 12 States and the District of Columbia. The Section 126 Rule contains a provision under which EPA would withdraw the control requirements in a State if EPA approves a State plan to control the NO_X transport in response to the NO_X SIP Call. As the result of court actions, the compliance dates for the Section 126 Rule and the NO_X SIP Call have now been delayed until May 31, 2004. In addition, the NO_X SIP Call has been divided into two phases. Therefore, EPA is proposing to revise and update the Section 126 withdrawal provision so that it will operate under these new circumstances.

This proposed action would not create any additional impacts beyond what was promulgated in the January 2000 Rule. This proposed rule also does not raise novel legal or policy issues. Therefore, EPA believes that this action is not a "significant regulatory action."

B. Paperwork Reduction Act

Today's action does not propose any new information collection request requirements. Therefore, an information collection request document is not required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as: (1) A small business according to the U.S. Small Business Administration size standards for the NAICS codes listed in the following table; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

NAICS code	Economic activity or industry	Size standard in number of employees, millions of dollars of revenues, or output
322121	Pulp mills	750
322122		
325211	Plastics materials, synthetic resins, and nonvulcanized elastomers	750
325188	Industrial organic chemicals	1,000
325199		
324110	Petroleum refining	1,500
331111	Steel works, blast furnaces, and rolling mills	1,000
333611	Steam, gas, and hydraulic turbines	1,000
333618	Stationary internal combustion engines	1,000
333415	Air-conditioning and warm-air heating equipment and commercial and industrial refrigeration equipment	750
222111	Electric utilities	[1] 4
222112		
486210	Natural gas transmission	$6.0
221330	Steam and air conditioning supply	$10.5

[1] Million megawatt hrs.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's proposal, if promulgated, would not create new requirements for small entities or other sources. Instead, this action is proposing to revise the Section 126 Rule to withdraw the section 126 requirements under specified circumstances. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rules with "Federal mandates" that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. A "Federal mandate" is defined to include a "Federal intergovernmental mandate" and a "Federal private sector mandate" (2 U.S.C. 658(6)). A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or tribal governments," (2 U.S.C. 658(5)(A)(i)), except for, among other things, a duty that is "a condition of Federal assistance" (2 U.S.C. 658(5)(A)(I)). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions (2 U.S.C. 658(7)(A)).

The EPA has determined that this proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more for either State, local, or tribal governments in the aggregate, or for the private sector. This Federal action does not propose any new requirements, as discussed above. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, would result from this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's proposed action would not impose any additional burdens beyond those imposed by the January 2000 Rule. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA

[6] Indiana, Kentucky, Michigan, and New York were only partially covered by the Section 126 Rule.

[7] The EPA is currently revising certain portions of the NO_X SIP Call in response to a March 3, 2000 decision by the U.S. Court of Appeals for the D.C. Circuit. *See Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000). In this decision, the court upheld the NO_X SIP Call on all major issues, but remanded four narrow issues to EPA for further rulemaking. The EPA expects to complete the rulemaking by the end of the year, which will slightly modify the NO_X SIP budgets based on the court's holding. In light of the changes necessary to respond to the court decision, EPA anticipates that the final NO_X SIP budgets would be no more stringent than the original SIP budgets as modified by the March 2, 2000 technical amendment (65 FR 11222). Therefore, a SIP meeting the March 2, 2000 budgets and providing for reductions by May 1, 2003, should fully address the significant NO_X transport from that State, and the current section 52.34(i) withdrawal provision applies to automatically withdraw the section 126 requirements for sources in that State.

to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. If promulgated, it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's action does not significantly or uniquely affect the communities of Indian tribal governments. As discussed above, today's proposed action would not impose any new requirements that would impose compliance burdens beyond those that would already apply under the January 2000 rule. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045; "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because this action is not "economically significant" as defined under Executive Order 12866 and the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355; May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Today's action does not propose any new regulatory requirements.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Transfer and Advancement Act of 1995 ("NTTAA," Pub. L. 104–113 section 12(d) 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The National Technology Transfer and Advancement Act of 1997 does not apply because today's action does not propose any new technical standards. This action is proposing to amend the January 2000 Rule by specifying circumstances under which the Section 126 requirements would be withdrawn.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, trading, Intergovernmental Relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 27, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

2. Section 52.34 is amended by revising paragraph (i) to read as follows:

§ 52.34 Action on petitions submitted under section 126 relating to emissions of nitrogen oxides.

* * * * *

(i) *Withdrawal of section 126 findings.* Notwithstanding any other provision of this subpart, a finding under paragraphs (c), (e)(1) and (e)(2), (g), and (h)(1) and (h)(2) of this section as to a particular major source or group of stationary sources in a particular State will be deemed to be withdrawn, and the corresponding part of the relevant petition denied, if the Administrator issues a final action approving implementation plan provisions that:

(1) Comply with the applicable requirements of §§ 51.121 and 51.122 of this chapter for such State, modified to require achievement of the emission reductions under § 51.121 of this chapter starting no later than May 31, 2004; or

(2)(i) Comply with the applicable requirements of §§ 51.121 and 51.122 of this chapter, except for § 51.121(e) of this chapter, for such State, modified to require achievement of the emission reductions under § 51.121 of this chapter starting no later than May 31, 2004, and

(ii) Achieve emissions reductions, from the large EGUs and large non-EGUs subject to paragraph (j) of this section in such State, that equal or exceed the emissions reductions otherwise required under Part 97 of this chapter for such State.

* * * * *

[FR Doc. 03–8152 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
April 4, 2003

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 422 and 489

Medicare Program; Improvements to the Medicare+Choice Appeal and Grievance Procedures; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

42 CFR Parts 422 and 489

[CMS–4024–FC]

RIN 0938–AK48

Medicare Program; Improvements to the Medicare+Choice Appeal and Grievance Procedures

AGENCY: The Centers for Medicare & Medicaid Services, HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period responds to comments on the January 24, 2001, proposed rule regarding improvements to the Medicare+Choice (M+C) appeal and grievance procedures. It establishes new notice and appeal procedures for enrollees when an M+C organization decides to terminate coverage of provider services. The January 24, 2001 proposed rule was published as a required element of an agreement entered into between the parties in *Grijalva* v. *Shalala*, civ. 93–711 (U.S.D.C. Az.), to settle a class action lawsuit.

This rule also specifies a Medicare-participating hospital's responsibility for issuing discharge or termination notices under both the original Medicare and M+C programs, amends the Medicare provider agreement regulations with regard to beneficiary notification requirements, and amends M+C enrollee grievance procedures.

DATES: *Effective date:* Except for §§ 422.564, 422.620, 422.624, and 422.626, which are subject to the Paperwork Reduction Act (PRA), this final rule with comment period is effective May 5, 2003. We will publish the effective dates of those sections of the rule that are subject to the PRA in the **Federal Register** when the sections have been approved by the Office of Management and Budget.

Comment date: We will consider comments on this final rule if received at the appropriate address, as provided below, no later than 5 p.m. on June 3, 2003.

ADDRESSES: Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4024–FC, P.O. Box 8013, Baltimore, MD 21244–8013. To insure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 443G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–8013.

Comments mailed to the above addresses may be delayed and received too late for us to consider them.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–4024–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Chris Gayhead, (410) 786–6429 (for issues concerning improvements to the M+C appeals and grievance procedures); Rhonda Greene Bruce, (410) 786–7579 (for issues related to hospital discharge notices).

I. Background

A. Balanced Budget Act of 1997

Section 4001 of the Balanced Budget Act of 1997, (BBA) (Pub. L. 105–33), enacted August 5, 1997, added sections 1851 through 1859 to the Social Security Act (the Act) to establish a new Part C of the Medicare program, known as the "Medicare+Choice (M+C) Program." Implementing regulations for the M+C program are set forth in 42 CFR part 422. Subpart M of part 422 implements sections 1852(f) and (g), which set forth the procedures M+C organizations must follow with respect to grievances, organization determinations, and reconsiderations and other appeals. Under section 1852(f) of the Act, an M+C organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any other entity or individual through which the organization provides health care services) and enrollees in its M+C plans.

Section 1852(g) of the Act addresses the procedural requirements concerning coverage determinations (called "organization determinations") and reconsiderations and other appeals of such determinations. In general, organization determinations involve the question of whether an enrollee is entitled to receive, or should continue to receive, a health service, and the amount the enrollee is expected to pay for the service. An organization determination may also involve an enrollee's request for reimbursement for services obtained with or without prior authorization. Only disputes concerning organization determinations are subject to the reconsideration and other appeal requirements under section 1852(g) of the Act. All other disputes are subject to the grievance requirements under section 1852(f) of the Act. For purposes of this final rule, a reconsideration consists of a review of an adverse organization determination (a decision that is unfavorable to the M+C enrollee, in whole or in part) by either the M+C organization or an independent review entity (IRE) or entities. We use the term "appeal" to denote any of the procedures that deal with the reviews of organization determinations, including reconsiderations, hearings before administrative law judges (ALJs), reviews by the Medicare Appeals Council (MAC) and judicial review.

B. Grijalva v. Shalala

Grijalva v. *Shalala* is a 1993 class action lawsuit brought by beneficiaries enrolled in Medicare risk-based managed care organizations. The plaintiffs challenged the adequacy of the managed care appeals process and claimed that CMS failed to assure that contracting managed care organizations afforded enrollees rights to which plaintiffs contended enrollees were entitled when the organization denied, reduced, or terminated health care coverage.

The Secretary and the plaintiffs reached a settlement agreement in the case, which the Arizona District Court approved on December 4, 2000. Under the settlement agreement, we agreed to publish a notice of proposed rulemaking (NPRM) proposing regulations that would establish new notice and appeal procedures when an M+C organization decides to terminate coverage of provider services to an enrollee. Providers that would be affected under the proposed rules published pursuant to the settlement agreement included skilled nursing facilities (SNFs), home health agencies (HHAs) and comprehensive outpatient rehabilitation facilities (CORFs). A key element of the agreement was that CMS would propose to establish an independent review entity to conduct fast-track reviews of appeals of decisions to terminate services. Under the proposed process, M+C enrollees would receive detailed written notices concerning their service terminations and their appeal rights at least four days before a service termination. The proposed appeal process would be carried out during those four days. (*See* our January 24, 2001, proposed rule, 66 FR 7594, for a more detailed description of the settlement agreement.)

The settlement agreement contained a great deal of specificity with respect to both the notice and appeal procedures to be set forth in the proposed rule, and the timeframes for publication of proposed and final rules. However, consistent with Administrative Procedure Act (APA) standards for notice and comment rulemaking, the agreement explicitly established that publication of the proposed requirements "[should] not be construed as a promise or predetermination regarding the content of [the] final rule * * * on notice and appeal procedures for M+C organization decisions to terminate provider services."

II. Provisions of the Proposed Rule

On January 24, 2001, we published an NPRM (66 FR 7593) that, consistent with the settlement agreement, proposed regulations that would establish that an M+C enrollee who is dissatisfied with an M+C organization's decision to terminate SNF, HHA, or CORF services would have the right to a fast-track review by an independent entity. As described below, the proposed rule set forth the notification and appeals procedures for implementing this new appeal right. The proposed rule also addressed the notification procedures associated with similar appeal rights available to Medicare beneficiaries receiving inpatient hospital services as well as M+C beneficiary grievance procedures.

A. Proposed Notice and Appeal Procedures

We proposed that for any termination of services furnished by one of the affected types of providers, the enrollee would receive a standardized notice informing them of the M+C organization's decision to terminate the services. Under our proposal, the provider would be charged with the delivery of the notice four calendar days before the scheduled termination. If the services were expected to be furnished to an enrollee for a time span of fewer than four calendar days in duration, the enrollee would be given the notice upon admission. Valid delivery of the notice required the enrollee to sign the notice to indicate that he or she had received the notice and could comprehend it.

We proposed that the termination notice contain the following information:

A specific and detailed explanation why services were either no longer medically necessary or were no longer covered (with a description of any applicable Medicare coverage rule).

Any applicable M+C organization policy, contract provision, or rationale upon which the termination decision was based.

Specific, relevant information to an extent sufficient to advise the enrollee of how a Medicare or M+C organization policy applied to the enrollee's case, as well as the date and time that the organization's coverage of services would end (and the enrollee's liability would begin).

A description of the enrollee's fast-track appeal rights, including how to contact the IRE to initiate an appeal, as well as the availability of other M+C appeal procedures if the enrollee failed to meet the deadline for (or decided not to pursue) a fast-track IRE appeal.

Under our proposal, an enrollee who wanted to appeal a termination decision to the IRE needed to contact the IRE by noon of the first calendar day after receiving the termination notice. We specified that an enrollee who timely sought IRE review would be protected from liability for the costs of services during the fast-track appeals process. Coverage of provider services would continue until noon of the day after an enrollee received notice of an IRE's decision upholding the M+C organization's determination, or until the time and date designated on the termination notice, whichever was later.

We proposed that when an enrollee appealed an M+C organization's decision to terminate provider services, the burden was on the M+C organization to prove that the termination was the correct decision. The M+C organization would be required to supply any information that the IRE required to sustain the termination decision, including a copy of the termination notice. The M+C organization would be required to supply this information as soon as possible, but no later than the close of business of the first day after the day the IRE notified the M+C organization that the enrollee had requested a review.

Assuming that the IRE received all needed information on a timely basis, the proposed process would have resulted in a decision by the close of business on the second full day after the deadline for an enrollee's appeal request, with the following possible results:

If the IRE decided that services should not be terminated, a new termination notice would be required, with attendant appeal rights, before the M+C organization could terminate services.

If the IRE deferred its decision, coverage of the services would continue until the decision was made but no additional termination notice would be required.

If the IRE decided to uphold the M+C organization's decision to discontinue services, coverage of the enrollee's services would end at noon on the day after the IRE made its decision or as specified in the termination notice, whichever is later.

In the event that the M+C organization's decision was upheld, the enrollee would be financially liable for any services provided after the effective date identified in the notice. The proposed rule outlined that an enrollee's first recourse after an unfavorable IRE decision would be to request, within 60 days, that the IRE reconsider its decision. The IRE would have up to 14 calendar days from the date of the request for reconsideration to issue its reconsidered determination, with subsequent appeals possible to an ALJ and the MAC, consistent with the procedures set forth in the existing M+C regulations.

B. Hospital Notification Procedures

We also proposed in the January 24, 2001, rule requirements regarding hospitals' responsibility for issuing discharge notices under both the original Medicare and the M+C program. Specifically, we proposed that hospitals be required to provide to all Medicare beneficiaries (including those enrolled in M+C plans) a notice that includes the reasons for a discharge and information on their appeal rights. Under the proposed rule, hospitals would be responsible for delivering such a notice to each beneficiary the day before the date of the discharge. We noted that these notices would have to be approved by the Office of Management and Budget under section 3506(c)(2)(A) of the Paperwork Reduction Act.

C. Grievance Procedures

The January 2001 rule also proposed to revise the existing definition of a "grievance," and proposed that an M+C organization be required to notify the enrollee of its decision as expeditiously as the case required, but no later than 30 calendar days after the date the organization received the grievance. In conjunction with this timeframe, we also proposed that the M+C organization be permitted to extend the timeframe by

up to 14 calendar days if the enrollee requested the extension or if the organization justified a need for additional information and the delay was in the interest of the enrollee.

Our proposal would require an M+C organization to inform the enrollee of the disposition of the grievance in writing if the grievance was submitted in writing. Grievances submitted orally could under the proposal be responded to either orally or in writing unless a written response was specifically requested by the M+C enrollee.

We proposed that the M+C organization's written response to a grievance involving quality of care issues or concerns must describe the enrollee's right to seek Quality Improvement Organization (QIO) review. For any complaint involving a QIO, the M+C organization must cooperate with the QIO in resolving the complaint.

The proposed rule specified that an M+C organization would be required to expedite a grievance if: (1) The grievance involved an M+C organization's decision to invoke an extension relating to an organization determination or reconsideration; (2) the grievance involved an M+C organization's refusal to grant an enrollee's request for an expedited organization determination; or (3) applying the standard timeframe could seriously jeopardize the enrollee's life, health or ability to regain maximum function. We proposed that the M+C organization notify the enrollee of its decision on an expedited grievance within 72 hours of receipt of the enrollee's grievance. The proposed grievance procedures concluded with the requirement that the M+C organization have a system to track and maintain records on all grievances received both orally and in writing, including the final disposition of the grievance. The tracking system would be required to maintain, at a minimum, date of receipt, disposition and date the response was given.

D. Reductions of Service

As part of the *Grijalva* settlement, we agreed to solicit comments in the January 2001 rule on how to provide notice and appeal procedures for decisions by M+C organizations to reduce provider services. We stated in the January 2001 proposed rule that, based on our review of this issue, we were considering adopting the position that a written notice should be required whenever there was a reduction in any previously authorized ongoing course of treatment. We did not put forth specific regulatory language to implement this approach, but instead asked for public comments on the appropriateness of such a requirement and recommendations on specific regulatory revisions in this regard.

III. Analysis of and Responses to Public Comments

A. Overview of Comments on January 24, 2001 Proposed Rule

We received 33 timely comments from organizations representing hospitals and other providers, M+C organizations, beneficiary advocacy groups and others. Commenters representing providers and managed care organizations uniformly agreed that the new appeals procedures were unworkable as proposed. They raised a series of objections to the proposed provisions, with concerns focusing on the following areas:

- Creation of a fast-track appeals process.
- Timing of the termination notices.
- Content and delivery of the notices.

The commenters representing beneficiary groups generally supported the procedures as proposed and urged CMS to finalize the proposed provisions. Commenters also expressed concern over the revised procedures for notifying Medicare beneficiaries of their right to appeal when discharged from an inpatient hospital. We also received comments on the proposed grievance procedures and the appropriateness of establishing notice and appeal procedures for reductions in provider services. These comments and our responses are discussed below.

B. The Proposed Fast-Track Review Process (Sections 422.624 and 422.626)

1. Need for a New Fast-Track Appeals Process

Comment: Several commenters opposed the creation of a fast-track, independent appeals process. These commenters argued that the current expedited appeals process is effective to handle appeals of provider terminations. They pointed out that the appeals process had changed considerably since the *Grijalva* lawsuit was first filed in 1993, including the implementation of an expedited appeals process for Medicare managed care enrollees (through an April 30, 1997, final rule (62 FR 23375)) and the subsequent establishment of the M+C program appeals procedures (under the BBA and implementing regulations). They asserted that the new fast-track appeals process would be confusing, duplicative, burdensome and expensive.

Response: We recognize that many of the problems that led to the original *Grijalva* lawsuit have been rectified through subsequent statutory and regulatory changes, and we believe that the existing expedited appeals process constitutes an important and effective beneficiary protection. However, the current expedited appeals process was designed primarily to address denials of the initiation of a service. The fast-track appeals process proposed in the January 24, 2001, rule would deal with decisions about the termination of provider services. Moreover, obtaining an independent review of an M+C organization's decision to terminate an enrollee's provider services now takes at least 6 days to complete, under a process where both the M+C organization and CMS's independent contractor must review an adverse organization determination about the need for further services. Our experience has been that decisions involving the termination of provider services, particularly in nursing homes, have been among the most contentious, and have often exposed enrollees to potentially significant financial liability for continuation of services. Under the fast-track process, an enrollee may appeal directly to an IRE, with greatly limited, if any, financial liability. This one-step process, carried out at government expense, can limit appeal processing costs for both the enrollee and the M+C organization.

We also note that section 1869(b) of the Act, as amended by section 521 of the Medicare Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA), has introduced significant new appeal requirements for beneficiaries under the original Medicare program that substantially parallel those proposed pursuant to the *Grijalva* settlement. BIPA requires the Secretary to establish a new fast-track appeal process when a provider of services plans to terminate an individual's services or discharge the individual from the provider. Currently, this right to an expedited review only exists with respect to hospital discharges under sections 1154 and 1155 of the Act. Our decision to implement an independent review process for terminations of provider services furnished to M+C enrollees is entirely consistent with, and bolstered by, the Congressional intent and direction evidenced by the BIPA provisions. (*See* our November 15, 2002, proposed rule, at 67 CFR 69312 for further details on the BIPA statute and our proposed new appeal provisions.) We believe that CMS must assure that all Medicare beneficiaries are afforded a fair and equitable process to appeal

provider terminations whether the beneficiary is enrolled in M+C or original Medicare.

2. Timing of the Termination Notices

Comment: Many commenters stated that it is clinically improbable that an M+C organization or provider could accurately predict four days in advance when a discharge would be appropriate, particularly in the nursing home setting where discharge decisions are made "at most 48 hours prior to discharge." They argued that requiring delivery of the termination notices four days in advance would result in unnecessary appeals being initiated in situations where there could be a subsequent decision that services should not be terminated. They also believe that the four-day advance notice would greatly complicate the appeals decision-making process, since appeals would need to be decided as much as two days before the actual termination of services. Commenters suggested a number of alternative requirements for delivery of the termination notice, including: three days before termination of services, two days before termination, one day before termination of services, and "promptly" after the M+C organization decides that termination is appropriate.

Several commenters representing home health providers expressed concern that providers of such intermittent care in effect would be required to arrange for their staff to make extra visits solely to deliver termination notices. Commenters also suggested that if CMS retained the four-day advance notice requirement, the requirement should be more flexible, *i.e.*, delivery could be carried out before the proposed four-day deadline if circumstances permitted.

Response: The primary intent of the proposed four-day advance notification requirement was to enable the appeals process to be completed by the time services were scheduled to end, and thus to protect enrollees from any financial liability during the course of the appeal process. However, we have become convinced based on our review of the comments and further research into medical practice patterns that providing these notices four days in advance of termination is often not practical, particularly in institutional settings. Therefore, in this final rule, we are requiring under 422.624(b)(1) that enrollees receive notices *no later than two days* in advance of termination of services. We are also revising the proposed requirements to state explicitly that if, in a noninstitutional setting, the span of time between services exceeds two days, the notice may be provided the next to last time services are furnished.

We recognize that the result of this change would be that in some situations, enrollees will be exposed to potential liability for services that are found unnecessary by the independent review entity. However, we have concluded that it is not possible to construct a system that in all situations provides a meaningful notice about termination of services and still builds in complete financial protection for enrollees during the course of an appeal to an IRE. Note that we are also revising the appeals process itself (by shortening the time frame for records to be sent to the IRE, under 422.626(e)(3)) to ensure that it is completed within three days of the notice of termination. The effect of these changes is that an enrollee will face a maximum of one day of financial liability if the IRE rules that the disputed discharge date is appropriate.

In establishing this policy, we carefully considered how to balance two conflicting responsibilities—the need to ensure that an M+C enrollee has an opportunity to a meaningful appeal without undue financial exposure with the obligation not to impose inappropriate financial burdens on M+C organizations. Clearly, except in the inpatient hospital setting, the Medicare statute generally does not provide financial liability protection for either M+C enrollees or other Medicare beneficiaries who have chosen to continue to receive services pending the result of an appeal or claim determination. Absent a statutory mandate, we do not believe we have the authority to require M+C organizations to pay for services that are subsequently determined by an independent review entity not to be medically necessary, or otherwise covered, for the enrollee in question. (As noted above, section 521 of BIPA establishes a similar right to a fast track appeal of a termination of provider services (under section 1869(b)(1)(F) of the Act), but did not provide for continuation of Medicare coverage during the pendency of the appeal.)

It is important to note that an enrollee's potential financial liability for continuing provider services occurs only after valid delivery of the advance termination notice. That is, consistent with the requirements outlined at § 422.624(b), a standardized, signed and dated advance termination notice is required for financial liability to accrue to the enrollee. Providing this notice as soon as the termination date is known (rather than waiting until two days in advance of service termination) will in many cases serve the best interests of both plan enrollees and the M+C organizations who are responsible for payment for the services.

Comment: Several commenters responded to our specific request for comments on what constituted four-day notice and expressed confusion over whether the deadline for notice delivery would be 3 p.m. or "close of business." Commenters indicated that requiring that the notices be delivered by 3 p.m. was not appropriate, given for example that physicians frequently visit nursing homes late in the afternoon or early in the evening after their office hours are over. Commenters recommended that CMS clarify that termination notices could be given until the end of the business day, which would still enable enrollees to request an appeal by noon of the next day.

Response: We agree with commenters that the deadline for notice delivery needs to be later than 3 p.m. to allow physicians and other practitioners enough time to visit nursing homes or other service settings late in the day. We recognize that practice patterns are different in these settings than in inpatient hospitals and thus that it may not be appropriate to apply the same standard across all provider settings. Thus, rather than establish a more precise time standard in regulations, the regulations will continue to indicate *the latest day* that a notice must be delivered. We intend to issue further program guidance that will be based on the prevalent practice patterns for the various service types. This guidance will reflect our general agreement that delivery of the advance termination notice by "close of business" will provide sufficient time for an enrollee to appeal by noon of the next day.

Comment: Two commenters raised concern over whether the four-day advance notice requirement should include weekends and holidays. One commenter asked that we consider the fact that many of the notices may be given on a day that would place the fourth day on a Saturday, Sunday, or holiday. Another commenter stated that since HHA and CORF services are not usually rendered on weekends or holidays, and M+C organizations have limited staff available on these days, CMS should consider using business rather than calendar days, where appropriate.

Response: As noted above, this final rule changes the requirement for advance notification of termination of services or discharge from the four day standard in the proposed rule to no later than two calendar days prior to termination of services or discharge. The new standard of "at least" two days

affords an M+C organization or provider the option of providing notice more than two days in advance if the second day before discharge is a non-business day (for example, for a Monday discharge). We have also provided that situations involving non-institutional settings, where the time-span between service delivery exceeds two days, an enrollee should be notified no later than the next to the last time services are furnished. We will work with provider and M+C organization representatives, and with the IRE to develop uniform procedures to deal with those rare situations where an enrollee needs to be given notice or discharged on a weekend. At a minimum, we intend to require, through its contract, that the IRE be able to accept expedited review requests on any day of the week and notify an M+C organization of that request.

3. Content and Delivery of the Termination Notice

Comment: Commenters raised a series of related concerns about both the delivery and content of the termination notices. Many commenters viewed as unnecessarily burdensome the requirement that each enrollee in a provider setting receive a detailed termination notice, regardless of whether the enrollee agreed with the termination of services. They generally believe that in most situations the contents of the required notice were too extensive and would provide little or no benefit to most enrollees.

Commenters were divided on the issue of who should be responsible for distributing the notices. Managed care industry commenters generally supported the proposed requirement that the providers of services deliver the notices, although they expressed concern over their liability in situations where the providers failed to do so. Commenters representing providers objected to being charged with this responsibility, particularly in view of the detailed nature of the notice. They indicated that it would be difficult to obtain all needed information from M+C organizations and that it was unfair to in effect shift the responsibilities of M+C organizations to providers. One commenter argued that a policy whereby providers would be responsible for giving notices does not comport with the settlement agreement.

Response: We continue to believe that providers clearly are in a better position than M+C organizations to carry out routine delivery of service termination notices to their patients. At the same time, although all enrollees need to be made aware of their appeal rights on a timely basis, we recognize that only a small proportion are likely to object to the termination of their services. Thus, it is in the best interests of all parties that the notice delivery process be as streamlined and simple to administer as possible.

To that end, we are requiring a two-step notification procedure under this final rule. We are revising the proposed requirement that providers deliver a detailed termination notice to M+C enrollees. Instead, we are requiring under 422.624(b) that providers deliver a standardized, largely generic, notice to each M+C enrollee whose services are terminating that will explain the enrollee's appeal rights. The notice will contain only two enrollee-specific elements—the enrollee's name and the date services will end. These notices will contain standardized information on an enrollee's appeal rights and how to initiate an appeal if necessary. Unless the enrollee wishes to dispute the termination of services, no further notice will be required.

The notice will instruct the enrollee to contact the IRE if he or she believes that the services should continue. If the enrollee indicates to the IRE that he or she disagrees with the discharge, the IRE will immediately contact the M+C organization, which will be required under 422.626(e) to deliver a detailed notice to the dissatisfied enrollee and to the IRE. The detailed notice must contain the remaining elements required under the proposed rule, including an explanation of why services were no longer needed, a description of any applicable Medicare coverage rule or policy, a statement of any applicable M+C organization policy or rationale, and facts specific to the enrollee that establish the applicability of Medicare or M+C organization policies. We believe that M+C organizations are in the best position to give detailed notices regarding their specific policies and the criteria that they applied in deciding to terminate provider services. Moreover, in view of the fact that M+C organizations ultimately bear the responsibility for both the service termination/discharge decision and for paying for services covered under their plans, we believe that is appropriate that M+C organizations be responsible for preparing and delivering them under the limited circumstances when they are needed.

Comment: Commenters were concerned that providers would refuse to comply with instructions to deliver notices and wanted to know what incentives were in place to obligate providers to deliver notices.

Response: We believe that the streamlined notification process should greatly ameliorate this concern. Providers will be obligated to comply with notice requirements through the amendment of the provider agreement regulations at § 489.27(b), as well as through their contractual arrangements with M+C organizations. We recognize that M+C organizations may also choose to delegate to providers the responsibility for discharge and termination decisions, and for the delivery of detailed notices in disputed termination cases. M+C organizations may choose to offer incentives to providers for compliance with these responsibilities, or penalties for non-compliance, through these private contractual arrangements. However, consistent with 422.502(i), M+C organizations remain ultimately responsibility for carrying out such delegated requirements.

We also note that section 1819(h) of the Act specifies remedies that may be used by the Secretary when a SNF is not in substantial compliance with the requirements for participation in the Medicare program. These penalties are applied on the basis of surveys conducted by CMS or by a survey agency. The regulations at § 488.406 include other penalties for non-compliance such as denials of payment, and corrective action plans. Also, HHAs are regulated in part by conditions of participation found at § 484.12, which indicate that HHAs must operate and furnish services in compliance with all applicable Federal, State and local laws and regulations.

Comment: Several commenters raised questions about financial liability in situations where a provider failed to deliver timely notice. They believe that it would be unfair for M+C organizations to be liable for services in such situations.

Response: Again, we believe that the prevalence of this sort of situation will be greatly lessened in light of the direction that we have taken in this final rule, which places a clear, reasonable obligation on both providers and M+C organizations with respect to informing enrollees of their rights. Nevertheless, the nature of the arrangement between an enrollee and a managed care organization dictates that the organization is ultimately responsible for payment for services that are found to be covered under the enrollee's plan. When an IRE makes a decision on an enrollee's appeal of a service termination, that decision will determine the extent to which liability rests on either the M+C organization or the enrollee. Consistent with

422.624(a)(2), an IRE's review will be available with respect to termination decisions where an enrollee first was "authorized, either directly or by delegation, to receive an ongoing course of treatment from that provider." Thus, the IRE's determination is limited to whether continuation of an ongoing course of treatment is covered under an enrollee's plan. The IRE will not be expected to assign liability between the provider and the M+C organization.

Accomplishing proper advance notification of termination by the provider requires coordination and information sharing between the provider and the M+C organization to ensure that the enrollee receives the correct information at the proper time. We believe that the interdependence between M+C organizations and SNFs, HHAs, and CORFs reflects the typical daily reality of health plans and insurers.

Comment: Some commenters suggested that the 4-day advance notice requirement could result in the overutilization of services. They were concerned, for example, that an enrollee could be kept in a SNF unnecessarily even if the individual's condition had improved sufficiently to permit an unexpectedly early discharge. Commenters also asked about situations where an IRE determined that services should continue only one or two additional days. They questioned the need for additional notices in such situations.

Response: The notice requirement is not intended to impede or substitute for appropriate medical decision-making practices. Nothing in these requirements precludes an enrollee from being discharged from a SNF or HHA when an enrollee and his or her physician are in agreement that the discharge is medically appropriate. To clarify this point, we have revised section 422.624(d) to specify that, although an M+C organization is financially liable for continued services until 2 days after an enrollee receives a termination notice, the enrollee may waive the right to continued services if he or she agrees with being discharged sooner than 2 days after receiving the notice. However, an enrollee who objects to the service termination would not be liable for the services until 2 days after receiving the notice.

Similarly, it is not our intent to require M+C organizations to provide more care than an IRE determines would be appropriate. If an IRE specifies the number of days that coverage should continue, the IRE's decision itself takes the place of any further notice. However, there may be instances where an IRE will defer to an M+C organization to determine when coverage should end. In those cases, another advance termination notice must be given to the enrollee within a time frame consistent with the circumstances involved. Again, we believe that this concern is lessened or eliminated under the change to a 2-day advance notice.

Comment: Several commenters were concerned about the length and complexity of the notice, believing that this would cause delays in its preparation and create noncompliance with the delivery and appeals timeframes. Some commenters also argued that preparing these detailed notices about policies, coverage rules and contract provisions for every enrollee prior to provider services terminating would be administratively burdensome.

Response: As discussed above, we agree that it is not necessary to provide a detailed notice to all enrollees. We have learned through consumer testing that Medicare beneficiaries prefer to receive relevant information timed according to when they need to act. Thus, we have revised the proposed policy from requiring 100 percent distribution of a detailed notice from providers to all enrollees, to 100 percent distribution of a largely generic notice that explains when services will end, where to appeal if the enrollee disagrees, and potential liability for continued coverage during an appeal. For those enrollees who choose to appeal, M+C organizations would be required to provide a detailed notice that: explains why services are no longer covered or medically necessary, describes any applicable coverage rules, policies, or contract provisions, and contains facts specific to the enrollee and relevant to the coverage determination that are sufficient to advise the enrollee about the enrollee's care. We believe that this two-step notification process meet the needs of the large majority of enrollees who need to know when their services will end and what their appeal rights are, as well as the small minority of enrollees who want more specific information about why their services are ending. This approach also ensures that providers and M+C organizations are not faced with unnecessary administrative costs and burdens. CMS will develop both notices—the advance termination notice, and the detailed termination notice, through OMB's PRA process.

Comment: Some commenters viewed our proposal to require providers to deliver termination notices as evidence that CMS was unfairly favoring M+C organizations over providers, by allowing M+C organizations to avoid responsibility for providing notices. Some commenters believed that making providers responsible for termination notices simply because they were in the best position to deliver notices was unprecedented and argued that this violated the Administrative Procedure Act (APA).

Response: In developing these proposals, as well as in developing this final rule, we have attempted to arrive at policies that balance the rights and responsibilities of all the involved parties, including Medicare beneficiaries, providers, and M+C organizations. We continue to believe that beneficiaries need to be informed of their appeal rights and that providers are in the best position to carry out this function. At the same time, we are very cognizant of the need to accomplish such notification in the most cost-effective and least burdensome manner. Thus, as explained above, we have made adjustments to the proposed provisions to reflect concerns raised by commenters. This is the essence of notice and comment rulemaking, and thus we believe that implementing the notification requirement through this rulemaking process is entirely consistent with the APA. That is, the preamble to the proposed rule satisfied the requirements of the APA by describing our proposed policies and explaining the reasoning behind the proposal that providers deliver the termination notices. This final rule then reflects our careful consideration of the comments received. In response to comments on the burden imposed by the proposal on providers, we have in this final rule lessened that burden.

Comment: Various commenters raised questions regarding whether a notice needed to be provided in certain scenarios, such as when services did not meet Medicare coverage criteria, or where a provider or attending physician disagreed with an M+C organization's decision to terminate services.

Response: M+C organizations must determine when services should end on the basis that services are no longer medically necessary, or otherwise are not covered under Medicare or the M+C plan's coverage policies. Once an M+C organization determines that provider services should end, providers must deliver notices to enrollees at least two days in advance of services terminating. The requirement to provide the notice is independent of the basis for termination of a course of treatment. In other words, it applies whether the decision is based on a medical necessity judgment or the application of a Medicare coverage rule.

Similarly, the provider's obligation to give an advance termination notice to the enrollee exists even if a provider or attending physician disagrees with the M+C organization that services should terminate. The M+C organization's decision to end services is not an indication that the provider necessarily agrees that services should end, but it is necessary to ensure that the enrollee has the opportunity to appeal the M+C organization's decision.

Comment: Commenters recommended that CMS permit providers to request appeals on behalf of enrollees and recommended that an IRE's decision bind an M+C organization to pay a provider for necessary services.

Response: Providers have the ability to file appeals on behalf of enrollees as authorized representatives in accordance with § 422.562(d). We have not created any additional provider appeal rights in this regulation. The purpose of these regulations is to ensure that enrollees receive the services that they are entitled to under their M+C plans, through the implementation of appropriate notice and appeal. CMS generally does not specify the payment arrangements between M+C organizations and providers; therefore, an IRE's reversal of an M+C organization's decision to terminate services is not a ruling on whether, or the extent to which, an M+C organization is financially obligated to the provider. Instead, the relevance of an IRE's reversal is that the M+C organization is obligated to continue services for the enrollee beyond the services that the M+C organization previously authorized.

Comment: Some commenters suggested that the requirement for a 4-day advance notice in situations where an IRE determined that services should continue only one or two additional days would result in the overutilization of health care services. They questioned the need for additional notices in such situations.

Response: It is not our intent to require M+C organizations to provide more care than an IRE determines would be appropriate. If an IRE specifies the number of days that coverage should continue, the IRE's decision itself takes the place of any further notice. However, there may be instances where an IRE will defer to an M+C organization to determine when coverage should end. In those cases, another advance termination notice must be given to the enrollee within a time frame consistent with the circumstances involved. Again, we believe that this concern is lessened or eliminated under the change to a two-day advance notice.

Comment: Commenters expressed concern that an IRE might delay making a decision if it believed that it needed additional information from the M+C organization. The commenter proposed that CMS require an IRE to inform the M+C organization promptly, by fax or e-mail, if an IRE believed that it needed more information to make a decision, and to specify the precise information it required to make a decision on the merits.

Response: Section 422.626(d)(5) specifies that if an M+C organization fails to provide sufficient information to support its decision to terminate an enrollee's services, an IRE may defer issuing a decision until it receives needed information about the case. If an IRE chooses to do so (rather than simply decide the case in the enrollee's favor based on the evidence at hand), we agree that an IRE should make best efforts to promptly notify an M+C organization of the information the IRE needs, and that the submission of this information could affect the IRE's decision on the merits. However, M+C organizations should not expect IREs to routinely follow-up to complete the record. It is the M+C organization's responsibility to provide all relevant material necessary to sustain its termination decision by close of business of the day that the IRE notifies the M+C organization that an enrollee has requested an appeal. Thus, we will instruct IREs through their contracts with CMS that in the event that the M+C organization fails to submit documentation that would sustain the M+C organization's decision, and the IRE either cannot obtain the prompt cooperation of the M+C organization, or does not deem it practical to obtain additional information, the IRE should issue a decision based on the information available and err on the side of the beneficiary.

Comment: One commenter suggested that CMS should extend the same provider notice requirements to original Medicare beneficiaries whose services are being terminated.

Response: As noted above, section 1869(b)(1)(F) of the Act, as amended by section 521 of BIPA, establishes appeal rights for beneficiaries under original Medicare that are largely parallel to those available to M+C enrollees under this final rule. As discussed in detail in our November 15, 2002, proposed rule concerning those provisions, we believe that existing Advance Beneficiary Notices (ABNs) that are now used in Medicare fee-for-service settings are the appropriate vehicle to trigger the right to an expedited appeal of a provider termination of services. (*See* 67 FR 69337.)

Comment: Several commenters are concerned that the standard for "valid delivery" of a termination notices is difficult to meet. They indicated that it would require a clinician to deliver the notice in order to determine the enrollee's level of consciousness, and ability to read and comprehend it, which would be expensive and burdensome.

Response: Section 422.624(c) specifies that "delivery" of a notice is valid only if an enrollee has signed and dated the notice to indicate that he or she both received the notice and can comprehend its contents. This policy is consistent with other CMS requirements governing the delivery of similar notices such as those set forth in CMS program memoranda A–99–52 and A–99–54 for HHA advanced beneficiary notices under original Medicare. We have no indication that this standard has proven problematic and believe that it is appropriate to apply similar protections to enrollees in the M+C program. Note that this requirement for successful delivery does not permit an enrollee to extend coverage indefinitely by refusing to sign a notice of termination. If an enrollee refuses to sign a notice, the provider would annotate its copy of the notice to indicate the refusal, and the date of the refusal would be considered the date of receipt of the notice.

By the time that termination notices are issued, providers will have already needed to assess an enrollee's ability to accept delivery of a notice, based on typical admission assessments, care planning evaluations and discharge planning activities that have taken place during the course of treatment. In the event a provider believes that an enrollee is not capable to receive the notice, providers should be well-acquainted enough with the enrollee's particular situation to make alternative arrangements, if necessary, to deliver a valid notice. For example, an incapacitated enrollee is not able to act on his or her rights and, therefore, could not validly "receive" the notice. This situation could be remedied through the use of an authorized representative under Federal or State law.

4. Other Comments

Comment: Several commenters objected to the proposed requirement under § 422.502(i)(3)(iv) that M+C organizations include specific provisions in their contracts with providers to require providers to comply with the notice requirements in 422.624. They believe it is burdensome to reopen contracts with providers to incorporate these requirements, citing that the change in the conditions of participation at § 489.27(b) should be sufficient to ensure compliance.

Response: We agree that the change in conditions of participation at § 489.27(b) is sufficient to ensure that providers comply with the notice requirements at § 422.624. Although we believe that it would be in the best interests of providers and M+C organizations to include these notice requirements in their contracts, we do not intend to require that providers and M+C organizations renegotiate their contracts solely for the purpose of including a clause regarding notice delivery requirements. Therefore we have removed proposed § 422.502(i)(3)(iv).

Comment: One commenter wanted to know if M+C organizations could charge enrollees a reasonable flat fee for the costs of duplicating and mailing case files to enrollees upon request.

Response: In accordance with the Privacy Act and 45 CFR 5b.13, "[f]ees may only be charged where an individual requests that a copy be made of the record to which he is granted access." No fee is permissible unless the copying costs are at least $25. Thus, an M+C organization may not charge a fixed fee for the costs of duplicating and mailing case files to enrollees, but may apply the fee schedule outlined in § 5b.13(b). This would allow an M+C organization to charge $.10 per page for photocopied records above the $25 threshold, or the actual cost determined on a case-by-case basis for records not susceptible to photocopying.

Comment: One commenter noted that the proposed rule was silent on the type of entity that could serve as an IRE. The commenter (an organization representing Quality Improvement Organizations) recommended that QIOs should be designated as IREs since QIOs already interact on a daily basis with families who question whether the timing of a provider discharge is appropriate. The commenter indicated that relying on an entity other than QIOs would be confusing to enrollees. The commenter recommended that CMS change all references from IRE to QIO so that CMS would not have to develop and maintain a costly and unnecessary contractual and regulatory structure that duplicates the QIO program.

Response: Although we recognize that QIOs have experience with making similar determinations, we do not believe that it is appropriate to designate in a final rule that QIOs will carry out the fast-track reviews. We are still evaluating whether these reviews are more appropriately accomplished through a single IRE, or multiple entities, as well as the extent to which these procedures can be linked with expedited reviews required under the new BIPA provisions. There are various independent entities, including QIOs, which already have contractual relationships with CMS to make coverage decisions. As we attempt to develop improved, more efficient appeals procedures under both M+C and original Medicare, CMS will determine whether it is prudent to use these existing contractors to fulfill the requirements of this regulation, or whether it is necessary to seek bids for this important work.

Comment: One commenter expressed concern that the proposed rule did not require that IRE reviewers include clinicians or practicing physicians. The commenter also believed that a reviewer should have a background in the specialty or subspecialty relevant to the case.

Response: The regulations at §§ 422.624 and 626 are part of the overall M+C appeals process under subpart M. These fast-track reviews effectively replace M+C organization's reconsiderations on SNF, HHA, and CORF termination cases. Thus, similar to the requirement under § 422.590(g)(2) for reconsideration decisions by M+C organizations, we intend to require through our contract with the IRE(s) that decisions involving denial of coverage based on a lack of medical necessity "must be made by a physician with expertise in the field of medicine that is appropriate for the services at issue. The physician making the reconsidered determination need not, in all cases, be of the same specialty or subspecialty as the treating physician."

C. Hospital Discharge Notices (§§ 422.620 and 489.27)

Comment: Many commenters strongly opposed the proposed requirements under 422.620 and 489.27 that hospitals issue a standardized notice of appeal rights for a second time on the day before discharge to all Medicare beneficiaries, including those that are enrolled in a Medicare managed care health plan. They believe that this requirement poses a significant administrative burden in both delivering and explaining the form and takes away from time better spent on providing services and discharge planning. They contend that the notice is unnecessary in either the managed care or fee-for-service context and indicated that, in many cases, beneficiaries are confused by the notice. One commenter stated that after the enactment in 1998 of the requirement under 422.620 that all M+C enrollees receive discharge notices the day before the end of their hospital stay, the Quality Improvement Organizations (QIO) received many phone calls from confused beneficiaries not understanding the notice. The commenters believe that very few beneficiaries have any interest in disputing their hospital discharges and thus the cons of this requirement far outweigh any benefits.

Two commenters supported the proposal that hospitals issue notices, both near admission and the day before discharge, to all Medicare beneficiaries. They supported CMS's efforts to combine the Important Message from Medicare (IM) with the Notice of Discharge & Medicare Appeals Rights (NODMAR), and Hospital Issued Notice of Noncoverage (HINN). The commenters found the notices largely duplicative and welcomed the simple one page document. (Please note that since the publication of the proposed rule, the required notices and the distribution process have also been the subject of public comment through the Office of Management and Budget (OMB) approval process required under section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA).)

Response: After careful consideration of the public comments on these requirements, the many comments received on the notices themselves through the PRA process, and evaluation of CMS data on the hospital discharge appeals process, we are convinced that changes are needed in the proposed notice requirements. Consistent with the notice requirements discussed above for other provider termination situations, we are revising 422.620 to eliminate the requirement that hospitals provide a written notice of noncoverage to each M+C enrollee the day before discharge. Section 489.27 will continue to require that hospitals furnish the Important Message from Medicare, which explains a beneficiary's appeal rights to every Medicare inpatient during their stay, but will not specify that the notice be delivered the day before discharge.

We continue to strongly believe that all beneficiaries need to be informed of their Medicare appeal rights when admitted as inpatients to hospitals, and this will continue to take place in compliance with section 1866(a)(1)(M) of the Act. However, we have reached the conclusion that requiring that this notice in effect be delivered twice, once upon admission and again before discharge, would be an unnecessarily burdensome requirement on hospitals. We have reviewed data from the QIOs

via CMS's Standard Data Processing System covering the period November 1999–March 2001. During this time, there were approximately 11 million Medicare beneficiaries discharged from hospitals, only about 15,000 of whom (slightly more than one tenth of 1 percent) chose to appeal the hospital discharge decision. Tellingly, the proportion of M+C enrollees that exercised their right to appeal was no different than that for other beneficiaries, despite the ongoing requirement that all M+C enrollees receive notice of their discharge and Medicare appeal rights the day before discharge—a requirement that does not exist for other Medicare beneficiaries. Thus, we believe this evidence indicates the efficacy of the current practice under which hospitals issue detailed notices of noncoverage to beneficiaries under original Medicare only when they express dissatisfaction with the termination of hospital services.

Therefore, hospitals will continue to be responsible for issuing both the Important Message from Medicare to all Medicare inpatients, as well as for issuing HINNs to inpatients covered under the original Medicare program when they indicate that they disagree with a hospital's discharge decision. For enrollees in the M+C program, we are revising 422.620 to specify that M+C organizations are responsible for providing a written notice of noncoverage when an enrollee disagrees with a discharge decision. The notice must be issued no later than the day before hospital coverage ends and must explain the reason why care is no longer needed, the enrollee's appeal rights, and the effective date of time of the enrollee's liability for continued inpatient care. We believe that it is appropriate to place this responsibility on M+C organizations, given their financial liability for continued care in such situations.

We intend to submit updated versions of both the Important Message from Medicare and the detailed notices of noncoverage to OMB for public comment through the PRA process. (We anticipate that there will continue to be two notices of noncoverage—one for patients under original Medicare and one for patients enrolled in the M+C program.) Until that process is completed, hospitals and M+C organizations should continue to use the existing Important Message, HINN, and NODMAR for accomplishing the notification requirements of this final rule. We intend to continue our efforts to simplify the messages delivered by these notices, including limiting each notice to a one-page format.

Comment: One commenter stated that although the proposed rule made it clear that CMS intends to have hospitals administer the IM to all Medicare beneficiaries, it was unclear as to when and how often the notice is to be administered during an inpatient stay. The commenter acknowledges the value to beneficiaries of administering appeal notices for inpatient stays, but believes that hospitals should continue to distribute the IM only at admission, as they have done for years.

Response: We recognize the need for clarity in this regard. The intent of the proposed rule, in conjunction with the procedures set forth through the PRA process, was that hospitals generally would issue the notice twice during an inpatient stay, that is, once at or near the time of admission and again before discharge. However, that proposal has been superceded by the requirements of this final rule. As explained above, hospitals thus should continue their current practice of issuing the IM at or near admission to all Medicare inpatients, and issuing a notice of noncoverage before discharge only in situations where a beneficiary other than an M+C enrollee has indicated dissatisfaction with his or her scheduled discharge date. M+C organizations will be responsible for administering notices of noncoverage to inpatient M+C enrollees when they disagree with an M+C organization's discharge decision.

Comment: One commenter suggests that CMS increase its educational and outreach efforts to ensure beneficiaries' understanding of the notices they receive. The commenter stated that hospitals should not be relied upon to provide all of the education necessary for a beneficiary to understand their Medicare rights.

Response: We are committed to ensuring that notices provided to beneficiaries are clear and understandable, and that beneficiaries with questions can get prompt, reliable answers. To this end, we now routinely consumer test major beneficiary notices such as these hospital notices, as well as subject them to public comment through OMB's Paperwork Reduction Act process. Beneficiaries with questions can contact Medicare's toll free number (1–800-MEDICARE) or work with beneficiary outreach groups sponsored by CMS, such as the State Health Insurance Assistance Programs (SHIPs).

Comment: Two commenters were strongly opposed to CMS's practice of submitting standard termination and similar notices, such as the hospital Important Message, for review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). For notices like these, these commenters believe that this practice makes no sense, and introduces lengthy and they believe unnecessary delays in the implementation of legally required notices. The commenters, citing 44 U.S.C. 3501 *et seq.*, contend that these notices do not fall within the requirements of the PRA for agency actions involving collection of information. They allege that the delay in implementing standardized notices caused by CMS's practice delays compliance with legal requirements, as noted above. Another commenter contends that, while Congress created the PRA to reduce the amount of paperwork providers utilize, over the past five years, providers have seen nothing but increases in the amount of paperwork they must complete. The commenter further argues that the notices required under the proposed rule add to the paperwork burden that providers have to comply with instead of decreasing the burden, as outlined under the PRA.

Response: We do not agree with the commenter's interpretation of the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA). The PRA applies both to information collection and paperwork burden, and thus we believe it is required and appropriate to obtain public comment on notices that are required under Federal regulations. We intend to work closely with OMB to minimize any delays in the development and clearance of the revised standardized notices. We note that in this final rule, we have reduced the paperwork burden that would have been imposed under the proposed rule, including the elimination of certain notice requirements absent an objection to, or decision to appeal, a discharge.

Comment: Several commenters raised concerns about the discharge decision-making process for hospital inpatients who are enrollees of M+C plans. They contend that there will inevitably be disagreements between plans and providers about the timing of patient discharges and that the proposed rule would exacerbate these disputes by requiring hospitals to distribute detailed discharge notices to all M+C enrollees. This in effect requires a hospital to explain an M+C organization's decision. Another commenter stated that over the past few years, its member hospitals have encountered numerous instances in which M+C plans have reduced or denied payment to hospitals for days during which the plan and the beneficiary's physician have disagreed about whether the beneficiary should be discharged.

Response: Clearly, the hospital discharge decision-making process requires substantial coordination and cooperation between M+C organizations and hospitals. We recognize that requiring detailed discharge notices for all M+C inpatients would have potentially increased the difficulties in this regard without achieving any demonstrable benefits for enrollees. Thus, we have revised the requirements in this final rule to make clear that such notices, when needed, are the responsibility of M+C organizations. However, we continue to believe that it is inappropriate for CMS to interfere in the business relationships between M+C organizations and their hospital providers and that any tension between these parties largely parallels that in the private health insurance sector.

Comment: One commenter noted that under the original Medicare, hospitals must provide QIOs copies of all HINNs given to beneficiaries. In view of the proposal that a detailed discharge notice be given to each Medicare inpatient, the commenter suggested that we eliminate the requirement that QIOs receive copies of every discharge notice.

Response: We believe that hospitals should continue to provide QIOs with copies of all HINNs, and that M+C organization should provide QIOs with copies of the noncoverage notices that they provide to dissatisfied beneficiaries. This is consistent with the policy described above for expedited reviews of other provider terminations, where M+C organizations will furnish copies of their detailed termination notices to both the IRE and the enrollee when there is a dispute over a discharge or service termination.

D. Grievance Procedures (§§ 422.561 and 422.564)

Comment: Some commenters argued that the proposed grievance procedures were overly prescriptive, while others supported establishing the proposed new standards. One commenter believed that grievance procedures should be flexible, given our interpretation of the preemption provision under section 1856(b)(3)(B)(iii), *i.e.*, Federal rules do not specifically preempt State grievance requirements unless they relate to coverage determinations. One commenter stressed that any grievance requirements we imposed should be consistent with those applied by accrediting organizations, so that M+C organizations would not have to change current procedures to a great extent.

Response: In the June 26, 1998, interim final rule to establish the M+C program (63 FR 35,030), we set forth the general requirement that an M+C organization must resolve grievances in a timely manner and have grievance procedures to meet CMS guidelines. In both the interim final rule and the June 29, 2000, final rule (65 FR 40,170, 40,275), we indicated that we intended to establish more detailed requirements for grievance procedures.

We generally agree with the commenters that the regulations should not be overly prescriptive with respect to grievance procedures. We note that many States have processes to address complaints that involve issues other than coverage, and State grievance procedures, unlike appeal procedures, are not specifically preempted by Federal rules. We consulted with representatives of the managed care industry, beneficiary advocacy groups, and QIOs, and examined standards developed by the National Association of Insurance Commissioners (NAIC). We learned that M+C organizations already adhere to State requirements concerning grievances. Also, our experience has shown that enrollees overwhelmingly pursue appeals rather than grievances, and rarely raise concerns or problems associated with the existing grievance procedures. Therefore, as discussed below, we are not including in this final rule the proposed procedural provisions set forth in § 422.564(d) and (e), which pertain to the method for filing and the notification and time frames associated with grievances.

Nevertheless, we believe that a basic uniform grievance structure should be in place to address those issues that fall outside of the appeals process. In particular, we believe that grievance provisions are needed to address complaints involving procedural issues that arise during the appeals process. Thus § 422.564(d) establishes an expedited grievance process for the following circumstances: (1) The grievance involves an M+C organization's decision to invoke an extension related to an organization determination or reconsideration; or (2) the grievance involves an M+C organization's refusal to grant an enrollee's request for an expedited organization determination under § 422.570 or reconsideration under § 422.584.

We believe that the changes we are setting forth in this final rule either have a direct effect on the M+C appeals process, or provide clarification in existing requirements, but allow M+C organizations the flexibility needed to maintain current procedures that comply with State requirements.

Comment: Several commenters strongly encouraged CMS to establish mandatory time frames and notification procedures for resolving grievances. One commenter suggested that grievance time frames mirror those for standard and expedited organization determinations. Two commenters suggested a 30-calendar day time frame to render a grievance decision, with an opportunity for a 14-calendar day extension for peer review. Another commenter argued that the grievance procedure must have a mechanism to resolve a dispute regarding an M+C organization's denial to grant an expedited review within 24 hours, so that an inappropriately denied request can proceed quickly in the appeals process. Finally, one commenter expressed concern about State privacy requirements, which, in some cases, prevent health plans from providing specific information on how grievances get resolved.

Response: As noted above, we have not in this final rule adopted the proposed provisions that prescribed time frames for responding to grievances generally. We do not believe that establishing Federal requirements for the manner and timeliness within which grievances must be disposed is necessary, and as we have noted it could be unduly burdensome in light of varying State requirements. Furthermore, we have not received any reports that enrollees have encountered frustration or problems in getting M+C organizations to respond to enrollees' grievances timely or communicate in an effective manner. Enrollees will continue to have regulated formal avenues to pursue complaints involving all payment, coverage and quality of care issues.

We also agree with the commenter who suggested that grievances involving expedited appeals needed to be addressed as quickly as possible. Therefore, as noted above, we are specifying under § 422.564(d) that an M+C organization must notify the enrollee within 24 hours of receiving a grievance about the M+C organization's refusal to expedite a review, or the M+C organization's decision to invoke an extension to the organization determination or reconsideration time frames. This will ensure that any inappropriate procedural actions under the appeals process are resolved and that the appeal proceeds without delay. In this situation, any extension would clearly be inappropriate, since it would constitute a de facto denial of the

enrollee's request for an expedited review.

Comment: One commenter asked who will determine which route is more appropriate for the beneficiary in pursuing a remedy to a complaint, since we acknowledge that the same claim or circumstances that gave rise to an appeal could have elements of a grievance. This may cause the beneficiary to be confused as to which route is more appropriate. Another commenter asserted that M+C organizations should be required to provide clear, accurate and standardized information concerning grievance and appeal procedures.

Response: We are adding to § 422.564(b) a requirement that when an M+C organization receives a complaint, it must promptly determine and inform the enrollee whether the issue is subject to its grievance procedures or its appeal procedures. Note that we view "complaint" and "dispute" as generic terms that cover various expressions of dissatisfaction or disagreement that may be brought to the attention of an M+C organization or its providers. Thus, complaints or disputes can encompass grievable or appealable issues, but in either case would require resolution in accordance with the organization's internal procedures.

CMS already requires M+C organizations to provide clear and concise information to all enrollees regarding appeal and grievance procedures. M+C organizations include this information annually in their Evidence of Coverage (EOC). In addition to other information that M+C organizations wish to convey, CMS also provides standard information that all EOCs must contain regarding appeals and grievances.

Comment: Various commenters expressed conflicting views on the most appropriate means for dealing with quality of care issues. Some commenters believed that a quality of care issue should first be resolved by the M+C organization and subsequently sent to the QIO. Other commenters argued that quality of care issues should be referred immediately to the QIO for resolution, while others maintained that complaints should be processed by both M+C organizations and QIOs simultaneously.

Response: As reflected under new § 422.564(c), we decided that the most flexible approach would be to permit enrollees to file quality of care complaints with either the M+C organization, the QIO, or both. We expect M+C organizations and QIOs to coordinate and cooperate with one another to resolve enrollees' complaints.

Comment: Many commenters suggested that CMS should not include a definition of "quality of care" in the regulations because defining it would oversimplify the many issues that quality of care might encompass.

Response: We agree with the commenters that the term "quality of care" does not lend itself to a regulatory definition. Instead, we will rely on the States and M+C organizations to identify the types of issues that might fall into the quality of care category.

Comment: A commenter questioned how CMS would enforce record-keeping requirements for M+C organization grievances.

Response: Section 422.564(e) requires M+C organizations to maintain records associated with processing grievances. M+C organizations already should have a system to track and maintain records on all grievances in light of existing requirements under section 1852(c)(2)(C) and § 422.111(c)(3), whereby M+C organizations must report aggregate information on the disposition of grievances. Thus, the record-keeping requirement will be enforced through CMS' existing procedures to monitor grievance activities, and if appropriate, place M+C organizations on corrective action plans. We expect M+C organizations, at a minimum, to keep track of the receipt date and final disposition of the grievance, and the date that the M+C organization notified the enrollee of the disposition.

E. Reductions of Services

This final rule does not set forth any new regulations regarding reductions in services. As part of the *Grijalva* settlement, we agreed to solicit comments on whether new notice and appeal procedures were needed for decisions by M+C organizations to reduce health services. The issue of what constitutes appropriate notice and appeal procedures for reductions of service was also raised in the regulations to implement the M+C program.

In the M+C final rule, we made several changes to § 422.566(b), which describes actions that constitute organization determinations. We added language at § 422.566(b)(3) to clarify that an organization's refusal to pay for or provide services, in whole or in part, "including the type or level of services" can constitute an organization determination if the enrollee believes that services should be furnished or arranged. We stated in the preamble to the final rule that we agreed that a reduction in service could be considered an organization determination that was subject to an appeal. To the extent that the organization refused to continue to provide all or part of the services that the enrollee believed should be furnished, the reduction constituted an appealable issue.

However, the existing M+C regulations do not specify that notices are routinely required in connection with reductions of services. The notices are required only if the enrollee disagrees that the services are no longer medically necessary.

We have reviewed several public comments on these issues, both after the publication of the M+C interim final rule on June 26, 1998, and again with respect to the January 24, 2000, proposed rule. Several commenters both times strongly urged us to consider the administrative and financial burden associated with notice requirements. They maintained that it is unnecessary to require notification to enrollees when services are reduced because the normal progression of a clinical course of treatment is from increased to decreased services. Some commenters have argued that providing detailed notices in all reduction situations would be confusing, burdensome and intrusive upon the physician/patient relationship.

Based on our review of current and previous comments on this issue, we believe that the process of changing the notice requirement for reductions of services is unnecessary, particularly in light of the requirement that all enrollees receive notice of their appeal rights before the termination of services in hospital and other provider settings. We will monitor the new policy on discontinuations of provider services, and if we find that it is necessary to create additional procedures for reductions of services, we will initiate the necessary rulemaking.

IV. Provisions of This Final Rule With Comment Period

A. Summary of Provisions

For the convenience of the reader, listed below are the major changes to the M+C regulations that are set forth in this final rule with comment period. This listing is intended solely as a reference aid rather than as a comprehensive statement of the policies set forth in the regulation text.

- New § 422.502(i)(3)(iv) specifies that M+C organization contracts with providers and other related entities entered into after (the effective date of this final rule) must contain a provision specifying that these entities will comply with the applicable notice and appeal provisions in §§ 422.620, 422.624, and 422.626.

- In § 422.561, the definition of grievance is revised to mean any complaint or dispute, other than one that constitutes an organization determination, expressing dissatisfaction with any aspect of an M+C organization's or provider's operations, activities, or behavior, regardless of whether remedial action is requested.
- In § 422.564, paragraph (c) clarifies that an enrollee may file a quality of care complaint either with the QIO, the M+C organization, or both entities. New paragraphs (d) and (e) establish specific procedures for handling expedited grievances and for record-keeping with respect to grievances, respectively.
- Section 422.620 provides that an M+C organization (or a hospital that has accepted delegation of the authority to make the discharge decision) must issue a written notice of noncoverage to any M+C enrollee who disagrees with the M+C organization's decision to discharge the enrollee. As discussed above, this represents a change from the proposed provision that hospitals issue such notices for all discharges of M+C enrollees.
- Section 422.624 sets forth the requirements for notifying enrollees when their SNF, HHA, or CORF services are being terminated. These procedures require that the provider deliver, generally no later than two days before the termination of services, a standardized advanced termination notice that informs the enrollee of the date of discharge and how to file an appeal. As discussed above, the provisions set forth in this final rule represent a change from the proposed provisions, which would have required that more detailed notices be delivered four days in advance of service termination.
- Section 422.626 establishes an enrollee's right to a fast-track appeal of an M+C organization's decision to terminate these provider services, and the requirements and procedures associated with these fast-track appeals. This section explains the liability rules and evidence standards during these appeals, and establishes the procedures to be followed, including the responsibilities of M+C organizations and the IRE that makes the decisions on the appeals. As discussed above, this final rule with comment period provides that M+C organizations must furnish detailed termination notices only to enrollees who timely request a fast-track appeal but must furnish these notices to the enrollee and the IRE on the day of the request. This change from the proposed rule may result in a maximum of one day of potential financial liability for services for an enrollee whose appeal is unsuccessful. (Note that under existing M+C appeal procedures, an enrollee's potential liability in an unsuccessful appeal would be at least 4 days.)
- Section 489.27 specifies that, as an element of the provider's agreement to participate in the Medicare program, hospitals and other providers must furnish beneficiaries with applicable OMB-approved notices concerning their discharge rights, including the hospital discharge notice required under section 1866(a)(1)(M) of the Act and the advance termination notice for M+C enrollees whose SNF, HHA, or CORF services are being terminated. This final rule with comment period does not specify that a hospital discharge notice must be provided the day before a discharge.

B. Decision To Issue a Final Rule With Comment Period

As discussed above, section 1869(b)(1)(F) of the Act, as revised by section 521 of BIPA, requires that the Secretary establish a process by which a beneficiary may obtain an independent, expedited determination if he or she receives a notice from a provider of services that the provider plans to terminate the services or discharge the individual from the provider. Currently, this right to an expedited review exists only with respect to hospital discharges (under sections 1154 and 1155 of the Act). On November 15, 2002, we published a proposed rule setting forth the procedures needed to implement this statutory directive.

Clearly, the new appeal rights proposed in accordance with section 1869 of the Act in many ways resemble those envisioned by the *Grijalva* settlement agreement and now set forth in this final rule. However, for the most part, the January 24, 2001, proposed rule that preceded this final rule was developed without the benefit of that statutory direction. We believe it is prudent and appropriate to consider further public comments on the requirements set forth here, now that the public has had an opportunity to review our proposal to implement the BIPA provisions. For example, we welcome comments on whether, and the extent to which, the procedures set forth here for M+C enrollees and those proposed to implement the BIPA expedited determination rights for original Medicare beneficiaries can or should be integrated or combined, or at least made uniform. If these additional comments result in changes to these requirements, we will publish a subsequent final rule to set forth these changes. (Note that publication of such a final rule would not delay the implementation of the procedures established under this final rule, which will begin on January 1, 2004, consistent with our commitment not to implement significant changes to the M+C program on a mid-year basis.)

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to the document.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 30-day notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comments on the following issues:

Whether the information collection is necessary and useful to carry out the proper functions of the agency;

The accuracy of the agency's estimate of the information collection burden;

The quality, utility, and clarity of the information to be collected; and

Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Several commenters addressed the burden associated with the proposed termination notice provisions, and these comments are discussed in detail above in section III.B.3 of this final rule. As discussed there, this final rule contains changes to these provisions based on public comments. Our estimates of the revised information collection requirements are set forth below, and we welcome further comments on these issues.

Section 422.564—Grievance Procedures

As discussed in detail in section II.D of this preamble, this final rule does not include the proposed detailed requirements with respect to the general grievance procedures to be followed by

M+C organizations. Instead, we have largely maintained the existing standard. That is, an M+C organization must have an established process to track and maintain records on all grievances received both orally and in writing, including, at a minimum, the date of receipt, final disposition of the grievance, and the date that the M+C organization notified the enrollee of the disposition. We have specified that an M+C organization must respond to an enrollee's grievance within 24 hours if the complaint involves an M+C organization's refusal to grant an enrollee's request for an expedited organization determination or an M+C organization's decision to invoke an extension on an appeal request. M+C organizations must routinely respond to such grievances, and although the 24-hour time frame represents a new requirement, it does not affect the information collection burden. (Note that M+C organizations already document their case files or notify enrollees when they process requests for expedited reviews under §§ 422.570 and 422.584, and invoke extensions to the organization determination and reconsideration times frames under §§ 422.568, 422.572, and 422.590.) Thus, while the new requirement is subject to the PRA, the burden associated with this requirement is captured by the requirements in §§ 422.568, 422.572 and 422.590, approved under OMB number 0938–0829.

Section 422.620—How M+C Enrollees Must Be Notified of Noncoverage of Inpatient Hospital Care

When an M+C organization has authorized coverage of the inpatient admission of an enrollee, either directly or by delegation (or the admission constitutes emergency or urgently needed care, as described in sections 422.2 and 422.113), the M+C organization (or hospital that has been delegated the authority to make the discharge decision) must provide a written notice of noncoverage when the beneficiary disagrees with the discharge decision.

Based on the 2002 CMS Data Compendium, (CMS Publication Number 03437), there are approximately 11.8 million Medicare beneficiaries discharged from hospitals each year. We extrapolate that approximately 1.8 million of these are M+C discharges. As discussed in section II.C of this preamble, based on previous inpatient hospital appeals data from the QIO's Standard Data Processing System, we estimate that about 0.1 to 0.2 percent (1,800 to 3,6000) of M+C enrollees' hospital discharges will be disputed. We project that it would take M+C organizations (or hospitals that have been delegated the authority to make the discharge decision) approximately 30 minutes to prepare and furnish the notice required in these cases. Thus, the total annual burden associated with providing notices to M+C enrollees is approximately 900 to 1800 hours. (Note that issuance of these notices will not take effect until a separate PRA statement has been published.)

Section 422.626—Fast-Track Appeals of Service Terminations to the IRE

An enrollee who desires a fast-track appeal must submit a request for an appeal to the IRE, in writing or by telephone, by noon of the first calendar day after receipt of the written termination notice. If the IRE is closed on the day the enrollee requests a fast-track appeal, the enrollee must file a request by noon of the next day that the IRE is open for business.

In 1999, the Center for Health Dispute Resolution (CHDR), the entity with whom CMS now contracts to conduct appeals of M+C reconsiderations, reviewed approximately 3,000 cases involving services provided by SNFs, HHAs, and CORFs. (Note that we have no way of knowing the proportion of these cases that involved service terminations, but for purposes of this analysis, we will make the assumption that all of these 3,000 cases involve service terminations.) Based on the General Accounting Office's 1999 Report to the Special Committee on Aging, "Greater Oversight Needed to Protect Beneficiary Rights," managed care organizations reverse their original adverse organization determinations in approximately 75 percent of appealed cases. Therefore, we believe that the 3,000 cases that went to CHDR likely represent about 25 percent of all appeals (*i.e.*, "reconsiderations") involving affected providers that are now conducted by M+C organizations. Thus, we estimate that the number of provider appeals that would likely be heard by an IRE would be 12,000 cases. This constitutes approximately 2 percent of the 616,500 M+C enrollees that we estimate will receive termination notices, which we believe is a reasonable estimate of the maximum number of enrollees that are likely to file appeals with the IRE. It is estimated that it will take 12,000 enrollees 15 minutes to file an appeal on an annual basis. The total annual burden associated with this requirement is 3,000 hours.

The enrollee may submit evidence to be considered by the IRE in making its decision and may be required by the IRE to authorize access to his or her medical records in order to pursue the appeal. It is likely that no more than 10 percent of the 12,000 enrollees who file appeals will also submit additional evidence. It is estimated that it will take 1,200 enrollees 60 minutes to submit evidence on an annual basis. That is, since enrollees may not be functioning at their maximum capacity, they may need to contact family members, friends, or their personal physicians who might provide assistance in gathering additional evidence. The total annual burden associated with this requirement is 1,200 hours.

Upon notification by the IRE of a fast-track appeal, the M+C organization must supply any and all information, including a copy of the notice sent to the enrollee, no later than by close of business of the following day. It is estimated that it will take M+C organizations 60–90 minutes to gather and prepare a case file to send to the IRE. Since we have estimated that approximately 12,000 enrollees would request appeals, the total annual burden associated with this requirement is 12,000–18,000 hours.

Upon an enrollee's request, the M+C organization must provide a copy of, or access to, any documentation sent to the IRE no later than close of business of the first day after the day the material is requested. We estimate that 20% of the 12,000 enrollees who file an appeal will request copies of information forwarded to the IRE. It is estimated that it will take M+C organizations 15 minutes to provide a copy of all of the information provided to the IRE, to 2,400 enrollees. The total annual burden associated with this requirement is 600 hours.

If the IRE upholds an M+C organization's termination decision in whole or in part, the enrollee may appeal by requesting that the IRE reconsider its decision. It is estimated that 50 percent of the 12,000 appeals will result in the IRE upholding the M+C organization's termination decision. Of those 6,000 cases, we estimate that 20 percent of the enrollees will request a reconsideration by the IRE. It is estimated that it will take 1,200 enrollees 30 minutes to file a request for reconsideration on an annual basis. The total annual burden associated with this requirement is 600 hours.

Section 489.27—Beneficiary Notice of Discharge Rights

A hospital that participates in the Medicare program must furnish each Medicare beneficiary, or an individual acting or his or her behalf, the notice of discharge rights required under section 1866(a)(1)(M) of the Act. In addition, providers (as identified at § 489.2(b)) that participate in the Medicare program must furnish each Medicare beneficiary, or authorized representative, applicable CMS notices in advance of the termination of Medicare services, including the notices required under § 422.624 of this part.

The information collection requirements associated with § 489.27 are currently approved under OMB PRA approval number 0938–0692.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements in §§ 422.564, 422.620, 422.624, and 422.626. The new hours associated with these collections are summarized in the chart below.

Section No.	Entity	Estimated Burden Hours
422.620	Hospitals	900–1800
422.624	SNFs/HHAs/CORFs	200,320
422.626 (a) and (c)	M+C Enrollees	4,200
422.626 (e)	M+C organizations	12,600–18,600
422.626 (f)	M+C organizations	600

These requirements are not effective until they have been approved by OMB. If you have any comments on any of these information collection and record keeping requirements, please mail the original and 3 copies within 30 days of this publication date directly to the following: Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Office of Regulations Development and Issuances, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Attn: Julie Brown, CMS–4024–FC.

And, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

VII. Regulatory Impact Statement

A. Introduction

We have examined the impact of this rule under the criteria of Executive Order 12866 (September 1993, Regulatory Planning and Review), section 1102(b) of the Social Security Act, the Regulatory Flexibility Act (RFA), Pub. L. No. 96–354, the Unfunded Mandates Reform Act of 1995, Pub. L. No. 104–4, and Executive Order 13132. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). We estimate a burden of not more than $10 million associated with this final rule. Thus, this rule does not meet the $100 million threshold and is not, therefore, a major rule. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

The RFA requires agencies, in issuing certain rules, to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals, SNFs, and HHAs are small entities, either by nonprofit status or by having revenues of $25 million or less annually. For purposes of the RFA, all providers affected by this regulation are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for a final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. While it will have an impact on small entities, the economic impact on any particular entity will be negligible.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that would include any Federal mandate that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule would not have such an effect on State, local, or tribal governments, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that would impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This rule does not have a substantial effect on State and local governments.

Although a regulatory impact analysis is not mandatory for this final rule, we believe it is appropriate to discuss the possible impacts of the new appeals procedures on beneficiaries, providers, and M+C organizations, regardless of the monetary threshold of that impact. Therefore, a discussion of the anticipated impact of this rule is presented below.

B. Scope of the Proposed Changes

As discussed in detail above, this final rule establishes new notice and appeal procedures for enrollees when an M+C organization decides to terminate coverage of services by SNFs, HHAs, and CORFs. This rule specifies the responsibilities of M+C organizations and providers in issuing termination notices associated with these new appeal rights. It also clarifies the responsibilities of hospitals and M+C organizations for informing Medicare beneficiaries of their right to appeal a hospital discharge and amends the associated Medicare provider agreement regulations with regard to beneficiary notification requirements. Finally, it revises the existing regulations with respect to M+C grievance procedures. In general, we believe that these changes would enhance the rights of M+C enrollees and other Medicare beneficiaries, without imposing any

significant financial burden on these individuals. The impact of the final rule on M+C organizations and providers is discussed below.

C. New Notice and Appeal Procedures for Provider Terminations (§§ 422.624 and 422.626)

As explained in detail in the proposed rule, we examined available appeals data from the Center for Health Dispute Resolution (CHDR), the organization with whom CMS now contracts to conduct appeals of M+C reconsiderations to project the likely number of appeals that may be expected under these new provisions. (Under existing § 422.592, any case where an M+C organization's reconsideration results in affirming an adverse organization determination is automatically sent to CHDR for review.) Based on this analysis, we estimated that the annual number of possible appeals that will be heard by an IRE under the procedures set forth in this final rule will be approximately 12,000 cases. We received no comments on the validity of this estimate and continue to believe that it is realistic. (*See* our January 24, 2001, proposed rule for further details—66 FR 6600–6602.)

Although commenters generally did not object to this volume estimate, both provider and M+C industry commenters found the procedures associated with implementing the new expedited appeals very problematic. Throughout this preamble, we have acknowledged and responded to the comments concerning the unnecessarily burdensome nature of these procedures. As discussed in detail above, we have made several significant changes to the notification procedures that we believe should ameliorate these concerns. Most notably, this final rule greatly simplifies the notice that providers furnish to enrollees whose services are ending and provides that M+C organizations must furnish detailed termination notices only to enrollees who timely request a fast-track appeal.

Thus, for approximately 12,000 cases, M+C organizations will be required under this final rule to make available to the enrollee a copy of the detailed termination notice, and to the IRE, and to the enrollee upon request, a copy of any documentation needed to decide on the appeal. Although we recognize that there is an administrative burden associated with this requirement, we believe that the existing M+C reconsideration process would already result in the M+C organization gathering and reviewing the case file to reach a termination decision. Moreover, we note that this burden on M+C organizations is largely offset by the fact that M+C organizations will no longer be responsible for conduct internal reconsiderations of any cases covered under this final rule. That is, IREs will conduct reviews not just of the 3,000 cases that now go to CHDR but also of the 9,000 cases that are now subject to the M+C organization reconsideration process.

Similarly, with respect to providers, the requirements of this final rule should prove much easier to implement than those in the proposed rule. The required termination notices will be largely standardized, requiring only the insertion of the enrollee's name and discharge date. We estimate that it should take no more than 5 minutes to deliver such a notice, at a per-notice cost of no more than $7.50 (based on a $30 per hour rate if the notice is delivered by health care personnel). Based on an estimated 600,000 notices annually, we estimate the aggregate cost of delivering these notices should be less than $5 million.

Thus, we believe that the new notice and appeal provisions of this final rule should have minimal financial impact on M+C organizations and providers. We note that both the advance termination notice and the detailed termination notice will be developed through OMB's Paperwork Reduction Act process and thus will be the subject of further opportunity for public comment.

D. Hospital Discharge Notices (§§ 422.620 and 489.27)

Under the proposed rule, hospitals would have been required to issue a standardized discharge notice to each Medicare beneficiary twice during an inpatient stay, that is, once at or near the time of admission and again before discharge. The second notice (a revised version of the Important Message from Medicare now required under section 1866(a)(1)(M) of the Act and 489.27) would have included more detailed information about the reason for the discharge. Comments on this proposal, many of which focused on the administrative burden associated with this notice, are discussed in detail above. We estimated that the additional aggregate burden on hospitals would exceed $100 million.

Under this final rule, hospitals instead will continue to be responsible for issuing the Important Message from Medicare to all Medicare inpatients, as well as for issuing HINNs to inpatients covered under the original Medicare program when they indicate that they disagree with a hospital's discharge decision. These requirements are identical to those currently in effect and thus will entail no additional burden for hospitals.

All inpatient enrollees in the M+C program will also continue to receive the Important Message from their hospital during an admission. In addition, consistent with the notice requirement for other Medicare beneficiaries, we are revlsing 422.620 to specify that M+C organizations are responsible for providing a written notice of noncoverage when an enrollee disagrees with a discharge decision. The notice must be issued no later than the day before hospital coverage ends and must explain the reason why care is no longer needed, the enrollee's appeal rights, and the effective date of time of the enrollee's liability for continued inpatient care. Again, we estimate that the incidence of this notice will be no more than 0.1 to 0.2 percent of all M+C enrollee discharges, or roughly 1800 to 3600 notices, at an estimate aggregate annual cost to M+C organizations of $15,000–$30,000. Again, all of the required notices for hospital inpatient discharges will be published through the OMB PRA process.

E. Grievance Procedures (§ 422.564)

Grievances essentially include any complaint or dispute, other than one that constitutes an organization determination, expressing dissatisfaction with any aspect of an M+C organization's or provider's operations. As discussed in detail above, the primary new requirements set forth under this final rule (422.564(d) and (e)) are that an M+C organization establish specific procedures for handling expedited grievances and for record-keeping with respect to grievances, respectively.

Again, we have carefully examined the grievance procedures now in use by M+C organizations, and in particular the grievance procedures spelled out in the NAIC's Model Grievance Act, in developing these procedures. We believe that M+C organizations are in large measure already in compliance with the grievance procedures set forth here, and thus these requirements will have no substantial impact on most M+C organizations.

F. Federalism Summary Impact Statement

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This rule would not have a substantial effect on State or local governments.

In accordance with Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare+Choice, Penalties, Privacy, Provider-sponsored organizations (PSO), Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 422—MEDICARE+CHOICE PROGRAM

Part 422 is amended as set forth below:

■ 1. The authority citation for part 422 continues to read as follows:

Authority: Secs. 1102, 1851 through 1857, 1859, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395W–21 through 1395w–27, and 1395hh).

■ 2. In § 422.561, the definition of "grievance" is revised to read as follows:

§ 422.561 Definitions.

* * * * *

Grievance means any complaint or dispute, other than one that constitutes an organization determination, expressing dissatisfaction with any aspect of an M+C organization's or provider's operations, activities, or behavior, regardless of whether remedial action is requested.

* * * * *

3. Section 422.564 is revised to read as follows:

§ 422.564 Grievance procedures.

(a) *General rule.* Each M+C organization must provide meaningful procedures for timely hearing and resolving grievances between enrollees and the organization or any other entity or individual through which the organization provides health care services under any M+C plan it offers.

(b) *Distinguished from appeals.* Grievance procedures are separate and distinct from appeal procedures, which address organization determinations as defined in § 422.566(b). Upon receiving a complaint, an M+C organization must promptly determine and inform the enrollee whether the complaint is subject to its grievance procedures or its appeal procedures.

(c) *Distinguished from the quality improvement organization (QIO) complaint process.* Under section 1154(a)(14) of the Act, the QIO must review beneficiaries' written complaints about the quality of services they have received under the Medicare program. This process is separate and distinct from the grievance procedures of the M+C organization. For quality of care issues, an enrollee may file a grievance with the M+C organization; file a written complaint with the QIO, or both. For any complaint submitted to a QIO, the M+C organization must cooperate with the QIO in resolving the complaint.

(d) *Expedited grievances.* An M+C organization must respond to an enrollee's grievance within 24 hours if:

(1) The complaint involves an M+C organization's decision to invoke an extension relating to an organization determination or reconsideration.

(2) The complaint involves an M+C organization's refusal to grant an enrollee's request for an expedited organization determination under § 422.570 or reconsideration under § 422.584.

(e) *Recordkeeping.* The M+C organization must have an established process to track and maintain records on all grievances received both orally and in writing, including, at a minimum, the date of receipt, final disposition of the grievance, and the date that the M+C organization notified the enrollee of the disposition.

■ 4. Section 422.620 is revised to read as follows:

§ 422.620 How M+C enrollees must be notified of noncoverage of inpatient hospital care.

(a) *Enrollee's entitlement.* (1) Where an M+C organization has authorized coverage of the inpatient admission of an enrollee, either directly or by delegation (or the admission constitutes emergency or urgently needed care, as described in §§ 422.2 and 422.113), the M+C organization (or hospital that has been delegated the authority to make the discharge decision) must provide a written notice of noncoverage when—

(i) The beneficiary disagrees with the discharge decision; or

(ii) The M+C organization (or the hospital that has been delegated the authority to make the discharge decision) is not discharging the individual but no longer intends to continue coverage of the inpatient stay.

(2) An enrollee is entitled to coverage until at least noon of the day after such notice is provided. If QIO review is requested under § 422.622, coverage is extended as provided in that section.

(b) *Physician concurrence required.* Before notice of noncoverage is provided, the entity that makes the noncoverage/discharge determination (that is, the hospital by delegation or the M+C organization) must obtain the concurrence of the physician who is responsible for the enrollee's inpatient care.

(c) *Notice to the enrollee.* The written notice of non-coverage must be issued no later than the day before hospital coverage ends. The written notice must include the following elements:

(1) The reason why inpatient hospital care is no longer needed.

(2) The effective date and time of the enrollee's liability for continued inpatient care.

(3) The enrollee's appeal rights.

(4) Additional information specified by CMS.

■ 5. New §§ 422.624 and 422.626 are added to subpart M to read as follows:

§ 422.624 Notifying enrollees of termination of provider services.

(a) *Applicability.* (1) For purposes of §§ 422.624 and 422.626, the term provider includes home health agencies (HHAs), skilled nursing facilities (SNFs), and comprehensive outpatient rehabilitation facilities (CORFs).

(2) *Termination of service defined.* For purposes of this section and § 422.626, a termination of service is the discharge of an enrollee from covered provider services, or discontinuation of covered provider services, when the enrollee has been authorized by the M+C organization, either directly or by delegation, to receive an ongoing course of treatment from that provider. Termination includes cessation of coverage at the end of a course of treatment preauthorized in a discrete increment, regardless of whether the enrollee agrees that such services should end.

(b) *Advance written notification of termination.* Prior to any termination of service, the provider of the service must deliver valid written notice to the enrollee of the M+C organization's decision to terminate services. The provider must use a standardized notice, required by the Secretary, in accordance with the following procedures—

(1) *Timing of notice.* The provider must notify the enrollee of the M+C organization's decision to terminate covered services no later than two days before the proposed end of the services. If the enrollee's services are expected to be fewer than two days in duration, the provider should notify the enrollee at

the time of admission to the provider. If, in a non-institutional setting, the span of time between services exceeds two days, the notice should be given no later than the next to last time services are furnished.

(2) *Content of the notice.* The standardized termination notice must include the following information:

(i) The date that coverage of services ends.

(ii) The date that the enrollee's financial liability for continued services begins.

(iii) A description of the enrollee's right to a fast-track appeal under § 422.626, including information about how to contact an independent review entity (IRE), an enrollee's right (but not obligation) to submit evidence showing that services should continue, and the availability of other M+C appeal procedures if the enrollee fails to meet the deadline for a fast-track IRE appeal.

(iv) The enrollee's right to receive detailed information in accordance with § 422.626 (e)(1) and (2).

(v) Any other information required by the Secretary.

(c) *When delivery of notice is valid.* Delivery of the termination notice is not valid unless—

(1) The enrollee (or the enrollee's authorized representative) has signed and dated the notice to indicate that he or she has received the notice and can comprehend its contents; and

(2) The notice is delivered in accordance with paragraph (b)(1) of this section and contains all the elements described in paragraph (b)(2) of this section.

(d) *Financial liability for failure to deliver valid notice.* An M+C organization is financially liable for continued services until 2 days after the enrollee receives valid notice as specified under paragraph (c) of this section. An enrollee may waive continuation of services if he or she agrees with being discharged sooner than 2 days after receiving the notice.

§ 422.626 Fast-track appeals of service terminations to independent review entities (IREs).

(a) *Enrollee's right to a fast-track appeal of an M+C organization's termination decision.* An enrollee of an M+C organization has a right to a fast-track appeal of an M+C organization's decision to terminate provider services.

(1) An enrollee who desires a fast-track appeal must submit a request for an appeal to an IRE under contract with CMS, in writing or by telephone, by noon of the first day after the day of delivery of the termination notice. If, due to an emergency, the IRE is closed and unable to accept the enrollee's request for a fast-track appeal, the enrollee must file a request by noon of the next day that the IRE is open for business.

(2) When an enrollee fails to make a timely request to an IRE, he or she may request an expedited reconsideration by the M+C organization as described in § 422.584.

(3) If, after delivery of the termination notice, an enrollee chooses to leave a provider or discontinue receipt of covered services on or before the proposed termination date, the enrollee may not later assert fast-track IRE appeal rights under this section relative to the services or expect the services to resume, even if the enrollee requests an appeal before the discontinuation date in the termination notice.

(b) *Coverage of provider services.* Coverage of provider services continues until the date and time designated on the termination notice, unless the enrollee appeals and the IRE reverses the M+C organization's decision. If the IRE's decision is delayed because the M+C organization did not timely supply necessary information or records, the M+C organization is liable for the costs of any additional coverage required by the delayed IRE decision. If the IRE finds that the enrollee did not receive valid notice, coverage of provider services by the M+C organization continues until at least two days after valid notice has been received. Continuation of coverage is not required if the IRE determines that coverage could pose a threat to the enrollee's health or safety.

(c) *Burden of proof.* When an enrollee appeals an M+C organization's decision to terminate services to an IRE, the burden of proof rests with the M+C organization to demonstrate that termination of coverage is the correct decision, either on the basis of medical necessity, or based on other Medicare coverage policies.

(1) To meet this burden, the M+C organization must supply any and all information that an IRE requires to sustain the M+C organization's termination decision, consistent with paragraph (e) of this section.

(2) The enrollee may submit evidence to be considered by an IRE in making its decision.

(3) The M+C organization or an IRE may require an enrollee to authorize release to the IRE of his or her medical records, to the extent that the records are necessary for the M+C organization to demonstrate the correctness of its decision or for an IRE to determine the appeal.

(d) *Procedures an IRE must follow.* (1) On the date an IRE receives the enrollee's request for an appeal, the IRE must immediately notify the M+C organization and the provider that the enrollee has filed a request for a fast-track appeal, and of the M+C organization's responsibility to submit documentation consistent with paragraph (e)(3) of this section.

(2) When an enrollee requests a fast-track appeal, the IRE must determine whether the provider delivered a valid notice of the termination decision, and whether a detailed notice has been provided, consistent with paragraph (e)(1) of this section.

(3) The IRE must notify CMS about each case in which it determines that improper notification occurs.

(4) Before making its decision, the IRE must solicit the enrollee's views regarding the reason(s) for termination of services as specified in the detailed written notice provided by the M+C organization, or regarding any other reason that the IRE uses as the basis of its review determination.

(5) An IRE must make a decision on an appeal and notify the enrollee, the M+C organization, and the provider of services, by close of business of the day after it receives the information necessary to make the decision. If the IRE does not receive the information needed to sustain an M+C organization's decision to terminate services, it may make a decision on the case based on the information at hand, or it may defer its decision until it receives the necessary information. If the IRE defers its decision, coverage of the services by the M+C organization would continue until the decision is made, consistent with paragraph (b) of this section, but no additional termination notice would be required.

(e) *Responsibilities of the M+C organization.* (1) When an IRE notifies an M+C organization that an enrollee has requested a fast-track appeal, the M+C organization must send a detailed notice to the enrollee by close of business of the day of the IRE's notification. The detailed termination notice must include the following information:

(i) A specific and detailed explanation why services are either no longer reasonable and necessary or are no longer covered.

(ii) A description of any applicable Medicare coverage rule, instruction or other Medicare policy including citations; to the applicable Medicare policy rules, or the information about how the enrollee may obtain a copy of the Medicare policy from the M+C organization.

(iii) Any applicable M+C organization policy, contract provision, or rationale upon which the termination decision was based.

(iv) Facts specific to the enrollee and relevant to the coverage determination that are sufficient to advise the enrollee of the applicability of the coverage rule or policy to the enrollee's case.

(v) Any other information required by CMS.

(2) Upon an enrollee's request, the M+C organization must provide the enrollee a copy of, or access to, any documentation sent to the IRE by the M+C organization, including records of any information provided by telephone. The M+C organization may charge the enrollee a reasonable amount to cover the costs of duplicating the information for the enrollee and/or delivering the documentation to the enrollee. The M+C organization must accommodate such a request by no later than close of business of the first day after the day the material is requested.

(3) Upon notification by the IRE of a fast-track appeal, the M+C organization must supply any and all information, including a copy of the notice sent to the enrollee, that the IRE needs to decide on the appeal. The M+C organization must supply this information as soon as possible, but no later than by close of business of the day that the IRE notifies the M+C organization that an appeal has been received from the enrollee. The M+C organization must make the information available by phone (with a written record made of what is transmitted in this manner) and/or in writing, as determined by the IRE.

(4) An M+C organization is financially responsible for coverage of services as provided in paragraph (b) of this section, regardless of whether it has delegated responsibility for authorizing coverage or termination decisions to its providers.

(5) If an IRE reverses an M+C organization's termination decision, the M+C organization must provide the enrollee with a new notice consistent with § 422.624(b).

(f) *Reconsiderations of IRE decisions.* (1) If the IRE upholds an M+C organization's termination decision in whole or in part, the enrollee may request, no later than 60 days after notification that the IRE has upheld the decision that the IRE reconsider its original decision.

(2) The IRE must issue its reconsidered determination as expeditiously as the enrollee's health condition requires but no later than within 14 days of receipt of the enrollee's request for a reconsideration.

(3) If the IRE reaffirms its decision, in whole or in part, the enrollee may to appeal the IRE's reconsidered determination to an ALJ, the DAB, or a federal court, as provided for under this subpart.

(4) If on reconsideration the IRE determines that coverage of provider services should terminate on a given date, the enrollee is liable for the costs of continued services after that date unless the IRE's decision is reversed on appeal. If the IRE's decision is reversed on appeal, the M+C organization must reimburse the enrollee, consistent with the appealed decision, for the costs of any covered services for which the enrollee has already paid the M+C organization or provider.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

Part 489 is amended as set forth below:

■ 1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, 1819, 1861, 1864(m), 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395i-3, 1395x, 1395aa(m), 1395cc, and 1395hh).

■ 2. In § 489.20, paragraph (p) is revised to read as follows:

§ 489.20 Basic commitments.

The introductory text of § 489.20 is republished without change and paragraph (p) is revised to read as follows:

The provider agrees to the following:

* * * * *

(p) To comply with § 489.27 of this part concerning notification of Medicare beneficiaries of their rights associated with the termination of Medicare services.

* * * * *

■ 3. Section 489.27 is revised as follows;

§ 489.27 Beneficiary notice of discharge rights.

(a) A hospital that participates in the Medicare program must furnish each Medicare beneficiary, or an individual acting on his or her behalf, the notice of discharge rights required under section 1866(a)(1)(M) of the Act. The hospital must provide timely notice during the course of the hospital stay. For purposes of this paragraph, the course of the hospital stay begins with the provision of a package of information regarding scheduled preadmission testing and registration for a planned hospital admission. The hospital must be able to demonstrate compliance with this requirement.

(b) Notification by other providers. Other providers (as identified at § 489.2(b)) that participate in the Medicare program must furnish each Medicare beneficiary, or authorized representative, applicable CMS notices in advance of the termination of Medicare services, including the notices required under 42 CFR 422.624. These notices must be approved by the Office of Management and Budget prior to implementation under section 3506(c)(2)(A) of the Paperwork Reduction Act.

Dated: February 10, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: February 25, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–8204 Filed 4–1–03; 2:28 pm]

BILLING CODE 4120–01–P

VOL
68

ISS
65

AP
4

003

MI

Federal Register

Friday,
April 4, 2003

Part V

Department of Housing and Urban Development

Notice of Funding Availability for HOPE VI Demolition Grants Fiscal Year 2002; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4801–N–01]

Notice of Funding Availability for HOPE VI Demolition Grants Fiscal Year 2002

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This NOFA announces the availability of approximately $ 40 million in Fiscal Year (FY) 2002 funds for HOPE VI Demolition Grants.

I. Program Overview

(A) *Purpose of the Program.* The purpose of HOPE VI Demolition grants is to assist public housing agencies (PHAs) to demolish severely distressed public housing and provide relocation and other supportive services for residents.

(B) *Available Funds.* Approximately $40 million, in accordance with Section II of this NOFA, below.

(C) *Eligible Applicants.* PHAs that operate severely distressed public housing. PHAs that only administer the Housing Choice Voucher Program, Tribal Housing Authorities and Tribally Designated Housing Entities are ineligible to apply.

(D) *Application Deadline.* Demolition grant applications are due on June 3, 2003, as described in Section IV of this NOFA.

(E) *Authority.*

(1) The funding authority for HOPE VI Demolition grants under this HOPE VI NOFA is provided by the FY 2002 Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2002 (Public Law 107–73, approved on November 26, 2001) (FY 2002 HUD Appropriations Act) under the heading "Revitalization of Severely Distressed Public Housing (HOPE VI)." The FY 2002 HUD Appropriations Act provides that these HOPE VI funds "remain available until September 30, 2003."

(2) The program authority for the HOPE VI Program is section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v) (the 1937 Act), as added by section 535 of the Quality Housing and Work Responsibility Act of 1998 (Public Law 105–276, 112 Stat. 2461, approved October 21, 1998) (QHWRA).

II. Allocation of HOPE VI Funds

Type of assistance	Allocation of funds (approximate)	Funds available for award in this HOPE VI demolition NOFA (approximate)
Revitalization Grants	$492,485,000	
Demolition Grants	40,000,000	$40,000,000
Neighborhood Networks	5,000,000	
Technical Assistance	6,250,000	
Housing Choice Voucher Assistance	30,000,000	
Total	$573,735,000	$40,000,000

(A) *Revitalization Grants.* Approximately $492.5 million of the FY 2002 HOPE VI appropriation has been allocated to fund HOPE VI Revitalization grants and will be awarded in accordance with a separate HOPE VI Revitalization Grants NOFA.

(B) *Demolition Grants.* Approximately $40 million of the FY 2002 HOPE VI appropriation has been allocated to fund HOPE VI Demolition grants and will be awarded in accordance with this HOPE VI Demolition Grants NOFA.

(C) *Neighborhood Networks.* The FY 2002 appropriation for HOPE VI allocated $5 million for a Neighborhood Networks initiative for activities authorized in section 24(d)(1)(G) of the 1937 Act, which provides for the establishment and operation of computer centers in public housing for the purpose of enhancing the self-sufficiency, employability, and economic self-reliance of public housing residents by providing them with onsite computer access and training resources. The availability of these funds will be announced in a separate NOFA, and, in accordance with the appropriation, they will be awarded to PHAs on a competitive basis.

(D) *Technical Assistance.* The FY 2002 appropriation for HOPE VI allocated $6.25 million to provide technical assistance and contract expertise in the HOPE VI Program, to be provided directly by grants, contracts, or cooperative agreements, including training and cost of necessary travel for participants in such training, by or to officials and employees of HUD and of PHAs and to residents. The Office of Public Housing Investments will administer technical assistance funds.

(E) *Housing Choice Voucher Program.* The cost of assistance under the Housing Choice Voucher Program that will be provided to FY 2002 HOPE VI Revitalization and Demolition grantees will come from the FY 2002 HOPE VI appropriation. Approximately $30 million will be allocated for such assistance. If this amount is more than the amount necessary, the remaining funds will be made available for obligation before September 30, 2003.

(1) If you anticipate that you will need Housing Choice Voucher 8 assistance in order to carry out necessary relocation in conjunction with proposed demolition during FY 2003, your application must include the number of vouchers you will need, both in total and in FY 2003, and a Housing Choice Voucher application.

(2) If you will need Housing Choice Voucher assistance in fiscal years beyond FY 2003 for demolition that is being carried out in phases, or if you have unused vouchers that are available to be used for HOPE VI-related relocation in FY 2003 but will need more for subsequent years, you must request additional vouchers only as needed during the appropriate fiscal years.

(3) Housing Choice Voucher assistance cannot be awarded or used to relocate residents from units that are to be demolished until HUD has approved those units for demolition.

(4) If you have previously received Housing Choice Voucher assistance to relocate residents from the targeted severely distressed units, you may still apply for a HOPE VI Demolition Grant to demolish the units without replacement.

(5) You may request Housing Choice Voucher assistance for all units covered under a HOPE VI Demolition application to relocate residents from units that will not be replaced with hard units.

(F) *Funding of Previously Nonselected Applications.* Notwithstanding Section III(E)(4) of the General Section of the FY 2001 SuperNOFA, HUD will not use any funds from this HOPE VI Demolition NOFA to fund any previous-submitted, nonselected HOPE VI Demolition applications.

III. Application Thresholds

(A) Each required element of a HOPE VI Demolition grant application is a threshold requirement. Your application will not be eligible for funding unless each requirement listed in this NOFA is included in your application. HUD will give you the opportunity to submit any missing information up to the application deadline date, as provided in Section XI(C) of this NOFA.

IV. Application Submission Information

(A) *Application.*

(1) The HOPE VI Demolition Grant Application (Application) is appended to this NOFA and contains the required elements of the program. It provides explicit, specific instructions as to the requirements for your HOPE VI Demolition application. Your application must conform to the requirements of this HOPE VI Demolition NOFA and follow the format described in the Application. The Application is designed to guide you through the application process and ensure that your application addresses all requirements of this NOFA. Please note that if there is a discrepancy between information provided in the Application and the information provided in this NOFA, the information in the NOFA prevails.

(2) HUD will mail this NOFA, including the Application, to every eligible PHA. In addition, you may also obtain an Application from the HOPE VI Information Clearinghouse at 1–866–242–HOPE (1–866–242–4673). Persons with hearing or speech impairments may call the Clearinghouse's TTY number at 1–800–HUD–2209. When requesting an Application, please be sure to request the HOPE VI Demolition Application, and provide your name, address (including zip code), and telephone number (including area code). The Application also will be available on the HOPE VI Home Page *http://www.hud.gov/hopevi* and the HUD Home Page *http://www.hud.gov/grants.*

(B) *Application Due Date.* Demolition grant applications are due at HUD Headquarters on or before 5:15 p.m., Eastern Time, on June 3, 2003. *This application deadline is firm. Your application must arrive at HUD Headquarters by 5:15 p.m., Eastern Time, on the due date. You should submit your application early to avoid the risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.*

(C) *Application Delivery.*

(1) Send one copy of your completed application to Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410. Please make sure that you note the room number.

(2) *Applications Sent by Overnight Delivery.* It is strongly recommended that you send your application by an overnight carrier at least two days before the application due date. You should use only DHL, Falcon Carrier, FedEx, United Parcel Service (UPS), or the U.S. Postal Service, as they are the only carriers accepted into the HUD building without an escort. Delivery by these services must be made during HUD Headquarters business hours, between 8:45 a.m. and 5:15 p.m., Eastern Time, Monday through Friday. If these companies do not serve your area, you must submit your application via the U.S. Postal Service.

(3) No Hand Carried Applications. *Due to new security measures, HUD will no longer accept hand carried applications.*

(4) You must send one copy of your application to your HUD Field Office. The application sent to Headquarters will be the one that must meet the deadline. If the Field Office receives an application on time, but Headquarters does not, it will not be considered.

(5) HUD will not accept for review and evaluation any applications sent by facsimile (fax). Also do not submit resumes or videos.

(D) *Technical Assistance.*

(1) Before the application due date, HUD staff will be available to provide you with general guidance and technical assistance. HUD staff, however, is not permitted to assist in preparing your application. If you have a question or need clarification, you may call, fax, or write Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll free numbers). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

(2) Frequently asked questions, clarifications, and any technical amendments will be posted on the HOPE VI Web site at *http://www.hud.gov/hopevi.* In addition, all materials related to this NOFA, including the HOPE VI Demolition Application will be posted to this site. Any technical corrections will also be published in the **Federal Register**. Applicants are responsible for monitoring these sites during the application preparation period.

V. Eligible Demolition Activities

(A) Relocation, including reasonable moving expenses, for residents displaced as a result of the demolition of the project. *See* Section IX of this NOFA for relocation requirements.

(B) Demolition of dwelling units in buildings, in whole or in part, including the abatement of environmentally hazardous materials such as asbestos, in accordance with section 18 of the 1937 Act as amended.

(C) Demolition of nondwelling structures, if such demolition is directly related to the demolition of severely distressed dwelling units to be demolished with funds from the HOPE VI Demolition Grant.

(D) Restoration of the site to a "Greenfield," a clean site by removing all demolished materials, filling in the site, and establishing a lawn. No additional improvements, such as constructing new curbs and gutters, installing playground equipment, installing permanent fences, or planting gardens, may be paid for with HOPE VI Demolition grant funds.

(E) In the case of partial demolition of a site, minimal site restoration after demolition and subsequent site improvements to benefit the remaining portion of the project in order to provide project accessibility or to make the site more marketable.

(F) Reasonable costs for administration, planning, technical assistance, and fees and costs that are deemed to be incremental costs of carrying out the demolition as specifically approved by HUD.

VI. Demolition Grant Limitations

(A) *Grant Limitations.*

(1) *Demolition.* You may request up to $6,000 per unit for demolition and other eligible related costs.

(2) *Relocation.*

(a) You may request up to $3,000 in relocation costs for each unit that is occupied as of the date you submit your HOPE VI Demolition grant application.

(b) At least half of the funds requested for relocation must be used to provide mobility counseling and other services to promote the self-sufficiency of displaced residents.

(3) *Nondwelling Structures.*

(a) You may request reasonable amounts to pay for the demolition of significant nondwelling structures related to the demolition of dwelling units. These costs must be included as part of an application for funding of demolition of public housing units; you may not apply for them separately. Examples of such costs include community centers and heating plants.

(b) Such costs must be justified and verified by an engineer or architect licensed by his or her state licensing board who is not an employee of the housing authority or the city. The engineer or architect must provide his or her license number and state of registration. A Nondwelling Structures Cost Certification is included in the HOPE VI Demolition Grant Application.

(B) HUD recognizes that the HOPE VI grant may not cover the total costs of relocation, abatement, and demolition in all cases and that you may have to provide additional funding from other sources.

(C) *You may not use HOPE VI Demolition Grant funds to pay for any demolition or related activities carried out before the date of the letter announcing the award of the HOPE VI Grant.*

VII. Site and Unit Requirements

(A) *Demolition Site and Unit Application Guidelines.*

(1) You may submit up to five HOPE VI Demolition grant applications that target a total of no more than 2,500 severely distressed public housing units.

(2) You may target units in only one public housing project (*i.e.* units that have the same project number) per application.

(3) You may submit more than one application targeting units in a single housing project.

(4) You may target as many or as few units per application as you wish.

(5) Unless otherwise indicated, the Executive Director of the applicant PHA, or his or her designate, must sign each form or certification, whether part of an attachment or a Standard Certification. Signatures need not be original.

(B) *Separability.* In accordance with section 24(j)(2)(A)(v) of the 1937 Act, if you propose to target only individual buildings of a project for demolition, you must:

(1) Demonstrate to HUD's satisfaction that the severely distressed public housing is sufficiently separated from the remainder of the project of which the building is part to make demolition of the building feasible, and

(2) Demonstrate that the plan for the demolished portion will provide defensible space for the occupants of the remaining building(s). Separations may include a road, berm, catch basin, or other recognized neighborhood distinction.

(C) *Appropriateness of Proposal.* In accordance with section 24(e)(1) of the 1937 Act, each application must demonstrate the appropriateness of the proposal in the context of the local housing market *relative to other alternatives.* You must briefly discuss other possible alternatives to your proposal, and explain why your plan is more appropriate. This is a statutory requirement as well as an application threshold.

Examples of alternative proposals may include:

(1) Rebuilding on the site and/or building off-site replacement public housing in isolated, non-residential, or otherwise inappropriate areas.

(2) Proposing a range of incomes, housing types (rental vs. homeownership, market rate vs. public housing, townhouse vs. detached house, etc.), or costs that cannot be supported by a market analysis.

(3) Targeting the land for something other than its highest and best use, given market conditions and the social goals of your agency.

VIII. Severe Distress

(A) *Severe Distress.*

(1) The targeted public housing project or building in a project must be severely distressed. In accordance with section 24(j)(2) of the 1937 Act, the term "severely distressed public housing" means a public housing project (or building in a project) that:

(a) Requires major redesign, reconstruction or redevelopment, or partial or total demolition, to correct serious deficiencies in the original design (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems, and other deficiencies in the physical plant of the project; and

(b) Is a significant contributing factor to the physical decline of, and disinvestment by, public and private entities in the surrounding neighborhood; and

(c)(i) Is occupied predominantly by families who are very low-income families with children, are unemployed, and dependent on various forms of public assistance; or

(ii) Has high rates of vandalism and criminal activity (including drug-related criminal activity) in comparison to other housing in the area; and

(d) Cannot be revitalized through assistance under other programs, such as the Capital and Operating Funds Programs for public housing under the Act, or the programs under sections 9 and 14 of the 1937 Act (as in effect before the effective date under section 503(a) of QHWRA) because of cost constraints and inadequacy of available amounts.

(B) *Demonstration of Severe Distress.* Units will be considered severely distressed if:

(1) They are included in a HUD-approved Section 202 Mandatory Conversion Plan. The Section 202 Conversion Plan must be approved by HUD on or before the HOPE VI Demolition grant application due date;

(2)(a) They are included in a Section 202 Mandatory Conversion Plan that you have submitted to HUD on or before the HOPE VI Demolition grant application deadline date, or

(b) They are, in HUD's sole determination under section 537(c) of QHWRA, subject to the removal requirements of 24 CFR part 971 and can be expected to be demolished in accordance with the time schedule required by Section IV(F)(1) of this NOFA;

(3) They are included in a HUD-approved application for demolition that was developed in accordance with section 18 of the 1937 Act, as amended ("section 18 demolition application"); or

(4) They are included in a HUD-approved Revitalization Plan as part of a HOPE VI Revitalization grant.

IX. Relocation

(A) *General.* You must provide suitable, decent, safe, and sanitary housing for each family required to relocate as a result of demolition activities. The relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4201–4655) (URA) and the implementing government-wide regulations at 49 CFR part 24 cover any person who moves permanently from real property or moves personal property from real property directly because of demolition for an activity undertaken with HUD assistance.

CPD Notice 02–08, entitled "Guidance on the Application of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA), as Amended, in HOPE VI Projects," outlines the URA requirements and describes the framework for operating its relocation assistance activities connected with HOPE VI revitalization and demolition activities. Applicants

should use this document as a guide for formulating and implementing their HOPE VI Relocation Plans.

(B) *Standard Relocation Requirements.* You must carry out relocation activities in compliance with a relocation plan that conforms to the following statutory and regulatory requirements, as applicable:

(1) Relocation as a result of demolition approved by a section 18 demolition application is subject to the URA and section 18 of the 1937 Act.

(2) Relocation as a result of demolition approved as part of a Section 202 Mandatory Conversion Plan is subject to the URA.

(3) Relocation as a result of demolition approved as part of a HOPE VI Revitalization Plan is subject to the URA.

(C) *Relocation Guidelines.*

(1) Each applicant requesting funds for relocation must complete, as a condition for receipt of HOPE VI Demolition Grant funds, a HOPE VI Relocation Plan. In your application, you must provide a certification that you have completed a HOPE VI Relocation Plan, and that it conforms to the URA requirements described above.

(2) You are encouraged to involve HUD-approved housing counseling agencies, including faith-based, non-profit and/or other organizations and/or individuals in the community to which relocatees choose to move, in order to ease the transition and minimize the impact on the neighborhood.

(3) If applicable, you are encouraged to work with surrounding jurisdictions to assure a smooth transition if residents choose to move from your jurisdiction to the surrounding area.

(4) No relocation costs incurred before the award of the HOPE VI Grant may be reimbursed.

X. Fair Housing and Equal Opportunity

(A) *Compliance with Fair Housing and Civil Rights Laws.*

(1) All applicants and their subrecipients must comply with all Fair Housing and Civil Rights laws, statutes, regulations, and Executive Orders as enumerated in 24 CFR 5.105(a) enumerated at 24 CFR 1003.601, as applicable.

(2) If you, the applicant:

(i) Have been charged with a systemic violation of the Fair Housing Act alleging ongoing discrimination;

(ii) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an on-going pattern or practice of discrimination; or,

(iii) Have received a letter of non-compliance findings, identifying on-going or systemic noncompliance, under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or section 109 of the Housing and Community Development Act, and if the charge, lawsuit, or letter of findings has not been resolved to HUD's satisfaction before the application deadline stated in the NOFA, you may not apply for assistance under this NOFA. HUD will not rate and rank your application. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of on-going discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings. Examples of actions that may be taken prior to the application deadline to resolve the charge, lawsuit, or letter of findings, include but are not limited to:

(a) a voluntary compliance agreement signed by all parties in response to the letter of findings;

(b) a HUD-approved conciliation agreement signed by all parties;

(c) a consent order or consent decree; or

(d) a judicial ruling or a HUD Administrative Law Judge's decision that exonerates the respondent of any allegations of discrimination.

(B) *Desegregation Orders.* You must be in full compliance with any desegregation or other court order and Voluntary Compliance Agreements related to Fair Housing (*e.g.*, Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and section 504 of the Rehabilitation Act of 1973) that affects your public housing program and that is in effect on the date of application submission.

(C) *Additional Nondiscrimination Requirements.* You and your subrecipients, must comply with:

(1) Title IX of the Education Amendments Act of 1972.

(2) The American with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*)

(D) *Ensuring the Participation of Disadvantaged Firms.* The Department is committed to ensuring that small businesses, small disadvantaged businesses, minority firms, women's business enterprises, and labor surplus area firms participate fully in HUD's direct contracting and in contracting opportunities generated by HUD grant funds. Too often, these businesses still experience difficulty accessing information and successfully bidding on federal contracts. HUD regulations at 24 CFR 85.36(e) require recipients of assistance (grantees and subgrantees) to take all necessary affirmative steps in contracting for purchase of goods or services to assure that these disadvantaged firms are used when possible. Affirmative steps include:

(1) Placing disadvantaged firms on solicitation lists;

(2) Assuring that disadvantaged firms are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by disadvantaged firms;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by disadvantaged firms;

(5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in Sections (1) through (5) above.

(E) HOPE VI grantees must comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Economic Opportunities for Low and Very Low-Income Persons in Connection with Assisted Projects) and its implementing regulations at 24 CFR part 135. Information about section 3 can be found at HUD's section 3 Web site *http://www.hud.gov/fhe/sec3over.html.*

XI. Hope VI Demolition Grant Application Selection Process

(A) *HOPE VI Demolition Grant Funding Categories.* HUD will select HOPE VI Demolition grant applications on a first-come, first-served basis, by an application's Priority Group and Ordinal. HOPE VI Demolition grant applications are not rated.

(1) *Eligible Units.* Severely distressed public housing units to be demolished with HOPE VI Demolition grant funds must meet one of the criteria in the description of priority groups below.

(2) *Priority Groups.* You must identify each HOPE VI Demolition grant application by its appropriate Priority Group, as described below. Each application must target units of a single Priority Group; *e.g.*, do not include Priority Group 1 units in the same application as Priority Group 2 units.

(a) *Priority Group 1.*

(i) Priority Group 1 applications target units included in an approved Section 202 Mandatory Conversion Plan. The Section 202 Conversion Plan must be approved by HUD on or before the HOPE VI Demolition grant application due date.

(ii) Units associated with a HOPE VI Revitalization grant are not eligible for this Priority Group. Every application

that targets units associated with a HOPE VI Revitalization Grant is only eligible for Priority Group 4.

(b) *Priority Group 2.*

(i) Priority Group 2 applications:

a. Target units included in a Section 202 Mandatory Conversion Plan that you have submitted to HUD on or before the HOPE VI Demolition grant application deadline date, or

b. Target units that, in HUD's sole determination under section 537(c) of QHWRA, are subject to the removal requirements of 24 CFR part 971 and can be expected to be demolished in accordance with the time schedule required by Section XIII(A) of this NOFA.

(ii) If you submit a HOPE VI Demolition grant application for units that are targeted in a Section 202 Mandatory Conversion Plan that was submitted under 24 CFR part 971 but not yet approved (Priority Group 2), and HUD subsequently approves the Conversion Plan before the HOPE VI Demolition grant application deadline date, you may revise your application and it will be reclassified as Priority Group 1. HUD will change the original Ordinal to the Ordinal corresponding to the date that the revision was received.

(iii) If you submit a Section 202 Mandatory Conversion Plan but HUD determines that the targeted project does not qualify for conversion under 24 CFR part 971, your HOPE VI Demolition grant application will not be eligible for funding. If you intend to submit a Priority 1 or 2 application, discuss the project with your Field Office to ensure that it qualifies under the standards of 24 CFR part 971.

(iv) Units associated with a HOPE VI Revitalization grant are not eligible for this Priority Group. Every application that targets units associated with a HOPE VI Revitalization Grant is only eligible for Priority Group 4.

(c) *Priority Group 3.* Priority Group 3 applications target units that were included in a HUD-approved application for demolition that was developed in accordance with section 18 of the 1937 Act, as amended ("section 18 demolition application").

(i) HUD must approve your section 18 demolition application on or before the HOPE VI Demolition grant application deadline. If your section 18 demolition application does not meet the statutory requirements of section 18, including the requirement for HUD Field Office approval of the Interim or PHA Plan as required by 24 CFR part 903, HUD will not approve the section 18 demolition application and your HOPE VI Demolition grant application will not be eligible for funding.

(ii) If you have submitted a section 18 demolition application to the SAC but it has not yet been approved by HUD when you submit your HOPE VI Demolition grant application, your HOPE VI application will not be considered complete and you will not receive an Ordinal unless and until your section 18 demolition application is approved on or before the HOPE VI Demolition Grant Application deadline.

(iii) If your section 18 demolition application is approved by HUD on June 2, 2003 or June 3, 2003 only, you are not required to submit your approval letter to HUD, and HUD will deem the approval letter to have been submitted in the application. In such a case, if your application is otherwise complete, your Ordinal will be the date that HUD approves your section 18 demolition application.

(iv) If HUD has previously approved your section 18 demolition application but HUD later rescinded the approval, your section 18 demolition application will not be considered approved by HUD and your HOPE VI Demolition grant application will not be eligible for funding.

(v) Units associated with a HOPE VI Revitalization grant are not eligible for this Priority Group. Every application that targets units associated with a HOPE VI Revitalization Grant is only eligible for Priority Group 4.

(d) *Priority Group 4.*

(i) Priority Group 4 applications target units that:

a. Were targeted for demolition in a previously-approved HOPE VI Revitalization application and the demolition has not yet been carried out; or

b. Were not originally targeted for demolition in a previously-approved HOPE VI Revitalization application but are located in the same project and at the same site that will be revitalized using an existing Revitalization grant, and have not yet been demolished.

(ii) The requested HOPE VI Demolition grant funds, in combination with the existing HOPE VI Revitalization grant funds, may not exceed the Total Development Cost (TDC)/Housing Cost Cap (HCC) limits.

a. If the Revitalization grant is below TDC/HCC, any dollars freed up as a result of the proposed additional demolition grant funds may be used for any development costs, up to the project's TDC/HCC limit.

b. If the Revitalization grant is below or at TDC/HCC, the dollars freed up from the proposed additional demolition grant funds may be used for the demolition of additional units or for Community Renewal costs such as Extraordinary Site Costs that fall outside of HCC.

(iii) If a Priority Group 4 HOPE VI Demolition application is selected for funding, HUD will approve the planned demolition:

a. In its approval of your Supplemental Submissions for the Revitalization grant;

b. By amending its approval of your Supplemental Submissions, if it has already been approved by HUD; or

c. By approving a section 18 demolition application, if you choose to submit one.

(B) *Ordinals.* Upon receipt, HUD will assign each HOPE VI Demolition grant application an Ordinal (*i.e.*, ranking number) that reflects the date HUD Headquarters received the application. Ordinals correspond to business days, starting with the date HUD receives the first Demolition grant application and ending on the HOPE VI Demolition grant application deadline date. HUD will consider all applications received on the same date as received at the same time on that date, and those applications will all be assigned the same Ordinal.

(C) *Demolition Screening.*

(1) HUD will screen the application to ensure that it meets each HOPE VI threshold criterion listed in this NOFA.

(2) If HUD determines that an application is not eligible (*e.g.*, the applicant is not a PHA, the units have already been demolished, etc.), HUD will not consider the application further and will immediately notify the applicant that the application has been rejected.

(3) If HUD determines that an applicant is eligible but the application is incomplete, within approximately two days of receipt of the application, HUD will contact the applicant in writing by fax (followed with a hard copy by mail) to request the missing information. Applicants whose applications are received by HUD on the same date, and who have missing items, will be notified by HUD of their missing items on the same day to ensure that all applicants have the same number of days to provide the missing information.

Please Note: This provision means that the nearer to the deadline date you submit your application, the less time you will have to correct any deficiencies, and if HUD receives your application on the deadline date and there is a deficiency, that application will not be eligible for funding. You are advised to submit your application as soon as possible, in the event that HUD identifies a deficiency that you need to correct.

(4) If HUD determines that the information you submit in response to a notification of deficiency is correct and completes the application, HUD will add to the application's Ordinal the number of days between notification of the deficiency and curing of the deficiency.

(5) If HUD determines that the information submitted does not make the application complete, HUD will notify you of the remaining deficiency. You will have the opportunity to submit information in response to notifications of deficiency until the HOPE VI Demolition grant application due date.

(6) If you do not submit the requested information by the HOPE VI Demolition grant deadline date, your application will be ineligible for funding.

(7) If a deficiency is cured on the same day the deficiency letter is sent, the application will add one Ordinal.

(D) *Funding.* HUD will award HOPE VI Demolition grants in the following order, based on fund availability.

(1) HUD will fund Priority Group 1 applications by Ordinal.

(2) If funds remain after HUD has funded all eligible Priority Group 1 applications, HUD will fund Priority Group 2 applications by Ordinal.

(3) If funds remain after HUD has funded all eligible Priority Group 2 applications, HUD will fund Priority Group 3 applications by Ordinal.

(4) If funds remain after HUD has funded all eligible Priority Group 4 applications, HUD will fund Priority Group 4 applications by Ordinal.

(5) At any stage, if there is more than one application with next Ordinal to be funded and there are insufficient funds to fund all of them, HUD will conduct a lottery among those applications to determine which application(s) will be funded.

(6) HUD reserves the right to partially fund the next eligible application if insufficient funds remain to fund the entire amount requested, and HUD determines that the funds available are adequate to carry out some significant demolition activities.

(7) If funds remain after all eligible HOPE VI Demolition grant applications have been funded or if the amount remaining is inadequate to feasibly fund the next eligible Demolition grant application, HUD reserves the right to:

(a) Reallocate unused funds to fund or supplement the next eligible HOPE VI Revitalization application(s), in rank order, or

(b) Carry over unused funds to the next fiscal year.

XII. Post Award Activities

(A) *Notification of Funding Decisions.* Because the HOPE VI Demolition grants are awarded on a first-come, first-served basis, HUD reserves the right either to award funds to Priority Group 1 applications as soon as they are determined to be eligible for funding, or announce all awards after the HOPE VI Demolition grant application deadline date has passed. HUD will notify ineligible applicants of their ineligibility immediately after that determination has been made. HUD will provide written notification to all HOPE VI applicants, whether or not they have been selected for funding.

(B) *Environmental Review.* HUD notification that you have been selected to receive a HOPE VI Demolition grant constitutes only preliminary approval. Grant funds may not be released until the responsible entity completes an environmental review and you submit and obtain HUD approval of a request for release of funds and the responsible entity's environmental certification in accordance with 24 CFR part 58 and Section XIV of this NOFA (or HUD has completed an environmental review under 24 CFR part 50 where HUD has determined to do the environmental review).

(C) *Demolition Grant Agreement.* When you are selected to receive a Demolition grant, HUD will send you a HOPE VI Demolition Grant Agreement, which constitutes the contract between you and HUD to carry out and fund public housing demolition activities. Both you and HUD will sign the cover sheet of the Grant Agreement. You must sign the Grant Agreement within 90 days of receiving it. Failure to sign the Grant Agreement within 90 days may cause the Department to withdraw its award of funds. It is effective on the date of HUD's signature. The Grant Agreement differs from year to year. The Grant Agreement from FY 2001 can be found on the HOPE VI Web site *www.hud.gov/hopevi.*

XIII. Post Award Requirements

(A) *Timeliness of Demolition.* Grantees must proceed within a reasonable timeframe, as indicated below. In determining reasonableness of such timeframe, HUD will take into consideration those delays caused by factors beyond your control.

(1) You must complete the proposed demolition within a reasonable timeframe, which is two years from the date of Grant Agreement execution. HUD will take into consideration delays caused by factors beyond your control when enforcing this requirement or as otherwise approved by HUD to accommodate reasonable relocation and demolition schedules.

(2) In accordance with section 24(i) of the 1937 Act, if you do not proceed within a reasonable timeframe, in the determination of HUD, HUD shall withdraw any grant amounts that you have not obligated. HUD shall redistribute any withdrawn amounts to one or more other applicants eligible for HOPE VI assistance or to one or more other entities capable of proceeding expeditiously in the same locality in carrying out the activities of the original Grantee.

(B) *Conflict of Interest.*

(1) *Prohibition.* In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of a Grantee and who exercises or has exercised any functions or responsibilities with respect to activities assisted under a HOPE VI Grant, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(2) *HUD-Approved Exception.*

(a) *Standard.* HUD may grant an exception to the prohibition in Section (1) above on a case-by-case basis when it determines that such an exception will serve to further the purposes of HOPE VI and its effective and efficient administration.

(b) *Procedure.* HUD will consider granting an exception only after the Grantee has provided a disclosure of the nature of the conflict, accompanied by:

(i) An assurance that there has been public disclosure of the conflict;

(ii) A description of how the public disclosure was made; and

(iii) An opinion of the Grantee's attorney that the interest for which the exception is sought does not violate state or local laws.

(c) *Consideration of Relevant Factors.* In determining whether to grant a requested exception under Section (b) above, HUD will consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the Demolition Activities that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class intended to

be the beneficiaries of the Demolition Plan and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process, with respect to the specific activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in Section (iii) above;

(vi) Whether undue hardship will result either to the Grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

(3) *Conducting Business in Accordance with Core Values and Ethical Standards.* Entities subject to 24 CFR parts 84 and 85 are required to develop and maintain a written code of conduct (see sections 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must: prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees and agents for their personal benefit in excess of minimal value; and, outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this NOFA, you will be required, prior to entering into a grant agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees and agents of your organization are aware of your code of conduct.

(C) *OMB Circulars and Administrative Requirements.* You must comply with the following administrative requirements related to the expenditure of federal funds. OMB Circulars can be found at *http://www.whitehouse.gov/omb/circulars/index.html.* Copies of the OMB Circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 10503, telephone (202) 395–7332 (this is not a toll free number). The Code of Federal Regulations can be found at *http://www.access.gpo.gov/nara/cfr/index.html.*

(1) Administrative requirements applicable to PHAs are:

(a) 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments), as modified by 24 CFR 941 or successor part, subpart F, relating to the procurement of partners in mixed finance developments.

(b) OMB Circular A–87 (Cost Principles for State, Local and Indian Tribal Governments);

(c) 24 CFR 85.26 (audit requirements).

(2) Administrative requirements applicable to non-profit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations);

(b) OMB Circular A–122 (Cost Principles for Non-Profit Organizations);

(c) 24 CFR 84.26 (audit requirements).

(3) Administrative requirements applicable to for profit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations);

(b) 48 CFR part 31 (contract cost principles and procedures);

(c) 24 CFR 84.26 (audit requirements).

(D) *Labor Standards.* HUD-determined wage rates apply to demolition and activities associated with filling in the site and establishing a lawn.

(1) Davis-Bacon wage rates apply to demolition followed by construction on the site.

(2) HUD-determined wage rates apply to demolition and activities associated with filling in the site and establishing a lawn.

(3) Under section 12(b) of the 1937 Act, wage rate requirements do not apply to individuals who:

(a) Perform services for which they volunteered;

(b) Do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and

(c) Are not otherwise employed in the work involved (24 CFR part 70).

(4) If other federal funds are used in connection with your HOPE VI activities, labor standards requirements apply to the extent required by the other federal programs on portions of the project that are not subject to Davis-Bacon rates under the 1937 Act.

(E) *Lead-Based Paint.* You must comply with lead-based paint evaluation and reduction requirements as provided for under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*). You must also comply with regulations at 24 CFR part 35, 24 CFR 965.701, and 24 CFR 968.110(k), as they may be amended or revised from time to time. Unless otherwise provided, you will be responsible for lead-based paint evaluation and reduction activities. The National Lead Information Hotline is 1–800–424–5323.

(F) *Internet Access.* You must have access to the Internet and provide HUD with email addresses of key staff and contact people.

(G) *Procurement of Recovered Materials.* State agencies and agencies of a political subdivision of a state that are using assistance under this NOFA for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the quantity acquired in the preceding fiscal year exceeded $10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XIV. Environmental Review

(A) If you are selected for funding and an environmental review has not been conducted on the targeted site, the responsible entity, as defined in 24 CFR 58.2(a)(7), must assume the environmental review responsibilities for projects being funded by HOPE VI. If you object to the responsible entity conducting the environmental review, on the basis of performance, timing or compatibility of objectives, HUD will review the facts and determine who will perform the environmental review. At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with 24 CFR 58.77(d)(1). If a responsible entity objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50. You must provide any documentation to the responsible entity (or HUD, where applicable) that is needed to perform the environmental review.

(B) If you are selected for funding, you must have a Phase I environmental site assessment completed in accordance with the American Society for Testing and Material (ASTM) Standards E 1527–97, as amended, for each affected site. A Phase I assessment is required whether the environmental review is completed under 24 CFR part 50 or 24 CFR part 58. The results of the Phase I assessment must be included in the documents that must be provided to the responsible entity (or HUD) for the environmental review. If the Phase I assessment recognizes environmental concerns or if the results are inconclusive, a Phase II environmental site assessment will be required.

(C) You may not undertake any actions with respect to the project that are choice-limiting or could have environmentally adverse effects, including demolishing, acquiring, rehabilitating, converting, leasing, repairing, or constructing property proposed to be assisted under this NOFA, and you may not commit or expend HUD or local funds for these activities, until HUD has approved a Request for Release of Funds following a responsible entity's environmental review under 24 CFR part 58, or until HUD has completed an environmental review and given approval for the action under 24 CFR part 50. In addition, you must carry out any mitigating/remedial measures required by the Responsible Entity (or HUD). If a remediation plan, where required, is not approved by HUD and a fully-funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

(D) The costs of environmental reviews and hazard remediation are eligible costs under the HOPE VI Program.

(E) HUD's Environmental web site is located at *http://hudstage.hud.gov/offices/cpd/energyenviron/environment/index.cfm*

XV. Findings and Certifications

(A) *Catalog of Federal Domestic Assistance Number.* The Catalog of Federal Assistance (CFDA) Number for HOPE VI is 14.866. The CFDA is a government-wide compendium of federal programs, projects, services, and activities that provide assistance or benefits to the public.

(B) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Regulations Division, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

(C) *Federalism.* Executive Order 13132 prohibits, to the extent practicable and permitted by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on state and local governments and are not required by statute, or preempt state law, unless the relevant requirements of section 6 of the Executive Order are met. This NOFA does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

(D) *Intergovernmental Review of Federal Programs.* Executive Order 12372 was issued to foster intergovernmental partnership and strengthen federalism by relying on state and local processes for the coordination and review of federal financial assistance and direct federal development. The Order allows each state to designate an entity to perform a state review function. The official listing of State Points of Contact (SPOC) for this review process can be found at: *http://www.whitehouse.gov/omb/grants/spoc.html.* States that are not listed on the Web site have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of those states, you may send applications directly to HUD. If your state has a SPOC, you should contact them to see if they are interested in reviewing your application prior to submission to HUD. Please make sure that you allow ample time for this review process when developing and submitting your application.

(E) *Prohibition Against Lobbying Activities.* You are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment), which prohibits recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the federal government in connection with a specific contract, grant, or loan. You are required to certify, using the HUD–424 series form, that you will not, and have not, used appropriated funds for any prohibited lobbying activities. As necessary, you must disclose, using Standard Form LLL, "Disclosure of Lobbying Activities," any funds, other than federally appropriated funds, that will be or have been used to influence federal employees, Members of Congress, and congressional staff regarding specific grants or contracts. The Lobbying Disclosure Act of 1995 (Public Law 104–65, approved December 19, 1995), repealed section 112 of the Housing and Urban Development Reform Act of 1989 (Public Law 101–235, approved December 15, 1989) (HUD Reform Act), and requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

(F) *Documentation and Public Access Requirements.* Section 102 of the HUD Reform Act (42 U.S.C. 3545) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice in the **Federal Register** that also provides information on the implementation of section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) (FOIA) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available for public inspection all HOPE VI grant applications for five years beginning not less than 30 days following the grant award. Applications will be made available in accordance with FOIA and HUD's implementing regulations at 24 CFR part 15.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

(a) Assistance subject to section 102(a) of the HUD Reform Act; and/or

(b) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(G) *Section 103 HUD Reform Act.* HUD's regulations implementing section 103 of the HUD Reform Act (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4. Applicants or HUD employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) HUD employees who have specific program questions should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

(H) *Paperwork Reduction Act Statement.* The information collection requirements contained in this notice have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and assigned OMB control number 2577–0208. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: March 28, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

U.S. Department of Housing
and Urban Development
Office of Public Housing Investments
Public and Indian Housing

OMB Approval No. 2577-0208
exp. 12/31/2004

HOPE VI DEMOLITION GRANT APPLICATION

HOPE VI WEBSITE: www.hud.gov/hopevi

The public reporting burden for this collection of information for the HOPE VI Demolition Program is estimated to average 40 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and preparing the application package for submission to HUD.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Reports Management Officer, Paperwork Reduction Project, to the Office of Information Technology, US Department of Housing and Urban Development, Washington, DC 20410-3600. When providing comments, please refer to OMB Approval No. (insert program number (s) and name(s) of programs in the Application, placing each one after the other). HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The information submitted in response to the Notice of Funding Availability for the HOPE VI Program is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235, approved December 15, 1989, 42 U.S.C. 3545).

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

APPLICATION SUBMISSION INSTRUCTIONS

A. Application Preparation

1. Section 18 Demolition Application. HUD must approve your Section 18 demolition application by the HOPE VI Demolition grant application deadline date in order to be eligible for funding under Priority Group 3. If your Section 18 demolition application does not meet the statutory requirements of Section 18, including the requirement for HUD Field Office approval of the Interim or PHA Plan as required by 24 CFR part 903, HUD will not approve the HOPE VI Demolition Grant Application.

2. HUD Review. If HUD determines that a Demolition Grant Application is eligible but incomplete, HUD will contact you in writing by fax (followed up with a hard copy by mail) to request the missing information. If HUD finds your application and other applications received on the same day to be incomplete, HUD will notify all such applicants of their missing items on the same day. Since HOPE VI Demolition Grant Applications are not rated, you may submit information to complete your application at any time before the HOPE VI Demolition Grant Application deadline date. However, if your application is received on the deadline date and it is missing a required submission, you will have no opportunity to submit any missing item after the deadline date and your HOPE VI Demolition Grant Application will be ineligible for funding.

B. Application Content and Organization.

1. The first page of your application is the **HOPE VI Demolition Application Checklist**. This page serves three purposes:

   a. Use the left side of the Checklist to make sure that all pieces of the application are included.

   b. HUD will use the right side of the Checklist to screen the application for completeness.

   c. If any deficiencies are found, HUD will fax you the Checklist with a letter, if necessary, to identify any missing items.

   Please make sure that the HOPE VI Demolition Application Checklist is on the very top of your application. No transmittal letter is requested.

2. The next page is the **HOPE VI Demolition Application Receipt** (HUD-2993-A). This form serves both as an acknowledgement that HUD received your application, but also as a fax transmittal for the checklist above if HUD has found deficiencies in your application.

   a. Print or type the name and address of the person that should receive the receipt in the box provided and provide all of the information requested above the line.

   b. HUD will record the date received, ordinal assigned, and application number.

   c. After HUD has screened the application for completeness, it will either:

      i. Fax the receipt to the fax number listed on the Receipt indicating that no deficiencies have been found, or

      ii. Fax the receipt to you with the HOPE VI Demolition Checklist and a letter, if necessary, indicating the missing documentation. HUD will **not** notify you of deficiencies by telephone. **It is very important that the fax number listed on the Application Receipt is correct so that it gets to the right person on your staff.**

   d. Applicants with deficient applications that share the same Ordinal will be notified by fax of deficiencies on the same day. To account for differences in the time of day of the fax notification and differences in time zones, any response that HUD receives on the same day as the fax notification was sent out will be counted as having been received on the day after the fax notification.

   Place the HOPE VI Demolition Application Receipt directly behind the HOPE VI Demolition Application Checklist in the application.

3. The third page of your application is the **Application for Federal Assistance (HUD-424)**. This form provides HUD with essential information about your PHA and the funds you are requesting. Do not fill in box 15, as you will report your funding elsewhere in the application. The CFDA number for HOPE VI is 14.866. You will find a copy of HUD-424 in this HOPE VI Application and on the HOPE VI Website.

4. Attach **Exhibits A through I** next. Provide the narrative and attachments in the order presented. Please **DO NOT** provide any information that is not requested in this Application. Extraneous material hinders application review, does not improve an application, and may obscure important information. The HOPE VI Budget form needed for Exhibit H and the Section 8 application for Exhibit E can be found in this HOPE VI Application, and can be downloaded from the HOPE VI Website. Information on TDC needed for Exhibit D can also be found on the HOPE VI Website.

5. **Standard Certifications**. All statutorily required certifications are included in the HUD-424 and HUD-424B form.

C. Application Format

To speed the processing of your application, please follow these instructions when assembling your package:

1. Use 8-1/2 by 11" paper, one side only.
2. Mark each Exhibit with an appropriately labeled tab.
3. Package the application as securely and simply as possible; do not use a three ring binder.
4. Two-hole punch the pages at the top with a 2-3/4" center.

D. Application Submission

Follow the directions in Section IV of the NOFA for procedures for submitting your application (e.g., mailed applications, express mail, or overnight delivery). It is recommended that applications be placed with an overnight delivery carrier at least two days before the due date to ensure timely delivery. Experience has shown that attempts to place them in regular mail often result in late deliveries and disqualified applications. Due to new security measures, HUD will no longer accept hand carried applications.

HOPE VI DEMOLITION
APPLICATION CHECKLIST

PHA Name: _____

Development Name: _____

PHA CHECKOFF		HUD VERIFICATION
_____	HOPE VI Demolition Application Checklist	_____
_____	HOPE VI Demolition Application Receipt (HUD-2993-A)	_____
_____	Application for Federal Assistance (HUD-424)	_____
_____	Applicant Assurances and Certifications (HUD-424B)	_____
_____	**Exhibit A: Application Information**	_____
	Exhibit B: Priority Group and Documentation of Eligibility:	
_____	Priority 1: HUD's letter to PHA approving Section 202 Conversion Plan	_____
_____	Priority 2A: PHA's letter transmitting Section 202 Conversion Plan to HUD	_____
_____	Priority 2B: Documentation of HUD's Determination of Section 202 Status	_____
_____	Priority 3: HUD's letter to PHA approving Section 18 demolition application	_____
_____	Priority 4: HUD's letter awarding Revitalization Grant	_____
_____	**Exhibit C: Narrative of Proposed Activities**	_____
_____	**Exhibit D: Priority Group 4 Applications**	_____
_____	**Exhibit E: Relocation Plan Certification**	_____
_____	**Exhibit F: Program Schedule**	_____
_____	**Exhibit G: Grant Limitations Worksheet**	_____
_____	**Exhibit H: HOPE VI Budget**	_____
_____	**Exhibit I: Nondwelling Structures Certification**	_____

EXHIBIT A: APPLICATION INFORMATION

PHA Name:_____

Development Name:_____

Development Number(s): _____

DOFA:_____ Grant Amount Requested: $_____

Number of total units in development: _____

Number proposed for demolition: _____

Demolition Approval Status: (Complete grid below)

	Date	Number of Units		Number of Buildings	
		Requested	Approved	Requested	Approved
HUD-Approved Conversion Plan (24 CFR part 971)					
Submitted Conversion Plan (24 CFR part 971)					
HUD-Approved Section 18 Demolition Application					
Previously-awarded HOPE VI Revitalization Grant RP Approval					

Street Addresses of units to be demolished (including ZIP code):

EXHIBIT B: PRIORITY GROUP AND DOCUMENTATION OF ELIGIBILITY

Indicate the Priority Group in which your application qualifies and submit the corresponding documentation of eligibility.

_____ Priority 1: Approved Section 202 Mandatory Conversion Plan

Submit your letter from HUD approving your Section 202 Mandatory Conversion Plan. See **Section XI(A)(2)(a)** of the NOFA regarding Priority Group 1.

Priority 2: See **Section XI(A)(2)(b)** of the NOFA regarding Priority Group 2.

_____ Priority 2(A): Submitted Section 202 Mandatory Conversion Plan.

Submit your letter to HUD transmitting your Section 202 Plan to HUD.

_____ Priority 2(B): HUD-Designated Section 202 Units

Submit evidence that the targeted units, in HUD's sole determination under section 537(c) of the Public Housing Reform Act of 1998, are subject to the removal requirements of 24 CFR part 971 and can be expected to be demolished in accordance with the time schedule required by Section XIII(A) of the NOFA.

_____ Priority 3: Approved Section 18 Demolition Application

Submit your letter from HUD approving your Section 18 Demolition Application. If HUD approves your demolition application on the **day before** or **on the application deadline date**, the requirement to provide evidence of approval will be considered to be met and you will not have to submit HUD's approval letter back to HUD. See **Section XI(A)(2)(c)** of the NOFA regarding Priority Group 3.

_____ Priority 4: Previously-Awarded HOPE VI Revitalization Grant

Submit a copy of HUD's letter awarding the HOPE VI Revitalization Grant that is associated with this request for demolition funding. If demolition of the units targeted in this HOPE VI Demolition Grant application was approved via a Section 18 Demolition Application, provide the demolition approval letter as described in Priority 3 above. If demolition of the targeted units was approved in a letter approving the Revitalization Plan for the previously-awarded Revitalization Grant, submit the RP approval letter. *The units targeted in a Priority Group 4 HOPE VI Demolition Application are not required to be approved for demolition before the application is awarded.* See **Section XI(A)(2)(d)** of the NOFA regarding Priority Group 4.

EXHIBIT C: NARRATIVE OF PROPOSED ACTIVITIES

Provide a one- to two-page narrative that briefly summarizes the proposed demolition and related activities. Although this is a required exhibit, this overview is for informational purposes only and will not be used in the evaluation of the application.

1. Describe the scope of the proposed demolition. Provide the number of original dwelling units and buildings in the project, the number of any units previously demolished or disposed of, and the number of units proposed for demolition with funds from this HOPE VI Demolition Grant Application.

2. Describe any non-dwelling facilities to be demolished. Explain the relationship between the non-dwelling facilities and the dwelling units to be demolished, both in terms of proximity and use.

3. In the case of partial demolition of a site, describe any minimal site restoration that will take place after demolition and subsequent site improvements needed to benefit the remaining portion of the project in order to provide project accessibility or to make the site more marketable.

4. Demonstrate the appropriateness of your proposal in the context of the local housing market relative to other alternatives. This is a statutory threshold criterion. See **Section VII(C)** of the NOFA.

5. Describe the proposed plan for the use of the site after demolition, and the resources that will be used to carry out that plan.

6. If applicable, list all prior HUD public housing grant assistance you have used for the physical revitalization of the proposed development. This includes any public housing funds received for Capital Improvements as far back in time as possible. If only a portion of the targeted development has previously received such funds, provide the street addresses of the units assisted.

EXHIBIT D: PRIORITY GROUP 4 APPLICATIONS ONLY

In accordance with **Section XI(A)(2)(d)(ii)** of the NOFA:

1. Provide an analysis of TDC/HCC of the current Revitalization Grant. Use FY 2001 TDC Limits, as provided in Notice PIH 01-22. This Notice is available on the HOPE VI website.

2. Provide an analysis to TDC/HCC of the current Revitalization Grant plus the requested Demolition Grant. Use TDC figures as described above.

3. If this HOPE VI Demolition Grant Application targets units that were targeted for demolition in the original HOPE VI Revitalization application (regardless of any subsequent budget changes), provide a description of the use that will be made of Revitalization Grant funds that would be freed up if this Demolition Grant were awarded.

   a. If the analysis in (1) above indicates that the Revitalization grant is below TDC/HCC, any dollars freed up as a result of the proposed additional demolition grant funds may be used for any construction costs, up to the project's TDC/HCC limit.

   b. If the analysis in (1) above indicates that the Revitalization grant is below or at TDC/HCC, the dollars freed up from the proposed additional demolition grant funds may be used for the demolition of additional units or for Community Renewal costs such as Extraordinary Site Costs that fall outside of HCC.

EXHIBIT E: RELOCATION PLAN CERTIFICATION

This Exhibit is required for all applications that request HOPE VI Demolition Grant funding for relocation. In accordance with **Section IX** of the NOFA, you must provide a certification that you have completed a HOPE VI Relocation Plan and that it conforms to the URA requirements. This certification may be in the form of a letter. The HOPE VI Relocation Plan Guide is posted on the HOPE VI web site as a tool to assist you in preparing your Relocation Plan. Do not submit the HOPE VI Relocation Plan Guide; only the certification should be in the application. If applicable, attach a copy of your Section 8 application in accordance with **Section II(E)** of the NOFA. This attachment is not applicable if the targeted project is vacant as of the application due date.

EXHIBIT F: PROGRAM SCHEDULE

Provide a Program Schedule that clearly indicates that you will start demolition activity within six months from the date of Grant Agreement execution and complete the demolition within two years from the date of Grant Agreement execution. Assume a Grant Agreement execution date of September 1, 2003.

EXHIBIT G: GRANT LIMITATIONS WORKSHEET

1. Demolition. Number of dwelling units approved for demolition:

   _____ x $6,000 $_____

2. Relocation/Self-Sufficiency. Number of dwelling units approved for demolition that are **occupied** as of the date of the HOPE VI Demolition Application submission:

   _____ x $3,000 $_____

3. Nondwelling Structures $_____

4. Total allowable cost (1 + 2 + 3) $_____

5. Total funds requested $_____

EXHIBIT H: HOPE VI BUDGET

1. Provide your proposed budget on Part I of the HOPE VI Budget Form (HUD-52825-A). A copy of the Budget form can be found in this HOPE VI Application and can be downloaded from the HOPE VI Website.

2. On Part II of the Budget:

   a. Provide a **detailed** itemization of the costs of all activities, including demolition, hazard abatement, site restoration, fees, and administrative costs. See **Section V** of the NOFA for eligible Demolition Grant activities.

   b. Differentiate between costs for dwelling units and nondwelling facilities.

   c. Itemize all costs budgeted for relocation activities.

Applicants that do not adequately describe their costs on Part II of the Budget will be asked to submit a clarification and their Ordinal will change accordingly.

EXHIBIT I: NONDWELLING STRUCTURES CERTIFICATION

If you are requesting funds for the demolition of nondwelling structures in your budget, those costs must be justified and verified by an engineer or architect licensed by his or her state licensing board who is not an employee of the housing authority or the city. See **Section VI(A)(3)** of the NOFA for examples of nondwelling structures. You must include in your application a completed Nondwelling Structures Cost Certification and the required attachment.

NONDWELLING STRUCTURES COST CERTIFICATION

I hereby certify that:

1. I am licensed as an engineer _____ or architect _____ (check one) by the licensing board for the state in which the public housing project identified below is located.

2. I am not an employee of the applicant public housing authority or unit of local government in which the public housing project identified below is located.

3. Costs to demolish significant nondwelling structures may be incurred in conjunction with the demolition of severely distressed public housing as part of a HOPE VI Demolition Grant Application. Examples of eligible demolition costs related to significant nondwelling structures include, but are not limited to, the demolition of heating plants, community buildings, or streets on the site of the severely distressed project.

4. I have reviewed the attached description and calculation of costs for the demolition of significant nondwelling structures related to the demolition of dwelling units at the site identified below, as requested by the applicant Housing Authority listed below, and affirm that those costs qualify as allowable nondwelling structures costs (as defined in Paragraph 3 above) and are justified and reasonable in light of my assessment of the site of the project and the proposed work to be completed.

Name: _____

Signature: _____
Date

License number: _____ State of Registration: _____

Applicant PHA: _____

Development Name: _____

Required Attachment: Description of proposed demolition of nondwelling structures and itemized listing of costs.

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

HOPE VI Demolition Grant Application Receipt

U.S. Department of Housing and Urban Development

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

HA Code ☐☐---☐☐☐

PHA Fax Number ☐☐☐---☐☐☐---☐☐☐☐

Development Name _____

Amount Requested $ ☐☐,☐☐☐,☐☐☐

To Be Completed by HUD

☐ HUD received your application by the deadline.

Date received (mm/dd/yyyy) _____

Ordinal _____

Application Number _____

☐ Your application has been screened and no deficiencies have been identified.

☐ Your application has been screened and a deficiency has been identified. Please see the attached letter and/or checklist.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration.

form **HUD-2993-A** (02/2001)

Instructions for the HUD-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This form must be used by applicants requesting funding from the Department of Housing and Urban Development. This application form HUD-424 incorporates the Assurances and Certifications (HUD-424-B). You may either (1) attach the Assurances and Certifications to the application or (2) renew the certifications that you previously made on behalf of your organization and submitted to HUD if the legal name of your organization has not changed and you were the authorized representative who signed the Assurances and Certifications.

Item Number Instructions

1. Please indicate whether your application is for a formal application submission or a preliminary application (pre-application). HUD does not accept pre-applications for programs funded through the SuperNOFA.
2. Enter the date you are submitting your application to HUD.
3. This box will be completed by HUD. When received by HUD, your application will be stamped:
   (a) with a date; and
   (b) with the time received.
4. Leave Blank. This will be completed by the HUD program office receiving your application. When HUD accepts electronic applications for the grant program you are applying for, this number will be computer generated.
5. If your application is to renew or continue an existing grant, provide the existing grant number. If a new award, please leave blank.
6. Leave blank if you have not been provided a HUD ID number or user number. If you are a Public Housing Authority, enter your HUD issued Public Housing Authority ID number.
7. Enter the legal name of your organization applying for HUD funding.
8. Enter the name of the primary unit in your organization, if applicable, which will be responsible for the program.
9. Enter the complete address of your organization.
10. Enter the name, title, telephone number, fax number, and E-mail of the person to contact on matters related to your application.
11. Enter your organization's Employer Identification Number (EIN) as assigned by the Internal Revenue Service or if you are applying as an individual, your Social Security Number.
12. Choose from the list and enter the appropriate letter in the space provided. You must be an eligible applicant to apply for assistance. You must read the program information requirements to determine if you are a type of applicant that is eligible to apply for assistance under the program.
13. Enter the type of application you are submitting for funding consideration.

Check the appropriate box.

- [redacted] "New" means you are applying for a new grant award.
- [redacted] "Continuation" means you are requesting an extension of an existing award.
- [redacted] "Renewal" means you are requesting funding for renewal of an existing grant. e.g. Supportive Housing Program (SHP) or Shelter + Care grant.
- [redacted] "Revision" means you are submitting a revision prior to the application due date in response to HUD's request for clarification or modification to your initial submission.

14. Pre-filled.
15. Enter the Catalog of Federal Domestic Assistance (CFDA) number and title and, if applicable, component title of the program.
16. Enter a brief description of your program and key activities.
17. Identify the location(s) where your activities will take place. If this is the entire state, enter "Entire State".
18a. Enter the proposed start date.
18b. Enter the proposed end date.
19a. List the Congressional District(s) where your organization is located.
19b. List any Congressional District(s) where your program of activities or project sites will be located.
20. You must complete the funding matrix on page 2 of this form. Enter the following information:

Grant Program: The HUD funding program under which you are applying.

HUD Share: Please check the program requirements. Enter the amount of HUD funds you are requesting in your application.

Applicant Match: Enter the amount of funds or cash equivalent of in-kind contributions you are contributing to your project or program of activities.

Other Federal Share: Enter the amount of other Federal funds for your program of activities.

Previous versions of HUD-424 and 424-M are obsolete.

form **HUD-424** (06/2002)
ref. OMB Circular A-102

Instructions for the HUD-424 (Continued)

State Share: Enter the amount of funds or cash equivalent of in-kind services the State is providing to your project or program of activities.
Local/Tribal Share: Enter the amount of funds or cash equivalent of in-kind services your local/tribal government is providing to your project or program of activities.
Other: Enter the amount of other sources of private, non-profit, or other funds or cash equivalent of in-kind services being provided to your project or program of activities.
Program Income: Enter the amount of program income you expect to generate over the life of your award.
Total: Please total all columns and fill in the amounts.
21. You should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 or check your application kit to determine whether the State Intergovernmental Review Process is required.
22. This question applies to your applicant organization, not the person signing as your organization's authorized representative. Categories of debt include disallowed costs that requires repayment to HUD.
23. To be signed by the authorized representative of your organization. A copy of your governing body's authorization for you to sign this application must be available in your organization's office.

Application for Federal Assistance

U.S. Department of Housing and Urban Development

OMB Approval No.2501-0017 (exp. 03/31/2005)

1. Type of Submission
☐ Application ☐ Preapplication

2. Date Submitted	4. HUD Application Number
3. Date and Time Received by HUD	5. Existing Grant Number
	6. Applicant Identification Number

7. Applicant's Legal Name	8. Organizational Unit
9. Address (give city, county, State, and zip code) A. Address: B. City: C. County: D. State: E. Zip Code:	10. Name,title,telephone number,fax number, and e-mail of the person to be contacted on matters involving this application (including area codes) A. Name: B. Title: C. Phone: D. Fax: E. E-mail:
11. Employer Identification Number (EIN) or SSN	12. Type of Applicant (enter appropriate letter in box) ☐ A. State — I. University or College B. County — J. Indian Tribe C. Municipal — K. Tribally Designated Housing Entity (TDHE) D. Township — L. Individual E. Interstate — M. Profit Organization F. Intermunicipal — N. Non-profit G. Special District — O. Public Housing Authority H. Independent School District — P. Other (Specify)
13. Type of Application ☐ New ☐ Continuation ☐ Renewal ☐ Revision If Revision, enter appropriate letters in box(es) ☐ ☐ A. Increase Amount B. Decrease Amount C. Increase Duration D. Decrease Duration E. Other (Specify)	14. Name of Federal Agency **U.S. Department of Housing and Urban Development**
15. Catalog of Federal Domestic Assistance (CFDA) Number 14 --- Title: Component Title:	16. Descriptive Title of Applicant's Program
17. Areas affected by Program (boroughs, cities, counties, States, Indian Reservation, etc.)	

18a. Proposed Program start date	18b. Proposed Program end date	19a. Congressional Districts of Applicant	19b. Congressional Districts of Program

20. Estimated Funding: **Applicant must complete the Funding Matrix on Page 2.**

21. Is Application subject to review by State Executive Order 12372 Process?
A. Yes ☐ This preapplication/application was made available to the State Executive Order 12372 Process for review on: Date_____
B. No ☐ Program is not covered by E.O. 12372
☐ Program has not been selected by State for review.

22. Is the Applicant delinquent on any Federal debt? ☐ No
☐ Yes If "Yes," explain below or attach an explanation:

Funding Matrix

The applicant must provide the funding matrix shown below, listing each program for which HUD funding is being requested, and complete the certifications.

Grant Program*	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income	Total
Grand Totals									

* For FHIPs, show both initiative and component

Certifications

I certify, to the best of my knowledge and belief, that no Federal appropriated funds have been paid, or will be paid, by or on behalf of the applicant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of this Federal grant or its extension, renewal, amendment or modification. If funds other than Federal appropriated funds have or will be paid for influencing or attempting to influence the persons listed above, I shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying. I certify that I shall require all sub awards at all tiers (including sub-grants and contracts) to similarly certify and disclose accordingly.

Federally recognized Indian Tribes and tribally designated housing entities (TDHEs) established by Federally-recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but State-recognized Indian tribes and TDHEs established under State law are not excluded from the statute's coverage.

This application incorporates the Assurances and Certifications (HUD-424B) attached to this application or renews and incorporates for the funding you are seeking the Assurances and Certifications currently on file with HUD. To the best of my knowledge and belief, all information in this application is true and correct and constitutes material representation of fact upon which HUD may rely in awarding the agreement.

23. Signature of Authorized Official	Name (printed)
Title	Date (mm/dd/yyyy)

Previous versions of HUD-424 and 424-M are obsolete.

form HUD-424 (01/2003)
ref. OMB Circular A-102

Applicant Assurances and Certifications | **U.S. Department of Housing and Urban Development** | OMB Approval No. 2501-0017 (exp. 03/31/2005)

Instructions for the HUD-424-B Assurances and Certifications

As part of your application for HUD funding, you, as the official authorized to sign on behalf of your organization or an an individual must provide the following assurances and certifications. By signing this form, you are stating that to the best of your knowledge and belief, all assertions are true and correct.

As the duly authorized representative of the applicant, I certify that the applicant [Insert below the Name and title of the Authorized Representative, name of Organization and the date of signature]:

Name:_____, Title:_____.

Organization:_____, Date:_____.

1. Has the legal authority to apply for Federal assistance, has the institutional, managerial and financial capability (including funds to pay the non-Federal share of program costs) to plan, manage and complete the program as described in the application and the governing body has duly authorized the submission of the application, including these assurances and certifications, and authorized me as the official representative of the applicant to act in connection with the application and to provide any additional information as may be required.

2. Will administer the grant in compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and implementing regulations (24 CFR Part 1), which provide that no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance OR if the applicant is a Federally recognized Indian tribe or its tribally designated housing entity, is subject to the Indian Civil Rights Act (25 U.S.C. 1301-1303).

3. Will administer the grant in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and implementing regulations at 24 CFR Part 8, and the Age Discrimination Act of 1975 (42 U.S.C. 6101-07), as amended, and implementing regulations at 24 CFR Part 146 which together provide that no person in the United States shall, on the grounds of disability or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance; except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

4. Will comply with the Fair Housing Act (42 U.S.C. 3601-19), as amended, and the implementing regulations at 24 CFR Part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, disability, familial status, or national origin; except an applicant which is an Indian tribe or its instrumentality which is excluded by statute from coverage does not make this certification; and further except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

5. Will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601) and implementing regulations at 49 CFR Part 24 and 24 CFR 42, Subpart A.

6. Will comply with the environmental requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related Federal authorities prior to the commitment or expenditure of funds for property acquisition and physical development activities subject to implementing regulations at 24 CFR parts 50 or 58.

7. Will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about --

(1) The dangers of drug abuse in the workplace;

(2) The applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required in Paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

form HUD-424-B (01/2003)

Applicant Assurances and Certifications (Continued)	U.S. Department of Housing and Urban Development	OMB Approval No. 2501-0017 (exp. 03/31/2005)

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee has worked, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(h). The applicant may insert in the space provided below the site(s) for the performance of work or may provide this information in connection with each application.

(i). Place of Performance (street address, city, county, state, zip code)

8. In accordance with 24 CFR Part 24, and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three year period preceding this proposal, been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in the preceding paragraph of this certification; and

(d) Where the applicant is unable to certify to any of the statements in this certification, an explanation shall be attached.

(e) Will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction, " provided by the HUD without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

These certifications and assurances are material representations of the fact upon which HUD can rely when awarding a grant. If it is later determined that I, the applicant, knowingly made an erroneous certifications or assurance, I may be subject to criminal prosecution. HUD may also terminate the grant and take other available remedies.

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0208 (exp. 12/31/2004)

Public Reporting Burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.
This information is necessary to provide details on the funds requested by Housing Authorities. The form displays the amount requested, broken down by budget line item, with each use explained on Part II. The requested information will be reviewed by HUD to determine if the amount requested is reasonable and whether the required percentages of capital and supportive services funds are met. Responses to the collection are required by the appropriation under which the HOPE VI grant was funded. The information collected does not lend itself to confidentiality.
HUD may not conduct or sponsor, and a person is not required to respond to collection of information unless it displays a currently valid OMB control number.

HOPE VI Budget
Part I: Summary

PHA Name

HOPE VI Grant Number

☐ Original HOPE VI Budget ☐ Revised HOPE VI Budget ☐ Predevelopment Budget

Line No.	Summary by Budget Line Item	Capital Costs	Supportive Services Costs	Total Funds Requested	HUD Approved Funds
1	Total Non-HOPE VI Funds				
2	1408 Management Improvements				
3	1410 Administration				
4	1430 Fees and Costs				
5	1440 Site Acquisition				
6	1450 Site Improvement				
7	1460 Dwelling Structures				
8	1465 Dwelling Equipment—Nonexpendable				
9	1470 Nondwelling Structures				
10	1475 Nondwelling Equipment				
11	1465 Demolition				
12	1495 Relocation Cost				
13	**Amount of HOPE VI Grant** (Sum of lines 2-12)				

HUD Certification: In approving this budget and providing assistance to a specific housing development(s), I hereby certify that the assistance will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources (24 CFR 12.50).

Signature of Authorized HUD Official — Date (mm/dd/yyyy)

Signature of PHA Executive Director — Date (mm/dd/yyyy)

Previous editions are obsolete

form HUD-52825-A (12/96)
ref Handbook 7485.1

HA Name	HOPE VI Budget **Part II: Supporting Pages**				

Work Item Number 1	Budget Line Item Number 2	Statement of Need 3	Description of Proposed/Approved Action and Method of Accomplishment 4	Individual Project Number 5	Total Funds Requested 6	HUD-Approved Funds 7

Previous editions are obsolete

Page ___ of ___

form HUD-52825-A (12/96)
ref Handbook 7485.1

Instructions for Preparation of Form HUD-52825-A,

HOPE VI Budget Submission:

When requested by HUD, prepare a separate form HUD-52825-A (Parts I and II) for the HOPE VI program, describing the activities which are planned to be undertaken with the HOPE VI funds. Submit the original and two copies (or any lesser number of copies as specified by HUD) of this form to the HUD Field Office. On an as-needed basis, submit a revised form when the HUD-established threshold requires prior HUD approval to revise the HOPE VI Budget.

Part I: Summary

HA Name - Enter the name of the Housing Authority (HA).

HOPE VI Grant Number - Enter the unique HOPE VI Grant number assigned by HUD upon grant approval.

FFY of Grant Approval - Enter the Federal Fiscal Year (FFY) in which the HOPE VI grant is being approved/was approved. (last 2 digits of HOPE VI Grant Number).

Type of Submission - Check the appropriate box and indicate whether the submission is the Original HOPE VI Budget or a Revised HOPE VI Budget (and revision number).

Total Funds Approved:

Line 1 - Enter the amount rounded to the nearest ten dollars, for all work that will be undertaken from non-HOPE VI funds. Enter zero if no work will be undertaken from non-HOPE VI funds.

Lines 2 through 12 - For each line, enter the appropriate amount rounded to the nearest ten dollars, or zero if no work will be undertaken in a particular HOPE VI budget line item.

Line 13 - Amount of HOPE VI Grant - Enter the sum of lines 2 through 12.

Part II: Supporting Pages

1. **Work Item Number** - Number each work item sequentially.
2. **Budget Line Item Number** - Enter the appropriated HOPE VI budget line item which corresponds to the work item described.
3. **Statement of Need**
4. **Description of Proposed/Approved Action and Method of Accomplishment** - For each HOPE VI budget line item listed, provide a statement of need and a description of all work items (physical or management, as applicable) that will be funded with HOPE VI funds, including management improvements, supportive services, administrative costs, equipment, etc. Enter the quantity of the work as a percentage or whole number, Describe administrative costs in sufficient detail to clearly identify items.
5. **Individual Project Number** - Enter the abbreviated (e.g., VA-36-1) of the development where the work items will be undertaken.
6. **Total Funds Requested** - For each work item and HA-wide activity described, enter the total funds requested. Where appropriate, add a reasonable contingency amount to each work item and indicate the percentage.

Previous editions are obsolete

form HUD-52825-A (12/96)
ref Handbook 7485.1

[FR Doc. 03–8174 Filed 4–3–03; 8:45 am]
BILLING CODE 4210–33–C

VOL
68

ISS
65

AP
4

003

MI



Federal Register

Friday,
April 4, 2003

Part VI

Environmental Protection Agency

40 CFR Parts 9 and 46
Fellowships; Interim Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 46

[FRL–7476–2]

RIN 2030–AA77

Fellowships

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: This rule revises EPA's current fellowship regulation to provide greater flexibility and clarify requirements in order to aid in the administration and monitoring of the EPA fellowships. EPA's fellowship programs provide financial assistance to individuals to further their education in environmental fields, such as environmental engineering and science. EPA is also amending certain approved information collection requirements.

DATES: This regulation is effective May 5, 2003, and applies to fellowship agreements awarded after May 5, 2003. Comments on this interim final rule must be submitted by June 3, 2003.

ADDRESSES: Comments must be submitted to W. Scott McMoran, Office of Grants and Debarment (3903R), United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: W. Scott McMoran at (202) 564–5376.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities eligible to receive the environmental fellowships listed in 40 CFR part 46 are regulated by this rule. Regulated categories and entities include:

Category	Regulated entities
Persons	Individuals.
Institutions of Higher Education.	Colleges and Universities.

Only individuals may apply for fellowships under this regulation. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Comments and Record

The record of this interim final rule includes a copy of the previous version of this rule. It is available for inspection from 9 a.m. to 4 p.m. (eastern time), Monday through Friday, excluding legal holidays, by contacting the person listed in the **ADDRESSES** section.

Comments on this interim final rule must be submitted by June 3, 2003, to the person listed in the **ADDRESSES** section.

III. Background

EPA last updated its fellowship regulation (40 CFR part 46) on October 18, 1984. Since that time, EPA's legal authorities, practices and policies have changed, and, as a result, the regulation is out of date. Also, the General Accounting Office reviewed the EPA fellowship program and found that, in order to award fellowships in compliance with the regulation, the agency was relying on approved exceptions from the regulation. For these reasons, EPA is revising the regulation to update and clarify requirements. In particular, we have:

- Generally eliminated references to EPA's Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations regulation (40 CFR part 30). Fellowships are awards made to individuals and that regulation applies to organizations (*see* 40 CFR 30.1).
- Added new provisions based on part 30 to assure the regulation addresses all appropriate requirements, including: § 46.125 which authorizes EPA to approve exceptions from this regulation, where necessary; § 46.130 which makes clear that fellows are subject to the government-wide suspension and debarment program; § 46.145 which requires fellows to fly on American Carriers when involved in foreign travel under fellowships; § 46.210 and § 46.215 which provide termination and enforcement provisions; and § 46.220 which establishes a dispute process for fellowships. We also added § 46.205 which establishes requirements for handling intangible property such as documents and computer software developed under a fellowship. It incorporates the intangible property provisions of part 30 (40 CFR 30.36) rather than repeating them. That rule is complex and its form would not change if it were included in this rule, so there was no reason to repeat it.
- Eliminated monetary limits on the amount EPA can award for benefits. The amounts that will be awarded for various purposes under fellowships will be determined by the EPA program offices making the awards.
- Revised the list of EPA's statutes (§ 46.105) under which EPA awards fellowships to bring it up to date.
- Deleted the definitions of full time fellow and part time fellow. We will rely on the policy of the institution involved to make that determination.
- Added a requirement that fellows annually submit copies of transcripts and publications (§ 46.175(b)), when required by the fellowship agreement.

In compliance with the Paperwork Reduction Act, EPA is also amending 40 CFR part 9 to add the list of currently approved information collection request numbers related to information collected under the Fellowships regulation (40 CFR part 46).

Statutory and Regulatory Reviews

Regulatory Flexibility Act

This interim final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which notice and comment rulemaking is required under the Administrative Procedure Act (APA) or any another statute. Grant award and administration matters, such as this rule, are explicitly exempt from the notice and comment requirements of the APA (5 U.S.C. 553(a)(1)). Nor is this rule required to undergo notice and comment rulemaking under any other statute.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 2 U.S.C. 1501 *et seq.*, 109 Stat. 48 (1995), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This regulation contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. The UMRA excludes from the definitions of "Federal intergovernmental mandate" and "Federal private sector mandates" duties that arise from conditions of Federal assistance.

National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used, the Act requires EPA to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

This rule does not involve any technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that is determined to be: (1) "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 because the fellowship award authority does not meet any of the criteria. As such, this action will not require submission to the Office of Management and Budget (OMB) for review.

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use.

Paperwork Reduction Act

In keeping with the requirements of the Paperwork Reduction Act (PRA), as amended, 44 U.S.C. 3501 *et seq.*, the information collection requirements contained in this rule have been approved by OMB under information collection request number 0938.06 (OMB Control Number 2030–0020) and Quality Assurance Specifications and Requirements information request number 0866.05 (OMB Control Number 2080–0033). This rule does not contain any collection of information requirements beyond those already approved. Since this action imposes no new or additional information collection, reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, no information request has been or will be submitted to the Office of Management and Budget for review. We are revising 40 CFR part 9 to reflect these requirements.

Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This interim final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule applies to individuals and any individual may apply for an EPA fellowship. Thus, Executive Order 13175 does not apply to this rule.

Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This interim final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the

requirements of section 6 of the Executive Order do not apply to this rule. Further, because this rule regulates the use of Federal financial assistance, it will not impose substantial direct compliance costs on States.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 5, 2003.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 46

Environmental protection, Grant programs-education, Grant programs-environmental protection, Reporting and recordkeeping requirements, Scholarships and fellowships.

Dated: March 27, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1 the table is amended by adding a new heading and new entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control no.
. . .	. . .
Fellowships	
46.155	2030–0004
46.170(a)	2030–0020
46.185(a)	2030–0020
46.190(a) and (b)	2030–0020
46.200(a)	2030–0020
46.230(a)	2030–0020
. . .	. . .

■ 3. For the reasons set forth in the preamble, 40 CFR part 46 is revised to read as follows:

PART 46—FELLOWSHIPS

Sec.

Subpart A—General

46.100 Purpose.
46.105 Authority.
46.110 Objectives.
46.115 Types of fellowships.
46.120 Definition.
46.125 Exceptions.
46.130 Debarment and suspension.

Subpart B—Applying for Fellowships

46.135 Eligibility.
46.140 Benefits.
46.145 International travel and work.
46.150 Request for applications.
46.155 Submission of applications.
46.160 Evaluation of applications.
46.165 Notification.

Subpart C—Award

46.170 Fellowship agreement.
46.175 Terms and conditions.
46.180 Acceptance of fellowship award.

Subpart D—During the Fellowship

46.185 Activation notice.
46.190 Fellowship agreement amendments.
46.195 Project period.
46.200 Payment.
46.205 Intangible property.
46.210 Termination.
46.215 Enforcement.
46.220 Disputes.

Subpart E—After the Fellowship

46.225 Equipment.
46.230 Closeout procedures.

Authority: Section 103(b)(5) of the Clean Air Act, as amended (42 U.S.C. 7403(b)(5)); sections 104(b)(5) and (g)(3)(B) of the Clean Water Act, as amended (33 U.S.C. 1254(b)(5) and (g)(3)(B)); section 1442 of the Safe Drinking Water Act, as amended (42 U.S.C. 300j–1); section 8001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6981); section 10 of the Toxic Substances Control Act, as amended (15 U.S.C. 2609); section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136r); sections 104(k)(6)and 311 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604(k)(6) and 42 U.S.C. 9660).

PART 46—FELLOWSHIPS

Subpart A—General

§ 46.100 Purpose.

This part establishes the requirements for all Environmental Protection Agency (EPA) fellowship awards.

§ 46.105 Authority.

EPA is authorized to award fellowships under the statutes listed in this section. EPA is not required to award fellowships under all of the listed authorities, but does so at its discretion.

(a) Section 103(b)(5) of the Clean Air Act, as amended (42 U.S.C. 7403(b)(5));

(b) Section 104(b)(5) and (g)(3)(B) of the Clean Water Act, as amended (33 U.S.C. 1254(b)(5) and (g)(3)(B));

(c) Section 1442 of the Safe Drinking Water Act, as amended (42 U.S.C. 300j–1);

(d) Section 8001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6981);

(e) Section 10 of the Toxic Substances Control Act, as amended (15 U.S.C. 2609);

(f) Section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136r); and

(g) Sections 104(k)(6) and 311 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604(k)(6) and 42 U.S.C. 9660).

§ 46.110 Objectives.

EPA awards fellowships to help individuals participate in academic and professional educational opportunities in fields related to pollution control and environmental protection. Fellowships provide support for undergraduate and graduate students, including staff of state, local or Tribal agencies responsible for environmental pollution control and environmental protection.

§ 46.115 Types of fellowships.

In general, EPA may award you one of two kinds of fellowships.

(a) The first are fellowships to students who are selected on the basis of EPA requests for applications and program announcements. These fellowships may assist you with the costs of academic and professional career studies in pollution control and environmental protection in fields such as science, engineering, technology, social science, and specialty areas supporting environmental protection efforts.

(b) The second are fellowships awarded to current or prospective employees of state, local and Tribal environmental pollution control or regulatory agencies who are nominated to receive fellowships by their agency. These fellowships may assist you with the costs of academic and professional career studies in pollution control and environmental protection in fields such as science, engineering, technology, social science, and specialty areas supporting environmental protection efforts.

§ 46.120 Definition.

Fellow: You are a fellow if you receive an EPA fellowship award.

§ 46.125 Exceptions.

The Director, Grants Administration Division, may approve exceptions from this part on a case-by-case or class basis.

§ 46.130 Debarment and suspension.

EPA will not award you a fellowship if you are debarred, suspended or otherwise excluded from participation in federal programs. Names of individuals who are excluded are included on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained and distributed by the General Services Administration.

Subpart B—Applying for Fellowships

§ 46.135 Eligibility.

If you wish to apply for an EPA fellowship, you must be:

(a) A citizen of the United States, its territories, or possessions, or lawfully admitted to the United States for permanent residence;

(b) Accepted by or an applicant to an accredited educational institution for academic credit in an educational program directly related to pollution control or environmental protection; and

(c) If you are applying for a fellowship offered specifically to employees or prospective employees of state, local and Tribal organizations, you must be nominated by the head of the state, local or Tribal agency, or designee, based on the need for academic and professional career study to enhance your skills related to the needs of the organization.

§ 46.140 Benefits.

EPA fellowships may include funds to help you pay such things as:

(a) A part, or all, of your tuition and fees, as determined appropriate by EPA.

(b) An expense allowance for books, supplies, and equipment (equipment is an item with a unit acquisition cost of more than $5,000) as determined appropriate by EPA. You may use this allowance for expenses that are necessary for your education, such as the cost of health insurance, supplies, and travel to conduct research and attend technical meetings relating to the fellowship. You may acquire equipment only with EPA's written approval and there will be very few instances where the purchase of equipment is authorized (see § 46.225.)

(c) A stipend determined by the EPA program office based on EPA's resources and your course load.

§ 46.145 International travel and work.

(a) You may use fellowship funds for travel to or work in a foreign country only if the travel or work is approved by the EPA Office of International Activities (OIA). You will be notified of OIA approval in the fellowship award or in a letter from the EPA project officer or the award official.

(b) If you travel to or from a foreign country and the travel cost is paid under the fellowship agreement, you must comply with the Fly America Act. In accordance with that Act, you must travel on U.S. air carriers certificated under 49 U.S.C. 1371, to the extent that such carriers provide service, even if the foreign air carrier costs less than the American air carrier.

§ 46.150 Request for applications.

EPA generally requests fellowship applications through electronic and printed announcements or other means designed to inform potential applicants.

§ 46.155 Submission of applications.

The request for applications or program announcement will advise you how to file an application and what information you must include. You must submit applications for fellowships on EPA's "Fellowship Application" (EPA Form 5770–2) or in any other form EPA designates. EPA will provide instructions for completing the application. You must submit the original and two copies of the application unless the instructions require otherwise. Alternatively, EPA may allow you to submit applications electronically. It is also likely that EPA will require you to submit undergraduate and graduate transcripts to the office identified in the request for applications or program announcement.

§ 46.160 Evaluation of applications.

EPA will evaluate your application based on criteria identified in the request for applications or program announcement. Evaluation criteria may include:

(a) The relevance of your proposed studies to EPA's mission.

(b) Your potential for success, as reflected by your academic record, letters of reference, and any other available information.

(c) The availability of EPA funds.

§ 46.165 Notification.

If EPA does not select you to receive a fellowship, we generally will notify you within 60 days after final selections are made. If you are a successful applicant, EPA will send you a fellowship agreement in accordance with § 46.170.

Subpart C—Award

§ 46.170 Fellowship agreement.

(a) The "Fellowship Agreement" (EPA Form 5770–8) is the written agreement, including amendments, between EPA and you. The fellowship agreement will state the amount of Federal funds awarded and the terms and conditions governing the fellowship.

(b) The EPA award official may approve any pre-award costs you incurred, if determined appropriate by the award official. You incur pre-award costs at your own risk (see also § 46.195).

§ 46.175 Terms and conditions.

(a) If EPA awards you a fellowship on the basis of a nomination by your current or prospective state, local or Tribal government employer, by accepting the fellowship agreement you agree to remain in the employment of the state, local, or Tribal employer for twice the period of the fellowship. If you fail to meet this obligation, EPA may, after consultation with your employer or prospective employer, require you to repay the amount of the fellowship.

(b) You must submit a copy of your transcript to the EPA project officer after the completion of each year of the fellowship, if required by the fellowship agreement. You must also submit copies of any publications and other products from the research, if required.

(c) EPA may require you to provide various performance reports under your fellowship, but we will not require reports more frequently than quarterly. At the end of the fellowship, you must submit a final report and other documentation, if required in the fellowship agreement.

§ 46.180 Acceptance of fellowship award.

You must accept your fellowship by signing and returning the EPA award form (EPA Form 5770–8) to the EPA award official within three weeks after receipt, or within an extension of time approved by the award official. If you do not sign and return the Fellowship

agreement to the award official or request an extension of the acceptance time within three calendar weeks after receiving the agreement, the award official may void the agreement. EPA will not pay for costs incurred under voided agreements.

Subpart D—During the Fellowship

§ 46.185 Activation notice.

(a) Each fellowship includes a "Fellowship Activation Notice" (EPA Form 5770–7). You must complete, sign, and obtain other appropriate signatures on the Activation Notice when the program supported by the fellowship agreement begins. In certain instances, *e.g.*, if your program of study is at an EPA facility, the EPA project officer may sign as sponsor on the Activation Notice. You must submit the Activation Notice to the award official.

(b) If you do not submit the Activation Notice (EPA Form 5770–7) within 90 days after the date of the award, the award official may initiate action to terminate the fellowship agreement in accordance with § 46.210.

§ 46.190 Fellowship agreement amendments.

(a) If you need to make any of the changes listed in paragraphs (a)(1) thorough (3) of this section, you must notify the project officer and receive a formal amendment (EPA Form 5770–8) approving the changes. You must sign and return one copy of each amendment to the award official. If you make the change before you receive the amendment, you do so at your own risk. Changes that require formal amendments are:

(1) A change in the amount of the fellowship;

(2) A change in the academic institution you attend; or

(3) A change in the duration of your fellowship.

(b) You must obtain the EPA project officer's written approval of changes in the field of study or approved research project.

(c) You do not need EPA approval of minor changes that are consistent with the objective of the fellowship agreement. Minor changes do not, however, obligate EPA to provide additional funds for any costs you incur in excess of the fellowship agreement amount.

§ 46.195 Project period.

Based on the "Date Fellow Will Enter on Duty" which you enter on the Activation Notice (see § 46.185(a)), EPA will establish the project period for the fellowship. If you incur costs before the date of the fellowship award, the date on the Activation Notice must reflect that fact (see also § 46.170(b)).

§ 46.200 Payment.

EPA will not make payments under a fellowship agreement until the award official receives the signed "Fellowship Activation Notice" (EPA Form 5770–7) as required by § 46.185. Unless the fellowship provides another payment process, EPA makes payments as follows:

(a) EPA pays tuition and fees directly to the educational institution.

(b) EPA pays any stipend directly to you on a monthly or other basis approved by the project officer and included in the fellowship agreement.

(c) EPA pays any book or other expense allowance to you or to the educational institution, as specified in the fellowship agreement. If EPA pays your expense allowance to the educational institution, the institution may deduct not more than two percent of the expense allowance as a handling fee.

§ 46.205 Intangible property.

In general, if you develop intangible property under a fellowship agreement (*e.g.*, copyrighted software), EPA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. EPA's requirements for dealing with such intangible property are found at 40 CFR 30.36 of EPA's Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

§ 46.210 Termination.

(a) EPA may terminate your fellowship agreement in whole or in part in accordance with the following:

(1) If you fail to submit the "Fellowship Activation Notice" as required by § 46.185.

(2) If you fail to comply with the terms and conditions of the fellowship agreement.

(b) You may voluntarily terminate your fellowship by sending the award official written notification setting forth the reasons for termination and the effective date. In that case, the EPA project officer may discuss the terms of the termination with you, and EPA may send you a letter or other document which states any termination conditions.

(c) Costs resulting from obligations you incur after termination of an award are not allowable unless EPA expressly authorizes them in the notice of termination or subsequently approves them. Costs after termination which are necessary and not reasonably avoidable are allowable if:

(1) The cost results from obligations which you properly incurred before the effective date of termination, were not in anticipation of the termination, and are noncancellable; and

(2) The cost would be allowable if the award expired normally.

§ 46.215 Enforcement.

(a) You must use fellowship funds for the purposes stated in the fellowship agreement. If you fail to comply with the terms and conditions of an award, EPA may take one or more of the following actions, as appropriate:

(1) Temporarily withhold or suspend payments pending your correction of the deficiency or pending other enforcement by EPA;

(2) Disallow all or part of the cost of the activity or action not in compliance;

(3) Wholly or partly terminate the fellowship agreement in accordance with § 46.210(a);

(4) Withhold the award of additional funds under the fellowship; or

(5) Take other remedies that may be legally available.

(b) In taking an enforcement action, EPA will provide you an opportunity for hearing, appeal, or other administrative proceeding to which you are entitled under any statute or regulation applicable to the action involved, including § 46.220.

(c) The enforcement remedies identified in this section, including withholding of payment and termination, do not preclude debarment and suspension action under Executive Orders 12549 and 12689 and EPA's implementing regulations (40 CFR part 32).

§ 46.220 Disputes.

(a) If you and the EPA award official or project officer have a disagreement, you should make reasonable efforts to resolve it at that level.

(b) If you cannot reach agreement, an EPA disputes decision official will provide a written final decision. The EPA disputes decision official is the individual designated by the award official to resolve disputes concerning assistance agreements. The dispute procedures outlined at 40 CFR part 31, subpart F, will apply.

Subpart E—After the Fellowship

§ 46.225 Equipment.

(a) If EPA authorizes you to purchase equipment (see § 46.140(b)) and the equipment retains a fair market value of more than $5,000, you must request disposition instructions from the EPA project officer when you no longer need it for the work under the fellowship.

(b) If you purchase an item with an acquisition cost of $5,000 or less, the item belongs to you.

§ 46.230 Closeout procedures.

(a) You must submit the "EPA Fellowship Completion of Studies Notice" (EPA Form 5770–9) signed by your sponsor or department head of the educational institution when the project period ends. In certain instances, *e.g.*, your program of study is at an EPA facility, the EPA project officer may sign as sponsor on the Completion of Studies Notice. You may request an extension to submit the form if you need it.

(b) You must retain all records related to your fellowship agreement for three years after the completion date you insert on the "Completion of Studies Notice" (EPA Form 5770–9).

(c) EPA, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, has the right of timely and unrestricted access to your documents, papers, or other records related to your fellowship, in order to make audits, examinations, excerpts, transcripts and copies of such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

[FR Doc. 03–8153 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

Reader Aids

Federal Register

Vol. 68, No. 65

Friday, April 4, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, APRIL

15653–15920	1
15921–16164	2
16165–16402	3
16403–16714	4

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7657 15921
7658 16403

Executive Orders:
10448 (Amended by 13293) 15917
11157 (Revoked by 13294) 15919
11800 (Revoked by 13294) 15919
13293 15917
13294 15919

Administrative Orders:
Presidential Determinations:
No. 2003–18 of March 24, 2003 16165
No. 2003–19 of March 24, 2003 16167

5 CFR

5201 16398

Proposed Rules:
1600 16449
1605 16449
1606 16449
1655 16449

7 CFR

25 16169
718 16170
723 16170
923 15923
989 15926
1412 16170
1413 16170

Proposed Rules:
930 15971

9 CFR

94 15932

10 CFR

Proposed Rules:
170 16374
171 16374

12 CFR

226 16185

Proposed Rules:
702 16450
704 16450
712 16450
723 16450

13 CFR

121 16405

Proposed Rules:
121 15971

14 CFR

39 ..... 15653, 15937, 16190, 16192, 16195, 16198, 16200, 16203, 16205
71 ..... 16207, 16351, 16409, 16410
93 15657
97 ..... 16411, 16412
121 15884
125 15884
129 15884

Proposed Rules:
21 16217
25 16458
39 ..... 15682, 15684, 15687, 16220, 16222, 16225, 16458
71 ..... 16227, 16229, 16230

15 CFR

740 ..... 16144, 16208
742 ..... 16144, 16208
762 16208
774 ..... 16144, 16208

16 CFR

Proposed Rules:
305 16231
310 ..... 16238, 16414

17 CFR

228 15939
229 15939
244 15939
249 15939

Proposed Rules:
240 15688

20 CFR

404 15658
408 16415

21 CFR

1308 16427

Proposed Rules:
10 16461

24 CFR

Proposed Rules:
202 15906
902 16461

26 CFR

1 ..... 15940, 16430
40 15940
48 15940
49 15940
301 16351
602 ..... 15940, 15942, 16430

Proposed Rules:
1 ..... 15801, 16462
49 15690

29 CFR

70 16398

71.....16398
96.....16162
99.....16162
2509.....16399
2510.....16399
2520.....16399
2550.....16399
2560.....16399
2570.....16399
2575.....16399
2582.....16399
2584.....16399
2589.....16399
2590.....16399

30 CFR

Proposed Rules:
70.....15691
72.....15691
75.....15691
90.....15691

32 CFR

Proposed Rules:
199.....16247
312.....16249

33 CFR

117.....15943

Proposed Rules:
110.....15691
165.....15694

36 CFR

7.....16432

37 CFR

Proposed Rules:
201.....15972

38 CFR

1.....15659

40 CFR

9.....16708
46.....16708
52.....15661, 15664
180.....15945, 15958, 15963, 16436

Proposed Rules:
52.....15696, 16644

42 CFR

422.....16652
489.....16652

Proposed Rules:
440.....15973

43 CFR

10.....16354
423.....16214

44 CFR

Ch.1.....15666
61.....15666
64.....15967

45 CFR

2506.....16437

46 CFR

Proposed Rules:
401.....15697
530.....15978

47 CFR

25.....16446
54.....15669

Proposed Rules:
64.....16250

48 CFR

Proposed Rules:
2.....16366
4.....16366
13.....16366
32.....16366
52.....16366

49 CFR

1.....16215
665.....15672

50 CFR

635.....16216
17.....15804
224.....15674
230.....15680
679.....15969

Proposed Rules:
17.....15876, 15879, 16602

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 4, 2003

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Walnuts grown in—
California; published 3-5-03

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Livestock and poultry disease control:
Cattle and other property disposed of because of bovine tuberculosis; payments; published 3-5-03

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Maryland; published 2-3-03
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Lactic acid, ethyl ester, and lactic acid, n-butyl ester; correction; published 4-4-03

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Oklahoma; published 3-10-03
Oklahoma and Texas; published 3-6-03

JUSTICE DEPARTMENT
Drug Enforcement Administration
Schedules of controlled substances:
Alpha-methyltryptamine and 5-methoxy-N,N-diisopropyltryptamine; Schedule I temporary placement; published 4-4-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Air Tractor, Inc.; published 3-19-03
APEX Aircraft; published 2-19-03
Bell; published 2-28-03
Bombardier; published 2-28-03
Fokker; published 2-28-03
Hartzell Propeller, Inc.; published 2-28-03
McDonnell Douglas; published 2-28-03
Raytheon; published 2-28-03
Standard instrument approach procedures; published 4-4-03

RULES GOING INTO EFFECT APRIL 6, 2003

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Aircraft:
Repair stations; published 8-6-01

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Olives grown in—
California; comments due by 4-9-03; published 3-10-03 [FR 03-05561]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Foot-and-mouth disease; disease status change—
Uruguay; comments due by 4-11-03; published 2-10-03 [FR 03-03228]
Noxious weeds:
Kikuyu grass cultivars; comments due by 4-11-03; published 2-10-03 [FR 03-03181]
Witchweed; regulated areas; comments due by 4-11-03; published 2-10-03 [FR 03-03182]
Plant-related quarantine, foreign:
Wheat and related products; flag smut import prohibitions; comments due by 4-8-03; published 2-7-03 [FR 03-03057]
Plant related quarantine; domestic:
Fire ant, imported; comments due by 4-7-03; published 2-5-03 [FR 03-02685]

AGRICULTURE DEPARTMENT
Forest Service
National Forest System land and resource management planning; comments due by 4-7-03; published 3-5-03 [FR 03-05116]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 4-10-03; published 3-26-03 [FR 03-07252]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Energy conservation standards and test procedures—
Refrigerators and refrigerator-freezers; comments due by 4-7-03; published 3-7-03 [FR 03-05405]
Refrigerators and refrigerator-freezers; comments due by 4-7-03; published 3-7-03 [FR 03-05404]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
California; comments due by 4-10-03; published 3-11-03 [FR 03-05748]
Indiana; comments due by 4-10-03; published 3-11-03 [FR 03-05741]
New Hampshire; comments due by 4-7-03; published 3-6-03 [FR 03-05305]
New Jersey; comments due by 4-7-03; published 3-6-03 [FR 03-05320]
Rhode Island; comments due by 4-7-03; published 3-6-03 [FR 03-05307]
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-7-03; published 3-7-03 [FR 03-05325]
Iowa; comments due by 4-7-03; published 3-7-03 [FR 03-05309]
Small Business Liability Relief and Brownfields Revitalization Act; implementation:
Federal standards for conducting all appropriate inquiry; negotiated rulemaking committee; intent to establish; comments due by 4-7-03; published 3-6-03 [FR 03-05324]

FARM CREDIT ADMINISTRATION
Farm credit system:
Borrower rights; comments due by 4-7-03; published 2-4-03 [FR 03-02506]

FEDERAL COMMUNICATIONS COMMISSION
Radio frequency devices:
Unlicensed devices operating in additional frequency bands; feasibility; comments due by 4-7-03; published 1-21-03 [FR 03-01206]
Radio stations; table of assignments:
North Carolina and Virginia; comments due by 4-11-03; published 3-10-03 [FR 03-05333]
Oregon; comments due by 4-11-03; published 3-6-03 [FR 03-05334]
Various States; comments due by 4-11-03; published 3-6-03 [FR 03-05335]

FEDERAL MARITIME COMMISSION
Passenger vessel financial responsibility:
Performance and casualty rules, Alternative Dispute Resolution program, etc.; miscellaneous amendments; comments due by 4-8-03; published 12-27-02 [FR 02-32645]

FEDERAL RESERVE SYSTEM
Home mortgage disclosure (Regulation C):
Transition rules for applications; staff commentary; comments due by 4-8-03; published 3-7-03 [FR 03-05365]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):

Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare:
End-stage renal disease services; provider bad debt payment; comments due by 4-11-03; published 2-10-03 [FR 03-02974]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Radiological health:
Diagnostic x-ray systems and their major components; performance standard; comments due by 4-9-03; published 12-10-02 [FR 02-30550]

HEALTH AND HUMAN SERVICES DEPARTMENT
Energy Employees Occupational Illness Compensation Program Act; implementation:
Special Exposure Cohort; classes of employees designated as members; procedures; comments due by 4-7-03; published 3-7-03 [FR 03-05604]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
New Jersey; comments due by 4-7-03; published 2-5-03 [FR 03-02696]
Pollution:
Ballast water management reports; non-submission penalties; comments due by 4-7-03; published 1-6-03 [FR 03-00100]
Vessel and facility response plans for oil; 2003 removal equipment requirements and alternative technology revisions
Meeting; comments due by 4-8-03; published 11-19-02 [FR 02-29168]
Ports and waterways safety:
Oahu, Maui, Hawaii, and Kauai, HI; security zones; comments due by 4-7-03; published 2-4-03 [FR 03-02523]

HOMELAND SECURITY DEPARTMENT
Lobbying restrictions; comments due by 4-7-03; published 3-6-03 [FR 03-05145]
Nondiscrimination on basis of disability in federally conducted programs or activities; comments due by 4-7-03; published 3-6-03 [FR 03-05142]
Nondiscrimination on basis of race, color, or national origin in programs or activities receiving Federal financial assistance; comments due by 4-7-03; published 3-6-03 [FR 03-05144]
Nondiscrimination on basis of sex in education programs or activities receiving Federal financial assistance; comments due by 4-7-03; published 3-6-03 [FR 03-05143]
Organization, functions, and authority delegations:
Immigration law enforcement; comments due by 4-7-03; published 3-6-03 [FR 03-05146]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Public housing assessment system; changes; comments due by 4-7-03; published 2-6-03 [FR 03-02608]

JUSTICE DEPARTMENT
DNA identification system:
USA PATRIOT Act; implementation—
Federal offenders; DNA sample collection; comments due by 4-10-03; published 3-11-03 [FR 03-05861]

LABOR DEPARTMENT
Occupational Safety and Health Administration
Safety and health standards:
Commercial diving operations; comments due by 4-10-03; published 1-10-03 [FR 03-00372]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Competitive acquisition; debriefing; comments due by 4-7-03; published 2-4-03 [FR 03-02580]
Cost principles; general provisions; comments due by 4-7-03; published 2-4-03 [FR 03-02581]

PERSONNEL MANAGEMENT OFFICE
Federal Long Term Care Insurance Program; comments due by 4-7-03; published 2-4-03 [FR 03-02463]
Health benefits, Federal employees:
Health care providers; financial sanctions; comments due by 4-11-03; published 2-10-03 [FR 03-03125]
Homeland Security Act; implementation:
Voluntary separation incentive payments; comments due by 4-7-03; published 2-4-03 [FR 03-02766]

SECURITIES AND EXCHANGE COMMISSION
Securities:
Sarbanes-Oxley Act of 2002; implementation—
Attorneys; professional conduct standards; implementation; comments due by 4-7-03; published 2-6-03 [FR 03-02520]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States
Andean Trade Preference Act, as amended by Andean Trade Promotion and Drug Eradication Act; countries eligibility for benefits; petition process; comments due by 4-7-03; published 2-4-03 [FR 03-02705]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Aircraft products and parts; certification procedures:
Production Approval Holder's quality system; products and/or parts that have left system, performing work on; policy statement; comments due by 4-10-03; published 3-11-03 [FR 03-05128]
Airworthiness directives:
BAE Systems (Operations) Ltd.; comments due by 4-11-03; published 3-12-03 [FR 03-05859]
Bell; comments due by 4-8-03; published 2-7-03 [FR 03-03030]
Boeing; comments due by 4-10-03; published 2-24-03 [FR 03-04236]
Dornier; comments due by 4-11-03; published 3-12-03 [FR 03-05858]
General Electric Co.; comments due by 4-8-03; published 2-7-03 [FR 03-02995]
McDonnell Douglas; comments due by 4-7-03; published 2-20-03 [FR 03-04028]
Raytheon; comments due by 4-10-03; published 2-24-03 [FR 03-04234]
Sikorsky; comments due by 4-8-03; published 2-7-03 [FR 03-03031]
Turbomeca; comments due by 4-7-03; published 2-5-03 [FR 03-02633]
Turbomeca S.A.; comments due by 4-8-03; published 2-7-03 [FR 03-02996]
Jet routes; comments due by 4-7-03; published 2-19-03 [FR 03-03965]

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Grants:
Operation of motor vehicles by intoxicated persons; withholding of Federal-aid highway funds; comments due by 4-7-03; published 2-6-03 [FR 03-02790]

TRANSPORTATION DEPARTMENT
Federal Motor Carrier Safety Administration
Motor carrier safety standards:
Intermodal container chassis and trailers; general inspection, repair, and maintenance requirements; negotiated rulemaking process; intent to consider; comments due by 4-10-03; published 2-24-03 [FR 03-04228]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Grants:
Operation of motor vehicles by intoxicated persons; withholding of Federal-aid highway funds; comments due by 4-7-03; published 2-6-03 [FR 03-02790]

TREASURY DEPARTMENT
Comptroller of the Currency
National banks:
Authority provided by American Homeownership and Economic Opportunity Act, and other miscellaneous amendments; comments due by 4-8-03; published 2-7-03 [FR 03-02641]

TREASURY DEPARTMENT
Community Development Financial Institutions Fund
Bank Enterprise Award Program; implementation; comments due by 4-7-03; published 2-4-03 [FR 03-02336]
Community Development Financial Institutions Program; implementation; comments due by 4-7-03; published 2-4-03 [FR 03-02335]

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Anti-money laundering programs for businesses engaged in vehicle sales; comments due by 4-10-03; published 2-24-03 [FR 03-04173]
Anti-money laundering programs for travel agencies; comments due by 4-10-03; published 2-24-03 [FR 03-04172]

VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
Cirrhosis of liver in former prisoners of war; presumptive service connection; comments due by 4-11-03; published 2-10-03 [FR 03-03175]
Loan guaranty:
Veterans Education and Benefits Expansion Act; implementation; comments due by 4-11-03; published 2-10-03 [FR 03-03176]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 395/P.L. 108–10
Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

Last List March 10, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html* .

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Order Now!

The United States Government Manual 2002/2003

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.



$49 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS • PERIODICALS • ELECTRONIC PRODUCTS

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
***7917**

☐ **YES**, please send me ——— copies of **The United States Government Manual** 2002/2003,
S/N 069–000–00145–9 at $49 ($68.60 foreign) each.

Total cost of my order is $ ———. **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 9/02

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $35 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $30 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.



Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscriptions for one year:

——— **LSA (List of CFR Sections Affected)**, (LCS) for $35 per year.
——— **Federal Register Index** (FRUS) $30 per year.

The total cost of my order is $ ———. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

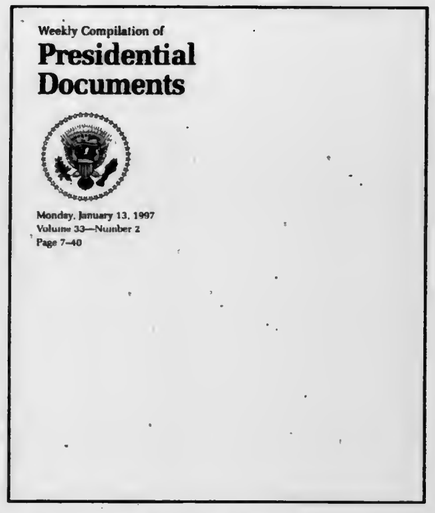
Thank you for your order!

Authorizing Signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
*** 5420**

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $151.00 First Class Mail ☐ $92.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 4/00

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VOL
68
ISS
65
AP
4
2003
UMI



Printed on recycled paper

VOL
68
ISS
66
AP
7
003
MI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.



Federal Register

4–7–03 Monday
Vol. 68 No. 66 Apr. 7, 2003

United States Government Printing Office
SUPERINTENDENT OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
68
ISS
66
AP
7
003
MI



Federal Register

4–7–03 Monday
Vol. 68 No. 66 Apr. 7, 2003
Pages 16715–16942

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche — **202–512–1800**
Assistance with public subscriptions — **202–512–1806**
General online information — **202–512–1530; 1–888–293–6498**
Single copies/back copies:
Paper or fiche — **202–512–1800**
Assistance with public single copies — **1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES
Subscriptions:
Paper or fiche — **202–741–6005**
Assistance with Federal agency subscriptions — **202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 66
Monday, April 7, 2003

Administration on Aging
See Aging Administration

Aging Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16802
Grants and cooperative agreements; availability, etc.:
Senior Medicare Patrol Projects, 16802–16803

Agriculture Department
See Animal and Plant Health Inspection Service
See Farm Service Agency
See Forest Service

Air Force Department
PROPOSED RULES
Privacy Act; implementation, 16746–16747
NOTICES
Privacy Act:
Systems of records, 16786–16789

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Hog cholera; disease status change—
European Union regions, 16921–16941
PROPOSED RULES
Interstate transportation of animals and animal products (quarantine):
Tuberculosis in cattle and bison—
State and area classifications, 16733–16735

Centers for Disease Control and Prevention
NOTICES
Inventions, Government-owned; availability for licensing, 16803
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Transgenomic, Inc., 16803–16804

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Vermont, 16760

Coast Guard
RULES
Drawbridge operations:
New York, 16721
NOTICES
Deepwater ports; license applications:
Port Pelican LLC, 16808–16809

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Defense Department
See Air Force Department

Drug Enforcement Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16830

Education Department
NOTICES
Elementary and secondary education:
Elementary and Secondary Education Act; implementation—
Unsafe School Choice Option; dangerous schools identification and transfer opportunity for student victims of violent criminal offenses, 16789–16790

Employment and Training Administration
NOTICES
Adjustment assistance:
Adventure Travel, 16835–16836
American Bag Corp., 16836–16837
B.J. Everett, 16837
Bechtel Jacobs Co. LLC, 16837–16838
Burelbach Industries, Inc., 16838–16839
Cedar Creek Fibers, LLC, 16839
Corning Cable Systems, LLC, 16839–16840
Erasteel, Inc., 16840–16841
F.L. Smithe Machine Co., Inc., 16841
Frametome Connectors USA, Inc., 16841
Honeywell International, 16841
Jackson Sewing Center, 16841–16842
Motorola, Inc., 16842
New England Iron, LLC, 16842
Reliant Bolt, Inc. et al, 16842–16843
Sara Lee Bakery Group, 16843
Search Resources, 16843
Summit Manufacturing, LLC, 16843–16844
United Containers Machinery, 16844
Adjustment assistance and NAFTA transitional adjustment assistance:
International Rectifier et al., 16833–16835
Committees; establishment, renewal, termination, etc.:
Apprenticeship Advisory Committee, 16844

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Electricity export and import authorizations, permits, etc.:
Avista Corp., 16790–16791

Environmental Protection Agency
RULES
Air programs:
Stratospheric ozone protection—
Ozone-depleting substances; substitutes list; correction, 16728–16730
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 16724–16726
Rhode Island, 16721–16724
South Dakota, 16726–16728

PROPOSED RULES
Air programs:
Stratospheric ozone protection—
Ozone-depleting substances; substitutes list; correction, 16749
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 16748–16749
Small Business Liability Relief and Brownfields Revitalization Act; implementation:
All Appropriate Inquiry Negotiated Rulemaking Committee; establishment and meeting, 16747–16748
NOTICES
Committees; establishment, renewal, termination, etc.:
National Environmental Education Advisory Council, 16794–16795
Confidential business information and data transfer, 16795–16796
Environmental statements; availability, etc.:
Coastal nonpoint pollution control programs; States and territories—
Texas, 16784–16785
Meetings:
State FIFRA Issues Research and Evaluation Group, 16796–16797

Farm Service Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16756

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Eurocopter France, 16735–16736
Pratt & Whitney, 16736–16743
NOTICES
Committees; establishment, renewal, termination, etc.:
National Parks Overflight Advisory Group, 16860
Meetings:
Aging Transport Systems Rulemaking Advisory Committee, 16860–16861

Federal Communications Commission
RULES
Radio stations; table of assignments:
Oklahoma, 16730–16731
Texas, 16730
PROPOSED RULES
Radio stations; table of assignments:
Colorado, 16750–16751
Georgia, 16750
Texas, 16750
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16797–16798

Federal Deposit Insurance Corporation
NOTICES
Meetings:
Banking Policy Advisory Committee, 16798

Federal Election Commission
RULES
Compliance procedures:
Administrative fines; civil money penalties reduction for political committees that file reports late or not at all Correction, 16715

Federal Energy Regulatory Commission
NOTICES
Meetings; Sunshine Act, 16791–16793

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Lafourche and St. Charles Parishes, LA, 16861
St. Charles and Jefferson Parishes, LA, 16861–16862

Federal Housing Enterprise Oversight Office
RULES
Safety and soundness:
Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corp. (Freddie Mac)—
Financial and other information; public disclosure, 16715–16718

Federal Railroad Administration
PROPOSED RULES
Local rail freight assistance to States; withdrawn, 16753–16754

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 16798
Formations, acquisitions, and mergers, 16798

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Recovery plans—
Chaparral and scrub community species east of San Francisco Bay, CA, 16826
Environmental statements; notice of intent:
Caspian tern management in Columbia River estuary, 16826–16827

Food and Drug Administration
NOTICES
Food additive petitions:
Ciba Specialty Chemicals; withdrawn, 16804

Forest Service
NOTICES
Environmental statements; notice of intent:
Klamath National Forest, CA, 16756–16758
Sierra Nevada Forest Plan, CA, 16758–16759
Meetings:
Deschutes Provincial Advisory Committee, 16760
Resource Advisory Committees—
Crook County, 16760
Plumas County, 16760

General Services Administration
RULES
Federal property management:
Subchapter H Appendix (temporary regulations); CFR correction, 16730
NOTICES
Privacy Act:
Systems of records, 16798–16801

Health and Human Services Department
See Aging Administration
See Centers for Disease Control and Prevention
See Food and Drug Administration

See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16801
Grants and cooperative agreements; availability, etc.:
President's Challenge Physical Activity and Fitness Awards Program; cosponsorship opportunity; correction, 16801–16802

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Maternal and Child Health Federal Set-Aside Program—
Comprehensive hemophilia diagnostic and treatment centers (Region IV), 16804–16806

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
See Federal Housing Enterprise Oversight Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16809–16814
Mortgagee Review Board; administrative actions, 16814–16826
Regulatory waiver requests; quarterly listing, 16901–16919

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16862–16864
Meetings:
Taxpayer Advocacy Panels, 16864–16865

International Trade Administration
NOTICES
Antidumping:
In-shell raw pistachios from—
Iran, 16764–16765
Non-malleable cast iron pipe fittings from—
China, 16765–16766
Top-of-the-stove stainless steel cooking ware from—
Korea, 16766
Antidumping and countervailing duties:
Administrative review requests, 16761
Pasta from—
Italy, 16763–16764
Turkey, 16761–16763
Countervailing duties:
Dynamic random access memory semiconductors from—
Korea, 16766–16783
Prestressed concrete steel wire strand from—
India, 16783–16784

Justice Department
See Drug Enforcement Administration
See Justice Programs Office
See Parole Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16829–16830

Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16830–16833

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Public land orders:
Alaska, 16828
Arizona, 16828
Resource management plans, etc.:
Three Rivers Resource Area, OR, 16828–16829

Maritime Administration
NOTICES
Deepwater ports; license applications:
Port Pelican LLC, 16808–16809

National Aeronautics and Space Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16844–16845

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 16845–16846

National Highway Traffic Safety Administration
RULES
Fuel economy standards:
Light trucks, 2005-2007 model years, 16867–16900

National Institute of Standards and Technology
NOTICES
Meetings:
Storage and processor card-based technologies; workshop, 16784

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic coastal fisheries cooperative management—
American lobster; correction, 16732
Northeastern United States fisheries—
Atlantic herring; correction, 16731
PROPOSED RULES
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Precious coral, etc., 16754–16755
NOTICES
Environmental statements; availability, etc.:
Coastal nonpoint pollution control programs; States and territories—
Texas, 16784–16785
Meetings:
Pacific Fishery Management Council, 16785–16786
Permits:
Marine mammals, 16786

National Park Service
NOTICES
Committees; establishment, renewal, termination, etc.:
National Parks Overflight Advisory Group, 16860

Office of Federal Housing Enterprise Oversight
See Federal Housing Enterprise Oversight Office

Parole Commission
RULES
Federal prisoners; paroling and releasing, etc.:
District of Columbia and United States Codes; prisoners serving sentences—
Military prisoners; mandatory release, 16718–16720
PROPOSED RULES
Federal prisoners; paroling and releasing, etc.:
District of Columbia and United States Code; prisoners serving sentences—
Conditions for release, 16743–16746

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
Regulatory Flexibility Act Section 610 and plain language reviews, 16751–16753

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16846–16847
Meetings; Sunshine Act, 16847–16848
Self-regulatory organizations:
Clearing agency registration applications—
Emerging Markets Clearing Corp., 16848
Self-regulatory organizations; proposed rule changes:
Options Clearing Corp., 16849–16850
Philadelphia Stock Exchange, Inc., 16850–16852

Small Business Administration
NOTICES
Meetings:
Veterans Business Affairs Advisory Committee, 16852

State Department
NOTICES
Art objects; importation for exhibition:
Max Beckmann, 16852–16853
Grants and cooperative agreements; availability, etc.:
China; promotion of democracy, human rights, and rule of law, 16853–16854

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16806–16808

Surface Transportation Board
NOTICES
Rail carriers:
Rail rate challenges in small cases; hearing, 16862

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Air carriers:
U.S. passenger airlines agreements—
Delta/Northwest/Continental, 16854–16858
Aviation proceedings:
Agreements filed, etc., 16858–16859
Meetings:
NAFTA Land Transportation Standards Subcommittee and Transportation Consultative Group; annual plenary session, 16859–16860

Treasury Department
See Internal Revenue Service
RULES
Foreign persons; mergers, acquisitions, and takeovers:
Voluntary notice filing, 16720–16721

Western Area Power Administration
NOTICES
Power rate adjustments:
Loveland Area Projects, CO, 16793–16794

Separate Parts In This Issue

Part II
Transportation Department, National Highway Traffic Safety Administration, 16867–16900

Part III
Housing and Urban Development Department, 16901–16919

Part IV
Agriculture Department, Animal and Plant Health Inspection Service, 16921–16941

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

9 CFR
71.....16922
92.....16922
93.....16922
94.....16922
98.....16922
130.....16922
Proposed Rules:
77.....16733

11 CFR
110.....16715

12 CFR
1730.....16715

14 CFR
Proposed Rules:
39 (2 documents).....16735, 16736

28 CFR
2.....16718
Proposed Rules:
2.....16743

31 CFR
800.....16720

32 CFR
Proposed Rules:
806b.....16746

33 CFR
117.....16721

40 CFR
52 (3 documents).....16721, 16724, 16726
61.....16726
82 (2 documents).....16728, 16729
Proposed Rules:
Ch. 1.....16747
52.....16748
82.....16749

41 CFR
Ch. 101.....16730

47 CFR
73 (2 documents).....16730
Proposed Rules:
73 (3 documents).....16750

49 CFR
533.....16868
Proposed Rules:
172.....16751
173.....16751
174.....16751
175.....16751
176.....16751
177.....16751
178.....16751
266.....16753

50 CFR
648.....16731
697.....16732
Proposed Rules:
660.....16754

Rules and Regulations

Federal Register
Vol. 68, No. 66
Monday, April 7, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2003–7]

Administrative Fines: Correction

AGENCY: Federal Election Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rules governing the Administrative Fines program that were published in the **Federal Register** on March 17, 2003. The correction relates to a technical amendment updating a citation to the Federal Claims Collection Standards.

DATES: The correction is effective March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel or Dawn M. Odrowski, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On March 17, 2003, the Federal Election Commission published in the **Federal Register** final rules governing the Administrative Fines program. *See* Administrative Fines; final rules, 68 FR 12572 (March 17, 2003). These final rules included a technical amendment to 11 CFR 111.45 to correct a citation to the Federal Claims Collection Standards ("the Standards") in response to the revision and recodification of the Standards after the original Administrative Fines regulations were published in May 2000. In the March 17, 2003, **Federal Register** publication, instruction number 4 incorrectly identified "General Accounting Office" rather than "Government Accounting Office" as the language that is removed from 11 CFR 111.45.

Correction of Publication

■ Accordingly, the publication of final regulations that were the subject of FR Doc. 2003–6, published on March 17, 2003 (68 FR 12572), is corrected as follows:

PART 111—COMPLIANCE PROCEDURES (2 U.S.C. 437g, 437d(a))

■ On page 12580, column 1, correct instruction number 4 to read as follows:

§ 111.45 [Corrected]

"4. Section 111.45 is amended by removing in the second sentence the phrase, '4 CFR parts 101 through 105' and by adding in its place, '31 CFR parts 900 through 904,' and by removing in the second sentence the phrase, 'Government Accounting Office' and adding in its place, 'U.S. Department of the Treasury.'"

Dated: April 1, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–8307 Filed 4–4–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1730

RIN 2550–AA25

Public Disclosure of Financial and Other Information

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final regulation.

SUMMARY: The Office of Federal Housing Enterprise Oversight is issuing a final regulation that sets forth public disclosure requirements with respect to financial and other information by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

EFFECTIVE DATE: April 30, 2003.

FOR FURTHER INFORMATION CONTACT: David W. Roderer, Deputy General Counsel, or Christine C. Dion, Associate General Counsel, telephone (202) 414–6924 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, entitled the "Federal Housing Enterprises Financial Safety and Soundness Act of 1992" (Act) (12 U.S.C. 4501 *et seq.*), established OFHEO as an independent office within the Department of Housing and Urban Development to ensure that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) are capitalized adequately and operate safely and in compliance with applicable laws, rules, and regulations.

The relationship of the government-sponsored enterprises to financial markets is critical to their viability. To accomplish their missions, the Enterprises must have access to capital markets. In supporting the primary mortgage markets, secondary market players, including the Enterprises, access domestic and global financing sources and offer a variety of issuances demanded by these markets. The Enterprises are significant as participants in mortgage-backed securities and agency debt markets, and in related hedging activities, and as issuers and guarantors of securities.

As users of and participants in the financial markets, the success of the Enterprises in meeting their public policy missions and in maintaining their safe and sound operations is inextricably tied to full and robust disclosure.[1] Disclosure may provide information about the corporate operations of a firm, the intricacies of a given securities offering, or specialized information concerning particular events or business practices. In addition, Enterprise securities have become increasingly significant to

[1] *See, Freddie Mac and Fannie Mae Enhancements to Capital Strength, Disclosure and Market Discipline*, 3–4 News, Archives (October 19, 2000), available at *http://www.freddiemac.com/*; and *Franklin Raines, FDIC Panel: "The Rise of Risk Management: Challenges for Policy Makers,"* 1, 6 Media, Speeches (July 31, 2002), available at *http://www.fanniemae.com/*.

domestic and foreign market participants. The business practices of the Enterprises affect large and small investors, debt markets and international debt holders alike. Access to the markets and the price of that access are directly affected by investor perceptions of the transparency of the Enterprises and the safety and soundness of their operations. In such an environment, as the Enterprises themselves acknowledge, they have an interest in providing "best in class" disclosures.[2]

B. Disclosure and Safe and Sound Operations

Full and adequate disclosure of information by the Enterprises regarding their financial conditions and risks is an important part of OFHEO's supervisory program. Full disclosure enhances market discipline.[3] OFHEO possesses both explicit and implied authorities to address the Enterprises' disclosure practices.[4] The office has at its disposal a range of supervisory tools to require full and meaningful disclosures.[5]

While the offer and sale of their securities are exempt from the registration requirements of the Securities Act of 1933[6] and their securities are exempted securities under the Securities Exchange Act of 1934 (Exchange Act),[7] the Enterprises last July indicated that they would voluntarily register their common stock with the Securities and Exchange Commission (SEC) under the provisions of Section 12(g) of the Exchange Act, 15 U.S.C. 78*l*(g). That section permits companies not covered by the Exchange Act and its requirements for periodic disclosures to submit voluntarily to SEC rules. Voluntary registration triggers the attendant rules and regulations of the SEC, including SEC enforcement authorities. Once a company volunteers, it must remain under the strictures of the law, unless permitted to remove itself by the SEC. OFHEO is proposing this regulation, in part, to facilitate the process of voluntary registration by the Enterprises under the Exchange Act.

OFHEO has a broad statutory mandate to adopt regulations, rules, and guidances deemed to be appropriate to assuring the safety and soundness of the Enterprises including appropriate disclosures that aid in promoting market discipline. OFHEO is empowered fully to mandate financial and securities disclosure and to take related actions to implement such regulatory requirements through filings and submissions, examination and oversight of disclosures. OFHEO anticipates no duplication of regulation as it administers its broad safety and soundness obligations.

Public Disclosure of Financial and Other Information Regulation

OFHEO issued a proposed Public Disclosure of Financial and Other Information regulation, which was published in the **Federal Register** on January 23, 2003.[8] The proposed regulation complements the examination and supervisory programs of OFHEO and ensures that the disclosure policies and practices of the Enterprises comport with safety and soundness standards.

II. Response to Comments

OFHEO received six comment letters on the proposed regulation. Comment letters were received from Fannie Mae; Freddie Mac; America's Community Bankers, a national trade association for community banks of all charter types; FM Watch, a coalition of financial services and housing-related trade associations; Mr. James G. McDonald, a self-described civil rights attorney from Virginia, and Ms. Yvonne M. Wohlers from Williamsburg, Virginia.

Comments

The comments addressed both general and specific elements of the proposed rule. All comments endorsed increased public disclosure of information by the Enterprises.

The comment letters of Mr. McDonald and Ms. Wohlers, while supporting broad disclosure of Enterprise information, raised issues relating to immigration matters that are not germane to the purpose or scope of the proposed regulation that focuses on securities and other financial disclosures.

FM Watch characterized the proposed regulation as an interim measure stating its position that parity of securities regulation can result only through enactment of legislation that would repeal the exempt status of Enterprise securities under the Federal securities laws. FM Watch suggested revising the proposed regulation in several areas. FM Watch recommended that the regulation specify the procedures to be used by, and the sanctions available to, OFHEO to enforce compliance with disclosure requirements.

As noted in the preamble to the proposed regulation, OFHEO possesses a broad range of explicit and implied authorities to address the Enterprises' disclosure practices. The Office has at its disposal a variety of supervisory tools to require full and meaningful disclosure. As stated in section 1730.1(b) of the proposed and final rule, the regulation in no way limits or restricts the authority of OFHEO to act under its safety and soundness mandate to regulate the Enterprises, including, but not limited to, "enforcing compliance with applicable laws, rules and regulations." For these reasons, OFHEO has determined that it is not necessary to include a separate enforcement or compliance provision in this regulation.

FM Watch also suggested that the proposed regulation be supplemented with additional sections that would delineate the respective responsibilities and remedies of OFHEO and the SEC with respect to Enterprise disclosures. In addition, FM Watch recommended that OFHEO enter into a Memorandum of Understanding with the SEC regarding compliance issues and establish a procedure for the receipt and processing of investor grievances.

As noted in the preamble to the proposed regulation, voluntary registration triggers the attendant rules and regulations of the SEC, including SEC enforcement authorities. OFHEO proposed this regulation, in large part, to facilitate the process of voluntary registration by the Enterprises under the Exchange Act. Moreover, OFHEO has a broad statutory mandate to adopt regulations, rules, and guidances to assure safe and sound operations of the Enterprises including appropriate disclosures. OFHEO regularly communicates with the SEC. Further, OFHEO regularly receives comments from private persons and groups on a range of topics and a regulation need not establish a specialized procedure for receipt of comments. In sum, the enforcement policies and practices of OFHEO with respect to Enterprise disclosures do not require additional elaboration in this rulemaking.

FM Watch also recommended that the proposed regulation be revised by adding a section detailing various disclosure commitments made by the Enterprises since October 2000 in order to ensure that such commitments are strictly adhered to by the Enterprises. OFHEO has determined that such a recitation of Enterprise disclosure commitments is unnecessary in this regulation. OFHEO has indicated previously that it monitors these disclosure commitments.

FM Watch also recommended that the regulation require the Enterprises to adopt internal rules with respect to insider transactions. OFHEO's existing regulations and guidances address the maintenance of appropriate internal guidelines and procedures by the Enterprises.[9]

Both Freddie Mac and Fannie Mae commented on proposed paragraph (a) of section 1730.3 that would require the preparation of disclosures relating to an Enterprise's financial condition, results of operation, business developments, and management expectations that include supporting financial information and certifications. The requirements in paragraph (a) will be satisfied through compliance by an Enterprise with SEC disclosure requirements specified in paragraph (b)(1)–(3) of the section.

Freddie Mac characterized paragraph (a) as being "an open-ended" disclosure requirement. Freddie Mac also asserted that it is unclear whether OFHEO is imposing a disclosure obligation in paragraph (a) that is different from the legal standards governing other Exchange Act registrants. Freddie Mac commented that, in order to eliminate any ambiguity with respect to Enterprise disclosure obligations, proposed section 1730.3 be revised by deleting paragraph (a) to merely require the Enterprises to comply with SEC regulations specified in paragraph (b) with respect to the submission of proxy statements and insider trading reports by officers and directors. Similarly, Fannie Mae commented that section 1730.3 of the proposed regulation goes beyond filling in the regulatory "gaps" that the SEC would be unable to reach notwithstanding its voluntary registration. Fannie Mae characterized the proposed section as an assertion of parallel authority for OFHEO to act as a "back-up" regulator regarding regulations applicable to Fannie Mae by virtue of its registration with the SEC. Fannie Mae expressed its view that Congress has not charged OFHEO with the responsibility of investor protection. It further opined that there is no basis in statute or public policy for OFHEO to raise through its proposal the possibility that the agency might at some point seek to substitute its judgment for that of the SEC with respect to disclosure regulation and enforcement. Fannie Mae stated that section 1730.3 (b)(1) would make failure to meet SEC requirements a violation of OFHEO's rules as well. For those reasons, Fannie Mae urged that paragraph (b)(1), which addresses periodic disclosures required by registrants under section 12 of the Exchange Act, be deleted from the final regulation.

OFHEO notes that section 1730.3(a) simply reiterates the overall authority of OFHEO to regulate financial and other disclosures of the Enterprises as part of its statutory safety and soundness responsibilities. In supporting voluntary registration by the Enterprises under the Exchange Act, the regulation in no way impinges upon or contracts OFHEO's safety and soundness authorities. The comments of Freddie Mac and Fannie Mae go to the possible scope and exercise of those authorities that are not the focus of this section of the regulation. Further, as indicated in the preamble to the proposed rule, OFHEO's actions are guided by its statute that provides for oversight of Enterprise safety and soundness. As indicated as well in the preamble, OFHEO anticipates no duplication of regulation in meeting its obligations. Additionally, OFHEO has tools at its disposal to clarify and make certain any issue relating to the subsection's requirements should such a need arise.

In addition to its general comments, Fannie Mae requested a technical change to section 1730.3, paragraph (a) that requires each Enterprise to prepare disclosures relating to "its financial condition, results of operation, business developments, and management's expectations. * * *" Fannie Mae requested that the text be changed to read "its financial condition, results of operation and business" as Fannie Mae stated that SEC rules regarding business development and management expectations are more limited and will be adequately addressed through the periodic reports it will be required to file upon registration under the Exchange Act.

As noted earlier, however, this section addresses OFHEO's safety and soundness authority and does not reference other statutes. OFHEO's descriptions of its authorities, indeed, may be expected to be different from language employed by another regulator acting under a different statutory regime.

Both Freddie Mac and Fannie Mae commented on section 1730.3(b)(1) of the proposed regulation, that requires an Enterprise satisfying its disclosure obligations through compliance with various SEC regulations to prepare and make public reports and other materials "that may be required under the rules and regulations of the [SEC], including interpretations of the Commission and its staff. * * *" Both Enterprises asserted that this would be a new requirement, not imposed on other SEC registrants. Also, they noted that SEC staff interpretations do not establish legally binding and enforceable disclosure requirements for SEC registrants. For these reasons, they requested that reference to staff interpretations be deleted from paragraph (b)(1) in the final regulation.

The provision is retained as proposed. SEC registrants are expected to comply with staff interpretations that are applicable to those registrants. The Enterprises can, of course, discuss with the SEC staff the appropriate method for complying with interpretations.

Freddie Mac also commented on section 1730.4 of the proposed regulation, which requires the Enterprises to provide to OFHEO copies of all disclosures filed with the SEC. Freddie Mac requested that OFHEO modify the section to indicate that OFHEO would provide confidential treatment for such submissions similar to that provided by the SEC under Rule 24b–2. OFHEO has existing procedures that address the treatment of confidential Enterprise submissions. The procedures provide case-by-case determinations and ensure that nonpublic, confidential information is safeguarded whenever appropriate. Accordingly, OFHEO has determined that it is not necessary to modify section 1730.4 in the final regulation.

OFHEO is adopting the regulation as proposed.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

This regulation would not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required. This regulation, however, has been submitted to the Office of Management and Budget

[2] *Id.* See, for example, Fannie Mae, *Franklin Raines, FDIC Panel.*

[3] See Basel Committee on Banking Supervision's consultative paper entitled, "A New Capital Adequacy Framework." (Basel Committee Publications No. 50 (June 1999)).

[4] In general, see 12 U.S.C. 4513, 12 U.S.C. 4631, 4632, and 4636; 12 U.S.C. 4514; 12 U.S.C. 4501(6) as well as the chartering acts for the Enterprises at 12 U.S.C. 1723a(k)(2) and 12 U.S.C. 1456(c)(2) and (3).

[5] An unsafe or unsound practice may serve as a basis for enforcement action by OFHEO pursuant to 12 CFR parts 1777 and 1780.

[6] 15 U.S.C. 77a through 77aa.

[7] 15 U.S.C. 78a through 78jj.

[8] 68 FR 3194 (January 23, 2003).

[9] For example, among others, 12 CFR 1710 and 1720 (Appendix A).

(OMB) for review under other provisions of Executive Order 12866 as a significant regulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of this final regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the regulation, as herein adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of Government. The Enterprises are federally chartered corporations supervised by OFHEO. This regulation sets forth minimum disclosure standards with which the Enterprises must comply for Federal supervisory purposes and address the safety and soundness authorities of the agency. This regulation does not affect in any manner the powers and authorities of any State with respect to the Enterprises or alter the distribution of power and responsibilities between State and Federal levels of government. Therefore, OFHEO has determined that this final regulation has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

List of Subjects in 12 CFR Part 1730

Government-sponsored enterprises, Financial disclosure, Reporting and recordkeeping requirements, Records.

■ Accordingly, for the reasons stated in the preamble, OFHEO adds part 1730 to subchapter C of 12 CFR Chapter XVII to read as follows:

Subchapter C—Safety and Soundness

PART 1730—DISCLOSURE OF FINANCIAL AND OTHER INFORMATION

Sec.
1730.1 Purpose.
1730.2 Definitions.
1730.3 Periodic disclosures.
1730.4 Submission of disclosures.

Authority: 12 U.S.C. 4513; 12 U.S.C. 4514; 12 U.S.C. 4631; and, 12 U.S.C. 4632.

§ 1730.1 Purpose.

(a) The purpose of this part is to require the Enterprises to prepare and submit financial and other disclosures as specified by OFHEO.

(b) This part does not limit or restrict the authority of OFHEO to act under its safety and soundness mandate to regulate the Enterprises, including conducting examinations, requiring reports and disclosures, and enforcing compliance with applicable laws, rules and regulations.

§ 1730.2 Definitions.

For purposes of this part, the term:

(a) *Commission* means the Securities and Exchange Commission (or SEC).

(b) *Disclosure or disclosures* means any report[s], form[s], or other information submitted by the Enterprises pursuant to this part and may be used interchangeably with the terms "report[s]" or "form[s]."

(c) *Enterprise* means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and the term "Enterprises" means, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(d) *Exchange Act* means the Securities Exchange Act of 1934.

(e) *OFHEO* means the Office of Federal Housing Enterprise Oversight (or the office).

§ 1730.3 Periodic disclosures.

(a) Each Enterprise shall prepare disclosures relating to its financial condition, results of operation, business developments, and management's expectations that include supporting financial information and certifications.

(b) The requirement of paragraph (a) of this section for disclosures will be satisfied if:

(1) In the case of an Enterprise having a class of securities registered pursuant to Section 12 of the Exchange Act, the Enterprise prepares and makes public an annual report, quarterly report and current reports and such other materials that may be required under the rules and regulations of the Commission, including interpretations of the Commission and its staff and rules governing audited financial statements;

(2) The Enterprise files with the Commission all reports, statements, and forms required pursuant to Sections 14(a) and (c) of the Exchange Act and by rules and regulations adopted by the Commission under those sections that would be required to be filed by the Enterprises if the Enterprises has a class of equity securities registered under Section 12(g) of the Exchange Act that were not exempted securities under the Exchange Act; and,

(3) The officers and directors of the Enterprise file with the Commission all reports and forms relating to the common stock of the Enterprise that would be required to be filed by the officers and directors pursuant to Section 16 of the Exchange Act and by rules and regulations adopted by the Commission under that section if the Enterprises had a class of equity securities registered under Section 12(g) of the Exchange Act that were not exempted securities under the Exchange Act.

§ 1730.4 Submission of disclosures.

Unless otherwise required by OFHEO, the Enterprises shall provide to OFHEO on a concurrent basis copies of all disclosures filed with the SEC pursuant to § 1730.3.

Dated: April 1, 2003.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 03–8379 Filed 4–4–03; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending its procedures governing the mandatory release of military prisoners confined in Federal civilian prisons. Such mandatory release is earned through good time credits. The amendment implements a Department of Defense Instruction that permits the U.S. Parole Commission to place a military prisoner who is released from a Federal civilian prison under "mandatory supervision as if on parole" until the expiration of the sentence imposed, if the Commission determines that such supervision is necessary for the orderly transition of the offender back into community.

DATES: *Effective Date:* April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: Former Department of Defense regulations did not permit any military prisoner who was released by operation of law due to good time credits to be subject to supervision in the community for the remainder of the imposed sentence. This was in contrast to the requirement that applies to Federal civilian prisoners who are eligible for but denied parole. Prisoners sentenced by military courts martial and then transferred to a Federal institution come under the exclusive jurisdiction of the U.S. Parole Commission for parole purposes pursuant to 10 U.S.C. 858. Thus, in the absence of any rule authorizing post-release supervision for military mandatory releasees, there was a gap in the Commission's authority to require post-release supervision for military prisoners mandatorily released on good time from institutions operated by the Federal Bureau of Prisons. (The Bureau of Prisons considered former 18 U.S.C. 4164—which authorizes mandatory release supervision for federal civilian prisoners eligible for parole—to be inapplicable to military prisoners who committed their crimes on or after November 1, 1987.) Thus, if the Commission denied parole and continued a military prisoner to the expiration of his sentence, the Commission was not able to supervise the offender. However, if the Commission paroled the military prisoner prior to the mandatory release date, the Commission could supervise the military offender just as any other parolee to the expiration of the prisoner's sentence.

At the request of the Attorney General of the United States, the Department of Defense has amended its regulations regarding the mandatory release of military prisoners, including prisoners in the custody of the Bureau of Prisons. *See* DoD Instruction 1325.7, "Administration of Military Correctional Facilities and Clemency and Parole Authority," July 17, 2001. These regulations generally allow for the supervision of military prisoners mandatorily released with good time deductions.[1] In the regulations, the Department of Defense adopted a policy to use mandatory supervision in all cases except where the Service Clemency and Parole Boards find it inappropriate. The regulations also permit the Parole Commission to place military prisoners who are in Federal civilian custody on "mandatory supervision" after they are mandatorily released, if the Commission finds that such supervision is appropriate "to provide an orderly transition to civilian life for released prisoners and to protect the communities into which the prisoners are released." *See* DoD Instruction 1325.7 (6.20.8). However, the DoD Instruction is silent as to whether the Commission should, as the Department of Defense has done, adopt a general presumption that mandatory supervision is appropriate. Additionally, the new DoD instruction may be applied only to offenders who committed their crimes 30 days or more after the rule change. Therefore, under the terms of the DoD instruction, the Commission can only require supervision if the prisoner committed his crime on or after August 16, 2001.

The Commission is adopting a paragraph at the end of 28 CFR 2.35 so that the Commission's rules will conform to the Department of Defense regulations and policy regarding the mandatory release of military prisoners. Pursuant to the DoD Instruction, the amended rule states that when the Commission orders a military offender continued to expiration, the military prisoner will be placed on "mandatory supervision" until the expiration of his sentence if the Commission finds that the DoD criteria are met. The Commission is adopting this rule in order to give military offenders incarcerated in federal civilian prisons notice that, if the Commission denies the prisoner parole and continues the prisoner to the expiration of the prisoner's sentence, the prisoner may be required to serve a period of mandatory supervision after the prisoner's release. Although the Commission already has the authority under Department of Defense regulations to order mandatory supervision for military prisoners who committed their offenses on or after August 16, 2001, this rule further clarifies the Commission's authority and explains the Commission's general statement of policy regarding mandatory supervision.

The amended rule also includes the presumption that supervision is appropriate for all military mandatory releasees unless case-specific factors indicate that supervision is not appropriate. *See* DoD Instruction 1325.7 (6.20.1). The Commission is adopting this presumption for several reasons. First, the presumption in favor of supervision conforms with the presumption in the DoD Instruction. The inclusion of the presumption in favor of supervision after mandatory release will thus result in a uniform application of the Instruction among military offenders released from military and civilian institutions. Most importantly, the Commission agrees with the Department of Defense's general assessment that supervision in the community is, for the majority of cases, a highly effective technique to provide for a transition into the community and to protect the communities into which the prisoners are released. Therefore, the rule states that mandatory supervision shall be presumed unless the Commission finds case-specific factors illustrating that such supervision is inappropriate.

Finally, the final rule makes one change from the interim rule regarding early termination of mandatory supervision. The Commission has refrained from making early termination from supervision decisions for military offenders because it has considered this authority to be vested in the appropriate military clemency board. *See* Parole Commission Rules and Procedures Manual 2.43–04. Accordingly, the Commission is clarifying the final sentence of the rule, noting that the authority to terminate a military prisoners mandatory supervision rests with the appropriate military clemency board. The rule now makes it clear that a prisoner on "mandatory supervision" will be subject to the conditions of parole at 28 CFR 2.40 unless the appropriate military clemency board takes action terminating the prisoner's supervision or sentence.

Implementation

This final rule will be implemented for any military offender mandatorily released on good time deductions from a Federal civilian prison if the offender committed his offense after August 15, 2001.

[1] Mandatory supervision for military offenders differs from mandatory release for "old law" U.S. Code offenders under 18 U.S.C. 4164 since such supervision runs to the full term without the 180-day reduction that applies to civilian, "old law" mandatory releasees.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this interim rule does not constitute a significant rule within the meaning of Executive Order 12866. The interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to section 804(3)(c) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Amended Rule

■ Accordingly, the U.S. Parole Commission is adopting the following amendments to 28 CFR part 2.

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

Subpart A—United States Code Prisoners and Parolees

■ 2. Section 2.35 is amended by revising the following paragraph (d):

§ 2.35 Mandatory release in the absence of parole.

* * * * *

(d) If the Commission orders a military prisoner who is under the Commission's jurisdiction for an offense committed after August 15, 2001 continued to the expiration of his sentence (or otherwise does not grant parole), the Commission shall place such prisoner on mandatory supervision after release if the Commission determines that such supervision is appropriate to provide an orderly transition to civilian life for the prisoner and to protect the community into which such prisoner is released. The Commission shall presume that mandatory supervision is appropriate for all such prisoners unless case-specific factors indicate that supervision is inappropriate. A prisoner who is placed on mandatory supervision shall be deemed to be released as if on parole, and shall be subject to the conditions of release at § 2.40 until the expiration of the maximum term for which he was sentenced, unless the prisoner's sentence is terminated early by the appropriate military clemency board.

Dated: March 21, 2003.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 03–7850 Filed 4–4–03; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF THE TREASURY

31 CFR Part 800

Office of International Investment; Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends regulations that implement section 721 of Title VII of the Defense Production Act of 1950 (the "DPA"), as added by section 5021 of the Omnibus Trade and Competitiveness Act of 1988. This rule amends only those provisions relating to the filing of voluntary notice with the Committee on Foreign Investment in the United States (CFIUS).

DATES: This final rule is effective as of April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Gay Sills, Director, Office of International Investment, Department of the Treasury, 15th Street and Pennsylvania Ave., NW., Washington, DC 20220, (202) 622–1860.

SUPPLEMENTARY INFORMATION: Section 136 of the Defense Production Act Amendments of 1992 (Pub. L. 102–558) amended section 709 of the DPA by requiring that any regulation issued under the DPA be published in the **Federal Register** and that opportunity for public comment be provided for not less than thirty days. Accordingly, this regulation was published in proposed form in the **Federal Register** on November 21, 2002. The Treasury Department received no comments. The regulations are therefore now being published in final form, exactly as proposed.

This final regulation provides parties that file a notice with CFIUS under section 721 with the option of filing electronically, providing just a single paper copy to CFIUS, or the option of continuing the current practice of providing CFIUS 13 paper copies. By filing electronically, companies could substantially decrease the paperwork burden of providing CFIUS notice under section 721.

Executive Order 12866

These regulations are not subject to the requirements of Executive Order 12866 because they relate to foreign and military affairs functions of the United States.

Paperwork Reduction Act

The collections of information provided for in this rule have been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) under OMB control number 1505–0121. The proposed rule does not change the information collection other than to permit an alternative means of submitting notice to the Committee on Foreign Investment in the United States.

Administrative Procedure Act

Because this final rule relates to foreign and military affairs functions of the United States, it is not subject to a delayed effective date pursuant to 5 U.S.C. 553(a)(1).

Regulatory Flexibility Act

This regulation implements Section 721 of the Defense Production Act of 1950 ("Section 721") (50 U.S.C. App. 2170)("DPA"). Section 709 of the DPA (50 U.S.C. App. 2159) provides that the regulations issued under it are not subject to the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 553). Notwithstanding this exemption, section 709 of the DPA was amended by section 136 of the Defense Production Act Amendments of 1992 (Pub. L. 102–558) to require any regulation issued under the DPA to be published in the **Federal Register** for at least thirty days to provide for public comment. This requirement subjected the proposed regulation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. When the proposed rule was published, the Treasury Department estimated that an average filing requires about 60 hours of preparation time. This final rule will permit parties to file notifications electronically, which is expected to reduce the preparation time somewhat because it will no longer be necessary to provide 13 paper copies of a filing. Instead, a filer can provide a single paper copy to the Treasury Department along with the electronic filing. Therefore, the impact of the final rule on small companies that file notifications with CFIUS is expected to be marginally beneficial.

List of Subjects in 31 CFR Part 800

Foreign investments in United States, Investigations, National defense,

Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set out in the preamble, 31 CFR part 800 is amended as follows:

PART 800—REGULATIONS PERTAINING TO MERGERS, ACQUISITIONS, AND TAKEOVERS BY FOREIGN PERSONS

■ 1. The authority citation for part 800 continues to read as follows:

Authority: Section 721 of Pub. L. 100–418, 102 Stat. 1107, made permanent law by section 8 of Pub. L. 102–99, 105 Stat. 487 (50 U.S.C. App. 2170) and amended by section 837 of the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102–484, 106 Stat. 2315, 2463; E.O. 12661, 54 FR 779, 3 CFR, 1988 Comp., p. 618.

■ 2. Section 800.401 is revised to read as follows:

§ 800.401. Procedures for notice.

(a) A party or parties to an acquisition subject to section 721 may submit a voluntary notice to the Committee of the proposed or completed acquisition by:

(1) Sending thirteen copies of the information set out in § 800.402 to the Staff Chairman of the Committee on Foreign Investment in the United States ("Staff Chairman"), Office of International Investment, Department of the Treasury, 15th Street and Pennsylvania Avenue, NW., Washington, DC 20220; or

(2) Sending:

(i) One signed paper copy of the information set out in § 800.402 to the Staff Chairman of the Committee on Foreign Investment in the United States ("Staff Chairman"), Office of International Investment, Department of the Treasury, 15th Street and Pennsylvania Avenue, NW., Washington, DC 20220; and

(ii) One electronic copy of this same information in Adobe Acrobat (PDF) or Microsoft Word format to the following e-mail address: *CFIUS@do.treas.gov*. Electronic filings that exceed 5 Megabytes (MB) will need to be divided into smaller transmissions of no more than 5 MB each, which should be sent individually as attachments to separate e-mails.

(b) Any member of the Committee may submit an agency notice of a proposed or completed acquisition to the Committee through its Staff Chairman if that member has reason to believe, based on facts then available, that the acquisition is subject to section 721 and may have adverse impacts on the national security. In the event of agency notice, the Committee will promptly furnish the parties to the acquisition with written advice of such notice.

(c) No agency notice, or review or investigation by the Committee, shall be made with respect to a transaction more than three years after the date of conclusion of the transaction, unless the Chairman of the Committee, in consultation with other members of the Committee, requests an investigation.

(d) No communications other than those described in paragraphs (a), (b) and (c) of this section shall constitute notice for purposes of section 721. In any case where a party or parties file(s) electronically under paragraph (a) of this section, the signed paper copy shall constitute the original copy, and CFIUS will not notify the parties of its acceptance of a filing until the original copy has been received by the Office of International Investment.

John B. Taylor,

Under Secretary of the Treasury.

[FR Doc. 03–8302 Filed 4–4–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–024]

Drawbridge Operation Regulations: Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Wantagh State Parkway Bridge, mile 16.1, across Goose Creek at Wantagh, New York. Under this temporary deviation the bridge may remain in the closed position from 6 a.m. on April 1, 2003 through 4 p.m. on April 30, 2003. This temporary deviation is necessary to facilitate painting operations at the bridge.

DATES: This deviation is effective from April 1, 2003 through April 30, 2003.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Wantagh State Parkway Bridge has a vertical clearance in the closed position of 16 feet at mean high water and 19 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.799(i).

The bridge owner, New York State Department of Transportation, requested a temporary deviation from the drawbridge operation regulations to facilitate painting operations at the bridge. The bridge must remain in the closed position to perform this work.

The Coast Guard coordinated this closure with the mariners who normally use this waterway to help facilitate this necessary bridge maintenance and to minimize any disruption to the marine transportation system.

Under this temporary deviation the Wantagh State Parkway Bridge will remain in the closed position from 6 a.m. on April 1, 2003 through 4 p.m. on April 30, 2003.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: March 28, 2003.

Vivien S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 03–8282 Filed 4–4–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–7476–7]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; One-Hour Ozone Attainment Demonstration for the Rhode Island Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This action approves Rhode Island's one-hour ozone attainment demonstration for the Rhode Island serious ozone nonattainment area, submitted by the Rhode Island Department of Environmental Management (DEM) on March 24, 2003. This action is based on the requirements of the Clean Air Act as amended in 1990, related to one-hour ozone attainment demonstrations. In addition, EPA is establishing an attainment date of November 15, 2007, for the area, and is approving the contingency measures SIP, the 2007 motor vehicle emissions

budgets, and the reasonably available control measures analysis also submitted by Rhode Island on March 24, 2003. A notice of proposed rulemaking was published for this action on February 14, 2003. EPA received no comments on that proposal.

EFFECTIVE DATE: This rule will become effective on May 7, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection by appointment weekdays from 9 a.m. to 4 p.m., at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA; and the Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, Rhode Island 02908–5767. Please telephone in advance before visiting.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, (617) 918–1664.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. What Rhode Island SIP revision is the topic of this action?
II. What previous action have we taken on this SIP revision?
III. What motor vehicle emissions budgets are we approving?
IV. EPA Action
V. Administrative Requirements

I. What Rhode Island SIP Revision Is the Topic of This Action?

The Rhode Island DEM submitted a one-hour ozone attainment demonstration SIP on March 24, 2003, for the Rhode Island serious ozone nonattainment area. The SIP revision was subject to public notice and comment by the State, and a public hearing was held on February 27, 2003. The attainment demonstration included a reasonably available control measures (RACM) analysis, contingency measures, and 2007 motor vehicle emissions budgets for the Rhode Island serious ozone nonattainment area. Rhode Island requested an attainment date for this area of November 15, 2007, and included a demonstration of how its plan will reach attainment as expeditiously as practicable by that date. The final plan adopted by Rhode Island is not substantially different than the proposed submission provided to EPA on January 27, 2003.

II. What Previous Action Have We Taken on This SIP Revision?

EPA published a notice of proposed rulemaking for the Rhode Island attainment demonstration SIP on February 14, 2003 (68 FR 7476). In that action, EPA reviewed the proposed Rhode Island attainment plan which includes a RACM analysis, contingency measures, and 2007 motor vehicle emissions budgets with an attainment date of November 15, 2007, and proposed to approve it if Rhode Island did not make substantial revisions during the state review process. If Rhode Island did make substantial revisions, EPA indicated it would issue a new proposed rule. The notice of proposed rulemaking states EPA's conclusions regarding the approvability of the various portions of the SIP, which will not be repeated here. Readers are directed to the proposal for further information.

III. What Motor Vehicle Emissions Budgets Are We Approving?

On January 27, 2003, Rhode Island submitted proposed motor vehicle emissions budgets for volatile organic compounds (VOC's) and nitrogen oxides (NO_X) for the 2007 attainment year for the Rhode Island serious ozone nonattainment area. Under EPA's policy[1] for reviewing the adequacy of motor vehicle emissions budget submissions, these budgets were posted on the EPA adequacy Web site for public comment on February 19, 2003, at *www.epa.gov/otaq/transp/conform/currsips.htm*, and a public comment period was open until March 17, 2003. The SIP was also made available electronically on the Rhode Island DEM Web site at *www.state.ri.us/dem/programs/benviron/air/attainpn.htm*. EPA received no comments on these budgets during the adequacy comment period, and EPA also received no comments on our February 14, 2003, proposed approval of these budgets.

The Rhode Island DEM did, however, receive comment during their State comment period on the proposed motor vehicle emissions budgets. As part of their attainment demonstration, Rhode Island calculated on-road mobile source emissions for 1999, 2002 and 2007. When apportioning vehicle miles traveled (VMT) for 1999 among the light-duty gasoline vehicle and light-duty gasoline truck categories, Rhode Island utilized vehicle registration data for such vehicles from the Federal Highway Administration's Highway Statistics Series.[2] When apportioning VMT for 2002 and 2007, Rhode Island made further adjustments based on MOBILE6 default information to reflect the change in VMT mix that occurs over time due to increased sales of vehicles (*e.g.*, minivans and sport utility vehicles) in the light-duty gasoline truck category.

However, a commenter to the Rhode Island DEM noted an error in the methodology related to the vehicle registration data that were used. Some of the light-duty trucks reflected in the vehicle registration data were omitted in the reapportionment calculation and thus the percent of VMT attributed to light-duty gasoline vehicles and light-duty gasoline trucks were slightly off for each of the three years analyzed, Rhode Island DEM agreed that this technical error should be corrected and revised the on-road mobile source emission estimates for 1999, 2002 and 2007. In their submission dated March 24, 2003, Rhode Island includes revised mobile source budgets for 2007. These budgets properly reflect the percentage of light-duty gasoline trucks expected in the vehicle fleet mix in 2007. The attainment year motor vehicle emissions budgets established by this plan that we are approving are contained in Table 1 below.

TABLE 1.—2007 EMISSIONS BUDGETS FOR ON-ROAD MOBILE SOURCES IN TONS PER SUMMER DAY (TPSD)

Area	2007 VOC budget	2007 NO_X budget
Rhode Island	30.68	33.97

These revised budgets represent an increase of only approximately one percent as compared with the budgets that were proposed for approval on February 14, 2003. This minimal change in the motor vehicle emissions budgets does not affect the reasoning behind our February 14, 2003, proposed approval of Rhode Island's proposed attainment demonstration submitted on January 27, 2003, and EPA does not consider it to be a substantial change. Further, EPA finds that there is good cause pursuant to 5 U.S.C. 553(b)(3)(B) that publishing an additional notice of proposed rulemaking to take comment on this change would be impracticable, unnecessary, and contrary to the public interest. EPA is under court order to promulgate a Federal implementation plan if it cannot approve Rhode Island's attainment demonstration and its attendant motor vehicle emissions budgets by March 31, 2003. The recent submission of this change, less than a week before that deadline, makes it impossible to take comment on the change in an orderly process prior to the court's deadline for our action. Further opportunity for comment is also unnecessary because the substance of the issue concerning the corrected budgets was thoroughly aired in the State's public participation process in a time frame virtually contemporaneous with EPA's rulemaking on this attainment demonstration. It appears that any members of the public who were interested in this issue had ample opportunity to address it in the State's process, and it would be simply redundant for EPA to offer an essentially identical opportunity to ventilate the same question a few weeks after the State had done so. Finally, it is contrary to the public interest to delay EPA's approval of these 2007 budgets, which substantially reduce the level of motor vehicle emissions allowed under Rhode Island's SIP when compared with the currently approved motor vehicle emissions budgets. While the adjustment described above increased the size of the 2007 budgets very slightly compared with Rhode Island's proposal, the overall rate of decrease in the budgets over time remains essentially unchanged and, most importantly, remains consistent with Rhode Island's attainment demonstration. For these combined reasons, EPA finds good cause to dispense with further notice and public procedure concerning this minor change in the 2007 budgets.

Therefore, today EPA is approving these motor vehicle emissions budgets for the State of Rhode Island for 2007 into the SIP. EPA is approving these 2007 motor vehicle emissions budgets because they are consistent with the control measures in the SIP, and the SIP as a whole demonstrates attainment of the 1-hour ozone standard. The approved 2007 motor vehicle emissions budgets would apply in all future conformity determinations for an analysis year of 2007 and later. Note that a conformity determination with an analysis year between the present and 2006 would use the year 1999 motor vehicle emissions budgets of 41.57 tons per summer day of VOC and 46.40 tons per summer day of NO_X established in the approved post-1996 rate-of-progress plan for the Rhode Island serious ozone nonattainment area. 66 FR 30811 (June 8, 2001). However, at this time there is no analysis year required prior to 2007.

IV. EPA Action

EPA is approving the ground-level one-hour ozone attainment demonstration SIP for the Rhode Island serious ozone nonattainment area. EPA is also approving the attainment date for this area as November 15, 2007. EPA also approves the contingency measures, the RACM analysis, and the 2007 volatile organic compound and nitrogen oxide motor vehicle emissions budgets for the Rhode Island serious ozone nonattainment area for use in transportation conformity.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

[1] Memorandum from G. MacGregor, dated May 14, 1999, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision."

[2] Data obtained from the Federal Highway Administration's "Highway Statistics 2000;" tables MV–1 and MV–9; *see http://www.fhwa.dot.gov/ohim/hs00/mv.htm.*

Dated: March 27, 2003.

Robert W. Varney,

Regional Administrator, EPA—New England.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart OO—Rhode Island

■ 2. Section 52.2076 is amended by revising the table to read as follows:

§ 52.2076 Attainment of dates for national standards.

* * * * *

Air quality control region	Pollutant					
	SO		PM_{10}	NO_2	CO	O_3
	Primary	Secondary				
Rhode Island portion of AQCR 120 (Entire State of Rhode Island)	(a)	(b)	(a)	(a)	(a)	(c)

[a] Air quality levels presently better than primary standards or area is unclassifiable.
[b] Air quality levels presently better than secondary standards or area is unclassifiable.
[c] November 15, 2007.

■ 3. Section 52.2088 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 52.2088 Control strategy: Ozone.

* * * * *

(b) Approval—Revisions to the state implementation plan submitted by the Rhode Island Department of Environmental Management on March 24, 2003. The revisions are for the purpose of satisfying the one-hour ozone attainment demonstration requirements of section 182(c)(2)(A) of the Clean Air Act, for the Rhode Island serious ozone nonattainment area. The revision establishes a one-hour attainment date of November 15, 2007 for the Rhode Island serious ozone nonattainment area, and approves the contingency measures for purposes of attainment. This revision establishes motor vehicle emissions budgets for 2007 of 30.68 tons per day of volatile organic compounds and 33.97 tons per day of nitrogen oxides to be used in transportation conformity in the Rhode Island serious ozone nonattainment area. Rhode Island also commits to conduct a mid-course review to assess modeling and monitoring progress achieved towards the goal of attainment by 2007, and to submit the results to EPA by December 31, 2004.

[FR Doc. 03–8254 Filed 4–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 201–4202a; FRL–7472–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determinations for General Electric Transportation Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for General Electric Transportation Systems (GETS). GETS is a major source of nitrogen oxides (NO_X) located in Erie County, Pennsylvania. EPA is approving these revisions to establish NO_X RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on June 6, 2003 without further notice, unless EPA receives adverse written comment by May 7, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Makeba Morris, Acting Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major volatile organic compound (VOC) and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

II. Summary of SIP Revision

On December 9, 2002, PADEP submitted a formal revision to its SIP to establish and impose RACT for a major source of NO_X. The RACT determinations and requirements are included in the operating permit issued by PADEP. GETS is a coal-fired power generating station located in Erie County, Pennsylvania and is considered a major source of NO_X. In this instance, RACT has been established and imposed by PADEP in an operating permit. On December 9, 2002, PADEP submitted operating permit No. OP 25–025A to EPA as a SIP revision. This operating permit includes three coal fired boilers: Boiler Nos. 1, 5 and 9. The facility shall perform annual tune-ups, and operate and maintain the three boilers in accordance with the manufacturer's recommendations. Based on a 30-day rolling average, this operating permit contains NO_X emission limit rates for each of the three boilers of 0.59 lb/MMbtu. This operating permit also contains NO_X emission limits for the three boilers based on a 12-month consecutive period. The permit specifies the following limits: 400 tons per year (tpy) for Boiler No. 1, 324 tpy for Boiler No. 5, and 520 tpy for Boiler No. 9. NO_X emission reports for each boiler shall be submitted to PADEP within 30 days of the end of each calendar quarter. Coal consumption for each boiler shall be submitted on a quarterly basis. The coal consumption report shall be submitted to PADEP within 30 days of the end of each calendar quarter. A NO_X continuous emission monitoring system (CEMS) is required for the combined stack from the three boilers which shall be operated and maintained in accordance with 25 Pa. Code Chapter 139 and PADEP's latest "Continuous Source Monitoring Manual." The CEM system shall be approved by PADEP. CEMS reports shall be submitted to PADEP within 30 days after each calendar quarter, but no later than the time frame established in PADEP's latest "Continuous Source Monitoring Manual." The operating permit requires GETS to maintain records as follows: (a) the facility shall maintain records to demonstrate compliance with 25 Pa. Code Sections 129.91—129.94; (b) the records shall provide sufficient data and calculations to clearly demonstrate that the requirements of 25 Pa. Code Sections 129.91—129.94 are met; and (c) records shall be retained for at least two years and shall be made available to PADEP upon request.

III. EPA's Evaluation of the SIP Revisions

EPA is approving this SIP submittal because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT or for limiting a source's potential to emit. The Commonwealth has also imposed recordkeeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

IV. Final Action

EPA is approving a revision to the Commonwealth of Pennsylvania's SIP which establishes and requires RACT for GETS (OP 25–025A) located in Erie County, Pennsylvania. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on June 6, 2003 without further notice unless EPA receives adverse comment by May 7, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report

regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for General Electric Transportation Systems.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving the Pennsylvania's source-specific RACT requirements to control NO_X emissions from General Electric Transportation Systems in Erie County, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 19, 2003.

Thomas C. Voltaggio,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(198) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(198) Revisions pertaining to NO_X RACT determinations for a major source submitted by the Pennsylvania Department of Environmental Protection on December 9, 2002.

(i) Incorporation by reference.

(A) Letter of December 9, 2002 from the Pennsylvania Department of Environmental Protection transmitting source-specific NO_X RACT determinations.

(B) Operating permit (OP) for General Electric Transportation Systems, Erie County, OP 25–025A, effective August 26, 2002.

(ii) Additional Material—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the source listed in paragraph (c)(198)(i)(B) of this section.

[FR Doc. 03–8361 Filed 4–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 61

[SIP NO. SD–001–0013, SD–001–0014, SD–001–0015; FRL–7475–1]

Approval and Promulgation of Air Quality Implementation Plans; South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving State Implementation Plan (SIP) revisions submitted by the State of South Dakota on May 6, 1999 and June 30, 2000. The revisions modify the State's air quality rules so they are consistent with federal rules and clarify existing provisions. EPA is also removing from the SIP or not approving into the SIP, certain provisions of the State's air quality rules because they are not related to attainment or maintenance of the National Ambient Air Quality Standards (NAAQS) and are not appropriate for inclusion in the SIP. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective May 7, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202 and copies of the Incorporation by Reference material at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the South Dakota Department of Environmental and Natural Resources, Air Quality Program, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA, Region 8, (303) 312–6144.

SUPPLEMENTARY INFORMATION: On January 27, 2003 (68 FR 3848), EPA published a notice of proposed rulemaking (NPR) for the State of South Dakota. The NPR proposed partial approval and partial disapproval of State Implementation Plan (SIP) revisions submitted by the State of South Dakota on May 6, 1999 and June 30, 2000. The May 6, 1999 and June 30, 2000 submittals revise the State's air quality rules so they are consistent with federal rules and clarify existing provisions. EPA is also removing from the SIP or not approving into the SIP, certain provisions of the State's air quality rules because they are not related to attainment or maintenance of the National Ambient Air Quality Standards (NAAQS) and are not appropriate for inclusion in the SIP.

I. Final Action

Since we received no comments on the January 27, 2003 notice of proposed rulemaking, we are partially approving and partially disapproving State Implementation Plan revisions submitted by the State of South Dakota submitted on May 6, 1999 and June 30, 2000, except for provisions that we are not acting on, or have acted on previously. The sections of the rules that we are proposing to approve will replace the same numbered sections that have been previously approved into the SIP and are as follows: Sections 74:36:01:01(1) through (79), effective 4/4/1999; 74:36:01:03, effective 4/4/1999; 74:36:01:05, effective 4/4/1999; 74:36:01:07, effective 4/4/1999; 74:36:01:08, effective 4/4/1999; 74:36:01:10, effective 4/4/1999; 74:36:01:17, effective 4/4/1999; 74:36:01:20, effective 4/4/1999; 74:36:02:02, effective 6/27/2000; 74:36:02:03, effective 6/27/2000; 74:36:02:04, effective 6/27/2000; 74:36:02:05, effective 6/27/2000; 74:36:04:03, effective 4/4/1999; 74:36:04:09, effective 4/4/1999; 74:36:04:11, effective 4/4/1999; 74:36:04:12, effective 4/4/1999; 74:36:04:12.01, 4/4/1999; 74:36:04:13, effective 4/4/1999; 74:36:01:14, effective 4/4/1999; 74:36:04:18, effective 4/4/1999; 74:36:04:19, effective 4/4/1999; 74:36:04:20, effective 4/4/1999; 74:36:04:20.01, effective 4/4/1999; 74:36:04:20.04, effective 4/4/1999; 74:36:04:22, effective 4/4/1999; 74:36:06:02, effective 4/4/1999; 74:36:06:03, effective 4/4/1999; 74:36:06:07, effective 4/4/1999; 74:36:11:01, effective 6/27/2000; 74:36:12:01, effective 6/27/2000; 74:36:13:02, effective 6/27/2000; 74:36:13:03, effective 6/27/2000; 74:36:13:04, effective 6/27/2000; and 74:36:13:07, effective 6/27/2000.

We are not acting on the following as SIP revisions because they are not appropriate to be included in the SIP: sections 74:36:07:06.01; 74:36:07:34–42.01; and 74:36:13:08; and chapters 74:36:05, 74:36:08, and 74:36:16.

The SIP provisions that we previously acted on are as follows: 74:36:07:06.2, 74:36:07:07.01, 74:36:07:11 (repealed), 74:36:07:43, and 74:36:11:04.

Also, the State made revisions to previously approved 111(d) plans. Specifically, section 74:36:07:06.01 was updated to incorporate by reference 40 CFR part 60, as of July 1, 1998 and sections 74:36:07:34–42:01 were updated to incorporate by reference 40 CFR part 60, as of July 1, 1999. We are approving these revisions to the 111(d) plans.

We are also approving the removal of chapter 74:36:08 from the SIP and updating the table in 40 CFR 61.04(c)(8) to indicate that the 40 CFR part 61 NESHAPS are now delegated to the State.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. We believe the South Dakota SIP revisions that are the subject of this document will not interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act because the State's revisions are as no less stringent than requirements currently contained in their SIP. Additionally, currently there are no nonattainment areas in South Dakota.

II. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Vinyl chloride.

Dated: March 17, 2003.

Kerrigan G. Clough,

Deputy Regional Administrator, Region 8.

■ 40 CFR parts 52 and 61 are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart QQ—South Dakota

■ 2. Section 52.2170 is amended by adding paragraph (c)(21) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(21) On May 6, 1999 and June 30, 2000, South Dakota submitted revisions to its Air Pollution Control Program Rules. The sections of the rule being approved replace the same numbered sections that have previously been approved into the SIP. The provisions of section 74:36:07, except 74:36:07:29 and 74:36:07:30, which have previously been incorporated by reference in paragraphs (c)(16)(i)(A) and (c)(18)(i) of this section, are being removed from the South Dakota SIP.

(i) Incorporation by reference.

(A) Sections 74:36:01:01(1) through (79), effective 4/4/1999; 74:36:01:03, effective 4/4/1999; 74:36:01:05, effective 4/4/1999; 74:36:01:07, effective 4/4/1999; 74:36:01:08, effective 4/4/1999; 74:36:01:10, effective 4/4/1999; 74:36:01:17, effective 4/4/1999; 74:36:01:20, effective 4/4/1999; 74:36:02:02, effective 6/27/2000; 74:36:02:03, effective 6/27/2000; 74:36:02:04, effective 6/27/2000; 74:36:02:05, effective 6/27/2000; 74:36:04:03, effective 4/4/1999; 74:36:04:09, effective 4/4/1999; 74:36:04:11, effective 4/4/1999; 74:36:04:12, effective 4/4/1999; 74:36:04:12.01, effective 4/4/1999; 74:36:04:13, effective 4/4/1999; 74:36:01:14, effective 4/4/1999; 74:36:04:18, effective 4/4/1999; 74:36:04:19, effective 4/4/1999; 74:36:04:20, effective 4/4/1999; 74:36:04:20.01, effective 4/4/1999; 74:36:04:20.04, effective 4/4/1999; 74:36:04:22, effective 4/4/1999; 74:36:06:02, effective 4/4/1999; 74:36:06:03, effective 4/4/1999; 74:36:06:07, effective 4/4/1999; 74:36:11:01, effective 6/27/2000; 74:36:12:01, effective 6/27/2000; 74:36:13:02, effective 6/27/2000; 74:36:13:03, effective 6/27/2000; 74:36:13:04, effective 6/27/2000; and 74:36:13:07, effective 6/27/2000.

PART 61—[AMENDED]

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

■ 2. In § 61.04 the table in paragraph (c)(8) is amended by removing the footnote 2 designation from the heading for "SD".

[FR Doc. 03–8358 Filed 4–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7477–5]

RIN 2060–AG12

Protection of Stratospheric Ozone: Notice 17 for Significant New Alternatives Policy Program; Correction

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability; correction.

SUMMARY: The Environmental Protection Agency published in the **Federal Register** of December 20, 2002, a Notice of Acceptability related to the Significant New Alternatives Policy (SNAP) program. Additional, new information was recently made available to EPA and provided updated information related to the calculation of the environmental impact of a fire suppression substitute that was listed as an acceptable substitute in the Notice. Based on this new information, EPA is correcting the atmospheric lifetime and global warming potential (GWP) listed for the substitute fire suppression agent. This correction does not change EPA's finding of acceptability, as set forth in the Notice, for use of the substitute in fire protection. This document identifies and makes the above corrections.

DATES: This corrections is effective on April 7, 2003.

ADDRESSES: Information relevant to this correction notice is contained in Air Docket A–2002–08, 1301 Constitution Avenue, NW.; U.S. Environmental Protection Agency, Mail Code 6102T; Washington, DC, 20460. The docket reading room is located at the address above in room B102 in the basement. Reading room telephone: (202) 566–1744, facsimile: (202) 566–1749; Air docket staff telephone: (202) 566–1742, facsimile: (202) 566–1741. You may inspect the docket between 8:30 a.m. and 4:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Bella Maranion by telephone at (202) 564–9749, by fax at (202) 565–2155, by e-mail at *maranion.bella@epa.gov*, or by mail at U.S. Environmental Protection Agency, Mail Code 6205J, Washington, D.C. 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, NW., Washington, DC, 20001. Further information can be found by calling the Stratospheric Protection Hotline at (800) 296–1996, or by viewing EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/title6/snap/*.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency published in the **Federal Register** of December 20, 2002 (67 FR 77927), a Notice of Acceptability related to the Significant New Alternatives Policy (SNAP) program. After publication of FR Doc. 02–32130 on December 20, 2002, additional, new information was recently made available to EPA provided updated information related to the calculation of the environmental impact of a fire suppression substitute that was listed as an acceptable substitute in the notice. Based on this new information, EPA is correcting the atmospheric lifetime and global warming potential (GWP) listed for C6-perfluoroketone, a substitute fire suppression agent. EPA's evaluation of this new information is available in EPA air docket A–2002–08 at the address described above under **ADDRESSES.** This correction does not change EPA's finding of acceptability for use of C6-perfluoroketone as a substitute for halon 1301 in total flooding fire suppression applications in both normally occupied and unoccupied areas.

In FR Doc. 02–32130, published on December 20, 2002 (67 FR 77927), under "Supplementary Information," section I "Listing of Acceptable Substitutes," make the following corrections:

1. On p. 77931, in the first full paragraph in the third column, under the heading "Environmental Information," correct the sentence to read "C6-perfluoroketone has no ozone depletion potential, a global warming potential of between four and seven relative to CO2 over a 100-year time horizon, and an atmospheric lifetime of up to two weeks."

2. On p. 77932, in the first paragraph of the first column, under the heading "Comparison to Other Fire Suppressants," correct the second sentence to read "With no ozone-depletion potential, a global warming potential of between four and seven, and an atmospheric lifetime of up to two weeks, C6-perfluoroketone provides an improvement over use of halon 1301, hydrochlorofluorocarbons (HCFCs) and hydrofluorocarbons (HFCs) in fire protection."

Dated: March 25, 2003.

Drusilla Hufford,

Director, Global Programs Division.

[FR Doc. 03–8367 Filed 4–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7477–7]

RIN 2060–AG12

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances; Correction

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule; correction.

SUMMARY: The Environmental Protection Agency published in the **Federal Register** of January 27, 2003, a direct final rule related to the Significant New Alternatives Policy (SNAP) program. Additional, new information was recently made available to EPA related to the calculation of the environmental impact of a fire suppression substitute that was listed as an acceptable substitute in the direct final rule. Based on this new information, EPA is correcting the atmospheric lifetime and global warming potential (GWP) listed for the substitute fire suppression agent. This correction does not change EPA's finding of acceptability, as set forth in the rule, for use of the substitute in fire protection. This document identifies and makes the above correction.

DATES: This correction is effective on April 7, 2003.

ADDRESSES: Information relevant to this correction is contained in Air Docket A–2002–08, 1301 Constitution Avenue, NW.; U.S. Environmental Protection Agency, Mail Code 6102T; Washington, DC, 20460. The docket reading room is located at the address above in room B102 in the basement. Reading room telephone: (202) 566–1744, facsimile: (202) 566–1749; Air docket staff telephone: (202) 566–1742, facsimile: (202) 566–1741. You may inspect the docket between 8:30 a.m. and 4:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Bella Maranion by telephone at (202) 564–9479, by fax at (202) 565–2155, by e-mail at *maranion.bella@epa.gov,* or by mail at U.S. Environmental Protection Agency, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, N.W., Washington, D.C., 20001. Further information can be found by calling the Stratospheric Protection Hotline at (800) 296–1996, or by viewing EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/title6/snap/.*

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency published in the **Federal Register** of January 27, 2003, a direct final rule (68 FR 4004) related to the Significant New Alternatives Policy (SNAP) program. After publication of FR Doc. 03–1623 on January 27, 2003, additional, new information was recently made available to EPA and provided updated information related to the calculation of the environmental impact of a fire suppression substitute that was listed as an acceptable substitute in the direct final rule. Based on this new information, EPA is correcting the atmospheric lifetime and global warming potential (GWP) listed for C6-perfluoroketone, a substitute fire suppression agent. EPA's evaluation of this new information is available in EPA air docket A–2002–08 at the address described above under **ADDRESSES.** This correction does not change EPA's finding of acceptability, subject to use conditions, of this substitute for use in fire protection.

In FR Doc.03–1623, published on January 27, 2003 (68 FR 4004), under "Supplementary Information", section II, " Listing of Substitutes", make the following corrections:

1. On page 4006 in the second full paragraph of the third column, correct the fourth sentence to read, "C6-perfluoroketone has no ozone-depletion potential, a global warming potential of between four and seven compared to CO_2 on a 100-year time horizon, and an atmospheric lifetime of up to two weeks."

2. On page 4006 in the third full paragraph of the third column, correct the second sentence to read "With no ozone-depletion potential, a global warming potential of between four and seven, and an atmospheric lifetime of up to two weeks, C6-perfluoroketone provides an improvement over use of halon 1211, hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs) in fire protection."

Administrative Requirements

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this correction is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget (OMB). Because the EPA has made a "good cause" finding that this correction is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this correction does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. This correction also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This correction does not have substantial direct effects on the States, or on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This correction also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant. This rule is not a "significant energy action" as defined in Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355 (May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

This correction does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272) do not apply. This correction also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This correction does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the rule for the Listing of Substitutes for Ozone-Depleting Substances; Final Rule and Proposed Rule.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, the EPA has made such a good cause finding, including the reasons therefore, and established an effective date of April 7, 2003. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the correction in the **Federal Register**. This correction is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: March 25, 2003.

Drusilla Hufford,

Director, Global Programs Division.

[FR Doc. 03–8365 Filed 4–4–03; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 101

Federal Property Management Regulations

CFR Correction

In Title 41 of the Code of Federal Regulations, Chapter 101, revised as of July 1, 2002, beginning on page 493, in the Appendix to Subchapter H, remove Temporary Regulations H–29 and H–30.

[FR Doc. 03–55509 Filed 4–4–03; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–826; MM Docket No. 01–159; RM–10164; RM–10395]

Radio Broadcasting Services; Comanche, Mullin and Mason, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a petition for rule making filed at the request of Charles Crawford, proposing the allotment of FM Channel 224A at Comanche, Texas as that community's second local FM transmission service (RM–10164). *See* 66 FR 39473, July 31, 2001. In response to a counterproposal filed by Mullin Broadcasters (RM–10395) this documents allots Channel 224C3 to Mullin, Texas, as that community's first local aural transmission service. Our determination was based on the Commission's allotment priorities (*see Revisions of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982)), and is consistent with the Commission's policy to allot the highest class channel requested to a community that complies with the technical requirements of the Rules. Additionally, Channel 259A is allotted to Mason, Texas, as a replacement for vacant Channel 224A to accommodate the Mullin, Texas allotment. Coordinates used for Channel 224C3 at Mullin, Texas, are 31–33–24 NL and 98–39–55 WL. Coordinates used for replacement Channel 259A at Mason, Texas, remain unchanged at 30–45–00 NL and 99–14–00 WL. As Mason is located within 320 kilometers of the U.S.-Mexico border, the Mexican government will be advised of the channel substitution at that community. With this action, this docketed proceeding is terminated.

DATES: Effective May 5, 2003. A filing window for Channel 224C3 at Mullin, Texas, and for Channel 259A at Mason, Texas, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–159, adopted March 19, 2003, and released March 21, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 224A and adding Channel 259A at Mason; and by adding Mullin, Channel 224C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–8406 Filed 4–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–834; MB Docket No. 02–383, RM–10614]

Radio Broadcasting Services; Buffalo, Oklahoma

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Robert Fabian, allots Channel 224C2 to Buffalo, Oklahoma, as the community's first local aural transmission service. *See* 68 FR 532, January 6, 2003. Channel 224C2 can be allotted to Buffalo, in compliance with the Commission's minimum distance separation requirements, provided there is a site restriction of 19.8 kilometers (12.3 miles) east of the community. The reference coordinates for Channel 224C2 at Buffalo are 36–50–36 North Latitude and 99–24–30 West Longitude. A filing window for Channel 224C2 at Buffalo, Oklahoma, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective May 5, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC, 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket Nos. 02–383, adopted March 19, 2003, and released March 21, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Buffalo, Channel 224C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–8404 Filed 4–4–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021101264–3016–02; I.D. 032503A]

RIN 0648 AQ33

Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2003 Atlantic Herring Specifications; Clarification and Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification and Clarification of Seasonal Allocation for Area 1A for Atlantic Herring Specifications; correction.

SUMMARY: Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, NMFS clarifies the measures in the final rule implementing the final specifications for the 2003 Atlantic herring fishery. In that final rule, NMFS listed the 2003 total allowable catch (TAC) of Atlantic herring for Area 1A. However, the two seasonal TACs for the area were inadvertently omitted. The intent of this notification is to announce the 2003 seasonal allocation of Atlantic herring in Area 1A and correct the Table reflecting the 2003 Atlantic Herring Specifications published in the **Federal Register** on February 6, 2003.

DATES: The Atlantic herring specifications for fishing year 2003 published February 6, 2003 (68 FR 6088) are corrected, effective April 4, 2003, through December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail *paul.h.jones@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Need for Correction/Clarification

Final specifications for the 2003 Atlantic herring fishery were published on February 6, 2003 (68 FR 6088). In the rule, the preamble contained a table showing the Area TACs for the 2003 Atlantic herring fishery. However, the table inadvertently omitted the listing of the Area 1A TAC into two seasonal quotas. The final rule implementing Framework 1 to the Atlantic Herring Fishery Management Plan required annual specification of herring quotas into two seasonal fishing periods for Management Area 1A (January - May, and June - December). In the preamble of both the proposed specifications for the 2003 Atlantic herring fishery, published on November 15, 2002 (67 FR 69181), and the final specifications, the rules stated that there were only two changes from the specifications approved by NMFS for the 2002 fishery: A transfer of 10,000 mt from the Area 2 TAC reserve to the Area 3 TAC, resulting in an Area 3 TAC of 60,000 mt and an Area 2 TAC reserve of 70,000 mt; and a restriction on U.S. at-sea processing vessels to fish in Areas 2 and 3, only. Omitting the two seasonal quotas for Area 1A was not a change from the 2002 specifications.

Accordingly, in rule, FR Doc. 03–2798 published on February 6, 2003, on page 6089, in the first and second columns, the final specifications for the 2003 Atlantic herring fishery are corrected to read as follows, with specific reference to the seasonal quota allocation for Area 1A:

FINAL SPECIFICATIONS AND AREA TACS FOR THE 2003 ATLANTIC HERRING FISHERY

Specification	Final Allocation (mt)
ABC	300,000
OY	250,000
DAH	250,000
DAP	226,000
JVPt	20,000
JVP	10,000 (Area 2 and 3 only)
IWP	10,000
USAP	20,000 (Area 2 and 3 only)
BT	4,000
TALFF	0
Reserve	0
TAC–Area 1A	60,000 January 1, 2003–May 31, 2003, landings cannot exceed 6,000
TAC–Area 1B	10,000
TAC–Area 2	50,000 (TAC reserve: 70,000)
TAC–Area 3	60,000

This action is being taken pursuant to 50 CFR 648.200 and 648.202.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 1, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–8396 Filed 4–4–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 010918229–3033–02; I.D. 022301A]

RIN 0648–AP15

American Lobster Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to the final rule.

SUMMARY: This document contains a correction to the final rule published March 27, 2003, at 68 FR 14902. This rule amends regulations to modify the conservation management measures to the American lobster fisheries.

DATES: This correction is effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Ross, NOAA Fisheries, Northeast Region, 978–281–9234.

SUPPLEMENTARY INFORMATION: The final rule published at 68 FR 14902 on March 27, 2003, FR Doc 03–7067 has inadvertently omitted the amendatory language that adds Table 1 to Part 697. This correction, in conforming to the **Federal Register** procedural requirements, adds the missing amendatory instruction 7.

Correction

Accordingly, correct the March 27, 2003, publication by adding amendatory instruction 7 to read as follows:

On page 14902, third column, at the end of text following instruction 6, add the following text: "7. Add Table 1 to Part 679 to read as follows:".

Dated: April 1, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–8395 Filed 4–4–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 66
Monday, April 7, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 02–112–1]

Tuberculosis in Cattle and Bison; State and Zone Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the bovine tuberculosis regulations by establishing two separate zones with different tuberculosis risk classifications in the State of Michigan and raising the designation of one of those zones from modified accredited to modified accredited advanced. We are proposing this action based on our determination that Michigan meets the requirements for zone recognition and that one of the zones meets the criteria for designation as modified accredited advanced.

DATES: We will consider all comments that we receive on or before June 6, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–112–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–112–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–112–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph VanTiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal.

At the beginning of the 20th century, bovine tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for bovine tuberculosis in livestock.

Federal regulations implementing this program are contained in 9 CFR part 77, "Tuberculosis" (referred to below as the regulations), and in the "Uniform Methods and Rules-Bovine Tuberculosis Eradication" (UMR), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of tuberculosis. We propose to amend the regulations to establish two tuberculosis classification zones within Michigan.

Conditions for Zone Recognition

Under §§ 77.3 and 77.4 of the regulations, in order to qualify for zone classification by the Animal and Plant Health Inspection Service (APHIS), the State must meet the following requirements:

1. The State must have adopted and must be enforcing regulations that impose restriction on the intrastate movement of cattle, bison, and captive cervids that are substantially the same as those in place in part 77 for the interstate movement of those animals.
2. The designation of part of a State as a zone must otherwise be adequate to prevent the interstate spread of tuberculosis.
3. The zones must be delineated by the animal health authorities in the State making the request for zone recognition and must be approved by the APHIS Administrator.
4. The request for zone classification must demonstrate that the State has the legal and financial resources to implement and enforce a tuberculosis eradication program and has in place the infrastructure, laws, and regulations to require and ensure that State and Federal animal health authorities are notified of tuberculosis cases in domestic livestock or outbreaks in wildlife.
5. The request for zone classification must demonstrate that the State maintains, in each intended zone, clinical and epidemiological surveillance of animal species at risk of tuberculosis, at a rate that allows detection of tuberculosis in the overall population of livestock at a 2 percent prevalence rate with 95 percent confidence. The designated tuberculosis epidemiologist must review reports of all testing for each zone within the State within 30 days of the testing.
6. The State must enter into a memorandum of understanding with APHIS in which the State agrees to adhere to any conditions for zone recognition particular to that request.

Request for Zone Recognition in Michigan

Currently, the State of Michigan is classified as modified accredited for cattle and bison. However, we have received from the State of Michigan a request for zone recognition in which State animal health officials demonstrate that Michigan meets the requirements listed above for the requested zone recognition. Therefore, we propose to recognize two zones in Michigan as follows:

- The smaller of the two zones would consist of Alcona, Alpena, Cheboygan, Crawford, Emmet, Montmorency, Oscoda, Otsego, and Presque Isle

Counties and those portions of Iosco and Ogemaw Counties that are north of the southernmost boundary of the Huron National Forest and the Au Sable State Forest.

• The second zone in Michigan would consist of the remainder of the State.

The criteria for modified accredited advanced status are set forth in the definition of *Modified accredited advanced State or zone* in § 77.5 of the regulations. According to those criteria, the Administrator, upon his or her review may allow a State or zone with fewer than 30,000 herds to have up to 3 affected herds for each of the most recent 2 years, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone. State animal health officials in Michigan have demonstrated to APHIS that, except for the smaller zone, Michigan now meets these criteria.

The criteria for modified accredited status are set forth in the definition of *Modified accredited State or zone* in § 77.5 of the regulations. According to those criteria, the Administrator, upon his or her review, may allow a State or zone with fewer than 10,000 herds to have up to 10 affected herds for the most recent year, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures. State animal health officials in Michigan have demonstrated to APHIS that the smaller zone meets these criteria.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Bovine tuberculosis is a communicable disease of cattle, bison, cervids and other species, including humans, and results in losses of meat and milk production among infected animals. As part of the Cooperative State/Federal Tuberculosis Eradication Program, which has virtually eliminated bovine tuberculosis from the Nation's livestock populations, the regulations classify each State according to its tuberculosis risk and place certain restrictions on the movement of cattle and bison from States with high-risk classifications.

Currently, the State of Michigan is classified as modified accredited for cattle and bison. We propose to amend the regulations to establish two classification zones within Michigan. Alcona, Alpena, Cheboygan, Crawford, Emmet, Montmorency, Oscoda, Otsego, and Presque Isle Counties and those portions of Iosco and Ogemaw Counties that are north of the southernmost boundary of the Huron National Forest and the Au Sable State Forest would be classified as modified accredited. The designation of the remaining counties in the State would be raised from modified accredited to modified accredited advanced. We discuss below the projected effects of the proposed action.

As of January 2002, there were approximately 15,500 cattle operations in Michigan, totaling 990,000 head of cattle. According to the National Agricultural Statistics Service, the reported total cash value of cattle in Michigan is $900.9 million as of that year. Over 98 percent of Michigan's cattle operations yield less than $750,000 in yearly revenues and are therefore considered small entities under criteria established by the Small Business Administration.

For those counties or portions of counties in the smaller zone that would remain under modified accredited status, there would be no change in production costs. These 11 counties contribute approximately 63,100 head of cattle to the statewide total, representing only 6.4 percent of total cattle production in Michigan. The counties or portions of counties in the larger zone that would be raised from modified accredited status to modified accredited advanced status would experience fewer interstate movement restrictions associated with pre-movement testing requirements. Decreased tuberculin testing would result in decreased production costs for the affected producers, thus providing the monetary benefit described below.

The approximate per head tuberculin testing cost is $6.33, based on an average Michigan herd consisting of 60 animals. This is compared to an average sale value of approximately $910 per head. Thus, savings resulting from reduced testing represent less than 1 percent of the per-head value. This benefit is relatively small when compared to the total size and significance of the cattle and bison industry in Michigan and the United States overall.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, we propose to amend 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 would continue to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

2. In § 77.9, paragraph (b) would be revised to read as follows:

§ 77.9 Modified accredited advanced States or zones.

* * * * *

(b) The following are modified accredited advanced zones: All of the State of Michigan except for the zone that comprises those counties or portions of counties in Michigan described in § 77.11(b).

* * * * *

3. In § 77.11, paragraphs (a) and (b) would be revised to read as follows:

§ 77.11 Modified accredited States or zones.

(a) The following are modified accredited States: None.

(b) The following are modified accredited zones: A zone in Michigan that comprises Alcona, Alpena, Cheboygan, Crawford, Emmet, Montmorency, Oscoda, Otsego, and Presque Isle Counties and those portions of Iosco and Ogemaw Counties that are north of the southernmost boundary of the Huron National Forest and the Au Sable State Forest.

* * * * *

Done in Washington, DC, this 1st day of April, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–8332 Filed 4–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–53–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 155B, SA–365N and N1, AS–365N2, and AS 365 N3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model EC 155B, SA–365N and N1, AS–365N2, and AS 365 N3 helicopters with emergency flotation gear installed. This proposal would require inspecting the hydraulic brake hose (hose) for crazing, pinching, distortion, or leaks at the torque link hinge and replacing the hose, if necessary. This proposal would also require inspecting the hose and the emergency flotation gear pipe to ensure adequate clearance, and adjusting the landing gear leg, if necessary. This proposal is prompted by a report of a hose compression due to interference with a clamp that attaches the emergency flotation gear pipe. The actions specified by this proposed AD are intended to prevent failure of the hose, resulting in failure of hydraulic pressure to the brakes on the affected landing gear wheel and subsequent loss of control of the helicopter during a run-on landing.

DATES: Comments must be received on or before June 6, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–53–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–53–AD." The postcard will be date stamped and returned to the commenter.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model EC 155 B, AS 365 N, N1, N2, and N3 helicopters. The DGAC advises of receiving a report of a hose compression due to interference with a clamp that attaches the emergency flotation gear pipe.

Eurocopter has issued Alert Telex No. 32.00.09, for Model AS 365N, N1, N2, and N3 helicopters, and Alert Telex No. 32A004, for Model EC 155B helicopters, both dated July 31, 2002. These alert telexes specify checks of the condition of the hose, as well as ensuring that there is no interference between the hose and the emergency flotation gear pipe when the landing gear is retracted. The DGAC classified these alert telexes as mandatory and issued AD No. 2002–475–007(A) for Model EC 155 B helicopters, and AD No. 2002–474–058(A), for Model AS 365 N, N1, N2, and N3 helicopters, both dated September 18, 2002, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, the proposed AD would require, within the next 10 hours time-in-service (TIS), inspecting the hose for crazing, pinching, distortion, or leaks at the torque link hinge and replacing the hose before further flight, if necessary. The proposed AD would also require, at the next 100-hour TIS inspection, inspecting the hose and the emergency flotation gear pipe to ensure adequate clearance, and adjusting the landing gear leg, if necessary. The actions would be required to be accomplished in accordance with the alert telexes described previously.

The FAA estimates that 44 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per helicopter to accomplish the inspection and 5 work hours to replace any parts, as necessary, and that the average labor rate is $60 per work hour. Required parts would cost approximately $459 for the hose; if replacing the hose on two sides is required, the cost would be approximately $918. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,518 per helicopter, or $50,094 for the entire fleet, assuming 75 percent of the fleet (33 helicopters) is equipped with emergency flotation gear and the hoses are replaced on all 33 helicopters.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of

power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2002–SW–53–AD.

Applicability: Model EC 155B, SA–365N and N1, AS–365N2, and AS 365 N3 helicopters, with emergency flotation gear installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the hose, resulting in failure of hydraulic pressure to the brakes on the affected landing gear wheel and subsequent loss of control of the helicopter during a run-on landing, accomplish the following:

(a) Within 10 hours time-in-service (TIS), inspect the hose for crazing, pinching, distortion, or leaks as illustrated in Area A of Figure 1 of Eurocopter Alert Telex No. 32.00.09, for Model SA–365N and N1, AS–365N2, and AS 365 N3 helicopters, and Alert Telex No. 32A004, for Model EC 155B helicopters, both dated July 31, 2002 (Alert Telexes).

(b) If crazing, pinching, distortion, or leaks exist, replace the hose with an airworthy hose before further flight.

(c) At the next 100-hour TIS inspection, inspect the hose and the emergency flotation gear pipe to ensure adequate clearance and adjust the landing gear leg, if necessary, in accordance with the Operational Procedure, paragraph 2.B.2., of the applicable Alert Telexes.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 2002–475–007(A) and AD No. 2002–474–058(A), both dated September 18, 2002.

Issued in Fort Worth, Texas, on March 31, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–8329 Filed 4–4–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–47–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt and Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), that is applicable to Pratt and Whitney (PW) model 4000 series turbofan engines. That AD currently requires interim actions to address engine takeoff power loss events until the high-pressure-compressor (HPC) case is redesigned and available for incorporation on the PW4000 engines. This proposal would require the same actions as that AD, adds on-wing Testing-21 to Boeing 747 and MD–11 airplanes, and adds the requirement to install a new Ring Case Configuration (RCC) rear HPC on engines installed in the Boeing fleet. This proposal is prompted by the development of an RCC rear HPC for PW4000 series turbofan engines installed in the Boeing fleet. The actions specified in the proposed AD are intended to prevent engine takeoff power losses due to HPC surge.

DATES: Comments must be received by May 7, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, telephone (860) 565–6600; fax (860) 565–4503. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments, as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–47–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On October 11, 2002, the FAA issued AD 2002–21–10, Amendment 39–12916 (67 FR 65484, October 25, 2002), that:

- Establishes a minimum rebuild standard for engines and requires operators to remove PW4000 engines with cutback stators from service,
- Limits the number of PW4000 engines with potentially reduced stability margin to no more than one engine on each airplane,
- Removes engines from service using engine stagger limit criteria,
- Returns engines to service after having exceeded HPC cyclic limits or after shop maintenance by either passing engine fuel spike stability tests or overhauling the HPC,
- Performs repetitive test cell engine fuel spike stability tests at certain cycle intervals,
- Establishes a rules based criterion to determine the engine category on Airbus airplanes,
- Establishes criteria to allow engine stagger without Testing-21 for engines over their respective limits,
- Establishes criteria which may require Testing-21 on engines that have complied with Boeing/McDonnell Douglas/Airbus Fan Thrust Deterioration Mode (FTDM) ADs,
- Reestablishes the HPT/HPC cyclic mismatch criteria, and
- Adds criteria to address engine installation changes, aircraft transfers, and thrust rating changes.

That action was prompted by investigation and evaluation of PW4000 series turbofan engines surge data, and continuing reports of surges in the PW4000 fleet. That condition, if not corrected, could result in engine takeoff power losses due to HPC surge.

Since that AD was issued, PW issued service bulletin PW4ENG 72–755, dated February 28, 2003, that introduces a new RCC rear HPC for engines installed on Boeing airplanes.

Although the RCC rear HPC has been certified to 14 CFR part 33 and 14 CFR part 25 on Boeing airplanes, it has not completed certification to 14 CFR part 25 on Airbus and McDonnell Douglas airplanes.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of the following PW service information:

- Service Bulletin PW (SB) PW4ENG 72–755, dated February 28, 2003
- Internal Engineering Notice (IEN) 02KCW13, dated October 14, 2002
- IEN 02KCW13A, dated October 14, 2002
- IEN 02KCW13C, dated July 25, 2002
- IEN 02KCW13D, dated July 29, 2002
- IEN 02KCW13E, dated November 21, 2002
- IEN 02KCW13F, dated October 14, 2002
- IEN 02KCW13H, dated December 9, 2002
- SB PW4ENG72–714, Revision 1, dated November 8, 2001
- SB PW4ENG72–749, dated June 17, 2002
- IEN 96KC973D, dated October 12, 2001
- Temporary Revision (TR) TR 71–0018, dated November 14, 2001
- TR 71–0026, dated November 14, 2001
- TR 71–0035, dated November 14, 2001
- Cleaning, Inspection, and Repair (CIR) procedure CIR 51A357, Section 72–35–68, Inspection/Check-04, Indexes 8–11, dated September 15, 2001
- CIR 51A357, Section 72–35–68, Repair 16, dated June 15, 1996
- PW4000 PW engine manual (EM) 50A443, 71–00–00, TESTING–21, dated March 15, 2002
- PW4000 PW EM 50A822, 71–00–00, TESTING–21, dated March 15, 2002
- PW4000 PW EM 50A605, 71–00–00, TESTING–21, dated March 15, 2002

Additional Service Information

The FAA has reviewed and approved the technical contents of Chromalloy Florida Repair Procedures, 00 CFL–039–0, dated December 27, 2000 and 02 CFL–024–0, dated September 15, 2002.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other PW4000 series turbofan engines of this same type design, the proposed AD would supersede AD 2002–21–10 to require the same actions as that AD, adds on-wing Testing-21 to Boeing 747 and MD11 airplanes, and adds the requirement to install a new RCC rear HPC on engines installed in the Boeing fleet as follows:

- For engines installed on Boeing 767 airplanes, by May 31, 2006 and thereafter, ensure that at least one Configuration I engine is installed on the airplane. After May 31, 2006, the non-Configuration I engine installed on the airplane must have incorporated the Haynes material in the HPC inner case rear hook.
- For engines installed on Boeing 747 airplanes, by January 31, 2007 and thereafter, ensure that no more than one non-Configuration I engine is installed on the airplane. After January 31, 2007, the non-Configuration I engine installed on the airplane must have incorporated the Haynes material in the HPC inner case rear hook.
- Prior to June 30, 2009 or whenever the HPC module is disassembled to a level that separates the HPC rear case assembly at H flange from the HPC module, whichever occurs first, incorporate the RCC rear HPC. Engines incorporating the RCC rear HPC are Configuration I engines.

The actions are required to be done in accordance with the service information described previously and have been coordinated with the Transport Airplane Directorate.

Economic Analysis

There are approximately 2,300 engines of the affected design in the worldwide fleet. The FAA estimates that 550 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 183 work hours per engine to perform the

proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $119,500 per engine. Based on these figures, the total average annual cost of the proposed AD to U.S. operators is estimated to be $11,953,800.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12916, (67 FR 65484, October 25, 2002, and by adding a new airworthiness directive:

Pratt & Whitney: Docket No. 2000–NE–47–AD. Supersedes AD 2002–21–10, Amendment 39–12916.

Applicability: This airworthiness directive (AD) is applicable to Pratt and Whitney (PW) model PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines. These engines are installed on, but not limited to, certain models of Airbus Industrie A300, Airbus Industrie A310, Boeing 747, Boeing 767, and McDonnell Douglas MD–11 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (w) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent engine takeoff power losses due to high-pressure-compressor (HPC) surges, do the following:

(a) When complying with this AD, determine the configuration of each engine on each airplane using the following Table 1:

TABLE 1.—ENGINE CONFIGURATION LISTING

Configuration	Configuration description	Designator
(1) Phase 1 without high pressure turbine (HPT) 1st turbine vane cut back stator (1TVCB).	A	Engines that did not incorporate the Phase 3 configuration at the time they were originally manufactured, or have not been converted to Phase 3 configuration; and have not incorporated HPT 1TVCB using any revision of service bulletin (SB) PW4ENG 72–514.
(2) Phase 1 with 1TVCB	B	Same as Configuration A except that HPT 1TVCB has been incorporated using any revision of SB PW4ENG 72–514.
(3) Phase 3, 2nd Run	C	Engines that incorporated the Phase 3 configuration at the time they were originally manufactured, or have been converted to the Phase 3 configuration during service; and that have had at least one HPC overhaul since new.
(4) Phase 3, 1st Run	D	Same as Configuration C except that the engine has not had an HPC overhaul since new, except those engines that are defined as Configuration Designator G.
(5) HPC Cutback Stator Configuration Engines	E	Engines that currently incorporate any revision of SBs PW4ENG72–706, PW4ENG72–704, or PW4ENG72–711.
(6) Engines that have passed Testing—21	F	Engines which have successfully passed Testing—21 performed in accordance with paragraph (i) or (j) of this AD. Once an engine has passed a Testing-21, it will remain a Configuration F engine until the HPC is overhauled, or is replaced with a new or overhauled HPC.
(7) Phase 3, 1st Run Subpopulation Engines. These engines are identified by model and serial numbers (SNs) as follows: PW4152: SN 724942 through SN 724944 inclusive; PW4158: SN 728518 through SN 728533 inclusive; PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062: SN 727732 through SN 728000 inclusive and SN 729010 inclusive; PW4460, PW4462: SN 733813 through SN 733840 inclusive	G	Engines that incorporated the Phase 3 configuration at the time they were originally manufactured, that were built from August 29, 1997 up to the incorporation of the HPC inner rear case with the Haynes material rear hook at the original engine manufacturer and have not had an HPC overhaul since new.
(8) Engines from Configuration G that have have passed Testing-21.	H	Engines that have successfully passed Testing-21 performed in accordance with paragraph (i) or (j) of this AD. Once an engine has passed a Testing-21, it will remain a Configuration H engine until the HPC is overhauled, or is replaced with a new or overhauled HPC.
(9) Engines installed on Boeing airplanes with a build standard that incorporates a ring case configuration (RCC) rear HPC.	I	Engines that have incorporated PW SB PW4ENG 72–55, dated February 28, 2003, or have been manufactured with an RCC rear HPC.

Configuration E Engines Installed on Boeing 747, 767, and MD–11 Airplanes

(b) For Configuration E engines, do the following:

(1) Before further flight, limit the number of engines with Configuration E as described in Table 1 of this AD, to one on each airplane.

(2) Remove all engines with Configuration E from service before accumulating 1,300 cycles-since-new (CSN) or cycles-since-conversion (CSC) to Configuration E, whichever is later.

Configuration G and H Engines Installed on Boeing 747, 767, MD–11, and Airbus A300 and A310 Airplanes

(c) For Configuration G and H engines installed on Boeing 747, 767, MD–11, and Airbus A300 and A310 airplanes, except as provided in paragraph (b) of this AD:

(1) Before further flight, remove from service engines that exceed the CSN limits listed in the following Table 2. Thereafter, ensure that no Configuration G or H engines exceed the HPC CSN limits listed in Table 2 of this AD.

TABLE 2.— CONFIGURATION G AND H LIMITS

Configuration designator	B747 PW4056	B767 PW4052	B767 PW4056	B767 PW4060 PW4060A PW4060C W4062	MD–11 PW4460 PW4462	A300/310 PW4152 PW4156A PW4158
G	1,700 CSN 600 cycles-since-passing Testing-21 (CST)	3,000 CSN 600 CST	2,100 CSN 600 CST	1,350 CSN 600 CST	1,150 CSN 600 CST	2,800 CSN 600 CST
H						

(2) Prior to return to service and installed on Boeing 747 and 767 airplanes, Configuration G and H engines must meet the requirements of paragraph (j) of this AD.

(3) Prior to return to service and installed on Airbus or McDonnell Douglas airplanes, Configuration G or H engines must meet the requirements of paragraph (i) of this AD.

Engines Installed on Boeing 767 and MD–11 Airplanes

(d) For engines installed on Boeing 767 and MD–11 airplanes, except as provided in paragraph (b) and (c) of this AD:

(1) Before further flight, limit the number of engines that exceed the HPC CSN, HPC cycles-since-overhaul (CSO), or HPC CST limits in Table 3 of this AD, to no more than one engine per airplane. Thereafter, ensure that no more than one engine per airplane exceeds the HPC CSN, CSO, or CST limit in Table 3 of this AD.

(2) Prior to return to service and installed on MD11 airplanes, engines must meet the requirements of paragraph (i) of this AD.

(3) Prior to return to service and installed on Boeing 767 airplanes, engines must meet the requirements of paragraph (j) of this AD.

Engines Installed on Boeing 747 Airplanes

(e) Except as provided in paragraph (b) and (c) of this AD, before further flight, and thereafter, manage the engine configurations installed on Boeing 747 airplanes as follows:

(1) Limit the number of Configuration A, B, C, or E engines that exceed the HPC CSN or HPC CSO limits listed in Table 3 of this AD, to not more than one engine per airplane. Table 3 follows:

TABLE 3.—ENGINE LIMITS FOR BOEING AIRPLANES

Configuration designator	B747–PW4056	B767–PW4052	B767–PW4056	B767–PW4060 PW4060A PW4060C PW4062	MD–11 PW4460 PW4462
A	1,400 CSN or CSO	3,000 CSN or CSO	1,600 CSN or CSO	900 CSN or CSO	800 CSN or CSO.
B	2,100 CSN or CSO	4,400 CSN or CSO	2,800 CSN or CSO	2,000 CSN or CSO	1,200 CSN or CSO.
C	2,100 CSO	4,400 CSO	2,800 CSO	2,000 CSO	1,300 CSO.
D	2,600 CSN	4,400 CSN	3,000 CSN	2,200 CSN	2,000 CSN.
E	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO.
F	800 CST	800 CST	800 CST	800 CST	800 CST.

(2) The single Configuration A, B, C, or E engine per airplane that exceeds the HPC CSN or CSO limits listed in Table 3 of this AD, must be limited to 2,600 HPC CSN or CSO for Configuration A, B, or C engines, or 1,300 HPC CSN or CSC to Configuration E, whichever is later; for Configuration E engines.

(3) Remove from service Configuration D engines before accumulating 2,600 CSN.

(4) Remove from service Configuration F engines before accumulating 800 CST.

(5) Prior to return to service and installed on Boeing airplanes, Configuration A, B, C, D, and F engines must meet the requirements of paragraph (j) of this AD.

Engines Installed on Airbus A300 and A310 Airplanes

(f) Use paragraphs (f)(1) through (f)(9) to determine which Airbus A300 PW4158 engine category 1, 2, or 3 limits of the following Table 4 of this AD apply to your engine fleet:

TABLE 4.—ENGINE LIMITS FOR AIRBUS AIRPLANES

Configuration designator	A300 PW4158 category 1, and A310 PW4156 and PW4156A	A300 PW4158 category 2, and A310 PW4152	A300 PW4158 category 3
A	900 CSN or CSO	1,850 CSN or CSO	500 CSN or CSO.
B	2,200 CSN or CSO	4,400 CSN or CSO	1,600 CSN or CSO.
C	2,200 CSO	4,400 CSO	1,600 CSO.
D	4,400 CSN	4,400 CSN	4,400 CSN.
E	Not Applicable	Not Applicable	Not Applicable.
F	800 CST	800 CST	800 CST.

(1) Determine the number of Group 3 takeoff surges experienced by engines in your fleet before April 13, 2001. Count surge events for engines that had an HPC overhaul and incorporated either SB PW 4ENG 72–484 or SB PW4ENG 72–575 at the time of overhaul. Do not count surge events for engines that did not have the HPC overhauled (*i.e.* 1st run engine) or had the HPC overhauled but did not incorporate either SB PW4ENG 72–484 or SB PW4ENG 72–575. See paragraph (v)(5) of this AD for a definition of a Group 3 takeoff surge.

(2) Determine the number of cumulative HPC CSO accrued by engines in your fleet before April 13, 2001. Count HPC CSO for engines that had an HPC overhaul and incorporated either SB PW4ENG 72–484 or SB PW4ENG 72–575 at the time of overhaul. Do not count HPC CSO accrued on your engines while operating outside your fleet.

(3) Calculate the surge rate by dividing the number of Group 3 takeoff surges determined in paragraph (f)(1) of this AD, by the number of cumulative HPC CSO determined in paragraph (f)(2) of this AD, and then multiply by 1,000.

(4) If the surge rate calculated in paragraph (f)(3) of this AD is less than 0.005, go to paragraph (f)(5) of this AD. If the surge rate calculated in paragraph (f)(3) of this AD is greater than or equal to 0.005, go to paragraph (f)(6) of this AD.

(5) If the cumulative HPC CSO determined in paragraph (f)(2) of this AD is greater than or equal to 200,000 cycles, use A300 PW4158 Category 2 limits of Table 4 of this AD. If less than 200,000 cycles, go to paragraph (f)(7) of this AD.

(6) If the surge rate calculated in paragraph (f)(3) of this AD is greater than 0.035, use A300 PW 4158 Category 3 limits of Table 4 of this AD. If less than or equal to 0.035, go to paragraph (f)(7) of this AD.

(7) Determine the percent of takeoffs with greater than a 1.45 Takeoff engine pressure ratio (EPR) data for engines operating in your fleet. Count takeoffs from a random sample of at least 700 airplane takeoffs that has occurred over at least a 3-month time period, for a period beginning no earlier than 23 months prior to the effective date of this AD. See paragraph (v)(6) of this AD for definition of Takeoff EPR data.

(8) If there is insufficient data to satisfy the criteria of paragraph (f)(7) of this AD, use A300 PW4158 Category 3 limits of Table 4 of this AD.

(9) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (f)(7) of this AD is greater than 31%, use A300 PW 4158 Category 3 limits listed in Table 4 of this AD. If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (f)(7) of this AD is less than or equal to 31%, use A300 PW 4158 Category 1 limits listed in Table 4 of this AD.

(g) For engines installed on Airbus A300 or A310 airplanes, except as provided in paragraph (c) of this AD, before further flight, limit the number of engines that exceed the CSN, CSO, or CST limits listed in Table 4 of this AD, to no more than one engine per. airplane. Thereafter, ensure that no more than one engine per airplane exceeds the HPC CSN, CSO, or CST limits listed in Table 4 of this AD. See paragraph (i) of this AD for return to service requirements.

(h) For Airbus A300 PW4158 engine operators, except those operators whose engine fleets are determined to be Category 3 classification based on surge rate in accordance with paragraph (f)(6) of this AD, re-evaluate your fleet category within 6 months from the last evaluation, and thereafter, at intervals not to exceed 6 months, using the following criteria:

(1) For operators whose engine fleets are initially classified as Category 1 or 3 in accordance with paragraph (f) of this AD, determine the percent of takeoffs with greater than a 1.45 Takeoff EPR data for engines operating in your fleet. Count takeoffs from a sample of at least 200 takeoffs that occurred over the most recent six month time period since the last categorization was determined, or the total number of takeoffs accumulated over 6 months if less than 200 takeoffs. See paragraph (v)(6) of this AD for definition of takeoff EPR data.

(i) If there is insufficient data to satisfy the criteria of paragraph (h)(1) of this AD, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(ii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(1) of this AD is greater than 31%, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(iii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(1) of this AD is less than or equal to 31%, use A300 PW4158 Category 1 limits listed in Table 4 of this AD.

(2) For operators whose engine fleets are initially classified as Category 2 in accordance with paragraph (f) of this AD, determine the percent of takeoffs with greater than a 1.45 Takeoff EPR data for engines operating in your fleet. Count takeoffs from a sample of at least 200 takeoffs that occurred over the most recent six month time period since the last categorization was determined, or the total number of takeoffs accumulated over 6 months if less than 200 takeoffs. See paragraph (v)(6) of this AD for definition of takeoff EPR data.

(i) If there is insufficient data to satisfy the criteria of paragraph (h)(2) of this AD, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(ii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(2) of this AD is greater than 37%, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(iii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(2) of this AD is greater than or equal to 21% and less than or equal to 37%, use A300 PW4158 Category 1 limits listed in Table 4 of this AD.

(iv) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(2) of this AD is less than 21%, use A300 PW4158 Category 2 limits listed in Table 4 of this AD.

Return to Service Requirements for Engines To Be Installed on Airbus or McDonnell Douglas Airplanes

(i) Engines removed from service in accordance with paragraph (c), (d), or (g) of this AD may be returned to service and installed on Airbus or McDonnell Douglas airplanes under the following conditions:

(1) After passing a cool-engine fuel spike stability test (Testing-21) that has been done in accordance with one of the following PW4000 Engine Manuals (EM) as applicable, except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge:

(i) PW4000 EM 50A443, 71–00–00, TESTING–21, dated March 15, 2002.

(ii) PW4000 EM 50A822, 71–00–00, TESTING–21, dated March 15, 2002.

(2) Engines tested before the effective date of this AD, in accordance with PW4000 EM 50A443, Temporary Revision No. 71–0026, dated November 14, 2001; or PW4000 EM 50A822, Temporary Revision No. 71–0018, dated November 14, 2001; or PW Internal Engineering Notice (IEN) 96KC973D, dated October 12, 2001, meet the requirements of Testing-21; or

(3) After passing an on-wing Testing-21 on PW4460 and PW4462 engines installed on the MD–11 airplanes that has been done in accordance with Major IEN 02KCW13H, dated December 9, 2002 or done prior to the approval of Major IEN 02KCW13H, dated December 9, 2002 in accordance with Minor IEN 02KCW13F, dated October 14, 2002 except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge; or

(4) The engine HPC was replaced with an HPC that is new from production with no time in service; or

(5) The engine HPC has been overhauled, or the engine HPC replaced with an overhauled HPC with zero cycles since overhaul; or

(6) An engine that is either below or exceeds the limits of Table 3 or Table 4 of this AD may be removed and installed on another airplane without Testing-21, as long as the requirements of paragraph (c), (d), or (g) of this AD are met at the time of engine installation.

Return to Service Requirements for Engines To Be Installed on Boeing 747 or 767 Airplanes

(j) Engines removed from service in accordance with paragraph (c), (d), or (e) of this AD may be returned to service and installed on Boeing airplanes under the following conditions:

(1) After passing a cool-engine fuel spike stability test (Testing-21) that has been done in accordance with PW4000 EM 50A605, 71–00–00, Testing-21, dated March 15, 2002, except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge; or

(2) Engines tested before the effective date of this AD, in accordance with PW IEN 96KC973D, dated October 12, 2001, or PW4000 EM 50A605, Temporary Revision No. 71–0035, dated November 14, 2001 meet the requirements of Testing-21; or

(3) For PW4056 engines installed on Boeing 747 airplane, after successfully completing on-wing Testing-21 in accordance with Major IEN 02KCW13E, dated November 21, 2002 or if done prior to the approval of Major IEN 02KCW13E dated November 21, 2002 in accordance with Minor IEN's 02KCW13, dated October 14, 2002, 02KCW13A, dated October 14, 2002, 02KCW13C, dated July 25, 2002, or 02KCW13D, July 29, 2002 except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge; or

(4) An engine that is either below or exceeds the limits of Table 3 or Table 4 of this AD may be removed and installed on another airplane without Testing-21, as long as the requirements of paragraph (c), (d), or (e) of this AD are met at the time of engine installation.

(5) Engine has incorporated the RCC rear HPC in accordance with PW SB PW4ENG 72–755, dated February 28, 2003. Completing this SB changes the engine configuration to Configuration I.

Phase 0 or Phase 1, FB2T or FB2B Fan Blade Configurations

(k) For Configuration A, B, C, D, E, F, G, and H engines with Phase 0 or Phase 1, FB2T or FB2B fan blade configurations complying with the requirements of AD 2001–09–05, (66 FR 22908, May 5, 2001), AD 2001–09–10, (66 FR 21853, May 2, 2001), or AD 2001–01–10, (66 FR 6449, January 22, 2001), do the following:

(1) Operators complying with the ADs listed in paragraph (k) of this AD using the weight restriction compliance method, must perform Testing-21 in accordance with paragraph (i) or (j) of this AD whenever any quantity of fan blades are replaced with new fan blades, overhauled fan blades, or with fan blades having the leading edges recontoured after the effective date of this AD, if during the shop visit the HPC is not overhauled and separation of a major engine flange, located between "A" flange and "T" flange, does not occur.

(2) If an operator changes from the weight restriction compliance method to the fan blade leading edge recontouring method after the effective date of this AD, testing-21 in accordance with paragraph (i) or (j) of this AD is required each time fan blade leading edge recontouring is done, if the fan blades accumulate more than 450 cycles since new or since fan blade overhaul, or since the last time the fan blade leading edges were recontoured.

Minimum Build Standard For Engines Installed on Airbus and McDonnell Douglas Airplanes

(l) Use the following minimum build standards for engines to be returned to service and installed on Airbus and McDonnell Douglas airplanes:

(1) After the effective date of this AD, do not install an engine with HPC and HPT modules where the CSO of the HPC is 1,500 cycles or greater than the CSN or CSO of the HPT.

(2) For any engine that undergoes an HPC overhaul after the effective date of this AD:

(i) Inspect the HPC mid hook and rear hook of the HPC inner case for wear in accordance with PW Clean, Inspect and Repair (CIR) Manual PN 51A357, Section 72–35–68 Inspection/Check-04, Indexes 8–11, dated March 15, 2002 or September 15, 2001. If the HPC rear hook is worn beyond serviceable limits, replace the HPC inner case rear hook with an improved durability hook in accordance with PW SB PW4ENG 72–714, Revision 1, dated November 8, 2001, or Chromalloy Florida Repair Procedure 00 CFL–039–0, dated December 27, 2000. If the HPC inner case mid hook is worn beyond serviceable limits, repair the HPC inner case mid hook in accordance with PW CIR PN 51A357 Section 72–35–68, Repair-16, dated June 15, 1996, or in accordance with PW SB PW4ENG 72–749, dated June 17, 2002, or Chromalloy Florida Repair Procedure 02 CFL–024–0, dated September 15, 2002.

(ii) After the effective date of this AD, any engine that undergoes an HPC overhaul may not be returned to service unless it meets the build standard of PW SB PW4ENG 72–484, PW4ENG 72–486, PW4ENG 72–514, and PW4ENG 72–575. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG 72–514.

(3) After the effective date of this AD, any engine that undergoes separation of the HPC and HPT modules must not be installed on an airplane unless it meets the build standard of PW SB PW4ENG 72–514. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG 72–514.

Minimum Build Standard for Engines Installed on Boeing 747 and 767 Airplanes

(m) For engines to be returned to service and installed on Boeing 747 and 767 airplanes, after the effective date of this AD, any HPC module that is disassembled to a level that separates the HPC rear case assembly at H flange from the HPC module may not be returned to service unless the RCC rear HPC is incorporated in accordance with PW SB PW4ENG 72–755, dated February 28, 2003.

Stability Testing Requirements for Engines to be Installed on Airbus or McDonnell Douglas Airplanes

(n) For engines to be installed on Airbus or McDonnell Douglas airplanes, after the effective date of this AD, Testing-21 must be performed in accordance with paragraph (i) of this AD, before an engine can be returned to service after having undergone maintenance in the shop, except under any of the following conditions:

(1) The engine HPC was overhauled, or replaced with an overhauled HPC with zero cycles since overhaul; or the engine HPC was replaced with an HPC that is new from production with no time in service.

(2) The shop visit did not result in the separation of a major engine flange located between "A" flange and "T" flange; or

(3) Engines with an HPC having zero CSN or CSO, or engines that successfully passed Testing-21 with zero CST; and are split at Flange E for transportation reasons as specified in the applicable Storage/Transport section of the applicable Engine Manual.

Stability Testing Requirements for Engines to be Installed on Boeing 747 or 767 Airplanes

(o) For engines to be installed on Boeing 747 or 767 airplanes, after the effective date of this AD, Testing-21 must be performed in accordance with paragraph (j) of this AD, before an engine can be returned to service after having undergone maintenance in the

shop, except under any of the following conditions:

(1) Engine HPC has incorporated the RCC rear HPC in accordance with PW SB PW4ENG 72–755, dated February 28, 2003. Completing this SB changes the engine configuration to Configuration I.

(2) The shop visit did not result in the separation of a major engine flange located between "A" flange and "T" flange; or

(3) Engines that successfully passed Testing-21 with zero CST, and are split at Flange E for transportation reasons as specified in the applicable Storage/Transport section of the applicable EM.

Thrust Rating Changes, Installation Changes, and Engine Transfers

(p) When a thrust rating change has been made by using the Electronic Engine Control (EEC) programming plug, or an installation change has been made during an HPC overhaul, use the lowest cyclic limit of Table 3 or Table 4 of this AD, associated with any engine thrust rating change or with any installation change made during this period. See paragraph (v)(2) for definition of HPC overhaul period.

(q) When a PW4158 engine is transferred to another PW4158 engine operator whose engine fleet has a different category, use the lowest cyclic limit in Table 4 of this AD that was used or will be used during the affected HPC overhaul period.

(r) When a PW4158 engine operator whose engine fleet changes category in accordance with paragraph (h) of this AD, use the lowest cyclic limits in Table 4 of this AD that were used or will be used during the affected HPC overhaul period.

(s) Engines with an HPC having zero CSN or CSO at the time of thrust rating change, or installation change, or engine transfer between PW4158 engine operators, or subsequent change in operator engine fleet category in accordance with paragraph (h) of this AD in the direction of lower to higher Table 4 limits, are exempt from the lowest cyclic limit requirement in paragraphs (p), (q), and (r) of this AD.

Engines That Surge

(t) For engines that experience a surge, and after troubleshooting procedures are completed for airplane-level surge during forward or reverse thrust, do the following:

(1) For engines that experience a Group 3 takeoff surge, remove the engine from service before further flight and for engines that will be installed on Airbus or McDonnell Douglas airplanes, perform an HPC overhaul; or for engines that will be installed on Boeing airplanes, incorporate the RRC rear HPC in accordance with PW SB PW4ENG 72–755, dated February 28, 2003.

(2) For any engine that experiences a forward or reverse thrust surge at EPR's greater than 1.25 that is not a Group 3 takeoff surge, do the following:

(i) For Configuration A, B, C, D, F, G, and H engines, remove engine from service within 25 CIS or before further flight if airplane-level troubleshooting procedures require immediate engine removal, and perform Testing-21 in accordance with paragraph (i) or (j) of this AD, as applicable.

(ii) For Configuration E engines, remove engine from service within 25 CIS or before further flight if airplane-level troubleshooting procedures require immediate engine removal.

(3) Paragraphs (t)(1) and (t)(2) are not applicable to engines that incorporate the RCC rear HPC in accordance with PW SB PW4ENG 72–755, dated February 28, 2003.

Terminating Action for Boeing Airplanes

(u) For Boeing operators with PW4000 engines installed on Boeing 747 or Boeing 767 airplanes, modify the engine HPC assembly by incorporating the RCC rear HPC in accordance with PW SB PW4ENG 72–755, dated February 28, 2003 as follows:

(1) For engines installed on Boeing 767 airplanes, manage the engine configuration installed on the airplanes in your fleet as follows:

(i) By May 31, 2006 and thereafter, ensure that at least one Configuration I engine is installed on the airplane.

(ii) After May 31, 2006, the non-Configuration I engine installed on the airplane must have incorporated the Haynes material in the HPC inner case rear hook during the original engine build or during an HPC overhaul in accordance with PW4ENG 72–714, dated June 27, 2000 or Revision 1, dated November 8, 2001, or Chromalloy Florida Repair procedure 00CFL–039–0, dated December 27, 2000.

(2) For engines installed on Boeing 747 airplanes, manage the engine configuration installed on the airplanes in your fleet as follows:

(i) By January 31, 2007 and thereafter, ensure that no more than one non-Configuration I engine is installed on the airplane.

(ii) After January 31, 2007, the non-Configuration I engine installed on the airplane must have incorporated the Haynes-material in the HPC inner case rear hook during the original build or during an HPC overhaul in accordance with PWENG 72–714, dated June 27, 2000, or Revision 1, dated November 8, 2001, or Chromalloy Florida Repair procedure 00CFL–039–0, dated December 27, 2000.

(3) Prior to June 30, 2009 or whenever the HPC module is disassembled to a level that separates the HPC rear case assembly at H flange from the HPC module, whichever occurs first, incorporate the RCC rear HPC in accordance with PW SB PW4ENG 72–755, dated February 28, 2003. Engines incorporating the RCC rear HPC are Configuration I engines. See paragraph (v)(7) for definition of HPC rear case assembly.

(4) Incorporation of the RCC rear HPC constitutes terminating action to the Testing-21 requirements as specified in paragraph (o) of this AD, and engine stagger limit requirements as specified in paragraphs (c), (d), and (e) of this AD for engines installed on Boeing airplanes.

Note 2: Terminating action to this AD for engines installed on Airbus and McDonnell Douglas airplanes is pending RCC rear HPC certification to 14 CFR part 25. Once approved, this AD will be superseded to add terminating action requirements for the Airbus and McDonnell Douglas fleets.

Definitions

(v) For the purposes of this AD, the following definitions apply:

(1) An HPC overhaul is defined as restoration of the HPC stages 5 through 15 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(2) An HPC overhaul period is defined as the time period between HPC overhauls.

(3) An HPT overhaul is defined as restoration of the HPT stage 1 and 2 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(4) A Phase 3 engine is identified by a (-3) suffix after the engine model number on the data plate if incorporated at original manufacture, or a "CN" suffix after the engine serial number if the engine was converted using PW SBs PW4ENG 72–490, PW4ENG 72–504, or PW4ENG 72–572 after original manufacture.

(5) A Group 3 takeoff surge is defined as the occurrence of any of the following engine symptoms that usually occur in combination during an attempted airplane takeoff operation (either at reduced, derated or full rated takeoff power setting) after takeoff power set, which can be attributed to no specific and correctable fault condition after completing airplane-level surge during forward thrust troubleshooting procedures:

(i) Engine noises, including rumblings and loud "bang(s)."

(ii) Unstable engine parameters (EPR, N1, N2, and fuel flow) at a fixed thrust setting.

(iii) Exhaust gas temperature (EGT) increase.

(iv) Flames from the inlet, the exhaust, or both.

(6) Takeoff EPR data is defined as Maximum Takeoff EPR if takeoff with Takeoff-Go-Around (TOGA) is selected or Flex Takeoff EPR if takeoff with Flex Takeoff (FLXTO) is selected. Maximum Takeoff EPR or Flex Takeoff EPR may be recorded using any of the following methods:

(i) Manually recorded by the flight crew read from the Takeoff EPR power management table during flight preparation (see Aircraft Flight Manual (AFM) chapter 5.02.00 and 6.02.01, or Flight Crew Operation Manual (FCOM) chapter 2.09.20) and then adjusted by adding 0.010 to the EPR value recorded; or

(ii) Automatically recorded during Takeoff at 0.18 Mach Number (Mn) (between 0.15 and 0.20 Mn is acceptable) using an aircraft automatic data recording system and then adjusted by subtracting 0.010 from the EPR value recorded; or

(iii) Automatically recorded during takeoff at maximum EGT, which typically occurs at 0.25—0.30 Mn, using an aircraft automatic data recording system.

(7) HPC rear case assembly is defined as the HPC rear case with heat shields and other minor detail parts installed within the HPC rear case, but not including the HPC rear segmented stators.

Alternative Methods of Compliance

(w) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(x) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Testing-21 Reports

(y) Within 60 days of test date, report the results of the cool-engine fuel spike stability assessment tests (Testing-21) and on-wing Testing-21 to the ANE–142 Branch Manager, Engine Certification Office, 12 New England Executive Park, Burlington, MA 01803–5299, or by electronic mail to 9-ane-surge-ad-reporting@faa.gov. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056. Be sure to include the following information:

(1) Engine serial number.

(2) Engine configuration designation per Table 1 of this AD.

(3) Date of the cool-engine fuel spike stability test or on-wing Testing-21, as applicable.

(4) HPC Serial Number, and HPC time and cycles-since-new and since-compressor-overhaul at the time of the test.

(5) Results of the test (Pass or Fail).

Issued in Burlington, Massachusetts, on March 31, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–8328 Filed 4–4–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: Parole Commission, Justice.

ACTION: Proposed rule.

SUMMARY: The U.S. Parole Commission is proposing to revise three rules that describe the conditions of release for federal and District of Columbia offenders on parole supervision, and District of Columbia offenders serving terms of supervised release. The proposed revision consolidates similar provisions for the three groups of offenders and makes the conditions easier to read and understand. There are some minor changes in the directions given to the releasees. Finally, the Commission proposes to generally apply a condition presently required for some DC supervised releasees convicted of domestic violence offenses to all persons under supervision who were convicted of domestic violence offenses.

DATES: Comments must be received by May 7, 2003.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd, Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: The Parole Commission has the responsibility of imposing and enforcing conditions of release for those federal and District of Columbia offenders who have been released to parole supervision [1] and those District of Columbia felon offenders sentenced to a term of supervised release. Section 4209 of Title 18 U.S. Code describes the conditions of release that must be imposed for federal parolees, and permits the Commission to impose other conditions that are reasonably related to the nature and circumstances of the parolee's offense and the history and characteristics of the parolee, and other limitations that are reasonable to protect the public welfare. As a result of the transfer of parole authority required by the National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105–33, and laws now codified at DC Code 24–131(a) and (c) the Commission has the same broad authority granted to the former District of Columbia Board of Parole to release a prisoner on parole "upon such terms and conditions as the Board shall from time to time prescribe." DC Code 24–404(a). For District of Columbia offenders on supervised release, the Commission has the authority to impose conditions of supervised release as provided in 18 U.S.C. 3583 using the procedures outlined in the federal parole statutes. DC Code 24–133(c)(2) and 24–403.01(b)(6).

Through the conditions of release the Commission provides guides and limitations for the releasee's conduct while under supervision. See 18 U.S.C. 4209(b) and 3583(f). The Commission imposes and enforces the conditions primarily to protect the public from a recurrence of criminal behavior by the releasee. The conditions are listed on a certificate given to the releasee at the outset of the supervision term. Examples of general conditions of release are requirements that the releasee obey all laws, remain within the geographical limits of the supervision district, and give complete and accurate reports of his activities to the supervision officer. Some conditions are required by statute, e.g., that the offender refrain from unlawful use of a controlled substance or that a sex offender comply with sex offender registration laws. The Commission may also impose special conditions of release to address specific problems evident from the releasee's history, such as a requirement that the releasee participate in a drug treatment program or a mental health aftercare program.

The releasee's supervision officer is responsible for the day-to-day implementation of the release conditions.[2] If the releasee violates a condition of release, the consequence may range from an informal reprimand from the supervision officer or modification of release conditions to the releasee's return to prison through a revocation proceeding. Therefore, it is important that the release conditions should be sufficiently clear and specific to effectively inform the releasee of the rules he must follow under supervision. The releasee has the responsibility of seeking the guidance of the supervision officer if there is any ambiguity concerning the duties required of the releasee by the conditions.

Under the present format of the rules, the Commission has described the conditions of release that generally apply to persons on supervision in three separate rules within Part 2 of 28 CFR. Section 2.40 describes the conditions of parole for federal parolees. Section 2.85 covers conditions of parole for DC parolees. Section 2.204 lists the conditions of supervised release for DC supervised releasees. Each of these rules lists in full the general conditions of

[1] "Parole supervision" includes supervision of offenders for the remainder of the sentence of imprisonment after release by good time deduction. *See, e.g.*, 18 U.S.C. 4164.

[2] For federal parolees, the supervision officer is a U.S. Probation Officer. 28 CFR 2.38. DC Code offenders on parole or supervised release in the District of Columbia are supervised by community supervision officers of the Court Services and Offender Supervision Agency of the District of Columbia. 28 CFR 2.91.

release. Since the general conditions of release are virtually identical for all three groups of offenders, the rules are unnecessarily duplicative. The proposed rules reduce this duplication by using § 2.204 as the rule for the full statement of applicable conditions and then placing cross-references to § 2.204 in § 2.40 and § 2.85. Provisions that are unique to a particular group of offenders are maintained in the rules for the respective group, *e.g.*, the rule on the effect of a prisoner's refusal to sign a release certificate is maintained in § 2.40 and § 2.85.

The rules were reorganized and edited to make the conditions easier to read and understand. The revision includes minor changes and clarifications in the directions given to releasees. For example, the revised rule at § 2.204(a)(3) changes the direction given to a releasee who has an emergency and cannot report to the designated supervision office within 72 hours of release. The revised rule instructs that a releasee in this situation shall contact the designated supervision office by telephone, rather than report to the U.S. Probation Office nearest to the releasee's location. The revised rule at § 2.204(a)(5)(ii) clarifies that a releasee is prohibited from possessing ammunition, in addition to firearms and other dangerous weapons. (Convicted felons are prohibited by 18 U.S.C. 922(g) from possessing a firearm or ammunition.) The revised rule at § 2.204(a)(4)(iii), with the cross-references in the other sections, removes any question whether the condition advising a releasee to permit visits of the supervision officer to the releasee's residence and workplace applies to federal parolees as well as DC parolees and supervised releasees.

The Commission proposes § 2.204 as the repository for the full statement of the release conditions because the Commission's workload will eventually shift from parole to DC supervised release cases, and the statute governing supervised release cases (18 U.S.C. 3583) outlines the greatest number of release conditions that Congress has mandated for persons on supervision. The proposed revision incorporates in the rules all release conditions and other provisions required by statutory law for persons in the three groups. The proposal includes a decision to generally extend a condition mandating treatment for a supervised releasee convicted of a crime of domestic violence those persons on parole supervision. The statute at 18 U.S.C. 4209 does not require the condition for federal parolees and there is no DC law that mandates this condition for DC parolees. The Commission believes that this condition should be required for all persons on supervision who have been convicted of a crime of domestic violence.

The proposed revision retains rules on such matters as the consequence of an offender's failure to acknowledge his acceptance of release conditions by signing the release certificate and the procedures for modifying release conditions after an offender is released to the community.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this proposed rule does not constitute a significant rule within the meaning of Executive Order 12866. The proposed rule, if adopted, will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to section 804(3)(c) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Proposed Rule

Accordingly, the U.S. Parole Commission proposes the following amendments to 28 CFR part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.40 is revised to read as follows:

§ 2.40 Conditions of release.

(a) *General conditions of release.* (1) The conditions set forth in § 2.204(a)(3)–(6) apply for the reasons set forth in § 2.204(a)(1). These conditions are printed on the certificate of release issued to each releasee.

(2) The refusal of a prisoner who has been granted a parole date to sign the certificate of release (or any other document necessary to fulfill a condition of release) constitutes withdrawal of that prisoner's application for parole as of the date of refusal. To be considered for parole again, that prisoner must reapply for parole consideration. A prisoner who is released to supervision through good-time deduction who refuses to sign the certificate of release is nevertheless bound by the conditions set forth in that certificate.

(b) *Special conditions of release.* (1) The Commission may impose a condition other than one of the general conditions of release if the Commission determines that such condition is necessary to protect the public welfare and provide adequate supervision of the releasee. Examples of special conditions of release that the Commission frequently imposes are found at § 2.204(b)(2).

(2) If the Commission requires the releasee's participation in a drug-treatment program, the releasee must submit to a drug test before release, if the special condition was imposed before release, and to at least two other drug tests, as determined by the supervision officer. A decision not to impose this special condition, because available information indicates a low risk of future substance abuse by the releasee, shall constitute good cause for suspension of the drug testing requirements of 18 U.S.C. 4209(a). If the Commission imposes this special condition before release, a grant of parole or reparole is contingent upon the prisoner passing all pre-release drug tests administered by the Bureau of Prisons.

(c) *Changing conditions of release.* The provisions of § 2.204(c) apply.

(d) *Appeal.* A releasee may appeal under § 2.26 an order to impose or modify a release condition not later than 30 days after the date the condition is imposed or modified.

(e) *Application of release conditions to absconder.* The provisions of § 2.204(d) apply.

(f) *Revocation for possession of a controlled substance.* If the Commission finds after a revocation hearing that a releasee, released after December 31, 1988, has possessed a controlled substance, the Commission shall revoke parole or mandatory release. If such a releasee fails a drug test, the Commission shall consider appropriate alternatives to revocation. The Commission shall not revoke parole on the basis of a single, unconfirmed positive drug test, if the releasee challenges the test result and there is no other violation found by the Commission to justify revocation.

(g) *Supervision officer guidance.* The provisions of § 2.204(f) apply.

(h) *Definitions.* For purposes of this section—

(1) The terms *supervision officer, domestic violence crime, approved offender-rehabilitation program* and *firearm*, as used in § 2.204, have the meanings given those terms by § 2.204(g);

(2) The term *releasee*, as used in this section and in § 2.204 means a person convicted of a federal offense who has been released on parole or released through good-time deduction; and

(3) The term *certificate of release*, as used in this section and § 2.204, means the certificate of parole or mandatory release delivered to the prisoner under § 2.29.

3. Section 2.85 is revised by revising the section to read as follows:

§ 2.85 Conditions of Release.

(a) *General conditions of release.* (1) The conditions set forth in § 2.204(a)(3)–(6) apply for the reasons set forth in § 2.204(a)(1). These conditions are printed on the certificate of release issued to each releasee.

(2) The refusal of a prisoner who has been granted a parole date to sign the certificate of release (or any other document necessary to fulfill a condition of release) constitutes withdrawal of that prisoner's application for parole as of the date of refusal. To be considered for parole again, the prisoner must reapply for parole consideration. A prisoner who is released to supervision through good-time deduction who refuses to sign the certificate of release is nevertheless bound by the conditions set forth in that certificate.

(b) *Special conditions of release.* The Commission may impose a condition other than one of the general conditions of release if the Commission determines that such condition is necessary to protect the public welfare and provide adequate supervision of the releasee. Examples of special conditions of release that the Commission frequently imposes are found at § 2.204(b)(2).

(c) *Changing conditions of release.* The provisions of § 2.204(c) apply.

(d) *Application of release conditions to absconder.* The provisions of § 2.204(d) apply.

(e) *Supervision officer guidance.* The provisions of § 2.204(f) apply.

(f) *Definitions.* For purposes of this section—

(1) The terms *supervision officer, domestic violence crime, approved offender-rehabilitation program* and *firearm*, as used in § 2.204, have the meanings given those terms by § 2.204(g);

(2) The term *releasee*, as used in this section and in § 2.204, means the certificate of parole or mandatory release delivered to the releasee under § 2.86.

4. Section 2.204 is revised to read as follows:

§ 2.204 Conditions of Supervised Release.

(a)(1) *General conditions of release and notice by certificate of release.* The conditions set forth in paragraphs (a)(3)–(6) of this section apply to every releasee and are necessary to protect the public welfare and to provide adequate supervision of the releasee. The certificate of release issued to each releasee by the Commission notifies the releasee of these conditions.

(2) *Effect of refusal to sign certificate of release.* A releasee who refuses to sign the certificate of release is nonetheless bound by the conditions set forth in that certificate.

(3) *Reporting arrival.* The releasee shall go directly to the district named in the certificate, appear in person at the supervision office, and report the releasee's residence address to the supervision officer. If the releasee is unable to appear in person at that office within 72 hours of release because of an emergency, the releasee shall contact that office by telephone. A releasee who is initially released to the physical custody of another authority shall follow these directions upon release from the custody of the other authority.

(4) *Providing information to and cooperating with the supervision officer.*

(i) The releasee shall, between the first and third day of each month, make a written report to the supervision officer on a form provided for that purpose. The releasee shall also report to the supervision officer at such times and in such a manner as that officer directs and shall provide such information as the supervision officer requests. All information that a releasee provides to the supervision officer shall be complete and truthful.

(ii) The releasee shall notify the supervision officer within two days of an arrest or questioning by a law-enforcement officer, a change in place of residence, or a change in employment.

(iii) The releasee shall permit the supervision officer to visit the releasee's residence and workplace.

(iv) The releasee shall permit the supervision officer to confiscate any material that the supervision officer believes may constitute contraband and that is in plain view in the releasee's possession, including in the releasee's residence, workplace, or vehicle.

(v) The releasee shall submit to a drug or alcohol test whenever ordered to do so by the supervision officer.

(5) *Prohibited conduct.*

(i) The releasee shall not violate any law and shall not associate with a person who is violating any law.

(ii) The releasee shall not possess a firearm, other dangerous weapon, or ammunition.

(iii) The releasee shall not drink alcoholic beverages to excess and shall not illegally buy, possess, use, or administer a controlled substance. The releasee shall not frequent a place where a controlled substance is illegally sold, dispensed, used, or given away.

(iv) The releasee shall not leave the geographic limits set by the certificate of release without written permission from the supervision officer.

(v) The releasee shall not associate with a person who has a criminal record without permission from the supervision officer.

(vi) The releasee shall not enter into an agreement to act as an informer or special agent for a law-enforcement agency without the prior approval of the Commission.

(6) *Additional conditions.*

(i) The releasee shall make a diligent effort to work regularly, unless excused by the supervision officer, and to support any legal dependent. The releasee shall participate in an employment readiness program if so directed by the supervision officer

(ii) The releasee shall make a diligent effort to satisfy any fine, restitution order, court costs or assessment, or court-ordered child support or alimony payment to which the releasee is subject. The releasee shall provide financial information relevant to the payment of such a financial obligation that is requested by the supervision officer. If unable to pay such a financial obligation in one sum, the releasee shall cooperate with the supervision officer to establish an installment-payment schedule.

(iii) If the term of supervision results from a conviction for a domestic violence crime, and such conviction is the releasee's first conviction for such a crime, the releasee shall, as directed by the supervision officer, attend an approved offender-rehabilitation program if such a program is readily available within a 50-mile radius of the releasee's residence.

(iv) The releasee shall comply with any applicable sex-offender registration law.

(v) The releasee shall provide a DNA sample, as directed by the supervision officer, if collection of such sample is

authorized by the DNA Analysis Backlog Elimination Act of 2000.

(vi) If the releasee is supervised by the District of Columbia Court Services and Offender Supervision Agency, the releasee shall submit to the sanctions imposed by the supervision officer within the limits established by an approved schedule of graduated sanctions if the supervision officer finds that the releasee has tested positive for illegal drugs or has committed a noncriminal violation of the conditions of release. Notwithstanding the imposition of a graduated sanction, if the releasee is a risk to the public safety, or is not complying in good faith with the sanction imposed, the Commission may revoke the term of supervision based upon the violation that caused the imposition of the sanction, the failure to comply with the sanction imposed, or both.

(b)(1) *Special conditions of release.* The Commission may impose a condition other than a condition set forth in paragraphs (a)(3)–(6) of this section if the Commission determines that such condition is necessary to protect the public welfare and provide adequate supervision of the releasee.

(2) The following are examples of special conditions frequently imposed by the Commission—

(i) That the releasee reside in or participate in the program of a community corrections center, or both, for all or part of the period of supervision;

(ii) That the releasee participate in a drug- or alcohol-treatment program, and abstain from all use of alcohol and other intoxicants;

(iii) That, as an alternative to incarceration, the releasee remain at home during nonworking hours and have compliance with this condition monitored by telephone or electronic signaling devices; and

(iv) That the releasee permit a supervision officer to conduct a search of the releasee's person, or of any building, vehicle, or other area under the control of the releasee, at such time as that supervision officer shall decide, and to seize contraband found thereon or therein.

(3) If the Commission requires the releasee's participation in a drug-treatment program, the releasee must submit to a drug test within 15 days of release, if the special condition was imposed before release, and to at least two other drug tests, as determined by the supervision officer. A decision not to impose this special condition, because available information indicates a low risk of future substance abuse by the releasee, shall constitute good cause for suspension of the drug testing requirements of 18 U.S.C. 3583(d).

(c) *Changing conditions of release.* (1) The Commission, sua sponte or at the request of the supervision officer or the releasee, may at any time modify or add to the conditions of release if the Commission determines that such modification or addition is necessary to protect the public welfare and provide adequate supervision.

(2)(i) Except as provided in paragraph (c)(2)(ii) of this section, before the Commission orders a change of condition, the releasee shall be notified of the proposed modification or addition and, unless waived, shall have 10 days from receipt of such notification to comment on the proposed modification or addition. Following that 10-day period, the Commission shall have 21 days, exclusive of holidays, to determine whether to order such modification or addition to the conditions of release.

(ii) The 10-day notice requirement of paragraph (c)(2)(i) of this section does not apply to a change of condition that results from a revocation hearing for the releasee, a determination that the modification or addition must be ordered immediately to prevent harm to the releasee or to the public, or a request from the releasee.

(d) *Application of release conditions to absconder.* A releasee who absconds from supervision prevents the term of supervision from expiring and the running of the term is tolled during the time that the releasee is an absconder. A releasee who absconds from supervision remains bound by the conditions of release, even after the date that the term of supervision originally was scheduled to expire. The Commission may revoke the term of supervision based on a violation of a release condition committed by such a releasee before the expiration of the term of supervision, as extended by the period of absconding.

(e) *Revocation for certain violations of release conditions.* If the Commission finds after a revocation hearing that a releasee has possessed a controlled substance, refused to comply with drug testing, or possessed a firearm, the Commission shall revoke the term of supervision and impose a term of imprisonment as provided at § 2.218.

(f) *Supervision officer guidance.* The Commission expects a releasee to understand the conditions of release according to the plain meaning of those conditions and to seek the guidance of the supervision officer before engaging in conduct that may violate a condition of release. The supervision officer may instruct a releasee to refrain from particular conduct that would violate a condition of release or to take specific steps to avoid or correct a violation of a condition of release.

(g) *Definitions.* As used in this section, the term—

(1) *Releasee* means a person who has been sentenced to a term of supervised release by the Superior Court of the District of Columbia;

(2) *Supervision officer* means a Community Supervision Officer of the District of Columbia Court Services and Offender Supervision Agency or United States Probation Officer;

(3) *Domestic violence crime* has the meaning given that term by 18 U.S.C. 3561, except that the term "court of the United States" as used in that definition shall be deemed to include the District of Columbia Superior Court;

(4) *Approved offender-rehabilitation program* means a program that has been approved by the District of Columbia Court Services and Offender Supervision Agency (or the United States Probation Office) in consultation with a State Coalition Against Domestic Violence or other appropriate experts;

(5) *Certificate of release* means the certificate of supervised release delivered to the releasee under § 2.203; and

(6) *Firearm* has the meaning given by 18 U.S.C. 921.

Dated: March 21, 2003.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 03–7849 Filed 4–4–03; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is proposing to exempt those records contained in the systems of records identified as F033 AF A, entitled "Information Requests—Freedom of Information Act" and F033 AF B, entitled "Privacy Act Request Files" when an exemption has been previously claimed for the records in "other" Privacy Act systems of records. The exemptions are intended to preserve the exempt status of the records when the purposes underlying the exemptions for the original records are still valid and necessary to protect the contents of the records.

DATES: Comments must be received on or before June 6, 2003, to be considered by this agency.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 806b

Privacy.

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Appendix C to part 806b is amended by adding paragraphs (b)(24) and (b)(25) to read as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

Appendix C to Part 806b—General and Specific Exemptions.

* * * * *

(b) Specific exemptions. * * *

(24) *System identifier and name:* F033 AF A, Information Requests-Freedom of Information Act.

(i) *Exemption:* During the processing of a Freedom of Information Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Department of the Air Force hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are apart.

(ii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record, and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(25) *System identifier and name:* F033 AF B, Privacy Act Request Files.

(i) *Exemption:* During the processing of a Privacy Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Department of the Air Force hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are apart.

(ii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reason:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent (1) such provisions have been identified and an exemption claimed for the original record, and (2) the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: March 31, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–8214 Filed 4–4–03; 8:45 am]

BILLING CODE 5001–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–7474–6]

Establishment and Meeting of the Negotiated Rulemaking Committee on All Appropriate Inquiry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Establishment of FACA Committee and meeting announcement.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2. section 9(a)(2)), we are giving notice that the Environmental Protection Agency is establishing the Negotiated Rulemaking Committee On All Appropriate Inquiry. We also are announcing the date and location of the first meeting of the Committee. EPA has determined that the regulatory

negotiation process will ensure that we obtain a diverse array of input from both private sector stakeholders and state program officials who are familiar with and have experience in implementing processes to conduct all appropriate inquiry. EPA also has determined that this Committee is in the public interest and will assist the Agency in performing its duties as prescribed in the Small Business Liability Relief and Brownfields Revitalization Act (the Brownfields law). Negotiations will begin in April 2003 and conclude by December 2003.

Copies of the Committee Charter will be filed with the appropriate committees of Congress and the Library of Congress.

DATES: The first meeting of the Negotiated Rulemaking Committee on All Appropriate Inquiry will be held on April 29 and 30, 2003. The meeting is scheduled for 9 a.m. to 4:30 p.m. on both dates.

ADDRESSES: The first meeting of the Committee will be held in Conference Room 1117A of EPA East, 1201 Constitution Ave. NW., Washington, DC. The meeting is scheduled for 9 a.m. to 4:30 p.m. on April 29 and 30, 2003.

FOR FURTHER INFORMATION CONTACT: Persons needing further information should contact Patricia Overmeyer of EPA's Office of Brownfields Cleanup and Redevelopment, 1200 Pennsylvania Ave., NW., Mailcode 5105T, Washington, DC 20460, (202) 566–2774, or *overmeyer.patricia@epa.gov*.

SUPPLEMENTARY INFORMATION: On March 6, 2003 EPA published a notice in the **Federal Register** (68 FR 10675) announcing its intent to form a negotiated rulemaking committee under the Negotiated Rulemaking Act of 1996 and the Federal Advisory Committee Act. The purpose of the Committee will be to conduct discussions and reach consensus, if possible, on proposed regulatory language setting standards and practices for conducting all appropriate inquiry, as required by the Small Business Liability Relief and Brownfields Revitalization Act (the Brownfields law). That Notice discussed the issues to be negotiated and the interest groups proposed as members of the committee. The notice also discussed the procedures involved in a Negotiated Rulemaking process. The public comment period for that notice closed on April 5, 2003.

Issues for Negotiation

We anticipate that the issues to be addressed by the Negotiated Rulemaking Committee on All Appropriate Inquiry may include:

- Balancing the goals and priorities of state regulatory programs, privately-developed consensus standards, and the Congressional mandate for a federal standard for conducting all appropriate inquiry.
- Developing clear and concise standards that address each of the statutory criteria (section 101(35)(B)(iii) of CERCLA).
- Balancing the need to put abandoned properties back into productive reuse with concerns for public health and environmental protection.
- Balancing a need for clear and comprehensive standards that will ensure a high level of certainty in identifying potential environmental concerns without imposing time consuming and unnecessarily expensive regulatory requirements.
- Defining the shelf life of an assessment and the extent to which an assessment, or the results of all appropriate inquiry, may be transferred to subsequent property owners.
- Minimizing disruptions to the current real estate market due to the development of a federal standard that is different from current industry protocols while ensuring that the federal standard is protective and in compliance with statutory criteria.
- Identifying the extent to which sampling and analysis of potentially contaminated property may be required to document the presence, or the lack of, environmental contamination.
- Identifying what information is necessary on the potential contamination of adjacent and adjoining properties, as well as underlying groundwater resources.
- Establishing a list of contaminants to include in the investigation when conducting all appropriate inquiry.

Participants

The Committee will be composed of approximately 25 members representing parties of interest to the rulemaking ensuring a balanced representation from affected and interested stakeholder groups. EPA anticipates that the committee will contain the following types of representatives:

- Environmental Interest Groups
- Environmental Justice Community
- Federal Government
- Tribal Government
- State Government
- Local Government
- Real Estate Developers
- Bankers and Lenders
- Environmental Professionals

EPA has determined that this Committee is in the public interest and will assist the Agency in performing its duties as prescribed in the Small Business Liability Relief and Brownfields Revitalization Act (the Brownfields law).

The first meeting of the Committee will be held on April 29, 2003 in Washington, DC. The Committee will address organizational issues such as groundrules, schedules, and prioritization of issues discussions over the next few meetings. There is no requirement for advance registration for members of the public who wish to attend and observe the meeting. Opportunity for the general public to address the Committee will be provided at the end of the Committee meeting agenda.

Thomas P. Dunne,

Associate Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 03–7504 Filed 4–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 201–4202b; FRL–7473–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determinations for General Electric Transportation Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of establishing reasonably available control technology (RACT) determinations for General Electric Transportation Systems (GETS). GETS is a major source of nitrogen oxides (NO_X) located in Erie County, Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 7, 2003.

ADDRESSES: Written comments should be addressed to Makeba Morris, Acting Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Pennsylvania's Approval of NO_X RACT Determinations for General Electric Transportation Systems, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: March 19, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–8362 Filed 4–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7477–6]

RIN 2060–AG12

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances; Correction

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; correction.

SUMMARY: The Environmental Protection Agency published in the **Federal Register** of January 27, 2003, a direct final rule and companion proposed rule related to the Significant New Alternatives Policy (SNAP) program. A typographical error was made in the listing of a product name. This document identifies and corrects the error in the proposed rule.

DATES: These corrections are made as of April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Bella Maranion, by telephone at (202) 564–9479, by fax at (202) 565–2155, by e-mail at *maranion.bella@epa.gov*, or by mail at U.S. Environmental Protection Agency, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, NW., Washington, DC, 20001. Further information can be found by calling the Stratospheric Protection Hotline at (800) 296–1996, or by viewing EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/title6/snap/*.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency published in the **Federal Register** of January 27, 2003, a proposed rule (68 FR 4012) related to the Significant New Alternatives Policy (SNAP) program. In FR Doc. 03–1624, published on January 27, 2003, a typographical error was made in the listing of a product name.

In FR Doc. 03–1624, published on January 23, 2003 (68 FR 4012), under "Supplementary Information", section II, "Administrative Requirements", make the following correction: on page 4013, in the second full paragraph of the second column, correct the product name "H Galen HOPES" to read "H Galden HFPEs" in both places in the paragraph where this error occurs.

Administrative Requirements

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this correction is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget (OMB). Because the EPA has made a "good cause" finding that this correction is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this correction does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. This correction also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This correction does not have substantial direct effects on the States, or on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This correction also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant. This rule is not a "significant energy action" as defined in Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355 (May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

This correction does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272) do not apply. This correction also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This correction does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the rule for the Listing of Substitutes for Ozone-Depleting Substances; Final Rule and Proposed Rule.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: March 25, 2003.

Drusilla Hufford,

Director, Global Programs Division.

[FR Doc. 03–8366 Filed 4–4–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–821; MM Docket No. 99–243; RM–9675, 10121, 10122, 10123]

Radio Broadcasting Services; Cameron, Rosebud, Thorndale and Thrall, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: A *Notice of Proposed Rule Making* was issued in response to a petition filed by Houston Christian Broadcasters, Inc. ("HCB"). *See* 64 FR 37926, July 14, 1999. HCB requested the allotment of Channel *286A at Thorndale, TX, reservation of the channel for noncommercial educational use, and amendment of its application for Channel 257A at Thorndale to specify operation on Channel *286A. Counterproposals were filed by Munbila Broadcasting Corp. requesting the allotment of Channel 286A at Rosebud, TX and by Elgin FM Limited Partnership requesting the allotment of Channel 286A at Thrall, TX. Additionally, a one-step application filed by Cameron Broadcasting requesting the substitution of Channel 286C3 for Channel 232A at Cameron, TX was accepted as a counterproposal. The proposals for Thorndale, Rosebud and Thrall, TX have been withdrawn. The application for Cameron, TX will be processed by the Audio Division subject to Commission Rules. Action in this document dismisses the petition for Thorndale and the counterproposals requesting allotments at Rosebud and Thrall. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–243, adopted March 19, 2003, and released March 21, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–8405 Filed 4–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–626; MB Docket No. 03–58; RM–10608]

Radio Broadcasting Services; Pelham and Meigs, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Jerry E. White, Cindy Mitchell White, Donald E. White and Donald F. White d/b/a Mitchell County Television requesting the reallotment of Channel 222A from Pelham, Georgia to Meigs, Georgia, as the community's first local aural transmission service, and modification of the construction permit for Station WQLI to reflect the changes. Channel 222A can be allotted to Meigs at coordinates 31–04–50 and 84–09–33.

DATES: Comments must be filed on or before May 5, 2003, and reply comments on or before May 20, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–58, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Meigs, Channel 222A and removing Pelham, Channel 222A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–8403 Filed 4–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–627; MB Docket No. 03–57; RM–10565]

Radio Broadcasting Services; Fort Collins, Westcliffe, and Wheat Ridge, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Tsunami Communications, Inc., licensee of Station KTCL, Channel 227C, Fort Collins, Colorado, proposing the substitution of Channel 227C0 for Channel 227C at Fort Collins and reallotment of Channel 227C0 to Wheat Ridge, Colorado. The coordinates for Channel 227C0 at Wheat Ridge are 39–40–18 and 105–07–32. To accommodate Channel 227C0 at Wheat Ridge, we shall propose the substitution of Channel 249A for vacant Channel 227A at Westcliffe, Colorado, at coordinates 38–03–21 and 105–30–02. The proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 227C0 at Wheat Ridge, Colorado.

DATES: Comments must be filed on or before May 5, 2003, and reply comments on or before May 20, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp, Shook, Hardy & Bacon, 600 14th Street, NW., Suite 800, Washington, DC 20005–2004.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–57, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 227C at Fort Collins, and by removing Channel 227A and adding Channel 249A at Westcliffe and by adding Wheat Ridge, Channel 227C0.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–8402 Filed 4–4–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 173, 174, 175, 176, 177, and 178

[Docket No. RSPA–03–14793; Notice No. 03–04]

Regulatory Flexibility Act Section 610 and Plain Language Reviews

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of regulatory review; request for comments.

SUMMARY: RSPA requests comments on the economic impact of its regulations on small entities. As required by the Regulatory Flexibility Act and as published in DOT's Semi-Annual Regulatory Agenda, we are analyzing the rules applicable to the transportation of radioactive materials to identify requirements that may have a significant economic impact on a substantial number of small entities. We also request comments on ways to make these regulations easier to read and understand.

DATES: Comments must be received by July 7, 2003.

ADDRESSES: Address written comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Identify the docket number RSPA–03–14793 at the beginning of your comments and submit two copies. If you want to receive confirmation of receipt of your comments, include a self-addressed, stamped postcard. You can also submit comments by e-mail by accessing the Dockets Management System on the Internet at *http://dms.dot.gov* or by fax to (202) 366–3753.

The Dockets Management System is located on the Plaza Level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. In addition, you can review comments by accessing the Dockets Management System at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Eileen Edmonson, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, telephone (202) 366–8553; or Donna O'Berry, Office of Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, telephone (202) 366–4400.

SUPPLEMENTARY INFORMATION: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

I. Section 610 of the Regulatory Flexibility Act

A. Background and Purpose

Section 610 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires agencies to conduct periodic reviews of rules that have a significant economic impact on a substantial number of small business entities. The purpose of the review is to determine whether such rules should be continued without change, amended, or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of such small entities.

B. Review Schedule

The Department of Transportation (DOT) published its Semiannual Regulatory Agenda on December 9, 2002, listing in Appendix D (67 FR 74799) those regulations that each operating administration will review

under section 610 during the next 12 months. Appendix D also contains DOT's 10-year review plan for all of its existing regulations.

The Research and Special Programs Administration (RSPA, we) has divided its Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) into 10 groups by subject area. Each group will be reviewed once every 10 years, undergoing a two-stage process—an Analysis Year and Section 610 Review Year. For purposes of the review announced in this notice, the Analysis year began in December 2002, coincident with the Fall 2002 publication of the Semiannual Regulatory Agenda, and will conclude in the Fall of 2003.

During the Analysis Year, we will analyze each of the rules in a given year's group to determine whether any rule has a significant impact on a substantial number of small entities and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. In each Fall's Regulatory Agenda, we will publish the results of the analyses we completed during the previous year. For rules that have a negative finding, we will provide a short explanation. For parts, subparts, or other discrete sections of rules that do have a significant impact on a substantial number of small entities, we will announce that we will be conducting a formal section 610 review during the following 12 months.

The section 610 review will determine whether a specific rule should be revised or revoked to lessen its impact on small entities. We will consider: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules or with state or local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. At the end of the Review Year, we will publish the results of our review.

The following table shows the 10-year analysis and review schedule:

RSPA SECTION 610 REVIEW PLAN 1999–2009

Title	Regulation	Analysis Year	Review Year
Incident reports	§§ 171.15 and 171.16	1998	N/A
Hazmat safety procedures	Parts 106 and 107	1999	N/A
General Information, Regulations, and Definitions	Part 171.		
Carriage by Rail and Highway	Parts 174 and 177	2000	N/A
Carriage by Vessel	Part 176	2001	N/A
Radioactive Materials	Parts 172, 173, 174, 175, 176, 177, 178	2002	2003
Explosives	Parts 172, 173, 174, 176, 178	2003	2004
Cylinders	Parts 172, 173, 178, 180		
Shippers—General Requirements for Shipments and Packagings	Part 173	2004	2005
Specifications for Non-bulk Packagings	Part 178	2005	2006
Specifications for Bulk Packagings	Parts 178, 179, 180	2006	2007
Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements.	Part 172	2007	2008
Carriage by Aircraft	Part 175.		
Transportation Program Procedures	Part 107.		

C. Regulations Under Analysis

During Year 5 (2002–2003), the Analysis Year, we will conduct a preliminary assessment of the rules in 49 CFR parts 172, 173, 174, 175, 176, 177, and 178 applicable to radioactive materials transportation. The review will include the following parts and subparts:

Subpart	Title
Part 172	
Subpart B	Table of Hazardous Materials and Special Provisions.
Subpart C	Shipping Papers.
Subpart D	Marking.
Subpart E	Labeling.
Subpart F	Placarding.
Appendix B to Part 172	Trefoil Symbol.
Part 173	
Subpart A	General.
Subpart B	Preparation of Hazardous Materials for Transportation.
Subpart I	Class 7 (Radioactive) Materials.
Part 174	
Subpart C	General Handling and Loading Requirements.
Subpart D	Handling of Placarded Rail Cars, Transport Vehicles and Freight Containers.
Subpart K	Detailed Requirements for Class 7 (Radioactive) Materials.

Subpart	Title
Part 175	
Subpart A	General Information and Regulations.
Subpart B	Loading, Unloading, and Handling.
Subpart C	Specific Regulations Applicable According to Classification of Material.
Part 176	
Subpart A	General.
Subpart B	General Operating Requirements.
Subpart D	General Segregation Requirements.
Subpart M	Detailed Requirements for Radioactive Materials.
Part 177	
Subpart A	General Information and Regulations.
Subpart B	Loading and Unloading.
Subpart C	Segregation and Separation Chart of Hazardous Materials.
Subpart E	Regulations Applying to Hazardous Material on Motor Vehicles Carrying Passengers for Hire.
Part 178	
Subpart K	Specifications for Packagings for Class 7 (Radioactive) Materials.

We are seeking comments on whether any requirements for radioactive materials transportation in parts 172, 173, 174, 175, 176, 177, and 178 have a significant impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If your business or organization is a small entity and if any of the radioactive materials requirements in parts 172, 173, 174, 175, 176, 177, and 178 have a significant economic impact on your business or organization, please submit a comment explaining how and to what degree these rules affect you, the extent of the economic impact on your business or organization, and why you believe the economic impact is significant.

II. Plain Language

A. Background and Purpose

Plain language helps readers find requirements quickly and understand them easily. Examples of plain language techniques include:

(1) Undesignated center headings to cluster related sections within subparts.

(2) Short words, sentences, paragraphs, and sections to speed up reading and enhance understanding.

(3) Sections as questions and answers to provide focus.

(4) Personal pronouns to reduce passive voice and draw readers into the writing.

(5) Tables to display complex information in a simple, easy-to-read format.

For an example of a rule drafted in plain language, you can refer to RSPA's final rule entitled "Revised and Clarified Hazardous Materials Safety Rulemaking and Program Procedures," which was published June 25, 2002 (67 FR 42948). This final rule revised and clarified the hazardous materials safety rulemaking and program procedures by rewriting 49 CFR part 106 and subpart A of part 107 in plain language and creating a new part 105 that would contain definitions and general procedures.

B. Review Schedule

In conjunction with our section 610 reviews, we will be performing plain language reviews of the HMR over a 10-year period on a schedule consistent with the section 610 review schedule. Thus, our review of requirements in parts 172, 173, 174, 175, 176, 177, and 178 applicable to radioactive materials transportation will also include a plain language review to determine if the regulations can be reorganized and/or rewritten to make them easier to read, understand, and use. We encourage interested persons to submit draft regulatory language that clearly and simply communicates regulatory requirements, and other recommendations, such as putting information in tables or consolidating regulatory requirements, that may make the regulations easier to use.

Issued in Washington, DC on March 31, 2003 under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 03–8316 Filed 4–4–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 266

[FRA Docket No. 3R–1979–1, Notice No. 3]

RIN 2130–AA60

Local Rail Freight Assistance to States

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Proposed rules; withdrawal.

SUMMARY: The FRA is withdrawing a notice of proposed rulemaking (NPRM) addressing the Local Rail Freight Assistance Program. In its NPRM published on November 30, 1990, 55 FR 49648, FRA proposed to modify 49 CFR part 266, which implements the agency's Local Rail Freight Assistance Program. Since the Administration has not requested, and the Congress has not provided, any appropriations for that program since 1995, and no new appropriations are anticipated. the proposed amendments are no longer necessary.

FOR FURTHER INFORMATION CONTACT: Joseph Pomponio, Senior Attorney, Office of Chief Counsel. FRA, 1120

Vermont Avenue, NW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Section 5 of the Department of Transportation Act (49 U.S.C. 1654 *et seq.*) establishes a program of federal grants to states to fund local rail freight assistance projects. The regulations implementing section 5 of the Act are contained in 49 CFR part 266. The Local Rail Service Reauthorizing Act, Public Law No. 101–213 (Dec. 11, 1989) ("Reauthorizing Act") amended section 5 of the Act in several ways. The proposed amendment of part 266 was to reflect those amendments enacted by the Reauthorizing Act. However, the Administration has not requested, and the Congress has not provided, any appropriations for that program since 1995. As a result no new funding has been made available to recipients since that time and none is anticipated. Since no further funding is anticipated for the program, the proposed amendments to part 266 are no longer necessary.

Conclusion: Based on the foregoing, FRA is withdrawing the NPRM.

Issued in Washington, DC on March 31, 2003.

Allan Rutter,

Administrator.

[FR Doc. 03–8283 Filed 4–4–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 032703B]

RIN 0648–AN79, 0648–AP54, 0648–AP55

Fisheries Off West Coast States and in the Western Pacific; Precious Coral Fisheries, Fishery Management Plan (FMP) Amendment 4; Bottomfish and Seamount Groundfish Fisheries, FMP Amendment 6; Pelagic Fisheries, FMP Amendment 8; Crustacean Fisheries, FMP Amendment 10

AGENCY: National Marine Fisheries Service (NOAA), Commerce.

ACTION: Notice of availability of supplemental FMP amendments; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (Council) has prepared supplements to FMP Amendment 4 to the Fishery Management Plan for the Precious Coral Fisheries of the Western Pacific Region (Amendment 4) fisheries, FMP Amendment 6 to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Amendment 6), fisheries FMP Amendment 8 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Amendment 8) for fisheriesand FMP Amendment 10 to the Fishery Management Plan for Crustaceans Fisheries of the Western Pacific Region (Amendment 10) of the Western Pacific Region. The supplemental amendments, which have been submitted to NMFS for Secretarial review, are intended to implement certain revisions made by the provisions of the Sustainable Fisheries Act (SFA) revisions to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Included in the supplemental amendments are bycatch provisions for the bottomfish and seamount groundfish and pelagic FMPs fisheries; overfishing definitions and control rules for the bottomfish and seamount groundfish, pelagics, and crustacean FMPs fisheries; and definitions of "fishing communities" in Hawaii for the bottomfish and seamount groundfish, pelagics, crustaceans, and precious corals FMPs fisheries.

DATES: Written comments on the supplemental FMP amendments must be received on or before June 6, 2003.

ADDRESSES: Written comments on any of the supplemental FMP amendments should be sent to Dr. Charles Karnella, Administrator, Pacific Islands Area Office, NMFS, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814, or faxed to 808–973–2941. Comments will not be accepted via e-mail or the internet.

Copies of the amendment documents are available from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813. The documents are also available on the following website: *http://www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, phone: (808) 522–8220; fax: (808) 522–8226.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires each Regional Fishery Management Council to submit fishery management plans or plan amendments to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires NMFS, immediately upon receiving a fishery management plan or amendment, to publish notification in the **Federal Register** that the fishery management plan or plan amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve, disapprove, or partially disapprove the fishery management plan or plan amendment.

The Council has prepared supplements to Amendment 4, Amendment 6, Amendment 8, and Amendment 10 that address bycatch issues; establish overfishing definitions and describe control rules; and designate define fishing communities in the State of Hawaii, consistent with the certain SFA amendments made by the 1996 SFA to the Magnuson-Stevens Act. Then on February 3, 1999, NMFS approved portions of the Council's FMP amendments pertaining to essential fish habitat provisions, identification of commercial, recreational and charter fishing sectors; overfishing definition for precious corals; bycatch provisions for crustaceans and precious coral fisheries; and designation definition of fishing communities for American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

The supplemental amendments provide new specifications of overfishing criteria. Maximum sustainable yield-based control rules and overfishing thresholds are defined for the Northwestern Hawaiian Islands (NWHI) lobster stock and multi-species complexes of bottomfish and seamount groundfish and western Pacific pelagic management unit species. Stock status determination criteria, including maximum fishing mortality thresholds and minimum stock size thresholds, are defined for the lobster stock, bottomfish, and pelagic stock complexes. The bottomfish and seamount groundfish FMP already contains measures to prevent overfishing and to rebuild overfished stocks. These include a moratorium on the harvest of armorhead to rebuild this stock in the seamount groundfish fishery, a prohibition on the use of destructive bottomfish fishing methods, area closures around the main Hawaiian Islands, and limited access programs in the implementation of bottomfish NWHI to limit fishing effort. Additional measures to prevent overfishing or to rebuild overfished stocks that may be considered by the Council in the future include additional area closures, seasonal closures, reduction in the number of available limited access permits, establishment of limited access programs in areas other than the NWHI, limits on catch per trip, limits on effort per trip, and fleet-wide limits on catch and effort.

The pelagics FMP already includes measures to prevent local overfishing and to keep stocks from becoming locally overfished through a limited access program for the Hawaii-based longline fishery, prohibition on the use of drift gill nets, and various longline area closures in Federal waters around American Samoa, Guam, and Hawaii. Additional measures that may be considered by the Council in the event of overfishing include reductions in the number of limited access longline permits, size restrictions, etc.

The crustaceans FMP contains measures to prevent overfishing and keep NWHI stocks from becoming overfished including gear restrictions, trap specifications (to allow juvenile lobsters to escape), a limited access permit program for the NWHI commercial lobster fishery, a limit on the number of lobster traps allowed per vessel, seasonal and area closures, and annual bank-specific harvest guidelines. Additional measures that may be considered by the Council, if needed, include adjustments to the NWHI seasonal closure, temporary fishery closures, and size or species harvest restrictions.

Supplemental FMP amendments pertaining to bycatch issues describe bycatch levels and patterns in the bottomfish and seamount groundfish and pelagic fisheries. Management measures currently require all primary and relief operators (captains) in the NWHI limited access fisheries to complete one-time protected species workshop. The supplemental amendments describe recent improvements in bycatch reduction and bycatch reporting, as well as non-regulatory management initiatives to further minimize bycatch and reduce bycatch mortality, and improve the measurement of bycatch and analyses thereof in these fisheries. These initiatives include fishery outreach programs that foster awareness of bycatch issues, research into fishing methods and gear modification to reduce bycatch and bycatch mortality, development of markets for low value fish that would otherwise be discarded by fishermen, and improvements to information collection for bycatch.

The supplemental amendments for the bottomfish and seamount groundfish, pelagics, crustaceans, and precious corals FMPs define each of the major inhabited main Hawaiian islands as a fishing community. This island-by-island designation definition of fishing communities is based on analyses indicating that the social and economic cohesion of fishery participants is strongest at the island level. Fishing, support services, and fishery infrastructure are critically important to all of Hawaii's populated areas. As such fishing communities in Hawaii are not distinguished according to a particular fishery or gear type. The supplemental amendments define Hawaii's fishing communities as the islands of Niihau, Kauai, Oahu, Molokai, Maui, Lanai, and Hawaii.

Public comments on any or all of the supplemental FMP amendments must be received by June 6, 2003, to be considered by NMFS in the decision whether to approve, disapprove, or partially approve the amendments.

The supplemental amendments contain no implementing regulations.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: April 2, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8398 Filed 4–4–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 66
Monday, April 7, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; End-Use Certificate Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the extension of information collection currently used in support of the End-Use Certificate Program.

DATES: Comments about this notice must be received in writing on or before June 3, 2003, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Sharon Miner, USDA, Farm Service Agency, Warehouse and Inventory Division, Program Development Branch, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20520–0553, (202) 720–6266; or by e-mail to: *Sharon.Miner@usda.gov*. Comments may be submitted via facsimile to (202) 690–3123.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: End-Use Certificate Program.

OMB Control Number: 0560–0151.

Type of Request: Extension of currently approved information collection.

Expiration Date of Approval: June 30, 2003.

Abstract: This information collected is used to ensure that Canadian wheat does not benefit from USDA or Commodity Credit Corporation assisted export programs. The End-Use Certificate Program is covered at 7 CFR part 782. The North American Free Trade Agreement Implementation Act requires USDA to establish the end-use certificate system for Canadian wheat. Accordingly, Farm Service Agency requires information from the importers, subsequent buyers, and end-users to assist in tracking the Canadian wheat within the U.S. marketing system.

Estimate of Annual Burden: Average 0.215 hours per response.

Type of Respondents: Wheat importers, traders, and end-users.

Estimated Annual Number of Respondents: 421.

Estimated Number of Responses per Respondent: 128.

Estimated Total Annual Burden on Respondents: 4,520 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed in Washington, DC, on March 28, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–8308 Filed 4–4–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath National Forest, California, Meteor

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to conduct vegetative management activities using a variety of methods on National Forest System lands in the Salmon River watershed near the towns of Sawyers Bar, Forks of Salmon, and Cecilville in Siskiyou County, California. Timber harvest and associated activities are proposed on approximately 744 acres. Removal of non-commercial trees and brush are proposed on approximately 131 acres. No new road construction is proposed. Some road decommissioning is proposed. All activities would likely occur within three to five years of the decision being made.

DATES: Comments concerning the scope of the analysis must be received within 14 days of the publication of this notice in the **Federal Register**. The draft environmental impact statement is expected by May 2003 and the final environmental impact statement is expected by September 2003.

ADDRESSES: Send written comments to Margaret Boland, Forest Supervisor, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097.

FOR FURTHER INFORMATION CONTACT: Lynda Karns, Team Leader, at the above address or call (530) 841–4469.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purposes of the proposed action are to maintain stand health by leading stands into a resilient condition where they can provide a sustained yield of wood products; to reduce the risk of losing these stands to catastrophic fire; to maintain unique wildlife habitats; and to provide an economical, safe, and environmentally sensitive transportation system. The need for treatment was identified when the existing condition was compared with the desired condition from the Klamath National Forest Land and Resource Management Plan. These needs or opportunities are taken from the Upper South Fork of the Salmon River Ecosystem Analysis, the North Fork Salmon Watershed Assessment, the Lower South Fork of the Salmon River Ecosystem Analysis, and the Klamath National Forest Forestwide Roads Analysis.

Proposed Action

The Salmon River District of the Klamath National Forest proposes timber harvest and associated activities on approximately 744 acres in the Salmon River Watershed. Harvest prescriptions include 313 acres of commercial thinning, 317 acres of group selection, 36 acres of green tree retention (some acres are double-counted with the thinning acres), 28 acres of seed tree/sanitation, and 50 acres of salvage. All acreages are approximate. Helicopter, cable, and tractor logging systems would be used. Harvest activities would occur on matrix land, which includes the land allocations of General Forest, Partial Retention, and Recreational Wild and Scenic Rivers (WSRs). Selected stream channel areas and unstable areas in the Riparian Reserve land allocation would be thinned to move these areas towards their desired condition. Associated activities including reforestation, precommercial thinning, browse protection, hardwood felling, hand grubbing and chainsaw release of planted trees, gopher control, and mastication (grinding up) of non-commercial trees would occur on matrix land. Project-generated fuels would be treated through a combination of hand piling, prescribed burning, yarding and removal of unmerchantable material, tractor piling, and other mechanical treatment.

Non-commercial trees and brush would be masticated on approximately 131 acres in nine stands outside of timber sale units. Habitat improvement activities would include low-intensity underburning in oak stands, repairing a fence, repairing the outlet to a pond, and improving two water developments.

No new road construction is proposed. One road would be stormproofed (made self-maintaining), one unclassified road would be improved and added to the transportation system, six unclassified roads would be decommissioned, and two roads would have maintenance level changes.

The legal description is Township 37–40 North, Range 11–12 West, Mount Diablo Meridian and Township 10 North, Range 8 East, Humboldt Meridian. All activities would likely be completed within three to five years of the decision being made.

Possible Alternatives

An alternative that includes timber harvest and associated activities on approximately 650 acres, mastication of non-commercial trees and brush on 41 acres outside of timber sale units, oak underburning, and improving two water developments would also be considered. Road work would be similar to the proposed action.

Responsible Official

Margaret Boland, Forest Supervisor, USDA Forest Service, 1312 Fairlane Road, Yreka, California 96097 is the Responsible Official.

Nature of Decision To Be Made

The Forest Service must decide whether it will implement this proposal, an alternative design that moves the area towards the desired condition, or not implement any project at this time.

Scoping Process

In October 2002, this vegetation management project was included in the Klamath National Forest's Schedule of Proposed Actions, which was posted on the Klamath National Forest's internet web site and mailed to interested parties. In January of 2003 a scoping letter for the proposed vegetation management project was mailed to 82 people, groups, and agencies. The scoping letter was sent to those who expressed interest in the proposal, who owned property adjacent to the project area, and to agencies with responsibilities for local resource management. This notice of intent invites additional public comment on this proposal and initiates the preparation of the environmental impact statement. Due to the extensive scoping effects already conducted, no scoping meeting is planned. The public is encouraged to take part in the planning process and to visit with Forest Service officials at any time during the analysis and prior to the decision.

While public participation in this analysis is welcome at any time, comments received within 14 days of the publication of this notice will be especially useful in the preparation of the draft environmental impact statement. The scoping process will include identifying potential issues, significant issues to be analyzed in depth, alternatives to the proposed action, and potential environmental effects of the proposal and alternatives.

Preliminary Issues

Six preliminary issues have been identified for this proposal as follows: (1) Timber harvest and underburning could reduce the quantity and quality of habitat providing for northern spotted owl (NSO) nesting, roosting, foraging, and dispersal activities in Critical Habitat in the Matrix. (2) Timber harvest in conjunction with past cumulative effects in the upper Jones Gulch Drainage could trigger slope failure in the dormant landslide area below. (3) Timber harvest, fuel reduction, and road activities, could cause soil erosion or trigger slope failure, which could increase sediment in streams, contributing to cumulative effects to water quality. (4) Timber harvest, fuel reduction, and road activities could increase sediment in streams, affecting the habitat of anadromous fish. (5) Logging in riparian reserves could cause erosion and result in sedimentation in streams. (6) Portions of units located along the North Fork of the Salmon River, which is designated as Recreational in the WSR System, could adversely affect WSR values.

Comment Requested

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in, or affected by, the proposed vegetation management activities.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the Final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service handbook 1909.15, Section 21)

Dated: March 31, 2003.

Margaret J. Boland,

Forest Supervisor, Klamath National Forest.

[FR Doc. 03–8318 Filed 4–4–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra Nevada Forest Plan Amendment, Supplemental Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, Intermountain and Pacific Southwest Regions will prepare and consider a supplemental environmental impact statement (SEIS) for a proposal to amend the Record of Decision (ROD) for the Sierra Nevada Forest Plan Amendment, which was signed on January 12, 2001. Specifically, the proposed action responds to changed circumstances and new information identified during a year-long review of the Sierra Nevada Forest Plan Amendment. The proposed action would amend the Land and Resource Management Plans for the Humboldt-Toiyabe, Modoc, Lassen, Plumas, Tahoe, Eldorado, Stanislaus, Sierra, Sequoia, and Inyo National Forests, the Lake Tahoe Basin Management Unit. As done for the original ROD, the Regional Forester for the Pacific Southwest Region has delegated authority to adopt any changes on behalf of the Regional Forester for the Intermountain Region.

DATES: Scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c) 4(4)). There was extensive public involvement in the development of the proposed action and the Forest Service is not inviting comments at the time.

FOR FURTHER INFORMATION CONTACT: Kathleen S. Morse, Interdisciplinary Team Leader, USDA Forest Service, Pacific Southwest Region, 1323 Club Drive, Vallejo, CA 94592. Phone: (707) 562–8822.

SUPPLEMENTARY INFORMATION:

Background

Over the past decade, the Forest Service has conducted large-scale land and resource management planning efforts for the Sierra Nevada bioregion. In 1992, the Forest Service Pacific Southwest Research Station published *The California Spotted Owl: A Technical Assessment of its Current Status* (CASPO Technical Report), which initiated a Sierra Nevada-wide planning effort to address concerns about declining California spotted owl populations. In January 1993, the Forest Service completed an environmental assessment that proposed guidelines for California spotted owl conservation based on measures described in the CASPO Technical Report. On January 13, 1993, the Regional Forester decided to adopt these guidelines for the Pacific Southwest Region as an interim measure to protect California spotted owl habitat until a long-term conservation strategy could be developed.

The Forest Service analyzed options for a long-term California spotted owl strategy in a draft environmental impact statement (EIS) released in February 1995 and a revised draft EIS released in 1996. In 1997, the Secretary of Agriculture chartered a Federal Advisory Committee (FAC) to review the revised draft EIS. The FAC concluded that the revised draft EIS was insufficient as either a California spotted owl management plan or as a broader ecosystem management plan..

In early 1998, the Chief of the Forest Service directed the Regional Forester of the Pacific Southwest Region to develop an ecosystem strategy for conserving California spotted owls, old forest ecosystems, and other forest resources, considering the recommendations of the FAC committee and recent scientific information presented in the Sierra Nevada Ecosystems Management Report (SNEP) to Congress, published between June 1996 and March 1997. The SNEP Report included four volumes of scientific assessments for the Sierra Nevada bioregion, with accompanying large database and maps. In November 1998, the Forest Service published a Notice of Intent to prepare an EIS to amend Land and Resource Management Plans for 11 national forests in the Sierra Nevada and Modoc Plateau and Regional Guides for the Intermountain and Pacific Southwest Regions to address five problem areas: old forest ecosystems and associated species; aquatic, riparian, and meadow ecosystems; fire and fuels; noxious weeds; and lower westside hardwood ecosystems. In May 2000, the draft EIS for the Sierra Nevada Forest Plan Amendment (SNEPA) was released. The final EIS for the SNFPA was released in January 2001 and the Record of Decision was signed on January 12, 2001.

As the Forest Service was preparing the Notice of Intent for the SNFPA, the Herger-Feinstein Quincy Library Group Forest Recovery Act (HFQLG Forest Recovery Act) became law in October 1998 as part of the Department of Interior and Related Agencies Appropriations Act. The HFQLG Forest Recovery Act required the Forest Service to conduct a 5-year pilot project to implement certain resource protection measures and management activities on the Plumas, Lassen, and Tahoe National Forests. Based on the direction in the HFQLF Forest Recovery Act, the Forest Service prepared an environmental impact statement (EIS) evaluating the impacts of the pilot project. In August 1999, the Lassen, Plumas, and Tahoe Forest Supervisors issued the Record of Decision (ROD) and the Final Environmental Impact Statement (FEIS) for pilot project implementation. Subsequently, the pilot project area was included in the SNFPA and management direction for the pilot project was changed to reflect the January 12, 2001 decision.

On November 16, 2001, the Chief of the Forest Service completed his review of 234 appeals of the SNEPA ROD. The Chief affirmed the SNFPA ROD. However, in his appeal decision, the Chief instructed the Regional Forester of the Pacific Southwest Region to re-evaluate the SNFPA decision in light of recent and repeated severe fire seasons and a need to aggressively manage

excessive fuel loading. Incompatibilities between the HFQLG Forest Recovery Act and the SNFPA were another area of concern. The Chief's appeal decision was subject to discretionary review by the Secretary of Agriculture, however, a review was not concluded.

On December 31, 2001, the Regional Forester chartered the Sierra Nevada Forest Plan Amendment River Team (Team) to evaluate any needed changes to the SNFPA ROD relative to the areas of concern identified in the Chief's appeal decision as well as other issues raised in the appeals, specifically the impacts of the decision on grazing permit holders, recreation users and permit holders, and local communities. Over the course of a year-long review, the Team worked with staffs from national forests and ranger districts; an interagency team with members from Federal, State, and local agencies, former members of the SNFPA interdisciplinary team; scientists; and various various interest groups to gain insights and new information relative to the SNFPA ROD. The Team developed recommendations consistent with the Regional Forester's charter to "develop flexible solutions primarily focused on improving local decision-making capabilities, while meeting our obligations under applicable laws." In March 2003, the Team released its findings and recommendations in a report entitled "Sierra Nevada Forest Plan Amendment Management Review and Recommendations" (USDA Forest Service Pacific Southwest Region, R5–MB–012), March 2003).

Purpose and Need for Action

Based upon the new analysis and information provided by the review and the knowledge gained by field managers charged with implementing the decision, the Regional Forester proposes to change selected elements of the SNFPA. The proposal builds on the strengths of the SNFPA ROD and retains its goals, land allocations, acres of treatment and the same priority to protect communities. The proposed changes respond to the Chief's direction: (1) Identify ways to more aggressively treat fuel loading in the Sierra Nevada while providing short and long-term protection of wildlife and other resource values, (2) improve consistency with the National Fire Plan, and (3) achieve greater harmony between the SNFPA and the HFQLG Forest Recovery Act. In addition, the proposed action allows for a wider array of tools and techniques to be used to achieve the desired conditions for a given location. This will increase the efficiency and effectiveness of fuels treatments and provide more opportunities to balance uses such as grazing and recreation with habitat protection for sensitive species.

Proposed Action

The proposed action replaces select standards and guidelines in the existing fire and fuels management strategy with direction that provides the flexibility needed at the local level to effectively modify wildland fire behavior. In addition, the basic strategy is broadened to include other management objectives such as addressing forest health issues, restoring and maintaining ecosystem structure and composition, and restoring ecosystems after severe wildfires. The resulting integrated vegetation management strategy is designed to be sufficiently aggressive to minimize risk in the urban-wildland interface areas and adequately address the threats to wildlife from catastrophic wildfires. This objective is balanced with the need to provide for short-term and long-term protection for wildlife and other resource values.

The proposed action builds some flexibility into standards and guidelines for willow flycatcher habitat, Yosemite toad habitat, great gray owl protected activity centers, and grazing utilization to better reflect the wide array of site conditions encountered in the field and the management opportunities they may provide.

The proposed action clarifies management intent for off-highway vehicles, limits the requirement for limited operating periods to vegetative management projects only, and clarifies how several of the riparian standards and guidelines apply to recreation activities, uses and projects. These changes are proposed to more closely align written direction with management intent and to allow local managers to develop mitigation measures for small and varied recreation-related projects on a project- and site-specific basis.

Responsible Official

The responsible official is Regional Forester Jack A. Blackwell, USDA Forest Service Pacific Southwest Region, 1323 Club Drive, Vallejo, CA 94592.

Nature of Decision To Be Made

The Record of Decision for the SEIS will amend the Land and Resource Management plans for the Humboldt-Toiyabe, Modoc, Lassen, Plumas, Tahoe, Eldorado, Stanislaus, Sierra, Sequoia, and Inyo National Forests, the Lake Tahoe Basin Management Unit.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft SEIS is expected to be available for public review and comment in May 2003; and a final environmental impact statement in October 2003. The comment period for the draft SEIS will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Sec)

Gilbert Espinosa,

Deputy Regional Forester.

[FR Doc. 03–8317 Filed 4–4–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Advisory Committee (DPAC)

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The Deschutes Advisory Committee will meet on April 17th, 2003 starting at 9 a.m. at the Jefferson County Firehall on the corner of Adam and "J" Street in Madras, Oregon. Agenda items will include a presentation on the Deschutes National Forest Recreation Initiative, Update on the status of the Aquatic Conservation Strategy and Survey and Manage Supplemental EISs, Update on the Upper Deschutes Resource Management Plan and Metolious Basin Subcommittees, Rechartering, and a briefing on the new Stewardship Contract authority. The remainder of the day will include info sharing and a Public Forum from 4 p.m. until 4:30 p.m. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDA, Prineville BLM, 3050 NE 3rd St., Prineville, OR 97754, Phone (541) 416–6872.

Dated: March 31, 2003.

Leslie A.C. Weldon,

Deschutes National Forest Supervisor.

[FR Doc. 03–8319 Filed 4–4–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.
ACTION: Notice of meetings.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold meetings on April 11, 2003, in Chester, California, and on May 16, 2003, in Chilcoot, CA. The March 7, 2003, meeting was cancelled. The purpose of the April meeting will be to review the proposed Plumas County Title III projects, consider several resubmitted projects from the second (Cycle 2) funding cycle, and to review dates and materials for the third (Cycle 3) funding process under the Title 2 provisions of the Secure Rural Schools and Community Self-Determination Act of 2000. The May agenda will be established at the April meeting.

DATES AND ADDRESSES: The April 11 meeting will take place from 9–1:30 p.m., at the Lake Almanor Elks Lodge, 164 Main Street, Chester, California. The time and place for the May 16 meeting will be determined at a later date.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, PO Box 11500/159 Lawrence Street, Quincy, CA, 95971; (530) 283–7850; or by e-mail to *eataylor@fs.fed.us.* Final agendas are posted one week prior to the meeting on the Internet at: *http://www.fs.fed.us/r5/pay2states/plumas.* Prior meeting minutes and agendas are available on the same site.

SUPPLEMENTARY INFORMATION: Agenda items for the April 11 meeting include:

(1) Forest Service update regarding RAC general administration and replacement members;

(2) Review Cycle 2 project approvals with Forest Supervisor;

(3) Consider and make decision on Cycle 3 funding cycle dates and materials;

(4) Review Plumas County Supervisor's proposed Title III projects; and

(5) Future meeting schedule/logistics/agenda.

The meetings are open to the public and individuals may address the Committee after being recognized by the Chair,

Dated: March 28, 2003.

Robert G. MacWhorter,

Deputy Forest Supervisor.

[FR Doc. 03–8320 Filed 4–4–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Crook County Resource Advisory Committee, Sundance, Wyoming, USDA, Forest Service.
ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Black Hills National Forests' Crook County Resource Advisory Committee will meet Monday April 21, 2003 in Sundance, Wyoming for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on April 21, begins at 6:30 p.m. at U.S. Forest Service, Bearlodge Ranger District Office, 121 South 21st Street, Sundance, Wyoming. Agenda topics will include making decisions on proposals to fund. A public forum will be at 8:30 p.m. (MT).

FOR FURTHER INFORMATION CONTACT: Steve Kozel, Bearlodge District Ranger and Designated Federal Officer, at (307) 283–1361.

Dated: April 1, 2003.

Steve Kozel,

Bearlodge District Ranger.

[FR Doc. 03–8482 Filed 4–4–03; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Wednesday, April 9, 2003, at the State House, 115 State Street, Montpelier, Vermont 05602. The Advisory Committee will hold a town hall meeting with public agency officials, educators, and community leaders to discuss efforts to address racism and harassment of minorities in Vermont public schools and communities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Marc Pentino, of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, March 19, 2003.

Dawn R. Sweet,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 03–8333 Filed 4–4–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213(2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than the last day of April 2003, interested parties may request an administrative review of the following order with an anniversary date in April for the following period:

Antidumping Duty Proceedings

The People's Republic of China: Automotive Replacement Glass Windshields
A–570–867

Period

9/19/01–3/31/03

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of April 2003. If the Department does not receive, by the last day of April 2003, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 2, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03–8416 Filed 4–4–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805][C–489–806]

Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews: Certain Pasta from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
ACTION: Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews: Certain Pasta from Turkey.

SUMMARY: The Department of Commerce ("the Department") has received information sufficient to warrant initiation of changed circumstances administrative reviews of the antidumping and countervailing duty orders on certain pasta from Turkey. Based on this information, we preliminarily determine that Gidasa Sabanci Gida Sanayi ve Ticaret A.S. ("Gidasa") is the successor-in-interest to Maktas Makarnacilik ve Ticaret A.S. ("Maktas") for purposes of determining antidumping and countervailing duty liabilities. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Jim Neel or Eric Greynolds (Antidumping) or Jennifer D. Jones (Countervailing), Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4161, (202) 482–6071, or (202)482–1664, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published in the **Federal Register** the antidumping and countervailing duty orders on pasta from Turkey (61 FR 38545–38547). On February 12, 2003, Gidasa submitted information stating that Gidasa is the successor-in-interest to Maktas and, as such, Gidasa is entitled to the receive the same antidumping and countervailing duty treatment as is accorded Maktas. On March 5, 2003, petitioners entered their appearance and objected to an expedited treatment of these changed circumstances reviews on the basis that such treatment would preclude a "full and meaningful" participation of all

parties. Subsequently, on March 7, 2003, Gidasa submitted comments on petitioners' objections and provided further support for its expedited treatment request.

Scope of Reviews

Imports covered by these reviews are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of these reviews are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Ruling

On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package of pasta weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders: *See Memorandum from John Brinkmann to Richard Moreland*, dated May 24, 1999, in the case file in the Central Records Unit, main Commerce building, room B-099 ("CRU").

Initiation and Preliminary Results of Changed Circumstances Antidumping and Countervailing Duty Reviews

In a submission dated February 12, 2003, Gidasa advised the Department that in December 2002, Gidasa had acquired all of Maktas' assets. The relevant facts in that process were as follows.

In December 2002, a Turkish holding company, Haci Omer Sabanci Holding A. S. ("Sabanci"), incorporated Gidasa as a Turkish corporation. Once established, Gidasa bought the assets of Maktas, including its facilities and its brand name ("Piyale"), essentially taking over all the activities and functions of Maktas.

Gidasa then began producing the same products, under the Piyale name, with the same personnel and equipment and selling them to the same customers through the same channels, using the same management team as its predecessor, Maktas. In accordance with section 751(b) of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.216, the Department has determined that there is a sufficient basis to initiate a review of changed circumstances to determine whether Gidasa is the successor-in-interest to Maktas.

In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20461 (May 13, 1992) ("*Canadian Brass*"). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994) and *Canadian Brass*, 57 FR at 20461. Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

We preliminarily determine that Gidasa is the successor-in-interest to Maktas. In its February 12, 2003, submission, Gidasa provided evidence that production continues with the same equipment, the same workers, the same raw materials purchased from the same suppliers, and the same production process. Gidasa also provided evidence that it continues to sell the same products to the same customers to which Maktas previously sold. Moreover, Gidasa has provided evidence that substantially all management and employees are the same as when the factory was managed by Maktas. Documentation attached to Gidasa's February 12, 2003, submission supports its claims that the acquisition of Maktas resulted in little or no changes in either production facilities, supplier relationships, customer base, or management. This documentation consisted of: (1) Maktas and Gidasa's price lists, supplier lists, distributer lists, sales history, and product catalogs; (2) Sabanci, Maktas, and Gidasa's organization charts; and (3) documents supporting transfer of trademarks, equipment, and real property from Maktas to Gidasa. The documentation described above demonstrates that (i) substantially all employees of Maktas, including management, have been transferred to Gidasa, (ii) the business was sold as a going concern, and (iii) there was little to no change in management structure, supplier relationships, production facilities, or customer base. In its March 5, 2003, submission, petitioners objected to an expedited treatment of these changed circumstances reviews. However, petitioners offered no compelling reasons for the Department not to proceed with these changed circumstances reviews on an expedited basis.

When warranted, the Department may publish the notice of initiation and preliminary determination concurrently. *See* 19 CFR 221(c)(3)(ii). The Department has determined that such action is warranted because Gidasa has provided *prima facie* evidence that it is the successor-in-interest to Maktas.

For the forgoing reasons, we preliminarily determine that Gidasa is the successor-in-interest to Maktas and should receive the same antidumping and countervailing duty rates with respect to certain pasta from Turkey as the former Maktas.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held no later than 44 days after the date of publication of this notice, or the first workday thereafter. Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. The Department will publish the final results of these changed circumstances reviews, including the results of its analysis of issues raised in any written comments.

We are issuing and publishing these determinations and notice in accordance with sections 751(b) and 777(i)(1) of the Act and sections 19 CFR 351.216 and 351.221.

Dated: March 31, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–8410 Filed 4–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818][C–475–819]

Notice of Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews: Certain Pasta from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews: Certain Pasta from Italy.

SUMMARY: The Department of Commerce (the Department) has received information sufficient to warrant initiation of changed circumstances reviews of the antidumping and countervailing duty orders on certain pasta from Italy. Based on this information, we preliminarily determine that Pasta Lensi S.r.l. is the successor-in-interest to Italian American Pasta Company Italia S.r.l. (IAPC) for purposes of determining antidumping and countervailing duty liability. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Alicia Kinsey (Antidumping) or Stephen Cho (Countervailing), Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4793 or (202) 482–3798, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Italy (61 FR 38547). Also, on July 24, 1996, the Department published in the **Federal Register** the companion countervailing duty order (61 FR 38544). Five reviews of these orders have been conducted, and a sixth is underway. IAPC participated in the fifth review and is an interested party in the ongoing sixth review of these orders. On February 12, 2003, IAPC submitted a letter stating that it changed its corporate name to Pasta Lensi S.r.l. (Lensi), and that Lensi is the successor-in-interest to IAPC. As such, the former IAPC argues that Lensi is entitled to receive the same antidumping and countervailing cash deposit rates accorded to IAPC.

The former IAPC also requested that the Department conduct expedited changed circumstances reviews pursuant to 19 CFR 351.221(c)(3)(ii). Petitioners have not responded to IAPC's February 12, 2003 request for changed circumstances reviews.

Scope of Review

Imports covered by these reviews are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of these reviews are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See Memorandum from Edward Easton to Richard Moreland*, dated August 25, 1997, which is on file in the Central Records Unit (CRU), room B-099 of the main Commerce Department Building.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See Letter from Susan H. Kuhbach to Barbara P. Sidari*, dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation of Barilla, an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997 (62 FR 65673). On October 5, 1998, the Department issued its final determination that Barilla's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(b). *See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See Memorandum from John Brinkmann to Richard Moreland*, dated May 24, 1999, which is available in the CRU.

The following scope ruling is pending:

(5) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry*

of the Antidumping and Countervailing Duty Orders, 65 FR 26179 (May 5, 2000).

Initiation and Preliminary Results of Changed Circumstances Antidumping and Countervailing Duty Reviews

In the February 12, 2003 submission, IAPC advised the Department that in September of 2002, IAPC acquired certain intangible assets of Pastificio Lensi S.p.A and that IAPC resolved to change its name to Pasta Lensi S.r.l. The February 12, 2003 submission demonstrates that in November 2002, a Registration Notice registering the name change was filed with the Brescia Chamber of Commerce, Industry, Handicrafts, and Agriculture. Prior to the acquisition and name change, the former IAPC made two changes to its board of directors and company management. However, the corporate structure and ownership of the company did not change as a result of the name change. Lensi operates the same production facility operated by IAPC. No production facilities have been added, eliminated, or transferred since the name change. Lensi's supplier relationships have stayed the same as IAPC's, and Lensi's customer base did not substantially change as a result of the name change. In accordance with section 751(b) of the Act and 19 CFR 351.216, the Department has determined that there is a sufficient basis to initiate changed circumstances reviews to determine whether Lensi is the successor-in-interest to IAPC.

In making such a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460 (May 13, 1992) (*Canadian Brass*). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994); *see also Canadian Brass*, 57 FR 20460, Comment 1 ("[G]enerally, in the case of an asset acquisition, the Department will consider the acquiring company to be a successor to the company covered by the antidumping duty order, and thus subject to its duty deposit rate, if the resulting operation is essentially similar to that existing before the acquisition.") Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

We preliminarily determine that Lensi is the successor-in-interest to IAPC. Documentation attached to Lensi's February 12, 2003, submission supports its claims that the acquisition of certain intangible assets resulted in little or no change in either production facilities, supplier relationships, customer base, or management. This documentation consisted of: (1) minutes of the September 4, 2002 IAPC Board of Directors Meeting and September 19, 2002 Extraordinary Shareholder Meeting detailing the resolve to change the name from IAPC to Lensi and to acquire certain assets, and the shareholder approval of the name change and acquisition of assets; (2) Registration Statement filed with Brescia Chamber of Commerce; (3) legal structure of the former IAPC's parent company, the American Italian Pasta Company's European affiliates, before and after the name change; (4) a list of the IAPC/Lensi Board of Directors; (5) organization charts for IAPC and Lensi, before and after the name change; (6) list of suppliers and quantity of purchases for IAPC/Lensi; and (7) customers and quantity of sales for IAPC and Lensi, before and after the name change. The documentation described above demonstrates that (i) substantially all employees of IAPC, including most of the management, remain the same, (ii) the intangible assets were sold as a going concern, and (iii) there were little or no changes in management structure, supplier relationships, production facilities, or customer base.

When "expedited action is warranted," the Department may publish the notice of initiation and preliminary determination concurrently. *See* 19 CFR 351.221(c)(3)(ii); *see also Granular Polytetrafluoroethyline Resin from Italy: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Revew*, 68 FR 13672 (March 20, 2003). The Department has determined that such action is warranted because IAPC has provided *prima facie* evidence that Lensi is its successor-in-interest, and we have the information necessary to make a preliminary finding already on the record.

Based upon the record evidence, we find that Lensi operates as the same business entity as IAPC. Thus, we preliminarily determine that Lensi is the successor-in-interest to IAPC.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held no later than 44 days after the date of publication of this notice, or the first workday thereafter. Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. See 19 CFR 531.309, 310. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. The Department will publish the final results of these changed circumstances reviews, including the results of its analysis of issues raised in any written comments.

We are issuing and publishing these determinations and notice in accordance with sections 751(b) and 777(i)(1) of the Act and sections 351.216 and 351.221 of the Department's regulations.

Dated: March 31, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–8411 Filed 4–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-507–502]

Certain In-Shell Raw Pistachios from Iran: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Rescission of Antidumping Duty Administrative Review

SUMMARY: On August 27, 2002, the Department of Commerce (the Department) published in the **Federal Register** (67 FR 55000) a notice announcing the initiation of an administrative review of the antidumping duty order on certain in-shell pistachios from Iran covering two exporters. The period of review (POR) is July 1, 2001, to June 30, 2002. This review has now been rescinded because both parties requesting the review withdrew their request.

EFFECTIVE DATE: April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall or Donna Kinsella, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–1398 or (202) 482–0194 respectively.

Scope of the Review

The product covered by this review is raw, in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells, and edible meats from Iran. This merchandise is currently provided for in item 0802502000 of the *Harmonized Tariff Schedule.*

Background:

On July 31, 2002, Cyrus Marketing (an importer) requested an administrative review of Rafsanjan Pistachio Producers Cooperative (RPPC), an Iranian producer and exporter of in-shell pistachios, with respect to the antidumping duty order published in the **Federal Register**. *See Antidumping Duty Order: Certain In Shell Pistachios from Iran*, 51 FR 25922 (July 17, 1986). Additionally, the petitioner, California Pistachio Commission (CPC), requested an administrative review of the Tehran Negah Nima Trading Company, Inc. (Nima). The Department initiated the review for both companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002).

On March 5, 2003, the CPC withdrew its request for administrative review of Nima. On March 19, 2003, Cyrus Marketing withdrew its request for review of RPPC. The applicable regulation, 19 CFR 351.213(d)(1)(2002), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. Although Cyrus Marketing's and the CPC's requests for withdrawal were made after the 90-day deadline, in accordance with 19 CFR 351.213(d)(1), the Secretary may extend this time limit if the Secretary decides it is reasonable to do so. We have received no submissions opposing Cyrus Marketing's request for withdrawal of the administrative review and Cyrus Marketing was the only party to request the administrative review of RPPC. Likewise, we have received no submissions opposing CPC's request for withdrawal of the administrative review and CPC was the only party to request the administrative review of Nima. In addition, on October 31, 2002, Nima submitted certifications that it did not have any U.S. sales or shipments during the POR. Therefore, we find it reasonable to extend the deadline and accept the withdrawal requests, and we are rescinding this review of the antidumping duty order on certain in-shell pistachios from Iran covering the period July 1, 2001, through June 30, 2002, for both companies.

This notice is issued and published in accordance with sections 751 and 777(i) of the Tariff Act of 1930 and 19 CFR 351.213(d)(4).

Dated: April 1, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–8413 Filed 4–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–875]

Notice of Antidumping Duty Order: Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Antidumping Duty Order.

EFFECTIVE DATE: April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Ronald Trentham or Sam Zengotitabengoa, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6320, and (202) 482–4195, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by this order are finished and unfinished non-malleable cast iron pipe fittings with an inside diameter ranging from ¼ inch to 6 inches, whether threaded or unthreaded, regardless of industry or proprietary specifications. The subject fittings include elbows, ells, tees, crosses, and reducers as well as flanged fittings. These pipe fittings are also known as "cast iron pipe fittings" or "gray iron pipe fittings." These cast iron pipe fittings are normally produced to ASTM A–126 and ASME B.16.4 specifications and are threaded to ASME B1.20.1 specifications. Most building codes require that these products are Underwriters Laboratories (UL) certified. The scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings.

Fittings that are made out of ductile iron that have the same physical characteristics as the gray or cast iron fittings subject to the scope above or which have the same physical characteristics and are produced to ASME B.16.3, ASME B.16.4, or ASTM A–395 specifications, threaded to ASME B1.20.1 specifications and UL certified, regardless of metallurgical differences between gray and ductile iron, are also included in the scope of this petition. These ductile fittings do not include grooved fittings or grooved couplings. Ductile cast iron fittings with mechanical joint ends (MJ), or push on ends (PO), or flanged ends and produced to the American Water Works Association (AWWA) specifications AWWA C110 or AWWA C153 are not included.

Imports of covered merchandise are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7307.11.00.30, 7307.11.00.60, 7307.19.30.60 and 7307.19.30.85. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

On March 24, 2003, pursuant to section 735(b)(1)(A)(ii) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (the ITC) notified the Department of Commerce (the Department) of its final determination that the industry in the United States producing non-malleable cast iron pipe fittings is threatened with material injury by reason of import of the subject merchandise from the People's Republic of China (PRC).

In accordance with section 736(a)(1) of the Act, the Department will direct the U.S. Customs Service (Customs) to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the U.S. price of the merchandise for all relevant entries of non-malleable cast iron pipe fittings form the PRC. In accordance with section 736(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is

based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determination. In addition, section 736(b)(2) of the act requires Customs to refund any cash deposits or bonds of estimated antidumping duties posted since the Department's preliminary antidumping determination if the ITC's final determination is based on a threat of material injury.

Because the ITC's final determination in this case is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determination, section 736(b)(2) is applicable to this order. Therefore, the Department will direct Customs to assess, upon further advice, antidumping duties on all liquidated entries of non-malleable cast iron pipe fittings for the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination of threat of material injury in the **Federal Register** and terminate the suspension of liquidation for entries of non-malleable cast iron pipe fittings from the PRC entered, or withdrawn from warehouse, for consumption prior to that date. The Department will also instruct Customs to refund any cash deposits made, or bonds posted, between the publication date of the Department's preliminary antidumping determination and the publication of the ITC's final determination.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, Customs will require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the estimated weighted-average dumping margins listed below. The "PRC-wide rate" rate applies to all exporters of subject merchandise not specifically listed below.

Manufacturer/exporter	Weighted-average margin (percent)
Jinan Meide Casting Co., Ltd	7.08
Shanghai Foreign Trade Enterprises Co., Ltd	6.34
PRC-Wide Rate	75.50

Pursuant to section 735(a) of the Act, this notice constitutes the antidumping duty order with respect to non-malleable cast iron pipe fittings from the PRC. Interested parties may contact the Department's Central Records Unit, Room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: April 1, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–8414 Filed 4–4–03; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–601]

Top-of-the-Stove Stainless Steel Cooking Ware from the Republic of Korea: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Sam Zengotitabengoa or Ron Trentham, Group II, Office 4, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4195 or 482–6320, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 2, 2003, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on top-of-the-stove stainless steel cooking ware (Cookware) from the Republic of Korea (Korea) (68 FR 9048).

On February 27, 2003, pursuant to a request made by Dong Won Metal Co., Ltd. (Dong Won), a producer and exporter of Cookware, the Department initiated an administrative review of the antidumping duty order on Cookware from Korea. On March 23, 2003, Dong Won withdrew its request for an administrative review of Cookware from Korea.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that a party that requests an administrative review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. The Department is rescinding the administrative review of the order on Cookware from Korea for the period January 1, 2002 through December 31, 2002, because the requesting party has withdrawn its request for this administrative review within the 90-day time limit, and no other interested parties have requested a review of Cookware from Korea for this time period.

This notice is in accordance with section 777(i)(1) of the Act and 19 CFR 251.213(d)(4).

Dated: April 1, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–8415 Filed 4–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–851]

Preliminary Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary affirmative countervailing duty determination.

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers or exporters of dynamic random access memory semiconductors from the Republic of Korea. For information on the estimated countervailing duty rates, *see infra* section on "Suspension of Liquidation."

EFFECTIVE DATE: April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Melani Miller, Ryan Langan, Jesse Cortes, or Daniel J. Alexy, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0116, (202) 482–2613, (202) 482–3986, and (202) 482–1540, respectively.

Petitioner

The petitioner in this investigation is Micron Technology, Inc. ("the petitioner").

Period of Investigation

The period for which we are measuring subsidies, or period of investigation ("POI"), is January 1, 2001 through June 30, 2002.

Case History

The following events have occurred since the publication of the Department of Commerce's ("the Department") notice of initiation in the **Federal Register**. *See Notice of Initiation of Countervailing Duty Investigation: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 67 FR 70927 (November 27, 2002) ("*Initiation Notice*").

On December 6, 2002, we issued countervailing duty questionnaires to the Government of the Republic of Korea ("GOK") and the two major producers/exporters of dynamic random access memory semiconductors ("DRAMS" or "subject merchandise") in the Republic of Korea ("ROK"), Samsung Electronics Co., Ltd. ("SEC") and Hynix Semiconductor Inc. ("Hynix") (formerly, Hyundai Electronics Industries Co., Ltd. ("HEI")).

On January 13, 2003, we published a postponement of the preliminary determination in this investigation until March 31, 2003. *See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Extension of Time Limit for Preliminary Determination of Countervailing Duty Investigation*, 68 FR 1597 (January 13, 2003).

We received the companies' responses to the Department's questionnaire on January 27, 2003, and the GOK's response on February 3, 2003. On February 5 and 11, 2003, the petitioner submitted comments regarding these questionnaire responses. We issued supplemental questionnaires to the companies and the GOK on February 11 and 19, 2003, and received responses to those supplemental questionnaires on February 25 and March 4, 10, and 14, 2003. We issued a second supplemental questionnaire to SEC on March 25, 2003, and received a response to this questionnaire on March 28, 2003.

On February 20, 2003, the petitioner submitted several new subsidy allegations. The petitioner made further submissions regarding these new allegations on February 24 and 28, 2003. Hynix, SEC, and the GOK filed comments on these new subsidy allegations on February 25, 26, and 28, respectively. SEC filed additional comments on March 4, 2003. We addressed these new subsidy allegations in a March 7, 2003, memorandum to Susan Kuhbach, *New Subsidy Allegations* ("*New Subsidy Allegations Memo*"), which is on file in the Department's Central Records Unit in Room B–099 of the main Department building ("CRU"). Because we initiated an investigation of two of these newly-alleged programs (as discussed in the *New Subsidy Allegations Memo*), we issued a questionnaire to the each of the respondents with respect to these new programs on March 7, 2003. We received a response to these questionnaires on March 28, 2003.

Finally, both the petitioner and the respondents, as well as other interested parties, submitted comments on the preliminary determination on March 10, 14, 18, 21, 24, 27, and 28, 2003.

Scope of Investigation

The products covered by this investigation are DRAMS from the ROK, whether assembled or unassembled. Assembled DRAMS include all package types. Unassembled DRAMS include processed wafers, uncut die, and cut die. Processed wafers fabricated in the ROK, but assembled into finished semiconductors outside the ROK are also included in the scope. Processed wafers fabricated outside the ROK and assembled into finished semiconductors in the ROK are not included in the scope.

The scope of this investigation additionally includes memory modules containing DRAMS from the ROK. A memory module is a collection of DRAMS, the sole function of which is memory. Memory modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, small outline dual in-line memory modules, Rambus in-line memory modules, and memory cards or other collections of DRAMS, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items which alter the function of the module to something other than memory, such as video graphics adapter boards and cards, are not included in the scope. This investigation also covers future DRAMS module types.

The scope of this investigation additionally includes, but is not limited to, video random access memory and synchronous graphics RAM, as well as various types of DRAMS, including fast page-mode, extended data-out, burst extended data-out, synchronous dynamic RAM, Rambus DRAM, and Double Data Rate DRAM. The scope also includes any future density, packaging, or assembling of DRAMS. Also included in the scope of this investigation are removable memory modules placed on motherboards, with or without a central processing unit, unless the importer of the motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this investigation does not include DRAMS or memory modules that are re-imported for repair or replacement.

The DRAMS subject to this investigation are currently classifiable under subheadings 8542.21.8005 and 8542.21.8021 through 8542.21.8029 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The memory modules containing DRAMS from the ROK, described above, are currently classifiable under subheadings 8473.30.10.40 or 8473.30.10.80 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this investigation remains dispositive. . .

Injury Test

Because the ROK is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 ("the Act"), the International Trade Commission ("ITC") is required to determine whether imports of the subject merchandise from the ROK materially injure, or threaten material injury to, a U.S. industry. On December 13, 2002, the ITC made its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from the ROK of the subject merchandise. *See Drams and Dram Modules from Korea*, 67 FR 79148 (December 27, 2002).

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life ("AUL") of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the Department's regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's

1977 Class Life Asset Depreciation Range System (the "IRS Tables"). For DRAMS, the IRS Tables prescribe an AUL of 5 years. None of the responding companies or interested parties disputed this allocation period. Therefore, we have used the 5-year allocation period for all respondents. See, also, February 24, 2003 memorandum to the file entitled "Average Useful Life," which is on file in the Department's CRU.

Discount Rates and Benchmarks for Loans

Pursuant to 19 CFR 351.524(d)(3)(i), the Department will use, when available, the company-specific cost of long-term, fixed-rate loans (excluding loans deemed to be countervailable subsidies) as a discount rate for allocating non-recurring benefits over time. Similarly, pursuant to 19 CFR 351.505(a), the Department will use the actual cost of comparable borrowing by a company as a loan benchmark, when available. Section 351.505(a)(2) of the Department's regulations defines a comparable commercial loan as one that, when compared to the loan being examined, has similarities in the structure of the loan (*e.g.*, fixed interest rate v. variable interest rate), the maturity of the loan (*e.g.*, short-term v. long-term), and the currency in which the loan is denominated. In instances where no applicable company-specific comparable commercial loans are available, 19 CFR 351.505(a)(3)(ii) allows the Department to use a national average interest rate for comparable commercial loans.

Hynix and SEC reported that they had the following types of loans outstanding from the GOK or GOK-owned banks, ROK financial institutions, overseas creditors, or foreign banks with branches in the ROK during the POI: (1) Long-term fixed- and variable-rate foreign currency loans; (2) Long-term fixed- and variable-rate won-denominated loans; (3) short-term fixed-rate won-denominated loans; and (4) short-term fixed-rate foreign currency loans. Some of these loans were received prior to 1992. Hynix also received non-recurring benefits during the POI, as discussed in the "Analysis of Programs" section, below.

We are using the following benchmarks and discount rates for this preliminary determination:

Discount Rates and Benchmarks for Long-Term Loans

The Department has previously determined that the GOK directed the lending practices of financial institutions in the ROK through 1991. *See, e.g., Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea*, 58 FR 37338, 37339 (July 9, 1993) ("*Certain Steel*"); *Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea*, 65 FR 41051 (July 3, 2000) ("*Structural Beams*"); and *Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea*, 67 FR 62102 (October 3, 2002) ("*Cold-Rolled Steel*"). Given the GOK's direction of banks, we determined that the best indicator of the commercial, long-term borrowing rate in the ROK through 1991 was the three-year corporate bond rate on the secondary market. No party in this proceeding has submitted new evidence that would lead us to reconsider this benchmark. Therefore, for the preliminary determination, we are using the three-year corporate bond rate on the secondary market as our benchmark to calculate the benefits which the respondent companies received from domestic won-denominated loans obtained prior to 1992 that were still outstanding during the POI.

In subsequent determinations, the Department found that the GOK controlled directly or indirectly the lending practices of most sources of credit in the ROK between 1992 and 2000. *See, e.g., Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15530 (March 31, 1999) ("*Plate in Coils*"); *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 73276 (December 29, 1999) ("*CTL Plate*"); and *Structural Beams*. In *Plate in Coils*, the Department further determined that the GOK does not exercise direct or indirect control over ROK branches of foreign commercial banks. Also, in *Cold-Rolled Steel*, we found that, subsequent to April 1999, companies no longer needed approval from the GOK to access direct foreign loans or issue foreign securities. Thus, we found that these types of loans were not countervailable and, thus, also normally represented an appropriate benchmark.

As explained below in the "Direction of Credit and Other Financial Assistance" discussion in the "Analysis of Programs" section, based upon these earlier findings and updated information, we have preliminarily determined in this investigation that: (1) The GOK still exercised substantial control over most lending institutions in the ROK from 1992 through 1998, and (2) that the GOK directed credit to Hynix during the period January 1999 through June 30, 2002. Moreover, consistent with our determinations in *Plate in Coils* and *Cold-Rolled Steel*, we continue to find that the government did not exercise direct or indirect control over ROK branches of foreign commercial banks, direct foreign loans obtained after April 1999, and foreign securities issued after April 1999. Thus, we have generally continued to utilize such loans as benchmarks for SEC and Hynix, when available.

Based on the above, we are using the following benchmarks for the preliminary determination to calculate the benefits conferred by GOK-directed long-term loans obtained since 1992 which are still outstanding during the POI:

- For countervailable foreign-currency denominated long-term loans for creditworthy companies, we used, where available, the company-specific, weighted-average interest rates on the companies' comparable commercial foreign currency loans from foreign bank branches in the ROK. If this type of benchmark was unavailable, then, consistent with past cases (*see, e.g., Cold-Rolled Steel*), we relied on lending rates as reported by the International Monetary Fund's ("IMF") *International Financial Statistics Yearbook*.
- For countervailable won-denominated long-term loans for creditworthy companies, we used the company-specific corporate bond rate on the companies' won-denominated public and private bonds, where available. Use of this benchmark is consistent with *Plate in Coils*, 64 FR at 15531, in which we determined that the GOK did not control the ROK domestic bond market after 1991. Where company-specific rates were not available, we used the national average of the yields on three-year won-denominated corporate bonds as reported by the Bank of Korea ("BOK"). We note that the use of the three-year corporate bond rate from the BOK follows the approach taken in *Plate in Coils*, 64 FR at 15532, in which we determined that, absent company-specific interest rate information, the won-denominated corporate bond rate is the best indicator of the commercial long-term borrowing rate for won-denominated loans in the ROK.
- Finally, because we have preliminarily determined that Hynix was uncreditworthy from January 1, 2000 through June 30, 2002 in accordance with 19 CFR 351.524(d)(3)(ii) (*see, infra* section on "Creditworthiness"), we have calculated for Hynix only long-term uncreditworthy benchmarks and discount rates for 2000 through June 30, 2002. According to 19 CFR 351.505(a)(3)(iii), in order to calculate these rates, the Department must specify values for four variables: (1) The probability of default by an uncreditworthy company; (2) the probability of default by a creditworthy company; (3) the long-term interest rate for creditworthy borrowers; and (4) the term of the debt. For the probability of default by an uncreditworthy company, we have used the average cumulative default rates reported for the Caa-to C-rated category of companies as published in Moody's Investors Service, "Historical Default Rates of Corporate Bond Issuers, 1920–1997" (February 1998). For the probability of default by a creditworthy company, we used the cumulative default rates for investment grade bonds as published in Moody's Investor Service, "Statistical Tables of Default Rates and Recovery Rates" (February 1998). For the long-term interest rate that would be paid by a creditworthy company, we are using (1) the national average of the three-year ROK won corporate bond rate as published by the BOK for won-denominated foreign currency loans and for the discount rate, and (2) the IMF's *International Financial Statistics Yearbook* for foreign-currency denominated long-term loans. For the term of the debt, we used 5 years because all of the non-recurring subsidies examined were allocated over a 5-year period, as discussed in the "Allocation Period" section, above.

Benchmarks for Short-Term Loans

As discussed below in the "Direction of Credit and Other Financial Assistance" section, we have found that the GOK directed credit for all loans to Hynix during the POI. Thus, we cannot rely on Hynix" company-specific commercial won-or foreign currency-denominated loans outstanding during the POI as our benchmark. Instead, for those programs requiring the application of a short-term, fixed, won- or foreign currency-denominated interest rate benchmark, we used the money market rates as reported in the IMF's *International Financial Statistics* in accordance with 19 CFR 351.505(a)(3)(ii).

Equityworthiness

Section 771(5)(E)(i) of the Act and 19 CFR 351.507 state that, in the case of a government-provided equity infusion, a benefit is conferred if an equity investment decision is inconsistent with the usual investment practice of private investors. According to 19 CFR 351.507, the first step in determining whether an equity investment decision is inconsistent with the usual investment practice of private investors is examining whether, at the time of the infusion, there was a market price for similar, newly-issued equity. If so, the Department will consider an equity infusion to be inconsistent with the usual investment practice of private investors if the price paid by the government for newly-issued shares is greater than the price paid by private investors for the same, or similar, newly-issued shares.

If actual private investor prices are not available, then, pursuant to 19 CFR 351.507(a)(3)(i), the Department will determine whether the firm funded by the government-provided infusion was equityworthy or unequityworthy at the time of the equity infusion. In making the equityworthiness determination, pursuant to 19 CFR 351.507(a)(4), the Department will normally determine that a firm is equityworthy if, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable time. To do so, the Department normally examines the following factors: (1) Objective analyses of the future financial prospects of the recipient firm; (2) current and past indicators of the firm's financial health; (3) rates of return on equity in the three years prior to the government equity infusion; and (4) equity investment in the firm by private investors.

Section 351.507(a)(4)(ii) of the Department's regulations further stipulates that the Department will "normally require from the respondents the information and analysis completed prior to the infusion, upon which the government based its decision to provide the equity infusion." Absent an analysis containing information typically examined by potential private investors considering an equity investment, the Department will normally determine that the equity infusion provides a countervailable benefit. This is because, before making a significant equity infusion, it is the usual investment practice of private investors to evaluate the potential risk versus the expected return, using the most objective criteria and information available to the investor.

The equityworthiness analysis relating to Hynix' debt-to-equity conversions as part of the Hynix October 2001 Restructuring program is located in the "Analysis of Programs" section, below.

Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. *See* 19 CFR 351.505(a)(4). According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. In making this determination, according to 19 CFR 351.505(a)(4)(i), the Department normally examines the following four types of information: (1) The receipt by the firm of comparable commercial long-term loans; (2) present and past indicators of the firm's financial health; (3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm's future financial position.

With respect to item number one, above, pursuant to 19 CFR 351.505(a)(4)(ii), in the case of firms not owned by the government, the receipt by the firm of comparable long-term commercial loans, unaccompanied by a government-provided guarantee (either explicit or implicit), will normally constitute dispositive evidence that the firm is not uncreditworthy. However, according to the *Preamble* to the Department's regulations, in situations, for instance, where a company has taken out a single commercial bank loan for a relatively small amount, where a loan has unusual aspects, or where we consider a commercial loan to be covered by an implicit government guarantee, we may not view the commercial loan(s) in question to be dispositive of a firm's creditworthiness. (*See Countervailing Duties; Final Rule*, 63 FR 65348, 65367 (November 28, 1998) ("*Preamble*").)

In the *Initiation Notice*, we indicated that we would investigate Hynix" creditworthiness in 2000 through 2002. As discussed in the March 31, 2003 memorandum entitled "Creditworthiness" ("*Creditworthiness Memo*") (which is on file in the Department's CRU), we have found Hynix to be uncreditworthy in 2000 through June 2002. Therefore, we have used an uncreditworthy benchmark rate in calculating the benefit from loans received during this time period, and have also used an uncreditworthy discount rate in calculating any non-

recurring benefits received by Hynix that were allocable to the POI.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined to Be Countervailable

A. Direction of Credit and Other Financial Assistance

The GOK's Credit Policies Through 1998

As discussed above in the "Discount Rates and Benchmarks for Loans" section, the Department has examined the issue of whether the GOK controlled the lending practices of banks in the ROK in past cases. For the period through 1991, we determined that the GOK's direction of credit policies resulted in countervailable subsidies to the ROK steel industry. See, *e.g.*, *Certain Steel*, *CTL Plate*, and *Structural Beams*. In subsequent determinations, the Department found that the GOK continued to control, directly and indirectly, the long-term lending practices of most sources of credit in the ROK through 1998. *See Plate in Coils* and *CTL Plate* for our findings regarding 1997 and 1998, respectively.

Although we determined that the GOK directed the provision of loans by ROK banks in *Plate in Coils* and the *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636, 30639 (June 8, 1999) ("*Sheet and Strip*"), we concluded that loans from Korean branches of foreign banks (*i.e.*, branches of U.S. and foreign-owned banks operating in Korea) did not confer countervailable subsidies. This determination was based upon our finding that credit from ROK branches of foreign banks was not subject to the government's control and direction. Additionally, because these loans were not directed or controlled by the GOK, we used them as benchmarks to establish whether loans from domestic banks conferred a benefit upon respondents.

We provided the respondents in the current proceeding an opportunity to present new factual information concerning the GOK's direction of long-term lending during this previously-examined period. No party contested or provided new information challenging the Department's findings prior to 1998. Moreover, although certain respondents indicated that they were challenging the Department's finding for 1998, the respondents have not provided any new information that has not already been closely examined in past proceedings (*e.g.*, *CTL Plate* and *Structural Beams*). Therefore, we preliminarily determine that the GOK controlled, directly and indirectly, the long-term lending practices of most sources of lending in the ROK through 1998, with the exception of loans from Korean branches of foreign banks, as noted above, and, consequently, that the GOK entrusted and directed these banks to make loans as directed by the GOK.

Specificity

In the above-cited proceedings, we determined that government-directed loans provided a countervailable subsidy to the ROK steel industry. For the reasons explained below, we have preliminarily determined in this proceeding that the GOK also directed loans to the semiconductor industry through 1998.

In *Structural Beams* and *CTL Plate*, the Department found that the GOK directed credit to "strategic" industries, such as steel, automobiles, and consumer electronics, throughout the 1970s, 1980s, and 1990s. In 1976, it was clear that the semiconductor industry was one of the GOK's "strategic" industries and was designated to receive special treatment from the GOK, including loans. For example, in its Fourth Five-Year Plan, the GOK stated that "the electronics industry will be promoted as a major export industry through the development of new technology products and the expansion of overseas sales activities * * * Semiconductors, computers and related items have been selected as strategic products."

This plan gave rise to the publicly financed Korea Institute of Electronics Technology ("KIET"). The KIET's primary function was to plan and coordinate semiconductor research and development; import, assimilate, and disseminate foreign technologies; provide technical assistance to Korean firms; and conduct market research. According to an October 1991 study, KIET essentially jump-started the semiconductor industry in the ROK and paved the way for SEC, HEI, and Goldstar Electron to enter the market as major DRAMS producers. In addition, the Heavy and Chemical Industry plans of 1974 and 1976 identified six strategic industries (chemicals, electronics, machinery, non-ferrous metals, and steel) which the GOK would support financially to "raise the selected industries" competitiveness and, consequently, to increase their exports."

For the next two decades, the semiconductor industry was repeatedly identified in national economic and development plans, as well as in industry promotion plans, as a "strategic" industry that would receive "a wide range of fiscal and financial investment incentives." Other examples of such policies include the Fifth Five-Year Economic and Social Development Plan (1981) and the Sixth Five-Year Economic and Social Development Plan (1986).

In *Structural Beams*, we found that, after the removal of the de jure preferences for "strategic" industries in 1985, the GOK continued to channel billions of dollars in lending into sectors favored by the government's industrial policies. We also found that, throughout the 1990s, "bankers in Korea {believed} that the {Korea Development Bank ("KDB")} is still known for preferring the semiconductor, shipbuilding, and steel industries." (*See Structural Beams* June 7, 2000 memorandum to the file, "Direction of Credit in Korea: Structural Steel Beams from the Republic of Korea," the public version of which is included as an appendix to the March 31, 2003 memorandum entitled "Direction of Credit Citations" (*"Direction Citations Memo"*), which is on file in the Department's CRU.)

In this investigation, there is substantial evidence illustrating the GOK's continued favoritism toward the semiconductor industry well after 1985. The GOK's Seven Year High Technology Development Plan (1990) (*"Seven Year Plan"*) called for U.S. Dollar ("USD") 1.83 billion for the development of semiconductors, tax incentives to encourage private-sector investment, and the building of an industrial estate for the assembly of semiconductors, computers, and optical equipment. The *Seven Year Plan* also identified 16 and 64 megabit DRAMS for development through government-industry cooperation. Under the *Seven Year Plan*, the Highly Advanced National program ("HAN") was established to support the production of 256 megabit DRAMS by 1996 and one gigabit DRAMS by 2000 with USD 4.9 billion in government expenditures through 2001.

In 1994, the Ministry of Trade, Industry, and Energy ("MOTIE") announced its selection of five strategic investment sectors (semiconductors, liquid crystal displays ("LCD"), aircraft, satellites, and machine tools) to receive government support. "As for the semiconductor industry, 46.9 billion won will be spent on {research and development ("R&D")} for a 256-{megabit} DRAM this year and 20 billion won for LCD research. Of these amounts, 19.2 billion won and 10 billion won, respectively, will be extended from the government budget. By 1997, a total of 195.4 billion won * * * are to be invested in {semiconductors}." In a July 1997 interview, the Director General of the Electronics, Textile, and Chemical Industry Bureau of MOTIE stated, "{t}he government's long-term strategy calls for {the ROK} becoming the world's largest producer of semiconductor chips in the year 2010."

Moreover, in *Structural Beams*, we found that the KDB provided a significant amount of the lending to "strategic" industries, such as steel, throughout the 1990s. Therefore, as in Structural Beams, in the instant investigation we reviewed a list of the largest recipients of KDB financing within the manufacturing sector in 1992 through 1997 as part of our specificity analysis. For this investigation, we requested similar information regarding the distribution of loans to industry sectors by specific institutions, including the KDB, and the Korean financial sector as a whole. The GOK provided information for 1997 and 1998 for broad industry sectors such as "Pulp, Paper, and Paper Products," and "Radio, Television, and Communication Equipment," which includes semiconductors. The GOK stated that it was unable to provide loan information on a more specific basis. Because this information does not cover the period we are examining in full, and because it is overly broad to use in our normal specificity analyses under 771(5A) of the Act, we intend to seek more detailed information during verification with respect to lending distribution in the ROK.

Notwithstanding the limited KDB lending data, we find that there is sufficient information on the record demonstrating the GOK's designation of the semiconductor industry as a "strategic" industry. Specifically, the GOK's national economic and development plans, as well as industry promotion plans, from the late 1970s through 1998, identified the semiconductor industry as a "strategic" industry.

Therefore, based on the above information, we preliminarily determine that the GOK directed credit specifically to the semiconductor industry through 1998 within the meaning of section 771(5A) of the Act.

The GOK's Involvement in the ROK Lending Sector from 1999 Through June 30, 2002

The Department has also addressed GOK direction of credit in the years subsequent to 1998. In the *Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 67 FR 1964 (January 15, 2002) and *Cold-Rolled Steel*, we provided the respondents with an opportunity to present new factual information concerning the government's credit policies in 1999 and 2000, respectively. No party provided any new information on the GOK lending policies for domestic banks in either case. Therefore, we determined in those cases that long-term lending from domestic commercial banks and from specialized banks, such as the KDB, was directed by the GOK in 1999 and 2000, respectively.

Additionally, with respect to direct foreign loans (*i.e.*, loans from offshore banks) and offshore foreign securities issued by ROK companies, we found that, subsequent to April 1999, companies no longer needed approval from the GOK to access direct foreign loans or to issue foreign securities. *See Cold-Rolled Steel*. Thus, we determined that these loans were not directed or controlled by the GOK, and could serve as benchmarks. No party has challenged this past finding.

In the instant investigation, the petitioner has alleged that the GOK continued to influence and direct the practices of lending institutions in the ROK through the POI, and that the semiconductor sector received a disproportionate share of the benefits provided pursuant to this direction, resulting in the conferral of countervailable benefits on the producers/exporters of the subject merchandise. The petitioner has also alleged that, if the Department does not find that the semiconductor industry received a disproportionate share of financing during this period, this directed credit was specific to Hynix. The petitioner asserts, therefore, that the Department should countervail all loans and benefits from GOK owned/controlled/directed institutions that were received by the producers/exporters of the subject merchandise, or all loans and benefits received specifically by Hynix, obtained during this period that were outstanding during the POI.

We provided the respondents in this proceeding an opportunity to present new factual information concerning the GOK's credit practices from 1999 through June 30, 2002 which we would consider along with our findings in the above-noted prior investigations. Certain respondents challenged the Department's prior direction of credit findings for 1999 and 2000. Parties in this investigation also presented information concerning the GOK's role in the ROK financial lending sector from 2001 through June 30, 2002.

Because of the Department's prior determinations that the GOK controlled and directed credit provided by most ROK banks through 2000, discussed above, the burden of demonstrating that the GOK has changed its practices is placed, in large part, upon the respondents. Moreover, with respect to 1999 and 2000, because the Department has previously found that the GOK directed credit provided by most ROK banks in those years, new information or evidence of changed circumstances must be presented before the Department will revise or change its previous findings.

In its response, the GOK argued that the post-1997 financial reforms instituted following the ROK financial crisis have led to the liberalization of the ROK financial sector, and that the GOK did not direct credit provided by domestic and government-owned banks from 1998 through the end of the POI. The GOK has also placed new information on the record to support its claim. As noted above, the Department has already addressed the impact of these reforms in 1998 in *CTL Plate* and *Structural Beams*. However, for the subsequent period, the GOK has submitted new information which we have analyzed to determine whether the GOK continued to direct credit from 1999 through June 30, 2002.

In our analysis, we have distinguished between banks that are themselves government authorities within the meaning of section 771(5)(B) of the Act and commercial banks that are not considered to be government authorities. In *CTL Plate* and *Structural Beams*, we found that, although changes had been made to the legislation regulating government-controlled specialized banks, such as the KDB, in the aftermath of the financial crisis, the respondents did not provide any evidence to demonstrate that the KDB has discontinued its practice of selectively making loans to specific firms or activities to support GOK policies.

Record evidence from the instant investigation indicates that the KDB and other specialized banks, such as the Industrial Bank of Korea ("IBK"), continue to be government authorities within the meaning of section 771(5)(B)

of the Act. The term "authority" is defined in section 771(5)(B) of the Act as "a government of a country or any public entity within the territory of the country." As stated in the *Preamble* to the Department's regulations, "* * * we intend to continue our longstanding practice of treating most government-owned corporations as the government itself." *See Preamble*, 63 FR 65402.

In order to assess whether an entity such as the KDB should be considered to be the government for purposes of countervailing duty investigations, the Department has in the past considered the following factors to be relevant: (1) Government ownership; (2) the government's presence on the entity's board of directors; (3) the government's control over the entity's activities; (4) the entity's pursuit of governmental policies or interests; and (5) whether the entity is created by statute. *See, e.g., Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30954 (July 13, 1992); *Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from the Netherlands*, 52 FR 3301, 3302, 3310 (February 3, 1987); and *Sheet and Strip*, 64 FR 30642–43.

According to the BOK in a February 2002 report on ROK financial institutions, most of the specialized banks are government-controlled banks. With regard to the KDB, all of the KDB's shares are held by the GOK. Additionally, according to the KDB Act, the KDB's purpose is "the supply and management of major industrial funds to promote industrial development and the advancement of the national economy." All of KDB's senior management and its auditor are appointed by the ROK President or the Ministry of Finance and Economy ("MOFE"). KDB's annual business plan must be approved on an annual basis by the MOFE, and the KDB is supervised by the MOFE (except for prudential supervision, which is carried out by the Financial Supervisory Commission ("FSC")). Any net losses suffered by the KDB are covered by the GOK according to Article 44 of the KDB Act.

The purpose of the IBK is "to promote independent economic activities for small and medium enterprises and to enhance their economic status in the national economy." The majority of the IBK's shares are held by the GOK. The IBK's top officials are appointed by the ROK President or by a GOK ministry. According to the IBK Act, one of the IBK's activities is to "perform business entrusted by the Government and public entities," and to "achieve the purpose of the bank {as noted above} with the approval of the relevant Minister." The IBK's annual business plan and operations manual (including its lending methods) must be approved by the relevant minister. Any annual losses suffered by the IBK are covered by the GOK.

Based on this information and our past findings, we preliminarily determine that the KDB and the other specialized banks, such as the IBK, are government authorities. Hence, the financial contributions they made fall within section 771(5)(B)(i) of the Act.

As for the commercial banks in which the GOK owned a majority or minority stake, there is no evidence currently on the record that these entities are GOK authorities within the meaning of section 771(5)(B) of the Act. These banks act as commercial banks, and temporary GOK ownership of the banks due to the financial crisis is not, by itself, indicative that these banks are GOK authorities. Therefore, we must determine whether these banks, as well as other ROK lenders, were directed or entrusted by the GOK to provide funds to the respondents during the period 1999 through the end of the POI. *See* section 771(5)(B)(iii) of the Act.

In late 1997, the financial crisis that had been plaguing many countries in Asia came to a head in the ROK. A severe foreign exchange crisis, coupled with a sharp increase in interest rates and a drop in economic output, caused many large companies to be unable to meet their debt obligations and liquidity needs. As a result, many companies experienced serious financial difficulties, and many banks were weakened by the rapid increase in non-performing loans, a situation that threatened the stability of the financial system itself.

According to the GOK, this financial crisis in late 1997 brought about many market-oriented changes in the financial sector in the ROK. For example, as discussed in *CTL Plate* and *Structural Beams*, in January 1998, the GOK announced closure of some banks, and in April 1998, it launched the FSC which, according to the GOK, is a central government organization established for the purpose of consolidating and improving the GOK's monitoring and supervision of financial institutions. (The FSC's authority was later expanded to also cover specialized banks.) According to the GOK, these changes were part of a larger package of reforms including legal, regulatory, and policy changes intended to transform the ROK financial sector into a better managed, better supervised, and more market-oriented sector of the economy.

As part of these reforms, in the period 1999 through 2002, several commercial banks in the ROK were closed or merged with other banks. The closure of weak financial institutions was, according to the GOK, one of the most dramatic policy changes in the ROK. The GOK also points to the opening of the financial markets to foreign ownership and investment as another major change. For example, majority ownership of Korea First Bank ("KFB") was sold to a foreign investor, and shares in other banks, such as Korea Exchange Bank ("KEB"), were sold to foreign investors. Additionally, the GOK worked to tighten rules on accounting and best practices by applying international standards.

Finally, as noted above, the GOK implemented many new laws, regulations, and practices with regard to the financial system. In May 1999, the KDB Act was amended to entrust the FSC with regulatory oversight of KDB's financial prudentiality. In January 2000, the Depositor Protection Act was revised to ensure that officers and employees of financial institutions that are responsible for financial troubles of their employer can be required to compensate the financial institution for damages. The Bank Act was also revised to set forth procedures for the licensing and supervision of banks. In March 2000, the KDB enforcement decree was amended to expand to the KDB the loan exposure limits that applied to other banks. In October 2000, the Corporate Restructuring Vehicle Act was enacted to facilitate the resolution of bad loans held by financial institutions. The Financial Holding Company Act was also enacted, which established financial holding companies in the ROK for the first time. In November 2000, Prime Minister's Decree, Instruction No. 408 ("*Prime Minister's Decree*"), was issued, stating that government officials at financial supervisory organizations, such as the MOFE and the FSC, were not to interfere in the operations of commercial and specialized banks.

In December 2000, the Public Funds Management Act was enacted to enhance transparency in the use of public funds. The Depositor Protection Act was also revised to allow the Korea Deposit Insurance Corporation ("KDIC") to request information directly from banks, and to request assistance from the FSC if a financial institution looks as if it may become insolvent. In September 2001, the Corporate Restructuring Promotion Act ("CRPA") was enacted to allow creditor banks to initiate prompt restructuring measures against potentially insolvent companies and to provide a more formal framework for creditor financial institutions to work together. In April 2002, the Banking Act was revised to relax restrictions placed on bank ownership.

As is evidenced by the above-noted changes in the ROK financial system since the 1997 financial crisis, the GOK has taken many steps to reform the financial system in the ROK, steps for which the GOK has been widely praised. However, despite the changes noted above, events in the ROK financial system have led the GOK to continue its involvement there. Specifically, in the aftermath of the financial crisis, many corporations have suffered from liquidity problems, especially as loans and other debt incurred during or after the financial crisis have begun to mature. These financial problems in the corporate sector necessarily have had a great impact on the creditors holding the outstanding liabilities of these corporations. Because many banks have suffered their own liquidity crises in light of the troubles in the corporate sector due to their debt holdings in these troubled companies, record evidence indicates that the GOK has inevitably had to stay closely involved in the financial system in order to ensure stability while corporate restructuring continues, and that the GOK's role exceeded the understandable function of financial supervision.

For example, record evidence indicates that the GOK had to inject trillions of won into ROK banks to keep them solvent following the financial crisis. According to an August 2001 Bank for International Settlements paper, this type of support was "inevitable and necessary in order to ensure the soundness of the financial system and to prevent systematic risk in the process of financial sector restructuring." As a result of these recapitalizations, many commercial banks have been nationalized by the GOK, and the GOK has become (and continued to be throughout the POI) the majority owner of several of the large ROK commercial banks, including Seoul Bank, the banks under the Woori Financial Holding Company umbrella (including Peace, Kwangju, and Kyongnam banks), Woori Bank (formerly Hanvit Bank), and Cho Hung Bank (although we note that there is conflicting information on the record with respect to bank ownership by the GOK during the POI). Moreover, in 2001, the BOK increased the aggregate credit ceiling in order to provide more funds to financial institutions to encourage the financial institutions to provide loans to the corporate sector. In doing so, the BOK also adjusted the method of allocation in such a way as to supply more aggregate credit at low interest rates to financial institutions that expanded corporate lending.

While we do not contend that the GOK's ownership of ROK banks is by itself dispositive of the GOK's involvement in the banks' lending decisions, banks that are owned, in whole or in part, by the GOK are subject to the influence of their majority or minority shareholders. This point was made, for example, by a Morgan Stanley executive director and ROK chief, who stated in a September 2001 *Asiamoney* article regarding ongoing discussions relating to a potential debt-for-equity swap involving Hynix and its creditors (which eventually took place in Hynix's October 2001 restructuring) that "if creditor banks go down that road, there would be speculation that the decision was made in conjunction with the government." He continued, "{a}lthough Hynix argues that the creditors arrived at their decision {to participate in the debt-to-equity conversion} purely on economic grounds, the fact that most of them are state-owned does infer government intervention." Thus, the GOK's ownership position in certain banks indicates that the GOK does have an impact on lending decisions of certain government-owned banks.

Along with its increased ownership in the banks, the GOK's dual role as owner and regulator can also be seen as evidence of the GOK's influence over bank lending decisions. For instance, in July 2001 articles in the *International Herald Tribune* and the *New York Times*, Stanley Fischer, an IMF official who was an architect of the IMF's restructuring plan in the ROK, was quoted as saying that the GOK needed to get itself out of the financial sector and should stop supporting failing banks and corporations. With regard to the GOK, he stated that "they have got to get themselves out of the financial sector" and that "{t}here is a conflict of interest between the government as an owner and the government as a supervisor." This view was also reflected in the August 2, 2001 IMF Public Information Notice (No. 01/79), which is included as an appendix to the *Direction Citations Memo* on file in the Department's CRU. In the notice, which was prepared as part of the IMF's post-crisis monitoring program, IMF directors expressed concern that "the role of the government as part-owner and supervisor of financial institutions, coupled with a significant role as guarantor of corporate debt, would hinder the pace of restructuring and risk impeding the development of a sound commercial banking system and a thriving capital market." There is also evidence on the record that the GOK has given authoritative instructions to financial institutions, including those involved in supporting Hynix. According to a November 2001 paper prepared by a World Bank employee, "press reports that the {Financial Supervisory Service ("FSS") (the FSC's enforcement body)} had instructed creditor banks to classify Hynix loans as normal further highlight the conflicts of interest that can arise when a financial supervisor is tasked with managing corporate/financial sector restructuring in a systemic crisis." The same World Bank report states that "it is reported in the press that the FSS—in contravention of its duty to safeguard the soundness of {the ROK's} financial sector—has been pressuring financial institutions to extend credits to distressed companies as promised in {out-of-court} workout {Memoranda of Understanding ("MOU")}."

Additional information on the record suggests that the corporate restructuring mechanism for distressed firms in the ROK would continue to require additional reforms to ensure that corporate workouts are conducted on commercial terms and without government intervention. In particular, the IMF took issue with the ROK's record with "out-of-court" workouts, suggesting that greater reliance should be put on court-supervised insolvency in order to accelerate the restructuring of distressed companies, and stressing the need for additional insolvency reform. In this context, the IMF directors "urged the authorities to refrain from pushing creditors into bailing out troubled companies * * *." *See* February 1, 2001 IMF Public Information Notice (No. 01/8), which is included as an appendix to the *Direction Citations Memo* on file in the Department's CRU. The directors noted that some government intervention in the financial markets may have been justified as long as these measures were transitory, kept distortions to a minimum, were limited to viable firms with temporary problems, and avoided the perception that some companies are "too big too fail." *Id.* The Directors concluded that the basic restructuring framework was largely in place, but that it was now critical "for the government to step back from intervening in the operation of markets and economic decision making, and instead rely in the future on markets in imposing discipline." *Id.*

Even a year later, the IMF directors found that, while some progress in corporate restructuring had been made,

the corporate sector remained "beleaguered" by the continued operation of loss-making companies. In particular, the directors "stressed that the orderly exit of nonviable companies should be accelerated, and that state-owned banks, in particular, need to accept reductions on their claims, including by allowing a company to be liquidated if losses become unmanageable." *See* February 12, 2002 IMF Public Information Notice (No. 02/09), which is included as an appendix to the *Direction Citations Memo* on file in the Department's CRU.

The GOK has claimed that the GOK-owned banks make their lending and credit decisions based on commercial criteria. However, there is information on the record indicating that the GOK continues to direct, and otherwise apply pressure to, certain ROK lenders with regard to their lending and credit decisions. Specifically, there are numerous reports on the record that indicate that the GOK was involved in certain bank lending and credit decisions during the POI to ensure that debt-ridden companies, particularly Hynix and other current or former Hyundai Group affiliates, would have access to financing or other funds provided by the banks.

For example, in September 2002, an ROK National Assembly member chastised the GOK in a press statement for compelling financial institutions to support the Hyundai Group and Hynix since the beginning of Hyundai's liquidity crisis in mid-2000. The report stated "{f}or two years following the outbreak of liquidity crisis in the Hyundai Group, the government of Dae-Joong Kim has provided astronomical sums of special support to the Hyundai Group, amounting to a total of 33.6 trillion won by mobilizing the resources of financial and government-run institutions."

A January 2001 *Wall Street Journal* article states that ROK banks have "been more accustomed to following government orders than making sound credit decisions." It further states that, when KFB (a bank that is 51 percent foreign-owned) refused to participate in a GOK debt restructuring program (that was focused primarily on Hyundai Group companies) at the request of the FSS, the FSS applied pressure to KFB and "strongly urged" KFB to participate in the plan lest it risk losing some of its clients. Commenting on this, an executive at a GOK-owned bank said that the nationalized banks were "green with envy," as "nobody wants to increase their exposure to these corporations that still have a long way to get their acts together." The article states that the FSS asked creditor banks to participate in this program, and only KFB refused.

An April 2001 *Korea Herald* article notes that the FSS threatened to fine Hana Bank if it failed to provide emergency liquidity to Hyundai Petrochemical, which was a part of the Hyundai Group that was going through the corporate workout process. In a June 2001 *Dow Jones International* news article, it was reported that KorAm Bank reversed its decision not to participate in the Hynix June 2001 convertible bond offering after the FSS warned of a possible sanction against KorAm if it did not participate. In February 2001, the managing director at UBS Warburg in Seoul stated that "the impression that we get is that while the government claims {the banks} are totally independent, behind-the-scenes pressure is being applied so that they lend to certain entities." In July 2001, with regard to corporate restructuring packages, an official at the MOFE stated that "we've decided to force all creditor financial institutions {both local and foreign} to take part in {creditor} meetings in order to prevent some of them from refusing to attend and pursuing their own interests by taking advantage of bailout programs."

According to a July 2002 *Institutional Investor International* article, "{}among the biggest concerns is the true extent of banking independence. Yes, there are plenty of signs that this autonomy holds sway—notably, KFB's stance toward the *chaebol*." The article continues, stating that although GOK officials state that there is no government pressure at all, not everyone is convinced. "The government has changed its policies quite a bit, but it still may assert influence," said a Credit Suisse First Boston ("CSFB") senior economist in Hong Kong. "Nobody can rule out intervention." According to a March 2002 *New York Times* article, "{m}any analysts say that privatization is needed to foster management independence and lending discipline. "There's a suspicion that the government mucks around with the banks," said an analyst at the IMF. With one-quarter of Korean companies losing money, he said, banks often face political pressure to keep them on life support." Finally, an April 2001 *Korea Times* article notes: "{W}hether the Kim administration likes it or not, the Korean banks are now under tight state control. The government jawboned banks to bail out insolvent firms, including Hyundai Engineering and Construction {("HEC")}. The independence of the central bank was compromised, as the {BOK} must get approval for its budget from the {MOFE}."

(For a more detailed list of record information on the issue of direction, *see Direction Citations Memo*, noted above, which is on file in the Department's CRU.)

Moreover, although the GOK states that it has taken affirmative measures, such as the *Prime Minister's Decree*, to ensure that government officials at financial supervisory organizations do not interfere in the operations of commercial and specialized banks, record evidence indicates that GOK interference has continued, in some instances, and that the *de jure* measures contain sufficient ambiguities which would allow the GOK to become involved in the banking system. For instance, the *Prime Minister's Decree* at Article 5 states that the financial supervisory agencies can request cooperation from financial institutions for the purpose of the stability of the financial market, or to attain the goals of financial policies. As noted above, the financial system in the ROK has been going through a crisis that could be the type of situation in which this exception would be applied. A further exception that would allow GOK influence over the banks is included in Article 6 of the *Prime Minister's Decree*. Article 6 states that "the Minister of MOFE and KDIC shall, *unless they exercise their rights as shareholders of any of the Financial Institutions*, procure that the Financial institution, which was invested by the {GOK} or KDIC, can be operated independently under the direction of the Board of Directors thereof" (emphasis added). As noted above, because the GOK is part-owner in many commercial banks, an exercise of its shareholder rights could allow the GOK an opportunity to become involved in the operations of the banks.

Finally, Article 17 of the Public Fund Oversight Special Act stipulates that when the GOK provides public funds to a financial institution (such as the recapitalization of a bank as occurred several times during this period), the GOK will enter into an MOU which will set financial soundness, profitability, and asset quality targets, and will consist of a detailed implementation plan for implementation of these targets. Pursuant to Article 14, the GOK will review the implementation of this plan on a quarterly basis. The GOK in this manner can be directly involved in the fiscal operations of the bank.

Thus, although record evidence does indicate that the GOK's financial system reforms have been positive and are beginning to take hold, evidence on the record indicates that, in certain instances, these reforms have yet to fully erase the GOK's direction of the banks, nor have they prevented the GOK from acting, through financial institutions involved in the ROK market, to ensure that Hynix received necessary financing. Therefore, based on the above, we preliminarily find that the GOK directed the lending and credit practices of certain sources of credit in the ROK from 1999 through June 2002 in limited situations, including the case of Hynix, as discussed below.

Before addressing the issue of whether credit is directed to a specific enterprise or industry in the ROK, we note that, in past cases, we have found that loans from ROK branches of foreign banks are not subject to the direction of the GOK. (*See, e.g., Plate in Coils* and *Cold-Rolled Steel*.) Specifically, we found that loans from Citibank were not directed by the GOK. (*See, e.g., Plate in Coils* memorandum dated March 4, 1999, "Analysis Concerning Post 1991 Direction of Credit," which is included as an appendix to the *Direction Citations Memo* on file in the Department's CRU.) Based on these past findings, we have preliminarily determined that the lending and credit practices of Citibank are not directed by the GOK. However, we intend to seek further information with regard to Citibank prior to the final determination.

Specificity

As discussed above, we have preliminarily determined that the GOK directed credit to the semiconductor industry through 1998. However, for the period 1999 through June 30, 2002, record evidence in this proceeding indicates that the GOK directed or provided loans and other benefits to a specific company or group of companies. The group of companies to which the GOK directed or provided loans during this period comprises companies that continue to be or were part of the Hyundai Group, including one of the respondents in this proceeding, Hynix.

As evidenced by many of the articles cited above regarding GOK direction of credit in this period, many of the statements that were made relating to government instructions to, and pressure on, banks related to financing for Hyundai Group companies or Hynix, or programs, such as the Fast Track program, discussed below, that were directed to Hyundai Group companies.

For example, as discussed above, in September 2002, a National Assembly member spoke out against the GOK's direction of credit to the Hyundai Group companies. However, National Assembly members were not the only ones speaking of this practice. The official response to the National Assembly Report from President Kim's office was as follows: "{w}e are doing what is deemed necessary to save companies leading the country's strategic industries." Another Blue House official said in January 2001 that "Hyundai is different from Daewoo. Its semiconductors and constructions are Korea's backbone industries. These firms hold large market shares of their industries, and these businesses are deeply-linked with other domestic companies. Thus, these firms should not be sold off just to follow market principles."

In January 2001, the *Korea Times* stated that "cash-starved {Korean} companies claimed that the government's measures were only aimed at certain larger companies such as {Hyundai Merchant Marine, Co. Ltd ("HMM")}, HEI, and Korea Industrial Development." According to a March 2001 article in the *Korea Herald*, "{o}nce again, the government appears to have backtracked on reform pledges, as it allegedly forced creditors to extend trillions of won in fresh financial aid to three Hyundai Group firms—{HEI, HEC}, and Hyundai Petrochemical." And in May 2001, a senior KEB official stated that "{i}f Hynix is placed under receivership, Korea's exports will be severely battered {because} Hynix accounts for 4 percent of exports. As far as I know, the government is now working out a series of powerful measures to ensure the survival of Hynix Semiconductor."

The National Assembly member, quoted above, charged that the GOK provided "astronomical sums of special support to the Hyundai Group, amounting to a total of 33.6 trillion won by mobilizing the resources of financial and government-run institutions" from May 2000 to June 2002. The National Assembly Report relied on data relating to the corporate restructuring measures taken by the following Hyundai Group companies from May 2000 through June 2002: HEC, Hynix, Hyundai Petrochemical Co., Ltd., and HMM (collectively, "Hyundai Group"). During this period, ROK financial institutions participated in the Hyundai Group's restructuring measures, which included new loans, equity swaps, the acceleration of debt acquisition, the extension of debt maturities, convertible bond purchases, and debt exemptions for a total of 244,106 billion won; the total for Hynix was 120,017 billion won. During the same period, GOK authorities (the KDB and the Export-Import Bank of Korea, among others) provided support to the Hyundai Group totaling 115,365 billion won (Hynix data is not reported separately from these figures). Hynix' share of restructuring measures from financial institutions accounted for nearly 50 percent of the Hyundai Group's total.

In considering whether this program was *de facto* specific, we are mindful of other scenarios where there have been debt restructuring programs in situations of national financial difficulty. For example, in the *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001) ("*Thai Hot-Rolled Steel*"), the Department found that a debt restructuring program was not specific to the respondent steel company because it was not limited to an enterprise or industry. There, the evidence showed that the program was broadly available across many industries, and the Department's evaluation showed that there was no predominant user or disproportionate share of the program, as well as other factors. (*See Thai Hot-Rolled Steel*, 66 FR 50410 and accompanying September 21, 2001 Decision Memorandum at Section III.A.4.) By contrast, here we find a number of indicators of ROK activity specifically focused on aiding Hynix and the Hyundai Group of companies.

Because record evidence indicates that the GOK's actions with respect to its direction of credit were specific to current or former Hyundai Group companies, we preliminarily find that this program is specific for Hynix pursuant to section 771(5A)(D)(iii)(I) of the Act. Further, we preliminarily determine that the GOK did not direct credit to SEC or the semiconductor industry as a whole during this period. Therefore, we preliminarily determine that any loans or other benefits provided to SEC during this period pursuant to the allegations of direction of credit are not countervailable according to section 771(5) of the Act.

Specific Financial Contributions Made Pursuant to the GOK's Direction of Credit

Having preliminarily determined that the GOK directed credit to the semiconductor industry through 1998, and to Hynix subsequently, we now examine the financial contributions made by the directed financial institutions and the benefits conferred by those financial contributions.

1. Hynix Financial Restructuring and Recapitalization

In the fall of 2000, because of the weakness in the ROK financial system in the wake of the 1997 financial crisis, many companies, like HEI, were continuing to have trouble securing financing for their operations or to refinance maturing debt. HEI, specifically, had serious looming financial troubles, with several trillion won in short-term debt that was coming due in 2001.

According to Hynix, and as further discussed below, the first step taken by HEI and its financial advisors, Citibank and Salomon Smith Barney ("SSB"), was to work with HEI's creditors to borrow funds to meet immediate liquidity needs. These funds were arranged for in December 2000 in the form of a won 800 billion syndicated bank loan, which was organized by Citibank. Hynix reports that this was a stop-gap measure to cover certain immediate financial needs while a more comprehensive restructuring and recapitalization plan was being developed and implemented. At the same time, HEI was also nominated by its creditors to participate in a new GOK program starting in January 2001, the KDB Fast Track Debenture Program (discussed in greater detail below). Also in January 2001, Hynix arranged with its creditors to secure an increase in its documents against acceptance ("D/A") line of credit from USD 800 million to USD 1.4 billion.

In March 2001, as part of its corporate restructuring, HEI changed its name to Hynix. This step was taken in advance of its official August 2001 separation from the Hyundai chaebol. At the same time, a group of Hynix' 17 major creditors formed the first Hynix Creditors' Financial Institution Council ("Creditors" Council"). According to the GOK, this Creditors' Council was based on the corporate workout process established by the GOK in June 1998 pursuant to the Corporate Restructuring Act ("CRA"), which was an informal agreement that comprised 210 ROK financial institutions. Under the CRA, the FSC would identify the lead creditor of the troubled corporation (normally the financial institution with the most outstanding debt). The lead creditor, which would be responsible for negotiating any corporate work-out terms, headed the Creditors' Council, a council made up of the troubled corporation's creditor banks. (In September 2001, the CRA was replaced by the CRPA, a more formal mechanism under ROK law which codified the corporate workout methods that were being utilized under the CRA.) However, although this Creditors' Council was based on the CRA councils, according to the GOK, it was not part of the CRA program but was a voluntary agreement among Hynix' creditors based on experience acquired while pursuing other workout agreements.

Hynix and SSB presented this Creditors' Council with an overall restructuring proposal for Hynix. This proposal included recapitalization in the form of a won 1 trillion convertible bond issuance and an issuance of USD 1.25 billion in common shares in the form of Global Depository Shares ("GDS"), and rescheduling and restructuring of Hynix' debt through maturity extensions and greater availability of short-term debt instruments. Hynix and its creditors formally agreed to this restructuring plan in May 2001. As a result, in June 2001, Hynix issued won 994.1 billion in convertible bonds, borrowed won 5.9 billion in the form of a separate loan, participated in a successful USD 1.25 billion GDS issuance on foreign and domestic capital markets, and had many of its maturing debts rescheduled or refinanced. Hynix also was able to continue to access short-term usance and overdraft financing.

Despite these restructuring efforts, by summer of 2001, it became apparent that more restructuring would be necessary due to the unexpectedly prolonged downturn in the DRAMS market and Hynix' continuing financial troubles. Thus, Hynix and its advisors worked with Hynix' creditors to develop a new restructuring package that was adopted in October 2001. As part of this package, which was negotiated pursuant to the new CRPA, Hynix' new CRPA Council developed three options for Hynix' creditors: (1) For creditors that agreed to extend new loans, the creditors could convert D/A balances to general long-term loans, swap convertible bonds and unsecured loans to new convertible bonds (which would be subsequently converted into equity), and refinance or extend the remaining loans; (2) creditors that did not agree to extend new loans, but did agree to the debt-to-equity conversion, could convert all of their secured loans and 28 percent of their unsecured loans into the convertible bonds that would subsequently be swapped for equity, with the remainder of the unsecured loans to be forgiven; (3) creditors that did not agree to either new loans or the debt-to-equity conversion could exercise their appraisal rights for all of their secured debt and 25 percent of their unsecured debt based on Hynix' liquidation value as of September 31, 2001 (as established by an external consultant), and have the remainder of the debt forgiven. The various creditors of Hynix selected among these options, with the result that won 2.993 trillion in debt was swapped for equity on December 6, 2001, won 1.45 trillion in debt was forgiven, some new loans were issued, and numerous loans were extended or refinanced.

As discussed above in the "Direction of Credit and Other Financial Assistance section, we have preliminarily determined that the GOK directed Hynix' creditor banks to participate in these restructuring programs and to provide credit and other funds to Hynix in order to assist it through its financial difficulties. As indicated in the overview of the Hynix restructurings, the financial assistance provided to Hynix by its creditors took various forms. We preliminarily determine that these different means of supporting Hynix were financial contributions as described in section 771(5)(D) of the Act. Specifically, the loans, convertible bonds, extensions of maturities (which we view as new loans), D/A financing, usance financing, overdraft lines, debt forgiveness, and debt-for-equity swaps are direct transfers of funds from the GOK-directed financial institutions to Hynix. (*See* section 771(5)(D)(i) of the Act.)

We determined the benefits to Hynix from the various instruments as follows:

- For the long-term loans and new bonds that were issued as part of the restructuring program, we compared the interest rates on the directed long-term loans and new bonds to the benchmark interest rates detailed in the "Subsidies Valuation Information" section, above, in accordance with section 771(5)(E)(ii) of the Act. For the period January 2000 through June 2002, we used an uncreditworthy benchmark rate because we determined that Hynix was uncreditworthy during this period (as discussed above in the "Creditworthiness" section and the accompanying *Creditworthiness Memo*). For long-term variable-rate loans, the repayment schedules of these loans did not remain constant during the lives of the respective loans. Therefore, we have calculated the benefit from these loans using the Department's variable rate methodology as described in 19 CFR 351.505(a)(5) and 19 CFR 351.505(c)(4). For long-term fixed-rate loans and bonds, consistent with Cold-Rolled Steel, we calculated the benefit using the Department's standard fixed-rate methodology specified in 19 CFR 351.505(c)(2). We summed these benefits to determine the total benefit during the POI from the long-term loans and bonds.
- For short-term loans, we calculated the benefit using the methodology specified in 19 CFR 351.505(c)(1) and (2). We summed these benefits to determine the total benefit during the POI from these short-term loans.

We treated the D/A financing as short-term debt. According to record information, this form of debt involved the discounting of receivables. Because we did not have the imputed interest rate on this type of debt, we assumed, as gap-filling facts available, that the interest rate was the same as the short-term rate on Hynix' other short-term debt that was denominated in the same currency. To calculate the benefit, we compared this short-term rate to the benchmark short-term rate.

Also, regarding the usance financing and overdraft lines, the ceilings and terms for both types of credit are normally renegotiated on an annual basis. However, as part of the May and October restructuring packages, both the usance and overdraft ceilings were extended for a longer period than the normal one-year agreement. For instance, in the May package, both the usance and overdraft credit lines were extended from December 2001 to June 30, 2003. The lines were further extended in the October package to December 2004.

Because the ceilings and terms were extended beyond one year and it is unclear at this point whether these loans could be outstanding for greater than one year, we treated these loans as long-term loans on the assumption that the loans could be outstanding for greater than one year. For the period before the extensions (January through April 2001), we treated these loans as short-term loans.

Debt-to-Equity Swaps

As discussed above, as part of the October 2001 restructuring package, certain of Hynix' creditors swapped some of their outstanding debt for equity. To determine whether these equity purchases conferred a benefit on Hynix, we followed the methodology described in 19 CFR 351.507.

According to 19 CFR 351.507, the first step in determining whether an equity investment decision is inconsistent with the usual investment practice of private investors is examining whether, at the time of the infusion, there was a market price paid by private investors for similar newly-issued equity. However, pursuant to 19 CFR 351.507(a)(iii), if a private investor's purchases of newly issued shares is not significant, the Department will not use the market price paid by the private investor for comparison purposes.

According to record information, Hynix was involved in a GDS issuance in June 2001 that was spearheaded by SSB. According to Hynix, the GDS issuance was oversubscribed by 1.5 times, which is a testament to its success. The GDSs were priced at twelve USD each and were equivalent to five shares of Hynix common stock.

In April 2001, prior to the GDS issuance, SSB issued a report on Hynix stating that it expected DRAMS prices to stabilize at USD 2.40 in the second quarter of 2001 and begin to rebound in the third quarter of 2001. In addition, SSB touted, "Hynix should offer tremendous potential upside to new and existing equity holders as the market improves this year." However, shortly thereafter, SSB's positive forecasts proved to be the exact opposite of what happened to Hynix and the worldwide DRAMS market.

By July 2001, DRAMS prices had fallen 75 percent from their July 2000 levels, reaching USD 1.10. Morgan Stanley Dean Witter ("MSDW") stated in a July 2001 equity report on Hynix, "{i}n view of the weakness in DRAMS fundamentals, the company's loss of competitiveness in the DRAMS business by not investing effectively, and its huge debt, which will likely continue to impair shareholders' value, we see no reason to be positive on the stock." MSDW slashed its earnings per share projections for Hynix by 51 percent for 2001, and 604 percent for 2002, based on this assessment.

Echoing MSDW's concerns, CSFB, in July 2001, increased its forecast of Hynix' net losses from won 2.5 trillion to won 3.9 trillion for 2001, and from won 1.7 trillion to won 2.4 trillion for 2002. In August 2001, despite the worsening of the DRAMS market and Hynix' financial state, SSB continued to see Hynix in a positive light. SSB, however, revised its 2001 revenue estimates for Hynix to won 4.3 trillion, down from Hynix' own revenue estimates of won 8.7 trillion made in April 2001.

By September of 2001, investors worldwide voiced their pessimism towards the DRAMS market in the stock exchanges. According to Dow Jones International, by September 2001, Hynix' GDSs had lost 72 percent of their issuance value, a loss of USD 900 million to investors. By October of 2001, the DRAMS market had changed dramatically from January, and even June, 2001. According to the *Wall Street Journal*, DRAMS prices were below cost industry-wide. In an October 8, 2001, article, the *Wall Street Journal* stated, "{a}lthough chip makers worldwide are taking a loss with each chip they sell, Hynix, according to industry analysts, is in the worst financial shape. In early September, Hynix' future looked shaky. Now, as the global economic outlook gets grimmer, {Hynix'} looks worse."

Because of the extreme differences in the condition of the global DRAMS market as a whole, and Hynix' financial state at the time of the two equity infusions, we do not believe that the GDS issuance in June 2001 supports a conclusion that the October 2001 equity purchase (*i.e.*, debt-to-equity conversion) was consistent with the usual investment practices of private investors (*see* section 771 (5)(E)(i) of the Act). Clearly, the earlier, rosy expectations for a rebound in DRAM demand and prices, which were necessary for Hynix to improve its position, were not bourne out. Therefore, we have not considered the GDS issuance in our analysis of the usual investment practices of private investors. Nor have we used the prices paid for the GDS as a measure of what a private investor would pay for Hynix' stock in October 2001.

Citibank was one of Hynix' creditors that opted to swap debt for equity in the October 2001 debt restructuring. As discussed above, we have preliminarily determined that Citibank's participation in the Hynix restructuring was not directed by the GOK. Therefore, we must consider whether Citibank's decision to swap debt for equity demonstrates that the other creditors' decision to swap their debt for equity was consistent with the private investor standard in section 771 (5)(E)(i) of the Act.

Pursuant to 19 CFR 351.507(a)(2)(3), if a private investor's purchases of newly issued shares are not significant, the Department will not use the market price paid by the private investor for comparison purposes. Although we cannot reveal the actual portion of the equity purchase accounted for by Citibank because it is proprietary, we preliminarily determine that Citibank's purchase was insignificant.

In discussing the requirement in 19 CFR 351.507(a)(2)(3), "the amount of shares purchased by a private investor must be significant in order to provide an appropriate benchmark," the *Preamble* refers to *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Italy*, 60 FR 31992, 31994 (June 19, 1995) ("*Pipe from Italy*"). In *Pipe from Italy*, the Government of Italy ("GOI"), and numerous private investors participated in the same equity issuance. The GOI purchased 81.6

percent of the shares, while private investors purchased the remaining 18.4 percent, at the same price. The Department, in *Pipe from Italy*, considered the private investors' participation in the equity issuance significant and, therefore, did not find the GOI's equity infusion inconsistent with the usual investment practice of private investors. The portion of equity obtained by Citibank in Hynix' October restructuring was less than the private investors' participation in *Pipe from Italy*.

Because we did not have actual private investor prices to use as a comparison to the price paid by Hynix' other creditors, we examined other indicators of Hynix' equityworthiness, pursuant to 19 CFR 351.507(a)(4). From 1997 through 2001, Hynix reported losses in every year except 1999. In 2000, Hynix' net income was negative 28 percent and in 2001, its net income was negative 127 percent. Based on Hynix' financial statements, its return on equity was negative in 1998 (negative 6 percent), 1999 (negative 3 percent), 2000 (negative 40 percent), and 2001 (negative 97 percent). MSDW estimated Hynix' return on equity for 2002 at negative 76 percent. Additionally, for the years 1997 through 2001, Hynix' debt-to-equity ratios ranged from 688 percent in 1997 to 129 percent in 2001. These figures clearly demonstrate Hynix' poor condition throughout the late 1990s and through 2001.

Based on these indicators, we preliminarily determine that Hynix was unequityworthy at the time of the October 2001 debt-to-equity swap. In accordance with 19 CFR 351.507(a)(6), we have treated the amount of equity purchased by Hynix' creditors, other than Citibank, as a grant.

As discussed above, Hynix' October restructuring package included the conversion of won 2.99 trillion in convertible bonds, and secured and unsecured loans into new convertible bonds which carried an obligation to convert the bonds into equity. These bonds were issued on December 6, 2001. Because the new convertible bonds carried a conversion obligation, Hynix recorded the debt-to-equity swap as a capital adjustment in its 2001 financial statements. Therefore, we have treated the benefit as having been provided to Hynix in 2001.

In accordance with 19 CFR 351.507(c), we allocated the benefit of the debt-to-equity conversion over the AUL using the uncreditworthy discount rate as described in the "Subsidies Valuation Information" section, above.

Debt Forgiveness

Under 19 CFR 351.508(c), the benefit conferred by a debt forgiveness is the amount of the debt forgiven. To calculate the benefit to Hynix received during the POI from the October 2001 debt forgiveness, we allocated the entire amount of debt forgiven over the AUL using an uncreditworthy discount rate.

KDB "Fast Track" Debenture Program

In the aftermath of the 1997 financial crisis, many ROK companies had to borrow heavily to service their USD-denominated debts, which soared as the value of the won plummeted against the USD. Many companies did so through corporate bond issues, most of which were set to mature in late 2000 and 2001. However, when it came time for these bonds to mature, difficulties in the financial market, including unwillingness by investors to invest in the bond market due to heightened risk, especially in companies with poor credit ratings, made it difficult for many companies to refinance or service their maturing bonds. Moreover, many financial institutions could not extend further financing to companies because of loan exposure limits put in place following the financial crisis.

Due to this situation, many ROK companies, especially those with below-investment grade bond ratings, were left with serious liquidity problems. Furthermore, the won 65 trillion in corporate bonds coming due in 2001 threatened to overwhelm the capital markets. Therefore, the GOK instituted several programs to try to address this situation. In June 2000, the GOK established the Collateralized Bond Obligation ("CBO") and Collateralized Loan Obligation ("CLO") programs in order to support the refinancing of corporate bonds. Through these programs, the GOK purchased debentures and loans from ROK companies, repackaged them into portfolios that included many bonds from different companies, and sold securities backed by those bonds and loans to investors with a partial guarantee from the Korea Credit Guarantee Fund ("KCGF"). No more than 10 percent of the debt of any one company could be placed into a single bundle of bonds or loans. According to the GOK, any company with maturing bonds was eligible to participate in the CBO and CLO programs.

Because many companies had much greater debt than could be handled by each CBO/CLO portfolio due to the 10 percent exposure limit, the GOK created the KDB Fast Track or Debenture Program to address this problem. Under the Fast Track program, which was administered by the KDB, companies selected to participate in this program first had to redeem 20 percent of their bonds that were maturing in 2001; the remaining 80 percent of the maturing bonds were purchased by the KDB, and were subsequently replaced with new, bonds issued by the participating companies. Of the bonds purchased by the KDB that were replaced by new issues, 10 percent of the new bonds issued were kept by the KDB, 20 percent of each new issue was purchased by the company's creditors (a blanket waiver was issued by the GOK in order to allow the creditors to surpass their loan exposure limits), and the remaining 70 percent of each new issue was bundled with other bonds and sold as CBOs or CLOs (which were partially guaranteed by the KCGF). As part of the agreement that had to be signed by the participating companies, each company was required to purchase a certain percentage of its subordinated bonds bundled with other bonds in the CBOs and CLOs (three percent in the case of a CBO, and five percent for a CLO). The program ceased to operate at the end of 2001.

According to the GOK, in order to participate in the Fast Track program, companies had to be nominated by their Creditors' Councils. Companies eligible to participate in this program, as established in Article 8 of the Creditor Financial Institutions and Corporate Credit Guarantee Fund Council Agreement to Facilitate Bond Offerings, are those that (1) are experiencing temporary liquidity problems due to a large-scale maturation of corporate bonds but have the ability to redeem at least 20 percent of those bonds; (2) are nominated by their Creditors' Council; and (3) that are not distressed companies that are undergoing corporate reorganization or workout programs. According to record evidence, only six companies participated in this program, four of which were current or former Hyundai affiliates.

Hynix was selected to participate in the Fast Track program in January 2001. According to Hynix, won 1.208 trillion of its bonds were refinanced through this program. Of this total, the KDB purchased won 120.8 billion (or 10 percent) of the maturing bonds, the creditor banks purchased won 241.6 billion (or 20 percent) of the maturing bonds, and the CBO/CLO funds purchased 70 percent of the remaining new issues, won 845.6 billion. Upon incorporation into the CBO and CLO funds, Hynix then repurchased back the specified proportion of the subordinate bonds through the CBOs and CLOs.

Hynix participated in the program only until August 2001.

As discussed above, we have preliminarily determined that the GOK's direction of credit was specific to Hynix and other current or former Hyundai Group companies. Additionally, we preliminarily determine that the Fast Track program was *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the participants in this program were limited in number. However, we preliminarily determine that the bonds that were placed in the CBO and CLO funds as part of this program did not provide a countervailable subsidy to Hynix because, according to record information, those programs were available to anyone with maturing bonds that wanted to participate and we have found no evidence of *de jure* or *de facto* specificity in the application of the program.

To determine the benefit received by Hynix as a result of the Fast Track program, we compared the interest rates on the directed bonds to the benchmark interest rates detailed in the "Subsidies Valuation Information" section, above. We calculated the benefit from these bonds using the Department's standard fixed-rate methodology described in 19 CFR 351.505(c)(2). We summed these benefits to determine the total benefit during the POI.

2. Other Loans Provided From 1999 Through the POI

With the exceptions noted below, for all other loans obtained by Hynix during this period that were outstanding during the POI, we calculated the benefit using the methodology described above for the Hynix restructuring loans.

Hynix stated in its questionnaire responses that it obtained Long-Term Usance loans, as well as loans under the Fund for Promotion of Informatization and the Fund for Promotion of Defense Industry, during this period that were outstanding during the POI. Hynix reported that these loans were for projects involving non-subject merchandise. Thus, for the purposes of this preliminary determination, we have not included these loans in our benefit calculations for Hynix. We note that Hynix" questionnaire responses on this matter will be subject to verification.

3. Loans Provided Prior to 1999

As explained above, the Department has preliminarily determined that the GOK directed credit to the semiconductor industry in the period through 1998. We further determine that these GOK-directed loans to Hynix and SEC are financial contributions as described in section 771(5)(D)(i) of the Act.

The directed loans received by Hynix and SEC through 1998 that were outstanding during the POI were long-term fixed- and variable-rate foreign currency loans and long-term fixed- and variable-rate won-denominated loans. In order to determine whether a benefit was received by Hynix or SEC as a result of the long-term loans that were received through 1998 (with the exception of those noted below), we compared the interest rates on the directed loans to the benchmark interest rates detailed in the "Subsidies Valuation Information" section, above. For long-term variable-rate loans, the repayment schedules of these loans did not remain constant during the lives of the respective loans. Therefore, we have calculated the benefit from these loans using the Department's variable rate methodology as described in 19 CFR 351.505(a)(5) and 19 CFR 351.505(c)(4). For long-term fixed-rate loans, consistent with *Cold-Rolled Steel*, we calculated the benefit using the methodology specified in 19 CFR 351.505(c)(2). We summed the benefit amounts during the POI to determine the total benefit for each company.

Hynix reported that it did not directly receive loans under the Energy Savings Fund ("ESF") (loans made from this fund are discussed in *Plate in Coils*, 64 FR 15533, and *Structural Beams*, 65 FR 41051 and accompanying July 3, 2000 Decision Memorandum at page 12, Section I.A.2). The GOK, on the other hand, reports that Hynix did in fact maintain an outstanding ESF loan balance during the POI. The basis for Hynix' claim that it did not participate in the ESF program is that funding for Hynix projects was disbursed to third-party energy savings companies ("ESCOs"), which completed the Hynix ESF projects under contract.

The record indicates that Hynix and the ESCOs submitted applications jointly to the Korea Energy Management Corporation in order to obtain ESF funding. Information concerning these transactions is not on the record, and, accordingly, we are not making a determination concerning Hynix ESF loans at this time. Instead, we will request further information on this matter during the course of this proceeding and will make a finding on this matter in the final determination.

SEC reported that certain loans received under the Science and Technology Promotion Fund prior to 1999 were tied to non-subject merchandise (loans made from this fund are discussed in *Structural Beams*, 65 FR 41051 and accompanying July 3, 2000 Decision Memorandum at page 13). Furthermore, both Hynix and SEC stated in their questionnaire responses that their loans from the Fund for Promotion of Informatization and the Fund for Industrial Technology Development that were obtained during this time period were for projects involving non-subject merchandise. Thus, for the purposes of this preliminary determination, we have not included these loans in our benefit calculations. We note that Hynix" and SEC's questionnaire responses on this matter will be subject to verification.

Countervailable Subsidy Rates for Hynix and SEC

We used the above mentioned methodologies to calculate the benefit from all of the financial contributions discussed above, and summed the benefit amounts from all financial contributions. We then divided the total benefit by each respective company's total sales values during the POI. On this basis, we determine the net countervailable subsidy to be 57.23 percent *ad valorem* for Hynix and 0.01 percent *ad valorem* for SEC.

B. Tax Programs Under the Tax Reduction and Exemption Control Act ("TERCL") and/or the Restriction of Special Taxation Act ("RSTA")

Under ROK tax laws, ROK companies are allowed to claim tax credits for various kinds of investments. If the investment tax credits cannot be used entirely during the year they are claimed, then the company may carry them forward for use in subsequent years. Until December 28, 1998, these investment tax credits were provided under the TERCL. On that date, the TERCL was replaced by the RSTA. Pursuant to this change in the law, tax credits based on eligible investments made after December 28, 1998 were provided under the authority of RSTA.

In past proceedings, the Department found that companies that invested in domestically-produced facilities (*i.e.*, facilities produced in the ROK) received higher tax credits than companies that invested in foreign-produced facilities under these programs. *See CTL Plate*, 64 FR 73182. Under section 771(5A)(C) of the Act, subsidies that are contingent upon the use of domestic goods over imported goods are specific. Accordingly, the Department determined that the higher tax credits for investments made in domestically-produced facilities constituted import substitution subsidies under section 771(5A)(C) of the Act. In addition, because the GOK had foregone the collection of tax revenue otherwise due

under this program, the Department determined that a financial contribution was provided as described in section 771(5)(D)(ii) of the Act, with a benefit to the recipients in the amount of the tax savings pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). Therefore, the Department determined that this program was countervailable. *See CTL Plate*, 64 FR 73182.

In *Cold-Rolled Steel*, the Department found that changes had been made in the manner in which at least some of these investment tax credits are determined. *See Cold-Rolled Steel*, 67 FR 62102, and the accompanying September 18, 2002 Decision Memorandum at page 12, Section I.F. Pursuant to amendments made to the TERCL on April 10, 1998, the distinction between investments in domestic and imported goods was eliminated for certain programs, including the Tax Credit for Investment in Facilities for Productivity Enhancement (Article 24 of RSTA) and the Tax Credit for Investment in Specific Facilities (Article 25 of RSTA). Accordingly, the Department determined that tax credits received under these programs for investments made after April 10, 1998 are no longer countervailable. However, companies can still carry forward and use the tax credits for investments earned under the countervailable aspects of the TERCL program before the April 10, 1998 amendment to the tax law. Consistent with *Cold-Rolled Steel*, the Department continues to find countervailable the use of investment tax credits earned on investments made before April 10, 1998.

The specific Articles under the TERCL and the RSTA that we are investigating in the instant investigation are discussed separately below:

Temporary Tax Credit for Investment (Article 26 of RSTA)

The tax credit program under Article 26 of RSTA was enacted to promote investment in facilities during periods of economic slowdown. It provides a tax credit equal to ten percent of the investments made by companies in certain eligible industries specified in the implementing Presidential Decree, which includes the computer industry. Article 26 of RSTA was not among the programs found in *Cold-Rolled Steel* to have eliminated the import substitution advantage for eligible investments made after April 10, 1998.

Hynix reported no taxable income for the POI and, therefore, claimed no credits and received no benefits under this tax program. SEC claimed credits and received tax benefits under this program in its 2001 tax return for tax year 2000, but not in its 2002 tax return for tax year 2001.

As discussed above, we found in *CTL Plate* that tax programs offered as part of the RSTA and the TERCL bestowed a financial contribution in the form of foregone revenue, as described in section 771(5)(D)(ii) of the Act, with a benefit to the recipients in the amount of the tax savings pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). Moreover, as discussed above, we determined in *CTL Plate* and *Cold-Rolled Steel* that tax benefits offered through the RSTA and the TERCL are *de jure* specific pursuant to section 771(5A)(C) of the Act, to the extent that they are contingent upon the use of domestic goods over imported goods. As noted above, this Article of the RSTA was not one of the programs for which the distinction between domestic and foreign-produced merchandise was eliminated. Therefore, because ROK companies received a higher tax credit for investments made in domestically-produced facilities, we preliminarily find that this program is specific pursuant to section 771 (5A)(C) of the Act. Thus, we preliminarily determine that this program conferred countervailable subsidies upon SEC during the POI.

In calculating the benefit for SEC, consistent with 19 CFR 351.524(c)(1), we treated the tax savings as a recurring benefit and divided the tax savings received by SEC during the POI by SEC's total sales during the POI. On this basis, we preliminarily determine that a countervailable benefit of 0.15 percent *ad valorem* exists for SEC under this program.

C. Electricity Discounts Under the Requested Load Adjustment ("RLA") Program

The GOK introduced an electricity discount under the RLA program in 1990 to address emergencies in the Korea Electric Power Company's ("KEPCO") ability to supply electricity. Under this program, customers with a contract demand of 5000 kilowatts or more who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3000 kilowatts or more are eligible to enter into a RLA contract with KEPCO. Customers who choose to participate in this program must reduce their load upon KEPCO's request, or pay a surcharge to KEPCO.

Customers can apply for this program between May 1 and May 15 of each year. If KEPCO finds the application in order, KEPCO and the customer enter into a contract with respect to the RLA discount. The RLA discount is provided based upon a contract for two months, normally July and August. Under this program, a basic discount of 440 won per kilowatt is granted between July 1 and August 31, regardless of whether KEPCO makes a request for a customer to reduce its load.

During the POI, SEC received an RLA discount for July and August 2001. Hynix did not participate in the program during the POI.

The Department has previously found this program to be countervailable. *See Sheet and Strip*, 64 FR 30636, and *Cold-Rolled Steel*, 67 FR 62102 and accompanying September 23, 2002 Decision Memorandum at page 18, Section I.M. Specifically, we found this program specific under section 771(5A)(D)(iii)(I) of the Act because the discounts were distributed to a limited number of customers. A financial contribution is provided within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone by the government, with the benefit being a discount on the company's monthly electricity charge. No party has provided any new information to warrant reconsideration of this determination. Therefore, we preliminarily determine this program to be countervailable pursuant to section 771(5) of the Act.

Consistent with *Sheet and Strip* and *Cold-Rolled Steel*, because the electricity discounts provide recurring benefits, we have expensed the benefit from this program in the year of receipt. To measure the benefit from this program, we summed the electricity discounts which SEC received from KEPCO under the RLA program during the POI. We then divided that amount by SEC's total sales value for the POI. On this basis, we determine a net countervailable subsidy of 0.00 percent *ad valorem* for SEC.

D. Operation G–7/HAN Program

Under the Framework Act on Science and Technology, the GOK made direct financial contributions in the form of interest-free loans to respondent companies under the Operation G–7/HAN Program. These loans were provided as matching funds in support of the Next Generation Semiconductor Technology Project from 1993 through 1997 through the Ministry of Science and Technology ("MOST"), the Ministry of Commerce, Industry, and Energy, and other administrative authorities.

Both Hynix and SEC report that they had loans that were outstanding during the POI under this program.

We preliminarily determine that this program is specific within the meaning of section 771(5A)(D)(i) of the Act because it is limited to the semiconductor industry. In addition, we preliminarily determine that a financial contribution was provided under section 771(5)(D)(i) of the Act in the form of direct loans from the GOK. Finally, pursuant to section 771(5)(E) of the Act, we preliminarily determine that the benefit conferred by this program is the difference between the amount the companies paid on the loans and the amount the companies would pay on comparable commercial loans.

Consistent with section 771(5)(D)(i) of the Act and 19 CFR 351.505(c)(2), we calculated the benefit from these loans by comparing the interest actually paid on the loans during the POI to what the companies should have paid during the POI. We used as our benchmarks the rates described in the "Discount Rates and Benchmarks for Loans" section, above. We then divided the total benefit from the loans for each company by the company's total sales in the POI to calculate the total countervailable subsidy. On this basis, we preliminarily determine that countervailable benefits of 0.14 percent *ad valorem* and 0.01 percent *ad valorem* exist for Hynix and SEC, respectively.

E. 21st Century Frontier R&D Program

The 21st Century Frontier R&D program is a GOK program established in 2000 that provides loans to semiconductor manufacturers in the form of matching funds for research and development to overcome the technological limits of next-generation semiconductor technology, among other goals. The GOK made direct financial contributions under this program in the form of interest-free loans through the MOST and other administrative authorities.

SEC claims that it did not receive any loans under this program. Hynix reports that it had loans outstanding during the POI under this program.

We preliminarily determine that this program is specific within the meaning of section 771(5A)(D)(i) of the Act, because it is limited to the semiconductor industry. In addition, we preliminarily determine that a financial contribution was provided under section 771(5)(D)(i) of the Act in the form of direct loans from the GOK. Finally, pursuant to section 771(5)(E) of the Act, we preliminarily determine that the benefit conferred by this program is the difference between the amount the companies paid on the loan and the amount the companies would pay on comparable commercial loans.

Consistent with section 771(5)(D)(i) of the Act, we calculated the benefit from these loans by comparing the interest actually paid on the loans during the POI to what the companies should have paid during the POI. We used as our benchmarks the benchmarks discussed in the "Discount Rates and Benchmarks for Loans" section above. We then divided the total benefit from the loans for each company by the company's total sales in the POI to calculate the total countervailable subsidy. On this basis, we preliminarily determine that a countervailable benefit of 0.00 percent *ad valorem* exists for Hynix.

II. Programs Preliminarily Determined to Be Not Countervailable

Tax Programs Under the TERCL and/or the RSTA

1. Reserve for Research and Human Resources Development (formerly Technological Development Reserve) (Article 9 of RSTA/formerly, Article 8 of TERCL)

Article 8 of the TERCL permits an ROK company operating in manufacturing or mining, or in a business prescribed by a Presidential Decree, to set aside funds into a reserve account to cover a company's planned expenditure for the "development or innovation" of technology. These funds are reported as a loss in the current taxable year, thus reducing the company's tax liability. Article 8 specifies that capital goods producers and technology-intensive companies can establish a reserve of up to five percent of revenue, while companies in other industries are limited to a three percent reserve. After a two-year grace period, funds set aside for the reserve must be allocated as income over a three-year period.

Hynix established a fund in 1996, and evenly distributed the fund as taxable income in years 1999 through 2001. SEC created a reserve under this program in 1999; it did not allocate any portion of this fund as taxable income through the end of the POI.

In *CTL Plate*, 64 FR 73181, we determined that this program was countervailable for companies that could claim a five percent tax reserve, but not for companies that could claim a three percent tax reserve. Both Hynix and SEC claim that they are only eligible for the three percent tax reserve. Therefore, we preliminarily determine that this program is not countervailable with respect to Hynix and SEC because neither was eligible for the countervailable reserve.

2. Tax Credit for Research and Human Resources Development Expenses (Article 10 of RSTA/Article 9 of TERCL)

Article 10 of the RSTA replaced Article 9 of the TERCL at the beginning of 2001. It provides a tax credit for certain qualifying expenses related to research and human resources development ("R&HRD"), deductible from individual or corporate income tax. Under Article 9 of the TERCL, the credit was limited to certain mining, manufacturing, or other businesses (including computer companies), as specified by the implementing Presidential Decree. Under Article 10 of the RSTA, however, eligibility was extended to all domestic businesses, except for those in real estate or consumptive services. There are two methods for calculating the credit, under which the amount is equal to either (1) 50 percent of the amount by which the R&HRD expense incurred for the relevant tax year exceeds the yearly average of R&HRD expenses incurred over the four years preceding the tax year; or (2) 15 percent of R&HRD expenses for the tax year. Persons other than small and medium enterprises, however (*e.g.*, large corporations) may claim credits only pursuant to the first method.

Hynix claims it was not eligible for this program during the POI and, hence, claimed no tax credits and received no benefits under the program during the POI. SEC claimed credits and received tax benefits under this program in its tax returns for 2000 and 2001, which were applicable to its tax liabilities during the POI.

Based on the record evidence, we find no indication that this program is specific on any basis under section 771(5A). Therefore, we preliminarily determine that benefits received under this program are not countervailable.

3. Tax Credit for Investment in Facilities for Productivity Enhancement (Article 24 of RSTA/Article 25 of TERCL)

Article 24 of the RSTA, which is the Tax Credit for Investment in Facilities for Productivity Enhancement, provides tax credits for investments in specified capital equipment. We have previously determined that tax credits received pursuant to these investment programs for investments made after April 10, 1998 are not countervailable because a distinction between investment in domestic versus foreign-made goods was eliminated. *See Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip From the Republic of Korea*, 68 FR 13267 (March 19, 2003) and accompanying March 10, 2003 Decision Memorandum at page 11, Section III.A.8.

Both SEC and Hynix claimed exemptions under Article 24 of the RSTA. All of SEC's tax credits resulted

from investments made after April 10, 1998. Therefore, we preliminarily conclude that SEC did not receive countervailable benefits under this program. Additionally, Hynix reported no taxable income for the POI and, therefore, claimed no credits and received no benefits under this tax program.

4. Tax Credit for Investment in Facilities for Special Purposes (Article 25 of RSTA)

Article 25 of the RSTA provides tax credits equal to three percent of the company's investment in specified facilities related to, among other things, environmental and health and safety measures. The credits are deducted from the company's corporate income tax liability. Article 25 of the RSTA was among the programs found in *Cold-Rolled Steel* to have eliminated the import substitution tax advantage for eligible investments made after April 10, 1998. Thus, tax credits based on investments made after that date are not countervailable.

Hynix reported no taxable income for the POI and, therefore, claimed no credits and received no benefits under this tax program. SEC claimed credits under this program in its 2001 tax return for tax year 2000, but not in its 2002 tax return for tax year 2001. However, SEC reports that all tax credits it earned under the program for the POI were based on investments made after April 10, 1998. Moreover, SEC reports that it did not carry forward any tax credits from years prior to April 10, 1998. Therefore, we preliminarily find that neither Hynix nor SEC received a benefit from this program during the POI.

III. Programs Preliminarily Determined Not To Have Been Used

Based on the information provided in the responses, we determine no responding companies applied for or received benefits under the following programs during the POI:

A. Short-Term Export Financing

B. Tax Programs Under the TERCL and/or the RSTA

1. *Reserve for Overseas Market Development (formerly, Article 17 of TERCL)*
2. *Reserve for Export Loss (formerly, Article 16 of TERCL)*
3. *Tax Exemption for Foreign Technicians (Article 18 of RSTA)*
4. *Reduction of Tax Regarding the Movement of a Factory That Has Been Operated for More Than Five Years (Article 71 of RSTA)*

C. Tax Reductions or Exemption on Foreign Investments under Article 9 of the Foreign Investment Promotion Act ("FIPA")/FIPA (Formerly Foreign Capital Inducement Law)

D. Duty Drawback on Non-Physically Incorporated Items and Excessive Loss Rates

E. Export Insurance

The Korean Export Insurance Corporation ("KEIC") was established pursuant to the Export Insurance Act of 1968 for the purpose of providing export insurance. Insurance policies issued to ROK companies through this program provide protection from risks such as payment refusal and buyer's breach of contract. Claims are paid from the Export Insurance Fund, which is managed by the KEIC and is funded by contributions from the GOK and the private sector via premium payments. The KEIC determines premium rates by considering numerous factors, including the creditworthiness of the importing party and the term of the policy. Hynix and SEC both participated in this program during the POI.

To determine whether an export insurance program provides a countervailable benefit, we first examine whether premium rates charged are adequate to cover the program's long-term operating costs and losses. *See* 19 CFR 351.520(a)(1). In doing so, the Department will analyze both the viability of the program and the overall commercial health of the entity operating the program. In examining whether rates are manifestly inadequate, the Department will examine a five-year period, POI inclusive. *See Preamble*, 63 FR at 65385.

The GOK reports that the KEIC export insurance program has experienced operating losses for all of these years, and that the GOK has been covering the losses incurred by this program. Therefore, we preliminarily determine that the premium rates that are being charged are inadequate pursuant to 19 CFR 351.520(a)(1). If the Department determines that premium rates are inadequate, pursuant to 19 CFR 351.520(a)(2), the benefit amount is calculated as the net amount of compensation received (compensation received less premium fees paid). Thus, consistent with the *Final Affirmative Countervailing Duty Determination: Carbon Steel Butt-Weld Pipe Fittings From Israel*, 60 FR 10569, 10571 (February 27, 1995), we examined export insurance expressly related to DRAMS exported to the United States. SEC did not make any claims or receive any pay-outs from the KEIC related to DRAMS during the POI; Hynix reported that it also did not receive any pay-outs during the POI. Therefore, we preliminarily determine that neither SEC nor Hynix received a countervailable benefit pursuant to this program within the meaning of section 771(5)(E) of the Act during the POI.

IV. Program Preliminarily Determined To Not Exist

Based on the information provided in the responses, we preliminarily determine that the following program does not exist:

Won 680 Billion Bond Guarantee

V. Programs for Which We Did Not Make a Preliminary Determination

As noted above, because we received several new subsidy allegations from the petitioner only 40 days prior to this preliminary determination, and were not able to initiate an investigation of two of these programs until four weeks before the preliminary determination (as discussed in the *New Subsidy Allegations Memo*), we had insufficient time prior to this preliminary determination to properly analyze the data and information submitted in response to these new programs. However, we will make a finding on the following new programs in the final determination:

A. Import Duty Reduction for Cutting Edge Products

B. Permission for Hynix and SEC To Build in Restricted Area

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each manufacturer of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates for Hynix and SEC to be the following:

Producer/Exporter	Net subsidy rate (percent)
Samsung Electronics Co., Ltd.	0.16
Hynix Semiconductor Inc. (formerly, Hyundai Electronics Industries Co., Ltd.)	57.37
All Others	57.37

In accordance with sections 777A(e)(2)(B) and 705(c)(5)(A) of the Act, we have set the "all others" rate as Hynix' rate because the rate for SEC, the only other investigated company, is *de minimis*.

Pursuant to section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of DRAMS from the ROK (except for entries from SEC) that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise (except for entries from SEC) in the amounts indicated above. Entries from SEC are not subject to this suspension of liquidation because we have preliminarily determined its rate to be *de minimis*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(3) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: March 31, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–8409 Filed 4–4–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533–829]

Prestressed Concrete Steel Wire Strand from India: Extension of Time Limit for Preliminary Determination in Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Preliminary Determination in Countervailing Duty Investigation.

EFFECTIVE DATE: April 7, 2003.

SUMMARY: The Department of Commerce is extending the time limit of the preliminary determination in the countervailing duty (CVD) investigation of prestressed concrete steel wire strand from India from April 28, 2003 to June 30, 2003. This extension is made pursuant to section 703(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("the Act").

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Alicia Kinsey, or Jim Neel, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230; telephone: 202–482–2209, (202) 482–4793 or 202–482–4161, respectively.

SUPPLEMENTARY INFORMATION:

Extension of Due Date for Preliminary Determination

On February 20, 2003, the Department of Commerce ("the Department") initiated the CVD investigation of prestressed concrete steel wire strand from India. *See Notice of Initiation of Countervailing Duty Investigation: Prestressed Concrete Steel Wire Strand from India*, 68 FR 9058 (February 27, 2003). Currently, the preliminary determination is due no later than April 28, 2003. However, pursuant to section 703(c)(1)(B) of the Act, we have determined that this investigation is "extraordinarily complicated" and are therefore extending the due date for the preliminary determinations by 63 days to no later than June 30, 2003.

Under section 703(c)(1)(B), the Department can extend the period for reaching a preliminary determination until not later than the 130th day after the date on which the administering authority initiates an investigation if:

(B) the administering authority concludes that the parties concerned are cooperating and determines that

(i) the case is extraordinarily complicated by reason of

(I) the number and complexity of the alleged countervailable subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters; or

(IV) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination.

We find that thus far in this investigation all concerned parties are cooperating. Moreover, we find that this case is extraordinarily complicated because of the number of alleged programs, and the complexity of each program. Subsidy programs have been alleged against the federal government, as well as four state governments, for a total of twenty-two programs requiring analysis. As a consequence, we determine that additional time is necessary to complete the preliminary determination. Therefore, pursuant to section 703(c)(1)(B) of the Act, we are postponing the preliminary determination in this investigation to no later than June 30, 2003.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: March 31, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–8412 Filed 4–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Workshop on Storage and Processor Card-based Technologies

AGENCY: National Institute of Standards and Technology (NIST).

ACTION: Notice of public workshop.

SUMMARY: The National Institute of Standards and Technology (NIST) announces a workshop to identify current and planned Federal government activities and related needs, general issues, existing voluntary industry consensus standards, gap areas in standards coverage, and industry capabilities in the field of storage and processor card technologies. It is anticipated that the workshop will support development of a standards roadmap, and a guideline on storage and processor card technologies to include multitechnology composition issues. The goal of this initial workshop is to develop and exchange information on the standards for and capabilities of multitechnology storage and processor cards. This workshop is not being held in anticipation of a planned procurement activity. The detailed draft agenda and supporting documentation for the workshop will be available from the NIST Computer Security Resource Center Web site at *http://csrc.nist.gov* by May 9, 2003.

DATES: The workshop will be held on July 8, 2003, from 9 a.m. to 5 p.m. It is anticipated that this will be a one-day workshop, but provisions are being made to support a second day in case the response to this announcement supports an expanded agenda.

ADDRESSES: The workshop will be held in the Administration Building (Bldg. 101), Green Auditorium, National Institute of Standards and Technology, Gaithersburg, MD.

FOR FURTHER INFORMATION CONTACT: Further information, when available, may be obtained from the Computer Security Resource Center Web site at *http://csrc.nist.gov* or by contacting Terry Schwarzhoff or Curt Barker, National Institute of Standards and Technology, Building 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930; telephone 301–975–5727; Fax 301–948–1233, or e-mail *terry.schwarzhoff@nist.gov* or *wbarker@nist.gov*.

SUPPLEMENTARY INFORMATION: Many technologies, such as optical stripe media, barcodes, magnetic stripes, contactless integrated chips, and the smart card integrated circuit chip have been implemented on card platforms. Voluntary industry consensus standards for many of these technologies are already available, but have not been integrated (directly or by reference) into one single document for use by federal agencies. This roadmap would provide a reference to the existing standards for these card technologies and help identify gap areas for the wider card technology community. Many card platforms include anti-counterfeit elements to increase the security of the physical platform. Some examples of these are holograms, optical variable devices (OVDs), laser etching, and ghost/shadow printing, but again have not been addressed in a single document with respect to integration with card technologies.

The General Accounting Office recently issued a report on "Progress in Promoting Adoption of Smart Card Technology" (GAO–03–144, February 5, 2003). The Report provides a set of Recommendations (pp. 35) that reinforce the role of the National Institute of Standards and Technology (NIST) in the U.S. Government Smart Card (GSC) program. The report recommends that the Director, NIST, continue to improve and update the government smart card interoperability specification by addressing government-wide standards for additional technologies to ensure broad interoperability among federal agency systems. A key NIST response to the GAO recommendation is to develop a guideline that addresses applicable standards for multiple technologies that can coexist on card platforms.

NIST will lead an effort to develop a document/technical report as a roadmap/guideline, in coordination with other agencies and private industry.

The initial workshop is being held to identify the state of candidate technologies and to provide the basis for development of guidelines. Workshop topics are planned to include:

—Current government card-related activities/needs,

—card-based technology attributes,

—industry activities

—card related voluntary industry consensus standards

—and multitechnology interoperability issues.

Advance registration is required. To register, please fax your name, address, telephone, fax and e-mail address to 301–926–2733 (Attn: Card-Based Technology Workshop) by June 9, 2003. Registration by electronic mail should be addressed to *vickie.harris@nist.gov*. Registration questions should be addressed to Vickie Harris on 301–975–2934. Due to NIST security regulations regarding access to this site, registration will not be available at the door. The workshop will be open to the public.

Authority

This work effort is being initiated pursuant to NIST's responsibilities under the Federal Information Security Management Act of 2002, the Information Technology Management Reform Act of 1996, Executive Order 13011, and OMB Circular A–130.

Dated: April 1, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–8380 Filed 4–4–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Proposed Findings Document

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce, and the Environmental Protection Agency.

ACTION: Notice of availability of proposed findings document on conditional approval of coastal nonpoint pollution control program for Texas.

SUMMARY: Second notice is hereby given of the intent to conditionally approve the Texas Coastal Nonpoint Pollution Control Program (coastal nonpoint program) and notice is hereby given of the availability of the revised Proposed Findings Document on the conditional approval. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA) 16 U.S.C. section 1455b, requires States and Territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs. Coastal States and Territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA for approval. The Findings Document was prepared by NOAA and EPA to provide the rationale for the agencies' decision to approve each State and Territory coastal nonpoint pollution control program. NOAA and EPA have proposed to approve, with conditions, the coastal nonpoint pollution control program submitted by Texas.

On September 28, 2001, the first **Federal Register** notice of NOAA's and EPA's intent to conditionally approve the Texas Coastal Nonpoint Program and the availability of the Proposed Findings Document, Environmental Assessment and Finding of No Significant Impact was published. Subsequent to the notice being published, Texas requested additional time to provide additional information and address some of the conditions before the findings were finalized. Texas was able to meet several of the conditions, and NOAA and EPA have revised the Proposed Findings Document accordingly. The following changes have been made to the Proposed Findings Document: (1) the enforceable policy element of the conditions for agriculture, forestry, urban (new development, site development, existing development, watershed protection, and roads, highways and bridges), marinas, and hydromodification has been met through the State's submission of a revised legal opinion. (2) The condition for the urban construction site chemical control, roads, highways and bridges (construction projects and construction site chemical control), and hydromodification (dams) erosion and sediment control and chemical and pollutant control management measures have been addressed through issuance of the National Pollutant Discharge Elimination System (NPDES) Phase II permit. (3) NOAA and EPA have reinstated the previously excluded agricultural dryland rowcrop area subject to receiving additional information to support its exclusion. (4) An alternative for addressing the urban new and existing development management measures condition has been proposed that would allow Texas to finalize its State NPDES rules to ensure that they are required throughout the 6217 management area. (5) The findings for the roads, highways and bridges management measures (planning, siting, development, operation and maintenance, and runoff systems management measures) were revised to clarify that the condition applies only to roads, highways and bridges that are not under the jurisdiction of the Texas Department of Transportation.

Copies of the revised Proposed Findings Document may be found on the NOAA Web site at *http://www.ocrm.nos.noaa.gov/czm/6217/* or may be obtained upon request from: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-Fast Highway, Silver Spring, Maryland, 20910, phone (301) 713–3155, x150 e-mail *helen.farr@noaa.gov*.

DATES: Individuals or organizations wishing to submit comments on the proposed Findings Document should do so by May 7, 2003.

ADDRESSES: Comments should be made to: John King, Acting Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, phone (301) 713–3155, x188, e-mail *john.king@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, phone (301) 713–3155, x150, e-mail *helen.farr@noaa.gov*.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: March 31, 2003.

Ted I. Lillestolen,

Associate Deputy, Assistant Administrator, for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Dated: March 28, 2003.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water, Environmental Protection Agency.

[FR Doc. 03–8289 Filed 4–4–03; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033103E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Groundfish Stock Assessment Review (STAR) Panel for bocaccio and black rockfish will hold a work session which is open to the public.

DATES: The bocaccio and black rockfish STAR Panel will meet beginning at 10 a.m., April 21, 2003. The meeting will continue on April 22, 2003 beginning at 8 a.m. through April 25, 2003. The meetings will end at 5 p.m. each day, or as necessary to complete business.

ADDRESSES: The bocaccio and black rockfish STAR Panel meeting will be held at NMFS Southwest Fisheries Science Center, Santa Cruz Laboratory Conference Room, 110 Shaffer Road, Santa Cruz, CA 95060; telephone: 831–420–3900.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Staff Officer; 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review draft stock assessment documents and any other pertinent information, work with the Stock Assessment Team to make necessary revisions, and produce a STAR Panel report for use by the Councilfamily and other interested persons.

Entry to the Southwest Fisheries Science Center requires identification with photograph (such as a student ID, state drivers license, etc.).

Although nonemergency issues not contained in STAR Panel agendas may come before the STAR panel for discussion, those issues may not be the subject of formal panel action during this meeting. STAR Panel action will be restricted to those issues specifically listed in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, providedthe public has been notified of the panel's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: April 1, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8394 Filed 4–4–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032403B]

Marine Mammals; File No. 1003–1665

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Jennifer Moss Burns, University of Alaska Anchorage, Department of Biological Sciences, College of Arts and Sciences, 3211 Providence Drive, Anchorage, AK 99508, has requested an amendment to scientific research Permit No. 1003–1665–00.

DATES: Written or telefaxed comments must be received on or before May 7, 2003.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 1003–1665–00, issued on April 12, 2002 (67 FR 19167) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 1003–1665–00 authorizes the permit holder to take up to 40 Pacific harbor seals (*Phoca vitulina richardsi*) per year in Southeast Alaska by capture, blood and tissue sampling, and attachment of scientific instruments, and up to 500 harbor seals per year by disturbance incidental to capture, scat collection, and ground and aerial surveys. The purpose of the research is to study the physical factors (e.g., ice and water conditions, seasons) that influence seal habitat use and to monitor seal foraging behavior and prey selection. The permit holder requests authorization to increase the number of takes by disturbance incidental to capture and surveys to 2000 per year. This request is based on observations from the previous year's surveys during which a greater than anticipated abundance of seals was documented.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 31, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–8397 Filed 4–4–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter systems of records.

SUMMARY: The Department of the Air Force is proposing to alter two existing systems of records notices in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alterations consist of adding exemptions to the existing systems of records F033 AF A, entitled 'Information Requests-Freedom of Information Act' and F033 AF B, entitled 'Privacy Act Request File'.

The exemptions are needed because during the course of a Freedom of Information Act (FOIA) and Privacy Act action, exempt materials from other systems of records may in turn become part of the case records in these systems. To the extent that copies of exempt records from those 'other' systems of records are entered into the Freedom of Information Act and/or Privacy Act case records, the Department of the Air Force hereby claims the same exemptions for the records from those 'other' systems that are entered into these systems, as claimed for the original primary systems of records which they are a part. Therefore, the Air Force is proposing to add exemptions 5 U.S.C. 552a(j)(2), (k)(1) through (k)(7) to these two existing systems of records.

DATES: The actions will be effective on May 7, 2003, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force FOIA/Privacy Manager, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne P. Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on March 28, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 31, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F033 AF CIC B

SYSTEM NAME:

Information Requests-Freedom of Information Act (June 11, 1997, 62 FR 31793).

CHANGES:

SYSTEM IDENTIFIER:

Replace entry with 'F033 AF A'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add to end of entry 'individuals whose requests and/or records have been processed under FOIA and referred by other Federal agencies; and attorneys representing individuals submitting such requests.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Replace entry with 'Records created or compiled in response to FOIA requests, *i.e.*, original requests; responses to such requests; all related memoranda, correspondence, notes, and other related or supporting documentation; and copies of requested records.'

* * * * *

PURPOSE(S):

Replace entry with 'To process FOIA requests and to assist the Department of the Air Force in carrying out responsibilities under the FOIA.'

* * * * *

RECORD SOURCE CATEGORY:

Replace entry with 'Those individuals who submit initial requests, the agency records searched in the process of responding to such requests; Air Force personnel assigned to handle such requests; other agencies or entities that have referred requests concerning Department of the Air Force records, or that have consulted with the Department of the Air Force regarding the handling of particular requests; and submitters of records or information that have provided assistance to the Department of the Air Force in making FOIA access determinations.'

EXEMPTION(S) CLAIMED FOR THE SYSTEM:

Replace entry with 'During the course of a FOIA action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this FOIA case record, Air Force hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 806b. For additional information contact the system manager.'

* * * * *

F033 AF A

SYSTEM NAME:

Information Requests-Freedom of Information Act.

SYSTEM LOCATION:

Air Force installations and headquarters of combatant commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have requested documents under the provisions of the Freedom of Information Act (FOIA); individuals whose requests and/or records have been processed under FOIA and referred by other Federal agencies; and attorneys representing individuals submitting such requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records created or compiled in response to FOIA requests, *i.e.*, original requests; responses to such requests; all related memoranda, correspondence, notes, and other related or supporting documentation; and copies of requested records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, The Freedom of Information Act as implemented by Air Force Supplement to DoD Regulation 5400.7; and 10 U.S.C. 8013.

PURPOSE(S):

To process FOIA requests and to assist the Department of the Air Force in carrying out responsibilities under the FOIA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Released records are retained in office files for two years after annual cut-off. Denied records are retained in office files for six years then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

FOIA managers at Air Force installations, bases, units, organizations, and offices. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the appropriate FOIA office. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to or visit the appropriate FOIA office. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction

37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Those individuals who submit initial requests, the agency records searched in the process of responding to such requests; Air Force personnel assigned to handle such requests; other agencies or entities that have referred requests concerning Department of the Air Force records, or that have consulted with the Department of the Air Force regarding the handling of particular requests; and submitters of records or information that have provided assistance to the Department of the Air Force in making FOIA access determinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a FOIA action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this FOIA case record, Air Force hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c), and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

F033 AF CIC B

SYSTEM NAME:

Privacy Act Request File (June 11, 1997, 62 FR 31793).

CHANGES:

SYSTEM IDENTIFIER:

Replace entry with 'F033 AF B'.

* * * * *

PURPOSE(S):

Delete 'to prepare legal opinions and interpretations for system managers and the Secretary of the Air Force' and add 'to compile information for reports, and to ensure timely response to requesters.'

* * * * *

STORAGE:

Delete entry and replace with 'Maintained in file folders and on computers and computer output products.'

* * * * *

SAFEGUARDS:

Add to entry 'Records in computer storage devices are protected by computer system software.'

RETENTION AND DISPOSAL:

Replace entry with 'Granted access requests; responses to requests for non-existent records, inadequate descriptions, and failure to pay agency fees that are not appealed, are destroyed 2 years after date of reply; denied access requests not appealed are destroyed 5 years after date of reply; denied access requests appealed, and requests to amend are destroyed with the approved disposition instructions of the related subject individual's record, 4 years after final agency determination, or 3 years after final adjudication by courts whichever is later.'

* * * * *

EXEMPTION(S) CLAIMED FOR THE SYSTEM:

Replace entry with 'During the course of a Privacy Act (PA) action, exempt materials from other systems of records may become part of the case records in this system of records. To the extent that copies of exempt records from those 'other' systems of records are entered into these PA case records, the Department of the Air Force hereby claims the same exemptions for the records as they have in the original primary systems of records which they are a part.

Department of the Air Force exemption rules have been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) published in 32 CFR part 806b. For additional information contact the system manager.'

* * * * *

F033 AF B

SYSTEM NAME:

Privacy Act Request File.

SYSTEM LOCATION:

At all levels having responsibility for systems of records under the Privacy Act. Includes Headquarters United States Air Force staff agencies; major commands; field operating agencies; installations and activities, and headquarters of combatant commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who request access to, or amendment of records about themselves under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a).

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memoranda, legal opinions, messages, and miscellaneous documents relating to an individual's request for access to or amendment of records concerning that person, including letters of denial, appeals, statements of disagreements, and related documents accumulated in processing requests received under the Privacy Act of 1974.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 5 U.S.C. 552a, The Privacy Act of 1974; and Air Force Instruction 33–332, Air Force Privacy Act Program.

PURPOSE(S):

To record, process and coordinate individual requests for access to, or amendment of, personal records, and appeals on denials of requests for access or amendments to personal records; and to compile information for reports, and to ensure timely response to requesters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

May be disclosed to the Office of Management and Budget or other Government agencies having a direct interest in monitoring or evaluating compliance with the provisions of the Privacy Act, including the preparation of special studies or reports on the status of actions taken to comply with the Act, the results of those efforts, any problems encountered and recommendations for any changes in legislation, policies, or procedures.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on computers and computer output products.

RETRIEVABILITY:

Retrieved by name of requester.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties and who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms. Records in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Granted access requests; responses to requests for non-existent records, inadequate descriptions, and failure to pay agency fees that are not appealed, are destroyed 2 years after date of reply; denied access requests not appealed are destroyed 5 years after date of reply; denied access requests appealed, and requests to amend are destroyed with the approved disposition instructions of the related subject individual's record, 4 years after final agency determination, or 3 years after final adjudication by courts whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act managers at installations, bases, units, organizations, and offices. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the appropriate system manager.

Written requests should include the person's full name, and other personal information which could be verified from the person's file.

For personal visits, the individual should present a valid identification card or driver's license and some verbal information which could be verified from the person's case file. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the appropriate system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Written requests should include the person's full name, and other personal information which could be verified from the person's file.

For personal visits, the individual should present a valid identification card or driver's license and some verbal information which could be verified from the person's case file. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Those individuals who submit initial requests, the agency records searched in the process of responding to such requests; Air Force personnel assigned to handle such requests; other agencies or entities that have referred requests concerning Department of the Air Force records, or that have consulted with the Department of the Air Force regarding the handling of particular requests; and submitters of records or information that have provided assistance to the Department of the Air Force in making FOIA access determinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a Privacy Act (PA) action, exempt materials from other systems of records may become part of the case records in this system of records. To the extent that copies of exempt records from those 'other' systems of records are entered into these PA case records, the Department of the Air Force hereby claims the same exemptions for the records as they have in the original primary systems of records which they are a part.

Department of the Air Force exemption rules have been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 03–8215 Filed 4–4–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Elementary and Secondary Education Act; Implementation

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of proposed deadlines for final implementation.

The Deputy Under Secretary for Safe and Drug-Free Schools proposes deadline dates for final implementation of requirements under the Unsafe School Choice Option (USCO), under section 9532 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001. This notice proposes deadlines by which each State must identify persistently dangerous schools, as well as offer students in those schools and students who are victims of violent criminal offenses while on school property the opportunity to transfer to a safe school.

DATES: We must receive your comments on or before May 7, 2003.

ADDRESSES: Address all comments about this notice to William Modzeleski, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E314, Washington, DC 20202–6123. If you prefer to send your comments through the Internet, use the following address: *safeschl@ed.gov*. Please specify "USCO Comments" in the subject line of your electronic message.

If you want to comment on the information collection requirements, you must send your comments to the Department representative named in that section.

FOR FURTHER INFORMATION CONTACT: Kristen Hayes, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E340, Washington, DC 20202–6123. Telephone: (202) 708–9431. Or via Internet: *Kristen.Hayes@ed.gov*.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this notice of proposed deadlines. We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this notice. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice of proposed deadlines in Room 3E314, FB6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public record for this notice of proposed deadlines. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Proposed Deadlines and Affected Parties

We propose establishing two deadlines related to implementation of the USCO provisions: (1) The date by which each State must identify persistently dangerous public elementary and secondary schools; and (2) the date by which each State must allow students who attend a persistently dangerous school, and students who are victims of violent criminal offenses while at school or on the grounds of the school, to transfer to a safe school.

We propose that each State identify those schools that meet its definition of a persistently dangerous school by *July 1, 2003 and each July 1st thereafter,* and that each State allow students attending a persistently dangerous public elementary or secondary school to transfer to a safe school *by the start of the 2003–2004 school year and by the start of every school year thereafter.* We propose that, *by the start of the 2003–2004 school year,* each State must have in place its policy to allow students who are victims of violent criminal offenses while in or on the grounds of a school they attend to transfer to a safe public school. We recognize that the start of the school year will vary from local educational agency (LEA) to LEA. The opportunity to transfer provided by USCO must be offered to affected students by the start of the school year in their LEA. This policy would remain in place for future years. Changes, consistent with statutory requirements, may be made as needed by the State.

Background

Title IX, section 9532 of the Elementary and Secondary Education Act as reauthorized by the No Child Left Behind Act 2001 establishes the USCO requirements. Accordingly, each State receiving ESEA funds must establish and implement a statewide USCO policy. This policy must provide to a student attending a persistently dangerous public elementary or secondary school the opportunity to transfer to a safe public elementary school or secondary school (which may be a public charter school) within the LEA in which the student is currently enrolled. This policy must provide the same transfer opportunity to a student who becomes the victim of a violent criminal offense while in or on the grounds of that student's public elementary or secondary school.

Each State must establish a policy to address both USCO provisions after consultation with a representative sample of LEAs.

Section 9532 requires that, as a condition of receiving ESEA funds, each State certify to the Secretary that it is in compliance with the USCO requirements. Each State has already provided the required certification in its application for ESEA funding available on July 1, 2002. However, we recognized that not all States were able to meet all of the requirements of the USCO by that date. Thus, we permitted each State to "qualify" its respective certification, pending completion of the activities necessary to comply with the USCO provisions, and to report quarterly on its progress toward full compliance. We also issued draft non-regulatory guidance in July 2002 that outlined the implementation steps that would constitute full compliance with the USCO provisions.

We propose these deadlines to ensure that students who attend persistently dangerous schools or who are the victims of violent criminal offenses while in school or on school grounds are offered the opportunity to transfer to a safe public school as quickly as possible. Such transfers will help ensure the opportunity for students to learn in a safe environment.

We believe that the proposed deadlines appropriately balance the amount of time needed by each State to implement these provisions with the compelling interest of having students attend a safe school.

Paperwork Reduction Act of 1995

Although the Department of Education is not collecting data, the statute does contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education submitted a copy of the information collection to the Office of Management and Budget (OMB) for its review and approval.

We estimate annual recordkeeping burden for this collection of information to average 20 hours for each of 56 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden for this collection to be 1120 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in text or PDF at the following site: *http://www.ed.gov/offices/OSDFS/index.html.*

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7912.

Dated: April 4, 2003.

Judge Eric Andell,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 03–8400 Filed 4–4–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–101–B]

Application To Export Electric Energy; Avista Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Avista Corporation (Avista) has applied to amend its authorization to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 7, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On October 17, 1994, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–101 authorizing Avista (formerly Washington Water Power Company) to transmit electric energy from the United States to Canada using the international electric transmission facilities owned and operated by Bonneville Power Administration (BPA). That Order authorized Avista to export firm capacity and associated energy only for the months of November, December, January, and February, and at a maximum rate of transmission of 100 megawatts (MW). On October 23, 1995, in Order No. EA–101–A, FE amended the previous electricity export authorization by authorizing exports during each month of the calendar year and at a maximum rate of transmission of 400 MW.

On November 8, 2000, Avista filed an application with FE to amend Order No. EA–101–A by increasing the maximum rate of transmission to 1,000 MW. Notice of receipt of that application appeared in the **Federal Register** on November 20, 2000. No comments were received during the 30-day comment period. On February 12, 2003, Avista submitted an amended application. In the amended application, Avista changed its request for a 1,000-MW export limit and, instead, requests that the authorized export limit be changed from 400 MW to an amount not to exceed the reliability and physical limits of the international transmission facilities presently owned by BPA. In its amended application, Avista clarified that the electric energy to be exported will be sold on an "as available" basis as system conditions dictate and as surpluses are available.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Avista application to export electric energy to Canada should be clearly marked with Docket EA–101–B. Additional copies are to be filed directly with Richard L. Storro, Manager, Wholesale Power, Avista Corporation, P.O. Box 3727, Spokane, Washington 99220–3727 *AND* R. Blair Strong, Paine, Hamblen, Coffin, Brooke and Miller, 717 W. Sprague, Suite 1200, Spokane, WA 99201–3505.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order Nos. EA–101 and EA–101–A. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the previous proceedings.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the FE Home Page at *http://www.fe.de.gov.* Upon reaching the FE Home page, select "Electricity Regulation" and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on March 31, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Cool & Power Import/Export, Office of Cool & Power Systems, Office of Fossil Energy.

[FR Doc. 03–8378 Filed 4–4–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

April 2, 2003.

The following notice of meeting is published pursuant to Section 3(A) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: April 9, 2003, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, telephone (202) 502–8400 for a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

824th Meeting—April 9, 2003; Regular Meeting, 10:00 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs and rates—Electric

E–1.
Omitted

E–2.
Docket# ER03–300, 000, Pacific Gas and Electric Company
Other#s ER03–300, 001, Pacific Gas and Electric Company

E–3.
Docket# ER03–401, 000, Midwest Independent Transmission System Operator, Inc.
Other#s ER03–401, 001, Midwest Independent Transmission System Operator, Inc.

E–4.
Omitted

E–5.
Docket# ER03–547, 000, Southwest Power Pool, Inc.

E–6.
Docket# ER03–249, 000, Illinois Power Company
Other#s ER03–249, 001, Illinois Power Company

E–7.
Docket# ER03–560, 000, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation

E–8.
Docket# ER00–1053, 006, Maine Public Service Company
Other#s ER00–1053, 007, Maine Public Service Company
ER00–1053, 008, Maine Public Service Company

E–9.
Docket# ER98–1438, 012, Midwest Independent Transmission System Operator, Inc.
Other#s ER98–1438, 013, Midwest Independent Transmission System Operator, Inc.
ER02–111, 004, Midwest Independent Transmission System Operator, Inc.
ER02–111, 005, Midwest Independent Transmission System Operator, Inc.

E–10.

Docket# ER03–13, 001, New York Independent System Operator, Inc.
Other#s ER03–13, 002, New York Independent System Operator, Inc.
E–11.
Docket# ER01–3000, 006, International Transmission Company
Other#s RT01–101, 006, International Transmission Company
EC01–146, 006, DTE Energy Company
E–12.
Omitted
E–13.
Docket# ER02–1783, 000, Entergy Services, Inc.
E–14.
Docket# ER03–95, 001, American Electric Power Service Corporation
E–15.
Omitted
E–16.
Docket# ER98–3760, 006, California Independent System Operator Corporation
Other#s EC96–19, 057, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company
ER96–1663, 060, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company
E–17.
Docket# ER02–1021, 002, Ontario Energy Trading International Corp.
E–18.
Omitted
E–19.
Omitted
E–20.
Omitted
E–21.
Docket# PA02–2, 002, Fact-Finding Investigation into Possible Manipulation of Electric and Natural Gas Prices
E–22.
Omitted
E–23.
Docket# ER02–2595, 001, Midwest Independent Transmission System Operator, Inc.
E–24.
Docket# ER03–238, 001, New York Independent System Operator, Inc.
Other#s ER03–238, 002, New York Independent System Operator, Inc.
E–25.
Docket# EL02–41, 001, Pittsfield Generating Company, L.P.
Other#s QF88–21, 010, Pittsfield Generating Company, L.P.
E–26.
Omitted
E–27.
Docket# ER03–169, 001, Tampa Electric Company
E–28.
Docket# RM00–7, 008, Midwest Independent Transmission System Operator, Inc., New York Independent System Operator, Inc., PJM Interconnection, L.L.C.
E–29.
Docket# NJ03–1, 000, Sunflower Electric Power Corporation
E–30.
Docket# EL03–48, 000, Oildale Energy LLC
Other#s QF84–518, 005, Oildale Energy LLC
E–31.
Docket# ER02–1741, 001, Nevada Power Company
Other#s ER02–1742, 001, Nevada Power Company
ER02–2344, 000, Southern California Edison Company
E–32.
Docket# EL01–93, 005, ISO New England, Inc.
Other#s EL01–93, 006, ISO New England, Inc.
E–33.
Docket# ER02–1264, 000, Cabrillo Power I LLC and Cabrillo Power II LLC

Miscellaneous Agenda

M–1.
Docket# RM02–7, 000, Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations
M–2.
Docket# RM02–14, 000, Regulation of Cash Managment Practices
M–3.
Docket# RM03–6, 000, Amendments to Conform Regulations with Order No. 630 (Critical Energy Infrastructure Information Final Rule)

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP03–188, 000, East Tennessee Natural Gas Company
Other#s RP03–188, 001, East Tennessee Natural Gas Company
G–2.
Omitted
G–3.
Omitted
G–4.
Docket# RP03–172, 000, Transcontinental Gas Pipe Line Corporation
G–5.
Docket# PR02–18, 000, Nicor Gas
Other#s PR02–18, 001, Nicor Gas
PR02–18, 002, Nicor Gas
G–6.
Docket# RP02–241, 000, Williams Gas Pipelines Central, Inc.
Other#s RP02–241, 001, Williams Gas Pipelines Central, Inc.
RP02–241, 002, Williams Gas Pipelines Central, Inc.
G–7.
Docket# RP00–407, 003, High Island Offshore System, L.L.C.
Other#S RP00–619, 004, High Island Offshore System, L.L.C.
RP03–118, 000, High Island Offshore System, L.L.C.
G–8.
Docket# RP02–13, 005, Portland Natural Gas Transmission System
G–9.
Docket# RP00–414, 001, PG&E Gas Transmission, Northwest Corporation
Other#s RP01–15, 002, PG&E Gas Transmission, Northwest Corporation
G–10.
Docket# RP03–221, 001, High Island Offshore System, L.L.C.
G–11.
Docket# RP00–479, 001, Trailblazer Pipeline Company
Other#s RP00–479, 002, Trailblazer Pipeline Company
RP00–624, 001, Trailblazer Pipeline Company
RP00–624, 002, Trailblazer Pipeline Company
G–12.
Docket# RP00–332, 002 ANR Pipeline Company
Other#s RP00–332, 003, ANR Pipeline Company
RP00–597, 002, ANR Pipeline Company
RP03–182, 000, ANR Pipeline Company
G–13.
Docket# CP00–6, 007, Gulfstream Natural Gas System, L.L.C.
Other#s CP00–6, 008, Gulfstream Natural Gas System, L.L.C.
RP03–173, 000, Gulfstream Natural Gas System, L.L.C.
G–14.
Docket# GT02–34, 002, Natural Gas Pipeline Company of America
Other#s GT02–34, 001, Natural Gas Pipeline Company of America
G–15.
Docket# RP03–19, 002, Florida Gas Transmission Company
G–16.
Docket# RP02–335, 001, ANR Pipeline Company
G–17.
Docket# RP03–162, 002, Trailblazer Pipeline Company
G–18.
Docket# RP98–53, 026, Kinder Morgan Interstate Gas Transmission L.L.C.
Other#s GP98–29, 001, ONEOK Resources Company
G–19.
Docket# RP03–20, 002, Transwestern Pipeline Company
Other#s RP03–20, 001, Transwestern Pipeline Company
G–20.
Docket# RP02–362, 004, PG&E Gas Transmission, Northwest Corporation
Other#s RP02–362, 003, PG&E Gas Transmission, Northwest Corporation

Energy Projects—Hydro

H–1.
Docket# P–6058, 007, Hydro Development Group, Inc.
Other#s P–6058, 008, Hydro Development Group, Inc.
P–6059, 007, Hydro Development Group, Inc.
P–6059, 008, Hydro Development Group, Inc.
H–2.
Docket# P–2311,047, Great Lakes Hydro America, LLC
Other#s P–2288, 042, Public Service Company of New Hampshire
H–3.
Docket# P–2114, 111, The Yakama Nation v. Public Utilities District No. 2 of Grant County, Washington
H–4.
Docket# P–400, 038, Willard Janke v. Public Service Company of Colorado

Energy Projects—Certificates

C–1.
Docket# CP02–379, 001, Southern LNG Inc.
Other#s CP02–379, 000, Southern LNG Inc.
CP02–380, 000, Southern LNG Inc.
CP02–380, 001, Southern LNG Inc.
C–2.
Docket# CP02–90, 000, AES Ocean Express, LLC
Other#s CP02–90, 001, AES Ocean Express, LLC
CP02–91, 000, AES Ocean Express, LLC
CP02–92, 000, AES Ocean Express, LLC
CP02–93, 000, AES Ocean Express, LLC
CP02–93, 001, AES Ocean Express, LLC
C–3.
Docket# CP01–444, 000, Tractebel Calypso Pipeline, LLC
Other#s CP01–444, 001, Tractebel Calypso Pipeline, LLC
CP01–444, 002, Tractebel Calypso Pipeline, LLC
C–4.
Docket# CP01–79, 000, ANR Pipeline Company
C–5.
Docket# CP01–388, 002, Transcontinental Gas Pipe Line Corporation
C–6.
Omitted
C–7.
Docket# CP02–396, 001, Greenbrier Pipeline Company, LLC
Other#s CP02–396, 000, Greenbrier Pipeline Company, LLC
CP02–397, 000, Greenbrier Pipeline Company, LLC
CP02–397, 001, Greenbrier Pipeline Company, LLC
CP02–398, 000, Greenbrier Pipeline Company, LLC
CP02–398, 001, Greenbrier Pipeline Company, LLC

Magalie R. Salas,
Secretary.
[FR Doc. 03–8497 Filed 4–3–03; 10:46 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend; Sunshine Act

April 2, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY: Federal Energy Regulatory Commission.

DATE AND TIME: April 9, 2003 (Within a relatively short time before or after the regular Commission Meeting).

PLACE: Hearing Room 6, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries, and Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on April 9, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,
Secretary.
[FR Doc. 03–8498 Filed 4–3–03; 10:46 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects—Extension of Transmission and Ancillary Service Rates—Rate Order No. WAPA–101

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: This action is being taken to extend the existing Loveland Area Projects (LAP) Transmission and Ancillary Service rates, Rate Order No. WAPA–80, and Energy Imbalance Service rate, Rate Order No. WAPA–97, through March 31, 2004. The existing LAP Transmission and Ancillary Service rates and the Energy Imbalance Service rate will expire March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Payton, Rates Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, (970) 461–7442, or e-mail *dpayton@wapa.gov.*

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–0037.00 approved December 6, 2001, the Secretary delegated: (1) The authority to develop long-term power and transmission rates on a non-exclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

The Deputy Secretary approved the existing Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, and L–AS6 on March 23, 1998 (Rate Order No. WAPA–80, 63 FR 16778, April 6, 1998). FERC confirmed and approved the formula rate schedules for Rate Order No. WAPA–80 on July 21, 1998, under FERC Docket No. EF98–5181–000 (at 84 FERC ¶ 61,066). The existing formula rates became effective on April 1, 1998, and are approved through March 31, 2003.

Subsequently, Rate Schedule L–AS4, Energy Imbalance Service, was revised and approved by the Secretary on May 30, 2002 (Rate Order No. WAPA–97, 67 FR 39970, June 11, 2002). Rate Order No. WAPA–97 became effective July 1, 2002, and is approved through March 31, 2003. FERC confirmed and approved the formula rate schedule for Energy Imbalance Service on February 3, 2003 (Docket No. EF02–5181–000).

Western's existing formula rate schedules, which are recalculated annually, will sufficiently recover project expenses (including interest) and capital requirements through the extension period. Western is seeking this extension to provide more time for the evaluation of new rates for ancillary services, particularly energy imbalance and regulation, and to provide a concurrent public process and rate approval period for new rates for firm electric service, transmission service, and ancillary services. For these reasons, Western is extending the existing rates for transmission and ancillary services through March 31, 2004, under 10 CFR part 903.23(b).

I approved Rate Order No. WAPA–101 after DOE reviewed Western's proposal. My approval extends the existing LAP transmission and ancillary services rate schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, and L–AS6 through March 31, 2004.

Dated: March 20, 2003.

Kyle E. McSlarrow,
Deputy Secretary.

Order Confirming and Approving an Extension of the Loveland Area Projects Transmission and Ancillary Service Rates

The Loveland Area Projects (LAP) Transmission and Ancillary Service rates were established following section

302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a). This act transferred to and vested in the Secretary of Energy (Secretary) the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts that specifically apply to the project system involved.

By Delegation Order No. 00–0037.00 approved December 6, 2001, the Secretary delegated: (1) The authority to develop long-term power and transmission rates on a non-exclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This rate extension is issued following the Delegation Order and the DOE rate extension procedures at 10 CFR part 903.23(b).

Background

The Deputy Secretary approved the existing Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, and L–AS6 on March 23, 1998 (Rate Order No. WAPA–80, 63 FR 16778, April 6, 1998). FERC confirmed and approved the formula rate schedules for Rate Order No. WAPA–80 on July 21, 1998, under FERC Docket No. EF98–5181–000 (at 84 FERC ¶ 61,066). The existing formula rates became effective on April 1, 1998, and are approved through March 31, 2003.

Subsequently, Rate Schedule L–AS4, Energy Imbalance Service, was revised and approved by the Secretary on May 30, 2002 (Rate Order No. WAPA–97, 67 FR 39970, June 11, 2002). Rate Order No. WAPA–97 became effective July 1, 2002, and is approved through March 31, 2003. FERC confirmed and approved the formula rate schedule for Energy Imbalance Service on February 3, 2003 (Docket No. EF02–5181–000).

Discussion

On March 31, 2003, Western's LAP Transmission and Ancillary Service rates and the Energy Imbalance Service rate expire. Western's existing formula rate schedules, which are recalculated annually, will sufficiently recover project expenses (including interest) and capital requirements through the extension period. Western is seeking this extension to provide more time for the evaluation of new rates for ancillary services, particularly energy imbalance and regulation, and to provide a concurrent public process and rate approval period for new rates for firm electric service, transmission service, and ancillary services.

The process will take several months to complete because of the complex issues Western and its interested public must address. It will also offer opportunities for public information and comment forums.

For these reasons, Western seeks to extend existing Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, and L–AS6 under 10 CFR 903.23(b) through March 31, 2004.

Order

In view of the above and under the authority delegated to me by the Secretary, I hereby extend the existing Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, and L–AS6 for LAP Transmission and Ancillary services from April 1, 2003, through March 31, 2004.

Dated: March 20, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

[FR Doc. 03–8377 Filed 4–4–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7476–8]

Request for Applications for the National Environmental Education Advisory Council

SUMMARY: Section 9 (a) and (b) of the National Environmental Education Act of 1990 (Pub. L. 101–619) mandates a National Environmental Education Advisory Council. The Advisory Council provides advice, consults with, and makes recommendations to the Administrator of the U.S. Environmental Protection Agency (EPA) on matters relating to the activities, functions, and policies of EPA under the Act. EPA is requesting nominations of candidates for membership on the Council. The Act requires that the Council be comprised of eleven (11) members appointed by the Administrator of EPA. Members represent a balance of perspectives, professional qualifications, and experience. The Act specifies that members must represent the following:

- Primary and secondary education (one of whom shall be a classroom teacher)—two members;
- Colleges and universities—two members; Not-for-profit organizations involved in environmental education—two members;
- State departments of education and natural resources—two members;
- Business and industry—two members;
- Senior Americans—one member.

Members are chosen to represent various geographic regions of the country, and the Council strives for a diverse representation. The professional backgrounds of Council members should include education, science, policy, or other appropriate disciplines. Each member of the Council shall hold office for a one (1) to three (3) year period. Members are expected to participate in up to two (2) meetings per year and monthly or more conference calls per year. Members of the Council shall receive compensation and allowances, including travel expenses, at a rate fixed by the Administrator.

There are currently three (3) vacancies on the Advisory Council that must be filled:

- Business and Industry—one vacancy (2003–2006);
- Non-Profit Organization—one vacancy (2003–2005);
- Senior American—one vacancy (2003–2005).

Additionally, there will be three (3) vacancies on the Advisory Council beginning in June 2003 that must be filled:

- Business and Industry—one vacancy (2003–2005);
- Primary and Secondary Education—one vacancy (2003–2006);
- State Department of Natural Resources—one vacancy (2003–2006).

EPA particularly seeks candidates with demonstrated experience and/or knowledge in any of the following environmental education issue areas:

- Integrating environmental education into state and local education reform and improvement;
- State, local and tribal level capacity building;
- Cross-sector partnerships; leveraging resources for environmental education;
- Design and implementation of environmental education research;
- Professional development for teachers and other education professionals; and
- Targeting under-represented audiences, including low-income and multi-cultural audiences, senior citizens, and other adults.

Additional Considerations:

The Council is looking for individuals who demonstrate the following:

- Ability to make the time commitment;
- Strong leadership skills;
- Strong analytical and writing skills;
- Ability to stand apart and evaluate programs in an unbiased fashion;
- Team players;
- Conviction to follow-through and to meet deadlines;
- Ability to review items on short notice.

DATES: Applications to fill all of the identified vacancies on the Council for 2003 must be submitted no later than July 1, 2003. The application must include the following:

- Name/address/phone/e-mail of applicant;
- 1–2 page resume (Please detail environmental education experience.);
- Two (2) letters of support for the applicant;
- One (1) page statement by the applicant on his/her personal perspective on environmental education. This must not exceed one (1) page.

Please note that meetings will be held subject to availability of funds.

ADDRESSES: Submit nominations to Ginger Potter, Designated Federal Official, Office of Environmental Education, Office of Public Affairs (1704A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ginger Potter at the above address, or call (202) 564–0453; E-mail address: *potter.ginger@epa.gov.*

SUPPLEMENTARY INFORMATION: The Council provides the Administrator with advice and recommendations on EPA implementation of the National Environmental Education Act. In general, the Act is designed to increase public understanding of environmental issues and problems, and to improve the training of environmental education professionals. EPA will achieve these goals, in part, by awarding grants and/or establishing partnerships with other Federal agencies, state and local education and natural resource agencies, not-for-profit organizations, universities, and the private sector to encourage and support environmental education and training programs. The Council is also responsible for preparing a national biennial report to Congress that will describe and assess the extent and quality of environmental education, discuss major obstacles to improving environmental education, and identify the skill, education, and training needs for environmental professionals.

Dated: March 27, 2003.

CeCe Kremer,

Deputy Associate Administrator, Office of Public Affairs.

[FR Doc. 03–8369 Filed 4–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7476–9]

Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractors Booz Allen Hamilton, Incorporated and ASRC Aerospace Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) for authorization to disclose to its contractor, Booz Allen Hamilton, Incorporated ("Booz Allen Hamilton, Incorporated"), of McLean, Virginia, Superfund confidential business information ("CBI") which has been submitted to EPA Region 1, Office of Site Remediation and Restoration, Search and Cost Recovery Section, Booz Allen Hamilton, Incorporated principal offices are located at 8283 Greensboro Drive, McLean, VA 20770, and ASRC Aerospace Corporation (hereinafter "ASRC Aerospace Corporation"), of Greenbelt, Maryland, Superfund confidential business information ("CBI") which has been submitted to EPA Region 1, Office of Site Remediation and Restoration, Search and Cost Recovery Section, ASRC Aerospace Corporation's principal offices are located at 6301 Ivy Lane, Suite 300, Greenbelt, Maryland 20770.

DATES: Comments are due by April 17, 2003.

ADDRESSES: Comments should be submitted to Patricia M. Inglis, Office of Site Remediation and Restoration, U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Boston, MA 02114–2023.

FOR FURTHER INFORMATION CONTACT: Patricia M. Inglis at (617) 918–1413.

SUPPLEMENTARY INFORMATION:

Notice of Required Determines, Contract Provisions and Opportunity to Comment

A. Booz Allen Hamilton, Incorporated

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, (commonly known as "Superfund") requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records, including those relevant to cost recovery. EPA has entered into a contract, No. R16800391 with A. Booz Allen Hamilton, Incorporated for management of these records. EPA Region 1 has determined that disclosure of CBI to Booz Allen Hamilton, Incorporated employees is necessary in order that Booz Allen Hamilton, Incorporated may carry out the work required by that contract with EPA. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii). EPA Region 1 will require that each Booz Allen Hamilton, Incorporated employee sign a written agreement that he or she (1) will use the information only for the purpose of carrying out the work required by the contract, (2) shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and (3) shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by Booz Allen Hamilton, Incorporated for performance of the work required by the contract, or upon completion of the contract. These non-disclosure statements shall be maintained on file with the Region 1 Delivery Order Project Officer. Booz Allen Hamilton, Incorporated employees will be trained on Superfund CBI requirements.

B. ASRC Aerospace Corporation

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, (commonly known as "Superfund") requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records, including those relevant to cost recovery. EPA has entered into a contract, No. 68-R1–02–01 with ASRC Aerospace Corporation for management of these records. EPA Region 1 has determined that disclosure of CBI to ASRC Aerospace Corporation employees is necessary in order that ASRC Aerospace Corporation may carry out the work required by that contract with EPA. The contract complies with all requirements of 40 CFR

2.301(h)(2)(ii). EPA Region 1 will require that each ASRC Aerospace Corporation employee sign a written agreement that he or she (1) will use the information only for the purpose of carrying out the work required by the contract, (2) shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and (3) shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by ASRC Aerospace Corporation for performance of the work required by the contract, or upon completion of the contract. These non-disclosure statements shall be maintained on file with the Region 1 Delivery Order Project Officer. ASRC Aerospace Corporation employees will be trained on Superfund CBI requirements.

EPA hereby advises affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii).

Dated: March 20, 2003.

Stanley D. Chin,

Acting Director, Office of Site Remediation and Restoration, Region 1.

[FR Doc. 03–8368 Filed 4–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0112; FRL–7299–9]

The Association of American Pesticide Control Officials/State FIFRA Issues Research and Evaluation Group; Working Committee on Water Quality and Pesticide Disposal; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/ State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Water Quality and Pesticide Disposal (WC/WQPD) will hold a 2–day meeting, beginning on April 28, 2003 and ending April 29, 2003. This notice announces the location and times for the meeting, and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, April 28, 2003, from 8:30 a.m. until 5 p.m., and April 29, 2003, from 8:30 a.m. until noon.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 300 Army-Navy Drive, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: mcduffie.georgia@epa.gov.

Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax (802) 472–6957; e-mail address: aapco@plainfield.bypass.com.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in SFIREG's information exchange relationship with EPA regarding important issues related to human health, environmental pesticides, and insight into EPA's decision-making process.

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0112. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA dockets. You may use EPA dockets at http://www.epa.gov/edocket/ to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Tentative Agenda

This unit provides tentative agenda topics for the 2–day meeting.

1. Atrazine Interim Reregistration Eligibility Decision (IRED) and Memorandum of Understanding (MOU) with registrants.

2. Shallow ground water definition (for precautionary label statements and directions).

3. Disposal Label Language Issue Team.

4. CCA cancellation update.

5. Association of State and Interstate Water Pollution Control Administration Project Report.

6. Registration mechanisms - review and discussion.

7. Water Quality Registration Issue Team - Approval of EPA operating procedure.

8. Membership recruiting discussion.

9. Planning for joint meeting with Working Committee on Pesticide Operations Management (WC/POM).

10. WQ/PD Working Committee Workgroups/Updates.

11. EPA update/briefing.

a. Office of Pesticide Programs update.

b. Office of Enforcement and Compliance Assurance update.

List of Subjects

Environmental protection, Pesticide pests.

Dated: March 21, 2003.

Jay Ellenberger,

Associate Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 03–8371 Filed 4–4–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 27, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 6, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0748.

Title: Section 64.1504, Disclosure Requirements for Information Services Provided Through Toll-Free Numbers.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3,750.

Estimated Time per Response: 2–5 hours.

Frequency of Response: Third party disclosure.

Total Annual Burden: 10,500 hours.

Total Annual Cost: None.

Needs and Uses: 47 CFR section 64.1504 incorporates in the Commission's Rules, the requirements of sections 228(c)(7)–(10) that restrict the manner in which toll-free numbers may be used to charge telephone subscribers for information services. Common carriers must prohibit the use of toll-free numbers in a manner that would result in the calling party being charged for information conveyed during the call, unless the calling party (1) has executed a written agreement that specifies the material terms and conditions under which the information is provided, or (2) pays for the information by means of a prepaid account, credit, debit, charge, or calling card and the information service provider includes in response to each call an introductory message disclosing specified information detailing the cost and other terms and conditions for the service. The disclosure requirements are intended to ensure that consumers know when charges will be levied for calls to toll-free numbers and are able to obtain information necessary to make informed choices about whether to purchase toll-free information services.

OMB Control No.: 3060–0749.

Title: Section 64.1509, Disclosure and Dissemination of Pay-Per-Cal Information.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 25 respondents.

Estimated Time per Response: 410 hours.

Frequency of Responses: Annual and on occasion reporting requirements; Third party disclosure.

Total Annual Burden: 10,250 hours (multiple responses).

Total Annual Cost: None.

Needs and Uses: Common carriers that assign telephone numbers to pay-per call services must disclose to all interested parties, upon request, a list of all assigned pay-per-call numbers. For each assigned number, carriers must also make available (1) a description of the pay-per-call services; (2) the total cost per minute or other fees associated with the service; and (3) the service provider's name, business address, and telephone number. In addition, carriers handling pay-per call services must establish a toll-free number that consumers may call to receive information about pay-per-call services. Finally, the Commission requires carriers to provide statements of pay-per-call rights and responsibilities to new telephone subscribers at the time service is established and, although not required by statute, to all subscribers annually.

OMB Control Number: 3060–0752.

Title: Section 64.1510, Billing Disclosure Requirements for Pay-Per-Call and Other Information Services.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,350.

Estimated Time per Response: 10–40 hours.

Frequency of Response: Annual reporting requirement; Third party disclosure.

Total Annual Burden: 54, 000 hours.

Total Annual Cost: None.

Needs and Uses: Under 47 CFR Section 64.1510, telephone bills containing charges for interstate pay-per-call and other information services must include information detailing consumers' rights and responsibilities with respect to these charges. Specifically, telephone bills carrying pay-per-call charges must include a consumer notification stating that (1) the charges are for non-communication services; (2) local and long distance telephone services may not be disconnected for failure to pay-per-call charges; (3) pay-per call (900 number) blocking is available upon request; and (4) access to pay-per-call services may be involuntarily blocked for failure to pay-per-call charges. In addition, each call billed must show the type of services, the amount of the charge, and the date, time, and duration of the call. Finally, the bill must display a toll-free number which subscribers may call to obtain information about pay-per-call services. Similar billing disclosure requirements apply to charges for information services either billed to subscribers on a collect basis or accessed by subscribers through a toll-free number. The billing disclosure requirements are intended to ensure that

telephone subscribers billed for pay-per-call or other information services can understand the charges levied and are informed of their rights and responsibilities with respect to payment of such charges.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–8299 Filed 4–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Banking Policy; Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of a meeting of the FDIC Advisory Committee on Banking Policy ("Advisory Committee"), which will be held at the FDIC office in Arlington, Virginia. The Advisory Committee will provide advice and recommendations on a broad range of issues relating to the FDIC's mission and activities.

Time and Place: Tuesday, April 22, 2003, from 9 a.m. to 12:30 p.m., and 1:30 p.m. and 3:30 p.m. The meeting will be held in Meeting Room A at the FDIC Seidman Center, located at 1001 North Monroe Street, Arlington, Virginia.

Agenda: The agenda items include discussion of the FDIC regional and field office structure, the future of financial regulation, and the future of banking. Agenda items are subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide antendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–3742.

Dated: April 2, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Committee Management Officer.

[FR Doc. 03–8334 Filed 4–4–03; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 21, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Tommy W. Ross, Milan, Tennessee; to acquire additional voting shares of Hometown Bancorp, Inc., Milan, Tennessee, and thereby indirectly acquire additional voting shares of The Bank of Milan, Milan, Tennessee.

Board of Governors of the Federal Reserve System, April 1, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–8311 Filed 4–4–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 1, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Premier Bancshares, Inc., Dallas, Texas, and Premier Delaware Bancshares, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Synergy Bank, SSB, Waco, Texas, and thereby indirectly acquire Synergy Financial Group, Waco, Texas.

Board of Governors of the Federal Reserve System, April 1, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–8310 Filed 4–4–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Proposed Revisions to a Privacy Act System of Records

AGENCY: General Services Administration.

ACTION: Notice of proposed revisions to an existing Privacy Act system of records.

SUMMARY: The General Services Administration (GSA) proposes to revise an existing system of records titled "Investigation Case Files" (GSA/ADM–24), last published on July 25, 1996 (61 FR 38752). The system of records, maintained by GSA's Office of Inspector General (OIG), is being revised to comply with requirements established by the Homeland Security Act of 2002 (Pub. L. 107–296, Nov. 25, 2002). The major change to the system is the addition of a new routine use to allow the disclosure of information to authorized officials within the President's Council on Integrity and Efficiency (PCIE), who are charged with the responsibility for conducting qualitative assessment reviews of investigative operations for the purpose of reporting to the President and Congress on the activities of the OIG. A minor change consisting of substituting a sequential numbering system for the current alphabetical system under routine uses in the Privacy Act notice also will be made for easier reference.

DATES: Any interested persons may submit written comments on this proposal. It will become effective without further notice on May 7, 2003 unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments should be submitted to the Office of Counsel to the Inspector General (JC), Office of Inspector General, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: GSA Privacy Act Officer, General Services Administration, Office of the Chief People Officer, 1800 F Street, NW., Washington, DC 20405; telephone (202) 501–1452.

SUPPLEMENTARY INFORMATION: This publication is in accordance with the Privacy Act requirement that agencies publish their amended systems of records in the **Federal Register** when there is a revision, change, or addition. GSA's Office of Inspector General (OIG) has reviewed its systems of records notices and has determined that its record system, Investigation Case Files (GSA/ADM–24), must be revised to add a routine use in order to comply with the Homeland Security Act of 2002. Specifically, section 812, subsection (7) of that Act reads as follows: "To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General." The additional routine use would allow the disclosure of information to authorized officials within the PCIE, the Department of Justice, and the Federal Bureau of Investigation, as necessary, for the purpose of conducting qualitative assessment reviews of the OIG's investigative operations to ensure that adequate internal safeguards and management procedures are maintained.

Dated: March 31, 2003.

Daniel K. Cooper,

Director, Information Management Division.

GSA/ADM–24

SYSTEM NAME:

Investigation Case Files.

SECURITY CLASSIFICATION:

Some of the material contained in the system has been classified in the interests of national security pursuant to Executive Order 11652.

SYSTEM LOCATION:

This system is located in the GSA Office of Inspector General, 1800 F Street NW., Washington, DC 20405. The database for the system, known as the Investigations Information System (IIS), is on a local area network in the GS Building and is operated by the System Development and Support Division of the Office of Inspector General (JPM).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are employees, former employees, and applicants for employment with GSA, as well as commissions, committees and small agencies serviced by GSA. The system also includes historical researchers, employees of contractors performing custodial or guard services in buildings under GSA control, any person who was the source of a complaint or an allegation that a crime had taken place, a witness who has information or evidence on any side of an investigation, and any possible or actual suspect in a criminal, administrative, or civil action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative files containing personal information, including name, date and place of birth, experience, and investigative material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. 3., section 2 *et seq.*

PURPOSE(S):

The system serves as a basis for taking civil, criminal, and administrative actions, including the issuance of subpoenas, security clearances, suitability determinations, and similar authorized activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used by GSA officials and representatives of other government agencies on a need-to-know basis in the performance of their official duties under the authorities set forth above and for the following routine uses:

1. A record of any case in which there is an indication of a violation of law, whether civil, criminal, or regulatory in nature, may be disseminated to the appropriate Federal, State, local, or foreign agency charged with the responsibility for investigating or prosecuting such a violation or charged with enforcing or implementing the law.

2. A record may be disclosed to a Federal, State, local, or foreign agency or to an individual organization in the course of investigating a potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparing for a trial or hearing for such a violation, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, and disclosing the information is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

3. A record relating to a case or matter may be disclosed in an appropriate Federal, State, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice, even when the agency is not a party to the litigation.

4. A record relating to a case or matter may be disclosed to an actual or potential party or to his or her attorney for the purpose of negotiation or discussion on matters such as settlement of the case or matter, plea-

bargaining, or informal discovery proceedings.

5. A record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement or that involves a case or matter within the jurisdiction of any agency may be disclosed to the agency to notify it of the status of the case or matter or of any decision or determination that has been made or to make such other inquiries and reports as are necessary during the processing of the case or matter.

6. A record relating to a case or matter may be disclosed to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States, or to an Executive agreement.

7. A record may be disclosed to a Federal, State, local, foreign, or international law enforcement agency to assist in crime prevention and detection or to provide leads for investigation.

8. A record may be disclosed to a Federal, State, local, foreign, tribal or other public authority in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuing of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter.

9. A record may be disclosed to the public, news media, trade associations, or organized groups when the purpose is educational or informational, such as describing crime trends or distinctive or unique modus operandi, provided that the record does not identify a specific individual.

10. A record may be disclosed to an appeal or grievance examiner, formal complaints examiner, equal opportunity investigator, arbitrator, or other authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. This includes matters and investigations involving the Merit Systems Protection Board or the Office of Special Counsel. A record may also be disclosed to the United States Office of Personnel Management (OPM) in accordance with the agency's responsibility for evaluating Federal personnel management.

11. A record may be disclosed as a routine use to a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the person who is the subject of the record.

12. Information may be disclosed at any stage of the legislative coordination and clearance process to the Office of Management and Budget (OMB) for reviewing of private relief legislation as set forth in OMB Circular No. A–19.

13. A record may be disclosed: (a) To an expert, a consultant, or contractor of GSA engaged in a duty related to an agency function to the extent necessary to perform the function; and (b) to a physician to conduct a fitness-for-duty examination of a GSA officer or employee.

14. A record may be disclosed to any official charged with the responsibility to conduct qualitative assessment reviews of internal safeguards and management procedures employed in investigative operations. This disclosure category includes members of the President's Council on Integrity and Efficiency and officials and administrative staff within their investigative chain of command, as well as authorized officials of the Department of Justice and the Federal Bureau of Investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, REVIEWING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in files and file folders. Electronic records are stored in an electronic database or on hard or floppy disks and tapes.

RETRIEVABILITY:

Paper records are retrievable manually by name from files indexed alphabetically and filed numerically by location and incident. Electronic records are retrievable by number or letter.

SAFEGUARDS:

Paper records are stored in locked rooms with access limited to authorized personnel. Computer based records are available only to authorized users with a need to know and are protected by a network logon password, user password, and restricted right of access to the software, system, file, data element, and report.

RETENTION AND DISPOSAL:

Records are disposed of by shredding or burning, as scheduled in the HB, GSA Maintenance and Disposition System (OAD P 1820.2A), and the records schedules authorized by that system.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is the System Development and Support Division of the Office of Inspector General (JPM). The mailing address is: General Services Administration (JPM), 1800 F Street NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

An individual who wishes to be notified whether the system contains a record concerning him or her should address a request to the Office of Counsel to the Inspector General (JC), General Services Administration, Room 5324, 1800 F Street NW., Washington, DC 20405.

RECORDS ACCESS PROCEDURES:

An individual seeking access to a record should put his or her request in writing and address it to the Office of Counsel to the Inspector General (JC), including full name (maiden name if appropriate), address, and date and place of birth. General inquiries may be made by calling the Office of Counsel to the Inspector General on (202) 501–1932.

CONTESTING RECORD PROCEDURES:

GSA rules for contesting the content of a record or appealing a denial of a request to amend a record are in 41 CFR part 105–64 published in the **Federal Register**.

RECORD SOURCE CATEGORIES:

The sources are individuals themselves, employees, informants, law enforcement agencies, other government agencies, employers, references, co-workers, neighbors, educational institutions, and intelligence sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

In accordance with 5 U.S.C. 552a(j), this system of records is exempt from all provisions of the Privacy Act of 1974 with the exception of subsections (b); (c)(1) and (2); (e)(4)(A) through (F); (e)(6), (7), (9), (10), and (11); and (i) of the Act, to the extent that information in the system pertains to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals; to the activities of prosecutors, courts, and correctional, probation, pardon, or parole authorities; and to (a) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, that is associated with an identifiable individual; or (c) reports of enforcement of the criminal laws, from arrest or indictment through release from supervision. This system is exempted to maintain the efficacy and integrity of the Office of Inspector General's law enforcement function. In accordance with 5 U.S.C. 552a(k), this system of records is exempt from subsections (c)(3); (d); (e)(1); (e)(4); (G), (H), and (I); and (f) of the Privacy Act of 1974. The system is exempt:

a. To the extent that the system consists of investigatory material compiled for law enforcement purposes. However, if any individual is denied any right, privilege, or benefit to which the individual would otherwise be eligible as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the Act, under an implied promise that the identity of the source would be held in confidence; and

b. To the extent the system consists of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the Act, under an implied promise that the identity of the source would be held in confidence.

This system has been exempted to maintain the efficacy and integrity of lawful investigations conducted pursuant to the Office of Inspector General's law enforcement responsibilities and responsibilities in the areas of Federal employment, government contracts, and access to security classified information.

[FR Doc. 03–8309 Filed 4–4–03; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[OS–0990–OWH–NEW–CSS]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection.

Title of Information Collection: National Women's Health Information Center (NWHIC) Customer Satisfaction Questionnaire.

Form/OMB No.: OS–0990–OWH–NEW–CSS.

Use: The OWH plans to send a customer satisfaction questionnaire to users of NWHIC who have called the 1–800 number. Since its launch in 1998, NWHIC's toll-free number and services have not been evaluated to determine how well it has been fulfilling its goals. The survey is intended to assess the effectiveness of OWH in disseminating information through NWHIC. A random sample of 1,556 NWHIC users (with consent) will be mailed a survey and follow-up letter.

Frequency: One Time.

Affected Public: Individuals.

Annual Number of Respondents: 1,245.

Total Annual Responses: 1,245.

Average Burden Per Response: 9 minutes.

Total Annual Hours: 144.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OS document identifier, to *John.Burke@hhs.gov*, or call the Reports Clearance Office on (202) 690–8356. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address:

Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, *Attention:* John Burke (0990–OWH–NEW–CSS), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: March 28, 2003.

John P. Burke, III,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 03–8300 Filed 4–4–03; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Opportunity for Cosponsorship of the President's Challenge Physical Activity and Fitness Awards Program; Correction

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of the President's Council on Physical Fitness and Sports.

ACTION: Notice; correction.

SUMMARY: The Office of the President's Council on Physical Fitness and Sports (PCPFS) published a document in the **Federal Register** of March 25, 2003, announcing the opportunity for both non-Federal public and private sector entities to cosponsor activities related to the President's Challenge Physical Activity and Fitness Awards Program. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Christine Spain, (202) 690–5148.

Correction

In the **Federal Register** of March 25, 2003, in FR Doc. 03–7033, on page 14420, in the first column, correct the **DATES** caption to read:

DATES: To receive consideration, a request to participate as a cosponsor must be received by the close of business on May 20, 2003, at the address listed. Requests will meet the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date. Private metered postmarks will not

be acceptable as proof of timely mailing. Hand-delivered requests must be received by 5 p.m. Requests that are received after the deadline date will be returned to the sender.

Dated: April 2, 2003.

Penelope Royall,

Acting Executive Director, President's Council on Physicol Fitness and Sports, Department of Health and Human Services.

[FR Doc. 03–8374 Filed 4–4–03; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Family Caregiver Support Program 50-State Survey

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by May 7, 2003.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St., NW., rm. 10235, Washington, DC 20503, Attn: Allison Herron Eydt, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: Brian Lutz, Director, Office of Community Based Services, (202) 357–3530

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

The collection of this information will serve to profile the experience of states in providing family caregiver support services to the elderly and younger adults with disabilities, following the passage of the NFCSP. The outcomes from this survey will include: cross-cutting policy and service delivery issues, state-by-state demographics, promising practices, types of family caregiver support services available in each state, eligibility and assessment criteria, and other program-specific and state-specific information.

The project's data collection, analysis, reporting and dissemination will occur over an estimated 12-month period. Subject to OMB approval, we anticipate beginning data collection in June 2003 and ending data collection in October 2003. Data will be cleaned, entered, compiled and verified over a three-month period (September 2003–November 2003). Data analysis will be conducted over a three-month period (December 2003–February 2004), and state profiles and state-by-state datasets will be prepared over a subsequent three-month period (March 2004–May 2004). The written report will be completed in June 2004.

AoA estimates the burden of this one-time only collection of information as follows:

Part One Survey—Family Caregiver Alliance:

Number of respondents: Three people per state.

Annual Hour Burden: 30 minutes.

Part Two Follow-Up Telephone Interview—Family Caregiver Alliance

Number of respondents: Three people per state (same population—Part One).

Annual Hour Burden: 30 minutes.

Survey by National Conference of State Legislatures:

Number of respondents: One person per state.

Frequency of response: One time.

Annual Hour Burden: 20 minutes.

Annualized Cost: 80 minutes × 50 × $30/hr/person = $2000.

In the **Federal Register** of December 4, 2002 (07 FR 72216), the agency requested comments on the proposed collection of information. No comments were received.

Dated: April 1, 2003.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 03–8281 Filed 4–4–03; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–03–02]

Fiscal Year 2003 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications.

SUMMARY: The Administration on Aging announces that under this program announcement it will hold a competition for "Senior Medicare Patrol Projects" for up to 24 cooperative agreements at a federal share of approximately $175,000 per year for a project period of three years.

Legislative authority: The Older Americans Act, Public Law 106–501 (Catalog of Federal Domestic Assistance 93.048, Title IV and Title II Discretionary Projects).

Purpose of grant awards: The purpose of these projects is to test the best ways of using the skills of retired nurses, doctors, accountants and other professionals to train seniors to serve as expert resources to detect and stop health care error, fraud, and abuse. The award is a cooperative agreement because the Administration on Aging will be substantially involved in the development and execution of the activities of the projects. The cooperative agreement will provide for training, technical assistance and support to projects in every state.

Eligibility for grant awards and other requirements: Eligibility for grant awards is limited to public, state and local agencies, federally recognized tribes, or nonprofit agencies, organizations, and institutions in the following states: California, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Wisconsin, and Wyoming—to carry out cooperative agreement awards to train retired persons to serve in their communities as volunteer expert resources and educators in combating health care error, fraud, and abuse. Faith-based organizations are eligible to apply from the states listed above.

The Administration on Aging is currently funding "Senior Medicare Patrol Projects" in the remaining 26 states, plus the District of Columbia and Puerto Rico. No further awards will be made in these states.

Grantees are required to provide at least 25% of the total program costs from non-federal cash or in-kind resources in order to be considered for the award.

DATES: The deadline date for the submission of applications is May 22, 2003.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office of Consumer Choice and Protection, Washington, DC 20201, attn: Doris Summey, or by calling 202/357–3533 or 202/357–3532. Applications must be mailed to the above address or hand-delivered to the Office of Grants Management, Room 4604, One Massachusetts Avenue, NW., Washington, DC 20001. Application kits and instructions for electronic mailing of grant applications are available at *http://www.aoa.gov/egrants.*

Dated: April 2, 2003.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 03–8418 Filed 4–4–03; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Availability of Government-Owned Inventions for Licensing

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The inventions named in this notice are owned by agencies of the United States Government. In accordance with 35 U.S.C. 209(e) and to achieve expeditious commercialization of results of federally funded research and development, the inventions are available for licensing in the United States (U.S.). Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to Thomas E. O'Toole, M.P.H., Deputy Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Mailstop K–79, 1600 Clifton Road, Atlanta, GA 30333, telephone (770) 488–8611; facsimile (770) 488–8615; or e-mail *tto@cdc.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

Automated Microscopic Image Acquisition, Compositing, and Display (CDC Ref. I–019–00/0), U.S. Patent SN: 10/001,268.

Single Vial Reconstitution System for Lyophilized Vaccines and Other Pharmaceuticals (CDC Ref. I–005–02/0), U.S. Patent SN: 60/391,862.

Molecular Identification of Aspergillus Species (CDC Ref. I–006–02/0), U.S. Patent SN: 60/381,463.

Integration of Gene Expression Data and Non-Gene Data (CDC Ref. I–024–02/0), U.S. Patent SN: 60/429,920.

Measurement of Total Reactive Isocyanate Groups in Samples Using Bifunctional Nucleophiles Such as 1,8-Diaminonapthalene (DAN) (CDC Ref. I–034–02/0), U.S. Patent SN: 60/429,963.

Dated: March 31, 2003.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–8321 Filed 4–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prospective Grant of Exclusive License: Diagnostics of Fungal Infections

AGENCY: Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the Centers for Disease Control and Prevention (CDC), Technology Transfer Office, Department of Health and Human Services (DHHS), is contemplating the grant of a worldwide, limited field of use, exclusive license to practice the inventions embodied in the patent and patent applications referred to below to Transgenomic, Inc. (Transgenomic) having a place of business in Omaha, Nebraska. The patent rights in these inventions have been assigned to the government of the United States of America. The patent and patent applications to be licensed are:

Title: Rapid and Sensitive Method for Detecting *Histoplasma capsulatum.*

U.S. Patent Application Serial No.: 09/673,298.

Filing Date: 1/12/2001.

Domestic Status: Patent No.: 6,469,156.

Issue Date: 10/22/2002.

Title: Nucleic Acids for Detecting *Aspergillus* Species and Other Filamentous Fungi.

U.S. Patent Application Serial No.: 09/423,233.

Filing Date: 6/27/2000.

Domestic Status: 6,372,430.

Issue Date: 4/16/2002.

Title: Molecular Identification of *Aspergillus* Species.

U.S. Patent Application Serial No.: 60/381,463.

Filing Date: 5/17/2002.

Domestic Status: Pending.

Issue Date: N/A.

Title: Nucleic Acids for the Identification of Fungi and Methods for Using the Same.

U.S. Patent Application Serial No.: 60/325,241.

Filing Date: 9/26/2001.

Domestic Status: Pending.

Issue Date: N/A.

Title: Nucleic Acids of the M Antigen Gene of Histoplasma Capsulatum, Antigens, Vaccines, and Antibodies.

U.S. Patent Application Serial No.: 09/674,195.

Filing Date: 10/10/2000.

Domestic Status: Pending.

Issue Date: N/A.

Title: Nucleic Acids for Detecting *Fusarium* Species and Other Filamentous Fungi.

U.S. Patent Application Serial No.: 10/046,955.

Filing Date: 1/14/2002.

Domestic Status: Pending.

Issue Date: N/A.

Title: Nucleic Acid Probes for Detecting *Candida* Species.

U.S. Patent Application Serial No.: 08/903,446.

Filing Date: 7/30/1997.

Domestic Status: 6,242,178.

Issue Date: 6/5/2001.

Title: Nucleic Acid Probes for *Candida Parapsilosis* Methods for Detecting Candidiasis in Blood.

U.S. Patent Application Serial No.: 08/429,520.

Filing Date: 4/26/1995.

Domestic Status: 5,688,644.

Issue Date: 11/18/1997.

Title: Nucleic Acid Sequences and Methods for Detecting *Candida tropicalis* in Blood.

U.S. Patent Application Serial No.: 08/429,522.

Filing Date: 4/26/1995.

Domestic Status: 5,645,992.

Issue Date: 7/8/1997.

Title: Nucleic Acid Probes and Methods for Detecting *Candida krusei* Cells in Blood.

U.S. Patent Application Serial No.: 08/429,532.

Filing Date: 4/26/1995.

Domestic Status: 5,635,353.

Issue Date: 6/3/1997.

Title: Nucleic Acid Probes and Methods for Detecting *Candida glabrata* DNA in Blood.

U.S. Patent Application Serial No.: 08/429,523.

Filing Date: 4/26/1995.

Domestic Status: 5,631,132.

Issue Date: 5/20/1997.

Title: Nucleic Acid Probes and Methods for Detecting *Candida* DNA Cells in Blood.

U.S. Patent Application Serial No.: 08/065,845.

Filing Date: 5/20/1993.

Domestic Status: 5,426,027.

Issue Date: 6/20/1995.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

Specific DNA (oligonucleotide) probes have been developed for a wide variety of systemic disease causing fungi, including *Histoplasma capsulatum, Aspergillus* species, *Candida* species, *Fusarium* species, and others. A probe has been developed for identification of all dimorphic fungi. These probes can be used for the rapid identification of fungal pathogens and for the diagnosis of mycotic diseases.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments, and other materials relating to the contemplated license should be directed to Andrew Watkins, Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K–79, Atlanta, GA 30341, telephone: (770) 488–8610; facsimile: (770) 488–8615. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by CDC within sixty days of this notice will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552. A signed Confidential Disclosure Agreement will be required to receive a copy of any pending patent application.

Dated: March 31, 2003.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–8322 Filed 4–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2999]

Ciba Specialty Chemicals; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 9B4686) proposing that the food additive regulations be amended to provide for the safe use of benzenepropanoic acid, 3,5- bis(1,1-dimethylethyl)-4-hydroxy-, C7-C9-branched alkyl esters as an antioxidant and/or stabilizer for adhesives.

FOR FURTHER INFORMATION CONTACT: Mark Hepp, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3858, 202–418–3098.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 7, 1999 (64 FR 48654), FDA announced that a food additive petition (FAP 9B4686) had been filed by Ciba Specialty Chemicals, 540 White Plains Rd., P.O. Box 2005, Tarrytown, NY 10591–9005. The petition proposed to amend the food additive regulations in § 178.2010 Antioxidants and/or stabilizers for polymers (21 CFR 178.2010) to provide for the safe use of benzenepropanoic acid, 3,5- bis(1,1-dimethylethyl)-4-hydroxy-, C7-C9-branched alkyl esters as an antioxidant and/or stabilizer for adhesives. Ciba Specialty Chemicals has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 20, 2003.

Alan M. Rulis,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 03–8335 Filed 4–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[CFDA Number 93.110B]

Maternal and Child Health Federal Set-Aside Program; Special Projects of Regional and National Significance; Comprehensive Hemophilia Diagnostic and Treatment Centers; Regional Project Grant

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that $360,000 in fiscal year (FY) 2003 funds is available to fund one grant to establish a regional network of hemophilia treatment centers (HTCs) in the Maternal and Child Health Bureau Hemophilia Program, Region IV North (Kentucky, North Carolina, South Carolina, and Tennessee) to provide comprehensive care for people with hemophilia and other congenital bleeding disorders and their families in the diagnosis and treatment of hemophilia and other bleeding disorders. This grant will be awarded for a 2-year period, subject to satisfactory progress and the availability of funds.

DATES: Applications must be received in the HRSA Grant Application Center (GAC) at the address below by the close of business, May 8, 2003. Applications will meet the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date, and received in time for submission to the objective review panel. A legible, dated receipt from a commercial carrier or U.S. Postal Service will be accepted instead of a postmark. Private metered postmarks will not be accepted as proof of timely mailing.

ADDRESSES: To receive a complete application kit, applicants may telephone the HRSA Grants Application Center at 1–877–477–2123 (1–877–HRSA–123) and present the announcement number HRSA 03–084 and announcement code HTC or register on-line at: *http://www.mchb.hrsa.gov/grants/*. All applications should be mailed or delivered to: Grants Management Officer (MCHB), HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, Maryland, 20879, telephone: 1–877–HRSA–123 (1–877–477–2123), e-mail: *hrsagac@hrsa.gov*.

Submission Requirements

Applicants are required to submit one ink-signed hard copy original of the complete application and two hard copies. Additionally, applicants are required to submit a diskette of the abstract.

The HRSA Grants Application Center will send out confirmation of the receipt of the application. If the acknowledgment is not received within 15 days of submitting the application, applicants should contact the HRSA Grants Application Center at 1–877–477–2123 or by e-mail at *hrsagac@hrsa.gov* to determine the status of the application.

FOR FURTHER INFORMATION CONTACT: Jack Arner, 301–443–1080 (for questions specific to project activities of the program and program objectives); and Theda Duvall, 301–443–1440 (for grants policy, budgetary, and business questions).

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Hemophilia is a group of hereditary bleeding disorders of specific blood clotting factors classified as hemophilia A and B. Classic hemophilia A is the result of a deficiency of clotting factor VIII; Hemophilia B is a deficiency of clotting factor IX. Approximately 17,000 persons in the United States, primarily males, are affected by hemophilia A or B, the most well known and prevalent of the clotting factor deficiencies. The program also serves individuals with other congenital bleeding disorders including von Willebrand Disease (VWD). It is estimated that up to 4 million individuals in the United States have VWD. VWD, a hereditary bleeding disorder caused by a problem with a protein needed for blood to clot, equally affects men and women.

The National Hemophilia Program was initiated in 1975 and has been since that time funded through Special Projects of Regional and National Significance (SPRANS) under the authority contained in 42 U.S.C. 701(a)(2). Comprehensive hemophilia diagnostic and treatment services are offered through 12 regional grantees, with a network of 135 HTCs located throughout the country. In addition to comprehensive medical services for hemophilia, the HTCs offer a comprehensive array of educational genetic counseling, peer support, and HIV prevention and risk reduction services. Regional services are based upon a regional needs assessment. They include capacity building, communication and information dissemination, regional strategic planning, data collection and analyses, and the coordination of training and technical assistance to affiliated treatment centers, as needed. Services currently being provided through the MCHB Hemophila grant in Region IV—North will end on May 31, 2003 and will require a new grant starting on June 1, 2003.

Authorization

Section 501(a)(2) of the Social Security Act, the MCH Federal Set-Aside Program (42 U.S.C. 701(a)(2)).

Purpose

This grant program supports the provision of comprehensive care (diagnosis and treatment) for people with hemophilia and other congenital bleeding disorders and their families through an integrated regional network of centers for such disorders. This grant will be used to promote in the Maternal and Child Health Bureau Hemophilia Program Region IV North: (1) Comprehensive care to meet the needs including medical, psycho-social, peer support, and genetic testing and counseling of individuals with hemophilia and other congenital bleeding disorders and their families throughout their life time; (2) outreach to unserved and underserved people with congenital bleeding disorders; and (3) collaboration with HTCs within the defined area and promotion of family-centered care within the client population.

The grant also supports the provision of regional coordination and administration including regional services for planning, service coordination and allocation of funds for comprehensive care to ensure those persons with hemophilia and other congenital bleeding disorders and their families have access to high quality care. Regional services should be based upon a regional needs assessment and should include capacity building, communication and information dissemination, regional strategic planning, data collection and analyses, and the coordination of training and technical assistance to affiliated treatment centers, as needed.

Eligibility

Under SPRANS project grant regulations at 42 CFR 51a.3, any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b), is eligible to apply for funding covered by this announcement. Faith-based and community-based organizations are eligible to apply for these funds. Preference for funding will be given to applicants having a geographical location within MCHB Hemophilia Region IV-North. Applicants having a geographical location outside of MCHB Hemophilia Region IV-North will receive consideration only if there is no acceptable application received from within MCHB Hemophilia Region IV-North.

Funding Level/Project Period

$360,000 in FY 2003 is available to support the award of one grant with a project period of up to two years. Funding beyond FY 2003 is contingent upon satisfactory performance and the availability of funds.

The applicant will not be required to match or share in project costs if an award is made.

Review Criteria

Applications that are complete and responsive to the guidance will be evaluated by an objective review panel specifically convened for this solicitation and in accordance with applicable policies and procedures. In general, applications for this grant program will be reviewed using the following criteria listed in descending order of priority:

The extent to which the project will contribute to improvement of the health of persons with hemophilia and other congenital bleeding disorders, including the extent to which the project will accomplish a number of specific priorities (described in the project guidance) which are consistent with regulatory review criteria generally applicable to all Title V programs (at 42 CFR 51a.5) and are relevant to the specific project (65 points). This should incorporate the following components:

- Access to comprehensive care for individuals diagnosed with hemophilia and hemophilia/HIV and other congenital bleeding disorders as described in the *Current Standards and Criteria for the Care of Persons with Congenital Bleeding Disorders* as published by the National Hemophilia Foundation (NHF) which will be made available in the program guidance (25 points);
- Outreach to those not being served by Federally-funded hemophilia treatment centers (15 points);
- Emphasis on prevention to reduce complications and morbidity associated with hemophilia (5 points);
- Linkage of hemophilia treatment centers with primary care providers for children and adults served by the hemophilia treatment centers (5 points);
- Collaboration and coordination of services with State Title V Maternal and Child Health Programs; Ryan White

Titles I, II, and III, HIV community-based organizations; State and local health agencies; Ryan White Title IV HIV comprehensive family-centered care projects, prevention, education and peer support activities; national and local consumer organizations, including the National Hemophilia Foundation and its Chapters (5 points);

• Evidence of formal patient choice and grievance policies and procedures (5 points);

• Participation in other significant activities, and a description of any involvement with factor replacement product programs (5 points).

• The extent to which (A) the project personnel are well qualified by training and/or experience for their roles in the project and the applicant organization has adequate facilities and personnel; and (B) there is a plan for management of the regional network of hemophilia diagnostic and treatment centers (15 points). In addressing this criterion please describe the following items:

• Regional program management;

• Fostering communication among and providing technical assistance and training to HTCs;

• Other significant regional activities;

• The extent to which the estimated cost to the government of the project is reasonable, considering the anticipated results (10 points).

• The strength of the project's plan for evaluation (10 points).

Additional criteria may be used to review and rank applications for this competition. Any such criteria will be identified in the program guidance included in the application kit.

Applicants should pay strict attention to addressing these criteria, in addition to those referenced above. Also, to the extent that regulatory review criteria generally applicable to all Title V programs (at 42 CFR part 51a.5) are relevant to this specific project, such factors will be taken into account.

Paperwork Reduction Act

OMB approval for any data collection in connection with this grant will be sought, as required under the Paperwork Reduction Act of 1995.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based non-governmental organizations within their jurisdictions. The project abstract may be used in lieu of the one-page PHSIS.

Community-based non-governmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372

The MCH Federal Set-Aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

Dated: March 31, 2003.

Dennis P. Williams,

Deputy Administrator.

[FR Doc. 03–8336 Filed 4–4–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Practitioner Services Network Initiative—New—SAMHSA's Center for Substance Abuse Treatment (CSAT), plans to obtain information about the providers, care and characteristics of clients with substance abuse disorders and related co-morbidities that receive treatment from practitioners in private practice and organizational settings. This information is needed to complement available information about the substance abuse treatment provided in institutional and publicly funded settings, in order to more completely describe the full range and nature of substance abuse problems affecting the nation.

The CSAT Practitioner Services Network initiative provides support to six of the largest behavioral health associations in the nation to design and implement surveys using representative samples of their members and the clients they serve. The membership of the selected Associations collectively represent a significant proportion of the behavioral health professionals in the country. Two of these associations, the American Psychiatric Association and the American Psychological Association, have separately functioning internet-based PSN infrastructures; from these two groups CSAT will be able to purchase reports based on the data they have already collected.

For four other associations (*i.e.*, the American Association for Marriage and Family Therapy; the American Counseling Association; NAADAC, The Association for Addiction Professionals; and the National Association of Social Workers), CSAT will sponsor new data collection efforts to provide a core set of data elements to be collected in their upcoming membership surveys. The four Associations conduct periodic sample surveys of their memberships through their individual Practitioner Services Network infrastructures and will incorporate a common set of specific substance-abuse questions that are of importance to CSAT into these studies. CSAT will sponsor data collection and purchase, from each Association, a report that addresses the characteristics of practitioners who may be expected to encounter clients with substance abuse disorders, the characteristics of clients with behavioral and/or substance abuse disorders, and the nature of services rendered to these clients.

The reports to be purchased by CSAT will be based on the Associations' surveys of a representative sample of 400 of their members. Practitioners in the sample will abstract demographic and encounter-specific data from two of their current patients' records. No client identifying information will be collected as part of this study. Data collection methods will include mailed surveys with mailed reminders and follow-up phone calls in order to achieve a target response rate of 80 percent.

This information will complement CSAT's and SAMHSA's existing data collection efforts and provide a more comprehensive view of the populations in need of services, the prevalence of substance abuse and mental health co-morbidities, and the qualifications and training of private practitioners who serve these clients.

The burden estimates are summarized in the following table.

Estimated number of respondents	Responses per respondent	Estimated completion time (hours)	Total burden hours
1,600	1	.33	532

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 1, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–8323 Filed 4–4–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

National Outcomes Performance Assessment of the Collaborative Initiative to Help End Chronic Homelessness—New—This Initiative is coordinated by the U.S. Interagency Council on the Homeless and involves the participation of three Council members: the Department of Housing and Urban Development (HUD), the Department of Health and Human Services (HHS), and the Department of Veterans Affairs (VA). Within HHS, SAMHSA's Center for Mental Health Services is the lead agency.

This project will monitor the implementation and effectiveness of the Initiative. A national assessment of client outcomes is needed to assure a high level of accountability and to identify which models work best for which people, using the same methods for all sites. To this end, this project will provide a site-by-site description of program implementation, as well as descriptive information on clients served; services received; housing quality, stability, and satisfaction; and, client outcomes in health and functional domains. The VA Northeast Program Evaluation Center (NEPEC), based at the VA Connecticut Healthcare System in West Haven, Connecticut, will be responsible for conducting this project.

Data collection will be conducted over a 36-month period. At each site, a series of measures will be used to assess (1) program implementation (*e.g.*, number and types of housing units produced and intensity and types of treatment and supportive services provided), (2) client descriptive information (*e.g.*, demographic and clinical characteristics, and housing and treatment services received) and, (3) client outcomes.

Client outcomes will be measured using a series of structured instruments administered by evaluation personnel employed and funded by the local VA medical center or outpatient clinic involved at each Initiative site who will work closely with central NEPEC staff. Assessments will be conducted through face-to-face interviews and, when needed, telephone interviews. Interviews (approximately one hour in length) will be conducted at baseline, defined as the date of entry into the clinical treatment program leading to placement into permanent housing, and quarterly (every 3 months) thereafter for up to three years. Discharge data will be collected from program staff at the time of official discharge from the program, or when the client has not had any clinical contact from members of the program staff for at least 6 months. In addition to client interviews, key-informant interviews with up to 15 program managers at each site will be conducted annually.

At most Initiative sites, it is expected that more people will be screened and/or evaluated for participation in the program than receive the full range of core housing and treatment services. We have conceptualized entry into the Initiative as a two-phase process involving an Outreach/Screening/Assessment Phase (Phase I), and an Active Housing Placement/Treatment Phase (Phase II) that is expected to lead to exit from homelessness. In some programs these two phases may be described as the Outreach and Case Management Phases. It will be important to have at least some minimal information on all clients so as to be able to compare those who enter Housing/Treatment with those who do not.

Client-level data at the time of first contact with the program (*i.e.*, before the client receives more intensive treatment or housing services) will be collected using a screener form. The screener form will be completed by the Evaluation assistant or member of the clinical staff when prospective clients are first told about the program, and express interest in participating in the program (*i.e.*, when they enter Phase I). The purpose of this form is to identify the sampling frame of the evaluation at

each site, or the pool of potential clients from which clients are then selected. Program implementation will be measured using a series of progress summaries.

Initiative sites will be responsible for screening potential participants, assessing homeless and disabling condition eligibility criteria for the program, and documenting eligibility as part of the national performance assessment. Each site will identify a limited number of portals of entry into the program in a relatively small geographic area, so that the evaluator can practically and systematically contact clients about participating in the evaluation. VA evaluation staff, clinical program staff, and NEPEC will work together to establish systematic procedures for assessing eligibility, enrolling clients into the Housing/Treatment Activity of the Initiative, obtaining written informed consent to participate in the national performance assessment, and other evaluation activities.

The estimated response burden to collect this information is as follows:

Instrument	No. of respondents	Responses/respondent	Burden/response (hrs)	Total burden (hrs)
Client screener (completed by program staff)	10	300	0.083	249
Client baseline interview	1,200	1	1.00	1,200
Client followup interviews	1,200	11	0.67	8,844
Client discharge form (completed by program staff)	10	120	0.083	100
Key informant interviews with site program managers	108	3	1.00	324
Total	1,318			10,717
3-Year annual average	1,318			3,572

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 1, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–8324 Filed 4–4–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG 2003–14134]

Port Pelican LLC Deepwater Port License Application; Preparation of Environmental Impact Statement

AGENCY: Coast Guard, DHS, and Maritime Administration, DOT.

ACTION: Notice of intent and request for public comments.

SUMMARY: The U.S. Coast Guard and the Maritime Administration (MARAD) announce their intent to prepare an environmental impact statement (EIS) for the project described in the Port Pelican LLC Deepwater Port License Application. The plan description in the license application calls for construction of a liquefied natural gas (LNG) Deepwater Port known as "Port Pelican" and associated anchorage in the Gulf of Mexico, approximately 36 miles south southwest of Fresh Water City, Louisiana, located in Outer Continental Shelf (OCS) Block Vermillion 140. Port Pelican would deliver natural gas to the U.S. Gulf Coast using existing gas supply and gathering systems in the Gulf of Mexico and southern Louisiana. Gas would then be delivered to shippers using the national pipeline grid though interconnections with major interstate and intrastate pipelines. The Coast Guard seeks public and agency input on the scope of the EIS. Specifically, the Coast Guard requests input on any environmental concerns that the public may have related to the proposal to construct a new Deepwater Port, sources of relevant data or information, and any suggested analysis methods for inclusion in the EIS.

DATES: Comments and related material must reach the Docket on or before May 7, 2003.

ADDRESSES: Comments may be submitted in several ways. To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2003–14134), U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to Room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(3) By fax to the Docket Management Facility at (202) 493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available for inspection or copying in Room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. You may also view this docket, including this notice and comments, on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions about the project, you may contact Commander Mark Prescott, U.S. Coast Guard at (202) 267–0225 or *mprescott@comdt.uscg.mil.* For questions on viewing or submitting materials to the docket, contact Dorothy Beard, Chief, Dockets, DOT, at (202) 366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related materials on this notice. Persons submitting comments should include their names and addresses, this notice reference number (USCG–2003–14134), and the reasons for each comment. You may submit your comments and materials by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address given under **ADDRESSES.** If you choose to submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, and suitable for copying and electronic filing. If you submit them by mail and would like to know if they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received during the comment period. (For additional information about this notice or the EIS, contact Commander Mark Prescott, U.S. Coast Guard at (202) 267–0225 or *mprescott@comdt.uscg.mil.*)

Background Information

The Deepwater Port Act of 1974, as amended (the Act, 33 U.S.C. 1501 *et seq.*), defines a deepwater port as any fixed or floating manmade structure other than a vessel, or any group of such structures, that are located beyond State seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any State. The Act provides that an applicant must submit detailed plans for a proposed facility to the Secretary of Transportation, along with its license application. The Secretary has delegated the processing of deepwater port applications to the Coast Guard and the Maritime Administration (MARAD). The Act provides "For all applications, the Secretary, in cooperation with other involved Federal agencies and departments, shall comply with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332)." This notice is intended to meet the requirements of NEPA and to provide general information about the procedure that will be followed in complying with NEPA.

Proposed Action

The Coast Guard intends to prepare an EIS consistent to the maximum extent practicable with the Deepwater Port Act of 1974, as amended (the Act, 33 U.S.C. 1501 *et seq.*), NEPA (Section 102(2)(c), as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508)), Department of Transportation (DOT) Order 5610.1C (Procedures for Considering Environmental Impacts), and Coast Guard Policy (Commandant's Instruction (COMDTINST) M16475.1D). The Coast Guard anticipates having one or more cooperating agencies in this endeavor.

NEPA requires Federal agencies to consider environmental impacts that may result from a proposed action, to inform the public of potential impacts and alternatives, and to facilitate public involvement in the assessment process. The EIS describes in detail the nature and extent of the environmental impacts of the Proposed Action and each alternative and discusses appropriate mitigation measures for any adverse impacts. An EIS includes, among other matters, discussions of the purpose and need for the Proposed Action, a description of alternatives, a description of the affected environment, and an evaluation of the environmental impacts of the Proposed Action and alternatives.

The Port Pelican EIS will assess the impacts of the alternatives, including approving or not approving (No Action Alternative) the license application to construct and operate Port Pelican, on the natural and human environment. The application addresses the Port Pelican Terminal (the Terminal), an LNG receiving, storage and regasification facility, and the Pelican Interconnector Pipeline (PIPL) to transport the gas to the existing offshore gas gathering and transmission system. Port Pelican would consist of two concrete gravity based structure (GBS) units fixed to the seabed, which would include integral LNG storage tanks, support deck mounted LNG receiving and vaporization equipment and utilities, berthing accommodations for LNG carriers, facilities for delivery of natural gas to a pipeline transportation system, and personnel accommodations. The Terminal would be able to receive the largest LNG carriers currently in service or under contract for construction. All marine systems, communication, navigation aids and equipment necessary to conduct safe LNG carrier operations and receiving of product would be provided at the port.

The Terminal would be constructed in two phases. Phase I includes the installation of the two GBS units with internal storage tanks and facilities for LNG offloading, and vaporization capability to deliver a peak 1.0 billion standard cubic feet per day (SCFD) of natural gas to the pipeline system. Additional vaporization equipment and associated support equipment and facilities would be installed during Phase II to increase the peak facility vaporization and send out rate to 2.0 billion SCFD.

As required by NEPA, the Coast Guard also will analyze the No Action Alternative as a baseline for comparing the impacts of the proposed project. For the purposes of this project, the No Action Alternative is defined as not approving the Port Pelican LLC Deepwater Port License Application. The Coast Guard encourages public participation in the EIS process. The scoping period will begin upon publication of this notice in the **Federal Register** and continue for a period of 30 days. A scoping meeting may be held. If one is held, the date and location of the meeting will be announced separately in the **Federal Register.** Multiple methods for providing comments are available, including mail, Internet and fax.

Following the scoping process, the Coast Guard will prepare a draft EIS. A Notice of Availability will be published in the **Federal Register** when the draft EIS is available. Public notices will be mailed or emailed to those who have requested a copy of the draft EIS. The public will be provided an opportunity to review the draft EIS and to offer appropriate comments.

Comments received during the draft EIS review period will be available in the public docket and made available in the final EIS. A Notice of Availability of the final EIS will also be published in the **Federal Register.**

Dated: March 31, 2003.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

Margaret D. Blum,

Associate Administrator, Port, Intermodal, and Environmental Activities, U.S. Maritime Administration.

[FR Doc. 03–8450 Filed 4–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4817–N–05]

Notice of Proposed Information Collection for Public Comment—PHA-Owned or Leased Projects, Maintenance and Operation—Resident Allowance for Utilities Documentation

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 6, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing,

Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: PHA-Owned or Leased Projects, Maintenance and Operation—Resident Allowance for Utilities Documentation.

OMB Control Number: 2577–0062.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) provide their residents with reasonable amounts of utilities a part of Family Gross rents. These amounts are called Tenant Allowance for utilities. HUD regulations provide criteria which PHAs are to use to determine utility allowances. In order for PHAs to prove that their allowances reflect reasonable amounts of utilities, there is a need for documentation on how it is determined.

Agency form numbers, if applicable: None.

Members of affected public: State or Local Government.

Estimation of the total number of hours needed to pare the information collection including number of respondents, frequency of response, and hours of response: 3400 respondents, one-time documentation, 1.9 hour average per documentation, 6,236 total recordkeeping burden.

Status of the proposed information collection: Reinstatement, without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 31, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–8277 Filed 4–4–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4817–N–06]

Notice of Proposed Information Collection for Public Comment—Contract for Inspection Services—Turnkey

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 6, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Contract for Inspection Services—Turnkey.

OMB Control Number: 2577–0007.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) use the Contract of Inspection Services—Turnkey to obtain the professional services of an architect or engineer to assist in the administration of a construction contract and to inspect the installation of the work. The information contained in the contract is used by the PHA and the architect/engineer for the following purposes: To define the legal obligations of both parties; to establish the specific work and its locations; to set forth the services which the architect/engineer must provide; to establish the fee to be paid for the work; to establish reporting requirements. The requirements are similar to contracts generally used in the construction industry.

Agency form numbers, if applicable: HUD–5084.

Members of affected public: State or Local Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Respondents are identified as projects. 135 projects × one contract per project annually, 1.5 hour average per contract, 200 total annual burden hours for reporting; 135 projects × .25 hours per projects for recordkeeping, 51 total annual burden hours for recordkeeping; total burden hours are 251.

Status of the proposed information collection: Reinstatement, without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 31, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

Contract for Inspection Services
(Turnkey)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0007 (exp.8/31/95)

Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0007), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

This Agreement entered into as of the _____ day of _____ by and between the _____ a public body organized and existing under and by virtue of the laws of the State of _____ (hereinafter called the Local Authority or LA), and _____ Architects, of _____ (hereinafter called the Architect):

Witnessed that:

Whereas, the LA is undertaking the acquisition of a low-rent housing project designated as Project No. _____ located at _____ in _____; and

Whereas, the United States of America, acting through the Department of Housing and Urban Development (hereinafter called the Government) has agreed to assist in the financing of the acquisition of this project under the provisions of the United States Housing Act of 1937; and

Whereas, under date of _____ the LA entered into a certain agreement (hereinafter called the Contract of Sale) with _____ (In the Contract of Sale and hereinafter in this Agreement called the Seller) in which the LA has agreed to purchase certain real estate after completion thereon by the Seller of certain improvements to be constructed in accordance with plans and specifications as set forth in the Contract of Sale (which said Contract of Sale is made a part hereof as if set forth herein in full), said improvements to consist of _____ buildings containing _____ dwelling units, together with utilities, site improvements, landscaping, and related facilities; and

Whereas, the LA desires to obtain from the Architect professional services with reference to the LA's interest in the Contract of Sale;

Now, Therefore, the LA and the Architect do mutually agree as follows:

Article 1. Scope. The Architect agrees to provide professional services for the LA in connection with the project as set forth in Article 3 hereof.

Article 2. Fee. For the professional services rendered as defined in Article 3 hereof, the La agrees to pay the Architect a fee determined at the rate of two and one-half times the direct personnel expense as approved by the La.

Direct personnel expense includes actual and reasonable salaries paid to the Architect, his collaborators and his technical personnel for performing the services stipulated under this contract, at rates of pay consistent with the nature of the services performed, but which shall not exceed $_____ per hour. Direct personnel expense does not include stenographic, clerical, or other expense of an overhead nature required for performance of this contract and for which compensation is included in the fee stipulated herein. It is agreed that, regardless of the actual timing of services, calculation of the maximum remuneration to the Architect shall be based on the assumption that professional services will average _____ hours per week during the actual construction period. The total compensation to the Architect shall not exceed $_____.

Payments to the Architect on account of services hereunder shall be made at the end of each month when the Architect shall submit a bill setting forth an itemization of direct personnel expense involved.

Article 3. Professional Services. The Architect shall:

3.1 Perform all services required of the Architect as set forth in the Contract of Sale.

3.2 Furnish the LA at the time of executing this Agreement a written list of those who may collaborate in inspecting the work. The Architect will be responsible for compensating such collaborators.

3.3 In cooperation with the La, prepare an inspection schedule appropriate to the construction and anticipated progress, but in no case less often than monthly.

3.4 Make on-site inspections according to the schedule to determine conformity with plans and specifications, without in any way guaranteeing the Seller's work or assuming responsibility for the project design.

3.5 Within five days of each inspection, provide the LA a written report on such inspection including all deficiencies observed in the work and send copies of each such report to the Seller, to the Lender, and to the Housing Assistance Office.

3.6 Check (without verifying by physical measurement or instrument survey) lines and grades of foundations, surfaces, grassed areas and underground utilities laid out by the Seller.

3.7 Advise the LA on special problems and any changes in the work. Prepare and countersign construction change orders involving a change in contract price and/or extension of contract time for execution by the LA and the Seller. Changes not affecting contract price or time of completion shall be documented, singly or in groups, for formal acceptance by the LA and the Seller and countersigning by the Architect. Changes affecting the contract price (see Article IV, Contract of Sale) shall be carefully checked as to monetary value and the countersignature thereon shall indicate that the credit or extra has been verified by the Architect and that the amount involved represents a reasonable adjustment of the contract price.

3.8 Approve materials and color schemes, and recommend La approval or disapproval of samples, certificates, and test reports when provided for in the Contract of Sale.

3.9 Maintain a file of shop drawings, guarantees and warranties relating to the improvement; review and approve "as-built" drawings and specifications; and transfer this material to the LA at completion of construction.

3.10 Attend conferences when and as deemed necessary by the LA.

3.11 Assist in final inspection and prepare list of incomplete or defective work and, if necessary, prepare the documents and recommend monetization of any such work.

3.12 Certify at the time of settlement that the property involved complies in all respects to the plans and specifications and any amendments thereto, and is in good and tenantable condition.

3.13 Certify as to full completion of the project for payment of amounts withheld at the time of settlement.

3.14 Inspect the project after final acceptance and occupancy and before expiration of any applicable guarantees or warranties, if requested to do so by the LA.

Article 4. Miscellaneous Requirements

4.1 Prevailing Wages. The Architect and his/her agents shall pay or cause to be paid to all Architects, technical engineers, draftsmen, and technicians employed on any part of the work under this contract not less than the salaries or wages prevailing in the locality, as determined or adopted(subsequent to a determination under applicable State or local law) by HUD. The Architect shall furnish to the LA, with each statement submitted for services rendered, certification as to such compliance. These requirements shall not apply to executive, supervisory, and administrative employees.

4.2 Withholding of Wages. In cases (of which the LA has notice) of underpayment of wages required to be paid under the requirement above, the LA may withhold from the Architect out of payments due, an amount sufficient to pay to the employees involved the difference between the wages required to be paid under the contract and the wages actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the LA for and on account of the Architect to the respective employees to whom they are due.

4.3 Equal Employment Opportunity. During the performance of this Agreement, the Architect agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, or national origin. The Architect will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, handicap, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Architect shall insert provisions similar to the foregoing in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

4.4 Officials Not to Benefit. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement, or to ant benefit that may arise therefrom.

4.5 Interest of Members of the LA and the Local Governing Body. No member, officer, or employee of the LA, no member of the governing body of the locality in which the LA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, shall, during his/her tenure, or for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

4.6 Covenant Against Contingent Fees. The Architect warrants that he/she has not employed any person to solicit or secure this Agreement upon an agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the LA the right to terminate this Agreement or, in its discretion, to deduct from the compensation otherwise payable, the amount of such commission, percentage, brokerage, or contingent fee.

4.7 Assignability. The Architect shall not assign or transfer any interest in this Agreement except that claims for monies due or to become due him/her from the LA under the Agreement may be assigned to a bank, trust company, or other financial institution.

4.8 Termination. The LA reserves the right to terminate the services of the Architect by giving at least three days written notice of the fact and time of such termination. In such event, all finished or unfinished work prepared by the Architect shall become the property of the LA, and the Architect shall be entitled to compensation for satisfactory work under this Agreement on the basis stated in Article 2.

In Witness Whereof, the LA and the Architect have executed this Agreement as of the day and year first above written.

By _____

BY _____

Title _____

Architect's Business Address and Zip Code _____

_____

Architect's Business Telephone _____

Architect's Home Telephone _____

Previous editions are obsolete

form HUD-5084 (12/91)
ref. Handbook 7440.1

[FR Doc. 03–8278 Filed 4–4–03; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–16]

Notice of Submission of Proposed Information Collection to OMB: Public Housing Reform; Change in Admission and Occupancy Requirements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0230) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of proposal: Public Housing Reform; Change in Admission and Occupancy Requirements.

OMB Approval number: 2577–0230.

Form numbers: None.

Description of the need for the information and its proposed use: Public Housing Agencies will provide information required by statute for verification of earned income by minors, welfare rent reduction, over-income for small PHAs and the Community Services and Economic Self-Sufficiency Program as part of the admission and occupancy requirements authorized by the Quality Housing and Work Responsibility Act of 1998.

Respondents: Individuals or households, State, Local or Tribal Government.

Frequency of submission: On occasion, Per applicant.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3400		1		22		74,800

Total estimated burden hours: 74,800.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 28, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–8279 Filed 4–4–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–17]

Notice of Submission of Proposed Information Collection to OMB: Report on Occupancy for Public and Indian Housing

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0028) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9)

whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of proposal: Report on Occupancy for Public and Indian Housing.

OMB Approval number: 2577–0028

Form numbers: HUD–51234

Description of the need for the information and its proposed use: The information to be collected provides occupancy information to monitor units vacant, demolished, boarded-up, under repair/modernization rehabilitation, or converted to a non-dwelling status. These unoccupied units represent a serious waste of program resources that could be averted by HUD attention and intervention. The information is used to prepare input to reports on Presidential and Congressional needs.

Respondents: Individuals or households, State, Local, or Tribal Government.

Frequency of submission: Annually

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	3,400		3,400		1		3,400

Total estimated burden hours: 3,400.

Status: Reinstatement, without change, of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 28, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–8280 Filed 4–4–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4558–N–12]

Mortgagee Review Board Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(c) of the National Housing Act, this notice advises the public of the cause and description of certain administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees. This notice of administrative actions relates solely to the failure of title I lenders and title II mortgagees to submit the required audited annual financial statement, an acceptable annual audited financial statement and/or payment of the annual recertification fee.

FOR FURTHER INFORMATION CONTACT: Phillip A. Murray, Director, Office of Lender Activities and Program Compliance, Room B–133–3214 L'Enfant Plaza, 451 Seventh Street, SW., Washington, DC 20410, telephone: (202) 708–1515. (This is not a toll-free number.) A Telecommunications Device for Hearing- and Speech-Impaired Individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101–235, approved December 15, 1989), requires that HUD publish a description of and the cause for administrative actions against a HUD-approved mortgagee by the Department's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5), this notice advises the public of administrative actions that have been taken by the Mortgagee Review Board from April 1, 2002, through September 30, 2002, related to the failure of title I lenders and title II mortgagees to submit the required audited annual financial statement, an acceptable annual audited financial statement and/or payment of the annual recertification fee.

Action: Withdrawal of HUD/FHA title I lender approval and title II mortgagee approval.

Cause: Failure to submit to the Department the required annual audited financial statement, an acceptable annual audited financial statement, and/or remit the required annual recertification fee.

Name	City	State
251 Title 1 Lenders and Loan Correspondents Terminated Between April 1, 2002, and September 30, 2002		
A MIRACLE MORTGAGE INC	PORTLAND	OR
ABERDEEN FEDERAL CREDIT UNION	ABERDEEN	SD
ACADEMY BANK	LEBANON	TN
ACE MORTGAGE LLC	SALT LAKE CITY	UT
AFFILIATED BANC CORP	SCHAUMBURG	IL
AFFORDABLE HOME LOANS INC	SAN BERNARDINO	CA
ALL KERN FINANCIAL CORPORATION	BAKERSFIELD	CA
AMERICAN BANK LAKE CITY	LAKE CITY	MN
AMERICAN HOME ACCEPTANCE CORP	SAN FRANCISCO	CA
AMERICAN MORTGAGE EXPRESS CORP	CHERRY HILL	NJ
AMERICAN SOUTHWEST MORTGAGE CORPORATION	OKLAHOMA CITY	OK
AMIR MORTGAGE CORPORATION	IRVINE	CA
APPROVED HOME MORTGAGE CORP	PEMBROKE PINES	FL
ARBOR MORTGAGE INC	HILLSBORO	OR
ASSOCIATED BANK LAKESHORE NA	MANITOWOC	WI
BANK OF DYER	HUMBOLDT	TN
BANK OF RALEIGH	BECKLEY	WV
BANK OF SIERRA BLANCA	SIERRA BLANCA	TX
BANK OF ST CHARLES COUNTY	WELDON SPRING	MO

Name	City	State
BANK STAR ONE	FULTON	MO
BANKERS FINANCIAL GROUP INC	GREENBELT	MD
BANKNET MORTGAGE CORPORATION	MIAMI	FL
BAYSIDE FIRST MORTGAGE COMPANY	SANTA ANA	CA
BELL FEDERAL S + L OF BELLEVUE	PITTSBURGH	PA
BENEFIT FUNDING CORPORATION	BELTSVILLE	MD
BERMOR CORPORATION	LOS ANGELES	CA
BEST MORTGAGE FINDERS INC	TUCSON	AZ
BJD MORTGAGE CO	JACKSONVILLE	FL
BONDCORP REALTY SERVICES INC	NEWPORT BEACH	CA
CALDWELL NATIONAL BANK	CALDWELL	TX
CAMINO REAL FINANCIAL INC	WHITTIER	CA
CAPITAL PACIFIC MORTGAGE	NEWPORT BEACH	CA
CDW FINANCIAL CORP	LOS ANGELES	CA
CENTRAL APPALACHIAN PEOPLES FED CU	BEREA	KY
CENTURY MORTGAGE CORP	CORONA	CA
CHATEAU MORTGAGE CORPORATION	SAN DIEGO	CA
CHEMICAL BANK SOUTH	MARSHALL	MI
CHINO FEDERAL CREDIT UNION	BAYARD	NM
CITIZENS FIRST MORTGAGE CORPORATION	ENGLEWOOD	OH
CITY NATIONAL BANK	CLOQUET	MN
CITY NATIONAL BANK	FORT SMITH	AR
CMG MORTGAGE INC	SAN RAMON	CA
CNH FUNDING INC	LAS VEGAS	NV
COBB HOUSING INC	MARIETTA	GA
COLONIAL HOME EQUITIES INC	MELVILLE	NY
COLUMBIA FEDERAL SAV AND LN	FT MITCHELL	KY
COMERICA BANK	DETROIT	MI
COMMERCE BANK PA	DEVON	PA
COMMUNITY BANK DESOTO COUNTY	SOUTHAVEN	MS
COMPASS BANK ALABAMA	BIRMINGHAM	AL
COMUNITY LENDING INC	SAN JOSE	CA
CONSUMER FAIR LENDING INC	RESEDA	CA
CO-OP CREDIT UNION	BLACK RIVER FALLS	WI
COUNTRYSIDE LENDING OF TEXAS LC	HEBER CITY	UT
CROSSMARK MORTGAGE CORPORATION	COVINA	CA
CS FINANCIAL INC	LOS ANGELES	CA
CYBERLOANOFFICER–COM INC	CHICAGO	IL
D JORDAN BERMAN MORTGAGE CORP	MIAMI	FL
DAVIDSON FINANCIAL INC	COLORADO SPRINGS	CO
DEAN ENTERPRISES INCORPORATED	LA CANADA	CA
DELTA CASUALTY COMPANY	CHICAGO	IL
DONN STEIER INC	MAMMOTH LAKES	CA
EIDON FINANCIAL INC	SAN DIEGO	CA
EMA FINANCIAL INC	ONTARIO	CA
ENTERPRISE MORTGAGE CORP	LANSING	MI
EQUITY DIRECT MORTGAGE CO	LAGUNA HILLS	CA
EQUITY UNLIMITED COMPANY	ATLANTA	GA
EXECUTIVE CAPITAL GROUP INC	UPLAND	CA
EZ FUNDING CORPORATION	LOS ANGELES	CA
F AND M BANK—BRODHEAD	BRODHEAD	WI
FARMERS AND MERCHANTS	STANLEY	WI
FARMERS AND MERCHANTS STATE BK	WAYNE	NE
FARMERS TRUST AND SAVINGS BANK	BUFFALO CENTER	IA
FAST TRAC MORTGAGE LLC	ENGLEWOOD	CO
FINANCIAL AND REAL ESTATE INC	CYPRESS	CA
FINANCIAL CONSULTANTS OF AMERICA INC	STUDIO CITY	CA
FIRST AMERICAN NATIONAL FINANCIAL GROUP	RANCHO CUCAMONGA	CA
FIRST FEDERAL SAVING BANK	ZANESVILLE	OH
FIRST FOUNDATION MORTGAGE INC	TORRANCE	CA
FIRST GREENSBORO HOME EQUITY INC	GREENSBORO	NC
FIRST MORTGAGE SOLUTION INC	ORLANDO	FL
FIRST NATIONAL BANK	BALDWIN	WI
FIRST NATIONAL BANK	BOVEY	MN
FIRST NATIONAL BANK	DEEP RIVER	MN
FIRST NATIONAL BANK	LIMON	CO
FIRST NATIONAL BANK AND TRUST	FORT WALTON BEACH	FL
FIRST NATIONAL BANK JOLIET	JOLIET	IL
FIRST OF AMERICA BANK	SOUTHGATE	MI
FIRST STATE BANK	ALEXANDRIA	MN
FIRST STATE BANK	WILTON	ND
FIRST STATE BANK OF DENTON	DENTON	TX
FIRST STATE BANK OF PORTER	PORTER	IN
FIRST TRUST MORTGAGE AND FINANCE	TAMPA	FL

Name	City	State
FIRST UNION TRUST COMPANY NA	WILMINGTON	DE
FIRST VANTAGE BANK TENNESSEE	KNOXVILLE	TN
FIRST WORLD MORTGAGE CORP	FARMINGTON	CT
FLAGSHIP BANK AND TRUST	WORCESTER	MA
FORT CALHOUN STATE BK	FORT CALHOUN	NE
FORT JACKSON FEDERAL CU	FORT JACKSON	SC
FORTRESS BANK NA	HOUSTON	MN
FOUNDATION FUNDING GROUP INC	TAMPA	FL
FOUR CORNERS FINANCIAL	TUSTIN	CA
FREEL FINANCIAL SERVICES INC	TAMPA	FL
GENESIS MORTGAGE CORP	LA JOLLA	CA
GENEVA STATE BANK	GENEVA	NE
GLOBAL CREDIT UNION	SPOKANE	WA
GLOBAL MORTGAGE CO	CHICAGO	IL
GRAND CANYON STAT EMP FED C U	PHOENIX	AZ
GREAT LAKES CREDIT UNION	NORTH CHICAGO	IL
GREAT OAK MORTGAGE CORP	ATLANTA	GA
GREAT WESTERN FINAN SERV INC	PLANO	TX
GRS EMPLOYEES CREDIT UNION	ROCHESTER	NY
GULF EMPLOYEES CREDIT UNION	GROVES	TX
HIGHLAND FEDERAL BANK FSB	BURBANK	CA
HILLSIDE FINANCIAL GROUP INC	KALAMAZOO	MI
HOLLIDAY AMERICAN MORTGAGE LLC	OKLAHOMA CITY	OK
HOME CORPORATION	CITY OF INDUSTRY	CA
HOME NATIONAL BANK	SUTTON	WV
HOMEPOINT MORTGAGE INC	OGDEN	UT
INDUSTRIAL BANK	ENCINO	CA
INDYMAC INC	PASADENA	CA
INFINITY MORTGAGE CORPORATION	ATLANTA	GA
IPI SKYSCRAPER MORTGAGE CORPORATION	NEW YORK	NY
ITASCA STATE BANK	GRANDS RAPIDS	MN
J AND B EXECUTIVE INVESTMENTS ASSOC	TUSTIN	CA
JPMORGAN CHASE BANK	GARDEN CITY	NY
KELKO CREDIT UNION	SPRINGFIELD	MA
KIRKWOOD FINANCIAL CORPORATION	VICTORVILLE	CA
KIRTLAND FEDERAL CREDIT UNION	ALBUQUERQUE	NM
L AND H MANAGEMENT GROUP INC	MIAMI	FL
L M INVESTMENTS INC	TUSTIN	CA
LAKE ELMO BANK LAKE	ELMO	MN
LANDVIEW FINANCIAL INC	LOS ANGELES	CA
LASALLE BANK FSB	CHICAGO	IL
LEADERSHIP MORTGAGE SERVICES INC	ATLANTA	GA
LEDERLE EMPLOYEES FCU	PEARL RIVER	NY
LEWIS HUNT ENTERPRISES INC	SOUTHFIELD	MI
LOAN LINES INC	TARZANA	CA
LOANGUY-COM	LOS ANGELES	CA
LOANKEY FINANCIAL INC	WALNUT CREEK	CA
LOANS OF ANY NATURE INCORPORATED	FRESNO	CA
MALTA NATIONAL BANK	MALTA	OH
MARINA MORTGAGE COMPANY INC	IRVINE	CA
MARQUETTE BANK MONTANA NA	CONRAD	MT
MARQUETTE CATHOLIC CREDIT UN	MARQUETTE	MI
MAXIMUM MORTGAGE CONCEPTS	W BRIDGEWATER	MA
MC JAMES MORTGAGE CORPORATION	NEWPORT BEACH	CA
MEDFORD COOPERATIVE BANK	MEDFORD	MA
MELLON BANK NA	PITTSBURGH	PA
MEMPHIS AREA TEACHERS C U	MEMPHIS	TN
MERCHANTS NATIONAL BANK OF WINONA	WINONA	MN
METROPOLITAN BANK AND TRUST CO	CHICAGO	IL
MID-CITY NATIONAL BANK	CHICAGO	IL
MIDTOWN FINANCIAL SERVICES	ROYAL OAK	MI
MILAM FINANCIAL SERVICES LLC	HOUSTON	TX
MINER KENNEDY ASSOCIATES INC	SCOTTSDALE	AZ
MISSOULA GOVERNMENT EMP C U	MISSOULA	MT
MMI MORTGAGE CORP	HESPERIA	CA
MODIS MORTGAGE INC	LOS ANGELES	CA
MONARCH MORTGAGE	CINCINNATI	OH
M-ONE CAPITAL CORP	RANCHO CUCAMONGA	CA
MORTGAGE DEPOT INC	TAMPA	FL
MORTGAGE EDGE CORPORATION	MCLEAN	VA
MORTGAGE MANAGERS INC	LIBERTYVILLE	IL
MORTGAGE SECURITY INC EAST	FALMOUTH	MA
MORTGAGE TEAM INC RANCHO	SANTA MARGAR	CA
MORTGAGE TRUST GROUP INC	SHREWSBURY	MA

Name	City	State
MUTUAL LENDING CORPORATION	DIAMOND BAR	CA
N A D INC	BURBANK	CA
NBGI INC	LOS ANGELES	CA
NEW WEST MORTGAGAE CO	NORTH HOLLYWOOD	CA
NEW WORLD MORTGAGE COMPANY INC	ENGLEWOOD CLIFFS	NJ
NEW WORLD MORTGAGE INC	DOWNEY	CA
NORTHFIELD SAVINGS BANK	STATEN ISLAND	NY
NORTHWOODS STATE BANK	NORTHWOOD	IA
NUMERICA FUNDING INC	VIRGINIA BEACH	VA
OAKCREST FINANCIAL CORP	MISSION VIEJO	CA
OCWEN FEDERAL BANK FSB WEST	PALM BEACH	FL
OGEMA STATE BANK	OGEMA	MN
PACIFIC CAPITAL MORTGAGE INC	SCOTTSDALE	AZ
PACIFIC CHARTER MORTGAGE CORPORATION	LOS ALAMITOS	CA
PACIFIC INDEPENDANCE FINANCE	ENCINO	CA
PANHANDLE STATE BANK	SANDPOINT	ID
PAONIA STATE BANK	PAONIA	CO
PENIEL INVESTMENT CORPORATION	MONTEBELLO	CA
PEOPLES STATE BANK	HANOVER	PA
PLAZA HOME MORTGAGE INC	SAN DIEGO	CA
PORTUGUESE CONTINENTAL FEDERAL CR UN	NEWARK	NJ
PPI EQUITIES	LOS ANGELES	CA
PREMIER MORTGAGE CORPORATION	ELGIN	IL
PRIMEQWEST FINANCIAL CORP	CARLSBAD	CA
PROGRESS BANK OF MISSOURI	SULLIVAN	MO
PROMISTAR BANK	JOHNSTOWN	PA
PROVINCE BANK FSB	MARIETTA	PA
PSB RECEIVABLES IV CORP	CARLSBAD	CA
PSB RECEIVABLES V CORP	CARLSBAD	CA
PSP FINANCIAL SERVICES INC	IRVINE	CA
R J GROUP INC	LA PALMA	CA
RCFC INC	VICTORVILLE	CA
REAL MERC INVESTMENTS INC	NORTHRIDGE	CA
ROYAL FINANCE INC WEST	PALM BEACH	FL
RURAL AMERICAN BANK	BRAHAM	MN
S AND C BANK	NEW RICHMOND	WI
SARASOTA MUNICIPAL ECU	SARASOTA	FL
SECURITY FIRST NETWORK BANK	ATLANTA	GA
SIERRA REAL ESTATE SERVICE INC	FRESNO	CA
SIX RIVERS NATIONAL BANK	EUREKA	CA
SOLID FINANCIAL MORTGAGE CORP	WESTON	FL
ST ANSGAR STATE BANK	SAINT ANSGAR	IA
STATE BANK	AUSTIN	TX
STATE BANK OF DRUMMOND	DRUMMOND	WI
STATE NATIONAL BANK	CADDO MILLS	TX
STATEWIDE ACCEPTANCE CORPORATION	BIRMINGHAM	AL
STATEWIDE MORTGAGE AND INVESTMENT	PENSACOLA	FL
SUCCESS FUNDING INC	NORTHRIDGE	CA
SUNRISE VISTA MORTGAGE CORP	CITRUS HEIGHTS	CA
T M MORTGAGE CORPORATION	SPRINGFIELD	VA
TANNER FINANCIAL INC	BONITA	CA
TAYLLON MORTGAGE CORPORATION	LAS VEGAS	NV
TEXCORP MORTGAGE BANKERS INC	HOUSTON	TX
THE CAL-BAY MORTGAGE GROUP	PETALUMA	CA
THE LOAN NETWORK	SOUTH PASADENA	CA
THE MORTGAGE PLACE INC	RANCHO CUCAMONGA	CA
TITLE WEST MORTGAGE INC	WOODLAND HILLS	CA
TMI FINANCIAL INC	AUSTIN	TX
TOWNEBANK	PORTSMOUTH	VA
TWENTYFIRST FINANCIAL INC	LOS ANGELES	CA
TWIN CITIES MORTGAGE INC	LAKE FOREST	CA
U S BANK TRUST NATIONAL ASSOCIATION	SEATTLE	WA
UNICOR FUNDING INC MISSION	VIEJO	CA
UNION BANK CALIFORNIA NA	SAN DIEGO	CA
UNION MORTGAGE CORPORATION	CERRITOS	CA
UNITED COMMUNITY BANK	PERHAM	MN
UNITED FIDELITY BANK FSB	EVANSVILLE	IN
UNITED MORTGAGE FINANCE GROUP INC	HAMDEN	CT
UNIVERSITY BANK SAULT STE	MARIE	MI
UPTOWN MORTGAGE CORPORATION	WHITTIER	CA
US BANK NA	EAST GRAND FORKS	MN
US BANK TRUST NATIONAL ASSOC-CALIFORNIA	SAN FRANCISCO	CA
US LENDING CORPORATION	LONG BEACH	CA
USA MORTGAGE GROUP INC	LAFAYETTE	IN

Name	City	State
VALLEY BANK NA	ELK POINT	SD
VIKING MORTGAGE CORP	PINOLE	CA
W C FINANCIAL INC	SANTA ANA	CA
WELLS FARGO BANK TEXAS NA	SAN ANTONIO	TX
WEST COAST FUNDING MISSION	VIEJO	CA
WESTCO REAL ESTATE FINANCE CORP	COSTA MESA	CA
WESTERN FEDERAL MORTGAGE INC	BELLEVUE	WA
WHITNEY NATIONAL BANK	NEW ORLEANS	LA
WORLD WIDE MONEY CENTER INC	SAN DIEGO	CA
WORLDWIDE CAPITAL INDUSTRIES INC	RANCHO CUCAMONGA	CA

568 Title 2 Mortgagees and Loan Correspondent Mortgagees Terminated Between April 1, 2002, and September 30, 2002

A AND E MORTGAGE CO LLC	ROSELLE	NJ
A BETTER MORTGAGE AND REAL ESTATE SERV	DOWNEY	CA
ABC AND D MORTGAGE SRVS INC	FORT MYERS	FL
ABC LENDING INC	CORAL SPRINGS	FL
ADVANCE BANK SB	LANSING	IL
ADVANCED INNOVATIVE MORTGAGES INC	FLINT	MI
ADVANTAGE MORTGAGE CORPORATION	NAPERVILLE	IL
AEROSTAR MORTGAGE CORP	PLANO	TX
ALEXANDER AND ASSOCIATES REAL ESTATE COR	LEBANON	IN
ALFAMUTUAL FIRE INSURANCE CO	MONTGOMERY	AL
ALL WORLD FINANCIAL INC	LAKEWOOD	CO
AMA FINANCIAL CORPORATION	FOREST PARK	IL
AMARIS MORTGAGE COMPANY	CHICAGO	IL
AMERI-TRUST FINANCIAL INC	NASHVILLE	TN
AMERICAN BANK OF CONNECTICUT	WATERBURY	CT
AMERICAN CAPITAL FUNDING CORP	HOUSTON	TX
AMERICAN CAPITAL MORTGAGE INC	CORDOVA	TN
AMERICAN DREAM HOME LOANS INC	TEMECULA	CA
AMERICAN EQUITY MORTGAGE INC	PORTLAND	OR
AMERICAN FEDERAL CREDIT UNION	MISSION HILLS	CA
AMERICAN FUNDING ALLIANCE CORPORATION	TEMECULA	CA
AMERICAN FUNDING CORPORATION	HAMMOND	LA
AMERICAN HOME FUNDING INC	NEWPORT BEACH	CA
AMERICAN HOMEOWNERS UNION	DULUTH	GA
AMERICAN MORTGAGE CENTER LLC	FRESNO	CA
AMERICAN MORTGAGE LINK INC	ST PETERSBURG	FL
AMERICAN REPUBLIC INS CO	DES MOINES	IA
AMERICAN TRUST MORTGAGE BROKERS	MIAMI	FL
AMERIHOME MORTGAGE CORP	TAMPA	FL
AMERILOAN INC	PHOENIX	AZ
AMIR MORTGAGE CORPORATION	IRVINE	CA
AMSTERDAM FEDERAL SAVINGS AND LOAN ASSN	AMSTERDAM	NY
AMTRUST FINANCIAL SERVICES INCORP	CARMEL	IN
ANCHOR HOME MORTGAGE MAPLES INC	MAPLES	FL
ANDROSCOGGIN SAVINGS BANK	LEWISTON	ME
ANTELOPE VALLEY BANK	LANCASTER	CA
APM CAPITAL INC	SAN DIEGO	CA
APPLE MORTGAGE CORPORATION	TUSCALOOSA	AL
APPROVED HOME MORTGAGE CORPORATION	PEMBROKE PINES	FL
APPROVED MORTGAGE FINANCING	JACKSONVILLE	FL
APPS FINANCIAL CORPORATION	ORANGE	CA
ASPEN MORTGAGE CO LLC	GREENVILLE	SC
ASSOCIATES MORTGAGE GROUP INC	LOUISVILLE	KY
ATLANTIC PACIFIC EQUITY CORP	MISSION VIEIO	CA
AUDUBON SAVINGS BANK	AUDUBON	NJ
AUTOWIN INC	TUSTIN	CA
AVALON MORTGAGE INC	DULUTH	GA
B AND D CAPITAL MORTGAGE CORP	OAKLAWN	IL
BAKELITE EMPLOYEES CREDIT UNION	SOMERSET	NJ
BANC NOTE OF AMERICA INC	INDIANAPOLIS	IN
BANK LATAH	LATAH	WA
BANK OF BENTONVILLE	BENTONVILLE	AR
BANK OF BLOOMFIELD HILLS	BLOOMFIELD HILLS	MI
BANK OF GRAVETT	GRAVETTE	AR
BANK OF MISSOURI CAPE	GIRARDEAU	MO
BANK OF THE SIERRA	PORTERVILLE	CA
BANK ONE MICHIGAN GROSS	POINT	MI
BANK PLUS INC	ALBUQUERQUE	NM
BANK TWENTY ONE	CARROLLTON	MO
BANKERS MORTGAGE CORPORATION	CHEVY CHASE	MD
BANKNET MORTGAGE CORPORATION	MIAMI	FL

Name	City	State
BARTOW COUNTY BANK	CARTERSVILLE	GA
BARWICK AND ASSOCIATES LTD	BATAVIA	OH
BEE LINE MORTGAGE CORP	FT LAUDERDALE	FL
BELGRADE STATE BANK	POTOSI	MO
BELL FEDERAL SAVINGS ALA	PITTSBURGH	PA
BEST MORTGAGE SERVICES	BELLEVUE	WA
BIG LAKE NATIONAL BANK	OKEECHOBEE	FL
BLOOMFIELD ACCEPTANCE CO LLC	BIRMINGHAM	MI
BMA FINANCIAL CORPORATION	DANVILLE	CA
BMR FINANCIAL SERVICES INC	GREENBELT	MD
BRECKINRIDGE CORP	WINCHESTER	VA
BRENTON MORTGAGES INC	DES MOINES	IA
BYZAN CORPORATION	TIMONIUM	MD
C M H MORTGAGE COMPANY	WORTHINGTON	OH
C PALMIERI ENTERPRISES INC	SAN DIEGO	CA
CAL SIERRA FUNDING INC	MARTINEZ	CA
CALUMET SECURITIES CORPORATION	PLANO	TX
CAMBRIDGE EQUITIES LLC	SHELBYVILLE	TN
CAPITAL CITY MORTGAGE CO INC	TOPEKA	KS
CAPITAL COMPANY OF AMERICA LLC	SAN FRANCISCO	CA
CAPITAL FINANCIAL ENTERPRISES INC	CHICAGO	IL
CAPITAL MORTGAGE CORP	RALEIGH	NC
CAPITAL MORTGAGE GROUP	MIAMI	FL
CAPITAL PACIFIC MORTGAGE INC	NEWPORT BEACH	CA
CARMEL MOUNTAIN MORTGAGE CORPORATION	SAN DIEGO	CA
CARRINGTON MORTGAGE CORPORATION	MIAMI	FL
CARTY MORTGAGE SERVICES	MEMPHIS	TN
CATHEDRAL MORTGAGE INC	MONTEBELLO	CA
CENIT BANK FOR SAVINGS FSB	CHESAPEAKE	VA
CENTRAL MORTGAGE BROKERAGE CORP	JACKSON HEIGHTS	NY
CENTRAL VALLEY CREDIT UNION	MODESTO	CA
CENTURA MORTGAGE GROUP INC	GRAPEVINE	TX
CENTURY MORTGAGE CORP	CORONA	CA
CHALLENGER MORTGAGE CORPORATION	HOUSTON	TX
CHANCELLOR MORTGAGE SERVICES	SEVERNA PARK	MD
CHAPEL CREEK MORTGAGE BANKER INC	MT POCONO	PA
CHARTER BANK	WYANDOTTE	MI
CHASE MANHATTAN MORTGAGE CORP-MELLON	DENVER	CO
CHATEAU MORTGAGE CORP	ATLANTA	GA
CHERVENIC FINANCIAL SERVICES LP	STOWE	OH
CHINO VALLEY MORTGAGE INC	RANCHO CUCAMONGA	CA
CHOICEONE BANK	SPARTA	MI
CITIZENS BANK AMERICUS	AMERICUS	GA
CITIZENS BANK AND TRUST GRAYSON	LEITCHFIELD	KY
CITIZENS BANK FSB	SALISBURY	NC
CITIZENS FIRST BANK	ROME	GA
CITIZENS FIRST MORTGAGE CORPORATION	ENGLEWOOD	OH
CITY EMPLOYEES CR UN W PALM BEACH INC	WEST PALM BEACH	FL
CITY NATIONAL BANK	TAYLOR	TX
CITY NATIONAL BANK FORT SMITH	FORT SMITH	AR
CITY SAVINGS BANK	PITTSFIELD	MA
CLP DOCUMENT PREPARATION INC	OAKBROOK	IL
COAST TO COAST FUNDING INC	CITY OF COMMERCE	CA
COASTAL MORTGAGE ASSOCIATES	CARLSBAD	CA
COASTAL SAVINGS BANK	PORTLAND	ME
COLONIAL HOME EQUITIES INC	MELVILLE	NY
COLONIAL TRUST CORPORATION	FORT LAUDERDALE	FL
COLONY MORTGAGE LLC	SOUTH PLAINFIELD	NJ
COLORADO COMMUNITY FIRST STATE BK-CO	DENVER	CO
COLUMBIA CREDIT UNION	VANCOUVER	WA
COMMERCE BANK AND TRUST	TOPEKA	KS
COMMUNITY BANK	BRISTOW	OK
COMMUNITY BANK AND TRUST	NEOSHO	MO
COMMUNITY BANK OF LAWNDALE	CHICAGO	IL
COMMUNITY FIRST NATIONAL BANK	LAS CRUCES	NM
COMMUNITY FIRST NATIONAL BANK	FERGUS FALLS	MN
COMMUNITY FIRST NATIONAL BANK	SPOONER	WI
COMMUNITY FIRST STATE BANK	ALLIANCE	NE
COMMUNITY GUARANTY SAVINGS BANK	PLYMOUTH	NH
COMMUNITY HOME LOAN LLC	HOUSTON	TX
COMMUNITY HOMEBANC INC	INDEPENDENCE	MO
COMMUNITY HOMEBANC OF AMERICA CORP	INDEPENDENCE	MO
COMMUNITY SECURITY BANK	NEW PRAGUE	MN
COMPLETE MORTGAGE COMPANY LLC	SHREVEPORT	LA

Name	City	State
COMSTOCK BANK	RENO	NV
CONCEPT ONE MORTGAGE CORP	SOUTHFIELD	MI
CONGRESSIONAL MORTGAGE CORPORATION INC	BIRMINGHAM	AL
CONSOLIDATED BANK AND TRUST CO	RICHMOND	VA
CONSORCIO LENDING INC	BREA	CA
CONSTRUCTION WRKS PEN TR FED	MERRILLVILLE	IN
CONSUMER FAIR LENDING INC	RESEDA	CA
CONTINENTAL MORTGAGE CORP	SAN JUAN	PR
CONTINENTAL MORTGAGE CORP OF ILLINOIS	MT PROSPECT	IL
CONTINENTAL MORTGAGE INC	ST GEORGE	UT
COOPERATIVA AHORRO Y CREDITO DE MAUNABO	MAUNABO	PR
CORNERSTONE BANK AND TRUST NA	ALTON	IL
CORNERSTONE MORTGAGE CORP	DULUTH	GA
COUNTRY LIFE INSURANCE CO	BLOOMINGTON	IL
COUNTRYSIDE HOME LOANS INC	PORTERVILLE	CA
COUNTY FUNDING CORP	SANTA ANA	CA
CPT FINANCIAL CORP	VACAVILLE	CA
CREDIT WORKS INC	BROOKFIELD	CT
CRESCENT BANK AND TRUST	NEW ORLEANS	LA
CRESTAR BANK	RICHMOND	VA
CROSSMARK MORTGAGE CORP	COVINA	CA
CROW PASS INVESTMENTS LLC	ANCHORAGE	AK
CRYSTAL LAKE BANK AND TRUST COMPANY NA	CRYSTAL LAKE	IL
CS FINANCIAL INC	LOS ANGELES	CA
DACOTAH BANK	CLARK	SD
DAMLA CORPORATION	ATLANTA	GA
DAWKINS AND ASSOCIATES INC	CHARLOTTE	NC
DENTON AREA TEACHERS CREDIT UNION	DENTON	TX
DESTINY MORTGAGE GROUP INC	BIRMINGHAM	AL
DIRECT MORTGAGE BANKERS CORPORAION	CARLSBAD	CA
DISCOVER FINANCIAL GROUP INC—OREGON	CANBY	OR
DIVERSIFIED BAY MORTGAGE	SAN RAMON	CA
DJB OUTSOURCING GROUP INC	DESOTO	TX
DOT FINANCIAL INC	SACRAMENTO	CA
EAB MORTGAGE COMPANY INC	GARDEN CITY	NY
EAGLE MORTGAGE GROUP INC	CASSELBERRY	FL
EASTERN MORTGAGE COMPANY INC	EMERALD ISLE	NC
ELDORADO BANK	SACRAMENTO	CA
ELITE FUNDING INC	BALDWIN PARK	CA
EMPIRE HOME LENDING CORPORATION	BOCA RATON	FL
ENTERPRISE FINANCIAL COMPANY	WEST BLOOMFIELD	MI
ENTERPRISE MORTGAGE CORP	LANSING	MI
EQUALITY SAVINGS AND LOAN ASSN	ST LOUIS	MO
EQUITY UNLIMITED COMPANY	ATLANTA	GA
ERETZ FUNDING LTD	BROOKLYN	NY
EUROPEAN AMERICAN BANK AND TR CO	UNIONDALE	NY
EXCHANGE BANK OF MISSOURI	FAYETTE	MO
FAIR LENDING FINANCIAL SERVICES INC	MAITLAND	FL
FAIRGREEN MORTGAGE CO LLC	ATLANTA	GA
FAMILY SECURITY FINANCIAL LLC	WALLSVILLE	UT
FARMERS AND MERCHANTS BANK	COLBY	KS
FARMERS AND MERCHANTS BANK	STANLEY	WI
FARMERS NATIONAL BANK	OPELIKA	AL
FAST TRAC MORTGAGE LLC	ENGLEWOOD	CO
FIDELITY FEDERAL BANK	IRVINE	CA
FIDELITY NATIONAL MORTGAGE CORP	CLINTON TOWNSHIP	MI
FIFTH THIRD BANK INDIANA	EVANSVILLE	IN
FIFTH THIRD BANK NW OHIO NA	TOLEDO	OH
FIFTH THIRD BANK OF COLUMBUS	DUBLIN	OH
FIFTH THIRD BANK OF SOUTHERN OH	HILLSBORO	OH
FIFTH THIRD BANK WESTERN OHIO NA	DAYTON	OH
FINANCIAL AND REAL ESTATE SERV	CYPRESS	CA
FINANCIAL CONSULTANTS OF AMERICA INC	STUDIO CITY	CA
FINANCIAL DYNAMICS FUNDING CORP	MINEOLA	NY
FIRST AMERICAN NATIONAL FINANCIAL GROUP	RANCHO CUCAMONGA	CA
FIRST BANK AND TRUST COMPANY	PROVIDENCE	RI
FIRST BANK FARMERSVILLE	FARMERSVILLE	TX
FIRST BENEFICIAL MORTGAGE CORP	CHARLOTTE	NC
FIRST CAPITAL MORTGAGE AND ASSOC INC	MARIETTA	GA
FIRST CHESAPEAKE MORTGAGE CORP	ANNAPOLIS	MD
FIRST CHICAGO MORTGAGE CO	CHICAGO	IL
FIRST CHOICE HOME LOANS INC	CONYERS	GA
FIRST CHOICE MORTGAGE INC	IRVINE	CA
FIRST COLONIAL SAVINGS BANK	HOPEWELL	VA

Name	City	State
FIRST COMMERCE MORTGAGE CO	LINCOLN	NE
FIRST COMMUNITY BANK FSB	KEOKUK	IA
FIRST COMMUNITY BANK SW GA	BAINBRIDGE	GA
FIRST COVENANT MORTGAGE CORP	BIRMINGTON	AL
FIRST DENVER MORTGAGE COMPANY	DENVER	CO
FIRST DISCOUNT MORTGAGE CORP	BIRMINGHAM	MI
FIRST EQUITY MORTGAGE LLC	MURRAY	UT
FIRST FEDERAL BANK CA	SANTA MONICA	CA
FIRST FEDERAL SAVINGS BANK	WASHINGTON COURTHOUSE	OH
FIRST FEDERAL SAVINGS BANK EASTERN OH	ZANESVILLE	OH
FIRST FLOYD BANK	ROME	GA
FIRST FOUNDATION MORTGAGE INC	TORRANCE	CA
FIRST FUND MORTGAGE CORPORATION	LAUDERHILL	FL
FIRST HARBOR FINANCIAL SERVICES LP	WILMINGTON	NC
FIRST HOMESTEAD FUNDING CORP	WHEATON	MD
FIRST HORIZON MORTGAGE INC	SHELBY TOWNSHIP	MI
FIRST INDEPENDENCE NATL BANK	DETROIT	MI
FIRST JEFFERSON MORTGAGE CORP	NORFOLK	VA
FIRST KANSAS FEDERAL SAVINGS ASSN	OSAWATOMIE	KS
FIRST NATION BANK	COVINGTON	GA
FIRST NATIONAL BANK	SILOAM SPRINGS	AR
FIRST NATIONAL BANK—GREENFIELD	GREENFIELD	IA
FIRST NATIONAL BANK AND TRUST	ROGERS	AR
FIRST NATIONAL BANK AND TRUST	PARSONS	KS
FIRST NATIONAL BANK OF MARENGO	MARENGO	IL
FIRST NATIONAL BANK OF O NEILL	O NEILL	NE
FIRST NATIONAL BANK OF PASCO	DADE CITY	FL
FIRST NATIONAL MORTGAGE BANC	PHOENIX	AZ
FIRST NATIONWIDE BANK FSB	DALLAS	TX
FIRST OAKMONT ENTERPRISES INC	LEHIGH	FL
FIRST OPTION FINANCIAL INC	CENTERVILLE	OH
FIRST STATE BANK	KEENE	TX
FIRST STATE BANK OF DENTON	DENTON	TX
FIRST STATE BANK OF PORTER	PORTER	IN
FIRST STATE FINANCIAL CORPORATION	NEWPORT BEACH	CA
FIRST SWITZERLAND FINANCIAL LTD	CHICAGO	IL
FIRST TENNESSEE BANK NA	MEMPHIS	TN
FIRST VIRGINIA MORTGAGE CO	FALLS CHURCH	VA
FIRST WESTERN BANK	SIMI VALLEY	CA
FIRST WESTERN BANK WALL	WALL	SD
FIVE POINTS BANK-HASTINGS	HASTINGS	NE
FLAGSHIP BANK AND TRUST CO	WORCESTER	MA
FLEET MORTGAGE GROUP INC	COLUMBIA	SC
FLEET NATIONAL BANK	PROVIDENCE	RI
FLORIDA FIRST FINANCIAL INC	TAMARAC	FL
FODARE INC	PALM BEACH GARDENS	FL
FORT CALHOUN STATE BANK	FORT CALHOUN	NE
FRANKLIN FIRST FINANCIAL LTD	WEST HEMPSTEAD	NY
FRANKLIN-LAMOILLE BANK	ST ALBANS	VT
FREEDOM FINANCIAL SERVICES INC	SPRINGFIELD	MO
FREEDOM MORTGAGE COMPANY LLC	SOLDOTNA	AK
FREEL FINANCIAL SERVICES INC	TAMPA	FL
FRIENDSHIP COMMUNITY BANK	OCALA	FL
FRONTIER MORTGAGE CORPORATION	LAS VEGAS	NV
G E LENDERS INC	TIMONIUM	MD
GALLAND FINANCIAL SERVICES	ONTARIO	CA
GATEWAY BANK AND TRUST	RINGGOLD	GA
GATEWAY FINANCIAL LTD	MASSAPEQUA	NY
GATEWAY FUNDING CORPORATION	ALISO VIEJO	CA
GEORGIA BANK AND TRUST COMPANY	MARTINEZ	GA
GIBRALTAR FINANCE AND MORTGAGE INC	HOUSTON	TX
GLOBAL BANCORP INC	ANAHEIM	CA
GLOBAL BENEFITS INC	FORT LEE	NJ
GOLD BANC MORTGAGE INC	OVERLAND PARK	MO
GOLD COUNTRY NATIONAL BANK	MARYSVILLE	CA
GRAND FEDERAL SAVINGS BANK	GROVE	OK
GRAND WEST FINANCIAL LIMITED	COLORADO SPRINGS	CO
GREAT HOME MORTGAGES INC	LAKEWOOD	CO
GREATER CHICAGO BANK	BELLWOOD	IL
GULFSTREAM LENDING INC	DENVER	CO
H AND M MORTGAGE CORPORATION	CAPERRA	PR
HADDON SAVINGS BANK	HADDON HEIGHTS	NJ
HAMILTON FINANCIAL GROUP LTD	OAKBROOK	IL
HAMPTON MORTGAGE CORPORATION	CLARKSTON	MI

Name	City	State
HAMPTON ROADS FUNDING CORP	VIRGINIA BEACH	VA
HARTSVILLE COMMUNITY BANK NA	HARTSVILLE	SC
HAVEN MORTGAGE CORPORATION	RANCHO CUCAMONGA	CA
HERITAGE BANK	JONESBORO	GA
HIGHLAND MORTGAGE FINANCIAL GROUP INC	EVERGREEN	CO
HINSDALE FEDERAL BANK FOR SAVINGS	HINSDALE	IL
HOLLIDAY AMERICAN MORTGAGE LLC	OKLAHOMA CITY	OK
HOME CORPORATION	CITY OF INDUSTRY	CA
HOME FINANCE AND MORTGAGE INC	CORNELIUS	NC
HOME MORTGAGE FUNDING SERVICES	AURORA	CO
HOME MORTGAGE LLC	MIDDLETOWN	CT
HOMEBASE LENDING GROUP INC	DOWNEY	CA
HOMEOWNERS ASSISTANCE CORP	BEDFORD	NH
HOMEPOINT MORTGAGE INC	OGDEN	UT
HOMESOUTH MORTRGAGE SERVICES	HIRAM	GA
HOMESTART MORTGAGE CORPORATION	CHICAGO	IL
HOMESTEAD MORTGAGE COMPANY	SOUTHFIELD	MI
HSA RESIDENTIAL MTG SER TX INC	HOUSTON	TX
INDEPENDENCE BANK	KERNERSVILLE	NC
INDEPENDENT BANK OF OXFORD	OXFORD	AL
INDYMAC INC	PASADENA	CA
INNOVATIVE MORTGAGE COMPANY	SOUTH BEND	IN
INTEGRITY MORTGAGE GROUP INC	ELKHART	IN
INTER BANK	DUVALL	WA
INVVISION MORTGAGE INC	CARROLLTON	TX
J AND R MORTGAGE INC	SAN MATEO	CA
J M FINANCIAL SERVICES INC	BAY HARBOR	FL
JAN-RON FINANCIAL CORP DBA HOME FIN MTG	TORRANCE	CA
JD REECE MORTGAGE COMPANY	MISSION WOODS	KS
JEFFERSON HERITAGE MORTGAGE CO	BALLWIN	MO
JONES COMPANY FINANCIAL SERVICES LTD	BRENTWOOD	TN
KANSAS STATE BANK—OTTAWA	OTTAWA	KS
KEYPORT LIFE INSURANCE COMPANY	BOSTON	MA
KIRTLAND FEDERAL CREDIT UNION	ALBUQUERQUE	NM
KMC MORTGAGE SERVICES INC	NAPLES	FL
LANDMARK PACIFIC MORTGAGE	FAIR OAKS	CA
LEGACY FINANCIAL AND INSURANCE CNTR INC	ST GEORGE	UT
LENDING NOW INC	JACKSONVILLE	FL
LIBERTY MORTGAGE LP	SAN DIEGO	CA
LIFE INSURANCE CO GEORGIA	ATLANTA	GA
LIFETIME MORTGAGE INC	INDIANAPOLIS	IN
LOAN FACTORY INC	HOUSTON	GA
LOANKEY FINANCIAL INC	WALNUT CREEK	CA
LOANS AMERICA MORTGAGE CORPORATION	MIAMI	FL
LOANS FOR RESIDENTIAL HOMES MORTGAGE	EAST GREENWISH	RI
LUCKY REALTY HOMES INC	PIKESVILLE	MD
LUTHERAN BROTHERHOOD	MINNEAPOLIS	MN
M AND I BANK	SUPERIOR	WI
M AND I BANK OF SOUTHERN WISCONSIN	MADISON	WI
M AND I COMMUNITY STATE BANK	EAU CLAIRE	WI
M AND I FIRST AMERICAN BANK	WAUSAU	WI
M L MORTGAGE INC	HOUSTON	TX
M-ONE CAPITAL CORP	RANCHO CUCAMONGA	CA
MARC S ENGLISH FINL SRVCS	ARLINGTON	TX
MARQUETTE BANK MONTANA NA	CONRAD	MT
MARQUETTE BANK NA	NEW HOPE	MN
MARX MORTGAGE ONE INC	FOREST PARK	IL
MASCOMA SAVINGS BANK FSB	LEBANON	NH
MATRIX MORTGAGE CO LLC	INDIANAPOLIS	IN
MCKENZIE BANKING COMPANY	MCKENZIE	TN
MERCANTILE BANK ARKANSAS	NORTH LITTLE ROCK	AR
MERCANTILE TRUST AND SAVINGS BANK	QUINCY	IL
MERCHANTS AND FARMERS BANK	HOLLY SPRINGS	MS
MERIDIAN GROUP MORTGAGE CORP	CARMEL	IN
MERIDIAN RESIDENTIAL GROUP INC	ENGLEWOOD CLIFF	NJ
METROBOSTON MORTGAGE CO INC	CANTON	MA
METROPOLITAN FINANCIAL INC	CHICAGO	IL
METTER BANKING COMPANY	METTER	GA
MID AMERICA MORTGAGE SERVICES OF ST LOUI	ST LOUIS	MO
MID INDIANA MORTGAGE INC	INDIANAPOLIS	IN
MID-CITY FINANCIAL INC	ARLINGTON	TX
MID-CITY NATIONAL BANK	CHICAGO	IL
MID-CONTINENT CASUALTY COMPANY	TULSA	OK
MIDWEST BANK DETROIT	LAKES	MN

Name	City	State
MILAM FINANCIAL SERVICES LLC	HOUSTON	TX
MILLENIUM FUNDING GROUP INC	EUSTIS	FL
MILLENIUM HOME MORTGAGE LLC	PARSIPPANY	NJ
MILLENNIUM MORTGAGE COMPANY	SIOUX FALLS	SD
MILLENNIUM MORTGAGE FUNDING	SUNRISE	FL
MILLENNIUM MORTGAGE INVESTORS INC	ANNANDALE	VA
MILLENNIUM RESIDENTIAL MORTGAGE LLC	HOUSTON	TX
MINER KENNEDY ASSOCIATES INC	SCOTTSDALE	AZ
MINNWWEST BANK SLAYTON	SLAYTON	MN
MMI MORTGAGE CORP	HESPERIA	CA
MNB FINANCIAL SERVICES INC	DALLAS	TX
MODIS MORTGAGE INC	LOS ANGELES	CA
MOHAWK PROGRESSIVE FEDERAL C U	SCHENECTADY	NY
MONEY LENDERS INC	MIAMI	FL
MONTECITO BANK AND TRUST	SANTA BARBARA	CA
MORTGAGE ADVISORS INC	CHICAGO HEIGHTS	IL
MORTGAGE BANKERS SERVICE CORPORATION	CORAL SPRINGS	FL
MORTGAGE BEACON INC	CLEARWATER	FL
MORTGAGE CONSULTANTS INC	COLUMBIA	MD
MORTGAGE EXECUTIVES INC	PORTLAND	OR
MORTGAGE FINANCING INC	BIRMINGHAM	AL
MORTGAGE FREEDOM COMPANY INC	TUALATIN	OR
MORTGAGE MONEY INC	MEMPHIS	TN
MORTGAGE ONE OF NEVADA INC	LAS VEGAS	NV
MORTGAGE PROFESSIONALS INC	EL PASO	TX
MORTGAGE SOLUTIONS LLC	BLOOMINGTON	IN
MORTGAGE TEAM INC RANCHO	SANTA MARGAR	CA
MUTUAL LENDING CORPORATION	DIAMOND BAR	CA
NASHOBA BANK	GERMANTOWN	TN
NATIONAL BANK ANDOVER	ANDOVER	KS
NATIONAL BANK OF COMMONWEALTH	INDIANA	PA
NATIONAL BANK OF FREDERICKSBURG	FREDERICKSBURG	VA
NATIONAL HOME LOAN CORPORATION	DEERFIELD BEACH	FL
NATIONAL LIFE INSURANCE CO	MONTPELIER	VT
NATIONWIDE MORTGAGE AND LOAN CORPORATION	MIAMI	FL
NEIGHBORHOOD MORTGAGE BANKERS INC	VALLEY STREAM	NY
NETHOMEFINANCIAL LP	ALBUQUERQUE	NM
NEW DIMENSIONS FINANCIAL SER	ROLLING MEADOWS	IL
NEW LIFE MORTGAGE CO	NORTH MIAMI BEACH	FL
NEW ORLEANS MORTGGE LENDING CORP	NEW ORLEANS	LA
NEW WEST MORTGAGE CO	NORTH HOLLYWOOD	CA
NEW WORLD MORTGAGE COMPANY INC	ENGLEWOOD CLIFFS	NJ
NF INVESTMENTS INC	ATLANTA	GA
NHC MORTGGAE GROUP LP	HOUSTON	TX
NO CAROLINA TEACHRS ST EMP RET	RALEIGH	NC
NORMAN METRO MORTGAGE COMPANY LLC	NORMAN	OK
NORTH AMERICAN BANKING COMPANY	ROSEVILLE	MN
NORTH CAROLINA MUTUAL LIFE INS	DURHAM	NC
NORTH SOUND BANK	SILVERDALE	WA
NORTH STAR BANK	ROSEVILLE	MN
NORTHCENTRAL MORTGAGE SERVICES CORP	OCALA	FL
NORTHEAST FLORIDA MORTGAGE INC	SOUTH HAMPTON	FL
NORTHERN FINANCIAL MORTGAGE LLC	LOVELAND	CO
NORTHSHORE MORTGAGE CORP	METAIRIE	LA
NORTHSTAR MORTGAGE LP	TEMECULA	CA
NORTHWEST BANK	ROANOKE	TX
NORTHWESTERN SAVINGS BANK AND TRUST	TRAVERSE CITY	MI
OAK HILL BANKS	JACKSON	OH
OAK TREE FINANCIAL CONCEPTS	FREDERICK	MD
OCEAN BANK	MIAMI	FL
OHIO BANK	FINDLAY	OH
OLYMPIC FINANCIAL SERVICES	FULLERTON	CA
ON-LINE MORTGAGE EXPRESS	UPLAND	CA
ONE SOURCE MORTGAGE GROUP INC	INDIANAPOLIS	IN
ORCHARD FEDERAL SAVINGS BANK	ONTARIO	OR
PACIFIC COAST FINANCIAL SERVICE	SAN CLEMENTE	CA
PACIFIC MORTGAGE FUNDING CORP	NORWALK	CA
PARADIGM FINANCIAL LLC	NINEVEH	IN
PENIEL INVESTMENT CORPORATION	MONTEBELLO	CA
PEOPLES BANK	MILLINGTON	TN
PEOPLES BANK	CUBA	MO
PEOPLES MORTGAGE LENDING SERVICES INC	ORLANDO	FL
PERFORMANCE MORTGAGE CORP	HENDERSONVILLE	TN
PERPETUAL BANK FSB	ANDERSON	SC

Name	City	State
PERSONAL MORTGAGE SERVICES INC	PORT CHARLOTTE	FL
PINNACLE BANK	LITTLE ROCK	AR
PINNACLE MORTGAGE INC	EAST HANOVER	NJ
PIONEER BANK	BAKER CITY	OR
PLATINUM CAPITAL MORTGAGE INC	CHAMBLEE	GA
PLATINUM MORTGAGE LENDING CORP	SUNRISE	FL
PLG FUNDING CORPORATION	SOUTHFIELD	MI
PLUMAS BANK	SUSANVILLE	CA
PORT GIBSON BANK	PORT GIBSON	MS
PORTUGUESE CONTINENTAL FEDERAL CR UN	NEWARK	NJ
PRECEPT CORPORATION	OAKLAND	CA
PRECISE MORTGAGE SERVICES INC	ELMSFORD	NY
PRECISE MORTGAGE SERVICES INC	DENTON	TX
PRIMEQWEST FINANCIAL CORP	CARLSBAD	CA
PROFESSIONAL MORTGAGE ASSOCIATES LTD	CLARKSTON	MI
PROGRESSIVE MORTGAGE	BROWNSVILLE	TX
PROGRESSIVE MORTGAGE AND INVESTMENT CORP	SHREVEPORT	LA
PROMISTAR BANK	JOHNSTOWN	PA
PSP FINANCIAL SERVICES INC	IRVINE	CA
PUTNAM MORTGAGE CORPORATION	STONEHAM	MA
QPOINT HOME MTG LOANS BELLEVUE MAIN INC	BELLEVUE	WA
QUALITY LENDING LP	KATY	TX
R B MORTGAGE CO	SAN BERNARDINO	CA
R M G FUNDING GROUP INC DBA NATIONAL BAN	CANOGA PARK	CA
RAHWAY SAVINGS INSTITUTION	RAHWAY	NJ
REAL MERC INVESTMENT INC	NORTHRIDGE	CA
REDLANDS CENTENNIAL BANK	REDLANDS	CA
REGAL MORTGAGE SERVICES INC	INDIANAPOLIS	IN
REPUBLIC BANK	DARIEN	IL
RESIDENTIAL CREDIT CORPORATION	WESTMINSTER	CA
RIVER CITY MORTGAGE LP	SACRAMENTO	CA
RIVERSIDE MORTGAGE COMPANY LLC	LABELLA	FL
RIVERWAY BANK	HOUSTON	TX
RODRIGUEZ CHAVEZ CORP	HOUSTON	TX
ROYAL FINANCE INC	WEST PALM BEACH	FL
RSO INC	GREENFIELD	IN
RUSTY ROSE INC	MIAMI	FL
S AND C BANK	NEW RICHMOND	WI
SAJJ LLC	DALLAS	TX
SAN JOAQUIN FINANCIAL	FRESNO	CA
SCHULER MORTGAGE INC	BELLEVUE	WA
SCHWEGMANN BANK AND TRUST COMPANY	HARVEY	LA
SECURITY FIRST FINANCIAL LLC	SOUTH OGDEN	UT
SECURITY NATIONAL BANK AND TR CO NORMAN	NORMAN	OK
SFM LLC	BRENTWOOD	TN
SIERRA FOOTHILL FINANCIAL INC	OAKHURST	CA
SIERRA FOOTHILL MORTGAGE CORP	AUBURN	CA
SIMMONS FIRST BANK DUMAS	DUMAS	AR
SIX RIVERS NATIONAL BANK	EUREKA	CA
SOUTH JERSEY SAVINGS AND LOAN ASSN	TURNERSVILLE	NJ
SOUTH SIDE NATIONAL BANK—ST LOUIS	SAINT LOUIS	MO
SOUTHERN MORTGAGE LENDING CORPORATION	MEMPHIS	TN
SOUTHERN MORTGAGE SERVICES	MIAMI	FL
SOUTHERN STATES FUNDING	ORLANDO	FL
SOUTHLAND MORTGAGE BANKERS INC	MIAMI	FL
SOUTHLAND MORTGAGE INVESTMENT GROUP INC	GAINESVILLE	FL
SOUTHWEST NATIONAL BANK	GREENSBURG	PA
SPECIALIZED FINANCIAL SERVICES	BEDFORD	TX
SPOKANE EMPLOYEES' RETIREMT SY	SPOKANE	WA
STATE BANK AND TRUST NA	TULSA	OK
STATE BANK OF DELANO	DELANO	MN
STATE BANK OF LIZTON	PITTSBORO	IN
STATE BANK OF YOUNG AMERICA	NORWOOD YOUNG AMER	MN
STATE EMPLOYEES COMM CREDIT UNION	DES MOINES	IA
STATEWIDE MORTGAGE GROUP INC	MARCO ISLAND	FL
STERLING MORTGAGE CORP	OKLAHOMA CITY	OK
STEWART BOSSEL AND ASSOCIATES	CLEVELAND	OH
STONEHILL MORTGAGE CORPORATION	TAUNTON	MA
SUNCOAST MORTGAGE BANKERS	MIAMI	FL
SUNRISE MORTGAGE SERVICES	MIAMI	FL
SUNSHINE STATE MORTGAGE INV CORP	MIAMI	FL
SUPERIOR FIRST MORTGAGE LLC	ADDISON	TX
SUSSEX COUNTY STATE BANK	FRANKLIN	NJ
SWIFT FINANCIAL SERVICES INC	WELLINGTON	FL

Name	City	State
TEHAMA COUNTY BANK	RED BLUFF	CA
TERRA FINANCIAL GROUP INC	PHILADELPHIA	PA
TEXAS COMMUNITY BANK	DALLAS	TX
TG MORTGAGE GROUP LP	HOUSTON	TX
THE LOAN STORE INC	ST LOUIS	MO
THE MORTGAGE FOUNDATION LP	ARLINGTON	WA
THE UNITED FEDERAL CREDIT UNION	MORGANTOWN	WV
TLC HOME FINANCE INC	PLACENTIA	CA
TMI FINANCIAL INC	AUSTIN	TX
TOPS MORTGAGE INC	LEHIGH ACRES	FL
TRACY FEDERAL BANK FSB	CASTRO VALLEY	CA
TRANSWORLD MORTGAGE CORP	HOUSTON	TX
TRAVELERS INS CO	HARTFORD	CT
TRIANGLE BANK	ROCKY MOUNT	NC
TRINITY GROUP LLC	BOISE	ID
TRUMAN BANK HOME MORTGAGE	ST LOUIS	MO
TWENTYFIRST FINANCIAL INC	LOS ANGELES	CA
TWIN RIVERS COMMUNITY BANK	EASTON	PA
UFG MORTGAGE CORPORATION	CLINTON TOWNSHIP	MI
UNICOR FUNDING INC	MISSION VIEJO	CA
UNION BANCSHARES MORTGAGE CORP	HOLIDAY	FL
UNION BANK	BEULAH	ND
UNION BANK	KANSAS CITY	MO
UNION BANK OF ILLINOIS	SWANSEA	IL
UNITED BANK	DEL CITY	OK
UNITED COMMUNITY BANK	DANVILLE	IL
UNITED NATIONAL MORTGAGE LLC	FISHKILL	NY
UNITED POWERHOUSE FUNDING	ANAHEIM	CA
UNIVERSAL LENDING GROUP INC	SOUTHLAKE	TX
UNIVERSITY BANK	ANN ARBOR	MI
UNIVERSITY MORTGAGE INC	ANN ARBOR	MI
US FUNDING MORTGAGE CORPORATION INC	PITTSBURG	PA
USA MORTGAGE GROUP INC	LAFAYETTE	IN
V A STREAMLINE INC	CARLSBAD	CA
VADIS MORTGAGE CORPORATION	HOLLYWOOD	FL
VALENCIO MORTGAGE CORP	WINTER SPRINGS	FL
VALLEY FINANCIAL FUNDING LLC	PHOENIX	AZ
VALLEY OAKS NATIONAL BANK	SOLVANG	CA
VIKING MORTGAGE CORP	PINOLE	CA
VIKING MORTGAGE SERVICES INC	LANGHORNE	PA
VINTAGE TRUST MORTGAGE	SALEM	OR
W C FINANCIAL INC	SANTA ANA	CA
W CRISS PETERS ENTERPRISES INC	FORT LAUDERDALE	FL
WASHINGTON STATE BANK	FEDERAL WAY	WA
WELLS FARGO BANK NORTHWEST NA	SALT LAKE CITY	UT
WELLS FARGO FUNDING INC	BLOOMINGTON	MN
WEST END REALTY SERVICES	RANCHO CUCAMONGA	CA
WESTCO REAL ESTATE FINANCE	COSTA MESA	CA
WESTERN AND SOUTHERN LIFE INS CO	CINCINNATI	OH
WESTERN FEDERAL MORTGAGE INC	BELLEVUE	WA
WESTERN FINANCIAL SAVINGS BANK	IRVINE	CA
WESTSOUND BANK	BREMERTON	WA
WHITE MOUNTAINS SERVICES CORP	ANN ARBOR	MI
WHITLYN COMPANY	AUSTIN	TX
WHOLESALE MORTGAGE LENDERS LLC	SHREVEPORT	LA
WILSHIRE INTERNATIONAL FIN NETWORK INC	LOS ANGELES	CA
WINVEST MORTGAGE CORPORATION	LAUDERDALE LAKE	FL
WOOD FINANCIAL SERVICES COMPANY	BEND	OR
WOODMONT FINANCIAL SERVICES GROUP LLC	BRENTWOOD	TN
WOODSVILLE GUARANTY SAVINGS BANK	WOODSVILLE	NH
WORLD WIDE MONEY CENTER INC	SAN DIEGO	CA
WORLDNET FINANCIAL SERVICES INC	GREENSBORO	NC
XLN INC	NEWPORT BEACH	CA
YALE NEW HAVEN HEALTH FCU	NEW HAVEN	CT

Dated: March 27, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner, Chairman Mortgagee Review Board.

[FR Doc. 03–8276 Filed 4–4–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Recovery Plan for Chaparral and Scrub Community Species East of San Francisco Bay, CA, for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the Draft Recovery Plan for Chaparral and Scrub Community Species East of San Francisco Bay, California for public review. This draft recovery plan addresses six species, and includes recovery criteria and measures for one plant *Arctostaphylos pallida* (pallid manzanita) and one animal Alameda whipsnake (*Masticophis lateralis euryxanthus*) that are federally listed as threatened. In addition, four species of concern are addressed, three plants [*Arctostaphylos manzanita* ssp. *laevigata* (Contra Costa manzanita), *Cordylanthus nidularius* (Mt. Diablo bird's-beak), and *Eriogonum truncatum* (Mt. Diablo buckwheat)] and one animal (Berkeley kangaroo rat (*Dipodomys heermanni berkeleyensis*). The latter two are presumed extinct.

DATES: Comments on the draft recovery plan must be received on or before August 5, 2003, to receive our consideration.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California (telephone: 916–414–6600). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Wayne S. White, Field Supervisor, Ecological Services, at the above address. An electronic copy of this draft recovery plan will also be made available at *http://www.r1.fws.gov/ecoservices/endangered/recovery/default.htm.*

FOR FURTHER INFORMATION CONTACT: Heather Bell or Kirsten Tarp, Fish and Wildlife Biologists, at the above address, or at 916–414–6600.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

The six species addressed in this draft recovery plan occur primarily in the chaparral and scrub habitats in a three county area east of the San Francisco Bay in California. All species addressed in the draft recovery plan are threatened by the loss, fragmentation, or degradation of chaparral habitat in the eastern San Francisco Bay Area. Therefore, areas currently, historically, or potentially occupied by the species are recommended for habitat protection and/or special management considerations.

The objectives of this draft recovery plan are to:

(1) Ameliorate the threats that caused *Arctostaphylos pallida* and Alameda whipsnake to be listed, and ameliorate any other newly identified threats in order to be able to delist these two federally listed species;

(2) Ensure the long-term conservation of *Arctostaphylos manzanita* ssp. *laevigata* and *Cordylanthus nidularius;* and

(3) Confirm the status of the two presumed extinct species of concern, *Eriogonum truncatum* and Berkeley kangaroo rat. If these species are not rediscovered, insights gained as to reasons for extirpation may assist in community restoration. If extant populations of these species are discovered, the ultimate goal would be to ensure their long-term conservation.

Public Comments Solicited

We solicit written comments on the draft recovery plan described. All comments received by the date specified above will be considered in developing a final recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 13, 2002.

Steve Thompson,

Manager, California/Nevada Operations Office, Region 1, Fish and Wildlife Service.

[FR Doc. 03–8325 Filed 4–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement for Caspian Tern Management in the Columbia River Estuary and Notification of Six Public Scoping Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), this notice advises the public that the U.S. Fish and Wildlife Service (Service), the U.S. Army Corps of Engineers (Corps), and the National Marine Fisheries Service (NMFS) are preparing an Environmental Impact Statement (EIS) for Caspian Tern *(Sterna caspia)* Management in the Columbia River estuary, and announces six public scoping meetings. The proposed project study area includes the States of Washington, Oregon, California, Idaho, and Nevada. We are furnishing this notice in compliance with NEPA and implementing regulations for the following purposes: (1) To advise other agencies and the public of our intentions; (2) to obtain suggestions and information on the issues related to the proposed project to be addressed in the EIS; and (3) to announce public meetings for scoping.

DATES: Written comments are encouraged, and should be received no later than 5 p.m. Pacific time on May 22, 2003. Interested parties may contact the Service for more information at the address below. Proposed project information will be presented, and comments will be accepted at each meeting. The meeting dates and times are:

1. April 14, 2003, 5:30–8:30 p.m., Oakland, CA.
2. April 15, 2003, 5:30–8:30 p.m., Arcata, CA.
3. April 28, 2003, 5:30–8:30 p.m., Aberdeen, WA.
4. April 29, 2003, 5:30–8:30 p.m., Olympia, WA.
5. May 5, 2003, 5:30–8:30 p.m., Astoria, OR.
6. May 6, 2003, 5:30–8:30 p.m., Portland, OR.

ADDRESSES: Address comments, requests for more information related to the preparation of the EIS, or requests to be added to the mailing list for this project to: Nanette Seto, Migratory Birds and Habitat Programs, 911 NE 11th Avenue, Portland, OR 97232, telephone (503) 231–6164, facsimile (503) 231–2019.

The meeting locations are:

1. Oakland, Marriott, 1001 Broadway, Oakland, CA.
2. Arcata, Redwood Park Lodge, East Park Road, Arcata, CA.
3. Aberdeen, Grays Harbor College, 1620 Edward P. Smith Dr., Aberdeen, WA.
4. Olympia, Washington State Capital Museum, 211 West 21st Ave., Olympia, WA.
5. Astoria, Duncan Law Seafood Center, 2021 Marine Drive #200, Astoria, OR.
6. Portland, Double Tree Hotel, Lloyd Center, 1000 North East Multnomah, Portland, OR.

SUPPLEMENTARY INFORMATION:

Background

In 2000, Seattle Audubon, National Audubon, American Bird Conservancy, and Defenders of Wildlife filed a lawsuit against the Corps alleging that compliance with NEPA for the proposed action of relocating a large colony of Caspian terns from Rice Island to East Sand Island, to reduce tern predation on salmon smolts, was insufficient; and against the Service in objection to the potential take of eggs as a means to prevent nesting on Rice Island. In 2002, all parties reached a settlement agreement. Terms of the agreement require the provision of approximately 6 acres of habitat for Caspian terns on East Sand Island and the prohibition of lethal take of adults or eggs on Rice Island. The settlement agreement also stipulates that the Service, Corps, and NMFS prepare an EIS to address salmon smolt predation and Caspian tern management in the Columbia River estuary.

Current Planning Effort

The Service, Corps, and NMFS are beginning the process of developing an EIS for Caspian tern management in the Columbia River estuary. The EIS will address the following issues: (1) Caspian tern predation on salmon smolts in the Columbia River estuary; (2) management of Caspian terns in the Pacific Coast/Western region, particularly the colony on East Sand Island in the Columbia River estuary; and (3) long-term ownership and management of East Sand Island in the Columbia River estuary.

Preliminary Scoping Issues

The following preliminary issues and questions have been identified for consideration in the EIS. Additional issues will be identified during public scoping.

1. Predation by the current Caspian tern colony on East Sand Island may have impacts on listed salmonids in the Columbia River estuary. Salmon experience high mortality rates as juveniles during the freshwater, estuary and early ocean stages, leading researchers to suggest that reducing mortality during the juvenile stage has the potential to increase population growth rates. NMFS is concerned over the increasing impact of avian predation on listed salmonids in the Columbia River estuary.

2. Is there a need to actively manage the Caspian tern colony on East Sand Island to ensure long-term conservation of this species in the Pacific Coast/Western region? Natural and human-caused events have reduced or eliminated habitat in the Pacific Coast/Western region; 8 of 15 historic colonies have been lost or abandoned in the last 20 years. Currently, about 24 colonies of Caspian terns are breeding in the region, with many concentrated on few remaining suitable sites. In particular, East Sand Island contains about 70 percent of the tern population in the region. This large colony may be vulnerable to catastrophic accidents in the Columbia River and stochastic events such as storms, predators, human disturbance, and disease.

3. Management actions may be required to protect salmonid stocks and the Caspian tern colony in the Columbia River estuary. Federal and State agencies, and nongovernmental organizations have agreed to explore the need and opportunity to restore, create, and enhance nesting habitat for Caspian terns in the Pacific Coast/Western region as one means to reduce and disperse the large tern colony on East Sand Island in the Columbia River estuary. The benefits of this action would reduce the level of tern predation on out-migrating Columbia River smolts and lower the vulnerability of a significant portion of the breeding Caspian terns in the Pacific Coast/Western region to catastrophic events.

Public Comments

Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above address. All comments received from individuals on Environmental Impact Statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations (40 CFR 1506.6(f)), and other Service and Departmental policy and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to contain the commentator's name, address, or other identifying information. Such comments may be submitted anonymously to the Service.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

Dated: March 7, 2003.

Rowan Gould,

Deputy Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 03–6898 Filed 4–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–ET; AA–6981]

Public Land Order No. 7560; Withdrawal of Public Lands for Haida Corporation; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 63.05 acres of public lands located within the Tongass National Forest from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, pursuant to section 10(a)(1) of the Haida Land Exchange Act of 1986, as amended. Any lands selected by the Haida Corporation shall remain withdrawn until they are conveyed. Any lands described herein that are not conveyed to the corporation will remain withdrawn as part of the Tongass National Forest, and will be subject to the terms and conditions of any other withdrawal or segregation of record.

EFFECTIVE DATE: April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

Order

By virtue of the authority vested in the Secretary of the Interior by section 10(a)(1) of the Haida Land Exchange Act of 1986, Pub. L. No. 99–664, as amended, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and are hereby reserved for selection by the Haida Corporation:

Copper River Meridian

Tongass Notional Forest

(a) Siginaka Islands (unsurveyed)

Twelve islands located within secs. 19, 20, 29, 30, 31 and 32 of T. 54 S., R. 63 E.

The areas described aggregate approximately 45.89 acres.

(b) Silver Point/Cobb Islands (unsurveyed).

Three islands located within sec. 18 of T. 56 S., R. 64 E.

The areas described aggregate approximately 17.16 acres.

The areas described in (a) and (b) above aggregate approximately 63.05 acres.

2. Prior to conveyance of any lands withdrawn by this order, the lands shall be subject to administration by the Department of Agriculture, Forest Service, under applicable public land laws governing the use of National Forest System land. Any lands described in this order not conveyed to the corporation, shall remain withdrawn as part of the Tongass National Forest and will be subject to the terms and conditions of any withdrawal or segregation of record.

Dated: March 11, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–8305 Filed 4–4–03; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 12960]

Public Land Order No. 7561; Revocation of Secretarial Order Dated June 10, 1931; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial Order in its entirety as it affects approximately 73 acres of National Forest System lands withdrawn to protect several water sources within the Tonto (formerly Crook) National Forest for recreational development. The Forest Service has determined that the withdrawal is no longer needed. This action will open the lands to mining.

EFFECTIVE DATE: May 7, 2003.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, 602–417–9437.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that the withdrawal is no longer needed and has requested the revocation.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated June 10, 1931, which withdrew National Forest System lands for several water sources within the Tonto (formerly Crook) National Forest for recreational development, is hereby revoked in its entirety.

2. At 10 a.m. on May 7, 2003, the lands will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: March 11, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–8306 Filed 4–4–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–025–1430–ES; G–03–0065]

Notice of Intent to amend the Three Rivers Resource Management Plan

AGENCY: Bureau of Land Management.

ACTION: Notice of intent to amend the Three Rivers Resource Management Plan (RMP).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to amend an RMP for the Three Rivers Resource Area. BLM intends to consider a land tenure adjustment allocation and associated land sale proposal, which would require amending an existing land use plan. The Three Rivers Resource Area covers the management of public land administered by the BLM in northern Harney County, Oregon. The plan amendment will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria can be submitted in writing to the address listed below for 30 days following the publication of this notice in the **Federal Register**. Comments will be considered in an Environmental Assessment (EA) and plan amendment to be prepared by an interdisciplinary team, which will analyze the impacts of this proposal and a reasonable range of alternatives. No public meetings or field trips are scheduled at this time, but could be arranged if there is sufficient public interest. Any such meetings will be announced in the Burns Times-Herald with a minimum of 15 days advance notice.

ADDRESSES: Written comments on the proposed amendment, classification, and conveyance should be sent to the BLM Three Rivers Resource Area Field Office, 28910 Highway 20 West, Hines, OR 97738. Existing planning documents and information will be mailed to all known interested parties, and are available at the above address during normal working hours or online at the Burns District Web site at *http://www.or.blm.gov/Burns* under "Planning Documents" or by phone at (541) 573–4400. Availability of planning documents will be announced in the Burns Times-Herald.

FOR FURTHER INFORMATION CONTACT: Skip Renchler, Realty Specialist, Three Rivers Resource Area, 28910 Highway 20 West, Hines, Oregon 97738.

SUPPLEMENTARY INFORMATION: The purpose of the amendment is to facilitate the conveyance of public land containing the Burns Butte Shooting Range to the Burns Butte Sportsman's Club (Club). The Club has leased the land pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*) since 1992, and has fully developed the range in accordance with their approved plan of development. They have now made application to purchase the land under the Act. The existing RMP identifies the land for retention (Land Tenure Zone 1). If the plan amendment is approved the land will be rezoned for disposal through appropriate sale authorities (Land Tenure Zone 3).

The following described land is the subject of this proposed plan amendment and is being examined for classification and conveyance under the Recreation and Public Purposes Act:

Willamette Meridian

T.23S., R.30E.

Sec. 21, NE¼, N½SE¼.

The land described above aggregates 240 acres in Harney County, Oregon.

When completed, the EA and, if appropriate, Finding of No Significant Impact, will be available for a 30-day comment period.

There are no known significant issues related to this project as a change in land ownership is not expected to alter existing land uses. The interdisciplinary team will include, at a minimum, specialists in land use planning, realty, recreation, wildlife biology, and hazardous materials.

Comments, including names and addresses of commentors, will be available for public review. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for inspection in their entirety.

Joan M. Suther,

Three Rivers Resource Area Field Manager.

[FR Doc. 03–8304 Filed 4–4–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: extension of a currently approved collection; Department Initial Report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 3, page 567 on January 6, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 6, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

Overview of this information collection:

(1) Type of Information Collection: Extension of a Currently Approved Collection.

(2) Title of the Form/Collection: Department Initial Report (DIR).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: none. The U.S. Department of Justice Office of Community Oriented Policing Services is sponsoring this information collection.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Recipients of the Funding Accelerated for Small Towns (FAST) program, the Accelerated Hiring, Education and Deployment (AHEAD) program, and/or Universal Hiring Program (UHP) grants. Other: Applicants of the current hiring grant program, UHP, or interested parties. Abstract: The DIR is a collection instrument that the COPS Office uses to establish a baseline to evaluate the progress of agencies awarded grants under the FAST, AHEAD, and UHP grant programs.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The DIR will be sent to approximately 500 grantees per year. The estimated amount of time required for the average respondent to complete and return the form is 1.5 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: There are 875 estimated burden hours associated with this collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20503.

Dated: April 2, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–8381 Filed 4–4–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Extension of A Currently Approved Collection, U.S. Official Order Forms for Schedules I and II Controlled Substances (Accountable Forms), Order Form Requisition.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encourage and will be accepted until June 6, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* U.S. Official Order Forms for Schedules I and II Controlled Substances (Accountable Forms), Requisition for Order Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA–222 and DEA–222a. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will asked or required to respond, as well as a brief abstract: Primary; Business or other for-profit. Other: Federal government, State, Local and Tribal Governments, Nonprofit Entities. Abstract: DEA–222 is used to transfer or purchase Schedule I and II controlled substances and data is needed to provide an audit of transfer and purchase. DEA–222a Requisition Form is used to obtain the DEA–222 Order Form. Respondents are DEA registrants eligible to handle these controlled substances.

(5) An estimate of the total number of respondents are the amount of time estimated for an average respondent to respond: It is estimated that there are a total of 100,870 respondents to this information collection. It is estimated to take 0.05 hours for a purchaser to requisition DEA Forms 222, using DEA Form 222a. It is estimated to take purchasers 0.333 hours to complete, annotate and file each order. It is estimated to take suppliers 0.333 hours to enter data regarding each order into a computer system, annotate the order and file it. It is estimated to take suppliers 9 hours a month to log and track DEA Forms 222 and prepare the monthly mailing of required information to DEA. It is estimated to take 0.25 hours to sign and execute each power of attorney letter. The annual average time spent to dependent on the number of orders completed and filled.

(6) An estimated of the total public burden (in hours) associated with the collection: The average annual public burden is 3.9 million hours, assuming a 6 percent annual growth rate in the number of orders.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC.

Dated: April 2, 2003.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 03–8386 Filed 4–4–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: reinstatement, with change, of a previously approved collection for which approval has expired; Police Corps Service Agreement.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until [June 6, 2003.]. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ms. I. Sausjord, The Office of Police Services, Office of Justice Programs, US Department of Justice, 810 Seventh Street NW., Washington, DC 20531, facsimile (202) 353–0598.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement, With Change, of a Previously Approved Collection for Which Approval has Expired.

(2) Title of the Form/Collection: Police Corps Service Agreement

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: none. The Office of Police Corps Services, Office of Justice Programs, US Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. The Police Corps Service Agreement is the written contract between the Office of Police Corps and Law Enforcement Education and Police Corps Participants to complete police corp training, and setting forth the participant's agreement to provide 4 years of law enforcement service at an accredited agency in exchange for scholarship or reimbursement funds for educational purposes.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 500 respondents will complete a 30 minute form.

(6) An estimate of the total public burden (in hours) associated with the collection: There are estimated 250 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington DC 20530.

Dated: April 1, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–8382 Filed 4–4–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; reinstatement, without change, of a previously approved collection for which approval has expired; Edward Byrne Memorial State and Local Law Enforcement Assistance Program.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 6, 2003.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Camille Cain, (202) 514–6015, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) Type of information collection: Reinstatement, Without change, of a Previously Approved Collection for Which Approval Has Expired.

(2) The title of the form/collection: Edward Byrne Memorial State and Local Law Enforcement Assistance Program.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: OJP Form 4061/6.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, Local or Tribal. Other: none. The Bureau of Justice Assistance is requesting the Office of Management and Budget approval for a collection of information from the State offices which administer formula grant awards under the provisions of Subtitle C-State and Local Law Enforcement Assistance Act of the Anti-Drug Abuse Act of 1988, as amended by the Crime Control and the Immigration Acts 1990. This guidance document consolidates guidance related to the Formula Grant Program which has been provided to the States, including guidance which has been issued under separate cover to address specific Congressional requirements.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that 398 respondents will complete an application for benefits.

(6) An estimate of the total public burden (in hours) associated with the collection: The estimated total annual burden hours associated with this information collection are 26,829.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530, or via facsimile at (202) 514–1590.

Dated: April 1, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–8383 Filed 4–4–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-day emergency notice of information collection under review; reinstatement, without change, of a previously approved collection for which approval has expired certification of compliance with the statutory eligibility requirements for tribal governments.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by April 18, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, (202) 395–7860, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Cathy Poston, Attorney/Advisor, Office on Violence Against Women, Office of Justice Programs, 810 7th Street, NW., Washington DC 20531, or facsimile at (202) 305–2589.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Certification of Compliance with the Statutory Eligibility Requirements for Tribal Governments.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* The Office of Management and Budget Number for the certification form is 1121/186. The Office on Violence Against Women, Office of Justice Programs, United States Department of Justice is sponsoring the collection.

(4) *Affected public who will be as or required to respond, as well as a brief abstract:* Primary: The affected public includes the approximately 100 grantees under the STOP Violence Against Indian Women Discretionary Grant Program. The STOP Violence Against Indian Women Discretionary Grants are designed to develop and strengthen tribal law enforcement and prosecutorial strategies to combat violent crimes against Indian women, as well as develop and strengthen victim services. The Violence Against Women Act of 1994 required that 4 percent of the amount appropriated each year for grants to combat violent crimes against women be made avialable for grants to Indian tribal governments. The Violence Against Women Act of 2000 increased this amount to 5 percent.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 100 grantees under the STOP Violence Against Indian Women Discretionary Grant Program less than one hour to complete the certification form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden to complete the certification form is less than 100 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy, Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 1, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–8384 Filed 4–4–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-day emergency notice of information collection under review; reinstatement, without change, of a previously approved collection for which approval has expired certification of compliance with the statutory eligibility requirements of the Violence Against Women Act.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by April 18, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, (202) 395–7860, Department of Justice Desk Officer, Washington, Dc 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Cathy Poston, Attorney/Advisor, Office on Violence Against Women, Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531, or facsimile at (202) 305–2589. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information.

Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* The Office of Management and Budget Number for the certification form is 1125/185. The Office on Violence Against Women, Office of Justice Programs, United States Department of Justice is sponsoring the collection.

(4) *Affected public who will be as or required to respond, as well as a brief abstract:* Primary: The affected public includes STOP formula grantees (50 states, the District of Columbia and five territories (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands)). The STOP Violence Against Women Formula Grant Program was authorized through the Violence Against Women Act of 1994 (VAWA 1994) and reauthorized and amended by the Violence Against Women Act of 2000 (VAWA 2000). Its purpose is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. It envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. The Department of Justice's Office on Violence Against Women (OVW) administers the STOP Formula Grant Program funds which must be distributed by STOP state administrators according to statutory formula (as amended by VAWA 2000).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take 56 respondents (STOP state administrators) less than one hour to complete the certification form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the certification form is less than 56 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy, Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 1, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–8385 Filed 4–4–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of March 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

None.

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,201; International Rectifier, Temecula, CA

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,350; Leviton Manufacturing Co., Inc., Hillsbrove Div., Warwick, RI

TA–W–50,994; Fishing Vessel (F/V) Teter Totter Clarks Point, AK

TA–W–50,782; EMCO Flow Systems, Longmont, CO

TA–W–50,722; Bickford Woodworking Products, Inc., Monmouth, ME

TA–W–50,694; Modern Molding Manufacturing, Inc., Pot Huron, MI

TA–W–50,476; Honeywell International, Coon Rapids, MN

TA–W–50,925 Annette Island Packing Co., Metlakatla, AK

TA–W–50,206; Inland Production Co., Inland Resources, Myton, UT

TA–W–51,166; Fishing Vessel (F/V) Double Eagle, Dillingham, AK

TA–W–50,900; Shrimping Vessel (S/V) Night Stalker, Homosassa, FL

TA–W–50,749; Alaska Commercial Fisheries Entry Commission Permit #SO4K61848], Douglas Island, AK

TA–W–50,844; Fishing Vessel (F/V), Jennifer Lynn, Togiak, AK

TA–W–50,842; Fishing Vessel (F/V) Anna Mae, Port Heiden, AK

TA–W–50,730; PPG Industries, Inc., Automotive Coating Div., Troy, MI

TA–W–50,517; Carl Zeiss IMT Corp., Minneapolis, MN

TA–W–50,459; Suss Microtec, Inc., Waterbury, VT

TA–W–50,441; Fishing Vessel (F/V), Slipstream, Dillingham, AK

TA–W–51,261; Fishing Vessel (F/V) Lonny A., Ekwok, AK

TA–W–51,207; General Electric Co., Industrial Systems, Mebane, NC
TA–W–51,239; Fishing Vessel (F/V) Pamela Dawn, Kodiak, AK
TA–W–51,186; State of Alaska Commercial Fisheries Entry Commission, Permit #64734J, Togiak, AK
TA–W–50,909; International Foam Products, Inc., Carlstadt, NJ
TA–W–50,995; Fishing Vessel (F/V) Kira, South Naknek, AK

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–50,772; Symbol Technologies, Inc., Detroit Service Center, Farmington Hills, MI
TA–W–51,048; Kayser-Roth Corp., Creedmoor Facility, Creedmoor, NC
TA–W–51,100 & A, B; HMH Transportation, Inc., Hazlehurst, GA, Forest Park, GA and Los Angeles, CA
TA–W–51,030; Esco Corp., Danville, IL
TA–W–51,012; Convergys Information Management Group, Inc., Cincinnati, OH
TA–W–50,129 & A; IBM Corp., Global Services Div., Piscataway, NJ and Middletown, NJ
TA–W–50,857; Centre State International Trucks, Inc., Mt. Pleasant, IA
TA–W–51,244; Teletech Holdings, Duluth, GA
TA–W–51,082; Center Partners, Yukon, OK
TA–W–51,071; Nova Chemicals, Inc., United States Operating Center, Styrenics Business Div., EPS Business Unit, Moon Township, PA
TA–W–51,037; Jabil Global Services, Inc., Tampa, FL

The investigation revealed that criterion (a)(2)(A) (I.A) (no employment declines) has been met.

TA–W–51,164; Fishing Vessel (F/V) Melody Lynn, Aleknagik, AK
TA–W–50,753; Fishing Vessel (F/V) Rainbow, Manokotak, AK
TA–W–51,168; Fishing Vessel (F/V) Vanessa, Kodiak, AK
TA–W–51,032; Wheeling-Pittsburgh Steel Corp., Allenport, PA
TA–W–50,903; Fishing Vessel (F/V) Samantha Kenny, Homosassa, FL
TA–W–50,863; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T60197A, Anchorage, AK
TA–W–50,697; State of Alaska Commercial Fisheries Entry Commission Permit #SO3T66854Jm Sand Point, AK
TA–W–50,392; Heckett Multiserv, Keppel, PA
TA–W–51,275; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T65905, Dillingham, AK
TA–W–51,162; Fishing Vessel (F/V), J.C., Dillingham, AK

The investigation revealed that criterion (a)(2)(A) (I.B) (sales or production, or both did not decline) and (a)(2)(A) (II.B) (no shift in production to a foreign country) have not been met.

TA–W–50,679; TRS Ceramics, Inc., State College, PA
TA–W–50,959; Harper Brush Works, Fairfield, IA
TA–W–51,185; Fishing Vessel North Runner, Egegik, AK

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a)(2)(B) (No shift in production to a foreign country) have not been met.

TA–W–50,859; Vishay Intertechnology, Vishay Cera-Mite Div., Oconto Falls, WI

The investigation revealed that criterion (a)(2)(A) (I.C) (increased imports) and (a)(2)(B) (II.C) (has shifted production to a country not under the free trade agreement within US) have not been met.

TA–W–50,217; Universal Instrument Corp., Corporate Operations Div., Binghamton, NY

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,180; Hy-Lift, LLC, Muskegon, MI: September 17, 2001.
TA–W–42,360; Precision Twist Drill Co., Rhinelander, WI: September 16, 2001.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–51,126; Kelly Industries, Inc., Eighty Four, PA: March 5, 2002.
TA–W–50,442; Dynamik Tool and Die, Dandridge, TN: December 6, 2001.
TA–W–50,470; Hitachi High Technologies America, Inc., Life Sciences Division, San Jose, CA: December 19, 2001.
TA–W–50,780; Piedmont Carving Co., Inc., Thomasville, NC: January 31, 2002.
TA–W–50,833; Caraustar Industries, Carolina Concerting, Northern Mill Div., Fayetteville, NC: February 1, 2002.
TA–W–50,802; Applied Micro Circuits Corp., San Diego, CA: January 21, 2002.
TA–W–50,850; PTC Alliance Midwest Manufacturing, Chicago Heights, IL: February 5, 2002.
TA–W–51,083; Fernbrook and Co., Palmerton, PA: March 6, 2002.
TA–W–50,520; Omnitronics, LLC, Conneaut, OH: December 29, 2001.
TA–W–51,182; Ball Corp., Metal Food Container Operation, Blytheville, AR: March 14, 2002.
TA–W–51,112; OSRAM Sylvania, General Lighting Div., Maybrook, NY: February 21, 2002.
TA–W–51,031; National Presto Industries, Inc., Eau Claire, WI: February 24, 2002.
TA–W–50,980; International Paper Co., Chemical Cellulose Div., Natchez, MS: February 7, 2002.
TA–W–50,976; Madeleine Manufacturing Co., Inc., Union, SC: February 15, 2002.
TA–W–50,890; Calapooia Valley Mushrooms, Brownsville, OR: February 7, 2002.
TA–W–50,886; Dana Brake Parts, Inc., Litchfield, IL: February 11, 2002.
TA–W–50,832 A; Ionics, Inc., Fabrication Products Div., Bridgeville, PA and Canonsburg, PA: February 5, 2002.
TA–W–50,708; Peace Industries, Ltd, Ace Fastener Div., Rolling Meadows, IL: January 27, 2002.
TA–W–50,610; Warnaco, Inc., Intimate Apparel Div., Thomasville, GA: January 13, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–50,965; Crescent Cardboard Co., LLC, Lee MA: February 19, 2002.
TA–W–50,367; Autoliv ASP, Inc., Indianapolis, IN: December 12, 2001.
TA–W–50,671; Motorola Computer Group, a wholly-owned subsidiary of Motorola, Inc., Tempe, AZ: January 20, 2002.
TA–W–50,829; Engineered Medical Systems, Inc., including leased workers of Spherion, Indianapolis, IN: February 6, 2002.
TA–W–50,864; Fishing Vessel (F/V) Jenny O. Dawn, Naknek, AK: February 4, 2002.
TA–W–50,888; Go/Dan Industries, Inc., Div. of Transpro, Inc., Buffalo, NY: February 12, 2002.
TA–W–50,798; Overseas Manufacturing Systems of America, Inc., El Paso, TX: January 16, 2002.
TA–W–50,728; Delco Remy America, Inc., Anderson, IN: October 17, 2002.
TA–W–51,237; Fishing Vessel Sea Pride, Everett, WA: March 15, 2002.
TA–W–51,235; Fishing Vessel (F/V) Halowawa, Ketchikan, AK: March 12, 2002.
TA–W–51,225; Compton Corp., Naugatuck Facility, Naugatuck, CT: March 13, 2002.
TA–W–51,155; Buckbee-Mears St. Paul, a Div. of BMC, Inc., St. Paul, MN: March 10, 2002.
TA–W–51,147; Manitowoc Boom Trucks, Inc., d/b/a Manitex, York, PA: March 10, 2002.
TA–W–51,143; Tyco Healthcare Retail Group, a Div. of Tyco Healthcare, including leased workers of Manpower and Adecco, Harmony, PA: March 13, 2002.
TA–W–51,135; Advance USA LLC, New Stanton, PA: March 12, 2002.
TA–W–51,124; Pass and Seymour, Compression Molding Group, a subsidiary of Legrand, including leased workers of The Holland Group, Concord, NC: March 6, 2002.
TA–W–51,122; Emerson Appliance Controls, Frankort, IN: March 5, 2002.
TA–W–51,065; GE Interlogix, North St. Paul, MN: March 4, 2002.
TA–W–50,982; Tarkett, Inc., Sample Department, a subsidiary of Domco Tarket, Inc., including leased workers of Hobart-West and Adecco, Newburgh, NY: February 13, 2002.
TA–W–50,882; Pirelli Power and Cable Systems LLC, Energy Div., Colusa, CA: February 3, 2002.
TA–W–50893; Best Manufacturing Group LLC, Griffin, GA: February 10, 2002.
TA–W–50,873; Scantibodies Laboratory, Inc., Pregnancy Test Kit/PTK Quality Control Department, Santee, CA: January 29, 2002.
TA–W–50,871; Jabil Circuit, Inc., St. Petersburg, FL: February 10, 2002.
TA–W–50,851; Sentex Systems, a Div. of Link Door Controls, Chatsworth, CA: January 30, 2002.
TA–W–50,906; ArvinMeritor, Inc., including leased workers of Randstad Staffing, Gordonsville, TN: March 11, 2002.
TA–W–50,824; Formtech Enterprises, Inc., Quick Plastics Div., including leased workers of Kelly Services, Inc., Jackson, MI: February 6, 2002.
TA–W–50,816; Nevamar Co., High Pressure Laminate Div., Hampton, SC: February 4, 2002.
TA–W–50,785; RMI Titanium Co., Niles, OH: January 17, 2002.
TA–W–50,766; Vishay Sprague Sanford, Inc., Sanford, ME: April 4, 2003.
TA–W–50,293; Mitsubishi Electric Automation, Inc., Vernon Hills, IL: December 9, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of March 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–07626; Maidenform, Inc., Jacksonville, FL
NAFTA–TAA–06288; Regal Plastics, LLC, Roseville, MI

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

None.

Affirmative Determinations NAFTA–TAA

None.

I hereby certify that the aforementioned determinations were issued during the month of March 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 28, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8338 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,492]

Adventure Travel, Iron Mountain, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application received on March 3, 2003, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Adventure Travel, Iron Mountain, Michigan was signed on February 7, 2003, and will soon be published in the **Federal Register**.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of a worker at Adventure Travel, Iron Mountain, Michigan engaged in activities related to travel services. The petition was denied because the petitioning worker did not produce an article within the meaning of section 222(3) of the Act.

The petitioner appears to allege that "the 'article' definitions from the U.S.

Code Collections" support the argument that travel services constitute production. The petitioner further states that "as you can see, the code and hard data evidence I provided with my petition are synonymous." When the petitioner was contacted in regard to what was meant by "US Code Collections", she clarified that she meant section 222(3) of the Trade Act of 1974.

Of the several attachments sent with the original petition, the first is a letter written by the petitioner stating why the worker produced a product. The petitioner states that subject firm services required "skills and tools" to produce. When contacted for further clarification, the petitioner stated that the complexity of the work involved, including the fact that multiple airline carrier inventories were consulted to produce a single ticket, deserved consideration of the work as production.

The sophistication of the work involved is not an issue in ascertaining whether the petitioning workers are eligible for trade adjustment assistance, but rather only whether they produced an article within the meaning of section 222(3) of the Trade Act of 1974.

In the letter attached to the petition, the petitioner also asserts that the tickets produced by the subject firm are "tangible" and states that she "has boxes and files of these very real copies of (travel) contracts".

The fact that the terms of travel contract services performed by the petitioner are printed on paper does not constitute production of an article within the meaning of section 222(3).

The second attachment appears to be the first page of an e-mail from the "Chairman of Congressional Travel Industry Caucus" to Attorney General Ashcroft, with a section circled alleging that "major carriers" are engaging in unfair taxation and commission standards regarding U.S. and Canadian travel agents relative to "foreign" travel agents.

The information in this attachment has no bearing on the reason for denying the petitioning worker; an article was not produced within the meaning of section 222(3) of the Trade Act.

The third attachment is an untitled single page that appears to be printed from the internet. At the top of the page there is a table with the heading "NAFTA by Country Trade Comparisons, 1992." The petitioner has circled a paragraph below this that suggests that there is a downward trend in U.S. production and a corresponding increase in U.S. service industries.

This information is irrelevant to the criteria used to assess eligibility for trade adjustment assistance.

The next attachment is titled "Upheaval in Travel Distribution: Impact on Consumers and Travel Agents" and appears to be an excerpt of a study authored by a congressional commission. On the first page, a section has been highlighted by the petitioner that describes the mission of the study to establish "whether there are impediments to obtaining information about the airline industry's services and products." It seems to be the intent of the petitioner to assert that this congressional commission may be referring to the "airline contracts" (as noted on petition) processed by the petitioner as products, and that, as a result, the worker should be considered eligible for trade adjustment assistance. In another section circled by the petitioner, a section notes that "internet technology is not going to save consumers from airline domination of retailing." Again, the petitioner appears to believe that commission's use of words (specifically, retailing) merit the acknowledgement of airline tickets as products.

In fact, the processing of contracts and/or tickets does not constitute production within the meaning of section 222(3).

Upon further review, the Department has determined that, even if the petitioning worker were considered a production worker, criterion (1) has not been met. Section 222 of the Trade Act defines an eligible worker "group" as "three or more workers in a firm or an appropriate subdivision thereof."

The investigation revealed that the subject firm is owner-operated and there are no employees of the firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 20th day of March 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8357 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,320]

American Bag Corporation, Stearns Plant, Stearns, KY; Notice of Negative Determination Regarding Application for Reconsideration

By application of January 23, 2003, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on January 3, 2003, and published in the **Federal Register** on February 4, 2003 (67 FR 5654).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at American Bag Corporation, Stearns Plant, Stearns, Kentucky engaged in the production of airbags, was denied because criterion (1) was not met. Employment did not decline in the relevant period, but in fact increased from January through November of 2002 relative to the same time period in 2001.

In the request for reconsideration, the company official confirms that there were no employment declines in the relevant period. However, he also asserts that the reason for this was that workers laid off from the Stearns facility were replaced with workers from American Bag Corporation, Winfield, Kentucky (workers at this facility are currently certified for trade adjustment assistance through August 29, 2003). The official concludes that, on a corporate wide level, employment levels for workers engaged in production of airbags did decline in the relevant period.

When assessing eligibility for trade adjustment assistance, the Department exclusively considers the relevant employment data for the facility where the petitioning worker group was employed. Thus corporate employment levels, in this context, are irrelevant. As employment levels at the subject facility did not decline in the relevant period, criterion (1) has not been met.

The company official also asserts that the major customer of the subject firm imported competitive airbags.

In order for import data to be considered, employment declines must have occurred at the subject facility in the relevant period. As criterion (1) has not been met for the petitioning worker group, imports are irrelevant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 19th day of March 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8355 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,904]

B.J. Everett, Old Town, FL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 14, 2003, in response to a petition filed by a company official on behalf of workers at B.J. Everett, Old Town, Florida.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed in Washington, DC, this 26th day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8341 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,222]

Bechtel Jacobs Company LLC, Piketon, OH; Notice of Negative Determination Regarding Application for Reconsideration

By application received on August 15, 2002, an attorney acting on behalf of the Paper, Allied-Industrial, Chemical and Energy International Union, Local 5–689, requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Bechtel Jacobs Company LLC, Piketon, Ohio was signed on July 1, 2002, and published in the **Federal Register** on July 18, 2002 (67 FR 47400).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Bechtel Jacobs Company LLC, Piketon, Ohio engaged in activities related to the environmental management services and site restoration activities. The petition was denied because the petitioning workers did not produce an article within the meaning of Section 222(3) of the Act.

The union alleges that laid off workers at Bechtel Jacobs Company LLC, Piketon, Ohio were in direct support of United States Enrichment Corporation (USEC), which is currently TAA certified. The union proceeds to assert that, because the union secured "bumping" rights for laid-off workers of USEC (allowing them seniority rights in obtaining positions with Bechtel Jacobs), this tie to the TAA certified firm validates the petitioning workers' eligibility. The union also asserts that, as all union-represented employees of Bechtel Jacobs are fomer employees of USEC, the import impact on the certified firm has a direct bearing on the petitioning worker group.

There is no legal affiliation between Bechtel Jacobs and the TAA certified firm. In fact, the union lawyer attests to this, stating that the two companies are "separate legal entities". The existence of bumping rights (as established by a union) does not meet the connection required for petitioning worker eligibility based on affiliation to a TAA certified firm.

The petitioner further asserts that, because workers at Bechtel Jacobs are entirely reliant on production levels at USEC, the subject firm workers should be certified.

The fact that service workers are dependant on the production of a trade certified firm does not automatically make the service workers eligible for trade adjustment assistance. Before service workers can be considered eligible for TAA, they must be in direct support of an affiliated TAA certified facility. This is not the case for the Bechtel Jacobs LLC.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are under certification for TAA.

The petitioner appears to assert that workers laid off from Bechtel Jacobs are being denied eligibility for TAA because they chose to be employed, because if they had refused jobs at Bechtel Jacobs following their lay off from USEC, they would be considered eligible for TAA benefits.

Worker eligibility that is determined by layoffs that occurred at a firm that precedes the last place of employment is determined by the state on an individual basis to determine if the worker(s) meet the various factors under the existing certification during the relevant period.

Finally, the petitioner alleges that in a previous TAA certification of USEC (TA–W–37, 599A), a petition on behalf of workers at Bechtel Jacobs was withdrawn at the request of the Department. The petitioner further asserts that this request for withdrawal was due to the fact that there was already an existing TAA certification on behalf of workers at USEC. In essence, the union asserts that they were informed by the Department that workers of Bechtel Jacobs would be considered part of the petitioning worker group at USEC. As a result of this precedent, the petitioner concludes that the Department itself identified a connection between Bechtel Jacobs and USEC that established grounds for

petitioning worker eligibility for TAA benefits in the current investigation.

The TAA termination of the previous case (TA–W–39, 052) relates to the discovery that, during the verification process, it was revealed that the Bechtel Jacobs LLC workers were employed by USEC and terminated during the relevant period of the USEC TAA certification and thus could be considered eligible under that certification. Since the workers were impacted at USEC during the relevant period, those workers may qualify as terminated workers and thus meet the eligibility requirements as laid off workers of USEC during the relevant period. Thus the decision was made by the Union to withdraw the petition at that time since the workers could qualify under the USEC TAA certification.

Therefore, the petitioning group of workers transfer from USEC to a new company (Bechtel Jacobs) doesn't qualify a TAA certification under the name of Bechtel Jacobs. Bechtel Jacobs workers who were eligible for trade adjustment assistance in the USEC certification met eligibility requirements only because they had been separated from USEC, and thus the state was able to qualify the Bechtel Jacobs workers as separated USEC employees.

As already indicated, since the petitioning worker group in this investigation was not engaged in production, but performed a service (environmental management services and site restoration activities) for an unaffiliated firm, they do not qualify for eligibility under the Trade Act of 1974.

Conclusion

In conclusion, the workers at the subject firm did not produce an article within the meaning of Section 222(3) of the Trade Act of 1974.

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of March, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8348 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,386]

Burelbach Industries, Incorporated, Rickreal, OR; Notice of Negative Determination Regarding Application for Reconsideration

By application of February 10, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on January 13, 2003, and published in the **Federal Register** on February 6, 2003 (68 FR 6211).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Burelbach Industries, Inc., Rickreal, Oregon was denied because the "upstream supplier" group eligibility requirement of section 222(b) of the Trade Act of 1974, as amended, was not met. The "upstream supplier" requirement is fulfilled when the workers' firm (or subdivision) is a supplier to a firm that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification. The workers of Burelbach Industries, Inc., Rickreal, Oregon did not act as an upstream supplier to a trade certified firm.

The petitioner appears to allege that he is applying for trade adjustment assistance on behalf of workers that are import impacted on primary and secondary grounds.

When addressing the issue of import impact, the Department considers imports of products "like or directly competitive" in the case of primary impacted firms, or whether the subject firm supplied a component in a product produced by a trade certified firm in the case of secondary impact. As neither the subject firm nor its major declining customers reported imports like or directly competitive with the sawmill equipment produced at the subject firm, primary import impact did not occur. As the subject firm did not produce a component used in the products of their customers, the allegation of secondary import impact is equally invalid.

The petitioner notes that several of the subject firm's customers have been certified for trade adjustment assistance due to import impact and thus appears to imply that the petitioning workers should be eligible for TAA.

As already noted, the declining customers of the subject firm do not import products like or directly competitive with those produced at the subject firm. Further, the subject firm produces sawmill equipment that is used to process timber, but as the equipment does not form a component part of the products produced at the customer firms, subject firm workers do not constitute upstream suppliers of trade certified firms.

The petitioner provides a list of other trade certified firms, claiming that these firms produced the same type of products as the subject firm, and thus appears to allege that the petitioning workers in this case should also be certified.

None of the three firms listed by the petitioner produce products like or directly competitive with the sawmill machinery produced by the subject firm. Of the trade certified firms listed, two were certified on the basis of increased company imports of products like or directly competitive with those produced at the subject firms. In the case of the other firm, workers were certified on the basis of increased customer imports of products like or directly competitive with those produced at the subject firm. In contrast to the trade certified firms described above, neither Burlebach Industries nor its customers reported imports of competitive sawmill machinery.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 25th day of March, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8356 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,007]

Cedar Creek Fibers, LLC, Formerly Wellman, Inc., Fayetteville, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 27, 2003, in response to a worker petition filed on behalf of workers at Cedar Creek Fibers, LLC, formerly Wellman, Inc., Fayetteville, North Carolina.

The petitioning group of workers is covered by an active certification issued on September 19, 2002 (TA–W–41,409). Consequently, the investigation has been terminated.

Signed at Washington, DC this 25th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8345 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,184]

Corning Cable Systems, LLC, Business Operation Services—OptiCon Network Manager, Hickory, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked January 2, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Corning Cable Systems, LLC, Business Operation Services—OptiCon Network Manager, Hickory, North Carolina was signed on December 20, 2002, and published in the **Federal Register** on January 9, 2003 (67 FR 1199).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Corning Cable Systems, LLC, Business Operation Services—OptiCon Network Manager, Hickory, North Carolina engaged in activities related to data entry. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

The petitioner alleges that the reason subject firm workers were listed in the **Federal Register** as having been denied was on the basis "that criterion (2) has not been met * * * the workers firm (or subdivision) is not a supplier or downstream producer for trade affected companies."

In fact, the petitioner mistakenly quotes the paragraph below the listing of TA–W–50,184, when the correct paragraph citing the reason for the negative determination was above the listing. The relevant paragraph reads as follows: "the workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974."

The petitioner alleges that "several other groups from the same company and same town got coverage" and that, on that basis, the petitioning worker group should also be considered eligible. The petitioner also appears to allege that, because the company marketed various products and services together as a "Total Solutions" package, all worker groups should be equally eligible.

In fact, only one other worker group has been TAA and NAFTA–TAA certified for Corning Cable Systems in Hickory, North Carolina. This worker group produced cable assembly hardware, which, unlike the data entry performed by the petitioning worker group, constitutes a product within the meaning of section 222 of the Trade Act. Further, the subject firm's marketing strategy in selling products and services in a package does not create the affiliation required for service in support of production. Service workers must perform a function that directly supports the production of the certified worker group in order to be eligible for trade adjustment assistance. In this case, the petitioning worker group performs data entry for the purpose of creating independent databases, and do not contribute to the production of cable assembly hardware of the worker group certified at the same facility.

The petitioner also asserts that the subject firm did not correctly address the petitioning worker group's function in describing their job duties as "data entry", implying that there were much more complex functions involved, and that the description does not properly take into account the "technological knowledge and skills" of the petitioning workers.

The sophistication of the work involved is not an issue in ascertaining whether the petitioning workers are eligible for trade adjustment assistance, but rather only whether they produced an article within the meaning of section 222(3) of the Trade Act of 1974.

The petitioner appears to allege that, because petitioning workers "built virtual networks for fiber management," their work should be considered production.

Virtual networks are not considered production of an article within the meaning of section 222(3) of the Trade Act.

The petitioner appears to allege that, on the basis that that petitioning workers produced an article within the meaning of a dictionary definition provided in the request for reconsideration, the worker group should be eligible for trade adjustment assistance.

Petitioning workers do not produce an "article" within the meaning of the Trade Act of 1974. Databases are not tangible commodities, that is, marketable products, and they are not listed on the Harmonized Tariff Schedule of the United States (HTS), published by the United States International Trade Commission (USITC), Office of Tariff Affairs and Trade Agreements, which describes all articles imported to or exported from the United States. Furthermore, when a Nomenclature Analyst of the USITC was contacted in regards to whether virtual networks and databases provided by subject firm workers fit into any existing HTS basket categories, the Department was informed that no such categories exist.

In addition, the Trade Adjustment Assistance (TAA) program was established to help workers who produce articles and who lose their jobs as a result of trade agreements. Throughout the Trade Act an article is often referenced as something that can

be subject to a duty. To be subject to a duty on a tariff schedule an article will have a value that makes it marketable, fungible and interchangeable for commercial purposes. But, although a wide variety of tangible products are described as articles and characterized as dutiable in the HTS, informational products that could historically be sent in letter form and that can currently be electronically transmitted, are not listed in the HTS. Such products are not the type of employment work products that customs officials inspect and that the TAA program was generally designed to address.

The petitioner also argues that the petitioning worker group did not simply "provide services", asserting that, because the data entry took the form of databases recorded on CD–ROMs, they "handed over goods."

Electronically generated information is not considered production in the context of assessing worker group eligibility for trade adjustment assistance. The fact that the device used to record electronically generated information processed by the petitioning workers has a physical form does not qualify the petitioning worker group as having produced an article.

The petitioner also alleges that imports impacted layoffs, asserting that because workers lost their jobs due to a transfer of job functions to India, petitioning workers should be considered import impacted.

The petitioning worker group is not considered to have engaged in production, thus any foreign transfer of their job duties is irrelevant within the context of eligibility for trade adjustment assistance.

The petitioner appears to assert that the Division of Trade Adjustment Assistance is "supposed to look at each case individually" in assessing the eligibility of worker groups for TAA. The petitioner also appears to suggest that, because the workers performed services that involved "newer technology", the meaning of "article" as defined in the Trade Act is outdated, and therefore irrelevant.

In fact, the eligibility of petitioning worker groups is considered exclusively within the context of section 222 of the Trade Act.

In conclusion, the workers at the subject firm did not produce an article within the meaning of section 222(3) of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 17th day of March, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8354 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,170]

Erasteel, Inc., McKeesport, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of February 6, 2003, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on January 24, 2003, and published in the **Federal Register** on February 24, 2003 (67 FR 8622).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Erasteel, Inc., McKeesport, Pennsylvania was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported cold drawn steel.

The petitioners state that their major customer imports high speed drill bits and blanks, and that these items are "like or directly competitive with articles produced by" subject firm workers. In a clarifying conversation with one of the petitioners, he stated that the steel produced at the subject firm was processed in such a way that its only possible end use was to form it into the drill bits and blanks produced by the customer.

The term "like or directly competitive" is drawn from a paragraph in section 222 of the Trade Act. In this paragraph, a "like" competitive product is described as an article which is "substantially identical in inherent or intrinsic characteristics." A "competitive product" is described as an article which "is substantially equivalent for commercial purposes." As the subject firm produces drawn steel and not drills bits or blanks, the subject firm products are not "like" or "identical" to potential customer imports of drill bits and blanks. Further, the drawn steel cannot be used for the same commercial purposes as the finished drill bits and blanks. Thus subject firm products are not "like or directly" competitive with alleged customer imports as stated in section 222(3) of the Trade Act.

The petitioners also allege that the subject firm imported competitive products in the relevant period. In an attempt to clarify this allegation, a petitioner was contacted. In response to a request for clarification, the petitioner stated that the subject firm briefly imported semi-finished steel coils for further processing at the subject firm; specifically, coils were imported that were sized to thinner dimensions at the subject firm. However, the subject firm stopped importing this semi-finished product prior to petitioner layoffs, according to the petitioner.

As described by the petitioner, the steel imported is not "like or directly" competitive with the steel produced by the subject firm. Further, a company official was contacted in regard to this allegation. The official clearly stated that the company did not import competitive drawn and ground bars. In response to the issue of imported coils, the official stated that the company only imported for a very brief period and that these imports did not prompt layoffs.

Finally, the petitioners acknowledge that a domestic shift in production caused the closure of the McKeesport facility.

However, they also assert that the need for Erasteel to consolidate their production was a direct result of business lost from their major customer, and that this customer was importing competitive products.

As has already been established, the major declining customer did not import "like or directly" competitive products.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of March, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8353 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,986]

F.L. Smithe Machine Company, Inc., Duncanville, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 26, 2003, in response to a worker petition filed by the International Association of Machinists and Aerospace Workers, Local Lodge 2348, on behalf of workers at F.L. Smithe Machine Company, Inc., Duncanville, Pennsylvania.

The petitioning group of workers is covered by an active certification issued on April 6, 2001 (TA–W–38,752). Consequently, the investigation has been terminated.

Signed at Washington, DC this 24th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8343 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,907]

Frametome Connectors, Inc., Communications, Data and Consumer Division, Fiber Optics Group, a Member of the Areva Group, Etters, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 14, 2003 in response to a petition filed on behalf of workers at Frametome Connectors USA, Inc., Communications, Data and Consumer Division, Fiber Optics Group, the Areva Group, Etters, Pennsylvania.

The petitioning group of workers is covered by an active certification issued on March 26, 2003 and which remains in effect (TA–W–50,122). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 26th day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8342 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,285]

Honeywell International, ACS-Control Products, Albuquerque, NM; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 24, 2003 in response to a petition filed by a company official on behalf of workers at Honeywell International, ACS-Control Products, Albuquerque, New Mexico.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC this 25th day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8347 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,256]

Jackson Sewing Center, Madisonville, TN; Notice of Negative Determination on Reconsideration

On February 19, 2003, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice will soon be published in the **Federal Register**.

The Department initially denied the workers of Jackson Sewing Center, Madisonville, Tennessee because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. Imports of sewn furniture parts did not contribute importantly to the layoffs at the subject plant. The workers at the subject firm were engaged in employment related to the manufacture (sewing) of upholstered furniture parts. The sewn articles were sent to other affiliated plants to be incorporated into upholstered furniture.

The petitioner asserts that company sales were down and thus the company was attempting to cut costs by importing Chinese products (cut-sewn fabric for furniture) competitive with those produced by the subject plant. The petitioner further alleges that, during September 2002, some "parts" from China were seen at an affiliated plant. The petitioner also supplied style numbers believed to be imported from China.

On reconsideration, the Department contacted the company for further clarification concerning company imports of cut-sewn fabric for upholstered furniture. In response to the style numbers supplied by the petitioner, the company indicated that, with the exception of one style number, they did not import these products. The one style number imported (7866) constituted a negligible amount in relation to production at the subject firm and the company further indicated this was a one time event during 2002, and in fact was not even produced at the subject firm, but rather at an affiliated facility. (However, the subject plant had the capability to produce that style.)

The company also reported that they imported cut-sewn leather furniture parts and tables but that they did not produce cut-sewn leather furniture parts and tables. In any event, the amount of imported cut-sewn leather furniture parts was extremely small in relation to production at the Madisonville plant during January through September 2002. In fact, the imported pre-cut and sewn leather covers were purchased from manufacturers that specialize in producing these products. The company indicated that the investment in equipment and training would far exceed any profitability they could expect in such a program.

The company also indicated that they imported tables during the relevant period. However, since the worker group does not produce this product,

imported tables are not "like or directly" competitive with what the subject plant produced (cut-sewn fabric for furniture parts) and thus does not meet the eligibility requirements of Section 222(3) of the Trade Act of 1974.

The plant ships all cut-sewn fabric parts for furniture produced at the subject plant to other affiliated plants that incorporate the sewn parts into furniture; therefore, a customer survey is not relevant to this investigation.

In summary, the sum of cut-sewn fabric and one style of cut-sewn leather furniture parts imported was extremely small amount relative to what the subject plant produced during the relevant period, and therefore did not contribute importantly to layoffs at the subject plant.

The company also indicated that from 2001 to 2002 the styles of furniture have changed and thus require a smaller number of cut sewn furniture parts to produce a piece of furniture.

The company further indicated that the Madisonville plant was an extension for the sewing operation of an affiliated domestic facility. The subject plant was opened several years ago when additional sewing capacity was needed at the affiliated plant, since the labor market was extremely tight. Since less sewing is now required the company decided to shift the sewing operation back to the affiliated plant.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Jackson Sewing Center, Madisonville, Tennessee.

Signed at Washington, DC this 21st day of March 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8350 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,391]

Motorola, Inc., Deer Park, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 19, 2002, in response to a petition filed on behalf of workers at Motorola, Inc., Deer Park, Illinois.

The Department has amended an active certification for workers of Motorola, Inc., Global Telecom Solutions Sector (GTSS) formerly Network Solutions Sector (NSS) (TA–W–40,501), to include the petitioning group of workers.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 17th day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8340 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,311]

New England Iron, LLC, Springfield, MA; Notice of Negative Determination Regarding Application for Reconsideration

By application February 6, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on December 13, 2002, and published in the **Federal Register** on January 9, 2003 (67 FR 1201).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of New England Iron, LLC, Springfield, Massachusetts was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported grey iron castings. The company did not import grey iron castings in the relevant period.

The petitioner asserts that the subject firm was a tier (2) supplier to a tier (1) company that in turn machined the castings and sold them to an automaker. The petitioner further alleges that this automaker is currently having these machined castings made in Brazil.

In assessing the eligibility of a petitioning worker group for trade adjustment assistance, the Department considers imports that are "like or directly" competitive to those produced by the petitioning worker group. As the grey iron castings that are allegedly imported are subject to further processing (*e.g.*, machined), they would not be considered "like or directly" competitive with the grey iron castings produced by the subject firm, and thus do not meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC this 19th day of March 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8351 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,001 and TA–W–50,001A]

Reliant Bolt, Inc., Bedford Park, IL; Reliant Fastener, Rock Falls, IL; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on December 10, 2002, applicable to workers of Reliant Bolt, Inc., Bedford Park, Illinois. The notice was published in the **Federal Register** on December 26, 2002 (67 FR 78817).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Information shows that Reliant Fastener, Rock Falls, Illinois is a sister facility of Reliant Bolt, Inc. All workers were separated at Reliant Fastener when the facility closed in November 2002. The workers were engaged in the production of fasteners for industrial and automobile industries.

Accordingly, the Department is amending the certification to include workers of Reliant Fastener, Rock Falls, Illinois.

The amended notice applicable to TA–W–50,001 is hereby issued as follows:

"All workers of Reliant Bolt, Inc., Bedford Park, Illinois (TA–W–50,001) and all workers of Reliant Fastener, Rock Falls, Illinois (TA–W–50,001A), who became totally or partially separated from employment on or after November 4, 2001, through December 10, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 5th day of February 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8339 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,989]

Sara Lee Bakery Group, Eau Claire, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 26, 2003 in response to a worker petition filed by Bakery, Confectionery, Tobacco Workers and Grain Millers Union, Twin Cities Local 22 on behalf of workers at Sara Lee Bakery Group, Eau Claire, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 25th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8344 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,047]

Search Resources, Workers Employed at Blandin Paper Co., Grand Rapids, MN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 4, 2003 in response to a worker petition which was filed on behalf of workers of Search Resources employed at Blandin Paper Company, Grand Rapids, Minnesota.

An active certification covering the petitioning group of workers is already in effect (TA–W–50,598, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8346 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,074]

Summit Manufacturing, LLC, West Hazelton, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of February 25, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on February 3, 2003 and published in the **Federal Register** on February 24, 2003 (68 FR 8619).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Summit Manufacturing, LLC, West Hazelton, Pennsylvania engaged in the production of steel telecommunications poles, steel pole modifications, cellular poles, sign and lighting poles, and flag poles was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customers regarding their purchases of steel telecommunications poles, steel pole modifications, cellular poles, sign and lighting poles, and flag poles in 2000, 2001 and 2002. None of the respondents reported increasing imports while decreasing purchases from the subject firm during the relevant period. Imports did not contribute importantly to layoffs at the subject firm.

The petitioner alleges that the imports of steel, especially from Canada increased from 2001 to 2002.

Imports of steel are not "like or directly competitive" with the products produced (steel telecommunications poles, steel pole modifications, cellular poles, sign and lighting poles, and flag poles) by the subject plant, thus this allegation is not relevant to the investigation.

The petitioner's request for reconsideration further states that the investigation took longer than the 40 days required to complete the investigation and, because of this, the workers of the subject plant should be certified.

The Department makes every effort to conduct a TAA investigation within the prescribed 40 day period. A review of the initial investigation shows that the responses by the company and customers took longer than normal. The Department bases its findings on facts after it receives all requested data necessary in order to make an accurate decision, regardless of timeframes.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 18th day of March 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8352 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,889]

United Container Machinery, Glen Arm, MD; Notice of Negative Determination Regarding Application for Reconsideration

By application January 1, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on November 29, 2002, and published in the **Federal Register** on December 23, 2002 (67 FR 78257).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of United Container Machinery, Glen Arm, Maryland was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported machinery for corrugated boxes.

The petitioner states that the subject firm workers were previously certified for trade adjustment assistance in 1998, and thus appears to allege that they should be considered eligible currently.

The Department considers import impact in terms of the relevant period of the current investigation; therefore import impact as established in a previous investigation that is outside the relevant period is irrelevant.

The petitioner also states that the company did not file a new petition on behalf of subject firm workers when the previous certification expired.

This fact has no bearing on eligibility of subject firm workers for trade adjustment assistance.

The petitioner asserts that an affiliate of the subject firm imports competitive products from Hungary.

In response to this allegation, a company official clarified that United Container Machinery did merge with another company in the late summer of 2002, and that the merger did include the acquisition of a Hungarian facility. He also verified that the foreign firm has imported a small percentage of their production to the United States for some time; however, imports of products produced from this facility have not increased since the merger, and so have not contributed to layoffs at the subject firm.

The petitioner asserts that a foreign competitor sells competitive products to at least two customers of the subject firm.

When contacted about this allegation, the company official stated that the two companies mentioned comprised a very small percentage of the subject firm's sales declines. In fact, according to the company official, the layoffs were not brought about by sales and production declines, but rather by a shift in production to two affiliated domestic facilities.

The petitioner also stated that United Container Machinery acted as a selling agent of competitive machinery and that this role "in the long run affected some of our prospective sales."

The company official that commented on this stated that the subject firm had taken part in a partnership with several foreign firms to sell competitive corrugated box machinery, receiving a commission for their services. However, the imports resulting from the partnership between the subject firm and the foreign firms constituted a very small amount relative to production at the Glen Arm facility. The company official further clarified that imports declined for the twelve months ending August of 2002, when the partnership ceased.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC this 25th day of March 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8349 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Reestablishment of Advisory Committee on Apprenticeship (ACA)

AGENCY: Employment and Training Administration, Labor.

ACTION: Reestablishment of the Advisory Committee on Apprenticeship (ACA).

SUMMARY: Notice is hereby given that after consultation with the General Services Administration, the Department of Labor has determined that the reestablishment of a national advisory committee on apprenticeship is necessary and in the public interest. Accordingly, the Employment and Training Administration has chartered the Advisory Committee on Apprenticeship (ACA) which succeeds the Federal Committee on Registered Apprenticeship (FCRA). The charter for the FCRA expired on January 19, 2003. The current charter was signed February 13, 2003, and will expire two years from that date.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4671, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–2796, (this is not a toll-free number).

Signed in Washington, DC, this 1st day of April 2003.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 03–8337 Filed 4–4–03; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–036]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to John R. Yadvish, Code RC, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: NASA Small Business Innovation Research Commercial Metrics

OMB Number: 2700–0095.

Type of review: Revision.

Need and Uses: This collection is used to assess the contributions of NASA funded Small Business Innovation Research (SBIR) technology.

Affected Public: Business or other for-profit.

Number of Respondents: 1000.

Annual Responses: 200.

Hours Per Request: 1.

Annual Burden Hours: 200.

Frequency of Report: Every three years.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–8417 Filed 4–4–03; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 22, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov.* Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. e-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–03–6, 3 items, 3 temporary items). Records relating to the Military Assistance to Safety and Traffic program. Included are such records as reports relating to missions flown, operational plans, letters of agreement, and survey and audit information. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1–440–01–2, 19 items, 17 temporary items). Records relating to the standardization of medical procedure codes used in billing Medicare for medical supplies and

services. Included are such records as meeting and request files, electronic and paper records relating to codes, a web version of the annual summary, and electronic copies of records created using electronic mail and word processing. Electronic versions of annual data summaries and the supporting documentation are proposed for permanent retention.

3. Department of Justice, Drug Enforcement Administration (N1–170–03–2, 4 items, 3 temporary items). Electronic and paper feeder reports pertaining to weekly teletype reports sent by the Administrator to the Attorney General and agency staff summarizing significant activities and items of interest. Also included are electronic copies of records created using electronic mail and word processing. Finalized summaries maintained electronically at headquarters are proposed for permanent retention.

4. Department of Labor, Bureau of Labor Statistics (N1–257–03–1, 8 items, 7 temporary items). Survey instruments, intermediate reports, copies of publications, electronic data files of survey responses, and administrative records relating to special, one-time surveys conducted by the Office of Occupational Safety and Health Statistics. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of survey publications.

5. Department of Transportation, Federal Aviation Administration (N1–237–02–1, 3 items, 3 temporary items). Inputs, system documentation, and master files of the Substance Abuse Tracking System, which contains information about agency employees who have violated policy concerning substance abuse.

6. Department of Transportation, Federal Aviation Administration (N1–237–02–2, 2 items, 2 temporary items). Investigative case files relating to aircraft parts suspected of not meeting regulatory requirements. Also included are electronic copies of documents created using electronic mail and word processing.

7. Department of the Treasury, Office of the Treasurer (N1–56–03–5, 8 items, 7 temporary items). Correspondence, calendars, invitations, trip files, and subject files. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of speeches, testimonies, and public appearance comments made by the Treasurer.

8. Department of the Treasury, Community Development Financial Institution (N1–56–03–2, 43 items, 36 temporary items). Records relating to the administration of the Community Development Financial Institutions Fund, including such records as application files, agreements, certification files, event and outreach files, meeting notes, working files, and other administrative materials. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of program presentations, policy formulation files, and planning records relating to expanding financial services to Native American communities.

9. Department of the Treasury, Bureau of the Public Debt (N1–53–03–4, 2 items, 2 temporary items). Auction and Issue Folders, which include paper and electronic versions of auction bid forms, Treasury Direct system reports, and allotment wires.

10. Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances (N1–412–02–04, 2 items, 2 temporary items). Records relating to unregistered pesticides, including such records as Foreign Purchaser Acknowledgement Statements, annual summaries from exporters, and export notice logs. Electronic copies of documents created using electronic mail and word processing are also included.

11. Environmental Protection Agency, Office of Administration and Resources Management (N1–412–03–8, 3 items, 3 temporary items). Grant and other agreement oversight records. Included are such records as correspondence, reports, policies and procedures, and other records relating to the oversight of grants and other assistance agreements for site-specific Superfund and non-Superfund programs. Electronic copies of records created using electronic mail and word processing are also included.

12. Environmental Protection Agency, Office of International Affairs (N1–412–03–10, 2 items, 2 temporary items). International travel records including such records as lists of trips and reports relating to the purpose and accomplishments of international trips. Also included are electronic copies of records created using electronic mail and word processing.

13. Peace Corps, Office of the General Counsel (N1–490–03–1, 12 items, 8 temporary items). Records relating to legislation, litigation, monetary claims, safety and security incidents, and other legal matters, including electronic copies of records created using word processing and electronic mail. Proposed for permanent retention are recordkeeping copies of files relating to legislation, regulatory matters, and policies and procedures as well as selected litigation case files.

14. Small Business Administration, Office of Government Contracting (N1–309–03–02, 7 items, 7 temporary items). Inputs, outputs, master files, system documentation, and system backups of the Certification of Competency Automated Computer System, which relates to the certification of small businesses as competent for Federal contracts. Included are electronic copies of documents created using electronic mail and word processing.

15. Small Business Administration, Office of Entrepreneurial Development (N1–309–03–06, 8 items, 8 temporary items). Inputs, outputs, master files, system documentation, and system backups of the Entrepreneurial Development Management Information System, which tracks technical assistance provided by the agency to small business clients. Included are electronic copies of documents created using electronic mail and word processing.

Dated: March 28, 2003.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 03–8301 Filed 4–4–03; 8:45 am]

BILLING CODE 7515–01–P

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17a–6, SEC File No. 270–433, OMB Control No. 3235–0489.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–6 (17 CFR 240.17a–6) permits national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board (collectively, "SROs") to destroy or convert to microfilm or other recording media records maintained under Rule 17a–1, if they have filed a record destruction plan with the Commission and the Commission has declared such plan effective.

There are 26 SROs: 9 national securities exchanges, 1 national securities association, 15 registered clearing agencies, and the Municipal Securities Rulemaking Board. These respondents file no more than one record destruction plan per year, which requires approximately 160 hours for each plan. However, we are discounting that figure by a factor of 20 given our experience to date with the number of plans that have been filed. Thus, the total annual compliance burden is estimated to be 8 hours. The approximate cost per hour is $200, resulting in a total cost of compliance for these respondents of $1,600 per year (8 hours @ $200 per hour).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 27, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8303 Filed 4–4–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 7, 2003:

Closed meetings will be held on Tuesday, April 8, 2003, at 2:30 p.m. and Friday, April 11, 2003, at 11 a.m. An open meeting will be held on Friday, April 11, 2003, at 10 a.m. in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

Commissioner Campos, as duty officer, determined that no earlier notice thereof was possible.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meeting scheduled for Tuesday, April 8, 2003, will be:

Formal Orders of Investigation;

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions.

The subject matter of the open meeting scheduled for Friday, April 11, 2003, will be:

The Commission will hear oral argument on an appeal by Monetta Financial Services, Inc. ("MFS"), a registered investment adviser, Robert S. Bacarella, the president and a director of MFS, and Richard D. Russo, an independent trustee of the Monetta Trust, from an administrative law judge's initial decision.

The law judge found that respondents violated section 17(a) of the Securities Act of 1933, section 10(b) of the Securities Exchange Act of 1934, and Exchange Act rule 10b–5. The law judge further found that Bacarella aided, abetted, and was the cause of MFS" willful violations of sections 206(1) and 206(2) of the Investment Advisers Act of 1940. The law judge ordered respondents to cease and desist from these violations; suspended Bacarella from association with any investment adviser or registered investment company for 90 days, and fined him $100,000; suspended Russo from association with any registered investment company for 30 days, fined him $25,000, and ordered him to pay disgorgement of $28,823, plus prejudgment interest; and censured MFS, and fined the firm $200,000.

The Commission will consider the following issues:

(1) Whether respondents committed the alleged violations;

(2) Whether Robert S. Bacarella aided, abetted, or was a cause of MFS" violations of section 206 of the Investment Advisers Act of 1940; and

(3) If so, whether sanctions are appropriate and in the public interest.

The subject matter of the closed meeting scheduled for April 11, 2003, will be:

Post-argument Discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: April 2, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–8434 Filed 4–2–03; 4:05 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [65 FR 15249, March 28, 2003].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional Meeting.

An additional Closed Meeting will be held on Friday, April 4, 2003 at 10:30 a.m.

Commissioner Campos, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, the Secretary to the Commission, and certain staff members who have an interest in the matter will attend the Closed Meeting.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c), (5), (7) and (10) and 17 CFR 200.402(a)(5), (7) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting will be: Formal Order of Investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: April 2, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–8508 Filed 4–3–03; 11:17 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47602; File No. 600–30]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Approving a Request for an Extension of Temporary Registration as a Clearing Agency

March 31, 2003.

Pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 24, 2003, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") a request that the Commission extend EMCC's temporary registration as a clearing agency.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to extend EMCC's temporary registration as a clearing agency through March 31, 2004.

On February 13, 1998, pursuant to Sections 17A(b) and 19(a)(1) of the Act[3] and Rule 17Ab2–1 promulgated thereunder,[4] the Commission granted EMCC's application for registration as a clearing agency on a temporary basis until August 20, 1999.[5] By subsequent orders, the Commission extended EMCC's registration as a clearing agency through March 31, 2003.[6]

EMCC was created to facilitate the clearance and settlement of transactions in U.S. dollar denominated Brady Bonds.[7] Since it began operations, EMCC has added certain emerging market sovereign debt and corporate debt to the list of eligible securities that may be cleared and settled at EMCC.[8] EMCC began operating on April 6, 1998, with ten dealer members.

As part of EMCC's initial temporary registration, the Commission granted EMCC temporary exemption from Section 17A(b)(3)(B) of the Act because EMCC did not provide for the admission of some of the categories of members required by that section.[9] To date, EMCC's rules still only provide membership criteria for U.S. broker-dealers, United Kingdom broker-dealers, U.S. banks, and non-U.S. banks. As the Commission noted in the Registration Order, the Commission believes that it is appropriate for EMCC to limit the categories of members during its initial years of operations because to date no entity in a category not covered by EMCC's rules has expressed an interest in becoming a member.[10] Accordingly, the Commission is extending EMCC's temporary exemption from Section 17A(b)(3)(B).

The Commission also granted EMCC a temporary exemption from Sections 17A(b)(3)(A) and 17A(b)(3)(F) of the Act to permit EMCC to use, subject to certain limitations, ten percent of its clearing fund to collateralize a line of credit at Euroclear used to finance on an intraday basis the receipt by EMCC of eligible instruments from one member that EMCC will redeliver to another member.[11] The Registration Order limited EMCC's use of clearing fund deposits for this intraday financing to the earlier of one year after EMCC commenced operations or the date on which EMCC begins its netting service. On April 2 and May 17, 1999, the Commission approved rule changes that permitted EMCC to implement a netting service and that extended EMCC's ability to use clearing fund deposits for intraday financing at Euroclear until all EMCC members are netting members.[12] Because not all of EMCC's members have become netting members, the Commission is extending EMCC's temporary exemption from Section 17A(b)(3)(A) and (F).

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with Section 19(a)(1) of the Act.[13] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. 600–30. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the amended application for registration, all written statements with respect to the application that are filed with the Commission, all written communications relating to the application between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. All submissions should refer to File No. 600–30 and should be submitted by April 28, 2003.

It is therefore ordered, pursuant to Section 19(a) of the Act, that EMCC's registration as a clearing agency (File No. 600–30) be and hereby is temporarily approved through March 31, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8390 Filed 4–4–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(a).

[2] Letter from Merrie Faye Witkin, Senior Counsel and Assistant Secretary, EMCC (Feb. 24, 2003).

[3] 15 U.S.C. 78q–1(b) and 78s(a)(1).

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 39661 (Feb. 13, 1998), 63 FR 8711 (Feb. 20, 1998) ("Registration Order").

[6] Securities Exchange Act Release Nos. 41733 (Aug. 12, 1999), 64 FR 44982 (Aug. 18, 1999); 43182 (Aug. 18, 2000), 65 FR 51880 (Aug. 25, 2000); and 44707 (Aug. 15, 2001), 66 FR 43941 (Aug. 21, 2001); 45648 (Mar. 26, 2002), 67 FR 15438 (Apr. 1, 2002).

[7] Brady bonds are restructured bank loans that were first issued pursuant to a plan developed by then U.S. Treasury Secretary Nicholas Brady to assist debt-ridden countries restructure their sovereign debt into commercially marketable securities. The plan provided for the exchange of bank loans for collateralized debt securities as part of an internationally supported sovereign debt restructuring. Typically, the principal and certain interest of these bonds is collateralized by U.S. Treasury zero coupon bonds and other high grade instruments.

[8] Securities Exchange Act Release Nos. 40363 (Aug. 25, 1998), 63 FR 46263 (Aug. 31, 1998); 41618 (July 14, 1999), 64 FR 39181 (July 21, 1999); and 46714 (Oct. 23, 2002), 67 FR 66031 (Oct. 29, 2002).

[9] Registration Order at 8716.

[10] EMCC has represented to the staff that it will modify its rules to provide admission criteria for other entities that wish to become EMCC members.

[11] Registration Order at 8720.

[12] Securities Exchange Act Release Nos. 41247 (Apr. 2, 1999), 64 FR 17705 (Apr. 12, 1999) and 41415 (May 17, 1999), 64 FR 27841 (May 21, 1999).

[13] 15 U.S.C. 78s(a)(1).

[14] 17 CFR 200.30–3(a)(50)(i).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47599; File No. SR–OCC–2002–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Money Market Funds as Margin Collateral

March 31, 2003.

I. Introduction

On January 29, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–OCC–2002–04 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on January 16, 2003.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The change to OCC's rule 604 expands the permissible forms of margin collateral to include shares in money market funds. The rule change also reorganizes the rule and makes certain nonsubstantive format changes.

Rule 604 specifies the forms of collateral that may be deposited as margin. Permitted forms of margin collateral include cash, government securities, letters of credit, and certain equity and debt securities.[3] OCC regularly reviews these forms of collateral for suitability with the intent of addressing clearing members' desire to use a diverse combination of readily available and cost-effective forms of collateral while ensuring that collateral is limited to instruments that are relatively stable in value and are easily converted to cash. OCC believes that shares in certain money market funds meet these criteria and that it is appropriate for OCC to expand its categories of acceptable collateral to include such instruments.

OCC believes that the professional asset management, liquidity, and stable principal value typically associated with money market funds make shares in such funds an attractive collateral alternative for all OCC clearing accounts. As a result of recent amendments to the regulations of the Commodity Futures Trading Commission ("CFTC"), clearing members that are registered as futures commission merchants are now permitted to invest customer funds of their futures customers in money market fund shares.[4] Accordingly, clearing members want to be able to pledge shares in such funds as margin for their "non-proprietary" cross-margining accounts. OCC believes that such deposits are appropriate collateral not only for cross-margining accounts but for all accounts.

Requirements for Eligibility of Funds

OCC will define acceptable money market funds as those meeting the criteria of SEC rule 2a–7,[5] "Money Market Funds," under the Investment Company Act of 1940 ("ICA"),[6] subject to certain additional criteria. The ICA sets the standards by which mutual funds and other investment vehicles operate, and rule 2a–7 thereunder requires a qualifying money market fund to meet certain portfolio maturity, quality, and diversification criteria. Instruments that may qualify as permitted investments for money market funds typically include U.S. Treasury securities, repurchase agreements, Federal agency securities, commercial paper, certificates of deposit, time deposits, corporate notes, asset-backed securities, and municipal securities. To minimize credit risk, OCC will accept only money market funds that limit their investments to "first tier securities" as defined in rule 2a–7 under the ICA.[7] Although certain types of instruments that qualify as first tier securities would not qualify to be pledged directly as margin collateral under rule 604,[8] OCC believes that the rating requirements and maturity prerequisites combined with inherent diversification of the funds provides sufficient protection to warrant acceptance of shares of money market funds containing such instruments.

To ensure a diverse group of fund investors so that the actions of any one shareholder (*e.g.*, redeeming a large interest in a fund) do not materially disrupt the ability of the fund to redeem shares in an orderly manner, rule 604(b)(3) will prohibit a clearing member from depositing as margin collateral any money market fund where a registered holder of the money market fund has an interest of 10% or more in the money market fund.

In order for a fund's shares to be acceptable as margin collateral, the fund (and/or its sponsor, transfer agent, or other agent as appropriate) will be required to represent to OCC that it meets the foregoing requirements and to agree that it will continue to do so. In addition, OCC will require the fund to make certain other agreements intended to further ensure OCC's ability to convert fund shares promptly to cash if necessary.

Redemption

While the ICA generally prohibits mutual funds from suspending the right of redemption, the ICA does allow funds to postpone the payment of redemption proceeds for up to seven days after the tender of fund shares to the fund or its agent. The ICA also allows for the suspension or postponement of redemption in certain emergency situations. In addition, while the intent of a money market fund is to redeem shares in cash, most issuers retain the right to redeem their shares in kind where the redeeming shareholder would receive portfolio securities rather than cash. Any such action would introduce liquidation risk as well as additional costs associated with the sale of such securities.

Rule 604(b)(3)(i)(H) will require any fund accepted as margin collateral to waive its rights under the ICA to delay redemption or to redeem in kind. The fund will instead have to agree to redeem fund shares in cash no later than the business day following a redemption request by OCC with limited exceptions for unscheduled closings of Federal Reserve Banks or the New York Stock Exchange. These waivers of redemption restrictions along with the next day

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 47146 (January 9, 2003), 68 FR 2385.

[3] Pursuant to a rule filing approved by the Commission last year, OCC clearing members are allowed to deposit as margin debt securities issued by Congressionally chartered corporations that OCC's membership/margin committee has approved. Securities Exchange Act Release No. 45745 (April 12, 2002), 67 FR 19467 (April 19, 2002) (File No. SR–OCC–2001–04).

[4] In December 2000, the CFTC amended its Regulation 1.25 to expand the range of instruments in which FCMs and clearing organizations may invest customer segregated funds to include highly liquid instruments such as money market mutual funds. Rules Relating to Intermediaries of Commodity Interest Transactions, 65 FR 77993 (December 13, 2000).

[5] 17 CFR 270.2a–7.

[6] 15 U.S.C. 80a *et seq.*

[7] In general, a first tier security is a security with a remaining maturity of 397 calendar days or less that: (i) Has received a short-term rating from at least two nationally recognized statistical rating organizations in the highest short-term rating category for debt obligations; (ii) is unrated but is deemed to be of comparable quality to securities identified in (i) as determined by the fund's board of directors; (iii) is issued by a registered investment company that is itself a money market fund; or (iv) is a government security. 17 CFR 270.2a–7(a)(12).

[8] For example, OCC does not currently accept commercial paper, certificates of deposit, time deposits, corporate notes, asset-backed securities, or municipal securities.

payment requirement have been established to maintain adequate liquidity of margin collateral and are also intended to be consistent with the redemption conditions contained in CFTC rule 1.25.[9]

Valuation

OCC will require funds to perform a net asset value computation at least once per day with the dissemination of such computation to be made available to OCC no later than 9 a.m. central time the following day. Given the diversified nature of eligible fund investments as well as the investment duration limitations, a daily computation of net asset value appears reasonable. Nevertheless, OCC will apply a 2% haircut on the current market value of fund shares. The 2% haircut was selected for consistency with the treatment of similar assets under the net capital rule.[10]

OCC's Security Interest

As in the case of other securities held as collateral, OCC will require that clearing members give OCC a first priority perfected security interest in deposited fund shares. Because shares in money market funds are typically not issued in certificated form, ownership is established by registration of the securities on the books of the fund or its transfer agent. OCC can ordinarily obtain a perfected security interest in fund shares registered in the name of a clearing member by execution of the fund's standard three-party agreement among OCC, the clearing member, and the fund or its transfer agent.

In addition, to preclude a situation whereby a clearing member secures its obligations to OCC with collateral managed and within the control of that clearing member or a related party, an association restriction is included in rule 604(b)(3)(iii). This restriction is consistent with OCC rules regarding the deposit of government securities, debt or equity issues, or letters of credit as margin collateral.[11] This standard may be waived if the issuing institution can demonstrate that an acceptable arrangement has been made for the control of underlying portfolio investments and for the processing of OCC redemption requests by a third party.

OCC is also moving the provisions which require compliance with the Commission's rule 15c3–3 when applicable, formerly set forth in rule 604(d)(2), have been moved so that these provisions apply not only to equity and debt securities but to all securities deposited as margin under rule 604(b). A sentence has been added to these provisions to require compliance with the CFTC's customer protection regime when securities are deposited with respect to futures accounts.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Securities Exchange Act of 1934, as amended, because it enhances the efficiency of the clearing system while still allowing OCC to safeguard securities and funds by permitting clearing members to collateralize their obligations to OCC with an additional form of highly liquid, stable value assets.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F).[12] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that OCC's rule change meets this requirement because while OCC clearing members will be able to deposit money market funds as margin collateral, OCC has established procedures with respect to the deposits of money market funds as margin collateral that should ensure that OCC will be able to safeguard the securities and funds that are within its custody or control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2002–04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8387 Filed 4–4–03; 8:45 am]

BILLING CODE 8010–01–P

[9] CFTC Regulation 1.25(c)(5), 65 FR 77993, 78010, 78011 (Dec. 13, 2000); *see also*, 65 FR 82270 (Dec. 28, 2000). CFTC Interpretive Letter No. 01–31 (April 2, 2001) (Funds will be deemed in compliance with Regulation 1.25(c)(5) even though they provide for delayed redemption in specified emergency situations).

[10] 17 CFR 240.15c3–1(c)(2)(vi)(D)(1).

[11] OCC rule 604, Interpretation and Policies .07 and .10.

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47605; File No. SR–Phlx–2003–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. To Adopt a License Fee for Transactions in Standard & Poor's Depository Receipts®

April 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange amended the proposal on March 28, 2003.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Summary of Equity Charges to adopt a license fee of $0.00025 per share per trade side for sides greater than 500 shares, with no maximum fee per trade side charged to Non-PACE Customers[4] and Electronic Communications Networks ("ECNs"),[5] and a license fee of $0.00035 per share per trade side, with no maximum fee per trade side charged to specialists for transactions on the Phlx in Standard & Poor's Depository Receipts® ("SPDRs").[6] The Exchange also proposes to make minor, technical changes to its equity fee schedule to make corresponding references to the proposed fees. All other equity charges currently assessed by the Phlx will be imposed where applicable.[7]

The Exchange proposes to implement this fee as of March 17, 2003, the date that it began trading in the SPDRs. Text of the proposed rule change is set forth below. New text is in brackets. Deleted text is in italics.

SUMMARY OF EQUITY CHARGES
(P 1/[2]*3*)*

EQUITY TRANSACTION CHARGE I

Based on total shares per transaction with the exception of specialist trades and PACE trades.[1]

Monthly Transaction Value	Rate per share
First 500 shares	$0.00
Next 2,000 shares	$0.0075
Next 7,500 shares	$0.005
Remaining shares	$0.004

$50 maximum fee per trade side.

License Fee

*SPDRs, Standard & Poor's Depositary Receipts***

Customer Non-PACE and Electronic Communications Network[E] ("ECN") License Fee

$0.00025 per share per trade side for sides greater than 500 shares

No maximum fee per trade side

Specialist License Fee

$0.00035 per share per trade side

No maximum fee per trade side

Pace Specialist Charge[2] I

$.20 per PHLX Specialist Trade against PACE Executions (Not applicable to PACE trades on the opening)

See Appendix A for additional fees.

I denotes fee eligible for monthly credit of up to $1,000.

* not applicable to transactions in Nasdaq-100 Index Tracking Stock℠ (see page [3]*4* for fees).

Summary of Equity Charges (p 2/[2]*3*)*

Equity Floor Brokerage Assessment I

$250 monthly charge[2]*3*

Equity Floor Brokerage Transaction Fee I

$.05 per 100 shares or fraction thereof, for floor broker executing transactions for their own member firms.

Sec Fee

The amount shall be determined by Section 31 of the Securities Exchange Act of 1934.

Off-Exchange Trade Information Fee I

$.10 per DOT trade

Remote Information Access Fee I

$300.00 per month

Electronic Communications Network[E] ("ECN") Fee

$2,500.00 per month (in lieu of equity transaction charges)

Outbound ITS Fee I (also applicable to transactions in Nasdaq-100 Index Tracking Stock℠)[3]*4*

For PACE orders sent over ITS with the customer information attached:

500 shares or less—$0.60 per 100 shares

501 to 4,999 shares—$0.30 per 100 shares

Net Inbound ITS Credit (also applicable to transactions in Nasdaq-100 Index Tracking Stock℠)[4]*5*

$0.30 per 100 shares on the excess, if any, of the number of inbound ITS shares executed over the number of outbound ITS shares sent and executed on a monthly basis.

Summary of Equity Charges (p 3/3)

See Appendix A for additional fees.

I denotes fee eligible for monthly credit of up to $1,000.

* not applicable to transactions in Nasdaq-100 Index Tracking Stock℠ (*see* next page for fees).

[E] ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter ("OTC") market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by or on behalf of an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

Any fees, credits, discounts and other charges in the Exchange's fee schedule which are based upon an equity specialist's specialist activity apply to competing specialists.

*** *Standard & Poor's®," "S&P®," "S&P 500®," "Standard & Poor's 500®", and "500" are trademarks of The McGraw-Hill Companies, Inc., and have been licensed for use by the Philadelphia Stock Exchange, Inc., in connection with the listing and trading of SPDRs, on the Phlx. These products are not sponsored, sold or endorsed by S&P, a division of The McGraw-Hill Companies, Inc., and S&P makes no representation regarding the advisability of investing SPDRs.*

[1] However, this charge applies where an order, after being delivered to the Exchange by the PACE system is executed by the specialist by way of an outbound commitment, when such outbound ITS commitment reflects the PACE order's clearing information, but does not apply where a PACE trade was executed against an inbound ITS commitment.

[2] *This charge does not apply to transactions in Nasdaq-100 Index Tracking Stock℠ and SPDRs.*

[2]*3* Applies to each member who derives at least 80% of gross income generated from Phlx floor based activities from his/her floor brokerage business conducted on the Exchange. Floor brokerage business conducted on the Exchange includes orders that are received on the Phlx, even if those orders are executed on an exchange other than the Phlx. The 5% floor brokerage assessment is waived until Dec 31, 2003 and is scheduled to be reinstated Jan 1, 2004.

[3]*4* This fee will only apply when the specialist sends an order received over PACE to ITS and receives an execution, if the specialist used the PACE customer's clearing information on the outbound ITS commitment.

[4]*5* This credit will include all inbound and outbound ITS executions, including both

---

counter ("OTC") market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivation pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by on behalf of an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

[6] Standard & Poor's®, "S&P 500®," "Standard & Poor's 500®," and "500" are trademarks of The McGraw-Hill Companies, Inc., and have been licensed for use by the Phlx, in connection with the listing and trading of SPDRs, on the Phlx. These products are not sponsored, sold or endorsed by Standard & Poor'a ("S&P"), a division of The McGraw-Hill Companies, Inc., and S&P makes no representation regarding the advisability of investing in SPDRs.

[7] These charges may include equity transaction charges, an equity floor brokerage assessment, an equity floor brokerage transaction fee, an off-Exchange trade information fee, an SEC fee, a remote information access fee, an Electronic Communications Network fee, an outbound Inter-Market Trading System ("ITS") fee and a net inbound ITS credit. Additionally, the PACE Specialist charge does not apply because specialists are not eligible for further PACE volume discounts. *See* Securities Exchange Act No. 44259 (May 4, 2001), 66 FR 23962 (May 10, 2001) (SR–Phlx–200–41). The proposals also codifies that the PACE Specialist Charge does not apply to QQQ transactions. This charge has not previously applied to Nasdaq-100 Tracking Stock Index ("QQQ") trades, as evidenced by the separate QQQ fee schedule. *See also* Securities Exchange Act Release No. 43776 (December 28, 2000), 66 FR 1166 (January 5, 2001) (SR–Phlx–2000–103). Nevertheless when adding a footnote that this charge does not apply to SPDRs, the Exchange determined, to avoid confusion, to refer to both products.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 28, 2003, the Exchange filed a Form 19b–4, which completely replaced and superceded the original filing in its entirety ("Amendment No. 1"). For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on March 28, 2003, the date the Exchange filed Amendment No. 1. 15 U.S.C. 78(s)(b)(3)(C).

[4] PACE is the acronym for the Exchange's Automated Communication and Execution System, which is the Exchange's order routing, delivery, execution and reporting system for its equity trading floor. *See* Exchange Rules 229 and 229A.

[5] ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-

PACE and non-PACE and both proprietary and customer commitments.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt a license fee that will apply to trading SPDRs on the Exchange. The Exchange recently determined to begin trading SPDRs. The license fees should help off-set licensing fees payable to Standard & Poor's[8] associated with the trading of these products on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(4) of the Act,[10] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange believes that charging members that trade these products a licensing fee is an equitable means of recovering a portion of the licensing fees incurred by the Exchange.[11]

[8] *See supra* note 6.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] With regard to the distinction between Customer PACE and Non-PACE license fees, the Exchange states that it is consistent with its current practice to not impose customer charges for equity transactions delivered through PACE, but to impose customer charges for Non-PACE executions. *See, e.g.*, Securities Exchange Act Release Nos. 47385 (February 20, 2003), 68 FR 10295 (March 4, 2003) (SR–Phlx–2003–06); 44381 (June 1, 2001), 66 FR 31264 (June 11, 2001) (SR–Phlx–2001–57); and 43776 (December 28, 2000), 66 FR 1166 (January 5, 2001) (SR–Phlx–00–103). Also, consistent with its current practice, the Exchange charges customer transaction fees and specialist transaction fees at different rates. *See, e.g.*, Securities Exchange Act Release Nos. 44381 (June 1, 2001), 66 FR 31264 (June 11, 2001) (SR–Phlx–2001–57); 47109 (December 30, 2002), 68 FR 841 (January 7, 2003) (SR–Phlx–2002–78); and 42332 (January 12, 2000), 65 FR 3517 (January 21, 2000) (SR–Phlx–00–59).

[12] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act[12] and Rule 19b–4(f)(2) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2003–17 and should be submitted by April 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8388 Filed 4–4–03; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs Public Meeting

The U.S. Small Business Administration (SBA) will hold a public Advisory Committee Meeting on Veterans Business Affairs on Tuesday, April 22, 2003, from 8:30 a.m. to 5 p.m. The meeting will be held at the U.S. Small Business Administration located at 409 3rd Street, SW., 2nd Floor in the Eisenhower Conference Room and will be open to the public from 9 a.m. to 3 p.m. The purpose of this meeting is to establish the structure of the Advisory Committee on Veterans Business Affairs and to carry out its mission in accordance with the Veterans Entrepreneurship and Small Business Development Act of 1999 (Public Law 106–50). Any member of the public seeking further information concerning the meeting or who wishes to submit oral or written comments, should contact Cheryl Clark in the Office of Veterans Business Development (OVBD) at the SBA located at 409 3rd Street SW., Washington, DC 20460 or fax at (202) 205–7292. Requests for oral comments must be in writing and be received no later than noon Eastern Time on Friday, April 11, 2003.

Candace H. Stoltz,

Director of Advisory Councils, Office of Communications.

[FR Doc. 03–8401 Filed 4–4–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4329]

Culturally Significant Objects Imported for Exhibition Determinations: "Max Beckmann"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, "Max Beckmann," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, Long Island City, Queens, New York, from on or about June 26, 2003, to on or about September 29, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: March 31, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–8392 Filed 4–4–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4330]

Bureau of Democracy, Human Rights and Labor Call for Statements of Interest: Democracy, Human Rights, and the Rule of Law in the People's Republic of China

SUMMARY: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor (DRL) announces a call for statements of interest from organizations interested in being invited to submit proposals for projects on promoting democracy, human rights and the rule of law in China. This is an initial solicitation to ascertain organizations that may be interested in doing projects in China and does not constitute a request for proposals. Organizations invited to submit proposals will have an opportunity to expand on their statements at a later date.

Statements of Interest

The Bureau of Democracy, Human Rights and Labor (DRL) invites organizations to submit statements of interest of no more than two pages outlining program concepts and capacity to manage projects that will foster democracy, human rights, freedom of information, judicial independence, criminal and civil rule of law, and civil society in the People's Republic of China. Statements should include the following information:

(1) Brief description of the organization;

(2) Project objectives, activities and the desired outcomes.

Recipients should not submit a budget at this time, but responses should indicate approximate project totals.

Additional Information

The Bureau's Human Rights and Democracy Fund (HRDF) supports innovative, cutting-edge programs which uphold democratic principles, support and strengthen democratic institutions, promote human rights, and build civil society in countries and regions of the world that are geo-strategically important to the U.S. HRDF funds projects that have an immediate impact but that have potential for continued funding beyond HRDF resources. HRDF projects must not duplicate or simply add to efforts by other entities.

DRL is interested in funding projects to begin no earlier than late summer 2003 and not to exceed two years in duration. Twelve-eighteen months programs will be the preferred award period. The bulk of project activities must take place in-country; U.S-based activities or exchange projects are not encouraged. Projects that draw on resources from greater China will be considered, but the majority of activities should address the PRC directly. Projects that have a strong academic or research focus will not be highly considered. DRL will not fund health, technology, environmental, or scientific projects unless they have an explicit democracy, human rights, or rule of law component. Projects that focus on commercial law or economic development will not be highly considered.

Pending availability of funds, approximately 8,500,000 is expected to be available under the Economic Support Funds through the Bureau's Human Rights and Democracy Fund (HRDF) for projects that address Bureau objectives in China. The Bureau anticipates making awards in amounts of $250,000–$1,000,000 to support program and administrative costs required to implement these programs.

Applicant/Organization Criteria

Organizations submitting statements should meet the following criteria:

- Be a U.S. public or private non-profit organization. For-profit organizations may submit statements of interest. Foreign organizations may be sub-recipients of U.S organizations or they may submit statements directly. Direct submissions should indicate the organization's ability to comply with U.S. government accounting and auditing standards.
- Have demonstrated experience administering successful projects in China or in similar challenging program environments.
- Have existing, or the capacity to develop, active partnerships with in-country organization(s).
- Organizations may form consortia and submit a combined statement of interest.

Review Process

The Bureau will acknowledge receipt of all submissions. Following a review of all submissions, organizations may be invited to submit full proposals. Invitations will be based on subjective evaluation of how the project meets the criteria outlined, United States foreign policy objectives, and priority needs of DRL.

Deadline and Submission Instructions

Applicants should submit statements of interest by overnight express courier services such as Federal Express or DHL, or by local courier service to: the U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Room 7802, 2201 C Street, NW., Washington, DC 20520. Proposals delivered by local courier should be delivered to the "Jogger's Entrance" on 21st street between C and D streets. Due to slow mail processing within the Department of State, we do not recommend submitting proposals via the U.S. postal system. Faxed documents will not be accepted at any time. All submissions must be received at the Bureau of Democracy, Human Rights and Labor by 5 p.m. Eastern Standard Time (EST) on Wednesday, April 23, 2003.

FOR FURTHER INFORMATION CONTACT: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor, DRL/PHD. Please specify Amy Gadsden, 202–647–2551, on all inquiries and correspondence.

Dated: April 1, 2003.

Lorne W. Craner,

Assistant Secretary for Democracy, Human Rights and Labor, Department of State.

[FR Doc. 03–8391 Filed 4–4–03; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Termination of Review Under 49 U.S.C. 41720 of Delta/Northwest/Continental Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Termination of Review of Joint Venture Agreements.

SUMMARY: On February 28, Delta Air Lines, Northwest Airlines, and Continental Airlines resubmitted their code-share and frequent-flyer program reciprocity agreements to the Department for review under 49 U.S.C. 41720. The implementation of these two agreements would constitute a key part of the three airlines' proposed alliance. In their resubmission, the airlines accepted three of the six conditions that the Department had stated were necessary to avoid a formal enforcement proceeding, and they proposed alternative language for the other three conditions. The Department has determined that the alternative language proposed by the airlines adequately addresses the competitive concerns relating to those three conditions. The Department is therefore terminating its current review of the agreements. In reaching this conclusion, the Department is relying on the terms of the agreements, the airlines' representations that they will compete independently on capacity and fares, and their formal acceptance of the six conditions as modified.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: On February 28, Delta, Northwest, and Continental ("the Alliance Carriers") resubmitted their code-share and frequent-flyer program reciprocity agreements to us for review under 49 U.S.C. 41720. These agreements form essential elements of the airlines' proposed alliance, which will be a comprehensive marketing arrangement that will also include reciprocal access to airport lounges and some joint marketing. Their alliance agreement has a ten-year term. See 68 FR 3293, 3295, January 23, 2003.

The Alliance Carriers initially submitted the agreements on August 23, 2002. After an extensive investigation and analysis, we concluded that the agreements as presented raised serious competitive concerns. We stated that we would direct our Enforcement Office to begin a formal enforcement proceeding to determine whether the alliance would be unlawful unless the Alliance Carriers accepted six conditions that would address our competitive concerns. 68 FR 3293, January 23, 2003 ("the January Notice"). The Alliance Carriers at first refused to accept our conditions but thereafter consulted with us on possible modifications to the language of three of the conditions. On the basis of those consultations, they resubmitted their agreements on February 28, stated that they would accept three of our original six conditions, proposed alternative language for the other three conditions, and acknowledged our legal authority to impose conditions to prevent unfair methods of competition in the airline industry.

We invited interested persons to submit comments on the proposed alternative language. 68 FR 10770, March 6, 2003. We received public comments from JetBlue Airways; U.S. Airways; Galileo International, a computer reservations system; the Airports Council International-North America ("ACI"), which represents local, regional, and state governing bodies that own and operate the principal U.S. airports used by scheduled service airlines; the Massachusetts Port Authority ("Massport"), which operates Boston-Logan International Airport; the Montana Department of Transportation; the Memphis-Shelby County Airport Authority; and M. Michelle Buchecker. JetBlue, USAirways, Galileo, and Ms. Buchecker contend that we should not accept the alternative language. Massport asserts that we should require the Alliance Carriers to surrender different gates at Boston Logan. ACI expresses concern that we may, in the future, take steps that would interfere with the airports' right to manage their own affairs. The Montana state agency and the Memphis airport authority support the alternative language.

A group of airlines ("the Non-aligned Carriers")—AirTran, America West, Frontier, JetBlue, Midwest, Southwest, and Spirit—filed joint comments that oppose the alternative language and requested confidential treatment for their filing.

After considering the Alliance Carriers' resubmission and the comments, we have determined that the alternative conditions adequately address our competitive concerns at this time. We are therefore ending our review of the agreements. The three airlines have agreed to our conditions with some modifications. We believe that these restrictions on their behavior should adequately reduce the possibility of anti-competitive behavior. Each airline has also represented that it will continue to compete independently on fares and service levels. Finally, the Alliance Carriers have separately agreed to abide by certain additional conditions imposed by the Department of Justice under its authority to enforce the antitrust laws.

We recognize that the implementation of the alliance could ultimately reduce competition in the airline industry, despite the conditions, although we do not expect such a result. We further recognize that the Alliance Carriers' actual implementation of the alliance may differ from their anticipated behavior. In addition, we are fully aware that world events and general economic conditions may lead to major changes in the airline industry, which could change the alliance's impact on airline competition. We will therefore closely monitor the Alliance Carriers' implementation of their agreements to ensure that they abide by their representations to us and comply with the conditions. Furthermore, in our on-going monitoring of industry conditions, we will be watchful for major changes in the level and type of competitive behavior in the airline industry. We have the statutory authority to undertake a new review of the competitive effects of the alliance at any time that we believe that such a review is warranted. We will not hesitate to initiate such a review if developments indicate that it is necessary.

Background

The statute requiring our review of the alliance agreements—49 U.S.C. 41720—requires certain kinds of joint venture agreements among major U.S. passenger airlines to be submitted to us at least 30 days before they are implemented. The statute does not expressly require the parties to obtain our approval before proceeding. We may extend the waiting period by 150 days with respect to a code-sharing agreement and by 60 days for other types of agreements. At the end of the waiting period (either the 30-day period or any extended period established by us), the parties may implement their agreement. To prohibit the parties from implementing an agreement, we would normally institute a formal enforcement proceeding under 49 U.S.C. 41712 (formerly section 411 of the Federal Aviation Act) to determine whether the agreement's implementation would be an unfair or deceptive practice or unfair method of competition. We apply section 41712 in light of the express direction of the statute that we consider the public policy factors set forth in 49 U.S.C. 40101. If we found that the agreement would violate section 41712, we could issue an order directing the parties to cease and desist from the practices found to be unlawful.

Last year we reviewed another alliance between major airlines, the United/US Airways alliance. We determined to end the waiting period for the United/US Airways agreements and take no action at that time to prevent the airlines from implementing the agreements. 67 FR 62846, October 8, 2002. The information then available to us was not sufficient to indicate that an enforcement proceeding under section 41712 would be warranted, although we expressed concern that the alliance could lead to a lessening of competition between the two airlines in some markets. We also noted, however, that United and U.S. Airways had accepted certain restrictions imposed by the Department of Justice under its authority to enforce the antitrust laws. We additionally noted the United/US Airways alliance could benefit a number of travelers and could increase competition in some markets, as long as United and U.S. Airways had strong incentives to continue to compete with each other.

On August 23, 2003, the Alliance Carriers submitted their code-share and frequent flyer program reciprocity agreements for our review under 49 U.S.C. 41720. The proposed alliance would add Delta to the existing alliance between Continental and Northwest. We invited the public to submit comments on the proposed agreements. To enable interested parties to submit more meaningful comments, we required the Alliance Carriers to make available unredacted copies of their alliance agreements. 67 FR 69804, November 19, 2002.

After reviewing the comments and other material and conducting an extensive informal investigation, we determined that the agreements, if implemented as presented by the three airlines, could result in significant adverse impacts on airline competition unless the airlines accepted six conditions developed by us to limit potential competitive harm. Our January Notice explained the basis for this determination. We stated that we would direct our Aviation Enforcement Office to institute a formal enforcement proceeding regarding the matter if the Alliance Carriers chose to implement the agreements without accepting those conditions.

We were aware that the Alliance Carriers represented that each of them would independently set its own fares and schedules and that they had structured their alliance so that each partner would continue to compete independently. Under that structure, the ticket price paid by a traveler would go to the operating airline, even if the passenger bought the ticket from a marketing airline. Since the marketing airline would not share in the ticket revenue, that airline would have an incentive to operate its own flights. In addition, they alleged that their agreements would not authorize any discussions prohibited by the antitrust laws. They would engage in discussions on subjects such as flight arrival times, gate locations, and certain other service features only in order to provide "more seamless service." They asserted that their alliance would benefit consumers by providing on-line services to travelers in markets that now have no on-line service and improved access to frequent flyer programs and airport lounges. *See* 68 FR 3295.

As described more fully in the January Notice, we nonetheless had several concerns with the alliance's potential impact on airline competition. The alliance would create a potential for collusion among the three partners; it could enable the Alliance Carriers to take advantage of their combined dominant market presence in a number of cities in ways that could force unaffiliated airlines to exit the markets and deter entry by other airlines; it would establish joint marketing efforts that could reduce competition between the partners and preclude effective competition from unaffiliated airlines; it could lead to a "hoarding" of airport facilities; and it could result in "screen clutter," causing the services of competing carriers to be downgraded in the displays offered to travel agents by computer reservations systems ("CRSs"). 68 FR 3295–3297. We developed six conditions in an attempt to address these concerns. The January Notice set forth the text of those conditions. 68 FR 3297–3299.

The Department of Justice, pursuant to its separate and independent authority to enforce the antitrust laws, reviewed the alliance agreements and determined that it would not challenge the implementation of the agreements under the antitrust laws if the Alliance Carriers accepted certain conditions, which the Department of Justice concluded were necessary to preserve competition among the carriers. The three airlines have accepted those conditions. Under those conditions, Delta, Continental, and Northwest will not code-share on local traffic on routes where more than one of them offers nonstop service, including their hub-to-hub routes (Atlanta-Detroit/Houston, for example). For purposes of this restriction, Newark Liberty International Airport, John F. Kennedy International Airport, and LaGuardia Airport are treated as one point. The bar against code-sharing, however, does not cover flights between Washington Reagan National, LaGuardia, and Boston Logan. The Alliance Carriers also agreed to conditions that bar certain pricing conduct that could provide a vehicle for price signaling and collusion. Accordingly, each party is limited in the extent to which it can set prices on flights operated by another airline.[1] Finally, each Alliance Carrier must continue to act independently in establishing the terms and conditions of its frequent flyer programs and in bidding on corporate contracts, although when consistent with the antitrust laws the Alliance Carriers may offer customers the option of a joint bid. These conditions are substantially the same as the conditions accepted last year by United and U.S. Airways and by Northwest and Continental when they began implementing their own alliance five years ago.

While the Alliance Carriers accepted the Department of Justice conditions, they initially stated that they would implement their alliance without accepting our conditions. Soon thereafter, however, they asked whether we would consider alternatives for three of our six conditions and postponed the implementation of their alliance. On the basis of consultations with us, they resubmitted the agreements for our review with their proposed alternative conditions on February 28. They stated that they accepted, without change, our first, fifth, and sixth conditions, which involve the alliance's steering committee, CRS displays, and the agreements' exclusivity provision. They

[1] Under the pricing condition required by the Department of Justice, the marketing carrier's fares must be the same as the operating carrier's fares on routes that are not served by the marketing airline (the marketing airline is the airline that does not operate the flight but nonetheless sells seats under its code). On routes served by two or more of the partners with connecting service, when one airline is the marketing airline it must sell seats on flights operated by the partner airline for the same fares it charges for its own flights or for the fares established by the operating airline. On routes where one airline offers nonstop service and the other airline offers connecting service, the latter airline's fares for the nonstop service must be the same as the operating carrier's fares.

requested changes in the second, third, and fourth conditions, which involve airport facilities, limits on code-sharing flights, and joint marketing. They requested that we complete our review within 30 days. They acknowledged our legal authority under section 41712 to impose conditions, but asserted that, in their view, neither our conditions nor the conditions required by the Department of Justice were necessary to protect competition.

We invited public comment on the Alliance Carriers' proposed alternative language. 68 FR 10770, March 6, 2003. Our notice set forth the proposed language. We directed the commenters to discuss only whether the Alliance Carriers' three new proposals would adequately address the competitive concerns regarding the three corresponding conditions, which we explained in our January Notice, and not whether the findings and analysis in the January Notice were adequate or reasonable. We stated that we would decide whether the Alliance Carriers' proposals were acceptable within 30 days. We noted that, if we determine that the alternative conditions adequately address our concerns, and the Alliance Carriers formally accept them along with the other three conditions developed by us, we would not now institute a formal enforcement proceeding to determine whether the airlines' agreements violate section 41712. However, we would retain our full statutory authority to continue to monitor the three airlines' implementation of their alliance, and to take enforcement action under section 41712 in the future if necessary. We reaffirmed our conclusion that, if the alliance were implemented as originally presented to us, it would raise serious competitive issues and we would begin a formal enforcement proceeding if the Alliance Carriers implemented the alliance without conditions satisfactory to us.

As noted, we received comments from the Non-aligned Carriers, JetBlue, U.S. Airways, Galileo, ACI, Massport, the Montana Department of Transportation, the Memphis-Shelby County Airport Authority, and M. Michelle Buchecker. This notice discusses the arguments presented by the public comments. Due to the Non-aligned Carriers' request that their comments remain confidential, this notice does not discuss their objections. We have nonetheless given careful consideration to the Non-aligned Carriers' arguments.

Decision

Congress has given this Department the responsibility to prevent unfair methods of competition in the airline industry through section 41712. Congress directed us, in interpreting and applying section 41712, to consider the factors set forth in section 40101. Our statutory authority is separate and independent from the Department of Justice's authority to enforce the antitrust laws. Section 41712 states that we should take enforcement action when we find that doing so is in the public interest, based on our consideration of the factors set forth in section 40101. After considering the comments, we have concluded that allowing the Alliance Carriers to go forward with their agreements, subject to the six conditions as modified, will best serve the public interest at this time. We presently believe that the six conditions, as modified with the alternative language, will adequately address our competitive concerns with the alliance. Therefore, at this time, we do not believe it necessary to institute a formal enforcement proceeding to determine whether the alliance will violate section 41712. We will therefore terminate our current review of the agreements under 49 U.S.C. 41720. As stated earlier, however, we will continue to monitor the alliance's implementation to see whether the Alliance Carriers' future conduct or changes in the airline industry's structure and competitive conditions raise competitive concerns requiring further review, including potential enforcement action under section 41712.

If the Alliance Carriers at any future time decide that they will no longer comply with the restrictions which they have agreed upon with us (which incorporate the restrictions they agreed upon with the Justice Department), they will have created a new agreement and must submit that new agreement to us under 49 U.S.C. 41720. Implementation of any such new agreement must be deferred until the end of the statutory waiting period. The same will be true if they materially modify the terms of the written agreements submitted to us for review on August 23. Under our established interpretation of 49 U.S.C. 41720, airlines that significantly modify a joint venture agreement must submit the modified agreement to us for review under that statute.

We do not agree with the commenters who have urged us to extend the waiting period under 49 U.S.C. 41720. They contend that we cannot now accurately assess the alliance's competitive impact when current world events such as war in Iraq and potential changes in the industry's structure may substantially change the alliance's potential impact on airline competition. While no one can predict with certainty what may happen, we do not believe that these events warrant a delay in the alliance's implementation. The conditions should mitigate the anti-competitive effects of the alliance, and we intend to monitor closely the alliance's effects on competition in light of future developments. We retain our full statutory authority to take enforcement action at any time if we have reason to believe that the alliance has a significant adverse impact on airline competition, and we will do so.

Similarly, we are not persuaded that it is necessary to delay the implementation of the alliance pending a review of Delta's new low-fare operation, Song. According to JetBlue's comments, Delta will launch Song this spring, and Song should be operating 36 aircraft by the end of the year. JetBlue asserts that Song is designed to "attack" low-fare competitors, implying that such an "attack" is not a legitimate response to consumer demands and industry competition. We do not believe it necessary to block the implementation of the alliance pending a more detailed investigation of Delta's plans for Song's operations or to exclude Song from the alliance until completion of further review. Rather, we will continue to assess the effects of the alliance in the light of actual experience. As a general matter, we have no reason to block Delta, or any other airline, from restructuring its operations to meet competitive challenges from other airlines and to satisfy consumer demands for lower fares. Incumbent airlines may legitimately respond to competitive actions by others, and Delta is entitled to compete fairly for a share of the Northeast-Florida market. While JetBlue fears that Song will engage in unlawful conduct, JetBlue Comments at 3–4, we cannot assume now that Delta will operate Song unlawfully. If, after Song begins operations, JetBlue were to present evidence to us indicating that Song may be engaged in unfair methods of competition, we would have full authority to consider that evidence under section 41712 and determine what action would be appropriate at that time.

In determining whether to end our review of the Alliance Carriers' agreements, we considered the commenters' arguments that we should require the Alliance Carriers to accept our original conditions without modification. As discussed below, however, we presently believe that the alternative language proposed by the Alliance Carriers may be sufficient to address our competitive concerns.

Again, if the conditions prove to be insufficient, adversely affected parties may complain to us, and we will have the power to take enforcement action at that time.

Airport Facilities. Our original condition on airport facilities would have required the Alliance Carriers to surrender gates at four of their hubs as a result of co-location and, if requested by the airport operator, to surrender additional gates at their hubs and Boston Logan that were used less than six turns each day. The alternative language still requires them to give up thirteen gates at four of their hubs, and requires Delta to give up thirteen additional gates at Boston Logan in 2005. However, rather than establish a usage standard that would govern the future conduct of these carriers alone, the alternative language would require the carriers to give up gates now at two congested airports, Boston Logan and LaGuardia. We believe that the alternative language should be sufficient. The requirement that the Alliance Carriers surrender specific gates now offers immediate benefits over our original proposal, which may have made gates available in the future if they were underused and were requested by the airport sponsor. It is unlikely that any gates ultimately surrendered under the original condition would have been desirable gates. We therefore are not persuaded that the alternative language should be rejected due to alleged defects in several of the gates to be surrendered. We have reviewed the adequacy of the gates at Boston Logan and LaGuardia. We understand that the gates are useable for many purposes, if not all, and will enable airlines to gain access to these two airports, where access has historically been difficult.

Massport, the airport sponsor of Boston Logan, states that it would prefer that Northwest give up two different gates, which could be used by wide-body aircraft, unlike the gates that Northwest has chosen to surrender. However, no carrier commenter has complained about the adequacy of those particular gates. Our principal concern in our review of the alliance has been its impact on domestic airline competition. The gates to be surrendered by Northwest should be adequate for the needs of most domestic airlines, since airlines operate wide-body aircraft on relatively few domestic routes.

ACI does not specifically support or oppose the alternative language for the gate access condition or our original gate condition. ACI instead expresses its dissatisfaction with the alleged efforts of this Department and the Federal Aviation Administration to interfere with the airports' asserted right to manage their facilities. ACI fears that we may interpret the condition as requiring an airport sponsor to relinquish its rights under leases with the Alliance Carriers. ACI's concern is unfounded. We are not requiring any airport to take action that would surrender its rights under its lease agreements. The condition requires gates to be surrendered only if requested by the airport sponsor, except for the gates that will be given up by Delta at Boston Logan upon its relocation to a new terminal. Presumably the airport sponsor will take into account its leasehold interests in determining whether to request the gates. Furthermore, giving an airport the opportunity to obtain gates that can be used by other airlines for new or expanded services should benefit the airport's customers and thus the airport sponsor.

Nonetheless, we do not accept ACI's implicit premise that airport sponsors should be able to manage their airports without regard for federal interests or their obligations under federal law. The airports used by the Alliance Carriers have received substantial grants from the FAA. As required by 49 U.S.C. 47107, the airports had to accept specific assurances in order to obtain those federal funds. Those assurances require among other things that the airport be available for public use on reasonable terms and conditions. 49 U.S.C. 47107(a)(1). Airports therefore have an obligation to make gates available for airlines that wish to begin service (or expand service) and are otherwise unable to obtain the facilities needed to operate those services. *See* FAA/OST Task Force Study, U.S. Department of Transportation, *Airport Business Practices and Their Impact on Airline Competition* (October 1999) at 13–26. We will continue to review airport facilities issues in connection with our review, under federal law, of airport competition plans, and will investigate complaints about "hoarding" of gates pursuant to our authority under section 41712.

ACI additionally asked us to clarify the alternative language's proviso that an Alliance Carrier need not surrender a gate "if it will be required to continue to pay rentals, charges or any other lease obligations related thereto." ACI contends that we should explicitly state that this language does not exempt the airline's compliance with the lease obligations accruing before the surrender of the gates. ACI Comments at 5–6. However, ACI has misread the condition, which is only intended to define when an Alliance Carrier must surrender a gate, not to define the extent of its obligations under its lease with the airport sponsor.

Code-sharing Limitations. In an effort to ensure that the Alliance Carriers fulfilled their promises of consumer benefits due to new on-line service in many markets, we required that at least one-fourth of each marketing carrier's code-share flights must be to or from airports that the airline and its regional affiliates either did not directly serve or served with no more than three daily roundtrips as of August 2002. We also required that an additional thirty-five percent of the code-share flights must either meet that requirement or be to or from small hub and non-hub airports. The condition limited the total number of code-share flights between Delta and Continental and between Delta and Northwest to 2,600 (but does not affect the existing code-sharing between Continental and Northwest). We committed ourselves to reviewing these restrictions after the first year. We believed these restrictions were necessary to ensure that the Alliance Carriers implemented their representations that the alliance would provide consumer benefits by creating on-line service in a number of new markets. 68 FR 3298.

The alternative language allows the Alliance Carriers to code-share on an additional 2,600 flights in the second year, subject to the requirement that thirty percent of these additional code-share flights must be flights in new markets or to small hub or non-hub airports. If the Alliance Carriers wish to add additional code-share flights after the second year, they must give us 180 days advance notice and provide any information requested by us on the additional code-share services. 68 FR 10771.

We believe that the alternative language will continue to ensure that the Alliance Carriers use their code-sharing to extend their networks, as they publicly stated was their intent. As under our original condition, they may use a large share of their code-share flights for larger markets where they compete with other airlines. The alternative language will also establish an upper limit on the number of additional code-share flights in the second year of the alliance. While the Alliance Carriers may expand code-sharing to significantly more markets in the second year, we retain our statutory authority to review the competitive impact of any such expansion. If at any time, we believe the effects of the alliance are anti-competitive, we may

institute a proceeding under section 41712. In addition, the Alliance Carriers are required to give us 180 days notice before code-sharing on additional flights after the second year of their alliance. That will enable us to conduct a thorough review of the impact on competition of the first two years of the alliance, and of any proposed expansion of code-share operations, and to take action if necessary. Finally, the restrictions imposed separately by the Department of Justice will prevent the Alliance Carriers from code-sharing in markets where two or more of the partners offer nonstop service. Again, we will closely monitor the competitive impact of the Alliance Carriers' implementation of their code-sharing agreement and will consider whether additional limits should be placed on that activity.

Joint Marketing Restrictions. We have also determined to accept the Alliance Carriers' alternative language on joint marketing. Although it will give them greater ability to make joint offers to corporations and travel agencies than under our original condition, their ability to make joint offers will remain subject to substantial restrictions. In their agreement with the Justice Department, they acknowledge that they may not make joint offers where doing so would violate the antitrust laws. Our condition, with the Alliance Carriers' alternative language, gives each corporation and travel agency the right to request separate offers from each of the Alliance Carriers and allows the airline partners to make a joint bid only if the corporation or travel agency has made a written request for a joint offer. The Alliance Carriers may not make a joint bid for domestic travel, or for domestic travel linked with international travel, to a corporation or travel agency that has its headquarters or a principal place of business in specified cities where the Alliance Carriers' joint market share exceeds fifty percent, except that they may submit a joint bid to such a corporation or travel agency for travel originating from cities other than the principal place of business or headquarters city. No joint bid may make the discounted corporate fares or travel agency commissions dependent on the satisfaction of minimum booking requirements in specific domestic O&D markets offered by one partner, unless the corporation or travel agency has stated in writing that it desires such an offer in order to compare it with a competitive bid from one of the other seven largest carriers or from another airline alliance.

Some commenters suggest that the requirement of a written request from the corporation or travel agency may be ineffective, because the Alliance Carriers may put pressure on corporations and travel agencies to request a joint bid. *See, e.g.,* Galileo Comments at 2. However, we believe the requirement may still have its intended effect. Any such conduct by the Alliance Carriers would violate the condition, and potentially section 41712. We believe that there is a significant likelihood that some corporations and travel agencies subjected to unlawful pressure will report it to us, and we encourage them to do so. We would take very seriously any such reports. The requirement that any joint offer be preceded by a request from the corporation or travel agency should therefore be effective. As with the other conditions, however, we will monitor the effectiveness of the limitations on joint marketing and take further action if necessary.

One objection to the alternative language reflects a misunderstanding of its restrictions. As noted, the prohibition against joint bids to corporations or travel agencies that have their headquarters or a principal place of business in the cities listed in Exhibit A allows joint bids for travel originating from cities other than their principal place of business or headquarters city. Some commenters have assumed that this exception would allow the Alliance Carriers to make a joint bid for the return trips of a corporation's personnel located at the headquarters or principal place of business, even if the bid may not cover their outbound trips. Any such interpretation would be wrong. The Joint Carriers could not make a joint bid to a company headquartered in Atlanta for the travel of the headquarters personnel, but they could make a joint bid for travel originating at such a company's facility in California, assuming such a bid would comply with the antitrust laws. That bid, however, could only cover the travel of employees and contractors located at the California facility, not those located in Atlanta. The joint bid thus could not cover travel from California to Atlanta by personnel located in Atlanta. The Alliance Carriers accordingly cannot evade the restriction by treating trips by headquarters personnel from the field to headquarters as travel originating in another city, since the travel of such personnel originated in the headquarters city.

Conclusion

In sum, after thorough consideration of all comments, we are not persuaded that we should postpone the completion of our review of the agreements or that we should reject the alternative language. Subject to our conditions, the agreements should not unreasonably restrict each partner's incentives and ability to compete independently or be likely to result in collusion on fares or service levels. However, given our strong concern that the agreements not lead to unfair methods of competition, we intend to monitor their implementation closely. If and when the airlines' implementation of their joint venture appears to be having an adverse impact on competition, we will consider taking action under section 41712. Furthermore, as stated above, if at any point the Alliance Carriers decide that they will no longer comply with the restrictions to which they have agreed, they will have created a new agreement which must be submitted to us under 49 U.S.C. 41720 and whose implementation must be delayed until the end of a new waiting period.

Our review will be deemed terminated when we receive from the Alliance Carriers a signed written acceptance, in a form satisfactory to us, of the six conditions, including the proposed alternative language as discussed in this Notice.

Issued in Washington, DC on March 31, 2003.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–8288 Filed 4–4–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending March 28, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–14811.
Date Filed: March 26, 2003.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0506 dated 28 March 2003. Mail Vote 286—Resolution 010y TC2 Within Europe Special Passenger Amending Resolution from Italy to Europe. *Intended effective date:* 1 April 2003.

Docket Number: OST–2003–14816.
Date Filed: March 27, 2003.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0508 dated 28 March 2003. Mail Vote 289—Resolution 010b. TC2 Within Europe Special Passenger Amending Resolution. from Croatia to Europe.
Intended effective date: 10 April 2003.

Docket Number: OST–2003–14817.
Date Filed: March 27, 2003.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 1020 dated 21 March 2003 Resolutions r1–r13. PTC COMP 1021 dated 21 March 2003 Resolutions r14r38.

PTC COMP 1023 dated 25 March 2003 Technical Correction. PTC COMP 1025 dated 28 March 2003 Technical Correction. PTC COMP 1026 dated 28 March 2003 Technical Correction. Minutes—PTC COMP 1022 dated 25 March 2003. *Intended effective date:* 15 April 2003.

Docket Number: OST–2003–14818.
Date Filed: March 27, 2003.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 278.

PTC12 NMS–AFR 0160 dated 14 March 2003. North Atlantic-Africa Resolutions r1–r20. Minutes—PTC12 NMS–AFR 0163 dated 21 March 2003. Tables—PTC12 NMS–AFR Fares 0081 dated 21 March 2003. *Intended effective date:* 1 May 2003.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–8375 Filed 4–4–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–95–246]

North American Free Trade Agreement's Land Transportation Standards Subcommittee and Transportation Consultative Group: Plenary Session

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice announces the ninth joint plenary session of the North American Free Trade Agreement's (NAFTA) Land Transportation Standards Subcommittee (LTSS) and the Transportation Consultative Group (TCG) and other related meetings. As an adjunct to the plenary session, technical working groups that address specific standards-related areas will also meet. Representatives of non-governmental organizations (NGO) with an interest in land transportation issues may contact the chairpersons of LTSS or TCG working groups to which they wish to direct their comments, either in writing or in person. Only U.S., Canadian, and Mexican government officials may attend the plenary session.

Background

The Land Transportation Standards Subcommittee (LTSS) was established by the North American Free Trade Agreement's (NAFTA) Committee on Standards-Related Measures to examine the land transportation regulatory regimes in the United States, Canada, and Mexico, and to seek to make certain standards more compatible. The Transportation Consultative Group (TCG) was formed by the three countries' departments of transportation to address non-standards-related issues that affect cross-border movements among the countries, but that are not included in the NAFTA's LTSS work program (Annex 913.5.a–1).

Meetings and Deadlines: The ninth joint LTSS/TCG plenary session will be held May 28 and 29, 2003, at the Hyatt Riverwalk, San Antonio, Texas, USA. The following LTSS working groups are expected to meet during the same dates and at the same location: (1) Compliance and Driver and Vehicle Standards; (2) Vehicle Weights and Dimensions; and (3) Hazardous Materials Transportation Standards. The following TCG working groups also are expected to meet: (1) Cross-Border Operations and Facilitation; (2) Rail Safety and Economic Issues; (3) Science and Technology; and (4) Maritime and Ports Policy.

An opportunity will be provided for non-governmental organizations to address officials of the individual working groups regarding issues that concern them and that are within the purview of those working groups. Representatives of the truck, bus, and rail industries, transportation labor unions, brokers and shippers, chemical manufacturers, insurance industry, public safety advocates, and others who wish to take advantage of this opportunity are asked to contact the U.S. chairperson of the group they wish to address. Contact names, addresses and phone numbers are provided later in this notice. Copies of presentations, in English and Spanish, should be mailed to the working group chairs no later than May 14, 2003. This is an opportunity for presenters to voice their concerns, provide technical information, and offer suggestions relevant to achieving greater standards compatibility and improving cross-border trade. While written statements may be of any length, oral presentations will be limited based on the number of presenters to be accommodated. Working group chairs will determine the allowable length of any oral presentation and communicate that to the interested NGOs at least one week prior to the meeting dates. After May 14, statements may be submitted for the record and requests to present oral comments to the working groups will be accommodated only on a time-available basis.

Interested parties can make hotel reservations by telephoning the Hyatt Riverwalk at 1–800–233–6343 and identifying themselves as attendees to the NAFTA LTSS. This will ensure that attendees receive the meeting room rate. A block of guest rooms has been reserved at the hotel for the nights of May 27, 28 and 29 until April 20, 2003. After that the meeting rate cannot be guaranteed, nor the availability of guest rooms. A credit card is required to guarantee payment for all rooms.

A briefing to report on the outcome of the meetings will be conducted in room 3328 at DOT at the address below, on Wednesday, June 25, 2003, from 10 a.m. to 12 noon. Interested parties may notify DOT of their interest in attending this briefing by calling (202) 366–2892 by June 24.

SUPPLEMENTARY INFORMATION: LTSS-related documents, including past working group reports and statements received by DOT from industry associations, transportation labor unions, public safety advocates, and others are available for review in Docket No. OST–95–246, at the address below, Room PL–401, between 9 a.m. and 5 p.m., (EST) Monday through Friday, except national holidays. The Docket, which is updated periodically, may also be accessed electronically at *http://dms.dot.gov.* Information about the ninth plenary session can also be found on the DOT NAFTA Web site at *http://www.dot.gov/NAFTA.*

Address and Phone Numbers: Individuals and organizations interested in participating in working group sessions must send notice of their interest and copies of their presentations by May 14 to one or more of the following working group chairs:

LTSS Working Groups

Compliance and Driver and Vehicle Standards, Tom Kozlowski—(202–366–4049), Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.
Vehicle Weights and Dimensions, Jim March—(202–366–9237), Federal Highway Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.
Hazardous Materials Transportation Standards, Bob Richard—(202–366–

0586), Research & Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

TCG Working Groups

Cross-Border Operations and Facilitation, Maria Lameiro (202–366–2892), Office of International Transportation & Trade, Office of the Secretary of Transportation, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

Rail Safety and Economic Issues, Jane Bachner (202–493–6405), Federal Railroad Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

Science and Technology, Rich Biter (202–366–5781), Office of the Secretary of Transportation, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

Maritime and Ports Policy, Greg Hall (202–366–5773), Maritime Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

For additional information, call (202) 366–2892.

Dated: March 31, 2003.

Bernestine Allen,

Director, Office of International, Transportation and Trade.

[FR Doc. 03–8376 Filed 4–4–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

DEPARTMENT OF THE INTERIOR

National Park Service

Membership in the National Parks Overflights Advisory Group

AGENCIES: National Park Service, Interior, and Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: By **Federal Register** notice published on February 12, 2003, the National Park Service (NPS) and the Federal Aviation Administration (FAA), asked interested persons to apply to fill a vacant position representing environmental interests on the National Parks Overflights Advisory Group (NPOAG). This notice informs the public of the person selected to fill that vacancy on the NPOAG. It also announces a change in representation of one member representing aviation interests on the NPOAG.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Executive Resource Staff, Western Pacific Region Headquarters, 15000 Aviation Blvd., Hawthorne, CA 90250, telephone: (310) 725–3800, e-mail: *Barry.Brayer@faa.gov,* or Howie Thompson, Natural Sounds Program, National Park Service, 12795 W. Alameda Parkway, Denver, Colorado, 80225, telephone: (303) 969–2461; e-mail: *Howie_Thompson@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator and the Director (or their designees) serve as *ex officio* members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

The advisory group provides "advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands."

Changes in Membership

To maintain the balanced representation of the group, the FAA and the NPS recently published a notice in the **Federal Register** asking interested persons to apply to fill a vacancy representing environmental interests on the NPOAG. The person selected to fill that position is Mr. Steve Bosak of the National Parks Conservation Association.

In addition, the Aircraft Owners and Pilots Association recently announced that Ms. Heidi Williams will replace Mr. Andy Cebula as a member of the NPOAG representing aviation interests.

Issued in Washington, DC, on April 1, 2003.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 03–8399 Filed 4–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee (ATSRAC).

DATES: The ATSRAC will meet on April 24, 2003, from 8:30 a.m. to 5 p.m.

ADDRESSES: The Boeing Company, 1200 Wilson Blvd., Roslyn, Virginia.

FOR FURTHER INFORMATION CONTACT: Shirley Stroman, Office of Rulemaking, ARM–208, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470; fax (202) 267–5075; or e-mail *shirley.stroman@faa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces a meeting of the Aging Transport Systems Rulemaking Advisory Committee. The FAA will hold the meeting at the location listed under the **ADDRESSES** heading of this notice. The purpose of the meeting is to discuss the new tasks the FAA proposes to assign to the ATSRAC.

The meeting is open to the public; however, attendance will be limited by the size of the meeting room. The FAA will make the following services available if you request them by April 18, 2003:

- Teleconferencing
- Sign and oral interpretation
- A listening device

Individuals using the teleconferencing service and calling from outside the Washington, DC metropolitan area will be responsible for paying long-distance charges. To arrange for any of these services, contact the person listed under the **FOR FURTHER INFORMATION CONTACT** heading of this notice.

The public may present written statements to the Committee by providing 20 copies to the Committee's Executive Director or by bringing the copies to the meeting. Public statements will be considered if time allows.

Issued in Washington, DC, on March 31, 2003.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 03–8285 Filed 4–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lafourche and St. Charles Parishes, LA

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise interested agencies and the public that, in accordance with the National Environmental Policy Act (NEPA), an Environmental Impact Statement (EIS) will be prepared for a proposed road project (State Project Nol 700–92–0011 and Federal Aid Project No. NH–9201(501)) in Lafourche and St. Charles Parishes, Louisiana.

FOR FURTHER INFORMATION CONTACT: William C. Farr, Programs Operations Manager, Federal Highway Administration, 5304 Flanders Drive, Sutie A, Baton Rouge, Louisiana 70808, Telephone: (225) 757–7615; Facsimile (225) 757–7601 or Vincent Russo, Environmental Engineer Administrator, Louisiana Department of Transportation and Development, P.O. Box 94245, Baton Rouge, Louisiana 70804, Telephone: (225) 248–4191; Facsimile: (225) 248–4188.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Louisiana Department of Transportation and Development (LaDOTD), will prepare an EIS on a proposal to upgrade a portion of U.S. Highway 90 (US 90) to full "Control of Access" highway meeting interstate standards. US 90 would become an extension of Interstate 49 (I–49). The project consists of the proposed I–49 extension from Raceland to the Davis Pond Diversion. The approximate distance of the project is 23 miles.

Proposed I–49 south is comprised of approximately 143 miles of US 90 from Lafayette to the Westbank Expressway in Jefferson Parish. This project is intended to provide traffic safety, a primary hurricane evacuation route serving 37% of Louisiana's population, access to nine airports and four of Louisiana's seven deep draft ports, and provide a vital link for economic development of the region.

Studies have been completed on the I–49 Connector (US 90/US 167) in Lafayette and studies are being completed oin the Lafayette Regional Airport to Route LA 88 and the Wax Lake Outlet to Berwick sections of I–49 South. This proposed EIS addresses the Raceland to Davis Pond section of I–49 South, herein after referred to as Section of Independent Utility (SIU) 1. More specifically, this project will involve preliminary environmental (including social environment) and engineering constraints studies, the development of concept line and grade alternatives, initial impact evaluation, more detailed study of line and grade alternatives and environmental impact, the development of a draft EIS, a public hearing, preparation of a final EIS with complete, detailed environmental and line and grade studies, and a Record of Decision.

A Solicition of Views (SOV) letter will be submitted for distribution to representatives on the SOV mailing list. After mailing of the SOV, a scoping meeting will be held with LADOTD and interested agencies. A public meeting will be scheduled in both of the affected parishes to introduce the project and receive public comment after the initial scoping meeting with LaDOTD. There will be a total of three public meetings and one public hearing in each parish (Lafourche and St. Charles Parishes) throughout the NEPA process to present findings to the public and obtain public input. Additionally, small group informational meetings may be held at the request of commumity groups throughout the project.

Interested individuals, organizations, and public agencies are invited to attend the public meetings and participate in identifying any important environmental issues related to the proposed alternatives and suggesting alternatives which are more economical or which have less environmental effects while achieving similar transportation objectives.

To ensure that the full range of issues related to this proposed action is addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

The public will receive notices on location and time of future opportunities for participation at meetings and public hearings through newspaper advertisements and other means. If you wish to be placed on the mailing list to receive further information as the project develops, please contact Mr. William Farr with FHWA or Mr. Vincent Russo with LaDOTD at the addresses above.

In accordance with the regulations and guidance by the Council on Environmental Quality (CEQ), as well as 23 CFR part 450 and 23 policies; the EIS will include an evaluation of the social, economic, and environmental impacts of the alternatives. The EIS will comply with the requirements of the Clean Air Act Amendments of 1990 and with Executive Order 12898 on Environmental Justice. The EIS will meet the requirements of the U.S. Environmental Protection Agency's transportation conformity regulations (40 CFR part 93 and 23 CFR 450.322(b)(8)). After publication, the draft EIS will be available for public agency review and comment.

The Final EIS will consider the public and agency comments received during the public and agency circulation of the EIS and will identify the preferred alternative. Opportunity for additional public comment will be provided throughout all phases of the project development.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Dated: Issued on April 1, 2003.

William A. Sussmann,

Division Administrator, FHWA, Baton Rouge, Louisiana.

[FR Doc. 03–8330 Filed 4–4–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: St. Charles and Jefferson Parishes, LA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for proposed road project (State Project No. 700–92–0011 and Federal Aid Project No. NH–9201(501)) in St. Charles and Jefferson Parishes, Louisiana.

FOR FURTHER INFORMATION CONTACT: William C. Farr, Program operation Manager, Federal Highway Administration, 5304 Flanders Drive, Suite A, Baton Rouge, Louisiana 70802, Telephone: (225) 757–7615; and Vince Russo, Environmental Engineer

Administrator, Louisiana Department of Transportation and Development, 5040 Florida Boulevard, Room 204A, POB 94245, Baton Rouge, Louisiana, 70804, Telephone: (225) 248–4190. Additional information may also be obtained at the I–49 Web site: *http://www.i49south.org.*

SUPPLEMENTARY INFORMATION: Pursuant to title 23, Code of Federal Regulations, part 771, Environmental Impact and Related Procedures, the FHWA, in cooperation with the Louisiana Department of Transportation and Development, will prepare an EIS in accordance with the National Environmental Policy Act (NEPA) on a proposal to improve U.S. Route 90 (U.S. 90) in St. Charles and Jefferson Parishes, Louisiana. The proposed improvement would involve an upgrade of the existing roadway to Federal Interstate Standards on existing alignment and/or new alignment and name the new facility Interstate 49 (I–49). The proposed project is between LA 306 to the west of the I–310 Interchange to the West Bank Expressway with a length of approximately 20 miles.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand, and hurricane evacuation. Also, included in this proposal is a new improved interchange with Interstate Highway 310 (I–310) just west of Boutte, Louisiana. Alternatives under consideration include (1) taking no action (no-build); (2) improving the existing facility on existing alignment from a four-lane open access roadway to a full control of access roadway according to Federal Interstate Standards; and (3) improving the existing facility on existing alignment to the maximum extent practicable and on new alignment where required from a four-lane open to limited access roadway to a full control of access roadway according to Federal Interstate Standards, and (4) building a new full control of access four—lane roadway all on new alignment according to Federal Interstate Standards. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment along with various geometric concepts on the segment U.S. 90/I–49 between the Huey P. Long Bridge and the end of the project to the east.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of three (3) public meetings will be held in the project area in St. Charles and Jefferson Parishes in 2003 and early 2004. In addition, a Public Hearing will be held. Public notice will be given of the time and place of the meetings and the Hearing. The draft EIS will be available for public and agency review and comment prior to the Public Hearing. A formal scoping meeting is planned for April or May of 2003. Public notice will be given of the time and place of the scoping meeting.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above. Anyone wishing to be placed on the mailing list for future notices and announcements concerning this project may request so by writing the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on April 1, 2003.

William A. Sussmann,

Division Administrator, Baton Rouge, Louisiana.

[FR Doc. 03–8331 Filed 4–4–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 646]

Rail Rate Challenges in Small Cases

AGENCY: Surface Transportation Board, DOT.

ACTION: Amended notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) is rescheduling the public hearing in this matter to April 22, 2003.[1] New dates for filing notices of intent to participate and for filing written testimony are established.

DATES: The public hearing will take place on Tuesday, April 22, 2003, at 10 a.m. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than April 11, 2003. Each speaker should also file with the Board his/her written testimony by April 16, 2003.

ADDRESSES: The public hearing will take place in the 7th floor hearing room at the Board's offices in the Mercury Building, 1925 K Street, NW., Washington, DC. An original and 10 copies of all notices of intent to participate and testimony should refer to STB Ex Parte No. 646, and should be sent to: Surface Transportation Board, Attn: STB Ex Parte No. 646, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION, CONTACT: Beryl Gordon, (202) 565–1616. [Federal Information Relay Service (FIRS) (Hearing Impaired): (800) 877–8339.]

SUPPLEMENTARY INFORMATION: The public hearing in this matter is for the purpose of providing a forum for the expression of views and proposals by rail shippers, railroads, and other interested persons, regarding rail rate challenges in small cases to be considered by the Board. Decisions and notices of the Board, including this notice and the prior notice in this matter, are available on the Board's Web site at *http://www.stb.dot.gov.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: April 1, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–8393 Filed 4–4–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The hearing had originally been set for April 16, 2003.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8800

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8800, Application for Additional Extension of Time To File U.S. Return for a Partnership, REMIC, or for Certain Trusts.

DATES: Written comments should be received on or before June 6, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Additional Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts.

OMB Number: 1545–1057.

Form Number: Form 8800.

Abstract: Form 8800 is used by partnerships, REMIC, and by certain trusts to request an additional extension of time (up to 3 months) to file Form 1065, Form 1041, or Form 1066. Form 8800 contains data needed by the IRS to determine whether or not a taxpayer qualifies for such an extension.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and farms.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 11 min.

Estimated Total Annual Burden Hours: 3,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–8296 Filed 4–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–A, U.S. Corporation Short-Form Income Tax Return.

DATES: Written comments should be received on or before June 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Corporation Short-Form Income Tax Return.

OMB Number: 1545–0890.

Form Number: 1120–A.

Abstract: Form 1120–A is used by small corporations with less than $500,000 of income and assets to compute their taxable income and tax liability. The IRS uses Form 1120–A to determine whether these corporations have correctly computed their tax liability.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Responses: 262,446.

Estimated Time Per Respondent: 72 hours, 58 minutes.

Estimated Total Annual Burden Hours: 19,152,552.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–8297 Filed 4–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2106

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2106, Employee Business Expenses.

DATES: Written comments should be received on or before June 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet *CAROL.A.SAVAGE@irs.gov.*, Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employee Business Expenses.

OMB Number: 1545–0139.

Form Number: 2106.

Abstract: IRC section 62 allows employees to deduct their business expenses to the extent of reimbursement in computing adjusted gross income. Expenses in excess of reimbursements are allowed as an itemized deduction. Unreimbursed meals and entertainment are allowed to the extent of 50% of the expense. Form 2106 is used to compute these expenses.

Current Actions: Lines 22b and 22c are being deleted from part II of Form 2106 to comply with Revenue Procedure 99–38, which prescribes the new standard mileage rate of 32.5 cents per mile, effective 1/1/2000 for the entire year. This is a change from last year's form when there were two different rates during the year. This year there is one rate and taxpayers need only one line to make the computation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,567,188.

Estimated Time Per Respondent: 4 hr., 5 min.

Estimated Total Annual Burden Hours: 22,809,519.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–8298 Filed 4–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted.

DATES: The meeting will be held Friday, May 2, 2003, 8:30 a.m. to 6:30 p.m., and Saturday, May 3, 2003, 8:30 a.m. to 2 p.m. at the St. Gregory Hotel, 2003 M Street, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Friday, May 2, 2003, 8:30 a.m. to 6:30 p.m., and Saturday, May 3, 2003, 8:30 a.m. to 2 p.m. in the St. Gregory Hotel, 2033 M Street, Washington, DC. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623.

The agenda will include the following: Mid-year assessment reports, discussion of various administrative issues, discussion and prioritization of issues elevated to Joint Committee, and discussion of next meeting.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 31, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–8291 Filed 4–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Friday, April 25, 2003.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, April 25, 2003, from 11 a.m. e.s.t. to 12:30 p.m. e.s.t. via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 31, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–8292 Filed 4–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, April 23, 2003.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, April 23, 2003, from 12 noon EST to 1 pm E.S.T. via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: IRS Notices.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 31, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–8293 Filed 4–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be held Monday, April 21, 2003 from 2 pm PST to 4 pm PST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider an oral or written statement, please call 1–888–912–1227 or 206–220–6096, or write Anne Gruber, TAP Office, 915 2nd Ave, M/S W406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 31, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–8294 Filed 4–4–03; 8:45 am]

BILLING CODE 4830–01–P

VOL
68
ISS
66
AP
7
003
MI

Federal Register

Monday,
April 7, 2003

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 533

Light Truck Average Fuel Economy Standards Model Years 2005–2007; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. 2002–11419; Notice 3]

RIN 2127–AI70

Light Truck Average Fuel Economy Standards Model Years 2005–2007

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule establishes corporate average fuel economy standards for light trucks. NHTSA is setting a standard of 21.0 miles per gallon (mpg) for model year (MY) 2005, 21.6 mpg for MY 2006, and 22.2 mpg for MY 2007.

DATES: Effective: May 5, 2003. If you wish to submit a petition for reconsideration of this rule, your petition must be received by May 22, 2003.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues, call Ken Katz, Lead Engineer, Fuel Economy Division, Office of Planning and Consumer Standards, at (202) 366–0846, facsimile (202) 493–2290, electronic mail *kkatz@nhtsa.dot.gov*. For legal issues, call Otto Matheke or Nancy Bell, Office of the Chief Counsel, at (202) 366–2992.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Background
III. Summary of the NPRM
IV. Summary of Final Rule and Supporting Documents
V. Maximum Feasible Fuel Economy Considerations
VI. Summary of Public Comments
A. Technological Comments
B. Economic Comments
C. Environmental Comments
D. Additional Comments
VII. Consideration of the Maximum Feasible Fuel Economy Levels
A. Technological Feasibility
1. General Motors
2. Ford
3. DaimlerChrysler
B. Economic Practicability and Other Economic Issues
1. Costs
2. Benefits to Society
3. Comparison of Estimated Costs to Estimated Societal Benefits
VIII. The Effect of Other Federal Vehicle Standards on Fuel Economy
A. Federal Motor Vehicle Safety Standards
1. FMVSS No. 138, Tire Pressure Monitoring Systems
2. FMVSS No. 139, Tire Upgrade
3. FMVSS No. 201, Occupant Protection in Interior Impact
4. FMVSS No. 202, Head Restraints
5. FMVSS No. 208, Occupant Crash Protection
6. FMVSS No. 225, Child Restraint Anchorage Systems
7. FMVSS No. 301, Fuel System Integrity
8. Cumulative Weight Impacts of the FMVSSs
B. Federal Motor Vehicle Emissions Standards
1. Tier 2 Requirements
2. Onboard Refueling Vapor Recovery
3. Supplemental Federal Test Procedure
4. California Air Resources Board LEV II and Section 177 States
IX. The Need of The Nation to Conserve Energy
X. Balancing of Statutory Factors
XI. Rulemaking Analyses and Notices

I. Introduction

Beginning in 1996, NHTSA was subject to a series of limitations on appropriations that prevented the agency from considering changes to the corporate average fuel economy (CAFE) levels established by statute at 27.5 mpg for passenger cars and by regulation at 20.7 mpg for non-passenger automobiles (light trucks). In July 2001, Secretary of Transportation Mineta asked Congress not to renew the appropriations rider restricting the agency's authority.

Congress enacted the Department of Transportation and Related Agencies Appropriations Act for FY 2002 (Pub. L. 107–87) in December 2001 without the appropriations rider. Since that time, the agency has been actively engaged in collecting and analyzing data, establishing appropriate fuel economy standards, and considering ways to enhance the CAFE program within current statutory authority.

Because NHTSA is required by the CAFE statute to establish the CAFE standard for a model year not later than 18 months before its beginning, and thus had to establish the light truck standard for MY 2004 on or before April 1, 2002, the agency had to act quickly after December 2001 to set that standard. Due to the lack of opportunity to gather and analyze the data necessary to support a standard different from 20.7 mpg, the agency set the MY 2004 standard at 20.7 mpg. (67 FR 16052, April 4, 2002)

On February 7, 2002, the agency published a Request for Comments, seeking data relating to manufacturers' product plans for light trucks for MYs 2005–2010 and seeking comments relating to potential reforms to the CAFE program. (67 FR 5767) Having received and analyzed detailed data about manufacturers' product plans for MYs 2005–2007, the agency published a Notice of Proposed Rulemaking (NPRM) on December 16, 2002 proposing to establish the CAFE standard for light trucks at 21.0 mpg for MY 2005, 21.6 mpg for MY 2006 and 22.2 mpg for MY 2007. (67 FR 77015)

NHTSA noted in the NPRM that, consistent with the recommendations of the National Academy of Sciences (NAS) in its report on the effectiveness and impacts of the CAFE standards, the agency intended to consider alternatives to the current structure of the CAFE program that would enhance long term fuel economy while protecting motor vehicle safety and American jobs, and to implement reforms consistent with our statutory authority for model years after MY 2007. We further noted our belief that advanced fuel saving technologies, such as hybrid electrics and advanced diesel vehicles, could substantially enhance the average fuel economy of the American light vehicle fleet as even more advanced technologies, such as fuel cells, are developed.

Since that time, both public and private initiatives have been announced. Earlier this year, President Bush proclaimed the government's support for the active research and development of commercially viable hydrogen-powered fuel cells for transportation and stationary power applications, and the infrastructure to support them. As the President indicated in his State of the Union address, successful execution of the Hydrogen Fuel Initiative would mean that the first car driven by a child born today could be powered by fuel cells, and pollution-free. The President's Hydrogen Fuel Initiative complements the FreedomCAR initiative, a partnership with the U.S. auto industry aimed at developing technologies needed for mass production of safe and affordable hydrogen fuel cell vehicles. Together, these initiatives will enable automobile manufacturers to decide to offer affordable and technologically viable hydrogen fuel cell vehicles in the mass consumer market by 2015 and the ability to produce and deliver such vehicles to the market by 2020.

The private sector is also responding to the nation's need to develop energy independence. On January 6, 2003, General Motors announced that it would offer an optional hybrid powertrain on several of its most popular models, including light trucks. While pointing out that its plans involve "relatively low volumes," General Motors also stated that its initiative would make it "well positioned to meet market demand as it develops." Similarly, Ford Motor Company will introduce an optional hybrid electric powertrain in its Escape Sport Utility Vehicle, beginning with MY 2004. As Ford explained:

> While a few automakers have introduced small, low-volume hybrid-electric cars, Ford is introducing its first HEV on a family-sized sport utility to increase mass customer appeal. The hybrid-electric powertrain also has been developed with additional applications and vehicles in mind to expand the potential impact of the environmentally responsible technology.

DaimlerChrysler will introduce an optional diesel engine in the Jeep Liberty Sport Utility Vehicle, also beginning with MY 2004. The company claimed in December 2002 that American consumers could help reduce oil use by about 800 million gallons annually if they chose to purchase clean diesel engines at the same rate as Europeans. According to DaimlerChrysler: "Today's modern diesel vehicles should be part of the solution to improving fuel efficiency and reducing carbon dioxide emissions. Diesels lead to up to 30 percent improvement in fuel economy, while reducing carbon dioxide emissions an average of 20 percent."

The agency intends to address potential long-term enhancements to the fuel economy program through a separate rulemaking to be initiated this year. We will examine the best methods through which to redefine the distinctions between light trucks and passenger cars and the best basis on which to set CAFE standards. We will identify and seek comment on specific reforms aimed at enhancing fuel economy while protecting the safety of the American public and American jobs.

In the meanwhile, the agency must establish fuel economy standards for light trucks to address the current need to conserve energy within the bounds of technological feasibility and economic practicability, taking into account the effects of other Federal vehicle standards on fuel economy. Having analyzed the manufacturers' product plans and other available information, and considering the nation's need to conserve energy while seeking to protect the safety and jobs of the American public, we proposed light truck CAFE levels for MYs 2005–2007.

We received a significant amount of comment on the proposal, expressing a wide range of views. While some of those commenting charged that technology is available to set the standards higher, others argued that insufficient lead time and technological and market risks make it unlikely that the proposed standards would be attained. We have reviewed the comments and adjusted many aspects of the analyses to account for many of the points made. We have similarly reassessed the costs and benefits of the proposed standards.

After considering the foregoing, we are adopting the standards as proposed in the NPRM, having concluded that they constitute the maximum feasible level, taking into consideration the statutory criteria, for average light truck fuel economy standards for MYs 2005–2007. We have concluded that the standards are within the technological feasibility and economic practicability of the primary companies in the light truck market, and will enhance the ability of the nation to conserve fuel and reduce its dependence on foreign oil. We have concluded further that the standards established today present the overall best balance between the express statutory criteria.

II. Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–1974, Congress enacted the Energy Policy and Conservation Act (EPCA). The Act established an automotive fuel economy regulatory program by adding Title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Saving Act. Title V has been amended from time to time and codified without substantive change as Chapter 329 of title 49, United States Code. 49 U.S.C. 32901–32919.

Chapter 329 provides for the issuance of CAFE standards for passenger automobiles and for automobiles that are not passenger automobiles (light trucks). The CAFE standards set a minimum performance requirement in terms of an average number of miles a vehicle travels per gallon of gasoline or diesel fuel. Individual vehicles and models are not required to meet the mileage standard; rather, each manufacturer must achieve an average level of fuel economy for all specified vehicles manufactured in a given model year.

Section 32902(a) of Chapter 329 states that the Secretary of Transportation shall prescribe by regulation CAFE standards for light trucks for each model year.[1] That section requires that the CAFE standards for light trucks for a given model year be issued at least 18 months before the beginning of that model year. That section also states "[e]ach standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year." Section 32092(f) directs the Secretary to consider four factors in determining the "maximum feasible" fuel economy level:

(1) Technological feasibility;
(2) Economic practicability;
(3) The effect of other Federal motor vehicle standards on fuel economy; and
(4) The need of the Nation to conserve energy.

The first light truck CAFE standards were established for MY 1979 and applied to light trucks with Gross Vehicle Weight Ratings (GVWR) up to 6000 pounds. Beginning with MY 1980, NHTSA raised this GVWR ceiling to 8500 pounds. For MYs 1979–1981, NHTSA established separate standards for two-wheel drive (2WD) and four-wheel drive (4WD) light trucks, without a "combined" standard blending the two together. Beginning with MY 1982, NHTSA established a combined standard, plus optional 2WD and 4WD standards. After MY 1991, NHTSA dropped the optional 2WD and 4WD standards. During MYs 1980–1995, NHTSA also required U.S. light truck manufacturers' "captive imports" to be separated from their other truck models in determining compliance with CAFE standards. The following table lists the "combined" standards established since MY 1982:

Model year	CAFE standard (mpg)
1982	17.5
1983	19.0
1984	20.0
1985	19.5
1986	20.0
1987	20.5
1988	20.5
1989	20.5
1990	20.0
1991	20.2
1992	20.2
1993	20.4
1994	20.5
1995	20.6
1996	20.7
1997	20.7
1998	20.7
1999	20.7
2000	20.7
2001	20.7
2002	20.7
2003	20.7
2004	20.7

In 1994, the agency departed from its usual past practice of considering light truck standards for one or two model years at a time and published an Advance Notice of Proposed

[1] The Secretary has delegated the authority to implement the automotive fuel economy program to the NHTSA Administrator. 49 CFR 1.50(f).

Rulemaking (ANPRM) in the **Federal Register** outlining NHTSA's intention to set standards for some, or all, of MYs 1998–2006. 59 FR 16324 (April 6, 1994).

On November 15, 1995, the Department of Transportation and Related Agencies Appropriations Act for FY 1996 was enacted. Pub. L. 104–50. Section 330 of that Act provided:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations * * * prescribing corporate average fuel economy standards for automobiles * * * in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

Pursuant to that Act, we then issued an NPRM limited to MY 1998, proposing to set the light truck CAFE standard for that year at 20.7 mpg, the same level as the standard we had set for MY 1997. 61 FR 145 (January 3, 1996). We adopted this 20.7 mpg-standard in a final rule issued on March 29, 1996. 61 FR 14680 (April 3, 1996).

On September 30, 1996, the Department of Transportation and Related Agencies Appropriations Act for FY 1997 was enacted. Pub. L. 104–205. Section 323 of that Act included the same limitation on appropriations regarding the CAFE standards contained in Section 330 of the FY 1996 Appropriations Act. The agency followed the same process as the prior year and established a MY 1999 light truck CAFE standard of 20.7 mpg, the same level as the standard that had been set for MYs 1997 and 1998.

Because the same limitation on the setting of CAFE standards was included in the Appropriations Acts for each of FYs 1998–2001, the agency followed that same procedure during those fiscal years and did not issue any NPRMs in the series of rulemakings we conducted to establish the light truck fuel economy standards for MYs 2000–2003. The agency concluded in those rulemakings, as it had when setting the MY 1999 standard, that the restrictions contained in the appropriations acts prevented the issuance of any standards other than the standard set for the prior model year. The agency also determined that issuing an NPRM was unnecessary and contrary to the public interest because there was no other course of action available to it.

The Department of Transportation and Related Agencies Appropriations Act for FY 2001 was enacted on October 23, 2000. Pub. L. 106–346. That is the appropriations act under which we issued the light truck CAFE standard for MY 2003. While Section 320 of that Act contained a restriction on CAFE rulemaking identical to that contained in prior appropriation acts, the conference committee report for that Act directed that NHTSA fund a study by NAS to evaluate the effectiveness and impacts of CAFE standards (H.R. Conf. Rep. No. 106–940, at 117–118).

NAS submitted its report to the Department of Transportation on July 30, 2001. The final report was released in January 2002. The report concludes that technologies exist that could significantly increase passenger car and light truck fuel economy within 15 years. However, their development cycles as well as future economic, regulatory, safety and consumer preferences will influence the extent to which these technologies appear in the U.S. market.

All but two members of the NAS committee that authored the report said, "to the extent that the size and weight of the fleet have been constrained by CAFE requirements * * * those requirements have caused more injuries and fatalities on the road than would otherwise have occurred." (NAS, p. 29). Specifically, they noted: "the downweighting and downsizing that occurred in the late 1970s and early 1980s, some of which was due to CAFE standards, probably resulted in an additional 1300 to 2600 traffic fatalities in 1993." (NAS, pp. 3 and 111.)

The NAS found that, to minimize financial impacts on manufacturers, and on their suppliers, employees, and consumers, sufficient lead-time (consistent with normal product life cycles) should be given when considering increases in CAFE standards. The report stated that there are advanced technologies that could be employed, without negatively affecting the automobile industry, if sufficient lead-time were provided to the manufacturers. In the NAS' view, the selection of future fuel economy standards will require uncertain and difficult trade-offs among environmental benefits, vehicle safety, cost, energy independence, and consumer preferences. It also suggests that consideration be given to changing the CAFE regulatory program to one based on vehicle attributes, such as weight, and that allowing "credit trading" could eliminate the current CAFE program's encouragement of downweighting or the production and sale of more small cars, and also reduce costs. (NAS, pp. 5, 113) Recognizing the many trade-offs that must be considered in setting fuel economy standards, the NAS committee took no position on what CAFE standards would be appropriate for future years.

In a letter dated July 10, 2001, Secretary of Transportation Mineta asked the House and Senate Appropriations Committees to lift the restriction on the agency's spending funds for the purposes of improving CAFE standards. The Department of Transportation and Related Agencies Appropriations Act for FY 2002 (Pub. L. 107–87), which was enacted on December 18, 2001, did not contain a provision restricting the Secretary's authority to prescribe fuel economy standards.

When issuing our January 2002 proposal to establish the MY 2004 standard at 20.7 mpg (67 FR 3470), we noted that our newly regained ability to spend funds did not immediately enable us to conduct the level of analysis needed to set different fuel economy standards.[2] Although a number of commenters reacted to this proposal by advocating a higher MY 2004 standard, the agency determined, based on the limited information available to the agency for analyzing the manufacturers' product plans and on the lack of lead time to change those plans significantly, to set the MY 2004 standard at 20.7 mpg (67 FR 16052, April 4, 2002).

On February 7, 2002, we issued a Request for Comments (RFC) (67 FR 5767) seeking data on which we could base our analysis of appropriate CAFE standards for light trucks for upcoming model years, beginning with MY 2005. We also sought comments on possible reforms to the CAFE program, as it applies to both passenger cars and light trucks, to protect passenger safety, advance fuel-efficient technologies, and obtain the benefits of market-based approaches. In the same month, Secretary Mineta asked Congress "to provide the Department of Transportation with the necessary authority to reform the CAFE program, guided by the NAS report's suggestions."

While we are limited today in setting CAFE standards for the relative short term and within the constraints of the current CAFE statute, we will continue to support and encourage the development of advanced vehicle technologies capable of substantial fuel economy improvements and a market

[2] To prepare to establish any fuel economy standard, the agency must collect information relating to prospective CAFE levels, analyze and weigh the information in light of the statutory criteria for determining the "maximum feasible" average fuel economy level, and incorporate this information and analysis into a rulemaking action to set the standard, with opportunity for notice and comment. As NHTSA was unable to spend any funds by virtue of Section 320 of the FY 2001 Appropriations Act and the predecessor restrictions in earlier Appropriations Acts, it was not able to prepare the factual or analytical foundation necessary for rulemaking to establish CAFE standards at new levels from September 1995 to December 2001.

structure to support them through efforts like the President's proposed research initiative to aid in developing clean, hydrogen-powered automobiles, targeted research dollars and consumer tax incentives. Consistent with the recommendations of the NAS report, we intend to study programmatic CAFE alternatives and to implement those reforms within our statutory authority to allow for greater improvements in fuel economy safely in the years beyond those addressed in this final rule.

III. Summary of the NPRM

NHTSA proposed light truck CAFE standards for MYs 2005–2007 in an NPRM published on December 16, 2002 (66 FR 77015). This proposal sought to set a standard for light trucks at 21.0 mpg for MY 2005, 21.6 mpg for MY 2006 and 22.2 mpg for MY 2007. These proposed standards represented NHTSA's tentative view of the maximum feasible fuel economy levels that could be achieved by light truck manufacturers in each of these model years.

The agency's proposal relied heavily on the NAS fuel economy report, confidential product plans submitted by some manufacturers, data maintained by NHTSA for other manufacturers, and responses to the agency's February 2002 RFC. NHTSA analyzed the information from these sources to develop an understanding of the availability, effectiveness and costs of technologies and other means to increase light truck fuel economy. The agency then proceeded to process these data, using two methodologies. One methodology, which has been labeled as the "Stage" analysis, primarily involved application of the agency's engineering judgment and expertise about possible adjustments to the detailed product plans submitted in response to the RFC by DaimlerChrysler, General Motors, and Ford. The Stage analysis was limited to these manufacturers because they were the only ones that provided the agency with detailed product plans for MYs 2005–2007. The other methodology, used by the Department's Volpe National Transportation Systems Center (Volpe Center) and labeled as the "Volpe" analysis, relied on the aforementioned product plans as well as data relating to manufacturers that had not submitted detailed information in response to the RFC.

The Stage and the Volpe analyses were both intended to provide reliable estimates of manufacturer capabilities. Stage I of the Stage analysis took existing product plans and applied technologies that manufacturers indicated would be available by MY 2005. Stage II applied more advanced transmission upgrades and engine improvements to planned model and engine changeovers.

The Volpe analysis considered product plans, but also used a technology application algorithm developod by Volpe Center staff. This algorithm systematically applied consistent cost and performance assumptions to the entire industry, as well as consistent assumptions regarding economic decision-making by manufacturers. Technologies were applied in order of cost-effectiveness. Use of this methodology led to projections that low-friction lubricants, engine accessory improvements, reductions in engine friction and rolling and aerodynamic resistance, cylinder deactivation, and transmission upgrades (5-speed, 6-speed, and automatically shifted manual transmissions) would account for most of the response to the proposed CAFE standards.

The NPRM explained that the Stage analysis provided the initial basis for the proposed CAFE standards, while the Volpe Center's technology application algorithm was used to estimate the overall economic impact of the proposal. The Volpe analysis covered the entire industry and assessed the economic impact of the proposal as measured in terms of increases in new vehicle prices on a manufacturer-wide, industry-wide, and average per-vehicle basis. Based on these estimates and corresponding estimates of the proposal's net economic and other benefits, the agency tentatively concluded that the proposal would be economically practicable and technologically feasible.

IV. Summary of Final Rule and Supporting Documents

The agency is adopting the light truck CAFE standards proposed in the NPRM: 21.0 mpg for MY 2005, 21.6 mpg for MY 2006, and 22.2 mpg for MY 2007. In establishing these standards, the agency has carefully considered all the comments submitted to the docket, but in particular those of motor vehicle manufacturers and of groups representing consumer and environmental interests. The agency has determined that these levels are the maximum feasible CAFE levels for light trucks for those model years, balancing the express statutory factors and, in particular, the impact of the standard on motor vehicle safety and American jobs. NHTSA estimates that the fuel economy increases required by the standards for MYs 2005–2007 will generate approximately 3.6 billion gallons of gasoline savings over the 25-year lifetime of the affected vehicles.

The agency has analyzed potential technological improvements to the product offerings for each manufacturer with a significant share of the light truck market. In response to the public comments, we updated both the Stage and the Volpe analyses, making numerous changes to our engineering and economic calculations and determinations to account for computational errors and other adjustments we found appropriate. The agency's projection of CAFE capability is based on the most recently submitted product plans and involves technological improvements we have determined to be appropriate and feasible within the time frame. We do not believe this final rule will necessitate, nor do we believe it will result in, any "mix shifting," *e.g.*, changing from the planned production of heavier or larger vehicles to lighter or smaller vehicles, which might result in significant employment and/or weight reductions were it to occur.

Indeed, we sought public comment on the possibility or likelihood that manufacturers would comply with these new standards by reducing vehicle weight and, if so, any safety consequences of weight reduction. The manufacturers suggested that weight reduction is a possible compliance option, while falling short of predicting that they would in fact comply by reducing the mass of their vehicles in ways that may affect their overall crashworthiness. We believe that the final rule neither will necessitate nor result in reductions in vehicle weight that will impede the overall safety of the vehicle fleet traveling on the roads of America. Indeed, as the NAS report noted, there are many technological means available to manufacturers for improving fuel economy that are much more cost-effective than weight reduction. Accordingly, we did not rely on weight reduction.

We recognize that the standard established for MY 2007 is a substantial challenge for General Motors, especially in light of the updates to the product plans submitted with its comments on the NPRM. This is the first time since the issuance of MY 1983–1985 light truck standards in December 1980 that the agency has established light truck CAFE standards for more than two model years in the same final rule. We recognize that, between now and the last (MY 2007) of the model years for which standards are being established, there is more time than in previous light truck CAFE rulemakings for significant changes to occur in external factors

capable of affecting the achievable levels of CAFE. These external factors include fuel prices and the demand for vehicles with advanced fuel saving technologies, such as hybrid electric and advanced diesel vehicles. Changes in these factors could lead to higher or lower levels of CAFE, particularly in MY 2007.

Recognizing that the MY 2007 standard may have to be reexamined in light of any significant changes in those factors, the agency plans to monitor the compliance efforts of the manufacturers. To this end, the agency will examine the manufacturers' pre and mid-model year fuel economy reports filed with NHTSA through December 2004 and current market information, and consider the reasonableness of the efforts made by the manufacturers after this final rule to meet the MY 2007 standard. If appropriate, the agency could adjust the standard upward or downward. The CAFE standard for a model year can be increased at anytime before the 18-month period preceding that year, and decreased at anytime before the beginning of that year. Thus, the MY 2007 standard could be increased anytime before April 1, 2005 and decreased anytime before October 1, 2006.

The Final Economic Assessment (FEA) discusses in detail the fuel efficiency enhancing technologies expected to be available during MYs 2005–2007. Some of the technologies discussed in the FEA have been used for over a decade (*e.g.*, overhead camshafts, engine friction reduction, and low friction lubricants). Others have only recently been incorporated into passenger cars, (*e.g.*, 5-speed and 6-speed automatic transmissions and variable valve timing). Still others have been under development for a number of years, but have not been produced in quantity for an extended period (*e.g.*, cylinder deactivation, variable valve lift and timing, continuously variable transmission (CVT), integrated starter/generator, advanced diesels and hybrid drive-trains).

The FEA also details, and this preamble summarizes, the agency's analysis of the costs and benefits of these CAFE standards. The agency has estimated not only the anticipated costs that would have to be borne by General Motors, Ford and DaimlerChrysler and other light truck manufacturers to comply with the standards, but also the significance of the societal benefits anticipated to be achieved through direct and indirect fuel savings. We have concluded that these CAFE standards—while challenging—can be met in a cost beneficial way, and that they will benefit society considerably.

A final Environmental Assessment (EA) also accompanies this final rule. The agency has determined that the proposed action would not have a significant effect on the quality of the environment.

V. Maximum Feasible Fuel Economy Considerations

The CAFE statute sets forth the parameters within which the agency is required to establish corporate average fuel economy standards. Section 32902(a) provides that "each standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year."

As noted above, the agency is required to consider the factors in 49 U.S.C. 32902(f) when determining the "maximum feasible" CAFE standards for any given model year. These are technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. Although the EPCA does not include motor vehicle safety as an express statutory factor, it does not preclude consideration of it. Accordingly, NHTSA should consider safety in accordance with its statutory responsibilities regarding safety and the Administration's emphasis on ensuring motor vehicle safety.

The agency has historically included consideration of numerous public policy concerns, whether considered as part of the enumerated factors or in addition to them. The courts have routinely affirmed the agency's authority to do this and have consistently upheld NHTSA's conclusions. *See, e.g., Center for Auto Safety* v. *NHTSA*, 793 F.2d 1322 (CAS II) (D.C. Cir. 1986) (administrator's consideration of market demand as component of economic practicability found to be reasonable); *Public Citizen* v. *NHTSA*, 848 F.2d 256 (D.C. Cir.1988)(Congress established broad guidelines in the fuel economy statute; agency's decision to set lower standard was a reasonable accommodation of conflicting policies).

In particular, consideration of the impact of CAFE standards on motor vehicle and passenger safety has long been recognized as an integral part of the agency's process of examining the various considerations and determining maximum feasible average fuel economy. As the United States Court of Appeals pointed out in upholding NHTSA's exercise of judgment in setting the 1987–1989 passenger car standards, "NHTSA has always examined the safety consequences of the CAFE standards in its overall consideration of relevant factors since its earliest rulemaking under the CAFE program." *See, Competitive Enterprise Institute* v. *NHTSA* (CEI I), 901 F.2d 107, 121 at n.11 (DC Cir. 1990).

As discussed in many past fuel economy notices, it is clear from the legislative history of EPCA that Congress intended NHTSA to take industry-wide considerations into account in determining the maximum feasible CAFE levels, and not necessarily base its determination on any particular company's asserted or projected abilities. This does not necessarily mean that CAFE standards will be set at the level asserted by the "least capable manufacturer" with a substantial share of the market. Instead, it means that we must take particular care in considering the statutory factors with regard to these manufacturers—weighing their asserted capabilities, product plans and economic conditions against agency projections of their capabilities, the need for the nation to conserve energy and the effect of other regulations (including motor vehicle safety and emissions regulations) and other public policy objectives.

This approach is consistent with the Conference Report on the legislation enacting the CAFE statute:

> Such determination [of maximum feasible average fuel economy level] should take industry-wide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer that might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist and the possible implications for the national economy and for reduced competition association [sic] with a severe strain on any manufacturer. * * *
>
> S. Rep. No. 94–516, 94th Congress, 1st Sess. 154–155 (1975).

The agency has historically assessed whether a potential CAFE standard is economically practicable in terms of whether the standard is one "within the financial capability of the industry, but not so stringent as to threaten substantial economic hardship for the industry." *See, e.g., Public Citizen* v. *National Highway Traffic Safety Administration*, 848 F.2d 256, 264 (D.C. Cir. 1988). In essence, in determining the maximum feasible level of CAFE, the agency assesses what is technologically feasible for manufacturers to achieve without leading to adverse economic consequences, such as a significant loss of jobs or the unreasonable elimination of consumer choice. The CAFE statute does not compel that fuel savings be gained at the expense of American jobs or competition within the motor vehicle market.

At the same time, the law does not preclude a CAFE standard that poses considerable challenges to any individual manufacturer. The Conference Report makes clear, and the case law affirms, "(A) determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy." CEI–I, 793 F.2d 1322, 1352 (D.C. Cir. 1986). Instead, the agency is compelled "to weigh the benefits to the nation of a higher fuel economy standard against the difficulties of individual automobile manufacturers." *Id.* The statute permits the imposition of reasonable, "technology forcing" challenges on any individual manufacturer, but does not contemplate standards that will result in "severe" economic hardship by forcing reductions in employment affecting the overall motor vehicle industry.[3]

The law permits CAFE standards exceeding the projected capability of any particular manufacturer as long as the standard is economically practicable for the industry as a whole. Thus, while a particular CAFE standard may pose difficulties for one manufacturer, it may also present opportunities for another. The CAFE program is not necessarily intended to maintain the competitive positioning of each particular company. Rather, it is intended to enhance fuel economy of the vehicle fleet on American roads, while protecting motor vehicle safety and the totality of American jobs and the overall United States economy. By the same token, maximum feasible fuel economy levels must be ones that account for the need to place technologies into mass production and cannot be based on claims of potential technologies that have not been shown to be feasible on such a production level.

The standards established in this final rule fall within our Stage analysis for each of the primary companies in the light truck market for MYs 2005 and 2006, and for all but one for MY 2007. Of those companies, the Stage analysis projects that the current product plans of both DaimlerChrysler and Ford for MY 2007 will produce a light truck CAFE of 22.2. The Volpe analysis, which looks more globally at the industry as a whole, further confirms the feasibility of a CAFE level of 22.2 mpg for MY 2007. Accordingly, while the standard for that model year is being set at a level above the Stage analysis' projection for one of the primary companies in the light truck market, we believe that industry wide considerations and the additional lead time provided confirm that the standard reflects the overall best balance of technological feasibility, economic practicability and the nation's need to conserve energy and reduce our dependence on foreign oil.

[3] In the past, the agency has set CAFE standards above its estimate of the capabilities of a manufacturer with less than a substantial, but more than a de minimus, share of the market. See, *e.g., Center For Auto Safety* v. *National Highway Traffic Safety Administration*, 793 F.2d 1322, 1326 (D.C. Cir. 1986) (noting that the agency set the MY 1982 light truck standard at a level that might be above the capabilities of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler, and further noting that Chrysler had 10–15 percent market share while Ford had 35 percent market share). On other occasions, the agency reduced an established CAFE standard to address unanticipated market conditions that rendered the standard unreasonable and likely to lead to severe economic consequences. 49 FR 41250, 50 FR 40528, 53 FR 39275, *Public Citizen* v. *National Highway Traffic Safety Administration*, 848 F.2d 256, 264 (D.C. Cir. 1988).

VI. Summary of Public Comments

NHTSA received over 65,000 individual submissions to the rulemaking docket from vehicle manufacturers and associations, environmental and consumer advocacy groups, members of Congress and individual citizens. The majority of the submissions were letters or emails provided to the public by various organizations and submitted by private citizens to the docket. Many contained supplementary thoughts from the individual senders.

The citizenry expressed both support for the proposal and concern that the proposed standards would not be sufficient to meet the nation's need to conserve energy in the short term or to protect natural resources and secure energy independence in the long term. Many of the individual submissions included a letter provided by the Natural Resources Defense Council describing the proposal as "woefully inadequate" and expressing concern that the proposal did not go far enough to help the country reduce our dependence on foreign oil. This letter also pointed out that the proposal was consistent with the preexisting plans of much of the automobile industry.

The Union of Concerned Scientists provided citizens with a form to fill out stating that "I am disappointed because," with a space for individual comments. Other similar documents were also placed in the docket. Some expressed a belief that technology is available through which manufacturers could exceed the CAFE standards proposed. Many stated that the potential of war in the Middle East warrants more aggressive standards. Other individuals, using either forms or personally developed submissions, expressed support for the proposal. The Coalition for Vehicle Choice urged citizens to submit comments expressing support for the maintenance of consumer choice from amongst a broad array of vehicles.

Members of Congress also differed in their reaction to the proposal. Over 100 members of the House of Representative wrote to NHTSA urging the agency to increase the standards further, and stating that "a much greater increase can and should be done to take advantage of the many existing technologies in automotive design that can increase fuel economy and reduce our nation's dangerous over-dependence on imported oil." These Congressmen also stated that "it is now unarguable that the fuel efficiency of light trucks can be improved without sacrificing safety," and that automobile manufacturers have boasted of plans to incorporate hybrid electric vehicles in their fleets.

In contrast, the Chairman and Ranking Member of the Committee on Energy and Commerce in the House of Representatives wrote that the proposal was "laudable," and was consistent with the fuel savings goal set forth in H.R. 4, which was adopted by the House of Representatives and the House-Senate conference committee in the last Congress. These members pointed out that while H.R. 4 passed the House of Representatives by a vote of 240 to 189 with a mandate for NHTSA to conduct a multi-year rulemaking resulting in a savings of five billion gallons of gasoline by the year 2010, an amendment statutorily to increase light truck standards "was soundly defeated by a vote of 269 to 160." These members further point out that H.R. 4 would have codified NHTSA's practice of considering any adverse safety and employment impacts. The Chairman and Ranking Member concluded that the "legislative summary of the consideration of H.R. 4, the 'SAFE Act of 2001,' should be instructive on the intent of Congress regarding the CAFE standards for light trucks."

The Competitive Enterprise Institute and Consumer Alert argued that increased CAFE standards have the potential to adversely affect motor vehicle safety. The Mercatus Center and Randall Lutter and Troy Kravitz of the

AEI-Brookings Institute (Lutter and Kravitz) raised concerns relating to many of the analytic assumptions used in the PEA and discussed in the NPRM.

Environmental and consumer advocacy groups commenting on the proposal included Public Citizen, Center for Auto Safety, the Union of Concerned Scientists, the Natural Resource Defense Council, the Sierra Club, 20/20 Vision, U.S. Public Interest Research Group, Environmental Defense, the Alliance to Save Energy and the American Council for an Energy-Efficient Economy.

In general, these groups expressed dismay that the nature of the CAFE program, and its heavy reliance on the confidential technological, financial and product abilities of motor vehicle makers, preclude access to the data upon which much of the CAFE analysis is based. These groups contend that basing CAFE standards on the manufacturers' product plans unduly limits the agency to conducting passive rulemakings that neither force the companies to alter course nor advances the nation's longer-term energy needs. They also contend that technologies are available to manufacturers to enhance the fuel economy performance of their fleet. Many of these groups offered suggestions for the upcoming notice that the agency intends to publish seeking comment on potential reforms within current statutory authority.

Many automobile manufacturers and their trade associations also commented on the proposal. None took issue directly with the agency's decision to establish light truck CAFE standards over a period of model years. However, many took issue with specifics of the agency's analytic approach and particular assumptions built into both the technological and economic analyses used. The companies generally, but not universally, suggested that the proposed standards are challenging, but achievable. Most of the companies argued that the agency did not properly account for technological and market risks that could render the standards infeasible.

Of those who sell light trucks in the U.S. market, DaimlerChrysler, Ford and General Motors each have approximately 25 percent market share, and the remaining companies have the rest. DaimlerChrysler, whose projected CAFE levels were the highest of the three, did not take issue with any particulars in the agency's analysis of its capabilities. However, DaimlerChrysler raised concerns relating to the agency's general analytic approach and the company's view that the agency did not adequately consider the risk of deterioration in the projections. To account for that risk, DaimlerChrysler urged the agency to reduce its CAFE proposals to 20.9 mpg for MY 2005, 21.1 mpg for MY 2006 and 21.5 mpg for MY 2007.

Ford's comments indicated that the company viewed NHTSA's proposal as technologically challenging. Like DaimlerChrysler, Ford raised concerns with the agency's general analytic approach and argued that the agency had underestimated the lead time necessary to incorporate fuel economy improvements in vehicles, as well as the difficulties of introducing new technologies across a high volume fleet. Nonetheless, Ford indicated that it was committed to taking additional actions beyond those it already planned to achieve the "difficult" standards as proposed.

General Motors submitted the most extensive comments, challenging many of the agency's assumptions and arguing that the agency had overestimated that company's ability to achieve the proposed CAFE levels. General Motors pointed out computational errors and lead-time considerations that, it contended, render our proposal technologically infeasible and economically impracticable. We will discuss the various issues raised by General Motors and other manufacturers more fully below.

While the above discussion very briefly describes the comments submitted by the various interested parties, the following summary sets forth the comments by topic. In some cases, we have provided or summarized the agency's response in this section. In other cases, our response to the comments is embedded in the more detailed analysis of the technological and economic issues discussed later in this document.

A. Technological Comments

1. Relationship Between Technology Analyses

General Motors commented that the "Stage" and Volpe analyses consider different technologies. General Motors said that it believed that due to the differences in the two analyses, there was a substantial gap in the rulemaking record. General Motors also stated that NHTSA has neither presented the costs of the improvements that it used in the Stage analysis nor vouched for the feasibility of the technology applications used in the Volpe analysis.

2. Technology Application Algorithm Methodology

General Motors stated that Volpe's algorithm suffers from the following methodological limitations: (1) Application of technologies to all trucklines in a single model year, (2) the addition and subsequent removal of some technologies, (3) the application of aerodynamic drag reduction to only some versions of a given nameplate.

3. Lead Time

The Alliance of Automobile Manufacturers (Alliance), Ford Motor Company (Ford), and General Motors stated that NHTSA's analysis inadequately considered lead-time requirements for adding existing fuel technologies and for developing new technologies, and overestimated the number of vehicle models to which technologies could be added in a single model year. General Motors and Ford submitted confidential comments responding to the particular technological advances contemplated in the NPRM. General Motors, Ford, DaimlerChrysler and the Alliance expressed concern with the simultaneous application of some technologies to all of a given manufacturer's products and stated that technologies cannot be incorporated in every vehicle at the same time. General Motors and DaimlerChrysler further claimed that NHTSA paid little attention to product life cycles or the need for lead-time. The National Automobile Dealers Association (NADA) commented that any CAFE standard set too high might prematurely force technological changes, resulting in decreased vehicle performance, reliability, and/or marketability. Honda asserted that development lead-time is essential to enhancing fuel economy without degrading safety. Union of Concerned Scientists contended that automobile manufacturers could incorporate fuel-efficient technology into vehicles faster than assumed in the NHTSA analysis.

We have reviewed our analysis in light of these comments and, where appropriate, have incorporated additional lead time into the analysis by applying some technologies in MYs 2006 or 2007, rather than in MY 2005. The establishment of CAFE standards over a period of years allows us both to ensure that the standards are reasonably within the industry's projected capabilities without incurring adverse economic and safety consequences, and to encourage progress in technological advances to enhance fuel economy

performance during the later model years covered by the regulation.

4. Implementation Risks in Forecasted Technological Improvements

General Motors, Ford, DaimlerChrysler and the Alliance suggested that NHTSA must fully account for implementation risks in its forecast of technological improvements and that the proposed standards be lowered to account for the numerous technological and implementation risks that they may encounter. The Alliance stated that the following risks should be included: availability of technology options, cost of technology, level of technology applied, success of each new technology in meeting its targets, range of product offerings, overall economic climate, customer requirements for utility, size, performance, usage patterns, options, powertrains, and the level of new regulations in vehicle safety and emissions. The Alliance also stated that risks cannot be reduced by assuming that an increase in the popularity of crossover vehicles may limit the future sales of full size utility vehicles or that consumers will consider traction control and limited slip differentials as replacements for 4WD in vehicles. DaimlerChrysler stated that NHTSA's projections are based on the highest and riskiest levels of technology and may not be attainable.

General Motors provided specific estimates of suggested CAFE reductions to account for various risks, Ford suggested that NHTSA consider scenarios involving both high and low fuel economy estimates from each manufacturer, and DaimlerChrysler recommended reducing the standards to 20.9 mpg for MY 2005, 21.1 mpg for MY 2006 and 21.5 mpg for MY 2007. DaimlerChrysler stated that its current projected costs to improve fuel economy, taking into account the risks described in its submission to the RFC, are approximately four times higher than those projected by the agency in the NPRM. DaimlerChrysler provided no other analysis or data to support lowering the proposed CAFE standards.

The companies also asserted that their projected CAFE performance tends to be overly optimistic and must often be reduced in light of actual market demand. Public advocates were skeptical of those claims and countered that the industry's tendency to market less fuel efficient vehicles, in lieu of marketing more fuel efficient vehicles, contributes to any discrepancy between projected and actual CAFE performance.

As noted above, we have made adjustments in our technological analysis, where appropriate, to account for certain technology risks and included into our analysis additional lead time.

The agency has at times included in its assessment of maximum feasible a "risk factor" to account for unforeseen external factors that may render reasonable efforts to comply inadequate to meet the standards. This was done, for example, when establishing light truck CAFE standards for MY 1995 and reducing passenger car standards for MYs 1987–88. When faced with the necessity of lowering the statutorily established CAFE standard for passenger cars, the agency concluded that the risk that manufacturers would be forced to restrict product offerings to meet more challenging standards outweighed the risk that manufacturers could develop means to outperform the established CAFE level. The agency acted to adjust the passenger car standard just prior to the start of the 1987 model year and about a year before the advent of the 1988 model year, noting that as of that time the record showed that manufacturers had made good faith, but unsuccessful, compliance efforts.

We do not believe the same type of "risk factor" is appropriate to apply to this rulemaking. While we recognize that the standard set for MY 2007 is an aggressive one in light of General Motor's current product plans, we also believe that technological advancements, market acceptance of hybrids and modern diesels, and other external factors could alter General Motor's relative position. Unlike the situation in the late 1980s, which included a risk factor when no lead time was possible, there remains sufficient lead time for a manufacturer whose current product plan may not yet project compliance to develop product offerings to enhance their currently projected CAFE performance. In addition, unlike any time in the past, the market is beginning to include vehicles with advanced technologies including hybrid electric and advanced diesel engines that are more fuel-efficient and that do not adversely affect safety or American jobs.

Accordingly, unlike the situation presented to the agency in the late 1980s, current conditions and contingencies lead us to conclude that the potential harm of setting the light truck CAFE standard too low for MYs 2005–2007 outweighs the risk of setting it too high. As noted above, the agency intends to examine the manufacturers' pre and mid-model year fuel economy reports filed with NHTSA through December 2004 and current market information, and consider the reasonableness of the efforts made by the manufacturers after this final rule to meet the MY 2007 standard. If appropriate, the agency could adjust the standard upward or downward.

5. Use of Weight Reduction To Meet Proposed Standards

The Alliance, General Motors, Competitive Enterprise Institute, Insurance Institute for Highway Safety, and Lutter and Kravitz commented that manufacturers may reduce vehicle weight in response to the standards and that doing so would have negative safety implications. Competitive Enterprise Institute argued that the historical fact is that vehicle manufacturers tend to respond to CAFE standards by reducing the size of their fleets. Competitive Enterprise Institute also argued that higher CAFE standards would likely encourage sales of the smaller, less crashworthy SUVs at the expense of the larger, safest SUVs. In addition, that organization argued that higher CAFE standards would diminish the ongoing market trend toward larger, safer SUVs; that is, such standards would reduce or eliminate future upsizing. That organization stated that the agency's proposal fails to acknowledge or analyze these effects.

American Honda Motor Co., Inc. (Honda), Environmental Defense, Union of Concerned Scientists, American Council for an Energy-Efficient Economy, and Center for Auto Safety argued that weight reduction is an important fuel economy strategy that may not have negative net safety implications, if it were limited to the largest and heaviest light trucks. The Sierra Club disagreed with the assumption that weight and safety are always inversely related and with the NAS report's conclusions about the safety impact of the current standards. It also commented that safety is a function of design, not size. Similarly, Environmental Defense argued that the NAS report and agency studies treat weight as the only vehicle attribute affecting safety and do not account for size, crashworthiness, compatibility and the general quality of the vehicle structure and its safety features. That organization and Public Citizen further argued that agency studies are unable to distinguish between the effects of vehicle weight and vehicle size. Public Citizen argued that any safety problem associated with changes in the fleet of light vehicles was largely due to increases in the overall divergence in vehicle weight within the light vehicle fleet caused by the growth in the number of light trucks and to the rollover proneness of light trucks.

Finally, Public Citizen argued that any safety concerns associated with downweighting are irrelevant when the focus is exclusively on CAFE standards for light trucks instead of those for both passenger cars and light trucks.

We note that these comments reflect diverging views on the relationship between size and safety. Some commenters, such as CEI, embraced the proposition that increasing vehicle size always results in safety benefits. Others, such as Honda and Public Citizen, stated that they believe that other vehicle characteristics besides size have an impact on safety. For its part, Honda emphasized that vehicles can become lighter and still retain their size and ability to protect occupants. Public Citizen took the view that there are number of design characteristics that may impact the safety of light truck occupants and persons in other vehicles, including height and stability. Moreover, the organization indicated that fuel economy regulations having a potential to reduce or restrain the size of light trucks would have different safety impacts than those that might force changes in size to both cars and trucks.

As discussed below, while manufacturers point out that weight reduction is a compliance option, the CAFE standards established by this final rule can be met without the need to reduce vehicle weight and we do not believe that manufacturers will employ weight reduction to meet the standards.

6. NHTSA's Proposed Standards and Projected Manufacturer Capabilities

DaimlerChrysler, Ford, and General Motors commented that it would be difficult to comply with the proposed standards. Toyota agreed that it would be difficult for other companies to meet the standard. General Motors detailed what it views as flaws in the agency's analysis of its potential capability and also provided revised product plans exhibiting different CAFE values (higher for MYs 2005–2006 and lower for MY 2007) than those it previously submitted. Ford presented revised fleet projections that are lower than those contained in its response to the RFC and discussed technologies that the agency added to Ford's fleet which are not feasible.

Public interest groups, based on public announcements by Ford and General Motors about improving fuel economy of SUVs and introduction of hybrids, supported higher standards than those proposed. Environmental Defense, Union of Concerned Scientists and Public Citizen presented analyses arguing that technology permits NHTSA to set a higher standard. The American Council for an Energy-Efficient Economy and Cummins argued that NHTSA should take diesel technologies into account in this rulemaking. Toyota asserted that it has applied more fuel-efficient technologies, such as variable valve timing (VVT) and multi-valve cylinder heads, than most other manufacturers. It suggested that the proposed standards would encourage the entire industry to similarly apply the best available technologies.

We believe the standards established today are challenging enough to encourage the further development and implementation of fuel efficient technologies while also available enough within the applicable time frame to be economically practicable and feasible for the industry. As noted above, we have concluded that the standards set through this final rule represent the best overall balance of the statutory factors, and in addition are consistent with the protection of motor vehicle safety and American jobs.

7. Estimated Fuel Savings of Technologies

Environmental Defense, American Council for an Energy-Efficient Economy, and Union of Concerned Scientists stated that NHTSA underestimated the fuel savings of the technologies it considered. Environmental Defense argued that some technologies can be optimized for increasing fuel economy, performance or other features and that NHTSA's analysis should use higher values more reflective of optimization for fuel economy purposes. In related comments, Environmental Defense and Union of Concerned Scientists argued also that the agency should hold vehicle weight and performance constant in determining future fuel economy capability instead of assuming continued increases in both.

American Council for an Energy-Efficient Economy and Union of Concerned Scientists stated that the National Research Council (NRC/NAS) values should have been used without reduction. More specifically, Environmental Defense disagreed with the agency's estimated 1–2 percent fuel economy benefit for VVT and variable value lift and timing (VVLT) technologies and claimed that published estimates show that optimal application of VVLT technology provides a 10–12 percent fuel economy benefit. Environmental Defense also disagreed with the agency's 0.5 percent estimated benefit for automatic transmissions using aggressive shift logic, which, they state, shows fuel economy improvements of 9–12 percent using 6-speed transmissions. American Council for an Energy Efficient Economy argued that NHTSA's limited consideration of only the technologies available to the Big 3 undercuts its estimates of achievable fuel economy and that NHTSA should have used the cost and benefit numbers from the NAS report.

In the NPRM, the agency indicated that it did not expect manufacturers to deviate from existing plans for vehicle weight and performance in their efforts to comply with our proposal. At the same time, our NPRM contained, as Stage III of the Stage analysis, a projection that manufacturers could replace 6.0L and larger displacement engines with smaller displacement engines of similar design. Perhaps focusing more on the statement that NHTSA did not anticipate changes in weight and performance than on an analysis containing a cutback in engine sizes, some commenters stated that we failed to realize the fuel saving benefits that would have been realizable if determinations of future fuel economy capability had been premised upon limiting further increases in light truck mass and performance.

CAFE standards must be economically practicable and, as we have observed before, consumers will not buy what they do not want. Forcing through regulation substantial deviation from product offerings based on projected consumer demand incurs a risk of running afoul of economical practicability. At the same time, maximum feasible fuel economy standards should encourage the continuing development and use of more fuel-efficient technology. Current projections of consumer demand may not fully account for potential changes in consumer preferences that may accompany new entrants in the market, fluctuating fuel prices, and other factors that can affect actual CAFE performance. The agency therefore intends to monitor the compliance efforts of the manufacturers and to examine the manufacturers' pre and mid-model year fuel economy reports filed with NHTSA through December 2004 and current market information before the onset of MY 2007.

As indicated below, our analysis and projection of manufacturer capabilities now relies on more optimistic fuel economy gains for some technologies, including low viscosity lubricants and low rolling resistance tires, than those contained in the NPRM. These revised values place the estimated fuel saving benefits of these technologies in line with the estimates contained in the NAS report.

We do not agree, however, that either VVLT or improved shift logic will yield the benefits claimed by Environmental Defense. We note that the NAS panel was afforded an opportunity to review similar returns claimed for these technologies and did not, on an incremental basis similar to that used here by the agency, adopt the claimed values.[4] In regard to the technologies used, NHTSA believes that the lead time available restricts the agency from assuming that manufacturers will be able to rely on advanced technologies that are not yet proven or available for use.

8. Diesel Engines and HEVs

Automobile manufacturers and their associations commented that NHTSA's exclusion of advanced diesels and hybrid electric vehicles (HEVs) from the technology analysis was appropriate given the emissions and cost challenges facing advanced diesels and HEVs, respectively. Environmental organizations and another commenter expressed greater optimism regarding diesels for consideration in setting the CAFE standard. The American Council for an Energy-Efficient Economy commented that NHTSA's technology analysis was inadequate because it excluded HEVs and diesels. Cummins stated that its diesel engine development program demonstrates a fuel economy improvement of 50 percent-70 percent over gasoline engines. Cummins also stated that target engine availability is within the time frame proposed in the NPRM. The Alliance to Save Energy cited the Ford Escape HEV as surpassing most passenger cars in fuel economy and as providing support for the proposition that there is no technological reason for NHTSA not to require a significant increase in fuel economy standards for all light trucks.

As described above, since the publication of the NPRM both public and private initiatives have been announced. These include a government initiative to develop, over the longer term, viable hydrogen fuel cell powered transportation and General Motor's initiative to begin to offer optional hybrid propulsion systems in light trucks. In addition, Ford Motor Company and DaimlerChrysler will offer hybrid and modern diesel Sport Utility Vehicles beginning with MY 2004. We believe it possible that an active market for hybrid and modern diesel vehicles may significantly enhance the actual fuel economy of the light truck fleet by MY 2007. The infusion by these companies and others of advanced technology vehicles into that market is an important step towards that development.

Although we mentioned our support for the development of a market for the advanced diesels and hybrid electric vehicles in the NPRM, we did not incorporate them into the proposal because we did not have information on the extent of product offerings and marketing to generate public interest in them during MYs 2005–2007. For the final rule, we have incorporated hybrid and diesel vehicles incorporated into the manufacturers' product plans, but not beyond. We continue to note, however, that such vehicles may yet come to play an important role in the market by MY 2007.

B. Economic Comments

1. Cost of Specific Technologies

General Motors, Ford, the Alliance and Toyota Motor North America, Inc. (Toyota) argued that manufacturer incremental costs are understated. Ford and General Motors asserted that NHTSA's analysis underestimates the costs for applying certain technologies and thus underestimates its costs per fuel economy improvement for those technologies. General Motors claimed that part of NHTSA's underestimation occurs as the result of a clerical error because NHTSA did not use the technology costs identified in its rulemaking support documents, but instead used much lower costs.

General Motors also stated that the Volpe analysis assumes that all technologies will cost manufacturers the same amount for all models no matter how much progress has been made to date. General Motors stated that NHTSA's assumption that it can make improvements in these areas at the same rate and at the same costs to other manufacturers is incorrect. Public Citizen, Honda, and 20/20 Vision commented that fuel-efficient vehicles, *e.g.*, hybrids, could be manufactured for reasonable costs.

2. Projected Number of Sales

General Motors and other manufacturers argued that the sales rate used by NHTSA for new model year vehicles during the first several months of a model year was too high (4.167 percent vs. 3.125 percent) and that the agency mistakenly assumed that all vehicles of a given model year would be on the road and in use by January 1 of the calendar year following the start of that model year. General Motors commented that NHTSA's benefit model does not accurately reflect the number of new vehicles on the road during the initial calendar years in which they were sold. General Motors provided a number that reduced the total societal benefits for the three years by $62M.

3. Impact on Consumer Choice

General Motors asserted that some product restrictions might be necessary to achieve the proposed levels. The Recreational Vehicle Industry Association stated that reductions in size and towing capacity of light trucks resulting from proposed levels may restrict size, weight, and capacity offerings in trailers and conversion vehicles.

The agency tentatively concluded in the NPRM that the standards would not lead to product restrictions or impede consumer choice. We believe that the CAFE standards established today will not diminish the existing vibrant market for light trucks, offering the public a wide array of features and functions. We further believe that sufficient lead time exists before MY 2007 such that technologies not currently within manufacturers' product plans and/or the development of a market for alternative propulsion systems may significantly enhance fuel economy performance without affecting the features and functions offered to consumers.

4. Baseline of 20.7 MPG

The Alliance and Ford asserted that manufacturer incremental costs are understated because many manufacturers have already added significant costs in anticipation of the increased CAFE standards that are not included in the agency's incremental costs. The Alliance suggested that a more appropriate baseline would utilize data from the current model year assuming the manufacturers meet the 20.7 mpg CAFE standard absent technologies used in anticipation of future standards.

Public Citizen argued that the agency relied too heavily on the manufacturers for the baseline mpg level and for estimated mpg levels for future model years. The Alliance to Save Energy argued that the proposal should have considered the manufacturers' voluntary commitments to improve the fuel economy of their fleets (citing Ford's 2001 commitment to improve SUV fuel economy by 25 percent by 2005) and indicated that hybrid technology should have been weighted more in determining model year baselines.

[4] Committee on the Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards, National Research Council, Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards, Washington, DC, National Academy Press, 2002, p. 136.

For reasons discussed below, we have estimated the incremental costs associated either with increasing CAFE from an average fuel economy standard of 20.7 mpg, or from the manufacturer's baseline, if over 20.7 mpg, to the newly established standard. We have accounted for incremental benefits the same way, and thereby have treated the incremental costs and the incremental benefits in the same manner.

5. Survival Rates by Age of Vehicle; Vehicle Miles Traveled

The Alliance and Ford commented that the agency should recalculate costs using only a 25-year useful life, rather than a 30-year useful life. Ford stated that the assumed vehicle miles travel (VMT) growth rate of 1.8 percent is too high in comparison to recent experience and claimed that VMT instead has remained stable. Public interest groups criticized the agency for its use of a VMT baseline that they asserted was too low. Union of Concerned Scientists argued that NHTSA's estimate of VMT is low compared with other studies and underestimates the consumer benefits of fuel economy improvements. Union of Concerned Scientists cited survey data and stated that first year travel is over 15,000 miles and does not lower to 12,000 miles for several years.

The agency's analysis in the NPRM used a 25-year useful life. Data reflecting a previous assumption of a 30-year lifetime was inadvertently included in a spreadsheet placed in the docket, but these data were not used in the agency's calculations. We have decided to calculate VMT based on the Update of Fleet Characterization Data for Use in EPA's MOBILE6 program, EPA's most recent mobile source emission model.

6. Value of Externalities

Citing various studies, the Alliance and General Motors asserted that NHTSA should not include any monopsony or supply disruption externality in its benefit analysis. The Alliance argued that the agency failed to address other externalities associated with an increase in the CAFE standard, such as increased congestion and highway fatalities. The Mercatus Center commented that the link between energy security and fuel economy is not well known, but suggested that it is likely close to zero.

General Motors commented that increased travel resulting from the rebound effect would result in increased traffic crashes, injuries, and fatalities. Lutter and Kravitz commented that the economic analysis should include the external costs of increased accidents caused by additional driving due to the rebound effect and stated that estimates of marginal external accident costs range from 6 to 20 cents per vehicle mile.

The Alliance, General Motors, and Lutter and Kravitz commented that the agency's economic analysis should include the external costs of increased congestion caused by additional driving due to the rebound effect. Lutter and Kravitz stated that the economic analysis should use estimates of congestion costs ranging from at least 6 to 10 cents per vehicle-mile.

As discussed below, we have added costs attributable to increased congestion, noise and crashes resulting from the additional exposure associated with the rebound effect. We have also monetized the benefits associated with the time savings gained from the increase in the intervals between vehicle refuelings. We have otherwise determined that our values were consistent with the applicable literature.

7. Impact of Safety Standards on Vehicle Weight

Comments from the Alliance, General Motors, and Ford claimed that NHTSA did not consider and/or underestimated the impact of several proposed safety standards. General Motors argued that to meet future safety standards and to voluntarily implement new safety features, manufacturers might be forced to reduce vehicle weight elsewhere on the vehicle to comply with the proposed CAFE standard. As discussed below, we have considered these concerns but do not agree that companies will be forced to limit safety related systems to comply with these CAFE standards.

8. Rebound Effect

The Alliance, General Motors, and Ford urged the agency to use a value of 35 percent rather than 15 percent, with a sensitivity analysis of 20 percent to 50 percent. These commenters each based this recommendation on a recent survey article, Greening, Greene, and Difiglio (Energy Policy 28 (2000) 389–401) and on the agreement of participants in "Car Talk," a Clinton Administration dialogue on fuel economy among the auto industry, environmental organizations, think tanks, and government organizations. DaimlerChrysler seemed also to recommend a value of about 35 percent, stating, "the commonly accepted price elasticity of VMT is a negative 3.5 percent, which means that a 10 percent reduction in per mile vehicle fuel consumption actually only reduces fuel consumption by 7 percent."

The American Council for an Energy-Efficient Economy stated that it believes that a 15 percent rebound factor might be too high, based on the agency's statement that increasing fuel economy by 10 percent will produce an estimated 8–9 percent reduction in fuel use. According to that organization, this implies an assumption that the rebound effect is between 1 percent and 12 percent.

In consideration of these comments, we have revised the estimate of the fuel economy rebound effect for light trucks used in this analysis from 15 percent to 20 percent. We recognize that the magnitude of the assumed rebound effect and the implications of any rebound effect are complex issues. NHTSA will continue to monitor relevant research for use in future CAFE rulemakings.

9. Present Value of Benefits (Including 7 Percent Discount Factor)

Both Lutter and Kravitz and the Mercatus Center argued for discount rates higher than 7 percent. Lutter and Kravitz stated that the agency should have used a rate ranging from 7.6–10 percent, the average new car finance rate during 1984–95. The Mercatus Center argued that the discount rate should be much higher (14 percent-28 percent), since fuel economy should be treated as an irreversible investment. For reasons discussed below, we have decided to use the proposed discount rate of 7 percent.

10. Impact of Higher Prices on Sales

General Motors commented that an increase in light truck prices, due to fuel economy initiatives, above competitive pricing levels would be met by a disproportionate loss in unit sales to its competition. Honda stated that most customers would be willing to pay a little extra to buy a car with higher fuel economy but would not trade fuel economy for desired features. Public Citizen and 20/20 Vision commented that surveys illustrate that consumers are willing to pay more for vehicles that have a higher fuel economy.

In response to comments, the agency has added to its analysis a discussion of impacts of higher prices of sales using a price elasticity of 1.0. The agency believes that higher light truck prices could shift some new vehicle sales from light trucks to automobiles and might also delay retirement and replacement of used vehicles. These issues are discussed more fully in the FEA.

11. Market Efficiency and Consumer Rationality

The Alliance and General Motors commented that NHTSA has consistently overestimated consumer demand for increased fuel economy. They stated further that automobile buyers are rational and informed and that vehicle producers effectively respond to the extent of their preferences for fuel economy.

The Mercatus Center commented that NHTSA's analysis should include the foregone benefit to consumers from being unable to choose attributes they would prefer in a vehicle, e.g., a 6.0L engine in instead of a 5.3L engine.

Lutter and Kravitz stated that NHTSA's analysis incorrectly assumes that consumers have inadequate information about vehicle fuel economy, and that they are unable to value correctly the future fuel savings resulting from improved fuel economy and as a consequence vehicle manufacturers supply inadequate levels of fuel economy. Public Citizen argued that there is no validity to the "consumer choice" argument made by manufacturers because vehicle offerings are driven, not by consumer choice, but by manufacturers' advertising.

Many commenters asserted that NHTSA had made a determination that there is a market failure in the provision of vehicle fuel efficiency. In the NPRM, the agency did not make any such determination. NHTSA noted a paradox that cost-saving technologies appeared to be penetrating the market to only a limited extent and therefore sought public comment on possible sources of market failure.

First, on the supply side of the vehicle market, it is well known that the light truck market is concentrated in three large producers who account for roughly 75 percent of market share, although there are a number of smaller producers that account for the remaining 25 percent. As several commenters noted, there is substantial evidence of competition among producers in the light truck market and indications that the three large producers are under increasing competition from the smaller producers. Under these circumstances, NHTSA maintains its previous statement that there is only a "remote" possibility that a supply side failure in the marketplace accounts for the limited market penetration of cost-saving, fuel-saving technologies.

Second, commenters discussed whether there could be a failure on the demand side of the market for fuel economy, rooted perhaps in the way that consumers perceive the private benefits of enhanced fuel economy and incorporate that information in their purchasing decisions. Several commenters noted that consumers are provided clear and substantial information about the fuel efficiency ratings of different vehicles, including information about the operating expenses associated with these fuel efficiency ratings. However, the argument for demand side failure may have less to do with the absence of consumer information about fuel efficiency than with the overall complexity of the vehicle-purchasing decision, the number of other factors of greater salience to consumers, the temporal aspects of ownership and resale, and the difficulty of weighing fuel efficiency differences against other (especially nonmonetary) attributes of vehicles. Rational consumers, cognizant of decision making costs, may use simplified decision rules when purchasing vehicles that give limited, diminished or no weight to fuel economy differences—at least when projected fuel prices are relatively low. The agency does not know whether this demand-side argument is true and did not receive much comment that supports or refutes it. The agency believes the plausibility of this argument is less remote than the supply-side argument but still quite speculative. Regardless of how consumers perceive fuel economy benefits when they make purchasing decisions, it is clear that consumers will experience the benefits of cost-saving technologies when they operate their vehicles—assuming the engineering-economics information underlying the NAS Report is accurate.

C. Environmental

1. Foreign/Domestic Refining Split

General Motors disputed the agency's assumption that 45 percent of the reduction in fuel will come from domestic refineries and 55 percent will come from imported finished gasoline. General Motors stated that it believes that a 2000 Energy Information Administration's (EIA) study is the source of this estimate and that the study merely states that 55 percent of U.S. petroleum needs are imported (in the form of crude and refined products) and that the other 45 percent are met from domestic sources. General Motors claimed that there is little evidence that these same proportions apply to reductions in fuel use and that U.S. refinery emissions are just as likely to remain the same as the baseline under the proposed standard and should not be credited against the rebound effect without substantiation. After considering a variety of data sources, we have decided to use a 50/50 split to account for reductions in refining.

2. Use of the GREET Model/Value of Emissions per Ton

General Motors stated that NHTSA's benefits model incorrectly used emission factors from the "Greenhouse Gases and Regulated Emissions in Transportation" (GREET) model for refinery emissions. According to General Motors, NHTSA incorrectly included extraction emission factors in its analysis. General Motors calculated a reduced total societal benefit for three years of $3,000,000 based on this error.

We agree with General Motors that we did not appropriately account for emissions reductions likely to result from gasoline savings. But we disagree with the contention that emissions attributable to petroleum extraction would be unaffected. Accordingly, we separated emission factors to account for different states in the petroleum cycle.

3. Greenhouse Gas Emissions for Carbon

Environmental Defense requested that NHTSA place a value on the benefit of avoided greenhouse gas emissions, while also noting: "the magnitude of the global warming externality is admittedly difficult to estimate." The value of avoiding greenhouse gas emissions is not quantifiable at this time. However, our analysis in the Environmental Assessment indicates that the established standards will result in an estimated 9.4 million metric tons of avoided greenhouse gas emissions over the 25-year lifetime of the vehicles (measured in terms of carbon equivalents).

D. Additional Comments

1. Limited-Line Light Truck Manufacturers

Porsche AG, Porsche North America, Inc. (Porsche) urged NHTSA to establish a separate standard or standards for limited-line truck manufacturers, possibly using a graduated standard based on the number of light truck models offered. According to Porsche, smaller manufacturers are penalized because they do not sell small economy vehicles that are capable of producing offsetting credits.

Limited-line manufacturers, according to Porsche, must struggle to meet CAFE because of their limited resources and a limited truck line that does not allow them to average their fleet fuel economy. Therefore, if their vehicle line does not meet the current standard, they must pay penalties or incur disproportionate costs in attempting to meet the applicable standard.

With an annual worldwide production of more than 10,000

vehicles, Porsche agreed that it was foreclosed from applying for a manufacturer-specific fuel economy standard under the exemption provisions of 49 U.S.C. § 32902(d). However, Porsche argued that worldwide consolidation of the automobile industry indicates that the 10,000-vehicle threshold is no longer appropriate and should be raised. Barring any change to the threshold, which Porsche acknowledged is beyond NHTSA's authority, the company suggested that NHTSA is obligated to ensure that small limited-line manufacturers are not harmed. To fulfill this obligation, Porsche argued that the agency should follow an earlier precedent and establish a separate light truck standard for limited-line manufacturers as it did in 1980 and 1981.

The agency does not agree with Porsche's suggestion that the company's particular circumstances support establishment of a separate fuel economy standard for limited-line manufacturers. We note that both full-line and limited line manufacturers have indicated that their product mix places them at a disadvantage in complying with CAFE. For some, having too many large trucks is a problem. For others, like Porsche, not having other more fuel-efficient trucks is the obstacle. In either case, the challenge of meeting is difficult for both classes of manufacturers.

Porsche stated that it faces a disadvantage because it makes only a single high performance truck and has no "legitimate" opportunity to comply. Although some manufacturers have chosen to participate in market segments that make it easier for them to meet CAFE, we note that all manufacturers must meet particular challenges when complying with a standard. Porsche is correct in pointing out that NHTSA, in the very first years in which CAFE standards were in effect, established a separate light truck standard for light truck manufacturers who did not use passenger car engines in their trucks. This separate standard, promulgated in 1978, offered a degree of relief to International Harvester, a company struggling to meet both CAFE and emissions standards with limited resources.

NHTSA finds it difficult to equate Porsche's present position with that of International Harvester in 1978. Unlike International Harvester, which had been producing a family of larger light trucks whose basic design remained unchanged from the early 1960's, Porsche began the design process knowing that CAFE standards would apply to its product. Porsche presumably entered the light truck market after determining that the costs of compliance or paying penalties were offset by the benefits of doing so. While the increase in CAFE standards established by this final rule will require that Porsche increase its efforts to build more fuel efficient light trucks, the company cannot state that its designs pre-date CAFE, that an increase in CAFE standards was not foreseeable or that it is not technologically feasible for Porsche to meet the standards.

As indicated above, NHTSA does not believe that present market conditions dictate establishing a separate fuel economy standard for Porsche or other limited-line manufacturers. We are also not convinced by Porsche's argument that doing so would be consistent with Congressional intent. Porsche has correctly observed that NHTSA cannot modify the current statutory threshold for small manufacturers entitled to seek exemption from CAFE under 49 U.S.C. § 32902(d). However, Porsche apparently believes that the existence of the exemption provision supports the larger notion that limited-line manufacturers are entitled to relief. We believe that the more logical conclusion is that in creating the exemption provision and limiting its applicability, Congress intended to restrict rather than expand NHTSA's authority to exempt manufacturers from CAFE.

2. Executive Order 12866

General Motors and the Alliance also commented that neither the NPRM nor the Preliminary Economic Assessment (PEA) identified regulatory alternatives to raising CAFE standards for light trucks as required by Executive Order 12866, Regulatory Planning and Review. General Motors stated that, for example, raising the gas tax by 2.4 cents per gallon would achieve the same fuel savings associated with NHTSA's proposal and would be 50 times less costly than NHTSA's proposal.

NHTSA believes that the statutory structure and regulatory framework narrowly limit the regulatory alternatives that the agency can consider. The statute specifically requires NHTSA to establish the maximum feasible average fuel economy standard accounting for certain, specified considerations. Implicit in that analysis is consideration of the level at which the best balance of the statutory criteria can be achieved. We note that, unlike broader based empowering statutes, EPCA does not contemplate that the agency will address the nation's need to conserve energy through any alternatives other than the establishment of an average fuel economy standard applicable to a class or classes of non-passenger automobiles. We further note that, while General Motors points out that an increase in the gas tax may be a public policy alternative, it is not a regulatory alternative available under EPCA.

3. Confidential Business Information

Consumer and environmental advocacy groups expressed frustration that they do not have access to the same confidential technological, financial and product data as the agency, and therefore are limited in their ability to critique and comment upon the agency's analysis. Environmental Defense argued that NHTSA's authorizing legislation states that the agency may withhold information only if the Administrator finds that disclosure of information would cause "significant competitive damage."

NHTSA considers EPCA's reference to "significant competitive damage" as being substantively synonymous with Exemption 4 of the Freedom of Information Act. We acknowledge the frustrations expressed by the consumer and environmental advocacy groups that they do not have access to the same confidential technological, financial and product data as the agency, and therefore are limited in their ability to critique the agency's analysis. We note, however, that Congress entrusted the establishment of appropriate corporate average fuel economy standards—and, indeed, the balancing of the express statutory and public policy considerations—to the Secretary of Transportation, who has in turn delegated that responsibility to the expertise of the National Highway Traffic Safety Administration. In the NPRM we provided detailed descriptions of the methodologies employed in our engineering and economic analysis. In doing so, we ensured that sufficient information was available for all to comment on the approach and fundamental assumptions used to conduct the analyses leading to the proposal and, ultimately, to this final rule.

4. Small Business Impacts

The Recreational Vehicle Industry Association stated that the impacts of the required increases in light truck fuel economy on sales and production of trailers, other recreational vehicles that require towing, and conversion vehicles based on light trucks would be disproportionately or exclusively borne by small businesses.

NHTSA does not believe that this standard will have an adverse effect on the recreational vehicle industry. The agency has determined that the average fuel economy standards established in this final rule will not significantly impact product offerings or the utility available to consumers.

5. Dual Fuel Credits

General Motors and the Alliance expressed concern that the agency had not yet finalized the proposed regulation extending the Alternative Motor Fuels Act of 1988 (AMFA) credits. They argued that, while NHTSA is not permitted to incorporate those credits into the CAFE standards (and thereby potentially eliminate the pure incentive Congress intended), the agency should consider the practical impact of the credits.

On March 11, 2002, the agency published a proposal to extend the dual fuel vehicle credits that vehicle manufacturers can earn by producing vehicles capable of operating on gasoline and other types of fuel. (67 FR 10873). Since then, both the Senate and the House of Representatives passed bills that would statutorily extend the credits. The extension was also included in the conference energy bill (H.R. 4) in the last Congress.

We will separately issue a final rule addressing the proposed extension of the AMFA credits. In the meanwhile, Congress has made clear that we may not take the existence or use of those credits into consideration when determining maximum feasible fuel economy levels. We have reviewed the legislative history surrounding the establishment of those credits to determine whether Congress would nonetheless expect the agency to acknowledge the existence of those credits when analyzing the costs and benefits associated with any proposed CAFE standard. We are skeptical that Congress would have expected the agency to assume technological costs, potential job losses or adverse safety consequences that, as a practical matter, are improbable in light of the AMFA credits. The legislative history, however, indicates that Congress expected these credits to be a pure incentive. Because consideration of costs and benefits is a critical component to determining the economic practicability of the proposed standard, we have concluded that the statute does not permit us to consider the impact of the AMFA credits when assessing the costs and benefits of proposed CAFE standards.

VII. Consideration of the Maximum Feasible Fuel Economy Levels

A. Technological Feasibility

1. General Motors

Our December 2002 NPRM estimated that General Motors would be able to achieve a light truck CAFE of 20.97 mpg in 2005, 21.63 mpg in 2006, and 22.29 mpg in 2007. This estimate was based on the "Stage" analysis described above. Use of the "Stage" analysis yielded the following potential improvements to the General Motors light truck fleet:

POTENTIAL GENERAL MOTORS CAFE IMPROVEMENTS, MPG [1]

Model year	Stage I improvements	Stage II improvements	Stage III improvements	Total	Potential CAFE, mpg.
2005	.439	.466	.1065	1.012	20.97
2006	.936	.502	.0616	1.500	21.63
2007	.921	.496	.0825	1.499	22.29

[1] Due to rounding, the individual improvements may not equal the potential CAFE for General Motors.

As we indicated in the NPRM, NHTSA relied, in part, on information provided by General Motors to determine which Stage I technologies General Motors could employ in MYs 2005–2007 to enhance its fuel economy performance. Our analysis indicated that General Motors could employ five technologies by MY 2005 in certain parts of its light truck fleet and an additional three technologies in certain parts of its light truck fleet by MY 2006. In NHTSA's view, all of these technologies would continue to be used in future model years. We also used the numbers provided by General Motors for percentage increases in fuel economy in calculating the possible fuel economy increase attributable to each of these technologies.

To determine how and when General Motors could employ Stage II technologies for MYs 2005–2007, NHTSA relied on General Motors' comments, the agency's own engineering judgment, and the submissions from other manufacturers. Our analysis indicated that General Motors could employ two technologies by MY 2005, and an additional technology by MY 2006. To determine possible fuel economy increases, NHTSA examined manufacturer-provided estimates for the percentage increases in fuel economy for each technology. We placed more credence on a value if a manufacturer had already introduced that specific technology, if it was in the NAS range of estimates, and if at least one other manufacturer provided a similar value for the fuel economy potential of that technology.

In the Stage III analysis for the NPRM, the agency tentatively concluded that the bulk of General Motors models equipped with the 6.0L engines could be equipped instead with 5.3L engines without notably degrading their utility. We determined that, standing alone, this change to General Motors' MYs 2005–2007 light truck fleet would increase General Motors' CAFE by 0.1 mpg.

As we indicated in our summary of the comments provided above, General Motors disagreed with NHTSA's projections and provided new and revised data to support its assertions. The company's February 2003 submission indicates that General Motors believes it can achieve a CAFE of 20.4 mpg in MYs 2005 and 2006, and 20.6 mpg in MY 2007.

General Motors pointed out clerical mistakes in the NPRM, such as double counting certain vehicles and technologies that were already being used by General Motors to meet the company's projected CAFE. General Motors stated that correcting for these clerical errors would lower NHTSA's assessment of General Motors CAFE by 0.08 mpg in MY 2005, 0.18 mpg in MY 2006, and 0.16 mpg in MY 2007. Additionally, General Motors argued that NHTSA's technological assessment is too optimistic about the degree to which General Motors can improve its CAFE, particularly since NHTSA made no allowance for deterioration or "risk" in its forecasts. General Motors also stated that NHTSA's projections of the company's capability to improve its CAFE ignored how little lead time General Motors had to implement changes to its MY 2005 trucks " which would begin production in July 2004.

Compared to its May 2002 CAFE forecasts, General Motors' February 2003 CAFE forecasts are higher for MYs 2005 and 2006, but lower for MY 2007.

The updated forecasts involve several model changes, volume changes, and greater use of some of the technologies included in NHTSA's analyses. Based on these updated forecasts, General Motors provided its own computation of what General Motors' CAFE would be for MYs 2005–2007 if either the Stage or Volpe technologies were added to General Motors' updated product plans without any instances of double counting. These projections indicated that the Stage analysis projected General Motors' attaining a CAFE of 21.20 mpg in MY 2005, 21.65 mpg in MY 2006 and 21.75 mpg in MY 2007. Using the Volpe method, General Motors reported that its projected CAFE should be 21.12 mpg in MY 2005, 21.47 mpg in MY 2006 and 21.70 mpg in MY 2007.

The foregoing projections, according to General Motors, are still far too optimistic, even after the effects of double counting and other clerical errors are addressed. General Motors indicated that the agency's proposal included the use of technologies that could not be implemented in the time available, including some that were not yet ready for commercial application. In other instances, General Motors asserted that it had already exploited particular technologies to the extent possible. General Motors also indicated that both the "Stage" analysis and the Volpe analysis relied on projected improvements from certain technologies that were unrealistic.

Accordingly, General Motors submitted its own estimates of benefits from the application of the same technologies. In many instances, these estimates were lower than those used by NHTSA. The company also disagreed with NHTSA's view in the NPRM that the displacement reductions envisioned in NHTSA's Stage III analysis—replacing a larger engine with a smaller one in some vehicles—were a practical means of improving fuel economy. According to General Motors, requiring the replacement of one engine with another constituted more than a change in a single vehicle. Instead, the company argued that such a change was the equivalent of prohibiting production of an entire model line. General Motors concluded that NHTSA's proposed CAFE standards are neither technologically feasible nor economically practicable.

As it did for the NPRM, NHTSA used two methodologies to explore the potential for improvement in General Motors' fuel economy. One, the "Stage" analysis, examined the potential use of various technologies and other means after separating these methods into three different "Stages" and applying them to manufacturers in a designated sequence. The agency's "Stage" analysis, which is contained in the FEA that has been placed in the docket, corrected errors that General Motors had found in our earlier analysis.

As was the case with the "Stage" analysis performed in support of the NPRM, we based our choices as to which technologies to apply on our review of manufacturer product plans. In the case of General Motors, the agency re-examined many of our preliminary findings about which technologies could be applied to improve General Motors' fuel economy and revised its estimates. In so doing, we noted that General Motors' May 2002 submission, submitted in response to our February 7, 2002 request for comments, contained a number of references to technologies or returns on technologies that the company either abandoned or discounted in its February 14, 2003 submission. In some instances, our analysis was modified to reflect General Motors' February 2003 view of which measures could be employed. In others, we examined both the May 2002 and February 2003 General Motors submissions to see if opportunities existed to expand the use of technologies that appeared to be consistent with General Motors' product plans as depicted in both documents. We also considered improvements from technologies that had been adopted by other manufacturers. Our analysis projected that some of these technologies could be used to improve fuel economy if General Motors expended additional effort to implement some of these changes.

We further believe that, while there are technological and market risks associated with establishing a CAFE standard three model years beyond MY 2004, the last year for which a standard has been established, there is also the opportunity to incorporate further technological advancements to achieve the standard and beyond. We also believe that General Motors' projected CAFE capabilities may be further enhanced should consumers begin to demand more hybrid electric vehicles, diesel vehicles and cross-over utility vehicles and should General Motors expand its offerings in this arena to meet consumer demand.

NHTSA believes that it is technologically feasible for General Motors to meet the standards established in this final rule. We note that our updated "Stage" analysis responds to General Motors" most recent comments and projections by adjusting the use, introduction, and application of fuel economy improvements to conform better to General Motors' currently planned deployment of technologies. The agency also reexamined the application of several technologies to ensure that they were applied to vehicles suitable for their use. In so doing, NHTSA examined the way in which these technologies were being used by the industry. Our analysis applies technologies that are either already in use or are sufficiently mature to have been included by other manufacturers in their MY 2005–2007 product plans.

Finally, our analysis did not rely on the use of clean diesel engines or the production of hybrids beyond those already planned by General Motors. However, the agency believes that the use of diesel engines and hybrid technology would enable General Motors to offset some of their anticipated risks of technical implementation and meet the new standard. Both of these technologies offer significant promise for increased fuel efficiency and one, if not both, could certainly be in place during MYs 2005–2007. Other external uncertainties, such as further technological development and fluctuating fuel prices that may affect consumer demand by MY 2007, could assist General Motors in achieving the standards established by this final rule.

General Motors' comments also took issue with the validity and execution of NHTSA's "Volpe" analysis. As indicated in the PEA prepared in conjunction with our December 2002 NPRM, NHTSA computed the potential costs of its proposal through an analysis developed by the Volpe National Transportation Systems Center. This analysis used an algorithm that applied fuel economy technologies to different model lines based on the cost-effectiveness of each technology. General Motors argued that the Volpe analysis contained a number of errors, including some clerical and mathematical errors.

The company also claimed that the Volpe analysis was illogical in the manner in which technologies were used and discarded without sufficient regard for capital costs. The analysis was also flawed, in General Motors' view, because the Volpe analysis applied different techniques for estimating costs than those employed in the Stage analysis to raise General Motors' fuel economy. Finally, General Motors also indicated that many of the technologies employed in the "Volpe" analysis were either not ready, did not deliver the fuel savings described or were, in many instances, not practicable for General Motors.

The agency agrees that the Volpe analysis prepared for the NPRM contained clerical errors and, in some instances, applied and removed technologies without consideration of capital costs. We have remedied the clerical errors in our earlier Volpe analysis, changed our application of technologies to reflect the impact of repaying capital investments and modified the analysis so that the Volpe cost estimates are more nearly based on the technologies, or their equivalents, used by NHTSA in its updated Stage analysis. We have also performed a more traditional analysis of General Motors' projected costs by calculating the total cost of all the projected "Stage" technologies. As we are also using the Volpe methodology to calculate costs for the industry, as well as for General Motors, the Volpe methodology was also changed to reflect that capital costs might require employment of technologies for several years, rather than a single year. As is the case with the Stage analysis, the Volpe analysis was also changed to apply technologies in a manner more consistent with General Motors' projections of its product plans and capabilities. In so doing, we also examined the abilities and plans of the industry as a whole in determining which technologies could reasonably be used. As indicated in our discussion regarding costs, we believe that the Volpe analysis provides an accurate accounting of the potential aggregate costs of this final rule.

After careful review of General Motors' comments, the agency modified its application of both the Stage analysis and the Volpe analysis. One Stage I technology was not applied as widely as it was in the NPRM. A Stage II technology that NHTSA had calculated could be widely introduced in MY 2005 is now being applied in phases in MYs 2006 and 2007. Technologies that were not used in our analysis for the NPRM are now being applied as Stage II technologies. Finally, in regard to Stage III, our analysis no longer relies on General Motors' removing the existing 6.0L engine from some trucks and replacing it with a smaller V–8. As stated above, the possibility that forcing through regulation substantial deviation from product offerings based on projected consumer demand may impose unreasonable constraints on the market leads us to conclude that it is not appropriate to include such engine shifts in the Stage analysis. Nonetheless, market forces may yet independently favor further reassessment of product plans for which there remains adequate lead time.

In addition to these changes in the technologies used and the way they were applied, we also changed our estimates of the improvements we expect to gain from certain technologies. In the case of low rolling resistance tires and low viscosity/low friction lubricants, the agency had previously estimated that these technologies would each yield a .5 percent improvement in fuel economy. In response to criticisms that our values were either too low or too high, we decided to use the NAS mid-range estimates (where available) since they were developed based on extensive study and review. Thus, we adopted a 1.3 percent improvement for low rolling resistance tires, which is the midpoint value projected by the NAS report.

In the case of low friction/low viscosity lubricants, we indicated in the PEA accompanying the CAFE NPRM that these lubricants could yield anywhere from a 0.3 percent to 1.0 percent improvement in fuel economy. However, our calculations for the NPRM relied on a 0.5 percent improvement from low friction/low viscosity lubricants. After consideration of the potential benefits of these lubricants, we now anticipate, as did the NAS, that use of these oils will yield a 1 percent improvement. In addition to changing the estimated returns for the preceding technologies, our analysis also reduced the percentage improvement related to improved cooling fans from 2.4 percent to 2.0 percent.

After correcting errors in our earlier analysis and making other changes as described above, our Stage analysis projects, based on General Motors' most recently submitted product plans, light truck CAFE estimates for that company of 20.96 mpg for MY 2005, 21.56 mpg for MY 2006 and 21.99 mpg for MY 2007. Unlike many previous CAFE rulemakings, we are establishing light truck standards for three consecutive model years. This provides, especially as regards the third model year, MY 2007, additional lead time for companies to develop compliance options not typically available when a standard is set just 18 months prior to a model year. We believe that, although General Motors' current product plans do not project that it will achieve a 22.2 mpg light truck CAFE without further adjustments, that the opportunity and technologies exist to make such adjustments technologically feasible and economically practicable for MY 2007. We note that, while Ford finds the standards "challenging," that company stated that it would make just such adjustments to meet the standards.

Further, the Volpe analysis (while principally a tool to assess costs and benefits) suggests a projection of 22.2 mpg for MY 2007 for General Motors. Rather than address General Motors' product plans on a model-by-model basis, the Volpe analysis estimates the company's projected CAFE capabilities through application of technologies available to the industry as a whole. The Volpe analysis suggests that the Stage analysis may present a conservative projection for MY 2007, given the additional lead time provided for that model year.

Moreover, the CAFE statute does not contemplate that each standard automatically be set at the lowest projected level of the "least capable manufacturer with a significant share of the market." Instead, it contemplates CAFE levels at the maximum level attainable within the industry as a whole without necessitating consequential adverse economic consequences. As noted above, this is the first time since 1980 that the agency has simultaneously established light truck standards for more than two model years. As a result, we believe it to be within the intent of the statute to set more challenging—but still reasonable—CAFE levels during the year(s) furthest in the future.

Indeed, the concept of the "least capable manufacturer with a significant share of the market" was intended to be a surrogate for analyzing whether employment reductions or other adverse economic consequences (including vehicle weight reductions) were necessary to meet the standards. While we have not pointed to particular measures based on current plans and projections that will bring General Motors' MY 2007 CAFE level to 22.2 mpg, that level may be achieved through additional technological improvements and the expansion of hybrid electric, diesel engine or cross-over utility vehicles in the marketplace. External market factors may also impact actual CAFE performance. As a result, we have determined that—for MY 2007, as well as MYs 2005 and 2006—the CAFE standards are technologically feasible, and economically practicable, for the industry as a whole despite being set at a level above the current projections for a company with a substantial share of the light truck market.

2. Ford

Our December 2002 NPRM estimated, based on examination of Ford's product plans and use of the Stage analysis, that Ford could improve its light truck CAFE to 21.0 mpg for MY 2005, 21.6 mpg for MY 2006 and 22.2 mpg for MY 2007.

The agency determined that Ford could reach these levels by raising its projected CAFE by an additional .08 mpg from 20.9 mpg in MY 2005 and an additional .19 mpg from 22.0 mpg in MY 2007. Ford's response to the NPRM did not specifically dispute NHTSA estimates for MYs 2005 and 2006. However, Ford indicated that it believed the agency's projection for its CAFE for MY 2007 overstated the company's capability by as much as a tenth of a mile per gallon.

In its response to the NPRM, Ford indicated that it viewed NHTSA's proposal as technologically challenging and submitted updated information about its product plans that supported this contention. At the same time, Ford indicated that it was committed to taking additional actions beyond those it already planned to achieve these "difficult" standards. The company indicated, as did General Motors and other manufacturers, that the agency's proposal underestimated the leadtime needed to incorporate fuel economy improvements in vehicles as well as the difficulties of introducing new technologies across a large manufacturer's fleet. Ford also indicated that hybrid and advanced diesel technology are not mature enough to improve overall CAFE performance significantly. In Ford's view, the weight increases due to safety standards have been significantly underestimated. Ford also commented that NHTSA's proposal did not account for any risks that projected increases in fuel efficiency would not materialize. As a general matter, the company also said that increased sales of full-size trucks could erode its CAFE estimates in spite of its plans.

In regard to specific changes to Ford's fleet projected by NHTSA, Ford argued that it could not take some of the measures that NHTSA had identified in the agency's Stage analysis. Some of these measures, according to Ford, would be much more costly than NHTSA estimated. Others, in Ford's view, had not yet been sufficiently proven to be suitable for use on MY 2005–2007 vehicles. Ford noted that NHTSA's use of some proven technologies would make it necessary for that company to expend tremendous resources. The company also noted that some technologies, although proven and presumably available, would not be acceptable to consumers.

NHTSA projects that Ford has the technological capability to meet the light truck CAFF standards set forth in this final rule. After reviewing Ford's comments, NHTSA has undertaken a further analysis of the company's projected capabilities and the technologies available for improving Ford's CAFE. As with General Motors and DaimlerChrysler, the agency did not include expanded production of hybrid electric or diesel engines beyond those already included in each company's product plans. However, as noted above, we believe these advanced technologies are likely to offset some of the potential risks Ford anticipates and potentially may enhance CAFE performance beyond current projections. Further, our analysis continues to apply technologies as a means of improving fuel economy in lieu of weight reduction and downsizing.

After reviewing Ford's comments, we made a number of revisions to our analysis. A more detailed account of these changes is found in the FEA accompanying this document. In general, we adjusted our estimates based on the updated product plans contained in Ford's comments. Using these plans, we considered the extent to which certain fuel economy measures are now being implemented within the industry and considered those technologies that will be sufficiently mature to be available in MYs 2005–2007. These technologies were then applied in a fashion consistent with how other manufacturers are using them and, in our view, consistent with Ford's projected capabilities.

Ford's comments also indicated that it believed that NHTSA has seriously underestimated the weight penalty, and subsequent loss in fuel efficiency, caused by weight increases necessitated by safety standards. As indicated below in our discussion of the impact of other federal standards on fuel economy, NHTSA disagrees. Some of the weight penalties claimed by Ford are related to proposed requirements that are not yet final. Others are more speculative and based on agency initiatives that have not yet generated proposals. For rules that are already in place, NHTSA believes some of the Ford claims overestimate the impact.

Based on the Stage analysis, Ford's projected light truck CAFE is 20.96 mpg in MY 2005, 21.56 mpg in MY 2006 and 22.23 mpg in MY 2007. The Volpe analysis indicates that Ford can achieve 21.00 mpg for MY 2005, 21.68 mpg for MY 2006, and 22.2 mpg for MY 2007.

3. DaimlerChrysler

The agency's December 2002 NPRM projected that DaimlerChrysler was capable of achieving a light truck CAFE of 21.3 mpg for MY 2005, 21.6 mpg for MY 2006 and 22.2 mpg for MY 2007. Although DaimlerChrysler's comments in response to the NPRM characterized the agency's proposal as extremely challenging, the company did not dispute that it was capable of achieving these levels of fuel economy. However, DaimlerChrysler commented that the foregoing fuel economy projections would remain valid only so long as DaimlerChrysler's planned technology advancements and product mix remained intact.

The company warned that there were significant risks that expected fuel economy gains might not be realized or that consumer demand for less fuel efficient vehicles could cause a reduction in DaimlerChrysler's CAFE. Therefore, DaimlerChrysler suggested that NHTSA revise its proposal to reflect more accurately the risks faced by the company and other manufacturers in pursuing improved fuel economy. DaimlerChrysler indicated that the NHTSA proposal should be 20.9 mpg for MY 2005, 21.1 mpg for MY 2006 and 21.5 mpg for MY 2007.

DaimlerChrysler indicated that reducing the agency's proposed levels was supported by a number of considerations. The company noted that NHTSA had not seemed to consider that there were any risks that technologies might not yield greater efficiency or consumers would demand less efficient vehicles. DaimlerChrysler stated that these risks were particularly significant given the short lead time available to manufacturers if any changes needed to be made to their products for MYs 2005–2007. According to DaimlerChrysler, it was essentially "locked in" to its product plans for MYs 2005 and 2006. The company further indicated that even its MY 2007 product plans could only be changed in the most limited fashion. Due to this lack of leadtime, DaimlerChrysler cautioned NHTSA that it would not be possible for it, or any other vehicle manufacturer, to institute anything more than minor changes to its products through MY 2007.

The Agency's Stage analysis projects that DaimlerChrysler can achieve 21.3 mpg for MY 2005, 21.6 mpg for MY 2006, and 22.2 mpg for MY 2007. The Volpe analysis indicates that DaimlerChrysler can achieve 21.32 mpg for MY 2005, 21.60 mpg for MY 2006, and 22.24 mpg for MY 2007.

NHTSA acknowledges that its proposal simply specified a single value for CAFE for each year rather than stating ranges for each of the three model years. This led a number of commenters to conclude that the agency did not account for any risks that consumer demand may shift or that technologies would not yield expected fuel savings. However, the agency is aware of such risks and notes that these risks are also accompanied by opportunities. Just as there is a risk that consumers may demand less fuel-efficient vehicles, changes in market conditions could also stimulate a greater demand for more efficient vehicles. Additionally, a number of potential technologies, including clean diesel and hybrid vehicles, and the shift to more fuel efficient cross-over utility vehicles, may offer opportunities for greater fuel savings and may serve to offset some of the risk anticipated by DaimlerChrysler.

The agency is certainly aware that vehicle manufacturers must have sufficient lead time to incorporate changes and new features into their vehicles. Similarly, NHTSA also recognizes that vehicle manufacturers follow design cycles when introducing or significantly modifying a product. This is why the agency has always been respectful of industry needs in this regard. At the same time, we also observe that competition has forced manufacturers to become considerably more agile in modifying and changing products to meet demand. This is evidenced by Ford's and General Motors' submitting revised product plans between May 2002 and February 2003. Generally speaking, we believe that manufacturers have the same ability to meet market driven demands for design changes as those required by regulation. NHTSA believes that the requirements of this final rule do not impose technical demands beyond those that DaimlerChrysler or other manufacturers can meet in the allotted time.

B. Economic Practicability and Other Economic Issues

The agency has estimated not only the anticipated costs that would be borne by General Motors, Ford and DaimlerChrysler to comply with the standards, but also the significance of the societal benefits anticipated to be achieved through direct and indirect fuel savings. In regard to manufacturer costs, the NPRM relied on the Volpe analysis to determine a probable range of costs. In preparing this final rule, we have prepared cost estimates using updated versions of both the Volpe analysis and the Stage analysis. We have concluded that these standards need not result in reductions in employment or competition, and that—while challenging—they are achievable within the framework described above, and that they will benefit society considerably. For the sake of this analysis, we have translated the societal benefits into dollar values and compared those values to our estimated costs to the manufacturers for this final rule.

1. Costs

After review of the comments submitted in response to the NPRM and performing further analysis, NHTSA estimates the average incremental cost per vehicle needed to meet the standards to be $22 for MY 2005, $67 for MY 2006, and $106 for MY 2007. The total incremental cost (the cost necessary to bring the corporate average fuel economy for light trucks from 20.7 mpg to the standards) is now estimated to be $170 million for MY 2005, $537 million for MY 2006, and $862 million for MY 2007.

The level of additional expenditure necessary beyond already planned investment varies for each individual manufacturer. These individual expenditures are discussed in more detail in the FEA. In order to estimate them, the agency developed cost estimates for the various technologies that are available to and technologically feasible for vehicle manufacturers within the time frame covered by this final rule. These cost estimates were developed through use of a refined "Volpe" analysis that incorporates a number of changes made in response to concerns pointed out by commenters.

The differences between the costs projected in the NPRM and the costs now estimated for this final rule are significant and reflect changes in the agency's methodology, calculations and underlying assumptions. We note first that our analysis of which technologies are most likely to be used by manufacturers to improve fuel economy has changed markedly as a result of the comments and updated product plans submitted in response to the NPRM. The remainder of the difference between the two cost estimates stems from changes to our "Volpe" analysis. Although this methodology is more completely described in both the FEA accompanying the NPRM and the FEA accompanying this final rule, the final rule "Volpe" analysis relies on several inputs and uses an algorithm to calculate overall costs for fuel economy improvements.

Manufacturer comments indicated dissatisfaction with the NPRM "Volpe" analysis. The companies, General Motors in particular, argued that our analysis underestimated the costs for certain of those technologies, contained clerical and mathematical errors, and applied technologies with little or no regard for leadtime and proper allocation of capital investment. General Motors also noted that the Volpe analysis and the Stage analysis applied different technologies. While the Volpe analysis estimated costs using one set of technologies, the agency's Stage analysis supported the proposed new standards by relying on another. General Motors also indicated that many of the technologies employed in the "Volpe" analysis were either not ready, did not deliver the fuel savings described and were, in many instances, not practicable for General Motors.

As indicated above, the agency reexamined and improved the Volpe analysis in response to the comments. As discussed in more detail in the FEA, we recalculated our assessment of the costs after remedying the clerical errors noted by General Motors. In contrast to the earlier "Volpe" analysis used to calculate the costs set forth in the NPRM, cost estimates in the final rule Volpe analysis first assumed that manufacturers would apply technologies in a fashion more consistent with our "Stage" analysis. As explained below, this differed from our methodology used for the NPRM. Our NPRM "Volpe" analysis applied the cheapest technologies first and added new technologies largely in order of increasing cost.

While our new analysis did not abandon the idea that less costly technologies would be used before those that are more costly (ranked on a cost per mpg investment basis), we considered both the order in which technologies are most likely to be used based on availability as well as cost. We also changed the methodology to recognize that capital costs require employment of technologies for several years, rather than a single year. Finally, we updated the Volpe analysis to include more accurate cost estimates for some technologies and increased benefits from others. In our view, this makes the Volpe analysis more consistent with the Stage analysis and better reflects actual conditions in the automotive industry.

General Motors argued that restricting availability of large engines would impact on sales and result in job losses. Referring to its experience with one of its models that was simultaneously redesigned and given a new 6.0L engine, General Motors stated that a large increase in sales of this vehicle resulted when the 6.0L engine replaced a smaller predecessor. The company then stated that replacing the 6.0L with a newly designed smaller engine would result in lost sales. General Motors' argument implies that replacing the 6.0L engine in this model with a smaller engine would reduce sales to a level equivalent to its sales before the redesign.

The Recreational Vehicle Industry Association commented that increases in light truck fuel economy could indirectly impact the sales and production of trailers, conversion vehicles and recreational vehicles by reducing the availability of suitably powerful light trucks and light truck chassis.

The final rule is not based on any engine shifts. Forcing through regulation substantial deviation from product offerings may impose unreasonable constraints on the market. Thus, we conclude that it is not appropriate to include such engine shifts in the Stage analysis. Since the final rule would not other necessitate any such substantial deviation, NHTSA does not believe that this standard will have an adverse effect on the recreational vehicle industry.

NHTSA's cost analysis recognizes the importance of the competitive market. We believe that the standards contained in this final rule will not limit the availability of vehicles that consumers need and want. We believe that the standards established in this final rule will not result in changes to power-to-weight ratios, towing capacity or cargo and passenger hauling ability. In short, the standards will not affect the utility of available vehicles and therefore should not affect consumer preferences for or against them. Since consumer choices will not be affected, neither will the production plans of any particular manufacturer.

2. Benefits to Society

In the FEA, the agency analyzed the economic and environmental benefits of this final rule by estimating fuel savings over the lifetime of the model year (approximately 25 years).

The agency's analysis estimated the undiscounted future impacts and then determined their present value using a 7 annual percent discount rate. We translated impacts other than direct fuel savings into dollar values and then factored them into our cumulative estimates. Adding indirect benefits to the direct benefits of fuel saved as a result of higher CAFE standards produced an incremental benefit to consumers, when reduced to present value, of $29 per vehicle for MY 2005, $83 per vehicle for MY 2006 and $121 per vehicle for MY 2007. The total present value of these direct and indirect benefits is estimated to be $218 million for MY 2005, $645 million for MY 2006 and $955 million for MY 2007.

We obtained forecasts of light truck sales for future years from the EIA's Annual Energy Outlook 2002 (AEO 2002). Based on these forecasts, NHTSA estimated that approximately 7,654,000 light trucks would be sold in MY 2005. For MYs 2006 and 2007, we estimated 7,795,000 and 7,922,000 light truck sales respectively.

We estimated fuel economy performance for each future model year's light trucks under the current CAFE standard and with alternative standards in effect, using the agency's projections for the application of fuel saving technologies. We then assessed the economic value of annual fuel savings resulting from higher light truck CAFE standards by applying EIA's AEO 2002 forecast of future fuel prices to each year's estimated fuel savings. In turn, we estimated future fuel savings by dividing the total number of miles that the surviving population of vehicles of that model year are estimated to be driven by the average on-road fuel economy level associated with the base standard of 20.7 mpg.

NHTSA then assumed that if the same trucks met a higher CAFE standard when sold, their total fuel consumption during each subsequent calendar year could be calculated by dividing the increased number of miles they are driven as a result of the higher fuel economy resulting from that standard. The sum of these annual fuel savings over each calendar year that vehicles remain in service represents the cumulative fuel savings resulting from applying a stricter CAFE standard to light trucks produced during that model year.

NHTSA's analysis of the benefits of external factors totaled $0.083 per gallon of gasoline, including $0.048 for "monopsony" effect (the effect on the world market price of gasoline from reductions in U.S. demand), and $0.035 for reducing the threat of supply disruptions.

In the FEA, we also analyzed the effect of the standards on vehicle and refinery emissions. Our analysis indicated that the MY 2005 standard would result in a net reduction of criteria pollutants with a present value of $2.4 million. For MY 2006, this net reduction would have a present value of $8.0 million and for MY 2007 the net reduction of criteria pollutants would have a present value of $12.7 million.

We obtained per mile emission rates using EPA's Mobile 6.2 motor vehicle emissions factor model. Then we monetized changes in total emission levels.[5]

[5] White House Office of Management and Budget, Office of Information and Regulatory Affairs, "Report to Congress on the Benefits and Costs of Federal Regulations," 1998, p. 72. See also Office of Management and Budget, "Draft Report to Congress on the Costs and Benefits of Federal Regulations: Notice," **Federal Register**, Volume 67, No. 60, Thursday, March 28, 2002, p. 15041. The values used for VOC, NO_X, and SO2 are the midpoints of the ranges used by OMB. However, OMB does not provide a damage cost estimate for carbon monoxide (CO); the value used here was derived from Donald R. McCubbin and Mark A. Delucchi, "The Health Costs of Motor-Vehicle-Related Air Pollution," Journal of Transport Economics and Policy, September 1999, Volume 33, part 3, pp. 253–86.

Commenters questioned NHTSA's use of several of the variables and values used in the PEA and also in the Draft Environmental Assessment. In response to these comments, the agency further considered the use and accuracy of its chosen variables and values. In many cases, the agency concluded that, based upon current data and literature, it was correct in its determinations and has retained those variables or values. In other cases, the agency has decided to revise its assumptions and the estimates that they support. The agency's response to comments on the economic and environmental analyses is delineated below and a more detailed analysis is provided in the FEA and the Environmental Assessment.

a. Vehicle Miles Traveled and Survivability

A VMT growth rate is a key parameter used to account for travel trends and to calculate the resulting vehicle emissions. The EPA's MOBILE6 air quality model, which is used by State and local governments to help them meet Clean Air Act requirements, was used in the analysis and incorporates a 1.8 percent VMT growth rate.

Ford questioned whether the baseline on-road average annual VMT growth rate of 1.8 percent over the entire study period is accurate since, as it argues, historical data from the last ten years indicate that the VMT (per vehicle) has remained stable.

The agency notes that the information provided by Ford is accurate when referring to, as Ford does, VMT per vehicle per year. However, the 1.8 percent VMT growth rate used in the Environmental Assessment refers not to the per-vehicle VMT, but to fleet VMT per year. Historical data show that the VMT per year for the light-duty vehicle fleet has been increasing and this trend is expected to continue. The value of 1.8 percent was derived from the AEO 2002 report published by the EIA. EIA uses data from the FHWA Highway Statistics as inputs to its model and forecasts a growth rate of 1.8 percent for light-duty vehicles (combined) per year over the 2000–2020 period. Since the period covered by the agency's final rule falls within this period, the value projected by EIA is appropriate.

In both the NPRM and PEA, we stated that we had performed an analysis of the environmental impacts of the proposed CAFE standards by estimating fuel savings over the life of the vehicle. The vehicle life extends from the initial year in which the vehicle is offered for sale through approximately 25 years of use. A "survival rate" is assumed by applying estimates of the proportion of vehicles surviving at each age interval up to 25 years.

Ford and the Alliance noted that notwithstanding those statements, the agency's spreadsheet of calculated fuel savings made calculations for vehicles up to the age of 30 instead of 25 years. They said that the agency should recalculate costs, using a 25-year useful life (vehicle age) and the survival rate from the latest Transportation Energy Data Book. NHTSA notes that it did use a 25-year useful life in its proposal and that an earlier assumption of a 30-year useful life was inadvertently placed in a spreadsheet provided to those commenters who requested it.

In the analysis that accompanied the NPRM, NHTSA incorporated a baseline VMT estimate of 12,000 miles based upon an earlier NHTSA analysis of vehicle survivability and miles traveled. Union of Concerned Scientists argued that NHTSA's estimate of VMT is low compared with other studies and therefore the agency underestimates the fuel economy benefits. Union of Concerned Scientists urged NHTSA to use the mileage numbers provided in the Oak Ridge Transportation Data Book (15,000 miles) or the mileage used in the NAS analysis (15,600 miles in the first year, declining at 4.5 percent per year thereafter), instead of the 12,000 miles used in the PEA. After consideration of this issue, the agency has decided to calculate VMT based on the Update of Fleet Characterization Data for Use in EPA's MOBILE6 program. See Table VIII–2 of FEA.

b. Discount Rate

OMB requires government agencies to use a 7 percent discount rate as a base-case in their cost and benefit analyses.[6] (OMB Circular A–94 and Guidance of January 11, 1996) This approximates the average before tax rate of return to private capital in the U.S. economy, and represents, in general, the foregone returns (opportunity cost) that could have been received in private investments. With proper justification, agencies may supplement an analysis based on that rate with an analysis based on an alternative discount rate.

Both Lutter and Kravitz and the Mercatus Center argued for higher discount rates. Lutter and Kravitz stated that the agency should have used a rate ranging from 7.6–10 percent, the average new car finance rate during 1984–95.

The Mercatus Center argued that the discount rate should be much higher (14 percent–28 percent), since fuel economy should be treated as an irreversible investment. That organization stated that an example of an irreversible investment, in the business context, is a nuclear power plant, because it has large sunk costs that cannot be recovered should investment outcomes turn unfavorable. The Mercatus Center stated that households have limited portfolios of risky investments and may be unable to diversify away the risk of energy savings or other investments. It argued that to compensate for such risk, consumers require higher discount rates. The Mercatus Center claimed that the investment in fuel economy is a sunk cost at the time of purchase and cannot be reversed, should the consumer decided that the investment is unwarranted. That organization also cited empirical evidence of implicit consumer discount rates for energy efficiency in the 1970's and early 1980's in arguing for a much higher discount rate.

After considering the comments, we have decided not to use an alternative discount rate.

Discounting is required to adjust future impacts to a basis that is comparable with current impacts and to reflect society's preference for current consumption or investment opportunities. The appropriate basis for determining discount rates is the marginal opportunity cost of lost or displaced funds. When these funds involve capital investment, the marginal real rate of return on capital may be appropriate. The Office of Management and Budget has prescribed a 7 percent discount rate to represent the average before-tax rate of return to private capital in the U.S. economy. It approximates the opportunity cost of capital and is, according to OMB, "* * * the appropriate discount rate to use whenever the main effect of a regulation is to displace or alter the use of capital in the private sector." The investments required to achieve fuel economy improvements will require some temporary displacement of capital. NHTSA consistently uses this discount rate in evaluating the impacts of its regulations.

[6] For additional information about the use of discount rates in regulatory analysis, see OMB Draft Guidelines for the Conduct of Regulatory Analysis and the Format of Accounting Statements at 68 FR 5513, 5521, February 3, 2003.

c. Rebound Effect

By reducing the amount of gasoline used and thus the cost of fuel per mile driven, higher CAFE standards are expected to result in a slight increase in annual miles driven per vehicle from the levels from those that would result if the MY 2004 standard of 20.7 mpg remained in effect. The resulting increase, termed the "rebound effect," offsets part of the reduction in gasoline consumption that results from improved fuel efficiency.

The magnitude of the rebound effect from higher CAFE standards for light-duty vehicles is typically derived from econometric estimates of the elasticity of vehicle use (either per vehicle or for an entire fleet) with respect to either fuel cost per mile driven or fuel economy measured in miles per gallon. In other words, these estimates examine the extent to which consumers are believed to respond to changes in fuel cost or fuel economy by driving more or less. Most recent estimates of the magnitude of the rebound effect for light-duty vehicles fall in the relatively narrow range of 10 percent to 20 percent, which implies that increasing vehicle use will offset 10–20 percent of the fuel savings resulting directly from an improvement in fuel economy. The NAS report concluded that the best estimate of the current rebound effect is 10–20 percent. On that basis, the NPRM used a value of 15 percent, the mid-point of the range in the NAS report.

The Alliance, General Motors, and Ford urged the agency to use a value of 35 percent rather than 15 percent, with a sensitivity analysis of 20 percent to 50 percent. These commenters each based this recommendation on a recent survey article, Greening, Greene, and Difiglio (Energy Policy 28 (2000) 389–401) and on the agreement of participants in "Car Talk," a Clinton Administration dialogue on fuel economy among the auto industry, environmental organizations, think tanks, and government organizations. DaimlerChrysler seemed also to recommend a value of about 35 percent, stating, "the commonly accepted price elasticity of VMT is a negative 3.5 percent, which means that a 10 percent reduction in per mile vehicle fuel consumption actually only reduces fuel consumption by 7 percent."

General Motors stated that the agency's 15 percent figure is not supported by most literature. It urged the agency to consider the comments it submitted in May 2002 and the research it cited. In its May 2002 comments, General Motors stated that the Greening, Greene, and Difiglio article estimated

the rebound effect at between 20 and 50 percent. In its new comment, General Motors stated that this article reviewed 75 articles on the rebound effect, including 22 on automotive transport. The company stated that very few of the reviewed articles showed a rebound effect of less than 20 percent, except for the short term, and several of the reviewed articles showed a rebound effect of up to 50 percent. General Motors stated that a more thorough review of the literature would have led NHTSA to use a rebound estimate of more than 20 percent.

General Motors included as an attachment to its comment a study of costs and benefits prepared by Dr. Andrew N. Kleit. Dr. Kleit stated that a recent study (Greene *et al.*, 1999) found a rebound effect of 20 percent, and he employed that result in his study. Dr. Kleit also cited the Greening, Greene, and Difiglio survey article, and stated that a 20 percent rebound effect is a conservative estimate. Dr. Kleit stated that the Congressional Budget Office, in a recent report on CAFE standards, also assumed a rebound effect of 20 percent.

The American Council for an Energy Efficient Economy noted that, with regard to the rebound effect, NHTSA stated in the NPRM that increasing fuel economy by 10 percent would produce an estimated 8–9 percent reduction in fuel economy. According to the Council, this implies that the rebound effect is between 1 percent and 12 percent, in contrast to the rebound effect of 15 percent used to calculate benefits reported in the agency's Preliminary Economic Analysis. The Council stated that clarification was necessary, and offered that a 15 percent rebound might be too high.

After careful review of the studies in light of the comments, the agency has determined that a rebound effect of 20 percent is appropriate for this action. The agency disagrees with the comments of the Alliance, General Motors, Ford and DaimlerChrysler that a number higher than 20 percent should be used. The recent comprehensive analysis of the effectiveness of CAFE standards conducted by the NAS concluded that the best estimate of the current rebound effect was 10–20 percent,[7] and the agency's analysis of NAS' fuel saving estimates indicates that the 20 percent figure was used in deriving them. The NAS' estimate was based on a review of recent studies that focused specifically on the fuel economy rebound effect for light duty vehicles, rather than on more general consumer purchases of durable goods and other energy-saving devices, which formed the basis of some of the studies emphasized in the Greening, Greene, and Difiglio survey.

The agency also believes that a careful analysis of the Greening, Greene and Difiglio survey on the rebound effect, which is a compendium of results of other studies surveying a wide range of rebound effects (including those associated with durable goods and energy-saving devices), shows that use of 20 percent for the rebound effect is reasonable when limiting the review to the studies analyzing vehicle use.

In response to American Council for an Energy Efficient Economy's comments, the agency notes that an 8 percent reduction in fuel use in response to a 10 percent improvement in fuel economy means that 2 percentage points of the fuel savings that would otherwise result from the 10 percent increase in fuel economy is offset by additional driving. This response implies a rebound effect ranging from 10 percent (calculated as 1 percent divided by 10 percent) to 20 percent (2 percent divided by 10 percent), the range specified in the Preliminary Economic Analysis and also used in the Draft Environmental Assessment.

The Alliance and General Motors contended that the additional miles traveled by virtue of the rebound effect could increase overall exposure to motor vehicle crashes. We note that we have now provided a value associated with the various potential consequences of increased exposure, including congestion, noise and crashes.

We recognize that the magnitude of the assumed rebound effect and the implications of any rebound effect are complex issues. NHTSA will continue to monitor relevant research for use in future CAFE rulemakings.

d. Baseline of 20.7

In our analysis, costs were estimated based on the specific technologies that were applied to improve each manufacturer's fuel economy from the level of the manufacturer's plans up to the level of the final rule. Benefits were also determined from the level of the manufacturer's plans up to the level of the final rule. If the manufacturer's plans did not reach the level of the MY 2004 standard, 20.7 mpg, the costs and benefits were estimated based on the specific technologies that were applied to improve each manufacturers' fuel economy from 20.7 mpg to the level of the final rule.

The Alliance, Ford, General Motors, and DaimlerChrysler commented that the use of 20.7 mpg as a baseline for fleet-wide fuel economy was inappropriate because the 20.7 figure incorporates anticipated technologies and fuel economy gains which are not being credited in NHTSA's analyses. The Alliance suggested that a more appropriate baseline would utilize data from the current model year assuming the manufacturers meet the 20.7 mpg CAFE standard absent technologies used in anticipation of future standards. Alliance to Save Energy and Public Citizen, on the other hand, claimed that NHTSA relied too heavily on this baseline, as well as manufacturers' projections, and should have given greater consideration to manufacturers' earlier voluntary commitments to improve fuel economy of their light trucks fleets by 2007.

NHTSA continues to believe that 20.7 mpg is a valid baseline measure for fuel economy for several reasons. First, manufacturers are required to achieve a standard of 20.7 mpg standard through MY 2004. Second, the agency considers both the costs and benefits for a manufacturer to meet the new standards from either the level of the manufacturer's plans up to the level of the final rule or 20.7 mpg up to the level of the final rule. The costs to manufacturers of meeting the new standard have not been ignored in our analysis. Finally, the agency continues to believe that using manufacturers' projections in determining their fleet wide fuel economy is the most practical means of determining those figures. These projections are the only means by which the agency can account for the planned introduction of new vehicle models.

The NPRM addressed the issue of manufacturers' earlier voluntary commitments to fuel economy. We noted that, in response to the agency's Request for Comments, DaimlerChrysler, Ford and General Motors clarified their public commitments relating to fuel economy improvements in their vehicles. More specifically, Ford clarified its July 2000 announcement that it planned to increase the fuel economy of its sport utility vehicle fleet by 25 percent by the 2005 calendar year. Ford stated that its plan calls for a significant fuel economy improvement in its existing fleet combined with the introduction of new SUVs with higher fuel economy capabilities. Ford also explained that its commitment uses MY 2000 as the base year and that the increase will become effective with the introduction of the MY 2006 vehicles during the latter half of 2005.

General Motors stated that its public announcement did not refer to its average fuel economy levels, but rather to its leadership in light truck fuel economy and its intent to remain the leader over the next five years. General Motors also made clear that its leadership relates to the manufacture and *sale* of more fuel-efficient light trucks as measured through model-to-model comparisons of comparable vehicles.

Finally, DaimlerChrysler stated that it is committed to improving the fuel efficiency of all of its vehicles and that its fleet will match or exceed those of other full-line manufacturers.

e. Fraction of Calendar Year

General Motors commented that our assumptions regarding the fraction of the calendar year that new model vehicles are on the road should be adjusted downward, apparently to reflect the fact that most new vehicles are not in service for the entire calendar year in which they are sold. We note that our previous analyses did adjust for the fact that new vehicles are typically in service for less than twelve months during the year in which they are sold, although we used a slightly different procedure than that suggested in General Motors' comments. Instead of adjusting the estimated *sales* of vehicles of each model year downward during the calendar years when they are available for sale, as General Motors seems to recommend, we adjusted our estimates of light truck *usage* (average annual miles driven per vehicle) downward for those ages corresponding to the years when each model year is on sale.[8] We believe that this procedure is consistent with that recommended by General Motors in its comments, and we have also applied it to the revised estimates of annual light truck use incorporated in our revised analyses.

f. Value of Externalities

The full economic cost of importing petroleum into the U.S. includes three components, or "externalities," in addition to the purchase price of petroleum itself. These externalities are: (1) Demand costs representing the higher costs for oil imports resulting from the combined effect of U.S. import demand and OPEC market power on the world oil price (also known as "monopsony" power), (2) disruption costs representing the risk of reductions in U.S. economic input and disruption of the domestic economy caused by sudden reductions in the supply of imported oil to the U.S., and (3) military security and strategic petroleum reserve costs representing the costs for maintaining a U.S. presence to secure imported oil supplies from unstable regions and for maintaining the Strategic Petroleum Reserve (SPR) to cushion against resulting price increases.

In the NPRM, we estimated that total value of externalities at 8.3 cents per gallon. This figure combined 4.8 cents per gallon in demand costs (monopsony effect) and 3.5 cents per gallon in supply disruption costs. Because the costs of maintaining a SPR have not varied in response to changes in oil import level, our analysis did not include any costs savings from maintaining a smaller SPR among the external benefits of reducing gasoline consumption and petroleum imports by means of a higher CAFE standard for light-duty trucks.

In response to our valuation of these externalities, the Alliance stated that an appropriate value for an oil import externality is zero because the sum of the externalities is exceedingly small. It argued that if the U.S. reduced oil consumption, it would, in theory, benefit from a reduction in oil price. The Alliance also pointed to studies by the Congressional Research Service and Bohi and Toman indicating that they question the existence of any significant externality associated with oil supply disruptions. Similarly, General Motors, citing to a study by Bohi and Toman of Resources for the Future, commented that NHTSA should not include monopsony power because U.S. monopsony pricing power has marginal benefits at best. Also, General Motors argues, citing to Bohi and Toman and a study by the Congressional Research Service, that disruption costs should not be included in the agency's analysis because the private sector uses hedges, inventories and the SPR to mitigate the risks from any significant market failure. The Mercatus Center stated that the link between energy security and fuel economy is not well known, but likely close to zero, because energy security relates to the price of oil, not its origin.

NHTSA does not agree with commenters on the value of these externalities. The extent of monopsony power is dependent upon a complex set of factors including the relative importance of U.S. imports in the world oil market, and the sensitivity of petroleum supply and demand to its world price among other participants in the international oil market.

As discussed in Chapter VIII of the FEA, most evidence appears to suggest that variation in U.S. demand for imported petroleum continues to exert some influence on world oil prices. A detailed and careful analysis by Leiby *et al.* (1993) estimated a range of values for this cost corresponding to approximately $1.00–$3.00 per barrel in today's dollar terms. Using the midpoint of this range, reducing the level of U.S. oil imports by raising CAFE standard to lower future gasoline use by light trucks results in benefits to the U.S. economy of approximately $0.48 per gallon of gasoline.

With regard to disruption costs, while the vulnerability of the U.S. to oil price shocks is widely thought to depend on total petroleum consumption rather than on the level of oil imports, variation in imports is still likely to have some effect on the magnitude of the price increase resulting from any disruption of import supply. In addition, changing the quantity of petroleum imported into the U.S. may also affect the probability that such a disruption will occur. If either the size of the resulting price increase or the probability that U.S. oil imports will be disrupted is affected by the pre-disruption level of oil imports, the expected value of the costs stemming from the supply disruptions will also vary in response to the level of oil imports.

Another detailed and exhaustive study by Leiby *et al.* (1997) estimates that, under reasonable assumptions about the probability that import supplies will be disrupted to varying degrees in the future, this component of the social costs of oil imports ranges from well under $10.00 to approximately $2.00 per additional barrel of oil imported by the U.S. The agency believes that an estimate of approximately $1.50 per barrel (or 3.5 cents per gallon) is reasonable for the disruption costs component of imported petroleum and that reductions in the level of oil imports resulting from

[7] Committee on the Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards, National Research Council, Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards, Washington, D.C., National Academy Press, 2002, pp. 19–20.

[8] Specifically, our analysis adjusted the estimated usage figure for "age zero" light trucks (those sold during the calendar year preceding their model year) to assume that they are in service for an average of two months of the calendar year in which the vehicles of each model year are introduced. This assumption is intended to reflect the typical dates on which the vehicles of a model year are introduced and monthly sales patterns for recent model years. Similarly, we adjusted the usage figure for "age 1" light trucks (those sold during the same calendar year as their model year) using the assumptions that one-quarter of those vehicles had been purchased during the previous calendar year and were thus in service for the entire calendar year, and that the remaining three-quarters were purchased throughout the first eight months of the following year (and were thus in service for, on average, two-thirds of that year). These assumptions are consistent with monthly sales patterns for recent model-year light trucks.

gasoline savings in response to a higher CAFE standard for light-duty trucks would reduce disruption costs by this amount in addition to the value of savings in gasoline itself.

General Motors and Lutter and Kravitz commented that the agency's economic analysis should include the external costs of increased congestion, noise, and accidents caused by additional driving due to the rebound effect. While the agency views the values provided by Lutter and Kravitz and General Motors out of the mainstream of estimates, the agency has decided to add these costs into its analysis. The agency reviewed several sources for estimates, including FHWA, and determined that it will use a figure of 4.0 cents, 2.15 cents, and 0.06 cents per vehicle-mile for congestion, accident, and noise costs, respectively.

Both vehicle manufacturers and consumer groups commented on the effect of higher vehicle prices on sales. Consumer groups argued that consumers are willing to pay more for fuel economy. Honda, on the other hand, questioned whether consumers would trade other features for fuel economy and whether they would consider fuel economy savings beyond their ownership period. The agency has decided to add into its analysis a discussion of the impacts of higher prices on sales. Based on the economic literature, cited in Chapter VII of the FEA, a price elasticity of 1.0 is assumed. The agency believes that higher light truck prices could shift some new vehicle sales from light trucks to automobiles and might also delay retirement and replacement of used vehicles.

The agency has also decided to provide a value associated with the benefits attained through refueling time saved over the lifetime of the vehicle. No direct estimates of the value of extended vehicle range were readily available, so our analysis calculates the reduction in the annual number of required refueling cycles that results from improved fuel economy, and applies DOT-recommended values of travel time savings to convert the resulting time savings to their economic value. (*See* Chapter VIII of the FEA for a detailed description of those values.) The estimated change in required refueling frequency reflects the increased light truck use associated with the rebound effect, as well as the increased driving range stemming from higher fuel economy. The present value of lifetime social benefit from extended vehicle range are estimated at $22.6 million for MY 2005, 73.2 million for MY 2006, and 107.7 million for MY 2007. We recognize that this value may represent an upper bound estimate of this benefit. Some people may periodically refuel their vehicles (*e.g.*, each weekend) regardless of how much fuel they have.

g. Refinery Emissions/GREET

In order to estimate the contribution of refinery emissions, we employed the GREET model in our analysis. The Draft Environmental Assessment included petroleum refining and distribution emissions as representative of "upstream" emissions. The agency calculated the changes in these upstream emissions under the proposal. General Motors commented that the agency incorrectly used extraction emissions factors in its analysis.

Upon reviewing this issue, the agency agrees with General Motors' comment that we did not appropriately account for the emissions reductions likely to result from gasoline savings due to the agency's CAFE action. However, the agency disagrees with General Motors' contention that emissions attributable to petroleum extraction would be unaffected by the action and should thus be excluded from its analysis of the action's potential environmental impacts.

In response to General Motors' comments, we have used information derived from the GREET model to disaggregate total emissions throughout the gasoline supply process into those occurring during each of the different stages in that process, and we have employed these disaggregated emission factors to develop more reliable estimates of the reduction in emissions associated with lower gasoline consumption by light trucks. Specifically, we have used information extracted from the GREET model to develop separate estimates of emissions that occur during each of four phases of the gasoline production and distribution process: crude oil extraction; crude oil storage and transportation to refineries; gasoline refining; and transportation, storage, and distribution of refined gasoline. (Emissions that occur during vehicle refueling at gasoline stations are included in our estimates of increased emissions from additional light truck use due to the rebound effect, and are presented separately in the analysis.)

Our revised analysis incorporates the following assumptions in estimating the reductions in these emissions from lower gasoline use by light trucks: (1) Reductions in imports of gasoline reduce emissions associated with gasoline transportation, storage, and distribution; (2) reductions in domestic refining of gasoline from imported crude oil reduce emissions associated with crude oil transportation and storage, crude oil refining into gasoline, and gasoline transportation, storage, and distribution; and (3) reductions in domestic refining of gasoline from domestically-produced crude oil reduce emissions associated with crude oil extraction, crude oil transportation and storage, gasoline refining, and gasoline transportation, storage, and distribution.[9]

We use these assumptions in conjunction with the disaggregated emission factors for each phase of the gasoline supply process and assumptions regarding the reductions in imports and domestic refining of gasoline (see foreign-domestic split, below) attributable to fuel savings from this final rule. The resulting estimates of emissions reductions associated with gasoline supply and distribution are reflected in our calculations. We believe that these estimates respond to General Motors' concerns.

h. Foreign-Domestic Split

In the NPRM, we assumed that 45 percent of the reduction in fuel use would be reflected in reduced domestic gasoline refining, and that the remaining 55 percent would be met by reduced imports of refined gasoline. We stated, "Part of the fuel savings resulting from the Proposed Action leads to lower U.S. imports of refined gasoline, and thus does not affect refinery emission levels in the U.S. However, the remaining fuel savings are assumed to reduce the volume of gasoline refined within the U.S. (from either imported or domestically-produced crude petroleum), which produces a corresponding reduction in criteria pollutant refinery emissions. This analysis assumes 55 percent of refined gasoline is imported and 45 percent is refined domestically." This estimate was based on a detailed analysis of differences in gasoline consumption, imports, and domestic refining between the "Low Economic Case" and the "Reference Case" forecasts presented in the EIA's AEO 2002. (This analysis was conducted by EIA at the request of the agency.)

General Motors questioned this assumption, stating that there is little evidence that this same proportion

[9] In effect, these assumptions imply that the distance that crude oil typically travels to reach refineries is approximately the same regardless of whether it is transported from domestic oilfields or import terminals, and that the distance that domestically-refined gasoline travels from refineries to retail gasoline stations is approximately the same as foreign-refined gasoline must be transported from import terminals to these same gasoline stations.

would apply to reductions in fuel use under the proposal. General Motors cited new low sulfur fuel requirements and suggested that this might constrain the ability of foreign suppliers to meet U.S. refined fuel needs, with the result that a reduction in fuel consumption could lead to lower imports of refined gasoline rather than less refining in the U.S. General Motors also questioned the existence of emission reductions from domestic oil refineries based on the idea that they might fall under a cap and trade system, which would allow them to trade any potential reduction in emissions or adjust production to remain at the cap. Finally, General Motors commented that the domestic-import split in refined gasoline should be examined in terms of its marginal effects on refinery and other sources of emissions during the gasoline supply process.

In response to General Motors' comment about emissions caps, the agency contacted EPA, which stated that refineries are not regulated under any national cap and trade system. While refineries in States with Clean Air Act State Implementation Plans may be under some regulatory framework at the local or regional level, we found no regulatory programs that lead us to question the existence of real reductions in refinery emissions from baseline levels. General Motors' comment that the domestic-import split be examined in terms of its marginal effects on emissions is addressed elsewhere in this document.

Based on the remainder of General Motors' comments, we have reexamined this issue and have determined that additional data are available to support a revised assumption about the distribution of CAFE fuel savings between savings in gasoline imports and reduced domestic refining. More detailed data obtained from EIA provide a direct measure of historical and current variations in imported and domestic sources of gasoline in response to variations in U.S. gasoline consumption. Although test data capture the integrated effect of all factors—not just fuel economy—that influence the market for gasoline, we believe that as observations rather than forecasts, they provide one reliable source of information related to this issue. According to the EIA, "In 2001, United States refineries produced over 90 percent of the gasoline used in the United States." Current EIA data [10] for the four-week period ending February 14, 2003 corroborate this figure by stating that 91.5 percent (7.939 MBPD) of the gasoline used by the U.S. during that period was refined domestically, and 8.5 percent (0.736 MBPD) was imported. These data (although not on an on-the-margin basis) produce an estimate that approximately 90 percent of the reduction in fuel use from the proposed CAFE standard would be met by lower domestic refining, while the remaining 10 percent would be reflected in reduced imports of refined gasoline.

Analysis of historical data concerning variations in gasoline consumption and imports reported by EIA supports a similar estimate of the likely response to gasoline savings. This analysis compares annual changes in domestic gasoline refining and gasoline imports to annual changes in U.S. gasoline consumption. From the period 1992 to 2002, growth in foreign refining accounted for 10 percent of the total growth in gasoline consumption.[11] EPA has also assumed a similar distribution of reductions in domestic and foreign refining in some analyses of potential reductions in refinery emissions in response to gasoline savings.

General Motors' criticism of the agency's analysis of refining emissions based on the theory that the pending low sulfur fuel regulations (part of the "Tier 2" regulations) [12] might inhibit foreign refiners from being able to meet increased U.S. gasoline demand appears to misinterpret the analysis presented in the Draft Environmental Assessment. The Tier 2 regulations are not a part of the agency's CAFE action, but they do provide part of the backdrop against which we must evaluate our action. If the low sulfur requirements do result in an increased fraction of U.S. gasoline consumption being supplied by domestic refiners, as General Motors suggests, it follows that a similarly increased fraction of fuel savings resulting from the agency's CAFE action would be reflected in reduced domestic refining, with the result that the associated domestic emissions from gasoline refining would be reduced by more than would otherwise be the case. Thus General Motors' comment supports rather than undermines the agency's treatment of potential emissions reductions from reduced domestic refining.

We acknowledge, however, that the distribution of fuel savings between reductions in domestic refining (90 percent) and reductions in gasoline imports (the remaining 10 percent) discussed above differs from the distribution forecast by EIA's National Energy Modeling System (NEMS). Following DOE's release of the version of NEMS used to develop Annual Energy Outlook 2003 (AEO 2003), we used this modeling system to explore this issue more closely. To develop a baseline, we ran the model with all inputs at values provided by DOE for the AEO 2003 reference case. To test the effects of the Proposed Action, we then ran the model after changing only those inputs corresponding to light truck CAFE standards. For each calendar year during 2006–2020, we calculated the extent to which these cases differed in terms of petroleum product consumption and imports. We then calculated the ratio between changes in imports and changes in consumption. Unexpectedly, total petroleum product imports were calculated to be 0.039 quads higher in 2006 with the proposed standards than in the reference case, although this was more than offset by a calculated 0.073 quad decline in crude oil imports. Thus, the above-mentioned ratio was −1.05 in 2006. However, during the rest of the period, petroleum product imports were calculated to be lower always with the proposed light truck standards than in the reference case, and the ratio of changes in petroleum product imports to changes in petroleum product consumption ranged from 0.62 to 1.14. As for cumulative changes, the ratio was 0.97 during 2006–2020 and 0.99 during 2007–2020. In other words, for every CAFE-induced 100-gallon reduction in petroleum product consumption, NEMS predicted that petroleum product imports would fall by 97–99 gallons.

We have discussed the disparity between these forecast trends and the implications of current and historic gasoline supply data with representatives of the Department of Energy (DOE) and EIA. They acknowledge that predicting the specific gasoline supply sources likely to be affected by the reductions in U.S. gasoline use associated with the new CAFE standards is extremely difficult and its results uncertain. DOE also indicated that the sources of changes in refined gasoline supply vary greatly by region of the U.S., with nearly all variation in gasoline demand on the East Coast met by changes in supply from foreign refiners, while changes in demand in other regions of the U.S. are

[10] *www.eia.gov*, "This Week in Gasoline," four-week period ending February 14, 2003.

[11] Calculated from data reported in Energy Information Administration, Monthly Energy Review Database, "Petroleum," Table 3.4 (*http://www.eia.doe.gov/emeu/mer/mets/table3_4.xls*).

[12] The Tier 2 limits on gasoline sulfur content are schedule to take effect beginning in 2006; for details, see EPA, Tier 2/Gasoline Sulfur Final Rulemaking (*http://www.epa.gov/otaq/tr2home.htm*).

met almost entirely by changes in domestic refining activity. As a consequence, the specific geographic pattern of fuel savings resulting from the agency's action—which depends in turn on the distribution of light truck purchases and use—is likely to influence the mix of reduced gasoline imports and domestic refining that occurs in response to these fuel savings.

The agency believes that the consistent association between changes in gasoline demand and domestic refining activity revealed in current and historical data is notable, and that the effect of the pending Tier 2 fuel standards will reinforce this association. However, we also realize that the effects of future variation in gasoline demand on foreign and domestic sources of supply may differ from these historical patterns. Since the new CAFE standards will take effect in the future, the agency believes it is prudent also to consider these forecast changes in foreign and domestic gasoline supply in its analysis.

In an effort to do so, as well as to recognize the uncertainty inherent in forecasting the future effects of lower gasoline demand on specific supply pathways, the agency has elected to assume that 50 percent of the reduction in future light truck gasoline use resulting from its action will be reflected in reduced imports of refined gasoline, while the remaining 50 percent will be translated into reductions in domestic gasoline refining. The agency recognizes that neither historical data nor forecast trends indicate that changes in gasoline use are likely to have equal effects on gasoline imports and domestic refining. However, this assumed distribution represents a probability-weighted average impact of reduced gasoline consumption, which incorporates both the extreme range of possible outcomes suggested by historical and forecast data, as well as the approximately equal likelihood that either outcome will occur.

The agency further assumes that the resulting decline in U.S. gasoline production will reduce domestic refiners' use of imported and domestic crude petroleum feedstocks in direct proportion to their current fractions of total U.S. refinery feedstock use. The implications of these assumptions for the resulting changes in emissions occurring during various phases of the gasoline supply chain are discussed in detail elsewhere in this document, addressing General Motors' concern that the agency examine the domestic-import split in terms of its marginal effects on refining and other sources of emissions.

i. Greenhouse/Carbon Emissions

Environmental Defense requested that NHTSA place a value on the benefit of avoided greenhouse gas emissions, while also noting the magnitude of the global warming externality is admittedly difficult to estimate. The value of avoiding greenhouse gas emissions is unquantifiable at this time. However, our analysis in the Environmental Assessment indicates that if the proposed standards were adopted in the final rule, they would result in an estimated 9.4 million metric tons of avoided greenhouse gas emissions over the 25-year lifetime of the vehicles (measured in terms of carbon equivalents).

3. Comparison of Estimated Costs to Estimated Societal Benefits

NHTSA estimates that the direct fuel-savings to consumers account for the majority of the total social benefits, and exceed the estimated costs of adopting more fuel-efficient technologies. In sum, the total incremental costs by model year compared to the incremental societal benefits by model year are as follows:

[Dollars in millions]

Model year	Total costs	Total societal benefits	Net benefits
2005	$170	$218	$48
2006	537	645	108
2007	862	955	93

In light of these figures, we have concluded that the final rule serves the overall interests of the American people and is consistent with the balancing that Congress has directed us to do when establishing CAFE standards. For all the reasons stated above, we believe the final rule is economically practicable and, independently, that it is a cost beneficial advancement for American society.

a. Consumer Choice

In their comments on the NPRM, automobile manufacturers argued that in a well-functioning market with fully informed consumers and manufacturers, consumers would take into account the savings to themselves associated with more fuel-efficient vehicles. Therefore, if the value of cumulative fuel savings exceeded the additional price and associated financing cost of purchasing a more fuel-efficient vehicle, consumers should be inclined to buy these vehicles and producers should be inclined to sell them. The Mercatus Center stated that the analysis should include foregone benefit to consumers from not being able to choose attributes they prefer in a vehicle.

The automobile manufacturers and Mercatus Center raised these issues and arguments because they do not believe that there is a market failure in the market place. Many commenters asserted that NHTSA had made a determination that there is a market failure in the provision of vehicle fuel efficiency. In the NPRM, the agency did not make any such determination. NHTSA noted a paradox that cost-saving technologies appeared to be penetrating the market to only a limited extent and therefore sought public comment on possible sources of market failure.

First, on the supply side of the vehicle market, it is well known that the light truck market is concentrated in three large producers who account for roughly 75 percent of market share, although there are a number of smaller producers that account for the remaining 25 percent. As several commenters noted, there is substantial evidence of competition among producers in the light truck market and indications that the three large producers are under increasing competition from the smaller producers. Under these circumstances, NHTSA maintains its previous statement that there is only a "remote" possibility that a supply side failure in the marketplace accounts for the limited market penetration of cost-saving, fuel-saving technologies.

Second, commenters discussed whether there could be a failure on the demand side of the market for fuel economy, rooted perhaps in the way that consumers perceive the private benefits of enhanced fuel economy and incorporate that information in their purchasing decisions. Several commenters noted that consumers are provided clear and substantial information about the fuel efficiency ratings of different vehicles, including information about the operating expenses associated with these fuel efficiency ratings. However, the argument for demand side failure may have less to do with the absence of consumer information about fuel efficiency than with the overall complexity of the vehicle-purchasing decision, the number of other factors of greater salience to consumers, the temporal aspects of ownership and resale, and the difficulty of weighing fuel efficiency differences against other (especially nonmonetary) attributes of vehicles. Rational consumers, cognizant of decision making costs, may use simplified decision rules when purchasing vehicles that give limited, diminished or no weight to fuel economy differences—at least when projected fuel prices are relatively low. The agency does not know whether this demand-side argument is true and did not receive much comment that supports or refutes it. The agency believes the plausibility of this argument is less remote than the supply-side argument but still quite speculative. Regardless of how consumers perceive fuel economy benefits when they make purchasing decisions, it is clear that consumers will experience the benefits of cost-saving technologies when they operate their vehicles—assuming the engineering-economics information underlying the NAS Report is accurate.

b. EIA Analysis and Employment

As part of the interagency review process, the EIA provided NHTSA with a preliminary analysis of the energy and economic impacts of an increase in light truck CAFE standards comparable to the proposed rule. NHTSA discussed this analysis in the NPRM and included a copy of it in the docket for the rulemaking. Specifically, EIA analyzed standards of 21.2, 21.7, and 22.2 mpg for MYs 2005–2007, respectively. Using its NEMS, EIA's analysis indicated that the actual average fuel economy of new light trucks would increase to 21.7 mpg in MY 2005—well beyond the 21.2 mpg required during that year—but would fall slightly short of the 22.2 mpg standard by MY 2007. The EIA analysis also projected that NHTSA's proposed rule would cause a greater increase in the cost of light trucks than estimated by NHTSA and a slight reduction in the average weight of light trucks. NHTSA estimated no weight reduction. EIA's estimates of fuel savings resulting from stricter CAFE standards for light trucks also appear to be larger than those calculated in NHTSA's analysis. Finally, EIA's projected effects on employment and real GDP are slightly negative through 2010, but become positive during 2011 to 2020.

The automobile industry commented that EIA's analysis differed from NHTSA's in that its projected effects on employment and real GDP are slightly negative through 2010, but become positive during 2011 to 2020. Additionally, commenters noted that recent studies by the Congressional Budget Office and Professor Kleit concluded that CAFE standards are not cost-effective.

As discussed in the NPRM, the differences in results of the two analyses of the proposed light truck standards stem primarily from differences in the underlying approaches of models. For example, the NEMS model effectively treats all manufacturers identically, while NHTSA's approach relies heavily on detailed manufacturer-specific data. As a result of these differences, NHTSA's approach has advantages for analyzing the effects of near-term modest increases, while the NEMS approach is more useful for analyzing longer-term industry-wide effects of larger increases in the standards. For shorter-term analysis of modest increases in required fuel economy levels, confidential information about the differences in the relative fuel economy capabilities of the individual manufacturers at the model-specific level is essential. This is because the technology application burdens and cost impacts imposed on individual manufacturers by the stricter standards will differ significantly. Where longer-term, industry-wide analysis of significant increases in CAFE standards is required, current differences in manufacturer capabilities become much less relevant. In addition, NEMS" ability to estimate macroeconomic "feedbacks" from stricter CAFE standards is very useful.

20/20 Vision also commented on employment by stating that their study, "Fuel Standards and Jobs," shows that raising CAFE standards by 20 percent in 2010 would net 70,000 jobs by 2010 and 30,000 jobs by 2020. This study used a large-scale econometric 80-order interindustry model of the U.S. economy using the Management Information Services, Inc. (MISI) model. This model assumes no major market penetration of hybrid, fuel cell, or alternative fuel vehicles. Public Citizen cited "Drilling in Detroit," a report by the Union of Concerned Scientists, in support of the proposition that increased CAFE standards would lead to increased employment.

Based on our analysis of the MISI assumptions, the actual employment effects of this rulemaking would be much less than that asserted by 20/20 Vision for a number of reasons.

First, because 20/20 Vision's model assumed a 20 percent increase in CAFE for passenger cars and light trucks, and light trucks are about 50 percent of the market, its estimates should be multiplied by 0.5 for this light truck rulemaking. Second, since the proposed CAFE standard increase by NHTSA is about 7 percent (22.2/20.7 mpg) rather than 20 percent, if the model were linear, the estimate might be multiplied by 0.35 (7/20).

Third, the assumed cost impact ($700 per vehicle, which is related to the 20 percent increase in fuel economy) is disproportionately high compared to our estimate for this rule. Fourth, the MISI model translates increased expenditures for reconfigured motor vehicles into per unit outputs for that industry and support industries. This assumption is not appropriate. Many of the technology improvements would not increase the number of jobs. For example, moving from a 4-speed to a 5-speed or 6-speed automatic transmission would result in very few additional jobs and changing tires would result in very few additional jobs. It appears that the MISI model assumes that these are increases rather than substitutions of technologies.

Fifth, 20/20 Vision's analysis of a 30 percent increase in CAFE estimates an increase in the Motor Vehicle and Equipment Industry of about 155,000 jobs. This number seems implausible to the agency because there are currently only 900,00 jobs in the industry. Finally, the MISI model does not seem to take into account that higher prices potentially reduce sales and thus employment levels.

VIII. The Effect of Other Federal Vehicle Standards on Fuel Economy

The statute specifically directs us to consider the impact of other Federal vehicle standards on fuel economy. This statutory factor constitutes an express recognition that fuel economy standards should not be set without due consideration given to the effects of efforts to address other regulatory concerns, such as motor vehicle safety and emissions. The primary influence of many of these regulations is the addition of weight to the vehicle, with the commensurate reduction in fuel economy.

A. Federal Motor Vehicle Safety Standards

The agency has evaluated the impact of the Federal Motor Vehicle Safety Standards (FMVSS) using MY 2001 vehicles as a baseline. We have issued or proposed to issue a number of FMVSSs that become effective between the MY 2001 baseline and MY 2007. The fuel economy impact, if any, of these new requirements will take the form of increased vehicle weight resulting from the design changes needed to meet new FMVSSs.

The average test weight (roughly equal to curb weight plus 300 pounds) of the light truck fleet in MY 2001 was 4,501 pounds. The average test weight for General Motors, Ford, and DaimlerChrysler light trucks subject to the CAFE standard for MY 2001 was 4,627 pounds. The average test weight for light trucks of these three manufacturers is expected to increase slightly between MY 2001 and MY

2007. The change in weight includes all factors, such as changes in fleet mix of vehicles, required safety improvements, and voluntary safety improvements. Our review of new safety requirements that will apply to the MY 2005–2007 light truck fleet indicates that compliance with the following safety standards will have an impact on vehicle weight:

1. FMVSS 138, Tire Pressure Monitoring Systems

As required by the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, NHTSA published a final rule in June 2002 (67 FR 38704) requiring Tire Pressure Monitoring Systems (TPMS) be installed in all passenger cars, multipurpose passenger vehicles, trucks and buses that have a GVWR of 10,000 pounds or less, effective in November 2003. We estimated that the added weight would be that of electrical parts weighing not more than half a pound (0.23 kilograms or less) per vehicle. Ford submitted comments indicating that NHTSA's projection underestimated the weight penalty for complying with this standard. However, Ford's suggested weight penalty was not significantly higher than that estimated by the agency and would not have any greater impact on fuel economy.

2. FMVSS 139, Tire Upgrade

The TREAD Act mandated rulemaking to revise and update our safety performance requirements for tires. On March 5, 2002, NHTSA published a proposal to upgrade those requirements (67 FR 10050). Our Preliminary Economic Assessment for the proposed tire upgrade indicated there would be added cost for the improved tires but no increased weight. We also observed that changes to the required normal load ratings for passenger car tires might make it necessary for some of these vehicles to have larger tires, which would add an undetermined minimal amount of weight to those vehicles. In regard to light trucks, we observed that the agency's proposal would, for the first time, establish a maximum vehicle normal load rating for light truck tires but did not indicate if meeting the requirement would make it necessary for manufacturers to use larger rims and tires on their trucks.

Both Ford and General Motors submitted comments indicating that the proposed requirements of FMVSS 139 could have significant impacts on fuel economy. Ford indicated that the agency's proposed rule would impose weight increases from a need to make tires heavier and for rims on vehicles to be larger. General Motors' comments indicated a belief that the proposed requirements could have a serious impact on fuel economy by increasing rolling resistance.

Although NHTSA has not yet issued a final rule, the agency believes that the concerns raised by Ford and General Motors are not well founded. While General Motors did not indicate with specificity exactly why it believed that FMVSS 139 would increase rolling resistance, NHTSA believes that the standard is more likely to decrease rolling resistance. One component of NHTSA's proposal for FMVSS 139 is new requirements for high-speed endurance. Meeting these new endurance requirements is likely to result in tires that have less, rather than more, rolling resistance. One of the principal factors affecting tire endurance at high speeds is heat buildup in the tire. Tires with less rolling resistance generate less heat and have more endurance. Therefore, the new requirements are likely to encourage tires with less rolling resistance.

Ford's concern, which indicated a weight penalty from heavier tires and rims, evidently stems from a concern that complying with new high speed test requirements in FMVSS 139 and application of the load reserve requirements of FMVSS 110 to light trucks will force manufacturers to use heavier tires and rims on these trucks. FMVSS 110 specifies requirements for tire and rim selection for new vehicles. One purpose of these requirements is to prevent tire overloading by specifying that rims and tires provide a minimum load reserve.

According to Ford, the agency's proposal to modify FMVSS 139 and 110 to require light truck manufacturers to meet these load reserve requirements could, for those light trucks that did not already meet the new load reserve requirements, have the effect of making it necessary for manufacturers to use larger wheels and tires on their vehicles. However, NHTSA is currently evaluating its proposal in light of the public comments and has not yet issued a final rule. We anticipate that the agency's concerns relating to overloading will be addressed without creating a need to equip light trucks with larger wheels and tires.

3. FMVSS 201, Occupant Protection in Interior Impact

This standard specifies requirements to afford protection for occupants from impacts with interior parts of the vehicle. On April 5, 2000, NHTSA issued a proposal to require that the door frames on pillarless multi-door vehicles and seat belt mounting structures on soft top utility vehicles meet the upper interior head protection requirements of FMVSS 201. The proposed requirements would apply to passenger cars and to multipurpose vehicles, trucks, and buses with a GVWR of 10,000 pounds (4,536 kilograms) or less. Because these proposed requirements will apply only to a very small percentage of light vehicles, the agency believes that the requirements will not have an effect on the CAFE of any manufacturer. Finally, we note that none of the commenters attributed any fuel economy impacts to this standard.

4. FMVSS 202, Head Restraints

In January 2001, the agency published a proposal to improve front seat head restraints in passenger cars, pickups, vans, and utility vehicles and require head restraints in the rear outboard positions (66 FR 967). Because many pickup trucks and some vans do not have back seats, their average weight increase under that rulemaking would be lower than that for automobiles. NHTSA estimated the average weight gain for light trucks, vans and SUVs would be 4.3 pounds (1.94 kilograms) per vehicle. The agency proposed three years leadtime for the head restraints final rule. Since that rule has not been issued yet, the earliest effective date would be September 1, 2006 or MY 2007. Therefore, any weight penalty would be limited to MY 2007.

Ford was the only commenter to suggest that the FMVSS 202 rulemaking might have any impact on CAFE, based on the proposal to require rear head restraints. The company estimated a weight penalty that was based on its view that the FMVSS 202 final rule would require head restraints in some rear seating positions presently not equipped with them. NHTSA notes that the asserted weight penalty would not affect the significant number of vehicles in the light truck fleet that do not have rear seats. Based on the distribution of potential rear seat head restraints across Ford's fleet, we agree that vehicles with rear seats might experience a weight penalty for compliance with FMVSS 202 if rear seat head restraints were required. However, neither the weight increase estimated by Ford nor that estimated by the agency is significant enough to affect Ford's ability to meet the MY 2007 standard.

5. FMVSS 208, Occupant Crash Protection

On May 12, 2000, NHTSA published a final rule (65 FR 30680) amending our occupant crash protection standard. The requirements of the final rule will be phased-in by increasing percentages during MYs 2005–2007. While only portions of the MY 2005 and MY 2006 fleets will be required to comply, all of the MY 2007 fleet will be required to comply. To comply, manufacturers will have to install air bag sensors, switches, status indicators, and associated electrical equipment. We estimate the average weight gain will be 3.4 pounds (1.54 kilograms).

In Ford's view, significant additional weight would be required to meet the occupant protection requirements. Ford attributed some of this weight to air bag sensors and other equipment. Ford also anticipates additional weight increases as a result of efforts to comply with the planned rulemaking to establish frontal offset crash requirements. Ford did not, however, indicate which portion of the weight penalty it claimed was attributable to the May 2000 final rule, and which might be attributable to the frontal offset crash requirements. Based on our knowledge of the weight of items that would have to be installed to meet the May 2000 final rule, we believe that bulk of the claimed weight penalties for FMVSS 208 are related to the frontal offset crash requirements currently under study. The agency has not yet issued a frontal offset proposal, nor considered the model years to which any new requirements would apply.

6. FMVSS 225, Child Restraint Anchorage Systems

On March 5, 1999, NHTSA published a final rule establishing FMVSS 225, Child Restraint Anchorage Systems, requiring vehicle manufacturers to install child restraint anchorage systems that are standardized and independent of the vehicle seat belts (64 FR 10786). The FEA (February 1999) for FMVSS 225 estimates the additional weight for improved anchorages will be less than 1 pound (0.45 kilogram). Ford believes that, in addition, some of its vehicles will require structural reinforcement to meet anchorage strength requirements in FMVSS 225. Ford alleges that NHTSA significantly underestimated the weight penalties imposed by these child restraint anchorage requirements and claimed that its CAFE efforts would be hampered by this added weight.

We do not believe this FMVSS will adversely affect CAFE performance. Ford's claimed weight penalties appear to assume that all light trucks will require significant additional structure. However, we believe that any need for additional structure will be much more limited than Ford claims. Our estimate is that some additional weight will be necessary, but we do not believe that Ford provided compelling evidence to alter our assessment that the impact of the FMVSS 225 requirements, will impose an inconsequential weight penalty with no adverse CAFE effect.

7. FMVSS 301, Fuel System Integrity

On November 12, 2000, NHTSA published a proposal (65 FR 67693) to amend the fuel system integrity requirements for rear-end and side crashes and resulting fuel leaks. Although a few models (generally in the middle of their production lives) might require heavy additions such as a polymer guard for the bottom of the fuel tank, most would not. Many of the vehicles to be produced for MYs 2005–2007 have anticipated the new requirements and have been designed to comply with them. We believe manufacturers will be able to meet the new requirements through the addition of lightweight items such as flexible filler necks. We estimate the average weight gain for light trucks not currently built to the new requirements to be 0.24 pounds (0.11 kilograms) per vehicle.

8. Cumulative Weight Impacts of the FMVSSs

In total, NHTSA estimates that weight additions necessitated by the FMVSS requirements that will become effective between the MY 2001 fleet and MY 2007 fleet will average about 9.5 pounds per vehicle.

NHTSA examined the changes in safety-related weight, regardless of whether mandatory or voluntary, from the plans submitted in response to the RFC and the NPRM to see if there were changes affecting their fuel economy levels. Only Ford took issue with our estimates of weight penalties and provided enough data for a complete analysis. Taken together, Ford's submissions in response to the RFC and the NPRM estimated weight impacts for complying with FMVSSs ranging from approximately 100 to 200 pounds per vehicle. Ford indicated that these weight impacts could reduce its fuel economy by approximately 0.20 mpg to 0.30 mpg. Our reading of Ford's comments indicates that the bulk of this weight increase is attributable to that company's belief that the agency will require light trucks to meet a frontal offset crash test requirement for FMVSS 208. Ford also attributes a significant weight increase to child restraint anchorage requirements and our current proposal to upgrade tire performance.

The agency agrees that we must consider all of our regulatory programs, as well as those of other agencies, when establishing CAFE standards. We also agree that we should consider anticipated requirements as well as those that have been finalized. Having done so, however, we do not believe that new safety requirements likely to be applied to MYs 2005–2007 necessitate any reduction in the proposed standards. It appears that there is a small increase in safety related weight for FMVSS 225 for MYs 2005 and 2006 and a somewhat larger increase in safety related weight if a final rule incorporating the proposed requirements for FMVSS 202 is promulgated and applies to MY 2007 light trucks. The CAFE penalties for these weight increases are too small to alter the agency's estimates of Ford's capabilities in these years. Further, the rulemaking process will allow for ample opportunities for manufacturers to comment and the agency to consider whether any future rulemakings will in fact be inconsistent with this final rule.

B. Federal Motor Vehicle Emissions Standards

With input from EPA, NHTSA has evaluated the impact of a number of vehicle related emissions standards on fuel economy. In addition, NHTSA's Environmental Assessment examines how the CAFE standards impact air quality by affecting emissions of criteria pollutants. Many of these standards and regulations are currently being implemented through a multi-year phase-in. NHTSA believes there will not be any significant fuel economy impact between the MY 2001 baseline and MY 2007 resulting from federal or state emissions standards or regulations.

The agency's position with regard to the relationship between state laws and our federal fuel economy responsibility was set forth in the NPRM and has not changed. The EPCA statute contains a preemption provision intended to ensure a unified federal program to address motor vehicle fuel economy. As a result of that statute, no state may adopt or enforce any law or regulation relating to fuel economy.

1. Tier 2 Requirements

On February 10, 2000, EPA published a final rule (65 FR 6698) establishing new federal emissions standards for vehicles classified by EPA as passenger cars, light trucks and medium duty vehicles. These new emissions standards are known as Tier 2 standards. The Tier 2 standards marks the first time that the same set of federal emissions standards have been applied to all passenger cars, light trucks, and medium-duty passenger vehicles. Under the Tier 2 standards, light trucks include "light light-duty trucks" (or

LLDTs), rated at less than 6000 pounds GVWR and "heavy light-duty trucks" (or HLDTs), rated at more than 6000 pounds GVWR. For new passenger cars and light LDTs, the Tier 2 standards phase-in beginning in MY 2004, and are to be fully phased-in by MY 2007. During the phase-in period of MYs 2004–2007, all passenger cars and light LDTs not certified to the primary Tier 2 standards must meet an interim standard equivalent to the current National Low Emission Vehicle (NLEV) standards for light duty vehicles. In addition to establishing new emissions standards for vehicles, the Tier 2 standards also establish limits for the sulfur content of gasoline.

General Motors and Ford very briefly suggested, without explanation, the Tier 2 standards might limit diesel sales. It was unclear whether they were referring to current or advanced diesels. We note that EPA, when issuing the Tier 2 standards, responded to comments its received regarding the impact of the Tier 2 standard and its impact on the Supplemental Federal Test Procedure and concluded that the Tier 2 standards would not adversely affect fuel economy.

2. Onboard Refueling Vapor Recovery

On April 6, 1994, EPA published a final rule (59 FR 16262) establishing requirements controlling vehicle-refueling emissions through the use of onboard refueling vapor recovery (ORVR) vehicle-based systems. These requirements applied to light-duty vehicles beginning in MY 1998, and were phased-in over three model years. The ORVR requirements also apply to light-duty trucks with a gross vehicle weight rating up to 6000 lbs, beginning in MY 2001 and phasing-in over three model years at the same rate as for light-duty vehicles. For light-duty trucks with a gross vehicle weight rating of 6001–8500 lbs, the ORVR requirements first apply in MY 2004 and phase-in over three model years at the same rate as light-duty vehicles.

The ORVR requirements impose a small weight penalty on vehicles as they necessitate the installation of vapor recovery canisters and associated tubing and hardware. In its comments, Honda indicated that it did not agree with the assertion in the NPRM that the ORVR system, which results in fuel vapors being made available for combustion, provides a fuel economy benefit offsetting the weight of the system.

Assuming the correctness of Honda's argument that there are negligible fuel economy benefits from ORVR systems, we note that weight increases attributable to replacing older vapor recovery technology with ORVR. compliant systems are not likely to be significant enough to have an impact on fuel economy.

3. Supplemental Federal Test Procedure

The Federal Test Procedure (FTP) contains the test conditions and procedures used by the EPA when conducting new vehicle emissions and fuel economy tests. On October 26, 1996, EPA published a final rule (61 FR 54852) revising the tailpipe emission portions of the Federal Test Procedure (FTP) for light-duty vehicles (LDVs) and light-duty trucks (LDTs). The revision created a Supplemental Federal Test Procedure (SFTP) designed to address shortcomings with the existing FTP in the representation of aggressive (high speed and/or high acceleration) driving behavior, rapid speed fluctuations, driving behavior following startup, and use of air conditioning. The SFTP also contains requirements designed to more accurately reflect real road forces on the test dynamometer. EPA chose to apply the SFTP requirements to trucks through a phase-in. Light-duty trucks with a gross vehicle weight rating (GVWR) up to 6000 lbs were subject to a three-year phase-in ending in MY 2002. Heavy light-duty trucks, those with a GVWR greater than 6000 lbs but not greater than 8500 lbs, are subject to a phase-in in which 40 percent of each manufacturer's production must meet the SFTP requirements in MY 2002, 80 percent in MY 2003, and 100 percent in MY 2004.

MY 2004 is the final year of the SFTP requirement phase-in for light trucks subject to CAFE standards. Neither Ford nor General Motors indicated in their comments on the MY 2004 CAFE NPRM that the SFTP requirements would have any impact on their ability to meet the MY 2004 standard.

Although DaimlerChrysler has indicated that the changes to the FTP will have a disproportionately negative impact on light truck fuel economy, EPA has determined that the net effect on fuel economy for the recent test procedure changes is near zero. EPA considered the effects of four test changes: single-roll electric dynamometer with full-speed load simulation, elimination of the 10 percent air conditioning load factor, elimination of the 5,500 pound maximum test weight for cars, and improved test equipment. While some changes decreased measured fuel economy, others raised it. The net result was a near zero effect. This determination was based on the total fleet, which is a mix of front wheel drive and rear wheel drive cars and trucks.

Considering light trucks alone is not likely to change that determination. The light truck fleet has a larger mix of rear wheel drive vehicles than the light vehicle fleet. This would lead to a slightly increased effect of the single roll dynamometer and thereby slightly lower measured fuel economy. However, the truck sub-class also has higher road load horsepower than the combined fleet. This would lead to slightly higher effects due to the elimination of the 10 percent air conditioning load and thereby slightly higher measured fuel economy.

Consequently, there is no need to adjust the CAFE standards for these test procedures. The net effect of the combined test procedure changes on the truck sub-class is still expected to be near zero.

4. California Air Resources Board LEV II and Section 177 States

The State of California Low Emission Vehicle II regulations (LEV II) will apply to passenger cars and light trucks in MY 2004. The LEV II amendments restructure the light-duty truck category so that trucks with a gross vehicle weight rating of 8,500 pounds or lower are subject to the same low-emission vehicle standards as passenger cars. LEV II requirements also include more stringent emission standards for passenger car and light-duty truck LEVs and ultra low emission vehicles (ULEVs), and establish phase-in requirements that begin in 2004. During the initial year of the four-year phase-in, the LEV II standards require that 25 percent of production comply.

The agency notes that compliance with increased emission requirements is most often achieved through more sophisticated combustion management. The improvements and refinement in engine controls to achieve this end generally improve fuel efficiency and have a positive impact on fuel economy.

In summary, the agency believes that there will be no impact on fuel economy from emissions standards on light truck fuel economy between the baseline MY 2001 and MY 2007 fleets.

IX. The Need of the Nation To Conserve Energy

EPCA specifically directs the Department to balance the technological and economic challenges with the nation's need to conserve energy. While EPCA grew out of the energy crisis of the 1970s, the United States still faces considerable energy challenges today. Increasingly, U.S. energy consumption has been outstripping U.S. energy production. This imbalance, if allowed to continue, will inevitably undermine our economy, our standard of living, and our national security. (May 2001 National Energy Policy (NEP) Overview, p. viii)

As was made clear in the first chapter of the NEP, efficient energy use and conservation are important elements of a comprehensive program to address the nation's current energy challenges:

> America's current energy challenges can be met with rapidly improving technology, dedicated leadership, and a comprehensive approach to our energy needs. Our challenge is clear—we must use technology to reduce demand for energy, repair and maintain our energy infrastructure, and increase energy supply. Today, the United States remains the world's undisputed technological leader: but recent events have demonstrated that we have yet to integrate 21st-century technology into an energy plan that is focused on wise energy use, production, efficiency, and conservation.
>
> (Page 1–1)
>
> Conserving energy, especially reducing the nation's dependence on imported petroleum, benefits the nation's efforts to address the energy challenges in several ways. Reducing total petroleum use and reducing petroleum imports decrease our economy's vulnerability to oil price shocks and improves our national security.
>
> Over the long term, the development of advanced fuel cell technology, and an infrastructure to support it, will help achieve significant reductions in foreign oil dependence and stability in the world oil market. For the short term, the continued infusion of hybrid propulsion and advanced diesel vehicles into the U.S. light truck fleet may also contribute to reduced dependence on petroleum. Since the NPRM was issued, companies have announced enhanced efforts in this area. We believe it is possible, with substantial marketing and public policy support, to create a vibrant and efficient market for vehicles with advanced technologies by MY 2007.
>
> The importance of improving the fuel economy of light trucks is evident from the effect that those vehicles are having on the overall fuel economy of light vehicles. As was noted in the NEP:
>
> Despite the adoption of more efficient transportation technologies, average fuel economy for passenger vehicles has remained relatively flat for ten years and is, in fact, at a twenty year low, in large part due to the growth and popularity of low fuel economy pickup trucks, van and sport utility vehicles.
>
> (p. 4–9)
>
> We have concluded that the increases to the light truck CAFE standards adopted in this final rule will contribute appropriately to energy conservation and the comprehensive energy program set forth in NEP. In assessing the impact of the standards, we accounted for the increased vehicle mileage that accompanies reduced costs to consumers associated with greater fuel efficiency and have concluded that the final rule will lead to considerable fuel savings. While increasing fuel economy without increasing the cost of fuel will lead to some additional vehicle travel, the overall impact on fuel conservation remains positive.
>
> We acknowledge that, despite the CAFE program, the United States' dependence on foreign oil and petroleum consumption has increased in recent years. Nonetheless, data suggest that past fuel economy increases have had a major impact on U.S. petroleum use. The NAS determined that if the fuel efficiency of the vehicle fleet had not improved since the 1970s, the U.S. gasoline consumption and oil imports would be about 2.8 million barrels per day higher than they are today. Increasing fuel economy by 10 percent will produce an estimated 8 percent reduction in fuel consumption. Increases in the fuel economy of new vehicles eventually raise the fuel efficiency of all vehicles as older cars and trucks are scrapped.
>
> Further, we do not believe that the increases in the light truck CAFE standards applicable to the 2005–2007 MYs will unduly lead to so-called "energy waste." This theory, presented in comments responding to our Request for Comments and NPRM, rests on the notion that efforts to reduce energy use can result in negative economic effects from losses in product values, profits and worker incomes. As discussed above, the agency has determined that the CAFE standards can be achieved without significant adverse economic or safety consequences. Within the bounds of technological feasibility and economic practicability, the final rule will, in fact, enhance "energy efficiency" without adverse ancillary effects.

X. Balancing of Statutory Factors

In determining the maximum feasible average fuel economy levels for the MY 2005–07 standards, we have specifically considered all four of the factors specified by the statute—technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy. We have also specifically weighed the benefits to the nation of higher average fuel economy standards against the difficulties of individual manufacturers.

We have determined that the established CAFE standards are the maximum feasible levels for each of the model years. Although the MY 2007 standard is a challenging one, the additional lead time available and the likelihood of continuing technological advancement makes a CAFE standard of 22.2 mpg technologically feasible and economically practicable in light of the nation's need to conserve energy and to reduce our dependence on foreign oil. The Volpe analysis confirms that these standards are cost-beneficial and technologically feasible. CAFE standards above those established in this rule tip the balance and render it unlikely that the standards could be achieved without significantly negative economic consequences.

XI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This final rule is economically significant as adopted. Accordingly, OMB reviewed it under Executive Order 12866. The rule is also significant within the meaning of the Department of Transportation's Regulatory Policies and Procedures.

Because the rule is economically significant, the agency has prepared an FEA and placed it in the docket and on the agency's Web site.

Costs: We estimated costs based on the specific technologies that were

applied to improve each manufacturer's fuel economy from the level of the manufacturer's plans up to the level of the final rule. Table 1 provides those cost estimates on an average per vehicle basis and Table 2 provides those estimates on a fleet-wide basis.

Benefits: We also determined benefits from the level of the manufacturer's plans up to the level of the final rule. The benefits are derived mainly from fuel savings over the lifetime of the vehicle. However, the benefits also include the results of a number of additional analyses that relate to the value of oil import externalities, criteria pollutant emissions, and a variety of beneficial transportation impacts brought about by the "rebound effect". Table 1 provides the benefit estimates on a per vehicle basis and Table 2 provides them on a fleet-wide basis.

Net Benefits: We compared the costs and benefits and concluded that the fuel economy standards are cost beneficial on a societal basis.

Safety Impacts: The agency believes the manufacturers can meet the fuel economy levels without weight reductions. Thus, there need not be a safety impact due to reducing weights for light trucks.

Table 3 provides the level of the final rule, an adjusted baseline weighted average fuel economy based on the manufacturers' product plans, and a weighted average fuel economy for the fleet after assuming increases in technology to bring the manufacturers' average fuel economy up to the level of the standard. Some manufacturers already (in MY 2001) exceed the standard levels, thus the weighted average exceeds the level of the final rule. Finally, Table 3 shows the lifetime fuel savings in millions of gallons.

TABLE 1.—INCREMENTAL COST AND SOCIAL BENEFIT ANALYSIS PER AVERAGE VEHICLE—OVER ITS LIFETIME

[In year 2000 dollars]

Model year	Costs	Benefits	Net benefits
2005	$22	$29	$7
2006	67	83	16
2007	106	121	15

TABLE 2.—INCREMENTAL TOTAL COST BENEFIT ANALYSIS OVER THE LIFETIME OF THE FLEET

[In millions of year 2000 dollars]

Model year	Costs	Benefits	Net benefits
2005	$170	$218	$48
2006	537	645	108
2007	862	955	93

TABLE 3.—SAVINGS IN MILLIONS OF GALLONS OF FUEL

Model year	Proposed fuel economy standard (mpg)	Adjusted baseline fuel economy level based on manufacturer plans (mpg)	Estimated fuel economy level with technology additions needed to meet standard (mpg)	Lifetime fuel savings (in millions of gallons)—undiscounted	Lifetime fuel savings—present discounted value
2005	21.0	21.13	21.29	432	263
2006	21.6	21.31	21.78	1,273	774
2007	22.2	21.60	22.31	1,892	1,151

B. National Environmental Policy Act

Consistent with the requirements of the National Environmental Policy Act and the regulations of the Council on Environmental Quality, the agency has prepared a final Environmental Assessment for this action, responding to comments to the draft Environmental Assessment, and has placed this analysis in the docket. Based on the final Environmental Assessment, the agency has concluded that the action will not have a significant effect on the quality of the human environment.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act and certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that there are not any single stage light truck manufacturers within the United States with 1,000 or fewer employees.

D. Executive Order 13132, Federalism

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." Executive Order 13132 defines the term "Policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. The statute under which the CAFE program is administered clearly says that states may not adopt or enforce any law or regulation that relates to fuel economy standards. 49 U.S.C. 32919(a). Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. The Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, of more than $100 million annually, but it will result in the expenditure of that magnitude by vehicle manufacturers and/or their suppliers. In promulgating this rule, NHTSA considered whether average fuel economy standards lower and higher than those adopted would be appropriate. NHTSA has concluded that the standards established by this final rule are the maximum feasible standards for the light truck fleet for MYs 2005–2007, based on a balancing of the statutory considerations.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There are no new information collection requirements in this final rule.

G. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule does not have a disproportionate effect on children. The primary effect of this rule is to conserve energy resources by setting CAFE standards for light trucks.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [13] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

[13] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specifications and related management systems practices." They pertain to "products and processes, such as size, strength, or technical performance of a product, process or material."

There are no voluntary consensus standards for U.S. fuel economy. Therefore, setting this final rule does not involve the use of any voluntary standards.

I. Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rule that: (1) is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the regulatory action meets either criterion, we must evaluate the adverse energy effects of the planned rule and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

The rule establishes light truck fuel economy standards that will reduce the consumption of petroleum and will not have any adverse energy effects. Accordingly, this rulemaking action is not designated as a significant energy action.

J. Department of Energy Review

In accordance with 49 U.S.C. 32902(j), we submitted this rule to the Department of Energy for review. That Department did not make any comments that we have not addressed.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 533

Energy conservation, Motor vehicles.

PART 533—[AMENDED]

■ In consideration of the foregoing, 49 CFR part 533 is amended as follows:

■ 1. The authority citation for part 533 continues to read as follows:

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

■ 2. Section 533.5 is amended by revising Table IV in paragraph (a) to read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE IV

Model year	Standard
1996	20.7
1997	20.7
1998	20.7
1999	20.7
2000	20.7
2001	20.7

TABLE IV—Continued

Model year	Standard
2002	20.7
2003	20.7
2004	20.7
2005	21.0
2006	21.6
2007	22.2

* * * * *

Issued on: March 31, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–8222 Filed 4–1–03; 3:41 pm]

BILLING CODE 4910–59–P

Federal Register

Monday,
April 7, 2003

Part III

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2002; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4767–N–04]

Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2002

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waivers from October 1, 2002, through December 31, 2002.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice must cover the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the quarter beginning on October 1, 2002, and ending on December 31, 2002.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 708–3055 (this is not a toll-free number). Hearing-or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (2 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver-grant action may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). This notice covers HUD's waiver-grant activity from October 1, 2002, through December 31, 2002. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the section of title 24 being waived. For example, a waiver-grant action involving the waiver of a provision in 24 CFR part 58 would come before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in title 24 of the Code of Federal Regulations and that is being waived as part of the waiver-grant action. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver-grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred during January 1, 2003, through March 31, 2003.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: March 27, 2003.

Alphonso Jackson,

Deputy Secretary.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development October 1, 2002, Through December 31, 2002

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulations:* 24 CFR 574.625(b)(1).

Project/Activity: A recipient of grant funds from HUD's Housing Opportunities for Persons with AIDS (HOPWA) requested a waiver of the conflict of interest disclosure provision.

Nature of Requirement: This provision requires the grantee to disclose the nature of the conflict of interest, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made. This provision requires the grantee to publish the name of the person seeking the assistance and confidential health records regarding the individual.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: October 28, 2002.

Reasons Waived: HUD determined that there was good cause for granting the waiver to protect the name of the person seeking the assistance and the confidential medical information regarding the person seeking assistance. However, HUD did not waive the other factors/requirements in 24 CFR 574.625(b)(1) that must be considered prior to granting the exception. In addition, Section 7(q)(3) of the Department of Housing and Urban Development Act requires HUD to publish notice in the **Federal Register** of all waivers of regulations approved by HUD. Because of the possibility that the publication of this waiver could be used to identify the affected individual, HUD will publish the waiver request without identifying the grantee.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulations:* 24 CFR 576.35(a)(1), 24 CFR 576.35(a)(2)(i), 24 CFR 576.35(a)(2)(ii).

Project/Activity: The city of Clinton, IA, requested a waiver of the provisions governing the obligation and expenditure of Emergency Shelter Grant (ESG) funds.

Nature of Requirement: Section 576.35(a)(1) requires each state to make available to its state recipients all emergency shelter grant amounts that it was allocated within 65 days of the date of the grant award by HUD. Funds set aside by a state for homeless prevention activities must be made available to state recipients within 180 days of the grant award. Section 576.35 (a)(2)(i) requires each state recipient of ESG funds to have its grant funds obligated within 180 days of the date on which the state made the grant amounts available to state recipients. In the case of grants for homeless prevention activities, state recipients are required to obligate grant amounts within 30 days of the date on which the state has made the grant amount available. Section 576.35(a)(2)(ii) requires each state recipient to spend all of its grant amounts within 24 months of the date on which the state made the grant amounts available to the state recipient. In the case of grants for homeless prevention activities, state recipients must spend such sums within 180 days of the date on which the state made the grant amount available.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: November 22, 2002.

Reasons Waived: The state suspended the city of Clinton's receipt of ESG funding for Fiscal Year (FY) 2001 and FY 2002 to prevent any reoccurrences of violations by the Victory Center Rescue Mission. This delayed the program until HUD could determine that the recipient could continue to receive ESG funding with the state's continued oversight.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulations:* 24 CFR 582.105(e).

Project/Activity: Alameda County, CA, requested a waiver of the eight percent administrative cap for its 1996 Shelter Plus Care grant.

Nature of Requirement: Section 582.105(e) allows the grantee to expend up to eight percent of the grant amount to pay the costs of administering the housing assistance.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: November 18, 2002.

Reasons Waived: The waiver is granted because the county will be able to serve the same number of households that was originally anticipated for an additional period of time with no increase in funds. The county will be allowed to expend an additional five percent for a total of thirteen percent of its grant for administrative costs. The grant was expected to assist 35 households at a time. However, the grant has assisted approximately 63 households over the course of the grant. The county intends to serve the same number of households that was originally anticipated for an additional period of time with no increase in funds.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

II. Regulatory Waivers Granted by the Office of Housing

For further information about the following waivers actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Northstar Apartments, Raymondville, TX; Project Number: 115–35425.

Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and Federal Housing Administration (FHA) insured proceeds for the subject property.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 22, 2002.

Reason Waived: The regulation was waived since the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in payment of extension fees to the investors who purchased the Government National Mortgage Association (GNMA) mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the San Antonio Multifamily Program Center to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Presbyterian Villages North, Pontiac, MI; Project Number: 044–35566.

Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and FHA-insured proceeds for the subject property.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 23, 2002.

Reason Waived: The regulation was waived since the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in payment of extension fees to the investors who purchased GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Detroit Multifamily Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Iodent Lofts, Detroit, MI; Project Number: 044–32041.

Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and FHA-insured proceeds for the subject property.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 29, 2002.

Reason Waived: The regulation was waived since the front money escrow is so large, the insured proceeds would not be disbursed for several months,

resulting in payment of extension fees to the investors who purchased GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Detroit Multifamily Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Ashley Courts at Cascade Apartments, Phase III, Atlanta, GA; Project Number: 061–35545.

Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and FHA-insured proceeds for the subject property.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 14, 2002.

Reason Waived: The regulation was waived since the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in payment of extension fees to the investors who purchased GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Atlanta Multifamily Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Springdale Estates, Austin, TX; Project Number: 115–35427.

Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and FHA-insured proceeds for the subject property.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 25, 2002.

Reason Waived: The regulation was waived since the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in payment of extension fees to the investors who purchased GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Fort Worth Multifamily Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Greenlaw Renaissance Apartments, Memphis, TN; Project Number: 081–35238.

Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and FHA-insured proceeds for the subject property.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 11, 2002.

Reason Waived: The regulation was waived since the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in payment of extension fees to the investors who purchased GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Nashville Multifamily Program Center to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: The Village at Carver, Phase II, Atlanta, GA; Project Number: 061–35552.

Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and FHA-insured proceeds for the subject property.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 15, 2002.

Reason Waived: The regulation was waived since the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in payment of extension fees to the investors who purchased GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) permitted the Atlanta Multifamily Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 491.600):

FHA No.	Project name	State
06235361	Angel Apartments	AL
05935106	Augustine Park Apartments	LA
08435239	Brookfield Village	MO
05235336	Burton Manor	MD
04335257	Calumet/Horizon	OH
01436041	Cayuga Village	NY
01257080	Concourse Plaza	MD
06235362	Cornelius Apartments	AL
06135562	Dodge Court Apartments	GA
08235225	Eastview Terrace Apartment	AR
04635519	Eddy's Apartments	OH
01335108	Genesee Towers	NY
05435455	Glenfield Apartments	SC
01257164	Jerome Terrace Apartments	NY
04235362	Lakeview Estates	OH
10935049	LaPrete Apartments	WY

FHA No.	Project name	State
03135177	Lexington Manor	NJ
08735120	Lynnridge Apartments	TN
01257121	Maria Estela I	NY
06535314	Meadowbrook Apartments	MS
04635543	Mt. Carmel (aka Lebanon Village aka Greentree)	OH
04235302	Nela Manor	OH
06535330	New Main Apartments	MS
05435389	Newberry Arms Apartments	SC
12235452	Palmdale East Q	CA
04232011	Park Lane Villa	OH
01257167	Parkview Residence	NY
04735129	Peterson Apartments	MI
05110508	Pinebrook Village Apartments	VA
01235403	Plaza Apartments	NY
11535233	Poesta Creek Apartments	TX
08535314	Portageville Apartments	MO
00035341	Southern Hills Apartments	DC
04235504	Southwesterly Apartments	OH
14335075	Virginia Terrace	CA
04235298	Vistula Heritage Village	OH

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA-insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 4, 2002.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410; telephone (202) 708–0001.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 491.600):

FHA No.	Project name	State
06235310	Birmingham Towers	AL
06435015	Capital City South Apartments.	LA
05235337	Cedar Hill Apartments	MD
01435043	Cedargrove Heights Apartments.	NY
07335407	Gary NSA I & II	IN
08435212	Hyde Park Apartments	MO
11235308	Longview Square Apartments.	TX
03335249	New Brighton Elderly Apartments.	PA
01335086	Northcliffe Apartments	NY
06735235	Oceanside Estates	FL
05935200	Parish Square Apartments.	LA
01257156	Rochester Manor Apartments.	NY
02435036	Round Barn Apartments	VT
11735155	Southgate Village	OK
08435196	Sullivan Hall	MO
04235286	University Towers	OH
11738005	Wesley Village	OK
05335296	Yadkin House	NC

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA-insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 7, 2002.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410; telephone (202) 708–0001.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 491.600):

FHA No.	Project name	State
01335078	Brick School Terrace (aka 16th Apts.).	NY
08535299	Cabool Apartments	MO
04235356	Center Towers	OH
02435040	Chestnut Place	ME
06102006	Cumberland Oaks Apartments.	GA
12235514	Foothill Terrace	CA
08535300	Kennett Apartments	MO
08435229	Lawndale Heights Apartments.	MO
06535334	Moorhead Manor Apartments.	MS
04235354	Newton Manor	OH
08435240	North Valley Townhomes.	MO
01335076	Ogden Mills Apartments (10th Apts.).	NY
06535333	Pendleton Square	MS
04635532	The Biltmore	OH
02335239	The Weldon	MA
08335238	Tug Fork Apartments	KY
12535081	Walnut Gardens	NV
08435203	Woodlen Place Apartments.	MO

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA-insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 11, 2002.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410; telephone (202) 708–0001.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: AIDSCARE, Incorporated, Chicago, IL; Project Number: 071–HD119/IL06–Q001–005.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: October 15, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Kane Cook Homes, Yorkville, IL; Project Number: 071–HD117/Il06–Q001–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: October 16, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Millenium Place, Amherst, NY; Project Number: 014–HD093/NY06–Q001–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: October 16, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Harvard Square, Irvine, CA; Project Number: 143–HD011/CA43–Q001–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: October 29, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Seneca County Volunteers of America (VOA), Tiffin, OH; Project Number: 042–EE120/OH12–S001–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: November 6, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Bridgeway Apartments, Phase II, Picayune, MS; Project Number: 065–HD025/MS26–Q001–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: November 6, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Belleville Non-Profit Housing, Belleville, MI; Project Number: 044–EE077/MI28–S011–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: November 7, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Saint Teresa of Avila Senior Housing, Brooklyn, NY; Project Number: 012–EE300/NY36–S001–015.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: November 25, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: AHEPA 23–III Apartments, Incorporated, Montgomery, AL; Project Number: 062–EE046/AL09–S001–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: November 25, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Hillsborough County VOA Living Center III, Tampa, FL; Project Number: 067–HD080/FL29–Q001–005.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 9, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Crossroads Housing, Onawa, IA; Project Number: 074–HD023/IA05–Q011–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 10, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Young Men's Christian Association (YMCA) of Metropolitan Chicago, Chicago, IL; Project Number: 071–EE141/IL06–S981–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 11, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: New Visions, Louisville, KY; Project Number: 083–HD060/KY36–Q001–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 18, 2002.
Reason Waived: The sponsor obtained a grant from the city of Louisville in the amount of $100,000. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CRF 891.100(d).
Project/Activity: Geneva Avenue Elderly Housing, Dorchester, MA; Project Number: 023–EE110/MA06–S991–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 24, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d). and 24 CFR 891.165.
Project/Activity: Dogwood Terrace, Florence, AL; Project Number: 062–HD043/AL09–Q991–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: November 6, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. Additional time was needed for the firm commitment to be issued.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Oxford Trace Apartments, San Antonio, TX; Project Number: 115–HD028/TX59–Q991–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: November 19, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. In addition, the long-time president of the nonprofit resigned, a new builder was hired, and additional time was needed to obtain building permits. Further, the city of San Antonio required a fairly extensive and costly drainage system surrounding the site.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: VOA Pineville, Pineville, LA; Project Number: 064–HD055/LA48–Q001–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 25, 2002.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. Additional time was needed for the firm commitment to be reprocessed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Bevins Court, Lakeport, CA; Project Number: 121–HD069/CA39–Q991–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 20, 2002.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. In addition, project experienced delays with the city of Lakeport in the local design review and approval process.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891(d) and 24 CFR 891.165.

Project/Activity: Elmwood House II, Evesham Township, NJ; Project Number: 035–EE043/NJ39–S001–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 18, 2002.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. Additional time was needed for the owner to attempt to locate additional funds.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Rotary Village II, Del Rio, TX; Project Number: 115–EE057/TX59–S001–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 24, 2002.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. Additional time was needed for the owner to attempt to locate additional funds and to find a qualified contractor.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Columbia Gardens, Caldwell, ID; Project Number: 124–HD008/ID16–Q001–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2002.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. Additional time was needed to obtain clearance from the Advisory Council on Historic Preservation (SHPO) in the state of Idaho.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Joseph's Medical Center Senior Housing, Yonkers, NY; Project Number: 012–EE265/NY36–S991–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 2, 2002.

Reason Waived: The local approval process delayed the completion of the working drawings and additional time was needed for HUD to complete the processing of the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Mount St. Mary's, Tonawanda, NY; Project Number: 014–EE198/NY06–S001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 10, 2002.

Reason Waived: The sponsor needed more time to secure additional funding, submit the firm commitment application, and to proceed to initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Laurel Commons, Laurel, DE; Project Number: 032–EE009/DE26–S991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 22, 2002.

Reason Waived: The project was delayed because additional time was needed for the Town of Laurel to approve the final subdivision of the project site prior to initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: George and Lois Brown Estates, Henderson, NV; Project Number: 125–HD067/NV25–Q991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 29, 2002.

Reason Waived: Before issuing a firm commitment and proceeding with initial closing, additional time was needed to review and revise the pro-forma policy of title insurance, survey, surveyor's report, and architect agreement.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: The Orange County Two-Site Project, Town of Hamptonbur, NY; Project Number: 012–HD091/NY36–Q991–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 29, 2002.

Reason Waived: The owner needed additional time to obtain a building permit.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: La Playa Apartments, San Francisco, CA; Project Number: 121–HD065/CA39–Q981–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 29, 2002.

Reason Waived: The project experienced delays because additional time was needed to resolve a protest brief, which was filed with the city and courts of San Francisco by the Ocean Beach Condominiums Homeowners Association.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: A. Kornegay Senior Housing, New York, NY; Project Number: 012–EE303/NY36–S001–018.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 29, 2002.

Reason Waived: The project encountered delays while undergoing the local approval process.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Monarch Housing, Santa Cruz, CA; Project Number: 121–HD071/CA39–Q991–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 30, 2002.

Reason Waived: HUD needed additional time to process the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hale O Mana'o Lana Hou II, Wailuku, Maui, HI; Project Number: 140–HD015/HI110–Q961–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 4, 2002.

Reason Waived: The project incurred delays because additional time was needed to issue the firm commitment, review the initial closing documents, and close the project.

Contact: Willie.Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cottonwood Manor VI, Cottonwood, AZ; Project Number: 123–EE069/AZ20–S991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 4, 2002.

Reason Waived: The sponsor needed additional time to secure additional funds.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Nashville Supportive Housing Development, Nashville-Davidson, TN; Project Number: 086–HD016/TN43–Q971–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 4, 2002.

Reason Waived: The sponsor needed additional time to obtain additional funds from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Brandon Apartments, Brandon, Hillsborough County, FL; Project Number: 067–HD066/FL29–Q991–011.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 6, 2002.

Reason Waived: The sponsor experienced multiple delays due to site control problems, design issues, and cost overruns. Additional time was needed to prepare and review closing documents and to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Stephen's County Village, Gulfport, MS; Project Number: 065–EE031/MS26–S001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 6, 2002.

Reason Waived: The project experienced delays due to the removal of one of the sponsors, and the subsequent loss of the site. Additional time was needed to allow the project's owner to prepare and submit the firm commitment application and for HUD to complete the technical processing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: OBED Apartments, North Providence, RI; Project Number: 016–HD025/RI43–Q991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 6, 2002.

Reason Waived: The project experienced delays due to litigation involving a zoning variance.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: ProCAP Housing, Providence, RI; Project Number: 016–HD030/RI43–Q991–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 6, 2002.

Reason Waived: The project experienced delays due to a site change. Delays were also experienced because of the lengthy process for acquiring sites from the Providence Redevelopment Authority.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Accessible Space, Incorporated, Birmingham, AL; Project Number: 062–HD041/AL09–Q981–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 6, 2002.

Reason Waived: Additional time was needed for HUD to process the firm commitment application in order for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Pelican Lake Housing Corporation, Eagle River, WI; Project Number: 075–HD066/WI39–Q001–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 6, 2002.

Reason Waived: The project experienced delays due to the need to redesign the building bringing the project costs within the capital advance budget. Additional time was needed to pursue fund raising activities to cover budget shortfalls.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ada S. McKinley IV, Chicago, IL; Project Number: 071–HD110/IL06–Q981–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 14, 2002.

Reason Waived: Additional time was needed for the receipt and processing of the firm commitment application, for issuance of the firm commitment, and for the project to proceed to initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Providence Gamelin House, Seattle, WA; Project Number: 127–EE028/WA19–S001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 25, 2002.

Reason Waived: The project experienced delays due to litigation and environmental issues beyond the sponsor's control.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Pensdale Apartments (a/k/a 4200 Mitchell Street), Philadelphia, PA; Project Number: 034–EE100/PA26–S991–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 25, 2002.

Reason Waived: The project experienced delays due to the timing and execution of the relocation of the remaining commercial tenants.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ghost Creek Housing, River Falls, WI; Project Number: 075–HD067/WI39–Q001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 26, 2002.

Reason Waived: The project was delayed due to litigation involving a zoning variance for the site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000

• *Regulation:* 24 CFR 891.165.

Project/Activity: Coalport Senior Housing, Coalport, PA; Project Number: 033–EE102/PA28–S991–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 27, 2002.

Reason Waived: The sponsor needed more time to obtain additional financing. The project experienced delays because results of the test (soils) borings needed to be obtained.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Teresa of Avila Senior Housing, Brooklyn, NY; Project Number: 012–EE300/NY36–S001–015.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 27, 2002.

Reason Waived: The owner needed additional time to obtain local approval for releasing a portion of a larger parcel of land owned by the sponsor.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Morgan-Trevathan Apartments, Benton, KY; Project Number: 083–EE074/KY36–S001–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 2, 2002.

Reason Waived: The sponsor/owner needed additional time to make revisions to the firm commitment application and to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Village Supervised Apartments, Hamilton Township, Atlantic County, NJ; Project Number: 035–HD034/NJ39–Q961–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 2, 2002.

Reason Waived: The project incurred delays due to a site change required in order for the project to comply with accessibility requirements.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Iberia Place, New Iberia, LA; Project Number: 064–HD042/LA48–Q981–001.

Nature of Requirement: Section 891.165 provides that the duration of

the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 2, 2002.

Reason Waived: Additional time is needed for HUD to process the firm commitment application in order for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Myrtle Davis Senior Complex, Milwaukee, WI; Project Number: 074–EE095/WI39–S001–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 3, 2002.

Reason Waived: The owner needed additional time to resolve issues with the general contractor and to prepare the initial closing documents once the firm commitment was issued.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Presbyterian Home at Stafford, Stafford Township, NJ; Project Number: 035–EE037/NJ39–S991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 4, 2002.

Reason Waived: The project has experienced delays due to numerous state and local reviews required to obtain local permits.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Garden Grove Apartments, Milwaukee, WI; Project Number: 075–HD062/WI39–Q991–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 9, 2002.

Reason Waived: The sponsor needed additional time to resolve problems with the design of the building. Additional time was also needed to assemble the initial closing documents once the firm commitment was issued.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: JoMar of Zion, Oshkosh, WI; Project Number: 075–EE096/WI39–S001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 9, 2002.

Reason Waived: The sponsor needed additional time to assemble the initial closing documents once the firm commitment was issued.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Fuller Gardens, San Leandro, CA; Project Number: 121–HD073/CA39–Q001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 9, 2002.

Reason Waived: The project experienced delays because the owner needed additional time to resolve language associated with the mortgage note and deed of trust.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Olympian Village II, Beloit, WI; Project Number: 075–EE099/WI39–S001–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 9, 2002.

Reason Waived: The sponsor needed additional time to assemble the initial closing documents once the firm commitment was issued.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: The Connection, Incorporated (Home for the Brave), New Haven, CT; Project Number: 017–HD028–CT26–Q001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 18, 2002.

Reason Waived: The sponsor/owner needed additional time to obtain the necessary gap financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Luther Ridge, Middletown, CT; Project Number: 017–EE053/CT26–S991–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 18, 2002.

Reason Waived: The project shares a site and building with a project financed by the state of Connecticut. The owner needs additional time to find a contractor that meets both Section 202 and Connecticut state requirements.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Millennium Cudahy, Cudahy, WI; Project Number: 075–EE097/WI39–S001–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 18, 2002.

Reason Waived: HUD discovered problems with the owner's board and development team that had to be resolved. The sponsor/owner needed additional time to assemble closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Geneva Avenue Elderly Housing, Dorchester, MA; Project Number: 023–EE110/MA06–S991–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 18, 2002.

Reason Waived: The project experienced delays because the owner needed to revise the plans to include an additional elevator to accommodate the residents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Millennium Janesville I, Janesville, WI; Project Number: 075–EE100/WI39–S001–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 20, 2002.

Reason Waived: HUD discovered problems with the owner's board and development team that had to be resolved. The sponsor/owner needed additional time to assemble closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Pathways, Greenwich, CT; CA, Project Number: 017–HD022/CT26–Q981–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 24, 2002.

Reason Waived: The project experienced delays due to litigation.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: ASI-Jackson County, Medford, OR; Project Number: 126–HD028/OR16–Q991–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 24, 2002.

Reason Waived: The owner needed additional time before the revised Davis-Bacon wage rates were issued. Also, additional time was needed for the contractor to re-bid the subcontractor work, and for submission of a revised cost breakdown.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Andrews of Jennings Phase II Apartments, Jennings, MO; Project Number: 085–EE049/MO36–S001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2002.

Reason Waived: The project had incurred delays while waiting for the partial release of land from St. Andrews of Jennings Phase I to be approved.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: TELACU-Pico Rivera, Pico Rivera, CA; Project Number: 122–EE170/CA16–S001–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2002.

Reason Waived: HUD needed additional time to review the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Villa Seton, Port St. Lucie, FL; Project Number: 067–EE107/FL29–S001–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2002.

Reason Waived: The sponsor needed additional time to redesign the project and re-bid the construction contract in order to reduce project costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hunterdon Consumer Home, East Amwell, NJ; Project Number: 031–HD121/NJ39–Q001–012.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2002.

Reason Waived: The sponsor had to locate an alternate site. The historical preservation determination was not received until July 2002.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Roselawn Village Apartments, Minneapolis, MN; Project Number: 092–HD053/MN46–Q001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2002.

Reason Waived: The sponsor needed to obtain letters of assurance from the Minnesota Pollution Control Agency concerning the risk of the low-level ground water contamination. In addition, the project experienced delays while testing was being performed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Skyline Apartments, Napa, CA; Project Number: 121–HD074/CA39–Q001–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2002.

Reason Waived: The project experienced delays due to extensive negotiations with the state on the terms of the lease agreement.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Bakersfield Senior Housing, Bakersfield, CA; Project Number: 122–EE164/CA16–S001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2002.

Reason Waived: The owner needed additional time to reduce the cost of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cantebria Senior Housing, Encinitas, CA; Project Number: 129–EE021/CA33–S991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2002.

Reason Waived: The project experienced delays because additional time was needed for the secondary financing documents to be revised and reviewed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Loretta Heritage Apartments, Syracuse, NY; Project Number: 014–HD084/NY06–Q991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 30, 2002.

Reason Waived: The project experienced delays because additional time was needed for the owner to resolve a water pressure problem with the city.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Henderson School Apartments, Henderson, NY; Project Number: 014–EE033.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons; that is, households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 8, 2002.

Reason Waived: The Buffalo Multifamily Hub requested permission to waive the age requirements of the subject property. The owner/management agent of the subject project has requested permission to waive the

elderly and low-income requirements to alleviate the current occupancy and financial problems at the property. The property will be allowed to rent to the non-elderly between the ages of 55 and 62 years and allow the applicants to meet the low-income eligibility requirements. Providing for a waiver to the elderly and low-income restrictions will allow the owner additional flexibility to rent vacant units. The owner will have the flexibility to offer units to the non-elderly, low-income applicants, and therefore, will be able to achieve full occupancy and the project will not fail. This waiver is effective for one year from date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000; telephone (202) 708–3730.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following waivers actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Waltham Housing Authority (WHA), Waltham, MA; The WHA has requested a special exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for a disabled housing choice voucher program participant.

Nature of Requirement: Section 982.505(d) allows a PHA to approve a higher payment standard within the basic range for a family that includes a person with a disability as a reasonable accommodation in accordance with 24 CFR part 8.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 4, 2002.

Reason Waived: Approval of the waiver was granted to allow a disabled housing choice voucher participant to lease a unit large enough to allow movement with the motorized scooter or wheelchair in all the rooms. The kitchen appliances are low enough to be accessed and parking will be provided in front of her unit.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Brookline Housing Authority (BHA), Brookline, MA; The BHA has requested a special exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for a disabled housing choice voucher program participant. The participant is thirty-four years old and suffers from mental retardation and cerebral palsy.

Nature of Requirement: Section 982.505(d) allows a PHA to approve a higher payment standard within the basic range for a family that includes a person with a disability as a reasonable accommodation in accordance with 24 CFR part 8.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 10, 2002.

Reason Waived: Approval of the waiver was granted to allow a disabled housing choice voucher participant to lease a unit with on-site supervision and assistance with living activities, without which she would not be able to live independently.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Santa Fe Civic Housing Authority (SFCHA), Santa Fe, NM; The SFCHA has requested a special exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for a disabled housing choice voucher program participant. The participant has chronic disorders and chemical sensitivities that are expected to last indefinitely.

Nature of Requirement: Section 982.505(d) allows a PHA to approve a higher payment standard within the basic range for a family that includes a person with a disability as a reasonable accommodation in accordance with 24 CFR part 8.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 10, 2002.

Reason Waived: Approval of the waiver was granted to allow a disabled housing choice voucher participant to lease a unit that will accommodate the individual's disabilities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Brookline Housing Authority (BHA), Brookline, MA; The BHA has requested a special exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for disabled housing choice voucher program participants. The participants require the support of a personal care assistant to enable them to live independently.

Nature of Requirement: Section 982.505(d) allows a PHA to approve a higher payment standard within the basic range for a family that includes a person with a disability as a reasonable accommodation in accordance with 24 CFR part 8.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: November 27, 2002.

Reason Waived: Approval of the waiver was granted to allow a disabled housing choice voucher participant to lease a unit with on-site supervision and assistance with living activities because the participant cannot live independently.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Massachusetts Department of Housing and Community Development (MDHCD), Boston, MA; Project-Based Assistance (PBA) Program. The MDHCD has requested a special exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for a disabled housing choice voucher program participant.

Nature of Requirement: Section 982.505(d) allows a PHA to approve a higher payment standard within the basic range for a family that includes a person with a disability as a reasonable accommodation in accordance with 24 CFR part 8.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 19, 2002.

Reason Waived: Approval of the waiver was granted to allow a disabled

housing choice voucher participant to lease his current unit due to his maladies and the medication he takes. His doctors and counselors feel that moving from his current unit would be a physical and emotional hardship on him because he relies on his neighbors to drive him to doctor appointments and provide meals and emergency medical help. Without his neighbors' assistance, he is not able to live independently.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR, Section 983.7(b)(1)..

Project/Activity: Western Piedmont Council of Governments (WPCG), Hickory, NC; The WPCG requested a waiver to the requirement that prohibits a public housing agency from attaching project-based assistance under the Housing Choice Voucher program to housing for which construction started before an agreement to enter into a housing assistance payments (AHAP) contract was executed for Millside Manor, a 28-unit new construction elderly project.

Nature of Requirement: Section 983.7(b)(1) prohibits a project from receiving project-based assistance where construction began before the execution of an AHAP contract.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: November 27, 2002.

Reason Waived: The WPCG inadvertently failed to execute an AHAP contract. The regulation was waived since all of the regulatory requirements of the AHAP contract had been met and it appeared that the owner and the PHA operated in good faith. Accordingly, HUD authorized the WPCG to enter into an AHAP contract.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 983.51.

Project/Activity: Fort Wayne Housing Authority (FWHA), Fort Wayne, IN; The FWHA requested a waiver of competitive selection of owner proposals.

Nature of Requirement: Regulations at Section 983.51 requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 15, 2002.

Reason Waived: Competitive selection was waived since the owners of McMillan Park had already gone through a competitive selection. McMillan Park was awarded low-income housing tax credits through a competitive process conducted by the state of Indiana.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 983.51.

Project/Activity: St. Paul Public Housing Agency (SPPHA), St. Paul, MN; Project-Based Program.

Nature of Requirement: Section 983.51 require competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 30, 2002.

Reason Waived: Approval of the waiver was granted because the project had already gone through a competitive selection process for funding.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 983.51 and Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Chicago Housing Authority (CHA), Chicago, IL. The CHA requested a waiver of competitive selection of owner proposals and an exception to the initial guidance to permit it to attach PBA to Hearts United III that will be located in three adjoining census tracts with poverty rates that exceed 20 percent.

Nature of Requirement: Section 983.51 requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy. Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: November 7, 2002.

Reason Waived: Competitive selection was waived since the project underwent a competitive selection process by the state of Illinois for Low-Income Housing Tax Credits, as well as one by the city of Chicago's Department of Housing for city-owned land. Hearts United III is in the Grand Boulevard community and within the 43rd Street—Cottage Grove Redevelopment Area, designated as such in 1998 by the city of Chicago Department of Planning and the City Council. The goals of a designated redevelopment area are to support the development of a mixed-income community through residential, commercial and related development. These goals are consistent with the goals of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 983.255(b).

Project/Activity: Rochester New York Housing Authority (RHA), Rochester, NY; Project-Based Program.

Nature of Requirement: Section 983.255(b) requires HUD approval for a special adjustment of the rent to an owner in the PBA program if the adjustment reflects increases in the actual and necessary cost of owning and maintaining the contract unit.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 30, 2002.

Reason Waived: Approval of the waiver was granted because there was a substantial and general increase in property insurance in suburban Monroe County due to the terrorist attacks of September 11, 2001.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 1000.214.

Project/Activity: The submission of the Indian Housing Plan (IHP) by the Hydaburg Cooperative Association (Hydaburg, Alaska) for Fiscal Year (FY) 2002 funding made available under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).

Nature of Requirement: Section 1000.214 establishes a July 1st deadline for the submission of an IHP.

Reason Waived: The Area Office of Native American Programs (ONAP) indicated that the 2002 IHP was received before the July 1st deadline and advised the Tribal Council that the plan was received. When it was discovered that the Association's IHP had not been received by ONAP, the regulatory due date had passed.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: November 3, 2002.

Contact: Deborah Lalancette, Director, Grants Management, Denver Program ONAP, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202; telephone: (303) 675–1625.

• *Regulation:* 24 CFR 1000.336(b).

Project/Activity: Request to Waive the Regulatory Deadline for Submitting a Census Challenge to the data to be used to compute the Ute Indian Tribe's (Ft. Duchesne, Utah) FY 2003 Indian Housing Block Grant Allocation.

Nature of Requirement: An Indian tribe or tribally designated housing entity (TDHE) that has data in its possession that it contends are more accurate than data contained in the U.S. Decennial Census, and the data were collected in a manner acceptable to HUD, may submit the data and proper documentation to HUD.

Reason Waived: Fires on the Ute Indian Reservation resulted in processing delays at the Tribe's TDHE. In addition, recent changes in the Ute Indian's tribal administration have had a significant impact on the Tribe's TDHE, including reorganization and restructuring, and the capacity to submit a Census Challenge in a timely fashion.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: November 27, 2002.

Contact: Deborah Lalancette, Director, Grants Management, Denver Program ONAP, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202; telephone: (303) 675–1625.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Housing Authority of the County of Santa Cruz (HACSC), Santa Cruz, CA; The HACSC requested an exception to the initial guidance to permit it to attach PBA to El Centro Apartments that is in a census tract with a poverty rate of 21 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 4, 2002.

Reason Waived: Approval of the exception was granted since the project was in an area that had undergone major renovation since an earthquake in 1989. During the years of reconstruction along Pacific Avenue over $90 million of private investment and $30 million in public funds have been expended. Pacific Avenue is part of the city's redevelopment area as identified in the city's Consolidated Plan for affordable and preserved housing. The housing and commercial activity along Pacific Avenue is consistent with the goal of deconcentration and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA PBA Program; Initial Guidance.

Project/Activity: Housing Authority of the City of Atlanta (HACA), Atlanta City, GA; The HACA requested an exception to the initial guidance to permit it to attach PBA to Columbia High Point Estates that is in a census tract with a poverty rate of 29 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 31, 2002.

Reason Waived: Approval of the exception was granted since the project will be developed in the Pryor Road Corridor that is a designated redevelopment area as defined in the city's approved Atlanta Southside Redevelopment Plan. Approximately 2000 new rental and homeownership units will be developed in the Pryor Road Corridor over the next five years in addition to new planned commercial, retail, and recreational opportunities. Of the 2000 new units, 690 will be subsidized through tax credits or HUD subsidies; the other 1,310 units will be sold or rented at market rate. The current and planned activities for this redevelopment area are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA PBA Program; Initial Guidance.

Project/Activity: Massachusetts Department of Housing & Community Development (MDHCD), Boston, MA; The MDHCD requested an exception to the initial guidance to permit it to attach PBA to a property located at 1202 Commonwealth Avenue in Boston that is in a census tract with a poverty rate of 32.45 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 9, 2002.

Reason Waived: Approval of the exception was granted since the adjusted poverty rate, that takes into consideration (and excludes) the significant number of college students

who reside in the immediate area, is 18.37 percent. The project is also located in the Allston Village Main Streets District as designated by the Department of Neighborhood Development in which $15,876,857 has been invested for economic development, housing preservation, and rental housing development.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA PBA Program; Initial Guidance.

Project/Activity: Boston Housing Authority (BHA), Boston, MA; The BHA requested an exception to the initial guidance to permit it to attach 13 PBA units to the Metropolitan. The Metropolitan is a new construction project consisting of 251 units, with 133 rental units (53 market rent and 81 affordable), and 118 ownership units (84 market rent and 34 affordable) in the Chinatown neighborhood of Boston. The current poverty rate according to 1990 census data is 28.53 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 9, 2002.

Reason Waived: Approval of the exception was granted because the Department of Neighborhood Development (DND) has worked with the community of Chinatown to sponsor several projects and programs that have worked to deconcentrate poverty and improve the quality of life in this area. Projects include economic development, homebuyer assistance, and rental housing development with a total public assistance of $5,732,250. In addition, within the Chinatown/Theatre District Neighborhood, several large-scale market residential and commercial projects have been completed or scheduled to be completed within the next five years.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477, extension 4069.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: St. Paul Public Housing Agency (SPPHA), St. Paul, MN; The SPPHA requested an exception to the initial guidance to permit it to attach PBA to a 71-unit single-room occupancy facility owned by Catholic Charities in a census tract with a poverty rate of 37 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 30, 2002.

Reason Waived: Approval of the exception was granted because Guild Hall (also known as St. Christopher Place Apartments) is in a HUD-designated Enterprise Community whose goals of creating jobs, housing, and new educational and healthcare opportunities are consistent with the goal of deconcentration and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart E and subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA PBA Program; Initial Guidance.

Project/Activity: St. Paul Public Housing Agency (SPHA), St. Paul, MN; The SPHA requested an exception to the initial guidance to permit it to attach PBA to the Oxford, a building that is in a census tract with a poverty rate that exceeds 20 percent. The SPPHA also requested an exception to waive the requirement that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA for this project and a second project named the Lexington.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent. Section II subpart F requires that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families, and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, HUD Headquarters is authorizing implementation of this aspect of the law on a case-by-case basis.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: November 13, 2002.

Reason Waived: Approval of the exception for deconcentration was granted since the Oxford is in a HUD-designated Enterprise Community the goals of which are to open new businesses, create jobs, housing, and new educational and healthcare opportunities. These goals are consistent with the goal of deconcentration and expanding housing and economic opportunities. Approval of the exception for the number of units in a building that may be project-based was granted because the families living in the Oxford and Lexington will receive supportive services including job training, literacy life skills, childcare, and transportation. These supportive services are consistent with the statute.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA PBA Program; Initial Guidance.

Project/Activity: Housing Authority City of Elkhart (HACE), Elkhart, IN; The HACE requested an exception to waive the requirement that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA for 12 units of housing that will be rehabilitated at 525 Middlebury Street.

Nature of Requirement: Section II subpart F of the initial guidance requires that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families, and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, Headquarters is authorizing implementation of this aspect of the law on a case-by-case basis.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: November 27, 2002.

Reason Waived: Approval of the exception to the number of units in a building that may be project-based was granted because the families living in the Middlebury Street building will receive supportive services in the areas of employment, homemaking skills, credit and household budgeting, and asset building for homeownership. These supportive services are consistent with the statute.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA PBA Program; Initial Guidance.

Project/Activity: Camden Housing Authority (CHA), Camden, NJ; The CHA requested an exception to waive the requirement that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA for Everett Gardens, a 184-unit project that will undergo substantial rehabilitation.

Nature of Requirement: Section II subpart F requires that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families, and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, HUD Headquarters is authorizing implementation of this aspect of the law on a case-by-case basis.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: November 29, 2002.

Reason Waived: Approval of the exception for the number of units in a building that may be project-based was granted because the families living in Everett Gardens will receive supportive services including job readiness, general education development, and training in trade programs. These supportive services are consistent with the statute.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

[FR Doc. 03–8275 Filed 4–4–03; 8:45 am]

BILLING CODE 4210–32–P

VOL
68

ISS
66

AP
7

003

MI

Federal Register

Monday,
April 7, 2003

Part IV

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 71, 92, et al.
Recognition of Animal Disease Status of Regions in the European Union; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71, 92, 93, 94, 98, and 130

[Docket No. 98–090–5]

RIN 0579–AB03

Recognition of Animal Disease Status of Regions in the European Union

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of animals and animal products to recognize a region in the European Union as a region in which hog cholera (classical swine fever) is not known to exist, and from which breeding swine, swine semen, and pork and pork products may be imported into the United States under certain conditions, in the absence of restrictions associated with other foreign animal diseases of swine. Additionally, we are recognizing Greece and four Regions in Italy as free of swine vesicular disease. These actions are based on a request from the European Commission's (EC's) Directorate General for Agriculture and on our analysis of the supporting documentation supplied by the EC and individual Member States. These actions will relieve some restrictions on the importation into the United States of certain animals and animal products from those regions. However, because of the status of those regions with respect to other diseases, and, in some cases, because of other factors that could otherwise result in a risk of introducing animal diseases into the United States, the importation of animals and animal products into the United States from those regions will continue to be subject to certain restrictions.

EFFECTIVE DATE: April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Director, Sanitary Trade Issues Team, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356. The full risk analysis and economic analysis associated with this rule may be obtained electronically at *http://www.aphis.usda.gov/vs/ncie/reg-request.html*, or by contacting the person listed under this heading.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA or the Department) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations pertaining to the importation of animals and animal products are set forth in the Code of Federal Regulations (CFR), title 9, chapter I, subchapter D (9 CFR parts 91 through 99).

On June 25, 1999, we published in the **Federal Register** (64 FR 34155–34168, Docket No. 98–090–1) a proposal to amend the regulations by recognizing—with the exception of specified regions in Germany and Italy—the countries of Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, and Spain as a region in which hog cholera (classical swine fever (CSF)) is not known to exist, and from which breeding swine, swine semen, and pork and pork products may be imported into the United States under certain conditions. The regions in Germany and Italy that were not included in that region are the following: In Germany, the Kreis Vechta in the Land of Lower Saxony, the Kreis Warendorf in the Land of Northrhine Westfalia, and the Kreis Altmarkkreis Salzwedel in the Land of Saxony-Anhalt; and in Italy, the Island of Sardinia (referred to in this document as the Region of Sardegna), and the Regions of Emilia-Romagna and Piemonte.

Additionally, we proposed to add Greece to the list of regions recognized as free of foot-and-mouth disease (FMD). We also proposed to add Greece to the list of FMD-free regions whose exports of ruminant and swine meat and products to the United States are subject to certain restrictions to guard against introducing FMD into this country. These restrictions were proposed because Greece imports fresh meat of ruminants or swine from regions where FMD exists; has a common border with regions where FMD exists; and imports ruminants or swine from regions where FMD exists under conditions less restrictive than would be acceptable for importation into the United States.

Finally, we proposed to add Greece and eight Regions in northern Italy (listed below) to the list of regions recognized as free of swine vesicular disease (SVD). Additionally, we proposed to add Greece and the eight Regions in Italy to the list of SVD-free regions whose exports of pork and pork products to the United States are subject to certain restrictions to guard against introducing SVD into this country. These restrictions were proposed because of the same situations with regard to SVD that were described in the preceding paragraph regarding FMD and Greece. We proposed to add the following Regions in northern Italy to these lists: Abruzzi, Emilia-Romagna, Friuli-Venezia Giulia (referred to in the proposed rule as Friuli), Liguria, Marche, Molise, Piemonte, and Valle d'Aosta.

Before developing our proposed rule, we conducted an analysis to determine the likelihood of introducing CSF from the European Union (EU) and to determine what, if any, mitigation measures we considered necessary. We assessed the likelihood of introducing CSF through the importation of live breeding swine, swine semen, and pork and pork products, and submitted the risk analysis for peer review.

We solicited comments concerning our proposal, including the risk analysis, for 60 days ending August 24, 1999. We received five comments by that date. They were from a domestic industry organization, a veterinary association, the EC, and other members of the public.

One of the comments expressed concerns with several aspects of our risk analysis. Based on that comment, and as recommended by the Department's Office of Risk Assessment and Cost Benefit Analysis based in part on peer review comments, we revised the initial risk analysis and included a supplement that presented in more detail specific information about CSF outbreaks in the EU.

On May 3, 2002, we published in the **Federal Register** a notice (67 FR 22388–22389, Docket No. 98–090–2) that the revised risk analysis was available for public review and we requested comments on the revised document. The comment period was initially scheduled to end July 2, 2002, but on July 5, 2002, in response to a request by a commenter, we published a notice in the **Federal Register** (67 FR 44798–44799, Docket No. 98–090–3) that reopened and extended the comment period until July 17, 2002. We received 21 comments by that date. They were from domestic and foreign industry organizations, individual businesses, a U.S. State Port Authority, the EC, a member State of the EU, and other members of the public.

We carefully considered all comments we received on our June 1999 proposal and our May 2002 notice of availability of the revised risk analysis. For the reasons given in the proposed rule and in this document, we are adopting our June 1999 proposed rule as a final rule, with the changes discussed below. (It should be noted that even though this final rule removes some importation restrictions on animals and products from certain foreign regions with regard to CSF and SVD, the importation of swine and swine products from the EU may continue to be prohibited or restricted due to the presence in the EU of other diseases affecting swine, such as brucellosis, pseudorabies, and tuberculosis.)

We will first discuss the issues raised by commenters in response to our June 1999 proposed rule, then we will discuss the issues raised in response to our revised risk analysis.

Comments on the June 1999 Proposed Rule

Of the five comments we received in response to our June 1999 proposed rule, three supported the proposal as written. Of the other two comments, one generally supported the proposal, but recommended certain changes. The other expressed concerns with a number of provisions of the proposal and its supporting documentation. We discuss below the issues raised by the commenters.

SVD in Italy

As discussed above, in our June 1999 proposed rule, we proposed to list eight Regions in Italy as those in which SVD is not known to exist. (In Italy, a "Region" is a type of political jurisdiction.) Those eight Regions were Abruzzi, Emilia-Romagna, Friuli-Venezia Giulia, Liguria, Marche, Molise, Piemonte, and Valle d'Aosta. One commenter requested that we also recognize the following nine Regions as those in which SVD does not exist: Lombardia, Trentino-Alto Adige, Veneto, Toscana, Umbria, Lazio, Basilicata, Puglia, and Sardegna. We have carefully evaluated the information contained in the comment, and believe that it would be appropriate to allow members of the public to comment on the change requested by the commenter. Therefore, we are not making any changes in this final rule in response to this comment, but we intend to initiate a separate notice and comment rulemaking regarding those additional Regions.

Further, because SVD was diagnosed in the Regions of Abruzzi, Emilia Romagna, Molise, and Piemonte in 2002, we are not including those Regions in this final rule as regions in which SVD does not exist. However, we are developing an updated evaluation of the SVD situation in those Regions. We will publish a notice in the **Federal Register** when the updated evaluation is ready for public review and will accept comment on the evaluation for a specified period of time. Following review of any comments we receive, we will determine whether it is appropriate to consider those Regions as regions in which SVD does not exist. If such a determination is made, we will publish a final rule to that effect in the **Federal Register**.

FMD in Greece

We proposed in our June 1999 proposal to recognize Greece as a region in which FMD does not exist. Following publication of that proposal, FMD was diagnosed in the summer of 2000 in cattle in several prefectures in Greece. However, since September 2000, there have been no incidences of FMD in that country. Therefore, on March 21, 2002, we published a proposal in the **Federal Register** (67 FR 13105–13108, Docket No. 01–059–1) to recognize Greece free of FMD. We solicited comments concerning our proposal for 60 days ending March 20, 2002, and received no comments. Following the comment period, we published a final rule in the **Federal Register** (67 FR 44524–44526, Docket No. 01–059–2) in which we adopted the proposed rule as a final rule without change.

Change in Terminology

Our regulations in 9 CFR chapter I use the term "hog cholera." When we published our June 1999 proposed rule, consistent with the existing regulations, we used the term "hog cholera." However, it is standard practice among veterinary practitioners in the international community to refer to hog cholera as "classical swine fever" or "CSF." Therefore, in the remainder of this final rule, including the regulatory text at the end of this document, we use the term "classical swine fever" (or "CSF") rather than "hog cholera." Additionally, for the sake of consistency throughout our regulations in 9 CFR chapter I, we are removing the term "hog cholera" wherever it appears in the existing regulations (*i.e.*, parts 71, 93, 94, 98, and 130) and adding in its place the term "classical swine fever."

Administrative Units Considered

As noted above, in Italy, the smallest administrative jurisdiction we considered for purposes of regionalization was the "Region." In Germany, we used the "kreis." One commenter said that it was not clear from the proposal why APHIS concluded that the Italian Region and the German kreis should be considered for regionalization purposes. The commenter stated that the proposal did not include information relating to unique characteristics of the regions and physical boundaries that may or may not be present. Another commenter agreed with our use of the kreis in Germany for CSF regionalization purposes but recommended that, in Italy, we use instead the "Unita Sanitarie Locali."

As discussed in our proposed rule, we chose to use the Italian "Region" and German "kreis" for purposes of regionalization because we considered them to be the smallest administrative jurisdictions in those countries that have effective oversight of normal animal movements into, out of, and within those jurisdictions, and that, in association with national authorities if necessary, have the responsibility for controlling animal disease locally. The commenter who suggested we use the Unita Sanitarie Locali as the smallest administrative jurisdiction in Italy did not offer any information as to how the Unita Sanitarie Locali meets those criteria. Therefore, we are not making any changes based on the comments received, but we welcome further information on this issue.

Information on Outbreaks

One commenter stated that the proposed rule did not include information relating to specific outbreaks in the regions addressed by the proposed rule, and that it would have been instructive for APHIS to have included in the proposed rule a map indicating where the CSF outbreaks occurred in relation to the proposed regionalization, along with a list of reasons for the outbreaks (*e.g.*, wild boar exposure, feeding of uncooked garbage, transport into the area, or unknown origin).

We agree that the type of information referred to by the commenter is important in assessing the CSF risk presented by imports from particular regions, and we considered those factors in our risk analysis. At the time we published the proposed rule, some of the information was available on the APHIS Internet website, which was referenced in the proposed rule. The supplement to our initial risk analysis illustrates in more detail the type of information referred to by the commenter.

Concern With Regionalization

One commenter on our June 1999 proposal expressed concern that, following publication of the proposed rule, an outbreak of CSF occurred in the Kreis Uckermark in the Land of Brandenburg in Germany, which was included in the proposal as an area in which CSF is not known to exist. The commenter stated further that, even

though the prevalence of CSF in wild boars in Brandenburg had been determined to be under 1 percent, that apparently was enough to lead to infection of the domestic population. The commenter concluded that there is insufficient control of the potential sources of the introduction of CSF into herds in Germany to allow that country to be regionalized.

When we developed the risk analysis on which we based our proposed rule, we included among our assumptions the probability that CSF outbreaks would continue to occur in the EU, just as we must assume there is some chance of an outbreak of a particular disease in any country we currently consider free of that disease. Starting from the assumption that future outbreaks of CSF would occur, we evaluated the risk of disease spread based on the length of time between the occurrence of CSF infections and the time that control efforts, such as implementation of new restriction zones, took effect. We concluded that breeding swine, swine semen, and pork and pork products could be imported with extremely low risk from the region we were proposing to establish in the EU, under the conditions set forth in the proposal. It should be noted that the information and data we used for our risk analysis were from outbreaks that occurred in 1997–1998, which constituted one of the worst CSF epidemics in the EU in recent history.

CSF in Germany

One commenter stated that no scientific justification was provided in the proposed rule for identifying the Kreis Vechta, the Kreis Warendorf, and the Kreis Altmarkkreis Salzwedel as those regions in which CSF is considered to exist, or for how the risk from other areas in Germany was assessed.

As we explained in our proposed rule, in establishing geographic boundaries for the regions, we used the boundaries of the smallest administrative jurisdiction that has effective oversight of normal animal movements into, out of, and within that jurisdiction, and that, in association with national authorities if necessary, has the responsibility for controlling animal disease locally. In Germany, this administrative unit is a *kreis*.

We proposed to continue to consider the kreis listed above as regions in which CSF is known to exist because each had an outbreak of CSF during the 6 months prior to the time we developed our proposed rule. In assessing the risk from the remaining areas of Germany, we assumed, as described above, that CSF outbreaks would continue in the EU, and we evaluated risk based on the length of time between the occurrence of infection in a region previously considered free of CSF by the EC and the time that control efforts took effect.

Delay in Disease Detection

In our proposed rule, we stated that, in 1997, an estimated 103 of 611 CSF outbreaks in the EU occurred outside any zones that were under restrictions because of CSF, and that, of those 103, only 1 was a swine semen collection center approved for export, and only 1 was a breeding operation that engaged in export sales. We stated further that epidemiological evidence suggests that the disease was present in various regions for 7 days to nearly 8 weeks before it was detected and the region was placed under restrictions. One commenter expressed concern that this demonstrated that several importations into the United States of semen and breeding stock could occur before a CSF outbreak is detected.

The commenter is correct in concluding that, with unmitigated importation, there is a significant risk of introducing CSF into the United States. Our risk analysis calculated that risk as a probability, and also calculated the probability if mitigation measures were applied. We evaluated the likely volume of imported products and the prevalence of infected versus noninfected products in the estimate of the probability that infected products would be imported. The risk of importing CSF-infected products is not zero but, as discussed in the risk analysis, is quite low. Of the products evaluated, the risk analysis identified swine semen as presenting the greatest risk. Therefore, we proposed that, in addition to the EU's routine biosecurity measures, before swine semen can be exported to the United States from the region in question, the donor boar must be held at the semen collection center for at least 40 days following collection of semen, and, along with all other swine at the semen collection center, exhibit no clinical signs of CSF.

Compliance With Office International des Epizooties (OIE) Guidelines

In discussing the quantitative risk analysis that we used as a basis for our proposed rule, we stated that one of the starting point assumptions we made was that OIE export guidelines are applied to the movement of animals and animal products within the EU. One commenter stated that, elsewhere in our proposal, we indicated we had to take into account that the EC released certain areas from restrictions prior to completion of a 6-month waiting period. The commenter expressed concern that our risk analysis appeared to be using an assumption that is not supported by current practice in the EU, and requested further documentation of adherence to the OIE standard before the proposed rule was made final.

Although we stated that we expected that OIE export guidelines would be applied to movement of animals and animal products within the EU, we did not build that assumption into our quantitative risk assessment. The quantitative assessment was based on the waiting periods actually used by the EU during the 1997–1998 epidemic. With regard to guidelines for export to the United States, whether a region is certified as being free of CSF must be based on U.S. criteria (*i.e.*, at least 6 months must have passed since eradication of the last outbreak of the disease).

One commenter stated it was not possible to determine from the site visit reports done prior to the proposed rule whether movement and import controls complied with EU directives. Additionally, said the commenter, information was not presented regarding compliance with directives regarding truck washing.

When conducting its site visit, the review team observed compliance with EC directives, truck washing, and tracking of swine movements through the "SANITEL–V" and "ANIMO" databases. (The SANITEL–V database is a computerized database in Belgium that contains information on animal identification, farm registration, and animal movements. The ANIMO database is an EU-wide database that contains origin, destination, and movement information regarding animal movements within the EU.)

Notification of Change in Disease Status

One commenter stated that the proposed rule did not describe the process by which the EU would notify APHIS of a change in regionalization status and how timely we expected that notification to be. The commenter stated additionally that the proposed rule included no discussion of the process by which APHIS would accept or reject a regionalization decision and the impact of that process on EU exports of animals and animal products to the United States.

The U.S.-EU Equivalency Agreement (an agreement covering sanitary measures affecting U.S.-EU trade in all animals and animal products) requires written notification, within 24 hours, of a change in disease status. If the EU recognizes a region in a previously disease-affected area to be free of a disease, any APHIS acceptance of the EU regionalization will be carried out through the rulemaking process, with an opportunity for the public to comment on and submit information regarding the regionalization.

Values Used in Our Risk Analysis

As noted above, before developing our proposed rule, we conducted an analysis to determine the likelihood of the introduction of CSF from the EU region in question, and to determine what, if any, measures we considered necessary to mitigate risk. We assessed the likelihood of the introduction of CSF through live breeding swine, swine semen, and pork and pork products.

In assessing the risk of CSF introduction, we incorporated certain numerical information into our mathematical model. For breeding swine, for example, we used input values for the following: The number of undetected, CSF-affected breeding farms eligible to supply animals for export, assuming that undetected CSF exists in the EU; the number of breeding herds eligible for export in the EU; the number of weeks that CSF remains undetected in EU breeding herds per year, assuming that undetected CSF exists in the EU; the number of breeding swine shipments per year; the number of breeding herds per shipment; the number of animals selected for export from any given breeding herd; and the probability that an individual animal is infected with CSF, assuming that there is infection in the herd.

One commenter questioned some of the input values we used. The input values in question, the commenter's concerns, and our responses are as follows:

1a. *Input value:* The number of undetected CSF-infected herds in the EU, assuming that undetected CSF exists in the EU within regions eligible to export breeding swine.

1b. *Comment:* It is unclear whether established restriction zones in the EU were based on information available before 1997. If this is not so, the number of herds may be underestimated due to the lack of complete information to identify those restriction zones. In other words, a *post hoc* evaluation of regions is invalid and underestimates the number of infected herds. It may also be useful to give this a triangular distribution, because it is based on the occurrence of one case. If there were not this one case, the model would interpret that there is no risk from breeding stock.

1c. *Response:* The information and data we used in the risk analysis for determining whether infected herds were inside established restriction zones were from outbreaks that occurred in 1997 and 1998. We obtained the information from epidemiological reports provided by the EU and from extensive discussions with EU representatives. The dates that the restriction zones were established were carefully compared to the dates that herds were believed to have become infected. Only one export-oriented swine semen center and one export-oriented breeding operation were identified as having become affected outside of established restriction zones.

We do not agree that the data we used underestimated the potential disease risk. The analysis is based on data from the most severe CSF outbreak documented in EU history and assumes that this event is typical of a severe situation in the EU that might occur in the future. This approach likely overestimates the actual risk. We believe that if the EU made epidemiological data available for the several years prior to the 1997 to 1998 outbreaks, and if these data were incorporated into the risk analysis, the estimated risk levels would be lower than those we reported.

With regard to the recommendation that we use a triangular distribution (*i.e*, a calculation of the minimum, most likely, and maximum estimate), we did sensitivity analyses (*i.e.*, the determination of how variations in input data affect probability outcomes) using a variety of scenarios. Although the results of these multiple analyses were not included in the original risk analysis document, we included them in the revised risk analysis. The results of the multiple analyses did not affect the conclusions of the analysis.

2a. *Input value.* The number of weeks that CSF remains undetected in EU breeding herds per year, assuming that undetected CSF exists in the EU (based on varying lengths of time in different areas of the EU).

2b. *Comment.* The differentiation of detection periods among areas appears to be based on very limited information. It is not clear why the areas need to be differentiated or what the mechanical logic is for the wide range of detection periods.

2c. *Response.* The information regarding the time that infection remained undetected in various locations in the EU was drawn from the actual outbreaks that occurred from 1997 to 1998. The rather substantial differences in duration among various locations (7 to 21 days in several areas to 53 days in one area) were due in part to the fact that some detections occurred in areas with ongoing CSF eradication efforts, which included active surveillance, while other detections occurred in areas where only passive surveillance was being used. In some instances, the initial detection within a country took a great deal longer than subsequent detections in other parts of the country because the initial detection caused heightened awareness and surveillance.

3a. *Input value.* Number of breeding herds per shipment. (The risk analysis used 1 for this value.)

3b. *Comment.* Is it policy that only one herd will be used in a shipment? If not, perhaps it should be.

3c. *Response.* This assumption was incorporated into some of the simulations we performed for the purposes of our risk analysis, because, historically, most shipments have involved one herd. However, the commenter did not provide, and we are not aware of, a disease risk reason to limit shipments to one herd. If all animals to be imported are moved in accordance with the regulations, including more than one herd in a shipment would not present an unacceptable increase in disease risk.

4a. *Input value.* Number of animals selected for export from any given breeding herd. (The geometric mean of the distribution for the number of swine per shipment was 6.125. For the purposes of our risk analysis, we used a value of 6.)

4b. *Comment.* It could be argued that using the geometric mean of 6 probably underestimates the size of future imports. It is more likely that substantial portions of the line will be imported to allow rapid transfer of genetics.

4c. *Response.* We agree that using the geometric mean could result in an underestimate of possible future imports. For this reason, we ran a simulation using an arithmetic mean (38 animals) as well, which is included in our revised risk analysis. We found that increasing the number of breeding swine in a shipment more than six-fold does not change our conclusion that the risk is still very low.

5a. *Input value.* Probability that an individual animal is infected with CSF, assuming that CSF exists in the herd; or proportion of infected animals in a semen center in which CSF exists. The risk analysis used a triangular distribution of 0.05, 0.15, and 0.40 for each of these probabilities. We noted in our risk analysis that indirect reports suggest the value may be extremely variable (*i.e.*, 25 percent to 100 percent, depending on circumstances).

5b. *Comment.* This is a subjective estimate with a value that is extremely variable. It is not clear why the upper

limit is 40 percent in this estimate. The need for the triangular estimate is understood, but the biological possibility of 100 percent is not accounted for.

5c. *Response.* Despite a 40 percent upper limit suggested by EC officials, we performed a sensitivity analysis on this upper limit, and also ran simulations with an upper limit of 100 percent, although that analysis was not reported in the original risk analysis. Using a 40 percent upper limit, the expected frequency of incursion was one or more in every 33,670 years. Using a 100 percent upper limit, the expected frequency of incursion was one or more in every 26,000 years, a 1.3-fold change. We included the results of these additional sensitivity analyses in our revised risk analysis.

Swine Semen Collection Centers

In § 98.38 of our proposed rule, we set forth conditions for the importation of swine semen from the multicountry area of the EU we were proposing to consider as one region. These conditions included origin requirements for the donor boar, requirements for isolation and testing prior to the boar's entry into the semen collection center, transportation requirements, and requirements for holding and observing the boar at the semen collection center for at least 40 days following collection of the semen. One commenter requested that an additional condition be included, *i.e.*, to require that the donor boar be serologically tested while at the semen collection center. The commenter stated that observation alone might not detect very subtle clinical signs of CSF infection.

We are making no changes based on this comment. All boars must be tested for CSF with negative results before entering the semen collection center. We do not consider it necessary to require additional testing at the center to ensure that the donor boar is not infected with CSF. Additionally, if an infected animal were held for at least 40 days at a collection center, it is very likely that the other animals being held at the center would provide a "sentinel effect"-that is, other animals exposed to the infected animal would likely show clinical signs of the disease while the infected animal was being held at the center. In developing our risk analysis, we created a scenario of maximum risk by not taking into account any sentinel effect. In actuality, it is likely that such an effect would provide a safeguard that an infected animal would be detected.

EU Trading Partners

One commenter said it was not clear from the proposal if importation from the EU region would be dependent on the United States considering countries that export animals and animal products into the EU region as free of CSF, or if the United States would accept the EU designation of its trading partners' CSF status.

Our consideration of whether to allow the importation of animals and animal products from a region in the EU was based on a number of factors. One of the factors we considered was that the exportation of swine into the EU from countries outside the EU is allowed under certain conditions if the animals are accompanied by a declaration that the countries are free of CSF, or if the animals were tested with negative results for CSF. Such movement controls are based on the status of countries outside the EU as recognized by the EU. Additionally, we considered the EU's ability to rapidly detect and eliminate any outbreaks of CSF that might occur within the EU. In our proposal, we discussed the surveillance for CSF that is carried out in the EU and the measures that would be taken to control and eradicate the disease in the event of an outbreak. After assessing these and other factors (as discussed in our proposed rule), we concluded that the conditions we proposed for importing breeding swine, swine semen, and pork and pork products into the United States from the EU would mitigate the risk of introducing CSF into this country.

CSF Outbreaks in France, Spain, Luxembourg, and Germany After June 1999

Following publication of our June 1999 proposed rule, there were CSF outbreaks in domestic swine in parts of the EU, including France, Luxembourg, Spain, and Germany. Following those outbreaks, each of the affected countries took action to eradicate CSF. At this time, we are developing an updated evaluation of the CSF situation in France, Luxembourg, and Spain, and defining the jurisdictional level we could recognize as a region within those countries. We will publish a notice in the **Federal Register** when the updated evaluation is ready for public review and will accept comment on the evaluation for a specified period of time. Following review of any comments we receive, we will determine whether it is appropriate to consider: (1) France, Luxembourg, and Spain (or an appropriate combination of the three) as countries in which CSF does not exist or (2) appropriate jurisdictional units of France and/or Spain as regions in which CSF does not exist. If such a determination is made, we will publish a final rule to that effect in the **Federal Register**.

Additionally, we anticipate developing a similar updated evaluation for those kreis in Germany that had CSF outbreaks after being included in the June 1999 proposed rule, for discussion in a separate notice in the **Federal Register**. Those areas of Germany are as follows: Kreis Heinsberg in the Land of Northrhine-Westphalia; Kreis Oldenberg in the Land of Lower Saxony; Kreis Uckermark in the Land of Brandenburg; Kreis Bernkastel-Wittlich in the Land of Rhineland Palatinate; Kreis Soltau-Fallingbostel in the Land of Lower Saxony; Kreis Rhein-Hunsruche in the Land of Rhineland-Palatinate; Kreis Bitburg-Prüm in the Land of Rhineland Palatinate; Kreis Trier-Saarburg and Kreis Südliche Weinstrasse in the Land of Rhineland Palatinate; and Kreis Donnersbergkreis in the Land of Rhineland Palatinate.

CSF Outbreak in Spain

One commenter expressed concern regarding the site visit report that APHIS completed prior to development of the proposed rule. The commenter noted that the site visit report indicated that no information was available at the time of its drafting regarding the source of an outbreak of CSF in the Province of Segovia in Spain. The commenter requested that any information that was subsequently obtained be made available to the public.

All information that has been made available to us by Spain is posted to the APHIS Internet website.[1] At this time, the source of the outbreak in Segovia has not been determined. However, the current epidemiological situation is being actively monitored in view of the recent outbreaks, and we are not relieving restrictions on imports from Spain at this time.

Movement of Swine Within Germany

One commenter stated that the site visit report noted that if CSF occurs in a district (kreis) in Germany, under EU standards, swine may not be exported to another country from anywhere in the State (Land) in which the district is located. However, districts in the State other than the affected district may move swine within Germany. The commenter stated that there is some question whether this practice continues at present and, if so, questioned whether this practice should affect how the United States views the disease status of Germany.

The type of movement within Germany that is referred to by the commenter is governed by a number of restrictions that reduce any disease risk that might otherwise be present. Swine that are moved from districts in a State other than an affected district must be clinically examined and serologically tested for CSF before being moved within Germany. After being moved, the swine must be held in isolation and clinically examined for 30 days.

Disease Surveillance in the EU

One commenter stated that the site visit report did not provide information on the level of active surveillance in areas next to the regions in the EU in which CSF is considered to exist.

As we stated in our proposed rule, if an outbreak of CSF occurs, eradication measures are conducted on the affected premises, and movement restrictions and active surveillance measures are implemented in surrounding areas. A protection zone with a radius of at least 3 kilometers and a surveillance zone with a radius of at least 10 kilometers are placed around the affected premises. Among the measures taken within the surveillance zone are the serological testing and clinical examination of all swine herds in the zone.

CSF Outbreaks in Previously Free Countries

At the time we published our proposed rule, there were certain countries in Europe that the existing regulations listed as free of CSF. Because these countries were already considered free of the disease, we did not propose to include them in the multicountry EU region we identified in our proposal. One commenter questioned whether, in the event of a CSF outbreak in those "free" countries, the United States would accept the EU regionalization strategy in those countries, or would instead address the situation on an "entire country" basis. The same commenter stated that the final rule should specify when and how APHIS would choose to invoke safeguarding mechanisms to restrict or prohibit imports from the EU, rather than accept and approve EU regionalization strategies and requests.

We would treat a CSF outbreak in a country we had considered free of the disease in the same way that we would treat an outbreak of any disease of concern in a "free" country. According to Article 12 of the U.S.-EU Equivalency Agreement: "Either Party may take provisional measures necessary for the protection of public or animal health. These measures shall be notified within 24 hours to the other Party and, on request, consultations regarding the situation shall be held within 14 days. The Parties shall take due account of any information provided through such consultations, and shall endeavor to avoid unnecessary disruption to trade. * * *"

In this final rule, we are adding a new § 92.3 that provides that whenever the EC establishes a quarantine in the EU in a region APHIS recognizes as one in which a disease is not known to exist, and the EC imposes restrictions on the movement of animals or animal products from the quarantined area, such animals and animal products are prohibited importation into the United States. If the outbreak appeared likely to continue in a limited part of the country, we would impose a ban on products from the area in question and, through rulemaking, would change the disease status listing of that part of the country. If the outbreak appeared to be spreading to other areas of the country, we would initiate rulemaking to change the disease status listing of the entire country.

FMD in Greece; SVD in Greece and Italy

As noted above, in our proposed rule, we proposed to add Greece to the list of regions recognized as free of FMD. Additionally, we proposed to add Greece and eight Regions in northern Italy to the list of regions recognized as free of SVD. One commenter stated that the information regarding Greece upon which the proposal was based was collected in 1997, and expressed concern that the information did not address political unrest in Yugoslavia and an FMD outbreak in Turkey. The commenter also questioned why APHIS did not consider it necessary to conduct a site visit in Italy.

As noted above, following publication of our June 1999 proposed rule, several outbreaks of FMD occurred in Greece in the summer of 2000. No additional outbreaks have occurred since September 2000. In January 2001, APHIS representatives conducted a site visit to Greece to obtain evidence regarding the FMD status of that country and determined that a proposal to consider Greece free of FMD was warranted. In March 2001, APHIS published in the **Federal Register** a proposal to consider Greece free of the disease, received no comments on the proposal, and made the proposal final in July 2002.

With regard to SVD, we are making no changes based on the comment. The last outbreak of the disease in Greece was diagnosed in 1979. Yugoslavia is recognized as a region in which SVD does not exist. However, we are adding Greece to the list in § 94.13 of SVD-free regions whose exports of pork and pork products to the United States are subject to certain restrictions. We are applying these restrictions because Greece supplements its national pork supply by importing fresh (chilled or frozen) pork from regions where SVD exists; has a common land border with certain regions where SVD exists; and imports swine from regions where SVD exists under conditions less restrictive than would be acceptable for importation into the United States.

We did not conduct a site visit to Italy because we had conducted a site visit to that country 2 years previously (in March 1997) in connection with the Italian request to be recognized as free of African swine fever. That site visit gave us a clear understanding of, and confidence in, Italy's veterinary infrastructure, surveillance, diagnostic capabilities, and detection capabilities.

Noncommingling of Products

One commenter stated that the proposed rule did not describe how APHIS would validate that products destined for export from Greece or Italy are not commingled with or exposed to products originating in regions where SVD exists.

Such validation will be carried out in the same way as in other countries that export animals and animal products to the United States. We require certification by veterinary officials in those countries that our regulatory requirements have been met. Additionally, initial inspections of slaughtering and processing establishments are conducted by the Department's Food Safety and Inspection Service (FSIS) and APHIS, and periodic inspections are subsequently conducted by FSIS.

Comments Received on Revised Risk Analysis

Of the 21 comments we received in response to our May 2002 notice of availability, one requested an extension of the comment period, and all but two of the rest of the commenters either supported the results of the revised risk analysis or recommended that the June 1999 proposed rule be made final.

Of the remaining two commenters, one expressed the opinion that the risk of introducing CSF virus into the United

[1] The Internet address for accessing the information is *http://www.aphis.usda.gov/vs/ncie/reg-request.html*. At the bottom of that website page, click on "Information previously submitted by Regions requesting export approval and their supporting documentation." At the next screen, click on the triangle beside "European Union/Not Specified/Classical Swine Fever," then on the triangle beside "Information Supporting Request."

States via the import of semen is much less than the one estimated in the risk analysis, based on the following reasons:

• Although the swine semen simulation model used in the risk analysis assumes that an outbreak of CSF occurs each 2 years in a semen collection center in the region being analyzed, between 1991 and 2002 only one CSF outbreak occurred in a semen collection center in the region in question.

• Although the risk analysis assumed that the "risky period" in the case of an outbreak in a semen collection center would last as long as in any other pig holding—*i.e.*, 3–4 weeks on average—this does not correspond to what actually happened in the Netherlands in 1997, when CSF was introduced into a swine semen center and was recognized in other swine holdings in the vicinity of the center well before confirmation of the disease in the center itself.

• Improvements have been made through EC legislation to reduce the risk of spreading CSF through swine semen. This legislation took into account the experiences of the 1997–1998 outbreak.

The commenter requested that APHIS eliminate the requirement that semen collected in the EU region in question be held for 40 days before being exported to the United States. The commenter further requested that, if APHIS believes that some mitigating measures on the importation of semen are necessary, it consider alternative measures such as the testing of semen before exportation by virological tests.

We are making no changes based on this comment. The application of a 40-day hold on semen was based on the results of the risk assessment we conducted for the proposed rule, which indicated that, without mitigation, the importation of swine semen from the EU region in question would present a disproportionate risk of introducing CSF into the United States. The 40-day hold was determined to be an effective mitigation measure. If we receive a request from a member of the public to consider an alternative means of mitigation, along with supporting information with which to evaluate such a request, or if we receive information that indicates that no mitigation measures may be necessary, we will conduct an assessment of the risk of importing swine semen into the United States under the conditions suggested. If such an assessment indicates that the change would be appropriate, we will publish, in accordance with the Administrative Procedure Act (APA), a proposal in the **Federal Register** to change the regulations accordingly, and provide an opportunity for other members of the public to comment on the proposed action.

The commenter also stated that the provisions of the final rule should reflect the current CSF situation in the EU, not the situation in 1999.

We published our June 1999 proposal in response to a request from the EC that we consider a multi-country area in the EU as one region, and we conducted an analysis of the risk of the introduction of CSF from that region at that time. In accordance with the APA, we invited comments on the proposed rule and are addressing in this final rule the comments we received. We are receptive to requests for further changes to the regulations and will address such changes through notice and comment rulemaking in accordance with the APA. If the existing situation appears to warrant a new analysis, we will conduct one.

One commenter raised a number of issues regarding our proposed rule and specific provisions of the risk analysis. We address below the issues raised by that commenter in a comment/response format.

Comment: APHIS' scientific approach toward the regionalization of the EU and its member States and sublevels seems to differ from APHIS' approach to other countries or regions. Continuing outbreaks of CSF in the EU call into question the ability of the EU to apply appropriate disease control measures and how APHIS can evaluate risk in a dynamic situation.

Response: We agree that the approach we proposed to regionalizing the EU is somewhat different from the way we have historically approached other regionalization actions. This is due to the nature of the request from the EU, which asked that multiple countries be considered as one region, and the infrastructure and regulatory factors specific to the region in question. In recognition of what the commenter refers to as a "dynamic situation," the risk analysis we developed recognized the possibility of continuing sporadic CSF outbreaks in the EU region in question, and the risks associated with these outbreaks, rather than looking at a specific geographic area as free of the disease. Risk was defined as a quantitative probability based on the disease history of the region and was approached on a commodity basis, rather than as an evaluation of disease status. The approach in our risk analysis and proposed rulemaking is consistent with APHIS' obligation under the World Trade Organization Agreement on Sanitary and Phytosanitary Measures (WTO–SPS Agreement) to recognize not only disease-free areas, but also areas of low disease prevalence for which mitigations can be established to reduce risk.

Comment: CSF has been diagnosed in numerous locations in the EU since the data for the revised risk analysis was collected, and these new data should be incorporated into a risk analysis to allow for an accurate conclusion. We believe an outbreak in domestic swine in France in 2002 due to exposure to wild boar contradicted an assumption in the risk analysis that CSF outbreaks in domestic swine in France do not occur due to exposure to wild boar. The descriptive observations in the risk analysis do not predict clearly where outbreaks may occur and, although APHIS stated in its risk analysis that an historical reduction in the spread of CSF from wild boar could be attributed to EU surveillance and control activities, those activities were considered inadequate by the EU to counter outbreaks that occurred after publication of the June 1999 proposed rule, as evidenced by the EC's decision in May 2002 to take further measures for the control of CSF.

Response: Much of the data used in the risk analysis were generated during an extremely severe CSF epidemic that occurred in the EU in 1997 and 1998. As discussed in the risk analysis, this CSF epidemic is considered the most severe the EU has ever experienced. The risk estimates generated in the analysis took into account the effectiveness of EU control measures, and where these measures failed, under these severe conditions. The risk analysis, therefore, anticipates future CSF epidemics of the same magnitude and the same level of detection and control failures as occurred during the 1997–98 epidemic. Given that recent CSF epidemics have been of a lesser magnitude and reflect fewer failures in detection and control, they fall within the expectations of the current risk analysis. Incorporating the data from these recent epidemics into the analysis would likely reduce the estimated risk.

We do not agree that our risk analysis assumed that CSF outbreaks in domestic swine in France do not occur due to exposure to wild boar. The statement that, at the time of the risk analysis, there had not been a CSF outbreak in France was not meant to imply that outbreaks in domestic swine do not occur due to exposure to wild boar, but was simply an observation of what had or had not occurred. The risk analysis recognized the possibility of continuing sporadic outbreaks anywhere in the EU. As discussed above, given that recent CSF epidemics are of a lower magnitude and reflect fewer failures in detection and control, they fall within the expectations of the risk analysis. The risk analysis was not intended to predict where outbreaks might occur in the EU, but simply to assess the risk to the United States from future situations in the EU where CSF epidemics reach the same magnitude and the same level of detection and control failures as occurred during the 1997–98 epidemic. Again, the 1997–98 CSF epidemic is considered the most severe the EU has ever experienced.

Comment: Unless APHIS establishes what level of risk of a CSF incursion—as measured by "the expected frequency of one CSF incursion every 'x' years"—it considers acceptable, it is difficult to assess the different levels of risk that are calculated in the risk analysis.

Response: Through the Animal Health Protection Act (AHPA) (7 U.S.C. 8301–8317), Congress declared that "the Secretary may prohibit or restrict the importation or entry of any animal, article, or means of conveyance * * * if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock" (7 U.S.C. 8303(a)). Neither the AHPA nor the Secretary through regulations has delineated all the specific conditions that might be considered necessary to protect against the introduction of animal diseases or pests. This allows APHIS to evaluate the specific animal diseases or pests of concern and impose the specific importation conditions necessary to reduce sufficiently the risk of the introduction of such diseases and pests.

APHIS has a long history of evaluating countries or other regions qualitatively for animal disease risk, including the risk of introducing CSF. A qualitative evaluation for this rulemaking was conducted in accordance with the standard approach described in 9 CFR 92.2. The results of this evaluation are presented throughout the final report of the risk analysis.

For this rulemaking, APHIS also conducted a quantitative assessment of the risks. APHIS estimated data parameters for input into the quantitative model that describe risks associated with the most severe outbreak of CSF that has ever occurred in the EU. APHIS reported the results of the assessment as the likelihood of one or more incursions per year or the mean time between incursions. Reporting results using quantitative frequency values of this type was not meant to provide, or imply that APHIS has identified, a precise frequency of incursion as an Appropriate Level of Protection or Acceptable Level of Risk (ALOP or ALOR). Rather, APHIS used these results to assess the probable range or degree of the likelihood of introducing CSF from the EU and what mitigating importation conditions, if any, need to be imposed to further decrease the degree of such likelihood. In this particular case, irrespective of the precise frequency of events estimated by the model, the numerical values suggested that the frequency of CSF introduction by breeding swine and pork from the EU would be extremely low, as would be the case with swine semen with mitigation. Using the information available to it, APHIS was able to determine the likelihood of introducing CSF from the EU, assess the different risk levels, and decide if any mitigation measures were necessary without having to pinpoint an exact ALOP or ALOR.

Comment: The OIE Code describes four components of risk analysis-release assessment, exposure assessment, consequence assessment, and risk estimation— but APHIS did not conduct a consequence assessment because APHIS considered the risks estimated for release and exposure "very small." APHIS should complete all four steps in its risk analysis, due to the extremely wide margins around the most likely risk estimates, as well as different risks to the U.S. swine populations depending on the route of exposure (*e.g.*, infected meat vs. infected semen).

Response: OIE guidelines state that, if the release or exposure assessment demonstrates no significant risk, the risk assessment may conclude. APHIS addressed consequences in its analysis. However, because the risk values for both release and exposure were very small, it did not conduct a detailed consequence assessment. However, the risk analysis does address all components listed in the OIE guidelines.

Comment: In conducting its risk analysis, did APHIS consider assessing CSF risk from specific discrete areas in the EU countries, rather than in the EU region as a whole? Perhaps this type of analysis would have identified specific areas with higher risk levels and the need for additional mitigation measures. APHIS should discuss the appropriateness of establishing different levels of risk for different areas.

Response: The risk analysis that APHIS conducted considered multiple Member States of the EU as one region. This approach was in response to a request by the EC that the countries in question be considered together as one region. The approach we have taken is actually a conservative one with regard to disease risk, in that we are continuing to prohibit imports of swine and swine products from parts of or entire Member States that had an outbreak of CSF either shortly before we published our 1999 proposed rule or since that time. In those parts of the EU where we are removing prohibitions on imports due to CSF, we are also applying mitigating measures with regard to the importation of swine semen, in recognition of the trade practices among the EU Member States in the region.

Comment: It was not clear from the risk analysis how primary and secondary outbreaks are factored into the evaluation of risk. It appears that any infected herd, regardless of whether its infection was considered primary or secondary, could contribute to CSF risks prior to detection. In the report from the APHIS 2000 site visit to the EU, it was not clear whether the EU was immediately notifying the United States of secondary outbreaks of CSF. The United States might be exposed to CSF from animals or products from areas of secondary outbreaks.

Response: In the December 2000 risk analysis (Section II, "Spatial and Temporal Considerations," in "Temporal Trends in Primary versus Secondary Outbreaks"), we used the following definitions for primary and secondary outbreaks: "For purposes of this discussion, APHIS is defining a primary outbreak as one that occurred in domestic swine in a previously free area. The smallest area under consideration by APHIS in this definition is a county-level equivalent (*e.g., kreis*) that had not recently reported a CSF outbreak attributed to wild boar, swill feeding, or any other (including unknown) cause. Secondary outbreaks are defined as other outbreaks and are generally attributed to causes such as the purchase of animals or contacts with persons or transport equipment from other premises with infected domesticated swine." The commenter is correct that any herd, regardless of whether it was considered a primary or secondary outbreak could contribute to risks prior to detection. However, even considering changes in the levels of secondary spread from recent outbreaks in areas like Germany, the magnitude and scope of this spread is far less than occurred in the Netherlands in 1997–98, which was the most severe outbreak in the region in question in recent history.

The practice of the EC is to consider any disease outbreak a primary outbreak if it occurs outside the administrative unit where another primary outbreak has already occurred. Therefore,

notification must be given of outbreaks in any areas that are not currently under restriction, even if they are epidemiologically linked to outbreaks that have already occurred in another administrative unit. Where secondary outbreaks occur in areas that have already had a primary outbreak, movement from that area will have already been shut down due to the primary outbreak.

Comment: It may be difficult to detect CSF quickly, as witnessed by the 1997 outbreaks in the Netherlands, where it was estimated the CSF virus was detected approximately 6 weeks after it was introduced. Quick detection may be hindered by presumption that clinical symptoms are caused by a disease other than CSF, such as when diagnosis of CSF in the United Kingdom was delayed due to confusion of CSF with Postweaning Multi-Systemic Wasting Syndrome (PMWS) and Porcine Dermatitis and Nephropathy Syndrome (PDNS).

Response: With regard to outbreaks in the Netherlands, the risk analysis took into account the actual detection delays that occurred during the 1997–98 epidemic, including the 6-week time period the commenter mentioned for the Netherlands. With regard to the potential of misdiagnosing CSF as PMWS or PDNS, since the CSF outbreak in the United Kingdom, the EC has adopted a CSF Diagnostic Manual, taking into account the experience gained during outbreaks in the United Kingdom and in other EU Member States. Additionally, recent improvements in CSF diagnosis have been made through the development of polymerase chain reaction techniques, which are particularly useful in combination with postmortem examination and histopathology when CSF might otherwise be confused with other diseases.

Comment: How does APHIS intend to enforce its prohibition on the importation of products and animals from EU areas that APHIS considers to be affected with CSF, if the EU allows movement among its member States from such areas before APHIS recognizes the areas as CSF-free? How will movements within the EU be monitored to ensure that products and animals are not moved from areas considered restricted regions by the EU?

Response: In determining which areas in the EU are considered "CSF-affected," APHIS will apply the criterion of whether at least 6 months have elapsed since the last incidence of CSF in the area, and will prohibit imports of swine and swine products from areas that APHIS does not consider CSF-free. This should be verifiable from the certification provided by the exporting region. For regions from which importation is not prohibited due to CSF, APHIS will require certification of region of origin by the exporting country.

Comment: The proposed rule did not describe how animal products would be traced if there were an outbreak outside the areas in which CSF is considered to exist, and how such an outbreak would affect products already in the United States or in transit to the United States. How will APHIS track and keep its port inspectors notified as to which areas in the EU are allowed to export swine, swine products, and swine semen to the United States?

Response: In the event a trading partner should have an outbreak of CSF, we would follow the same notification procedures that we follow for any disease of concern. Any prohibited or restricted articles in transit would be stopped at the port of importation into the United States. If a product had already passed through a port of entry, we would trace the product by means of the importer's distribution records.

Comment: APHIS should discuss in the final rule any comments on its June 1999 risk analysis that were generated by peer review of the analysis.

Response: The peer review comments focused on lack of transparency, identification of data sources, sensitivity analysis, listing of mitigation options, and conformance with OIE format. The comments suggested further that the analysis be revised to expand its hazard characterization, taking into account the spatial and temporal nature of the outbreaks that had occurred in the EU, including analysis of risk patterns, primary outbreaks versus secondary or tertiary ones, and pathways of disease spread.

In response to these comments, APHIS revised the presentation of the quantitative model. These revisions appear in Section I of the 2000 analysis. The document was reformatted to conform more closely with OIE guidelines, and includes a list of mitigation options. APHIS also clarified the description of the quantitative model and clearly identified data sources. Sensitivity analysis was conducted on some input values.

In addition, APHIS requested additional data from the EU to support a spatial and temporal analysis. Data collected included an update of the epidemiological information on which the 1999 analysis was based, as well as new information on the origin of outbreaks in space and time, disease surveillance in feral swine and wild boars, patterns of animal movement, maps of local veterinary administrative units in areas where outbreaks occurred, and information on herd and animal density. APHIS performed a spatial and temporal analysis that was presented as Section II of the revised analysis.

Comment: Will the risk analysis be reviewed and updated by APHIS in the event additional countries join the EU?

Response: In the event additional countries join the EU, we will initiate an assessment of CSF risk from those countries upon request by the EC. If, based on such a risk assessment, we believe restrictions from those countries with regard to CSF could safely be relieved, we would propose such a change through notice and comment rulemaking.

Comment: In calculating risk, the risk analysis factored in a "risky period" of 35 days following an outbreak, during which the disease may or may not be identified. Because the clinical signs of CSF are the same as for a number of other swine diseases, identification of CSF could be delayed. How would the probabilities of CSF introduction into the United States change if a 42-day risky period is used?

Response: The analysis incorporated the actual difficulties the Netherlands encountered in detecting CSF in 1997 as well as the actual detection difficulties of other EU Member States throughout the epidemic. The risky periods included in the analysis and described under variable "b" for each of the three models of the risk analysis were: (a) the Netherlands, 35 days; (b) the Lerida province in Spain, 53 days; (c) the Segovia, Madrid, and Toledo provinces in Spain, 7 to 21 days (most likely 10 days); (d) Belgium, 42 days; (e) Italy, 21 days; (f) Germany, 7 to 21 days (most likely 10 days). Therefore, the maximum risky period considered in the analysis was 53 days based on Spain's experience, which is greater than the 42 days suggested by the commenter. The risky period for any specific Member State was not analyzed individually, but rather was incorporated into an overall probability distribution of the risky period for all of the EU Member States under consideration. This probability distribution and its derivation are described in the risk analysis document. While the commenter is correct that problems with detection ability could be compounded even further in the United States, it is only the EU's ability to detect CSF that is being examined in the risk analysis.

Comment: In the EU in 1997, 611 outbreaks of CSF were confirmed, and 103 of the 611 were in farms outside protection zones established during the

outbreaks. Although, in its risk analysis, APHIS considered the remaining 508 herds as not contributing to further spread of the disease during the "risky period," experience with disease movement through a variety of pathways indicates that CSF would be expected to spread from the protection zones.

Response: The 103 outbreaks occurring outside protection zones include any spread that occurred from the 508 outbreaks inside the protection zones to outside the protection zones.

Comment: APHIS stated in its risk analysis that an area can be designated as CSF-free if a case of CSF has not been detected for at least 6 months. What changes in the risk analysis would result if new criteria with a shorter length of time were established as the standard APHIS would use?

Response: The 6-month period referred to by the commenter is longer than the time that actual protection zones were maintained in the EU after the last case of CSF occurred in the zone. The risk analysis was based on the actual times the protection zones were maintained. Therefore, if a 6-month waiting period were applied, the risk would be reduced to levels below those estimated in the analysis. The additional mitigative effect of the longer 6-month waiting period could not be explicitly incorporated into the risk estimates because of the lack of actual observations on which to base such estimates.

Comment: In its risk model for breeding swine, APHIS assumed that each shipment of breeding swine for export originated from only a single farm. Is this a valid assumption? How would the probability of disease introduction change if this assumption were not made?

Response: APHIS made the assumption based on data available from the United Kingdom and Denmark. Import records showed that most shipments from these EU Member States originated from a single herd. APHIS was unable to obtain specific information for other Member States, so we assumed for the purposes of the risk analysis that each shipment was represented by one breeding herd. For a given number of imported breeding animals, any increase in risk caused by increasing the number of herds would be largely offset by the decrease in risk resulting from decreasing the number of animals selected per herd. The overall effect of a small increase in the number of herds of origin would be expected to be negligible, given the following: (1) The low within-herd prevalence that is likely for an undetected infected herd; (2) breeding animals would not likely be shipped if there were evidence of any type of infection in the shipment, regardless of whether an animal had been specifically identified as being infected with CSF; and (3) the overall number of imported animals is held constant.

Comment: Will this final rule change the quarantine and testing protocols for breeding swine imported into the United States?

Response: This final rule will change the listing of regions we consider to be affected with CSF and will affect the requirements an exporting region would have to meet in the absence of any other disease restrictions applicable to swine and swine products. It will not affect the current quarantine and testing protocols for breeding swine imported into the United States. If breeding stock is imported into the United States from regions in the EU considered to be free of CSF, the animals would still be required to undergo preembarkation and post-importation quarantine to ensure that they are not affected with brucellosis, tuberculosis, or pseudorabies.

Comment: In its sensitivity analysis, APHIS appeared to gauge changes in one variable independently of changes in another. For instance, the analysis determined the effect of varying the proportion over time of infected breeding farms exporting to the United States independently of determining the effect of varying the probability that an animal in a CSF-infected herd is infected with CSF. APHIS should evaluate concurrently these changes to the model to determine their simultaneous effect on the probability of one or more CSF incursions in a year.

Response: The purpose of the sensitivity analysis was to demonstrate the effect of changing individual input values in the model. The most likely risk estimates changed only minimally as a result of changing either of the two input values mentioned by the commenter, and changing both simultaneously would not be expected to result in a more substantial change. Although the range of uncertainty in the risk estimates did change substantially (a nine-fold change) by changing the distribution used for the input value "Effect of varying the proportion over time of infected breeding swine farms exporting to the United States," this change too would not be substantively affected by changing both input values simultaneously.

Comment: The beta distribution (a probability distribution that is used to estimate the variability around a proportion) used to describe the relationship of the model term g/h (the probability that a randomly selected breeding herd has undetected CSF) in the breeding swine model could be viewed as too conservative to adequately describe the expected outbreak frequency, and a triangular distribution (a calculation of the minimum, most likely, and maximum estimate) that uses a more realistic description of the 1997 outbreak in the Netherlands is required. The analysis underestimated the number of herds that would become infected before the disease was diagnosed. An estimate of the number of herds infected during this "risky period" should be used for "g" (the number of infected breeding herds with undetected CSF) and provide a basis for determining the parameters of the triangular distribution.

Response: We disagree with the commenter's suggestion to use a triangular rather than a beta distribution to represent the variability around the proportion g/h. The use of a beta distribution to represent this variability is consistent with well-established statistical theory. A triangular distribution is generally used to represent a rough guess in the absence of actual observational data and has no theoretical foundation.

Comment: The risk analysis indicated a "maximum" result of one CSF incursion in breeding swine every 4,880 years, but a "most likely" result of one CSF incursion every 33,700 years. How does APHIS view the differences in the values?

Response: As noted above, the numerical values suggest that frequency of introduction by any commodity that was considered in the analysis, even with no import mitigations applied, was extremely low.

Comment: What does APHIS consider the estimated sensitivity of the serologic assay(s) being considered in the model? If the sensitivity is anything less than 100 percent, it should be included in the development of the model.

Response: The sensitivity of the serological assay for CSF in the EU is estimated at between 85 and 95 percent. However, since serological testing was not considered in the risk analysis as a potential mitigation for imported breeding swine, there was no need to include such an estimate in the model. If the commenter's question is regarding the EU's ability to detect CSF in its surveillance activities, it should be noted that risk analysis was based on a retrospective evaluation of the EU's actual detection success in the 1997–98 epidemic. Therefore, an estimate of the sensitivity of the serological assay was not required. Only evidence of the

observed success rate in detection and control, or, in other words, the measurements of the risky periods, was needed.

Comment: In its June 1999 risk analysis, APHIS stated that the starting risk level of CSF introduction by swine semen was 1 or more incursions in an average of 1,842 years, but that holding semen donor boars and observing them clinically for 40 days after semen collection reduced this likelihood to 1 or more outbreaks in 257.7 million years. In its December 2000 risk analysis, APHIS states that holding the swine for 40 days would result in a risk estimate of 1 or more incursions in an average of 8,090 years. How does APHIS explain the discrepancy between the first and the second analysis?

Response: In the June 1999 risk analysis, the 40-day holding period included the additional estimated mitigative effect of multiple animals being held together during the 40-day period. In other words, the June 1999 analysis incorporated a sentinel effect that required only one of the group of animals being held together to show observable signs of infection for detection to occur. In the revised December 2000 risk analysis, this sentinel effect was dropped from the analysis. The December 2000 risk analysis assumes that only one animal is held and is based on whether this specific animal shows observable signs. Dropping the sentinel effect from the analysis results in a substantial increase in the estimated risk. Although we believe this overestimates the risk, the sentinel effect was dropped from the analysis because there were no substantiated data available to support an estimate of the number of animals that might be held together. The assumption of no sentinel effect is described in the analysis in the discussion of variable "k".

Comment: APHIS stated in its risk analysis that additional mitigation could be accomplished by employing serological testing. APHIS, therefore, should evaluate the change in risk that would occur if such testing were required. During the 1997 CSF outbreak in the Netherlands, some boars in a semen collection center that were initially considered not to be infected with CSF, based on the absence of clinical signs, were tested the following day and found to be infected. It appears an outbreak of CSF in the semen collection center followed the transport of some boars into the center in the same means of conveyance used earlier for sows from a presumed infected farm. This apparent biosecurity problem raises questions about the assumptions used in the model in the risk analysis.

Response: The risk analysis included the fact that the CSF agent was introduced into the semen collection center during the risky period-*i.e.*, prior to CSF detection and control in the Netherlands. This information was incorporated into variable "g" (the number of affected swine semen collection centers with undetected CSF) in the swine semen model. Therefore, the breakdown in biosecurity that occurred and the unclear clinical signs that were presented were already accounted for in the risk analysis model, which prompted the proposed inclusion of a 40-day holding period on swine semen before export. Based on the reduced level of risk when such a holding period is required, we see no reason to additionally evaluate the effect of requiring the serological testing referred to by the commenter.

Comment: Many of the approved swine semen collection centers in the EU are located in Spain, Germany, and France, all countries in which CSF outbreaks have occurred relatively recently.

Response: As noted above, we are continuing to apply import prohibitions due to CSF on those parts of countries or entire countries where a CSF outbreak has occurred since our June 1999 proposal. As we discussed earlier, included in such areas are Spain, France, parts of Germany, and Luxembourg.

Comment: In establishing the eligibility of the semen of a boar for export to the United States, is it required that no new boars enter the stud (the semen collection facility) during the 30-day isolation period and 40-day incubation period of the specific donor boar in question. Is serologic testing a component of the isolation and incubation protocol?

Response: Serologic testing and isolation of boars is required by the EU prior to the boars entry into the semen collection center. Once the semen is collected, whether the boars are kept isolated will not have any significant effect on import risk.

Comment: In evaluating the sensitivity of its risk model (*i.e.*, its determination of how variations in input data affect probability outcomes), APHIS stated that it "considered a distribution to address uncertainty unnecessary since the assumptions used reflected a situation worse than there were data to support." This statement seems to contradict itself, because a major justification for conducting a sensitivity analysis is the lack of a good estimate for a variable.

Response: The statement in the risk analysis that the commenter is referring to was in regard to only one scenario of the sensitivity analysis. In that scenario, the point estimate of the number of infected semen centers exporting semen to the United States was doubled in order to see the effect on the risk estimates. This scenario was created to isolate the effect of altering the number of semen centers that were infected, which could best be accomplished by comparing the model results using two alternative point estimates. However, another scenario was also run, and is documented in the risk analysis, where a probability distribution (specifically a beta distribution) was used to represent the number of infected semen centers. We devoted attention to running multiple scenarios for the number of infected semen centers because we viewed this factor as a critical model variable.

Comment: If the risk "maximum result" were selected in the analysis, the result would be an expected frequency of a CSF incursion due to imported semen every 694 years, in contrast to every 1,840 years for the "most likely value." The sensitivity analysis varying the probability of an animal as CSF infected in a CSF-infected center results in a "most likely value" of one or more incursions every 903 years, and a "maximum value" of one or more incursions every 278 years, which are similar to the values for the scenario of an approved semen center becoming infected with CSF every year. Considering this level of risk, what would be the impact on risk to assume mitigation measures in addition to the 40-day hold on semen included in the proposed rule?

Response: The value referred to by the commenter was determined before any mitigating measures were introduced into the risk calculations. With the introduction of a 40-day waiting period before semen may be exported, even the maximum value is no more than one or more incursions every 2,430 years. However, the most likely value for the expected frequency is one or more incursions every 8,090 years.

Comment: Because semen seems to pose the highest risk of all swine commodities considered for export to the United States, it could be considered important to survey the U.S. industry regarding the types of importations that are likely in the future, in order to ensure that the assumptions that were used in the model are appropriate for future importations. The commenter suggested such survey information might include countries and other regions from which imports would be requested, the number of doses likely, and the number of boars per shipment.

Response: In compiling data for the risk analysis, APHIS contacted several major breeding companies regarding their plans for importation. Although the companies gave no indication at the time of significant plans for importations, the risk analysis nonetheless assumed that such importations would occur.

Comment: APHIS stated that requirements for inspection by the Department's Food Safety and Inspection Service (FSIS) would reduce the risk of importing infected product into the United States even further than estimated in the risk analysis. Are there any rapid testing protocols, or pathognomonic (distinctly characteristic) lesions or clinical signs, that would lead an FSIS inspector to be concerned about CSF infection in a particular animal or pork product?

Response: There is no commercially practical test for the CSF virus in meat and meat products. Our statement in the proposed rule addressed ante- and post-mortem inspection of animals. Such inspection evaluates the general health of the animal to be slaughtered. One of the common characteristics of CSF is a high percentage of a swine herd sick at the ante-mortem stage. In addition, high temperature and purplish discoloration of the abdominal skin may be noticed. CSF does cause lesions on various organs that can be detectable post-mortem. Although we noted the benefit of inspection, the effect of such inspection was not considered in our risk analysis.

Comment: APHIS should explain why more emphasis was not applied to interpreting the "maximum likelihood" estimates regarding the risk of CSF introduction into the United States in addition to or rather than the "most likely" estimates. In risk evaluations, an evaluation of the range around the "most likely" estimate should carry as much weight as an evaluation of the "most likely" estimate itself.

Response: The most likely risk estimates were highlighted as the central tendencies of the model output distributions. However, maximum risk estimates (as well as minimum, mean, and median estimates) were also presented as part of the output of each scenario that was run for each model. In this way, readers had full information about the central tendencies and the ranges of the model outputs. However, the maximum risk estimates are obtained from the extreme tail of the probability distribution. The tail of the distribution represents an extremely small area relative to the area representing the central mass of the distribution from which the most likely estimate is obtained.

Comment: Given the difficulty and subjectivity involved in determining the value of variables for use in the risk model, and the magnitude of the effect of the variables on the final risk estimate, it may be useful to conduct a Delphi Survey (a survey of the opinions of experts on a particular topic) to ascertain ranges of estimates for prospective risk A sensitivity analysis could then be completed that combines the range of estimates (and the variation around the estimates) for the model inputs. This would allow APHIS to use data regarding CSF outbreaks since the December 2000 risk analysis was written, which would, in turn, allow the model to have more value for application to potential future CSF situations in the EU.

Response: Most of the data used in the risk analysis were generated during an extremely severe CSF epidemic that occurred in the EU in 1997 and 1998. As discussed in the risk analysis, this CSF epidemic is considered the most severe the EU has ever experienced. By using actual data from this epidemic rather than using estimates based on expert opinions obtained through a Delphi Survey, the risk assessment provides a more cautious estimation of the potential risk. The risk estimates generated in the analysis took into account the effectiveness of EU control measures, and if and where those measures failed, under these severe conditions. The risk analysis therefore anticipates future situations in the EU where CSF epidemics reach up to the same magnitude and the same level of detection and control failures as occurred during the 1997–98 epidemic. Given that recent CSF epidemics are of a smaller magnitude and have fewer failures in detection and control, they fall within the expectations of the current risk analysis. Incorporating the data from these recent epidemics into the analysis would likely reduce the estimated risk.

Comment: APHIS acknowledges the impact of the sensitivity analysis on the models but does not present the final risk estimations resulting from the sensitivity analysis. APHIS should publish the final risk estimates for the three models.

Response: A summary of the final risk estimates for all three models is presented in the executive summary of the risk analysis report. The full details of these estimates are presented throughout the text of the report. The risk estimates for each sensitivity analysis are reported in the sensitivity analysis section. The sensitivity analyses were conducted to show how the final risk estimates might change under alternative assumptions regarding input values. As such, the results of the sensitivity analyses stand alone rather than as adjustments to the final models.

Commenter: The model does not account for the impact of intraregional spread (such as five herds being infected at one time). This, combined with the use of a conservative beta distribution to describe the proportion of infected herds from which animals are exported to the United States over time (g/h), biases the model toward underestimating the true risk to the United States. Is APHIS considering this aspect?

Response: As we discussed in the sensitivity analysis section of the risk analysis regarding swine semen, the beta distribution for the input value g/h is considered conservative in the sense that it likely contributes to overestimating the risk. Also, as discussed in the risk analysis, the CSF epidemic that provided the data for the analysis is considered the most severe the EU has ever experienced. Incorporated into the risk estimates based on this epidemic are six different risky periods representing index cases in six discrete locations in the EU: the Netherlands, Italy, Belgium, Germany, and two separate locations in Spain (the risky period is documented under input value b in the models). Since the models are exclusively based on the time period during which this severe epidemic occurred and do not incorporate any "peace time" periods, the model is actually biased toward overestimating the risk.

Comment: The risk analysis report, despite referring to the importance of the wild boar reservoir in maintaining the CSF virus in a region, concludes that the "risk of importing CSF-infected material from areas of the EU that are in close proximity to infected wild boar is not greater than the risk of importing infected material from areas that are geographically distant from primary outbreaks caused by wild boar." Have statistical tests been applied to the available data to provide a quantitative assessment of the risk posed by wild boar to EU herds? APHIS should review its previous assumptions about the role of wild boars with regard to the risk of importing infected or contaminated animals or products.

Will semen be allowed to be imported into the United States from an area in the EU that is designated by the EU to be "wild boar control area" (*i.e.*, an area in which CSF has been diagnosed in feral swine and in which domestic

swine have consequently been placed under surveillance and in which specified measures are being taken to protect domestic swine from infection by feral swine)? How will APHIS requirements change as EU wild boar control areas change?

The site visit report notes that a seropositive wild boar was detected in 1999 in the Netherlands. Are there wild boar control areas in that country? Additionally, Italy has a significant wild boar population that overlays the main pig-producing areas. Although Italy has had no reported CSF outbreaks in 2002, it had several outbreaks each year previously.

Response: Swine semen will be allowed to be imported into the United States from a wild boar control area. As discussed in the spatial and temporal section of the risk analysis, some of the outbreaks in domestic swine follow domestic animal movement or related pathways in the EU. The analysis documented that the number of outbreaks and the extent of undetected CSF spread associated with these pathways are actually greater than those that have been associated with disease originating from direct contact with infected wild boar and any associated proximity spread.

The clearest examples of these associations are evident in the outbreaks that occurred in the Netherlands and in Germany. The primary outbreak for the epidemic in the Netherlands actually occurred in Paderborn, Germany. The Netherlands outbreaks were linked to infectious material from Germany that contaminated a Dutch lorry. The improperly disinfected truck carried infectious material back to the Netherlands after transporting pigs in the Paderborn area of Germany. In this epidemic, secondary spread occurred through the movement of an empty truck into the Netherlands, where additional spread took place from a variety of causes, including the movement of swine, people, equipment, and semen for artificial insemination. Due in part to the Netherlands' relatively long risky period (the period before the disease was detected and controls implemented), a total of 429 outbreaks occurred in the Netherlands during this epidemic.

In contrast, in Germany during the same time period there were 56 outbreaks. Fourteen of these were primary outbreaks (due to either contact with wild boar or unknown causes that may have been contact with wild boar) with very little secondary spread, in contrast to the enormous secondary spread that occurred in the Netherlands. The outbreaks in Germany occurred primarily in areas that were already under EU restriction because disease had been detected in wild boar. As discussed in the analysis, APHIS attributed the relative lack of disease spread in Germany to movement restrictions and increased surveillance and control mechanisms, which were required by EU legislation and also conducted in part due to the presence of infected wild boar. During 1997 and 1998, Germany had a much shorter risky period than the Netherlands, with far less undetected and uncontrolled secondary spread. APHIS requirements will not change as wild boar control areas change. In response to the commenter's question, there are no wild boar control areas in the Netherlands.

All of these factors led to the conclusion that the risk to the United States of importing CSF-affected swine or swine products is not greater for imports from areas in close proximity to wild boar than it is from areas like the Netherlands that had more difficulty detecting a CSF incursion and had substantially greater secondary spread before the disease was detected and controls implemented. In short, CSF is found and controlled more quickly in areas of the EU where it is expected to be found, such as in close proximity to wild boar in Germany, than it is in areas where it is not expected to be found, such as in the Netherlands. The greater risk to the United States is from those areas with longer risky periods and substantially greater undetected secondary spread.

No statistical or quantitative methods have been applied to estimate the risk to EU herds from wild boar, because the focus of the risk analysis was on the risk to U.S. herds rather than EU herds.

Comment: Local veterinary units are important in local CSF eradication efforts. Are methods employed by the local veterinary units standardized and monitored by a central authority?

Response: Local veterinary units are subject to the national rules and regulations of the EU Member State in which they are located, as well as the relevant EU animal health legislation. National contingency plans must be reviewed and approved by EC authorities. Within these constraints, protection zones and surveillance zones are often established based on the boundaries of the local veterinary units.

Comment: Are reports from the EU Standing Veterinary Committee the best source of current listings of EU restrictions on swine movement due to a high prevalence of seropositive wild boars? What information will be made available to APHIS to allow it to adjust its listing of infected regions?

Response: As standard practice, there is direct communication between the EC and APHIS within 24 hours of an outbreak. Such information is then compiled in the reports of the EU Standing Veterinary Committee.

Comment: It would be helpful if all documentation submitted in support of a regionalization request that is posted to the APHIS Internet website be in English.

Response: We agree with the commenter. Under § 92.2, submission of information required by the regulations to accompany a regionalization request must be in English. We are encouraging countries requesting regionalization to provide English translations of all supporting documentation.

Comment: In its site visit report, APHIS noted that detailed reports on six CSF outbreaks that occurred in 1999 were reviewed and that all six occurred within previously established protection or surveillance zones. The report also notes that data from 2000 was presented but was not detailed. Was there anything of interest in the information from the 2000 outbreaks?

Response: Two CSF outbreaks occurred in domesticated swine in Germany in 2000. The two outbreaks were in Kreis Bernkastel-Wittlich (landers of Rhineland Palatinate) and were included on the maps in the spatial and temporal section of the risk analysis. Both outbreaks were situated in an area where there had been long-standing movement restrictions on domesticated swine due to CSF in wild boar. Therefore, these outbreaks would have posed no substantive risk to the United States.

Comment: Since January 2002, the EU has been responding to continuing CSF outbreaks in Germany by increasing the size of the areas from which exports of live swine and semen are not allowed. In light of such an evolving situation, has APHIS considered conducting a "test exercise" to review how the agency would apply its import restrictions and procedures? Has the evolving situation altered APHIS" view of the adequacy of the EU disease control procedures?

Response: With regard to the recommendation of a "test exercise," APHIS has ongoing experience in responding to outbreaks of animal diseases of concern in foreign regions, including such serious diseases as CSF and FMD, and will continue to take the measures necessary to ensure that such diseases are not introduced into the United States. With regard to how the evolving disease situation in the EU affects APHIS' conclusions regarding disease risk, as noted earlier, the risk analysis upon which the June 1999 proposed rule was based took into consideration the most serious CSF situation in EU history. Any disease outbreaks since then have not been of the severity of the 1997–1998 outbreaks.

Comment: Although EU regulations restrict trade in domestic pigs from specified wild boar areas in Germany to other EU Member States, trade is allowed to other regions of Germany with some restrictions. How does the risk analysis account for the risk of the spread of CSF within Germany from such movement?

Response: The risk analysis took into account all CSF outbreaks in Germany that occurred outside of any established restriction zones. Therefore, any undetected outbreaks outside such zones that resulted from domesticated swine movement within Germany were considered to be part of the population of herds from which the United States could potentially import. These outbreaks were included in the risk estimates as part of variable "g" in the breeding swine and swine semen models, and variable "P_I" in the pork model.

Comment: Does a 2002 outbreak in France in domestic swine exposed to infected wild boar change APHIS" conclusion in the risk analysis that areas containing infected wild boar can be considered CSF-free for export? The outbreak in France additionally calls into question the statement made in the risk analysis report that no CSF outbreaks in France had been attributed to wild swine during the 7 years prior to development of the risk analysis.

Response: Obviously, areas that have had recent outbreaks of CSF in domesticated swine, such as the area in France, would not be considered for recognition of CSF freedom until the waiting periods discussed in the proposed rule had elapsed. The risk analysis itself did not deal directly with declarations of disease freedom, but rather dealt with the risk to the United States of outbreaks that occurred outside any established EU restriction zones. As discussed in responses to comments above, the risk analysis anticipates future situations in the EU where CSF epidemics reach the same magnitude and the same level of detection and control failures as occurred during the 1997–98 epidemic. Given that recent CSF epidemics are of a smaller magnitude and have fewer failures in detection and control, they fall within the expectations of the current risk analysis.

Comment: How can APHIS support its statement in the risk analysis that the 1997–98 CSF outbreak in the Netherlands was "unique" and did not serve as a very good model of how CSF can be introduced into or spread within the region? What made this situation and a 2000 outbreak in East Anglia in the United Kingdom unique and unlikely to recur? Many of the factors that APHIS considered in judging the Netherlands outbreak to be unique have not and will not change, such as highly concentrated production, dependence on pig transport between farm sites and regions, and insufficient rendering capacity.

Response: The 1997–98 EU CSF epidemic is considered unique in its magnitude and scope because nothing comparable has occurred before or since. As noted above, this CSF epidemic is considered the most severe the EU has ever experienced. The computer model for the risk assessment alone is not intended to predict all possible future scenarios. APHIS intends to monitor the animal health situation in the EU and periodically review the parameters of the risk assessment model to determine if the situation in the EU has changed sufficiently to alter the findings of the assessment.

Comment: Although the site visit report indicates the Netherlands has instituted additional restrictions on handling semen, transporting live animals, and biosecurity practices, no information was presented on the measures taken at semen centers in other countries or regions.

Response: The risk analysis regarding CSF in the EU region, and the additional mitigations we proposed for the importation of swine semen, were based on the situation prior to any changes in biosecurity measures in the Netherlands. Any increases in biosecurity there and in other countries will serve to lower the assessed risk, but were not depended upon to bring the risk of CSF to an acceptable level.

Comment: The site visit report noted that a surveillance zone was established in Luxembourg in 1999 due to CSF in a neighboring area in Germany. It is not clear if movement restrictions are in place for domestic swine in the surveillance zone.

Response: Movement restrictions are in place for domestic pigs in the surveillance zone, and swine are not permitted to be moved until they are tested by both serology and virology.

Comment: Although the United Kingdom had originally been considered a low-risk area, a CSF outbreak there in 2000, coupled with the FMD outbreak in 2001, indicates disease control measures there are not adequate.

Response: The United Kingdom was not included in the region under consideration in our June 1999 proposal. We have addressed the disease outbreaks in the United Kingdom separately from the those in the region under consideration.

Comment: The commenter stated that because of recent CSF outbreaks in Spain, the EU extended its implementation of restrictive measures in that country.

Response: As we discussed above, CSF outbreaks in the EU region in question since publication of the proposed rule have been of a smaller magnitude, and have had fewer failures in detection and control, than during the 1997–1998 epidemic and fall within the expectations of our risk analysis. It should be noted, however, that because the outbreaks in Spain occurred after the publication of the proposed rule, and the public has not had the opportunity to formally comment on any CSF classification of Spain following those outbreaks, we are not including Spain in this final rule as a country in which CSF is not known to exist.

Comment: Will any of the risk mitigation measures in the proposed rule be applied to countries that have already been recognized as free of CSF?

Response: The scope of the risk analysis explicitly excluded those EU Member States that APHIS had already recognized as CSF free.

Comment: Would APHIS prohibit imports from areas under EU restrictions due to wild boar infections when the EU allows trade with restrictions within the country in question, even though it prohibits trade to other Member States?

Response: In this final rule, we are amending part 92 of the regulations to add a new § 92.3, as proposed, that provides that whenever the EC establishes a quarantine for a disease in the EU in a region that APHIS recognizes as one in which the disease is not known to exist, and the EC imposes prohibitions or other restrictions on the movement of animals or animal products from the quarantined area in the EU, such animals and animal products are prohibited importation into the United States.

Change in Terminology

We are making a change in this final rule to reflect current terminology regarding who receives certificates at the port of arrival. In § 94.23(c), instead of referring to "collector of customs," we refer instead to "appropriate Customs and Border Protection Officer."

Therefore, for the reasons given in the proposed rule and in this document, we are adopting our June 1999 proposed rule as a final rule, with the changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

This rule recognizes a region of the EU as one in which CSF does not exist. Additionally, it recognizes Greece and certain regions of Italy as areas in which SVD does not exist. Although restrictions on the importation of animals and animal products from these regions may continue because of other diseases, a number of restrictions due to CSF and SVD are no longer warranted for imports from the areas. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This rule recognizes a region in the EU as one in which CSF is not known to exist, and from which breeding swine, swine semen, and pork and pork products may be imported into the United States under certain conditions. Additionally, it recognizes Greece and four Regions in Italy as free of SVD. These actions are based on a request from the EC's Directorate General for Agriculture and on our review of the supporting documentation supplied by the EC and individual EU Member States. These actions will relieve some restrictions on the importation into the United States of certain animals and animal products from those regions that are imposed because of CSF and SVD.

In considering this rulemaking, we considered three options. The first, which we could have applied to all the diseases addressed by this rule, was to retain the current regulations and make no changes. We did not consider this an acceptable option because it was not warranted by the disease situation in the regions in question and such inaction would have been contrary to U.S. obligations under international trade agreements. A second option, specific to CSF, was to allow free movement of swine, swine semen, and pork from the region we are recognizing as one in which CSF does not exist. Based on our risk analysis, however, we concluded that adopting that option would lead to an unacceptable risk of introducing CSF into the United States. Therefore, we chose our third option, which was to adopt the provisions of this rule.

Below is a summary of the economic analysis prepared for this rule. The economic analysis provides a cost-benefit analysis as required by E.O. 12866 and an analysis of impacts on small entities as required by the Regulatory Flexibility Act. A copy of the full economic analysis is available by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Recognition of an EU Region as One in Which CSF Does Not Exist

The analysis with regard to CSF examines the economic impact of the potential importation of fresh (chilled or frozen) pork, breeding swine, and swine semen from a region in the EU that this rule recognizes as one in which CSF is not known to exist.

This is in accordance with the policy of "regionalization," whereby import requirements are tailored to regions that are determined by science-based risk factors, rather than political boundaries.

Five EU Member States that are already recognized in the current regulations as being regions in which CSF is not known to exist are excluded from this analysis, because the regulations governing CSF do not currently restrict their pork, live swine, and swine semen exports to the United States.

Potential Importations of Pork

Potential exports to the United States from the seven EU Member States considered (Austria, Belgium, parts of Germany, Greece, parts of Italy, the Netherlands, and Portugal) constitute the trade volumes used in the analysis, assuming no risk of disease introduction. For pork, the import levels used in the analysis are based on the proportion of Denmark's global pork exports that are imported into the United States. It is assumed that a similar percentage of the global pork exports of each of the EU Member States will be exported to the United States. The total quantity of pork assumed is about 15,158 metric tons. For breeding swine and swine semen imports, the import levels used in the analysis are based on historical data and prior U.S. demand for EU swine genetic stock.

Current U.S. pork import levels suggest that imports resulting from this rule are likely to be minimal. The import levels used in the analysis allow for an analysis of potential economic effects if market conditions were to change in favor of U.S. imports of EU swine and pork and pork products. Estimated effects on producers and consumers reflect the expected effects of these imports, assuming no disease risks.

Although we expect that the economic effect of this rule will be minimal, we used a net trade benefit model to evaluate what would happen should trade occur. Benefits to the United States of pork imports from the EU Member States considered are calculated as the net change in consumer surplus and producer surplus. Assuming an import volume of 15,158 metric tons of pork, the annual net trade benefit is estimated to be about $228,000 (2001 dollars). Based on data on domestic pork production and prices for the period 1997 to 2001, the welfare changes in consumer surplus and producer surplus would reflect about a 0.1 percent decrease in U.S. pork production, a 0.1 percent increase in pork consumption, and a 0.1 percent decrease in the farmgate price of pork.

Potential Imports of Breeding Swine

The marginal benefit, in terms of productivity gains, from future imports of EU breeding swine is expected to be minimal, given the ready availability of improved genetic lines in both the United States and Canada. Over the 8-year period from 1994–2001, over 98 percent of breeding swine imports into the United States came from Canada, and only about 1.2 percent came from the European Union. The breeding swine that were imported from the EU came almost entirely from Denmark and the United Kingdom, countries that are unaffected by this rule. We used the number of breeding swine imported from Denmark and the United Kingdom to establish a recent average and a reasonable upper bound for potential imports from the EU Member States of concern. The average number of breeding swine imported annually from Denmark and the United Kingdom is 440. The minimum number imported was zero in 2001, and the maximum was 1,299 imported in 1997. It is assumed that 200 breeding swine per year may be imported from the newly recognized region in which CSF is not known to exist.[2]

APHIS does not record the percentages of imported breeding swine that are boars and gilts. For the purposes of benefits estimation, we assume that one-third of imports are boars and two-thirds are gilts. Therefore, the most likely future annual average of imported boars is assumed to be 67, and of gilts is assumed to be 133. Assuming minimal expected benefits from productivity gains, benefits to the United States from importation of EU breeding swine can most readily be quantified in terms of the unit values of the imports. It is assumed that, at a minimum, producers would expect to pay about $1,000 to import a single EU breeding gilt and possibly $2,800 to import a single EU breeding boar, including transportation and quarantine costs. There is a great deal of variability in both the prices of individual animals, due to product differentiation, and in the cost of transportation, which may be negotiated with individual contract carriers. Multiplying assumed quantities and unit values yields a most likely import value of $187,600 for breeding boars and a most likely value of $133,000 for breeding gilts imported from the EU region affected by this rule.

[2] Although projected import quantities for breeding swine and swine semen used in this analysis were approximated independently of those used in the risk assessment, similar assumptions were followed in both analyses.

Potential Imports of Swine Semen

During the period 1997–2001, the source countries and quantities of swine semen varied widely from one year to the next. The single largest exporter to the United States during this period was Australia, which averaged 1,045 doses per year, or 43 percent of the total. Canada supplied an average of about 672 doses per year, or 28 percent of the total. An average of about 680 doses were imported each year from the EU–28 percent of the total. In 2001, 1,736 doses came from Germany, one of the Member States that constitute the region affected by this rule. During the first 9 months of 2002, the only swine semen imports from the EU were 780 doses imported from Denmark.

A wide range of prices for swine semen reflects considerable product differentiation in the market for swine genetics. Quoted prices for swine semen from a small sampling of producers range from $6 to $50 per dose. It is presumed that the higher priced semen represents the greater perceived benefit to U.S. swine products. In addition to the price per dose, buyers must pay for packaging materials and shipping costs, although these costs constitute a small fraction of the overall cost. A typical shipment of swine semen would be 30 doses packed in a cooler. Packing materials, including cooler, are available for about $15 per shipment. A 15-pound packed cooler can be shipped between the United States and the EU for about $200. The value of a 30-dose shipment of swine semen is therefore assumed to be $1,715. Using that value, annual values of swine semen imported from the region affected by this rule are expected to be approximately $40,000.

Regarding the effects of the rule on small entities, more than 88 percent of all U.S. hog farms meet the U.S. Small Business Administration size criterion for small entities of annual revenues of less than $750,000. Pork, breeding swine, and swine semen imports from the region in question are unlikely to be significantly affected by this regulatory change, which could cause an average annual effect on small entities of less than 0.1 percent of average gross revenue.

Recognition of Greece and Certain Regions in Italy as Free of SVD

We are also recognizing Greece and four Regions in Italy as free of SVD. Recognition of Greece and certain Regions in Italy as free of SVD will remove U.S. import restrictions because of this disease with respect to pork and live swine. This analysis examines potential effects of this rule on U.S. entities by comparing global trading patterns of Greece, Italy, and the United States for these commodities.

International trade statistics for swine, pork, and pork products are available for Greece and the United States, but not specifically for the four Regions in Italy. Given the unavailability of individual regional trade statistics for the Regions in question, we based our analysis on swine, pork, and pork products for Italy as a whole. Because Italy has a total of 20 Regions, conclusions regarding likely minimal export effects for the four Regions are all the more valid.

Both Greece's and Italy's swine, pork, and pork imports far outweigh their exports. During the period 1996 to 2000, the annual value of Italy's imports of swine, pork, and pork products averaged more than $1.2 billion more than the value of its exports of swine, pork, and pork products. For Greece, the annual value of its imports of swine, pork, and pork products averaged more than $250 million more than the value of its exports. In contrast, during the same period, the United States annually averaged approximately $6.2 million more in exports of breeding swine than in imports, and over $475 million more in exports of pork and pork products than imports. The United States is a net importer of swine other than breeding swine, with average annual imports, virtually all of which are supplied by Canada, valued at close to $274 million more than annual exports.

Small entities that might be directly-affected by the SVD provisions of this rule are buyers and wholesalers of swine and pork products, and, indirectly, U.S. pork producers. However, as discussed above, prevailing trade patterns indicate that this rule will have little economic effect on U.S. entities, large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact were prepared for this rule. The assessment provides a basis for the conclusion that the importation of swine, swine semen, and other swine products from specified regions in Europe under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0218.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Region, Reporting and recordkeeping requirements.

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases, Imports.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

■ Accordingly, we are amending 9 CFR parts 71, 92, 93, 94, 98, and 130 as follows:

PART 71—GENERAL PROVISIONS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 71.3 [Amended]

■ 2. In § 71.3, paragraph (b) is amended by removing the words "hog cholera" and adding the words "classical swine fever" in their place.

PART 92—IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS: PROCEDURES FOR REQUESTING RECOGNITION OF REGIONS

■ 3. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 4. In § 92.1, a definition of *European Union* is added, in alphabetical order, to read as follows:

§ 92.1 Definitions.

* * * * *

European Union. The organization of Member States consisting of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Republic of Ireland, Spain, Sweden, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

* * * * *

■ 5. A new § 92.3 is added to read as follows:

§ 92.3 Movement restrictions.

Whenever the European Commission (EC) establishes a quarantine for a disease in the European Union in a region the Animal and Plant Health Inspection Service recognizes as one in which the disease is not known to exist and the EC imposes prohibitions or other restrictions on the movement of animals or animal products from the quarantined area in the European Union, such animals and animal products are prohibited importation into the United States.

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 6. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.505 [Amended]

■ 7. In § 93.505, paragraph (a) is amended by removing the words "hog cholera" and adding the words "classical swine fever" in their place.

§ 93.517 [Amended]

■ 8. In § 93.517, paragraph (a) is amended by removing the words "hog cholera" and adding the words "classical swine fever" in their place.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 9. The title of part 94 is revised to read as above.

■ 10. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

■ 11. Section 94.9 is amended as follows:

■ a. By revising the section heading and paragraph (a) to read as set forth below.

■ b. By removing the words "hog cholera" and adding in their place the words "classical swine fever" in following places:

■ i. Paragraph (b), introductory text.

■ ii. Paragraph (b)(1)(iii)(C).

■ iii. Paragraph (b)(1)(iii)(C)(1), both times they appear.

■ iv. Paragraph (b)(1)(iii)(C)(2), both times they appear.

■ v. Paragraph (c).

§ 94.9 Pork and pork products from regions where classical swine fever exists.

(a) Classical swine fever is known to exist in all regions of the world except Australia; Canada; Denmark; England, except for East Anglia (Essex, Norfolk, and Suffolk counties); Fiji; Finland; Iceland; Isle of Man; New Zealand; Northern Ireland; Norway; the Republic of Ireland; Scotland; Sweden; Trust Territory of the Pacific Islands; Wales; and a single region in the European Union consisting of Austria, Belgium, Germany (except for the Kreis Uckermark in the Land of Brandenburg; the Kreis Oldenberg, the Kreis Soltau-Fallingbostel, and the Kreis Vechta in the Land of Lower Saxony; the Kreis Heinsberg and the Kreis Warendorf in the Land of Northrhine-Westphalia; the Kreis Bernkastel-Wittlich, the Kreis Bitburg-Prüm, the Kreis Donnersbergkreis, the Kreis Rhein-Hunsrücke, the Kreis Südliche Weinstrasse, and the Kreis Trier-Saarburg in the Land of Rhineland Palatinate; and the Kreis Altmarkkreis in the Land of Saxony-Anhalt); Greece; Italy (except for the Regions of Emilia-Romagna, Piemonte, and Sardegna); the Netherlands; and Portugal.[10]

* * * * *

■ 12. Section 94.10 is amended by revising the section heading and paragraph (a) to read as follows:

§ 94.10 Swine from regions where classical swine fever exists.

(a) Classical swine fever is known to exist in all regions of the world except Australia; Canada; Denmark; England, except for East Anglia (Essex, Norfolk, and Suffolk counties); Fiji; Finland; Iceland; Isle of Man; New Zealand; Northern Ireland; Norway; the Republic of Ireland; Scotland; Sweden; Trust Territory of the Pacific Islands; Wales; and a single region in the European Union consisting of Austria, Belgium, Germany (except for the Kreis Uckermark in the Land of Brandenburg; the Kreis Oldenberg, the Kreis Soltau-Fallingbostel, and the Kreis Vechta in the Land of Lower Saxony; the Kreis Heinsberg and the Kreis Warendorf in the Land of Northrhine-Westphalia; the Kreis Bernkastel-Wittlich, the Kreis Bitburg-Prüm, the Kreis Donnersbergkreis, the Kreis Rhein-Hunsrücke, the Kreis Südliche Weinstrasse, and the Kreis Trier-Saarburg in the Land of Rhineland Palatinate; and the Kreis Altmarkkreis in the Land of Saxony-Anhalt); Greece; Italy (except for the Regions of Emilia-Romagna, Piemonte, and Sardegna); the Netherlands; and Portugal. No swine that are moved from or transit any region where classical swine fever is known to exist may be imported into the United States, except for wild swine imported into the United States in accordance with paragraph (b) of this section.

* * * * *

■ 13. In § 94.12, paragraph (a) is revised to read as follows:

§ 94.12 Pork and pork products from regions where swine vesicular disease exists.

(a) Swine vesicular disease is considered to exist in all regions of the world except Australia, Austria, the Bahamas, Belgium, Bulgaria, Canada, Central American countries, Chile, Denmark, Dominican Republic, Fiji, Finland, France, Germany, Greece, Greenland, Haiti, Hungary, Iceland, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Panama, Portugal, Republic of Ireland, Romania, Spain, Sweden, Switzerland, Trust Territories of the Pacific, the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland), Yugoslavia, and the Regions in Italy of Friuli, Liguria, Marche, and Valle d'Aosta.

* * * * *

■ 14. In § 94.13, the undesignated introductory text is revised to read as follows:

§ 94.13 Restrictions on importation of pork or pork products from specified regions.

Austria, the Bahamas, Belgium, Bulgaria, Chile, Denmark, France, Germany, Hungary, Luxembourg, the Netherlands, Portugal, Republic of Ireland, Spain, Switzerland, the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland), Yugoslavia, and the Regions in Italy of Friuli, Liguria, Marche, and Valle d'Aosta are declared free of swine vesicular disease in § 94.12(a) of this part. These regions either supplement their national pork supply by the importation of fresh (chilled or frozen) meat of animals from regions where swine vesicular disease is considered to exist, have a common border with such regions, or have trade practices that are less restrictive than are acceptable to the United States. Thus, the pork or pork products produced in such regions may be commingled with fresh (chilled or frozen) meat of animals from a region where swine vesicular disease is considered to exist, resulting in an undue risk of swine vesicular disease introduction into the United States. Therefore, pork or pork products and ship's stores, airplane meals, and baggage containing such pork, other than those articles regulated under part 95 or part 96 of this chapter, produced in such regions shall not be brought into the United States unless the following requirements are met in addition to other applicable requirements of part 327 of this title:

* * * * *

§ 94.17 [Amended]

■ 15. Section 94.17 is amended by removing the words "hog cholera" and adding in their place the words "classical swine fever" in the following places:

■ a. The section heading.

■ b. Paragraph (b).

■ c. Paragraph (c).

§ 94.20 [Amended]

■ 16. In § 94.20, paragraph (c) and the introductory text of paragraph (e) are amended by removing the words "hog cholera" and adding in their place the words "classical swine fever".

■ 17. A new § 94.23 is added to read as follows:

§ 94.23 Restrictions on the importation of swine, pork, and pork products from parts of the European Union.

In addition to meeting all other applicable provisions of this part, live swine, pork, and pork products imported from the region of the European Union consisting of Austria, Belgium, Germany (except for the Kreis Uckermark in the Land of Brandenburg; the Kreis Oldenberg, the Kreis Soltau-Fallingbostel, and the Kreis Vechta in the Land of Lower Saxony; the Kreis Heinsberg and the Kreis Warendorf in the Land of Northrhine-Westphalia; the Kreis Bernkastel-Wittlich, the Kreis Bitburg-Prüm, the Kreis Donnersbergkreis, the Kreis Rhein-Hunsrücke, the Kreis Südliche Weinstrasse, and the Kreis Trier-Saarburg in the Land of Rhineland Palatinate; and the Kreis Altmarkkreis in the Land of Saxony-Anhalt), Greece, Italy (except for the Regions of Emilia-Romagna, Piemonte, and Sardegna), the Netherlands, and Portugal must meet the following conditions:

(a) *Pork and pork products.* (1) The pork or pork products must not have been commingled with pork or pork products derived from swine that have been in any region when the region was classified in § 94.10(a) as one in which classical swine fever is known to exist;

(2) The swine from which the pork or pork products were derived must not have lived in a region when the region was classified in § 94.10(a) as one in which classical swine fever is known to exist, and must not have transited such a region unless moved directly through the region in a sealed means of conveyance with the seal determined to be intact upon arrival at the point of destination; and

(3) The pork and pork products must be accompanied by a certificate issued by an official of the national government of the region of origin who is authorized to issue the foreign meat inspection certificate required by § 327.4 of this title, stating that the provisions of paragraphs (a)(1) and (a)(2) of this section have been met.[19]

(b) *Live swine.* (1) The swine must be breeding swine and must not have lived in a region when the region was classified in § 94.10(a) as one in which classical swine fever is known to exist, and must not have transited such a region unless moved directly through the region in a sealed means of

[10] See also other provisions of this part and parts 93, 95, and 96 of this chapter and part 327 of this title for other prohibitions and restrictions upon importation of swine and swine products.

[19] The certification required may be placed on the foreign meat inspection certificate required by § 327.4 of this title or may be contained in a separate document.

conveyance with the seal determined to be intact upon arrival at the point of destination;

(2) The swine must never have been commingled with swine that were in a region at a time when the region was classified in § 94.10(a) as one in which classical swine fever is known to exist;

(3) No equipment or materials used in transporting the swine may have previously been used for transporting swine that do not meet the requirements of this section, unless the equipment or materials have first been cleaned and disinfected; and

(4) The swine must be accompanied by a certificate issued by a salaried veterinary officer of the national government of the country of origin, stating that the provisions of paragraphs (b)(1) through (b)(3) of this section have been met.[20]

(c) The certificates required by paragraphs (a)(3) and (b)(4) of this section must be presented by the importer to the appropriate Customs and Border Protection officer at the port of arrival, upon arrival of the swine, pork, or pork products at the port, for the use of the veterinary inspector at the port of entry.

(Approved by the Office of Management and Budget under control number 0579–0218)

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

■ 18. The authority citation for part 98 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 98.15 [Amended]

■ 19. Section 98.15 is amended by removing the words "hog cholera" and adding in their place the words "classical swine fever" in the following places:

■ a. Paragraph (a)(1)(ii).
■ b. Paragraph (a)(2)(ii).
■ c. Paragraph (a)(5)(ii)(B)
■ d. Paragraph (a)(7)(i)(B).
■ e. Paragraph (a)(8)(i)(B).

§ 98.34 [Amended]

■ 20. Section 98.34 is amended as follows:

■ a. By removing the words "hog cholera" and adding in their place the words "classical swine fever" in the following places:

■ i. Paragraph (c)(7)(ii).
■ ii. Concluding text of paragraph (c)(7)(iii) (following paragraph (c)(7)(iii)(G)).

■ b. In paragraph (c)(7)(iii)(D), by removing the words "Hog cholera" and adding in their place the words "Classical swine fever".

■ 21. A new § 98.38 is added to read as follows:

§ 98.38 Restrictions on the importation of swine semen from parts of the European Union.

In addition to meeting all other applicable provisions of this part, swine semen imported from the region of the European Union consisting of Austria, Belgium, Germany (except for the Kreis Uckermark in the Land of Brandenburg; the Kreis Oldenberg, the Kreis Soltau-Fallingbostel, and the Kreis Vechta in the Land of Lower Saxony; the Kreis Heinsberg and the Kreis Warendorf in the Land of Northrhine-Westphalia; the Kreis Bernkastel-Wittlich, the Kreis Bitburg-Prüm, the Kreis Donnersbergkreis, the Kreis Rhein-Hunsrücke, the Kreis Südliche Weinstrasse, and the Kreis Trier-Saarburg in the Land of Rhineland Palatinate; and the Kreis Altmarkkreis in the Land of Saxony-Anhalt); Greece, Italy (except for the Regions of Emilia-Romagna, Piemonte, and Sardegna), the Netherlands, and Portugal must meet the following conditions:

(a) The semen must come only from a semen collection center approved for export by the veterinary services of the national government of the country of origin;

(b) The donor boar must not have lived in a region when the region was classified in § 94.10(a) as one in which classical swine fever is known to exist, and must not have transited such a region unless moved directly through the region in a sealed means of conveyance with the seal determined to be intact upon arrival at the point of destination;

(c) The donor boar must never have been commingled with swine that have been in a region when the region was classified in § 94.10(a) as one in which classical swine fever is known to exist;

(d) The donor boar must be held in isolation for at least 30 days prior to entering the semen collection center;

(e) No more than 30 days prior to being held in isolation as required by paragraph (d) of this section, the donor boar must be tested with negative results with a classical swine fever test approved by the Office International des Epizooties;

(f) No equipment or materials used in transporting the donor boar from the farm of origin to the semen collection center may have been used previously for transporting swine that do not meet the requirements of this section, unless such equipment or materials has first been cleaned and disinfected;

(g) The donor boar must be observed at the semen collection center by the center veterinarian, and exhibit no clinical signs of classical swine fever;

(h) Before the semen is exported to the United States, the donor boar must be held at the semen collection center for at least 40 days following collection of the semen, and, along with all other swine at the semen collection center, exhibit no clinical signs of classical swine fever; and

(i) The semen must be accompanied to the United States by a certificate issued by a salaried veterinary officer of the national government of the country of origin, stating that the provisions of paragraphs (a) through (h) of this section have been met.[3]

(Approved by the Office of Management and Budget under control number 0579–0218)

PART 130—USER FEES

■ 22. The authority citation for part 130 continues to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

§ 130.14 [Amended]

■ 23. In § 130.14, paragraph (b), the table is amended in the column titled "Test" by removing the words "(hog cholera)" in the entry for Fluorescent antibody neutralization and adding in their place the words "(classical swine fever)".

■ 24. In § 130.18, paragraph (b), the table is amended by removing the entry for Hog Cholera tissue sets and adding a new entry in alphabetical order to read as follows:

§ 130.18 User fees for veterinary diagnostic reagents produced at NVSL or other authorized site (excluding FADDL).

* * * * *

(b) * * *

[20] The certification required may be placed on the certificate required by § 93.505(a) of this chapter or may be contained in a separate document.

[3] The certification required may be placed on the certificate required under § 98.35(c) or may be contained in a separate document.

Reagent	User fee	Unit
Classical swine fever tissue sets	81.50	Tissue set.

* * * * *

Done in Washington, DC, this 2nd day of April 2003.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 03–8314 Filed 4–2–03; 3:00 pm]

BILLING CODE 3410–34–P

Reader Aids

Federal Register

Vol. 68, No. 66

Monday, April 7, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, APRIL

15653–15920	1
15921–16164	2
16165–16402	3
16403–16714	4
16715–16942	7

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7657 15921
7658 16403

Executive Orders:
10448 (Amended by 13293) 15917
11157 (Revoked by 13294) 15919
11800 (Revoked by 13294) 15919
13293 15917
13294 15919

Administrative Orders:
Presidential Determinations:
No. 2003–18 of March 24, 2003 16165
No. 2003–19 of March 24, 2003 16167

5 CFR

5201 16398

Proposed Rules:
1600 16449
1605 16449
1606 16449
1655 16449

7 CFR

25 16169
718 16170
723 16170
923 15923
989 15926
1412 16170
1413 16170

Proposed Rules:
930 15971

9 CFR

71 16922
92 16922
93 16922
94 ..... 15932, 16922
98 16922
130 16922

Proposed Rules:
77 16733

10 CFR

Proposed Rules:
170 16374
171 16374

11 CFR

110 16715

12 CFR

226 16185
1730 16715

Proposed Rules:
702 16450
704 16450
712 16450
723 16450

13 CFR

Proposed Rules:
121 15971

14 CFR

39 ..... 15653, 15937, 16190, 16192, 16195, 16198, 16200, 16203, 16205
71 ..... 16207, 16351, 16409, 16410
93 15657
97 ..... 16411, 16412
121 15884
125 15884
129 15884

Proposed Rules:
21 16217
25 16458
39 ..... 15682, 15684, 15687, 16220, 16222, 16225, 16458, 16735, 16736
71 ..... 16227, 16229, 16230

15 CFR

740 ..... 16144, 16208
742 ..... 16144, 16208
762 16208
774 ..... 16144, 16208

16 CFR

Proposed Rules:
305 16231
310 ..... 16238, 16414

17 CFR

228 15939
229 15939
244 15939
249 15939

Proposed Rules:
240 15688

20 CFR

404 15658
408 16415

21 CFR

1308 16427

Proposed Rules:
10 16461

24 CFR

Proposed Rules:
202 15906
902 16461

26 CFR

1 ..... 15940, 16430

40 15940
48 15940
49 15940
301 16351
602 ..... 15940, 15942, 16430

Proposed Rules:
1 ..... 15801, 16462
49 15690

28 CFR
2 16718

Proposed Rules:
2 16743

29 CFR
70 16398
71 16398
96 16162
99 16162
2509 16399
2510 16399
2520 16399
2550 16399
2560 16399
2570 16399
2575 16399
2582 16399
2584 16399
2589 16399
2590 16399

30 CFR

Proposed Rules:
70 15691
72 15691
75 15691
90 15691

31 CFR
800 16720

32 CFR

Proposed Rules:
199 16247
312 16249
806b 16746

33 CFR
117 ..... 15943, 16721

Proposed Rules:
110 15691
165 15694

36 CFR
7 16432

37 CFR

Proposed Rules:
201 15972

38 CFR
1 15659

40 CFR
9 16708
46 16708
52 ..... 15661, 15664, 16721, 16724, 16726
61 16726
82 ..... 16728, 16729
180 ..... 15945, 15958, 15963, 16436

Proposed Rules:
Ch. 1 16747
52 ..... 15696, 16644, 16748
82 16749

41 CFR
Ch. 101 16730

42 CFR
422 16652
489 16652

Proposed Rules:
440 15973

43 CFR
10 16354
423 16214

44 CFR
Ch.1 15666
61 15666
64 15967

45 CFR
2506 16437

46 CFR

Proposed Rules:
401 15697
530 15978

47 CFR
25 16446
54 15669
73 16730

Proposed Rules:
64 16250
73 16750

48 CFR

Proposed Rules:
2 16366
4 16366
13 16366
32 16366
52 16366

49 CFR
1 16215
533 16868
665 15672

Proposed Rules:
172 16751
173 16751
174 16751
175 16751
176 16751
177 16751
178 16751
266 16753

50 CFR
17 15804
224 15674
230 15680
635 16216
648 16731
679 15969
697 16732

Proposed Rules:
17 ..... 15876, 15879, 16602
660 16754

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 7, 2003

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Hog cholera; disease status change—
European Union regions; published 4-7-03

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Stratospheric ozone protection—
Ozone-depleting substances; substitutes list; correction; published 4-7-03
Ozone-depleting substances; substitutes list; correction; published 4-7-03

FEDERAL MEDIATION AND CONCILIATION SERVICE
Arbitration services:
Fee schedules; published 3-6-03

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Missión Creek Waterway, China Basin, San Francisco Bay, CA; safety zone; published 3-19-03

HOMELAND SECURITY DEPARTMENT
Nondiscrimination on basis of disability in federally conducted programs or activities; published 3-6-03

JUSTICE DEPARTMENT
Parole Commission
Federal prisoners; paroling and releasing, etc.:
District of Columbia and United States Codes; prisoners serving sentences—
Military prisoners; mandatory release; published 4-7-03

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Visiting regulations; prior relationship; published 3-6-03

SECURITIES AND EXCHANGE COMMISSION
Securities:
Off-balance sheet arrangements and aggregate contractural obligations; published 2-5-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
British Aerospace; published 2-19-03
Raytheon; published 4-3-03
SOCATA-Groupe AEROSPATIALE; published 2-19-03

TREASURY DEPARTMENT
Foreign persons; mergers, acquisitions, and takeovers:
Voluntary notice filing; published 4-7-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing, and standards:
Classification services to growers; 2003 user fees; comments due by 4-15-03; published 3-31-03 [FR 03-07631]
Cotton research and promotion order:
Cotton Board rules and regulations; amendments; comments due by 4-14-03; published 3-14-03 [FR 03-06164]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Exotic Newcastle disease; quarantine area designations—
Arizona; comments due by 4-15-03; published 2-14-03 [FR 03-03685]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Magnuson-Stevens Act provisions—
National standard guidelines; revision; comments due by 4-16-03; published 3-3-03 [FR 03-04886]

COMMODITY FUTURES TRADING COMMISSION
Commodity pool operators and commodity trading advisors:
Commodity trading advisors; performance data and disclosure; comments due by 4-14-03; published 3-13-03 [FR 03-06081]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Cost-reimbursement contracts; payment bonds; comments due by 4-15-03; published 2-14-03 [FR 03-03575]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Fish, shellfish, and seafood products; comments due by 4-15-03; published 2-14-03 [FR 03-03574]
Security-guard functions; contractor performance; comments due by 4-15-03; published 2-14-03 [FR 03-03577]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Vessel repair and alteration contracts; loss liability; comments due by 4-15-03; published 2-14-03 [FR 03-03576]

DEFENSE DEPARTMENT
Engineers Corps
Water pollution control:
Clean Water Act—
Waters of United States; definition; comments due by 4-16-03; published 2-28-03 [FR 03-04768]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New York; comments due by 4-14-03; published 3-13-03 [FR 03-05908]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New York; comments due by 4-14-03; published 3-13-03 [FR 03-05909]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Kentucky; comments due by 4-18-03; published 3-19-03 [FR 03-06584]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Missouri; comments due by 4-17-03; published 3-18-03 [FR 03-06311]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Missouri; comments due by 4-17-03; published 3-18-03 [FR 03-06312]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Missouri; comments due by 4-17-03; published 3-18-03 [FR 03-06309]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Missouri; comments due by 4-17-03; published 3-18-03 [FR 03-06310]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Missouri; comments due by 4-17-03; published 3-18-03 [FR 03-06307]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Missouri; comments due by 4-17-03; published 3-18-03 [FR 03-06308]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Missouri; comments due by 4-17-03; published 3-18-03 [FR 03-06305]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and

promulgation; various States:
Missouri; comments due by 4-17-03; published 3-18-03 [FR 03-06306]
Hazardous waste program authorizations:
Virginia; comments due by 4-14-03; published 3-13-03 [FR 03-06110]

ENVIRONMENTAL PROTECTION AGENCY
Hazardous waste program authorizations:
Virginia; comments due by 4-14-03; published 3-13-03 [FR 03-06109]

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Methoprene, etc.; comments due by 4-14-03; published 2-12-03 [FR 03-03236]
Water pollution control:
Clean Water Act—
Waters of United States; definition; comments due by 4-16-03; published 2-28-03 [FR 03-04768]

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Federal-State Joint Board on Universal Service—
Universal services; definition; comments due by 4-14-03; published 3-13-03 [FR 03-06092]
Radio frequency devices:
Advanced wireless service; comments due by 4-14-03; published 3-13-03 [FR 03-06038]
Television broadcasting:
Digital television conversion; transition issues; comments due by 4-14-03; published 2-18-03 [FR 03-03812]

GENERAL SERVICES ADMINISTRATION
Acquisition regulations:
Industrial funding fee and sales reporting clauses; consolidation and fee reduction; comments due by 4-17-03; published 3-18-03 [FR 03-06458]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
Vaginal contraceptive products (OTC) containing nonoxynol 9; labeling requirements; comments due by 4-16-03; published 1-16-03 [FR 03-00902]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Virginia; comments due by 4-14-03; published 2-12-03 [FR 03-03458]
Ports and waterways safety:
Columbia River, Vancouver, WA; safety zone; comments due by 4-15-03; published 2-14-03 [FR 03-03605]
San Diego Bay, CA; security zones; comments due by 4-14-03; published 2-11-03 [FR 03-03263]
Tampa Bay Captain of Port Zone, FL; security zones; comments due by 4-14-03; published 2-12-03 [FR 03-03460]

HOMELAND SECURITY DEPARTMENT
Federal Emergency Management Agency
Disaster assistance:
Federal assistance to individuals and households; comments due by 4-15-03; published 9-30-02 [FR 02-24733]
National Flood Insurance Program:
Group flood insurance policy; comments due by 4-15-03; published 9-30-02 [FR 02-24734]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Canada lynx; contiguous U.S. distinct population segment; comments due by 4-16-03; published 3-17-03 [FR 03-06291]

INTERIOR DEPARTMENT
Minerals Management Service
Royalty management:
Federal geothermal resources; discussions for developing consensus on royalty valuation approaches; comments due by 4-16-03; published 3-17-03 [FR 03-06254]
Oil value for royalties due on Indian leases; establishment; comments due by 4-14-03; published 2-12-03 [FR 03-03466]

PENSION BENEFIT GUARANTY CORPORATION
Government Paperwork Elimination Act; implementation:
Electronic transactions; removal of regulatory impedments to filings, issuances, computation of time, and electronic record retention; comments due by 4-15-03; published 2-14-03 [FR 03-03081]

SECURITIES AND EXCHANGE COMMISSION
Investment advisers and investment companies:
Compliance programs; comments due by 4-18-03; published 2-11-03 [FR 03-03315]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Transponder continuous operation; comments due by 4-18-03; published 3-18-03 [FR 03-06511]
Air traffic operating and flight rules, etc.:
Reduced vertical separation minimum in domestic U.S. airspace; comments due by 4-14-03; published 2-28-03 [FR 03-04765]
Airworthiness directives:
BAE Systems (Operations) Ltd.; comments due by 4-16-03; published 3-17-03 [FR 03-06260]
Boeing; comments due by 4-17-03; published 3-3-03 [FR 03-04842]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Dassault; comments due by 4-17-03; published 3-18-03 [FR 03-06261]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Empresa Basileira de Aeronautica S.A. (EMBRAER); comments due by 4-16-03; published 3-17-03 [FR 03-06259]
Eurocopter France; comments due by 4-15-03; published 2-14-03 [FR 03-03774]
McDonnell Douglas; comments due by 4-14-03; published 2-27-03 [FR 03-04587]
Turbomeca S.A.; comments due by 4-14-03; published 2-12-03 [FR 03-03473]
Class E airspace; comments due by 4-16-03; published 3-17-03 [FR 03-06334]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—
Adaptive frontal-lighting systems; comments due by 4-14-03; published 2-12-03 [FR 03-03505]

TRANSPORTATION DEPARTMENT
Saint Lawrence Seaway Development Corporation
Seaway regulations and rules:
Tariff of tolls; comments due by 4-16-03; published 3-17-03 [FR 03-06347]

TREASURY DEPARTMENT
Disclosure of records:
Legal proceedings; access to information and records; clarification; comments due by 4-16-03; published 3-17-03 [FR 03-06247]

VETERANS AFFAIRS DEPARTMENT
Disabilities rating schedule:
Musculoskeletal system; comments due by 4-14-03; published 2-11-03 [FR 03-02119]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 395/P.L. 108–10
Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

Last List March 10, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.access.gpo.gov/nara/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $1195.00 domestic, $298.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2250**.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-050-00001-6)	9.00	[4]Jan. 1, 2003
3 (1997 Compilation and Parts 100 and 101)	(869-048-00002-0)	59.00	[1] Jan. 1, 2002
4	(869-050-00003-2)	9.50	Jan. 1, 2003
5 Parts:			
1-699	(869-050-00004-1)	57.00	Jan. 1, 2003
700-1199	(869-050-00005-9)	46.00	Jan. 1, 2003
1200-End, 6 (6 Reserved)	(869-048-00006-2)	58.00	Jan. 1, 2002
7 Parts:			
1-26	(869-048-00001-1)	41.00	Jan. 1, 2002
27-52	(869-050-00008-3)	47.00	Jan. 1, 2003
53-209	(869-050-00009-1)	36.00	Jan. 1, 2003
*210-299	(869-050-00010-5)	59.00	Jan. 1, 2003
300-399	(869-050-00011-3)	43.00	Jan. 1, 2003
400-699	(869-050-00012-1)	39.00	Jan. 1, 2003
700-899	(869-050-00013-0)	42.00	Jan. 1, 2003
900-999	(869-048-00014-3)	58.00	Jan. 1, 2002
*1000-1199	(869-050-00015-6)	23.00	Jan. 1, 2003
*1200-1599	(869-050-00016-4)	58.00	Jan. 1, 2003
1600-1899	(869-050-00017-2)	61.00	Jan. 1, 2003
1900-1939	(869-048-00018-6)	29.00	Jan. 1, 2002
1940-1949	(869-048-00019-4)	53.00	Jan. 1, 2002
1950-1999	(869-048-00020-8)	47.00	Jan. 1, 2002
2000-End	(869-050-00021-1)	46.00	Jan. 1, 2003
8	(869-048-00022-4)	58.00	Jan. 1, 2002
9 Parts:			
1-199	(869-048-00023-2)	58.00	Jan. 1, 2002
*200-End	(869-050-00024-5)	56.00	Jan. 1, 2003
10 Parts:			
1-50	(869-050-00025-3)	58.00	Jan. 1, 2003
51-199	(869-050-00026-1)	56.00	Jan. 1, 2003
*200-499	(869-050-00027-0)	44.00	Jan. 1, 2003
500-End	(869-048-00028-3)	58.00	Jan. 1, 2002
11	(869-048-00029-1)	34.00	Jan. 1, 2002
12 Parts:			
1-199	(869-050-00030-0)	30.00	Jan. 1, 2003
*200-219	(869-050-00031-8)	38.00	Jan. 1, 2003
220-299	(869-048-00032-1)	58.00	Jan. 1, 2002
300-499	(869-050-00033-4)	43.00	Jan. 1, 2003
500-599	(869-050-00034-2)	38.00	Jan. 1, 2003
600-899	(869-050-00035-1)	54.00	Jan. 1, 2003
900-End	(869-050-00036-9)	47.00	Jan. 1, 2003
13	(869-050-00037-7)	47.00	Jan. 1, 2003
14 Parts:			
1-59	(869-048-00037-2)	60.00	Jan. 1, 2002
60-139	(869-050-00039-3)	58.00	Jan. 1, 2003
140-199	(869-050-00040-7)	28.00	Jan. 1, 2003
*200-1199	(869-050-00041-5)	47.00	Jan. 1, 2003
1200-End	(869-050-00042-3)	43.00	Jan. 1, 2003
15 Parts:			
0-299	(869-050-00043-1)	37.00	Jan. 1, 2003
300-799	(869-048-00043-7)	58.00	Jan. 1, 2002
800-End	(869-050-00045-8)	40.00	Jan. 1, 2003
16 Parts:			
0-999	(869-050-00046-6)	47.00	Jan. 1, 2003
1000-End	(869-050-00047-4)	57.00	Jan. 1, 2003
17 Parts:			
1-199	(869-048-00048-8)	47.00	Apr. 1, 2002
200-239	(869-048-00049-6)	55.00	Apr. 1, 2002
240-End	(869-048-00050-0)	59.00	Apr. 1, 2002
18 Parts:			
1-399	(869-048-00051-8)	59.00	Apr. 1, 2002
400-End	(869-048-00052-6)	24.00	Apr. 1, 2002
19 Parts:			
1-140	(869-048-00053-4)	57.00	Apr. 1, 2002
141-199	(869-048-00054-2)	56.00	Apr. 1, 2002
200-End	(869-048-00055-1)	29.00	Apr. 1, 2002
20 Parts:			
1-399	(869-048-00056-9)	47.00	Apr. 1, 2002
400-499	(869-048-00057-7)	60.00	Apr. 1, 2002
500-End	(869-048-00058-5)	60.00	Apr. 1, 2002
21 Parts:			
1-99	(869-048-00059-3)	39.00	Apr. 1, 2002
100-169	(869-048-00060-7)	46.00	Apr. 1, 2002
170-199	(869-048-00061-5)	47.00	Apr. 1, 2002
200-299	(869-048-00062-3)	16.00	Apr. 1, 2002
300-499	(869-048-00063-1)	29.00	Apr. 1, 2002
500-599	(869-048-00064-0)	46.00	Apr. 1, 2002
600-799	(869-048-00065-8)	16.00	Apr. 1, 2002
800-1299	(869-048-00066-6)	56.00	Apr. 1, 2002
1300-End	(869-048-00067-4)	22.00	Apr. 1, 2002
22 Parts:			
1-299	(869-048-00068-2)	59.00	Apr. 1, 2002
300-End	(869-048-00069-1)	43.00	Apr. 1, 2002
23	(869-048-00070-4)	40.00	Apr. 1, 2002
24 Parts:			
0-199	(869-048-00071-2)	57.00	Apr. 1, 2002
200-499	(869-048-00072-1)	47.00	Apr. 1, 2002
500-699	(869-048-00073-9)	29.00	Apr. 1, 2002
700-1699	(869-048-00074-7)	58.00	Apr. 1, 2002
1700-End	(869-048-00075-5)	29.00	Apr. 1, 2002
25	(869-048-00076-3)	68.00	Apr. 1, 2002
26 Parts:			
§§ 1.0-1-1.60	(869-048-00077-1)	45.00	Apr. 1, 2002
§§ 1.61-1.169	(869-048-00078-0)	58.00	Apr. 1, 2002
§§ 1.170-1.300	(869-048-00079-8)	55.00	Apr. 1, 2002
§§ 1.301-1.400	(869-048-00080-1)	44.00	Apr. 1, 2002
§§ 1.401-1.440	(869-048-00081-0)	60.00	Apr. 1, 2002
§§ 1.441-1.500	(869-048-00082-8)	47.00	Apr. 1, 2002
§§ 1.501-1.640	(869-048-00083-6)	44.00	[6]Apr. 1, 2002
§§ 1.641-1.850	(869-048-00084-4)	57.00	Apr. 1, 2002
§§ 1.851-1.907	(869-048-00085-2)	57.00	Apr. 1, 2002
§§ 1.908-1.1000	(869-048-00086-1)	56.00	Apr. 1, 2002
§§ 1.1001-1.1400	(869-048-00087-9)	58.00	Apr. 1, 2002
§§ 1.1401-End	(869-048-00088-7)	61.00	Apr. 1, 2002
2-29	(869-048-00089-5)	57.00	Apr. 1, 2002
30-39	(869-048-00090-9)	39.00	Apr. 1, 2002
40-49	(869-048-00091-7)	26.00	Apr. 1, 2002
50-299	(869-048-00092-5)	38.00	Apr. 1, 2002
300-499	(869-048-00093-3)	57.00	Apr. 1, 2002
500-599	(869-048-00094-1)	12.00	[5]Apr. 1, 2002
600-End	(869-048-00095-0)	16.00	Apr. 1, 2002
27 Parts:			
1-199	(869-048-00096-8)	61.00	Apr. 1, 2002

Title	Stock Number	Price	Revision Date
200-End	(869-048-00097-6)	13.00	Apr. 1, 2002
28 Parts:			
0-42	(869-048-00098-4)	58.00	July 1, 2002
43-end	(869-048-00099-2)	55.00	July 1, 2002
29 Parts:			
0-99	(869-048-00100-0)	45.00	[8]July 1, 2002
100-499	(869-048-00101-8)	21.00	July 1, 2002
500-899	(869-048-00102-6)	58.00	July 1, 2002
900-1899	(869-048-00103-4)	35.00	July 1, 2002
1900-1910 (§§ 1900 to 1910.999)	(869-048-00104-2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869-048-00105-1)	42.00	[8]July 1, 2002
1911-1925	(869-048-00106-9)	29.00	July 1, 2002
1926	(869-048-00107-7)	47.00	July 1, 2002
1927-End	(869-048-00108-5)	59.00	July 1, 2002
30 Parts:			
1-199	(869-048-00109-3)	56.00	July 1, 2002
200-699	(869-048-00110-7)	47.00	July 1, 2002
700-End	(869-048-00111-5)	56.00	July 1, 2002
31 Parts:			
0-199	(869-048-00112-3)	35.00	July 1, 2002
200-End	(869-048-00113-1)	60.00	July 1, 2002
32 Parts:			
1-39, Vol. I		15.00	[2]July 1, 1984
1-39, Vol. II		19.00	[2]July 1, 1984
1-39, Vol. III		18.00	[2]July 1, 1984
1-190	(869-048-00114-0)	56.00	July 1, 2002
191-399	(869-048-00115-8)	60.00	July 1, 2002
400-629	(869-048-00116-6)	47.00	July 1, 2002
630-699	(869-048-00117-4)	37.00	July 1, 2002
700-799	(869-048-00118-2)	44.00	July 1, 2002
800-End	(869-048-00119-1)	46.00	July 1, 2002
33 Parts:			
1-124	(869-048-00120-4)	47.00	July 1, 2002
125-199	(869-048-00121-2)	60.00	July 1, 2002
200-End	(869-048-00122-1)	47.00	July 1, 2002
34 Parts:			
1-299	(869-048-00123-9)	45.00	July 1, 2002
300-399	(869-048-00124-7)	43.00	July 1, 2002
400-End	(869-048-00125-5)	59.00	July 1, 2002
35	(869-048-00126-3)	10.00	[7]July 1, 2002
36 Parts			
1-199	(869-048-00127-1)	36.00	July 1, 2002
200-299	(869-048-00128-0)	35.00	July 1, 2002
300-End	(869-048-00129-8)	58.00	July 1, 2002
37	(869-048-00130-1)	47.00	July 1, 2002
38 Parts:			
0-17	(869-048-00131-0)	57.00	July 1, 2002
18-End	(869-048-00132-8)	58.00	July 1, 2002
39	(869-048-00133-6)	40.00	July 1, 2002
40 Parts:			
1-49	(869-048-00134-4)	57.00	July 1, 2002
50-51	(869-048-00135-2)	40.00	July 1, 2002
52 (52.01-52.1018)	(869-048-00136-1)	55.00	July 1, 2002
52 (52.1019-End)	(869-048-00137-9)	58.00	July 1, 2002
53-59	(869-048-00138-7)	29.00	July 1, 2002
60 (60.1-End)	(869-048-00139-5)	56.00	July 1, 2002
60 (Apps)	(869-048-00140-9)	51.00	[8]July 1, 2002
61-62	(869-048-00141-7)	38.00	July 1, 2002
63 (63.1-63.599)	(869-048-00142-5)	56.00	July 1, 2002
63 (63.600-63.1199)	(869-048-00143-3)	46.00	July 1, 2002
63 (63.1200-End)	(869-048-00144-1)	61.00	July 1, 2002
64-71	(869-048-00145-0)	29.00	July 1, 2002
72-80	(869-048-00146-8)	59.00	July 1, 2002
81-85	(869-048-00147-6)	47.00	July 1, 2002
86 (86.1-86.599-99)	(869-048-00148-4)	52.00	[8]July 1, 2002
86 (86.600-1-End)	(869-048-00149-2)	47.00	July 1, 2002
87-99	(869-048-00150-6)	57.00	July 1, 2002
100-135	(869-048-00151-4)	42.00	July 1, 2002
136-149	(869-048-00152-2)	58.00	July 1, 2002
150-189	(869-048-00153-1)	47.00	July 1, 2002
190-259	(869-048-00154-9)	37.00	July 1, 2002
260-265	(869-048-00155-7)	47.00	July 1, 2002
266-299	(869-048-00156-5)	47.00	July 1, 2002
300-399	(869-048-00157-3)	43.00	July 1, 2002
400-424	(869-048-00158-1)	54.00	July 1, 2002
425-699	(869-048-00159-0)	59.00	July 1, 2002
700-789	(869-048-00160-3)	58.00	July 1, 2002
790-End	(869-048-00161-1)	45.00	July 1, 2002
41 Chapters:			
1, 1-1 to 1-10		13.00	[3]July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3-6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10-17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3]July 1, 1984
19-100		13.00	[3]July 1, 1984
1-100	(869-048-00162-0)	23.00	July 1, 2002
101	(869-048-00163-8)	43.00	July 1, 2002
102-200	(869-048-00164-6)	41.00	July 1, 2002
201-End	(869-048-00165-4)	24.00	July 1, 2002
42 Parts:			
1-399	(869-048-00166-2)	56.00	Oct. 1, 2002
400-429	(869-048-00167-1)	59.00	Oct. 1, 2002
430-End	(869-048-00168-9)	61.00	Oct. 1, 2002
43 Parts:			
1-999	(869-048-00169-7)	47.00	Oct. 1, 2002
1000-end	(869-048-00170-1)	59.00	Oct. 1, 2002
44	(869-048-00171-9)	47.00	Oct. 1, 2002
45 Parts:			
1-199	(869-048-00172-7)	57.00	Oct. 1, 2002
200-499	(869-048-00173-5)	31.00	[9]Oct. 1, 2002
500-1199	(869-048-00174-3)	47.00	Oct. 1, 2002
1200-End	(869-048-00175-1)	57.00	Oct. 1, 2002
46 Parts:			
1-40	(869-048-00176-0)	44.00	Oct. 1, 2002
41-69	(869-048-00177-8)	37.00	Oct. 1, 2002
70-89	(869-048-00178-6)	14.00	Oct. 1, 2002
90-139	(869-048-00179-4)	42.00	Oct. 1, 2002
140-155	(869-048-00180-8)	24.00	[9]Oct. 1, 2002
156-165	(869-048-00181-6)	31.00	[9]Oct. 1, 2002
166-199	(869-048-00182-4)	44.00	Oct. 1, 2002
200-499	(869-048-00183-2)	37.00	Oct. 1, 2002
500-End	(869-048-00184-1)	24.00	Oct. 1, 2002
47 Parts:			
0-19	(869-048-00185-9)	57.00	Oct. 1, 2002
20-39	(869-048-00186-7)	45.00	Oct. 1, 2002
40-69	(869-048-00187-5)	36.00	Oct. 1, 2002
70-79	(869-048-00188-3)	58.00	Oct. 1, 2002
80-End	(869-048-00189-1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1-51)	(869-048-00190-5)	59.00	Oct. 1, 2002
1 (Parts 52-99)	(869-048-00191-3)	47.00	Oct. 1, 2002
2 (Parts 201-299)	(869-048-00192-1)	53.00	Oct. 1, 2002
3-6	(869-048-00193-0)	30.00	Oct. 1, 2002
7-14	(869-048-00194-8)	47.00	Oct. 1, 2002
15-28	(869-048-00195-6)	55.00	Oct. 1, 2002
29-End	(869-048-00196-4)	38.00	[9]Oct. 1, 2002
49 Parts:			
1-99	(869-048-00197-2)	56.00	Oct. 1, 2002
100-185	(869-048-00198-1)	60.00	Oct. 1, 2002
186-199	(869-048-00199-9)	18.00	Oct. 1, 2002
200-399	(869-048-00200-6)	61.00	Oct. 1, 2002
400-999	(869-048-00201-4)	61.00	Oct. 1, 2002
1000-1199	(869-048-00202-2)	25.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
1200–End	(869–048–00203–1)	30.00	Oct. 1, 2002
50 Parts:			
1–17	(869–048–00204–9)	60.00	Oct. 1, 2002
18–199	(869–048–00205–7)	40.00	Oct. 1, 2002
200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
600–End	(869–048–00207–3)	58.00	Oct. 1, 2002
CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2003 CFR set		1,195.00	2003
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2003
Individual copies		2.00	2003
Complete set (one-time mailing)		298.00	2002
Complete set (one-time mailing)		290.00	2001

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice.* You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AER SMITH212J                DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AERDO SMITH212J              DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

——— subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $764 each per year.

——— subscriptions to **Federal Register**, *daily only* (FRDO), at $699 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

108th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 108th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara1/nara005.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 108th Congress for $285 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 2/03

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $264.00
Six months: $132.00

Code of Federal Regulations:

Current year (as issued): $298.00



Superintendent of Documents **Subscription** Order Form

Order Processing Code
*** 5419**

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $264 each ☐ Six months at $132.00

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $298 each

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

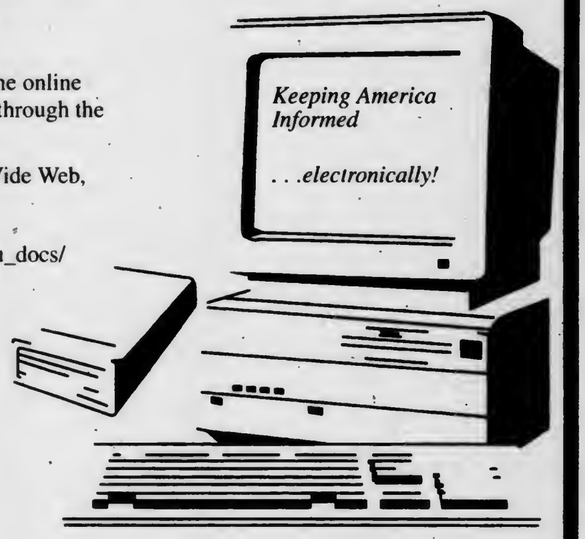
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

VOL
68
ISS
66
AP
7
003
MI



Printed on recycled paper

VOL
68
ISS
67
AP
8
003
MI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.



Federal Register

4–8–03 | Tuesday
Vol. 68 No. 67 | Apr. 8, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
68
ISS
67
AP
8
003
MI



Federal Register

4–8–03 Tuesday
Vol. 68 No. 67 Apr. 8, 2003
Pages 16943–17252

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 202–512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 202–512–1800
Assistance with public single copies 1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES
Subscriptions:
Paper or fiche 202–741–6005
Assistance with Federal agency subscriptions 202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 67
Tuesday, April 8, 2003

Agency for International Development
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17007

Agriculture Department
See Animal and Plant Health Inspection Service
See Farm Service Agency
See Forest Service
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Ivy gourd control; release of nonindigenous leaf-mining weevil in Guam and Saipan, 17007–17008

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17043–17045

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Runaway and Homeless Youth Programs, 17045–17053

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
New York, 17019

Coast Guard
RULES
Drawbridge operations:
Delaware, 16953–16955
Organization, functions, and authority delegations:
Agency transition to Homeland Security Department; technical amendments
Correction, 16953
Ports and waterways safety:
Kill Van Kull Channel et al., NY and NJ; regulated navigation area, 16955–16958
NOTICES
Environmental statements; availability, etc.:
Response Boat Replacement Project, 17063–17064
Reports and guidance documents; availability, etc.:
Merchant mariners—
Document renewals and issuances; forms and procedures, 17064

Commerce Department
See Industry and Security Bureau—
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17019

Commodity Futures Trading Commission
NOTICES
Committees; establishment, renewal, termination, etc.:
Agricultural Advisory Committee, 17024

Copyright Office, Library of Congress
RULES
Copyright office and procedures:
Transfers and licenses of copyright granted in or after 1978; notices of termination, 16958–16959

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17024–17025

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Biological and Environmental Research Advisory Committee, 17025

Energy Information Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17025–17027

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Massachusetts, 16959–16962
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Massachusetts, 17002–17003
Hazardous wastes:
Identification and listing—
Hazardous waste mixtures; wastewater treatment exemptions (headworks exemptions), 17233–17250
NOTICES
Meetings:
Drinking water distribution systems; public stakeholders, 17041
Pesticide Program Dialogue Committee, 17041–17042

Executive Office of the President
See Management and Budget Office

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 17042

Farm Service Agency
RULES
Program regulations:
Loan and grant program funds; allocation methodology and formulas
Correction, 17153

Federal Aviation Administration
RULES
Air traffic operating and flight rules, etc.:
Area navigation and miscellaneous amendments, 16943–16948
Airworthiness directives:
Pilatus Aircraft Ltd., 16948–16950
Class D and Class E airspace, 16950
Class E airspace, 16950–16952
Class E airspace; correction, 17153
PROPOSED RULES
Air traffic operating and flight rules, etc.:
Area navigation and miscellaneous amendments, 16992–16993
NOTICES
Passenger facility charges; applications, etc.:
Lehigh Valley International Airport, PA, 17149–17150

Federal Communications Commission
RULES
Common carrier services:
Satellite communications—
18 GHz frequency band redesignation, satellite earth stations blanket licensing, and additional spectrum allocation for broadcast satellite service use, 16962–16968
Radio stations; table of assignments:
Various States, 16968–16969
PROPOSED RULES
Radio stations; table of assignments:
Oregon, 17003–17004

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17027–17028
Electric rate and corporate regulation filings:
American Transmission Company, Inc., et al., 17036–17038
Hydroelectric applications, 17038–17040
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 17028
CenterPoint Energy Gas Transmission Co., 17029
CenterPoint Energy-Mississippi River Transmission Corp., 17028–17029
CMS Trunkline LNG Co., LLC, 17029
Columbia Gas Transmission Corp., 17030
Columbia Gulf Transmission Co., 17030–17031
East Tennessee Natural Gas Co., 17031–17032
El Paso Natural Gas Co., 17032
Gulfstream Natural Gas System, L.L.C., 17032–17033
Kern River Gas Transmission Co., 17033
MIGC, Inc., 17033–17034
Natural Gas Pipeline Co. of America, 17034
Northern Natural Gas Co., 17034
PG&E National Energy Group et al., 17032
Transcontinental Gas Pipe Line Corp., 17034–17035
Vector Pipeline L.P., 17036
Williston Basin Interstate Pipeline Co., 17036

Federal Maritime Commission
PROPOSED RULES
Passenger vessel financial responsibility:
Performance and casualty rules, Alternative Dispute Resolution program, etc.; miscellaneous amendments; oral comments and hearing, 17003

Federal Railroad Administration
NOTICES
Meetings:
Railroad Safety Advisory Committee, 17150

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 17042
Formations, acquisitions, and mergers, 17042–17043
Meetings; Sunshine Act, 17043

Fish and Wildlife Service
RULES
Endangered and threatened species:
Critical habitat designations—
Bexar County, TX, invertebrate species, 17155–17231
Scotts Valley polygonum, 16970–16990
NOTICES
Endangered and threatened species permit applications, 17067–17072

Food and Drug Administration
PROPOSED RULES
Public Health Security and Bioterrorism Preparedness and Response Act of 2002; implementation:
Food records, maintenance and inspection; and administrative detention; satellite downlink public meeting, 16998–17000

Forest Service
NOTICES
Land and resource management plans, etc.:
Kootenai and Idaho Panhandle National Forests, ID, MT, and WA, 17008
Meetings:
Resource Advisory Committees—
Madera County, 17008–17009

Harry S. Truman Scholarship Foundation
NOTICES
Meetings; Sunshine Act, 17043

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
RULES
Health insurance reform:
Health Insurance Portability and Accountability Act of 1996—
Electronic protected health information; security standards; correction, 17153

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
PROPOSED RULES
Grants:
Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee; establishment, 17000–17002
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17064–17065

Grant and cooperative agreement awards:
Rural Housing and Economic Development Program, 17065–17067
Reports and guidance documents; availability, etc.:
Ginnie Mae mortgage-backed securities; loan-level data release, 17251–17252

Indian Affairs Bureau
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
Lac Courte Oreilles Band of Lake Superior Chippewa Indians, WI, 17072
Tulalip Tribes of Washington, 17072

Industry and Security Bureau
NOTICES
Export privileges, actions affecting:
Talyi, Yaudat Mustafa, et al.; correction, 17153

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See National Park Service

Internal Revenue Service
PROPOSED RULES
Income taxes:
Accruals and allocations due to age attainment, reductions; and cash balance plans; nondiscrimination cross-testing rules application
Hearing date and location changes, 17002
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17151–17152

International Trade Administration
NOTICES
Meetings:
Environmental Technologies Trade Advisory Committee, 17020

International Trade Commission
NOTICES
Import investigations:
4,4'-diamino-2,2'-stilbenedisulfonic acid and stilbenic fluorescent whitening agents from—
Various countries, 17084–17085
Meetings; Sunshine Act, 17085–17086

Land Management Bureau
NOTICES
Survey plat filings:
Idaho, 17072–17073

Library of Congress
See Copyright Office, Library of Congress

Management and Budget Office
NOTICES
Reports and guidance documents; availability, etc.:
Consolidated Federal Financial Report, 17097–17105
Federal grant applications; standard data elements, 17090–17097

Minerals Management Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17073–17077

National Aeronautics and Space Administration
RULES
Acquisition regulations:
Shipment by Government Bills of Lading, 16969

National Institute of Standards and Technology
NOTICES
Voluntary product standards:
American Petroleum Institute; standards development, 17020–17021

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17053–17054
Grants and cooperative agreements; availability, etc.:
Clinical Researchers Extramural Loan Repayment Program, 17054–17057
Health Disparities Research Loan Repayment Program, 17058–17061
Meetings:
National Center for Complementary and Alternative Medicine, 17061
National Heart, Lung, and Blood Institute, 17061–17062
National Institute of Neurological Disorders and Stroke, 17062
National Institute on Aging, 17062
National Institute on Drug Abuse, 17063

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Atka mackerel and Pacific cod, 16990
Pollock, 16990–16991
PROPOSED RULES
Fishery conservation and management:
Magnuson-Stevens Act provisions—
Domestic fisheries; exempted fishing permit applications, 17004–17006
Space-based data collection systems; policies and procedures, 16993–16998
NOTICES
Meetings:
New England Fishery Management Council, 17022
Pacific Fishery Management Council, 17022–17023
South Atlantic Fishery Management Council, 17023–17024
Permits:
Endangered and threatened species, 17024

National Park Service
NOTICES
Concession contracts and permits:
Expiring contracts; extension, 17077–17078
Environmental statements; availability, etc.:
Channel Islands National Park, CA, 17078
Great Basin National Park, NV, 17078–17079
Lake Mead National Recreation Area, NV and AZ, 17079
Saguaro Nationa Park, AZ, 17079–17080
Schuylkill River Valley National Heritage Area, PA, 17080–17081
Environmental statements; notice of intent:
Ala Kahakai National Historic Trail, HI, 17081–17082

Lackawanna Valley National Heritage Area, PA, 17082
Meetings:
Native American Graves Protection and Repatriation Review Committee, 17082–17083
National Natural Landmark designations:
Garden Canyon, Fort Huachuca, AZ, 17083
Native American human remains and associated funerary objects:
Museum of Western Colorado, Grand Junction, CO—Apache Gahe (Crown Dancer's) mask, 17083–17084
Nevada State Museum, Carson City, NV—Inventory from Pyramid Lake, NV, 17084

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 17086
Reports and guidance documents; availability, etc.:
Wisconsin; regulatory agreement with NRC, 17086–17090

Office of Management and Budget
See Management and Budget Office

Rural Business-Cooperative Service
RULES
Program regulations:
Loan and grant program funds; allocation methodology and formulas
Correction, 17153
NOTICES
Grants and cooperative agreements; availability, etc.:
Renewable Energy Systems and Energy Efficiency Improvements Program, 17009–17018

Rural Housing Service
RULES
Program regulations:
Loan and grant program funds; allocation methodology and formulas
Correction, 17153

Rural Utilities Service
RULES
Program regulations:
Loan and grant program funds; allocation methodology and formulas
Correction, 17153
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17018–17019

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17105
Investment Company Act of 1940:
Shares substitution applications—
CUNA Mutual Life Insurance Co. et al., 17115–17120
Metropolitan Life Investors USA Insurance Co. et al., 17106–17115
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 17120–17122
Municipal Securities Rulemaking Board, 17122–17134
National Association of Securities Dealers, Inc., 17134–17139
National Securities Clearing Corp., 17139–17140
New York Stock Exchange, Inc., 17140–17146
Pacific Exchange, Inc., 17146–17147
Applications, hearings, determinotions, etc.:
El Paso Corp., 17105–17106

Small Business Administration
NOTICES
Disaster loan areas:
Florida and Alabama, 17147
Georgia, 17147
Kentucky, 17147–17148
Massachusetts and New Hampshire, 17148
North Carolina, 17148
Ohio, 17148
Virginia, 17148–17149

State Department
NOTICES
Art objects; importation for exhibition:
Illuminating the Renaissance: The Triumph of Flemish Manuscript Painting in Europe, 17149

Surface Transportation Board
NOTICES
Railroad services abandonment:
CSX Transportation, Inc., 17151
St. Croix Valley Railroad Co., 17150–17151

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 17155–17231

Part III
Environmental Protection Agency, 17233–17250

Part IV
Housing and Urban Development Department, 17251–17252

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
1940 17153

14 CFR
1 16943
39 16948
71 (10 documents) 16943, 16950, 16951, 16952, 17153
95 16943
97 16943
Proposed Rules:
1 16992
71 16992
91 16992
95 16992
97 16992
121 16992
125 16992
129 16992
135 16992

15 CFR
Proposed Rules:
911 16993

21 CFR
Proposed Rules:
1 16998

24 CFR
Proposed Rules:
1000 17000

26 CFR
Proposed Rules:
1 17002

33 CFR
Ch. 1 16953
117 16953
165 16955

37 CFR
201 16958

40 CFR
52 16959
Proposed Rules:
52 17002
261 17234

45 CFR
164 17153

46 CFR
Ch. 1 16953
Ch. 3 16953
Proposed Rules:
540 17003

47 CFR
2 16962
21 16962
25 16962
73 16968
74 16962
78 16962
101 16962
Proposed Rules:
73 16968

48 CFR
1847 16969
1852 16969

49 CFR
Ch. 4 16953

50 CFR
17 (2 documents) 16970, 17156
679 (2 documents) 16990
Proposed Rules:
600 (2 documents) 17004, 17005

Rules and Regulations

Federal Register
Vol. 68, No. 67
Tuesday, April 8, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 71, 95, and 97

[Docket No. FAA–2003–14698; Amendment Nos. 1–50; 71–32; 95–339; 97–1334]

RIN 2120–AH77

Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action adopts certain amendments proposed in Notice No. 02–20, Area Navigation (RNAV) and Miscellaneous Amendments. Specifically, this action revises or adopts several definitions in FAA regulations, including Air Traffic Service routes, in part to be in concert with International Civil Aviation Organization (ICAO) definitions; reorganizes the structure of FAA regulations concerning the Designation of Class A, B, C, D, and E Airspace Areas; Airways; Routes; and Reporting Points, without changing the intent of the rule; and incorporates by reference two FAA Orders on Terminal Instrument Procedures (TERPS) and Flight Procedures and Airspace, into the Code of Federal Regulations. This action is intended to facilitate the development of RNAV routes that are not restricted to ground-based navigation references.

DATES: This final rule is effective on May 15, 2003. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of May 15, 2003. Comments on this action must be submitted on or before May 8, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14698 at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested persons to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. We also invite comments relating to environmental, energy, federalism, or international trade impacts that might result form this amendment. Please include the regulatory docket or amendment number and send two copies to the address above. We will file all comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, in the public docket. The docket is available for public inspection before and after the comment closing date.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78), or you may visit *http://dms.dot.gov.*

The FAA will consider all comments received on or before the closing date for comments. We will consider late comments to the extent practicable. We may amend this final rule in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–2003–14698." The postcard will be date-stamped by the FAA and mailed to the commenter.

Availability of Final Rule

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us *9-AWA-SBREFA@faa.gov.*

Background

On December 17, 2002, the FAA published Notice No. 02–20, Area Navigation (RNAV) and Miscellaneous Amendments, (Docket No. FAA–2002–

14002; 67 FR 77326). In that notice, the FAA proposed to amend its regulations (14 CFR parts, 1, 71, 91, 95, 97, 121, 125, 129, and 135) to reflect technological advances that support RNAV operations; make certain terms consistent with those of the ICAO; remove the middle marker as a required component of instrument landing systems; and clarify airspace terminology. The changes in Notice No. 02–20 were proposed to facilitate the transition from reliance on ground-based navigation to new reference sources, enable advancements in technology, and increase efficiency of the National Airspace System. These amendments do not preclude the continued use of ground-based navigation systems. The comment period for Notice No. 02–20 closed on January 31, 2003. In response to the notice, the FAA received 21 comments.

A number of commenters requested that the FAA extend the comment period for up to 90 days to permit more in depth analyses of the proposal. Other comments received on this effort concerned the proposed amendments to communications and navigation equipment requirements, and instrument approach procedure terminology. These particular comments were substantive and reflected a significant interest in many areas of the proposed amendments. Also, several comments were received regarding the proposed amendments to air traffic service (ATS) routes terminology and criteria in part 1 and part 71. The FAA believes that many of these comments indicate that the commenters misunderstood the scope and intent of the proposed changes to part 1 and part 71.

For the reasons discussed below, the FAA is taking two separate actions: (1) Issuing a final rule, request for comments, on those matters dealing with the revision or adoption of several definitions in 14 CFR part 1, the reorganization of 14 CFR part 71, and the incorporation of FAA Order 8260.3 and FAA Order 8260.19 into the Code of Federal Regulations by reference; and (2) reopening the comment period for the proposed RNAV operations and equipment requirements. The reopening of the comment period for the proposed RNAV operations and equipment requirements is published separately in today's **Federal Register**.

Rationale for Separate Rule Action

This separate rulemaking effort will enable the FAA to proceed with the design and development phase of a high altitude RNAV route structure while providing an additional opportunity for public input. Operators of suitably-equipped aircraft will be able to realize some of the benefits of this High Altitude Redesign (HAR) project potentially as early as the summer of 2003. The HAR seeks to maximize the efficiency of the National Airspace System through the use of new technology and airspace concepts in the high altitude structure. The HAR will enable improved system efficiency by establishing high altitude RNAV routes for use by operators of suitably equipped aircraft. For example, establishing multiple routes in high density corridors where air traffic flows are currently served by a single jet route will lead to a reduction in "miles-in-trail" restrictions and alleviate "choke points" that lead to air traffic delays. In consideration of the increased traffic volume expected during the upcoming summer air travel season, the potential for increased air traffic delays, and the time required to promulgate airspace rulemaking actions to establish RNAV routes, the FAA believes that it is in the public interest to adopt these amendments in a separate final rule.

Many of the aircraft in the U.S. commercial fleet operating in the high altitude structure are already capable of utilizing the RNAV routes being implemented under the HAR. Experience from the implementation of RNAV procedures and routes in the terminal environment indicates significant time and fuel savings for participating carriers and demonstrates the potential of the HAR project.

The new RNAV routes will supplement, but not replace, the existing National Airspace System (NAS) route structure (*i.e.*, Federal airways and jet routes). The adoption of these amendments will facilitate the expanded use of RNAV systems for operators of suitably equipped aircraft. However, the adoption will not impose any new obligation on users to change from current ground-based navigation systems.

The FAA has determined that these amendments can be adopted separately without adverse impact on the continuing rulemaking process for the remaining proposed amendments in Notice No. 02–20. We have also determined that failure to proceed with a final rule now would further delay the savings that would be realized by a significant number of system users. The FAA recognizes that some members of the public may not have submitted comments on the relevant proposals because they requested an extension of the comment period. Therefore, the FAA is opening a 30-day comment period with this final rule.

In response to these particular proposals, the FAA received four comments regarding the amendments to parts 1 and 71 being adopted in this final rule. No comments were received regarding the amendments to §§ 95.1 and 97.20. These comments are further discussed below.

Analysis of Comments

Section 1.1 General Definitions

Comments were received regarding the definitions "Air Traffic Service (ATS) route" and "Area navigation (RNAV)." The Airline Dispatchers Federation wrote expressing general approval of the NPRM, but was concerned that the definition of an *Air Traffic Service route* does not "concur" with other regulatory requirements.

The FAA does not agree with this comment. This ICAO definition of Air Traffic Service route is being adopted simply as a general term to include all Federal airways, jet routes, and RNAV routes in the NAS. The definition states that an ATS route would be defined by route specifications that may include a route designator, the path to or from fixes, distance between fixes, reporting requirements, and the lowest safe altitude for the route. This is general information that is consistent with the information currently contained in various directives regarding the development and establishment of Federal airways and jet routes in the NAS.

Alaska Airlines questioned how ATS routes would be referred to in day-to-day communications and operations. The Aircraft Owners and Pilots Association (AOPA) expressed similar concerns, and stated that the FAA should use the term "ATS route" only in internal orders and procedures design guidance, citing the potential for confusion.

The FAA disagrees with these comments. As stated above, the term "ATS route" is a general term used to describe all types of routes designated in the NAS. The FAA does not foresee changing the identification of existing routes. The current prefixes "J" and "V" will continue to be used to describe jet routes and VOR Federal airways, respectively, in flight plans, ATC communications, and regulations. In addition, colored Federal airways will also continue to be described by the appropriate colors and prefixes (*e.g.*, Red Federal airways: R–1; Green Federal airways: G–1; etc.). Also, the FAA will add a new prefix, "Q," to identify domestic RNAV routes that will be established as one outcome of this rule. The new routes will be established by

rule in the same manner as jet routes and victor airways. ICAO has allotted the "Q" prefix, and the number series 001 through 499, to the United States for this purpose (*e.g.*, Q–105). ATC communications and flight plans will refer to these routes by "Q-prefix and number" as is currently done for "jet routes" and "victor airways." Further, the FAA plans to amend appropriate publications, such as the Aeronautical Information Manual (AIM), to reflect the changes adopted in this rule.

As part of their comments on the proposal, Continental Airlines requested that the proposed definition of *area navigation (RNAV)* be dropped, stating that more industry input is required.

The FAA does not agree with this request. The current definition in § 1.1 limits the use of RNAV to station-referenced navigation signals (*i.e.*, ground-based navigation aids) or within the limits of self-contained system capability. The new definition describes RNAV as a method of navigation that permits aircraft operations on any desired flight path. This broadened definition is intended to allow the expanded use of RNAV systems and allows the flexibility to take advantage of future changes in navigation technology. The FAA acknowledges that not all RNAV-capable aircraft are suitably equipped to operate on all RNAV routes. The FAA will determine the means to qualify aircraft for various RNAV operations and the method for promulgating the requirements to operate on RNAV routes. These requirements will be promulgated similarly to the way part 71 routes and part 97 procedures are currently promulgated. In addition, the modified definition of *area navigation (RNAV) route* stipulates that the routes are ATS routes that can be used by suitably equipped aircraft.

Section 71.11 Air Traffic Service (ATS) routes

In response to Notice No. 02–20, Continental Airlines and Alaska Airlines submitted comments on § 71.11. Continental Airlines requested that the proposed subparagraphs (a), (b), and (c) be deleted and § 71.11 be rewritten as follows: "Unless otherwise specified, ATS routes include the protected airspace dimensions as determined acceptable by the Administrator."

The FAA does not agree with Continental Airlines' comment. The revised § 71.11, as suggested by Continental Airlines, omits certain important information regarding route design that should be reflected in part 71. Subparagraphs (a), (b), and (c), as proposed in Notice No. 02–20, are based on information extracted from the existing § 71.75 "Extent of Federal airways" that is useful to the public. The new § 71.11 expands that information to include all ATS routes in addition to Federal airways. The new § 71.11(a) also differs from the existing § 71.75(a) by adding the word "fix" to define a route. This change provides for the use of RNAV waypoints to describe route segments. The new § 71.11(b) replaces the information contained in the existing § 71.75(b) regarding Federal airway route boundaries and protected airspace. Much of the information in § 71.75 is of a technical nature that the FAA believes should not be included in part 71. The new § 71.11(b) stipulates that the source of information regarding protected airspace dimensions for ATS routes is FAA Order 8260.3, United States Standard for Terminal Instrument Procedures (TERPS). Additionally, Order 8260.3 is incorporated by reference by the amendment of § 97.20 in this final rule. Criteria applicable to ATS routes is found in Order 8260.3, chapter 15, "Area Navigation (RNAV)," and chapter 17, "Enroute Criteria." Future developments in navigation technology will be reflected in revised editions of Order 8260.3.

Further, § 71.11(c) states that an ATS route does not include the airspace of a prohibited area. A prohibited area is a type of special use airspace, designated under part 73, wherein no person may operate an aircraft without permission of the using agency. Waivers are not normally granted for routine *en route* aircraft operations to transit a prohibited area, therefore the FAA believes that it is important that this paragraph remain a part of this section.

In their comment, Alaska Airlines believes that the new § 71.11 does not address assigning a required navigation performance (RNP) value to ATS routes. Alaska Airlines stated that the advent of RNP may make current route dimensions and protected airspace criteria obsolete and that this should be examined.

The FAA intentionally did not address RNP in this rulemaking action due to the ongoing development of RNP standards and procedures in the United States. Referencing FAA Order 8260.3 as the source of route criteria, and removing more specific criteria from this section, will preclude the need for further amendments to part 71 once RNP values and procedures are finalized. We believe that this rule will not adversely affect the future implementation of RNP in the NAS.

Section 71.13 Classification of Air Traffic Service (ATS) Routes.

In their comment, Continental Airlines requested that § 71.13(b) be rewritten to delete the specific references to VOR Federal airways and colored Federal airways. They recommended that the section should refer to (1) Federal airways, and (2) RNAV routes.

The FAA does not agree with this recommended change. In the current § 71.73, Classification of Federal airways, states that Federal airways consist of VOR Federal airways and colored Federal airways, and lists the specific types of colored Federal airways (i.e., Green, Amber, Red, and Blue). The new § 71.13(b) simply lists the types of airways and routes that are designated in subpart E of this part. Currently, 43 designated colored Federal airways, and more than 600 VOR Federal airways, remain in the NAS. The FAA believes that removing the references to VOR and colored airways as requested by the commenter would cause confusion about the status of these routes. Currently, there is no plan to eliminate these types of Federal airways and they will remain a part of the NAS. Additionally, these airways are not impacted by this rulemaking action.

AOPA further commented that the rule should not adversely impact the majority of general aviation operations that are not equipped with IFR GPS equipment.

We agree with this comment and thus emphasize that this rule is intended to facilitate the expanded use of RNAV and GPS navigation, and not intended to curtail navigation based on the Federal airway or jet route structures.

AOPA also stated their expectations that the following changes should occur concurrently with the publication of this final rule: A reduction of the minimum *en route* altitude on Victor airways when using GPS; increased access to Class B airspace by establishing RNAV routes through the area; increased access to special use airspace by publishing routes independent of NAVAID citing; and enable RNAV access to geographic areas where failing navigation infrastructure prevents IFR access to certain airports.

These specific comments are outside the scope of Notice No. 02–20.The FAA points out that separate efforts are already underway to address these concerns and that this rule will facilitate progress in those areas.

No comments were received regarding §§ 95.1 and 97.20.

The Rule

This rule adopts the following amendments proposed in Notice No. 02–20:

Part 1—Definitions and Abbreviations

In § 1.1 General definitions, this action adds the terms *Air Traffic Service (ATS) route and Area navigation (RNAV) route*, and amends the terms *Area navigation (RNAV)* and *Route segment*. These changes adopt the ICAO term "Air Traffic Service (ATS) route" as a general term that includes Federal airways, jet routes, and RNAV routes, and to facilitate the use of RNAV that is not dependent on ground-based navigation systems.

Part 71—Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points

The FAA is adopting, in full, the part 71 amendments, with minor edits to the title of this part, as proposed in Notice No. 02–20. These changes incorporate the term "Air Traffic Service (ATS) route;" facilitate the development of ATS routes that are not dependent upon ground-based navigation systems; remove extraneous information from part 71; and restructure the sections in part 71 to more clearly organize the information and improve readability.

Part 95—IFR Altitudes

The FAA is adopting, in full, the part 95 amendments. These changes increase the flexibility of the rule to accommodate the use of other-than-ground-based navigation systems. However, these amendments do not preclude the continued use of ground-based navigation systems.

Part 97—Standard Instrument Approach Procedures

In Notice No. 02–20, the FAA proposed various amendments to the heading of part 97, and to §§ 97.1, 97.3, 97.5, 97.10, and 97.20. This rule, however, adopts only the amendment to § 97.20 General. Section 97.20 is amended to incorporate FAA Order 8260.3, "U.S. Standard for Terminal Instrument Procedures (TERPS)," and FAA Order 8260.19, "Flight Procedures and Airspace," into the Code of Federal Regulations.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this final rule.

International Compatibility

In keeping with United States obligations under the Convention on International Civil Aviation, it is the FAA's policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and the benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this rulemaking indicates that its cost impact is minimal because the rule merely revises or adds definitions, incorporates by reference two orders concerning TERPS and Flight Procedures and Airspace, and enables the use of advanced RNAV navigation routes that the FAA has been developing. These routes are typically more direct, and therefore, shorter than the current Federal Airways and jet routes and in following these advanced RNAV routes aircraft may require less fuel and time to reach their destinations. Because the costs and benefits of this action do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory impact analysis." Similarly, we have not prepared a full "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking under the DOT Regulatory and Policies and Procedures. We do not need to do a full evaluation where the cost impact of a rule is minimal. We will prepare a full regulatory evaluation for the separate final rule concerning RNAV operations and equipment requirements.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a "significant economic impact on a substantial number of small entities" as they are defined in the Act. If we find that the action will have a significant impact, we must do a "regulatory flexibility analysis."

This final rule merely revises or adds definitions, incorporates by reference two orders concerning TERPS and Flight Procedures and Airspace, and enables the use of advanced RNAV navigation routes that the FAA has been developing. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will impose the same minimal costs on domestic and international entities and thus have a neutral trade impact.

Unfunded Mandate Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. The requirements of title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

14 CFR Part 95

Air traffic control, Airspace, Alaska, Navigation (air), Puerto Rico.

14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air), Weather.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

■ 2. Amend § 1.1 as follows:
■ a. Remove the definitions of Area navigation high route, Area navigation low route, and RNAV way point.
■ b. Add definitions for Air Traffic Service (ATS) route and Area navigation (RNAV) route in alphabetical order to read as set forth below.
■ c. Revise the definitions of Area navigation (RNAV), and Route segment to read as set forth below.

§ 1.1 General definitions.

* * * * *

Air Traffic Service (ATS) route is a specified route designated for channeling the flow of traffic as necessary for the provision of air traffic services. The term "ATS route" refers to a variety of airways, including jet routes, area navigation (RNAV) routes, and arrival and departure routes. An ATS route is defined by route specifications, which may include:
(1) An ATS route designator;
(2) The path to or from significant points;
(3) Distance between significant points;
(4) Reporting requirements; and
(5) The lowest safe altitude determined by the appropriate authority.

* * * * *

Area navigation (RNAV) is a method of navigation that permits aircraft operations on any desired flight path.

Area navigation (RNAV) route is an ATS route based on RNAV that can be used by suitably equipped aircraft.

* * * * *

Route segment is a portion of a route bounded on each end by a fix or navigation aid (NAVAID).

* * * * *

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 3. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

■ 4. Revise the heading of part 71 to read as set forth above.

Subpart A—Class A Airspace

■ 5. Transfer the heading "Subpart A—General; Class A Airspace" from where it appears preceding § 71.1 to preceding § 71.31 and revise it to read as set forth above.

■ 6. Add § 71.11 to read as follows:

§ 71.11 Air Traffic Service (ATS) routes.

Unless otherwise specified, the following apply:

(a) An Air Traffic Service (ATS) route is based on a centerline that extends from one navigation aid, fix, or intersection, to another navigation aid, fix, or intersection (or through several navigation aids, fixes, or intersections) specified for that route.

(b) ATS routes include the primary protected airspace dimensions defined in FAA Order 8260.3, "United States Standard For Terminal Instrument Procedures (TERPS)." Order 8260.3 is incorporated by reference in § 97.20 of this chapter.

(c) An ATS route does not include the airspace of a prohibited area.

■ 7. Add § 71.13 to read as follows:

§ 71.13 Classification of Air Traffic Service (ATS) routes.

Unless otherwise specified, ATS routes are classified as follows:
(a) In subpart A of this part:
(1) Jet routes.
(2) Area navigation (RNAV) routes.
(b) In subpart E of this part:
(1) VOR Federal airways.
(2) Colored Federal airways.
(i) Green Federal airways.
(ii) Amber Federal airways.
(iii) Red Federal airways.
(iv) Blue Federal airways.
(3) Area navigation (RNAV) routes.

■ 8. Add § 71.15 to read as follows:

§ 71.15 Designation of jet routes and VOR Federal airways.

Unless otherwise specified, the place names appearing in the descriptions of airspace areas designated as jet routes in subpart A of FAA Order 7400.9, and as VOR Federal airways in subpart E of FAA Order 7400.9, are the names of VOR or VORTAC navigation aids. FAA Order 7400.9 is incorporated by reference in § 71.1.

§ 71.73 [Removed]

■ 9. Remove § 71.73.

§ 71.75 [Removed]

■ 10. Remove § 71.75.

§ 71.77 [Removed]

■ 11. Remove § 71.77.

§ 71.79 [Removed]

■ 12. Remove § 71.79.

PART 95—IFR ALTITUDES

■ 13. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, and 14 CFR 11.49(b)(2).

■ 14. Revise § 95.1 to read as follows:

§ 95.1 Applicability.

(a) This part prescribes altitudes governing the operation of aircraft under IFR on ATS routes, or other direct routes for which an MEA is designated in this part. In addition, it designates mountainous areas and changeover points.

(b) The MAA is the highest altitude on an ATS route, or other direct route for which an MEA is designated, at which adequate reception of VOR signals is assured.

(c) The MCA applies to the operation of an aircraft proceeding to a higher minimum en route altitude when crossing specified fixes.

(d) The MEA is the minimum en route IFR altitude on an ATS route, ATS route

segment, or other direct route. The MEA applies to the entire width of the ATS route, ATS route segment, or other direct route between fixes defining that route. Unless otherwise specified, an MEA prescribed for an off airway route or route segment applies to the airspace 4 nautical miles on each side of a direct course between the navigation fixes defining that route or route segment.

(e) The MOCA assures obstruction clearance on an ATS route, ATS route segment, or other direct route, and adequate reception of VOR navigation signals within 22 nautical miles of a VOR station used to define the route.

(f) The MRA applies to the operation of an aircraft over an intersection defined by ground-based navigation aids. The MRA is the lowest altitude at which the intersection can be determined using the ground-based navigation aids.

(g) The changeover point (COP) applies to operation of an aircraft along a Federal airway, jet route, or other direct route; for which an MEA is designated in this part. It is the point for transfer of the airborne navigation reference from the ground-based navigation aid behind the aircraft to the next appropriate ground-based navigation aid to ensure continuous reception of signals.

PART 97—STANDARD INSTRUMENT PROCEDURES

■ 15. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

■ 16. Revise § 97.20 to read as follows:

§ 97.20 General.

(a) This subpart prescribes standard instrument procedures based on the criteria contained in FAA Order 8260.3B, "U.S. Standard for Terminal Instrument Procedures (TERPS) (July 7, 1976) and FAA Order 8260.19C, "Flight Procedures and Airspace" (September 16, 1993). These standard instrument procedures and FAA Orders were approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. They may be examined at the following locations:

(1) FAA Orders 8260.3 and 8260.19 may be examined at the Federal Aviation Administration, Flight Standards Service, Flight Technologies and Procedures Division (AFS–420), 6500 S. MacArthur Blvd., Oklahoma City, OK, and at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. These Orders are available for purchase from the U.S. Government Printing Office, 710 N. Capitol Street, NW., Washington, DC 20401.

(2) Standard instrument procedures may be examined at the Federal Aviation Administration, National Flight Data Center (ATA–110), 800 Independence Avenue, SW., Washington, DC, and at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(b) Standard instrument procedures and associated supporting data are documented on specific forms under FAA Order 8260.19C (September 16, 1993) and are promulgated by the FAA through the National Flight Data Center (NFDC) as the source for aeronautical charts and avionics databases. These procedures are then portrayed on aeronautical charts and included in avionics databases prepared by the National Aeronautical Charting Office (AVN–500) and other publishers of aeronautical data for use by pilots using the NFDC source data. The terminal aeronautical charts published by the U.S. Government were approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. They may be examined at the Federal Aviation Administration, National Flight Data Center (ATA–110), 800 Independence Avenue, SW., Washington, DC, and at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. These charts are available for purchase from the FAA National Aeronautical Charting Office, Distribution Division AVN–530, 6303 Ivy Lane, Suite 400, Greenbelt, MD 20770.

Issued in Washington, DC on March 28, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–8286 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–02–AD; Amendment 39–13106; AD 2003–07–10]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires you to replace certain push switch caps on the electrical power management overhead panel with parts of improved design. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent the inability to operate the switch, which could result in failure to activate the related operational system. Such failure could adversely affect the operation and control of the airplane.

DATES: This AD becomes effective on May 12, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 12, 2003.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–02–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that certain push switch cap spigots on the electrical power management overhead panel have failed to activate their related operational system when engaged. The plastic these push switch cap spigots are made of is not strong enough and causes the switch cap spigots to break when engaged. The defective switch caps have the caption of ON, OPEN, or have no caption or symbol located on the electrical power management overhead panel, part number 972.81.32.102, that has not been modified to Mod A status.

The FOCA has reported the following three incidents in which the switch failed to activate its related operational system when engaged:

—Inability to switch the probe heating on;

—Inability to open the Inertial Separator; and

—Inability to switch the Taxi Light on.

What is the potential impact if FAA took no action? This condition, if not corrected, could result in failure to activate certain operational systems. Such failure could result in adverse operation and control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC–12 and PC–12/45 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 7, 2003 (68 FR 6376). The NPRM proposed to require you to replace certain push switch caps on the electrical power management overhead panel with parts of improved design.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's final determination on this issue? We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial questions. We have determined that these changes and minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 45 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the replacements:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 = $180	The manufacturer will provide replacement parts free of charge.	$180	$180 × 45 = $8,100

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–07–10 Pilatus Aircraft Ltd.: Amendment 39–13106; Docket No. 2003–CE–02–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models PC–12 and PC–12/45 airplanes, manufacturer serial numbers (MSN) 321, 401 through 457, and 463 that:

(1) Have an overhead panel, part number (P/N) 972.81.32.102 (or FAA-approved equivalent part number), installed that has not been modified to Mod A status; and

(2) Are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the inability to activate certain operational systems. Such failure could adversely affect the operation and control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following, unless already accomplished:

Actions	Compliance	Procedures
(1) Replace all switch caps that have a caption of ON, OPEN, and ones with no caption or symbol on them.	Within the next 100 hours time-in-service after May 12, 2003 (the effective date of this AD).	In accordance with Pilatus PC12 Service Bulletin No. 31–003, dated September 27, 2002.

Actions	Compliance	Procedures
(2) Using a permanent marker, mark MOD Status A on the overhead panel identification label.	Prior to further flight after completing the actions required in paragraph (d)(1) of this AD.	In accordance with Pilatus PC12 Service Bulletin No. 31–003, dated September 27, 2002.
(3) Do not install an overhead panel, P/N 972.81.32.102, unless it has been modified to Mod A status.	As of May 12, 2003 (the effective date of the AD).	In accordance with Pilatus PC12 Service Bulletin No. 31–003, dated September 27, 2002.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, use the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus PC12 Service Bulletin No. 31–003, dated September 27, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note: The subject of this AD is addressed in Swiss AD Number HB 2002–659, dated November 30, 2002.

(g) *When does this amendment become effective?* This amendment becomes effective on May 12, 2003.

Issued in Kansas City, Missouri, on March 28, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8198 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14347; Airspace Docket No. 03–ACE–4]

Modification of Class D Airspace; and Modification of Class E Airspace; Topeka, Philip Billard Municipal Airport, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Topeka, Philip Billard Municipal Airport, KS.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 10, 2003 (66 FR 6606). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 15, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 28, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8567 Filed 4–07–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14428; Airspace Docket No. 03–ACE–8]

Amendment to Class E Airspace; Ankeny, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Ankeny, IA.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 19, 2003 (68 FR 7913). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 15, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 28, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8566 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 03–ACE–6]

Amendment to Class E Airspace; Lebanon, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Lebanon, MO.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 19, 2003 (68 FR 7914). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 15, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 28, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8569 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14427; Airspace Docket No. 03–ACE–7]

Amendment to Class E Airspace; Ames, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective day of the final rule which revises Class E airspace at Ames, IA.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 19, 2003 (68 FR 7915). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 15, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 28, 2003

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8570 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14459; Airspace Docket No. 03–ACE–12]

Modification of Class E Airspace; Clarinda, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Clarinda, IA.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 25, 2003 (68 FR 8706). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 15, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 28, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8565 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14458; Airspace Docket No. 03–ACE–11]

Modification of Class E Airspace; Larned, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Larned, KS.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 25, 2003 (68 FR 8703). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 15, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 28, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8564 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14457; Airspace Docket No. 03–ACE–10]

Modification of Class E Airspace; Herington, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Herington, KS

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 25, 2003 (68 FR 8704). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 15, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 28, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8563 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14429; Airspace Docket No. 03–ACE–9]

Modification of Class E Airspace; Cherokee, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Cherokee, IA.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 25, 2003 (68 FR 8705). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 15, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 28, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03 -8571 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Chapter I

46 CFR Chapters I and III

49 CFR Chapter IV

[USCG–2003–14505]

Coast Guard Transition to Department of Homeland Security; Technical Amendments Reflecting Organizational Changes

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard published in the **Federal Register** of February 28, 2003, a document concerning technical changes to various parts of titles 33 (Navigation and Navigable Waters), 46 (Shipping), and 49 (Cargo containers) of the Code of Federal Regulations. Inadvertently, four technical changes to revise chapter headings were omitted. This document adds those four changes.

DATES: Effective on March 1, 2003.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call James McLeod, Project Manager, Office of Regulations and Administrative Law (G–LRA), Coast Guard, at 202–267–6233. If you have questions on viewing, or submitting material to, the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION: The Coast Guard published a document in the **Federal Register** of February 28, 2003, (68 FR 9533) making technical changes to various parts of titles 33 (Navigation and Navigable Waters) and 46 (Shipping) of the Code of Federal Regulations. We changed "Department of Transportation" to the "Department of Homeland Security" in specified sections in 33 CFR Chapter I and 46 CFR Chapter I. Inadvertently, four technical changes revising Chapter headings in Titles 33, 46, and 49 of the Code of Federal Regulations were omitted. This document adds those changes.

■ (1) In rule FR Doc. 03–4763 published on February 28, 2003, (68 FR 9533) make the following corrections. On page 9534, in the second column, change the number of amendatory instruction "1" to "1a", add the words "COAST GUARD, DEPARTMENT OF HOMELAND SECURITY" to the heading for 33 CFR Chapter I and add a new amendatory instruction 1 to read:

■ 1. The title 33, chapter I heading is revised to read as set forth above.

■ (2) On page 9535, in the second column, add the words "COAST GUARD, DEPARTMENT OF HOMELAND SECURITY" to the heading for 46 CFR Chapter I and add a new amendatory instruction 26a to read:

■ 26a. The title 46, chapter I heading is revised to read as set forth above.

■ (3) On page 9535, in the third column immediately following amendatory instruction 30, add the heading "46 CFR Chapter III—COAST GUARD (Great Lakes Pilotage), DEPARTMENT OF HOMELAND SECURITY" and add a new amendatory instruction 31 to read:

■ 31. The title 46, chapter III heading is revised to read as set forth above.

■ (4) On page 9535, in the third column immediately following amendatory instruction 31, add the heading "49 CFR Chapter IV—COAST GUARD, DEPARTMENT OF HOMELAND SECURITY" and add a new amendatory instruction 32 to read:

■ 32. The title 49, chapter IV heading is revised to read as set forth above.

Dated: March 25, 2003.

Robert F. Duncan,

Rear Admiral, U.S. Coast Guard, Chief Counsel.

[FR Doc. 03–8284 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–02–020]

RIN 1625–AA09

Drawbridge Operation Regulation; Nanticoke River, Seaford, DE

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the Norfolk Southern Railroad Bridge across the Nanticoke River, mile 39.4, in Seaford, Delaware. The final rule will increase bridge openings by extending the daytime hours of operation and reducing the required signal time for opening the draw. The change will reduce delays for navigation by allowing more draw openings.

DATES: This rule is effective May 8, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as available in the docket, are part of docket CGD05–02–020 and are available for inspection or copying at Commander (oan), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at (757) 398–6587.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 6, 2002, a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Nanticoke River, Seaford, Delaware" was published in the **Federal Register** (67 FR 50844). No comments on the proposed rule were received. No public hearing was requested, nor held.

Background and Purpose

The Nanticoke River Bridge is owned and operated by Norfolk Southern Railroad. The regulation in 33 CFR 117.243 requires the railroad bridge over the Nanticoke River, mile 39.4, in Seaford, Delaware to open on signal from May 1 through September 30 from 8 a.m. to 8 p.m. and need not be opened from 8 p.m. to 8 a.m. At all times from October 1 through April 30, the draw shall open on signal if at least four hours notice is given.

The bridge connects The Town of Blades and Seaford. This bridge is one of two railways supplying the southern Delmarva Peninsula. Mariners do not have an alternate route. The Town of Blades requested permission to increase the number of hours the bridge will be open to marine traffic due to the increased navigation on the waterway. The Town of Blades asserted that the present regulation for this bridge is too restrictive for the increased number of mariners. Blades Economic Development Commission (BEDCO) has built an 87-slip marina in the Town of Blades, upstream from the bridge. The marina is now open, and the drawbridge needs to be opened more frequently to accommodate the increased flow of maritime traffic in this area. As the flow of vessel traffic increases, the current operating schedule of the bridge may cause vessel back-ups and potential hazardous impacts on navigation. The Town of Blades also asserts that this economic development project will draw more than the 87 mariners already projected for the marina.

The Town of Blades requested permission to increase the number of hours the bridge will be open to water

craft to avoid excessive/hazardous vessel back-ups at the bridge. Norfolk Southern Railway and local mariners developed an inter-modal compromise. The plan allows for an extended amount of time that the draw will be open, while not excessively limiting the rail traffic. This compromise will help to decrease the back-up of mariners at the bridge and thus avoid potentially hazardous/dangerous situations. The aforementioned indicates that it would be advantageous to change the drawbridge operating regulations. The Coast Guard believes that this rule change is needed and will expedite and not overburden marine traffic.

Due to the fact that the final rule will increase time/openings, all of which the bridge owner has agreed to, we anticipate only positive impacts on the boating community.

This final rule will revise 33 CFR 117.243, which regulates the scheduled openings of the Norfolk Southern Railroad Bridge across the Nanticoke River at mile 39.4.

Discussion of Comments and Changes

The Coast Guard did not receive any comments on the NPRM. Therefore, no changes were made to the final rule.

Regulatory Evaluation

This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

We reached this conclusion based on the fact that these changes will not impede but enhance maritime traffic transiting the bridge, while still providing for the needs of the bridge owner.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule will not have a significant economic impact on a substantial number of small entities because the regulation removes current restrictions on navigation by allowing for an increased number of draw openings. In addition, maritime advisories will be widely available to users of the river about all proposed regulations and any potential impacts to navigation.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. In our notice of proposed rulemaking we provided a point of contact to small entities who could answer questions concerning proposed provisions or options for compliance.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and could either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. The final rule only involves the operation of an existing drawbridge and will not have any impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

■ For reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); § 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. § 117.243 is revised to read as follows:

§ 117.243 Nanticoke River.

The draw of the Norfolk Southern Railway Bridge across the Nanticoke River, at mile 39.4, at Seaford, Delaware will operate as follows:

(a) From March 15 through November 15 the draw will open on signal for all vessels except that, from 11 p.m. to 5 a.m. at least 2½ hours notice will be required.

(b) At all times from November 16 through March 14 the draw will open on signal if at least 2½ hours notice is given.

(c) When notice is required, the owner operator of the vessel must provide the bridge tender with an estimated time of passage by calling 717–541–2151/2140.

Dated: March 31, 2003.

James D. Hull,

Vice Admiral, U. S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–8525 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–017]

RIN 1625–AA11

Regulated Navigation Area; Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel and New Jersey Pierhead Channel, New York and New Jersey

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is amending a Regulated Navigation Area (RNA) to add restrictions on vessels transiting the Bergen Point West Reach of the Kill Van Kull during U.S. Army Corps of Engineers dredging operations in that area. This action is necessary to provide for the safety of life and property on navigable waters during dredging operations that impinge upon the navigable portion of the channel and require the temporary relocation of navigational aids. This action is intended to reduce the risks of collisions, groundings and other navigational mishaps.

DATES: This rule is effective from March 30, 2003 to September 30, 2004. Comments and related material must reach the Coast Guard on or before June 9, 2003.

ADDRESSES: The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–03–017 and are available for inspection or copying at Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, room 203, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander F. Fiumano, Vessel Traffic Service, Coast Guard Activities New York at (718) 354–4191.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–03–017), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material to the Coast Guard at the address under **ADDRESSES.** If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Coast Guard, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The U.S. Army Corps of Engineers is conducting an extensive navigation improvement project in Kill Van Kull and Newark Bay, New York and New Jersey. The project, which is being conducted in nine distinct phases, began in April 1999 and will continue through approximately April 2005. In anticipation of the project and its probable impact on navigation, the Coast Guard worked with local pilots and maritime users to develop restrictions on vessels transiting the area during dredging operations. As a result of that cooperative process, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (63 FR 72219) on December 31, 1998, discussing our intention to establish a Regulated Navigation Area (RNA) for Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel and New Jersey Pierhead Channel, New York and New Jersey. We received no letters commenting on the proposed rule. No public hearing was requested and none was held. On April 15, 1999, we published a Final Rule in the **Federal Register** (64 FR 18577) codifying the RNA at 33 CFR 165.165.

Once dredging operations began in the Bergen Point portion of the navigation improvement project, it has become evident that the provisions of the original RNA were insufficient to ensure safe navigation on that portion of the waterway. On May 16, 2002, Kill Van Kull Channel Lighted Buoys 10 and 12 (LLNR 37300 and 37310) and Bergen Point Lighted Buoy 14 (LLNR 37325) had to be relocated to facilitate dredging of the Kill Van Kull. Once those buoys were relocated, the Bergen Point Buoy was hit and moved off-station requiring Coast Guard assets to be diverted from other safety and security missions in the Port of New York and New Jersey to re-establish the buoy on-station. More importantly, other vessels were unable to navigate successfully within the temporary channel boundaries. More than half of the vessels over 700 feet long transiting the area were unable to safely navigate the narrow southern channel during periods of high current and moderate winds. And there were several near collisions between tugs and barges operating in the area. We determined that a significant risk of similar mishaps existed unless additional regulations were prescribed for vessels operating in the vicinity of Bergen Point while continued dredging

operations impinged upon the navigable portion of the channel.

In light of the foregoing, immediate action was required to establish additional regulations for vessels operating in the vicinity of Bergen Point while U.S. Army Corps of Engineers dredging operations continued. On June 25, 2002, we published a temporary final rule (TFR) in the **Federal Register** (67 FR 42723) establishing additional restrictions on vessels transiting the Bergen Point West Reach of the Kill Van Kull. Those restrictions were only expected to be effective until March 30, 2003. During the week of February 3, 2003, the U.S. Army Corps of Engineers notified the Coast Guard that dredging in this section was behind schedule and would not be completed for approximately 12 to 18 months. During the week of February 10, 2003, the U.S. Army Corps of Engineers notified the Coast Guard that the approved dredged depth of the Kill Van Kull had been increased to 50 feet from 45 feet.

Due to the recent extension of the Army Corps of Engineers' dredging project, it is necessary to continue enforcement of the provisions currently codified in 33 CFR 165.165(d)(10). This TFR will essentially re-institute those operating requirements from the expiration of the current TFR through the expected completion of the project. These circumstances provide good cause for not publishing an NPRM. Similarly, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to restrict commercial vessel transits in the waterway and protect the maritime public from the hazards associated with changing vessel traffic patterns during this dredging project.

Background and Purpose

The United States Army Corps of Engineers and the Port Authority of New York/New Jersey commenced an extensive channel-dredging project in the Kill Van Kull in April 1999. On May 16, 2002, Kill Van Kull Channel Lighted Buoys 10 and 12 (LLNR 37300 and 37310) and Bergen Point Lighted Buoy 14 (LLNR 37325) were relocated to facilitate dredging of the Bergen Point West Reach of the Kill Van Kull. Since these buoys were relocated, one vessel collided with the Bergen Point Buoy and moved it off-station requiring Coast Guard assets to be diverted from other safety and security missions in the Port of New York and New Jersey while re-establishing the buoy on its assigned location. More than half of the vessels over 700 feet long transiting this area were unable to safely navigate the narrow southern channel during periods of high current and moderate winds. Instead, they had to depart from the temporary boundaries of the channel and proceed through a portion of the closed area north of the Kill Van Kull Lighted Buoy 10. There were also several near collisions between tugs and barges in this area.

In order to protect life, property and the marine environment, the Coast Guard established the following additional requirements for commercial vessels transiting Bergen Point West Reach of the Kill Van Kull (Work Areas (4) and (5) of the dredging project):

Tug Requirements. All vessels 350 feet in length, or greater, excluding tugs with tows, require one assist tug. All vessels 700 feet in length, or greater, require two assist tugs. All vessels 900 feet in length, or greater, excluding tugs with tows, require three assist tugs.

Tidal Current Restrictions. Vessels 700 feet in length, or greater, are restricted to movements within one hour before or after slack water (as measured from the Bergen Point current station).

Astern Tows. Hawser tows are not permitted unless an assist tug accompanies the tow.

Sustained winds from 20 to 34 knots. In sustained winds from 20 to 34 knots: (A) Cargo ships and tankers in ballast may not transit Work Areas (4) and (5);

(B) Tugs pushing or towing alongside tank barges 350 feet in length, or greater, in light condition, require an assist tug in Work Areas (4) and (5).

Sustained winds greater than 34 knots. In sustained winds greater than 34 knots, vessels 300 gross tons or greater, and all tugs with tows are prohibited from transiting Work Areas (4) and (5).

Nearly identical restrictions had been imposed during a previous dredging project conducted in the same area from 1991 to 1992. Those regulations were instituted after three groundings, which resulted in one oil spill and one channel blockage. In anticipation of the current dredging project, the Coast Guard worked closely with local pilots and commercial waterway users to devise a system of regulations that would reduce the likelihood of similar mishaps from recurring. After extensive consultation, computer simulations and other analysis, we concluded that the regulations codified at 33 CFR 165.165 would adequately protect the interests of safe navigation in the vicinity of Bergen Point during the U.S. Army Corps of Engineers' navigation improvement project. As previously discussed, actual experience with those regulations demonstrated the need for additional restrictions on commercial vessels operating in that area. Vessel Traffic Service New York met with Pilots and Tug companies operating in the port to explain the need for these restrictions. Additional restriction for navigation in the vicinity of Bergen Reach were developed. On June 25, 2002, we published a "Temporary final rule; request for comments" in the **Federal Register** (67 FR 42723), which codified those requirements as 33 CFR 165.165(d)(10). No comments were received, and the TFR provisions proved to be effective in preserving the interests of safe navigation in the vicinity of the Bergen Reach.

We had anticipated that those restrictions would only be necessary until March 30, 2003. During the week of February 3, 2003, the U.S. Army Corps of Engineers notified the Coast Guard that dredging in this section was behind schedule and would not be completed for approximately 12 to 18 months. During the week of February 10, 2003, the U.S. Army Corps of Engineers notified the Coast Guard that the approved dredged depth of the Kill Van Kull had been increased to 50 feet from 45 feet. Due to these extensions in the dredging project, the Coast Guard is enacting this TFR to maintain requirements identical to those currently codified at 33 CFR 165.165(d)(10) through September 30, 2004.

Discussion of Temporary Rule

This rule essentially extends the provisions currently codified at 33 CFR 165.165(d)(10) by re-instituting identical requirements once that TFR expires. This TFR is necessary because the Army Corps of Engineers has extended its dredging project in the Kill Van Kull for approximately 18 months and expanded the scope of the project to dredge an additional five feet from the channel.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This finding is based on the fact that the overwhelming majority of vessels transiting through the Bergen Point portion of the Kill Van Kull that would be required by this regulation to utilize tug assistance would most likely employ that service as a matter of prudence even in the absence of a regulation; only those vessels that would not observe that "best practice" will be affected; all interested stakeholders have been informed of these restrictions at Harbor Operations Committee meetings and are given the opportunity to comment on revisions that may be necessary; identical regulations have been in effect since June 25, 2002 without undue burden on waterway users; under current practice, we have had six positions available during each tidal current window for vessels over 700 feet long to transit, an average of two vessels transit during these transit windows, and no vessel has been required to wait for the next transit window since these regulations were originally established; moreover, each of the provisions of this rule could be imposed upon individual vessels transiting through Bergen Point under the existing authority of the Vessel Traffic Services New York.

Advance notifications will be made to the local maritime community by the Local Notice to Mariners, marine information and electronic mail broadcasts, at New York Harbor Operations Committee meetings, and on the Internet at *http://www.harborops.com.*

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of commercial vessels intending to transit Bergen Point West Reach of the Kill Van Kull. This RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: Kill Van Kull accommodates approximately 26,000 vessel transits annually; the overwhelming majority of vessels that would be required to utilize tug assistance while transiting the Bergen Point portion of the Kill Van Kull would employ that service as a matter of prudence even in the absence of a regulation; only the small percentage of vessels not observing this "best practice" will be affected by this regulation; moreover, we know of no specific small entities among that small number; all interested stakeholders have been informed of these restrictions at Harbor Operations Committee meetings and are given the opportunity to comment on revisions that may be necessary; the restrictions imposed by this rule are identical to those that have been enforced since June 25, 2002 and which have not been unduly burdensome on waterway users; we currently have six positions available during each tidal current window for vessels over 700 feet long to transit, an average of two vessels transit during these transit windows, and no vessel has been required to wait for the next transit window since these regulations were originally established.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this temporary rule so that we can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Commander F. Fiumano, Vessel Traffic Service, Coast Guard Activities New York at (718) 354–4191.

Small business may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–800–REG–FAIR (1–888–734–3247).

Collection of Information

This temporary rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this temporary rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this temporary rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This temporary rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this temporary rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This temporary rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This temporary rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal

Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this temporary rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this temporary rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it revises a Regulated Navigation Area. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.** 165 as follows:

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, in Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From March 30, 2003 to September 30, amend § 165.165 to add paragraph (d)(10) to read as follows:

§ 165.165 Regulated Navigation Area; Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel and New Jersey Pierhead Channel, New York and New Jersey.

* * * * *

(d) * * *

(10) *Bergen Point West Reach.* In addition to the requirements in paragraphs (d)(1) through (d)(9) of this section, the following provisions apply to vessels transiting in or through Work Areas (4) and (5):

(i) *Tug requirements:* All vessels 350 feet in length, or greater, excluding tugs with tows, require one assist tug. All vessels 700 feet in length, or greater, excluding tugs with tows, require two assist tugs. All vessels 900 feet in length, or greater, excluding tugs with tows, require three assist tugs.

(ii) *Tidal current restrictions:* Vessels 700 feet in length, or greater, are restricted to movements within one hour before or after slack water, as measured from the Bergen Point current station.

(iii) *Astern tows:* Hawser tows are not permitted unless an assist tug accompanies the tow.

(iv) *Sustained winds from 20 to 34 knots.* In sustained winds from 20 to 34 knots:

(A) cargo ships and tankers in ballast may not transit Work Areas (4) and (5);

(B) tugs pushing or towing alongside tank barges 350 feet in length, or greater, in light condition, require an assist tug in Work Areas (4) and (5).

(v) *Sustained winds greater than 34 knots.* In sustained winds greater than 34 knots, vessels 300 gross tons or greater and all tugs with tows are prohibited from transiting Work Areas (4) and (5).

Dated: March 28, 2003.

Vivien S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 03–8526 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2002–5B]

Notice of Termination

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: The Copyright Office's interim rule governing the form, content, and manner of service of notices of termination of transfers and licenses granted by authors on or after 1978 is being adopted as a final rule with one change. Beginning on January 1, 2003, copyright owners have been able to serve notices of termination on certain copyright transferees and licensees under an interim rule effective on that date. The Office is now adopting an additional amendment that was set forth in the proposed rule published in the **Federal Register** on December 20, 2002.

EFFECTIVE DATE: May 8, 2003.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202)707–8380. Fax: (202)707–8366.

SUPPLEMENTARY INFORMATION: Section 203 of the Copyright Act, 17 U.S.C. 203, provides that under certain circumstances, authors may terminate grants of transfers or licenses of copyright entered into after January 1, 1978. Such terminations may be made during a five-year period commencing 35 years after the execution of the grant or, if the grant included the right of publication, the earlier of 35 years after publication pursuant to the grant or 40 years after the execution of the grant. January 1, 2003, was the first date on which a termination could be made pursuant to section 203. In order to have regulations in place by January 1, the Copyright Office published an interim rule on December 23, 2002. 67 FR 78176.

On December 20, 2002, the Copyright Office published a notice of proposed rulemaking governing termination of transfers and licenses pursuant to section 203 of the Copyright Act. Notice of Proposed Rulemaking, Notice of Termination, 67 FR 77951. The Office proposed to amend 37 CFR 201.10, the existing regulation governing notices of termination under section 304 of the Copyright Act, 17 U.S.C. 304, by adding provisions relating to terminations under section 203.

On December 23, 2002, the Office published an interim rule, effective January 1, 2003, which differs from the proposed rule in only one respect. The proposed rule amended § 201.10(b)(1)(i) of the Copyright Office regulations to require that a notice of termination pursuant to section 17 U.S.C. 304 must identify whether the termination is made under section 304(c) or section 304(d). Because this proposed amendment would change established practice with respect to terminations under section 304(c), and because the Office did not believe it would be prudent to change the requirements for section 304 notices of termination on such short notice, that proposed amendment was not included in the interim rule. It is included in this final rule.

The comment period for the notice of proposed rulemaking has closed and the Office has received no comments. For that reason, and for the reasons outlined in the Notice of Proposed Rulemaking, the Office has decided to adopt, as a final rule, the December 23 Interim Rule, with the change proposed on December 20.

The entire text of § 201.10, as amended, may be found on the Copyright Office Web site at *http://www.copyright.gov/docs/203.html.*

List of Subjects in 37 CFR Part 201

Copyright.

Final Regulation

■ In consideration of the foregoing, the Copyright Office adopts the interim rule published on December 23, 2002 (67 FR 78176) as final, with the following change:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Section 201.10 is amended in paragraph (b)(1)(i), by removing "If the termination is made under section 304(d), a statement to that effect;" and adding, in its place, "Whether the termination is made under section 304(c) or under section 304(d);".

Dated: March 25, 2003.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 03–8540 Filed 4–7–03; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–088–7216a; A–1–FRL–74662]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Amendment to 310 CMR 7.06, Visible Emissions Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is conditionally approving a State Implementation Plan (SIP) revision submitted by the State of Massachusetts. On August 9, 2001, the Massachusetts Department of Environmental Protection (MA DEP) formally submitted a SIP revision containing multiple revisions to the State Regulations for the Control of Air Pollution. In today's action EPA is conditionally approving one portion of these rule revisions, 310 CMR 7.06 (1)(c), into the Massachusetts SIP. This conditional approval is based on a commitment by MA DEP to submit a revised regulation by one year from today. If Massachusetts fails to submit the required revisions within one year, then this final conditional approval will be converted to a disapproval. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective June 9, 2003, unless EPA receives adverse comments by May 8, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Butensky, Environmental Planner, (617) 918–1665; *butensky.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 9, 2001, the MA DEP submitted a formal revision to the State Implementation Plan (SIP). This SIP revision consists of amendments to several sections of the Massachusetts Regulations for the Control of Air Pollution. Today's action conditional approves one section of this submittal, 310 CMR 7.06(1)(c) of the Massachusetts "Visible Emissions" regulation.

I. Summary of SIP Revision
A. What are visible emissions?
B. What does the current visible emissions rule in Massachusetts require?
C. What amendments did Massachusetts submit to their visible emissions rule?
D. What concerns does EPA have with the existing amendments?
E. What changes has Massachusetts committed to make to the rule?

A. What Are Visible Emissions?

Visible emissions, also known as "opacity," is a measure of the density of smoke being emitted from a particular source. The more dense and dark the emissions from a source appear, the higher the opacity. in general, higher opacity is equivalent to higher emissions of particulate matter. States have developed and implemented rules for certain sources of particulate matter designed to measure and control the level of opacity emitted from smokestack or vents, thereby controlling the amount of particular matter released into the ambient air.

B. What Does the Current Visible Emissions Rule in Massachusetts Require?

Massachusetts rule section 310 CMR 7.06 provides specific requirements for visible emissions. Section 310 CMR 7.06(1) of the existing visible emissions rule applies to stationary sources other than incinerators. Section 310 CMR 7.06(1)(a) states that "no person shall cause, suffer, allow, or permit the emissions of smoke which has a shade, density, or appearance equal to or greater than No. 1 of the [Ringleman] chart for a period, or aggregate period of time in excess of six minutes during any one hour period, provided that at no time during the said six minutes the shade, density, or appearance be equal to or greater than No. 2 of the [Ringleman] chart." Furthermore, section 310 CMR 7.06(1)(b) goes on to state that "No person shall cause, suffer, allow, or permit the operation of a facility so as to emit contaminant(s), exclusive of uncombined water or smoke subject to 310 CMR 7.06(1)(a) of such opacity which, in the opinion of the Department, could be reasonably controlled through the application of modern technology of control and a good Standard Operating Procedure, and in no case, shall exceed 20% opacity for a period or aggregate period of time in excess of two minutes during any one hour provided that, at no time during the said two minutes shall the opacity exceed 40%."

C. What Amendments Did Massachusetts Submit to Their Visible Emissions Rule?

On August 9, 2001, the MA DEP submitted to EPA amendments to the Massachusetts Regulations for the Control of Air Pollution. This submittal included revisions to several regulatory sections. However, today's action only applies to the revisions made to section 310 CMR 7.06, entitled "Visible Emissions." The revisions of this section will allow a facility subject to a Title V operating permit to operate under alternative opacity emission standards for certain boilers, provided the facility develops a plan outlining the practices it will utilize during certain operating conditions (*e.g.*, start up, shut down, *etc.*).

Specifically, a new section 310 CMR 7.06(1)(c) allows facilities subject to Title V operating permits to comply with a visible emissions limitation not to exceed 15 percent opacity for boilers rated less than 500 BTU input capacity. To operate in accordance with the exception, a facility must notify the MA DEP and submit a plan describing practices for operating and maintaining the equipment to minimize emissions during soot blowing, startup, shut down, burner change, and malfunction. In addition, the plan must also include corrective action procedures. An exceedance of the visible emission limitation would not be deemed a violation provided the facility could demonstrate that it was operating in accordance with the plan at the time of the exceedance. In addition, MA DEP can disallow a facility from operating pursuant to this exception if the plan is inadequate or a condition of air pollution exists. Finally, any facility operating pursuant to this exception must notify the MA DEP within 24 hours or the next business day of any malfunction which causes an exceedance of the allowed visible emissions requirements for greater than a 12 minute period.

D. What Concerns Does EPA Have With the Existing Amendments?

EPA has concluded that 310 CMR 7.06 (1)(c) contains several deficiencies that must be addressed by the MA DEP. First, there is no apparent cap on opacity during start up and shut down operations. In addition, the revised rule does not explicitly provide an averaging period by over which opacity should be measured. Furthermore, there is no explicit criteria in the regulation stating how the MA DEP will judge the plan of good operating practices required to be submitted by facilities taking advantage of the exception in 310 CMR 7.06(c). Lastly, there are no provisions to make the good operating practices outlined in a facility's plan enforceable. If the operating practices are not made enforceable, then neither EPA nor citizens will be able to enforce against a facility violating its opacity limitation.

E. What Changes Has Massachusetts Committed To Make to the Rule?

In a letter from the MA DEP dated September 12, 2002, MA DEP has committed to submit, within one year from today, revisions to section 7.06 (1)(c). In its September 12, 2002 letter, MA DEP included to specific regulatory language that it intends to adopt to address EPA concerns. The amendments the MA DEP has committed to make to the rule include adding a 27% opacity limitation to apply during startup, shut down, soot blowing and other limited periods as specified in the plan of good operating practices approved by the MA DEP. MA DEP has also committed to explicitly include a six minute averaging period in the rule.

Massachusetts has also committed to add explicit criteria in the regulation stating how the MA DEP will judge the plan of good operating practices required to be submitted by facilities taking advantage of the alternative opacity limitation. Lastly, Massachusetts has also committed to add provisions to the rule specifying how the good operating practices and visible emission limitations outlined in a facility's plan will be made enforceable. These will address all of the concerns raised by EPA.

II. Final Action

EPA is conditionally approving 310 CMR 7.06(1)(c) of the SIP revision submitted by the Massachusetts Department of Environmental Protection on August 9, 2001 as a revision to the SIP. The State must submit to EPA by one year from today a revised regulation addressing the concerns outlined in this action. If the State fails to do so, this approval will become a disapproval on that date. EPA will notify the State by letter that this action has occurred. At that time, this regulation will no longer be a part of the approved Massachusetts SIP. EPA subsequently will publish a notice in the notice section of the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment within the applicable time frame, the conditionally approved regulation will remain a part of the SIP until EPA takes final action approving or disapproving the new regulation. If EPA disapproves the new submittal, the conditional approval will also be disapproved at that time. If EPA approves the submittal, the regulation will be fully approved in its entirety and replace the conditionally approved regulation in the SIP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective June 9, 2003 without further notice unless the Agency receives relevant adverse comments by May 8, 2003.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 9, 2003 and no further action will be taken on the proposed rule.

III. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 2003. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 21, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart W—Massachusetts

■ 2. Section 52.1119 is amended by adding paragraph (a)(3) to read as follows:

§ 52.1119 Identification of plan.

* * * * *

(a) * * *

(3) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection dated August 9, 2001.

(i) Incorporation by reference.

(A) Revisions to the Massachusetts Regulations for the Control of Air Pollution, section 310 CMR 7.06 (1)(c), dated August 3, 2001.

(ii) Additional materials:

(A) Letter from the Massachusetts Department of Environmental Protection dated September 12, 2002 submitting a commitment to revise section 310 CMR 7.06 (1)(c) of Massachusetts State Implementation Plan by one year from today.

■ 3. In § 52.1167 Table 52.1167 is amended by adding new entries to existing state citations and by adding new state citations to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED MASSACHUSETTS REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.06(1)(c)	Visible Emissions	8/9/01	[Insert date of publication].	[Insert *FR* citation from published date].	None	Conditional approval at 52.1119(a)(3).

[FR Doc. 03–8359 Filed 4–7–03; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 21, 25, 74, 78, and 101

[IB Docket No. 98–172, FCC 02–317]

Redesignation of the 17.7–19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7–20.2 GHz and 27.5–30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3–17.8 GHz and 24.75–25.25 GHz Frequency Bands for Broadcast Satellite-Service Use

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document alters the 18 GHz band plan, blanket licensing rules, and relocation rules adopted in a previous First Order on Reconsideration in this proceeding released in 2001. This document changes certain rules in light of the increased number of frequency spectrum options the Commission has recently made available to certain licensees. The rule changes will remove unnecessary burdens on the public and the agency.

DATES: Effective May 8, 2003.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order on Reconsideration, FCC 02–317, released on November 26, 2002. The full texts of the documents are available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The documents are also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-02-317*. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, Telephone: 202–863–2893, Fax: 202–863–2898, e-mail *qualexint@aol.com*.

Summary of Report and Order

1. On June 8, 2000, the Commission adopted a Report and Order in this proceeding (18 GHz Order) 65 FR 54155, September 7, 2000 which, among other things, concluded that terrestrial fixed service (FS) and ubiquitously deployed fixed-satellite service (FSS) earth stations generally could not share the same 18 GHz spectrum. Thus, in the 18 GHz Order, the Commission separated most terrestrial FS operations from most FSS operations by allocating separate sub-bands to each service; however, the Commission retained co-primary allocations for geostationary orbiting (GSO) FSS and FS operations in the 18.3–18.58 GHz band.

2. In response to the original 18 GHz Order, we received petitions for reconsideration from several parties, including Hughes Electronics Corporation (Hughes), a proponent of GSO FSS operations. On November 1, 2001, we released a First Order on Reconsideration 66 FR 63512, December 7, 2000 in this proceeding that resolved many of the petitioners' concerns. We deferred action, however, on two elements of Hughes' petition: (1) That we reconsider the co-primary allocation for FS in the 18.3–18.58 GHz band; and (2) that we permit blanket licensing of earth stations receiving in certain portions of the 18 GHz band.

3. Shortly after the Commission adopted the First Order on Reconsideration, the United States Circuit Court of Appeals for the D.C. Circuit issued an order rejecting a separate challenge to the 18 GHz Order from another FSS licensee in the 18 GHz band. In December 2001, the D.C. Circuit rejected those elements of the appeal not rendered moot by our First Order on Reconsideration. Concluding that the Commission's 18 GHz Order was entitled to the heightened degree of deference traditionally accorded decisions regarding spectrum management, the D.C. Circuit upheld the relocation policies and procedures adopted in the 18 GHz Order that had been challenged.

4. Since that time, the Commission has expanded the eligibility requirements to enable the vast majority of FS operators in the 18.3–18.58 GHz band to access other spectrum. On May 16, 2002, the Commission adopted the CARS Eligibility Order 67 FR 43257, June 27, 2002, which permitted all multichannel video programming distributors (MVPDs) to become eligible for Cable Television Relay Service (CARS) licenses in the 12.7–13.2 GHz and 17.7–18.3 GHz bands. Lifting eligibility restrictions on licenses in the 12.7–13.2 GHz and 17.7–18.3 GHz bands reversed a longstanding Commission policy that had allowed franchised cable systems and wireless cable systems to become CARS licensees, but denied the same opportunity to non-eligible competitors to traditional cable systems, such as private cable operators (PCOs), which are dependent on the 18 GHz band. MVPD licensees who operate in the 18.3–18.58 GHz band are, following adoption of the CARS Eligibility Order, generally eligible for licenses in these alternative CARS bands.

5. In this Order, the Commission alters the 18 GHz band plan to make the FSS the sole primary spectrum allocation in the 18.3–18.58 GHz band. This action recognizes the Commission's recent decision to make additional spectrum available to current, co-primary users of the 18.3–18.58 GHz band. This Order also permits the blanket licensing of GSO FSS facilities in the 18.3–18.58 GHz and 29.25–29.5 GHz bands, and—consistent with the band clearing procedures that have been adopted in other proceedings—this Order adopts provisions designed to ensure the orderly migration and timely reimbursement of terrestrial FS incumbents in the 18.3–18.58 GHz band. These changes to our rules will help promote the efficient use of spectrum for existing and future users.

6. Finally, this Order denies a Petition for Reconsideration of the First Order on Reconsideration filed by the Satellite Industry Association (SIA). SIA questions the Commission's relocation procedures and one-year testing period upon relocation set forth in the First Order on Reconsideration. In the Order, the Commission declined to depart from precedent and stated that the relocation procedures and one-year testing period have been adequately justified and alternatives adequately explored in light of the Commission's overall spectrum management goals.

7. On January 27, 2003, the Commission released an erratum to this Order. The erratum corrects omissions in the rule changes proposed in the Order. The final rules contain the omissions.

Procedural Matters

8. *Paperwork Reduction Act.* The rules adopted in this Second Order on Reconsideration involve no reporting requirements, and it is likely no additional outside professional skills will be necessary to comply with the rules and requirements here listed.

9. *Final Regulatory Flexibility Certification.* As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the 18 GHz NPRM (63 FR 54100, October 8, 1998). The Commission sought written public comments on the proposals in the 18 GHz NPRM, including comment on the IRFA. In its 18 GHz Order, the Commission concluded that the rules adopted in that Order would not, under the RFA, affect small entities disproportionately. Many of the rules adopted in the 18 GHz Order pertained to entities, such as licensees of geostationary and non-geostationary space stations, which, because of their size, do not qualify as small entities. While a few of the rules adopted concerned terrestrial facilities, such as microwave services, which qualify as small entities because of their size, the Commission concluded that "procedures do not affect small entities disproportionately and it is likely no additional outside professional skills are required to complete the annual report indicating the number of small antenna earth stations actually brought into service." We received no petitions for reconsideration of that Final Regulatory Flexibility Analysis.

10. Subsequently, the Commission addressed issues unrelated to its RFA analysis in its First Order on Reconsideration. The First Order on Reconsideration altered several previously adopted rules, including changing the power flux density value for the 18.3–18.8 GHz frequency band and extending the same ten-year comparable facilities relocation policy to all FS operations in the 18 GHz band. The First Order on Reconsideration also decided no longer to require the use of the Legacy List coordination process. Finally, the Commission considered the impact of it rule changes on small entities and concluded that the rules adopted would not, under the RFA, affect small entities disproportionately.

11. In this Second Order on Reconsideration, we address issues unrelated to earlier RFA analysis and promulgate additional final rules. This additional Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Rules

12. This Second Order on Reconsideration grants, in part, a Petition for Reconsideration filed in this proceeding by the Hughes Electronics Corporation (Hughes). This Order also denies a Petition for Reconsideration filed by the Satellite Industry Association (SIA) filed against the First Order on Reconsideration. In response to the Hughes Reconsideration Petition, the Commission alters the 18 GHz band plan to make the fixed-satellite service (FSS) the sole primary spectrum allocation in the 18.3–18.58 GHz band. The Commission's actions recognize the increased number of frequency spectrum options that the Commission has recently made available to licensees in the terrestrial fixed service (FS), the other primary service currently located in the 18.3–18.58 GHz band. The Commission also allows the blanket licensing of GSO FSS facilities in the 18.3–18.58 GHz band and 29.25–29.5 GHz bands and—consistent with the band clearing procedures that we have adopted in other portions of the frequency spectrum—the Commission adopts provisions designed to ensure the orderly migration and timely reimbursement of terrestrial FS incumbents in the 18.3–18.58 GHz band. These changes to the Commission's rules will help promote the efficient use of spectrum for existing and future users.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

13. No comments were submitted in direct response to the IRFA.

14. Description and Estimate of the Number of Small Entities to Which the *Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the adopted rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees that may be affected by the adopted rules.

15. *Satellite Telecommunications.* The SBA has developed a small business size standard for Satellite Telecommunications Carriers, which consists of all such companies having $12.5 million or less in annual receipts. In addition, a second SBA size standard for Other Telecommunications includes "facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems," and also has a size standard of annual receipts of $12.5 million or less. According to Census Bureau data for 1997, there were 324 firms in the category Satellite Telecommunications, total, that operated for the entire year. Of this total, 273 firms had annual receipts of $5 million to $9,999,999 and an additional 24 firms had annual receipts of $10 million to $24,999,990. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 1997, there were 439 firms in the category Satellite Telecommunications, total, that operated for the entire year. Of this total, 424 firms had annual receipts of $5 million to $9,999,999 and an additional 6 firms had annual receipts of $10 million to $24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

16. *Space Stations (Geostationary).* Commission records reveal that there are 15 space station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of geostationary space stations that would constitute a small business under the SBA definition, or apply any rules providing special consideration for Space Station (Geostationary) licensees that are small businesses.

17. *Fixed Satellite Transmit/Receive Earth Stations.* Currently there are 10 operational fixed-satellite transmit/receive earth stations authorized for use in the 18.3–18.58 GHz and 29.25–29.5 GHz bands. We do not request or collect annual revenue information, and thus are unable to estimate the number of earth stations that would constitute a small business under the SBA definition.

18. *Broadcast Auxiliary Service.* (BAS) involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain

(from a remote news gathering unit back to the stations). The Commission has not developed a definition of small entities specific to broadcast auxiliary licensees. The U.S. Small Business Administration (SBA) has developed small business size standards, as follows: (1) For TV BAS, we will use the size standard for Television Broadcasting, which consists of all such companies having annual receipts of no more than $12.0 million; (2) For Aural BAS, we will use the size standard for Radio Stations, which consists of all such companies having annual receipts of no more than $6 million; (3) For Remote Pickup BAS we will use the small business size standard for Television Broadcasting when used by a TV station and that for Radio Stations when used by such a station.

19. According to Census Bureau data for 1997, there were 906 Television Broadcasting firms, total that operated for the entire year. Of this total, 734 firms had annual receipts of $9,999,999.00 or less and an additional 71 had receipts of $10 million to $24,999,999.00. Thus, under this standard, the majority of firms can be considered small.

20. According to Census Bureau data for 1997, there were 4,476 Radio Stations (firms), total, that operated for the entire year. Of this total 4,265 had annual receipts of $4,999,999.00 or less, and an additional 103 firms had receipts of $5 million to $9,999,999.00. Thus, under this standard, the great majority of firms can be considered small.

21. *Fixed Microwave Services.* (FS) includes common carrier, private-operational fixed, and broadcast auxiliary radio services. Presently there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The SBA has developed a small business size standard for Cellular and other Wireless Telecommunications, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 had employment of 1,000 employees or more. Thus, under this standard, virtually all firms can be considered small. Microwave services in the 18.3–18.58 GHz band include point-to-point Private Cable Operator (PCO) systems, Cable Television Relay Systems and common carrier systems. Private point-to-point PCO systems use ninety-eight percent of the operational channels in the band; Cable Television Relay Systems less than two percent of the operational channels; and common carrier systems use less than one percent of the operational channels in the band.

22. *Report to Congress:* The Commission will send a copy of the Order, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Order and this Certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration and will be published in the **Federal Register**, 5 U.S.C. 605(b).

Ordering Clauses

23. Pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 302, 303(c), 303(e), 303(f), 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 302, 303(c), 303(e), 303(f), 303(r), and 403, this Order is hereby adopted.

24. *It is further ordered* that the Petition for Reconsideration of Hughes Electronics Corporation is granted, in part, and denied in part.

25. *It is further ordered* that the Petition for Reconsideration of the Satellite Industry Association is denied.

26. *It is further ordered* that the Regulatory Flexibility Analysis, as required by section 604 of the Regulatory Flexibility Act, is adopted.

27. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Order*, including the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

28. *It is further ordered* that this proceeding is terminated pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 154(j).

List of Subjects in 47 CFR Parts 2, 21, 25, 74, 78, and 101

Auxiliary, Cable television relay service, Experimental radio, Fixed microwave services, Public fixed radio services, Reporting and recordkeeping requirements, Satellite communications, Special broadcast.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule

■ For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 21, 25, 74, 78, and 101 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106 is amended by revising page 69 of the Table of Frequency Allocations and the Non-Government (NG) Footnotes to read as follows:

18.3–22.5 GHz (SHF)

[See previous page for 18.1–18.4 GHz]

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
18.4–18.6 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE			18.3–18.6 FIXED-SATELLITE (space-to-Earth) G117 US334	18.3–18.6 FIXED-SATELLITE (space-to-Earth) NG164 US334 NG144	Satellite Communications (25)
18.6–18.8	18.6–18.8	18.6–18.8	18.6–18.8	18.6–18.8	

18.3–22.5 GHz (SHF)—Continued

[See previous page for 18.1–18.4 GHz]

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
EARTH EXPLORATION SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile SPACE RESEARCH (passive) 5.522A 5.522C	EARTH EXPLORATION SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile SPACE RESEARCH (passive) 5.222A	EARTH EXPLORATION SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile SPACE RESEARCH (passive) 5.522A	EARTH EXPLORATION SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 G117 SPACE RESEARCH (passive) US254 US334	EARTH EXPLORATION SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 NG164 SPACE RESEARCH (passive) US254 US334 NG144	
18.8–19.3 FIXED FIXED-SATELLITE (space-to-Earth) 5.523A MOBILE			18.8–20.2 FIXED-SATELLITE (space-to-Earth) G117	18.8–19.3 FIXED-SATELLITE (space-to-Earth) NG165 US334 NG144	
19.3–19.7 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-space) 5.523B 5.523C 5.523D 5.523E MOBILE				19.3–19.7 FIXED FIXED-SATELLITE (space-to-Earth) NG166 US334 NG144	Satellite Communications (25) Auxiliary Broadcast (74) Cable TV Relay (78) Fixed Microwave (101)
19.7–20.1 FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE-SATELLITE (space-to-Earth) 5.524	19.7–20.1 FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528 5.529	19.7–20.1 FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE-SATELLITE (space-to-Earth) 5.524		19.7–20.1 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.525 5.526 5.527 5.528 5.529 US334	Satellite Communications (25)

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG144 Stations authorized as of September 9, 1983 to use frequencies in the bands 17.7–18.3 GHz and 19.3–19.7 GHz may, upon proper application, continue operations. Fixed stations authorized in the 18.3–19.3 GHz band that remain co-primary under the provisions of 47 CFR 21.901(e), 74.502(c), 74.602(g), 78.18(a)(4), and 101.147(r) of this chapter may continue operations consistent with the provisions of those sections.

* * * * *

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

■ 3. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

■ 4. Section 21.901 is amended by revising paragraph (e) to read as follows:

§ 21.901 Frequencies.

* * * * *

(e) Frequencies in the band segments 18,580–18,820 MHz and 18,920–19,160 MHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations for point-to-point return links from a subscriber's location on a shared co-primary basis with other services under parts 25, 74, 78 and 101 of this chapter until June 8, 2010. Prior to June 8, 2010, such stations are subject to relocation by licensees in the fixed-satellite service. Such relocation is subject to the provisions of §§ 101.85 through 101.97 of this chapter. After June 8, 2010, such operations are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations. No applications for new licenses will be accepted in these bands after June 8, 2000.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 5. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sec. 303, 47 U.S.C. 303. 47 U.S.C. sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 6. Section 25.115 is amended by revising paragraph (e) to read as follows:

§ 25.115 Application for earth station authorizations.

* * * * *

(e) Earth stations operating in the 20/30 GHz Fixed-Satellite Service with U.S.-licensed or non-U.S. licensed satellites: Applications to license individual earth stations operating in the 20/30 GHz band shall be filed on FCC Form 312, Main Form and Schedule B, and shall also include the information described in § 25.138. Earth stations belonging to a network operating in the 18.3–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz or 29.25–30.0 GHz bands may be licensed on a blanket basis. Applications for such blanket authorization may be filed using FCC Form 312, Main Form and Schedule B, and specifying the number of terminals to be covered by the blanket license. Each application for a blanket license under this section shall include the information described in § 25.138.

* * * * *

■ 7. Section 25.138 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 25.138 Blanket Licensing Provisions of GSO FSS Earth Stations in the 18.3–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space), and 29.25–30.0 GHz (Earth-to-space) bands.

(a) All applications for a blanket earth station license in the GSO FSS in the 18.3–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz, and 29.25–30.0 GHz bands that meet the following requirements shall be routinely processed:

* * * * *

■ 8. Section 25.145 is amended by revising paragraph (h) to read as follows:

§ 25.145 Licensing conditions for the Fixed-Satellite Service in the 20/30 GHz bands

* * * * *

(h) *Policy governing the relocation of terrestrial services from the 18.3 to 19.3 GHz band.* Frequencies in the 18.3–19.3 GHz band listed in parts 21, 74, 78, and 101 of this chapter have been reallocated for primary use by the Fixed-Satellite Service, subject to various provisions for the existing terrestrial licenses. Fixed-Satellite Service operations are not entitled to protection from the co-primary operations until after the period during which terrestrial stations remain co-primary has expired. (see §§ 21.901(e), 74.502(c), 74.602(g), 78.18(a)(4), and 101.147(r) of this chapter).

■ 9. Section 25.202 is amended by revising the table in paragraph (a)(1) to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

* * * * *

Space-to-Earth (GHz)	Earth-to-space (GHz)
3.7–4.21 [1]	5.091–5.25 [12, 14]
6.7–7.025 [12]	5.925–6.4251 [1]
10.7–10.95 [1, 12]	12.75–13.15 [1, 12]
10.95–11.2 [1, 2, 12]	13.2125–13.25 [1, 12]
11.2–11.45 [1, 12]	13.75–14 [4, 12]
11.45–11.7 [1, 2, 12]	14–14.25 [5]
11.7–12.2 [3]	14.2–14.5
12.2–12.7 [13]	15.43–15.63 [12, 15]
18.3–18.58 [1, 10, 16]	17.3–17.89 [9]
18.58–18.8 [6, 10, 11]	27.5–29.5 [1]
18.8–19.3 [7, 10]	29.5–30
19.3–19.7 [8, 10]	48.2–50.2
19.7–20.2 [10]	
37.6–38.6	
40–41	

[1] This band is shared coequally with terrestrial radiocommunication services.

[2] Use of this band by geostationary satellite orbit satellite systems in the fixed-satellite service is limited to international systems; i.e., other than domestic systems.

[3] Fixed-satellite transponders may be used additionally for transmissions in the broadcasting-satellite service.

[4] This band is shared on an equal basis with the Government radiolocation service and grandfathered space stations in the Tracking and Data Relay Satellite System.

[5] In this band, stations in the radionavigation service shall operate on a secondary basis to the fixed-satellite service.

[6] The band 18.58–18.8 GHz is shared co-equally with existing terrestrial radiocommunication systems until June 8, 2010.

[7] The band 18.8–19.3 GHz is shared co-equally with terrestrial radiocommunications services until June 8, 2010, except for operations in the band 19.26–19.3 GHz and for low power systems operating under Section 101.147(r)(10), which shall operate on a co-primary basis until October 31, 2011.

[8] The use of the band 19.3–19.7 GHz by the fixed-satellite service (space-to-Earth) is limited to feeder links for the mobile-satellite service.

[9] The use of the band 17.3–17.8 GHz by the Fixed-Satellite Service (Earth-to-space) is limited to feeder links for the Direct Broadcast Satellite Service, and the sub-band 17.7–17.8 GHz is shared co-equally with terrestrial fixed services.

[10] This band is shared co-equally with the Federal Government fixed-satellite service.

[11] The band 18.6–18.8 GHz is shared co-equally with the non-Federal Government and Federal Government Earth exploration-satellite (passive) and space research (passive) services.

[12] Use of this band by non-geostationary satellite orbit systems in the fixed-satellite service is limited to gateway earth station operations.

[13] Use of this band by the fixed-satellite service is limited to non-geostationary satellite orbit systems.

[14] See 47 CFR 2.106, footnotes S5.444A and US344, for conditions that apply to this band.

[15] See 47 CFR 2.106, footnotes S5.511C and US359, for conditions that apply to this band.

[16] The band 18.3–18.58 GHz is shared co-equally with terrestrial radiocommunications services until November 19, 2012.

* * * * *

■ 10. Section 25.258 is amended by revising paragraph (b) to read as follows:

§ 25.258 Sharing between NGSO MSS Feeder links Stations and GSO FSS services in the 29.25–29.5 GHz Bands.

* * * * *

(b) Licensed GSO FSS systems shall, to the maximum extent possible, operate with frequency/polarization selections, in the vicinity of operational or planned NGSO MSS feeder link earth station complexes, that will minimize instances of unacceptable interference to the GSO FSS space stations. Earth station licensees operating with GSO FSS systems shall be capable of providing earth station locations to support coordination of NGSO MSS feeder link stations under paragraphs (a) and (c) of this section. Operation of ubiquitously deployed GSO FSS earth stations in the 29.25–29.5 GHz frequency band shall conform to the rules contained in § 25.138.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 11. The authority citation for part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1032; 47 U.S.C. 158, 303.

■ 12. Section 74.502 is amended by revising paragraph (c) introductory text to read as follows:

§ 74.502 Frequency assignment.

* * * * *

(c) Aural broadcast STL and intercity relay stations that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations in the band 18,760–18,820 and 19,100–19,160 MHz on a shared co-primary basis with other services under parts 21, 25, and 101 of this chapter until June 8, 2010. Prior to June 8, 2010, such stations are subject to relocation by licensees in the fixed-satellite service. Such relocation is subject to the provisions of §§ 101.85 through 101.97 of this chapter. After June 8, 2010, such operations are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations. No applications for new licenses will be accepted in these bands after June 8, 2000.

* * * * *

■ 13. Section 74.551 is amended by revising paragraph (d) to read as follows:

§ 74.551 Equipment changes.

* * * * *

(d) Permissible changes in equipment operating in the bands 18.3–18.58, 18.76–18.82 GHz and 19.1–19.16 GHz. Notwithstanding other provisions of this section, licensees of stations that remain co-primary under the provisions of § 74.502(c) may not make modifications to their systems that increase interference to satellite earth stations, or result in a facility that would be more costly to relocate.

§ 74.602 Frequency assignment.

■ 14. Section 74.602 is amended by revising paragraph (g) introductory text to read as follows:

* * * * *

(g) The following frequencies are available for assignment to television STL, television relay stations and television translator relay stations. Stations operating on frequencies in the sub-bands 18.3–18.58 GHz and 19.26–19.3 GHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations on a shared co-primary basis with other services under parts 21, 25, 78, and 101 of this chapter. Such stations, however, are subject to relocation by licensees in the fixed-satellite service. Such relocation is subject to the provisions of §§ 101.85 through 101.97 of this chapter. No new applications for new licenses will be accepted in the 19.26–19.3 GHz band after June 8, 2000, and no new applications for new licenses will be accepted in the 18.3–18.58 GHz band after November 19, 2002. The provisions of § 74.604 do not apply to the use of these frequencies. Licensees may use either a two-way link or one or both frequencies of a frequency pair for a one-way link and shall coordinate proposed operations pursuant to procedures required in § 101.103(d) of this chapter.

* * * * *

■ 15. Section 74.651 is amended by revising paragraph (c) to read as follows:

§ 74.651 Equipment changes.

* * * * *

(c) Permissible changes in equipment operating in the bands 18.3–18.58 GHz and 19.26–19.3 GHz. Notwithstanding other provisions of this section, licensees of stations that remain co-primary under the provisions of § 74.602(g) may not make modifications to their systems that increase interference to satellite earth stations, or result in a facility that would be more costly to relocate.

PART 78—CABLE TELEVISION RELAY SERVICE

■ 16. The authority citation for part 78 continues to read as follows:

Authority: Secs. 4(i), 301 and 303(r), Federal Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301 and 303(r)).

■ 17. Section 78.18 is amended by revising paragraph (a)(4) introductory text to read as follows:

§ 78.18 Frequency assignments.

(a) * * *

(4) The Cable Television Relay Service is also assigned the following frequencies in the 17,700–19,700 MHz band. These frequencies are co-equally shared with stations in other services under parts 25, 74, and 101 of this chapter. Cable Television Relay Service stations operating on frequencies in the sub-bands 18.3–18.58 GHz and 19.26–19.3 GHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations on a shared co-primary basis with other services under parts 25, 74, and 101 of this chapter. Such stations, however, are subject to relocation by licensees in the fixed-satellite service. Such relocation is subject to the provisions of §§ 101.85 through 101.97 of this chapter. No new applications for part 78 licenses will be accepted in the 19.26–19.3 GHz band after June 8, 2000, and no new applications for part 78 licenses will be accepted in the 18.3–18.58 GHz band after November 19, 2002.

* * * * *

■ 18. Section 78.109 is amended by revising paragraph (d) as follows:

§ 78.109 Equipment changes.

* * * * *

(d) *Permissible changes in equipment operating in the bands 18.3–18.58 GHz and 19.26–19.3 GHz.* Notwithstanding other provisions of this section, licensees of stations that remain co-primary under the provisions of § 78.18(a)(4) may not make modifications to their systems that increase interference to satellite earth stations, or result in a facility that would be more costly to relocate, unless the modifications are needed as a result of a Commission requirement.

PART 101—FIXED MICROWAVE SERVICES

■ 19. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, and 303.

■ 19a. Section 101.83 is revised to read as follows:

§ 101.83 Modification of station license.

Permissible changes in equipment operating in the band 18.3–19.3 GHz: Notwithstanding other provisions of this section, stations that remain co-primary under the provisions of § 101.147(r) may not make modifications to their systems that increase interference to satellite earth stations, or result in a facility that would be more costly to relocate.

■ 20. Section 101.85 is amended by revising the section heading, the introductory text and paragraphs (a) and (b) to read as follows:

§ 101.85 Transition of the 18.3–19.3 GHz band from the terrestrial fixed services to the fixed-satellite service (FSS).

Fixed services (FS) frequencies in the 18.3–19.3 GHz bands listed in §§ 21.901(e), 74.502(c), 74.602(g), and 78.18(a)(4) and § 101.147(a) and (r) of this chapter have been allocated for use by the fixed-satellite service (FSS). The rules in this section provide for a transition period during which FSS licensees may relocate existing FS licensees using these frequencies to other frequency bands, media or facilities.

(a) FSS licensees may negotiate with FS licensees authorized to use frequencies in the 18.3–19.30 GHz bands for the purpose of agreeing to terms under which the FS licensees would:

(1) Relocate their operations to other frequency bands, media or facilities; or alternatively

(2) Accept a sharing arrangement with the FSS licensee that may result in an otherwise impermissible level of interference to the FSS operations.

(b)(1) FS operations in the 18.3–18.58 GHz band that remain co-primary under the provisions of §§ 21.901(e), 74.502(c), 74.602(d), 78.18(a)(4) and § 101.147(r) of this chapter will continue to be co-primary with the FSS users of this spectrum until November 19, 2012 or until the relocation of the fixed service operations, whichever occurs sooner.

(2) FS operations in the 18.58–19.3 GHz band that remain co-primary under the provisions of §§ 21.901(e), 74.502(c), 74.602(d), 78.18(a)(4) and § 101.147(r) of this chapter will continue to be co-primary with the FSS users of this spectrum until June 8, 2010 or until the relocation of the fixed service operations, whichever occurs sooner, except for operations in the band 19.26–19.3 GHz and low power systems operating pursuant to § 101.47(r)(10), which shall operate on a co-primary basis until October 31, 2011.

(3) If no agreement is reached during the negotiations pursuant to § 101.85(a), an FSS licensee may initiate relocation procedures. Under the relocation procedures, the incumbent is required to relocate, provided that the FSS licensee meets the conditions of § 101.91.

* * * * *

■ 21. Section 101.95 is amended by revising the section heading to read as follows:

§ 101.95 Sunset provisions for licensees in the 18.30–19.30 GHz band.

■ 22. Section 101.97 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 101.97 Future licensing in the 18.30–19.30 GHz band.

(a) All major modifications and extensions to existing FS systems in the 18.3–18.58 band after November 19, 2002, or in the 18.58–19.30 band after June 8, 2000 (with the exception of certain low power operations authorized under § 101.147(r)(10)) will be authorized on a secondary basis to FSS systems. All other modifications will render the modified FS license secondary to FSS operations, unless the incumbent affirmatively justifies primary status and the incumbent FS licensee establishes that the modification would not add to the relocation costs for FSS licensees. Incumbent FS licensees will maintain primary status for the following technical changes:

* * * * *

23. Section 101.147 is amended by revising paragraph (r) to read as follows:

§ 101.147 Frequency assignments.

* * * * *

(r) *17,700 to 19,700 and 24,250 to 25,250 MHz:* Operation of stations using frequencies in these bands is permitted to the extent specified below.

(1) Until November 19, 2012, stations operating in the band 18.3–18.58 GHz that were licensed or had applications pending before the Commission as of November 19, 2002 shall operate on a shared co-primary basis with other services under parts 21, 25, and 74 of the Commission's rules;

(2) Until October 31, 2011, operations in the band 19.26–19.3 GHz and low power systems operating pursuant to § 101.47(r)(10) shall operate on a co-primary basis;

(3) Until June 8, 2010, stations operating in the band 18.58–18.8 GHz that were licensed or had applications pending before the Commission as of June 8, 2000 may continue those operations on a shared co-primary basis with other services under parts 21, 25, and 74 of the Commission's rules;

(4) Until June 8, 2010, stations operating in the band 18.8–19.3 GHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations on a shared co-primary basis with other services under parts 21, 25, and 74 of the Commission's rules;

(5) After November 19, 2012, stations operating in the band 18.3–18.58 GHz are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations.

(6) After June 8, 2010, operations in the 18.58–19.30 GHz band are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations.

(7) After November 19, 2002, no new applications for Part 101 licenses will be accepted in the 18.3–18.58 GHz band.

(8) After June 8, 2000, no new applications for Part 101 licenses will be accepted in the 18.58–19.3 GHz band.

(9) Licensees may use either a two-way link or one frequency of a frequency pair for a one-way link and must coordinate proposed operations pursuant to the procedures required in § 101.103. (Note, however, that stations authorized as of September 9, 1983, to use frequencies in the band 17.7–19.7 GHz may, upon proper application, continue to be authorized for such operations, consistent with the above conditions related to the 18.58–19.3 GHz band.)

* * * * *

[FR Doc. 03–7322 Filed 4–7–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–813]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and *Amendment of the Commission's Rules to permit FM Channel and Class Modifications by Applications*, 8 FCC Rcd 4735 (1993).

DATES: Effective April 8, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted March 19, 2003, and released March 21, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

■ 2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 299C2 and adding Channel 299C1 at Wrightsville.

■ 3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 300C1 and adding Channel 300C2 at Hampton.

■ 4. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 271C1 and adding Channel 271C3 at Driggs.

■ 5. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 258C1 and adding Channel 258C0 at Lake Charles.

■ 6. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 276C2 and adding Channel 276C1 at Ocean Springs.

■ 7. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 275C and adding Channel 275C0 at Kirtland.

■ 8. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 233C and adding Channel 233C0 at Canyon City.

■ 9. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 262C and adding Channel 262C0 at Brownsville.

■ 10. Section 73.202(b), the Table of FM Allotments under Virgin Islands, is amended by removing Channel 236B and adding Channel 237B at Christiansted.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–8408 Filed 4–7–03; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1847 and 1852

Shipment by Government Bills of Lading

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule adopts as final, without change, the interim rule published in the **Federal Register** on June 6, 2002, which amended the NASA Federal Acquisition Regulation Supplement (NFS) to specify that shipment by Government Bills of Lading (GBLs) may only be used to ship international and domestic overseas items deliverable under contracts, and that all other shipments are to be made via Commercial Bills of Lading (CBLs).

EFFECTIVE DATE: April 8, 2003.

FOR FURTHER INFORMATION: Lou Becker, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546, telephone: (202) 358–4593, e-mail to: *Louis.G.Becker@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Effective March 31, 2002, the General Services Administration (GSA) retired the use of Optional Form 1103, U.S. Government Bill of Lading (GBL) and Optional Form 1203, U.S. Government Bill of Lading—Privately Owned Personal Property (PPGBL) for domestic shipments. NASA published an interim rule in the **Federal Register** on June 6, 2002, amending the NFS to comply with changes to the Federal Management Regulation (FMR) part 102–117 (41 CFR 102–117), Transportation Management, published in the **Federal Register** on October 6, 2000 (65 FR 60060), and FMR part 102–118 (41 CFR 102–118), Transportation Payment and Audit, published in the **Federal Register** on April 26, 2000 (65 FR 24568). The interim rule revised NASA clause 1852.247–30, Bills of Lading, to indicate that GBLs may only be used to ship international and domestic overseas items deliverable under contracts, and all other domestic shipments shall be made via Commercial Bills of Lading (CBL).

This is not a significant regulatory action, and therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the change only affects contracts where the point of delivery for domestic shipments of items deliverable under a contract is f.o.b. origin.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose new recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1847 and 1852

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Interim Rule Adopted as Final Without Change

■ Accordingly, NASA adopts the interim rule amending 48 CFR parts 1847 and 1852, published in the **Federal Register** on June 6, 2002 (67 FR 38908), as a final rule without change.

Authority: 42 U.S.C. 2473(c)(1).

PART 1847—TRANSPORTATION

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

[FR Doc. 03–8539 Filed 4–7–03; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH76

Endangered and Threatened Wildlife and Plants; Endangered Status and Designation of Critical Habitat for *Polygonum hickmanii* (Scotts Valley polygonum)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for *Polygonum hickmanii* (Scotts Valley polygonum). *Polygonum hickmanii* is restricted to two sites in northern Scotts Valley, Santa Cruz County, California. We are also designating critical habitat pursuant to the Act for this species; 116 hectares (287 acres) of land are designated as critical habitat. This rule implements the protection and recovery provisions afforded by the Act for this species.

DATES: This rule becomes effective on May 8, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ventura Field Office, 2493 Portola Road Suite B, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford, Ventura Fish and Wildlife Office, at the above address or telephone number 805/644–1766, facsimile 805/644–3958 or e-mail at *connie_rutherford@fws.gov*. Information regarding this rulemaking is available in alternate formats upon request.

SUPPLEMENTARY INFORMATION:

Background

Polygonum hickmanii (Scotts Valley polygonum) is a recently described endemic plant species from Scotts Valley, Santa Cruz County, California (Hinds and Morgan 1995). Randy Morgan made the type collection in 1993 from a "grassland [north] of Navarra Drive, [west] of Carbonero Creek" (Hinds and Morgan 1995). The species was named after James C. Hickman, editor of the Jepson Manual-Higher Plants of California (Hickman 1993) and author of the chapter on the genus *Polygonum* in the same reference. Hickman concurred with Morgan's assessment that the taxon was distinct (J.C. Hickman, *in litt.* 1991), but died before coauthoring the publication of a name. The plant is a small, erect, taprooted annual in the buckwheat family (Polygonaceae). It grows from 2 to 5 centimeters (cm) (1 to 2 inches (in)) tall and can be either single stemmed or profusely branching near the base in more mature plants. The linear-shaped leaves are 0.5 to 3.5 cm (0.2 to 1.4 in) long, 1 to 1.5 mm (0.04 to 0.06 in) wide, and tipped with a sharp point. The single white flowers consist of two outer and three inner tepals (petal-like structure) and are found in the axils of the bracteal leaves (modified leaves near the flower).

The nearest known location of a closely related species, *Polygonum parryi*, is at Mount Hamilton, about 48 kilometers (km) (30 miles (mi)) inland. *Polygonum hickmanii* differs from *P. parryi* in its larger white flowers, longer leaves, larger anthers and achenes, and longer, straight stem sheath (Hinds and Morgan 1995). According to the late Harold Hinds, who was reviewing the genus *Polygonum* in an upcoming volume of the Flora of North America (Flora of North America Editorial Committee, in prep.), he intended to continue to recognize the distinctness of *P. hickmanii* as a species in that volume (Harold Hinds, University of New Brunswick, pers. comm., 1998). His successor, Mihai Costea, indicates there is no reason to doubt the validity of the taxon (M. Costea, University of Guelph, Ontario, Canada, *in litt.* 2002).

As with many other annual species found within Mediterranean climates in California (Holland and Keil 1990), *Polygonum hickmanii* germinates in the fall or early winter in response to winter season rains. The plant grows slowly over the next few months and remains fairly inconspicuous until flowering begins in May. The panicles (floral branches) are indeterminate in their growth, meaning that the oldest flowers are found near the base of the stem and younger flowers found near the continually growing tip. The degree to which *P. hickmanii* depends on insect pollinators (rather than being self-pollinated) has not been determined. However, Morgan observed a sphecid wasp (family Sphecidae) visitation to an individual *P. hickmanii* (R. Morgan, pers. comm., 1998).

With the type of floral development found in *P. hickmanii*, new flowers will continue to be produced until climate or microhabitat conditions are no longer favorable. Consequently, seed production ranges from a few dozen seeds in a typical individual to as many as two hundred in a particularly robust individual (Randy Morgan, biological consultant, pers. comm., 1998).

The seeds of many plant taxa within the buckwheat family (Polygonanceae) are known to be attractive forage to wildlife, who then inadvertently disperse some portion of the seed. Because the seed of *Polygonum hickmanii* are small, they most likely would be attractive to birds and small mammals including such species as black-tailed hares (*Lepus californicus*), pocket mice (*Perognathus californicus*), western gray squirrel (*Sciurus griseus*), ground squirrels (*Otospermophilus beecheyi*), striped skunks (*Mephitis mephitis*), opossums (*Didelphis virginiana*) and racoons (*Procyon lotor*).

Maintaining a seed bank (a reserve of dormant seeds, generally found in the soil) is important to the year-to-year and long-term survival of annual plants (Baskin and Baskin 1978, Baskin and Baskin 1998). A seed bank includes all the mature seeds in a population and generally covers a larger area than the extent of observable plants seen in a given year (Given 1995). The number and location of standing plants (the observable plants) in a population varies annually due to a number of factors, including the amount and timing of rainfall, temperature, soil conditions, and the extent and nature of the seed bank. The extent of seed bank reserves is variable from population to population and large fluctuations in the number of standing plants at a given site may occur from one year to the next.

The distribution of *Polygonum hickmanii* has apparently been limited to the northern Scotts Valley area in Santa Cruz County, California. Two bodies of evidence support this theory. First, none of the herbarium collections of other *Polygonum* species that were checked in preparation for the publication of the name for *P. hickmanii* matched those collected from Scotts Valley. Herbaria that were searched included the Dudley Herbarium at Stanford University, the Jepson and University of California (UC) herbaria located at UC Berkeley, and the herbarium at the Missouri Botanic Garden (H. Hinds, *in litt.* 1998; R. Morgan, pers. comm., 1998). Secondly, predictive searches of other potentially suitable habitat in Santa Cruz County (based on soil type, local climate, and associated species) have failed to locate additional colonies of *P. hickmanii* (R. Morgan, pers. comm., 1998).

Polygonum hickmanii is found at two sites about 0.6 km (1 mi) apart at the northern end of Scotts Valley. The plant is found on gently sloping to nearly

level shallow soils over outcrops of Santa Cruz mudstone and Purisima sandstone (Hinds and Morgan 1995). It frequently, though not always, occurs with the endangered *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower) (59 FR 5499) and other small annual herbs in patches within a more extensive annual grassland habitat. These small patches, scattered in a mosaic throughout the grassland plant community, have been referred to as "wildflower fields" because they support a large number of native herbs, in contrast to the adjacent annual grasslands that support a greater number of nonnative grasses and herbs. While the wildflower fields are underlain by shallow, well-draining soils, the surrounding annual grasslands are underlain by deeper soils with a greater water-holding capacity, and therefore more easily support the growth of nonnative grasses and herbs.

Although the patches of wildflower field habitat stand out in contrast to the surrounding grasslands, a closer look at the wildflower field patches reveals slight microhabitat differences within the patch itself. The outer edge, or "ring" of the patch supports the greatest diversity of the native herbs, which are found on the deepest soils within the patch. Moving toward the center of the patch, the soil layer is shallower, and another ring supporting primarily the endangered *Chorizanthe robusta* var. *hartwegii* occurs here. In the very center of the patch where the soils are shallowest, the greatest concentration of *Polygonum hickmanii* is found, and other species are sparse. The surface soil texture in the center of the wildflower fields tends to be consolidated and crusty rather than loose and sandy (Biotic Resources Group (BRG) 1998). Flowering in *P. hickmanii* lags behind that of the endangered *Chorizanthe robusta* var. *hartwegii* and the other herbs by 4 to 8 weeks, and the consolidated soil surface may play a role in supplying late spring moisture to the species (R. Morgan, pers. Comm. 2003).

Elevation of the sites is from 215 to 246 meters (m) (700 to 800 feet (ft)) (Hinds and Morgan 1995). In the Scotts Valley area, the grasslands tend to be located on the middle to lower slopes within the subwatersheds, while the slopes above the grasslands tend to support redwood and mixed forest plant communities. On the Polo parcel, the slopes become increasingly steep from west to east; slopes nearest to Carbonero Creek on the western edge of the parcel are less than 20 percent, the slopes in the middle of the parcel range from 20 to 40 percent, and the slopes along the eastern edge of the parcel up to the ridgeline reach over 40 percent. Geologic reports discuss several hazards that contribute to the geologic instability of the site. First, the site is within a seismically active region that experiences groundshaking. Second, the site has been subject to landslide activity, and evidences of past debris flows have been observed on the site. Third, due to the impermeable nature of the Purisima Formation bedrock, seasonal perched groundwater conditions are common in areas where the bedrock is overlain by alluvium (material deposited by flowing water) and colluvium (loose deposit of rock debris accumulated at the base of a cliff or slope), which contributes to slope instability (Impact Sciences 2000).

The geology of the Glenwood parcel has some similarities to the Polo parcel. Santa Cruz mudstone underlays the lower slopes and alluvial deposits, and the Purisima Formation underlays the upper slopes and ridges. The lowest elevations are along Carbonero Creek, which runs through the middle of the parcel from north to south. Similar to the Polo parcel, the mildest slopes are adjacent to the creek, while the slopes generally increase with increased distance from the creek, and slopes along the ridges to the east and west reach over 30 percent (Impact Sciences 1997, 1998). Geologic hazards on the site that contribute to slope instability include seismic hazards, landslide activity, high erosion, and sedimentation potential due to the presence of springs and drainages and the impermeable nature of the Purisima Formation on the upper slopes. Although soil erosion and sedimentation are natural processes, human activities can increase the rates above their natural levels (Global Change Research Information Office (GCRIC) 2002). Processes such as soil erosion on upper slopes, the accumulation of sedimentation on lower slopes, and soil compaction can alter the physical and chemical properties of those soils sufficiently to change their ability to store and supply nutrients and moisture needed by plants (GCRIC 2002). The persistence of plants with specific microhabitat requirements depends on maintaining the appropriate edaphic or soil conditions. Maintaining the stability of the higher slopes within a subwatershed are therefore important for maintaining the stability of the edaphic conditions directly downslope.

Polygonum hickmanii is associated with a number of native herbs including *Chorizanthe robusta* var. *hartwegii*, *Lasthenia californica* (goldfields), *Minuartia douglasii* (sandwort), *Minuartia californica* (California sandwort), *Gilia clivorum* (gilia), *Castilleja densiflora* (owl's clover), *Lupinus nanus* (sky lupine), *Brodiaea terrestris* (brodiaea), *Stylocline amphibola* (Mount Diablo cottonweed), *Trifolium grayii* (Gray's clover), and *Hemizonia corymbosa* (coast tarplant). Nonnative species present at the two sites include *Filago gallica* (filago) and *Vulpia myuros* (rattail) (California Natural Diversity Data Base (CNDDB) 1998; R. Morgan, pers. comm., 1998). In many cases, the habitat also supports a crust of mosses and lichens (BRG 1998).

For purposes of this rule, a concentration of individuals of *Polygonum hickmanii* will be referred to as a "colony." Because of the close proximity of many of the colonies to each other (less than 0.4 km (0.2 mi) apart), it is unknown whether they function as genetically separate units or not. The approximate area occupied by any one colony ranges from the smallest at 1.5 m by 1.5 m (5 ft by 5 ft) to the largest at 15 m by 9 m (50 ft by 30 ft). Currently, there are approximately 11 colonies of *P. hickmanii* in total; the area covered by observable plants is less than 0.4 hectare (ha) (1 acre (ac)).

The *Polygonum hickmanii* colonies are split between two sites—the Glenwood site and the Polo Ranch site. The Glenwood site is located north of Casa Way and west of Glenwood Drive in northern Scotts Valley; it contains five colonies on two parcels of land. One of these colonies is situated within a 3.6 ha (9 ac) preserve on a 19.4 ha (48 ac) parcel that is owned by the Scotts Valley Unified School District and is referred to as the "School District" colony (Denise Duffy and Associates 1998). The other four colonies at the Glenwood site are located approximately 0.21 km (0.13 mi) to the west of the School District colony, on a parcel of land owned by the Salvation Army (CNDDB 1998). These four colonies are referred to as the "Salvation Army" colonies. Additional suitable but unoccupied habitat is found on the east side of Glenwood Drive on a parcel owned by Glenwood/American Dream. This parcel was recently approved for a housing development; a large portion of the parcel will be designated as "open space," and a management plan will be developed to take into consideration the conservation of sensitive resources (Wetlands Research Associates 2002). This open space area supports numerous colonies of *Chorizanthe robusta* var. *hartwegii*, which is frequently found in the same wildflower field patches as *Polygonum hickmanii*, as well as the endangered Ohlone tiger

beetle (*Cicindela ohlone*) (Impact Sciences 2001).

The Polo Ranch site contains six colonies. This site is located just east of Highway 17 and north of Navarra Road in northern Scotts Valley, and is approximately 1.6 km (1 mi) east of the Salvation Army and School District colonies. These six colonies are situated within 0.2 km (0.1 mi) of one another, and all of these colonies occur on a parcel owned by Greystone Homes (Kathleen Lyons, BRG, *in litt.* 1997; Impact Sciences 2000).

Polygonum hickmanii is a short-lived annual species, and the total number of individuals can vary from year to year. In 2002, the total number of individual stems found at the Glenwood site was approximately 340 (140 on the School District parcel and approximately 200 on the Salvation Army parcel) (K. Lyons, *in litt.* 2002; Biotic Resources Group 2002); the Salvation Army parcel supported as many as 2,000 plants in 1998 (K. Lyons, pers. comm., 1998). In 1998, the total number of individuals on the Polo Ranch site was approximately 1,259 (K. Lyons, *in litt.* 1997).

Previous Federal Action

We first became aware of *Polygonum hickmanii* in 1992 during the development of the proposed listing rule for *Chorizanthe robusta* var. *hartwegii* (66 FR 10469). At that time, however, a name for the taxon had not formally been published, and so we did not consider it for listing under the Act. Once the name, *P. hickmanii*, was published by Hinds and Morgan (1995), we reviewed information in our existing files, in the California Natural Diversity Data Base, and new information on proposed projects being submitted to us for our review, and we determined that sufficient information existed to believe that listing may be warranted. *Polygonum hickmanii* was included in the list of candidate species published in the **Federal Register** on October 25, 1999 (64 FR 57534).

On November 9, 2000, we published a rule to propose (65 FR 67335) *Polygonum hickmanii* as an endangered species. At the time of the proposed listing, we determined that critical habitat for *P. hickmanii* was prudent, but deferred proposing critical habitat designation until a proposal to designate critical habitat could be developed for both *P. hickmanii* and *Chorizanthe robusta* var. *hartwegii*, a plant species already listed as endangered, because the two taxa share the same ecology and geographic location. We proposed critical habitat for both of these taxa on February 15, 2001 (66 FR 10469); the final critical habitat designation for *Chorizanthe robusta* var. *hartwegii* was published on May 29, 2002 (67 FR 37336). On May 22, 2002, the Center for Biological Diversity (CBD) filed a lawsuit alleging our failure to issue a final listing and critical habitat designation for *P. hickmanii* violated the time requirements specified in the Act. In settlement of this lawsuit, we agreed to complete the final listing and critical habitat designations by March 30, 2003.

Summary of Comments and Recommendations

In the November 9, 2000, proposed rule to list the species (65 FR 67335) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. A 60-day comment period closed on January 8, 2001. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A notice announcing the publication of the listing proposal was published in the Santa Cruz Sentinel on November 16, 2000. Another comment period opened on February 15, 2001, when the proposed critical habitat designation for *Chorizanthe robusta* var. *hartwegii* and *Polygonum hickmanii* was published. This 60-day comment period closed on April 16, 2001. A legal notice announcing the publication of the proposed critical habitat designation was published in the Santa Cruz Sentinel on February 24, 2001. Additionally, we published a notice on November 21, 2002, announcing the availability of the draft economic analysis on the proposed critical habitat designation. This notice subsequently opened the public comment period for 15 days, until December 6, 2002, on the proposed listing rule, the proposed critical habitat designation, and the draft economic analysis on the proposed critical habitat designation.

During the three comment periods, we received individually written comments from 17 parties. Twelve commenters expressed support for the listing proposal and the proposed critical habitat designation. One of the 17 commenters opposed the proposed critical habitat designation for *Polygonum hickmanii*. Four commenters were neutral, either on the proposed listing or the proposed critical habitat designation. Approximately 800 additional letters were submitted as part of a mailing campaign when critical habitat was proposed for the species. Of these, 23 were opposed, 1 was neutral, and the remaining were in support of the critical habitat designation.

We reviewed all comments received for substantive issues and new information regarding the proposed listing of *Polygonum hickmanii*; most of the comments received were minor technical comments, and corrections and additions were made to the final rule accordingly. We also reviewed comments regarding the proposed critical habitat designation for *P. hickmanii*. Similar comments were grouped into two general issues relating specifically to biological issues, and procedural and legal issues. These are addressed in the summary that follows.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of four peer reviewers regarding pertinent scientific or commercial data and assumptions relating to population status and biological and ecological information for the proposed listing of *Polygonum hickmanii* when it was published on November 9, 2000. Three of the four reviewers responded. These reviewers expressed support for the listing of the species and described the information included in the rule as factually correct to the best of their knowledge. Their comments are summarized in the following responses to comments and incorporated into the final rule.

We also solicited independent opinions from three additional knowledgeable individuals with expertise in one or several fields, including familiarity with the species, familiarity with the geographic region in which the species occurs, and familiarity with the principles of conservation biology, to review the proposed critical habitat designation when it was published on February 15, 2001. As recommended by the Service Directorate, we requested peer review from Sustainable Ecosystems Institute, as well as two other peer reviewers. All three of the peer reviewers supported the proposal, and provided us with comments that are summarized in the following responses to comments and incorporated into the final rule.

Issue 1: Biology and Methodology

Comment 1: The proposed critical habitat designation is not properly supported by the best scientific information available. In particular, the Service makes "numerous and varied unsupported assertions regarding the biology and habitat requirements" of the species, and did not use the data available to them.

Response: As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Polygonum hickmanii*. This information includes data from the California Natural Diversity Data Base (CNDDB 2000), geologic and soil survey maps (USGS 1989, SCS 1980), recent biological surveys and reports, our recovery plan for this species, additional information provided by interested parties, and discussions with botanical experts. We also conducted multiple site visits to the two locations that were proposed for designation.

Comment 2: One peer reviewer suggested expanding the list of primary constituent elements to include such factors as seed germination requirements, substrate salinity, microreliefs and microclimates within local habitats, seasonal and yearly groundwater levels, and bird populations that migrate within the range of *Polygonum hickmanii*.

Response: While we recognize that these factors may be important components of the habitats within which *Polygonum hickmanii* is found, we do not have sufficient information at this time that leads us to believe they are the primary factors essential to the conservation of *P. hickmanii* throughout its range.

Comment 3: One peer reviewer commented that, while the Service had reasonably performed the difficult task of identifying the primary constituent elements, that the importance of certain processes (*e.g.*, habitat disturbance, pollination, seed dispersal) was not sufficiently supported in the proposal. Specifically, the reviewer asserts that pollination activity within colonies more likely has a major effect on seed set and population persistence than does pollination activity between colonies, and that the majority of pollination occurs across short distances. The concern is that general statements of opinion could be translated into major management actions without adequate scientific basis.

Response: The peer reviewer that supplied these comments was responding to a request to concurrently review critical habitat proposals for four plant taxa. While we were unable to confirm this with the peer reviewer, we believe that the concern was directed primarily to two other of the four species that have significantly larger distributions than *Polygonum hickmanii*, in which case the concern over discriminating between within-colony and between-colony pollinator distances would be more germane.

With respect to *P. hickmanii*, the entire range of the species covers a distance of only 1.6 km (1 mi), with colonies clustered at the two proximal ends of this range. Although no information is available concerning the importance of pollinators to the long-term persistence of *P. hickmanii*, the distance between the colonies in each of the clusters is well within the 0.5 km (0.3 mi) distance that many native pollinators are thought to fly (Waser *in* litt. 2002).

Comment 4: One commenter submitted a map portraying a recommended revision to the proposed critical habitat covering the parcel owned by American Dream/Glenwood that would have reduced the extent of critical habitat on that parcel. The commenter suggested that the swath of low-elevation grasslands that occur along Carbonera Creek in the middle of the Glenwood Unit could be eliminated from critical habitat, as well as a portion of the Carbonera Creek watershed above them. The commenter suggested that the low-level grasslands do not support the primary constituent elements. Further the commenter suggested that the presence of existing residential development and the Scotts Valley High School along Glenwood Drive would make this area less desirable as a movement corridor for wildlife functioning as dispersal agents for *P. hickmanii*.

Response: While this narrow area of low-elevation grasslands does not contain wildflower fields, it is a grassland plant community that supports pollinators and seed dispersal agents for the wildflower fields. In addition, the low-level grassland along Carbonero Creek provide an important corridor for dispersers between the colonies on the west side and suitable, but unoccupied wildflower field habitat on the east side of Glenwood Valley. Similarly, the low-level grasslands would also be an important corridor to potential pollinators between the two sides of Glenwood Valley once *Polygonum hickmanii* is reestablished on the east side of the valley. Therefore, the low-level grasslands that occur along Carbonero Creek do include primary constituent elements.

The recent development of the Scotts Valley High School has reduced the extent of the corridor between the east and west sides of Carbonero Creek, and has therefore increased the conservation value and importance of the remaining corridor for pollinators and seed dispersers. In the background section of this final rule, we have expanded the discussion of potential seed dispersers and pollinators, which are part of the primary constituent elements, to clarify the role that these elements may play in the long-term conservation of the species.

In the case of *Polygonum hickmanii*, we included conservation recommendations for this species in a multi-species recovery plan we published, which also addressed recovery actions for two listed insects and three listed plants (including the endangered *Chorizanthe robusta* var. *hartwegii* that occurs with *P. hickmanii*) in the Santa Cruz Mountains (Service 1998). Upon *P. hickmanii* being listed, we intend that the conservation recommendations included in this recovery plan will, in effect, become the recovery recommendation for this species. This plan identifies both State and Federal efforts for conservation of the plant and establishes a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan sets recovery priorities and describes site-specific management actions necessary to achieve conservation and survival of the plant.

As part of the recovery recommendations for *Polygonum hickmanii*, the recovery plan states that all known sites would have to be in protected status, a habitat conservation plan would have to be in place with the City of Scotts Valley, and population numbers would have to be stable or increasing (Service 1998). The limited range of the species, the limited opportunities for conservation, and the existence of threats on all locations where it occurs makes conservation of the species very difficult. Further loss of habitat or compromising the ecological processes on which the species depends may eliminate the ability of the species to persist. Therefore, we believe it is necessary to include the low-elevation grasslands in the critical habitat designation.

Issue 2: Legal and Procedural Issues

Comment 5: The proposed designation fails to designate specific areas as critical habitat, but instead used a landscape approach.

Response: The critical habitat designation delineates areas that support locations of known individuals of *Polygonum hickmanii* and areas with the primary constituent elements we believe essential to the long-term conservation of *P. hickmanii*. In fact, the distribution of *P. hickmanii* is so restricted that direct and indirect affects to its habitat will make recovery particularly challenging. However,

given the limited distribution of the species, we were able to map critical habitat with a higher level of accuracy and therefore believe we have identified specific areas meeting the definition of critical habitat.

Comment 6: The proposed designation improperly includes areas not essential to the conservation of *Polygonum hickmanii*.

Response: As result of mapping limitations, not all parcels of land proposed as critical habitat contained habitat components essential to the conservation of Polygonum hickmanii. In developing the final designation, we reevaluated and modified the boundaries of the proposed designation as appropriate to exclude areas that did not contain the primary constituent elements. The use of recently acquired high-resolution aerial photographs (April 2000) enabled us to more accurately map the designation. However, due to our mapping scale, some areas not essential to the conservation of *P. hickmanii* may be included within the boundaries of final critical habitat. Certain features, such as buildings, roads, other paved areas and urban landscaped areas do not contain the primary constituent elements for the species. Service staff at the contact numbers provided are available to assist landowners in discerning whether or not lands within the critical habitat boundaries actually possess the primary constituent elements for the species.

Comment 7: The commenter stated that the proposed designation should have delineated occupied and unoccupied habitat areas. Further, the commenter stated that there are a lack of data to demonstrate that colonies do in fact temporarily disappear or expand into areas surrounding the immediate vicinity of the current year's colony.

Response: In this final designation, both critical habitat units are occupied by either standing plants or support a *Polygonum hickmanii* seed bank, but each of the units probably contains areas that could be considered unoccupied by the species. "Occupied" is defined here as an area that may or may not have had above-ground standing plants of *P. hickmanii* during current surveys, but if no standing plants are apparent, the site likely contains a below-ground seed bank of undeterminable boundary. All occupied sites contain some or all of the primary constituent elements and are essential to the conservation of the species, as described below. "Unoccupied" is defined here as an area that contains no above-ground standing plant of *P. hickmanii* and is unlikely to contain a viable seed bank (*e.g.*, soils are currently deeper than what is optimal for the *Polygonum hickmanii*). The inclusion of unoccupied habitat in our critical habitat designation reflects the dynamic nature of the habitat and the life history characteristics of this taxon. Unoccupied habitat provides areas into which populations might expand, provides connectivity or linkage between colonies within a unit, and supports populations of pollinators and seed dispersal organisms.

Determining the specific areas that this taxon occupies is difficult for at least two reasons: (1) The way the current distribution of *Polygonum hickmanii* colonies is mapped can be variable, depending on the scale at which concentrations of individuals are recorded (*e.g.*, many small concentrations versus one large concentration); and (2) depending on the climate and other annual variations in habitat conditions, the extent of the distributions of annual species such as *P. hickmanii* may either shrink and temporarily disappear or, if there is a residual seedbank present, enlarge and cover a more extensive area (Baskin and Baskin 1998). Because it is logistically difficult to determine how extensive the seed bank is at any particular site and because above-ground plants may or may not be present in all patches within a site every year, it would be difficult to quantify what proportion of each critical habitat unit may actually be occupied by *P. hickmanii*.

While the areas designated as critical habitat may include areas that do not currently support *Polygonum hickmanii*, we believe these areas are within the geographic area presently occupied by the species. However, even if they were considered to be outside this geographical area presently occupied, for the reasons discussed below we have determined that they are essential to the conservation of the *P. hickmanii*. Occupied areas, as well as the adjacent grassland areas provide the essential life-cycle needs of the species and provide some or all of the habitat components essential for the conservation of *P. hickmanii*. We are designating critical habitat for *P. hickmanii* in all areas that are known to currently be occupied by the species. In addition, we believe it is necessary to protect unoccupied habitat on the slopes above the known occurrences of *P. hickmanii* because its persistence depends on maintaining the stability of the slopes on which it occurs. As discussed in the Background section of this rule, the characteristics of the geology and soils in the area make these slopes naturally prone to soil erosion. Human activities on the slopes above occurrences of *P. hickmanii* can exacerbate the natural rates of erosion and increase the risk of extirpation to *P. hickmanii* on the slopes below. At this time, we are not aware of additional populations of *P. hickmanii* nor additional areas that can be occupied by the species in the future.

Comment 8: The commenter expressed concern about whether there was any new information to be found that would have bearing on the proposed endangered status of *Polygonum hickmanii* or on the identification of habitats essential to the species.

Response: We have reviewed new information from the CNDDB, biological surveys, and botanists in the field familiar with the species, and we have made numerous visits to field sites since the early 1990s. Based upon this information, we believe that the range of the species is limited to the Scotts Valley area. Since the early 1990s, habitat for the species has been destroyed due to several development projects, and additional habitat has been altered due to secondary impacts resulting from development. According to a review of the socioeconomic information available about the geographic area presented in the draft economic analysis, pressure on the remaining suitable habitat for the species from residential and commercial development and recreation has increased steadily since we first became aware of the species in the early 1990s. The increased pressure on the limited area currently available for this species reinforces its endangered status and the need to designate critical habitat.

Comment 9: The Service has failed to properly consider the economic and other impacts of designating particular areas as critical habitat.

Response: The draft economic analysis for *P. hickmanii* was first published concurrently with that for *Chorizanthe robusta* var. *hartwegii*. We accepted comments on the draft economic analysis during a 30-day comment period for the latter species that started on September 19, 2001 (66 FR 48227). However, this comment was made prior to a subsequent reopening of the comment period for the draft economic analysis. On November 21, 2002 (66 FR 700199), we published another notice in the **Federal Register** announcing again the availability of the draft economic analysis for the critical habitat for *Polygonum hickmanii*. This notice opened a 15-day public comment period on the draft economic analysis for the proposed designation of critical habitat for *P. hickmanii*. All comments received regarding the economic analysis for *P. hickmanii* are addressed in this Summary of Comments and Recommendations section. Additionally, an addendum to the economic analysis, incorporating the comments received on the economic analysis, has been completed and is available upon request (*see* **ADDRESSES**). We believe this economic analysis and its addendum along with this final rule do properly consider the economic and other impacts of designating particular areas as critical habitat.

Comment 10: The Service has improperly bifurcated or separated its consideration of the economic impacts and scientific analysis by not preparing the economic analysis at the time of the proposed critical habitat designation.

Response: Pursuant to section 4(b)(2) of the Act, we are to evaluate, among other relevant factors, the potential economic effects of the designation of critical habitat for *Polygonum hickmanii*. We published our proposed designation in the **Federal Register** on February 15, 2001 (66 FR 10469). At that time, our Division of Economics and their consultants, Industrial Economics, Inc., initiated the draft economic analysis. The draft economic analysis was made available for public comment and review beginning on November 21, 2002 (67 FR 70199), as well as in a previous 30-day open comment period associated with *Chorizanthe robusta* var. *hartwegii* (September 19, 2001, 66 FR 48227). Following the 15-day public comment period on the proposal and draft economic analysis opened on November 21, 2002, a final addendum to the economic analysis was developed. Both the draft economic analysis and final addendum were used in the development of this final designation of critical habitat for *P. hickmanii*. Please refer to the Economic Analysis section of this final rule for a more detailed discussion of these documents.

Comment 11: The Service has not provided a fair and meaningful opportunity for comment on its proposed critical habitat designation.

Response: In our proposed rule to list *Polygonum hickmanii* as endangered on November 9, 2000 (65 FR 67335), we found that designating critical habitat was prudent, but we stated that we would propose critical habitat concurrently with *Chorizanthe robusta* var. *hartwegii* in the future. An open comment period was held at that time to receive comments on the proposed listing, as well as the prudency determination. We published a proposed rule to designate critical habitat for *P. hickmanii* on February 15, 2001 (66 FR 10469), and accepted comments from the public for 60 days, until April 16, 2001. The comment period was reopened from November 21, 2002, to December 6, 2002 (67 FR 70199), to allow for additional comments on the proposed designation and comments on the draft economic analysis of the proposed critical habitat.

We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of a legal notice in the Santa Cruz Sentinel on November 16, 2000, after the proposed rule to list was published, and again on February 24, 2001, after the proposed critical habitat designation was published. We provided notification of the draft economic analysis through telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, local jurisdictions, and interest groups. Additionally, the public had two opportunities to request a public hearing, but none was requested.

Comment 12: The Service should prepare and consider an environmental impact statement in keeping with the National Environmental Policy Act of 1969 (NEPA).

Response: We have determined that an Environmental Assessment and/or an Environmental Impact Statement, as defined under the authority of NEPA, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). Also, the public involvement and notification requirements under both the Endangered Species Act and the Administrative Procedure Act provide ample opportunity for public involvement in the process, similar to the opportunities for public involvement and economic analysis of effects that would be provided in the NEPA process.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Polygonum hickmanii* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment Of Its Habitat or Range

In addition to the colonies of *Polygonum hickmanii* at the Glenwood and Polo Ranch sites, other colonies of *P. hickmanii* may have occurred in Scotts Valley prior to publication of the species name in 1995. An existing housing development bordering the south side of the Glenwood site (Glen View) was built in the mid-1980s, and one development bordering the south side of the Polo Ranch site (Navarra Drive) was built in the 1970s. However, the environmental analyses done at those times would not have recognized *P. hickmanii* as a distinct taxon.

None of the occupied habitat for *Polygonum hickmanii* is targeted for direct destruction. However, all occupied habitat will be subject to habitat alteration resulting from current and proposed projects. At the Glenwood site, construction of a high school was initiated in June 1998. The colony of *P. hickmanii* on this site is within an area designated as a grassland preserve intended to protect a number of sensitive plant species, including *P. hickmanii, Minuartia californica* (California sandwort), *Plagiobothrys diffusus* (San Francisco popcorn flower), and the endangered *Chorizanthe robusta* var. *hartwegii*. The preserve is 2 ha (4 ac) in size and is adjacent to a wetland preserve of slightly smaller size. The combined area of the two preserves form a 3.6 ha (9 ac) area, linear in shape, sandwiched between high school playing fields to the north and the existing Glen View development (also known as Casa Way) to the south. The colony of *P. hickmanii* is 18 m (60 ft) away from the edge of the preserve nearest to the playing field. A management plan for the grasslands preserve includes prescriptions for boundary protection, habitat enhancement, control of nonnative plant species, and a 10-year monitoring program (BRG 1998). Although the effectiveness of this management plan has not yet been demonstrated, *P. hickmanii* will likely still be subject to habitat alteration due to the small size of the preserve and its proximity to other land uses. Problems with managing small preserves within urban areas have been documented previously (Jensen 1987, Clark *et al.* 1998, Howald 1993, Service 1995). *See* Factor E for additional discussion of inadequate preserve design on the long-term conservation of plants.

The kinds of habitat alteration that are anticipated to result from the high school project include changes in

surface hydrologic conditions due to the increased watering of the ballfield upslope from the preserve; changes in surface water quality due to the application of fertilizers, herbicides, and pesticides on the ballfield and adjacent areas up slope from the preserve; an increase in the number of nonnative plant species that will likely invade from adjacent newly altered areas; and an increase in the amount of soil erosion, soil compaction, and disturbance to the soil crust caused by the increased numbers of students, pets, and bicycles coming into the preserve from adjacent areas. The nature of the thin soils and the crusts of mosses and lichens they support make them particularly vulnerable to any form of surface disturbance (Belknap 1990).

The Scotts Valley Water District constructed a series of pipelines, maintenance roads, and tanks to distribute recycled water in the northern Scotts Valley area (EMC Planning Group 1998; Scotts Valley Water District 1998). One pipeline and an all-weather maintenance road pass through the southwestern corner of the preserve and continue to the north and west onto a parcel owned by the Salvation Army where a water tank would be installed. As originally proposed, this route was to come within 23 m (75 ft) of the colonies of *Polygonum hickmanii* on the Salvation Army parcel and within 18 m (60 ft) of the endangered *Chorizanthe robusta* var. *hartwegii* (K. Lyons, pers. comm., 1998). However, when road grading was initiated in July 1999, grading plans were not followed closely. Moreover, measures to minimize and mitigate impacts to sensitive resources included in the approved project were not implemented. As a result, road grading came to within 3 m (10 ft) of *P. hickmanii* and to within 6 m (20 ft) of *C. r.* var. *hartwegii* on the Salvation Army parcel; on the adjacent high school preserve, individuals of *C. r. hartwegii* were destroyed. (Vince Cheap, California Native Plant Society, *in litt.* 1999; V. Cheap, *in litt.* 2001).

The kinds of habitat alteration that are anticipated to impact *Polygonum hickmanii* from the Water District's project include changes in surface hydrology due to the placement of the road upslope from the colonies; changes in surface water quality due to the application of herbicides, pesticides, and tackifiers (dust reducing substances) on the road and roadsides upslope from the colonies; an increase in the amount of soil siltation from the upslope roadbank; soil erosion, soil compaction, and disturbance of the soil crust; and an increase in the number of nonnative plant species that will likely invade from the road.

A visit to the Glenwood site confirmed that the nonnative plant *Genista monspessulana* (French broom) has invaded to within a few feet of one of the colonies of *Polygonum hickmanii* in the last few years (Carole Kelley, Friends of Glenwood, pers. comm., 1998). If not controlled, this invasive plant could quickly eliminate habitat for the *P. hickmanii*. French broom is considered a pest species, which in some places forms impenetrable thickets that displace native vegetation and lower habitat value for wildlife (Habitat Restoration Group, no date; Bossard, *et al.* 2000).

A housing development proposed for the Polo Ranch site includes 30 to 40 housing units clustered on 7.3 of 47.0 ha (18 of 116 ac), with the remaining 38 ha (95 acres) kept as open space (City of Scotts Valley 1998). At the time the proposed rule to list *Polygonum hickmanii* was prepared, the proposed development placed houses and roadways within 18 m (60 ft) or closer to five out of six colonies of *P. hickmanii* and separated the colonies from each other, with three of the six colonies isolated on all sides either by existing or proposed dwellings and roadways. As of 2002, the planned layout of houses has been modified to include a 31-m (100-ft) setback from all but one of the colonies (M. Fodge, Planning Department, City of Scotts Valley, pers. comm., 2002; G. Deghi, consultant, pers. comm., 2002).

Alterations of habitat for *Polygonum hickmanii* that are likely to occur as a result of the Polo Ranch development are changes in surface hydrologic conditions due to the grading of roads and lots; soil erosion, soil compaction, and disturbance of the soil crust by humans, pets, and bicycle traffic; inadvertent (*i.e.*, aerial drift) and intentional application of herbicides, pesticides, and fertilizers on roadsides and yards; inadvertent introduction of nonnative species (both weedy and ornamental); and dumping of yard wastes. Examples of alteration of habitat that have occurred on grasslands north of the backyards of existing housing along Navarra Drive (along the south edge of the Polo Ranch property) include gates and pathways leading from backyards onto the grassland, ivy creeping over fences and onto the grassland, oaks (*Quercus* sp.) planted within the grassland, and shade created by planted backyard trees (K. Lyons, pers. comm., 1998).

Although two of the projects (high school and recycled water distribution system) include plans for conservation of *Polygonum hickmanii* through development-related mitigation, and the third project (Polo Ranch) would be expected to do so as well, the successful implementation of these mitigation plans has not been demonstrated. In particular, the size and characteristics of preserve areas and open spaces and the management actions prescribed through the environmental review process (see Factor D) are unlikely to be biologically adequate to ensure the long-term conservation of *P. hickmanii* and its habitat. In addition, since *P. hickmanii* colonies will be in preserves or open spaces that are small in area, support small numbers of individuals, and consist of degraded habitat, or that continue to receive secondary effects of adjacent human activities, they become more vulnerable to extirpation from naturally occurring events (see Factor E).

All habitat for *Polygonum hickmanii* is also threatened in general by the encroachment of nonnative grasses from the surrounding grasslands. Although several species of nonnative grass (*e.g., Vulpia myuros*) grow within the wildflower fields, these patches for the most part do not support the abundant growth of nonnative grasses (*Bromus* sp.) that occur on the adjacent, more mesic grassland habitat. These nonnative grasses on the mesic grasslands do not compete with *P. hickmanii* in the classic sense (competition for light, water, nutrients). However, the tall culms (stems) of nonnative grasses can physically drape over patches of wildflower field habitat, particularly the smaller patches, and deposit a mat of litter (thatch) that physically prohibits the species within the wildflower field from appearing. Because nonnative grasses and herbs produce more biomass than their native counterparts, they also produce more litter (Belknap *et al.* 2001). Although decomposition rates for nonnative species are likely no slower than those of native species, their faster rate of biomass production results in a greater accumulation of litter. Other cases of native species being overtaken by litter accumulation produced by nonnatives have been noted in desert ecosystems (Jayne Belknap, Biological Resources Division, pers. comm., 1998) and on the California Channel Islands (Rob Klinger, The Nature Conservancy, pers. comm., 1998).

In summary, habitat alteration and destruction, including urban development, road construction, and their attendant secondary impacts (including increased trampling from humans, pets, bicycles, and installation and maintenance of landscaped areas),

are threats to the species. These activities cause soil erosion, soil compaction, disturbance of the soil crust, changes in soil hydrology, changes in water quality, encroachment of nonnative species, and accumulation of thatch.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization or vandalism are not known to be threats to this species.

C. Disease or Predation

We found no evidence that disease is a factor affecting this species. Predation by cattle, livestock, or other wildlife species is not known to occur.

D. The Inadequacy of Existing Regulatory Mechanisms

Polygonum hickmanii currently receives no protection under Federal law, and it is not currently listed by the State of California.

Chorizanthe robusta var. *hartwegiana*, an endangered species, frequently occurs within the same wildflower field habitat as *Polygonum hickmanii*; however, in two locations *P. hickmanii* occurs without the former species. Even though *C. r.* var. *hartwegiana* was federally listed as endangered in 1994, and critical habitat was subsequently designated in 2002, these regulatory actions, and subsequent protections afforded the species and its habitat do not fully protect the frequently co-occurring *P. hickmanii* under the Act for several reasons. First, in context of a consultation under section 7 of the Act, because of the restricted distribution of *P. hickmanii* within the wildflower field habitat, there may be circumstances in which an action proposed by a Federal action agency may jeopardize the continued existence of *P. hickmanii* or destroy or adversely modify its critical habitat, while the same action may not result in jeopardy or adverse modification for *C. r.* var. *hartwegiana*. In addition, because of differences in phenology between the two species (flowering period in *P. hickmanii* is beginning when that of *C. r.* var. *hartwegiana* is ending), it is also possible that the timing of an activity (*e.g.*, grazing or spraying) could be a greater threat to one species than the other. Second, even though *P. hickmanii* shares the same wildflower field habitat with *C. r.* var. *hartwegiana*, it is possible that over time, the distribution of the two species among the wildflower field patches could shift, resulting in less overlap between the two species than is evident at this point in time. Thus, regulatory protections for *C. r.* var. *hartwegiana* may provide less protections for *P. hickmanii*. Third, because of the more restricted distribution of *P. hickmanii* and life history differences between the two plants, recovery actions implemented for *C. r.* var. hartwegiana may be inadequate to provide for the conservation of *P. hickmanii*.

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. The lead agency is the public agency with primary authority or jurisdiction over the project, and that agency is responsible for conducting a review of the project and consulting with other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project potentially "reduce(s) the number or restrict(s) the range of a rare or endangered plant or animal." Species eligible for, but not yet listed by the State as threatened or endangered, are given the same protection as those species officially listed by State or Federal governments. The Rare Plant Scientific Advisory Committee for the California Native Plant Society has determined that *Polygonum hickmanii* meets the criteria for being included on CNPS' "List 1B." The plants on List 1B meet the definitions of section 1901, chapter 10 of the California Department of Fish and Game Code, and are therefore eligible for State listing. It is mandatory that plants on List 1B be fully considered during preparation of environmental documents relating to CEQA. Once significant effects are identified, the lead agency may require mitigation for effects through changes in the project, or the lead agency may decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of listed species. Therefore, the protection of listed species through CEQA depends upon the discretion of the lead agency involved; however, findings of "overriding considerations" are infrequent.

Inclusion of mitigation measures in a project approved through the CEQA process does not guarantee that such measures are implemented. The recycled water distribution project approved by the Scotts Valley Water District included measures to avoid and mitigate impacts to sensitive resources, including those for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*. However, grading for this project was initiated without implementing those measures, which resulted in a much narrower buffer zone left between the plant populations and the grading activity (Carl Wilcox, California Department of Fish and Game, *in litt.* 1999).

Certain local agencies are exempt from city and county regulations in accordance with chapter 1, paragraphs 53094 and 53096, of the State of California regulations on planning, zoning, and development laws (Governor's Office of Planning and Research 1996). The High School project for the Scotts Valley Unified School District is exempt from local permitting requirements; therefore, no permits or approvals were required from the City of Scotts Valley. Additionally, the recycled water distribution project for the Scotts Valley Water District is similarly exempted; therefore, no permits or approvals are required from either the City of Scotts Valley or the County of Santa Cruz. In July 1999, the Water District proceeded with road and tank pad grading for this project. This activity was initiated without fulfilling mitigation measures that called for sensitive areas to be flagged and fenced ahead of time, and resulted in grading that went beyond the scope of work for the project. Although the County of Santa Cruz notified the Water District that the additional grading was not exempted from applicable regulations, the only consequence is that the county has requested that the damaged areas be satisfactorily restored (Alvin James, County of Santa Cruz, *in litt.* 1999).

The establishment and implementation of a management plan for the preserve at the High School site does not provide for enforcement authority to maintain the physical integrity of the preserve.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The design of preserves and open spaces related to project mitigation to date has been insufficient to provide for the long-term conservation of *Polygonum hickmanii* and other sensitive species that occur in the wildflower fields in Scotts Valley. Additionally, the threat of random extinction is increased in small populations of limited distribution (please see the "Random Extinction" section below for further discussion).

Inadequate Preserve Design

The need for adequate preserve design has been discussed by many biologists (Jensen 1987; Shafer 1995; Rathcke and Jules 1993; Kelly and Rotenberry 1993). To increase the certainty that a species will persist over a given interval of time,

adequate habitat needs to be protected and land uses adjacent to the preserve need to be compatible with maintaining the integrity of the preserve. Habitat is not restricted solely to the area actually occupied by the species. It must include an area that is large enough to maintain the ecological functions upon which the species depends and have a ratio of edge to total area that minimizes fragmentation and edge effects.

Failure to protect sufficient habitat results in the eventual decline of the target species. Small preserves adjacent to urban areas have additional stress placed on them due to the need to manage a host of human-caused impacts. The increased stress urban wildland areas receive has been documented by many authors (Keeley 1993).

In the case of *Polygonum hickmanii* at the School District Preserve, the site remained unfenced and unsigned for several years, was subject to bicycle and heavy equipment traffic, and served as a repository for yard waste (C. Kelley, *in litt.* 1999). Local residents also have used the preserve for golf practice (Biotic Resources Group 2002). A management plan for the preserve was completed in 1998 (Wittwer, *in litt.* 2002). However, prescribed management actions are not always implemented according to schedule due to budget limitations.

Habitat fragmentation also affects plant-pollinator interactions in a number of ways. The abundance of specific pollinators may decline due to the elimination of nesting sites, decreases in food source plants due to changes in composition of the plant community, increases in competition from nonnative pollinators, and increases in the exposure to pesticides (Rathcke and Jules 1993; Jennersten 1988; Kearns and Inouye 1997). In plant species that are obligate outcrossers (those that require pollinators to effect seed development), reduced pollinator availability can result in limited seed production. Even if a plant species is not an obligate outcrosser, genetic variability within the plant population can be reduced with potentially deleterious long-term consequences (see discussion below on random extinction). We believe the effects of habitat fragmentation discussed above are similar to those that could affect the long-term persistence of the *Polygonum hickmanii*.

Ecological processes that would be important to maintain within preserve areas for *Polygonum hickmanii* include, but are not limited to, the integrity of edaphic (soil) conditions, hydrologic processes (surface flows), the associated "wildflower field" plant community, plant-pollinator interactions, and seed dispersal mechanisms. Maintaining such processes will be severely compromised by the small size of the areas being set aside as preserves or open spaces, the extent of edge subject to external influences, and the particular kinds of adjacent land use to which the preserves will be subject. Threats resulting from alteration of habitat due to adjacent changes in land use (discussed in Factor A) are exacerbated by the small size of the preserves and the proximity of nearly all of the colonies to the edges of the preserves or open spaces, or to roads. Distances of less than 24 m (80 ft) are not considered to be effective at buffering from chemical pollutants (*e.g.*, herbicides, pesticides, and other contaminants) (Conservation Biology Institute (CBI) 2000). Depending on site configuration or circumstances, buffers of up to 91 m (300 ft) may not be adequate to provide sufficient buffering from invasive animals and increased fire frequency (CBI 2000).

Random Extinction

This species is considered to have a high risk of extinction in the wild in the immediate future based on criteria put forth by the World Conservation Union, as modified for plants (Keith 1998). Species with few populations and individuals are vulnerable to the threat of naturally occurring events, causing extinction through mechanisms operating either at the genetic level, the population level, or the landscape level. Decrease in genetic variability will reduce the likelihood that individuals in a population will persist in a changing environment. Additionally, populations with lower levels of genetic diversity are more likely, on average, to experience reduced reproductive success due to inbreeding depression. Species with few populations or those that are low in number may be subject to forces at the population level that affect their ability to complete their life cycles successfully. For example, reduced numbers of individuals may lead to a reduction in number of pollinators and subsequently seed set. Additionally, if the host plants are partially self-incompatible, reduction in population size may lead to increased self-pollination and may reduce the level of genetic variability. At the landscape level, random natural events, such as storms, drought, or fire, could destroy a significant percentage of individuals or entire populations; a hot fire could destroy a seedbank as well. The restriction of colonies to small sites increases their risk of extinction from such naturally occurring events.

The genetic characteristics of *Polygonum hickmanii* have not been investigated; therefore, the degree to which these characteristics contribute to the likelihood of *P. hickmanii* being vulnerable to extinction for these reasons is unknown. However, random events operating at the population and landscape levels clearly have the potential for increasing the chance of extinction for *P. hickmanii*.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this taxon in determining the actions to take in this rule. Based on this evaluation, the appropriate action is to list *Polygonum hickmanii* as endangered. The species is threatened with extinction due to habitat alteration resulting primarily from urban development, inadequate preserve design, and vulnerability to naturally occurring events due to low numbers of individuals and occupied acreage of the entire taxon. All of the colonies are on private lands. Although conservation efforts have been prescribed as part of mitigation for two of the three projects (high school and recycled water distribution project), and are expected to be proposed for the third project (Polo Ranch development), the small extent of occupied habitat, small colony sizes, and imminent threats lessen the chance that such efforts will lead to secure, self-sustaining colonies at these sites.

Critical Habitat

Section 3 of the Act defines critical habitat as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions authorized, funded, or carried out by a Federal agency. Section 7 of the Act also

requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act against such activities.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known, and using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat except in those circumstances determined by the Secretary. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. This policy requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should, at a minimum, be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, it is important to understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not also be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the Act's section 7(a)(2) jeopardy standard and the section 9 prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific and commercial data available to determine areas that contain the physical and biological features that are essential for the conservation of *Polygonum hickmanii*. This information included data from the CNDDB 2000, geologic and soil survey maps (USGS 1989, SCS 1979), geologic information contained in project documents (Impact Sciences 1998, 2000), recent biological surveys and reports, our multi-species recovery plan for the Santa Cruz Mountatins that provided conservation recommendations for *Polygonum hickmanii*, additional information provided by interested parties, and discussions with botanical experts. We also conducted multiple site visits to the two locations that are being designated as critical habitat.

In addition to the above, we also reviewed the goals for *Polygonum hickmanii* included in our multi-species recovery plan, which addresses this species and other taxa from the Santa Cruz Mountains (Service 1998). The plan included the following conservation recommendations: (1) Secure and protect habitat for *Polygonum hickmanii* through habitat conservation plans (HCPs), conservation easements, or acquisition; (2) manage habitat for the species through such actions as controlling nonnative species, reducing impacts from recreation, restoring degraded sites, and monitoring regularly; (3) learn more about the life history, ecology, and population dynamics of the species that will contribute to developing appropriate management strategies; (4) increase public awareness of the species and its associated habitats through various outreach efforts; and (5) use an adaptive management approach to revise management strategies over time. Critical habitat alone is not expected to recover the species, and it is only one of many strategies that can assist in such recovery.

Determining the specific areas that this taxon occupies is difficult for several reasons: (1) The distribution of *Polygonum hickmanii* appears to be more closely tied to the presence of the Santa Cruz mudstone and Purisima soils than to specific plant communities; the plant communities may undergo changes over time, which, due to the degree of cover that is provided by that vegetation type, may or may not favor the growth of *P. hickmanii* above ground; (2) the way the current distribution of *P. hickmanii* is mapped can be variable, depending on the scale at which patches of individuals are recorded (*e.g.*, many small patches versus one large patch); and (3) depending on the climate and other annual variations in habitat conditions, the extent of the distributions may either shrink and temporarily disappear, or, if there is a residual seedbank present, enlarge and cover a more extensive area. Because it is logistically difficult to determine how extensive the seed bank is at any particular site and because above-ground plants may or may not be present in all patches within a site every year, it would be difficult to quantify what proportion of each critical habitat unit may actually be occupied by *P. hickmanii*. Therefore, within the grassland habitat, patches of unoccupied habitat are interspersed with patches of occupied habitat; the inclusion of unoccupied habitat in our

critical habitat units reflects the dynamic nature of the habitat and the life history characteristics of this taxon. Unoccupied areas provide areas into which populations might expand, provide connectivity or linkage between colonies within a unit, and support populations of pollinators and seed dispersal organisms. Other areas, specifically the steeper slopes above the occurrences of *P. hickmanii*, and including non-grassland areas that extend up to the ridgelines, are necessary to maintain the hydrologic and edaphic characteristics of the wildflower field patches where *P. hickmanii* is found.

Summary of Changes From the Proposed Critical Habitat Designation

Based on a review of public comments received on the proposed designation of critical habitat, we reevaluated our proposal and made several changes to the final designation of critical habitat. These changes include the following:

(1) The description of the primary constituent elements was modified and clarified. One peer reviewer suggested expanding the list of primary constituent elements; we did not believe it was appropriate to do so (see comment 2 in Summary of Comments above). However, we did incorporate some of the additional elements suggested by the peer reviewer and included discussion of them as features of the landscape that need special management or protections. In the third primary constituent element ("grassland plant community that supports the wildflower field habitat that is stable over time"), we removed the reference to nonnative species being absent or at low densities in recognition that such areas, even if they contain nonnative species, may have the potential to be restored so as to support *Polygonum hickmanii* in the future. Two other primary constituent elements (pollinator activity between existing colonies of *P. hickmanii*, and seed dispersal mechanisms between existing colonies and other potentially suitable sites) were removed as individual primary constituent elements. Instead, these two elements were added into primary constituent element #3. We did this because we think it more accurately portrays the role of pollinators and seed dispersers as integrated parts of a healthy plant community that could support *P. hickmanii*, rather than as elements whose absence would lead the public to conclude that an area was not critical habitat.

(2) One primary constituent element ("physical processes * * * that support natural dune dynamics") was erroneously included in the proposed rule; it has been removed from this final rule.

(3) We added a section describing the Special Management Needs or Protections that *Polygonum hickmanii* may require. We believe that this new section will assist land managers in developing strategies for conservation and protection of *P. hickmanii* on lands they manage.

(4) We made revisions to the boundary lines on both critical habitat units. The purpose of these changes was to remove areas that do not contain the primary constituent elements. The use of recently acquired high-resolution aerial photographs (April 2000) enabled us to more precisely map critical habitat. These changes reduced the Glenwood Unit by 4 percent (3 ha, 8 ac). The Polo Ranch Unit was reduced 15 percent (5 ha, 13 ac) by eliminating some of the riparian gallery forest at the western edge of the unit that borders Carbonero Creek and does not support any of the primary constituent elements.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Polygonum hickmanii* is described in the Background section of this final rule. Based on the best available information at this time, we believe the long-term probability of the conservation of *P. hickmanii* is dependent upon the protection of existing population sites and the maintenance of ecological functions within these sites, including connectivity between colonies within close geographic proximity to facilitate pollinator activity and seed dispersal mechanisms, and the ability to maintain disturbance factors (for example, fire disturbance) that contribute to the openness of plant cover upon which the species depends. In addition, the small range of this species makes it vulnerable to edge effects from adjacent human activities, including disturbance from trampling and recreational use, the introduction and spread of nonnative species, and the application of herbicides, pesticides, and other contaminants (Conservation Biology Institute 2000).

The primary constituent elements of critical habitat for *Polygonum hickmanii* are:

(1) Thin soils in the Bonnydoon series that have developed over outcrops of Santa Cruz mudstone and Purisima sandstone;

(2) "Wildflower field" habitat that has developed on these thin-soiled sites;

(3) A grassland plant community that supports the "wildflower field" habitat and that supports the pollinator activity and seed dispersal mechanisms that typically occur within the grassland plant community;

(4) Areas around each colony to allow for recolonization to adjacent suitable microhabitat sites;

(5) Habitat within the subwatersheds upslope to the ridgelines to maintain the edaphic and hydrologic conditions and slope stability that provide the seasonally wet substrate for growth and reproduction of *P. hickmanii*.

Special Management Considerations or Protections

Special management considerations or protections may be needed to maintain the primary constituent elements for *Polygonum hickmanii* within the units being designated as critical habitat. In some cases, protection of existing habitat and current ecologic processes may be sufficient to ensure that populations of *P. hickmanii* are maintained at those sites and have the ability to reproduce and disperse in surrounding habitat. In other cases, however, active management may be needed to maintain the primary constituent elements for *P. hickmanii*. We have outlined below the most likely kinds of special management and protection that *P. hickmanii* may require.

(1) The soils on which *Polygonum hickmanii* is found should be maintained to optimize conditions for its persistence. Physical properties of the soil, such as its chemical composition, surface crust, and drainage capabilities, would best be maintained by limiting or restricting the use or application of herbicides, fertilizers, or other soil amendments.

(2) Overspray from irrigation or saturation of soils beyond the normal rainfall season should also be avoided, as this may alter the structure and composition of the grassland community or render the native species more vulnerable to pathogens found in wetter soil regimes.

(3) The associated plant communities must be maintained to ensure that the habitat needs of pollinators and seed dispersal agents are maintained. The use of pesticides should be limited or restricted so that healthy populations of pollinators are present to effect pollination and, therefore, seed set in *Polygonum hickmanii*. The fragmentation of habitat through construction of roads and certain types of fencing should be limited so that dispersal agents may disperse seed of *P. hickmanii* throughout the unit.

(4) Invasive, nonnative species such as brome grasses and other species may need to be actively managed within the grassland community to maintain the patches of open habitat that *Polygonum hickmanii* needs.

(5) Certain areas where *Polygonum hickmanii* occurs may need to be fenced to protect it from accidental or intentional trampling by humans and livestock. While *P. hickmanii* appears to withstand light to moderate disturbance, heavy disturbance may be detrimental to its persistence. Seasonal exclusions may work in certain areas to protect *P. hickmanii* during its critical season of growth and reproduction.

Criteria Used To Identify Critical Habitat

To delineate the critical habitat units, we selected areas that provide for the conservation of *Polygonum hickmanii* at the only two sites where it is known to occur, additional suitable habitat, and habitat upslope of these areas to the ridgeline of the subwatersheds. The current range of the species suggests that part of its former range was destroyed by urban development. Additionally, the remaining range of the species is highly restricted, with standing plants currently growing on less than 0.4 ha (1 ac) of land. We believe it is essential to the conservation of the species to preserve all areas that currently support native populations of *P. hickmanii* because the current range of the species is so restricted. However, habitat is not restricted solely to the area where standing individuals can be observed. Habitat for the species must include an area that is large enough to maintain the ecological functions upon which the species depends (*e.g.*, the hydrologic and edaphic conditions for seed germination and establishment, pollinators, and seed dispersers). We believe it is important to designate an area of sufficient size to allow landscape scale processes to continue that maintain the patches of wildflower field habitat and to minimize the alteration of habitat, such as invasions of nonnative species and recreation-caused erosion, that result from human occupancy and human activities occurring in adjacent areas.

We delineated the critical habitat units by creating data layers in a geographic information system (GIS) format of the areas of known occurrences of *Polygonum hickmanii* using information from the California Natural Diversity Data Base (CNDDB 2000) and the other information sources listed in the Methods section above. These data layers were created on a base of USGS 7.5′ quadrangle maps obtained from the State of California's Stephen P. Teale Data Center. Because the areas within proposed critical habitat boundaries were portions of the San Augustin Spanish Land Grant, they have not been surveyed according to the State Plan Coordinate System. Therefore, instead of defining proposed critical habitat boundaries using a grid of township, range, and section, we defined the boundaries for the proposed critical habitat units using known landmarks and roads.

During preparation of the final rule, we found several discrepancies between the legal description of the boundaries of the critical habitat units and the boundaries of the units as depicted in the maps accompanying the proposed rule. The discrepancies resulted primarily through our use of data layers created at a small scale (for example 1:100,000 scale USGS mapping) during preparation of the maps of the proposed critical habitat. For the final rule, we corrected the mapped boundaries of critical habitat first to be consistent with the boundaries as described in the proposed rule. We then modified the boundaries of proposed critical habitat using information on the location of existing developed areas from recent (April 2000) aerial imagery, additional information from botanical experts, and comments on the proposed rule. The boundaries of the final critical habitat units are defined by Universal Transverse Mercator (UTM).

In selecting areas of critical habitat, we made an effort to avoid developed areas, such as housing developments, which are unlikely to contribute to the conservation of *Polygonum hickmanii*. We attempted to map critical habitat for the final rule in sufficient detail to exclude developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *P. hickmanii*. Some other areas within the boundaries of the mapped units, such as roads, parking lots and other paved areas, lawns, and other urban landscaped areas, will not contain any of the primary constituent elements. Federal actions limited to these areas, therefore would not trigger a section 7 consultation under the Act, unless they affect the species or primary constituent elements in adjacent critical habitat.

Critical Habitat Designation

The critical habitat units described below constitute our best assessment at this time of the areas essential for the species' conservation. Critical habitat for *Polygonum hickmanii* is being designated at the only two sites where it is known to occur. Both units are currently occupied with known occurrences of *P. hickmanii*. These areas provide the essential life cycle needs of the species and the habitat components essential for the conservation of *P. hickmanii*. The two units are primarily within the city limits of Scotts Valley in Santa Cruz County with a small portion within an unincorporated area of Santa Cruz County, California, and include the grassland habitat that contains the "wildflower field" patches on which the species depends. Given the threats to the habitat of *P. hickmanii* discussed above, we believe that these areas are likely to require special management considerations and protection.

Because we consider maintaining hydrologic and edaphic conditions so important in these grasslands, the critical habitat area extends outward to the following limits—(1) Upslope from the occurrences of *P. hickmanii* to include the upper limit of the immediate watershed; (2) downslope from the occurrences of *P. hickmanii* to the point at which grassland habitat is replaced by forest habitats (oak forest, redwood forest, or mixed conifer-hardwood forest); and (3) to the boundary of existing development.

Including the upper limit of the watershed highlights the importance of maintaining stability of the slopes above the habitat of the species, because soil disturbing activities in this area could result in erosion and deposition of soils on top of wildflower field habitat, and could also lead to a change in the flow of surface and subsurface water downslope, which could change the amount and timing of water availability to the wildflower field habitat. Including habitat downslope from the wildflower field habitat likewise highlights the importance of maintaining edaphic and hydrologic conditions below the wildflower field patches, because soil disturbing activities in this area could also result

in erosion and removal of soils which could cause destabilization of slopes where the wildflower field patches are located.

Unit Descriptions

We are designating the following general areas as critical habitat (see legal descriptions for exact critical habitat boundaries).

Unit 1: Glenwood Site

Unit 1 consists of approximately 87 ha (214 acres) to the west of Glenwood Drive and north and northwest of Casa Way, in the city of Scotts Valley. This unit includes land owned and managed by the Salvation Army and by the Scotts Valley High School District as a preserve, but excludes the rest of the High School, and land to the east of Glenwood Drive, encompassing the parcel known as the Glenwood Development. Most of the land being designated within this unit is privately owned, with a small portion (4 ha (9 ac)) owned by a local agency (High School District). This unit is essential because it supports approximately 25 to 50 percent of the known above-ground numbers of individuals of *Polygonum hickmanii*, as well as other suitable patches of wildflower field habitat that could be colonized by the species naturally, or used as introduction sites as part of a recovery effort. Much of this suitable, but unoccupied habitat, is slated to be dedicated as "open space" as part of the housing development on the Glenwood parcel; therefore, an opportunity may exist to pursue such a recovery effort. The unit also supports intervening habitat that includes the grassland community that supports the pollinators and seed dispersers that are important to the survival and conservation of *P. hickmanii*. Additional habitat that is unsuitable for *P. hickmanii* is also included on the slopes above the wildflower field patches; this additional habitat is necessary to maintain the slope stability and therefore the hydrologic and soil conditions suitable for *P. hickmanii* and the wildflower field habitat.

Unit 2: Polo Ranch Site

The Polo Ranch site consists of approximately 30 ha (73 ac) to the east of Carbonera Creek on the east side of Highway 17 and north and northeast of Navarra Drive, in the city of Scotts Valley, in Santa Cruz County, California. All land being designated as critical habitat is privately owned. This unit is essential because it supports approximately 50 to 75 percent of the known above-ground numbers of individuals of *Polygonum hickmanii*, as well as other suitable patches of wildflower field habitat that could be colonized by the species naturally, or used as introduction sites as part of a recovery effort. The unit also supports intervening habitat that includes the grassland community necessary for pollinators and seed dispersers that are responsible for maintaining genetic variability within the species. Additional habitat that is unsuitable for the growth of *P. hickmanii* is also included on the slopes above the wildflower field patches; this additional habitat is necessary to maintain the slope stability and therefore the hydrologic and soil conditions suitable for *P. hickmanii*. Much of the unsuitable habitat will be set aside as "open space" as part of the pending housing development, because these slopes are too steep to safely support housing construction.

TABLE 1.—APPROXIMATE CRITICAL HABITAT AREA (HA (AC)) AND LAND OWNERSHIP.

[1 ha = 2.47 ac]

Unit name	Local agency	Private	Total
Glenwood Unit	4 ha (9 ac)	83 ha (205 ac)	87 ha (214 ac)
Polo Ranch Unit	0 ha (0 ac)	30 ha (73 ac)	30 ha (73 ac)
Total	4 ha (9 ac)	113 ha (278 ac)	117 ha (287 ac)

Estimates reflect the total area within critical habitat unit boundaries. Approximate hectares have been converted to acres.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in public awareness and conservation actions by Federal, State, and local and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that we develop and implement recovery plans for all listed species unless we find that such a plan will not promote the conservation of the species. Together with our partners, we would initiate such appropriate recovery actions following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this Interagency Cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed to be listed or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat, if any has been designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Activities on private lands requiring a permit from a Federal agency, such as a permit from the Army Corps of Engineers under section 404 of the Clean Water Act, would be subject to the section 7 of the Act consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded or permitted, would not require section 7 consultation.

Listing of this plant would authorize development of a recovery plan. However, in the case of *Polygonum hickmanii*, we included conservation recommendations for this species in a multi-species recovery plan we published, which also addressed recovery actions for two listed insects and three listed plants (including the endangered *Chorizanthe robusta* var. *hartwegii* that occurs with *P. hickmanii*) in the Santa Cruz Mountains (Service 1998). Since *P. hickmanii* is being listed with the publication of this final rule, we intend that the conservation recommendations included in this multi-species recovery plan will, in effect, become the recovery plan for this species. This plan identifies both State and Federal efforts for conservation of the plant and establishes a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan sets recovery priorities and describes site-specific management actions necessary to achieve conservation and survival of the plant. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to the State of California for management actions promoting the protection and recovery of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce the species, or to remove the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction in areas under Federal jurisdiction and the removal, cutting, digging up, damaging, or destroying of such endangered plants in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 N.E. 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Collection, damage, or destruction of endangered plants on Federal lands is prohibited, although in appropriate cases, a Federal endangered species permit may be issued to allow for collection. However, *Polygonum hickmanii* is not presently known to occur on Federal land. Removal, cutting, digging up, damaging, or destroying endangered plants on non-Federal lands also constitutes a violation of section 9 of the Act if conducted in knowing violation of State law or regulations, including State criminal trespass law.

Questions regarding whether specific activities will constitute a violation of section 9 should be addressed to the Field Supervisor, Ventura Fish and Wildlife Office (*see* **ADDRESSES**).

Effects of Critical Habitat Designation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat were designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10 (d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect *Polygonum hickmanii* or its critical habitat will require consultation under section 7 of the Act. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, or any other activity requiring Federal action (*i.e.*, funding, authorization) will also continue to be subject to the section 7 of the Act consultation process. Federal actions not affecting critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 of the Act consultation.

Both of the units we are designating are considered to be occupied by either standing *Polygonum hickmanii* plants or a seed bank, and Federal agencies already consult with us on activities in areas where the species may be present to ensure that their actions do not jeopardize the continued existence of the species. Therefore, the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Actions on which Federal agencies consult with us include, but are not limited to:

(1) Development on private lands requiring permits from Federal agencies, such as section 404 of the Clean Water Act permits from the U.S. Army Corps of Engineers;

(2) Restoration projects sponsored by the Natural Resources Conservation Service; and

(3) Pest control projects undertaken by the Animal and Plant Health Inspection Service, permits from Housing and Urban Development, or authorization of Federal grants or loans.

Such activities would be subject to the section 7 of the Act consultation process. Where federally listed wildlife species occur on private lands proposed for development, any HCPs submitted by the applicant to secure an incidental take permit according to section 10(a)(1)(B) of the Act would be subject to the section 7 of the Act consultation process. The Ohlone tiger beetle (*Cicindela ohlone*), a federally endangered species, occurs in close proximity to *C. r.* var. *hartwegii* within grasslands on the east side of Carbonero Creek on the Glenwood Development parcel. We anticipate that an HCP will be developed to cover incidental take for the tiger beetle and will address conservation measures for *C. r.* var. *hartwegii* as well as *Polygonum hickmanii* during development of the management plan for the open space portion of the parcel.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Polygonum hickmanii* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that alter watershed characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain natural grassland communities and the wildflower field habitat. Such activities adverse to *Polygonum hickmanii* could include, but are not limited to: Vegetation manipulation, such as chaining or harvesting timber in the watershed upslope from *P. hickmanii*; maintaining an unnatural fire regime either through fire suppression or prescribed fires that are too frequent or poorly-timed; residential and commercial development, including road building and golf course installations; agricultural activities, including orchardry, viticulture (the cultivation of grapes), row crops, and livestock grazing; and

(2) Activities that appreciably degrade or destroy native grassland communities, including, but not limited to, livestock grazing, clearing, discing, introducing or encouraging the spread of nonnative species, and heavy recreational use.

If you have questions about whether specific activities may constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (*see* **ADDRESSES**).

Relationship to Habitat Conservation Plans

Currently, there are no HCPs that include *Polygonum hickmanii* as a covered species. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although the Act only prohibits take of listed wildlife species, listed plant species may also be covered in an HCP for wildlife species.

In the event that future HCPs covering *Polygonum hickmanii* are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not destroy or adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *P. hickmanii*. The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We will also provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify appropriate management for lands essential for the long-term conservation of *P. hickmanii*. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Following the publication of the proposed critical habitat designation, a draft economic analysis was conducted to estimate the potential economic effect of the designation. The draft analysis was made available for review on November 21, 2002. We accepted comments on the draft analysis until December 6, 2002.

Our draft economic analysis evaluated the potential future effects of *Polygonum hickmanii* as a threatened species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a "without critical habitat" baseline and compared it to a "with critical habitat" scenario. The "without critical habitat" baseline represented the current and expected economic activity under all modifications prior to the critical habitat designation, including protections afforded the species under Federal and State laws. The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting beneficial costs associated with critical habitat, including educational benefits. The most likely economic effects of critical habitat designation are on private landowners carrying out development activities funded or authorized by a Federal agency.

Based on our economic analysis, we concluded that the designation of critical habitat would not result in a significant additional regulatory burden above and beyond that attributable to the listing of *Polygonum hickmanii*. Our economic analysis does take into account that unoccupied habitat is being designated and that there may be some cost associated with new section 7 consultations that would not have occurred but for critical habitat being designated. Our economic analysis also recognizes that there may be economic effects due to the reaction of the real estate market to critical habitat designation, as real estate values may be temporarily lowered due to perceived increase in the regulatory burden. However, we believe these impacts will be short-term or minimal in cost.

In the final economic analysis, we conclude that, over the next 10 years the total costs to all landowners attributable to the designation are expected to be approximately $11,000 to $36,000 annually. However, we anticipate the costs will be even less because the costs of preparing Environmental Impact Reports for proposed developments, which were figured into the estimates, would have already been prepared to satisfy California Environmental Quality Act requirements for the lead State agency.

The values presented above may be an overestimate of the potential economic effects of the designation because the analysis includes a number of assumptions about the likelihood of future section 7 of the Act consultations, Environmental Impact Report preparation costs, and the costs involved in project modifications. Please see the economic analysis and final addendum for more information. Furthermore, the final designation has been reduced to encompass 117 ha (287 acres) versus the 125 ha (308 ac) proposed as critical habitat, a difference of approximately 8 ha (21 ac), that may reduce the economic effects of the designation.

A copy of the final economic analysis with supporting documents are included in the supporting record for this rulemaking and may be obtained by contacting our Ventura Fish and Wildlife Office (*see* **ADDRESSES**).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government.

This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not reviewed this final critical habitat designation.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In this rule, we are certifying that the critical habitat designation for *Polygonum hickmanii* will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

Small entities include small organizations, such as independent nonprofit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. SBREFA does not explicitly define either "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a "significant economic impact." Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA. (*Mid-Tex Electric Co-op Inc.* v. *F.E.R.C.*, 773 F.2d 327 (D.C. Cir. 1985) and *American Trucking Associations, Inc.* v. *U.S. E.P.A.*, 175 F.3d 1027, (D.C. Cir. 1999))

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. Residential development on private land constitutes the primary activity expected to be impacted by the designation of critical habitat for *Polygonum hickmanii*.

To be conservative (*i.e.*, more likely overstate impacts than understate them), the economic analysis assumed that the two potentially affected parties (American Dream/Glenwood and Lennar/Graystone Homes) that may be engaged in development activities within critical habitat are small entities. There are approximately 35 small residential development and construction companies in Santa Cruz County. At most two formal consultations could arise involving private entities. Therefore, the economic analysis assumes that at most two separate residential/small business entities may be affected by the designation of critical habitat for *Polygonum hickmanii* over 10 years.

Under the reasonable assumption that the two consultations would be spread out over the 10-year period, less than 1 percent of residential development and construction companies may be affected annually, on average, by the designation of critical habitat for the *Polygonum hickmanii*. Consequently, the economic analysis concludes that this designation will not affect a substantial number of small entities as a result of the designation of critical habitat for *P. hickmanii*.

In general, two different mechanisms in consultations under section 7 of the Act could lead to additional regulatory requirements for the one small business, on average, that may be required to consult with us each year regarding their project's impact on *Polygonum hickmanii* and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or destroy or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in destruction or adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or destruction or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through nondiscretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have no consultation history for *Polygonum hickmanii*, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in this final listing rule and critical habitat designation.

It is likely that a developer could modify a project to avoid removing standing plants. Based on the types of modifications that have been implemented in the past for plant species, a developer may take such steps as installing fencing to protect existing colonies of plants, re-aligning the project to avoid sensitive areas, continuation of current grazing practices or establishment of new management provisions to ensure containment of nonnative exotic species that threaten *Polygonum hickmanii*, and or restrictions of certain recreation uses to avoid disruption of normal propagation of the species. As determined in our economic analysis, the cost for implementing these modifications for one project may range from $11,000 to $55,000. It should be noted that developers likely would already be required to undertake such modifications due to regulations in CEQA. These modifications are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this rule would result in a significant economic effect on a substantial number of small entities and have determined, for the above reasons, that it will not affect a substantial number of small entities. Furthermore, we believe that the potential compliance costs for the number of small entities that may be affected by this rule will not be significant. Therefore, we are certifying that the designation of critical habitat for *Polygonum hickmanii* will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

OMB's Office of Information and Regulatory Affairs has determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. In the economic analysis, we determined whether designation of critical habitat would cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this designation.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that they must ensure that any programs involving Federal funds, permits, or other authorized activities will not adversely affect the critical habitat.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. There are no energy-related facilities located within designated critical habitat. This rule is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for *Polygonum hickmanii* in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by *Polygonum hickmanii*, as well as unoccupied areas, would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While making this designation and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning, rather than waiting for case-by-case section 7 of the Act consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act, as amended. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Polygonum hickmanii*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a Government-to-Government basis. The designated critical habitat for *Polygonum hickmanii* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (*see* **ADDRESSES**).

Author

The primary author of this final rule and critical habitat designation is Constance Rutherford, Ventura Fish and Wildlife Office (*see* **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.12(h), by adding an entry for *Polygonum hickmanii* in alphabetical order under FLOWERING PLANTS to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Flowering Plants							
Polygonum hickmanii	Scotts Valley polygonum.	U.S.A. (CA)	Polygonaceae	E	736	17.96(a)	NA

■ 3. Amend § 17.96(a) by adding a critical habitat for Family Polygonaceae: *Polygonum hickmanii* (Scotts Valley polygonum) in alphabetical order to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Polygonaceae: *Polygonum hickmanii* (Scotts Valley polygonum)

(1) Critical habitat units are depicted for Santa Cruz County, California, on the map below.

(2) The primary constituent elements of critical habitat for *Polygonum hickmanii* are the habitat components that provide:

(i) Thin soils in the Bonnydoon series that have developed over outcrops of Santa Cruz mudstone and Purisima sandstone;

(ii) "Wildflower field" habitat that has developed on these thin-soiled sites;

(iii) A grassland plant community that supports the "wildflower field" habitat and that supports the pollinator activity and seed dispersal mechanisms that typically occur within the grassland plant community;

(iv) Areas around each colony to allow for recolonization to adjacent suitable microhabitat sites; and

(v) Habitat within the subwatersheds upslope to the ridgelines to maintain the edaphic and hydrologic conditions and slope stability that provide the seasonally wet substrate for growth and reproduction of *Polygonum hickmanii*.

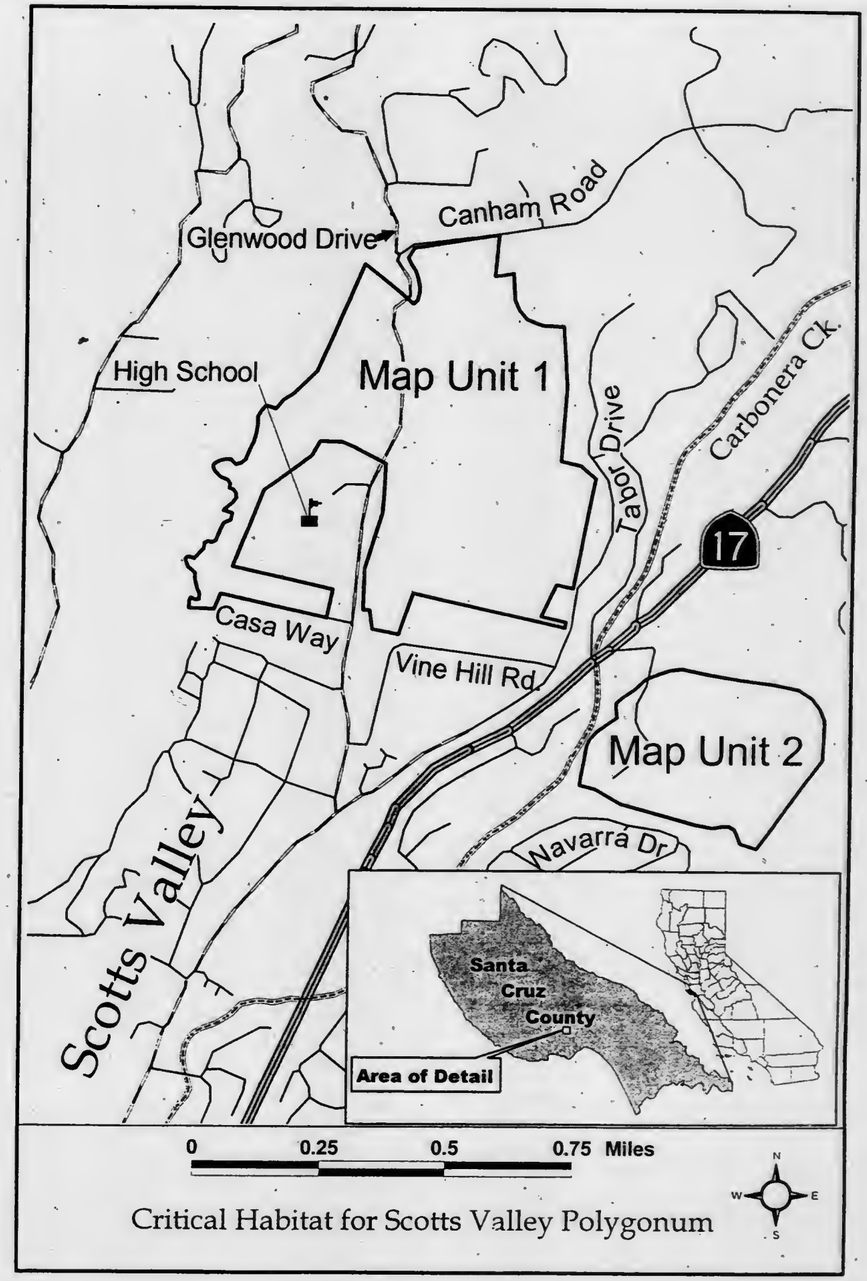
(3) Existing features and structures, such as buildings, roads, railroads, airports, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(4) Unit 1: Santa Cruz County, California. From USGS 7.5′ quadrangle map Felton, California, Mount Diablo Meridian, California. Lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 587990, 4103190; 587999, 4103220; 588021, 4103230; 588025, 4103250; 587997, 4103260; 588025, 4103280; 588035, 4103290; 588033, 4103310; 588025, 4103320; 588012, 4103330; 588014, 4103340; 588005, 4103350; 587984, 4103360; 587969, 4103370; 587962, 4103380; 587958, 4103390; 587962, 4103400; 587975, 4103410; 587992, 4103410; 588012, 4103420; 588029, 4103400; 588046, 4103410; 588058, 4103420; 588064, 4103430; 588072, 4103450; 588082, 4103480; 588088, 4103500; 588091, 4103530; 588091, 4103560; 588099, 4103570; 588115, 4103590; 588146, 4103580; 588169, 4103610; 588201, 4103630; 588272, 4103700; 588411, 4104050; 588571, 4103930; 588584, 4103940; 588589, 4103960; 588590, 4103980; 588583, 4104010; 588574, 4104030; 588559, 4104050; 588549, 4104070; 588568, 4104110; 588833, 4104150; 588827, 4104020; 588883, 4104030; 588891, 4103950; 588906, 4103920; 588931, 4103890; 588979, 4103870; 589049, 4103870; 589069, 4103680; 589061, 4103450; 589124, 4103440; 589173, 4103400; 589117, 4103050; 589062, 4103060; 589019, 4102960; 589099, 4102940; 589096, 4102920; 588612, 4103020; 588570, 4102880; 588485, 4102900; 588474, 4102960; 588452, 4102960; 588452, 4103090; 588473, 4103160; 588502, 4103270; 588504, 4103330; 588505, 4103420; 588402, 4103470; 588360, 4103480; 588292, 4103480; 588267, 4103440; 588121, 4103320; 588033, 4103080; 588352, 4103020; 588337, 4102930; 588000, 4102990; 587981, 4102940; 587900, 4102940; 587900, 4102960; 587905, 4102980; 587919, 4102970; 587931, 4102970; 587932, 4102990; 587924, 4103010; 587916, 4103040; 587915, 4103060; 587893, 4103070; 587887, 4103090; 587883, 4103100; 587885, 4103100; 587891, 4103110; 587911, 4103100; 587939, 4103130; 587942, 4103150; 587951, 4103160; 587963, 4103150; 587977, 4103160; 587990, 4103190.

(5) Unit 2: Santa Cruz County, California. From USGS 7.5′ quadrangle map Laurel, California, Mount Diablo Meridian, California. Lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 589297, 4102370; 589213, 4102420; 589164, 4102430; 589168, 4102460; 589174, 4102500; 589181, 4102550; 589189, 4102570; 589210, 4102600; 589243, 4102620; 589261, 4102630; 589274, 4102640; 589271, 4102660; 589270, 4102680; 589270, 4102690; 589289, 4102710; 589327, 4102740; 589361, 4102770; 589402, 4102790; 589435, 4102800; 589472, 4102800; 589571, 4102790; 589657, 4102780; 589762, 4102770; 589845, 4102750; 589889, 4102730; 589917, 4102690; 589932, 4102660; 589932, 4102620; 589930, 4102530; 589865, 4102440; 589732, 4102250; 589681, 4102260; 589669, 4102290; 589661, 4102300; 589642, 4102310; 589623, 4102310; 589590, 4102310; 589531, 4102320; 589297, 4102370.

(6) Map for Units 1 and 2 follows:

BILLING CODE 4310–55–P



Critical Habitat for Scotts Valley Polygonum

* * * * *

Dated: March 27, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–8181 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 032803E]

Fisheries of the Exclusive Economic Zone Off Alaska; AtkaMackerel and Pacific Cod With Trawl Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closures and openings.

SUMMARY: NMFS announces opening and closing dates of the first and second directed fisheries for Atka mackerel within the harvest limit area (HLA) in Statistical Areas 542 and 543. These actions are necessary to fully use the 2003 HLA limits established for the Central (area 542) and Western (area 543) Aleutian Districts pursuant to the 2003 Atka mackerel total allowable catch (TAC). NMFS also prohibits directed fishing for Pacific cod by vessels using trawl gear in the HLA.

DATES: Prohibition of directed fishing for Pacific cod with trawl gear in area 542 HLA and area 543 HLA: Effective 1200 hrs, Alaska local time (A.l.t.), April 8, 2003, until 1200 hrs, A.l.t., April 11, 2003. The first directed fisheries for Atka mackerel in the HLA in area 542 and area 543 open: Effective 1200 hrs, A.l.t., April 8, 2003, until 1200 hrs, A.l.t., April 9, 2003. The second directed fisheries for Atka mackerel in the HLA in area 542 and area 543 open: effective 1200 hrs, A.l.t., April 10, 2003, until 1200 hrs, A.l.t., April 11, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(8)(iii), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. NMFS has randomly assigned each vessel to the directed fishery or fisheries for which they have registered. NMFS has notified each vessel owner as to which fishery each vessel has been assigned by NMFS (68 FR 2922, January 22, 2003).

In accordance with § 679.20(a)(8)(ii)(C)(*1*), the HLA portion of the Atka mackerel TAC in areas 542 and 543 are 8,147 mt and 5,547 mt, respectively (68 FR 9907, March 3, 2003). The HLA directed fisheries for Atka mackerel were previously opened and closed (68 FR 2920, January 22, 2003) based on the HLA apportionments of the interim specifications of groundfish (67 FR 78739, December 26, 2002). NMFS has determined that as of March 25, 2003, the remaining amounts of the Atka mackerel HLA limits are 2,496 mt in the 542 HLA limit and 1,894 mt in the 543 HLA limit.

In order to fully utilize the 2003 HLA limit for areas 542 and 543 and pursuant to § 679.20(a)(8)(iii)(C), NMFS is reopening the first and second directed fisheries for Atka mackerel for the dates and times listed under the **DATES** section of this notice.

In accordance with § 679.20(a)(8)(iii)(D) and based on the amounts of the HLA limits currently available and the proportion of the number of vessels in each fishery compared to the total number of vessels participating in the HLA directed fishery for area 542 or 543, the harvest limits for each HLA directed fishery in areas 542 and 543 are: 1,248 mt for the first directed fishery in area 542, 947 mt for the first directed fishery in area 543, 1,248 mt for the second directed fishery in area 542, and 947 mt for the second directed fishery in area 543.

In accordance with § 679.20(a)(8)(iii)(E), the Administrator, Alaska Region, NMFS, has established the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the dates and times listed under the **DATES** section of this notice.

In accordance with § 679.22(a)(8)(iv)(A), directed fishing for Pacific cod by vessels named on a Federal Fisheries Permit under § 679.4(b) and using trawl gear is prohibited in the HLA in area 542 or area 543, as defined in § 679.2, when the Atka mackerel HLA directed fishery in area 542 or area 543 is open. Consequently, NMFS is prohibiting directed fishing for Pacific cod in the HLA in area 542 and area 543 as defined in accordance with the dates and times listed under the **DATES** section of this notice.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fisheries, lead to exceeding the HLA limits, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 2, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8543 Filed 4–3–03; 2:21 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 040203B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the pollock total allowable catch (TAC) for Statistical Area 620 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 3, 2003, through 1200 hrs, A.l.t., August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The B season allowance of the pollock TAC in Statistical Area 620 of the GOA is 7,778 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003). In accordance with § 679.20(a)(5)(iii)(B) the Administrator, Alaska Region, NMFS (Regional Administrator) hereby increases the B season pollock TAC by 1,484 mt, the amount of the A season pollock allowance in Statistical Area 620 that was not previously taken in the A season. The revised B season allowance of pollock TAC in Statistical Area 620 is therefore 9,262 mt (7,778 mt plus 1,484 mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the revised B season allowance of the pollock TAC in Statistical Area 620 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 9,062 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the B season allowance of the pollock TAC in Statistical Area 620, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 2, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8544 Filed 4–3–03; 2:21 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 67
Tuesday, April 8, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 71, 91, 95, 97, 121, 125, 129, and 135

[Docket No. FAA–2002–14002; Notice No. 02–20]

RIN 2120–AH77

Area Navigation (RNAV) and Miscellaneous Amendments; Partial Reopening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); partial reopening of comment period.

SUMMARY: This action reopens the comment period for portions of an NPRM that was published December 17, 2002. In that document, the FAA proposed to amend its regulations to reflect technological advances that support area navigation (RNAV); make certain terms consistent with those of the International Civil Aviation Organization; remove the middle marker as a required component of instrument landing systems; and clarify airspace terminology. This reopening is a result of requests from the regulated public to extend the comment period of the proposal.

DATE: Comments must be received on or before July 7, 2003.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–2002–14002, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov* at any time. Commenters who wish to file comments electronically, should follow the instructions on the DMS Web site.

FOR FURTHER INFORMATION CONTACT: Lawrence Buehler, Flight Technologies and Procedures Division, Flight Standards Service, AFS–400, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone: (202) 385–4586.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this rulemaking action. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** of April 11, 2000 (65 FR 19477–19478), or you may visit *http://dms.dot.gov*.

Before acting on this rulemaking action, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this rulemaking in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Background

On December 17, 2002 (67 FR 77326; Dec. 17, 2002), the FAA issued a proposed rule entitled, "Area Navigation (RNAV) and Miscellaneous Amendments." The comment period closed January 31, 2003. The changes were proposed to facilitate the transition from ground-based navigation to new reference sources, enable advancements in technology, and increase efficiency of the National Airspace System (NAS).

Today's Action

The FAA has received requests to extend the comment period from Aeronautical Radio Inc., Airline Dispatchers Federation, the Air Transport Association, Alaska Airlines, Boeing, Continental Airlines, Delta Air Lines, Northwest Airlines, the Regional Airline Association, United Parcel Service, and the Aircraft Owners and Pilots Association. Each organization stated that it needed additional time to review the NPRM and formulate its responses. The FAA has also received comments on the proposed amendments to communications and navigation equipment requirements, and instrument approach procedure terminology. These particular comments were substantive and reflected significant public interest in the many areas of the proposed amendments. Based on these considerations, the FAA has determined that it is in the public interest to reopen the comment period for certain portions of the NPRM. However, for reasons discussed below, this docket will remain closed for comments addressing the following proposed amendments:

Part 1—Definitions and Abbreviations, under § 1.1 General definitions, the terms "Air Traffic Service (ATS) route," "Area navigation (RNAV)," "Area navigation (RNAV) route," and "Route segment."

Part 71—Designation of Class A, Class B, Class C, Class D, and Class E Airspace Areas; Air Traffic Service Routes; and Reporting Points, §§ 71.11, 71.13, 71.15, 71.73, 71.75, 71.77, and 71.79.

Part 95—IFR Altitudes, § 95.1.

Part 97—Standard Instrument Procedures, § 97.20.

The FAA has issued a separate final rule with request for comments for these proposed amendments. The separate final rule with request for comment is in today's **Federal Register**. The separate rule action will enable the FAA to proceed with the design and development phase of a high altitude RNAV route structure. The FAA believes that these amendments can be adopted separately without adverse impact on the continuing rulemaking process on the remaining proposed amendments in the NPRM.

The FAA has decided to accommodate the requests to reopen and extend the comment period. Based on the number of requests for extension, the FAA believes that the additional time is necessary for the public to fully analyze and comment on the proposed amendments.

Conclusion

In accordance with 14 CFR 11.47(c), the FAA has reviewed the requests for an extension of the comment period on "Area Navigation (RNAV) and Miscellaneous Amendments" published in the **Federal Register** December 17, 2002, and grants the requests in part.

Except as explained above and separately in this issue of the **Federal Register**, the comment period for the proposed RNAV operations and equipment provisions is reopened for an additional 90-day period until July 7, 2003.

Issued in Washington, DC, on March 28, 2003.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 03–8287 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 911

[Docket No. 030220035–3035–01]

RIN 0648–AQ55

Policies and Procedures Concerning Use of the NOAA Space-Based Data Collection Systems

AGENCY: National Environmental Satellite, Data, and Information Service (NESDIS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The proposed rule will amend NOAA's policies and procedures regarding space-based data collection systems (DCS) to allow expanded use of the NOAA DCS for government interests and to permit greater flexibility in utilizing these vital U.S. data collection assets in support of homeland security, National security, law enforcement, and humanitarian operations.

DATES: Submit comments on or before May 8, 2003.

ADDRESSES: Written comments on the proposed rule should be sent to: Kay Metcalf, NOAA, NESDIS, Direct Services Division, E/SP3, Room 3320, FB–4, 5200 Auth Road, Suitland, Maryland 20746–4304.

FOR FURTHER INFORMATION CONTACT: Kay Metcalf at (301) 457–5681, e-mail: *Kay.Metcalf@noaa.gov;* or Glenn Tallia at 301–713–1337, e-mail: *Glenn.E.Tallia@noaa.gov.*

SUPPLEMENTARY INFORMATION: NOAA enacted 15 CFR Part 911, effective June 5, 1998, to revise its policies and procedures for authorizing the use of the space-based DCS that operate on NOAA's Geostationary Operational Environmental Satellites (GOES) and on its Polar-orbiting Operational Environmental Satellites (POES). For general background on NOAA DCS, refer to the notice of final rulemaking published in the **Federal Register** on May 6, 1998, at 63 FR 24917.

The current regulations enacted in 1998 revised the policy on the use of the GOES DCS and formalized a new policy for the use of the Argos Data Collection and Location System (Argos DCS) which flies on the POES. There are two fundamental principles underlying NOAA's DCS rule: (1) The Government will not allow its space-based DCS to be used where there are commercial space-based services available that fulfill user's requirements; and (2) NOAA DCS will be used predominantly for environmental applications.

The current regulations provide for non-environmental use of the Argos DCS in two instances: (1) Episodic uses, where there is the significant possibility of loss of life, which is consonant with NOAA's (and all U.S. Government agencies') inherent public safety mission; and (2) for government users and for non-profit users where there is a governmental interest, particularly in instances where the use of commercial services is not appropriate due to the sensitive nature of the applications (such as for National security or law enforcement purposes). Non-environmental use of the Argos DCS is limited to no more than five percent of the system's total use.

Explanation of Changes

The tragic events of September 11, 2001, precipitated a need to provide more flexibility in utilizing these vital United States data collection assets in support of homeland security, National security, law enforcement and humanitarian operations. The proposed changes will facilitate the expanded use of the NOAA DCS for government interests in these areas.

Nonetheless, the proposed revisions do not change the underlying policy that the use of the NOAA DCS will only be authorized where it is determined that there are no commercial space-based services available to meet the users' requirements. Furthermore, there will be no change in the general policy that the NOAA DCS will be used predominantly for environmental applications and that any exceptions to the general policy will be closely monitored by NOAA.

A subcategory of non-environmental use termed "sensitive use" would be established and will be inserted as new subsection 911.3(p). This new subcategory would be added to address those situations where the user is either a governmental entity or a non-profit organization with a governmental interest, and where the user's requirements dictate the use of a governmental system for reasons such as National security, homeland security, law enforcement, and humanitarian operations.

Current subsection 911.3(p), "testing use," is renumbered as 911.3(q) and changes have been made to correct a typographical error in the text of the CFR wherein part of the definition was repeated.

Current subsection 911.3(q), "user," is renumbered as 911.3(r) and a new clause is added to the definition to include the organization requiring collection of the data within the definition of "user."

Current subsection 911.3(r), "user platform," is renumbered as 911.3(s).

Current subsection 911.3(s), "user requirement," is renumbered as 911.3(t).

Subsection 911.4(c)(3) is changed to recognize non-environmental use, in those limited situations where it is allowed, for both types of NOAA DCS (Argos DCS and GOES DCS). Non-environmental use of the NOAA DCS systems will be limited to episodic use and to sensitive use. The five percent cap on non-environmental use of Argos DCS is removed to permit greater discretion for sensitive and episodic use of the system (subject to capacity limitations) on an as-needed basis.

In subsection 911.4(c)(4), episodic use is now recognized for all NOAA DCS, not just Argos DCS.

Subsection 911.5(c) is amended by inserting "for System Use Agreements and renewals" following "user requests" to clarify which user requests are covered.

Subsection 911.5(e)(1) is amended by inserting "environmental" before the word "data."

Subsection 911.5(e)(3) and 911.5(e)(4) are added to define the period of performance for non-environmental use of GOES DCS.

Section 911.6 has been revised to ensure that users are on notice regarding the open data transmission aspects of the NOAA DCS. The proposed regulation amends section 911.6 as follows:

- Subsection 911.6(a) is amended to require users to permit NOAA and other agencies to make "appropriate use as determined by NOAA" of the data;
- Subsection 911.6(a) is further amended by inserting "environmental" before "data" to clarify which data will be subject to "full, open, timely, and appropriate use" by NOAA and other U.S. Government agencies;
- Subsection 911.6(a) also is amended to delete the last sentence in the current rule which refers to the protection of proprietary data (new subsections 911.6(b) and (c), below, will address this issue);
- A new subsection 911.6(b) is inserted to provide notice that the raw data from the NOAA space segment is openly transmitted and accessible; and
- A new subsection 911.6(c) is inserted to provide notice regarding the accessibility of NOAA DCS data during the ground segment.

The new provisions in 911.6 put users on notice that NOAA can only control data distribution once it is received at NOAA ground stations and, even then, only within the design limitations of the ground system segment. The revised rule notifies DCS users that raw data may be openly received during the space segment transmission of the data where access is not controlled. After the data is received, access to the processed data from the ground segment is affected by the user' specifications and the system design limitations.

Appendix A (Argos DCS Use Policy Diagram) and Appendix B (GOES DCS Use Policy Diagram) have been updated to incorporate the effects of the proposed changes on the NOAA DCS system use policy.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The factual basis for this certification is as follows. A fundamental principle underlying NOAA's DCS rule is that Government will not allow its space-based DCS to be used where there are commercial space-based services available that fulfill user's requirements. Moreover, the proposed rule provides for non-environmental use of the NOAA DCS in two discrete situations, one involving episodic uses in instances where there is a significant possibility of loss of life, and the other where there is a governmental interest and the use of commercial services is not appropriate due to the sensitive nature of the applications, such as for National security or law enforcement purposes. Thus the proposed rules are not expected to impact small businesses. As such, no initial regulatory flexibility analysis has been prepared.

Paperwork Reduction Act of 1995 (35 U.S.C. 3500 *et seq.*)

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved under OMB Control Number 0648–0157.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

The public reporting burden for this collection of information is estimated to average 3 hours per GOES agreement and 1 hour per Argos agreement, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this collection of information to Kay Metcalf, NOAA, National Environmental Satellite, Data, and Information Service, Direct Services Division, E/SP3, Room 3320, FB–4, 5200 Auth Road, Suitland, Maryland 20746–4304; and to OMB at the Office of Information and Regulatory Affairs, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)

Publication of the final regulations does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

Executive Order 12866

This rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 15 CFR Part 911

Scientific equipment, Space transportation and exploration.

Dated: March 28, 2003.

Gregory W. Withee,

Assistant Administrator for Satellite and Information Services, National Oceanic and Atmospheric Administration, Department of Commerce.

For the reasons set out in the preamble, 15 CFR part 911 is proposed to be amended as follows:

PART 911—POLICIES AND PROCEDURES CONCERNING USE OF THE NOAA SPACE–BASED DATA COLLECTION SYSTEMS

1. The authority citation for part 911 continues to read as follows:

Authority: 15 U.S.C. 313, 49 U.S.C. 44720; 15 U.S.C. 1525; 7 U.S.C. 450b; 5 U.S.C. 552.

2. Revise § 911.3(p), (q), (r), and (s) and add paragraph (t) as follows:

§ 911.3 Definitions.

* * * * *

(p) Sensitive use means the use of the NOAA DCS where the users' requirements dictate the use of a governmental system such as National security, homeland security, law enforcement and humanitarian operations.

(q) Testing use means the use of the NOAA DCS by manufacturers of platforms for use in conjunction with the NOAA DCS, for the limited purpose of testing and certifying the compatibility of new platforms with the technical requirements of the NOAA DCS.

(r) User means the entity and/or organization that owns or operates user platforms for the purpose of collecting and transmitting data through the NOAA DCS, or the organization requiring the collection of the data.

(s) User platform means device designed in accordance with the specifications delineated and approved by the Approving Authority used for the in-situ collection and subsequent transmission of data via the NOAA DCS. Those devices which are used in conjunction with the GOES DCS are referred to as data collection platforms (DCP) and those which are used in conjunction with the Argos DCS are referred to as Platform Transmitter Terminals (PTT). For purposes of these regulations, the terms "user platform," "DCP", and "PTT" are interchangeable.

(t) User requirement means the requirement expressed and explained in the System Use Agreement.

3. Revise § 911.4(c)(3) and (c)(4) as follows:

§ 911.4 Use of the NOAA Data Collection Systems.

* * * * *

(c) * * *

(3) Except as provided in paragraph (c)(4) of this section, non-environmental use of the NOAA DCS is only authorized for government use and non-profit users where there is a government interest. The NOAA DCS will continue to be predominantly used for environmental applications. Non-environmental use of the system shall be limited to sensitive use, and to episodic use as defined below in paragraph (c)(4) of this section.

(4) Episodic use of the NOAA DCS may also be authorized in specific instances where there is a significant possibility for loss of life. Such use shall be closely monitored.

* * * * *

4. Revise § 911.5(c) and (e)(1), and add new paragraphs (e)(3), and (e)(4) as follows:

§ 911.5 NOAA Data Collection Systems Use Agreements.

* * * * *

(c) The Director shall evaluate user requests for System Use Agreements and renewals and conclude agreements for use of the NOAA DCS.

* * * * *

(e)

(1) Agreements for the collection of environmental data, by the GOES DCS, shall be valid for 5 years from the date of initial in-situ deployment, and may be renewed for additional 5-year periods.

* * * * *

(3) Agreements for the collection of non-environmental data, via the GOES DCS, by government agencies, or non-profit institutions where there is a government interest, shall be valid for 1 year from the date of initial in-situ deployment of the platforms, and may be renewed for additional 1-year periods.

(4) Agreements for the episodic collection of non-environmental data, via the GOES DCS under § 911.4(c)(4), shall be of short, finite duration not to exceed 1 year without exception, and usually shall not exceed 6 months. These agreements shall be closely monitored and shall not be renewed.

5. Revise § 911.6 to read as follows:

§ 911.6 Treatment of data.

(a) All NOAA DCS users must agree to permit NOAA and other agencies of the U.S. Government the full, open, timely, and appropriate use as determined by NOAA, of all environmental data collected from their platforms; this may include the international distribution of environmental data under the auspices of the World Meteorological Organization.

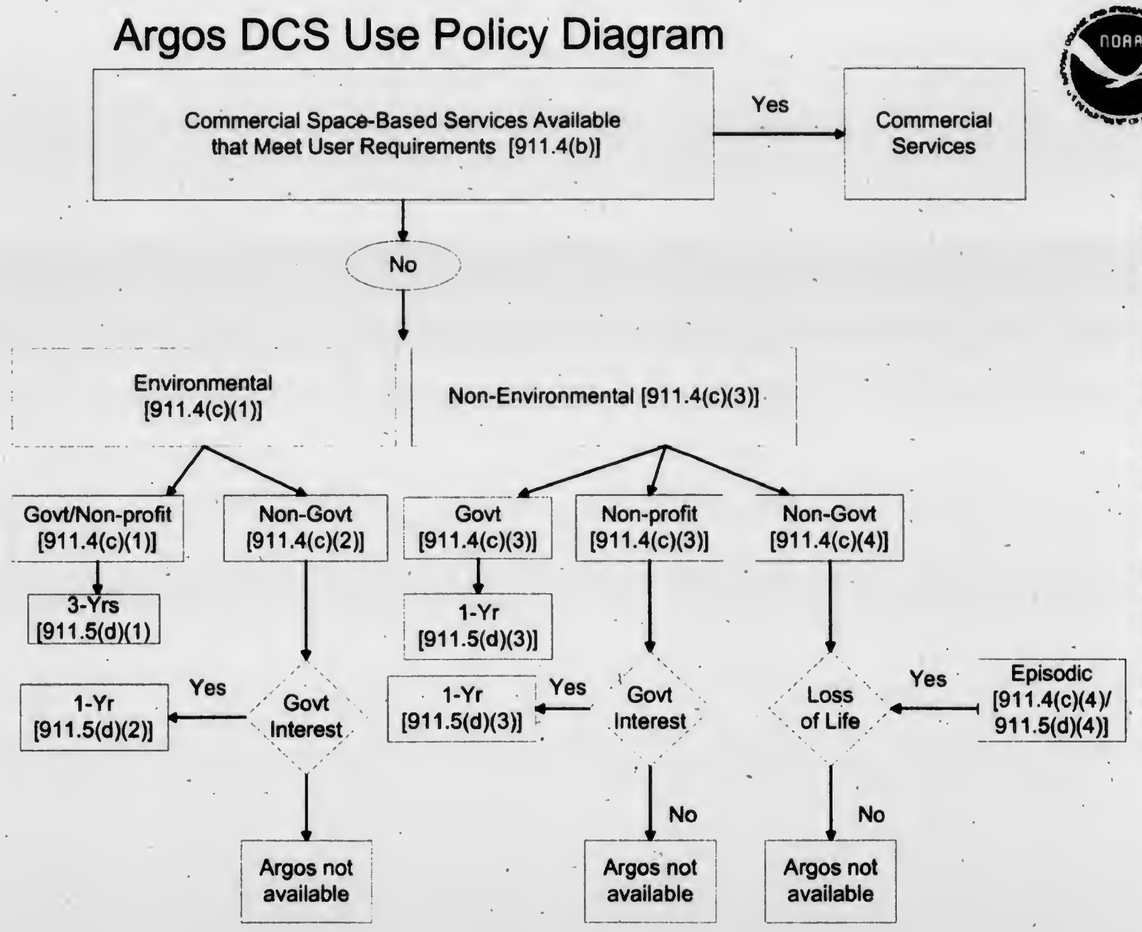
(b) Raw data from the NOAA space segment is openly transmitted and accessible.

(c) Accessibility of the NOAA DCS processed data from the ground segment is handled in accordance with the users specifications and system design limitations, subject to the provisions stated in paragraph (a) of this section.

6. Revise Appendix A to Part 911 as follows:

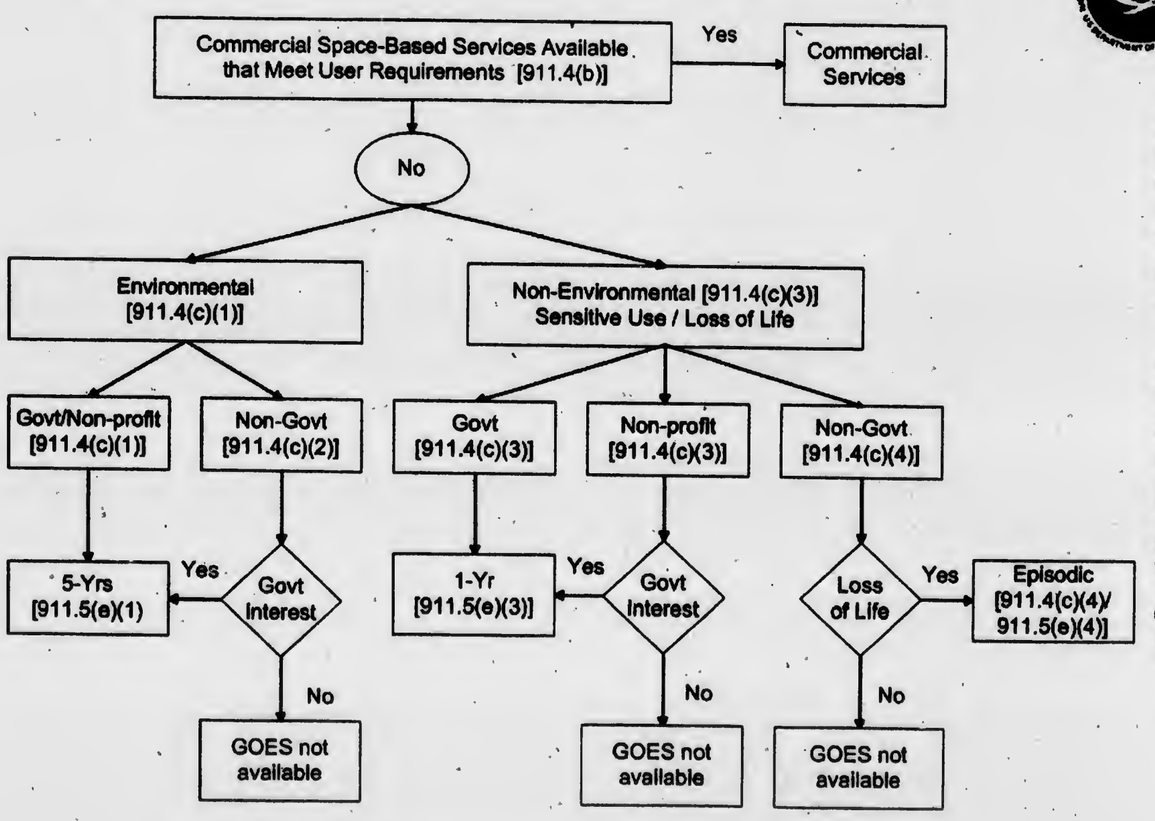
BILLING CODE 3510–12–U

7. Revise Appendix B to Part 911 as follows:



Appendix A to Part 911 - Argos DCS Use Policy Diagram

Note: Testing Use permitted as per [911.4(c)(5)] for up to 1-Yr [911.5(d)(5)] Appendix A



Appendix B to Part 911 - GOES DCS Use Policy Diagram

Note: Testing Use permitted as per [911.4(c)(5)] for up to 1-Yr [911.5(e)(2)] Appendix A

[FR Doc. 03–8184 Filed 4–7–03; 8:45 am]
BILLING CODE 3510–12–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket Nos. 02N–0275 and 02N–0277]

Proposed Regulations Implementing Title III of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; satellite downlink public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting (via satellite downlink) to discuss proposed regulations implementing two sections in Title III of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) regarding maintenance and inspection of records for foods (Docket No. 02N-0277) and administrative detention (Docket No. 02N-0275). FDA expects to publish shortly in the **Federal Register** proposed rules implementing each of these provisions. The purpose of the satellite downlink public meeting is to provide information on the proposed rules to the public and to provide the public an opportunity to ask questions or to provide comment.

DATES: The satellite downlink public meeting will be held on May 7, 2003, 1 to 3 p.m., eastern standard time. Questions submitted in advance must be received by the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document by 4:30 p.m. on May 2, 2003.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations where the satellite downlink may be viewed. A written transcript of the meeting will be available for viewing at Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and at http://www.fda.gov/oc/bioterrorism/bioact.html. A copy of the videotaped meeting may also be viewed at the Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT: Louis Carson, Center for Food Safety and Applied Nutrition (HFS–32), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2277, FAX: 301–436–2605, e-mail: CFSAN-FSS@cfsan.fda.gov, for general questions about the downlink, submission of advance questions, and requests for a taped version of the meeting. Registration for specific downlink locations should be directed to the appropriate contact person listed in table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

The events of September 11, 2001, highlighted the need to enhance the security of the U.S. food supply. Congress responded by passing the Bioterrorism Act (Public Law 107–188), which was signed into law on June 12, 2002. The Bioterrorism Act includes four provisions in Title III (Protecting Safety and Security of Food and Drug Supply), Subtitle A (Protection of Food Supply) that require the Secretary of Health and Human Services, through FDA, to develop implementing regulations on an expedited basis. These four provisions are: Section 305 (Registration of Food Facilities), section 307 (Prior Notice of Imported Food Shipments), section 306 (Maintenance and Inspection of Records for Foods), and section 303 (Administrative Detention). On February 3, 2003, FDA published in the **Federal Register** notices of proposed rulemaking for registration of food facilities (68 FR 5378) and prior notice of imported food shipments (68 FR 5428), and will soon publish in the **Federal Register** notices of proposed rulemaking for maintenance and inspection of records for foods and administrative detention. During the satellite downlink public meeting, FDA will explain the proposed rules on maintenance and inspection of records for foods and administrative detention and will answer questions. The satellite downlink public meeting will be offered in English with simultaneous French and Spanish translation and will be simulcast live in English, French, and Spanish for North, Central, and South America (including Hawaii and Alaska).

On January 29, 2003, FDA held a satellite downlink meeting during which FDA explained the proposed rules for registration of food facilities and prior notice of imported food shipments to implement sections 305 and 307 of the Bioterrorism Act, respectively. You may download a copy of the videotape of this meeting at http://www.cfsan.fda.gov/~comm/vltbtact.html. A written transcript of the satellite downlink meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, within 3 weeks of the satellite downlink public meeting at a cost of 10 cents per page. Contact Louis Carson for a copy of the videotaped meeting. A copy of the video taped meeting may also be viewed at the Dockets Management Branch.

Information about the public meetings, a list of additional non-FDA Web sites for viewing the public meetings, contact information, the provisions of the Bioterrorism Act under FDA's jurisdiction, and the agency's implementation plans are available at http://www.fda.gov/oc/bioterrorism/bioact.html.

II. Submitting Questions

Interested persons may submit questions concerning the proposals in advance of the satellite downlink meeting. The deadline for the submission of questions is provided in the **DATES** section of this notice. Questions submitted in advance will be used by the session moderator to help clarify issues of concern and provide information about the proposals during the downlink meeting. The viewing audience may also telephone, fax, or e-mail questions to FDA officials during the live downlink.

III. Proposed Regulations to be Addressed

The proposed regulations that will be addressed at the satellite downlink public meeting announced in this document concern the following provisions of the Bioterrorism Act:

Section 303 (Administrative Detention) of the Bioterrorism Act authorizes FDA to detain food if the agency has credible evidence or information that the food presents a threat of serious adverse health consequences or death to humans or animals. The Bioterrorism Act requires FDA to issue regulations to provide procedures for instituting on an expedited basis certain enforcement actions against perishable foods, but it does not specify a deadline for a final regulation.

Section 306 (Maintenance and Inspection of Records for Foods) of the Bioterrorism Act authorizes FDA, by regulation, to require persons that manufacture, process, pack, transport, distribute, receive, hold, or import food to create and maintain records that FDA determines are necessary to identify the immediate previous sources and the immediate subsequent recipients of food (i.e., where it came from and who received it). This would allow FDA to follow up on credible threats of serious adverse health consequences or death to humans or animals by tracing the food back to its source and tracing the food forward to all recipients. Farms and restaurants are exempt from any recordkeeping regulations that are issued by FDA. The statute requires FDA to issue final regulations by December 12, 2003.

IV. Sites for Viewing the Downlink Public Meeting

A list of non-FDA parties providing other locations for viewing the downlink public meeting is provided in table 1 of this document. The parties listed are providing this service free of charge in the interest of providing information to their constituents and to assist in creating a public process.

TABLE 1.—MAY 7, 2003, SATELLITE DOWNLINK PUBLIC MEETING TO DISCUSS PROPOSED REGULATIONS IMPLEMENTING SECTION 303: ADMINISTRATIVE DETENTION AND SECTION 306: MAINTENANCE AND INSPECTION OF RECORDS FOR FOODS OF THE BIOTERRORISM ACT

Locations	Contact Information
Department of Veterans Affairs Medical Center, Pete Wheeler Auditorium, 1670 Clairmont Rd., Decatur, GA 30033, 404–321–6111, ext. 6050.	JoAnn Pittman, U.S. FDA/Atlanta District Office, 60 8th St., NE., Atlanta, GA 30309, 404–253–1272, FAX: 404–253–1202, email: jpittman@ora.fda.gov.
U.S. FDA, Detroit District Office, 300 River Pl., suite 5900, Detroit, MI 48207–4291, 313–393–8109.	Evelyn DeNike, U.S. FDA/Detroit District Office, 300 River Pl., suite 5900, Detroit, MI 48207–4291, 313–393–8109, FAX: 313–393–8139, email:edeniike@ora.fda.gov.
Massachusetts Department of Public Health, Division of Food and Drugs, 305 South St., Jamaica Plain, MA 02130, 617–983–6767.	Susan Small, U.S. FDA/New England District Office, One Montvale Ave., Stoneham, MA 02180, 781–596–7779, FAX: 781–596–7896, email: ssmall@ora.fda.gov.
University of California Irvine, C–127 Student Center (at E. Peltason/Periera), Emerald Bay B and C, Irvine, CA 92697.	Ramlah I. Oma, U.S. FDA/Los Angeles District Office, 19900 MacArthur Blvd., suite 300, Irvine, CA 92612–2445, 949–798–7611, FAX: 949–798–7656, email: roma@ora.fda.gov.
Center for Food Safety and Applied Nutrition, U.S. FDA, Auditorium, 5100 Paint Branch Pkwy., College Park, MD, 301–436–2428.	Contact: Tonya Poindexter, U.S. FDA/Center for Food Safety and Applied Nutrition, rm. 3B035, College Park, MD 20740, 301–436–2277, FAX: 301–436- 2605, email: CFSAN–FSS@cfsan.fda.gov.

In addition, any interested parties with access to a satellite dish may view the downlink meeting at the following coordinates:

Live simulcast in English (channel 6.8), French (channel 5.8), and Spanish (channel 6.2).

Pre-event Test: A pre-event test for U.S. downlink sites only will be provided on May 6 from 12 noon EST to 1 p.m. EST. During that hour, technical assistance will be available through a trouble line at 1–888–626–8730." This is a test of Galaxy 9, Transponder 3 only.

U.S.—C-BAND: GALAXY 9 127 DEGREES WEST

Transponder	Polarization	Channel	Downlink Freq.	Audio
3	Vertical	3	3760 MHz	6.8 English 6.2 Spanish 5.8 French

MEXICO & SOUTH AMERICA—C-BAND: PAS 9 58 DEGREES WEST

Transponder	Polarization	Channel	Digital Settings	Downlink Freq.	Audio
24 Slot C - Digital	Horizontal	24	4:2:0 FEC 3/4 Symbol Rate: 5.632	4164.5 MHz	6.8 English 6.2 Spanish 5.8 French

Video rebroadcasts will be played at several locations throughout the world. Dates and viewing times for the video rebroadcasts for Europe, Asia, Australia, New Zealand can be found on FDA's bioterrorism Web site (http://www.fda.gov/oc/bioterrorism/bioact.html. Information on additional video rebroadcasts in English, Spanish, and French will also be available at http://www.fda.gov/oc/bioterrorism/bioact.html.

Videostream copies of the satellite downlink meeting will be available in English, Spanish, and French on CD–ROM within 10 working days after the meeting. Copies of the meeting will also be available on videotape cassettes in English, Spanish, and French in NTSC (VHS), PAL, PAL–N and SECAM formats. Contact Louis Carson for a copy of the meeting on CD–ROM or videotape. Videotape requests must specify language and format. A videostream of the meeting will be posted on FDA's Web site at http://www.fda.gov/oc/bioterrorism/bioact.html.

V. Registration

To register for the satellite downlink public meeting, contact the persons

listed in table 1 in this document for the site you want to attend. Space is limited and registration will be closed at each site once maximum seating capacity for that site is reached (between 100 and 200 people per site). Send registration information (including name, title, firm name, address, telephone number, e-mail address, and fax number) for each attendee to the contact identified in table 1 of this document no later than May 5, 2003. You may register by e-mail, fax, or telephone.

If you need special accommodations due to a disability, please notify the contact person listed in table 1 of this document at least 7 days in advance of the meeting.

VI. Transcripts

Within 3 weeks of the satellite downlink public meeting, written transcripts in English, French, and Spanish will be available for viewing at the Dockets Management Branch (see **ADDRESSES**) and posted on the following Web site: http://www.fda.gov/oc/bioterrorism/bioact.html. A written transcript of the satellite downlink meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, within 3 weeks of the satellite downlink public meeting at a cost of 10 cents per page. Contact Louis Carson for a copy of the videotaped meeting. A copy of the video taped meeting may also be viewed at the Dockets Management Branch.

Dated: April 2, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–8576 Filed 4–3–03; 4:18 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4676–N–06]

Indian Housing Block Grant Allocation Formula: Notice of Establishment of Negotiated Rulemaking Committee and Announcement of Final List of Committee Members

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD announces the establishment of its Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee, consistent with the Negotiated Rulemaking Act of 1990. In addition, this notice announces the final list of committee members. The committee will negotiate a proposed rule to revise the allocation formula used under the Indian Housing Block Grant (IHBG) Program. This document follows publication of July 16, 2001, July 5, 2002, and January 22, 2003, notices advising the public of HUD's intent to establish the negotiated rulemaking committee and soliciting nominations for membership on the committee.

DATES: The first meeting of the negotiated rulemaking committee will be held on Tuesday, April 29, 2003, Wednesday, April 30, 2003, and Thursday, May 1, 2003. The meetings will start at 9 a.m. each day and are scheduled to adjourn at 4 p.m. each day.

ADDRESSES: The meetings will take place at the Adams-Mark Hotel, 1550 Court Place Street, Denver, Colorado 80202; telephone (303) 893–3333.

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone, (202) 401–7914 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

With tribal participation, HUD developed the March 12, 1998 (63 FR 12349), final rule that implemented the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4101 *et seq.*) (NAHASDA). Following the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570), the committee negotiated the March 12, 1998, final rule, which created a new 24 CFR part 1000 containing the Indian Housing Block Grant (IHBG) regulations. NAHASDA established the IHBG Program by reorganizing housing assistance to Native Americans and eliminating and consolidating a number of HUD assistance programs. In addition to creating a single housing assistance program, NAHASDA provides Federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government.

The amount of assistance made to Indian tribes is determined using a formula, developed as part of the NAHASDA negotiated rulemaking process. A regulatory description of this formula is located in subpart D of 24 CFR part 1000 (§§ 1000.301–1000.340). In general, the amount of funding for a tribe is the sum of the formula's Need component and the Formula Current Assisted Stock (FCAS) component, subject to a minimum funding amount authorized by § 1000.328. Based on the amount of funding appropriated annually for the IHBG Program, HUD calculates the annual grant for each tribe and conveys this information to Indian tribes. An Indian Housing Plan (IHP) for the tribe is then submitted to HUD. If the IHP is found to be in compliance with the statutory and regulatory requirements, the grant is made.

Section 1000.306 of the IHBG Program regulations provides that the allocation formula shall be reviewed within five years after issuance. This 5-year period closes in March 2003. Further, the Omnibus Indian Advancement Act (Pub. L. 105–568, approved December 27, 2000), makes several statutory changes to the IHBG allocation formula that HUD has decided to implement through rulemaking. Accordingly, HUD believes this would be an appropriate time to review the IHBG formula.

II. The Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee

Through this notice, HUD announces the establishment of its Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee. The committee will negotiate a proposed rule to revise the allocation formula used for the IHBG Program. In addition, section IV of this notice announces the final list of negotiated rulemaking committee members.

HUD first published a notice of intent to establish a negotiated rulemaking committee on July 16, 2001 (66 FR 37098), but due to the events of September 11, 2001, HUD was not able to act on the notice within the timeframes originally intended. Accordingly, HUD published a July 5, 2002, notice, which (1) again advised the public of HUD's intent to establish the negotiated rulemaking committee; (2) solicited public comments on the proposed membership of the committee; (3) explained how persons could be nominated for membership to the committee; and (4) announced the names of those who successfully completed applications under the original July 16, 2001, notice. In particular, HUD solicited committee members from among elected officers of tribal governments (or authorized designees of those tribal governments)

with a definable stake in the outcome of a proposed rule. On January 22, 2003 (68 FR 3112), HUD published a third **Federal Register** notice, announcing the list of proposed members for the negotiated rulemaking committee, and requesting additional public comment on the proposed membership.

III. Discussion of Public Comments Received on the January 22, 2003, Notice

The public comment period on the January 22, 200[illegible] notice closed on February 21, 2003. The notice was of interest to Indian country, as demonstrated by the 40 public comments that HUD received on the notice. This section presents a summary of the issues raised by the commenters on the January 22, 2003, notice, and HUD's responses to these issues.

Comment: HUD failed to provide response to public comments on previous notices. Several commenters wrote that HUD had not responded to comments submitted in response to the two earlier **Federal Register** notices.

HUD response. HUD disagrees, and notes that it has made several changes to this negotiated rulemaking process as a result of the comments received on the July 16, 2001, and July 5, 2002, notices. Among other such modifications, HUD expanded the size of the committee from 18 to 24 members, and increased the number of HUD representatives from one to two for a total of 26 committee members. HUD also clarified that the relevant qualifying experience for membership on the committee included experience as a housing practitioner, and extended the time for nominees with incomplete applications to submit the missing information. Further, HUD clarified the meaning of the terms "small," "medium," and "large" tribes in response to commenters requesting such clarification. In addition, HUD sought a second round of nominations in response to concerns that there was insufficient geographic diversity among the original candidates for committee membership.

Comment: The qualifications for membership on the committee were unclear. Several commenters expressed this concern.

HUD response. As discussed in the response to the preceding comments, HUD has clarified and addressed any questions regarding the qualifications for membership on the negotiated rulemaking committee. HUD believes that the qualifications were understood by the vast majority of Indian tribes, as evidenced by the large number of highly qualified candidates that were nominated for membership on the committee.

Comment: Adequate time must be given to the committee to complete its work. Several commenters made this recommendation.

HUD response. HUD agrees, and is committed to ensuring that the negotiated rulemaking committee is provided with sufficient time to complete the development of a proposed rule.

Comment: Small tribes will need a special allocation of travel funds to attend the negotiated rulemaking committee meetings. Several commenters made this suggestion.

HUD response. HUD is sympathetic to the concerns expressed by these commenters, and notes that travel expenses are an eligible expense under the IHBG Program.

Comment: Comments regarding committee membership. Several commenters wrote that the number of committee members does not adequately represent all tribal interests. Other commenters wrote that the proposed committee membership did not represent an adequate balance of geographically diverse small, medium and large tribes.

HUD response. HUD believes that the final committee membership reflects a balanced representation of all Indian tribes. As noted in a preceding response, HUD increased the number of committee members from 18 to 26 in response to comments received from the tribes. Further, HUD sought a second round of nominations in response to concerns that there was insufficient geographic diversity among the original candidates for committee membership.

Comment: HUD should also establish a list of alternate committee members to represent the interests of members unable to attend committee meetings. Several commenters made this suggestion. The commenters wrote that it is important to select alternates so that a member's particular interests will be represented even if the member is unable to attend a committee meeting.

HUD response. Rather than pre-selecting a team of alternates, HUD has determined that each committee member should have the discretion to decide who will best represent them in their absence. A committee member unable to attend any session should inform the committee in writing as to whom they have selected to represent them.

Comment: Support for proposed committee members and additional nominations for membership. The majority of the additional comments received were letters in support of particular proposed committee members, along with several letters from interested parties nominating other individuals the commenter felt would better represent particular interests.

HUD response. HUD appreciates the support expressed by the commenters, as well as the additional nominations for committee membership. If a tribe requested that its tribal representative be replaced with a substitute, HUD has honored that request. The number of highly qualified individuals nominated for membership has helped to ensure the success of this negotiated rulemaking process. HUD looks forward to working with its tribal partners in the development of proposed changes to the IHBG Formula.

IV. Final Membership of the Negotiated Rulemaking Committee

This section announces the final list of negotiated rulemaking committee members. In making the selections for membership on the negotiated rulemaking committee, HUD's goal was to establish a committee whose membership reflects a balanced representation of Indian tribes. In addition to the tribal members of the committee, there will be two HUD representatives on the negotiated rulemaking committee. The firm of Carr, Falkner & Swanson will serve as facilitators.

The final list of members of the Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee is as follows:

Tribal Members

Eddie L. Tullis, Tribal Chairman, Poarch Band of Creek Indians, Atmore, Alabama.

Joel M. Frank, Housing Director, Seminole Tribe of Florida, Hollywood, Florida.

Beasley Denson, Vice Chief, Mississippi Band of Choctaw Indians, Choctaw, Mississippi.

Bruce K. LaPointe, Development Director, Sault St. Marie Housing Authority, Sault Ste. Marie, Michigan.

Bill Anoatubby, Governor, The Chickasaw Nation, Ada, Oklahoma.

Russell Sossamon, Executive Director, Housing Authority of the Choctaw Nation of Oklahoma, Hugo, Oklahoma.

Robert B. Carlile III, Executive Director, Citizen Potawatomi Nation Housing Authority, Shawnee, Oklahoma.

Marvin Jones, Executive Director, Community Services, Cherokee Nation, Tahlequah, Oklahoma.

Jack Sawyers, Executive Director, Utah Paiute Tribal Housing Authority, Cedar City, Utah.

Robert Gauthier, Executive Director, Salish and Kootenai Housing Authority, Pablo, Montana.

Wayne Ducheneaux, Executive Director, Cheyenne River Housing Authority, Eagle Butte, South Dakota.
Darlene Tooley, Executive Director, Northern Circle Indian Housing Authority, Ukiah, California.
Michael L. Reed, Chief Executive Officer, Cocopah Indian Housing and Development, Somerton, Arizona.
Terry Hudson, Executive Director, Northern Pueblos Housing Authority, Espanola, New Mexico.
Judith Marasco, Executive Director, Yurok Indian Housing Authority, Klamath, California.
Johnny Naize, Tribal Council Member, Navajo Nation, Window Rock, Navajo Nation, Arizona.
Brian Wallace, Chairman, Washoe Tribe of Nevada and California, South Gardnerville, Nevada.
Larry Coyle, Tribal Council Member, Cowlitz Tribe, Oakville, Washington.
Tim King, Tribal Council Member, Samish Indian Nation, Seattle, Washington.
Virginia Brings Yellow, Tribal Council Member, Quinault Indian Nation, Taholah, Washington.
Marty Shuravloff, Executive Director, Kodiak Island Housing Authority, Kodiak, Alaska.
Blake Y. Kazama, Executive Director, Tlingit-Haida Regional Housing Authority, Juneau, Alaska.
Ron Hoffman, Executive Director, Association of Village Council Presidents, Regional Housing Authority, Bethel, Alaska.
Carol Gore, Executive Director, Cook Inlet Housing Authority, Anchorage, Alaska.

HUD Representatives

Michael M. Liu, Assistant Secretary for Public and Indian Housing.
Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs.

V. First Committee Meeting

The first meeting of the Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee will be on Tuesday, April 29, 2003, Wednesday, April 30, 2003, and Thursday, May 1, 2003. The meetings will start at 9 a.m. each day and are scheduled to adjourn at 4 p.m. each day. The meetings will take place at the Adams-Mark Hotel, 1550 Court Place Street, Denver, Colorado 80202.

The agenda planned for the meeting includes: (1) Orienting members to the negotiated rulemaking process; (2) establishing a basic set of understandings and ground rules (protocols) regarding the process that will be followed in seeking a consensus; and (3) discussion of the issues relating to the IHBG Allocation Formula.

The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this document.

VI. Future Committee Meetings

Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of all future meetings will be published in the **Federal Register**. HUD will make every effort to publish such notices at least 15 calendar days prior to each meeting.

Dated: April 1, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–8550 Filed 4–7–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209500–86 and REG–164464–02]

RIN–1545–BA10, 1545–BB79

Reductions of Accruals and Allocations Because of the Attainment of Any Age; Application of Nondiscrimination Cross-Testing Rules to Cash Balance Plans; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change in date and location for public hearing on proposed rulemaking.

SUMMARY: This document provides notice of a change of date and location for the public hearing on proposed regulations under sections 401 and 411 regarding the requirements that accruals or allocations under certain retirement plans not cease or be reduced because of the attainment of any age.

DATES: The public hearing is being held on Wednesday, April 9, 2003, and Thursday, April 10, 2003 at 10 a.m. Outlines of oral comments were due by Thursday, March 13, 2003.

ADDRESSES: The public hearing is being held in the Andrew W. Mellon Auditorium, 1300 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION: Concerning the regulations, Linda Marshall (202) 622–6090; concerning submissions, Sonya M. Cruse (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking and notice of public hearing, appearing in the **Federal Register** on Wednesday, December 11, 2003 (67 FR 76123), announced that a public hearing on proposed regulations relating to the requirements that accruals or allocations under certain retirement plans not cease or be reduced because of the attainment of any age would be held on Thursday, April 10, 2003, in room 4718, Internal Revenue Building 1111 Constitution Avenue, NW., Washington, DC. A subsequent notice published in the **Federal Register** on January 17, 2003, (68 FR 2466), changed the date and location of the public hearing to April 9, 2003, in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of the number of individuals requesting to speak at the hearing, the hearing will be held on both Wednesday, April 9, 2003 and on Thursday, April 10, 2003. On both dates the hearing will begin at 10 a.m., and registration for the hearing will begin at 9 a.m. On both dates the hearing will be held in the Andrew W. Mellon Auditorium, 1300 Constitution Avenue, NW., Washington, DC.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 03–8575 Filed 4–3–03; 3:54 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–088–7216b; A–1–FRL–7466–5]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Amendment to 310 CMR 7.06, Visible Emissions Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to conditionally approve a State Implementation Plan (SIP) revision submitted by the State of Massachusetts. On August 9, 2001, the Massachusetts Department of Environmental Protection (MA DEP) formally submitted a SIP revision containing multiple revisions to the State Regulations for the Control of Air Pollution. In today's action EPA is conditionally approving one portion of these rule revisions, 310 CMR 7.06(1)(c), into the Massachusetts SIP. This conditional approval is based on a commitment by MA DEP to submit a revised regulation by one year from today. If Massachusetts fails to submit the required revisions within one year of this conditional approval, then this conditional approval will be converted to a disapproval.

DATES: Written comments must be received on or before May 8, 2003.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Butensky, Environmental Planner, (617) 918–1665; *butensky.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is conditionally approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: February 21, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03–8360 Filed 4–7–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 02–15]

Passenger Vessel Financial Responsibility

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking; extension of time; submission of oral comments; public hearing.

SUMMARY: The Commission has determined to extend the comment period in this matter, and to provide interested persons with the opportunity to make oral presentations to individual Commissioners and at a public hearing before the full Commission.

DATES: Comments are now due on May 30, 2003.

ADDRESSES: Address all comments and inquiries concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001. (202) 523–5725. E-mail: *secretary@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Amy W. Larson, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1018, Washington, DC 20573–0001. (202) 523–5740. E-mail: *generalcounsel@fmc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to rule 53(a) of the Commission's rules of practice and procedure, 46 CFR 502.53(a)(2002), in notice-and-comment rulemakings the Commission may permit interested persons to make oral presentations in addition to filing written comments. The Commission has determined to permit interested persons to make such presentations to individual Commissioners in this proceeding, and additionally to hold a public hearing before the full Commission.

At the discretion of individual Commissionaries, interested persons request one-on-one meetings at which they may make presentations describing their views on the proposed rule. Any meeting or meetings shall be completed before the close of the comment period. The summary or transcript of oral presentations will be included in the record and must be submitted to the Secretary of the Commission within 5 days of the meeting. Interested persons wishing to make an oral presentation should contact the Office of the Secretary to secure contact names and numbers for individual Commissioners.

The Commission has also determined to hold a public hearing, at which interested parties may make presentations and field questions from the Commissioners. The date and time of the hearing will be set forth in a subsequent order.

Finally, the deadline for filing comments is extended to May 30, 2003.

By the Commission. *

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–8611 Filed 4–4–03; 9:29 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–815; MB Docket No. 03–78, RM–10684]

Radio Broadcasting Services; Bend and Prineville, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Combined Communications, Inc., licensee of Station KTWS–FM, Channel 253C3, Bend, Oregon. Petitioner proposes to upgrade the allotment for Channel 253C3 at Bend, Oregon, to Channel 253C1, and to modify the license of KTWS–FM accordingly. In order to facilitate that change, petitioner further proposes to substitute Channel 271C3 for Channel 255C3, a vacant allotment at Prineville, Oregon, and to change the reference coordinates for that allotment. Channel 271C3 can be allotted to Prineville in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.6 km (8.4 miles) east of Prineville. The coordinates for Channel 271C3 at Prineville are 44–20–36 North Latitude and 120–44–06 West Longitude. If that change is made in the Table of Allotments, Channel 253C1 can be allotted to Bend in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.6 km (1.6 miles)

* Commissioner Brennan, concurring in part and disenting in part: A public hearing is far better public policy, in my view, than closed-door meetings with interested parties, when one is considering a substantial rule change. While I support the decision to extend the comment period and to hold a public hearing, I dissent as to the matter of one-on-one presentations, the need for which is obviated by a public hearing.

northwest of Bend. The coordinates for Channel 253C1 at Bend are 44–04–41 North Latitude and 121–19–57 West Longitude. *See* **SUPPLEMENTARY INFORMATION** *infra*.

DATES: Comments must be filed on or before May 12, 2003, and reply comments on or before May 27, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner as follows: J. Dominic Monahan, Luvaas, Cobb, Richards & Fraser, P.C., 777 High Street, Suite 300, Eugene, Oregon 97401.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–78, adopted March 19, 2003 and released March 21, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202)863–2893.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 253C3 and by adding Channel 253C1 at Bend; and by removing Channel 255C3 and by adding Channel 271C3 at Prineville.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–8407 Filed 4–7–03; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 032803C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the requirement to count DAS under this EFP against his NE multispecies DAS allocation; the fishing restrictions imposed by the GOM rolling closure areas; and the minimum fish size requirements for the temporary retention of undersized fish for data collection purposes. The EFP would allow these exemptions for not more than 20 days of sea trials. All experimental work would be monitored by a UNH Cooperative Extension technician.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before April 23, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on UNH Cooperative Extension Shallow Gillnet Selectivity EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Management Specialist, phone 978–281–9220.

SUPPLEMENTARY INFORMATION: The UNH Cooperative Extension submitted an application for an EFP on January 24, 2003, with final revisions received on March 21, 2003. The experimental fishing application requests authorization to allow the collection of data on the performance of two gillnet designs that are intended to utilize differences in behavior and closeness to the seabed between flatfish and cod. It is hypothesized that the shallower nets will have better species and size selectivity than either regular roundfish gillnets, tie-down gillnets, and foam-core flatfish gillnets, thereby reducing discards of GOM cod and allowing fishermen to continue to fish for flatfish without exceeding the cod possession limits. The time period for this experiment would be May 1–August 31, 2003. The location of the experiment would be bounded by the New England shoreline, west of 69° W. long., and north of 42° N. lat. The experiment would use a total of 40 gillnets, 300 ft (91.44 m) in length with 7–inch (17.7 cm) mesh. The control group nets would be 25 meshes deep while the experimental group nets would be 12 and 8 meshes deep.

The applicant has requested an exemption from 20 NE multispecies DAS to conduct the experiment. The applicant has also requested an exemption from GOM rolling closures III and IV. The applicant has also requested that the vessel be allowed to land any legal-sized fish for which he is permitted, for commercial sale within GOM possession limits. There would be some bycatch of sub-legal sized fish associated with the experiment (approximately 420 lb (190.5 kg) of cod, 1,740 lb (789 kg) of dogfish and 100 lb (45.36 kg) of mixed fluke, dabs, mackerel and pollock). All undersized fish will be returned to the water as soon as practicable after the measurements are recorded. Estimated total landings, excluding discards, is approximately 20,000 lb (9,072 kg) of mixed multispecies (9,000 lb (4,082 kg) cod, 10,000 lb (4,536 kg) dogfish, and 1,000 lb (454 kg) of mixed fluke, dabs, mackerel, and pollock) based upon 50 percent of the commercial catch rate. A technician from the UNH Cooperative Extension would be on the vessel for all of the trips associated with this EFP. The participating vessel would be required to comply with applicable state landing laws and report all landings on the Federal Fishing Vessel Trip Report.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 .S.C. 1801 *et seq.*

Dated: April 2, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8554 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 032803G]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from: The requirement to count days-at-sea (DAS) under this EFP against the NE multispecies DAS allocation for a total of 30 DAS; the fishing restrictions imposed by the Gulf of Maine (GOM) rolling closure areas; the minimum mesh size requirements specified for the GOM Regulated Mesh Area; and the minimum fish size requirements for the temporary retention of undersized fish for data collection purposes. The EFP would allow these exemptions for not more than 30 days of sea trials. All experimental work would be monitored by University of New Hampshire Cooperative Extension scientists/observers.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before April 23, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on UNH Cooperative Extension Codend Mesh Size Selectivity Study." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Management Specialist, phone number 978–281–9220.

SUPPLEMENTARY INFORMATION: The UNH Cooperative Extension submitted an application for an EFP on January 21, 2003, with final revisions received on March 21, 2003. The experimental fishing application requests authorization to use one commercial fishing vessel to conduct sea trials of a hydrodynamic codend cover. The purpose of this experiment is to design a cover that would surround the codend without masking the net. Floats, weights, and kites would be placed on the outside of a trawl net to hold a supplemental small-mesh net away from the codend being examined. This would better enable researchers to evaluate a variety of codends by quantifying the amount of fish that escape, as well as those that are retained. The UNH researchers would use alternate tows both with, and without, the codend cover to evaluate differences in fish retention. Also, underwater video technology would be employed to observe the codend, the cover, and the fish escaping from the net. The codend cover would then be used to determine species and size selectivity of different trawl codend mesh sizes in the GOM multispecies fishery. Furthermore, the proposal seeks to determine fish retention in large mesh codends for GOM cod, haddock, whiting, and flounders (winter, witch, dabs). The experiment would compare the selectivity of 6.5–inch (16.51 cm) diamond mesh, 6.5–inch (16.51 cm) square mesh, 7–inch (17.78 cm) diamond mesh, and 7–inch (17.78 cm) square mesh codends against the regulation 6–inch (15.24 cm) diamond mesh. The biological impact of mesh size increases, including fishing mortality and discard rates of regulated multispecies, would be analyzed. The results of this mesh selectivity study would then be made available to the New England Fishery Management Council and NMFS.

The at-sea portion of the experiment would last no longer than 30 days between April and September, 2003. The activity would occur in Federal waters off the coast of New Hampshire excluding the Western GOM closure area. A total of 180, 30–minute tows at 2.8 knots would be conducted (six per day). UNH researchers would be required to be aboard the vessel at all times during the experimental work. All undersized fish would be returned to the sea as quickly as possible after measurement and examination. However, legal-sized fish that otherwise would have to be discarded would be allowed to be retained and sold within GOM possession limits. The participating vessel would be required to report all landings in its Vessel Trip Report. The catch levels are not expected to have a detrimental impact on the NE multispecies resources. Estimated total landings for the 30 days are: Cod–9,000 lb (4,082 kg); flounders (winter, witch, dabs)-9,000 lb (4,082 kg); and other groundfish (haddock, cusk, white hake, silver hake, ocean pout, wolffish, etc.)-6,000 lb (2,722 kg). This is approximately one-half the amount of fish that would be landed by the vessel when fishing under normal operating conditions on a NE multispecies DAS. Because the vessel will be fishing with a 3–inch (7.62-cm) codend cover it is estimated that total discards will exceed that of normal fishing operations. Total discard is estimated at 36,000 lb (16,329

kg) (50 percent herring, 20 percent mackerel, 20 percent hake, 5 percent cod and haddock, and 5 percent flounders (winter, witch, dabs)). Researchers will take precautions to avoid areas where there are concentrations of undersized fish.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 2, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8555 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 67
Tuesday, April 8, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrataive Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov*.

SUPPLEMENTARY INFORMATION: *OMB No.:* OMB 0412–.

Form No.: N/A.

Title: Reporting of foreign value added taxes and custom duties.

Type of Review: New.

Purpose: Subsections (b) and (g) of section 579 of USAID's FY 2003 appropriations act require USAID to withhold the equivalent of 200 percent of the amount of value added taxes and custom duties assessed by a foreign government or entity, from February 20, 2003 through September 30, 2003, on commodities financed with foreign assistance funds either directly or through grantees, contractors and subcontractors. The amount is to be withheld from FY 2004 funds allocated for a central government of the country or for the West Bank and Gaza Program. The amount to be withheld is reduced by any reimbursements of value added taxes and custom duties.

Subsection (e) of section 579 provides that the Secretary of State shall issue rules, regulations, or policy guidance, as appropriate, to implement the prohibition against taxation of assistance contained in this section.

In order for USAID to implement the statute and withhold the correct amounts, the agency needs to know from its contractors and grantees for each foreign country the amount of value added tax and custom duties paid and any reimbursements received.

We are interested in hearing from contractors and grantees as to the most effective way or ways to do this (*e.g.*, on voucher or other payment documents, separate report), and frequency (every voucher, monthly, quarterly, one-time report) and to the workings in practice of existing reimbursement systems.

Section 579(c) permits USAID to establish a minimum exception from the withholding requirements of subsection (b). We welcome your comments on what would be an appropriate minimum amount consistent with statute, by transaction amount or other basis, taking into account the administrative burden on contractors and grantees to track transactions.

USAID's appropriations act is the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003 contained in Division E of H.J. Res. 2, the Consolidated Appropriations Resolution, 2003 (P.L. 108-7), February 20, 2003.

Annual Reporting Burden

Respondents: 4,000.

Total annual responses: 4,000.

Total annual hours requested: 24,000 hours.

Dated: April 1, 2003.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 03–8528 Filed 4–7–03; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–034–1]

Ivy Gourd; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to a proposed field release of a nonindigenous leaf-mining weevil, *Acythopeus cocciniae*, into Guam and Saipan for the biological control of ivy gourd (*Coccinia grandis*). The environmental assessment documents our review and analysis of environmental impacts associated with widespread release of this agent. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before May 8, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–034–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–034–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–034–1" in the subject line.

You may read any comments that we receive on the environmental assessment in our reading room. The

reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Tracy A. Horner, Ecologist, Environmental Services, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1237; (301) 734–5213.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is considering several applications for permits to release the nonindigenous leaf-mining weevil *Acythopeus cocciniae* in order to reduce the severity and extent of ivy gourd (*Coccinia grandis*) infestations in Guam and Saipan.

Ivy gourd is native to Africa, Asia, Fiji, and northern Australia. This invasive weed is a rapidly growing, climbing or trailing vine that forms thick mats, overgrowing trees and other vegetation, walls, fences, and utility poles. Ivy gourd also serves as a host for numerous pests of cucurbitaceous crops, including black leaf-footed bug (*Leptoglossus australis*), leafminers (*Liriomyza* spp.), melon aphid (*Aphis gossypii*), melon fly (*Bactrocera cucurbitae*), pumpkin caterpillar (*Diaphania indica*), red pumpkin beetle (*Aulacophora foveicollis*), and whiteflies (*Bemisia spp.*).

Ivy gourd has been detected in the United States in Guam, Hawaii, and Saipan. In July 1999, we prepared an environmental assessment (EA) that examined the potential release of *A. cocciniae* and another weevil of the same genus, *A. burkhartorum*, into the environment for use as biological control agents to reduce the severity and extent of ivy gourd infestations in the State of Hawaii. APHIS has subsequently received permit applications for additional releases of *A. cocciniae* beyond the area considered in the 1999 EA. The applicants propose to release *A. cocciniae* in Guam and Saipan to reduce the severity and extent of ivy gourd infestation on those islands.

A. cocciniae is native to Africa. Adults live up to 200 days and feed on the leaves of the ivy gourd, creating numerous holes in the lamina. Eggs are laid singly by insertion into the lamina of the leaves. The eggs hatch in about 8 days, and the larvae mine the leaves for 9 to 10 days thereafter. Pupation takes place within the mine and lasts for 15 days. Adult feeding and larval mining can cause drying of the leaves and eventual defoliation.

APHIS" review and analysis of the proposed action and its alternatives are documented in detail in an EA entitled, "Field Release of *Acythopeus cocciniae* (Coleoptera: Curculionidae), a nonindigenous leaf-mining weevil for control of ivy gourd, *Coccinia grandis* (Cucurbitaceae), in Guam and Saipan" (February 2003). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/* by following the link for "Document/Forms Retrieval System" then clicking on the triangle beside "6—Permits—Environmental Assessments," and selecting document number 0034. You may request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the EA when requesting copies. The EA is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 2nd day of April 2003 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–8518 Filed 4–7–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kootenai (KNF) and Idaho Panhandle National Forests (IPNF); Montana, Idaho and Washington; Extension of Scoping For Revised Land and Resource Management Plans

AGENCY: Forest Service, USDA.

ACTION: Extension of the scoping period in conjunction with revision of the Land and Resource Management Plans (hereafter referred to as Forest Plan or Plans) for the Kootenai and Idaho Panhandle National Forests (Kootenai Idaho Panhandle Zone, hereafter referred to as KIPZ) located in Lincoln, Sanders, and Flathead countries in Montana; Bonner, Boundary, Kootenai, Shoshone, Benewah, Latah, and Clearwater counties in Idaho; and Pend Oreille county in Washington.

SUMMARY: The scoping period has been extended for the proposed revised Forest Plans and the Draft Environmental Impact Statement. The original notice of intent was published in the **Federal Register**, Vol. 67, No. 83, on page 21210, on April 30, 2002 as FR Doc. 02–10548.

DATES: Comments concerning the scope of the analysis must be received in writing by May 30, 2003.

ADDRESSES: Send written comments and suggestions to Forest Supervisor, c/o Forest Plan Revision, Kootenai National Forest, 1101 W Hwy 2, Libby, MT 59923.

FOR FURTHER INFORMATION CONTACT: Joe Krueger at (406) 293–6211 or Gary Ford at (208) 765–7478.

SUPPLEMENTARY INFORMATION: The scoping period has been extended to May 30, 2003, to provide additional time for public access to the Analysis of the Management Situation report. Comments received during the scoping period will be used to develop alternatives in the DEIS.

Dated: April 1, 2003.

Bob Castaneda,

Kootenai Forest Supervisor.

[FR Doc. 03–8483 Filed 4–7–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Public Law 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, April 21, 2003. The Madera Resource Advisory Committee will meet at the Spring Valley Elementary School in O'Neals, CA. The purpose of the meeting is: update on the RAC new committee members, revisit RAC FY 2003 proposals and updates of proposal information, review progress of FY 2002 accounting, review Madera County RAC mission and clarify voting procedures.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, April 21, 2003. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Spring Valley Elementary School, 46655 Road 2000, O'Neals, CA 93645.

FOR FURTHER INFORMATION CONTACT: Dave Martin, USDA, Sierra National Forest, 57003 Road 225, North Fork, CA, 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Update on RAC new committee members; (2) revisit RAC FY 2003 proposals and updates of proposal information; (3) review progress of FY 2002 accounting; (4) review Madera County RAC mission and; (5) clarify voting procedures. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: April 1, 2003.

David W. Martin,

District Ranger.

[FR Doc. 03–8484 Filed 4–7–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Funds Availability (NOFA) Inviting Applications for the Renewable Energy Systems and Energy Efficiency Improvements Grant Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of $23 million in competitive grant funds for fiscal year (FY) 2003 to purchase renewable energy systems and make energy improvements for agricultural producers and rural small businesses. In order to be eligible for grant funds, the agricultural producer or rural small business must demonstrate financial need. The grant request must not exceed 25 percent of the eligible project costs.

DATES: Applications must be completed and submitted to the appropriate United States Department of Agriculture (USDA) State Rural Development Office postmarked no later than June 6, 2003. Applications postmarked after June 6, 2003, will be returned to the applicant with no action. Comments regarding the information collection requirements under the Paperwork Reduction Act of 1995 must be received on or before June 9, 2003.

ADDRESSES: Submit proposals to the USDA State Rural Development Office where your project is located or, in the case of a rural small business, where you are headquartered. A list of the Energy Coordinators and State Rural Development Office addresses and telephone numbers follow. For further information about this solicitation, please contact the applicable State Office.

USDA State Rural Development Offices

Alabama

Chris Harmon, USDA Rural Development
Sterling Center, Suite 601
4121 Carmichael Road
Montgomery, AL 36106–3683
(334) 279–3615

Alaska

Dean Stewart, USDA Rural Development
800 West Evergreen, Suite 201
Palmer, AK 99645–6539
(907) 761–7722

Arizona

Gary Mack, USDA Rural Development
3003 North Central Avenue, Suite 900
Phoenix, AZ 85012–2906
(602) 280–8717

Arkansas

Shirley Tucker, USDA Rural Development
700 West Capitol Avenue, Room 3416
Little Rock, AR 72201–3225
(501) 301–3280

California

Charles Clendenin, USDA Rural Development
430 G Street, Agency 4169
Davis, CA 95616–4169
(530) 792–5825

Colorado

Sue McWilliams, USDA Rural Development
628 West 5th Street
Cortez, CO 81321
(970) 565–8416, Ext. 127

Delaware-Maryland

James Waters, USDA Rural Development
4607 South Dupont Hwy.
P.O. Box 400
Camden, DE 19934–0400
(302) 697–4324

Florida/Virgin Islands

Joe Mueller, USDA Rural Development
4440 NW. 25th Place
P.O. Box 147010
Gainesville, FL 32614–7010
(352) 338–3482

Georgia

J. Craig Scroggs, USDA Rural Development
333 Phillips Drive
McDonough, GA 30253
(678) 583–0866

Hawaii

Tim O'Connell, USDA Rural Development
Federal Building, Room 311
154 Waianuenue Avenue
Hilo, HI 96720
(808) 933–8313

Idaho

Dale Lish, USDA Rural Development
725 Jensen Grove Drive, Suite 1
Blackfoot, ID 83221
(208) 785–5840, Ext. 118

Illinois

Cathy McNeal, USDA Rural Development
2118 West Park Court, Suite A
Champaign, IL 61821
(217) 403–6209

Indiana

Jerry Hay, USDA Rural Development
North Vernon Area Office
2600 Highway 7 North
North Vernon, IN 47265
(812) 346–3411, Ext. 4

Iowa

Jeff Kuntz, USDA Rural Development
Federal Building, Room 873
210 Walnut Street
Des Moines, IA 50309
(614) 932–3031

Kansas

Larry Carnahan, USDA Rural Development
P.O. Box 437
115 West 4th Street
Altamont, KS 67330
(620) 784–5431

Kentucky

Dewayne Easter, USDA Rural Development
771 Corporate Drive, Suite 200
Lexington, KY 40503
(859) 224–7435

Louisiana

Kevin Boone, USDA Rural Development
3727 Government Street
Alexandria, LA 71302
(318) 473–7960

Maine

Michael Rollins, USDA Rural Development
967 Illinois Avenue, Suite 4
P.O. Box 405
Bangor, ME 04402–0405

(207) 990–9125

Massachusetts/Rhode Island/Connecticut

Sharon Colburn, USDA Rural Development
Rural Energy Coordinator
451 West Street, Suite 2
Amherst, MA 01002–2999
(413) 253–4303

Michigan

Jason Church, USDA Rural Development
3001 Coolidge Road, Suite 200
East Lansing, MI 48823
(517) 324–5217

Minnesota

David Gaffaney, USDA Rural Development
410 AgriBank Building
375 Jackson Street
St. Paul, MN 55101–1853
(651) 602–7814

Mississippi

Charlie Joiner, USDA Rural Development
Federal Building, Suite 831
100 West Capitol Street
Jackson, MS 39269
(601) 965–5457

Missouri

D. Clark Thomas, USDA Rural Development
601 Business Loop 70 West
Parkade Center, Suite 235
Columbia, MO 65203
(573) 876–0984

Montana

John Guthmiller, USDA Rural Development
900 Technology Blvd., Unit 1, Suite B
P.O. Box 850
Bozeman, MT 59771
(406) 585–2549

Nebraska

Cliff Kumm, USDA Rural Development
201 North, 25 Street
Beatrice, NE 68310
(402) 223–3125

Nevada

Dan Johnson, USDA Rural Development
555 West Silver Street, Suite 101
Elko, NV 89801
(775) 738–8468, Ext. 112

New Jersey

Michael Kelsey, USDA Rural Development
5th Floor North, Suite 500
8000 Midlantic Drive
Mt. Laurel, NJ 08054
(856) 787–7700, Ext. 7751

New Mexico

Eric Vigil, USDA Rural Development
6200 Jefferson Street, NE.
Room 255
Albuquerque, NM 87109
(505) 761–4952

New York

Robert Pestridge, USDA Rural Development
The Galleries of Syracuse
441 South Salina Street, Suite 357
Syracuse, NY 13202–2541
(315) 477–6426

North Carolina

H. Rossie Bullock, USDA Rural Development
Bladen County Agriculture Service Center
450 Smith Circle, Room 137
Elizabethtown, NC 28337
(910) 862–3179

North Dakota

Dale Van Eckout, USDA Rural Development
Federal Building, Room 208
220 East Rosser Avenue
P.O. Box 1737
Bismarck, ND 58502–1737
(701) 530–2065

Ohio

James Cogan, USDA Rural Development
Federal Building, Room 507
200 North High Street
Columbus, OH 43215–2418
(614) 255–2420

Oklahoma

Jody Harris, USDA Rural Development
100 USDA, Suite 108
Stillwater, OK 74074–2654
(405) 742–1036

Oregon

Don Hollis, USDA Rural Development
1229 SE Third Street, Suite A
Pendleton, OR 97801–4198
(541) 278–8049, Ext. 129

Pennsylvania

Lee Patterson, USDA Rural Development
One Credit Union Place, Suite 330
Harrisburg, PA 17110–2996
(717) 237–2189

Puerto Rico

Virgilio Velez, USDA Rural Development
IBM Building
654 Munoz Rivera Avenue, Suite 601
Hato Rey, PR 00918–6106
(787) 766–5091

South Carolina

Mike Hucks, USDA Rural Development
Strom Thurmond Federal Building
1835 Assembly Street, Room 1007
Columbia, SC 29201
(803) 253–3645

South Dakota

Gary Korzan, USDA Rural Development
Federal Building, Room 210
200 4th Street, SW.
Huron, SD 57350
(605) 352–1142

Tennessee

Dan Beasley, USDA Rural Development
3322 West End Avenue, Suite 300
Nashville, TN 37203–1084
(615) 783–1341

Texas

Pat Liles, USDA Rural Development
Federal Building, Suite 102
101 South Main Street
Temple, TX 76501
(254) 742–9780

Utah

Richard Carrig, USDA Rural Development
Wallace F. Bennett Federal Building
125 South State Street, Room 4311
Salt Lake City, UT 84147–0350
(801) 524–4328

Vermont/New Hampshire

Lyn Millhiser, USDA Rural Development
City Center, 3rd Floor
89 Main Street
Montpelier, VT 05602
(802) 828–6069
Contact person for New Hampshire:
Scott Johnson, (603) 223–6042

Virginia

Laurette Tucker, USDA Rural Development
Culpeper Building, Suite 238
1606 Santa Rosa Road
Richmond, VA 23229
(804) 287–1594

Washington

Chris Cassidy, USDA Rural Development
1606 Perry Street, Suite E
Yakima, WA 98902–5769
(509) 454–5743, Ext. 5

West Virginia

Cheryl Wolfe, USDA Rural Development
75 High Street, Room 320
Morgantown, WV 26505–7500
(304) 284–4882

Wisconsin

Brian Deaner, USDA Rural Development
4949 Kirschling Court
Stevens Point, WI 54481
(715) 345–7615, Ext. 132

Wyoming

Jerry Tamlin, USDA Rural Development
100 East B, Federal Building, Room 1005
P.O. Box 820
Casper, WY 82602
(307) 261–6319

SUPPLEMENTARY INFORMATION:

Background

This solicitation is issued pursuant to enactment of the Farm Security and Rural Investment Act of 2002 (2002 Act), which established the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX, Section 9006. The 2002 Act requires the Secretary of Agriculture to create a program to make direct loans, loan guarantees, and grants to agricultural producers and rural small businesses to purchase renewable energy systems and make energy efficiency improvements. The program is designed to help agricultural producers and rural small businesses reduce energy costs and consumption and help meet the nation's critical energy needs. The 2002 Act also mandates the maximum percentage RBS will provide in funding for these types of projects. The RBS grant will not exceed 25 percent of the eligible project costs and will be made only to those who demonstrate financial need. Due to the time constraints for implementing this program, RBS has decided to institute only the grant program for FY 2003.

Definitions applicable to this NOFA

Agricultural Producer—An individual or entity directly engaged in the production of agricultural products, including crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations.

Annual receipts—Total income or gross income (sole proprietorship) plus cost of goods sold.

Biogas—Biomass converted to gaseous fuels.

Biomass—Any organic material that is available on a renewable or recurring basis including agricultural crops; trees grown for energy production; wood waste and wood residues; plants, including aquatic plants and grasses; fibers; animal waste and other waste materials; and fats, oils, and greases, including recycled fats, oils, and greases. It does not include paper that is commonly recycled or unsegregated solid waste.

Capacity—The load that a power generation unit or other electrical apparatus or heating unit is rated by the manufacturer to be able to meet or supply.

Capacity Factor—The ratio of the average load on (or power output of) a generating unit or system to the capacity rating of the unit or system over a specified period of time.

Commercially Available—Systems that have a proven operating history and an established design, installation, equipment, and service industry.

Demonstrated Financial Need—The applicant must demonstrate that it is unable to finance the project from its own resources or other funding sources without grant assistance.

Eligible Project Cost—Total project costs that are eligible to be paid with grant funds.

Energy Audit—A written report by an independent, qualified entity or individual that documents current energy usage, recommended improvements and their costs, energy savings from these improvements, dollars saved per year, and the weighted-average payback period in years.

Energy Efficiency Improvement—Improvements to a facility or process that reduce energy consumption.

Financial Feasibility—The ability of the business to achieve the projected income and cash flow. An assessment of the cost-accounting system, the availability of short-term credit for seasonal business, and the adequacy of raw materials and supplies.

Grant Close Out—When all required work is completed, administrative actions relating to the completion of work and expenditures of funds have been accomplished, and RBS accepts final expenditure information.

In-kind Contributions—Applicant or third-party real or personal property or services benefiting the Federally assisted project or program that are contributed by the applicant or a third party.

Interconnection Agreement—The terms and conditions governing the interconnection and parallel operation of the applicant's electric generation equipment and the utility's electric power system. Other services required by the applicant from the utility are covered under separate arrangements.

Leveraged Funds—The funds needed to pay for the portion of the eligible project costs of the project not paid for by a grant awarded under this program.

Other Waste Materials—Inorganic or organic materials that are used as inputs for energy production or are by-products of the energy production process.

Power Purchase Arrangement—The terms and conditions governing the sale and transportation of electricity produced by the applicant to another party. Other services are covered under separate arrangements.

Pre-commercial Technology—Technologies that have emerged through the research and development process and have technical and economic potential for application in commercial energy markets but are not yet commercially available.

Renewable Energy—Energy derived from a wind, solar, biomass, or geothermal source or hydrogen derived from biomass or water using wind, solar, or geothermal energy sources.

Renewable Energy System—A process that produces energy from a renewable energy source.

Rural—Any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town.

Small Business—A private entity including a sole proprietorship, partnership, corporation, and a cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code) but excluding any private entity formed solely for a charitable purpose, and which private entity is considered a small business concern in accordance with the Small Business Administration's Small Business Size Standards by North American Industry Classification System (NAICS) Industry found in 13 CFR 121; provided the entity has 500 or fewer employees and $20 million or less in total annual receipts including all parent, affiliate, or subsidiary entities at other locations.

Total Project Cost—The sum of all costs associated with a completed, operational project.

Grant Amounts

The amount of funds available for this program in FY 2003 is $23 million. RBS grant funds may be used to pay up to 25 percent of the eligible project costs. Half of the funds will be available for renewable energy systems and the other half for energy efficiency improvement projects. USDA may reallocate funds between the renewable energy systems and the energy efficiency improvement funds. Applications for renewable energy systems must be for a minimum grant request of $10,000, but no more than $500,000. Applications for energy efficiency improvements must be for a minimum grant request of $10,000, but no more than $250,000. The actual number of grants funded will depend on the quality of proposals received and the amount of funding requested. These limits are consistent with energy efficiency improvement projects and alternative energy systems, which the Department has determined are appropriate for agricultural producers and rural small businesses. Grant limitations were based on historical data supplied from Department of Energy, Environmental Protection Agency and Rural Utilities Service on renewable energy systems and from an energy efficiency state program for energy efficiency improvements.

Applicant Eligibility

An eligible applicant must be an agricultural producer or rural small business. Individual applicants must be citizens of the United States (U.S.) or reside in the U.S. after being legally admitted for permanent residence. Entities must be at least 51 percent owned, directly or indirectly, by individuals who are either citizens of the U.S. or reside in the U.S. after being legally admitted for permanent residence. The applicant must also have demonstrated financial need. In the case of an applicant that is applying as a rural small business, the business headquarters must be in a rural area and the project to be funded also must be in a rural area. Adverse actions made on applications are appealable pursuant to 7 CFR part 11.

Project Eligibility

The proposed project must be for the purchase of a renewable energy system or to make energy efficiency

improvements and located in a rural area. The applicant must be the owner of the system and control the operation of the proposed project. A third-party operator may be used to manage the operation or proposed project. Grant funds are not for research and development; therefore, they will only be used for commercial or pre-commercial technology.

All projects financed under this NOFA must be based on satisfactory sources of revenues in an amount sufficient to provide for the operation and maintenance of the system or project.

A proposed renewable energy system can use up to 25 percent of total energy input from a nonrenewable energy source for necessary and incidental requirements of the energy system. No other use of non-renewable energy inputs will be allowed for projects funded under this program.

Eligible projects for energy efficient improvements must conserve energy equal to 15 percent of at least the last 12 months usage and pay for itself within 11 years or less through energy cost savings.

RBS is required to assess the potential environmental impacts of a proposed action prior to commitment of Federal financial resources to the project. This environmental review is consistent with the Council on Environmental Quality's (CEQ) regulations for implementing the procedural provisions of the National Environmental Policy Act. Any required environmental review must be completed prior to RBS obligating any grant funds. The taking of any actions or incurring any obligations during the time of application or application review and processing which would either limit the range of alternatives to be considered or which would have an adverse effect on the environment, such as the initiation of construction, will result in project ineligibility.

Environmental review will be accomplished pursuant to RBS environmental regulations found at 7 CFR part 1940, subpart G or successor regulations. A site visit will be scheduled, if necessary, to determine the scope of the review. The applicant will be notified regarding the level of review required. If an environmental review cannot be completed in sufficient time for grant funds to be obligated by September 30, 2003, grant funds will not be awarded.

Eligible and Ineligible Uses for RBS Grant Funds

RBS grant funds may be used for the following as a part of an eligible project:

1. Purchase and installation of equipment;
2. Construction or improvements;
3. Energy audits;
4. Permit fees;
5. Professional service fees;
6. Feasibility studies;
7. Business plans, and
8. Retrofitting.

Ineligible uses for RBS Grant Funds:

1. Land acquisition;
2. Capital leases;
3. Working capital;
4. Residential improvements;
5. Agricultural tillage equipment;
6. Vehicles;
7. Preparation of the grant application;
8. Waste collection;
9. Funding of political or lobbying activities;
10. Operating, maintaining, routine repairs, or fuel costs for biogas or biomass renewable energy projects;
11. Production, collection, and transportation of energy inputs;
12. Construction of a new facility except when the new facility is used for the same purpose, is approximately the same size, and, based on the energy audit, will provide more energy savings than improving an existing facility. Only the items identified in the energy audit of the existing facility will be eligible for funding. (pertains to energy efficiency projects only); and
13. Costs paid prior to an application being received by RBS except for predevelopment costs such as energy audits, feasibility studies, business plans, permit fees, or architectural and engineering fees.

Leveraged Funds

RBS grant funds may be used to pay up to 25 percent of the eligible project costs. Therefore, the applicant must provide at least 75 percent of leveraged funds to complete the project. Leveraged funds will be verified from information provided in the application. In-kind contributions and other Federal grants may not be used to meet the 75 percent requirement.

Application

Separate applications must be submitted for renewable energy system and energy efficiency improvement projects. Applicants can only submit one application for renewable energy systems and one application for energy efficiency improvements. The maximum amount of grant assistance to one individual or entity will not exceed $750,000. The following will constitute a complete application, which must be submitted by June 6, 2003.

1. Form SF–424, "Application for Federal Assistance."
2. Form SF–424C, "Budget Information—Construction Pogrames." Each cost classification category listed on the form must be filled out if it applies to your project. Any cost category item not listed on the form that applies to your project can be put under the miscellaneous category. Attach a separate sheet if you are using the miscellaneous category and list each miscellaneous cost by not allowable and allowable costs in the same format as on the SF–424C form. All project costs must be categorized as either eligible or ineligible.
3. Form SF–424D, "Assurances—Construction Programs."
4. AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions."
5. AD–1049, "Certification Regarding a Drug-Free Workplace Requirements."
6. Form RD 400–1, "Equal Opportunity Agreement."
7. Form RD 400–4, "Assurance Agreement."
8. "Certification for Contracts, Grants and Loans," required by Section 319 of Public Law 101–121 if the grant is $100,000 or more.
9. If the applicant has made or agreed to make payment using funds other than Federal appropriated funds to influence or attempt to influence a decision in connection with the application, Form SF–LLL, "Disclosure of Lobbying Activities," must be completed.
10. A project-specific feasibility study prepared by a qualified independent consultant will be required for all renewable energy system projects. An acceptable feasibility study must include an analysis of the market, financial, and management feasibility of the proposed project. The feasibility study must include an opinion and a recommendation by the independent consultant. Energy efficiency improvement projects do not require a feasibility study to be completed.
11. If the project involves interconnection to an electric utility, a copy of a letter of intent to purchase power, a power purchase agreement, or an interconnection agreement will be required from your utility company or other purchaser for renewable energy systems.
12. Table of Contents. For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required SF–424 forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

13. Project Summary. A summary of the project proposal, not to exceed one page, must include the following: Title of the project, description of the project including goals and tasks to be accomplished, names of the individuals responsible for conducting and completing the tasks, and the expected timeframes for completing all tasks, including an operational date. The applicant must also clearly state whether the application is for the purchase of a renewable energy system or to make energy efficiency improvements.
14. Eligibility. Describe how you meet the definition of an eligible applicant.
15. Applicant Information. All applicants must provide the following:

A. Business/farm/ranch operation.

(1) Describe ownership, including a list of individuals and/or entities with ownership interest. Provide names of any corporate parents, affiliates, and subsidiaries, as well as a description of the relationship, including products, between these entities.

(2) Describe the operation.

B. Management. Provide the resume of key managers focusing on relevant business experience.

C. Financial Information.

(1) Explanation of the demonstrated financial need for the grant.

(2) Current balance sheet and income statement prepared in accordance with generally accepted accounting principles (GAAP) and dated within 90 days of the application for rural small businesses. Agricultural producers should present financial information in the format that is generally required by commercial agriculture lenders. These items are required on the total operations of the applicant and its parent, subsidiary, or affiliates at other locations.

(3) Small business applicants must provide sufficient information to determine total annual receipts of the business and any parent, subsidiary, or affiliates at other locations. Voluntarily providing tax returns is one means of satisfying this requirement. Information provided must be sufficient to make a determination of total income and cost of goods sold by the business.

(4) If available, financial statements prepared in accordance with GAAP for the past 3 years, including income statements and balance sheets. Agricultural producers should present financial information for the past 3 years in the format that is generally required by commercial agriculture lenders.

(5) Financial projections to include pro forma financial statements for 3 years, with an explanation of assumptions used to generate the financial statements. The financial statements must include cash flow statements, income statements, and balance sheets. Income statements and cash flow statements must be monthly for the first year and annual for the next 2 years. The balance sheet should be annual for all 3 years. Energy efficiency improvement applicants must provide cash flow statements, income statements, and balance sheets that are annual for all 3 years. This applies to all operations of the applicant, existing and new. Financial projections are not required on any parent, subsidiary, or affiliate of the applicant.

D. Production information for renewable energy system projects.

(1) Is the technology to be employed by the facility commercially or pre-commercially available? Provide information to support this position.

(2) Describe the availability of materials, labor, and equipment for the facility.

E. Business market information for renewable energy system projects.

(1) Demand. What is the demand (past, present, and future) for the product and/or service? Who will buy the product and/or service?

(2) Supply. What is the supply (past, present, and future) of the product and/or service? Who are the competitors?

(3) Market niche. Given the trends in demand and supply, how will the business be able to sell enough of its product/service to be profitable?

16. Form RD 1940–20, "Request for Environmental Information." It is strongly recommended that the applicant contact the appropriate Rural Energy Coordinator for assistance in completing this form.
17. Verification of Leveraged Funds. Applicant must provide a copy of a bank statement or a copy of the confirmed funding commitment from the funding source. Leveraged funds must be included on the SF–424 and SF–424C forms.
18. Technical Requirements/Engineer or Architect Report. Separate technical requirements exist for grants for renewable energy systems and energy efficiency improvement projects. The applicant must address the appropriate technical requirements. Two copies of the technical requirements must be submitted in order for the State Rural Development Office to submit a copy to the RBS National Office for a technical review.

A. Renewable Energy System Technical Requirements. The application must demonstrate that the system operates over its design life as expected, the owner/operator is capable of managing the system, and the vendor will provide the needed support. The following are technical requirements for renewable energy systems and will be addressed independently, in narrative form, and in the following order:

(1) Detailed Description of System. Provide a step-by-step description, based on authoritative information, of the complete system from renewable and nonrenewable energy input and inclusive of energy, byproduct, and effluent outputs. Describe the type of renewable energy source, its availability (include storage and handling of the source), and modes of delivery. Power and energy required to operate the system must also be described to determine net power and energy produced. Information on the system, if appropriate, must address utility system interconnection requirements, power purchase arrangements, and output energy storage systems. Detailed information on the actual outputs shall be addressed under system performance as outlined in the following section.

(2) System Performance. Describe the expected power and energy production of the proposed system as rated and as expected in actual field conditions. System performance must be addressed on a daily, monthly, annual, and long-term basis. Other products of the system operation shall be identified with quantity and composition produced. Effluents such as air and water, solids, and other residues shall be identified. Non-energy products with potential commercial value, such as fertilizers, soil amendments and hydrogen shall be identified.

(3) System Design Life. Provide historical or engineering information that supports expected design life of the system and timing of major component replacement or rebuilds.

(4) Use of power and energy supplied by system. Describe the uses of the electricity, heat, torque, and energy stored by the renewable energy system. Discuss how renewable energy system downtime will impact any of the uses of the renewable energy supplied by the system and how and if such energy must or can be supplied by other means.

(5) Project Costs and Timeline. Identify and itemize major project costs and a timeline and milestones for key activities, including project design, siting and permitting, system purchase, site preparation, system installation, operational testing, and decommissioning if applicable.

(6) Design qualifications. Discuss needed system designer qualifications and/or certifications in accordance with commonly acceptable or recognized organizations or bodies. If applicable,

verify that site designers are qualified and/or certified. Provide evidence that the system and installation plans conform to all applicable national, State, and local standards. Provide a list of the same or similar systems designed, installed, or supplied currently operating and with references if available. Discuss spare parts and service availability for life of the system. Describe the knowledge, skills, and abilities needed to install, service, operate, and maintain the system.

(7) Professional services required. Describe professional services and qualifications, expected professional service costs required to design, construct, operate, and maintain the system. This may include a professional engineer, an agricultural engineer, a design engineer, an environmental engineer, a lawyer, accounting, project construction, project management, or any other needed professional services.

(8) Equipment installation. Fully describe the management and plan for site development and system installation. All systems must be installed and interconnected in conformance with the system manufacturer specifications, utility system requirements, and any applicable national, State, or local codes and standards. A general contractor or a turnkey system provider must install the proposed system.

(9) Startup, shakedown, and steady state operation. Provide the appropriate start up testing procedures and test criteria. Describe testing and inspection procedures necessary before system startup and monitoring of initial operation. Estimate needed time to complete startup testing and shakedown period for system to obtain design-operating parameters at a steady state operating level. Verifiable and empirical information must be provided at startup, end of shakedown, and end of steady state operation test period.

(10) Operations and Maintenance. Describe the routine operations and maintenance requirements of the proposed system, including feedstock acquisition, transportation and handling, maintenance for the mechanical and electrical system, system monitoring and control requirements, output delivery systems, and on-going environmental compliance. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for in or outsourcing.

(11) Potential vendor qualifications. For each vendor, provide the type of services provided, number of years they have provided the proposed services, technical support programs, and availability of spare parts.

(12) Performance assurance. Describe vendor standard warranty and performance bonds where available. The owner operator shall commit to keep the system in operating order for the design life of the system identified above. Obtain a commitment from the vendor to supply and service for the design life of the system provided. Describe available training and operation assistance available from the vendor and other sources. Construction contracts in excess of $100,000 will require a performance and payment bond for 100 percent of the contract price.

(13) A qualified professional engineer must certify numbers 1–10 of the technical requirements for renewable energy system projects exceeding $100,000 in total project cost. Vendors may prepare numbers 11 and 12 of the technical requirements. Qualifications of any preparer or certifier must be submitted with the application.

B. Energy Efficiency Improvement Technical Requirements. The application must demonstrate that the energy efficiency improvements perform over the design life as expected. Information should be supported by the energy audit, required elsewhere in this NOFA, whenever applicable. The following are technical requirements for energy efficiency improvement projects and will be addressed independently, in narrative form, and in the following order:

(1) Detailed Description of Energy Efficiency Improvement Project. Describe the components, materials or systems to be installed and how they improve the energy efficiency of the process or facility being modified. Discuss passive improvements such as improving the thermal efficiency of a storage facility and active improvements such as replacing high efficiency energy consuming equipment as separate topics. If synergisms are anticipated between active and passive improvements or other energy systems discuss these as an additional topic. Any change in on-site effluents or other byproducts shall be included in the discussion.

(2) Performance. Describe the expected energy savings of the energy efficiency improvement project. The expected energy savings must be supported by an authoritative energy audit as described elsewhere in this NOFA. Energy savings must be addressed on an annual basis. Performance may also be addressed on a seasonal basis or other periodic basis as determined and stated by the energy auditor. Discuss performance in a similar topical manner as required in paragraph 1 above.

(3) Design Life. Provide information that supports expected design life of passive and active improvements. Describe the scope and timing of major component replacement or rebuilds.

(4) Project Costs and Timeline. Identify and itemize major energy efficiency improvement project costs and a timeline and milestones for key activities, including project design, permitting, materials and equipment purchase, site preparation, and installation.

(5) Design qualifications. Discuss needed designer qualifications and/or certifications with commonly accepted or recognized organizations or bodies. If applicable, verify that designers are qualified and/or certified. Provide evidence that the energy efficiency improvement project and installation plans conform to all applicable national, State, and local standards. Describe the knowledge, skills, and abilities needed to install, service, operate, and maintain the installed materials, equipment and systems.

(6) Professional services required. Describe professional services and qualifications, expected professional service costs required to design, construct, operate, and maintain the energy efficiency improvement project. This may include a professional engineer, an agricultural engineer, a design engineer, an environmental engineer, a lawyer, accounting, project construction, project management, or any other needed services.

(7) Equipment, system and material installation. Fully describe the plan for site development, and equipment, system and materials installation. All equipment, systems and materials must be installed in conformance with applicable national, State or local codes, and standards. A general contractor or a turnkey provider must install the proposed energy efficiency improvement project.

(8) Operations and maintenance. Describe the routine operations and maintenance of the proposed energy efficiency improvement project. Include in the discussion, costs and labor associated with the operations and maintenance of the energy efficiency improvement project and plans for in and outsourcing.

(9) Potential vendor qualifications. For each vendor, discuss the type of service provided, number of years they have provided the proposed services, availability of spare parts and post sale customer support.

(10) Performance assurance. Describe vendor standard warranty and performance bonds where available. Vendors must offer competitive warranties on products and services. The applicant shall commit to keep the energy efficiency improvement project in good repair and operating order for the design life for the energy efficiency improvement project. Describe how information will be collected and reported to meet the reporting requirements of the Renewable Energy/Energy Efficiency Grant Agreement.

(11) A qualified professional engineer or architect must certify to numbers 1–8 of the technical requirements for an energy efficiency improvement project exceeding $100,000 in total project cost. Vendors may prepare numbers 9 and 10 of the technical requirements. Qualifications of any preparer or certifier must be submitted with the application.

19. Energy Audit for Efficiency Improvements Projects:

Each application for an energy efficiency grant must include an energy audit. An energy audit is a written report by an independent, qualified entity that documents current energy usage, recommended potential improvements and their costs, energy savings from these improvements, dollars saved per year, and weighted-average payback period in years (total costs divided by total dollars of energy savings).

The methodology of the energy audit should meet professional and industry standards. RBS review and evaluation of the assessment is for grant purposes only and should not be considered a validation or guarantee of any technology, proposed project, cost estimate, energy savings value, or future energy costs.

The energy audit should cover the following:

A. Situation report. Give a narrative description of the facility or process, its energy system(s) and usage, and activity profile. Also include price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer on the date of the audit. Any energy conversion should be based on use rather than source.

B. Potential improvements. List specific information on all potential energy-saving opportunities and their costs.

C. Technical analysis. Give consideration to the interactions among the potential improvements and other energy systems:

(1) Estimate the annual energy and energy costs savings expected from each improvement identified in the potential project.

(2) Calculate all direct and attendant indirect costs of each improvement.

(3) Rank potential improvements measures by cost-effectiveness (item 2 divided by item 1 above).

D. Potential improvement description. Give a narrative summary of the potential improvement and its ability to provide needed benefits, including a discussion of project reliability and durability.

(1) Provide primary specifications for critical components.

(2) Provide preliminary drawings of project layout, including any related structural changes.

(3) Document baseline data compared to projected consumption, together with any explanatory notes. When appropriate, show before-and-after data in terms of consumption per unit of production, time or area. Include at least 1 year's bills for those energy sources/fuel types affected by this project. Also submit utility rate schedules, if appropriate.

(4) Identify significant changes in future related operations and maintenance costs.

(5) Identify zoning and building code issues and required permits and licenses.

(6) Describe explicitly how outcomes will be measured.

20. Evaluation Criteria. Evaluation of the proposals will be based on the following criteria. These criteria should be individually addressed in narrative form on a separate sheet of paper. Failure to address any one of the criteria may disqualify the application.

A. Criteria for applications for renewable energy systems are:

(1) Quantity of Energy Produced. Points may only be awarded for either energy replacement or energy generation.

a. Energy replacement. If the proposed renewable energy system is intended primarily for self use by the farm, ranch, or small business and will provide energy replacement of greater than 75 percent, 20 points will be awarded; greater than 50 percent, but less than 75 percent, 15 points will be awarded; or greater than 25 percent, but less than 50 percent, 10 points will be awarded. The energy replacement should be determined by dividing the estimated quantity of energy to be generated by at least the past 12 months energy profile of the applicant. The estimated quantity of energy may be described in Btu's, kilowatts, or similar energy equivalents. Energy profiles can be obtained from the utility company.

b. Energy generation. If the proposed renewable energy system is intended primarily for production of energy for sale, 20 points will be awarded.

(2) Environmental Benefits. If the proposed renewable energy system is to upgrade an existing facility or construct a new facility required to meet applicable health or sanitary standards, 10 points will be awarded. Documentation will be obtained from the appropriate regulatory agency with jurisdiction to establish the standard, to verify that a bona fide standard exists, what that standard is, and that the proposed project is needed and required to meet the standard.

(3) Commercial Availability. If the renewable energy system is currently commercially available and replicable, an additional 10 points will be awarded. Commercial availability must be discussed in the technical requirements.

(4) Cost Effectiveness. If the proposed renewable energy system will return the cost of the investment in 5 years or less, 25 points will be awarded; 6–10 years, 20 points will be awarded; 11–15 years, 15 points will be awarded; or 16–20 years, 10 points will be awarded. The estimated return on investment should be determined by dividing the total cost of the project by the estimated projected net annual income and/or energy savings of the renewable energy system.

(5) Amount Requested. If the amount of the grant request is less than $100,000, 15 points will be awarded; $100,000–$200,000, 10 points will be awarded; or $200,001–$300,000, 5 points will be awarded.

(6) Leveraged Funds. If the applicant has provided eligible leveraged funds of over 90 percent, 15 points will be awarded; 85 percent–90 percent, 10 points will be awarded; or 80 percent–84 percent, 5 points will be awarded.

(7) Management. If the renewable energy system will be monitored and managed by a qualified third-party operator, such as pursuant to a service contract, maintenance contract, or remote telemetry, an additional 10 points will be awarded. Aspects of management must be discussed in the technical requirements.

B. Criteria for applications for energy efficiency improvements are:

(1) Energy savings. If the estimated energy expected to be saved by the installation of the energy efficiency improvements will be 35 percent or greater, 20 points will be awarded; 30 percent–34 percent, 15 points will be awarded; 25 percent–29 percent, 10 points will be awarded; or 20 percent–24 percent; 5 points will be awarded. This will be determined by the projections in an energy audit.

(2) Cost Effectiveness. If the proposed energy efficiency improvements will

return the cost of the investment in 2 years or less, 25 points will be awarded; 3–5 years, 20 points will be awarded; 6–8 years, 15 points will be awarded; or 9–11 years, 10 points will be awarded. The estimated return on investment is calculated by dividing the total project cost by the total dollars of energy savings of the energy efficiency improvements.

(3) Amount Requested. If the amount of the grant request is $10,000–$50,000, 15 points will be awarded; $50,001–$125,000, 10 points will be awarded; or $125,001–$200,000, 5 points will be awarded.

(4) Leveraged Funds. If the applicant has provided eligible leveraged funds of over 90 percent, 15 points will be awarded; 85 percent–90 percent, 10 points will be awarded; or 80 percent–84 percent, 5 points will be awarded.

Methods for Evaluating and Ranking Applications

State Rural Development Office personnel will review all applications. Ineligible and incomplete applications may be returned to the applicant and not evaluated further. Projects not financially or technically feasible will not be considered for funding. Qualified industry experts will review the technical requirements of the applications. The State Rural Development Office will score the application based on the Evaluation Criteria and submit it to the National Office to be reviewed and ranked. The National Office will rank applications based on its total score. The highest scoring applications will be selected until all the funds are depleted. Recommendations for funding will be forwarded to the Administrator of RBS, who will award the grants.

Planning and Performing Development

RBS will use 7 CFR 1780.54, 1780.57 (b)–(f) and (h)–(o), 1780.61, 1780.67, 1780.68, 1780.70, 1780.72, 1780.74, 1780.75, and 1780.76 for planning, designing, procurement methods and procedures, bidding, contract award and administration, and construction of renewable energy system and energy efficiency improvement projects as applicable. However, grantees are not authorized to construct the facility/project/improvement in total, or in part, or utilize its own personnel and/or equipment under this NOFA.

Servicing Regulations

Grants will be serviced in accordance with 7 CFR, part 1951, subpart E.

Grantee Requirements

The grantee must sign a Grant Agreement (which is published at the end of the NOFA) and abide by all requirements contained in the Grant Agreement or any other Federal statutes or regulations governing this program. Failure to follow the requirements may result in termination of the grant and adoption of other remedies provided for in the Grant Agreement.

Paperwork Reduction Act

The collection of information requirements contained in this notice have received temporary emergency clearance by the Office of Management and Budget under Control Number 0570–0044. However, in accordance with the Paperwork Reduction Act of 1995, RBS will seek standard OMB approval of the reporting requirements contained in this Notice and hereby opens a 60-day comment period.

Abstract

RBS needs to receive the information contained in this collection of information to select the projects it believes will provide the most long-term economic benefit to rural areas. The selection process is competitive. RBS will ensure that the funds are used for the intended purpose.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.3 hours per response.

Respondents: Agricultural producers and rural small businesses.

Estimated Number of Respondents: 133.

Estimated Number of Responses Per Respondent: 11.

Estimated Number of Responses: 1,463.

Estimated Total Annual Burden on Respondents: 6,251 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of the RBS estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: April 1, 2003.

Thomas C. Dorr,

Under Secretary, Rural Development.

OMB No. 0570–0044

United States Department of Agriculture

Rural Business-Cooperative Service

Renewable Energy/Energy Efficiency Grant Agreement

THIS GRANT AGREEMENT (Agreement) dated _____, is a contract for receipt of grant funds under the Renewable Energy/Energy Efficiency program (Title IX, Section 9006 of Public Law 107–171).

BETWEEN _____ (Grantee) and the United States Of America acting through the Rural Business-Cooperative Service (RBS), Department of Agriculture (Grantor).

WITNESS:

All references herein to "Project" refer to installation of a renewable energy system or energy efficiency improvement located at _____. The grant is $_____ (Grant) which is _____ percent of the Eligible Project Costs.

Should actual project costs be lower than projected in the agreement, the final amount of grant will be adjusted to remain at the above percentage of the final Eligible Project Cost.

WHEREAS:

Grantee has determined to undertake the retrofitting, acquisition, construction, or purchase of a renewable energy/energy efficiency project described in the application dated _____ (Project) with a total estimated cost of $_____.

Grantee is able to finance or obtain funding from other sources for $_____.

Now, therefore, in consideration of said grant, Grantee agrees that Grantee:

Is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those contained in 7 CFR part 3015, "Uniform Federal Assistance Regulations," which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collections is 0570–0044. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The parties agree to all of the terms and provisions of any policy or regulations promulgated under Title IX, Section 9006 of the Farm Security and Rural Investment Act of 2002 as amended. Any application submitted by the Grantee for this grant, including any attachments or amendments, are incorporated and included as part of this Agreement. Any changes to these documents or this Agreement must be approved in writing by the Grantor.

The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement.

Use of Grant Funds

Will use grant funds and leveraged funds only for the purposes and activities specified in the application approved by the Grantor including the approved budget. Budget and approved use of funds are as further described in the Grantor Letter of Conditions and amendments or supplements thereto. Any uses not provided for in the approved budget must be approved in writing by the Grantor. The proposed renewable energy system or energy efficiency improvements shall be constructed/installed in accordance with any energy audit recommendations or engineering or other technical reports provided by the Grantee and approved by the Grantor.

Civil Rights Compliance

Will comply with Executive Order 12898, the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. This shall include collection and maintenance of data on the race, sex, and national origin of Grantee's membership/ ownership and employees. This data must be available to the Grantor in its conduct of Civil Rights Compliance Reviews, which will be conducted prior to grant closing and 3 years later, unless the final disbursement of grant funds has occurred prior to that date.

Financial Management Systems

A. Will provide a Financial Management System in accordance with 7 CFR part 3015, including but not limited to:

1. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

2. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and ensure that they are used solely for authorized purposes.

3. Accounting records prepared in accordance with generally accepted accounting principles (GAAP) and supported by source documentation.

4. Grantee tracking of fund usage and records that show matching funds and grant funds are used in equal proportions. The grantee will provide verifiable documentation regarding matching funds usage, *i.e.*, bank statements or copies of funding obligations from the matching source.

B. Will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after final grant disbursement, except that the records shall be retained beyond the 3-year period if audit findings have not been resolved. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's which are pertinent to the grant for the purpose of making audits, examinations, excerpts, and transcripts.

Procurement and Construction

A. Will comply with the applicable procurement requirements of 7 CFR part 1780 regarding standards of conduct, open and free competition, access to contractor records, and equal employment opportunity requirements.

B. Will, for construction contracts in excess of $100,000, provide performance and payment bonds for 100 percent of the contract price.

Acquired Property

A. Will in accordance with 7 CFR part 3015, hold title to all real property identified as part of the project costs, including improvements to land, structures or things attached to them. Movable machinery and other kinds of equipment are not real property (see Item 2 below). In addition:

1. Approval may be requested from Grantor to transfer title to an eligible third party for continued use for originally authorized purposes. If approval is given, the terms of the transfer shall provide that the transferee must assume all the rights and obligations of the transferor, including the terms of this Grant Agreement.

2. If the real property is no longer to be used as provided above, disposition instructions of the Grantor shall be requested and followed. Those instructions will provide for one of the following alternatives:

a. The Grantee may be directed to sell the property, and the Grantor shall have a right to an amount computed by multiplying the Federal (Grantor) share of the property times the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). Proper sales procedures shall be followed which provide for competition to the extent practicable and result in the highest possible return.

b. The Grantee shall have the opportunity of retaining title. If title is retained, Grantor shall have the right to an amount computed by multiplying the market value of the property by the Federal share of the property.

c. The Grantee may be directed to transfer title to the property to the Federal Government provided that, in such cases, the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

Disposition requirements for real property shall expire 20 years from the date of final grant disbursement. This Grant Agreement covers the following described real property (use continuation sheets as necessary).

B. Will abide by the requirements of 7 CFR part 3015 pertaining to equipment, which is acquired wholly or in part with grant funds.

Disposition requirements for equipment will expire at the end of each item's useful life (which is based on a straight-line, non-accelerated method). This Grant Agreement covers the following described equipment (use continuation sheets as necessary):

Item	*Useful Life*

C. Not to encumber, transfer, or dispose of the property or any part thereof, acquired wholly or in part with Grantor funds, without the written consent of the Grantor.

D. If required by Grantor, record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal grant funds, and that use and disposition conditions apply to the property as provided by 7 CFR part 3015.

Reporting

A. Will after Grant Approval through Project Construction:

1. Provide periodic reports as required by the Grantor. A financial status report and a project performance report will be required on a quarterly basis (Due 30 working days after end of the quarter. For the purposes of this grant, quarters end on March 31, June 30, September 30, and December 31). The financial status report must show how grant funds and leveraged funds have been used to date and project the funds needed and their purposes for the next quarter. A final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include the following:

a. A comparison of actual accomplishments to the objectives for that period.

b. Reasons why established objectives were not met, if applicable.

c. Reasons for any problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation.

d. Objectives and timetables established for the next reporting period.

2. Final project development report which includes a detailed project funding and expense summary; summary of facility installation/construction process including recommendations for development of similar projects by future applicants to the program.

3. For the year(s) in which in Grant funds are received, Grantee will provide an annual financial statement (Generally Accepted Accounting Principles basis for small businesses) to Grantor.

B. Will after Project Construction:

1. Allow Grantor access to the project and its performance information during its useful life.

2. Provide periodic reports as required by Grantor and permit periodic inspection of the project by a representative of the Grantor. Grantee reports will include but not be limited to the following:

a. Purchase of Renewable Energy System Project Report. Commencing the first full calendar year following the year in which project construction was completed and continuing for 3 full years a report detailing the following will be provided:

i. Quantity of Energy Produced. Grantee to report the actual amount of energy produced in BTUs, kilowatts, or similar energy equivalents.

ii. Environmental Benefits. If applicable, Grantee to provide documentation that identified health and/or sanitation problem has been solved.

iii. Return on Investment. Grantee to provide the annual income and/or energy savings of the renewable energy system.

iv. Summary of the cost of operating and maintaining the facility.

v. Description of any maintenance or operational problems associated with the facility.

vi. Recommendations for development of future similar projects.

b. Energy Efficiency Improvement Project Report. Commencing the first full calendar year following the year in which project construction was completed and continuing for 2 full years. Grantee will report the actual amount of energy saved due to the energy efficiency improvements.

Grant Disbursement

Will disburse grant funds as scheduled. Unless required by funding partners to be provided on a pro rata basis with other funding sources, grant funds will be disbursed after all other funding sources have been expended.

A. Requests for reimbursement may be submitted monthly or more frequently if authorized to do so by the Grantor. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

B. Grantee shall not request reimbursement for the Federal share of amounts withheld from contractors to ensure satisfactory completion of work until after it makes those payments.

C. Payment shall be made by electronic funds transfer.

C. Payment shall be made by electronic funds transfer.

D. Standard Form 271, "Outlay Report and Request for Reimbursement for Construction Programs," or other format prescribed by Grantor shall be used to request Grant reimbursements.

E. For renewable energy projects, grant funds will be disbursed in accordance with the above through 90 percent of grant disbursement. The final 10 percent of grant funds will be held by the Grantor until construction of the project is completed, operational, and has met or exceeded the test run requirements as set out in the grant award requirements.

Post-Disbursement Requirements

Will own, operate, and provide for continued maintenance of the Project.

IN WITNESS WHEREOF, Grantee has this day authorized and caused this Agreement to be signed in its name and its corporate seal to be hereunto affixed and attested by its duly authorized officers thereunto, and the Grantor has caused this Agreement to be duly executed in its behalf by:

_____

Name:
Title:

_____

Date

United States of America

Rural Business-Cooperative Service

By: _____

Name:
Title:

[FR Doc. 03–8491 Filed 4–7–03; 8:45 am]
BILLING CODE 3410–XU–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by June 9, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for approval.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Water and Waste Loan and Grant Program.

OMB Control Number: 0572–0121.

Type of Request: Extension of a currently approved collection.

Abstract: The Rural Utilities Service is authorized by section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes to fund water and waste disposal projects serving the most financially needy rural communities through the Water and Waste Disposal loan and grant program. Financial assistance should result in reasonable user costs for rural residents, rural businesses, and other rural users. The program is limited to rural areas and small towns with a population of 10,000 or less. The Water and Waste loan and grant program is administered through 7 CFR part 1780.

Estimate of Burden: Public reporting for this collection of information is estimated to average 3 hours per response.

Respondents: Not-for-profit institutions; State, local, or tribal government.

Estimated Number of Respondents: 5,800.

Estimated Number of Responses per Respondent: 8.73.

Estimated Total Annual Burden on Respondents: 134,240 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–8431 Filed 4–7–03; 8:45 am]
BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the New York Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 10:30 p.m. on Wednesday, April 9, 2003. The purpose of the conference call is to plan a community forum on civil rights issues and post-9/11 law enforcement-community relations in New York.

This conference call available to the public through the following call-in number: 1–800–659–8296, access code: 16090481. Any interested member of the public may call this number and listen to the meeting. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St. Hilaire of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116), by 4 p.m. on Tuesday, April 8, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, March 26, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–8481 Filed 4–7–03; 8:45 am]
BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of Inspector General.

Title: Applicant for Funding Assistance.

Form Number(s): CD–346.

OMB Approval Number: 0605–0001.

Type of Review: Regular submission.

Burden Hours: 625.

Number of Respondents: 500.

Average Hours Per Response: 1.

Needs and Uses: The Department of Commerce's Form CD–346 is used to assist program and grants administration officials in determining the responsibility, financial integrity, and management principles of principal officers and employees of organizations, firms, or recipients or beneficiaries of grants, loans, or loan guarantee programs of operating units in the Department.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 3, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–8573 Filed 4–7–03; 8:45 am]
BILLING CODE 3510–55–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

Date: May 16, 2003

Time: 9 a.m. to 12 p.m. and 2:30 p.m. to 3:30 p.m.

Place: U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Room 4830 (Room 3407 has also been reserved as a backup).

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold a plenary meeting on May 16, 2003 at the U.S. Department of Commerce.

The ETTAC will discuss administrative and trade issues including the status of trade negotiations in regards to environmental technologies trade liberalization, recent program changes at the U.S. Trade Development Agency and subcommittee action plans. Time will be permitted for public comment. The meeting is open to the public.

Written comments concerning ETTAC affairs are welcome anytime before or after the meeting. Minutes will be available within 30 days of this meeting.

The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. Government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the interagency Environmental Trade Working Group (ETWG) of the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently rechartered until May 30, 2004.

For further information phone Corey Wright, Office of Environmental Technologies Industries (ETI), International Trade Administration, U.S. Department of Commerce at (202) 482–5225. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to ETI.

Dated: March 31, 2003.

Carlos F. Montoulieu,

Director, Office of Environmental Technologies Industries.

[FR Doc. 03–8529 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of the American Petroleum Institute's Standards Activities

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of intent to develop or revise standards and request for public comment and participation in standards development.

SUMMARY: The American Petroleum Institute (API), with the assistance of other interested parties, continues to develop standards, both national and international, in several areas. This notice lists the standardization efforts currently being conducted by API committees. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of API is being undertaken as a public service. NIST does not necessarily endorse, approve, or recommend the standards referenced.

ADDRESSES: American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005; telephone (202) 682–8000, *http://www.api.org.*

FOR FURTHER INFORMATION CONTACT: All contact individuals listed in the supplementary information section of this notice may be reached at the American Petroleum Institute.

SUPPLEMENTARY INFORMATION:

Background

The American Petroleum Institute develops and publishes voluntary standards for equipment, materials, operations, and processes for the petroleum and natural gas industry. These standards are used by both private industry and by governmental agencies. All interested persons should contact the appropriate source as listed for further information.

Pipeline Committee

New Std 1162 Developing a Public Awareness Program for Operators
New Std 1109 Marking Liquid Petroleum Pipeline Facilities

For Further Information Contact: Andrea Johnson, Standards Department, email: *johnsona@api.org.*

Committee on Marketing

Std 2610 Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities
RP 1501 Recommended Practice for Retail or Consumer Aviation Fueling Facilities
Std 1529 Aviation Fueling Hose
RP 1626 Recommended Practice for Storing and Handling Ethanol and Gasoline-ethanol Blends at Distribution Terminals and Service Stations.

For Further Information Contact: David Soffrin, Standards Department, email: *soffrind@api.org.*

Committee on Refining

Corrosion & Materials:

RP 651 Cathodic Protection of Aboveground Petroleum Storage Tanks
RP 652 Lining of Aboveground Petroleum Storage Tanks
RP 936 Refractory Installation Quality Control Guidelines
New Coke Drum Survey Report

Inspection:

Std 510 Pressure Vessel Inspection Code
Std 570 Piping Inspection Code

Pressure Vessel and Tanks:

Std 620 Design & Construction of Large, Welded, Low-Pressure Storage Tanks
Std 650 Welded Tanks for Oil Storage
Std 653 Tank Inspection, Repair, Alteration, and Reconstruction

Electrical Equipment:

RP 545 Lightening Protection for Aboveground Petroleum Storage Tanks

Mechanical Equipment:

Std 618 Reciprocating Compressors for Petroleum, Chemical, and Gas Industry Services

Piping:

Std 598 Valve Inspection and Testing
Std 591 User Acceptance of Refinery Valves
Std 609 Butterfly Valves: Double Flanged, Lug- and Wafer-Type

Instrument & Control Systems:

RP 552 Transmission Systems

Technical Data Book—Petroleum Refining:

Electronic Version of the Technical Data Book—Petroleum Refining, Release 3.0

For Further Information Contact: David Soffrin, Standards Department, email: *soffrind@api.org.*

Meetings/Conferences: The Spring Refining Meeting will be held at the Sheraton Seattle Hotel & Towers, Seattle, Washington, April 14–16, 2003. The Fall Refining Meeting will be held at the Adams Mark Hotel, Denver, Colorado, September, 15–17, 2003. Interested parties may visit the API Web site at *http://www.api.org/events* for more information regarding participation in these meetings.

Committee on Safety and Fire Protection

RP 752 Management of Process Hazards Associated with Location Process Plant Buildings
RP 2003 Protection Against Ignitions arising out of Static, Lightening and Stray Currents
RP 2350 Overfill Protection
Std 2510 Design, Construction & Operation of LPG Storage Facilities
RP 2220 Improving Owner and Contractor Safety Performance

For Further Information Contact: David Soffrin, Standards Department, email: *soffrind@api.org.*

Committee on Petroleum Measurement

Manual of Petroleum Measurement Standards:

Chapter 4.1 introduction to Proving Systems
Chapter 4.3 Small Volume Provers
Chapter 4.7 Field-Standard Test Measures
New Chapter 4.9.1 Introduction to Determination of the Volume of Displacement and Tank Provers
New Chapter 4.9.2 Determination of the Volume of Displacement and Tank Provers by the Waterdraw Method of Calibration
New Chapter 4.9.3 Determination of the Volume of Displacement and Tank Provers by the Master Meter Method of Calibration
New Chapter 4.9.4 Determination of the Volume of Displacement and Tank Provers by the Gravimetric Method
Chapter 6.2 Loading Rack and Tank Truck Metering System for Non-LPG Products
Chapter 9.2 Pressure Hydrometer Test Method for Density or Relative Density
Chapter 10.3 Determination of Water and Sediment in Crude Oil by the Centrifuge Method, Laboratory Procedure
New 12.1.3 Calculation Procedures for Liquefied Petroleum Gases (New document)
New Chapter 17.9 Vessel Experience Factors
Chapter 19.2 Evaporative Loss from Floating Roof Tanks
Chapter 19.4 Speciation of Evaporative Losses

For Further Information Contact: Jon Noxon, Standards Department, email: *noxonj@api.org.*

API/ASTM/GPA standards

Chapter 9.2/ASTM D1567 Standard Test Method or Relative Density of Light Hydrocarbons by Pressure Hydrometer
Chapter 10.3/ASTM D4007 Standard Test Method for Water and Sediment in Crude Oil by the Centrifuge Method
Chapter 10.6/ASTM D1796 Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method A
Chapter 11.2/GPA TP 15 A Simplified Vapor Pressure Correlation for Commercial NGLs

For Further Information Contact: Paula Watkins, Standards Department, email: *watkinsp@api.org.*

Meetings/Conferences: The Spring Committee on Petroleum Measurement Meeting will take place at the Hyatt Regency Hotel, Dallas, Texas, March 17–21, 2003. The Fall Committee on Petroleum Measurement Meeting will take place at the Wyndham Palace Hotel, Lake Buena Vista, Florida, September 29–October 3, 2003. Interested parties may visit the API Web site at *http://www.api.org/events* for more information regarding participation in these meetings.

Committee on Exploration and Production

Production Equipment:

Spec 6A Specification for Valves and Wellhead Equipment
Spec 12B Specification for Bolted Tanks
Spec 12D Specification for Field Welded Tanks
Spec 12F Specification for Shop Welded Tanks
RP 14H Installation, Maintenance, and Repair of Surface Safety Valves and Underwater Safety Valves Offshore

Oil Country Tubular Goods:

Bul 5T1 Imperfection Terminology
RP 5C5 Evaluation Procedures for Casing and Tubing Connections
RP 5A3 Thread Compounds for Casing, Tubing and Line Pipe
Spec 5L Specification for Line Pipe
RP 5B1 Threading, Gauging and Thread Inspection of Casing, Tubing and Line Pipe Threads
Offshore Structures, Drill Through Equipment, and Subsea Production Equipment:

Spec 2C Specification for Cranes
RP 2X Recommended Practice for Ultrasonic and Magnetic Examination of Offshore Structures
Spec 16A Specification for Drill Through Equipment
Spec 16D Specification for Control Systems for Drilling Well Control Systems
Spec 17E Specification for Subsea Production Control Umbilicas
New RP 17H Recommended Practice for ROVs
New 17TR2 Technical Report on aging of PA–11 in Flexible Pipes

Drilling Operations and Equipment:

Spec 4F Specification for Drilling and Well Servicing Structures
RP 7G Recommended Practice for Drill Stem Elements and Operating Limits
Spec 8C Specification for Drilling and Production Hoisting Equipment
Spec 9A Specification for Wire Rope
RP 10B Recommended Practice for Testing Well Cements
10 TR1 Technical Report on Cement Sheath Evaluation
Spec 13A Specification for Drilling Fluid Materials
RP 13C Recommended Practice for Drilling Fluid Processing Systems Evaluation
RP 13D Recommended Practice for Rheology and Hydraulics of Oil-well Drilling Fluids
RP 13E Recommended Practice for Shale Shaker Screen Cloth Designation
RP 13I Recommended Practice for Laboratory Testing Drilling Fluids
RP 13J Recommended Practice for Testing Heavy Brines Quality Systems
Spec Q1 Quality Programs for the Petroleum and Natural Gas Industry

For Further Information Contact: Mike Spanhel, Standards Department, email: *spanhel@api.org.*

Meetings/Conferences: The 2003 Summer Standardization Conference on Oilfield Equipment & Materials will take place at the Marriott Rivercenter Hotel, San Antonio, Texas, June 16–20, 2003. Interested parties may visit the API Web site at *http://www.api.org/events* for more information regarding participation in this meeting.

For additional information on the overall API standards program, contact: David Miller, Standards Department, email: *miller@api.org.*

Dated: April 2, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–8530 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033103G]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat and Monkfish Oversight Committees in April, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on April 22, 2003 and April 24, 2003. *See* **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Portsmouth, NH and Warwick, RI. *See* **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, April 22, 2003 at 9 a.m.– Habitat Oversight Committee Meeting.

Location: Courtyard Marriott, 1000 Market Street, Portsmouth, NH 03801; telephone: (603) 436–2121.

The committee will review recommendations from the Habitat Technical Team related to Essential Fish Habitat requirements for Amendment 2 to the Monkfish Fishery Management Plan (FMP) and Amendment 1 to the Herring FMP. They will also review the recommendations from the Joint Advisory Panel and Habitat Technical Team meeting, scheduled for April 10, 2003. The purpose of this Joint Advisors meeting is to develop one habitat closed area alternative to be incorporated into both Amendment 10 to the Scallop FMP and Amendment 13 to the Multispecies FMP. The Committee will review this recommendation and preliminary analysis of this alternative.

Thursday, April 24, 2003 at 9 a.m.– Monkfish Oversight Committee Meeting.

Location: Sheraton Providence Airport Hotel, 1850 Post Road, Warwick, RI; telephone: (401) 738–4000.

The Committee will discuss issues and options to be included in the Amendment 2 Draft Environmental Impact Statement (DSEIS). The Committee will also consider the recommendations of the Habitat Committee, and the enforcement analysis prepared by the Enforcement Committee. Amendment 2 alternatives being considered include, but are not limited to; permit qualification criteria for vessels fishing south of 38°N; management program for a deepwater directed fishery in the SFMA; separation of monkfish days-at-sea (DAS) from multispecies and sea scallop DAS programs; counting of monkfish DAS as 24–hour days; measures to minimize impacts of the fishery on endangered sea turtles; measures to minimize bycatch in directed and non-directed fisheries; an exemption program for vessels fishing for monkfish outside of the EEZ (in the NAFO Regulated Area); alternative measures to minimize impacts of the fishery on essential fish habitat; measures to improve data collection and research on monkfish, including mechanisms for funding cooperative research programs; and, timing of the annual review and adjustment process. The Committee may develop and recommend other management alternatives not included in the list above.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: April 1, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8557 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033103F]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Fishery Management Plan Environmental Impact Statement Oversight Committee (EIS Oversight Committee) will hold a working meeting, which is open to the public, on the draft Groundfish Programmatic Environmental Impact Statement.

DATES: The EIS Oversight Committee working meeting will occur Tuesday, April 22, 2003, 1 p.m. to 5 p.m. and Wednesday, April 23, 2003, 8 a.m. to close of business on that day.

ADDRESSES: The meeting will be held in the West Conference Room at the Pacific Fishery Management Council office, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384, telephone: (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Kit Dahl, NEPA Specialist, (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the EIS Oversight Committee meeting is to review the status of the draft Programmatic Environmental Impact Statement (PEIS), which will analyze five comprehensive alternatives to the current groundfish management program. These alternatives were developed by the EIS Oversight Committee in 2002 and adopted by the Council in October 2002. The EIS Oversight Committee will review the alternatives, descriptions of the affected environment, bycatch management requirements, proposed analytical methodologies, and other relevant information and documents. The EIS Oversight Committee will advise the drafters and analysts regarding resource indicators, important issues for analysis, schedules for review of draft sections as they are prepared, and other matters relating to preparation of the draft document. The EIS Oversight Committee will report to the Council at its June 2003 meeting.

Although nonemergency issues not contained in the EIS Oversight Committee meeting agenda may come before the committee for discussion, those issues may not be the subject of formal EIS Oversight Committee action during these meetings. EIS Oversight Committee action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the EIS Oversight Committee's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: April 1, 2003.

Theophilus R. Brainerd

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8556 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040203A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting which is open to the public.

DATES: The GMT working meeting will begin Monday, May 5, 2003 at 1 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. to 5 p.m. Tuesday, May 6 through Friday, May 9.

ADDRESSES: The meetings will be held at the NMFS Southwest Fisheries Science Center, Santa Cruz Laboratory, 110 Shaffer Road, Santa Cruz, CA 95060; telephone: (831) 420–3900.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Staff Officer, (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the GMT working meeting is to plan strategies to effectively aid the Council in managing 2003 West Coast groundfish fisheries and Council initiatives expected to arise in 2003. Additionally, the GMT will discuss groundfish management measures in place for the spring and summer months, review new groundfish stock assessments and survey results, discuss recommended management measures for 2004 fisheries, respond to assignments relating to implementation of the Council's groundfish strategic plan, review and consider technical aspects of draft stock rebuilding plans and analyses, consider criteria for recommending mid-course corrections to harvest levels under biennial management, consider standards and criteria for Council approval of Exempted Fishing Permits, and address other assignments relating to groundfish management.

Although nonemergency issues not contained in this agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: April 2, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8559 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033103H]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Scientific and Statistical Committee (SSC) Sub-Committee in Charleston, SC.

DATES: The meeting will take place April 23–25, 2003.

ADDRESSES: The meeting will be held at the Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: (843) 571–1000; fax: (843) 766–9444.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free: 866–SAFMC–10; fax: (843) 769–4520.

SUPPLEMENTARY INFORMATION: The SSC Sub-Committee will meet from 1 p.m. until 5 p.m. on April 23, 2003, from 8:30 a.m. until5 p.m. on April 24, 2003, and from 8:30 a.m. until 12 noon on April 25, 2003. Under the Magnuson-Stevens Act, the SSC is the body responsible for reviewing the Council's scientific materials, including stock assessments. Therefore, the purpose of this SSC Sub-Committee meeting is to prepare recommendations for presentation to the full Scientific and Statistical Committee during the June, 2003 meeting in Cocoa Beach, FL, addressing red porgy, vermilion snapper and black sea bass assessments. The SSC Sub-Committee will provide their determinations on the stock assessments, including the following: certify the assessments are based upon best available data/science and are adequate for management, develop advice on the magnitude and direction of action(s) required, interpret the assessment results and provide clearly understood conclusions, develop guidelines for the Council on assessment needs and resources to complete recommendations, and review the current Southeastern Data Assessment and Review (SEDAR) Process and offer recommendations.

Although non-emergency issues not contained in this agenda may come

before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the council office (*see* **ADDRESSES**) by April 21, 2003.

Dated: April 1, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8558 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092502F]

Endangered Species; File No. 1299

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit modification.

SUMMARY: Notice is hereby given that Dr. Raymond Carthy has been issued a modification to scientific research Permit No. 1299.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727) 570–5301; fax (727) 570–5320.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Carrie Hubard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On July 12, 2002, notice was published in the **Federal Register** (67 FR 48442) that a modification of Permit No. 1299, issued May 24, 2001 (66 FR 29934), had been requested by the above-named individual. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The permit modification increases the take of green sea turtles from 100 each to 200 each due to the unexpected numbers of turtles caught in the research area and extends to duration of the Permit to December 2004.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 1, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–8553 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee; Tenth Renewal

The Commodity Futures Trading Commission has determined to renew again for a period of two years its advisory committee designated at the "Agricultural Advisory Committee." The Commission certifies that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, as amended.

The objectives and scope of activities of the Agricultural Advisory Committee are to conduct public meetings and submit reports and recommendations on issues affecting agricultural producers, processors, lenders and others interested in or affected by agricultural commodities markets, and to facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations represented on the Committee.

Chairman James E. Newsome serves as Chairman and Designated Federal Official of the Agricultural Advisory Committee. Commissioner Walter Lukken serves as Vice-Chairman of the Committee. The Committee's membership represents a cross-section of interested and affected groups including representatives of producers, processors, lenders and other interested agricultural groups.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Issued in Washington, DC on April 1, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–8428 Filed 4–7–03; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 9, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 2, 2003.

John Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Special Education Elementary Longitudinal Study (SEELS).

Frequency: Semi-annually, biennially.

Affected Public: Individuals or household; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 31,495.

Burden Hours: 15,978.

Abstract: Special Education Elementary Longitudinal Study (SEELS) will provide the first national picture of the experiences and outcomes of students in special education ages 6 through 12 at the outset of the Study. The Study will inform special education policy development and support Government Performance and Results Act (GPRA) measurement and Individuals with Disabilities Education Act (IDEA) reauthorization. Data will be collected three times over a five-year period from parents, teachers, and principals of sampled students.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2254. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–8437 Filed 4–7–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science

Biological and Environmental Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Biological and Environmental Research Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, April 30, 2003, 8:30 a.m. to 5 p.m.; and Thursday, May 1, 2003, 8:30 a.m. to 12 p.m.

ADDRESSES: American Geophysical Union, 2000 Florida Avenue, NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen (301–903–9817; *david.thomassen@science.doe.gov*), or Ms. Shirley Derflinger (301–903–0044; *shirley.derflinger@science.doe.gov*), Designated Federal Officers, Biological and Environmental Research Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–70/ Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290. The most current information concerning this meeting can be found on the Web site: *http://www.science.doe.gov/ober/berac/announce.html*.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda: Wednesday, April 30, and Thursday, May 1, 2003:

- Comments from Dr. Ray Orbach, Director, Office of Science.
- Report by Dr. Ari Patrinos, Associate Director of Science for Biological and Environmental Research.
- Extended discussion of the Strategic Plan and organization of the new Environmental Remediation Sciences Division in the Office of Biological and Environmental Research including a report from the new BERAC working group for this Division.
- Science talk—to be determined.
- Paul Bertsch, Savannah River Ecology Laboratory, workshop report.
- Lou Pitelka, Appalachian Laboratory, Report of the Biosphere 2 Center as a National Scientific User Facility.
- New business.
- Public comment (10 minute rule).

Public Participation: The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen or Shirley Derflinger at the address or telephone numbers listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on April 2, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–8517 Filed 4–7–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed changes and extension for three-years to the Forms

EIA–851, "Domestic Uranium Production Report," and EIA–858, "Uranium Industry Annual Survey."

DATES: Comments must be filed by June 9, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Douglas Bonnar. To ensure receipt of the comments by the due date, submission by FAX (202–287–1946) or e-mail (*douglas.bonnar@eia.doe.gov*) is recommended. The mailing address is Office of Coal, Nuclear, Electric and Alternate Fuels, EI–52/L'Enfant Plaza Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–1615.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Douglas Bonnar at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

The EIA–851 is a quarterly survey that collects monthly data on uranium production at conventional mills and nonconventional plants (byproduct recovery and in-situ leach plants). Published data appear in the EIA report, "Domestic Uranium Production Report." The report is available at *http://www.eia.doe.gov/cneaf/nuclear/page/at_a_glance/qtr_upd/qupd.html*

The Form EIA–858 is an annual survey that collects data on uranium raw materials activities (Schedule A) and uranium marketing activities (Schedule B). Data collected on these forms provide a comprehensive statistical characterization of the domestic uranium industry. Published data from these surveys are used by Congress, Federal and State agencies, the uranium and nuclear-electric industries, and the general public. Published data appear in the EIA reports, "Uranium Industry Annual," and the "Annual Energy Review."

II. Current Actions

EIA will be requesting a three-year extension of approval to its uranium surveys with the following survey changes.

- Propose putting the EIA–858 Schedule A: Uranium Raw Material Activities survey on standby due to the small size of the U.S. uranium producer industry. The Schedule A survey is mainly a property-by-property form for about 30 U.S. companies that own/lease uranium reserves and mines, which almost all are not expected to be mined. The burden for each company to complete the Schedule A is approximately 10 hours annually and since EIA is developing new internet data collection systems for its surveys, it is difficult to justify the expense for the Schedule A with currently few active producers.
- Propose collecting annually the following data from potentially 8 U.S. uranium producers: Facility information, processing information, mine and/or other production and related information, drilling, expenditures, and employment using an EIA–851 (Annual) "Domestic Uranium Production Report" survey along with its current quarterly survey collection of monthly production using the EIA–851 (Quarterly) "Domestic Uranium Production Report." The annual burden would be about 2 hours and the quarterly burden would remain 0.75 hours and each would be a 1-page form. Respondents would use EIA's secure file transfer system for these data collections.
- Propose renaming the EIA–858 survey from "Uranium Industry Annual Survey" to "Uranium Marketing Annual Survey" with the following changes from the EIA–858 Schedule B, Uranium Marketing Activities survey:
  - —Delete Items 1.D.2 (Custody Transactions) and 1.D.3 (Matched Sales Transactions)
  - —Delete Items 1.F.4 (Imported From) and 1.F.5 (Exported To)
  - —In Item 1.F (Future Deliveries), report quantities (Min/Max) only
  - —Add enrichment price data ($ / SWU) to Item 2, (Enrichment Services Purchased)
  - —In Item 3 inventories, report only by material types (U_3O_8, Natural UF_6, Enriched UF_6, and fabricated fuel not inserted into a reactor)
  - —Delete Item 4 (Uranium Inventory Policy)
  - —Delete Item 6.E (U_3O_8 Equivalent of secondary SWU received in exchange)

The annual burden would be about 14 hours (originally 24 hours for both Schedules A and B) and respondents would use an internet data collection system for this EIA–858 "Uranium Marketing Annual Survey."

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. (If the notice covers more than one form, add "Please indicate to which form(s) your comments apply.")

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average 14 hours per response for the EIA–858, 0.75 hours per response for the EIA–851 (Quarterly), and 2 hours per response for the EIA–851 (Annual). The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information to be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, on April 2, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–8515 Filed 4–7–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request, Correction

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request, Correction.

Correction—In notice document 03–7924 appearing on page 16008 in the issue of Wednesday, April 2, 2003, make the following correction:

The date in the II. Current Actions section should be 2006, rather than 2003.

Issued in Washington, DC, April 3, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–8516 Filed 4–7–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–544–000, FERC–544]

Proposed Information Collection and Request for Comments

April 1, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before June 4, 2003.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments on the proposed collection of information may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 and should refer to Docket No. IC03–544–000.

Documents filed electronically via the Internet can be prepared in a variety of formats including WordPerfect, MS Word, Portable Document Format, Rich Text Format of ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of documents. User assistance for electronic filings is available at 202–502–8258 or by E-mail to *efiling@fer.gov*. Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller at (202)502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–544 "Gas Pipeline Rates: Rate Change(Formal)", is used by the Commission to carry out its responsibilities in implementing the statutory provisions of sections 4, 5, and 16 of the Natural Gas Act (15 U.S.C.717c–717o, Pub. L. 75–688). The Commission implements FERC–544 filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 154.

General rate change applications filed under section 4(e) of the Natural Gas Act reflect changes in rates based generally upon changes in the pipeline company's overall costs of providing service. Staff analyses are performed to determine whether the proposed rates and charges are consistent with the Commission's statutory responsibilities, policies, conditions. A preliminary review and report to the Commission of all changes filed under the NGA must be made by staff. Based upon the report, the Commission determines the filing should be accepted or suspended and set for hearing and investigation. 18 CFR 154.301 through 154.313 govern the filing requirements for rate changes and define the statements and schedules pipeline companies must file in support of their proposed rates and charges. 18 CFR 154.205 governs the filing requirements for changes relating to suspended tariffs, executed agreements or parts thereof. 18 CFR 154.206 permits the proposed change in rate, charge, classification or service to go into effect upon motion of the jurisdictional gas pipeline at the expiration of the

suspension period or upon receipt of the motion, whichever is later.

Formal rate change filings (FERC–544) are suspended and set for hearing. When the NGA section 4(e) filing is suspended, the rate becomes the subject of a hearing process and may go into effect subject to refund with interest. All suspended filings that go through the hearing process are considered formal cases and an investigation is instituted to determine the reasonableness of the rate filing. If the rates and charges are deemed unjust, unreasonable or unduly discriminatory, the appropriate rate, charge or service condition is ascertained. The formal proceeding is terminated by the issuance of a final Commission order.

Action: The Commission is requesting reinstatement. Due to an administrative lapse, FERC–544 was allowed to expire. The Commission seeks reinstatement of FERC–544 and a three-year approval of the collection of information.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
10	1	4,583	45,830

The estimated total cost to respondents is $2,578,841.00. (No. of hours divided by 2,080 hours per year per employee times $117,041.00 per year per average employee = $ 2,578,841.00.) The cost per respondent is $257.884.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology e.g. permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8456 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–071]

ANR Pipeline Company; Notice of Negotiated Rate Filing

April 2, 2003.

Take notice that on March 28, 2003, ANR Pipeline Company, (ANR) tendered for filing two negotiated rate agreements between ANR and Kerr-McGee Oil & Gas Corporation pursuant to ANR's Rate Schedules ITS and ITS (Liquefiables), a related Lease Dedication Agreement, and the underlying transportation service agreements. ANR tenders these agreements pursuant to its authority to enter into negotiated rate agreements. ANR requests that the Commission accept and approve the agreements to be effective April 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8480 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–410–005,and RP01–8–005]

CenterPoint Energy-Mississippi River Transmission Corporation; Notice of Compliance Filing

April 1, 2003.

Take notice that on March 27, 2003, CenterPoint Energy-Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective April 1, 2003:

Substitute Eighth Revised Sheet No. 73
Substitute Original Sheet No. 123A
Substitute Fourth Revised Sheet No. 125
Substitute Fourth Revised Sheet No. 164
Original Sheet No. 164A
Substitute Fifth Revised Sheet No. 175
Substitute Third Revised Sheet No. 226A
Substitute Original Sheet No. 253
Original Sheet No. 253A
Second Revised Sheet No. 254
Substitute Original Sheet No. 255

MRT states that the purpose of this filing is to comply with the Commission's order issued February 26, 2003 in Docket Nos. RP00–410–002, RP00–410–003, RP01–8–002 and RP01–8–003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8460 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–482–005]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

April 1, 2003.

Take notice that on March 27, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective February 28, 2003:

Substitute Original Sheet No. 34.
Substitute Original Sheet No. 456.
Substitute Original Sheet No. 457.

CEGT states that the purpose of this filing is to comply with the Commission's order issued March 4, 2003 in Docket Nos. RP00–482–003 and RP00–482–004.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8463 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–465–002 and RP00–616–002]

CMS Trunkline LNG Company, LLC; Notice of Compliance Filing

April 1, 2003.

Take notice that on March 28, 2003, CMS Trunkline LNG Company, LLC (TLNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A, the revised tariff sheets listed in Appendix A attached to the filing proposed to become effective April 1, 2003.

TLNG states that this filing is being made to comply with the Commission's Letter Order dated March 20, 2003 in Docket Nos. RP00–465–001 and RP00–616–001. TLNG also states that this filing reflects the Commission's acceptance of tariff revisions in Docket No RP02–446–000 to comply with Order No. 587–O and incorporate NAESB Version 1.5 standards in TLNG's tariff that were filed and implemented between the filing and approval of the tariff sheets in the subject docket.

TLNG's states that copies of this filing are being served on all jurisdictional customers, interested state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8462 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–142–002 and CP01–260–002]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

April 1, 2003.

Take notice that on March 27, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 500B, bearing a proposed effective date of May 1, 2003.

On December 20, 2002, the Commission issued an Order Issuing Certificate, Granting Abandonment Authority, and Vacating Certificate in the above-referenced proceedings (the Certificate Order). In this order, Columbia was directed to file the project executed service agreements and a revised tariff sheet adding its project service agreements to its list of non-conforming service agreements in its tariff. In this filing, Columbia is submitting the two long-term service agreements approved by the Certificate Order, subject to the revisions directed by the Certificate Order.

In addition, Columbia is submitting two short-term or interim service agreements for service to the same customers to precede the start date of the long-term service agreements, based on the customers' request for service at the earliest possible date. These two short-term or interim agreements are non-conforming and being submitted for the Commission's approval. Thus, Columbia is submitting Service Agreement Nos. 75239, 75240, 75241, and 75242 and Fourth Revised Sheet No. 500B listing all four project service agreements as non-conforming in compliance with the Certificate Order.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8453 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–078]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

April 1, 2003.

Take notice that on March 26, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction:

FTS–1 Service Agreement No. 75236 between Columbia Gulf Transmission Company and CoEnergy Trading Company dated March 19, 2003

Transportation service is to commence April 1, 2003 and end October 31, 2003 under the agreement.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8470 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–079]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

April 2, 2003.

Take notice that on March 28, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction.

FTS–1 Service Agreement No. 75324 between Columbia Gulf Transmission Company and Tenaska Marketing Ventures dated March 25, 2003

Columbia Gulf states that transportation service is to commence April 1, 2003 and end April 30, 2003 under the agreement.

Columbia Gulf further states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8477 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–080]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

April 2, 2003.

Take notice that on March 28, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction:

FTS–1 Service Agreement No. 75269 between Columbia Gulf Transmission Company and EnergyUSA–TPC dated March 25, 2003

Columbia Gulf states that transportation service is to commence April 1, 2003 and end October 31, 2003 under the agreement.

Columbia Gulf further states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8478 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–316–000]

East Tennessee Natural Gas Company; Notice of Annual Cashout Report

April 1, 2003.

Take notice that on March 28, 2003, East Tennessee Natural Gas Company (East Tennessee) tendered for filing its annual cashout report for the November 2001 through October 2002 period in accordance with Rate Schedules LMS–MA and LMS–PA.

East Tennessee states that the report reflects a cumulative net loss from cashout activity of $459,866 for the November 2001 through October 2002 reporting period. In accordance with its Rate Schedules LMS–MA and LMS–PA, East Tennessee will roll this loss forward into its next annual cashout report.

East Tennessee states that copies of the filing were mailed to all affected customers of East Tennessee and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8469 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–317–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 2, 2003.

Take notice that on March 28, 2003, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1-A, the tariff sheets listed in Appendix A to the filing, to become effective April 28, 2003.

EPNG states that these tariff sheets simplify the Form of Service Agreements and provide additional contracting flexibility.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8476 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–114–000]

PG&E National Energy Group, et al., Complainants, v. New England Power Pool, Respondent; Notice of Complaint

April 2, 2003.

Take notice that on March 28, 2003, PG&E National Energy Group, PG&E Generating, USGen New England, Inc., PG&E Energy Trading-Power, L.P. (PG&E NEG) and The United Illuminating Company (collectively referred to as Complainants) filed a Complaint Requesting Fast Track Processing against the New England Power Pool (NEPOOL) requesting that the Federal Energy Regulatory Commission (Commission) invalidate the March 7, 2003 action of the NEPOOL Participants Committee establishing Hydro Quebec Interconnection Capability Credits (HQICCs) for the 2004 Power Year. The complaint also requests the Commission to direct NEPOOL to set HQICCs for the 2004 Power Year at the level previously established for 2003 Power Year on an interim basis until HQICCs can be redetermined in accordance with prior Commission orders and approved by the Commission.

The Complainants state that copies of the complaint were served via facsimile and overnight mail to the Secretary of NEPOOL, as well as electronically for circulation to NEPOOL Participants, and by overnight delivery to the affected state regulatory agencies.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: April 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8472 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–006]

Gulfstream Natural Gas System, L.L.C.; Notice of Compliance Filing

April 2, 2003.

Take notice that on March 28, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing a settlement agreement, pursuant to which Gulfstream and Florida Power Corporation (FPC) have agreed to execute various transportation agreements and negotiated rate agreements.

Gulfstream states that the purpose of this filing is to comply with the order issued by the Commission on July 3, 2002, in Docket Nos. RP02–361–000, *et al.* (July 3 Order). Gulfstream states that the July 3 Order rejected various provisions contained in its original agreements with FPC and directed Gulfstream to file revised agreements with FPC that eliminated such rejected provisions or modified the provisions in accordance with the order. Gulfstream states that the instant filing complies with the directives of the July 3 Order.

Gulfstream states that copies of its filing have been mailed to all parties listed on the Official Service List compiled by the Secretary of the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8475 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–315–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 1, 2003.

Take notice that on March 28, 2003, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective May 1, 2003:

Third Revised Sheet No. 178
Third Revised Sheet No. 179
First Revised Sheet No. 179-A
Alternate Third Revised Sheet No. 178
Alternate Third Revised Sheet No. 179

Kern River states that the purpose of this filing is: (1) To expand the number of existing supply and market area pools reflected in Kern River's FERC Gas Tariff so that receipt points that are not currently included in a supply area pool can be added to an appropriate supply area pool and delivery points that are not currently included in a market area pool can be added to an appropriate market area pool; or (2) in the alternative, to add two receipt points to existing supply area pools and six delivery points to existing market area pools.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8468 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–255–001]

MIGC, Inc.; Notice of Compliance Filing

April 1, 2003.

Take notice that on March 27, 2003, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No.1, the following alternative tariff sheet, to become effective March 18, 2003:

Second Revised Title Sheet

On February 14, 2003, MIGC filed revised tariff sheets, revising its tariff to replace the physical address references with a reference to MIGC's Internet Web Site where its physical address, phone numbers and e-mail addresses are listed. This change was instigated by a change in MIGC's corporate office address. FERC issued a Letter Order on March 17, 2003 accepting the revised tariff sheets effective March 18, 2003 subject to certain conditions set forth in the Letter Order. The Letter Order directed MIGC to file within ten days of the date of the order a revised title page replacing MIGC's old physical address references with its new address references in accordance with this Commission regulation.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8465 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–503–002]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

April 1, 2003.

Take notice that on March 28, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Third Revised Sheet No. 343 and First Revised Sheet No. 343A, to be effective April 28, 2003.

Natural states that the purpose of this filing is to comply with the Commission's Order After Technical Conference and On Rehearing issued February 27, 2003.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP01–503.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8464 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–314–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 1, 2003.

Take notice that on March 28, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Fifth Revised Sheet No. 291, proposed to be effective on April 28, 2003.

Northern states that it is proposing a change to section 48.F (Daily Delivery Variance Charges-Critical Day) of the General Terms and Conditions of its tariff to clarify the notice period for calling a Critical Day on Northern's system.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8467 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–72–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

April 1, 2003.

Take notice that on March 27, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed in Docket No. CP03–72–000, an application, in abbreviated form, pursuant to Section 7(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an order permitting and approving abandonment of certain firm sales service provided to Piedmont Natural Gas Company (Piedmont) under Transco's Rate Schedule FS, as more fully set forth in the application which is on file with the Commission and open to public inspection.

In such application, Transco states that it entered into a firm sales agreement with United Cities Gas Company, South Carolina Division, on August 1, 1991, under which Transco sells gas to Piedmont, successor to United Cities Gas Company, under Rate Schedule FS, with Buyer's Daily Sales Entitlement amount listed on Exhibit "A" to the agreement (FS Agreement).

In accordance with Paragraph 1 of Article IV of the FS Agreement, Transco delivers gas to Piedmont at various upstream points of delivery. Transco acts as agent for Piedmont for the purpose of arranging for the transportation of gas purchased from the points of delivery to the points of redelivery identified in the FS Agreement.

In the instant application, Transco seeks authorization to abandon the FS Agreement to Piedmont, effective April 1, 2004, pursuant to Piedmont's election to terminate its FS Agreement.

Transco states that the Primary Term of the FS Agreement ended on March 31, 2001. By letter dated March 6, 2002, Piedmont provided Transco with a two-year notice to terminate the subject FS Agreement as of April 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8454 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–73–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

April 1, 2003.

Take notice that on March 27, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed in Docket No. CP03–73–000 an application, in abbreviated form, pursuant to section 7(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission, for an order permitting and approving abandonment of certain firm sales service provided to Piedmont Natural Gas Company (Piedmont) under Transco's Rate Schedule FS, as more fully set forth in the application which is on file with the Commission and open to public inspection.

In such application, Transco states that it entered into a firm sales agreement with United Cities Gas Company, South Carolina Division, on August 1, 1991, under which Transco sells gas to Piedmont, successor to United Cities Gas Company, under Rate Schedule FS, with Buyer's Daily Sales Entitlement amount listed on Exhibit "A" to the agreement (FS Agreement).

In accordance with Paragraph 1 of Article IV of the FS Agreement, Transco delivers gas to Piedmont at various upstream points of delivery. Transco acts as agent for Piedmont for the purpose of arranging for the transportation of gas purchased from the points of delivery to the points of redelivery identified in the FS Agreement.

In the instant application, Transco seeks authorization to abandon the FS Agreement to Piedmont, effective April 1, 2004, pursuant to Piedmont's election to terminate its FS Agreement.

Transco states that the Primary Term of the FS Agreement ended on March 31, 2001. By letter dated March 6, 2002, Piedmont provided Transco with a two-year notice to terminate the subject FS Agreement as of April 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8455 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–236–011, RP00–553–014, and RP00–481–011]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

April 2, 2003.

Take notice that on March 28, 2003, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Sheet No. 60A, Substitute Tenth Revised Sheet No. 60B and Substitute Ninth Revised Sheet No. 60C, which tariff sheets are proposed to be effective April 1, 2003.

Transco states that these tariff sheets are being submitted in compliance with the Commission's Order on Compliance issued March 19, 2003. The March 19, 2003 order accepted Transco's 1Line" related filings submitted on January 31, 2003 and February 28, 2003, subject to Transco revising certain tariff sheets to clarify that the GRI surcharge will only be assessed once for a transportation service.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8474 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–313–000]

Vector Pipeline L.P.; Notice of Annual Fuel Use Report

April 1, 2003.

Take notice that on March 28, 2003, Vector Pipeline L.P. tendered for filing an annual report of its monthly fuel use ratios for the period January 1, 2002 through December 31, 2002. Vector states that this filing is made pursuant to Section 11.4 of the General Terms and Conditions of the Vector Gas Tariff and Section 154.502 of the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8466 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–463–005 and RP00–600–003]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

April 1, 2003.

Take notice that on March 27, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Fifth Revised Sheet No. 256, with an effective date of July 1, 2002.

Williston Basin states that Fifth Revised Sheet No. 256 filed on June 28, 2002, in Docket No. RP00–463–000, *et al.* was incorrect as it did not reflect approved tariff language. Williston Basin states that the language included in this substitute sheet correctly reflects the previously approved tariff language along with the language proposed in its June 28, 2002 filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8461 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–73–000, et al.]

American Transmission Company, Inc., et al.; Electric Rate and Corporate Filings

April 1, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Transmission Company LLC

[Docket No. EC03–73–000]

Take notice that on March 27, 2003, American Transmission Company LLC (ATCLLC) tendered for filing an Application for Authority to Acquire Transmission Facilities Under Section 203 of the Federal Power Act. ATCLLC requests that the Commission authorize ATCLLC to acquire ownership of certain transmission facilities from the Community Development Authority of the City of Juneau, Wisconsin and Badger Power Marketing Authority, Inc. ATCLLC requests Commission authorization by April 28, 2003.

ATCLLC states that a copy of the Application has been served on the Public Service Commission of Wisconsin, the Michigan Public Service Commission and the Illinois Commerce Commission.

Comment Date: April 17, 2003.

2. Pacific Gas and Electric Company

[Docket No. ER00–565–003]

Take notice that on March 28, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing its supplemental filing in the Scheduling Coordinator Services Tariff (SCS Tariff) proceeding. PG&E initially filed the SCS Tariff on November 12, 1999. On January 11, 2000, the Commission accepted the SCS Tariff for filing, suspended it for a nominal period and set it for hearing. However, the Commission held hearings in abeyance pending the outcome of Docket No. ER97–2358–002. PG&E states that the parties have now requested that the SCS Tariff proceeding be reactivated. PG&E makes this supplemental filing to update the original filing. In the SCS Tariff, PG&E requests a retroactive effective date as of the commencement of the California Independent System Operator Corporation (ISO) operations (March 31, 1998). PG&E states that SCS Tariff seeks to recover the cost PG&E incurs from the ISO as Scheduling Coordinator for certain existing transmission service customers.

PG&E states that copies of this filing have been served upon the California Public Utilities Commission, all parties designated on the Official Service List for Docket ER00–565–000 and the ISO.

Comment Date: April 18, 2003.

3. Safe Harbor Water Power Corporation

[Docket No. ER03–423–001]

Take notice that on March 27, 2003, Safe Harbor Water Power Corporation submitted an additional explanation and support for the ratio of Accessory Electric Equipment costs to be included in its annual revenue requirement for Reactive Support and Voltage Control from Generation Sources Service in compliance with the Commission's Order dated March 12, 2003, in Docket No. ER03–423–000.

Comment Date: April 17, 2003.

4. TXU Portfolio Management Company LP

[Docket No. ER03–506–001]

Take notice that on March 28, 2003, TXU Portfolio Management Company LP (TXU Portfolio Management), tendered for filing a correction of its third revised market-based rate tariff (Tariff) that was filed on February 7, 2003. The TXU states that the correction reflects a slight change to paragraph seven (7) "Affiliate Sales Prohibited" of its Tariff to comply with the Commission Staff's request for a language change.

TXU Portfolio Management also tendered for filing, pursuant to Commission Staff's request, a Notice of Cancellation for TXU Energy Trading Company's second revised Tariff documenting that TXU Energy Trading Company is now operating as TXU Portfolio Management Company LP. TXU Portfolio Management requests that its third revised Tariff become effective as of January 10, 2003.

Comment Date: April 11, 2003.

5. American Electric Power Service Corporation

[Docket No.R03–662–000]

Take notice that on March 28, 2003, the American Electric Power Service Corporation (AEPSC), tendered for filing a New Network Integration Transmission Service Agreement (NITSA) for the City of Dowagiac, Michigan (Dowagiac), and Third Revised NITSA for American Municipal Power—Ohio, Inc. AEP also requests termination of NITSA No.147, an agreement with Commonwealth Edison Company for deliveries to Dowagiac that ended its initial term as of midnight February 28, 2003. AEPSC states that these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6.

AEPSC requests that these service agreements be made effective on and after March 1, 2003. AEPSC states that a copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: April 18, 2003.

6. Carolina Power & Light Company

[Docket No. ER03–663–000]

Take notice that on March 28, 2003, Carolina Power & Light Company (CP&L) tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement with The Town of Winterville, NC. CP&L states that service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on their behalf.

CP&L is requesting an effective date of March 1, 2003 for this Service Agreement. CP&L also states that a copy of the filing was served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: April 18, 2003.

7. Westar Energy, Inc.

[Docket ER03–664–000]

Take notice that on March 28, 2003, Kansas Gas & Electric Company, Inc. and Westar Energy, Inc. (collectively Westar) submitted for filing a Notice of Cancellation of an Electric Power Supply Agreement between Westar Energy and the City of Erie, Kansas designated as Rate Schedule No. 164 and the City of Wathena, Kansas designated as Rate Schedule No. 217.

Westar states that copies of this filing were served on the City of Erie, Kansas; City of Wathena, Kansas and the Kansas Corporation Commission.

Comment Date: April 18, 2003.

8. Public Service Company of New Mexico

[Docket No. ER03–665–000]

Take notice that on March 28, 2003, the Public Service Company of New Mexico (PNM) submitted for filing an executed Network Integration Transmission Service Agreement (NITSA) and an associated Network Operating Agreement (NOA) (together the Agreements) with the United States Department of Energy—Western Area Power Administration (Western), dated February 27, 2003, under the terms of PNM's Open Access Transmission Tariff (OATT). PNM states the purpose of the NITSA and NOA is to facilitate delivery of electric service by Western to meet its network load requirements on Kirtland Air Force Base in Albuquerque, New Mexico. PNM states the Agreements are the result of the Settlement Agreement reached among the Parties to FERC Docket Nos. TX00–1–001 and ER00–896–001 (and approved by FERC letter order dated April 12, 2002) and the "Final Order Directing Transmission Services" issued April 29, 2002 by the Commission in those same two dockets. Service under the NITSA and NOA commenced on March 1, 2003, and PNM is requesting that same date as the effective date for the Agreements. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

PNM states that a copy of this filing has been served upon the Official Service List for Docket Nos. TX00–1–001 and ER00–896–001, the New Mexico Public Regulation Commission and the New Mexico Attorney General.

Comment Date: April 18, 2003.

9. Pacific Gas and Electric Company

[Docket No. ER03–666–000]

Take notice that on March 28, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing changes to rate schedules for electric transmission service to the following customers: Bay Area Rapid Transit District, California Department of Water Resources, Minnesota Methane LLC, Modesto Irrigation District, Sacramento Municipal Utility District, the City and County of San Francisco, California, the Transmission Agency of Northern California, Turlock Irrigation District and the Western Area Power Administration for services to Sonoma County Water Agency. PG&E states the changes include a change in the existing wholesale transmission rate methodologies and a rate change to reflect the current cost of providing transmission service to the foregoing customers.

PG&E states that copies of this filing have been served upon the California Public Utilities Commission and the affected customers.

Comment Date: April 18, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8471 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

April 1, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor original license.

b. *Project No.:* 12423–000.

c. *Date filed:* November 25, 2002.

d. *Applicant:* American Falls Reservoir District No. 2 and Big Wood Canal Company.

e. *Name of Project:* Lateral 993 Hydroelectric Project.

f. *Location:* Juncture of the 993 Lateral and North Gooding Main Canal, Boise Meridian, 20 miles northwest of the Town of Shoshone, Lincoln County, Idaho. The initial diversion is the Milner Dam on the Snake River. The North Gooding Main Canal is part of a U.S. Bureau of Reclamation (Bureau) project. The project would occupy about 10–15 acres of Federal land managed by the Bureau.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Lynn Harmon, General Manager, American Falls Reservoir District No. 2 and Big Wood Canal Company, Box C, Shoshone, Idaho, 83352; (208) 886–2331.

i. *FERC Contact:* Allison Arnold, (202) 502–6346 or *allison.arnold@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice. Reply comments must be filed with the Commission within 105 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The 993 Hydroelectric Power Project would consist of: (1) A new concrete diversion structure located across the North Gooding Main Canal with a maximum height of 10 feet; (2) a new 7,000-foot-long canal with a bottom width of 25 feet that is to be excavated from rock, with some earth embankment, having a hydraulic capacity of 350 cfs; (3) a 10-foot-high gated concrete diversion structure that would divert up to 350 cfs to a concrete intake structure; (4) a 2,900-foot-long steel pipe (or HDPE) penstock (72 inch diameter); (5) a 30 by 50-foot concrete with masonry or metal walled powerhouse containing two 750-kilowatt (kW) turbines with a total installed capacity of 1,500 kW; (6) an enlarged 100-foot-long tailrace channel with a bottom width of 40 feet that would discharge into the North Gooding Main Canal; (7) a 2.4-mile-long transmission line, and (8) appurtenant facilities. The annual generation would be approximately 5.8 gigawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8457 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197]

Notice of Intent To File an Application for a New License

April 1, 2003.

a. *Type of Filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 2197.

c. *Date Filed:* March 27, 2003.

d. *Submitted By:* Alcoa Power Generating Inc., Yadkin Division—current licensee.

e. *Name of Project:* Yadkin Falls Hydroelectric Project.

f. *Location:* On the Yadkin River in Montgomery, Stanly, Davidson, Rowan, and Davie Counties, North Carolina. The project does not occupy federal lands.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* Pat Shaver, Yadkin Public Reference Room, Penta Buildling, 48 Falls Road, Badin, NC 28009, pat.shaver@alcoa.com, (704) 422–5678.

i. *FERC Contact:* Ron McKitrick, ronald.mckitrick@ferc.gov, (770) 452–3778.

j. *Effective date of current license:* May 1, 1958.

k. *Expiration date of current license:* April 30, 2008.

l. *Description of the Project:* The project consists of the following four developments:

The High Rock Development consists of the following existing facilities: (1) A 936-foot-long dam; (2) a 15,180-acre reservoir; (3) a powerhouse integral to the dam containing three generating units with a total installed capacity of 39.6 MW; and (4) other appurtenances.

The Tuckertown Development consists of the following existing facilities: (1) A 1,370-foot-long dam; (2) a 2,560-acre reservoir; (3) a powerhouse integral to the dam containing three generating units with a total installed capacity of 38.0 MW; and (4) other appurtenances.

The Narrows Development consists of the following existing facilities: (1) A 1,144-foot-long dam with a bypass spillway and channel; (2) a 5,355-acre reservoir; (3) a powerhouse containing four generating units with a total installed capacity of 108.8 MW; and (4) other appurtenances.

The Falls Development consists of the following existing facilities: (1) A 750-foot-long dam; (2) a 204-acre reservoir; (3) a powerhouse integral to the dam containing three generating units with a total installed capacity of 29.9 MW; and (4) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 2006.

n. A copy of this filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or TTY (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8458 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2579–049]

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

April 1, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2579–049.

c. *Date Filed:* February 3, 2003.

d. *Applicant:* Indiana Michigan Power Company.

e. *Name of Project:* Twin Branch Hydroelectric Project.

f. *Location:* The project is located on the St. Joseph River, in St. Joseph County, Indiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. David M. Shirley, Hydro Operations, American Electric Power, 1 Riverside Plaza, Columbus, OH 43215–2373, (614) 223–1000.

i. *FERC Contact:* Shana High, (202) 502–8674.

j. *Deadline for filing comments and or motions:* April 21, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R, Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2579–049) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:* Indiana Michigan Power Company requests Commission approval to grant permission to Wyland's Marine to install thirteen removable aluminum docks along the shoreline of the St. Joseph River to create 26 seasonal boat slips within the project boundary. Wyland's Marine is a privately owned marina on the north shore of the St. Joseph River less than one mile upstream of the Twin Branch Dam and approximately one-half mile downstream of the Bittersweet Bridge river crossing.

l. *Location of the Applications:* The filings are available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the

Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8459 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 287–009]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 2, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* P–287–009.

c. *Date filed:* April 8, 2002.

d. *Applicant:* Midwest Hydro Inc.

e. *Name of Project:* Dayton Hydroelectric Project.

f. *Location:* On the Fox River, near the City of Dayton, in La Salle County, Illinois. The project does not affect any Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Charles Alsberg, Executive Vice President, North American Hydro, P.O. Box 167, Neshkoro, WI 54960, (920) 293–4628 ext. 11.

i. *FERC Contact:* Tom Dean, (202) 502–6041, *thomas.dean@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Dayton Hydroelectric Project consists of: (1) 594-foot-long arch-buttress uncontrolled fixed crest overflow concrete dam; (2) a 200-foot-long earthen embankment on the east side; (3) a 200 acre impoundment with a normal pool elevation of 498.90 msl; (4) a concrete head gate structure with four 15.5-foot-wide and 9.5 foot-high wooden gates located at the west abutment; (5) a 900-foot-long, 135-foot-wide, 10-foot-deep power canal; (6) a powerhouse containing three turbines with a total installed capacity of 3,680 kW; (7) a 150-foot-long, 2.4 kV transmission line; and (8) appurtenant facilities. The average annual generation is 14,200 megawatt hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Procedural schedule: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. The EA will have at least a 30 day period for entities to file comments, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to this proposal, they should file comments during the comment period stipulated in item j above, briefly explaining the basis for their objection.

Issue Scoping Document: April 2003

Notice that application is ready for environmental analysis: June 2003

Notice of the availability of the EA: October 2003

Ready for Commission decision on the application: December 2003

o. Anyone may submit a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8473 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7477–8]

Announcement of a Public Stakeholder Meeting on Drinking Water Distribution Systems

AGENCY: Environmental Protection Agency.

ACTION: Notice of a public stakeholder meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has scheduled a public meeting to discuss the finished water quality in distribution systems. The purpose of this meeting is to provide information to stakeholders and the public.

DATES: The stakeholder meeting will be held from 9 a.m. to 4:30 p.m. eastern time on Friday, May 16, 2003.

ADDRESSES: The meeting will be held at the Hyatt Regency Washington Hotel—On Capitol Hill, at 400 New Jersey Avenue, NW., Washington DC, phone (202) 737–1234.

FOR FURTHER INFORMATION CONTACT: For technical inquiries contact: Mr. Kenneth Rotert, (202) 564–5280, e-mail: *rotert.kenneth@epa.gov.* For registration and general information about this meeting, please contact Ms. Druann O'Connor at Economic and Engineering Services, Inc., 10900 NE 4th Street, Suite 1110, Bellevue, WA 98004; by phone: (425) 452–8100; by fax: (425) 454–4189, or e-mail at *doconnor@ees-1.com.*

SUPPLEMENTARY INFORMATION: The meeting will provide stakeholders with a summary of available data, information, and research on the potential public health impacts of drinking water distribution systems.

Those registered by May 2, 2003, will receive background materials prior to the meeting. Additional information on these and other EPA activities under SDWA is available at the Safe Drinking Water Hotline at (800) 426–4791.

Meeting materials are available at *http://www.epa.gov/safewater/tcr/tcr.html.*

Any person needing special accommodations at this meeting, including wheelchair access, should contact the same previously-noted point of contact at Economic and Engineering Services, Inc., at least five business days before the meeting so that the appropriate arrangements can be made.

Same day registration for this meeting will be from 8:30 a.m. to 9 a.m. eastern time.

Dated: April 2, 2003.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 03–8537 Filed 4–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0137; FRL–7303–5]

Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs will hold a public meeting of the Pesticide Program Dialogue Committee (PPDC) on April 16 and 17, 2003. An agenda has been developed and is posted on EPA's website. The following topics are planned for discussion: Improving mosquito control labeling; pesticide registration review; inert ingredients risk assessment framework implementation; and follow-up regarding alternative non-animal or reduced animal testing. Additional topics planned for presentation or as updates include the following: Endangered species, Section 18 reforms, human testing, methyl bromide, etc.

DATES: The meeting will be held on Wednesday, April 16, 2003, from 9 a.m. to 5:15 p.m., and Thursday, April 17, 2003, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA; telephone number: (703) 486–1111. The Sheraton Crystal City is one block from the Crystal City Metro Station.

FOR FURTHER INFORMATION: Margie Fehrenbach, Office of Pesticide Programs (7501C), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–4775; fax number: (703) 308–4776; e-mail address: fehrenbach.margie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general; however, persons may be interested who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) (Public Law 104–170) of 1996. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. Potentially affected entities may include but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer and farmworker groups; pesticide users and growers; pest consultants; State, local and tribal governments; academia; public health organizations; food processors; and the public. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0137. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr.* An agenda has been developed and is posted at *http://www.epa.gov/pesticides/ppdc.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in

the system, select "search," then key in the appropriate docket ID number.

II. Background

The PPDC is composed of 42 members appointed by EPA's Deputy Administrator. Committee members were selected from a balanced group of participants from the following sectors: Pesticide user, grower and commodity groups; industry and trade associations; environmental/public interest and farmworker groups; Federal, State and tribal governments; public health organizations; animal welfare; and academia. PPDC was established to provide a public forum to discuss a wide variety of pesticide regulatory development and reform initiatives, evolving public policy, program implementation issues, and science policy issues associated with evaluating and reducing risks from use of pesticides.

III. How Can I Request to Participate in this Meeting?

This meeting will be open to the public. Opportunity will be provided for questions and comments by the public. Any person who wishes to file a written statement may do so before or after the meeting. These statements will become part of the permanent record and will be available for public inspection at the address listed under Unit I.B.1

List of Subjects

Environmental protection, Agriculture, Agricultural workers, Chemicals, Foods, Pesticides, Pests, Inert Ingredients, Risk assessment.

Dated: April 3, 2003.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 03–8640 Filed 4–4–03; 12:43 pm]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 10, 2003, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—March 28, 2003 (Open and Closed).

B. Reports

—Rural Poverty.
—FCS Building Association Quarterly Report.
—OIG Advisory Report on the FCA Continuity of Operations Plan.
—Office of the Comptroller of the Currency Ombudsman Functions.
—Loan Growth Study.
—Farm Credit System Structure Study.
—Risk Analysis Report—First Quarter Fiscal Year 2003.

C. New Business

1. Regulations

—Credit and Related Services—Draft Proposed Rule.

2. Other

—Draft Amended and Restated Market Access Agreement—Final Approval.

Closed Session [1]

Reports

—Examination Issues.

Dated: April 4, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–8689 Filed 4–4–03; 2:52 pm]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 22, 2003.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. M. Brian Yarrington, Thermopolis, Wyoming; to acquire voting shares of State Holding Company, Thermopolis, Wyoming, and thereby indirectly acquire voting shares of First State Bank of Thermopolis, Thermopolis, Wyoming.

Board of Governors of the Federal Reserve System, April 2, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–8449 Filed 4–7–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 2, 2003.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Fulton Financial Corporation, Lancaster, Pennsylvania; to merge with Premier Bancorp, Inc., Doylestown, Pennsylvania, and thereby indirectly acquire Premier Bank, Doylestown, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. North Georgia Bancorp, Watkinsville, Georgia; to become a bank holding company by acquiring North Georgia Bank, Watkinsville, Georgia.

C. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Hume Bancshares Acquisition Corp., St. Louis, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Hume Bancshares, Inc., Hume, Missouri, and thereby indirectly acquire Hume Bank, Hume, Missouri.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Ram Security Holdings, Ltd., Waco, Texas; to become a bank holding company by acquiring 71.20 percent of the voting shares of Security Bancshares, Inc., Waco, Texas, and thereby indirectly acquire voting shares of Citizens State Bank, Woodville, Texas.

In connection with this application, Ram Security Holdings, GP, Inc., Waco, Texas; also has applied to become a bank holding company by acquiring .5 percent of the voting shares of Ram Security Holdings, Ltd., Waco, Texas, and thereby indirectly acquire voting shares of Security Bancshares, Inc., Waco, Texas, and Citizens State Bank, Woodville, Texas.

Board of Governors of the Federal Reserve System, April 2, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–8448 Filed 4–7–03; 8:45 am]

BILLING CODE 6210–01–S

[1] Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8).

FEDERAL RESERVE SYSTEM

Sunshine Act Meetings

AGENCY: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, April 14, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; (202) 452–2955.

SUPPLEMENTARY INFORMATION: You may call (202) 452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–8674 Filed 4–4–03; 1:43 pm]

BILLING CODE 6210–01–P

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Sunshine Act Meeting; Annual Meeting of the Trustees and Officers of the Harry S. Truman Scholarship Foundation

4 to 5:30 p.m., April 9, 2003, U.S. Capitol, Room HC–8.

1. Call to Order
2. Welcome and Introductions
3. Approval of the Minutes of the 2002 Annual Meeting
4. Comments from President Albright: Priorities, Work Plan and Schedule for 2003
5. Report from Executive Secretary: 2003 Selection Process; Financial Report
6. Report on Truman Scholars Forum, March 22
7. Old Business
8. New Business
9. Adjournment

Louis H. Blair,

Executive Secretary.

[FR Doc. 03–8666 Filed 4–4–03; 1:13 pm]

BILLING CODE 6820–AD–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–37–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: National Disease Surveillance Program—II. Disease Summaries (0920–0004)—Revision—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Background

Surveillance of the incidence and distribution of disease has been an important function of the U.S. Public Health Service (PHS) since 1878. Through the years, PHS/CDC has formulated practical methods of disease control through field investigations. The CDC Surveillance Program is based on the premise that diseases cannot be diagnosed, prevented, or controlled until existing knowledge is expanded and new ideas developed and implemented. Over the years, the mandate of CDC has broadened to include preventive health activities and the surveillance systems maintained have expanded.

CDC and the Council of State and Territorial Epidemiologists (CSTE) collect data on disease and preventable conditions in accordance with jointly approved plans. Changes in the surveillance program and in reporting methods are effected in the same manner. At the onset of this surveillance program in 1968, the CSTE and CDC decided on which diseases warranted surveillance. These diseases are

reviewed and revised based on variations in the public's health. Surveillance forms are distributed to the State and local health departments who voluntarily submit these reports to CDC at variable frequencies, either weekly or monthly. CDC then calculates and publishes weekly statistics via the Morbidity and Mortality Weekly Report (MMWR), providing the states with timely aggregates of their submissions.

The following diseases/conditions are included in this program: influenza, respiratory and enterovirus, arboviral encephalitis, rabies, Salmonella, Campylobacter, Shigella, foodborne outbreaks, waterborne outbreaks, and enteric virus. These data are essential on the local, state, and Federal levels for measuring trends in diseases, evaluating the effectiveness of current prevention strategies, and determining the need for modifying current prevention measures.

This request is for extension of the data collection for three years. Because of the distinct nature of each of the diseases, the number of cases reported annually is different for each. The total estimated annualized burden is 12,335 hours.

Form	No. of respondents	No. of responses/ respondent	Average burden/response (in hours)
Diarrheal Disease Surveillance:			
Campylobactor (electronic)	53	52	3/60
Salmonella (electronic)	53	52	3/60
Shigella (electronic)	53	52	3/60
Foodborne Outbreak Form (electronic)	52	25	15/60
* * * Arboviral Surveillance (ArboNet)	54	717	5/60
Influenza:			
Influenza virus (fax, Oct–May)	44	33	10/60
Influenza virus (fax, year round)	12	52	10/60
Influenza virus (electronic, Oct–May)	14	33	5/60
Influenza virus (electronic, year round)	10	52	5/60
Influenza Annual Survey	80	1	15/60
Influenza-like Illness (Oct–May)	620	33	15/60
Influenza-like Illness (year round)	130	52	15/60
Monthly Respiratory & Enterovirus Surveillance Report:			
Excel format (electronic)	25	12	15/60
Access format (electronic)	2	12	15/60
National Respiratory & Enteric Virus Surveillance System (NREVSS)	89	52	10/60
Rabies (electronic)	40	12	8/60
Rabies (paper)	15	12	20/60
Waterborne Disease Outbreak Form	60	2	20/60
* * * Cholera and other Vibrio Illness	300	1	20/60
* * * CaliciNet	30	10	10/60

Dated: March 31, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–8485 Filed 4–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–36–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: National Program of Cancer Registries—Cancer Surveillance System 0920–0469—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The American Cancer Society estimates that about 1.2 million Americans will be newly diagnosed with cancer and that about 8.2 million Americans are currently alive with a history of cancer. The National Institutes of Health estimates the cost of cancer is about $172 billion including ($61 billion) direct costs to treat cancer and ($111 billion) indirect costs in lost productivity due to illness and premature death.

In 2000, CDC implemented the National Program of Cancer Registries (NPCR)—Cancer Surveillance System (CSS) to collect, evaluate and disseminate cancer incidence data collected by population-based cancer registries. In 2002, CDC published United States Cancer Statistics—1999 Incidence which provided cancer statistics for 78% of the United States population from all cancer registries whose data met national data standards. Prior to this, at the national level, cancer incidence data were available for only 14% of the population of the United States.

With this expanded coverage of the U.S. population, it will now be possible to better describe geographic variation in cancer incidence throughout the country and provide incidence data on minority populations and rare cancers to further plan and evaluate state and national cancer control and prevention efforts.

Therefore, the CDC's NCCDPHP, Division of Cancer Prevention and Control, proposes to continue to aggregate existing cancer incidence data from states funded by the National Program of Cancer Registries into a national surveillance system.

These data are already collected and aggregated at the state level. Thus the additional burden on the states is small. Funded states are asked to continue to report data to CDC on an annual basis twelve months after the close of a diagnosis year and again at twenty-four months to obtain more complete incidence data and vital status from mortality data. The estimated annualized burden for this data collection is 126 hours.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)
State, Territorial, and District of Columbia Cancer Registries	63	1	2

Dated: March 31, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–8486 Filed 4–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Notice No. ACF/ACYF/RHYP 2003–01]

Notice of Availability of Financial Assistance and Request for Applications for Runaway and Homeless Youth Program Grants

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Notice.

SUMMARY: This notice announces the availability of financial assistance and request for applications for the FY 2003 Basic Center Program for Runaway and Homeless Youth (BCP), FY 2003 Street Outreach Program (SOP), FY 2003 Positive Youth Development State and Local Collaboration Demonstration Projects (SLCDP) and FY 2004 Transitional Living Program (TLP).

The full official Program Announcement must be used to apply for grant funding under the competitive grant areas and is available by calling or writing the ACYF Operations Center at the address below: Educational Services, Inc., Attention: ACYF Operations Center, 1150 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036. Telephone: 1–800–351–2293, Email: *FYSB@esilsg.org;* or by downloading the announcement from the FYSB Web site at *http://www.acf.hhs.gov/programs/fysb.*

DATES: The deadline date for mailed or hand delivered applications for all four grants under this announcement is: June 9, 2003.

The Catalog of Federal Domestic Assistance: Number 93.623, Basic Center Program and State and Local Collaboration Demonstration Project; Number 93.550, Transitional Living Program; and Number 93.557, Street Outreach Program.

Application Mailing and Delivery Instructions: Applications must be in hard copy, one signed original and two copies must be submitted. Mailed applications will be considered as meeting the announced deadline if they are postmarked on or before the published deadline date. Applications handcarried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers or any other method of hand delivery shall be considered as meeting an announced deadline date if they are received on or before the published deadline date, between the hours of 8 a.m. and 4:30 p.m., e.d.t., Monday through Friday (excluding Federal holidays), at the following address: Educational Services, Inc., Attention: ACYF Operations Center, 1150 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036, telephone: 1–800–351–2293, Email: *FYSB@esilsg.org.*

This address must appear on the envelope/package containing the applications.

Applicants are responsible for mailing and delivering applications well in advance of deadlines to ensure that the applications are received on time. Applicants are cautioned that express/overnight mail service does not always deliver as agreed.

The Administration for Children and Families will not accept applications delivered by fax or e-mail regardless of date or time of submission and receipt.

Late Applications. Applications which do not meet the criteria stated above or are not received or postmarked by the deadline date are considered late applications. The Administration for Children and Families will notify each late applicant that its application will not be considered in the current competition.

Extension of Deadline. The Administration for Children and Families may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur; or when there are widespread disruptions of the mail service, or in other rare cases. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

FOR FURTHER INFORMATION CONTACT: ACYF Operations Center at the address and telephone number above, or for program information contact: Dorothy Pittard, Youth Services Program Specialist, Administration for Children and Families, Family and Youth Services Bureau, 330 C Street, SW., Washington, DC 20447. (202)205–8102.

Background on Runaway and Homeless Youth and Positive Youth Development

The Family and Youth Services Bureau (FYSB), within the Administration for Children and Families (ACF), administers programs that provide services to an adolescent population of runaway, homeless, and street youth. This population is estimated at 1.5 million youth. Many of these youth have left home to escape abusive situations or because they were not provided with their basic needs for food, shelter, and a safe, supportive environment. Many live on the streets or away from home without parental supervision and are highly vulnerable. They may be exploited by dealers of illegal drugs, or become victims of street violence or members of gangs which provide protection and a sense of extended family. They may be drawn into shoplifting, survival sex or dealing drugs in order to earn money for food, shelter, clothing and other daily expenses. They often drop out of school, forfeiting their opportunities to learn and to become independent, self-sufficient, contributing members of society.

On the street, these youth may try to survive with little or no contact with medical professionals, the result being that health problems may go untreated and worsen. Without the support of family, schools and other community institutions, they may not acquire the personal values and work skills that will enable them to enter or advance in the world of work. Furthermore, while on the streets, unsheltered youth may create challenges for law enforcement and put themselves in danger. This situation calls for a community-based positive youth development approach to

address the needs of runaway, homeless and street youth.

The Family and Youth Services Bureau has worked to promote a positive youth development framework for all FYSB activities. This approach, which is asset-based rather than problem-focused, is intended for policy and program developers, program managers, youth services professionals, and others who care about young people. It intends to enhance capacity to develop service models and approaches that direct youth toward positive pathways of development. The positive youth development approach is predicated on the understanding that all young people need support, guidance, and opportunities during adolescence, a time of rapid growth and change. With this support, they can develop self-assurance and create a healthy, successful life.

Key elements of positive youth development are:

- Healthy messages to adolescents about their bodies, their behaviors and their interactions;
- Safe and structured places for teens to study, recreate, and socialize;
- Strengthened relationships with adult role models, such as parents, mentors, coaches or community leaders;
- Skill development in literacy, competence, work readiness and social skills; and
- Opportunities to serve others and build self-esteem.

If these factors are being addressed, young people can become not just "problem free" but "fully-prepared" and engaged constructively in their communities and society.

Positive developmental opportunities should be available to all young people during adolescence. Adolescents need opportunities to fulfill their developmental needs—intellectually, psychologically, socially, morally and ethically. Youth benefit from experiential learning and they need to belong to a group while maintaining their individuality. At the same time they want and need support and interest from caring adults. They also need opportunities to express opinions, challenge adult assumptions, develop the ability to make appropriate choices, and learn to use new skills, including leadership.

These key elements result in the following outcomes:

- Increased opportunities and avenues for the positive use of time;
- Increased opportunities for positive self-expression;
- Increased opportunities for youth participation and civic engagement.

It is FYSB's hope and expectation that awareness of this positive youth development approach and its importance for serving youth will increase. The FYSB publications, Understanding Youth Development: Promoting Positive Pathways of Growth, The National Youth Summit: Summit Themes and A Strategy for Action and Reconnecting Youth and Community: A Youth Development Approach, are widely distributed as source documents for positive youth development concepts and applications. Both are currently available from the National Clearinghouse on Families and Youth (NCFY) at *http://www.ncfy.com* (301–608–8098). Additionally, a recent Statement of Principles for Positive Youth Development, endorsed by a broad range of agencies, institutions and organizations, may be found in the brochure: Toward A Blueprint For Youth: Making Positive Youth Development A National Priority. Multiple copies of this resource are available from NCFY or it can be found online at *http://www.acf.hhs.gov/programs/fysb*.

Applicants must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families and to submit the required Annual Report to the Secretary of DHHS on program activities and accomplishments with statistical summaries and other required program and financial reports, as instructed by FYSB.

Legislative Authority: Grants for Runaway and Homeless Youth programs are authorized by the Runaway and Homeless Youth Act (title III of the Juvenile Justice and Delinquency Prevention Act of 1974), as amended by the Missing, Exploited, and Runaway Children Protection Act of 1999, (Pub. L. 106–71). Text of this statute may be found at *http://www.acf.hhs.gov/programs/fysb*.

Project and Budget Periods. This announcement is inviting applications for project periods up to three to five years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three to five years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three- to five-year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the government.

SUPPLEMENTARY INFORMATION: Grant awards for FY 2003 funds will be made by September 30, 2003, for the Basic Center Program, Street Outreach Program and Positive Youth Development State and Local Collaboration Demonstration Projects. Transitional Living Program grant awards for FY 2004 will be made after September 30, 2003.

The estimated funds available for new starts and the approximate number of new grants that may be awarded under this program announcement are as follows:

Competitive grant area	New start grants funds available	Estimated Number of new grants
A. BCP	Up to $12,300,000	Up to 100.
B. TLP	Up to $7,900,000	Up to 42.
C. SOP	Up to $4,600,000	uup to 46.
D. SLCDP	Up to $1,500,000	Up to 13.

In addition to the new start grants, the Administration for Children and Families has provided for noncompetitive continuation funds to current grantees in the following programs:

Grant area	Noncompetitive continuation funds	Number of grants
A. BCP	Up to $31,400,000	Up to 265.
B. TLP	Up to $27,800,000	Up to 149.
C. SOP	Up to $8,900,000	Up to 91.

Grant area	Noncompetitive continuation funds	Number of grants
D. SLCDP	$ -0-	0

Part I. Commpetitive Grant Areas and Summaries of Evaluation Criteria

A. Basic Center Program (Competitive Grant Area A, CFDA# 93.623)

Program Purpose, Goals and Objectives: The purpose of part A of the RHY Act is to establish or strengthen locally-controlled, community-based programs that address the immediate needs of runaway and homeless youth and their families. Services must be delivered outside of the law enforcement, child welfare, mental health and juvenile justice systems. The program goals and objectives of the Basic Center Program of part A of the RHY Act are to:

- Alleviate problems of runaway and homeless youth;
- Reunite youth with their families and encourage the resolution of intra-family problems through counseling and other services;
- Strengthen family relationships and encourage stable living conditions for youth; and
- Help youth decide upon constructive courses of action.

Background: The Runaway and Homeless Youth Act of 1974 was a response to widespread concern regarding the alarming number of youth who were leaving home without parental permission, crossing State lines and who, while away from home, were exposed to exploitation and other dangers of street life.

Each Basic Center program is required to provide outreach to runaway and homeless youth; temporary shelter for up to fifteen (15) days; food; clothing; individual, group and family counseling; aftercare and referrals, as appropriate. Basic Center programs are required to provide their services in residential settings for at least four (4) youth and no more than twenty (20) youth. Some programs also provide some or all of their shelter services through host homes (usually private homes under contract to the centers), with counseling and referrals being provided from a central location. Basic Center programs shelter youth at risk of separation from the family who are less than 18 years of age, and who have a history of running away from the family. Basic Centers must provide age appropriate services or referrals for homeless youth ages 18–21.

The primary presenting problems of youth who receive shelter and non-shelter services through FYSB-funded Basic Centers include: (1) Family conflicts; (2) physical, sexual and emotional abuse; (3) divorce, death, or sudden loss of income; and (4) personal problems such as drug use, problems with peers, school attendance and truancy, bad grades, inability to get along with teachers and learning disabilities.

Eligible Applicants

- Public agencies—any State, unit of local government, Indian tribes and tribal organizations, and/or combinations of such units;
- Private nonprofit agencies; and
- Community-based and faith-based organizations.

Current Basic Center grantees with project periods ending on or before September 29, 2003, and all other eligible applicants not currently receiving Basic Center funds may apply for a new competitive Basic Center grant under this announcement.

Current Basic Center Program grantees (including subgrantees) with one or two years remaining on their current grant and the expectation of continuation funding in FY 2003 may not apply for a new Basic Center grant for the community they currently serve. These grantees will receive instructions from their respective ACF Runaway and Homeless Youth (RHY) Regional Office contacts on the procedures for applying for noncompetitive continuation grants. Current grantees that have questions regarding their eligibility to apply for new funds, should consult with the appropriate Regional Office Youth Contact, listed in part V, Appendix B, of the full official Program Announcement to determine if they are eligible to apply for a new grant award.

Funding: Depending on the availability of funds, the Family and Youth Services Bureau expects to award up to $12,300,000 for up to 100 new competitive Basic Center Program grants. In accordance with the RHY Act, the funds will be divided among the States in proportion to their respective populations under the age of 18, according to the latest census data. A minimum of $100,000 will be awarded to each State, the District of Columbia and Puerto Rico. A minimum of $45,000 will be awarded to each of the four insular areas: Guam, American Samoa, the Commonwealth of the Northern Marianas and the Virgin Islands.

The funds available for continuations and new starts in each State and insular area are listed in the Table of Allocations by State (part V, Appendix D) located in the full official program announcement. In this Table, the amounts shown in the column labeled "New Starts" are the amounts available for competition under this announcement. The number of new awards made within each State depends upon the amount of the State's total allotment less the amount required for non-competing continuations, as well as on the number of acceptable applications. Therefore, where the amount required for noncompeting continuations in any State equals or exceeds the State's total allotment, it is possible that no new awards will be made. However, agencies in the States where zero funding is reflected on the BCP Table of Allocation are highly encouraged to apply for grant funding in the event that additional funding becomes available.

All applicants under this competitive grant area will compete with other eligible applicants in the State in which they propose to deliver services. In the event that there are insufficient numbers of applications approved for funding in any State or jurisdiction, the Commissioner of ACYF will reallocate the unused funds to other Basic Center Program applicants.

Federal Share of Project Costs: Applicants may apply for up to $200,000 per year which equals a maximum of $600,000 for a 3-year project period.

Applicant Share of Project Costs: The applicant must provide a non-Federal share or match of at least ten percent (10%) of the Federal funds awarded. (There may be certain exceptions for Tribes with "638" funding pursuant to Public Law 93–638, under which certain Federal grants may qualify as matching funds for other Federal grant programs, e.g., those which contribute to the purposes for which grants under section 638 were made.) The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a three-year project costing $600,000 in Federal funds (based on an award of $200,000 per 12-month budget period) must provide a match of at least $60,000 ($20,000 per budget period). Grantees will be held accountable for commitments of required non-Federal

funds. Failure to provide the required match will result in a disallowance of Federal funds.

Duration of Project: This announcement solicits applications for Basic Center programs of up to three years duration (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for noncompetitive continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be entertained in subsequent years, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

B. Transitional Living Program (Competitive Grant Area B, CFDA#93.550)

Program Purpose, Goals and Objectives: The overall purpose of the Transitional Living Program (TLP) for homeless youth is to establish and operate transitional living programs for homeless youth. This program is structured to help older, homeless youth achieve self-sufficiency and avoid long-term dependency on social services. Transitional living programs provide shelter, skills training, and support services to homeless youth ages 16 through 21 for a continuous period not exceeding 18 months.

Transitional Living Programs are required to provide services in residential settings for at least four (4) youth and no more than twenty (20) youth. Transitional Living Program funds are to be used for the purpose of enhancing the capacities of youth-serving agencies in local communities to effectively address the service needs of homeless, older adolescents and young adults, including pregnant and parenting homeless youth. Goals, objectives and activities that may be maintained, improved and/or expanded through a TLP grant must include, but are not necessarily limited to:

- Providing stable, safe living accommodations while a homeless youth is a program participant;
- Providing the services necessary to assist homeless youth in developing both the skills and personal characteristics needed to enable them to live independently;
- Providing education, information and counseling aimed at preventing, treating and reducing substance abuse among homeless youth;
- Providing homeless youth with appropriate referrals and access to medical and mental health treatment;
- Providing the services and referrals necessary to assist youth in preparing for and obtaining employment;
- Providing the services and referrals necessary to assist youth in preparing for and obtaining secondary, and where feasible, post-secondary education and/or vocational training; and
- Providing the services and referrals necessary to assist pregnant and parenting homeless youth with the skills and knowledge necessary to become a more effective parent and lead productive and independent lives.

Background: It is estimated that about one-fourth of the youth served by all runaway and homeless youth programs are homeless. This means that the youth cannot return home or to another safe living arrangement with a relative. Other homeless youth have "aged out" of the child welfare system and are no longer eligible for foster care.

These young people are often homeless through no fault of their own. The families they can no longer live with are often physically and sexually abusive and involved in drug and alcohol abuse. They cannot meet the youth's basic human needs (shelter, food, clothing), let alone provide the supportive and safe environment needed for the healthy development of self-image and the skills and personal characteristics which would enable them to mature into a self-sufficient adult.

Homeless youth, lacking a stable family environment and without social and economic supports, are also at high risk of being involved in dangerous lifestyles and problematic or delinquent behaviors. More than two-thirds of homeless youth served by ACF-funded programs report using drugs or alcohol and many participate in survival sex and prostitution to meet their basic needs.

Homeless youth are in need of a support system that will assist them in making the transition to adulthood and independent living. While all adolescents are faced with adjustment issues as they approach adulthood, homeless youth experience more severe problems and are at greater risk in terms of their ability to successfully make the transition to self-sufficiency and to become a productive member of society.

Pregnant and parenting homeless youth are likely to face poverty, low levels of educational attainment, and long-term dependence on public assistance. Research indicates that children of teenage mothers are more likely to be born prematurely and to be of low birth weight than children born to women who are older. Compared to children born to older women, children of adolescent mothers, in general, do not do as well in school, have higher reported incidences of abuse and neglect, have higher rates of foster care placement, and are more apt to run away from home. As these children get older, the boys are 2.7 times more likely to be involved in criminal behavior, and the girls are 33 percent more likely to become teenage mothers themselves, increasing the likelihood that they will rely on public assistance.

The Transitional Living Program for Homeless Youth specifically targets services to homeless youth and affords youth service agencies with an opportunity to serve homeless youth in a manner which is comprehensive and geared towards ensuring a successful transition to self-sufficiency. The TLP also improves the availability of comprehensive, integrated services for homeless youth, which reduces the risks of exploitation and danger to which these youth are exposed while living on the streets without positive economic or social supports.

Eligible Applicant

- Public agencies—any State, unit of local government, Indian tribes and tribal organizations, and/or combinations of such units;
- Private nonprofit agencies; and
- Community-based and faith-based organizations.

Current TLP grantees (including subgrantees) with project periods ending on or after September 30, 2003, and all other eligible applicants not currently receiving TLP funds may apply for a new competitive TLP grant under this announcement for awards in FY 2004.

Current TLP grantees (including subgrantees) with one or two years remaining on their current awards and the expectation of continuation funding in Fiscal Year 2003 may not apply for a new TLP grant under this announcement. These grantees will receive instructions from their respective Administration on Children and Families (ACF) Regional Office Youth Contact on the procedures for applying for non-competitive continuation grants. Current grantees, which have questions regarding their eligibility to apply for new funds, should consult with the appropriate Regional Office Runaway and Homeless Youth Contact, listed in part V, appendix B, of the full official Program Announcement to determine if they are eligible to apply for a new grant award.

Funding: Depending on the availability of funds, the Family and Youth Services Bureau expects to award up to $7,900,000 for up to 42 new competitive Transitional Living Program grants for fiscal year 2004. The funding is to provide shelter, skill training and support services to assist homeless youth, including pregnant and parenting youth, in making a smooth transition to self-sufficiency and to prevent long-term dependency on social services.

Federal Share of Project Costs: Applicants may apply for up to $200,000 per year, which equals a maximum of $1,000,000 for a 5-year project period.

Applicant Share of Project Cost: Transitional Living grantees must provide a non-Federal share or match of at least ten percent (10%) of the Federal funds awarded. (There may be certain exceptions for Tribes with "638" funding pursuant to Public Law 93–638, under which certain Federal grants funds may qualify as matching funds for other Federal grant programs, *e.g.*, those which contribute to the same purposes for which grants under section 638 are made.) The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a five-year project costing $1,000,000 in Federal funds (based on an award of $200,000 per 12-month budget period) must include a match of at least $100,000 ($20,000 per budget period). Grantees will be held accountable for commitments of required non-Federal funds. Failure to provide the required match will result in a disallowance of Federal funds.

Duration of Project: This announcement solicits applications for Transitional Living projects of up to five years (60-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for noncompeting continuation grants beyond the one-year budget periods, but within the 60-month project periods, will be entertained in subsequent years, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

C. Street Outreach Program (Competitive Grant Area C, CFDA #93.557)

Program Purpose, Goals and Objectives: The overall purpose of SOP is to provide education and prevention services to runaway, homeless and street youth who have been subjected to or are at risk of sexual exploitation or abuse. The goal of the program is to establish and build relationships between street youth and program outreach staff in order to help youth leave the streets. The objective of the program is to provide support services that will assist the youth in moving and adjusting to a safe and appropriate alternative living arrangement. These services include, at a minimum, treatment, counseling, and provision of information and referral services. Street outreach programs must have access to local emergency shelter space that is an appropriate placement for young people and that can be made available for youth willing to come in off the streets. In addition, street outreach staff must have access to the shelter in order to maintain interaction with the youth during the time they are in the shelter.

Background: In response to the needs of street youth who are subjected to or at risk of sexual exploitation or abuse, Congress amended the Runaway and Homeless Youth Act by authorizing the Education and Prevention Services to Reduce Sexual Abuse of Runaway, Homeless and Street Youth Program under the Violent Crime Control and Law Enforcement Act of 1994. This program is referred to as the Street Outreach Program (SOP) for Runaway, Homeless and Street Youth.

The array of social, emotional and health problems faced by youth on the street is dramatically compounded by the incidence of sexual exploitation and/or abuse. Street youth are victimized by strangers as well as by individuals known to the youth, and a significant number of homeless youth are exploited as they participate in survival sex to meet their basic needs for food and shelter. Because of these issues, sexually exploited youth often need more intensive services. Youth must be afforded the opportunity to slowly build trust relationships with caring and responsible adults as the first step to successfully encouraging them to leave the streets.

Eligible Applicants

- Private nonprofit agencies; and
- Community-based and faith-based organizations.

Note: Public agencies are NOT eligible to apply for these funds.

Current Street Outreach Program grantees with project periods ending on or before September 29, 2003, and all other eligible applicants not currently receiving SOP funds may apply for a new competitive SOP grant under this announcement.

Current Street Outreach Program grantees (including subgrantees) with one or two years remaining on their current grant and the expectation of continuation funding in FY 2003 may not apply for a new Street Outreach grant for the community they currently serve. These grantees will receive instructions from their respective ACF Regional Offices on the procedures for applying for continuation grants. Current grantees, which have questions regarding their eligibility to apply for new funds, should consult with the appropriate Regional Office Youth Contact, listed in part V, appendix B, located in the full official program announcement to determine if they are eligible to apply for a new grant award.

Funding: Depending on the availability of funds the Family and Youth Services Bureau expects to award up to $4,600,000 for up to 46 new competitive Street Outreach Program grants for street-based outreach and education.

Federal Share of Project Costs: Applicants may apply for up to $200,000 in Federal support each year, a maximum of $600,000 for a 3-year project period. The maximum Federal share of project costs is $200,000 for 12 months.

Applicant Share of Project Cost: Street Outreach grantees must provide a non-Federal share or match of at least ten percent (10%) of the Federal funds awarded. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a three-year project costing $600,000 in Federal funds (based on an award of $200,000 per 12-month budget period) must provide a match of at least $60,000 ($20,000 per budget period). Grantees will be held accountable for commitments of required non-Federal funds. Failure to provide the required match will result in a disallowance of Federal funds.

Duration of Project: This announcement solicits applications for Street Outreach Program projects of up to three years (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for noncompeting continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be considered subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

D. Positive Youth Development State and Local Collabortion Demonstration Projects (Competitive Grant Area D, CFDA #93.623)

Program Purpose, Goals and Objectives: This demonstration represents a continuation of the investment FYSB has made to sponsor collaborative approaches to positive youth development in the 13 States over the past several years. Under the Youth Development State Collaboration Demonstration projects the focus was on establishing partnerships and collaborative efforts particularly among State-level agencies and actors. Projects solicited in this announcement are specifically aimed at moving the earlier State-level successes to the level of local community jurisdictions (and/or tribes). Specifically, these project grants are intended to support collaboration between State governments and local community jurisdictions or tribes. States may propose a program of joint cooperation between a tribe and another local jurisdiction.

At least one operating RHY program must be in the local community jurisdiction or Tribe selected by the State government for the joint collaboration demonstration project in order to:

- Continue the earlier FYSB-funded efforts to promote the positive development of youth, and
- Pilot test an effort to extend that work down to the level of local communities.

As such, the goals of the Positive Youth Development State and Local Collaboration Demonstration Projects are: (1) To encourage collaboration among the State and Local (or Tribal) agencies and communities that will increase opportunities for positive youth development for young people in local communities and neighborhoods; (2) to promote and facilitate communication and cooperation between the State, local communities and youth serving agencies, including FYSB RHY Program grantees, in addressing the needs and issues of adolescents and young adults; (3) to encourage an ongoing community presence and participation in the planning and execution of strategies aimed at the positive development of their young people; (4) and to energize local constituencies including residents, community and faith-based organizations and service providers around a positive youth development agenda.

The overarching aim of these pilot efforts will be to help States to explore new collaborative relationships with local communities that will prove effective in increasing the number and array of positive development opportunities available to young people. Beginning a dialogue with the participating local community or Tribe, and sustaining their ongoing involvement and participation in this collaboration, will be viewed as critical to effectiveness of the demonstration's collaboration and to its efforts to pursue the programmatic objectives (*see* below) outlined for this demonstration. As such, this community involvement is stressed throughout this announcement.

The SLCDP Demonstration Project is focused on increasing opportunities for positive youth development in local jurisdictions and communities. Funded projects in this demonstration will be based on collaborative program designs that emphasize each of the following three major programmatic objectives for fostering positive youth development and positive youth outcomes.

- *Increased opportunities and avenues for the positive use of time including:* Recreational activities, organized sports, educational and personal enrichment, volunteerism and/or age-appropriate employment. (Safe places with structured activities during non-school hours; marketable skills through effective education; ongoing relationships with caring adults-parents, mentors, tutors, or coaches.)
- *Increased opportunities for positive self-expression:* Higher emphasis on helping young people identify and develop their strengths and talents and to exercise them in positive ways where they can be recognized and celebrated by the larger community of young people and adults. (Healthy start and future.)
- *Increased opportunities for youth participation and civic engagement:* Efforts to provide youth with opportunities to participate in school and community affairs and to be represented among the actors and within the institutions that constitute the political, social and economic infrastructure of their school, community, city and region. (Opportunities to give back through community service.)

These project grants will serve as the basis for exploring new partnerships among the Family and Youth Services Bureau (FYSB), States, local jurisdictions and/or Tribes, and community and faith-based, youth serving organizations in order to establish and support these programmatic objectives at the State and local community levels.

The demonstration will be conducted in two phases:

- Phase I, the Planning Phase will begin on September 30, 2003, through September 29, 2004, and will consist of the first 12 months of the grant.
- Phase II, the Implementation Phase will begin September 30, 2004, and will continue for the remaining four years ending on September 29, 2008.

The Planning Phase: The demonstration will begin with a one-year planning phase. State grantees will use this phase to accomplish three specific formative goals that will shape the 4-year implementation effort: (1) Identify and secure commitment(s) from the local jurisdiction and/or Tribe, and the RHY Programs that will be the collaborating partners during the implementation phase; (2) conduct a collaborative planning process focusing on strategies for pursuing the three programmatic objectives set forth (above) for the demonstration; and (3) review and finalize the proposed plans for implementation with FYSB:

- Select the Local Partner: The first three months (1–3) of the planning phase will be used to identify a local jurisdiction (or Tribe)—city, community or neighborhood—that is willing and able to assume the role of local partner in this demonstration. The product of this first three-month period will be a Memorandum of Understanding (MOU) between the applicant and the organization/entity assuming the lead role, as the local collaboration partner, committing each of the parties to participate in the 5-year FYSB funded SLCDP Demonstration Project.
- Draft the Plan: The next six months (4–9) of the planning phase will be used to conduct the outreach, convene the meetings, and engage the deliberations that are necessary to produce a plan outlining proposed directions for pursuing each of the three youth development programmatic objectives outlined above.
- Finalize the Plan: The final three months (10–12) will be a period of dialogue and negotiations with FYSB representatives to refine and further develop these plans and preliminary directions into an approved plan and budget for implementing the 4-year implementation collaborative effort.

The Implementation Phase: FYSB plans to fund four years of State/local operation under the approved plan. Continuation funding will be based on availability of funds and satisfactory progress made during the first year Planning Phase. It is expected that operations under the grant will feature adherence to the three youth development programmatic objectives outlined above as well as the following:

- Continued and ongoing high level collaboration among a consistent group of State, local and RHY program representatives of the project.
- Involvement of parents, guardians, other caring adults and youth in all phases of development and implementation of the youth development strategies.
- Ongoing dialogue, communications and participation with and among residents from the neighborhoods and communities targeted by the effort.

Background: For a number of years, FYSB has been promoting a youth development philosophy and has produced a framework for implementing a positive youth development approach. The framework can be used by program developers, program managers and youth service professionals in developing and implementing service models and approaches that will redirect youth in high risk situations toward positive pathways of development. We have identified four key principles that are important in the development of young people as they move toward a successful and productive adulthood: (1) A sense of industry and competency, (2) a feeling of connectedness to others (particularly to caring adults, especially parents), and to society, (3) a belief in their control over their fate in life, and (4) a stable identity.

FYSB supports the youth development approach and believes it is crucial that positive developmental opportunities be made available to all young people during adolescence, a time of rapid growth and change. Adolescents need opportunities to fulfill their developmental needs; intellectually, psychologically, socially, morally and ethically. Youth benefit from experiential learning and they need to belong to a group while maintaining their individuality. At the same time, they want and need adult support and interest. They also need to express opinions, challenge adult assumptions, develop the ability to make appropriate choices and learn to use new skills.

When young people are not given positive outlets for growth, they may find potentially damaging alternatives. Gang membership, for example, may address an adolescent's need for safety and "belonging to" a group, close friendships and opportunities for exercising decision-making skills and responsibility. However, it also places young people at high risk for drug use and exposure to violence and crime. In contrast, positive developmental opportunities meet adolescent needs while decreasing their exposure to destructive influences and reducing their involvement in risky behaviors.

A rapidly changing society and a decreasing sense of community have reduced or eliminated many of the traditional ways that young people receive the support they need to move toward maturity and self-sufficiency. Additionally, increasing violence and hopelessness in many neighborhoods threaten young people's welfare and make developmental opportunities scarce in some communities. In such environments, a commitment by a community to creating programs and services that meet young people's developmental needs is critical.

Programs with a youth development focus offer young people the skills, knowledge and community support they need to function effectively. The youth development approach is designed to focus on the positive outcomes desired by young people, not the negative outcomes that adults hope to prevent. The distinction may appear subtle, but it is a significant shift in policy and practice. Youth development moves the dialogue from one that focuses on youth with problems to one in which youth are seen as resources. In addition, youth development envisions a community effort to determine and provide, in concert with youth, the assistance and support youth need to grow into healthy adults. With all of these principles in mind FYSB began to invest resources in helping States make a difference in the lives of their young people.

Beginning in 1999, the nine State agencies listed below were awarded grants by FYSB, under the Youth Development State Collaboration Demonstration Project, to establish collaboration efforts around youth development at the State level.

- Department of Economic Security, State of Arizona
- Department of Human Services, State of Colorado
- Office of Policy and Management, State of Connecticut
- Department of Human Rights, State of Iowa
- Department of Human Resources, State of Maryland
- Executive Office of Health and Human Services, Commonwealth of Massachusetts
- Health and Human Services, State of Nebraska
- Office of Children and Family Services, State of New York
- Commission on Children and Families, State of Oregon

In 2001, a second cohort of four States agencies was also funded to pursue the goals of this demonstration as follows:

- Bureau of Youth Services and Delinquency Prevention, State of Illinois
- Indiana Human Resources Investment Council, State of Indiana
- Louisiana Workforce Commission, State of Louisiana
- University of Kentucky, Cooperative Extension 4H Program, State of Kentucky

In the ensuing years, these States' activities have included: Assessing existing statewide policies and procedures to determine how best to integrate youth development principles into current approaches; providing training on the youth development approach; involving young people in program and policy development; organizing region, State, or community-wide conferences and forums; making subgrants that promote youth development activities; creating new outlets for sharing information on youth development such as home pages on the Internet's World Wide Web; developing and supporting statewide coalitions of agencies serving runaway and homeless youth; and identifying data to measure positive outcomes.

The limited competition among the same 13 State organizations with demonstration projects solicited in this competitive area seeks to build on their prior work accomplishments to create new and stronger partnerships between the State agencies listed above and one local jurisdiction or Tribe, as a potential model for identifying effective practices that can guide future State and local intergovernmental partnerships and collaborative efforts to promote the positive development of young people.

Eligible Applicants: This competition is limited to the 13 State organizations that are currently participating in the Youth Development State Collaboration Demonstration Project funded by FYSB. They are: Arizona (AZ), Colorado (CO), Connecticut (CT), Iowa (IA), Illinois (IL), Indiana (IN), Kentucky (KY), Louisiana (LA), Massachusetts (MA), Maryland (MD), Nebraska (NE), New York (NY), and Oregon (OR).

Funding: Depending on the availability of funds the Family and Youth Services Bureau expects to make up to 13 awards to support State and local collaborations according to the following schedule:

- Year 1 Planning Phase Grant: FYSB expects to award up to $120,000 to each grantee to support the 12-month Planning Phase.
- Years 2–5 Implementation Phase Grants: Over the next four years, FYSB expects to award up to $1,000,000 ($250,000/yr) to each grantee to support

the implementation of programs and activities proposed in their proposed plans and approved by FYSB.

Federal Share of Project Costs: Applicants may apply for support in accordance with the schedule outlined above for a total of $1,120,000 over the 5-year demonstration period ($120,000 in year 1; and $1,000,000 over the four years—2 through 5).

Applicant Share of Project Costs: The applicant must provide a non-Federal share or match of at least ten percent (10%) of the Federal funds awarded. (There may be certain exceptions for Tribes with "638" funding pursuant to Public Law 93–638, under which certain Federal grants may qualify as matching funds for other Federal grant programs, *e.g.*, those which contribute to the purposes for which grants under section 638 were made.) The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, an applicant requesting $120,000 must match the federal funds with a non-Federal share of at least $12,000. It is expected that these matching resources will be budgeted for and made available in the same 12-month program period in which federal resources are provided. Grantees will be held accountable for commitments of required non-Federal funds. Failure to provide the required match will result in a disallowance of Federal funds.

Duration of Project: This announcement solicits applications for Positive Youth Development State and Local Collaboration Demonstration Projects of up to five years (60-month project period) beginning September 30, 2003 through September 29, 2008. Grant awards will be for a one-year (12-month) budget period. Applications for continuation grants beyond the one-year budget period, but within the longer term project period, will be entertained in subsequent years on a noncompetitive or competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the interest of the government.

Summary of Evaluation Criteria for Competitive Areas A, B, C and D (BCP, TLP, SOP and SLCDP)

Criterion 1: Objectives and Need for Assistance (15 points)

Applications will be judged on how clearly they identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly Stated. Applications will need to specify the goals and objectives of the project and how implementation will fulfill the purposes of the program. Applications should describe the conditions of youth and families in the area to be served; the incidence and characteristics of runaway, homeless or street youth and their families; the existing support systems for at-risk youth and families in the area, including other agencies providing services to runaway and homeless youth in the area.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 2: Results or Benefits Expected (20 points)

Applications will be judged on how clearly they identify the results and benefits to be derived, specify services to be provided, who will receive services, where and how these services will be provided, and how the services will benefit the youth families and the community to be served.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 3: Approach (35 points)

Applications will be judged on how clearly they outline a plan of action which: Describes the scope and detail of how the proposed work will be accomplished; accounts for all functions or activities identified in the application; cites factors which might accelerate or decelerate the work and reasons for taking the proposed approach rather than others. Applications are encouraged to describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Applications will be judged on the extent to which they describe the program's youth development approach or philosophy and indicate how it underlies and integrates all proposed activities. Applicants will be expected to list organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution; describe formal service linkages and plans for coordination with other agencies; describe plans for conducting outreach and encouraging awareness of and sensitivity to the diverse needs of runaway and homeless youth who represent particular ethnic, religious and racial backgrounds and sexual orientations. Applicants are encouraged to describe the type, capacity and staff supervision of the shelter that will be available for youth.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 4: Staff and Position Data (10 points)

Applicants will be judged on whether they provide a resume and biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed. Applicants will be expected to list organizations and consultants who will work on the program along with a short description of the nature of their effort or contribution.

Applicants will be expected to provide information on plans for training project staff as well as staff of cooperating organizations and individuals and State the expected or estimated ratio of staff to youth.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 5: Organizational Profile (10 points)

Applicants will be expected to provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial Statements, audit reports or Statements from CPAs/Licensed Public Accountants. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

Applicants will be expected to provide a plan for project continuance beyond grant support, including a plan for securing resources and continuing project activities after Federal assistance has ceased and an annotated listing of applicant's funding sources. Such plans should include written agreements, if applicable, between grantees and subgrantees or subcontractors or other cooperating entities and letters of support and statements from community, public and commercial leaders that support the project proposed for funding.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 6: Budget and Budget Justification (10 points)

Applicants will be expected to provide a detailed line item budget and a narrative budget justification that describes how the categorical costs are derived. Applicants will be judged on how clearly they discuss the necessity, reasonableness, and allocability of the proposed costs and how clearly they describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement and accurate accounting of funds received.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Part II. Notification Under Executive Order 12372—State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs", and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities". Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. (**Note:** State/territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if applicable, or to ACF.)

As of January 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia and Washington.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447. The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found at *http://www.whitehouse.gov/omb/grants/spoc.html*.

Note: Inquiries about obtaining a Federal grant should not be sent to OMB.

Dated: April 2, 2003.

Frank Fuentes,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 03–8430 Filed 4–7–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; 2003 California Health Interview Survey (CHIS) Cancer Control Module (CCM)

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 3, 2002, pages 62067 and 62068 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: 2003 California Health Interview Survey (CHIS) Cancer Control module (CCM). Type of Information Collection Request: New. Need and Use of Information Collection: NCI sponsored a Cancer Control Modules to the National Health Interview Survey (NHIS) and to the California Health Interview Survey (CHIS) administered in 2000. While the NHIS data have proven extremely useful in monitoring risk factors and screening related to cancer control, the national sample does not provide adequate numbers of racial-ethnic minorities to analyze particular domains within them, such as age by gender and income or education. The CHIS telephone survey, administered for the first time in 2000–2001, is designed to provide population-based, standardized health-related data for California counties. Initiated by the California Department of Health Services (CDHS) Center for Health Statistics, the Public Health Institute (PHI), and the UCLA Center for Health Policy Research (UCLA), the survey is largely funded by California sources. The 2000 CHIS CCM is similar in content to the 2000 NHIS CCM, and met its target of one sample adult in 55,000 households. California, the most populous state in the Nation, is also the most racially and ethnically diverse. Specific populations of interest include Black or African American, Hispanic or Latino, Asian, Native Hawaiian or Other Pacific Islander, and American Indian or Alaska Native. The CHIS data was released in July 2002. NCI is using the CHIS and NHIS data from 2000/2001 to better estimate health-related behaviors and cancer risk factors for smaller racial/ethnic minority populations. Preliminary analyses suggest that the CHIS will provide improved estimates for cancer risk factors and screening

among racial/ethnic minority populations. NCI will sponsor questions on cancer screening in the 2003 NHIS and to provide better estimates for smaller racial-ethnic minority populations, anticipates also sponsoring cancer screening questions on the 2003 CHIS. NCI will also take advantage of the Housing and Environment Module to be included in the 2003 CHIS to ask respondents questions about environmental tobacco smoke and physical activity.

Frequency of response: One-time. *Affected public:* Individuals. *Types of Respondents:* U.S. adults. The annual reporting burden is as follows:

A.12–1 ESTIMATES OF HOUR BURDEN—2003 CHIS CANCER CONTROL MODULE

Type of respondent	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Adult Individuals—Pilot	150	1	.09	13.50
Adult Individuals—Survey	55,000	1	.09	4,950.00
Total Annual Hour Burden				4,963.50

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20530, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Nancy Breen, Ph.D., Project Officer, National Cancer Institute, EPN 4005, 6130 Executive Boulevard MSC 7344, Bethesda, Maryland 20892–7344, or call non-toll-free number (301) 496–8500, or FAX your request to (301) 435–3710, or E-mail your request, including your address, to *breenn@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: March 28, 2003.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 03–8425 Filed 4–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health Extramural Loan Repayment Program for Clinical Researchers

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) announces the availability of educational loan repayment under the NIH Extramural Loan Repayment Program for Clinical Researchers (LRP–CR). The Loan Repayment Program for Clinical Researchers, which is authorized by section 487F [1] of the Public Health Service (PHS) Act (42 U.S.C. 288–5a), as added by the Clinical Research Enhancement Act of the Public Health Improvement Act of 2000 (Public Law 106–505), provides for the repayment of the existing educational loan debt of qualified health professionals who agree to conduct clinical research. The Loan Repayment Program for Clinical Researchers provides for the repayment of up to $35,000 of the principal and interest of the extant educational loans of such health professionals for each year of obligated service. Payments equal to 39 percent of total loan repayments are issued to the Internal Revenue Service on behalf of program participants to offset Federal tax liabilities incurred. The purpose of the Loan Repayment Program for Clinical Researchers is the recruitment and retention of highly qualified health professionals as clinical investigators. Through this notice, the NIH invites qualified health professionals who contractually agree to engage in clinical research for at least two years, and who agree to engage in such research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week, to apply for participation in the NIH Loan Repayment Program for Clinical Researchers.

DATE: Interested persons may request information about the Loan Repayment Program for Clinical Researchers on April 8, 2003.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, NIH, 6011 Executive Blvd., Room 601, MSC 7669, Rockville, MD 20892, by email (*jm40z@nih.gov*), by fax 301–402–0169, or by telephone 301–496–4607 (not a toll-free number). For program information contact Marc S. Horowitz, email *lrp@nih.gov*, or telephone 301–402–5666 (not a toll free number). Information regarding the requirements, application deadline dates, and an on-line application for the Clinical Research Loan Repayment Program may be obtained at the NIH Loan Repayment Program Web site, *http://www.lrp.nih.gov*.

SUPPLEMENTARY INFORMATION: The Clinical Research Enhancement Act, which is contained in the Public Health Improvement Act of 2000 (Pub. L. 106–505), was enacted on November 13, 2000, adding section 487F of the PHS Act (42 U.S.C. 288–5a). Section 487F authorizes the Secretary, acting through the Director of the NIH, to carry out a program of entering into contracts with

[1] So in the law. There are two sections 487F. Section 205 of Public Law 106–505 (114 Stat. 2329), inserted section 487F after section 487E. Previously, section 1002(b) of Public Law 106–310 (114 Stat. 1129), which relates to a Pediatric Research Loan Repayment Program, inserted section 487F after section 487E.

appropriately qualified health professionals. Under such contracts, qualified health professionals agree to conduct clinical research for at least two years in consideration of the Federal government agreeing to repay, for each year of research service, not more than $35,000 of the principal and interest of the extant qualified educational loans of such health professionals. Payments equal to 39 percent of total loan repayments are issued to the Internal Revenue Service on behalf of program participants to offset Federal tax liabilities incurred. This program is known as the NIH Loan Repayment Program for Clinical Researchers (LRP–CR).

Eligibility Criteria

Specific eligibility criteria with regard to participation in the Loan Repayment Program for Clinical Researchers include the following:

1. Applicants must be U.S. citizens, U.S. nationals, or permanent residents of the United States;

2. Applicants must have a Ph.D., M.D., D.O., D.D.S., D.M.D., D.P.M., Pharm.D., D.C., N.D., or equivalent doctoral degree from an accredited institution;

3. Applicants must have total qualifying educational loan debt equal to or in excess of 20 percent of their institutional base salary on the date of program eligibility (the effective date that a loan repayment contract has been executed by the Secretary of Health and Human Services or designee), expected to be between June 1 and August 1, 2003. Institutional base salary is the annual amount that the organization pays for the participant's appointment, whether the time is spent in research, teaching, patient care, or other activities. Institutional base salary excludes any income that a participant may earn outside the duties of the organization. Institutional base salary may not include or comprise any income (salary or wages) earned as a Federal employee;

4. Applicants must conduct qualifying research supported by a non-profit foundation, non-profit professional association, or other non-profit institution, or a U.S. or other government agency (Federal, State, or local). A foundation, professional association, or institution is considered to be non-profit if exempt from Federal tax under the provisions of section 501 of the Internal Revenue Code (26 U.S.C. 501);

5. Applicants must engage in qualified clinical research. Clinical research is defined as patient-oriented clinical research conducted with human subjects or research on the causes and consequences of disease in human populations involving material of human origin (such as tissue specimens and cognitive phenomena) for which an investigator or colleague directly interacts with human subjects in an outpatient or inpatient setting to clarify a problem in human physiology, pathophysiology or disease, or epidemiologic or behavioral studies, outcomes research or health services research, or developing new technologies, therapeutic interventions, or clinical trials;

6. Applicants must engage in qualified clinical research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week;

7. Full-time employees of Federal government agencies are ineligible to apply for LRP benefits. Part-time Federal employees who engage in qualifying research as part of their non-Federal duties for at least 20 hours per week, and whose funding source is from a non-profit source as defined in number 4 of this section, are eligible to apply for loan repayment if they meet all other eligibility requirements;

8. Applicants must agree to conduct research for which funding is not prohibited by Federal law, regulation, or HHS/NIH policy. Recipients who receive LRP awards must conduct their research in accordance with applicable Federal, State and local law (*e.g.*, applicable human subject protection regulations);

9. Applicants will not be excluded from consideration under the Loan Repayment Program for Clinical Researchers on the basis of age, race, culture, religion, gender, sexual orientation, disability, or other non-merit factors; and

10. No individual may submit more than one LRP application to the NIH in any fiscal year. Individuals who have applied previously for the LRP–CR but did not receive an award are eligible to submit a new application if they meet all of the above eligibility criteria.

The following individuals are ineligible for participation in the Loan Repayment Program for Clinical Researchers:

1. Persons who are not United States citizens, nationals, or permanent residents;

2. Any individual who has a Federal judgment lien against his/her property arising from a Federal debt is barred from receiving Federal funds until the judgment is paid in full or satisfied;

3. Any individual who owes an obligation of health professional service to the Federal government, a State, or other entity, unless deferrals or extensions are granted for the length of their Extramural Loan Repayment Program service obligation. The following are examples of programs with service obligations that disqualify an applicant from consideration, unless a deferral for the length of participation in the Loan Repayment Program for Clinical Researchers is obtained:

Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program,
Exceptional Financial Need (EFN) Scholarship Program,
Financial Assistance for Disadvantaged Health Professions Students (FADHPS),
Indian Health Service (IHS) Scholarship Program,
National Health Service Corps (NHSC) Scholarship Program,
National Institutes of Health Undergraduate Scholarship Program (UGSP),
Physicians Shortage Area Scholarship Program,
Primary Care Loan (PCL) Program,
Public Health Service (PHS) Scholarship Program, and
National Research Service Award (NRSA) Program—a recipient of postdoctoral National Research Service Award support from an individual postdoctoral fellowship (F32) or an institutional research training grant (T32) is eligible for loan repayment. NRSA recipients incur a service obligation of 12 months for their first year of NRSA support. This obligation is usually repaid in the second year of the NRSA award.

Note: NRSA service and loan repayment service obligations cannot be concurrently satisfied. There are two options for NRSA LRP recipients: (1) Defer receipt of LRP payments in the 2nd year of NRSA support to fulfill their obligation; or (2) request an extension of time to fulfill the NRSA service obligation in order to satisfy the LRP service obligation while also receiving loan repayment.

4. Full-time employees of Federal government agencies;

5. Current recipients of NIH Intramural Research Training Awards (IRTA) or Cancer Research Training Awards (CRTA);

6. Individuals conducting research for which funding is precluded by Federal law, regulations or HHS/NIH policy, or that does not comply with applicable Federal, State, and local law regarding the conduct of the research (*e.g.*, applicable human subject protection regulations); and

7. Individuals with ineligible loans, which include loans that have been consolidated with a loan of another individual (including spouses or

children), or loans that are not educational, such as home equity loans.

Selection Process

Upon receipt, applications for the Loan Repayment Program for Clinical Researchers will be reviewed for eligibility and completeness by the NIH Office of Loan Repayment. Incomplete or ineligible applications will not be processed for review. Applications that are complete and eligible will be referred to the appropriate NIH Institute or Center for peer review by the NIH Center for Scientific Review (CSR). In evaluating the application, reviewers will be directed to consider the following components as they relate to the likelihood that the applicant will continue in a clinical research career:

a. Potential of the applicant to pursue a career in clinical research.

- Appropriateness of the applicant's previous training and experience to prepare him/her for a clinical research career.
- Suitability of the applicant's proposed clinical research activities in the two-year loan repayment period to foster a research career.
- Assessment of the applicant's commitment to a research career as reflected by the personal statement of long-term career goals and the plan outlined to achieve those goals.
- Strength of recommendations attesting to the applicant's potential for a research career.

b. Quality of the overall environment to prepare the applicant for a clinical research career.

- Availability of appropriate scientific colleagues to achieve and/or enhance the applicant's research independence.
- Quality and appropriateness of institutional resources and facilities.

The following information is furnished by the applicant or others on behalf of the applicant (forms are completed electronically at the NIH LRP Web site, *www.lrp.nih.gov):*

Applicants electronically transmit the following to the NIH Office of Loan Repayment:

1. Applicant Information Statement.
2. Biosketch.
3. Personal Statement, which includes a discussion of career goals and academic objectives.
4. Description of Research Activities, which describes the current or proposed research project including the specific responsibilities and role of the applicant in conducting the research. The research supervisor or mentor will be asked to concur in the research project description provided by the applicant.
5. Identification of three Recommenders (one of whom is identified as research supervisor or mentor).
6. Identification of Institutional Contact.
7. On-line Certification.
8. Current account statement(s), and promissory note(s) or disclosure statement(s), obtained from lending institution(s), submitted via facsimile to 866–849–4046.
9. If applying based on NIH support, Notice of Grant/Award (or PHS Form Number 2271 for T32 recipients).

Research supervisors or mentors electronically transmit the following to the NIH Office of Loan Repayment:

1. Recommendation.
2. Biosketch.
3. Assessment of the Research Activities Statement submitted by the applicant.
4. Description of the Research Environment, which provides detailed information about the lab where the applicant is or will be conducting research, including funding, lab space, and major areas under investigation.
5. Training or Mentoring Plan, which includes a detailed discussion of the training or mentoring plan, including a discussion of the research methods and scientific techniques to be taught. This document is completed by the research supervisor or mentor and is submitted for all applicants (except for applicants with an NIH R01 or equivalent grant).
6. Biosketch of a laboratory staff member if involved in training or mentoring the applicant.

The other two Recommenders electronically transmit recommendations to the NIH Office of Loan Repayment.

Institutional Contacts electronically transmit the following to the NIH Office of Loan Repayment:

A certification that: (a) Assures the applicant will be provided the necessary time and resources to engage in the research project for two years from the date a Loan Repayment Program Contract is executed; (b) assures that the applicant is or will be engaged in qualifying research for 50 percent of his/her time, *i.e.*, not less than 20 hours per week; (c) certifies that the institution is non-profit (exempt from tax under 26 U.S.C. 501) or is a U.S. or other government agency (Federal, State, local); and (d) provides the applicant's institutional base salary.

Program Administration and Details

Under the Loan Repayment Program for Clinical Researchers, the NIH will repay a portion of the extant qualified educational loan debt incurred to pay for the researcher's undergraduate, graduate, and/or health professional school educational expenses. Individuals must have total qualified educational debt that equals or exceeds 20 percent of their institutional base salary on the date of program eligibility. This is called the debt threshold. The formula used to calculate the potential annual loan repayment amount is total educational debt less the participant obligation (an amount equal to 10 percent of institutional base salary), which yields the total repayable debt; the total repayable debt is divided by 25 percent, which yields the potential annual repayment amount (up to $35,000). Participants are encouraged to pay the participant obligation during the contract period.

Following is an example of loan repayment calculations: an applicant has a loan debt of $100,000 and a university compensation of $40,000. Since the loan debt exceeds the debt threshold (20 percent of university compensation = $8,000), the applicant has sufficient debt for loan repayment consideration. The participant obligation is 10 percent of the institutional base salary, in this case $4,000. Thus, repayment of the $4,000 debt is the applicant's responsibility. The remaining amount, in this example $96,000 (total repayable debt) will be considered for repayment on a graduated basis. In this case, the maximum to be repaid in the initial two-year contract is $48,000 or $24,000 per year, plus tax reimbursement benefits.

The total repayable debt will be paid at the rate of one-quarter per year, subject to a statutory limit of $35,000 per year, for each year of obligated service. Individuals are required to initially engage in 2 years of qualified clinical research.

Following conclusion of the initial two-year contract, participants may competitively apply for renewal contracts if they continue to engage in qualified clinical research. These continuation contracts may be approved on a year-to-year basis, subject to a finding by NIH that the applicant's clinical research accomplishments are acceptable, qualified clinical research continues, and non-profit institutional or U.S. or other government agency (Federal, State, or local) support has been assured. Renewal applications are competitively reviewed and the submission of a renewal application does not assure the award of benefits. Funding of renewal contracts is also contingent upon an appropriation and/or allocation of funds from the U.S. Congress and/or the NIH or the NIH Institutes and Centers.

In return for the repayment of their educational loans, participants must agree to (1) engage in qualified clinical research for a minimum period of two years; (2) engage in such research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week; (3) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (4) pay monetary damages as required for breach of contract; and (5) satisfy other terms and conditions of the LRP contract. Applicants must submit a signed contract, prepared by the NIH, agreeing to engage in qualified clinical research at the time they submit an application. Substantial monetary penalties will be imposed for breach of contract.

The NIH will repay lenders for the extant principal, interest, and related expenses (such as the required insurance premiums on the unpaid balances of some loans) of qualified U.S. or other government (Federal, State, local), academic institutions, and commercial or other chartered U.S. lending institution educational loans obtained by participants for the following:

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other living expenses as determined by the Secretary.

Repayments are made directly to lenders, following receipt of (1) the Principal Investigator, Program Director, or Research Supervisor's verification of completion of the prior period of research, and (2) lender verification of the crediting of prior loan repayments, including the resulting account balances and current account status. The NIH will repay loans in the following order, unless the Secretary determines that significant savings would result from a different order of priority:

(1) Loans guaranteed by the U.S. Department of Health and Human Services:

- Health Education Assistance Loan (HEAL);
- Health Professions Student Loan (HPSL);
- Loans for Disadvantaged Students (LDS); and
- Nursing Student Loan Program (NSL);

(2) Loans guaranteed by the U.S. Department of Education:

- Direct Subsidized Stafford Loan;
- Direct Unsubsidized Stafford Loan;
- Direct Consolidation Loan;
- Perkins Loan;
- FFEL Subsidized Stafford Loan;
- FFEL Unsubsidized Stafford Loan; and
- FFEL Consolidation Loan;

(3) Loans made or guaranteed by a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States;

(4) Loans made by academic institutions; and

(5) Private ("Alternative") Educational Loans:

- MEDLOANS; and
- Private (non-guaranteed) Consolidation Loans.

The following loans are NOT repayable under the Loan Repayment Program for Clinical Researchers:

(1) Loans not obtained from a U.S. or other government entity, academic institution, or a commercial or other chartered U.S. lending institution such as loans from friends, relatives, or other individuals, and non-educational loans, such as home equity loans;

(2) Loans for which contemporaneous documentation (current account statement, and promissory note or lender disclosure statement) is not available;

(3) Loans that have been consolidated with loans of other individuals, such as a spouse or child;

(4) Loans or portions of loans obtained for educational or living expenses, which exceed a reasonable level, as determined by the standard school budget for the year in which the loan was made, and are not determined by the LRP to be reasonable based on additional contemporaneous documentation provided by the applicant;

(5) Loans, financial debts, or service obligations incurred under the following programs, or other programs that incur a service obligation that converts to a loan on failure to satisfy the service obligation:

- Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Program;
- Indian Health Service (IHS) Scholarship Program;
- National Institutes of Health Undergraduate Scholarship Program (UGSP),
- National Research Service Award (NRSA) Program;
- Physicians Shortage Area Scholarship Program (Federal or State);
- Primary Care Loan (PCL) Program; and
- Public Health Service (PHS) and National Health Service Corps (NHSC) Scholarship Program;

(6) Delinquent loans, loans in default, or loans not current in their payment schedule;

(7) PLUS Loans;

(8) Loans that have been paid in full; and

(9) Loans obtained after the execution of the NIH Loan Repayment Program Contract (*e.g.*, promissory note signed after the LRP contract has been awarded).

Before the commencement of loan repayment, or during lapses in loan repayments, due to NIH administrative complications, Leave Without Pay (LWOP), or a break in service, LRP participants are wholly responsible for making payments or other arrangements that maintain loans current, such that increases in either principal or interest do not occur. The LRP contract period will not be modified or extended as a result of Leave Without Pay (LWOP) or a break in service. Penalties assessed participants as a result of NIH administrative complications to maintain a current payment status may not be considered for reimbursement.

LRP payments are NOT retroactive. Loan repayment for Fiscal Year 2003 will commence after a loan repayment contract has been executed, which is expected to be no earlier than June 2003.

Additional Program Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs.

This program is subject to OMB clearance under the requirements of the Paperwork Reduction Act of 1995. The OMB approval of the information collection associated with the Loan Repayment Program for Clinical Researchers expires on December 31, 2004. The Catalog of Federal Domestic Assistance number for the Loan Repayment Program for Clinical Researchers is 93.280.

Dated: January 24, 2003.

Elias A. Zerhouni,

Director, NIH.

[FR Doc. 03–8426 Filed 4–7–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Loan Repayment Program for Health Disparities Research

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) and the National Center on Minority Health and Health Disparities (NCMHD) invite applications for the extramural Loan Repayment Program for Health Disparities Research (HDR–LRP or Program) for fiscal year 2003. Pursuant to the authority granted by section 103 of Pub. L. 106–525, the Minority Health and Health Disparities Research and Education Act of 2000, that added section 485G of the Public Health Service (PHS) Act (42 U.S.C. 287c–33), the Director of NCMHD, has established a loan repayment program that offers the repayment of educational loan debt to qualified health professionals who agree to conduct research on minority health or other health disparities for a minimum of 2 years.

DATES: Information regarding the HDR–LRP is currently available and the following are the application deadline dates: Fiscal Year 2004—January 31, 2004; and Fiscal Year 2005—January 31, 2005. All applications must be submitted on-line by 5 p.m. (eastern standard time). If an Application Deadline Date falls on a weekend or holiday, the application is due on the following business day by 5 p.m. (eastern standard time).

ADDRESSES: Information about the program and an on-line application may be obtained at the NIH Loan Repayment Program Web site located at *http://www.lrp.nih.gov* or by contacting the National Center on Minority Health and Health Disparities, Attention Kenya McRae, non-toll free number: (301) 402–1366, or via e-mail at: *mcraek@od.nih.gov*.

SUPPLEMENTARY INFORMATION:

Definitions

(1) "Debt threshold" is the minimum amount of qualified educational loan debt an applicant must have in order to be eligible for Program benefits. An applicant must have qualified educational loan debt equal to at least 20 percent of the applicant's annual institutional base salary at the time of award.

(2) "Health disparities population" as determined by the Director of NCMHD, after consultation with the Director of the Agency for Healthcare Research and Quality, is defined as a population where there is significant disparity in the overall rate of disease incidence, prevalence, morbidity, mortality, or survival rates in the population as compared to the health status of the general population. For purposes of this announcement, the following populations are determined to be health disparities populations: Blacks/African Americans, Hispanics/Latinos, Native Americans, Alaska Natives, Asian Americans, Native Hawaiians, Pacific Islanders and the medically underserved such as individuals from the Appalachian region.

(3) "Health disparities research" is defined as basic, clinical, or behavioral research on a health disparities population (including individual members and communities of such populations), including the causes of such health disparities and methods to prevent, diagnose, and treat such disparities.

(4) "Institutional base salary" is defined as the annual amount that the organization pays for the participant's appointment, whether the time is spent in research, teaching, patient care or other activities. Institutional base salary excludes any income that a participant may earn outside the duties of the organization, and it may not include or comprise any income (salary or wages) earned as a Federal employee.

(5) "Medically underserved" refers to individuals that lack access to primary and specialty care either because they are socioeconomically disadvantaged and may or may not live in areas with high poverty rates or because they reside in rural areas. The term also refers to individuals that reside in geographic areas where the Index of Medical Underservice (IMU) is 62 or less. The Health Resource Services Administration (HRSA) criteria designates a service area with an IMU of 62 or less as a "medically underserved area (MUA)." The IMU is a weighted score derived from four variables: the ratio of primary medical care physicians per 1,000 population, infant mortality rate, percentage of population below the Federal poverty level, and percentage of the population age 65 years or over.

(6) "Minority health conditions" refers to all diseases, disorders, and other conditions (including mental health and substance abuse) that are unique to, more serious, or more prevalent in racial and ethnic minorities, for which the medical risk factors or types of medical interventions may be different or research involving such populations as subjects or data on such individuals is insufficient.

(7) "Minority health disparities research" is defined as basic, clinical, or behavioral research on minority health conditions, including research to prevent, diagnose, and treat such conditions.

(8) "Total educational loan debt" is defined as the outstanding educational loan debt incurred by health professionals for their educational expenses incurred at accredited institutions. It consists of the principal, interest, and related expenses of qualified U.S. Government, academic institutions, and commercial U.S. educational loans obtained by the applicant for: (a) Undergraduate, graduate and health professional school tuition expenses; (b) other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and (c) reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other reasonable living expenses as determined by the Director or his designee.

(9) "Repayable debt" means the difference between the applicant's total educational loan debt and 50 percent of the applicant's debt threshold.

Background

The Minority Health and Health Disparities Research and Education Act of 2000 (Pub. L. 106–525) was enacted on November 22, 2000, amending the Public Health Service (PHS) Act and adding section 485G that authorizes the Director of the National Center on Minority Health and Health Disparities (NCMHD) to establish a program entering into contracts with qualified health professionals. These health professionals are required to conduct minority health or other health disparities research for a minimum of two years, in consideration of the Federal Government repaying a portion of the extant principal and interest of their educational loans, up to a maximum of $35,000 per year, for each year of service. Payments equal to 39 percent of the total loan repayments are issued to the Internal Revenue Service on behalf of HDR–LRP participants to offset Federal tax liabilities incurred. In addition to establishing the program, the Director, NCMHD, must ensure that not fewer than 50 percent of the contracts are awarded to qualified health professionals that are members of health disparities populations. This program is known as the Loan Repayment Program for Health Disparities Research (HDR–LRP). Selected applicants become participants of the HDR–LRP only upon the execution of a contract by the Director of NCMHD.

Eligibility Criteria

Specific eligibility criteria with regard to participation in the HDR–LRP include the following:

(1) Applicants must be U.S. citizen, U.S. nationals, or permanent residents of the United States;

(2) Applicants must have a Ph.D., M.D., D.O., D.D.S., D.M.D., D.P.M., Pharm.D., D.C., N.D., or equivalent doctoral degree from an accredited institution;

(3) Applicants must have total qualifying educational loan debt equal to or in excess of 20 percent of their annual institutional base salary at the time their loan repayment contract is executed by the Director, NCMHD (Example: An applicant with a base salary of $40,000 per year must have a minimum outstanding educational loan debt of $8,000);

(4) Applicants must engage in qualified minority health or other health disparities research supported by a non-profit foundation, non-profit professional society, non-profit institution, or a U.S. or other government agency (Federal, State, or local). A foundation, professional society, or institution is considered to be non-profit if exempt from Federal tax under the provisions of section 501 of the Internal Revenue Code (26 U.S.C. 501);

(5) Applicants must engage in qualified minority health or other health disparities research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week;

(6) Applicants must agree to conduct research for which funding is not prohibited by Federal law, regulations, or HHS/NIH policy. Recipients of LRP awards must conduct their research in accordance with applicable Federal, State and local law (*e.g.*, applicable human subject protection regulations);

(7) Full-time employees of Federal Government agencies are ineligible to apply for LRP benefits. Part-time Federal employees, who engage in qualifying research as part of their non-Federal duties, for the required percentage of time, are eligible to apply for loan repayment if they meet all other eligibility requirements;

(8) Applicants must have a research supervisor or mentor with experience in the area of proposed research;

(9) Applicants will not be excluded from consideration under the HDR–LRP on the basis of age, race, culture, religion, gender, sexual orientation, disability or other non-merit factors; and

(10) No individual may submit more than one LRP application to the NIH in any fiscal year. Individuals who have applied previously for the Program or any other NIH Loan Repayment Program but did not receive an award are eligible to submit a new application if they meet the above eligibility criteria.

The following individuals are ineligible for participation in the HDR–LRP:

(1) Persons who are not United States citizens, nationals, or permanent residents;

(2) Individuals who have a Federal judgment lien against their property arising from a Federal debt are barred from receiving Federal funds until the judgment is paid in full or satisfied;

(3) Individuals who owe an obligation of health professional service to the Federal Government, a State, or other entity, unless deferrals or extensions are granted for the length of the HDR–LRP service obligation. The following are examples of programs with service obligations that disqualify applicants from consideration, unless a deferral for the length of participation in the HDR–LRP is obtained:

- Physicians Shortage Area Scholarship Program,
- Primary Care Loans (PCL) Program—recipients of PCLs incur a service obligation to practice primary care. PCL recipients are eligible to apply for the HDR–LRP if the PCL has been paid in full. If still repaying the PCL, LRP applicants must submit documentation, via facsimile to (866) 849–4046, from the Health Resources and Services Administration (HRSA) that demonstrates that the LRP applicant is satisfying the terms and conditions of the PCL,
- Public Health Service Scholarship Program,
- National Health Service Corps Scholarship Program,
- Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program,
- Indian Health Service Scholarship Program,
- National Research Service Award Program—a current recipient of a postdoctoral National Research Service Award support from an individual postdoctoral fellowship (F32) or an institutional research training grant (T32) will not be eligible for loan repayment during the second year of NRSA support without a formal deferral of the NRSA service obligation (see *http://grants1.nih.gov/grants/guide/pa-files/PA–02–109.html*). Concurrent repayment of service obligations is prohibited. Participation in an NIH LRP is only permissible by first satisfying the NRSA service obligation, which is satisfied either by completing the second year of NRSA support or by requesting a deferral of the NRSA service obligation (note—first year NRSA recipients are eligible to apply for and receive NIH loan repayment. Second year NRSA recipients can apply to participate in the HDR–LRP, but can only receive loan repayment during the second year if an extension of time is obtained to satisfy the NRSA service obligation. If an extension is not obtained, loan repayment will commence after the completion of the NRSA service obligation. LRP payments are NOT retroactive.);

(4) Full-time employees of Federal Government agencies;

(5) Recipients of NIH Intramural Research Training Awards (IRTA) or Cancer Research Training Awards (CRTA);

(6) Individuals conducting research for which funding is precluded by Federal law, regulations or HHS/NIH policy, or that does not comply with applicable Federal, State, and local law regarding the conduct of the research (*e.g.*, applicable human subject protection regulations);

(7) Individuals with ineligible loans, which include loans that have been consolidated with a loan of another individual (including spouses or children), or loans that are not educational, such as home equity loans;

(8) Individuals with existing service obligations to Federal, State, or other entities may not apply for the HDR–LRP, unless and until the existing service obligation is discharged or deferred for the length of program participation; and

(9) Individuals that have a Federal judgment lien against their property arising from a Federal debt may not apply for the HDR–LRP until the judgment has been paid in full or otherwise satisfied.

Application Procedures

Applications must be submitted electronically to the Office of Loan Repayment (OLR). The NIH LRP Web site is *http://www.lrp.nih.gov*. The site has an Applicant Information Bulletin with the current deadlines, sources for assistance, and additional details regarding application procedures.

Application materials from the applicant, the supervisor/mentor, recommenders and institutional officials must be submitted prior to the application deadline.

The following information must be provided by the applicant:

1. *Applicant Information Statement.*

2. *Biosketch.*

3. *Personal Statement,* which includes a discussion of career goals and academic objectives.

4. *Description of Research Activities,* which describes the current or proposed research project including the specific responsibilities and role of the applicant in conducting the research. The research supervisor or mentor will be asked to concur in the research project description provided by the applicant.

5. *Contact information for Three Recommenders* (one of whom is identified as research supervisor or mentor).

6. *Contact Information for Institution Official* able to serve as the Institutional Contact and verify an applicant's employment/research appointment and research funding status.

7. *On-line Certification.*

8. *Loan information,* which includes the current account statement(s), and promissory note(s) or disclosure statement(s), obtained from lending institution(s), submitted via facsimile to (866) 849–4046.

9. *Notice of Grant/Award* (or PHS Form Number 2271 for T32 recipients) if applying based on NIH support.

The following information must be provided by the Research Supervisor/Mentor and submitted electronically via the NIH–LRP Web site:

1. *Recommendation.*

2. *Biosketch.*

3. *Assessment of the Research Activities Statement* submitted by the applicant.

4. *Description of the Research Environment.* (Please provide detailed information about the lab where the applicant is or will be conducting research, including funding, lab space, and major areas under investigation.)

5. *Training or Mentoring Plan.* (Includes a detailed discussion of the training and/or mentoring plan, as well as the research methods and scientific techniques to be taught.)

6. *Biosketch of other pertinent staff members* involved in the training or mentoring the applicant.

Recommenders must submit their recommendations electronically.

Institutional Contacts must electronically submit a certification, via the NIH–LRP Web-site, that: (a) Assures the applicant will be provided the necessary time and resources to engage in the research project for two years from the date a Loan Repayment Program Contract is executed; (b) assures that the applicant is or will be engaged in qualifying research for 50 percent of their time, *i.e.*, not less than 20 hours per week; (c) certifies that the funding foundation, professional society, or institution is considered to be non-profit as provided under section 501 of the Internal Revenue Code (26 U.S.C. 501) or is a U.S. government entity (Federal, State, or local), and (d) provides the applicant's institutional base salary.

Review Process

Applications that are received and complete by the deadline will undergo peer review by a Special Emphasis Panel (SEP). The reviewers will use the review criteria in assessing and rating each application.

Review Criteria

a. Potential of the applicant to pursue a career in minority health or other health disparities research.

- Appropriateness of the applicant's previous training and experience to prepare him/her for a minority health or other health disparities research career.
- Suitability of the applicant's proposed minority health or other health disparities research activities in the two-year loan repayment period to foster a research career.
- Assessment of the applicant's commitment to a research career as reflected by the personal statement of long-term career goals and the plan outlined to achieve those goals.
- Strength of recommendations attesting to the applicant's potential for a research career.

b. Quality of the overall environment to prepare the applicant for a minority health or other health disparities research career.

- Availability of appropriate scientific colleagues to achieve and/or enhance the applicant's research independence.
- Quality and appropriateness of institutional resources and facilities.

Program Administration and Details

Under the HDR–LRP, a portion of the participants' outstanding educational loan debt will be repaid. Participants will not automatically qualify for the maximum amount of loan repayment. The amount the NCMHD will consider for repayment during the initial two-year contract shall be calculated as follows: one-fourth the repayable debt per year, up to a maximum of $35,000 per year. For example, a participant with a base salary of $40,000 per year and an outstanding eligible educational loan debt of $100,000, would have a debt threshold of $8,000 (the debt threshold is 20 percent of an applicant's annual institutional salary). All participants are responsible for paying one-half of their debt threshold amount. This amount is known as the participant's obligation and is subtracted from the total outstanding loan debt. In this case, the participant's obligation would be $4,000 and the participant's eligible loan debt would be reduced to $96,000. This reduced amount is known as the repayable debt ($100,000 − $4,000 = $96,000). Of the $96,000 repayable debt amount, the NCMHD would repay $24,000 a year in loan repayments (one-fourth of the repayable debt amount), plus tax benefits.

Loan repayments will be made to the designated lender following the completion of each full quarter (3 months) of service by the participant and upon the receipt of requested documentation from the participants and their supervisors/mentors. Because the first payment to the lenders on behalf of the participants will not commence until the end of the first full quarter of obligated service, participants should continue to make monthly loan payments until they have been informed that payments have been forwarded to their lenders. This measure enables the participants to maintain their loans in a current payment status.

In return for the repayment of their educational loans, participants must agree to (1) engage in qualified minority health or other health disparities research for a minimum period of two years; (2) engage in such research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week; (3) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (4) pay monetary damages as required for breach of contract; and (5) satisfy other terms and conditions of the LRP contract.

Repayments are made directly to lenders, following the receipt of (1) the Principal Investigator, Program Director, or Research Supervisor's verification of completion of the prior period of research, and (2) lender verification of the crediting of prior loan repayments, including the resulting account balances and current account status. The NIH will repay loans in the following order, unless the Director determines that significant savings would result from a different order of priority:

(1) Loans guaranteed by the U.S. Department of Health and Human Services:

- Health Education Assistance Loan (HEAL);
- Health Professions Student Loan (HPSL);
- Loans for Disadvantaged Students (LDS); and
- Nursing Student Loan Program (NSL);

(2) Loans guaranteed by the U.S. Department of Education:

- Direct Subsidized Stafford Loan;
- Direct Unsubsidized Stafford Loan;
- Direct Consolidation Loan;
- Perkins Loan;
- FFEL Subsidized Stafford Loan;
- FFEL Unsubsidized Stafford Loan; and
- FFEL Consolidation Loan;

(3) Loans made or guaranteed by a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States;

(4) Loans made by accredited academic institutions; and

(5) Private ("Alternative") Educational Loans:

- MEDLOANS; and
- Private (non-guaranteed) Consolidation Loans.

The following loans are NOT repayable under the HDR–LRP:

(i) Loans not obtained from a U.S. or other government entity, academic institution, or a commercial or other chartered U.S. lending institution such as loans from friends, relatives, or other individuals, and non-educational loans, such as home equity loans;

(ii) Loans for which contemporaneous documentation (current account statement, and promissory note or lender disclosure statement) is not available;

(iii) Loans that have been consolidated with loans of other individuals, such as a spouse or child;

(iv) Loans or portions of loans obtained for educational or living expenses that exceed a reasonable level, as determined by the standard school budget for the year in which the loan was made, and are not determined by the LRP to be reasonable based on additional contemporaneous documentation provided by the applicant;

(v) Loans, financial debts, or service obligations incurred under the following programs, or other programs that incur a service obligation that converts to a loan on failure to satisfy the service obligation:

- Physicians Shortage Area Scholarship Program (Federal or State);
- National Research Service Award Program;
- Public Health and National Health Service Corps Scholarship Program;
- Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Program; and
- Indian Health Service Scholarship Program;

(vi) Delinquent loans, loans in default, or loans not current in their payment schedule;

(vii) PLUS Loans;

(viii) Loans that have been paid in full;

(ix) Loans obtained after the execution of the LRP Contract (*e.g.*, promissory note signed after the LRP contract has been awarded); and

(x) Primary Care Loans.

During lapses in loan repayments, due either to NIH administrative complications or a break in service, LRP participants are wholly responsible for making payments or other arrangements that maintain loans current, such that increases in either principal or interest do not occur. Penalties assessed participants as a result of NIH administrative complications to maintain a current payment status may not be considered for reimbursement.

Additional Program Information

This program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs. Under the requirements of the Paperwork Reduction Act of 1995, OMB has approved the application forms for use by the HDR–LRP under OMB Approval No. 0925–0361 (expires December 31, 2004).

The Catalog of Federal Domestic Assistance number for the HDR–LRP is 93.307.

Dated: February 5, 2003.

Elias A. Zerhouni,

Director, NIH.

[FR Doc. 03–8427 Filed 4–7–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel G–09.

Date: April 21, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Martin H. Goldrosen, PhD, Chief, Office of Scientific Review, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd, Ste. 106, Bethesda, MD 20892–5475, (301) 451–6331, *goldrosm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Dated: March 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8423 Filed 4–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, NHLBI Mentored Scientist Development Award.

Date: April 21, 2003.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Roy L. White, PhD, Scientific Review Administrator, Review Branch, Room 7192, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892. 301–435–0287.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8420 Filed 4–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, N/A.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: May 13–14, 2003.

Closed: May 13, 2003, 8 a.m. to 8:15 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Open: May 13, 2003; 8:15 a.m. to 11:45 a.m.

Agenda: Committee discussion.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Closed: May 13, 2003, 11:45 a.m. to 12:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Open: May 13, 2003, 12:45 p.m. to 4:25 p.m.

Agenda: Committee discussion.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Closed: May 13, 2003, 4:25 p.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Closed: May 14, 2003, 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Open: May 14, 2003, 8:30 a.m. to 12:30 p.m.

Agenda: Committee discussion.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Closed: May 14, 2003, 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Open: May 14, 2003, 1:30 p.m. to 2:30 p.m.

Agenda: Committee Discussion.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Open: May 14, 2003, 2:30 p.m. to 3 p.m.

Agenda: Personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Contact Person: Dan L. Longo, MD, Scientific Director, National Institute on Aging, Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825, 410–558–8110, *dl14q@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8421 Filed 4–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Dose Escalation Trial Contract Proposal Teleconference.

Date: April 8, 2003.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone conference call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5388.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8422 Filed 4–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: May 21–22, 2003.

Closed: May 21, 2003, 9 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: May 22, 2003, 9 a.m. to 4 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Bethesda, MD 20892–9547, (301) 443–2755.

Information is also available on the Institute's/Center's home page: *http//www.drugabuse.gov/NACDA/NACDAHome.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8424 Filed 4–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2002–13482]

Response Boat Replacement Project; Programmatic Environmental Assessment and Finding of No Significant Impact

AGENCY: Coast Guard, DHS

ACTION: Notice of availability.

SUMMARY: The U.S. Coast Guard (USCG) announces the availability of the Final Programmatic Environmental Assessment (PEA) and Finding of No Significant Impact (FONSI) for the USCG Response Boat Replacement Project. The purpose of acquiring standard Response Boats—Small (RB-S) and Response Boats—Medium (RB-M) is to add to or replace these aging and increasingly inefficient vessels with standard, more reliable, and more environmentally sound ones. These boats will be deployed at the 44 Coast Guard Group or Activities units, 186 multi-mission stations, and 24 Marine Safety Offices that currently operate non-standard vessels and/or 41-foot Utility Boats (41-foot UTB).

ADDRESSES: Documents discussed in this notice, including comments, will be available for review or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC, between the hours 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. This material may also be viewed on the Internet at Web address: *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions about the project, or would like a copy of the PEA or FONSI, you may contact Mr. David Wiskochil at (202) 267–0584 or e-mail him at: *Dwiskochil@comdt.uscg.mil.* For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION: We are announcing the availability of the Final Programmatic Environmental Assessment (PEA) and Finding of No Significant Impact (FONSI) for the Coast Guard Response Boat Replacement Project. The purpose of acquiring standard Response Boats—Small (RB-S) and Response Boats—Medium (RB-M) is to add to or replace these aging and increasingly inefficient vessels with standard, more reliable, and more environmentally sound ones. These boats will be deployed at the 44 Coast Guard Group or Activities units, 186 multi-mission stations, and 24 Marine Safety Offices that currently operate non-standard vessels and/or 41-foot Utility Boats (41-foot UTB).

Domestic port safety and security has long been a core USCG mission. In the wake of the terrorist attacks committed on September 11, 2001, however, emerging threats to the U.S. homeland have prompted an increased USCG focus on protecting domestic ports and the U.S. maritime transportation system from terrorist threats.

The PEA is a broad, general view of the environmental impacts that may be anticipated by the purchase and deployment of the RB-Ss and RB-Ms along the coastal United States, including the Great Lakes states, Hawaii, Alaska, Guam, Puerto Rico, and the U.S. Virgin Islands. The PEA cannot foresee all possible site-specific and cumulative environmental impacts as a result of implementation of the proposed action.

Homeporting identifies where a boat would normally be docked. Because this is a programmatic document without specific homeporting decisions for the RB–Ms and RB–Ss, certain site-specific environmental categories that may be impacted by those decisions have not been assessed in this document but will be addressed in follow-on analysis under the National Environmental Policy Act (NEPA) as necessary. As identified in the notice of intent and request for comments we published October 10, 2002 in the **Federal Register** (67 FR 63189–63191) these categories are: Socioeconomic, environmental justice, land use, cultural resources and geological resources.

We received six comments. Five of those who commented merely thanked us for a copy of the Notice. The sixth, California Coastal Commission, indicated that a Finding of Consistency might be necessary. The Coast Guard agrees that, when homeporting decisions are made, additional environmental analyses, as well as a consistency determination may be necessary. The USCG intends to replace the current 350 non-standard small boats with the new RB–Ss on a one-for-one basis at existing USCG facilities with minor or no changes to

infrastructure. Personnel levels are expected to remain the same.

The USCG also intends to replace the 41-foot UTBs with RB–Ms. In some cases, the RB–Ms will replace the 41-foot UTBs on a one-for-one basis. Some facilities may receive additional RB–Ms and supplementary personnel may be required. For Homeland Security considerations, the USCG may add additional RB–Ss and RB–Ms at existing USCG facilities. Actual homeporting of additional RB–Ms or RB–Ss will be addressed in follow-on NEPA documentation as necessary.

As part of the USCG's homeland security mission, some of the 700 RB–Ss will be used as part of the establishment and operation of Maritime Safety and Security Teams (MSSTs). Separate NEPA analyses are being conducted for the MSST program. The USCG is still formulating plans regarding the homeporting and personnel requirements of these boats. As homeporting decisions are made, the USCG will use this PEA as a tiering document, and if necessary, appropriate follow-on NEPA assessments will be completed.

Dated: April 2, 2003.

George Molessa,

Captain, U.S. Coast Guard, Assistant Commandant for Acquisition, Acting.

[FR Doc. 03–8524 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–14500]

Merchant Mariner's Documents: Forms and Procedures for Renewals and Issuances

AGENCY: Coast Guard, DHS.

ACTION: Notice of policy.

SUMMARY: The Coast Guard published a notice in the **Federal Register** on Thursday, February 20, 2003, in which we stated: "The Coast Guard will begin issuing Merchant Mariner's Documents (MMDs) [on] a new form to new applicants as soon as possible." The Coast Guard has since implemented new, more secure procedures to process new or "original" applicants and is now issuing MMDs on the new form.

DATES: The Coast Guard began issuing MMDs to original applicants on the new form on February 28, 2003.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Mr. Donald J. Kerlin, Deputy Director, Coast Guard National Maritime Center (NMC), (202) 493–1006.

SUPPLEMENTARY INFORMATION: MMDs both serve as identity cards for merchant mariners and provide information about the mariners' professional qualifications. MMDs, in the previously issued form (CG–2838 [Rev. 7–94]), serve the second of these purposes well enough; however, they no longer serve the first with sufficient confidence. The Coast Guard is replacing them using a new form (CG–2838 [Rev. 09/02]) that it will issue through a more secure process. It will make every effort to effect a smooth and easy transition from the old form to the new form. The issuance of MMDs on the new form for original applicants began on February 28, 2003.

Mariners may encounter delays incident to the new processes now in practice. For further information, mariners may contact their nearest Regional Exam Centers (RECs), a list of which appears at 46 CFR 12.01–7, or call Mr. Donald Kerlin at the National Maritime Center, 4200 Wilson Boulevard, Suite 630, Arlington, VA 22203–1804, (202) 493–1006.

Authority: 46 U.S.C. 7301, 7302, 7303, 7304, 7305, 7503, 7505, and Department of Homeland Security Delegation No. 0170.

Dated: March 13, 2003.

Kevin J. Eldridge,

Rear Admiral, Coast Guard, Assistant Commandant for Governmental and Public Affairs.

[FR Doc. 03–8451 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–15]

Notice of Proposed Information Collection: Comment Request; Application for Multifamily Housing Project

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for reviews, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: June 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 415 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the pubic and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Application for Multifamily Housing Project.

OMB Control Number, if applicable: 2502–0029.

Description of the need for the information and proposed use: This information collection is the basic application used in HUD/FHA multifamily insurance programs. The related exhibits are needed by HUD to determine project feasibility, and mortgagor/contractor acceptability. HUD analyzes specific information including financial data, cost data, drawings, and specifications to determine whether the proposed project meets program requirements for mortgage insurance. This is a revision to include form HUD–92013–E, which accompanies each application for any project intended to provide housing for the elderly or the disabled for non-assisted housing.

Agency form numbers, if applicable. HUD–92013, HUD–92013–SUPP, HUD–92013–NHICF, & HUD–92013–E.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 168,680; the number of respondents is 6,350 generating approximately 6,350 annual responses, the frequency of response is on occasion; and the estimated time needed to prepare the response varies from 36 minutes to 68 hours.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: April 1, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 03–8549 Filed 4–7–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–31]

Announcement of Funding Awards for the Rural Housing and Economic Development Program; Fiscal Year 2002

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Super Notice of Funding Availability (SuperNOFA) for the Rural Housing and Economic Development Program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Jackie Williams-Mitchell, Director, Office of Rural Housing and Economic Development, Office of Community Planning and Development, 451 7th Street, SW., Room 7137, Washington, DC 20410; telephone (202) 708–2290 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–800–877–8339. For general information on this and other HUD programs, call Community Connections at 1–800–998–9999 or visit the HUD Web site at *http://www.hud.gov*.

SUPPLEMENTARY INFORMATION: The Rural Housing and Economic Development program was authorized by the Department of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act of 1999. The competition was announced in the SuperNOFA published March 26, 2002. Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

The Catalog of Federal Domestic Assistance number for this program is 14.250.

The Rural Housing and Economic Development Program is designed to build capacity at the State and local level for rural housing and economic development and to support innovative housing and economic development activities in rural areas. Eligible applicants are local rural non-profit organizations, community development corporations, Indian tribes, and State housing finance agencies. The funds made available under this program were awarded competitively, through a selection process conducted by HUD in consultation with the United States Department of Agriculture (USDA).

For the Fiscal Year 2002 competition, a total of $25,000,000 was awarded to 101 projects nationwide. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987. 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in appendix A to this document.

Dated: March 27, 2003.

Roy A. Bernardi,

Assistant Secretary for Community, Planning and Development.

APPENDIX A.—FISCAL YEAR 2002 FUNDING AWARDS FOR RURAL HOUSING AND ECONOMIC DEVELOPMENT PROGRAM

Applicant	City	State	Award
Rural Alaska Community Action Program, Inc	Anchorage	AK	$400,000
Tanana Chiefs Conference, Inc	Fairbanks	AK	400,000
The Hale Empowerment and Revitalization Organization	Greensboro	AL	93,153
Ark of Love Ministries	Hayneville	AL	110,400
South Arkansas Community Development	Arkadelphia	AR	150,000
Southern Financial Partners	Arkadelphia	AR	150,000
Community Development Partnership	Eureka Springs	AR	149,954
Native Resources Developer, Inc	Pago Pago Samoa	AS	145,000
International Sonoran Desert Alliance	Ajo	AZ	150,000
Elfrida Citizens' Alliance, Inc	Elfrida	AZ	150,000
White Mountain Apache CDC	McNary	AZ	400,000
Comite de Bien Estar, Inc	San Luis	AZ	400,000
Catholic Community Services in Southeastern AZ	Sierra Vista	AZ	400,000
PPEP Microbusiness and Housing Development Cor	Tucson	AZ	400,000
White Mountain Apache Tribe of the Fort Apache Reservation	Yuma	AZ	400,000
Campesinos Unidos, Inc	Brawley	CA	150,000
Timbisha Shoshone Tribe	Brawley	CA	149,112
Housing Assistance Corporation	Fresno	CA	150,000
Community Advocacy Foundation	Fresno	CA	400,000
South County Housing Corporation	Gilroy	CA	400,000
North Fork Community Development Council, Inc	North Fork	CA	100,000

APPENDIX A.—FISCAL YEAR 2002 FUNDING AWARDS FOR RURAL HOUSING AND ECONOMIC DEVELOPMENT PROGRAM—Continued

Applicant	City	State	Award
Walking Shield American Indian Society, Inc	Tustin	CA	400,000
Guidiville Indian Rancheria	Ukiah	CA	150,000
San Pasqual Band of Mission Indians of California	Valley Center	CA	150,000
Colorado Housing Inc	Pagosa Springs	CO	148,750
Catholic Charities Housing, Inc	St Petersburg	FL	400,000
Georgia Legal Services Program, Inc	Atlanta	GA	150,000
Lower Chattahoochee Regional Development Center	Columbus	GA	150,000
Southwest Georgia United Empowerment Zone, Inc	Vienna	GA	399,996
Grow Iowa Foundation, Inc	Orient	IA	150,000
Federation of Appalachian Housing Enterprises, Inc	Berea	KY	150,000
Hazard Perry County Community Ministries, Inc	Hazard	KY	400,000
Kentucky Highlands Investment Corporation	London	KY	400,000
Purchase Area Housing Corporation	Mayfield	KY	150,000
Kentucky River Foothills Development Council, Inc	Richmond	KY	150,000
Southern Kentucky Economic Development Corp	Somerset	KY	400,000
Community Housing, Inc	Winchester	KY	134,000
Project 2000, Inc	Hammond	LA	75,000
Four Directions Development Corp	Bangor	ME	399,000
Western Maine Development Association	South Paris	ME	150,000
Keweenaw Bay Indian Community	Baraga	MI	145,015
Little River Band of Ottawa Indians	Manistee	MI	400,000
Midwest Minnesota Community Development Corporation	Detroit Lakes	MN	400,000
Three Rivers Community Action, Inc	Zumbrota	MN	150,000
North East Comm. Action Corp	Bowling Green	MO	50,000
Quitman County Development Organization	Marks	MS	400,000
Native American Development Corporation	Billings	MT	149,488
Blackfeet Tribe	Browning	MT	400,000
Ktunaxa Community Development Corporation	Elmo	MT	400,000
Fort Belknap Indian Community	Harlem	MT	333,218
Fort Peck Assiniboine and Sioux Tribes	Poplar	MT	400,000
Lake County Community Housing Organization	Ronan	MT	148,460
Community Developers of Beaufort-Hyde, Inc	Belhaven	NC	100,000
Northwestern Housing Enterprises, Inc	Boone	NC	400,000
Eastern Band of Cherokee Indians	Cherokee	NC	400,000
Native Opportunity Way Community Development Corp	Hollister	NC	99,560
Laurinburg Downtown Revitalization Corporation	Laurinburg	NC	150,000
Design Corps	Raleigh	NC	400,000
Omaha Tribe of Nebraska	Macy	NE	400,000
Santee Sioux Tribe of Nebraska	Niobrara	NE	400,000
Ho-Chunk Community Development Corporation	Winnebago	NE	384,500
New Mexico Mortgage Finance Authority	Albuquerque	NM	400,000
Women's Intercultural Center, Inc	Anthony	NM	150,000
Eastern Plains Housing Development Corporation	Clovis	NM	100,000
Rio Grande Valley Housing and Economic Development Corp	Espanola	NM	142,465
Las Cruces Affordable Housing, Inc	Las Cruces	NM	150,000
Dona Ana County Advocates for Children and Families	Las Cruces	NM	400,000
Hidalgo Medical Services	Lordsburg	NM	150,000
Pojoaque Housing Corporation	Santa Fe	NM	100,000
Fallon Paiute-Shoshone Tribe	Fallon	NV	400,000
Western Catskills Community Revitalization Council, Inc	Stamford	NY	150,000
Housing Authority of the Apache Tribe of Oklahoma	Anadarko	OK	27,075
Housing Authority of the Choctaw Nation of Oklahoma	Hugo	OK	100,000
Comanche Nation Housing Authority	Lawton	OK	306,000
Citizen Potawatomi Nation	Shawnee	OK	396,870
Cherokee Nation	Tahlequah	OK	400,000
Burns Paiute Tribe	Burns	OR	150,000
Confederated Tribes of the Umatilla Indian Reservation	Pendleton	OR	297,000
State of Oregon	Salem	OR	400,000
Four Bands Community Fund, Inc	Eagle Butte	SD	150,000
Lakota Fund	Kyle	SD	150,000
Sicangu Enterprise Center	Mission	SD	150,000
Oglala Sioux Tribe Partnership for Housing, Inc	Pine Ridge	SD	400,000
West Tennessee Legal Services, Inc	Jackson	TN	149,984
Eastern Eight Community Development Corporation	Johnson City	TN	16,000
Sparks Housing Development Corporation	El Paso	TX	150,000
El Paso Collaborative for Community & Economic Develop	El Paso	TX	400,000
Community Empowerment through Education (CETE)	El Paso	TX	400,000
Rural Development and Finance Corporation	San Antonio	TX	75,000
RDFC Housing Development Corporation	San Antonio	TX	75,000
Azteca Community Loan Fund	San Juan	TX	400,000
Center for Economic Opportunities	San Juan	TX	400,000
Proyecto Azteca	San Juan	TX	400,000
Texas Community Credit Opportunities, Inc	Weslaco	TX	400,000
World Vision	Federal Way	WA	150,000
Lopez Community Land Trust	Lopez	WA	150,000
Northwest Regional Facilitators	Spokane	WA	150,000
Sokoagon Chippewa Community	Crandon	WI	150,000
Catholic Charities Bureau, Inc	Superior	WI	100,000
Southern Appalachian Labor School	Kincaid	WV	400,000
Northern Arapaho Housing Development Organization	Ethete	WY	100,000
Total			$25,000,000

[FR Doc. 03–8552 Filed 4–7–03; 8:45 am]
BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We (U.S. Fish and Wildlife Service) solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before May 8, 2003 to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–068803

Applicant: Jerry Lynn Kinser, Conroe, Texas.

The applicant requests a permit to purchase, in interstate commerce, one female and one male captive bred Hawaiian (=nene) goose (*Branta [=Nesochen] sandvicensis*) for the purpose of enhancing its propagation and survival. This notification covers activities conducted by the applicant over the next 5 years.

Permit No. TE–039800

Applicant: Kathy Williams, San Diego, California.

The permittee requests an amendment to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–068799

Applicant: Mikael Romich, San Bernardino, California.

The applicant requests a permit to take (harass by survey and locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys and nest monitoring in San Bernardino, Riverside, Los Angeles, Orange, and San Diego Counties, California for the purpose of enhancing its survival.

Permit No. TE–022630

Applicant: U.S. Geological Survey, Las Vegas, Nevada.

The permittee requests an amendment to collect/reduce to possession Astragalus jaegerianus (Lane Mountain milk-vetch) in conjunction with research in San Bernardino County, California for the purpose of enhancing its survival.

Permit No. TE–069171

Applicant: Santa Monica Mountains National Recreation Area, Thousand Oaks, California.

The applicant requests a permit to collect/reduce to possession Pentachaeta lyonii (Lyon's pentachaeta) in conjunction with seed collection and propagation in Ventura County, California for the purpose of enhancing its survival.

Permit No. TE–839480

Applicant: Richard Zembal, Laguna Hills, California.

The permittee requests an amendment to take (harass by survey) the Stephen's kangaroo rat (Dipodomys stephensi) and the San Bernardino kangaroo rat (Dipodomys merriami parvus) in conjunction with surveys in San Bernardino, Riverside, and Orange Counties, California for the purpose of enhancing their survival.

Permit No. TE–799568

Applicant: Dana Kamada, San Clemente, California.

The permittee requests an amendment to take (harass by survey) the Conservancy fairy shrimp (Branchinecta conservatio), the longhorn fairy shrimp (Branchinecta longiantenna), the Riverside fairy shrimp (Streptocephalus wootoni), the San Diego fairy shrimp (Branchinecta sandiegonensis), and the vernal pool tadpole shrimp (Lepidurus packardi) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–821404

Applicant: Doug Willick, Orange, California.

The permittee requests an amendment to take (monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and nest monitoring in Ventura County, California for the purpose of enhancing its survival.

Permit No. TE–069321

Applicant: Department of the Army—Fort Hunter Liggett, Fort Hunter Liggett, California.

The applicant requests a permit to take (capture, band, and release) the least Bell's vireo (*Vireo bellii pusillus*) and the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with mist-netting surveys in Ventura County, California for the purpose of enhancing their survival.

Permit No. TE–837309

Applicant: Michael Misenhelter, Norco, California.

The permittee requests an amendment to take (survey by pursuit) the Quino checkerspot butterfly (Euphydryas editha quino) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–069534

Applicant: Victor Novik, San Diego, California.

The applicant requests a permit to take (harass by survey) the Riverside fairy shrimp (*Streptocephalus wootoni*) and the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and to take (survey by pursuit) the Quino checkerspot butterfly (Euphydryas editha quino) in conjunction with surveys in San Diego, Imperial, Orange, Riverside, and Ventura Counties, California for the purpose of enhancing their survival.

Permit No. TE–067291

Applicant: Barry Roth, San Francisco, California.

The applicant requests a permit to take (survey, collect, and sacrifice) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with taxonomic and classification studies throughout the range of the species in California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: March 28, 2003.

Daniel H. Diggs,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–8487 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Permits for Incidental Take

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Issuance of 229 Permits for Incidental Take of Threatened and Endangered Species.

SUMMARY: Between April 21, 2000 and December 31, 2002, Region 2 of the Fish and Wildlife Service issued 229 permits for the incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. Of the 229 permits issued, in the greater Austin, Texas area; 9 were for the golden-cheeked warbler (*Dendroica chrysoparia*) (GCW) related to the Balcones Canyonlands Preserve, and 220 were for the Houston toad (Bufo houstonesis) (HT). In addition, between October 1, 2000, and September 30, 2001, 5 permits were amended, one for several karst invertebrate species, and 4 for HT.

ADDRESSES: If you would like copies of any of the above documents, please contact the U.S. Fish and Wildlife Service, Ecological Services, P.O. Box 1306, Room 4012, Albuquerque, New Mexico, 87103.

FOR FURTHER INFORMATION CONTACT: Leslie Dierauf, Regional Habitat Conservation Plan Coordinator, P.O. Box 1306, Room 4012, Albuquerque, New Mexico, 87103, 505–248–6651. Further details of these permits may also be viewed on the Internet at *http://ecos.fws.gov.*

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal Regulation prohibit the "take" of wildlife species listed as threatened or endangered species. Under the Act, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to authorize incidental take, *i.e.* that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing permits for endangered species are at 50 CFR 17.22.

229 INCIDENTAL TAKE PERMITS ISSUED

Permittee	(State)Species	Permit No.	Date of issuance
Cornerstone #1	(TX)HT	TE–021793–0	4/27/00
Ehler	(TX)HT	TE–021561–0	4/27/00
Sanchez	(TX)HT	TE–021792–0	4/27/00
SPS Builders	(TX)HT	TE–021532–0	5/10/00
Cook Classic Home	(TX)HT	TE–023593–0	5/19/00
Walters	(TX)HT	TE–021659–0	5/24/00
Hanks and Sims	(TX)HT	TE–024872–0	6/9/00
Tilley	(TX)HT	TE–023965–0	6/9/00
Johnson	(TX)GCW	TE–024873–0	7/17/00
Comanche Canyon Ranch	(TX)GCW	TE–004683–0	7/17/00
Crossings, The	(TX)HT	TE–024619–0	7/27/00
Berger	(TX)HT	TE–027260–0	7/28/00
Cantrell	(TX)HT	TE–025654–0	7/28/00
Hodges	(TX)HT	TE–025653–0	7/28/00
Cooper	(TX)HT	TE–027163–0	7/28/00
Manferd	(TX)HT	TE–025655–0	7/28/00
Cornerstone #2	(TX)HT	TE–026687–0	7/28/00
Pettit	(TX)HT	TE–025656–0	7/28/00
Mixon	(TX)HT	TE–027746–0	8/17/00
Bush	(TX)HT	TE–029602–0	8/31/00
Macleod	(TX)HT	TE–025997–0–009	9/15/00
Ludwig/Wheeler	(TX)HT	TE–025997–0–001	9/15/00

229 INCIDENTAL TAKE PERMITS ISSUED—Continued

Permittee	(State)Species	Permit No.	Date of issuance
Miles	(TX)HT	TE–029947–0	9/18/00
Broussard	(TX)HT	TE–029946–0	9/18/00
Decker	(TX)HT	TE–028087–0	9/18/00
Rush Green Builder	(TX)HT	TE–025997–0–033	9/18/00
Russo	(TX)HT	TE–029605–0	9/18/00
Aiello	(TX)GCW	TE–025965–0–001	9/28/00
Lake of the Woods	(TX)HT	TE–029780–0	9/28/00
Bastrop Co 4 Low Quality	(TX)HT	TE–025965–0–000	9/28/00
Bastrop Co 42 Medium Quality	(TX)HT	TE–025997–0–000	9/28/00
Bastrop Seventh Day Adventist	(TX)HT	TE–025997–0–003	10/2/00
Becerra	(TX)HT	TE–025997–0–004	10/2/00
Kummermehr	(TX)HT	TE–025997–0–010	10/2/00
Seifert	(TX)HT	TE–025997–0–005	10/2/00
Jarrels	(TX)HT	TE–025997–0–006	10/13/00
SEB Circle B Homes	(TX)Karst	TE–025997–0–011	10/13/00
McClure #1	(TX)HT	TE–025997–0–014	10/13/00
McClure #2	(TX)HT	TE–025997–0–015	10/13/00
Schena	(TX)HT	TE–029608–0	10/27/00
MacQueen	(TX)HT	TE–025997–0–021	10/31/00
Pierson	(TX)HT	TE–025997–025	11/21/00
Ligopn	(TX)HT	TE–025997–0–014	11/21/00
Smith, L	(TX)HT	TE–025997–0–024	11/21/00
Lindenau	(TX)HT	TE–025997–0–023	11/21/00
Kelley	(TX)HT	TE–025997–0–008	12/1/00
Johnson #2	(TX)HT	TE–025997–0–027	12/21/00
Groves	(TX)HT	TE–025997–0–026	12/21/00
Niehus	(TX)HT	TE–025997–0–029	12/21/00
Walraven	(TX)HT	TE–033185	1/18/01
Gilfillan	(TX)HT	TE–33887–0	1/23/01
Gillespie	(TX)HT	TE–025997–0–032	1/29/01
Stahl	(TX)HT	TE–032117–0	1/29/01
Vavricek	(TX)HT	TE–025997–0–028	1/29/01
Holter	(TX)HT	TE–025997–0–030	1/29/01
Stobaugh #1	(TX)HT	TE–025965–0–002	2/20/01
Steines	(TX)HT	TE–025965–0–003	2/20/01
Miller	(TX)HT	TE–025997–0–033	2/20/01
Nira	(TX)HT	TE–025997–0–034	2/20/01
Sinclair	(TX)HT	TE–025997–0–031	2/20/01
Walters	(TX)HT	TE–025997–0–036	2/20/01
Parker	(TX)HT	TE–025997–0–037	2/20/01
Gardner	(TX)HT	TE–025997–0–035	2/20/01
Live Oak Homes	(TX)HT	TE–025997–0–016	2/26/01
McClure #3	(TX)HT	TE–025997–0–040	2/26/01
Cornerstone Construction #3	(TX)HT	TE–025997–0–042	2/26/01
Havens	(TX)HT	TE–025997–0–038	3/1/01
Young	(TX)HT	TE–025965–0–004	3/9/01
Sultan & Kahn	(TX)HT	TE–035525–0	3/9/01
Roush	(TX)HT	TE–025997–0–041	3/9/01
Macafee	(TX)HT	TE–025997–0–039	3/9/01
Advantage Builders #1	(TX)HT	TE–025997–0–045	3/23/01
Colter	(TX)HT	TE–025997–0–044	3/23/01
Bishop	(TX)HT	TE–025997–0–049	3/23/01
Miller	(TX)HT	TE–025965–0–047	3/23/01
McCluree #4	(TX)HT	TE–025965–0–048	3/23/01
Advantage Builder #2	(TX)HT	TE–025997–0–046	3/23/01
Mosley	(TX)HT	TE–025965–0–006	4/6/01
Slater	(TX)HT	TE–025965–0–007	4/6/01
Mendoza	(TX)HT	TE–025965–0–009	4/6/01
Smith, A	(TX)HT	TE–025965–0–008	4/6/01
Hansen	(TX)HT	TE–025965–0–010	4/6/01
Casey	(TX)HT	TE–025997–0–050	4/6/01
Wright	(TX)HT	TE–025997–0–043	4/25/01
CT–620	(TX)GCW	TE–036095–0	4/30/01
Skye & Eckert	(TX)HT	TE–035908–0	4/30/01
Beeman	(TX)HT	TE–035919–0	4/30/01
DuCharme	(TX)HT	TE–025997–0–053	5/10/01
Shigo	(TX)HT	TE–025997–0–071	5/10/01
Juarez Construction, Inc	(TX)HT	TE–025965–0–016	5/10/01
Tod Phillips Homes #5	(TX)HT	TE–025965–0–014	5/10/01
Tod Phillips Homes #16	(TX)HT	TE–025965–1–015	5/10/01
Tod Phillips Homes #1	(TX)HT	TE–025997–0–059	5/10/01
Tod Phillips Homes #2	(TX)HT	TE–025997–0–060	5/10/01

229 INCIDENTAL TAKE PERMITS ISSUED—Continued

Permittee	(State)Species	Permit No.	Date of issuance
Tod Phillips Homes #3	(TX)HT	TE–025997–0–061	5/10/01
Tod Phillips Homes #64	(TX)HT	TE–025997–0–064	5/10/01
Haeffner & Rostetter	(TX)HT	TE–025997–0–063	5/10/01
Glenn	(TX)HT	TE–025997–1–055	5/10/01
Stobaugh #2	(TX)HT	TE–025997–0–011	5/10/01
Shen Inc.	(TX)HT	TE–025997–0–054	5/10/01
Goode	(TX)HT	TE–025997–0–062	5/10/01
West	(TX)HT	TE–025997–0–056	5/10/01
Hinkston	(TX)HT	TE–025997–0–057	5/10/01
Ingram #1	(TX)HT	TE–025965–0–018	6/15/01
Conrad	(TX)HT	TE–025997–0–073	6/15/01
Cornerstone Construction #4	(TX)HT	TE–025997–1–113	6/15/01
Alley	(TX)HT	TE–025965–0–017	6/15/01
Brigham	(TX)HT	TE–025997–0–0075	6/15/01
Martinez	(TX)HT	TE–025997–0–080	6/15/01
Brady	(TX)HT	TE–025997–0–075	6/15/01
Vasquez	(TX)HT	TE–037190–0	6/26/01
Harding	(TX)HT	TE–36096–0	6/28/01
Gray Mountain, Ltd	(TX)GCW	TE–037888–0	6/28/01
Bell	(TX)HT	TE–039440–0	6/28/01
Wirries	(TX)HT	TE–037191–0	7/1/01
JRS Builders #1	(TX)HT	TE–025997–0–093	7/5/01
JRS Builders #2	(TX)HT	TE–025997–0–094	7/5/01
City of Bastrop, Water Dept	(TX)HT	TE–025965–0–013	7/5/01
Kailing	(TX)HT	TE–025997–090	7/5/01
Ellington	(TX)HT	TE–025965–0–020	7/5/01
Wright	(TX)HT	TE–025965–0–019	7/5/01
McClure #5	(TX)HT	TE–025997–0–097	7/27/01
McClure #6	(TX)HT	TE–025997–0–098	7/27/01
Greenwood	(TX)HT	TE–025997–0–096	7/27/01
Howard	(TX)HT	TE–025997–0–058	7/27/01
Holberg	(TX)HT	TE–025997–1–100	8/1/01
Matl	(TX)HT	TE–025997–1–101	8/1/01
Bastrop County WCID #2	(TX)HT	TE–025965–1–023	8/1/01
Steiwig	(TX)HT	TE–025997–1–099	8/3/01
Capstone Builders #1	(TX)HT	TE–025965–1–021	8/3/01
Capstone Builders #2	(TX)HT	TE–025965–1–022	8/3/01
Cornerstone Construction #5	(TX)HT	TE–025997–0–104	8/23/01
Whited	(TX)HT	TE–025997–0–108	8/23/01
Fuller	(TX)HT	TE–025997–0–105	8/23/01
Myers	(TX)HT	TE–025997–0–109	8/27/01
Bowman Builders #1	(TX)HT	TE–025997–0–081	8/27/01
Bowman Builders #2	(TX)HT	TE–025997–0–082	8/27/01
Tyre	(TX)HT	TE–025997–1–106	8/27/01
Samaro	(TX)HT	TE–025997–1–107	8/27/01
Burnham	(TX)HT	TE–025997–1–111	9/10/01
Garcia	(TX)HT	TE–025997–1–113	9/10/01
Fernandez	(TX)HT	TE–025997–1–112	9/10/01
Taylor	(TX)HT	TE–025997–1–024	9/18/01
Serna	(TX)HT	TE–025997–1–114	9/18/01
Holcomb	(TX)HT	TE–041785–0	10/2/01
Nicholson	(TX)HT	TE–041784–0	10/10/01
Beathard	(TX)HT	TE–046419–0	10/10/01
Adams	(TX)HT	TE–041787–0	10/10/01
La Cantera	(TX)HT	TE–044512–0	10/22/01
Raz	(TX)HT	TE–042729–0	10/25/01
Scarpato	(TX)HT	TE–042733–0	10/26/01
Abell	(TX)HT	TE–025997–1–115	11/1/01
Briscoe	(TX)HT	TE–025997–1–120	11/1/01
Gonzales	(TX)HT	TE–025997–1–116	11/14/01
Attra	(TX)HT	TE–025965–1–029	11/14/01
Creamer	(TX)HT	TE–025965–1–027	11/14/01
Vogel	(TX)HT	TE–025997–1–123	11/14/01
King	(TX)HT	TE–025965–1–028	11/14/01
Juarez	(TX)HT	TE–025965–1–026	12/7/01
Beveridge	(TX)HT	TE–045264–0	12/13/01
Woodside Trails Wilderness	(TX)HT	TE–041786–0	12/13/01
Alley	(TX)HT	TE–025965–0–030	12/21/01
Erickson	(TX)HT	TE–025997–1–126	12/21/01
Whitfield	(TX)HT	TE–025997–1–125	12/21/01
McNulty	(TX)HT	TE–025965–1–031	12/21/01
Paradise Land & Cattle Co. #1	(TX)HT	TE–025965–1–032	12/21/01

229 INCIDENTAL TAKE PERMITS ISSUED—Continued

Permittee	(State)Species	Permit No.	Date of issuance
Paradise Land & Cattle Co #2	(TX)HT	TE–025997–1–127	12/21/01
McClure #7	(TX)HT	TE–025997–1–132	1/7/02
Scheuerman	(TX)HT	TE–025997–1–133	1/7/02
Sheuerman	(TX)HT	TE–025997–1–130	1/7/02
Ingram #2	(TX)HT	TE–025965–1–035	1/7/02
Arcy	(TX)HT	TE–025997–1–129	1/7/02
Akin	(TX)HT	TE–045263–0	1/9/02
Millenium Custom Homes #2	(TX)HT	TE–025997–0–139	1/30/02
Orta	(TX)HT	TE–025997–1–036	1/31/02
Alley #4	(TX)HT	TE–025965–0–037	1/31/02
Alley #3	(TX)HT	TE–025965–0–039	1/31/02
Morriss	(TH)HT	TE–025997–1–134	1/31/02
Hyatt	(TH)HT	TE–025997–1–138	1/31/01
Milliken	(TH)HT	TE–025997–1–137	1/31/01
Alley #5	(TH)HT	TE–025965–0–038	1/31/01
Johnson #3	(TH)HT	TE–025997–1–136	1/31/01
Gilpin	(TH)HT	TE–025997–1–135	1/31/01
Clayton	(TH)HT	TE–046417–0	2/14/02
Ribelin Ranch Partners, Ltd	(TH)HT	TE–40090–0	2/14/02
Jacobson	(TH)HT	TE–045267–0	2/14/02
Little	(TH)HT	TE–045265–0	2/14/02
Reams	(TH)HT	TE–042731–0	2/15/02
Jones	(TH)HT	TE–025997–1–140	2/19/02
Barnes	(TH)HT	TE–025965–1–041	2/21/02
Patton	(TH)HT	TE–025997–1–124	2/21/02
Nicholson	(TH)HT	TE–049665–0	2/26/02
Edwards	(TH)HT	TE–025997–1–141	3/4/02
Daggett	(TH)HT	TE–025997–1–145	3/21/02
Godwin	(TH)HT	TE–025965–1–043	3/21/02
Burgan	(TH)HT	TE–025997–1–144	3/21/02
Tapia	(TH)HT	TE–025997–1–146	3/21/02
Voicestream Wireless	(TH)HT	TE–025997–1–148	3/21/02
Odom	(TH)HT	TE–025997–1–147	3/21/02
JRS Builders #6	(TH)HT	TE–025997–1–152	3/21/02
JRS Builders #5	(TH)HT	TE–025997–1–151	3/21/02
JRS Builders #4	(TH)HT	TE–025997–1–150	3/21/02
Jenkins	(TH)HT	TE–025997–1–143	3/21/02
JRS Builders #3	(TH)HT	TE–025997–1–149	3/21/02
Smith, TM	(TH)HT	TE–025997–0–092	3/21/02
LCRA	(TH)HT	TE–046500–0	5/6/02
Williams	(TH)HT	TE–049666–0	6/5/02
Bartlett	(TH)HT	TE–049034–0	6/5/02
Paradise Lands & Cattle Co #3	(TH)HT	TE–025997–1–154	6/11/02
McClure #8	(TH)HT	TE–025997–1–132	6/25/02
Maldonado	(TH)HT	TE–025997–2–160	6/25/02
Parker	(TH)HT	TE–025997–1–159	6/25/02
Russel Park Estates	(TH)GCW	TE–051567–0	7/12/02
Nichols	(TH)HT	TE–025997–2–163	7/29/02
Travis	(TH)HT	TE–025997–1–158	7/31/02
Blairwood, Ltd./Silver Oa	(TH)GCW	TE–053021–0	8/5/02
King	(TH)HT	TE–025965–0–012	8/13/02
Dyer	(TH)HT	TE–025997–2–164	8/30/02
Yoch	(TH)HT	TE–025997–2–162	8/30/02
Parks	(TH)HT	TE–025997–2–165	9/30/02
Weinstein	(TH)HT	TE–025997–2–166	10/7/02
Angulo	(TH)HT	TE–049664–0	10/31/02
Vickers	(TH)HT	TE–025965–1–47	11/1/02
Goodwin	(TH)HT	TE–025965–2–048	12/3/02
May	(TH)HT	TE–025997–2–167	12/5/02
Laster/Pardue	(TH)HT	TE–053011–0	12/13/02
Bastrop County WCID #2	(TH)HT	TE–025965–049	12/13/02

5 AMENDMENTS

Permittee	(State) species	Permit No.	Date of issuance
Sultan and Kahn Partners, Lt.	(TX)HT	TE–023822–00	12/19/02
Bastrop County 4 Low Quality	(TX)HT	TE–025965–1–000	7/27/01
Bastrop County 42 Med Quality	(TX)HT	TE–025997–1–000	7/27/01
Gaines	(TX)HT	TE–023822–1–1	2/19/02
Laughlin	(TX)HT	TE–023822–001	2/19/02

Susan MacMullin,
Acting Regional Director, Region 2.
[FR Doc. 03–8488 Filed 4–7–03; 8:45 am]
BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to a Tribal-State Compact.

SUMMARY: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amendment to the Class III gaming compact between the Lac Courte Oreilles Band of Lake Superior Chippewa Indians and the State of Wisconsin. This Amendment extends the term of the compact for 45 days.

EFFECTIVE DATE: April 8, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: March 17, 2003.

Aurene M. Martin,
Assistant Secretary—Indian Affairs.
[FR Doc. 03–8561 Filed 4–7–03; 8:45 am]
BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to a Tribal-State Compact.

SUMMARY: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amendment to the Class III gaming compact between the Tulapid Tribes of Washington and the State of Washington. This Amendment provides new regulations for electronic gaming devices.

EFFECTIVE DATE: April 8, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: March 13, 2003.

Aurene M. Martin,
Assistant Secretary—Indian Affairs.
[FR Doc. 03–8560 Filed 4–7–03; 8:45 am]
BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet certain administrative needs of the Bureau of Land Management. The lands we surveyed are:

The plat constituting the entire survey record of the dependent resurvey of a portion of the subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 4, 8, 9, 16, 17, 21, 22, 23, and 24, in T. 8 S., R. 27 E., Boise Meridian, Idaho, was accepted November 15, 2002.

The plat representing the supplemental plat was prepared to correct certain erroneously lotted areas, as depicted on the plat, in T. 11 N., R. 17 E., Boise Meridian, Idaho was accepted January 15, 2003.

The plat representing the dependent resurvey and corrective dependent resurvey of portions of the north and east boundaries, and the dependent resurvey of a portion of the subdivisional lines, and the 1907 meanders of the right bank of the Salmon River in sections 1 and 12, and the subdivision of sections 1 and 12, in T. 23 N., R. 21 E., Boise Meridian, Idaho, was accepted January 16, 2003.

The plat constituting the entire survey record of the dependent resurvey of a portion of the west boundary and subdivisional lines, the subdivision of section 7, and a metes-and-bounds survey in section 7, in T. 7 S., R. 6 E., Boise Meridian, Idaho, was accepted January 24, 2003.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 26, and the metes-and-bounds survey of Parcel A and two easements in section 26, in T. 5 N., R. 1 E., Boise Meridian, Idaho, was accepted February 4, 2003.

The plats constituting the entire survey record of the dependent resurvey of a portion of the south, west, and north boundaries and a portion of the subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 6, 7, 17, 18, 19, 20, 29, 32, and 33, in T. 7 S., R. 27 E., Boise Meridian, Idaho, was accepted February 24, 2003.

The plat constituting the entire record of dependent resurvey of portions of the east boundary, and subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 12, 13 and 24, in T. 7 S., R. 26 E., Boise Meridian, Idaho, was accepted February 26, 2003.

The plat representing the dependent resurvey of a portion of the east boundary, and a portion of the subdivisional lines, and the subdivision of section 25, in T. 2 N., R. 42 E., Boise Meridian, Idaho, was accepted March 12, 2003.

The plats representing the dependent resurvey of a portion of the south boundary, a portion of the west boundary, and a portion of the subdivisional lines, and the subdivision of sections 19, 31, and 32, the survey of a portion of the 1999–2002 meander lines of the Snake River in sections 19 and 32, the 1999–2002 survey of a partition line in section 32, and a metes-and-bounds survey in section 31, in T. 2 N., R. 43, E., Boise Meridian, Idaho, were accepted March 12, 2003.

These surveys were executed at the request of the Bureau of Indian Affairs to meet certain administrative needs of the Bureau of Land Management. The lands we surveyed are:

The plat representing the dependent resurvey of a portion of the west boundary and subdivision of sections 19, 30, and 31, the corrective dependent resurvey of a portion of the subdivisional lines and subdivision of sections 19 and 31, and the further subdivision of section 30, in T. 3 S., R. 35 E., Boise Meridian, Idaho, was accepted January 29, 2003.

The plats representing the dependent resurvey of a portion of the subdivisional lines, 1892 meanders of the right bank of the Blackfoot River in section 18, the subdivision of sections 8, 9, 17, 18, and 19, and the survey of the 2000–2002 meanders and informative traverse of the Blackfoot River, the north boundary of the Fort Hall Indian Reservation, portions of the 2000–2002 median line of the Blackfoot River, all in sections 8, 9, 17, 18, and 19, partition lines in section 18, and a metes-and-bounds survey of fee land in section 9, in T. 3 S., R. 35 E., Boise Meridian, Idaho, was accepted February 10, 2003.

Dated: April 1, 2003.

Duane E. Olsen,
Chief Cadastral Surveyor for Idaho.
[FR Doc. 03–8489 Filed 4–7–03; 8:45 am]
BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0088).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "30 CFR Part 227, Delegation to States."

DATES: Submit written comments on or before June 9, 2003.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385 or email *sharron.gebhardt@mms.gov*.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 227, Delegation to States.

OMB Control Number: 1010–0088.

Bureau Form Number: None.

Abstract: The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Public Law 104–185, as corrected by Public Law 104–200, amends the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 *et seq.* Prior to enactment of RSFA, section 205 of FOGRMA, 30 U.S.C. 1735, provided for the delegation of audits, inspections, and investigations to the States. RSFA amendments to section 205 of FOGRMA provided that other Federal royalty management functions may also be delegated to requesting States. RSFA authorized the following Federal royalty management functions to States:

a. Conducting audits and investigations;

b. Receiving and processing production and royalty reports;

c. Correcting erroneous report data;

d. Performing automated verification; and

e. Issuing demands, subpoenas (except for solid mineral and geothermal leases), orders to perform restructured accounting, and related tolling agreements and notices to lessees or their designees.

Currently, 10 States have delegation agreements to perform audits and investigations, which is the same function previously authorized under FOGRMA in 1982. Since the passage of RSFA and publication of the final rule on August 12, 1997, no States have proposed a delegation agreement to assume the four additional functions authorized by RSFA. When a State performs any of the delegated functions under the 30 CFR part 227 regulations, the State also assumes the burden of providing various types of information to MMS. This information, provided to MMS in the course of performing the work of the delegated functions, is the focus of this information collection.

The requirement to respond is mandatory. If a State were to perform the function of processing royalty and production reports, that State would submit proprietary data to MMS, and both the State and MMS are required to safeguard and protect proprietary data. No items of a sensitive nature are collected.

Frequency of Response: Depending on the function being performed, information can be daily, monthly, quarterly, or annually.

Estimated Number and Description of Respondents: 10 States currently have delegation agreements to do audits and investigations. We estimated that one State per year may request to perform the four additional functions authorized by RSFA.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 4,179 hours.

The following chart shows the breakdown of the estimated burden hours by CFR section and paragraph:

STATE RESPONDENT ANNUAL BURDEN HOUR CHART

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
227.103; 227.107; 227.109; 227.110(a); (b)(1) and (2), (c), (d), and (e); 227.111(a) and (b); 227.805.	If you want MMS to delegate royalty performed management functions to you, then you must submit a delegation proposal to the MMS Associate Director for Minerals Revenue Management. MMS may extend the 90-day period with your written consent. You may submit a new delegation proposal at any time following a the denial * * * and upon request, [MMS] will send a copy of the delegation proposals to trade associations to distribute to their members * * * You may ask MMS to renew the delegation for an additional 3 years no less than 6 months before your 3-year delegation agreement expires. You must submit your renewal request to the MMS Associate Director for Minerals Revenue Management * * * You may submit a new renewal request any time after denial. After the 3-year renewal period for your delegation agreement ends, if you wish to continue performing one or more delegated functions, you must request a new delegation agreement from MMS * * * If you do not request a hearing * * * any other affected person may submit a written request for a hearing to the MMS Associate Director for Minerals Revenue Management. Before the agreement expires, if you wish to continue to perform one or more of the delegated functions you performed under the expired agreement, you must request a new delegation agreement meeting the requirements of this part and the applicable standards. If you want perform to royalty management functions in addition to those authorized under your existing agreement you must request a new delegation * * * After yur delegation agreement is terminated, you may apply again for delegation by beginning with the propsosal process under this part.	200	3	600
227.112(d) and (e)	At a minimum, you must provide vouchers detailing your expenditures quarterly during the fiscal year; You must maintain adequate books and records to support your vouchers.	4	80	320
227.200(a), (b)(1), (2), (3), (4), and (5); (c), and (d).	* * * You must seek information or guidance from MMS regarding new, complex, or unique issues. Provide complete disclosure of financial results of activities; Maintain correct and accurate records of all mineral-related transactions and accounts; Maintain effective controls and accountability; Maintain effective system of accounts * * * Maintain adequate royalty and production information * * * Assist MMS in meeting the requirements of * * * GPRA; Maintain all records you obtain or create * * *.	200	10	2,000
227.200(e) and (h); 227.801(a); 227.804.	Provide months prior reports to MMS about your to activities under your delegated functions (progress reports) * * * you must provide periodic statistical reports to MMS summarizing the activities you carried out * * * Help MMS respond to requests for information from other Federal agencies, Congress, and the public * * * You may ask MMS for an extension of time to comply with the notice. In your extension request you must explain why you need more time * * * You may request MMS to terminate your delegation at any time by submitting your written notice of intent 6 months prior to the date on which you want to terminate * * *.	3	80	240
227.200(f); 227.401(e) 227.601 (d).	Assist MMS in maintaining adequate reference, royalty, and production databases; access well, lease, agreement, and reporter reference data from MMS, and provide updated information to MMS. * * * Access well, lease, agreement, and production reporter or royalty reporter reference data from MMS and provide updated information to MMS * * *.	.5	250	125
227.200(g)	Develop annual work plans * * *	60	10	600
227.400(a) (4), (6) 227.401 (d).	If you request delegation of either production report or royalty report processing functions, you must perform * * * timely transmitting production report or royalty report data to MMS and other affected Federal agencies * * * Providing production data or royalty data to MMS and other affected Federal agencies * * * Timely transmit required production or royalty data to MMS and other affected Federal agencies * * *.	.5	250	125
7.400(c)	You must provide MMS with a copy of any exceptions from reporting and payment requirements for marginal properties and any alternative royalty and payment requirements for unit agreements and communitization agreements you approve.	20	1	20
227.501(c)	Submit accepted and corrected lines to MMS to allow processing in a timely manner * * *.	.5	250	125

STATE RESPONDENT ANNUAL BURDEN HOUR CHART—Continued

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
227.601(c)	To perform automated verification or production reports or royalty reports, you must: Maintain all documentation and logging procedures * * *.	2	12	24
Total			946	4,179

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: The non-hour cost burden for one State to assume the four additional functions authorized by RSFA is estimated at $60,000 for electronic processing and imaging capability.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting non-hour cost burden to respondents or recordkeepers resulting from the collection of information. The non-hour cost burden for one State to assume the four additional functions authorized by RSFA is estimated at $60,000 for electronic processing and imaging capability. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request, and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: April 2, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–8533 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB control number 1010–0129.

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "Royalty-in-Kind Pilot Program " Offers, Financial Statements and Surety Instruments for Sales of Royalty Oil and Gas."

DATES: Submit written comments on or before June 9, 2003.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385 or email *sharron.gebhardt@mms.gov.*

SUPPLEMENTARY INFORMATION:

Title: "Royalty-in-Kind Pilot Program—Offers, Financial Statements and Surety Instruments for Sales of Royalty Oil and Gas."

OMB Control Number: 1010–0129.

Bureau Form Number: None.

Abstract: The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. MMS performs the royalty management functions for the Secretary.

Taking and selling of the Government's royalty share in the form of production or "in kind" (RIK) is authorized by the Mineral Leasing Act (MLA), 30 U.S.C. 192, for onshore leases and the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1353, for offshore leases. Recommendations in an MMS 1997 Feasibility Study concluded that, under the right conditions, RIK could be workable, revenue positive, and administratively more efficient for Government and industry. Pursuant to the 1997 study's recommendations, MMS is conducting the following pilots.

- For oil from Federal leases in Wyoming which began October 1, 1998;
- For gas from Federal leases offshore the State of Texas [Texas 8(g)] which began December 1, 1998;
- For gas from Federal offshore leases in the Gulf of Mexico (GOM) Region which began in October 1999. This will involve the largest production volumes; and
- For oil from Federal offshore leases in the GOM Region which began in October 2000.

In addition to the above pilots, on November 6, 2001, President Bush announced an initiative to refill the Strategic Petroleum Reserve (SPR). MMS, in coordination with the Department of Energy (DOE), entered into a joint, 3-year initiative to fill the remaining capacity of the SPR. Operators of Federal leases in the GOM will deliver royalty oil to MMS' exchange partner at or near the lease. MMS's exchange partner will then deliver similar quantities of crude oil to MMS or its designated agent at Gulf Coast market centers. MMS's designated agent will be either DOE or its exchange contractor. DOE will then contract for exchange or direct movement of exchange oil to the SPR.

The feasibility and cost-effectiveness of MMS providing RIK production direct to other Federal agencies for their consumption is also being investigated in conjunction with the pilots.

MMS, as the responsible steward of Federal mineral revenues, is conducting the pilot programs of oil and gas RIK sales and investigation of direct Federal consumption to show conclusively whether or not RIK is viable for the Federal Government, and, if so, how, when, and where it makes sense to exercise the RIK option.

Offers, Financial Statements and Surety Instruments for Sales of Royalty Oil and Gas. The collections of information addressed in this ICR are necessary because the Secretary of the Interior is obligated to hold competition when selling to the public to protect actual RIK production before, during, and after any sale, and obtain a fair return on royalty production sold. MMS must fulfill those obligations for the Secretary. The reporting requirements are as follows:

a. The actual offers that potential purchasers will submit when MMS offers production for competitive sales;

b. Offerors' statements of financial qualification; and

c. Surety Instruments, such as a Letter of Credit (LOC), Bond, prepayment, or Parent Guaranty.

MMS has also re-evaluated the need for two reporting requirements that were approved by OMB in the last ICR submission and has decided that this information is no longer needed. These reporting requirements are (1) Form MMS–4440, Summary of Receipt and Delivery Volumes, and (2) Report of Gas Analysis. Also, the subject heading "LOC" has been changed to the more generic heading "Surety Instruments" to capture the broader field of financial instruments that may be collected under this ICR, such as Bonds, prepayments, and Parent Guarantees. That is, an LOC is just one of the many types of surety instruments used by MMS that provide a safeguard against non-payment by a respondent under an RIK contract.

No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected. The requirement to respond is required to obtain or retain benefits.

For clarification purposes, we have also changed the title of this ICR from "Bids and Financial Statements for Sale of Royalty Oil and Gas (RIK Pilots) (Form MMS–4440) to "'Royalty-in-Kind Pilot Program'Offers, Financial Statements and Surety Instruments for Sales of Royalty Oil and Gas."

Frequency of Response: On occasion.

Estimated Number and Description of Respondents: 80 oil and gas companies.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 940 hours.

The following chart shows the breakdown of the estimated burden hours:

RESPONDENT ANNUAL BURDEN HOUR CHART

Royalty-in-kind pilot projects	Reporting requirements	Burden hours per response	Annual number of responses	Annual burden hours
	Offers	1	840	840
	Financial Statements	1	20	20
	Surety Instruments	4	20	80
		Total	880	940

(NOTE: A respondent is counted each time they respond. Unsuccessful offerors will submit only 2 responses.)

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour" cost burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: April 3, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–8534 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts: Extension of Expired Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that, in order to avoid interruption of visitor services, the National Park Service has extended the following concession contracts for a period of 3 years (*i.e.*, until December 31, 2005) or until such time as new authorizations are executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION All of the listed concession contracts expired by their terms on December 31, 2002. The National Park service has determined that the proposed extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete development of a Colorado River Management Plan, and issue a prospectus based on that plan leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Concessioner ID No.	Concessioner name	Park
GRCA006	Arizona Raft Adventures, Inc	Grand Canyon National Park.
GRCA007	Arizona River Runners, Inc	Grand Canyon National Park.
GRCA010	Canyoneers, Inc	Grand Canyon National Park.
GRCA011	Colorado River & Trails Expeditions, Inc	Grand Canyon National Park.
GRCA015	Grand Canyon Expeditions Company Inc	Grand Canyon National Park.
GRCA016	Canyon Expeditions, Inc	Grand Canyon National Park.
GRCA017	Diamond River Adventures, Inc	Grand Canyon National Park.
GRCA018	Hatch River Expeditions, Inc	Grand Canyon National Park.
GRCA020	Moki Mac River Expeditions, Inc	Grand Canyon National Park.
GRCA021	OARS, Inc	Grand Canyon National Park.
GRCA022	Outdoor Unlimited River Trips	Grand Canyon National Park.
GRCA024	Aramark Leisure Services, Inc., dba Wilderness River Adventures.	Grand Canyon National Park.
GRCA025	Tour West, Inc	Grand Canyon National Park.
GRCA026	Western River Expeditions, Inc	Grand Canyon National Park.
GRCA028	Canyon Explorations, Inc	Grand Canyon National Park.
GRCA029	High Desert Adventures, Inc	Grand Canyon National Park.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Nick Hardigg, Chief, Concession Management, Grand Canyon National

Park, P.O. Box 129, Grand Canyon, AZ 86023, Telephone 928/638–7709.

Dated: March 3, 2003.

Cindy Orlando,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–8496 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement/ Primary Restoration Plan, Santa Cruz Island, Channel Islands National Park, Santa Barbara County, CA; Notice of Approval of Record of Decision

Summary: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR part 1505.2), the Department of the Interior, National Park Service has prepared, and the Regional Director, Pacific West Region has approved, the Record of Decision for the Primary Restoration Plan for Santa Cruz Island at Channel Islands National Park. The formal no-action period was initiated October 18, 2002, with the U.S. Environmental Protection Agency's **Federal Register** notification of the filing of the Final Environmental Impact Statement (EIS).

Decision: As soon as practicable the National Park Service will begin to implement the Primary Restoration Plan described and analyzed as Alternative Four (Proposed Action) contained in the Final EIS. The selected plan features a deliberate, long-term (approximately six years) strategy which entails construction of fenced areas for managing pig eradication efforts, and coordinated use of prescribed burns and herbicide applications to control the highly invasive fennel (a non-native weed species).

This course of action and three alternatives were identified and analyzed in the Final EIS, and previously in the Draft EIS (the latter was distributed in March 2001). The full spectrum of foreseeable environmental consequences was assessed, and appropriate mitigation measures identified, for each alternative. Beginning with early scoping, through the preparation of the Draft and Final EIS, and including numerous public meetings, approximately 50 written comments were received and duly considered. No substantive or adverse comments were received during the no-action period, which ended on November 17, 2002. Key consultations which aided in the preparation of the Draft and Final EIS involved (but were not limited to) the U.S. Fish and Wildlife Service, California Dept. of Fish and Game, State Historic Preservation Office, Native American Tribes, Santa Barbara Museum of Natural History, The Nature Conservancy, and the Santa Cruz Island Foundation.

Copies: Interested parties desiring to review the Record of Decision may obtain a complete copy by contacting the Acting Superintendent, Channel Islands National Park, 1901 Spinnaker Dr., Ventura, California 93001; or via telephone request at (805) 658–5700.

Dated: February 10, 2003.

Arthur E. Eck,

Deputy Regional Director, Pacific West Region.

[FR Doc. 03–8501 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Supplemental Environmental Impact Statement; General Management Plan Amendment for Visitor Learning Center; Great Basin National Park, White Pine County, NV; Notice of Availability

Summary: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service, Department of the Interior, has prepared and distributed a supplemental environmental impact statement (SEIS) for a proposed amendment of the General Management Plan (which was approved in 1993). The SEIS assesses the potential impacts of a proposal to construct a Visitor Learning Center in the townsite of Baker, Nevada (rather than on National Park Service park lands north of Baker, known locally as Baker Ridge). This conservation planning and environmental impact analysis effort identified and analyzed three alternatives (and foreseeable environmental consequences and appropriate mitigation strategies) for constructing the park's new Visitor Learning Center.

Proposal and Alternatives: The Final SEIS identifies and analyzes three alternatives, including "no action" (to document existing conditions and provide an environmental baseline for comparing "action" alternatives). The No Action Alternative (Alternative 1) assumes that the Baker Ridge location for the Visitor Learning Center would remain unchanged, thus implementing the existing General Management Plan (GMP). The Proposed Action (Alternative 2) amends the GMP to allow the construction to occur outside of the main park area within the townsite of Baker, Nevada. The approximately 7,000 ft² facilities identified are consistent with the concepts approved in the GMP. The Third Alternative (Alternative 3) amends the GMP to eliminate the Baker Ridge Visitor Learning Center and to maintain the current Lehman Caves Visitor Center as the only orientation facility.

Public Involvement: Notice of initiation of the conservation planning and environmental impact analysis process was published in the **Federal Register** on December 2, 1999; and information regarding the proposal was mailed to the park's GMP mailing list, and press release was distributed to local and regional media. A notice of availability of the Draft SEIS was published in the **Federal Register** on April 19, 2002; and on April 21, 2002 local announcements were published in the Ely Times. Copies of the document were distributed by direct mailings, posting in public libraries, and through electronic media. Copies were provided to Federal, state, and local agencies, interested organizations, and private individuals. Several scoping and consultation meetings were conducted throughout; fewer than a dozen written comments were received from these combined phases. Several letters of support were received. All substantive comments on the Draft SEIS, and specific responses, are included in the Final SEIS. Besides editorial revisions, changes from the Draft SEIS made in the Final SEIS were derived from clarifications prompted by comments received as a result of the 60 day comment period, as follows:

The U.S. Environmental Protection Agency raised two concerns. First centered upon "Greening the Government" opportunities (Executive Order 13101 "Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition"; Executive Order 13123 "Greening the Government Through Efficient Energy Management"; and, Executive Order 13148 "Greening the Government Through Leadership in Environmental Management"). Details on the park's compliance with these Federal "greening the government" policies are included in section 3.0 (p. 29) of the Final SEIS. The second concern was in regards to exclusion of water quality (including permitting under section 402 and 404 of the Clean Water Act) as a impact issue topic. Further information to address this concern has been included in section 1.8 (pp. 18–19) of the Final SEIS.

The Nevada Health Division requested further information on the potential for the construction of new water and sewage treat facilities. Clarifications and new information regarding this element of the proposed action has been included in section 3.0 (pp. 29 and 35) of the Final SEIS.

Printed or CD–ROM copies of the Final SEIS may be obtained upon request to the Park Superintendent, Great Basin National Park, Baker, Nevada, 89311. The telephone number for the park is (775) 234–7331. In addition the document may be obtained via the Internet at *http://www.nps.gov/grba*.

If individuals responding to release of the Final SEIS request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There may also be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations and businesses; and, anonymous comments may not be considered.

Decision Process: The Proposed Alternative would amend the General Management Plan to allow the placement of a Visitor Learning Center outside of the main park area, on an administrative site located within the Baker townsite. A Record of Decision may be executed no sooner than 30 (thirty) days after publication of EPA's notice of filing of this Final SEIS in the **Federal Register**. As a delegated EIS, the official with responsibility for approving the Final SEIS is the Regional Director, Pacific West Region; subsequently the official responsible for implementation is the Superintendent, Great Basin National Park.

Dated: February 3, 2003.

Arthur E. Eck,

Deputy Regional Director, Pacific West Region.

[FR Doc. 03–8495 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement/ Lake Management Plan, Lake Mead National Recreation Area, Nevada and Arizona; Notice of Approval of Record of Decision

Summary: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the implementing regulations promulgated by the Council on Environmental Quality (40 CFR part 1505.2), the Department of the Interior, National Park Service has prepared, and the Regional Director, Pacific West Region has approved, the Record of Decision for the Lake Management Plan for Lake Mead National Recreation Area, in southeast Nevada and southwest Arizona. The requisite 30 days no-action period was officially initiated January 17, 2003, with the U.S. Environmental Protection Agency's **Federal Register** notification of the filing of the Final Environmental Impact Statement (EIS).

Decision: As soon as practicable the NPS will begin to implement the Lake Management Plan described and analyzed as Alternative C (the Preferred Alternative) contained in the Final EIS. The selected plan features a deliberate, long-term strategy to protect significant cultural and natural resources, while allowing for a spectrum of recreational use. Boating carrying capacity is established at 5055 boats, waters are zoned for a variety of recreational settings including a shoreline flat wake zone to improve shoreline safety, and new sanitation and public education measures will be initiated. Carbureted two-stroke engines will be prohibited beginning December 31, 2012, and personal watercraft use is authorized in specified zones (the final rulemaking to authorize personal watercraft use is scheduled to be published immediately, while separate rulemaking will be pursued to implement other components of the selected plan). This plan was deemed to be the "environmentally preferred" alternative, and it was further determined that no impairment of park values would ensue based on its implementation.

This course of action and three alternative plans were identified and analyzed in the Final EIS, and previously in the Draft EIS (the latter was distributed in April 2002). The full spectrum of foreseeable environmental consequences were assessed, and appropriate measures to minimize harm were identified, for each alternative. Beginning with early scoping, through the preparation of the Draft and Final EIS, numerous public meetings were conducted, and media (local and regional) and Web site updates were regularly produced. All written comments responding to the Draft and Final EIS were duly considered, and are maintained in the administrative record of the overall conservation planning and environmental impact analysis process. Key collaborations which aided in the preparation of the Draft and Final EIS involved (but were not limited to) numerous county and city agencies and boards in Arizona and Nevada, the U.S. Fish and Wildlife Service, Arizona Game and Fish Dept., Nevada Div. of Wildlife, all interested native American Tribes, affected Colorado River law enforcement agencies, Nevada and Arizona State Historic Preservation Offices, and the U.S. Geological Survey.

Copies: Interested parties desiring to review the Record of Decision may obtain a complete copy by contacting the Superintendent, Lake Mead National Recreation Area, 601 Nevada Way, Boulder City, NV 89005; or via telephone request at (702) 293–8986.

Dated: March 18, 2003.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 03–8547 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan/ Environmental Impact Statement (GMP/EIS), Saguaro National Park, AZ

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for a general management plan, Saguaro National Park, Arizona.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement (EIS) for a general management plan for Saguaro National Park. The environmental impact statement will be approved by the Director, Intermountain Region.

The general management plan (GMP) will establish the overall direction for the park, setting broad management goals for managing the area over the next 15 to 20 years. The plan will prescribe desired resource conditions and visitor experiences that are to be achieved and maintained throughout the park. Based on the desired

conditions, the plan will outline the kinds of resource management activities, visitor activities, and developments that would be appropriate in the park. Among the topics that will be addressed are protection of natural and cultural resources, protection of riparian resources, appropriate range of visitor uses, impacts of visitor uses, adequacy of park infrastructure, visitor access to the park, education and interpretive efforts, wilderness suitability, park partnerships, and external pressures on the park. In cooperation with local, State, tribal, and other Federal agencies, attention will also be given to cooperative efforts to address issues that affect the integrity of Saguaro National Park, such as the management of the urban/park interface, traffic congestion in and around the park, fires, threatened and endangered species and their habitat, and biological corridors that lead into and out of the park.

A range of reasonable alternatives for managing the park, including a no-action and preferred alternative, will be developed through the planning process and included in the EIS. The EIS will evaluate the potential environmental impacts of the alternatives.

As the first phase of the planning and EIS process, the National Park Service is beginning to scope the issues to be addressed in the GMP/EIS. All interested persons, organizations, and agencies are encouraged to submit comments and suggestions regarding the issues or concerns the GMP/EIS should address, including the suitable range of alternatives and appropriate mitigating measures, and the nature and extent of potential environmental impacts.

DATES: Written comments on the scope of the general management plan/environmental impact statement will be accepted for 60 days beyond the publication of this notice of intent. In addition, public scoping sessions will be held in Tucson and surrounding communities in the winter of 2003. Locations, dates, and times of these meetings will be provided in local and regional newspapers, and on the Internet at *http://www.nps.gov/sagu*.

ADDRESSES: Written comments or requests to be added to the project mailing list should be directed to: Sarah Craighead, Superintendent, Saguaro National Park, 3693 S. Old Spanish Trail, Tucson, AZ 85730 telephone (520) 733–5101; e-mail: *sagu_information@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Superintendent, Sarah Craighead, Superintendent, Saguaro National Park, 3693 S. Old Spanish Trail, Tucson, AZ 85730 telephone (520) 733–5101. General information about Saguaro National Park is available on the Internet at *http://www.nps.gov/sagu* and *http://friendsofsaguaro.org*.

SUPPLEMENTARY INFORMATION: Please submit Internet comments as a text file avoiding the use of special characters and any form of encryption. Be sure to include your name and return street address in your Internet message.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that their home addresses be withheld from the public record, which will be honored to the extent allowable by law. Requests to withhold names and/or addresses must be stated prominently at the beginning of the comments. However, submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: February 3, 2003.

Karen P. Wade,

Director, Intermountain Region.

[FR Doc. 03–8502 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Draft Environmental Impact Statement for Schuylkill River Valley National Heritage, Management Plan Update

AGENCY: National Park Service, Department of Interior.

ACTION: Availability of draft environmental impact statement for the Schuylkill River Valley National Heritage Area Management Plan Update.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of a Draft Environmental Impact Statement (DEIS) for Schuylkill River Valley National Heritage Area Management Plan Update. The Schuylkill River Valley National Heritage Area Act of 2000 requires the Schuylkill River Greenway Association, with guidance from the National Park Service, to prepare an update of their 1995 Schuylkill Heritage Corridor Management Action Plan. The Management Plan Update is expected to include: (A) Actions to be undertaken by units of government and private organizations to protect the resources of the Heritage Area; (B) an inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its natural, cultural, historical, recreational, or scenic significance; (C) a recommendation of policies for resource management that considers and details application of appropriate land and water management techniques, including the development of intergovernmental cooperative agreements to protect the historical, cultural, recreational, and natural resources of the Heritage Area in a manner consistent with supporting appropriate and compatible economic viability; (D) a program for implementation of the management plan by the management entity; (E) an analysis of ways in which local, State, and Federal programs may best be coordinated to promote the purposes of this title; and (F) an interpretation plan for the Heritage Area.

The study area, designated as the Schuylkill River Valley National Heritage, includes parts of the counties of: Schuylkill, Berks, Chester, Montgomery and Philadelphia in southeastern Pennsylvania as associated with the Schuylkill River corridor.

The National Park Service (NPS) maintains two park sites within the region: Valley Forge National Historical Park and the Hopewell Furnace National Historic Site. Otherwise the majority of land is non-federal and the NPS assumes a management role only within their park units. Instead, conservation, interpretation and other activities are managed by partnerships among federal, state, and local governments and private nonprofit organizations. The Schuylkill River Greenway Association manages the national heritage area. The National Park Service has been authorized by Congress to provide technical and financial assistance for a limited period (up to 10 years from the time of the designation in 2000).

DATES: The DEIS will remain on Public Review for sixty days from the publication of the notice in the **Federal Register** by the Environmental Protection Agency.

FOR FURTHER INFORMATION CONTACT: Peter Samuel, Project Leader, Philadelphia Support Office, National Park Service, U.S. Custom House, 200 Chestnut Street, Philadelphia, PA 19106, *peter_samuel@nps.gov*, 215–597–1848.

If you correspond using the Internet, please include your name and return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representative or officials of organizations or businesses, available for public inspection in their entirety.

Dated: February 13, 2002.

Pat Phelan,

Associate Regional Director, Administration, Northeast Region.

[FR Doc. 03–8492 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Ala Kahakai National Historic Trail Comprehensive Management Plan, County of Hawaii, HI; Notice of Intent To Prepare an Environmental Impact Statement

Summary: Pursuant to provisions in § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190), the National Park Service is initiating conservation planning and environmental impact analysis for a Comprehensive Management Plan (CMP) for the recently designated Ala Kahakai National Historic Trail. This effort will provide an Environmental Impact Statement (EIS) and CMP that encompasses protection of sacred, cultural and natural resources, visitor use and interpretation, and facilities. This National Historic Trail traces approximately 175 miles of the prehistoric coastal Ala Loa ("long trail") on the island of Hawaii, from Upolu Point on the northern tip of the island, south along the entire west coast, around Ka Lae (South Point), and then up to the eastern boundary of Hawaii Volcanoes National Park. The original trail linked many pre-contact communities on the island, as well as locations of many significant events in Hawaiian history.

The Ala Kahakai Trail was designated a National Historic Trail by the United States Congress on January 24, 2000. This designation was derived from a trail feasibility study entitled Ala Kahakai National Trail Study (and Final Environmental Impact Statement, January 1998), as well as on testimony offered by community advocacy groups for the trail. On November 13, 2000, the 106th U.S. Congress and President William Clinton officially incorporated the trail into the National Trails System. Pub. L. 106–509 calls for establishment of a continuous trail, which is to be administered by the Secretary of the Interior.

Alternatives: As basis for preparing the Ala Kahakai NHT CMP/EIS, the NPS jointly with the State of Hawaii, Native Hawaiian groups, private landowners and other stakeholders will identify and analyze several alternative management concepts, consistent with agency policy. At this time, in addition to establishing an environmental baseline by developing a "No Action" alternative (maintaining existing conditions and management), the conservation planning process is expected to identify several alternative options for providing visitor use opportunities and suitable protection strategies. The CMP/EIS will evaluate the potential environmental impacts of each alternative, and identify appropriate mitigation actions. The alternatives will be based upon input from the community, an environmental constraints analysis using updated Geographical Information Systems (GIS) data, and other analytical and decision-making methods.

Impact Analysis Issues: The CMP/EIS will be tiered to the 1998 Ala Kahakai National Trail Study and EIS. All issues and concerns which informed completion of that project will be updated through consultations and discussions with current landowners, agencies, Native Hawaiian groups, local business owners, and other stakeholders. A planning newsletter is available detailing issues identified to date (copies may be obtained as noted below). At this time, topics to be addressed include:

(1) Protection of sacred and cultural Native Hawaiian sites from intended and unintended damage by trail users;

(2) Management of marine and terrestrial natural resources that are or may be affected by increased public use of the Ala Kahakai;

(3) Landowner liability with regard to access across privately-owned property, as well as trespassing, littering, and other property offenses (approximately 50% of the trail corridor, much of which may be owned in fee simple by the State of Hawaii, traverses private lands);

(4) Trail maintenance and monitoring by volunteer community-based groups;

(5) Facility development and maintenance; and

(6) Safety and security of trail users.

Scoping/Public Involvement: There will be public open house meetings held throughout the various stages of the overall conservation planning process. These meetings will be hosted in communities across the various regions along the designated trail route. The first public meetings will be to elicit comments that identify new concerns and issues, provide essential environmental information, and suggest trail design alternatives. These initial meetings will take place beginning on March 22, 2003. A final summary of all information developed in the scoping phase will be available. Subsequently, draft management alternatives will be developed and available for review through a second round of public meetings. Finally, public meetings to foster broad review of the Draft CMP/EIS will be hosted. All meetings will be noticed and publicized through the local news media, direct mailings, and on the trail's Web site.

Comments: All responses conveying new information or concerns are encouraged at this time, and may be submitted by any one of several methods. Mail comments to Mr. Mike Donoho, Planning Team Leader, 73–4786 Kanalani Street, #14, Kailua-Kona, HI 96740; or transmit via email c/o *mike_donoho@nps.gov* (include your name and return address in your email message); or via facsimile to (808) 329–2597. All written scoping comments must be postmarked or transmitted not later than 30 days from the date that this notice is published in the **Federal Register**—as soon as this date has been determined it will be widely publicized, including posting on the trail's Web site to be established in spring 2003.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspections all submissions from organizations or businesses, and from individuals

identifying themselves as representatives or officials of organizations or businesses; and, anonymous comments may not be considered.

Decision Process: Availability of the Draft CMP/EIS for review and comment will be officially announced by notice of availability in the **Federal Register**, as well as through local and regional news media, area libraries, and direct mailing. At this time, distribution of the document is anticipated during fall 2004. After due consideration of all comments and information received, a Final CMP/EIS would be prepared which at this time is anticipated could be completed during summer 2005. As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation is the Superintendent, Ala Kahakai National Historic Park.

Dated: February 13, 2003.

Arthur E. Eck,

Deputy Regional Director, Pacific West Region.

[FR Doc. 03–8494 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for the Lackawanna Valley National Heritage Area, Management Plan Update

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the Lackawanna Valley National Heritage Area Management Plan Update.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an environmental impact statement (EIS) for the Management Plan Update for Lackawanna Valley National Heritage Area. The Lackawanna Valley National Heritage Area Act of 2000 requires the Lackawanna Heritage Valley Authority (LHVA), with guidance from the National Park Service, to prepare an update of their 1991 Plan for the Lackawanna Heritage Valley. The Management Plan Update is expected to include: (A) An inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the purposes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its historical, cultural, natural, recreational, or scenic significance. (B) A recommendation of policies for resource management that considers and details application of appropriate land and water management techniques, including the development of intergovernmental cooperative agreements to protect the historical, cultural, natural, and recreational resources of the Heritage Area in a manner that is consistent with the support of appropriate and compatible economic viability. (C) A program for implementation of the management plan by the management entity, including (i) plans for restoration and construction; and (ii) specific commitments of the partners for the first 5 years of operation. (D) An analysis of ways in which local, State, and Federal programs may best be coordinated to promote the purposes of this Act. (E) An interpretation plan for the Heritage Area.

The study area, designated as the Lackawanna Valley National Heritage Area, shall be comprised of all or parts of Lackawanna County, Luzerne County, Wayne County, and Susquehanna County, Pennsylvania in northeastern Pennsylvania as associated with the Lackawanna Valley River corridor.

The National Park Service (NPS) maintains one park site within the region: Steamtown National Historical Park. Otherwise the majority of land is non-Federal and the NPS assumes a management role only within the park unit. Instead, conservation, interpretation and other activities are managed by partnerships among Federal, State, and local governments and private nonprofit organizations. The Lackawanna Heritage Valley Authority (LHVA) manages the national heritage area. The National Park Service has been authorized by Congress to provide technical and financial assistance for a limited period (up to 10 years from the time of the designation in 2000).

The EIS will address a range of alternatives—they include a no-action alternative and other action alternatives. The impacts of the alternatives will be assessed through the EIS process.

A scoping meeting will be scheduled and notice will be made of the meeting through a broad public mailing and publication in the local newspapers.

FOR FURTHER INFORMATION CONTACT: Peter Samuel, Project Leader, Philadelphia Support Office, National Park Service, U.S. Customs House, 200 Chestnut Street, Philadelphia, PA 19106, *peter_samuel@nps.gov*, 215–597–1848.

If you correspond using the Internet, please include your name and return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

Dated: January 28, 2003.

Pat Phelan,

Associate Regional Director, Administration, Northeast Region.

[FR Doc. 03–8493 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of a meeting of the Native American Graves Protection and Repatriation Review Committee.

General Information: The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001 et seq. Review Committee members are appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains and developing a process for disposition of such remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations; consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items.

The Review Committee's work is completed during meetings that are open to the public. The next scheduled meetings are in St. Paul, MN, May 9-11, 2003, and Albuquerque, NM, November 21-23, 2003. Final dates for the Albuquerque meeting will be confirmed during the St. Paul meeting.

Transcripts of Review Committee meetings are available approximately 8 weeks after each meeting at the National NAGPRA program office, 1201 Eye Street NW, Washington, DC. To request electronic copies of meeting transcripts, send an e-mail message to nagpra_info@nps.gov.

Information about NAGPRA, the Review Committee, and Review Committee meetings is available at the National NAGPRA Website, *http://www.cr.nps.gov/nagpra*; for the Review Committee's meeting protocol, click "Review Committee," then click "Procedures."

Indian tribes and Native Hawaiian organizations that are considering visits to museums or Federal agencies in Review Committee meeting locations for the purpose of transfers of repatriated cultural items may wish to schedule transfers to coincide with Review Committee meetings. The National NAGPRA program awards repatriation grants to assist with the costs of repatriation transfers. Information about NAGPRA grants is posted on the National NAGPRA Website at *http://www.cr.nps.gov/nagpra*; click "NAGPRA Grants."

St. Paul, MN, meeting, May 9-11, 2003: At the invitation of the Minnesota Indian Affairs Council, the Review Committee will meet on May 9, 10, and 11, 2003, in the Town Square A Room in the Radisson City Center Hotel St. Paul, 411 Minnesota Street, St. Paul, MN 55101, telephone (651) 291-8800, Web *http://www.radisson.com/stpaulmn_citycenter.*

Meeting sessions will begin at approximately 8:30 a.m. each day, and will end at approximately 5 p.m. on May 9 and 10, and approximately 12 noon on May 11. The agenda for the meeting in St. Paul will include National NAGPRA program reports on implementation; consideration of a dispute between the Royal Hawaiian Academy of Traditional Arts and the Bishop Museum; discussion of regulations, dispute resolution procedures, and the Review Committee's 2002 report to the Congress; and presentations and statements by Indian tribes and Native Hawaiian organizations, museums, Federal agencies, and the public.

To schedule a presentation to the Review Committee during the St. Paul meeting, submit a written request with an abstract of the presentation and contact information. Persons also may submit written statements for consideration by the Review Committee during the St. Paul meeting. Send requests and statements to the Designated Federal Officer, NAGPRA Review Committee (1) by U.S. Mail to the National Park Service, 1849 C Street NW (2253), Washington, DC 20240; or (2) by commercial delivery to the National Park Service, 1201 Eye Street NW, 8th floor, Washington, DC 20005. Because increased security in the Washington, DC, area may delay delivery of U.S. Mail to Government offices, copies of mailed requests and statements should also be faxed to (202) 372-5197.

No special lodging arrangements have been made for this meeting. A variety of accommodations are available in St. Paul and nearby communities.

Albuquerque, NM, meeting, November 2003: The Review Committee is scheduled to meet in Albuquerque, NM, November 21-23, 2003. Final dates for the Albuquerque meeting will be confirmed during the St. Paul meeting. A subsequent Federal Register notice will be published that includes final meeting dates, location, agenda, and other details for the Albuquerque meeting.

Dated: March 3, 2003.

John Robbins,

Designated Federal Officer, NAGPRA Review Committee.

[FR Doc. 03–8506 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Proposed National Natural Landmark Designation for Garden Canyon at Fort Huachuca, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice of proposed National Natural Landmark designation.

SUMMARY: The National Park Service has evaluated and determined that Garden Canyon, located within Fort Huachuca, Cochise County, Arizona, meets the criteria for national significance and proposes to designate it a National Natural Landmark. The public is invited to comment on this proposed action.

DATES: Written comments will be accepted until June 9, 2003.

ADDRESSES: Written comments should be sent to Margi Brooks, National Natural Landmarks Program Coordinator, National Park Service, 1415 N. Sixth Ave., Tucson, Arizona, 85705, or to her Internet address: *Margi_Brooks@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Margi Brooks at 520–670–6501 extension 232.

SUPPLEMENTARY INFORMATION: Garden Canyon represents the best example of Madrean montane evergreen woodland, Madrean montane conifer forest, and semi-desert grassland in the Mohave-Sonoran desert region. This unique assemblage of biotic communities harbors many subtropical species at the northern edges of their range. The relative absence of livestock grazing, coupled with a relatively natural fire regime, has contributed to the retention of ecosystems in Garden Canyon that are representative of pre-settlement conditions. Information on the National Natural Landmarks Program can be found in 36 CFR Part 62 or on the Internet at *http://www1.nature.nps.gov/nnl/index.htm.*

Dated: February 27, 2003.

Margaret A. Brooks,

National Natural Landmarks Program Manager.

[FR Doc. 03–8503 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Museum of Western Colorado, Grand Junction, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, Sec. 7, of the intent to repatriate a cultural item in the possession of the Museum of Western Colorado, Grand Junction, CO, that meets the definition of "sacred object" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has

control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural item is an Apache Gahe (Crown Dancer's) mask. This mask is made of painted wood, hide (buckskin), feathers, cloth, and metal.

The mask was purchased by Paul Pletka in New Mexico. No other information regarding the date or circumstances of its acquisition is known. Mr. Pletka donated the mask to the Museum of Western Colorado in 1975.

Through consultations with members of the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona and the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico, the mask has been identified as a specific ceremonial object needed by the Mescalero Apache Tribe's traditional Native American religious leaders for the practice of traditional religion. Independent research conducted by the museum's professional staff, including discussions with the donor, support this assessment.

Officials of the Museum of Western Colorado have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (3)(C), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Museum of Western Colorado also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between the mask and the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with this sacred object should contact Judy Prosser-Armstrong, Curator of Archives, Librarian and Registrar, Museum of Western Colorado, P.O. Box 20000, Grand Junction, CO 81502-5020, telephone (970) 242-0971, extension 210, before May 8, 2003. Repatriation of this sacred object to the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Museum of Western Colorado is responsible for notifying the Apache Tribe of the Fort Cobb Reservation, Fort Cobb, Oklahoma, a nonfederally recognized Indian group; Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona that this notice has been published.

Dated: February 7, 2003.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 03–8504 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Nevada State Museum, Carson City, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, Sec. 5, of the completion of an inventory of human remains in the possession of the Nevada State Museum, Carson City, NV. These human remains were removed from an unidentified site in the vicinity of Pyramid Lake, Washoe County, NV.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Nevada State Museum professional staff in consultation with a representative of the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada.

In 1971, human remains representing a minimum of one individual were removed by an unknown person from site 26Wa1019 in the vicinity of Pyramid Lake, Washoe County, NV. The human remains were donated anonymously to the Nevada State Museum in 1971. The human remains are of a female between 25 and 35 years of age. No known individual was identified. No associated funerary objects are present.

These human remains were examined by Douglas Owsley of the Smithsonian Institution. Dr. Owsley indicates that the cranial morphology of this individual is consistent with known Paiute individuals. Ancestors of the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada, have traditionally occupied the area around where these human remains were recovered.

Officials of the Nevada State Museum have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (9-10), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Nevada State Museum also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Alanah Woody, NAGPRA Coordinator, Nevada State Museum, 600 North Carson Street, Carson City, NV, 89701, telephone (775) 687-4810, extension 229, before May 8, 2003. Repatriation of the human remains to the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada, may proceed after that date if no additional claimants come forward.

The Nevada State Museum is responsible for notifying the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada that this notice has been published.

Dated: January 28, 2003.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 03–8505 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–434 and 731–TA–1030–1032 (Preliminary)]

4,4'-Diamino-2,2'-Stilbenedisulfonic Acid and Stilbenic Fluorescent Whitening Agents From China, Germany, and India

AGENCY: International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation No. 701–TA–434 (Preliminary) and antidumping investigations Nos. 731–TA–1030–1032 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India of 4,4'-diamino-2,2'-stilbenedisulfonic acid and stilbenic fluorescent whitening agents, provided for in subheadings 2921.59.20 and 3204.20.80, respectively, of the Harmonized Tariff Schedule of the United States that are allegedly subsidized by the Government of India and by reason of such imports from China, Germany, and India that are allegedly sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping investigations in 45 days, or in this case by May 15, 2003. The Commission's views are due at Commerce within five business days thereafter, or by May 22, 2003.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on March 31, 2003, by Ciba Specialty Chemicals Corporation, Tarrytown, NY.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on April 21, 2003, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202–205–3190) not later than April 16, 2003, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 24, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: April 2, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–8514 Filed 4–7–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATE: April 17, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meetings:* none.
2. Minutes
3. Ratification List

4. Inv. Nos. 701–TA–433 and 731–TA–1029 (Preliminary) (Allura Red Coloring from India)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before April 18, 2003; Commissioners' opinions to the Secretary of Commerce on or before April 25, 2003.)

5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: April 3, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–8651 Filed 4–4–03; 12:33 pm]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meetings

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of April 7, 14, 21, 28, May 5, 12, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 7, 2003

Friday, April 11, 2003

9 a.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS), (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

12:30 p.m.—Discussion of Management Issues (Closed—Ex. 2).

Week of April 14, 2003—Tentative

There are no meetings scheduled for the Week of April 14, 2003.

Week of April 21, 2003—Tentative

There are no meetings scheduled for the Week of April 21, 2003.

Week of April 28, 2003—Tentative

There are no meetings scheduled for the Week of April 28, 2003.

Week of May 5, 2003—Tentative

There are no meetings scheduled for the Week of May 5, 2003.

Week of May 12, 2003—Tentative

Thursday, May 15, 2003

9:30 a.m.—Briefing on Results of Agency Action Review Meeting (Public Meeting) (Contact: Robert Pascarelli, 301–415–1245)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording) (301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information

"Discussion of Management Issues (Closed—Ex. 2)," originally scheduled for March 20, 2003, was postponed to April 11, 2003.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: April 3, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–8625 Filed 4–4–03; 11:21 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

State of Wisconsin: NRC Staff Draft Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Wisconsin

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed agreement with the State of Wisconsin.

SUMMARY: By letter dated August 21, 2002, former Governor Scott McCallum of Wisconsin requested that the U.S. Nuclear Regulatory Commission (NRC) enter into an Agreement with the State as authorized by section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would relinquish, and Wisconsin would assume, portions of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing the summary of a draft assessment by the NRC staff of the Wisconsin regulatory program. Comments are requested on the proposed Agreement and the staff's draft assessment which finds the Program adequate to protect public health and safety and compatible with NRC's program for regulation of Agreement material.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in Wisconsin from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150.

DATES: The comment period expires May 8, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Comments may be submitted electronically at *nrcrep@nrc.gov.*

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O–1–F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of Wisconsin including all information and documentation submitted in support of the request, and copies of the full text of the NRC Staff Draft Assessment are also available for public inspection in the NRC's Public Document Room—ADAMS Accession Numbers: ML030160104 and ML030900662.

FOR FURTHER INFORMATION CONTACT: Lloyd A. Bolling, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2327 or e-mail *LAB@nrc.gov.*

SUPPLEMENTARY INFORMATION: Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 32 States. The Agreement States currently regulate approximately 16,250 agreement material licenses, while NRC regulates approximately 4,900 licenses. Under the proposed Agreement, approximately 260 NRC licenses will transfer to Wisconsin. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials [1] and activities that involve use of the materials.

In a letter dated August 21, 2002, former Governor McCallum certified that the State of Wisconsin has a program for the control of radiation hazards that is adequate to protect public health and safety within Wisconsin for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the "categories of materials") which the State of Wisconsin requests authority over are: (1) The possession and use of byproduct materials as defined in section 11e.(1) of the Act; (2) the possession and use of source materials; and (3) the possession and use of special nuclear materials in quantities not sufficient to form a critical mass, as provided for in regulations or orders of the Commission.

(b) The proposed Agreement contains articles that:

- Specify the materials and activities over which authority is transferred;
- Specify the activities over which the Commission will retain regulatory authority;
- Continue the authority of the Commission to safeguard nuclear materials and restricted data;
- Commit the State of Wisconsin and NRC to exchange information as necessary to maintain coordinated and compatible programs;
- Provide for the reciprocal recognition of licenses;
- Provide for the suspension or termination of the Agreement; and
- Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the Chairman of the Commission and the Governor of Wisconsin.

(c) Wisconsin currently registers users of naturally-occurring and accelerator-produced radioactive materials. The regulatory program is authorized by law in section 3145, subsection 254.34 of the revised Wisconsin Statutes. Subsection 254.335(1) provides the authority for the Governor to enter into an Agreement with the Commission. Wisconsin law (subsection 254.335(2)) contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Wisconsin licenses until the licenses expire or are replaced by State-issued licenses.

(d) The NRC staff draft assessment finds that the Wisconsin program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of agreement materials.

II. Summary of the NRC Staff Draft Assessment of the Wisconsin Program for the Control of Agreement Materials

NRC staff has examined the Wisconsin request for an Agreement with respect to the ability of the Wisconsin radiation control program to regulate agreement materials. The examination was based on the Commission's policy statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (referred to herein as the "NRC criteria"), (46 FR 7540; January 23, 1981, as amended by policy statements published at 46 FR 36969; July 16, 1981, and at 48 FR 33376; July 21, 1983).

(a) *Organization and Personnel.* The agreement materials program will be located within the existing Radiation Protection Section (Program) of the Wisconsin Department of Health and Family Services. The Program will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the Program staff members are specified in the Wisconsin State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection. Supervisory level staff have more than 10 years working experience each, in radiation protection.

The Program currently has one staff vacancy, which they are actively recruiting to fill. The Program performed, and NRC staff reviewed, an analysis of the expected Program workload under the proposed Agreement. Based on the NRC staff review of the State's staff analysis, Wisconsin has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The Program will employ a staff of 9.5 full-time professional/technical and administrative employees for the agreement materials program. The distribution of the qualifications of the individual staff members will be balanced to the distribution of categories of licensees transferred from NRC. Each individual on the staff is qualified in accordance with the Program's training and qualification procedure to function in the areas of responsibility to which the individual is assigned.

(b) *Legislation and Regulations.* The Wisconsin Department of Health and Family Services (DHFS) is designated by law in chapter 254 of the Wisconsin Revised Statutes to be the radiation control agency. The law provides the DHFS the authority to issue licenses,

[1] The radioactive materials are: (a) Byproduct materials as defined in section 11e.(1) of the Act; (b) byproduct materials as defined in section 11e.(2) of the Act; (c) source materials as defined in section 11z. of the Act; and (d) special nuclear materials as defined in section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors. The DHFS is authorized to promulgate regulations.

The law requires the DHFS to adopt rules that are compatible with equivalent NRC regulations and that are equally stringent to the equivalent NRC regulations. Wisconsin has adopted HFS 157 Radiation Protection Code effective August 1. 2002. The NRC staff reviewed and forwarded comments on these regulations to the Wisconsin staff. The NRC staff review verified that, with the comments incorporated, the Wisconsin rules (and legally binding requirements) contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The DHFS has extended the effect of the rules, where appropriate, to apply to naturally occurring radioactive materials and to radioactive materials produced in particle accelerators, in addition to agreement materials. The NRC staff also concludes that Wisconsin will not attempt to enforce regulatory matters reserved to the Commission.

Wisconsin regulations are different from the NRC regulations with respect to the termination of the license. Current NRC regulations permit a license to be terminated when the facility has been decommissioned, *i.e.*, cleaned of radioactive contamination, such that the residual radiation will not cause a total effective dose equivalent greater than 25 millirem per year to an average member of the group of individuals reasonably expected to receive the greatest exposure. Normally, the NRC regulations require that the 25 millirem dose constraint be met without imposing any restrictions regarding the future use of the land or buildings of the facility ("unrestricted release"). Under certain circumstances, NRC regulations in 10 CFR part 20, subpart E, allow a license to be terminated if the 25 millirem dose constraint is met with restrictions on the future use ("restricted release"). Wisconsin law does not allow a license to be terminated under restricted release conditions. Wisconsin will instead issue a special "decommissioning-possession only" license as an alternate to license termination under restricted release. NRC staff has concluded that this approach is compatible with NRC regulations.

(c) *Storage and Disposal.* Wisconsin has also adopted NRC compatible requirements for the handling and storage of radioactive material. Wisconsin will not seek authority to regulate the land disposal of radioactive material as waste. The Wisconsin waste disposal requirements cover the preparation, classification and manifesting of radioactive waste, generated by Wisconsin licensees, for transfer for disposal to an authorized waste disposal site or broker.

(d) *Transportation of Radioactive Material.* Wisconsin has adopted regulations compatible with NRC regulations in 10 CFR part 71. Part 71 contains the requirements that licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. Wisconsin will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) *Recordkeeping and Incident Reporting.* Wisconsin has adopted the sections compatible with the NRC regulations which specify requirements for licensees to keep records, and to report incidents, accidents, or events involving materials.

(f) *Evaluation of License Applications.* Wisconsin has adopted regulations compatible with the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use radioactive materials. Wisconsin has also developed a licensing procedures manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the Program staff when evaluating license applications.

(g) *Inspections and Enforcement.* The Wisconsin radiation control program has adopted a schedule providing for the inspection of licensees as frequently as the inspection schedule used by NRC. The Program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the reporting of inspection results to the licensees. The Program has also adopted, by rule based on the Wisconsin Revised Statutes, procedures for the enforcement of regulatory requirements.

(h) *Regulatory Administration.* The Wisconsin Department of Health and Family Services is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The Program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Wisconsin law prescribes standards of ethical conduct for State employees.

(i) *Cooperation with Other Agencies.* Wisconsin law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Wisconsin. The law provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier.

Wisconsin also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The Wisconsin Radiation Protection Code provides exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits Wisconsin to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that Wisconsin's program will continue to be compatible with the Commission's program for the regulation of agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Wisconsin to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its draft assessment, the NRC staff concludes that the State of Wisconsin meets the requirements of the Act. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement. NRC will continue the formal processing of the proposed Agreement which includes publication of this notice once a week for four consecutive weeks for public review and comment.

IV. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Dated in Rockville, Maryland, this 2nd day of April, 2003.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State and Tribal Programs.

Agreement Between the United States Nuclear Regulatory Commission and the State of Wisconsin for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of the State of Wisconsin providing for discontinuance of the regulatory authority of the Commission within the State under chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, the Governor of the State of Wisconsin is authorized under s. 254.335 (1), Wisconsin Statutes, to enter into this Agreement with the Commission; and,

Whereas, the Governor of the State of Wisconsin certified on August 21, 2002, that the State of Wisconsin (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory authority for such materials; and,

Whereas, the Commission found on [date] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, the Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, this Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. By-product materials as defined in section 11e. (1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

A. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

B. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material wastes as defined in the regulations or orders of the Commission;

D. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission;

E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

F. The regulation of the land disposal of byproduct, source, or special nuclear material waste received from other persons;

G. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

With the exception of those activities identified in Article II, paragraphs A through D, this Agreement may be amended, upon application by the State and approval by the Commission, to include the additional areas specified in Article II, paragraphs E, F and G, whereby the State can exert regulatory authority and responsibility with respect to those activities and materials.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that

Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and will assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other agreement state. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission may also, pursuant to section 274j of the Act, temporarily suspend all or part of this agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by the Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on July 1, 2003, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done in Madison, Wisconsin this ** day of June, 2003.

For the United States Nuclear Regulatory Commission.

Nils J. Diaz,

Chairman.

For the State of Wisconsin.

Jim Doyle,

Governor.

[FR Doc. 03–8527 Filed 4–7–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management; Standard Data Elements for Federal Grant Applications

AGENCY: Office of Federal Financial Management (OFFM), Office of Management and Budget (OMB).

ACTION: Notice of proposed requirement to establish standard data elements.

SUMMARY: OMB proposes (1) to establish a standard set of data elements and definitions as found on the SF–424, plus five additional data elements for Federal agencies and grant applicants to use on both paper and electronic applications for discretionary grants, and (2) to require a new assurance statement to replace the current assurances found on the SF–424. The Federal E-Grants initiative calls for the development of a one-stop, electronic grant portal where potential grant recipients will receive full service electronic grant administration as part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

The grantee community is familiar with most of the data elements, which have been required by Standard Form (SF) 424, "Application for Federal Assistance," SF–424A, Budget Information Non-Construction; SF–424B, Assurances—Non-Construction Programs; SF–424C, Budget Information Construction Programs, and SF–424D, Assurances—Construction Programs. OMB is adding the following five new standard data elements to those already appearing on the current SF–424 and will revise the form accordingly. The five new standard data elements being added are:

(1) Requesting entity's universal identifier (see proposal to use the Duns Universal Numbering System (DUNS) in the October 30, 2002 **Federal Register**, Vol. 67, No. 210, pp. 66177–66178;

(2) Requesting entity's e-mail address;

(3) Requesting entity's country location for address purposes;

(4) Requesting entity's facsimile (Fax) number; and

(5) Requesting entity's indictor for "Not-For-Profit" under "Type of Applicant" based upon how the entity is classified with the Internal Revenue Service.

The use of government-wide standard data elements by grant applicants and the Federal agencies that award discretionary grants or cooperative agreements establishes the data standard for grant applications submitted via the E-Grants portal grant application software known as E-Apply. In order to establish data standards, this Notice also identifies how the data will be transmitted for E-Apply. The proposed electronic transmission of the data set is to use the conventions established by the American National Standards Institute (ANSI) 194 Data Transaction Set. These data elements will be incorporated into the first version of E-Apply, scheduled for release in October 2003, which will permit applicants to apply electronically for Federal grants.

The consolidated assurance statement, which is being proposed to replace the current assurances found on the SF–424B and SF–424D, is designed to provide a streamlined way for Federal agencies to obtain assurance about compliance with applicable requirements. OMB believes the addition of the consolidated assurance statement will allow applicants to proceed through the application process in a more efficient manner. Only at time of award would the grantee address any specific agency assurances that are incorporated in the award and are above and beyond the standard assurances.

DATES: Comments on the proposed data elements, definitions and consolidated assurance statement must be submitted by June 9, 2003.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: *sswab@omb.eop.gov.* Please include "Standard Data Elements Comments" in the subject line and put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and E-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–3952. Comments may be mailed to Sandra Swab, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sandra Swab, Office of Federal Financial Management, Office of Management and Budget, telephone 202–395–3993, and E-mail: *sswab@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

Standard Set of Data Elements and Definitions

The Federal E-Grants initiative, one of 24 initiatives of the Administration's overall E-Government program for improving access to Government services via the Internet, calls for the development of a one-stop, electronic grant portal where potential grant recipients will receive full service electronic grant administration. OMB is seeking to develop a standard set of data elements that will be used by grant-making Federal agencies to develop web-based grant application software. The application software, E-Apply, will permit the use of on-line grant applications by October 2003. This **Federal Register** announcement seeks public comment on establishing the current data elements and definitions of the SF–424 with the proposed five additional data elements as the standard data set that Federal agencies would include in the first version for electronic grant applications. The standard data elements are found in the attachment to this notice. The attachment identifies the current data elements and definitions found on the SF–424. The proposed data elements have been required of grant applicants when submitting SF–424s to which OMB is proposing to add five new elements: (1) Requesting entity's universal identifier (see proposal to use the DUNS in the October 30, 2002 **Federal Register**); (2) requesting entity's e-mail address; (3) requesting entity's country location; (4) requesting entity's facsimile (Fax) number; and (5) for Not-For-Profit entities only, requesting entity's indicator for "Type of Applicant."

Additional efforts not included in this initial proposal, seek to have the Federal government review various grants management processes that focus on different types of business lines that cut across similar grant programs. For example, grant programs that focus on research may need to have different grant application information than programs that focus on education. However, many different agency grant programs may be similar in a broad subject category and collect similar information. For those grant programs found in broad subject categories and cut across various Federal agencies, the data may be standardized and shared by collecting the data only once. This cross-agency standard data may become a subset to the standard data collected on the SF–424. When such data is identified and approved, it is the intention to revise the suite of SF–424 standard collection forms to identify cross-agency data. This effort will be done in consultation with the grants community at-large through the public comment process. It is thought the standardization of data and establishment of standard data for similar types of grant programs will enhance the collection of data and help to overall simplify the grants application and management processes.

Policy for Electronic Grant Applications

The SF–424 data elements, including the five proposed data elements, are attached for review and comment and are contained within the American National Standards Institute's (ANSI) Grant Application or Assistance Application 194 Transaction Data Set, a national electronic standard for the Federal grant application. The 194 Transaction Data Set has evolved under the auspices of the Inter-Agency Electronic Grants Committee (IAEGC), ANSI, Federal Demonstration Partnership, universities, research institutions, and Federal grant-making agencies. Using an established national electronic standard to implement the E-Apply software application helps to standardize the data conventions and provides a foundation upon which to build future applications. The attachment correlates the SF–424 data to the related data found in the 194 Transaction Data Set. Information on the 194 Transaction Data Set can be found on the Inter-Agency Electronic Grants Committee's (IAEGC) Web site at *www.iaegc.gov.*

Consolidated Assurance of Compliance for Grant Applicants

We further propose to revise the SF–424 to provide a streamlined way for Federal agencies to obtain assurances of compliance with applicable requirements. Currently, a Federal program office that uses the entire suite of SF–424 forms for its applications would require an applicant to submit assurances on, either a SF–424B, "Assurances—Non-Construction Programs," or a SF–424D, "Assurances—Construction Programs."

The assurance forms (SF–424B/D) list many individual national policy requirements and a few selected administrative requirements based in statute, Executive Order, regulation, or OMB circular language. The national policy requirements address societal objectives such as protection of the environment or ensuring civil rights. The selected administrative matters, such as conduct of audits, relate to stewardship of public funds. The forms require the applicant's "authorized certifying official" to sign, thereby agreeing that the applicant will comply with the requirements if an award is made.

We propose an approach that coordinates the business processes of application and award at the time of announcing funding availability. Agencies' announcements will identify administrative and national policy requirements with which applicants must comply if they receive awards, thereby helping potential applicants make more informed decisions about whether to apply. If an entity is unable or unwilling to comply with any of these requirements, it should not invest time and money in preparing an application.

At time of application, applicants would be asked to sign the following consolidated assurance on the cover page of the SF–424, which would replace the lists of individual requirements that currently appear on the SF–424B and SF–424D:

> I have reviewed the requirements that apply to recipients of awards under this program* and assure, as the duly authorized representative of the applicant, that the applicant will comply with those requirements and other terms and conditions if it receives an award.
>
> *If you are submitting this application in response to a Federal agency announcement of a funding opportunity, consult that announcement or any associated application instructions for the Internet site or other location where you may view the generally applicable requirements. Otherwise, if you do not know where to view them, contact the office to which you are submitting this application to ask about the location.

At time of award, a successful applicant would receive an award document with terms and conditions incorporating the applicable national policy and administrative requirements. These would be the same requirements for which the applicant provided an assurance of compliance at time of application, except for any award-specific requirements that the agency

imposes or any new requirements or changes made to existing requirements after the agency issued its announcement.

This new approach for a consolidated assurance has a number of advantages:

• It is easier to give potential applicants up-to-date information on applicable requirements. National policy and administrative requirements change over time, due to enactment or adoption of new policies and repeal or revision of existing ones. Updating a standard form is a cumbersome and lengthy process, so it is difficult to keep forms up to date with the latest policy changes. The SF–424B and SF–424D, for example, are not fully up to date at this time.

• The consolidated assurance eliminates the need to update the electronic submission format each time a requirement changes. As the Federal Government moves from paper forms to electronic transactions, periodically updating the list of national policy and administrative requirements would require reprogramming the format for electronic submission of applications if each requirement was individually listed in the assurances of compliance. Reprogramming would increase costs and administrative burdens. Instead, the change would be addressed in agencies' terms and conditions, which are more easily updated.

• Potential applicants only need to consult a single source, the agency's terms and conditions, for all applicable requirements before providing assurance. Currently, an awarding agency or program office must supplement the SF–424B or SF–424D with information about agency-or program-specific requirements because the standard forms list only government-wide requirements.

It is anticipated that OMB would change the SF–424 to reflect the above assurance language changes when the additional data elements are added to the form and public comment supports such a change. Current grant application forms can be found at *http://www.whitehouse.gov/omb/grants.*

Questions and Comments

We welcome your input on any aspect of the data elements and inclusion of the consolidated assurance in place of those found on the SF–424B and SF–424D. Questions that you may wish to address include:

• Are the proposed data elements found on the current SF–424 the essential ones needed to apply for Federal grants? If you recommend adding or deleting any data elements, please explain why.

• Are the current definitions found on the SF–424 clear and explicitly define what is required for applicants to enter on the SF–424, "Application for Federal Assistance?"

• Are the names of data elements and any terms used in describing them readily understandable? Are the terms generic enough to cover all programs and agencies in which you might have an interest? Do you have suggestions for alternate terms?

• Is the current SF–424, plus the five additional proposed data elements and assurance language, sufficient enough to establish the SF–424 as the data standard? If comments indicate a more in-depth change to the SF–424, should OMB establish this as the data standard and then proceed with a more complete revision at a later date?

• Is the assurance language feasible for use by Federal agencies in lieu of those found on the SF–424B and SF–424D?

Joseph L. Kull,
Deputy Controller.

Attachment: The attachment is a series of tables that list the name of the data element found on the SF–424 with the description found on the grant application form. The attachment also lists the data element name found in the 194 Transaction Data Set for comparison. Use of the 194 Transaction Data Set is to help define data layout for electronic transmission. Each table is titled to help better understand the groups of the data elements.

TABLE 1.—ALL FEDERAL GRANT APPLICATION INFORMATION

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Type of Submission (No. 1)	Self-explanatory (Identify if project application or pre-application, construction or non-construction.).	Construction Application Indicator.
Date Submitted (No. 2)	Date application submitted to Federal agency (or State if applicable)	Application Date.
Applicant Identifier	Applicant's control number (if applicable)	Applicant's Application Identification.
Date received by State (No. 3)	State use only (if applicable)	Date Received by State/Other Reviewer.
State Application Identifier	State use only (if applicable)	Reviewing Organization Application Number.
Date Received by Federal Agency (No. 4).	If this application is to continue or revise an existing award, enter date of present award.	Date Received by Federal Agency.
Federal Identifier	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.	Federal Agency Application Number.
Type of Application (No. 8)	Check appropriate box and enter appropriate letter(s) in the space(s) provided: —"New" means a new assistance award —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.	Application Type.
If Revision	Enter the appropriate choice to specify reason for renewal. (List: New, Continuation, Revision. If revision, indicate: List: Increase Award, Decrease Award, Increase Duration, Decrease Duration, Other (Specify)).	Application Purpose.
CFDA Number (No. 10)	Use the Catalog of Federal Domestic Assistance (CFDA) number of the program under which assistance is requested.	Catalog of Federal Domestic Assistance Number.
CFDA Title (No. 10)	Use the Catalog of Federal Domestic Assistance (CFDA) title of the program under which assistance is requested.	Program Name.

TABLE 1.—ALL FEDERAL GRANT APPLICATION INFORMATION—Continued

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Descriptive Title of Applicant's Project (No 11).	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (*e.g.*, construction or real property projects), attach a map showing project location. For pre-application, use a separate sheet to provide a summary description of this project.	Application Title.

TABLE 2.—ORGANIZATION/APPLICANT INFORMATION

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
DUNS New Addition	The DUNS number of the organization. (Subject to OMB approval of single identifier.).	Organization DUNS.
Applicant Name/Address (No. 5)	Legal name of applicant, name of primary organizational unit that will undertake the assistance activity, complete address of applicant, including country, if other than US, and name and telephone number and e-mail address of the person to contact on matters related to this application.	Organization Name.
Name of Federal Agency (No. 9)	Name of the Federal Agency from which assistance is being requested with this application.	Organization Type.
Organizational Unit (No. 5)	The department, service, laboratory, or equivalent level within the organization.	Department.
Organizational Unit (No. 5)	The division, office, or major subdivision of the organization	Division.
Employer Identification Number (No. 6).	Enter Employer's Identification Number (EIN) as assigned by the Internal Revenue Service.	Employer's Identification Number.
Type of Applicant (No. 7) New Addition: Not for Profit.	Enter the appropriate choice in the space provided to show the applicant type such as state or county. (List: State, County Municipal Township, Interstate, Intermunicipal, Special District, Independent School District, State Controlled Institution of Higher Learning, Private University, Indian Tribe, Individual, Profit organization, Not for Profit, Other (specify)).	Entity Type.
Congressional District (No. 14)	List the applicant's Congressional District and any (District(s) affected by the program or project.	Congressional District.

TABLE 3.—APPLICANT/INDIVIDUAL CONTACT INFORMATION

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Contact Person, Name (No. 5)	Type of individual associated with the business process of submitting the application.	Individual Type
Contact Person, Name (No. 5)	The individual's first name	First Name.
Contact Person, Name (No. 5)	The individual's last name	Last Name.
Contact Person, Name (No. 5)	The individual's middle name.	Middle Name
Contact Person, name (No. 5)	The individual's name prefix	Prefix.
Contact Person, Name (No. 5)	The individual's name suffix	Suffix.
Contact Person, Name (No. 18a) Authorized Representative, Title.	Position title of an individual	Title.
Date Signed (No. 18e)	Date Application Signed	Signature Date.

TABLE 4.—APPLICANT/INDIVIDUAL ADDRESS INFORMATION

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Address, City (No. 5)	City of an organization or individual	City.
Address, County (No. 5)	County of an organization or individual	County.
Address, State (No. 5)	State of an organization or individual	State.
Address (No. 5)	Street address of an organization or individual	Street Address.
Address, Zip Code (No. 5)	Zip code of an organization or individual	Zip Code.
Contact Person, Telephone (No. 5)	Telephone number for an organization or individual.	Telephone Number.
Fax Number New Addition	Fax number for an organization or individual	Fax Number.
E-Mail Address New Addition	E-Mail address for the individual	E-Mail address.
Country New Addition	Country of an organization or individual	Country.

TABLE 5.—PROJECT INFORMATION

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Areas Affected by Project (No. 12)	List only the largest political entities affected (*e.g.*, State, counties, cities).	Geographic Location Name.
Proposed Projected State Date (No. 13)	Self-explanatory (Planned beginning date of project.)	Project Start Date.
Proposed Project Ending Date (No. 13)	Self-explanatory (Planned ending date of project.).	Project End.

TABLE 6.—SF–424 COVER PAGE BUDGET INFORMATION

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Estimated Funding	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item.	Budget Item Code, Budget Item Cost.
Estimated Funding	Dollar amount of the budget item	Dollar Amount.

TABLE 7.—SF–424A NON-CONSTRUCTION BUDGET

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Section A, Budget Summary (Nos. 1–5, a–g).	For applications pertaining to a single Federal grant program (Catalog of Federal Domestic Assistance number) and not requiring a functional or activity breakdown, enter on Line under Column (a) the Catalog program title and the Catalog number in Column (b). For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b). Lines 1–4, Columns (c) through (g) For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year). Line 5—Show the total for all columns used.	Budget Item Code, Budget Item Cost, Budget Item Name, Budget Item Description, Budget Item Period.
Section B, Budget Categories (Nos. 6, a–k).	In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories. Line 6a–i—Show the totals of Lines 6a to 6h in each column. Line 6j—Show the amount of indirect cost. 6k—Enter the total amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5. Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, shown under the program.	Budget Item Code, Budget Item Cost, Budget Item Name, Budget Item Description, Budget Item Period.
Section C, non-Federal Resources (Nos. 8–12).	Lines 8–11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.	Budget Item Code, Budget Item Cost, Budget Item Name, Budget Item Description, Budget Item Period.

TABLE 7.—SF–424A NON-CONSTRUCTION BUDGET—Continued

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
	Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary. Column (b)—Enter the contribution to be made by the applicant. Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agency should leave this column blank. Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources. Column (e)—Enter totals of Columns (b), (c), and (d). Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.	
Section D, Forecasted Cash Needs (Nos. 13–15).	Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year. Line 14—Enter the amount of cash from all other sources needed by quarter during the first year. Line 15—Enter the totals of amounts on Lines 13 and 14.	Budget Item Code, Budget Item Cost, Budget Item Name, Budget Item Description, Budget Item Period.
Section E, Budget Estimates of Federal Funds Needed for Balance of the Project (Nos. 16–20).	Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants. If more than four lines are needed to list the program titles, submit additional schedules as necessary. Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.	Budget Item Code, Budget Item Cost, Budget Item Name, Budget Item Description, Budget Item Period.
Section F, Other Budget Information (Nos. 21–23).	Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency. Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense. Line 23—Provide any other explanations or comments deemed necessary.	Budget Item Code, Budget Item Cost, Budget Item Name, Budget Item Description, Budget Item Period, Paragraph Text.

TABLE 8.—SF–424C BUDGET INFORMATION CONSTRUCTION PROGRAM

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Budget Information Construction Programs (Nos. 1–17, a–c).	Column (a).—If this is an application for a "New" project, enter the total estimated cost of each of the items listed on lines 1 through 16 (as applicable) under "Cost Classification". If this application entails a change to Item an existing award, enter the eligible amounts approved under the previous award for the items under "Cost Classification". Column (b).—If this is an application for a "New" project, enter that portion of the cost of each item in Column a. that is not allowable for Federal assistance. Contact the Federal agency for assistance in determining the allowability of specific costs. If this application entails a change to an existing award, enter the adjustment [+ or (-)] to the previously approved costs from column (a) reflected in this application.	Budget Item Code, Budget Item Cost, Budget Item Description, Budget Item Period.

TABLE 8.—SF–424C BUDGET INFORMATION CONSTRUCTION PROGRAM—Continued

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
	Line 1—Enter estimated amounts needed to cover administrative expenses. Do not include costs, which are related to the normal functions of government. Allowable legal costs are generally only those associated with the purchases of land, which is allowable for Federal participation and certain services in support of construction of the project. Line 2—Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements). Line 3—Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc. Line 4—Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan). Line 5—Enter estimated engineering costs, such as surveys, tests, soil borings, etc. Line 6—Enter estimated engineering inspection costs. Line 7—Enter estimated costs of site preparation and restoration which are not included in the basic construction contract. Line 9—Enter estimated cost of the construction contract. Line 10—Enter estimated cost of office, shop, laboratory, safety equipment, etc., to be used at the facility, if such costs are not included in the construction contract. Line 11—Enter estimated miscellaneous costs. Line 12—Total of items 1 through 11. Line 13—Enter estimated contingency costs (Consult the Federal agency for the percentage of the estimated construction cost to use.). Line 14—Enter the total of lines 12 and 13.. Line 15—Enter estimated program income to be earned during the grant period, *e.g.*, salvaged materials, etc. Line 16—Subtract line 15 from line 14. Line 17—This block is for the computation of the Federal share. Multiply the total allowable project costs from line 16, column (c) by the Federal percentage share (this may be up to 100 percent; consult Federal agency for Federal percentage share) and enter the product on line 17.	

TABLE 9.—ASSURANCES, NON-CONSTRUCTION (SF–424B)

[To Be Replaced by Proposed Assurance Statement]

SF–424 Caption or block no.	SF–424 Description	194 Data Element Name for Electronic Submission
Assurance, Federal Debt, State Review	16. Applicants should contact the State Single Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. 18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization is submitted as part of the application).	Yes or No Condition.
Assurance, Federal Debt State Review	See above	Yes or No Condition Description.
Assurance, Federal Debt, State Review	See above	Yes or No Condition Response.
Assurance, Federal Debt, State Review	See above	Yes or No Condition Type.

TABLE 10.—ASSURANCES, CONSTRUCTION (SF–424D)

[To Be Replaced by Proposed Assurance Statement]

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Assurance, Federal Debt, State Review	16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. 18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization is submitted as part of the application).	Yes or No Condition Date.
Assurance, Federal Debt State Review	See above	Yes or No Condition Description.
Assurance, Federal Debt, State Review	See above	Yes or No Condition Response.
Assurance, Federal Debt, State Review	See above	Yes or No Condition Type.

[FR Doc. 03–8435 Filed 4–7–03; 8:45 am]
BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management; Consolidated Federal Financial Report

AGENCY: Office of Federal Financial Management (OFFM), Office of Management and budget (OMB).

ACTION: Notice of proposed consolidated Federal Financial Report.

SUMMARY: The Office of Federal Financial Management proposes to consolidate several existing financial reporting forms into a single financial report to be used by the Federal agencies and grant recipients. The purpose of this consolidated Federal Financial Report is to provide grant recipients with a standard format and consistent reporting requirements to be used for reporting financial information on formula and discretionary grants and cooperative agreements. The Federal awarding agencies jointly developed this format as one part of the implementation of the Federal Financial Assistance management Improvement Act of 1999 (Pub. L. 106–107).

DATES: All comments on this proposals should be in writing, and must be received by June 9, 2003.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: *ghatch@omb.eop.gov*. Please include "Consolidated Federal Financial Report" in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization postal address telephone number and E-mail address in the text of the message. Comments may also be submitted via facsimile to 202 395–3952. Comments may be mailed to Garrett Hatch, Office of Federal Financial Management, Office of Management and budget, Room 6025, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Garrett hatch, Office of Federal Financial Management, Office of management and budget, telephone 202–395–0786, and E-mail: *ghatch@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: This notice addresses issues raised during the public consultation process mandated by Public Law 106–107. Many areas of financial reporting were identified as being in need for improvement and streamlining. Commenters suggested the use of a single form, consistency in reporting frequency and requirements elimination of duplicate information, and electronic submission of reports.

The Financial Status Report (SF 269 and 269a) and the Federal Cash Transaction Report (SF 272 and 272a) were reviewed and analyzed to determine the data elements common to multiple forms and the data elements unique to any single form. Consolidation of these forms in intended to reduce the reporting burden placed on award recipients and to streamline the data collection process.

In addition to the consolidated set of data elements, four new data elements were added:

(1) Reporting entity's universal identifier (*see* proposal to use the Duns Universal Numbering System (DUNS) in the October 30, 2002, **Federal Register**, Vol 67, No. 210, pp. 66177–66178);

(2) Total recipient share required;

(3) Remaining recipient share to be provided; and

(4) Reporting entity's e-mail address.

This information was combined and resulted in four standard sections for reporting transactions and balances. The standard sections include: Status of Federal Cash, Status of Federal Expenditures and Unobliged Balance (of Federal funds), Status of Recipient Share, and Program Income.

Federal agencies will not be required to collect all of the information included on the proposed form. The Federal agency will identify the sections that must be completed by recipients and the frequency of report submission. We have allowed for flexibility in the frequency of reporting but have established a uniform due date of no later than 30 days after of each specified reporting period.

The immediate use of this proposed form would be in a paper format. However, the data elements included in the paper format are intended to be used in the future for the electronic submission and collection of financial information.

We welcome your input on any aspect of the Federal Financial Report.

Questions that you may wish to address include:

Is the format of the form easy to understand and complete? Do you have suggestions for improvements in the appearance of the form? Are the line item instructions understandable? have we sufficiently defined the terms? Are there any data elements that could be eliminated from the form? If your recommend eliminating an item, please explain your recommendation. Could we provide any additional information that would be useful to the users of this form?

Joseph L. Kull,

Deputy Controller.

BILLING CODE 3110-01-P

Instructions for Federal Agencies

The Federal agency will instruct award recipients how to use this form. The Federal Financial Report (FFR) may be used to:

- report the "Status of Federal Cash" (lines a through c) either for a single award or for multiple awards (For multiple awards, complete page 2 of the form and do not complete the following lines on page 1: 2, 5, 6, 8, 10d-q, and 11); **OR**
- report all Federal and recipient expenditures for a single award (lines d – q); **OR**
- report both the "Status of Federal Cash" and all Federal and recipient expenditures for a single award (completing all lines on the report).

Reporting Frequency:

- The Federal Financial Report (FFR) may be required on a quarterly, semi-annual, or annual basis. The Federal agency shall determine the frequency of the FFR for each project or program, considering the size and complexity of the particular project or program. A final report shall be required at the completion of the agreement.
- The following report period end dates may be used for the FFR: 3/31, 6/30, 9/30 and/or 12/31.
- The Federal agency shall require recipients to submit the FFR, regardless of the frequency of the report, no later than 30 days after the end of each specified reporting period. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient. Final reports shall be submitted no later than 90 days after the project end date.
- The Federal agency shall inform recipients at time of award of the reporting frequency, the periods covered by each report, and the dates the reports are due.

FEDERAL FINANCIAL REPORT

(Follow instructions on the back)

1. Federal Agency and Organizational Element to Which Report is Submitted	2. Federal Grant or Other Identifying Number Assigned by Federal Agency (To report multiple grants, attach page 2)	OMB Approval No.	Page 1	of pages

3. Recipient Organization (Name and complete address including Zip code)			
4. Universal Identifier Number	5. Recipient Account Number or Identifying Number (To report multiple grants, attach page 2)	6. Final Report ☐ Yes ☐ No	7. Basis of Accounting ☐ Cash ☐ Accrual

8. Funding/Grant Period From: (Month, Day, Year)	To: (Month, Day, Year)	9. Period Covered by this Report From: (Month, Day, Year)	To: (Month, Day, Year)

10. Transactions	I. Previously Reported	II. Current Period	III. Cumulative
Status of Federal Cash (To report multiple grants, attach page 2):			
a. Cash Receipts			
b. Cash Disbursements			
c. Cash on hand (line a minus b)			
Status of Federal Expenditures and Unobligated Balance:			
d. Total Federal funds authorized			
e. Federal share of expenditures			
f. Federal share of unliquidated obligations (current period)			
g. Total Federal share (sum of lines e and f)			
h. Unobligated balance of Federal funds (line d minus g)			
Status of Recipient Share:			
i. Total recipient share required			
j. Recipient share of expenditures			
k. Recipient share of unliquidated obligations (current period)			
l. Total recipient share (sum of lines j and k)			
m. Remaining recipient share to be provided (line i minus l)			
Program Income:			
n. Program income expended in accordance with the deduction alternative			
o. Program income expended in accordance with the addition alternative			
p. Unexpended program income (current period)			
q. Total Federal program income earned (sum of lines n,o and p)			

11. Indirect Expense	a. Type of Rate (place "X" in the appropriate box) ☐ Provisional ☐ Predetermined ☐ Final ☐ Fixed	b. Rate	c. Base	d. Total Amount	e. Federal Share

12. *Remarks: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation:*

13. Certification; I certify to the best of my knowledge and belief that this report is correct and complete and that all expenditures and unliquidated obligations are for the purposes set forth in the award documents.

a. Typed or Printed Name and Title of Certifying Official	c. Telephone (Area code, number and extension)
	d. Email address
b. Signature of Authorized Certifying Official	e. Date Report Submitted
	14. Agency use only:

Prescribed by OMB A-102 and A-110 ☐

Federal Financial Report

(Attachment for reporting multiple grants)

1. Federal Agency and Organizational Element to which report is submitted (Box 1 on Page 1)	2. Recipient Organization (Box 3 on Page 1)	3. Universal Identifier Number (Box 4 on Page 1)

4. Period covered by this report (Box 9 on page 1) From (month, day, year):	To (month, day, year):	

5. List information below for each grant covered by this report. Use additional pages if more space is required.

Federal Grant Number	Recipient Account Number	Net Disbursement	Cumulative Net Disbursement
		$	$

Line Item Instructions for Page 1 of the Federal Financial Report

FFR Box Number	Reporting Item	Instructions
Cover Information		
1.	Federal Agency and Organizational Element to Which Report is Submitted	Enter name of the Federal funding agency to which report is submitted.
2.	Federal Grant or Other Identifying Number Assigned by Federal Agency	Enter grant number assigned to recipient by the Federal funding agency. For multiple grants, report this information on page 2 and indicate reference to page 2 in this box. *Do not complete this line if reporting for multiple awards.*
3.	Recipient Organization (Name and complete address including Zip Code)	Enter name and address of recipient organization.
4.	Universal Identifier Number	Enter the recipient organization's Universal Identifier Number.
5.	Recipient Account Number or Identifying Number	Enter account number or any other identifying number used by the recipient. For recipient use only; not required by the Federal funding agency. For multiple grants, report this information on page 2 and indicate reference to page 2 in this box. *Do not complete this line if reporting for multiple awards.*
6.	Final Report (Yes/No)	Mark appropriate box. Check "yes" only if this is the final report for the grant. *Do not complete this line if reporting for multiple awards.*
7.	Basis of Accounting (Cash/Accrual)	Mark appropriate box.
8.	Funding/Grant Period, From: (Month, Day, Year)	Enter the beginning and ending dates of the current funding period. NOTE: If this is a multi-year program, the Federal agency may require cumulative reporting through consecutive funding periods. In that case, enter the beginning and ending dates of the grant period, and in the rest of these instructions, substitute the term "grant period" for "funding period". *Do not complete this line if reporting for multiple awards.*
	Funding/Grant Period ,To: (Month, Day, Year)	See above
9.	Period Covered by this Report, From: (Month, Day, Year)	Enter beginning and ending dates of the current period (amounts to be reported in column II of line item 10) of this report.
	Period Covered by this Report, To: (Month, Day, Year)	See above
10.	Transactions	The purpose of columns I, II, and III is to show the effect of this reporting period's transactions on cumulative financial status. The amounts entered in column I will normally be the same as those in column III of the previous report in the same funding period. If this is the first report of the funding period, leave the column I blank. The amounts entered in column II will be for the period indicated in line item 9. The amounts included in column III are the sum of columns I and II. If this is the only report of the funding period, enter amounts in column III and leave columns I and II blank. If you

		need to adjust amounts entered on previous reports, footnote the column I entry on this report and attach an explanation.
Status of Federal Cash:		
10a.	Cash Receipts	Enter the amount of cash received from this funding agency.
10b.	Cash Disbursements	Enter the amount of cash disbursed for Federal share. (For multiple grants, report each grant separately on page 2. The total on page 2 should reconcile to the amounts reported on page 1.)
10c.	Cash on hand (line a minus b)	Enter the amount of line a minus line b.
Status of Federal Expenditures and Unobligated Balance: *Do not complete this section if reporting for multiple awards.*		
10d.	Total Federal funds authorized	Enter the total Federal funds authorized for the current funding period.
10e.	Federal share of expenditures (line e equals line b for cash basis reporting)	Enter the amount of Federal funds expended (less any rebates, refunds or other credits). For reports prepared on the cash basis, expenditures are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expenses *charged*, the value of in-kind contributions applied, and the amount of cash advances and payments made to subrecipients. For reports prepared on the accrual basis, expenditures are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expenses *incurred*, the value of in-kind contributions applied, and the net increase or decrease in the amounts owed by the recipient for goods or other property received, for services performed by employees, contractors, subgrantees, and other payees, and other amounts becoming owed under programs for which no current services or performances are required, such as annuities, insurance claims, and other benefit payments.
10f.	Federal share of unliquidated obligations (current period only) (This Period)	Enter the Federal share of unliquidated obligations, including unliquidated obligations to subgrantees and contractors. For cash basis reporting. this is the amount of obligations incurred which have not been paid. For accrual basis reporting, this is the amount of obligations incurred for which an expenditure has not been recorded. On the final report, this line must be zero.
10g.	Total Federal share (sum of lines e and f) (This Period)	Enter the sum of lines e and f.
10h.	Unobligated balance of Federal funds (line d minus g)	Enter the amount of line d minus line g.

Status of Recipient Share: *Do not complete this section if reporting for multiple awards.*		
10i.	Total Recipient share required	Enter the required recipient funds to be provided (required match or cost sharing amount).
10j.	Recipient share of expenditures	Enter the amount of recipient funds expended as defined in 10 **e**. Program income used to finance the non-Federal share of the project or program should be included this amount.
10k.	Recipient share of unliquidated obligations (current period only) (This Period)	Enter the recipient share of unliquidated obligations, including unliquidated obligations to subgrantees and contractors, as defined in 10 f. On the final report, this line must be zero.
10l.	Total Recipient share (sum of lines j and k) (This Period)	Enter the sum of lines j and k. Recipient share can exceed required match amount as stated in 10 i.
10m.	Remaining recipient share to be	Enter amount of line i minus line l. If recipient share in line 10

	provided (line i minus l) (Cumulative)	l is greater than the required match amount in 10 i, enter zero.
Program Income: *Do not complete this section if reporting for multiple awards.*		
10n.	Program income expended in accordance with the deduction alternative	Enter the amount of program income that was deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.
10o.	Program income expended in accordance with the addition alternative	Enter the amount of program income that was added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program activities.
10p.	Unexpended program income (current period only) (This Period)	Enter the Federal amount of program income that has been earned but not expended.
10q.	Total Federal program income earned (sum of lines n, o and p) (Cumulative)	Enter the sum amount of lines n, o and p.
11a.	Indirect Expense, Type of Rate (Provisional, Predetermined, Final, or Fixed)	Mark appropriate box.
11b.	Indirect Expense, Rate	Enter the indirect cost rate in effect during the reporting period.
11c.	Indirect Expense, Base	Enter the amount against which the rate was applied for the current reporting period.
11d.	Indirect Expense, Total Amount	Enter the amount of line b times line c.
11e.	Indirect Expense, Federal Share	Enter the amount of the Federal share of line 11 d.
Remarks and Certification		
12.	Remarks	Enter any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation, if applicable.
13a.	Typed or Printed Name and Title Of Certifying Official	Enter the name and title of the authorized certifying official.
13b.	Signature of Authorized Certifying Official	Authorized certifying official must sign here.
13c.	Telephone (Area Code, number and extension)	Enter telephone number (including area code and extension) of individual listed in line 13 a.
13d.	Email address	Enter the email address of the individual listed in 13 a.
13e.	Date Report Submitted	Enter the date the form is submitted to the Federal agency.
14.	Agency Use Only	This section is reserved for Federal Agency Use.

Line Item Instructions for Page 2 of the Federal Financial Report

(To be completed only if reporting for multiple awards)

FFR Box Number	Reporting Item	Instructions
1.	Federal Agency and Organizational Element to Which Report is Submitted	Enter name of the Federal funding agency to which report is submitted. Same as Box 1 on Page 1.
2.	Recipient Organization	Enter only the name of the recipient organization.
3.	Universal Identifier Number	Enter the recipient organization's Universal Identifier Number.
4.	Period Covered by this Report, From: (Month, Day, Year)	Enter beginning and ending dates of the current period (amounts to be reported in column II of line item 10) of this report.
	Period Covered by this Report, To: (Month, Day, Year)	See above.
5.	Federal Grant Number	List the grant numbers assigned to recipient by the Federal funding agency.
	Recipient Account Number	List the account numbers or any other identifying number used by the recipient. For recipient use only; not required by the Federal funding agency.
	Net Disbursement	Enter the amount of cash disbursed in the current period for Federal share. The column total on page 2 should reconcile to the amount reported on page 1 in box 10b, column II.
	Cumulative Net Disbursement	Enter the cumulative amount of cash disbursed for Federal share. The column total on page 2 should reconcile to the amount reported on page 1 in box 10b, column III.

[FR Doc. 03–8436 Filed 4–7–03; 8:45 am]
BILLING CODE 3110–01–C

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17Ac2–1, SEC File No. 270–95, OMB Control No. 3235–0084. Rule 19d–2, SEC File No. 270–204, OMB Control No. 3235–0205.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 17Ac2–1 under the Securities Exchange Act of 1934 (the "Act") requires transfer agents to register with the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, and to amend their registration.

It is estimated that on an annual basis, the Commission will receive approximately 100 applications for registration on Form TA–1 from transfer agents required to register as such with the Commission. Included in this figure are amendments made to Form TA–1 as required by Rule 17Ac2–1(c). Based upon past submissions, the staff estimates that the average number of hours necessary to comply with the requirements of Rule 17Ac2–1 is one and one-half hours, with a total burden of 150 hours.

Rule 19d–2 under the Act prescribes the form and content of applications to the Commission by persons desiring stays of final disciplinary sanctions and summary action of self-regulatory organizations ("SROs") for which the Commission is the appropriate regulatory agency.

It is estimated that approximately 30 respondents will utilize this application procedure annually, with a total burden of 90 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–2 is 3 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 3, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8519 Filed 4–7–03; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange, Inc. (El Paso Corporation, Common Stock, $3.00 par value) File No. 1–14365

April 2, 2003.

El Paso Corporation, a Delaware corporation ("Issuer"), has filed an

application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $3.00 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The Board of Directors ("Board") of the Issuer approved resolutions on December 6, 2002 to withdraw its Security from listing on the Exchange. The Issuer determined that it is not in the best interest of the Issuer or its stockholders to continue to be subject to the limitations and cost associated with maintaining the PCX's listing requirements for its Security. In addition, the Issuer believes that it is desirable and in the best interests of the Issuer and its stockholders to delist its Security from the PCX. The Issuer states that the Security will continue to trade on the New York Stock Exchange, Inc. ("NYSE").

The Issuer stated in its application that it has complied with the rules of the PCX that govern the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the PCX and from registration under section 12(b)[3] of the Act and shall not affect its listing on the NYSE or its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before April 25, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–8440 Filed 4–7–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).
[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25988; File No. 812–12897]

Metropolitan Life Investors USA Insurance Company, et al.

April 1, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to section 26(c) of the Investment Company Act of 1940 (the "Act") approving certain substitutions of securities and for an order of exemption pursuant to section 17(b) of the Act.

APPLICANTS: MetLife Investors USA Insurance Company ("MetLife Investors USA"), Security Equity Life Insurance Company ("Security Equity Life"), MetLife Investors USA Separate Account A ("Separate Account A"), Security Equity Life Separate Account 10 ("Separate Account 10" and Security Equity Life Separate Account 13 ("Separate Account 13").

FILING DATES: The application was filed on October 24, 2002, and amended and restated on March 28, 2003.

SUMMARY OF APPLICATION: Applicants request an order to permit the substitutions by MetLife Investors and Security Equity Life of Class A shares of the MetLife Stock Index Portfolio (the "Replacement Portfolio") of Metropolitan Series Fund, Inc. ("Metropolitan Series") and held by Separate Account A, Separate Account 10, and Separate Account 13 (each an "Account," together, the "Accounts") for Initial Class shares of the Index 500 Portfolio (the "Substituted Portfolio") of the Fidelity Variable Insurance Products Fund II ("VIP Fund II") to support variable annuity or variable life insurance contracts issued by MetLife Investors USA or Security Equity Life (collectively, the "Contracts"). Applicants also request an order of the Commission exempting them, the Metropolitan Series, VIP Fund II, the Replacement Portfolio, and the Substituted Portfolio as well as the proposed substitution from section 17(a) of the 1940 Act to the extent necessary to permit MetLife Investors USA and Security Equity Life to carry out the proposed substitutions by redeeming the VIP Fund II shares in-kind and using the proceeds to purchase the shares issued by the Metropolitan Series.

HEARING OR NOTIFICATION OF HEARING: An order granting the amended and restated application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Christopher A. Martin, Esq., Metropolitan Life Insurance Company, 501 Boylston Street, Boston, MA 02116 and Richard C. Pearson, Esq., MetLife Investors USA Insurance Company, 22 Corporate Plaza Drive, Newport Beach, California 92660. Copy to David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Alison White, Senior Counsel, or Lorna MacLeod, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants Representations

1. MetLife Investors USA is a stock life insurance company organized under Delaware law in 1960. MetLife Investors USA is authorized to transact the business of life insurance, including annuities, in the District of Columbia and all states except New York.

2. MetLife Investors USA is a wholly-owned subsidiary of MetLife Investors USA Group, Inc. ("MLIG") (formerly, Security First Group, Inc.). MLIG, in turn, is an indirect wholly-owned subsidiary of MetLife, Inc. ("MetLife"), the parent of Metropolitan Life Insurance Company ("MLIC"). MetLife is listed on the New York Stock Exchange and, through its affiliates, is a leading provider of insurance and financial products and services to individuals and groups. MetLife Investors USA Insurance Company changed its name from Security First Life Insurance Company on January 31, 2001.

3. Security Equity Life is a stock life insurance company domiciled in New York. Security Equity Life was established in 1983 as a wholly-owned subsidiary of Security Mutual Life Insurance Company of New York. Security Equity Life is admitted to sell life insurance and annuities in 40 states and the District of Columbia. Security Equity Life sells corporate-owned life insurance contracts in all of these jurisdictions and individual contracts to residents of New York. Security Equity Life is a wholly-owned subsidiary of GenAmerica Financial Corporation, an intermediate stock holding company, acquired by MetLife on January 6, 2000.

4. Separate Account A is a separate investment account of MetLife Investors USA established under Delaware law on May 29, 1980. Separate Account A currently has 60 subaccounts. Each subaccount invests in a corresponding portfolio of a registered management investment company. A number of variable annuity Contracts that invest in the Substituted Portfolio have been issued through Separate Account A (the, "MetLife Investors Contracts") and interests in the Account offered through such Contracts have been registered under the Securities Act of 1933, as amended (the "1933 Act") on Form N–4.

5. MetLife Investors USA is the legal owner of the assets in Separate Account A. If, and to the extent so provided in the MetLife Investors Contracts, that portion of the assets of Separate Account A equal to its reserves and other liabilities under outstanding MetLife Investors Contracts are not chargeable with liabilities arising out of any other business MetLife Investors USA may conduct. Income, gains and losses, realized or unrealized, from the assets of Separate Account A are credited to or charged against the Account without regard to the other income, gains, or losses of MetLife Investors USA.

6. Separate Account 10 is a separate investment account of Security Equity Life established under New York law on December 15, 1994. Separate Account 10 serves as one of several separate account funding vehicles for certain variable life insurance contracts that are exempt from registration under section 4(2) of the 1933 Act and Regulation D thereunder (the "Security Equity Life PP Contracts"). Each separate account available as an investment option under the Security Equity Life PP Contracts invests in a corresponding portfolio of a registered management investment company; Separate Account 10 invests only in the Substituted Portfolio.

7. Security Equity Life is the legal owner of the assets in Separate Account 10. If, and to the extent so provided in the Security Equity Life PP Contracts, that portion of the assets of Separate Account 10 equal to its reserves and other liabilities under outstanding Security Equity Life PP Contracts will not be charged with liabilities that arise from any other business that Security Equity Life may conduct. Income, gains and losses, whether or not realized, from the assets of Separate Account 10 are, in accordance with the Security Equity Life PP Contracts, credited to or charged against the Account without regard to the other income, gains, or losses of Security Equity Life.

8. Separate Account 13 is a separate investment account of Security Equity Life established under New York law on December 30, 1994. Separate Account 13 currently has 20 subaccounts. Each subaccount invests in a corresponding portfolio of a registered management investment company. A number of variable life insurance Contracts that invest in the Substituted Portfolio have been issued through Separate Account 13 (the, "Security Equity Life Contracts") and interests in the Account offered through such Contracts have been registered under the 1933 Act on Form S–6.

9. Security Equity Life is the legal owner of the assets in Separate Account 13. If, and to the extent so provided in the Security Equity Life Contracts, that portion of the assets of Separate Account 13 equal to its reserves and other liabilities under outstanding Security Equity Life Contracts will not be charged with liabilities arising from any other business that Security Equity Life may conduct. Income, gains and losses, whether or not realized, from the assets of Separate Account 13 are, in accordance with the Security Equity Life Contracts, credited to or charged against the Account without regard to the other income, gains, or losses of Security Equity Life.

10. The terms of the MetLife Investors Contracts permit Contract owners to transfer Contract value under the Contracts between and among the available subaccounts of Separate Account A and from such subaccounts to MetLife Investors USA's general account during the accumulation period and to exchange annuity units during the annuity period. Although MetLife Investors USA does not currently charge a fee for Contract value transfers or annuity unit exchanges, the Contracts reserve for it the right to impose a $10 charge for each transfer or exchange.

11. The terms of the Security Equity Life PP Contracts permit Contract owners to transfer Contract value under the Contracts between and among the separate accounts available under the Contracts on any valuation day within the following guidelines: (a) Contract value cannot be allocated to more than five separate accounts at any one time, (b) transfer requests must be in writing and in a form acceptable to Security Equity Life, (c) except as described below, only one transfer is permitted in each Contract year, and (d) Security Equity Life reserves the right to limit the amount of any transfer. Notwithstanding this contractual limitation, Security Equity Life currently permits up to 12 transfers per Contract year between or among separate accounts that invest in underlying portfolios within a single series management investment company or in underlying portfolios managed by the same investment manager. All transfer requests made on a single valuation day count as a single transfer. Security Equity Life does not impose a charge for transfers.

12. The terms of the Security Equity Life Contracts permit Contract owners to transfer Contract value under the contracts between and among available subaccounts on any valuation day within the following guidelines: (a) Contract value cannot be allocated to more than five subaccounts and the fixed account (*i.e.*, Security Equity Life's general account) at any time, (b) transfer requests must be in writing and in a form acceptable to Security Equity Life, (c) except as described below, only one transfer is permitted in each Contract year, and (d) Security Equity Life reserves the right to limit the amount of any transfer. Notwithstanding this contractual limitation, Security Equity Life currently permits up to 12 transfers per Contract year between or among subaccounts. All transfer requests made on one valuation day count as a single transfer. Security Equity Life does not impose a charge for transfers.

13. Under the Contracts, MetLife Investors USA and Security Equity Life reserve the right to substitute shares of one portfolio for shares of another, including a portfolio of a different management investment company. Three of the MetLife Investors Contracts require Contract owners to approve any substitution. None of the other MetLife Investors Contracts nor any of the Security Equity Life Contracts require such approval. The following is representative of the Contract provisions reserving this right to substitute that appears in the MetLife Investors Contracts and the Security Equity Life Contracts:

MetLife Investors Contracts That Require Contract Owner Approval

The separate account may not change the fund shares of a series unless approved by a vote of the majority of the units entitled to vote and as provided by the [1940] Act.

MetLife Investors Contracts That Do Not Require Contract Owner Approval

If shares of any fund should no longer be available for investment by a series or if in the judgment of the Company further investment in shares of any fund should become inappropriate in view of the purposes of the contracts, the Company may substitute for each fund share already purchased, shares of another fund or other securities, and apply future purchase payments under the contracts to the purchase of shares of another fund or other securities. The separate account may not change the fund shares of a series unless approved by the [1940] Act. The separate account may buy other securities for other series or contracts, or if requested by a contract owner, convert units from one series or contract to another.

Security Equity Life PP Contracts

For any Separate Account, [Security Equity Life] has the right to substitute a new portfolio for the portfolio in which the Separate Account invests, to substitute new Separate Accounts, to combine two or more Separate Accounts, to cause a Separate Account that is managed directly by an investment manager to instead invest its assets in shares or units of portfolios managed by one or more investment managers, to cause a Separate Account that invests its assets in shares or units of a portfolio to instead be managed directly by an investment manager, and to eliminate any existing Separate Accounts or any other investment option. Subject to any required regulatory approvals, [Security Equity Life] reserves the right to transfer assets of a Separate Account to another Separate Account which [Security Equity Life] determines to be associated with the class of contracts to which the contract belongs.

Security Equity Life Contracts

For any Separate Account Division, [Security Equity Life] has the right to substitute a new portfolio for the portfolio in which the Separate Account invests, to substitute new Separate Account Divisions, to combine two or more Separate Account Divisions, to cause a Separate Account Division that is managed directly by an investment manager to instead invest its assets in shares or units of portfolios managed by one or more investment managers, to cause a Separate Account Division that invests its assets in shares or units of a portfolio to instead be managed directly by an investment manager, and to eliminate any existing Separate Account Division or any other investment option. Subject to any required regulatory approvals, [Security Equity Life] reserves the right to transfer assets of a Separate Account Division to another Separate Account Division which [Security Equity Life] determines to be associated with the class of contracts to which the contract belongs.

14. In the prospectuses for the Contracts, MetLife Investors USA and Security Equity Life disclose their right to substitute shares of one portfolio for shares of another. All of the prospectuses for the MetLife Investors Contracts disclose a requirement that approval of Contract owners invested in an affected portfolio is needed prior to any substitution, regardless of whether or not the related Contract requires such approval. Consistent with Contractual provisions, the prospectuses for the Security Equity Life Contracts and the private placement memoranda for the Security Equity Life PP Contracts do not disclose any such approval requirement. The following is representative disclosure about substitutions that appears in each prospectus and private placement memorandum:

MetLife Investors USA Prospectus

MetLife Investors USA may substitute shares of another fund for Fund shares directly purchased and apply future Purchase Payments under the Contracts to the purchase of these substituted shares if the shares of a Fund are no longer available or further investment in such shares is determined to be inappropriate by MetLife Investors USA's management in view of the purposes of the Contracts. However, no substitution is allowed unless a majority of the Owners entitled to vote (those who have invested in the Series) and the SEC approves the substitution under the 1940 Act.

Security Equity Life Private Placement Memorandum

For any Separate Account, subject to any required regulatory approvals, [Security Equity Life] has the right to substitute a new Underlying Portfolio for the Underlying Portfolio in which the Separate Account invests, to substitute new Separate Accounts, to combine two or more Separate Accounts, to cause a Separate Account that is managed directly by an investment manager to instead invest its assets in shares or units of an Underlying Portfolio, to cause a Separate Account that invests its assets in shares or units of an Underlying Portfolio to instead be managed directly by an investment manager, and to eliminate any existing Separate Account or any other investment option.

Security Equity Life VLI Prospectus

[Security Equity Life] reserves the right, subject to compliance with applicable law, to make additions to, deletions from, or substitutions for the shares that are held by the Separate Account or that the Separate Account may purchase. Security Equity Life reserves the right to eliminate the shares of any of the Underlying Portfolios and to substitute the shares of another registered open-end investment company if the shares of an Underlying Portfolio are no longer available for investment or if, in Security Equity Life's judgment, further investment in any Underlying Portfolio becomes inappropriate in view of the purposes of the Separate Account. [Security Equity Life] will not substitute any shares attributable to a Contract Holder's interest in a Division of a Separate Account without notice to the Contract Holder and prior approval of the SEC, to the extent required by the 1940 Act or other applicable law. Nothing contained in this Prospectus shall prevent the Separate Account from purchasing other securities for other series or classes of contracts, or from permitting a conversion between series or classes of contracts on the basis of requests made by Contract Holders.

15. The VIP Fund II is registered as an open-end management investment company under the 1940 Act and currently offers 5 separate investment portfolios, one of which would be involved in the proposed substitution. The VIP Fund II issues a separate series of shares of beneficial interest in connection with each portfolio and has registered such shares under the 1933 Act on Form N–1A. Fidelity Management & Research Company ("FMR") serves as the investment adviser to each portfolio.

16. FMR and VIP Fund II on behalf of the Substituted Portfolio have entered into a subadvisory agreement with Deutsche Asset Management, Inc. ("DAMI") to provide portfolio management services pursuant to which DAMI chooses the Substituted Portfolio's investments and places orders to buy and sell the Substituted Portfolio's investments. DAMI is a wholly-owned subsidiary of Deutsche Bank AG.

17. In addition, FMR has also entered into a subadvisory agreement with FMR Co., Inc. ("FMRC") on behalf of the Substituted Portfolio, pursuant to which FMRC may provide investment advisory services for the Substituted Portfolio.

18. The Metropolitan Series is registered as an open-end management investment company under the 1940 Act and currently offers 20 separate investment portfolios, one of which would be involved in the proposed substitution. The Metropolitan Series issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N–1A. MetLife Advisers is the investment adviser of each portfolio of the Metropolitan Series. MetLife Advisers is an indirect wholly-owned subsidiary of MetLife.

19. MetLife Advisers has a subadvisory agreement with MLIC whereby MLIC makes the day-to-day investment management decisions for the Replacement Portfolio. MLIC also manages its own investment assets and those of certain affiliated companies and other entities. As of December 31, 2002, MLIC had approximately $250 billion in assets under management. MetLife Advisers is responsible for overseeing MLIC and for making recommendations to the Metropolitan Series' board of directors relating to hiring and replacing any subadviser. MetLife Advisers also performs general administrative and management services for the Metropolitan Series. MLIC's principal offices are located at One Madison Avenue, New York, New York 10010. MLIC also is the Metropolitan Series' principal underwriter and distributor.

20. MetLife Investors Distribution Company ("MetLife Investors Distribution") serves as principal underwriter and distributor for the MetLife Investors Contracts. MetLife Investors Distribution is an indirect wholly-owned subsidiary of MetLife. MetLife Investors Distribution is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended (the "1934 Act") and is a member of the National Association of Securities Dealers, Inc ("NASD"). MetLife Investors Distribution may enter into selling agreements with other broker-dealers registered under the 1934 Act whose representatives are authorized to sell the MetLife Investors Contracts.

21. Walnut Street Securities, Inc. ("Walnut Street") serves as principal underwriter and distributor for Security Equity Life PP Contracts and Security Equity Life Contracts. Walnut Street is a wholly-owned subsidiary of GenAmerica Corporation. Walnut Street is registered as a broker-dealer under the 1934 Act and is a member of the NASD. Walnut Street may enter into selling agreements with other broker-dealers registered under the 1934 Act whose representatives are authorized to sell the Security Equity Life PP Contracts and Security Equity Life Contracts.

22. MetLife Investors USA and Security Equity Life propose to substitute Class A shares of Replacement Portfolio for Initial Class shares of the Substituted Portfolio held in the Accounts (the "proposed substitutions"). At the current time, most variable life insurance and variable annuity contracts being actively marketed by MetLife affiliated life insurance companies that offer an S&P 500 Index investment portfolio, offer the Replacement Portfolio. The proposed substitutions are part of efforts by MetLife Investors USA and Security Equity Life to standardize investment options offered through variable life insurance and variable annuity contracts across all MetLife affiliated life insurance companies. Investment option standardization is expected to make such contracts more efficient to administer and oversee, thereby reducing costs to the companies and improving service to owners of all of the contracts. For example, one variable annuity operations center provides contract administration and contract owner services for most of the affiliated life insurance companies. Standardizing product features, such as investment options, will foster more efficient administration of the Contracts, thereby improving quality control and Owner satisfaction. Similarly, as part of this standardization process, several other mutual funds managed by companies affiliated with Metropolitan Life Insurance Company are being merged into investment portfolios of Metropolitan Series, including the MetLife Portfolio. This should, as with the proposed substitution, increase the Portfolio's net assets and lead to lower overall expenses for the Portfolio. By way of other examples, most sales representatives will only have to be familiar with one S&P 500 Index portfolio offering rather than several. Likewise, for most contracts, only one prospectus, rather than several, for an S&P 500 Index portfolio would have to be printed.

23. Though not a principal reason for the proposed substitutions, the substitutions would have the effect of transferring Contract values to an investment portfolio managed by MLIC, an affiliated person of MetLife Investors USA and Security Equity Life, thereby increasing the management fees to MLIC.

24. Applicants believe that replacing the Substituted Portfolio with the Replacement Portfolio is appropriate and in the best interests of Contract owners because the investment objectives and principal investment strategies of the Replacement Portfolio are substantially identical to those of the Substituted Portfolio so that Contract owners will have continuity in investment and risk expectations. In addition, the types of investment advisory and administrative services provided to the Replacement Portfolio are substantially the same as those provided to the Substituted Portfolio.

25. Although net expenses for the Substituted Portfolio were slightly lower than those for the Replacement Portfolio for the year ended December 31, 2002, Applicants note that the expense ratio for the Substituted Portfolio before voluntary waivers and reimbursements was higher than that of the Replacement Portfolio. More significantly, Applicants propose to limit Contract charges (discussed below) attributable to Contract value invested in the Replacement Portfolio following the proposed substitutions, to a rate that would offset the expense ratio differential between the Substituted Portfolio's 2002 expense ratio and the expense ratio for the Replacement Portfolio.

26. Applicants believe that replacing the Substituted Portfolio with the Replacement Portfolio is appropriate and in the best interests of Contract owners because the Replacement Portfolio is larger than the Substituted Portfolio and has excellent prospects for future growth. Although almost all equity mutual funds have declined in size over the last two years (due primarily to equity market declines, but also as a result of investor redemptions), the Replacement Portfolio has, on a percentage basis, declined in size less than the Substituted Portfolio. In large part this is because it has gained new investors. As indicated above, the Applicants anticipate that, through mergers with affiliated funds and being added as an investment option in variable annuity and life insurance contracts of MetLife affiliated insurance companies, the Replacement Portfolio will continue to add new investors.

Size and continued growth are important factors in the performance of an index portfolio because they have a critical impact on expense levels. The Replacement Portfolio had an expense ratio in 2002 of 0.31%. Applicants believe that with the growth anticipated for the Portfolio, it has excellent prospects of maintaining or even lowering that ratio in future years. Although the Substituted Portfolio had an actual expense ratio of 0.28% for 2002, it achieved that ratio only after a reimbursement of 0.05% from FMR, its investment adviser. The reimbursement is voluntary and FMR may cease reimbursing the Portfolio at any time. In addition, FMR has the ability to seek repayment of the reimbursed amounts under certain circumstances in future years.

Applicants also believe that replacing the Substituted Portfolio with the Replacement Portfolio is appropriate and in the best interests of Contract owners because the Replacement Portfolio has had better performance than the Substituted Portfolio. Although, being index portfolios, performance differences are very small, the Replacement Portfolio has consistently outperformed the Substituted Portfolio in recent years.

27. The following chart sets out the investment objective and principal investment strategies of the Substituted Portfolio and the Replacement Portfolio, as stated in their respective prospectuses.

Substituted portfolio	Replacement portfolio
Index 500 Portfolio Investment Objective: Seeks investment results that correspond to the total return of common stocks publicly traded in the United States, as represented by the S&P 500 Index.	MetLife Stock Index Portfolio. Investment Objective: To equal the performance of the S&P 500 Index.
Principal Investment Strategies: The Portfolio will normally invest at least 80% of its assets in common stocks included in the S&P 500 Index. The Portfolio may not always hold all of the same securities as the S&P 500 Index. The subadviser may use statistical sampling techniques to attempt to replicate the returns of the S&P 500 Index. Statistical sampling techniques attempt to match the investment characteristics of the S&P 500 Index and the Portfolio by taking into account such factors as capitalization, industry exposures, dividend yield, price/earnings ratio, price/book ratio, and earnings growth. The Portfolio also expects to lend securities to earn income for the Portfolio. The Portfolio may lend its securities to broker-dealers or other institutions to earn income. The Portfolio may also use various techniques, such as buying and selling futures contracts, to increase or decrease its exposure to changing security prices or other factors that affect security values.	Principal Investment Strategies: The Portfolio will normally invest most of its assets in common stocks included in the S&P 500 Index. The Portfolio also expects to invest, as a principal investment strategy, in securities index futures contracts and/or related options to simulate full investment in the S&P 500 Index while retaining liquidity to facilitate trading, to reduce transaction costs, or to seek higher return when these derivatives are priced more attractively than the underlying security. Also, since the Portfolio attempts to keep transaction costs low, the portfolio manager generally will rebalance the Portfolio only if it deviates from the S&P 500 Index by a certain percent. MetLife monitors the tracking performance of the Portfolio through examination of the "correlation coefficient." A perfect correlation would produce a coefficient of 1.00. The Portfolio will attempt to maintain a target correlation coefficient of at least .95.

28. The following chart compares the total operating expenses (before and after any waivers and reimbursements) for the year ended December 31, 2002, expressed as an annual percentage of average daily net assets, of the Substituted Portfolio and the Replacement Portfolio. Neither the Initial Class shares of the Substituted Portfolio nor Class A shares of the Replacement Portfolio have adopted any plan pursuant to rule 12b–1 under the 1940 Act.

	Substituted portfolio (in percent)	Replacement portfolio (in percent)
	Index 500 Portfolio (Initial Class)	MetLife Stock Portfolio (Class A)
Advisory Fees	0.24	0.25
Other Expenses	0.09	0.06
Total Operating Expenses	0.33	0.31
Less Expense Waivers and Reimbursements	0.05	N/A
Net Operating Expenses	0.28	0.31

29. The following chart compares the fees paid for advisory and subadvisory services for the fiscal year ending December 31, 2002, expressed as an annual percentage of average daily net assets, by the Substituted Portfolio and the Replacement Portfolio.

Substituted portfolio—Index 500 portfolio		Replacement portfolio—Metlife Stock Index portfolio (Class A)	
Annual advisory fees	Annual subadvisory fees (paid by the Adviser)	Annual advisory fees	Annual subadvisory fees (paid by the Adviser)
0.24%	DAMI 0.006% FMRC 0.12%	0.25%	At Cost.

30. By supplements dated March 5, 2003, to the May 1, 2002 prospectuses for the MetLife Investors Contracts and February 28, 2003 for May 1, 2000 prospectuses for the Security Equity Life Contracts and the private placement memoranda for the Security Equity Life PP Contracts and the Accounts, MetLife Investors USA and Security Equity Life notified owners of their Contracts of their intention to take the necessary actions, including seeking the orders requested by this application and obtaining approval from various groups of Contract owners (described below), to carry out the proposed substitutions as described herein.

31. The supplements about the proposed substitutions advised Contract owners that from the date of the supplement until the date of the proposed substitutions, MetLife Investors USA and Security Equity Life will not (except as described in the next section) exercise any rights reserved under any Contract to impose restrictions or additional restrictions on or charges for transfers until at least 30 days after the proposed substitutions. Similarly, the supplements disclosed that, from the date of the supplement until the date of the proposed substitutions, MetLife Investors USA and Security Equity Life will permit Contract owners to make one transfer of Contract value out of the subaccount currently holding shares of the Substituted Portfolio to another subaccount without the transfer being treated as one of a limited number of permitted transfers or a limited number of transfers permitted without a transfer charge. The supplements also advised Contract owners that if the proposed substitutions are carried out, then each Contract owner affected by a substitution will be sent a written notice (described immediately below) informing them of the fact and details of the substitutions.

32. Within five days after the proposed substitutions, any Contract owners who are affected by a substitution will be sent a written notice informing them that the substitutions were carried out. The notice also will reiterate the facts that MetLife Investors USA and Security Equity Life: (a) will not exercise any rights reserved by it under any of the Contracts to impose restrictions or additional restrictions on or charges for transfers until at least 30 days after the proposed substitutions, and (b) will, for at least 30 days following the proposed substitutions, permit such Contract owners to make one transfer of Contract value out of the subaccount holding shares of the Replacement Portfolio to another subaccount without the transfer being treated as one of a limited number of permitted transfers or a limited number of transfers permitted without a transfer charge. Current prospectuses for the Replacement Portfolio will be sent to Contract owners on or before the time the notices are sent. The notice as delivered in certain jurisdictions also may explain that, under insurance regulations in those jurisdictions, Contract owners affected by the substitutions may exchange their Contract for a fixed-benefit life insurance contract or fixed-benefit annuity contract during the 60 days following the substitutions.

33. In addition, as described below, MetLife Investors USA will solicit approval of the proposed substitutions from owners of MetLife Investors Contracts by mailing them information statements and voting forms. Likewise, Security Equity Life will solicit approval of the proposed substitutions from owners of Security Equity Life PP Contracts and Security Equity Life Contracts by mailing them information statements and voting forms.

34. MetLife Investors USA and Security Equity Life will effect the proposed substitutions following the issuance of the orders requested herein and the approval of the proposed substitutions by Contract owners (described below) as follows. As of the Effective Date, shares of the Substituted Portfolio will be redeemed in cash or in-kind by MetLife Investors USA and Security Equity Life. The proceeds of such redemptions will then be used to purchase shares of the Replacement Portfolio either by cash purchases or in-kind purchases, with each subaccount of the Accounts investing the proceeds of its redemption from the Substituted Portfolio in the Replacement Portfolio. All redemptions of shares of the Substituted Portfolio and purchases of shares of the Replacement Portfolio will be effected in accordance with rule 22c–1 under the 1940 Act.

35. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's Contract value or death benefit or in the dollar value of his or her investments in any of the Accounts. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or MetLife Investors USA's or Security Equity Life's obligations under the Contracts be altered in any way. All applicable expenses incurred in connection with the proposed substitutions, including the costs of obtaining Contract owner approvals, brokerage commissions, legal, accounting, and other fees and expenses, will be paid by MetLife Investors USA or Security Equity Life. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. The proposed substitutions will not, of course, be treated as a transfer of Contract value or an exchange of annuity units for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. MetLife Investors USA and Security Equity Life will not exercise any right either may have under the Contracts to impose restrictions or additional restrictions on or charges for Contract value transfers or annuity unit exchanges under the Contracts for a period of at least thirty days following the proposed substitutions. One exception to this is that MetLife Investors USA and Security Equity Life may impose restrictions on transfers to prevent or limit "market timing" activities by Contract owners or agents of Contract owners.

36. Prior to the proposed substitutions, MetLife Investors USA and Security Equity Life will permit Contract owners to make one transfer of Contract value (or annuity unit exchange) out of the Substituted Portfolio subaccount to another subaccount without the transfer (or exchange) being treated as one of a limited number of permitted transfers (or exchanges) or a limited number of transfers (or exchanges) permitted without a transfer charge. Likewise, for at least 30 days following the proposed substitutions, MetLife Investors USA and Security Equity Life will permit Contract owners affected by the substitutions to make one transfer of Contract value (or annuity unit exchange) out of Replacement Portfolio subaccount to another subaccount without the transfer (or exchange) being treated as one of a limited number of permitted transfers (or exchanges) or a limited number of transfers (or exchanges) permitted without a transfer charge. All Contract owners, even those who are "market timers," may avail themselves of the "free" transfer privilege both before and after the proposed substitutions.

37. MetLife Investors USA and Security Equity Life are also seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

38. To the extent that the annualized expenses of the Replacement Portfolio exceeds, for each fiscal period (such period being less than 90 days) during the twenty-four months following the substitutions, 0.28%, MetLife Investors USA and Security Equity Life will, for each Contract outstanding on the date of the proposed substitutions, make a corresponding reduction in separate account (or subaccount) expenses on the last day of such fiscal period, such that the amount of the Replacement Portfolio's expense ratio, together with those of the corresponding separate account (or subaccount) will, on an annualized basis, be no greater than the sum of 0.31% and the expense ratio of the separate account (or subaccount) for the 2002 fiscal year. In addition, for twenty-four months following the substitutions MetLife Investors USA and Security Equity Life will not increase asset-based fees or charges for Contracts outstanding on the day of the proposed substitutions. (Here, the term "Contract" means all of the MetLife Investors Contracts, Security Equity Life PP Contracts, and Security Equity Life Contracts currently offering a subaccount or separate account investing in the Substituted Portfolio).

39. In accordance with the Contract provisions and/or prospectus disclosure for the MetLife Investors Contracts,

MetLife Investors USA will seek approval of the substitutions proposed for Separate Account A from MetLife Investors Contract owners. Such approval will be sought from the owners of each class of MetLife Investors Contracts voting as a separate group, and the substitutions will be carried out for each class of Contracts whose owners approve them. A class of Contracts refers to a Contract type distinguishable from other types by the product (marketing) designation and, in most cases, by its contract form as approved for sale in each jurisdiction. Contracts of the same class have the same features and charge structure.

Approval is obtained by the affirmative vote of a majority of the class' outstanding interests in the Substituted Portfolio subaccount of Separate Account A (measured by the dollar value of accumulation units or annuity unit reserves). MetLife Investors USA will solicit approval of MetLife Investors Contract owners by sending them written voting forms accompanied by a voting information statement and other disclosure documents in a manner consistent with applicable requirements of Regulation 14A under the Securities Exchange Act of 1934 (together, "voting materials"). In particular, the relevant information statement will disclose, in substance, the information required by applicable items of Form N–14. Any beneficial financial interest that MetLife Investors USA may have in Separate Account A is immaterial in relation to the interests of Contract owners, and MetLife Investors USA will not cast any votes.

40. Security Equity Life will seek approval of the substitutions proposed for Separate Accounts 10 from Security Equity Life PP Contract owners and for Separate Account 13 from Security Equity Life Contract owners. Such approval will be sought from the owners of Security Equity Life Contracts and Security Equity Life PP Contracts, each voting as a separate group, and the substitutions will be carried out for each group of Contracts whose owners approve them. Approval is obtained by the affirmative vote of the lesser of: (a) a majority of the outstanding interests in either Separate Account 10 or the Substituted Portfolio subaccount of Separate Account 13 (measured by the dollar value of accumulation units), or (b) 67% of such outstanding interests voted, if votes received represent a majority of such interests. Security Equity Life will solicit approval of Security Equity Life PP Contract owners and Security Equity Life Contract owners by sending them written voting materials of the same type sent by MetLife Investors USA. Any beneficial financial interest that Security Equity Life may have in either Separate Account 10 of Separate Account 13 is immaterial in relation to the interests of Contract owners and Security Equity Life will not cast any votes.

41. Pursuant to rule 20a–1 under the Act, the voting materials for Separate Account A and Separate Account 13 will be filed with the Commission as proxy materials. Because Separate Account 10 is not a registered investment company, voting materials related to it will not be so filed, however, the voting materials will be substantially identical in all material respects to the voting materials for Separate Account 13. Applicants anticipate that voting materials will be sent to Contract owners on or about March 28, 2003. Unless extended by either MetLife Investors USA or by Security Equity Life, votes must be received by April 24, 2003 to be counted.

42. The replacement of the Substituted Portfolio with the Replacement Portfolio is consistent with the protection of Contract owners and the purposes fairly intended by the policy and provisions of the 1940 Act and, thus, meets the standards necessary to support an order pursuant to section 26(c) of the 1940 Act.

43. Although not identical, the investment objectives and principal investment strategies of the Replacement Portfolio are substantially the same as those of the Substituted Portfolio. The investment objective of the Substituted Portfolio is to seek investment results corresponding to the total return of common stocks publicly traded in the United States, as represented by the S&P 500 Index. The S&P 500 Index consists of 500 common stocks, most of which are listed on the New York Stock Exchange. The stocks included in the S&P 500 Index are issued by companies among those whose outstanding stock have the largest aggregate market value, although stocks that are not among the 500 largest are included in the S&P 500 Index for diversification purposes.

44. The Substituted Portfolio normally invests at least 80% of its assets in common stocks included in the S&P 500 Index. The Portfolio may not always hold all of the same securities as the S&P 500 Index. DAMI uses statistical sampling techniques to attempt to replicate the returns of the S&P 500 Index. Statistical sampling techniques attempt to match the investment characteristics of the S&P 500 Index and the Portfolio by taking into account such factors as capitalization, industry exposures, dividend yield, price/earnings ratio, price/book ratio, and earnings growth. The Portfolio may lend its securities to broker-dealers or other institutions to earn income. The Portfolio may also use various techniques, such as buying and selling futures contracts, to increase or decrease its exposure to changing security prices or other factors that affect security values.

45. The investment objective of the Replacement Portfolio is to equal the performance of the S&P 500 Index. The Replacement Portfolio normally invests most of its assets in common stocks included in the S&P 500 Index. The Replacement Portfolio is managed by purchasing all of the common stocks in the S&P 500 Index. The Replacement Portfolio also expects to invest, as a principal investment strategy, in securities index futures contracts and/or related options to simulate full investments in the S&P 500 Index while, at the same time, retaining liquidity, facilitating trading, reducing transaction costs, or seeking higher returns when these derivatives are priced more attractively than the underlying indicies. Also, since the Replacement Portfolio attempts to keep transaction costs low, the Replacement Portfolio subadviser generally will rebalance the Replacement Portfolio only if it deviates from the S&P 500 Index by a certain percent. The Replacement Portfolio may lend its securities to broker-dealers or other institutions to earn income. MLIC monitors the tracking performance of the Replacement Portfolio using the "correlation coefficient." A perfect correlation results in a coefficient of 1.00. The Replacement Portfolio will attempt to maintain a target correlation coefficient of at least 0.95.

46. The investment objectives of the two portfolios are virtually identical. Both portfolios seek to mirror the performance of the S&P 500 Index. Further, both portfolios' principal investment strategies are substantially the same in that both portfolios are managed by investing portfolio assets in the common stocks comprising the S&P 500 Index. Unlike the Replacement Portfolio, however, the Substituted Portfolio may not always hold all of the same securities as the S&P 500 Index. Further, although the Substituted Portfolio may use various techniques, such as buying and selling futures contracts, to increase or decrease its exposure to changing security prices, the Replacement Portfolio invests, as a principal investment strategy, in securities index futures contracts and/or related options when such derivatives are priced more attractively than the underlying security or to simulate full investments in the S&P 500 Index—a strategy of potential benefit to Contract owners.

47. FMR currently serves as investment adviser for the Substituted Portfolio. Investment management decisions for the Substituted Portfolio are made by DAMI and FMRC in their capacity as subadvisers. The investment adviser for the Replacement Portfolio is MetLife Advisers. MLIC carries out the daily investment management decisions for the Replacement Portfolio in its capacity as subadviser.

48. Both the Replacement Portfolio and the Substituted Portfolio have assets of more than $2.4 billion as of December 31, 2002. The Substituted Portfolio's asset base, however, has declined from $5.5 billion as of December 31, 1999.

49. Since both portfolios hold a large percentage of its assets in the 500 securities of the S&P 500 Index in the same proportion as the index, the respective expense ratios of the portfolios are the primary cause of tracking error (*i.e.*, the difference between the performance of the Substituted Portfolio or the Replacement Portfolio and the performance of the S&P 500 Index). For each of the last five years, the Substituted Portfolio's investment adviser voluntarily reimbursed a portion of the Portfolio's operating expenses. In fact, FMR retains the ability to be repaid for these expense reimbursements in future years in the amount that expenses fall below the 0.28% limit prior to the end of a fiscal year. Through imposition of the expense caps described above following the proposed substitutions, Contract owners affected by the proposed substitutions will incur total Portfolio and subaccount expenses for two years that are no higher than the total Portfolio and subaccount expenses that they incurred in the fiscal year ended December 31, 2002.

50. The following table compares the respective asset levels, expense ratios, and performance data of the two portfolios, as well as performance data for the S&P 500 Index.

Portfolio	Asset levels (as of 12/31/02) (millions)	Expense ratios (for the year ended 12/31/02) (in percent)	Performance (for periods ending 12/31/02)
Index 500 Portfolio (Substituted Portfolio)	$2,497	0.28	• 1 Year: −22.25% • 5 Year: −0.84% • 10 Year: 9.04%
MetLife Stock Index Portfolio (Replacement Portfolio)	$2,840	0.31	• 1 Year: −22.10% • 5 Year: −00.66% • 10 Year: 09.15%
S&P 500 Index	N/A	N/A	• 1 Year: −22.09% • 5 Year: −00.58% • 10 Year: 09.34%

51. The Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

52. Because shares held by a separate account of an insurance company are owned by the insurance company, MetLife Investors USA, Security Equity Life and other life insurance company affiliates of MetLife Investors USA and Security Equity Life own of record all of the shares of the Replacement Portfolio. Therefore, Metropolitan Series and the Replacement Portfolio are arguably under the control of MetLife Investors USA and Security Equity Life (and its affiliates) notwithstanding the fact that Contract owners may be considered the beneficial owners of those shares held in the Accounts. If Metropolitan Series and the Replacement Portfolio are under MetLife Investors USA's and Security Equity Life's control, then any person controlling MetLife Investors USA and Security Equity Life, or any person under common control with MetLife Investors USA and Security Equity Life, is an affiliated person of Metropolitan Series and the Replacement Portfolio. Similarly, if Metropolitan Series and the Replacement Portfolio are under MetLife Investors USA's and Security Equity Life's control, then Metropolitan Series and the Replacement Portfolio are affiliated persons of MetLife Investors USA and Security Equity Life and also are affiliated persons of any persons that control MetLife Investors USA and Security Equity Life or are under common control with MetLife Investors USA and Security Equity Life.

53. Regardless of whether or not MetLife Investors USA and Security Equity Life can be considered to control Metropolitan Series or the Replacement Portfolio, because MetLife Investors USA and Security Equity Life each own of record more than 5% of the shares of the Replacement Portfolio, each is an affiliated person of Metropolitan Series and of the Replacement Portfolio. Similarly, because more than 5% of the Replacement Portfolio's shares are owned by each of MetLife Investors USA and Security Equity Life, Metropolitan Series and the Replacement Portfolio are affiliated persons of MetLife Investors USA and Security Equity Life and also are affiliated persons of affiliated persons of any person that controls MetLife Investors USA and Security Equity Life or is under common control with MetLife Investors USA and Security Equity Life. Likewise, because MetLife Investors USA and Security Equity Life may, from time to time, own of record more than 5% of the shares of the Substituted Portfolio, each may, from time to time, be an affiliated person of VIP Fund II and of the Substituted Portfolio. Similarly, VIP Fund II and the Substituted Portfolio are each affiliated persons of MetLife Investors USA and Security Equity Life and also are affiliated persons of affiliated persons of any person that controls MetLife Investors USA and Security Equity Life or is under common control with MetLife Investors USA and Security Equity Life.

54. The proposed substitutions by MetLife Investors USA and Security Equity Life which may entail the purchase of shares of the Replacement Portfolio with portfolio securities of the Substituted Portfolio, therefore also may entail the purchase of such securities by the Replacement Portfolio and/or the sale of such securities by the Substituted Portfolio, each acting as principal, to the other and therefore may be in contravention of section 17(a) of the 1940 Act. In addition, the

participation of MetLife Investors USA and Security Equity Life in such purchase or sale transactions could be viewed as entailing the purchase of such portfolio securities from the Substituted Portfolio and the sale of such portfolio securities to the Replacement Portfolio by MetLife Investors USA and Security Equity Life each acting as principal, and therefore may be in contravention of section 17(a) of the 1940 Act.

55. Any in-kind redemptions of Substituted Portfolio shares and purchases of Replacement Portfolio shares for purposes of the proposed substitutions will be effected in a manner consistent with the investment objective, principal investment strategies and other policies of the Substituted Portfolio and the Replacement Portfolio. Both the VIP Fund II and Metropolitan Series will agree on the terms of any in-kind redemption. If the two management companies cannot agree, the VIP Fund II will redeem Substituted Portfolio shares for cash. If the parties do agree, the Replacement Portfolio will receive an approximately proportionate amount of each of the Substituted Portfolio's holdings and cash at the time of the substitution, as determined by the investment adviser of the Substituted Portfolio. After the Replacement Portfolio receives these portfolio holdings, MetLife will review them and determine which holdings to retain for the Replacement Portfolio based on the overall context of the Portfolio's investment objective, principal investment strategies and other policies and consistent with its management of the Replacement Portfolio. The redemption of Substituted Portfolio shares in kind is intended to reduce the costs of the proposed substitutions.

56. MetLife Investors USA and Security Equity Life assert that the terms under which any in-kind redemptions and purchases will be effected are reasonable and fair and will not involve overreaching on the part of any person principally because the transactions will not cause Contract owner interests to be diluted and because the transactions will conform to all but two of the conditions in rule 17a–7. The proposed transactions will take place at relative net asset value in conformity with the requirements of section 22(c) of the 1940 Act and rule 22c–1 thereunder with no change in the amount of any Contract owner's contract value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not suffer any adverse tax consequences as a result of the Substitution. The fees and charges under the Contracts will not increase because of the Substitution.

57. Both the board of directors of Metropolitan Series and the board of trustees of VIP Fund II have adopted procedures, as required by rule 17a–7 under the Act, pursuant to which the Portfolios of each may purchase securities from or sell securities to their affiliates. MetLife Investors USA and Security Equity Life will carry out the proposed substitutions in conformity with all of the conditions of rule 17a–7 and Metropolitan Series' and VIP Fund II's procedures thereunder, except that: (1) the consideration paid for the securities being purchased or sold will not be entirely cash, and (2) the board of directors of Metropolitan Series and the board of trustees of VIP Fund II will not separately review each portfolio security purchased and sold.

58. Even though MetLife Investors USA and Security Equity Life may not rely on rule 17a–7, they believe that the rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons. When the Commission first proposed and then adopted rule 17a–7, it noted that the purpose of the rule was to eliminate the filing and processing of applications "in circumstances where there appears to be no likelihood that the statutory finding for a specific exemption under section 17(b) could not be made" by establishing "conditions as to the availability of the exemption to those situations where the Commission, upon the basis of its experience, considers that there is no likelihood of overreaching of the investment companies participating in the transaction."

59. Applicants assert that where, as here, they or the relevant investment company would comply with most, but not all, of the conditions of the rule, the Commission should consider the extent to which the conditions that they propose to meet would protect investors under the circumstances of the particular proposed transaction and issue an order if compliance with those conditions would fully protect investors under such circumstances. The circumstances surrounding the proposed substitutions will be such as to offer the same degree of protection to the Substituted Portfolio and the Replaced Portfolio from overreaching that rule 17a–7 provides to them generally in connection with their purchase and sale of securities under that rule in the ordinary course of their business. In particular, because of the circumstances surrounding the proposed substitutions, VIP Fund II and the Replaced Portfolio could not "dump" undesirable securities on Metropolitan Series or the Substituted Portfolio, or retain its desirable securities for itself. Because both Portfolios are "index funds" that seek to match the performance of the same stock market index, both Portfolios hold substantially the same portfolio securities, and the Substituted Portfolio would receive from the Replaced Portfolio a pro-rata share of such securities held by the latter, the Replaced Portfolio would not have the opportunity to "dump" undesirable securities on, or otherwise overreach, the Substituted Portfolio. Nor can MetLife Investors USA or Security Equity Life effect the proposed transactions at a price that is disadvantageous to either the Replaced Portfolio or the Substituted Portfolio. Although the transactions may not be entirely for cash and the boards (or directors or trustees) will not make the determinations required by paragraph (e)(3) of rule 17a–7, each will be effected based upon: (a) the independent market price of the portfolio securities valued as specified in paragraph (b) of rule 17a–7, and (b) the net asset value per share of the Substituted Portfolio and the Replacement Portfolio valued in accordance with the procedures disclosed in the registration statement of each and as required by rule 22c–1 under the Act. No brokerage commission, fee, or other remuneration will be paid to any party in connection with the transaction.

60. The prohibitions of section 17(a) of the 1940 Act were designed to protect overreaching of an investment company primarily by its long-standing or "permanent" affiliates (*e.g.*, investment advisers and principal underwriters or their corporate parents) not other investment companies managed by an independent party that are only occasionally affiliates when a single party owns 5% or more of each of their shares. Applicants assert that, in the context of the proposed substitutions, board review of a lengthy, non-discretionary list of portfolio securities would not increase protection of Contract owners, but would only serve to distract directors' and trustees' attention from more important matters.

61. Any in-kind redemptions and purchases will be carried out in a manner consistent with the policies of both the Substituted Portfolio and the Replacement Portfolio, as recited in their respective registration statements and in any reports by filed by either with the Commission under the 1940 Act. Both the VIP Fund II, on behalf of the Substituted Portfolio, and Metropolitan Series, on behalf of the Replacement Portfolio, must agree on the terms of any in-kind redemption. If an agreement cannot be reached, the VIP Fund II will redeem Substituted Portfolio shares in cash.

62. The proposed substitutions, as described herein, are consistent with the general purposes of the 1940 Act as stated in the Findings and Declaration of Policy in section 1 of the 1940 Act. The proposed transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent. Securities to be provided by the Substituted Portfolio as redemption proceeds and subsequently contributed to the Replacement Portfolio to effect the in-kind purchases of Replacement Portfolio shares will be valued by the Replacement Portfolio at the values established by the Substituted Portfolio using its normal valuation procedures. Therefore, there will be no change in value to any Contract owner as a result of the Substitution. The Commission has granted relief to others based on similar facts.

63. Applicants submit that, for all of the reasons stated above, (a) the terms of the proposed in-kind redemptions and purchases of shares described above, including the consideration to be paid or received, are reasonable and fair to Contract owners and do not involve overreaching on the part of any person, (b) the proposed in-kind redemptions and purchases of shares described above are consistent with the policies of Metropolitan Series and the Replacement Portfolio, as well as VIP Fund II and the Substituted Portfolio, as recited in the registration statements (and 1940 Act reports filed with the Commission) of each, and (c) the proposed in-kind redemptions and purchases of shares described above are consistent with the general purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8438 Filed 4–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25989; File No. 812–12905]

CUNA Mutual Life Insurance Company, et al.; Notice of Application

April 2, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to section 26(c) of the Investment Company Act of 1940 (the "Act") approving certain substitutions of securities.

APPLICANTS: CUNA Mutual Life Insurance Company (the "Company"), CUNA Mutual Life Variable Annuity Account (the "Annuity Account"), and CUNA Mutual Variable Life Account (the "Life Account").

SUMMARY OF APPLICATION: Applicants request an order to permit the substitutions by the Company of Z Class shares of the Multi-Cap Growth Stock Fund (the "Replacing Fund") of the Ultra Series Fund ("Ultra Series") for Initial Class shares of the MFS Emerging Growth Series (the "Replaced Fund") of the MFS Variable Insurance Trust ("MFS Trust").

FILING DATE: The application was filed on November 22, 2002 and was amended and restated on March 28, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested person may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Margaret Gallardo-Cortez, Esq., Assistant Vice President and Associate General Counsel, CUNA Mutual Life Insurance Company, 5910 Mineral Point Road, Madison, WI 53701–0391. Copy to David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: H. Yuna Peng, Attorney, at (202) 942–0676, or Lorna J. MacLeod, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Company is a mutual life insurance company organized under Iowa law in 1879 and incorporated on June 21, 1882. The Company, first organized as a fraternal benefit society with the name "Mutual Aid Society of the Evangelical Lutheran Synod of Iowa and Other States," changed its name to "Lutheran Mutual Aid Society" in 1911, and reorganized as a mutual life insurance company called "Lutheran Mutual Life Insurance Company" on January 1, 1938. On December 28, 1984, the Company changed its name to "Century Life of America." On January 1, 1997, the Company changed its name to "CUNA Mutual Life Insurance Company." As of December 31, 2002, the Company had assets in excess of $5 billion.

2. The Company conducts a conventional life insurance business within the context of the credit union system and is authorized to transact the business of life insurance, including annuities, in all states other than New York and in Puerto Rico. For purposes of the Act, the Company is the depositor and sponsor of each of the Accounts as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

3. Each Account is a "separate account" as defined by Rule 0–1(e) under the Act. Each Account is registered with the Commission as a unit investment trust. Each Account is comprised of a number of subaccounts and each subaccount invests exclusively in one of the insurance dedicated mutual fund portfolios made available as investment vehicles underlying the Contracts.

4. The Annuity Account is divided into 11 subaccounts. The assets of the Annuity Account support variable annuity contracts and interests in the Account offered through such contracts have been registered under the Securities Act of 1933.

5. The Life Account is divided into 11 subaccounts. The assets of the Life

Account support variable life insurance contracts and interests in the Account offered through such contracts have been registered under the 1933 Act.

6. The MFS Trust is registered as an open-end management investment company under the Act and currently offers 15 separate investment portfolios (each, a "Fund"), one of which would be involved in the proposed substitution. The MFS Trust issues a separate series of shares of beneficial interest in connection with each Fund and has registered such shares under the 1933 Act on Form N–1A. Massachusetts Financial Services Company ("MFS") serves as the investment adviser to each Fund, including the Replaced Fund. MFS' principal offices are located at 500 Boylston Street, Boston, Massachusetts 02116.

7. Ultra Series is registered as an open-end management investment company under the Act and currently offers 10 separate investment portfolios, one of which would be involved in the proposed substitution. Ultra Series issues a separate series of shares of beneficial interest in connection with each portfolio (also a "Fund"), and has registered such shares under the 1933 Act on Form N–1A. MEMBERS Capital Advisors, Inc. ("MCA") is the investment adviser of each Fund, including the Replacing Fund. Under a unitary fee arrangement, MCA, at its own expense, also provides or arranges for the provision of substantially all other services required by Ultra Series through service agreements with affiliated and unaffiliated service providers. Such services include all administrative, accounting and legal services as well as the services of custodians, transfer agents and dividend disbursing agents. The Funds of Ultra Series do, however, pay their own auditor's fees, compensation to (and expenses of) trustees who are not interested persons, independent counsel fees, and extraordinary expenses.

8. The Company and CUNA Mutual Investment Corporation ("CMIC") each own a one-half interest in MCA. MCA's principal offices are located at 5910 Mineral Point Road, Madison, Wisconsin 53701.

9. MCA manages the assets of various Funds of Ultra Series, including the Replacing Fund, using a "manager of managers" approach under which MCA may allocate some or all of a Fund's assets among one or more "specialist" subadvisers. MCA monitors the performance of each subadviser to the extent that it deems appropriate to achieve a Fund's investment objective, reallocates portfolio assets among its own portfolio management team and individual subadvisers, or recommends to the Ultra Series' board of trustees that particular subadvisers be employed or terminated for a Fund.

10. MCA and the Replacing Fund have entered into a subadvisory agreement with Wellington Management Company, LLP ("Wellington Management") to provide portfolio management services pursuant to which Wellington Management selects the Replacing Fund's investments and places orders to buy and sell the Replacing Fund's investments. Wellington Management's principal offices are located at 75 State Street, Boston, Massachusetts, 02109.

11. The Contracts are flexible premium variable annuity and variable life insurance contracts. The variable annuity Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a variable or fixed basis. The variable life insurance Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, throughout the insured's life, and for a substantial death benefit upon the death of the insured. Under each of the Contracts, the Company reserves the right to substitute shares of one Fund for shares of another, or of another investment portfolio, including a portfolio of a different management investment company.

12. For as long as a variable life insurance Contract remains in force or a variable annuity Contract has not yet been annuitized, a Contract owner may transfer all or any part of the Contract value from one subaccount to any other subaccount or to a fixed account. The Contracts do not limit the number of transfers of Contract value for any period of time or reserve to the Company the right to limit the number of transfers. The Company currently waives applicable fees for Contract value transfers; however, certain of the variable life insurance Contracts reserve to it the right to assess a charge of $20 for transfers in excess of four per Contract year and certain of the annuity Contracts reserve the right to it to assess a charge of $10 for transfers in excess of twelve per Contract year.

13. The proposed substitution is part of efforts by the Company to provide a portfolio selection within the Contracts that: (1) Better represents the designated asset class, (2) provides more stability in portfolio management, and (3) exhibits more consistency of periodic returns relative to representative markets.

14. In 1995, when the Company first selected the Replaced Fund as an investment option under inclusion in the Contracts, the Fund met its desire for a multi-capitalization investment option. In recent years, however, the Replaced Fund has, in the Company's view, become more oriented towards stocks of large-cap growth companies. Although this has been the result of a strategy of successfully identifying and holding as portfolio investments the securities of fast-growing companies and by focusing new purchases in larger companies, the portfolio composition and general orientation of the Replaced Fund has shifted and no longer fits the position in the investment option lineup for the Contracts desired by the Company. In contrast, MCA has recently retained Wellington Management as the Replacing Fund's subadviser in order to manage the Fund to fit this position in the lineup. In recent years, other accounts managed by Wellington Management in this style have generally invested between 20% and 35% of their total assets in small-cap and mid-cap growth stocks, thereby providing more consistent multi-cap exposure. In the Company's judgment, this portfolio orientation better represents the asset class mix of a portfolio originally intended for inclusion in the Contracts.

15. Over time, the Replaced Fund has experienced a series of portfolio manager changes followed by the assignment of several portfolio managers, each with management responsibility over a portion of the Replaced Fund's assets. In the Company's view, this led to a significant increase in the number of portfolio holdings and has correspondingly raised the portfolio turnover rate to over 231% for 2001. It also has resulted, at times, in concentrations of the Fund's investments in one or a few industries or sectors while other industries or sectors have been underrepresented.

16. The Company believes that it is important that Contract investment options perform generally in line with representative markets, particularly given the limited selection of subaccounts available under the Contracts. In the Company's judgment, the changes in portfolio management and investment style experienced by the Replaced Fund have resulted in erratic portfolio performance for the Replaced Fund and the Company has determined that the Fund has not performed in line with those representative markets considered by MCA as providing more diversified multi-cap exposure. In contrast, the Replacing Fund's subadviser's style of management appears to have a much more consistent record in this regard. Based on Wellington Management's three-year history managing other accounts (mutual funds and other subadvisory clients) using this style and disciplines, the Company believes that the Fund, under Wellington Management's direction, will provide much more consistent performance than the Replaced Fund has provided. Applicants believe that replacing the Replaced Fund with the Replacing Fund will benefit Contract owners and improve the array of investment options available under the Contracts.

17. Replacing the Replaced Fund with the Replacing Fund is appropriate and in the best interests of Contract owners because the stated investment objectives and principal investment strategies of the Replacing Fund are substantially identical to those of the Replaced Fund so that Contract owners will have continuity in investment and risk expectations. In addition, the types of investment advisory and administrative services provided to the Replacing Fund are substantially the same as those provided to the Replaced Fund. Finally, Applicants note that the net expenses for the Replacing Fund were the same as those for the Replaced Fund for the year ended December 31, 2002.

18. The following chart sets out the investment objective and principal investment strategies of the Replaced Fund and the Replacing Fund, as stated in their respective prospectuses.

Replaced Fund	Replacing Fund
MFS Emerging Growth Series	**Multi-Cap Growth Stock Fund**
Investment Objective: Long term growth of capital.	Investment Objective: Long term capital appreciation.
Principal Investment Strategies:	Principal Investment Strategies:
The Fund invests, under normal market conditions, at least 80% of its net assets in common stocks and related securities, such as preferred stocks, convertible securities and depositary receipts for those securities, of emerging growth companies. Emerging growth companies may be of any size, and the Fund's investments may include securities listed on a securities exchange or traded in over-the-counter (OTC) markets.	The Fund invests generally in common stocks, securities convertible into common stocks and related equity securities. Under normal market conditions, the Fund will maintain at least 80% of its assets in these securities.
MFS, the Fund's adviser, uses a bottom-up, as opposed to a top-down, investment style in managing the Fund. This means that securities are selected based upon fundamental analysis (such as an analysis of earnings, cash flows, competitive position and management's abilities) performed by the Fund's manager and MFS' large group of equity research analysts.	The Fund seeks securities of growth companies across a broad range of market capitalization focusing on those with proprietary technologies, management, or market opportunities that are likely to support earnings growth over extended time periods in excess of the growth rate of the economy and/or the rate of inflation.
While the Fund is a diversified fund and therefore spreads its investments across a number of issuers, it may invest a relatively large percentage of its assets in a single issuer as compared to other funds managed by MFS. The Fund may invest in foreign securities (including emerging market securities)	The Fund may also invest in warrants, preferred stocks and debt securities (including non-investment grade debt securities). The Fund may invest up to 25% of its assets in foreign securities, including emerging market securities.
The Fund has engaged and may engage in active and frequent trading to achieve its principal investment strategies.	

19. The following chart compares advisory fees, other expenses, total operating expenses (before and after any waivers and reimbursements), and portfolio turnover rates for the year ended December 31, 2002, expressed as an annual percentage of average daily net assets, of the Replaced Fund and the Replacing Fund. Neither the Initial Class shares of the Replaced Fund nor Z Class shares of the Replacing Fund are subject to a distribution plan or shareholder service plan adopted under Rule 12b–1 of the Act.

	Replaced Fund	Replacing Fund
	MFS Emerging Growth Series (Initial Class)	Multi-Cap Growth Stock Fund (Z Class)
Advisory Fees	0.75%	0.85%
Other Expenses	0.11	0.01
Total Operating Expenses	0.86%	0.86%
Less Expense Waivers and Reimbursements	N/A	N/A
Net Operating Expenses	0.86%	0.86%
Portfolio Turnover	114.67%	156.51%

20. The Replaced Fund has an expense offset arrangement that reduces the Fund's custody fee based upon the amount of cash maintained by the Portfolio with its custodian and dividend disbursing agent. "Other Expenses" do not take into account these expense reductions, and are therefore higher than the actual expenses of the series. Had these fee reductions been taken into account, "Net Expenses" for the Replaced Fund would equal 0.85%.

21. The following chart compares the fees paid for advisory and subadvisory services for the fiscal year ending December 31, 2002, expressed as an annual percentage of average daily net assets, by the Replaced Fund and the Replacing Fund.

Replaced Fund		Replacing Fund	
MFS Emerging Growth Series (Initial Class)		Multi-Cap Growth Stock Fund (Z Class)	
Annual Advisory Fee	Annual Subadvisory Fee (paid by the Adviser)	Annual Unitary Management Fee	Annual Subadvisory Fee (paid by the Adviser)
0.75%	NA	0.85%	Wellington Management First $100M—0.50% Above $100M—0.40%

22. The following table compares the respective asset levels, expense ratios, and performance data of the two Funds for each of the past three fiscal years. Wellington Management has been the Replacing Fund's subadviser since May 1, 2002.

MFS Emerging Growth Fund	Net assets at end of period	Expense ratio	Total return
2000	$2,312,406,000	.85%	−19.61%
2001	1,462,000,000	.86	−33.49
2002	774,775,000	.85	−33.76
Multi-Cap Growth Fund			
2000	$9,897,000	.91%	−9.52%
2001	13,923,000	.86	−30.89
2002	75,326,000	.86	−25.21

23. Applicants believe that the Replacing Fund is an appropriate replacement for the Replaced Fund for each Contract. The Replacing Fund has a substantially identical investment objective as that of the Replaced Fund. Both pursue their investment objective by investing primarily in companies, of various sizes, which are expected to grow faster than the general economy. The investment adviser for the Replaced Fund and the subadviser for the Replacing Fund both rely on internal research and use a "bottom-up" stock selection approach to portfolio management (as opposed to a "top-down," economic forecasting oriented approach). There are, however, some distinctions between the way in which the principal investment strategies are pursued by the Replaced Fund and the Replacing Fund.

24. The primary differences in the implementation of investment strategies of the Replaced Fund and the Replacing Fund manifest in the degree of flexibility exercised by their adviser or subadviser in implementing the strategies. For example, whereas the Replaced Fund's investment adviser employs no firm guidelines limiting the size of its capitalization exposures, the Replacing Fund's subadviser typically limits large-cap exposure to a range of 60%–90% of total assets, mid-cap exposure to 25% or less of total assets, and small-cap exposure to 20% or less of total assets. Similarly, the Replaced Fund's adviser does not limit its exposure to any single industry; in contrast, the Replacing Fund's subadviser generally limits its industry exposure to no more than 15 percentage points in excess of that industry's weight in the Fund's benchmark index. Moreover, the Replaced Fund has often concentrated its portfolio in relatively few large holdings, with some exceeding 10% of total assets, while much of the rest of its portfolio is often scattered over a few hundred very small holdings. In contrast, the Replacing Fund's subadviser has generally managed other accounts with the same style as the Replacing Fund with few holdings representing more than 5% of the Fund's total assets and fewer than 110 holdings overall. Finally, the annual portfolio turnover rate for the Replaced Fund has ranged from 114% to 231% over the last three years as it has tried to respond to current market conditions. In contrast, other accounts managed by the Replacing Fund's subadviser with the same style as the Replacing Fund have experienced annual turnover rates ranging from 90% to 140% during the past three years. The Company believes that this likely is a reflection of Wellington Management's longer-term perspective on the stocks it has purchased. In addition, the Replacing Fund has available to it transactional advantages attributable to achieved economies of scale comparable to that of the Replaced Fund's manager and has the same expense ratio as the Replaced Fund.

25. To the extent that the annualized ratio of expenses to average net assets of the Replacing Fund exceeds, for each fiscal period (such period being less than 90 days) during the twenty-four months following the substitutions, 0.85%, the Company will, for each Contract outstanding on the date of the proposed substitutions, make a corresponding reduction in separate account expenses (or subaccount) expenses on the last day of such fiscal period, such that the ratio of the Replacing Fund's expenses to average net assets, together with the ratio of expenses to average net assets of the corresponding separate account (or subaccount) will, on an annualized basis, be no greater than the sum of 0.85% and the ratio of expenses to average net assets of the separate account (or subaccount) for the fiscal year ended December 31, 2002. In addition, for twenty-four months following the substitutions, the Company will not increase asset-based fees or charges for Contracts outstanding on the day of the proposed substitutions.

26. By supplements to the May 1, 2002 prospectuses for the Contracts and the Accounts (substantially in the form attached as Exhibit C to the initial application), the Company will notify owners of the Contracts of their intention to take the necessary actions, including seeking the order requested by this application, to carry out the proposed substitution as described herein.

27. The supplements about the proposed substitution will advise Contract owners that from the date of the supplement until the date of the proposed substitution, the Company will not (except as described in the next section) suspend its current waivers of transfer charges or exercise any rights reserved by it under any Contract to impose additional charges for transfers until at least 30 days after the proposed substitution. Similarly, the supplements will disclose that, from the date of the supplement until the date of the proposed substitution, the Company will permit Contract owners to make one transfer of Contract value out of the subaccount currently holding shares of the Replaced Fund to another subaccount without the transfer being treated as one of a limited number of transfers permitted without a transfer charge. The supplements also will advise Contract owners that if the proposed substitution is carried out, then each Contract owner affected by the substitution will be sent a written notice (described immediately below) informing them of the fact and details of the substitution.

28. Within five days after the proposed substitution, any Contract owners who are affected by the substitution will be sent a written notice informing them that the substitution was carried out. Current prospectuses for the Replacing Fund will be sent to Contract owners on or before the time the notices are sent. The notice as delivered in certain jurisdictions also may explain that, under insurance regulations in those jurisdictions, Contract owners affected by the substitutions may exchange their Contract for a fixed-benefit life insurance contract or fixed-benefit annuity contract during the 60 days following the substitutions.

29. The Company will carry out the proposed substitutions by redeeming Initial Class shares of the Replaced Fund held by the Accounts for cash and applying the proceeds to the purchase of Z Class shares of the Replacing Fund. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's Contract value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or the Company's obligations under the Contracts be altered in any way. All applicable expenses incurred in connection with the proposed substitutions, including brokerage commissions and legal, accounting, and other fees and expenses, will be paid by the Company. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions.

30. The proposed substitution will not be treated as a transfer of Contract value or an exchange of annuity units for the purpose of assessing transfer charges or for determining the number of remaining "free" transfers or exchanges in a Contract year. The Company will not exercise any right it may have under the Contracts to impose charges for Contract value transfers or annuity unit exchanges under the Contracts for a period of at least 30 days following the proposed substitutions. Similarly, the Company will permit Contract owners to make one transfer of Contract value (or annuity unit exchange) out of the Replaced Fund subaccount to another subaccount without the transfer (or exchange) being treated as one of a limited number of transfers (or exchanges) permitted without a transfer charge. Likewise, for at least 30 days following the proposed substitutions, the Company will permit Contract owners affected by the substitutions to make one transfer of Contract value (or annuity unit exchange) out of Replacing Fund subaccount to another subaccount without the transfer (or exchange) being treated as one of a limited number of transfers (or exchanges) permitted without a transfer charge.

31. The Company is also seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

32. The proposed substitution appears to involve the substitution of securities within the meaning of section 26(c) of the Act. Applicants therefore request orders from the Commission pursuant to section 26(c) approving the proposed substitution.

33. All the Contracts expressly reserve for the Company the right, subject to compliance with applicable law, to substitute shares of one fund or portfolio held by a subaccount of an Account for another. The prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right. The Company has reserved this right of substitution both to protect itself and its Contract owners in situations where it believes a fund is no longer appropriate for Contract owners or where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of its separate accounts and to afford the opportunity to replace such shares where to do so could benefit itself and Contract owners.

34. Applicants maintain that Contract owners will be better served by the proposed substitution and that the proposed substitution is appropriate given the Funds and other investment options available under the various Contracts. Since its inception, the Replacing Fund has had investment performance superior to that of the Replaced Fund. More significantly, the Replacing Fund has had substantially similar levels of expenses over this same period (substantially identical for each of the past two years) as the Replaced Fund. Applicants believe that the Replacing Fund and Replaced Funds are substantially the same in their stated investment objectives and principal investment strategies as to afford investors continuity of investment experience, relative to management style. In addition, Applicants generally submit that the proposed substitution meets the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

35. Although the Replaced Fund has substantially more assets than the Replacing Fund, the Replaced Fund's assets have declined significantly in recent periods. Although the Replaced Fund benefits from an expense offset arrangement that reduces the Fund's custody fees and thus has the effect, along with other arrangements to reduce expenses, of reducing the Replaced Fund's expenses to slightly lower than those of the Replacing Fund, there is no assurance that this expense reduction will continue. Because of the expense limits on the Contracts discussed above, for two years following the proposed substitution, Contract owners affected by the proposed substitution will benefit from a subaccount and underlying Fund with aggregate expenses that are no higher than the aggregate annualized expenses of the subaccount and the Replaced Fund for the fiscal year ended December 31, 2002.

36. Applicants believe that Contract owners will be at least as well off with the Replacing Fund as with the Replaced Fund. The proposed substitution retains for Contract owners the investment flexibility that is a central feature of the Contracts. If the proposed substitution is carried out, all Contract owners will be permitted to

allocate purchase payments and transfer Contract values between and among the remaining subaccounts as they could before the proposed substitution.

37. The proposed substitution is not the type of substitution that section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer Contract values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption which section 26(c) was designed to prevent.

38. The proposed substitution also is unlike the type of substitution that section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their Contract values. They also select the specific type of coverage offered by the Company under the Contract, as well as numerous other rights and privileges set forth in the Contract. Contract owners may also have considered the size, financial condition, type and reputation for service of the Company, from whom they purchased their Contract in the first place. These factors will not change because of the proposed substitution.

39. Applicants submit that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Conclusion:

Applicants assert that, for the reasons stated above, the requested order approving the Substitution should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8439 Filed 4–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47613; File No. SR–Amex–2003–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Amend the Price Criteria for Securities That Underlie Options Traded on the Exchange

April 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 25, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its initial listing guidelines in Commentary .01 and .05(d)(ii) to Amex rule 915 to allow options to be listed on "covered securities," when, among other things, the trading price of the underlying security was at least $3 for the five business days prior to certification with The Options Clearing Corporation ("OCC"). The text of the proposed rule change follows. Additions are in italics. Deleted text is in [brackets].

* * * * *

Rule 915. Criteria for Underlying Securities

(a) No Change
(b) No Change

Commentaries

.01 The Board of Governors has established guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. Absent exceptional circumstances with respect to items 1, 2, 3 or 4 listed below, at the time the Exchange selects an underlying security for Exchange options transactions, the following guidelines with respect to the issuer shall be met:

1. No Change
2. No Change

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

3. No Change
4. *(a) If the underlying security is a "Covered Security" as defined under section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least $3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation for listing and trading, as measured by the closing price reported in the primary market in which the underlying security is traded; or*

(b) If the underlying security is not a "Covered Security," [E]either (i) the market price per share of the underlying security has been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days or (ii) (a) the underlying security meets the guidelines for continued listing in rule 916; (b) options on such underlying security are traded on at least one other registered national securities exchange; and (c) the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been at least 5,000 contracts.

5. No Change
.02–.04 No Change
.05 (a)–(c) No Change

(d) In the case of a restructuring transaction that satisfies either or both of the conditions of subparagraph (a) above in which shares of a Restructured Security are sold in a public offering or pursuant to a rights distribution;

(i) No Change

(ii) the Exchange may certify that the market price of the Restructured Security satisfies guideline 4 of Commentary .01 above by relying on the market price history of the original security prior to the ex-date for the Restructure Transaction in the manner described in paragraph (a) above, but only if the Restructured Security has traded "regular way" on an exchange or automatic quotation system for at least five trading days immediately preceding the date of selection, and at the close of trading on each trading day preceding the date of selection, as well as at the opening of trading on the date of selection the market price of the Restructured Security was at least $7.50, *or if the Restructured Security is a "Covered Security," as defined in Commentary .01(4) to rule 915, the market price of the Restructured Security was at least $3.00;* and

(iii) No Change

.06–.09 No Change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its pricing requirement for underlying securities. Currently, Commentary .01(4) to Amex rule 915 provides that either (i) the market price per share of the underlying security has been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection or (ii) the underlying security meets the guidelines for continued listing in Amex rule 916, options on such underlying security are traded on at least one other registered national securities exchange and the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been at least 5,000 contracts.

The Exchange now proposes to amend Commentary .01(4) to Amex rule 915 to provide that, for underlying securities that are "Covered Securities," as defined under section 18(b)(1)(A) of the Securities Act of 1933 ("1933 Act"),[3] the closing market price of the underlying security must be at least $3 per share for the five previous consecutive business days prior to the date on which the Amex submits an option class certification to OCC.[4] Underlying securities that are not "Covered Securities" will continue to be subject to the Exchange's current $ 7.50 price per share requirement found in Commentary .01 to Amex rule 915.[5]

The proposed rule change is identical to a proposal by the Chicago Board Options Exchange, Inc. ("CBOE") to revise its initial listing standards that was recently approved by the Commission and became effective on January 15, 2003.[6] In addition, the International Securities Exchange, Inc. ("ISE") has also proposed to match the CBOE amendment to options initial listing standards.[7] The Exchange seeks to amend its initial options listing guidelines in order to be consistent with both the CBOE and ISE so that the Amex is not placed at a competitive disadvantage with respect to the option classes that it may list. The Exchange further does not believe that this particular options initial listing guideline serves to accomplish its intended purpose of preventing the proliferation of option classes on overlying securities that lack adequate liquidity to maintain fair and orderly markets.

The Exchange believes that changing the initial price guideline to the proposed $3 market price per share for "covered securities" would allow the Exchange to evaluate whether to list options on a greater number of classes without compromising investor protection based on the economic realities of its customers and the marketplace. In determining to list new option classes, the Exchange also must ensure that its own systems and those of the Options Price Reporting Authority ("OPRA") have the capacity to handle the potential increased capacity requirements.

The Exchange believes that the proposed $3 market price per share standard is also consistent with the guideline price in Exchange rule 916 for determining whether an underlying security previously approved for Exchange options transactions can continue to underlie options trading.[8] Commentary .01(4) and .02 to Amex rule 916 sets a $3 market price per share as the threshold for determining whether the Exchange may continue listing and trading options on an underlying security that was previously approved for options trading under rule 915. Accordingly, the Exchange believes that the proposed $3 market price per share for "covered securities" should also be the threshold standard for the initial listing as well.

Consistent with both the CBOE and ISE proposals, the Exchange, as a safeguard against price manipulation, has proposed that the underlying security have a closing market price of at least $3 per share for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to OCC for listing and trading. The Exchange believes that the proposed "look back" period of five consecutive trading days provides a sufficient measure of protection from attempts to manipulate the market price of the underlying security. The proposed $3 price standard and the five-day look-back period would provide a reliable test for stability and, at the same time, presents a more reasonable time period for qualifying the price of an underlying security. The Exchange further believes that this proposed abbreviated qualification period, in combination with the Exchange's quarterly delisting program,[9] would contribute to reducing unnecessary quote traffic.

Finally, for the purposes of consistency within Amex rules, the Exchange proposes to also amend Commentary .04(d)(ii) to Amex rule 915 in connection with Restructured Securities. Commentary .04(d)(ii) to Amex rule 915 currently provides a method to certify that the market price of a Restructured Security satisfies the pricing requirement of Commentary .01(4) to Amex rule 915 referencing the $7.50 market price per share requirement. In order to make Commentary .04(d)(ii) Amex rule 915 consistent with the pricing guideline change to Commentary .01(4) of Amex rule 915, the amended rule reflects the reduction of the market price from $7.50 to $3 as long as the Restructured Security is a "Covered Security."

[3] Section 18(b)(1)(A) of the 1933 Act provides that, "(a) security is a covered security if such security is listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities) * * *." *See* 15 U.S.C. 77r(b)(1)(A). The term Covered Security, for the operation of proposed amendments to Commentary .01(4) to Amex rule 915 would not include those securities defined under section 18(b)(1)(B) of the 1933 Act. *See* 15 U.S.C. 77r(b)(1)(B).

[4] For purposes of this proposal, the market price of an underlying security is measured by the closing price reported in the primary market in which the underlying security is traded. *See* amended Commentary .01(4) to Amex rule 915.

[5] The Exchange is not seeking to amend any of the other initial listing guidelines set forth in Commentary .01 to Amex rule 915.

[6] *See* Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003).

[7] *See* Securities Exchange Act Release No. 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003).

[8] *See* Commentary .01(4) and .02 of Amex rule 916.

[9] The Exchange states that it currently reviews multiply listed option classes, on a quarterly basis, for the purpose of delisting such option classes due to a lack of trading interest. Going forward, the Exchange intends to implement an active delisting program which would require the quarterly delisting of multiply listed option classes that do not trade more than twenty (20) contracts per day on the Exchange.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)[10] of the Act in general and furthers the objectives of section 6(b)(5)[11] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act[12] and subparagraph (f)(6) of rule 19b–4[13] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under rule 19b–4(f)(6)(iii) of the Act,[14] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange contends that this proposed rule is substantially similar to comparable rules the Commission approved for the CBOE, which was published for public notice and comment.[15] As a result, the Exchange believes that the proposed rule change does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period,[16] and, therefore, the proposal is effective and operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–19 and should be submitted by April 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8446 Filed 4–7–03; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See* Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (approving SR–CBOE–2002–62). *See also* Securities Exchange Act Release Nos. 47352 (February 11, 2003), 68 FR 8319 (February 20, 2003) (Notice of Filing and Immediate Effectiveness of SR–PCX–2003–06); and 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003) (Notice of Filing and Immediate Effectiveness of SR–ISE–2003–04).

[16] For purposes only of waiving the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47609; File No. SR–MSRB–2002–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Amendments to Rules G–37, on Political Contributions and Prohibitions on Municipal Securities Business, G–8, on Books and Records, Revisions to Form G–37/G–38 and the Withdrawal of Certain Rule G–37 Questions and Answers

April 1, 2003.

On September 26, 2002, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–2002–12), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), and rule 19b–4 thereunder.[1] The proposed rule change is described in items I, II, and III below, which Items have been prepared by the Board. On March 26, 2003, the MSRB filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith amendments to rules G–37, on political contributions and prohibitions on municipal securities business, G–8, on books and records, revisions to Form G–37/G–38 and the withdrawal of certain Rule G–37 Questions and Answers . The cumulative amendments made to rules G–37 and G–8, the revisions to Form G–37/G–38 and the withdrawal of certain Rule G–37 Questions and Answers as set forth in the original filing and by Amendment No. 1 are collectively referred to herein as the "Proposed Rule Change." The Proposed Rule Change revises the exemption process and the definition of municipal finance professional. Amendment No. 1 alters the text of the amendments to the rule language as it appears in the original filing. Below is the text of the Proposed Rule Change. Additions are italicized; deletions are bracketed.

[1] 15 U.S.C. 78s(b)(1); 17 CFR 240.19b–4.

Rule G–37. Political Contributions and Prohibitions on Municipal Securities Business

(a) No change.

(b)*(i)* No broker, dealer or municipal securities dealer shall engage in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: (A) The broker, dealer or municipal securities dealer; (B) any municipal finance professional associated with such broker, dealer or municipal securities dealer; or (C) any political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional; provided, however, that this section shall not prohibit the broker, dealer or municipal securities dealer from engaging in municipal securities business with an issuer if the only contributions made by the persons and entities noted above to officials of such issuer within the previous two years were made by municipal finance professionals to officials of such issuer for whom the municipal finance professionals were entitled to vote and which contributions, in total, were not in excess of $250 by any municipal finance professional to each official of such issuer, per election.

(ii) For an individual designated as a municipal finance professional solely pursuant to subparagraph (B) of paragraph (g)(iv) of this rule, the provisions of paragraph (b)(i) shall apply to contributions made by such individual to officials of an issuer prior to becoming a municipal finance professional only if such individual solicits municipal securities business from such issuer.

(iii) For an individual designated as a municipal finance professional solely pursuant to subparagraphs (C), (D) or (E) of paragraph (g)(iv) of this rule, the provisions of paragraph (b)(i) shall apply only to contributions made during the six months prior to the individual becoming a municipal finance professional.

(c) through (d) No change.

(e)(i) Except as otherwise provided in paragraph (e)(ii), each broker, dealer or municipal securities dealer shall, by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31) send to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending, two copies of Form G–37/G–38 setting forth, in the prescribed format, the following information:

(A)–(C) No change.

(D) any information required to be disclosed pursuant to section (e) of rule G–38; [and]

(E) such other identifying information required by Form G–37/G–38[.] *; and*

(F) whether any contribution listed in this paragraph (e)(i) is the subject of an automatic exemption pursuant to section (j) of this rule, and the date of such automatic exemption.

The Board shall make public a copy of each Form G–37/G–38 received from any broker, dealer or municipal securities dealer.

(ii) through (iii) No change.

(f) No change.

(g) Definitions. (i) through (iii) No change.

(iv) The term "municipal finance professional" means: (A) Any associated person primarily engaged in municipal securities representative activities, as defined in rule G–3(a)(i), *provided, however, that sales activities with natural persons shall not be considered to be municipal securities representative activities for purposes of this subparagraph (A)*; (B) any associated person who solicits municipal securities business, as defined in paragraph (vii); (C) any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any persons described in subparagraphs (A) or (B); (D) any associated person who is a supervisor of any person described in subparagraph (C) up through and including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to rule G–1(a); or (E) any associated person who is a member of the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in rule G–1) executive or management committee or similarly situated officials, if any; provided, however, that, if the only associated persons meeting the definition of municipal finance professional are those described in this subparagraph (E), the broker, dealer or municipal securities dealer shall be deemed to have no municipal finance professionals.

Each person designated by the broker, dealer or municipal securities dealer as a municipal finance professional pursuant to rule G–8(a)(xvi) is deemed to be a municipal finance professional. Each person designated a municipal finance professional shall retain this designation for [two] *one* year[s] after the last activity or position which gave rise to the designation.

(v) through (viii) No change.

(h) No change.

(i) A registered securities association with respect to a broker, dealer or municipal securities dealer who is a member of such association, or the appropriate regulatory agency as defined in section 3(a)(34) of the Act with respect to any other broker, dealer or municipal securities dealer, upon application, may exempt, conditionally or unconditionally, a broker, dealer or municipal securities dealer who is prohibited from engaging in municipal securities business with an issuer pursuant to section (b) of this rule from such prohibition. In determining whether to grant such exemption, the registered securities association or appropriate regulatory agency shall consider, among other factors [whether]:

(i) *whether* such exemption is consistent with the public interest, the protection of investors and the purposes of this rule; [and]

(ii) *whether* such broker, dealer or municipal securities dealer

(A) prior to the time the contribution(s) which resulted in such prohibition was made, had developed and instituted procedures reasonably designed to ensure compliance with this rule;

(B) prior to or at the time the contribution(s) which resulted in such prohibition was made, had no actual knowledge of the contribution(s);

(C) has taken all available steps to cause the [person or persons] *contributor* involved in making the contribution(s) which resulted in such prohibition to obtain a return of the contribution(s); and

(D) has taken such other remedial or preventive measures, as may be appropriate under the circumstances[.], *and the nature of such other remedial or preventive measures directed specifically toward the contributor who made the relevant contribution and all employees of the broker, dealer or municipal securities dealer;*

(iii) whether, at the time of the contribution, the contributor was a municipal finance professional or

otherwise an employee of the broker, dealer or municipal securities dealer, or was seeking such employment;

(iv) the timing and amount of the contribution which resulted in the prohibition;

(v) the nature of the election (e.g., federal, state or local); and

(vi) the contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

(j) Automatic Exemptions.

(i) A broker, dealer or municipal securities dealer that is prohibited from engaging in municipal securities business with an issuer pursuant to section (b) of this rule as a result of a contribution made by a municipal finance professional may exempt itself from such prohibition, subject to subparagraphs (ii) and (iii) of this section, upon satisfaction of the following requirements: (1) The broker, dealer or municipal securities dealer must have discovered the contribution which resulted in the prohibition on business within four months of the date of such contribution; (2) such contribution must not have exceeded $250; and (3) the contributor must obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the broker, dealer or municipal securities dealer.

(ii) A broker, dealer or municipal securities dealer is entitled to no more than two automatic exemptions per 12-month period.

(iii) A broker, dealer or municipal securities dealer may not execute more than one automatic exemption relating to contributions by the same municipal finance professional regardless of the time period.

* * * * *

Rule G–8: Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i)–(xv) No change.

(xvi) *Records Concerning Political Contributions and Prohibitions on Municipal Securities Business Pursuant to Rule G–37.*

Records reflecting:

(A)–(D) No change.

(E) the contributions, direct or indirect, to officials of an issuer and payments, direct or indirect, made to political parties of states and political subdivisions, by the broker, dealer or municipal securities dealer and each political action committee controlled by the broker, dealer or municipal securities dealer [(or controlled by any municipal finance professional of such broker, dealer or municipal securities dealer)] for the current year and separate listings for each of the previous two calendar years, which records shall include: (i) The identity of the contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions and payments, and (iii) the amounts and dates of such contributions and payments;

(F) the contributions, direct or indirect, to officials of an issuer made by each municipal finance professional, *any political action committee controlled by a municipal finance professional,* and non-MFP executive officer for the current year [and separate listings for each of the previous two calendar years], which records shall include: (i) The names, titles, city/county and state of residence of contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions, [and] (iii) the amounts and dates of such contributions, *and (iv) whether any such contribution was the subject of an automatic exemption, pursuant to Rule G–37(j), including the amount of the contribution, the date the broker, dealer or municipal securities dealer discovered the contribution, the name of the contributor, and the date the contributor obtained a return of the contribution;* provided, however, that such records need not reflect any contributions made by a municipal finance professional or non-MFP executive officer to officials of an issuer for whom such person is entitled to vote if the contributions made by such person, in total, are not in excess of $250 to any official of an issuer, per election[; and]. *In addition, brokers, dealers and municipal securities dealers shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (F) for those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (A) and (B) of rule G–37(g)(iv) and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (F) for those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (C), (D) and (E) of rule G–37(g)(iv) and for any political action committee controlled by such individuals and for any non-MFP executive officers; and*

(G) the payments, direct or indirect, to political parties of states and political subdivisions made by all municipal finance professionals, *any political action committee controlled by a municipal finance professional,* and non-MFP executive officers for the current year [and separate listings for each of the previous two calendar years], which records shall include: (i) The names, titles, city/county and state of residence of contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such payments, and (iii) the amounts and dates of such payments; provided, however, that such records need not reflect those payments made by any municipal finance professional or non-MFP executive officer to a political party of a state or political subdivision in which such persons are entitled to vote if the payments made by such person, in total, are not in excess of $250 per political party, per year. *In addition, brokers, dealers and municipal securities dealers shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (G) for those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (A) and (B) of rule G–37(g)(iv) and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (G) for those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (C), (D) and (E) of rule G–37(g)(iv) and for any political action committee controlled by such individuals and for any non-MFP executive officers.*

(H)–(K) No change.

* * * * *

Form G–37/G–38

Name of dealer: _____

Report period: _____

I. CONTRIBUTIONS MADE TO ISSUER OFFICIALS

[List by state]

State	Complete name, title (including) any city/county/state or other political subdivision) of issuer official.	Contributions by each contributor category (*i.e.*, dealer, dealer controlled PAC, municipal finance professional controlled PAC, municipal finance professionals and executive officers). For each contribution, list contribution amount and contributor category (for example, ($500 contribution by non-MFP executive officer). *If any contribution is the subject of an automatic exemption pursuant to Rule G–37 (j), list amount of contribution and date of such automatic exemption.*

II. Payments Made to Political Parties of States or Political Subdivisions (List by State)

No change.

III. Issuers With Which Dealer Has Engaged in Municipal Securities Business (List by State)

No change.

IV. Consultants

No change.

* * * * *

Rule G–37 Questions & Answers To Be Withdrawn

May 24, 1994 (Q&A #12)

[Q: A dealer may discover that a "disgruntled" municipal finance professional made a contribution to an issuer official deliberately to prohibit the dealer from engaging in municipal securities business with the issuer. Is there a procedure in place whereby the dealer can seek an exemption from the prohibition on municipal securities business in such circumstances?]

[A: The Board recognizes that there may be limited circumstances in which a dealer should be able to request an exemption from the prohibition on business. Thus, the Board has filed with the SEC an amendment to rule G–37 that allows bank regulatory authorities (the Office of the Comptroller of the Currency, Federal Reserve Board and Federal Deposit Insurance Corporation), upon application by a dealer, to grant such exemption, conditionally or unconditionally, in certain circumstances. See the rule filing, SR–MSRB–94–5, for more information about this procedure.]

June 15, 1995 (Q&A #4)

[Q: Rule G–37(i) provides a procedure whereby dealers may request that the NASD or the appropriate regulatory agency (*i.e.*, federal bank regulatory authorities) grant an exemption from the rule's two-year ban on municipal securities business with an issuer which resulted from political contributions made to officials of that issuer by the dealer, a PAC controlled by the dealer, or a municipal finance professional. If a municipal finance professional made a contribution to an issuer official which triggered the ban, what factors would be relevant to the dealer's decision to request an exemption from that ban, and to the NASD or appropriate regulatory agency in determining whether the exemption should be granted?]

[A: In determining whether to grant such an exemption, rule G–37(i) requires the NASD or the appropriate regulatory agency to consider, among other factors, whether (i) such exemption is consistent with the public interest, the protection of investors and the purposes of rule G–37; and (ii) such dealer (A) prior to the time the contribution(s) which resulted in such prohibition was made, had developed and instituted procedures reasonably designed to ensure compliance with the rule; (B) prior to or at the time the contribution(s) which resulted in such prohibition was made, had no actual knowledge of the contribution(s); (C) has taken all available steps to cause the person or persons involved in making the contribution(s) which resulted in such prohibition to obtain a return of the contribution(s); and (D) has taken such other remedial or preventive measures as may be appropriate under the circumstances.

In reviewing the facts and circumstances presented by the dealer, as well as the factors set forth above, the NASD or the appropriate regulatory agency will consider whether, prior to the time the contribution was made, the dealer had developed and instituted procedures reasonably designed to ensure compliance with the rule. Such procedures are required by rule G–27 on supervision. Effective compliance procedures are essential because rule G–37 requires the dealer to have information regarding each contribution made by the dealer, dealer-controlled PACs and municipal finance professionals so that the dealer can determine where and with whom it may or may not engage in municipal securities business. In addition, for disclosure purposes, the dealer must maintain information on executive officers' contributions and payments to political parties, as well as consultant hiring practices. Moreover, because of the "directly and indirectly" provision in rule G–37(d), as well as the no solicitation and no bundling provisions in section (c) of the rule, the dealer must ensure that those persons and entities subject to the rule are not causing the dealer to be in violation thereof. In this regard, the Board wishes to remind dealers that they are responsible for determining which of their employees, supervisors (*e.g.*, branch managers), and management personnel (*e.g.*, members of the dealer's executive or management committee or similarly situated officials) are "municipal finance professionals." In addition to those persons and entities covered by the rule, the dealer must ensure that other persons and entities hired to assist in municipal securities activities (*e.g.*, consultants) are not being directed to make contributions, or otherwise being used as conduits, in violation of the rule. In reviewing a request for exemption, the NASD or the appropriate regulatory agency also will consider whether the dealer has taken all available steps to obtain a return of the contribution. The return of the contribution, while important, is only one of the factors to be considered, and is not dispositive of whether an exemption should be granted.

Finally, the NASD or appropriate regulatory agency will consider whether the dealer has taken remedial or preventive measures as may be appropriate under the circumstances. Thus, dealers should provide information on any changes to compliance procedures and/or personnel action taken to address the particular situation which resulted in the prohibition so that such problems do not recur. For additional guidance on the exemption provision, please refer to Q&A number 2 in the August 1994 issue of *MSRB Reports* (Vol. 14, No. 4).

The Board previously provided two examples in which exemptions may be appropriate. The first example described a situation in which a disgruntled municipal finance professional made a contribution purposely to injure the

dealer, its management or employees. The second example involved a municipal finance professional who was eligible to vote for a particular issuer official and who made a number of small contributions during an election cycle (*e.g.*, over four years) which, when consolidated, amounted to slightly over the $250 *de minimis* exemption (*e.g.*, $255).

The Board believes that the following situations are not sufficient to justify the granting of an exemption from a ban on business: (1) A contribution was made by a municipal finance professional which subjected the dealer to the two-year ban on business, but the municipal finance professional was not aware of rule G–37 or any of its particular provisions; (2) the dealer or a municipal finance professional did not know that the recipient of a particular contribution was an "official of an issuer"; and (3) at the time the contribution was made, an associated person did not know that he was a "municipal finance professional" by virtue of his supervisory capacity, by being primarily engaged in municipal securities representative activities, or by virtue of any of the other activities listed in the rule's definition of municipal finance professional.

The Board is strongly of the view that exemptions should be granted only in limited circumstances. If a significant number of exemptions are granted by the regulatory agencies, then the Board may reexamine the propriety of the exemption provision.]

June 29, 1998 (Q&A #1 (partial withdrawal), 2 and 3)

1. Q: A person is associated with a dealer in a non-municipal finance professional capacity and makes a political contribution to an official of an issuer for whom such person is not entitled to vote. Less than two years after such person made the contribution, the dealer merges with another dealer and, solely as a result of the merger, that person becomes a municipal finance professional of the surviving dealer. Would the surviving dealer be prohibited from engaging in municipal securities business with that issuer?

A: Yes. Rule G–37 would prohibit the surviving dealer from engaging in municipal securities business with the issuer for two years from the date the contribution was made. Of course, the surviving dealer's prohibition on business would only begin when the person who made the contribution becomes a municipal finance professional of the surviving dealer.

The Board notes, however, that rule G–37 was not intended to prevent mergers in the municipal securities industry or, once a merger is consummated, to seriously hinder the surviving dealer's municipal securities business if the merger was not an attempt to circumvent the letter or spirit of rule G–37. [Thus, the Board believes that it would be appropriate for the NASD or the appropriate regulatory agency (*i.e.*, federal bank regulatory authorities) to grant conditional or unconditional exemptions from bans on municipal securities business arising from such mergers if the NASD or the appropriate regulatory agency determines that, pursuant to rule G–37(i), the exemption is consistent with the public interest, the protection of investors and the purposes of the rule, as well as any other factors set forth in the rule or any other factors deemed relevant by the NASD or the appropriate regulatory agency.]

[2. Q: The Board has previously provided two examples in which exemptions from a ban on municipal securities business may be appropriate under rule G–37(i). Are these the only situations in which the NASD or the appropriate regulatory agency may provide an exemption under rule G–37(i)?]

[A: No. The two examples noted in Q&A number 4 (June 15, 1995), *MSRB Reports*, Vol. 15, No. 2 (July 1995) at 3–4, *MSRB Manual* (CCH) & 3681, were not meant to be the only instances in which exemptions might appropriately be given. Because of the varying factual situations that arise with each exemptive request, the Board believes that the NASD and the appropriate regulatory agencies should review such other factual situations presented by dealers in exemptive requests pursuant to the requirements in rule G–37(i) and, based on the facts, either approve or reject the request. Rule G–37(i) allows the NASD and the appropriate regulatory agencies to grant exemptions from the ban on business "conditionally or unconditionally" and, if the NASD or the appropriate regulatory agency believes it would be appropriate to shorten the ban on business or limit its scope, it is authorized to do so as long as the requirements of rule G–37(i) are met.]

[3. Q: The Board has previously described three situations which it believes are not sufficient to justify the granting of an exemption from a ban on municipal securities business under rule G–37(i). Does this mean that the NASD or the appropriate regulatory agency may never provide an exemption under rule G–37(i) if any of these situations exist?]

[A: No. The Board's intent in describing these three scenarios in Q&A number 4 (June 15, 1995), *MSRB Reports*, Vol. 15, No. 2 (July 1995) at 3–4, *MSRB Manual* (CCH) & 3681, was to note that none of these situations was sufficient, in and of itself, to justify the granting of an exemption from a ban on municipal securities business. However, any such scenario in combination with other facts and circumstances deemed relevant by the NASD or the appropriate regulatory agency (including, but not limited to, the factors set forth in rule G–37(i)) could, in the judgment of the NASD or the appropriate regulatory agency, be sufficient to justify a conditional or unconditional exemption from the ban.

The Board also notes that none of the three situations previously cited as insufficient to justify an exemption involved a contribution made prior to an individual becoming a municipal finance professional. Thus, for example, where a non-*de minimis* contribution was made by a person who later becomes a municipal finance professional (whether by reason of a merger, as a newly hired associated person, as an existing associated person becoming involved in municipal securities activities, or otherwise), neither the NASD nor any appropriate regulatory agency is constrained from granting a conditional or unconditional exemption if, in its judgment, such exemption is consistent with rule G–37(i).]

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the Proposed Rule Change and discussed any comments it received on the Proposed Rule Change. The text of these statements may be examined at the places specified in item IV below. The MSRB has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule G–37, on political contributions and prohibitions on municipal securities business, became effective on April 25, 1994. During the past eight years, the MSRB believes that the rule has been successful in halting pay-to-play practices in the municipal securities market. As part of the MSRB's Long-Range Plan, the MSRB determined to conduct a review of the rule's requirements and seek comments on whether there are compliance concerns to address. Although the MSRB is sensitive to the burden imposed on brokers, dealers and municipal securities dealers ("dealers") by the requirements of rule G–37 and is committed to reducing this burden whenever possible, the MSRB believes that the rule has provided substantial benefits to the industry and the investing public by reducing the direct connection between political contributions to issuer officials and the awarding of municipal securities business.

Background

Rule G–37 prohibits a dealer from engaging in municipal securities business [2] with an issuer within two years after certain contributions to an official of such issuer made by the dealer, any municipal finance professional ("MFP") associated with such dealer (other than certain *de minimis* contributions) [3] or any political action committee ("PAC") controlled by the dealer or any MFP. In addition, the rule requires dealers to disclose on Form G–37/G–38 certain contributions to issuer officials and payments to political parties of states and political subdivisions made by MFPs and certain other categories of contributors. Rule G–8, on books and records, requires dealers to create records of such contributions and payments. Finally, rule G–37(i) provides a procedure whereby dealers may request that NASD or the appropriate regulatory agency (*i.e.*, federal bank regulatory authorities) grant an exemption from rule G–37's two-year ban on municipal securities business with an issuer that resulted from political contributions made to officials of that issuer.

Review of Proposed Rule Change

Exemption Process and Withdrawal of Certain Rule G–37 Questions and Answers

As noted above, under rule G–37(i), a dealer that has triggered the rule's two-year ban on municipal securities business may seek an exemption from that ban from the appropriate regulatory agency.[4] The rule provides that the appropriate regulatory agency may exempt, "conditionally or unconditionally," a dealer that is banned from engaging in municipal securities business with an issuer from such ban. The MSRB specifically intended that the regulatory agencies have flexibility in dealing with the various factual situations that may arise pursuant to exemption requests. For example, a regulatory agency could reduce the ban on business from two years to a lesser period of time. In determining whether to grant an exemption request, the appropriate regulatory agency is required to consider, among other factors, whether an exemption would be consistent with the public interest, the protection of investors and the purposes of rule G–37. The regulatory agency also is required to examine whether the dealer had appropriate procedures in place to ensure compliance with the rule, had no actual knowledge that the contribution was being made, has taken all steps to obtain a return of the contribution, and has taken any other appropriate remedial or preventive measures.

The Proposed Rule Change includes the addition of the following relevant factors to be considered by the appropriate regulatory agency in determining whether to grant an exemption (conditional or unconditional) from the two-year ban on business:

- The nature of remedial or preventive measures directed specifically toward the contributor and all employees of the dealer.
- Whether, at the time of the contribution, the contributor was an MFP or otherwise an employee of the dealer, or was seeking such employment.
- The timing and amount of the contribution.
- The nature of the election (*e.g.*, federal, state or local).
- The contributor's apparent intent or motive in making the contribution, as evidenced by the facts and circumstances surrounding such contribution.

The additional factors will help to clarify facts and circumstances relevant to exemptive requests and will facilitate the review of such requests by the appropriate regulatory agency. To further clarify and facilitate this process, the MSRB also is withdrawing certain rule G–37 Questions and Answers ("Qs and As") previously published concerning when an exemption may or may not be appropriate. This action is necessary in order to clarify that the regulatory agencies have discretion in administering the exemption process. The Proposed Rule Change will assist the regulatory agencies in exercising their discretion in a manner that will fulfill the purposes of rule G–37.

Adoption of an Automatic Exemption Provision

The Proposed Rule Change provides for an automatic exemption from a dealer's ban on business in certain limited instances. This provision sets out procedures that would permit dealers to execute two such exemptions per 12-month period for contributions made by an MFP of $250 or less if the dealer discovers the contribution within four months of the date of such contribution and the contributor obtains a return of the contribution within 60 calendar days of the date of discovery of such contribution by the dealer. A dealer would not be permitted to execute more than one automatic exemption relating to contributions by the same MFP. The automatic exemption would not be available for contributions made by a dealer, a dealer-controlled PAC or MFP-controlled PAC. Finally, dealers would be required to report the exemption on Form G–37/G–38 and to maintain records of such exemptions pursuant to rule G–8, on books and records. A dealer would be banned from municipal securities business until the contribution was returned.

The MSRB believes that a limited automatic exemption provision will provide a measure of relief to the industry without compromising the purposes of rule G–37. In addition, it will relieve some of the regulatory agencies' burden of administering the exemption process by removing from this process certain routine cases involving small contributions. The MSRB notes that the time periods proposed are reasonable and will encourage dealers to discover contributions that could give rise to a ban on business in a timely manner (*e.g.*, in preparation for the filing of quarterly forms G–37/G–38) and to seek quick refunds of these contributions. The automatic exemption will, for example, allow dealers who wish to hire as an MFP someone who previously gave a small contribution to an issuer official to lift the ban on business with that issuer after meeting the requirements of the new provision.

[2] Municipal securities business is defined in rule G–37 to encompass certain activities of dealers in connection with primary offerings of municipal securities, such as acting as underwriter in a negotiated sale, as placement agent, or as financial advisor, consultant or remarking agent to an issuer in which the dealer was chosen on a negotiated basis.

[3] Contributions made by an issuer for whom the MFP is entitled to vote will not cause the MFP's dealer to be prohibited from engaging in municipal securities business with issuer if the contributions, in total, are not in excess of $250 by such MFP to each official of such issuer, per election.

[4] The appropriate regulatory agencies include NASD for securities firms and the federal bank regulators for bank dealers.

Also, a dealer could lift the ban on business if an MFP contributes to an issuer official for whom he or she is not entitled to vote without knowing that his or her firm does business with that issuer. The MSRB determined to limit the number of exemptions, as well as the dollar amount involved, to ensure that the automatic exemption provision could only be used in limited circumstances and not as an avenue for circumvention of the rule.

Definition of Municipal Finance Professional

MFPs Primarily Engaged in Municipal Securities Representative Activities

The Proposed Rule Change amends the definition of MFP so that associated persons "primarily engaged" in municipal securities representative activities based on their retail sales of municipal securities are excluded from the definition. While there may be limited instances in which retail sales persons make contributions to obtain municipal securities business for dealers, the MSRB believes that these instances do not outweigh the compliance burden of determining which of these persons are included in the rule. In addition, any retail sales representative who solicits municipal securities business would remain covered under the rule as an MFP.

Look Back and Look Forward Provisions

Since rule G–37 prohibits a dealer from engaging in municipal securities business within two years of certain contributions made by MFPs, a dealer must perform a two-year "look back" of its MFPs" contributions in order to make a determination on whether it is subject to any prohibitions on municipal securities business. Dealers have informed the MSRB that this look back has precluded them from hiring individuals who had made contributions, even though the contributions (which may have been relatively small) were made at a time when the individuals had no reason to be familiar with rule G–37. In addition, some dealers have noted how the look back has affected individuals with regard to in-firm transfers and promotions.

Once an individual is designated as an MFP by a dealer, he or she retains this designation for two years after the last activity or position which gave rise to the designation. This "look forward" provision has created compliance problems for some dealers in trying to track the contributions of individuals who have left their MFP positions and transferred to other areas in the firms.

The Proposed Rule Change produces the following results:

- *MFPs primarily engaged in municipal securities representative activities:* The two-year look back is retained, and the look forward is reduced to one year.
- *Solicitor MFPs:* The two-year look back is retained, but limited only to contributions to officials of the issuer solicited, and the look forward is reduced to one year.
- *Supervisor and management-level MFPs:* The look back is reduced to six months and the look forward is reduced to one year.

Thus, the two-year look back is retained for those MFPs who are primarily engaged in municipal securities representative activities and for those who solicit municipal securities business while the two year look forward is reduced to one year for these individuals. For supervisory and management-level MFPs, the look back is reduced to six months and the look forward is reduced to one year.[5] The MSRB believes that supervisors and management-level MFPs should remain subject to the rule while they hold their supervisory positions; however, the potential link between obtaining municipal securities business and contributions made by an individual prior to becoming an MFP solely by reason of taking on a new supervisory or management position is tenuous and therefore the shorter timeframes are appropriate. The MSRB notes that most supervisors in the municipal securities department will still be covered by the two-year look back because such individuals are "primarily engaged" in municipal securities representative activities.

In addition, many dealers over the years have raised concerns about bringing non-MFPs to meetings with issuers to solicit municipal securities business (*e.g.*, an individual with expertise in asset-backed securities may be asked to attend a meeting with an issuer that is considering a securitization of tobacco settlement revenue or delinquent tax receipts) because the prior contributions of these individuals could result in a ban on business, even if made to issuers other than those solicited. Dealers believe that such a result is unreasonable given that the contribution by the solicitor MFP to another issuer's official would have no impact on the underwriter selection process of the issuer that he or she is soliciting. Accordingly, the Proposed Rule Change limits the look back for solicitor MFPs (*i.e.*, persons not primarily engaged in municipal securities representative activities) only to contributions to officials of the issuer solicited. Once these solicitors become MFPs, all of their subsequent contributions to any issuer official still will be covered by the rule.

2. Statutory Basis

The MSRB believes the Proposed Rule Change is consistent with section 15B(b)(2)(C) of the Securities Exchange Act of 1934 ("Act"), which provides that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the Proposed Rule Change is consistent with the Act in that it will facilitate dealer compliance with rule G–37, thereby further protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the Proposed Rule Change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On April 2, 2002, the MSRB proposed for comment draft amendments relating to the exemption provision and the definition of municipal finance professional as contained in Rule G–37 (the "Notice"). The MSRB received nine comment letters from the following:

John M. Hartenstein ("Mr. Hartenstein"),
Investment Company Institute ("ICI")
MassMutual Financial Group ("MassMutual")
Morgan Stanley & Co. Incorporated ("Morgan Stanley")
National Association of State Treasurers ("NAST")
Seasongood & Mayer, LLC ("Seasongood")
T. Rowe Price Group, Inc. ("T. Rowe Price")
The Bond Market Association ("TBMA")
Wilmer, Cutler & Pickering ("Wilmer") (commenting on behalf of the Democratic National Committee ("DNC") and the Republican National Committee ("RNC")).

Many commentators expressed their support for one or more of the proposals and provided suggestions for additional changes.

The Exemption Provision

Additional Relevant Factors To Be Added; Certain Qs & As To Be Withdrawn

The MSRB proposed the addition of the following relevant factors to be considered by the appropriate regulatory agency in determining whether to grant an exemption (conditional or unconditional) from the two-year ban on business:

- The nature of remedial or preventive measures directed specifically toward the contributor and all employees of the dealer.
- Whether, at the time of the contribution, the contributor was an MFP or otherwise an employee of the dealer, or was seeking such employment.
- The timing and amount of the contribution.
- The nature of the election (*e.g.*, federal, state or local).
- The contributor's apparent intent or motive in making the contribution, as evidenced by the facts and circumstances surrounding such contribution.

The MSRB also proposed withdrawing certain Qs and As previously published concerning when an exemption may or may not be appropriate, noting that this action is necessary to clarify that the regulatory agencies have discretion in administering the exemption process.

Morgan Stanley and T. Rowe Price expressed support for the additional relevant factors and the withdrawal of certain Qs and As. Morgan Stanley believes that the MSRB "must go further to facilitate the NASD's equitable administration of the exemption process by adding an additional factor that expressly requires the NASD to consider the proportionality of the penalty to the violation." They argue that the MSRB "must emphasize to the NASD that it has at its disposal and must utilize the option of granting conditional exemptions to fashion remedies that are more proportional to the egregiousness of the violation."

Seasongood believes that the opportunity for exemptive relief should be available only to those dealers who discover problematic contributions prior to a third party discovering them. Seasongood argues that this approach "will encourage firms to be forthright in dealing with violations and will more effectively punish firms who either are not vigilant in monitoring G–37 compliance or who willfully violate the rule."

MSRB Response. The two-year ban arose from the MSRB's view of the necessity of avoiding even the appearance of a conflict of interest by an issuer in awarding negotiated municipal securities business to a dealer that made contributions (or an MFP who made non-*de minimis* contributions) to issuer officials. In reviewing exemptive requests, the appropriate regulatory agencies examine the facts and circumstances surrounding each such request and, in addition to the relevant factors set forth in the rule, may examine *any other* factor they wish, including the size of the contribution and the potential business lost. The draft amendments add to the list of factors the timing and amount of the contribution, as well as the contributor's apparent intent or motive in making the contribution. The MSRB does not believe it is appropriate to add to the list of relevant factors the amount of business lost because then it could be argued that a contribution of any size should not result in a ban on business in a large issuing state. The MSRB believes such a result would go against the purposes of rule G–37.

In addition, rule G–37(i) states that the regulatory agencies may exempt, "conditionally or unconditionally," a dealer that is banned from engaging in municipal securities business with an issuer from such ban. The regulatory agencies may, if they deem it appropriate, reduce a ban on business to less than two years, and, in fact, have done so on certain occasions. Thus, the rule, as amended, already provides the regulatory agencies the ability to limit the extent of the ban on business in situations where, based on the specific facts and circumstances, a reduced penalty would be appropriate. Because the MSRB has no inspection or enforcement authority, it must defer to the regulatory agencies' judgment on these matters. Thus, the MSRB does not believe it is appropriate for it to *mandate* that the regulatory agencies grant conditional exemptions in appropriate cases, as suggested by Morgan Stanley.

The MSRB disagrees with Seasongood's suggestion that exemptions should only be available to those dealers who discover problematic contributions prior to someone else discovering them and reporting them to the authorities or the media. The MSRB believes that most dealers discover their own problematic contributions and then apply to the NASD for exemptive relief in appropriate cases. While self-discovery of problematic contributions is a factor, it should not be a conclusive one against the dealer. A failure to self-discover does not mean that a dealer has willfully violated the rule.

Adoption of an Automatic Exemption Provision

The Notice requested comments on incorporating an automatic exemption provision into Rule G–37. The draft amendments provided for an automatic exemption from a dealer's ban on business in certain limited instances. The provision sets out procedures that would permit dealers to execute two such exemptions per 12-month period for contributions made by an MFP of $250 or less if: (1) The dealer discovers the contribution within four months of the date of such contribution; (2) the contributor makes a written request for a return of the contribution within 30 calendar days of the dealer's discovery; and (3) the contributor obtains a refund within 30 calendar days of the written request. A dealer would not be permitted to execute more than one automatic exemption relating to contributions by the same MFP. The automatic exemption would not be available for contributions made by a dealer, a dealer-controlled PAC or an MFP-controlled PAC. Finally, dealers would be required to report the exemption on Form G–37/G–38 and to maintain records of such exemptions pursuant to rule G–8, on books and records. A dealer would be banned from municipal securities business until the contribution was returned.

TBMA supports the concept of an automatic exemption but believes "that a somewhat broader exemptive provision is warranted." They recommend increasing the allowable dollar amount to $1,000, arguing that "contributions that are promptly identified and refunded in full would not reasonably influence the underwriter selection process" regardless of the amount. Morgan Stanley also recommends that the amount be increased to $1,000, arguing that "the fact that a refund must be obtained in a prompt manner eliminates any perceived risk of pay-to-play."

The draft amendments required a dealer to make a written request for a refund within 30 days of discovering the contribution, and obtain the refund within 30 days of such request. TBMA recommends adding a measure of flexibility to the automatic exemption provision by combining these two time periods so that dealers would be

[5] The Proposed Rule Change also amends rule G–8(a)(xvi) to reduce the look back to six months for contributions made by non-MFP executive officers.

required to obtain a refund within 60 days of discovering the contribution.

In its Notice, the MSRB noted that, in addition to the automatic exemption, dealers may continue to seek exemptions from the appropriate regulatory agency through the regular exemption process. TBMA argues that "it is likely that waivers will continue to be granted infrequently, and the process will continue to be time-consuming. Further, the mere existence of an automatic exemption may lessen the likelihood of obtaining a discretionary waiver in circumstances in which contributions are quickly discovered and refunded but do not meet all the requirements of the automatic exemption."

T. Rowe Price and Wilmer support the draft amendments in this area, but believe it is unfair to base the availability of the automatic exemption on a requirement that is outside the contributor's control, *i.e.*, obtaining a refund. T. Rowe Price recommends eliminating this requirement. ICI suggests that the requirement be changed to require that the contributor make a "good faith effort" within 30 calendar days of the dealer's discovery to obtain a return of the contribution, including making a written request for such return. T. Rowe Price also recommends that the Board eliminate the requirement that a dealer discover the contribution in a timely manner (*i.e.*, within four months).

Seasongood believes that an automatic exemption should be available only if the dealer itself discovers the rule violation (as opposed to another dealer discovering it and reporting it to the authorities or the media). They also argue that the automatic exemption should not be available if the contribution is returned after the election for which it was given, otherwise the candidate would derive the benefit of using the funds when they were needed most.

MSRB Response. The MSRB determined to adhere to the $250 contribution limit for automatic exemptions since the provision is intended to apply to routine cases involving small contributions. With regard to the requirements that contributors make a written refund request within 30 days of discovery of the contribution and obtain a refund within 30 days thereafter, the MSRB adopted TBMA's suggestion that these two time periods be combined. Thus, the Proposed Rule Change requires the contributor to obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the dealer.

The MSRB did not adopt the recommendations of T. Rowe Price and Wilmer regarding the elimination of the requirement to actually obtain a refund or ICI's suggestion to make a "good faith effort" to obtain a refund. While it is true that the return of the contribution is not within the dealer's control, the automatic exemption provision should be limited to those circumstances where there is no appearance of a conflict of interest. In those circumstances where the contribution is not returned within the appropriate time frame, the MSRB believes that NASD or bank regulator review is needed through the regular exemption process. Therefore, a refund must be obtained in order to execute an automatic exemption.

Additionally, the MSRB believes that requiring dealers to discover offending contributions within four months of such contributions represents a reasonable time period that will encourage dealers to develop and institute good compliance procedures. The MSRB disagrees with T. Rowe Price's suggestion that this requirement be eliminated. The time periods proposed are fair and reasonable; so long as a dealer discovers, and obtains a refund of, the offending contribution within those time periods (and otherwise complies with the provision's requirements) the dealer should be permitted to avail itself of an automatic exemption.

Finally, the MSRB disagrees with Seasongood's suggestions that the automatic exemption should only be available to those dealers who discover the problematic contributions before someone else does and reports the information to the authorities or the media, and only if the contribution is returned before the election for which it was intended. As noted above, the MSRB believes that most dealers discover and report their own bans on business and then apply to NASD or bank regulator for exemptive relief. Moreover, the requirement that dealers discover the offending contributions within four months acts as a significant incentive for dealers to discover their own potential bans on business. The MSRB also did not adopt Seasongood's suggestion that dealers be required to obtain a refund prior to the election for which it was intended. Given the relatively small dollar amounts involved, the Board was not persuaded that this issue represented a significant problem or otherwise merited regulatory action.

Definition of Municipal Finance Professional

MFPs Primarily Engaged in Municipal Securities Representative Activities

The draft amendments provide for amending the definition of MFP to exempt retail sales representatives. While there may be limited instances in which retail sales persons make contributions to obtain municipal securities business for dealers, the MSRB proposed the draft amendments because of its belief that these instances do not outweigh the compliance burden of determining which of these persons are included in the rule. In addition, any retail sales person who solicits municipal securities business would be covered under the rule as an MFP.

T. Rowe Price states that it strongly supports the proposal. It notes that it is in agreement "with the Board's belief that if the retail salesperson is not soliciting municipal securities business, the connection between the retail salesperson's contributions and any awarding of municipal securities business is very tenuous." T. Rowe Price notes that, for its firm, "where the registered representatives who deal with investors and potential investors in Section 529 Plan securities do not receive commission-based compensation and do not have their own client base * * * there is no connection between any contributions they may make and the awarding of a long-term contract by a state for the program management of its Section 529 Plan." It states that the "proposal brings much needed clarity to the area without diluting the effectiveness of Rule G–37."

Seasongood is opposed to the proposal. It states that firms are "seeking municipal underwriting business by touting the size and effectiveness of their retail sales force. As evidenced by the significant increase in issuers having a separate 'retail order period' prior to the regular order period, firms utilize their sales forces to generate underwriting fees from tax-exempt financings. Specifically, the takedown component, which is usually the largest part of an underwriter's fee, is being earned by the firm and the salesperson." Seasongood believes that the proposal will make it more difficult for a firm's competitor to uncover violations in helping to enforce compliance with the rule.

MSRB Response. The MSRB determined to exempt retail sales representatives from the definition of MFP. If a retail sales person is not soliciting municipal securities business, the appearance of a conflict of interest is negligible because there is little reason to believe that the contribution was intended to be, or taken to be, an attempt to gain influence in the awarding of municipal securities business. A retail sales person who solicits municipal securities business will still be covered under the rule as an MFP. The Commission staff asked that the MSRB make a technical language revision to the definition of MFP concerning retail sales persons to clarify that the exemption from the definition applies to sales activities with individual (not institutional) investors. The MSRB has done so.

Look Back and Look Forward Provisions

In the Notice, the MSRB requested comments on draft amendments concerning the look back and look forward provisions that would produce the following results:

- *MFPs primarily engaged in municipal securities representative activities:* Retain the two-year look back. Reduce the look forward to one year.
- *Solicitor MFPs:* Retain the two-year look back, but limit it only to contributions to officials of the issuer solicited. Reduce the look forward to one year.
- *Supervisor and management-level MFPs:* Eliminate the look back and look forward.

T. Rowe Price supports the proposals concerning both the look back and look forward provisions.

TBMA supports only the proposals for eliminating the look back and look forward provisions for supervisor and management-level MFPs. TBMA questions "whether the look back and overhang requirements, as applied to other persons, are justified." With respect to the look forward provision, TBMA states that "the MSRB has not identified *any* circumstances in which it is likely that a contribution by a former MFP for up to one year *after* losing that status is being made for the purpose of attracting municipal business." If the MSRB continues to apply look forward and look back provisions for MFPs primarily engaged in municipal securities representative activities and solicitor MFPs, TBMA states that a six-month period "is more than sufficient to remedy possible abuses." TBMA notes that "a six-month period is more consistent with the requirements of Rule G–38," on consultants, and that dealers "have designed their compliance systems to track such contributions over these time periods."

Seasongood states that the look forward provision should remain at two years and it should continue to apply to supervisor and management-level MFPs. With respect to the proposal to limit the two-year look back for solicitor MFPs to contributions to officials of the issuer solicited, Seasongood notes that it "could not disagree more strongly." Seasongood states that the proposal "would eviscerate the definition of solicitation by allowing anyone to participate in a presentation calculated to appeal to issuer officials for municipal securities business without repercussions. This definition has been the lynchpin in preventing the "pay to play" games G–37 was designed to stop. If a firm soliciting municipal business can bring individuals to the presentation who are allowed to contribute to campaigns without being banned from their business, the MSRB will be opening a huge hole in the overall effectiveness of G–37 and the ability of competitors to discern when a violation has occurred."

MSRB Response. The MSRB determined to adopt the draft amendments to revise the look back and look forward provisions for MFPs primarily engaged in municipal securities representative activities and for solicitor MFPs. The MSRB believes it is important to retain the longer time frames for those MFPs more directly involved in obtaining municipal securities business. Once an associated person of a dealer solicits municipal securities business, the new look back requirement would be limited to officials of the issuer solicited. All contributions by this solicitor MFP to any issuer official would be covered going forward.

The SEC staff asked that the MSRB revise the proposal for supervisor and management-level MFPs as contained in the draft amendments. The SEC staff asked that the look back be revised to six months (instead of eliminated) and the look forward be reduced to one year (instead of eliminated). The MSRB has revised the requirements per the SEC staff's suggestions.

De Minimis Contributions

Maintain the "Entitled to Vote" Requirement

Contributions made by an MFP to officials of an issuer for whom the MFP is entitled to vote will not cause the MFP's dealer to be prohibited from engaging in municipal securities business with the issuer if the contributions, in total, are not in excess of $250 by such MFP to each official of such issuer, per election. Wilmer believes that the *de minimis* exception should be available to any MFP, not just those entitled to vote for the particular candidate, arguing that "[t]here are compelling reasons that a contributor who lives in one jurisdiction might want to support a candidate in a different jurisdiction. When a voter lives in a different jurisdiction from where the voter works, the voter might feel effected as much or more by the election of county or city officials in the work jurisdiction than at home." Similarly, NAST believes that the Board should eliminate the "entitled to vote" requirement, noting that "the determination of whether a contribution is so small as to be *de minimis* should not depend on where the contributor lives."

MSRB Response. The MSRB determined to maintain this requirement. Eliminating the requirement would allow national firms with numerous MFPs to make many contributions to an issuer official. This would create at least the appearance of a conflict of interest since the MFPs would have no direct interest in the issuer's jurisdiction.

Maintain the $250 *De Minimis* Amount

NAST "strongly believes" that the *de minimis* amount should be raised to $1,000 to correspond to current federal limits, arguing that:

First, Congress determined that $1,000 per election is a sufficiently low amount that it does not raise conflict of interest or favoritism concerns. Inflation and the increasing amount of contributions required to compete in local, state, and national elections in many jurisdictions have diminished even further the potential impact of an individual appropriate to prevent corruption or the perception of corruption in connection with contributions in the amount of $1,000 or less.* * * Second, increasing the *de minimis* contribution exemption to correspond with the federal contribution limit would significantly reduce the likelihood that a contributor might inadvertently trigger a two-year ban on business under rule G–37.* * * Finally, raising the *de minimis* exemption to the current FECA level would eliminate the disproportionate impact of rule G–37 on contributions to issuer officials who are candidates for federal office.

MSRB Response. First, the MSRB determined that $250 continues to be an appropriate limit. Second, the inclusion of "the nature of the election" in the list of relevant factors should assist NASD and bank regulators in deciding whether to grant an exemptive request (conditionally or unconditionally) in view of the contribution amount and the federal contribution limits. Finally, the SEC's 1994 rule G–37 Approval Order rejected the argument of a

disproportionate impact on issuer officials who are candidates for federal office.

Other Issues

Eliminate the Two-Year Ban on Business

Morgan Stanley is concerned that NASD, in administering exemptive requests, does not take into account "the proportionality of the penalty to the perceived violation. * * *" They note that "the two-year ban applies regardless of the nature of, or intent in making, the contribution. Thus, a $1 million contribution triggers the same ban as a $5 contribution * * * [and the] so-called 'death penalty' applies equally to minor infractions and blatant attempts to engage in 'pay-to-play'." Morgan Stanley also states that the protracted nature of the current exemption process "is particularly problematic when a broker-dealer has committed significant resources in connection with a municipal securities deal and is suddenly subject to a ban because it discovers an inadvertent contribution by an MFP with no relationship to that particular deal." While they agree with the Board's proposal to amend the exemption process, Morgan Stanley believes that "simply changing the exemption standards does not go far enough to remedy the problem.* * * It is imperative that the Rule incorporate a mechanism designed to avoid disproportionate and clearly inequitable results." Therefore, Morgan Stanley urges the Board to consider eliminating the two-year ban on business and replacing it "with a fair and equitable enforcement process in which the NASD has the mandate to consider issues of proportionality and impose sanctions that are consistent with the facts and circumstances of each case." They state that, under this approach, offending contributions would not automatically trigger the two-year ban but instead would require the NASD "to craft a penalty that is proportional to the egregiousness of the violation."

MSRB Response. The MSRB determined not to eliminate the two-year ban on business that results when a dealer or MFP (or their controlled PACs) makes a contribution to an issuer official. In formulating rule G–37, the MSRB initially proposed a rule that would focus on the intent of the giver and be enforced like other MSRB rules through the normal inspection and review process of the enforcement agencies. Many commentators noted that such a rule would not halt pay-to-play practices because determining the intent of the giver would be impossible. Thus, the MSRB determined to make the ban on business an automatic result of certain contributions to issuer officials. In this way, the MSRB believed that pay-to-play practices would be halted, but MFPs still could contribute to those they were entitled to vote for, and could continue to volunteer their services to those elections. The ban is a way to ensure fair competition by avoiding conflicts of interest or the appearance of such a conflict.

Morgan Stanley complains that the two-year ban should be eliminated because it does not take into account the proportionality of the contribution to the business lost. Morgan Stanley also gives examples of MFPs making small contributions that resulted in bans on business but were not granted exemptions by NASD. As noted in rule G–37(i), the regulatory agencies have the ability to review a number of factors in making its decision on exemption requests and has the ability to make conditional or unconditional exemptions. Certain of the conditions noted include what procedures the firm had in place at the time of the contribution and the actions of the MFP. After reviewing these and other facts, in a number of cases exemptions were not given. In other cases, the ban was lifted, either in whole or in part. A review of the totality of the factors apparently led NASD to these results. If one of the factors had been the proportionality of the contribution to the business lost, one could argue that a contribution of any size should not result in a ban on business in a large issuing state. The MSRB believes that the addition of such a factor would push the process to be too lenient in contravention of the purposes of rule G–37.

Contributions by Bank PACs and Bank Holding Company PACs

The MSRB's Web site contains links to information provided to the Federal Election Commission ("FEC"), the Internal Revenue Service ("IRS") and state election offices.

Wilmer supports the Board's decision to continue excluding from rule G–37 contributions by bank PACs and BHC PACs. On the other hand, Morgan Stanley states that "bank affiliated dealers have the ability to circumvent the spirit of the Rule through contributions made by their bank affiliate or its PAC * * *. [T]his unintended loophole undermines the effectiveness of the Rule and places traditional broker-dealer firms at a competitive disadvantage." Morgan Stanley therefore recommends that the Board require disclosure on Form G–37 of contributions to issuer officials by dealer affiliated banks, bank PACs and BHC PACs. They believe that this "would bring much needed transparency to this area * * * [which] would serve to discourage attempts to circumvent the spirit of the Rule through the use of bank affiliates.

Seasongood believes that sufficient disclosure of bank PAC contributions does not currently exist under federal law. They state that certain Web sites (*e.g., http://www.fec.gov/finance_reports*) "are not user-friendly * * * which prevents someone from gleaning the information necessary to determine what PAC gave money to who." Moreover, the "information available is old and difficult to analyze." Seasongood believes that the MSRB should be the single repository for information relating to political contributions and municipal securities business.

MSRB Response. The MSRB determined not to require disclosure on Form G–37/G–38 of contributions to issuer officials from dealer-affiliated banks, bank PACs and BHC PACs. As noted above, the MSRB has published links on its website to information provided by the FEC, IRS and state election offices. Banks and their PACs contribute to state and local officials for many reasons that have nothing to do with acquiring municipal securities business. Requiring affiliated dealers to report these contributions to the MSRB would raise a potentially unfair implication that the contribution was intended to influence the official to exercise his or her discretion in favor of granting an affiliate municipal securities business, when in fact the contribution may have been made to further the bank's legitimate political activity and there may be no connection between the contribution and the affiliated dealer's business.

Moreover, to the extent that dealer-affiliated bank PACs are controlled by the dealer, or by an MFP of the dealer (even if the MFP is an employee of the bank), rule G–37 already obligates the dealer to report contributions made by the bank PAC. In a recent administrative proceeding, the SEC, in only its second rule G–37 enforcement action, held that contributions by a bank PAC, controlled by bank-employed MFPs, resulted in bans on business by the affiliated dealer.[6] When the dealer engaged in banned business, it violated rule G–37.

Finally, there already is substantial public reporting of PAC contributions. The FEC requires all corporate affiliated

[6] *See In the Matter of Fifth Third Securities, Inc.*, Exchange Act Release No: 46087, June 18, 2002.

PACs that are not established exclusively for state and local (*i.e.*, nonfederal) activity to register and report receipts and expenditures to the FEC. These reports are available for free and online from the FEC's Web site. The FEC's Web site provides the ability to view actual financial reports filed by PACs from 1993 to the present. These reports usually reflect contributions to federal campaigns. In addition, some reports reflect state and local campaign activity. The FEC website also provides researchers with the ability to electronically search the records for contributions to PACs by individuals, contributions made or received by a specific committee using various criteria, and contributions received by a specific campaign using a candidate's name, state, or party affiliation. While the information on the FEC website may be of limited use to persons searching for state and local contributions, the FEC website also links to state records offices that receive campaign finance reports and make them publicly available. These state records offices provide a wealth of information about contributions to state and local officials by corporations and their affiliated PACs. In addition, section 527 of the Internal Revenue Code, which provides tax-exempt status for political organizations, including PACs and federal, state and local committees, requires that political organizations that receive $25,000 or more in gross receipts and wish to be tax exempt under section 527 to file certain informational forms. Currently, it is possible to find additional information about bank PACs on the IRS Web site.

Constitutional Issues

NAST reiterates constitutional issues that the organization raised in 1993 when rule G–37 was first proposed. Specifically, NAST questions whether the rule violates the First Amendment because it is underinclusive or overinclusive, and "whether the rule is justified by a compelling governmental interest and whether it is narrowly tailored to achieve the goal."[7] NAST also raises again issues of federalism stating that, "[w]hile the scope and subject matter of the rule is the regulation of municipal securities dealers (and related professionals), it is also clear that the rule has a direct impact on state and local political speech and the conducting of state and local elections." NAST goes on to say that "extending the proposed rule to federal officials would remove the present inequity of having a federal rule which limits the fundraising ability of state and local officials running for national office, while leaving incumbent federal officials free to take political contributions and gifts from the securities industry."

MSRB Response. All of the constitutional issues raised by the NAST comment letter were addressed and rejected in both the SEC's 1994 rule G–37 Approval Order and the United States District Court of Appeals for the District of Columbia Circuit decision in *Blount v. Securities and Exchange Commission*.[8] In *Blount*, a unanimous panel of the District of Columbia Circuit found that rule G–37 was constitutional under a strict scrutiny analysis by finding that the rule was narrowly tailored to serve a compelling governmental interest.[9] The court found the purposes of the rule of protecting investors from fraud and protecting underwriters from unfair, corrupt practices to be substantial and compelling. The court also held that rule G–37 self-evidently advanced that interest, noting that,

> Underwriter's campaign contributions *self-evidently* create a conflict of interest in state and local officials who have power over municipal securities contracts and a risk that they will award the contracts on the basis of benefit to their campaign chests rather than to the government entity. (Emphasis added)

The court further concluded that "the link between eliminating pay-to play practices" and the goals of "perfecting the mechanism of a free and open market" were also "self-evident."

Finally, the court held that the rule was "narrowly tailored" to serve these compelling governmental interests.[10] Accordingly, the court concluded that the rule met the strict scrutiny test, noting that the rule is closely drawn and thus avoids unnecessary abridgement of First Amendment rights.[11]

NAST's federalism concerns were also addressed and rejected in the SEC's 1994 rule G–37 Approval Order. Specifically, the Commission stated that "the proposed rule change is a necessary and appropriate measure to prevent fraudulent and manipulative acts and practices and the appearance of fraud and manipulation in the municipal securities market by eliminating 'pay-to-play" arranged underwritings.' The Commission also noted that:

> The Commission believes that it is not necessary to extend the proposal to include contributions to candidates for federal office. The proposal addresses abusive political contributions to officials of issuers who may influence the selection of municipal securities underwriters. Because federal office holders do not influence the underwriter selection process, the Commission believes it would not be appropriate to include federal candidates under the rule's requirements. By the same token, the Commission also believes that any resulting hardship to candidates for federal office who are currently local officials is not a reason for eliminating these requirements.[12]

Ballot Referenda

One commentator, Mr. Hartenstein, raised the issue of contributions to ballot measure campaigns. He states that contributions to ballot measure campaigns are an inappropriate influence "in the selection of investment banks and other municipal market participants for the consulting work that is generated by successful local bond measures." He notes that, "[t]his influence is not unlike the pernicious effects that the rule is intended to curb." Mr. Hartenstein states that, "in the ballot measure context, investment banking firms may freely make money contributions in order to directly influence the appointed and elected public officials who decide which firms to hire for the public agency's bond business, without

[7] NAST continues, "[a]s an example of a potential First Amendment problem, NAST submits that the rule remains vulnerable to attack as being underinclusive in that it does not reach all the municipal securities professionals who participate in municipal securities transactions and who have a comparable incentive and opportunity to engage in unethical and anti-competitive behavior."

[8] In 1994, William Blount, the then Chairman of the Alabama Democratic Party and a municipal securities dealer, brought an action against the SEC alleging that rule G–37 was unconstitutional. *Blount v. SEC*, 61 F. 3d 938 (D.C. Cir. 1995), *cert. denied*, 116 S.Ct. 1351 (1996).

[9] In 1996, the Supreme Court denied Blount's petition for a writ of *certiorari* to review the Court of Appeal's decision.

[10] The court observed that the dealer is barred from engaging in business with the particular issuer for only two years after making the contribution, and from soliciting contributions only during the time it is engaged in or seeking business with the issuer associated with the donee. It noted further that municipal finance professionals are still able to contribute up to $250 per election to each official for whom they are entitled to vote, without triggering the business bar. Finally it observed that, as interpreted by the SEC, "the municipal finance professionals are not in any way restricted from engaging in the vast majority of political activities, including making direct expenditures for the expression of their views, giving speeches, soliciting votes, writing books, or appearing at fundraising events."

[11] The court also specifically rejected *Blount's* claims that rule G–37 is fatally underinclusive, noting that "a rule is struck for underinclusiveness only if it cannot 'fairly be said to advance any genuinely substantial governmental interest.'"

[12] The United States District Court of Appeals for the District of Columbia Circuit in *Blount* also summarily rejected as meritless petitioner's claim that rule G–37 had an effect on states' own election processes and, as such, usurps the states' power to control their own elections.

any fear of sanctions under the rule. This clear flouting of the spirit of the rule should be stopped, and it can be stopped if the rule is amended to extend to ballot and bond measure elections."

Mr. Hartenstein states that contributions to bond measure campaigns "can result in higher bond interest and bond issuance costs, and higher taxes, than if municipal finance professionals were selected without regard to the amount they will contribute to campaigns." He notes that it is "in the public interest to limit or prohibit contributions to local school bond election campaigns by interested private companies and individuals. This is an important corollary to the fundamental problem that rule G–37 is designed to address."

MSRB Response. The MSRB is reviewing this issue to determine whether any further action in this area is advisable.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such Proposed Rule Change, or

(B) Institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. Solicitation of Comments

Interested people are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Exchange Act. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0608. Copies of the submissions, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–2002–12 and should be submitted by April 29, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8447 Filed 4–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47608; File No. SR–NASD–2003–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Modify Computer-to-Computer Interface Fees for NASD Members

April 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2003 the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act[3] and rule 19b–4(f)(2) thereunder,[4] which renders the rule immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD rule 7010 to modify the fees paid by NASD members for bandwidth enhancements of Computer-to-Computer Interface ("CTCI") lines.[5] Nasdaq will implement this rule change on April 1, 2003.

The text of the proposed rule change is below. New text is in *italics*. Deleted text is in [brackets].

* * * * *

7000. Charges for Services and Equipment

A. Rule 7010. System Services

(a)–(e) No change.

(f) Nasdaq Workstation™ Service

(1) No change.

[(3)] *(2)* The following charges shall apply for each CTCI subscriber[*]:

Options	Price
Option 1: Dual 56kb lines (one for redundancy) and single hub and router.	$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).	$1600/month.
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	$8000/month.
Option 1, 2, or 3 with Message Queue software enhancement	Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%.
Disaster Recovery Option:	
Single 56kb line with single hub and router. (For remote disaster recovery sites only.)	$975/month.
Bandwidth Enhancement Fee (for T1 subscribers only)	$[4000]*600*/month per 64kb increase above 128kb T1 base[.].

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Nasdaq also submitted a proposed rule change to make an identical modification to the bandwidth enhancement fee paid by non-members. *See* Securities Exchange Act Release No. 47607 (April 1, 2003) (order granting Accelerated Approval to SR–NASD–2003–46).

Options	Price
Installation Fee	$2000 per site for dual hubs and routers; $1000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP-capable lines within a single location).	$1700 per relocation.

[* As reflected in SR–NASD–00–80 and SR–NASD–00–81, Nasdaq began replacing x.25 CTCI circuits with TCP/IP CTCI circuits in January 2001. Pursuant to SR–NASD–2001–87 and SR–NASD–2001–88, the fee for x.25 CTCI circuits—which had remained $200 per month per circuit—was increased to $1,275 per month per circuit from February 1, 2002 until the date of the termination of such circuits. Pursuant to SR–NASD–2002–96, users of x.25 CTCI circuits will receive a credit of $625 per month per circuit from February 1, 2002 until the date of circuit termination.]

(g)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's Trumbull, Connecticut processing facilities. Through CTCI, firms are able to enter trade reports into Nasdaq's Automated Confirmation Transaction Service ("ACT"), orders into Nasdaq's transaction execution systems, and mutual fund pricing data into Nasdaq's Mutual Fund Quotation Service. The CTCI network operates over the Enterprise Wide Network II ("EWN II") and provides connectivity over powerful 56kb and T1 data lines. In addition, the CTCI network uses the industry-standard Transmission Control Protocol/Internet Protocol ("TCP/IP"), a transmission protocol that is robust, efficient, and well known among the technical community.

As part of an ongoing effort to reduce costs incurred by Nasdaq's market participants to use its systems and services, Nasdaq proposes to reduce the fee for CTCI bandwidth enhancements[6] from $4,000 to $600 per month for each 64 kilobit ("kb") increment of additional bandwidth provided over a T1 CTCI line (above the base level of 128 kb). Nasdaq believes that the fee reduction will make it more economical for member firms who connect directly to Nasdaq to make the bandwidth upgrades needed to allow them to route higher volumes of orders to Nasdaq, as well as to build excess capacity that allows them to be prepared for volume spikes that occur during major market events.[7]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[8] in general, and with section 15A(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[10] and rule 19b–4(f)(2) thereunder[11] because it establishes or changes a due, fee, or other charge. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–43 and should be submitted by April 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8442 Filed 4–7–03; 8:45 am]

BILLING CODE 8010–01–P

[6] The term "bandwidth" refers to the amount of data that can be transmitted over a CTCI line in one second. Accordingly, bandwidth enhancements allow a CTCI subscriber to send and receive a greater volume of data over a line.

[7] Nasdaq also proposes to delete a footnote from NASD rule 7010(f) that describes pricing changes relating to x.25 CTCI circuits, which are no longer in use.

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47607; File No. SR–NASD–2003–46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. to Modify Computer-to-Computer Interface Fees for Non-NASD Members

April 1, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2003 the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Amendment No. 1 was filed on March 31, 2003.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010 to modify the fees paid by persons that are not NASD members for bandwidth enhancements of Computer-to-Computer Interface ("CTCI") lines.[4] Nasdaq proposes to implement the rule change on April 1, 2003.[5]

The text of the proposed rule change, as amended, is below. New text is in *italics*. Deleted text is in [brackets].

* * * * *

7000. Charges for Services and Equipment

A. Rule 7010. System Services

(a)–(e) No change.

(f) Nasdaq Workstation™ Service

(1) No change.

[(3)] (2) The following charges shall apply for each CTCI subscriber[*]:

Options	Price
Option 1: Dual 56kb lines (one for redundancy) and single hub and router	$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).	$1600/month.
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	$8000/month.
Option 1, 2, or 3 with Message Queue software enhancement	Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%.
Disaster Recovery Option:	
Single 56kb line with single hub and router. (For remole disaster recovery sites only.)	$975/month.
Bandwidth Enhancement Fee (for T1 subscribers only)	$[4000] *600*/month per 64kb increase above 128kb T1 base[.].
Installation Fee	$2000 per site for dual hubs and routers $1000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP-capable lines within a single location)	$1700 per relocation.

[*As reflected in SR–NASD–00–80 and SR–NASD–00–81, Nasdaq began replacing x.25 CTCI circuits with TCP/IP CTCI circuits in January 2001. Pursuant to SR–NASD–2001–87 and SR–NASD–2001–88, the fee for x.25 CTCI circuits " which had remained $200 per month per circuit " was increased to $1,275 per month per circuit from February 1, 2002 until the date of the termination of such circuits. Pursuant to SR–NASD–2002–96, users of x.25 CTCI circuits will receive a credit of $625 per month per circuit from February 1, 2002 until the date of circuit termination.]

(g)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's Trumbull, Connecticut processing facilities. Through CTCI, firms are able to enter trade reports into Nasdaq's Automated Confirmation Transaction Service ("ACT"), orders into Nasdaq's transaction execution systems, and mutual fund pricing data into Nasdaq's Mutual Fund Quotation Service. The CTCI network operates over the Enterprise Wide Network II ("EWN II") and provides connectivity over powerful 56kb and T1 data lines. In addition, the CTCI network uses the industry-standard Transmission Control Protocol/Internet Protocol ("TCP/IP"), a transmission protocol that is robust, efficient, and well known among the technical community.

As part of an ongoing effort to reduce costs incurred to use its systems and services, Nasdaq proposes to reduce the fee for CTCI bandwidth enhancements[6] from $4,000 to $600 per month for each 64 kilobit ("kb") increment of additional bandwidth provided over a T1 CTCI line (above the base level of 128 kb). Nasdaq has also proposed an identical pricing

[1] 5 U.S.C. 778s(b)(1).

[2] 17 CFR 240.19b–4

[3] *See* letter from John M. Yetter, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division") Commission, dated March 28, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq proposed to implement the proposed rule change on April 1, 2003 and requested accelerated approval of the proposal.

[4] Nasdaq also submitted a proposed rule change to make an identical modification to the bandwidth enhancement fee paid by NASD members. *See* Securities Exchange Act Release No. 47608 (April 1, 2003) (Notice of Filing and Immediate Effectiveness of SR–NASD–2003–43).

[5] *See* Amendment No. 1, *supra* note 3.

[6] The term "bandwidth" refers to the amount of data that can be transmitted over a CTCI line in one second. Accordingly, bandwidth enhancements allow a CTCI subscriber to send and receive a greater volume of data over a line.

decrease for NASD member firms[7] and now proposes to offer this fee reduction to non-NASD members that use CTCI.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[9] in general, and with Section 15A(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–46 and should be submitted by April 29, 2003.

[7] *See supra* note 4.

[8] Nasdaq also proposes to delete a footnote from NASD Rule 7010(f) that describes pricing changes relating to x.25 CTCI circuits, which are no longer in use.

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(5).

IV. Commission's Finding and Order Granting Accelerated Approval of Proposed Rule Changes

After careful review the Commission finds that the proposed rule change and Amendment No. 1 are consistent with the requirements of Section 15A(b)(5) of the Act[11] because it provides for the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using any facility or systems which the association operates.[12] Specifically, the proposed fee reduction makes CTCI bandwidth enhancements more economical to all market participants.

The Commission notes that Nasdaq has also submitted a proposed rule change to make an identical decrease to the bandwidth enhancement fee paid by NASD members that use CTCI.[13] Although this proposal became effective upon filing with the Commission on March 20, 2003, Nasdaq has proposed to delay the implementation of the fee decrease for NASD members until April 1, 2003. Similarly, Nasdaq has proposed to implement the fee decrease on April 1, 2003 for non-NASD members who use CTCI. Therefore, Nasdaq has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change will allow for the equitable treatment of members and non-NASD members by allowing Nasdaq to implement the fee reduction for both NASD members and non-NASD members on April 1, 2003. Accordingly, the Commission finds good cause, consistent with Section 15A(b)[14] and Section 19(b)(2) of the Act[15] to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NASD–2003–46) and Amendment No. 1 thereto are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8443 Filed 4–7–03; 8:45 am]

BILLING CODE 8010–01–U

[11] 15 U.S.C. 78*o*–3(b)(5).

[12] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] *See supra* note 4.

[14] 15 U.S.C. 78*o*–3(b).

[15] 15 U.S.C. 78s(b)(2).

[16] *Id.*

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47612; File No. SR–NASD–2003–54]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. To Modify Nasdaq Test Facility Pricing Under Rule 7050 for Persons Who Are Not NASD Members

April 1, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. On April 1, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify Nasdaq Test Facility pricing under Rule 7050 for persons that are not NASD members.[4] Nasdaq proposes to implement the proposed rule change on April 1, 2003. The text of the proposed rule change is below. Proposed new

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq requested accelerated approval of the proposed rule change. See Letter dated March 31, 2003, from Alex Kogan, Associate General Counsel, Nasdaq to Katherine England, Assistant Director, Division of Market Regulation, Commission.

[4] Nasdaq is also submitting an identical proposed rule change applicable to members. *See SR–NASD–2003–53.*

language is in *italics;* proposed deletions are in [brackets].

* * * * *

7050. Other Services

(a) No change.
(b) No change.
(c) No change.
(d) Nasdaq Testing Facility [(NTF)]

(1) Subscribers that conduct tests of their computer-to-computer interface (CTCI), NWII application programming interface (API), or market data vendor feeds through the Nasdaq Testing Facility (NTF) [of The Nasdaq Stock Market, Inc. (Nasdaq)] shall pay the following charges:

\$285/hour—For *an Active Connection for* CTCI/NWII API testing [between 9 a.m. and 5 p.m. E.T. on business days]*during the normal operating hours of the NTF;*

\$75/hour—*For an Idle Connection for CTCI/NWII API testing during the normal operating hours of the NTF, unless such an Idle Connection is over a dedicated circuit;*

No charge—For an Idle Connection for CTCI/NWII API testing if such an Idle Connection is over a dedicated circuit during the normal operating hours of the NTF;

\$333/hour—For CTCI/NWII API testing *(for both Active and Idle Connections)* at all [other] times *other than the normal operating hours of the NTF* [on business days, or on weekends and holidays].

(2) *(A) An "Active Connection" commences when the user begins to send and/or receive a transaction to and from the NTF and continues until the earlier of disconnection or the commencement of an Idle Connection.*

(B) An "Idle Connection" commences after a Period of Inactivity and continues until the earlier of disconnection or the commencement of an Active Connection. If a Period of Inactivity occurs immediately after subscriber's connection to the NTF is established and is then immediately followed by an Idle Connection, then such Period of Inactivity shall also be deemed a part of the Idle Connection.

(C) A "Period of Inactivity" is an uninterrupted period of time of specified length when the connection is open but the NTF is not receiving from or sending to subscriber any transactions. The length of the Period of Inactivity shall be such period of time between 5 minutes and 10 minutes in length as Nasdaq may specify from time to time by giving notice to users of the NTF.

(3) The foregoing hourly fees shall not apply to market data vendor feed testing, or testing occasioned by:

(A) renew or enhanced services and/or software provided by Nasdaq;[or]

(B) modifications to software and/or services initiated by Nasdaq in response to a contingency[.]; or

(C) testing by a subscriber of a Nasdaq service that the subscriber has not used previously, except if more than 30 days have elapsed since the subscriber commenced the testing of such Nasdaq service.

([3]4) Subscribers that conduct CTCI/API or market data vendor feed tests using a dedicated circuit shall pay a monthly fee, in addition to any applicable hourly fee described in section (d)(1) above, in accordance with the following schedule:

Service	Description	[Proposed] Price
NTF Market Data	Test Market Data Vendor Feeds over a 56kb dedicated circuit	\$1,100/circuit/month.
NTF NWII API	NWII API service to an onsite test SDP over a 56kb dedicated circuit	\$1,100/circuit/month.
NTF CTCI	CTCI service over a 56kb dedicated circuit	\$1,100/circuit/month.
NTF Test Suite	NWII API service and CTCI service over two 56kb circuits (128 kb)	\$1,800/2 circuits/month.
NTF Circuit	Installation of any service option including SDP configuration	\$700/circuit/installation.

([4]5) New NTF subscribers that sign a one-year agreement for dedicated testing service shall be eligible to receive 90-calendar days free dedicated testing service.

([5]6) "New NTF subscribers" are subscribers that

(A) have never had dedicated testing service; or

(B) have not had dedicated testing service within the last 6 calendar months.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change seeks to make certain modifications to the pricing of testing services provided through the Nasdaq Test Facility ("NTF"). The objectives of the pricing changes are to reduce barriers to entry for new Nasdaq subscribers and to address feedback from subscribers regarding current test fees. In some instances, the current charges are not cost efficient for subscribers, and as a consequence, firms may choose not to test through NTF or elect not to connect to Nasdaq's systems at all. The proposed rule change seeks to encourage subscribers to make greater use of Nasdaq services.

The proposed rule distinguishes between active and idle connections to the NTF. An active connection is in effect while transactions are actually being transmitted and for a brief period of inactivity thereafter. The existing hourly rate (\$285 per hour) remains unchanged with respect to the times when the connection is active during the NTF's normal operating hours. However, if no transactions are being transmitted over an open connection, then, after a certain period of inactivity, that connection would be deemed idle and a newly established lower rate (\$75 per hour) will apply. Initially, the period during which a connection needs to remain inactive before it will be deemed idle will be 10 minutes. However, Nasdaq reserves the right to adjust this time within a range of 5 to 10 minutes by giving notice of the change to NTF subscribers. The idle connection rate will not apply outside of NTF's normal operating hours, when the existing rate (\$333 per hour) remains unchanged for both active and idle connections.

The proposed rule also eliminates idle connection charges during the NTF's normal operating hours for NTF subscribers with dedicated circuit connections and waives hourly charges during the times over an initial 30-day period when a subscriber is using NTF to test a Nasdaq service that the subscriber has not used previously.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[5] including section 15A(b)(5) of the Act,[6] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. By adopting a pricing structure that is responsive to subscriber needs and market demands, the proposed rule supports efficient use of existing systems and ensures that the charges associated with such use are allocated equitably.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–54 and should be submitted by April 29, 2003.

V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, the requirements of section 15A(b)(5) of the Act,[7] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The Commission believes that the proposed new pricing structure should provide users with more flexible and economically efficient access to the NTF. Additionally, the Commission notes that the proposed pricing structure is identical to that proposed to be applied to NASD members.[8] The Commission further finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval is appropriate in that it will ensure that persons who are not NASD members receive the benefits of a more flexible pricing structure for use of the NTF as soon as possible.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–2003–54) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8520 Filed 4–7–03; 8:45 am]

BILLING CODE 8010–01–U

[5] 15 U.S.C. 78o–3.
[6] 15 U.S.C. 78o–3(5).
[7] 15 U.S.C. 78o-3(5).
[8] *See* SR–NASD–2003–53, *supra*, n. 4.
[9] 15 U.S.C. 78s(b)(2).
[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47603; File No. SR–NSCC–2003–02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Creating New Cost Basis Reporting Service

March 31, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on January 24, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grand accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change creates a new Cost Basis Reporting Service ("CBRS") that will facilitate the automated exchange of cost basis information regarding a customer account transfer.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).
[2] The Commission has modified the text of the summaries prepared by NSCC.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is add a new Rule 30 to NSCC's Rules and Procedures ("Rules") in order to create a new CBRS that will facilitate the automated exchange of cost basis information related to a customer account transfer.

NSCC has developed a cost basis reporting service to augment its current Automated Customer Account Transfer Service ("ACATS") processing. Cost basis reporting is useful to customers for tax reporting purposes. Cost basis information is currently captured and entered into many firm's portfolio systems manually. NSCC was requested to centralize and standardize the transmission of cost basis information.

CBRS will be available to NSCC members and qualified securities depositories acting on behalf of their participants and will permit them to transmit between themselves on an automated basis cost basis information with respect to accounts that have previously been transferred via ACATS. Participants may send cost basis data to NSCC multiple times during the day up to a predetermined cutoff.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [3] and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC has notified its member of the terms of the proposed service by an Important Notice on November 4, 2002. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that NSCC's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F)[4] of the Act. Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Providing an automated and standardized method of transmitting cost basis information related to securities accounts that are transferred from one broker-dealer to another through ACATS should reduce NSCC's members' administrative burdens and as such should promote the prompt and accurate clearance and settlement of securities transactions.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow NSCC to implement this new service in time for it to provide benefits for brokers, dealers, and investors for the current tax filing period and will also enable NSCC to implement CBRS in accordance with its systems implementation schedule.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549–0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-NSCC–2003–02. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at NSCC's principal office. All submissions should refer to File No. SR–NSCC–2003–02 and should be submitted by April 29, 2003.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2003–02) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8444 Filed 4–7–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47614; File No. SR–NYSE–2002–55]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Regarding the Dissemination of Liquidity Quotations

April 2, 2003.

I. Introduction

On October 28, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and rule 19b–4 thereunder,[2] a proposed rule change to amend its rules to permit the display and use of quotations in stocks traded on the NYSE to show additional depth in the market for those stocks ("Liquidity Quote Proposal"). On December 20, 2002, NYSE filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for public comment in the **Federal Register** on January 2, 2003.[4] On March 20, 2003, NYSE filed Amendment No. 2 to the proposed rule change.[5] The Commission has received 12 substantive comment letters on the proposed rule change, including the NYSE's response addressing the commenters' concerns.[6] The Commission has substantial concern that the proposed rule change is not consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NYSE. As an alternative to instituting proceedings to determine whether the proposed rule change should be disapproved, 15 U.S.C. 78s(b)(2)(B), this order approves the proposed rule change, as amended, conditional on the delayed effectiveness of the proposal as described below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 19, 2002 ("Amendment No. 1"). Amendment No. 1 replaces the filing in its entirety and provides, in the proposed rule text and the purpose section of the filing, further details on the display of additional quotations in stocks to show market depth.

[4] Securities Exchange Act Release No. 47091 (December 23, 2002), 68 FR 133.

[5] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 20, 2003 ("Amendment No. 2"). In Amendment No. 2, the NYSE removes paragraph (c) of NYSE Rule 1001, which currently provides that if executions of auto ex orders have traded with all trading interest reflected in the Exchange's published bid or offer, the Exchange will disseminate a bid or offer at that price of 100 shares until the specialist requites the market. The NYSE's proposed autoquoting feature in NYSE Rule 1000, which will systematically update a published quotation immediately reflecting the next best bid or offer on the specialist's book, will have the effect of superceding this provision. This was a technical amendment and is not subject to notice and comment.

[6] *See* letters from Thomas F. Secunda, Bloomberg, dated December 16, 2002 ("Bloomberg Letter I"); W. Hardy Callcott, Senior Vice President and General Counsel, Charles Schwab & Co., Inc., dated January 22, 2003 ("Schwab Letter"); Craig S. Tyle, General Counsel, Investment Company Institute, dated January 23, 2003 ("ICI letter"); Thomas F. Secunda, Bloomberg, dated January 23, 2003 ("Bloomberg Letter II"); Jeffrey T. Brown, Senior Vice President, Secretary and General Counsel, Cincinnati Stock Exchange, Inc., dated January 24, 2003 ("CSE Letter"); Meyer S. Frucher, Chairman and Chief Executive Officer, Philadelphia Stock Exchange, Inc., dated February 27, 2003 ("Phlx Letter"); Kevin M. Foley, Bloomberg, dated February 26, 2003 ("Bloomberg Letter III"); and Paul Merolla, Executive Vice President and General Counsel, Instinet Corp., dated March 14, 2003 ("Instinet Letter"), to Jonathan G. Katz, Secretary, Commission. *See also* letters from Richard P. Bernard, Executive Vice President and General Counsel, NYSE, to Annette Nazareth, Director, Division, Commission, dated February 7, 2003 ("NYSE Letter"); Richard A. Grasso, Chairman and Chief Executive Officer, NYSE, to William H. Donaldson, Chairman, Commission, dated March 11, 2003 ("Grasso Letter I") and March 20, 2003 ("Grasso Letter II"); and Greg Babyak, Counsel to Bloomberg, to William H. Donaldson, Chairman, Commission, dated March 26, 2003 ("Bloomberg Letter IV"). *See also* emails from Richard Bernard, Executive Vice President and General Counsel, NYSE, to Annette Nazareth, Director, Division, Commission, *et al.*, dated February 11, 2003, February 12, 2003, February 14, 2003, and March 4, 2003. Luis de la Torre, Counsel to Commissioner Goldschmid, Brian A. Stern and Mary S. Head, Counsels to Commissioner Glassman, wrote memoranda to the official file documenting several meetings.

II. Description of the Liquidity Quote Proposal

A. Exchange Rules Affecting Dissemination of Liquidity Quote

The Exchange is required by Rule 11Ac1–1 under the Act [7] to disseminate the highest bid and lowest offer in its market (*i.e.*, the "best quote" available for dissemination). The Exchange believes that decimal trading has resulted in many more price intervals that can be the best quote, with the result that the highest bid and lowest offer may not reflect the true depth of the market at prices reasonably related to the last sale.

The Exchange is proposing to address this issue by providing for the dissemination, in selected securities as appropriate, of a "liquidity bid" and a "liquidity offer," which would reflect aggregated Exchange trading interest at a specific price interval below the best bid (in the case of a liquidity bid) or at a specific price interval above the best offer (in the case of a liquidity offer).

The specific price interval above or below the best bid and offer, as well as the minimum size of the liquidity bid or offer, would be established by the specialist in the subject security. Liquidity bids and offers would include orders on the specialist's book, trading interest of brokers in the trading crowd, and the specialist's dealer interest, at prices ranging from the best bid (offer) down to the liquidity bid (up to the liquidity offer).

According to the Exchange, it would not be mandatory to disseminate a separate liquidity bid and/or offer. In certain instances, depending on the depth of the market, the Exchange represents that the best bid (offer) and the liquidity bid (offer) may converge. In such case, the Exchange would make available the same price and size both as the best bid (offer) over the Consolidated Quotation System ("CQS") and as the liquidity bid (offer) via the Exchange's Common Access Point ("CAP"). In any event, all disseminated bids and offers (best and liquidity) would be deemed to be "firm quotations" that are available for interaction with trading interest.

Orders seeking to trade against the best and liquidity bids/offers would be executed in accordance with NYSE auction procedures and NYSE procedures governing the execution of XPress orders.[8] Proposed NYSE rule 60 includes details on how market and limit orders, as well as XPress orders, would be executed against best and liquidity bids and offers.

First, with respect to market orders, NYSE proposes that when a liquidity bid is published in addition to a best bid, a market order to sell of a size greater than the size of the best bid will be executed to the extent possible against the best bid [9] with the balance of the sell order being executed at the higher price of the liquidity bid or at the price of other orders on the book below the best bid, but above the liquidity bid.[10]

NYSE is proposing that similar procedures would be used for the execution of limit orders when there are liquidity bids and offers as well as best bids and offers. In that regard, when a liquidity bid is published in addition to a best bid, a limit order to sell of a size greater than the size of the best bid, but which is limited to a price executable at or above the liquidity bid price, would be executed first against the best bid (or crossed as explained above), with the balance of the order being executed within its limit price at a price at which orders on the book will not be traded through.[11]

[7] 17 CFR 240.11Ac1–1.

[8] An XPress order is an order of a specified minimum size that is to be executed against a displayed XPress quote, or at an improved price, if obtainable. In order to be indicated as an XPress quote, a published bid or offer must be for no less than the minimum share size, currently 15,000 shares, at the same price for no less than 15 seconds.

[9] The order will be crossed by the specialist when he or she is acting as agent for the order using the auction market procedures in NYSE Rule 76, which calls for the member to publicly bid and offer on behalf of the orders before making a transaction with him- or herself.

[10] For example, assume the best bid is $20.10 for 200 shares, while the liquidity bid is $20.05 for 10,000 shares, with no other bids in between the best and liquidity bids. If a market order to sell 1000 shares is received by the specialist, 200 shares would trade at the best bid price of $20.10, and 800 shares would trade at $20.05, the liquidity bid price, unless the specialist in crossing the order obtains price improvement for it. If there were other bids on the book between the best and liquidity bids, the sell market order could receive executions at those prices. For example, if, in addition to the best and liquidity bids of $20.10 and $20.05 in the previous example, there were also a bid of $20.07 for 300 shares, the market order to sell would be executed as follows—200 shares at the best bid of 20.10, 300 shares at $20.07 and 500 shares at the liquidity bid of $20.05, unless the specialist in crossing the order obtains price improvement for it. Market orders to buy would follow the same principles using the best and liquidity offers.

[11] For example, assume there is a best bid for 200 shares of $20.10 and a liquidity bid of $20.05 for 10,000 shares. In addition, there is a bid for 500 shares at $20.07. If a limit order to sell 1,000 shares at $20.05 is received by the specialist, it would be executed as follows—200 shares at $20.10, 500 shares at $20.07 and 300 shares at the liquidity bid of $20.05. In all these examples, however, as with market orders, the specialist would follow NYSE auction market crossing procedures in an effort to obtain price improvement for the order. Limit orders to buy would follow the same principles.

Third, regarding the execution of XPress Orders,[12] the Exchange proposes to amend Supplementary Material .40 of NYSE rule 13 ("Definitions of Orders") to provide that a liquidity bid or offer, regardless of size, will be XPress eligible if it has been published for at least 15 seconds. The Exchange expects that the size of Liquidity Quote bids and offers will be of a size that represents significant interest for a stock and will, in many stocks, be greater than 15,000 shares. However, where the share size of the liquidity bid or offer does not equal 15,000 shares, the Exchange believes that institutional interest in trading at the liquidity price may still be present, and that utilizing the XPress trading protocol will be an appropriate way for this interest to access such displayed greater liquidity. Liquidity Quote will still be required to be at the same liquidity price for at least 15 seconds to be eligible as a quotation against which an XPress order may be executed.

Further, the Exchange proposes to amend NYSE rule 60 to provide that an XPress order may be priced at either the best bid or offer price if XPress eligible (*i.e.*, for at least 15,000 shares for at least 15 seconds), or priced at the liquidity bid or offer price, if, again, XPress eligible. An XPress order to buy priced at the liquidity offer price will be either executed at that price, or a price that will allow an XPress order to be filled without trading through orders on the book. The Exchange represents that specialists will seek price improvement for XPress orders in accordance with the Exchange's procedures for the execution of XPress orders.[13]

B. Automated Dissemination of Quotations

In conjunction with the dissemination of dual quotations, the Exchange proposes to provide for the automated dissemination of the NYSE best bid and offer as SuperDOT limit orders are received systemically. This is a change to the Exchange's current practice whereby specialists are responsible for disseminating bids and offers. Proposed NYSE rule 60 would provide that the Exchange will "autoquote" the NYSE's highest bid or lowest offer whenever a limit order is transmitted to the specialist's book at a price higher (lower) than the previously disseminated highest (lowest) bid (offer). When the NYSE's highest bid or lowest offer has been traded with in its entirety, the Exchange would then autoquote a new bid or offer reflecting the total size of orders on the specialist's book at the next highest (in the case of a bid) or lowest (in the case of an offer) price.[14]

In any instance where the specialist disseminates a proprietary bid (offer) of 100 shares or more on one side of the market, the bid or offer on that side of the market shall not be autoquoted. In such an instance, any better-priced limit orders received by the specialist shall be manually displayed, unless they are executed at a better price in a transaction being put together in the auction market at the time that the order is received.

In conjunction with autoquoting of bids and offers, NYSE Rule 1000 ("Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation") would be amended to provide that a NYSE Direct+® ("NYSE Direct+") order[15] equal to or greater than the size of the published bid/offer will exhaust the entire bid/offer, rather than decrease it to 100 shares as is the case today.[16] The purpose of this change is to facilitate the autoquoting of the next highest bid/lowest offer. The unfilled balance of the NYSE Direct+ order would be displayed in the auction market as a SuperDOT limit order.

The Exchange believes that the proposed automated dissemination of the best bid and offer also suggests a need to amend Supplementary Material .30 to NYSE rule 123A ("Miscellaneous Requirements") to enable specialists to trade percentage orders against incoming SuperDOT orders.[17] With the automating of SuperDOT bids and offers, specialists would not be permitted to interact with such orders on behalf of percentage orders as they do today because they cannot "reach across the market" to effect smaller size trades. Thus, the Exchange is proposing to amend NYSE rule 123A.30 to permit specialists to "reach across the market" with percentage orders to effect trades of less than 10,000 shares or a quantity of stock having a market value of less than $500,000.[18]

C. NYSE Liquidity Quote Service Agreements

Liquidity Quote would be part of the NYSE OpenBook data feed service.[19] Recipients of the Liquidity Quote data would be subject to the terms of the existing NYSE "vendor" agreement, and end-users that receive the Liquidity Quote data from vendors or broker-dealers would continue to be subject to the existing "subscriber" agreement. The vendor agreement generally authorizes a data feed recipient to provide a display of the Liquidity Quote data for retransmission, or to distribute the Liquidity Quote data internally.[20] The vendor agreement prohibits data feed recipients from enhancing, integrating, or consolidating its market data with data from other market centers for retransmission.[21] In addition, NYSE has imposed a "window requirement" as part of its service agreements, which requires that the Liquidity Quote data be displayed in a separate window, or with a line drawn between its data and other markets' data.[22]

[12] *See supra* note .

[13] The Exchange proposes that if a specialist receives two XPress orders within a nearly simultaneous time frame, one priced at the best bid (offer), and the other priced at the liquidity bid (offer), both orders will be executed in accordance with the Exchange's procedures for the execution of XPress orders. Both orders will also be exposed to the trading crowd for price improvement. Those portions of the orders that do not receive price improvement will be executed against the XPress bids (offers), which may not then be traded against by other members pursuant to the Exchange's procedures for the execution of XPress orders.

[14] NYSE Rule 60 would also be amended to provide that autoquoting will include: (i) adding size to the best and liquidity bids/offers as additional limit orders are received; and (ii) reducing the size of the best and liquidity bids/offers as limit orders on the book are executed or cancelled. However, the Exchange notes that *de minimis* increases or decreases in the size of limit orders on the book, as determined by the specialist, will not result in automated augmenting or decrementing of the size of the liquidity bid or offer where such bid or offer continues to reflect the actual size of limit orders on the book.

[15] NYSE Direct+ provides for the automatic execution of limit orders of 1099 shares or less against the Exchange's disseminated bid or offer. *See* NYSE Rules 1000–1005.

[16] *See* Amendment No. 2, *supra* note 5.

[17] Currently, specialists may bid or offer (within $0.10 of the last sale) on behalf of a percentage order, and an incoming SuperDOT order may then trade against such bid or offer. The specialist may not "reach across the market" to trade a percentage order against a bid or offer in a "destabilizing" transaction (bid above the last sale or sell below the last sale) unless the trade is for at least 10,000 shares or a quantity of stock with a market value of at least $500,000.

[18] According to the Exchange, specialists could not "reach across the market" more than $0.10 from the last sale to effect these smaller size trades if the trade would be destabilizing. This $0.10 limitation is the same as the current limitation on making destabilizing bids or offers against which incoming orders may trade.

[19] For further details on the NYSE OpenBook service, *see* Securities Exchange Act Release No. 45138 (December 7, 2001), 66 FR 66491 (December 14, 2001) (SR–NYSE–2001–42).

[20] For further details on the vendor and subscriber agreements, *see id.* ("Order Approving a Proposed Rule Change by NYSE Establishing the Fees for NYSE OpenBook").

[21] *See* NYSE Letter, at 3 (stating in FN2, "[o]ur vendor contacts provide: '[Vendor] shall not cause * * * the displays of [NYSE Depth] Information that [Vendor] provides to (end-users] to be integrated with other market information that any source other than NYSE makes available [For example, Vendor] shall not permit the displays * * * to be consolidated with limit orders [of] any other market * * *'").

[22] *Id.*, at FN2 ("* * * Vendor [may display] one or more other entities' limit orders side-by-side with, or on the same page as, displays of OpenBook Information.").

III. Summary of Comments

The Commission received 12 comment letters on the proposal.[23] All of the commenters generally supported the idea of NYSE's Liquidity Quote proposal. The commenters believed that with the advent of decimalization, the highest bid and lowest offer no longer reflects the true depth of the market. However, there were several issues raised by the commenters regarding the form and use of Liquidity Quote data.

First, four commenters believed that the Commission should require the NYSE to submit for public comment the vendor and subscriber agreements for the Liquidity Quote service or, at minimum, a description of the relevant terms of the agreements for Commission review.[24] Three commenters believed that the contracts constituted SRO rules and, as such, the contracts should be filed as a proposed rule change for Commission approval, pursuant to section 19(b)(2) of the Act.[25]

Second, three commenters also believed that the restrictions of the vendor agreements are inconsistent with sections 6 and 11A of the Exchange Act.[26] Specifically, the commenters opposed NYSE's contractual restrictions on the integration, display, and redistribution of Liquidity Quote data, and stated that the restrictions were inconsistent with the standards of a national market system set forth in section 11A of the Exchange Act because access to this "critical" data should be offered on a reasonable and nondiscriminatory basis.

Third, three commenters said that the downstream restrictions of NYSE's vendor agreements would create a bifurcated market for data and transparency. These commenters believe that large broker-dealers would have the internal ability to reformat the NYSE data feed and take full advantage of the Liquidity Quote data. Conversely, small- and medium-sized broker-dealers that lack the internal resources to reformat the Liquidity Quote data feed would have to rely on market data vendors. The commenters concluded that the downstream restrictions of NYSE's vendor agreements impose unfair access restrictions on small- and medium-sized market participants that are financially unable to purchase a data feed directly from the NYSE and thus rely on vendors to provide this market information for a reasonable fee.[27]

Fourth, one commenter asserted that the downstream restrictions prevent market data vendors from providing value-added services to their customers, in contravention of the Display Rule.[28] This commenter believed that enhancing the format of the Liquidity Quote data and integrating it with data from other markets, or with analytics that use the data, would create a more useful product available for redistribution to its customers.[29] The commenter also believed that the vendor restrictions on integration are anticompetitive in contravention of section 6(b)(8) of the Exchange Act,[30] in that they impair other market centers from viewing Liquidity Quotes in tandem with the consolidated quote display, and inhibit competition with the NYSE for order flow in NYSE-listed securities.[31]

In response to the commenters' concerns about the Liquidity Quote data restrictions, NYSE stated that it intends to compete in the market for finished data products by producing and disseminating a distinguishable product identified to the NYSE. Therefore, to preserve NYSE's branding goal of an independent display of depth data, the NYSE's vendor agreements restrict the integration of Liquidity Quote data with other markets' data and preclude a vendor from displaying rows or columns of other markets' data intermingled with Liquidity Quote data.

In response to commenters concerns regarding vendors' ability to provide value-added services to its customers, NYSE argued that the Commission should not prohibit NYSE from restricting the way in which vendors can package Liquidity Quote data. NYSE asserted that such restrictions allow the NYSE to compete with vendors in the market for finished data products, as well as compete with the other market centers for sizeable order flow. In addition, NYSE stated that the integration of Liquidity Quote data with other markets' quotation information would be misleading, in that its firm and executable liquidity bid or offer would be commingled with "fleeting" 100-share best bids and offers of its competitors.

IV. Discussion

Section 19(b) of the Act[32] requires the Commission to approve the proposed rule change filed by the NYSE if the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. After careful review, the Commission finds, for the reasons discussed below, that NYSE's proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a national securities exchange, but only if the NYSE does not apply the restrictions on data integration currently contained in the vendor agreements.[33]

Specifically, the Commission finds that the Liquidity Quote proposal, when viewed apart from the vendor agreements, is consistent with sections 6(b)(5)[34] and 6(b)(8)[35] of the Act. Section 6(b)(5) of the Act[36] requires, among other things, that the rules of NYSE be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Section 6(b)(8) of the Act[37] requires, among other things, that the Exchange's rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the Liquidity Quote proposal, when viewed apart from the NYSE vendor agreements, will substantially increase the amount of information available to the public and market participants with respect to quotations for, and transactions in, certain specified securities listed on the Exchange, consistent with sections 6(b)(5) and 6(b)(8) of the Act. In a decimal market environment, the highest bid and lowest offer of an exchange may not reflect where the actual market is, particularly for sizeable orders, because the increase in the number of price increments causes less depth to be available at each price point. Accordingly, the dissemination, in selected securities, of a liquidity bid or offer reflecting NYSE aggregate trading interest, including limit orders, trading crowd interest, and

[23] *See supra* note 6.

[24] *See* Schwab Letter; Bloomberg Letter II; CSE Letter; and Bloomberg Letter III.

[25] 15 U.S.C. 78s(b). *See* Bloomberg Letter I, II, III; CSE Letter; and Schwab Letter.

[26] Schwab Letter; Bloomberg Letter II; and CSE Letter.

[27] *Id.* The Schwab and Bloomberg II Letters also noted that the fees charged to retail investors for liquidity quote data are unduly excessive, discriminatory, and anticompetitive. *See* Schwab Letter and Bloomberg Letter II.

[28] 17 CFR 240.11Ac1–2. *See* Bloomberg Letter II.

[29] Bloomberg Letter II.

[30] 15 U.S.C. 78f(b)(8).

[31] Bloomberg Letter II.

[32] 15 U.S.C. 78s(b).

[33] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78f(b)(5).

[35] 15 U.S.C. 78f(b)(8).

[36] 15 U.S.C. 78f(b)(5).

[37] 15 U.S.C. 78f(b)(8).

specialist proprietary interest, at a price interval below the best bid (in the case of a liquidity bid), or above the best offer (in the case of a liquidity offer), is consistent with the protection of investors and the public, when viewed apart from the NYSE vendor agreements.[38]

However, nine commenters criticized the provisions of the NYSE's vendor and subscriber agreements for Liquidity Quote that preclude data feed recipients from enhancing, integrating, or consolidating its market data with data from other market centers for retransmission. While these agreements have not been filed with the Commission under section 19(b)(2) of the Act,[39] because these comments directly relate to the manner in which the Liquidity Quote proposal will operate, the Commission believes that it can and must consider these comments in determining whether, or on what terms, to approve or institute disapproval proceedings with respect to the Liquidity Quote proposal. In other words, in assessing whether the Liquidity Quote is consistent with the requirements of section 6, we must measure against the standards of section 6, not only the literal terms of the Liquidity Quote proposal, but also the operation of Liquidity Quote as governed by the provisions of the vendor agreements.

Section 6(b), in pertinent part, requires that the Liquidity Quote proposal, viewed in the context of the restrictions contained in the vendor agreements, (1) "foster cooperation and coordination with persons engaged in * * * processing information with respect to, and facilitating transactions in securities;"[40] (2) "remove impediments to and perfect the mechanism of a free and open market and a national market system;"[41] (3) not be "designed to permit unfair discrimination between customers; * * *"[42] and (4) "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title."[43] With respect to the first two considerations, we look for guidance to section 11A.

Section 11A of the Act[44] provides the Commission with broad powers over exclusive processors of market information[45] and thus the Commission is responsible for assuring that exclusive processors function in a manner that is neutral with respect to all market centers, all market makers, and all private firms.[46] In particular, section 11A(a)(1)(C)(ii) and (iii) of the Act[47] direct the Commission, in the interest of the public, for the protection of investors and maintenance of fair and orderly markets, to assure: (1) the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities; and (2) fair competition among brokers and dealers, among exchange markets, and between exchange and other markets.[48] The NYSE proposes to disseminate its Liquidity Quota data on a voluntary basis; however, even absent a Commission rule requiring dissemination, if the NYSE chooses to disseminate Liquidity Quote data, it must do so on terms that are fair and not unreasonably discriminatory, and in accordance with the objectives of a national market system, as provided by section 11A of the Act.[49]

In this context, the Commission is concerned that the restrictions in the vendor agreements that preclude vendors from providing an enhanced, integrated, or consolidated data product to customers raise such significant fair and reasonable access issues under section 11A of the Act for data recipients, as to preclude the NYSE from disseminating Liquidity Quote data in a manner consistent with the statute.

Specifically, the Commission is concerned that the restrictions in the vendor agreements on the use and form of Liquidity Quote data are not fair to market data vendors because they will be prevented from integrating or commingling Liquidity Quote data with data from other markets. This restriction may be particularly unfair and unreasonably discriminatory to customers of vendors whose businesses primarily consist of packaging quotation information from all reporting market centers on a consolidated basis for sale to customers. Such customers seek to avoid the costs of desktop integration, and the NYSE restrictions would impose integration costs that smaller users of market data may be unable to bear.[50]

In addition, the Commission believes that restrictions on integration of data such as Liquidity Quote are likely to be more troublesome than restrictions on integration for products such as NYSE OpenBook.[51] OpenBook contains only a display of orders left with the specialist, while Liquidity Quote reflects orders in the book, interest in the crowd, and the specialist's own interest at a price and size usually different than the NYSE's best bid or offer. In other words, Liquidity Quote differs from OpenBook in that it: (1) Represents the NYSE's market-wide price for a specific size, not just a subset of orders on the NYSE; and (2) immediately may be executed against. The Commission believes that preventing vendors from integrating quotations of this type with quotations from other markets is a more substantial restriction on the ability of vendors to provide useful market data than posed by OpenBook and would, unlike OpenBook, impose on users integration costs with respect to immediately executable, market-wide quotations in a manner that would: (1) Be inconsistent with fostering "cooperation and coordination with persons engaged in processing information with respect to * * * securities;"; (2) "be "designed to permit unfair discrimination between customers;" and (3) impede, rather than remove impediments to, a "free and open market and a national market system."[52]

The Commission also believes that the restrictions on integrating Liquidity Quote data and only permitting the data to be displayed in a separate window raise substantial concerns about burdens on competition, which may be inconsistent with section 6(b)(8) of the Act. In particular, the Commission believes that in the case of other market centers, the restrictions likely could inhibit competition with the NYSE for order flow in NYSE-listed securities because Liquidity Quote data is precluded from being viewed in tandem with the consolidated quote display. In addition, the Commission is concerned that the restrictions may be anticompetitive as to small- and medium-sized market participants that are unable to choose useful formats to view the Liquidity Quote data.

The NYSE argues that these restrictions are designed to maintain the integrity of its data so that it is uniquely identified to the NYSE. We are not persuaded by this argument. We believe that a less restrictive labelling requirement, such as one that simply would require the clear identification of the data as the NYSE Liquidity Quote, might well achieve the stated objective. The Commission believes that whatever ownership interests the NYSE may have in these data cannot be asserted in a manner inconsistent with the requirements of sections 6(b)(5) and 6(b)(8). The Commission believes that there is a substantial question as to whether, to be consistent with these standards, Liquidity Quote should be provided in a way that allows data feed recipients to be able to enhance, integrate or consolidate Liquidity Quote data in a reasonable format.[53]

While it is arguable that an SRO may restrict the integration of some information that is not required by current SEC rules to be disseminated in a consolidated format, the Commission believes it is also arguable that, at a minimum, where a market chooses to disseminate quotation data that is immediately executable and represents a market's entire interest at a particular price such market data should be consolidatable.[54] The NYSE argues that as owner of this data, it has the legal right to "brand" this data and, in order to preserve its brand, it must be able to restrict integration of this data with other data. The Commission preliminarily believes that the better view of section 11A is that these statutory provisions preclude the NYSE, once it makes the decision to disseminate this data, from asserting whatever property rights it may have to this data in a way that unfairly and unreasonably limits vendor and investors access and use of this data and has a negative effect on intermarket competition in NYSE listed securities.

The Commission, therefore, is approving this proposal on the condition that the proposed rule change is not effective until the NYSE accepts the condition to remove from its contracts the prohibition on the ability of data feed recipients, including vendors, to integrate the data with the display of other markets' data, and demonstrates its acceptance of the condition to the Commission. If the NYSE accepts the condition, it must do so by the close of business on April 9, 2003. If the NYSE accepts the condition, it may not implement the Liquidity Quote Proposal until the prohibition is removed from its vendor contracts.

If by the close of business on April 9, 2003, the NYSE has not demonstrated

---

[38] The NYSE has represented that in some cases, depending on the depth of market, the NYSE best bid or offer and the liquidity bid or offer may converge, in which case, the NYSE will make available the same price and size both as the best bid (offer) over CQS, and the liquidity bid (offer) over the Exchange's CAP line. The Commission notes that liquidity bids and offers will be deemed firm quotations, subject to the firm quoting obligations of Rule 11Ac1–1(c) under the Act. 17 CFR 240.11Ac1–1(c). In addition, the Commission notes that orders seeking to trade against liquidity bids (offers) will be executed in accordance with NYSE's current auction market procedures, in particular, with respect to the handling of market orders, limit orders, and XPress orders.

[39] 15 U.S.C. 78s(b)(2). Because of the manner in which the Commission is disposing of this matter, the Commission need not decide whether the NYSE agreements at issue here or similar such agreements should be filed under section 19(b)(2) of the Act. In this connection, we note, however, that commenters have not been precluded from commenting on these agreements in the absence of such a filing and the Commission is able to, and indeed required to, take these comments into account to the extent that they relate to the manner in which the proposal that has been filed with the Commission will operate.

[40] 15 U.S.C. 78f(b)(5).

[41] *Id.*

[42] *Id.*

[43] *See also* 15 U.S.C. 78f(b)(8).

[44] 15 U.S.C. 78k–1.

[45] The Commission notes that the NYSE would be operating the Liquidity Quote service as an "exclusive processor." An "exclusive processor" is defined in section 3(a)(22)(B) of the Act as "any SIP or SRO that, directly or indirectly, engages on an exclusive basis, in collecting, processing, or distributing the market information of an SRO." 15 U.S.C. 78c(a)(22)(B). A Securities Information Processor ("SIP") is defined in section 3(a)(22)(A) of the Act as "any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing * * * on a current and continuing basis, information with respect to such transactions or quotations * * * ." 15 U.S.C. 78c(a)(22)(A).

[46] There is no indication in section 11A and its legislative history that self-regulatory organizations ("SROs") acting as SIPs should be treated differently under the section because of the Commission's separate statutory authority under section 19(b). Therefore, section 19(b) review does not limit the Commission's authority under section 11A.

[47] 15 U.S.C. 78k–1(a)(1)(C)(ii) and (iii).

[48] In enacting the Securities Acts Amendments of 1975 ("1975 Act Amendments"), Congress specifically recognized that the securities markets are dynamic and change over time and, therefore, specifically rejected mandating the specific components of the national market system. Instead, Congress granted the Commission broad authority to oversee its implementation. *See* S. Rep. No. 75, 94th Cong., 1st Sess. (1975) ("Senate Report"). The 1975 Act Amendments added section 11A "to bring under the SEC's direct jurisdiction all organizations engaged in the business of collecting, processing, or publishing information relating to quotations for, indications of interest to purchase and sell, and transactions in securities." *Id.*, at 9–10. As a result, the 1975 Act Amendments greatly expanded the Commission's authority to regulate the national market system and matters related to the dissemination of market information.

The goals of this new authority were "to insure the availability of prompt and accurate trading information, to assure that these communications networks are not controlled or dominated by any particular market center, to guarantee fair access to such systems by all brokers, dealers and investors, and to prevent any competitive restriction on their operation not justified by the purposes of the Act." *Id.* The Commission's broad authority "includes all powers necessary to ensure the regulation of the securities information processing activities of [the] exchanges and associations in the same manner and to the same extent as the Commission may regulate securities information processors registered and regulated under new section 11A(b)." *Id.*, at 10.

Moreover, Congress noted that the Commission's authority under section 11A of the Exchange Act includes the authority to regulate "what and how information is displayed and qualifications for the securities to be included on any tape or within any quotation system." *Id.*, at 11. Legislative history for section 11A states that "it is critical for those who trade to have access to up-to-the-second information as to the prices at which transactions in particular securities are taking place (*i.e.*, last sale reports) and the prices at which other traders have expressed their willingness to buy or sell (*i.e.*, quotations)." *Id.*, at 9.

[49] *See e.g.*, Securities Exchange Act Release No. 20874 (April 17, 1984), 49 FR 17640 (April 24, 1984).

[50] Desktop integration requires certain infrastructure, such as data storage and application installation and maintenance, that many small users currently do not directly bear. Such smaller users often take advantage of the economies of scale offered by data vendors that provide integration at a central location.

[51] For further details on the NYSE OpenBook service, *see* Securities Exchange Act Release No. 45138 (December 18, 2001), 66 FR 66491 (December 26, 2001). In its order approving the NYSE's OpenBook service, the Commission stated that "NYSE's * * * restrictions on vendor redissemination of OpenBook data, including the prohibition on providing the full data feed and providing enhanced, integrated, or consolidated data found in these agreements are on their face discriminatory, and may raise fair access issues under the Act."

[52] *See* section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5). In the context of the Liquidity Quote proposal, we have received comment from a more diverse array of commenters and have received more information about the potential negative transparency and competitive effects, and effects on smaller market data users, than we received in response to publication of the OpenBook proposal. We also have had the advantage of experience with the operations of the restrictions on the dissemination of the OpenBook product, which shows that our expectation, as expressed in our cautionary statement in the OpenBook order, *see* note 51, *supra*, that the market would challenge these types of vendor agreement restrictions, has not been fulfilled. The Commission has a statutory responsibility to balance the statutory goals of facilitating the provision of more quotation information to the market with the goals of ensuring that quotations information is provided in a fair way and in a way that does not unreasonably burden competition. In conducting this balance, as we have done here with respect to the Liquidity Quote proposal, we must take into account all the information provided to us by commenters and by market experience. The additional experience we have with respect to the failure of market forces to act to address the anti-competitive nature of the vendor contracts in the context of the OpenBook proposal further informs and reinforces our decision here.

[53] The Commission believes that it would be reasonable and consistent with the statute for the NYSE to require that data feed recipients who choose to provide a value-added liquidity quote data package to: (i) Give the NYSE attribution next to any integrated quote that includes NYSE data; and (ii) make available to customers NYSE's liquidity quote product as a separate branded package.

[54] The NYSE believes that the Commission is "extend[ing] the consolidated Display Rule to NYLQ [or Liquidity Quote]." *See* Grasso (NYSE) Letter, at 2. The NYSE argues, in referencing the "Report of the Advisory Committee on Market Information: A Blueprint for Responsible Change," September 14, 2001 ("Seligman Report"), that the Seligman Report concluded that such data should be free from "mandatory consolidation requirements." *See id.* (citing, the Seligman Report). The Commission is not mandating that the NYSE consolidate its Liquidity Quote data with that of other markets. The Commission does believe, however, that the Liquidity Quote data should be disseminated in a consolidatable format—*i.e.*, vendors and investors should not be precluded from opting to consolidate the Liquidity Quote data. Contrary to the NYSE's views, the Seligman Report did not recommend that markets be able to make their own market data non-consolidatable; the Seligman Report recommended that markets no longer be required to centrally consolidate their data.

its acceptance of the condition to the Commission, the Commission will issue an order beginning proceedings to disapprove the proposed rule change, pursuant to section 19(b)(2)(B) of the Act.[55]

V. Conclusion

It is ordered, pursuant to section 19(b)(2) of the Act,[56] that the proposed rule change (SR–NYSE–2002–55), as amended, is approved, on the condition that the proposed rule change will not be effective unless the NYSE demonstrates to the Commission by April 9, 2003 that it has accepted the condition that it remove from its vendor agreements the prohibition on data feed recipients, including vendors, from integrating Liquidity Quote data with other markets' data or with the display of other markets' data, provided however that the NYSE may require that vendors provide the NYSE attribution in any display that includes Liquidity Quote and also may require vendors that purchase the Liquidity Quote product to make Liquidity Quote available to their customers as a separate branded package.

It is further ordered that the Liquidity Quote Proposal may not be implemented until the prohibition is removed from the NYSE's vendor agreements.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8441 Filed 4–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47610; File No. SR–PCX–2003–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Regarding Firm Quotation Size

April 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 21, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend its rules governing firm quotations in order to provide that all PCX quotations will be firm for all incoming customer and broker-dealer orders for their full disseminated size pursuant to PCX rule 6.86(b)(2). The text of the proposed rule change is available at the Office of the Secretary, PCX and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to provide that all PCX quotations will be firm for all incoming customer and broker-dealer orders for their full disseminated size pursuant to PCX rule 6.86(b)(2). This will allow the Exchange to provide customers and broker-dealers an opportunity to receive executions up to the full disseminated size beyond the one contract minimum that the Exchange's current rule provides for broker-dealer orders. As proposed, absent unusual market conditions as set forth in PCX rule 6.86(d), each Responsible Broker or Dealer[3] is obligated to be firm for all incoming orders in a listed option series in an amount up to the full disseminated size.

2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[4] of the Act, in general, and further the objectives of section 6(b)(5),[5] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to section 19(b)(3)(A)(i) of the Act[6] and subparagraph (f)(6) of rule 19b–4 thereunder.[7] Consequently, because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act and rule 19b–4 thereunder.

A proposed rule change filed under rule 19b–4(f)(6)[8] normally does not become operative prior to thirty days after the date of filing. However, pursuant to rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[9] Waiving the pre-filing requirement and accelerating the operative date will provide investors increased liquidity. Further, the Commission notes that on January 21, 2003 it approved a similar proposed rule change submitted by the International Securities Exchange, Inc. ("ISE"), which requires ISE quotations to be firm for published sizes for all orders entered by ISE members regardless of whether the orders are for the accounts of customers or broker-dealers.[10] For these reasons, the Commission designates that the proposed rule change has become effective and operative immediately.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–12 and should be submitted by April 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8445 Filed 4–7–03; 8:45 am]

BILLING CODE 8010–01–P

---

[55] 15 U.S.C. 78s(b)(2)(B).

[56] 15 U.S.C. 78s(b)(2).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "Responsible Broker or Dealer" means that, with respect to any bid or offer for any listed option made available by the Exchange to quotation vendors, the Lead Market Maker and any registered Market Makers constituting the trading crowd in such option series will collectively be the "Responsible Broker or Dealer" to the extent of the aggregate quotation size specified. *See* PCX Rule 6.86(a)(2).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 15 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6).

[9] For purposes of accelerating the operative date of this proposal only, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] *See* Securities Exchange Act Release No. 47220, 68 FR 4260 (January 28, 2003) (ISE–2002–24).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9U63]

State of Florida (And Contiguous Counties In Alabama)

Bay, Brevard, Broward, Charlotte, Citrus, Dade, Duval, Franklin, Gulf, Hillsborough, Okaloosa, Santa Rosa and Taylor Counties and the contiguous counties of Baker, Calhoun, Clay, Collier, DeSoto, Dixie, Escambia, Glades, Hardee, Hendry, Hernando, Highlands, Indian River, Jackson, Jefferson, Lafayette, Lee, Levy, Liberty, Madison, Manatee, Marion, Monroe, Nassau, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Sarasota, Seminole, St. Johns, Sumter, Volusia, Wakulla, Walton and Washington in the State of Florida; and Covington and Escambia counties in the State of Alabama constitute an economic injury disaster loan area as a result of freezing temperatures beginning November 2002 and continuing through February 2003. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on January 2, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.324 percent.

The numbers assigned for economic injury for this disaster are 9U6300 for Florida; and 9U6400 for Alabama.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 2, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–8531 Filed 4–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3484]

State of Georgia

Mitchell County and the contiguous counties of Baker, Colquitt, Decatur, Dougherty, Grady, Thomas and Worth in the State of Georgia constitute a disaster area due to damages caused by severe storms and tornadoes that occurred on March 20, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 30, 2003 and for economic injury until the close of business on December 31, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere—5.875%
Homeowners without credit available elsewhere—2.937%
Businesses with credit available elsewhere—6.378%
Businesses and non-profit organizations without credit available elsewhere—3.189%
Others (including non-profit organizations) with credit available elsewhere—5.500%

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere—3.189%

The number assigned to this disaster for physical damage is 348412 and for economic damage is 9U5700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 31, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–8512 Filed 4–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3482]

State of Kentucky (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency, effective March 27, 2003, the above numbered declaration is hereby amended to include Anderson, Clay, Elliott, Estill, Knox, Lawrence, Magoffin, Mason, Menifee, Morgan, Nicholas, Powell, Rowan, and Woodford Counties in the

State of Kentucky as a disaster area due to damages caused by severe winter ice and snow storms, heavy rain, flooding, tornadoes, and mud and rock slides occurring on February 15 through February 26, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bath, Bracken, Franklin, Harrison, Laurel, Mercer, Nelson, Robertson, Shelby, Spencer, Washington, and Whitley in the State of Kentucky and Brown County in the State of Ohio may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is May 13, 2003, and for economic injury the deadline is December 15, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 28, 2003.

Cheri C. Wolff,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–8513 Filed 4–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9U61]

State of Massachusetts (And Contiguous Counties in New Hampshire)

Essex County and the contiguous counties of Middlesex and Suffolk in the State of Massachusetts; and Hillsborough and Rockingham Counties in the State of New Hampshire constitute an economic injury disaster loan area as a result of a fire that occurred on February 20, 2003 in Marblehead, Massachusetts. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on December 31, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.189 percent.

The numbers assigned for economic injury for this disaster are 9U6100 for Massachusetts; and 9U6200 for New Hampshire.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: March 31, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–8510 Filed 4–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P008]

State of North Carolina

As a result of the President's major disaster declaration for Public Assistance on March 27, 2003 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Alamance, Caswell, Forsyth, Granville, Guilford, Orange, Person, Rockingham and Stokes Counties in the State of North Carolina constitute a disaster area due to damages caused by an ice storm occurring on February 27, 2003 and continuing through February 28, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 27, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage

Non-Profit Organizations without Credit Available Elsewhere—*3.189%*

Non-Profit Organizations with Credit Available Elsewhere—*5.500%*

The number assigned to this disaster for physical damage is P00811.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: March 31, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–8509 Filed 4–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3481]

State of Ohio (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective April 1, 2003, the above numbered declaration is hereby amended to include Gallia and Meigs Counties as disaster areas due to damages caused by a severe winter storm and record snow occurring on February 14, 2003, and continuing through March 18, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Athens in the State of Ohio; and Jackson, Mason and Wood Counties in the State of West Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is May 13, 2003, and for economic injury the deadline is December 15, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 1, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–8532 Filed 4–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster 3485]

Commonwealth of Virginia

As a result of the President's major disaster declaration on March 27, 2003, I find that Buchanan, Dickenson, Montgomery, Russell, Tazewell and Wise Counties and the Independent Cities of Norton, Roanoke and Salem in the Commonwealth of Virginia constitute a disaster area due to damages caused by a severe winter storm, record snowfall, heavy rain, flooding and mudslides occurring on February 15 through February 28, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 27, 2003 and for economic injury until the close of business on December 29, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bland, Craig, Floyd, Giles, Lee, Pulaski, Roanoke, Scott, Smyth and Washington in the Commonwealth of Virginia; Harlan, Letcher and Pike counties in the State of Kentucky; Mercer, McDowell and Mingo counties in the State of West Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.875
Homeowners without Credit Available Elsewhere	2.937
Businesses with Credit Available Elsewhere	6.378
Businesses and Non-Profit Organizations without Credit Available Elsewhere	3.189
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	3.189

The number assigned to this disaster for physical damage is 348511. For economic injury the number is 9U5800 for Virginia; 9U5900 for Kentucky; and 9U6000 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 28, 2003.

Cheri C. Wolff,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–8511 Filed 4–7–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4331]

Culturally Significant Objects Imported for Exhibition Determinations: "Illuminating the Renaissance: The Triumph of Flemish Manuscript Painting in Europe"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that three additional objects to be included in the exhibition, "Illuminating the Renaissance: The Triumph of Flemish Manuscript Painting in Europe," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Los Angeles, California, from on or about June 17, 2003, to on or about September 7, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: April 1, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, , Department of State.

[FR Doc. 03–8541 Filed 4–7–03; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–06–C–00–ABE To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lehigh Valley International Airport, Allentown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lehigh Valley International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 8, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Lori Ledebohm, Community Planner/PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bob Lewullis, of the Lehigh-Northampton Airport Authority at the following address: 3311 Airport Road, Allentown, PA 18109–3040.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Lehigh-Northampton Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Community Planner/PFC contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011, 717–730–2835. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lehigh Valley International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 4, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Lehigh-Northampton Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 4, 2003.

The following is a brief overview of the application.

Proposed charge effective date: July 1, 2003.

Proposed charge expiration date: March 1, 2005.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $3,102,115.

Brief description of proposed project(s): Loading Bridges—Post Concourse.

Loading Bridges—RJ Modifications.

Design and Construct Electrical Airfield Vault.

Design and Construct ARFF Building.

Airfield Security Perimeter Fencing.

RPZ Land Acquisition R/W 24 and Hangar Land.

Noise Mitigation—Sound Insulation (Phase II).

Land Acquisition R/W 6–24 Noise.

Design and Construct Air Cargo Apron—Phase II.

Noise Mitigation—Sound Insulation.

Taxiway A Rehabilitation.

General Aviation Apron.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Eastern Region, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York 11434.

In addition, any person may, upon request, inspect the application, notice

and other documents germane to the application in person at the Lehigh-Northampton Airport Authority.

Issued in Camp Hill, PA on March 31, 2003.

John B. Carter,

Acting Manager, HAR-ADO, Eastern Region.

[FR Doc. 03–8572 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 30]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee ("ARSAC") meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4 p.m. on Tuesday, May 20, 2003.

ADDRESSES: The meeting of the RSAC will be held at the Washington Plaza, 10 Thomas Circle, NW., Washington, DC 20005, (202) 842–1300. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Trish Butera, or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20590, (202) 493–6212/6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee ("ARSAC"). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4 p.m. on Tuesday, May 20, 2003. The meeting of the RSAC will be held at the Washington Plaza, 10 Thomas Circle, NW., Washington, DC 20005, (202) 842–1300. All times noted are eastern standard time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual voting representatives and five associate representatives drawn from among 32 organizations representing various rail industry perspectives, two associate representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico and other diverse groups. Staffs of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

The RSAC meeting topics will include a final briefing on a draft Cab Noise NPRM, if available as a consensus recommendation from the Cab Working Conditions Working Group, in anticipation of a forthcoming mail ballot. The committee will be asked to accept a task for revision and supplementation of Safety Standards for Rail Passenger Service. Finally, FRA will introduce to the Committee a requirement concerning a new Congressionally-mandated study of the cost and benefits of Positive Train Control (PTC) that appears to fall within existing task statements (Nos. 97–4 and 97–5); and the Committee will be asked to authorize consideration of this issue by the PTC Working Group.

In addition to these items of business, the Committee will receive briefings on the following topics: Security update; hazardous materials transportation next steps; development of a new Highway-Rail Crossing/Action Plan; Transport Canada's programs for highway-rail crossing safety and access control; and the Safety Assurance and Compliance Program.

See the RSAC Web site for details on pending tasks at: *http://rsac.fra.dot.&fnl;gov/*. Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740), for more information about the RSAC.

Issued in Washington, DC, on April 3, 2003.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 03–8522 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–850X]

St. Croix Valley Railroad Company—Abandonment and Discontinuance of Service Exemption—in Pine and Kanabec Counties, MN

On March 19, 2003, St. Croix Valley Railroad Company (SCXY) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to: (1) Abandon its rail easement over a line of the Burlington Northern and Santa Fe Railway Company (BNSF) between milepost 58.3 at Mora Junction (Brook Park) and milepost 47.6 at Mora, a distance of 10.7 miles;[1] and (2) discontinue rail service pursuant to overhead trackage rights over a rail line of BNSF between Hinckley and Mora Junction (Brook Park), a distance of 8.2 miles, in Pine and Kanabec Counties, MN. The line traverses United States Postal Service zip codes 55007, 55037, and 55051. There are three stations on the line.

The line contains Federally granted rights-of-way. Any requests for documentation should be made to BNSF as the owner of the line.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 7, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 28, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–850X and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Thomas F. McFarland, P.C., 208 South LaSalle St., Suite 1890, Chicago, IL 60604–1194. Replies to the SCXY petition are due on or before April 28, 2003.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 3, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–8521 Filed 4–7–03; 8:45 am]

BILLING CODE 4915–00–P

[1] According to SCXY, this segment was embargoed, effective July 22, 2002, due to unsafe track conditions.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No 630X)]

CSX Transportation, Inc.—Abandonment Exemption—in Sumner County, TN

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 0.43-mile line of railroad between milepost OCN–162.57 and milepost OCN–163.00 in Gallatin, Sumner County, TN. The line traverses United States Postal Service Zip Code 37066.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R.Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 8, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 18, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 28, 2003, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to CSXT's representative: Natalie S. Rosenberg, Counsel, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 11, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by CSXT's filing of a notice of consummation by April 8, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 26, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–7953 Filed 4–7–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1066 and Schedule Q (Form 1066)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently, the IRS is soliciting comments concerning Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income

Tax Return and Schedule Q (Form 1066), Quarterly Notice to Residential Interest Holder of REMIC Taxable Income or Net Loss Allocation.

DATES: Written comments should be received on or before June 9, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet *CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return and Schedule Q (Form 1066), Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.

OMB Number: 1545–1014.

Form Number: Form 1066 and Schedule Q (Form 1066).

Abstract: Form 1066 and Schedule Q (Form 1066) are used by a real estate mortgage investment conduit (REMIC) to figure its tax liability and income and other tax-related information to pass through to its residual holders. IRS uses the information to determine the correct tax liability of the REMIC and its residual holders.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 4,917.

Estimated Time Per Respondent: 154 hours, 22 minutes.

Estimated Total Annual Burden Hours: 758,989.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–8295 Filed 4–7–03; 8:45 am]

BILLING CODE 4830–01–M

Corrections

Federal Register

Vol. 68, No. 67

Tuesday, April 8, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1940

RIN 0570–AA30

Methodology and Formulas for Allocation of Loan and Grant Program Funds

Correction

In rule document 03–7237 beginning on page 14527 in the issue of Wednesday, March 26, 2003 make the following correction:

§ 1940.593 [Corrected]

On page 14528, in the second column, in § 1940.593, after paragraph (f), the next paragraph "(a)" should read "(g)".

[FR Doc. C3–7237 Filed 4–7–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Yaudat Mustafa Talyi, a.k.a. Joseph Talyi, and International Business Services, Ltd. and Top Oil Tools, Ltd.

Correction

In notice document 03–7858 beginning on page 15982 in the issue of Wednesday, April 2, 2003, make the following correction:

On page 15982, in the first column, the subject line is corrected to read as set forth above.

[FR Doc. C3–7858 Filed 4–7–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 164

[CMS–0049–F]

RIN 0938–AI57

Health Insurance Reform: Security Standards

Correction

In rule document 03–3877 beginning on page 8334 in the issue of Thursday, February 20, 2003 make the following correction:

§ 164.306 [Corrected]

On page 8377, in the first column, in § 164.306, after paragraph (d)(2), the next paragraph "(1)" should read "(3)".

[FR Doc. C3–3877 Filed 4–7–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14352; Airspace Docket No. 00–AGL–25]

Modification of Class E Airspace; Hazen, ND

Correction

In rule document 03–7662 beginning on page 15348 in the issue of Monday, March 31, 2003 make the following corrections:

§ 71.1 [Corrected]

1. On page 15349, in the first column, in §71.1, under the heading **AGL ND E5 Hazen, ND [Revised]**, in the 13th line, "countercloskwise" should read "counterclockwise".

2. On the same page, in the same column, in the same section, under the same heading, in the 21st line, "long. 102° 24′ 00″W., " should read "long. 102° 34′ 00″ W.,".

[FR Doc. C3–7662 Filed 4–7–03; 8:45 am]

BILLING CODE 1505–01–D

VOL
68
ISS
67
AP
8
003
MI



Federal Register

Tuesday,
April 8, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Seven Bexar County, Texas, Invertebrate Species; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI47

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Seven Bexar County, TX, Invertebrate Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for seven endangered invertebrate species found in Bexar County, Texas, pursuant to the Endangered Species Act of 1973, as amended (Act). The critical habitat designation totals approximately 431 hectares (1,063 acres) in 22 units. Section 7 of the Act requires Federal agencies to ensure, in consultation with the Service, that actions they authorize, fund, or carry out are not likely to result in the destruction or adverse modification of critical habitat. Section 4 of the Act requires us to consider economic and other impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule, including data on economic and other impacts of the designation. As a result of comments and information received, we are not designating critical habitat as originally proposed for two species that occur entirely on State-owned lands that are subject to a conservation plan.

DATES: This rule becomes effective on May 8, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Austin Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758.

FOR FURTHER INFORMATION CONTACT: Robert Pine, Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, at the above address (telephone 512/490–0057; facsimile 512/490–0974).

SUPPLEMENTARY INFORMATION:

Background

The seven species for which we are designating critical habitat in this rulemaking inhabit caves or other features known as karst. The term "karst" refers to a type of terrain that is formed by the slow dissolution of calcium carbonate from limestone bedrock by mildly acidic groundwater. This process creates numerous cave openings, cracks, fissures, fractures, and sinkholes, and the bedrock resembles a honeycomb.

As a result of climatic changes beginning two million years ago and lasting until ten thousand years ago, invertebrate species colonized caves and other subterranean voids (Barr 1968; Mitchell and Reddell 1971; Elliott and Reddell 1989). Species that dwell exclusively in caves and other subterranean voids are referred to as "troglobites." Through faulting and canyon downcutting, the karst terrain colonized by these species along the Balcones Fault Zone (a zone approximately 25 kilometers (km) in width, extending from the northeast corner of Bexar County to the western edge of the County) became increasingly dissected, creating "islands" of karst and barriers to dispersal. These "islands" isolated troglobitic populations from each other, probably resulting in further speciation.

The following nine Bexar County, Texas, troglobitic invertebrate species were listed as endangered on December 26, 2000 (65 FR 81419): spider (no common name) (*Cicurina venii*), Robber Baron Cave harvestman (*Texella cokendolpheri*), vesper cave spider (*Cicurina vespera*), Government Canyon cave spider (*Neoleptoneta microps*), Madla's cave spider (*Cicurina madla*), Robber Baron cave spider (*Cicurina baronia*), beetle (no common name) (*Rhadine exilis*), beetle (no common name) (*Rhadine infernalis*), and Helotes mold beetle (*Batrisodes venyivi*). These are karst dwelling species of local distribution in north and northwest Bexar County. They spend their entire lives underground.

Since publication of the listing final rule, the common names for the following six arachnid species have been changed as a result of a meeting of the Committee on Common Names of Arachnids of the American Arachnological Society in 2000. Accordingly, we are changing the common names of the species currently in the list of Endangered and Threatened Wildlife (50 CFR 17.11) as Robber Baron Cave harvestman, Robber Baron cave spider, Madla's cave spider, vesper cave spider, Government Canyon cave spider, and one with no common name (*Cicurina venii*) to Cokendolpher cave harvestman, Robber Baron Cave meshweaver, Madla Cave meshweaver, Government Canyon Bat Cave meshweaver, Government Canyon Bat Cave spider, and Braken Bat Cave meshweaver, respectively.

Individuals of the listed species are small, ranging in length from 1 millimeter (0.039 inch (in)) to 1 centimeter (0.39 in). They are eyeless, or essentially eyeless, and most lack pigment. Low quantities of food in caves have caused adaptations in these species, including low metabolism, long legs for efficient movement, and loss of eyes, possibly as an energy-saving trade-off (Howarth 1983). Survival may be possible from months to years with little or no food (Howarth 1983). Adult *Cicurina* spiders have survived in captivity without food for about 4 months (James Cokendolpher, Museum of Texas Tech University, pers. comm. 2002).

Although little is known about the life history of listed Texas troglobitic invertebrates, they are believed to live for longer than 1 year. This belief is based, in part, on the amount of time some juveniles have been kept in captivity without maturing (Veni and Associates 1999; James Reddell, Texas Memorial Museum, pers. comm. 2000). For example, James Cokendolpher (Museum of Texas Tech University, pers. comm. 2002) maintained a juvenile troglobitic *Cicurina* spider from May 1999 through April 2002. Reproductive rates of troglobites are typically low (Poulson and White 1969; Howarth 1983). According to surveys conducted by Culver (1986), Elliott (1994a), and Hopper (2000), population sizes of troglobitic invertebrates are typically small, with most species known from only a few specimens (Culver *et al.* 2000).

As described below, the primary habitat requirements of these species include: (1) Subterranean spaces in karst with stable temperatures, high humidities (near saturation), and suitable substrates (for example, spaces between and underneath rocks suitable for foraging and sheltering); and (2) a healthy surface community of native plants and animals that provide nutrient input and, in the case of native plants, act to buffer the karst ecosystem from adverse effects (for example, invasions of nonnative species, contaminants, and fluctuations in temperature and humidity). These karst invertebrates require stable temperatures and constant, high humidity (Barr 1968; Mitchell 1971a) because they are vulnerable to desiccation in drier habitats (Howarth 1983) or cannot detect or cope with more extreme temperatures (Mitchell 1971a). Temperatures in caves typically remain at the average annual surface temperature, with little variation

(Howarth 1983; Dunlap 1995). Relative humidity is typically near 100 percent in caves that support troglobitic invertebrates (Elliott and Reddell 1989). During temperature extremes, the listed species may retreat into small interstitial spaces (human-inaccessible) connected to a cave, where the physical environment provides the required humidity and temperature levels (Howarth 1983). These species may spend the majority of their time in such retreats, only leaving them to forage in the larger cave passages (Howarth 1987).

Since sunlight is absent or present in extremely low levels in caves, most karst ecosystems depend on nutrients derived from the surface either directly (organic material brought in by animals, washed in, or deposited through root masses) or indirectly through feces, eggs, and carcasses of trogloxenes (species that regularly inhabit caves for refuge, but return to the surface to feed) and troglophiles (species that may complete their life cycle in the cave, but may also be found on the surface) (Barr 1968; Poulson and White 1969; Howarth 1983; Culver 1986). Primary sources of nutrients include leaf litter, cave crickets, small mammals, and other vertebrates that defecate or die in the cave.

As described in our final rule to list the nine species (65 FR 81419), the continuing expansion of the human population in karst terrain constitutes the primary threat to the species through: (1) Destruction or deterioration of habitat by construction; (2) filling of caves and karst features and loss of permeable cover; (3) contamination from septic effluent, sewer leaks, runoff, pesticides, and other sources; (4) exotic species, especially nonnative fire ants (*Solenopsis invicta*); and (5) vandalism.

Karst in Bexar County

The northern portion of Bexar County is located on the Edwards Plateau, a broad, flat expanse of Cretaceous carbonate rock that ranges in elevation from 335.5 meters (m) (1,100 feet (ft)) to 579.5 m (1,900 ft) (Veni 1988; Soil Conservation Service 1962). This portion of the Plateau is dissected by numerous small streams and is drained by Cibolo Creek and Balcones Creek. To the southeast of the Plateau lies the Balcones Fault Zone, a 25-km-wide fault zone that extends from the northeast corner of the County to the western County line. The many streams and karst features of this zone recharge the Edwards Aquifer.

The principal, cave-containing rock units of the Edwards Plateau are the upper Glen Rose Formation, Edwards Limestone, Austin Chalk, and Pecan Gap Chalk (Veni 1988). The Edwards Limestone accounts for one-third of the cavernous rock in Bexar County and contains 60 percent of the caves, making it the most cavernous unit in the County. The Austin Chalk outcrop is second to the Edwards in total number of caves. In Bexar County, the outcrop of the upper member of the Glen Rose Formation accounts for approximately one-third of the cavernous rock, but only 12.5 percent of Bexar County caves (Veni 1988). In Bexar County, the Pecan Gap Chalk, while generally not cavernous, has a greater than expected density of caves and passages (Veni 1988).

Veni (1994) delineated six karst areas within Bexar County. The regions were named after places within their boundaries. These karst fauna regions are bounded by geological or geographical features that may represent obstructions to the movement (on a geologic time scale) of troglobites, which has resulted in the present-day distribution of endemic (restricted to a given region) karst invertebrates in the Bexar County area.

These areas have been delineated by Veni (1994) into five zones that reflect the likelihood of finding a karst feature that will provide habitat for the endangered Bexar County invertebrates based on geology, distribution of known caves, distribution of cave fauna, and primary factors that determine the presence, size, shape, and extent of caves with respect to cave development. These five zones are defined as:

Zone 1: Areas known to contain one or more of the nine endangered karst invertebrates;

Zone 2: Areas having a high probability of suitable habitat for the invertebrates;

Zone 3: Areas that probably do not contain the invertebrates;

Zone 4: Areas that require further research but are generally equivalent to zone 3, although they may include sections that could be classified as zone 2 or zone 5; and

Zone 5: Areas that do not contain the invertebrates.

Under contract with the Service, Veni (2002) re-evaluated and, where applicable, redrew the boundaries of each karst zone originally delineated in Veni (1994). Revisions were based on current geologic mapping, further studies of cave and karst development, and the most current information available on the distribution of listed and nonlisted cave-adapted species (Veni 2002).

Endangered Karst Invertebrate Distribution

As of December 2002, 475 caves were known to occur in Bexar County, some of which have been biologically surveyed for listed species (Veni 2002). At least 97 of the 475 caves were sealed or destroyed before they could be biologically surveyed (Veni 2002). Not all of the remaining caves in Bexar County have been adequately surveyed for invertebrates. It is likely that some of these caves will be found to contain one or more of the listed species. When the species were listed as endangered in December 2000, the Service knew of 57 occupied caves. When critical habitat was proposed in Bexar County in August 2002, we knew of 69 occupied caves. We now know of 74 caves containing one or more of the listed species in Bexar County (Table 1). The following species status descriptions are based on information available to us as of December 23, 2002.

Braken Bat Cave Meshweaver

The Braken Bat Cave meshweaver, *Cicurina venii* (Araneae: Dictynidae), was first collected on November 22, 1980, by G. Veni and described by Gertsch (1992). Braken Bat Cave remains the only location known to contain this species (Table 1).

Cokendolpher Cave Harvestman

The Cokendolpher cave harvestman, *Texella cokendolpheri* (Opilionida: Phalangodidae), was collected in 1982 and described by Ubick and Briggs (1992). This species, along with the Robber Baron Cave meshweaver, is only known from Robber Baron Cave (Table 1).

Government Canyon Bat Cave Meshweaver

The Government Canyon Bat Cave meshweaver, *Cicurina vespera* (Araneae: Dictynidae), was first collected on August 11, 1965, by J. Reddell and J. Fish (Reddell 1993), and described by Gertsch (1992). The species is currently known from Government Canyon Bat Cave in Government Canyon State Natural Area and an unnamed cave referred to as "5 miles northeast of Helotes." However, the specimen collected from the latter cave has been tentatively identified as a new species (Cokendolpher, in press).

Government Canyon Bat Cave Spider

The Government Canyon Bat Cave spider, *Neoleptoneta microps* (Araneae: Leptonetidae), was first collected on August 11, 1965, by J. Reddell and J. Fish (Reddell 1993). The species was originally described by Gertsch (1974)

as *Leptoneta microps* and later reassigned to *Neoleptoneta* following Brignoli (1977) and Platnick (1986). The species is known from 2 caves in Government Canyon State Natural Area (Table 1).

Madla Cave Meshweaver

The Madla Cave meshweaver, *Cicurina madla* (Araneae: Dictynidae), was first collected on October 4, 1963, by J. Reddell and D. McKenzie (Reddell 1993) and described by Gertsch (1992). The Madla Cave meshweaver has been found in eight caves (Table 1).

The Service is aware of 11 additional caves from which immature, eyeless troglobitic *Cicurina* spiders have been collected (SWCA 2000). Eight of these are in caves that have other listed species and are either included in critical habitat areas or areas that are not included in the designation due to the provision of adequate special management. The remaining three are in caves where authorization for take of *C. madla* was granted to La Cantera under a section 10(a)(1)(B) permit. These three caves have been, or will be, heavily impacted and are, therefore, not expected to contribute to the species recovery.

Robber Baron Cave Meshweaver

The Robber Baron Cave meshweaver, *Cicurina baronia* (Araneae: Dictynidae), was first collected in Robber Baron Cave February 28, 1969, by R. Bartholomew (Reddell 1993) and described by Gertsch (1992). The Robber Baron Cave meshweaver (a spider) is only known from Robber Baron Cave (Table 1).

Beetle (No Common Name) *Rhadine exilis*

The beetle *Rhadine exilis* (Coleoptera: Carabidae) was first collected in 1959. The species was described by Barr and Lawrence (1960) as *Agonum exile* and later assigned to the genus *Rhadine* (Barr 1974). The species is currently known to have been found in 47 caves (Table 1).

Beetle (No Common Name) *Rhadine infernalis*

Rhadine infernalis (Coleoptera: Carabidae) was first collected in 1959. The species was initially described by Barr and Lawrence (1960) as *Agonum infernale*, but later assigned to the genus *Rhadine* (Barr 1974). Scientists have recognized three subspecies (*Rhadine infernalis ewersi*, *Rhadine infernalis infernalis*, *Rhadine infernalis* new subspecies) (Barr 1974; Barr and Lawrence 1960; Reddell 1998), all of which are included as protected under the Federal listing of the full species as endangered. A total of 35 caves are known to contain *Rhadine infernalis* (Table 1).

Rhadine infernalis ewersi is known from 3 caves. *Rhadine infernalis infernalis* is known from 19 caves. The unnamed new subspecies (*Rhadine infernalis* new subspecies) was known from 6 caves at the time of the proposed rule designating critical habitat. During the public comment period, we received confirmation that *R. infernalis* collected from Obvious Little Cave has been identified as *R. infernalis* new subspecies. An additional 5 caves were identified in the proposed rule as containing *Rhadine infernalis* that have not yet been identified at the subspecies level. During the public comment period, we received survey information confirming the presence of *R. infernalis* in Continental Cave (Table 1). According to Veni (2002), specimens from these caves are probably *R. infernalis infernalis*, but have either not yet been fully identified or not reported.

Helotes Mold Beetle

The Helotes mold beetle, *Batrisodes venyivi* (Coleoptera: Pselaphidae), was first collected in 1984 and described by Chandler (1992). The species is currently known from six caves (Table 1). The location of one of the caves, referred to as "unnamed cave ½ mile north of Helotes," is unknown. The original record for this cave is from Barr's (1974) description of *Rhadine exilis*. Because the number of caves in the general area is large, the location of this cave cannot be positively identified (George Veni, George Veni & Associates, pers. comm. 2002). However, this cave may not be a separate location after all, but may be an existing cave listed by the collector under the alternative name "5 miles NE of Helotes." The cave referred to as "5 miles NE of Helotes," also has an unknown location.

TABLE 1.—CAVES KNOWN AS OF DECEMBER 23, 2002, TO CONTAIN ONE OR MORE OF THE NINE BEXAR COUNTY, TEXAS, KARST INVERTEBRATES FEDERALLY LISTED AS ENDANGERED

Species (# of caves)	Cave name
Braken Bat Cave meshweaver (*C. venii*) (1)	Braken Bat Cave.
Cokendolpher cave harvestman (*Texella cokendolpheri*) (1)	Robber Baron Cave.
Government Canyon Bat Cave meshweaver (*C. vespera*) (1)	Government Canyon Bat Cave.
Government Canyon Bat Cave spider (*Neoleptoneta microps*) (2)	Government Canyon Bat Cave, Surprise Sink.
Madla Cave meshweaver (*Cicurina madla*) (8)	Christmas Cave, Madla's Cave, Madla's Drop Cave, Helotes Blowhole, Headquarters Cave, Hills and Dales Pit, Robber's Cave, Lost Pothole.
Robber Baron Cave meshweaver (*C. baronia*) (1)	Robber Baron Cave
Beetle (no common name) (*Rhadine exilis*) (47)	40 mm Cave, B–52 Cave, Backhole, Black Cat Cave, Boneyard Pit, Bunny Hole, Cross the Creek Cave, Dos Viboras Cave, Eagles Nest Cave, Hairy Tooth Cave, Headquarters Cave, Hilger Hole, Hold Me Back Cave, Hornet's Last Laugh Pit, Isocow Cave, Kick Start Cave, MARS Pit, MARS Shaft, Pain in the Glass Cave, Platypus Pit, Poor Boy Baculum Cave, Ragin' Cajun Cave, Root Canal Cave, Root Toupee Cave, Springtail Crevice, Strange Little Cave, Up the Creek Cave.
	Christmas Cave, Helotes Blowhole, Helotes Hilltop Cave, Logan's Cave, unnamed cave ½ mile N. of Helotes.
	Creek Bank Cave, Government Canyon Bat Cave, Lithic Ridge Cave, Pig Cave, San Antonio Ranch Pit, Tight Cave.
	Hills and Dales Pit, John Wagner Ranch Cave No. 3, Kamikazi Cricket Cave, La Cantera Cave No. 1, La Cantera Cave No. 2, Mastodon Pit, Robber's Cave, Three Fingers Cave, Young Cave No. 1.
Beetle (no common name) *R. infernalis* (6) (subspecies not indicated—probably *R. infernalis infernalis* but individual specimens are either not fully identified or reported (Veni 2002)).	Canyon Ranch Pit, Continental Cave, Fat Man's Nightmare Cave, Pig Cave, San Antonio Ranch Pit, Scenic Overlook Cave.

TABLE 1.—CAVES KNOWN AS OF DECEMBER 23, 2002, TO CONTAIN ONE OR MORE OF THE NINE BEXAR COUNTY, TEXAS, KARST INVERTEBRATES FEDERALLY LISTED AS ENDANGERED—Continued

Species (# of caves)	Cave name
R. infernalis ewersi (3)	Flying Buzzworm Cave, Headquarters Cave, Low Priority Cave.
R. infernalis new subspecies (7)	Caracol Creek Coon Cave, Game Pasture Cave No. 1, Isopit, King Toad Cave, Obvious Little Cave, Stevens Ranch Trash Hole Cave, Wurzbach Bat Cave.
R. infernalis infernalis (19)	Bone Pile Cave, Dancing Rattler Cave, Government Canyon Bat Cave, Hackberry Sink, Lithic Ridge Cave, Surprise Sink, Christmas Cave, Helotes Blowhole, Logan's Cave; Madla's Cave, Madla's Drop Cave, Crownridge Canyon Cave, Genesis Cave, John Wagner Ranch Cave No. 3, Kamikazi Cricket Cave, Mattke Cave, Robber's Cave, Scorpion Cave, Three Fingers Cave.
Helotes mold beetle (*Batrisodes venyivi*) (6)	San Antonio Ranch Pit, Scenic Overlook Cave, Christmas Cave, unnamed cave ½ mile N of Helotes, Helotes Hilltop Cave, unnamed cave 5 miles NE of Helotes.

Animal Community

Cave Crickets

Cave crickets are a critical source of nutrient input for karst ecosystems (Barr 1968; Reddell 1993). Cave crickets in the genus *Ceuthophilus* occur in most caves in Texas (Reddell 1966). Being sensitive to temperature extremes and drying, cave crickets forage on the surface at night and roost in the cave during the day. Cave crickets lay their eggs in the cave, providing food for a variety of karst species (Mitchell 1971b). Some karst species also feed on cave cricket feces (Barr 1968; Poulson *et al.* 1995) and on adults and nymphs directly (Cokendolpher, in press; Elliott 1994a). Cave crickets are scavengers or detritivores, feeding on dead insects, carrion, and some fruits, but not on foliage (Elliott 1994a).

Elliott (2000) studied the community ecology of three caves in protected areas of varying size in northwest Travis and Williamson Counties, Texas, from 1993 to 1999. The three caves are in areas protected as mitigation for two listed species found in Lakeline Cave during the development of Lakeline Mall. Lakeline Cave is located on a 0.9 hectares (ha) (2.3 acres (ac)) protected area and is surrounded by parking lots and a shopping center. Temples of Thor Cave and Testudo Tube are within much larger tracts of undeveloped land, being located on 42.5 ha (105 ac), and 10.5 ha (26 ac) of protected areas, respectively. During the monitoring study (1993–1999), the number of cave crickets drastically declined in Lakeline Cave, while they increased slightly or decreased moderately in the other two caves. Elliott (2000) concluded that drought, fire ants, and a decrease in racoon visitation caused the decline of the cave crickets. These results are consistent with reports of declines and extinctions of several invertebrates and small mammals (resulting from lower survivorship, higher emigration, and/or lower immigration) from habitat patches ranging in size from 2 to 7 ha (5 to 17 ac) (Mader 1984; Tscharntke 1992; Keith *et al.* 1993; Lindenmayer and Possingham 1995; Hill *et al.* 1996).

Elliott (1994a) evaluated cave cricket foraging within 50 m (164 ft) of cave entrances at his study sites and found crickets to the end of the 50 m sampling distance. On a few occasions he observed cave crickets beyond his sampling sites, and on one occasion he set a trap 60 m (197 ft) from the entrance and found one large adult. Elliott (1994a) concluded that the "largest adults probably are capable of traveling far beyond 60 m from the entrance," but he did not have the data necessary to establish how far they go. During recent cave cricket surveys conducted for an ongoing project in central Texas, an adult cave cricket was found foraging 95 m (311 ft) from the study cave (Steve Taylor, Illinois Natural History Survey, pers. comm. 2002).

As trogloxenes, cave cricket populations are dependent on the patchy distribution of karst voids. Therefore, cave cricket populations may have a metapopulation (subpopulations that interact via the dispersal of individuals from one subpopulation to others) or a source-sink population structure, and it may be important to protect multiple karst features that support cave crickets in a karst ecosystem (Helf *et al.* 1995). Metapopulation dynamics require movement among patches, and persistence requires interacting patches that undergo local extinctions and establishment of new subpopulations in areas previously devoid of individuals (Hanski 1999). "Source" populations are those that occur "in a high-quality habitat in which birth rate generally exceeds the death rate and the excess individuals leave as emigrants." "Sink" populations are those that occur "in a low-quality habitat in which the birth rate is generally lower than the death rate and population density is maintained by immigrants from source populations (Meffe *et al.* 1997). Because cave crickets are a key source of nutrient input for karst ecosystems, conserving adequate areas between karst patches in a manner that allows for movement of individuals among cave cricket populations is likely an important factor in long-term maintenance for karst ecosystems.

Subsurface karst areas may also be important to allow movement among cave cricket populations through the subsurface environment associated with continuous limestone blocks. For example, Caccone and Sbordoni (1987) studied nine species of North American cave crickets (genera *Eukadenoecus* and *Hadenoecus*) from sites in North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, Kentucky, and Alabama. Seven of the species were obligate cave-dwelling species that emerged at night to feed. Through genetic analyses of the cave-dwelling species, they found that species or groups of populations inhabiting areas where the limestone is continuous and highly fissured are genetically less differentiated than are populations occurring in regions where the limestone distribution is more fragmented, indicating more exchange of individuals in areas of continuous karst.

Helf *et al.* (1995) suggested that populations of an eastern species of cave cricket (*Hadenoecus subterraneus*) may be at risk because they do not recover quickly after events such as drought, floods, and temperature extremes that preclude or diminish foraging opportunities. These cave cricket populations may have source-sink population dynamics, with some

karst features acting as sources and the majority of karst features acting as sinks, but Helf *et al.* (1995) recommends that "even sink populations should be protected because their emigrants can "rescue" source populations that experience local decimation." These studies suggest that it is important to protect the geological features that connect caves and maintain habitat corridors among caves.

Other Surface Animals

Many central Texas caves with endangered invertebrate species are frequented by mammals and several species of reptiles and amphibians (Reddell 1967). Although there are no studies establishing the role of mammals in central Texas cave ecology, the presence of a large amount of animal materials (such as scat, nesting materials, and dead bodies) indicates they are probably important. An important source of nutrients for the cave species may be the fungus, microbes, and/or other troglophiles and troglobites that grow or feed on feces (Elliott 1994b; Gounot 1994).

For predatory troglobites (such as the listed Bexar County invertebrates), invertebrates that accidently occur in the caves may also be an important nutrient source (Hopper 2000). Documented accidental species include snails, earthworms, terrestrial isopods (commonly known as pillbugs or potato bugs), scorpions, spiders, mites, collembola (primitive wingless insects that are commonly known as springtails), thysanura (commonly known as bristletails and silverfish), harvestmen (commonly known as daddy-long-legs), ants, leafhoppers, thrips, beetles, weevils, moths, and flies (Reddell 1965; 1966; 1999).

Vegetation Community

Surface vegetation is an important element of the karst habitat for several reasons, including its role in providing nutrients from: (1) Direct flow of plant material into the karst with water; (2) habitat and food sources provided for the animal communities that contribute nutrients to the karst ecosystem (such as cave crickets, small mammals, and other vertebrates); and possibly, (3) roots that extend into subsurface areas. Surface vegetation also acts as a buffer for the subsurface environment against drastic changes in the temperature and moisture regime and serves to filter pollutants before they enter the karst system (Biological Advisory Team 1990; Veni 1988). In some cases, healthy native plant communities also help control certain exotic species (such as fire ants) (Porter *et al.* 1988) that may compete with or prey upon the listed species and other species (such as cave crickets) that are important nutrient contributors (Elliott 1994a; Helf, *in litt.* 2002).

Tree roots have been found to provide a major energy source in shallow lava tubes and limestone caves in Hawaii (Howarth 1981). Jackson *et al.* (1999) investigated rooting depth in 21 caves on the Edwards Plateau to assess the belowground vegetational community structure and the functional importance of roots. They observed roots penetrating up to 25 m (82 ft) into the interior of 20 of the caves, with roots of 6 tree species common to the plateau penetrating to below 5 m (16.4 ft).

Along with providing directly and indirectly nutrients to the karst ecosystem, a healthy vegetative community may also help control the spread of exotic species. The red imported fire ant (*Solenopsis invicta*) is an aggressive predator, which has had a devastating and long-lasting impact on native ant populations and other arthropod communities (Vinson and Sorenson 1986; Porter and Savignano 1990) and is a threat to the karst invertebrates (Elliott 1994b; USFWS 1994). Fire ants have been observed building nests both within and near cave entrances, as well as foraging in caves, especially during the summer. Shallow caves inhabited by listed karst invertebrates are especially vulnerable to invasion by fire ants and other exotic species. In addition to preying on cave invertebrate species, including cave crickets, fire ants may compete with cave crickets for food (Elliott 1994a; Helf *in litt.* 2002). Helf (*in litt.* 2002) states that competition for food between fire ants and cave crickets (*Ceuthophilus secretus*) may be a more important interaction than predation. The presence of fire ants in and around karst areas could have a drastic detrimental effect on the karst ecosystem through loss of both surface and subsurface species that are critical links in the food chain.

The invasion of fire ants is known to be aided by "any disturbance that clears a site of heavy vegetation and disrupts the native ant community" (Porter *et al.* 1988). Porter *et al.* (1991) state that control of fire ants in areas greater than 5 ha (12 ac) may be more effective than in smaller areas since multiple queen fire ant colonies reproduce primarily by "budding," where queens and workers branch off from the main colony and form new sister colonies. Maintaining large, undisturbed areas of native vegetation may also help sustain the native ant communities (Porter *et al.* 1988; 1991).

Listed species, and their associated prey items, have adapted to native vegetation, with its associated nutrients, surface foliage, and subsurface roots. Before 1860, Bexar County native vegetation consisted of an approximate equal mix of areas with woody and grassland plants (Del Weniger 1988). In more recent times, exotic species have often replaced native plants. The effects on listed invertebrates of replacement of native with exotic vegetation have not been reported.

Woodland-Grassland Community

Because of the various roles played by surface vegetation in maintaining the cave and karst ecosystem, including the listed karst invertebrate species that are part of the ecosystem, we examined the best available scientific information to estimate the surface vegetation needed to support ecosystem processes. The woodland-grassland mosaic community typical of the Edwards Plateau is a patchy environment composed of many different plant species. Van Auken *et al.* (1980) studied the woody vegetation of the Edwards and Glen Rose formations in the southern Edwards Plateau in Bexar, Bandera, and Medina counties. They encountered a total of 24 species of plants on the Edwards or Glen Rose geologic formations, two of the principal, cave-containing rock units of the Edwards Plateau.

To maintain natural vegetation communities over the long term, enough individuals of each plant species must be present for successful reproduction. The number of reproductive individuals necessary to maintain a viable or self-reproducing plant population is influenced by needs for satisfactory germination (Menges 1995), genetic variation (Bazzaz 1983; Menges 1995; Young 1995), and pollination (Groom 1998; Jennersten 1995; Bigger 1999). Pavlik (1996) stated that long-lived, self-fertilizing, woody plants with high fecundity would be expected to have minimum viable population sizes in the range of 50–250 reproductive individuals. Fifty reproductive individuals is a reasonable minimum figure for one of the dominant species of the community (*Juniperous ashei*) based on reproductive profiles (Van Auken *et al.* 1979; Van Auken *et al.* 1980; Van Auken *et al.* 1981). This figure would likely be an underestimate for other woody species present in central Texas woodlands, however, because these other species are more sensitive to environmental changes and do not meet several of the life-history criteria needed for the lowest minimal viable population size. Although these species may require population sizes at the higher end of range (that is, nearer 250 individuals) suggested by Pavlik (1996) to be viable, we do not have the data to support that contention. Therefore, on the basis of our review of information available to us, and after soliciting input from a botanist with expertise in the Edwards Plateau (Dr. Kathryn Kennedy, Center for Plant Conservation, pers. comm. 2002), we consider a minimum viable population size for individual plant species composing a typical oak/juniper woodland found in central Texas to be 80 individuals per species. This estimate is based on a habitat type that, as a whole, is fairly mature, and on knowledge that the species are relatively long-lived and reproductively successful.

On the basis of an analysis of recorded densities, corrected for nonreproductive individuals, we then calculated the area needed to support 80 mature reproductive individuals per species for the 24 species reported by Van Auken *et al.* (1980). Based on our calculations, the four highest area requirements to maintain at least 80 mature individuals were for species that occur at lower densities. These included 80 ha (198 ac) for *Condalia hookeri*, and approximately 32 ha (79 ac) for each of *Ptelea trifoliata, Ungnadia speciosa*, and *Bumelia lanuginosa*. Our calculations indicate that the area needed to maintain the 7 species with the highest average dominance values (*Juniperus ashei, Quercus fusiformis, Quercus texana, Acacia greggii, Rhus virens, Berberis trifoliata*, and *Ulmus crassifolia*) is approximately 13 ha (33 ac). This number would maintain 80 reproductive individuals for 15 of the 24 species. Nine of the species are rarer in the community and all have importance values of less than 1.0. The area needed to maintain these nine species ranges from approximately 20 to 80 ha (49 to 198 ac), with 7 of them in the 26 ha to 32 ha (65 to 79 ac) range.

Most literature found for Central Texas native grasslands was descriptive and not quantitative in its treatment of species composition and dispersion. No literature was located that provided grassland species area curves or quantitative species density tables for the Central Texas area. Two papers by Lynch (1962, 1971) examined species on an 8-acre tract over time, with 123 species, but a high species turnover. High species turnover can be indicative of a habitat area which is too small; however, pre- and post-drought conditions may also have affected this situation. Robertson *et al.* (1997), in a slightly more mesic grassland habitat, found that a 4 ha (10 ac) site captured most of the species diversity (100 species) present even in much larger patches, although it does not address population sizes and persistence in isolation, and an increase to a 6 ha (14 ac) tract increased species representation to 140. One paper on a grassland in a more westerly and drier location in Central Texas recorded 157 taxa in a 16 ha (40 ac) exclosure studied between 1948 and the mid-1970's (Smeins and Merrill 1976).

Primary recruitment of new individuals of grass species in grasslands is from seedling establishment. Many grass species use wind to disperse their seeds and dispersal distances may be small. The process of expansion through rhizomes (underground stems) is slow and clonal, which reduces genetic variability. Seed dispersal, soil texture, and suitable soil moisture profiles at critical times are important factors for maintaining viability (Coffin *et al.* 1993).

As described above, we have reviewed the available information concerning grasslands and grassland species in Central Texas. The information is of a relatively general nature, and we did not find specific information addressing the role that grasslands or grass species might play in contributing, directly or indirectly, to karst ecosystems. While grassland communities and species may be important to maintaining the karst community, we lack adequate information to credibly estimate surface habitat patch size requirements for grass species in relation to karst ecosystems.

The presence of surface vegetation communities is important for maintaining the humid conditions, stable temperatures, and natural airflow in cave and karst environments. Vegetation also plays an important role in water quality. Since soil depth is shallow over the limestone plateau, water collects as sheet flow on the surface following rain and enters the subsurface environment through cave openings, fractures, and solutionally-enlarged bedding planes. This direct, rapid transport of water through the karst allows for little or no purification (Veni 1988), allowing contaminants and sediments to enter directly into the subsurface environment. As a result, karst features and karst dependent invertebrates are vulnerable to the adverse effects of pollution from contaminated ground and surface water. Maintaining stable environmental conditions and protecting groundwater quality and quantity requires managing a healthy vegetation community to avoid threats from surface and subsurface drainage to the karst environment needed by the karst dependent species. This includes not only the cave entrances accessible to humans, but also sinks, depressions, fractures, and fissures, which may serve as subsurface conduits into caves and other subsurface spaces used by the invertebrates.

Buffer Areas

To maintain a viable vegetative community, including woodland and grassland species, a buffer area is needed to shield the core habitat from impacts associated with edge effects or disturbance from adjacent urban development (Lovejoy *et al.* 1986; Yahner 1988). In this context, edge effects refer to the adverse changes to natural communities (primarily from increases in invasive species and pollutants, and changes in microclimates) from nearby areas that have been modified for human development.

The changes caused by edge effects can occur rapidly. For example, vegetation 2 m (6.6 ft) from a newly created edge can be altered within days (Lovejoy *et al.* 1986). Edges may allow invasive plant species to gain a foothold where the native vegetation had previously prevented their spread (Saunders *et al.* 1990; Kotanen *et al.* 1998; Suarez *et al.* 1998; Meiners and Steward 1999). When plant species composition is altered as a result of an edge effect, changes also occur in the surface animal communities (Lovejoy and Oren 1981; Harris 1984; Mader 1984; Thompson 1985; Lovejoy *et al.* 1986; Yahner 1988; Fajer *et al.* 1989; Kindvall 1992; Tscharntke 1992; Keith *et al.* 1993; Hanski 1995; Lindenmayer and Possingham 1995; Bowers *et al.* 1996; Hill *et al.* 1996; Kozlov 1996; Kuussaari *et al.* 1996; Turner 1996; Mankin and Warner 1997; Burke and Nol 1998; Didham 1998; Suarez *et al.* 1998; Crist and Ahern 1999; Kindvall 1999). Changes in plant and animal species composition as a result of edge effects may unnaturally change the nutrient cycling processes required to support cave and karst ecosystem dynamics. To minimize edge effects, the core area must have a sufficient buffer area.

One recommendation for protecting forested areas from edge effects that are in proximity to clear-cut areas is use of the "three tree height" approach (Harris 1984) for estimating the width of the buffer area needed. We used this general rule to estimate the width of buffer areas needed to protect the habitat core areas. The average height of native mature trees in the Edwards woodland association in Texas ranges from 3 to 9

m (10 to 30 ft) (Van Auken *et al.* 1979). Applying the "three tree height" general rule, and using the average value of 6.6 m for tree height, we estimated that a buffer width of at least 20 m (66 ft) is needed around a core habitat area to protect the vegetative community from edge effects. Based on this rule, 7 acres is necessary to protect a 33-acre core area. We recognize that the "three tree height" approach described by Harris (1984) was based on the distance that effects of storm events ("wind-throw") from a surrounding clear-cut "edge" will penetrate into an old-growth forest stand. Since the effects of edge on woodland/grass land mosaic communities have not been well studied, the "three tree height" recommendation is considered to be the best available peer-reviewed science to protect woodland areas from edge effects (Dr. Kathryn Kennedy, Center for Plant Conservation, pers. comm. 2003). The Texas Parks and Wildlife Department is also in general agreement about the need for some type of buffer as a means of addressing edge effects, but currently has not specific recommendations on appropriate size for such a buffer (John Herron, Texas Parks and Wildlife Department, pers. comm. 2003).

Animal communities also should be buffered from impacts associated with edge effects or disturbance from adjacent urban development. Edges can act as a barrier to dispersal of birds and mammals (Yahner 1988; Hansson 1998). Invertebrate species are affected by edges. Mader *et al.* (1990) found that carabid beetles and lycosid spiders avoided crossing unpaved roads that were even smaller than 3 m (9 ft) wide. Saunders *et al.* (1990) suggested that as *little as 100 m (328 ft)* of agricultural fields may be a complete barrier to dispersal for invertebrates and some species of birds. In general, for animal communities, species need buffers of 50 to 100 m (164 to 328 ft) or greater to ameliorate edge effects (Lovejoy *et al.* 1986; Wilcove *et al.* 1986; Laurance 1991; Laurance and Yensen 1991; Kapos *et al.* 1993; Andren 1995; Reed *et al.* 1996; Burke and Nol 1998; Didham 1998; Suarez *et al.* 1998).

Nonnative fire ants are known to be harmful to many species of invertebrates and vertebrates. In coastal southern California, Suarez *et al.* (1998) found that densities of the exotic Argentine ant (*Linepithema humile*), which has similar life history and ecological requirements to the red imported fire ant (Dr. Richard Patrock, University of Texas at Austin, pers. comm. 2003), are greatest near disturbed areas. Native ant communities tended to be more abundant in native vegetation and less abundant in disturbed areas. Based on the association of the Argentine ant and distance to the nearest edge in urban areas, core areas may only be effective at maintaining natural populations of native ants when there is a buffer area of at least 200 m (656 ft) (Suarez *et al.* 1998).

Information on the area needed to maintain populations of animal species, including cave crickets, found in Central Texas is lacking. As discussed above, animal communities should be buffered by areas of 50 to 100 m (164 to 328 ft) or greater to ameliorate edge effects, and by areas of 200 m (656 ft) to buffer against the effects of fire ants. From this data, we determined that a buffer of 100 m (328 ft), in addition to the 50 m (164 ft) cave cricket foraging area, would, at a minimum, protect the cave cricket foraging area from the effects of edge and nonnative species invasions.

Fragmentation

Haskell (2000) examined the effect of habitat fragmentation by unpaved roads through otherwise contiguous forest in the southern Appalachian Mountains and found reduced soil macroinvertebrate species abundance up to 100 m (328 ft) from the road and declines in faunal richness up to 15 m (50 ft) from the road. Haskell (2000) pointed out that "these changes may have additional consequences for the functioning of the forest ecosystem and the biological diversity found within this system. The macroinvertebrate fauna of the leaf litter plays a pivotal role in the ability of the soil to process energy and nutrients." Haskell further points out that these changes may in turn affect the distribution and abundance of other organisms, particularly plants. Changes in abundance in litter dwelling macroinvertebrates may also affect ground-foraging vertebrate fauna (Haskell 2000).

Invertebrate biomass per unit area has been found to be less in small fragmented habitats, which may result in reduced food available for cave crickets. Burke and Nol (1998), working in southern Ontario, Canada, found a greater biomass of leaf litter invertebrates in large (≥20 ha (49 ac)) than in smaller forested areas. Zanette *et al.* (2000) in New South Wales, Australia, reported that the biomass of ground dwelling invertebrates was 1.6 times greater in large (> 400 ha (988 ac)) than in smaller (~55 ha (136 ac)) forested areas.

Dispersal

The ability of individuals to move between preferred habitat patches is essential for colonization and population viability (Eber and Brandl 1996; Fahrig and Merriam 1994; Hill *et al.* 1996; Kattan *et al.* 1994; Kindvall 1999; Kozlov 1996; Kuussaari *et al.* 1996; Turner 1996). Patch shapes allowing connection with the highest number of neighboring patches increase the likelihood that a neighboring patch will be occupied (Fahrig and Merriam 1994; Kindvall 1999; Kuussaari *et al.* 1996; Tiebout and Anderson 1997). If movement among populations is restricted and a population is isolated, the habitat patch size must be large enough to ensure that the population can survive (Fahrig and Merriam 1994).

It is likely that many cave systems are connected throughout the subsurface geologic formation even though this may not be readily apparent from surface observations. The extent to which listed species use interstitial spaces and passages is not known. Troglobitic species may retreat into these small interstitial spaces where the physical environment is more stable (Howarth 1983) and may spend the majority of their time in such retreats, only leaving them during temporary forays into the larger cave passages to forage (Howarth 1987). During several karst invertebrate surveys conducted in Bexar County caves, Service biologists have observed that troglobites, including listed species, were not found when temperature and humidity in the cave was low. Upon returning to the same cave once environmental conditions returned to optimal, the listed species and other troglobites were observed.

Small voids (inaccessible to humans) and interstitial spaces can also provide subsurface corridors for movement of listed species and cave crickets between and among caves and karst features. Cores drilled around and between occupied caves have led to discovery of additional void space that was hydrologically, but not physically connected to the humanly-accessible portion of an occupied cave. Listed species were found in this void space.

Summary

The conservation of the endangered karst invertebrates depends on a self-sustaining karst ecosystem; surface and subsurface drainage basins to maintain adequate levels of moisture; and a viable surface animal and plant community for nutrient input and protection of the subsurface from adverse impacts. The area needed to conserve such an ecosystem includes a core area buffered from the impacts associated with fragmentation, isolation, edge effects, and other factors that may threaten ecosystem stability. Depending on the size and shape of these core habitat areas or patches, in order to remain viable, they may also require connections to other habitat patches.

Previous Federal Action

On January 16, 1992, we received a petition submitted by representatives of the Helotes Creek Association, the Balcones Canyonlands Conservation Coalition, the Texas Speleological Association, the Alamo Group of the Sierra Club, and the Texas Cave Management Association to add the nine invertebrates to the List of Threatened and Endangered Wildlife. On December 1, 1993, we announced in the **Federal Register** (58 FR 63328) a 90-day finding that the petition presented substantial information that listing may be warranted.

On November 15, 1994, we added eight of the nine invertebrates to the Animal Notice of Review as category 2 candidate species in the **Federal Register** (59 FR 58982). We intended to include *Rhadine exilis* in the notice of review, but an oversight occurred and it did not appear in the published notice. Category 2 candidates, a classification since discontinued, were those taxa for which we had data indicating that listing was possibly appropriate, but for which we lacked substantial data on biological vulnerability and threats to support proposed listing rules.

On December 30, 1998, we published a proposed rule to list the nine Bexar County karst invertebrates as endangered (63 FR 71855). Incorporating comments and new information received during the public comment period on the proposed rule, we published a final rule to list the nine Bexar County karst invertebrate species as endangered in the **Federal Register** on December 26, 2000 (65 FR 81419).

In the proposed rule for listing these species, we indicated that designation of critical habitat was not prudent for the nine invertebrates because the publication of precise species locations and maps and descriptions of critical habitat in the **Federal Register** would make the nine species more vulnerable to incidents of vandalism through increased recreational visits to their cave habitat and through purposeful destruction of the caves. We also indicated that designation of critical habitat was not prudent because it would not provide any additional benefits beyond those provided through listing the species as endangered.

Based on recent court decisions (for example, *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)) and the standards applied in those judicial opinions, we reexamined the question of whether critical habitat for the nine invertebrates would be prudent. After reexamining the available evidence for the nine invertebrates, we did not find specific evidence of collection or trade of these or any similarly situated species. Consequently, in our final rule listing the species, we found that "by designating critical habitat in a manner that does not identify specific cave locations, the threat of vandalism by recreational visits to the cave or purposeful destruction by unknown parties should not be increased" (65 FR 81419). Therefore, our final rule to list the species as endangered also included our determination that critical habitat designation was prudent as we did not find specific evidence of increased vandalism, and we found there may be some educational or informational benefit to designating critical habitat. Thus, we found that the benefits of designating critical habitat for the nine karst invertebrate species outweighed the benefits of not designating critical habitat.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) stated that we would undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget was insufficient to allow us to immediately complete all of the listing actions required by the Act during FY 2000. We stated that we would propose designation of critical habitat in the future at such time when our available resources and priorities allowed.

On November 1, 2000, the Center for Biological Diversity (Center) filed a complaint against the Service alleging that the Service exceeded its 1-year deadline to publish a final rule to list and to designate critical habitat for the nine Bexar County cave invertebrates. Subsequent to the Service publishing the final rule to list these nine species as endangered on December 26, 2000, the Center agreed to dismiss its claim regarding the listing of the species. Under the terms of a settlement reached between the Center and the Service, the Service agreed to submit to the **Federal Register** for publication a proposed critical habitat determination on or by June 30, 2002, and a final determination on or by January 25, 2003. Sixty-day extensions on the deadlines to submit both the proposed and final critical habitat determinations to the **Federal Register** for publication were approved by the court, and the new deadlines became August 31, 2002, and March 26, 2003, for the proposed and final rules, respectively.

On February 28, 2002, we mailed letters to the Texas Parks and Wildlife Department and the Texas Natural Resource Conservation Commission informing them that we were in the process of designating critical habitat for the nine Bexar County karst invertebrates. We requested any additional available information on the listed species, including biology; life history; habitat requirements; distribution, including geologic controls to species distribution; current threats; and management activities, current or in the foreseeable future. The letters contained a current list of Bexar County caves known to contain listed species, a map showing the general distribution of these species within each Karst Fauna Region, and a list of the references pertaining to these species and their distribution as we know it. We requested their review and comments on our current information and asked their assistance in providing any additional available information.

We also mailed approximately 300 pre-proposal letters to interested parties and cave biologists on March 20, 2002, informing them that we were in the process of designating critical habitat for the 9 listed karst invertebrates. The letters contained a copy of the final rule to list these Bexar County invertebrate species as endangered, a map showing the general distribution of these species, a list of literature about these species and their habitats, and a brief summary with questions and answers on critical habitat. We requested comments on: (1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of excluding areas will outweigh the benefits of including areas; (2) land use practices and current or planned activities in the subject areas and their possible impacts on possible critical habitat; (3) any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, and particularly any impacts on small entities or families; and (4) economic and other benefits associated with designating critical habitat for the Bexar County karst invertebrates.

On August 27, 2002, we proposed that 25 units encompassing a total of approximately 3,857 ha (9,516 ac) in

Bexar County, Texas, be designated as critical habitat for the nine karst invertebrates (67 FR 55064). The comment period for the proposed rule was originally scheduled to close on November 25, 2002, but was extended until December 23, 2002 (67 FR 70203), to allow for a 30-day comment period on the draft economic analysis. Thus, we accepted comments on the proposed rule and the economic analysis until December 23, 2002.

Summary of Comments and Recommendations

In the August 27, 2002, proposed rule, we requested all interested parties to submit comments or information concerning the designation of critical habitat for the nine endangered Bexar County invertebrates (67 FR 55064). During the comment period, we held a public hearing in San Antonio on October 30, 2002. We published a newspaper notice inviting public comment and announcing the public hearing in the San Antonio Express-News. A transcript of the hearing is available for inspection (*see* **ADDRESSES** section). The comment period was originally scheduled to close on November 25, 2002.

On November 21, 2002, we announced the availability of the draft economic analysis and requested comments on it and the proposal during an extension of the comment period until December 23, 2002 (67 FR 70203). We contacted all appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties and invited them to comment. We also provided notification of these documents through email, telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, and interest groups. For the notice of the proposed rule, we mailed over 1,500 letters to interested parties. Later we sent over 1,200 post cards notifying interested parties of the availability of the draft economic analysis and the extension of the comment period. The number of parties on the mailing list fell as we deleted out-of-date and duplicate addresses. We also published all of the associated documents on the Service's regional Internet site following their release.

We solicited 11 independent experts who are familiar with these species and the karst ecosystem to peer-review the proposed critical habitat designation. Only one of the peer reviewers submitted comments, generally in support of the proposed designation (see "Peer Review" section below). We also received a total of 42 written comments, and 3 oral comments at the public hearing. Of those comments indicating a preference, 10 supported the critical habitat designation and 13 indicated opposition to designation. Many commenters did not express opposition to the designation, but did express opposition to specific areas being included. We reviewed all comments received for substantive issues and new data regarding critical habitat and the draft economic analysis. Here, we address all comments on both documents received during the comment periods, as well as public hearing testimony. We have grouped similar comments and addressed them in the following summary.

Issue 1: Biological Justification and Methodology for Size of Critical Habitat Units

(1) *Comment:* The Service should designate smaller areas for critical habitat units, including: (1) Surface and subsurface drainage areas; (2) cave cricket foraging areas; and (3) dominant and subdominant woody species, rather than uncommon plant species. The Service focused its methodology on surface plant communities, but little information exists relating particular vegetation communities to the subsurface habitat of the listed species.

Our Response: We believe it is well documented that surface flora and fauna communities are an essential energy source for fauna, including the nine endangered invertebrates, in the karst environment. The areas needed to support dominant, subdominant, and "other woody species" common to the Edwards Plateau were included in our proposal to incorporate key components of the native vegetative community that contribute directly to nutrient input, and which also support the animal community that is another source of nutrient input to karst areas. We do not have data from vegetation surveys conducted around occupied caves to determine the importance of rarer plant species. Therefore, in this final designation we have reduced the size of all of the critical habitat units based on the amount of area that we believe, based on the best available information, is needed to support at least 15 of 24 species of vegetation on the Edwards Plateau, including the seven species with the highest dominance values, but not the rarer plant species (see "Criteria Used to Delineate Critical Habitat" section below for further explanation).

(2) *Comment:* The Service should designate larger areas for the critical habitat units to: (1) Include all or most of Karst Zone 1; (2) all or portions of Karst Zone 2; (3) reduce fragmentation of habitat; (4) consider subsurface karst voids between known caves that may provide habitat for the species; (5) provide better protection against pollution; and (6) provide dispersal corridors for cave crickets.

Our Response: We agree that it is likely that all of these concerns have the potential to affect the conservation of the endangered karst invertebrates. Much of the biology and ecology of these karst-adapted listed species is not well understood. Critical habitat was delineated to encompass areas on which are found those components of the karst ecosystem for which sufficient information exists to determine that they are essential to the conservation of the listed species.

We recognize that areas outside of the boundaries of critical habitat may be important for the karst invertebrates for purposes such as providing habitat in interstitial karst voids (beyond the known caves), additional sources of nutrients, or dispersal corridors. However, we did not have sufficient data when we proposed critical habitat, nor were any data provided during the comment period, that would allow us to adequately assess the importance to occupied caves of other areas of Karst Zones 1 or 2, karst voids between known caves, larger buffers, or areas that are needed for dispersal corridors for cave crickets. For instance, members of the Technical Subcommittee of the Karst Invertebrate Recovery Team, who are experts on the species and the karst ecosystems, agree that it is likely the invertebrates spend considerable time, perhaps the majority of time, in the human-inaccessible karst voids (interstitial spaces) associated with the cave (Steve Taylor, Technical Subcommittee chair, pers. comm. 2002). However, the distance that these invertebrates go from the cave into the surrounding karst is unknown. Since protection of the surface and subsurface drainage areas associated with each occupied cave is important to buffer the cave from pollutants, these drainage areas were included, where possible, in the critical habitat designation. Additional scientific discovery may show that larger areas are needed for long-term conservation, and we will continue to incorporate such information into planning and implementing various conservation activities for these species. Given the best available information, we believe the specific areas designated in this rule contain one or more of the physical or biological features that are essential to the conservation of the species and meet the definition of critical habitat as provided in section 3 of the Act.

(3) *Comment:* The proposed rule did not show that designating critical habitat was essential to conservation of the species or requires special management.

Our Response: Section 3 of the Act defines critical habitat as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed * * *, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination * * * that such areas are essential for the conservation of the species." Regulations (50 CFR 424.12) direct us to "focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species." Conservation is defined in the Act, section 3, as "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." We believe the proposed rule demonstrated that the primary constituent elements we recognized are essential to the conservation of the species. The areas we are designating all contain one or more of such features.

The caves and the associated karst are essential to the conservation of the species because the invertebrates live, feed, and reproduce in the caves and the associated karst structures. The subsurface drainage area is essential to provide the environmental conditions in the cave that are requirements for the species. The surface drainage area helps maintain the environmental conditions and helps maintain an energy flow into the underground karst system. The surface vegetation is a direct source of energy through plant materials entering the karst system, and the surface vegetation also supports animals (such as cave crickets) that process the plant materials and then leave the resulting nutrients in the cave. Cave crickets are likely one of the most important sources of nutrients that support the endangered karst invertebrates. We believe this final rule documents that the areas designated meet the definition of critical habitat in that they contain one or more of the physical and biological features that are essential to the conservation of the endangered karst invertebrates. We also have carefully reviewed whether such areas may require special management considerations or protection, as called for under the definition of critical habitat in section 3(5)(A)(i) of the Act. On the basis of our evaluation of certain areas already covered by conservation plans and thus already have special management considerations or protection, we did not include some areas in this final designation. (*See* "Lands Covered Under Existing Conservation Plans" section, below.)

(4) *Comment:* Because critical habitat must contain those physical or biological features essential to the conservation of the species, with the term "conservation" being considered synonymous with recovery, it appears that the same criteria used by the Service to delineate critical habitat must be incorporated into recovery plans for the Bexar County karst invertebrates. The commenter also hypothesized that the recovery of the Bexar County invertebrates will require establishment of a certain number of caves within adequate preserves that meet the parameters described in the proposed rule for critical habitat designation. Although a recovery plan has not yet been developed for these species, some of the areas proposed as critical habitat do not appear as if they will meet likely future recovery criteria for these species.

Our Response: We recognize that our designation of critical habitat may not include all the habitat areas that might eventually be determined to be necessary for the conservation of the listed karst invertebrates. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be recommended for attention as part of a recovery plan. Similarly, critical habitat designations made on the basis of the best information available at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts, particularly if new information available to these planning efforts calls for a different outcome. We also note that as provided for under section 4(a)(3) of the Act, we can revise our designation of critical habitat in the future if it is appropriate to do so.

Designation of critical habitat does not establish recovery criteria; that is one of the purposes of a recovery plan. Pursuant to section 4(f)(1) of the Act, the Service develops and implements plans, referred to as recovery plans, for the conservation and survival of listed species. As defined in section 3 of the Act, "conservation" means "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." A key purpose of a recovery plan is to recognize the threats to the listed species and propose methods for removing or minimizing the threats.

A Recovery Team, including stakeholders, currently is working with the Service to prepare a draft recovery plan for these species. While the Team has discussed recovery criteria, no draft plan has been developed. When a plan is developed, the public's review and comments will be solicited before a final plan is adopted by the Service. We cannot currently say how many or which areas will be identified in the recovery plan as being important for the conservation the species.

(5) *Comment:* The Service's recommendation for the size of the critical habitat units appears to be based on the study of a single cave (Lakeline Cave in Williamson County, Texas) that may not be representative of the other karst features.

Our Response: The recommended size for critical habitat units is not based on the results of the Lakeline Cave cricket study. The Service used the Lakeline study as one source of information that suggests small areas of native vegetation, surrounded by urban development, are not adequate to sustain the cave cricket population, which is believed to be a key to the ecology of karst invertebrates and a primary source of cave nutrients. Our designation is based on the use of the best scientific data available regarding the physical and biological features that are essential to the conservation of the species and the identification of specific areas where such features are found.

(6) *Comment:* The size of the area needed to support native plant communities is based on the need for the plants to support each other, not one karst ecosystem. Therefore, no reason exists that multiple cave/karst ecosystems cannot occur within the boundaries of one critical habitat unit, as long as the actual areas providing nutrients to each cave are encompassed.

Our Response: We agree that the approach taken in the proposed rule of providing adequate surface plant communities for the karst ecosystem does not necessarily require more surface area to support multiple caves in close proximity. In the final rule, we revised our methods for delineating critical habitat to include multiple caves within the same smaller surface area, where appropriate. For each cave, we overlaid the areas needed to include the surface and subsurface drainages, cave cricket foraging area, and the vegetative surface community (see "Critical Habitat" section).

(7) *Comment:* The Service should consider only designating the cave cricket foraging area plus a buffer area, or about 5.34 ac, as critical habitat around each cave.

Our Response: We agree that the immediate area around an occupied cave is very important for cave cricket foraging and other reasons, and that this area should be included in the critical habitat designation. However, there are additional physical and biological features that we have identified as essential to the conservation of the species, consistent with the definition of critical habitat in section 3 of the Act. The area recommended by the commenter would not adequately provide for the features and related primary constituent elements that we have identified as being essential to the conservation of these species (*see* "Critical Habitat" and "Primary Constituent Elements" sections, below).

(8) *Comment:* Based on the Testudo Tube Cave example in Williamson County, 31 acres (26-acre preserve plus a buffer area) may be an adequate area for critical habitat units.

Our Response: Testudo Tube Cave Preserve in Williamson County, Texas, is surrounded by several hundred acres of undeveloped land and is adjacent to an even larger preserved area of several thousand acres, resulting in an effective "preserve" size of much larger than 31 acres. We will be interested in long-term studies of the Testudo Tube Cave Preserve that may provide additional information about the adequacy of the size of the preserve. We note also that designating critical habitat does not establish a preserve (see "Critical Habitat" section).

(9) *Comment:* Boundaries of the critical habitat units are arbitrary and not properly defined. The boundaries should be based on biology and not roads and surface features.

Our Response: While the general size of the critical habitat unit boundaries are based on primary constituent elements needed by the species, in the proposed rule we did use roads and other surface features to make it easy for the public to identify the boundaries. In the changes to the boundaries in this final rule, we did not use surface features, but instead used specific coordinates to describe the boundaries. This allowed us to base boundaries mainly on biological, hydrological, and geological considerations, thereby delineating critical habitat areas more precisely.

(10) *Comment:* Critical habitat needs to be defined to include three new caves that have been discovered to contain listed species since the proposed rule was published.

Our Response: Of the three caves that were discovered to contain listed species since the proposed rule was published, two (Hackberry Sink and Dancing Rattler Cave) are located in Government Canyon State Natural Area. We have determined that the management for the caves and the species in the Natural Area provides adequate special management considerations for the primary constituent elements, and consequently units within the Natural Area that we proposed for designation are not included in this final rule. (See the "Lands Covered Under Existing Conservation Plans" section for further details.) One cave (Crownridge Canyon Cave) is in a new location, but was not included in this final determination because there would have been no opportunity for public comment had we included the area in critical habitat. Under our rulemaking procedures and the Administrative Procedure Act, we would first need to propose the area for designation and seek public review and comment on such a proposal before a designation would be possible. Because of the court-approved settlement agreement that set a deadline for finalizing this rule, we did not have enough time to republish a proposed rule that might have included the Crownridge Canyon Cave in the critical habitat designation. We note that the listed species in Crownridge Canyon Cave do occur in other caves within the critical habitat designation. Although we are not able to consider including Crownridge Canyon Cave in this designation of critical habitat, we believe the cave and the associated karst ecosystem to be important to the conservation of the species. Because the cave is known to be occupied, it will be covered by applicable provisions under sections 7 (requiring Federal agencies to consult under the "jeopardy standard"), 9, and 10 of the Act.

(11) *Comment:* The Service ignored the potential for the species to occur in void spaces within the bedrock lying between caves.

Our Response: We agree that the species occur within, and use, subsurface voids in karst rock and areas between occupied caves, and we indicated this in the proposed rule for critical habitat. However, we do not have data to quantify such areas. Using the best available data, we designated critical habitat to incorporate the specific areas on which are found the primary constituent elements of a karst ecosystem in the vicinity of caves known to be occupied by the endangered species.

(12) *Comment:* How can a cave located within an area lacking a healthy surface plant community contain an intact subsurface environment?

Our Response: The surface vegetative community has been significantly altered by urbanization in some of the designated critical habitat units. Since the caves still contain the endangered species, we believe that the areas have maintained the primary constituent elements related to the karst subsurface environment and surface and subsurface drainages. We recognize that intensive management of the remaining surface habitat may be needed to compensate for lack of natural plant and animal communities on the surface.

Issue 2: Data Quality

(13) *Comment:* The available data used in the proposed rule is not adequate to support this critical habitat designation. There seems to be a particular lack of data on species biology, ecology, and distribution of the species and information on which to base the unit boundaries and areas.

Our Response: As per section 4(b)(2) of the Act, we are required to designate critical habitat "on the basis of the best scientific data available," and we believe our designation meets that requirement. In general, the biology and ecology of the karst-adapted species are not well understood. Consequently, the criteria we used to delineate critical habitat, and the areas we delineated, were based on components of the karst ecosystem for which sufficient information exists to determine their importance to the listed species, and for which specific areas can be identified and mapped. The "Information Sources" and "Criteria Used to Designate Critical Habitat" sections below provide additional information regarding the basis for our designation.

(14) *Comment:* The number of Bexar County caves and those containing listed species should be updated to the latest available information. Will the Service designate critical habitat for new locations of the listed species that will be discovered subsequent to publication of the final rule for critical habitat designation?

Our Response: We fully agree that our knowledge of the caves in Bexar County that are known to provide habitat for endangered karst invertebrates should be as current as possible. This knowledge will help the Service evaluate the threats to the species, the status of the species, and plan for their conservation. We recognize that additional caves are likely to be found in the future that have endangered karst invertebrates and may not be within the areas currently designated as critical habitat.

Section 4(a)(3) of the Act provides that subsequent to the designation of critical habitat, we "may, from time-to-time thereafter as appropriate, revise such designation." Any new caves discovered to contain the listed species may be important to the conservation of the species, and we will consider them for potential future revisions of this designation, provided the available science at the time supports the designation. This would require the same procedures for public comment and full economic analysis as this final rule has followed. We note also that new areas found to be occupied by the endangered species and not included in this designation of critical habitat may be considered and included in the recovery plan being prepared for these species. Also, the species at those new locations will receive protection under sections 7 (pursuant to requirements for Federal agencies related to the "jeopardy" standard), 9, and 10 of the Act, regardless of whether the area is designated as critical habitat.

(15) *Comment:* Restricted access to private property limits the knowledge of other caves that may contain endangered karst invertebrates.

Our Response: The help of private property owners will be essential for the recovery of these endangered karst invertebrates. Any surveys for caves or cave invertebrates on private property are completely voluntary and at the discretion of the landowner. We appreciate the cooperation the Service has received from many landowners in Bexar County who allowed geologists and biologists access. We want to continue to build positive, voluntary relationships with private landowners for the conservation of listed species.

(16) *Comment:* Does critical habitat designation comply with the Federal Data Quality Act and Service Information Quality Guidelines?

Our Response: The U.S. Department of the Interior, of which the Fish and Wildlife Service is part, issued guidelines regarding data quality, in response to the passage of Public Law 106–554, referenced by the commenter. These guidelines, Information Quality Guidelines Pursuant to Section 515 of the Treasury and General Government Appropriations Act For Fiscal Year 2001, became effective October 1, 2002. The Service's rulemaking procedure, inclusive of this designation of critical habitat, includes a comprehensive public comment process and imposes a legal obligation on us to respond to comments on the proposed action. These procedural safeguards can ensure a thorough response to comments on quality of information. The thorough consideration required by this process generally meets the needs of the request for correction of information process, under the Federal Data Quality Act and Service Information Quality Guidelines. In the case of rulemakings and other public comment procedures, where we disseminate a study analysis or other information prior to the final rulemaking, requests for correction are considered prior to the final action. The commenter did not specifically identify how the draft economic analysis or proposed rule might not meet the criteria that the guidelines require. Regardless, we believe that this process used the best and most reliable scientific and commercial data available regarding the designation and meets the criteria of the data quality guidelines.

(17) *Comment:* The proposed rule states that of about 400 caves known in Bexar County, only 57 contain the listed species. Have the other 343 caves been surveyed?

Our Response: The final rule has been updated to reflect the best available information on the total number of caves known from Bexar County (475 caves as of December 2002). Seventy four caves are currently known to contain listed species. Not all of the known caves in Bexar County have been adequately surveyed for invertebrates. It is likely that some of these caves will be found to contain one or more of the listed species. We also expect more caves to be discovered as additional surveys are completed.

Issue 3: Site-Specific Comments

(18) *Comment:* Many individual landowners commented that their property should be excluded from the critical habitat because it did not contain either the caves with the species or the primary constituent elements necessary for critical habitat. Several units have already been significantly disturbed from urban development and others are planned for development.

Response: The specific properties of most of the individual landowners who expressed these concerns have been either removed from the critical habitat designation, or the amount of their property included in the designation is now significantly reduced. This is a result of the reduction in area designated in all of the units based on the updated criteria used in the final rule to determine the areas for critical habitat (refer to the "Methods" and the "Criteria Used to Identify Critical Habitat" sections of the final rule for the specific changes). All of the revised critical habitat units designated in this final rule contain one or more of the primary constituent elements essential for the conservation of these endangered species. Conservation of some species may be dependent, in part, on habitat restoration activities in some areas that have been disturbed. Such activities may include, but are not limited to, restoration of native vegetation, control of invasive species, and the installation of berms to protect the cave opening from pollutants.

(19) *Comment:* The groundwater drainage basins for Black Cat Cave and Logan's Cave (Units 13 and 17, respectively) extend beyond the boundaries of their proposed critical habitat areas. These units should be expanded to include the appropriate drainage basins. The surface water drainage area for Springtail Crevice Cave (Unit 21) extends more than 6 km outside of its proposed critical habitat area. All, or at least a significantly greater percentage, of the lower drainage area within about 2 km of the cave should be included within the critical habitat area to better protect the cave from degradation of water quality due to urbanization.

Our Response: The subsurface drainage areas associated with the caves from units 13 and 17, and the surface drainage area for the cave in Unit 21, were delineated after the proposed rule was published (Veni 2002). These drainage areas extend outside of the boundaries of the proposed critical habitat boundaries. These areas were not included in this final determination because they were not identified in the proposed rule and, therefore, were not available for public comment. Although not included in the critical habitat designation, minimizing future impacts to the subsurface and surface drainage areas associated with these caves will likely be important for the conservation of the listed species in these caves. We have emphasized the importance of these areas in this final rule (*see* "Critical Habitat Unit Descriptions" section).

(20) *Comment:* The boundaries of Unit 20 are arbitrary, and 160 ha (395 ac) are not required to protect the species in Robber Baron Cave.

Our Response: The boundaries of Unit 20 have been redrawn based on the cave footprint and the subsurface drainage area of the cave and reduced to include 23 ha (57 ac). The amount of Zone 1 area included in the critical habitat designation was also reduced due to a lack of information on the importance of this area to the listed species within the cave. We also reduced the area included

in the critical habitat by using coordinate data to describe the boundaries, rather than roads as used in the proposed rule.

(21) *Comment:* Several commenters requested that certain units be excluded because there are other caves with critical habitat, located in the same karst fauna region and containing the same listed species, whose surface habitat is in a more natural and less degraded state. Therefore, the Service should omit those units with degraded surface habitat, because they will not be required for conservation of these species.

Our Response: As discussed above, all of the specific areas being designated contain one or more physical or biological features and primary constituent elements that are essential for the conservation of these endangered species and meet the definition of critical habitat as provided in section 3 of the Act. While some of the designated areas may not be in optimal condition, they are the only known locations for these species. Some of the areas may need intensive special management to restore or maintain some of the conditions important to these species. Conservation efforts involving the designated areas and other areas, including efforts taken to implement a recovery plan when one is adopted, will be dependent on the voluntary cooperation of landowners. This may include, but is not limited to, the cooperation of landowners who may voluntarily allow restoration efforts on their lands.

(22) *Comment:* Unit 1e should be divided into multiple smaller units for critical habitat.

Our Response: We agree and the final designation divides Unit 1e, previously 341 ha (842 ac), into three smaller Units 1e1, 1e2, and 1e3 for a total area of 50 ha (124 ac) (see Table 2 below).

(23) *Comment:* How can the Service designate critical habitat for Unit 19 and Genesis Cave when the urban development on the site has already resulted in take of the species in the cave? If the unit was designated based on the alleged existence of intact subsurface environment, then why are the vegetation buffer zones necessary?

Our Response: We determined that area designated as Unit 19 maintains the biological and physical features essential to the conservation of the species and supports one or more of the primary constituent elements. Thus it warrants inclusion in the final critical habitat designation regardless of whether "take" (as defined in Section 9 of the Act) of listed species in Unit 19 has already occurred. Critical habitat for Units 19 and 20 is designated only for the subsurface environment due to the significant surface degradation that has already occurred. We acknowledge that intense management will likely be needed in both of these units for conservation of the species. Identifying areas that contain features essential to the conservation of the species and that may require special management considerations or protection is a primary purpose of designating critical habitat.

(24) *Comment:* The Service should address how intensive management will provide nutrients and water to listed species in caves in heavily urbanized areas, such as units 12 and 19. The Service should also identify who should be responsible for this management, since critical habitat designation does not mandate special management or require removal of existing structures.

Our Response: Under the definition of critical habitat, all of the areas being designated may require special management. Caves in heavily urbanized areas, such as those within Units 12, 19, and 20, may need more intensive management for conservation of the species than some of the other units. We anticipate that the recovery plan for these species will address the specific management strategies recommended for long-term conservation of these species. This designation does not in any way require landowners to undertake any particular management actions for the designated critical habitat or the listed species. As part of the recovery process, we anticipate working cooperatively with landowners and other partners to provide the management needed for conservation.

(25) *Comment:* The proposed rule did not clearly indicate that surface disturbances within Units 19 and 20 would not have the potential to adversely modify sub-surface critical habitat and would not be regulated under Section 7. Similarly, what is the regulatory distinction between units with both primary constituent elements and those units with only one of the primary constituent elements.

Our Response: For critical habitat Units 19 and 20, we designated the subsurface area only as critical habitat, because of the level of disturbance that already has altered the surface habitat. Under section 7 of the Act, Federal agencies are required to insure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to jeopardize the continued existed of a listed species or result in the destruction or adverse modification of designated critical habitat. An action authorized, funded, or carried out by a Federal agency involving the surface of the land is subject to the consultation requirement of section 7, and related regulations at 50 CFR 402, if such action may affect a listed species or its designated critical habitat. The aspect of a consultation involving critical habitat would address the potential effects of a proposed Federal action on the primary constituent elements in the area covered by the consultation. For additional information about consultations and the potential Federal activities that could destroy or adversely modify critical habitat see the "Section 7 Consultation" section, below.

(26) *Comment:* Unit 12 should be deleted because the areas around Hairy Tooth and Ragin' Cajun caves are effectively protected. Big Springs Ltd., has established preserves around each cave and has developed a management plan for Hairy Tooth Cave and is considering a management plan for Ragin' Cajun Cave. Also, Unit 9 should be deleted or much reduced to exclude areas under a karst management plan by the University of Texas at San Antonio.

Our Response: In order to consider not including an area that is the subject of a management plan, we first evaluate the plan. Key factors we evaluate include whether the plan or agreement is legally binding, the status of implementation of the plan, whether the plan specifies the management needed to ensure that primary constituent elements are appropriately protected and, if needed, improved. Along with meeting other criteria, the plan also must include a timely schedule for implementation and outline the probability that the funding source or other resources necessary to implement the management will be available. The management plan for Hairy Tooth Cave (Unit 12), which we received after the close of the comment period, did not meet the above criteria. A management plan for Ragin' Cajun Cave was not provided to us.

The University of Texas at San Antonio submitted a draft karst management plan for consideration with respect to Unit 9. This draft plan represents a very positive step for conservation of the listed karst invertebrate species. However, without a final plan, we could not make a determination that the area is receiving adequate special management, in accordance with the criteria described above. (*See* the "Lands Covered Under Existing Conservation Plans" for additional information on our process.) Therefore, Unit 9 is part of the final designation, although its size has been reduced (for other reasons) from the proposed amount of 71 ha (175 ac) to 16 ha (40 ac) in this final rule. The procedures for submitting management plans for possible exclusion of specific areas were clearly described in the proposed rule.

Issue 4: Economic Issues

(27) *Comment:* The draft economic analysis understates the economic impact from the critical habitat designation because it failed to adequately consider effects from: (1) Greater amounts of technical assistance and administrative tasks than estimated; (2) greater numbers of informal and formal section 7 consultations than estimated because of a vast understatement of Federal involvement in private projects; (3) increased difficulty in obtaining state and/or county approval for development; (4) project modifications and delays for planned developments; (5) development of biological assessments; (6) reduced property values; and (7) increased mitigation costs. Generally, the baseline approach used in the draft economic analysis underestimates the impacts to all development activities, whether or not Federal involvement is presumed.

Our Response: Minor modifications were made in the final economic analysis of the proposed rule to reflect increased technical assistance in one unit and to the cost of technical assistance related to Clean Water Act activities. We believe the estimates of formal and informal consultations in the final economic analysis reflect numbers that can be reasonably anticipated. We do not anticipate any increased difficulty in obtaining State or county approvals for development. While uncertainties about the impacts of the critical habitat designation and the perception that the designation will impose land use restrictions could temporarily foster this result, this effect is likely to be temporary in nature as the uncertainties and perceptions dissipate or become clarified over time.

We do not believe that critical habitat designation will impose additional project modifications and delays for projects, including preparation of biological assessments. Additional requirements associated with critical habitat designation apply solely to Federal actions, and since this designation only involves occupied habitat, then the section 7 requirements would have to be met pursuant to consideration of "jeopardy standard" regardless of the presence of critical habitat. We do not believe that the designation of critical habitat, when occupied by the listed species, should have any real effect on property value, because it only applies to those activities that involve a Federal action. However, we do recognize that there can be a perceived effect which could adversely affect property values. We will, through outreach and education, do all we can to correct this perception.

We believe mitigation costs associated with critical habitat designation were accurately estimated in the final economic analysis. The anticipated number of HCPs was increased from five to eight, and the cost of purchasing and managing mitigation lands due to the development of HCPs was estimated. The analysis used standard methods for analyzing the economic impacts. These methods have been used in past designations throughout the United States and have generally been found to be sufficient.

(28) *Comment:* The draft economic analysis is clearly prepared to show that minimal effects will be felt by the designation and should be rejected because it does not take an objective view of the matter under consideration. The information sources referenced do not include any discussions with private landowners.

Our Response: The analysis used standard methods for analyzing economic impacts. These methods have been used in past designations throughout the United States and have generally been found to be sufficient. Also, the final economic analysis of the proposed rule considers information gathered from interviews with individual property owners who submitted comments on the draft analysis.

(29) *Comment:* The level of predicted consultations appears to be based on the assumption that only commercial, as opposed to residential, development would trigger consultations, and the only anticipated Federal nexus for development was a party seeking an HCP.

Our Response: We apologize if the assumptions were not clear. We have clarified the assumptions in the final economic analysis.

(30) *Comment:* The draft economic analysis discounts entirely broader regional impacts, focusing only on the costs of consultation. The setting aside of land and delaying and increasing the costs of a variety of projects and activities will undoubtedly have a broader impact. In its draft economic analysis for the Kauai Cave wolf spider, the Service considered some of these broader economic impacts and determined that the impact of designating less than half the acreage proposed in Bexar County could be as high as $1.9 million. This difference in estimated costs is attributable to differences in methodology.

Our Response: We want to stress that the designation of critical habitat does not "set aside" land and does not create parks or preserves. We believe the economic analysis fairly estimated the costs of critical habitat designation in Bexar County (see our response to Comment 27). The final economic analysis of the proposed rule clarifies the methods used.

(31) *Comment:* Many landowners commented that their individual properties were of high economic value and the designation of critical habitat would substantially impact the future value and development potential of their properties. For this reason, the economic impact on individual property owners, in at least some instances, should outweigh the biological benefits of the designation of critical habitat.

Our Response: The regulatory requirements involving critical habitat apply only to those actions authorized, funded, or carried out by a Federal agency. We do recognize, however, that there can be a perceived effect which could influence property values, but believe any such effect is likely to be temporary in nature as the uncertainties and perceptions dissipate or become clarified over time. We will, through outreach and education, do all we can to correct this perception. We believe that the economic analysis appropriately considered the potential economic impacts of the proposed designation. Further, reductions in the amount of critical habitat in this final designation have resulted in a significant decrease in the amount of private land being designated.

(32) *Comment:* The draft economic analysis evaluates the effect of the total section 7 costs for individual units and then spreads those costs over the entire population of Bexar County. If these costs are attributed to the individual landowners in a single unit they would have a much greater impact. For instance, there are eight landowners in Unit 16, and the economic analysis is defective unless it measures the effects on those individual landowners.

Our Response: The analysis uses standard methods for analyzing the economic impacts of designating the areas included in our proposed rulemaking. These methods have been used in past designations throughout the United States and have generally been found to be sufficient. Time constraints prevented us from applying economic costs to individual property owners. We note also that the size of each unit designated is substantially reduced from what we proposed,

resulting from consideration of comments received and refinements in our methodology for identifying and mapping areas that meet the Act's definition of critical habitat. For instance, for Unit 16 our proposal included 61 ha (152 ac), whereas our final designation for that unit is 16 ha (40 acres).

(33) *Comment:* The draft economic analysis states that all of the critical habitat is over the Edwards Aquifer and then states which units are over the recharge zone. It isn't clear that only the units over the recharge zone get the protection measures that are listed. If the analysis assumed that all of the units get the same level of Edwards Aquifer protection, reevaluation of the numbers may be warranted.

Our Response: The draft economic analysis credited the protections only to those units in the recharge zone. We hope this point is adequately clarified in the final economic analysis of the proposed rule.

(34) *Comment:* For Unit 9, the draft economic analysis estimates only one technical assistance effort is anticipated and that no project modifications are anticipated. One request for assistance has already occurred, and probably one or two more will be required. In addition, a considerable amount of modification to University of Texas—San Antonio's plans in Unit 9 will have to occur to be in compliance with the proposed designation of critical habitat.

Our Response: The Service agrees that the effort was underestimated and corrections in the final economic analysis of the proposed rule have been made to reflect this. The Service agrees that if the proposed activities involve a Federal action, then modification of the proposed action may be needed. However, since this designation only involves occupied habitat, then the section 7 consultation requirements would have to be met (for the "jeopardy standard") regardless of the designation of critical habitat, and based on our experience in other situations, the outcome of such consultation is likely to be unchanged when it includes critical habitat.

(35) *Comment:* The estimates in Exhibit 4–4, page 44 (of the draft economic analysis) for anticipated costs to the Service, third parties, and the action agency do not cover the costs to date or future costs for UTSA in Unit 9, which are expected to be substantial.

Our Response: The final economic analysis of the proposed rule has been modified to incorporate expected costs to UTSA that would result from section 7 consultation related to development.

(36) *Comment:* The draft economic analysis does not adequately address the tremendous economic benefits of designating critical habitat, for example, the benefits to water supply protection for area residents.

Our Response: The value of economic benefits are difficult to estimate. The potential benefits of designating critical habitat are described subjectively in section 5 of the final economic analysis of the proposed rule.

(37) *Comment:* Landowners for Unit 12 provided specific value data to show a higher economic impact of the designation than provided in the economic analysis.

Our Response: The economic analysis includes consideration of a potential HCP for private development within this unit. Thus the comment is not inconsistent with the assumptions of the analysis. We do not expect costs to be greater than those represented by the formulation and implementation of the expected HCP.

Issue 5: Other Issues and Comments

(38) *Comment:* One commenter requested additional time so that the taxonomic description of a new subspecies of *Rhadine infernalis* can be completed.

Our Response: The Service is required to designate critical habitat for the Bexar County invertebrates within the time frame specified in the court settlement agreement. We have used the best scientific data available in making this designation.

(39) *Comment:* The City of San Antonio should be provided more exact cave locations for planning and protection of habitat, and to avoid inadvertent damage by the City.

Our Response: The Service and the City of San Antonio regularly exchange information for conservation of listed species. We understand that legally, the City may not be able to keep the cave locations confidential if we provided them, and having the locations generally known would pose an unacceptable risk of vandalism to the caves. Anyone may contact the Service for technical assistance to ensure their activities are consistent with conservation of these species. Helping make the public aware of the sensitive areas inhabited by these species is one of the most significant benefits of this designation. In addition to these critical habitat units, there are likely other localities where these species occur, of which we are not aware, or have not yet been discovered. Although they are not included in this designation, they are likely to be important for conservation of the species and should be considered in planning land management and development activities. We look forward to working with the City, and other partners, for management of their lands for the mutual benefit of the City's citizens and the conservation of the listed species.

(40) *Comment:* The Service should change the name of the Alamo Heights Karst Fauna Region so the public is not misled to believe the City of Alamo Heights is in critical habitat.

Our Response: The name of the Karst Fauna Region was taken from a report by George Veni and Associates (1994), which delineates separate geological regions in the San Antonio area. We recognize that the City of Alamo Heights is not within any of the units designated as critical habitat and regret any confusion the name of the faunal region might have caused. We have not used the Karst Faunal Region names in this final rule.

(41) *Comment:* Does critical habitat designation comply with Environmental Justice laws?

Our Response: Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. We do not believe that the designation of critical habitat for endangered and threatened species results in any changes to human health or environmental effects on surrounding human populations, regardless of their socioeconomic characterization. As such, we do not believe that Executive Order 12898 applies to critical habitat designations.

(42) *Comment:* The required public notice to interested parties was not satisfied because numerous mailings were returned because of invalid zip codes.

Our Response: We made the best effort to notify all individual landowners involved directly. We sent the letters announcing the proposed rule and requesting comments to over 1,500 interested parties. Of those, about 200 were returned because of out-of-date addresses. We attempted to update addresses and remove duplicate addresses. We followed this mailing with over 1,200 postcards announcing the availability of the draft economic analysis and extension of the comment period. We regret that some of the attempts to contact interested parties through the mail were unsuccessful. In addition to those efforts, the required public notices were published in the local newspaper. We also issued a news release, and there was coverage in the local newspaper and in other news media. Consequently, we believe we satisfactorily met the requirements for public notice to interested parties.

(43) *Comment:* The Texas Parks and Wildlife Department (TPWD) and the Department of Defense (DOD) submitted karst management plans for Government Canyon State Natural Area (GCSNA) and Camp Bullis, respectively, during the public comment period and requested that their properties be excluded from the final critical habitat designation.

Our Response: We reviewed the management plans submitted for both Camp Bullis and GCSNA. On the basis of our evaluation of these plans, we determined that they provide adequate special management and have not included the areas involved in the final designation of critical habitat. (See "Lands Covered Under Existing Conservation Plans" section for more information.)

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from knowledgeable individuals with expertise in one or several fields, including familiarity with the species, familiarity with the geographic region in which the species occurs, and familiarity with the principles of conservation biology. Only one of the eleven peer reviewers requested to review the proposed rule submitted comments. Overall the peer reviewer found the proposed rule to be an "excellent, comprehensive document." The following specific comments were provided by the peer reviewer.

(44) *Comment:* The 36 ha (90 ac) zone of vegetation surrounding each known cave or cave complex should be adequate to preserve foraging habitat for cave crickets.

Our Response: In this final rule we have significantly reduced the areas around occupied caves that are included in the critical habitat designation. However, in most cases, the critical habitat boundaries were drawn to include a 50 m (164 ft) area plus a buffer, and best available information indicates that most cave crickets forage within 50 m (164 ft) of cave entrances (see "Background" section for additional information).

(45) *Comment:* The reviewer stated that habitat requirements described in the proposed rule seemed fine; however, the reviewer expressed concern that active management may be required to maintain natural surface habitat for the benefit of the subsurface environment. The reviewer also expressed concern about the encroachment of red imported fire ants and the impacts of predation on and competition with cave crickets and asked if there is a provision for dealing with this threat in the critical habitat units.

Our Response: We recognize the impact that fire ants likely have on listed karst invertebrates and the need for intense management to control this threat. The designation of critical habitat recognizes that these areas may need special management, however, the designation does not require any particular land management activities. Specific actions for management recommendations will likely be included in the future recovery plan for these species. We will work with landowners on a case-by-case basis to assist in land management provisions to protect the karst environment that supports the listed Bexar County invertebrates.

(46) *Comment:* There are no dispersal corridors between these habitat units to provide opportunities for movement of individuals between cave cricket populations.

Our Response: We know that dispersal corridors are likely important for the long-term maintenance of cave cricket populations (*see* Background section for discussion). However, we lack the necessary information to adequately quantify the specific locations of such corridors and therefore have not included them in this critical habitat designation.

(47) *Comment:* The commenter recommends deleting the reference in the "Background" section to a study concerning *Ceuthophilu gracilipes*, another species of cave crickets, because it is not appropriate in the context in which it was used.

Our Response: We deleted this reference, which had been included in our proposed designation, and updated the "Background" section of this final rule as suggested.

Summary of Changes From the Proposed Rule

On the basis of public comments, we reviewed our methodology for determining the extent of critical habitat designation for the Bexar County karst invertebrates. Consequently, we refined the boundaries of our original proposed critical habitat units for this final designation and clarified our description of the methodology and rationale used in defining the critical habitat boundaries. Overall, these changes resulted in designating 431 ha (1,063 ac) in 22 units as critical habitat, as compared to our proposed designation of 3,857 ha (9,516 ac) in 25 units. Table 2 provides a unit-by-unit list of the changes in this final rule, which are summarized below.

In the proposed rule, we delineated critical habitat boundaries on the basis of the following criteria: Known occupied caves; the cave footprint; surface/subsurface drainage areas associated with the occupied cave; the cave cricket foraging area plus a buffer; the contiguous karst deposit associated with the occupied cave; and a minimum of 36 ha (90 ac), where possible, to support dominant, subdominant, and rare plant species. In the final rule, we revised several of these criteria. We reduced the minimum area needed to support surface vegetation from 36 ha (90 ac) to 16 ha (40 ac), which is the minimum area we determined is needed to support 15 of the 24 plant species common to the Edwards Plateau, including the 7 species with the highest dominance values, as listed in Van Auken *et al.* (1980). We did not include an estimated area to support nine of the rarer plant species in our consideration of this minimum area, because of a lack of definitive information on the importance of such species to the functioning of the karst ecosystem. These nine species all have importance values of less than 1.0 and needed an area of approximately 20 to 80 ha (49 to 198 ac) to maintain their populations. We also reduced the criterion for the amount of contiguous karst deposit surrounding occupied caves. In the proposed rule, we delineated the unit boundaries to maximize the amount of contiguous karst deposit we estimated was necessary to provide for subsurface movement of listed species between and around occupied caves. However, because of lack of data allowing us to quantify the extent of subsurface karst needed to maintain populations of these species, in the final rule we delineated the boundaries to maximize the amount of subsurface karst deposit underlying the cave footprint, drainage areas, cave cricket foraging area plus buffer, and 16 ha (40 ac) vegetation area only. As a result of these revisions, the size of most units was reduced significantly (Table 2). (*See* "Criteria Used to Designate Critical Habitat" section for additional details.)

In addition to the changes in criteria, we also completely removed six units that had been proposed for designation (Units 1a, 1b, 1c, 1d, 10, and 11) from the final designation. Units 1a–1d were

located on the Government Canyon State Natural Area (GCSNA) and the majority of Unit 10 and all of Unit 11 were located on Department of Defense land at Camp Bullis. We did not include these six units in the final designation because we determined that the conservation plans for these areas provide adequate special management and protection, such that the areas do not meet the definition of critical habitat under section 3(5)(A)(i) of the Act. We also excluded these areas from designation based on section 4(b)(2). (See "Lands Covered Under Existing Conservation Plans" section.) Two of the nine species, the Government Canyon Bat Cave meshweaver and the Government Canyon Bat Cave spider, occur only in caves on the GCSNA. As a result of not including in the final designation the four units originally proposed on the GCSNA, no critical habitat is being designated for these two species.

As a result of applying our revisions of the criteria used to delineate the unit boundaries (as described above) we separated two units identified in the proposed rule into separate, smaller units in this final rule. Specifically, Unit 1e as described in the proposed rule has been separated into three smaller units (Units 1e1, 1e2, and 1e3), and we separated Unit 8 into Units 8a and 8b. Removing six units, separating Unit 1e into three smaller units and Unit 8 into two smaller units resulted in a net change of three fewer units in this final rule as compared to the proposed rule.

TABLE 2.—CHANGES IN UNIT NUMBER AND UNIT AREA BETWEEN PROPOSED AND FINAL RULES DESIGNATING CRITICAL HABITAT FOR SEVEN OF THE NINE BEXAR COUNTY KARST INVERTEBRATES

Proposed rule		Final rule	
Unit #	Total area of unit hectares (ha); acres (ac)	Unit #	Total area of unit hectares (ha); acres (ac)
1a	76 ha; 188 ac	1a	Government Canyon State Natural Area—excluded from critical habitat.
1b	47 ha; 116 ac	1b	
1c	47 ha; 116 ac	1c	
1d	47 ha; 116 ac	1d	
1e	341 ha; 842 ac	1e1	15 ha; 38 ac.
		1e2	16 ha; 40 ac.
		1e3	19 ha; 46 ac.
2	99 ha; 245 ac	2	37 ha; 92 ac.
3	63 ha; 154 ac	3	17 ha; 41 ac.
4	63; ha; 154 ac	4	16 ha; 40 ac.
5	47 ha; 116 ac	5	16 ha; 40 ac.
6	45 ha; 111 ac	6	16 ha; 40 ac.
7	50 ha; 123 ac	7	16 ha; 40 ac.
8	174 ha; 428 ac	8a	16 ha; 40 ac.
		8b	28 ha; 69 ac.
9	71 ha; 175 ac	9	16 ha; 40 ac.
10	367 ha; 906 ac	10	Camp Bullis—excluded from critical habitat.
11	1,273 ha; 3,143 ac	11	Camp Bullis—excluded from critical habitat.
12	105 ha; 258 ac	12	21 ha; 51 ac.
13	51 ha; 125 ac	13	16 ha; 40 ac.
14	173 ha; 426 ac	14	26 ha; 64 ac.
15	195 ha; 481 ac	15	34 ha; 85 ac.
16	61 ha; 152 ac	16	16 ha; 40 ac.
17	48 ha; 118 ac	17	16 ha; 40 ac.
18	40 ha; 100 ac	18	16 ha; 40 ac.
19	59 ha; 146 ac	19	5 ha; 12 ac.
20	160 ha; 395 ac	20	23 ha; 57 ac.
21	155 ha; 382 ac	21	27 ha; 68 ac.
Totals: 25 units; 3,857 ha; 9,516 ac		(1) 22 units; 431 ha; 1,063 ac.	

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

"Conservation," as defined by section 3(3) of the Act, means the use of all methods and procedures which are necessary to bring an endangered or a threatened species to the point that measures provided pursuant to the Act are no longer necessary.

Section 7(a)(2) of the Act requires that Federal agencies shall, in consultation with the Service, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitats. Consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus (*i.e.*, Federal funding or authorization), and consequently critical habitat designation does not afford any additional regulatory protection or result in additional regulatory requirements under the Act in those circumstances. (*See* "Effects of Critical Habitat Designation" for further discussion of consultations under section 7 of the Act.)

Critical habitat provides nonregulatory benefits to the species by informing the public and private sectors of areas that are important for species conservation, and where such conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public and land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified, by helping people avoid causing accidental damage to such areas.

To be included in a critical habitat designation, the habitat must be "essential to the conservation of the species." Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (such as areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that, "Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied" by the listed species. In addition, our regulations (50 CFR 424.12(e)) state that "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Section 4 (b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular areas as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should, at a minimum, be the listing rule for the species. Additional information may be obtained from a recovery plan (if available), articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished reports, and discussion with experts.

Section 4 of the Act requires that we designate critical habitat on the basis of what we know at the time of designation. Since much of the cave-forming rock is located on private property in areas that have not been adequately surveyed, additional populations for some of these species are likely to exist and may be discovered over time. We recognize that our designation of critical habitat for these species may not include all of the habitat areas that may eventually be determined to be necessary for the conservation of the species. For these reasons, this critical habitat designation should not be interpreted to mean that habitat outside the designation is unimportant or may not be required for conservation of the species. Critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning and recovery efforts if new information available to these efforts calls for a different outcome.

Habitat of the listed species that is not included in this critical habitat designation will continue to be subject to conservation actions implemented by Federal agencies under section 7(a)(1) of the Act, which directs Federal agencies to utilize their authorities to carry out programs for the conservation of threatened and endangered species. Habitat outside the designation also will continue to receive regulatory protections afforded by the section 7(a)(2) jeopardy standard, which requires each Federal agency to insure, in consultation with the Service, that any action it authorizes, funds, or carries out is not likely to "jeopardize the continued existence" of a listed species. To achieve this objective, action agencies must consult with us whenever a Federal action "may affect" a listed species. This requirement applies regardless of whether critical habitat is designated, and Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases.

The applicability of the section 9 section take prohibition is not altered by the designation of critical habitat. Section 9 makes it unlawful for any person to "take" (defined broadly in section 3 as "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct") a listed wildlife species. Under section 10(a) of the Act, the Service may issue a permit to a non-Federal entity authorizing "take" if certain conditions are met. These conditions include a finding by the Service that such take is incidental to otherwise legal conduct, and that the take "will not appreciably reduce the likelihood of the survival and recovery of the species in the wild." The issuance criteria for such take permits also require applicants to minimize and mitigate the effects of their permitted actions, to the maximum extent practicable.

Primary Constituent Elements

In accordance with section 3(5)(A) of the Act and regulations at 50 CFR 424.12(b), in determining which areas to designate as critical habitat, we consider those physical and biological features that are essential to the conservation of the species and that may require special management consideration or protection. As described in our regulations, these features include, but are not limited to, the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing of offspring, and generally;

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Our regulations at 50 CFR 424.12(b) further direct that, when considering the designation of critical habitat, we are to focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species, and we are to list known primary constituent elements with the critical habitat description. Our regulations describe known primary constituent elements in terms that are more specific than the

description of physical and biological features. Specifically, our regulations state that primary constituent elements may include, but are not limited to, the following: Roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species of plant pollinator, geological formation, vegetation type, tide, and specific soil types.

Using the best scientific information available to us, we have determined that the primary constituent elements required by the karst invertebrates consist of: (1) The physical features of karst-forming rock containing subterranean spaces with stable temperatures, high humidities (near saturation) and suitable substrates (for example, spaces between and underneath rocks suitable for foraging and sheltering); and (2) the biological features of a healthy surface community of native plants (for example, juniper-oak woodland) and animals (for example, cave crickets) living in and near the karst feature that provide nutrient input and buffer the karst ecosystem from adverse effects (from, for example, nonnative species invasions, contaminants, and fluctuations in temperature and humidity).

Information Sources

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12, respectively), we used the best scientific information available to determine critical habitat areas that contain the physical and biological features and primary constituent elements that are essential for the conservation of the karst invertebrate species. This information included: (1) Peer-reviewed scientific publications; (2) the final listing rule for the nine Bexar County karst invertebrate species (65 FR 81419); (3) unpublished field data, survey reports, notes, and communications from qualified biologists or experts; (4) published descriptions of the regional geology (Soil Conservation Service 1962; Veni 1988, 1994, 2002); and (5) recent digital orthophotographs (March 2001) and parcel maps (generated in early 2002) obtained from the Bexar County Appraisal District to determine the current status of habitat surrounding the known occupied caves.

In the proposed rule, we referred to Veni's 1994 karst zone maps to ensure that the majority of the lands within each proposed unit overlaid a contiguous deposit of karst-bearing rock either known to contain the listed species (Zone 1) and/or having a high probability of suitable habitat for the listed species (Zone 2) to maintain subsurface connectivity for species movement throughout the contiguous karst deposit. Recognizing that a significant amount of additional information has become available, either as a result of the discovery of new caves containing the listed species, or additional biological surveys conducted in previously mapped caves and/or as a result of the release of information not available at the time of the 1994 report, we contracted with George Veni & Associates to re-evaluate and, where necessary, redraw the boundaries of the Bexar County karst zones. The resulting report (Veni 2002) also estimated the surface and subsurface drainage areas associated with each occupied cave in Bexar County with the exception of several caves which occur on cliffs and several for which sufficient information was not available. We received the report during the public comment period and used the information to ensure that each unit overlaid a contiguous deposit of karst-bearing rock and that the estimated drainage basins associated with each occupied cave were, where possible, designated as critical habitat. Contiguous deposits of karst-bearing rock associated with occupied caves subterranean spaces were included to protect subsurface voids believed to maintain populations of the listed species and provide for species movement. The drainage basins associated with occupied caves were included in order to protect the quantity and quality of water entering the karst ecosystem which, in turn, maintains stable temperatures and high humidities required by the listed species and protects the system from contamination.

Information on the status and location of occupied caves was obtained from presence/absence survey reports submitted during project consultations conducted with the Service under section 7 of the Act, annual reports on research and conservation activities conducted under a section 10(a)(1)(A) scientific permit, section 6 species status reports, and literature published in peer reviewed journals. Survey reports and scientific permit annual reports typically contained cave location information in the form of a cave location indicated on a U.S. Geological Survey topographic maps and/or UTM coordinates, and a map of the cave footprint.

To improve the accuracy of our cave location information, we submitted a request to the Texas Speleological Survey (TSS) for any available digital location data (UTM coordinates) for Bexar County caves known to contain one or more of the nine endangered species. TSS is a non-profit corporation established in 1961 to collect, organize, and maintain information on Texas caves and karst for scientific, educational, and conservation purposes, and to support safe and responsible cave exploration, and is affiliated with the Texas Memorial Museum, the Texas Speleological Association, and the National Speleological Society. TSS provided the majority of the digital location data, and reviewed and confirmed our location data for caves where no digital information was available. The precision of the locations for which digital location data were available ranges from 1 m to 10 m (3ft to 33 ft) and data documented on topographic maps was estimated to be accurate to within 10 m to 20 m (33 ft to 66 ft). This variability in precision was taken into account when delineating unit boundaries. We further agreed that any requests for such information would be directed to TSS as owners of the data. The precise location of the caves within each unit is not specified on the critical habitat maps in order to protect these caves from potential vandalism and to protect private landowners from potential increases in trespassing.

Criteria Used To Delineate Critical Habitat

Using the best scientific data available (as summarized in the "Background" section), we developed the following criteria to identify and delineate lands for designation as critical habitat: caves known to be occupied by one or more of the listed karst invertebrate species; the cave footprint; the surface and subsurface drainage areas associated with each cave, to the extent possible; a 150 m (492 ft) area around each cave to encompass the cave cricket foraging area of 50 m (164 ft) on the surface, measured from the cave entrance(s) and a 100 m (328 ft) area around the cave cricket foraging area to buffer the animal community, including cave crickets, against the effects of urban edges and red imported fire ant invasion; and, where possible, a minimum of 16 ha (40 ac) around each cave or cave cluster. This minimum 16 ha core area consists of a minimum 13 ha (33 ac) needed to support at least 15 of 24 species of the vegetative community commonly found on the Edwards Plateau, plus a 3 ha (7 ac) area to buffer the vegetative community against edge effects associated with urban disturbances. This surface area also acts to incorporate areas of contiguous karst deposit around an occupied cave, which likely contains the listed species that occupy the cave.

In several instances (Units 2, 13, and 21), the surface or subsurface drainage basin associated with the occupied cave, as defined by Veni (2002), extends outside of the area originally designated in the proposed rule and therefore was not included in the final rule (*see* "Critical Habitat Unit Descriptions" section). Also, in several instances (Units 1e1, 3, 6, 8b, and 17), the cave, cave footprint, and portions of the cave cricket foraging area plus buffer, the drainage basins, and the 16-ha (40-ac) vegetative area are located on lands protected under the La Cantera HCP which were not included in the designation (see "Unit Description" and Lands Covered Under Existing Conservation Plans" sections). The critical habitat area encompassing Robber Baron Cave (Unit 20) includes both the known and estimated extent of the cave's footprint. This cave is a complex maze cave consisting of approximately 1.51 km (0.94 mi) of passages known within a square area approximately 100 m (328 ft) on each side (Veni 1988). Prior to the extensive development that has occurred in the area, the cave's footprint was estimated to extend at least 100 m (328 ft) farther east to a water well, 600 m (1,969 ft) southwest to a now-sealed, extensive maze cave and about 1.2 km (0.75 mi) to the southwest to another well (Veni 1988). Exploration and mapping of these possible passages is continuing under the direction of the Texas Cave Management Association, which owns the cave entrance.

Critical Habitat Delineation

Lands designated as critical habitat for the seven endangered karst invertebrates occur in 22 separate units, with a total area of approximately 431 ha (1,063 ac). The lands within the critical habitat units are under private, city, and State ownership. Table 3 lists the known occupied caves, the total critical habitat unit area, land ownership, and the listed species that occur within each designated unit. Table 4 shows the listed species and the critical habitat unit(s) where they occur.

Each critical habitat unit contains one or more of the primary constituent elements needed by the karst invertebrate species. The "Critical Habitat Unit Descriptions" section (below) provides a description of lands within each unit and a description of how unit boundaries were delineated.

Areas within the boundaries of mapped units that have existing human-constructed, above-ground, impervious structures do not contain the primary constituent elements and are not considered to be critical habitat. Such features and structures include, but are not limited to, buildings and paved roads. However, subsurface areas under these structures are considered to be critical habitat since subterranean spaces containing these species or transmitting moisture and nutrients through the karst ecosystem extend, in some cases, underneath these existing human-constructed structures. Landscaped areas associated with existing human-constructed structures also are also not considered critical habitat because they do not contain the primary constituent elements. Although not considered to be critical habitat, these landscaped areas may provide some foraging area for cave crickets and other trogloxenes which are an important source of nutrients to the karst ecosystem.

TABLE 3.—KNOWN OCCUPIED CAVES, LAND OWNERSHIP AND LISTED SPECIES THAT OCCUR WITHIN EACH CRITICAL HABITAT UNIT DESIGNATED FOR ONE OR MORE OF THE ENDANGERED BEXAR COUNTY KARST INVERTEBRATES

Unit	Known occupied caves in unit	Total area of unit	Ownership	Listed species in unit
1e1	Pig Cave San Antonio Ranch Pit	15 ha (38 ac)	Private, city	*Rhadine exilis* *R. infernalis* *Batrisodes venyivi*
1e2	Continental Cave	16 ha (40 ac)	City	*R. infernalis*
1e3	Creek Bank Cave Tight Cave	19 ha (46 ac)	Private, city	*R. exilis*
2	Logan's Cave Madla's Drop Cave	37 ha (92 ac)	Private	*Cicurina madla* *R. exilis* *R. infernalis*
3	Helotes Blowhole* Helotes Hilltop Cave*	17 ha (41 ac)	Private	*C. madla* *R. exilis* *R. infernalis* *B. venyivi*
4	Kamikazi Cricket Cave	16 ha (40 ac)	Private	*R. exilis* *R. infernalis*
5	Christmas Cave	16 ha (40 ac)	Private	*C. madla* *R. exilis* *R. infernalis* *B. venyivi*
6	John Wagner Ranch Cave No. 3*	16 ha (40 ac)	Private, city	*R. exilis* *R. infernalis*
7	Young Cave No. 1	16 ha (40 ac)	Private	*R. exilis*
8a	Three Fingers Cave	16 ha (40 ac)	Private	*R. exilis* *R. infernalis*
8b	Hills and Dales Pit* Robber's Cave	28 ha (69 ac)	Private, city	*C. madla* *R. infernalis* *R. exilis*
9	Mastodon Pit	16 ha (40 ac)	State	*R. exilis*
12	Hairy Tooth Cave Ragin' Cajun Cave	21 ha (51 ac)	Private	*R. exilis*
13	Black Cat Cave	16 ha (40 ac)	Private	*R. exilis*
14	Game Pasture Cave No. 1 King Toad Cave Stevens Ranch Trash Hole Cave	26 ha (64 ac)	Private	*R. infernalis*
15	Braken Bat Cave Isopit	34 ha (85 ac)	Private	*Cicurina venii* *R. infernalis*

TABLE 3.—KNOWN OCCUPIED CAVES, LAND OWNERSHIP AND LISTED SPECIES THAT OCCUR WITHIN EACH CRITICAL HABITAT UNIT DESIGNATED FOR ONE OR MORE OF THE ENDANGERED BEXAR COUNTY KARST INVERTEBRATES—Continued

Unit	Known occupied caves in unit	Total area of unit	Ownership	Listed species in unit
	Obvious Little Cave			
	Wurzbach Bat Cave			
16	Caracol Creek Coon Cave	16 ha (40 ac)	Private	*R. infernalis*
17	Madla's Cave*	16 ha (40 ac)	Private	*C. madla* *R. infernalis*
18	Mattke Cave	16 ha (40 ac)	Private	*R. infernalis*
	Scorpion Cave			
19	Genesis Cave	5 ha (12 ac)	Private	*R. infernalis*
20	Robber Baron Cave	23 ha (57 ac)	Private	*Texella cokendolpheri* *Cicurina baronia*
21	Hornet's Last Laugh Pit	27 ha (68 ac)	City, Private	*R. exilis*
	Kick Start Cave			
	Springtail Crevice			
Totals				
22	31 caves	431 ha (1,063 ac)		

*Indicates caves and associated lands protected by management under La Cantera's Section 10 permit; these are not included in this designation or in the area figures.

TABLE 4.—LIST OF THE NINE ENDANGERED BEXAR COUNTY KARST INVERTEBRATES AND THE CRITICAL HABITAT UNITS WITHIN WHICH THEY OCCUR

Species name	Critical habitat unit(s) of occurrence
Braken Bat Cave meshweaver (*Cicurina venii*).	15
Cokendolpher cave harvestman (*Texella cokendolpheri*).	20
Government Canyon Bat Cave meshweaver (*Cicurina vespera*).	No critical habitat designated.
Government Canyon Bat Cave spider (*Neoleptoneta microps*).	No critical habitat designated.
Madla Cave meshweaver (*Cicurina madla*).	2, 3, 5, 8b, 17
Robber Baron Cave meshweaver (*Cicurina baronia*).	20
Beetle (*Rhadine exilis*)	1e1, 1e3, 2, 3, 4, 5, 6, 7, 8a, 8b, 9, 12, 13, 21
Beetle (*Rhadine infernalis*)	1e1, 1e2, 2, 3, 4, 5, 6, 8a, 8b, 14, 15, 16, 17, 18, 19
Helotes mold beetle (*Batrisodes venyivi*).	1e1, 3, 5

Of the 74 caves known to contain one or more of the listed species, 43 were not included in the critical habitat designation. These 43 caves, and the reasons they were not designated, are described in the following summary.

Two caves, referred to as "unnamed cave ½ mile N of Helotes" and "5 miles NE of Helotes," were not included in the proposed or final designation because their precise locations are unknown.

One cave, Crownridge Canyon Cave, was confirmed as a new location for one of the listed species during the public comment period. This cave was not included in this final determination because deadlines negotiated under the court-ordered settlement did not allow us to re-propose critical habitat, and thus there was not opportunity for the public to comment on its inclusion. Although we cannot include Crownridge Canyon Cave in this designation of critical habitat, we consider the cave and the associated karst ecosystem to be important to the conservation of the species. Because the cave is known to be occupied, it will receive protection under sections 7 (under the "jeopardy standard" standard), 9, and 10 of the Act.

Of the ten occupied caves associated with the La Cantera HCP, none were included in the proposed designation, and we have not included them in the final designation of critical habitat. We authorized two caves for take of *C. madla* under La Cantera's section 10(a)(1)(B) permit associated with the HCP. These two caves were heavily impacted as a result of authorized take and are not expected to contribute to the species' recovery. The other eight caves associated with the La Cantera HCP are protected within five karst management areas that will be perpetually managed and monitored in accordance with the conservation needs of the species. In most cases, these karst management areas were not considered adequate as stand alone preserves. Therefore, where appropriate, we included lands surrounding these occupied caves and associated management areas as part of the designation of critical habitat, as these lands provide physical and biological features that are essential to the conservation of the species. These areas include: Canyon Ranch Pit, Fat Man's Nightmare Cave, and Scenic Overlook Cave and the surrounding approximately 30 ha (75 ac); Helotes Blowhole and Helotes Hilltop caves and the surrounding approximately 10 ha (25 ac); John Wagner Ranch Cave No. 3 and the surrounding approximately 1.6 ha (4 ac); Hills and Dales Pit and the surrounding approximately 28 ha (70 ac); and Madla's Cave and the surrounding approximately 2 ha (5 ac). These eight caves and their associated karst management areas are being protected under the HCP, and we have not included them in this critical habitat designation (see "Lands Covered Under Existing Conservation Plans" section). Because of their geographic relationship to the rest of the critical habitat unit, it was difficult to show some of these areas in our mapping process. Thus, although some of these areas occur within the mapped area, they are not included in a legal sense through language in the final determination.

We did not include seven occupied caves in the Government Canyon State Natural Area (GCSNA), which is owned by the Texas Parks and Wildlife Department (TPWD), and 23 occupied caves on the Department of Defense's (DOD) Camp Bullis, in this critical habitat designation. Five of these caves were known to be occupied at the time of the proposed rule and were included in the proposed rule. The presence of listed species in the other two caves was confirmed by TPWD during the public comment period. During the public comment period, the Service received

and approved karst management plans submitted by each agency. These plans commit TPWD and DOD to long-term management and monitoring strategies that for the listed species and their habitat on their respective lands. The "Lands Covered Under Existing Conservation Plans" section explains the reasons why we did not include these areas in this designation of critical habitat.

Critical Habitat Unit Descriptions

Unless otherwise indicated in the unit descriptions below, each unit encompasses the following components: one or more occupied caves; the footprint of each cave; a 150 m (492 ft) area around the cave to encompass the cave cricket foraging area (50 m (164 ft)) and a buffer of 100 m (328 ft) against the effects of urban edges and red imported fire ant invasion; the surface and subsurface drainage areas associated with each cave as estimated in Veni (2002), to the extent possible; and, where possible, a minimum of 16 ha (40 ac) of surface vegetation encompassing each cave or cave cluster. Also, where possible, each unit was delineated to include contiguous deposits of Zone 1 karst-bearing rock as defined by Veni (2002) underlying the cave cricket foraging area plus buffer, the drainage areas, and the vegetative area.

As explained previously (*see* "Critical Habitat Delineation" section), some of the units include human-constructed, aboveground, impervious structures (e.g., buildings, paved roads) that do not contain the primary constituent elements and are not considered to be critical habitat. They are included within the mapped unit because subsurface areas under these structures are considered to be critical habitat, since subterranean spaces containing the karst species, or transmitting moisture and nutrients through the karst ecosystem, extend underneath these existing human-constructed structures. Within the units, landscaped areas associated with existing human-constructed structures also are not considered to be critical habitat because they do not contain the primary constituent elements, although they may provide some foraging area for cave crickets and other trogloxenes that are an important source of nutrients to the karst ecosystem.

Critical habitat boundaries are described as the area bounded by coordinates provided as geographic longitude and latitude coordinate pairs (e.g., –98.7612682, 29.4363049), referenced to North American Horizontal Datum 1983 (NAD 83). Coordinates were derived from 2001 digital orthophotographs obtained from the Bexar County Appraisal District. A description of each unit designated, including the current status of the lands in and around the unit, is presented below.

Unit 1e1

Unit 1e1 contains two occupied caves (Table 3). The surface of the unit consists primarily of undeveloped land. The majority of the unit is privately owned, with a small portion occurring on the City of San Antonio's Iron Horse Canyon tract, which was purchased under the Proposition 3 program. Proposition 3 is the Parks Development and Expansion Venue Project passed by San Antonio voters in 2000 for preservation of undeveloped Edwards Aquifer Recharge Zone lands. This unit is surrounded by undeveloped, privately owned land, including the City of San Antonio's Iron Horse Canyon tract and the La Cantera Canyon Ranch karst management area, which is being managed in perpetuity for the conservation of the species under a section 10(a)(1)(B) permit. (See "Lands Covered Under Existing Conservation Plans" section.) This unit contains all of the components described above, with the exception of a portion of the groundwater drainage area and cave cricket foraging area and buffer associated with San Antonio Ranch Pit extends onto La Cantera's Canyon Ranch karst management area, which is being managed for the conservation of the listed karst invertebrates.

Unit 1e2

Unit 1e2 contains one occupied cave (Table 3). The surface of the unit consists primarily of undeveloped lands with a few small roads. The entire unit occurs on the City of San Antonio's Iron Horse Canyon property. This unit contains all of the components described above.

Unit 1e3

Unit 1e3 contains two occupied caves (Table 3). The surface of the unit consists of undeveloped land with several small roads. The majority of the land is privately owned with a portion of the unit occurring on the City of San Antonio's Iron Horse Canyon property. This unit is surrounded by undeveloped, privately owned land, the City of San Antonio's Iron Horse Canyon property, and TPWD's Government Canyon State Natural Area. This unit contains all of the components described above, with the exception of a portion of the 21 ha (51 ac) subsurface drainage area shared by both caves that occurs on TPWD's Government Canyon State Natural Area, which we did not include in the designation (*see* "Lands Covered Under Existing Conservation Plans" section).

Unit 2

Two occupied caves occur within this Unit 2 (Table 3). The surface of Unit 2 consists of large, privatelyowned tracts, which appear to be primarily undeveloped with the exception of several small buildings and two or three small roads. The unit is surrounded by primarily undeveloped privately owned land. This unit contains all of the components described above, with the exception of a small portion of the 80-acre subsurface drainage basin associated with these caves that extends outside of the western boundary of this unit. This area was not included in this final determination because it was not identified in the proposed rule and therefore was not available for public comment. Although not included in the critical habitat area, minimizing impacts to the subsurface drainage area associated with these caves may be important for the conservation of the species in that cave.

Unit 3

Unit 3 consists of large tracts of primarily undeveloped privately owned land. La Cantera's Helotes Blowhole/Helotes Hilltop karst management area (approximately 10 ha (25 ac)) occurs entirely within this unit and contains two occupied caves (Table 3). This management area was acquired by La Cantera under their Section 10(a)(1)(B) permit, which requires that these caves and the surrounding lands be managed in perpetuity for the conservation of the species. We did not include these caves and associated management areas in the designation of critical habitat (see "Lands Covered Under Existing Conservation Plans" section). This unit was delineated to encompass the portion of the cave cricket foraging area plus buffer, the 16 ha (40 ac) vegetation area, and the subsurface drainage basin shared by the occupied caves that extends outside of the area protected under the La Cantera HCP. The majority of the unit overlies a contiguous deposit of Zone 1 karst-bearing rock and a small portion of Zone 3 as defined in Veni (2002), which underlies part of the cave cricket foraging area and buffer.

Unit 4

Unit 4 includes one occupied cave (Table 3). Lands surrounding Unit 4 consist of relatively large undeveloped tracts with some subdivided residential tracts that appear to be partially developed. The majority of the unit

overlies a contiguous deposit of Zone 1 karst-bearing rock with a small portion of Zone 3, which underlies part of the cave cricket foraging area and associated buffer areas. This unit contains all of the components described above.

Unit 5

Unit 5 contains one occupied cave (Table 3). The surface of Unit 5 consists of a large tract of privately owned, undeveloped land and several smaller tracts developed with homes and an associated residential road. The unit is bordered to the north and northwest by large tracts of undeveloped land and bordered on the remaining sides by smaller tracts with some residential development. This unit contains all of the components described above. The majority of the unit overlies a contiguous deposit of Zone 1 karst-bearing rock, with a small portion of Zone3, which underlies part of the cave cricket foraging area and associated buffer area.

Unit 6

La Cantera's John Wagner Ranch Cave #3 karst management area is within this unit, and contains one occupied cave (Table 3). This cave, and approximately 1.6 ha (4 ac) surrounding the cave, were acquired by La Cantera under their section 10(a)(1)(B) permit. The permit requires that the cave and the surrounding lands be managed in perpetuity for the conservation of the species. We did not include this cave, and the associated lands being managed under the permit, in this designation of critical habitat (see "Lands Covered Under Existing Conservation Plans" section). The surface of Unit 6 consists of several subdivided, large-lot tracts with homes and their associated roads and a large, undeveloped tract to the north owned by the City of San Antonio as part of the Thrift tract, which was purchased under the Proposition 3 program. The unit is surrounded on most of three sides by the City-owned Thrift tract and is adjacent to large-lot residential development to the south and southwest. This unit was delineated to encompass the portion of the cave cricket foraging area plus buffer, the subsurface drainage basin, and 16 ha (40 ac) vegetation area that extends outside of the area protected under the La Cantera HCP. The majority of Unit 6 overlies a contiguous deposit of Zone 1 karst-bearing rock with a small portion of Zone 3, which underlies part of the cave cricket foraging area and associated buffer area.

Unit 7

Unit 7 contains one occupied cave (Table 3). The surface of Unit 7 consists of relatively large, privately owned, undeveloped tracts with a few residential roads. The unit is surrounded by large, primarily undeveloped, privately-owned land. This unit contains all of the components described above.

Unit 8a

Unit 8a contains one occupied cave (Table 3). The surface of Unit 8a consists of large tracts of undeveloped land with a few small roads. About half of the unit is privately-owned. The other half lies within the City of San Antonio's Medallion tract, which was purchased under the Proposition 3 program. The unit is surrounded by undeveloped, privately owned lands and the City's Medallion property. This unit contains all of the components described above.

Unit 8b

Unit 8b contains two occupied caves (Table 3). The surface consists of large, primarily undeveloped tracts. A large portion of this unit occurs on the City of San Antonio's Medallion property, which was purchased under the Proposition 3 program. This unit also contains a portion of La Cantera's Hills and Dales Pit karst management area, which contains Hills and Dales Pit, one of the two occupied caves within the unit (Table 3). Hills and Dales Pit and 28 ha (70 ac) surrounding the cave were acquired by La Cantera under a section 10(a)(1)(B) permit, which requires that the cave and the surrounding lands be managed in perpetuity for the conservation of the species. We did not include this cave and associated lands in this designation of critical habitat (see "Lands Covered Under Existing Conservation Plans" section). This unit was delineated to encompass the portion of the 33-acre surface drainage basin and cave cricket foraging area plus buffer associated with Hills and Dales Pit that extends outside of the 28-ha management area protected under the La Cantera HCP, as well as all of the components associated with Robber's Cave as described above.

Unit 9

Unit 9 contains one occupied cave (Table 3). The surface of the unit consists of a large tract of undeveloped land owned by the University of Texas at San Antonio (UTSA). The unit is bordered to the north by Loop 1604, a major highway, to the west by the UTSA campus, and to the south and east by currently undeveloped land. A portion of the unit overlies a contiguous deposit of Zone 1 karst-bearing rock with the remainder being defined as Zone 2. This unit contains all of the components described above.

Unit 12

Unit 12 contains two occupied caves (Table 3). The unit is surrounded by residential development. Within the unit, there are multiple residential lots surrounding a tract of undeveloped land. The lots appear to be partially developed. Several residential roads and one major roadway occur within the unit. As explained above, these human-constructed features are not considered critical habitat, but subsurface areas under these structures are part of the designation of critical habitat. This unit contains all of the components described above.

Unit 13

Unit 13 includes one occupied cave (Table 3). The surface of the unit consists primarily of large privately owned tracts with some residential development. Bulverde Road, a major roadway, bisects the western portion of the unit. Unit 13 is bordered by dense residential development to the northwest and large-lot residential development to the northeast. The lands to the south, southeast, and southwest consist of large, primarily undeveloped tracts. This unit contains all of the components described above, with the exception of a portion of the subsurface drainage area, which extends outside of the western boundary of the unit underneath an area of existing residential development. This drainage area was not included in this final determination because it was not identified in the proposed rule and therefore was not available for public comment, and because of the legal settlement agreement to complete this designation by a specific deadline, we did not have time to republish the critical habitat proposal to include this area and allow public comment on it. Although this area is not included in the critical habitat area, minimizing impacts to the subsurface drainage area associated with Black Cat Cave may be important for the conservation of the species in that cave.

Unit 14

Unit 14 contains three occupied caves (Table 3). The surface of the unit consists of several large privately owned, undeveloped tracts and is surrounded by large tracts of currently undeveloped land. This unit contains all of the components described above.

Unit 15

Unit 15 contains four occupied caves (Table 3). The unit occurs within and is surrounded by large-lot residential development. This unit contains all of the components described above.

Unit 16

Unit 16 includes one occupied cave (Table 3). The surface of this unit consists of several large privately owned, undeveloped tracts. The unit is surrounded on three sides by privatelyowned undeveloped land. Loop 1604, a major roadway, goes through the eastern part of the unit and lies above the eastern portion of the subsurface drainage area associated with the cave. This unit contains all of the components described above.

Unit 17

Unit 17 consists of several large privately owned undeveloped tracts with a few small roads and is surrounded by privately owned undeveloped land. La Cantera's Madla's Cave management area occurs within this unit and contains the one occupied cave in the unit (Table 3). This cave and the approximately 2 ha (5 ac) surrounding the cave is under a conservation easement acquired by La Cantera under a section 10(a)(1)(B) permit, which requires that this cave and the surrounding lands be managed in perpetuity for the conservation of the species. We did not include this cave, as well as the the associated lands covered by the permit, in the designation of critical habitat (*see* "Lands Covered Under Existing Conservation Plans" section). This unit was delineated to encompass the portions of the cave cricket foraging area plus buffer and 16 ha (40-ac) vegetative area that extend outside of the management area protected under the La Cantera HCP. The majority of the unit overlies a contiguous deposit of Zone 1 karst-bearing rock with a small portion of Zone 3, which underlies part of the cave cricket foraging area and associated buffer area.

Unit 18

Unit 18 includes two occupied caves (Table 3). The surface of this unit consists of large privately owned undeveloped tracts and several smaller residential lots developed with homes. Unit 18 is surrounded on three sides by residential and commercial development and on the fourth side by a large undeveloped tract. This unit contains all of the components described above. The majority of the unit overlies a contiguous deposit of Zone 1 karst-bearing rock and a small portion of Zone 3 as defined in Veni (2002), which underlies part of the cave cricket foraging area and buffer.

Unit 19

This unit contains one cave (Table 3). Genesis Cave is one of only two locations currently known to contain *Rhadine infernalis infernalis* (Table 1) and is therefore particularly important for the conservation of the species. Genesis Cave is the deepest explored cave in Bexar County, extending below the water table, and has been mapped down to 78 m (256 ft) (Veni 1988).

The majority of the land within this unit has been developed for residential and/or commercial uses. As a result of the extensive existing development within this unit, the surface vegetation has been reduced and degraded and only small vegetated areas remain. Therefore, this unit does not contain the primary constituent element of a healthy surface plant community and was delineated to encompass the cave, its footprint, the surface and subsurface drainage area, and a portion of the cave cricket foraging area with potential for being restored to native vegetation. The cave is surrounded by approximately 2 acres of undeveloped land, which is adjacent to several small parcels of undeveloped land. We believe that these areas, by themselves, are not sufficient to maintain a healthy plant community and that intensive management will likely be needed to provide nutrients and water to the listed species in this cave. However, these small undeveloped areas surrounding the cave may provide foraging area for crickets inhabiting Genesis Cave and should be managed to benefit the species.

Unit 20

This unit contains one occupied cave (Table 3). Robber Baron Cave is the only known location for two of the nine listed species (Table 1) and because the cave is located within an area that is geologically isolated from other karst areas in the San Antonio region, these two species are not likely to occur outside this area (Veni 1994). Therefore, this cave is particularly important for the conservation of these species. Robber Baron Cave is by far the longest cave in Bexar County consisting of approximately 1.51 km (0.94 mi) of passages known within a square area approximately 100 m (328 ft) on each side (Veni 1988). Prior to the extensive development that has occurred in the area, the cave's footprint was estimated to extend at least 100 m (328 ft) farther east to a water well, 600 m (1,969 ft) southwest to a now-sealed extensive maze cave, and about 1.2 km (0.75 mi) to the southwest to another well (Veni 1988). The estimated footprint of the cave now extends underneath numerous residential and commercial developments. The Texas Cave Management Association (TCMA) now owns and manages the cave entrance and about 0.2 ha (0.5 ac) surrounding the opening. TCMA, in cooperation with the Service's Partners for Fish and Wildlife Program, is currently working to replace the existing cave gate, which consists of a concrete bunker created to deter access, with a new gate that will facilitate exchange of air and nutrients into the cave as well as restrict access. TCMA also plans to restore the grounds immediately surrounding Robber Baron Cave to a more natural state and repair the perimeter fence to regulate access.

The majority of the surface land within this unit has been developed for residential and/or commercial uses. As a result of the extensive existing development within this unit, the surface vegetation has been reduced and degraded and only small vegetated areas remain. Therefore, this unit does not contain the primary constituent element of a healthy surface plant community. The unit was designated to encompass the cave; the cave footprint, both the known and estimated extent; and the surface and subsurface drainage area. Vegetation surrounding the cave entrance consists primarily of nonnative species used for residential landscaping. Intensive management will likely be needed to provide nutrients and water to the listed species in this cave.

Unit 21

Unit 21 contains three occupied caves (Table 3). The majority of this unit occurs within the City of San Antonio's Stone Oak property, purchased under the Proposition 3 program. Several residential lots also occur within the unit boundaries. This unit contains all of the components described above, with the exception of the majority of the over 5,600-ac surface drainage area associated with Springtail Crevice Cave as defined by Veni (2002). This drainage area was not included in this final determination because it was not identified in the proposed rule and therefore was not available for public comment, and because of time deadlines associated with the legal settlement agreement to complete this designation, we did not have time to republish the critical habitat proposal to include this area and allow public comment on it. Although not included in the critical habitat area, minimizing impacts to the surface drainage area associated with this cave may be important for the conservation of the species in that cave.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a list species or result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a)(2) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Activities on Federal lands that may affect the listed karst invertebrates or their designated critical habitat will require section 7 consultation with the Service. Federal agencies also must consult with the Service under section 7 with regard to actions they authorize (permit) or fund that occur on private, State, or other non-Federal lands if the action may affect listed species or designated critical habitat. Actions authorized, funded, or implemented by Federal agencies that affect listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Federal actions that do not affect the species or designated critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer on any action likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat was designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If we issue a biological opinion, resulting from a section 7 consultation, concluding that a Federal action is likely to result in the destruction or adverse modification of critical habitat, we also would provide reasonable and prudent alternatives to the action, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that we believe would avoid destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat.

Activities on Federal lands that may affect any of the nine karst invertebrates or the designated critical habitat will require consultation under section 7 of the Act. Activities on private, State, or other non-Federal lands that involve a Federal action such a permit (*e.g.*, a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or a Construction General permit from the U.S. Environmental Protection Agency), or Federal funding (*e.g.*, from the Federal Highway Administration, Federal Aviation Administration, Federal Emergency Management Agency, Natural Resources Conservation Service, or Housing and Urban Development) also will continue to be subject to the section 7 consultation process. Federal actions that do not affect listed species or critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities which, if undertaken, may adversely modify such habitat or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the conservation of any of the seven karst invertebrates is appreciably reduced. These activities may occur outside the designated critical habitat and still result in destruction or adverse modification; for example, activities in the drainage area or locations adjacent to the critical habitat that impacts the karst environment within the designated critical habitat. Activities that may directly or indirectly adversely affect critical habitat for these karst invertebrates include, but are not limited to:

(1) Removing, thinning, or destroying perennial surface vegetation, with the exception of landscaping associated with existing human-constructed, above-ground, impervious structures, occurring in any critical habitat unit, whether by burning, mechanical, chemical, or other means (for example, wood cutting, grading, overgrazing, construction, road building, pipelines, mining, herbicide application);

(2) Alteration of the surface topography or subsurface geology within any critical habitat unit that results in significant disruption of ecosystem processes that sustain the cave environment. This may include, but is not limited to, such activities as filling cave entrances or otherwise reducing airflow, which limits oxygen availability; modifying cave entrances, or creating new entrances that increase airflow and result in drying; altering natural drainage patterns (surface or subsurface) in a manner that alters the amount of water entering the cave or karst feature; removal or disturbance of native surface vegetation that may alter the quality or quantity of water entering the karst environment; soil disturbance that results in increased sedimentation in the karst environment; increasing impervious cover that may decrease water quantity entering the karst environment within any critical habitat unit (*e.g.*, paving over a vegetated area); and altering the entrance or opening of the cave or karst feature in a way that would disrupt movements of raccoons, opossums, cave crickets, or other animals that provide nutrient input; or otherwise negatively altering the movement of nutrients into the cave or karst feature;

(3) Discharge or dumping of chemicals, silt, pollutants, household or industrial waste, or other harmful material into or near critical habitat units that may affect surface plant and animal communities or that affects the subsurface karst ecosystem.

(4) Pesticide or fertilizer application in or near critical habitat units that drain into these karst features or that affect surface plant and animal communities that support karst ecosystems. Careful use of pesticides in the vicinity of karst features may be necessary in some instances to control nonnative fire ants. Guidelines for controlling fire ants in the vicinity of karst features are available from us (*see* **ADDRESSES** section);

(5) Activities within caves that lead to soil compaction, changes in atmospheric conditions, or abandonment of the cave by bats or other fauna;

(6) Activities that attract or increase access for fire ants, cockroaches, or other invasive predators, competitors, or potential vectors for diseases or parasites into caves or karst features within the critical habitat units (*e.g.*, dumping of garbage in or around caves or karst features); and

(7) Release of certain biological control organisms within or adjacent to critical habitat areas. Biological control organisms include, but are not limited to, predaceous or parastoid (*i.e.*, an organism that lays its eggs in the body of another animal) vertebrates or invertebrates, fungi, bacteria, or other natural or bioengineered organisms.

Not all of the identified activities will necessarily result in the destruction or adverse modification of critical habitat. They indicate, however, the potential types of activities that will require section 7 consultation in the future and, therefore, that may be affected by the designation of critical habitat. To properly portray the effects of critical habitat designation, we must compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. All of the areas designated as critical habitat are known to contain one or more caves occupied by one or more of the listed karst invertebrates. Therefore, all of the actions described above as potentially adversely modifying critical habitat are also likely to adversely affect the listed species. Federal agencies already are required to consult with us on activities in areas where the species may be affected to ensure that the actions of the agency are not likely to jeopardize the continued existence of the species. Therefore, we do not expect that this designation of critical habitat will result in a regulatory burden above that already in place because of the presence of the listed species.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, please contact Robert T. Pine, Supervisor, Austin Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations on listed wildlife and plants, and inquiries about prohibitions and permits, should be directed to the U.S. Fish and Wildlife Service, Endangered Species Act Section 10 Program (*see* **ADDRESSES** section).

Lands Covered Under Existing Conservation Plans

The first portion of the definition of critical habitat in section 3(5)(A) of the Act states that critical habitat means: "(i) The specific areas within the geographical area occupied by the species, at the time it is listed * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection." As part of our process of developing a critical habitat designation, we evaluate existing management plans to determine whether an area may require special management or protection and thus qualifies as critical habitat. The Service believes that special management or protection is not required if an area is covered by a legally operative plan that addresses the maintenance and improvement of essential habitat elements and that provides for the long-term conservation of the species.

We consider a current plan to provide adequate special management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and (3) the plan provides assurances the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

When we assess the likelihood of whether the special management and protection will be implemented, we consider whether: (1) A management plan or agreement exists that specifies the special management actions being implemented or to be implemented; (2) there is a timely schedule for implementation; (3) there is a high probability that the funding source(s) or other resources necessary to implement the special management will be available; and (4) the party(ies) have the authority and long-term commitment to the agreement or plan to implement the special management and provide the protection, as demonstrated, for example, by a legal instrument providing enduring protection and special management of the areas that contain the primary constituent elements.

When we evaluate whether an action is likely to be effective, we consider whether: (1) The plan specifically addresses the special management needs, with respect to the conservation and enhancement, where possible, of the primary constituent elements; (2) actions similar to those being proposed or used as special management and protection have been successfully used in the past; (3) there are provisions for monitoring and assessment of the effectiveness of the special management and protection; and (4) adaptive management principles have been incorporated into the plan.

If an area provides physical or biological features essential to the conservation of the species, and also is covered by a plan that meets these criteria described above, then such an area does not constitute critical habitat as defined by section 3(5)(A)(i) of the Act because the primary constituent elements found there are not in need of special management.

With the "may require special management or protection" clause, Congress determined that certain areas should not be included in a designation despite the fact that they contain features essential to the conservation of the species. However, it has been suggested that the need for any management of physical or biological features, regardless of whether that

management is in place, qualifies an area as meeting this part of the definition of critical habitat. This interpretation ignores the question of whether the special management or protections are or are not required. Under this interpretation, any area on which an action needs to be taken to provide special management consideration or protection for a species constitutes critical habitat for that species. We believe that this interpretation of section 3(5)(A)(i) is incorrect because it essentially reads the special management clause out of the definition. Thus, under this interpretation, critical habitat would include all areas within the range of the species on which are found features essential to the conservation of the species, notwithstanding the additional requirement in the language of the Act. In contrast, our interpretation of the language, as described above, gives independent meaning to the special management clause because there will be some areas with features essential to the conservation of the species that will not require special management because they already have such management.

La Cantera Habitat Conservation Plan

Section 10(a) of the Act authorizes the Service to issue to non-Federal entities a permit for the incidental take of endangered or threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but results in the incidental taking of a listed species (*i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The Act specifies that an application for an incidental take permit must be accompanied by a conservation plan. A permit may not be issued unless the conservation plan submitted to the Service meets certain requirements, as provided in section 10(a)(2)(A) of the Act. For example, the conservation plan must specify what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps. After an opportunity for public comment on the conservation plan, the Service may issue the permit provided we determine that certain conditions, as specified in section 10(a)(2)(B), are met. For instance, the Service must find that the taking will be incidental, and the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

In our proposed rule for designating critical habitat for the karst invertebrates, we considered the lands covered by the La Cantera Habitat Conservation Plan. (A notice of availability for the HCP was published on July 2, 2001, opening a 30-day period for public comment. The section 10 permit was issued on October 31, 2001.) The goals of the HCP are to minimize and mitigate for the potential negative effects of constructing and operating commercial, light industrial, recreational, and residential development near and adjacent to currently occupied habitat of the endangered karst invertebrates, and to contribute to conservation of the covered species and other listed and non-listed cave or karst fauna. To accomplish these goals, the plan requires the following special management and protection:

- Routine inspections will be conducted and will include, but may not be limited to: Signs of vandalism and unauthorized entry; damage to cave gates, fencing, and/or signs; damage to vegetation; presence of fire ants or other nonnative species; dumping; and any other conditions that could affect the listed species or the karst ecosystem. Native vegetation will be maintained or improved within the karst management area. A baseline survey will be conducted and repeated every 10 years thereafter.
- A fire ant control and treatment program will be implemented. Boiling water will be used within 50 m of the cave footprint. Boiling water and/or chemical bait will be used between 50 and 150 m. Baits may be "broadcast" more than 150 m from a cave footprint according to protocols outlined in the HCP. The control and monitoring of fire ants will occur at least twice a year over the entire karst management area. Documentation of mounds will also occur during routine inspections. An increase in treatment will occur if mounds exceed stated numbers in the HCP.
- Cave security fences will be installed around all caves according to specifications outlined in the HCP, and some caves will have cave gates installed. Signs will be placed along all fences to further minimize the potential for vandalism and unauthorized access to the management areas. These areas will have officially designated points of access or entry. Entry gates will remain locked at all times when unattended. Cave security fences and their signs and cave gates will be maintained and routinely inspected; barbed-wire fences will be inspected at least every 6 months. Necessary repairs to fencing, gates, and signs will be initiated within one week if any of these are found to have incurred damage.
- In addition, the plan requires the control of impacts from increasing population densities of white-tailed deer and other mammals on surface plant and animal communities. Cattle, other domestic and/or exotic livestock, and pets will not be allowed in the karst management areas unless approved by the Service. No fertilizers, herbicides, or pesticides will be used within the management areas unless approved by the Service. No new roads, new utilities, or other development, including stormwater or wastewater lines, treatment ponds, structures or other facilities, are allowed within the karst management area boundaries unless allowed for under the HCP or approved by the Service. Motorized vehicles will be prohibited from the management areas at all times, unless utilized to facilitate operation, monitoring, and maintenance. No public access, including hiking, biking, and horseback riding, will be allowed unless approved by the Service. Karst management and monitoring plans will be developed for each management area and will include monitoring of the baseline conditions (biological and physical conditions of the area prior to the other scheduled activities), surface and subsurface animal species, and surface vegetation, as well as measurement of cave and surface climates.
- An adaptive management strategy will be used in the implementation of the plan. On the basis of this strategy, if monitoring or other information indicates that the goals or requirements of the HCP are not being met, then adjustments will be made as outlined in the HCP.

As explained in the proposed rule (67 FR 55064), based on our evaluation of the adequacy of special management considerations and protection provided by the La Cantera HCP, and in light of the definition of critical habitat in section 3(5)(A) of the Act, we did not include the five karst management areas established by La Cantera as part of the proposed designation of critical habitat. These areas were established as a requirement of their section 10(a)(1)(B) permit, which is titled "Environmental Assessment and Habitat Conservation Plan for Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for the Incidental Take of Two Troglobitic Ground Beetles (Rhadine exilis and Rhadine infernalis) and Madia Cave Meshweaver (Cicurina madia) During the Construction and Operation of Commercial Development on the Approximately 1,000-Acre La Cantera Property, San Antonio, Bexar County, Texas, dated October 11, 2001." These five karst management areas include: (1) Canyon Ranch (including Canyon Ranch Pit, Fat Man's Nightmare Cave, and Scenic Overlook Cave and the surrounding approximately 30 ha (75 ac) within critical habitat Unit 1e, as proposed; (2) Helotes Blowhole and Helotes Hilltop caves and the surrounding approximately 10 ha (25 ac), within Unit 3 as proposed; (3) John Wagner Cave No. 3 and the surrounding approximately 1.6 ha (4 ac), within Unit 6 as proposed; (4) Hills and Dales Pit and the surrounding approximately 28 ha (70 ac), within Unit 8 as proposed; and (5) Madla's Cave and the surrounding approximately 2 ha (5 ac), within Unit 17 as proposed.

We believe that the La Cantera HCP meets the three criteria used by the Service to determine if a plan provides adequate special management or protection to a listed species. First, the HCP provides a conservation benefit to the species through the protection of eight caves, each occupied by one or more of the three listed species covered under the HCP. The various management actions (*e.g.*, installation of security fences, controls on numerous potential human impacts, fire ant control and treatment program) will provide conservation benefits. Second, the HCP provides assurance that the conservation management strategies and actions will be implemented. These caves and associated management areas are protected, in perpetuity, by appropriate legal mechanisms, and will be managed, in perpetuity. The HCP provides assurances that the conservation strategies and actions will be implemented by outlining a schedule of management and monitoring activities to be conducted at each karst management area. Also, based on our review of available information, estimates, and budgets, La Cantera committed to provide funding for all management, monitoring, repair, and adaptive management actions described in the HCP up to an aggregate of $38,032 per year, as adjusted for inflation. Third, to provide assurances that the conservation strategies and measures will be effective, the HCP was developed on the basis of the best available information, and La Cantera is required to conduct periodic surveys of the cave environment, as well as the surface plant and animal community to determine the status of these environments and the need for adaptive management. If monitoring or other information indicates that the goals or requirements of the HCP are not being met, then adjustments will be made as appropriate. La Cantera is required to submit a report of all management and monitoring activities conducted each year to the Service annually.

For the reasons described above, the five karst management areas established by La Cantera and being provided for under their HCP are not included in this designation of critical habitat because they are receiving adequate special management considerations and protection, and therefore do not meet the definition of critical habitat as stated in section 3(5)(A)(i) of the Act.

Camp Bullis Conservation Plan for Karst Species

During the comment period for the proposed designation of critical habitat, the U.S. Army Garrison, Fort Sam Houston submitted a "Management Plan for the Conservation of Rare and Endangered Karst Species, Camp Bullis, Bexar and Comal Counties, Texas," for the 23 caves on Department of Defense (DOD) property that are known to contain listed karst species. These 23 caves were included within Units 10 and 11 of the proposed designation of critical habitat. The Camp Bullis conservation plan calls for the following special management considerations and protection:

- The Army will identify karst management areas (KMAs) and determine the appropriate size and shape of each KMA necessary to incorporate the biological and physical components needed for the conservation of the species (*e.g.*, cave footprint, surface and subsurface drainage areas associated with the occupied cave, cave cricket foraging area, surface plant and animal community). The KMAs will be preserved in perpetuity within the limits possible through the authority of Camp Bullis and its operational and mission requirements. The Plan stipulates that should Camp Bullis ever be transferred in whole or in part, local Army officials will request that the Secretary of the Army, or other appropriate authority, review and incorporate provisions from this management plan into the property disposal procedures in order to transfer responsibility for appropriate management of any former Camp Bullis karst management areas to all subsequent owners by deed recordation or other binding instrument.
- Fire ants will be controlled. Only boiling water will be used up to 50 m from a cave's footprint, chemical fire ant bait or boiling water, if feasible, will be used between 50 and 150 m, and "broadcasting" of bait may be used at distances greater than 150 m. Pesticide and fertilizer use will be prohibited within KMAs unless specifically authorized. Special management will protect important sources of nutrients for KMAs, prevent siltation and/or entry of other contaminants into KMAs, dprevent vandalism, dumping of trash, and unauthorized entry into caves. Certain caves may require cave gates and/or security fences.
- In addition, the Army will: (1) Continue conducting karst and biospeleological surveys; (2) complete hydrogeologic studies on KMAs; (3) continue studies on the ecology of karst species; (4) develop educational programs to raise awareness and encourage protection of karst ecosystems by Camp Bullis personnel and the public; (5) monitor all KMAs to determine success or failure of management actions; and (6) document all fauna and flora encountered during monitoring. Monitoring will occur every 1–3 years based on changes in the extent that Camp Bullis uses areas in or around the cave.
- Finally, only native xeriscape plants will be used to landscape for new construction within 150 m of a KMA. Two of the caves are near the boundary of Camp Bullis. We intend to form a partnership with Camp Bullis and the private landowners to gain their support for protecting the habitat that is on private lands near these caves.

In addition to the activities outlined in their plan, Camp Bullis began conducting surveys for cave and karst features and karst fauna in 1993 and plans to complete karst surveys of the entire approximately 28,000-acre installation in 2003. Camp Bullis submitted a draft karst management plan to us in 1999 and has been implementing measures to conserve listed karst invertebrate species since then. These measures include, but are not limited to, control of red-imported fire ants, control of unauthorized access through cave gating, and limiting training activities in areas around occupied caves. The 2002 karst management plan, received and approved by the Service during the comment period, includes these and additional measures to conserve the listed species and their ecosystems on Camp Bullis.

Based on our evaluation of the Camp Bullis conservation plan for the karst invertebrates, we find that it provides adequate special management considerations and protection for the species occurring within Units 10 and 11 that were proposed for designation as critical habitat. We believe that Camp Bullis' karst management plan (Plan) meets the three criteria used by the Service to determine if a plan provides adequate special management or protection to a listed species. The Plan

provides a conservation benefit to the species through the protection of twenty-three caves occurring on Camp Bullis. Each cave is occupied by one or more of the listed species. Under the terms of a memorandum of understanding (MOU) signed by Camp Bullis and the Service on December 20, 2002, Camp Bullis agreed to protect, manage and monitor caves containing listed species as specified in the Plan within the limits possible through the authority of Camp Bullis and its operational and mission requirements. The Plan stipulates that should Camp Bullis ever be transferred in whole or in part, local Army officials will request that the Secretary of the Army, or other appropriate authority, review and incorporate provisions from this management plan into the property disposal procedures in order to transfer responsibility for appropriate management of any former Camp Bullis karst management areas to all subsequent owners by deed recordation or other binding instrument. The Plan provides assurances that the conservation strategies and actions will be implemented by outlining a schedule of management and monitoring activities to be conducted at each occupied cave. The Plan also stipulates that funding for the management actions will be programmed in the Environmental Project Requirements database which is submitted annually. To provide assurances that the conservation strategies and measures will be effective, Camp Bullis has agreed to conduct periodic surveys of the cave environment, as well as the surface plant and animal community to determine the status of these environments and the need for adaptive management. If monitoring or other information indicates that the goals or requirements of the Plan are not being met, then adjustments will be made as appropriate. Under the Plan, Camp Bullis is required to submit a report of all management and monitoring activities conducted each year to the Service annually.

For the reasons described above, we have not included the Camp Bullis lands in proposed Units 10 and 11 in this final designation of critical habitat because these areas do not meet the definition of critical habitat as stated in section 3(5)(A)(i) of the Act.

Government Canyon State Natural Area Conservation Plan

During the comment period for the proposed rule, Texas Parks and Wildlife Department (TPW) submitted the "Karst Management and Maintenance Plan for Government Canyon State Natural Area, Bexar County, Texas." Government Canyon State Natural Area (GCSNA) was designated as a state natural area in 1993. As of 2002, GCSNA includes a total of 8,199 acres. As a designated natural area, GCSNA's mission is to protect the outstanding natural attributes found on the property, including caves inhabited by the listed karst invertebrates. Surveys for cave and karst features and cave fauna have been ongoing at GCSNA since 1994. To protect the listed karst invertebrates, GCSNA began treating for fire ants around the occupied caves in 1999 and has continued to implement this and other conservation measures benefitting the listed species and their ecosystem. Such on-going measures include, but are not limited to, ongoing surveys for cave and karst features and cave fauna, control of fire ants, and control of unauthorized access. As described in the following paragraphs, the 2002 karst management plan, received and approved by the Service during the comment period, includes these and additional measures to conserve the listed species and their ecosystems on GCSNA.

TPWD committed to limiting human use to a trail system and 12 primitive campsites on the portions of the property overlying the Edwards Aquifer. At least two surveys a year for fire ant mounds around cave openings will be conducted with fire ant mound densities being recorded within 50 m of cave entrances. Searches for fire ant mounds also will be made during routine maintenance inspections. Control will be conducted twice a year, with an increase in frequency if more than 80 mounds are located within 50 m of a cave entrance. Boiling water will be used to control fire ants within 50 m of the footprint of any cave. Boiling water or chemical baits will be used between 50 and 100 m from the footprint. Baits may be "broadcast" in areas greater than 150 m, and the bait use protocol is outlined in the management plan.

Wildfire fighting will, to the fullest extent practical, avoid direct or indirect impacts to caves. Pesticide and herbicide use will be prohibited unless expressly agreed to by all partners involved in the special management. Monthly monitoring and inspections of all endangered species caves will occur. Data collection will include: evidence of vandalism, evidence of vegetation damage due to off-trail use, condition of the cave gate and/or security fence, evidence of feral hogs and/or white tailed deer, presence of fire ants, and results of recent fire ant treatments. Cave cricket counts will be performed yearly at all caves. Through photographic documentation, changes in vegetation structure and composition around caves will be monitored. Volunteers holding valid scientific research and recovery permits for karst invertebrates will assist in monitoring listed and unlisted species. An annual report of activities will be submitted by October 31st of each calendar year.

Based on our evaluation of the Karst Management and Maintenance Plan for Government Canyon State Natural Area, we find that it provides adequate special management considerations and protection for Units 1a, 1b, 1c, and 1d that were proposed for designation as critical habitat. We believe that TPWD's karst management plan submitted for GCSNA meets the three criteria used by the Service to determine if a plan provides adequate special management or protection to a listed species. The Plan provides a conservation benefit to the species through the protection of seven caves, each occupied by one or more of the listed species. As a designated natural area, GCSNA's mission is to protect the outstanding natural attributes found on the property, including caves inhabited by the listed karst invertebrates. The property will be protected in perpetuity and used in a sustainable manner for scientific research, education, aesthetic enjoyment, and appropriate public use, not detrimental to the primary purposes for which the property was acquired. The Plan provides assurances that the conservation strategies and actions will be implemented by outlining a schedule of management and monitoring activities to be conducted at each occupied cave. Surveys for cave and karst features and cave fauna have been ongoing at GCSNA since 1994. The Plan also stipulates that funding for the management actions will be programmed into GCSNA's operating budget annually. To provide assurances that the conservation strategies and measures will be effective, TPWD has agreed to conduct periodic surveys of the cave environment, as well as the surface plant and animal community to determine the status of these environments and the need for adaptive management. If monitoring or other information indicates that the goals or requirements of the Plan are not being met, then adjustments will be made as appropriate. Under the Plan, TPWD is required to submit a report of all management and monitoring activities conducted each year at GCSNA to the Service annually. Therefore, we are not including these units in this final designation of critical habitat because these areas do not meet the definition of critical habitat as stated in section 3(5)(A)(i) of the Act.

Exclusions Under Section 4(b)(2)

As described above, based on our evaluation of the adequacy of special management and protection that is provided in current management plans involving the karst invertebrates, and in accordance with section 3(5)(A)(i) of the Act, we have not included the areas covered by the La Cantera HCP, or Units 1a, 1b, 1c, 1d, 10 and 11 as proposed, in this final designation of critical habitat. To the extent that special management considerations and protection may be required for these areas, and they therefore qualify as critical habitat according to section 3(5)(A)(i), they are properly excluded from designation under section 4(b)(2) of the Act, based on the following analysis.

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned. We believe exclusion under section 4(b)(2) of the Act applies to the areas encompassed in the special management and protection plans for the La Cantera HCP, GCSNA, and Camp Bullis.

La Cantera HCP

The principal benefit of any designated critical habitat is that Federal activities that may affect the habitat require consultation under section 7(a)(2) of the Act. Consultation is designed to ensure that adequate protection is provided to avoid adverse modification or destruction of critical habitat resulting from an action authorized, funded, or carried out by a Federal agency. Where HCPs are in place and lands are covered by a section 10(a)(1)B) permit, our experience has shown that any benefit of designation of such lands as critical habitat is small to none when the areas concerned are occupied by the species, because the occupied areas already are subject to section 7 consultation based on the "jeopardy standard." Permitted HCPs are designed to ensure the long-term survival of listed species within the area covered by the permit. Under an HCP, an areas that might be designated as critical habitat already will be protected in reserves and other conservation lands by the terms of the HCP and its implementation agreements. The HCP and implementation agreements include management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, a section 10(a)(1)(B) permit issued by us as a result of an HCP application must itself undergo consultation. While this consultation may not look specifically at the issue of the likelihood of adverse modification or destruction of critical habitat, it will look at the very similar concept of jeopardy to the listed species in the plan area. Since HCPs address land use within the plan boundaries, habitat issues within the plan boundaries will have been thoroughly addressed in the HCP and the consultation on the HCP.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for development. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many HCPs. For these reasons we believe that designation of critical habitat has little or no benefit in areas covered by HCPs.

The benefits of excluding HCPs from designation as critical habitat are significant. Benefits of excluding HCPs include relieving landowners, communities, and counties of any additional minor regulatory review that might be imposed by critical habitat. Many HCPs take considerable time—sometimes years—to develop and, upon completion, become the basis for regional conservation plans that are consistent with the conservation of covered species. Many of these plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirms regulatory assurances for HCP participants.

Another benefit of excluding HCPs is that exclusion encourages the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions that we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships, and, we believe, set the stage for more effective conservation actions in the future.

Specifically, for the lands covered by the La Cantera HCP, in a letter dated April 18, 2002, Mr. Alan Glen, representing the La Cantera Development Company, noted the following. "The significant mitigation measures and conservation benefits provided by the La Cantera HCP would likely not have been realized through a section 7 consultation. As a result, it is highly unlikely that the inclusion of the areas covered by the HCP in a designation of critical habitat would provide any benefit for the listed species. In contrast, the benefits of excluding the La Cantera HCP from the designation are expected to be significant for many of the same reasons identified in the Quino analysis set forth above. La Cantera and the Service worked together for years to produce the first HCP covering any of the listed Bexar County invertebrate species, and as the Service has acknowledged, the result is a model that can be followed throughout the region. The imposition of even a minor regulatory burden that will not yield substantial benefits for the species may hinder the orderly and effective implementation of the La Cantera HCP and, perhaps more importantly, discourage similar efforts to conserve the listed species by other parties in the future."

We have weighed the small benefit, if any, of including the lands in the HCP against the benefits of exclusion, which include the benefit of relieving both the property owners and the Service of the extra time and funds associated with the additional layer of approvals and regulation, including reinitiation of the intra-Service section 7 consultation, together with the encouragement of conservation partnerships. We have determined that the benefit of excluding the land covered by the La Cantera HCP from designation as critical habitat outweighs the benefits of including the areas, so we have excluded them from designation on the basis of section 4(b)(2) of the Act.

Government Canyon State Natural Area and Camp Bullis

The benefits of designating as critical habitat the State-owned GCSNA lands in proposed Units 1a, 1b, 1c, and 1d, and the DOD-owned Camp Bullis lands in proposed Units 10 and 11, are small to none. As previously stated, the listed species and their habitat on both Camp Bullis and the GCSNA already are being managed and protected under Service-approved karst management plans. These management plans provide long-term conservation benefits to the listed species on these properties. The only additional protection for the primary constituent elements that could occur on GCSNA would be the requirement for Federal agencies to consult on any action they permit, fund, or carry out, that may affect designated critical habitat, were it designated, on the State-owned lands. However, all of the caves on the Natural Area that could have been included in the designation are known to be inhabited by one or more species of the endangered karst invertebrates. Therefore, the section 7(a)(2) jeopardy standard for Federal agency actions already is in place and Federal agencies are required to consult with the Service on any action that may affect a listed species. Since take of the species would almost certainly be a result of harm to the habitat, no added section 7(a)(2) protections would be provided by designation of critical habitat in this situation.

Also, the primary purpose for GCSNA is for the protection and stewardship of outstanding natural attributes of statewide significance under Policy, TAC 59.61–59.64. Given this stated purpose, it is highly unlikely that the State would allow any federally funded or permitted project that would harm the habitats associated with the caves on the Natural Area. Therefore, it is highly unlikely that section 7(a)(2) consultation would ever be required. Also, GCSNA's karst management plan stipulates that TPWD intends to coordinate with the Service on any activities on GCSNA that may impact listed species or their habitat. Further, in the unlikely event that the State should ever propose an action that lacks Federal agency involvement and that might result in incidental take of the listed karst invertebrates on the Natural Area, an incidental take permit would be required under section 10(a)(1)(B) of the Act. Section 10(a)(1)(B) requires that the applicant minimize and mitigate, to the maximum extent practical, the impacts to listed species. While the Service would have to complete an intra-Service section 7(a)(2) consultation to ensure that issuing the permit did not jeopardize the listed species or adversely modify critical habitat, were it designated, it is highly unlikely that the designation of critical habitat on the Natural Area would add any measures that would increase the minimization and mitigation of harm to the habitat.

Camp Bullis' mission is to provide field training and support for military activities in south Texas. The mission requirements demand the presence of large tracts of undeveloped land for training operations. The management plan discussed above represents the cumulative efforts of Camp Bullis to eliminate, mitigate, and prevent harm to the federally and state-listed karst species. Camp Bullis has an approved and signed Integrated Natural Resource Management Plan (INRMP). This INRMP provides yet another layer of protection for the natural resources on Camp Bullis. The INRMP includes specific goals for managing the karst resources on Camp Bullis to ensure protection and enhance understanding. This includes: (1) Management of water resources on Camp Bullis, including wetlands, that protects the Edwards Aquifer Recharge Zone; (2) supporting research to measure the relationship between species diversity and the amount of water flowing into the recharge zones; and (3) continuing to support work done by the U.S. Geological Survey. Given these layers of protection for the habitats associated with the occupied caves, inclusion of Camp Bullis lands in this designation of critical habitat would have little or no benefit to the listed karst species.

The benefits of excluding areas within GCSNA and Camp Bullis from designation are significant. If special management and protection plans were not implemented as called for the in the GCSNA conservation plan, the State would be required to complete section 10(a)(1)(B) habitat conservation planning for any action that might result in incidental take of the listed species. In the case of Camp Bullis, section 7(a)(2) consultation would be needed on any action likely to result in the destruction or adverse modification of designated critical habitat. However, since both areas are implementing special management and protection plans that preclude take of listed species and harm to the associated habitat, no HCPs or consultations are needed. Completion of section 10(a)(1)(B) permits can require extensive lengths of time, in some cases, years and thousands of hours. Likewise, completion of formal section 7(a)(2) biological opinions may require completion of biological assessments that can require extensive lengths of time and thousands of hours to complete. Both processes may require the employment of consultants. Thus, by having special management and protection plans in place that preclude actions that might harm species and associated habitat, there is a great savings, in terms of both money and time, and a great benefit, to the Service, the State, and the DOD.

In the situations of GCSNA and Camp Bullis, the State and the DOD assumed the additional cost of putting in place and implementing special management for endangered species in their resource management plans. The special management far exceeds the protections that would be afforded by designation of critical habitat. If these areas were included in the critical habitat designation, the cooperative partnership that motivated these two agencies to assume the cost and work would be damaged. Since the added special management and protection measures for endangered karst invertebrates on the part of the State is voluntary, the designation could result in an adverse change to the cooperative partnership with the Service and changes to future management and protection. The primary constituent elements and species will greatly benefit from the implementation of these plans.

We believe recovery of listed species is best accomplished through partnerships and voluntary actions. If areas that are subject to adequate management plans are not excluded from designations of critical habitat, there will be a chilling effect on other potential partners. There is a great incentive to not having Federal regulations encumbering non-Federal land. It is likely that many potential partners will not assume the cost and work associated with implementing voluntary special management and protection if critical habitat is designated regardless of their efforts. As a result, listed species and their habitat will not have the benefits of voluntary special management. We believe that the benefits of excluding these areas already under special management as a result of voluntary action by the landowners greatly outweighs the benefits of including such areas as part of critical habitat. We believe that excluding these areas is beneficial to these and other species.

In the case of Camp Bullis, there also are national security benefits from exclusion of Units 10 and 11 from critical habitat designation which exceed any benefits from including these areas. In a prior consultation under section 7 of the Act, the Service

found: "All available land at Camp Bullis is being used for training for the Army, Air Force, Marine Corps, Reserve components, San Antonio police, FBI, U.S. Marshals and Academy Health Sciences." Training includes search and rescue, escape and evasion, survival, mechanized infantry maneuvers, urban warfare tactics, reconnaissance in enemy territory, parachute operations and combat assault landing, air base ground protection and low-level helicopter assault and maneuvering. An average of over 36,000 Army and other services' medical personnel undergo field medical training at Camp Bullis, and total military training use averages over 720,000 person-days annually.

The space and facilities for this training at Camp Bullis cannot readily be duplicated elsewhere. The benefits of avoiding adverse impacts to the U.S. Army's mission if training were delayed due to the need to reinitiate section 7 consultation as a result of concerns for irreversible or irretrievable commitment of resources with respect to the agency's action (section 7(d)) exceed the benefits of designation of proposed Units 10 and 11 as critical habitat.

Based on section 4(b)(2) and the consideration of the information described above, we find that the benefits of excluding the areas covered by the La Cantera HCP, proposed Units 1a, 1b, 1c, and 1d of the GCSNA lands, and proposed Units 10 and 11 on Camp Bullis, greatly exceed the limited benefits of including these areas in the designation of critical habitat. Benefits of exclusion include implementation of special management and protection plans that provide protection and management far in excess of any protection afforded by the Act through designation of critical habitat, by encouraging the formation of partnerships that will be the key to recovery of the species, by reducing the time and money that would have been needed to complete regulatory processes under sections 7(a)(2) and 10(a)(1)(B) of the Act, and by ensuring that the U.S. Army's role in protecting the Nation is not impaired.

We may exclude areas from the critical habitat designation unless the Secretary determines, "based on the best scientific and commercial data available, that the failure to designate such areas as critical habitat will result in extinction of the species concerned." Here, we have determined that the exclusion of the La Cantera HCP, GCSNA, and Camp Bullis lands will not result in the extinction of the species. First, activities authorized, funded, or carried out by Federal agencies in these areas that may affect the listed karst invertebrates will still require consultation under section 7 of the Act, based on the requirement that Federal agencies ensure that such activities are not likely to jeopardize the continued existence of listed species. This requirement applies even without critical habitat designation on these lands. Second, these three entities have committed to protecting and managing these endangered species in accordance with their special management plans and natural resource management objectives. In short, they have committed to greater conservation measures on these areas than would be available through the designation of critical habitat. With these natural resource measures, we have concluded that these exclusions from critical habitat will not result in the extinction of these karst invertebrates.

We have determined that, with the exceptions noted above, for the rest of the areas included in the designation of critical habitat in this final rule, the benefits of exclusion do not outweigh the benefits of critical habitat designation. As part of this determination, we conducted an economic analysis of the proposed rule designating critical habitat for these species.

Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific information available and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude any area from designation as critical habitat upon a determination that the benefits of such exclusion outweigh the benefits of specifying such an area as critical habitat, unless we determine, on the basis of the best scientific and commercial data available, that the failure to designate such area will result in the extinction of the species concerned. Following the publication of the proposed critical habitat designation, we completed a draft economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available to the public for review on November 21, 2002 (67 FR 70203) and we accepted comments on the proposed rule and the draft economic analysis of it until December 23, 2002.

In making our final critical habitat designation, we utilized the economic analysis and our analysis of other relevant impacts, and considered all comments and information submitted during the public hearing and comment period. No areas proposed as critical habitat were excluded or modified because of economic impacts. This analysis first identifies land use activities within or in the vicinity of those areas being proposed for critical habitat that are likely to be affected by section 7 of the Act. To do this, the analysis evaluates a "without section 7" scenario and compares it to a "with section 7" scenario. The "without section 7" scenario constitutes the baseline of this analysis. It represents the level of protection currently afforded the species under the Act, absent section 7 protective measures, which includes other Federal, State, and local laws. The "with section 7" scenario identifies land-use activities likely to involve a Federal nexus that may affect the species or its designated critical habitat, which accordingly have the potential to be subject to future consultations under section 7 of the Act.

Upon identifying section 7 impacts, the analysis proceeds to consider the subset of impacts that can be attributed exclusively to the critical habitat designation. To do this, the analysis adopts a "with and without critical habitat approach." This approach is used to determine those effects found in the upper-bound estimate that may be attributed solely to the proposed designation of critical habitat. Specifically, the "with and without critical habitat" approach considers section 7 impacts that will likely be associated with the implementation of the jeopardy provision of section 7 and those that will likely be associated with the implementation of the adverse modification provision of section 7. In many cases, impacts associated with the jeopardy standard remain unaffected by the designation of critical habitat and thus would not normally be considered an effect of a critical habitat rulemaking. The subset of section 7 impacts likely to be affected solely by the designation of critical habitat represents the lower-bound estimate of this analysis.

This analysis estimates that, over 10 years, 10 formal consultations and 22 informal consultations will occur on projects with the potential to affect the proposed critical habitat area. As mentioned, most of the future section 7 consultations associated with the area proposed as critical habitat are likely to address private landowner HCPs and participation in Partners for Fish and Wildlife. In addition, the Service expects to provide technical assistance to parties on 431 occasions.

The economic impact associated with section 7 consultations for the invertebrates is anticipated to be approximately $33.4 million over the next 10 years, $23.4 million when

discounted to present value using a rate of 7 percent. Approximately 87 percent of these total costs are expected to result specifically from designation of critical habitat while the remainder are coextensive with the listing of these species. While a range of activities may be affected by designation of critical habitat for the species, approximately 85 percent of the total designation costs are expected to stem from private landowner Habitat Conservation Plans (HCPs) intended to mitigate impacts from development of private lands within critical habitat. HCP impacts result from administrative costs associated with the section 7 consultation process and related project modifications. Remaining costs are expected to stem from review of management plans (*e.g.*, within Government Canyon State Natural Area and Camp Bullis), review of Clean Water Act permits, and participation in Partners for Fish and Wildlife projects on private lands.

A copy of the final economic analysis and supporting documents are included in our administrative record and may be obtained by contacting the Austin Ecological Services Office (*see* **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this is a significant regulatory action because it may raise novel legal or policy issues. As required by the Executive Order, we provided a copy of the rule, which describes the need for this action and how the designation meets that need, and the economic analysis, which assesses the costs and benefits of this critical habitat designation, to OMB for review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this final critical habitat designation for seven Bexar County invertebrates will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The economic analysis determined whether this critical habitat designation potentially affects a "substantial number" of small entities in counties supporting critical habitat areas. It also quantifies the probable number of small businesses likely to experience a "significant effect." SBREFA does not explicitly define either "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, the economic analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a "significant economic impact." Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA, including *Mid-Tex Electric Co-op., Inc.* v. *F.E.R.C.*, 773 F.2d 327 (D.C. Cir. 1985) and *American Trucking Associations, Inc.* v. *U.S. E.P.A.*, 175 F.3d 1027 (D.C. Cir. 1999).

The economic analysis examines the total estimated section 7 costs, including those impacts that may be "attributable coextensively" with the listing of the species. This results in a conservative estimate (*i.e.*, more likely to overstate impacts than understate them), because it utilizes the upper bound impact estimate.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, *etc.*). In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. We apply the "substantial number" test individually to each industry to determine if certification is appropriate.

The economic analysis identifies land use activities within our proposed critical habitat designation for the seven invertebrate species that are expected to be affected by section 7 of the Act. The following land use activities were identified as being potentially impacted by section 7 (*i.e.*, requiring consultations or associated project modifications) under the "with section 7" scenario: Private residential and commercial development; issuance of National Pollution Discharge Elimination System permits by Texas Natural Resource Conservation Commission (TNRCC); development of Karst Management Plan for Camp Bullis; roadway expansions by Texas DOT; Campus expansion of UTSA; and Partners for Fish and Wildlife conservation projects on private lands.

Of the projects that are potentially affected by section 7 consultation for the invertebrates, Camp Bullis occurs exclusively on Federal lands and does not have third party/small entity involvement (*i.e.*, only the Federal action agency and the Service are expected to be involved). In addition, under Small Business Administration (SBA) guidelines, State governments are considered independent sovereigns, not small governments. As such, TNRCC, Texas DOT, and UTSA are not considered "small entities."

Of the projects potentially impacted by section 7, some do not involve any project modifications. Specifically, Partners for Fish and Wildlife conservation projects on private lands are not expected to involve any project modifications. The greatest share of the costs associated with the section 7 consultation process stem from project modifications, as compared to the consultation itself. Indeed, costs associated with the consultation itself are relatively minor, with third-party costs estimated to range from $1,200 to $6,900 per consultation. Therefore, Partners for Fish and Wildlife conservation projects are unlikely to be significantly affected by consultations because these do not involve costly project modifications.

Several developers were identified as having activities with a Federal nexus and therefore are potentially affected by section 7 implementation for the nine invertebrates for which we proposed critical habitat designation. Six landowners are expected to complete HCPs for single- or multi-family homes or commercial development on their lands. These developers would each bear costs associated with the consultation and any related project modification for the HCP.

The SBA defines small development businesses as having less than $28.5 million in average annual receipts (also referred to as sales or revenues). The following steps were taken as part of the economic analysis to estimate number of small businesses affected: Estimate the number of businesses within the study area affected by section 7 implementation annually (assumed to be equal to the number of annual consultations); calculate the percent of businesses in the affected industry that are likely to be small; calculate the number of affected small businesses in the affected industry; calculate the percent of small businesses likely to be affected by critical habitat. Using these steps, the economic assessment done for the Bexar County Invertebrate Species Critical Habitat designation indicates that a total annual percentage of about 1 percent of small businesses would bear a significant cost in industry.

In summary, of the projects potentially impacted by section 7 implementation, some are excluded from consideration because they are on Federal or State lands, and some do not involve any project modifications. Specifically, Partners for Fish and Wildlife conservation projects on private lands are not expected to involve any project modifications. The greatest share of the costs associated with the consultation process stem from project modifications (as opposed to the consultation itself). Indeed, costs associated with the consultation itself are relatively minor, with third-party costs estimated to range from $1,200 to $6,900 per consultation. Therefore, small entities are unlikely to be significantly affected by consultations as these consultations do not involve costly project modifications. Additionally, because the costs associated with designating critical habitat for the seven invertebrates are likely to be significant for an total percentage of about one small business per year in the affected industries in the study area, this analysis concludes that a significant economic impact on a significant number of small entities will *not* result from the designation of critical habitat for the nine invertebrates. This would be true even if all of the effects of section 7 consultation on these activities were attributed solely to the critical habitat designation.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use since the majority of the lands being designated as critical habitat occur on privately owned lands that are primarily developed for agricultural and residential uses, and not for energy production or distribution. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

1. On the basis of information contained in the economic analysis, we determine that this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any of their actions involving Federal funding or authorization must not destroy or adversely modify the critical habitat or take the species under section 9 of the Act.

2. This rule will not produce a Federal mandate of $100 million or greater in any year (*i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act).

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights," March 18, 1988; 53 FR 8859), we have analyzed the potential takings implications of the designation of critical habitat for the seven karst invertebrates. The takings implications assessment concludes that this final rule does not pose significant takings implications. A copy of this assessment can be obtained by contacting the Austin Ecological Services Field Office (*see* **ADDRESSES** section).

On the basis of the above assessment, we find that this final rule designating critical habitat for the seven karst invertebrates does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by the seven endangered karst invertebrates would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this designation does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning.

Civil Justice Reform

In accordance with Executive Order 12988 (February 7, 1996; 61 FR 4729), the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act. The rule uses standard coordinates that are geographic longitude and latitude, decimal degree coordinate pairs, referenced to North American Horizontal Datum 1983 (NAD 83), and identifies the primary constituent elements within the designated areas to assist the public in understanding the

habitat needs of the seven karst invertebrates.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. Information collections associated with Endangered Species permits are covered by an existing OMB approval, which is assigned control number 1018–0094 and which expires on July 31, 2004. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB Control Number.

National Environmental Policy Act

We have determined that an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a Government-to-Government basis. The designation of critical habitat for the seven karst invertebrates does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this final rule is available, upon request, from the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (*see* **ADDRESSES** section).

Author

This rule was prepared by the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, as set forth below:

■ a. By revising the entries for Beetle, Helotes mold; Beetle [no common name] (*Rhadine exilis*); and Beetle [no common name] (*Rhadine infernalis*) under "INSECTS" to read as follows;

■ b. By removing the entries for Harvestman, Robber Baron Cave; Spider, Government Canyon Cave; Spider, Madla's Cave; Spider [no common name] (Cicurina venii); Spider, Robber Baron Cave; and Spider, vesper cave; and

■ c. By adding entries for Harvestman, Cokendolpher cave; Meshweaver, Braken Bat Cave; Meshweaver, Government Canyon Bat Cave; Meshweaver, Madla Cave; Meshweaver, Robber Baron Cave; and Spider, Government Canyon Bat Cave under "ARACHNIDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
INSECTS							
Beetle, Helotes mold	*Batrisodes venyivi*	U.S.A. (TX)	NA	E	706	17.95(i)	NA
Beetle, [no common name]	*Rhadine exilis*	U.S.A. (TX)	NA	E	706	17.95(i)	NA
Beetle, [no common name]	*Rhadine infernalis*	U.S.A. (TX)	NA	E	706	17.95(i)	NA
ARACHNIDS							
Harvestman, Cokendolpher cave	*Texella cokendolpheri*	U.S.A. (TX)	NA	E	706	17.95(g)	NA
Meshweaver, Braken Bat Cave	*Circurina venii*	U.S.A. (TX)	NA	E	706	17.95(g)	NA
Meshweaver, Government Canyon Bat Cave	*Circurina vespera*	U.S.A. (TX)	NA	E	706	NA	NA
Meshweaver, Madla Cave	*Cicurina madla*	U.S.A. (TX)	NA	E	706	17.95(g)	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Meshweaver, Robber Baron Cave	*Cicurina baronia*	U.S.A. (TX)	NA	E	706	17.95(g)	NA
Spider, Government Canyon Bat Cave	*Neoleptoneta microps*	U.S.A. (TX)	NA	E	706	NA	NA

■ 3. Amend § 17.95 by adding, in the same alphabetical order as these species occur in § 17.11(h):

■ a. In paragraph (g), critical habitat for the Cokendolpher cave harvestman (*Texella cokendolpheri*);

■ b. In paragraph (g), critical habitat for the Braken Bat Cave meshweaver (*Cicurina venii*);

■ c. In paragraph (g), critical habitat for the Madla Cave meshweaver (*Cicurina madla*);

■ d. In paragraph (g), critical habitat for the Robber Baron Cave meshweaver (*Cicurina baronia*);

■ e. In paragraph (i), critical habitat for the Helotes mold beetle (*Batrisodes venyivi*).

■ f. In paragraph (i), critical habitat for the beetle (no common name) (*Rhadine exilis*); and

■ g. In paragraph (i), critical habitat for the beetle (no common name), (*Rhadine infernalis*).

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

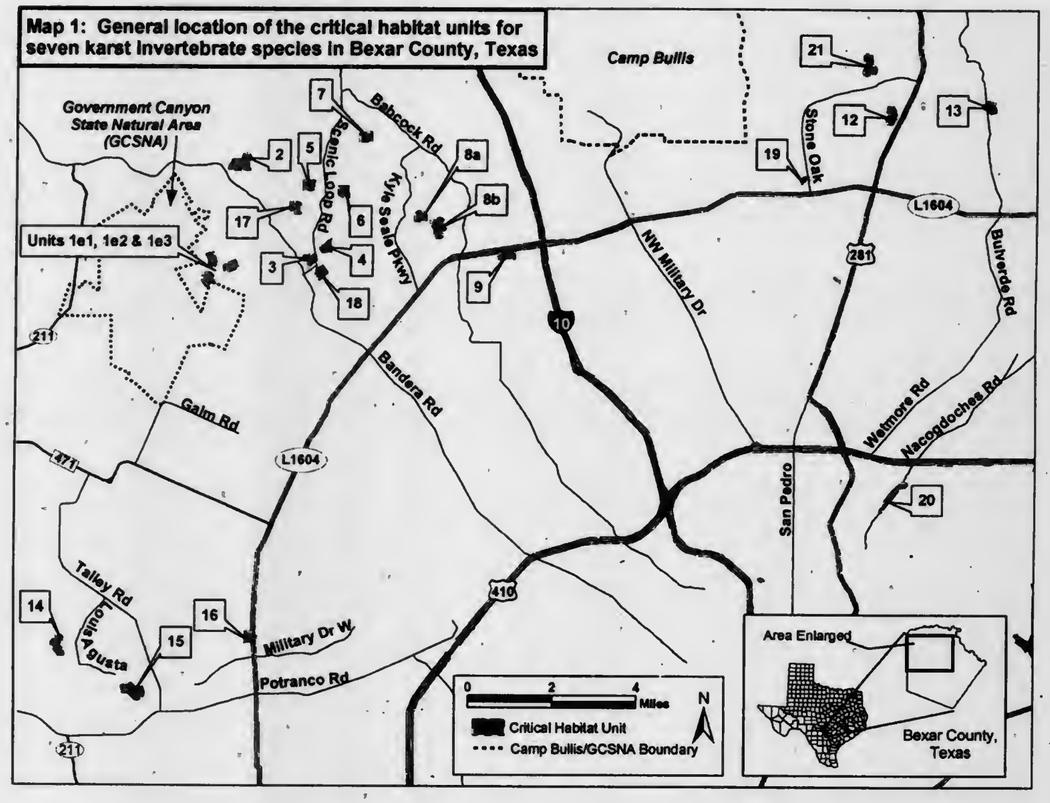
(g) *Arachnids.*

Cokendolpher cave harvestman (*Texella cokendolpheri*)

(1) Critical habitat for the Cokendolpher cave harvestman occurs in Unit 20 as described below and depicted on Map 1 (index map) and Map 2 below. All coordinates are geographic longitude and latitude, decimal degree coordinate pairs, referenced to North American Horizontal Datum 1983. Coordinates were derived from 2001 digital orthophotographs.

(2) Map 1—Index map of critical habitat units for karst invertebrate species in Bexar County, Texas—follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(3) The primary constituent elements include:

(i) The physical features of karst-forming rock containing subterranean spaces with stable temperatures, high humidities (near saturation), and suitable substrates (for example, spaces between and underneath rocks suitable for foraging and sheltering); and

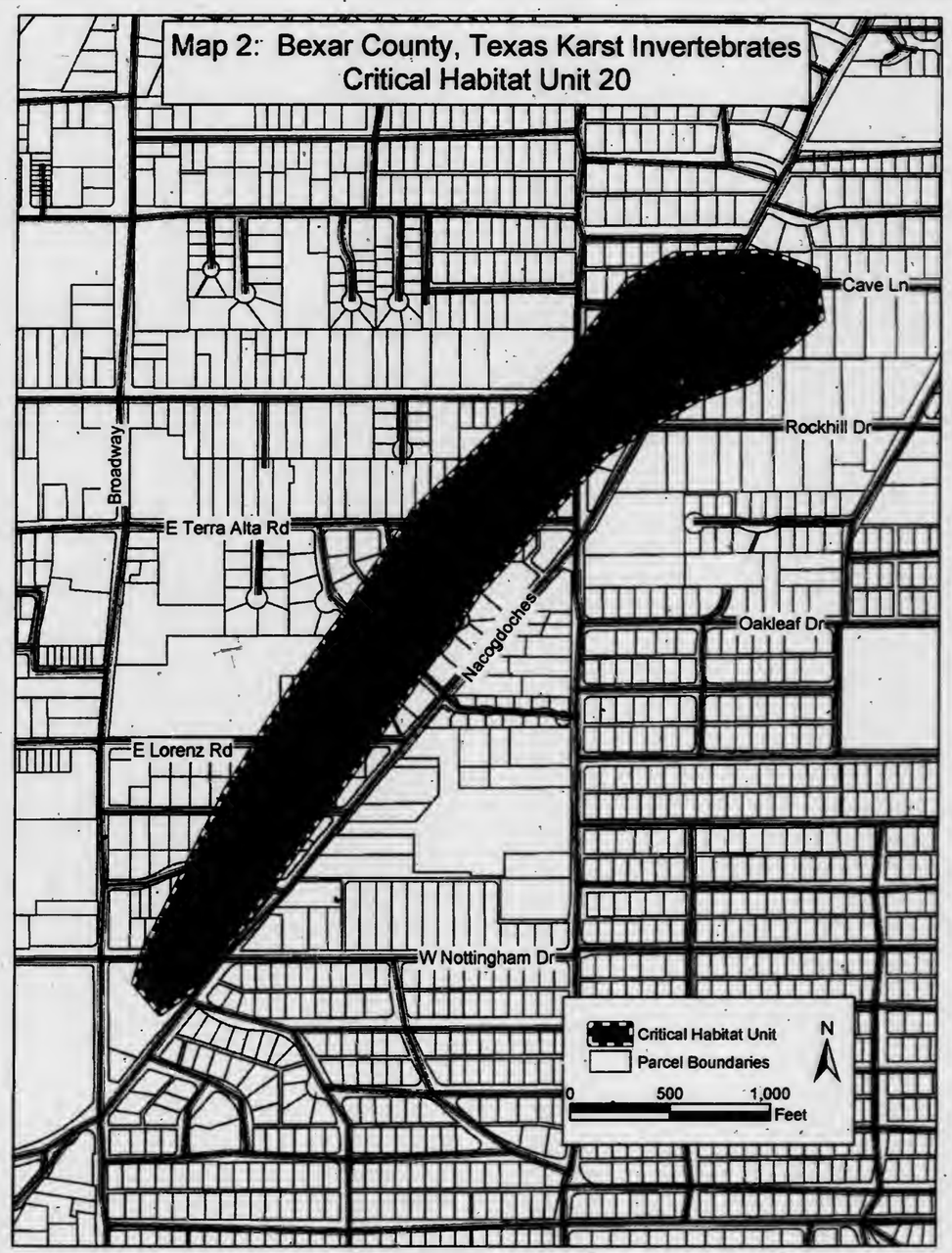
(ii) The biological features of a healthy surface community of native plants (for example, juniper-oak woodland) and animals (for example, cave crickets) surrounding the karst feature that provide nutrient input and buffer the karst ecosystem from adverse effects (from, for example, nonnative species invasions, contaminants, and fluctuations in temperature and humidity).

(4) Existing human-constructed, above-ground, impervious structures do not contain the primary constituent elements and are not considered to be critical habitat. Such features and structures include, but are not limited to, buildings and paved roads. However, subsurface areas under these structures are considered to be critical habitat since subterranean spaces containing these species and/or transmitting moisture and nutrients through the karst ecosystem extend, in some cases, underneath these existing human-constructed structures. Landscaped areas associated with existing human-constructed structures also are not considered critical habitat.

(5) Unit 20 (23 ha (57 ac)) is an area bounded by points with the following coordinates: –98.4582897, 29.5087489; –98.4575517, 29.5091199; –98.4561171, 29.5091615; –98.4553228, 29.5088978; –98.4552343, 29.5082394; –98.4563160, 29.5073726; –98.4571671, 29.5071204; –98.4586325, 29.5063688; –98.4606616, 29.5044311; –98.4637341, 29.5006275; –98.4649997, 29.4990919; –98.4656642, 29.4986719; –98.4660631, 29.4991019; –98.4658881, 29.4995898; –98.4646589, 29.5017013; –98.4639396, 29.5027162; –98.4616730, 29.5055952; –98.4595256, 29.5073856; –98.4591719, 29.5077488; –98.4582897, 29.5087489.

(6) Map 2—Unit 20 follows:

BILLING CODE 4310–55–P



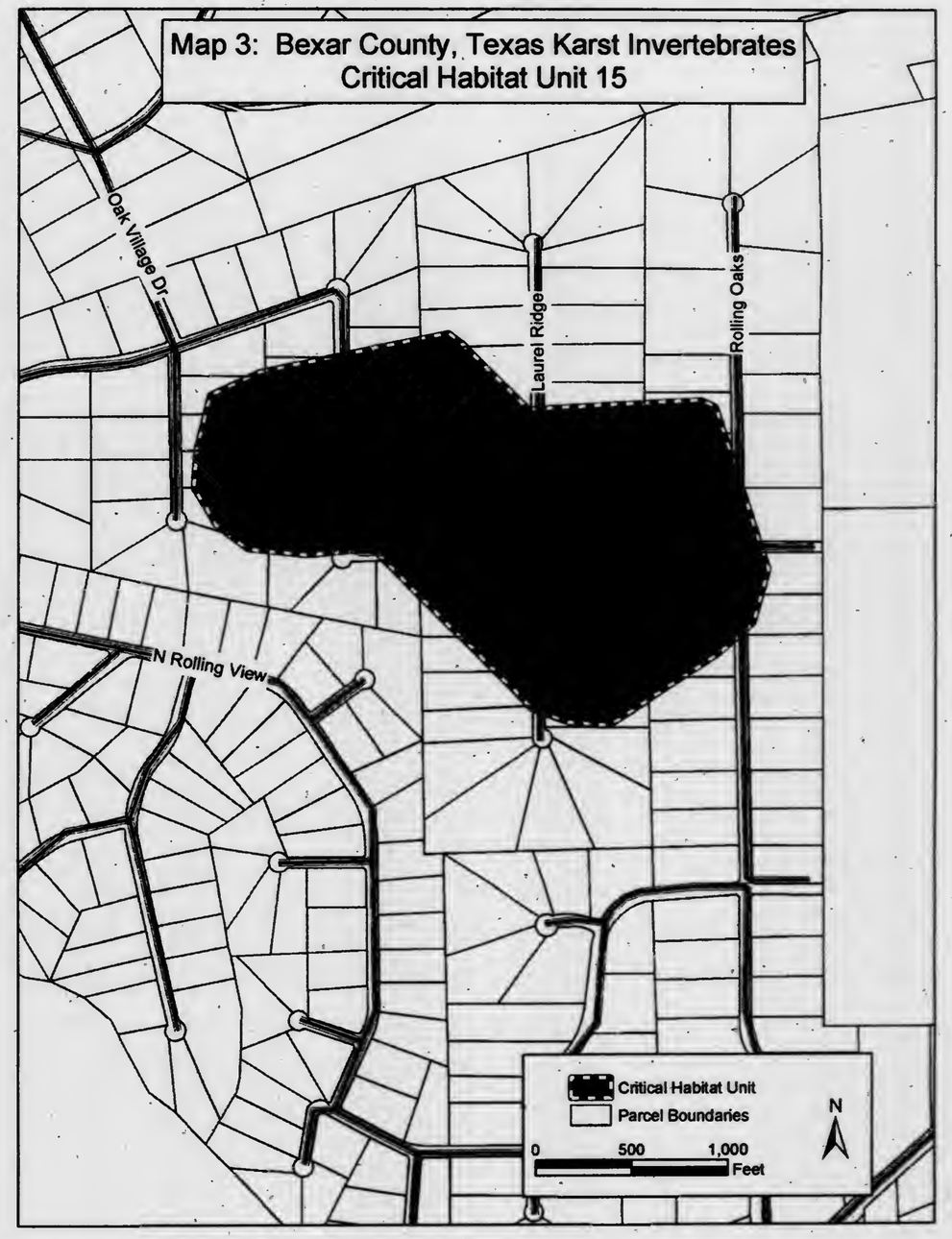
Braken Bat Cave meshweaver (*Cicurina venii*)

(1) Critical habitat for the Braken Bat Cave meshweaver in Bexar County, Texas, occurs in Unit 15 as described below and depicted on Map 3 below.

Unit 15 also is depicted on Map 1 (index map) provided in the entry for Cokendolpher cave harvestman in this paragraph (g). The primary constituent elements and statements regarding existing structures and associated landscaping, as described in the entry for Cokendolpher cave harvestman in this paragraph (g), are identical for this species.

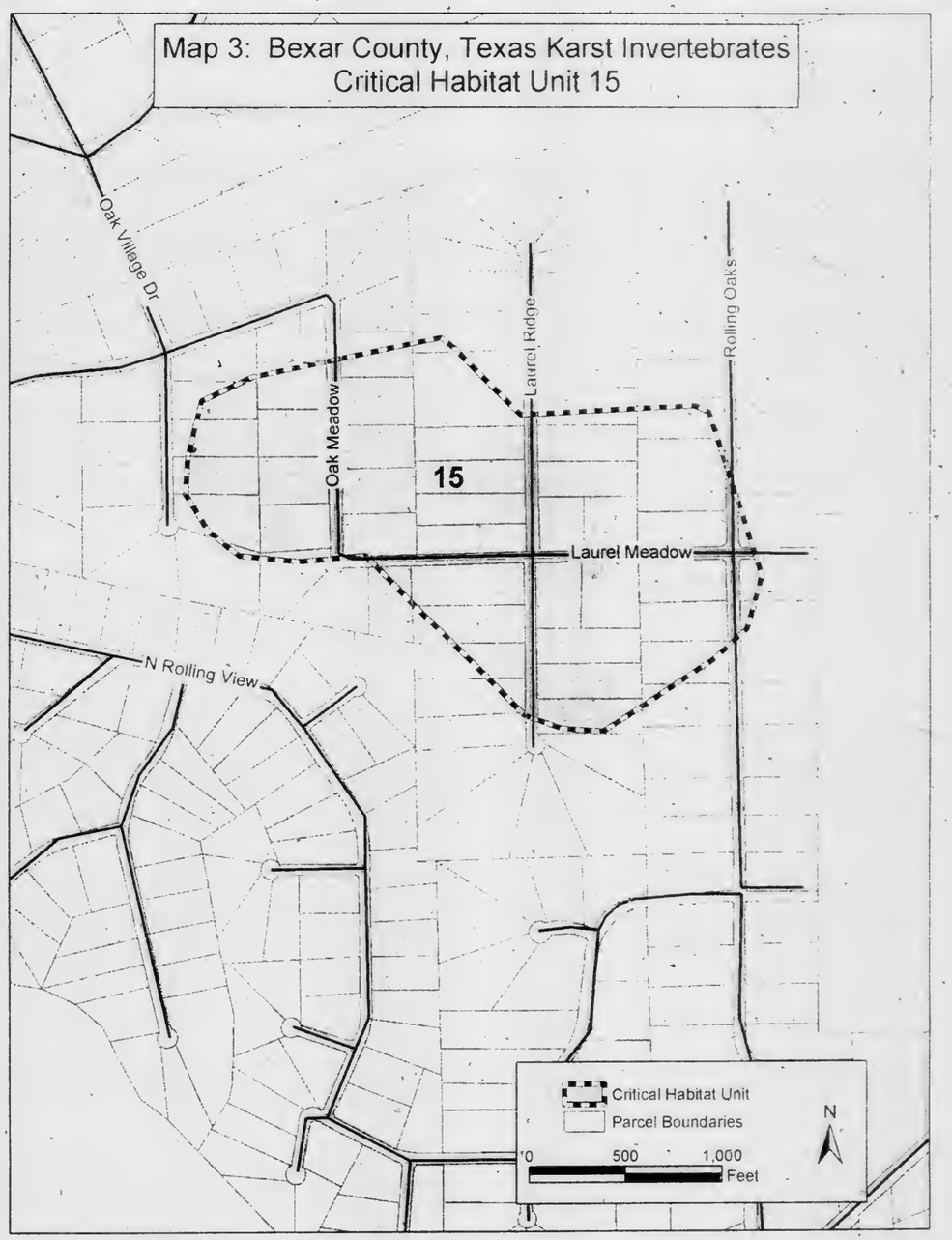
(2) Unit 15 (34 ha (85 ac)) is an area bounded by points with the following coordinates: –98.7631005, 29.4388531; –98.7600316, 29.4394009; –98.7598094, 29.4392533; –98.7587180, 29.4382984; –98.7558932, 29.4384257; –98.7556537, 29.4383265; –98.7547983, 29.4359982; –98.7550418, 29.4352415; –98.7555963, 29.4347910; –98.7573878, 29.4337784; –98.7580646, 29.4338220; –98.7586605, 29.4340159; –98.7612682, 29.4363049; –98.7623440, 29.4362183; –98.7633120, 29.4363085; –98.7638206, 29.4366668; –98.7641806, 29.4371861; –98.7641397, 29.4377268; –98.7639175, 29.4385170; –98.7631005, 29.4388531.

(3) Map 3—Unit 15 follows:



Madla Cave meshweaver (*Cicurina madla*)

(1) Critical habitat for the Madla Cave meshweaver in Bexar County, Texas, occurs in Units 2, 3, 5, 8b, and 17 as described below and depicted on Maps



Madla Cave meshweaver (*Cicurina madla*)

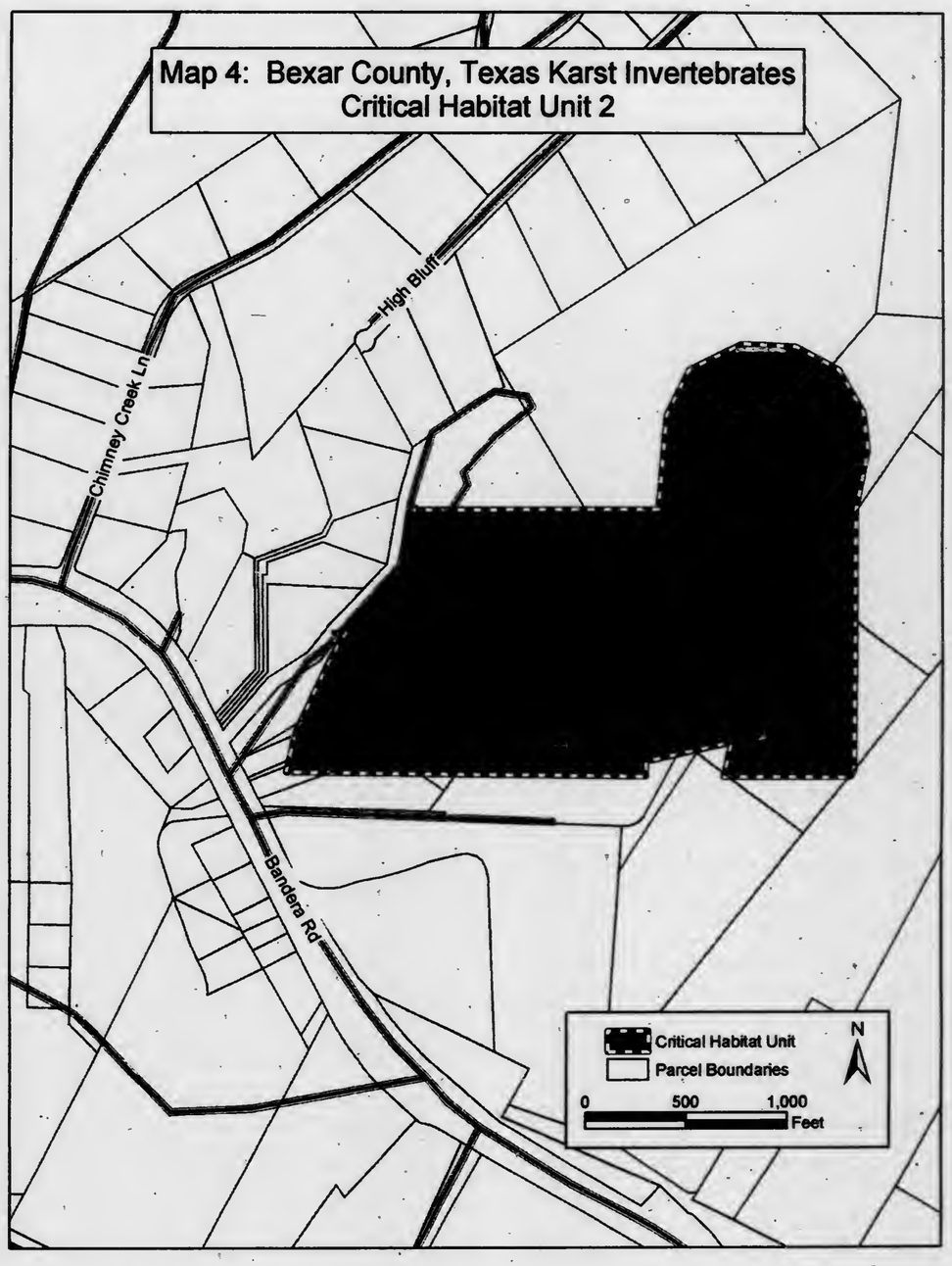
(1) Critical habitat for the Madla Cave meshweaver in Bexar County, Texas, occurs in Units 2, 3, 5, 8b, and 17 as described below and depicted on Maps

4 through 7 below. These units also are depicted on Map 1 (index map) provided in the entry for Cokendolpher cave harvestman in this paragraph (g). The primary constituent elements and statements regarding existing structures and associated landscaping, as described in the entry for Cokendolpher cave harvestman in this paragraph (g), are identical for this species.

(2) Four caves and their associated karst management areas established under the La Cantera section 10(a)(1)(B) permit are within the boundaries of units but are not designated as critical habitat. These include Helotes Blowhole and Helotes Hilltop caves and the surrounding approximately 10 ha (25 ac) (within Unit 3); Hills and Dales Pit and the surrounding approximately 28 ha (70 ac) (within Unit 8b); and Madla Cave and the surrounding 2 ha (5 ac) (within Unit 17).

(3) Unit 2 (37 ha (92 ac)) is an area bounded by points with the following coordinates: –98.7233687, 29.6171088; –98.7232109, 29.6176729; –98.7226506, 29.6187073; –98.7223227, 29.6191855; –98.7219946, 29.6195016; –98.7215653, 29.6198980; –98.7214108, 29.6206847; –98.7175298, 29.6206847; –98.7174011, 29.6219810; –98.7170539, 29.6225993; –98.7162170, 29.6229506; –98.7153881, 29.6229101; –98.7147133, 29.6225995; –98.7143375, 29.6220053; –98.7142667, 29.6214953; –98.7144462, 29.6206782; –98.7144750, 29.6170924; –98.7145361, 29.6170162; –98.7165027, 29.6170258; –98.7163850, 29.6174867; –98.7177246, 29.6172351; –98.7177252, 29.6170317; –98.7211420, 29.6170764; –98.7233687, 29.6171088.

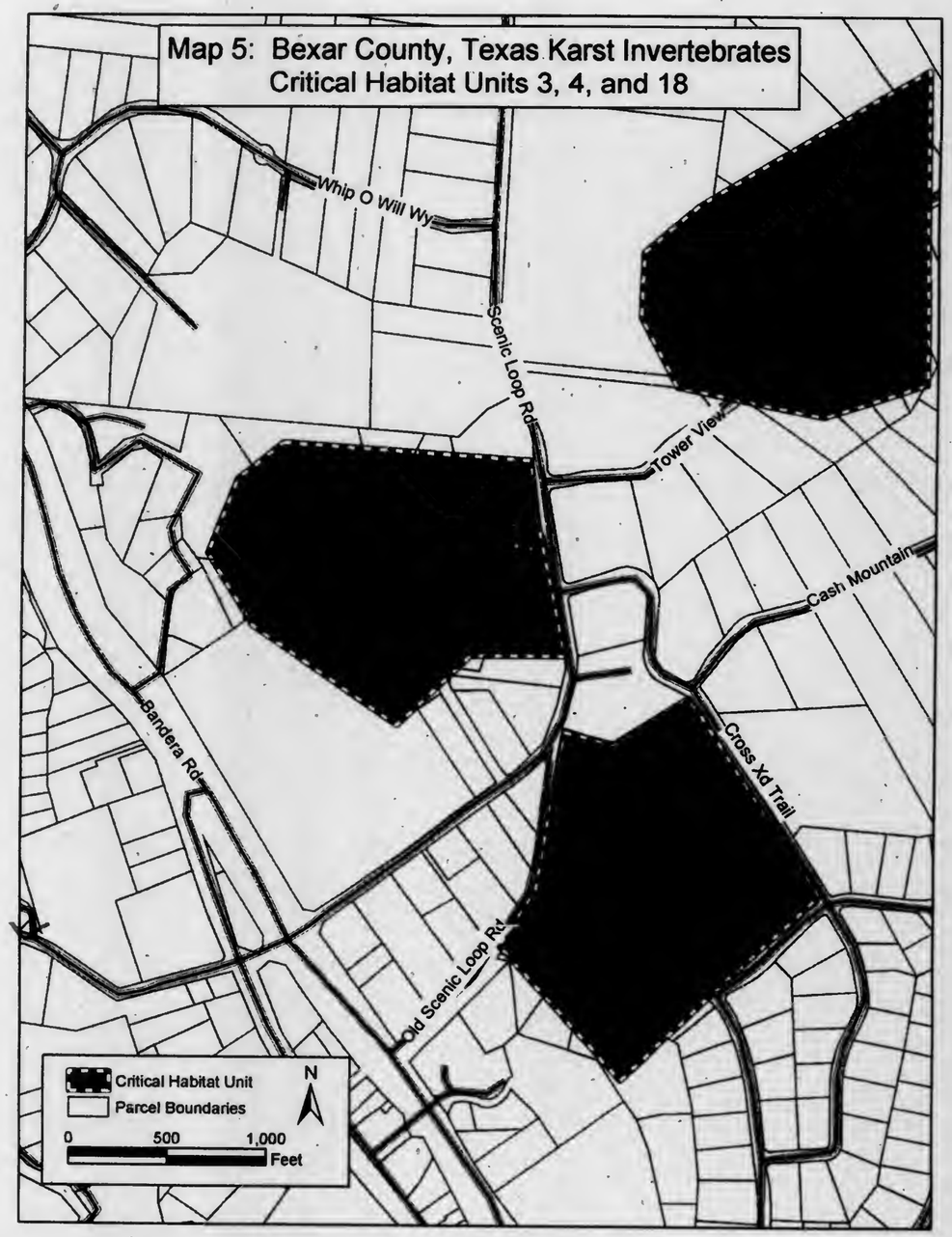
(4) Map 4—Unit 2 follows:



(5) Unit 3 (17 ha (41 ac)) is an area bounded by points with the following coordinates: –98.6924522, 29.5880654; –98.6884953, 29.5878232; –98.6883750, 29.5869448; –98.6879295, 29.5850798; –98.6894469, 29.5850833; –98.6906186,

29.5841182; –98.6929315, 29.5855036; –98.6936461, 29.5865268; –98.6931713, 29.5875652; –98.6924522, 29.5880654.

(6) Map 5—Unit 3 follows:



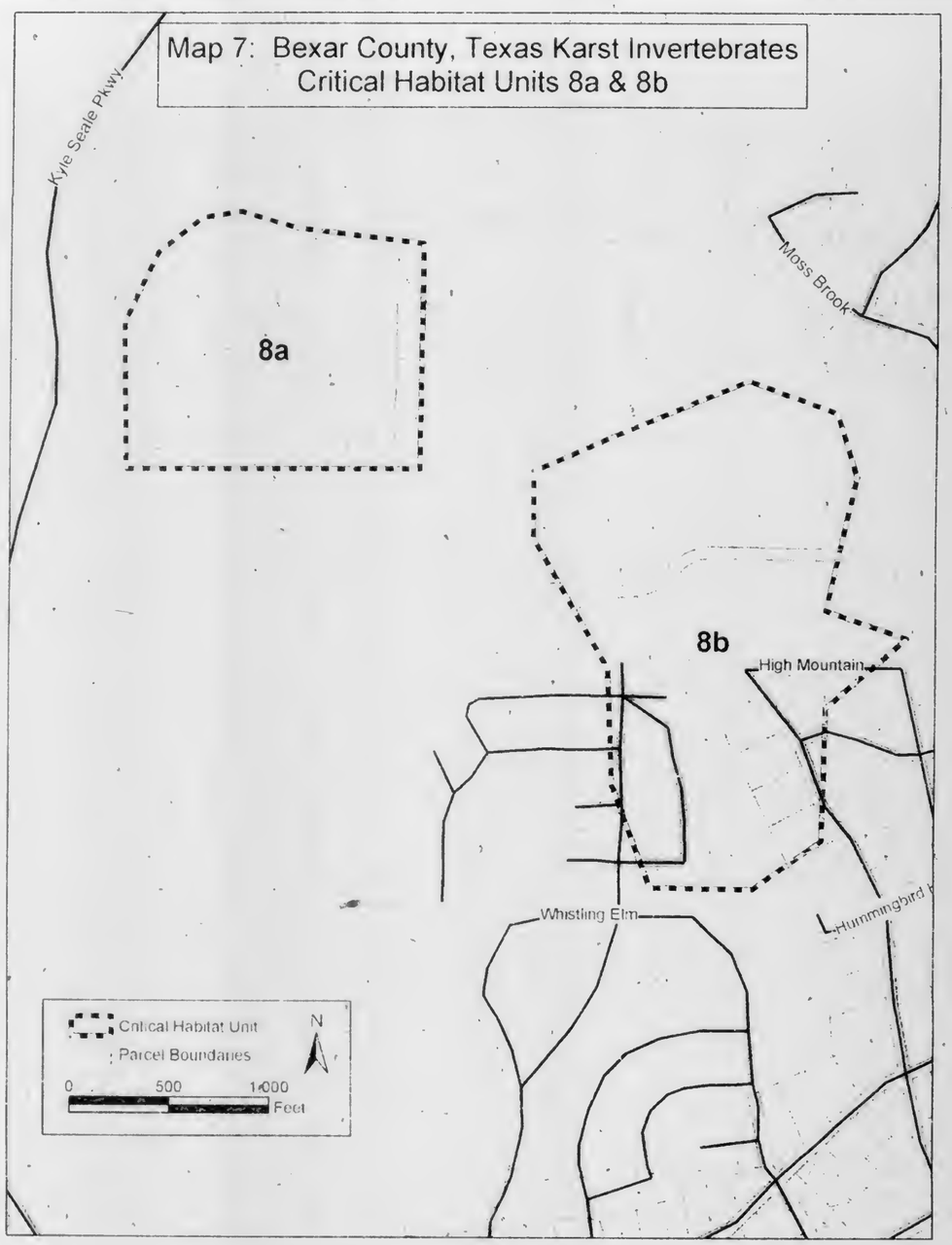
(7) Unit 5 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.6935478, 29.6136095; –98.6890212, 29.6135990; –98.6890205, 29.6111931; –98.6891305, 29.6109546; –98.6896239, 29.6104067; –98.6903350, 29.6101696; –98.6935582, 29.6101663; –98.6935478, 29.6136095.

(8) Map 6—Unit 5 (which also depicts Unit 17) follows:

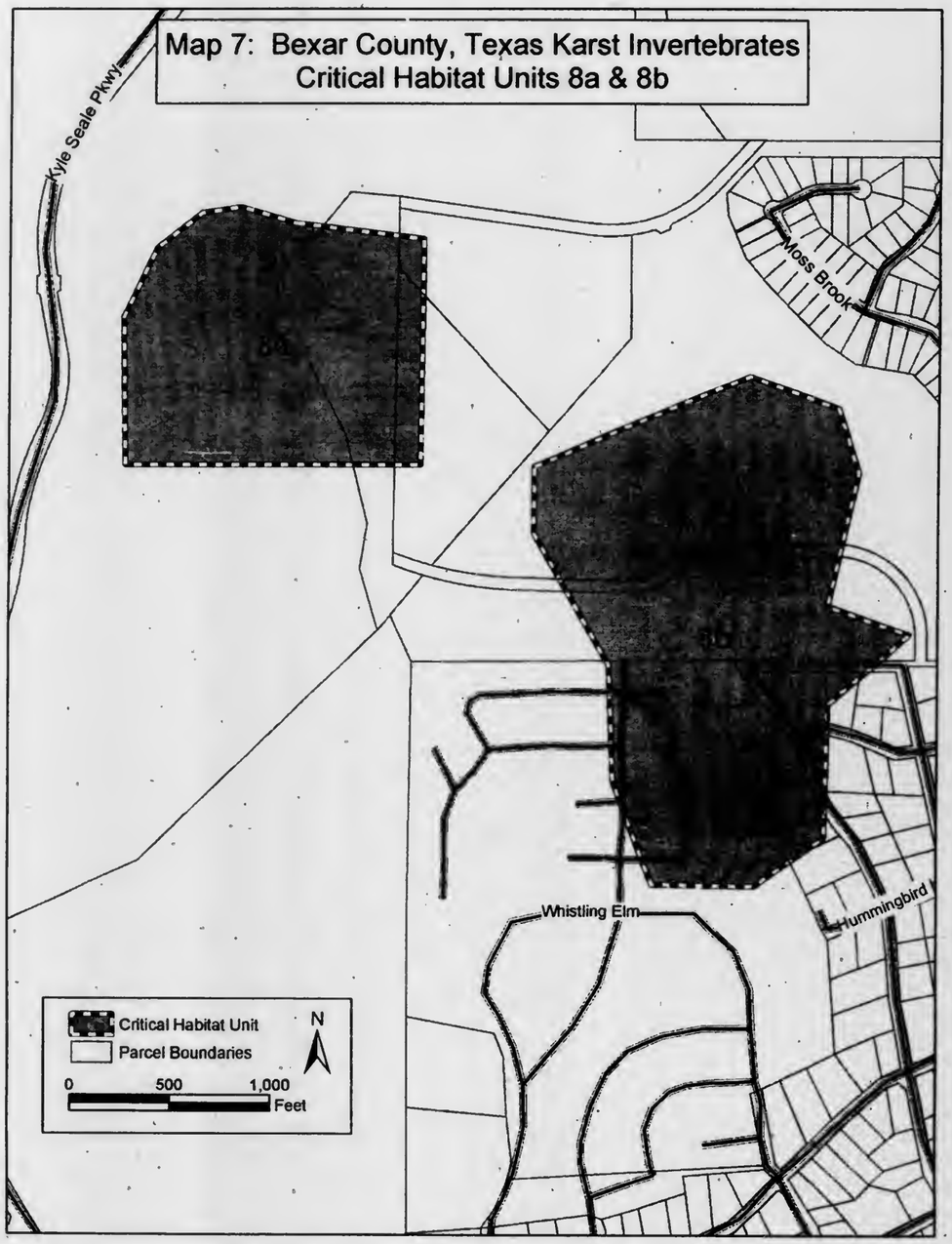


(9) Unit 8b (28 ha (69 ac)) is an area bounded by points with the following coordinates: –98.6429582, 29.5992695; –98.6395799, 29.6005152; –98.6381868, 29.5969511; –98.6383585, 29.5959854; –98.6384179, 29.5941526; –98.6395017, 29.5934820; –98.6411044, 29.5935108; –98.6417193, 29.5949384; –98.6417849, 29.5965421; –98.6429721, 29.5983417; –98.6429582, 29.5992695.

(10) Map 7—Unit 8b (which also depicts Unit 8a) follows:



(11) Unit 17 (16 ha (40 ac)) is an area bounded by points with the following coordinates: −98.6986633, 29.6061189; −98.6978901, 29.6064178; −98.6968967, 29.6060042; −98.6955470, 29.6059909; −98.6944214, 29.6056088; −98.6944325,



(11) Unit 17 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.6986633, 29.6061189; –98.6978901, 29.6064178; –98.6968967, 29.6060042; –98.6955470, 29.6059909; –98.6944214, 29.6056088; –98.6944325, 29.6018959; –98.6967798, 29.6018910; –98.6967762, 29.6031320; –98.6986774, 29.6031773; –98.6986633, 29.6061189.

(12) For a map of unit 17, refer to Map 6—Unit 5 in paragraph (8) of this entry.

Robber Baron Cave meshweaver (*Cicurina baronia*)

(1) Critical habitat for the Robber Baron Cave meshweaver in Bexar County, Texas, occurs in Unit 20 as provided in the critical habitat unit description and depicted on Map 1 and Map 2 in the entry for Cokendolpher cave harvestman in this paragraph (g). The primary constituent elements and statements regarding existing structures and associated landscaping, as described in the entry for Cokendolpher cave harvestman in this paragraph (g), are identical for this species.

* * * * *

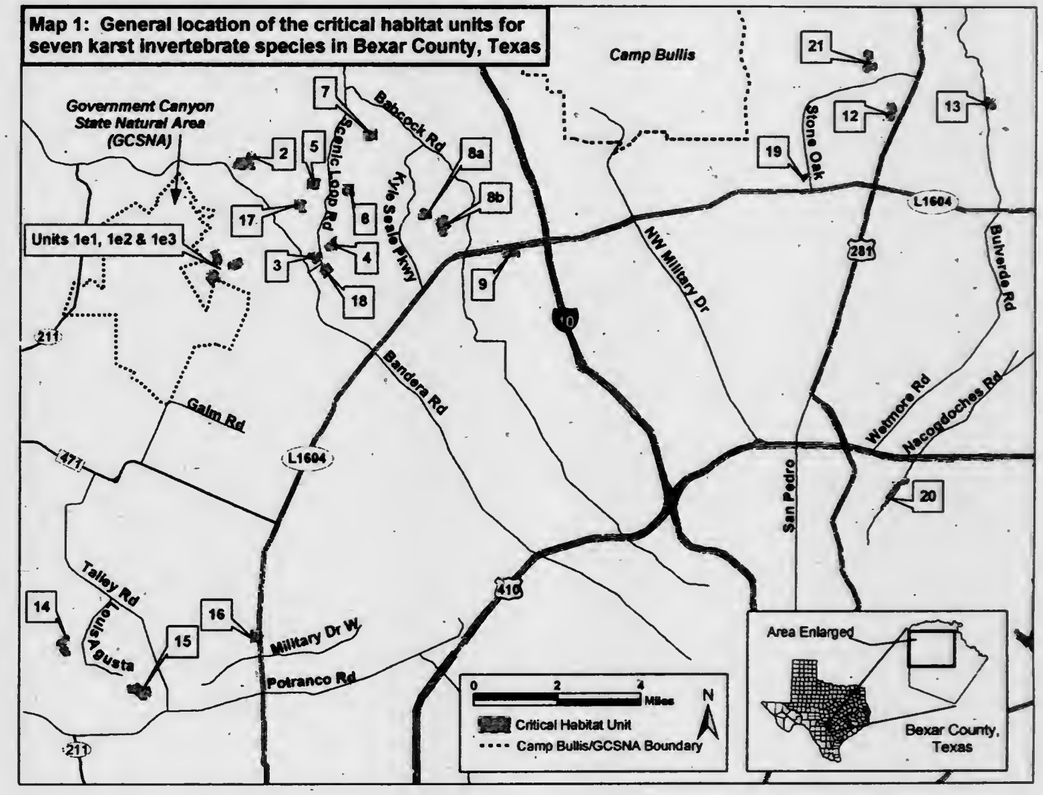
(i) *Insects.*

* * * * *

Helotes mold beetle (*Batrisodes venyivi*)

(1) Critical habitat for the Helotes mold beetle occurs in Units 1e1, 3, and 5 as described below and depicted on Map 1 (index map) and Maps 2 through 4 below. All coordinates are geographic longitude and latitude, decimal degree coordinate pairs, referenced to North American Horizontal Datum 1983. Coordinates were derived from 2001 digital orthophotographs.

(2) Map 1—Index map of critical habitat units for karst invertebrate species in Bexar County, Texas—follows:



(3) The primary constituent elements include:

(i) The physical features of karst-forming rock containing subterranean spaces with stable temperatures, high humidities (near saturation), and suitable substrates (for example, spaces between and underneath rocks suitable for foraging and sheltering); and

(ii) The biological features of a healthy surface community of native plants (for example, juniper-oak woodland) and animals (for example, cave crickets) surrounding the karst feature that provide nutrient input and buffer the karst ecosystem from adverse effects (from, for example, nonnative species invasions, contaminants, and fluctuations in temperature and humidity).

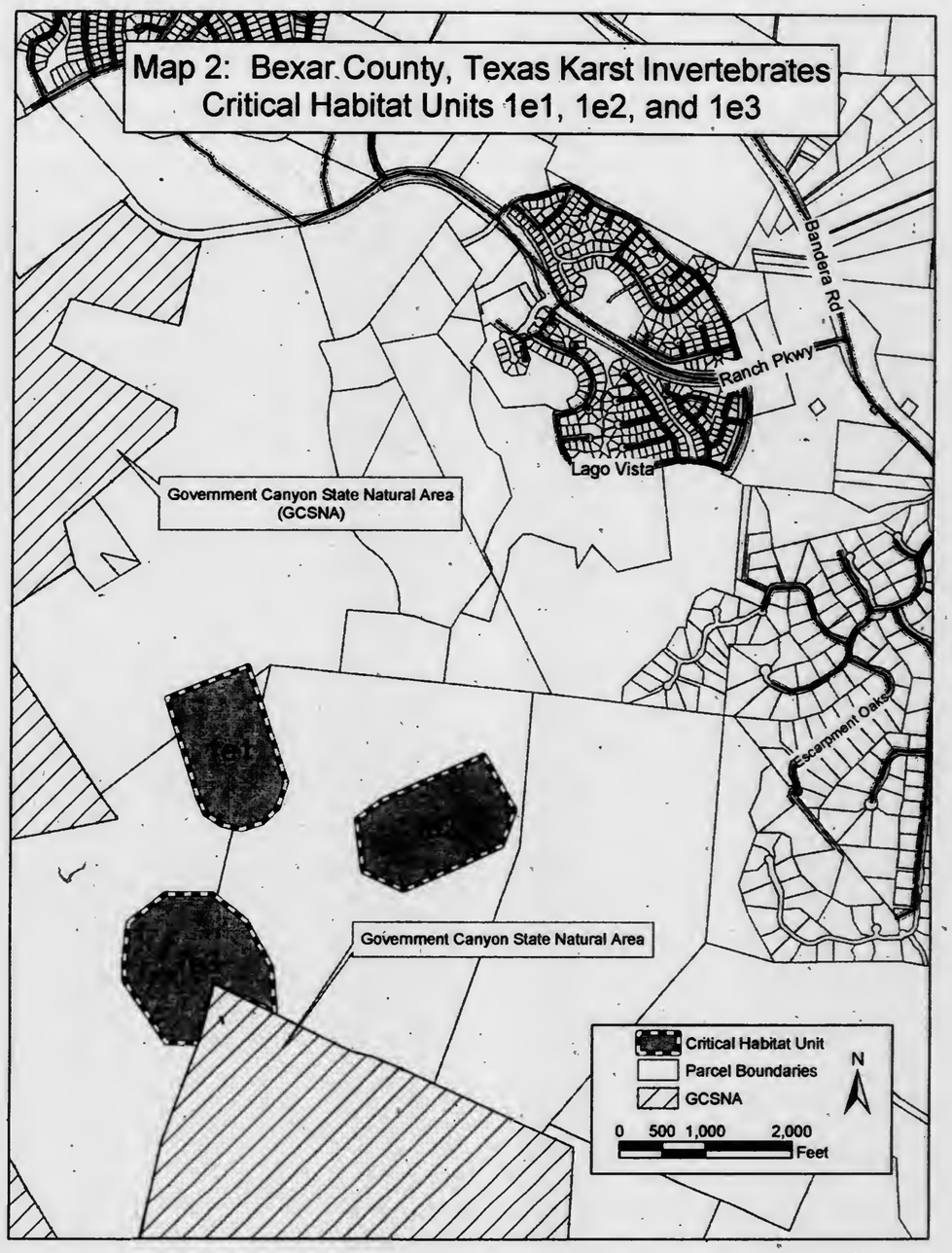
(4) Existing human-constructed, above ground, impervious structures do not contain the primary constituent elements and are not considered to be critical habitat. Such features and structures include, but are not limited to, buildings and paved roads. However, subsurface areas under these structures

are considered to be critical habitat since subterranean spaces containing these species and/or transmitting moisture and nutrients through the karst ecosystem extend, in some cases, underneath these existing human-constructed structures. Landscaped areas associated with existing human-constructed structures are also not considered critical habitat.

(5) Two caves, Helotes Blowhole and Helotes Hilltop caves, and their associated approximately 10 ha (25 ac) karst management area established under the La Cantera section 10 permit, are within the boundaries of Unit 3 but are not designated as critical habitat.

(6) Unit 1e1 (15 ha (38 ac)) is an area bounded by points with the following coordinates: –98.7273522, 29.5853221; –98.7276682, 29.5844887; –98.7282285, 29.5840393; –98.7289978, 29.5838347; –98.7296876, 29.5839736; –98.7302983, 29.5843184; –98.7305603, 29.5848409; –98.7317069, 29.5879827; –98.7287776, 29.5890153; –98.7285230, 29.5883695; –98.7273522, 29.5853221.

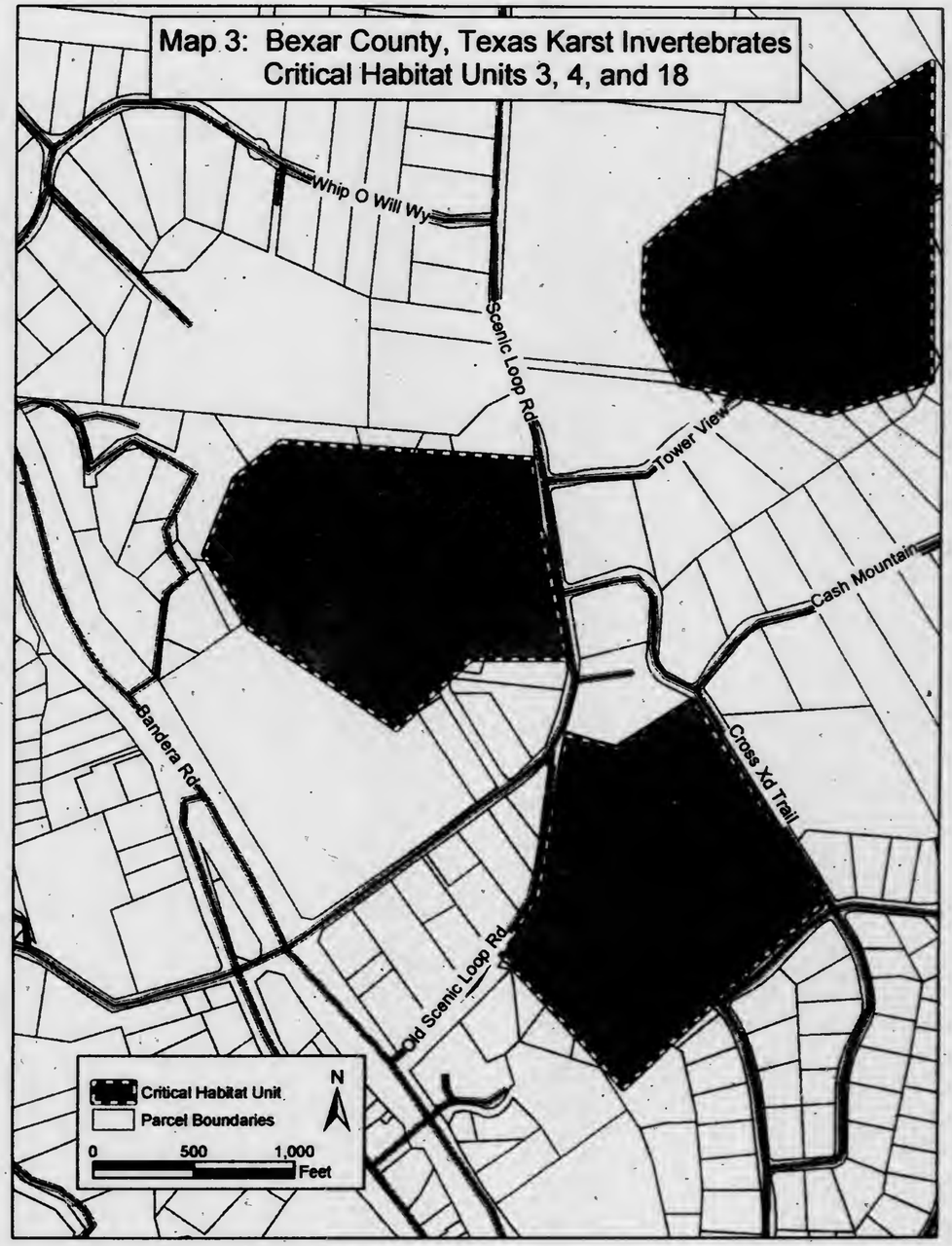
(7) Map 2—Unit 1e1 (which also depicts Units 1e2 and 1e3) follows:



(8) Unit 3 (17 ha (41 ac)) is an area bounded by points with the following coordinates: –98.6924522, 29.5880654; –98.6884953, 29.5878232; –98.6883750, 29.5869448; –98.6879295, 29.5850798; –98.6894469, 29.5850833; –98.6906186,

29.5841182; –98.6929315, 29.5855036; –98.6936461, 29.5865268; –98.6931713, 29.5875652; –98.6924522, 29.5880654.

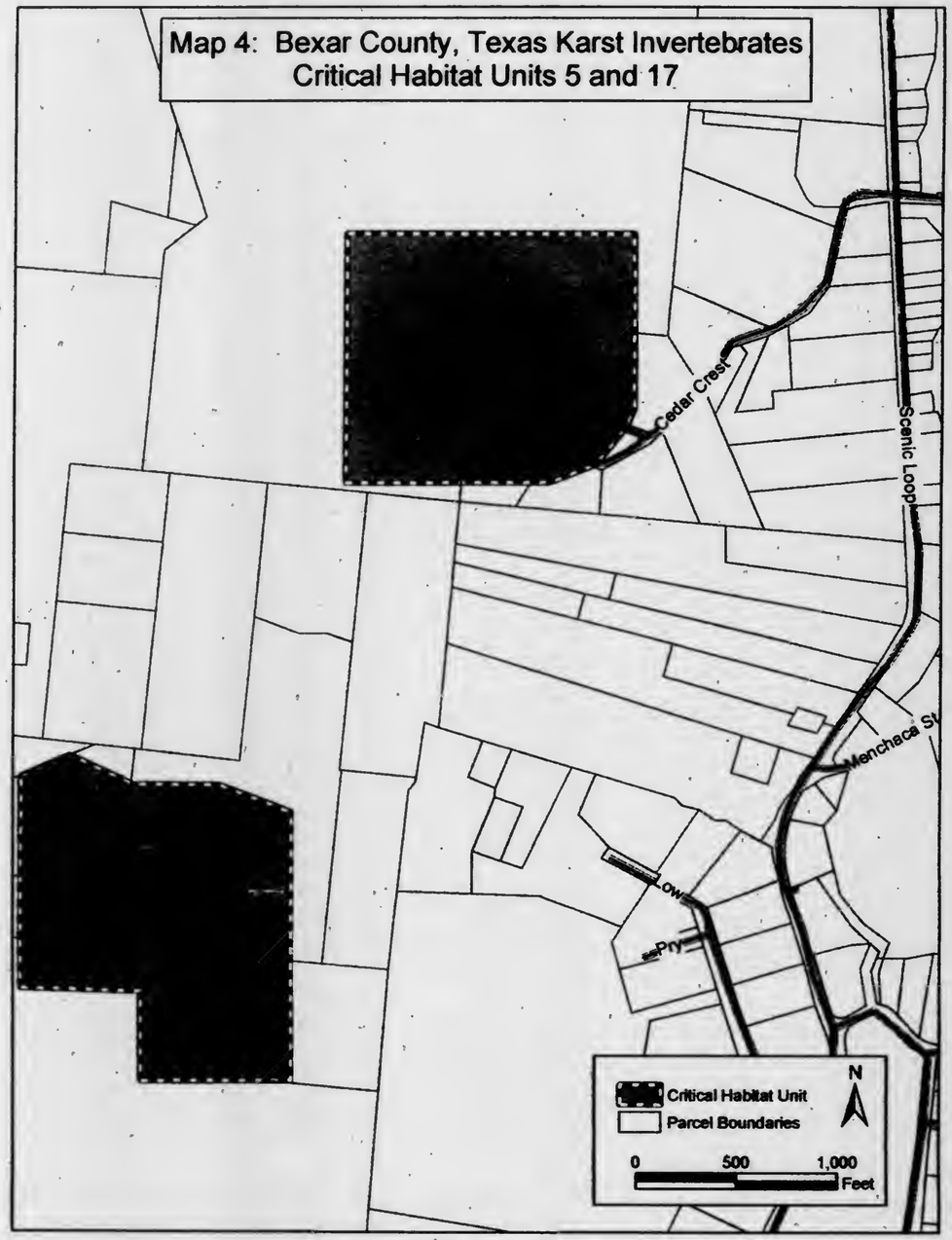
(9) Map 3—Unit 3 (which also depicts Units 4 and 18) follows:



(10) Unit 5 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.6935478, 29.6136095; –98.6890212, 29.6135990; –98.6890205, 29.6111931; –98.6891305, 29.6109546; –98.6896239, 29.6104067; –98.6903350,

29.6101696; –98.6935582, 29.6101663; –98.6935478, 29.6136095.

(11) Map 4—Unit 5 (which also depicts Unit 17) follows:



BILLING CODE 4310–55–C

Beetle (no common name) (*Rhadine exilis*)

(1) Critical habitat for the beetle *Rhadine exilis* in Bexar County, Texas, occurs in Units 1e1, 3, and 5 as provided in the critical habitat unit descriptions and depicted on Maps 1 through 4 in the entry for Helotes mold beetle in this paragraph (i). Critical habitat for this species also occurs in Units 1e3 and 4 as described below and depicted on Maps 2 and 3 in the entry for Helotes mold beetle in this paragraph (i). In addition, critical habitat for this species occurs in Units 2, 6, 7, 8a, 8b, 9, 12, 13, and 21 as described below and depicted on Maps 5 through 12 below. The primary constituent elements and statements regarding existing structures and associated landscaping, as described in the entry for Helotes mold beetle in this paragraph (i), are identical for this species.

(2) Four caves and their associated karst management areas established under the La Cantera section 10(a)(1)(B) permit are within the boundaries of units but are not designated as critical habitat. These include Helotes Blowhole and Helotes Hilltop caves and the surrounding approximately 10 ha (25 ac) (within Unit 3); John Wagner Ranch Cave No. 3 and the surrounding approximately 1.6 ha (4 ac) (within Unit 6); and Hills and Dales Pit and the surrounding approximately 28 ha (70 ac) (within Unit 8b).

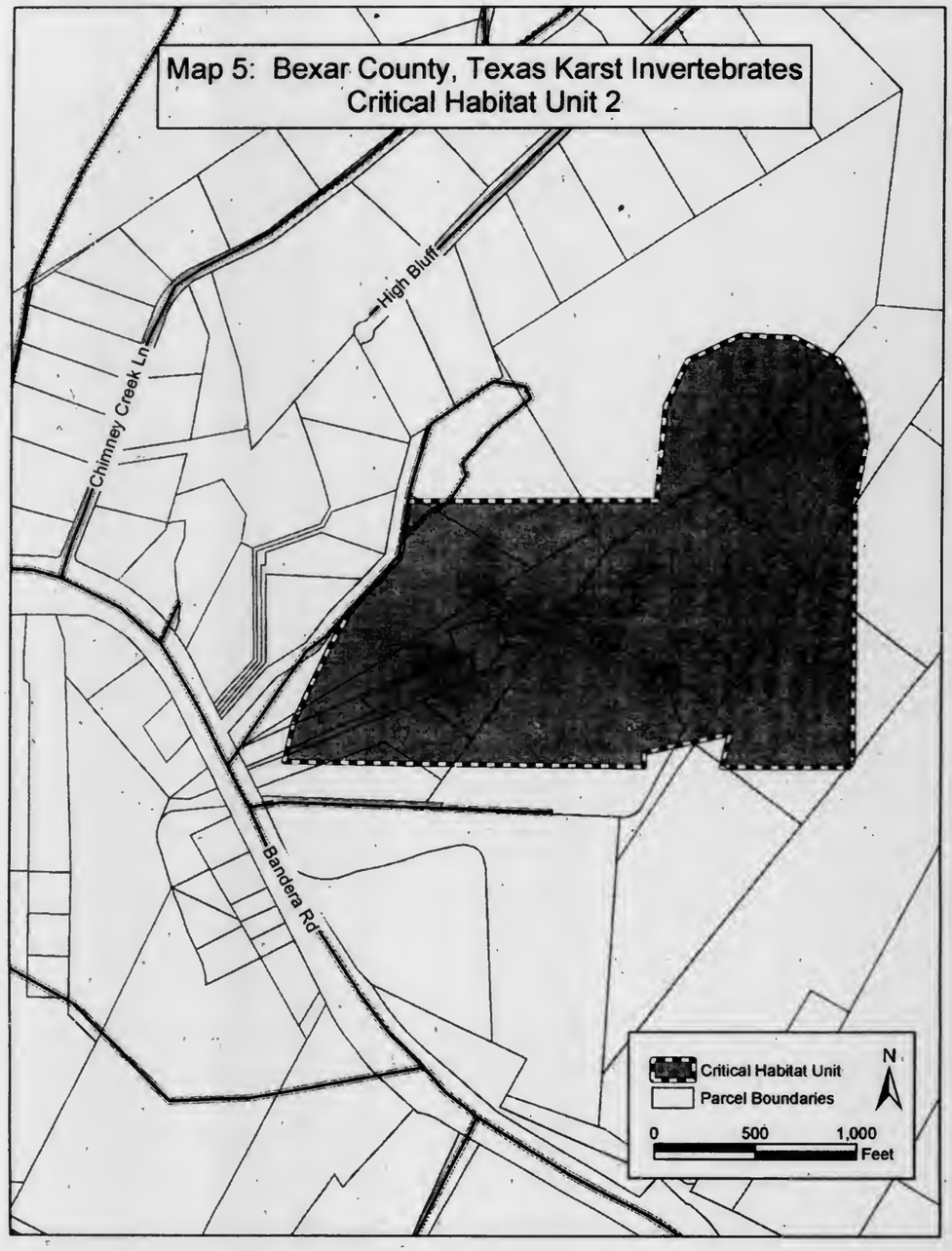
(3) Unit 1e3 (19 ha (46 ac)) is an area bounded by points with the following coordinates: –98.7330644, 29.5808303; –98.7317429, 29.5817323; –98.7300245, 29.5817484; –98.7287834, 29.5808858; –98.7278797, 29.5794152; –98.7277522, 29.5779929; –98.7299554, 29.5788393; –98.7305067, 29.5770049; –98.7316838, 29.5770266; –98.7331986, 29.5789722; –98.7332119, 29.5796238; –98.7330644, 29.5808303.

(4) A map of Unit 1e3 is provided in Map 2 of the entry for Helotes mold beetle in this paragraph (i).

(5) Unit 2 (37 ha (92 ac)) is an area bounded by points with the following coordinates: –98.7233687, 29.6171088; –98.7232109, 29.6176729; –98.7226506, 29.6187073; –98.7223227, 29.6191855; –98.7219946, 29.6195016; –98.7215653, 29.6198980; –98.7214108, 29.6206847; –98.7175298, 29.6206847; –98.7174011, 29.6219810; –98.7170539, 29.6225993; –98.7162170, 29.6229506; –98.7153881, 29.6229101; –98.7147133, 29.6225995; –98.7143375, 29.6220053; –98.7142667, 29.6214953; –98.7144462, 29.6206782; –98.7144750, 29.6170924; –98.7145361, 29.6170162; –98.7165027, 29.6170258; –98.7163850, 29.6174867; –98.7177246, 29.6172351; –98.7177252, 29.6170317; –98.7211420, 29.6170764; –98.7233687, 29.6171088.

(6) Map 5—Unit 2 follows:

BILLING CODE 4310–55–P

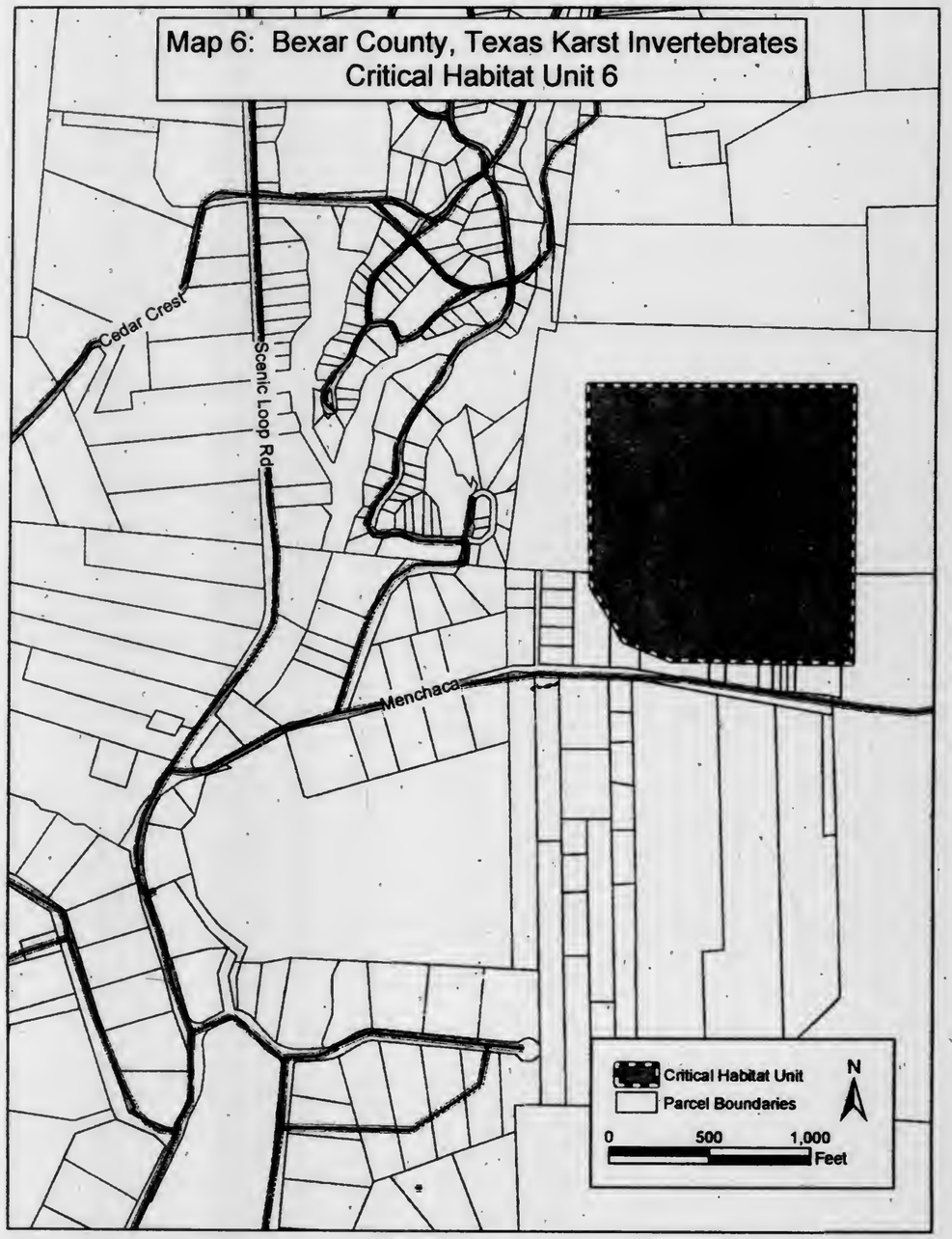


(7) Unit 4 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.6867019, 29.5907363; –98.6858306, 29.5913949; –98.6821967, 29.5933020; –98.6821915, 29.5888925; –98.6838368, 29.5884340; –98.6861597, 29.5888524; –98.6867424, 29.5898281; –98.6867019, 29.5907363.

(8) A map of Unit 4 is provided in Map 3 of the entry for Helotes mold beetle in this paragraph (i).

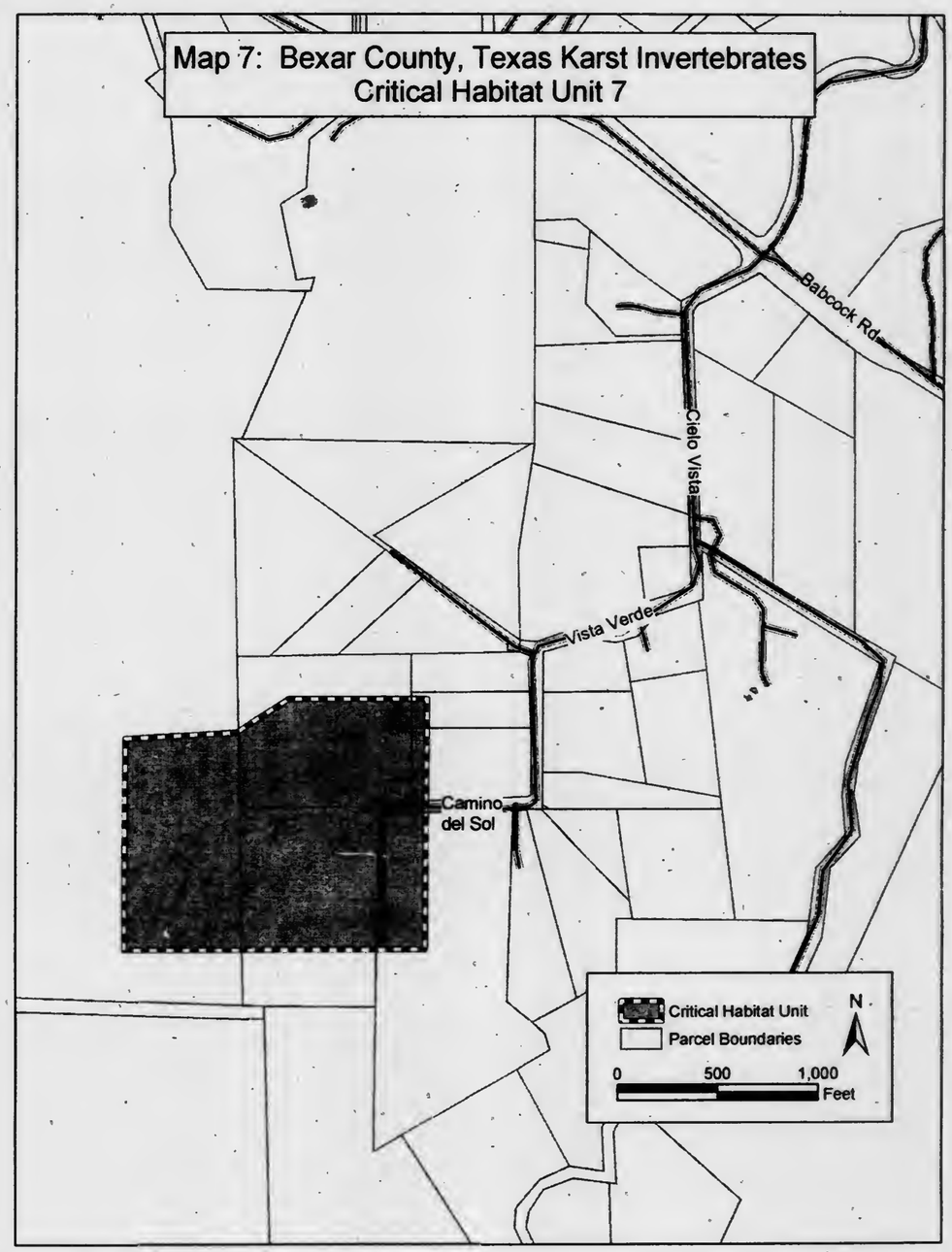
(9) Unit 6 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.6754738, 29.6114940; –98.6754991, 29.6076989; –98.6783407, 29.6077443; –98.6790700, 29.6080113; –98.6795845, 29.6087581; –98.6796498, 29.6115041; –98.6754738, 29.6114940.

(10) Map 6—Unit 6 follows:



(11) Unit 7 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.6713696, 29.6269338; –98.6713466, 29.6298459; –98.6696115, 29.6299251; –98.6688040, 29.6303752; –98.6666183, 29.6303712; –98.6666569, 29.6269341; –98.6713696, 29.6269338.

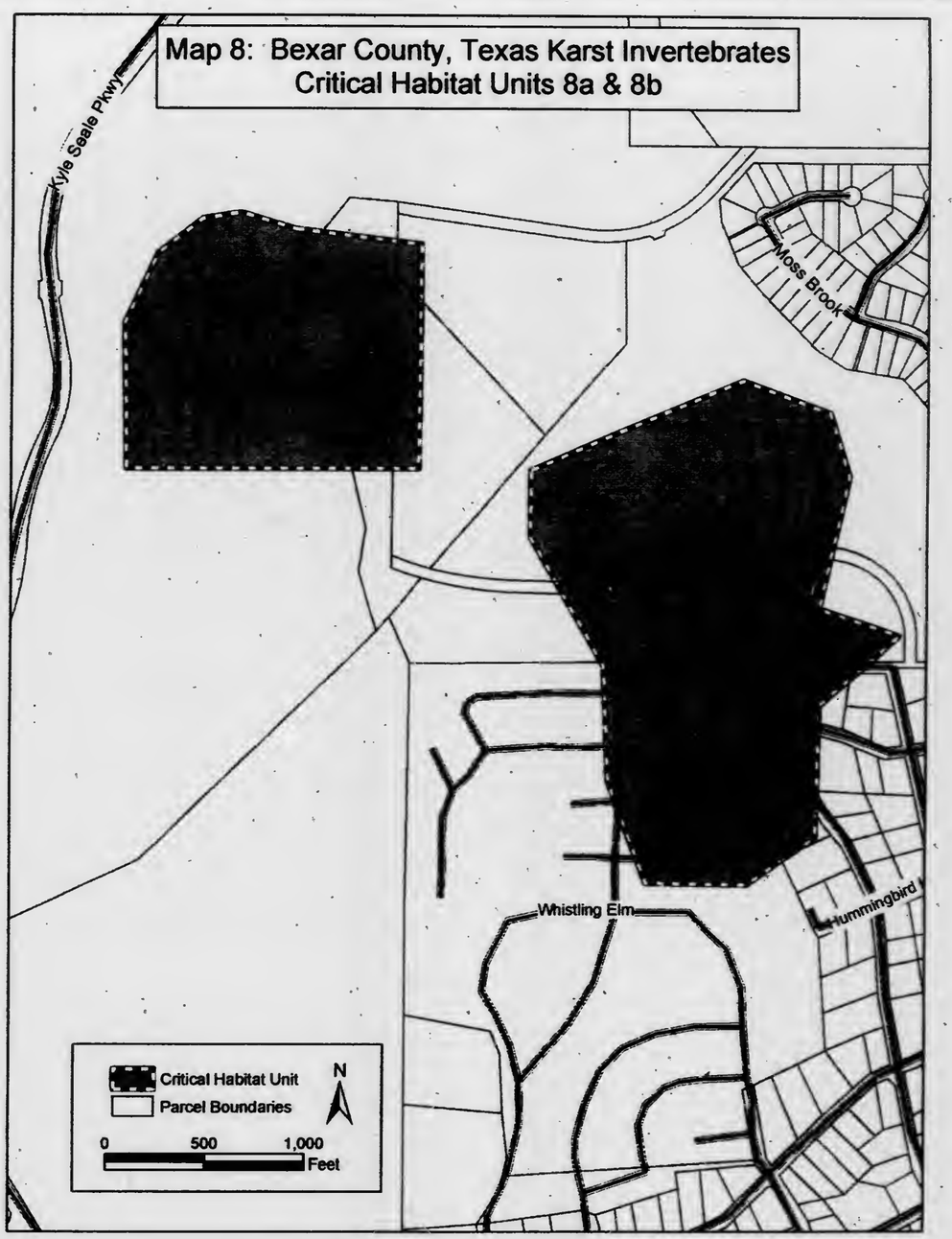
(12) Map 7—Unit 7 follows:



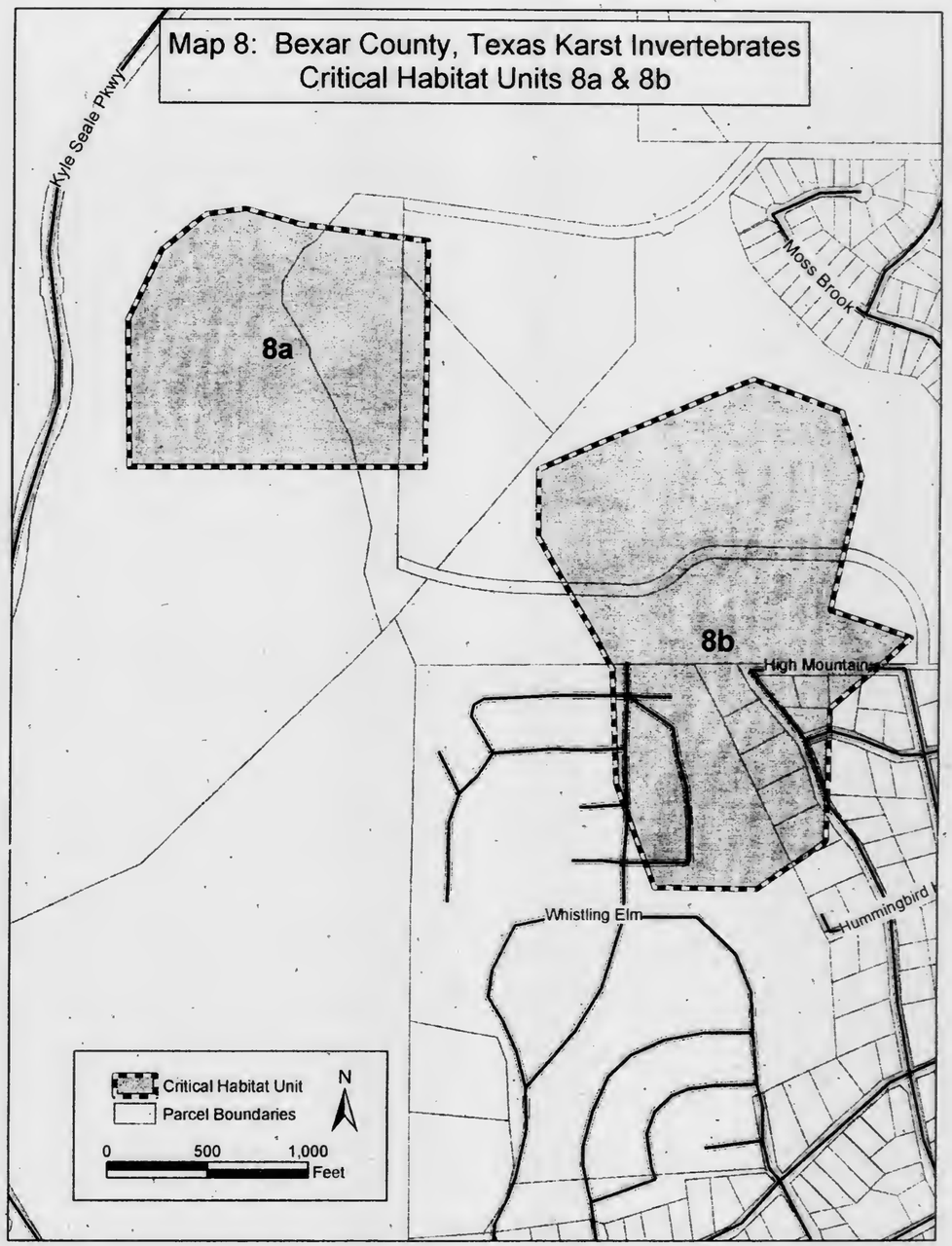
(13) Unit 8a (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.6467402, 29.6026321; –98.6447253, 29.6024097; –98.6447648, 29.5992959; –98.6494110, 29.5993090; –98.6494384, 29.6013452; –98.6489127, 29.6023010; –98.6482203, 29.6027779; –98.6476087, 29.6028598; –98.6467402, 29.6026321.

(14) Unit 8b (28 ha (69 ac)) is an area bounded by points with the following coordinates: –98.6429582, 29.5992695; –98.6395799, 29.6005152; –98.6381868, 29.6000556; –98.6378758, 29.5991778; –98.6383595, 29.5973398; –98.6370868, 29.5969511; –98.6383585, 29.5959854; –98.6384179, 29.5941526; –98.6395017, 29.5934820; –98.6411044, 29.5935108; –98.6417193, 29.5949384; –98.6417849, 29.5965421; –98.6429721, 29.5983417; –98.6429582, 29.5992695.

(15) Map 8—Units 8a and 8b follows:



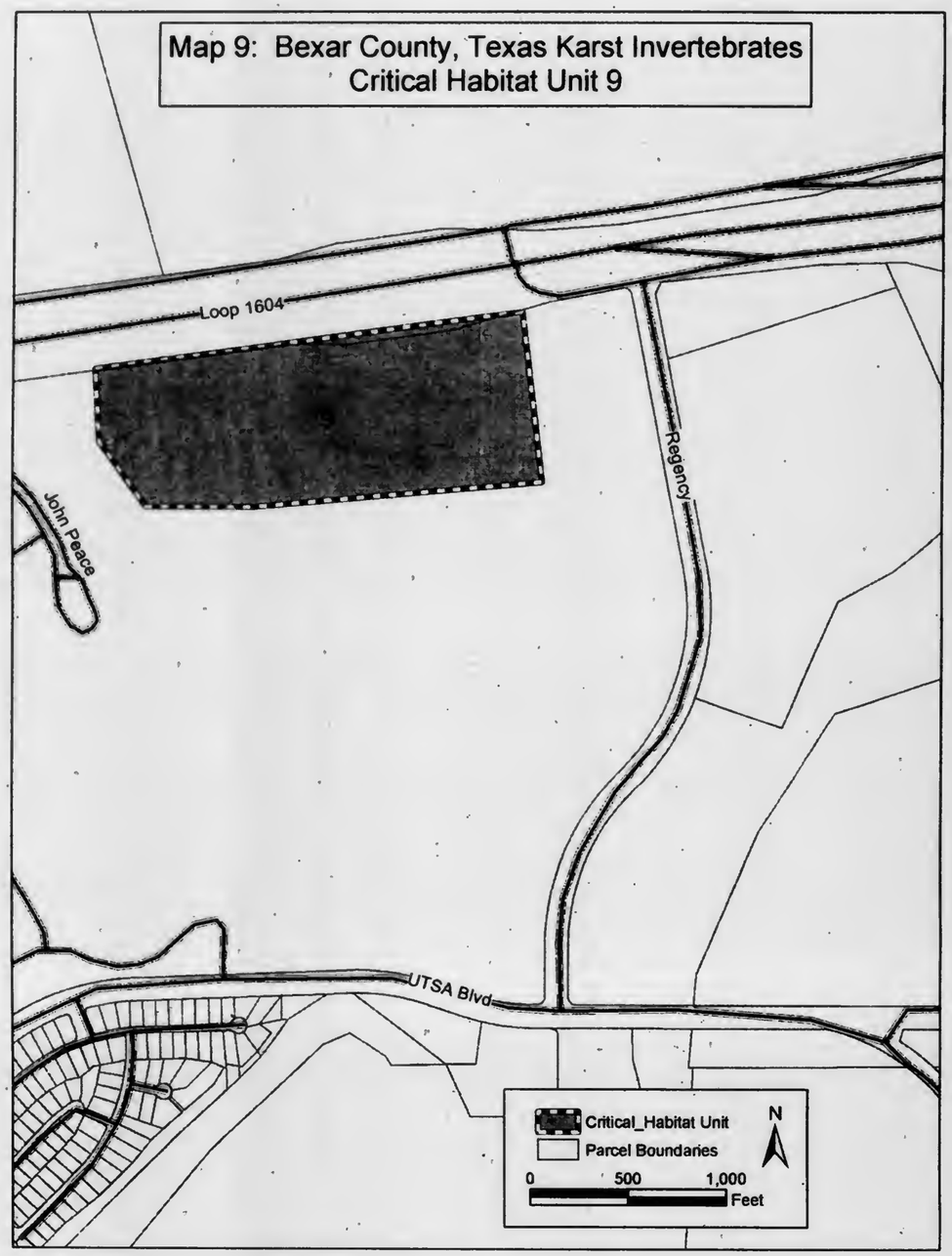
(16) Unit 9 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.6166421, 29.5881679; –98.6097995, 29.5889549; –98.6094772, 29.5865751; –98.6141408, 29.5862370;



(16) Unit 9 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.6166421, 29.5881679; –98.6097995, 29.5889549; –98.6094772, 29.5865751; –98.6141408, 29 5862370;

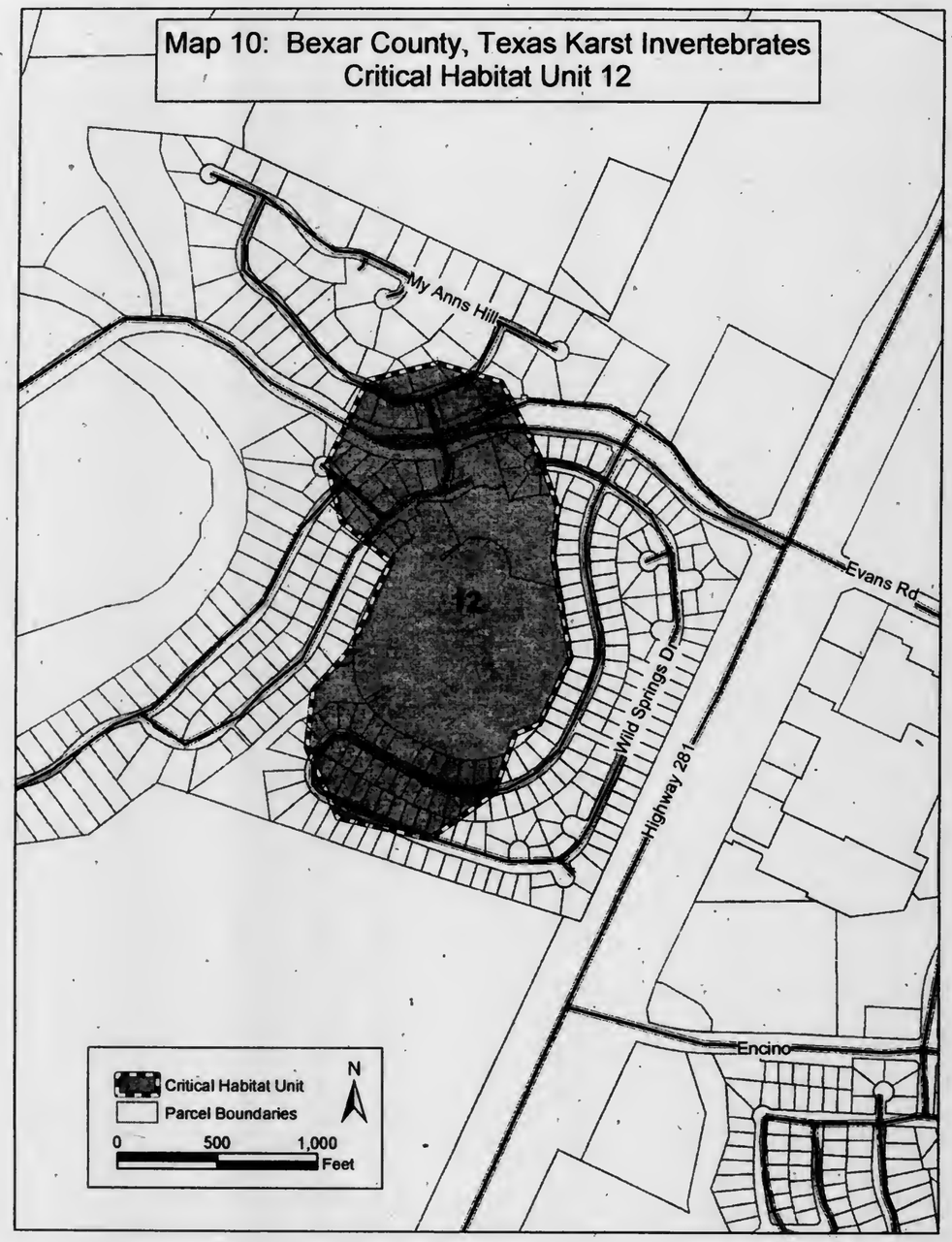
–98.6158210, 29.5862418; –98.6165749, 29.5871541; –98.6166421, 29.5881679.

(17) Map 9—Unit 9 follows:



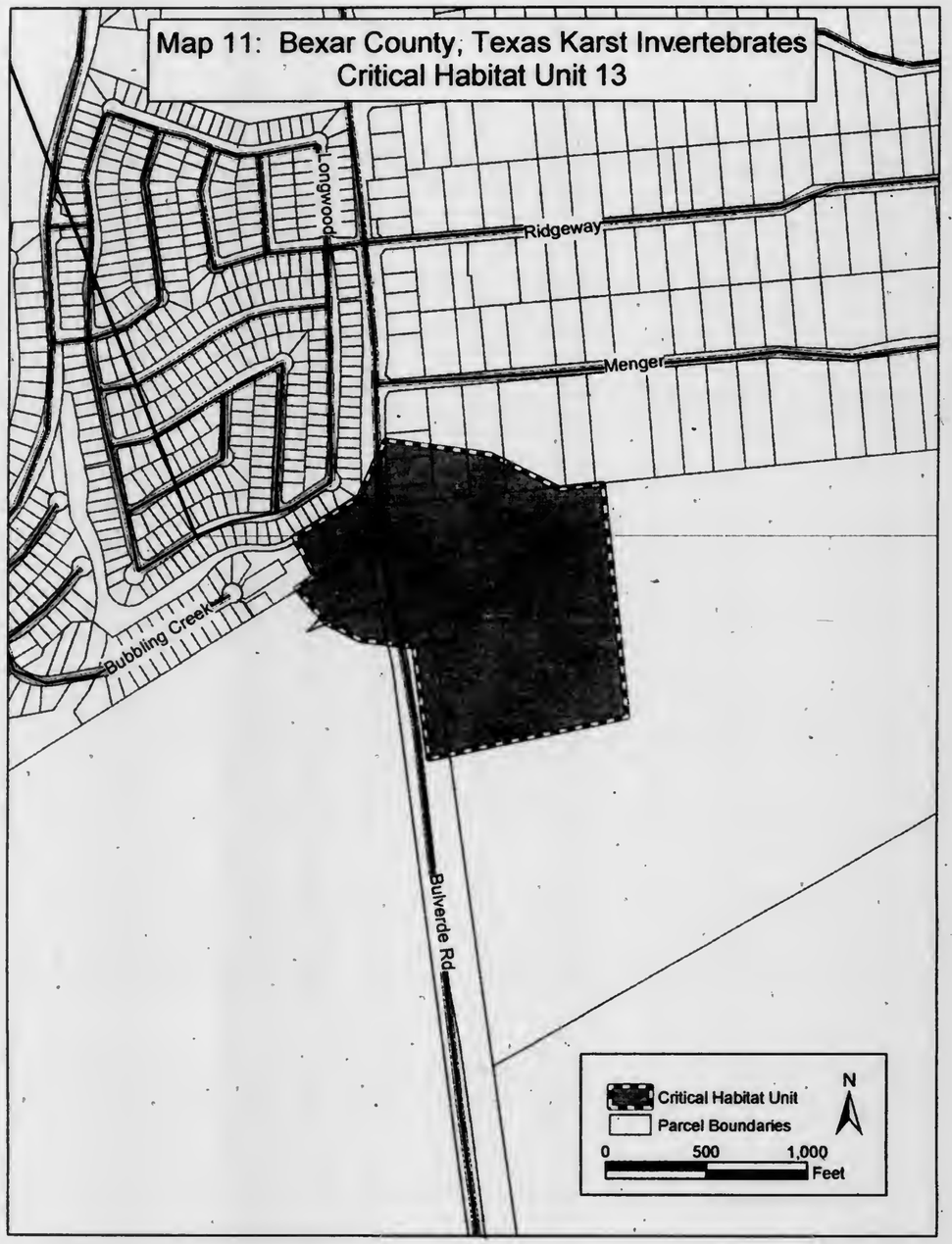
(18) Unit 12 (21 ha (51 ac)) is an area bounded by points with the following coordinates: –98.4631439, 29.6393535; –98.4620337, 29.6395912; –98.4610270, 29.6393230; –98.4604275, 29.6383078; –98.4601340, 29.6376003; –98.4602053, 29.6369053; –98.4599272, 29.6355399; –98.4604201, 29.6346170; –98.4608048, 29.6344781; –98.4611518, 29.6336481; –98.4621637, 29.6330425; –98.4636173, 29.6333332; –98.4641049, 29.6342973; –98.4640055, 29.6350951; –98.4634444, 29.6356360; –98.4627791, 29.6368420; –98.4635574, 29.6374176; –98.4637899, 29.6381796; –98.4637898, 29.6382043; –98.4631439, 29.6393535.

(19) Map 10—Unit 12 follows:



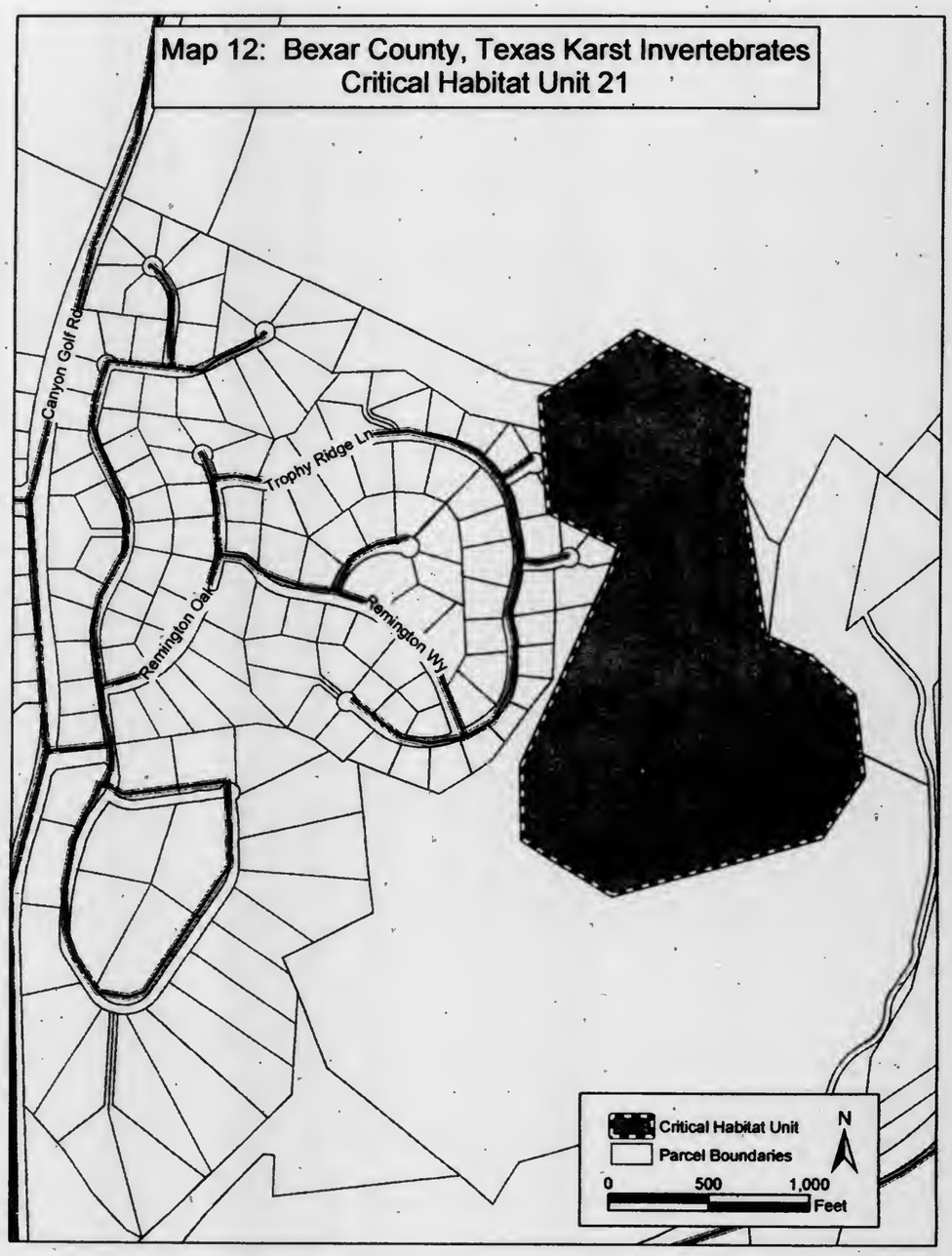
(20) Unit 13 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.4218888, 29.6404393; –98.4212080, 29.6405040; –98.4208242, 29.6372953; –98.4239377, 29.6367357; –98.4241724, 29.6382709; –98.4250182, 29.6383670; –98.4255670, 29.6386096; –98.4260182, 29.6390832; –98.4257350, 29.6392361; –98.4260492, 29.6397945; –98.4250314, 29.6403527; –98.4246243, 29.6411168; –98.4229768, 29.6409069; –98.4218888, 29.6404393.

(21) Map 11—Unit 13 follows:



(22) Unit 21 (27 ha (68 ac)) is an area bounded by points with the following coordinates: –98.4716469, 29.6499842; –98.4730641, 29.6507507; –98.4730857, 29.6517491; –98.4715209, 29.6547384; –98.4726672, 29.6552447; –98.4728036, 29.6567962; –98.4712860, 29.6577112; –98.4695532, 29.6569100; –98.4696535, 29.6556282; –98.4692815, 29.6535131; –98.4685518, 29.6532365; –98.4678845, 29.6527093; –98.4677417, 29.6516106; –98.4683879, 29.6507722; –98.4716469, 29.6499842.

(23) Map 12—Unit 21 follows:



BILLING CODE 4310–55–C

Beetle (no common name) (*Rhadine infernalis*)

(1) Critical habitat for the beetle *Rhadine infernalis* in Bexar County, Texas, occurs in Units 1e1, 3 and 5 as provided in the critical habitat unit descriptions and depicted on Maps 1 through 4 in the entry for Helotes mold beetle in this paragraph (i). This species also occurs in the following units: Unit 1e2 as described below and depicted on Map 2 in the entry for Helotes mold beetle in this paragraph (i); Units 2, 6, 8a, and 8b as described in the text and depicted on Maps 5, 6, and 8 in the entry for beetle (*Rhadine exilis*) in this paragraph (i); Unit 4 as provided in the critical habitat descriptions for beetle (*Rhadine exilis*) and depicted on Map 3 in the entry for Helotes mold beetle in this paragraph (i); Units 17 and 18 described below and depicted on Maps 3 and 4 found in the entry for Helotes mold beetle in this paragraph (i); and Units 14, 15, 16, and 19 as described below and depicted on Maps 13 through 16 below. The primary constituent elements and statements regarding existing structures and associated landscaping, as described in the entry for Helotes mold beetle in this paragraph (i), are identical for this species.

(2) Five caves and their associated karst management areas established under the La Cantera section 10(a)(1)(B) permit are within the boundaries of units but are not designated as critical habitat designation. These include Helotes Blowhole and Helotes Hilltop caves and the surrounding approximately 10 ha (25 ac) (within Unit 3); John Wagner Ranch Cave No. 3 and the surrounding approximately 1.6 ha (4 ac) (within Unit 6); and Hills and Dales Pit and the surrounding approximately 28 ha (70 ac) (within Unit 8b); and Madla Cave and the surrounding 2 ha (5 ac) (within Unit 17).

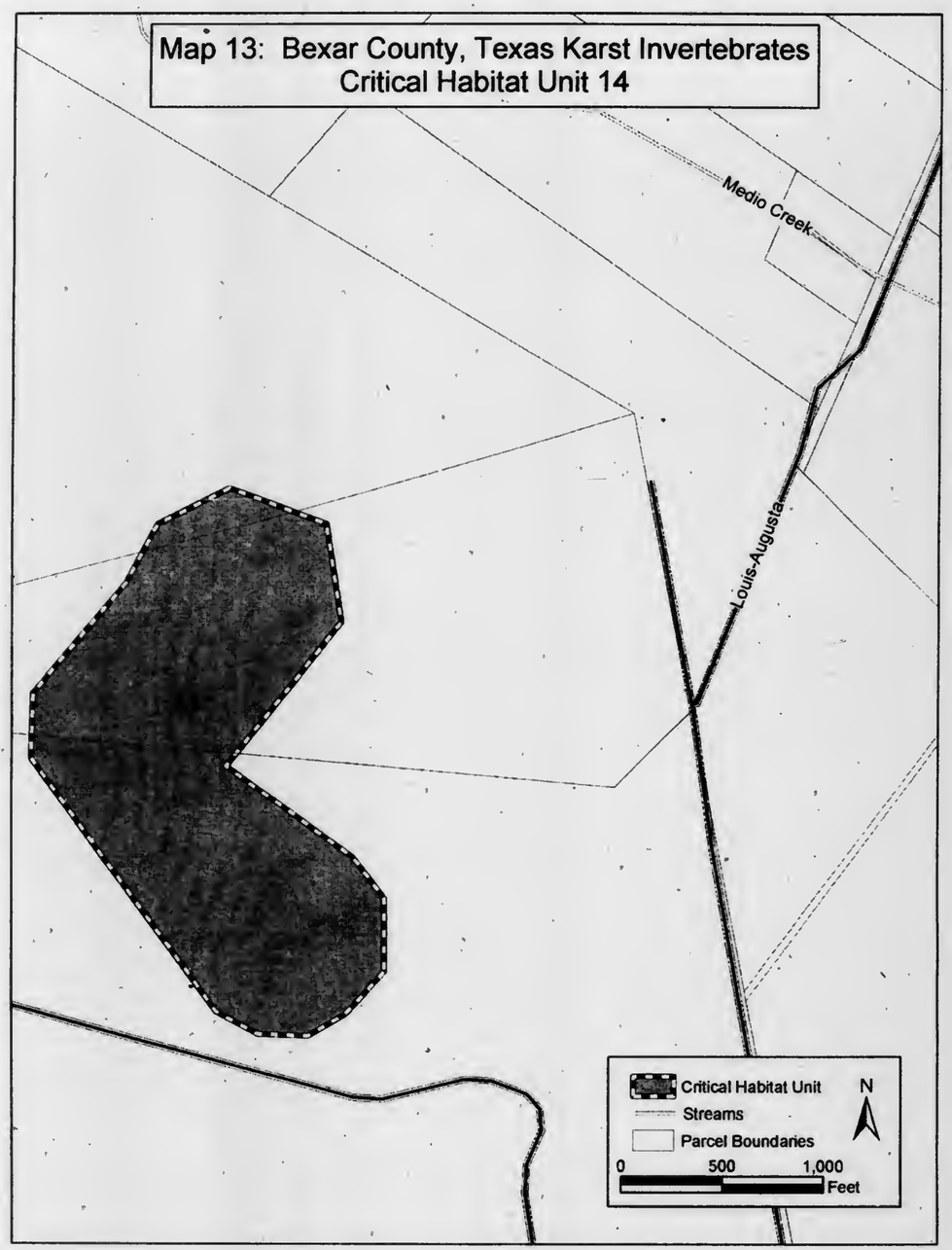
(3) Unit 1e2 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.7238284, 29.5847161; –98.7201061, 29.5861352; –98.7189558, 29.5844029; –98.7194474, 29.5832652; –98.7230107, 29.5818492; –98.7245095, 29.5824623; –98.7247550, 29.5841155; –98.7238284, 29.5847161.

(4) A map of unit 1e2 is provided in Map 2 of the entry for Helotes mold beetle in this paragraph (i).

(5) Unit 14 (26 ha (64 ac)) is an area bounded by points with the following coordinates: –98.7863612, 29.4495294; –98.7869725, 29.4489471; –98.7875551, 29.4486522; –98.7883435, 29.4486781; –98.7889905, 29.4489913; –98.7918932, 29.4524710; –98.7918632, 29.4533747; –98.7904052, 29.4548676; –98.7899060, 29.4556966; –98.7887880, 29.4561713; –98.7872743, 29.4556964; –98.7870331, 29.4543351; –98.7888385, 29.4523567; –98.7868531, 29.4511085; –98.7863591, 29.4505317; –98.7863612, 29.4495294.

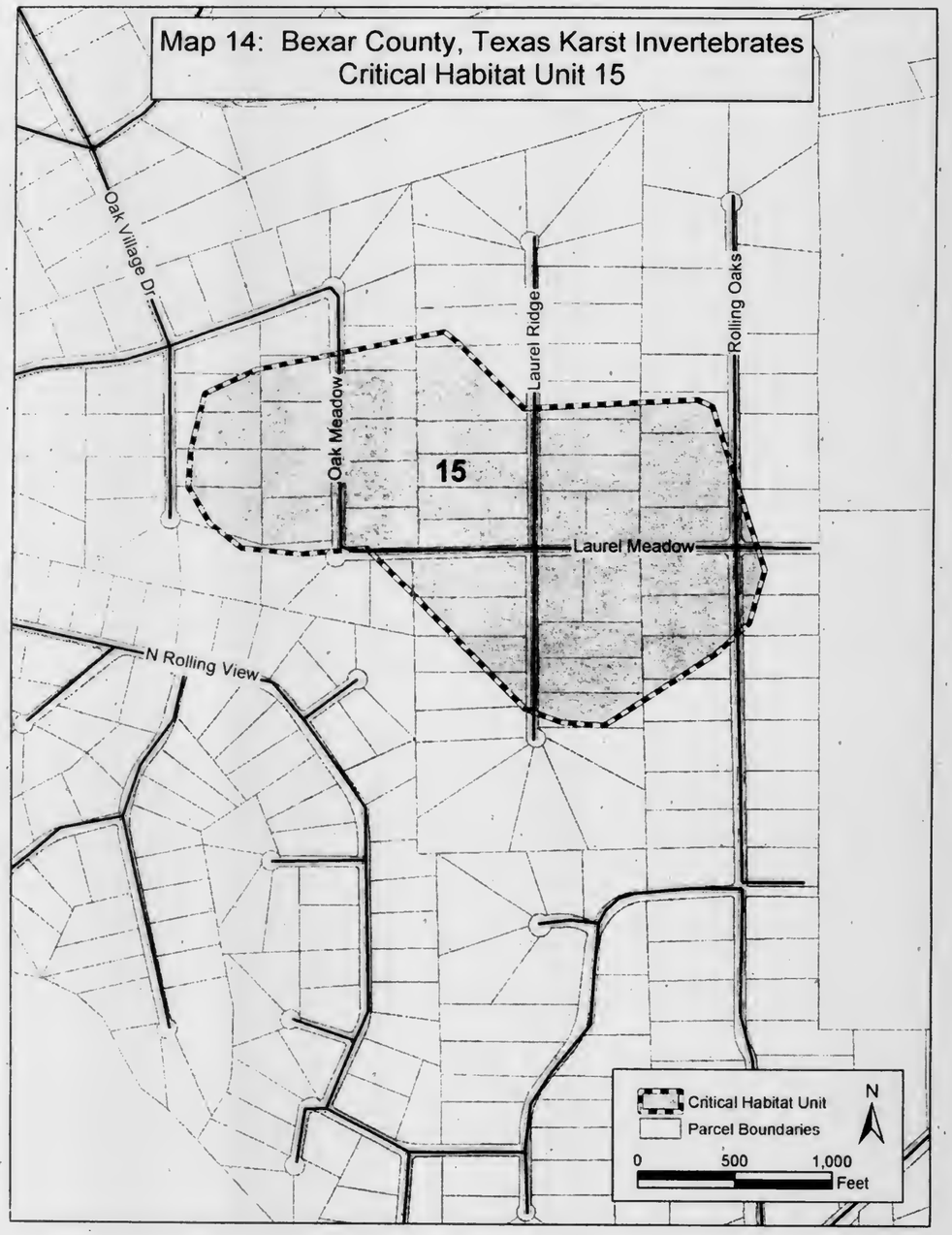
(6) Map 13—Unit 14 follows:

BILLING CODE 4310–55–P

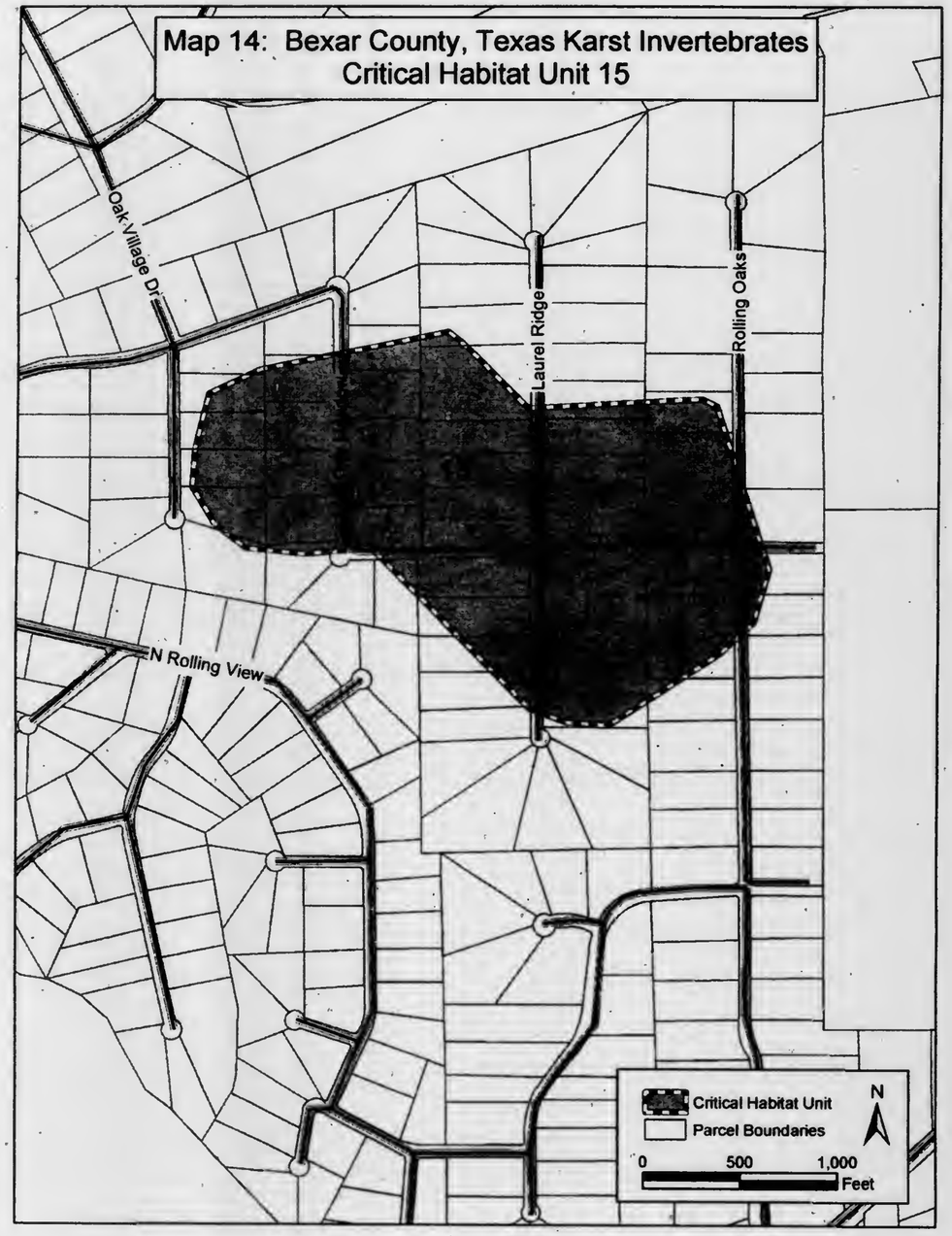


(7) Unit 15 (34 ha (85 ac)) is an area bounded by points with the following coordinates: –98.7631005, 29.4388531; –98.7600316, 29.4394009; –98.7598094, 29.4392533; –98.7587180, 29.4382984; –98.7558932, 29.4384257; –98.7556537, 29.4383265; –98.7547983, 29.4359982; –98.7550418, 29.4352415; –98.7555963, 29.4347910; –98.7573878, 29.4337784; –98.7580646, 29.4338220; –98.7586605, 29.4340159; –98.7612682, 29.4363049; –98.7623440, 29.4362183; –98.7633120, 29.4363085; –98.7638206, 29.4366668; –98.7641806, 29.4371861; –98.7641397, 29.4377268; –98.7639175, 29.4385170; –98.7631005, 29.4388531.

(8) Map 14—Unit 15 follows:

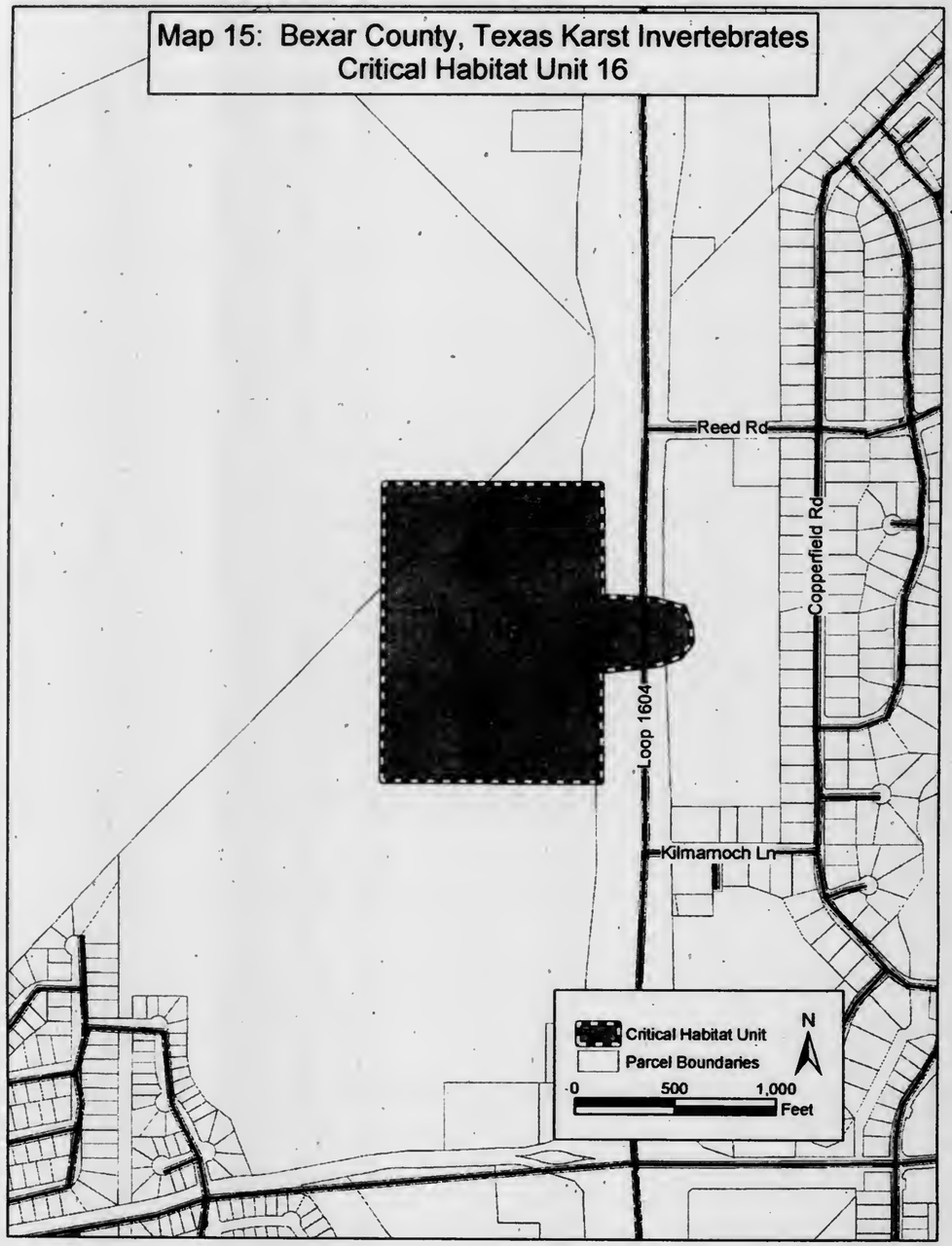


(9) Unit 16 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.7154218, 29.4533018; –98.7153995, 29.4573801; –98.7119857, 29.4573751; –98.7119610, 29.4558232; –98.7111540, 29.4557860; –98.7106973,



(9) Unit 16 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.7154218, 29.4533018; –98.7153995, 29.4573801; –98.7119857, 29.4573751; –98.7119610, 29.4558232; –98.7111540, 29.4557860; –98.7106973, 29.4556731; –98.7105899, 29.4554235; –98.7105693, 29.4552002; –98.7107385, 29.4550044; –98.7110558, 29.4549040; –98.7119873, 29.4548136; –98.7119764, 29.4532848; –98.7154218, 29.4533018.

(10) Map 15—Unit 16 follows:



BILLING CODE 4310–55–C

(11) Unit 17 (16 ha (40 ac)) is an area bounded by points with the following coordinates: —98.6986633, 29.6061189; —98.6978901, 29.6064178; —98.6968967, 29.6060042; —98.6955470, 29.6059909; —98.6944214, 29.6056088; —98.6944325, 29.6018959; —98.6967798, 29.6018910; —98.6967762, 29.6031320; —98.6986774, 29.6031773; —98.6986633, 29.6061189.

(12) A map of Unit 17 is provided in Map 4 in the entry for Helotes mold beetle in this paragraph (i).

(13) Unit 18 (16 ha (40 ac)) is an area bounded by points with the following coordinates: —98.6879353, 29.5840278; —98.6871403, 29.5838597; —98.6859450, 29.5845069; —98.6838609, 29.5817508; —98.6870156, 29.5791593; —98.6889591, 29.5810380; —98.6883743, 29.5818521; —98.6879353, 29.5840278.

(14) A map of Unit 18 is provided in Map 3 in the entry for Helotes mold beetle in this paragraph (i).

(15) Unit 19 (5 ha (12 ac)) is an area bounded by points with the following coordinates: —98.4945129, 29.6147150; —98.4940750, 29.6145674; —98.4938755, 29.6141954; —98.4939880, 29.6138063; —98.4942787, 29.6135970; —98.4952809, 29.6135500; —98.4956056, 29.6133414; —98.4963069, 29.6130155; —98.4967699, 29.6130881; —98.4966492, 29.6123219; —98.4973783, 29.6125657; —98.4978516, 29.6131158; —98.4974600, 29.6135445; —98.4971077, 29.6136897; —98.4970745, 29.6140495; —98.4968571, 29.6142911; —98.4962556, 29.6145285; —98.4954870, 29.6146791; —98.4945129, 29.6147150.

(16) Map 16—Unit 19 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310-55-C

* * * * *

Dated: March 26, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03-7735 Filed 4-7-03; 8:45 am]

BILLING CODE 4310-55-P

VOL
68

ISS
67

AP
8

003

MI



Federal Register

Tuesday,
April 8, 2003

Part III

Environmental Protection Agency

40 CFR Part 261
Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures ("Headworks Exemptions"); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7475–5]

RIN 2050–AE84

Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures ("Headworks Exemptions")

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing in today's action to add benzene and 2-ethoxyethanol to the list of solvents whose mixtures with wastewater are exempted from the definition of hazardous waste under the Resource Conservation and Recovery Act (RCRA). The Agency studied two other solvents, 1,1,2-trichloroethane and 2-nitropropane, and is not proposing at this time to add them to the current exemption.

Besides adding the two solvents to the exemption, the Agency is proposing to provide flexibility in the way compliance with the rule is determined by adding the option of directly measuring solvent chemical levels at the headworks of the wastewater treatment system to the current requirements. Finally, the Agency also is proposing to make additional listed hazardous wastes (beyond discarded commercial chemical products) eligible for the *de minimis* exemption, as well as adding non-manufacturing facilities to those that qualify for this exemption if certain conditions are met.

The Agency is requesting comments on these and other potential exemptions involving wastes managed in a wastewater system regulated under the Clean Water Act (CWA).

The Agency is not proposing any changes or seeking comment on any other provisions of the so-called "headworks rule," not specifically identified in this notice as subject to possible amendment. Nor will the Agency respond to any comments addressing any provisions of the headworks rule not specifically identified in this notice as subject to possible amendment.

DATES: To make sure we consider your comments on revisions to the wastewater treatment exemptions to hazardous waste mixtures, they must be postmarked by June 9, 2003.

ADDRESSES: Comments may be submitted electronically, or through hand delivery/courier or by mail. Send an original and two copies of your comments to: RCRA Docket Information Center, Office of Solid Waste, Environmental Protection Agency, Mailcode: 5305W, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0028. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this rulemaking, contact Ron Josephson, phone 703–308–0442; e-mail: *josephson.ron@epa.gov*, or Laura Burrell, phone 703–308–0005, e-mail: *burrell.laura@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

Entities potentially affected by this action are generators of industrial hazardous waste, and entities that treat, store, transport and/or dispose of these wastes. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action.

LIST OF POTENTIALLY AFFECTED U.S. INDUSTRIAL ENTITIES

Item	Economic Subsector or Industry Identity		Description
	SIC code	NAICS code	
1	02	112	Agricultural production—livestock
2	20	311	Food & kindred products
3	22	313	Textile mill products
4	24	321	Lumber & wood products
5	25	337	Furniture & fixtures
6	26	322	Paper & allied products
7	28	325	Chemicals & allied products
8	29	324	Petroleum & coal products
9	30	326	Rubber & miscellaneous plastics products
10	31	316	Leather & leather products
11	32	327	Stove, clay, glass & concrete products
12	33	331	Primary metal industries
13	34	332	Fabricated metal products
14	35	333	Industrial machinery & equipment
15	36	334, 335	Electrical & electronic equipment
16	37	336	Transportation equipment
17	38	3333, 3345	Instruments & related products
18	42	493	Motor freight transportation & warehousing
19	4581	48819, 56172	Airports, flying fields, & airport terminal services
20	4789	488999	Transportation services nec
21	49	221	Electric, gas, & sanitary services
22	50	421	Wholesale trade—durable goods
23	51	422	Wholesale trade—nondurable goods
24	5999	453998	Miscellaneous retail
25	721	8123	Dry-cleaning & industrial laundry services
26	73	514, 532, 541, 561	Business services
27	80	621, 622, 623	Health services
28	87	712	Engineering & management services

LIST OF POTENTIALLY AFFECTED U.S. INDUSTRIAL ENTITIES—Continued

Item	Economic Subsector or Industry Identity		Description
	SIC code	NAICS code	
29	8999	54162	Miscellaneous services
30	91	921	Executive, legislative & general government
31	95	924, 925	Environmental quality & housing
32	97	928	National security & international affairs

Notes:
(a) This list is based upon industry codes reported to the USEPA RCRA hazardous waste 1997 "Biennial Reporting System" database by F002/F005 aqueous spent solvent generators which manage such wastes in wastewater treatment systems, supplemented by industry codes which have USEPA Clean Water Act "Categorical Pretreatment Standards" for indirect discharge of industrial wastewaters to POTWs (as of July 2002).
(b) The USEPA Office of Solid Waste matched 1987 2-digit level SIC codes to 1997 NAICS codes using the U.S. Census Bureau website: *http://www.census.gov/epcd/naics/nsic2ndx.htm#S0*.
(c) SIC = 1987 Standard Industrial Classification system (U.S. Department of Commerce's traditional code system last updated in 1987).
(d) NAICS = 1997 North American Industrial Classification System (U.S. Department of Commerce's new code system as of 1997).
(e) Refer to the Internet website *http://www.census.gov/epcd/www/naicstab.htm* for additional information and a crosswalk table for the SIC and NAICS codes systems.

This table lists the types of entities that EPA believes could be affected by this action, based on industrial sectors identified in the economic analysis in support of this proposal. A total of about 3,300 to 10,400 entities are expected to benefit from the proposed revisions to 40 CFR 261.3 in the 32 industrial sectors listed above, but primarily in the chemicals and allied products sector (*i.e.*, SIC code 28, or NAICS code 325). Other entities not listed in the table also could be affected. To determine whether your facility is covered by this action, you should examine 40 CFR part 261 carefully in concert with the proposed rules found at the end of this **Federal Register** document. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the **FOR FURTHER INFORMATION CONTACT** section.

How Can I Get Copies of This Document and Other Related Information?

Docket

EPA has established an official docket for this action under Docket ID No. RCRA–2002–0028. The official docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The public docket is the collection of materials that is available for public viewing at 1301 Constitution Avenue, NW., Washington, DC. This Docket Facility is open from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–0270. You may copy up to 100 pages from any regulatory document at no cost. Additional copies are $0.15 per page.

Electronic Access

You may access this Federal Register document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the public docket, and access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility. EPA intends to work toward providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. RCRA–2002–0028. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *rcra-docket@epamail.epa.gov*, Attention Docket ID No. RCRA–2002–0028. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the following paragraph. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail

Send an original and two copies of your comments to: RCRA Docket Information Center, Office of Solid Waste, Environmental Protection Agency, Mailcode: 5305W, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0028.

By Hand Delivery or Courier

Deliver your comments to: RCRA Docket Information Center, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0028. Such deliveries are only accepted during the Docket's normal hours of operation as identified in the "How Can I Get Copies of This Document and Other Related Information?" section.

How Should I Submit CBI To the Agency?

Do not submit information that you consider to be confidential business information (CBI) electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0028. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

SUPPLEMENTARY INFORMATION: The index and many of the supporting materials are available on the Internet. You can find these materials at *http://www.epa.gov/epaoswer/hazwaste/id/headworks/index.htm*.

LIST OF ACRONYMS

Acronym	Meaning
1,1-DCE	1,1-dichloroethylene
1,1,2-TCA	1,1,2-trichloroethane
2-EE	2-ethoxyethanol
2-NP	2-nitropropane
ACC	American Chemistry Council
ANPRM	Advanced Notice for Proposed Rule Making
BRS	Biennial Reporting System
CBI	Confidential Business Information
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
CWA	Clean Water Act
DAF	Dilution and Attenuation Factor
EPA	Environmental Protection Agency
EPACMTP	EPA Composite Model for Leachate Migration with Transformation Products
FR	Federal Register
HSWA	Hazardous and Solid Waste Amendments
HWIR	Hazardous Waste Identification Rule

LIST OF ACRONYMS—Continued

Acronym	Meaning
IWEM	Industrial Waste Management Evaluation Model
LDR	Land Disposal Restrictions
MACT	Maximum Achievable Control Technology
MCL	Maximum Contamination Limit
NAICS	North American Industrial Classification System
NPDES	National Pollutant Discharge Elimination System
NRMRL	National Risk Management Research Laboratory
NSPS	New Source Performance Standard
NTTAA	National Technology Transfer and Advancement Act
OMB	Office of Management and Budget
OSWER	Office of Solid Waste and Emergency Response
POTW	Publicly Owned Treatment Works
ppm	parts per million
RCRA	Resource Conservation and Recovery Act
RFA	Regulatory Flexibility Act
RQ	Reportable Quantity
SIC	Standard Industrial Classification
TC	Toxicity Characteristic
TRI	Toxics Release Inventory
UMRA	Unfunded Mandates Reform Act
WWT	Wastewater treatment

Outline

I. Background
  A. History of Headworks Rule
  B. History of Solvents Listings
II. Potential Changes to the Headworks Rule
  A. Adding Solvents to the Headworks Exemption
  1. General Approach to Risk Analysis
  2. Issues presented by each solvent
  a. Benzene
  b. 2-ethoxyethanol
  c. 2-nitropropane
  d. 1,1,2-trichloroethane
  B. Revising Headworks Compliance Monitoring Method
  C. Exempting Scrubber Water Derived from Solvent Combustion
  D. Exempting Leachate Derived from Solvent Wastes
  E. Exempting Other Types of Leachate
  F. Expanding the *De minimis* Exemption
  G. State Authority
III. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
  H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act of 1995

I. Background

A. History of Headworks Rule

On May 19, 1980, the Agency listed several wastes as hazardous under RCRA. The current list as amended is found in 40 CFR part 261, subpart D. Among the listings are the F001–F005 listings under 40 CFR 261.31, which cover spent solvents as well as residuals from the recovery of spent solvents and spent solvent mixtures. In the same notice, EPA promulgated the "mixture rule" whereby a solid waste becomes regulated as a hazardous waste if it is mixed with one or more listed hazardous wastes.

After these provisions were promulgated, several industry groups became concerned that large volumes of wastewaters (and their resulting treatment sludges) would become listed hazardous wastes. After investigating the submitted data, the Agency, on November 17, 1981, (46 FR 56582–56589) promulgated a rule giving several exemptions to the mixture rule under 40 CFR 261.3(a)(2)(iv)(A)–(E). These exemptions are commonly called the "headworks rule."

The original headworks rule exemptions are divided into four categories: paragraphs (A) and (B) are concerned with solvents that may be contained in wastewaters when going to treatment, paragraph (C) is concerned with certain petroleum wastes, paragraph (D) with *de minimis* quantities of commercial chemical products that are lost to the wastewater treatment system during normal handling operations, and paragraph (E) with laboratory wastes and/or wastewaters discharged to wastewater treatment. The reasoning behind each of these exemptions is that the wastewater treatment system receives many different kinds of wastes, and the solvents, commercial chemical products, lab wastes, etc. are a minuscule and treatable part of the mix of wastewaters. The relatively small volumes of these organic constituents should be easily and effectively handled by the wastewater treatment system, so the risk to the environment would be negligible.

Under the solvents portion of the headworks rule, if the maximum total weekly usage of listed solvents divided by the average weekly flow of wastewater through the headworks of the facility's wastewater treatment system does not exceed the levels specified in paragraphs (A) and/or (B) of 40 CFR 261.3(a)(2)(iv), and the discharge of the wastewaters is subject to regulation under sections 402 or 307(b) of the Clean Water Act, the wastewater is exempt from the mixture rule, (and therefore any subsequent treatment sludge generation also would be exempt). Facilities which have eliminated the discharge of wastewaters also are eligible for this exemption. Those facilities that discharge or transport their wastewaters to privately-owned treatment works are not eligible for this exemption; however, the receiving facilities are eligible to receive the exemption if they comply with the provisions of the headworks rule.

The specified level in paragraph (A) is 1 ppm; the level in paragraph (B) is 25 ppm. *See* 46 FR 56582 (November 17, 1981) for more details. Carbon tetrachloride, tetrachloroethylene, and trichloroethylene were specified in paragraph (A). The remaining solvents listed under EPA Hazardous Waste Numbers F001, F002, F004, and F005 were put into paragraph (B). Since the solvents listed under EPA Hazardous Waste Number F003 are listed only for ignitability, and wastewater mixtures containing F003 solvents are not likely to be ignitable hazardous wastes, the headworks rule is not relevant for these wastes.

On February 9, 1995, the Agency listed wastes from the production of carbamate pesticides (60 FR 7824–7859). Included in the listing are further amendments to the headworks rule for wastes from this industry, 40 CFR 261.3(a)(2)(iv)(F) and (G). In addition, on August 6, 1998, the Agency revised § 261.3(a)(2)(iv)(C) as a part of the petroleum listing determination to include headworks provisions for these newly listed wastes (63 FR 42184).

In August 1999, EPA received a request from the American Chemistry Council (ACC, formerly the Chemical Manufacturers Association) to add the four solvents (1,1,2-trichloroethane, benzene, 2-nitropropane, and 2-ethoxyethanol) listed as hazardous wastes in 1986 to the headworks exemption. ACC also asked the Agency to allow direct monitoring as an alternative method by which compliance with the headworks rule may be determined. Other ACC-requested headworks rule changes include allowing those wastes listed in 40 CFR 261.31 and 261.32 to be added to the *de minimis* exemption, and expanding the headworks rule to include certain landfill leachates. EPA

included a request for comment on these and other ACC-suggested exemptions to the mixture and derived-from rules in the November 19, 1999 proposed Hazardous Waste Identification Rule (HWIR) (64 FR 63382). Many of today's proposed changes are an outgrowth of ACC's suggested revisions and the public comments that EPA received in response to the discussion of these suggested revisions in the 1999 HWIR proposal.

B. History of Solvent Listings

On May 19, 1980, the Agency listed 23 chemicals or classes of chemicals as hazardous wastes when used as solvents and subsequently spent. The listings can be found at 40 CFR 261.31, EPA Hazardous Waste Numbers F001–F005. As previously stated, in 1981 the Agency determined that small volumes of these spent solvents could be lost to wastewater treatment systems with negligible risk and therefore these spent solvents were exempted under the headworks rule (46 FR 56582–56589, November 17, 1981).

The Agency's spent solvent listings cover only those solvents that are used for their "solvent" properties—that is, to solubilize (dissolve) or mobilize other constituents. For example, solvents used in degreasing, cleaning, fabric scouring, as diluents, extractants, reaction and synthesis media, and similar uses are covered under the listing (when spent). A solvent is considered "spent" when it has been used and is no longer fit for use without being regenerated, reclaimed, or otherwise reprocessed.

On the other hand, process wastes in which solvents were used as reactants or ingredients in the formulation of commercial chemical products are not covered by the listing. The products themselves also are not covered. (*See* 50 FR 53316, December 31, 1985.)

On February 25, 1986 (51 FR 6537–6542), the Agency listed four other solvents in the F002 and F005 categories. These solvents are 1,1,2-trichloroethane, benzene, 2-nitropropane, and 2-ethoxyethanol (or ethylene glycol monoethyl ether). These listings were in response to a Congressional mandate in the Hazardous and Solid Waste Amendments of 1984 (HSWA). At the time, the Agency did not determine whether or not to add these solvents to the headworks rule exemptions.

The Agency followed up the 1986 solvent listings with another listing determination concerning solvents as part of a court-ordered mandate. On November 19, 1998 (63 FR 64372–64402), the Agency finalized a decision not to list any of 14 selected chemicals as spent solvents under the current listings. The Agency concluded that many of these chemicals had little to no solvent use or very specialized solvent uses, and those that were used as solvents were managed in such a way that additional regulation was not warranted. As a part of the same court-ordered mandate, the Agency also published a "Solvents Study" (August 22, 1996) on seven additional chemicals. Most of these chemicals were found to have no solvent use at all.

II. Potential Changes to the Headworks Rule

The Agency intends to make a technical correction to § 261.3(a)(2)(iv)(A). The term "spent" was inadvertently omitted from this paragraph when promulgated. The term "spent" should have appeared immediately before the word "solvent" in the first clause of the sub-paragraph as it does in sub-paragraph (B) of § 261.3(a)(2)(iv). The Agency proposes to correct this inadvertent oversight by inserting the word "spent" in the appropriate place in sub-paragraph (A).

A. Adding Solvents to the Headworks Exemption

The American Chemistry Council requested that the Agency consider adding the four solvents listed in 1986 to the headworks exemption under 40 CFR 261.3(a)(2)(iv)(A) and (B). After evaluating these chemicals, the Agency is proposing to add two of the solvents (benzene and 2-ethoxyethanol) to the exemption. That is, the Agency is proposing to add benzene to the solvents with a total 1 ppm headworks limit under § 261.3(a)(2)(iv)(A) and is proposing to add 2-ethoxyethanol (2–EE) to the 25 ppm total limit under § 261.3(a)(2)(iv)(B). The exemption for benzene is conditioned on the use of aerated biological treatment units and the requirement that any surface impoundments used prior to secondary clarification be lined. The Agency is not proposing any action regarding 1,1,2-trichloroethane (1,1,2–TCA) and 2-nitropropane (2–NP) at this time. The Agency considered each solvent's risks individually and solicits comments on the appropriateness of the exemptions and the levels set.

Under today's proposed changes, if the total headworks concentration of methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, and 2-ethoxyethanol (added by today's proposal) do not exceed 25 parts per million (ppm), and the other conditions are met relating to Clean Water Act discharge and monitoring or measurement of constituents in the headworks of the wastewater treatment system (see below), the wastewater mixtures would no longer be considered hazardous waste. For mixtures of carbon tetrachloride, tetrachloroethylene, trichloroethylene, and benzene (added by today's proposal under certain conditions), the total headworks concentration cannot exceed 1 ppm, and also must meet the other conditions for it to no longer be considered a hazardous waste; in addition, mixtures containing benzene must be managed in an aerated biological wastewater treatment system without the use of unlined surface impoundments prior to secondary clarification.

The Agency is taking comment only on the evaluation and decisions made concerning benzene, 2-ethoxyethanol, 1,1,2-trichloroethane, or 2-nitropropane to the mixture rule exemption at 40 CFR 261.3(a)(2)(iv)(A) and (B). The Agency is not soliciting comments on solvents currently exempted. The Agency also is not taking comment on any spent solvent listing or any other hazardous waste listing. Nor will the Agency respond to any comments submitted addressing any currently exempted solvent, any spent solvent listing or any other hazardous waste listing.

1. General Approach to Risk Analysis

The Agency took a phased approach to the risk analysis for the four solvents under consideration. In the first phase, EPA conducted a protective screening analysis by comparing the regulatory levels in the current solvents headworks exemption (*i.e.*, 1 ppm and 25 ppm) with protective waste concentration limits (based on ingestion of ground water contaminated by surface impoundment leachate and inhalation of chemicals volatilized from an aerated tank) that EPA already had generated under previous efforts. These efforts calculated protective levels based on a more stringent 10^{-6} risk threshold. In addition, EPA evaluated data from EPA's National Risk Management Research Laboratory (NRMRL, part of the Agency's Office of Research and Development) treatability database to determine the probable effect of treatment in reducing chemical concentrations using existing treatment technologies. In the second phase, EPA performed a more detailed analysis for the chemicals (where possible). This more detailed human health risk assessment evaluated both the direct groundwater pathway and indirect exposure pathways for chemicals released from either the wastewater or the resulting treatment sludge. This Phase II analysis used a 10^{-5} risk threshold that the Agency considers sufficiently protective of human health and the environment, and therefore uses for a variety of regulatory determinations.

Comparison to Existing Waste Concentration Limits

The screening analysis compared waste concentration estimates taken from previous modeling efforts for each of the four chemicals with applicable headworks exemption levels.

TABLE 1.—PRELIMINARY COMPARATIVE SOLVENT RISK DATA

Chemical name	Groundwater ingestion (mg/L)[1]	Direct inhalation[2] (mg/L)
benzene (c)	0.0027	3
2-ethoxyethanol (nc)	13	100,000
2-nitropropane (c)	N/A	0.04
1,1,2-trichloroethane (c)	0.0028	2

Footnotes:
(c) is a carcinogen, (nc) is a non-carcinogen
[1] Adult risk, surface impoundment, 10^{-6} risk, HQ = 1 (ground water modeling screening levels from IWEM)
[2] Adult risk, Aerated tanks, 90% sites, 90% receptors protected, 150 m, 10^{-6} risk, HQ = 0.25 (1999 Air Characteristic Study)

The Agency identified waste concentration screening estimates that would be protective of groundwater ingestion for three of the solvents (benzene, 2-ethoxyethanol, and 1,1,2-trichloroethane) from previous groundwater modeling efforts.[1] This comparison was conservative because it did not take into account any reductions in concentration due to treatment. For all three chemicals, the protective screening levels are lower than the existing standards for wastewaters entering treatment (*i.e.*, 1 ppm for benzene and 1,1,2-trichloroethane; and 25 ppm for 2-ethoxyethanol), indicating a need for further analysis. The Agency currently does not have sufficient information to generate an estimate of the toxicity of 2-nitropropane through ingestion, so no comparison could be made.

The Agency also has identified waste concentration estimates that would be protective of inhalation exposures to each of the four chemicals during volatilization from aerated tanks, also based on previous modeling efforts.[2] The numbers shown in Table 1 represent the maximum constituent concentration meeting the noted adult risk thresholds at specified receptor distances. The table shows that for three of the solvents (benzene, 2-ethoxyethanol, and 1,1,2-trichloroethane), the maximum modeled constituent level is above the exemption level proposed for these chemicals (*i.e.*, the existing standard of 1 ppm or 25 ppm was protective of this risk scenario) and thus, is considered protective. One of the constituents, 2-NP, is still of concern for the inhalation pathway (*i.e.*, the potential standard of 1 ppm would not meet the Agency inhalation risk thresholds). Additional discussion of 2-nitropropane follows below.

Analysis of Treatability Data

The NRMRL treatability database provides valuable information on effluent concentrations for specific chemicals at set input levels. For the purposes of today's proposal, Agency staff searched the database for aqueous treatment technology data on full-scale industrial facilities in the chemical or petroleum refining industries that have measured levels of any one of the four solvents entering the wastewater treatment system. Data generally are summarized from government references, such as effluent guidelines development documents. Aqueous treatment technology data are available for benzene and 1,1,2-trichloroethane. Only one non-industrial aqueous treatment technology data point exists for 2-ethoxyethanol, and no data are available for 2-nitropropane. The data show that for two of the solvents (benzene and 2-ethoxyethanol), wastewater treatment generally is effective in reducing concentrations below the levels of concern. Information on how to obtain the NRMRL data can be found at *http://www.epa.gov/ORD/NRMRL/treat.htm.* Further analysis of NRMRL data as applied to industrial users of the chemicals under consideration is available in *Proposed Rule to Expand the RCRA Wastewater Treatment Exemptions for Hazardous Waste Mixtures (Headworks Exemption) in 40 CFR 261.3(a)(2)(iv) Technical Background Document* located in the public docket to today's rule.

Additional Human Health Risk Assessment

In the second phase, the Agency used the Chem 9/Water 9 model as an emissions source model (*i.e.*, to estimate the wastewater and sludge concentrations after each step in the wastewater treatment system) and the Industrial Waste Management Evaluation Model (IWEM) to perform a groundwater pathway risk assessment, using data from the 1997 Biennial Reporting System as input parameters.[3] EPA modeled wastewaters managed in both a non-aerated tank and unlined surface impoundment, and an aerated biological treatment system (which included both primary and secondary clarifier wastewater units). EPA also modeled sludges generated by wastewater treatment as managed in monofills and land farms. EPA modeled direct and indirect pathways, using chemical specific dilution and attenuation factors (DAFs) from EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP), to predict the constituent concentration at the point of human contact. Direct routes included exposure via ingestion of contaminated ground water and inhalation of vapors from showering with contaminated ground water. Indirect routes of exposure

[1] U.S. EPA. 2002. Industrial Waste Management Evaluation Model (IWEM) Technical Background Document. Office of Solid Waste, Washington, DC. EPA530–R–02–012.

[2] Volume III: Revised Risk Analysis for the Air Characteristic Study: Results, EPA 530–R–99–019c, U.S. EPA, November 1999. (on CD-ROM)

[3] The 1997 BRS data were used because that was the last year to include wastewater data. EPA queried the BRS for data on F002 (for 1, 1,2-trichloroethane) and F005 (for benzene, 2-ethoxyethanol, and 2-nitropropane) at facilities which generated wastewaters or managed treatment sludges. The data from the BRS do not state which solvent is linked to a specific waste code. To screen for a "high end" exposure analysis, EPA based the input parameters on the facility that is the 90th percentile in size for the given waste code (*i.e.*, that only ten percent of the facilities are larger).

included the consumption of contaminated vegetables and meats.

For each scenario, multiple iterations were conducted to determine both central tendency risk and "high-end" risk. In all cases, however, the influent concentrations for benzene and 1,1,2-TCA at the headworks were assumed to be the maximum exemption level allowable assigned to carcinogens (1 ppm), and for 2-ethoxyethanol the influent concentration was assumed to be the maximum allowable limit for non-carcinogens (25 ppm). The risk level was set at 10^{-5} (one chance in 100,000) for carcinogens and at a hazard quotient of 1 for non-carcinogens. Finally, for the indirect pathways, the medium used to grow plants was assumed to consist of 100% sludge (at the concentration generated by Chem 9/Water 9). Because none of the chemicals assessed were found to be of concern for the indirect pathways, EPA did not further refine this assumption. A full description of the data screening methodology can be found in the modeling background document to today's proposal.

2. Issues presented by each solvent

a. Benzene. Benzene is the most ubiquitous of the four solvents under consideration. It has uses in many industries, particularly in organic synthesis and catalyst formation. Benzene is used as a reactant as well as a medium for reactions to take place. Due to increased restrictions on benzene emissions (such as MACT standards, etc.), chemical industries have been encouraged to find alternatives to benzene. It is also one of the more toxic, being classified by EPA as a Class A carcinogen.

As presented in Table 1 of this notice, existing modeled waste concentration limits show that the 1 ppm standard would be protective for the direct air inhalation pathway, even with the more stringent 10^{-6} risk threshold. Moreover, data from the NRMRL treatability database demonstrate that, after the specified treatment, effluent concentrations for benzene generally are below the groundwater modeled level of 0.0177 mg/L (17.7μg/L), even when the influent benzene level approaches 1 mg/L (1,000μg/L). Note that treatability numbers are measured at the effluent of a wastewater treatment system, not in the treatment unit itself. However, we believe this comparison is helpful because it illustrates that levels of benzene below concern are achievable in industrial wastewater treatment systems, even when the input level approaches 1 ppm.

Data from the groundwater pathway human health risk analysis also support the addition of benzene to the headworks exemption, with certain conditions. For wastewaters, non-aerated treatment scenarios resulted in exposures above the level of concern for all components, but aerated biological treatment scenarios resulted in unacceptable risk levels only when the primary clarifier wastewaters were managed in an unlined surface impoundment. For sludges, non-aerated treatment sludges and aerated biological treatment primary sludges managed in landfills resulted in risk levels above the level of concern, but aerated biological treatment secondary sludges managed in landfills were below the levels of concern. Indirect exposures to benzene from management of sludges in land farms were not of concern, regardless of treatment type. Benzene exceeded the risk of 10^{-5} for each of the non-aerated scenarios and two components from the aerated biological treatment system (primary clarifier wastewaters being managed in an unlined surface impoundment and primary clarifier sludge being managed in a monofill).

Based on the above results, the Agency is proposing to add benzene to the headworks exemption at the level of 1 ppm with the condition of certain management practices. Specifically, the proposed conditions are that wastewaters containing benzene be managed in aerated biological waste management units and that any surface impoundments used prior to secondary clarification be lined. Aerated biological treatment facilitates biodegradation, reducing the concentration of benzene in the sludge. (*See Risk Assessment to Support the Wastewater Treatment Exemptions (Headworks Exemptions) Proposed Rule*, U.S. EPA 2002, for further information on assumptions used for biodegradation in aerated biological treatment systems). Although the modeled risk for managing primary clarifier sludge (that is generated prior to aerated biological treatment) in a monofill exceeded 10^{-5}, EPA does not believe that additional conditions are needed to be protective of this scenario, primarily because these sludges still would be considered hazardous wastes if they exhibit the Toxicity Characteristic for benzene of 0.5 mg/L.

The Agency seeks comment on the proposal to add benzene to the headworks exemption at the level of 1 ppm with the conditional management requirements, on the necessity of the contingent management requirements, the level of biodegradation achieved through aerated biological treatment systems, industrial solvent use levels of benzene, and current industrial treatment systems and management practices.

b. 2-ethoxyethanol. 2-ethoxyethanol is the least toxic of the four chemicals under consideration, and is the only non-carcinogen. Due to concerns about workplace exposure and the availability of substitute chemicals, use of 2-ethoxyethanol has been declining in the United States.

As presented in Table 1 of this document, existing modeled waste concentration limits show that the 25 ppm standard would be protective for the direct air inhalation pathway, even without additional treatment. In addition, the limited treatment information on 2-ethoxyethanol available in the treatability database show that treatment can be effective in further reducing the concentration of 2-ethoxyethanol in wastewaters. However, groundwater screening pathway data for 2-ethoxyethanol, also in Table 1, show protective screening levels slightly below the 25 ppm standard (*i.e.*, 13 ppm), indicating a need for further analysis.

The more detailed groundwater pathway human health analysis does support, however, the addition of 2-ethoxyethanol at 25 ppm to the headworks exemption. Both direct and indirect analyses showed 2-ethoxyethanol at 25 ppm in the headworks poses no significant human health risk. (*See Risk Assessment to Support the Wastewater Treatment Exemptions (Headworks Exemptions) Proposed Rule*, U.S. EPA 2002).

The Agency seeks comment on the proposal to add 2-ethoxyethanol to the headworks exemption at 25 ppm.

c. 2-nitropropane. The Agency has very little production, release and toxicity data on 2-nitropropane. The 1999 Toxics Release Inventory (TRI) only listed three facilities nationwide reporting the chemical present in wastewaters. The treatability database from NRMRL has no aqueous technology data on 2-nitropropane. The Agency has only inhalation toxicity information to use for risk modeling purposes. We believe that the available risk information is not adequate to develop an oral benchmark for 2-nitropropane. 2-Nitropropane failed to pass the Phase I air risk screen by a factor of 25 (in contrast to the other three solvents passing, as indicated in Table 1). Because of the large margin of failure for 2-nitropropane, we considered it unlikely that 2-nitropropane would pass a more robust Phase II type of analysis. Based on the large margin of failure in the Phase I screen and the extremely low reported usage that the Agency found for 2-nitropropane, we determined that continued analysis of 2-nitropropane was not likely to affect the regulatory status of these wastes significantly.

Accordingly, the Agency is not proposing any action at this time on 2-nitropropane under 40 CFR 261.3(a)(2)(iv)(A) or (B). The Agency seeks comment on the availability of toxicity information on 2-nitropropane and the current level of use as a solvent.

d. 1,1,2-trichloroethane. According to the Agency's listing background document of 1985 [4], most 1,1,2-trichloroethane (1,1,2-TCA) was used as a vinylidene chloride feedstock. The rest had some solvent use, such as a solvent for waxes, resins, fats, rubbers, and coating cleaner.

As presented in Table 1 of this notice, existing modeled waste concentration limits show that the 1 ppm standard would be protective for the direct air inhalation pathway. However, the groundwater modeled level of 0.0028 mg/L indicates potential risk at the 1 ppm standard from the groundwater pathway, and data from the NRMRL treatability database do not appear to demonstrate a significant reduction in chemical concentration of 1,1,2-TCA during treatment, especially when the input level approaches 1 ppm.

Data from the more detailed groundwater pathway human health analysis also do not support the addition of 1,1,2-TCA at 1 ppm to the headworks exemption. While 1,1,2-TCA was found to be below the level of concern for indirect exposures, wastewater concentrations resulted in risks greater than 10–5 for sludges and wastewaters from both aerated biological treatment and non-aerated treatment units (both for groundwater ingestion and inhalation of shower vapors). In addition, 1,1,2-TCA undergoes transformation to 1,1-dichloroethylene (1,1-DCE) due to hydrolysis while being transported in the subsurface environments. The parent compound, 1,1,2-TCA, and the transformation product, 1,1-DCE, have similar fate characteristics. The transformation product is more toxic than the parent compound by approximately an order of magnitude. However, the modeling results are based on the parent compound only. Therefore, risk from 1,1,2-TCA will likely be even greater than shown in the headworks exemption risk background document (US EPA, 2002).

[4] "Listing Background document for Four Spent Solvents and Still Bottoms From Recovery of These Solvents, USEPA, January 22, 1985, Docekt No. F–85–LSSP–FFFFF, document no. F005."

Due to the indication that significant risks occurred in the majority of waste management scenarios as modeled, the Agency is not proposing any action on 1,1,2-TCA at this time under § 261.3(a)(2)(iv)(A). The Agency seeks comment on the results of this risk analysis and current solvent use.

B. Revising Headworks Compliance Monitoring Method

The Agency is proposing to expand the ways in which compliance with the headworks rule may be determined by adding the option of directly measuring solvent chemical levels at the headworks of the wastewater treatment system. This change would affect 40 CFR 261.3(a)(2)(iv)(A), (B), (F), and (G). Under the current solvent exemptions, a facility must use a "mass balance" approach to calculate the theoretical headworks concentration (via solvent usage) to be in compliance with the rule. That is, a facility must look at inventory records of the amount of solvent purchased weekly and divide that amount by the average weekly flow of wastewater through the headworks of the wastewater treatment system. The amount known not to go into the wastewater treatment system (*e.g.*, lost to product, removed as still bottoms) may be subtracted from the calculation. However, the amount volatilized may not be subtracted to ensure that the solvent wastes were properly treated and to minimize losses of these chemicals through volatilization.

The Agency received a request from ACC to allow another compliance methodology. Under this method, facilities would be allowed to perform a direct measurement of the concentration of solvent chemicals in the wastewater treatment system. According to ACC, use of direct measurement is more accurate than calculating a mass balance over the system. In addition, they point out that with the advent of MACT standards and NSPS requirements under the Clean Air Act and its amendments over the 21 years since the headworks rule was first promulgated, these standards should prevent the intentional volatilization about which the Agency was initially concerned.

When the original headworks rule was promulgated, the Agency was concerned that the exemption might encourage facilities to volatilize solvents before a defined measurement point, thus allowing facilities to claim compliance with the exemption, but in reality transferring the waste management problem to another medium. As a result, the Agency structured the exemption to require facilities to use the "mass balance" approach to calculate whether or not they met the concentration thresholds set forth in the rule. As noted earlier, facilities are allowed to subtract the amount of solvents known not to go into the wastewater treatment system (*e.g.*, from losses to product, still bottoms, etc.), but not losses due to volatilization (See 46 FR 56585, footnote 24, November 17, 1981). Use of the mass balance approach did not require facilities to define a specific point to measure levels of solvents entering the wastewater treatment system.

Since the 1981 rule was published, the Agency has promulgated numerous air emissions regulations for new and existing sources under the Clean Air Act (*e.g.*, MACT and NSPS programs). The background document to today's proposal *Proposed Rule to Expand the RCRA Wastewater Treatment Exemptions for Hazardous Waste Mixtures (Headworks Exemption) in 40 CFR 261.3(a)(2)(iv) Technical Background Document)* lists the industries affected by these Clean Air Act programs. Because of the coverage of these regulations, the Agency believes that concerns about volatilization have been addressed, and that allowing facilities a greater choice of compliance methodologies is appropriate.

Use of this method also means that the measured level(s) of the chemical(s) at the headworks may not exceed the total regulatory level, regardless of its (or their) origin in the process, as long as some of it (or them) has been used as a "solvent." Therefore, direct measurement could overstate the amount of solvent(s) if the chemical(s) were used at the facility in other applications (e.g., impurity in other feedstocks, product component, reaction byproduct, etc.) Facilities that wish to take advantage of the direct monitoring approach must report the entire concentration of the chemical in question if any of it was used as a solvent.

The Agency is proposing to give facilities a choice of using direct measurement or mass balance to determine compliance with the headworks rule. Facilities that choose to use direct monitoring must be subject to Clean Air Act regulations that minimize fugitive process or wastewater emissions (*e.g.*, MACT standards under 40 CFR part 61 or 63 or NSPS requirements under 40 CFR part 60). We are not proposing any changes to, nor are we seeking comment on the regulatory standard set in the 1981 rule, that a facility may not exceed the total solvent level set forth in § 261.3(a)(2)(iv)(A) or (B) in order to comply with the rule. The Agency will

not respond to comments addressing this standard.

One of the main implementation issues in utilizing the direct monitoring method of compliance is understanding the point in the process at which a facility determines whether it meets the limits in § 261.3(a)(2)(iv)(A) or (B). In response to this issue, the Agency is setting an informal definition of "headworks" so facilities and implementing agencies can understand how the monitoring point is described. The guidance the Agency is providing is intended to mirror the language in the 1981 preamble; namely, that the headworks is the location at which final combination of raw process wastewater streams typically takes place (46 FR 56582, November 17, 1981).

The Agency is not proposing to set a regulatory definition of the term headworks. Instead, the Agency prefers to describe the term for both maximum flexibility and understanding. For the purposes of this rule, headworks can include a central catch basin for industrial wastewaters, a pump station outfall, equalization tank, or some other main wastewater collection area that exists in which transport of process wastewaters stops and chemical or biological treatment begins.

The Agency seeks comment as to whether the description for headworks given above is adequate, or if a more detailed description is needed. Commenters may wish to provide examples to illustrate working definitions of headworks or where confusion about a headworks definition might exist.

The Agency proposes that facilities that want to take advantage of using direct monitoring develop a site-specific sampling and analysis plan that demonstrates compliance with the weekly average standards set for the appropriate solvent(s). The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of appropriate constituents to be monitored. In addition, facilities would be required to file a copy of the sampling and analysis plan with the Regional Administrator or State Director, as the context requires, or an authorized representative (*i.e.*, the "Director," as defined in 40 CFR 270.2), and would need to confirm that such sampling and analysis plan had been received prior to the commencement of direct monitoring at the facility. Examples of confirmation include certified mail return receipt, or written confirmation of delivery from a commercial delivery service. Upon confirmation that the sampling and analysis plan has been delivered successfully to the overseeing agency, the facility would be allowed to commence direct monitoring to demonstrate compliance. The filing of the sampling plan would suffice for initial notification. EPA does not propose to require any other formal notification to the regulator, unless a change in the facility's operations mandates a change in monitoring. Confirmation that the overseeing agency has received the sampling and analysis plan would not imply, however, that the package has been reviewed or approved. EPA does not propose to require that the overseeing agency issue a formal approval of the sampling and analysis plan. However, the Director may reject the sampling and analysis plan if he/she finds that (1) the sampling and analysis plan fails to include the above information, or (2) the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the sampling and analysis plan is rejected or if the Director finds that the facility is not following the sampling and analysis plan, the facility must no longer use the direct monitoring option until such time as the bases for rejection are corrected.

The Agency seeks comments from the public as to the benefits of the changes and if they are sufficiently protective of the environment. The Agency would like comments as to whether the best approach is (1) to leave the current system "as is," or (2) to give facilities a choice of mass balance or direct monitoring techniques. The Agency also seeks comment as to whether the overseeing agency should either approve a sampling and analysis plan, or require facilities to wait a certain period of time (if the state or EPA has not responded) before embarking on a direct monitoring program, and how a facility suspected of violating the exemption limits may be made to demonstrate compliance with the weekly standard.

Under the existing headworks exemption rule (46 FR 56585, November 17, 1981), facilities must be prepared to demonstrate (for the purposes of an inspection or audit) that they meet the mass balance criteria of the rule. Facilities opting to use direct monitoring could comply with this requirement by keeping monitoring records on site to show an inspector that the new criteria are being met. Under 40 CFR 268.7(a)(7), a facility is required to place a one-time notice concerning waste generation, subsequent exclusion from the definition of hazardous waste or solid waste or exemption from RCRA Subtitle C regulation, and the disposition of the waste, in the facility's on-site files. Generally, such notification, as well as certifications, waste analysis data, and other documentation must be kept for a period of three years unless an enforcement action by the Agency extends the record retention period (§ 268.7(a)(8)). EPA has estimated the burden associated with the proposed reporting requirements when a facility chooses the direct monitoring option. Those estimates are presented in section IV.D of today's proposal.

The Agency is soliciting comment on how to minimize overlapping reporting requirements. Under EPA's Water program, (*e.g.*, 40 CFR 122.48 and 403.12), facilities may be required under their permits to monitor these same constituents at the point of discharge (*i.e.*, effluent monitoring). The Agency recognizes that current requirements under the Clean Water Act do not require monitoring of the wastewater treatment system influent (or headworks). However, EPA notes some facilities may collect and may report such information. EPA seeks comment on whether or not facilities are currently performing influent monitoring for other media programs. If so, the Agency solicits comments on the frequency of the influent monitoring and reporting and if this information can be used to determine compliance with the headworks rule.

The Agency also seeks comment on the proposed use of other environmental regulatory program requirements to integrate the information needed for this exemption. Specifically, the Agency is interested in how much of the information is contained in air or water permit monitoring/reporting requirements, how easy modifying another regulatory program's requirements to contain these data would be, and what steps facilities are taking to conduct this kind of monitoring already.

C. Exempting Scrubber Water Derived From Solvent Combustion

The issue of whether to exempt incinerator scrubber water first was raised by commenters to the 1999 HWIR proposal. Under the current headworks rule, the exemptions under 40 CFR 261.3(a)(2)(iv)(A) and (B) are from "normal losses" from manufacturing operations and not from wastes that are already separated from the wastewaters or that had been removed from the process previously. Many spent solvents are sent to hazardous waste combustors. The combustors have scrubbers, used for air pollution control, and these scrubbers usually generate an aqueous stream that is easily treatable in the wastewater treatment system. The scrubber waters, however, are considered "derived from" residuals of the spent solvents, and since they are not incidental losses to the wastewater treatment system, they are not currently eligible for the headworks exemptions.

In the carbamates final rule (60 FR 7824–7859, February 9, 1995), the Agency decided that scrubber waters from the incineration of carbamate production wastes are eligible for the headworks exemptions that were promulgated under that listing determination. The justification for this decision was that these scrubber waters would be comparable in expected constituents and concentration levels with the already-exempted carbamate wastewaters.

Based on the rationale in the carbamates rule, the Agency is proposing that scrubber waters derived from the combustion of spent solvents and sent to a facility's wastewater treatment system qualify for the exemption under 40 CFR 261.3(a)(2)(iv)(A) and (B). Similar to the carbamates decision, we believe that the scrubber waters derived from combustion of spent solvent wastes will be comparable in expected constituents with spent solvent wastewaters. In addition, the solvent constituents receive at least 99.99% destruction and removal during incineration, the incinerator scrubber water is typically a small percentage of the flow into a wastewater treatment system, and the wastewater treatment system further reduces remaining constituent concentrations. The Agency requests comment on this proposed revision.

D. Exempting Leachate Derived From Solvent Wastes

Another suggested revision to the headworks rule is to exempt leachate from landfills that accepted only F001–F005 spent solvent wastes. Under current rules, leachate resulting from the disposal of more than one listed waste under 40 CFR part 261, subpart D is classified as EPA Hazardous Waste Number F039. Since no exemption currently exists under the headworks rule for F039 liquids, these leachates (even if derived solely from spent solvents) cannot be inserted into a facility's wastewater treatment system and receive an exemption from the mixture rule.

BRS data from 1997 show the presence of 12 hazardous waste landfills that accept only F001–F005 spent solvent hazardous wastes and no other listed wastes. These landfills are both on-site at manufacturing facilities and commercial hazardous waste landfills. In addition, three other landfills list characteristic waste codes, commercial chemical products, and lab packs with the spent solvent wastes. The waste codes in question may be associated with the solvents themselves. For example, D001 wastes are ignitable, and may be from the same solvents. The U226 waste code corresponds to 1,1,1-trichloroethane as a commercial chemical product. The chemical, when used as a solvent and subsequently spent, would carry an F001 or F002 waste code.

The Agency does not have sufficient data concerning the variability of these leachates to propose adding them to the exemption at this time. The Agency seeks comment as to whether such an exemption would be advisable, the relative volumes of leachate to other wastewaters going for treatment, and the relative concentrations of other contaminants in leachate versus those present in the other wastewaters at these facilities. The Agency also seeks comment as to whether landfills that accept characteristic wastes, lab packs, or commercial chemical products that correspond to the chemicals that are also listed spent solvents should be eligible to have leachate sent to a facility wastewater treatment system and be exempted.

At this point, the Agency is not proposing an exemption for solvent-only leachate. Therefore, in the final rule to today's proposal, the Agency does not expect to include any regulatory language exempting any of these leachates. Rather, the Agency is considering the leachate exemption discussion being advanced in today's proposal as an Advanced Notice of Proposed Rulemaking (ANPRM).

E. Exempting Other Types of Leachate

The ACC also has requested that the Agency consider establishing an exemption to allow facilities with unlined surface impoundments attached to wastewater treatment systems to accept hazardous waste landfill leachate into the wastewater treatment system without the need for the unlined surface impoundment to obtain a hazardous waste treatment, storage, and disposal permit.

At this time, EPA still is considering the suggested regulatory exemption for leachate derived-from landfilled hazardous waste as well as other specific exemption options, but we first need to evaluate several important issues. Most hazardous waste leachate is regulated under a separate waste code, F039. To date, we have received no information that would cause us to reconsider that listing, although we would welcome any data that might be helpful in such a re-evaluation. However, in the most recent EPA study of landfill leachate characteristics (65 FR 3007, January 19, 2000), we found considerable differences between the leachate samples from hazardous and non-hazardous landfills in both numbers of constituents of concern and their concentrations. Specifically, hazardous waste landfill leachate contained a greater number of constituents than non-hazardous waste landfill leachate, and the constituents found in both hazardous and non-hazardous waste landfill leachate generally were present in hazardous waste landfill leachate at concentrations an order of magnitude higher than those found in non-hazardous waste landfill leachate[5]. These pollutants can include many organic hazardous constituents not covered by the Toxicity Characteristic. Absent a risk assessment, it is not possible to determine whether the levels of these constituents pose unacceptable risk. However, the presence of these constituents is a strong indication that more study would be needed before developing an exemption for hazardous waste leachate.

One option would be to limit a possible future exemption to leachates from captive, on-site hazardous waste landfills. The Agency would be inclined to propose this limitation because landfills that accept off-site wastes will likely have a different constituent mix from those constituents in the facility wastewater treatment system. The Agency again seeks comment as to whether such an exemption would be advisable, the relative volumes of leachate to other wastewaters going for treatment, and the relative concentrations of other contaminants in leachate versus those present in the other wastewaters at these facilities.

At this point, the Agency is not proposing an exemption for non-solvent leachate. Therefore, the Agency does not expect to include any regulatory language in the final rule to this proposal without first seeking comment on a more fully-developed proposal.

F. Expanding the De Minimis Exemption

The current mixture rule exemption under 40 CFR 261.3(a)(2)(iv)(D) is a provision to remove from regulation small amounts of commercial chemical products (P- and U-listed wastes under

[5] Development Document for Final Effluent Limitations Guidelines and Standards for the Landfills Point Source Category, EPA–821–R–99–019, U.S. EPA, January 2000.

40 CFR 261.33) lost to a wastewater treatment system from manufacturing operations. Small amounts of § 261.33 materials which are being produced by, or used as raw product in, a manufacturing process are often unavoidably lost in normal material handling operations. For example, small amounts of raw material are lost in various unloading or material transfer operations (*e.g.*, small drippage when transfer hose lines are disconnected, and fugitive dust when certain materials are emptied from bags or transferred from bins). Additionally, small amounts of manufactured products or intermediates are lost in material handling, or storage activities (*e.g.*, losses from packing of pumps used to transfer product, unanticipated spills, relief valve discharges, rinsates from drained or otherwise emptied containers, and purgings associated with pressure relief or sample collection). 46 FR 56582 at 56586 (November 17, 1981).

Thus, the *de minimis* exemption is intended to apply to minor, inadvertent releases of waste to a wastewater treatment system as a result of normal operations at a well-maintained facility. The *de minimis* exemption currently does not apply to the discarding of these materials during abnormal manufacturing operations (*e.g.*, operation malfunctions resulting in substantial spills), or the discarding of these materials where they are not being used as raw materials or are not being manufactured as intermediates or final products. *Id.*

The Agency is proposing to broaden the scope of the *de minimis* exemption in two ways. First, we propose to expand the eligibility for the exemption beyond manufacturing operations. Second, we propose to expand the types of waste that are eligible for the exemption. This revised *de minimis* exemption only applies to those wastes not specifically addressed under some other provision of the headworks rule.

The original headworks exemption applies only to manufacturing operations; such facilities are likely to have wastewater treatment systems with Clean Water Act (CWA) permits that provide a means to assess and limit discharges of the specific chemicals manufactured there. However, the Agency realizes that many raw material storage terminals, hazardous waste facilities, etc. also may have effective wastewater treatment systems that prevent the release of small amounts of spilled wastes from posing a threat to human health or the environment. The Agency also realizes that under the CWA, many of these facilities have NPDES permits or permits under local CWA pretreatment programs that limit discharges and require monitoring for specific constituents (40 CFR part 122, 40 CFR part 403). Limitations on discharges of specific constituents implement CWA requirements to ensure that direct dischargers achieve effluent limitations based on best available technology and that indirect dischargers to POTWs comply with pretreatment standards. These limitations and standards act as another protective mechanism to prevent releases of toxic constituents from a facility's wastewater discharges and are an important consideration in the decision to propose this expansion of the *de minimis* exemption.

The Agency is therefore proposing that the *de minimis* eligibility be expanded to non-manufacturing sites that either (1) have a permit subject to the CWA that contains limits for (a) the constituents for which each waste was listed (in 40 CFR part 261, appendix VII) and (b) the constituents in the table "Treatment Standards for Hazardous Wastes" in 40 CFR 268.40 for which each waste has a treatment standard (*i.e.*, Land Disposal Restriction constituents), or (2) have eliminated the discharge of wastewaters altogether. By conditioning the expanded exemption on having a CWA permit that addresses the specific chemicals associated with the listed waste, EPA will help ensure that the wastewater treatment systems at non-manufacturing facilities will effectively treat such chemicals. However, this proposed condition would also mean that some raw material storage terminals or other non-manufacturing facilities that do not meet this condition would not be eligible to claim the *de minimis* exemption. This is because, while some non-manufacturing facilities' discharges are covered by general permits (*e.g.*, storm water discharge permits), they do not specifically address hazardous constituents likely to be present in the listed waste. (In contrast, the manufacturing facilities that are eligible for the current exemption are likely to have wastewater treatment systems with CWA permits that provide a means to assess and limit discharges of the specific chemicals.)

The Agency also is proposing to expand the *de minimis* exemption to wastes other than listed commercial chemical products for sites that either (1) have a permit subject to the CWA that contains limits for (a) the constituents for which each waste was listed (in 40 CFR part 261, appendix VII) and (b) the constituents in the table "Treatment Standards for Hazardous Wastes" in 40 CFR 268.40 for which each waste has a treatment standard (*i.e.*, Land Disposal Restriction constituents), or (2) have eliminated the discharge of wastewaters altogether.

The original headworks exemption only applies to commercial chemical products; CWA permitting requirements at manufacturing facilities generally provide a means to assess and limit discharges of these products, which because of their intrinsic value are not likely to be discharged in large volumes. In its correspondence with the Agency, ACC requested that this portion of the headworks rule be expanded to include *de minimis* amounts of industrial wastes listed in 40 CFR 261.31 and 261.32 (F- and K-listed wastes). *De minimis* releases of these F- and K-listed wastes, similar to those from P- and U-listed wastes, arise from losses during materials handling operations in which these wastes are being generated or being segregated for treatment and disposal. ACC's position is that facility wastewater treatment systems are capable of handling small amounts of F- or K-wastes spilled to the system.

The Agency agrees that very small releases of industrial waste to a facility's wastewater treatment system are not likely to have a significant effect upon that system, the quality of facility effluent discharges, solid wastes generated, occupational safety and health, and human health and the environment. Moreover, the Agency believes that the constituent-specific CWA permitting requirements under section 402 or under section 307(b) local pretreatment program for eligible facilities provides assurance that releases of these wastes to a facility's wastewater treatment system will be kept to a minimum. CWA permitting requirements at manufacturing facilities generally provide a means to assess and limit discharges of commercial chemical products, but may not specifically address constituents in F- and K-listed wastes. Therefore, to ensure that release of *de minimis* levels of these constituents will not put human health and the environment at risk, and to provide facilities an incentive to minimize the loss of F- and K-listed wastes, the Agency is proposing that facilities which discharge wastewaters have CWA permits that limit appendix VII and Land Disposal Restriction constituents associated with the specific wastes.

The Agency further notes that the headworks exemption does not negate the applicability of the Toxicity Characteristic (TC) (40 CFR 261.24) to the wastewater treatment sludge. Therefore, facilities have an additional incentive to reduce loadings of certain toxic constituents into the wastewater treatment system to prevent the sludge from exhibiting the TC.

The Agency considers hazardous substance release reporting under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9603 as an additional regulatory backstop to both of the proposed expansions to the headworks exemption. A release of a hazardous substance in a quantity equal to or greater than the Reportable Quantity (RQs) established for that hazardous substance triggers a requirement to notify the National Response Center of that release. *See* CERCLA section 103 (42 U.S.C. 9603(a)). Congress established an initial RQ for all hazardous substances of one pound (unless a higher RQ already had been established under CWA section 311(b)(4)) until EPA establishes an RQ for the substance by regulation. CERCLA section 102(b) (42 U.S.C. 9602(b)).

In setting RQ's, EPA takes into account the potential hazards posed by the chemicals of concern. The methodology for setting RQs is discussed in the May 25, 1983, **Federal Register** (48 FR 23552). RQs for hazardous substances are found in 40 CFR 302.4.

Similar to the CWA permits, the RQ acts as a protective mechanism discouraging releases of hazardous wastes to the environment by requiring facilities to report chemical releases above a certain threshold. In general, facilities must report releases of hazardous substances immediately to the National Response Center and State or Local Emergency Planning Center, depending on the type of release. While this reporting does not prevent releases, it requires facilities to be accountable for excess releases of hazardous substances when they occur. Because all hazardous wastes also are listed as hazardous substances, discharge of hazardous wastes in a facility's wastewater treatment system that cause a release to the environment above reporting thresholds must be reported to the appropriate authorities. While excess releases of hazardous wastes, such as in an upset or pass-through situation, do not qualify for the *de minimis* exemption, the RQ program, by its reporting requirements, provides an additional tool for minimizing hazardous waste discharges through a wastewater treatment system.

It is important to note that the Agency is not increasing the amount of waste that can be described as a *de minimis* release in this proposal. Moreover, these proposed expansions to the types of waste and facilities eligible for the *de minimis* exemption should not be construed as reducing the scope or application of any hazardous waste listing under 40 CFR 261.31 and 261.32. For example, the F006 listing covers wastewater treatment sludges from electroplating operations. For facilities that normally generate F006 wastes, a release of electroplating wastewaters to the treatment system would *still* result in the generation of F006 wastes. A facility could not use the *de minimis* exemption to claim that it is not generating F006 listed hazardous wastes. Finally, as stated previously, this revised *de minimis* exemption only applies to those wastes not specifically addressed under some other provision of the headworks rule.

As with any exemption from the definition of solid or hazardous waste under §§ 261.2–261.6 (including this *de minimis* exemption), 40 CFR 268.7(a)(7) requires a facility to place a one-time notice concerning waste generation, subsequent exclusion from the definition of hazardous waste or solid waste or exemption from RCRA Subtitle C regulation, and the disposition of the waste, in the facility's on-site files. Generally, such notification, as well as certifications, waste analysis data, and other documentation must be kept for a period of three years unless an enforcement action by the Agency extends the record retention period (§ 268.7(a)(8)).

In light of the limiting conditions and protective regulatory mechanisms we have discussed above, the Agency is proposing to expand the *de minimis* exemption (1) to non-manufacturing facilities, and (2) to wastes listed in 40 CFR 261.31 and 261.32 (F- and K-listed wastes) released in *de minimis* quantities when they meet certain conditions. Specifically, facilities discharging wastewaters (whether manufacturing or non-manufacturing) that are attempting to qualify for this expanded eligibility must have CWA permits under sections 307(b) or 402 that contain limits for the specific chemicals for which each waste was listed (in 40 CFR part 261, appendix VII) as well as hazardous constituents in 40 CFR 268.40 for which each listed waste has a treatment standard under Land Disposal Restrictions or must have eliminated the discharge of wastewaters altogether. The two proposed expansions will be considered independently; the Agency seeks comment as to the adequacy of the limiting conditions in ensuring protection of human health and the environment, the prevalence of facilities meeting the conditions (*e.g.*, having CWA permits that limit the constituents associated with the listed waste), and on the advisability of expanding each part of the exemption.

G. State Authority

Under section 3006 of RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the federal program, and to issue and enforce permits in the State. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally-enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law.

A state may receive authorization by following the approval process described in 40 CFR part 271. Part 271 of 40 CFR also describes the overall standards and requirements for authorization. After a state receives initial authorization, new Federal regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. The state must adopt such requirements to maintain authorization. In contrast, under RCRA section 3006(g), (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized States. Although authorized states still are required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so. Authorized states are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements.

RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program. *See also* 40 CFR 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, either HSWA or non-HSWA, that are considered less stringent.

Today's rule is proposed pursuant to non-HSWA authority. The proposed changes in the conditional exemptions from the definition of hazardous waste under the headworks rule are less stringent than the current Federal requirements. Therefore, States will not be required to adopt and seek authorization for the proposed changes. EPA will implement the changes to the exemptions only in those States which are not authorized for the RCRA program. Nevertheless, EPA believes that this proposed rulemaking has considerable merit, and we thus strongly encourage States to amend their programs and become Federally-authorized to implement these rules once they become final.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is "significant" and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the Agency has determined that today's proposed rule is a significant regulatory action because this proposed rule contains novel policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the docket to today's proposal. EPA's economic analysis suggests that this rule is not economically significant under Executive Order 12866, because EPA estimates that the overall national economic effect of the rule is $11.4 million to $48.6 million in average annual potential cost savings for RCRA regulatory compliance. The following table presents an itemization of EPA's estimated count of affected facilities, affected annual RCRA waste quantities, and estimated annual cost savings for each of the five main features of this proposed rule.

SUMMARY OF ESTIMATED POTENTIAL NATIONAL ECONOMIC IMPACT FROM THE PROPOSED REVISIONS TO THE "HEADWORKS EXEMPTION" OF THE RCRA HAZARDOUS WASTE MIXTURE RULE (40 CFR 261.3(A)(2)(IV) (A) TO (E))

Item	Proposed regulatory revision to "Headworks Exemption"	Count of potentially affected entities (eligible industrial facilities)	Annual quantity of potentially affected (eligible) RCRA hazardous waste (tons/year)	Estimate of average annual economic impact * ($/year)
1	Add two F005 spent solvents (benzene & 2-ethoxyethanol) to the "headworks exemption" for the RCRA hazardous waste mixture rule **.	115 to 1,800	0.036 to 0.594 million tons/year spent solvent (aqueous & non-aqueous & non-aqueous forms).	$0.32 to $5.65 million/year in spent solvent waste management cost savings (netting-out implementation paperwork costs).
2	Provide "headworks exemption" for F001 to F005 spent solvent hazardous waste combustion "scrubber waters".	3 to 9	0.20 to 0.61 million tons/year scrubber wastewater.	$0.53 to $1.58 million/year in scrubber wastewater management cost savings.
3	Allow "direct monitoring" of F001 to F005 spent solvent waste concentrations in headworks influent wastewaters, in lieu of "mass balance" computations.	1,800 to 7,300	1.13 to 4.58 million tons/year spent solvent wastes (aqueous & non-aqueous forms).	$10.09 to $40.88 million/year in spent solvent waste management cost savings.
4	Revise RCRA hazardous waste "de minimis" exemption to include RCRA F- & K-listed wastes.	70	30 tons/year spill incidents.	$0.03 million/year in spill response cost savings.
5	Revise RCRA hazardous waste "de minimis" exemption to include non-manufacting facilities.	1,270	570 tons/year spill incidents.	0.48 million/year in spill response cost savings.
	Column totals	3,300 to 10,400	1.37 to 5.78 million tons/year.	$11.4 to 48.6 million/year cost savings.

* Economic impact based on year 2000 price levels for waste management systems.
** Hypothetical expansion of the RCRA "headworks exemption" to include all four chemical solvents examined in the proposed rule, would only result in addition of one wastestream, at an additional annual cost savings of about $19,000 (consisting of 17,000 tons/year aqueous spent solvent).

A detailed presentation of EPA's methodology, data sources, and computations applied for estimating the number of affected entities (industrial facilities) and economic impacts attributable to today's proposal is provided in the "Economic Background Document" to this proposal.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1189.12). A copy of this ICR may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Avenue, NW., Washington DC 20460, or by calling (202) 566–1672, and by e-mail at *auby.susan@epamail.epa.gov*. A copy also may be downloaded off the Internet at *http://www.epa.gov/icr*.

EPA proposes the following conditions for reporting and recordkeeping by generators: The rule requires generators wanting to demonstrate compliance with the headworks rule through direct monitoring to submit a one-time copy of their sampling plan to the EPA Regional Administrator (or the state Director in an authorized state) and to maintain all records concerning such direct monitoring for a minimum of three years. The sampling plan requirements for the direct monitoring will be site-specific. As with all other exemptions and exclusions from the definition of hazardous waste, a facility is required under 40 CFR 268.7(a)(7) to place a one-time notice concerning waste generation, subsequent exclusion from the definition of hazardous waste or solid waste or exemption from RCRA Subtitle C regulation, and the disposition of the waste, in the facility's on-site files. Generally, such notification, as well as certifications, waste analysis data, and other documentation must be kept for a period of three years, unless an enforcement action by the Agency extends the record retention period (§ 268.7(a)(8)).

EPA estimates that the total annual respondent burden for the new paperwork requirements in the rule is approximately 16,564 hours per year and the annual respondent cost for the new paperwork requirements in the rule is approximately $15 million. However, in addition to the new paperwork requirements in the rule, EPA also estimated the burden and cost that generators could expect as a result of complying with the existing RCRA hazardous waste information collection requirements for the excluded materials. Because the addition of benzene and 2-ethoxyethanol would increase the number of facilities that participate in the existing headworks exemptions (and the greater possibility of using directly monitoring), EPA expects there would be both a reduction in some paperwork requirements (*i.e.*, preparation of hazardous waste manifests and Biennial Reports) and an increase in other paperwork requirements (*i.e.*, demonstrating compliance by using mass balance and submitting a one-time LDR notification under 40 CFR 268.7(a)(7)). Taking both proposed and existing RCRA requirements into account, EPA expects the proposed expansions would result in a bottom line total annual aggregate burden of approximately 19,315 hours and $15.1 million. This cost is expected to be offset by costs savings from reduced waste management costs (*see* section IV.B) with a net cost *savings* of $11.4–48.6 million. The net cost to EPA of administering the rule was estimated at approximately 942 hours and $39,250 per year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has fewer than 1000 or 100 employees per firm depending upon the SIC code the firm primarily is classified; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I hereby certify that this proposal will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on small entities subject to the rule. For more information regarding the economic impact of this proposed rule, please refer to the economic background document to this proposal.

We have therefore concluded that today's proposed rule will relieve regulatory burden for small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local; and tribal governments and the private sector. Under section 202 of the UMRA, EPA must prepare a written analysis, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the

Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials to have meaningful and timely input in the development of regulatory proposals, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any one year. This is because this proposed rule imposes no enforceable duty on any State, local, or tribal governments. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. Therefore, today's proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposal does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule directly affects primarily generators of hazardous wastewaters containing spent solvents, generators of scrubber waters derived from the incineration of spent solvents, and generators releasing *de minimis* amounts of listed wastes under certain conditions. There are no State and local government bodies that incur direct compliance costs by this rulemaking. State and local government implementation expenditures are expected to be less than $500,000 in any one year. Thus, the requirements of section 6 of the Executive Order do not apply to this proposal.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) is "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposal is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule reduces regulatory burden. It thus should not adversely affect energy supply, distribution or use.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule would allow facilities to demonstrate compliance using available and applicable sampling methods sufficient to establish compliance with the appropriate weekly standard.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Waste treatment and disposal.

Dated: March 26, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.3 is amended by revising paragraphs (a)(2)(iv)(A), (B), (D), (F) and (G) to read as follows:

§ 261.3 Definition of hazardous waste.

(a) * * *

(2) * * *

(iv) * * *

(A) One or more of the following spent solvents listed in § 261.31—benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene—*Provided,* That the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million, or the total measured concentration of these solvents entering the wastewater treatment system (at facilities subject to regulation under the Clean Air Act, as amended, at 40 CFR parts 60, 61, or 63), does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption must use an aerated biological wastewater treatment system and must use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Regional Administrator, or State Director, as the context requires, or an authorized representative ("Director" as defined in 40 CFR 270.2). The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the sampling and analysis plan is rejected or if the Director finds that the facility is not following the sampling and analysis plan, the facility must no longer use the direct monitoring option until such time as the bases for rejection are corrected; or

(B) One or more of the following spent solvents listed in § 261.31—methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, and 2-ethoxyethanol—*Provided That* the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million, OR the total measured concentration of these solvents entering the wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63), does not exceed 25 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Regional Administrator, or State Director, as the context requires, or an authorized representative ("Director" as defined in 40 CFR 270.2). The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the sampling and analysis plan is rejected or if the Director finds that the facility is not following the sampling and analysis plan, the facility must no longer use the direct monitoring option until such time as the bases for rejection are corrected; or

* * * * *

(D) A discarded hazardous waste, commercial chemical product, or chemical intermediate listed in §§ 261.31 through 261.33, arising from *de minimis* losses of these materials. For purposes of this paragraph (a)(2)(iv)(D), *de minimis* losses are unscheduled, uncontrollable, insignificant, and inadvertent releases to a wastewater treatment system, including those from normal material handling operations (*e.g.*, spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for *de minimis* quantities of wastes listed in §§ 261.31 through 261.32, or any non-manufacturing facility that claims an exemption for *de minimis* quantities of wastes listed in subpart D of this part must either have eliminated the discharge of wastewaters or have a permit subject to the Clean Water Act that contains limits for, the constituents for which each waste was listed (in 40 CFR 261 appendix VII) of this part; and the constituents in the table "Treatment Standards for Hazardous Wastes" in 40 CFR 268.40 for which each waste has a treatment standard (*i.e.*, Land Disposal Restriction constituents); or

* * * * *

(F) One or more of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—*Provided* that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, *i.e.*, what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilution into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight OR the total measured concentration of these chemicals entering the wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63), does not exceed 5 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Regional Administrator, or State Director, as the context requires, or an authorized representative ("Director" as defined in 40 CFR 270.2). The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals

accurately. If the sampling and analysis plan is rejected or if the Director finds that the facility is not following the sampling and analysis plan, the facility must no longer use the direct monitoring option until such time as the bases for rejection are corrected; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in § 261.32—organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156).—*Provided,* that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter OR the total measured concentration of these chemicals entering the wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63), does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Regional Administrator, or State Director, as the context requires, or an authorized representative ("Director" as defined in 40 CFR 270.2). The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the sampling and analysis plan is rejected or if the Director finds that the facility is not following the sampling and analysis plan, the facility must no longer use the direct monitoring option until such time as the bases for rejection are corrected.

* * * * *

[FR Doc. 03–8154 Filed 4–7–03; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Tuesday,
April 8, 2003

Part IV

Department of Housing and Urban Development

Notice Concerning Release of Certain Loan-Level Data on Ginnie Mae Mortgage-Backed Securities; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4810–N–01]

Notice Concerning Release of Certain Loan-Level Data on Ginnie Mae Mortgage-Backed Securities

AGENCY: The Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: This proposed notice announces the intent of Ginnie Mae, a Government corporation within the Department of Housing and Urban Development (HUD), to make certain loan-level data available to the public on Ginnie Mae multifamily securities, and invites public comments on this policy. This notice also invites comments regarding the impact of releasing specific loan-level information.

DATES: *Comment due date:* May 8, 2003.

ADDRESSES: Interested persons are invited to submit comments and responses to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) responses are not accepted.

FOR FURTHER INFORMATION CONTACT: Paulette M. Griffin, Director, Multifamily Programs Division, Office of Mortgage-Backed Securities, Room 6216, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2043 (this is not a toll free number). Speech-or hearing-impaired individuals may access this number via TTY by calling the toll free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Government National Mortgage Association (Ginnie Mae), a corporation that is wholly owned by the federal government, was created in 1968 to assist in the movement of funds from capital market investors to the housing market. Ginnie Mae guarantees the timely payment of principal and interest on single family, multifamily, and multiclass mortgage-backed securities issued by private institutions. The securities are backed by pools of mortgage loans that are insured or guaranteed by the Federal Housing Administration, the Department of Veterans Affairs, the Rural Housing Service, and the Secretary of Housing and Urban Development under section 184 of the Housing and Community Development Act of 1992.

In order to achieve a fair and open market in Ginnie Mae-guaranteed multifamily securities, the investing public, the securities industry, and issuers/servicers of those securities have asked Ginnie Mae to make delinquency information available to the public on the multifamily loans that back Ginnie Mae securities. Ginnie Mae proposes to make this information available to the public. Presently, issuers/servicers are free to disclose this information to the public, but there is no requirement that they do so. Some issuers/servicers disclose this information; others do not, and still other issuers/servicers selectively disclose the loan information. Unless this information is publicly available, investors may use less favorable assumptions when pricing multifamily Ginnie Mae securities. Making this multifamily loan information available to investors should lead to greater investor confidence and more accurate pricing on these securities. This could decrease the cost of borrowing to finance apartment buildings, and thus decrease the rents of low- and moderate-income families that live in those buildings.

The Department of Justice has advised HUD that, in the case of numerous information submitters, disclosure by an agency is permitted after publication of the agency's intent to release such information in a manner calculated to provide notice and afford affected parties an opportunity to comment. This procedure serves as notice to the public and provides an opportunity to comment. HUD first used this procedure in connection with disclosure of past note sale bids by publication in the **Federal Register** and the Commerce Business Daily. *See* 63 FR 36255 (July 2, 1998) and CBDNet Submission No. 230722 (July 30, 1998). Following this procedure, Ginnie Mae is publishing this notice of Ginnie Mae's intent to make this information available to the public.

Ginnie Mae invites interested persons to submit their comments regarding this proposed policy. Ginnie Mae is also interested in receiving comments from Ginnie Mae submitters and investors. Commenters are asked to provide Ginnie Mae with a detailed written statement of their objections, if any, to release of the information. Such statement shall specify all grounds for withholding the information and shall specifically demonstrate why the information is a trade secret or commercial or financial information that is privileged or confidential. If a commenter maintains that disclosure would cause competitive harm, for example, the statement should show that disclosure would reasonably be expected to cause such harm. Conclusory statements that the information would be useful to competitors or similar conclusory statements generally will not be considered sufficient to justify confidential treatment.

At the conclusion of the comment period, Ginnie Mae will consider all comments and determine whether further changes should be made to this policy as a result of the issues raised by commenters. A final Notice will be published in the **Federal Register** that, if necessary, will set forth changes to the policy announced in this Notice, or that will adopt this policy without change.

Ginnie Mae will also carefully consider comments and objections before determining whether to disclose specific delinquency information. If Ginnie Mae decides to disclose the information over the objections of a submitter, Ginnie Mae will advise the submitter in a written notice of its intent to disclose the information 10 business days before the specified disclosure date.

Authority: 12 U.S.C. 1721(g); 5 U.S.C. 552; 24 CFR 15.108(c); E.O. 12600.

Dated: March 31, 2003.

Ronald Rosenfeld,

President, Government National Mortgage Association.

[FR Doc. 03–8551 Filed 4–7–03; 8:45 am]

BILLING CODE 4210–66–U

Reader Aids

Federal Register

Vol. 68, No. 67

Tuesday, April 8, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, APRIL

15653–15920	1
15921–16164	2
16165–16402	3
16403–16714	4
16715–16942	7
16943–17252	8

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7657 15921
7658 16403

Executive Orders:
10448 (Amended by 13293) 15917
11157 (Revoked by 13294) 15919
11800 (Revoked by 13294) 15919
13293 15917
13294 15919

Administrative Orders:
Presidential Determinations:
No. 2003–18 of March 24, 2003 16165
No. 2003–19 of March 24, 2003 16167

5 CFR

5201 16398

Proposed Rules:
1600 16449
1605 16449
1606 16449
1655 16449

7 CFR

25 16169
718 16170
723 16170
923 15923
989 15926
1412 16170
1413 16170
1940 17153

Proposed Rules:
930 15971

9 CFR

71 16922
92 16922
93 16922
94 ..... 15932, 16922
98 16922
130 16922

Proposed Rules:
77 16733

10 CFR

Proposed Rules:
170 16374
171 16374

11 CFR

110 16715

12 CFR

226 16185
1730 16715

Proposed Rules:
702 16450
704 16450
712 16450
723 16450

13 CFR

Proposed Rules:
121 15971

14 CFR

1 16943
39 ..... 15653, 15937, 16190, 16192, 16195, 16198, 16200, 16203, 16205, 16948
71 ..... 16207, 16351, 16409, 16410, 16943, 16950, 16951, 16952, 17153
95 16943
93 15657
97 ..... 16411, 16412, 16943
121 15884
125 15884
129 15884

Proposed Rules:
1 16992
21 16217
25 16458
39 ..... 15682, 15684, 15687, 16220, 16222, 16225, 16458, 16735, 16736
71 ..... 16227, 16229, 16230, 16992
91 16992
95 16992
97 16992
121 16992
125 16992
129 16992
135 16992

15 CFR

740 ..... 16144, 16208
742 ..... 16144, 16208
762 16208
774 ..... 16144, 16208

Proposed Rules:
911 16993

16 CFR

Proposed Rules:
305 16231
310 ..... 16238, 16414

17 CFR

228 15939
229 15939
244 15939
249 15939

Proposed Rules:
240 15688

20 CFR
404.....15658
408.....16415

21 CFR
1308.....16427
Proposed Rules:
1.....16998
10.....16461

24 CFR
Proposed Rules:
202.....15906
902.....16461
1000.....17000

26 CFR
1 .....15940, 16430, 17002
40.....15940
48.....15940
49.....15940
301.....16351
602.....15940, 15942
Proposed Rules:
1.....15801, 16462
49.....15690

28 CFR
2.....16718
Proposed Rules:
2.....16743

29 CFR
70.....16398
71.....16398
96.....16162
99.....16162
2509.....16399
2510.....16399
2520.....16399
2550.....16399
2560.....16399
2570.....16399
2575.....16399
2582.....16399
2584.....16399
2589.....16399
2590.....16399

30 CFR
Proposed Rules:
70.....15691
72.....15691
75.....15691
90.....15691

31 CFR
800.....16720

32 CFR
Proposed Rules:
199.....16247
312.....16249
806b.....16746

33 CFR
Ch. 1 16953
117 .....15943, 16721, 16953
165.....16955
Proposed Rules:
110.....15691
165.....15694

36 CFR
7.....16432

37 CFR
201.....16958
Proposed Rules:
201.....15972

38 CFR
1.....15659

40 CFR
9.....16708
46.....16708
52 .....15661, 15664, 16721, 16724, 16726, 16959
61.....16726
82.....16728, 16729
180 .....15945, 15958, 15963, 16436
Proposed Rules:
Ch. 1 16747
52 .....15696, 16644, 16748, 17002
82.....16749
261.....17234

41 CFR
Ch. 101 16730

42 CFR
422.....16652
489.....16652
Proposed Rules:
440.....15973

43 CFR
10.....16354
423.....16214

44 CFR
Ch.1 15666
61.....15666
64.....15967

45 CFR
164.....17153
2506.....16437

46 CFR
Ch. 1 16953
Ch. 3 16953
Proposed Rules:
401.....15697
530.....15978
540.....17003

47 CFR
2.....16962
21.....16962
25.....16446, 16962
54.....15669
73.....16730, 16968
74.....16962
78.....16962
101.....16962
Proposed Rules:
64.....16250
73.....16750, 16968

48 CFR
1847.....16969
1852.....16969
Proposed Rules:
2.....16366
4.....16366
13.....16366
32.....16366
52.....16366

49 CFR
Ch. 4 16953
1.....16215
533.....16868
665.....15672
Proposed Rules:
172.....16751
173.....16751
174.....16751
175.....16751
176.....16751
177.....16751
178.....16751
266.....16753

50 CFR
17 .....15804, 16970, 17156
224.....15674
230.....15680
635.....16216
648.....16731
679.....15969, 16990
697.....16732
Proposed Rules:
17 .....15876, 15879, 16602
600.....17004, 17005
660.....16754

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 8, 2003

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Various States; published 4-8-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 3-4-03
Bombardier; published 3-4-03
Dowty Aerospace Propellers; published 3-4-03
Fokker; published 3-4-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing, and standards:
Classification services to growers; 2003 user fees; comments due by 4-15-03; published 3-31-03 [FR 03-07631]
Cotton research and promotion order:
Cotton Board rules and regulations; amendments; comments due by 4-14-03; published 3-14-03 [FR 03-06164]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Exotic Newcastle disease; quarantine area designations—
Arizona; comments due by 4-15-03; published 2-14-03 [FR 03-03685]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Magnuson-Stevens Act provisions—
National standard guidelines; revision; comments due by 4-16-03; published 3-3-03 [FR 03-04886]

COMMODITY FUTURES TRADING COMMISSION
Commodity pool operators and commodity trading advisors:
Commodity trading advisors; performance data and disclosure; comments due by 4-14-03; published 3-13-03 [FR 03-06081]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Cost-reimbursement contracts; payment bonds; comments due by 4-15-03; published 2-14-03 [FR 03-03575]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Fish, shellfish, and seafood products; comments due by 4-15-03; published 2-14-03 [FR 03-03574]
Security-guard functions; contractor performance; comments due by 4-15-03; published 2-14-03 [FR 03-03577]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Vessel repair and alteration contracts; loss liability; comments due by 4-15-03; published 2-14-03 [FR 03-03576]

DEFENSE DEPARTMENT
Engineers Corps
Water pollution control:
Clean Water Act—
Waters of United States; definition; comments due by 4-16-03; published 2-28-03 [FR 03-04768]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New York; comments due by 4-14-03; published 3-13-03 [FR 03-05908]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New York; comments due by 4-14-03; published 3-13-03 [FR 03-05909]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Kentucky; comments due by 4-18-03; published 3-19-03 [FR 03-06584]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Missouri; comments due by 4-17-03; published 3-18-03 [FR 03-06311]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Missouri; comments due by 4-17-03; published 3-18-03 [FR 03-06312]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Missouri; comments due by 4-17-03; published 3-18-03 [FR 03-06309]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Missouri; comments due by 4-17-03; published 3-18-03 [FR 03-06310]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Missouri; comments due by 4-17-03; published 3-18-03 [FR 03-06307]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Missouri; comments due by 4-17-03; published 3-18-03 [FR 03-06308]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Missouri; comments due by 4-17-03; published 3-18-03 [FR 03-06305]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Missouri; comments due by 4-17-03; published 3-18-03 [FR 03-06306]
Hazardous waste program authorizations:
Virginia; comments due by 4-14-03; published 3-13-03 [FR 03-06110]

ENVIRONMENTAL PROTECTION AGENCY
Hazardous waste program authorizations:
Virginia; comments due by 4-14-03; published 3-13-03 [FR 03-06109]

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Methoprene, etc.; comments due by 4-14-03; published 2-12-03 [FR 03-03236]
Water pollution control:
Clean Water Act—
Waters of United States; definition; comments due by 4-16-03; published 2-28-03 [FR 03-04768]

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Federal-State Joint Board on Universal Service—
Universal services; definition; comments due by 4-14-03; published 3-13-03 [FR 03-06092]
Radio frequency devices:
Advanced wireless service; comments due by 4-14-03; published 3-13-03 [FR 03-06038]
Television broadcasting:
Digital television conversion; transition issues; comments due by 4-14-03; published 2-18-03 [FR 03-03812]

GENERAL SERVICES ADMINISTRATION
Acquisition regulations:
Industrial funding fee and sales reporting clauses; consolidation and fee reduction; comments due by 4-17-03; published 3-18-03 [FR 03-06458]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
Vaginal contraceptive products (OTC) containing

nonoxynol 9; labeling requirements; comments due by 4-16-03; published 1-16-03 [FR 03-00902]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Virginia; comments due by 4-14-03; published 2-12-03 [FR 03-03458]
Ports and waterways safety:
Columbia River, Vancouver, WA; safety zone; comments due by 4-15-03; published 2-14-03 [FR 03-03605]
San Diego Bay, CA; security zones; comments due by 4-14-03; published 2-11-03 [FR 03-03263]
Tampa Bay Captain of Port Zone, FL; security zones; comments due by 4-14-03; published 2-12-03 [FR 03-03460]

HOMELAND SECURITY DEPARTMENT
Federal Emergency Management Agency
Disaster assistance:
Federal assistance to individuals and households; comments due by 4-15-03; published 9-30-02 [FR 02-24733]
National Flood Insurance Program:
Group flood insurance policy; comments due by 4-15-03; published 9-30-02 [FR 02-24734]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Canada lynx; contiguous U.S. distinct population segment; comments due by 4-16-03; published 3-17-03 [FR 03-06291]

INTERIOR DEPARTMENT
Minerals Management Service
Royalty management:
Federal geothermal resources; discussions for developing consensus on royalty valuation

approaches; comments due by 4-16-03; published 3-17-03 [FR 03-06254]
Oil value for royalties due on Indian leases; establishment; comments due by 4-14-03; published 2-12-03 [FR 03-03466]

PENSION BENEFIT GUARANTY CORPORATION
Government Paperwork Elimination Act; implementation:
Electronic transactions; removal of regulatory impedments to filings, issuances, computation of time, and electronic record retention; comments due by 4-15-03; published 2-14-03 [FR 03-03081]

SECURITIES AND EXCHANGE COMMISSION
Investment advisers and investment companies:
Compliance programs; comments due by 4-18-03; published 2-11-03 [FR 03-03315]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Transponder continuous operation; comments due by 4-18-03; published 3-18-03 [FR 03-06511]
Air traffic operating and flight rules, etc.:
Reduced vertical separation minimum in domestic U.S. airspace; comments due by 4-14-03; published 2-28-03 [FR 03-04765]
Airworthiness directives:
BAE Systems (Operations) Ltd.; comments due by 4-16-03; published 3-17-03 [FR 03-06260]
Boeing; comments due by 4-17-03; published 3-3-03 [FR 03-04842]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Dassault; comments due by 4-17-03; published 3-18-03 [FR 03-06261]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Empresa Basileira de Aeronautica S.A. (EMBRAER); comments due by 4-16-03; published 3-17-03 [FR 03-06259]
Eurocopter France; comments due by 4-15-03; published 2-14-03 [FR 03-03774]
McDonnell Douglas; comments due by 4-14-03; published 2-27-03 [FR 03-04587]
Turbomeca S.A.; comments due by 4-14-03; published 2-12-03 [FR 03-03473]
Class E airspace; comments due by 4-16-03; published 3-17-03 [FR 03-06334]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—
Adaptive frontal-lighting systems; comments due by 4-14-03; published 2-12-03 [FR 03-03505]

TRANSPORTATION DEPARTMENT
Saint Lawrence Seaway Development Corporation
Seaway regulations and rules:
Tariff of tolls; comments due by 4-16-03; published 3-17-03 [FR 03-06347]

TREASURY DEPARTMENT
Disclosure of records:
Legal proceedings; access to information and records; clarification; comments due by 4-16-03; published 3-17-03 [FR 03-06247]

VETERANS AFFAIRS DEPARTMENT
Disabilities rating schedule:
Musculoskeletal system; comments due by 4-14-03; published 2-11-03 [FR 03-02119]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 395/P.L. 108–10

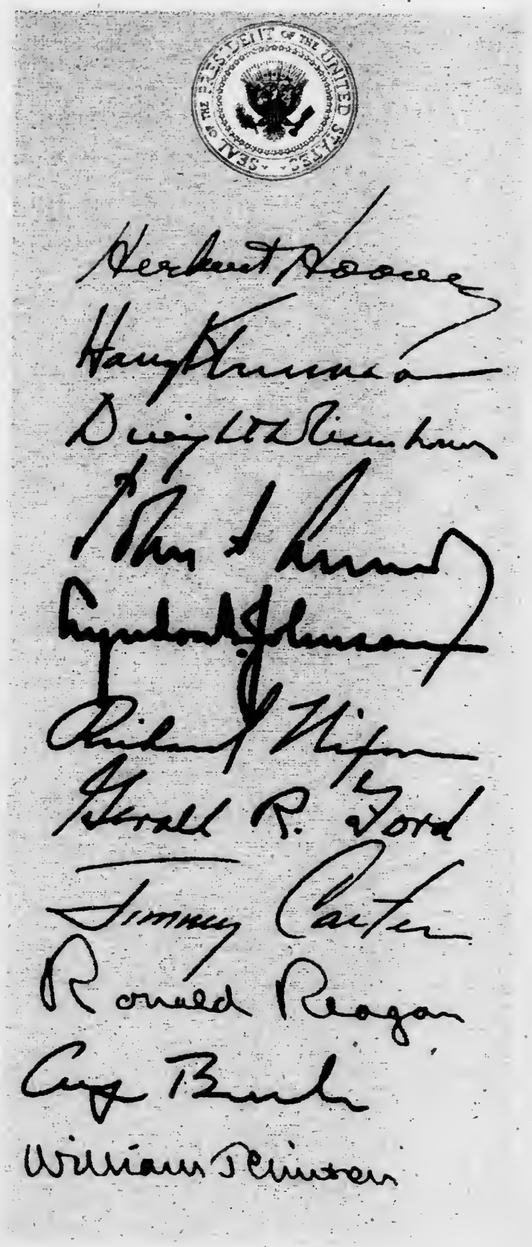
Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

Last List March 10, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.



Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	**$51.00**
1993 (Book II)	**$51.00**
1994 (Book I)	**$56.00**
1994 (Book II)	**$52.00**
1995 (Book I)	**$60.00**
1995 (Book II)	**$65.00**
1996 (Book I)	**$66.00**
1996 (Book II)	**$72.00**
1997 (Book I)	**$69.00**
1997 (Book II)	**$78.00**
1998 (Book I)	**$74.00**
1998 (Book II)	**$75.00**
1999 (Book I)	**$71.00**
1999 (Book II)	**$75.00**
2000–2001 (Book I)	**$68.50**
2000–2001 (Book II)	**$63.00**
2000–2001 (Book III)	**$75.00**

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA (Rev. 5/02)

Order Now!

The United States Government Manual 2002/2003

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.



$49 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS ✦ PERIODICALS ✦ ELECTRONIC PRODUCTS

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
***7917**

☐ **YES**, please send me ——— copies of **The United States Government Manual** 2002/2003,
S/N 069–000–00145–9 at $49 ($68.60 foreign) each.

Total cost of my order is $ ———. **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

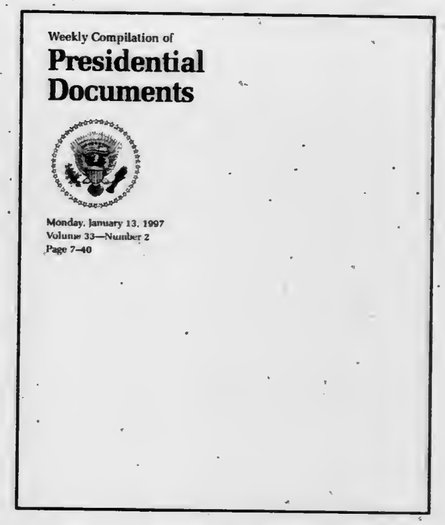
Thank you for your order!

Authorizing signature 9/02

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**


Weekly Compilation of
Presidential Documents

Monday, January 13, 1997
Volume 33—Number 2
Page 7–40

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5420**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $151.00 First Class Mail ☐ $92.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 4/00

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Would you like to know. . .

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $35 per year.

Federal Register Index

The Index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $30 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.



Superintendent of Documents **Subscription** Order Form

Order Processing Code:
* 5421

☐ **YES**, enter the following indicated subscriptions for one year:

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ **LSA (List of CFR Sections Affected)**, (LCS) for $35 per year.
_____ **Federal Register Index** (FRUS) $30 per year.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AER SMITH212J                DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFRDO SMITH212J              DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
* 5468

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $764 each per year.
_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $699 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling,** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

108th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 108th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara1/nara005.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

____ subscriptions to **PUBLIC LAWS** for the 108th Congress for $285 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 2/03

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

OL
68
SS
67
AP
8
03
MI



Printed on recycled paper

VOL
68
ISS
68
AP
9
003
UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.



Federal Register

4–9–01 Wednesday
Vol. 68 No. 68 Apr. 9, 2003

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
68

ISS
68

AP
9

003

MI



Federal Register

4–9–03 Wednesday
Vol. 68 No. 68 Apr. 9, 2003
Pages 17253–17528

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 202–512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 202–512–1800
Assistance with public single copies 1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES
Subscriptions:
Paper or fiche 202–741–6005
Assistance with Federal agency subscriptions 202–741–6005

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register
Vol. 68, No. 68
Wednesday, April 9, 2003

Agricultural Marketing Service
RULES
Nectarines and peaches grown in—
California, 17257–17267
Prunes (dried) produced in—
California, 17267–17272
PROPOSED RULES
Onions (sweet) grown in—
Washington and Oregon, 17325–17327

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Farm Service Agency
See Forest Service
See National Agricultural Statistics Service
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Viruses, serums, toxins, etc.:
Veterinary biological products; actions by licensees and permitees to stop preparation, distribution, sale, etc., 17327–17330
NOTICES
Meetings:
National Wildlife Services Advisory Committee, 17335
Viruses, serums, toxins, etc.:
Patent term extension; regulatory review period determinations—
Poulvac ST Vaccine, 17335–17336

Census Bureau
NOTICES
Meetings:
Census Advisory Committees, 17342

Coast Guard
RULES
Ports and waterways safety:
Tampa Bay et al., FL; security zones
Correction, 17291–17292

Commerce Department
See Census Bureau
See Economic Development Administration
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
See Patent and Trademark Office

Commodity Credit Corporation
RULES
Loan and purchase programs:
Agricultural Management Assistance Program, 17272–17276
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17336–17338

Defense Department
See Navy Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17356–17357
Health Information Privacy Program:
Protected health information; appropriate uses and disclosures, 17357–17358
Privacy Act:
Systems of records, 17358–17359

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
AccuStandard, Inc., 17402
Boehringer Ingelheim Chemicals, Inc., 17402–17403
Church of the Living Tree, 17403–17405
Dade Behring Inc., 17405–17406
Harris, James, E., P.A., 17406
Island Wholesale, Inc., 17406–17407
Penick Corp.; correction, 17407–17408
Siegfried (USA), Inc., 17408

Economic Development Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Economic development assistance programs, 17519–17528

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17359–17361

Employee Benefits Security Administration
RULES
Employee Retirement Income Security Act:
Civil penalties; assessment, 17502–17506
Administrative hearing procedures, 17505–17511
Medical care to employees of two or more employers; multiple employer welfare arrangements and other entities providing coverage; reporting requirements, 17493–17503
Section 3(40) collective bargaining agreements—
Plans established or maintained, 17471–17484
Plans established or maintained; administrative hearing procedures, 17483–17491

Employment and Training Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17410–17411

Energy Department
See Energy Efficiency and Renewable Energy Office
NOTICES
Electricity export and import authorizations, permits, etc.:
Direct Commodities Trading Inc., 17361

Energy Efficiency and Renewable Energy Office
NOTICES
Consumer products; energy conservation program:
Representative average unit costs of energy sources—
Electricity, natural gas, heating oil, propane, and kerosene, 17361–17363

Environmental Protection Agency
RULES
Hazardous waste program authorizations:
Oklahoma, 17308–17311
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Decanoic acid
Correction, 17307–17308
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Indiana, 17331–17332
Hazardous waste program authorizations:
Oklahoma, 17332–17333
NOTICES
Confidential business information and data transfer, 17363–17365
Meetings:
Air quality criteria; ozone and related photochemical oxidants; peer-review workshop, 17365
National Drinking Water Advisory Council, 17365–17366
Pesticide registration, cancellation, etc.:
Chromated copper arsenate wood preservative products, 17366–17372
Plant Products Co. Ltd., 17372–17374
Pesticides; experimental use permits, etc.:
Great Lakes Fishery Commission, 17374–17377
Superfund program:
Prospective lessee agreements—
Allied-Signal Property, MD, 17377–17378
Toxic and hazardous substances control:
Lead-based paint activities in target housing and child-occupied facilities; State and Indian Tribe authorization applications—
North Dakota, 17378–17379
Water pollution control:
Clean Water Act—
Sewage sludge; use and disposal; regulatory review; comment request, 17379–17395

Executive Office of the President
See Presidential Documents

Farm Service Agency
PROPOSED RULES
Special programs:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions, 17316–17320
Minor Program loans, 17320–17325
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17337–17338

Federal Aviation Administration
RULES
Air carrier certification and operations:
Flightcrew compartment access and door designs, 17513–17517

Federal Communications Commission
RULES
Television broadcasting:
Cable television systems—
Markets definition for purposes of broadcast signal carriage rules; correction, 17312
NOTICES
Radio broadcasting:
Equal Employment Opportunity rules and policies—
EEO public file reports; placement requirement, 17395–17396
Rulemaking proceedings; petitions filed, granted, denied, etc., 17396

Federal Maritime Commission
NOTICES
Agreements filed, etc., 17396
Ocean transportation intermediary licenses:
Pacific Atlantic Lines, Inc., et al., 17396–17397

Federal Reserve System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17397–17398
Banks and bank holding companies:
Change in bank control, 17398
Formations, acquisitions, and mergers, 17398
Permissible nonbanking activities, 17399

Fish and Wildlife Service
RULES
Endangered and threatened species:
Critical habitat designations—
Kauai cave wolf spider and amphipod, 17429–17470
Gray wolf
Correction, 17428

Food and Drug Administration
RULES
Food additives:
Pentaerythritol ester of partially hydrogenated gum or wood rosin; CFR correction, 17277

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
California, 17342–17343

Forest Service
NOTICES
Appealable decisions; legal notice:
Intermountain Region, 17338–17340
Environmental statements; notice of intent:
Bridger-Teton National Forest, WY, 17340–17341
Meetings:
Resource Advisory Committees—
Grays Harbor, 17341
Olympic Peninsula, 17341

General Services Administration
NOTICES
Public buildings space:
Federal buildings; redesignation, 17399

Health and Human Services Department
See Food and Drug Administration

Homeland Security Department
See Coast Guard

Interior Department
See Fish and Wildlife Service
See National Park Service

Internal Revenue Service
RULES
Excise taxes:
Pension excise taxes; future benefit accrual rate; significant reduction, 17277–17291
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17424–17425
Committees; establishment, renewal, termination, etc.:
Electronic Tax Administration Advisory Committee, 17425–17426
Inflation adjustment factor and reference prices:
Nonconventional source fuel credit, 17426
Meetings:
Taxpayer Advocacy Panels, 17426–17427

International Trade Administration
NOTICES
Antidumping:
Bulk aspirin from—
China, 17343–17346
Countervailing duties:
Pasta from—
Italy, 17346–17350

International Trade Commission
NOTICES
Import investigations:
Power amplifier chips, broadband tuner chips, transceiver chips, and products containing same; correction, 17399

Justice Department
See Drug Enforcement Administration
See Justice Programs Office
NOTICES
Pollution control; consent judgments:
BD Oil Gathering, Inc., 17399–17400
Colonial Pipeline Co., 17400
Puerto Rico Aqueduct & Sewer Authority, et al., 17400–17401
Privacy Act:
Systems of records, 17401–17402

Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17408
Meetings:
Violence Against Women National Advisory Committee, 17409

Labor Department
See Employee Benefits Security Administration
See Employment and Training Administration
See Labor Statistics Bureau

Labor Statistics Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17411

National Aeronautics and Space Administration
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Automated Control Technologies, Inc., 17412
Bombardier Motor Corporation of America, 17412

National Agricultural Statistics Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Agricultural Statistics Advisory Committee, 17341–17342

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
American Fisheries Act; implementation; correction, 17314
PROPOSED RULES
Fishery conservation and management:
Magnuson-Stevens Act provisions—
Domestic fishing; general provisions, 17333–17334
NOTICES
Marine mammals:
Incidental taking—
Vandenberg Air Force Base, CA; harbor activities related to Delta IV/Evolved Expendable Launch Vehicle; pinnipeds, 17351–17354

National Park Service
RULES
Special regulations:
Lake Mead National Recreation Area, NV and AZ; personal watercraft use, 17292–17307

National Telecommunications and Information Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Pan-Pacific Education and Communication Experiments by Satellite Program, 17354–17356

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 17359

Nuclear Regulatory Commission
NOTICES
Meetings:
Nuclear Waste Advisory Committee, 17414–17415
Applications, hearings, determinations, etc.:
Entergy Nuclear Operations, Inc., 17412–17414
United States Enrichment Corp., 17414

Patent and Trademark Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17356

Personnel Management Office
PROPOSED RULES
Group life insurance; Federal employees:
Premium rates and age bands, 17315–17316

Presidential Documents
PROCLAMATIONS
Special observances:
National Crime Victims' Rights Week (Proc. 7659), 17253–17254
EXECUTIVE ORDERS
Quarantinable communicable diseases, revised list (EO 13295), 17255

Railroad Retirement Board
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17415–17416

Rural Business-Cooperative Service
PROPOSED RULES
Program regulations:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions, 17316–17320
Minor Program loans, 17320–17325

Rural Housing Service
PROPOSED RULES
Program regulations:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions, 17316–17320
Minor Program loans, 17320–17325

Rural Utilities Service
PROPOSED RULES
Program regulations:
Farm Security and Rural Investment Act of 2002; implementation—
Loan eligibility provisions, 17316–17320
Minor Program loans, 17320–17325

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17416
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 17416–17418
National Association of Securities Dealers, Inc., 17418–17420
Pacific Exchange, Inc., 17420–17422

Small Business Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17422–17423
Disaster loan areas:
West Virginia, 17423

Social Security Administration
NOTICES
Meetings:
Ticket to Work and Work Incentives Advisory Panel, 17423

Statistical Reporting Service
See National Agricultural Statistics Service

Surface Transportation Board
RULES
Practice and procedure:
Rate challenges; expedited resolution under stand-alone cost methodology, 17312–17314

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 17429–17470

Part III
Labor Department, Employee Benefits Security Administration, 17471–17491

Part IV
Labor Department, Employee Benefits Security Administration, 17493–17511

Part V
Transportation Department, Federal Aviation Administration, 17513–17517

Part VI
Commerce Department, Economic Development Administration, 17519–17528

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7659.....17253
Executive Orders:
12452 (Revoked by 13295).....17255
13295.....17255

5 CFR
Proposed Rules:
870.....17315

7 CFR
916.....17257
917.....17257
993.....17267
1465.....17272
Proposed Rules:
762.....17316
772.....17320
956.....17325
1901.....17320
1941.....17316
1943.....17316
1951 (2 documents).....17316, 17320

9 CFR
Proposed Rules:
105.....17327
115.....17327

14 CFR
121.....17514

21 CFR
172.....17277

26 CFR
1.....17277
54.....17277
602.....17277

29 CFR
2510.....17472
2520.....17494
2560.....17503
2570 (2 documents).....17484, 17506

33 CFR
165.....17291

36 CFR
7.....17292

40 CFR
180.....17307
271.....17308
Proposed Rules:
52.....17331
271.....17332

47 CFR
76.....17312

49 CFR
1109.....17312
1111.....17312
1114.....17312

50 CFR
17 (2 documents).....17428, 17430
679.....17314
Proposed Rules:
600.....17333

Federal Register
Vol. 68, No. 68
Wednesday, April 9, 2003

Presidential Documents

Title 3—

The President

Proclamation 7659 of April 4, 2003

National Crime Victims' Rights Week, 2003

By the President of the United States of America

A Proclamation

Crime brings trauma, pain, and insecurity into the lives of too many Americans each year. As we work to reduce crime and protect the rights of the accused, we must take equal care to protect the rights of their victims. During National Crime Victims' Rights Week, we remember those who have suffered as a result of crime and honor those who have helped these victims.

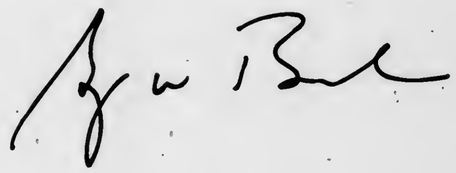
Americans suffered over 24 million crimes in 2001, 5.7 million of which involved violence. While we have improved policies and our justice system has treated victims with greater respect in recent years, we must continue our work to ensure the full rights of all crime victims and better protect our citizens. My Administration believes that victims of violent crime have important rights that deserve protection in our Constitution, and to guarantee these rights, I strongly support the passage of the bipartisan Crime Victims' Rights Amendment. This amendment will provide victims of violent crime the right to reasonable and timely notice of any public proceedings involving the crime or release of the perpetrator, and the right to be heard at public proceedings regarding the criminal's sentence or potential release. It will also assure that such victims receive timely notice of any escape of their attacker. Under this amendment, decision makers will duly consider the victim's safety and payment of restitution from the offender to the victim. This important amendment will strike the right balance in protecting individual rights and ensuring fairness and equity in our criminal justice system.

Across our Nation, victims' rights groups work on behalf of victims every day. Through care and compassion, these groups and individuals are bringing hope and comfort to their neighbors in need. Domestic violence shelters, support groups for families of homicide victims, rape crisis centers, and other organizations in our cities and communities offer vital assistance to individuals who have been affected by crime. In times of such crises, counselors, hotline operators, clergy, doctors, nurses, law enforcement, and countless others also help their fellow Americans cope with their pain and suffering.

As a Nation, we must continue to seek justice on behalf of all people who have been victimized by crime. The heroes in these efforts are the individuals and organizations who work to provide valuable support and assistance to those who have suffered from crime. This week allows us to recognize these heroes and renew our commitment to fulfilling the promise of our Nation of justice for all.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 6 through April 12, 2003, as National Crime Victims' Rights Week. I encourage every community to embrace the cause of victims' rights and to advance it in all sectors of our society.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of April, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh



[FR Doc. 03–8831
Filed 4–8–03; 8:45 am]
Billing code 3195–01–P.

Presidential Documents

Executive Order 13295 of April 4, 2003

Revised List of Quarantinable Communicable Diseases

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 361(b) of the Public Health Service Act (42 U.S.C. 264(b)), it is hereby ordered as follows:

Section 1. Based upon the recommendation of the Secretary of Health and Human Services (the "Secretary"), in consultation with the Surgeon General, and for the purpose of specifying certain communicable diseases for regulations providing for the apprehension, detention, or conditional release of individuals to prevent the introduction, transmission, or spread of suspected communicable diseases, the following communicable diseases are hereby specified pursuant to section 361(b) of the Public Health Service Act:

(a) Cholera; Diphtheria; infectious Tuberculosis; Plague; Smallpox; Yellow Fever; and Viral Hemorrhagic Fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named).

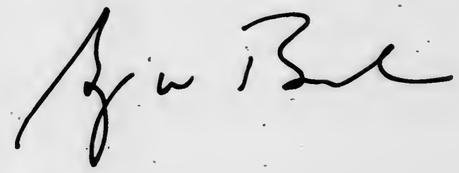
(b) Severe Acute Respiratory Syndrome (SARS), which is a disease associated with fever and signs and symptoms of pneumonia or other respiratory illness, is transmitted from person to person predominantly by the aerosolized or droplet route, and, if spread in the population, would have severe public health consequences.

Sec. 2. The Secretary, in the Secretary's discretion, shall determine whether a particular condition constitutes a communicable disease of the type specified in section 1 of this order.

Sec. 3. The functions of the President under sections 362 and 364(a) of the Public Health Service Act (42 U.S.C. 265 and 267(a)) are assigned to the Secretary.

Sec. 4. This order is not intended to, and does not, create any right or benefit enforceable at law or equity by any party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

Sec. 5. Executive Order 12452 of December 22, 1983, is hereby revoked.



THE WHITE HOUSE,
April 4, 2003.

[FR Doc. 03–8832
Filed 4–9–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 68, No. 68
Wednesday, April 9, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV03–916–2 IFR]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and container requirements for fresh shipments of these fruits, beginning with 2003 season shipments. This rule also continues a modification of the requirements for placement of Federal-State Inspection Service lot stamps for the 2003 season, establishes a net weight for a style of containers and exempts those containers from the well-filled requirement, and revises the weight-count standards for Peento type peaches. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule would enable handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interests of producers, handlers, and consumers of these fruits.

DATES: Effective April 10, 2003. Comments received by June 9, 2003, will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the orders, lot stamping, grade, size, maturity, container, container marking, and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC), which are responsible for local administration of the orders, met on December 3, 2002, and unanimously recommended that these handling requirements be revised for the 2003 season, which begins about the first or second week of April. The changes: (1) Continue the lot stamping requirements which have been in effect since the 2000 season; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2003 season; (3) revise weight-count standards for the Peento type peaches; (4) establish a net weight for all five-down containers and exempt those containers from the well-filled requirement; and (5) revise varietal maturity, quality, and size requirements to reflect changes in growing and marketing practices.

The committees meet prior to and during each season to review the rules and regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to the public and interested persons are encouraged to express their views at these meetings. The committees held

such meetings on December 3, 2002. USDA reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

No official crop estimate was available at the time of the committees' meetings because the nectarine and peach trees were dormant. The committees will recommend a crop estimate at their meetings in early spring. However, preliminary estimates indicate that the 2003 crop will be similar in size and characteristics to the 2002 crop, which totaled 23,230,000 containers of nectarines and 22,124,000 containers of peaches.

Lot Stamping Requirements

Sections 916.55 and 917.45 of the orders require inspection and certification of nectarines and peaches, respectively, handled by handlers. Sections 916.115 and 917.150 of the nectarine and peach orders' rules and regulations, respectively, require that all exposed or outside containers of nectarines and peaches, and at least 75 percent of the total containers on a pallet, be stamped with the Federal-State Inspection Service (inspection service) lot stamp number after inspection and before shipment to show that the fruit has been inspected. These requirements apply except for containers that are loaded directly onto railway cars, exempted, or mailed directly to consumers in consumer packages.

Lot stamp numbers are assigned to each handler by the inspection service, and are used to identify the handler and the date on which the container was packed. The lot stamp number is also used by the inspection service to identify and locate the inspector's corresponding working papers or field notes. Working papers are the documents each inspector completes while performing an inspection on a lot of nectarines or peaches. Information contained in the working papers supports the grade levels certified to by the inspector at the time of the inspection.

The lot stamp number has value for the industries, as well. The committees utilize the lot stamp number and date codes to trace fruit in the container back to the orchard from which it was harvested. This information is essential in providing quick information for a crisis management program instituted by the industries. Without the lot stamp information on each container, the "trace back" effort, as it is called, would be jeopardized.

Over the last few years, several new containers have been introduced for use by nectarine and peach handlers. These containers are returnable plastic containers (RPCs). Use of RPCs may represent substantial savings to retailers for storage and disposal, as well as for handlers who do not have to pay for traditional, single-use, containers. Fruit is packed in the containers by the handler, delivered to the retailer, emptied, and returned to a central clearinghouse for cleaning and redistribution to the handler. However, because these containers are designed for reuse, RPCs do not support markings that are permanently affixed to the container. All markings must be printed on cards that slip into tabs on the front or sides of the containers. The cards are easily inserted and removed, and further contribute to the efficient reuse of RPCs.

The cards are a continuing concern for the inspection service and the industries because of their unique portability. There is some concern that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers, thus permitting a handler to avoid inspection on a lot or lots of nectarines or peaches. This would also jeopardize the use of the lot stamp numbers for the industries' "trace back" program.

To address this concern since the 2000 season, the committees have annually recommended that pallets of inspected fruit in RPCs be identified with a USDA-approved pallet tag containing the lot stamp number, in addition to the lot stamp number printed on the card on the container. In this way, noted the committees, an audit trail would be created, confirming that the lot stamp number on each container on the pallet corresponds to the lot stamp number on the pallet tag.

The committees and the inspection service presented their concerns to the manufacturers of these types of containers prior to the 2000 season. At that time, one manufacturer indicated a willingness to address the problem by offering an area on the principal display panel where the container markings would adhere to the container. Another possible improvement discussed was for an adhesive for the current style of containers which would securely hold the cards with the lot stamp numbers, yet would be easy for the clearinghouse to remove when the containers are washed. However, the changes offered by the manufacturers were not available for use in the previous three seasons, and there is no assurance that they will be available for the 2003 season.

In a meeting of the Stone Fruit Grade and Size Subcommittee on November 6, 2002, it was determined that given the different styles and configurations of RPCs available, having a standardized display panel or a satisfactory adhesive for placement of the cards may not be realistic and the industry needed to continue the lot stamping requirements in place since the 2000 season.

For those reasons, the subcommittee unanimously recommended to the committees that the regulation in effect since the 2000 season requiring lot stamp numbers on USDA-approved pallet tags, as well as on individual containers on a pallet, be again required for the 2003 season. The committees, in turn, recommended unanimously that such requirement be extended for the 2003 season, as well.

Thus, §§ 916.115 and 917.150 will be amended to require the lot stamp number to be printed on a USDA-approved pallet tag, in addition to the requirement that the lot stamp number be applied to cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet, during the 2003 season.

Container and Pack Requirements

Sections 916.52 and 917.41 of the orders authorize establishment of container, pack, and marking requirements for shipments of nectarines and peaches, respectively. Under §§ 916.350 and 917.442 of the orders, the specifications of container markings, net weights, well-filled requirements, weight-count standards for various sizes of nectarines and peaches, and lists of standard containers are provided.

The committees unanimously recommended that a uniform net weight be established for all "five down" boxes (commonly referred to as "Euro" boxes), and that all such containers be exempted from the well-filled requirement. Currently, the net weight requirement of 31 pounds for "five down" boxes and the exemption from the well-filled requirement applies only to RPCs. However, as a handler noted at one meeting, the industry uses boxes of the same "footprint" (length and width dimensions) as the RPCs that are made of more traditional materials, such as corrugated cardboard. "Five down" boxes are containers that lay in a pattern of five containers per layer on each pallet. In other words, each layer of boxes on a pallet contains only five Euro boxes. Other container sizes and footprints may result in nine boxes per layer, etc.

Since applying the well-filled requirements to any five down Euro box might result in bruising or other damage to fruit packed in it, the Stone Fruit Grade and Size Subcommittee voted unanimously to extend the current requirements applicable to RPCs with regard to net weight and well-filled requirements to all five down Euro containers. This would ensure that all five down Euro containers have a uniform net weight and ensure that the fruit in those containers is handled in such a way to minimize damage.

At the December 3, 2002, meeting, the NAC and PCC also unanimously recommended that all five down Euro boxes have an established net weight of 31 pounds, which is to be printed on the end of the container, and that those containers, like the RPCS, be exempt from the well-filled requirement.

Nectarines: For the reasons stated above, paragraphs (a)(1) and (a)(8) of § 916.350 are revised to refer to all five down Euro containers. Such changes will ensure that all five down Euro containers of nectarines are a net weight of 31 pounds and are exempt from the well-filled requirement. The container markings shall be placed on one outside end of the container in plain sight and in plain letters.

Peaches: For the reasons stated above, paragraphs (a)(1) and (a)(9) of § 917.442 are revised to refer to all five down Euro containers. Such changes will ensure that all five down Euro containers of peaches are a net weight of 31 pounds and are exempt from the well-filled requirement. The markings shall be placed on one outside end of the container in plain sight and in plain letters.

Weight-Count Standards for Peaches

Under the requirements of § 917.41 of the order, containers of peaches are required to meet weight-count standards for a maximum number of peaches in a 16-pound sample when such peaches, which may be packed in tray-packed containers, are converted to volume-filled containers. Under § 917.442 of the order's rules and regulations, weight-count standards are established for all varieties of peaches as Tables 1, 2, and 3 of paragraph (a)(5)(iv).

According to the PCC, the Peento type peaches have traditionally been packed in trays because they have been marketed as a premium variety, which justified the added packing costs.

However, as the volume has increased, the value of this peach has diminished in the marketplace, and some handlers converted their tray-packed containers of Peento types to volume-filled containers. Prior to the 2002 season, weight-count standards established for peaches and nectarines were developed for round fruit. Peento type peaches are shaped like donuts, and those weight-count standards were inappropriate. In an effort to standardize the conversion from tray-packing to volume-filling for Peento type peaches, the committee staff conducted weigh-count surveys during the 2001 season to determine the most optimum weight-counts for the varieties at varying fruit sizes.

As a result, a new weight-count table applicable to only the Peento type peaches was added for the 2002 season. However, during the 2002 season, the committee staff continued to conduct further weight-count surveys to ensure that the Peento type peaches packed in volume-filled containers meet the weight-count standards established for tray-packed fruit. During those studies, the committee staff learned that very large Peento type peaches that were not previously converted from tray-packs to volume-filled containers were being packed in volume-filled containers and did not meet the weight-count standards.

For this reason, Table 3 of paragraph (a)(5)(iv) in § 917.442 is being revised to include weight-count standards for two of the larger peach sizes, sizes 32 and 30. Table 3 will also be corrected with regard to the maximum number of fruit in a 16-pound sample for sizes 54 and 50. Also, the maximum number of fruit in a 16-pound sample of size 54 Peento type peaches currently is listed as 77 peaches, and the maximum number of size 50 Peento type peaches is listed as 80 peaches. The maximum numbers of fruit for these sizes were inadvertently reversed, and will be corrected to indicate that the maximum number of fruit in a 16-pound sample of size 54 Peento type peaches is 80, and the maximum number of fruit in a 16-pound sample of size 50 Peento type peaches is 77.

Grade and Quality Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except for a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Prior to the 1996 season, § 917.459 required peaches to meet the requirements of a U.S. No. 1 grade, except for a more liberal allowance for open sutures that were not "serious damage."

This rule revises §§ 916.350, 916.356, 917.442, and 917.459 to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2003 season. ("CA Utility" fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements.) Shipments of nectarines and peaches meeting "CA Utility" quality requirements have been permitted each season since 1996.

Studies conducted by the NAC and PCC in 1996 indicated that some consumers, retailers, and foreign importers found the lower-quality fruit acceptable in some markets. When shipments of "CA Utility" nectarines were first permitted in 1996, they represented 1.1 percent of all nectarine shipments, or approximately 210,000 containers. Shipments of "CA Utility" nectarines reached a high of 5.3 percent (1,239,000 containers) during the 2002 season, but usually represent approximately 4 percent of total nectarine shipments. Shipments of "CA Utility" peaches totaled 1.9 percent of all peach shipments, or approximately 366,000 containers, during the 1996 season. Shipments of "CA Utility" peaches reached a high of 5.6 percent of all peach shipments (1,231,000 containers) during the 2002 season, but usually represent approximately 4 percent of total peach shipments.

Handlers have also commented that the availability of the "CA Utility" quality option lends flexibility to their packing operations. They have noted that they now have the opportunity to remove marginal nectarines and peaches from their U.S. No. 1 containers and place this fruit in containers of "CA Utility." This flexibility, the handlers note, results in better quality U.S. No. 1 packs without sacrificing fruit.

The Stone Fruit Grade and Size Subcommittee met on November 6, 2002, and did not make a recommendation to the NAC and PCC to continue shipments of "CA Utility" quality nectarines and peaches. Some subcommittee members raised concerns about "CA Utility" quality fruit, including concerns that growers' returns on "CA Utility" quality fruit are lower. The issue of the authorized tolerance of 40 percent U.S. No. 1 fruit in each container of "CA Utility" quality was raised, and there was some discussion that the tolerance should be reduced so that less U.S. No. 1 fruit would be in a box of "CA Utility" quality fruit. However, ultimately no decisions were made by the subcommittee as the result of these discussions.

Subsequently, however, the NAC and PCC voted unanimously at their

December 3, 2002, meetings to authorize continued shipments of "CA Utility" quality fruit during the 2003 season.

Accordingly, based upon the recommendations, paragraph (d) of §§ 916.350 and 917.442, and paragraph (a)(1) of §§ 916.356 and 917.459 are revised to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2003 season, on the same basis as shipments since the 2000 season.

Maturity Requirements

In §§ 916.52 and 917.41, authority is provided to establish maturity requirements for nectarines and peaches, respectively. The minimum maturity level currently specified for nectarines and peaches is "mature" as defined in the standards. For most varieties, "well-matured" determinations for nectarines and peaches are made using maturity guides (e.g., color chips). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed, based upon the most-recent information available on the individual characteristics of each nectarine and peach variety.

These maturity guides established under the handling regulations of the California tree fruit marketing orders have been codified in the Code of Federal Regulations as Table 1 in §§ 916.356 and 917.459, for nectarines and peaches, respectively.

The requirements in the 2003 handling regulations are the same as those that appeared in the 2002 handling regulations with a few exceptions. Those exceptions are explained in this rule.

Nectarines: Requirements for "well-matured" nectarines are specified in § 916.356 of the order's rules and regulations. This rule revises Table 1 of paragraph (a)(1)(iv) of § 916.356 to add maturity guides for four varieties of nectarines. Specifically, SPI recommended adding maturity guides for the Mango variety to be regulated at the B maturity guide, for the Honey Royale and the Sunny Red varieties at the J maturity guide, and the Prince Jim variety to be regulated at the L maturity guide.

The NAC recommended these maturity guide requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well-matured" level of maturity for nectarine varieties in production.

Peaches: Requirements for "well-matured" peaches are specified in § 917.459 of the order's rules and regulations. This rule revises Table 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for six peach varieties. Specifically, SPI recommended adding maturity guides for the September Flame variety to be regulated at the I maturity guide; Autumn Red, Magenta Queen, Pretty Lady, and the Prima Gattie 10 varieties to be regulated at the J maturity guide; and the Golden Princess variety to be regulated at the L maturity guide.

In addition, SPI requested that the language in paragraph (a)(1)(vi) of § 917.459 be revised with regard to the Joanna Sweet variety. Currently, the Joanna Sweet variety is required to have a one hundred percent surface color requirement for meeting the assigned color chip. SPI requested that the language be changed to reflect that any of the fruit surface that is not red shall meet the color guide established for the variety, including any color found in the stem cavity. This recommendation is based upon SPI's experience with the maturity characteristics of this variety.

Thus, paragraph (a)(1)(iv) of § 917.459 will be revised to reflect this recommendation.

The PCC recommended these maturity guide requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well-matured" level of maturity for peach varieties in production.

Size Requirements: Both orders provide (in §§ 916.52 and 917.41) authority to establish size requirements. Size regulations encourage producers to leave fruit on the tree longer, which improves both size and maturity of the fruit. Acceptable fruit size provides greater consumer satisfaction and promotes repeat purchases; and, therefore, increases returns to producers and handlers. In addition, increased fruit size results in increased numbers of packed containers of nectarines and peaches per acre, also a benefit to producers and handlers.

Varieties recommended for specific size regulations have been reviewed and such recommendations are based on the specific characteristics of each variety. The NAC and PCC conduct studies each season on the range of sizes attained by the regulated varieties and those varieties with the potential to become regulated, and determine whether revisions and additions to the size requirements are appropriate.

Nectarines: Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule revises § 916.356 to establish variety-specific minimum size requirements for four varieties of nectarines that were produced in commercially-significant quantities of more than 10,000 containers for the first time during the 2002 season. This rule also removes the variety-specific minimum size requirements for 11 varieties of nectarines whose shipments fell below 5,000 containers during the 2002 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Red Roy variety of nectarines, recommended for regulation at a minimum size 88. Studies of the size ranges attained by the Red Roy variety revealed that 100 percent of the containers met the minimum size of 88 during the 2002 season. Sizes ranged from size 40 to size 88, with 1.5 percent of the fruit in the 40 sizes, 22.2 percent of the packages in the 50 sizes, 55.8 percent in the 60 sizes, 14.6 percent in the 70 sizes, 5.4 in the 80 sizes, with .5 percent in the size 88.

A review of other varieties with the same harvesting period indicated that the Red Roy variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Red Roy variety in the variety-specific minimum size regulation at a minimum size 88 is appropriate. This recommendation results from size studies conducted over a two-year period.

Historical data such as this provides the NAC with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both NAC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the introductory text of paragraph (a)(4) of § 916.356 is revised to include the Red Roy variety; and the introductory text of paragraph (a)(6) of § 916.356 is revised to include the Candy Gold, Candy Sweet, and Honey Royale nectarine varieties.

This rule also revises the introductory text of paragraphs (a)(3), (a)(4), and (a)(6) of § 916.356 to remove 11 varieties from the variety-specific minimum size requirements specified in these paragraphs because less than 5,000 containers of each of these varieties were produced during the 2002 season. Specifically, the introductory text of paragraph (a)(3) of § 916.356 is revised to remove the Johnny's Delight and May Jim nectarine varieties; the introductory text of paragraph (a)(4) of § 916.356 is revised to remove the Scarlet Jewels and Star Brite nectarine variety; and the introductory text of paragraph (a)(6) of § 916.356 is revised to remove the Arctic Gold, Kay Diamond, Prima Diamond XVI, Spring Diamond, Spring Red, Summer Beaut, and Sunecteight (Super Star) nectarine varieties.

Nectarine varieties removed from the nectarine variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

Peaches: Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule revises § 917.459 to establish variety-specific minimum size requirements for 12 peach varieties that were produced in commercially-significant quantities of more than 10,000 containers for the first time during the 2002 season. This rule also removes the variety-specific minimum size requirements for 10 varieties of peaches whose shipments fell below 5,000 containers during the 2002 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Springtreat (60EF32) variety of peaches, which was recommended for regulation at a minimum size 80. Studies of the size ranges attained by the Springtreat (60EF32) variety revealed that 100 percent of the containers met the minimum size of 80 during the 2002 season. The sizes ranged from size 50 to size 80, with 8.2 percent of the containers meeting the size 50, 41.2 meeting the size 60, 37.6 percent meeting the size 70, and 12.9 percent meeting the size 80.

A review of other varieties with the same harvesting period indicated that the Springtreat (60EF32) variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to pack the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Springtreat (60EF32) variety in the variety-specific minimum size regulation at a minimum size 80 is appropriate. This recommendation, as with all other size recommendations for peaches, results from size studies conducted over a three-year period.

Historical data such as this provides the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both PCC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the introductory text of paragraph (a)(5) of § 917.459 is revised to include the Happy Dream, Magenta Queen, Springtreat (60EF32), and Spring Flame 21 peach varieties; and the introductory text of paragraph (a)(6) of § 917.459 is revised to include the August Flame, Henry II, June Flame, Pink Giant, Prima Peach XV, Red Giant, Snow Beauty, and Snow Princess peach varieties.

This rule also revises the introductory text of paragraph (a)(3) of § 917.459 to remove the Topcrest peach variety; revises the introductory text of paragraph (a)(5) of § 917.459 to remove the White Dream peach variety; and revises the introductory paragraph (a)(6) of § 917.459 to remove the Cal Red, Champagne, Flaming Dragon, Garnet Jewel, Lacey, Madonna Sun, Morning Lord, and Red Sun peach varieties from the variety-specific minimum size requirements specified in the section because less than 5,000 containers of each of these varieties was produced during the 2002 season.

Peach varieties removed from the peach variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The NAC and PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine and peach varieties, and the consumer acceptance levels for various fruit sizes. This rule is designed to establish minimum size requirements for fresh nectarines and peaches consistent with expected crop and market conditions.

This rule reflects the committees' and USDA's appraisal of the need to revise the handling requirements for California nectarines and peaches, as specified. USDA believes that this rule will have a beneficial impact on producers, handlers, and consumers of fresh California nectarines and peaches.

This rule establishes handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. This rule will also help the California nectarine and peach industries to provide fruit desired by consumers. This rule is designed to establish and maintain orderly marketing conditions for these fruit in the interests of producers, handlers, and consumers.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. For the 2002 season, the committees' staff estimated that the average handler price received was $9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 556,000 containers to have annual receipts of $5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2002

season, the committees' staff estimates that small handlers represent approximately 94 percent of all the handlers within the industry.

The committees' staff has also estimated that less than 20 percent of the producers in the industry could be defined as other than small entities. For the 2002 season, the committees' estimated the average producer price received was $4.00 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 187,500 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2002 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry. With an average producer price of $4.00 per container or container equivalent, and a combined packout of nectarines and peaches of 45,354,000 containers, the value of the 2002 packout level is estimated to be $181,416,000. Dividing this total estimated grower revenue figure by the estimated number of producers (1,800) yields an estimate of average revenue per producer of about $101,000 from the sales of peaches and nectarines.

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, container, container marking, and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. The NAC and PCC met on December 3, 2002, and unanimously recommended that these handling requirements be revised for the 2003 season. These recommendations had been presented to the committees by various subcommittees, each charged with review and discussion of the changes. The changes: (1) Continue the lot stamping requirements for reusable plastic containers that have been in effect since the 2000 season; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2003 season; (3) revise weight-count standards for the Peento type peaches; (4) establish a net weight for all five-down containers and exempt those containers from the well-filled requirement; and (5) revise varietal maturity, quality, and size requirements to reflect changes in growing and marketing practices.

This rule authorizes continuation of the lot stamping requirements for returnable plastic containers under the marketing orders' rules and regulations that have been in effect for such containers since the 2000 season for nectarine and peach shipments. The modified requirements of §§ 916.115 and 917.150 mandated that the lot stamp numbers be printed on a USDA-approved pallet tag, in addition to the requirement that the lot stamp number be applied to cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet. Continuation of such requirements for the 2003 season would help the inspection service safeguard the identity of inspected and certified containers of nectarines and peaches, and would help the industry by keeping in place the information necessary to facilitate their "trace-back" program.

The Stone Fruit Grade and Size Subcommittee met on November 6, 2002, and considered possible alternatives to this action. Other alternatives were rejected because it was determined that given the different styles and configurations of RPCs available, having a satisfactory adhesive for placement of the cards may not be realistic, at least for the time being, given the reluctance of box manufacturers to respond to the industry's requests.

For those reasons, the subcommittee and the committees unanimously recommended extending the requirement for the lot stamp number to be printed on the cards on each container and for each pallet to be marked with a USDA-approved pallet tag, also containing the lot stamp number. Such safeguards are intended to ensure that all the containers on each pallet have been inspected and certified in the event a card on an individual container or containers is removed, misplaced, or lost.

The Stone Fruit Grade and Size Subcommittee also discussed the 31-pound net weight requirement for all five down Euro containers at its meeting on November 6, 2002. At that time, it was noted by one handler that the current net weight of 31 pounds and exemption from the well-filled requirement are applicable to only the RPCs. The handler noted, however, that the industry also currently uses five down Euro boxes that are not RPCs. He further suggested that all five down Euro boxes should be required to meet the net weight of 31 pounds and be exempted from the requirement to be well-filled. The subcommittee agreed and unanimously recommended the change to the committees. The alternative would have meant that only the RPC five down Euro containers would have been subject to the minimum regulated with a net weight of 31 pounds, and exempted from the requirement to be well-filled. In consideration of uniformity for five down Euro containers, this alternative was rejected.

In 1996, §§ 916.350 and 917.442 were revised to permit shipments of "CA Utility" quality nectarines and peaches as an experiment during the 1996 season only. Such shipments have subsequently been permitted each season. Since 1996, shipments of "CA Utility" have ranged from 1 to 5 percent of total nectarine and peach shipments. This rule authorizes continued shipments of "CA Utility" quality nectarines and peaches during the 2003 season.

The Grade and Size Subcommittee met on November 6, 2002, and briefly discussed "CA Utility" quality nectarines and peaches. The subcommittee ultimately did not make a recommendation to the NAC and PCC regarding continued shipments of "CA Utility" quality nectarines and peaches. The subcommittee did, however, request that the results of a grower survey on attitudes toward "CA Utility" quality fruit conducted in December of 2001 by the committees be provided to the committees at the December 3, 2002, meeting.

However, at their meetings on December 3, 2002, the NAC and PCC unanimously recommended to continue to allow shipments of "CA Utility" quality nectarines and peaches.

Sections 916.350 and 917.442 establish container, pack, and marking requirements for shipments of nectarines and peaches, respectively. This rule makes changes to the pack and container marking requirements of the orders' rules and regulations to establish a net weight of 31 pounds for all types of five down Euro boxes, and exempt such boxes from the well-filled requirement.

Section 917.442 also establishes minimum weight-count standards for containers of peaches. Under these requirements, containers of peaches are required to meet weight-count standards for a maximum number of peaches in a 16-pound sample when such peaches are packed in a tray-packed container. Those same maximum numbers of peaches are also applicable to volume-filled containers, based upon the tray-packed standard. The weight-count standard was developed so handlers may convert tray-packed peaches to volume-filled containers and be assured that fruit of a specific size in the volume-filled container will be the same as that in the tray-packed container.

When the Stone Fruit Grade and Size Subcommittee met, they discussed the recent changes in the packing and marketing of Peento type peaches. When these varieties were first introduced and marketed, they were generally tray-packed because they were a novel and premium product. As production has increased, the value of the varieties has diminished in the marketplace, and some handlers have converted their tray-packed containers of Peento type peaches to volume-filled containers. Weight-count standards provide a basis for volume filling containers of other varieties of peaches. Currently, Peento type peaches are regulated under a new table of weight-count standards applicable to only these uniquely-shaped peaches.

The staff continued to conduct weight-count studies during the 2002 season so that weight-count standards could be perfected, thus ensuring that all handlers are handling a standard maximum number of peaches in a 16-pound sample. During the studies, the staff learned that all available sizes of Peento type peaches were being packed in volume-filled containers, including sizes for which there were not yet minimum weight-count standards. For that reason, modifications to Table 3 in paragraph (a)(5)(vi) of § 917.442 are made to include additional sizes 30 and 32, which are larger-sized Peento peaches.

Sections 916.356 and 917.459 establish minimum maturity levels. This rule makes annual adjustments to the maturity requirements for several varieties of nectarines and peaches. Maturity requirements are based on maturity measurements generally using maturity guides (*e.g.*, color chips), as recommended by Shipping Point Inspection. Such maturity guides are reviewed annually by SPI to determine the appropriate guide for each nectarine and peach variety. These annual adjustments reflect refinements in measurements of the maturity characteristics of nectarines and peaches as experienced over previous seasons' inspections. Adjustments in the guides utilized ensure that fruit has met an acceptable level of maturity, ensuring consumer satisfaction while benefiting nectarine and peach producers and handlers.

Currently, in § 916.356 of the nectarine order's rule and regulations, and in § 917.459 of the peach order's rule and regulations, minimum sizes for various varieties of nectarines and peaches, respectively, are established. This rule makes adjustments to the minimum sizes authorized for various varieties of nectarines and peaches for the 2003 season. Minimum size regulations are put in place to encourage producers to leave fruit on the trees for a longer period of time. This increased growing time not only improves maturity, but also increases fruit size. Increased fruit size increases the number of packed containers per acre, and coupled with heightened maturity levels, also provides greater consumer satisfaction, fostering repeat purchases. Such improved consumer satisfaction and repeat purchases benefit both producers and handlers alike.

Annual adjustments to minimum sizes of nectarines and peaches, such as these, are recommended by the NAC and PCC based upon historical data, producer and handler information regarding sizes attained by different varieties, and trends in consumer purchases.

An alternative to such action would include not establishing minimum size regulations for these new varieties. Such an action, however, would be a significant departure from the committees' practices and represent a significant change in the regulations as they currently exist; would ultimately increase the amount of less acceptable fruit being marketed to consumers; and, thus, would be contrary to the long-term interests of producers, handlers, and consumers. For these reasons, this alternative was not recommended.

The committees make recommendations regarding all the revisions in handling and lot stamping requirements after considering all available information, including recommendations by various subcommittees, comments of persons at subcommittee meetings, and comments received by committee staff. Such subcommittees include the Stone Fruit Grade and Size Subcommittee, the Inspection and Compliance Subcommittee, and the Executive Committee.

At the meetings, the impact of and alternatives to these recommendations are deliberated. These subcommittees, like the committees themselves, frequently consist of individual producers and handlers with many years' of experience in the industry who are familiar with industry practices and trends. Like all committee meetings, subcommittee meetings are open to the public and comments are widely solicited. In the case of the Stone Fruit Grade and Size Subcommittee, many growers and handlers who are affected by the issues discussed by the subcommittee attend and actively participate in the public deliberations. In addition, minutes of all subcommittee meetings are distributed to committee members and others who have requested them, thereby increasing the availability of information within the industry.

Each of the recommended handling requirement changes for the 2003 season is expected to generate financial benefits for produces and handlers through increased fruit sales, compared to the situation that would exist if the changes were not adopted. Both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be substantially different between large and small entities.

This rule does not impose any additional reporting and recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 CFR 1621 *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings are widely publicized throughout the nectarine and peach industry and all interested parties are encouraged to attend and participate in committee deliberations on all issues. These meetings are held annually during the last week of November or first week of December. Like all committee meetings, the December 3, 2002, meetings were public meetings, and all entities, large and small, were encouraged to express views on these issues. These regulations were also reviewed and thoroughly discussed at a subcommittee meeting held on November 6, 2002. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the handling requirements currently prescribed under the marketing orders for California fresh nectarines and peaches. Any comments

received will be considered prior to finalization of this rule.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) California nectarine and peach producers and handlers should be apprised of this rule as soon as possible, since shipments of these fruits are expected to begin in early April; (2) this rule relaxes grade requirements for nectarines and peaches; (3) the committees unanimously recommended these changes at public meetings and interested persons had opportunities to provide input at these meetings; and (4) the rule provides a 60-day comment period, and any written comments timely received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

■ 1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

■ 2. Section 916.115 is revised to read as follows:

§ 916.115 Lot stamping.

Except when loaded directly into railway cars, exempted under § 916.110, or for nectarines mailed directly to consumers in consumer packages, all exposed or outside containers of nectarines, and not less than 75 percent of the total containers on a pallet, shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such fruit has been USDA inspected in accordance with § 916.55: *Provided*, That for the period April 1 to October 31, 2003, pallets of returnable plastic containers shall have the lot stamp numbers affixed to each pallet with a USDA-approved pallet tag, in addition to the lot stamp numbers and other required information on cards on the individual containers.

■ 3. Section 916.350 is amended by:

■ A. Revising paragraph (a)(1);

■ B. Revising paragraph (a)(8); and

■ C. Revising paragraph (d) to read as follows:

§ 916.350 California nectarine container and pack regulation.

(a) * * *

(1) Such nectarines, when packed in any closed package or container, except master containers of consumer packages, individual consumer packages, and five down Euro containers, shall conform to the requirements of standard pack: *Provided*, That nectarines in any such volume-filled container need only be filled to within one-inch of the top of the container.

* * * * *

(8) Each five down Euro container of loose-filled nectarines shall bear on one outside end in plain sight and in plain letters the words "31 pounds net weight."

* * * * *

(d) During the period April 1 through October 31, 2003, each container or package when packed with nectarines meeting the "CA Utility" quality requirements, shall bear the words "CA Utility," along with all other required container markings, in letters at least ⅜ inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as "CA Utility," along with all other required markings, in letters at least 3/8 inch in height.

■ 4. Section 916.356 is amended by:

■ A. Revising paragraph (a)(1) introductory text;

■ B. Revising Table 1; and

■ C. Revising the introductory text of paragraphs (a)(3), (a)(4), and (a)(6) to read as follows:

§ 916.356 California nectarine grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: *Provided*, That nectarines 2 inches in diameter or smaller, shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle 3/8 inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle 1/2 inch in diameter: *Provided further*, That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen: *Provided further*, That all varieties of nectarines which fail to meet the U.S. No. 1 grade only on account of lack of blush or red color due to varietal characteristics shall be considered as meeting the requirements of this subpart: *Provided further*, That during the period April 1 through October 31, 2003, any handler may handle nectarines if such nectarines meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 40 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, except that when more than 30 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Nectarines; and that such nectarines are mature and are:

* * * * *

(iv) * * *

TABLE 1

Column A variety	Column B maturity guide
Alshir Red	J
April Glo	H
August Glo	L
August Lion	J
August Red	J
Aurelio Grand	F
Autumn Delight	L
Autumn Grand	L
Big Jim	J
Diamond Bright	J
Diamond Jewel	L
Diamond Ray	L
Earliglo	I
Early Diamond	J
Early May	F
Early May Grand	H
Early Red Jim	J
Early Sungrand	H
Fairlane	L
Fantasia	J
Firebrite	H
Fire Sweet	J
Flame Glo	L
Flamekist	L
Flaming Red	K
Flavortop	J
Grand Diamond	L
Gran Sun	L
Honey Blaze	J
Honey Kist	I

TABLE 1—Continued

Column A variety	Column B maturity guide
Honey Royale	J
Independence	H
July Red	L
June Brite	I
Juneglo	H
Kay Diamond	L
King Jim	L
Kism Grand	J
Late Le Grand	L
Late Red Jim	J
Mango	B
May Diamond	I
May Fire	H
Mayglo	H
May Grand	H
May Jim	I
May Kist	H
May Lion	J
Mid Glo	L
Moon Grand	L
Niagra Grand	H
P-R Red	L
Prince Jim	L
Prima Diamond XIII	L
Red Delight	I
Red Diamond	L
Red Fred	J
Red Free	L
Red Glen	J
Red Glo	I
Red Grand	H
Red Jewel	L
Red Jim	L
Red May	J
Rio Red	L
Rose Diamond	J
Royal Delight	F
Royal Giant	I
Royal Glo	I
Ruby Diamond	L
Ruby Grand	J
Ruby Sun	J
Ruby Sweet	J
Scarlet Red	K
September Free	J
September Grand	L
September Red	L
Sheri Red	J
Sparkling June	L
Sparkling May	J
Sparkling Red	L
Spring Bright	L
Spring Diamond	L
Spring Ray	L
Spring Sweet	J
Spring Red	H
Star Brite	J
Summer Beaut	H
Summer Blush	J
Summer Bright	J
Summer Diamond	L
Summer Fire	L
Summer Grand	L
Summer Lion	L
Summer Red	L
Sunburst	J
Sun Diamond	I
Sunecteight (Super Star)	G
Sun Grand	G
Sunny Red	J

TABLE 1—Continued

Column A variety	Column B maturity guide
Tom Grand	L
Zee Glo	J
Zee Grand	I

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

* * * * *

(3) Any package or container of Mayglo variety of nectarines on or after May 6 of each year, or Crimson Baby, Earliglo, Early Diamond, Grand Sun, or May Kist variety nectarines unless:

* * * * *

(4) Any package or container of Arctic Rose, Arctic Star, Diamond Bright, Juneglo, June Pearl, Kay Glo, Kay Sweet, May Diamond, May Grand, Prima Diamond IV, Prima Diamond VI, Prima Diamond XIII, Prince Jim, Prince Jim 1, Red Delight, Red Glo, Red Roy, Rose Diamond, Royal Glo, Sparkling May, White Sun, or Zee Grand variety nectarines unless:

* * * * *

(6) Any package or container of Alta Red, Arctic Blaze, Arctic Ice, Arctic Jay, Arctic Mist, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Glo, August Lion, August Pearl, August Red, August Snow, Big Jim, Bright Pearl, Bright Sweet, Candy Gold, Candy Sweet, Diamond Ray, Early Red Jim, Firebrite, Fire Pearl, Fire Sweet, Flame Glo, Flaming Red, Grand Diamond, Grand Pearl, Grand Sweet, Honey Blaze, Honey Kist, Honey Royale, July Pearl, July Red, June Lion, Kay Pearl, King Jim, Late Red Jim, P-R Red, Prima Diamond IX, Prima Diamond XVIII, Prima Diamond XIX, Prima Diamond XXIV, Prima Diamond XXVIII, Red Diamond, Red Glen, Red Jim, Regal Pearl, Regal Red, Royal Giant, Ruby Diamond, Ruby Pearl, Ruby Sweet, Scarlet Red, September Bright (26P–490), September Free, September Red, Sparkling June, Sparkling Red, Spring Bright, Spring Sweet, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Jewel, Summer Lion, Summer Red, Sunburst, Sun Diamond, Sunny Red, Sun Valley Sweet, Sweet White, Terra White, or Zee Glo variety nectarines unless:

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

■ 5. Section 917.150 is revised to read as follows:

§ 917.150 Lot stamping.

Except when loaded directly into railway cars, exempted under § 917.143, or for peaches mailed directly to consumers in consumer packages, all exposed or outside containers of peaches, and not less than 75 percent of the total containers on a pallet, shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such fruit has been USDA inspected in accordance with § 917.45: *Provided*, That for the period April 1 through November 23, 2003, pallets of returnable plastic containers shall have the lot stamp numbers affixed to each pallet with a USDA-approved pallet tag, in addition to the lot stamp numbers and other required information on cards on the individual containers.

■ 5. Section 917.442 is amended by:

■ A. Revising paragraph (a)(1);

■ B. Revising Table 3;

■ C. Revising paragraph (a)(9); and

■ D. Revising paragraph (d) to read as follows:

§ 917.442 California peach container and pack regulation.

(a) * * *

(1) Such peaches, when packed in any closed package or container, except master containers of consumer packages, individual consumer packages, and five down Euro containers, shall conform to the requirements of standard pack: *Provided*, That peaches in any such volume-filled container need only be filled to within one-inch of the top of the container.

* * * * *

(5) * * *

(iv) * * *

TABLE 3.—WEIGHT-COUNT STANDARDS FOR PEENTO TYPE PEACHES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A— Tray pack size designation	Column B— Maximum number of peaches in a 16-pound sample
80	140
72	128
70	111
64	99
60	93
56	87
54	80
50	77
48	74
44	70

TABLE 3.—WEIGHT-COUNT STANDARDS FOR PEENTO TYPE PEACHES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS—Continued

Column A— Tray pack size designation	Column B— Maximum number of peaches in a 16-pound sample
42	68
40	59
36	53
34	50
32	39
30	32

* * * * *

(9) Each five down Euro container of loose-filled peaches shall bear on one outside end in plain sight and in plain letters the words "31 pounds net weight."

* * * * *

(d) During the period April 1 through November 23, 2003, each container or package when packed with peaches meeting "CA Utility" quality requirements, shall bear the words "CA Utility," along with all other required container markings, in letters at least 3/8 inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as "CA Utility," along with all other required markings, in letters at least 3/8 inch in height.

■ 7. Section 917.459 is amended by:

■ A. Revising the introductory text of paragraph (a)(1);

■ B. Revising the introductory text of paragraph (a)(1)(iv);

■ C. Revising Table 1; and

■ D. Revising the introductory text of paragraphs (a)(3), (a)(5), and (a)(6) to read as follows:

§ 917.459 California peach grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade: *Provided*, That an additional 25 percent tolerance shall be permitted for fruit with open sutures which are damaged, but not seriously damaged: *Provided further*, That peaches of the Peento type shall be permitted a 10 percent tolerance for healed, non-serious, blossom-end growth cracks: *Provided further*, That during the period April 1 through November 23, 2003, any handler may handle peaches if such peaches meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 40 percent of the peaches in any container meet or exceed the requirement of the U.S. No. 1 grade, except that when more than 30 percent of the peaches in any container meet or exceed the requirements of U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Peaches; and that such peaches are mature and are:

* * * * *

(iv) The Federal or Federal-State Inspection Service shall make the final determinations on maturity through the use of color chips or other tests as determined appropriate by the inspection agency. The Federal or Federal-State Inspection Service will use the maturity guides listed in Table 1 in making maturity determinations for the specified varieties when inspecting to the "well matured" level of maturity. For these varieties, not less than 90 percent of any lot shall meet the color guide established for the variety, and an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety, except that for the Joanna Sweet variety of peaches, any of the fruit surface that is not red shall meet the color guide established for the variety, including any color noted in the stem cavity. For varieties not listed, the Federal or Federal-State Inspection Service will use such tests as it deems proper. A variance for any variety from the application of the maturity guides specified in Table 1 may be granted during the season to reflect changes in crop, weather, or other conditions that would make the specified guides an inappropriate measure of "well matured."

TABLE 1

Column A variety	Column B maturity guide
Angelus	I
August Lady	L
Autumn Flame	J
Autumn Gem	I
Autumn Lady	H
Autumn Red	J
Autumn Rose	H
Blum's Beauty	G
Brittney Lane	J
Cal Red	I
Carnival	I
Cassie	H
Coronet	E
Crimson Lady	J
Crown Princess	J
David Sun	I
Diamond Princess	J
Earlirich	H
Earlitreat	H
Early Delight	H
Early Elegant Lady	L
Early May Crest	H
Early O'Henry	I
Early Top	G
Elberta	B
Elegant Lady	L
Fairtime	G
Fancy Lady	J
Fay Elberta	C
Fire Red	I
First Lady	D
Flamecrest	I
Flavorcrest	G
Flavor Queen	H
Flavor Red	G
Franciscan	G
Goldcrest	H
Golden Princess	L
Honey Red	G
Joanna Sweet	J
John Henry	J
July Elberta	C
June Lady	G
June Pride	J
Kern Sun	H
Kingscrest	H
Kings Lady	I
Kings Red	I
Lacey	I
Lady Sue	L
Late Ito Red	L
Madonna Sun	J
Magenta Queen	J
May Crest	G
May Sun	I
Merrill Gem	G
Merrill Gemfree	G
Morning Lord	J
O'Henry	I
Pacifica	G
Pretty Lady	J
Prima Gattie 8	L
Prima Gattie 10	J
Queencrest	G
Ray Crest	G
Red Dancer (Red Boy)	I
Redhaven	G
Red Lady	G
Redtop	G
Regina	G
Rich Lady	J
Rich May	H
Rich Mike	H
Rio Oso Gem	I
Royal Lady	J
Royal May	G
Ruby May	H
Ryan Sun	I
September Flame	I
September Sun	I
Sierra Crest	H
Sierra Lady	I
Sparkle	I
Sprague Last Chance	L
Springcrest	G
Spring Delight	G
Spring Lady	H
Springtreat	I
Summer Lady	L
Summerset	I
Summer Zee	L
Suncrest	G
Supechfour (Amber Crest)	G
Super Rich	H
Sweet Dream	J
Sweet Gem	J
Sweet Mick	J
Sweet Scarlet	J
Topcrest	H
Tra Zee	J
Vista	J
Willie Red	G
Zee Lady	L

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

* * * * *

(3) Any package or container of Snow Kist or Super Rich variety peaches unless:

* * * * *

(5) Any package or container of Babcock, Bev's Red, Brittney Lane, Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, Happy Dream, June Lady, Kern Sun, Kingscrest, Magenta Queen, May Crest, May Sun, May Sweet, Pink Rose, Prima Peach IV, Queencrest, Ray Crest, Redtop, Rich May, Rich Mike, Snow Brite, Snow Prince, Springcrest, Spring Flame 21, Spring Lady, Spring Snow, Springtreat (60EF32), Sugar May, Sunlit Snow (172LE81), Sweet Scarlet, Zee Diamond, 012–094, or 172LE White Peach (Crimson Snow/Sunny Snow) variety peaches unless:

* * * * *

(6) Any package or container of August Flame, August Lady, Autumn Flame, Autumn Red, Autumn Rose, Autumn Snow, Cassie, Coral Princess, Country Sweet, Diamond Princess, Earlirich, Early Elegant Lady, Elegant Lady, Fairtime, Fancy Lady, Fay Elberta, Flamecrest, Full Moon, Henry II, Ivory Princess, Jillie White, Joanna Sweet, John Henry, July Flame, June Flame, June Pride, Kaweah, Kings Lady, Klondike, Late Ito Red, O'Henry, Pink Giant, Pretty Lady, Prima Gattie 8, Prima Peach 13, Prima Peach XV, Prima Peach 20, Prima Peach 23, Prima Peach XXV, Prima Peach XXVII, Princess Gayle, Queen Lady, Red Dancer, Red Giant, Rich Lady, Royal Lady, Ryan Sun, Saturn (Donut), Scarlet Snow, September Flame, September Snow, September Sun, Sierra Gem, Sierra Lady, Snow Beauty, Snow Blaze, Snow Fall, Snow Gem, Snow Giant, Snow Jewel, Snow King, Snow Princess, Sprague Last Chance, Spring Gem, Sugar Giant, Sugar Lady, Summer Dragon, Summer Lady, Summer Sweet, Summer Zee, Supechfour (Amber Crest), Sweet Dream, Sweet Gem, Sweet Kay, Sweet September, Tra Zee, Vista, White Lady, Zee Lady, or 24–SB variety peaches unless:

* * * * *

Dated: April 3, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–8650 Filed 4–4–03; 1:33 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV02–993–3 FR]

Dried Prunes Produced in California; Revising the Regulations Pertaining to a Voluntary Prune Plum Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the administrative rules and regulations pertaining to a voluntary prune plum diversion program under the California prune marketing order (order). The order regulates the handling of dried prunes produced in California and is administered by the Prune Marketing Committee (Committee). The changes made reflect changes in industry structure and current economic conditions, and modify administrative procedures used in connection with implementing a diversion program. These changes will provide for more timely and efficient implementation of a diversion program if recommended in the future.

EFFECTIVE DATE: This final rule becomes effective May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA will rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the administrative rules and regulations pertaining to a voluntary prune plum diversion program under the California prune marketing order (order). The order regulates the handling of dried prunes produced in California and is administered by the Committee. The changes made reflect changes in industry structure and current economic conditions, and modify administrative

procedures used in connection with implementing a diversion program. These changes will also provide for more timely and efficient implementation if a diversion program is needed in the future. These changes were unanimously recommended by the Committee at a meeting on November 29, 2001.

Volume Regulation Authority

Section 993.54 of the order provides authority for volume control in the form of reserve pooling. Volume control regulation is designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California prune crop may be sold by handlers to any market (salable or free tonnage) while the remaining percentage must be held by handlers in a reserve pool (or reserve) for the account of the Committee. Reserve prunes are disposed of through various programs authorized under the order. Net proceeds generated from sales of reserve prunes are distributed to the reserve pool's equity holders, primarily producers.

Diversion Program Authority

The order also provides authority under § 993.62 for prune producers to participate in a voluntary prune plum diversion program when a reserve pool is implemented. Under this program, prune producers can elect to divert part of their prune plum crop from normal prune or prune product markets in lieu of placing prunes in a reserve pool. Section 993.62 also authorizes establishment of rules and regulations to implement and administer a diversion program.

Section 993.162 contains the rules and regulations necessary for governing the implementation of a diversion program.

Prune Marketing Committee Recommendations

Because a diversion program has not been implemented since the 1970's, the administrative rules and regulations contain several outdated provisions. Section 993.162(a) of the regulations currently establishes specific dryaway ratios by producing regions within the production area. Dryaway ratios represent the ratio of the weight of fresh prune plums needed to produce dried prunes, and are the basis for computing the dried weight equivalent of diverted fresh prune plums. The ratios range from 2.6 to 3.25 pounds of fresh plums to make a pound of French prunes, depending on the producing region. For non-French prunes, the dryaway ratio is established at 3.5 pounds of plums for one pound of non-French prunes for the entire production area.

The dryaway ratios can change from year to year depending upon weather conditions, fruit maturity at time of harvest, fruit solids and other factors. The dryaway ratios used in the early 1970's are no longer valid. Expanding production together with limited dehydration capacity has forced some growers to begin harvesting earlier and continue later than in the past. This has resulted in dryaway ratios higher than those currently specified. Because of this, and to provide more flexibility, the Committee recommended removing the specific dryaway ratios for non-French prunes from § 993.162(a) of the regulations and adding language that will allow the Committee to compute dryaway ratios for the applicable producing regions based on a survey of at least eight commercial prune dehydrators geographically dispersed within the production area.

When the Committee believes a diversion program is needed, the Committee will obtain annual average dryaway ratios from commercial dehydrators surveyed and compute a five-year average dryaway ratio for each dehydrator. The Committee will then add together the participating commercial dehydrators' five-year average dryaway ratios for each producing region within the production area, and divide the total dryaway ratio by the number of participating commercial dehydrators to obtain each year's average dryaway ratio by producing region. In the event any of the annual dryaway ratios for any of the crop years are abnormally high or low in any year, the Committee could replace the abnormal year's data with that of an earlier year. After the computations are made, the resulting ratios will be announced and commercial dehydrators will be notified by letter prior to the beginning of any crop year in which reserve pooling and a diversion program was being contemplated. This will result in more accurate dryaway ratios in determining the dried weight equivalent of fresh prune plums being diverted.

No change to the dryaway ratio for non-French prunes was recommended. Production of these prunes is small (0.06 percent of total prune production), little data is available, and it is believed that the currently listed ratio of 3.5 to 1 is accurate.

As previously mentioned, dryaway ratios for French prunes are calculated and applied to various producing regions within the production area. Section 993.162(a) of the regulations currently contains reference to 13 counties that no longer produce prunes. Prune production has shifted within the production area over the years. Thus, the Committee recommended updating the prune producing regions and condensing them into fewer regions. The regions used in determining dried weight equivalents for a diversion program in § 993.162(a) will be realigned as follows:

French Prunes

—North Sacramento Valley—The counties of Butte, Glenn, Shasta, and Tehama.

—South Sacramento, Napa, Sonoma, and Santa Clara Valleys and the counties of Amador, Colusa, Lake, Placer, Solano, Sutter, Yolo, Yuba, Napa, Sonoma, San Benito, and Santa Clara.

—San Joaquin Valley—The counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare.

This final rule also will allow the Committee to assign any new counties of production to one of these three regions or remove counties when production ceases. When prune acreage ceases to exist in a county, the Committee will remove that county from the existing production region, with the approval of the Secretary, and announce the removal to the industry. In like manner, if there were new producing counties within the State, the Committee will, with the approval of the Secretary, be allowed to assign them to one of the existing regions based on geographic proximity and/or production/dehydration characteristics, instead of listing the counties in the rules and regulations. These assignments also will be announced to the industry. This process will allow the Committee to make timely changes to the producing regions so they reflect the current industry situation. Section 993.162(a) is modified to reflect these changes.

The region for non-French prunes will continue to include all counties within the production area because specific information on growing regions within the State is not maintained.

Section 993.162(b) of the regulations currently establishes the following eligible diversion methods: (1) Disposing of harvested prune plums under Committee supervision for nonhuman use at a location and in a manner satisfactory to the Committee; and (2) Leaving unharvested the entire production of prune plums from a solid block of bearing trees designated by the producer applying for the diversion. This final rule will specifically

reference the removal of prune plum trees prior to harvest as an eligible diversion method. In the past, it has been determined that removing trees will qualify as unharvested production under the existing regulations. However, the Committee recommended adding clarifying language to the regulations to ensure that the removal of trees will qualify as an eligible diversion method.

A final change to § 993.162(b) will require the Committee to conduct a meeting prior to the beginning of any crop year in which a diversion program was being contemplated to determine which diversion method or methods may be used, and announce the eligible diversion method(s) to the industry. Section 993.162(b) is modified to reflect these changes.

To participate in the diversion program, producers must file an application with the Committee. Section 993.162(c) of the regulations currently requires that when a producer applies for the diversion program, a deposit fee shall accompany the application. The deposit fees established in the current regulations are as follows: For each producer application, the fee shall be the greater of either $100 or the amount obtained by multiplying the quantity, in tons, of prune plums to be diverted by $3.50. For commercial dehydrators acting as an agent for a group of four or more producers, the fee shall be the greatest of either $200 or the amount obtained by multiplying the aggregate quantity in tons of prune plums to be diverted by the group by $3.50. The deposit fees charged to diverting growers were intended to finance the Committee's administrative costs for the entire diversion program with any excess monies to be refunded on a prorate basis to participants. Because of changed economics since these fees were established in the 1970's, the deposit fees established in the regulations will not currently cover these costs. The Committee, therefore, recommended revising the regulations to provide that whenever a diversion program is implemented, the Committee shall, with the approval of the Secretary, compute and announce the deposit fees associated with filing applications for the diversion program. The deposit fees will be announced to the industry, instead of specifying the deposit fees in the rules and regulations. It is intended that the computed fees will reflect Committee administrative costs associated with administering a diversion program whenever such a program is recommended.

These changes will allow flexibility in the regulations by allowing the Committee to compute and announce the fees. Section 993.162(c) is modified to reflect these changes.

The Committee also recommended changes to § 993.162(d) of the regulations. This section includes criteria for approving diversion applications and establishes fees in connection with modifying applications. The changes will remove reference to specific fees and allow the Committee to apply fees consistent with the process regarding deposit fees. The changes also will increase the service charge for modifying applications from $1 to $2 per ton to reflect current administrative costs. Section 993.162(d) is modified accordingly.

The rules and regulations pertaining to implementing a prune diversion program were developed in the 1970's, and several provisions are outdated. These changes are designed to bring the rules and regulations in line with the present California prune industry practices. The changes also provide for flexibility in years when reserve pooling and a diversion program are implemented.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,205 producers of dried prunes in the production area and approximately 24 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated industry profile shows that 9 out of 24 handlers (37.5 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Fifteen of the 24 handlers (62.5 percent) shipped under $5,000,000 worth of prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, would be considered large growers with annual receipts over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities. USDA does not have precise numbers on the total number of commercial dehydrators in the industry or their size. However, it may be assumed that many may be considered small under SBA criteria.

Under § 993.62 of the order, when volume control in the form of a reserve pool is implemented, prune producers can elect to divert part of their prune plum crop from normal markets in lieu of placing prunes in a reserve pool. Section 993.162 contains the administrative rules and regulations necessary to administer a diversion program. This rule will revise those regulations.

One of the changes will remove references in the regulations to establish dryaway ratios for prune plums of the French variety. Dryaway ratios are used to determine the dried weight equivalent of fresh prune plums diverted from normal markets. Because these dryaway ratios are outdated, the Committee recommended replacing them by a process that will allow the Committee to compute and announce current dryaway ratios based on a survey of commercial dehydrators. Surveying commercial prune dehydrators will impose a minor information collection burden on such entities. It is estimated that between 8 and 15 commercial dehydrators will be requested to furnish information on their annual average dryaway ratios to the Committee, and that it will take approximately 15 minutes to furnish the information. The total estimated annual burden of collecting this information is estimated to be 225 minutes (3 hours and 45 minutes) for the industry. However, the Committee believes that the burden to complete a commercial dehydrator dryaway ratio survey will be outweighed by obtaining and using updated dryaway ratio data for French prunes when dryaway ratios are used to determine the dried weight equivalent of fresh prune plums diverted from normal markets.

Another change will update the prune producing regions to which the dryaway ratios for French prunes are applied, and allow the Committee to update the areas based on current production information. Dryaway ratios vary from area to area, and prune production shifts over time. Another change will specify in the regulatory text that tree removal is an acceptable diversion method, and

that the Committee may determine, with the approval of the Secretary, and announce which method(s) of diversion may be used whenever a program is implemented. Another change will remove from the regulations outdated deposit fees for diversion program participants and authorize the Committee to compute such fees based on current program administration costs.

The changes to the prune producing regions, addition of acceptable diversion methods, and the Committee's authority to determine which methods of diversion are to be used are not expected to have a significant impact on growers or handlers, either small or large. These changes will update the regulations to reflect changes in the industry and to facilitate administration and implementation of a voluntary diversion program, if recommended in the future.

The changes regarding deposit fees will allow the Committee to collect charges from diversion program participants that reflect actual administrative costs incurred by the Committee. The fees specified in the regulations are outdated and will not cover the Committee's actual costs if a diversion program was needed to be implemented in the future. These changes will help to ensure that the growers participating in a future diversion program will pay the administrative costs of the program, as specified in § 993.62(g) of the order. Because growers participating in a diversion program are the beneficiaries of the program, it is appropriate that they pay the administrative fees of the program. In addition, because the diversion program is voluntary, growers will determine individually whether the costs will outweigh the benefits prior to their participation. It is not known how many growers will participate in a diversion program, since there has not been one implemented under the marketing order since the 1970's.

This final rule will be applied to small and large entities equally, regardless of size. The Committee believes that these actions will benefit the prune industry by updating the regulations to reflect changes in the industry, and by providing a process that will facilitate timelier implementation of a diversion program, if recommended.

The Committee discussed alternatives to this change on November 29, 2001, including taking no action. However, that will leave any future diversion program a less viable supply management tool due to outdated program elements. Another alternative was to update the data on dryaway ratios, prune producing regions, and diversion application charges through informal rulemaking the next time a diversion program was considered, rather than changing to a formula or survey procedure as stated herein. This alternative was not recommended because the Committee believed that this final rule would provide for more flexibility in administering a future diversion program.

This action will allow the Committee to survey commercial prune dehydrators to estimate costs applicable to drying prune plums. The reporting and record keeping burdens are necessary for compliance purposes and for developing statistical data to administer a future program. This rule will impose some additional reporting or recordkeeping requirements on both small and large California prune plum commercial dehydrators. It is estimated that between 8 and 15 commercial dehydrators will be requested to furnish information on their annual average dryaway ratios to the Committee, and that it will take an average of 15 minutes per response to furnish this information. The total estimated annual burden of collecting this information is estimated to be 225 minutes (3 hours and 45 minutes) for the industry. However, the Committee believes that the burden to complete a commercial dehydrator dryaway ratio survey will be outweighed by obtaining and using updated dryaway ratio data for French prunes when dryaway ratios are used to determine the dried weight equivalent of fresh prune plums from normal markets.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS is seeking approval by the Office of Management and Budget (OMB) for the additional burden imposed by the commercial dryaway ratio survey. Upon OMB approval, the additional burden will be merged into the information collection currently approved under OMB No. 0581–0178, Vegetable and Specialty Crop Marketing Orders. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, the Committee's Supply Management Subcommittee meeting on November 28, 2001, and the Committee meeting on November 29, 2001, where this action was deliberated, were both public meetings widely publicized throughout the prune industry. All interested persons, both large and small, were invited to attend the subcommittee and Committee meetings and participate in the industry's deliberations.

A proposed rule concerning this action was published in the **Federal Register** on October 28, 2002, (67 FR 65732). Copies of this rule were mailed or sent via facsimile to all Committee members, alternates and dried prune handlers. Finally, the Office of the Federal Register and USDA made the rule available through the Internet. The rule provided a comment period that ended December 27, 2002. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 993.162, paragraphs (a), (b), (c), and (d) are revised to read as follows:

§ 993.162 Voluntary prune plum diversion.

(a) *Quantity to be diverted.* The Committee shall indicate the quantity of prune plums that producers may divert pursuant to § 993.62 whenever it recommends to the Secretary that diversion operations for a crop year be permitted. Whenever diversion operation for a crop year have been authorized by the Secretary, the Committee shall notify producers, commercial dehydrators, and handlers, known to it of such authorization and diversion program procedures. The Committee shall compute the dried weight equivalent of prune plums so diverted on a dryaway basis as follows:

(1) For prune plums of the French variety, the Committee shall survey at least eight commercial prune dehydrators that are geographically dispersed within the production area to obtain their annual dryaway ratios for each of the preceding five crop years, and compute a five-year average dryaway ratio for each dehydrator. The Committee shall then add together the participating commercial dehydrators' five-year average dryaway ratios for each producing region within the production area, and divide the total by the number of participating commercial dehydrators in that region to compute the dryaway ratio by producing region. In the event any of the annual dryaway ratios for any of the crop years is abnormally high or low in any year, the Committee may replace the abnormal year's data with that of an earlier year. The prune producing regions for which dryaway ratios shall be computed for prune plums of the French variety are as follows:

(i) North Sacramento Valley, which includes the counties of Butte, Glenn, Shasta, and Tehama;

(ii) South Sacramento, Napa, Sonoma, and Santa Clara Valleys, which includes the counties of Amador, Colusa, Lake, Placer, Solano, Sutter, Yolo, Yuba, Napa, Sonoma, San Benito, and Santa Clara; and

(iii) San Joaquin Valley, which includes the counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare.

(A) *New producing counties within the area.* If there were new producing counties within the State of California, the Committee will, with the approval of the Secretary, assign the new prune producing county or counties, as the case may be, to one of the prune producing regions based on geographic proximity and/or production/dehydration characteristics. The addition of a county or counties, as the case may be, to one of the producing regions will be announced to the industry.

(B) *Removal of a county from a production area.* When prune acreage ceases to exist in a county, the Committee will, with the approval of the Secretary, remove that county from the existing region. Removal of a county from a production region also will be announced to the industry.

(2) For prune plums of the non-French variety, the dryaway ratio shall be 1 pound for each 3.50 pounds of prune plums diverted. The prune-producing region for prune plums of non-French varieties is the State of California.

(b) *Eligible diversions.* Eligible diversions shall preclude prune plums from becoming prunes and may include the following methods:

(1) Disposing of harvested prune plums under Committee supervision for nonhuman use at a location and in a manner satisfactory to the Committee;

(2) Leaving unharvested the entire production of prune plums from a solid block of bearing trees designated by the producer applying for the diversion of removing prune plum trees prior to harvest; and/or

(3) Such other diversions as may be authorized by he Committee and approved by the Secretary.

(4) In accordance with § 993.62(c), eligible diversion shall not apply to prune plums, which would not, under normal producer practices, be dried and delivered to a handler. On or before July 20 of each crop year when the Committee recommends a reserve pool and diversion program (except the Committee with the approval of the Secretary may extend this date by not more than 10 business days if warranted by a late crop), the Committee shall identify, with the approval of the Secretary, the acceptable method(s) of voluntary prune plum diversion through reasonable publicity to producers, commercial dehydrators, handlers, and the cooperative bargaining association(s). For the purposes of this section, cooperative bargaining association means a nonprofit cooperative association of dried prune producers engaged within the production area in bargaining with handlers as to price and otherwise arranging for the sale of natural condition dried prunes of its members.

(c) *Applications for diversion.*

(1) *By producers.* Each producer desiring to divert prune plums of his own production shall, prior to diversion, file with the Committee a certified application on Form PMC 10.1 "Application for Prune Plum Diversion" containing at least the following information:

(i) The name and address of the producer; whether the producer is an owner-operator, share-landlord, share-tenant, or cash tenant; and the name and address of any other person or persons sharing a proprietary interest in such prune plums;

(ii) The proposed method of diversion and the location where the diversion is to take place;

(iii) The quantity and variety of prune plums proposed to be diverted; and

(iv) The approximate period of diversion.

(v) A deposit fee shall accompany each producer's application to cover costs associated with processing the application and administering the diversion program. The Committee shall compute, with the approval of the Secretary, and announce to the industry, the deposit fee. The deposit fee announced shall be a set dollar amount or a per ton cost based on the tonnage to be diverted. The fee paid by the applicant shall be the greater of these amounts.

(2) *By dehydrator as agent.* Any producer, or group of producers, may authorize a dehydrator to act as an agent to divert harvested prune plums. Prior to diversion such dehydrator shall submit to the Committee an application on Form PMC 10.1 "Application for Prune Plum Diversion" for each producer or group of producers under contract with the dehydrator. A deposit fee shall accompany each such application to cover the costs associated with processing the application and administration of the program. With respect to any group of four or more producers under contract with a dehydrator, the deposit fee for the group shall be the greater of either double the single deposit fee, pursuant to paragraph (c)(1) of this section, or the amount obtained by multiplying the total tonnage of prune plums to be diverted by the group of producers covered in the dehydrator's application times the per ton deposit rate announced by the Committee pursuant to (c)(1) of this section.

(3) *Receipt of applications.* The Committee shall establish, and give prompt notice to the industry, a final date for receipt of applications for diversion: *Provided*, That the Committee may extend such deadline if the total tonnage represented in all applications is substantially less than the total tonnage established by the Committee pursuant to paragraph (a) of this section.

(d) *Approval of applications.* No certificate of diversion shall be issued by the Committee unless it has approved the application covering such diversion.

(1) The Committee's approval of an application shall be in writing, and include at least the following:

(i) The details as to the method of diversion to be followed;

(ii) The method of appraisal to be used by the Committee to determine the quantity of prune plums diverted;

(iii) The lesser of either the quantity specified in the application to be diverted, or modification of that quantity as a result of any Committee action to prorate the total quantity to be diverted by all producers; and

(iv) Such other information as may be necessary to assist the applicant in meeting the requirements of this section, including the conditions for proof of diversion.

(2) If the Committee determines that it cannot approve an application it shall notify the applicant promptly. The Committee shall state the reason(s) for failing to approve the application, and request the applicant to submit, if practicable, an amended application correcting the deficiencies in the original application.

(3) The Committee shall establish, and give prompt notice to the industry of a final date by which a producer or dehydrator may modify an approved application, including changing the method of diversion or the quantity of prune plums to be diverted: *Provided*, That any such change shall include information on the location or quantity of such diversion and shall be accompanied by a payment of a second deposit fee, calculated pursuant to paragraph (c)(1) or (c)(2), as applicable, of this section, plus a $2 per ton service charge for any increase in tonnage to be diverted.

(4) If an applicant cancels an approved diversion application prior to diversion, no part of the deposit fee shall be refunded, except upon approval by the Committee following review of all circumstances in the matter.

* * * * *

Dated: April 3, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–8649 Filed 4–8–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1465

RIN 0578–AA31

Agricultural Management Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements section 2501 of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) which amended section 524 of the Federal Crop Insurance Act which permits CCC to fund the Agricultural Management Assistance (AMA) program. This final rule describes how NRCS intends to implement AMA as authorized by the amendment in the 2002 Act.

EFFECTIVE DATE: May 9, 2003.

ADDRESSES: This rule may also be accessed via Internet. Users can access the Natural Resources Conservation Service (NRCS) homepage at *http://www.nrcs.usda.gov;* select Farm Bill 2002, and click on AMA Final rule.

FOR FURTHER INFORMATION CONTACT: Dave Mason, Program Manager, Conservation Operations Division, NRCS, P.O. Box 2890, Washington, DC 20013–2890, telephone: (202) 720–1873; fax: (202) 720–4265; e-mail: *dave.mason@usda.gov*, Attention: Agricultural Management Assistance.

SUPPLEMENTARY INFORMATION:

Discussion of Program

Section 2501 of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) amended section 524 of the Federal Crop Insurance Act (7 U.S.C. 1524) to permit CCC to fund the Agricultural Management Assistance (AMA) program at the amount of $20,000,000 for each of the fiscal years 2003 through 2007. Section 524(b) of the Federal Crop Insurance Act of 2000, as amended by section 133 of the Agricultural Risk Protection Act of 2000, authorized the AMA program.

As provided by section 524 of the Federal Crop Insurance Act (7 U.S.C. 1524), as amended by the 2002 Act, the funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS for carrying out AMA. (The Chief of the NRCS is vice-president of the CCC.) Accordingly, where NRCS is mentioned in this rule, it also refers to the CCC's funds, facilities, and authorities where applicable.

The Commodity Credit Corporation (CCC) administers the funds under the general supervision of a Vice President of the CCC who is the Chief of the Natural Resources Conservation Service (NRCS). These funds will be used annually for cost share assistance to producers in 15 States in which participation in the Federal Crop Insurance Program is historically low. The 15 States include Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. The cost share assistance will encourage and assist producers in the selected States to adopt natural resources conservation practices and investment strategies that will reduce or mitigate risks to their agricultural enterprises.

NRCS will use an allocation formula to determine the amount of funds that each state will receive that have been weighted to meet National objectives for the AMA conservation program. The formula used to determine allocation of funds to states consists of ranking factors of natural resource concerns. The formula is similar in nature to ones that have been used for other NRCS conservation programs.

However, this formula is primarily used to allocate funds to the states for practices that will mitigate a producer's risk of production through the implementation of resource conservation practices that reduce soil erosion, utilize integrated pest management principles and assist producers in transition to organic farming based operations. Production and marketing diversification is enhanced by utilizing integrated pest management principles by reducing and applying chemicals for production as needed. Producers who elect to eliminate chemical usage by converting to organic farming will be able to provide products to a growing sector of the American population whose daily diet consists partially or totally of organically produced food items. This allows producers to use marketing diversification as a tool to enhance their operations. AMA is targeted to 15 states that have been historically low in participation in programs that provide opportunities for producers to environmentally and financially implement conservation practices and marketing strategies to provide safeguards against the cyclic economic variances of the agricultural economy.

Other practices that producers may elect to implement include the opportunity to construct or improve watershed management or irrigation structures and plant trees to form windbreaks or improve water quality.

Based on national program objectives and state priorities and resource concerns, the State Conservationist in conjunction with advice from the State Technical Committee will determine which practices are eligible for program payments. The practices must meet the purposes set out in section 1465.1 of this rule.

The State Conservationist or designated conservationist with advice from the State Technical Committee and using a locally led process will rank and select applications for contracting based on the state-developed ranking criteria and ranking process. The NRCS representative will work with the applicant to collect the necessary information to evaluate the application using the ranking criteria.

Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), the Office of Management and Budget has determined that this final rule is not a significant regulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

NRCS has determined through an Environmental Assessment (EA) for the Agricultural Management Assistance Program that the issuance of this final rule would not have a significant impact on the human environment. Copies of the Environmental Assessment and the Finding of No Significant Impact may be obtained from Dave Mason, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890.

Civil Rights Impact Analysis

NRCS has determined through a Civil Rights Impact Analysis that the issuance of this final rule will not have a significant effect on minorities. Copies of the Civil Rights Impact Analysis and Finding of No Significant Impact may be obtained from Dave Mason, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890.

Paperwork Reduction Act

Section 2702 (b)(1)(A) of the 2002 Act exempts the promulgation of regulations and the administration of the AMA from the requirements of the Paperwork Reduction Act.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule are not retroactive. Furthermore, the provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614, 780 and 11 must be exhausted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, NRCS assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

USDA classified this final rule as "not major" under section 304 of the Department of Agriculture Reorganization Act of 1994, Pub. L. 104–354. Therefore, a risk assessment is not required.

Discussion of Comments

NRCS issued a proposed rule with request for comments on August 28, 2002, in the **Federal Register**, Volume 67, Number 167, Pages 55171–55175.

One comment was received during the comment period on the proposed regulation. The commenter stated that they were interested in organizing a meeting with a group of farmers in Illinois. Since the state of Illinois is not eligible for participation in the program and the comment was not directed to any section of the proposed rule, no changes were made to the rule.

List of Subjects in 7 CFR Part 1465

Conservation contract, Conservation plan, Conservation practices, Soil and water conservation.

■ Accordingly, Title 7 of the Code of Federal Regulations is amended by adding a new part 1465 to read as follows:

PART 1465—AGRICULTURAL MANAGEMENT ASSISTANCE

Subpart A—General Provisions

Sec.
1465.1 Purposes and applicability.
1465.2 Administration.
1465.3 Definitions.
1465.4 Program requirements.
1465.5 Conservation practices.

Subpart B—Contracts

1465.20 Applications for participation and selecting applications for contracting.
1465.21 Contract requirements.
1465.22 Conservation practice operation and maintenance.
1465.23 Cost-share payments.
1465.24 Contract modification, extension, and transfer of land.
1465.25 Contract violations and termination.

Subpart C—General Administration

1465.30 Appeals.
1465.31 Compliance with regulatory measures.
1465.32 Access to operating unit.
1465.33 Performance based upon advice or action of representatives of NRCS.
1465.34 Offsets and assignments.
1466.35 Misrepresentation and scheme or device.

Authority: 7 U.S.C. 1524(b), 16 U.S.C. 3801.

Subpart A—General Provisions

§ 1465.1 Purposes and applicability.

Through the Agricultural Management Assistance (AMA) program, the NRCS provides financial assistance funds annually to producers in 15 statutorily designated states to construct or improve water management structures or irrigation structures; to plant trees to form windbreaks or to improve water quality; and to mitigate risk through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic farming. The AMA Program is applicable in Connecticut, Delaware, Maryland, Massachusetts, Maine, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming.

§ 1465.2 Administration.

(a) Administration and implementation of the conservation provisions of AMA Program for the CCC is assigned to the Natural Resources Conservation Service (NRCS). The Farm Service Agency (FSA) is responsible for 'person' determinations under § 1465.23(c) and making cost-share payments.

(b) NRCS will:

(1) Provide overall management and implementation leadership for the AMA Program;

(2) Establish policies, procedures, priorities, and guidance for implementation;

(3) Establish cost-share payment limits;

(4) Determine eligible practices;

(5) Develop and approve conservation plans and contracts with selected participants;

(6) Provide technical leadership for implementation, quality assurance, and evaluation of performance; and

(7) Make funding decisions and determine allocations of AMA funds.

(c) FSA will:

(1) Determine 'person' and producer eligibility; and

(2) Make cost-share payments for practices completed.

§ 1465.3 Definitions.

The following definitions apply to this part and all documents issued in

accordance with this part, unless specified otherwise:

Applicant means an agricultural producer who has requested in writing to participate in the AMA Program. Producers who are members of a joint operation shall be considered one applicant.

Chief means the Chief of NRCS, or designee.

Conservation district means a political subdivision of a State, Indian tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation plan means a record of the participant's decisions, and supporting information, for treatment of a unit of land or water, and includes the schedule of operations, activities, and estimated expenditures needed to solve identified natural resource concerns.

Conservation practice means a specified treatment, such as a structural or vegetative practice or a land management practice, which is planned and applied according to NRCS standards and specifications.

Contract means a legal document that specifies the rights and obligations of any person who has been accepted for participation in the AMA Program.

Cost-share payment means the financial assistance from NRCS to the participant to share the cost of installing eligible practices.

Designated conservationist means an NRCS employee whom the State conservationist has designated as responsible for administration of the AMA Program.

Indian tribe means any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special assistance and services provided by the United States to Indians because of their status as Indians.

Indian trust lands means real property in which the United States holds title as trustee for an Indian or tribal beneficiary, or a Indian or tribal beneficiary holds title and the United States maintains a trust relationship.

Life-span means the minimum time period in which the conservation practices are to be maintained and used for their intended purpose.

Liquidated damages means a sum of money stipulated in the contract that the participant agrees to pay if the participant breaches the contract. The sum represents an estimate of the anticipated or actual harm caused by the breach, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Operation and maintenance means work that is to be performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Participant means a producer who is a party to an AMA contract.

Producer means a person who is engaged in agricultural production.

Secretary means the Secretary of the United States Department of Agriculture.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Technical assistance means the personnel and support resources needed to conduct conservation practice survey, layout, design, installation, and certification; training and providing quality assurance for professional conservationists; and evaluation and assessment of the AMA Program.

Unit of concern means a parcel of agricultural land that has natural resource conditions that are of concern to the participant.

§ 1465.4 Program requirements.

(a) Participation in the AMA Program is voluntary. The participant, in cooperation with the local conservation district, applies for practice installation for the farm or ranching unit of concern. The NRCS provides cost-share payments through contracts to apply needed conservation practices within a time schedule specified in the contract.

(b) The Chief determines the funds available for financial assistance according to the purpose and projected cost for which the financial assistance is provided in a fiscal year. The Chief allocates the funds available to carry out the AMA Program.

(c) To be eligible to participate in the AMA Program, an applicant must:

(1) Be an agricultural producer;

(2) Have control of the land for the life of the proposed contract period, except that:

(i) An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief determines that there is sufficient assurance of control; or

(ii) If the applicant is a tenant of the land involved in agricultural production the applicant shall provide NRCS with the written concurrence of the landowner in order to apply an eligible practice(s);

(3) Submit an application form CCC–1200;

(4) Supply information as required by NRCS to determine eligibility for the AMA Program; and

(5) States, political subdivisions, and entities thereof will not be persons eligible for payment. Any cooperative association of producers that markets commodities for producers shall not be considered to be a person eligible for payment.

(d) Land may only be considered for enrollment in the AMA program if NRCS determines that the land is:

(1) Privately owned land;

(2) Publicly owned land where:

(i) The land is under private control for the contract period and is included in the participant's operating unit;

(ii) Conservation practices will contribute to an improvement in the identified natural resource concern; and

(iii) The participant has provided NRCS with written authorization from the government landowner to apply the conservation practices; or

(3) The land is federally recognized Tribal, BIA allotted, or Indian trust land.

§ 1465.5 Conservation practices.

(a) The State Conservationist, with advice from the State Technical Committee, will determine the conservation practices eligible for AMA Program payments. To be considered eligible conservation practices, the practices must meet the purposes of the AMA as set out in § 1465.1.

(b) The conservation plan includes the schedule of operations, activities, and estimated expenditures of the practices needed to solve identified natural resource concerns.

Subpart B—Contracts

§ 1465.20 Applications for participation and selecting applications for contracting.

(a) Any producer who has eligible land may submit an application for participation in the AMA Program at a USDA service center. Producers who are members of a joint operation shall file a single application for the joint operation.

(b) NRCS will accept applications throughout the year. The State Conservationist will distribute information on the availability of assistance and the state-specific goals. Information will be provided that explains the process to request assistance.

(c) The State Conservationist, with advice from the State Technical Committee, will develop ranking criteria and a ranking process to select applications, taking into account local and state priorities.

(d) The State Conservationist or designated conservationist with advice from the State Technical Committee and using a locally led process will rank and select applications for contracting based on the state-developed ranking criteria and ranking process.

(e) The State Conservationist or designated conservationist will work with the applicant to collect the information necessary to evaluate the application using the ranking criteria.

§ 1465.21 Contract requirements.

(a) In order for a participant to receive cost-share payments, the participant shall enter into a contract agreeing to implement eligible conservation practices.

(b) An AMA contract will:

(1) Incorporate by reference all portions of a unit applicable to the AMA Program;

(2) Be for a duration of 3 to 10 years;

(3) Incorporate all provisions as required by law or statute, including participant requirements to:

(i) Not conduct any practices on the farm or ranch unit of concern that would tend to defeat the purposes of the contract according to § 1465.25;

(ii) Refund any AMA Program payments received with interest, and forfeit any future payments under the AMA Program, on the violation of a term or condition of the contract, consistent with the provisions of § 1465.25;

(iii) Refund all AMA Program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, consistent with the provisions of § 1465.24; and

(iv) Supply information as required by NRCS to determine compliance with the contract and requirements of the AMA Program.

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices consistent with the provisions of § 1465.22; and

(5) Any other provision determined necessary or appropriate by NRCS.

(c) The participant must apply the practice(s) according to the schedule set out in the contract or conservation plan.

§ 1465.22 Conservation practice operation and maintenance.

The contract will incorporate the operation and maintenance of the conservation practice(s) applied under the contract. The participant must operate and maintain the conservation practice(s) for its intended purpose for the life span of the conservation practice, as identified in the contract or conservation plan, as determined by NRCS. NRCS may periodically inspect the conservation practices during the life span of the practices as specified in the contract to ensure that operation and maintenance is occurring.

§ 1465.23 Cost-share payments.

(a)(1) The Federal share of cost-share payments to a participant will be 75 percent of the actual cost of an eligible practice. In no instance shall the total financial contributions for an eligible practice from all public and private entity sources exceed 100 percent of the actual cost of the practice.

(2) Participants may contribute their portion of the costs of practices through in-kind contributions, including labor and materials, providing the materials contributed meet the NRCS standards and specifications for the practice being installed.

(3) Cost-share payments will not be made to a participant who has applied or initiated the application of a conservation practice prior to approval of the contract.

(b) The total amount of cost-share payments paid to a person under this part may not exceed $50,000 for any fiscal year.

(c) For purposes of applying the payment limitations provided for in this section, NRCS will use the provisions in 7 CFR part 1400 related to the definition of a "person" and the limitation of payments, except that:

(i) The provisions in part 1400, subpart C for determining whether persons are actively engaged in farming, subpart E for limiting payments to certain cash rent tenants, and subpart F as the provisions apply to determining whether foreign persons are eligible for payment, will not apply.

(ii) With respect to land under an AMA Program contract which is inherited during the contract period, the $50,000 fiscal year limitation will not apply to the extent that the payments from any contracts on the inherited land cause an heir, who was party to an AMA Program contract on other lands prior to the inheritance, to exceed the annual limit.

(iii) With regard to contracts on tribal land, Indian trust land, or BIA allotted land, payments exceeding one limitation may be made to the tribal venture if an official of the BIA or tribal official certifies in writing that no one person directly or indirectly will receive more than the limitation.

(iv) The status of an individual or entity on the date of the application shall be the basis on which the determination of the number of persons involved in the farming operation is made.

(d) The participant and NRCS must certify that a conservation practice is completed in accordance with the contract before NRCS will approve the payment of any cost-share payment.

§ 1465.24 Contract modification, extension, and transfer of land.

(a) The participant and NRCS may modify a contract if the participant and NRCS agree to the contract modification.

(b) Contracts that run less than ten years may be extended for up to the 10-year limit in order for the participant to complete the practices scheduled in the contract, if such extension is requested by the participant before the contract expires.

(c) The parties may mutually agree to transfer a contract to a new participant. The transferee must be determined by NRCS to be eligible to participate in the AMA Program and shall assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract.

(d) NRCS may require a participant to refund all or a portion of any assistance earned under the AMA Program if the participant sells or loses control of the land under an AMA Program contract and the new owner or controller is not eligible to participate in the AMA Program or refuses to assume responsibility under the contract.

§ 1465.25 Contract violations and termination.

(a)(1) If NRCS determines that a participant is in violation of the terms of a contract or documents incorporated by reference into the contract, NRCS will give the participant a reasonable time, as determined by the State Conservationist, to correct the violation and comply with the terms of the contract and attachments thereto. If a

participant continues in violation, the State Conservationist may terminate the AMA Program contract.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, a contract termination shall be effective immediately upon a determination by the State Conservationist that the participant has submitted false information or filed a false claim, or engaged in any act for which a finding of ineligibility for payments is permitted under the provisions of § 1465.35, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(b)(1) If NRCS terminates a contract, the participant shall forfeit all rights for future payments under the contract and shall refund all or part of the payments received, plus interest determined in accordance with part 1403 of this chapter. The State Conservationist has the option of requiring only partial refund of the payments received if the State Conservationist determines that a previously installed conservation practice can function independently, is not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(2) If NRCS terminates a contract due to breach of contract or the participant voluntarily terminates the contract before any contractual payments have been made, the participant shall forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract. The State Conservationist will have the option to waive the liquidated damages depending upon the circumstances of the case.

(3) When making all contract termination decisions, NRCS may reduce the amount of money owed by the participant by a proportion which reflects the good faith effort of the participant to comply with the contract, or the hardships beyond the participant's control that have prevented compliance with the contract.

(4) The participant may voluntarily terminate a contract if NRCS agrees based on NRCS's determination that termination is in the public interest.

(5) In carrying out NRCS's role in this section, NRCS may consult with the local conservation district.

Subpart C—General Administration

§ 1465.30 Appeals.

(a) A participant may obtain administrative review of an adverse decision under the AMA Program in accordance with parts 11 and 614 of this title, except as provided in paragraph (b) of this section.

(b) The following decisions are not appealable:

(1) Payment rates, payment limits, and cost-share percentages;

(2) Funding allocations;

(3) Eligible conservation practices; and

(4) Other matters of general applicability, including:

(i) Technical standards and formulas;

(ii) Denial of assistance due to lack of funds or authority; or

(iii) Science-based formulas and criteria.

§ 1465.31 Compliance with regulatory measures.

Participants who carry out conservation practices will be responsible for obtaining the authorities, rights, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants will be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

§ 1465.32 Access to operating unit.

Any authorized NRCS representative shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance, inspect any work undertaken under the contract and collect information necessary to evaluate the performance of conservation practices in the contract. The NRCS representative will make a reasonable effort to contact the participant prior to the exercise of this provision.

§ 1465.33 Performance based upon advice or action of representatives of NRCS.

If a participant relied upon the advice or action of any authorized representative of NRCS, and did not know or have reason to know that the action or advice was improper or erroneous, the State Conservationist may accept the advice or action as meeting the requirements of the AMA Program and may grant relief, to the extent it is deemed desirable by NRCS, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant.

§ 1465.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States Government. The regulations governing offsets and withholdings found in part 1403 of this chapter shall be applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 1465.35 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting an AMA Program determination made in accordance with this part shall not be entitled to contract payments and must refund to NRCS all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) A producer's interest in all contracts shall be terminated, and the producer shall refund to NRCS all payments, plus interest determined in accordance with part 1403 of this chapter, received by such producer with respect to all contracts if it is determined that the producer knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the AMA Program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting an AMA Program determination.

Signed in Washington, DC, on March 28, 2003.

Bruce I. Knight,

Vice President, Commodity Credit Corporation, Chief, Natural Resources Conservation Service.

[FR Doc. 03–8452 Filed 4–8–03; 8:45 am]

BILLING CODE 3410–16–P

HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

Food Additives Permitted for Direct Addition to Food for Human Consumption

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 170 to 199, revised as of April 1, 2002, on page 63, § 172.615(a) is corrected in the table by removing the first entry for "Pentaerythritol ester of gum or wood rosin" and adding the following entry in its place:

§ 172.615 Chewing gum base.

* * * * *

(a) * * *

Plasticizing Materials (Softeners)	
Pentaerythritol ester of partially hydrogenated gum or wood rosin	Having an acid number of 7–18, a minimum drop-softening point of 102 °C, and a color of K or paler.

[FR Doc. 03–55510 Filed 4–8–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 54, and 602

[TD 9052]

RIN 1545–BA08

Notice of Significant Reduction in the Rate of Future Benefit Accrual

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance on the notification requirements under section 4980F of the Internal Revenue Code (Code) and section 204(h) of the Employee Retirement Income Security Act of 1974 (ERISA). Under these final regulations, a plan administrator must give notice of a plan amendment to certain plan participants and beneficiaries when the plan amendment provides for a significant reduction in the rate of future benefit accrual or the elimination or significant reduction in an early retirement benefit or retirement-type subsidy. These final regulations affect retirement plan sponsors and administrators, participants in and beneficiaries of retirement plans, and employee organizations representing retirement plan participants.

DATES: *Effective date.* These regulations are effective on April 9, 2003.

Applicability date. For dates of applicability of these regulations, *see* § 54.4980F–1, Q&A–18, of these regulations.

FOR FURTHER INFORMATION CONTACT: Pamela R. Kinard at (202) 622–6060 or Diane S. Bloom at (202) 283–9888 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1780. Responses to this collection of information are required to obtain a benefit for a taxpayer who wants to amend a plan with an amendment that significantly reduces the rate of future benefit accrual or eliminates or significantly reduces an early retirement benefit or retirement-type subsidy.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent varies from 1 hour to 80 hours, depending on individual circumstances, with an estimated average of 10 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR parts 1, 54, and 602 under section 4980F of the Code and section 204(h) of ERISA. Prior to 2001, section 204(h) of ERISA had no analogous section in the Code, but pursuant to section 101(a) of the Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt, the Secretary of the Treasury has authority to issue regulations under parts 2 and 3 of subtitle B of title I of ERISA, including section 204(h) of ERISA. Under section 104 of the Reorganization Plan No. 4, the Secretary of Labor retains enforcement authority with respect to parts 2 and 3 of subtitle B of title 1 of ERISA, but, in exercising that authority, is bound by the regulations issued by the Secretary of Treasury. On December 15, 1995, temporary regulations (TD 8631), under section 411(d)(6) of the Code were published in the **Federal Register** (60 FR 64320), providing guidance on section 204(h) of ERISA. A notice of proposed rulemaking (EE–34–95), cross-referencing the temporary regulations was published in the **Federal Register** (60 FR 64401) on the same day. On

December 14, 1998, final regulations (TD 8795) addressing the notice requirements under section 204(h) of ERISA were published in the **Federal Register** (63 FR 68678) and were codified in § 1.411(d)–6. The final regulations in this Treasury decision remove Treasury regulation § 1.411(d)–6.

Section 659 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16 (115 Stat. 38) (EGTRRA) added section 4980F of the Code. Section 4980F imposes an excise tax when a plan administrator fails to provide timely notice of plan amendments that provide for a significant reduction in the rate of future benefit accrual. A reduction of an early retirement benefit or a retirement-type subsidy is also treated, for purposes of section 4980F of the Code, as a reduction in the rate of future benefit accrual. Section 659(b) of EGTRRA also amended section 204(h) of ERISA to treat the elimination of an early retirement benefit or a retirement-type subsidy as a reduction in the rate of future benefit accrual. The Job Creation and Worker Assistance Act of 2002, Public Law 107–147 (116 Stat. 21) included certain technical corrections to section 659 of EGTRRA.

On April 23, 2002, proposed regulations under section 4980F of the Code and section 204(h) of ERISA were published in the **Federal Register** (67 FR 19713). On August 15, 2002, the IRS held a public hearing on the proposed regulations. Written comments responding to the notice of proposed rulemaking were also received. After consideration of all the comments, the proposed regulations are adopted, as amended by this Treasury decision, and the regulations under § 1.411(d)–6 are removed. The revisions are discussed below.

The regulations retain the overall structure of the proposed regulations and, like the proposed regulations, include a number of examples illustrating applicable rules. Some of the examples show the information required to be furnished in a section 204(h) notice, both as to amendments that result in a simple reduction in the future rate of benefit accrual and as to those that result in more complex reductions. The most complex are examples in which a defined benefit plan is amended to change prospectively the plan's benefit accrual formula from a traditional formula to a formula that bases future benefits on an account balance—commonly called a conversion to a cash balance pension plan—with the result that, for purposes of the notice requirements of section 4980F and section 204(h), the future rate of benefit accrual may be reduced for some participants and increased for others, including a separate but similarly complex effect on future early retirement benefits.

None of the examples illustrates rules in any other regulation or positions of Treasury or the IRS regarding provisions of the Internal Revenue Code other than the notice requirements of section 4980F and section 204(h). Thus, the examples do not indicate any possible outcome regarding proposed regulations that were published in the **Federal Register** (67 FR 76123) on December 11, 2002 relating to sections 411(b)(1)(H) and 411(b)(2) of the Internal Revenue Code, which require that accruals or allocations under certain retirement plans not cease or be reduced because of the attainment of any age. Specifically, Treasury and the IRS are still considering comments received in connection with those proposed regulations, including comments relating to cash balance pension plans, and will only address the application of section 411(b)(1)(H) to cash balance plans as part of the process to issue regulations under sections 411(b)(1)(H).

Explanation of Revisions and Summary of Comments

A. Overview

Section 4980F of the Code and section 204(h) of ERISA require notice of an amendment to an applicable pension plan that either provides for a significant reduction in the rate of future benefit accrual or eliminates or significantly reduces an early retirement benefit or retirement-type subsidy. An applicable pension plan is a defined benefit plan and any individual account plan that is subject to the funding requirements of section 412 of the Code. The notice is required to be provided to participants and alternate payees for whom the amendment is reasonably expected to reduce significantly the rate of future benefit accrual and to employee organizations representing those participants. The statute generally requires the plan administrator to provide the notice within a reasonable time before the effective date of the plan amendment.

A plan amendment that is subject to the notice requirements of section 4980F of the Code and section 204(h) of ERISA (section 204(h) amendment) may be subject to additional reporting and disclosure requirements under title I of ERISA, such as the requirement to provide a summary of material modifications (SMM) describing the amendment. Notice under section 4980F of the Code and section 204(h) of ERISA (section 204(h) notice) must be provided in accordance with the provisions of these regulations even though sections 102(a) and 104(b) of ERISA also may require that an SMM describing the plan amendment be furnished to participants covered under the plan and beneficiaries receiving benefits under the plan. The Department of Labor has advised the IRS that a plan administrator who provides a section 204(h) notice to applicable individuals in accordance with this final rule will be treated as having furnished those individuals with an SMM regarding the section 204(h) amendment. The Department of Labor has also advised the IRS that furnishing the notice to the last known address of an individual would be sufficient for this purpose where the plan utilizes a method of delivery described in 29 CFR 2520.104b–1 and the fiduciaries of the plan have taken reasonable steps to keep plan records up-to-date and to locate lost or missing participants. Finally, the Department of Labor noted that the plan administrator is required to satisfy any other requirements regarding the furnishing of SMMs or updated summary plan descriptions, including, for example, satisfaction of the requirement to furnish an SMM to any other participants covered under the plan, and to beneficiaries receiving benefits under the plan, who are entitled to an SMM regarding the amendment.

B. Conversion of a Money Purchase Pension Plan into an Individual Account Plan That is Not Subject to Section 412

Rev. Rul. 2002–42 (2002–28 I.R.B. 76), provides that a conversion of a money purchase pension plan into a profit-sharing plan is considered a significant reduction in the rate of future benefit accrual under the money purchase pension plan, thus requiring notice under section 4980F of the Code and section 204(h) of ERISA. As stated in the revenue ruling, allocations under the profit-sharing plan are not benefit accruals under the money purchase pension plan for purposes of determining whether there is a reduction in the rate of future benefit accrual. Accordingly, the final regulations clarify that a plan amendment to convert a money purchase pension plan into a profit-sharing or any other individual account plan that is not subject to section 412 of the Code (including a merger, consolidation, or transfer) is deemed to be a plan amendment that provides for a significant reduction in the rate of future benefit accrual for purposes of section 4980F of the Code and section 204(h) of ERISA.

C. Rate of Future Benefit Accrual Determined Annually

A commentator questioned the provisions of the proposed regulations under which the determination of whether there is a reduction in the rate of future benefit accrual would be based on the whether the amendment is reasonably expected to reduce "the benefits accruing for a year." The commentator objected on the grounds that this could require section 204(h) notice for an amendment that increases benefits in one year and then reduces them in the next, even though the aggregate benefit over the two years might not be reduced or might even be increased in the aggregate. The final regulations retain this rule, but clarify in an example that where a reduction occurs at the same time as an immediate increase in accrued benefits such that the participant's aggregate benefit can never be less than what it would have been had the amendment not been adopted, the reduction is not significant.

D. Reduction in the Rate of Future Benefit Accrual for Individual Account Plans

A commentator suggested that the regulations be revised to clarify that only contributions or forfeitures that are allocated to a participant's account be considered in determining whether a plan amendment to an individual account plan reduces the rate of future benefit accrual. The commentator recommended this revision to clarify that an amendment reducing a contribution formula is not considered insignificant solely because expected future investment returns might offset a portion of the reduction in the contribution formula. A clarification that reflects this suggestion has been adopted in the final regulations.

E. Determination of Applicable Individuals

A commentator suggested that the regulations be revised to clarify the date as of which applicable individuals should be identified. The commentator argued that the lack of a clear determination date would make it difficult, from an administrative standpoint, for plans to identify applicable individuals due to turnover among participants. The final regulations provide that whether a plan participant or an alternate payee is an applicable individual is determined on a typical business day that is reasonably proximate to the time the section 204(h) notice is provided (or at the latest date for providing section 204(h) notice, if earlier), based on all relevant facts and circumstances. An example to this effect has been added to the final regulations.

F. Definition of Early Retirement Benefits and Retirement-Type Subsidies

A commentator stated that Treasury and IRS should issue regulations defining the terms *early retirement benefits* and *retirement-type subsidies*. The commentator noted that there are numerous references to the terms *early retirement benefit* or *retirement-type subsidy* in both the Code (section 4980F(f)(3) and section 411(d)(6)(B)(i)), ERISA (sections 204(g)(2)(A) and 204(h)(9)) and the regulations (§ 1.411(d)-4 and Proposed § 54.4980F–1), but the terms are not defined. The commentator expressed concern that adverse consequences might result from an egregious failure to identify a significant reduction in early retirement benefit or a retirement-type subsidy and guidance has not been issued to clarify the meaning of those terms. The definitions of *Early retirement benefits* and *retirement-type subsidies* affect more than determining whether an amendment requires a section 204(h) notice and, therefore, are beyond the scope of these final regulations. Treasury and IRS anticipate issuing proposed regulations under section 411(d)(6), including general guidance concerning early retirement benefits and retirement-type subsidies. Comments regarding the anticipated proposed regulations were requested, including comments on the guidance that should be provided regarding early retirement benefits and retirement-type subsidies, in Notice 2002–46 (2002–28 I.R.B. 96) and Notice 2003–10 (2003–5 I.R.B. 369).

G. Timing of Notice

A number of comments addressed what constitutes a reasonable period for providing a section 204(h) notice. The proposed regulations included a generally applicable 45-day advance notice rule with exceptions for amendments in connection with certain business transactions and small plans. Some comments recommended that notice generally be required to be provided more than 45 days in advance of the effective date of the section 204(h) amendment and others recommended that notice generally be allowed to be provided less than 45 days in advance of the effective date of the section 204(h) amendment. The approach in the proposed regulations was designed to strike a balance between providing participants with sufficient time to understand and consider the information in the notice and allowing employers to effect changes in their plans for business reasons within a reasonable time, and has been retained in the final regulations.

A commentator requested clarification that section 204(h) notice may be provided before the adoption date of the amendment. The commentator noted that neither section 4980F of the Code nor section 204(h) of ERISA prevents a plan administrator from providing section 204(h) notice before the adoption date of the amendment. The regulations have not been revised to reflect this suggestion because the statute is already sufficiently clear that section 204(h) notice may be provided before the adoption of the amendment.

H. Certification of Accuracy by Senior Officer

A commentator suggested that the regulations be revised to require that a senior officer of the plan sponsor or the plan administrator certify to employees of the plan sponsor and the IRS that the disclosures in the section 204(h) notice accurately describe the effects of the amendment and that the notice is presented in a manner that is understandable to the average applicable individual. The commentator also suggested that the senior officer should certify that the section 204(h) notice provided to applicable individuals does not contain any false or misleading information. The commentator argued that this certification would not be burdensome to plan sponsors if they have exercised due diligence concerning the content of the section 204(h) notice. Because of concerns about the usefulness of such a rule as well as whether there is statutory authority for such a rule, this suggestion has not been adopted.

I. Determination and Effects of Egregious Failures

A commentator suggested that the regulations revise the definition of an egregious violation to distinguish between intentional and negligent acts of failure. The commentator stated that it is possible that a trustee or plan sponsor may make a decision not to provide section 204(h) notice that the trustee or plan sponsor thought was prudent at the time but later determined was a mistake. The commentator argued that these types of decisions, which may be negligent but not intentional, should not be considered egregious failures. The commentator suggested that the final regulations be revised to provide that an egregious failure is an action resulting from a deliberate choice by the plan sponsor, in which the plan sponsor

knew or reasonably should have known that a section 204(h) notice would be required. The commentator also suggested that the final regulations be revised to provide that only applicable individuals who were adversely affected by the egregious failure be entitled to the greater of the old or new benefit formulas.

Section 204(h)(6)(B) of ERISA generally defines an egregious failure as a failure within the control of the plan sponsor that is either an intentional failure or a failure to provide most of the individuals with most of the information they are entitled to receive. Further, section 204(h)(6)(A) of ERISA provides that, in the case of any egregious failure to meet any requirement of section 204(h) with respect to any plan amendment, the provisions are applied so that all applicable individuals are entitled to the greater of the benefits to which they would have been entitled without regard to the amendment, or the benefits under the plan with regard to the amendment. Accordingly, these suggestions were not adopted in the final regulations because they would conflict with the plain language of section 204(h) of ERISA.

J. Content of Section 204(h) Notice

Section 4980F of the Code and section 204(h) of ERISA require that section 204(h) notice be written in a manner calculated to be understood by the average plan participant and that it provide sufficient information to allow applicable individuals to understand the effect of the amendment. Q&A–11 of these final regulations sets forth the content requirements for section 204(h) notice. The final regulations retain the basic structure of Q&A–11 in the proposed regulations, but include a number of clarifications, including clarifying that the content must permit the applicable individual to determine the approximate magnitude of the reduction applicable to that individual. The regulations provide that this requirement is deemed to be satisfied if the notice includes illustrative examples satisfying certain conditions. At the request of a commentator, the final regulations clarify that individualized benefit statements may be used in lieu of illustrative examples if the statements include the same information as illustrative examples, such as showing the approximate range of the reductions for the individual if the reductions vary over time and identification of the assumptions used in the projections.

K. Benefit Changes Made by Collective Bargaining Agreements

A commentator suggested that the final regulations be revised to distinguish between a reduction in the rate of future benefit accrual by collective bargaining agreements and a reduction in the rate of future benefit accrual by plan amendments. Multiemployer plans often incorporate the provisions of related collective bargaining agreements by reference. The commentator argued that when the rate of future benefit accrual is being reduced by a change to a collective bargaining agreement, section 204(h) notice is not required because there is no plan amendment relating to the reduction. The commentator suggested that the final regulations include an example clarifying that in situations where there is an automatic benefit change that is linked to a collective bargaining agreement, section 204(h) notice is not required, or at a minimum that some relief be provided to allow the amendment to go into effect quickly. The IRS and Treasury believe that when a benefit formula in a plan document incorporates provisions of the collective bargaining agreement by reference, those provisions are part of the plan. Accordingly, the final regulations provide a rule in Q&A–7(a)(2) that if all or a part of a plan's rate of future benefit accrual, or an early retirement benefit or retirement-type subsidy provided under the plan, depends on provisions in another document that are referenced in the plan document, a change in the provisions of the other document is an amendment of the plan. An example illustrating this rule has been added to the final regulations.

The IRS and Treasury recognize that multiemployer plans may need additional time to comply with the requirements of Q&A–7(a)(2) of these final regulations, therefore the effective date of this rule has been delayed until January 1, 2004. In addition, because of the special characteristics of multiemployer plans (*e.g.*, participating employers are often small businesses with fewer than 100 employees), the final regulations provide that, for a multiemployer plan, section 204(h) notice must be provided at least 15 days before the effective date of any section 204(h) amendment.

Effective Date

Except with respect to Q&A–7(a)(2), these regulations are applicable to amendments with an effective date that is on or after September 2, 2003.

The provisions of Q&A–7(a)(2) of these regulations are applicable to amendments with an effective date that is on or after January 1, 2004.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the collection of information in these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that small entities generally do not have very complex benefit structures in their plans, or many different classes of participants who will be differently affected by an amendment reducing the rate of future benefit accrual. Small entities also have fewer employees, and thus they are required to provide section 204(h) notice to fewer individuals. Accordingly, the time required to for them to prepare and provide section 204(h) notice will usually be modest. Furthermore, because most small entities will only be affected when they amend the retirement plans they sponsor to reduce or eliminate benefits, and most small entities will not so amend their retirement plans frequently, it is generally expected that most small entities would be required to provide section 204(h) notice only once over the course of several years. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Pamela R. Kinard, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 54, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.411(d)–6 [Removed]

■ **Par. 2.** Section 1.411(d)–6 is removed.

PART 54—PENSION EXCISE TAXES

■ **Par. 3.** The authority citation for part 54 is amended by adding the following citation in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 54.4980F–1 also issued under 26 U.S.C. 4980F.* * *

■ **Par. 4.** Section 54.4980F–1 is added to read as follows:

§ 54.4980F–1 Notice requirements for certain pension plan amendments significantly reducing the rate of future benefit accrual.

The following questions and answers concern the notification requirements imposed by 4980F of the Internal Revenue Code and section 204(h) of ERISA relating to a plan amendment of an applicable pension plan that significantly reduces the rate of future benefit accrual or that eliminates or significantly reduces an early retirement benefit or retirement-type subsidy.

List of Questions

Q–1. What are the notice requirements of section 4980F(e) of the Internal Revenue Code and section 204(h) of ERISA?
Q–2. What are the differences between section 4980F and section 204(h)?
Q–3. What is an "applicable pension plan" to which section 4980F and section 204(h) apply?
Q–4. What is "section 204(h) notice" and what is a "section 204(h) amendment"?
Q–5. For which amendments is section 204(h) notice required?
Q–6. What is an amendment that reduces the rate of future benefit accrual or reduces an early retirement benefit or retirement-type subsidy for purposes of determining whether section 204(h) notice is required?
Q–7. What plan provisions are taken into account in determining whether an amendment is a section 204(h) amendment?
Q–8. What is the basic principle used in determining whether a reduction in the rate of future benefit accrual or a reduction in an early retirement benefit or retirement-type subsidy is significant for purposes of section 4980F and section 204(h)?
Q–9. When must section 204(h) notice be provided?
Q–10. To whom must section 204(h) notice be provided?
Q–11. What information is required to be provided in a section 204(h) notice?
Q–12. What special rules apply if participants can choose between the old and new benefit formulas?
Q–13. How may section 204(h) notice be provided?
Q–14. What are the consequences if a plan administrator fails to provide section 204(h) notice?
Q–15. What are some of the rules that apply with respect to the excise tax under section 4980F?
Q–16. How do section 4980F and section 204(h) apply when a business is sold?
Q–17. How are amendments to cease accruals and terminate a plan treated under section 4980F and section 204(h)?
Q–18. What are the effective dates of section 4980F, section 204(h), as amended by EGTRRA, and these regulations?

Questions and Answers

Q–1. What are the notice requirements of section 4980F(e) of the Internal Revenue Code and section 204(h) of ERISA?

A–1. (a) *Requirements of Internal Revenue Code section 4980F(e) and ERISA section 204(h).* Section 4980F of the Internal Revenue Code (section 4980F) and section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. 1054(h) (section 204(h)) each generally requires notice of an amendment to an applicable pension plan that either provides for a significant reduction in the rate of future benefit accrual or that eliminates or significantly reduces an early retirement benefit or retirement-type subsidy. The notice is required to be provided to plan participants and alternate payees who are applicable individuals (as defined in Q&A–10 of this section) and to certain employee organizations. The plan administrator must generally provide the notice before the effective date of the plan amendment. Q&A–9 of this section sets forth the time frames for providing notice, Q&A–11 of this section sets forth the content requirements for the notice, and Q&A–12 of this section contains special rules for cases in which participants can choose between the old and new benefit formulas.

(b) *Other notice requirements.* Other provisions of law may require that certain parties be notified of a plan amendment. See, for example, sections 102 and 104 of ERISA, and the regulations thereunder, for requirements relating to summary plan descriptions and summaries of material modifications.

Q–2. What are the differences between section 4980F and section 204(h)?

A–2. The notice requirements of section 4980F generally are parallel to the notice requirements of section 204(h), as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16 (115 Stat. 38) (2001) (EGTRRA). However, the consequences of the failure to satisfy the requirements of the two provisions differ: Section 4980F imposes an excise tax on a failure to satisfy the notice requirements, while section 204(h)(6), as amended by EGTRRA, contains a special rule with respect to an egregious failure to satisfy the notice requirements. See Q&A–14 and Q&A–15 of this section. Except to the extent specifically indicated, these regulations apply both to section 4980F and to section 204(h).

Q–3. What is an "applicable pension plan" to which section 4980F and section 204(h) apply?

A–3. (a) *In general.* Section 4980F and section 204(h) apply to an applicable pension plan. For purposes of section 4980F, an *applicable pension plan* means a defined benefit plan qualifying under section 401(a) or 403(a) of the Internal Revenue Code, or an individual account plan that is subject to the funding standards of section 412 of the Internal Revenue Code. For purposes of section 204(h), an *applicable pension plan* means a defined benefit plan that is subject to part 2 of subtitle B of title I of ERISA, or an individual account plan that is subject to such part 2 and to the funding standards of section 412 of the Internal Revenue Code. Accordingly, individual account plans that are not subject to the funding standards of section 412 of the Internal Revenue Code, such as profit-sharing and stock bonus plans and contracts under section 403(b) of the Internal Revenue Code, are not applicable pension plans to which section 4980F or section 204(h) apply. Similarly, a defined benefit plan that neither qualifies under section 401(a) or 403(a) of the Internal Revenue Code nor is subject to part 2 of subtitle B of title I of ERISA is not an applicable pension plan. Further, neither a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code),

nor a church plan (within the meaning of section 414(e) of the Internal Revenue Code) with respect to which no election has been made under section 410(d) of the Internal Revenue Code is an applicable pension plan.

(b) *Section 204(h) notice not required for small plans covering no employees.* Section 204(h) notice is not required for a plan under which no employees are participants covered under the plan, as described in § 2510.3–3(b) of the Department of Labor regulations, and which has fewer than 100 participants.

Q–4. What is "section 204(h) notice" and what is a "section 204(h) amendment"?

A–4. (a) *Section 204(h) notice* is notice that complies with section 4980F(e) of the Internal Revenue Code, section 204(h)(1) of ERISA, and this section.

(b) A *section 204(h) amendment* is an amendment for which section 204(h) notice is required under this section.

Q–5. For which amendments is section 204(h) notice required?

A–5. (a) *Significant reduction in the rate of future benefit accrual.* Section 204(h) notice is required for an amendment to an applicable pension plan that provides for a significant reduction in the rate of future benefit accrual.

(b) *Early retirement benefits and retirement-type subsidies.* Section 204(h) notice is also required for an amendment to an applicable pension plan that provides for the significant reduction of an early retirement benefit or retirement-type subsidy. For purposes of this section, *early retirement benefit* and *retirement-type subsidy* mean early retirement benefits and retirement-type subsidies within the meaning of section 411(d)(6)(B)(i).

(c) *Elimination or cessation of benefits.* For purposes of this section, the terms *reduce* or *reduction* include eliminate or cease or elimination or cessation.

(d) *Delegation of authority to Commissioner.* The Commissioner may provide in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) that section 204(h) notice need not be provided for plan amendments otherwise described in paragraph (a) or (b) of this Q&A–5 that the Commissioner determines to be necessary or appropriate, as a result of changes in the law, to maintain compliance with the requirements of the Internal Revenue Code (including requirements for tax qualification), ERISA, or other applicable federal law.

Q–6. What is an amendment that reduces the rate of future benefit accrual or reduces an early retirement benefit or retirement-type subsidy for purposes of determining whether section 204(h) notice is required?

A–6. (a) *In general.* For purposes of determining whether section 204(h) notice is required, an amendment reduces the rate of future benefit accrual or reduces an early retirement benefit or retirement-type subsidy only as provided in paragraph (b) or (c) of this Q&A–6.

(b) *Reduction in rate of future benefit accrual*—(1) *Defined benefit plans.* For purposes of section 4980F and section 204(h), an amendment to a defined benefit plan reduces the rate of future benefit accrual only if it is reasonably expected that the amendment will reduce the amount of the future annual benefit commencing at normal retirement age (or at actual retirement age, if later) for benefits accruing for a year. For this purpose, the annual benefit commencing at normal retirement age is the benefit payable in the form in which the terms of the plan express the accrued benefit (or, in the case of a plan in which the accrued benefit is not expressed in the form of an annual benefit commencing at normal retirement age, the benefit payable in the form of a single life annuity commencing at normal retirement age that is the actuarial equivalent of the accrued benefit expressed under the terms of the plan, as determined in accordance with section 411(c)(3) of the Internal Revenue Code).

(2) *Individual account plans.* For purposes of section 4980F and section 204(h), an amendment to an individual account plan reduces the rate of future benefit accrual only if it is reasonably expected that the amendment will reduce the amount of contributions or forfeitures allocated for any future year. Changes in the investments or investment options under an individual account plan are not taken into account for this purpose.

(3) *Determination of rate of future benefit accrual.* The rate of future benefit accrual for purposes of this paragraph (b) is determined without regard to optional forms of benefit within the meaning of § 1.411(d)–4, Q&A–1(b) of this chapter (other than the annual benefit described in paragraph (b)(1) of this Q&A–6). The rate of future benefit accrual is also determined without regard to ancillary benefits and other rights or features as defined in § 1.401(a)(4)–4(e) of this chapter.

(c) *Reduction of early retirement benefits or retirement-type subsidies.* For purposes of section 4980F and section 204(h), an amendment reduces an early retirement benefit or retirement-type subsidy only if it is reasonably expected that the amendment will eliminate or reduce an early retirement benefit or retirement-type subsidy.

Q–7. What plan provisions are taken into account in determining whether an amendment is a section 204(h) amendment?

A–7. (a) *Plan provisions taken into account*—(1) *In general.* All plan provisions that may affect the rate of future benefit accrual, early retirement benefits, or retirement-type subsidies of participants or alternate payees must be taken into account in determining whether an amendment is a section 204(h) amendment. For example, plan provisions that may affect the rate of future benefit accrual include the dollar amount or percentage of compensation on which benefit accruals are based; the definition of service or compensation taken into account in determining an employee's benefit accrual; the method of determining average compensation for calculating benefit accruals; the definition of normal retirement age in a defined benefit plan; the exclusion of current participants from future participation; benefit offset provisions; minimum benefit provisions; the formula for determining the amount of contributions and forfeitures allocated to participants' accounts in an individual account plan; in the case of a plan using permitted disparity under section 401(l) of the Internal Revenue Code, the amount of disparity between the excess benefit percentage or excess contribution percentage and the base benefit percentage or base contribution percentage (all as defined in section 401(l) of the Internal Revenue Code); and the actuarial assumptions used to determine contributions under a target benefit plan (as defined in § 1.401(a)(4)–8(b)(3)(i) of this chapter). Plan provisions that may affect early retirement benefits or retirement-type subsidies include the right to receive payment of benefits after severance from employment and before normal retirement age and actuarial factors used in determining optional forms for distribution of retirement benefits.

(2) *Provisions incorporated by reference in plan.* If all or a part of a plan's rate of future benefit accrual, or an early retirement benefit or retirement-type subsidy provided under the plan, depends on provisions in another document that are referenced in the plan document, a change in the provisions of the other document is an amendment of the plan.

(b) *Plan provisions not taken into account.* Plan provisions that do not affect the rate of future benefit accrual of participants or alternate payees are not taken into account in determining whether there has been a reduction in the rate of future benefit accrual. Further, any benefit that is not a section 411(d)(6) protected benefit as described in § 1.411(d)–4, Q&A–1(d) of this chapter, or that is a section 411(d)(6) protected benefit that may be eliminated or reduced as permitted under § 1.411(d)–4, Q&A–2(a) or (b) of this chapter, is not taken into account in determining whether an amendment is a section 204(h) amendment. Thus, for example, provisions relating to vesting schedules or the right to make after-tax contributions or elective deferrals are not taken into account.

(c) *Examples.* The following examples illustrate the rules in this Q&A–7:

Example 1. (i) *Facts.* A defined benefit plan provides a normal retirement benefit equal to 50% of highest 5-year average pay multiplied by a fraction (not in excess of one), the numerator of which equals the number of years of participation in the plan and the denominator of which is 20. A plan amendment is adopted that changes the numerator or denominator of that fraction.

(ii) *Conclusion.* The plan amendment must be taken into account in determining whether there has been a reduction in the rate of future benefit accrual.

Example 2. (i) *Facts.* Plan C is a multiemployer defined benefit plan subject to several collective bargaining agreements. The specific benefit formula under Plan C that applies to an employee depends on the hourly rate of contribution of the employee's employer, which is set forth in the provisions of the collective bargaining agreements that are referenced in the Plan C document. Collective Bargaining Agreement A between Employer B and the union representing employees of Employer B is renegotiated to provide that the hourly contribution rate for an employee of B who is subject to the Collective Bargaining Agreement A will decrease. That decrease will result in a decrease in the rate of future benefit accrual for employees of B.

(ii) *Conclusion.* Under paragraph (a)(2) of this Q&A–7, the change to Collective Bargaining Agreement A is a plan amendment that is a section 204(h) amendment if the reduction in the rate of future benefit accrual is significant.

Q–8. What is the basic principle used in determining whether a reduction in the rate of future benefit accrual or a reduction in an early retirement benefit or retirement-type subsidy is significant for purposes of section 4980F and section 204(h)?

A–8. (a) *General rule.* Whether an amendment reducing the rate of future benefit accrual or reducing an early retirement benefit or retirement-type subsidy provides for a reduction that is significant for purposes of section 4980F and section 204(h) is determined based on reasonable expectations taking into account the relevant facts and circumstances at the time the amendment is adopted.

(b) *Application for determining significant reduction in the rate of future benefit accrual.* For a defined benefit plan, the determination of whether an amendment provides for a significant reduction in the rate of future benefit accrual is made by comparing the amount of the annual benefit commencing at normal retirement age (or at actual retirement age, if later), as determined under Q&A–6(b)(1) of this section, under the terms of the plan as amended with the amount of the annual benefit commencing at normal retirement age (or at actual retirement age, if later), as determined under Q&A–6(b)(1) of this section, under the terms of the plan prior to amendment. For an individual account plan, the determination of whether an amendment provides for a significant reduction in the rate of future benefit accrual is made in accordance with Q&A–6(b)(2) of this section by comparing the amounts to be allocated in the future to participants' accounts under the terms of the plan as amended with the amounts to be allocated in the future to participants' accounts under the terms of the plan prior to amendment. An amendment to convert a money purchase pension plan to a profit-sharing or other individual account plan that is not subject to section 412 of the Internal Revenue Code is, in all cases, deemed to be an amendment that provides for a significant reduction in the rate of future benefit accrual.

(c) *Application to certain amendments reducing early retirement benefits or retirement-type subsidies.* Because section 204(h) notice is required only for reductions that are significant, section 204(h) notice is not required for an amendment that reduces an early retirement benefit or retirement-type subsidy if the amendment is permitted under the third sentence of section 411(d)(6)(B) of the Internal Revenue Code and regulations thereunder (relating to the elimination or reduction of benefits or subsidies which create significant burdens or complexities for the plan and plan participants unless the amendment adversely affects the rights of any participant in a more than de minimis manner).

(d) *Example.* The following example illustrates the rules in this Q&A–8:

Example. (i) *Facts.* Pension Plan A is a defined benefit plan that provides a rate of benefit accrual of 1% of highest-five years' pay multiplied by years of service, payable annually for life commencing at normal retirement age (or at actual retirement age, if later). Plan A is amended, effective January 1, 2008, to provide that any participant who separates from service after December 31, 2007, and before January 1, 2013, will have the same number of years of service he or she would have had if his or her service continued to December 31, 2012.

(ii) *Conclusion.* While the amendment will result in a reduction in the annual rate of future benefit accrual from 2009 through 2012 (because under the amendment, benefits based upon an additional five years of service accrue on January 1, 2008, and no additional service is credited after January 1, 2008 until January 1, 2013), the amendment does not result in a reduction that is significant because the amount of the annual benefit commencing at normal retirement age (or at actual retirement age, if later) under the terms of the plan as amended is not under any conditions less than the amount of the annual benefit commencing at normal retirement age (or at actual retirement age, if later) to which any participant would have been entitled under the terms of the plan had the amendment not been made.

Q–9. When must section 204(h) notice be provided?

A–9. (a) *45-day general rule.* Except as described in paragraphs (b), (c), and (d) of this Q&A–9, section 204(h) notice must be provided at least 45 days before the effective date of any section 204(h) amendment. See paragraph (e) of this Q&A–9 for special rules for amendments permitting participant choice.

(b) *15-day rule for small plans.* Except for amendments described in paragraph (d)(2) of this Q&A–9, section 204(h) notice must be provided at least 15 days before the effective date of any section 204(h) amendment in the case of a small plan. For purposes of this section, a small plan is a plan that the plan administrator reasonably expects to have, on the effective date of the section 204(h) amendment, fewer than 100 participants who have an accrued benefit under the plan.

(c) *15-day rule for multiemployer plans.* Except for amendments described in paragraph (d)(2) of this Q&A–9, section 204(h) notice must be provided at least 15 days before the effective date of any section 204(h) amendment in the case of a multiemployer plan. For purposes of this section, a multiemployer plan means a multiemployer plan as defined in section 414(f) of the Internal Revenue Code.

(d) *Special timing rule for business transactions*—(1) *15-day rule for section 204(h) amendment in connection with an acquisition or disposition.* Except for amendments described in paragraph (d)(2) of this Q&A–9, if a section 204(h) amendment is adopted in connection with an acquisition or disposition,

section 204(h) notice must be provided at least 15 days before the effective date of the section 204(h) amendment.

(2) *Later notice permitted for a section 204(h) amendment significantly reducing early retirement benefit or retirement-type subsidies in connection with certain plan transfers, mergers, or consolidations.* If a section 204(h) amendment is adopted with respect to liabilities that are transferred to another plan in connection with a transfer, merger, or consolidation of assets or liabilities as described in section 414(l) of the Internal Revenue Code and § 1.414(l)–1 of this chapter, the amendment is adopted in connection with an acquisition or disposition, and the amendment significantly reduces an early retirement benefit or retirement-type subsidy, but does not significantly reduce the rate of future benefit accrual, then section 204(h) notice must be provided no later than 30 days after the effective date of the section 204(h) amendment.

(3) *Definition of acquisition or disposition.* For purposes of this paragraph (d), see § 1.410(b)–2(f) of this chapter for the definition of acquisition or disposition.

(e) *Timing rule for amendments permitting participant choice.* In general, section 204(h) notice of a section 204(h) amendment that provides applicable individuals with a choice between the old and the new benefit formulas (as described in Q&A–12 of this section) must be provided in accordance with the time period applicable under paragraphs (a) through (d) of this Q&A–9. See Q&A–12 of this section for additional guidance regarding section 204(h) notice in connection with participant choice.

Q–10. To whom must section 204(h) notice be provided?

A–10. (a) *In general.* Section 204(h) notice must be provided to each applicable individual and to each employee organization representing participants who are applicable individuals. A special rule is provided in paragraph (d) of this Q&A–10.

(b) *Applicable individual.* Applicable individual means each participant in the plan, and any alternate payee, whose rate of future benefit accrual under the plan is reasonably expected to be significantly reduced, or for whom an early retirement benefit or retirement-type subsidy under the plan may reasonably be expected to be significantly reduced, by the section 204(h) amendment. The determination is made with respect to individuals who are reasonably expected to be participants or alternate payees in the plan at the effective date of the section 204(h) amendment.

(c) *Alternate payee.* Alternate payee means a beneficiary who is an alternate payee (within the meaning of section 414(p)(8) of the Internal Revenue Code) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A) of the Internal Revenue Code).

(d) *Designees.* Section 204(h) notice may be provided to a person designated in writing by an applicable individual or by an employee organization representing participants who are applicable individuals, instead of being provided to that applicable individual or employee organization. Any designation of a representative made through an electronic method that satisfies standards similar to those of Q&A–13(c)(1) of this section satisfies the requirement that a designation be in writing.

(e) *Facts and circumstances test.* Whether a participant or alternate payee is an applicable individual is determined on a typical business day that is reasonably proximate to the time the section 204(h) notice is provided (or at the latest date for providing section 204(h) notice, if earlier), based on all relevant facts and circumstances.

(f) *Examples.* The following examples illustrate the rules in this Q&A–10:

Example 1. (i) *Facts.* A defined benefit plan requires an individual to complete 1 year of service to become a participant who can accrue benefits, and participants cease to accrue benefits under the plan at severance from employment with the employer. There are no alternate payees and employees are not represented by an employee organization. On November 18, 2004, the plan is amended effective as of January 1, 2005 to reduce significantly the rate of future benefit accrual. Section 204(h) notice is provided on November 1, 2004.

(ii) *Conclusion.* Section 204(h) notice is only required to be provided to individuals who, based on the facts and circumstances on November 1, 2004, are reasonably expected to have completed at least 1 year of service and to be employed by the employer on January 1, 2005.

Example 2. (i) *Facts.* The facts are the same as in *Example 1*, except that the sole effect of the plan amendment is to alter the pre-amendment plan provisions under which benefits payable to an employee who retires after 20 or more years of service are unreduced for commencement before normal retirement age. The amendment requires 30 or more years of service in order for benefits commencing before normal retirement age to be unreduced, but the amendment only applies for future benefit accruals.

(ii) *Conclusion.* Section 204(h) notice is only required to be provided to individuals who, on January 1, 2005, have completed at least 1 year of service but less than 30 years of service, are employed by the employer, have not attained normal retirement age, and will have completed 20 or more years of service before normal retirement age if their employment continues to normal retirement age.

Example 3. (i) *Facts.* A plan is amended to reduce significantly the rate of future benefit accrual for all current employees who are participants. Based on the facts and circumstances, it is reasonable to expect that the amendment will not reduce the rate of future benefit accrual of former employees who are currently receiving benefits or of former employees who are entitled to deferred vested benefits.

(ii) *Conclusion.* The plan administrator is not required to provide section 204(h) notice to any former employees.

Example 4. (i) *Facts.* The facts are the same as in *Example 3*, except that the plan covers two groups of alternate payees. The alternate payees in the first group are entitled to a certain percentage or portion of the former spouse's accrued benefit and, for this purpose, the accrued benefit is determined at the time the former spouse begins receiving retirement benefits under the plan. The alternate payees in the second group are entitled to a certain percentage or portion of the former spouse's accrued benefit and, for this purpose, the accrued benefit was determined at the time the qualified domestic relations order was issued by the court.

(ii) *Conclusion.* It is reasonable to expect that the benefits to be received by the second group of alternate payees will not be affected by any reduction in a former spouse's rate of future benefit accrual. Accordingly, the plan administrator is not required to provide section 204(h) notice to the alternate payees in the second group.

Example 5. (i) *Facts.* A plan covers hourly employees and salaried employees. The plan provides the same rate of benefit accrual for both groups. The employer amends the plan to reduce significantly the rate of future benefit accrual of the salaried employees only. At that time, it is reasonable to expect that only a small percentage of hourly employees will become salaried in the future.

(ii) *Conclusion.* The plan administrator is not required to provide section 204(h) notice to the participants who are currently hourly employees.

Example 6. (i) *Facts.* A plan covers employees in Division M and employees in Division N. The plan provides the same rate of benefit accrual for both groups. The employer amends the plan to reduce significantly the rate of future benefit accrual of employees in Division M. At that time, it is reasonable to expect that in the future only a small percentage of employees in Division N will be transferred to Division M.

(ii) *Conclusion.* The plan administrator is not required to provide section 204(h) notice to the participants who are employees in Division N.

Example 7. (i) *Facts.* The facts are the same facts as in *Example 6*, except that at the time the amendment is adopted, it is expected that thereafter Division N will be merged into Division M in connection with a corporate reorganization (and the employees in Division N will become subject to the plan's amended benefit formula applicable to the employees in Division M).

(ii) *Conclusion.* In this case, the plan administrator must provide section 204(h) notice to the participants who are employees in Division M and to the participants who are employees in Division N.

Example 8. (i) *Facts.* A plan is amended to reduce significantly the rate of future benefit accrual for all current employees who are participants. The plan amendment will be effective on January 1, 2004. The plan will provide the notice to applicable individuals on October 31, 2003. In determining which current employees are applicable individuals, the plan administrator determines that October 1, 2003, is a typical business day that is reasonably proximate to the time the section 204(h) notice is provided.

(ii) *Conclusion.* In this case, October 1, 2003 is a typical business day that satisfies the requirements of Q&A–10(e) of this section.

Q–11. What information is required to be provided in a section 204(h) notice?

A–11. (a) *Explanation of notice requirements*—(1) *In general.* Section 204(h) notice must include sufficient information to allow applicable individuals to understand the effect of the plan amendment. In order to satisfy this rule, a plan administrator providing section 204(h) notice must satisfy each of the following requirements of this paragraph (a).

(2) *Information in section 204(h) notice.* The information in a section 204(h) notice must be written in a manner calculated to be understood by the average plan participant and to apprise the applicable individual of the significance of the notice.

(3) *Required narrative description of amendment*—(i) *Reduction in rate of future benefit accrual.* In the case of an amendment reducing the rate of future benefit accrual, the notice must include a description of the benefit or allocation formula prior to the amendment, a description of the benefit or allocation formula under the plan as amended, and the effective date of the amendment.

(ii) *Reduction in early retirement benefit or retirement-type subsidy.* In the case of an amendment that reduces an early retirement benefit or retirement-type subsidy (other than as a result of an amendment reducing the rate of future benefit accrual), the notice must describe how the early retirement benefit or retirement-type subsidy is calculated from the accrued benefit before the amendment, how the early retirement benefit or retirement-type subsidy is calculated from the accrued benefit after the amendment, and the effective date of the amendment. For example, if, for a plan with a normal retirement age of 65, the change is from an unreduced normal retirement benefit at age 55 to an unreduced normal retirement benefit at age 60 for benefits accrued in the future, with an actuarial reduction to apply for benefits accrued in the future to the extent that the early retirement benefit begins before age 60, the notice must state the change and specify the factors that apply in calculating the actuarial reduction (for example, a 5% per year reduction applies for early retirement before age 60).

(4) *Sufficient information to determine the approximate magnitude of reduction*—(i) *General rule.* (A) Section 204(h) notice must include sufficient information for each applicable individual to determine the approximate magnitude of the expected reduction for that individual. Thus, in any case in which it is not reasonable to expect that the approximate magnitude of the reduction for each applicable individual will be reasonably apparent from the description of the amendment provided in accordance with paragraph (a)(3) of this Q&A–11, further information is required. The further information may be provided by furnishing additional narrative information or in other information that satisfies this paragraph of this section.

(B) To the extent any expected reduction is not uniformly applicable to all participants, the notice must either identify the general classes of participants to whom the reduction is expected to apply, or by some other method include sufficient information to allow each applicable individual receiving the notice to determine which reductions are expected to apply to that individual.

(ii) *Illustrative examples*—(A) *Requirement generally.* The requirement to include sufficient information for each applicable individual to determine the approximate magnitude of the expected reduction for that individual under (a)(4)(i)(A) of this Q&A–11 is deemed satisfied if the notice includes one or more illustrative examples showing the approximate magnitude of the reduction in the examples, as provided in this paragraph (a)(4)(ii). Illustrative examples are in any event required to be provided for any change from a traditional defined benefit formula to a cash balance formula or a change that results in a period of time during which there are no accruals (or minimal accruals) with regard to normal retirement benefits or an early retirement subsidy (a wear-away period).

(B) *Examples must bound the range of reductions.* Where an amendment results in reductions that vary (either among participants, as would occur for an amendment converting a traditional defined benefit formula to a cash balance formula, or over time as to any individual participant, as would occur for an amendment that results in a wear-away period), the illustrative example(s) provided in accordance with this paragraph (a)(4)(ii) must show the approximate range of the reductions. However, any reductions that are likely to occur in only a de minimis number of cases are not required to be taken into account in determining the range of the reductions if a narrative statement is included to that effect and examples are provided that show the approximate range of the reductions in other cases. Amendments for which the maximum reduction occurs under identifiable circumstances, with proportionately smaller reductions in other cases, may be illustrated by one example illustrating the maximum reduction, with a statement that smaller reductions also occur. Further, assuming that the reduction varies from small to large depending on service or other factors, two illustrative examples may be provided showing the smallest likely reduction and the largest likely reduction.

(C) *Assumptions used in examples.* The examples provided under this paragraph (a)(4)(ii) are not required to be based on any particular form of payment (such as a life annuity or a single sum), but may be based on whatever form appropriately illustrates the reduction. The examples generally may be based on any reasonable assumptions (for example, assumptions relating to the representative participant's age, years of service, and compensation, along with any interest rate and mortality table used in the illustrations, as well as salary scale assumptions used in the illustrations for amendments that alter the compensation taken into account under the plan), but the section 204(h) notice must identify those assumptions. However, if a plan's benefit provisions include a factor that varies over time (such as a variable interest rate), the determination of whether an amendment is reasonably expected to result in a wear-away period must be based on the value of the factor applicable under the plan at a time that is reasonably close to the date section 204(h) notice is provided, and any wear-away period that is solely a result of a future change in the variable factor may be disregarded. For example, to determine whether a wear-away occurs as a result of a section 204(h) amendment that converts a defined benefit plan to a cash balance pension plan that will credit interest based on a

variable interest factor specified in the plan, the future interest credits must be projected based on the interest rate applicable under the variable factor at the time section 204(h) notice is provided.

(D) *Individual statements.* This paragraph (a)(4)(ii) may be satisfied by providing a statement to each applicable individual projecting what that individual's future benefits are reasonably expected to be at various future dates and what that individual's future benefits would have been under the terms of the plan as in effect before the section 204(h) amendment, provided that the statement includes the same information required for examples under paragraphs (a)(4)(ii)(A) through (C) of this Q&A–11, including showing the approximate range of the reductions for the individual if the reductions vary over time and identification of the assumptions used in the projections.

(5) *No false or misleading information.* A section 204(h) notice may not include materially false or misleading information (or omit information so as to cause the information provided to be misleading).

(6) *Additional information when reduction not uniform*—(i) *In general.* If an amendment by its terms affects different classes of participants differently (*e.g.*, one new benefit formula will apply to Division A and another to Division B), then the requirements of paragraph (a) of this Q&A–11 apply separately with respect to each such general class of participants. In addition, the notice must include sufficient information to enable an applicable individual who is a participant to understand which class he or she is a member of.

(ii) *Option for different section 204(h) notices.* If a section 204(h) amendment affects different classes of applicable individuals differently, the plan administrator may provide to differently affected classes of applicable individuals a section 204(h) notice appropriate to those individuals. Such section 204(h) notice may omit information that does not apply to the applicable individuals to whom it is furnished, but must identify the class or classes of applicable individuals to whom it is provided.

(b) *Examples.* The following examples illustrate the requirements paragraph (a) of this Q&A–11. In each example, it is assumed that the actual notice provided is written in a manner calculated to be understood by the average plan participant and to apprise the applicable individual of the significance of the notice in accordance with paragraph (a)(2) of this Q&A–11. The examples are as follows:

Example 1. (i) *Facts.* Plan A provides that a participant is entitled to a normal retirement benefit of 2% of the participant's average pay over the 3 consecutive years for which the average is the highest (highest average pay) multiplied by years of service. Plan A is amended to provide that, effective January 1, 2004, the normal retirement benefit will be 2% of the participant's highest average pay multiplied by years of service before the effective date, plus 1% of the participant's highest average pay multiplied by years of service after the effective date. The plan administrator provides notice that states: "Under the Plan's current benefit formula, a participant's normal retirement benefit is 2% of the participant's average pay over the 3 consecutive years for which the average is the highest multiplied by the participant's years of service. This formula is being changed by a plan amendment. Under the Plan as amended, a participant's normal retirement benefit will be the sum of 2% of the participant's average pay over the 3 consecutive years for which the average is the highest multiplied by years of service before the January 1, 2004 effective date, plus 1% of the participant's average pay over the 3 consecutive years for which the average is the highest multiplied by the participant's years of service after December 31, 2003. This change is effective on January 1, 2004." The notice does not contain any additional information.

(ii) *Conclusion.* The notice satisfies the requirements of paragraph (a) of this Q&A–11.

Example 2. (i) *Facts.* Plan B provides that a participant is entitled to a normal retirement benefit at age 64 of 2.2% of the participant's career average pay multiplied by years of service. Plan B is amended to cease all accruals, effective January 1, 2004. The plan administrator provides notice that includes a description of the old benefit formula, a statement that, after December 31, 2003, no participant will earn any further accruals, and the effective date of the amendment. The notice does not contain any additional information.

(ii) *Conclusion.* The notice satisfies the requirements of paragraph (a) of this Q&A–11.

Example 3. (i) *Facts.* Plan C provides that a participant is entitled to a normal retirement benefit at age 65 of 2% of career average compensation multiplied by years of service. Plan C is amended to provide that the normal retirement benefit will be 1% of average pay over the 3 consecutive years for which the average is the highest multiplied by years of service. The amendment only applies to accruals for years of service after the amendment, so that each employee's accrued benefit is equal to the sum of the benefit accrued as of the effective date of the amendment plus the accrued benefit equal to the new formula applied to years of service beginning on or after the effective date. The plan administrator provides notice that describes the old and new benefit formulas and also explains that for an individual whose compensation increases over the individual's career such that the individual's highest 3-year average exceeds the individual's career average, the reduction will be less or there may be no reduction. The notice does not contain any additional information.

(ii) *Conclusion.* The notice satisfies the requirements of paragraph (a) of this Q&A–11.

Example 4. (i) *Facts.* (A) Plan D is a defined benefit pension plan under which each participant accrues a normal retirement benefit, as a life annuity beginning at the normal retirement age of 65, equal to the participant's number of years of service multiplied by 1.5 percent multiplied by the participant's average pay over the 3 consecutive years for which the average is the highest. Plan D provides early retirement benefits for former employees beginning at or after age 55 in the form of an early retirement annuity that is actuarially equivalent to the normal retirement benefit, with the reduction for early commencement based on reasonable actuarial assumptions that are specified in Plan D. Plan D provides for the suspension of benefits of participants who continue in employment beyond normal retirement age, in accordance with section 203(a)(3)(B) of ERISA and regulations thereunder issued by the Department of Labor. The pension of a participant who retires after age 65 is calculated under the same normal retirement benefit formula, but is based on the participant's service credit and highest 3-year pay at the time of late retirement with any appropriate actuarial increases.

(B) Plan D is amended, effective July 1, 2005, to change the formula for all future accruals to a cash balance formula under which the opening account balance for each participant on July 1, 2005, is zero, hypothetical pay credits equal to 5 percent of pay are credited to the account thereafter, and hypothetical interest is credited monthly based on the applicable interest rate under section 417(e)(3) of the Internal Revenue Code at the beginning of the quarter. Any participant who terminates employment with vested benefits can receive an actuarially equivalent annuity (based on the same reasonable actuarial assumptions that are specified in Plan D) commencing at any time after termination of employment and before the plan's normal retirement age of 65. The benefit resulting from the hypothetical account balance is in addition to the benefit accrued before July 1, 2005 (taking into account only service and highest 3-year pay before July 1, 2005), so that it is reasonably expected that no wear-away period will result from the amendment. The plan administrator expects that, as a general rule, depending on future pay increases and future interest rates, the rate of future benefit accrual after the conversion is higher for participants who accrue benefits before approximately age 50 and after approximately age 70, but is lower for participants who accrue benefits between approximately age 50 and age 70.

(C) The plan administrator of Plan D announces the conversion to a cash balance formula on May 16, 2005. The announcement is delivered to all participants and includes a written notice that describes the old formula, the new formula, and the effective date.

(D) In addition, the notice states that the Plan D formula before the conversion provided a normal retirement benefit equal to the product of a participant's number of years of service multiplied by 1.5 percent multiplied by the participant's average pay over the 3 years for which the average is the highest (highest 3-year pay). The notice includes an example showing the normal retirement benefit that will be accrued after June 30, 2005 for a participant who is age 49 with 10 years of service at the time of the conversion. The plan administrator reasonably believes that such a participant is representative of the participants whose rate of future benefit accrual will be reduced as a result of the amendment. The example estimates that, if the participant continues employment to age 65, the participant's normal retirement benefit for service from age 49 to age 65 will be $657 per month for life. The example assumes that the participant's pay is $50,000 at age 49. The example states that the estimated $657 monthly pension accrues over the 16-year period from age 49 to age 65 and that, based on assumed future pay increases, this amount annually would be 9.1 percent of the participant's highest 3-year pay at age 65, which over the 16 years from age 49 to age 65 averages 0.57 percent per year multiplied by the participant's highest 3-year pay. The example also states that the sum of the monthly annuity accrued before the conversion in the 10-year period from age 39 to age 49 plus the $657 monthly annuity estimated to be accrued over the 16-year period from age 49 to age 65 is $1,235 and that, based on assumed future increases in pay, this would be 17.1 percent of the participant's highest 3-year pay at age 65, which over the employee's career from age 39 to age 65 averages 0.66 percent per year multiplied by the participant's highest 3-year pay. The notice also includes two other examples with similar information, one of which is intended to show the circumstances in which a small reduction may occur and the other of which shows the largest reduction that the plan administrator thinks is likely to occur. The notice states that the estimates are based on the assumption that pay increases annually after June 30, 2005, at a 4 percent rate. The notice also specifies that the applicable interest rate under section 417(e) for hypothetical interest credits after June 30, 2005 is assumed to be 6 percent, which is the section 417(e) of the Internal Revenue Code applicable interest rate under the plan for 2005.

(ii) *Conclusion.* The information in the notice, as described in paragraph (i)(C) and (i)(D) of this *Example 4*, satisfies the requirements of paragraph (a)(3) of this Q&A–11 with respect to applicable individuals who are participants. The requirements of paragraph (a)(4) of this Q&A–11 are satisfied because, as noted in paragraph (i)(D) of this *Example 4*, the notice describes the old formula and describes the estimated future accruals under the new formula in terms that can be readily compared to the old formula, *i.e.*, the notice states that the estimated $657 monthly pension accrued over the 16-year period from age 49 to age 65 averages 0.57 percent of the participant's highest 3-year pay at age 65. The requirement in paragraph (a)(4)(ii) of this Q&A–11 that the examples include sufficient information to be able to determine the approximate magnitude of the reduction would also be satisfied if the notice instead directly stated the amount of the monthly pension that would have accrued over the 16-year period from age 49 to age 65 under the old formula.

Example 5. (i) *Facts.* The facts are the same as in *Example 4*, except that, under the plan as in effect before the amendment, the early retirement pension for a participant who terminates employment after age 55 with at least 20 years of service is equal to the normal retirement benefit without reduction from age 65 to age 62 and reduced by only 5 percent per year for each year before age 62. As a result, early retirement benefits for such a participant constitute a retirement-type subsidy. The plan as in effect after the amendment provides an early retirement benefit equal to the sum of the early retirement benefit payable under the plan as in effect before the amendment taking into account only service and highest 3-year pay before July 1, 2005, plus an early retirement annuity that is actuarially equivalent to the account balance for service after June 30, 2005. The notice provided by the plan administrator describes the old early retirement annuity, the new early retirement annuity, and the effective date. The notice includes an estimate of the early retirement annuity payable to the illustrated participant for service after the conversion if the participant were to retire at age 59 (which the plan administrator believes is a typical early retirement age) and elect to begin receiving an immediate early retirement annuity. The example states that the normal retirement benefit expected to be payable at age 65 as a result of service from age 49 to age 59 is $434 per month for life beginning at age 65 and that the early retirement annuity expected to be payable as a result of service from age 49 to age 59 is $270 per month for life beginning at age 59. The example states that the monthly early retirement annuity of $270 is 38 percent less than the monthly normal retirement benefit of $434, whereas a 15 percent reduction would have applied under the plan as in effect before the amendment. The notice also includes similar information for examples that show the smallest and largest reduction that the plan administrator thinks is likely to occur in the early retirement benefit. The notice also specifies the applicable interest rate, mortality table, and salary scale used in the example to calculate the early retirement reductions.

(ii) *Conclusion.* The information in the notice, as described in paragraphs (i)(C) and (D) of *Example 4* and paragraph (i) of this *Example 5*, satisfies the requirements of paragraph (a)(3) of this Q&A–11 with respect to applicable individuals who are participants. The requirements of paragraph (a)(4) of this Q&A–11 are satisfied because, as noted in paragraph (i) of this *Example 5*, the notice describes the early retirement subsidy under the old formula and describes the estimated early retirement pension under the new formula in terms that can be readily compared to the old formula, *i.e.*, the notice states that the monthly early retirement pension of $270 is 38 percent less than the monthly normal retirement benefit of $434, whereas a 15 percent reduction would have applied under the plan as in effect before the amendment. The requirements of paragraph (a)(4)(ii) of this Q&A–11 that the examples include sufficient information to be able to determine the approximate magnitude of the reduction would also be satisfied if the notice instead directly stated the amount of the monthly early retirement pension that would be payable at age 59 under the old formula.

Q–12. What special rules apply if participants can choose between the old and new benefit formulas?

A–12. In any case in which an applicable individual can choose between the benefit formula (including any early retirement benefit or retirement-type subsidy) in effect before the section 204(h) amendment (old formula) or the benefit formula in effect after the section 204(h) amendment (new formula), section 204(h) notice has not been provided unless the applicable individual has been provided the information required under Q&A–11 of this section, and has also been provided sufficient information to enable the individual to make an informed choice between the old and new benefit formulas. The information required under Q&A–11 of this section must be provided by the date otherwise required under Q&A–9 of this section. The information sufficient to enable the individual to make an informed choice must be provided within a period that is reasonably contemporaneous with the date by which the individual is required to make his or her choice and that allows sufficient advance notice to enable the individual to understand and consider the additional information before making that choice.

Q–13. How may section 204(h) notice be provided?

A–13. (a) *Delivering section 204(h) notice.* A plan administrator (including a person acting on behalf of the plan administrator, such as the employer or plan trustee) must provide section 204(h) notice through a method that results in actual receipt of the notice or the plan administrator must take appropriate and necessary measures reasonably calculated to ensure that the method for providing section 204(h) notice results in actual receipt of the notice. Section 204(h) notice must be provided either in the form of a paper document or in an electronic form that satisfies the requirements of paragraph (c) of this Q&A–13. First class mail to the last known address of the party is an acceptable delivery method. Likewise, hand delivery is acceptable. However, the posting of notice is not considered provision of section 204(h) notice.

Section 204(h) notice may be enclosed with or combined with other notice provided by the employer or plan administrator (for example, a notice of intent to terminate under title IV of ERISA). Except as provided in paragraph (c) of this Q&A–13, a section 204(h) notice is deemed to have been provided on a date if it has been provided by the end of that day. When notice is delivered by first class mail, the notice is considered provided as of the date of the United States postmark stamped on the cover in which the document is mailed.

(b) *Example.* The following example illustrates the provisions of paragraph (a) of this Q&A–13:

Example. (i) *Facts.* Plan A is amended to reduce significantly the rate of future benefit accrual effective January 1, 2005. Under Q&A–9 of this section, section 204(h) notice is required to be provided at least 45 days before the effective date of the amendment. The plan administrator causes section 204(h) notice to be mailed to all affected participants. The mailing is postmarked November 16, 2004.

(ii) *Conclusion.* Because section 204(h) notice is given 45 days before the effective date of the plan amendment, it satisfies the timing requirement of Q&A–9 of this section.

(c) *New technologies*—(1) *General rule.* A section 204(h) notice may be provided to an applicable individual through an electronic method (other than an oral communication or a recording of an oral communication), provided that all of the following requirements are satisfied:

(i) Either the notice is actually received by the applicable individual or the plan administrator takes appropriate and necessary measures reasonably calculated to ensure that the method for providing section 204(h) notice results in actual receipt of the notice by the applicable individual.

(ii) The plan administrator provides the applicable individual with a clear and conspicuous statement, in electronic or non-electronic form, that the applicable individual has a right to request and obtain a paper version of the section 204(h) notice without charge and, if such request is made, the applicable individual is furnished with the paper version without charge.

(iii) The requirements of this section must otherwise be satisfied. Thus, for example, a section 204(h) notice provided through an electronic method must be delivered on or before the date required under Q&A–9 of this section and must satisfy the requirements set forth in Q&A–11 of this section, including the content requirements and the requirements that it be written in a manner calculated to be understood by the average plan participant and to apprise the applicable individual of the significance of the notice. Accordingly, when it is not otherwise reasonably evident, the recipient should be apprised (either in electronic or in non-electronic form), at the time the notice is furnished electronically, of the significance of the notice.

(2) *Examples.* The following examples illustrate the requirement in paragraph (c)(1)(i) of this Q&A–13. In these examples, it is assumed that the notice satisfies the requirements in paragraphs (c)(1)(ii) and (iii) of this section. The examples are as follows:

Example 1. (i) *Facts.* On July 1, 2003, M, a plan administrator of Company N's plan, sends notice intended to constitute section 204(h) notice to A, an employee of Company N and a participant in the plan. The notice is sent through e-mail to A's e-mail address on Company N's electronic information system. Accessing Company N's electronic information system is not an integral part of A's duties. M sends the e-mail with a request for a computer-generated notification that the message was received and opened. M receives notification indicating that the e-mail was received and opened by A on July 9, 2003.

(ii) *Conclusion.* With respect to A, although M has failed to take appropriate and necessary measures reasonably calculated to ensure that the method for providing section 204(h) notice results in actual receipt of the notice, M satisfies the requirement of paragraph (c)(1)(i) of this Q&A–13 on July 9, 2003, which is when A actually receives the notice.

Example 2. (i) *Facts.* On August 1, 2003, O, a plan administrator of Company P's plan, sends a notice intended to constitute section 204(h) notice of ERISA to B, who is an employee of Company P and a participant in Company P's plan. The notice is sent through e-mail to B's e-mail address on Company P's electronic information system. B has the ability to effectively access electronic documents from B's e-mail address on Company P's electronic information system and accessing the system is an integral part of B's duties.

(ii) *Conclusion.* Because access to the system is an integral part of B's duties, O has taken appropriate and necessary measures reasonably calculated to ensure that the method for providing section 204(h) notice results in actual receipt of the notice. Thus, regardless of whether B actually accesses B's email on that date, O satisfies the requirement of paragraph (c)(1)(i) of this Q&A–13 on August 1, 2003, with respect to B.

(3) *Safe harbor in case of consent.* The requirement of paragraph (c)(1)(i) of this Q&A–13 is deemed to be satisfied with respect to an applicable individual if the section 204(h) notice is provided electronically to an applicable individual, and—

(i) The applicable individual has affirmatively consented electronically, or confirmed consent electronically, in a manner that reasonably demonstrates the applicable individual's ability to access the information in the electronic form in which the notice will be provided, to receiving section 204(h) notice electronically and has not withdrawn such consent;

(ii) The applicable individual has provided, if applicable, in electronic or non-electronic form, an address for the receipt of electronically furnished documents;

(iii) Prior to consenting, the applicable individual has been provided, in electronic or non-electronic form, a clear and conspicuous statement indicating—

(A) That the consent can be withdrawn at any time without charge;

(B) The procedures for withdrawing consent and for updating the address or other information needed to contact the applicable individual;

(C) Any hardware and software requirements for accessing and retaining the documents; and

(D) The information required by paragraph (c)(1)(ii) of this Q&A–13; and

(iv) After consenting, if a change in hardware or software requirements needed to access or retain electronic records creates a material risk that the applicable individual will be unable to access or retain the section 204(h) notice—

(A) The applicable individual is provided with a statement of the revised hardware and software requirements for access to and retention of the section 204(h) notice and is given the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed at the time of the initial consent; and

(B) The requirement of paragraph (c)(3)(i) of this Q&A–13 is again complied with.

Q–14. What are the consequences if a plan administrator fails to provide section 204(h) notice?

A–14. (a) *Egregious failures*—(1) *Effect of egregious failure to provide section 204(h) notice.* Section 204(h)(6)(A) of ERISA provides that, in the case of any egregious failure to meet the notice requirements with respect to any plan amendment, the plan provisions are applied so that all applicable individuals are entitled to the greater of the benefit to which they would have been entitled without regard to the amendment, or the benefit under the plan with regard to the amendment. For a special rule applicable in the case of a plan termination, *see* Q&A–17(b) of this section.

(2) *Definition of egregious failure.* For purposes of section 204(h) of ERISA and this Q&A–14, there is an egregious failure to meet the notice requirements if a failure to provide required notice is within the control of the plan sponsor and is either an intentional failure or a failure, whether or not intentional, to provide most of the individuals with most of the information they are entitled to receive. For this purpose, an intentional failure includes any failure to promptly provide the required notice or information after the plan administrator discovers an unintentional failure to meet the requirements. A failure to give section 204(h) notice is deemed not to be egregious if the plan administrator reasonably determines, taking into account section 4980F, section 204(h), these regulations, other administrative pronouncements, and relevant facts and circumstances, that the reduction in the rate of future benefit accrual resulting from an amendment is not significant (as described in Q&A–8 of this section), or that an amendment does not significantly reduce an early retirement benefit or retirement-type subsidy.

(3) Example. The following example illustrates the provisions of this paragraph (a):

Example. (i) *Facts.* Plan A is amended to reduce significantly the rate of future benefit accrual effective January 1, 2003. Section 204(h) notice is required to be provided 45 days before January 1, 2003. Timely section 204(h) notice is provided to all applicable individuals (and to each employee organization representing participants who are applicable individuals), except that the employer intentionally fails to provide section 204(h) notice to certain participants until May 16, 2003.

(ii) *Conclusion.* The failure to provide section 204(h) notice is egregious. Accordingly, for the period from January 1, 2003 through June 30, 2003 (which is the date that is 45 days after May 16, 2003), all participants and alternate payees are entitled to the greater of the benefit to which they would have been entitled under Plan A as in effect before the amendment or the benefit under the plan as amended.

(b) *Effect of non-egregious failure to provide section 204(h) notice.* If an egregious failure has not occurred, the amendment with respect to which section 204(h) notice is required may become effective with respect to all applicable individuals. However, see section 502 of ERISA for civil enforcement remedies. Thus, where there is a failure, whether or not egregious, to provide section 204(h) notice in accordance with this section, individuals may have recourse under section 502 of ERISA.

(c) *Excise taxes.* See section 4980F and Q&A–15 of this section for excise taxes that may apply to a failure to notify applicable individuals of a pension plan amendment that provides for a significant reduction in the rate of future benefit accrual or eliminates or significantly reduces an early retirement benefit or retirement-type subsidy, regardless of whether or not the failure is egregious.

Q–15. What are some of the rules that apply with respect to the excise tax under section 4980F?

A–15. (a) *Person responsible for excise tax.* In the case of a plan other than a multiemployer plan, the employer is responsible for reporting and paying the excise tax. In the case of a multiemployer plan, the plan is responsible for reporting and paying the excise tax.

(b) *Excise tax inapplicable in certain cases.* Under section 4980F(c)(1) of the Internal Revenue Code, no excise tax is imposed on a failure for any period during which it is established to the satisfaction of the Commissioner that the employer (or other person responsible for the tax) exercised reasonable diligence, but did not know that the failure existed. Under section 4980F(c)(2) of the Internal Revenue Code, no excise tax applies to a failure to provide section 204(h) notice if the employer (or other person responsible for the tax) exercised reasonable diligence and corrects the failure within 30 days after the employer (or other person responsible for the tax) first knew, or exercising reasonable diligence would have known, that such failure existed. For purposes of section 4980F(c)(1) of the Internal Revenue Code, a person has exercised reasonable diligence, but did not know that the failure existed if and only if—

(1) The person exercised reasonable diligence in attempting to deliver section 204(h) notice to applicable individuals by the latest date permitted under this section; and

(2) At the latest date permitted for delivery of section 204(h) notice, the person reasonably believes that section 204(h) notice was actually delivered to each applicable individual by that date.

(c) *Example.* The following example illustrates the provisions of paragraph (b) of this Q&A–15:

Example. (i) *Facts.* Plan A is amended to reduce significantly the rate of future benefit accrual. The employer sends out a section 204(h) notice to all affected participants and other applicable individuals and to any employee organization representing applicable individuals, including actual delivery by hand to employees at worksites and by first-class mail for any other applicable individual and to any employee organization representing applicable individuals. However, although the employer exercises reasonable diligence in seeking to deliver the notice, the notice is not delivered to any participants at one worksite due to a failure of an overnight delivery service to provide the notice to appropriate personnel at that site for them to timely hand deliver the notice to affected employees. The error is discovered when the employer subsequently calls to confirm delivery. Appropriate section 204(h) notice is then promptly delivered to all affected participants at the worksite.

(ii) *Conclusion.* Because the employer exercised reasonable diligence, but did not know that a failure existed, no excise tax applies, assuming that participants at the worksite receive section 204(h) notice within 30 days after the employer first knew, or exercising reasonable diligence would have known, that the failure occurred.

Q–16. How do section 4980F and section 204(h) apply when a business is sold?

A–16. (a) *Generally.* Whether section 204(h) notice is required in connection with the sale of a business depends on whether a plan amendment is adopted that significantly reduces the rate of future benefit accrual or significantly reduces an early retirement benefit or retirement-type subsidy.

(b) *Examples.* The following examples illustrate the rules of this Q&A–16:

Example 1. (i) *Facts.* Corporation Q maintains Plan A, a defined benefit plan that covers all employees of Corporation Q, including employees in its Division M. Plan A provides that participating employees cease to accrue benefits when they cease to be employees of Corporation Q. On January 1, 2006, Corporation Q sells all of the assets of Division M to Corporation R. Corporation R maintains Plan B, which covers all of the employees of Corporation R. Under the sale agreement, employees of Division M become employees of Corporation R on the date of the sale (and cease to be employees of Corporation Q). Corporation Q continues to maintain Plan A following the sale, and the employees of Division M become participants in Plan B.

(ii) *Conclusion.* No section 204(h) notice is required because no plan amendment was adopted that reduced the rate of future benefit accrual. The employees of Division M who become employees of Corporation R ceased to accrue benefits under Plan A because their employment with Corporation Q terminated.

Example 2. (i) *Facts.* Subsidiary Y is a wholly owned subsidiary of Corporation S. Subsidiary Y maintains Plan C, a defined benefit plan that covers employees of Subsidiary Y. Corporation S sells all of the stock of Subsidiary Y to Corporation T. At the effective date of the sale of the stock of Subsidiary Y, in accordance with the sale agreement between Corporation S and Corporation T, Subsidiary Y amends Plan C so that all benefit accruals cease.

(ii) *Conclusion.* Section 204(h) notice is required to be provided because Subsidiary Y adopted a plan amendment that significantly reduced the rate of future benefit accrual in Plan C.

Example 3. (i) *Facts.* As a result of an acquisition, Corporation U maintains two defined benefit plans: Plan D covers employees of Division N and Plan E covers the rest of the employees of Corporation U. Plan E provides a significantly lower rate of future benefit accrual than Plan D. Plan D is merged with Plan E, and all of the employees of Corporation U will accrue benefits under

the merged plan in accordance with the benefit formula of former Plan E.

(ii) *Conclusion.* Section 204(h) notice is required.

Example 4. (i) *Facts.* The facts are the same as in *Example 3*, except that the rate of future benefit accrual in Plan E is not significantly lower. In addition, Plan D has a retirement-type subsidy that Plan E does not have and the Plan D employees' rights to the subsidy under the merged plan are limited to benefits accrued before the merger.

(ii) *Conclusion.* Section 204(h) notice is required for any participants or beneficiaries for whom the reduction in the retirement-type subsidy is significant (and for any employee organization representing such participants).

Example 5. (i) *Facts.* Corporation V maintains several plans, including Plan F, which covers employees of Division P. Plan F provides that participating employees cease to accrue further benefits under the plan when they cease to be employees of Corporation V. Corporation V sells all of the assets of Division P to Corporation W, which maintains Plan G for its employees. Plan G provides a significantly lower rate of future benefit accrual than Plan F. Plan F is merged with Plan G as part of the sale, and employees of Division P who become employees of Corporation W will accrue benefits under the merged plan in accordance with the benefit formula of former Plan G.

(ii) *Conclusion.* No section 204(h) notice is required because no plan amendment was adopted that reduces the rate of future benefit accrual or eliminates or significantly reduces an early retirement benefit or retirement-type subsidy. Under the terms of Plan F as in effect prior to the merger, employees of Division P cease to accrue any further benefits (including benefits with respect to early retirement benefits and any retirement-type subsidy) under Plan F after the date of the sale because their employment with Corporation V terminated.

Q–17. How are amendments to cease accruals and terminate a plan treated under section 4980F and section 204(h)?

A–17. (a) *General rule*—(1) *Rule.* An amendment providing for the cessation of benefit accruals on a specified future date and for the termination of a plan is subject to section 4980F and section 204(h).

(2) *Example.* The following example illustrates the rule of paragraph (a)(1) of this Q&A–17:

Example. (i) *Facts.* An employer adopts an amendment that provides for the cessation of benefit accruals under a defined benefit plan on December 31, 2003, and for the termination of the plan pursuant to title IV of ERISA as of a proposed termination date that is also December 31, 2003. As part of the notice of intent to terminate required under title IV in order to terminate the plan, the plan administrator gives section 204(h) notice of the amendment ceasing accruals, which states that benefit accruals will cease "on December 31, 2003 whether or not the plan is terminated on that date." However, because all the requirements of title IV for a plan termination are not satisfied, the plan cannot be terminated until a date that is later than December 31, 2003.

(ii) *Conclusion.* Nonetheless, because section 204(h) notice was given stating that the plan was amended to cease accruals on December 31, 2003, section 204(h) does not prevent the amendment to cease accruals from being effective on December 31, 2003. The result would be the same had the section 204(h) notice informed the participants that the plan was amended to provide for a proposed termination date of December 31, 2003 and to provide that "benefit accruals will cease on the proposed termination date whether or not the plan is terminated on that date." However, neither section 4980F nor section 204(h) would be satisfied with respect to the December 31, 2003 effective date if the section 204(h) notice had merely stated that benefit accruals would cease "on the termination date" or "on the proposed termination date."

(3) *Additional requirements under title IV of ERISA. See* 29 CFR 4041.23(b)(4) and 4041.43(b)(5) for special rules applicable to plans terminating under title IV of ERISA.

(b) *Terminations in accordance with title IV of ERISA.* A plan that is terminated in accordance with title IV of ERISA is deemed to have satisfied section 4980F and section 204(h) not later than the termination date (or date of termination, as applicable) established under section 4048 of ERISA. Accordingly, neither section 4980F nor section 204(h) would in any event require that any additional benefits accrue after the effective date of the termination.

(c) *Amendment effective before termination date of a plan subject to title IV of ERISA.* To the extent that an amendment providing for a significant reduction in the rate of future benefit accrual or a significant reduction in an early retirement benefit or retirement-type subsidy has an effective date that is earlier than the termination date (or date of termination, as applicable) established under section 4048 of ERISA, that amendment is subject to section 4980F and section 204(h). Accordingly, the plan administrator must provide section 204(h) notice (either separately, with, or as part of the notice of intent to terminate) with respect to such an amendment.

Q–18. What are the effective dates of section 4980F, section 204(h), as amended by EGTRRA, and these regulations?

A–18. (a) *Statutory effective date*—(1) *General rule.* Section 4980F and section 204(h), as amended by EGTRRA, apply to plan amendments taking effect on or after June 7, 2001 (statutory effective date), which is the date of enactment of EGTRRA.

(2) *Transition rule.* For amendments applying after the statutory effective date in paragraph (a)(1) of this Q&A–18 and prior to the regulatory effective date in paragraph (c) of this Q&A–18, the requirements of section 4980F(e)(2) and (3) of the Internal Revenue Code and section 204(h), as amended by EGTRRA, are treated as satisfied if the plan administrator makes a reasonable, good faith effort to comply with those requirements.

(3) *Special notice rule*—(i) *In general.* Notwithstanding Q&A–9 of this section, section 204(h) notice is not required by section 4980F(e) of the Internal Revenue Code or section 204(h), as amended by EGTRRA, to be provided prior to September 7, 2001 (the date that is three months after the date of enactment of EGTRRA).

(ii) *Reasonable notice.* The requirements of section 4980F and section 204(h), as amended by EGTRRA, do not apply to any plan amendment that takes effect on or after June 7, 2001 if, before April 25, 2001, notice was provided to participants and beneficiaries adversely affected by the plan amendment (and their representatives) which was reasonably expected to notify them of the nature and effective date of the plan amendment. For purposes of this paragraph (a)(3)(ii), notice that complies with § 1.411(d)–6 of this chapter, as it appeared in the April 1, 2001 edition of 26 CFR part 1, is deemed to be notice which was reasonably expected to notify participants and beneficiaries adversely affected by the plan amendment (and their representatives) of the nature and effective date of the plan amendment.

(b) *Regulatory effective date*—(1) *General effective date.* Except for Q&A–7(a)(2), Q&A–1 through Q&A–18 of this section apply to amendments with an effective date that is on or after September 2, 2003.

(2) *Effective date for Q&A–7(a)(2).* Q&A–7(a)(2) of this section applies to amendments with an effective date that is on or after January 1, 2004.

(c) *Amendments taking effect prior to June 7, 2001.* For rules applicable to amendments taking effect prior to June 7, 2001, *see* § 1.411(d)–6 of this chapter, as it appeared in the April 1, 2001 edition of 26 CFR part 1.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 5.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 6.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
54.4980F–1	1545–1780
. . . . .	

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: March 27, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 03–8290 Filed 4–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Tampa–03–006]

RIN 1625–AA00

Security Zones; Tampa Bay, Port of Tampa, Port of Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa, Big Bend, Weedon Island, and Crystal River, FL; Correction

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; correction.

SUMMARY: The Coast Guard published a final rule on March 25, 2003 establishing security zones in Tampa Bay, Port of Tampa, Port of Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa, Big Bend, Weedon Island, and Crystal River, Florida. The rule erroneously listed the geographic positions, descriptions, and size of security zones located in the waters adjacent to the Big Bend and Weedon Island power facilities. This document corrects the geographic positions, descriptions, and size of those security zones.

DATES: This correction is effective on April 9, 2003.

FOR FURTHER INFORMATION CONTACT: LCDR Dave McClellan, Coast Guard Marine Safety Office, Tampa at (813)228–2189/91 X 102.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard published a final rule in the **Federal Register** of March 25, 2003 (68 FR 14328) establishing security zones in Tampa Bay, Port of Tampa, Port of Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa, Big Bend, Weedon Island, and Crystal River, Florida. In our discussion of the rule and in paragraph (a)(14) of that rule, the geographic position, description, and size of the security zone for the Big Bend Power Facility were erroneously published as:

(14) Big Bend, Tampa Bay, Florida. All waters of Tampa Bay, from surface to bottom, extending 50 yards from the shore, seawalls and piers around the Big Bend Power Facility, encompassed by a line connecting the following points: 27°47.85′ N, 082°25.02′ W then east and south along the shore and pile to 27°47.63′ N, 082°24.70′ W then north along the shore to 27°48.17′ N, 082°24.70′ W then north and west along a straight line to 27°48.12′ N, 082°24.88′ W then south along the shore and pile to 27°47.85′ N, 082°25.02′ W, closing off entrance to the Big Bend Power Facility.

This correction changes the geographic description and positions to:

(14) Big Bend, Tampa Bay, Florida. All waters of Tampa Bay, from surface to bottom, adjacent to the Big Bend Power Facility, and within an area bounded by a line connecting the following points: 27°47.85′ N, 082°25.02′ W then east and south along the shore and pile to 27°47.63′ N, 082°24.70′ W then north along the shore to 27°48.02′ N, 082°24.70′ W then north and est along a straight line to 27°48.12′ N, 082°4.88′ W then south along the shore and pile to 27°47.85′ N, 082°25.02′ W, closing off entrance to the Big Bend Power Facility.

In our discussion of the rule and in paragraph (a)(15) of that rule, the geographic positions and description for the Weedon Island Power Facility were erroneously published as:

(15) Weedon Island, Tampa Bay, Florida. All waters of Tampa Bay, from surface to bottom, extending 50 yards from the shore, seawall and piers around the Power Facility at Weedon Island encompassed by a line connecting the following points: 27°51.52′ N, 082°35.82′ W then north and east along the shore to 27°51.54′ N, 082°35.78′ W then north to 27°51.68′ N, 082°35.78′ W then north to 27°51.75′ N, 082°35.78′ W closing off entrance to the canal then north to 27°51.89′ N, 082°35.82′ W then east along the shore to 27°51.89′ N, 082°36.10′ W then east to 27°51.89′ N, 082°36.14′ W closing off entrance to the canal.

This correction changes the geographic description and positions to:

(15) Weedon Island, Tampa Bay, Florida. All waters of Tampa Bay, from surface to bottom, extending 50 yards from the shore, seawall and piers around the Power Facility at Weedon Island encompassed by a line connecting the following points: 27°51.52′ N, 082°35.82′ W then north and east along the shore to 27°51.54′ N, 082°35.78′ W then north to 27°51.68′ N, 082°35.78′ W then north to 27°51.75′ N, 082°35.78′ W closing off entrance to the canal then north to 27°51.89′ N, 082°35.82′ W then west along the shore to 27°51.89′ N, 082°36.10′ W then west to 27°51.89′ N, 082°36.14′ W closing off entrance to the canal.

Need for Correction

This correction is needed to correct minor discrepancies in the coordinates and physical description for fixed security zones in waters adjacent to Big Bend and Weedon Island Power facilities in Tampa Bay.

Correction of Publication

■ In rule FR Doc. 03–6982 published on March 25, 2003 (68 FR 14328), make the following corrections:

■ a. On page 14329, in the third column, on lines 42 through 46, remove the words "The security zone extends 50 yards from the shore or seawall and from all piers around facilities. The security zone is bounded by the following points" and add, in their place, the words "It includes all waters of Tampa Bay, from surface to bottom, adjacent to the Big Bend Power Facility, and within an area bounded by a line connecting the following points".

■ b. On page 14329, in the third column on line 50 remove the latitude "27°48.17′ N" and add, in its place, the latitude "27°48.02′ N".

■ c. On page 14329, in the third column on line 69 remove the word "east" and add, in its place, the word "west".

■ d. On page 14330, in the first column on line 1 remove the word "east" and add, in its place, the word "west".

§ 165.T07–006 [Corrected]

■ e. On page 14332, in paragraph (a)(14), remove the words "extending 50 yards from the shore, seawalls and piers around the Big Bend Power Facility, encompassed by a line connecting the following points" and add, in their place, the words "adjacent to the Big Bend Power Facility, and within an area bounded by a line connecting the following points," and remove the latitude "27°48.17′ N" and add, in its place, the latitude "27°48.02′ N".

■ f. On page 14332, in paragraph (a)(15) on lines 14 and 15 remove the word "east" and add, in its place, the word "west".

Dated: March 27, 2003.

James M. Farley,

Captain, U.S. Coast Guard, Captain of the Port Tampa.

[FR Doc. 03–8523 Filed 4–8–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC91

Personal Watercraft Use at Lake Mead National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule designates areas where personal watercraft (PWC) may be used in Lake Mead National Recreation Area, Nevada and Arizona. This rule implements the provisions of the National Park Service (NPS) general regulation authorizing parks to allow the use of PWC by promulgating a special regulation. The *NPS Management Policies 2001* provides that individual parks should determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, overall management objectives, and consistent with the criteria of the NPS for managing visitor use. This rule authorizes the use of PWC at Lake Mead National Recreation Area consistent with the Record of Decision for Lake Management Plan.

EFFECTIVE DATE: This rule becomes effective April 9, 2003.

ADDRESSES: Mail Inquiries to: Jim Holland, Management Assistant, Lake Mead National Recreation Area, 601 Nevada Way, Boulder City, Nevada 89005.

FOR FURTHER INFORMATION CONTACT: Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7413, Washington, DC 20240. Phone: (202) 208–4206.

SUPPLEMENTARY INFORMATION:

Personal Watercraft Use and Regulatory Background

In May 1998 the Bluewater Network, a coalition of more than 70 organizations, filed a petition urging the National Park Service to initiate the rulemaking process to prohibit PWC use throughout the National Park System. In response to the petition, the NPS proposed a specific PWC regulation premised on the notion that PWC use should be evaluated by the individual park area to determine if the use is an appropriate use of the park (63 FR 49312, Sept. 15, 1998).

The NPS envisioned the servicewide regulation as an opportunity to evaluate impacts from PWC use before authorizing the use. The preamble to the servicewide regulation calls the regulation a "conservative approach to managing PWC use" considering the resource concerns, visitor conflicts, visitor enjoyment, and visitor safety. During a 60-day comment period, the NPS received nearly 20,000 comments.

After reviewing the public comments and further review, the NPS promulgated a final regulation that prohibited PWC use in all units, until the individual park areas determine PWC appropriateness for continued use (36 CFR 3.24(a), 65 FR 15077–90, Mar. 21, 2000). The final rule provided a 2-year grace period for 21 parks. Specifically, the regulation allowed the NPS to designate PWC areas and to continue PWC use by promulgating a special regulation in park areas, including Lake Mead National Recreation Area. Ten NRA's were given an additional option of authorizing PWC use through the units' superintendents' compendium (36 CFR 3.24(b)), but only if the requirements of 36 CFR 1.5 were met. This additional designation method was provided for in the units because of their congressional designation as national recreation areas and specific congressional intent to provide for motorized watercraft use in these parks.

In response to the PWC final regulation, Bluewater Network sued the NPS. The organization challenged the National Park Service decision to provide a 2-year grace period allowing continued PWC use in 21 park units while prohibiting PWC use in other park units. In addition, the organization also disputed the National Park Service decision to allow 10 park units the additional option of authorizing continued PWC use after 2002 using the procedures of the superintendents' compendium (36 CFR 1.5), which would not require the opportunity for public input through a notice and a comment rulemaking process.

In response to the suit, the National Park Service and the environmental group negotiated a settlement. The resulting settlement agreement accepted by the court on April 12, 2001, required each of those parks authorizing continued PWC use must promulgate a park-specific special regulation. The settlement agreement acknowledged that the NEPA analysis must, at a minimum, evaluate PWC impacts on water quality, air quality, soundscapes, wildlife, wildlife habitat, shoreline vegetation, visitor conflicts, and visitor safety.

In 2001 the National Park Service adopted its revised NPS Management Policies (NPS 2001) for the National Park System. The policy document included a provision addressing PWC use in park units and the need for proper evaluation before authorizing use in a specific park unit (8.2.3.3). The policy states that the use should be evaluated based on the park's enabling legislation, resources, values, other park uses, and overall management strategies.

On September 5, 2002, the National Park Service published a draft rule for the operation of PWC at Lake Mead NRA (67 FR 56785–94). The proposed rule for PWC use was based on alternative C (the preferred alternative) in the Draft Environment Impact Statement/Lake Management Plan (DEIS/LMP). The 60-day public comment period on the proposed rule ran from September 5 to November 4, 2002.

Overview of Recreational Use and Personal Watercraft

The NPS is granted broad statutory authority under various acts of Congress to manage and regulate water activities in areas of the National Park System, 16 U.S.C. 1, 1a–2(h) and 3. The NPS Organic Act, 16 U.S.C. 1 *et seq.*, authorizes the NPS to "* * * regulate the use of Federal areas known as national parks, monuments, and reservations * * * by such means and measures as conform to the fundamental purpose of the said parks * * * which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Congress has also emphasized that the "* * * authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the national park system and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress." 16 U.S.C. 1a–1. The appropriateness of a visitor use or recreational activity will vary from park to park. NPS Management Policies states that "* * * the laws do give the Service the management discretion to allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of a park, so long as the impact does not constitute impairment of the affected resources and values" (1.4.3). NPS Management Policies provide further that, "* * * preserving park resources and values unimpaired is the core, or primary responsibility of NPS managers * * *. In cases of doubt as to impacts of activities on park natural resources, the Service will decide in favor of protecting the natural resources." (4: 1).

The Organic Act and the other statutory authorities of the NPS vest us with substantial discretion in determining how best to manage park resources and provide for park visitors. "Courts have noted that the Organic Act is silent as to the specifics of park management and that under such circumstances, the NPS has broad discretion in determining which avenues best achieve the Organic Act's mandate * * *. Further, the NPS is empowered with the authority to determine what uses of park resources are proper and what proportion of the park resources are available for each use" *Bicycle Trail Council of Marin* v. *Babbitt*, 82 F.3d 1445, 1454 (9th Cir. 1996), *quoting National Wildlife Federation* v. *National Park Service*, 669 F. Supp. 384, 390 (D. Wyo. 1987). In reviewing a challenge to NPS regulations at Everglades National Park, the court stated, "The task of weighing the competing uses of Federal property have been delegated by Congress to the Secretary of the Interior * * *. Consequently, the Secretary has broad discretion in determining how best to protect public land resources." *Organized Fishermen of Florida* v. *Hodel*, 775 F.2d 1544, 1550 (11th Cir. 1985), cert. denied, 476 U.S. 1169 (1986).

Over the years, NPS areas have been impacted with new, and what often prove to be controversial, recreational activities. These activities tend to gain a foothold in NPS areas in their infancy, before a full evaluation of the possible impacts and ramifications that expanded use will have on the area can be initiated, completed and considered. PWC use fits this category.

PWC use is a relative new recreational activity at Lake Mead NRA. PWC, primarily stand-up models, were first observed on Lakes Mead and Mohave in the mid-1970s. In the 1980s, the first sit-down models were available with one- or two-person capacities. During this time, PWC were manufactured by four companies, the first PWC magazines were published and the typical cost of a PWC was $6,600.

From the mid-1980s through the 1990s, sales grew rapidly, then leveled off starting in the mid-1990s. According to visitor use surveys in 1993, the use of PWCs at Lake Mead NRA during this time constituted 15% of the boats on the water at any one time. A rapid increase in PWCs was observed in 1994, when their use jumped to 30% of the boats on the water at any one time.

Today monitoring shows that PWC use constitutes 35% of the boats on the water at any one time. There are 11,000 PWC registered in Clark County, Nevada and thousands more in the region surrounding Lake Mead NRA. The highest densities are observed in the urban interface areas of Lake Mead and in the southern portions of Lake Mohave.

Changes to the Final Rule

Some changes have been made in the Lake Management Plan/Final Environmental Impact Statement. Five percent of the park waters will be managed for primitive and semiprimitive recreational settings. This is an increase of three percent over the acreage in the draft rule. PWC use is prohibited in primitive and semiprimitive zones.

Bonelli Bay in the southern portion of the Virgin Basin was added to the semiprimitive zone on Lake Mead, as was the Lake Mead confluence with the Muddy River. These two areas account for the increased acreage in the semiprimitive zoning over the draft plan. The Overton Wildlife Management Area boundary defines the semiprimitive area of the Muddy River confluence and it is presently managed during the waterfowl hunting season as a flat wake area. This revision prohibits the use of PWC in the Overton Wildlife Management Area year-round.

The recreational zoning in Black Canyon has been modified to allow additional boating access for five days per week during the peak boating season between Memorial Day and Labor Day each year. During this period the canyon will be managed as rural natural zone with no special speed or horsepower restrictions. PWC use in the canyon is authorized during this period. The remainder of the year Black Canyon will be managed for semiprimitive conditions with a 65-horsepower maximum. As proposed in the LMP/DEIS, Black Canyon will be managed as a primitive setting two days per week (Sunday and Monday) year round.

In response to comments from the States of Arizona and Nevada, the proposed 100-foot flat wake zone around the entire lakes has been revised to a 200-foot flat wake zone around beaches occupied by bathers, around boats at the shoreline and a person in the water or at the shoreline. This revision is more closely aligned with existing Nevada boating law and allows the NPS to move toward the goal of providing unified boating law for the interstate waters of Lakes Mead and Mohave.

There are a number of actions that will require subsequent rulemaking in the implementation of the Lake Management Plan. This rule has been tailored specifically to address PWC operation in response to the general regulation in 36 CFR 3.24 prohibiting PWC use except by special regulation. The National Park Service focused specifically on PWC to prevent or minimize the period that PWC use would be restricted at Lake Mead NRA. It is the National Park Service's intention to move ahead with the additional rulemaking that will apply the flat-wake rule to all watercraft and to implement other aspects of the approved Lake Management Plan (LMP).

Discussion of Economic Effects of PWC Use

From an economic perspective, both alternative C (the continued use of PWC in 95% of Lake Mead and other restrictions as presented in this rulemaking) and alternative D, which would permit all two stroke engines and PWC in all of Lake Mead, resulted in the highest quantified net benefits, with alternative D resulting in a slightly higher amount of net quantified benefits. However, the National Park Service chose alternative C because certain costs could not be quantified in the net economic benefits. Those costs, relating to non-PWC use, aesthetics, ecosystem protection, human health and safety, congestion, or non-use values, would likely be greater for alternative D than for alternative C. Given that the quantified net benefits of alternatives C and D are already similar (*see* the table below), further inclusion of these non-quantified costs could reasonably result in alternative C having the greatest level of net benefits. Therefore, based on these factors, alternative C was considered to provide the greatest level of net benefits.

Benefits

Alternative A, the no action alternative, represents the baseline conditions of this rulemaking. Under that alternative, all PWC use would be

prohibited from the park. Alternatives B and C would permit PWC use with certain restrictions, and alternative D would permit PWC use as currently managed in the park. The benefits of any alternative are measured relative to the baseline conditions, which are represented by alternative A. Therefore, there are no incremental benefits associated with alternative A. The primary beneficiaries of alternatives B, C, and D would be the park visitors who use PWCs and the businesses that provide services to PWC users such as rental shops, restaurants, gas stations, and hotels. Additional beneficiaries include individuals who use PWCs outside the park where PWC users displaced from the park may decide to ride if PWC use within the park were prohibited. Benefits accruing to individual PWC users are called consumer surplus gains, and those accruing to businesses are called producer surplus gains. Consumer surplus measures the net economic benefit obtained by individuals from participating in their chosen activities, while producer surplus measures the net economic benefit obtained by businesses from providing services to individuals. These benefits, projected over a 10-year horizon, are summarized in the table below.

PRESENT VALUE OF PROJECTED INCREMENTAL BENEFITS UNDER ALTERNATIVES B, C, AND D, 2002–2012

[dollars]

	PWC users	Businesses	Total
Alternative B:			
Discounted at 3%	74,112,030	2,031,990–11,232,060	76,144,020–85,344,090
Discounted at 7%	59,006,910	1,617,850–8,942,800	60,624,760–67,949,710
Alternative C:			
Discounted at 3%	100,580,610	2,477,690–12,863,370	103,058,300–113,443,980
Discounted at 7%	80,080,800	1,972,710–10,241,630	82,053,510–90,322,430
Alternative D:			
Discounted at 3%	105,874,320	2,597,680–13,426,400	108,472,000–119,300,720
Discounted at 7%	84,295,580	2,068,240–10,689,900	86,363,820–94,985,480

Costs

As with the benefits described above, the costs of any alternative are measured relative to the baseline conditions, which are represented by alternative A. Therefore, there are no incremental costs associated with alternative A. The primary group that would incur costs under alternatives B, C, and D are the park visitors who do not use PWCs and whose park experiences would be negatively affected by PWC use within the park. At Lake Mead, non-PWC uses include boating, canoeing, fishing, and hiking. Additionally, the public could incur costs associated with impacts from alternatives B, C, and D to aesthetics, ecosystem protection, human health and safety, congestion, and non-use values. However, these costs could not be quantified for all alternatives due to a lack of available data.

There are other costs associated with alternatives B, C, and D relating to NPS enforcement of PWC restrictions. Those costs, projected over a 10-year horizon, are summarized in the table below.

PRESENT VALUE OF PROJECT NPS ENFORCEMENT COSTS UNDER ALTERNATIVES B, C, AND D, 2001–2012

[dollars]

Alternative B:	
Discounted at 3%	3,523,950
Discounted at 7%	2,793,080
Alternative C:	
Discounted at 3%	4,195,180
Discounted at 7%	3,325,090
Alternative D:	
Discounted at 3%	5,202,030
Discounted at 7%	4,123,110

Quantified Net Benefits

The quantified net benefits associated with alternatives B, C, and D are presented in the table below. These net benefits do not account for the costs to non-PWC users, or those relating to aesthetics, ecosystem protection, human health and safety, congestion, or non-use values due to a lack of available data. Therefore, these net benefit estimates do not represent all costs. If all costs could be incorporated, the indicated net benefits for each alternative would be lower. Nevertheless, these estimates present a likely range of net benefits that can be estimated from available information.

PRESENT VALUE OF QUANTIFIED NET BENEFITS UNDER ALTERNATIVES B, C, AND D, 2002–2012

[dollars]

Alternative B:	
Discounted at 3%.	72,620,070–81,820,140
Discounted at 7%.	57,831,680–65,156,630
Alternative C:	
Discounted at 3%.	98,863,120–109,248,800
Discounted at 7%.	78,728,420–86,997,340
Alternative D:	
Discounted at 3%.	103,269,970–114,098,690
Discounted at 7%.	82,240,710–90,862,370

Summary of Comments

A proposed rule was published for public comment on September 5, 2002 (67 FR 56785–94), with the comment period lasting until November 4, 2002. The NPS received 1,696 timely written responses regarding the proposed regulation. Of the responses, 1,636 were form letters in 3 separate form letter formats and 60 were individual letters. There were 1,060 electronic mailings. Responses received included 51 from individuals, 2 from businesses, 5 from organizations and 2 from public agencies.

Within the analysis, the term "commenter" refers to an individual, business, or organization that responded. The term "comments" refers to statements made by a commenter.

General Comments

1. There were a variety of commenters, including the Personal Watercraft Industry Association and United States Coast Guard (USCG), who proposed the flat wake zone should apply to all motorized vessels.

NPS Response: The National Park Service concurs with the commenters. The preferred alternative in the LMP has been modified and clearly applies the flat wake zone to all motorized vessels. The intention of the flat wake zone is to provide a safe shoreline environment for water recreation. The Lake Management Plan has been modified based on public comment and consultation with the respective states of Nevada and Arizona to read, "A 200-foot flat wake zone will be applied to all beaches occupied by bathers, boats at the shoreline, swimmers in the water or persons at the shoreline." A future rulemaking will extend this provision to all boats.

2. The PWIA requested that PWC used for water-skiing and wakeboarding be permitted to launch from the shoreline like other motorized boats.

NPS Response: The NPS agrees. The intention the Lake Management Plan is to afford PWC the same setting for beach starts for water-skiing purposes as other motorized boats. Persons operating boats would need to be at flat wake speed only if they are within 200-feet of a beach occupied by bathers, a boat at the shoreline or a person in the water or at the shoreline. It is the intention to apply this rule to all boats and this will be accomplished with a separate rulemaking as described in the preceding comment response.

3. There were a number of comments stating that restricted PWC use should be permitted in Black Canyon.

NPS Response: The preferred alternative in the final environmental impact statement (EIS) has been revised for recreational use of Black Canyon, allowing restricted PWC use. The final EIS states, "In this area, temporal zoning would be applied, providing a range of recreational settings. The area would be managed for a primitive setting two days per week on a year-round basis. Between Labor Day and Memorial Day, the area would be managed for a semiprimitive setting five days per week. During the summer months between Memorial Day and Labor Day, the area would be managed for a rural natural setting with only houseboats, waterskiing, and wakeboarding prohibited. PWC use is consistent with the rural natural setting. However, due to the narrow canyon setting in Black Canyon (zones 8 and 9), PWC use would be monitored during this period and restricted if the safety of lake users becomes an issue. This would be determined by observed/reported conflict information and boating incidents." This authorization has been specifically included in the final rulemaking.

4. Numerous commenters stated that the National Park Service is suggesting that one type of recreational experience is more meaningful than another.

NPS Response: The NPS disagrees that we place a higher value on a one type of recreational experience over another. The implication is that we place less value on PWC use than other forms of recreation. The Organic Act and the Lake Mead enabling legislation are the standards by which the National Park Service manages recreational activities. For Lake Mead NRA we have evaluated PWC use and are authorizing their continued use throughout 95% of the park waters.

5. Many commenters believed they should be able to use their USCG legal boat in every waterway where similar motorized boating activity occurs (*i.e.* water skiing, wake boarding, speed boating, etc.) They suggested the Lake Mead regulation should be based on engine type not hull design.

NPS Response: The National Park Service definition of PWC as noted in the draft and final EIS under the "Purpose of and Need for the Plan" chapter, "Background" section under "Personal Watercraft Use Regulatory Background" is as follows: Personal watercraft refers to a vessel, usually less than 16-feet in length, which uses an inboard, internal combustion engine powering a water jet pump as its primary source of propulsion. The vessel is intended to be operated by a person or persons sitting, standing, or kneeling on the vessel, rather than within the confines of the hull.

As presented in the description of the alternatives in the draft and final EIS, the National Park Service evaluated and chose the best regulatory approach in the preferred alternative in order to maintain the opportunities for various types of recreation while protecting the resources of the Lake Mead NRA. Some elements of the final EIS modified preferred alternative/final rule, such as the proposed recreational opportunity zoning, regulate PWC separately from other motorcraft, while other aspects, such as the flat wake zone and phase-out of old engine technology, regulates engine type instead of hull design.

6. We received numerous comments citing the Organic Act and the mission of the National Park Service to leave the resources and wildlife under its care "unimpaired for the enjoyment of future generations." We received a number of letters stating, federal law clearly prohibits activities that impair or derogate the NPA's resources or values.

NPS Response: The "Introduction" section of the "Environmental Consequences" chapter under "Summary of Laws and Policies" in the draft and final EIS summarizes the three overarching laws which guide the NPS in making decisions concerning protection of park resources. These laws, as well as others, are also reflected in the NPS Management Policies. In addition, in the "Methodology" section under the heading "Impairment Analysis," the EIS explains how the NPS applied these laws and policies to analyze the effects of PWC on Lake Mead park resources and values.

An impairment to a particular park resource or park value occurs when in the professional judgment of the responsible NPS manager the impact would harm the integrity of park resources or values, including the opportunity that otherwise would be present for the enjoyment of those resources or values. In making these determinations, the NPS managers must consider the provisions of the park's enabling legislation. For each resource topic, the draft and final EIS establishes thresholds or indicators of magnitude of impact. Should the impact approach a "major" level of intensity, it is one indication that impairment could result. For each impact topic, when the intensity approached "major," the team would consider mitigation measures to reduce the potential for "major" impacts, thus reducing the potential for impairment.

In response to growing concern regarding potential impacts from PWC, the National Park Service began an extensive review and regulation process. While comments were received opposing continued use of the vessel within units of the park system, other comments supported its use with certain conditions designed to protect park resources and values. Recognizing that some units needed to complete more local planning and analysis of impact was needed, the final servicewide PWC regulation provided for specified local decision-making on a park by park basis.

The servicewide regulation recognized the need for park areas wishing to continue PWC use to undertake and complete an analysis of the impacts to park resources and values that could result from continued use.

In the draft and final EIS, three of the four alternatives analyzed various PWC scenarios, along with other vessel management and recreational objectives. The alternatives also consider means to mitigate the effects of PWC on park resources and values, including limiting use in areas where management

objectives strive to create a visitor experience without these vessels or where sensitive park resources must be protected. The modified preferred alternative in the final EIS includes mitigation measures to protect other park users from potential conflicts with PWC (*see* the modified preferred alternative in the "Environmental Consequences" section of the FEIS), as well as other measures to protect species of special concern, water, and air resources.

The conclusion of the modified preferred alternative in the final EIS, was that continued PWC use, would not result in an impairment of park resources and values for which the Lake Mead Recreation Area was established to protect for future generations.

7. We received one comment from an individual who suggested we establish a Citizens Recreational Taskforce to address the future management of recreational use at Lake Mead NRA.

NPS Response: The rule takes a balanced approach to the management of PWC use within Lake Mead NRA. It takes into consideration resource impacts, conflicts with other visitors' use and enjoyment and safety concerns. It requires promulgation of park-specific regulation which is the same regulatory approach the National Park Service has taken to manage off-road vehicle use (36 CFR 4.10), aircraft, including powerless hang-gliders (36 CFR 2.17), and use of bicycles outside of developed areas (36 CFR 4.30(b)). This rule prohibits PWC use in areas where their use is inconsistent with the management objectives based on the Organic Act, enabling legislation, resources, values, and other visitor uses.

The National Park Service met with a wide variety of user groups concerning the management of recreational use of park waters. A listing of these meetings and organizations is included in the final EIS. These meetings represent the National Park Service approach to seeking specific user group input into the planning and decision making process. Because the park plans to continue this process, we do not think that a citizen's recreational taskforce is necessary.

Comments Related to Socioeconomic Resources

8. There were one or more commenters who expressed concern for the impact of the rule on the local economies of Laughlin/Bullhead City and the Las Vegas area.

NPS Response: The estimates (under alternative C) presented in the Economic Analysis of Personal Watercraft Regulations in Lake Mead NRA (NPS 2002), use 2012 as engine phase-in date when all two-stroke and four-stroke engines would have to become fuel injected, in accordance with EPA regulations. This date would cover the current life expectancy specified by the Personal Watercraft Industry Association of 5 to 7 years and the EPA estimate of 10 years. Under alternative C (the modified preferred), the National Park Service assumes that, as a result of PWC restrictions, businesses could experience a 5% reduction in PWC sales, service, and rentals related to the park. Some of this impact could occur as a result of engine-type restrictions, but there are also geographic restrictions proposed under this alternative that were taken into account. However, even under alternative A, as detailed in the draft and final EIS, where there would be a 100% reduction in PWC revenues related to the park, the impact on the regional economy would be very small, less than 0.1% of total economic activity.

The National Park Service expects that by 2012, most boat owners would already be in compliance with the 2006 EPA marine engine standards. The impact from the engine standards on boat owners is expected to be minimal. PWC manufacturers currently offer some models that are compliant with EPA's 2006 standards and PWC purchased after 2006 would be made compliant. Because the life of a PWC is estimated at 5 to 10 years (*see* final EIS, the "Introduction" section in the "Purpose and Need for the Plan" chapter), it is expected that the majority of noncompliant PWCs would no longer be in operation when the engine restrictions proposed under alternative C take effect in 2012. In addition, according to industry reports, it appears that the trend for conversion is toward the four-stroke model engines instead of direct injection two-stroke models. According to the PWIA, the two top selling PWC models for 2002 incorporated the four-stroke technology. Also, in discussions with PWC retailers in the vicinity of Lake Mead, NPS has been informed that the majority of new PWC purchases have been four-stroke engines.

It may be reasonable to assume that people shopping before 2006 for new watercraft would only consider purchasing those models with compliant engines in response to the public announcement that only 2006-compliant engines would be allowed at Lake Mead NRA after 2012. It is the NPS intention that the 10-year advance notice will provide ample opportunity for people to consider engine compliance when making a purchase.

Comments Related to Safety and Visitor Conflicts

9. There were numerous comments stating that "much attention has been given to so-called 'cleaner and quieter' PWC." They say these machines do not solve all problems associated with the PWC and cite recent research studies that find that the new technology emits as much or more carbon monoxide and nitrogen oxide.

NPS Response: The NPS agrees that the new technology will not solve all the problems, but they do provide major improvements in a number of areas specifically in air quality and water quality. Although the cleaner four-stroke and two-stroke direct injected engines will emit more nitrogen oxide due to a higher ratio of fuel actually being burned, they emit less hydrocarbons, which reduces the likelihood of ozone formation. The newer engine technology will not reduce impacts to wildlife from factors such as noise or use of the craft in close proximity to wildlife but this problem is common to all vessels to various extents. However, phasing in of the new technology would reduce impacts to aquatic and shoreline species by greatly reducing the discharge of fuel components such as benzene, toluene, ethyl benzene, and BTEX into the water as stated in the draft and final EIS in the "Methodology" section in the "Environmental Consequences" chapter.

The safety record of PWC at Lake Mead can be improved by measures such as boater safety education. The preferred alternative in the draft EIS and the modified preferred alternative in the final EIS proposes a requirement of boater safety training for all vessel operators born after 1983. States such as California report operator inexperience as the leading cause of PWC-related accidents (NTSB 1998). Boater education incorporating PWC-specific instruction has been shown to reduce PWC accidents in Connecticut and Michigan (NTSB 1998).

The industry's conversion to the four-stroke technology and the use of resonators is reducing the noise. Manufacturers are using noise absorbing foam and rubber padding in the construction of PWCs. Consequently, the newer technology used in PWC construction is addressing noise concerns and improvements are being observed at Lake Mead NRA.

10. There were additional comments concerning the safety record of PWC.

NPS Response: Safety is an issue for all boaters, including PWC users. Boating safety issues for the Lake Mead NRA are described in the "Recreational Use of the Lake" section of the "Affected Environment" of the FEIS. Under the modified preferred alternative, unified boating laws for Lake Mead and Lake Mohave are proposed, including the requirement of boater safety education for any boater born after 1983. When applicable, the operator of a boat/vessel would be required to have in his/her possession, proof of completion of a safety course meeting the requirements of the National Association of Boating Law Administrators while operating a boat/vessel.

Safety is further addressed under the modified preferred alternative in the final EIS, where a 200-foot flat wake zone would apply to beaches occupied by swimmers, boats at the shoreline, and people at the shoreline or in the water. Coordination with the states of Nevada and Arizona would be required in order to achieve the desired uniformity of the proposed boating regulations.

When implemented, these safety measures would increase the safety of participating in all forms of recreation at Lake Mead NRA. Consequences of the preferred alternative in relation to PWC safety are described in the "Environmental Consequences" section of the draft and final EIS.

11. We received comments that cited user conflicts. Specific incidents included conflicts between PWC and kayakers, fishermen, and swimmers. A few PWC supporters said these conflicts resulted from a minority of inconsiderate PWC operators and that we should regulate inappropriate behavior or enforce existing regulations rather than prohibit PWC use.

NPS Response: The National Park Service is pursuing specific measures to provide a safe shoreline environment and to minimize conflict between user groups. Specifically, a 200-foot flat wake zone is proposed around beaches occupied by bathers, boats at the shoreline and people in the water or at the water's edge. This rule is designed to improve the shoreline environment on both reservoirs.

In addition, 5% of the park waters have been zoned as primitive or semiprimitive where the management objectives are for a more quiet and tranquil setting. Visitors seeking this environment can visit these areas with some expectation of slower speeds and quieter boat operations. In these areas PWCs are prohibited and other boating use will be limited to flat wake speeds and/or electric trolling motors.

Comments Related to the Phaseout of Carbureted Two-Stroke Engines

12. Some commenters cited the inefficiency of the carbureted two-stroke engines.

NPS Response: We are concerned about pollution in any form, and exhaust gasses from two-stroke marine engines is no exception. We recognize that a certain amount of exhaust smoke and smell is inherent with any two-cycle engine and that the comments addressed excessive amounts from PWC. We acknowledge the findings of the Environmental Protection Agency's (EPA) 1991 study that indicate two-stroke engines lose roughly 25% of the fuel they consume unburned into the water, resulting in high levels of hydrocarbon emissions from these engines. The excessive smoke and smell from PWC could be attributed to unique operational characteristics of those vessels. PWCs are often operated with throttle settings that transition from idle to full throttle and back to idle, typically in a rapid and repeated sequence. In response to these concerns, the rule will phase out the carbureted two-stroke engines over a 10-year period.

13. There were comments that suggested the 2012 prohibition on carbureted two-stroke engines is unnecessary.

NPS Response: As noted in alternative C in the draft and final EIS, two-stroke PWC and outboard vessels would be barred from Lake Mead NRA beginning in 2012 as a result of the prohibition on carbureted two-stroke engines. However, even with the increasing availability of new technology four-stroke and direct injection two-stroke engines, it is estimated by EPA that by 2012, they would only comprise approximately 50 percent of PWC in use at that time.

According to the Personal Watercraft Industry Association, PWC models on the market today include the new technology reduced-emissions vessels (*http://www.pwia.org facts_release.htm#qa*) and the two top selling models in 2002 were four-stroke models. The NPS has also learned in discussion with local PWC retailers that the majority of new PWC purchases have been four-stroke engines. The industry shows this trend, combined with the relatively short operating life of PWC, which range from 5 to 10 years (depending on the source), would result in only a small number of PWC users who would be displaced when the restrictions go into effect. The NPS hopes the industry prediction is correct. But if less than 100% of the PWCs in 2012 are the new technology reduced emission PWCs, then the PWC restriction will take effect and ensure that the resources of the park will be protected.

Comments Related to General Environmental Impacts

14. Some commenters were concerned that the Service often lacks site-specific studies upon which to base a sound judgement on PWC use at Lake Mead. The commenters also pointed out that the National Park Service appears to overlook important studies which detail the damage these machines cause to the environment and wildlife.

NPS Response: The NPS utilized site specific studies to evaluate air quality, water quality, cultural resources and visitor use in the LMP/FEIS. Shoreline vegetation in this arid setting is primarily composed of exotic salt cedar so site specific inventories were limited to sensitive inflow areas. Specific studies were not initiated for the wildlife and soundscape analyses.

The NPS determined that site-specific studies of PWC impacts on wildlife were not necessary given the limited extent of native shoreline vegetation and its limited value to wildlife. As stated in the "Natural and Cultural Resources" section of the "Affected Environment" chapter of the draft and final EIS "* * * the majority of the shoreline in the recreation area contains nonnative salt cedar (*Tamarix* spp.), with relatively few areas supporting native vegetation. Fluctuating water levels along the shoreline make restoration of vegetation communities impossible in most situations."

In those few areas where there is shoreline habitat that is valuable for wildlife, such as in the willow scrub inflow areas of the Virgin and Muddy Rivers where neotropical migratory songbirds potentially nest, primitive and semiprimitive zones are proposed under the modified preferred alternative which would prohibit PWC use, waterskiing, and wakeboarding. Given the overall lack of wildlife habitat along most of the remainder of the National Recreational Area's shoreline, and the fact that PWC would be prohibited in the few areas that are deemed valuable for wildlife, the park has identified sensitive vegetation and shoreline habitat and has incorporated appropriate mitigation measures into the modified preferred alternative in the final EIS. Regarding fisheries of Lake Mead NRA, the modified preferred alternative in the final EIS proposes to use temporal shoreline zonings to

reduce and/or prevent impacts to shallow water spawning areas.

The U.S. Fish and Wildlife Service Biological Opinion is included in the final EIS in Appendix F. The biological opinion has concurred with the National Park Service determination that the preferred alternative is not likely to jeopardize the continued existence of the Southwestern willow flycatcher, bonytail chub, razorback sucker, or desert tortoise, and is not likely to destroy or adversely modify designated critical habitat for bonytail, razorback, or tortoise. In addition, the U.S. Fish and Wildlife Service agreed with the determination of no effect on the bald eagle and Yuma clapper rail. The mitigation adopted under the modified preferred alternative in the final EIS includes measures to protect spawning and nesting areas.

There is no definitive literature describing scientific measurements of PWC noise (*see* DEIS, p. 144). To address this lack of scientific data, the National Park Service contracted noise measurements of motorized vessels, including PWC, at Glen Canyon in 2001. The noise source data from this study was used in the Lake Mead draft and final EIS soundscape analysis because the results were not dependent upon or influenced by park geology or other environmental factors.

At Glen Canyon, sound measurements were made of a number of boats and PWC as they passed by a microphone mounted above the front of an instrumented boat. As stated in the technical report (NPS, 2002 or HMMH, 2002—Draft Technical Report on Noise: Personal Watercraft and Boating Activities at Glen Canyon National Recreation Area), controlled pass-by measurements of three PWC and one motorboat were conducted at several different speeds. Many boats and PWC were also randomly measured. In all cases, a radar gun was used to determine speed and a laser range finder was used for distance. After normalizing measurements to a common distance, maximum sound levels were computed both for 15 and 25 meters, the distance at which National Park Service watercraft noise emission regulations apply. One of the conclusions from the measurements at Glen Canyon was that, except for the boats with V–8 engines (which were louder), no significant differences were found in the sound levels produced by PWC and the other boats that were measured in the study.

Comments Related to Water Quality

15. Some comments expressed concern about the amount of raw fuel spilled into the water or on the shoreline when PWC were refueled by owners/operators at sites other than fuel docks.

NPS Response: The refueling of boats at the shoreline is legal. Illegal refueling occurs when the refueling results in the pollution or contamination of park waters. As noted in the final EIS under alternative C, "Resource Protection" section, the spillage of fuel during shoreline operations is a concern at Lakes Mead and Mohave. Polluting or contaminating park waters during refueling, including fuel spillage, is a citable offense under 36 CFR, 2.14(a)(6). Safe refueling practices need to be included in boating safety courses. The National Park Service will recommend the States of Nevada and Arizona include these procedures as part of the boating education curriculum.

16. A single commenter stated, the proposed rule, at page 56790, states that "based on fuel consumption estimates, between 1½ and 3 gallons of fuel is discharged into the water during a two-hour ride on a PWC." The rule goes on to say that during the summer weekends in high use areas, there are as many as 1,700 PWCs on the lakes, which "could result in 1,275 and 3,400 gallons of unburned fuel discharged per hour into Lakes Mead and Mohave combined." The commenter goes on to say that these statements are nonsense and supported by no technical information.

NPS Response: The National Park Service is concerned about pollution in any form and exhaust gasses from two-stroke marine engines is no exception. We recognize that a certain amount of exhaust smoke and smell is inherent with any two-stroke engine and that the comment addressed excessive amounts from PWC. We acknowledge the findings of the Environmental Protection Agency's (EPA) 1991 study that indicate two stroke engines lose roughly 25% of the fuel they consume unburned into the water, resulting in high levels of hydrocarbon emissions from these engines. The smoke and smell from PWC could be attributed to unique operational characteristics of those vessels. PWC are often operated with throttle settings that transition from idle to full throttle and back to idle, typically in a rapid and repeated sequence. These are the basis for the above analysis. While some PWC are converting to the new technology, the percentage of the PWC fleet has not yet made the conversion to the more efficient models. Consequently, the calculation of the potential discharge is valid.

17. One comment stated, the primary water quality concern that has been identified regarding continued PWC use is the discharge of unburned gasoline and gasoline additives from conventional carbureted two-stroke engines, as well as the spilling of such components during refueling (National Park Rulemaking at page 56790, DLMP/EIS (Lake Management Plan/Draft EIS) at pages 102, 133, 124, 188). PWC emissions in the Lake Mead area have already been reduced 25% below the 1998 baseline conditions.

NPS Response: We agree that water quality impacts from PWC and other carbureted two-stroke engines have declined since 1998 due to the conversion of carbureted two-stroke engine technology to cleaner technology. However, our goals for the reduction of emissions cannot be achieved without the proposed 2012 restrictions.

The final EIS addresses impacts from PWC use as well as all watercraft on Lake Mead and Lake Mohave. Four alternatives were analyzed. Alternative A would continue the prohibition of use of PWC in the Lake Mead NRA. Alternative B would prohibit all carbureted two-stroke engines beginning in 2004. Alternative C assumes a ban on two-stroke carbureted engines for all vessels, including PWC, after 2012. Alternative D assumes that no ban would take place and that two-stroke engines would be converted in accordance with the Environmental Protection Agency's assumptions (40 CFR parts 89–91, "Air Pollution Control; Gasoline Spark-Ignition and Spark-Ignition Engines, Exemptions;" rule, 1996). Alternative C (the modified preferred alternative) is compared to alternative D because alternative D allows for a mix of older model-two stroke carbureted engines with the EPA compliant cleaner engine models (two stroke fuel injected and four stroke engines) through the life of the plan. A brief summary of the analysis of surface water quality impacts to Lakes Mead and Mohave found in the Final EIS for alternatives C and D are described below.

The approach to evaluating surface water quality impacts is found in Appendix G of the Final EIS. Engine conversion, restriction by engine type, and the total boating capacity used to calculate impacts varies between alternatives C and D. Alternative C uses a combined total boating capacity of boats for both Lakes Mead and Mohave of 5,055 boats at one time, while alternative D uses a combined total boating capacity of 5,800 boats at one time. These boating capacities reflect the heaviest use period of the summer. The threshold volumes required to meet water quality standards at Lake Mead under alternative C are 48% less than alternative D in 2012. The threshold volumes required to meet water quality standards at Lake Mohave under alternative C are 61% less than alternative D in 2012 because of the combination of fewer boats on the water in alternative C and the ban on two-stroke carbureted engines after 2012. Complete results of the water quality analysis are found in the water quality section of the Environmental Consequences section of the Final EIS and in appendix H of the Final EIS.

IMPACTS OF ALL WATERCRAFT ON SURFACE WATER QUALITY—THRESHOLD VOLUME OF WATER NEEDED TO MEET WATER QUALITY STANDARDS

[In acre-feet]

Alt/Year	Ecological benchmark					Arizona standards for fish consumption	Human health criteria	
	Benzo (a)pyrene (fuel and exhaust)	Naphthalene	1-methyl Naphthalene	Benzene	MTBE	Benzo (a)pyrene (fuel and exhaust)	Benzo (a)pyrene (fuel and exhaust	Benzene
Lake Mead (assuming minimum pool elev. 1,150 feet, volume above thermocline 2,085,000 acre-feet)								
C–2004	4,047	1,602	4,554	1,836	58	26,331	12,878	198,900
D–2004	4,593	1,818	5,167	2,083	66	32,149	14,613	225,702
C–2012	1,754	694	1,973	795	25	12,275	5,580	86,179
D–2012	3,371	1,334	3,793	1,529	48	23,597	10,726	165,662
Lake Mohave (assuming minimum pool elev. 634 feet, volume above thermocline 687,800 acre-feet)								
C–2004	3,352	1,326	3,771	1,520	48	23,461	10,664	164,706
D–2004	3,925	1,553	4,416	1,780	56	27,473	12,488	192,874
C–2012	1,035	410	1,165	470	15	7,247	3,294	50,877
D–2012	2,652	1,049	2,983	1,203	38	18,561	8,437	130,307

18. One commenter stated, EPA has confirmed that studies show most unburned gasoline and gasoline additives emitted from two-stroke marine engines evaporate from water within the first hour and 15 minutes after they are released. More specifically, at 86 degrees Fahrenheit 84% of the unburned gasoline/additive mix released into the water evaporated within 75 minutes.

NPS Response: We generally agree with this comment. The commenter includes a quantitative discussion of the volatility of many of the components found in gasoline and gasoline additives emitted from carbureted two-stroke engines. As stated in the Final Environmental Impact Statement, many organic pollutants that are initially dissolved in the water volatilize to the atmosphere, especially if they have high vapor pressures, are lighter than water, and mixing occurs at the air/water interface (Final EIS, Methodology section, under Water Resources, Assumptions for Evaluating Impacts from Marine Engines, Including Personal Watercraft). Therefore, NPS analyses accounts for evaporative rates in its methodology and believes it has accurately portrayed potential effects to water quality.

19. There were a number of commenters concerned that the changeover to four-stroke and two-stroke direct injection PWC engines to meet the requirements of the EPA 2006 and CARB 2008 emission standards is occurring much more rapidly than EPA and National Park Service has estimated. Amounts of unburned fuel released at Lake Mead and Lake Mohave will accordingly continue to decline rapidly, achieving a reduction of approximately 90% from the 1998 baseline levels by 2012.

NPS Response: In the water quality analysis presented in the Final EIS, the assumption was made that clean technology engines (any engine not using carbureted two-stroke technology) would be 90% cleaner than the carbureted two-stroke engines. Under alternative C, conversion to all clean technology engines would be completed by 2012, while alternative D uses the rate of conversion of the engines from carbureted two-stroke to clean engines consistent with the EPA rule, "Final Rule for New Gasoline Spark-Ignition Marine Engines" (US EPA, 1996). The NPS used the EPA data where it was assumed that 21.6% of the carbureted two-stroke engines in use in 1998 would be replaced by 2004 and that 58.4% would be replaced by 2012. One of the commenter's (Personal Watercraft Industry Association) assertion is principally based on confidential, proprietary PWC sales and forecast data prepared by PWC manufacturers. This proprietary data was not supplied with the comment, and therefore has not been available to the NPS.

The commenter states that the data indicates that the conversion of PWC models to cleaner engines is occurring more rapidly than anticipated in the 1996 EPA analysis of the effects of the conversion rule. While the National Park Service has no reason to doubt that PWC conversions and sales may be proceeding at a greater rate than forecast by EPA, there is no survey or similar data available at this time that indicates that the engine mix at Lake Mead is proceeding at a faster or slower rate than the EPA forecast. Therefore, use of the EPA rates is considered appropriate in disclosing potential impacts to water quality.

20. One commenter stated the National Park Service committed to investigate the extent of oil and gas spills at refueling operations in the Lake Mead NRA, and to mitigate the impacts from these activities. This will further reduce the amount of unburned fuel released into the waters of the Lake Mead NRA from PWC use. Expected

reductions in PWC emission of unburned fuel and mitigation to limit spills from refueling operations will serve to alleviate any continuing concern regarding the possibility of surface oil sheen in areas of concentrated boating activity.

NPS Response: As stated in the Final EIS in the Environmental Consequences section, under Impacts of Alternatives A, B, C, and D, Water Resources, Impacts, the National Park Service provides best management practices for the handling of fueling areas and boat maintenance for concessioners and the boating public. The purpose of these practices is to reduce the pollutants entering the lakes due to fueling and boat maintenance activities. With the management requirements and public education reducing the levels of these impacts, the impacts would be expected to be minor. NPS has agreed to evaluate the operations of all fueling facilities on Lakes Mead and Mohave.

21. One commenter was concerned that the USGS sampling data showed the presence of the gasoline additive MTBE. The federal government, Nevada or Arizona have not established standards or maximum contaminant levels for MTBE. EPA has adopted an advisory level of 20–40 µg/l for drinking water. The highest sample measured by USGS was 4.16 µg/l, well below this EPA advisory level. The reduction in PWC engine emissions (as well as emissions from other marine engines) at Lake Mead since the sample was measured in 1999 is not likely to be repeated.

NPS Response: The water intake that delivers drinking water to the Las Vegas Valley is located at an elevation of 1,050 feet above mean sea level in Lake Mead, while the elevation of the lake surface is usually above 1,180 feet. This puts the intake at a depth of 130 feet or more. Gasoline compounds have not been detected in water samples regularly taken near the water intake by staff of the Southern Nevada Water System. In addition, the testing at water intake facilities has shown that levels of these compounds do not exceed advisory standards.

In the analysis presented in the Final EIS in Table 50, Toxicity Benchmarks, the ecological benchmark for MTBE, which is considered preliminary chronic water quality criteria, of 51,000 µg/l was used. The table found in response to Comment Number 17 shows a negligible impact from MTBE under the modified preferred alternative (alternative C) and the baseline (alternative D). We are aware California has mandated removal of MTBE from gasoline by next year, and the EPA is considering doing the same within the near future.

22. One commenter is concerned that recent studies show that PAH emissions might increase as carbureted two-stroke PWC engines are replaced by direct injection two-stroke models and that increased PAH emissions will have adverse impacts on aquatic organisms in the Lake Mead NRA. The Kado study measured only PAH air emissions from the test chamber while the outboard engine ran in a water tank. The study says nothing about what levels of PAHs were deposited in water. It therefore can provide no basis whatsoever for suggesting that the use of current and future direct injection two-stroke PWC engines present a risk to aquatic organisms or will impair water resources in the Lake Mead NRA.

NPS Response: PAHs were addressed in the draft and final EIS in the issues and impact topics and water quality section of Environmental Consequences. Text in the draft EIS impact analysis (alternatives B, C and D) was changed in the final EIS to read, "* * * changing from carbureted two-stroke engines to two-stroke fuel-injected engines may result in increases of airborne particulate-associated PAH. Further research, outside the scope of this planning effort, is needed to identify what impact this would have on PAH concentrations in water." However, the preferred alternative, which bans two-stroke carbureted engines after 2012, would greatly reduce the impact of petroleum emissions on water quality. PWC would contribute 19% of total hydrocarbon pollution in Lake Mead in 2012. Given the volume of available water in Lake Mead for mixing these compounds, NPS concludes the impact to water quality and aquatic organisms is minor and would not result in impairment to park resources.

In addition, according to industry reports, it appears that the trend for conversion is toward the four-stroke model engines instead of direct injection two-stroke models. According to the PWIA, the two top selling PWC models for 2002 incorporated the four-stroke technology, which have shown to produce fewer PAH emissions. Also, in discussions with PWC retailers in the vicinity of Lake Mead, NPS has been informed that the majority of new PWC purchases have been four-stroke engines. If this trend in sales is realized and it continues, PAH emissions would be less than indicated in the analysis.

Comments Related to Air Quality

23. One commenter stated the National Park Service analysis does not reflect the dramatic decrease in PWC hydrocarbon plus nitrogen oxides ($HC+NO_X$) emissions projected to occur over the next ten years that strongly suggests that the National Park Service's proposed ban on the use of carbureted two-stroke models after 2012 is unnecessary.

NPS Response: As part of the Final Environmental Impact Statement (EIS) for the Lake Management Plan, the National Park Service prepared a quantitative analysis of air quality impacts for each of the proposed alternatives. The Final EIS analysis addressed emissions of all watercraft, including PWC, on Lakes Mead and Mohave. Four alternatives were analyzed. Alternative A would continue the prohibition of PWC in the Lake Mead NRA. Alternative B would prohibit all carbureted two-stroke engines beginning in 2004. Alternative C assumes a ban on two-stroke carbureted engines for all vessels, including PWC, after 2012. Alternative D assumes that no ban would take place and that two-stroke engines would be converted in accordance with the Environmental Protection Agency's assumptions (40 CFR parts 89–91, "Air Pollution Control; Gasoline Spark-Ignition and Spark-Ignition Engines, Exemptions;" rule, 1996). The Final EIS emission projections for HC and NO_X for alternatives C and D are shown in the table below. Emission forecasts for other pollutants and for alternatives A and B are included in the Final EIS.

ESTIMATED HYDROCARBON AND NITROGEN OXIDES EMISSIONS FOR ALTERNATIVES C AND D

[Tons per year]

	Alternative C [1]				Alternative D [2]				Difference [3]	
	2004		2012		2004		2012		2012	
Percent of carbureted two-stroke engines replaced	21.6%		100%		21.6%		58.4%			
Pollutant	All watercraft	PWC	All watercraft	PWC	All watercraft	PWC	All watercraft	PWC	All watercraft	PWC
Hydrocarbons (HC)	904	689	360	199	918	701	659	467	299	268
Nitrogen oxides (NO_X)	159	16	186	40	161	16	174	28	−12	−12
$HC+NO_X$	1063	705	546	239	1079	717	833	495	287	256

[1] Alternative C (modified preferred alternative): After 2012, all boats on the lakes would be compliant with the EPA 2006 emission standards.
[2] Alternative D (baseline alternative): By 2012, 58.4% of carbureted two-stroke engines on the lakes would be compliant with the EPA 2006 emission standards. Using EPA's assumptions, by 2025, 75% of engines on the lakes would be compliant with the EPA emission standards.
[3] Difference between alternative C and alternative D in 2012. Negative values indicate an increase in NO_X emissions.

Note that in 2004 the conversion of carbureted two-stroke engines to cleaner engines is assumed to be the same for both alternatives C and D, but the emissions for alternative D would be higher than for alternative C. This would occur because alternative D would allow more watercraft to be in operation, compared to alternative C. The important result shown in the above table is that in 2012, alternative C would result in 287 fewer tons per year of $HC+NO_X$ than alternative D. Alternative C proposed elimination of these annual emissions through the life of the plan (2003 through 2023) would be a significant contribution to the efforts to reduce ozone concentrations in the region. This is because even though the cleaner four-stroke and two-stroke direct injected engines will emit more NO_X due to a higher ratio of fuel actually being burned, they emit less hydrocarbons which reduces the likelihood of ozone formation.

Emission levels shown in the table above are not directly comparable with the emission levels submitted by the commenter because the National Park Service—Air Quality Division calculates emissions on an annual basis, and the commenter's calculations are for an average boating day during the boating season. Some assumptions made for National Park Service calculations are more conservative than those used for commenter's calculations. The National Park Service assumed that the conversions from carbureted two-stroke engines to cleaner engines would occur at the rate forecast by the Environmental Protection Agency. As shown in the table above for tons per year of estimated hydrocarbon and nitrogen oxides emissions for alternatives C and D, 21.6% conversion is assumed from 1998 levels by 2004, and 58.4% conversion by 2012. The commenter assumes a faster conversion. The commenter assumes that emissions would be reduced because a significant portion of PWC would be cleaner than EPA requirements due to compliance with the more restrictive California requirements. However, our goals for the reduction of emissions can not be achieved without the proposed 2012 restrictions.

24. One commenter expressed concern that PWC emissions are declining faster than forecast by the EPA. The existing fleet of PWC has achieved a 25% reduction in the pre-1999 baseline of $HC+NO_X$ emissions, and will achieve over an 80% reduction by 2012.

NPS Response: The comment is principally based on two assumptions made by the commenter. The first is based on confidential, proprietary PWC sales and forecast data prepared by PWC manufacturers. No supporting data was supplied with the comment. The commenter states that the data indicates that the conversion of PWC models to cleaner engines is occurring more rapidly than anticipated in the 1996 EPA analysis of the effects of the conversion rule. While the National Park Service has no reason to doubt that PWC conversions and sales may be proceeding at a greater rate than forecast by EPA, there is no survey or similar data available at this time indicating the engine conversion at Lake Mead is proceeding at a faster or slower rate than the EPA forecast. Therefore, use of the EPA rates is considered appropriate—and use of an accelerated rate may be considered speculative without additional supporting data.

The second assumption by the commenter is that 75% of the PWC at Lake Mead will have engines that comply with the California (CARB) conversion rule for all years, which requires that marine engine emission reductions targeted by the EPA for 2006 be achieved in California by 2001. The California rule then requires further emission reductions by 2004 and 2008 (title 13, California Code of Regulations, sections 2440–2448). The commenter assumes that 50% of the PWC users at Lake Mead will be from California and all will have CARB-compliant watercraft, and that, because of manufacturing and sales efficiencies outside of California, an additional 25% of the Lake Mead PWC users will have CARB-compliant watercraft. The National Park Service concurs that many watercraft users at Lake Mead have California-registered PWC, and that they will meet the California Air Resources Board standards.

There is no data relative to PWC at Lake Mead to confirm the 75% figure assumed by the commenter. The National Park Service emissions calculations are conservative only in the sense that it does not specifically account for watercraft that have already or will be converted to meet California Air Resources Board standards. This is not considered "overly" conservative because 50% of the park visitors originate from California, and a certain percentage of these visitors will have PWC that are compliant with the EPA 2006 rule. There is currently no data to support or refute this 75% estimate. Under the preferred alternative, the engines would be 100% compliance after 2012.

25. One commenter stated that PWC emissions of $HC+NO_X$ at Lake Mead during the boating season were 3.9 tons per day prior to 1999, and are estimated at 2.9 tons per day for 2002 and 0.7 tons per day in 2012. Clark County, Nevada emissions are estimated at 450 tons per day. Therefore, PWC emissions at Lake Mead pose no public health risks.

NPS Response: The NPS-estimated emissions are a small fraction of Clark

County emissions. The NPS-estimated emissions are on the same order of magnitude as those presented by the commenter, even though the NPS estimates a larger amount of emissions. The argument that a single source has negligible impact because of its small size compared to all the sources in the region is not valid. This point was effectively stated in *Kings County Farm Bureau* v. *City of Hanford*, a 1990 California case that has been widely publicized and used in subsequent environmental analyses. The *Kings County* case also addressed the impacts of ozone-forming pollutants, and emphasized that each source is important when considering cumulative impacts.

Clark County is currently in attainment of the federal 1-hour ozone standard. The EPA has not yet made attainment designations for the 8-hour ozone standard that was promulgated in 1997 but was delayed by litigation in implementation. Preliminary data indicates that Clark County might not attain the 8-hour ozone standard (*http://www.epa.gov/ttn/naaqa/ozone/areas/maps/nv8hr.gif*). Therefore, reduction of emissions from all sources in the county is an issue.

As shown in the previous responses, the proposed elimination of two-stroke carbureted engines from Lake Mead NRA after 2012 would result in a substantial reduction in emissions, and would contribute to the improvement of air quality in Clark County.

26. National Park Service notes that recent studies suggest changing from two-stroke carbureted to two-stroke direct injection PWC engines might increase PAH emissions. A study by Norman Y. Kado et al, *Airborne Particle Emissions from 2- and 4-stroke Outboard Marine Engines: Polycyclic Aromatic Hydrocarbon and Bioassay Analysis*, (Kado study) quantified PAH concentrations in airborne particulate emissions. The Kado study showed that the PAH emissions from the direct-injected two-stroke engines tested were greater than from carbureted two-stroke engines. The direct-injected two-stroke outboard engine used in that study was a 1999 model and represented very early technology, and the results of the study are not applicable to newer model direct-injection outboard engines, much less PWC engines.

NPS Response: The commenter rejects the applicability of the Kado study to newer engines including PWC engines. However, since no comparable data for newer engines was presented, and many older engines would be allowed to operate at the recreation area through 2012, the Kado study is relevant. NPS acknowledges in the final EIS that further research is needed to identify what effect the conversion of two-stroke carburated engines to two stroke fuel injected engines would have on PAH concentrations in water.

In speaking with local PWC businesses the NPS was informed that the majority of newer PWC models being sold are four-stroke engines, not two-stroke fuel injected engines, but no specific data is available. These comments concerning four-stroke sales are consistent with statements made by PWIA that nationally the two top-selling PWC models are four-stroke models. Nevertheless, while conversion of some carbureted two-stroke engines to direct-injected two-stroke engines would result in increased PAH emissions, the concurrent conversion to four-stroke engines would result in reduced PAH emissions. As shown by the commenter, using Kado data, the combined PAH emissions of one direct-injected two-stroke engine and one four-stroke engine would be slightly less than the PAH emissions of the two carbureted two-stroke engines that would be replaced. Therefore, the increase or decrease of PAH emissions as carbureted two-stroke engines are converted to cleaner engine types would depend on the relative numbers of the types of cleaner engines. The speculation of the mix of engine types would not appreciably change NPS conclusions made in the final EIS.

27. Continued PWC use on Lake Mead under the proposed rule will not pose any adverse health risks for park visitors under even the "worst case" airborne PAH concentrations that could theoretically be generated by the vessels.

NPS Response: A relevant study concluded that there are some health effects associated with PAH emissions. (*See Environmental and Occupational Exposure to Toxic Air Pollutants from Winter Snowmobile Use in Yellowstone National Park* (Kado, Kuzmicky, and Okamoto)). Therefore the NPS cannot support a conclusion as the commenter suggests, that PWC use at Lake Mead would pose no adverse health risks from toxic air pollutant emissions; however the final EIS does acknowledge that the impact would likely be minor.

Comments Related to Wildlife and Wildlife Habitat

28. One commenter questions the occurrence of the Southwestern willow flycatcher at the inflow areas of the Muddy and Virgin Rivers and stated that no Southwestern willow flycatchers nest within Lake Mead NRA.

NPS Response: Southwestern willow flycatchers have been recorded within Lake Mead NRA, and are known to nest in certain areas. Monitoring has been conducted by the San Bernardino County Museum, the Bureau of Reclamation, and the National Park Service. The most recent published report (McKernan and Braden 2002) for the 2001 field season found flycatchers at the Virgin River-Lake Mead delta. In addition, since 1997, flycatchers have been observed breeding along the lower Muddy River on the Overton Wildlife Management Area, within Lake Mead NRA. There have also been flycatchers observed in the lower Grand Canyon, adjacent to the recreation area, in suitable habitat at Lake Mohave.

As stated in the draft and final EIS under the "Affected Environment" section, much of the shoreline areas of Lakes Mead and Mohave have riparian stands that are comprised of non-native tamarisk, or are too young to provide suitable nesting habitat. However, several areas have been determined suitable, and nest sites have been located. Of particular importance are the sensitive inflow areas, which will be protected by zoning for primitive and semi-primitive settings. In addition, if surveys find nesting pairs elsewhere along Lakes Mead and Mohave, closing the area under temporal zoning could be implemented to protect these sites.

29. One commenter takes issue with the impact discussion on shorebirds and other wildlife. They state, "on the basis of anecdotal evidence (chiefly testimony from park staff) the proposed rule concludes that PWCs could disturb wildlife through the interruption of normal activities, alarm or flight, avoidance and displacement of habitat, and nest abandonment. The term "could" demonstrates that National Park Service has not obtained evidence that such disturbance actually occurs at Lake Mead NRA."

NPS Response: There are many studies that relate to the impacts of motorized vessels, including PWC, on shorebirds, bald eagles, and other wildlife. These studies were considered in the development of the draft and final EIS. Buffer zones to protect foraging and loafing waterbirds from disturbance by personal watercraft in Florida (Rodgers 2000) determined that a buffer zones for motorized vessels would protect waterbirds. Effects of Motorboats and Personal Watercraft on Flight Behavior over a Colony of Common Terns (Burger 1998) showed disturbance responses from the use of motorized vessels, and recommended speed and distance restrictions close to tern colonies. Effects of Recreational Activities on Wintering Bald Eagles (Stalmaster and Kaiser 1998) showed that high

recreational use, including foot traffic and motorized vessels, can disrupt feeding activities.

In addition, National Park Service biologists provided information related to disturbance from motorized vessels to birds and other wildlife, and information pertaining to the sensitive shoreline areas around Lakes Mead and Mohave. This information was used in the draft and final EIS for developing mitigation and monitoring activities, and in establishing protective measures for wildlife within the recreation area. These measures, including establishing primitive and semi-primitive zones in the selected shoreline areas, will protect sensitive bird species from disturbance associated with the use of motorized vessels, including noise that flushes the birds, and wakes that disrupt nests.

30. There was concern expressed about the occurrence of the Yuma clapper rail. One commenter references the draft rule where it states that while the inflow areas of the Muddy and Virgin Rivers contain habitat that might support the endangered Yuma clapper rail, no confirmed sightings have occurred within the recreation area. The EIS concurs with this statement. However, on page 56788, the proposed rule contradicts itself, and states incorrectly that the Yuma clapper rail resides at Lake Mead NRA.

Clearly, the Yuma clapper rail cannot be said to "occupy" the shoreline or habitat of Lake Mead NRA if no one has ever seen it at the lake. This mistake should be corrected in the final rule.

NPS Response: Suitable habitat for the Yuma clapper rail does occur within the recreation area, in particular, in the inflow areas of the Muddy and Virgin Rivers. The commenter is correct that no Yuma clapper rail have been recorded within the recreation area. They have been recorded nearby in the Virgin River area. This has been corrected in the final rule.

31. There was one comment on the razorback sucker. The commenter points out the proposed rule states that biologists have studied the effect of motorized vessels on razorback sucker spawning areas at Lake Mead NRA for 10 years, and have concluded that such vessels, when passing through these areas interrupt spawning and generally interfere with the reproductive process. Nor do they include the studies or their data as appendices. As a result, the public and other scientists have no ability to determine whether the conclusions drawn by the "biologists" are valid. This is poor science. In addition, it appears that the proposed rule may be overstating the effects of PWCs and other vessels on the spawning habitats of the razorback sucker, given that the fish spawn between January and April, when few people visit Lake Mead NRA.

NPS Response: Fish species have been shown to be negatively affected by motorized watercraft emissions (Oris, *et al.* 1998). As stated in the draft and final EIS, temporary disturbance to spawning razorback suckers from the use of motorized vessels has been observed by biologists conducting fish monitoring activities (Marsh 2001). Visitation is currently low during spawning, and is likely to remain low between January and April, when the fish are spawning. Therefore, the impact from the continued use of motorized vessels is considered not likely to adversely affect the razorback sucker, and is not likely to jeopardize the continued existence of this species. In addition, under the mitigation outlined in the U.S. Fish and Wildlife Service Biological Opinion and in the draft and final EIS, biologists from Lake Mead NRA will continue to work with the Native Fish Work Group to monitor fish species and visitation to determine if temporal zoning of spawning areas is necessary to further protect razorback suckers and their habitat. The Native Fish Workgroup is composed of representative of Federal and State agencies as well as scientists with the respective state universities.

32. One commenter noted the proposed rule claims that use of motorized vessels, including PWCs "likely" disturbs bonytail chubs attempting to spawn in Lake Mead NRA. Again, no technical studies have been conducted to support these hypotheses.

NPS Response: According to the U.S. Fish and Wildlife Service Biological Opinion, appendix G of the final EIS, the largest remaining populations of bonytail chub in the wild are in Lake Mohave and in Lake Havasu. Both populations are the result of stocking young fish born from the existing broodstock into the declining wild populations. Efforts are underway by the U.S. Fish and Wildlife Service and the Bureau of Reclamation to refine rearing techniques and develop additional rearing facilities to increase production.

While it is true that no technical studies have been conducted to study the impacts of recreational use on the bonytail chub, as stated in the draft and final EIS, scientists who have studied native fish in the recreation area in the past 10 years have observed that motorized use around spawning areas of razorback suckers can temporarily disrupt spawning activities, and the same is likely true for bonytail chub (Marsh 2001). Since bonytail chub are known to spawn in April and May, it can be hypothesized that some disturbance impacts from recreational use could temporarily affect the bonytail chub spawning activities. In addition, bony tail chub are known to spawn in the southern portion of Lake Mohave, just north of Katherine Landing. This area receives increased use starting in May, when spawning activities are known to occur.

Fish species have also been shown to be negatively affected by motorized watercraft emissions (Oris, *et al.* 1998). Reduced water quality could harm aquatic organisms through algae blooms, suspended solids and turbidity, and oxygen depletion. However, Lake Mohave holds an immense amount of water, with a large volume of water flowing through the system. Therefore, even though there are contaminants entering the system from motorized vessels and from other sources such as fuel spills and parking lot runoff, these contaminants have not been recorded at concentrations that are known to result in impairment to the aquatic system or to human health.

The National Park Service is required by law and policy to survey for, protect, and strive to recover all species native to the national park system units that are listed under the Endangered Species Act (Management Polices 2001). The policy further states that the National Park Service will undertake active management programs to inventory, monitor, restore, and maintain listed species' habitats, including controlling detrimental visitor access, and enhancing critical habitat. The National Park Service and the U.S. Fish and Wildlife Service have determined that the temporal zoning which could be imposed around spawning habitat would protect these species, and could enhance critical habitat. As stated in the Biological Opinion, the use of temporal zoning will not be imposed until recommended by Federal biologists working in consultation with the Native Fish Workgroup.

Comments Related to Soundscape

33. One commenter suggested the National Park Service should insist that all watercraft have the quieter four-stroke engines.

NPS Response: The final rule would phase out the carbureted two-stroke engines over a 10-year period. The rule would only allow the use of direct injection two-stroke engines and four-stroke engines. Direct inject two-stroke and four-stroke engines have been shown to be quieter than the carbureted two-stroke engines. The NPS does not

believe it is necessary to require only four-stroke engines.

34. We received a number of comments citing a variety of concerns over the noise associated with PWC use. In almost all cases this noise was characterized as "annoying". Specific concerns included the constant and repeated fluctuation in engine tone and pitch as PWCs enter and exit the water while jumping wakes, changing speed and performing other quick maneuvers along with the persistent noise associated with remaining in one general location rather than traveling from point-to-point.

NPS Response: National Park Service *Management Policies* for Soundscapes, as stated in Management Policies 2001 (4.9), require superintendents to "identify what levels of human-caused sound can be accepted within the management purposes of parks. The sound considered acceptable will vary throughout the park, being generally greater in developed areas and generally lesser in undeveloped areas * * *. The service will take action to prevent or minimize all noise that * * * exceeds levels that have been identified as being acceptable to, or appropriate for, visitor uses at the sites being monitored." Management Policies for Visitor Use (8.2) indicate that unless mandated by statute, the National Park Service will not allow visitors to conduct activities that would unreasonably interfere with the atmosphere of peace and tranquility, or the natural soundscape maintained in wilderness and natural, historic, or commemorative locations within the park.

As written in the enabling legislation, the management purpose of Lake Mead is to provide public recreation, benefit, and use in a manner that will preserve, develop, and enhance, so far as practicable, the recreation potential and preserve the scenic, historic, scientific, and important features of the area. Recreational uses specifically listed in the act include bathing, boating, camping, and picnicking. Various levels of sound are associated with some of those uses, such as boating and PWC, and are consistent with the park's purpose as defined by the legislation.

To provide a "peaceful and tranquil" experience in some locations, PWC use would be prohibited within the primitive and semiprimitive recreational opportunity zones. These zones also place restrictions on wake speed and identify acceptable motor types, such as electric trolling motors in primitive zones. These prohibitions or restrictions in alternatives B and C (the preferred alternative) of the draft and final EIS and the modified preferred alternative of the final EIS would provide for a peaceful and tranquil visitor experience. In areas such as Black Canyon, where a diverse range of visitors use a variety of nonmotorized and motorized watercraft, the National Park Service would temporally zone this unique area to accommodate all users and provide experiences that range from tranquil to more rural and mechanized. All alternatives include plans and policies for enforcement of noise regulations. These elements of the Environmental Impact Statement are consistent with NPS Management Policies.

35. One commenter stated, testing at the Glen Canyon National Recreation Area indicate that the maximum noise levels for PWC are lower than the maximum noise levels for other motorized vessels.

NPS Response: It is more appropriate to say that maximum noise levels for PWC were found to be similar to outboards and inboards of similar size and power. The Glen Canyon test data show that, except boats with V–8 engines (V–8 "muscle boats"), which were clearly louder than all other craft, at a given speed, the noise levels of PWC were sometimes greater and sometimes less than those of other watercraft.

36. One commenter stated, since 1998, PWC engine sound levels have been reduced by up to 70%.

NPS Response: NPS has acknowledged that the newer model PWC are quieter than the older models. One might interpret a reduction from 100 to 30 decibels (dBA) as a 70% reduction. A noise level reduction of 5.2 dBA results from a 70% reduction in noise sources, for example if one had 10 like machines running, and turned off 7 of them. It is commonly accepted that people perceive a 10 dBA reduction in noise as about half (50%) as loud, such that a 70% reduction by perception would be something greater than 10 dBA. However the NPS can not state the exact percentage of sound emissions between the various models.

37. The commenter notes opponents of PWC have claimed that the vessels emit noises as high as 102 decibels, without specifying distances or the method of sound measurement. These unsubstantiated claims are refuted by the National Park Service's recent testing at Glen Canyon, and cannot be reproduced under accepted sound measurement standards.

NPS Response: As noted in the comment, no distance was specified for the 102-decibel (dBA) measurement. A noise source of 76 dBA at 82 feet, which was measured for a PWC, would be 102 dBA at 4 feet. Other conditions that could contribute to PWC noise of 102 dBA at distances greater than 4 feet would be PWC operation without a muffler or with a faulty muffler, and if the noise was measured when the PWC was airborne. This response is not to imply that 102 dBA is a typical PWC noise, but to indicate that while a data point of 102 dBA without description is of little value.

38. One commenter stated, "The National Marine Manufacturers Association has published a Model Noise Act for use by state legislatures or other agencies with jurisdiction over the manufacture and operation of watercraft. The Model Noise Act promotes regulation or legislation that would prohibit the operation of watercraft in a manner to exceed 75 dBA at the shoreline. The model noise act would also promote regulation or legislation that would prohibit the manufacture of watercraft that could not operate in compliance with the 75 dBA standard."

NPS Response: The 75 dBA shoreline noise level limit is consistent with a relatively recent state of Nevada standard that will be enforced at Lake Mead (Nevada Administrative Code Section 488.460). The National Park Service is currently revising boating regulations and is proposing to adopt the 75 dBA standard and will encourage the state of Arizona to adopt a similar standard.

Drafting Information

The principal authors of this final rule are: Jim Holland, Management Assistant, Lake Mead NRA; Kevin Hendricks, Assistant Chief Ranger, Lake Mead NRA; Nancy Hendricks, Resource Management Specialist, Lake Mead NRA; Kym Hall, Regulations Program Manager, National Park Service; and Michael Tiernan, Office of the Solicitor, Department of the Interior.

Compliance with Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This determination is based upon the findings in a report prepared by the National Park Service entitled "Economic Analysis of Personal Watercraft Regulations in Lake Mead National Recreation Area" (Law Engineering and Environmental Services, Inc., March 2002). The focus of this study was to document the impact of this rule on a variety of small entities including PWC dealerships and repair shops, PWC rental business, and other local businesses that provide services to PWC users. The Economic Analysis may be viewed on the Lake Mead Web site at *http://www.nps.gov/lame.*

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule raises novel legal or policy issues. This rule is among the first of its kind for managing PWC use in National Park Units and the first for managing use in a National Recreation Area. The National Park Service published general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirements of the general regulation continues to generate interest and discussion from the public concerning the overall effect of authorizing PWC use and National Park Service policy and park management.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The preferred alternative C, which would allow PWC use in 95% of Lake Mead, is expected to result in net economic benefits to those small businesses in the Lake Mead area that rent or sell personal watercraft. This net benefit is compared to the baseline, or alternative A, which is a complete ban of PWC in the Lake Mead National Recreation Area.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The National Park Service has completed an economic analysis to make this determination. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and imposes no other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas by allowing PWC use in specific areas of the park.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

National Environmental Policy Act

The National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and has prepared a draft Environmental Impact Statement (EIS). The draft EIS was made available for public review and comment on April 24, 2002, and the final EIS was made available for public review on January 10, 2003. A copy of the LMP/FinalEIS is available on the Lake Mead NRA Web page (*http://www.nps.gov/lame/planning*), at regional libraries or a copy may be obtained by contacting the Superintendent, Lake Mead NRA.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2: We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Administrative Procedures Act

This final rule will be effective upon publication in the **Federal Register**. In accordance with the Administrative Procedures Act, specifically, 5 U.S.C. 553 (d)(1), this rule (36 CFR 7.48 (g)) is exempt from the requirement of publication of a substantive rule not less than 30-days before its effective date.

As discussed in the preamble of this rule, the final rule is a part 7 special regulation for Lake Mead National Recreation Area that relieves the restrictions imposed by the general regulation, 36 CFR 3.24. The general regulation, 36 CFR 3.24, prohibits the use of personal watercraft in units of the national park system unless an individual park area has designated the use of personal watercraft by adopting a part 7 special regulation. The proposed rule was published in the **Federal Register** (67 FR 56,785) on September 5, 2002, with a 60-day period for notice and comment consistent with the requirements of 5 U.S.C. 553 (b). The Administrative Procedures Act, pursuant to the exception in (d)(1), waives the section 553 (d) 30-day waiting period when the published rule "grants or recognizes an exemption or relieves a restriction." In this rule the NPS is authorizing the use of PWCs, which is otherwise prohibited by 36 CFR 3.24. As a result, the 30-day waiting period does not apply to the Lake Mead National Recreation Area final rule.

The Attorney General's Manual on the Administrative Procedures Act, explained that the "reason for this exception would appear to be that the persons affected by such rules are benefited by them and therefore need no time to conform their conduct so as to avoid the legal consequences of violation. The fact that an interested person may object to such issuance, amendment, or repeal of a rule does not change the character of the rule as being one "granting or recognizing exemption or relieving restriction", thereby exempting it from the thirty-day requirement." This rule is within the scope of the exception as described by the Attorney General's Manual and the 30-day waiting period should be waived. *See also, Independent U.S. Tanker Owners Committee* v. *Skinner*, 884 F.2d 587(DC Cir. 1989). In this case; the court found that (d)(1) is a statutory exception that applies automatically for substantive rules that relieves a restriction and does not require any justification to be made by the agency. "In sum, the good cause exception must be invoked and justified; the (d)(1) exception applies automatically" at 591. The facts are that Lake Mead National Recreation Area is promulgating this special regulation for the purpose of relieving the restriction, prohibition of PWC use, imposed by 36 CFR 3.24 and therefore, the (d)(1) exception applies to this rule.

In accordance with the Administrative Procedures Act, this rule is also excepted from the 30-day waiting period by 5 U.S.C. 553 (d)(3) and is effective upon publication in the **Federal Register**. As discussed above, the purpose of this rule is to comply with 36 CFR 3.24 requirement for authorizing PWC use in park areas by promulgating a special regulation. "The legislative history of the APA reveals that the purpose for deferring the effectiveness of a rule under section 553(d) was 'to afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take other action which the issuance may prompt.' S.Rep. No. 752, 79th Cong., 1st Sess.15 (1946); H.R. Rep. No. 1980, 79th Cong., 2d Sess. 25 (1946)." *United States* v. *Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977). The persons affected by this rule are PWC users and delaying the implementation of this rule for 30-days will not benefit them; but instead will be counterproductive by denying them, for an additional 30-days, the benefits of the rule.

The rule has been developed in full compliance with section 553(b) and (c) rulemaking requirements. The proposed rule was published in the **Federal Register** and provided 60 days for public comments. The public comments received are summarized and analyzed in this rule. Also as part of this process, the park prepared an environmental impact statement (EIS) that was made available to the public on April 24, 2002, for public review and comment. The EIS evaluated the various alternatives for managing PWC use at Lake Mead, including an alternative with no PWC use. This rule will now implement the preferred alternative identified in the EIS with some changes as a result of the public comments received on both the proposed rule and the draft EIS.

"In determining whether to invoke the exception, the agency is 'required to balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable time to prepare for the effective date of its ruling.'" *The Northern Arapahoe Tribe* v. *Hodel*, 808 F.2d 741, 752 (10th Cir. 1987): Since the primary purpose of the 30-day waiting period is so the public can prepare for the changes caused by the new rule. This rule authorizes the continued use of PWCs at Lake Mead National Recreation Area and will not require any changes that will require a 30-day waiting period for the public to prepare itself. Because of the ongoing grace period, PWC use has been allowed to continue at Lake Mead despite the prohibition in 36 CFR 3.24. The intent of the grace period was to provide time for parks, such as Lake Mead National Recreation Area, to promulgate special regulations without having the prohibition of 36 CFR 3.24 take effect and, for other parks that decided not to promulgate special regulations authorizing PWC use such as Cape Cod National Seashore and Delaware Water Gap National Recreational Area, to give people additional time to adjust their recreational use patterns, *i.e.*, find alternative places to use their PWCs. There is no need to utilize the 30-day waiting period for the benefit of the affected parties, instead there is good cause for making this rule effective upon publication so that affected parties can continue using PWCs.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); sec. 7.96 also issued under DC Code 8–137(1981) and DC Code 40–721 (1981).

■ 2. Section 7.48 is amended by adding paragraph (g) to read as follows:

§ 7.48 Lake Mead National Recreation Area.

* * * * *

(g) *Personal Watercraft* (1) A person may launch and operate a personal watercraft in park waters or beach a personal watercraft on park lands, except in the following areas:

(i) In the designated Primitive area known as the Gypsum Beds, which is described as Arizona T31N; R20W Portions of sections 2, 3, 10 and 11; and

(ii) In the designated Primitive area known as the Virgin River, which is described as Nevada T36N; R68E Portions of Sections 25, 26, 34, 35, 36; and

(iii) In the designated Primitive/Semiprimitive area in Black Canyon, from the Willow Beach Harbor to Hoover Dam, prohibited from the first Tuesday following Labor Day weekend through Friday of Memorial Day weekend; and prohibited only on Sundays and Mondays from the Sunday of Memorial Day weekend through the Monday of Labor Day weekend, which is described as Nevada T22S; R65E Portions of Sections 32; T23S; R65E Portions of Sections 5, 8, 17, 20, 21, 28, 29, 34; T23½S; R65E Portions of Sections 34; T23S; R65E Portions of Sections 1, 2, and 12. Arizona T30N; R23W Portions of Sections 3, 10, 15, 22, 27, 34; T29N; R23W Portions of Sections 2, 12, 13; T29N; R22W Portions of Sections 18, 19, 20, 29; and

(iv) In the designated Semiprimitive area known as the Muddy River Confluence with Lake Mead (Overton Wildlife Management Area), which is described as Nevada T16S; R68E Portions of Sections 28, 29, 32, 33 and 34 and T17; R68E; and

(v) In the designated Semiprimitive area known as Grand Wash Bay, which is described as Arizona T33N; R16W Portions of Sections 16, 17, 21, 22, 27, 28, 29, 33 and 34, and T32½ N; R16W Portions of Sections 32 and 33; and

(vi) In the designated Semiprimitive area known as Bonelli Bay, which is described as Arizona T31N; R20W Portions of Sections 4, 5, 7, 8, 9, 16, 17, 18, 19, 20, 21, 29 and 30.

(2) A person may not operate a personal watercraft at a speed in excess of flat wake speed within 200 feet of any beach occupied by bathers, boats at the shoreline, or persons in the water or at the shoreline.

(3) After December 31, 2012, no one may operate a personal watercraft that does not meet the 2006 emission standards set by EPA for the manufacturing of two-stroke engines. A person operating a personal watercraft that meets the EPA 2006 emission standards through the use of direct-injection two-stroke or four-stroke engines, or the equivalent thereof, is not subject to this prohibition and will be allowed to operate as described in this section.

(4) The Superintendent may limit, restrict, or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

* * * * *

Dated: March 28, 2003.

Paul Hoffman,

Deputy Assistant Secretary for Fish and Wildlife and Parks,

[FR Doc. 03–8546 Filed 4–8–03; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0272; FRL–7296–9]

Decanoic Acid; Exemption from the Requirement of a Pesticide Tolerance; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of February 19, 2003, establishing an exemption from the requirement of a tolerance for residues of decanoic acid (capric acid) in or on all foods when applied/used as a component of a food contact surface sanitizing solution in food handling establishments. This document makes a technical correction to the exemption from the requirement of a tolerance for decanoic acid to correct typographical errors.

DATES: This document is effective on February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Adam Heyward, Antimicrobials Division, (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6422; e-mail address: heyward.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0272. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Does this Correction Do?

An exemption from the requirement of a tolerance for decanoic acid was added to 40 CFR part 180 in the **Federal Register** issue of February 19, 2003, (68 FR 7939) (FRL–7178–6). Inadvertently, the tolerance exemption for decanoic acid was assigned § 180.1223, which had previously been assigned to another pesticide which was published in the **Federal Register** issue of February 14, 2003 (68 FR 7433) (FRL–7291–3). This document corrects the section number for the Decanoic acid tolerance exemption.

III. Why is this Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment, because EPA is merely correcting the section number that was inadvertently assigned to the Decanoic acid tolerance exemption. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

This final rule implements a technical correction to the CFR, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical correction is not a "significant regulatory action" subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Nor does this final rule contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

Since the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute (see Unit III.), this action is not subject to provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates

Reform Act of 1995 (UMRA) (Public Law 104–4).

This final rule will not have substantial direct effects on the States or on one or more Indian tribes, on the relationship between the national government and the States or one or more Indian tribes, or on the distribution of power and responsibilities among the various levels of government or between the Federal government and Indian tribes. As such, this action does not have any "federalism implications" as described in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), or any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249), November 6, 2000).

Since this final rule is not a "significant regulatory action" as defined by Executive Order 12866, it does not require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), and is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

This action does not involve any technical standards that require the Agency's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

This action will not result in environmental justice related issues and does not, therefore, require special consideration under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988).

In issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule " as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: March 17, 2003.

James Jones

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is corrected as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. In FR Doc. 03–3843, published in the **Federal Register** of February 19, 2003, (68 FR 7939) (FRL–7278–6), in the 3rd column, the number 2 instruction is corrected to read "2. Section 180.1225 is added to subpart D to read as follows:" and that the section heading is corrected to read as follows:

§ 180.1225 Decanoic acid; exemption from the requirement of a tolerance.

[FR Doc. 03–8370 Filed 4–8–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7479–1]

Oklahoma: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA)

ACTION: Immediate final rule.

SUMMARY: The State of Oklahoma has applied for Final authorization of the changes to its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these revisions satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. The EPA is publishing this rule to authorize the revisions without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get adverse comments which oppose this authorization during the comment period, the decision to authorize the Oklahoma Department of Environmental Quality's (ODEQ) revisions to their hazardous waste program will take effect. If adverse comments are received, we will publish a document in the **Federal Register** either: A withdrawal of the immediate Final decisions and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes, or a document containing a response to comments and which either affirms that the immediate Final decision takes effect or reverses the decision.

EFFECTIVE DATE: This immediate final rule is effective on June 9, 2003, unless EPA receives adverse written comments by May 9, 2003. Should EPA receive such comments, it will publish a timely document either: Withdrawing the immediate final publication or affirming the publication and responding to comments.

ADDRESSES: Written comments, referring to Docket Number OK–01–03, should be sent to Alima Patterson Region 6 Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of Oklahoma program revision application and the materials which EPA used in evaluating the revisions are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following address: Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180 and EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States that receive final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260–266, 268, 270, 273, and 279.

B. What Is The Effect Of Today's Authorization Decision?

The effect of this decision is that a facility in Oklahoma subject to RCRA will have to comply with the authorized State Requirements (Cluster X listed in this document) instead of the equivalent federal requirements in order to comply with RCRA. Oklahoma has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: (1) Do inspections, and require monitoring, tests, analyses or reports, (2) enforce RCRA requirements and suspend or revoke permits. This action does not impose additional requirements on the regulated community because the regulations for which Oklahoma is being authorized by today's action are already effective, and are not changed by today's action.

C. What Is the History of Oklahoma's Final Authorization and Its Revisions?

Oklahoma initially received Final Authorization on January 10, 1985, (49 FR 50362–50363) published December 27, 1984 to implement its base hazardous waste management program. We authorized the following revisions: Oklahoma received authorization for revisions to its program with publication dates: April 17, 1990 (55 FR 14280–14282), effective June 18, 1990; September 26, 1990 (55 FR 39274) effective November 27, 1990; April 2, 1991 (56 FR 13411–13413) effective June 3, 1991; September 20, 1991 (56 FR 47675–47677) effective November 19, 1991; September 29, 1993 (58 FR 50854–50856) effective November 29, 1993; October 12, 1993 (52679–52682) effective December 13, 1993; October 7, 1994 (59 FR 51116–51122) effective December 21, 1994; January 11, 1995 (60 FR 2699–2702) effective April 27, 1995; October 9, 1996 (61 FR 52884–52886) effective December 23, 1996; Technical Correction March 14, 1997 (12100–12101) effective March 14, 1997; September 22, 1998 (63 FR 50528–50531) effective November 23, 1998; March 29, 2000 (65 FR 16528–16532) effective May 30, 2000; May 10, 2000 (65 FR 29981–29985) effective June 9; 2000; and January 2, 2001 (66 FR 28–33) effective March 5, 2001. The authorized Oklahoma RCRA program was incorporated by reference into the CFR published on December 9, 1998 (67800–67834) effective February 8, 1999 and August 26, 1999 (46567–46571) effective October 25, 1999. On October 15, 2001, Oklahoma submitted a final complete program revision application, seeking authorization of its program revision in accordance with 40 CFR 271.21.

Oklahoma statutes provide authority for a single State agency, the Oklahoma Department of Environmental Quality (ODEQ), to administer the provisions of the State Hazardous Waste Management Program. These statutes are the Oklahoma Department of Environmental Quality Act, 27 O.S. Supplement (Supp.) 2000 §§ 1–1–101 *et seq.* General provisions of the Oklahoma Environmental Quality Code which may affect the Hazardous Waste Program are 27A O.S. Supplement (Supp.). 2000 §§ 2–1–101 through 2–3–507; and the Oklahoma Hazardous Waste Management Act (OHWMA), 27A O.S. Supp. 2000 §§ 2–7–101 *et seq.*, specifically § 2–7–104 and 27A O.S. Supp. 2000 §§ 2–14–305 allows for issuance of general permits. No amendments were made to the above statutory authorities during the 2001 legislative session which will substantially affect the State Hazardous Waste Management Program.

The Oklahoma Board adopted RCRA Cluster X rules on February 23, 2001, as permanent rules. These permanent rules became effective on June 11, 2001, to implement the State hazardous waste program, which are codified in OAC 252:205 *et seq.* These rules include provisions, found at OAC 252:205–3–1 through 252:205–3–6, to incorporate by reference, in accordance with the *Guidelines For State Adoption of Federal Regulations By Reference*, the following EPA Hazardous Waste Management Regulations as amended through July 1, 2000: The provisions of Title 40 CFR part 124.31, 124.32 and 124.33; 40 CFR parts 260–266, with the exception of 40 CFR 260.21, 264.(f), 264.150, 264.301(1), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), 264.1080(g), 265.1(c)(4), 265.149, 265.150, 265.1030(c), 265.1010(f), 265.1080(e), 265.1080(f), and 265.1080(g); 40 CFR part 268 except 268.5, 268.6, 268.13, 268.42(b), 268.44(a) through (g), and 268.44(m) through (p); 40 CFR part 270 except 271.14(b)(18); 40 CFR part 273; and 40 CFR part 279.

The ODEQ remains the official agency of the State of Oklahoma, as designated by 27A O.S. Supp. 2000 Section 2–7–105(13) to cooperate with Federal agencies for purposes of hazardous waste regulation. The OHWMA delegates authority to the ODEQ to administer the State hazardous waste program, including the statutory and regulatory provisions necessary to administer the RCRA Cluster X provisions. The DEQ is the sole State agency responsible for administering the provisions of the OHWMA.

At the present, the Oklahoma Corporation Commission (OCC) regulates certain aspects of the oil and gas production and transportation industry in Oklahoma, including certain waste generated by pipelines, bulk fuel sales terminals and certain tank farms. The ODEQ and the OCC have in place a ODEQ/OCC Jurisdictional Guidance Document that reflects the current state of affairs between the two agencies. The current ODEQ/OCC jurisdictional Guidance Document was amended and signed on January 27, 1999.

The revisions of the State program to include administration of the provisions of portions of RCRA Cluster X will not require a change in responsibility for administration of the State hazardous waste program.

D. What Changes Are We Approving With Today's Action?

On October 15, 2001 the State of Oklahoma submitted a final complete program application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate Final decision, subject to receipt of written comments that oppose this action, that the State of Oklahoma's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. The State of Oklahoma revisions consist of regulations which specifically govern Federal Hazardous Waste promulgated from July 1, 1999 to June 30, 2000 (RCRA Cluster X) Oklahoma requirements are included in a chart with this document.

Federal Citation	State Analog
1. Delisting Waste, [50 FR 28702] July 15, 1985. (Checklist 17B)	27A O.S. Supp. 2000 § 2–2–104 Added by Laws 1994, effective July 1, 1994, Annotated Oklahoma Statutes 27A. O.S. Supp § 2–2–106 Amended by Laws 1981, effective July 1, 1981; Amended by Laws 1993, Rules 252:205:3–1 through 252:205:3–7 permanent effective date June 11, 2001.
2. Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps, [64 FR 36466–36490] July 6, 1999. (Checklist 181).	27A O.S. Supp. 2000 § 2–2–104 Added by Laws 1994, effective July 1, 1994, Annotated Oklahoma Statutes 27 A. O.S. Supp 2000 § 2–2–106 Amended by Laws 1981, effective July 1, 1981; Amended by Laws 1993, Rules 252:205:3–1 through 252:205–3–7 permanent effective date June 11, 2001.
3. Hazardous Waste Recycling; Land Disposal Restrictions; Final Rule, Hazardous Waste Air Pollutant Standards for Combustors, Miscellaneous Units, and Secondary Lead Smelters; Clarification of BIF Requirements; Technical Correction to Fast-track Rule, [64 FR 52828–53077; 64 FR 63209–63213] September 30, 1999; and November 19, 1999. (Checklist 182).	27A O.S. Supp. 2000 § 2–2–104 Added by Laws 1994, effective July 1, 1994, Annotated Oklahoma Statutes 27 A. O.S. Supp 2000 § 2–2–106 Amended by Laws 1981, effective July 1, 1981; Amended by Laws 1993, Rules 252:205–3–1 through 252:205–3–7 permanent effective date June 11, 2001.
4. Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters, [64 FR 56469–56472] October 20, 1999. (Checklist 183).	27A O.S. Supp 2000 § 2–2–104 Added by Laws 1994, effective July 1, 1994, Annotated Oklahoma Statutes 27 A. O.S. Supp 2000 § 2–2–106 amended by Laws 1981, effective July 1, 1981; amended by Laws 1993, Rules 252:205:3–1 through 252:205–3–7 permanent effective date June 11, 2001.
5. Accumulation Time Under RCRA for Waste Water Treatment Sludges From the Metal Finishing Industry; Final Rule: Vacatur of Organobromine Production Waste Listings, [65 FR 12378–12398] March 8, 2000. (Checklist 184).	27A O.S. Supp. 2000 § 2–2–104 Added by Laws 1994, effective July 1, 1994, Annotated Oklahoma Statutes 27 A. O.S. Supp 2000 § 2–2–106 Amended by Laws 1981, effective July 1, 1981; Amended by Laws 1993, Rules 252:205:3–1 through 252:205–3–7 permanent effective date June 11, 2001.
6. Organobromine Production Waste; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities; Final Rule, [65 FR 14472–14475] March 17, 2000. (Checklist 185).	27A O.S. Supp 2000 § 2–2–104 Added by Laws 1994, effective July 1, 1994, Annotated Oklahoma Statutes 27 A. O.S. Supp 2000 § 2–2–106 Amended by Laws 1981, effective July 1, 1981; Amended by Laws 1993, Rules 252:205:3–1 through 252:205–3–7 permanent effective date June 11, 2001.
7. Accumulation Time Under RCRA for Waste Water Treatment Sludges From the Metal Finishing Industry; Final Rule: Petroleum Refining Process Wastes-Clarification, [64 FR 36365–36367] June 8, 2000. (Checklist 187).	27A O.S. Supp. 2000 § 2–2–104 Added by Laws 1994, effective July 1, 1994, Annotated Oklahoma Statutes 27 A. O.S. Supp 2000 § 2–2–106 Amended by Laws 1981, effective July 1, 1981; Amended by Laws 1993, Rules 252:205:3–1 through 252:205–3–7 permanent effective date June 11, 2001.

E. What Decisions has EPA Made?

We conclude that Oklahoma's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Oklahoma final authorization to operate its hazardous waste program with the changes described in the authorization application. Oklahoma has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Oklahoma, including issuing permits, until the State is granted authorization to do so.

F. How do the Revised State Rules Differ From the Federal Rules?

In this authorization of the State of Oklahoma's program revisions for RCRA Cluster X, there are no provisions that are more stringent or broader in scope. Broader in scope requirements are not part of the authorized program and EPA can not enforce them.

G. Who Handles Permits After This Authorization Takes Effect?

The State of Oklahoma will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more permits or new portions of permits for the provision listed in that Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Oklahoma is not yet authorized.

H. Why was There not a Proposal Rule Before Today's Notice?

The EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval because we believe this action is not controversial. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

I. Where do I Send My Comments and When are They Due?

You should send written comments to Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. Please refer to Docket Number OK–01–03). We must receive your comments by May 9, 2003. You may not have an opportunity to comment again. If you want to comment on this action, you must do so at this time.

J. What Happens if EPA Receives Comments Opposing This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

K. When Will This Approval Take Effect?

Unless EPA receives comments opposing this action, this final authorization approval will become effective without further notice on June 9, 2003.

L. Where Can I Review The State's Application?

You can review and copy the State of Oklahoma's application from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444. For further information contact Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

M. Does Today's Action Affect Indian Country In Oklahoma?

Oklahoma is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect on Indian Country.

N. What Is Codification?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. The EPA does this by referencing the authorized State rules in 40 CFR part 272. The EPA reserves the amendment of 40 CFR part 272, Subpart LL for this codification of Oklahoma's program changes until a later date.

Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore, this action is not subject to review by OMB. This rule incorporated by reference Oklahoma's authorized hazardous waste management regulations, and imposes no additional requirements beyond those imposed by State law. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*). Incorporation by reference will not impose any new burdens on small entities. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 3501 *et. seq.*). Because this rule merely incorporates by reference certain existing State hazardous waste management program requirements which EPA already approves under CFR part 271, and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely incorporates by reference existing State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000).

This action also is not subject to Executive Order 13045 (62 FR 19885M April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, "Action Concerning Regulations That Significantly Affect Energy Supply Distribution or Use" (66 FR 28344, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for incorporation by reference as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State incorporation by reference application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. The final rule does not include environment justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

The Congressional Review Act, 5 U.S.C. 3501 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective on June 9, 2003.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This document is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 27, 2003.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 03–8667 Filed 4–8–03; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 95–178; FCC 99–116]

Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document makes a minor correction to part 76 of the Commission's rules pertaining to definition of markets which were published in the **Federal Register**, 64 FR 33796, June 24, 1999, regarding cable television broadcast signals.

DATES: Effective April 9, 2003.

FOR FURTHER INFORMATION CONTACT: Kenneth Lewis, Media Bureau (202) 418–2622.

SUPPLEMENTARY INFORMATION: The Order on Reconsideration and Second Report and Order, FCC 99–116, adopted May 21, 1999; released May 26, 1999, approved a final rule regarding the change of market definitions from Arbitron's areas of dominant influence to Nielsen Media Research's designated market areas for must-carry/retransmission elections. In this document we make a non-substantive change to update Nielsen Media Research's address in the publication of § 76.55(e)(2)(i) of the Commission's rules.

Need for Correction

As published, the final regulations contain an old address for Nielsen Media Research.

List of Subjects in 47 CFR Part 76

Cable television.

■ Accordingly, 47 CFR part 76 is corrected by making the following correcting amendments:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

§ 76.35 [Amended]

■ 2. In § 76.55, in paragraph (e)(2)(i), "299 Park Avenue" is revised to read "770 Broadway".

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–8577 Filed 4–8–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1109, 1111 and 1114

[STB Ex Parte No. 638]

Procedures to Expedite Resolution of Rate Challenges to be Considered Under the Stand-Alone Cost Methodology

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rules and request for comments.

SUMMARY: The Board amends its regulations to expedite the resolution of rail rate challenges considered under the stand-alone cost (SAC) methodology. The revisions institute a requirement for mandatory, non-binding post-complaint mediation between the shipper and railroad under Board auspices, and establish expedited processes, using Board staff, for resolving discovery and evidentiary disputes. The Board also requests comments on the following discovery-related issues: developing a list of standard information that should be routinely made available in discovery; limiting the number of discovery requests available to the parties; limiting the number of years of data for which discovery responses would be required, and establishing a cut-off date for updating discovery responses; and cost-sharing for production of discovery responses.

DATES: The final rules are effective on May 9, 2003; comments are due on June 9, 2003, with reply comments due on June 19, 2003.

ADDRESSES: Send comments (an original plus 10 copies) referring to Ex Parte No. 638 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Jamie P. Rennert (202) 565–1566. [Federal Information Relay Service (FIRS) (Hearing Impaired): (800) 877–8339.]

SUPPLEMENTARY INFORMATION: The Surface Transportation Board requests comments as follows:

Standard Discovery Requests

We are asking each interested party to (1) submit lists of all of the information and documents that (a) it believes it should be entitled to obtain as a matter of course in discovery in a SAC case and (b) it would expect to produce to the other party as a matter of course in discovery in a SAC case, and then (2) comment on the lists submitted by other parties in this proceeding. After reviewing the parties' lists and comments, we will decide whether to issue a list of standard information and documents that the parties to a SAC case would be required to produce. We also seek comment on the practical aspects of this proposal, such as the appropriate timing for such initial disclosures. For example, would it be practical to require the complainant's initial disclosures to be made contemporaneously with the filing of the complaint, and to make the defendant's initial disclosures due at the same time as its answer to the complaint?

Additional Discovery

A suggestion was made to place a limit on the number of discovery requests that each party would be allowed to make, absent permission from the Board. This is the procedure that applies to complex commercial litigation conducted in the federal courts, in Rule 33(a) of the Federal Rules of Civil Procedure (which limits a party to 25 written interrogatories, including all discrete subparts, without leave of court). We seek comment on (1) the appropriate number of interrogatories and document requests that could be made without our leave, and why, and (2) whether such a limitation is a necessary and appropriate measure to prevent parties from requesting data in multiple formats or versions. Commenters should address this proposal both as if it were to be adopted alone and as if it were to be adopted in conjunction with a list of standard information and documents that the parties to a SAC case would be required to produce as initial disclosures.

Time Periods

Suggestions were also made to limit the number of years for which data would need to be produced for a SAC case, absent permission from the Board, and to establish a cut-off date for discovery after which responses to discovery requests would not need to be updated. We seek comment on (1) the advantages and disadvantages of establishing such limits, (2) whether such limits should be standard or determined on a case-by-case basis at an initial discovery conference, (3) what the appropriate limitations would be, and for which types of data, and (4) an appropriate cut-off point in the procedural schedule for making additional discovery requests.

Costs

Finally, a suggestion has been made that the parties share the costs of production of data in response to discovery requests, rather than the responding party alone shouldering what can be substantial costs. We seek comment on (1) our authority to require such cost-sharing, (2) the circumstances, if any, under which parties should be required to share those costs, (3) how the costs of production would be quantified, and (4) how, if at all, the costs should be divided between the parties.

Additional information is contained in the Board's decision. To obtain a copy of the full decision, visit the Board's Web site at *http://www.stb.dot.gov;* or call the Board's Information Officer at (202) 565–1674. To purchase a copy of the decision, write to, call, email, or pick up in person from Dā-2-Dā Legal Copy Service, Room 405, 1925 K Street, NW., Washington, DC 20006, (202) 293–7776, *da2dalegal@earthlink.net.* [Federal Information Relay Service (FIRS) (Hearing Impaired): (800) 877–8339.]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

We conclude that our action will not have a significant effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act because small entities are not litigants in the rail rate cases that are the subject of this proceeding.

List of Subjects in 49 CFR Parts 1109, 1111 and 1114

Practice and procedure, Railroads.

Decided: April 3, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams,

Secretary.

■ The Surface Transportation Board amends 49 CFR parts 1109, 1111 and 1114 as follows:

PART 1109—USE OF ALTERNATIVE DISPUTE RESOLUTION IN BOARD PROCEEDINGS AND THOSE IN WHICH THE BOARD IS A PARTY

■ 1. The authority citation for part 1109 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721, 10704, and 11701.

■ 2. Add new § 1109.4, to read as follows:

§ 1109.4 Mandatory mediation in rate cases to be considered under the stand-alone cost methodology.

(a) A shipper seeking rate relief from a railroad or railroads in a case involving the stand-alone cost methodology must engage in non-binding mediation of its dispute with the railroad upon filing a formal complaint under 49 CFR Part 1111.

(b) Within 10 business days after the shipper files its formal complaint, the Board will assign a mediator to the case. Within 5 business days of the assignment to mediate, the mediator shall contact the parties to discuss ground rules and the time and location of any meeting. At least one principal of each party, who has the authority to bind that party, shall participate in the mediation and be present at any session at which the mediator requests that the principal be present.

(c) The mediator will work with the parties to try to reach a settlement of all or some of their dispute or to narrow the issues in dispute, and reach stipulations that may be incorporated into any adjudication before the Board if mediation does not fully resolve the dispute. If the parties reach a settlement, the mediator may assist in preparing a settlement agreement.

(d) The entire mediation process shall be private and confidential. No party may use any concessions made or information disclosed to either the mediator or the opposing party before the Board or in any other forum without the consent of the other party.

(e) The mediation shall be completed within 60 days of the appointment of the mediator. The mediation may be terminated prior to the end of the 60-day period only with the certification of the mediator to the Board. Requests to extend mediation, or to re-engage it later, will be entertained on a case-by-case basis, but only if filed by all interested parties.

(f) Absent a specific order from the Board, the onset of mediation will not affect the procedural schedule in stand-alone cost rate cases, set forth at 49 CFR 1111.8(a).

PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

■ 1. The authority citation for part 1111 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721, 10704, and 11701.

■ 2. Redesignate the current text in § 1111.8 as § 1111.8(a), add a new paragraph heading to redesignated paragraph (a), and add new paragraph (b) to read as follows:

§ 1111.8 Procedural schedule in stand-alone cost cases.

(a) *Procedural schedule.* * * *

(b) *Conferences with parties.* (1) The Board will convene a technical conference of the parties with Board staff prior to the filing of any evidence in a stand-alone cost rate case, for the purpose of reaching agreement on the operating characteristics that are used in the variable cost calculations for the movements at issue. The parties should jointly propose a schedule for this technical conference.

(2) In addition, the Board may convene a conference of the parties with Board staff, after discovery requests are served but before any motions to compel may be filed, to discuss discovery matters in stand-alone cost rate cases. The parties should jointly propose a schedule for this discovery conference.

PART 1114—EVIDENCE; DISCOVERY

■ 1. The authority citation for part 1114 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721, 10704, and 11701.

■ 2. Revise § 1114.31(a) to read as follows:

§ 1114.31 Failure to respond to discovery.

(a)(1) *Reply to motion to compel generally.* Except in rate cases to be considered under the stand-alone cost methodology, the time for filing a reply to a motion to compel is governed by section 1104.13.

(2) *Reply to motion to compel in stand-alone cost rate cases.* A reply to a motion to compel must be filed with the Board within 10 days thereafter in a rate case to be considered under the stand-alone cost methodology.

(3) *Conference with parties on motion to compel.* Within 5 business days after the filing of a reply to a motion to compel in a rate case to be considered under the stand-alone cost methodology, Board staff may convene a conference with the parties to discuss the dispute, attempt to narrow the issues, and gather any further information needed to render a ruling.

(4) *Ruling on motion to compel in stand-alone cost rate cases.* Within 5 business days after a conference with the parties convened pursuant to subparagraph (a)(3) of this section, the Secretary will issue a summary ruling on the motion to compel discovery in a stand-alone cost rate case. If no

conference is convened, the Secretary will issue this summary ruling within 10 business days after the filing of the reply to the motion to compel. Appeals of a Secretary's ruling will proceed under 49 CFR 1115.9, and the Board will attempt to rule on such appeals within 20 days after the filing of the reply to the appeal.

* * * * *

[FR Doc. 03–8645 Filed 4–8–03; 8:45 am]

BILLING CODE 4915–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011128283–3075–03; I. D. 111401B]

RIN 0648–AN55

Fisheries of the Exclusive Economic Zone Off Alaska; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; Technical amendment.

SUMMARY: This document corrects a cross reference in the regulatory text of 50 CFR part 679. The action is necessary to correct an error in a cross reference at § 679.20(a)(5)(iii)(B).

DATES: Effective April 8, 2003.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, NMFS, 907–586–7228 or e-mail at *patsy.bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION: A final rule, which published December 30, 2002 (67 FR 79692), redesignated § 679.20(a)(5)(ii) as § 679.20(a)(5)(iii). This paragraph redesignation affected a cross reference in existing § 679.20(a)(5)(iii)(B) but the change was not made. This error is corrected by this action.

Need for Corrections

This rule corrects a cross reference in § 679.20(a)(5)(iii)(B) by removing the reference to "(a)(5)(ii)(A)" and adding in its place "(a)(5)(iii)(A)."

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries (AA), NOAA, finds good cause to waive prior notice and an opportunity for public comment. NOAA finds that prior notice and comment are unnecessary as this rule makes a minor, non-substantive change to correct a mis-citation to another section of the regulation. Because this action is not substantive, 5 U.S.C. 553(d) does not apply. Therefore, this final rule is not subject to a 30–day delay in effectiveness.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: April 2, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ Accordingly, 50 CFR part 679 is corrected by making the following correcting amendments:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub, L, 106–554.

§ 679.20 [Corrected]

In § 679.20(a)(5)(iii)(B), the cross-reference "(a)(5)(ii)(A)" is corrected to read "(a)(5)(iii)(A)".

[FR Doc. 03–8684 Filed 4–8–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 68
Wednesday, April 9, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

RIN: 3206–AJ46

Federal Employees' Group Life Insurance Program: Removal of Premiums and Age Bands From Regulations

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to remove the premium rates and age bands under the Federal Employees' Group Life Insurance (FEGLI) Program from regulation. The information will be maintained on the FEGLI Web site at *http://www.opm.gov/insure/life.* Future rate and age band changes will be announced in the **Federal Register**.

DATES: Submit comments on or before June 9, 2003.

ADDRESSES: Send written comments to Abby L. Block, Special Advisor for Employee and Family Support, Strategic Human Resources Policy Division, Office of Personnel Management, Washington, DC 20415–3666; or deliver to OPM, Room 3425, 1900 E Street NW., Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, (202) 606–0004.

SUPPLEMENTARY INFORMATION: OPM is removing the premiums and age bands from the regulations to streamline the process used by OPM to adjust premium rates based on mortality and claims experiences, and actuarial determinations. The premiums in the FEGLI Program represent actuarial estimates of premium income necessary to pay future expected benefits costs. The rates for all coverage categories are specific to the experience of the FEGLI group and are not based on mortality rates within the general population. Actuarial analysis of changing mortality rates and Program changes, if any, make periodic premium adjustments necessary. OPM needs a simplified process to ensure that premium income can pay the future expected benefit costs in the FEGLI Program.

When OPM determines rate changes are needed, we will announce them in a public notice in the **Federal Register**. We also will issue guidance to all agencies for the purpose of counseling employees and we will notify affected annuitants directly. We will update the FEGLI Program Booklet when necessary to reflect changes and maintain the Booklet and premium rates on the FEGLI Web site *www.opm.gov/insure/life.*

Although members of the public will no longer have the opportunity to comment on changes through the formal regulatory process, they can continue as always to comment through emails and letters to OPM. Almost all the comments we receive regarding premium and age band changes are in response to these types of notification, rather than formal responses to regulations. We will accept and reply to comments from members of the public as always. Publishing these changes in the **Federal Register** will allow OPM to implement them in a more timely and efficient manner.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, because the regulation only affects life insurance benefits of Federal employees and retirees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is proposing to amend 5 CFR part 870 as follows:

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

1. The authority citation for part 870 is revised to read as follows:

Authority: 5 U.S.C. 8716; subpart J also issued under sec. 599C, Pub. L. 101–513, 104 Stat. 2064, as amended; § 870.302(a)(3)(ii) also issued under sec. 153, Pub. L. 104–134, 110 Stat. 1321; § 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251 and section 7(e), Pub. L. 105–274, 112 Stat. 2419.

Subpart D—Cost of Insurance

2. In § 870.401, paragraphs (a), (b)(1), and (d) are revised to read as follows:

§ 870.401 Withholdings and contributions for Basic insurance.

(a)(1) The cost of Basic insurance is shared between the insured individual and the Government. The employee pays two thirds of the cost, and the Government pays one-third.

(2) When OPM makes any adjustment to the Basic life insurance premium, we will issue a public notice in the **Federal Register**.

(b)(1) During each pay period in which an insured employee is in pay status for any part of the period, the employee's share of the premium must be withheld from the employee's biweekly pay. The amount withheld from the pay of an employee who is paid on other than a biweekly basis must be prorated and adjusted to the nearest one-tenth of one cent.

* * * * *

(d)(1) For an annuitant or compensationer who elects to continue Basic insurance and chooses the maximum reduction of 75 percent after age 65, under § 870.702(a)(2), the annuitant's share of the premium is withheld monthly and the compensationer's share is withheld every four weeks. These withholdings stop the month after the month in which the annuitant or compensationer reaches age 65. There are no withholdings from individuals who retired or began receiving compensation before January 1, 1990, and who elected the 75 percent reduction. For the purpose of this paragraph, an individual who separates from service after meeting the requirements for an immediate annuity under 5 U.S.C. 8412 (g) is considered to retire on the day before the annuity begins.

(2) An annuitant or compensationer who elects to continue Basic insurance and chooses either the reduction election of 50 percent or the no reduction after age 65, under § 870.702(a)(3) or § 870.702(a)(4), pays an additional premium for the 50 percent or no reduction election. This additional premium is withheld for each $1,000 of the BIA. At age 65, the Basic premium will stop, but the annuitant or compensationer must continue to pay the additional premium for either the 50 percent or the no reduction election.

* * * * *

3. Revise § 870.402 to read as follows:

§ 870.402 Withholdings for Optional insurance.

(a)(1) The insured individual pays the full cost of all Optional insurance. There is no Government contribution toward the cost of any Optional insurance.

(2) Optional insurance premiums are based on 5-year age bands beginning at age 35. The last age band for Option A is age 60+. The last age band for Options B and C is 80+. For the purpose of this subpart, effective April 24, 1999, an individual is considered to reach the next age band the 1st day of the pay period following the pay period in which his/her birthday occurs.

(3) When OPM makes any adjustment to the Optional life insurance premiums, we will issue a public notice in the **Federal Register**.

(b) During each pay period in any part of which an insured employee is in pay status, the employing agency must withhold the full cost of Optional insurance from his/her pay.

(c)(1) Subject to the provisions for reemployed annuitants in § 870.707, the full cost of Optional insurance must be withheld from the annuity of an annuitant and the compensation of a compensationer.

(2) The withholdings for Option A stop the month after the month in which an annuitant or compensationer reaches age 65.

(3) For an annuitant or compensationer who elects Full Reduction for any Option B or Option C multiples, the withholdings for those multiples stop the month after the month in which he/she reaches age 65.

(4) For an annuitant or compensationer who elects No Reduction for any Option B or Option C multiples, the withholdings for those multiples continue, as long as he/she remains insured.

(d)(1) For Option A and Option C, the amount withheld from pay, annuity, or compensation paid on other than a biweekly basis must be prorated and adjusted to the nearest cent.

(2) For Option B, the amount withheld from pay, annuity, or compensation paid on other than a biweekly basis must be prorated and adjusted to the nearest one-tenth of 1 cent.

(e) If an employee's annual pay is paid during a period shorter than 52 work weeks, the employing office must determine the amount to withhold. To do this, it converts the biweekly cost to an annual cost and prorates it over the number of installments of pay regularly paid during the year.

(f) When an agency withholds less than or none of the proper amount of Optional life insurance deductions from an individual's pay, annuity or compensation, the agency must submit an amount equal to the uncollected deductions required under 5 U.S.C. 8714a, 8714b, 8714c to OPM for deposit in the Employees' Life Insurance Fund.

4. In § 870.404, paragraph (d) is revised to read as follows:

§ 870.404 Withholdings and contributions provisions that apply to both Basic and Optional insurance.

* * * * *

(d) The deposit described in §§ 870.401(f) and 870.402(f) must be made no later than 60 calendar days after the date the employing office determines the amount of the underdeduction that has occurred, regardless of whether or when the underdeduction is recovered by the agency. The agency must determine whether to waive collection of the overpayment of pay, in accordance with 5 U.S.C. 5584, as implemented by 4 CFR chapter I, subchapter G. However, if the agency involved is excluded from the provisions of 5 U.S.C. 5584, it may use any applicable authority to waive the collection.

* * * * *

5. In § 870.801, paragraph (e) is revised to read as follows:

§ 870.801 Order of precedence and payment of benefits.

* * * * *

(e) Upon the death of an insured family member, Option C benefits are paid to the employee, annuitant or compensationer responsible for withholdings under § 870.402(a), except as provided in paragraph (f) of this section.

* * * * *

[FR Doc. 03–8610 Filed 4–8–03; 8:45 am]
BILLING CODE 6325–50–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 762, 1941, 1943 and 1951

RIN 0560–AG81

2002 Farm Bill Regulations—Loan Eligibility Provisions

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) proposes to amend the regulations for direct and guaranteed farm operating loans (OL) to implement the provision of the Farm Security and Rural Investment Act of 2002 (2002 Act) relating to loan eligibility for applicants with prior debt forgiveness resulting from a disaster or emergency designated by the President. FSA is proposing that borrowers who are current on an FSA loan at the onset of a Presidentially-declared disaster or emergency, but who receive debt forgiveness on that loan following the disaster, would be eligible for OL loan assistance if all other regulatory requirements were met. FSA is also proposing to amend the regulations for direct farm ownership (FO) loans to comply with the 2002 Act. FSA is proposing that applicants may qualify for a loan if they participated in the business operations of a farm or ranch for at least three of the past five years, rather than having operated a farm or ranch for that length of time. This portion of the rule is intended to make more borrowers eligible for FSA farm loan assistance. Finally, FSA is proposing to amend regulations concerning reamortization of amortized Shared Appreciation Agreement (SAA) recapture debt.

DATES: Comments on the rule must be received on or before June 9, 2003, to be assured of consideration.

ADDRESSES: Submit written comments to the Director, Loan Making Division, Farm Loan Programs, Farm Service Agency, United States Department of Agriculture, STOP 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522.

FOR FURTHER INFORMATION CONTACT: Kathy Zeidler, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Making Division, STOP 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522; telephone (202) 720–5199; or e-mail *kathy.zeidler@wdc.usda.gov*. Comments on the rule may be inspected by contacting Ms. Zeidler for arrangements during normal business hours. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

Notice and Comment

This rule is issued as a proposed rule. Upon completion of the public comment period and consideration of the comments received, FSA will issue a final rule addressing the comments, announcing the final determination, and making the provisions effective.

Executive Order 12866

This rule has been determined to be not significant under Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which the rule applies are:

10.406—Farm Operating Loans.

10.407—Farm Ownership Loans.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

Unfunded Mandates

This rule contains no Federal mandates under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws that are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, administrative remedies must be exhausted.

Environmental Assessment

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799, and 1940, subpart G. FSA has completed an environmental evaluation and concluded that the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12372

This rule is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015 subpart V published at 48 FR 29115 (June 24, 1983).

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Paperwork Reduction Act

The Agency's information collection requirements, currently approved under OMB control numbers 0560–0155, 0560–0157, and 0560–0167 are not affected by the proposed rule.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are not yet fully implemented for the public to conduct business with FSA electronically. However, loan application forms are available electronically for downloading through the USDA eForms Web site at *http://www.sc.egov.usda.gov*.

Background

Section 5319 of the 2002 Act provides another exception to the general rule prohibiting farm loans to borrowers who have received prior debt forgiveness. Under this provision, FSA farm loan borrowers who received debt forgiveness on not more than one occasion resulting directly and primarily from a major disaster or emergency designated by the President on or after April 4, 1996, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), may be eligible for direct or guaranteed farm operating loans to pay annual farm or ranch operating expenses. Note that while FSA makes emergency loans also when emergencies are designated by the USDA Secretary or FSA Administrator (physical loss loans only), only Presidentially-designated emergencies trigger this exception. In developing the proposed rule, FSA reasoned that if a borrower is operating in an area where a disaster or emergency is designated by the President, and the borrower is current on their FSA loan obligations prior to the designation, any subsequent debt forgiveness can be "directly and primarily" attributed to the major disaster or emergency. Therefore, the Agency is proposing that borrowers who are current on FSA loans at the onset of a Presidentially-declared disaster or emergency, but receive debt forgiveness on the loans within three years following the disaster, fall within the legislative exception and, therefore, would be eligible for OL loan assistance for paying annual farm operating expenses if all other loan requirements were met. The Agency specifically seeks comments on this issue.

Section 5001 of the 2002 Act revised an eligibility requirement for FSA's direct FO loan program. Applicants may now be eligible for this program if they participated in the business operations of a farm or ranch for at least three years, rather than having operated a farm or ranch for that length of time. FSA has in place a policy in its direct OL program defining farm participation with regard to acceptable farm experience and on-the-job training. Because this policy was already in effect, it was expanded to cover the new participation requirement for direct FO loans through administrative notice. The policy notice issued to field offices clarified the participation requirement by stating that applicants who: (1) Owned, managed, or operated a farm or ranch business for at least three years worth of complete production and

marketing cycles; (2) have been employed as a farm manager or farm management consultant for at least three years worth of complete production and marketing cycles; or (3) participated in the operation of a farm or ranch by being raised or working on a farm or ranch and having had significant responsibility for the day-to-day decision-making for at least three years' worth of complete production and marketing cycles meet the participation requirement. This rule proposes to amend FO regulations accordingly and to limit the three years of participation to the five years prior to the date the loan application is submitted. Only the last five years should be considered because this is consistent with OL eligibility requirements, which specify that applicants must have sufficient applicable educational and/or on-the-job training or farming experience in managing and operating a farm or ranch (one year's complete production and marketing cycle within the last five years). Recent farming experience is a better indicator of future success.

Section 5314 of the 2002 Act authorizes FSA to consider reamortization of amortized SAA recapture debt for up to 25 years from the date of the original amortization agreement when the borrower becomes delinquent on this non-program debt. To be eligible for this reamortization, the default must be due to circumstances beyond the borrower's control, and the borrower must have acted in good faith in attempting to repay the recapture amount. As this reamortization can be considered even when a borrower has no outstanding FLP loans, or when the SAA was triggered by all FSA loans being paid in full, FSA is proposing to amend 7 CFR 1951.901, 1951.907, 1951.909, and 1951.914 to comply with this requirement.

List of Subjects

7 CFR Part 762

General—Agriculture, Loan programs—Agriculture.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1943

Crops, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1951

Account servicing, Credit, Debt restructuring, Loan programs—Agriculture, Loan Programs—Housing and community development.

Accordingly, 7 CFR is revised as follows:

PART 762—GUARANTEED FARM LOANS

1. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

2. Amend § 762.102(b) by adding a definition of "Presidentially-designated emergency" to read as follows:

§ 762.102 Abbreviations and definitions.

* * * * *

(b) *Definitions.*

* * * * *

Presidentially-designated emergency. A major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*)

3. Amend § 762.120 by revising paragraph (a) to read as follows:

§ 762.120 Loan applicant eligibility.

* * * * *

(a) *Agency loss.* (1) Except as provided in paragraph (a)(2) of this section, the loan applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim on:

(i) More than three occasions on or prior to April 4, 1996; or

(ii) Any occasion after April 4, 1996.

(2) The applicant may receive a guaranteed OL to pay annual farm and ranch operating and family living expenses, provided the applicant meets all other requirements for the loan, if the applicant and anyone who will execute the promissory note:

(i) Received a write-down under section 353 of the CONACT;

(ii) Is current on payments under a confirmed bankruptcy plan; or

(iii) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for the county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FSA loans prior to the onset of a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the onset of such emergency meet this exception.

* * * * *

PART 1941—OPERATING LOANS

4. The authority citation for part 1941 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—Operating Loan Policies, Procedures and Authorizations

5. Amend § 1941.4 by adding a definition of "Presidentially-designated emergency" to read as follows:

§ 1941.4 Definitions.

* * * * *

Presidentially-designated emergency. A major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

* * * * *

6. Amend § 1941.12 by revising paragraphs (a)(8) and (b)(11) to read as follows:

§ 1941.12 Eligibility requirements.

* * * * *

(a) * * *

(8) *Agency loss.* (i) Except as provided in paragraph (a)(8)(ii) of this section, the loan applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim.

(ii) The applicant may receive a direct OL loan to pay annual farm and ranch operating and family living expenses, provided the applicant meets all other requirements for the loan, if the applicant and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim.

(A) Received a write-down under section 353 of the CONACT;

(B) Is current on payments under a confirmed bankruptcy plan; or

(C) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for the county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FSA loans prior to the onset of a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the onset of such emergency meet this exception.

* * * * *

(b) * * *

(11) *Agency loss.* (i) Except as provided in paragraph (b)(11)(ii) of this section, the loan applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim.

(ii) The applicant may receive a direct guaranteed OL loan to pay annual farm and ranch and operating and family living expenses, provided the applicant meets all other requirements for the loan, if the applicant and anyone who will execute the promissory note,

(A) Received a write-down under section 353 of the CONACT;

(B) Is current on payments under a confirmed bankruptcy plan; or

(C) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for the county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FSA loans prior to the onset of a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the onset of such emergency meet this exception.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

7. The authority citation for part 1943 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

Subpart A—Direct Farm Ownership Loan Policies, Procedures, and Authorizations

8. Amend § 1943.4 by adding a definition of "participated in the business operations of a farm or ranch" to read as follows:

§ 1943.4 Definitions.

* * * * *

Participated in the business operations of a farm or ranch. An applicant has participated in the business operations of a farm or ranch if the applicant has:

(1) Been the owner, manager or operator of a farm business for the year's complete production and marketing cycle as evidenced by tax returns, FSA farm records or similar documentation;

(2) Been employed as a farm manager or farm management consultant for the year's complete production and marketing cycle; or

(3) Participated in the operation of a farm by virtue of being raised on a farm or worked on farm with significant responsibility for the day-to-day decisions for the year's complete production and marketing cycle.

* * * * *

9. Amend § 1943.12 by revising the introductory text in paragraphs (a)(6) and (b)(8) to read as follows:

§ 1943.12 Farm ownership loan eligibility requirements.

(a) * * *

(6) Have participated in the business operations of a farm or ranch for at least 3 years out of the 5 years prior to the date the application is submitted and satisfy at least one of the following conditions:

* * * * *

(b) * * *

(8) Have one or more members, constituting a majority interest in the business entity, who have participated in the business operations of a farm or ranch for at least 3 years out of the 5 years prior to the date the application is submitted and satisfy at least one of the following conditions:

* * * * *

PART 1951—SERVICING AND COLLECTIONS

10. The authority citation for part 1951 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart S—Farm Loan Programs Account Servicing Policies

11. Amend § 1951.901 by revising the third sentence to read as follows:

§ 1951.901 Purpose.

* * * Shared Appreciation amortized payments (SA) may be reamortized in accordance with §§ 1951.907(e), 1951.909(c)(6) and 1951.909(e)(2).

* * * * *

12. In § 1951.907, revise the second and third sentences of paragraph (c), introductory text, redesignate paragraph (e) as (f) and add a new paragraph (e) to read as follows:

§ 1951.907 Notice of loan service programs.

* * * * *

(c) * * * If the borrower submits an incomplete application, see paragraph (f) of this section for procedures on requesting additional information. Delinquent borrowers who have also violated their loan agreements with the agency will be handled in accordance with paragraph (f) of this section. * * *

* * * * *

(e) The Agency will notify delinquent NP borrowers who have only SA amortization agreements that all items in paragraph (f)(5) of this section, with the exception of Attachment 2 or 4 of exhibit A and information for conservation contracts or debt settlement, must be submitted within 60 days or the account will be accelerated. If a complete application has not been submitted within 30 days, one additional notice will be sent to the NP borrower indicating the remaining information needed and the last day which it can be submitted.

* * * * *

13. Amend § 1951.909 by adding a new paragraph (c)(6) to read as follows:

§ 1951.909 Processing primary loan service program requests.

* * * * *

(c) * * *

(6) Non-Program borrowers who have only SA amortization agreements must meet the eligibility requirement in paragraph (c)(1) of this section, have acted in good faith in attempting to repay the recapture amount, and develop a feasible plan. Borrowers who do not meet the eligibility or feasibility requirements of this section will be notified of the adverse decision, and the account will be liquidated according to subpart J of this part.

* * * * *

14. Amend § 1951.914 by revising paragraphs (e), introductory text, and (e)(11) to read as follows:

§ 1951.914 Servicing shared appreciation agreements.

* * * * *

(e) *Shared appreciation amortization.* Shared appreciation due under this section may be amortized to a nonprogram amortized payment unless the amount is due because of acceleration or the borrower ceases farming. The amount due may be amortized as an SA amortized payment under the following conditions:

* * * * *

(11) If a borrower with an SA amortized payment also has outstanding Farm Loan Program loan(s) and becomes delinquent or financially distressed in accordance with § 1951.906 or if a borrower with an SA amortized

payment has no outstanding Farm Loan Program loans and becomes delinquent on the SA amortized payment, the SA payment agreement may be reamortized in accordance with § 1951.909.

* * * * *

Dated: March 24, 2003.

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

Dated: April 1, 2003.

Thomas C. Dorr,

Under Secretary for Rural Development.

[FR Doc. 03–8646 Filed 4–8–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 772, 1901, and 1951

RIN 0560–AG67

Servicing Minor Program Loans

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to consolidate, clarify and revise the servicing regulations for the Minor Programs currently administered by the Farm Service Agency, Farm Loan Programs (FSA). Minor Program loans involve existing loans only since there is no longer funding for new loans in these programs. FSA Minor Programs consist of the following loan types: Grazing Association loans and Irrigation and Drainage Association loans previously administered by the U.S. Department of Agriculture's Rural Development (RD) mission area, and Non-Farm enterprise and Recreation Loans made to individuals which have previously been administered by FSA. Recreation loans to associations will continue to be serviced by RD.

DATES: Comments on the proposed rule must be received on or before June 9, 2003 to be assured of consideration.

ADDRESSES: Mail comments on the proposed rule to: Veldon Hall, Director, Farm Loan Programs, Loan Servicing and Property Management Division, Farm Service Agency, USDA, 1400 Independence Avenue, SW. Stop 0523, Washington, DC 20250–0523, or hand deliver to Suite 500, 1250 Maryland Avenue, SW., Washington, DC 20024 during normal business hours. Comments and supporting documents may be viewed by contacting the information contact listed below. All comments, including names and addresses, will become part if the public record. Comments on the paperwork burden of this proposed rule must be sent to the addresses listed in the Paperwork Reduction Act section of this Rule.

FOR FURTHER INFORMATION CONTACT: Mel Thompson, Senior Loan Officer, Farm Service Agency; telephone: 202–720–7862; Facsimile: 202–690–1196; e-mail: *mel_thompson@wdc.fsa.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule was determined to be not significant under Executive Order 12866 and was not reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Agency certifies that this rule will not have a significant economic effect on a substantial number of small entities, because it does not require any action by the borrower who may be a small entity. The Agency, therefore, is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601). This rule does not impact small entities to a greater extent than large entities.

Environmental Evaluation

The environmental impacts of this proposed rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799, and 1940, subpart G. FSA completed an environmental evaluation and concluded that this proposed rule, if enacted, requires no further environmental review because no new loans are authorized. Servicing existing loans in accordance with previously published rules containing environmental requirements is not a major Federal action significantly affecting the quality of the human environment. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before requesting judicial review.

Executive Order 12372

As stated in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) the programs and activities within this rule do not require consultation with state and local officials under the scope of Executive Order 12372.

Unfunded Mandates Reform Act

This rule contains no Federal mandates as defined in Title II of the Unfunded Mandates Reform Act of 1995 (UMRA). Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose any new significant loan servicing criteria on state and local governments. The proposed rule revises the citation references and consolidates the servicing regulations to streamline loan servicing criteria applicable to Minor Programs. Therefore, consultation with the states is not required.

Paperwork Reduction Act

The amendments to 7 CFR parts 772, 1901, subpart E, and 1951, subparts E and F, contained in this rule only delete requirements and propose no new collections nor do they significantly affect the aggregate information collection burden of the Agencies. Certain forms and information collection are included and approved in the Information Collection Package for OMB control number 0560–0158 and are not impacted by this collection. Still, this rule transfers some of the information collections assigned OMB control numbers 0575–0118, 0575–0093, and 0575–0066, to the proposed part 772. This will result in certain burden that is currently assigned by OMB to the Rural Development Agencies of USDA being shifted to FSA. Consequently, FSA is requesting comments on the information collection requirements in this rule that are being moved from those currently in parts 1901, subpart E and 1951, subparts E and F as required by the Paperwork Burden Reduction Act. After publication of this rule in final, the Agency will submit documents to OMB to modify the currently approved burden to reflect this shift between control numbers. An estimate of the paperwork burden of the regulations as affected by this proposed rule are as follows:

Title: 7 CFR part 772, Servicing Minor Program Loans.

OMB Control Number: 0560–NEW.

Type of request: Approval of new information collection.

Abstract: This part contains FSA policies and procedures for servicing Minor Program loans which include: Grazing Associations, Irrigation and Drainage Associations, Non-Farm Enterprise loans and Recreation loans to individuals.

Estimate of burden: Public reporting burden for this collection of information is estimated to average less than 1 hour per response.

Respondents: Individuals and businesses.

Estimated number of respondents: 338

Estimated number of responses per respondent: 1

Estimated total annual burden on respondents: 179 hours Comments are requested regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimates of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to Mel Thompson, Loan Servicing and Property Management Division, Farm Service Agency, United States Department of Agriculture, STOP 0523, 1400 Independence Avenue, SW., Washington, DC 20250–0523; or e-mail: *mel_thompson@wdc.usda.gov.*

Federal Assistance Program

These proposed changes affect no programs listed in the Catalog of Federal Domestic Assistance.

Discussion of the Proposed Rule

This proposed rule consolidates and clarifies the servicing policies of the Farm Service Agency's Minor Loan Programs. The Minor Programs were administered by the former Farmers Home Administration (FmHA). Under the discretionary authority of the Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354, on October 20, 1994, the Individual-type loans (Non-Farm Enterprise and Recreation loans) were assigned to FSA. The Association-type loans (Grazing Associations and Irrigation and Drainage loans) were assigned to USDA's Rural Development mission area. Regulations for servicing the Association-type loans of these programs are currently found at 7 CFR part 1901, subpart E for Civil Rights Compliance; 7 CFR part 1951, subpart E for servicing; 7 CFR part 1951, subpart F for graduation; 7 CFR part 1956, subpart C for debt settlement; and 7 CFR part 1962 subpart A for bankruptcy. Individual-type Minor Program loans are the Non-Farm enterprise loans which are a subgroup of FSA, Farm Operating and Farm Ownership loans defined in 7 CFR 1941.4 and 1943.4 and Recreation loans, which are defined as Farm Loan Program (FLP) loans under 7 CFR 1951.906. Although these loans are no longer made by FSA, both categories are serviced as FLP loans in accordance with 7 CFR part 1951, subpart S.

Because the current delegation of these similar loan programs between FSA and the agencies of the Rural Development mission area is inefficient, this rule proposes to remove parts of regulations that are currently shared by FSA and the agencies of the Rural Development mission area and publish a consolidated FSA regulation governing these programs. Consolidating these scattered regulations will result in more efficient and proper administration of the servicing requirements for the Minor Programs. Information not specific to the Minor Programs will be eliminated and language will be improved for readability. Only requirements specific to the Minor Programs will be included. The result will be better service to the borrowers with these types of loans, and, at the same time, ease the agency officials' burden in administering these programs. The regulations for servicing bankruptcy (7 CFR part 1962, subpart A) and debt settlement (7 CFR part 1956, subparts B and C) previously applied to all Minor Program loans and will continue to apply under this rule. This proposed rule contains no new requirements, nor does it eliminate any provision currently contained in existing regulations. The intended effect of this rule is to transfer and consolidate authorities contained within separate Federal regulations into one part.

List of Subjects

Part 772

Agriculture, Credit, Rural areas.

Part 1901

Civil rights, Compliance reviews, Minority groups.

Part 1951

Account servicing, Grant programs—housing and community development, Reporting requirements, Rural areas.

Accordingly, for the reasons stated in the preamble, 7 CFR part 772 is added and 7 CFR parts 1901 and 1951 are amended as follows:

1. Add part 772 to read as follows:

PART 772—SERVICING MINOR PROGRAM LOANS

Sec.

772.1 Policy.
772.2 Abbreviations and definitions.
772.3 Compliance.
772.4 Environmental requirements.
772.5 Security maintenance.
772.6 Subordination of security.
772.7 Leasing Minor Program loan security.
772.8 Sale or exchange of security property.
772.9 Releases.
772.10 Transfer and assumption—AMP loans.
772.11 Transfer and assumption—IMP loans.
772.12 Graduation.
772.13 Delinquent account servicing.
772.14 Reamortization of AMP loans.
772.15 Protective advances.
772.16 Liquidation.
772.17 Equal opportunity and non-discrimination requirements.
772.18 Exception authority.

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 25 U.S.C. 490.

§ 772.1 Policy.

(a) *Purpose.* This part contains the Agency's policies and procedures for servicing Minor Program loans which include: Grazing Associations, Irrigation and Drainage Associations, Non-Farm Enterprise loans and Recreation loans to individuals.

(b) *Appeals.* The regulations at 7 CFR parts 11 and 780 apply to decisions made under this part.

§ 772.2 Abbreviations and definitions.

(a) Abbreviations.

AMP Association-Type Minor Program loan
CFR Code of Federal Regulations
FO Farm Ownership Loan
FSA Farm Service Agency
IMP Individual-type Minor Program loan
OL Operating Loan
USDA United States Department of Agriculture

(b) *Definitions.*

Association-type Minor Program loans: Means Minor Program loans to Grazing Associations and Irrigation and Drainage Associations.

Entity: Cooperatives, corporations, partnerships, joint operations, trusts, or limited liability companies.

Graduation: The requirement contained in loan documents of a Minor Program borrower that they pay their FSA loan in full with funds received from a commercial lending source as a result of improvement in their financial condition.

Individual-type Minor Program loans: Means Minor Program Non-Farm Enterprise or Individual Recreation loans that are serviced under existing regulations as program OL and FO loans. These loans were made to both entities and individuals.

Member: Means any individual who has an ownership interest in the entity which has received the Minor Program loan.

Minor Program: Non-Farm Enterprise, Individual Recreation, Grazing Association, or Irrigation and Drainage loan programs administered or to be administered by FSA that are subject to prescribed program loan servicing requirements, and, of which, each program has fewer than 500 outstanding loans and less than $100 million in outstanding debt.

Review official. An agency employee, contractor or designee who is authorized to conduct a compliance review of a Minor Program borrower.

§ 772.3 Compliance.

(a) *Requirements.* No Minor Program borrower shall directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, color, national origin, or disability. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters. FSA's civil rights requirements applicable to Minor Program borrowers are contained in title 7, part 15, subpart A and part 15b.

(b) *Reviews.* In accordance with Title VI of the Civil Rights Act of 1964, the Agency will conduct a compliance review of all Minor Program borrowers, to determine if a borrower has directly, or through contractual or other arrangement, subjected any person or cause any person to be subjected to discrimination on the basis of race, color, or national origin. The borrower must allow the review official access to their premises and all records necessary to carry out the compliance review as determined by the review official.

(c) *Frequency and timing.* Compliance reviews will be conducted no later than October 31 of every third year until the Minor Program loan is paid in full or otherwise satisfied.

(d) *Violations.* If a borrower refuses to provide information or access to their premises as requested by a review official during a compliance review, or is determined by the Agency to be not in compliance in accordance with this section, the Agency will service the loan in accordance with the provisions of § 772.14 of this part.

§ 772.4 Environmental requirements.

Servicing activities such as transfers, assumptions, subordinations, sale or exchange of security property, and leasing of security will be reviewed for compliance with title 7, part 1940, subpart G of chapter XVIII of the Code of Regulations and the exhibits to that subpart.

§ 772.5 Security maintenance.

(a) *General.* Borrowers are responsible for maintaining the collateral that is serving as security for their Minor Program loan in accordance with their lien instruments, security agreement and promissory note.

(b) *Security Inspection.* The Agency will inspect real estate that is security for a Minor Program loan at least once every three years, and chattel security at least annually. More frequent security inspections may be made as determined necessary by the Agency. Borrowers will allow representatives of the Agency, or any agency of the U.S. Government, in accordance with statutes and regulations, such access to the security property as the agency determines is necessary to document compliance with the requirements of this section.

(c) *Violations.* If the Agency determines that the borrower has failed to adequately maintain security, made unapproved dispositions of security, or otherwise has placed the repayment of the Minor Program loan in jeopardy, the Agency will:

(1) For chattel security, service the account according to title 7, part 1962, subpart A of chapter XVIII of the Code of Federal Regulations. If any normal income security as defined in that subpart secures a Minor Program loan, the reporting, approval and release provisions in that subpart shall apply.

(2) For real estate security for AMP loans, contact the Office of General Counsel for advice on the appropriate servicing including liquidation if warranted.

(3) For real estate security for IMP loans, service the account according to title 7, part 1951, subpart S, of chapter XVIII of the Code of Federal Regulations.

§ 772.6 Subordination of security.

(a) *Eligibility.* The Agency shall grant a subordination of Minor Program loan security when the transaction will further the purposes for which the loan was made, and:

(1) The loan will still be adequately secured after the subordination or the value of the loan security will be increased by the amount of advances to be made under the terms of the subordination.

(2) The borrower can document the ability to pay all debts including the new loan.

(3) The action does not change the nature of the borrower's activities to the extent that they would no longer be eligible for a Minor Program loan.

(4) The subordination is for a specific amount.

(5) The borrower is unable, as determined by the Agency, to refinance its loan and graduate in accordance with this subpart.

(6) The loan funds will not be used in such a way that will contribute to erosion of highly erodible land or conversion of wetlands for the production of an agricultural commodity according to title 7, part 1940, subpart G of chapter XVIII of the Code of Federal Regulations.

(7) The borrower has not been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or state law. "Borrower", for purposes of this subparagraph, specifically includes an individual or entity borrower and any member, stockholder, partner, or joint operator, of an entity borrower. "Controlled substance", for the purpose of this subparagraph, is defined at 21 CFR part 1308. The borrower will be ineligible for a subordination for the crop year in which the conviction occurred and the four succeeding crop years. An applicant must attest on the Agency application form that it and its members, if an entity, have not been convicted of such a crime.

(b) *Application.* To request a subordination, a Minor Program borrower must make the request in writing and provide the following:

(1) The specific amount of debt for which a subordination is needed;

(2) An appraisal in accordance with § 761.7 of this chapter, if the request is for more than $10,000, unless an appraisal report that is sufficient, as determined by the Agency, that is less than one year old, is on file with the Agency; and

(3) Consent and subordination, as necessary, of all other creditors' security interests.

(c) *Approval.* SEDs are authorized to approve subordination requests.

(1) If a subordination request does not meet the requirements of this part, the SED may reject it and offer appeal rights, or recommend it to the Administrator, FSA, pursuant to exception authority, for approval.

(2) When the SED rejects a subordination request, the State Office will notify the borrower of the decision.

(3) When recommending to the Administrator for an exception, the SED must provide documentation on how approval of the subordination is in the best interest of the Government.

§ 772.7 Leasing Minor Program loan security.

(a) *Eligibility.* The Agency may consent to the borrower leasing all or a portion of security property for Minor Program loans to a third party when:

(1) Leasing is the only feasible way to continue to operate the enterprise and is a customary practice;

(2) The lease will not interfere with the purpose for which the loan was made;

(3) The borrower retains ultimate responsibility for the operation, maintenance and management of the facility or service for its continued availability and use at reasonable rates and terms;

(4) The lease prohibits amendments to the lease or subleasing arrangements without prior written approval from the Agency;

(5) The lease terms provide that the Agency is a lien holder on the subject property and, as such, the lease is subordinate to the rights and claims of the Agency as lien holder; and

(6) The lease is for less than three years and does not constitute a lease/purchase arrangement, unless the transfer and assumption provisions of this subpart are met.

(b) *Application.* The borrower must submit a written request for Agency consent to lease the property.

§ 772.8 Sale or exchange of security property.

(a) *AMP loans.* (1) Sale of all or a portion of security property for an AMP loan may be approved when:

(i) The property is sold for market value based on a current appraisal in accordance with the standards at § 761.7 of this chapter;

(ii) The sale will not prevent carrying out the original purpose of the loan. The borrower must execute RD Form 400–4 "Assurance Agreement" or successor form. The covenant involved will remain in effect as long as the property continues to be used for the same or similar purposes for which the loan was made. The instrument of conveyance will contain the nondiscrimination covenants contained in 7 CFR 1951.204;

(iii) The remaining security for the loan is adequate or will not change after the transaction;

(iv) Sale proceeds remaining after paying any reasonable and necessary selling expenses are applied to the Minor Program loan according to lien priority;

(2) Exchange of all or a portion of security property for an AMP loan may be approved when:

(i) The Agency will obtain a lien on the property acquired in the exchange.

(ii) Property more suited to the borrower's needs related to the purposes of the loan is to be acquired in the exchange;

(iii) The AMP loan will be as adequately secured after the transaction as before;

(iv) It is necessary to develop or enlarge the facility, improve the borrower's debt-paying ability, place the operation on a more sound financial basis or otherwise further the loan objectives and purposes, as determined by the Agency.

(b) *IMP loans.* (1) A sale or exchange of chattel that is serving as security for an IMP loan is governed by title 7, part 1962, subpart A of chapter XVIII of the Code of Federal Regulations.

(2) A sale or exchange of real estate that is serving as security for an IMP loan is governed by title 7, part 1965, subpart A of chapter XVIII of the Code of Federal Regulations.

§ 772.9 Releases.

(a) *Security.* Minor Program liens may be released when:

(1) The debt is paid in full.

(2) Security property is sold for market value and sale proceeds are received and applied to the borrower's creditors according to lien priority, or

(3) An exchange in accordance with § 772.7(b) of this subpart has been concluded.

(b) *Borrower liability.* The Agency may release a borrower from liability when the Minor Program loan, plus all administrative collection costs and charges are paid in full. IMP borrowers who have had previous debt forgiveness on a farm loan program loan as defined in 7 CFR 1951.906 cannot be released from liability by FSA until the previous loss to the Agency has been repaid with interest from the date of debt forgiveness.

(c) *Servicing of debt not satisfied through liquidation.* Balances remaining after sale or liquidation will be subject to administrative offset in accordance with 7 CFR part 1951, subpart C, including internal agency administrative offset, Department of Treasury Offset and Treasury Cross-Servicing. Thereafter, the debt settlement provisions in part 1956, subpart B (for IMP loans) and subpart C (for AMP loans) of chapter XVIII of the Code of Federal Regulations apply.

§ 772.10 Transfer and assumption—AMP loans.

(a) *Eligibility.* The Agency may approve transfers and assumptions of AMP loans when:

(1) The present borrower is unable or unwilling to accomplish the objectives of the loan.

(2) The transfer will not harm the Government or adversely affect the Agency's security position.

(3) The transferee will continue with the original purpose of the loan.

(4) The transferee will assume an amount at least equal to the present market value of the loan security.

(5) The transferee documents the ability to pay the AMP loan debt as provided in the assumption agreement and has the legal capacity to enter into the contract.

(6) If there is a lien or judgment against the Agency security being transferred, the transferee is subject to such claims. The transferee must document the ability to repay the claims against the land.

(7) If the transfer is to one or more members of the borrower's organization and there is no new member, there must not be a loss to the Government.

(b) *Withdrawal.* Withdrawal of a member and transfer of the withdrawing member's interest in the Association to a new eligible member may be approved by the Agency if all of the following conditions are met:

(1) The entire unpaid balance of the withdrawing member's share of the AMP loan must be assumed;

(2) In accordance with the Association's governing articles, the required number of remaining members

must agree to accept any new member; and

(3) The transfer will not adversely affect collection of the AMP loan.

(c) *Requesting a transfer and assumption.* The transferor borrower and transferee applicant must submit:

(1) The written consent of any other lien holder, if applicable.

(2) A current balance sheet and cash flow statement.

(d) *Terms.* The interest rate and term of the assumed AMP loan will not be changed. Any delinquent principal and interest of the AMP loan must be paid current before the transfer of an assumption will be approved by the Agency.

(e) *Release of liability.* Transferors may be released from liability with respect to an AMP loan by the Agency when:

(1) The full amount of the loan is assumed.

(2) Less than the full amount of the debt is assumed, and the balance remaining will be serviced in accordance with § 772.9(c) of this subpart.

§ 772.11 Transfer and assumption—IMP loans.

Transfers and assumptions for IMP loans are processed in accordance with title 7, part 1962, subpart A of chapter XVIII of the Code of Federal Regulations for chattel secured loans and part 1965, subpart A of chapter XVIII of the Code of Federal Regulations for real estate secured loans. Any remaining transferor liability will be serviced in accordance with § 772.9(c) of this subpart.

§ 772.12 Graduation.

(a) *General.* Agency loan programs do not supplant or compete with credit available to borrowers from non-Governmental credit sources. Agency credit is intended to be available for a temporary period of time until the borrower has made sufficient progress to obtain credit from commercial lenders. This section does not apply to Minor Program borrowers with promissory notes which do not contain provisions requiring graduation.

(b) *Graduation reviews.* Borrowers shall provide current financial information when requested by the Agency or its representatives to conduct graduation reviews. After screening out the non-commercial and non-standard borrowers, the Agency will conduct a thorough review of the financial information provided by the borrower and request additional information as needed.

(1) AMP loans shall be reviewed at least every two years. In the year to be reviewed, each borrower must submit, at a minimum, a year-end balance sheet and cash flow projection for the current year.

(2) All IMP borrowers classified as "commercial" or "standard" in accordance with title 7, part 1951, subpart F of chapter XVIII of the Code of Federal Regulations shall be reviewed at least every two years. In the year to be reviewed, each borrower must submit a year-end balance sheet, actual financial performance for the most recent year, and a projected budget for the current year.

(c) *Criteria.* Borrowers will be requested to graduate from the Minor Programs as follows:

(1) Borrowers with IMP loans that are classified as "commercial" or "standard" will be requested to apply for private financing within 30 days from the date the borrower is notified of lender interest, if an application is required by the lender. For good cause, the Agency may grant the borrower a reasonable amount of additional time to apply for refinancing.

(2) Borrowers with AMP loans will be considered for graduation at least every two years or as otherwise determined by the Agency that the borrower's financial condition has significantly improved.

(d) *Enforcement.* The Agency shall take action to enforce graduation, when the Agency has evidence that commercial credit can be obtained at reasonable rates and terms.

(1) The Agency will accelerate the loan of a Minor Program borrower who fails to provide requested documents, does not take positive steps to refinance the loan when commercial credit can be obtained at reasonable rates and terms, or refuses to cooperate in any way with the requirements of this section.

(2) The Agency must inform the borrower in writing of the specific request of which the borrower failed or refused to cooperate and provide appeal rights in accordance with 7 CFR part 780 and 7 CFR part 11.

§ 772.13 Delinquent account servicing.

(a) *AMP loans.* The Agency will take the following actions on delinquent AMP borrowers:

(1) *First contact.* The Agency will attempt to contact the borrower 10 days after the payment due date, advise the borrower of the amount past due, and request that the payment be remitted immediately.

(2) *Second contact.* If within 20 days the borrower has not responded to the initial contact, a delinquency letter will be sent notifying the borrower that if the account is not brought current within 30 days, the Agency will take action to protect the Government's interest.

(3) *Third contact.* If within 30 days the borrower has not responded to the second contact delinquency letter or the borrower will not or cannot make satisfactory arrangements to bring the account current, the borrower will be notified by letter of the option of selling their security property to recover any equity, and advising that further collection action, including internal agency offset and referral to the Department of Treasury Offset Program and Treasury Cross-Servicing, will be taken if payment is not received or satisfactory arrangements are not made to bring the account current within 15 days.

(4) *Liquidation.* If the borrower does not make arrangements to cure the default and is not eligible for reamortization in accordance with § 772.14 of this subpart, liquidation action will be taken according to § 772.16 of this subpart.

(b) *IMP loans.* Delinquent IMP borrowers will be serviced according to part 1951, subpart S, of chapter XVIII of the Code of Federal Regulations and title 7 parts 3 and 1951, subpart C of chapter XVIII of the Code of Federal Regulations, concerning internal agency offset and referral to the Department of Treasury Offset Program and Treasury Cross-Servicing.

§ 772.14 Reamortization of AMP loans.

(a) The Agency may approve reamortization of AMP loans when there is no extension of the final maturity date of the loan and no intervening lien exists on the security for the loan which would jeopardize the Government's security position, and when:

(1)(i) The account is delinquent and cannot be brought current within one year; and

(ii) The borrower has presented a cash flow budget which demonstrates the ability to meet the proposed new payment schedule; or

(2) The account is current, but due to circumstances beyond the borrower's control, the borrower will be unable to meet the annual loan payments;

(b) An exception may be provided by and at the discretion of the Agency Administrator to the conditions in paragraph (a) of this section in accordance with § 772.18.

§ 772.15 Protective advances.

(a) The Agency may approve, without regard to any loan or total indebtedness limitation, vouchers to pay costs, including insurance and real estate taxes, to preserve and protect the security, the lien, or the priority of the lien securing the debt owed to the Agency if the debt instrument provides that the Agency may voucher the account to protect its lien or security.

(b) The Agency may pay protective advances only when it determines it to be in the Government's best financial interest.

(c) Protective advances are immediately due and payable.

§ 772.16 Liquidation.

When the Agency determines that continued servicing will not accomplish the objectives of the loan and the delinquency or financial stress cannot be cured by the options in § 772.13, the borrower will be encouraged to dispose of the Agency security voluntarily through sale or transfer and assumption. If a transfer or voluntary sale is not carried out, the loan will be liquidated according to title 7, part 1955, subpart A of chapter XVIII of the Code of Federal Regulations.

§ 772.17 Equal opportunity and non-discrimination requirements.

With respect to any aspect of a credit transaction, the Agency will comply with the requirements of the Equal Credit Opportunity Act as implemented in § 1910.2 of title 7, part 1910, subpart A of chapter XVIII of the Code of Federal Regulations, and the Department's civil rights policy in 7 CFR part 15d.

§ 772.18 Exception authority.

Exceptions to any requirement in this subpart can be approved in individual cases by the Administrator if application of any requirement or failure to take action would adversely affect the Government's interest. Any exception must be consistent with the authorizing statute and other applicable laws.

PART 1901—PROGRAM-RELATED INSTRUCTIONS

Subpart E—Civil Rights Compliance Requirements.

2. The authority citation for part 1901 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 40 U.S.C. 442; 42 U.S.C. 1480.

3. Amend § 1901.204 by:

a. Removing paragraphs (a)(1), (2), (4), and (10);

b. Redesignating paragraph (a)(3) as paragraph (a)(1);

c. Redesignating paragraphs (a)(5) through (9) as paragraphs (a)(2) through (6); and

d. Redesignating paragraphs (a)(11) through (28) as paragraphs (a)(7) through (24).

PART 1951—SERVICING AND COLLECTIONS

Subpart E—Servicing of Community and Direct Business Programs Loans and Grants

4. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C.1989; 42 U.S.C. 1480.

5. Amend § 1951.201 by removing the words "loans for Grazing and other shift-in-land-use projects;" and "Association Irrigation and Drainage loans;".

§ 1951.221 [Amended]

6. Amend § 1951.221 in paragraph (b) heading by removing the words "Grazing Association Loans, Irrigation and Drainage and other".

Signed in Washington, DC, on April 2, 2003.

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 03–8597 Filed 4–8–03; 8:45 am]

BILLING CODE 3410–05–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. FV03–956–1 PR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Fiscal Period Change

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a proposed change in the fiscal period under the Walla Walla sweet onion marketing order from June 1 through May 31 to January 1 through December 31. This rule was recommended by the Walla Walla Sweet Onion Marketing Committee (Committee), the agency responsible for local administration of the marketing order regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. The current fiscal period has been in place since the marketing order's inception in 1995. Because of advance planning needed for market promotion, including paid advertising, the Committee now develops its budget of expenditures before June 1, but delays actual expenditures until that date. This has made it more difficult for the Committee to coordinate the timing of marketing promotion activities with the short harvest and marketing season for Walla Walla sweet onions. The recommended change is expected to help the Committee better coordinate its marketing promotion activities with the marketing season—mid-June into September.

DATES: Comments must be received by June 9, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–2724; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small business may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 956 (7 CFR part 956) regulating the handling of Walla Walla sweet onions grown in Southeast Washington and Northeast Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would change the fiscal period from June 1 through May 31 to January 1 through December 31. This rule would also make conforming changes to the order's administrative rules and regulations. This change was unanimously recommended by the Committee at its December 17, 2003, meeting.

Section 956.40 of the order provides authority for the Committee to incur expenses that are reasonable and necessary to operate the program. Section 956.42 provides that these expenses be paid by assessments levied on fresh shipments of Walla Walla sweet onions. Further, § 956.41 provides that an annual budget of expenses be prepared by the Committee based on the defined fiscal period. Section 956.13 of the order defines "fiscal period" to mean the period beginning on June 1 and ending on May 31 of each year, or such other period as may be recommended by the Committee and approved by USDA.

Walla Walla sweet onions are traditionally harvested from about mid-June through about mid-August, although in recent years harvest has been extended into September due to an increase in spring planted onions and the use of better storage facilities. Walla Walla sweet onions have a short shelf life and are therefore generally marketed within a relatively short period of time following harvest. During the promulgation of the order in 1995, the proponent industry committee—the organization responsible for drafting the order and presenting it during the promulgation hearing—was of the opinion that the new order's fiscal period should begin shortly before the marketing season began. Testimony during the hearing supported the position that the start of the fiscal period should be close to the beginning of the season. This was so a minimum of expenses would be incurred prior to the time assessment revenue was received by the Committee following the sweet onion harvest.

Experience gained over the last eight years has shown the Committee that the June 1 through May 31 fiscal period is not conducive to coordinating the timing of its marketing promotion, including paid advertising activities, with the short harvest and marketing season for Walla Walla sweet onions. The crop is harvested and marketed during a four-month period—mid-June into September.

Because of advance planning needed for marketing promotion projects, the Committee now develops its budget of expenditures before June 1, but delays actual expenditures until that date. This has made it more difficult for the Committee to coordinate the timing of its promotion activities with the short harvest and marketing season. The Committee believes that better timing of marketing promotion activities with the harvest and marketing of Walla Walla sweet onions would improve the distribution and consumption of sweet onions. Hence, the Committee recommended that the fiscal period begin January 1 and end December 31 each year.

As previously stated, the Committee's current fiscal period is June 1 through May 31. The Committee plans on formulating a budget for the twelve-month period beginning June 1, 2003, and submitting it to the USDA for approval prior to that date. The Committee could then begin expending funds in early June for its 2003–2004 promotion and research plans, as well as for administration costs. Any final rule issued as a consequence of this proposed rule would be made effective January 1, 2004. Thus, the Committee would meet after this proposed change is issued as a final rule, but prior to January 1, 2004, to reformulate and resubmit a new budget for USDA approval for the new fiscal period beginning January 1, 2004, and ending December 31, 2004.

As conforming changes to the proposed fiscal period change, this rule would also update language in § 956.142, Interest charges, and § 956.180, Reports by removing the words "of each fiscal period" wherever they appear.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 21 handlers of Walla Walla sweet onions subject to regulation under the order and approximately 37 Walla Walla sweet onion producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

The Committee estimates that in 2002, 611,955 50-pound units of Walla Walla sweet onions were marketed at an average FOB price of about $9.00 per unit. Thus the total industry value at shipping point was about $5,507,595. Thus, a majority of handlers and producers of Walla Walla sweet onions may be classified as small entities.

This proposal would change the current fiscal period from June 1 through May 31 to January 1 through December 31. The current fiscal period has been in place since the marketing order's inception in 1995. Because of advance planning needed for marketing promotion projects, including paid advertising, the Committee now develops its budget of expenditures before June 1, but delays actual expenditures until that date. This has made it more difficult for the Committee to coordinate the timing of marketing promotion activities with the short harvest and marketing season for Walla Walla sweet onions—mid-June into September. The Committee believes that better timing of marketing promotion and marketing would result with a January 1 through December 31 fiscal period and improve the distribution and consumption of Walla Walla sweet onions.

Section 956.13 of the order defines "fiscal period" and provides the authority by which this recommended change is being proposed. This rule is a change to Committee operations which would not impose any new requirements or costs on Walla Walla sweet onion handlers or producers. It could, on the other hand, simplify the business operations within the Walla Walla sweet onion industry by putting the order's fiscal period on the same basis as that of normal business recordkeeping practices.

The Committee discussed the alternative of leaving the fiscal period as it presently exists, but unanimously concluded that this change, as recommended, would improve program administration.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large Walla Walla sweet onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The Committee's meeting was widely publicized throughout the Walla Walla sweet onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the December 17, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 956 is proposed to be amended as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 956.113 is added to subpart "Rules and Regulations" to read as follows:

§ 956.113 Fiscal period.

Pursuant to § 956.13, *fiscal period* shall mean the period beginning January 1 and ending December 31 of each year.

§ 956.142 [Amended]

3. Section 956.142 is amended by removing the words "of each fiscal period" in the second sentence.

§ 956.180 [Amended]

4. Section 956.180 is amended by removing the words "of each fiscal period" in the introductory text.

Dated: April 3, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–8648 Filed 4–8–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 105 and 115

[Docket No. 02–107–1]

Viruses, Serums, Toxins, and Analogous Products; Suspension, Revocation, or Termination of Biological Licenses or Permits; Inspections

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Virus-Serum-Toxin Act regulations to specify the actions that would have to be taken by veterinary biologics licensees and permittees upon their receipt of notice from the Animal and Plant Health Inspection Service (APHIS) to stop the preparation, distribution, sale, barter, exchange, shipment, or importation of any worthless, contaminated, dangerous, harmful, or unsatisfactory veterinary biological product. After receiving notice from APHIS to stop the preparation, distribution, sale, barter, exchange, shipment, or importation of any worthless, contaminated, dangerous, harmful, or unsatisfactory veterinary biological product, licensees and permittees would be required to notify wholesalers, dealers, jobbers, or other persons known to have veterinary biological products in their possession to stop the preparation, distribution, sale, barter, exchange, shipment, or importation of any worthless, contaminated, dangerous, harmful, or unsatisfactory veterinary biological product. In addition, licensees and permittees would be required to submit a complete accounting of the inventory of affected serials or subserials of biological products in the current possession of each person involved in the distribution or sale of the product, and provide written documentation concerning the required notifications as directed by the Administrator of APHIS. These proposed changes are necessary in order to clarify the regulations, provide for the most expeditious means of notification, and to prevent the risk that any worthless, contaminated, dangerous, harmful, or unsatisfactory veterinary biological product may cause harm to animals, the public health, or to the environment.

DATES: We will consider all comments that we receive on or before June 9, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–107–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–107–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–107–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related

information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief of Operational Support, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

Parts 105 and 115 of the Virus-Serum-Toxin Act regulations (9 CFR parts 105 and 115, referred to below as the regulations) provide, respectively, for the suspension, revocation, or termination of biological licenses or permits and for the inspection of veterinary biologics establishments and veterinary biological products. These regulations also contain provisions that address the actions to be taken by veterinary biologics licensees, permittees, jobbers, wholesalers, dealers, or other persons known to have veterinary biologics in their possession, upon their receipt of notice from the Animal and Plant Health Inspection Service (APHIS) to stop the preparation, distribution, sale, barter, exchange, shipment, or importation of worthless, contaminated, dangerous, harmful, or unsatisfactory veterinary biological product.

Section 105.3 of the regulations provides, in relevant part, that APHIS may notify a licensee or permittee to stop the preparation, sale, barter, exchange, shipment, or importation of any veterinary biological product if at any time it appears that such product may be dangerous in the treatment of domestic animals, or found to be unsatisfactory according to applicable Standard Requirements.

Similarly, § 115.2 provides, in relevant part, that if as a result of any inspection it appears that any veterinary biological product is worthless, contaminated, dangerous, or harmful, the Secretary will give notice of that finding to the manufacturer or importer and to any jobbers, wholesalers, dealers or other persons known to have any of such product in their possession. After receiving such notice, no person may sell, barter, or exchange any such product in any place under the jurisdiction of the United States or ship or deliver for shipment any such product in or from any State, Territory, or the District of Columbia.

Typically, before the stop distribution and sale notifications provided for by §§ 105.3 and 115.2 can be given, APHIS must obtain from the licensees and permittees (manufacturers or importers) the names and addresses of the wholesalers, dealers, jobbers, consignees, or other persons known to have any of the product in their possession. Any delay in obtaining the names and addresses of persons in possession of biological products subject to a stop distribution and sale action increases the risk that such product may cause harm to animals, the public health, or to the environment. APHIS believes that it is prudent to use the most expeditious means available to notify wholesalers, dealers, jobbers, consignees, or other persons concerning the stop distribution and sale action. Therefore, this proposed rule would amend §§ 105.3 and 115.2 to specify actions that veterinary biologics licensees and permittees would have to take when APHIS issues a stop distribution and sale notice concerning a veterinary biological product.

Specifically, APHIS is proposing to amend the regulations to provide that APHIS would contact veterinary biologics licensees and permittees concerning stop distribution and sale actions against any worthless, contaminated, dangerous, harmful, or unsatisfactory veterinary biological product. After being contacted by APHIS, veterinary biologics licensees or permittees would be required to immediately provide stop distribution and sale notification to wholesalers, jobbers, dealers, consignees or other persons in their respective distribution systems known to be in possession of such product. APHIS believes that having licensees or permittees provide stop distribution and sale notification to wholesalers, jobbers, dealers, consignees, or other persons in their respective distribution systems known to be in possession of any worthless, contaminated, dangerous, harmful, or unsatisfactory veterinary biological product is the most expeditious means of notification. Licensees and permittees have information readily available to them concerning the products that have been shipped to wholesalers, jobbers, dealers, consignees, or other persons in their respective distribution systems.

In addition, veterinary biologics licensees and permittees also would be required to document, in writing, all communications with wholesalers, dealers, jobbers, consignees, or other persons concerning the stop distribution and sale action; obtain a complete accounting of the inventory of such product in the possession of such wholesalers, jobbers, dealers, and other persons; and, as directed by the Administrator, submit records of all actions taken to ensure compliance with the stop distribution and sale notification.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

APHIS issues stop distribution and sale actions if information is received indicating that a serial or subserial of a licensed veterinary biological product is worthless, contaminated, dangerous, harmful, or unsatisfactory. Such information may come from inspection findings, an investigation, an adverse event report, or tests conducted by the Center for Veterinary Biologics Laboratory or by the licensee or permittee. Stop distribution and sale actions may be necessary to prevent risk to the health of animals, to the public health or well-being, or to the environment. Currently, the regulations in §§ 105.3 and 115.2 provide that APHIS may issue a notice requiring veterinary biologics licensees and permittees to stop distribution and sale if a product is found to be unsatisfactory according to applicable standard requirements or if it appears that such product is worthless, contaminated, dangerous, or harmful.

APHIS is proposing to amend the regulations to provide that APHIS would contact veterinary biologics licensees and permittees concerning stop distribution and sale actions against any worthless, contaminated, dangerous, harmful, or unsatisfactory veterinary biological product. After being contacted by APHIS, veterinary biologics licensees or permittees would be required to immediately provide stop distribution and sale notification to wholesalers, jobbers, dealers, consignees, or other persons in their respective distribution systems known to be in possession of such product. APHIS believes that having licensees or permittees provide stop distribution and sale notification to wholesalers, jobbers, dealers, consignees, or other persons in their respective distribution systems known to be in possession of any worthless, contaminated, dangerous, harmful, or unsatisfactory veterinary biological product is the most expeditious means of notification. Licensees and permittees have information readily available to them concerning which wholesalers, jobbers, dealers, consignees, or other persons in their respective distribution systems are known to be in possession of products.

In addition, veterinary biologics licensees and permittees also would be required to document, in writing, all communications with wholesalers, dealers, jobbers, consignees, or other persons concerning the stop distribution and sale action; obtain a complete accounting of the inventory of such product in the possession of such wholesalers, jobbers, dealers, and other persons; and, as directed by the Administrator, submit records of all actions taken to ensure compliance with the stop distribution and sale notification.

The effect of this action would be to clarify the regulations, provide for the most expeditious means of notification, and to prevent the risk that any worthless, contaminated, dangerous, harmful, or unsatisfactory veterinary biological product may cause harm to animals, the public health, or to the environment.

This proposed rule would affect all veterinary biologics licensees and permittees. Currently, there are approximately 135 veterinary biological establishments, including permittees. According to the standards of the Small Business Administration, most veterinary biological establishments would be classified as small entities.

Section 116.2 of the regulations currently requires licensees and permittees to maintain records of the quantity and location of each biological product that is prepared, that is in storage, and that is in distribution channels. In addition, each licensee, distributor, and permittee must maintain detailed disposition records showing the sale, shipment, or other disposition of any biological products that they have handled. Given these existing recordkeeping requirements, APHIS believes that the proposed requirement that licensees and permittees submit to APHIS a complete accounting of the inventory of an affected serial or subserial of a biological product in the current possession of each person involved in the distribution or sale of the product should not impose any undue recordkeeping burden. APHIS also believes that the current requirement for the maintenance of detailed disposition records would enable licensees and permittees to notify persons in their distribution system concerning stop distribution and sale notifications issued by APHIS without having to incur any undue recordkeeping burden.

APHIS anticipates that the only economic effects that would be associated with this proposed rule would be related to the costs incurred by licensees and permittees in connection with the notification process itself. This proposed rule does not specify the means by which licensees and permittees are required to give notification, only that the notification be made by them immediately upon receipt of the stop distribution and sale notification from APHIS. APHIS expects that most licensees and permittees would use electronic mail or facsimile to notify wholesalers, jobbers, dealers, consignees, or other persons in their respective distribution systems known to be in possession of any biological product for which APHIS has issued a stop distribution and sale action. Both of these methods are inexpensive, so the actual transmittal costs associated with the proposed notification requirement would be minimal.

Licensees and permittees could retain electronic mail return receipts or facsimile confirmation sheets to address the proposed requirement for documentation that notifications have been made, both of which can be produced automatically by the sender's electronic mail system or facsimile machine. There would be some personnel costs associated with producing and addressing the notification document that would have to be sent out, but the existing requirement for the maintenance of detailed disposition records discussed in the previous paragraph should serve to minimize, to the extent possible, the time spent engaging in those activities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program is listed in the category of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. The Virus-Serum-Toxin Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–107–1. Please send a copy of your comments to: (1) Docket No. 02–107–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

In this document, we are proposing to amend the regulations in §§ 105.3 and 115.2 to specify actions that veterinary biologics licensees and or permittees would have to take when APHIS issues a stop distribution and sale notice concerning a veterinary biological product. This process would entail the use of two new information collection activities.

First, after being contacted by APHIS, veterinary biologics licensees or permittees would be required to immediately provide stop distribution and sale notification to wholesalers, jobbers, dealers, consignees, or other persons in their respective distribution systems known to be in possession of such product.

Second, veterinary biologics licensees and permittees would have to obtain a complete accounting of the inventory of such product in the possession of such wholesalers, jobbers, dealers, and other persons in their distribution system.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the

validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.7666 hours per response.

Respondents: Licensees and permittees and wholesalers, dealers, jobbers, consignees, or other persons in their distribution system.

Estimated annual number of respondents: 55.

Estimated annual number of responses per respondent: 1.0909.

Estimated annual number of responses: 60.

Estimated total annual burden on respondents: 106 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

9 CFR Part 105

Animal biologics, Exports, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

9 CFR Part 115

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR parts 105 and 115 as follows:

PART 105—SUSPENSION, REVOCATION, OR TERMINATION OF BIOLOGICAL LICENSES OR PERMITS

1. The authority citation for part 105 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

2. Section 105.3 would be amended by adding a new paragraph (c) to read as set forth below:

105.3 Notices re: worthless, contaminated, dangerous, or harmful biological products.

* * * * *

(c) When notified to stop distribution and sale of a serial or subserial of a veterinary biological product under the provisions of paragraph (a) or (b) of this section, veterinary biologics licensees or permittees shall:

(1) Stop the preparation, distribution, sale, barter, exchange, shipment, or importation of the affected serial(s) or subserial(s) of any veterinary biological product pending further instructions from APHIS.

(2) Immediately send stop distribution and sale notifications to any jobbers, wholesalers, dealers, foreign consignees, or other persons known to have any such veterinary biological product in their possession, which instruct them to stop the preparation, distribution, sale, barter, exchange, shipment, or importation of any such veterinary biological product. All notifications shall be documented in writing by the licensee or permittee.

(3) Account for the quantity of each serial(s) or subserial(s) of any veterinary biological product at each location in the distribution channel.

(4) When required by the Administrator, submit complete and accurate reports of all notifications concerning stop distribution and sale actions to the Animal and Plant Health Inspection Service pursuant to § 116.5 of this subchapter.

PART 115—INSPECTIONS

3. The authority citation for part 115 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

4. Section 115.2 would be revised to read as follows:

§ 115.2 Inspections of biological products.

(a) Any biological product, the container of which bears a United States veterinary license number or a United States veterinary permit number or other mark required by these regulations, may be inspected at any time or place. If, as a result of such inspection, it appears that any such product is worthless, contaminated, dangerous, or harmful, the Secretary shall give notice to stop distribution and sale to the manufacturer or importer and may proceed against such product pursuant to the provisions of part 118 of this subchapter.

(b) When notified to stop distribution and sale of a serial or subserial of a veterinary biological product by the Secretary, veterinary biologics licensees or permittees shall:

(1) Stop the preparation, distribution, sale, barter, exchange, shipment, or importation of the affected serial(s) or subserial(s) of any veterinary biological product pending further instructions from APHIS.

(2) Immediately send stop distribution and sale notifications to any jobbers, wholesalers, dealers, foreign consignees, or other persons known to have any such veterinary biological product in their possession, which instruct them to stop the preparation, distribution, sale, barter, exchange, shipment, or importation of any such veterinary biological product. All notifications shall be documented in writing by the licensee or permittee.

(3) Account for the quantity of each serial(s) or subserial(s) of any veterinary biological product at each location in the distribution channel.

(4) When required by the Administrator, submit complete and accurate reports of all notifications concerning stop distribution and sale actions to the Animal and Plant Health Inspection Service pursuant to § 116.5 of this subchapter.

(c) Unless and until the Secretary shall otherwise direct, no persons so notified shall thereafter sell, barter, or exchange any such product in any place under the jurisdiction of the United States or ship or deliver for shipment any such product in or from any State, Territory, or the District of Columbia. However, failure to receive such notice shall not excuse any person from compliance with the Virus-Serum-Toxin Act.

Done in Washington, DC, this 2nd day of April, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–8599 Filed 4–8–03; 8:45 am]

BILLING CODE 3410–34–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN153–1;FRL–7478–2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to particulate matter (PM) regulations for Richmond Power and Light Company (RPL) of Wayne County, Indiana. On January 31, 2003, Indiana requested that EPA "parallel process" this State Implementation Plan (SIP) revision request, as an amendment to 326 Indiana Administrative Code (IAC) 6–1–14. RPL operates a power plant with two coal-fired boilers. EPA approved revisions to the short-term PM limits for these boilers on April 9, 1996 (61 FR 15704). Indiana is now seeking to revise the long-term (annual) PM limits for RPL to make them consistent with the short-term limits. The new PM limits are 320 tons per year (TPY) for boiler no. 1 and 700 TPY for boiler no. 2. Modeling analyses show that air quality is expected to be maintained.

DATES: The EPA must receive written comments by May 9, 2003.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of Indiana's submittal at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean the EPA.

Table of Contents

I. What is the EPA proposing to approve?
II. What are the proposed changes from the current rule?
III. What is the EPA's analysis of the supporting materials?
IV. What are the environmental effects of these actions?
V. Summary of EPA action.
VI. Statutory and Executive Order Reviews.

I. What Is the EPA Proposing to Approve?

The EPA is proposing, through "parallel processing," to approve revisions to the annual (long-term) PM limits for two boilers at the Richmond Power and Light facility. These revisions to the limits in 326 IAC 6–1–14 make these long-term limits consistent with the short-term limits previously approved by EPA as SIP revisions. The requested new PM limits are 320 TPY for boiler no. 1 and 700 TPY for boiler no. 2.

Parallel processing enables EPA to propose action on a state rule before it becomes final under state law. If the final, adopted state rule is substantially unchanged from the submission on which the proposed rule is based, then EPA may take final action based on its proposal. Significant changes in the rule between the version reviewed and the final, adopted version, may result in a new EPA proposed rule on the adopted rule. Without such significant changes, EPA will proceed with final rulemaking.

II. What Are the Proposed Changes From the Current Rule?

Indiana submitted, as a parallel processing request, revisions to 326 IAC 6–1–14 on January 31, 2003. Indiana revised the long-term PM limits for the two RPL boilers to make them consistent with their short-term limits. For boiler no. 1, the new limit is 320 TPY; for boiler no. 2, the new limit is 700 TPY. The previous limits were 71.6 TPY and 233.3 TPY, respectively. RPL's short-term limits remain at 0.19 pounds per million British Thermal Units (lb/MMBTU) and 0.22 lb/MMBTU, respectively. The combined short-term emissions limit for both boilers stays at 0.22 lb/MMBTU.

III. What Is the EPA's Analysis of the Supporting Materials?

Indiana submitted a PM modeling analysis for RPL on August 8, 1995 as part of the SIP revision request approved by EPA in April 1996. This modeling analysis applies to both the short-term limits approved in 1996 and to the new long-term limits. The maximum modeled annual PM concentration was 42.5 micrograms per meter cubed ($\mu g/m^3$). This is 1.7 $\mu g/m^3$ above the measured background concentration of 40.8 $\mu g/m^3$. The annual National Ambient Air Quality Standard (NAAQS) for PM is 50 $\mu g/m^3$. As the modeled concentration is below the NAAQS, the air quality of Wayne County, Indiana should be protected.

IV. What Are the Environmental Effects of These Actions?

Particulate matter interferes with lung function when inhaled. Exposure to PM can cause heart and lung disease. PM also aggravates asthma and bronchitis. Airborne particulate is the main source of haze that causes a reduction in visibility. It also is deposited on the ground and in the water. This harms the environment by changing the nutrient and chemical balance.

Each boiler is equipped with a control device. A common 325-foot tall stack replaced two 150-foot tall stacks in 1989. Both of these features help reduce PM concentration. Although the proposed new long-term emission limits are an increase over current limits, they are consistent with the short-term limits. The short-term limits should protect against brief, high concentration episodes. The modeling analysis found that with the new limits, the annual PM NAAQS should be maintained. Therefore, the new limits being proposed should protect the air quality of Wayne County, Indiana.

V. Summary of EPA Action

EPA is proposing, through parallel processing, to approve revisions to 326 IAC 6–1–14, the PM emission limits for Wayne County, Indiana. These revisions change the long-term (annual) PM emission limits for both boilers at the RPL facility to make them consistent with short-term limits for these sources. EPA approved revisions to the short-term limits for RPL on April 9, 1996. The PM modeling analysis show concentrations below the NAAQS level, demonstrating that the air quality of Wayne County, Indiana should be protected.

VI. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 1, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–8538 Filed 4–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7478–9]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also "the Agency" in this preamble) is proposing to grant final authorization to the State of Oklahoma Department of Environmental Quality (ODEQ) for its hazardous waste program revisions, specifically, revisions needed to meet the Resource Conservation and Recovery Act (RCRA), Cluster X which contains Federal rules promulgated from July 1, 1999, to June 30, 2000. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before May 9, 2003.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Oklahoma during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444; or Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: March 27, 2003.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 03–8668 Filed 4–8–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 032803B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit (EFP)

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS).

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow three vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would exempt three vessels from the minimum mesh size requirements for the Gulf of Maine (GOM) Regulated Mesh Area (RMA); regulations pertaining to the GOM Rolling Closure Areas III and V; days-at-sea (DAS) restrictions; and minimum fish size requirements. The experiment proposes to conduct a study to target cod and other groundfish species using modified bottom trawl gear to assess the effectiveness of square and hexagonal mesh escape windows, both with and without visual stimuli, in reducing the bycatch of non-target and undersized fish in the GOM groundfish fishery. The EFP would allow these exemptions for three commercial fishing vessels, for not more than 24 days of sea trials. All experimental work would be monitored at sea by observers trained to NMFS standards as part of this Cooperative Research Partners Initiative-funded project. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before April 24, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on the Cooperative Research Partners Initiative Escape Window and Visual Stimuli Selectivity Study." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fisheries Management Specialist, 978–281–9141.

SUPPLEMENTARY INFORMATION: A completed application for an EFP was submitted by Dr. Christopher Glass as part of a Cooperative Research Partners Initiative-funded project on January 28, 2003. The EFP would exempt three federally permitted commercial fishing vessels from the following NE multispecies provisions: The minimum mesh size requirements for the GOM RMA at 50 CFR 648.80(a)(3)(i); regulations pertaining to the GOM Rolling Closure Areas III and V at 50 CFR 648.81(g)(1)(iii) and (v), respectively; NE multispecies DAS restrictions at 50 CFR 648.82(a); and minimum fish size requirements specified at 50 CFR 648.83(a)(1).

The EFP would allow the commercial vessels to conduct the proposed study using modified bottom trawl gear. A total of four experimental codend configurations would be developed, including: (1) A codend made of 6.5–inch (16.51–cm) diamond mesh preceded by a 7–inch (17.78–cm) square mesh escape window in the extension; (2) a codend made of 6.5–inch (16.51–cm) diamond mesh preceded by a 7–inch (17.78–cm) hexagonal mesh escape window in the extension; (3) a codend made of 6.5–inch (16.51–cm) diamond mesh preceded by a 7–inch (17.78–cm) square mesh escape window in the extension, with additional visual stimulus by a black panel wrapped around the codend between the escape window and the codend; (4) a codend made of 6.5–inch (16.51–cm) diamond mesh preceded by a 7–inch (17.78–cm) hexagonal mesh escape window in the extension, with additional visual stimulus by a black panel wrapped around the codend between the escape window and the codend. Two conventional nets of 6.5–inch (16.51–cm) diamond mesh and 6.5–inch (16.51–cm) square mesh codends would be used to compare the effectiveness of the experimental extension configurations. For each of the four experimental codend configurations, a total of 30 valid tows would be conducted, while a total of 18 valid tows would be conducted for each of the two control codends, for a project total of approximately 156 tows of 20 minutes each in duration. Each of the three participating vessels would test all six of the codend configurations, concurrently, in different portions of the intended sampling area. Sampling would occur during two seasons (spring and fall), with operations taking place in May and October 2003, respectively.

A total of 24 DAS would be used during the course of this research. Each vessel would conduct 4–day fishing trips during each of the two seasons to carry out the sea trials. Vessels would target the following species: Atlantic cod, haddock, yellowtail flounder, winter flounder, summer flounder, and American plaice. The incidental catch is expected to be comprised mainly of skate, smooth and spiny dogfish, sculpin, sea raven, and sea robin.

The applicant requested that the research be conducted in the GOM in an area including 30–minute statistical squares 124, 125, 132, and 133; *i.e.*, between 42°00' and 43°00' N. lat. and between 70°00' and 71°00' W. long. All fish retained by the experimental nets would be weighed and measured as quickly as possible. Undersized fish would be returned to the sea as quickly as possible after measurement, while legal-sized fish would be landed and sold to offset vessel costs.

The catches of each codend configuration would be compared and analyzed to assess the effectiveness of

the escape windows, visual stimuli, and codend mesh shapes (diamond versus square mesh). Length frequency distributions and catch rates would be compared for each species by vessel, area, and experimental net configuration. Selectivity parameters would be developed for each species, including a determination of the 50–percent retention length, the selection factor, and the selection range for each species targeted in this study.

The participating vessels would be required to report all landings in their Vessel Trip Reports. The data collection activities aboard the participating vessel would be observers trained to NMFS standards to ensure compliance with the experimental fishery objectives. The EFP would also contain a provision that the Regional Administrator has the authority to reconsider the continuation of the experimental fishery on a month-to-month basis, based upon a monthly status report outlining total catch and bycatch submitted by the applicant, and would authorize the Regional Administrator to terminate the experimental fishery at any time, at her discretion.

Based on the results of the EFPs, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 3, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8685 Filed 4–8–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 68

Wednesday, April 9, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–033–1]

National Wildlife Services Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, we are giving notice of a meeting of the National Wildlife Services Advisory Committee.

DATES: The meeting will be held on June 24, 2003, from 8 a.m. to 5 p.m. and June 25, 2003, from 8 a.m. to noon.

ADDRESSES: The meeting will be held at the USDA Center at Riverside, 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: Mrs. Joanne Garrett, Director, Operational Support Staff, WS, APHIS, 4700 River Road, Unit 87, Riverdale, MD 20737–1234, (301) 734–7921.

SUPPLEMENTARY INFORMATION: The National Wildlife Services Advisory Committee (Committee) advises the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Wildlife Services (WS) program. The Committee also serves as a public forum enabling those affected by the WS program to have a voice in the program's policies.

The meeting will focus on operational and research activities and will be open to the public. Due to time constraints, the public will not be able to participate in the Committee's discussions. However, written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to Mrs. Joanne Garrett at the address listed under **FOR FURTHER INFORMATION CONTACT,** or may be filed at the meeting. Please refer to Docket No. 03–033–1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. App. II).

Done in Washington, DC, this 2nd day of April, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–8600 Filed 4–8–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–035–1]

Determination of Regulatory Review Period for Purposes of Patent Extension; Poulvac® ST Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has determined the regulatory review period for Poulvac® ST Vaccine and is publishing this notice of that determination as required by law. We have made this determination in response to the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that veterinary biologic.

DATES: We will consider all requests for revision of the regulatory review period determination that we receive on or before May 9, 2003. We will consider all due diligence petitions that we receive on or before October 6, 2003.

ADDRESSES: You may submit revision requests and due diligence petitions by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your request or petition (an original and three copies) to: Docket No. 03–035–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your request or petition refers to Docket No. 03–035–1. If you use e-mail, address your request or petition to *regulations@aphis.usda.gov*. Your request or petition must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–035–1" on the subject line.

You may request a copy of the regulatory review period determination by writing to Dr. Patricia L. Foley, USDA, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010–8197, or by calling (515) 232–5785. Please refer to the docket number, date, and complete title of this notice when requesting copies.

A copy of the regulatory review period determination and any revision requests or due diligence petitions that we receive on this determination are available for public inspection in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245; fax (301) 734–4314. For information regarding the regulatory review period determination, contact Dr. Patricia L. Foley, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010–8197; phone (515) 232–5785.

SUPPLEMENTARY INFORMATION: The provisions of 35 U.S.C. 156, "Extension of patent term," provide, generally, that a patent for a product may be extended for a period of up to 5 years as long as the patent claims a product that, among other things, was subject to a regulatory review period before its commercial marketing or use. (The term "product" is defined in that section as "a drug product" [which includes veterinary

biological products] or "any medical device, food additive, or color additive subject to regulation under the Federal Food, Drug, and Cosmetic Act.") A product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

The regulations in 9 CFR part 124, "Patent Term Restoration" (referred to below as the regulations), set forth procedures and requirements for the Animal and Plant Health Inspection Service's (APHIS) review of applications for the extension of the term of certain patents for veterinary biological products pursuant to 35 U.S.C. 156. As identified in the regulations, the responsibilities of APHIS include:

- Assisting Patent and Trademark Office of the U.S. Department of Commerce in determining eligibility for patent term restoration;
- Determining the length of a product's regulatory review period;
- If petitioned, reviewing and ruling on due diligence challenges to APHIS's regulatory review period determinations; and
- Conducting hearings to review initial APHIS findings on due diligence challenges.

The regulations are designed to be used in conjunction with regulations issued by the Patent and Trademark Office concerning patent term extension, which may be found at 37 CFR 1.710 through 1.791.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For veterinary biologics, the testing phase begins on the date the authorization to prepare an experimental veterinary biologic became effective and runs until the approval phase begins. The approval phase begins on the date an application for a license was initially submitted for approval and ends on the date such license was issued. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award, APHIS' determination of the length of a regulatory review period for a veterinary biologic will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(5)(B).

APHIS recently licensed for production and marketing the veterinary biologic Poulvac® ST Vaccine. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Poulvac® ST Vaccine (U.S. Patent No. 4,735,801) from the Board of Trustees of Leland Stanford Junior University, and the Patent and Trademark Office requested APHIS' assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 22, 2003, APHIS advised the Patent and Trademark Office that this veterinary biologic had undergone a regulatory review period and that the approval of Poulvac® ST Vaccine (Salmonella Typhimurium Vaccine, Live Virus) represented the first permitted commercial licensing or use of the product. Subsequently, the Patent and Trademark Office requested that APHIS determine the product's regulatory review period.

APHIS has determined that the applicable regulatory review period for Poulvac® ST Vaccine is 1,695 days. Of this time, 128 days occurred during the testing phase of the regulatory review period, and 1,567 days occurred during the approval phase. These periods were derived from the following dates:

1. *The date the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act (21 U.S.C. 151 et seq.) became effective:* September 26, 1996. APHIS has verified the applicant's claim that the test was begun on September 26, 1996.

2. *The date the application for a license was initially submitted for approval under the Virus-Serum-Toxin Act:* January 31, 1997. APHIS has verified the applicant's claim that the application was initially submitted on January 31, 1997.

3. *The date the license was issued:* May 16, 2001. APHIS has verified the applicant's claim that the license for the commercial marketing of the vaccine was issued on May 16, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for for patent extension, this applicant seeks 1,695 days of patent term extension.

Section 124.22 of the regulations provides that any interested person may request a revision of the regulatory review period determination within 30 days of the date of this notice (see **DATES** above). The request must specify the following:

- The identity of the product;
- The identity of the applicant for patent term restoration;
- The docket number of this notice; and
- The basis for the request for revision, including any documentary evidence.

Further, under § 124.30 of the regulations, any interested person may file a petition with APHIS, no later than 180 days after the date of this notice (see **DATES** above), alleging that a license applicant did not act with due diligence in seeking APHIS approval of the product during the regulatory review period. The filing, format, and content of a petition must be as described in the regulations in "Subpart D-Due Diligence Petitions" (§§ 124.30 through 124.33).

Authority: 35 U.S.C. 156.

Done in Washington, DC, this 2nd day of April, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–8601 Filed 4–8–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension for a currently approved information collection in support of the Regulations—Financing Commercial Sales of Agricultural Commodities under Title I, Public Law 480; Request for Vessel Approval, Form CCC–105 and Request for Vessel Approval Form CCC–105 (cotton); and Declaration of Sale, Form FAS–359.

DATES: Comments on this notice must be received by June 9, 2003, to be assured of consideration.

FOR FURTHER INFORMATION OR COMMENTS CONTACT: William Hawkins, Director, Program Administration Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1031, Washington, DC 20250–1031, telephone (202) 720–3241.

SUPPLEMENTARY INFORMATION:

Title: Regulations—Financing Commercial Sales of Agricultural Commodities under Title I, Pub. L. 480 (0551–0005); Request for Vessel Approval, Form CCC–105 (0551–0008); and Request for Vessel Approval Form CCC–105 (cotton) and Declaration of Sale, Form FAS–359 (0551–0009).

OMB Numbers: 0551–0005 (Records and Rule Keeping) and 0551–0008 (Request for Vessel Approval Form) and 0551–0009 (Declaration of Sale Form). These will be combined into OMB Number 0551–0005 if this request is approved.

Expiration Date of Approval: August 31, 2003.

Type of Request: Extension and revision of currently approved information collections, with change to combine 0551–0005 (Records and Rule Keeping); 0551–0008 (Request for Vessel Approval) and 0551–0009 (Declaration of Sale Form).

Abstract: Title I of The Agricultural Trade Development and Assistance Act of 1954, as amended, (Pub. L. 83–480) authorizes the CCC to finance the sale and exportation of agricultural commodities on concessional credit terms. Suppliers of commodities and ocean transportation must retain records for 3 years. Prospective commodity suppliers must provide information for the Department to determine eligibility. Commodity suppliers must report details of sales for price approval and submit to USDA, for approval, information on any amendments to the sales. Shipping agents nominated by importing countries must submit information to allow identification of possible conflicts of interest. Shipping agents or embassies submit pertinent shipping information on Form CCC–105 to facilitate approval by CCC of shipping arrangements. This approval is necessary to assure compliance with cargo preference requirements at the lowest cost to CCC. Agents submit this document in order that USDA can generate the CCC–106, a necessary payment document. Ocean carriers then receive payment for ocean freight. Commodity suppliers must report details of sales for price approval. Form FAS–359, "Declaration of Sale," is the written record, signed by the commodity supplier, of the terms of sale as reported by telephone. When signed by the General Sales Manager, it provides evidence of the USDA price approval required for CCC financing.

The information collected is used by CCC to manage, plan, evaluate and account for government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: The public reporting burden for these collections is estimated to average 8 hours per Record Keeping, 5 hours per Vessel Approval and 2 hours per Declaration of Sale response.

Respondents: Suppliers of commodities and ocean transportation; prospective commodity suppliers; shipping agents; and business or other-for-profit.

Estimated Number of Respondents: 45 per annum.

Estimated Total Annual Burden of Respondents: 565.00 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Requests for Comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to William Hawkins, Director, Program Administration Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1031, Washington, DC 20250–1031, or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD). All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on March 27, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–8598 Filed 4–8–03; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation Information Collection; Payment Eligibility and Payment Limitation Determinations Under the Noninsured Crop Disaster Assistance Program

AGENCIES: Farm Service Agency and the Commodity Credit Corporation, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) and the Commodity Credit Corporation (CCC), is seeking comments from all interested individuals and organizations on a currently approved information collection with revision. This information collection is used to support payment eligibility and payment limitation determinations for a multiple programs including the Conservation Reserve Program, the Price Support Programs, and the Direct and Counter-Cyclical Program authorized by the Farm Security and Rural Investment Act of 2002, and the Noninsured Crop Disaster Assistance Program.

DATES: Comments on this notice must be received on or before June 9, 2003, to be assured consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Farm Service Agency, Attn: James Baxa, Agricultural Program Specialist, Production, Emergencies, and Compliance Division, Farms Service Agency, United States Department of Agriculture, STOP 0517, Room 4752, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–0517. Comments also may be submitted via facsimile to (202) 720–4941 or by e-mail to *james.baxa@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: James Baxa, Agricultural Program Specialist at (202) 720–4189, or Diane Sharp, Director of Production, Emergencies, and Compliance Division at (202) 720–7641.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Payment Eligibility and Payment Limitation Determinations under the Noninsured Crop Disaster Assistance Program.

OMB Control Number: 0560–0096.

Expiration Date of Approval: March 31, 2003.

Type of Request: Extension of a currently approved information collection with revision.

Abstract: The collection of the information is necessary to determine the eligibility of individuals and entities as defined at 7 CFR part 1400 for payment eligibility and payment limitation in a multiple programs including, but not limited to, the Conservation Reserve Program, the Price Support Programs, the Direct and Counter-Cyclical Program and the Noninsured Corp Disaster Assistance Program. The regulations at 7 CFR part 1400, as amended, provide for an "actively engaged in farming" and "person" determinations to be made for

individuals or entities, with respect to a particular farming operation, in order to determine their payment eligibility and payment limitations under the multiple programs. Forms CCC–502A, CCC–502B, CCC–502C, CCC–502D, CCC–502EZ, CCC–501A and CCC–501B are still used by the respondents. The common elements to collect information from individuals or entities in the forms are names, as well as farming interest members, addresses, social security/employee identification numbers, location of the lands, percentage of leased or owned equipments, citizenship types, estimated farming labor hours, estimated percentage of farming management, and designated names in receiving payments. The respondents are allowed to complete and submit the forms electronically to the appropriate FSA County-based office that receives and makes the payment eligibility determinations. Information collection under Titles I and II of the Farm Security and Rural Investment Act of 2002 are exempted from the Paperwork Reduction Act of 1995, including the Conservation Reserve Program, the Price Support Programs, and the Direct and Counter-Cyclical Program. Only the Noninsured Crop Disaster Assistance Program is not exempt from the requirement of Paperwork Reduction Act, so it is necessary to describe the information collection in this Notice. If the information is not collected from the respondents, the FSA would not able to administer the payment programs properly to comply with the regulations.

Estimate of Burden: Average 56 minutes per response.

Type of Respondents: Producers who, as owner, landlord, tenant, or sharecropper, are involved in the farming operations and who would seek benefits under the Noninsured Corp Disaster Assistance Program.

Estimated Annual Number of Respondents: 123,000.

Estimated Number of Responses per Respondent: One per respondent.

Estimated Total Burden Hours: 114,870.

Comment is invited on: (1) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in responses to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed in Washington, DC, on April 3, 2003.

James R. Little,

Administrator, Farms Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–8722 Filed 4–8–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notices by the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by the ranger districts, forests and regional office of the Intermountain Region to publish legal notices required under 36 CFR parts 215 and 217. The intended effect of this action is to inform interested members of the public which newspapers the Forest Service will use to publish notices of proposed actions and notices of decision. This will provide the public with constructive notice of Forest Service proposals and decisions, provide information on the procedures to comment or appeal, and establish the date that the Forest Service will use to determine if comments or appeals were timely.

DATES: Publication of legal notices in the listed newspapers will begin on or after April 1, 2003. The list of newspapers will remain in effect until October 1, 2003, when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Priscilla McLain, Regional Appeals Coordinator, Intermountain Region, 324 25th Street, Ogden, UT 84401, and phone (801) 625–5146.

SUPPLEMENTARY INFORMATION: The administrative procedures at 36 CFR parts 215 and 217 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR parts 215 and 217. In general, the notices will identify: the decision or project, by title or subject matter; the name and title of the official making the decision; how to obtain additional information; and where and how to file comments or appeals. The date the notice is published will be used to establish the official date for the beginning of the comment or appeal period. The newspapers to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho:
The Idaho Statesman, Boise, Idaho.
For decisions made by the Regional Forester affecting National Forests in Nevada:
The Reno Gazette-Journal, Reno, Nevada.
For decisions made by the Regional Forester affecting National Forests in Wyoming:
Casper Star-Tribune, Casper, Wyoming.
For decisions made by the Regional Forester affecting National Forests in Utah:
Salt Lake Tribune, Salt Lake City, Utah.
For the decisions made by the Regional Forester that affect all National Forests in the Intermountain Region.
Salt Lake Tribune, Salt Lake City, Utah.

Ashley National Forest

Ashley Forest Supervisor decisions:
Vernal Express, Vernal, Utah.
Duchesne District Ranger decisions:
Uinta Basin Standard, Roosevelt, Utah.
Flaming Gorge District Ranger for decisions affecting Wyoming:
Casper Star Tribune, Casper, Wyoming.
Flaming Gorge District Ranger for decisions affecting Utah:
Vernal Express, Vernal, Utah.
Roosevelt District Ranger decisions:
Uinta Basin Standard, Roosevelt, Utah.
Vernal District Ranger decisions:
Vernal Express, Vernal, Utah.

Boise National Forest

Boise Forest Supervisor decisions:
The Idaho Statesman, Boise, Idaho.
Cascade District Ranger decisions:
The Long Valley Advocate, Cascade, Idaho.
Emmett District Ranger decisions:
The Messenger-Index, Emmett, Idaho.
Idaho City District Ranger decisions:
The Idaho Statesman, Boise, Idaho.

Lowman District Ranger decisions:
The Idaho World, Garden Valley, Idaho.
Mountain Home District Ranger decisions:
The Idaho Statesman, Boise, Idaho.

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions:
Casper Star-Tribune, Casper, Wyoming.
Big Piney District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.
Buffalo District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.
Greys River District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.
Jackson District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.
Kemmerer District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.
Pinedale District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.

Caribou-Targhee National Forest

Caribou-Targhee Forest Supervisor decisions for the Caribou portion:
Idaho State Journal, Pocatello, Idaho.
Caribou-Targhee Forest Supervisor decisions for the Targhee portion:
The Post Register, Idaho Falls, Idaho.
Ashton District Ranger decisions:
The Post Register, Idaho Falls, Idaho.
Dubois District Ranger decisions:
The Post Register, Idaho Falls, Idaho.
Island Park District Ranger decisions:
The Post Register, Idaho Falls, Idaho.
Montpelier District Ranger decisions:
Idaho State Journal, Pocatello, Idaho.
Palisades District Ranger decisions:
The Post Register, Idaho Falls, Idaho.
Soda Springs District Ranger decisions:
Idaho State Journal, Pocatello, Idaho.
Teton Basin District Ranger decisions:
The Post Register, Idaho Falls, Idaho.
Westside District Ranger decisions:
Idaho State Journal, Pocatello, Idaho.

Dixie National Forest

Dixie Forest Supervisor decisions:
The Daily Spectrum, St. George, Utah.
Cedar City District Ranger decisions:
The Daily Spectrum, St. George, Utah.
Escalante District Ranger decisions:
The Daily Spectrum, St. George, Utah.
Pine Valley District Ranger decisions:
The Daily Spectrum, St. George, Utah.
Powell District Ranger decisions:
The Daily Spectrum, St. George, Utah.
Teasdale District Ranger decisions:
The Daily Spectrum, St. George, Utah.

Fishlake National Forest

Fishlake Forest Supervisor decisions:
Richard Reaper, Richfield, Utah.
Beaver District Ranger decisions:
Richfield Reaper, Richfield, Utah.
Fillmore District Ranger decisions:
Richfield Reaper, Richfield, Utah.
Loa District Ranger decisions:
Richfield Reaper, Richfield, Utah.
Richfield District Ranger decisions:
Richfield Reaper, Richfield, Utah.

Humboldt-Toiyabe National Forests

Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion:
Elko Daily Free Press, Elko, Nevada.
Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion:
Reno Gazette-Journal, Reno, Nevada.
Austin District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada.
Bridgeport District Ranger decisions:
The Review-Herald, Mammoth Lakes, California.
Carson District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada.
Ely District Ranger decisions:
Ely Daily Times, Ely, Nevada.
Jarbidge District Ranger decisions:
Elko Daily Free Press, Elko, Nevada.
Mountain City District Ranger decisions:
Elko Daily Free Press, Elko, Nevada.
Ruby Mountains District Ranger decisions:
Elko Daily Free Press, Elko, Nevada.
Santa Rosa District Ranger decisions:
Humboldt Sun, Winnemucca, Nevada.
Spring Mountains National Recreation Area District Ranger decisions:
Las Vegas Review Journal, Las Vegas, Nevada.
Tonopah District Ranger decisions:
Tonopah Times Bonanza-Goldfield News, Tonopah, Nevada.

Manti-Lasal National Forest

Manti-LaSal Forest Supervisor decisions:
Sun Advocate, Price, Utah.
Ferron District Ranger decisions:
Emery County Progress, Castle Dale, Utah.
Moab District Ranger decisions:
The Times Independent, Moab, Utah.
Monticello District Ranger decisions:
The San Juan Record, Monticello, Utah.
Price District Ranger decisions:
Sun Advocate, Price, Utah.
Sanpete District Ranger decisions:
The Pyramid, Mt. Pleasant, Utah.

Payette National Forest

Payette Forest Supervisor decisions:
Idaho Statesman, Boise, Idaho.
Council District Ranger decisions:
Adam County Record, Council, Idaho.
Krassel District Ranger decisions:
Star News, McCall, Idaho.
McCall District Ranger decisions:
Star News, McCall, Idaho.
New Meadows, District Ranger decisions:
Star News, McCall, Idaho.
Weiser District Ranger decisions:
Signal American, Weiser, Idaho.

Salmon-Challis National Forests

Salmon-Challis Forest Supervisor decisions for the Salmon portion:
The Recorder-Herald, Salmon, Idaho.
Salmon-Challis Forest Supervisor decisions for the Challis portion:
The Challis Messenger, Challis, Idaho.
Challis District Ranger decisions:
The Challis Messenger, Challis, Idaho.
Leadore District Ranger decisions:
The Recorder-Herald, Salmon, Idaho.
Lost River District Ranger decisions:
The Challis Messenger, Challis, Idaho.
Middle Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho.
North Fork District Ranger decisions:
The Recorder-Herald, Salmon, Idaho.
Salmon/Cobalt District Ranger decisions:
The Recorder-Herald, Salmon, Idaho.
Yankee Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho.

Sawtooth National Forest

Sawtooth Forest Supervisor decisions:
The Times News, Twin Falls, Idaho.
Fairfield District Ranger decisions:
The Times News, Twin Falls, Idaho.
Ketchum District Ranger decisions:
Idaho Mountain Express, Ketchum, Idaho.
Minidoka District Ranger decisions:
The Times News, Twin Falls, Idaho.
Sawtooth National Recreation Area:
Challis Messenger, Challis, Idaho.

Uinta National Forest

Uinta Forest Supervisor decisions:
The Daily Herald, Provo, Utah.
Heber District Ranger decisions:
The Daily Herald, Provo, Utah.
Pleasant Grove District Ranger decisions:
The Daily Herald, Provo, Utah.
Spanish Fork District Ranger decisions:
The Daily Herald, Provo, Utah.

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions:
Salt Lake Tribune, Salt Lake City, Utah.
Evanston District Ranger decisions:
Uinta County Herald, Evanston, Wyoming.
Kamas District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah.
Logan District Ranger decisions:
Logan Herald Journal, Logan, Utah.
Mountain View District Ranger decisions:
Uinta County Herald, Evanston,

Wyoming.
Ogden District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah.
Salt Lake District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah.

Dated: April 3, 2003.
Jack G. Troyer,
Regional Forester.
[FR Doc. 03–8617 Filed 4–8–03; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Bridger-Teton National Forest—Wyoming—Big Piney, Grey River and Jackson Ranger Districts; Sublette and Lincoln Counties, WY; Environmental Impact Statement for Wyoming Range Allotment Complex

AGENCY: Forest Service, USDA.
ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Wyoming Range Allotment Complex (composed of the Corral Creek, Mule Creek, Grizzly Creek, Pickle Pass, Upper Grayback/Phosphate, North Horse, and Prospect Peak domestic sheep allotments) is located in Townships 34, 35, 36 and 37 North, Ranges 114, 115 and 116 West; Sixth Principal Meridian. The majority of the area (65%) is located within Sublette County, with the remainder being in Lincoln County. The complex is located on three districts—Greys River, Jackson, and Big Piney. Big Piney Ranger District administers all the allotments except Pickle Pass, which is administered by the Greys River District.

DATES: Comments concerning the scope of the analysis must be received by May 11, 2003. The draft environmental impact statement is expected July 2003 and the final environmental impact statement is expected September 2003.

ADDRESSES: Send written comments to: District Ranger, Big Piney Ranger District, Box 218, Big Piney, Wyoming 83113. For further information, mail correspondence to *mailroom_r4_bridger_teton@fs.fed.us* and on the subject line put only "Wyoming Range Complex."

FOR FURTHER INFORMATION CONTACT: District Ranger, Big Piney Ranger District, Box 218, Big Piney, Wyoming 83113 or phone (307) 276–3710.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Purpose and Need is to make recommendations on interpretation and site specific application of Forest Plan standards and guidelines to determine whether or not to allow domestic livestock grazing on the allotment complex.

To date, the Forest Service has identified four alternatives:

Alternative 1—Proposed Action

The Forest Service proposes to determine on the allotment complex if livestock grazing of 5 sheep bands will continue to be authorized on the allotment complex. All vacant allotment and allotment boundary changes have been incorporated into the complex through the administrative process as defined in FSH 2209.13—Grazing Permit Administration Handbook, Chapter 90—Rangeland Management Decision Making, Interim Directive No.: 2209.13–2002–4 Section 96—Delineation of Grazing Allotments and Section 98—Allotment Management Changes.

Possible Alternative

Alternative 2—No Action—Continue With the Current Livestock Management

The current management provides for grazing 5 bands of sheep on the allotment complex. All vacant allotment and allotment boundary changes have been incorporated into the complex through the administrative process as defined in FSH 2209.13—grazing permit administration handbook, chapter 90—rangeland management decision making, Interim Directive No.: 2209.13–2002–4 Sections 96—Delineation of Grazing Allotments and section 98—Allotment Management Changes.

Alternative 3—Separation Between Domestic Sheep Grazing Area and the Bighorn Sheep Core Area Boundary—Close Upper Grayback/Phosphate, Pickle Pass, Grizzly Creek and a Portion of Corral Creek Allotments to Domestic Sheep Grazing

This alternative would close the Upper Grayback/Phosphate, Pickle Pass, Grizzly Creek and approximately ⅔ of the Corral Creek allotments to domestic sheep grazing. The remaining area of Corral Creek allotment would be combined with the North Horse Creek Allotment and would remain open to domestic sheep grazing. This alternative provides separation from the bighorn sheep core native herd boundary and would include all the management actions described in the proposed action.

Alternative 4—No Livestock Grazing

No domestic livestock would be allowed to graze on the allotment complex. We are required in 40 CFR 1502.14(d) and Forest Service Handbook 1909.15, 23.1 to consider the No Livestock Grazing alternative in detail and to use it as a "baseline" for comparing the effects of the other alternatives.

Responsible Officials

Greg Clark, District Forest Ranger, Big Piney Ranger District, P.O. Box 218, Big Piney, Wyoming 83113. District Forest Ranger, Greys River Ranger District, P.O. Box 339, Afton, Wyoming 83110 Nancy Hall, District Forest Ranger, Jackson Ranger District, P.O. Box 1689, Jackson, Wyoming 83001.

Nature of Decision To Be Made

The decision, which is based on this analysis, will be decide if livestock will be allowed to graze on the allotment complex, either through the implementation of the proposed action, or an alternative to the proposed action. The decision would include any mitigation measures needed in addition to those prescribed in the Forest Plan.

Scoping Process

The Forest Service is seeking information, comments, and assistance from individuals, organizations, tribal governments, and federal, state, and local agencies interested in or affected by this project. Comments submitted on the 1999 scoping effort, comments on the Environmental Assessment released in December of 2002, previous field trips, and any new comments will be used to prepare the Draft Environmental Impact Statement (DEIS). Public participation will be solicited by notifying in person and/or by mail known interested and affected publics. News releases will be used to give the public general notice. Public participation activities would include requests for written comments. The first formal opportunity to comment is to respond to this notice of intent, which initiates the scoping process (40 CFR 1501.7). Scoping includes: (1) Identifying potential issues, (2) narrowing the potential issues and identifying significant issues of those that have been covered by prior environmental review, (3) exploring alternatives in addition to No Action, and (4) identifying potential environmental effects of the proposed action and alternatives.

Preliminary Issues

The Forest Service has identified the following potential issues. In addition, through the April 1999 scoping effort and comments received on the Environmental Assessment released in December 2002, issues have been refined. Your input is especially valuable here. It will help us determine which of these merit detailed analysis. It will also help identify additional issues related to the proposed action that may not be listed here.

Issue 1—Effects of grazing on vegetation.

Issue 2—Effects of grazing on watershed condition and function.

Issues 3—Effects of livestock on big horn sheep.

Issue 3—Effects of grazing on the Colorado cutthroat trout habitat.

Comment Requested

This notice of intent initiates the scoping process that guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

The Draft EIS (DEIS) is proposed to be filed with the Environmental Protection Agency (EPA) and to be available for public comment in the Spring of 2003. At that time, the EPA will publish a notice of availability for the DEIS in the **Federal Register.** The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.** The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp* v. *NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: April 3, 2003.
Greg Clark,
District Forest Ranger.
[FR Doc. 03–8630 Filed 4–8–03; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Peninsula Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The Olympic Peninsula Resource Advisory Committee will hold its next meeting on May 7, 2003. The meeting will be held at Washington State University Extension Learning Center, 201 W Pattison, Port Hadlock, Washington. The meeting will begin at 9:30 a.m. and end at approximately 3:30 p.m. Agenda topics are: Introductions; Approval of minutes of previous meeting; Update on Title II and III Projects; Presentation of project proposals; Selection of recommended projects and priorities; Public comments; and Identify next meeting date and location.

All Olympic Peninsula Resource Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, RAC Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd., Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor and Designated Federal Official, at (306) 956–2301.

Dated: April 3, 2003.
Dale Hom,
Forest Supervisor, Olympic National Forest.
[FR Doc. 03–8615 Filed 4–8–03; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Grays Harbor Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The Grays Harbor Resource Advisory Committee will hold its next meeting on May 8, 2003. The meeting will be held at the Aberdeen Timberland Library, 121 E Market Street, Aberdeen, Washington. The meeting will begin at 6:30 p.m. and end at 8:30 p.m. Agenda topics are: Approval of minutes of previous meeting; Update on Title II Projects; Presentation of FY 2003 Title II project proposals; Selection of recommended projects and priorities; Public comments; and Identify next meeting date and location.

All Grays Harbor Resource Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, RAC Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd., Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor and Designated Federal Official, at (306) 956–2301.

Dated: April 3, 2003.
Dale Hom,
Forest Supervisor, Olympic National Forest.
[FR Doc. 03–8616 Filed 4–8–03; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Appointment to the Advisory Committee on Agriculture Statistics

AGENCY: National Agricultural Statistics Service, USDA.
ACTION: Notification of appointment to the Advisory Committee on Agriculture Statistics.

SUMMARY: The Office of the Secretary of Agriculture announces members appointed to the Advisory Committee on Agriculture Statistics, in accordance with the Federal Advisory Committee Act, 5 U.S.C. App.

FOR FURTHER INFORMATION CONTACT: Carol House, Executive Director, Advisory Committee on Agriculture Statistics, U.S. Department of Agriculture, National Agricultural Statistics Service, 1400 Independence Avenue SW., Room 4117 South Building, Washington, DC 20250–2000. Telephone: 202–720–4333, Fax: 202–720–9013, or e-mail: *chouse@nass.usda.gov.*

SUPPLEMENTARY INFORMATION: The appointment for the twenty-five member committee, which has representation across seven categories which covers a broad range of agricultural disciplines and interests, was signed on February 13, 2003. Appointed members, by their associated category are: *Consumer and Information Organizations*—Robert W. Spear, Nobleboro, ME; Ross Ronald Racine, Billings, MT; James Dennis Rieck, Winfield, IL. *Educational Organizations*—Ling-Jung (Kelvin) Koong, Corvallis, OR; Bobby Ray Phills, Tallahassee, FL; Edmund R. Gomez, Alcalde, NM. *Farm Services Organizations*—Jacklyn M. Folsom, Cabot, VT; John Irving Gifford, Rock Island, IL; Jack Charles Mitenbuler, Indianapolis, IN; Ranvir Singh, Marysville, CA; Mark Edward Whalon, East Lansing, MI. *Government Agencies*—Robert Dale Epperson, Fresno, CA. *National Farm Organizations*— Carol Ann Gregg, Grove City, PA; Mark W. Jenner, Mt. Prospect, IL; Sheila Kay Massey, Animas, NM; Ivan W. Wyatt, Cedar Point, KS. *Producer and Marketing Organizations*—Mark Dale Lange, Cordova, TN; Andrew William LaVigne, Lakeland, FL; Roger M. Cryan, Fairfax, VA; Ira Silvergleit, Alexandria, VA; Lucy C. Meyring, Walden, CO.; William George Lapp, Omaha, NE.; Hugh Anslum Warren, Greenwood, MS. *Professional Organizations*—Walter J. Armbruster, Darien, IL; Ronald C. Wimberley, Raleigh, NC.

The duties of the Committee are solely advisory. The Committee will make recommendations to the Secretary of Agriculture with regards to the agricultural statistics program of the National Agricultural Statistics Service (NASS) and such other matters as it may deem advisable, or which the Secretary of Agriculture, Under Secretary for Research, Education, and Economics, or the Administrator of NASS may request. The Advisory Committee meeting was held on February 24–25, 2003. All meetings are open to the public. Committee members will be reimbursed for official travel expenses only.

Signed at Washington, DC, March 27, 2003.

R. Ronald Bosecker,

Administrator, National Agricultural Statistics Service.

[FR Doc. 03–8647 Filed 4–8–03; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2, section 10(a)(b), the Bureau of the Census (Census Bureau) is giving notice of a joint meeting, followed by separate and concurrently held meetings of the Census Advisory Committees (CACs) on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations. The Committees will address issues related to the 2010 reengineered decennial census, including the American Community Survey and other related decennial programs. The five Census Advisory Committees on Race and Ethnicity will meet in plenary and concurrent sessions on May 6 and 7. Last-minute changes to the schedule are possible, which could prevent us from giving advance notification.

DATES: May 6–7, 2003. On May 6, the meeting will begin at approximately 8 a.m. and end at approximately 5:30 p.m. On May 7, the meeting will begin at approximately 8 a.m. and end at approximately 12:15 p.m.

ADDRESSES: The meeting will be held at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia 20191.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233, telephone (301) 763–2070, TTY (301) 457–2540.

SUPPLEMENTARY INFORMATION: The CACs on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations are comprised of nine members each. The Committees provide an organized and continuing channel of communication between the representative race and ethnic populations and the U.S. Census Bureau. The Committees provide an outside-user perspective about how research and design plans for the 2010 reengineered decennial census, the American Community Survey, and other related programs realize goals and satisfy needs associated with these communities. They also assist the Census Bureau on ways that census data can best be disseminated to diverse race and ethnic populations and other users.

All meetings are open to the public. A brief period will be set aside at the meeting for public comment. However, individuals with extensive questions or statements must submit them in writing to the Committee Liaison Officer, named above, at least three days before the meeting. Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as known and preferably two weeks prior to the meeting.

Dated: April 2, 2003.

Hermann Habermann,

Deputy Director, Bureau of the Census.

[FR Doc. 03–8631 Filed 4–8–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 54–2002]

Foreign-Trade Zone 202: Application for Expansion and Reorganization Amendment of Application

Notice is hereby given that the application of the Board of Harbor Commissioners of the City of Los Angeles, grantee of FTZ 202, for authority to expand and reorganize FTZ 202 in the Los Angeles, California, area (Doc. 54–2002, 67 FR 72643, 12/6/02), has been amended to include a parcel (42 acres) within Proposed Site 20 at the Park Mira Loma West, which was inadvertently omitted. This increases the total acreage at this site from 531 acres to 573 acres. The application otherwise remains unchanged.

Comments on the change may be submitted to the Foreign-Trade Zones Board, U.S. Department of Commerce, FCB-Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230, by April 25, 2003.

Dated: April 2, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–8671 Filed 4–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–853]

Bulk Aspirin from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is currently conducting an administrative review of the antidumping duty order on bulk aspirin from the People's Republic of China. The period of review is July 1, 2001, through June 30, 2002. This review covers imports of subject merchandise from two producer/exporters.

We preliminarily find that sales have been made at not less than normal value. If these preliminary results are adopted in our final results of review, we will instruct the Customs Service to liquidate entries of bulk aspirin produced and exported by Shandong Xinhua Pharmaceutical Co., Ltd., and Jilin Henghe Pharmaceutical Company Ltd., without regard to antidumping duties.

We invite interested parties to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: April 9, 2003.

FOR FURTHER INFORMATION CONTACT: Julie Santoboni or Blanche Ziv, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4194, or(202) 482–4207, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 2000, the Department of Commerce ("Department") published an antidumping order on bulk aspirin from the People's Republic of China ("PRC"). *See Notice of Antidumping Duty Order: Bulk Aspirin from the People's Republic of China*, 65 FR 42673 (July 11, 2000). On July 1, 2002, the Department published in the **Federal Register** an *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 67 FR 77172 (July 1, 2002).

On July 10 and 30, 2002, in accordance with 19 CFR 351.213(b), two producer/exporters of the subject merchandise, Shandong Xinhua Pharmaceutical Co., Ltd. ("Shandong"), and Jilin Henghe Pharmaceutical Company Ltd. ("Jilin"), respectively, requested that the Department conduct an administrative review of this order. On July 31, 2002, Rhodia, Inc. ("petitioner") also requested an administrative review for Jilin and Shandong.

On August 27, 2002, we published a notice of initiation of the administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 67 FR 55000 (August 27, 2002). The period of this review ("POR") is July 1, 2001, through June 30, 2002.

We issued questionnaires to Jilin and Shandong on September 24, 2002. We received responses to the questionnaires from Shandong and Jilin on November 22 and December 4, 2002, respectively.

On December 18, 2002, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received responses from the petitioner on January 22 and 27, 2003. Jilin provided surrogate value information to the Department on January 28 and March 13, 2003.

We issued supplemental questionnaires to Jilin and Shandong between December 2002, and March 2003. We received responses to the supplemental questionnaires from both respondents from January through March 2003.

Scope of the Order

The product covered by this review is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho-acetylsalicylic acid or as mixed ortho-acetylsalicylic acid. Pure ortho-acetylsalicylic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula $C_9H_8O_4$. It is defined by the official monograph of the United States Pharmacopoeia 23 ("USP"). It is currently classifiable under the *Harmonized Tariff Schedule of the United States* ("HTSUS") subheading 2918.22.1000.

Mixed ortho-acetylsalicylic acid consists of ortho-acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the *Handbook of Nonprescription Drugs*, eighth edition, American Pharmaceutical Association. This product is currently classifiable under HTSUS subheading 3003.90.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Separate Rates

It is the Department's standard policy to assign all exporters of the merchandise subject to review in nonmarket economy ("NME") countries a single rate unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

Absence of *De Jure* Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

Absence of *De Facto* Control

A *de facto* analysis of absence of government control over exports is based on four factors—whether the respondent: 1) sets its own export prices independently of the government and other exporters; 2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of

losses; 3) has the authority to negotiate and sign contracts and other agreements; and 4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *see also Sparklers*, 56 FR at 20589.

In the *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China* 65 FR 33805 (May 25, 2000) ("*LTFV Investigation*"), we determined that there was an absence of both *de jure* and *de facto* government control of each investigated company's export activities and determined that each company warranted a company-specific dumping margin. For the POR, Jilin and Shandong (collectively, "the respondents"), responded to the Department's request for information regarding separate rates. We find that the evidence on the record is consistent with the *LTFV Investigation* and the respondents continue to demonstrate an absence of government control, both in law and in fact, with respect to their exports, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

Export Price and Constructed Export Price

For certain sales made by the respondents to the United States, we used constructed export price ("CEP") in accordance with section 772(b) of the Tariff Act of 1930, as amended ("the Act"), because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. For other sales made by Jilin, we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold outside the United States to unaffiliated purchasers in the United States prior to importation into the United States and constructed export price methodology was not otherwise indicated.

We calculated EP based on the FOB prices to unaffiliated purchasers. We calculated CEP based on FOB and delivered prices from the respondents' U.S. subsidiaries to unaffiliated customers. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price foreign inland freight, international freight, marine insurance, brokerage and handling, U.S. inland freight, U.S. customs duties, and U.S. warehousing expenses. We valued the deductions for foreign inland freight using surrogate data based on Indian freight costs. We selected India as the surrogate country for the reasons explained in the "*Normal Value*" section of this notice, below. Where the respondent used a market-economy shipper for more than an insignificant portion of its sales and paid for the shipping in a market-economy currency, we used the average price paid by that producer/exporter to value international freight for all of its sales. *See Tapered Roller Bearings from the People's Republic of China; Notice of Preliminary Results of 2000–2001 Review, Partial Rescission of Review, and Notice of Intent to Revoke Order, in Part*, 67 FR 45451 (July 9, 2002). Where the respondent used a market-economy marine insurance provider for more than an insignificant portion of its sales and paid for the insurance in a market-economy currency, we used the average price for marine insurance paid by that producer/exporter for all of its sales.

To value brokerage and handling, we used the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering for *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000). *See* the "Factors of Production Valuation Memorandum" dated April 2, 2003 ("*FOP memo*"). Because this information is not contemporaneous with the POR, we adjusted the data to the POR by using the Indian wholesale price index.

In accordance with section 772(d)(1) of the Act, for CEP sales we made deductions for the following selling expenses that related to economic activity in the United States: credit expenses, indirect selling expenses, inventory carrying costs, and direct selling expenses. Since neither respondent had U.S. dollar denominated borrowings during the POR, we calculated credit expenses using the short-term interest rate during the POR, as stated by the Federal Reserve Board. In accordance with section 772(d)(3) of the Act, we deducted from the starting price an amount for profit.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value ("NV") using a factors-of-production methodology if: (1) the merchandise is exported from a NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value ("CV") under section 773(a) of the Act.

The Department has treated the PRC as a NME country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. The parties in this proceeding have not contested such treatment in this review. Therefore, we treated the PRC as a NME country for purposes of this review and calculated NV by valuing the factors of production in a surrogate country.

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of overall economic development. For a further discussion of our surrogate selection, see the December 12, 2002, Memorandum to Susan Kuhbach from Jeffrey May, "2nd Administrative Review of Bulk Aspirin from the People's Republic of China" ("Surrogate Country Memo"), which is on file in the Department's Central Records Unit in Room B–099 of the main Department building. According to the available information on the record, we determined that India is a significant producer of comparable merchandise. None of the interested parties contested the selection of India as the surrogate country. Accordingly, we calculated NV using Indian values for the PRC producers' factors of production.

We obtained and relied upon publicly available information wherever possible. In many instances, we used the *Monthly Statistics of the Foreign Trade of India; Volume II Imports* ("*MSFTI*") to value factors of production, energy inputs and packing materials. Consistent with the *Final Determination of Sales at Less than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum, we excluded import data reported in the *MSFTI* for Korea, Thailand and Indonesia in our surrogate value calculations. In addition to the *MSFTI* data, we used Indian domestic prices from *Indian Chemical Weekly* ("*ICW*") to value certain chemical inputs. *See FOP memo.*

Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the respondents. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian surrogate values.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For the distances reported, we added to Indian CIF surrogate values a surrogate freight cost using the reported distances from the PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the United States Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1807–1908 (Fed.Cir. 1997). For those values not contemporaneous with the POR, we adjusted for inflation using the appropriate wholesale or producer price index published in the International Monetary Fund's *International Financial Statistics.*

Certain inputs in the production of bulk aspirin are considered business proprietary information by the respondents and cannot be discussed in this preliminary results notice. For a complete analysis of surrogate values, *see* the *FOP memo.*

Labor: We valued labor using the method described in 19 CFR 351.408(c)(3).

Electricity, Coal and Oil: Consistent with our approach in *Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 66 FR 15076 (March 15, 2001), we calculated our surrogate value for electricity based on electricity rate data reported by the International Energy Agency ("IEA"), 4th quarter 2001. For coal, we used import values from the *MSFTI.* We based the value of fuel oil on prices reported by the IEA, 4th quarter 2001.

Factory Overhead, SG&A, and Profit: We based our calculation of factory overhead and SG&A on the 2001–2002 financial data of Alta Laboratories Ltd. ("Alta"), an Indian producer of identical merchandise. Because Alta did not realize a profit during the financial period, we relied on the 2001–2002 financial data of two other Indian producers of comparable merchandise, Andhra Sugars Ltd. ("Andhra"), and Gujarat Organics Ltd. ("Gujarat").

Packing Materials: For packing materials we used import values from the MSFTI.

Inland Freight Rates: To value truck freight rates, we used an average of trucking rates quoted in *ICW.* For rail freight, we based our calculation on 1999 price quotes from Indian rail freight transporters.

Preliminary Results of the Review

We preliminary find that the following dumping margins exist for the period July 1, 2001, through June 30, 2002:

Exporter/Manufacturer	Weighted-average margin percentage
Shandong Xinhua Pharmaceutical Co., Ltd.	0.00
Jilin Henghe Pharmaceutical Company Ltd.	0.00

Assessment Rates and Cash Deposit Requirements

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to the Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of bulk aspirin entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) for the companies named above, the cash deposit rates for exports to the United States by these companies will be the rates for these firms shown above, except that, for exporters with *de minimis* rates (*i.e.*, less than 0.5 percent) no deposit will be required; (2) for exporters previously found to be entitled to a separate rate in a prior segment of the proceeding, and for which no review has been requested, the cash deposit rate will continue to be the rate established for that exporter in the most recent segment of the proceeding; (3) for all other PRC exporters the cash deposit rate will be 144.02 percent, the PRC country-wide ad-valorem rate; and (4) for all other non-PRC exporters of subject merchandise from the PRC to the United States, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held approximately 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

The Department will issue a notice of final results of this administrative review, including the results of its analysis of issues raised in any such written comments, within 120 days of publication of these preliminary results.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 2, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–8670 Filed 4–8–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta from Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 2001, through December 31, 2001. We preliminarily find that certain producers/exporters have received countervailable subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the "Preliminary Results of Review" section of this notice.

As certain requests for review were withdrawn, we are rescinding this review for the following companies: Labor S.r.L., F. Divella, S.p.A., and Delverde, S.p.A.

Interested parties are invited to comment on these preliminary results (*see* the "Public Comment" section of this notice).

EFFECTIVE DATE: April 9, 2003.

FOR FURTHER INFORMATION CONTACT: Craig Matney or Stephen Cho, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1778 or 482–3798, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The Department of Commerce (the "Department") published the countervailing duty order on certain pasta from Italy on July 24, 1996 (*Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 38544). On July 1, 2002, the Department published a notice of "Opportunity to Request Administrative Review" of this countervailing duty order for calendar year 2001 (*Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 67 FR 44172). We received review requests for five producers/exporters of Italian pasta. We initiated our review on August 27 and September 25, 2002 (*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 67 FR 55000 and Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part and Deferral of Administrative Reviews*, 67 FR 60210, respectively).[1]

On October 2, 2002, F. Divella, S.p.A. and Labor S.r.L. withdrew their requests for review, and on October 11, 2002, Delverde, S.p.A. withdrew its request for review. We are rescinding this administrative review for these three companies (*see* the "Partial Rescission" section, below).

Thus, this administrative review of the order covers the following producers/exporters of the subject merchandise: F.lli De Cecco di Filippo Fara S. Martino S.p.A. ("De Cecco") and Italian American Pasta Company, S.r.L. ("IAPC").

On September 10, 2002, we issued countervailing duty questionnaires to the Commission of the European Union ("EC"), the Government of Italy ("GOI"), and the producers/exporters which requested a review.[2] We received responses to our questionnaires in October and November 2002, and issued a supplemental questionnaire to De Cecco in December 2002. The response to the supplemental questionnaire was received in December 2002.

Partial Rescission

As noted above, F. Divella, S.p.A., Labor S.r.L. and Delverde, S.p.A. withdrew their requests for review. Because these withdrawals were timely filed, we are rescinding this review with respect to these companies (*see* 19 CFR 351.213(d)(1)). We will instruct the U.S. Customs Service to liquidate any entries from these companies during the period of review and to assess countervailing duties at the rate that was applied at the time of entry.

Scope of the Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white ("subject merchandise"). The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo di Certificazione, Bioagricoop S.c.r.l., QC&I International Services, Ecocert Italia, the Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.L.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("*HTSUS*"). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the countervailing duty order. (*See* August 25, 1997 memorandum from Edward Easton to Richard Moreland, which is on file in CRU in Room B–099 of the main Commerce building.)

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the countervailing duty order. (*See* July 30, 1998 letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., which is on file in the CRU.)

(3) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the countervailing duty order. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the countervailing duty order. (*See* May 24, 1999 memorandum from John Brinkmann to Richard Moreland, which is on file in the CRU.)

Period of Review

The period of review ("POR") for which we are measuring subsidies is from January 1, 2001, through December 31, 2001.

Attribution of Subsidies

De Cecco: De Cecco has responded on behalf of two members of the De Cecco Group: F.lli De Cecco di Filippo Fara San Martino S.p.A. ("Pastificio") and Molino e Pastificio F.lli De Cecco S.p.A. ("Pescara"). Pastificio and Pescara manufacture pasta for sale in Italy and the United States. Pastificio and Pescara are directly or indirectly 100 percent-owned by members of the De Cecco family. Effective January 1, 1999, Molino F.lli De Cecco di Filippo S.p.A. ("Molino") a third member of the De Cecco Group on whose behalf De Cecco responded in the fourth administrative review, was merged with Pastifico and ceased to be a separate entity. The Department will continue to consider countervailable any benefits received by Molino in past administrative review periods and allocated over a period that extends into or beyond the current POR. In accordance with section 351.525(b)(6)(i) and (ii) of the Department's regulations, we are attributing subsidies received by Pastificio and Pescara to the combined sales of both.

IAPC: IAPC has no affiliated companies located in Italy, and has therefore responded only on its own behalf.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: In accordance with sections 351.505(a)(1) and 351.524(d)(3) of the Department's regulations, we have used the amount the company actually paid on comparable commercial loans as the benchmark/discount rate, when the company had commercial loans in the same year as the government loan or grant. However, there were several instances where a company did not take out any loans which could be used as benchmarks/discount rates in the years in which the government grants or loans under review were received. In these instances, consistent with section 351.505(a)(3)(ii) of the Department's regulations, we used a national average interest rate for a comparable commercial loan. Specifically, for years prior to 1995, we used the Bank of Italy reference rate, adjusted upward to reflect the mark-up an Italian commercial bank would charge a corporate customer, as the benchmark interest rate for long-term loans and as the discount rate. For subsidies received in 1995 and later, we used the Italian Bankers' Association ("ABI") interest rate, increased by the average spread charged by banks on loans to commercial customers plus an amount for bank charges.

Allocation Period: In the *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 30288, June 14, 1996, ("*Pasta Investigation*"), the Department used as the allocation period for non-recurring subsidies the average useful life ("AUL") of renewable physical assets in the food-processing industry as recorded in the Internal Revenue Service's 1977 Class Life Asset Depreciation Range System ("the IRS tables"), *i.e.*, 12 years. However, the U.S. Court of International Trade ("CIT") ruled against this allocation methodology for non-recurring subsidies (*see British Steel plc v. United States*, 879 F.Supp. 1254, 1289 (CIT 1995) ("*British Steel I*")). In accordance with the CIT's remand order, the Department determined that the most reasonable method of deriving the allocation period for non-recurring subsidies was a company-specific AUL of renewable physical assets. This remand determination was affirmed by the CIT on June 4, 1996 (*see British Steel plc v. United States*, 929 F.Supp. 426, 439 (CIT 1996) ("*British Steel II*")).

Consistent with the ruling in *British Steel II*, we developed company-specific AULs in the first and second administrative reviews of this order (*see Certain Pasta from Italy: Final Results of Countervailing Duty Administrative Review*, 63 FR 43905, 43906, August 17, 1998 ("*First Review—Final Results*") and *Certain Pasta from Italy: Final Results of the Second Countervailing Duty Administrative Review*, 64 FR 44489, 44490–91, August 16, 1999 ("*Second Review—Final Results*"). We used these company-specific AULs to allocate any non-recurring subsidies that were not countervailed in the investigation. However, for non-recurring subsidies which had already been countervailed in the investigation, the Department used the original allocation period, *i.e.*, 12 years, because it was deemed neither reasonable nor practicable to reallocate those subsidies over a different time period. This methodology was consistent with our approach in *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997).

The third review of this order was subject to section 351.524(d)(2) of the Department's regulations. Under this regulation, the Department will use the AUL in the IRS tables as the allocation period, unless a party can show that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry. If a party can show that either of these time periods differs from the AUL in the IRS tables by one year or more, the Department will use the company-specific AUL or the country-wide AUL for the industry as the allocation period. In *Certain Pasta from Italy: Final Results of Third Administrative Review*, 66 FR 11269, February 23, 2001 ("*Third Review—Final Results*"), all subsidies received in the POR were assigned a 12-year allocation period, consistent with the IRS tables.

In the fifth review, no respondent has contested the 12-year AUL in the IRS tables. Therefore, we are assigning a 12-year allocation period to non-recurring subsidies received in the POR, as well as any non-recurring subsidies received in prior years by companies that were not included in previous reviews.

Analysis of Programs

I. Programs Preliminarily Determined to Confer Subsidies

1. Law 64/86 Industrial Development Grants

Law 64/86 provided assistance to promote development in the Mezzogiorno (the south of Italy). Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants because the market for pasta was deemed to be close to saturated. Grants were made only after a private credit institution, chosen by the applicant, made a positive assessment of the project. (Loans were also provided under Law 64/86; *see* below.) In 1992, the Italian Parliament

---

[1] Italian American Pasta Company, S.r.L. was inadvertently omitted from the August 27, 2002 initiation notice.

[2] On October 25, 2002, we issued a second courtesy copy of the countervailing duty questionnaire to IAPC because it did not receive the first copy.

abrogated Law 64/86 and replaced it with Law 488/92 (*see* below). This decision became effective in 1993. However, companies whose projects had been approved prior to 1993 were authorized to continue receiving grants under Law 64/86 after 1993.

De Cecco received grants under Law 64/86 which conferred a benefit during the POR. IAPC did not receive any grants under this program.

In *Pasta Investigation*, the Department determined that these grants confer a countervailable subsidy within the meaning of section 771(5) of the Tariff Act of 1930, as amended ("the Act"). They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these grants are countervailable subsidies.

In *Pasta Investigation*, the Department treated the industrial development grants as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. Also, consistent with our treatment of these grants in the *Third Review—Final Results*, for companies which previously have been investigated or reviewed, we have continued to expense or allocate grants disbursed prior to 1998 (the POR in the third review) according to the practice in place at the time of the investigation or review. (*See Countervailing Duties* (Proposed Rules), 54 FR 23366, 23384 (19 CFR 355.49(a)(3)) (May 31, 1989).) For grants disbursed in 1998, 1999, 2000, and this POR, 2001, we have followed the methodology described in section 351.524(b)(2) of our new countervailing duty regulations, which directs us to allocate over time those non-recurring grants whose total authorized amount exceeds 0.5 percent of the recipient's sales in the year of authorization. Where the total amount authorized is less than 0.5 percent of the recipient's sales in the year of authorization, the benefit is countervailed in full (*i.e.*, "expensed") in the year of receipt. We have also applied the methodology described in section 351.524(b)(2) of the Department's regulations to grants approved prior to 1998 for companies that were not previously investigated or reviewed.

We used the grant methodology described in section 351.524(d) of the Department's regulations to calculate the countervailable subsidy from those grants that were allocated over time. We divided the benefit received by De Cecco in the POR by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 64/86 industrial development grants to be 0.97 percent *ad valorem* for De Cecco.

2. Law 488/92 Industrial Development Grants

In 1986, the European Union ("EU") initiated an investigation of the GOI's regional subsidy practices. As a result of this investigation, the GOI changed the regions eligible for regional subsidies to include depressed areas in central and northern Italy in addition to the Mezzogiorno. After this change, the areas eligible for regional subsidies are the same as those classified as Objective 1, Objective 2, and Objective 5(b) areas by the EU.[3] The new policy was given legislative form in Law 488/92 under which Italian companies in the eligible sectors (manufacturing, mining, and certain business services) may apply for industrial development grants. (Loans are not provided under Law 488/92.)

Law 488/92 grants are made only after a preliminary examination by a bank authorized by the Ministry of Industry. On the basis of the findings of this preliminary examination, the Ministry of Industry ranks the companies applying for grants. The ranking is based on indicators such as the amount of capital the company will contribute from its own funds, the number of jobs created, regional priorities, etc. Grants are then made based on this ranking.

De Cecco received grants under Law 488/92 which conferred a benefit during the POR. IAPC did not receive any grants under this program.

Industrial development grants under Law 488/92 were found countervailable in *Second Review—Final Results*. The grants are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these grants are countervailable subsidies.

In *Second Review—Final Results*, the Department treated industrial development grants under Law 488/92 as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. We expensed or allocated these grants according to the methodology applied to the Law 64/86 industrial development grants discussed above.

We used the grant methodology as described in section 351.524(d) of the Department's regulations to calculate the subsidy for those grants that were allocated over time. We divided the benefits received by De Cecco in the POR by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 488/92 industrial development grants to be 0.40 percent *ad valorem* for De Cecco.

3. Law 64/86 Industrial Development Loans

In addition to the industrial development grants discussed above, Law 64/86 also provided reduced rate industrial development loans with interest contributions paid by the GOI on loans taken by companies constructing new plants or expanding or modernizing existing plants in the Mezzogiorno. For the reasons discussed above, pasta companies were eligible for interest contributions to expand existing plants, but not to establish new plants. The interest rates on these loans were set at the reference rate with the GOI's interest contributions serving to reduce this rate. Although Law 64/86 was abrogated in 1992 (effective 1993), projects approved prior to 1993, were authorized to receive interest subsidies after 1993.

De Cecco had Law 64/86 industrial development loans outstanding during the POR. IAPC did not have any loans under this program.

In *Pasta Investigation*, the Department determined that the Law 64/86 loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies after accounting for the GOI's interest contributions. Also, these loans were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these loans are a countervailable subsidy.

In accordance with section 351.505(c)(2) of the Department's regulations, we calculated the benefit for the POR by computing the difference between the payments De Cecco made on their Law 64/86 loans during the POR and the payments De Cecco would have made on a comparable commercial loan. We divided the benefit received by De Cecco by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 64/86 industrial development loans to be 0.41 percent *ad valorem* for De Cecco.

4. Law 341/95 Interest Contributions on Debt Consolidation Loans

Law 85/95 created the *Fondo di Garanzia* aimed at improving the financial structure of small- and medium-sized companies located in EU Objective 1 areas (*see* Footnote 3 above). Under Article 2 of Law 341/95, monies from the *Fondo di Garanzia* are used to make interest contributions on debt consolidation loans obtained by eligible companies. The company first enters into a loan contract with a commercial bank. Then, the contract is submitted to the approving authority. After approval, the loan is made.

De Cecco had a Law 341/95 debt consolidation loan outstanding during the POR. IAPC did not have any loans under this program.

We preliminarily determine that the interest contributions on this loan confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI providing a benefit in the amount of the interest contributions. Also, these interest contributions are regionally specific within the meaning of section 771(5A)(D)(iv) of the Act.

Because De Cecco anticipated receiving the interest contributions when it applied for the debt consolidation loan, we are calculating the amount of the subsidy as if this were a reduced interest loan (*see*, section 351.508(c)(2) of the Department's regulations). Thus, we have divided the interest contributions received by De Cecco in the POR by De Cecco's total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from interest contributions under Law 341/95 to be 0.01 percent *ad valorem* for De Cecco.

5. Social Security Reductions and Exemptions—Sgravi

Italian law allows companies, particularly those located in the Mezzogiorno, to use a variety of exemptions and reductions ("*sgravi*") of the payroll contributions that employers make to the Italian social security system for health care benefits, pensions, etc. The *sgravi* benefits are regulated by a complex set of laws and regulations, and are sometimes linked to conditions such as creating more jobs. The benefits under some of these laws (*e.g.*, Laws 183/76 and 449/97) are available only to companies located in the Mezzogiorno and other disadvantaged regions. Other laws (*e.g.*, Laws 407/90 and 863/84) provide benefits to companies all over Italy, but the level of benefits is higher for companies in the south than for companies in other parts of the country.

The various laws identified as having provided sgravi benefits during the POR are: Law 183/76, Law 407/90, Law 863/84, Law 449/97, and Law 448/98. (Laws 449/97 and 448/98 are related and sometimes referred to jointly as "*Sgravi Capitario*.") In this review, De Cecco received some form of *sgravi* benefits during the POR. IAPC is not located in the Mezzogiorno and, thus, did not receive any countervailable subsidies under this program.

In *Pasta Investigation* and subsequent reviews, the Department determined that the various forms of social security reductions and exemptions confer countervailable subsidies within the meaning of section 771(5) of the Act. They represent revenue foregone by the GOI bestowing a benefit in the amount of the savings received by the companies. Also, they were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because they were limited to companies in the Mezzogiorno or because the higher levels of benefits were limited to companies in the Mezzogiorno. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of our determination that these tax savings are a countervailable subsidy.

In accordance with section 351.524(c) of the Department's regulations and consistent with our methodology in *Pasta Investigation* and in reviews subsequent to *Pasta Investigation*, we have treated social security reductions and exemptions as recurring benefits. To calculate the countervailable subsidy, we divided De Cecco's savings in social security contributions during the POR by its total sales in the POR. In those instances where the applicable law provided a higher level of benefits to companies based on their location, we divided the amount of the *sgravi* benefits that exceeded the amount available to companies in other parts of Italy by the recipient company's total sales in the POR (*see* section 351.503(d)(1) of the Department's regulations).

On this basis, we preliminarily determine the countervailable subsidy from the *sgravi* program to be 0.18 percent *ad valorem* for De Cecco.

6. IRAP Exemptions

On January 1, 1998, the local income tax (ILOR) was replaced with a new regional tax, the IRAP, as a result of Legislative Decree 446 (December 15, 1997). Existing exemptions from the ILOR continued under IRAP. In particular, income from production facilities located in the Mezzogiorno was exempt from tax for ten years.

De Cecco claimed the IRAP tax exemption on its tax returns filed during the POR. IAPC did not claim any exemption under this program.

In *Pasta Investigation*, the Department determined that the ILOR tax exemption confers a countervailable subsidy within the meaning of section 771(5) of the Act. The exemption represents revenue foregone by the taxing authority and confers a benefit in the amount of the tax savings to the recipient companies, and the exemption was regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, neither the GOI nor the responding companies have provided any information to indicate that the substitution of the IRAP for the ILOR would warrant reconsideration of our determination that this tax exemption is a countervailable subsidy.

In accordance with sections 351.509(b) of the Department's regulations and our treatment of the ILOR tax exemption in *Pasta Investigation*, we are calculating the countervailable subsidy by dividing De Cecco's tax savings in the POR by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the IRAP tax exemption to be 0.08 percent *ad valorem* for De Cecco.

7. Export Restitution Payments

The EU provides restitution payments to EU pasta exporters based on the durum wheat content of their exported pasta products. The program is designed to compensate pasta producers for the difference between EU prices and world market prices for durum wheat. Generally, under this program, a restitution payment is available to any EU exporter of pasta products, regardless of whether the pasta was made with imported wheat or wheat grown within the EU.

De Cecco received export restitution payments during the POR for shipments of pasta to the United States. IAPC did

[3] Objective 1 covers projects located in underdeveloped regions; Objective 2 addresses areas in industrial decline; and Objective 5 pertains to agricultural areas.

not receive any payments under this program.

In *Pasta Investigation*, the Department determined that export restitution payments confer a countervailable subsidy within the meaning of section 771(5) of the Act. These payments are a direct transfer of funds from the EU bestowing a benefit in the amount of the payment. The restitution payments were found to be specific because their receipt is contingent upon export performance. In this review, the GOI, the EU, and the responding companies have not provided new information which would warrant reconsideration of our determination that export restitution payments are countervailable subsidies.

In *Pasta Investigation*, we treated the export restitution payments as recurring benefits. We have found no reason to depart from this treatment in the current review. Therefore, to calculate the countervailable subsidy, we divided the export restitution payments received by De Cecco in the POR for pasta shipments to the United States by the value of De Cecco's pasta exports to the United States in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the export restitution program to be 0.01 percent *ad valorem* for De Cecco.

II. Programs Preliminarily Determined to Be Not Used

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise under review did not apply for or receive benefits under these programs during the POR:

1. Law 64/86 VAT Reductions
2. Export Credits under Law 227/77
3. Capital Grants under Law 675/77
4. Retraining Grants under Law 675/77
5. Interest Contributions on Bank Loans under Law 675/77
6. Interest Grants Financed by IRI Bonds
7. Preferential Financing for Export Promotion under Law 394/81
8. Urban Redevelopment under Law 181
9. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market ("PRISMA")
10. Law 183/76 Industrial Development Grants
11. Law 598/94 Interest Subsidies
12. Law 236/93 Training Grants
13. European Regional Development Fund (ERDF)
14. Duty-Free Import Rights
15. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77
16. Law 1329/65 Interest Contributions (Sabatini Law)
17. European Social Fund (ESF)
18. Corporate Income Tax (IRPEG) Exemptions
19. Export Marketing Grants under Law 304/90

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter covered by this administrative review. For the period January 1, 2001 through December 31, 2001, we preliminarily determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service ("Customs") to assess countervailing duties at these net subsidy rates. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of this review. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at these rates on the f.o.b. value of all shipments of the subject merchandise from the producers/exporters under review that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Company	*Ad valorem* rate
F.lli De Cecco di Filippo Fara San Martino S.p.A.	2.06 percent
Italian American Pasta Company, S.r.L.	0.00 percent

The calculations will be disclosed to the interested parties in accordance with section 351.224(b) of the Department's regulations.

For companies that were not named in our notice initiating this administrative review (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.L. which were excluded from the order in *Pasta Investigation*), the Department has directed Customs to assess countervailing duties on all entries between January 1, 2001 and December 31, 2001, at the rates in effect at the time of entry.

For all non-reviewed firms, we will instruct Customs to collect cash deposits of estimated countervailing duties at the most recent company-specific or all others rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 38544 (July 24, 1996) or the company-specific rate published in the most recent final results of an administrative review in which a company participated. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: April 2, 2003.

Joseph A. Spetrini,

Acting Assistant Secretory for Import Administration.

[FR Doc. 03–8672 Filed 4–8–03 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031203A]

Small Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for incidental harassment of marine mammals; request for comments.

SUMMARY: NMFS has received a request from The Boeing Company (Boeing) for an authorization to take small numbers of marine mammals by harassment incidental to harbor activities related to the Delta IV/Evolved Expendable Launch Vehicle (EELV) at south Vandenberg Air Force Base, CA (VAFB). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize Boeing to take, by harassment, small numbers of several species of pinnipeds at south VAFB beginning in May 2003.

DATES: Comments and information must be received no later than May 9, 2003.

ADDRESSES: Comments on the application should be addressed to Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. Comments will not be accepted if submitted via e-mail or the Internet. A copy of the application (which includes the list of references used in this document) may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, (301) 713–2322, ext. 163 or Christina Fahy, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which(i) has the potential to injure a marine mammal or marine mammal stock in the wild ["Level A harassment"]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering ["Level B harassment"].

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On January 28, 2003, NMFS received an application from Boeing requesting an authorization for the harassment of small numbers of Pacific harbor seals (*Phoca vitulina richardsi*) and California sea lions (*Zalophus californianus*) incidental to harbor activities related to the Delta IV/EELV, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation operations. In addition, northern fur seals (*Callorhinus ursinus*) and northern elephant seals (*Mirounga angustirostris*) may also be incidentally harassed but in smaller numbers. An Incidental Harassment Authorization (IHA) was issued to Boeing on May 20, 2002 and remains in effect until May 20, 2003 (*see* FR 36151, May 23, 2002). The harbor where activities will take place is on south VAFB approximately 2.5 mi (4.02 km) south of Point Arguello, CA, and approximately 1 mi (1.61 km) north of the nearest marine mammal pupping site (i.e., Rocky Point).

Specified Activities

Delta Mariner off-loading operations and associated cargo movements will occur a maximum of 3 times per year, beginning December, 2003. The *Delta Mariner* is a 95.1–m (312–ft) long, 25.6–m (84–ft) wide steel hull ocean-going vessel capable of operating at a 2.4–m (8–ft) draft. For the first few visits to the south VAFB harbor, tug boats will accompany the *Delta Mariner*. Sources of noise from the *Delta Mariner* include ventilating propellers used for maneuvering into position and the cargo bay door when it becomes disengaged. Removal of the CBC from the *Delta Mariner* requires use of an elevating platform transporter. An additional source of noise with sound levels measured at a maximum of 82 dB A-weighted (re 20 microPascals at 1–m) 6.1 m (20 ft) from the engine exhaust (Acentech, 1998). Procedures require 2 short (approximately 1/3 second) beeps of the horn prior to starting the ignition. At 60.9 m (200 ft) away, the sound level of the EPT horn ranged from 62–70 dB A-weighted. Containers containing flight hardware items will be towed off the Delta Mariner by a tractor tug that generates a sound level of approximately 87 dB A-weighted at 15.2 m (50 ft) while in operational mode. Total time of *Delta Mariner* docking and cargo movement activities is estimated at between 14 and 18 hours in good weather.

To accommodate the *Delta Mariner*, the harbor will need to be dredged, removing approximately 3,000 to 5,000 cubic yards of sediment per dredging. Dredging will involve the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. Measured sound levels from this equipment are roughly equivalent to those estimated for the wharf modification equipment: 61–81 dB A-weighted at 76.2 m (250 ft). Dredge operations, from set-up to tear-down, would continue 24–hours a day for 3–5 weeks. Sedimentation surveys have shown that initial dredging indicates that maintenance dredging should be required annually or twice per year, depending on the hardware delivery schedule.

A more detailed description of the work proposed for 2003 is contained in the application which is available upon request (*see* **ADDRESSES**) and in the Final US Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at

Vandenberg Air Force Base (ENSR International, 2001).

Habitat and Marine Mammals Affected by the Activity

The marine mammal species likely to be harassed incidental to harbor activities at south VAFB are the Pacific harbor seal and the California sea lion. The most recent estimate of the Pacific harbor seal population in California is 30,293 seals (Forney et al., 2000). From 1979 to 1995, the California population increased at an estimated annual rate of 5.6 percent. The total population of harbor seals on VAFB is now estimated to be 1,040 (775 on south VAFB) based on sighting surveys and telemetry data (SRS Technologies, 2001).

The daily haul-out behavior of harbor seals along the south VAFB coastline is dependent on time of day rather than tide height. The highest number of seals haul-out at south VAFB between 1100 through 1700 hours. In addition, haul-out behavior at all sites seems to be influenced by environmental factors such as high swell, tide height, and wind. The combination of all three may prevent seals from hauling out at most sites. The number of seals hauled out at any site can vary greatly from day to day based on environmental conditions. Harbor seals occasionally haul out at a beach 76.2 m (250 ft) west of the south VAFB harbor and on rocks outside the harbor breakwater where Boeing will be conducting Delta Mariner operations, cargo loading, dredging activities, and reef enhancement activities. The maximum number of seals present during past dredging of the harbor was 43, with an average of 21 seals sighted per day. The harbor seal pupping site closest to south VAFB harbor is at Rocky Point, approximately 1.6 km (1 mi) north.

Several factors affect the seasonal haul-out behavior of harbor seals including environmental conditions, reproduction, and molting. Harbor seal numbers at VAFB begin to increase in March during the pupping season (March to June) as females spend more time on shore nursing pups. The number of hauled-out seals is at its highest during the molt which occurs from May through July. During the molting season, tagged harbor seals at VAFB increased their time spent on shore by 22.4 percent; however, all seals continued to make daily trips to sea to forage. Molting harbor seals entering the water because of a disturbance are not adversely affected in their ability to molt and do not endure thermoregulatory stress. During pupping and molting season, harbor seals at the south VAFB sites expand into haul-out areas that are not used the rest of the year. The number of seals hauled out begins to decrease in August after the molt is complete and reaches the lowest number in late fall and early winter.

During the wharf modification activity in June–July 2002, California sea lions were observed hauling out in small numbers. Although this is considered to be an unusual occurrence and is possibly related to fish schooling in the area, Boeing included sea lions in their request.

California sea lions range from British Columbia to Mexico. The minimum U.S. population estimate for California sea lions is 109,854 individuals. Since 1983, the population has grown at a rate of 5.0–6.2 percent annually. A 1985–1987 population survey indicated that most individuals on the Northern Channel Islands were on San Miguel Island, with the population ranging from 2,235 to over 17,000. The largest numbers of California sea lions in the VAFB vicinity occur at Lion Rock, 0.4 mi (0.64 km) southeast of Point Sal. This area is approximately 1.5 mi (2.41 km) north of the VAFB boundary. At least 100 sea lions can be observed during any season at this site. The Point Arguello beaches and the rocky ledges of South Rocky Point on south VAFB are haulout areas that may be used by California sea lions. The maximum number of sea lions seen hauling out during the recent wharf modification was six, daily counts ranging from 1 to 6 animals.

During the breeding season, most of California sea lions inhabit southern California and Mexico. Rookery sites in southern California are limited to San Miguel Island and to the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente. Breeding season begins in mid-May, occurring within 10 days of arrival at the rookeries. Molting occurs gradually over several months in the late summer and fall. Because the molt is not catastrophic, the sea lions can enter the water to feed.

Male California sea lions migrate annually. In the spring they migrate southward to breeding rookeries in the Channel Islands and Mexico, then migrate northward in the late summer following breeding season. Females appear to remain near the breeding rookeries. The greatest population on land occurs in September and October during the post-breeding dispersal and although many of the sea lions, particularly juveniles and sub-adult and adult males, may move north away from the Channel Islands.

Small groups of sea lions have been observed heading south along the VAFB coastline each year in April and May. In August, large groups of 25 to over 300 sea lions can be seen migrating north. Hauled out juvenile sea lions, as well as harbor seals, can be observed along the South Base sites in July, August, and September. Starving and exhausted subadult sea lions are also fairly common on the central California beaches during July and August.

Other marine mammal species are known to occur infrequently along the south VAFB coast during certain times of the year and are unlikely to be harassed by Boeing's activities. These four species are: the northern elephant seal, the northern fur seal, Guadalupe fur seal (*Arctocephalus townsendi*), and Steller sea lions (*Eumetopias jubatus*). Northern elephant seals may occur on VAFB but do not haul out in the harbor area. Northern fur seals, Guadalupe fur seals, and Steller sea lions occur along the California coast and Northern Channel Islands but are not likely to be found on VAFB. Descriptions of the biology and local distribution of these species can be found in the application as well as other sources such as Stewart and Yochem (1994, 1984), Forney *et al.* (2000), Koski *et al.* (1998), Barlow *et al.* (1993), Stewart and DeLong (1995), and Lowry *et al.* (1992). NMFS Stock Assessments can be viewed at: *http://www.NMFS.noaa.gov/pr/PR2/*

Stock_Assessment_Program/sars.html. Please refer to those documents for information on these species.

Potential Effects of Activities on Marine Mammals

Acoustic and visual stimuli generated by the use of heavy equipment during the *Delta Mariner* and off-loading operations, dredging, and kelp habitat mitigation, as well as the increased presence of personnel, may cause short-term disturbance to harbor seals and California sea lions hauled out along the beach and rocks in the vicinity of the south VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities. Based on the measured sounds of construction equipment, such as might be used during Boeing's activities, sound levels from all equipment drop to a maximum level of 95 dB A-weighted within 50 ft (15.2 m) of the sources. In contrast, the ambient background noise measured approximately 76.2 m (250 ft) from the beach was estimated to be 35–48 dB A-weighted (Acentech, 1998; EPA, 1971).

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a "looming" visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens *et al.*, 1988). The onset of operations by a loud sound source, such as the elevating platform transporter during CBC off-loading procedures, may elicit such a reaction. In addition, the movements of cranes and dredges may represent a "looming" visual stimulus to seals hauled out in close proximity. Seals and sea lions exposed to such acoustic and visual stimuli may either exhibit a startle response and/or leave the haul-out site.

According to the MMPA, if harbor activities disrupt the behavioral patterns of harbor seals, these activities would take marine mammals by Level B harassment. In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to result in disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering (i.e., Level B harassment) and would not cause serious injury or mortality to marine mammals.

On the other hand, startle and alert reactions accompanied by large-scale movements, such as stampedes into the water, could resul in injury of individuals and would be considered a take by harassment. In addition, such large-scale movements by dense aggregations of marine mammals or on pupping sites could potentially lead to takes by serious injury or death. However, there is no potential for large-scale movements leading to serious injury or mortality near the south VAFB harbor, because on average the number of harbor seals hauled out near the site on average is less than 30 and there is no pupping at nearby sites. The effects of the harbor activities are expected to be limited to short-term startle responses and localized behavioral changes.

For a further discussion of the anticipated effects of the planned activities on harbor seals in the area, please refer to the application and ENSR International's 2001 Final Environmental Assessment. Information in the application and referenced sources is preliminarily adopted by NMFS as the best information available on this subject.

Numbers of Marine Mammals Expected to Be Harassed

Boeing estimates that a maximum of 43 harbor seals per day may be hauled out near the south VAFB harbor, with a daily average of 21 seals sighted when tidal conditions were favorable during previous dredging operations in the harbor. Considering the maximum and average number of seals hauled out per day, assuming that the seals may be seen more than once, and using a maximum total of 83 operating days in 2003–2004, NMFS estimates that 145 to 623 Pacific harbor seals may be subject to Level B harassment, as defined in 50 CFR 216.3.

During wharf modification activities, a maximum of six California sea lions were seen hauling out in a single day, averaging between one and six sea lions each day. Based on its own calculations, NMFS believes that a total of 100 California sea lions, 10 northern elephant seals, and 5 northern fur seals may be subject to Level B harassment, as defined in 50 CFR 216.3, because they may be in nearby waters.

Possible Effects of Activities on Marine Mammal Habitat

Boeing anticipates no loss or modification to the habitat used by Pacific harbor seals or California sea lions that haul out near the south VAFB harbor. The harbor seal and sea lion haul-out sites near south VAFB harbor are not used as breeding, molting, or mating sites; therefore, it is not expected that the activities in the harbor will have any impact on the ability of Pacific harbor seals or California sea lions in the area to reproduce.

Boeing does anticipate unavoidable kelp removal during dredging. This habitat modification will not affect the marine mammal habitat. However, Boeing will mitigate for the removal of kelp habitat by placing 150 tons of rocky substrate in a sandy area between the breakwater and the mooring dolphins to enhance an existing artificial reef. This type of mitigation was implemented by the Army Corps of Engineers following the 1984 and 1989 dredging. A lush kelp bed adjacent to the sandy area has developed from the efforts. The substrate will consist of approximately 150 sharp-faced boulders, each with a diameter of about 2 ft (0.61 m) and each weighing about one ton. The boulders will be brought in by truck from an off-site quarry and loaded by crane onto a small barge at the wharf. The barge is towed by a tugboat to a location along the mooring dolphins from which a small barge-mounted crane can place them into the sandy area. Boeing plans to perform the reef enhancement in conjunction with the next maintenance dredging event in order to minimize cost and disturbances to animals. Noise will be generated by the trucks delivering the boulders to the harbor and during the operation of unloading the boulders onto the barges and into the water.

Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for Pacific harbor seals in California waters, and, thus, there are no anticipated effects on subsistence needs.

Mitigation

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities Boeing will undertake the following marine mammal mitigating measures:

(1) If activities occur during nighttime hours, lighting will be turned on before dusk and left on the entire night to avoid startling harbor seals at night.

(2) Activities should be initiated before dusk.

(3) Construction noises must be kept constant (i.e., not interrupted by periods of quiet in excess of 30 minutes) while harbor seals are present.

(4) If activities cease for longer than 30 minutes and harbor seals are in the area, start-up of activities will include a gradual increase in noise levels.

(5) A qualified marine mammal observer will visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of Boeing's activities. If flushing results, then the activities suspected of causing the seals to enter the water will be delayed until the seals leave the area.

(6) The *Delta Mariner* and accompanying vessels will enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks and the vessel will reduce speed 1.5 to 2 knots once the vessel is within 3 mi (4.83 km) of the harbor. The vessel will enter the harbor stern first, approaching the wharf and dolphins at less than 0.75 knot.

(7) As alternate dredge methods are explored, the dredge contractor may introduce quieter techniques and equipment.

Monitoring

As part of its 2002 application, Boeing provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed.

A NMFS-approved and VAFB-designated biologically trained observer will monitor the area for pinnipeds during all harbor activities. During nighttime activities, the harbor area will be illuminated, and the monitor will use a night vision scope. Monitoring activities will consist of:

(1) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities.

(2) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are low enough for pinnipeds to haul out (2 ft, 0.61 m, or less).

(3) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

Reporting

Boeing will notify NMFS 2 weeks prior to initiation of each activity. After each activity is completed, Boeing will provide a report to NMFS within 90 days. This report will provide dates and locations of specific activities, details of seal behavioral observations, and estimates of the amount and nature of all takes of seals by harassment or in other ways. In addition, the report will include information on the weather, the tidal state, the horizontal visibility, and the composition (species, gender, and age class) and locations of haul-out group(s). In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these activities, this will be reported to NMFS immediately.

Consultation

Under section 7 of the Endangered Species Act, NMFS has begun consultation on the proposed issuance of an IHA. Consultation will be concluded prior to the issuance of an IHA.

Although sea otters are not within the jurisdiction of NMFS, VAFB formally consulted with U.S. Fish and Wildlife Service (FWS) in 1998 on the possible take of southern sea otters during Boeing's harbor activities at south VAFB. A Biological Opinion was issued in August 2001. Southern sea otters were discussed in these documents and FWS recognized that Boeing will restore sea otter habitat (i.e., kelp beds) in the vicinity of the harbor to replace kelp destroyed during dredging. In addition, the FWS noting that VAFB has committed to a southern sea otter monitoring program designed to detect the presence and possible disturbance at the VAFB harbor area during dredging activities.

NEPA

In accordance with section 6.01 of the National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has determined based on the content and analysis of Boeing's request for an IHA, and the Final EA for Harbor Activities Associated with the Delta IV Program at VAFB (ENSRI, 2001) that the proposed issuance of this IHA to Boeing by NMFS will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Impacts are not expected to be outside the scope of that EA. Therefore, this action meets the definition of a "Categorical Exclusion" as defined under NOAA Administrative Order 216–6 and is exempted from further environmental review.

Preliminary Conclusions

NMFS proposes to issue an IHA to Boeing for harbor activities related to the Delta IV/EELV to take place at south VAFB over a 1–year period. The proposal to issue this IHA is contingent upon adherence upon the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has preliminarily determined that the impact of harbor activities related to the Delta IV/EELV at VAFB, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation will result in the harassment of only small numbers of Pacific harbor seals and California sea lions; would have no more negligible impact on these marine mammal stocks,; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses. While behavioral modifications may be made by these species to avoid the resultant acoustic and visual stimuli, there is no potential for large-scale movements, such as stampedes, since harbor seals and sea lions haul out in such small numbers near the site (maximum number of harbor seals hauled out in one day estimated at 43 seals, averaging at 21 seals per day, maximum number of sea lions hauled out in one day is estimated at six sea lions). The effects of the harbor activities are expected to be limited to short-term and localized behavioral changes. Therefore, NMFS preliminarily concludes that the effects of the planned demolition activities will have no more than a negligible impact on pinnipeds.

Due to the localized nature of these activities, the number of marine mammals potentially taken by harassment are estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is unlikely given the low noise levels and will be entirely avoided through the incorporation of appropriate mitigation measures. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near south VAFB harbor.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (*see* **ADDRESSES**). Prior to submitting comments, NMFS recommends readers review NMFS' responses to those comments on this activity submitted previously (*see* 67 FR 63151, May 23, 2002).

Dated: April 2, 2003.

Thomas C. Eagle,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–8686 Filed 4–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 001215353–3068–03]

RIN 0660–ZA14

PEACESAT Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of closing date for solicitation of PEACESAT applications.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for a grant for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program. Projects funded pursuant to this Notice are intended to support the PEACESAT Program's acquisition of satellite communications to service Pacific Basin communities and to manage the operations of this network. Applications for the PEACESAT Program grant will compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account. The deadline for receipt of television applications for the Public Telecommunications Facilities Program (PTFP), which is also funded from this account, was November 19, 2002. The PTFP deadline was published in the **Federal Register** on October 17, 2002 (67 FR 64297). NTIA also published in the March 5, 2003 **Federal Register** (68 FR 10610) that the deadline for receipt of radio and nonbroadcast applications for the PTFP, which are also funded from this account, will be April 4, 2003.

DATE: Applications for the PEACESAT Program grant must be received on or before 5 p.m. EDT on May 9, 2003. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. NTIA will not accept mail delivery of applications posted on the closing date or later and received after the above deadline. However, if an application is received after the closing date due to carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline.

ADDRESSES: To submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. Applicants submitting applications by hand delivery are notified that, due to security procedures in the Department of Commerce, all packages must be cleared by the Department's security office. The security office is located in Room 1874, located at Entrance No. 10 on the 15th St. NW. side of the building.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156.

SUPPLEMENTARY INFORMATION:

I. Application Forms and Requirements

Funding for the PEACESAT Program is provided pursuant to Public Law 108–7, "The Consolidated Appropriations Resolution, 2003," and Public Law 106–113, "The Consolidated Appropriations Act, Fiscal Year 2000." Public Law 106–113 provides "That, hereafter, notwithstanding any other provision of law, the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program is eligible to compete for Public Broadcasting Facilities, Planning and Construction funds." The PEACESAT Program was authorized under Pub. L. 100–584 (102 Stat. 2970) and also Pub. L. 101–555 (104 Stat. 2758) to acquire satellite communications services to provide educational, medical, and cultural needs of Pacific Basin communities. The PEACESAT Program has been operational since 1971 and has received funding from NTIA for support of the project since 1988.

Public Law 108–7 appropriated $43.5 million for this account to be awarded for Public Telecommunications Facilities Program (PTFP) grants and for PEACESAT Program grants. Solicitation notices for the PTFP Program were published in the **Federal Register** on October 17, 2002 (67 FR 64297) for television applications and on March 5, 2003 (68 FR 10610) for radio and nonbroadcast applications. Applications submitted in response to this solicitation for PEACESAT applications are not subject to the requirements of the October 17, 2002 or March 5, 2003 Notices and are exempt from the PTFP regulations at 15 CFR part 2301. NTIA anticipates making a single award for approximately $500,000 for the PEACESAT Program in FY2003.

NTIA requests that each applicant for a PEACESAT Program grant supply one (1) original signed application and five (5) copies, unless doing so would present a financial hardship, in which case the applicant may submit one(1) original and two (2) copies of the application. The application form consists of the Standard Form 424 Application for Federal Assistance; Standard Form 424A Budget Information-Non-Construction Programs; Standard Form 424 B, Assurances; Standard Form CD–511 Certification; and Standard Form LLL, Disclosure of Lobbying Activities (if applicable). These requirements are subject to the Paperwork Reduction Act and have been approved by the Office of Management and Budget under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

Eligible applicants will include any for-profit or non-profit organization, public or private entity, other than an agency or division of the Federal government. Individuals are not eligible to apply for the PEACESAT Program funds.

Grant recipients under this program will not be required to provide matching funds toward the total project cost.

The costs allowable under this Notice are not subject to the limitation on costs contained in the October 17, 2002 or March 5, 2003 Notices regarding the PTFP Program.

II. Catalog of Federal Domestic Assistance Number

11.550 Public Telecommunications Facilities Program.

III. Administrative Requirements; Scope of Project and Eligible Costs; Evaluation and Selection Process

Public Law Number 108–7 was enacted February 20, 2003. Public Law No. 108–7 appropriated funds to the Public Broadcasting, Facilities, Planning and Construction Funds account. Pursuant to Public Law 106–113 the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program can compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account. Funds appropriated to the Public Broadcasting, Facilities, Planning and Construction Funds account do not carry fiscal year limitations. A notice published on March 16, 1999 set forth the scope of the project and eligible costs, and a description of the evaluation and selection process for applications for the PEACESAT Program. Since funds for the Public Broadcasting, Facilities, Planning and Construction Funds account are available without fiscal year limitations, the administrative requirements; scope of project and eligible costs criteria; and evaluation and selection process criteria set forth in the March 16, 1999 notice apply to the 1999 PEACESAT program and to all subsequent years. A copy of the March 16,1999 Notice is available to potential applicants from NTIA at the address listed in the Address section and is also available on the Internet at *http://www.ntia.doc.gov/otiahome/peacesat.html*. If, in the future, NTIA changes the administrative requirements; the scope of project and eligible costs criteria; or the evaluation and selection process criteria, a new notice will be published containing the new criteria and requirements. Unsuccessful applications will be destroyed.

Applicants for grants for the PEACESAT Program must file their applications on or before May 9, 2003. NTIA anticipates making the grant award by September 30, 2003. NTIA shall not be liable for any proposal preparation costs.

IV. Project Period

Any project awarded pursuant to this notice will be for a one-year period.

V. Other Requirements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements

contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA),unless that collection displays a currently valid Office of Management and Budget control number.

VI. Executive Order 12866

It has been determined that this notice is "not significant" for the purpose of Executive Order 12866.

VII. Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in EO 13132.

VIII. Regulatory Flexibility Analysis

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for this notice related to public property, loans, grants, benefits or contracts, 5 U.S.C. 553(a), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice. 5 U.S.C. 601 *et seq.*

Authority: Pub. L. 108–7, "The Consolidated Appropriations Resolution, 2003," and Public Law 106–113, "The Consolidated Appropriations Act, Fiscal Year 2000."

Dr. Bernadette McGuire-Rivera,
Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 03–8678 Filed 4–8–03; 8:45 am]
BILLING CODE 3510–60–P

PATENT AND TRADEMARK OFFICE

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: United States Patent and Trademark Office (USPTO).

Title: Admittance to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the United States Patent and Trademark Office (USPTO).

Form Number(s): PTO–158, PTO–158A, PTO–275, PTO–107A, PTO–1209, PTO–2126.

Agency Approval Number: 0651–0012.

Type of Request: Revision of a currently approved collection.

Burden: 58,745 hours annually.

Number of Respondents: 64,142 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 30 minutes (0.5 hours) to complete either an application or registration to practice before the USPTO, or an application for a foreign resident to practice before the USPTO and, depending upon the complexity of the situation, to gather, prepare and submit the application. It is estimated to take 20 minutes (0.33 hours) to complete undertakings under 37 CFR 10.10(b); 10 minutes (0.17 hours) to complete data sheets; 5 minutes (0.08 hours) to complete the oath or affirmation, and the request for a paper copy of the continuing training program and furnished narrative; 45 minutes (0.75 hours) to complete the petition for waiver of regulations; and 90 minutes (1.5 hours) to complete the written request for reconsideration of disapproval notice of application and the petition for reinstatement to practice. It is estimated to take 2 hours and 10 minutes (2.17 hours) for the annual practitioner registration/continuing training program—ten minutes (0.17 hours) to fill out the form and an average of 2 hours (2.0 hours) to complete the continuing training examination online. It is estimated to take 2 hours and 5 minutes (2.08 hours) for the paper-based version of the annual practitioner registration/continuing training program-five minutes (0.08 hours) to request the materials and an average of 2 hours (2.0 hours) to complete the continuing training examination on paper. These times include time to gather the necessary information, prepare, and submit the forms and requirements in this collection.

Needs and Uses: This information is required by 35 U.S.C. 2(b)(2)(d), administered by the USPTO through 37 CFR 10.5–10.19. The information is used by the Director of the Office of Enrollment and Discipline (OED) to determine if the applicant for registration is of good moral character and repute; has the necessary legal, scientific, and technical qualifications; and is otherwise competent to advise and assist applicants in the presentation and prosecution of applications for patent grants.

Affected Public: Individuals or households; business or other for-profit; the Federal Government; and State, Local or Tribal Governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, (703) 308–7400, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, or by e-mail at *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before May 9, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 1, 2003.

Susan K. Brown,
Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–8602 Filed 4–8–03; 8:45 am]
BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 9, 2003.

Title, Form Number, and OMB Number: International Military Student Information; DD Form 2339; OMB Number 0702–0064.

Type of Request: Reinstatement.

Number of Respondents: 3,000.

Responses Per Respondent: 1.

Annual Responses: 3000.

Average Burden Per Resonse: 15 minutes (average).

Annual Burden Hours: 750 hours.

Needs and Uses: The DD Form 2399 is required in support of international military students who are attending training in the United States with the Military Departments as part of the security assistance training program. The DD Form 2399 is utilized in gathering information on the international student prior to his/her arrival in the United States in order that civilian and military sponsors can be assigned to assist the student during his/her training.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 3, 2003.

Patricia L. Toppings,
Alternate OSD Federal Register, Liaison Officer Department of Defense.

[FR Doc. 03–8620 Filed 4–8–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 9, 2003.

Title, Form Number, and OMB Number: Application and Agreement for Establishment of a National Defense Cadet Corps Unit; DA Form 3126–1; OMB Number 0702–0110.

Type of Request: Reinstatement.

Number of Respondents: 35.

Responses Per Respondent: 1.

Annual Responses: 35.

Average Burden Per Response: 60 minutes (average).

Annual burden Hours: 35 hours.

Needs and Uses: Educational Institutions desiring to host a National Defense Cadet Corps Unit (NDCC) may apply by using a DA Form 3126–1. The DA Form 3126–1 documents the agreement and becomes a contract signed by both the secondary institution and the U.S. Government. This form provides information on the schools's facilities and states specific conditions if a NDCC unit is placed at the institution. The data provided on the application is used to determine which school(s) will be selected.

Affected Public: State, Local, or Tribal Government; Not-For-Profit Institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 2, 2003.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–8621 Filed 4–8–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Health Information Privacy Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: Under 45 CFR part 164, "Standards for Privacy of Individually Identifiable Health Information" and DoD 6025.18–R, "DoD Health Information Privacy Regulation" provisions are made to allow appropriate uses and disclosures of protected health information concerning members of the armed forces to assure the proper execution of the military mission, provided that the Department of Defense publishes in the **Federal Register** a notice describing implementation of these provisions. This notice implements those provisions.

EFFECTIVE DATES: This notice is effective April 14, 2003.

FOR FURTHER INFORMATION CONTACT: CDR Sam Jenkins, Health Information Privacy Officer, TRICARE Management Activity, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, Virginia 22041–3206, (703) 681–5611, extension 6824.

SUPPLEMENTARY INFORMATION: In accordance with 45 CFR 164.512(K)(1)(i), the Department of Defense has established in DoD 6025.18–R, paragraph C7.11.1, the following provisions.

1. *General Rule.* A covered entity (including a covered entity not part of or affiliated with the Department of Defense) may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission.

2. *Appropriate Military Command Authorities.* For purposes of paragraph 1, appropriate Military Command authorities are the following:

2.1. All Commanders who exercise authority over an individual who is a member of the Armed Forces, or other person designated by such a Commander to receive protected health information in order to carry out an activity under the authority of the Commander.

2.2 The Secretary of Defense, the Secretary of the Military Department responsible for the Armed Force for which the individual is a member, or the Secretary of Homeland Security when a member of the Coast Guard when it is not operating as a service in the Department of the Navy.

2.3. Any official delegated authority by a Secretary listed in subparagraph 2.2 to take an action designed to ensure the proper execution of the military mission.

3. *Purposes for Which the Protected Health Information May Be Uses or Disclosed.* For purposes of paragraph 1, the purposes for which any and all of the protection health information of an individual who is a member of the Armed Forces may be used or disclosed are the following:

3.1. To determine the member's fitness for duty, including but not limited to the member's compliance with standards and all activities carried out under the authority of DoD Directive 1308.1, "DoD Physical Fitness and Body Fat Program," July 20, 1995, DoD Instruction 1332.38, "Physical Disability Evaluation," November 14, 1996, DoD Directive 5210.42, "Nuclear Weapons Personnel Reliability Program (PRP)," January 8, 2001, and similar requirements.

3.2. To determine the member's fitness to perform any particular

mission, assignment, order, or duty, including compliance with any actions required as a precondition to performance of such mission, assignment, order, or duty.

3.3. To carry our activities under the authority of DoD Directive 6490.2, "Joint Medical Surveillance," August 30, 1997.

3.4. To report on casualties in any military operation or activity in accordance with applicable military regulations or procedures.

3.5. To carry out any other activity necessary to the proper execution of the mission of the Armed Forces.

Dated: April 2, 2003.

Linda Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–8624 Filed 4–8–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to Add Systems of Records.

SUMMARY: The Office of the Secretary of Defense proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on May 9, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on April 1, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 2, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS 48

SYSTEM NAME:

Biographies of OSD Officials.

SYSTEM LOCATION:

Office of the Secretary of Defense, Chief Information Office, ATTN: Biographies of OSD Officials, 1950 Defense Pentagon, Room BG849, Washington, DC 203301–1950.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel currently occupying professional positions within the offices of the Office of the Secretary of Defense (OSD). A professional position is one occupied by a civilian in the grade of GS 13 and above or a military officer in the grade of major/lieutenant commander and above; employees in developmental programs such as Presidential Management Interns and Defense Fellows; and employees from other organizations serving as detailees and serving under intergovernmental personnel act agreements who are integrated within the OSD workforce.

CATEGORIES OF RECORDS IN THE SYSTEM:

Basic biographical information on individual OSD staff to include full name of the individual; rank/grade; title; organization/office; current assignments within OSD (starting with present and working backwards to cover all periods of assignment within OSD); past experiences (a brief history of other related past experiences); and education (optional). A photograph of the individual is optional.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 131, Office of the Secretary of Defense.

PURPOSE(S):

To provide the Secretary and Deputy Secretary of Defense, as well as the OSD Principal Staff Assistants (PSA), with immediate access to biographical information on the OSD staff personnel. PSAs will only have access to those biographies for personnel who are employed, assigned, or detailed to their respective offices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices applies to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on electronic media.

RETRIEVABILITY:

Retrieved alphabetically by the individual's full name.

SAFEGUARDS:

Records are maintained in a secure, limited access or monitored area. Physical entry by unauthorized persons is restricted by the use of locks, guards, or administrative procedures. Access to personal information is limited to those who require the records to perform their official duties. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information.

RETENTION AND DISPOSAL:

Records are deleted when the individual concerned departs the OSD staff.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personnel Systems and Evaluation Division, Washington Headquarters Services, Personnel and Security Directorate, ATTN: Biographies of OSD Officials, 5001 Eisenhower Avenue, Room 2N36, Alexandria, VA 22333–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief, Personnel Systems and Evaluation Division, Washington Headquarters Services, Personnel and Security Directorate, ATTN: Biographies of OSD Officials, 5001 Eisenhower Avenue, Room 2N36, Alexandria, VA 22333–0001.

Requests for information should contain individual's full name.

RECORDS ACCESS PROCEDURES:

Individuals seeking to access information about them selves contained in this system of records should address written inquiries to the Chief, Personnel Systems and Evaluation Division, Washington Headquarters Services, Personnel and Security Directorate, ATTN: Biographies of OSD Officials, 5001 Eisenhower Avenue, Room 2N36, Alexandria, VA 22333–0001.

Requests for information should contain individual's full name.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The source of record is from the individuals concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–8623 Filed 4–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. Patent application 10/342,649: HAZMAT Platform; a portable, re-usable, elevated platform that provides a large, non-slip, grated surface on which an individual wearing a fully-encapsulated hazardous materials suit may stand to ensure thorough on-site decontamination. The elevated design with a top grate and two folding/pivoting support leg assemblies allows for the collection of the hazardous material runoff in a containment vessel deployed underneath. It is made of impervious, strong, lightweight material to prevent absorption of any hazardous chemicals and to provide sufficient structural strength while keeping its overall weight reasonable. The design is simple and straightforward and can be economically manufactured. Patent application 10/314,484: Hexagonal Ball Socket Driver Bit; a ball socket driver bit that includes a ball portion and a shank portion. The ball portion cross section perpendicular to the bit axis is hexagonal. The shank portion has a cross section smaller than the ball portion. The first portion end is adapted to axially enter a socket head screw. The ball portion is adapted to enter a socket such that when turning the socket the socket head screw can be turned when the socket axis is not axially aligned with the screw axis.

ADDRESSES: Requests for copies of the invention cited should be directed to the Naval Surface Warfare Center, Crane Div, Code OCF, Bldg 64, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell Boggess, Naval Surface Warfare Center, Crane Div, Code OCF, Bldg 64, 300 Highway 361, Crane, IN 47522–5001, telephone (812) 854–1130. To download an application for license, see: *www.crane.navy.mil/foia_pa/CranePatents.asp.*

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: March 28, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–8673 Filed 4–8–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 9, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: April 3, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Application Package for the Jacob K. Javits Fellowship Program.

Frequency: Annually.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 2,000.

Burden Hours: 10,000.

Abstract: These instructions and forms provide the U.S. Department of Education the information needed to select fellows for the Javits Program.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grants Information Collections (1890–0001). Therefore, this 30-day public comment notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2246. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also

be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–8604 Filed 4–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 9, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 3, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Field Test of Agency Capacity to Implement Reporting Requirements Associated with Draft Evaluation Standard 3.

Frequency: One-time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 80;

Burden Hours: 4,880.

Abstract: The field test will assess Designated State Unit (VR agency) capacity to obtain and use unemployment insurance wage record data maintained by State Employment Security Agencies (SESAs) needed to implement a proposed evaluation standard and associated performance indicators mandated by the 1992 amendments to the Rehabilitation Act, as amended by the Workforce Investment Act of 1998.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2252. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her e-mail address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–8605 Filed 4–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 9, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 3, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revison.

Title: Performance Report for the Jacob K. Javits Fellowship Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 115.

Burden Hours: 690.

Abstract: This information collection provides the U.S. Department of Education with information needed to determine if grantees have made substantial progress toward meeting the Program's objectives and allow program staff to monitor and evaluate the Program. The Congress has mandated (through the Government's Performance and Results Act of 1993) that the U.S. Department of Educaton provide documentation about the progress being made by the Program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2256. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address vivian_reese@ed.gov. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–8606 Filed 4–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–278]

Application To Export Electric Energy; Direct Commodities Trading Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Direct Commodities Trading Inc. (DCT) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 9, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On March 26, 2003, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from DCT to transmit electric energy from the United States to Canada. DCT, a Canadian corporation, does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.

DCT will purchase the power to be exported from the New York Independent System Operator and transmit it on its own behalf to Canada over the existing international transmission facilities currently owned by the New York Power Authority and Niagara Mohawk Power Corporation. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by DCT, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the DCT application to export electric energy to Canada should be clearly marked with Docket EA–278. Additional copies are to be filed directly with Jean-Jacques Taza, DCT Inc., 4821 Park Avenue, Suite 6, Montréal, Quebec, Canada H2V 4E7.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy home page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Regulatory" Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on April 2, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Cool & Power Systems, Office of Fossil Energy.

[FR Doc. 03–8635 Filed 4–8–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy (DOE or Department) is forecasting the representative average unit costs of five residential energy sources for the year 2003 persuant to the Energy Policy and Conservation Act. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene.

EFFECTIVE DATE: The representative average unit costs of energy contained

in this notice will become effective May 9, 2003, and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Brian Card, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. (202) 586–9228.

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103. (202) 586–9507.

SUPPLEMENTARY INFORMATION: Section 323 of the Energy Policy and Conservation Act (Act) (42 U.S.C. 6291—6309) requires that DOE prescribe test procedures for the determination of the estimated annual operating costs or other measures of energy consumption for certain consumer products specified in the Act (42 U.S.C. 6293). These test procedures are found in 10 CFR part 430, subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be calculated from measurements of energy use in a representative average use cycle or period of use and from representative average unit costs of the energy needed to operate such product during such cycle (42 U.S.C. 6293(b)). The section further requires that DOE provide information to manufacturers regarding the representative average unit costs of energy (42 U.S.C. 6293(b)(4)). This cost information should be used by manufacturers to meet their obligations under section 323(c) of the Act. Most notably, these costs are used to comply with Federal Trade Commission (FTC) requirements for labeling. Manufacturers are required to use the revised DOE representative average unit costs when the FTC publishes new ranges of comparability for specific covered products, 16 CFR part 305. Interested parties can also find information covering the FTC labeling requirements at *www.ftc.gov/appliances*.

The Department last published representative average unit costs of residential energy for use in the Energy Conservation Program for Consumer Products Other Than Automobiles on April 24, 2002 (67 FR 20104). Effective May 9, 2003, the cost figures published on April 24, 2002, will be superseded by the cost figures set forth in this notice.

The Department's Energy Information Administration (EIA) has developed the 2003 representative average unit after-tax costs found in this notice. The representative average unit after-tax costs for electricity, natural gas, No. 2 heating oil, and propane are based on simulations used to produce the November, 2002, EIA *Short-Term Energy Outlook*, DOE/EIA–0226 (02/11), and reflect the mid-price scenario. The representative average unit after-tax costs for kerosene are derived from their relative prices to that of heating oil, based on 1997–2001 averages for these two fuels. The source for these price data is the October, 2002, *Monthly Energy Review* DOE/EIA–0035(2002/10). The *Short-Term Energy Outlook* and the *Monthly Energy Review* are available at the National Energy Information Center, Forrestal Building, Room 1F–048, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800. These publications can also be found on the EIA Web site: *www.eia.doe.gov*.

The 2003 representative average unit costs pursuant to section 323(b)(4) of the Act are set forth in Table 1, and will become effective May 9, 2003. They will remain in effect until further notice.

Issued in Washington, DC, on April 4, 2003.

David K. Garman,

Assistant Secretary for Energy Efficiency and Renewable Energy.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES—(2003)

Type of energy	Per million Btu [1]	In commonly used terms	As required by test procedure
Electricity	$24.65	8.41¢/kWh [2,3]	$.0841/kWh.
Natural gas	8.16	81.6¢/therm [4] or $8.37/MCF [5,6]	.00000816/Btu.
No. 2 Heating Oil	8.80	$1.22/gallon [7]	.00000880/Btu.
Propane	13.25	$1.21/gallon [8]	.00001325/Btu.
Kerosene	10.59	$1.43/gallon [9]	.00001059/Btu.

[1] Btu stands for British thermal units.
[2] kWh stands for kilowatt hour.
[3] 1 kWh = 3,412 Btu.
[4] 1 therm = 100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,026 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 03–8634 Filed 4–8–03; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0090; FRL–7297–4]

EPA's Office of Water and its Contractor, ICF and its Subcontractors RTI, Sci Comm, Inc., and Appl, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to EPA's Office of Water and its contractor, ICF and its subcontractors RTI, Sci Comm, Inc., and Appl, Inc., in accordance with 40 CFR 2.307(h)(3), and 2.308(h)(2). ICF and its subcontractors RTI, Sci Comm, Inc., and Appl, Inc., have been awarded a contract to perform work for EPA's Office of Water. Access to this information will enable ICF and its subcontractors RTI, Sci Comm, Inc., and Appl, Inc., to fulfill the obligations of the contract.

DATES: EPA's Office of Water and its contractor, ICF and its subcontractors RTI, Sci Comm, Inc., and Appl, Inc., will be given access to this information on or before April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7248; e-mail address: *johnson.erik@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *EPA Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0090. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA dockets. You may use EPA dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Contractor Requirements

Under Contract No. 68–C0–2009, ICF and its subcontractors RTI, Sci Comm, Inc., and Appl, Inc., will perform the following tasks:

1. *Human health.* The contractor shall prepare summaries of peer-reviewed literature on toxic and clinical endpoints, as specified in a work assignment; screening analyses that display and compare all available data for a pollutant, and build on the summaries; analyses for the purpose of supporting findings; and evaluate, and revise health effects documents.

2. *Sewage sludge.* The contractor shall provide technical support in the preparation, evaluation, and revision of procedures for selecting pollutants-of-concern in sewage sludge that is used or disposed of, and shall provide technical support during the evaluation of those pollutants.

3. *Laboratory analyses and laboratory/field studies.* The contractor shall analyze samples (e.g., water waste, surface water, drinking water, or sewage sludge) for pollutants to support development of water quality criteria, maximum contaminate level goals, sewage sludge pollutant limits, and other program requirements, as specified in a work assignment.

OPP has determined that access by ICF and its subcontractors RTI, Sci Comm, Inc., and Appl, Inc., to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR, 2.307(h)(3), this contract with ICF and its subcontractors RTI, Sci Comm, Inc., and Appl, Inc., prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the subcontractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, ICF and its subcontractors RTI, Sci Comm, Inc., and Appl, Inc., are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to ICF and its subcontractors RTI, Sci Comm, Inc., and Appl, Inc., until the requirements in this document have been fully satisfied. Records of information provided under this contract will be maintained by EPA Project Officers for this contract. All information supplied to, ICF and its subcontractors RTI, Sci Comm, Inc., and Appl, Inc., by EPA for use in connection with this contract will be returned to EPA when ICF and its subcontractors RTI, Sci Comm, Inc., and Appl, Inc., have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: March 27, 2003.

Linda Vlier Moos,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 03–8373 Filed 4–8–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0095; FRL–7301–8]

Dynamac Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Dynamac Corporation in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Dynamac Corporation has been awarded multiple contracts to perform work for OPP, and access to this information will enable Dynamac Corporation to fulfill the obligations of the contracts.

DATES: Dynamac Corporation will be given access to this information on or before April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7248; e-mail address: *johnson.erik@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0095. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Contractor Requirements

1. Under Contract No. 68–W0–0070, the contract shall require the contractor to research, evaluate, and analyze data and information pertaining to the ecotoxicity of pesticides and concentrations of pesticides in the environment—including soil, water, wildlife food items such as foliage and insects, and to complete ecological risk assessments as specified in the Statement of Work. Assessments completed by the contractor shall analyze all valid and adequate data, including data studies retrieved from the open literature, as well as any ecological toxicity documents provided by registrants or other governmental bodies and present in detailed summary of the results.

2. Under Contract No. 68–W0–0171, this contract will provide support primarily in the area of review and evaluation of available data pertaining to the chemistry and fate of pesticides in the environment (including the evaluation of environmental monitoring data), and, secondarily, the assessment of pesticide fate and transport in the environment. It may require the contractor, on occasion, to conduct research to understand science issues, support scientific workshops, conduct analyses of issues and provide science policy options. EPA's Environmental Fate and Evaluation Division (EFED) will make available to the contractor the data, studies, and information which is to be reviewed.

These contracts involve no subcontractors.

OPP has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under the contracts. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with Dynamac Corporation, prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Dynamac Corporation is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Dynamac Corporation until the requirements in this document have been fully satisfied. Records of information provided to Dynamac Corporation will be maintained by EPA Project Officers for these contracts. All information supplied to Dynamac Corporation by EPA for use in connection with these contracts will be returned to EPA when Dynamac Corporation has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: April 1, 2003.

Linda Vlier Moos,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 03–8655 Filed 4–8–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7479–6]

Peer-Review Workshop on the Environmental Effects of Ozone and Related Photochemical Oxidants

AGENCY: Environmental Protection Agency.

ACTION: Notice of peer-review workshop and public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a peer review workshop to facilitate preparation of the Environmental Effects Chapter to be included in a revised version of the EPA document Air Quality Criteria for Ozone and Related Photochemical Oxidants (Ozone Criteria Document, EPA 600/P–93/004aF–cF). Draft sections for this chapter, prepared (with the assistance of qualified scientists under contract) by the EPA's National Center for Environmental Assessment-Research Triangle Park Division (NCEA–RTP) within EPA's Office of Research and Development, will be reviewed at the Workshop. NCEA will then consider the peer-review advice in revising the sections and incorporating them into the overall Environmental Effects Chapter of the First External Review Draft Ozone Criteria Document to be released later for public comment.

DATES: The peer-review workshop will begin on Tuesday, April 22, 2003, at 9 a.m., and end on Wednesday, April 23, 2003, at 5 p.m. Members of the public are invited to attend as observers.

ADDRESSES: The peer-review workshop will be held at the Sheraton Imperial Hotel, 4700 Emperor Boulevard, Durham, North Carolina 27703. Sleeping room reservations may be made at 919–541–5050. Logistics for the workshop are being arranged by Science Applications International Corporation (SAIC), an EPA contractor. To attend the workshop, register by Monday, April 21, 2003, by calling SAIC at 703–318–4678 or by sending a facsimile to 703–736–0826. You can also register in advance via e-mail at *tcs-events@saic.com*. Space is limited, and reservations will be accepted on a first-come, first-served basis. On-site registration on April 22 and 23 will also be available, as space allows.

FOR FURTHER INFORMATION CONTACT: For workshop information and logistics, contact SAIC at: telephone: 703–318–4678; facsimile: 703–736–0826. For technical information, contact Dr. Robert W. Elias, U.S. EPA, NCEA–RTP, B243–01, Research Triangle Park, NC 27711; telephone: 919–541–4167; facsimile: 919–541–1818; or e-mail: *elias.robert@epa.gov*.

SUPPLEMENTARY INFORMATION: As discussed in a previous call for information (65 FR 57810, September 26, 2000), EPA is undertaking to review and, where appropriate, update and revise the Ozone Criteria Document last issued in July 1996. Pursuant to section 109 of the Clean Air Act, 42 U.S.C. 740, EPA periodically reviews, and when appropriate, updates and revises, the air quality criteria for ozone published under Section 108 of the Act, 42 U.S.C. 7408. EPA then considers these air quality criteria when it periodically reviews the National Ambient Air Quality Standards ("NAAQS") for ozone. *See* 42 U.S.C. 7409(d). As part of the review of the air quality criteria for ozone, a series of peer-review workshops will be convened to discuss draft sections and chapters for the revised Ozone Criteria Document. Preliminary outlines for the proposed chapters were presented in the draft Project Work Plan released for public comment (66 FR 67524, December 31, 2001) and for review by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board (68 FR 3527, January 24, 2003). The first workshop (to be held April 22–23, 2003) will cover draft sections on the environmental effects of ozone, followed at a later date by workshops on tropospheric ozone formation, concentrations, exposure aspects, and health effects. Copies of the draft materials will be made available to the public at the workshops. Peer-review comments and workshop discussions will be taken into account in revising the draft sections and chapters in preparation for release to the public as part of the First External Review Draft of the Ozone Criteria Document. Ample opportunity will be provided at that time for public review and submission of written comments.

Interested parties are invited to assist the EPA in further developing and refining the scientific information base by identifying and submitting pertinent new information on potential health and environmental effects of ozone. In order to be considered for possible inclusion in the criteria document, submitted information should be published or be accepted for publication in a peer-reviewed scientific journal. Such information should be provided to Dr. Robert W. Elias via the above-noted contact information.

Dated: April 3, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–8660 Filed 4–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7478–8]

Meeting of the National Drinking Water Advisory Council; Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given of a meeting of the National Drinking Water Advisory Council (NDWAC), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*). The Council will hear presentations and have discussions on topics important to the Environmental Protection Agency's (EPA's) national drinking water program, including, but not limited to: status reports from the NDWAC's work groups on Affordability and the Contaminant Candidate List, and upates on regulatory activity, source water protection initiatives, and the development of EPA's new strategic plan.

DATES: The Council meeting will be held on May 14, 2003, from 8:30 a.m. until 5:30 p.m. and May 15, 2003, from 8:30 a.m. until 1 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be held at The Washington Terrace Hotel located at 1515 Rhode Island Ave., NW., Washington, DC and is open to the public.

FOR FURTHER INFORMATION CONTACT: Members of the public that would like to attend the meeting, present an oral statement, or submit a written statement, should contact Brenda Johnson, Designated Federal Officer, National Drinking Water Advisory Council, by phone at (202) 564–3791, by e-mail to *johnson.brendap@epa.gov*, or by regular mail to the U.S. Environmental Protection Agency,

Office of Ground Water and Drinking Water (M/C 4601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The Council encourages the public's input and will allocate one hour during the meeting for this purpose. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify the Council's Designated Federal Officer by telephone at (202) 564–3791, no later than May 2, 2003. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received no later than May 2, 2003 will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Any person needing special accommodations at this meeting, including wheelchair access, please contact Brenda Johnson (see **FOR FURTHER INFORMATION CONTACT** section). Arrangements need to be made at least five business days before the meeting so that appropriate special accommodations can be made.

Dated: April 2, 2003.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 03–8669 Filed 4–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0104; FRL–7301–2]

Response to Requests to Cancel Certain Chromated Copper Arsenate (CCA) Wood Preservative Products and Amendments to Terminate Certain Uses of other CCA Products

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of a Cancellation Order.

SUMMARY: This notice announces that a cancellation order was signed on March 17, 2003, in response to the use terminations and cancellations voluntarily requested by the registrants of wood preservative pesticide products containing Chromated Copper Arsenate (CCA) pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. In addition to stating the Agency's response to the requests for cancellation of certain CCA products and amendments to terminate certain uses of other CCA products, this notice also addresses the considerable number of comments received in response to the Agency's requests for public comments on the above stated requests. In the cancellation order, the Agency granted certain of the aforementioned requests and did not take any action regarding certain other elements of the requests. Any sale, distribution, or use of affected products listed in this notice will only be permitted if such distribution, sale, or use is consistent with terms and conditions set forth in the cancellation order.

DATES: The effective dates of cancellation are as follows:(1) For affected product registrations—March 17, 2003 (2) For affected product registrations amended to delete terminated uses—May 16, 2003.

FOR FURTHER INFORMATION CONTACT: By mail: Bonaventure Akinlosotu, Office of Pesticide Programs (7510C), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 308, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 605–0653; e-mail: *akinlosotu.bonaventure@epa.gov.*

SUPPLEMENTARY INFORMATION: This announcement consists of five parts. The first part contains general information. The second part provides background, and summarizes the use terminations and product cancellations requested by the CCA product registrants. The third part summarizes the comments received in response to the Agency's request for public comments on the aforementioned registrants' requests, and provides the Agency's response to the comments. The fourth part provides a summary of the Agency's decision on the voluntary cancellation and use termination requests. The fifth part sets forth the existing stocks provisions that the Agency authorized in the cancellation order.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use CCA products. The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/.* To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

2. *In person.* The Agency has established an official record for this action under docket control number OPP–2003–0104. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Summary of Registrants' Request to Cancel Products and Delete Uses

On February 22, 2002, the Agency announced the receipt of requests from the registrants of wood preservative pesticide products containing Chromated Copper Arsenate (CCA) to cancel certain CCA products and to amend the registrations to terminate certain uses of other CCA products (67 FR 8244)(FRL–6826–8). Another notice was issued (67 FR 13328, March 22, 2002)(FRL–6831–6) to extend the comment period until April 9, 2002. The requests proposed that only certain uses of CCA be allowed as of December 31, 2003. The registrants stated in their requests that their requests were being made as a result of current and projected market demand for CCA products and the availability of new generation wood treatment products. The Agency considers these voluntary moves toward arsenic-free wood treatment products as a positive step, particularly for our nation's children. The Agency believes that reducing the potential residential exposure to a known human carcinogen is desirable. This transition affects all future residential uses of wood treated with CCA, including wood used in playground structures, decks, picnic tables, landscaping timbers, residential fencing, patios, walkways and boardwalks.

EPA received requests from four registrants (Table 1 of this unit) to cancel 2 products (Table 2 of this unit), and to amend 17 other affected end-use and manufacturing-use registrations to terminate all uses of such products (Table 3 of this unit) with the exception of the treatment of wood products that fall under the American Wood-Preservers' Association (AWPA) standards (based on the 2001 edition of the AWPA Standards) listed in the text of the requested label amendment stated below.

TABLE 1.—REGISTRANTS REQUESTING VOLUNTARY TERMINATION OF CERTAIN USES AND/OR CANCELLATION OF PRODUCTS LISTED IN TABLES 2 AND 3

EPA Company Number	Company Name and Address
003008	Osmose, Inc., 980 Ellicott Street, Buffalo, NY 14209
010465	Chemical Specialties. Inc.,One Woodlawn Green, Suite 250, 200 E. Woodlawn Road, Charlotte, NC 28217
035896	Phibro-Tech, Inc., Fort Lee, NJ 07024
062190	Arch Wood Protection, Inc., 1955 Lake Park Drive, Suite 250, Smyrna, GA 30080

TABLE 2.—REGISTRATIONS WITH REQUESTS FOR CANCELLATION OF PRODUCTS

Registration Number	Product Name
62190–5	WolmanacR Concentrate 70%
62190–11	CCA Type C 50% Chromated Copper Arsenate

TABLE 3.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO TERMINATE CERTAIN USES

Registration Number	Product Name
End Use Products	
3008–17	K–33–C (72%) Wood Preservative
3008–21	Special K–33 Preservative
3008–34	K–33 (60%) Wood Preservative
3008–35	K–33 (40%) Type-B Wood Preservative
3008–36	K–33–C (50%) Wood Preservative
3008–42	K–33–A (50%) Wood Preservative
3008–72	Osmose Arsenic Acid 75%
10465–26	CCA Type-C Wood Preservative 50%
10465–28	CCA Type-C Wood Preservative 60%
10465–32	CSI Arsenic Acid 75%
35896–2	Wood-Last Conc. Wood Preservation AQ 50% Solution CCA-Type A
62190–2	Wolmanac Concentrate 50%
62190–8	Wolmanac Concentrate 72%
62190–14	Wolmanac Concentrate 60%

TABLE 3.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO TERMINATE CERTAIN USES—Continued

Registration Number	Product Name
Manufacturing Use Products	
3008–66	Arsenic Acid 75%
10465–32	CSI Arsenic Acid 75%
62190–7	Arsenic Acid 75%

For affected manufacturing-use products, the label amendments were proposed to read as follows:

Effective December 31, 2003, this product may only be used (1) for formulation of the following end-use wood preservative products: ammoniacal copper zinc arsenate (ACZA) or chromated copper arsenate (CCA) labeled in accordance with the Directions for Use shown below, or (2) by persons other than the registrant, in combination with one or more other products to make: ACZA wood preservative; or CCA wood preservative that is used in accordance with the Directions for Use shown below.

Effective December 31, 2003, this product may only be used for preservative treatment of the following categories of forest products and in accordance with the respective cited standard (noted parenthetically) of the 2001 edition of the American Wood-Preservers Association Standards: Lumber and Timber for Salt Water Use Only (C2), Piles (C3), Poles (C4), Plywood (C9), Wood for Highway Construction (C14), Poles, Piles and Posts Used as Structural Members on Farms, and Plywood Used on Farms (C16), Wood for Marine Construction (C18), Round Poles and Posts Used in Building Construction (C23), Sawn Timber Used To Support Residential and Commercial Structures (C24), Sawn Crossarms (C25), Structural Glued Laminated Members and Laminations Before Gluing (C28), Structural Composite Lumber (C33), and Shakes and Shingles (C34). Forest products treated with this product may only be sold or distributed for uses within the AWPA Commodity Standards under which the treatment occurred.

For affected end-use products, the label amendments were proposed to read as follows:

Effective December 31, 2003, this product may only be used for preservative treatment of the following categories of forest products and in accordance with the respective cited standard (noted parenthetically) of the 2001 edition of the American Wood-Preservers Association Standards: Lumber and Timber for Salt Water Use Only (C2), Piles (C3), Poles (C4), Plywood (C9), Wood for Highway Construction (C14), Poles, Piles and Posts Used as Structural Members on Farms, and Plywood Used on Farms (C16), Wood for Marine Construction (C18), Round Poles and Posts Used in Building Construction (C23), Sawn Timber Used To Support Residential and Commercial Structures (C24), Sawn Crossarms (C25), Structural Glued Laminated Members and Laminations Before Gluing (C28), Structural Composite Lumber (C33), and Shakes and Shingles (C34). Forest products treated with this product may only be sold or distributed for uses within the AWPA Commodity Standards under which the treatment occurred.

In addition, the registrants requested that EPA allow use of the previous (unamended) labels for a period of 60 calendar days from the date on which the particular affected registrant receives EPA's approval of the amendment(s) to terminate use(s), and that EPA allow a further amendment by notification on or before December 1, 2003, to (1) delete the use directions in effect prior to these amendments, and (2) to delete the preface phrase "Effective December 31, 2003," from the amended labels such that the statement begins by reading, "This product may only be used for preservative treatment of the following categories of forest products and in accordance with the respective cited standard (noted parenthetically) of the 2001 edition of the American Wood-Preservers' Association Standards* * *." Furthermore, the registrants stated in their letters that they would neither amend nor withdraw their requests for cancellation/use terminations before EPA acts on them. Additionally, the registrants will notify their customers of the amended labels by certified mail after EPA acts on the requests.

III. Summary of Public Comments Received and Agency Response to Comments

The Agency issued a notice of receipt of the aforementioned requests along with a solicitation for public comments (February 22, 2002), followed by another notice to extend the comment period until April 9, 2002 (March 22, 2002). Approximately 6,700 comments were submitted by the wood preservative industry, the chromium industry, the lumber industry, the agricultural industry, Kentucky and Texas State government officials, federal government officials, environmental groups, businesses and private citizens of Corpus Christi, Texas, as well as from others. Based on the nature of the concern(s) expressed, the comments were grouped into four major categories: (1) business and economic concerns from the Agricultural Community and Wood Treatment Industry, (2) concerns with the possible adverse economic impact on the Chromium Industry and Corpus Christi, Texas, (3) concerns raised by Environmental Groups, and (4) other significant, pertinent comments.

Generally, the purpose of soliciting comments pursuant to Section 6(f) of FIFRA is to give an opportunity to comment to those individuals or businesses that would be affected by a registrant's requested action and to those who may want to apply for a registration for a pesticide for which there is a request to cancel the registration or to terminate use(s). This process helps to ensure that EPA is basing its regulatory decisions on the most up-to-date and complete information. The Agency did not specifically solicit comments for the purpose of determining if the voluntary cancellation/use termination requests were comprehensive enough or fast enough. Because these are voluntary cancellation/use termination requests, the registrants have proposed their own terms of cancellation/use termination. This type of public comment opportunity under Section 6(f) differs from the current reregistration public process in that during the reregistration public process the Agency solicits comments on a draft preliminary risk assessment and on draft risk mitigation proposals in anticipation of actions that may not be voluntary. Therefore, the scope of the public comment opportunity in the reregistration process is much broader than the scope of the opportunity in this voluntary cancellation/use termination.

Below is the summary of the comments received in response to EPA's request for public comments, along with the corresponding Agency response.

A. Business and Economic Concerns from the Agricultural Community and Wood Treating Industry

Comments. The majority of the comments received within this category specifically requested that the Agency not accept the request to cancel the use of CCA-treated lumber for agricultural fence posts based on the lack of exposure to children and the higher cost of the alternative products. These comments were received from the wood preservative, chromium, lumber, and agricultural industries, as well as private citizens, businesses, and town officials of Corpus Christi. With respect to exposure to children, the commenters stated their belief that there is little exposure to children from agricultural fencing (as compared to a deck or playground constructed of CCA treated wood) because agricultural fences are generally far away from residences and because children typically do not play on a fence as they would a deck or playground. In addition, the commenters stated that the exclusion of CCA-treated wood for agricultural fence posts from the label would cause an adverse economical impact on the agricultural, lumber, and wood treatment industries due to the higher cost of the alternative treatment products. The commenters stated that the wood treatment plants, the agricultural industry, and the chromium industry may suffer considerable financial and market damage due to the cost of converting wood preserving plants currently treating with CCA to an alternative chemical (estimated cost ranges from $75,000 to $125,000), and the costs of the alternative treatment products (estimated to be 10–15% higher than CCA products at the retail level and 30% higher than CCA products for the agricultural industry). The commenters stated their belief that as a result of the above stated concerns, there will be loss of employment within the industries concerned. The Agency also received a number of comments regarding the use of CCA to treat wood used for permanent wood foundations. The comments received indicated a need to retain this important use and that it posed little opportunity for residential exposure.

Agency's response. The Agency is currently separately from this voluntary cancellation/use termination action, reviewing the exposure and risk (as well as the benefits) of all uses of CCA through its reregistration process. In light of the issues raised by commenters with regard to agricultural fence post and permanent wood foundation uses, EPA believes it is appropriate to evaluate the commenters' concerns during that review. For example, fence posts treated according to AWPA Standard C16 are for agricultural purposes only. This particular type of fence post is used by many farmers and ranchers for barbed and other wire fencing. The distribution channels, aesthetics, size, round shape, and random diameter of that type of fence post effectively limit its use for specific agricultural purposes, and make it inappropriate for residential applications. The Agency has determined, based on available information and field investigations, that agricultural fence posts are not sold into the residential market. On the other hand, wood treated for fence posts according to AWPA Standard C5 is sold at the retail level for residential fencing and can be used for other residential applications as well.

Rather than delay acceptance of other portions of the voluntary cancellation/use termination requests until the reregistration review is complete, EPA has decided to accept the requests for voluntary cancellation/use termination for the other uses and defer any action with respect to requests to terminate agricultural fence post and permanent wood foundation uses until the Agency has evaluated those uses through the reregistration process. If at any time during the reregistration review the Agency determines it has sufficient information to take an action, that is, to either accept or refuse the requests for use termination of those uses, the Agency will take appropriate action. EPA believes this temporary deferral of action is consistent with the principle to phase out CCA for residential uses.

B. Concerns With the Possible Adverse Economic Impact on the Chromium Industry and Corpus Christi, Texas

Comments. Approximately 430 comments were received regarding the potential adverse economic effect from the proposed cancellation or termination of CCA products or treated wood uses on the chromic acid manufacturing plant in Corpus Christi, Texas. The residents of Corpus Christi have within their city limits a plant owned by Elementis Chromium L.P. (Elementis), the only major manufacturer of chromic acid in the United States. This chromic acid plant employs more than 100 residents of the Corpus Christi area and by its supply purchases and salaries, inputs about $40 million per year into the economy of Corpus Christi. Elementis believes the projected 70% decrease in total sales of CCA-treated products 2 years after the amendment is accepted will have adverse economic consequences on the status of the plant operations and the city of Corpus Christi.

Also, the chromium industry and wood treatment industry requested EPA limit its action regarding the phase-out to only CCA-treated playground structures and decks at this time, pending the outcome of the risk assessment being currently conducted by the Agency. It was requested that certain uses of CCA-treated wood, which were proposed for termination be allowed to continue. Specifically, the commenters requested that CCA-treated wood continue to be permitted for the following uses under the AWPA Commodity Standards C2 (Lumber, Timber, Bridge Ties, Mine Ties for above-ground, soil and freshwater use), C5 (Fence Posts), C15 (Wood for Commercial-Residential Construction-Preservative Treatment by Pressure Processes), C16 (Agricultural Fence Posts and certain Wood used on Farms), and C22 (Permanent Wood Foundation Material).

Agency's response. By way of background, under FIFRA, a registration or "license" is issued to an applicant for a pesticide product once all necessary data requirements in support of the registration have been satisfied and the application has been found to be acceptable. In order to obtain a registration for a pesticide under FIFRA, an applicant for registration must demonstrate that the pesticide satisfies the statutory standard for registration. The standard requires, among other things, that the pesticide perform its intended function without causing unreasonable adverse effects on the environment. The term "unreasonable adverse effects on the environment" is defined, among other things, as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide."

Under the statute, a registrant may at any time voluntarily request cancellation of a particular pesticide registration or termination of certain uses for the registration. Upon receipt of such requests, the Agency acts upon the requests pursuant to section 6(f) of FIFRA by notifying the public and soliciting comments from the public on the requests received. The Agency reviews the comments and may, based upon the comments received and/or any information or knowledge it may have concerning the pesticide and its uses in the environment, accept or deny the request either in whole or part.

With regard to the comments received from the chromium industry and on behalf of residents of Corpus Christi, Texas, as stated earlier, at this time, the Agency is not acting upon certain use terminations proposed by the registrants. Specifically, the Agency is deferring action on two use terminations addressed in the comments, agricultural fence posts and permanent wood

foundations. The Agency will examine such uses as part of its reregistration assessment of CCA products. However, the remaining voluntary cancellation requests were finalized on March 17, 2003, and the use terminations are effective as of May 16, 2003.

C. Concerns Raised by Environmental Groups

Comments. In their comments, the environmental groups (Clean Water Action, Healthy Building Network, and others) expressed concerns with the estimated 75 billion board feet (estimated by the American Wood Preservers Institute) of CCA-treated wood currently in use in residential settings. This proposed voluntary cancellation request affects future residential uses of CCA products but does not address existing CCA-treated wood decks and play structures. The environmental groups urged EPA to complete the CCA risk assessments to determine the dangers posed by CCA-treated wood currently in use. Concerns were also expressed over the safety of building contractors who come into contact with CCA-treated wood used during building construction and with utility workers working with utility poles. As a result, there were requests to extend use restrictions to include all uses, residential and industrial.

The environmental groups also believe that the time frame for the phase-out of CCA-treated wood from residential uses is too lengthy, and that the phase-out is not comprehensive enough. They appeared to assume that CCA-treated plywood would continue to be sold in retail stores indefinitely. The commenters also expressed concerns that the Agency doesn't address proper disposal of CCA-treated wood, and treated wood could be burned or dumped in landfills where it can contaminate soil and groundwater. They suggested that the registration be amended to include proper handling, use and disposal of CCA-treated wood.

Agency's response. The Agency acknowledges the concerns expressed by environmental groups regarding the potential risks of CCA to human health and the environment, and the need to proceed as quickly as possible given the potential risks. The Agency intends to address the commenters' concerns in two ongoing Agency processes in which the risk of the non-cancelled or terminated uses of CCA are currently being assessed. The Agency is currently conducting two risk assessments, one that focuses on children's exposure to CCA from play structures and decks constructed of CCA treated wood (uses of which are terminated pursuant to the cancellation order), and one that focuses on the remaining industrial and marine uses. The result of the children's exposure assessment will serve as the basis for determining if further action is needed concerning existing play structures and decks.

The Agency is also currently examining the use of CCA-treated wood in light of the latest science and safety standards, under EPA's reregistration process. Upon the completion of the overall risk assessment, which will address the remaining uses of CCA and any occupational hazards that may exist from exposure to CCA, and the benefits assessment, the Agency will announce its proposed approach and the public will be afforded an opportunity to provide comments. The Agency will then consider any comments received and make a final determination as to the reregistration eligibility of the remaining uses of CCA.

With respect to the disposal of CCA-treated wood, CCA-treated wood is classified as non-hazardous waste under the Federal Resource Conservation and Recovery Act (RCRA). Disposal of CCA-treated wood is addressed via the Consumer Awareness Program (CAP). The CAP is a voluntary program established in 1986 (and later updated in 2001) by the registrants of CCA products, to protect consumers by providing them with information on the proper handling, use and disposal of CCA-treated wood. Under this program, instructions on the proper handling, use and disposal of CCA-treated wood are disseminated to consumers upon purchasing CCA-treated wood products via the Consumer Safety Information Sheets (CSIS) and/or end tag labeling applied to the wood product itself. EPA also disseminates guidance to consumers to advise against burning CCA-treated wood. Additional information regarding the CAP, handling, use and disposal of CCA-treated wood can be obtained from the Agency's Web site at: *http://www.epa.gov/pesticides/citizens/1file.htm.*

D. Other Significant Pertinent comments

1. *Clarification regarding AWPA Standard C5—comment.* An inquiry was made as to the potential decision to allow wood to be treated with CCA for agricultural purposes (fence posts) under AWPA Standard C16 yet questioning why it would be a prohibited use under the AWPA Standard C5.

Agency response. As discussed earlier, the Agency is not taking any action on the requests to delete the agricultural fence post use of wood treated with CCA. Fence posts treated according to AWPA Standard C16 are for agricultural purposes only. This particular type of fence post is used by many farmers and ranchers for barbed and other wire fencing. The distribution channels, aesthetics, size, round shape, and random diameter of that type of fence post effectively limit its use for specific agricultural purposes, and make it inappropriate for residential applications. The Agency has determined, based on available information and field investigations, that agricultural fence posts are not sold into the residential market. Fence posts treated according to AWPA Standard C5, however, are for residential purposes. Prior to the voluntary cancellation/use terminations, the labels permitted wood treated for fence posts according to AWPA standard C5 to be used for residential fencing, and it could also possibly be used for other residential applications as well.

2. *CCA-treated wood export restrictions—* i. *Comment.* Comments sought clarification on whether wood treated with CCA can be exported to other countries for use in residential settings.

Agency response. As stated in this notice, under the Cancellation Order, effective December 31, 2003, wood treatment facilities are only allowed to treat wood products with CCA that are intended to be used only for those remaining uses approved on the CCA product label. Wood intended for use in prohibited residential settings may not be treated with CCA after December 30, 2003, unless the product being used is a pre-existing product and such use is permitted by that product label. (See Unit V: "Provisions for Disposition of Existing Stocks") Because of the method of product manufacture and distribution used in the wood preservation industry, the Agency does not expect any more than de minimus stocks to exist as of December 31, 2003, that do not bear the more restrictive label language. Hence, beginning December 31, 2003, unless the label on the affected product provides otherwise, it would be illegal to treat wood with CCA for any prohibited residential use, regardless of whether the treated wood is to be used in the United States or exported for use in other countries.

3. *Request received from American Wood-Preservers Institute (AWPI)—comment.* The American Wood-Preservers Institute, which provided comments on behalf of the companies that treat wood, requested that the proposed cancellation date of December 31, 2003, be extended an additional 3–6 months to allow further time for

treating plants' transition/conversion to alternative chemicals.

Agency response. The Agency recognizes that the transition to alternative chemicals may pose significant challenges to some stakeholders including wood treaters. However, in their request for voluntary cancellation/use termination, the registrants stated that a 22–month phase-in period was practicable based on the amount of time they believed is required to convert and retrofit the treating plants. The commenters did not present any substantial information that would render the requested time period inappropriate, and therefore EPA is not extending the requested time period.

IV. Summary of Agency's Decision Regarding the Voluntary Cancellation/ Use Termination Requests

The Agency has accepted portions of the proposed voluntary cancellation/use termination requests and is deferring action on other portions. As stated earlier, in light of the issues raised by commenters with regard to the agricultural fence post and permanent wood foundation uses, the Agency has decided to defer its decision and action on the registrants' request to terminate these uses until the Agency has evaluated these uses through the reregistration process. If at any time during the reregistration review the Agency determines it has sufficient information to take any action, that is, to either accept or refuse the requests for termination of those uses, the Agency will take appropriate action at that time. EPA's decision on the other portions of the requests for voluntary cancellation/ use termination is as follows:

1. The following product registrations were cancelled as of March 17, 2003:

62190–5	WolmanacR Concentrate 70%
62190–11	CCA Type C 50% Chromated Copper Arsenate

2. The following manufacturing product registrations were amended to delete certain terminated uses as of May 16, 2003:

3008–66	Arsenic Acid 75%
10465–32	CSI Arsenic Acid 75%
62190–7	Arsenic Acid 75%

For the above identified manufacturing-use products, the accepted amended labeling reads as follows:

Effective December 31, 2003, this product may only be used (1) for formulation of the following end-use wood preservative products: ammoniacal copper zinc arsenate (ACZA) or chromated copper arsenate (CCA) labeled in accordance with the Directions for Use shown below, or (2) by persons other than the registrant, in combination with one or more other products to make: ACZA wood preservative; or CCA wood preservative that is used in accordance with the Directions for Use shown below.

Effective December 31, 2003, this product may only be used for preservative treatment of the following categories of forest products and in accordance with the respective cited standard (noted parenthetically) of the 2001 edition of the American Wood-Preservers Association Standards: Lumber and Timber for Salt Water Use Only (C2), Piles (C3), Poles (C4), Plywood (C9), Wood for Highway Construction (C14), Round, Half Round and Quarter Round Fence Posts (C16), Poles, Piles and Posts Used as Structural Members on Farms, and Plywood Used on Farms (C16), Wood for Marine Construction (C18), Lumber and Plywood for Permanent Wood Foundations (C22), Round Poles and Posts Used in Building Construction (C23), Sawn Timber Used To Support Residential and Commercial Structures (C24), Sawn Crossarms (C25), Structural Glued Laminated Members and Laminations Before Gluing (C28), Structural Composite Lumber (C33), and Shakes and Shingles (C34). Forest products treated with this product may only be sold or distributed for uses within the AWPA Commodity Standards under which the treatment occurred.

3. The following end use product registrations were amended to delete certain terminated uses as of May 16, 2003:

3008–17	K–33–C (72%) Wood Preservative
3008–21	Special K–33 Preservative
3008–34	K–33 (60%) Wood Preservative
3008–35	K–33 (40%) Type-B Wood Preservative
3008–36	K–33–C (50%) Wood Preservative
3008–42	K–33–A (50%) Wood Preservative
3008–72	Osmose Arsenic Acid 75%
10465–26	CCA Type-C Wood Preservative 50%
10465–28	CCA Type-C Wood Preservative 60%
10465–32	CSI Arsenic Acid 75%
35896–2	Wood-Last Conc. Wood Preservation AQ 50% Solution CCA-Type A
62190–2	Wolmanac Concentrate 50%

62190–8	Wolmanac Concentrate 72%
62190–14	Wolmanac Concentrate 60%

For the above identified end-use products, the accepted amended label is to read as follows:

Effective December 31, 2003, this product may only be used for preservative treatment of the following categories of forest products and in accordance with the respective cited standard (noted parenthetically) of the 2001 edition of the American Wood-Preservers Association Standards: Lumber and Timber for Salt Water Use Only (C2), Piles (C3), Poles (C4), Plywood (C9), Wood for Highway Construction (C14), Round, Half Round and Quarter Round Fence Posts (C16), Poles, Piles and Posts Used as Structural Members on Farms, and Plywood Used on Farms (C16), Wood for Marine Construction (C18), Lumber and Plywood for Permanent Wood Foundations (C22), Round Poles and Posts Used in Building Construction (C23), Sawn Timber Used To Support Residential and Commercial Structures (C24), Sawn Crossarms (C25), Structural Glued Laminated Members and Laminations Before Gluing (C28), Structural Composite Lumber (C33), and Shakes and Shingles (C34). Forest products treated with this product may only be sold or distributed for uses within the AWPA Commodity Standards under which the treatment occurred.

4. Further amendments to the product label will be made by the registrants of the above identified amended registrations via notification to the Agency on or before December 1, 2003, to: (1) Delete the use directions in effect prior to these amendments, and (2) delete the preface phrase "Effective December 31, 2003," from the amended labels such that the statement begins by reading, "This product may only be used for preservative treatment of the following categories of forest products and in accordance with the respective cited standard (noted parenthetically) of the 2001 edition of the American Wood-Preservers' Association Standards..." These specific changes may be done via notification.

5. The registrants of the above identified products will notify their customers of the amended registrations/labels by certified mail. This is to ensure that those who are affected by the cancellation order are aware of the labeling changes.

6. The cancellation order included existing stocks provisions as described in Unit V below.

7. The text in 40 CFR 152.132 provides that a distributor (or supplemental registrant) is considered an agent of the registrant for intents and purposes under the act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

V. Provisions for Disposition of Existing Stocks

For purposes of this Order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation or amendment. Any distribution, sale or use of existing stocks in a manner inconsistent with the terms of the cancellation order or the existing stocks provisions contained in the order will be considered a violation of section 12(a)(2)(K) and/or section 12(a)(1)(A) of FIFRA. The following summarizes the effective dates of cancellation as well as the existing stocks provisions for each product subject to the cancellation order.

1. *Cancelled registrations (Table 2 in Unit II).* The effective date of cancellation was March 17, 2003, the date upon which the cancellation order was signed. Registrants have 60 calendar days following the signing of the cancellation order (until May 16, 2003) in which to sell or distribute products listed in Table 2. Registrants were notified of the signing of the cancellation order and of the required changes to labels on the date the order was signed by telephone and facsimile transmission. Any sale, distribution, or use by the registrants of these affected products on or after that date is prohibited. Sale, distribution, or use by persons other than the registrants may continue until supplies are exhausted. Additionally, sale, distribution or use of the stocks by persons other than the registrant in the channels of trade may continue until depleted, provided any sale, distribution, or use is in accordance with the existing label of that product.

2. *Registrations amended to delete terminated uses (Table 3).* The effective date of the cancellation effectuating the use terminations is May 16, 2003. The registrants' voluntary requests for termination of uses had requested that EPA allow use of the previous (unamended) labels for a period of 60 calendar days from the date on which the particular affected registrant receives EPA's approval of the amendments. The Agency is granting this request by making the effective date of cancellation 60 calendar days following the signing of the cancellation order. Registrants were notified of the signing of the cancellation order and of the required changes to labels on the date the order was signed by telephone and facsimile transmission. This 60-day period is intended to allow a sufficient period of time for an orderly transition to the amended labels without disrupting supply and availability of product. On or after May 16, 2003, any sale, distribution, or use of existing stocks by the registrants of the subject registrations is prohibited. Sale, distribution, or use by persons other than the registrants may continue until supplies are exhausted. Additionally, sale, distribution or use of the stocks in the channels of trade by persons other than the registrant may continue until depleted, provided any sale, distribution or use is in accordance with the existing label of that product.

List of Subjects

Environmental protection, Chromated Copper Arsenate, Pesticides and pests.

Dated: March 27, 2003.

Jack E. Housenger,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 03–8372 Filed 4–8–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0074; FRL–7298–2]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Plant Products Co. Ltd., Brampton, ON L6T 1G1, Canada, to conditionally register the pesticide products *Pseudozyma flocculosa* strain PF–A22 UL (TGAI) technical grade of the active ingredient and SPORODEX L an end-use product (EP) containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Sharlene R. Matten, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0514; e-mail address: *matten.sharlene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you produce crops or animals or manufacture food or pesticides. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0074. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, Arlington, VA (703) 305–5805. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of *Pseudozyma flocculosa* strain PF–A22 UL, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Pseudozyma flocculosa* strain PF–A22 UL during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditionally Approved Registrations

EPA issued a notice, published in the **Federal Register** of October 4, 2000 (65 FR 59185) (FRL–6742–1) (OPP–30500), which announced that Jellinek, Schwartz and Connolly, Inc., 1525 Wilson Blvd., Suite 600, Arlington, VA for Plant Products Co. Ltd., 314 Orenda Road, Brampton, Ontario, Canada, had submitted applications for (EPA file symbols 69697–R and 69697–G) to register pesticide products containing *Pseudozyma flocculosa.*

The following products were approved on September 20, 2002 to control powdery mildew disease on greenhouse-grown cut roses and English seedless cucumbers:

1. *Pseudozyma flocculosa* strain PF–A22 UL (TGAI) (EPA Registration Number 69697–1).

2. Sporodex L Biological Fungicide (EPA Registration Number 69697–3).

Both conditional registrations were signed on September 20, 2002 and will expire on September 30, 2004. EPA is requiring the registrant to provide data by October 31, 2003 showing detailed analysis of microbial contaminants in production batches, and reporting any incidents of hypersensitivity or other adverse health incidents to workers, applicators, or bystanders. In addition, EPA is requiring storage stability data for Sporodex L Biological Fungicide, and an acute pulmonary infectivity/toxicity study for *Pseudozyma flocculosa* strain PF–A22 UL (TGAI) by October 31, 2003. After analyzing the submitted data, EPA will decide whether to approve these products for a full registration.

List of Subjects

Environmental protection, Chemicals, Microbes, Pesticides and pests.

Dated: March 31, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–8656 Filed 4–8–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0080; FRL–7300–3]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 75437–EUP–R from Great Lakes Fishery Commission (GLFC) requesting an experimental use permit (EUP) for the sea lamprey migratory pheromone, petromyzonol sulfate. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket ID number OPP–2003–0080, must be received on or before May 9, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Andrew Bryceland, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6928; e-mail address: *bryceland.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0080. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any

cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0080. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID Number OPP–2003–0080. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0080.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0080. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

The GLFC has submitted an application for an EUP to determine if the sea lamprey migratory pheromone, petromyzonol sulfate can be used to attract sea lamprey into traps located in rivers. The study is to be conducted in the following creeks/rivers, states, and counties: Green Creek, Michigan, Cheboygan; Mulligan Creek, Michigan, Presque Isle; Black Mallard River, Michigan, Presque Isle; Ocqueoc River, Michigan, Presque Isle; Trout River, Michigan, Presque Isle; Poultney River/Hubbarton Brook, Vermont and New York, Rutland (VT) and Washington (NY); Winooski River/Sunderland Brook, Vermont, Chittendon; Great Chazy River/Corbeau Creek, New York, Clinton; and Mallets Bay/Allen Brook, Vermont, Chittendon. The total acreage to be treated is 16.7 acres.

III. What Action is the Agency Taking?

Following the review of the GLFC application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register.**

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: March 31, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–8658 Filed 4–8–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0081; FRL–7300–4]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 75437–EUP–E from Great Lakes Fishery Commission (GLFC) requesting an experimental use permit (EUP) for the male sea lamprey sex pheromone 3-ketopetromyzonol sulfate. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket ID number OPP–2003–0081, must be received on or before May 9, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Andrew Bryceland, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6928; e-mail address: *bryceland.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0081. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0081. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0081. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0081.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0081. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

The GLFC has submitted an application for an EUP to determine if the male sea lamprey sex pheromone, 3-ketopetromyzonol sulfate is as effective as spermiating male sea lamprey washings in attracting ovulated female sea lampreys. The study is to be conducted in the Ocqueoc River, Presque County, Michigan with a total treated acreage of 0.15 acre.

III. What Action is the Agency Taking?

Following the review of the GLFC application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register.**

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: April 1, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–8659 Filed 4–8–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7478–4]

Notice of Proposed Lessee Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act and the Solid Waste Disposal Act, Commonly Referred to as the Resource Conservation and Recovery Act of 1976, as Amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA")

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9601–9675, and the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. 6901–6992k, notice is hereby given that a proposed Prospective Lessee Agreement ("Lessee Agreement") associated with a 27-acre parcel of property formerly owned and operated by Allied-Signal located in Baltimore, Maryland (the "Property"), was executed by the Environmental Protection Agency, the Maryland

Department of the Environment and the Department of Justice and is now subject to public comment, after which the United States and the State of Maryland may modify or withdraw their consent if comments received disclose facts or considerations which indicate that the Lessee Agreement is inappropriate, improper, or inadequate. The Lessee Agreement will resolve certain potential EPA claims under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a); sections 3008(h) and 7003 of RCRA, 42 U.S.C. 6928(h) and 6973 and MDE claims under Title 7, Subtitle 2 of the Environment Article of the Annotated Code of Maryland against SBER Harbor Point, LLC and Harbor Point Development, LLC (the "Lessees").

During its operation and ownership of the Property, Allied-Signal used the Property for chromium processing activities which contributed to chromium contamination in the soil and the groundwater at the Property. In June 1989, Region III, the MDE and Allied-Signal entered into a Consent Decree under RCRA under which Allied-Signal agreed to conduct an on-site and off-site investigation. As a result of those investigations, EPA and MDE chose a remedy for the Site which required Allied-Signal to, among other things, construct a hydraulic barrier to contain the contaminated groundwater and conduct perpetual monitoring.

EPA and MDE have determined that Honeywell, the current owner of the Property, is successfully completing the requirements under the Consent Decree. Upon entering a lease with the Lessees, Honeywell will still be required to complete and maintain the remedy as provided for under the Consent Decree.

For fifteen (15) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed Lessee Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before April 24, 2003.

Availability: The proposed Lessee Agreement and additional background information relating to the proposed Lessee Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Lessee Agreement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Legal Program Coordinator (3RC00), 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the "Allied-Signal Prospective Lessee Agreement" and "RCRA–03–2003–0088TH," and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Sheila Briggs-Steuteville (3RC43), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2468.

Dated: April 2, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–8653 Filed 4–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0080; FRL–7299–7]

Lead-Based Paint Activities; State of North Dakota Lead-Based Paint Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; final approval of the State of North Dakota Lead-Based Paint Activities Program.

SUMMARY: On October 4, 2002, EPA received an application from the State of North Dakota requesting authorization to administer a Program in accordance with section 402 of the Toxic Substances Control Act (TSCA). Included in the application was a letter signed September 26, 2002, by the Governor of North Dakota, stating that the State's Lead-Based Paint Abatement Program is at least as protective of human health and the environment as the Federal program under TSCA section 402. Also, included was a letter from the Attorney General of North Dakota, certifying that the laws and regulations of the State provided adequate legal authority to administer and enforce TSCA section 402. North Dakota certifies that its program meets the requirements for approval of a State program under section 404 of TSCA and that North Dakota has the legal authority and ability to implement the appropriate elements necessary to enforce the program. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. Today's notice announces the authorization of the State of North Dakota Lead-Based Paint Activities Program to apply in the State of North Dakota effective September 26, 2002.

DATES: The Lead-Based Paint Activities Program authorization was granted to the State of North Dakota on September 26, 2002.

FOR FURTHER INFORMATION CONTACT: Amanda Hasty, Lead Coordinator, Environmental Protection Agency, Region VIII, 8P–P3T, 999 18th St., Suite 300, Denver, CO 80202–2466; telephone: (303) 312–6966; e-mail address: *hasty.amanda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General

A. Does this Notice Apply to Me?

This notice is directed to the public in general. This notice may, however, be of interest to firms and individuals engaged in lead-based paint activities in North Dakota. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by the notice. If you have any questions regarding the applicability of this notice to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. Summary

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. The Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–92), titled "Lead Exposure Reduction."

Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). These regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 (15 U.S.C. 2684), a State or Indian Tribe may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. EPA will review those applications within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684 (b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA authorization.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA authorization, by submitting a letter signed by the Governor or the Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized until such time as EPA disapproves the program application or withdrawals the program authorization.

In accordance with 40 CFR 745.324(d), "Program Certification," the Governor of North Dakota submitted a self-certification letter to the EPA Administrator on September 26, 2002, certifying that the State program meets the requirements contained in 40 CFR 745.324(e)(2)(i) and (e)(2)(ii). Included in the application was a letter from the Attorney General of North Dakota, certifying that the laws and regulations of the State provided adequate legal authority to administer and enforce TSCA section 402.

Notice of North Dakota's application, a solicitation for public comment regarding the application was published in the **Federal Register** of January 8, 2003 (68 FR 1059) (FRL–7282–8). As determined by EPA's review and assessment, North Dakota's application successfully demonstrated that the State's Lead-Based Paint Activities Program achieves the protectiveness and enforcement criteria, as required for Federal authorization. Furthermore, no public comments were received regarding North Dakota's application. Therefore, as of September 26, 2002, the State of North Dakota is authorized to administer and enforce the lead-based paint program under TSCA section 402.

II. Federal Overfiling

TSCA section 404(b) (15 U.S.C. 2684(b)) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

III. Withdrawal of Authorization

Pursuant to TSCA section 404(c), the Administrator may withdraw a State or Tribal lead-based paint activities program authorization, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this document in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: March 28, 2003.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 03–8657 Filed 4–8–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7478–7]

Standards for the Use or Disposal of Sewage Sludge; Agency Response to the National Research Council Report on Biosolids Applied to Land and the Results of EPA's Review of Existing Sewage Sludge Regulations

AGENCY: Environmental Protection Agency.

ACTION: Notice, with request for comment.

SUMMARY: The Environmental Protection Agency is providing notice and requesting public comment on the Agency's preliminary review of regulations under the Clean Water Act governing the use and disposal of sewage sludge. As part of this review, EPA commissioned the National Research Council (NRC) of the National Academy of Sciences to independently review the technical basis of the chemical and pathogen regulations applicable to sewage sludge that is applied to land. In July 2002, the NRC published a report entitled "Biosolids Applied to Land: Advancing Standards and Practices" in response to the EPA's request.

Today, the Agency is also announcing a strategy explaining how EPA plans to respond to the recommendations in the NRC report. Today's notice explains the rationale for the strategy and solicits public comments on the strategy.

In addition, EPA is announcing the preliminary results of its review of existing sewage sludge regulations under the Clean Water Act. At this time, EPA has not identified any additional toxic pollutants that warrant regulation in sewage sludge. The next step in identifying chemicals that may warrant regulation is to conduct a screening analysis of those chemicals for which adequate data and analytical methods are available and for which there is evidence that they may occur in sewage sludge. EPA plans to complete this screening analysis by January 2004. The terms "sewage sludge" and "biosolids" are used interchangeably in this notice.

DATES: EPA requests comments on all aspects of this notice. If you wish to submit comments on this action, you must do so by July 8, 2003.

ADDRESSES: Send your comments to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0006. Comments may also be submitted electronically or through hand delivery/courier. Follow the detailed instructions for providing comments in section B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Arleen Plunkett, U.S. Environmental Protection Agency, Office of Water, Health and Ecological Criteria Division (4304T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. (202) 566–1119. *plunkett.arleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Docket Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action

under Docket ID No. OW–2003–0006. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that are available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section A.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider late comments.

1. Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OW–2003–0006. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail

Comments may be sent by electronic mail (e-mail) to *ow-docket@epa.gov*, Attention Docket ID No. OW–2003–0006. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0006.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0006. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section A.1.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate a potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Abbreviations and Acronyms Used

AMSA—Association of Metropolitan Sewerage Agencies
BDMS—Biosolids Data Management System
CAFO—Concentrated Animal Feeding Operations
CDC—Centers for Disease Control and Prevention
CFR—Code of Federal Regulations
CWA—Clean Water Act
EC—European Community
EMS—Environmental Management System
EPA—U.S. Environmental Protection Agency
EQ—Exceptional Quality
EU—European Union
FTIR—Fourier Transform Infrared
GC/MS—Gas Chromatography/Mass Spectrometry
IAC—EPA Intra-Agency Committee for Biosolids
ICMA—International City/County Management Association
IRIS—Integrated Risk Information System
ISG—Information Sharing Group
LGEAN—Local Government Environmental Assistance Network
NBP—National Biosolids Partnership
NEBRA—New England Biosolids and Residuals Association
NPDES—National Pollutant Discharge Elimination System
NODA—Notice of Data Availability
NRC—National Research Council
NSSS—National Sewage Sludge Survey
ORD—Office of Research and Development
OW—Office of Water
PA—State of Pennsylvania
PCBs—Polychlorinated biphenyls
PCDDs/Fs—Polychlorinated dibenzo-p-dioxins/dibenzofurans
PCS—Permit Compliance System
PEC—EPA's Pathogen Equivalency Committee
POTW-Publicly Owned Treatment Works
PFRP—Processes to Further Reduce Pathogens
PSRP—Processes to Significantly Reduce Pathogens
QA/QC—Quality Assurance/Quality Control
QMRA—Quantitative Microbial Risk Assessment
RME—Reasonable Maximum Exposure
SSI—Sewage Sludge Incinerator
UA—University of Arizona, Water Quality Center
UCAL—University of California
UPA—University of Pennsylvania
USDA—United States Department of Agriculture
WEF—Water Environment Federation
WERF—Water Environmental Research Foundation

Table of Contents

I. What is the Legal Background of the Standards for the Use or Disposal of Sewage Sludge?
II. What Requirements are Included in the Standards for the Use or Disposal of Sewage Sludge (40 CFR Part 503)?
III. What is the Purpose of Today's Notice?
IV. What was EPA's Charge to the National Research Council?
V. What Were the National Research Council's Major Findings and Recommendations Concerning Land Application of Biosolids?
VI. What Process did EPA Use to Address the NRC recommendations?
VII. EPA's Strategy for Responding to the NRC Recommendations
VIII.EPA Responses to the NRC Recommendations by Category
IX. How did EPA Conduct the Review of Part 503 Regulations under the CWA Section 405(d)(2)(C)?
X. What are the Primary Issues for Public Comment?
XI. References

I. What Is the Legal Background of the Standards for the Use or Disposal of Sewage Sludge?

EPA promulgated Standards for the Use or Disposal of Sewage Sludge (40 CFR part 503) under section 405(d) and (e) of the Clean Water Act (CWA), 33 U.S.C. section 1345(d), (e), as amended by the Water Quality Act of 1987. In these amendments to section 405 of the CWA, Congress, for the first time, set forth a comprehensive program for reducing the potential environmental risks and maximizing the beneficial use of sewage sludge. As amended, section 405(d) of the CWA requires EPA to establish numerical limits and management practices that protect public health and the environment from the reasonably anticipated adverse effects of toxic pollutants in sewage sludge. Section 405(e) prohibits any person from disposing of sewage sludge from publicly owned treatment works (POTW) or other treatment works treating domestic sewage for any use except in compliance with regulations promulgated under section 405.

Section 405(d) calls for two rounds of sewage sludge regulations and sets deadlines for promulgation. In the first round, EPA was to establish numerical limits and management practices for those toxic pollutants which, based on "available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations that may adversely affect public health or the environment." CWA section 405(d)(2)(A). The second round is to address toxic pollutants not regulated in the first round "which may adversely affect public health or the environment." CWA section 405(d)(2)(B).

EPA did not meet the timetable in section 405(d) for promulgating the first round of regulations, and a citizen's suit was filed to require EPA to fulfill this mandate. (Gearhart v. Reilly, Civ. No. 89–6266–HO (D. Ore.)). A consent decree was entered by the court in this case, establishing schedules for both rounds of sewage sludge rules. EPA promulgated the first rule in 1993, 40 CFR part 503, 58 FR 9248 (Feb. 19, 1993) ("Round One"). For the second round ("Round Two"), EPA identified 31 pollutants and pollutant categories not regulated in Round One that EPA was considering for regulation. In November 1995, EPA narrowed the original list of 31 pollutants to two pollutant groups for the second round rulemaking: polychlorinated dibenzo-p-dioxins/dibenzofurans (PCDDs/Fs) and dioxin-like coplanar polychlorinated biphenyls (PCBs) (USEPA, 1996). The consent decree required the Administrator to sign a notice for publication proposing Round Two regulations no later than December 15, 1999, and to sign a notice taking final action on the proposal no later than December 15, 2001. (*Gearhart* v. *Whitman*, Civ. No. 89–6266–HO (D. Ore.)).

On December 15, 1999, the Administrator signed a proposal to establish numerical limits for dioxins, dibenzofurans, and co-planar PCBs ("dioxins") in sewage sludge that is applied to the land and proposed not to regulate dioxins in sewage sludge that is disposed of in a surface disposal unit or fired in a sewage sludge incinerator. 64 FR 72045 (December 23, 1999). On December 21, 2001, the Administrator gave final notice of EPA's determination

that numerical standards or management practices are not warranted for dioxins in sewage sludge that are disposed of at a surface disposal unit or incinerated in a sewage sludge incinerator. 66 FR 66228 (December 21, 2001). In that notice, EPA also announced that a final action on the proposal to amend the Standards for the Use or Disposal of Sewage Sludge for sewage sludge that is applied to the land would be published at a later date. The consent decree in *Gearhart* v. *Whitman* was amended to extend the deadline for final action on the land application Round Two rulemaking from the original date of December 15, 2001, to a new date of October 17, 2003.

On June 12, 2002 at 67 FR 40554, EPA published a Notice of Data Availability (NODA) containing new information relating to dioxins in land-applied sewage sludge and requested public comments. Currently, EPA is evaluating the public comments received on the NODA and will consider these comments in formulating a final action on dioxins in land-applied Sewage sludge by October 17, 2003.

II. What Requirements Are Included in the Standards for the Use or Disposal of Sewage Sludge (40 CFR Part 503)?

As noted above, CWA Section 405(d)(2)(A) required the first round of regulation to be based on "available information on [the] toxicity, persistence, concentration, mobility, or potential for exposure" of toxic pollutants in sewage sludge. EPA published the Round One standards (40 CFR Part 503) on February 19, 1993. These regulations established requirements for the final use and disposal of sewage sludge when it is: (1) Applied to the land for a beneficial purpose, including in home gardens, (2) placed in a surface disposal site, including biosolids-only landfills, and (3) incinerated.

For land application, Part 503 set numerical limits for nine heavy metals in sewage sludge, established operational standards (described below) to reduce or eliminate pathogens in sewage sludge and to reduce vector attraction, and required management practices to restrict the application rate and placement of sewage sludge on the land. Regarding surface disposal, Part 503 set numerical limits for three metals in sewage sludge, established requirements for the placement and management of a surface disposal site, and established operational standards to reduce or eliminate pathogens in sewage sludge and to reduce vector attraction. For incineration in a sewage sludge incinerator (SSI), Part 503 establishes limits for five metallic pollutants in sewage sludge fired in a SSI and adopted standards under the Clean Air Act for two additional metallic pollutants. The Agency has also established performance standards for SSIs through an operational standard for total hydrocarbons or carbon monoxide emissions that controls numerous organic compounds found in the emissions of sewage sludge incinerators. Part 503 also allows disposal of sewage sludge in a municipal solid waste landfill in accordance with 40 CFR part 258. In addition, the final rule requires monitoring, record keeping, and reporting. Standards apply to publicly and privately-owned treatment works that generate or treat domestic sewage sludge and to anyone who uses or disposes of sewage sludge.

The part 503 Standards consist of six elements designed to work together to protect human health and the environment. These elements are (1) numerical limits for certain pollutants, (2) management practices, (3) operational standards, (4) monitoring, (5) record keeping, and (6) reporting.

As an example, the land application provisions require a sewage sludge preparer to gather information on the nutrient content of the sewage sludge and pass this information along to the land applier in order for the land applier to be able to apply the sewage sludge at a suitable agronomic rate. Numerical limitations for land-applied sludge are pollutant concentrations in sewage sludge or cumulative or annual loading rates, based on multi-pathway exposure analyses and risk assessments to protect public health. Management practices include requirements, such as how the sewage sludge is to be placed on the land or otherwise managed in the environment. An example is the prohibition against applying sewage sludge to land closer than 10 meters from waters of the United States. Operational standards are technology requirements such as process descriptions and performance requirements to reduce or eliminate pathogens from sewage sludge and reduce vector attraction. These, together with required crop harvesting restrictions and site controls, constitute the approach for the control of pathogens in sewage sludge.

Monitoring of chemicals and pathogens in sewage sludge and certification of certain actions by the preparer or land applier must be performed at a frequency commensurate with the annual amount of land-applied sewage sludge. Records must be kept of these monitoring and certification activities at the locations where the monitoring/certifications have occurred. Finally, the larger sewage sludge preparers and land appliers must report this information to the permitting authority at least annually.

EPA has amended part 503 several times since its initial publication in February 1993. Following promulgation of the Round One rule, several petitions for review were filed challenging various aspects of the rule. In one petition, several mining and chemical concerns challenged the land application molybdenum limits. EPA amended the part 503 numerical standards for molybdenum to delete the cumulative loading rate, annual loading rate, and the pollutant concentration for molybdenum in sewage sludge to be land-applied. 59 FR 9095 (February 25, 1994). The ceiling concentration value for molybdenum was retained. Also, in that **Federal Register** notice, EPA added continuous monitoring of carbon monoxide as an alternative to continuous monitoring of total hydrocarbons in the sewage sludge incinerator requirements. In another case, *Leather Industries of America* v. EPA, 40 F.3d 392 (D.C. Cir. 1994), the court remanded several of the land application requirements. As a result of that decision, EPA deleted all numerical standards for chromium in sewage sludge to be land-applied and adjusted the Table 3 limit for selenium. 60 FR 54764 (October 25, 1995). EPA is considering further amendments to address the issues remaining from the partial remand, as well as other issues. EPA most recently amended Part 503 to make a number of technical amendments, provide regulatory flexibility, and make the sewage sludge incinerator standards self-implementing. 64 FR 42552 (August 4, 1999).

For a detailed discussion of the Part 503 Rule, see A Plain English Guide to the EPA Part 503 Biosolids Rule (1994), which is available as stated in the **ADDRESSES** section of the preamble. A copy of the Plain English Guide is available at the website address *http://www.epa.gov/owm/mtb/biosolids/503pe/index.htm.*

III. What Is the Purpose of Today's Notice?

Section 405(d)(2)(C) of the CWA calls on EPA to review the existing sewage sludge regulations in part 503 at least every two years for the purpose of identifying additional toxic pollutants in sewage sludge and promulgating regulations for such pollutants consistent with the requirements of section 405(d). Over the past decade, questions have been raised over the adequacy of the chemical and pathogen standards for protecting human health. To help address the human health concerns and the requirement for periodical reassessment of the Standards for Use or Disposal of Sewage Sludge, the Agency commissioned the NRC to independently review the technical basis of the chemical and pathogen regulations. The NRC study took place between January 2001 and June 2002. In July 2002, the NRC published a report entitled, "Biosolids Applied to Land: Advancing Standards and Practices" in response to EPA's request. For a copy of the full NRC report, visit our Web site at *http://www.epa.gov/ost/biosolids/nas/complete.pdf.* The NRC identified a need to update the scientific basis of Part 503 and provided approximately 60 recommendations.

In an agreement with the parties in Gearhart v. Whitman, EPA agreed to publish a notice in the **Federal Register** stating how it will respond to the NRC report recommendations and to seek public comments on its planned response. EPA also agreed to review publicly available information for the purpose of identifying additional toxic pollutants in biosolids and to publish a notice providing the results of the review and seek public comment. Today's notice fulfills this agreement.

IV. What Was EPA's Charge to the National Research Council?

EPA asked the NRC to conduct an independent evaluation of the regulations and standards for chemical pollutants and pathogens in biosolids that are land-applied. Specifically, the NRC was asked to focus on the adequacy and appropriateness of the risk assessment methods and data used by the Agency in setting regulatory requirements to protect human health. The NRC convened the Committee on Toxicants and Pathogens in Biosolids Applied to Land ("the committee"), which conducted and prepared a final report. The Statement of Tasks included the following:

1. Review the risk assessment methods and data used to establish concentration limits for chemical pollutants in biosolids to determine whether they are the most appropriate approaches. Consider the NRC's previous (1996) review and determine whether that report's recommendations have been appropriately addressed. Consider (a) how the relevant chemical pollutants were identified, (b) whether all relevant exposure pathways were identified, (c) whether exposure analyses, particularly from indirect exposures, are realistic, (d) whether the default assumptions used in the risk assessments are appropriate, and (e) whether the calculations used to set pollutant limits are appropriate.

2. Review the current standards for pathogen reduction or elimination in biosolids and their adequacy for protecting public health. Consider (a) whether all appropriate pathogens were considered in establishing the standards, (b) whether enough information on infectious dose and environmental persistence exists to support current control approaches for pathogens, (c) risks from exposure to pathogens found in biosolids, and (d) new approaches for assessing risks to human health from pathogens in biosolids.

3. Explore whether approaches for conducting pathogen risk assessment can be integrated with those for chemical risk assessment. If appropriate, recommend approaches for integrating pathogen and chemical risk assessments.

The NRC report, "Biosolids Applied to Land: Advancing Standards and Practices," described the work of the committee, stating that "the committee searched for evidence on human health effects related to biosolids exposure" in its review of the risk assessments and technical data used by EPA to establish the chemical and pathogen standards and the management practices contained in part 503. The report noted that "the committee did not attempt to determine whether the approaches used by EPA to set the 1993 biosolids standards were appropriate at the time of their development, and the committee's findings and recommendations should not be construed as either criticism or approval of the standards issued at that time."

V. What Were the National Research Council's Major Findings and Recommendations Concerning Land Application of Biosolids?

The NRC committee concluded that "there is no documented scientific evidence to indicate that the part 503 rule has failed to protect human health," but additional scientific work is needed to reduce persistent uncertainty about the potential for adverse human health effects from exposure to biosolids. The committee recognized that land application of biosolids is a widely used, practical option for managing the large volume of biosolids generated at waste water treatment plants that otherwise would need to be disposed of at landfills or by incineration. The committee also identified a need to update the scientific basis of part 503 to (1) ensure that the chemical and pathogen standards are supported by current scientific data and risk assessment methods, (2) demonstrate effective enforcement of part 503, and (3) validate the effectiveness of biosolids management practices. The NRC report focused on identifying how current risk assessment practices and knowledge regarding chemical pollutants and pathogens in biosolids can be used to update and strengthen the scientific basis and credibility of EPA's biosolids regulations.

The NRC report contains four overarching recommendations: (1) Use improved risk assessment methods to better establish standards for chemicals and pathogens, (2) conduct a new national survey of chemicals and pathogens in biosolids, (3) establish an approach to human health investigations, and (4) increase the resources devoted to EPA's biosolids program. These four overarching recommendations are discussed in detail and supplemented by 53 individual recommendations contained in Chapters 2–6 of the NRC report.

VI. What Process Did EPA Use To Address the NRC Recommendations?

Upon the release of the report, EPA established an Intra-Agency Committee (IAC) to respond to the recommendations in the NRC report and begin review of the existing Part 503 regulations to identify additional toxic pollutants that may warrant future regulation, pursuant to section 405(d)(2)(C). The IAC is comprised of EPA representatives from a cross-section of environmental program offices that are involved or interested in the biosolids program.

The IAC first developed an approach for responding to the NRC report and conducting the section 405(d)(2)(C) review of existing regulations. Activities for responding to the NRC report included developing a matrix to identify and track each recommendation, grouping the recommendations into eight categories based on subject area, evaluating the recommendations individually and establishing priorities, drafting initial responses by category, and developing a strategy to carry out the activities identified in response to the NRC recommendations. The approach for reviewing existing regulations to identify additional toxic pollutants that may warrant regulation, pursuant to section 405(d)(2)(C), is described in Section IX of this notice.

As stated above, the IAC first prepared a matrix (Compilation of National Research Council (NRC) Recommendations on Biosolids and

EPA Responses and Activities, USEPA 2002a) of all of the recommendations contained in the NRC report (NRC 2002). The matrix ensured that all recommendations were identified. Once in the matrix, recommendations that were found to be similar in subject matter and intent were placed in a framework to facilitate evaluation.

The Agency categorized the 57 recommendations (four overarching and 53 specific) into eight categories: (1) Survey, (2) Exposure, (3) Risk Assessments, (4) Methods Development, (5) Pathogens, (6) Human Health Studies, (7) Regulatory Activities, and (8) Biosolids Management. EPA's response and planned activities are presented on a category-by-category basis.

VII. EPA's Strategy for Responding to the NRC Recommendations?

EPA has identified three main objectives for attaining a better understanding of biosolids and reducing the potential for, or reducing the uncertainty related to, human health impact: (1) Update the scientific basis of Part 503 by conducting research in priority areas, (2) strengthen the biosolids program by evaluating results of completed, ongoing, or planned studies both within and outside EPA, and (3) continue ongoing activities for enhancing communication with outside associations and with the public.

Major Short-Term Goals and Priority Actions During FY03 and FY04

Over the next two years, subject to available resources, the Agency proposes to pursue biosolids activities in the following priority areas:

1. Continue program implementation (regulatory, compliance, and enforcement).

2. Evaluate the state-of-the-science and revise risk assessment methodologies, as appropriate.

3. Review available data, track ongoing studies by researchers outside of EPA, and identify information gaps. Initiate further field studies as needed.

4. Continue ongoing/planned activities relative to exposure, risk assessment, biosolids management, and analytical methods development.

5. Determine what pollutants, if any, warrant further regulation under the CWA.

6. Design and begin conducting a targeted survey that uses information obtained from published pollutant occurrence and effects data, State occurrence data bases, and input received during the public comment period.

7. Conduct a dialogue with other health-based Federal agencies, such as CDC, on the possibility of cooperatively tracking incident reports and investigating whether adverse human health outcomes can be associated with biosolids exposure. The results could help the Agency identify research gaps and, if appropriate, the need for a more comprehensive research plan.

These activities would be aimed at implementing NRC recommendations for reducing the potential for public health impact and updating the scientific basis of Part 503.

Major Longer-Term Goals and Future Priorities (FY05 and Beyond)

The Agency's proposed long-term biosolids activities depend on results of activities conducted in FY03/FY04 and available resources. The following priority areas are aimed at implementing recommendations for reducing the potential for public health impact:

1. Continue program implementation (regulatory, compliance, and enforcement).

2. Update the scientific basis of Part 503 by using FY03/04 research or by conducting research in priority areas.

3. Strengthen the biosolids program by incorporating results of completed, ongoing, or planned research activities both within and outside EPA to possibly include:

- Quantitative microbial risk assessment.
- Improved understanding of exposure pathways/scenarios.
- Molecular tracking study.

4. Continue activities to establish partnerships and communicate more effectively with other public health-based agencies, outside associations and the public.

There is considerable relevant work being conducted by others outside of EPA that may help inform and respond to the NRC recommendations. Much of the external work that relates directly to certain NRC recommendations is discussed in this notice and is being used to improve the Agency's biosolids program.

The Agency's approach also includes promoting policy and procedural guidance for ensuring and maximizing the quality of the information disseminated. Completed studies and ongoing research, once compiled, will be reviewed and evaluated for their contribution to EPA's biosolids program in accordance with Information Quality Guidelines (expressed in "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency" USEPA 2002b). These guidelines stress that information disseminated by EPA should adhere to a basic standard of quality, including objectivity, utility, and integrity.

EPA has developed this notice using its best estimate of FY 2003 resources, which are not finalized, and based on the President's FY 2004 budget. The Agency has assumed the same level of funding for future years, as is typically done.

VIII. EPA Responses to the NRC Recommendations by Category

A. Survey

1. Summary of Survey-Related NRC Report Recommendations

The NRC recommended that the Agency conduct a new national survey of chemicals and pathogens in biosolids. A survey may provide feedback for updating the science and technology of biosolids applied to land. These data would then be used to identify pathogens and additional chemicals for potential regulation and possibly deregulate those that are not, or no longer, found. The NRC recommended several components in designing a new national survey, including collecting data from State program databases, determining the adequacy of analytical detection methods and limits to support risk assessment, evaluating chemicals eliminated previously due to lack of data (*e.g.*, toxicity or exposure) and new chemical categories (*e.g.*, odorants, surfactants and pharmaceuticals) not previously evaluated.

Further, the NRC recommended monitoring environmental media, surveying for pathogens in both raw sewage sludge and treated sewage sludge managed through the various processes recommended in Part 503, assessing multiple species of certain metals (*e.g.*, mercury and arsenic) that have different toxicity profiles for human health, including infants and children, and analyzing a broad spectrum of pathogens in biosolids or environmental media adjacent to final use or disposal sites.

In addition, the NRC recommended that the Agency verify the adequacy of treatment and management practices. For example, to verify that Class A and B (as described in Part 503) treatment processes perform as assumed by engineering and design principles, EPA could determine pathogen density and elimination across treatment processes in biosolids and environmental media over time and examine management practices to ensure that risk-assessment principles are effectively translated into practice.

2. The Agency's Response to the Survey Category

How EPA Plans To Address NRC Survey Recommendations

The Agency believes that a comprehensive survey of pollutants in biosolids may provide useful information, but it is not likely the most pragmatic survey option available at this time. EPA has developed a proposed survey approach based on experience gained from the 1988 National Sewage Sludge Survey (NSSS), limitations of available analytic methods, knowledge of effects and routes of exposure, and suggestions by the NRC, among other factors (see Planned Strategy for the Survey Category below). The 1988 NSSS was ultimately limited in utility by shortcomings in available analytical methods and limited information of pollutant effects and/or means of exposure. While some advances in these areas have been made since 1988, these same limitations still exist for many pollutants, especially for pathogens and many of the new or emerging chemicals identified by the NRC. Therefore, EPA has concluded that a less comprehensive, more targeted, survey, to help fill data gaps and inform decisions regarding further studies, may be more useful to address uncertainties highlighted by the NRC. Information developed by national and international experts on pathogens and toxic chemicals may help produce a better informed survey design. The Agency believes that using such information may produce more valuable results than conducting a comprehensive national survey at this time. EPA is first planning to develop and initiate a targeted survey after considering the following sources of information:

Available data: The Agency has conducted a biosolids literature search and is reviewing the information for relevant data on chemicals and pathogens in biosolids. The literature search includes topics related to a survey of chemicals and pathogens in biosolids, management practices, and treatment efficacy. This information obtained may also assist EPA in responding to other NRC recommendations. For example, the Agency plans to use available information to prioritize future research and, if necessary, modify biosolids management practices to reduce risk.

Other sources of data include studies conducted by EPA regional offices, States, and universities. For example, EPA Region 8 is conducting a long-term study of biosolids addition to soil and the potential effects on soil microbiology. The University of Arizona is conducting research on airborne pathogen exposure at various times and distance from biosolids application sites. Within the next six to nine months, the Agency plans to review and assess such studies for their contribution in determining the potential for exposure and adverse human health impact from land-applied biosolids.

Studies: Ongoing EPA studies address many technical uncertainties related to pollutants in biosolids. For example, the adequacy of current analytical methods for selected priority pathogens and the development and/or validation of new methods are also being studied. In addition, field studies are being used to provide site-specific occurrence data.

While study emphasis is being placed on pathogens to address areas of uncertainty and public interest, selected chemicals are also being addressed to help determine significant issues and identify information gaps that remain to be addressed in these areas.

Planned Strategy for Designing a Targeted Survey

During the next fiscal year the Agency plans to initiate or continue Studies devoted to:

1. Methods development and/or validation studies for enteric viruses and helminth ova (see Methods Development).

2. Continuation and/or expansion of field studies to determine environmental contaminant occurrence at selected sites (see Methods Development and Pathogens Categories).

In addition, during the next 18 to 24 months, EPA is proposing to design a targeted approach for a survey of pollutants that occur in sewage sludge. New and existing information from sources such as relevant published pollutant occurrence and effects data, State occurrence databases, and input received during the public comment period will be used to help in the development of the proposed survey.

To ensure the survey provides meaningful results and the effective use of limited resources, EPA is considering restudying some of the pollutants that were studied in the 1988–1989 NSSS. EPA is also considering including some new and emerging chemicals, taking into account the availability of adequate analytical methods and their associated analytical costs. As a result, the Agency may only be able to measure a limited number of pollutants.

B. Exposure

1. Summary of Exposure NRC Recommendations

The NRC made recommendations on how current exposure information and updated conceptual exposure models can be used to update and strengthen the scientific basis of the chemical and technology-based pathogen standards. This category also includes recommendations to evaluate exposure for the reasonable maximum exposure (RME) individual, updating fate and transport models that might affect exposure estimates, and conducting pre-planned exposure studies under certain situations for specific exposure groups.

2. The Agency's Response to the Exposure Category

How EPA Plans To Address NRC Exposure Recommendations

Understanding human exposure to chemicals and pathogens, including the concentrations and fate and transport through important exposure pathways, is key for risk assessments supporting the Part 503 rule. As discussed below in the Risk Assessment category, the Agency plans to use a risk assessment framework to evaluate the priorities for reassessing or updating underlying components (including exposure assumptions) of previously conducted risk assessments. The Agency plans to use this information to determine if new exposure and risk calculations may be warranted for pollutants not previously assessed. Such an evaluation would include a review of the exposure information used in the Round 1 and Round 2 rules in light of new exposure information.

To conduct this activity, the Agency plans to first collect and review currently available exposure information from published literature, Federal and State databases, the NRC report, and other relevant sources. The Agency anticipates that some of the NRC recommendations regarding exposure may be addressed in newly available information, while others may require completion of ongoing studies. The Agency plans to review currently available exposure information to help identify data gaps and to inform decisions about future risk assessments and the need for additional exposure studies.

In the mid-1990's, EPA conducted research on the land application of biosolids to disturbed and contaminated sites requiring reclamation or remediation. These studies, which focused on the ability of biosolids to help improve soil properties and

establish sustainable vegetation cover on disturbed and highly contaminated sites, also included identification and determination of metals bioavailability in biosolids. The research was conducted to strengthen our understanding of the potential health impacts of metals, a particular focus during the development of the 1993 regulations. Results of this work showed that assumptions regarding metals availability used in earlier metals risk assessments were conservative. The Agency plans to reevaluate these findings in context with current practices and policies regarding exposure to metals in biosolids.

Exposure research: As part of a broader set of field studies, EPA recently initiated, in partnership with USDA and the State of Pennsylvania (PA), the planning of exposure-related research at five biosolids production and/or application sites. These studies are intended to gather site-specific information on current practices in biosolids production and application, and to identify and evaluate the fate of pollutants following biosolids application. Other objectives for this research, depending on the site, include (1) characterization of treated and untreated sludge (biological, physical, and chemical characterization), along with sampling and analysis during land application, (2) assessing the presence of pathogens, nitrogen, sulfur, volatile organic compounds and particulates in air, (3) determining how well the sewage sludge is disinfected as it moves through the different stages of processing, and (4) determining pathogen content in Class B sludge, once applied and following a period of natural attenuation. Other related work is being conducted by the University of Arizona's Water Quality Center.

Planned work is expected to begin in mid 2003. The plan is for facility operations for these sites to be documented, including the operation and performance of treatment process used to process sewage sludge and produce Class A and Class B biosolids. Pathogen and chemical occurrence data will also be collected at these sites. Proposed measurements over time for the production and land application processes may include total and volatile solids, pH, temperature, odor, appearance (*e.g.*, color, paste, liquid, powder), fecal coliforms, Salmonella spp., Staphylococcus aureus, enteric viruses, and helminth ova.

Because of concern over bioaerosols, air samples will be taken prior to, during, and following land application at the point of application and the fence line, for up to thirty days. Air sampling will be conducted in collaboration with USDA to address pathogens, chemicals, endotoxins, and particulates occurrence. Chemical and pathogen concentrations in air represent an initial step towards understanding the potential exposure of nearby communities. A description of the proposed studies can be found in the Pathogens category.

CAFO research: EPA is also conducting research on microorganisms and chemicals at animal manure land application sites, composting sites, and concentrated animal feeding operations (CAFOs). These include studies on the concentrations of airborne pathogens, toxic organic compounds, odorants, and particulates. The CAFO studies are important, because pathogen and chemical air transport and fate for animal manures resemble those for biosolids. The ongoing and proposed studies are described in the Methods Development category in this notice.

Planned Exposure Activities

EPA plans to continue its research partnership with USDA and the State of PA and to study an additional five field application sites.

The Agency is exploring a plan to conduct a molecular pathogen tracking exposure study as a follow-up to the PA/USDA/EPA study. This study would focus on individuals who have received medical attention and who suspect that they have been affected by biosolids application practices. This study would analyze human biological monitoring samples (*e.g.*, feces, blood, or swabs from skin, ears, eyes, or throat) to isolate potential causative agents, and genetic characterization would be used to identify the potential source(s).

C. Risk Assessment

1. Summary of Risk Assessment NRC Recommendations

The NRC recommended that the Agency use improved risk assessment methods to better assess risks and establish standards for chemicals and pathogens under Part 503, since methods for conducting risk assessments have evolved substantially since the 1993 regulations were established. The recommendations also include reassessing standards for chemicals currently in the Part 503 regulation using the latest science. The NRC suggested that future risk assessments incorporate new information on exposure, dose-response relationships, pathogen survival, quantitative microbial risk assessment techniques, and consideration of site-specific factors that may affect risk management practices (*e.g.*, odor). Recommendations were also made to involve stakeholders in the risk assessment process and to examine biosolids management practices to ensure that the underlying risk assessment principles are effectively translated into practice.

2. The Agency's Response for the Risk Assessment Category

How EPA Plans To Address NRC Risk Assessment Recommendations Current and Planned Risk Assessment Activities

For this notice, risk assessment is defined as the process of identifying the potential adverse health effects associated with environmental exposures to pollutants in biosolids, their severity, and likelihood. Previously, EPA used a risk based approach for estimating risks to human health and developing management practices to reduce risks and set protective standards. When they were conducted, EPA's assessments were based on state-of-the-science methods, information and management practices. The NRC recommended areas where new or updated health and exposure information, models, and risk assessment methods may strengthen the Agency's assessments for land-applied biosolids.

Consistent with the recommendations of the NRC, EPA plans to address the potential health hazards and exposures associated with land application of biosolids using state-of-the-science risk approaches. Specifically, EPA plans to reassess methods and data used for previously evaluated pollutants, and apply these methods to new pollutants. For example, risks from pollutants not previously assessed due to a lack of toxicity, environmental fate, or exposure information, will be reevaluated if new information is available. This effort is expected to take place in FY03 and FY04. The Agency has assessed risks to children and sensitive populations, and will continue that approach in future assessments and reassessments.

The NRC also recommended that representative stakeholders could be included in the risk assessment process to help identify exposure pathways, local conditions that could influence exposure, and possible adverse health outcomes. The Agency's policy is to involve stakeholders at various stages of policy development. The Agency intends to consider how consultation with stakeholders should be included in developing future sewage sludge risk assessments.

EPA, in conjunction with States and other Federal agencies, has already been addressing local biosolids issues in a few areas, and has used these opportunities to include stakeholders in the process to further evaluate and improve the assessment and management of biosolids. For example, stakeholders were involved in the scenario development and regulatory processes of a recent study in Pennsylvania. As part of this study, an informal information sharing group was formed that included concerned citizens, local officials, and contractors to assist the Agency in identifying stakeholder concerns and ensuring transparency in the field study process.

For the ongoing Round Two land application rulemaking, EPA conducted a revised risk assessment in response to public and peer review comments on the 1999 Round Two proposal. This revised assessment used a probabilistic approach instead of a deterministic approach to yield information on the sources of variability and uncertainty in the final risk estimates. The probabilistic approach used estimated values for certain input variables over the range of observed data to estimate the risks for the highly exposed population. This revised risk assessment also used new inputs, which included a redefined "highly exposed individual," new pathways and mechanisms of exposure, new exposure factors adopted from the latest EPA Exposure Factors Handbook, a sensitivity analysis to determine the relative importance of the input variables, and updated scientific information on the chemicals of concern, dioxins. EPA redefined the "highly exposed individual" as a member of a farm family that consumes 50 percent of his/her diet from home-produced crops and animal products grown on his/her own biosolids-amended land. EPA plans to use the Round Two risk assessment approach as a starting point for evaluating the NRC's recommendations, including the use of the reasonable maximum exposed (RME) individual for improving future risk assessments.

EPA is currently funding and conducting research related to risk assessment of biosolids. EPA is sponsoring research or has awarded grants to the Water Environment Research Foundation (WERF) and others to develop quantitative pathogen risk assessment methods and approaches. EPA plans to conduct a comprehensive evaluation and peer review of these results and, if deemed appropriate for use in assessing risk from pathogens found in biosolids, the Agency would incorporate these new risk assessment methods into any new or updated risk assessment and update the part 503 rule as necessary.

Other studies and related activities that EPA is conducting or sponsoring include the development of dose-response models for quantitative risk assessment of selected pathogens and the development of transmission models of pathogens and disease. These models are currently being developed for drinking water and, EPA plans to evaluate and, if appropriate, modify applicable models to be used in analyzing pathogens in biosolids. In addition, research is being conducted with USDA and various States on the extent of airborne concentrations of pathogens, toxic compounds, odorants, particulates and bioaerosols. EPA plans to evaluate the results of these studies for use in refining and improving future biosolids exposure and risk assessments. Further descriptions of these studies are provided in the pathogen section and the action plan.

To further the state of the knowledge surrounding all aspects of sewage sludge use and disposal, including improved risk assessments, EPA is supporting a workshop scheduled for January of 2004 on the "state of the science" on land application of municipal and industrial wastewater effluents, sewage sludge, and animal manures. This workshop is being coordinated by the University of Florida and will have numerous contributors from the Agricultural Research Service of USDA, and academia, among other groups. New and additional information on biosolids toxicities and environmental properties may emerge from this workshop; once evaluated, this information may be used in future risk assessment updates of the Part 503 Rule. The Web site *http://www.conference.ifas.ufl.edu/landapp/* contains information concerning the upcoming workshop, as well as other relevant information.

As discussed previously, EPA may use the risk assessment paradigm to provide both a focused reassessment of certain previously addressed pollutant risks, exposure pathways and risk assessment approaches, as well as assessing pollutants which have not been previously evaluated to effectively address the NRC risk assessment related recommendations and the review required by Section 405(d)(2)(C) of the CWA. These risk assessment activities will be initiated this year. This effort will be developed and outlined by an interdisciplinary workgroup within EPA and include external review of the analysis plan.

For this risk analysis, EPA is planning to focus on an evaluation of those key pollutants and pathways which are likely to be of greatest concern or where the new scientific developments may have the greatest impacts. This may result in later updating the Round One risk assessment models and re-evaluating selected pollutants, pathways and endpoints and/or new pathways and endpoints not previously addressed.

EPA is planning a two-step process for addressing the NRC recommendations with respect to risk assessments for pollutants in sewage sludge. The first step would be to conduct a problem formulation which would re-evaluate or assess methods, approaches and pollutants considered in the Round One determinations, and any new qualitative information for future pollutants. This problem formulation step would include the development of exposure/risk assessment scenarios that would be used to identify critical/key stressors, routes of exposure, model application and data gaps. The primary focus of this effort will be on areas having the greatest potential risks and uncertainties (*e.g.* pathogens). The problem formulation will serve to eliminate those stressors, scenarios, routes of exposure, and endpoints that need not be evaluated further. It would retain those areas which are potentially significant or require more study. The problem formulation would also result in a research analysis plan that would not only identify risk assessment activities but also prioritize research to address exposure and risk management.

The second step would be to conduct quantitative risk assessments and risk characterizations for key pollutants identified and prioritized by the scenario/conceptual models, as appropriate. These assessments would initially be screening level risk assessments. More refined assessments would be conducted only on those pollutants and pathways for which the screening-level assessment indicate significant potential for risk. In conducting any risk assessments, screening or comprehensive, EPA will, as appropriate, apply the most up-to-date scientific information and risk assessment methodologies. In addition, EPA proposes to continue its efforts to evaluate and develop new methods for pathogen risk assessments and improved models for exposure assessments.

EPA's proposed activities are to continue to track development of methods for QMRAs and develop guidelines for assessing risk from pathogens. In addition, EPA also plans to continue work on the evaluation of data and models for improving exposure assessments. EPA may also evaluate and

assess data and information related to multiple exposures, potential contaminant interactions, and potential effects on sensitive sub-populations, to the extent the state-of-the-science is available.

D. Methods Development

1. Summary of Methods Development NRC Recommendations

The NRC recommended that the Agency develop and standardize methods for measuring pathogens and emerging chemicals in biosolids and bioaerosols. Standardized methods could be used to provide measures of performance and to verify that the Agency's management practices and standards are reliable.

Specifically, the NRC recommended developing, standardizing, and validating methods for pathogens in biosolids and bioaerosols (*e.g.*, airborne pathogens). In addition, research that uses improved pathogen detection technology, round-robin laboratory testing to establish method accuracies and precision for pathogen concentrations in raw and treated biosolids, mechanisms for incorporating new methodologies into the verification process, and measures of performance that can be monitored (*e.g.*, concentrations of selected chemicals in exposure media and human biological monitoring such as blood or urine of workers and residents) could be considered useful in conducting and interpreting future risk assessments and used to develop applicable risk-assessment technologies.

2. The Agency's Response to Methods Development

How EPA Plans To Address NRC Methods Development Recommendations

For the methods development category, the Agency plans to focus its resources on pathogens and chemicals associated with biosolids. Validated analytical methods are necessary to support exposure assessments for toxic pollutants and pathogens. Methods are needed for determining the reliability of treatment processes, assaying pathogens and chemicals in raw and treated biosolids, incident follow-up, sampling environmental media, and human biological monitoring. Ongoing or planned methods development activities in the Agency that address the NRC recommendations follow.

Method Development Activities

Recently initiated EPA methods development work includes field studies at five biosolids production and application sites. Currently available analytical methods are being identified or in some cases adapted for this study. A description of these field studies has been provided in the preceding Exposure subsection of this notice. Additionally, EPA is conducting field studies at animal manure land application sites, composting sites, and concentrated animal feeding operations (CAFOs). This research includes measurements of pathogens, toxic organic compounds, odorants and particulates in the air near CAFOs. Both the biosolids and CAFO studies include evaluation and adaptation of analytical methods for selected pathogens and chemicals. Results of these studies should assist the Agency in determining the need for additional methods development research.

Open-path Fourier Transform Infrared (FTIR) spectrometry will be used to measure volatile organic compounds from land application sites. EPA is validating analytical methods for microorganisms cited in 40 CFR Part 503. Fecal coliform methods have been validated, whereas Salmonella methods are being validated. Methods and validation studies for these two agents are expected to be published in 2004.

Planned Method Development Activities

As part of its field study programs, EPA plans to work with USDA to investigate methods for measuring bacteria and viruses in air upwind and downwind of biosolids land application sites. EPA is considering developing and validating analytical methods for enteric viruses and helminth ova, as well as chemical analytical methods for emerging chemicals of potential concern in biosolids (*e.g.* pharmaceuticals).

E. Pathogens

1. Summary of Pathogen NRC Recommendations

The NRC recommended that the Agency review approaches for developing microbial analytical methods and conducting microbial risk assessments (Quantitative Microbial Risk Assessments) to analyze sensitivity and to ascertain what critical information is needed to reduce uncertainty about the risks from exposure to pathogens in biosolids. According to the NRC, research activities that might improve EPA's pathogen standards and reduce risk, or uncertainties concerning risk, from pathogens following exposure to biosolids include development, standardization and validation of detection and quantification methods for pathogens and indicator organisms, conducting research on vectors carrying pathogens and bioaerosols, and conducting studies to determine whether site restrictions for Class B achieve intended effects for pathogen levels. The NRC also recommended that EPA not allow provisions for distributing Class A biosolids in bags or other containers (weighing less than one metric ton) when they do not meet pollutant concentration limits (*i.e.*, all biosolids sold or given away should be exceptional quality).

Other NRC recommendations include considering additional indicator organisms (*e.g.*, Clostridium perfringens) for use in regulations, as well as funding, supporting and officially sanctioning the Pathogen Equivalency Committee (PEC) as part of the Federal program. National field and laboratory surveys to verify that Class A and Class B treatment processes for pathogens perform as assumed by their engineering and design principles could also be conducted. Determinations could be made of pathogen density and elimination across the various accepted treatment processes and in the biosolids or environmental media over time, applying geographic and site-specific conditions that affect pathogen fate and transport to determine the effectiveness of site restrictions, buffer zones, and holding periods for Class B biosolids. EPA may also consider further refining, and directly correlating, stabilization controls to outcomes using metabolic techniques (*e.g.*, sour test, carbon dioxide metabolic release, methane metabolic release).

2. The Agency's Response to the Pathogen Category

How EPA Plans To Address NRC Pathogen Recommendations

EPA currently uses a technology and management practices based approach to minimize pathogen exposure. The Agency is considering studies to better understand the measurement, control, and fate of pathogens during the production and land application of sewage sludge. Such studies include improved analytical methods, evaluation of treatment and application processes, site-specific pathogen occurrence studies, potential human health impacts, exposure assessment, and risk assessment.

Certain pathogen studies are discussed in the Methods Development subsection of this notice. Where other studies address several pathogen issues (*e.g.*, field studies, management, treatment, site restrictions), they are briefly described below.

Research: EPA has an ongoing biosolids research program focused on selected pathogens, and is expanding this program during this fiscal year. Future pathogen research will be determined by the results of ongoing studies that will inform the Agency about significant issues and information gaps that require additional work. Presently, the Agency is considering research in at least three general areas: (1) Development of improved pathogen analytical techniques; (2) assessment of exposure and risk for critical pathways and pollutants, and (3) evaluation of sewage sludge processing and land application methods and site restrictions. Results of such research will assist the Agency in determining where improvements may be needed.

Pathogen Activities

In June 2001, EPA and USDA sponsored a workshop on "Emerging Pathogen Issues in Biosolids, Animal Manures, and Other Similar By-Products" (USEPA 2003 in press). The workshop assembled experts in biosolids and animal waste management to review the state-of-the-science, resolve persistent and complex issues, and provide suggestions for research. The workshop considered: viruses, bacteria, protozoa, prions, fungi, and helminth ova; migration of pathogens to groundwater and air from recycling and treatment operations; qualitative identification and detection methods for pathogens; the fate of antibiotics in animal and human wastes; pathogen resistance to antibiotics; and susceptibility of people with immuno-suppressed conditions to pathogens.

A discussion of recently initiated EPA work concerning pathogens at five biosolids and three animal manure production and/or application sites is provided in the previous Exposure category.

The Agency has completed and is conducting additional studies on exposure and occurrence of disease which are described in the Risk Assessment and Human Health subsections of this Section VII. In a collaboration with Duke University, EPA has also published a report on the relationship between odor from animal and waste water residuals processing facilities and land application sites and potential health effects (Journal of Agromedicine, Volume 7(1), 2000, ISSN: 1059–924X). The report summarizes the state of knowledge on ambient odor health effects with emphasis on animal manure and biosolids odor emissions. Potential mechanisms for health symptoms, methods for validating health symptoms, presence of odor, and efficacy of odor management are discussed. The importance of health effects was found to be dependent upon a number of factors, and health impacts may be minimized using odor remediation methods.

The University of Arizona's, National Science Foundation, Water Quality Center (*http://www.wqc.arizona.edu*) has conducted, and is planning to conduct, pathogen studies in biosolids including: (1) Air transmission of pathogens from land application, (2) potential occurrence of Staphylococcus aureus, (3) fate and transport of pathogens, and (4) risk assessments for pathogens in land applied biosolids. These studies will evaluate various application sites, terrain, climate, and potentially affected nearby populations. The researchers involved in this study plan to model the transmission of pathogens to estimate exposure for nearby human populations, which may ultimately allow the development of predictive risk assessment protocols. EPA will monitor these studies as they develop over at least the next two years to determine their relevance to the National biosolids program.

EPA's Pathogen Equivalency Committee (PEC): The Agency formed and has supported the PEC since 1985. PEC members provide guidance to applicants, permitting authorities and members of the regulated community on sampling and analysis issues related to meeting the subpart D requirements of part 503 (pathogen and vector attraction reduction). The PEC currently consists of representatives from EPA and the Centers for Disease Control and Prevention (CDC). The members have expertise in bacteriology, virology, parasitology, wastewater engineering, medical and veterinarian sciences, statistics, and sludge regulations. The PEC evaluates and supports development of alternative treatment technologies by consulting with local communities, States, industry and others stakeholders. The PEC provides information on biosolids processes, contaminant occurrences, and exposure, and assists EPA regions, States, and the regulated industry with questions about equivalency for Processes to Significantly Reduce Pathogens (PSRP) and Processes to Further Reduce Pathogens (PFRP) under 40 CFR part 257 and part 503. If the PEC recommends that a process is equivalent to PSRP or PFRP, the operating parameters and any other conditions critical to adequate pathogen reduction are specified.

The Water Environment Research Foundation (WERF), with contributions from EPA, is funding a diverse research program to support the wastewater treatment industry. An important part of their program has been supporting research on biosolids that has been aimed at reducing uncertainties and hence is significant with respect to the NRC recommendations. Treatment plant residuals and biosolids, including pathogen issues, have consistently ranked among the top five priorities for WERF subscribers over the past decade. WERF biosolids research entails more than 40 basic and applied projects to reduce uncertainties, better manage biosolids, assess public perception of risks, and develop strategies for biosolids treatment and management. Much of WERF's research is focused on the beneficial uses of biosolids. The Research of particular interest includes methods for rapidly detecting pathogens. EPA plans to continue to review and evaluate such research projects as they are completed to determine their relevancy to the national biosolids program.

Other studies supported by WERF are intended to determine biosolids land application rates. Phosphorus overload in animal manure and biosolids is a particular concern. These studies are evaluating phosphorus bioavailability and Class A and Class B pathogens to determine potential impact on groundwater and other environmental media. WERF is convening a biosolids research summit in the summer of 2003. A WERF pre-summit will provide training about mutual gains activities and joint fact finding, and will develop a protocol for guiding the assistance of an information sharing group (comprised of the concerned citizens, as well as stakeholders) in recommending WERF-sponsored research and oversight needs. EPA plans to collaborate with WERF and the USDA to sponsor an international conference on sustainable land application for municipal and industrial effluents, manures, biosolids and other non-hazardous wastes. The conference, scheduled for January 2004, will provide information and perspectives on research gaps and needs. Detailed information on the WERF biosolids research program may be accessed at *http://www.werf.org.*

Planned Pathogen Activities

Quantitative Microbial Risk Assessment (QMRA): EPA and WERF are funding research termed "QMRA", as described in "A Dynamic Model to Assess Microbial Health Risks Associated with Beneficial Uses of Biosolids" (WERF 2003, Cooperative Agreement No. CR–825237). The organizations involved in this research include WERF, the University of

California at Berkeley, and Eisenberg, Olevieri and Associates. The document describing this research also presents a methodology for assessing exposure and risks to human health from pathogens in biosolids. The present methodology provides initial screening for a given scenario, identifies broad conditions for high and low risk situations, and estimates where more data are needed. Future work (beyond 2004) may focus on applying this methodology to more refined scenarios. Such validation activities will assist EPA in developing microbial risk assessment guidelines, subject to available resources.

Potential future pathogens activities will include analytical methods development, exposure and risk assessment. The Agency is also considering continuing site-specific evaluations of current treatment and land application processes, studies of wastewater treatment sludge stabilization during biosolids production to reduce odors and vectors, and the use of pilot-scale treatment units to optimize sludge treatment techniques for pathogen and chemical control.

F. Human Health Studies

1. Summary of Human Health NRC Recommendations

The NRC recommended that the Agency conduct response incident investigations, targeted exposure surveillance, and well-designed epidemiological investigations of exposed populations. Data from these studies would be used to provide a means of documenting whether health effects exist that can be linked to biosolids exposure.

The NRC also recommended that preplanned exposure assessment studies characterize exposure of workers and the general public who come into contact with biosolids either directly or indirectly. Such studies could include the identification of microorganisms and chemicals, the selection of measurement methods for field samples, and the collection of adequate samples in appropriate scenarios.

Further, the NRC recommended that epidemiological studies of biosolids use be designed to provide evidence of a causal association, or lack thereof, between biosolids exposure and adverse human health effects. These studies could include an assessment of the occurrence of disease and an assessment of potential exposures. Because large scale and comprehensive epidemiological studies are expensive and require extensive data analysis, priority could be given to studies that can help reduce uncertainty.

2. The Agency's Response to the Human Health Studies Category

How EPA Plans To Address NRC Human Health Studies Recommendations

At this time, the Agency does not plan to conduct an epidemiological study, as discussed in the NRC report. As noted by the NRC, comprehensive epidemiological studies are complex, time consuming, and require substantial additional funding. The Agency may assess the future need for epidemiological studies, but believes targeted human health studies (*e.g.*, those of focused scope, such as exposure to pollutants via aerial transport and incident investigations) over the short-term might better address potential human health impact and persistent uncertainties surrounding exposed populations. These studies could help assess the potential airborne exposure to pollutants and could help determine whether incidents are occurring following biosolids exposure. Targeted exposure and human health studies could also help inform the design of any future epidemiological studies, should they prove necessary. Results from targeted studies would also allow the Agency to communicate with other public health-based federal agencies regarding human health exposure and epidemiological studies.

Planned Human Health Activities

Targeted Human Health Investigations: The Agency's primary objective is to characterize pollutants and microbial agents present in biosolids, as well as any associated human exposure pathways, that may have the greatest potential to adversely impact human health. Specifically, the NRC sees an immediate need for a systematic approach for investigating claims of disease or illness following biosolids exposure. Regulators, sewage sludge processors, and land appliers must be capable of responding rapidly to such reports. The Agency is investigating the possibility of developing a process for timely notification, recording, and tracking incident reports in collaboration with the Centers for Disease Control and Prevention (CDC). The Agency has initiated preliminary discussions with the CDC to discuss possible mechanisms for recording and tracking biosolids related disease incidents.

The University of Arizona's National Science Foundation, Water Quality Center, may also join cooperatively in the USDA/EPA/State of PA study to evaluate risk from exposure to pathogens, particulates, endotoxins, and odors from farm fields and other agricultural and silvicultural settings upon which biosolids, animal manures, and other organic amendments have been applied. These cooperative studies will evaluate various application sites, terrain, climate, placements of receptor populations and downwind ambient air concentrations of pathogens and volatile organic chemicals near residents. The Agency plans to evaluate if the collected data can be used to develop models for estimating exposure of human populations downwind of these sites, which might then be used in predictive risk assessment applications.

G. Regulatory Activities

1. Summary of Regulatory NRC Recommendations

The NRC recommended that EPA revise or develop regulatory criteria for biosolids in a timely fashion and identify additional regulatory mechanisms to better protect human health and the environment from the exposure to land-applied biosolids. This recommendation includes the following components: a review of biosolids protocols used by other nations, adoption of national standard treatment design criteria, a refinement of stabilization controls correlated to outcomes using metabolic techniques, development of molybdenum standards, development of a quantitative microbial risk assessment (QMRA) to establish regulatory criteria for pathogens, studies to determine whether the management practices specified in the Part 503 rule achieve their intended effect, provisions for the distribution of Class A biosolids weighing less than 1 metric ton (*i.e.*, the NRC recommends that all biosolids sold should be exceptional quality (EQ)), and the elimination of exemptions for nutrient management and site restrictions for land-applied EQ biosolids.

The NRC also recommended that EPA consider additional risk-management practices when revising the part 503 rule. Considerations should include limitations on holding or storage practices, slope restrictions, soil permeability and depth to groundwater, and setbacks to residences or businesses, surface water, and drinking water supplies.

2. The Agency's Response to the Regulatory Category

How EPA Plans To Address NRC Regulatory Recommendations

Ongoing Regulatory Activities

New Standards: As previously mentioned in Section II above, EPA vacated the numeric standards for molybdenum in sewage sludge as a result of litigation. EPA has conducted a literature search of new environmental properties information for molybdenum in land-applied biosolids. Following review of this new information, EPA will determine its applicability as the basis for re-proposing molybdenum standards for land-applied sewage sludge. EPA is planning to complete this review in 2003.

EPA also has information indicating that virtually no biosolids products are sold or given away in bags or other containers unless they comply with the pollutant concentrations for the nine metals currently regulated and the pathogen and vector attraction reduction requirements, which allows these products to be classified as exceptional quality (EQ) as described in the EPA guidance (USEPA, 1994). EPA plans to evaluate the data during the current year to determine whether to amend part 503 to eliminate the non-EQ Table 4 alternative for selling and distributing biosolids products that are sold or given away in bags or other containers weighing less than one metric ton.

Standardized Management Practices: Part 503 is designed to protect public health through compliance not only with numerical criteria for pollutants found in biosolids, but also with operational standards for pathogen and vector attraction reduction. These operational standards are performance based, based on operational goals for specified reduction, to enable elimination of pathogens and vector attraction reductions in sewage sludge through various engineering designs, processes and equipment. EPA believes that such means are appropriate for achieving environmental performance while encouraging efficient, cost-effective, and innovative systems and approaches.

The establishment of national standard treatment design criteria may not result in application of the most efficient site-specific practices for protecting public health. The additional management practices recommended by the NRC are linked to site-specific, or local-level, conditions. Examples include topography, soil characteristics, climate, population density, land-use, depth to groundwater, and proximity to surface waters. States and local jurisdictions will have better knowledge of local conditions, and are in a better position to establish additional management practices to augment the protectiveness of the part 503 Standards. However, EPA also plans to evaluate such practices to determine if additional requirements or improvements in the Part 503 Rule are warranted.

Regulations from Other Nations: EPA generally considers relevant and available information and protocols from other nations to augment and inform its decisions. When standards are available, such as the Canadian standards for sewage sludge, these have provided the Agency with valuable new perspectives and insights into the scientific, technical, and societal basis for the development and implementation of sewage sludge regulations. However, there are fundamental scientific and programmatic differences between certain international sewage sludge standards and EPA's standards for the use or disposal of sewage sludge in 40 CFR part 503.

The Part 503 Standards are based on information for pollutants found in sewage sludge, and are risk-based as directed by section 405(d) of the Clean Water Act. As such, the Part 503 Standards consist of numerical limits with adequate margins of safety to protect public health and the environment. The Part 503 numerical standards are based on a conservative set of exposure pathway and risk assessment assumptions.

In contrast, international sewage sludge standards are based on differing legal frameworks. Therefore, sewage sludge regulation promulgated by some other countries may not be comparable to EPA's authority or standards under section 405 of the CWA. However, numerous other countries have supported the quantitative risk assessment approach and have often adopted Part 503 limits for regulating biosolids.

Planned Regulatory Activities

Studies: As part of its field studies in 2004, EPA is planning to evaluate certain Class B disinfection processes including the natural attenuation of pathogens that occurs while the sludge is on or in the soil for the site restriction periods stated in the current regulations (40 CFR 503.32(b)(5)). Treatment processes that are expected to be evaluated include anaerobic digestion and lime addition. Site restrictions to be studied include limitations on how soon agricultural activities can occur after biosolids application. In determining the efficacy of current management practices, ways to improve them may also be identified. This research will be initiated in 2003.

H. Biosolids Management

4. Summary of Biosolids Management NRC Recommendations

The NRC recommended that the Agency increase the resources devoted to its biosolids program and expand biosolids management activities. Specific recommendations were made to increase funding to States to implement programs, fund, support, and officially sanction EPA's Pathogen Equivalency Committee (PEC) as part of the EPA biosolids program, and strike a balance between expending resources on new site-specific data collection and expending resources to model and assess risk using existing information.

The NRC also recommended biosolids management activities in the following areas: expand and strengthen the oversight program, track allegations and sentinel events of adverse health effects from exposure to land-applied biosolids, and conduct studies to determine whether the management practices specified in Part 503 achieve their intended effect.

Furthermore, the NRC recommended that the Agency develop a procedural framework to implement human health investigations and to verify that (1) treatment technologies for pathogen control are effective (quality control), (2) chemical standards are met (compliance audits), and (3) unanticipated hazards are identified.

2. The Agency's Response to the Biosolids Management Category

How EPA Plans To Address NRC Biosolids Management Recommendations

Biosolids Management Activities

Overview: At EPA Headquarters, the biosolids regulatory staff within the Office of Water has been increased recently. The new staff positions will be devoted to regulatory development, Part 503 updates, and implementation activities. There is also an enforcement or compliance presence in each of the EPA Regional Offices for following up on phone calls and complaints received from the public, and initiating Agency enforcement actions, as appropriate.

States have their own oversight programs, some of which are quite comprehensive. There are a total of about 150 full time equivalent State employees assigned to their respective biosolids programs. Five States have

been authorized by EPA to administer the part 503 program, and 15 additional States are at various points in the authorization process. National coordination of State, regional and Headquarters biosolids programs are achieved via an annual national meeting.

EPA continues to meet its statutory obligations under the Clean Water Act (CWA) pertaining to sewage sludge. The Agency continues to believe that land application of biosolids is an appropriate choice for communities, when conducted in compliance with EPA regulations. Given present scientific knowledge, EPA has based the allocation of resources to biosolids compliance and enforcement on its assessment of the relative risks to public health and the environment that are posed by biosolids.

Regions and States have the flexibility and responsibility to address situations where compliance assistance and enforcement actions to address biosolids are appropriate and necessary. EPA has taken enforcement actions and/or appropriate administrative remedies to address biosolids violations of 40 CFR part 503 and will continue to take actions to address instances where biosolids pose an imminent and substantial endangerment to human health or the environment. EPA will reconsider resources devoted to biosolids if additional research and science demonstrate greater risk.

To assist the States and Regions in their oversight of the biosolids program, EPA has, either in place or in development, tools to assist and promote compliance with biosolids regulatory requirements. The National Pollutant Discharge Elimination System (NPDES) Compliance Inspection Manual, which is used by EPA and State inspectors to perform inspections in the field, includes a "Sludge (Biosolids)" chapter (Chapter 10). This manual has just undergone major revisions and updating by a Headquarters and regional workgroup; the Manual is being distributed as a final draft for regional and program office review. Electronic training modules, including a module for biosolids inspections, are planned to be available shortly after the release of the revised manual, in Summer 2003.

Additionally, there are two compliance assistance web sites, which are available for biosolids compliance studies, information and tools, and for links to other sites with pertinent biosolids compliance information. One is the National Environmental Compliance Assistance Clearinghouse at: *http://cfpub.epa.gov/clearinghouse/*. This site is a searchable clearinghouse of compliance assistance materials. The second Web site is the Local Government Environmental Assistance Network (LGEAN) at *http://www.lgean.net*. This on-line compliance assistance center, which focuses on local government environmental requirements, is operated by the International City/County Management Association (ICMA), and has six other partners representing local government.

In the area of data systems, EPA is continuing to work with States as it modernizes the Permit Compliance System (PCS) to allow for more effective program oversight. While PCS is the national data system for the NPDES permit program, it currently requires only limited biosolids data. As part of the PCS modernization, a separate workgroup (including States and EPA) was devoted to the data needed to manage the biosolids program. This workgroup examined data in State systems, Biosolids Data Management System (BDMS) and PCS, and considered incorporating BDMS into PCS. The recommendations of this workgroup, endorsed by the PCS Executive Council, was not to incorporate or link BDMS, but rather to add data elements to PCS to improve tracking and oversight of the biosolids program.

The BDMS is another source of biosolids data. It was developed in the late 1990s by Region VIII to track biosolids quantity, quality, use, and disposal practices in the Region VIII states. While not the national system of record for biosolids, BDMS is a tool for municipalities in which they can enter data themselves and use the BDMS to develop reports for states, EPA and for citizen review. The BDMS is also a valuable management tool and can be used to record information about reported incidences associated with biosolids land application. The BDMS is available at: *http://www.treeo.uf/.edu/water/bdmsQuestionnaire.asp*. Current BDMS users include some EPA Regional offices, States, users of biosolids, contract land appliers, and POTWs throughout the U.S. and Canada. EPA is continuing to assess the potential of upgrading BDMS as a management tool that can link with established states and the Federal PCS system.

Research by the Water Environment Research Foundation (WERF) is described in the Pathogen and the Human Health Studies categories. WERF also supported a study by the New England Biosolids and Residuals Association (NEBRA) looking at the importance of establishing relationships among researchers, federal government and concerned citizens. This research included a survey on public perceptions and what people know about biosolids, what their concerns are and whether their concerns are being addressed adequately. The study's aim is to suggest ways that regulators and people can work together. A report is due out by mid 2003.

This and other projects will help the Agency gain a better understanding of public perception issues, values, and expectations. EPA can then identify the most effective communication approaches to ensure understanding of the importance of, and need for, proper biosolids management

Science and Public Outreach: Because of varying resources and diverse local circumstances, risk communication practices vary widely throughout the United States. The Agency's risk communication programs are aimed at improving public awareness of the issues and to achieve exposure reductions where needed. Embodied in all of the priorities for action described in this biosolids strategy is a need to foster public awareness of the issues surrounding biosolids use and exposure. Through the activities and organizations mentioned below, EPA is committed to improving the effectiveness of risk communication methods at national, regional, and local levels.

An Information-Sharing Group (ISG) has been established based upon the concepts developed in WERF studies concerning joint fact-finding research. The ISG is comprised of concerned citizens, health scientists, municipal operators, a farmer, biosolids managers, and input from State and Federal regulatory agencies. The ISG has been established to work jointly with about 25 scientific experts in a large cooperative study of odor, particulates, pathogens, and endotoxins in the air around biosolids and animal manure land application sites. Currently the researchers are from EPA, USDA, the State of PA, and several other organizations. WERF has efforts underway to expand the use of such information-sharing in other research projects.

The National Biosolids Partnership (NBP) is a 48 member alliance formed in 1997 with AMSA (Association of Metropolitan Sewerage Agencies), WEF (Water Environment Federation, and EPA (U.S. Environmental Protection Agency). Through partnering with producers, service contractors, users, regulatory agencies, universities, the farming community, and environmental organization, the goal of the NBP is to advance environmentally sound and accepted biosolids management practices.

Through a voluntary Environmental Management System (EMS), being developed for biosolids by the National Biosolids Partnership (NBP), EPA continues to provide the public with educational information, based on the best science, about the recycling and disposal of biosolids. EPA strongly supports the ongoing efforts of the NBP to develop the EMS and to provide correct and timely information and community-friendly practices that could be followed via its new communications system. The EMS program supports local agencies to find ways to meet and go beyond what is required in state and federal regulations. About 45 municipalities are now pilot-testing their biosolids EMS programs based upon a blueprint developed by the NBP. Several of these municipalities will be ready to undergo an independent third party audit of the EMS program later this year (2003). Municipalities involved in the voluntary EMS program are reporting benefits they have achieved. They report that their participation in the EMS program has resulted in more efficient operation, reduced odors in biosolids, less intrusive transport of the biosolids to land application sites, better communication, and meaningful involvement of the public. The Agency plans to continue supporting NBP activities and working with municipalities on expanding the use of EMS programs in biosolids management. Two NBP Web site address that present relevant biosolids information are *http://www.biosolids.org* and *http://biosolids.policy.net/emsguide/manual/goodpractmanual.vtml*.

The EPA's Pathogen Equivalency Committee was discussed in the Pathogens subsection. The PEC is instrumental in the development and evaluation of regulatory-related initiatives. EPA will continue to support and evaluate the activities of the PEC.

State Regulations: 40 CFR part 503 sets minimum standards for the use or disposal of sewage sludge. State requirements may be more restrictive or administered in a manner different from the Federal regulation. In all cases, users and disposers of biosolids must comply with the most restrictive portions of both the Federal and State rules. In most cases, the part 503 rule is self-implementing; users must comply with part 503 rule, even if they have not been issued a permit covering sewage sludge use or disposal. EPA or States can take enforcement actions directly against persons who violate part 503 requirements. In situations where States and others are addressing such issues, EPA plans to use those opportunities to further evaluate and develop the tools to improve the assessment and management of sewage sludge.

Planned Biosolids Management Activities

The priority activities for biosolids presented in this response were evaluated in the larger context of other Agency priorities. The purpose of listing planned activities is to illustrate the Agency's future direction based on current information. Given the activities spelled out in this response, EPA's goal over the next two years is to complete studies and other activities, follow external research, and review available information. The Agency's longer-term goal is to assess results from completed and ongoing activities to determine further research needs. Implementation of various activities will be considered by the relevant EPA Offices and Regions in future priority setting activities.

IX. How Did EPA Conduct the Review of Part 503 Regulations Under the CWA Section 405(d)(2)(C)?

Section 405(d)(2)(C) of the Clean Water Act requires that EPA review the sewage sludge regulations "for the purpose of identifying additional toxic pollutants and promulgating regulations for such pollutants consistent with the requirements" of section 405(d). EPA has promulgated regulations in 40 CFR part 503 setting numeric standards for certain toxic pollutants in sludge, requirements for pathogen and vector attraction reduction, and operational standards for emissions from sewage sludge incinerators.

As explained in section IV above, EPA commissioned the NRC study of existing sewage sludge land application regulations for the purpose of strengthening the scientific basis of its review under section 405(d)(2)(C). In an agreement with the parties in *Gearhardt v. Whitman*, EPA agreed to publish a notice seeking public comment on its proposed response to the NRC recommendations and the results of its 405(d)(2)(C) review. In conducting this review, EPA committed to review and evaluate publicly available information, such as sampling data, scientific studies, and other analysis and information taken from a wide range of national and international public and private sources.

In fulfilling this commitment, EPA has performed a comprehensive assessment of the availability of data on chemicals that have been detected in or in some way linked to sewage sludge. EPA reviewed Rounds One and Two screening histories; collected and conducted a preliminary review of publicly available information on chemical toxicity, environmental properties such as mobility and persistence, and concentration; identified chemical pollutants for which appropriate analytical methods and human health benchmarks are available; and made preliminary determinations regarding sufficiency of information for risk-based screening analyses. The results of this review are available in the docket (USEPA, 2003e).

At this time, EPA has not identified any additional toxic pollutants that warrant regulation in sewage sludge. The next step in identifying toxic pollutants that may warrant regulation is to conduct a screening analysis of those chemicals for which adequate data and analytical methods are available and for which there is evidence that they may occur in sewage sludge. EPA plans to complete this screening analysis by January 2004. In addition, EPA is continuing to seek additional information to fill data gaps for those chemicals for which adequate data for the screening analysis is not yet available and would welcome any relevant data from commenters.

The Agency began its review under section 405(d)(2)(C) by first reviewing the complete list of pollutants that were considered in developing the Round One rule and Round Two proposal. For Round One, EPA conducted a National Sewage Sludge Survey (NSSS) in 1988–1989, which included an analysis of 411 pollutants. These 411 pollutants included, among others, every organic chemical including pesticide, dibenzofuran, dioxin and PCB analytes for which EPA had gas chromatography and mass spectrometry (GC/MS) standards (58 FR 9268–9269). Of the original 411 pollutants, EPA promulgated numeric standards in Round One for 10 pollutants (metals) in land-applied sewage sludge, three pollutants (metals) in sewage sludge placed in surface disposal units, seven pollutants in sewage sludge fired in sewage sludge incinerators (SSIs), and an operational standard for total hydrocarbons (or alternatively carbon monoxide) emitted from SSIs.

These same 411 pollutants were the starting point in 1995 for identifying pollutants for developing a Round Two regulation. EPA conducted a preliminary screening analysis which resulted in an identification of 31 pollutants for potential regulation in Round Two. These 31 pollutants were the subject of a comprehensive hazard identification study, which narrowed the list to dioxin, dibenzofurans and

coplanar polychorinated biphenyls (PCBs).

Many of the original 411 pollutants were eventually eliminated for consideration in Round One or Round Two rulemakings; 254 were eliminated because they were not detected in any or in fewer than one percent of the sewage sludge samples surveyed in the NSSS, and others were dropped because of a lack of sufficient information on their toxicity and environmental properties. In particular, 44 of the 411 pollutants, though detected at a frequency of greater than one percent, were dropped from further consideration because of lack of data on human health benchmarks and/or environmental properties. For a more detailed description of the process for Round One and Two, see USEPA, 2002c.

For the current review, EPA again started with the 411 pollutants initially identified for Round One consideration; As mentioned above, 254 of these pollutants were detected at a frequency rate of less than one percent in the 1988–89 NSSS and therefore were dropped from further consideration in both the Round One and Round Two rulemakings. Because the low detection rates for these 254 pollutants could have been due to the limits of the analytical and sampling methodology employed in 1988–89, EPA included these pollutants in the current review for potential addition to the Part 503 Standards. A literature search was performed on these pollutants to identify (1) human health benchmarks, (2) environmental properties, and (3) their presence or concentrations in sewage sludge.

As previously mentioned, 44 of the 411 pollutants considered in the Round One and Round Two rulemaking processes were detected at a frequency of greater than one percent, but were dropped from further consideration because of lack of data on human toxicity and/or environmental properties. EPA has preliminarily determined that 23 of the 44 are either non-toxic or non-persistent in the environment, but is continuing to evaluate them.

Next, EPA conducted a literature search of publicly available information to identify information on pollutants in sewage sludge since 1990, including information on pollutants that were not among the 411 originally identified pollutants. EPA has collected 459 scientific papers from national and international government entities, universities, non-profit and other private entities for the time period of 1990–2002, the date of the last NSSS to the present (USEPA, 2002d). Of these 459 papers, 216 papers concern either the Round One or Round Two pollutants only. The balance of these papers, 243, concern or potentially concern pollutants that were not the subjects of Rounds One or Two. Subsequently, these 243 papers were reviewed to verify which of the papers do in fact concern pollutants which were not the subjects of Rounds One and Two. In addition, these papers were reviewed for human health benchmarks, environmental properties, and presence or concentrations of these pollutants in sewage sludge.

EPA also collected information from EPA databases and several other existing databases with respect to human health benchmarks, and found 170 pollutants with some human health benchmarks among these databases (USEPA, 2002e). These databases include: EPA's Integrated Risk Information System, EPA's Superfund Technical Support Center Provisional Toxicity Values; EPA Health Assessment Documents, California Environmental Protection Agency Chronic Inhalation Reference Exposure Levels and Cancer Potency Factors, Agency for Toxic Substances and Disease Registry Minimal Risk Levels, and Health Effects Assessment Summary Tables.

The next step in this process was to ascertain whether analytical methods exist for detecting and quantifying each of these pollutants in sewage sludge (USEPA, 2002f, USEPA, 2002g, USEPA, 2002h). Although the accuracy, precision, and limits of detection of analytical methodologies for chemical pollutants in the sewage sludge matrix have significantly improved since the 1988–89 NSSS, there are still many pollutants for which no validated analytical methods exist.

In summary, EPA evaluated publicly available information with respect to presence in sewage sludge, toxicity (including human health benchmarks), persistence, mobility and potential for exposure for the pollutants contained in each of the four groups of pollutants described above: (1) The 254 pollutants with a low frequency of detection in the 1988–89 NSSS, (2) the 44 toxic pollutants that were detected at a frequency of greater than one percent in the 1988–1989 NSSS, but that had insufficient information to be able to perform subsequent evaluation, (3) the pollutants that were not the subject of Rounds One or Two but are covered in the 243 papers that turned up in the literature search, and (4) the 170 pollutants for which some health benchmark exists in the literature. These four groups of pollutants as described above were compared to eliminate any duplicates. Finally, EPA evaluated all of these pollutants to determine whether there are sufficiently accurate and precise analytical methodologies with adequate detection limits for these pollutants in the sewage sludge matrix. These results are available in detail in the docket for this notice (USEPA, 2003b).

These preliminary results will be further analyzed, leading to a risk-based screening analysis. The criteria for determining whether to proceed to a screening analysis for any pollutant are whether there are: (1) Adequate and reliable data regarding concentration of the pollutant in sewage sludge, (2) a current human health benchmark, (3) adequate information on environmental properties, such as persistence and mobility, and (4) an appropriate analytical method for the pollutant. In evaluating item 2 above, EPA will focus initially on chemicals for which there is a current peer-reviewed human health benchmark developed by EPA. EPA will next determine the adequacy of the available environmental properties data for use in the risk-based screening analysis.

The results of this screening analysis will serve as a basis for determining whether additional toxic pollutants should be considered for regulation in sewage sludge under section 405(d) of the Clean Water Act. As noted above, EPA has not yet identified any additional pollutants for regulation. Inclusion in the results presented today does not mean that a pollutant has been determined to be present in sewage sludge in concentrations that may adversely affect human health or the environment. Some, or even all, of these chemicals that have been detected in sewage sludge may only be present infrequently or in trace amounts, and may not present a risk of adverse effects to human health or the environment. Also, the properties or degree of toxicity of such chemicals may make their presence, even in higher amounts, of little risk to human health or the environment. As noted above, the NRC concluded that while there are significant data gaps, there is currently no documented scientific evidence that the existing Part 503 regulations have failed to protect public health. These results, however, are an important step forward in that they identify chemicals for which sufficient new information exists to proceed to a risk-based screening analysis, as well as data gaps that must be filled for other chemicals before such a screening analysis can be conducted.

EPA expects to complete its risk-based screening analysis of chemicals for which adequate information is currently available by January 2004. At that time EPA will identify those pollutants, if any, for which EPA plans to initiate a rulemaking under section 405(d). EPA requests comment on the methodology and results to date of its review under section 405(d)(2)(C) of the CWA. EPA also requests information that may help to fill data gaps for those chemicals for which sufficient information is not yet available to conduct a risk-based screening analysis.

X. What Are the Primary Issues for Public Comment?

While the EPA is requesting comments on all of the information discussed in this Notice, the Agency hopes that the public comment will also focus specifically on the following aspects of this Notice:

1. The Agency's preliminary strategy for responding to the NRC Recommendations, given that the Agency's biosolids program does not have sufficient resources to implement all of the recommendations.

2. EPA requests comment on its review under section 405(d)(2)(C) of the CWA. EPA also requests information that may help to fill data gaps for those chemicals for which sufficient information is not yet available to conduct a risk-based screening analysis.

3. EPA's plan to investigate the possibility of developing a process for timely notification, recording, and tracking incident reports in collaboration with other health-based Federal agencies, such as the Centers for Disease Control and Prevention.

4. The Agency's plan to begin designing a survey using information obtained from published pollutant occurrence and effects data, State occurrence data bases, and input received during the public comment period.

XI. References

NRC, 1996. Use of Reclaimed Water and Sludge in Food Crop Production. The National Academies Press. Washington, DC. Available online at *http://www.nap.edu/catalog/5175.html*

NRC, 2002. Biosolids Applied to Land; Advancing Standards and Practices, National Research Council of the National Academies. The National Academies Press. Available online at *http://search.nap.edu/books/0309084865/html.*

University of Arizona, National Science Foundation, Water Quality Center, within the Environmental Research Laboratory. Several studies ongoing. Ian L. Pepper, Director. Tuscon, Arizona.

USEPA, 1994. A Plain English Guide to the EPA Part 503 Biosolids Rule. 190 pages. Office of Water, Office of Wastewater Management. Available online at: *http://www.epa.gov/owm/mtb/biosolids/503pe/index.htm.*

USEPA, 1996. Technical Support Document for the Round Two Sewage Sludge Pollutants. EPA–822–R–96–003. Office of Water. Washington, DC. August, 1996.

USEPA, 2002a. Compilation of National Research Council (NRC) Recommendations on Biosolids and EPA Responses and Activities. 9 pages. Office of Water, Office of Science and Technology. Washington, DC.

USEPA, 2002b. Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency. EPA 260R–02–008. Office of Environmental Information. Washington, DC. October 2002. Available online at *Http://www.epa.gov/oei/qualityguidelines.*

USEPA, 2002c. Screening History for the Part 503 Rounds One and Two Proposal. 4 pages. Office of Water, Office of Science and Technology. Washington, DC.

USEPA, 2002d. Literature Search of Publicly Available Information to Identify Information on Pollutants in Sewage Sludge Since 1990. 48 pages. Office of Water, Office of Science and Technology. Washington, DC.

USEPA, 2002e. Human Health Benchmarks for Potential Constituents in Biosolids. 11 pages. Office of Water, Office of Science and Technology. Washington, DC.

USEPA, 2002f. List of Analytes from the 1989 National Sewage Sludge Survey Found in Less than 1% of the Samples. 7 pages. Office of Water, Office of Science and Technology. Washington, DC.

USEPA, 2002g. Summary of Analytes from the 1989 National Sewage Sludge Survey. 12 pages. Office of Water, Office of Science and Technology. Washington, DC.

USEPA, 2002h. Potential Analytes. 5 pages. Office of Water, Office of Science and Technology. Washington, DC.

USEPA, 2003a. In press. Contemporary Perspectives on Infectious Disease Agents In Sewage Sludge and Manure. Compost Science & Utilization/The JG Press, Inc.

USEPA, 2003b. Candidate Pollutants for Ongoing Sewage Sludge Evaluation. 15 pages. Office of Water, Office of Science and Technology. Washington, DC.

WERF, 2003. Dynamic Model to Assess Microbial Health Risks Associated with Beneficial Uses of Biosolids. Cooperative Agreement No. CR–825237. Alexandria, VA.

Dated: April 2, 2003.

G. Tracy Mehan III,

Assistant Administrator, Office of Water.

[FR Doc. 03–8654 Filed 4–8–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 98–204; DA 03–1046]

Interim Policy Concerning Placement of Equal Employment Opportunity Public File Report in a Broadcaster's Public File

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission gives notice of its interim policy concerning the deadline for placement of Equal Employment Opportunity public file reports in stations' public files. This document also gives notice of groups that have filed petitions for reconsideration in this matter regarding requirement modifications.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lewis Pulley (202) 418–1456, or Roy Boyce (202) 418–1438, Policy Division, Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, MM Docketa No. 98–204, adopted and released March 31, 2003. The complete text of this Public Notice is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com.*

Synopsis of Public Notice

1. By this Public Notice the Media Bureau establishes an interim policy concerning the enforcement of the requirement of the Equal Employment Opportunity ("EEO") rule—§ 73.2080—that a broadcaster that is part of an employment unit with five or more full-

time employees place information concerning its EEO efforts in its public file and on its Web-site, if it has one. *See* § 73.2080(c)(6). Pursuant to that provision, the information is required to be placed in the station's public file on the anniversary of the date the station is due to file its renewal application. The information relates to specified EEO activities engaged in during the preceding year.

2. Petitions for reconsideration have been filed by two groups of State Broadcasters Associations urging, among other matters, that the requirement should be modified to allow a ten day grace period for the specified information to be placed in the public file because broadcasters may not have sufficient time to collect and review data concerning activities that occur shortly before the renewal filing anniversary. The Commission will address the merits of these requests in due course. We will adopt an interim enforcement policy of allowing a ten day grace period with respect to EEO public file reports due April 1, 2003. Thus, licensees that must place an EEO report in their public files on April 1, 2003, will comply with the deadline so long as the reports are placed in the public file by April 11, 2003.

3. Thereafter, until such time as the Commission acts on the petitions for reconsideration, licensees should place EEO public file reports in their public files by the due date. They may, however, base their public file reports on activity that concludes up to 10 days prior to the due date. Licensees who choose to conclude their reports prior to the day before the due date should include any reportable information occurring between their cutoff date and the due date in next year's public file report.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–8579 Filed 4–8–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2603]

Petition for Reconsideration of Action in Rulemaking Proceeding

April 3, 2003.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by April 24, 2003. *See* section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the FM Table of Allotments (Eagle, Fort Morgan, and Hudson, Colorado, Bayard and Bridgeport, Nebraska, and Douglas and Fort Laramie, Wyoming).

Number of Petitions Filed: 1.

Subject: In the matter of the Federal-State Joint Board on Universal Service (CC Docket No. 96—45).

1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms (CC Docket No. 98–171).

Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (CC Docket No. 90–571)

Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size (CC Docket No. 92–237).

Number Resource Optimization (CC Docket No. 99–200).

Telephone Number Portability (CC Docket No. 95–116).

Truth-in-Billing and Billing Format (CC Docket No. 98–170).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–8618 Filed 4–8–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011689–004.

Title: ZIM/CSCL Space Charter Agreement.

Parties: Zim Israel Navigation Co., Ltd., China Shipping Container Lines Co. Ltd.

Synopsis: The amendment discontinues the chartering of space on several strings and changes the space allocations on the remaining strings.

Agreement No.: 011841–001.

Title: Lykes/Libra Slot Charter Agreement.

Parties: Companhia Libra de Navegacao, Lykes Lines Limited, LLC.

Synopsis: The subject agreement modification deletes from Article 5.1(a)(ii) the restrictions on the use of space by Libra to move cargo to/from ports in the Dominican Republic and Venezuela. Consequently, these countries are being added to the geographic scope. The modification also clarifies that the agreement is intended to cover the trade between the U.S. and Mexico. The parties request expedited review.

Agreement No.: 011848.

Title: WWL/K-Line Transatlantic Space Charter Agreement.

Parties: Wallenius Wilhelmsen Lines AS ("WWL"), Kawasaki Kisen Kaisha, Ltd. ("K-Line").

Synopsis: The proposed agreement would authorize WWL to take space on K-Line's roll-on, roll-off vessels operating between the Atlantic Coast of the United States and ports in Europe (including the United Kingdom and Scandinavia). The agreement also allows for a limited range of cooperative activities between the parties related to the space chartering.

Agreement No.: 200940–001.

Title: Broward County Tecmarine Marine Terminal Agreement.

Parties: Broward County, Tecmarine Lines, Inc.

Synopsis: The agreement amendment terminates the agreement effective April 3, 2003.

By Order of the Federal Maritime Commission.

Dated: April 4, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–8681 Filed 4–8–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Pacific Atlantic Lines, Inc., 530 Main Street, Fort Lee, NJ 07024, *Officer:* Netanel Gonen President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

United Aline Services Inc., 111 Great Neck Road, Suite 312, Great Neck, NY 11021, *Officer:* Gao, Yunyan, President (Qualifying Individual).

Merco International, Inc., 7372 N.W. 35 Terrace, Miami, FL 33122, *Officers:* Ricardo Olascoaga, Director (Qualifying Individual), Jorge Santiago Artaza, President.

Leonardi & Co. USA, Inc., One Cross Island Plaza, Suite 312, Rosedale, NY 11422, *Officers:* Ralph Di Rado, Secretary (Qualifying Individual), Italo Leonardi, President.

Chicago Int'l Forwarders Inc., 423E. Irving Park Road, Wood Dale, IL 60191, *Officers:* Janette Nham, President (Qualifying Individual), Luis Spina, Vice President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

MBC Brokers Inc., 13823 Judah Avenue, Hawthorne, CA 90250, *Officers:* John Hanson, President (Qualifying Individual), Ann Hanson, Secretary.

One Bin.Com, Inc., 3406 SW 26 Terrace, Unit C–10, Fort Lauderdale, FL 33312, *Officers:* Leon Williams, Vice President (Qualifying Individual). Michael Singh, CEO.

Deans International Shipping Co., Inc., 217–21 Merrick Blvd., Laurelton, NY 11413, *Officer:* Sharon Deans, President (Qualifying Individual).

Dated: April 4, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–8682 Filed 4–8–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before June 9, 2003.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report

Report title: Reporting and Disclosure Requirements Associated with Regulation P

Agency form number: unnum Reg P

OMB control number: 7100-0294

Frequency: Reporting, on–occasion; and disclosure, annually.

Reporters: State member banks, subsidiaries of state member banks, bank holding companies and it's subsidiaries or affiliates, branches and

agencies of foreign banks, commercial lending companies owned or controlled by foreign banks, corporations operating under section 25 or 25A of the Federal Reserve Act, and customers of these financial institutions.

Annual reporting hours: 427,500 hours

Estimated average hours per response: Financial institution disclosure requirements: Initial notice, 40 hours; annual notice, 1 hour; opt–out notice to consumers, 1 hour; and notice of change in terms, 1 hour. Consumer reporting requirements: opt–out notice, 1 hour; and continuing right to opt–out, 1 hour.

Number of respondents: 9,500 Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 248) and the Gramm–Leach–Bliley Act (Pub. L. 106–102, Sec. 504). Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises.

Abstract: The information collection pursuant to Regulation P is triggered by the establishment of a relationship between a customer and a financial institution. The regulation ensures that financial institutions provide customers notice of the privacy policies and practices of financial institutions and a means to prevent the disclosure of nonpublic personal information, in certain circumstances. Where applicable, financial institutions are required to provide an initial notice and an annual notice of their privacy policies and practices, opt–out notices, and revised notices containing changes in policies and procedures.

In 2000, the Federal Reserve, along with the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), National Credit Union Administration (NCUA), Federal Trade Commission (FTC), and Securities and Exchange Commission (SEC) (≥the agencies≥) jointly agreed on burden estimates when they promulgated the privacy regulations.

In early 2003, an inter–agency working group[1] agreed to jointly re–estimate the paperwork burden of their privacy regulations. To avoid expiration of the authority for the information collections while the review is being completed, the group agreed to separately publish for comment estimates based on the 2000 assumptions. The OCC, FDIC, and OTS published initial Federal Register notices using the 2000 estimates; the comment periods have closed. Each of these agencies have received comments. After the Federal Reserve's public comment period has closed, the agencies will jointly review all of the comments received. Then the agencies will publish a joint final notice with revised final estimates in the Federal Register.

Board of Governors of the Federal Reserve System, April 3, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–8614 Filed 4–8–03; 8:45 am]

BILLING CODE 6210–01–S

[1] The working group consists of staff from the Federal Reserve, FDIC, OCC, and OTS.

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 24, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Jerry L. Clark, De Leon, Texas; to acquire voting shares of F&M Bancshares, Inc., De Leon, Texas, and thereby indirectly acquire voting shares of Farmers and Merchants Bank, De Leon, Texas.

Board of Governors of the Federal Reserve System, April 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–8675 Filed 4–8–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov.nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 5, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Southwest Bancorporation of Texas, Inc., Houston, Texas, to acquire 100 percent of the voting shares of Maxim Financial Holdings of Delaware, Inc., Wilmington, Delaware; and Maxim Financial Holdings, Inc., Dickinson, Texas, and thereby indirectly acquire voting shares of MaximBank, Dickinson, Texas.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Western Alliance Bancorporation, Las Vegas, Nevada; to acquire 100 percent of the voting shares of Torrey Pines Bank, San Diego, California (in organization).

Board of Governors of the Federal Reserve System, April 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–8676 Filed 4–8–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than of Governors not later than April 23, 2003.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Commerzbank Aktiengesellschaft, Frankfurt, Germany; through its subsidiary, Commerzbank Capital Markets Corporation, New York, New York, to engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y; acting as investment or financial advisor, pursuant to section 225.28(b)(6) of Regulation Y; providing securities brokerage services, pursuant to section 225.28(b)(7)(i) of Regulation Y; engaging in riskless principal transactions, pursuant to section 225.28(b)(7)(ii) of Regulation Y; providing private placement services, pursuant to section 225.28(b)(7)(iii) of Regulation Y; engaging in other transactional services, pursuant to section 225.28(b)(7)(v) of Regulation Y; underwriting and dealing in government obligations and money market instruments, pursuant to section 225.28(b)(8)(i) of Regulation Y; and in permissible investing and trading activities, pursuant to section 225.28(b)(8)(ii)(a) of Regulation Y.

Board of Governors of the Federal Reserve System, April 3, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–8613 Filed 4–8–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[FPMR Bulletin 2003–B1]

Federal Management Regulation; Redesignation of a Federal Building

AGENCY: Public Buildings Service (P), GSA.

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin announces the redesignation of a Federal Building.

Expiration Date: This bulletin expires September 3, 2003. However, the building redesignation announced by this bulletin will remain in effect until canceled or superseded.

FOR FURTHER INFORMATION CONTACT: Paul Chistolini, General Services Administration, Public Buildings Service (P), Washington, DC 20405; at (202) 501–1100, or by e-mail at *paul.chistolini@gsa.gov*.

Dated: March 31, 2003.

Stephen A. Perry,

Administrator of General Services.

GENERAL SERVICES ADMINISTRATION

[FPMR Bulletin 2003-B1]

Federal Management Regulation; Redesignation of a Federal Building

To: Heads of Federal Agencies.

Subject: Redesignation of a Federal Building.

1. *What is the purpose of this bulletin?* The attached bulletin announces the redesignation of a Federal Building.

2. *When does this bulletin expire?* This bulletin expires September 3, 2003. However, the building redesignation announced by this bulletin will remain in effect until canceled or superseded.

3. *Redesignation.* The former and new name of the building being redesignated are as follows:

Former name	New name
Battle Creek Federal Center, 50 N. Washington Avenue, Battle Creek, MI 49017.	Hart-Dole-Inouye Federal Center, 50 N. Washington Avenue, Battle Creek, MI 49017.

4. *Who should we contact for further information regarding redesignation of this Federal Building?*

General Services Administration, Public Buildings Service, Office of the Commissioner, Attn: Paul Chistolini, 1800 F Street, NW., Washington, DC 20405, Telephone Number: (202) 501–1100, E-mail Address: *paul.chistolini@gsa.gov*.

[FR Doc. 03–8661 Filed 4–8–03; 8:45 am]

BILLING CODE 6820–23–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–490]

In the Matter of Certain Power Amplifier Chips, Broadband Tuner Chips, Transceiver Chips, and Products Containing Same; Notice of Correction

AGENCY: International Trade Commission.

ACTION: Correction of notice of investigation.

SUMMARY: Due to a typographical error, the Commission's notice published in the **Federal Register** on April 4, 2003 (68 F.R.16551) incorrectly stated that the complaint was filed on March 3, 2002. The corrected date is March 3, 2003.

By order of the Commission.

Issued: April 4, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–8652 Filed 4–8–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Oil Pollution Act (OPA)

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America* v. *BD Oil Gathering, Inc.*, Civil Action No. 2:03–0253, was lodged with the United States District Court for the Southern District of West Virginia on March 24, 2003.

In this action, the United States sought assessment of civil penalties for

Defendant's violation of section 311(b)(3) of the Clean Water Act, 33 U.S.C. 1321(b)(3) and the implementing regulations at 40 CFR part 100. On or about December 23, 1998, BD Oil, by, and through its employee or agent, operated a truck in Roane County, West Virginia, that ruptured and discharged approximately 92 barrels of oil into the Big Sandy Creek. Within ten days of entry of the Consent Decree, BD Oil will pay a civil penalty of $11,000.00 to the Oil Spill Liability Trust Fund. In addition to the civil penalty, BD Oil agrees to create and maintain a Spill Response Unit (SRU) to respond to oil spills and oil discharges within a designated portion of eastern Ohio and western West Virginia.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *BD Oil Gathering, Inc.*, D.J. Ref. 90–5–1–1–06959.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of West Virginia, 3000 Virginia Street, Suite 4000, Charleston, West Virginia 25301; and at U.S. Environmental Protection Agency, Region III Office, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed Consent Decree may also be obtained by (1) mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611; or by (2) faxing or e-mailing a request to Tonia Fleetwood (e-mail: *tonia.fleetwood@usdoj.gov*; fax no: (202) 514–0097; phone confirmation (202) 514–1547). In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.75 (25 cents per page reproduction cost), made payable to the U.S. Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–8644 Filed 4–8–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on April 1, 2003, a proposed consent decree ("decree") in *United States* v. *Colonial Pipeline Company*, Civil Action No. 1:00–CV–3142 JTC, was lodged with the United States District Court for the Northern District of Georgia.

In this action, the United States sought civil penalties for seven recent and significant spills from Colonial Pipeline Company's ("Colonial") 5,500 mile pipeline. The United States also sought injunctive relief to prevent future spills. Under the decree, Colonial will pay a $34 million civil penalty for seven spills that spilled 1.45 million gallons of oil from its pipeline into waters in five states. The $34 million civil penalty will go to the United States' Oil Pollution Liability Trust Fund, which underwrites cleanups nationwide.

Colonial will also require Colonial to designate its entire pipeline as potentially affecting "high consequence areas." This will subject the entire pipeline to the pipeline integrity regulations of the U.S. Department of Transportation's Office of Pipeline Safety ("OPS"). Under the terms of the settlement, Colonial is also required to (1) inspect its corrosion protection system along the entire pipeline system every five years; (2) repair problems detected in the corrosion protection system to meet the standards developed by the National Association of Corrosion Engineers (NACE); (3) maintain its right-of-ways, including mowing and removing debris; (4) have personnel on site when utility or other excavation is occurring within five feet of the pipeline; and (5) survey and inspect the pipeline where it crosses water, and address areas of the pipeline that are exposed or insufficiently buried.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Colonial Pipeline Company*, D.J. Ref. 90–5–1–1–4367.

The decree may be examined at the Office of the United States Attorney, U.S. Courthouse, Suite 1800, 75 Spring Street, SW., Atlanta, Georgia 30303, and at U.S. the U.S. Environmental Protection Agency—Region IV, Atlanta Federal Center, 61 Forsythe Street, Atlanta, Georgia 30303. During the public comment period, the decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $11.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–8642 Filed 4–8–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR § 50.7, notice is hereby given that on March 13, 2003, a proposed Consent Decree in *United States* v. *Puerto Rico Aqueduct and Sewer Authority, et al.*, Civil Action No. 01–1709 (JAF), was lodged with the United States District Court for the District of Puerto Rico.

In this action the United States sought civil penalties and injunctive relief for the defendants' alleged discharges of untreated sewage from 471 pump stations throughout the Commonwealth of Puerto Rico and for the alleged failure to report certain discharges in violation of section 301(a) and 402 of the Clean Water Act, 33 U.S.C. 1311(a) and 1342. The proposed Consent Decree provides for the payment of a $1 million civil penalty by PRASA and Compañia de Agusa de Puerto Rico, its former operator by contact, as well as the performance of a Supplemental Environmental Project ("SEP") by PRASA. The SEP is valued at $1 million and is designed to improve drinking water quality for certain communities which are not presently hooked up to PRASA water filtration systems. The proposed Consent Decree also requires PRASA and its current operator by contract, ONDEO de Puerto Rico, to develop and implement an EPA-approved system-wide operation and maintenance and spill response and cleanup plan for all pump stations owned by PRASA, as well as to perform specific remedial actions at designated pump stations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publciaton comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Puerto Rico Aqueduct and Sewer Authority, et al.*, Civil Action No. 01–1709 (JAF), D.J. Ref. 90–5–1–1–06475/1.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Puerto Rico, Federal Office Building, Room101, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918, and at U.S EPA Region II, Caribbean Environmental Protection Division, 1492 Ponce de Leon Avenue, Suite 207, San Juan, Puerto Rico 00907. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (2020 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $12.25 (for a copy without appendices) or $18.25 (for a copy with appendices) (25 cents per page reproduction cost), payable to the U.S. Treasury.

Catherine R. McCabe,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–8643 Filed 4–8–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 011–2003]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Civil Division, Department of Justice, is establishing a new system of records entitled "Annuity Brokers List System" Civil Division (CIV), JUSTICE/CIV–005.

The Annuity Brokers List System is established to support the production and maintenance of a list of annuity brokers as required by the "21st Century Department of Justice Appropriations Authorization Act". Section 11015(a) of the statute provides "Not later than 6 months after the date of enactment of this Act, the Attorney General shall establish a list of annuity brokers who meet minimum qualifications for providing annuity brokerage services in connection with structured settlements entered by the United States. This list shall be updated upon request by any annuity broker that meets the minimum qualifications for inclusion on the list. The Attorney General shall transmit such list, and any updates to such list, to all United States Attorneys." This notice is published in accordance with that statutory requirement.

The Department is providing a report to OMB and the Congress.

Dated: April 2, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

JUSTICE/CIV–005

SYSTEM NAME:

Annuity Brokers List System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Civil Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530; Department of Justice—Records Management Unit, 2711 Prosperity Avenue, Fairfax, VA 22031; and Federal Records Center, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are seeking to be included in the list of annuity brokers mandated by section 11015 of the "21st Century Department of Justice Appropriations Authorization Act."

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: declarations filed by annuity brokers and associated correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 107–273, 21st Century Department of Justice Appropriations Authorization Act, Section 11015(a).

PURPOSE:

These records are collected and maintained for the purpose of establishing a list of annuity brokers who meet minimum qualifications for providing annuity brokerage services in connection with structured settlements entered by the United States.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

None.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Paper records are maintained in filing cabinets. Automated data, including records that have been transformed into electronic form, are stored on computer discs or magnetic tapes, which are also stored in cabinets.

RETRIEVABILITY:

Files and automated data are retrieved by name of an individual.

SAFEGUARDS:

Files and automated data are maintained under supervision of Civil Division personnel or their contractors. During working hours—only authorized personnel, with the appropriate authority may handle, retrieve, or disclose any information contained therein. Access to electronic records is controlled by password or other user identification code.

RETENTION AND DISPOSAL:

A request for authority to maintain and dispose of annuity broker list records has been submitted to the National Archives and Records Administration and is pending. In the interim, all records received will be retained and no records will be destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Assistant Attorney General, Civil Division, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURES:

Address inquiries to: Office of the Assistant Attorney General, Civil Division, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about their records may write to the Office of the Assistant Attorney General, Civil Division, 950 Pennsylvania Avenue, NW., Washington, DC 20530. The request should state what records are sought and must include the requester's full name and current address. The request must be signed before a notary or signed, dated and submitted under penalty of perjury.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the Office of the Assistant Attorney General, Civil Division, 950 Pennsylvania Avenue, NW., Washington, DC 20530. The request should clearly and concisely state what information is being contested, the reason(s) for contesting it, and the proposed amendment to the record.

RECORD SOURCE CATEGORIES:

Individuals submitting information who are seeking to be included in the Department of Justice list of annuity brokers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 03–8641 Filed 4–8–03; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 28, 2002, and published in the **Federal Register** on October 18, 2002, (67 FR 64417), AccuStandard, Inc., 125 Market Street, New Haven, Connecticut 06513, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N=Ethylamphetamine (1475)	I
N,N=Dimthylamphetamine (1480)	I
Fenethylline (1503)	I
Mecloqualone (2572)	I
Alpha-Ethyltryptamine (7249)	I
3,4,5-Trimethoxyamphetamine (7390).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl) pyrrolidine (PCPY) (7458).	I
1-[1-(2-Thienyl)cyclohexyl] pyrrolidine (TCPY) (7473).	I
N-Ethyl-3-piperidyl benzilate (7482).	I
N-Methyl-3-piperidyl benzilate (7484).	I
Acetyldihydrocodeine (9051)	I
Benzylmorphine (9052)	I
Desomorphine (9055)	I
Codeine methylbromide (9070)	I
Difenoxin (9168)	I
Hydromorphinol (9301)	I
Methyldihydromorphine (9304)	I
Morphine methylbromide (9305)	I
Morphine methylsulfonate (9306)	I
Nicomorphine (9312)	I
Drotebanol (9335)	I
Allylprodine (9602)	I
Alphamethadol (9605)	I
Betaprodine (9611)	I
Clonitazene (9612)	I
Dextromoramide (9613)	I
Diampromide (9615)	I
Diethylthiambutene (9616)	I
Dimenoxadol (9617)	I
Dimepheptanol (9618)	I
Dimethylthiambutene (9619)	I
Dioxaphetyl butyrate (9621)	I
Dipipanone (9622)	I
Ethylmethylthiambutene (9623)	I
Furethidine (9626)	I
Hydroxypethidine (9627)	I
Ketobemidone (9628)	I
Morpheridine (9632)	I
Noracymethadol (9633)	I
Normethadone (9635)	I
Norpipanone (9636)	I
Phenadoxone (9637)	I
Phenampromide (9638)	I
Phenoperidine (9641)	I
Piritramide (9642)	I
Proheptazine (9643)	I
Properidine (9644)	I
Propiram (9649)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661).	I
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine (9663).	I
Tilidine (9750)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-Methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815).	I
Beta-Hydroxyfentanyl (9830)	I
Beta-Hydroxy-3-methylfentanyl (9831).	I
Alpha-Methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Nabilone (7379)	II
1-Phenylcylohexylamine (7460)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Isomethadone (9226)	II
Metopon (9260)	II
Piminodine (9730)	II
Racemorphan (9733)	II
Bezitramide (9800)	II

The firm plans to manufacture small quantities of the listed controlled substances to make reference standards.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of AccuStandard, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated AccuStandard, Inc. to ensure that the company's registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: March 21, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–8588 Filed 4–8–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 14, 2003, Boehringer Ingelheim Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal, and on November 27, 2002, made application by renewal, and on November 27, 2002, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Methylphenidate (1724)	II
Levo-aphacetylmethadol (9648)	II
Fentanyl (9801)	II
Dextropropoxphene (9273)	II

The firm plans to manufacture the listed controlled substances for formulation into finished pharmaceuticals.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537; Attention: Drug Operations Section, Domestic Drug Unit (ODOD) and must be filed no later than June 9, 2003.

Dated: March 21, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–8583 Filed 4–8–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substances in Schedule I or II and prior to issuing a registration under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 14, 2003, Boehringer Ingelheim Chemicals, Inc. 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import Phenylacetone for the bulk manufacture of amphetamine.

Any manufacturer holding, or apply for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Drug Operations Section, Domestic Drug Unit (ODOD), and must be filed no later than May 9, 2003.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), (f). As noted as a previous notice at 40 FR 43745–46 (Sepember 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.452(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 21, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–8585 Filed 4–8–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 5, 2001, and published in the **Federal Register** on October 17, 2001, (66 FR 52780), Boehringer Ingelheim Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, VA 23805, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II

The firm plans to manufacture the listed controlled substance for formulation into finished pharmaceuticals.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of, Boehringer Ingelheim Chemicals, Inc., to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Boehringer Ingelheim Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 21, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–8587 Filed 4–8–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 01–1]

The Church of the Living Tree; Denial of Application

On November 4, 1999, and pursuant to 21 U.S.C. 823(a), the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to the Church of the Living Tree (Respondent) of Leggett, California, proposing to deny its application for DEA Certificate of Registration as a manufacturer of marijuana, a Schedule I controlled substance. The Order to Show Cause alleged that the pending application should be denied because the Respondent's proposed manufacture and distribution of marijuana for human consumption was a purpose not in conformity with the provisions of the Controlled Substances Act, under 21 U.S.C., section 2 812(b)(1), 822(b), 823(f)(4), and 841(a)(1).

By letter dated November 26, 1999, the Respondent, through its trustee John Stahl (Mr. Stahl), timely filed a request for a hearing on the issues raised by the Order to Show Cause, stating, in part, that Respondent sought "* * * to cultivate cannabis sativa for purposes which are allowable under California Law, and to process the remaining stalk into pulp for our paper mill." Through inadvertence, this request was not docketed for a possible hearing. As a result, the then-Deputy Administrator of the DEA issued a final order finding that Respondent had not responded to the Order to Show Cause and denying

Respondent's application. 65 FR 50,567 (August 3, 2000). However, by error, and the agency subsequently rescinded the prior final order by order dated November 21, 2000. 65 FR 75958 (2000). The matter was then docketed before Administrative Law Judge Mary Ellen Bittner (Judge Bittner).

On October 23, 2000, the Government filed a Motion for Summary Disposition, reiterating the allegations contained in the Order to Show Cause and further alleging, in part, that the manufacture of marijuana for human consumption is a purpose not in conformity with the Controlled Substance Act. The Government further argued that DEA rejected a previous petition to reschedulo marijuana when it found that the drug has no currently accepted medical use. Marijuana Scheduling Petition; Denial of Petition; Remand, 59 FR 10,499, 10,507 (1992). The Government added that because the Respondent's previous DEA application for registration as a marijuana manufacturer was denied, the Respondent is now precluded from re-litigating the matter in its renewed effort to obtain a similar registration under the doctrine of res judicata. Robert A. Leslie, M.D., 64 FR 25,908 (1999); Robert M. Golden, M.D., 63 FR 38,669 (1998).

On November 1, and December 1, 2000, the Respondent filed its Response to Motion for Summary Disposition and Further Response to Motion for Summary Disposition respectively. In its submissions, the Respondent argued in essence that it "* * * intended to cultivate medical marijuana as a cooperative farm of * * * patients qualifying under the terms of the Compassionate Use Act of 1996 (the Compassionate Use Act)." As noted in a previous DEA final order, effective November 6, 1996, voters in California adopted the Compassionate Use Act, which provides that persons may grow or posses marijuana "upon the written or oral recommendation or approval of a physician." Cal. Health & Safety Code section 11362.5 Marion "Molly" Fry, M.D., 67 FR 78015, 78017 (2002). The Respondent further argued in relevant part that California's marijuana law should be given deference by the Federal Government, and the Government's motion for summary disposition rejected, since there remained a fundamental question for resolution by the instant proceedings: whether Respondent's application should denied despite its engaging in activities that are now sanctioned under California state law (*i.e.*, cultivation of marijuana for human consumption).

On April 17, 2001, Judge Bittner issued her Opinion and Recommended Decision, granting the Government's Motion for Summary Disposition and recommending that Respondent's application for DEA registration be denied. Neither party filed exceptions to Judge Bittner's recommended ruling, and on June 12, 2001, the record was transmitted to the Deputy Administrator for his final decision. The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts the Opinion and Recommended Decision of the Administrative Law Judge, and finds as follows:

On January 21, 1997, the Respondent submitted a prior application to DEA as a manufacturer of marijuana for human consumption. The Respondent proposed to rent space on its property to individuals qualifying under California State law as medical marijuana patients, who would then cultivate marijuana for personal consumption, leaving the mature stalks for Respondent to process into paper. On April 17, 1998, DEA issued an Order to Show Cause seeking to deny the application on grounds that the Respondent was not authorized by the State of California to cultivate marijuana. The Respondent filed a timely request for hearing, and the matter was docketed before Judge Bittner as Church of the Living Tree, DEA Docket No. 98–26 (Church of the Living Tree 1): On May 21, 1998, the Government filed a motion summary disposition, alleging inter alia, that California law did not permit cultivation or harvesting of marijuana, and as a result of Respondent's lack of state authorization to manufacture marijuana for non-human consumption, DEA could not grant its application for registration as a matter of law.

In response to the Government's motion, and with arguments similar in scope to its present request for registration, the Respondent asserted in relevant part that the purpose of its application as a bulk manufacturer of medical marijuana was decidedly "for Human Consumption" and in compliance with California law. On July 31, 1998, Judge Bittner issued a recommended decision, in which she granted the Government's motion for summary disposition and recommended that the Respondent's application be denied.

In his final order published as Church of the Living Tree, 63 FR 69,674 (1998), the then-Deputy Administrator found that from a reading of the Respondent's marijuana manufacturing proposal, "* * * it is clear that Respondent will be renting space on its property to others, but [Respondent] will not be the one manufacturing marijuana. Therefore * * * since Respondent will not be manufacturing marijuana nor is it proposing to manufacture marijuana, its application to be a manufacturer of marijuana must be denied." 21 U.S.C. 822(a) and 823(a). The then-Deputy Administrator added, "* * * if Respondent's application is for registration to manufacture marijuana for non-human consumption, then it would have to be denied because California does not allow the cultivation of marijuana for non-human consumption."

As noted above, on June 18, 1998, the Respondent submitted its most recent application for DEA registration as a manufacturer of marijuana in the category of bulk synthesizer-extractor. In support of the application, the Respondent asserted that its intentions are to cultivate medical marijuana as a cooperative farm of California patients qualifying under the terms of the Compassionate Use Act of 1996. The Respondent further contends that Art.I, sec. 8 and the Tenth Amendment to the United States Constitution provides the right to States to regulate their internal affairs. Therefore Respondent argues, since the proposes uses for its registration complies with California law, Respondent's pending application should be granted.

In the April 17, 2001, Opinion and Recommended Decision, Judge Bittner found that while Respondent seeks registration as a bulk synthesizer-extractor of marijuana, and although the Respondent is apparently willing to modify its application to the "non-human consumption" category, the Respondent's application cannot be granted under either category. The Deputy Administrator concurs with this finding. DEA concluded in Church of the Living Tree I that if Respondent rents out space to medical marijuana patients to cultivate marijuana, Respondent will be the entity doing the cultivation and therefore cannot be registered as a bulk synthesizer-extractor of marijuana. With respect to its instant application, the Respondent has not indicated that it seeks registration for purposes of growing marijuana for non-human consumption. In any event, there remains a lack of evidence before the Deputy Administrator that California law provides for the cultivation of marijuana for non-human consumption.

The Respondent has once again submitted an application for registration as a manufacture of marijuana for human consumption. Such use of a DEA registration is not in conformity with provisions of the Controlled Substances Act. As noted above marijuana is listed in Schedule I of the Controlled Substances Act (CSA). 21 U.S.C. 812(c); 21 CFR 1303.11. The CSA defines Schedule I controlled substances as those drugs or other substances that have "a high potential for abuse," "no current accepted medical use in treatment in the United States," and "a lack of accepted safety for use * * * under medical supervision." Also, every drug listed in Schedule I of the CSA lacks approval for marketing under the Federal Food Drug and Cosmetic Act (FDCA). Therefore, the Food and Drug Administration (FDA) has not approved marijuana for marketing as a drug.

The deleterious effects of marijuana use have been outlined extensively in previous DEA final orders and will not be repeated at length here. Marion "Molly" Fry, M.D. at 79015. *See also*, 66 FR 20038 (2001) 57 FR 10499 (1992). However, it bears mentioning again that the numerous significant short-term side effects and long term risks linked to smoking marijuana, include damage to brain cells; lung problems such as bronchitis and emphysema; a weakening of the body's antibacterial defenses in the lungs; the lowering of blood pressure; trouble with thinking and concentration; fatigue; sleepiness and the impairment of motors skills. *Id.*

Marijuana was placed in Schedule I for the same fundamental reason that it has never been approved for sale by the FDA; there have never been any sound scientific studies which demonstrate that marijuana can be used safely and effectively as medicine. See 66 FR 20038 (April 18, 2001) (DEA final order denying petition to initiate proceedings to reschedule marijuana). The Supreme Court recently explained the legal significance of marijuana's placement in Schedule I of the CSA:

> Whereas some other drugs (those in Schedules II through V) can be dispensed and prescribed for medical use, *see* 21 U.S.C. 829, the same is not true for marijuana. Indeed, the purposes of the Controlled Substances Act, marijuana has "no currently accepted medical use" at all.

United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 482, 491 (2001).

Federal law prohibits human consumption of marijuana outside of FDS-approved, DEA registered research. *Id.* at 490 ("For marijuana (and other drugs that have been classified as 'schedule I' controlled substances), there is but one express exception, and it is available only for Government approved research projects, section 823(f)."). *Id.* at 495 n.7.

In light of the Respondent's pending DEA application which by law cannot be granted, the Deputy Administrator concurs with Judge Bittner that there are no material disputed facts in this matter. Accordingly, the Government's motion for summary disposition was properly entertained and granted. It is well settled that when no question of material fact is involved, or when the material facts are agreed upon, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. The rationale is that Congress does not intend administrative agencies to perform meaningless tasks. See Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1983), *aff'd sub nom Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers*, AFL–CIO, 549 F.2d 634 (9th Cir. 1977). For the above-stated reasons, the application of Respondent must be denied.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by the Church of the Living Tree, be, and it hereby is, denied. This order is effective April 9, 2003.

Dated: March 26, 2003.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 03–8590 Filed 4–8–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 13, 2002, Dade Behring Inc., Route 896 Corporate Boulevard, Building 100, Attn: RA/QA, P.O. Box 6101, Newark, Delaware, 19714, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Ecogonine (9180)	II
Morphine (9300)	II

The firm plans to produce bulk products used for the manufacture of reagents and drug calibrator/controls, DEA exempt products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Drug Operations Section, Domestic Drug Unit (ODOD) and must be filed no later than 60 days from publication.

Dated: March 21, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–8581 Filed 4–8–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 20, 2002, Syva Company, Dade Behring Inc., Regulatory Affairs Department E1–310, 20400 Mariana Avenue, Cupertino, California, 95014, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Ecogonine (9180)	II
Morphine (9300)	II

The firm plans to produce bulk products used for the manufacture of reagents and drug calibrator/controls, DEA exempt products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug

Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Drug Operations Section, Domestic Drug Unit (ODOD) and must be filed no later than 60 days from publication.

Dated: March 21, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–8584 Filed 4–8–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

James E. Harris, P.A.; Revocation of Registration

On November 19, 2002, the Deputy Assistant Administrator, office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to James Harris, P.A. (Mr. Harris) of Henderson, Nevada, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, MH0604846, as a physician's assistant under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of that registration, pursuant to 21 U.S.C. 823(f) for reason that Mr. Harris is not authorized to handle controlled substances in the State of Nevada. The order also notified Mr. Harris that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Mr. Harris at a residential location in Henderson, Nevada and DEA received a signed receipt indicating that it was received on December 5, 2002. DEA has not received a request for hearing or any other reply from Mr. Harris or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Mr. Harris is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator new enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that on March 13, 2002, the Nevada State Board of Medical Examiners (the Board) issued Findings of Fact, Conclusions of Law and Order in response to a complaint filed against the physician assistant license of Mr. Harris. The Board found *inter alia*, that Mr. Harris while working as a physician assistant at his place of work was tested, with a positive result for controlled substances. The Board also found that Mr. Harris' use of controlled substances impaired his ability to practice medicine and endangered the health, safety and welfare of his patients. As a result of its findings, the Board ordered the revocation of Mr. Harris' physician assistant license to practice medicine in the State of Nevada.

There is no evidence in this investigative file that the Board's revocation order has been stayed or lifted, nor is there evidence that Mr. Harris' physician assistant license to practice medicine in the State of Nevada has been reinstated. Therefore, the Deputy Administrator finds that since Mr. Harris is not currently authorized to practice medicine in Nevada, it is reasonable to infer that he is not authorized to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Joseph Thomas Allevi, M.D., 67 FR 35581 (2002); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Mr. Harris is not licensed to handle controlled substances in Nevada, where he is registered with DEA. Therefore, he is not entitled to maintain that registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, MH0604846, issued to James E. Harris, P.A., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective May 9, 2003.

Dated: March 26, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03–8589 Filed 4–8–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02–27]

Island Wholesale, Inc., Denial of Application

On October 5, 2001, the Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Island Wholesale, Incorporated (Respondent), proposing to deny its application, executed on March 31, 2000, for DEA Certificate of Registration as a distributor of the list I chemicals ephedrine and pseudoephedrine. The Order to Show Cause alleged that granting the Respondent's application would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(h).

The Order to Show Cause was delivered to the Respondent by certified mail, and the Respondent timely requested a hearing. However, after the matter was docketed before Administrative Law Judge Gail A. Randall (Judge Randall), and the Government submitted its Prehearing Statement, the Respondent, through its legal counsel, withdrew its opposition to the denial of its DEA application for registration. In response to the Respondent's request, Judge Randall also found that the Respondent had likewise withdrawn its request for hearing. Accordingly, on April 18, 2002, Judge Randall issued a Termination Order terminating all matters before her and the matter was subsequently transmitted to the Deputy Administrator for Final Agency Decision.

In light of the withdrawal of its request for hearing, the Deputy Administrator finds that the Respondent has waived its hearing right. Aqui Enterprises, 67 FR 12576 (2002). After considering relevant material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46. The Deputy Administrator finds as follows:

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Deputy Administrator's review of the investigative file reveals that the Respondent is a small candy distributor located in Brooklyn, New York. The Respondent is owned by Fouad Twaiti, and his brother, Ali Twaiti serves as its manager. As part of a pre-registration investigation, DEA Division Investigators met with Fouad and Ali Twaiti on May 12, 2000. Fouad Twaiti informed investigators that his firm had been in operation since early 2000, and further added that his firm had been approached by some of its customers who ask for list I chemical products. Upon request, Fouad Twaiti furnished DEA investigators with a customer list consisting of four business establishments.

DEA investigators subsequently interviewed each of the owners and/or managers comprising the customer list provided by Fouad Twaiti. Each of the listed establishments denied requesting list I chemical products from Fouad Twaiti, and three of the establishments denied engaging in the sale of any pseudoephedrine products.

The investigative file further reveals that as part of its ongoing investigation of the Respondent, DEA investigators obtained bank records of an individual hereinafter referred to as "M.A." In or around March 2000, M.A. was criminally charged in Newark, New Jersey, with unlawful distribution of a listed chemical, and in January 2001, M.A. purportedly signed a plea agreement on the charge. According to DEA's review of bank records, Ali Twaiti engaged in a transaction with MA for $54,000 on December 20, 1999. When M.A. was asked by law enforcement officials about the above transaction with Ali Twaiti, M.A. replied, "that was for a candy deal."

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or combination of factors of factors, and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g.* Energy Outlet, 64 FR 14269 (1999). *See also* Henry J. Schwartz, Jr., M.D. 54 FR 16422 (1989).

The Deputy Administrator finds factors one, four, and five relevant to the Respondent's pending application.

With respect to factor one, maintenance of effective controls against diversion, the Deputy Administrator finds evidence in the investigative file that the Respondent provided customer information to DEA investigators that later proved to be false. With the ever-present problem of listed chemical diversion, it is incumbent upon a potential registrant to provide reliable and accurate information regarding the immediate destination of these products, and thereby, reduce the opportunity for diversion. The Deputy Administrator finds the uncertainty surrounding Respondent's customers is relevant under factor one and supports denial of Respondent's pending application for DEA registration.

Regarding factor four, past experience in the manufacture and distribution of chemicals, the Deputy Administrator can find no evidence in the investigative file that Respondent, a small candy distributor, has any previous experience related to handling or distributing listed chemicals. This factor also weighs against the granting of Respondent's pending application. *See*, CHM Wholesale Co., 67 FR 9985 (2002).

With respect to factor five, such other factors relevant to and consistent with the public safety, the Deputy Administrator finds relevant that Respondent provided false information to DEA investigators when it provided a list of its purported customers. The Deputy Administrator finds this lack of candor makes questionable the Respondent and its owners' commitment to the DEA statutory and regulatory requirements designed to protect the public from the diversion of listed chemicals. Seaside Pharmaceutical Co., 67 FR 12580 (2002); Aseel, Incorporated, Wholesale Division, 66 FR 35459 (2001); Terrence E. Murphy, M.D., 61 FR 2841 (1996).

On a related note, it is also unclear whether Fouad Twaiti provided a false statement to DEA investigators when he stated that the firm had been approached by customers requesting listed chemical products. Even if the statement regarding customer inquiries was true, there is insufficient information before the Deputy Administrator regarding the type of customers that requested these products, their identity and location, and whether they had a legitimate business interest in seeking the purchase of listed chemical products.

The Deputy Administrator also finds relevant under factor five, the fact that Ali Twaiti engaged in a significant financial transaction with a purported diverter of list I chemicals. The apparent business connection between Respondent's ownership and an individual purportedly convicted of unlawful distribution of list I chemicals is troubling when one considers that the Respondent seeks a DEA Certificate of Registration to distribute these same products.

The Deputy Administrator concludes that the Respondent cannot be entrusted with the responsibilities of a DEA registration. In light of the above, the Deputy Administrator further concludes that it would be inconsistent with the public interest to grant the application of the Respondent.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certificate of Registration, previously submitted by Island Wholesale, Incorporated be, and it hereby is, denied. This order is effective May 9, 2003.

Dated: March 26, 2003.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 03–8591 Filed 4–8–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Correction—Penick Corp.

On March 13, 2003, a Notice of Registration was published in the **Federal Register** (68 FR 12104) for Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, which was wrongly entitled Importer of Controlled Substances. The Notice

should have been entitled Manufacturer of Controlled Substances. All other information contained therein was correctly stated.

Dated: March 21, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–8586 Filed 4–8–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 29, 2002, Siegfried (USA) Inc., made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substance listed below:

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Codeine (9050)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Oxycodone (9143)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk—(non dosage forms) (9273).	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 60 days from publication.

Dated: March 21, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–8582 Filed 4–8–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Emergency Notice of Information Collection Under Review: New Collection; Project Safe Neighborhoods Semi-Annual Researcher Reporting Form.

The Department of Justice; Office of Justice Programs, has submitted the following information request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by April 18, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Office (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Robyn Thiemann, Counsel, Domestic Security Section, Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 6500, Washington, DC 20530, or facsimile (202) 305–4901.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* New Collection.

(2) *The title of the form/collection:* Project Safe Neighborhoods Semi-Annual Researcher Reporting Form.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection: Form number:* none. Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. *Other:* Business or other for-profit; not-for-profit institutions; Federal Governments; and state, local, or tribal government. The data, which will be submitted via the Semi-Annual Researcher Reporting Form in a timely fashion by the research for each of the 94 judicial districts, is essential to understanding gun violence at a national level. By collecting both outcome and intervention measures, the Department can identify programs that demonstrate success in reducing targeted gun crime. This information is essential to evaluating the program and providing feedback at the national level that can inform management decisions. Additionally, this data will assist the Department in discharging its obligations under the Government Performance and Results Act (GPRA).

(5) *An estimate of the number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 93 respondents will complete the form in approximately one hour twice a year.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this application is 186 hours.

If additional information is required, please contact Brenda Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: April 3, 2003.

Brenda Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–8607 Filed 4–8–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OVW)–1375]

Meeting of the National Advisory Committee on Violence Against Women

AGENCY: Office on Violence Against Women, Office of Justice Programs, Justice.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming public meeting of the National Advisory Committee on Violence Against Women (hereinafter "the Committee").

DATES: The meeting will take place on April 24 from 9 a.m. to 5 p.m., and on April 25 from 9:30 a.m. to 3 p.m.

ADDRESSES: The meeting will take place at the U.S. Department of Health and Human Services, Hubert Humphrey Building 200 Independence Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Omar A. Vargas, Special Assistant, The National Advisory Committee on Violence Against Women, 810 Seventh Street, NW., Washington, DC 20531. Telephone: (202) 307–6026. E-mail: *AskNAC@ojp.usdoj.gov*. Fax: (202) 307–3911. You may view the Committee's Web site at: *http://www.ojp.usdoj.gov/vawo/nac/welcome.html*.

SUPPLEMENTARY INFORMATION: The Committee is chartered by the Attorney General, and co-chaired by the Attorney General and the Secretary of Health and Human Services (the Secretary), to provide the Attorney General and the Secretary with practical and general policy advice concerning implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related laws, and will assist in the efforts of the Department of Justice and the Department of Health and Human Services to combat violence against women, especially domestic violence, sexual assault, and stalking.

In addition, because violence is increasingly recognized as a public health problem of staggering human cost, the Committee will bring national attention to the problem of violence against women and increase public awareness of the need for prevention and enhanced victim services.

This meeting will primarily focus on the Committee's work; there will, however, be an opportunity for public comment on the Committee's role in providing general policy guidance on implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related legislation.

Meeting Format

This meeting will be held according to the following schedule:

1. *Date:* Thursday, April 24, 2003. *Time:* 9 a.m–12 p.m.; including breaks. 12 p.m.–5 p.m., the Committee will gather for lunch and subcommittee meetings in sessions not open to the public.

2. *Date:* Friday, April 25, 2003. *Time:* 9:30 a.m.–3 p.m., including breaks and a working lunch.

The meeting schedule for April 24, 2003 will begin with presentations from invited speakers and reports on the work of the Committee's subcommittees. Time will be reserved for comments from the public, beginning at 10:30 a.m. and ending at 11 a.m. *See* the section below on Reserving Time for Public Comment, for information on how to reserve time on the agenda.

The meeting scheduled for April 25, 2003, will consist of briefings on Violence Against Women initiatives at the Department of Justice and the Department of Health and Human Services, and subcommittees will report back on the previous day's work.

Attending the Meeting

The meeting on April 24, from 9 a.m. to 12 p.m., will be open to the public. (The Committee will convene for lunch and in closed subcommittee sessions from 12 p.m. to 5 p.m. pursuant to 41 CFR 102–3.160 of the Federal Advisory Committee Act.) Registrations for the public sessions will be accepted on a space-available basis. Members of the public who wish to attend must register at least six (6) days in advance of the meeting by contacting Omar A. Vargas, Special Assistant, at the e-mail address or fax number listed above. Access to the meeting will not be allowed without registration, and all attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Individuals who will need special accommodations for a disability in order to attend the meetings should notify Omar A. Vargas, Special Assistant, at the above e-mail address or by fax, no later than April 18, 2003. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Submitting Written Comments

Interested parties are invited to submit written comments to the Committee, by September 30, 2003, using one of the following methods: by e-mail to *AskNAC@ojp.usdoj.gov;* by fax on (202) 307–3911; or by U.S. mail to The National Advisory Committee on Violence Against Women, 810 Seventh Street, NW., Washington, DC 20531. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received (we recommend 3–4 weeks).

Reserving Time for Public Comment

If you are interested in participating during the public comment period of the meeting, on the implementation of the Violence Against Women Act of 1994, and the Violence Against Women Act of 2000, you are requested to reserve time on the agenda by contacting the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice, by e-mail or fax. Please include your name, the organization you represent, if appropriate, and a brief description of the issue you would like to present. Participants will be allowed approximately 3 to 5 minutes to present their comments, depending on the number of individuals who reserve time on the agenda. Participants are also encouraged to submit two written copies of their comments at the meeting.

Given the expected number of individuals interested in providing comments at the meetings, reservations for presenting comments should be made as soon as possible.

Persons who are unable to obtain reservations to speak during the meetings are encouraged to submit written comments, which will be accepted at the meeting site or may be mailed to the Committee at the address listed under the section on Submitting Written Comments.

Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

Dated: April 4, 2003.

Diane M. Stuart,

Acting Director, Office on Violence Against Women.

[FR Doc. 03–8629 Filed 4–8–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This process helps to ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed continuation of a reporting and performance standards system for Indian and Native American programs under title I, section 166 of the Workforce Investment Act (WIA). A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before June 9, 2003.

ADDRESSES: James C. DeLuca, Chief, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–3754 (VOICE) or (202) 693–3818 (FAX) (these are not toll-free numbers) or INTERNET: *DeLuca.James@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Employment and Training Administration of the Department of Labor is requesting continuation of the current reporting and performance standards system for Workforce Investment Act (WIA), title I, section 166, Indian and Native American grantees for one year (April 1, 2003 to March 31, 2004), in part to coincide with the expiration of the section 166 financial report (ETA–9080) which is currently approved through March 31, 2004 under OMB Control Number 1205–0423. In evaluating the last few years' reporting experience of the grantees who receive funding under WIA section 166, including those receiving Supplemental Youth Services (SYS) funds, and, in light of the continuing statutory requirements of WIA applicable to section 166 grantees, the Department has decided to extend the currently-approved reporting requirements which it believes supports the current statutory requirements under WIA as they relate to the Indian and Native American Program. The only anticipated change(s) would be to accommodate the information collection requirements of the Administration's proposed "Common Measures" for evaluating all Federally-funded employment and training programs. Further details of these possible changes are available on request. However, it should be noted that the Workforce Investment Act comes up for reauthorization during 2003, which could result in additional, statutorily-mandated reporting changes which would need to be covered in this data collection.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

This ICR will be used by approximately 145 Workforce Investment Act (WIA) section 166 grantees as the primary reporting and performance measurement vehicle for enrolled individuals, their characteristics, training and services provided, outcomes, including job placement and employability enhancements, as well as detailed financial data on program expenditures. Grantees participating in the demonstration under Public Law 102–477 will not be affected by this collection, and have not been included in the following burden estimates.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Reporting and performance system for WIA, title I, section 166, Indian and Native American grantees.

OMB Number (current): 1205–0422.

Catalog of Federal Domestic Assistance Number: 17.265 (for PY 2002 and beyond).

Recordkeeping: Grantees shall retain supporting and other documents necessary for the compilation and submission of the subject reports for three years after submission of the final financial report for the grant in question [29 CFR 97.42 and/or 29 CFR 95.53]. It should be noted that the burden estimates for this collection as originally approved by OMB in April of 2001 were for 27,795 responses totaling some 78,615 hours.

Affected Public: Federally-recognized Indian tribes, bands, and groups; Alaskan Native entities; Hawaiian Native entities; private non-profit Indian-controlled organizations; State Indian Commissions or Councils (Native American-controlled); consortia of any and/or all of the above.

Cite/Reference/Form/etc.: ETA–9084 and ETA–9085.

Form No.	Respondents	Frequency	Total responses	Average time per response	Total burden hours
ETA–9084 (Comprehensive services)	145	semi-annual	290	9.67	2,804
ETA–9085 (Supplemental Youth Services)	105	semi-annual	210	9.67	2,031
Recordkeeping	145	(as needed)	27,295	9.67	73,780
Total	250	semi-annual	27,795	9.67	78,615

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): Costs associated with this collection will vary widely among grantees, from nearly no additional cost to some higher figure, depending on the state of automation attained by each grantee and the wages paid to the staff actually completing the various forms. However, because all expenditures associated with the preparation of these reports will come from the Federal grant funds themselves, there will be no costs to the grantees. The grantees will not be obligated to expend their own (*i.e.*, non-DOL) resources to fulfill these reporting requirements. All costs associated with the submission of these forms are allowable grant expenses. Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 2nd day of April, 2003.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 03–8637 Filed 4–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the "Current Population Survey (CPS) Volunteer Supplement." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before June 9, 2003.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (*See* **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

I. Background

The September 2003 CPS Volunteer Supplement will be conducted at the request of the USA Freedom Corps. The Volunteer Supplement will provide information on the total number of individuals in the U.S. involved in unpaid volunteer activities, factors that motivate volunteerism, measures of the frequency or intensity with which individuals volunteer, types of organizations that facilitate volunteerism, and activities in which volunteers participate.

Because the Volunteer Supplement is part of the CPS, the same detailed demographic information collected in the CPS will be available on respondents to the Supplement. Comparisons of volunteer activities will be possible across characteristics such as sex, race, age, and educational attainment of the respondent. It is intended that the Supplement will be conducted annually, if resources permit, in order to gauge changes in volunteerism.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

Office of Management and Budget clearance is being sought for the CPS Volunteer Supplement.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: CPS Volunteer Supplement.

OMB Number: 1220–0176.

Affected Public: Households.

Total Respondents: 58,000.

Frequency: Annually.

Total Responses: 112,000

Average Time Per Response: 4 minutes.

Estimated Total Burden Hours: 7,467 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 1st day of April, 2003.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 03–8638 Filed 4–8–03; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–838)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Automated Control Technologies, Inc. of 2009 Pleasant Valley Road, Fairmont, WV 26554, has applied for a Partially Exclusive license to practice the inventions described in NASA Case Number LAR–13845 1–CU entitled "Reactivation Of A Tin Oxide-Containing Catalyst," NASA Case Number LAR–13741–1–SB entitled "Process for Making a Noble Metal on Tin Oxide Catalyst," NASA Case Number LAR–14155–1–SB entitled "Catalyst For Carbon Monoxide Oxidation," NASA Case Number LAR14155–2–SB entitled "Catalyst For Carbon Monoxide Oxidation," NASA Case Number LAR–15351–1–CU entitled "Catalytic Process For Formaldehyde Oxidation," NASA Case Number LAR–15652–1–CU entitled "Catalyst For Oxidation Of Volatile Organic Compounds" for which U.S. Patents were issued and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration and NASA Case Number LAR15851–1–CU entitled "Process For Coating Substrates With Catalyst Materials" for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATES: Responses to this notice must be received by April 24, 2003.

FOR FURTHER INFORMATION CONTACT: Helen M. Galus, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–2199. Telephone 757–864–3227; Fax 757–864–9190.

Dated: April 3, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–8636 Filed 4–8–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–037)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that the Bombardier Motor Corporation of America, of Delaware, has applied for an exclusive license to practice the inventions disclosed in NASA Case Nos. MFS–31294–2–CIP2 entitled "Aluminum Alloy And Article Cast Therefrom," MFS–31294–7–CIP entitled "Process For Producing A Cast Article From A Hypereutectic Aluminum-Silicon Alloy" and MFS–31828–1 entitled "High Strength Aluminum Alloy For High Temperature Applications," for which U.S. Patent Applications were filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to James L. McGroary, Chief Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by April 24, 2003.

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Department/CD30, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5236.

Dated: January 3, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–8639 Filed 4–8–03; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Exemption

1.0 Background

Entergy Nuclear Operations, Inc., (ENO or the licensee) is the holder of Facility Operating License No. DPR–64 which authorizes operation of the Indian Point Nuclear Generating Unit No. 3 (IP3). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Westchester County in the State of New York.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50.44, "Standards for combustible gas control system in light-water-cooled power reactors," requires that each pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with the capability for controlling the combustible gas concentrations in the containment following a postulated loss-of-coolant accident (LOCA). A combustible gas control system is defined by 10 CFR 50.44(h) as a system that operates after a LOCA to maintain the concentrations of combustible gases within the containment, such as hydrogen, below flammability limits. Combustible gas control systems are of two types:

(1) Systems that allow controlled release from containment such as a purge or vent system, and

(2) Systems that do not result in a significant release from containment such as hydrogen recombiners. The combustible gas control system at IP3 consists of a hydrogen recombiner system and a backup purge system.

When IP3 was initially licensed, the post accident containment ventilation (PACV) system was installed to meet the requirements of 10 CFR 50.44(f). Section 50.44(f) requires:

> For facilities with respect to which the notice of hearing on the application for a construction permit was published between December 22, 1968, and November 5, 1970, if the incremental radiation dose from purging (and repressurization if a repressurization system is provided) occurring at all points beyond the exclusion area boundary after a postulated LOCA calculated in accordance with § 100.11(a)(2) of this chapter is less than 2.5 rem to the whole body and less than 30 rem to the thyroid, and if the combined radiation dose at the low population zone outer boundary from purging and the postulated LOCA calculated in accordance with § 100.11(a)(2) of this chapter is less than 25 rem to the whole body and less than 300 rem to the thyroid, only a purging system is necessary, provided that the purging system and any filtration system associated with it are designed to conform with the general requirements of Criteria 41, 42, and 43 of appendix A to this part. Otherwise the facility shall be provided with another type of combustible gas control system (a repressurization system is acceptable) designed to conform with the general requirements of Criteria 41, 42, and 43 of appendix A to this part. If a purge system is used as part of the repressurization system, the purge system shall be designed to conform with the general requirements of Criteria 41, 42, and 43 of appendix A to this part. The containment shall not be repressurized beyond 50 percent of the containment design pressure.

When the Commission issued what is now paragraph c(3)(ii) of 10 CFR 50.44 in 1981, a safety related hydrogen recombiner system was installed. Paragraph c(3)(ii) requires:

> By the end of the first scheduled outage beginning after July 5, 1982 and of sufficient duration to permit required modifications, each light-water nuclear power reactor that relies upon a purge/repressurization system as the primary means for controlling combustible gases following a LOCA shall be provided with either an internal recombiner or the capability to install an external recombiner following the start of an accident. The internal or external recombiners must meet the combustible gas control requirements in paragraph (d) of this section. [* * *]

As a result, the recombiner system became the primary method of combustible gas control while the PACV system became a backup method.

The purpose of this exemption request for 10 CFR 50.44(f) is to remove requirements for the PACV system from the IP3 licensing basis. The licensee is not requesting an exemption from GDC 41, "Containment Atmosphere Cleanup," or 10 CFR 50.44(c). The licensee is requesting this exemption in accordance with 10 CFR 50.12. Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. These circumstances include the special circumstances stated in 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." The PACV system also has a role in severe accident management. The Commission stated in Attachment 1 to SECY–02–0080, "Proposed Rulemaking—Risk-Informed 10 CFR 50.44, Combustible Gas Control In Containment," their position concerning the ability to vent the containment as a severe accident strategy. Specifically, Attachment 1 to SECY–02–0080 states:

> The Commission continues to view severe accident management guidelines as an important part of the severe accident closure process. Severe accident management guidelines are part of a voluntary industry initiative to address accidents beyond the design basis and emergency operating instructions. In November 1994, the U.S. nuclear industry committed to implement severe accident management at their plants by December 31, 1998, using the guidance contained in NEI 91–04, Revision 1, "Severe Accident Issue Closure Guidelines." Generic severe accident management guidelines developed by each nuclear steam system supplier owners group includes either purging and venting or venting the containment to address combustible gas control. On the basis of the industry-wide commitment, the Commission is not proposing to require such capabilities, but continues to view purging and/or controlled venting of all containment types to be an important combustible gas control strategy that should be considered in a plant's severe accident management guidelines.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. These circumstances include the special circumstances that the PACV system is not needed to meet the underlying purpose of 10 CFR 50.44. As mentioned above, the underlying purpose of 10 CFR 50.44 is to show that following a LOCA, an uncontrolled hydrogen-oxygen recombination would not take place, or that the plant could withstand the consequences of uncontrolled hydrogen-oxygen recombination without loss of safety function.

The staff examined the licensee's rationale to support the exemption request of eliminating the licensing basis requirements for the PACV system and concluded that retaining the licensing basis requirements for the PACV system is not necessary to achieve the underlying purpose of 10 CFR part 50.44. As mentioned above, the PACV system is the backup combustible gas control system. The primary system is the electric hydrogen recombiner system which meets the requirements of 10 CFR 50.44 c(3)(ii). Each of the recombiner subsystems is capable of maintaining the hydrogen concentration below the required limit following a design-basis LOCA. The PACV system is not necessary to meet the intent of the rule.

In their January 16, 2003, letter, the licensee stated that even with the retirement of the PACV system, they will be able to meet all their severe accident management commitments. Their current Severe Accident Management Guidelines (SAMGs) identify, in addition to the PACV system, three alternate methods of containment depressurization and combustible gas control. These methods are backflow to the steam ejector line, containment pressure relief line, and the containment purge system. The licensee stated that the decommissioning of the PACV system will include a revision to the SAMGs that will include the three alternative methods listed above. The staff concludes that the licensee continues to address the Commission's concerns regarding the use of purging and/or controlled venting of containment as an important combustible gas control strategy that should be considered in the licensee's severe accident management guidelines.

Based on the above, the staff determined that the requested exemption from the requirements of 10 CFR 50.44(f) meets the requirements of 10 CFR 50.12. The staff finds the requested exemption acceptable. Therefore, the staff concludes that pursuant to 10 CFR 50.12(a)(2) the licensee's requested exemption from the requirements of 10 CFR 50.44(f) for IP3 as specified in a letter dated October 3, 2002, and as supplemented by letters dated January 16 and March 11, 2003, is acceptable.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants ENO an exemption from the requirement to maintain a purge/repressurization system of 10 CFR 50.44(f) for IP3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 15487).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of April, 2003.

For the Nuclear Regulatory Commission

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–8628 Filed 4–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7003]

Notice of Opportunity To Request a Hearing Regarding the U.S. Enrichment Corporation Inc.'s Application for a License for the Possession and Use of Special Nuclear Material and Byproduct Material in Its American Centrifuge Lead Cascade Facility in Piketon, OH

I. Introduction

The U.S. Nuclear Regulatory Commission is considering an application submitted by the U.S. Enrichment Corporation Inc. (USEC), dated February 11, 2003, for a license to possess and use, for five years, special nuclear, source, and by-product material in the American Centrifuge Lead Cascade Facility (Lead Cascade). The Lead Cascade, which is to be located at the Portsmouth Gaseous Diffusion Plant in Piketon, Ohio, will possess up to 250 kilograms of uranium hexafluoride and will consist of up to 240 operating, full-scale centrifuge machines.

By letter dated March 13, 2003, the NRC informed USEC that based on an administrative review of the Lead Cascade license application, the NRC had found the application acceptable for technical review. However, before approving the proposed license, NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC regulations. The NRC will document its technical reviews related to radiological safety and common defense and security in a Safety Evaluation Report and its environmental safety review in an Environmental Assessment (EA). In the March 13, 2003, letter, the NRC also stated that it anticipates completing its technical reviews and issuing its decision by February 2004.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license falling within the scope of subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 between 7:45 a.m. and 4:15 p.m. on Federal workdays; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, (U.S. Enrichment Corporation Inc., 6903 Rockledge Drive, Bethesda, MD 20817–1818); Attention Mr. Steven A. Toelle; and

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 between 7:45 a.m. and 4:15 p.m. on Federal workdays, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

III. Further Information

For further details, the unclassified and non-proprietary portions of USEC's License application may be examined and/or copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The references with ADAMS Accession Number ML030730232 may also be viewed in the NRC's Electronic Public Document Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. Any questions with respect to this action should be referred to Mr. Yawar Faraz, Project Manager, Special Projects and Inspection Branch, Division of Fuel Cycle Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8 A33, Washington, DC 20555–0001. Telephone (301)415–8113 or e-mail *yhf@nrc.gov*.

Dated at Rockville, Maryland, this 3rd day of April 2003.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Deputy Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–8627 Filed 4–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 141st meeting on April 22–23, 2003, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, April 22, 2003

10 a.m.–10:40 a.m.: Opening Statement (Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate several items of interest.

10:40 a.m.–12 Noon: One Step at a Time: The Staged Development of Geologic Repositories for High-Level Radioactive Waste (Open)—The Committee will hear presentations by and hold discussions with representatives of the National Academy of Sciences on their recent report on staged development of a proposed HLW repository at Yucca Mountain, NV.

1 p.m.–5:15 p.m.: Transportation Working Group Follow-On Session: State of Nevada Technical Concerns with the Transporation of Spent Fuel and High-Level Waste (Open)—The Committee will hear presentations by and hold discussions with representatives from the State of Nevada regarding the review of Yucca Mountain Systems Issues related to Transportation Safety and Fuel Scale Testing issues including an Assessment of NUREG–1768.

5:15 p.m.–5:30 p.m.: Committee Discussion (Open)—The Committee will further discuss today's topics.

5:45 p.m.–7 p.m.: Preparation of ACNW Reports (Open)—The Committee will discuss the report of March 2003 Working Group Meeting on NRC and DOE Performance Assessments: Assumptions and Differences, and the State of Nevada Technical Concerns with the Transporation of Spent Fuel and HLW.

Wednesday, April 23, 2003

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–9:30 a.m.: Update on NRC Division of Waste Management Activities (Open)—The Committee will hear presentations by and hold discussions with the Director, Division of Waste Management on recent DWM activities of interest.

9:30 a.m.–12 Noon: DOE/NRC Key Technical Issue (KTI) Agreement Status (Open)—The Committee will hear presentations by and hold discussions with representatives of DOE and the NRC staff on the closure status of KTIs.

1 p.m.–2 p.m.: Discussion of Self-Assessment Survey Results (Open)—The Committee will discussion the results of the self-assessment survey.

2 p.m.–3 p.m.: ACNW Action Plan (Open)—The Committee members will discuss an update to the ACNW 2002–2003 Action Plan.

3:15 p.m.–6:30 p.m.: Preparation of ACNW Reports (Open)—The Committee will discuss proposed ACNW reports on matters considered during this meeting.

6:30 p.m.–6:45 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63459). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 7:30 a.m. and 4 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/(ACRS & ACNW Mtg schedules/agendas)*.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: April 3, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–8626 Filed 4–8–03; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Repayment of Debt: OMB 3220–0169. When the Railroad Retirement Board (RRB) determines that an overpayment of Railroad Retirement Act (RRA) or Railroad Unemployment Insurance Act (RUIA) benefits has occurred, it initiates prompt action to notify the annuitant of the overpayment and to recover the money owed the RRB. To effect payment of a debt by credit card, the RRB currently utilizes Form G–421f, Repayment by Credit Card.

The RRB is proposing the creation of four additional forms to assist the RRB in the debt collection process. Proposed Form G–421g, Response to Notice of Debt, will be released along with RRB notices of overpayment under the RUIA. Proposed Form G–421h, Response to Notice of Debt, will be released along with RRB notices of overpayment caused by a failure to return RRA payments released after an annuitant's death. Proposed Form G–421i, Response to Notice of Debt, will be released with RRB notices of overpayment of RRA annuities when the overpayment was not caused by the withdrawal of funds deposited to an annuitant's financial institution account after his death and

the debtor does not have current entitlement to an RRA annuity. Proposed Form, G–421j, Response to Notice of Debt, will be released with notices of delinquent debt under both the RRA and the RUIA.

All of the proposed forms will offer the repayment options of (1) direct payment by check or money order, (2) the use of a credit card, or (3) monthly installment payments. The G–421g will also offer the option of having a current benefit offset as a method of repayment.

One form is completed by each respondent. Completion is voluntary. RRB procedures pertaining to benefit overpayment determinations and the recovery of such benefits are prescribed in 20 CFR 255 and 340.

The estimate of annual respondent burden is as follows:

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Forms Nos.	Annual responses	Estimated completion time (min)	Burden hours
G–421f	180	5	15
G–421g	14,000	10	2,333
G–421h	500	10	83
G–421i	1,700	10	283
G–421j	11,000	10	1,833
Total	27,380		4,547

I. Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2902. Written comments should be recieved within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–8603 Filed 4–8–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension:

Rule 489 and Form F–N; SEC File No. 270–361; OMB Control No. 3235–0411.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("Act") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 489 Under the Securities Act of 1933, Filing of Form by Foreign Banks and Certain of Their Holding Companies and Finance Subsidiaries; and Form F–N, Appointment of Agent for Service of Process by Foreign Banks and Foreign Insurance Companies and Certain of Their Holding Companies and Finance Subsidiaries Making Public Offerings of Securities in the United States

Rule 489 under the Securities Act of 1933 (17 CFR 230.489) requires foreign banks and foreign insurance companies and holding companies and finance subsidiaries of foreign banks and foreign insurance companies that are excepted from the definition of "investment company" by virtue of rules 3a–1, 3a–5, and 3a–6 under the Investment Company Act of 1940 to file Form F–N to appoint an agent for service of process United States when making a public offering of securities. Approximately four entities are required by rule 489 to file Form F–N, which is estimated to require an average of one hour to complete. The estimated annual burden of complying with the rule's filing requirement is approximately five hours, as one of the entities has submitted multiple filings.

The estimates of average burden hours are made solely for the purposes of the Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549.

Dated: April 2, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8633 Filed 4–8–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47622; File No. SR–Amex–2003–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Extend a Pilot Program Relating to Crossing Procedures on the Amex in Nasdaq National Market Securities

April 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 26, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which items have been prepared by the Exchange. On March 31, 2003, the Amex amended the proposed rule change.[3] The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[4] and rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend until September 30, 2003 its pilot program under Commentary .06 to Amex rule 126(g) relating to crossing procedures on the Amex in Nasdaq National Market securities. The Amex proposes no substantive changes to the pilot, other than extending its operation until September 30, 2003. The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in item IV below. The Amex has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex has implemented crossing procedures under Amex rule 126(g), Commentary .06 on a pilot basis extending until March 31, 2003.[7] The Amex initially filed the pilot program in SR–Amex–2002–58.[8] The Exchange now proposes to extend the pilot for a six-month period until September 30, 2003. Proposed Amex Rule 126(g), Commentary .06 provides that a floor broker is permitted to effect cross transactions in Nasdaq National Market securities involving 5,000 shares or more without interference by the specialist or market makers if, prior to presenting the cross transaction, the floor broker first requests a quote for the subject security. These requests place the specialist and market makers on notice that the floor broker intends to cross within the bid-offer spread. This arrangement ensures that a specialist or market maker retains the opportunity to better the cross price by updating their quote, but precludes the specialist or market maker from breaking up a cross transaction after the cross transaction is presented. The floor broker retains the ability to present both sides of the order at the post if the customers so desire.

The Amex is making no changes to the pilot as filed with the Commission in SR–Amex–2002–58, other than to extend the pilot program until September 30, 2003.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[9] in general, and furthers the objectives of section 6(b)(5)[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission accelerate the operative date. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to operate without interruption until September 30, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[3] *See* March 28, 2003 letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission and attachments ("Amendment No. 1"). Amendment No. 1 completely replaces and supersedes the original filing.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Exchange asked the Commission to waive the 30-day operative delay. See Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[7] *See* Securities Exchange Act Release No. 46635 (October 10, 2002), 67 FR 64424 (October 18, 2003)(SR–Amex–2002–74).

[8] *See* Securities Exchange Act Release No. 46309 (August 5, 2002), 67 FR 51902 (August 9, 2002)(SR–Amex–2002–58)

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2003–20 and should be submitted by April 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8609 Filed 4–8–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47621; File No. SR–NASD–2003–56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Regarding Fees for the Reporting of SuperMontage Transactions Through the Automated Confirmation Transaction Service ("ACT")

April 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4[2] thereunder, notice is hereby given that on March 24, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. On March 27, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act[4] and rule 19b–4(f)(2) thereunder.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to waive certain fees for the reporting of SuperMontage transactions associated with the use of the ACT.[6] Nasdaq proposes to implement the proposed rule change on April 1, 2003.

Below is the text of the proposed rule change, as amended.[7] Proposed new language is *italicized*; proposed deleted language is [bracketed].

* * * * *

7000. CHARGES FOR SERVICES AND EQUIPMENT

7010. System Services

(a)–(f) No change.

(g) Automated Confirmation Transaction Service

(1) The following charges shall be paid by the participant for use of the Automated Confirmation Transaction Service (ACT):

Transaction Related Charges:

Reporting of transactions through SuperMontage (or any other transaction execution system that makes use of SuperMontage's functionality to report transactions).	$0.029/side (*subject to waiver under paragraph (2) below*).
Reporting of all other transactions in Nasdaq National Market and SmallCap Market securities not subject to comparison through ACT ("Covered Transactions")	
Average daily volume of media transaction reports for Covered Transactions during the month in which a participant is the reporting party:	Fee per side for reports of Covered Transactions to which such participant is a party:
0 to 10,000	$0.029.
10,001 to 50,000	$0.029 for a number of reports equal to 10,000 times the number of trading days in the month $0.015 for all remaining reports.
More than 50,000	$0.029 for a number of reports equal to 10,000 times the number of trading days in the month $0.015 for a number of reports equal to 40,000 times the number of trading days in the month $0.00 for all remaining reports.
Reporting of all other transactions not subject to comparison through ACT.	$0.029/side.
Comparison	$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares).
Late Report—T+N	$0.288/side.
Browse/query	$0.288/query*.
Terminal fee	$57.00/month (ACT only terminals).
CTCI fee	$575.00/month.
WebLink ACT	$300/month (full functionality) or $150/month (up to an average of twenty transactions per day each month)**.
Risk Management Charges	$0.035/side and $17.25/month per correspondent firm (maximum $10,000/month per correspondent firm).
Corrective Transaction Charge	$0.25/Cancel, Error, Inhibit, Kill, or "No" portion of No/Was transaction, paid by reporting side; $0.25/Break, Decline transaction, paid by each party.
ACT Workstation	$525/logon/month***.

(2) The $0.029 fee for reporting of transactions executed through SuperMontage (and other transaction execution systems that make use of SuperMontage's functionality to report transactions) will be waived for an ACT participant during any month in which the participant: (i) executed an average daily volume of 10,000 or more transactions through SuperMontage or any other transaction execution system using SuperMontage's functionality to report transactions; (ii) reported to ACT at least 98% of the internalized transactions in Nasdaq National Market and SmallCap Market securities executed by the participant during the month; and (iii) posted in SuperMontage at least 70% of the bids, offers, and non-marketable limit orders in Nasdaq National Market and SmallCap Market securities communicated by the participant to any market center. Nasdaq may request that a participant provide data supporting the participant's certification that it is eligible for the foregoing waiver, and will deem a participant that fails to provide such data upon request to be ineligible for the waiver. If a participant has more than one market participant identifier ("MPID") associated with the Central Registration Depository ("CRD") number under which it conducts business, eligibility will be determined by aggregating activity associated with all of its MPIDs (but not activity associated with MPIDs assigned to subsidiaries or other affiliates with a different CRD number).

The term "internalized transaction" refers to a transaction in which a customer order received by the participant is executed against another customer order received by the participant, or against the account of the participant as principal, but that is not facilitated or executed using a Nasdaq system or the system of any market center other than the participant. The term "market center" refers to any exchange market maker, OTC market maker, alternative trading system, national securities exchange, or national securities association.

* Each ACT query incurs the $0.288 fee; however, the first accept or decline processed for a transaction is free, to insure that no more than $0.288 is charged per comparison. Subsequent queries for more data on the same security will also be processed free. Any subsequent query on a different security will incur the $0.288 query charge.

** For the purposes of this service only, a transaction is defined as an original trade entry, either on trade date or as-of transactions per month.

*** A firm that uses ACT risk management through one or more NWII terminals when the ACT Workstation is introduced will be eligible to evaluate the ACT Workstation for a free, three-month trial period, provided that the firm continues to pay charges associated with its NWII terminal(s) during that period.

(h)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ACT is an automated trade reporting and reconciliation service that speeds the post-execution steps of price and volume reporting, comparison, and clearing of trades completed in Nasdaq, OTC Bulletin Board, and other over-the-counter securities. ACT handles transactions executed through Nasdaq's automated trading systems, as well as transactions negotiated over the telephone and internalized transactions. It also manages post-execution procedures for transactions in exchange-listed securities that are traded in the Nasdaq InterMarket.

Nasdaq represents that, as part of an ongoing effort to reduce the costs incurred by market participants to use Nasdaq services, it proposes to waive the ACT fees for transactions that are executed through SuperMontage (or any other transaction execution system, such as Liquidity Tracker, that uses SuperMontage's functionality to report transactions). Currently, Nasdaq assesses a fee of $0.029 per side for the reporting of such transactions, which are reported to ACT automatically. Under the proposed rule change, as amended, however, this fee would be waived for a participant during a month in which the participant: (i) Executed an average daily volume of 10,000 or more transactions through SuperMontage (or any other system that uses SuperMontage functionality to report trades); (ii) reported to ACT at least 98% of the internalized transactions[8] in Nasdaq National Market and SmallCap market securities executed by the participant during the month; and (iii) posted in SuperMontage at least 70% of the bids, offers, and non-marketable limit orders in Nasdaq National Market and SmallCap Market securities communicated by the participant to any market center.[9] A participant seeking to qualify for the fee waiver would certify its eligibility, and Nasdaq could request that the participant provide data to support its certification. If a participant has more than one MPID associated with the CRD number under which it conducts business, eligibility will be determined by aggregating activity associated with all of its MPIDs (but not activity associated with MPIDs assigned to subsidiaries or other affiliates with a different CRD number).

Nasdaq represents that it is currently facing competition from market centers that are willing to offer market participants free trade reporting services,[10] and from one market center

Continued

---

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 26, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq amended its proposal to state that, for purposes of determining eligibility for the fee waiver, if a market participant has more than one market participant identifier ("MPID") associated with the same Central Registration Depository ("CRD") number, the activity associated with all of those MPIDs will be aggregated; however, activity associated with MPIDs assigned to subsidiaries or other affiliates of the market participant that have a different CRD number will not be aggregated. *See* SR–NASD–2003–17 (permitting market makers and ECNs to receive a second identifier). For purposes of determining the effective date of the filing and calculating the 60-day abrogation period, the Commission considers the period to commence on March 27, 2003, the date that Nasdaq filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] Nasdaq represents that this filing applies to usage of ACT by NASD members. The usage of ACT by non-members is governed by NASD Rule 6120.

[7] The proposed rule text is marked to show changes from the language of the NASD Rule 7010 as amended by SR–NASD–2003–51 (filed March 24, 2003). That proposed rule change, which was effective immediately upon filing, introduced volume discounts for reporting most non-SuperMontage transactions in Nasdaq National Market and SmallCap Market securities.

[8] The Nasdaq proposal defines "internalized transactions" as a transaction in which a customer order received by the participant is executed against another customer order received by the participant, or against the account of the participant as principal, but that is not facilitated or executed using a Nasdaq system or the system of any market center other than the participant.

[9] The Nasdaq proposal defines "market center" as any exchange market maker, OTC market maker, alternative trading system, national securities exchange, or national securities association.

[10] *See, e.g.*, Securities Exchange Act Release No. 47331 (February 10, 2003), 68 FR 7635 (February 14, 2003) (File No. SR–NASD–2003–09)

that is effectively sharing market data revenue associated with transactions in Nasdaq-listed securities by "mutualizing" revenues with certain of its members,[11] notwithstanding the Commission's Order of Summary Abrogation (the "Order") regarding market data revenue sharing programs.[12] Because Nasdaq is not permitted to share market information revenues from Nasdaq-listed securities, and because it has too many market participants to effect a "mutualization" ploy, Nasdaq believes that it is placed in a fundamentally unfair competitive position. Nasdaq is proposing wide-ranging price reductions across multiple services,[13] but Nasdaq represents that it incurs substantial costs in order to operate ACT and to support its regulatory function. Nasdaq believes that the only way for it to compete with an exchange that can single out firms to "mutualize" with is to provide preferred pricing to its members that continue to support Nasdaq with their orders. Accordingly, Nasdaq believes that it is reasonable to offer free reporting of SuperMontage trades to a firm only if the firm's use of ACT and SuperMontage during a particular month is sufficiently consistent to allow Nasdaq to conclude that the lost revenue will be partially offset by other ACT revenue and transaction execution revenue.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of section 15A of the Act,[14] in general and with section 15A(b)(5) of the Act,[15] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes that the proposal, as amended, will allow a reduction in the overall level of ACT fees paid by market participants while ensuring that each participant pays an equitable share of the costs associated with ACT.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary and appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective upon March 27, 2003, the date of filing of Amendment No. 1 to the proposed rule change, pursuant to section 19(b)(3)(A)(ii) of the Act[16] and subparagraph (f)(2) of rule 19b–4 thereunder,[17] because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to File No. SR–NASD–2003–56 and should be submitted by April 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8632 Filed 4–8–03; 8:45 am]

BILLING CODE 8010–01–P

(eliminating trade reporting fees associated with the NASD's Alternative Display Facility).

[11] Securities Exchange Act Release No. 46688 (October 18, 2002), 67 FR 65816 (October 28, 2002) (SR–CSE–2002–14) (describing the Cincinnati Stock Exchange's market data revenue sharing program for Nasdaq securities).

[12] Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002).

[13] *See* File Nos. SR–NASD–2003–51 (filed March 24, 2003) (reporting of non-SuperMontage trades); SR–NASD–2003–53 (filed March 24, 2003) and SR–NASD–2003–54 (filed March 24, 2003) (Nasdaq Testing Facility); SR–NASD–2003–47 (filed March 21, 2003) and SR–NASD–2003–48 (filed March 21, 2003) (NWII logons); SR–NASD–2003–43 (filed March 20, 2003) and SR–NASD–2003–46 (filed March 20, 2003) (computer-to-computer interface pricing); see also Securities Exchange Act Release No. 47300 (January 31, 2003), 68 FR 6234 (February 6, 2003) (SR–NASD–2003–10) (quotation update fees).

[14] 15 U.S.C. 78*o*–3.

[15] 15 U.S.C. 78*o*–3(b)(5).

[16] 15 U.S.C. 78s(b)(3)(a)(ii).

[17] 17 CFR 240.19b–4(f)(2).

[18] For purposes of determining the effective date of the filing and calculating the 60-day abrogation period, the Commission considers the period to commence on March 27, 2003, the date that Nasdaq filed Amendment No. 1.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47615; File No. SR–PCX–2002–54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a One Tick Step Up Requirement for Auto-Ex in Certain Option Issues

April 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on August 27, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I, II and III below, which items have been prepared by the self-regulatory organization. On March 19, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules by adopting a one tick step up requirement for Market Makers who are participating on the Exchange's Automatic Execution System ("Auto-Ex") in certain option issues. The text of the proposed rule change is below. Additions are in *italics*.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

5231 Automatic Execution System

Rule 6.87(a)–(d)—No change.

(e) Market Maker Requirements and Eligibility. Any Exchange Member who is registered as a Market Maker and who has obtained written authorization from a clearing member is eligible to participate on the Auto-Ex system, subject to the following conditions and requirements:

(1)–(7)—No change.

(8) Auto-Ex Tick Better Requirement in Certain Issues.

(A) Except as provided in subsection (B), below, Lead Market Makers who are participating on Auto-Ex must assure that Exchange staff (i.e., the Order Book Official or Control Room staff) have set the Auto-Ex System either:

(i) to execute incoming electronic orders at prices that are one trading increment better than the Exchange's disseminated bid or offering price when another options exchange is disseminating the national best bid or offer at a price that is one trading increment better than the price being disseminated by the Exchange. The order will default for manual representation in the trading crowd when another options exchange is disseminating a price that is more than one trading increment better than the price being disseminated by the Exchange, or

(ii) to execute incoming electronic orders at the NBBO pursuant to Rule 6.87(i).

(B) Applicability. The requirements of subsection (A), above, will apply only to non-broker-dealer orders for ten contracts or less in option issues that are ranked in the 120 most actively traded equity options based on the total number of contracts traded nationally for a specified month based on volume as reported by the Options Clearing Corporation. For each current month, the Exchange's determination of whether an equity option ranks in the top 120 most active issues will be based on volume statistics for the three calendar months of trading activity beginning four months prior to the current month. In addition, the requirements of Subsection (A), above, will only apply to orders in option series that are not designated as LEAPS pursuant to Rule 6.4(e).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt new PCX rule 6.87(e)(8) relating to the Exchange's Auto-Ex System for options trading. Currently, Options Market Makers who are logged on to Auto-Ex are obligated to meet certain requirements as set forth in PCX rule 6.87(e)(1)–(7). The Exchange is proposing to adopt a new rule requiring Lead Market Makers ("LMMs") on Auto-Ex to "step up" and execute certain orders at better prices than the Exchange is disseminating, if another options exchange is disseminating that better price.

Current PCX rule 6.87(i) allows Auto-Ex to be set to execute inbound electronic orders at prices reflecting the national best bid or offer ("NBBO") in selected issues, subject to the approval of the Options Floor Trading Committee ("OFTC"). Under the proposal, LMMs who are participating on Auto-Ex must assure that Exchange staff (*i.e.*, the Order Book Official or Control Room staff) sets the Auto-Ex System in either of two ways for the selected issues as defined in PCX Rule 6.87(e)(8)(B). First, when another options exchange is disseminating a price at the NBBO and that price is one trading increment better than the price being disseminated by the Exchange, the Exchange staff may set the Auto-Ex system may to execute incoming electronic orders at prices that are one trading increment better than the Exchange's disseminated bid or offering price. Where the Exchange is disseminating a price that is more than one trading increment inferior to the price being disseminated by another options exchange, the order will default for manual representation in the trading crowd.

Alternatively, an LMM may have the Exchange staff set the Auto-Ex system to execute incoming electronic orders at the NBBO pursuant to PCX rule 6.87(i). Pursuant to PCX rule 6.87(i), any order that is not executed at the NBBO will be manually presented in the trading crowd if it is more than one trading increment away from the PCX market price.

Proposed PCX rule 6.87(e)(8) will apply only to non-broker-dealer orders for ten contracts or less in option issues that are ranked in the 120 most actively traded equity options based on the total number of contracts traded nationally for a specified month based on volume as reported by the Options Clearing Corporation. In addition, the rule will only apply to orders in option series that are not designated as LEAPS pursuant to PCX rule 6.4(e).

The Exchange's determination of whether an equity option ranks in the top 120 most active, nationally-traded issues will be based on volume statistics reported by the Options Clearing Corporation. For each current month, the Exchange's determination of whether an equity option ranks in the top 120 most active issues will be based on volume statistics for the three calendar months of trading activity beginning four months prior to the current month. The Exchange intends to notify its Members of the issues that are designated to be in the top 120 via a regulatory bulletin that will be published at the beginning of each month.

2. Basis

The Exchange believes that the proposal is consistent with section 6(b)(5)[3] of the Act in that it designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to

[3] 15 U.S.C. 78s(b)(2).

90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–54 and should be submitted by April 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8608 Filed 4–8–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before June 9, 2003.

[4] 17 CFR 200.30–3(a)(12).

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Linda K. Waters, Program Analyst, Office of Government Contracting, Small Business Administration, 409 3rd Street SW., Suite 8800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Linda K. Waters, Program Analyst, (202) 205–7315 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Prime Contracts program Quarterly Report Part A and B".

Form No's: 843 A & B.

Description of Respondents: Procurement Center Representatives.

Annual Responses: 63.

Annual Burden: 1,020.

SUPPLEMENTARY INFORMATION:

Title: "Application for Certificate of Competency".

Form No: 1531.

Description of Respondents: Small Business Owners.

Annual Responses: 300.

Annual Burden: 2,400.

SUPPLEMENTARY INFORMATION:

Title: "7(j) Management and Technical Assistance Program Sponsored Training Impact and Longitudinal Studies".

Form No's: 2167, 2168, 2169, 2170, 2171.

Description of Respondents: Person involved in the Executive Education Program (EEP).

Annual Responses: 500.

Annual Burden: 250.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Charles Ou, Economist, Office of Advocacy, Small Business Administration, 409 3rd Street SW., Suite 7800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles Ou, Economist, (202) 205–6966 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Value of Worker Training Programs to Small Business".

Form No: N/A.

Description of Respondents: Small and Large Businesses.

Annual Responses: 1.

Annual Burden: 1,244.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Sandra L. Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW., Suite 8300 Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra L. Johnston, Program Analyst, (202) 205–7528 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: "CDC Annual Report Guide".

Form No's: 1253 & 1235A.

Description of Respondents: Certified Development Companies.

Annual Responses: 270.

Annual Burden: 7,560.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Marcia Pixley, Regulatory Fairness Coordinator, Office of the National Ombudsman, Small Business Administration, 409 3rd Street SW., Suite 7125 Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Marcia Pixley, Regulatory Fairness Coordinator, (202) 619–1732 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Small Business and Agriculture Regulatory Enforcement Form".

Form No: 1993.

Description of Respondents: Small Business Owners and Farmers.

Annual Responses: 1,000.

Annual Burden: 500.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Cynthia G. Pitts, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street SW., Suite 6050 Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Pitts, Program Analyst, (202) 205–7570 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Pre-Disaster Mitigation Small Business Loan Application".

Form No: 5M.

Description of Respondents: Business Application for the Pre-Disaster mitigation loan program.

Annual Responses: 2,500.

Annual Burden: 5,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–8663 Filed 4–8–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3483, Amdt #1]

State of West Virginia

In accordance with notices received from the Department of Homeland Security—Federal Emergency Management Agency, effective March 28, 2003 and April 2, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on February 16, 2003, and continuing through March 28, 2003. This declaration is also amended to include Calhoun, Fayette, Greenbrier, Mason, McDowell, Mercer, Nicholas, Raleigh, Upshur, Webster and Wyoming Counties in the State of West Virginia as a disaster area due to damages caused by a severe winter storm, record snow, heavy rains, flooding and landslides occurring on February 16, 2003, and continuing through March 28, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Barbour, Braxton, Gilmer, Harrison, Lewis, Monroe, Pocahontas, Randolph, Ritchie and Summers in the State of West Virginia; and Alleghany, Bath, Bland, Giles and Tazewell Counties in the State of Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is May 13, 2003, and for economic injury the deadline is December 15, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 2, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–8662 Filed 4–8–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of meetings.

DATES: May 19, 2003, 10 a.m.—3 p.m.*; May 20, 2003, 9 a.m.—5 p.m.; May 21, 2003, 9 a.m.—1 p.m.

* The full deliberative panel meeting ends at 3. The standing committees of the Panel will meet from 3:15 p.m. until 6:15 p.m.

ADDRESSES: Embassy Suites Hotel at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington DC, 20037, Phone: (202) 362–9300.

SUPPLEMENTARY INFORMATION:

Type of meeting: This is a quarterly meeting open to the public. The public is invited to participate by coming to the address listed above. Public comment will be taken during the quarterly meeting. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress and the Commissioner of SSA, on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings, hear presentations, conduct full Panel deliberations on the implementation of TWWIIA and receive public testimony. The topics for the meeting will include presentations of briefing papers prepared for the Panel, SSA's early intervention demonstration project and agency updates from SSA, the Department of Education and the Department of Health and Human Services.

The Panel will meet in person commencing on Monday, May 19, 2003 from 10 a.m. to 3 p.m. (standing committee meetings from 3:15 p.m. to 6:15 p.m.); Tuesday, May 20, 2003 from 9 a.m. to 5 p.m.; and Wednesday, May 21, 2003 from 9 a.m. to 1 p.m.

Agenda: The Panel will hold a quarterly meeting. Briefings, presentations, full Panel deliberations and other Panel business will be held Monday, Tuesday and Wednesday, May 19, 20, and 21, 2003. Public testimony will be heard in person Monday, May 19, 2003 from 2:30 p.m. to 3 p.m. and on Wednesday, May 21, 2003 from 9 a.m. to 9:30 a.m. Members of the public must schedule a timeslot in order to comment. In the event that the public comments do not take up the scheduled time period for public comment, the Panel will use that time to deliberate and conduct other Panel business.

Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule time slots. Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA Implementation, no longer than 5 pages, may be submitted in person or by mail, fax or email on an on-going basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Kristen M. Breland, at *kristen.m.breland@ssa.gov* or calling (202) 358–6423.

The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the meeting or can be received in advance electronically or by fax upon request.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024.
- Telephone contact with Kristen Breland at (202) 358–6423.
- Fax at (202) 358–6440.
- E-mail to *TWWIIAPanel@ssa.gov.*

Dated: April 1, 2003.

Carol Brenner,

Designated Federal Officer.

[FR Doc. 03–8580 Filed 4–8–03; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8611

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8611, Recapture of Low-Income Housing Credit.

DATES: Written comments should be received on or before June 9, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Recapture of Low-Income Housing Credit.

OMB Number: 1545–1035.

Form Number: 8611.

Abstract: IRC section 42 permits owners of residential rental projects providing low-income housing to claim a credit against their income tax. If the property is disposed of or if it fails to meet certain requirements over a 15-year compliance period and a bond is not posted, the owner must recapture on Form 8611 part of the credits taken in prior years.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 9 hrs., 2 min.

Estimated Total Annual Burden Hours: 10,841.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 1, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–8593 Filed 4–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–107047–00]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–107047–00 (TD 8985), Hedging Transactions (§ 1.1221–2).

DATES: Written comments should be received on or before June 9, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, or through the internet *CAROL.A.SAVAGE@irs.gov.*, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Hedging Transactions.

OMB Number: 1545–1480.

Regulation Project Number: REG–107047–00.

Abstract: This regulation deals with the character and timing of gain or loss from certain hedging transactions entered into by members of a consolidated group of corporations. The regulation applies when one member of the group hedges its own risk, hedges the risk of another member, or enters into a risk-shifting transaction with another member. Also, this regulation clarifies the character of gain or loss from the sale or exchange of property that is a part of a business hedge. A taxpayer must identify the hedging transaction on its book and records before the close of the day on which the taxpayer enters into it and must also identify the item, items, or aggregate risk being hedged. The information will be used to verify that a taxpayer is properly reporting its business hedging transactions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 127,100.

Estimated Time Per Respondent: 1 hour, 20 minutes.

Estimated Total Annual Burden Hours: 171,050.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 1, 2003.

Glenn P. Kirkland.

IRS Reports Clearance Officer.

[FR Doc. 03–8594 Filed 4–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–63–88; IA–140–86; REG–209785–95]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing regulations, EE–63–88 (Final and temporary regulations) Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits; *IA–140–86* (Temporary) Fringe Benefits; Listed Property; and *REG–209785–95* (Final) Substantiation of Business Expenses (§§ 1.61–2, 1.132–5, and 1.274–5).

DATES: Written comments should be received on or before June 9, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation should be directed to Carol Savage, (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: EE–63–88 (Final and temporary regulations) Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits; *IA–140–86* (Temporary) Fringe Benefits; Listed Property; and *REG–209785–95* (Final) Substantiation of Business Expenses.

OMB Number: 1545–0771.

Regulation Project Number: EE–63–88; IA–140–86; and REG–209785–95.

Abstract:

EE–63–88—This regulation provides guidance on the tax treatment of taxable and nontaxable fringe benefits and general and specific rules for the valuation of taxable fringe benefits in accordance with Code sections 61 and 132. The regulation also provides guidance on exclusions from gross income for certain fringe benefits.

IA–140–86—This regulation provides guidance relating to the requirement that any deduction or credit with respect to business travel, entertainment, and gift expenses be substantiated with adequate records in accordance with Code section 274(d). The regulation also provides guidance on the taxation of fringe benefits and clarifies the types of records that are generally necessary to substantiate any deduction or credit for listed property.

REG–209785–95—This regulation provides that taxpayers who deduct, or reimburse employees for, business expenses for travel, entertainment, gifts, or listed property are required to maintain certain records, including receipts, for expenses of $75 or more.

Current Actions: There are no changes to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for profits institutions, farms and Federal, state, local or tribal governments.

Estimated Number of Respondents: 28,582,150.

Estimated Time Per Respondent: 1 hr., 20 min.

Estimated Total Annual Burden Hours: 37,922,688.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 1, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–8595 Filed 4–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Request for Nominations to the Electronic Tax Administration Advisory Committee

AGENCY: Internal Revenue Service (IRS).

ACTION: Notice.

SUMMARY: The Electronic Tax Administration Advisory Committee (ETAAC), was established to provide continued input into the development

and implementation of the Internal Revenue Service (IRS) strategy for electronic tax administration. The ETAAC provides an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members covey the public's perception of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. This document seeks nominations of individuals to be considered for selection as Committee members.

The Director, Electronic Tax Administration (ETA) will assure that the size and organizational representation of the ETAAC obtains balanced membership and includes representatives from various groups including: (1) Tax practitioners and preparers, (2) transmitters of electronic returns, (3) tax software developers, (4) large and small businesses, (5) employers and payroll service providers, (6) individual taxpayers, (7) financial industry (payers, payment options and best practices), (8) system integrators (technology providers), (9) academic (marketing, sales or technical perspectives), (10) trusts and estates, (11) tax exempt organizations, and (12) state and local governments. We are soliciting nominations from professional and public interest groups, IRS officials, the Department of Treasury, and Congress. Members will be limited to serving one two-year term on the ETAAC to ensure that new perspectives and ideas are generated by the members. All travel expenses within government guidelines will be reimbursed.

DATES: Written nominations must be received on or before May 1, 2003.

ADDRESSES: Nominations should be sent to Kim Logan, W:E:S, C4–158, 5000 Ellin Road, Lanham, Maryland 20706. Application forms can be obtained from Kim Logan, who can be reached on (202) 283–1947.

FOR FURTHER INFORMATION CONTACT: Kim Logan, (202) 283–1947.

SUPPLEMENTARY INFORMATION: The ETAAC will provide continued input into the development and implementation of the IRS strategy for electronic tax administration. The ETAAC members will convey the public's observations about current or proposed policies, programs, and procedures, and suggest improvements.

This activity is based on the authority to administer the Internal Revenue laws conferred upon the Secretary of the Treasury by section 7802 of the Internal Revenue Code and delegated to the Commissioner of the Internal Revenue. The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administration issues and will provide input into the development of the strategic plan for electronic tax administration.

Nominations should describe and document the proposed member's qualifications for membership to the Committee. Equal opportunity practices will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in the account the needs of the diverse groups served by the Department, membership will include, to the extent practicable, individuals, with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: April 1, 2003.

Terence H. Lutes,

Director, Electronic Tax Administration,

[FR Doc. 03–8679 Filed 4–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of Inflation Adjustment Factor, Nonconventional Source Fuel Credit, and Reference Price for Calendar Year 2002

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Publication of the inflation adjustment factor, nonconventional source fuel credit, and reference price for calendar year 2002 as required by section 29 of the Internal Revenue Code (26 U.S.C. section 29). The inflation adjustment factor, nonconventional source fuel credit, and reference price are used in determining the tax credit allowable on the sale of fuel from nonconventional sources under section 29 during calendar year 2002.

DATES: The 2002 inflation adjustment factor, nonconventional source fuel credit, and reference price apply to qualified fuels sold during calendar year 2002.

SUPPLEMENTARY INFORMATION:

Inflation Adjustment Factor: The inflation adjustment factor for calendar year 2002 is 2.1169.

Credit: The nonconventional source fuel credit for calendar year 2002 is $6.35 per barrel-of-oil equivalent of qualified fuels.

Reference Price: The reference price for calendar year 2002 is $22.51. Because this reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) does not occur for any qualified fuels sold during calendar year 2002.

FOR FURTHER INFORMATION CONTACT: For questions about how the inflation adjustment factor is calculated—Thomas A. Thompson, N:ADC:R:R:SMB, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 874–0585 (not a toll-free number).

For all other questions about the credit or the reference price—Jaime Park, CC:PSI:7, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 622–3120 (not a toll-free number).

Dated: March 31, 2003.

Heather Maloy,

Associate Chief Counsel (Passthroughs and Speciol Industries).

[FR Doc. 03–8680 Filed 4–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be conducted in Washington DC.

DATES: The meeting will be held Saturday, May 3, 2003 and Sunday, May 4, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be held Saturday, May 3, 2003 from 3 p.m. EST to 5 p.m. EST and on Sunday May 4, 2003 from 8 a.m. EST to 4 p.m. EST at the St. Gregory Hotel located at 2033 M Street, NW., Washington, DC. The public is invited to make oral comments on Sunday May 4, 2003. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited space, notification of intent to participate must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 1, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–8592 Filed 4–8–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 68, No. 68
Wednesday, April 9, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF20

Endangered and Threatened Wildlife and Plants; Final Rule to Reclassify and Remove the Gray Wolf from the List of Endangered and Threatened Wildlife in Portions of the Conterminous United States; Establishment of Two Special Regulations for Threatened Gray Wolves

Correction

In rule document 03–7018 beginning on page 15804 in the issue of Tuesday, April 1, 2003 make the following corrections:

1. On page 15864, in the table, in the second column heading, "Experimental Populations Special Rules 50 CFR 17.40(n):" should read "Experimental Populations Special Rules 50 CFR 17.84(i):".

2. On page 15875, in the third column, in the first paragraph, in the 11th line, "paragraph (n)" should read "paragraph (o)".

[FR Doc. C3–7018 Filed 4–8–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
April 9, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Kauai Cave Wolf Spider and Kauai Cave Amphipod; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH01

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Kauai Cave Wolf Spider and Kauai Cave Amphipod

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Kauai cave wolf spider (*Adelocosa anops*) and the Kauai cave amphipod (*Spelaeorchestia koloana*) pursuant to the Endangered Species Act of 1973, as amended (Act). The critical habitat designation consists of 14 units whose boundaries encompass an area of approximately 110 hectares (ha)(272 acres (ac)) on the island of Kauai, Hawaii. This critical habitat designation requires the Service to consult under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule, including data on economic and other impacts of the designation.

DATES: This rule becomes effective on May 9, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation, used in the preparation of this final rule will be available for public inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, Box 50088, Honolulu, HI 96850–0001.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian archipelago consists of eight main islands and the numerous shoals and atolls of the northwestern Hawaiian Islands. The islands were formed sequentially by basaltic lava that emerged from a hot spot in the earth's crust located near the current southeastern coast of the island of Hawaii (Stearns 1985). Kauai is the oldest of the main islands, with most of its land mass being formed between 3.6 and 5.6 million years ago (MYA) from a single, large shield volcano, now represented by the Alakai Plateau and adjacent ridges. Younger, secondary eruptions occurred over the eastern portion of the island as recently as the Pleistocene era (approximately 0.6 MYA). Due to the age of the island, the terrain is heavily eroded, with steep water-carved valleys and gulches characterizing the slopes of the Alakai Plateau and other isolated ridges. The Alakai Plateau is one of the wettest places on earth, receiving an average of 1.3 meters (m) (444 inches (in)) of rain annually (Juvik and Juvik 1998). Rain is delivered to the island by prevailing trade winds which come from the northeast. Southern and southwestern portions of the island lie in the rain shadow of the Alakai Plateau, ridges, or other uplands, and receive relatively little rain (NOAA 1990–1999).

The Koloa District lies in the southeast corner of Kauai and includes the town of Koloa and the community and resort area of Poipu. The area is dry to mesic (moderate rainfall), receiving an average of 107 to 223 centimeters (cm) (42 to 88 in) of rain annually. Although the Koloa District includes upland areas such as ridge lines derived from the Alakai Plateau and Haupu ridge, most human-occupied areas lie between sea level and about 183 m (600 feet (ft)) in elevation.

The Koloa area is composed of the youngest rock on Kauai, the Koloa Volcanics (MacDonald *et al.* 1960; Langenheim and Clague 1987), with flows dating from between 0.6 and 1.4 million years. Younger, consolidated marine deposits and lithified sand dunes lie on top of some coastal portions of the older Koloa Volcanics. The great age and subsequent weathering that has occurred on Kauai has resulted in most lava tubes having been collapsed or filled with sediments (MacDonald *et al.* 1960; Howarth 1973; Berger *et al.* 1981; Howarth 1987b), relative to younger islands (*e.g.*, Hawaii) where lava tubes are common features (Howarth 1983a). It is only in portions of the Koloa District, with its younger, cave-bearing rock, relative lack of developed soils, and minimal rainfall and subsequent sedimentation, that caves are known to be relatively common features on Kauai (Howarth 1981).

Kauai Cave Wolf Spider

The Kauai cave wolf spider (*Adelocosa anops*) is a member of the wolf spider family (Lycosidae). Spiders in this family are characterized by a distinctive eye pattern, including two particularly large eyes located within the middle row of eight eyes (Foelix 1982). While wolf spiders are typically visual predators, the most conspicuous physical character of the Kauai cave spider is its complete lack of eyes. This character is unique among wolf spiders and, in part, provides justification for the recognition of a separate genus for this taxon (Gertsch 1973). A few species of wolf spider have reduced eyes, including another cave-adapted species on the island of Hawaii, but only in the Kauai cave wolf spider are the eyes entirely absent. Adults of the Kauai cave wolf spider are about 12.7 to 19.0 millimeters (mm) (0.5 to 0.75 in) in total body length with a reddish-brown carapace, pale to silvery abdomen, and beige to pale orange legs. The hind margin of each chelicera (biting jaw) bears three large teeth, two situated basally, and the third at the outer end of the chelicera. The tibiae (the fifth segment of the leg) of the two front pairs of legs have four pairs of ventral spines, and the tarsi (ultimate segments) and metatarsi (penultimate segments) of all legs bear unusually long, silky, and shiny trichobothria (sensory hairs) (Gertsch 1973).

Dr. Frank Howarth, of the Bishop Museum, first discovered the Kauai cave wolf spider in Koloa in 1971, and it was formally described by Willis Gertsch of the Bishop Museum (Gertsch 1973). The Kauai cave wolf spider is a predator, and although blind, can detect the presence of potential food items through chemo-tactile sensory organs and actively stalks its prey (Howarth 1983a). Although predation has not been observed in the field, the spider probably feeds on the Kauai cave amphipod, other cave-inhabiting arthropods, and alien species of arthropods that enter the cave system. Compared to most wolf spiders, the reproductive capacity of the Kauai cave wolf spider is extremely low, with only 15 to 30 eggs produced in each egg sac (Wells *et al.* 1983; Howarth 1991). Newly hatched spiderlings are unusually large for wolf spiders, and are carried on the back of the female for only a few days (Howarth 1991; Howarth and Mull 1992). Other species of wolf spider may have in excess of 100 offspring per clutch and the newly hatched spiderlings are relatively small (Foelix 1982; Howarth 1991; Howarth and Mull 1992).

Kauai Cave Amphipod

The Kauai cave amphipod (*Spelaeorchestia koloana*) was discovered in some of the same caves as the Kauai cave wolf spider in 1971 (Bousfield and Howarth 1976). Because of the unusual attributes of a highly reduced pincher-like condition of the first gnathopod (thoracic appendage) of the amphipod, and the second gnathopod being mitten-like in both sexes, this taxon is placed in its own unique genus (*Spelaeorchestia*) within the family Talitridae (Bousfield and Howarth 1976). This species is also distinctive in its lack of eye facets and pigmentation, and extremely elongate, spiny, post-cephalic appendages. Adult cave amphipods are 7 to 10 mm (0.25 to 0.4 in) in length with a slender, laterally compressed body and a hyaline (nearly transparent) cuticle, giving it a shiny, translucent appearance. The second pair of antenna are slender and elongate, with the flagellum (slender outer part of the antenna) only slightly longer than the peduncle (narrow stalk attaching to the body). Peraeopods (abdominal walking legs) are very elongate, with slender, attenuated claws. All pleopods (swimming legs) are reduced, with branches vestigial or lacking. Uropods (tail-like appendages) 1 and 2 have well-developed pre-peduncles, and brood plates in the mature female are vestigial or entirely absent (Bousfield and Howarth 1976).

The Kauai cave amphipod is a detritivore and has been observed feeding on the roots of *Pithecellobium dulce* (Manila tamarind) and *Ficus* sp. (fig), rotting roots, sticks, branches, and other plant material washed into, or otherwise carried into, the caves, as well as the fecal material of other arthropods. In large cave passages, most individuals are found in association with roots or rotting plant debris. When disturbed, this cave amphipod typically moves slowly away rather than jumping like other amphipods. Nothing is known of the reproductive biology of this amphipod, but the vestigial brood plates of the female suggest they give birth to a small number of large offspring (Poulson and White 1969; Bousfield and Howarth 1976).

Cave Habitat

Cave habitats have a high degree of zonation which plays a major role in the distribution of cave-dwelling organisms. Howarth and Stone (1990) recognize five distinct zones, not all of which are always present within any one cave. The first zone, the "entrance zone," typically receives large amounts of solar radiation and is often vegetated with surface plants. Within the second zone, the "twilight zone," ambient light levels decrease as one moves away from the entrance and photosynthesizing plants that may be present in the entrance decline. The third zone is referred to as the "transition zone." The transition zone lacks light penetrance from the entrance, but other outside factors still greatly influence the cave habitat (*e.g.*, ample air movement and daily temperature fluctuations). All of the above described zones (entrance, twilight, and transition) are typically influenced by surface conditions, daily cycles of warming and cooling, surface humidity, and a fair degree of air exchange occurring between these zones and surface habitats over relatively short periods of time (daily). The fourth cave zone, the "dark zone," typically exhibits a sharp climatological change from the three previously described zones. The dark zone largely lacks daily air exchange with the surface and the three previously described zones. The relatively constant conditions encountered in the dark zone are often the result of a narrowing cave passage or low ceiling(s) that serve as physical barriers that restrict air exchange with other cave zones, or may be due to an up-slope orientation into a dead-end passage that traps warm, moist air. While the dark zone may undergo drastic changes in temperature and relative humidity, this more often is associated with seasonal rather than diurnal changes in air temperature. As a result of this, dark zones are seasonally stable in their micro-climatic conditions, remaining warm and humid during warm seasons. The final recognized cave zone is that of the "stagnant" zone (Howarth and Stone 1990). This zone lies deeper than the dark zone, receiving significantly less air exchange. As a consequence, the composition of gasses within this last zone is often largely controlled by the decomposition of organic matter and maintains high concentrations of carbon dioxide and low concentrations of oxygen. While considered inhospitable by human standards, field observations have indicated that obligate cave-dwelling species are highly tolerant of these conditions and many may, in fact, thrive in the stagnant air zone of caves (Howarth and Stone 1990).

Cave habitats almost always contain small voids, cracks, and passages (mesocaverns) that cannot be accessed by researchers (Howarth 1983b), but remain readily accessible (or preferred) by small troglobites (obligate cave-dwelling animals). Although such voids and cracks can occur in any zone and possess characteristics of each of the five zones, they frequently represent areas of reduced air flow and consequently are most similar to the dark and stagnant air zones. Passages and mesocaverns in limestone caves can form or be destroyed at almost anytime in the life of the cave, depending on the chemical characteristics of the rock and normal geologic processes. Limestone caves often become larger over time as acidic waters from the surface dissolve away the calcium carbonate bedrock. Since water flow enlarges and creates caves in limestone by solution, subterranean voids do not fill through erosion. If any do, the water quickly finds a different path and enlarges a new void. Limestone caves grow deeper as the water table sinks and the surface over the caves dissolves away. Limestone caves improve with age because, although individual voids and passages may be short-lived, limestone caves continuously reform so that habitat can remain suitable for very long time spans. Caves derived from lava tube systems are fundamentally different from limestone in that basalt is not as readily soluble. Hence, lava tube passages and mesocaverns do not typically dissolve away and become larger (formed), but are subject to filling with sediments (destroyed).

The tendency for Hawaiian basalt to shrink and crack upon cooling results in younger lava flows having an abundance of mesocaverns throughout their structure that may serve as habitat or as corridors between habitats. However, the cave-building process typically stops some time after cave and crack formation, and is replaced by the cave-filling processes as weathering and sedimentation begin filling in mesocaverns and passages. On younger islands, the abundance of mesocaverns may allow cave animals to move among and between larger, adjacent lava tubes (Berger *et al.* 1981; Howarth 1991). However, because these smaller voids become filled with erosional sediment in older flows like the Koloa Volcanics, and as a result of surface disturbance (Mueller-Dombois and Howarth 1981; Adam Asquith, Service, *in litt.*, 1994a), it is less likely that the Kauai cave animals can readily move among separate lava tubes or other cave systems.

Cave ecosystems are typically regarded as being food limited, and in most caves, the resident food-web communities require food input which is derived from surface systems based upon a photo-autotrophic (*i.e.*, photosynthesizing plants) food base (Culver 1986). Nutrients may enter caves via subterranean streams or other surface runoff; as guano from bats, birds, rodents, or other cave visitors or residents; or from plant roots that penetrate the cave (Culver 1986). Of these methods, roots from surface plants

are the primary means by which Hawaiian caves receive nutrient input (Howarth 1973). Protection and restoration of surface plant communities is, therefore, an extremely important consideration for cave conservation in Hawaii, as it is elsewhere (Culver *et al.* 2000). Factors or activities that impact or modify surface vegetation over caves (*e.g.*, fire, replacement of native or other perennial vegetation with grasses or some nonnative plants) can damage or destroy the underlying cave community.

Adaptations of Troglobitic Animals

As discussed in the species descriptions of the Kauai cave wolf spider and cave amphipod, troglobites typically possess specialized anatomical characters that represent adaptations to life in the cave environment. Such anatomical adaptations include enlarged and/or elongate tactile-sensory appendages (*e.g.*, legs or other appendages, antennae), and the lack of, or reduced, pigmentation and/or eyes (Barr 1968). Less obvious adaptations are also present in the physiology of troglobites and this has the potential to restrict their distribution within various cave zones (Huppop 1985). Laboratory studies with Hawaiian crickets (*Caconemobius* spp.) were conducted that compared the abilities of closely related surface and cave-dwelling forms to cope with desiccation (Ahearn and Howarth 1982). Surface-dwelling species exhibited considerably lower evaporation/desiccation rates than did the troglobitic species, and in one case, the surface species became dehydrated at half the rate of its cave-inhabiting relative. This low desiccation threshold largely confines these troglobites to the high-humidity environment of the deeper portions of caves, the dark and stagnant air zones. While such tests have not been conducted on the Kauai cave species, a logical assumption is that they have similar humidity tolerances, and this has been supported by field studies and observations conducted in the Kauai caves (see below). Similar adaptations in other troglobitic faunas (Vandel 1965; Barr 1968; Huppop 1985) support the universality of these traits in troglobitic animals.

Given the great vulnerability of troglobites to desiccation, adjacent mesocavern habitats will contain appropriate microclimate conditions and provide habitat or serve as refugia for troglobites when conditions in the main cave passages become drier or otherwise less accommodating. For example, during a previous survey of one cave of the Koloa area, the Kauai cave amphipod was not observed (Miura and Howarth 1978). However, on a subsequent survey, the floor of a small, dead end passage was saturated with 40 liters (10 gallons) of water, and 24 hours later amphipods had moved into this area, presumably from the surrounding mesocaverns (Howarth 1983a, 1983b). The foraging activities of both the Kauai cave wolf spider and the Kauai cave amphipod are restricted to dark, moist areas of large caverns and mesocaverns, and it is possible that the majority of their time is spent within such spaces.

Both Howarth (1983a) and Huppop (1985) have postulated that troglobites may be adapted to cope with low levels of oxygen and/or elevated concentrations of carbon dioxide, similar to conditions that would be encountered in the stagnant air zone of caves. This ability has been substantiated from observations in known stagnant air zones (Howarth and Stone 1990), as well as under controlled laboratory experiments. Hadley *et al.* (1981) conducted experiments with Hawaiian wolf spiders, both troglobites (*Lycosa howarthi*) and a related surface-dwelling species (*Lycosa* sp.). These researchers found the surface-dwelling spider had a higher metabolic rate, requiring 2.5 times more oxygen than its cave-dwelling relative. The reduced need for oxygen would better allow these spiders to survive in stagnant air cave zones. Given the ability of at least some troglobites to cope with reduced oxygen and elevated carbon dioxide, as well as their ability to inhabit inaccessible mesocaverns, it is assured that many troglobites will be able to reside in areas not readily surveyed by biologists. Hence, cave habitats will extend well beyond those areas accessible by researchers (Howarth 1983a).

Species Distribution and Abundance

The Kauai cave wolf spider and Kauai cave amphipod are generally restricted to cave dark and stagnant air zones, or other subterranean habitats such as cracks, voids, and other mesocaverns containing microclimate conditions similar to those zones. However, both the cave wolf spider and amphipod may be found in sub-optimal cave habitats (*e.g.*, cave transition zone) when conditions are appropriate (*e.g.*, elevated humidity during periods of increased rainfall). All of the caves where the cave amphipod has been located contain penetrating plant roots and/or other decomposing plant material; which serves as a food source for this detritivore. Plant material upon which the amphipods feed need not be from native plants, although nonnative toxic or indigestible plants may be inappropriate or damaging for amphipod foraging. The Kauai cave wolf spider can be found in caves where the cave amphipod does not occur, but other nonnative arthropods (*e.g.*, cockroaches, wood lice, small spiders) can be used as food for this generalist predator.

Prior to the publication of the proposed rule to designate critical habitat for the Kauai cave wolf spider (67 FR 14671, March 27, 2002), the spider had been observed in only five caves in the Koloa area since its discovery in 1971. Through mapping of one of the caves, the Service considers two of the caves originally believed to be separate to actually be one system with two entrances. Since 1996, Service biologists have conducted annual surveys of the caves, and starting in 1998, we have conducted biannual monitoring visits to three of the known occupied caves. Observations recorded in these visits include a total count of animals within each cave, potential threats to the listed cave organisms or their habitat, and the cave's condition (*e.g.*, human disturbance, presence of standing water). The following information is based on these monitoring visits.

In two of the four known occupied caves, wolf spiders have been seen on only three occasions, but have been more often observed in two other caves. Of the two more frequently occupied caves, in only one of these wolf spiders have been encountered during every monitoring visit with 14 to 28 individuals observed (USFWS data from January 18, 1996 to November 20, 2002). The second cave contained a smaller number of wolf spiders when they were found there (one to four per monitoring visit). Since April 2000, no wolf spiders have been observed in this cave. The decline of wolf spiders in this cave has been matched with a corresponding increase in the number of resident brown violin spiders, an alien, web-building species that likely preys upon both the Kauai cave wolf spider and amphipod (A. Asquith, *in litt.* 1994b; David Hopper, Service, *in litt.* 1999). Although these data are not conclusive, the declining numbers of the Kauai cave wolf spider and their increased absence in the second of the regularly occupied caves warrants concern with regard to population persistence.

Since the publication of the proposed rule, more surveys have been conducted and the spider has been verified to occur in two additional caves (Tom Shigemoto, Vice President, Alexander and Baldwin, pers. comm., 2002; Gordon Smith, Service, *in litt.* 2002), one of which was previously unknown and the other was known only to be occupied by amphipods. Therefore, the spider has verified occurrences in six caves.

The Kauai cave amphipod has been recorded from six caves in the Koloa area but was only regularly encountered in only three of these caves. In one of these three caves, where the amphipod was found with the wolf spider, their numbers have ranged from 8 to 67 during the biannual monitoring visits. In another regularly occupied cave, amphipod numbers have increased steadily from 10 to 20 individuals per visit in pre-1998 counts to over 300 individuals during a visit in November 2000 (Service, unpub. data).

In the three caves less frequently occupied by the amphipod, the lack of observations of the species is probably due to several factors. In one of these caves, relative humidity is often below 100 percent, which is a suboptimal condition for troglobites. Amphipods have been found in this cave when humidity conditions are optimal, such as after heavy rains which saturate the soil and increase the relative humidity in the dark zone. In a second cave, amphipods appear to be resident but were only observed during two visits that were conducted soon after the cave had been exposed by heavy machinery, and prior to the cave being re-closed for road construction (A. Asquith, *in litt.* 1999). The last of these three caves has been visited infrequently and amphipods have been observed during some, but not all, visits (Bousfield and Howarth 1976; D. Hopper, *in litt.* 1998a; D. Hopper, *in litt.*, 2000a).

Since the publication of the proposed rule, the Service was notified of a seventh cave where the amphipod's occurrence was previously recorded (Bousfield and Howarth 1976). No additional information has been provided on this particular cave nor do we know the current status of the cave. Therefore, the amphipod has been known from seven caves.

Despite the data obtained in our biannual monitoring counts, the quantities of animals reported do not represent sound population estimates. The methods needed to conduct non-damaging, mark-recapture studies for accurate estimates of population size have not been developed for these animals, and no attempt to conduct such studies have been undertaken.

Cave systems may be separated by various physical barriers such as subterranean streams, or areas with developed soils that have filled in the mesocavern passages or habitats of these old caves (Mueller-Dombois and Howarth 1981). The degradation and loss of naturally occurring mesocavern habitats and corridors has likely been accelerated by development or other land uses that often require clearing of vegetation, blasting, and filling of trenches and construction sites. These activities, as well as modern agricultural practices, exacerbate the rates of sediment mobilization (Kirch 1982; Cuddihy and Stone 1990), resulting in the filling of caves and mesocaverns (Howarth 1973; Mueller-Dombois and Howarth 1981; Burney *et al.* 2001).

Because distinct species can evolve in adjacent lava tubes even when cave animals can move extensively through mesocaverns (Hoch and Howarth 1993), it is reasonable to consider the separate localities of these animals as different populations, even though intervening areas of potential habitat cannot be surveyed. Thus, we have currently verified a total of six spider populations and seven amphipod populations that are distributed throughout the Koloa district as follows: the Koloa Caves #1, #2, the newly discovered spider cave, and adjacent areas west of Waikomo Stream are considered to harbor three populations of the spider and two populations of the amphipod; the seaward Kiahuna Caves #267 and #276 likely harbor two populations of the spider and one of the amphipod; the Kiahuna Cave #210 harbors a separate population each of the spider and amphipod; the Mahaulepu Cave harbors a separate population each of the cave amphipod and the spider (Service, unpublished data, 1998–1999; G. Smith *in litt.* 2002); a small cave near the St. Raphael church harbors a population of the cave amphipod; and a small cave near the Koloa bypass road harbors a cave amphipod population.

Threats

Small populations are also demographically vulnerable to extinction caused by random fluctuations in population size and sex ratio and to catastrophes such as hurricanes (Soule 1983; Gilpin and Soule 1986). In addition, the low reproductive potential of both cave species (less than five percent of their surface relatives) means that they require more time and space to recover from a disturbance than would similar animals living on the surface (F. Howarth, *in litt.* 2001).

One of the major threats facing the Kauai cave wolf spider and the Kauai cave amphipod is the introduction of invasive alien species (F. Howarth, *in litt.* 2001). For example, an alien terrestrial nemertine worm (*Argonemertes dendyi*) from Australia was discovered in the 1980s on the island of Hawaii (Howarth and Moore 1983). This animal can live and reproduce in caves and presumably feed on any invertebrates, such as the Kauai cave wolf spider and the Kauai cave amphipod. The impact on cave fauna is not known at this time (Howarth and Moore 1983). If portions of the habitat are more or less isolated and protected, the chances are greater that any one threat would not affect all occupied caves at the same time and animals that survive may eventually re-colonize their former habitat. This situation would also apply for other surface disturbances, such as oil spills, pollution, and pesticide application.

Human impacts in the Koloa caves, and resulting impacts on the Kauai cave wolf spider and Kauai cave amphipod, are another concern. Caves are frequently sought out by curiosity seekers, and over-use of caves occurs readily due to their fragile nature (Howarth 1982; Culver 1986). In addition, both natural and cultural features (*e.g.*, human burials and associated artifacts) of caves are often damaged or destroyed by collectors or vandals (Howarth 1982; N. McMahon, Hawaii Dept. Historic Preservation, pers. comm., 2001). Unauthorized visitation and vandalism is such an issue in caves that the Cave Resources Protection Act (16 U.S.C. 4301 *et seq.*; 102 Stat. 4546) was passed with the main intent of protecting cave-associated natural and cultural resources. Unauthorized entry and vandalism of the Koloa caves has been documented (D. Hopper, *in litt.*, 1998b, 2000a), and public interest in visiting caves is reflected in the publication of the location of two of these caves in a recent tourist guide (Doughty and Friedman 1998).

Human visitation to caves, even when not intentionally destructive, often results in severe impacts to the resident troglobites or other cave inhabitants. For example, nicotine is a potent insecticide that is easily introduced into the cave environment through cigarette smoke or discarded cigarette butts. Given the confined space and poor air circulation in caves supporting suitable troglobite habitat, the effects of cigarette smoke are far more pronounced in caves (Howarth 1982; Howarth and Stone 1993). The impacts of cigarette smoke are not restricted to the main cavern; the smoke will also impact mesocavern habitats, where its effects cannot be seen. Although less toxic than cigarette smoke, wood fire smoke may be equally damaging since far more smoke is produced and detrital food reserves may be burned. The use of cigarettes, as well as fire activity, have been documented

in the Koloa caves (D. Hopper, *in litt.*, 1998b, 2000a).

The narrow confines of most caves often result in focusing human travel and associated impacts to a small area, and increase the likelihood of troglobite mortality from unintentional trampling and the destruction or disturbance of food resources (*e.g.*, roots, detrital matter). In addition, human use of caves frequently results in the importation of garbage, which encourages the invasion of caves by potential competitors and predators such as cockroaches (F. Howarth, Bishop Museum, pers. comm., 1994; A. Asquith, *in litt.*, 1994a).

The restricted area in which the Koloa cave animals occur is rapidly undergoing development (KBGM Peat Marwick 1993). The shallow cave habitat has been, and continues to be, degraded or destroyed through surface alterations such as the removal of perennial vegetation, soil fill, grading, paving, collapsing and filling of caves, diversion of waste water into subterranean voids and spaces, and other activities associated with development and agriculture.

The Kauai cave wolf spider and Kauai cave amphipod are also increasingly at risk from predation and competition for space, water, and nutrients by introduced, nonnative animals (Howarth 1985, pers. comm., 1994; A. Asquith, *in litt.*, 1994a, b; D. Hopper, *in litt.*, 1999), biological and chemical pest control activities associated with residential and golf course development (Hawaii Office of State Planning 1992); and an increased likelihood of extinction from naturally occurring events due to the small number of remaining individuals, populations, and their limited distribution.

Due to the small number of known caves inhabited by these animals, we remain concerned that these threats may be exacerbated by the publication of the exact locations of individual caves. Since publication of the proposed listing rule for these animals in 1997 (62 FR 64340), we have found evidence of increased entry and vandalism in these caves (D. Hopper, *in litt.* 1998b, 2000b). While direct and intentional threats to these species from human take and collection are not documented, the sensitive nature of these animals and their habitat to increased human presence makes increased human awareness of these caves a potential direct threat to the Kauai cave wolf spider and Kauai cave amphipod.

Previous Federal Action

On June 16, 1978, we published in the **Federal Register** a proposal to list the Kauai cave wolf spider as an endangered species and the Kauai cave amphipod as threatened (43 FR 26084). That proposal was withdrawn on September 2, 1980 (45 FR 58171) as a result of a provision in the 1978 Amendments to the Endangered Species Act of 1973 that required withdrawal of all pending proposals that were not made final within 2 years of the proposal or within one year after passage of the Amendments, which ever period was longer. An initial comprehensive Notice of Review for invertebrate animals was published on May 22, 1984 (49 FR 21664), in which the Kauai cave wolf spider and Kauai cave amphipod were treated as category 2 candidates for Federal listing. Category 2 taxa were those for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules to list the species as threatened or endangered.

We published an updated Notice of Review for animals on January 6, 1989 (54 FR 554). In this notice, the Kauai cave wolf spider and Kauai cave amphipod were treated as category 1 candidates for Federal listing. Category 1 taxa were those for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. However, in the Notice of Review for all animal taxa published on November 21, 1991 (56 FR 58804), the two Kauai cave arthropods were listed as category 2 candidates. In the November 15, 1994, Notice of Review for all animal taxa (59 FR 58982), the two Kauai cave arthropods were again elevated to category 1 candidates. Upon publication of the February 28, 1996, Notice of Review (61 FR 7596), we ceased using candidate category designations and included the two cave arthropods as candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered. The two cave arthropods were included as candidate species in the September 19, 1997 (62 FR 49398), Notice of Review.

A proposed rule to list these two species as endangered was published on December 5, 1997 (62 FR 64340), and the final rule to list them was published on January 14, 2000 (65 FR 2348). Since that time, we have conducted conservation efforts for the Kauai cave wolf spider and Kauai cave amphipod through voluntary partnerships with two private landowners in the Koloa area.

In the proposed listing rule, we indicated that designation of critical habitat for the Kauai cave wolf spider and Kauai cave amphipod was not prudent. Our concern was that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase human visitation to these highly sensitive cave habitats, which could lead to incidents of vandalism, destruction of habitat, and unintentional cases of take. Also, we believed that critical habitat designation would not provide any additional benefit to these species beyond that provided through listing as endangered.

However, in the final listing rule, we determined that critical habitat designation was prudent as we did not find specific evidence of taking, vandalism, collection, or trade of these species or any other similarly situated species. Also, we found that there may also be some educational or informational benefit to designating critical habitat. Therefore, we found that the benefits of designating critical habitat for these two species outweighed the benefits of not designating critical habitat.

On June 2, 2000, we were ordered by the U.S. District Court for the District of Hawaii (in *Center for Biological Diversity* v. *Babbitt and Clark*, Civ. No. 99–00603 (D. Haw.)) to publish the final critical habitat designation for both cave animals by February 1, 2002. The plaintiffs and the Service entered into a consent decree in a separate action agreeing to jointly seek an extension of this deadline (*Center for Biological Diversity* v. *Norton*, Civ. No. 01–2063 (D.D.C. October 2, 2001)).

On February 14, 2001, we contacted landowners on the island of Kauai, notifying them of our requirement to designate critical habitat for the Kauai cave wolf spider and Kauai cave amphipod. We included a copy of a fact sheet describing the two species and their habitat, and a map showing the presumed historic and current range (based on occupied habitat and the distribution of similar geology and soils) of one or both of these species.

On January 30, 2002, the U.S. District Court in Hawaii approved a joint stipulation to modify the terms of the June 2 order to extend the deadline to August 10, 2002. Subsequently, the Service determined that an additional extension of time was needed to complete this designation process. On August 21, 2002, the U.S. District Court in Hawaii approved another joint stipulation extending the date for the final rule designating critical habitat for both cave animals to March 31, 2003.

The proposed rule published March 27, 2002, proposed to designate four critical habitat units which collectively amounted to approximately 1,697 ha (4,193 ac) (67 FR 14671). The public comment period closed on May 28, 2002. On November 15, 2002, we announced the availability of the draft economic analysis and reopened the comment period until December 16, 2002 (67 FR 69177).

Summary of Comments and Recommendations

In the proposed rule published on March 27, 2002 (67 FR 14671), we requested that all interested parties submit written comments on the proposal. We also contacted all appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment. We received no requests for a public hearing.

We received individually written letters from 43 parties, including five designated peer reviewers. Approximately 417 additional letters were submitted as part of a mailing campaign that supported designation. Of the 43 commenters who were not part of the mailing campaign, 16 supported the proposed designation, 26 were opposed, and 1 expressed neither support nor opposition. Of the 26 commenters who opposed the proposal, 17 commenters specifically opposed designation of critical habitat on lands they own or manage, and requested that these areas be excluded from critical habitat designation.

We reviewed all comments received for substantive issues and new information regarding critical habitat for both cave animals. Similar comments were grouped into general issues and are addressed in the following summary.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited, in writing, the review of the proposed critical habitat designation from nine independent experts affiliated with academic and research organizations or natural resource conservation agencies. We also put in a request to Sustainable Ecosystems Institute. All of the individuals contacted are recognized leaders in the field of cave ecology and conservation, as demonstrated by a record of published peer reviewed results of past and current research in this field. Four parties responded with written reviews of the proposal, one provided a letter citing his inability to participate due to the lack of applicability to his state agency position, and the remaining four parties either verbally declined to participate due to workload or other constraints or simply did not respond.

The four scientific review responses were generally positive and in support of the proposed designation on the basis of its technical merits. Reviewers generally recognized the limitations on the extent of specific knowledge regarding the cave species in terms of population sizes, population dynamics, and distribution of occupied habitat. However, a lack of knowledge is not unusual for troglobitic organisms that only occur in areas where humans rarely go and that may primarily inhabit mesocavern areas where humans are unable to enter at all. The reviewers were in agreement that the primary constituent elements were identified adequately. Three of the reviewers commented that additional information, particularly detailed mapping, was needed regarding human activities that may have eliminated one or more primary constituent elements from the landscape, information which presumably would allow some areas to be eliminated from consideration as critical habitat. Comments received from the peer reviewers are summarized in the following section and were considered in developing the final rule.

Issue 1: Biological Justification and Methodology

(1) *Comment:* One scientific reviewer commented that it was difficult to justify inclusion of Units 2 and 3 on geological grounds alone, considering that evidence of historical or current occupation by the organisms was lacking. However, another reviewer stated that the proposed designation on the basis of geology alone was indeed adequate, and pointed out the "plastic" nature of the underlaying calcareous substrates of Unit 2 and 3 over geologic time. Another scientific reviewer did not feel that enough information was available to evaluate the adequacy of the large size of Unit 1a without more detailed maps of geology, cave locations, and past, present and future land use. Another commenter noted that the proposed designation does not provide enough connectivity between units, and recommended that there should be continuity between Unit 1a and Unit 1b and to accomplish this, all of Makahuena Point should be designated.

Our Response: Unit 2 has not been included in the designation on geology alone. This unit lies only a short distance from a known occupied site and as mentioned by another reviewer was likely connected at an earlier time. Information provided during the comment period shows that the large size of appropriate habitat is likely to sustain the cave animals and is expected to provide the best type of habitat. In determining adequacy of size of critical habitat, we have reviewed the best scientific and commercial data available in making our final designation. Units 1b and 3 have not been included in the designation. A considerable amount of new information was provided to the Service regarding site-specific conditions on lands that had previously never been surveyed or had been incompletely surveyed. This includes new information regarding occupied and unoccupied caves, and technical information (*e.g.*, drilling logs that include cross-section/stratigraphy data of geologic core samples) regarding subsurface geology of surrounding areas. The total number of known occupied caves and caves with appropriate habitat has increased substantially, and some of the intervening areas between caves has been shown not to contain the primary constituent elements required to support adequate habitat for the species. The new information has resulted in a reformulation of the number of caves (and amount of above-ground area) considered to be essential to the conservation of the species. The new information has reduced, but not eliminated, the need for establishing critical habitat boundaries on the basis of the underlying geology of a given unit. Critical habitat boundaries have been modified to encompass surface areas above known caves and mesocave-bearing geologic features. These modifications and the rationale for the changes are described in detail in the section "Summary of Changes from the Proposed Rule."

(2) *Comment:* One scientific reviewer stressed the importance of environmental requirements of obligate cave-dwelling species, noting that appropriate conditions (100 percent relative humidity) only occurs in larger, longer caves, and may be most commonly found in mesocavern spaces. Mesocavern areas may be limited in Koloa because of the geologic age of the lava flow series; however, where they occur they are important.

Our Response: As the reviewer points out, a variety of data supports the existence and occupation of mesocavern habitats. This includes the typically low, but variable, numbers of organisms observed in cave surveys. Survey events that detect few individuals probably occur during conditions of reduced humidity whereby the organisms retreat into mesocaverns with suitable environmental conditions. Also, two known occupied caves that tend to exhibit drier conditions have been

surveyed numerous times with the wolf spider observed on only a few occasions. This indicates that, despite careful searches by trained observers, the organisms are able to move into areas of suitable habitat that are too small for humans to enter. We note that the "type locality" from where the initial specimens of the cave amphipod were collected for scientific description (the "sand chamber" of the Mahaulepu Sinkhole cave) appears to have a drier environmental regime than during initial biological surveys there in the 1970s. No amphipods have been seen in that chamber in recent years, likely due to this alteration of conditions. The Service agrees with the scientific reviewer that maintenance (and possibly enhancement) of suitable environmental conditions of caves and voids is an important consideration in conservation of the caves species.

(3) *Comment:* Two scientific reviewers recommended that the size of the critical habitat areas should be sufficient to protect adequate population numbers such that, in the event of local extirpations of the species due to natural disaster or disease, recolonization of these areas can occur.

Our Response: We agree, and we consider the issue of population dynamics central to the concept of conservation of the species. The cave species have characteristics that make estimates of population sizes and dispersal capabilities difficult. In addition, the species have naturally low reproductive potential. These characteristics highlight the importance of ensuring that the populations do not slip towards extinction due to demographic stochasticity (natural disaster, disease, invasive species interactions) or suffer from the effects of loss of genetic variability (inbreeding, genetic drift). We feel that our revised critical habitat boundaries, based upon the incorporation of new information regarding the number and locations of known occupied sites and sites highly likely to be occupied, encompass a wide distribution across the Koloa Basin, which will provide adequate refugia despite the possibility that unforeseen events may eliminate the entire population of a single cave or cave complex. These modified critical habitat boundaries are described in detail in the section "Summary of Changes from the Proposed Rule."

(4) *Comment:* The proposed critical habitat designation is based upon little specific data regarding the distribution of the cave invertebrates and the caves they inhabit; this has resulted in an overly broad "blanket" approach to the proposed critical habitat boundaries. A more reasonable approach would be to designate critical habitat around known population centers and known likely habitat.

Our Response: The proposed critical habitat designation was developed using the best technical information available to the Service at the time of preparation of the proposed rule. The majority of the lands where these species are found is privately owned, which severely limits and may prohibit the ability of the Service to survey caves and analyze landforms exhibiting potential habitat in short timeframes. Through ongoing outreach efforts and development of a series of cooperative conservation programs with certain landowners, a reasonable amount of scientific information had accumulated over time, and it was this available information that was used in the development of the proposed critical habitat designation. In response to Service requests for additional relevant information, several parties, including landowners and land managers, undertook surveys of their lands to obtain and share new information with the Service. This information has increased the level of specific knowledge about the species in terms of distribution of occupied and unoccupied caves, locations of additional areas with geologic features likely to contain habitat, and areas that, because of natural processes or human-caused changes, do not contain the primary constituent elements adequate for support of the species. In particular, the number of individual caves where one or both of the species are found has increased from six to nine. This has greatly influenced the technical analysis leading to the ultimate conclusion of which areas are necessary for the conservation of the species. As described elsewhere, the identification of additional known occupied habitat has resulted in refocusing critical habitat boundaries in consideration of our better understanding of the cave species populations, their distribution, the effects of habitat fragmentation, protection of isolated populations, and potential for retaining areas of habitat connectivity.

(5) *Comment:* A sand mining operation is located in Unit 2. Significant portions of this unit have been disturbed and should be excluded from designation.

Our Response: The sand mining operation is not included in the designation of critical habitat. As described above, new information regarding the geology and modification of potential habitat due to human activities such as the sand-pit operation, agriculture, and past and current land use patterns, have resulted in modification of the boundaries of the proposed critical habitat. These modified critical habitat boundaries are described in detail in the section "Summary of Changes from the Proposed Rule."

(6) *Comment:* One scientific reviewer noted that the concern regarding diseases and alien species invasions is warranted, but the reference to *Bacillus thuringinensis* (Bt) toxin as a potential threat is weak.

Our Response: The threat of profound ecological disturbance, including species extinctions, due directly or indirectly to alien species introduction is a common theme in the conservation of virtually every native Hawaiian ecosystem. In addition to calling attention to this immediate threat, our use of the Bt example was to demonstrate: (1) That some disease and alien species threats are intentional "biocontrol" introductions that could have unintended effects upon native ecosystems (this has occurred and continues to occur in Hawaii and elsewhere); and (2) the rationale behind protecting multiple, isolated portions of suitable occupied and unoccupied habitat in the event of a catastrophic event, such as a pesticide spill or other surface disturbance.

(7) *Comment:* Based upon existing and new information, there appear to be four distinct populations of the cave invertebrates. They occur at: Kukuiula, Kiahuna, Bypass Road/Civil Defense caves, and the sinkhole area. Based upon other cave conservation efforts (including a proposed critical habitat designation for cave organisms in Texas by the Service), recovery goals can be achieved by protecting in perpetuity three discrete populations of organisms. Considering the cooperative conservation efforts of landowners at Kukuiula, Kiuahuna (for caves), and at the sinkhole (presently for archeological preservation), the requisite three faunal areas for each species has been identified, which is sufficient for species protection.

Our Response: While the cave animals in Hawaii share some similarities with cave animals in Texas, it is inappropriate to assume recovery standards would be the same just because both occur in caves. Caves in Texas and caves in Hawaii are formed through different processes, have different food resources, and face different specific threats. Recovery standards need to be determined by evaluating individual species and their threats. Although there is no final recovery plan for either the Kauai cave amphipod or the Kauai cave wolf spider, we do not at this time believe the three areas mentioned above adequately provide protection against catastrophic events. Therefore, a designation limited to these three areas would not adequately provide for the conservation of either species.

Issue 2: Legal and Regulatory Issues

(8) *Comment:* The Service has misinterpreted the intent of the Act with exclusion of areas under 3(5)(A)(i) of the Act. If a specific area of cave invertebrate habitat is recognized to be critical to the extent that management is already taking place, the notion that such management renders designation unnecessary does not make sense. In fact, designation of these areas would seem more urgent.

Our Response: While we have not excluded any areas from this rule because they are already sufficiently managed, we still believe this interpretation of the definition is reasonable. Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must also require "special management considerations or protections."

(9) *Comment:* Areas that are merely capable of supporting the species are proposed for designation, as opposed to areas that are essential for the conservation of the species.

Our Response: Based on new information received during the public comment period we have refined the proposed designation. All areas designated as critical habitat are deemed essential to the conservation of the species. Areas designated provide for areas known to be occupied by the animals or provide for protection against catastrophic events by contributing to a wide distribution throughout the Koloa Basin.

(10) *Comment:* The Service failed to consider the cascading impacts resulting from the State-led regulatory activities that must, by law, be implemented as a result of critical habitat designation. These include the broad interpretation of "take" under Hawaii's Endangered Species Act (HRS Ch. 195D); mandatory "downzoning" of private lands under Hawaii's Land Use Law (HRS Ch. 205); unreasonably frequent requirements for full environmental impact statements for minor actions under Hawaii's Environmental Impact Statement Law (HRS Ch. 343); unreasonable permit delays for county-regulated Special Management Area permits under Hawaii's Coastal Zone Management Law (HRS Ch. 205A); uncertainty of interpretation of the reach and extent of State regulatory authority under Hawaii's State Water Code (HRS Ch. 174C); and implications for water quality standards under Hawaii Administrative Rules Ch. 11–54, Water Quality Standards.

Our Response: Possible costs resulting from interplay of the Federal Endangered Species Act and Hawaii State laws were discussed in sections 3 and 4 of the November 2002 Draft Economic Analysis of Proposed Critical Habitat Designation for the Kauai Cave Wolf Spider and the Kauai Cave Amphipod Island of Kauai, Hawaii (DEA) under direct and indirect costs as modified by the Addendum. They consider the economic impacts of section 7 consultations related to critical habitat even if they are attributable co-extensively to the listing status of the species. In addition, they examine any indirect costs of critical habitat designation, such as where critical habitat triggers the applicability of a State or local statute. The addendum to the DEA also fully considered this issue.

(11) *Comment:* The proposal violates the "commerce clause" because the spider and the amphipod are not related to interstate commerce.

Our Response: The Federal government has the authority under the Commerce Clause of the U.S. Constitution to protect these species, for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *Nat'l Ass'n of Home Builders* v. *Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), cert. denied, 1185 S. Ct. 2340 (1998). *See also Gibbs* v. *Babbitt*, No.99–1218 (4th Cir. 2000). The *Home Builders* case involved a challenge to application of ESA prohibitions to protect the listed Delhi Sands flower-loving fly. As with the species at issue here, the Delhi Sands flower-loving fly is endemic to only one State. Judge Wald held that application of the ESA to this fly was a proper exercise of Commerce Clause power because it prevented loss of biodiversity and destructive interstate competition.

(12) *Comment:* The Service must take into consideration the completed economic analysis prior to designation of critical habitat. Currently, the proposed critical habitat boundaries are proposed prior to the completion of the economic analysis. This runs counter to the requirement for determination of prudency under the ESA.

Our Response: We did not designate critical habitat before conducting an economic analysis. The DEA was published and made available for review on November 15, 2002 (67 FR 69177). The comment period on the proposed rule to designate critical habitat for these two species was extended until December 16, 2002, to allow interested and affected parties the opportunity to review the DEA in conjunction with the proposed critical habitat rule.

The Service determines whether critical habitat designation is prudent according to regulations found at 50 CFR 424.12(a). In accordance with these regulations, critical habitat designation is not prudent only when one or both of the following two situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or, (2) such designation would not be beneficial to the species. The economic analysis is generally conducted after critical habitat has been proposed in a given area, as set forth in regulations found at 50 CFR 424.19. If we find that economic or other impacts outweigh the benefit of designating critical habitat in a given area, that area will be excluded under section 4(b)(2) of the Act.

(13) *Comment:* Existing protections are adequate to conserve the species. The additional action of designating critical habitat is unnecessary.

Our Response: We are required to designate critical habitat to the maximum extent prudent. Designation is not prudent only when the species is threatened by taking or other human activity and designation would increase that threat or designation would not be beneficial.

(14) *Comment:* Because the DEA indicates that there will be substantial adverse impacts on small landowners, such as KG Kauai Development, LLC, there should be a Regulatory Flexibility Analysis performed on the designation of critical habitat.

Our Response: Small landowners and other entities potentially impacted by the designation of critical habitat for the Kauai cave arthropods were identified and discussed in section 5 of the November 2002 DEA and February 2003 addendum. As summarized in the addendum, there are no small entities, as defined under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act) (RFA/SBREFA) that may be impacted by implementation of the section 7 provisions of the Act for the cave animals. Therefore, we concluded that the designation of critical habitat for the cave species is not likely to significantly impact a substantial number of small entities. The final determination is much smaller than that which was initially proposed, and the addendum discusses impacts to

landowners but also concludes that no small entities will be impacted.

(15) *Comment:* In the context of Hawaii law, the designation constitutes taking as it results in the loss of value to the property.

Our Response: To a property owner, the designation of critical habitat becomes important when viewed in the context of section 7 of the Act, which requires all Federal agencies to ensure, in consultation with the Service, that any action that these aagencies authorize, fund, or carry out is not likely to result in the destruction or adverse modification of designated critical habitat. If, after consultation, our biological opinion concludes that a proposed action is likely to result in the destruction or adverse modification of critical habitat, we are required to suggest reasonable and prudent alternatives to the action that would avoid the destruction or adverse modification of the critical habitat. If we cannot suggest acceptable reasonable and prudent alternatives, the agency (or the applicant) may apply for an exemption, in accordance with section 7(e) through (p) of the Act.

The mere promulgation of a regulation, like the enactment of a statute, does not take private property unless the regulation on its face denies the property owners all economically beneficial or productive use of their land (*Agins* v. *City of Tiburon*, 447 U.S. 255, 260–263 (1980); *Hodel* v. *Virginia Surface Mining and Reclamation Ass'n*, 452 U.S. 264, 195 (1981); *Lucas* v. *South Carolina Coastal Council*, 505 U.S. 1003, 1014 (1992)). The designation of critical habitat alone does not deny anyone economically viable use of their property. The Act does not automatically restrict all uses of critical habitat; it only imposes restrictions under section 7(a)(2) of the Act on Federal agency actions that may result in destruction or adverse modification of designated critical habitat. Furthermore, as discussed above, if a biological opinion concludes that a proposed action is likely to result in destruction or modification of critical habitat, we are required to suggest reasonable and prudent alternatives.

(16) *Comment:* Several commenters requested an extension of the public comment period to enable more time for preparing and submitting comments to the Service. This request was made in part to enable the completion of scientific surveys of certain lands within proposed critical habitat and to allow more time to develop voluntary conservation agreements on some of these lands that might obviate the need for critical habitat.

Our Response: The Service provided a total of 90 days of public comment following publication of the proposed critical habitat rule and draft economic analysis. The Service was unable to accomodate further requests for an extension of the public comment period due to the court-ordered deadline mandating completion of this final critical habitat rule. However, the Service would be happy to receive and review any new information, and if warranted will consider this information in possible future revisions of this rule (*see* 16 U.S.C. 1533(a)(3)(B)). In addition, interested parties may petition to revise a critical habitat designation based on new information (16 U.S.C. 1533(b)(3)(D).

(17) *Comment:* The DEA lists economic impacts; however, there is no indication that the Service has identified appropriate critical habitat boundaries or modified the critical habitat boundaries in consideration of these economic impacts.

Our Response: We considered the economic impacts that were analyzed and summarized in the DEA and final addendum, and no critical habitat units in the proposed rule were excluded or modified due to economic impacts (*see* section "Analysis of Impacts Under Section 4(b)(2)"). However, several areas were excluded or modified because they lacked primary constituent elements, or were more degraded than other essential habitat areas, and therefore were not considered essential to the conservation of the species (*see* "Summary of Changes from the Proposed Rule" section).

(18) *Comment:* The incremental impact of designating critical habitat, over and above the original listing, is that it creates a presumption that modification of the land will "take" members of the species. The Service is obliged to calculate the impact of deterring landowners' use of their lands. If any economic use of the land is prevented, the Service is liable to compensate the private landowner for losses.

Our Response: Under federal law, while critical habitat may provide information to help a landowner identify where take through habitat modification may occur, the take prohibition applies whether or not critical habitat has actually been designated. The Act defines "take" to include "harm." 16 U.S.C. 1532 (19). "Harm is defined by regulation to include significant habitat modification or degradation where it actually kills or injures wildlife. 50 CFR 17.3. However, just because an action occurs in critical habitat would not demonstrate a take violation; the action must actually kill or injure the species. Take of a listed wildlife species may occur inside or outside of critical habitat if it causes death or injury to the species.

(19) *Comment:* A cost benefit and economic analysis pursuant to Executive Order 12866 is required because the DEA indicates that there may be an annual effect on the economy of over $100 million per year.

Our Response: While the DEA estimated potential costs greater than $100 million, this was based on the proposed critical habitat acreage of approximately 1,697 ha (4,193 ac). The final economic analysis evaluated the revised acreage of 110 ha (272 ac) and concluded that costs did not exceed $100 million.

(20) *Comment:* Portions of Unit 2 and the eastern portion of Unit 1 are planned but not permitted for major resort development; the southern portion of Unit 1 is planned but not permitted for subdivision into over 50 "upscale" houselots; a portion of Unit 3 is planned and permitted for a future limestone and basalt quarry; the area surrounding the old Koloa sugar mill will be expanded into an industrial area; several water wells are located in Unit 1 and additional water wells are expected. This development will create residential and employment opportunities for over a thousand island residents. In view of their economic importance, these areas should be excluded from consideration.

Our Response: As indicated in the "Summary of Changes from the Proposed Rule" section, large portions of the proposed critical habitat Units 1 and 2 have been excluded in the final designation of critical habitat due to biological, rather than economic, considerations. Unit 3 has been completely removed from critical habitat designation for biological reasons, as well.

(21) *Comment:* The Eric A. Knudsen Trust is seeking to subdivide or otherwise participate in the development of at least 741 lots/resorts units on 202 acres of trust-controlled lands [Tax Map Keys (TMKs): (4) 2–8–015:082; (4) 2–8–013:01; (4) 2–8–014:01, 02, 03, 04, 19, 30 {in part}; (4) 2–8–09:09; (4) 2–8–011:01, 18, 20, 35]. Because critical habitat designation may impact these plans, the trust asks that the lands be excluded from designation. Certain Eric A. Knudsen Trust lands may not be suitable as critical habitat because of prior urban and resort development [TMKs: (4) 2–8–01421, 26], and the trust asks that these lands be excluded from designation.

Our Response: With the revised critical habitat boundaries, only two critical habitat units fall within the TMKs listed. Both units (unit 6 and 8) fall within TMK (4) 2–8–014:01. All other proposed areas were excluded from final critical habitat designation for biological reasons, as described in the "Summary of Changes from the Proposed Rule" section.

(22) *Comment:* The DEA acknowledges that the proposed critical habitat boundaries will change with the final designation; however, the process by which final boundary determinations are made is not clear. The lack of definitive boundaries under consideration makes it impossible for anyone commenting on the economic impacts to be precise.

Our Response: The proposed critical habitat units were described and depicted in the proposed rule (67 FR 14671), as were the methods and criteria used in determining the proposed areas. We have described our methods and criteria for designating final critical habitat boundaries within this final rule.

(23) *Comment:* The DEA fails to distinguish potential costs due to designation from costs due to listing the cave animals as endangered. Nowhere does the draft provide any analysis of what impacts, if any, designating critical habitat for the cave animals would impose above and beyond those associated with the species' listing. Because the draft economic analysis does not distinguish between these costs, it cannot exclude proposed critical habitat from a final critical habitat designation pursuant to section 4(b)(2).

Our Response: The court, as per *New Mexico Cattlegrowers Association* v. *U.S. Fish and Wildlife Service*, requires us to look at co-extensive costs (consideration of the impact of all section 7 effects that could be a result of the designation, even if they are the same as those that arise from the listing). This is the approach the economic analysis and addendum take. The Service recognizes that if an area is excluded under 4(b)(2), not all of the economic impacts may be avoided.

Issue 3: Economic Issues

(24) *Comment:* Elements of the economic analysis are based upon unsubstantiated and speculative development scenarios that greatly exceed foreseeable, sustainable growth for the Koloa/Po'ipu region as set by existing county zoning and State land use designations, as well as other legally-binding planning guidelines such as the Kaua'i County General Plan.

Our Response: The resort/residential development planned in Units 2 and 4 and the residential development planned in Unit 10 is consistent with the 2000 Kaua'i General Plan (General Plan), current State land use districts, and current county zoning. The resort/residential development planned in Units 6 and 8 requires minor modifications in the State land use districts and county zoning, but it is consistent with the General Plan. All of this development is likely to occur within the proposed critical habitat between 2003 and 2020 if no consideration is given to the indirect impacts of the intended designation.

The commercial development planned in Unit 10 is not in the General Plan and is not included in the State Urban District. As mentioned in the Indirect Costs section of the Addendum, this development may not occur for reasons unrelated to the intended designation. However, since the General Plan is updated every 10 years or so, the commercial development may be added to the General Plan before 2020. The property values used in the Addendum reflect the fact that the development is not fully entitled, but that the land has development potential.

Barring a hurricane or a major recession that disrupts tourism and resort/residential property sales, it is expected that, without the intended designation, all or nearly all of the planned development in the intended designation would occur by 2020.

(25) *Comment:* Most development can proceed with reasonable project modifications that will reduce or eliminate damage to the cave ecosystems, therefore the economic impacts are greatly overstated. The economic analysis indicates that $1.9 billion of development may occur in the region and that project modifications would cost $61.6 million. This represents 3.2 percent of the cost of development, not an unreasonable amount considering these species and their habitats are highly endangered. Another commenter stated that direct costs of consultation must actually be divided by the profits from the sales, rentals, jobs, *etc.*, produced by all the units of resort, residential, commercial and light industrial development which are likely to be built. Figured per saleable and rental unit and calculated over time, the cost is not likely to be as staggering as portrayed.

Our Response: The estimates of direct and indirect costs in the *Draft Economic Analysis of Proposed Critical Habitat Deisgnation for the Kaua'i Cave Wolf Spider and the Kaua'i Cave Amphipod, Island of Kaua'i, Hawai'i* (DEA) were revised based on new information from the Service, resulting in a reduction in these estimates. For the larger projects affected by the intended designation, the revised figures represent a small percentage of the total development costs and profits.

(26) *Comment:* Direct costs are summed with indirect costs to derive a total impact estimate. Yet, direct costs are associated with development put in place, while indirect costs are associated with development foregone. The benefits of the former should be offset against the costs of the latter, not summed. Also, direct cost estimates do not include multiplier effects of these expenditures, yet indirect costs do include multiplier effects. So we see the full impact of development foregone, but only partial impacts of development actually implemented.

Our Response: Since the DEA was published, the direct costs and indirect costs have been modified to reflect new information gained since the publication of the DEA and based on the intended critical habitat designation. Direct costs include expenditures, on section 7 consultations and project modifications for assumed development. Indirect costs include additional expenditures as well as lost income benefits associated with lost development. The direct and indirect costs are no longer summed; also, the direct costs are not benefits—they do not offset indirect costs.

Indirect costs that reflect the multiplier effects of lost development are no longer included in the analysis because they would be generated in any case; to the extent that development is displaced from the intended designation due to the implementation of section 7 for the cave animals, that development would still be expected to occur but in another location of Koloa outside the critical habitat. This is now expected because of the smaller area intended for designation.

(27) *Comment:* Total impact is based on a guess that between 25 percent (low) and 50 percent (high) of all proposed development will not proceed due to habitat restrictions. [Sec 4.c] Also, Table VI–3 indicates that the "Low Projection" actually assumes a 33 percent loss, not 25 percent as claimed in the text (pg. VI–57). Thus, the "Low" impact should be 25 percent lower than reported, or about $330 million in Net Present Value terms.

Our Response: Due to the Service's intended modifications to the critical habitat designation, the cost estimates presented have been revised. In particular, the indirect impacts on remaining parcels are considered on a

parcel-by-parcel basis whereby the change in the likelihood of development, if any, associated with the intended designation is identified. The costs associated with these impacts are presented in the Indirect Costs section of the Addendum.

(28) *Comment:* The State of Hawaii Department of Business, Economic Development and Tourism (DBEDT) population and tourism growth projections were used for this study. These estimates are higher than the 2000 Kaua'i's General Plan projections. DBEDT's projections are controversial and contested.

Our Response: The DBEDT projections are presented in Table II–1 of the DEA, although both the DBEDT and General Plan projections are discussed in Chapter II of the DEA. The General Plan projections and information from developers are used to determine the amount of development that is planned in the intended critical habitat designation.

While the DBEDT projections are used in comparisons of lost economic activity to projected island-wide economic activity in the DEA, neither the DBEDT projections nor the General Plan projections are directly used in the calculation of updated cost estimates presented in the Addendum.

(29) *Comment:* It is erroneous to assume hotel and resort development displaced at Po'ipu is not likely to be replaced by equivalent projects elsewhere on Kauai. (V–57). In fact, there is island-wide competition for the resort market, and new areas such as Kapalawai have received Kauais General Plan resort designation. Also, visitor accommodations on Kauai are diversified with significant uncounted numbers of people staying in vacation rental homes, bed and breakfasts and camping outside of planned visitor destination areas. According to the Kauai General Plan analysis, the total number of resort and residential units already permitted, as opposed to those desired, is 5,836. (Appendices, Tables C and D). If the density allotted to Kukui'ula is cut in half, that total number is 4,036. Taking the HIGH number of baseline development (2,253, which includes not permitted units desired by Grove Farm), it appears that there must be 1,783 permitted units *outside* of the proposed critical habitat area. Future growth opportunities in Koloa, not requiring cave species mitigation construction, do exist in both the resort and residential categories. Growth opportunities in the Koloa area are not foreclosed by habitat designation.

Our Response: As a result of the Service's intended modifications to critical habitat, the DEA's estimates of loss of resort/residential development in the Po'ipu area and reduction in the amount of islandwide development no longer reflect the impacts associated with the intended designation. As discussed in the Indirect Costs section of the Addendum, even if some of the development planned in critical habitat does not take place, it is assumed that other development projects in the Koloa/Po'ipu area will be able to be increased in density or area to satisfy unmet demand for residential or resort/residential development.

(30) *Comment:* The costs of public support of residential and tourism development is not adequately identified or calculated. These costs should be considered avoided costs for reductions in growth. Among the missing estimates for the taxpayers "growth subsidies" are the following: (1) Public expenditures for more schools or expansion of existing schools, including teachers, staff and administrators; for police, fire, ambulance, lifeguard personnel and equipment; solid waste; recycling; governmental administrative services; etc. Public subsidies of each unit of residential and of tourism development are substantial; (2) Most of these costs, as well as those for water, sewage, and roads (which the study states will not be affected by habitat designation and do require consultations etc.), are increased when development is sprawling rather than contiguous. Development of Maha'ulepu and the Sugar Mill area would leap beyond current developed areas; (3) Another avoided cost would be the cost to attain permits for projects and project design costs, *etc.* To get permits needed to develop, Grove Farm has previously estimated costs of over $5 million, higher than numbers in the study.

Our Response: As discussed in the Indirect Costs section of the Addendum, a reduction in islandwide development attributable to the intended designation is no longer anticipated. Similarly, it is assumed there will be no impacts to the Maha'ulepu development since the areas planned for development are no longer in critical habitat. As such, any avoided public-support costs for reductions in development are not anticipated.

(31) *Comment:* Table ES–1 appears to present both the low and high ends of the economic impacts estimated, implying that the low-end value reflects the likely least cost that critical habitat designation would impose. In fact, review of the DEA reveals that the "low" value represents the low end of the possible worst-case scenario, not the low end of all likely scenarios.

Our Response: The impact estimates have been revised in the Addendum to include expected impacts for a number of possible scenarios and the Service's intended modifications to critical habitat. As such, the high and low estimates in Table Add-3 represent the range of reasonably foreseeable direct costs associated with section 7 implementation for the cave animals and the indirect costs associated with the intended designation.

(32) *Comment:* The DEA fails to recognize that the costs to investigate the implications of critical habitat are sunk costs associated with the designation process, not additional costs that final designations would impose. Any concerned party investigating the proposed designation of critical habitat on their lands have already hired their lawyers and consultants, and incurred the costs associated with figuring out the implications of designation on their lands. Even were the private landowners' lands ultimately excluded from the final critical habitat designation, the landowners would still not recoup those costs; the money has already been spent. These costs should not be included in the analysis of future potential costs from designation since they have already been incurred and were incurred regardless of the final designation decision.

Our Response: For completeness, estimated expenditures by landowners to investigate the implications of the proposed critical habitat were included in the DEA and Addendum, even if the funds have already been expended and are not recoverable. In estimating costs, a distinction is not made between the designation process and the final designation.

(33) *Comment:* Project modification costs are underestimated, particularly the cascading effect of project realignment with the purpose of avoiding critical habitat. Also, the costs of avoiding subsurface impacts to sewer lines, buried cables, *etc.*, in addition to roads, is underestimated.

Our Response: The project modification cost estimates take into account a variety of projects, locations, and contingencies, and are based on (1) discussions with the Service and construction contractors, and (2) an examination of the historical record of project modifications regarding the cave animals. The one historical case of a road realignment due to the cave animals involved the Koloa Bypass Road. In this case, the realignment was minor and was completed quickly at relatively low cost. The Service indicates that if a realignment is too costly for a particular project, other alternatives are possible. These include using post-tension concrete to bridge caves and mesocaverns, or placing sewer lines and cables above ground. If none of these options is economically or technically feasible, the Service indicates that a portion of a cave could be sealed off and filled in, as long as precautions are taken to minimize the impact to any cave animals that may be present. The costs associated with these various scenarios are considered in the project modification cost calculations in the Addendum.

In situations where development is displaced because of critical habitat, the cascading effect of project realignment is taken into account (*e.g.*, a school planned for a location in critical habitat would be relocated to an area planned for residential development, thereby resulting in a loss of planned housing).

(34) *Comment:* The DEA only partially considers the "indirect impacts" of critical habitat designation, and instead focuses on "direct impacts" due primarily to consultations under section 7 of the Act. Due to precedent set by *New Mexico Cattle Growers*, the Service must fully consider both types of impacts, and the DEA must present a thorough analysis of these economic effects. Another commenter stated that the DEA overemphasizes the direct costs attributable to critical habitat designation, which are relatively minor, and ignores or omits many indirect impacts, such as: Impacts to housing supply, especially affordable housing required by State and local governments as permit conditions associated with development of "market-priced" housing, upscale housing, and resort development; impacts to public infrastructure such as schools, parks, and roads, and decreases in public revenues as a result of reduced economic activity; disproportionate impacts to specific ethnic groups, and other social impacts.

Our Response: Both direct and indirect impacts are analyzed in Chapter VI and in the Addendum, and both are summarized in Table Add-2.

Regarding affordable housing, schools, parks and roads, the developers are obligated to provide them regardless of critical habitat. But if they cannot build them in critical habitat, then they could be moved elsewhere within a project site, displacing market housing or other project components. This displacement was assumed in analyzing the economic impacts of the section 7 implementation for the cave animals.

As discussed in the Indirect Costs section of the Addendum and in responses to other comments, a reduction in islandwide development attributable to the intended designation is no longer anticipated. As such, any changes in the public revenues associated with reduced economic activity are expected to be minimal.

No disproportionate economic or social impacts on specific ethnic groups were identified.

(35) *Comment:* The DEA acknowledges that some or all lands designated as critical habitat may be redistricted/rezoned at the State or county level to preclude further development, and the actual economic costs of redistricting could be very high ($1.54 billion to $3.1 billion). These estimates are mentioned in the text but not in the summaries of the economic impacts.

Our Response: Due to the Service's intended modifications to critical habitat, economic impacts on the order of $1.54 billion to $3.1 billion are no longer anticipated. The Indirect Costs section of the Addendum considers the potential indirect impact of the intended designation on each parcel in the intended designation to determine an estimate of development impacts (including any associated with potential redistricting, as applicable).

(36) *Comment:* The DEA does not account for investments and other expenditures already made on lands with the expectation that rezoning and redistricting will allow future development and hence a return on investment, nor does it account for the potential lost recapture of investment yields that may be foregone due to lost development potential for lands that have successfully been rezoned and permitted for development at a very high cost.

Our Response: The Indirect Costs section of the Addendum presents an estimate of the loss in property values due to the cave animals listing and critical habitat designation. The property values used in the analysis reflect the current market value of the land, which consists of real returns from existing uses and improvements as well as any anticipated improvements or uses.

(37) *Comment:* The DEA fails to consider the more restrictive Habitat Conservation Plan (HCP) guidelines under the Hawaii Endangered Species Law (HRS 195D–4, HRS 195D–21) which require that the State HCP permittee show a net benefit to the species. The DEA fails to analyze impacts due to the circumstance in which a landowner qualifies for a Federal HCP but is unable to obtain a State HCP.

Our Response: None of the landowners and developers remaining in the intended designation are anticipated to seek an HCP as a result of critical habitat designation. Section 4 of the Addendum discusses the indirect impacts of the intended designation in greater detail.

(38) *Comment:* The narrative exclusion of areas underlying currently developed areas such as buildings and driveways ("unmapped holes") is too vague considering the cryptic nature of the organisms and their habitats. The DEA fails to fully consider the economic impacts of landowners costs to properly demarcate "unmapped holes" in the process of obtaining necessary permits for development projects.

Our Response: The intended critical habitat designation contains few unmapped holes or developed areas. The costs to landowners to demarcate these sites is expected to be minimal.

(39) *Comment:* The DEA does not take into account the loss of income by Jas W. Glover Ltd., the operators of the quarry. The DEA should use a figure of $31–35/ton for shipping of limestone to Kauai, not the $13 to $16 per ton due to costs of wharfage fees loading and unloading costs, trucking, insurance, and other costs. In addition, the loss of quarry materials will have impacts throughout the construction industry on Kauai. Another commenter stated the siting of an additional quarry in the area is no longer necessary because market conditions have changed and products produced by the expanded quarry are not needed by the local economy. Another commenter stated that the operator of the quarry on Grove Farm lands (Jas W. Glover Ltd.) is a small entity, and it is woman-owned and Native Hawiian-owned. Because this firm is one of only two aggregate producers on the island the impacts to this economic sector should be considered under "Impacts to Small Entities."

Our Response: The site planned for the future expansion of the limestone quarry is no longer included in the intended critical habitat designation, so the associated direct costs, indirect costs, and impacts to small entities attributable to the intended designation are zero.

(40) *Comment:* The DEA incorrectly lists Kobayashi Group LLC as the owner of Kiahuna Golf Course and surrounding lands. The golf course (225.063 acres) is owned by Kiahuna Golf Club, LLC; the adjacent lands (95.412 acres) are owned by KG Kauai Development, LLC. These are distinct entities and not subsidiaries

of Kobayashi Group LLC, although there are common elements of ownership between various individuals. Kiahuna Golf Club, LLC, and KG Kau'i Development, LLC believe they qualify as small businesses. Because the DEA indicates that there will be substantial adverse impacts on small landowners such as KG Kaua'i Development, LLC and Kiahuna Golf Club, LLC there should be a Regulatory Flexibility Analysis performed on the designation of critical habitat.

Our Response: The Addendum lists KG Kaua'i Development, LLC (KGKD) as the owner of the land that is planned for the Kiahuna Golf Village Expansion and the Kiahuna Golf Course Expansion. No impacts are anticipated for the continued operation of the existing Kiahuna Golf Course by Kiahuna Golf Club, LLC.

RFA/SBREFA regulations state that the Small Business Administration (SBA) counts the receipts or employees of the business whose size is at issue and those of all its affiliates in determining the business' size. Businesses are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another business, and contractual relationships, in determining whether affiliation exists. Finally, RFA/SBREFA regulations state that a firm will not be treated as a separate business concern if a substantial portion of its assets and/or liabilities are the same as those of a predecessor entity. In such a case, the annual receipts and employees of the predecessor will be taken into account in determining size (13 CFR part 121).

KGKD states that it is affiliated with Kobayashi Group LLC through common ownership by certain individuals. In addition, KGKD was recently established by the Kobayashi Group LLC for the purpose of acquiring the properties surrounding the golf course. As such, Kobayashi may be considered a predecessor entity of KGKD. Due to its affiliation with Kobayashi Group LLC, KGKD is not considered separately in the RFA/SBREFA analysis in the Addendum.

(41) *Comment:* The level of effort to document and analyze the potential economic impacts resulting from critical habitat designation greatly exceeded the level of effort to document and analyze potential economic benefits due to designation, resulting in an unbalanced overestimation of detrimental economic impacts, and an unfair underestimation of economic benefits due to designation of critical habitat.

Our Response: See response to comment 42 below.

(42) *Comment:* The benefits of species protection are overstated and speculative. The DEA does not present the expected circumstances or timeline for delisting the species, nor is there a quantifiable estimate of the economic benefits of delisting. In addition, one commenter states the species themselves have no economic value; any estimate of economic benefit derived from not fully developing lands proposed for critical habitat are speculative and unquantifiable.

Our Response: This responds to comments 41 and 42 above: Even though the material presented in the DEA and in the Addendum regarding benefits is not as extensive as the material on costs, this does not result in overestimated costs and underestimated benefits. The less extensive analysis of the benefits is due to (1) a lack of scientific studies on environmental and biological changes that would be attributable to the section 7 implementation for the cave animals, and (2) the lack of existing economic studies on the economic value of these changes. However, the Addendum presents an expanded discussion of benefits, including the estimated value of retaining land in open space due to critical habitat.

The expected circumstances and the potential timeline of delisting the cave animals will be presented in the Service's final recovery plan for the cave animals. The DEA does discuss the reduced costs due to successful preservation and the existence value of the cave animals in the Benefits section of Chapter VI; however, these benefits are not quantified given the lack of information as described above.

(43) *Comment:* Based on 6,000 acres of undeveloped land bounded by Haupu ridge, and using pro rata estimates of ecological values from a University of Hawaii study of the value of the Koolau Range on Oahu (*http://www2.hawaii.edu/~uhero/workingpaper/HawaiiEnviroEvaluation.pdf* Environmental Valuation and the Hawaiian Economy, by Brooks Kaiser, Nancy Krause, and Jim Roumasset), the Koloa/Poipu viewscape is worth $29 million per year (at $0.23 per acre per household for Kauai's 21,000 households). Over 18 years (comparable to FWS estimates), this sums to $521 million. The annual stream of benefits from the conservation district is $10.1 million annually (at $1,690 per acre), summing to another $182.5 million on a comparable basis. The net present value of the undeveloped land is $456.9 million (at the UH lower estimate of $76,146 per acre). Degradation scenarios combining urban creep, invasive species, and human/animal disruption resulting in recharge loss could cost another $3.6 million annually (at $600 per acre), or a total of $65 million. That is only a start at estimating the ecological benefits and savings associated with preserving this undeveloped land, and we are at $1.225 billion already.

Our Response: The suggested benefits analysis would yield inaccurate results for several reasons. First, the proposed critical habitat for the cave animals as described in the proposed rule covers 4,193 acres. Since the publication of the proposed rule, the Service has identified several areas of the proposed critical habitat that it intends to remove for biological reasons, which would reduce the critical habitat to 272 acres. Basing the benefits analysis on 6,000 acres would overstate the economic benefits attributable to the implementation of section 7 for the cave animals.

Second, the commenter uses an incorrect value of open space. As stated in the University of Hawaii study, a recent survey found that Oahu residents are willing to pay $0.0023 per acre (0.23 cent per acre) for the preservation of open agricultural land on O'ahu. The commenter's use of $0.23 (23 cents) per acre overstates the benefits associated with open space by a factor of 100. The Benefits section of the Addendum uses the 0.23 cent per acre figure, corrected for (1) inflation; (2) the income levels on Kauai; and (3) the amount of existing open space on Kauai compared to Oahu. To calculate the value of additional open space, the corrected figure is then applied to the amount of land that may no longer be developed due to critical habitat.

Third, the University of Hawa'i (UH) study on the Koolau Range on Oahu focuses on the economic benefits provided by a mountainous region covered by dense forests and many native Hawaiian plants. The proposed critical habitat is in a gradually sloping and relatively dry area that contains many nonnative plant species. Since the ecosystems of these two areas are vastly different, the ecosystem services provided by these areas will also be different. As such, the economic valuation of the ecosystem services provided by the Koolau Mountains is generally not transferrable to the proposed or intended critical habitat. For example, the value of water recharge in the UH study reflects projected water supply and demand conditions on Oahu—an island which is nine percent larger than Kauai but has a population of more than twelve times that of Kauai. Furthermore, neither the proposed nor the intended designation is in an area of high rainfall. Also, the UH benefit analysis of reducing soil runoff is unique to three valleys that drain through partially channelized streams in urban areas into the manmade Ala Wai Canal. Since this canal was designed with inadequate flushing from stream or ocean currents, it functions as an unintended settling basin so must be dredged periodically. The proposed critical habitat drains into a portion of the ocean that has strong currents and adequate flushing. And unlike the Koolaus, none of the proposed critical habitat contains streams and aquatic life, and none of the units are suitable for hunting wild pigs.

Finally, the commenter's summation of benefits to $1.225 billion is flawed due to double-counting. For example, the $1,690 per acre figure in the UH study includes the benefits of open space. So adding the estimated open space benefit of $521 million to the ecosystem services estimate of $182.5 million double-counts the benefits of open space. Similarly, the two per-acre figures taken from the UH study ($1,690 per acre and $76,146 per acre) are two different measures of the same ecosystem benefits. The first figure refers to the annual stream of benefits, while the second figure refers to the net present value. Multiplying both of these figures by 6,000 acres and adding them together clearly double-counts the ecosystem benefits.

(44) *Comment:* Assigning an economic value to preservation of ecosystem functions that may result from the designation of critical habitat (such as groundwater recharge, protection of coastal marine waters and fisheries, and other ecosystem services) is now an acceptable method of economic analysis. The dollar value of these services is high. However, this analysis was done in a qualitative, narrative manner in the draft economic analysis. Why was it not done quantitatively?

Our Response: Quantitative estimates of the economic benefits of the listed ecosystem services provided by critical habitat are not presented in the DEA or in the Addendum because studies estimating the change in the ecosystem associated with critical habitat designation and the value of that change are not available.

However, such benefits are likely to be small. For example, the proposed critical habitat is near the coast in an area of low rainfall, and thus contributes little to groundwater recharge.

The reduction of development and grazing in critical habitat could reduce soil runoff thereby protecting the coastal marine waters and fisheries off the south shore of Kauai. However, as mentioned in the DEA, this benefit is likely to be small because the affected marine ecosystem has already been altered by over 150 years of sugarcane cultivation in the area. Also, Koloa has an open coastline that is exposed to surf and strong ocean currents that continually flush the near-shore environment. Finally, any displaced development is likely to occur elsewhere in Koloa. Thus, the net environmental benefit to Kauai is likely to be small.

Additional environmental benefits, such as the preservation of open space, changes to traffic congestion, and the promotion of native plants, are discussed in the Benefits section of Chapter VI in the DEA and in the Addendum.

(45) *Comment:* There was no attempt to quantify the value of open space (parks, preserves, even golf courses) surrounding real estate. Such increased property values are acknowledged, but there was no attempt to estimate the corresponding increases in property values. Understanding of this principle is a large driver in the DMB Development Company's decision to halve the density of their joint project with A&B at Kukuiula.

Our Response: The Indirect Costs section of the Addendum discusses the possibility that the land planned for development in certain critical habitat units will remain open as a result of the intended designation. If this land is managed as a park or preserve, it could increase the selling values of the home lots that are directly adjacent to critical habitat. An estimate of the number of homes or lots adjacent to the critical habitat units, as well as the potential increase in selling values, is discussed for critical habitat Units 2, 6, and 8.

(46) *Comment:* Development in the Koloa/Poipu area is already progressing at unsustainable levels, and future traffic, emergency services, and possibly water supply are sources of uncertainty. It is good that the critical habitat designation places additional mechanisms to undertake reasonable slow-growth planning for the region. Also, some tourists prefer less developed areas. The potential loss of revenues due to people seeking less overbuilt resort area would be conjectural, but no more so than the assumption that critical habitat designation for cave species will reduce the number of visitors to Kauai.

Our Response: With the intended reduction in critical habitat, it is now assumed that any loss in development due to the intended designation will be replaced by development elsewhere in Koloa (see the Indirect Costs section of the Addendum). Thus, critical habitat designation for the cave animals, as intended by the Service, is expected to result in little or no change to future traffic, emergency services, water requirements, etc.

(47) *Comment:* Portions of Unit 2 and the eastern portion of Unit 1 are planned but not permitted for major resort development; the southern portion of Unit 1 is planned but not permitted for subdivision into over 50 "upscale" houselots; a portion of Unit 3 is planned and permitted for a future limestone and basalt quarry; the area surrounding the old Koloa sugar mill will be expanded into an industrial area; several water wells are located in Unit 1 and additional water wells are expected. This development will create residential and employment opportunities for over a thousand island residents.

Our Response: Most of the development projects and associated water well projects mentioned by the commenter are no longer in the intended critical habitat designation.

Summary of Changes From the Proposed Rule

Based on a review of public comments received on critical habitat, we have reevaluated our proposed designations and included several changes to the final designations of critical habitat. No specific information on habitat conditions or species occurrence was provided. At the time of the publication of the proposed rule, we were aware of only six known cave locations where the animals occurred and did not know the precise locations of other caves with suitable habitat. In addition, in the proposed rule, we acknowledged two theories with regard to intercave dispersal corridors (67 FR 14673 and 67 FR 14674). One theory is that very limited, if any dispersal was occurring between the cave systems, and the other that dispersal corridors needed to be protected if these species are to be conserved. Because of the limited verified occupied areas and the absence of other known suitable cave locations, we believed it necessary to include areas in the proposal that would provide for intercave dispersal corridors. In the absence of more specific data, we proposed those areas that were most likely to contain the primary constituent elements based on the best available information at the

time. In our request for peer review and public comments on the proposed rule, we asked for specific information on the number and/or distribution of both animals and what areas were essential for the conservation of the species.

During the comment periods on the proposed rule, a significant amount of specific information was received on the presence or absence of primary constituent elements, verified occupied cave locations, and other locations of suitable caves. No additional information was provided on either the location or importance of intercave dispersal corridors. Although our peer review confirmed the importance of protecting caves and surrounding mesocaverns for local dispersal, there was no consensus or scientific clarity provided on intercave dispersal corridors.

We only designate areas as final critical habitat if they contain the physical and biological features essential to the conservation of the species, and if unoccupied, they are essential to the conservation of the species. In the case of the intercave dispersal corridors, we suspect connectivity may be important, but we do not know where they are, to what degree they are used, or how to map these corridors to be consistent with the legal requirements in designating critical habitat. Therefore, we have not included such areas in the final rule.

Based on a review of the public comments received on the proposed critical habitat, we have reevaluated our proposed designations and included several changes to the final designations of critical habitat. These changes include the following:

(1) The final designation went from three proposed units encompassing an area of approximately 1,697 ha (4,193 ac) to 14 units encompassing a total of 110 ha (272 ac).

(2) We received new information on the presence of the Kauai cave wolf spider in two caves in the Koloa region and updated their verified occurrence from four caves to six caves.

(3) We received information indicating we missed a cave from which the Kauai cave amphipod was previously recorded and updated their verified occurrence from six caves to seven caves.

(4) We received information from a survey conducted by Dr. Frank Howarth which identified areas required to maintain the persistence of both animals on Alexander and Baldwin property. The information contained numbers of caves discovered and the amount of areas surrounding them to incorporate sufficient protection and inclusion of mesocaverns connected to the caves. Areas not identified in Dr. Howarth's survey were excluded from the designation. This information also assisted us in refining the amount of needed habitat surrounding other caves.

(5) We received substantial data from various parties such as drilling records, photographs, archeological surveys, and biological surveys indicating the lack of primary constituent elements in certain portions of proposed critical habitat. These data provided information as to the current depths of dirt, clay, and other soils. Soil deposits greater than a foot deep begin to degrade and fill the meoscaverns and caves necessary for the cave animals' survival and indicate a lack of the primary constituent elements, or at a minimum the primary constituent elements are likely to be severely degraded (Dr. F. Howarth, pers. comm., 2002). These areas have been removed from the designation.

(6) We received additional information from Dr. Frank Howarth on areas of higher quality habitat with a high likelihood of containing occupied caves on Grove Farm property and a Civil Defense map indicating a large cave previously used as a fall-out shelter. These areas have been mapped and retained in the designation.

(7) We received information from various parties on surveys done on their properties indicating the likelihood of suitable cave habitat. Areas found to have a low likelihood of suitability have been removed from the designation.

(8) We made revisions to the unit boundaries based on information supplied by commenters, as well as information gained from field visits to some of the sites, that indicated that the primary constituent elements were not present in certain portions of the proposed unit, that certain changes in land use had occurred on lands within the proposed critical habitat that would preclude those areas from supporting the primary constituent elements, or that the areas may not be essential to the conservation of the species in question.

This final critical habitat designation addresses the conservation of the species by protecting a number of discrete cave systems (*i.e.*, eight caves occupied by one or both species and associated mesocaverns, six caves where occupancy status is unknown with associated mesocaverns, and three areas containing higher quality habitat likely to be occupied by one or both species) that represent a widely distributed pattern throughout the highest quality habitat in the Koloa Basin. Designating only the known occupied caves themselves would only provide extremely small areas with several of the caves in close proximity to one another. A designation such as this would leave the species vulnerable to extinction due to a single catastrophic event and therefore not provide for the conservation of the species. As previously discussed in this rule under "Adaptations of troglobitic animals," given the great vulnerability of these species to desiccation, adjacent mesocavern habitats that contain appropriate microclimate conditions will provide habitat or serve as refugia for both animals when conditions in the main cave passages become drier or otherwise less accommodating. It is within these mesocaverns where it is likely that the majority of their time is spent. Therefore, designating surrounding mesocaverns incorporates the area where the majority of the animals are likely to occur and provides for refugia from fluctuating conditions in caves which makes them essential to the conservation of the species. The remaining areas designated where occupancy by either species has not been verified are essential to the conservation of the species for the following reasons. The areas chosen, are known to contain caves or mesocaverns where the animals are most likely to occur. The designated spatter cones are the type of volcanic formations that produce rock with mesocaverns and likely produce cave structures as well. If animals do no currently occupy these areas, if dispersal is occurring, it can allow for areas for the species to disperse into, and if dispersal is not occurring, it can allow for reintroduction. These areas are deemed essential to the conservation of the species because they provide for a widely distributed pattern throughout the highest quality habitat available in the Koloa Basin. This wide distribution will protect the species from extinction from a single catastrophic event and therefore is essential to the conservation of the species. If new and additional scientific information shows that these areas are not essential, the critical habitat designation can then be revised.

Intervening areas between identified units of critical habitat may still be important to the recovery of the species although at this time we do not have information to identify them as essential to the conservation of the species. However, because either animal may be present at any given time in these intervening areas with suitable habitat, section 7 consultation requirements to ensure Federal actions are not likely to jeopardize the species and section 9 prohibitions, which preclude the unauthorized taking of listed animals, may apply.

Absent any scientific data on the issue of intercave dispersal corridors, we applied a basic conservation strategy that protects all of the known cave locations and surrounding mesocaverns and identified high quality habitat where the animals are most likely to be found in a pattern that maximizes distribution across the basin. This wide distribution of cave systems should provide for the long term conservation of these two species if they are adequately protected and managed by reducing the vulnerability to diseases and other catastrophic events.

We are currently working on a draft recovery plan for the cave animals which will identify the need for genetic studies to determine the relationships between animals in verified occupied caves and continued study into ways to determine the importance and location of intercave dispersal corridors. In the event that new information is made available and indicates the necessity, we will consider amending the critical habitat designation.

A brief summary of the modifications made to each unit is given below.

Former Unit 1 Waikomo—subunit 1a

This unit has been redesignated into 13 separate units. All of Alexander and Baldwin property has been surveyed by Dr. Frank Howarth, the recognized expert on Hawaiian caves. Along with data that a significant portion of their land has been dynamited and therefore highly unlikely to contain the primary constituent elements, Dr. Howarth has indicated where the primary cave habitats are and the surrounding buffer area (61 m) (200 ft) necessary to maintain the species in this area. Units 1, 2, and 3 represent the areas identified by Dr. Howarth. All other areas surveyed either do not contain the primary constituent elements or are not believed to be necessary to the conservation of the species because they were not identified by Dr. Howarth as necessary to maintain the species in the area and have been removed from the designation.

Areas above the Old Railroad Grade have been surveyed and the caves found to contain these animal species have been retained in the designation. Service biologists have mapped these caves.

The southern cave found in this area is one of the caves where the spider's occurrence has been verified. This cave and a 61 m (200 ft) buffer area to capture the surrounding mesocaverns to provide for a protective area from the development that may occur outside the buffer area comprise Unit 4.

The northern cave which occurs on the Kiahuna golf course has been gated, informational signs have been posted, and the area above the cave has been planted with native vegetation that is likely to provide food for the Kauai cave amphipod. This cave was mapped and a 30 m (100 ft) buffer placed around to capture the mesocaverns surrounding the cave. The golf course has been fully developed, therefore an additional buffer to protect against additional development is not believed to be necessary. The cave located within the golf course and the buffer area comprise Unit 5.

Additional information was provided indicating large soil deposits on the southern end of the property owned by Kiahuna Golf Club, LLC and KG Kauai Development LLC. In addition, archaeological information was provided indicating a large portion of the property was once used as fish ponds and terraced agricultural fields that were routinely left flooded. The use of land in this manner is likely to have caused a buildup of silt and other deposits that would either eliminate any primary constituent elements or degrade them. Therefore, these areas have been removed from the designation.

Drilling information obtained near areas proposed on the south side of Poipu Road near Koloa Landing and Poipu Beach Park indicate large deposits of sand and therefore no appropriate primary constituent elements. It is unlikely that the three small areas proposed south of Poipu Road, which likely contain similar deposits, contain the primary constituent elements. In addition, drilling information provided just north of Poipu Road, next to Poipu Village Shopping Center indicate a settling basin where large deposits of silt, clay, and soil have accumulated, indicating a lack of primary constituent elements. These areas have been removed from the designation.

Information obtained on the area north of the private road above Alexander and Baldwin property and east of Waikomo Stream indicates that far more homes and other structures have been built than previously believed. It is unlikely that primary constituent elements will be found in this area, and therefore it has been removed from the designation.

Additional information provided by the Eric Knudsen Trust shows two caves located within their property. These caves were identified during an archeological survey. Because the caves have not been surveyed by anyone familiar with the Kauai cave animals, we do not know whether they are occupied by either species. However, given that many of the caves found in the same area contain the animals, if all the primary constituent elements are present, it is highly likely that the animals will be present in these caves. Therefore, the area mapped for these caves including a 61 m (200 ft) buffer around them to include surrounding mesocaverns and protection from potential development are included in this designation as Units 6 and 8. Other archaeological finds indicate an extensive irrigation system, and it is likely that the rest of Eric Knudsen Trust property was used as terraced agricultural land that would have been routinely flooded. The use of land in this manner is likely to have caused a buildup of silt and other deposits that would either eliminate any primary constituent elements or degrade them. These areas have been deemed not essential to the conservation of the species and removed from the designation.

Unit 7 comprises an area that has not been surveyed recently, but the cave located on the property had a verified occurrence of the Kauai cave amphipod. The property is owned by the Roman Catholic Church, and no new information was provided on it. Since we did not have information on the exact location of the cave, we viewed satellite imagery and designated the area where the cave is most likely located. If new information on the exact location of the cave is gathered in the future, we will consider it in possible future revisions of this rule.

The Koloa bypass cave which is now a park and has a verified occurrence of the Kauai cave amphipod has been retained in the designation as Unit 9. This cave is completely surrounded by previously disturbed areas. The area above the cave was planted with plants to provide food for the Kauai cave amphipod and the entrance sealed over to prevent human intrusion. This unit comprises the open field of the park, which incorporates the cave and mesocaverns surrounding the cave.

Unit 10 includes the area containing the cave indicated on the civil defense map. The civil defense map does not outline the extent of the cave, but gives a general location. The entrance to the cave has also been sealed making it difficult to locate its exact location. This unit also includes the surrounding areas containing mesocaverns. In addition, further refinement was made by reviewing drilling records provided during the comment period. These records showed large deposits of clay

north of Mahaulepu Road, along Kaluahono Road, and below Waita Reservoir. These areas are unlikely to contain the primary constituent elements and have been removed from the designation.

Site visits by Service biologists and Dr. Frank Howarth were made in the remaining areas of proposed Unit 1a. Units 11 and 12 represent Puu Wanawana and Puu Hunihuni, areas that are most likely to contain suitable cave habitat where animals are likely to be present. Both are spatter cones which are volcanic formations that are comprised of exposed barren rock that contain mesocaverns, limited soil deposits, and limited prior disturbance, and are likely to contain larger voids or caves. Information was provided by consultants hired by Grove Farm who were able to further investigate the area and have indicated it is the place most likely to be occupied by either species. Since we do not know of an exact cave location, the entire area of barren rock has been included in the designation. Areas surrounding the barren rock are less likely to contain the primary constituent elements and were deemed not essential to the conservation of either species. Puu Hi Reservoir is less likely to contain suitable habitat since these areas have a greater build up of soil and water does not seem to percolate through the rock, suggesting a lack of unfilled mesocaverns and caves (Dr. F. Howarth, pers. comm., 2002).

Unit 13 incorporates the limestone cave with verified occurrences of the Kauai cave amphipod. A recent visit to the cave by Service biologist Gordon Smith, Dr. Frank Howarth, and Grove Farm consultants Dr. Steven Carothers and Kemble White verified the presence of the Kauai cave wolf spider in the cave (G. Smith *in litt.*, 2002). This record is the first of the Kauai cave wolf spider occurring in limestone caves. Although the cave has been extensively surveyed, the remaining limestone bearing rock has not been surveyed. Dr. Howarth did look at the area near Makawehi and indicated that the area north of the limestone bench, outside of the conservation zoned area, was not likely to contain the primary constituent elements as little barren rock was seen and the soil layer appeared to be significant. Unit 13 incorporates the limestone cave with verified occurrences of both the Kauai cave wolf spider and the Kauai cave amphipod as well as adjoining limestone bench area that is most likely to contain suitable habitat. All other surrounding areas were deemed not essential to the conservation of either species.

Former Unit 1 Waikomo—subunit 1b

No new information specific to proposed Unit 1b was provided during the comment period. However, when this was evaluated in light of the information provided on the proposed rule, this unit was found to be of lower quality habitat due to its small size and greater isolation from occupied areas, and because of the identification of suitable caves and likely higher quality habitat in other areas, this unit was deemed not essential to the conservation of either species.

Former Unit 2—Haula

Additional information was provided in and adjacent to Unit 2 in the form of survey information indicating a lack of primary constituent elements in parts of the unit. Areas less likely to contain the appropriate habitat were excluded and the remaining area is included in the designation. This unit lies only a short distance (approximately 350 m (1,100 ft)) from Unit 13 which is occupied, and it was likely once connected to that unit in the geologic past (Pleistocene Era) by deposits that have since eroded away or have been covered by unconsolidated sediments. The large size of appropriate habitat in this area is most likely to be able to sustain a population of either the Kauai cave amphipod or the Kauai cave spider. Information provided by Grove Farm confirms a large drainage system that empties into the limestone formation expected to provide the best type of habitat for the cave animals. Inclusion of this area with Units 1 through 13 provides a diverse geographic distribution that will increase the likelihood the species will survive stochastic or catastrophic impacts. This unit has been renamed Unit 14 of the designation and includes all the limestone bench area most likely to contain the primary constituent elements and therefore the animals themselves.

Former Unit 3—Puu Keke

Drilling logs were provided around and in the proposed Unit 3 which showed a mixture of limestone, rock, dirt, and mud. Based on the number of areas elsewhere verified to be occupied or found to be highly likely to contain the animals, this area was deemed not essential to the conservation of either species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation," as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "* * * the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." The relationship between a speciessurvival and its recovery has been a source of confusion to some in the past. We believe that a species' ability to recover depends on its ability to survive into the future when its recovery can be achieved; thus, the concepts of long-term survival and recovery are intricately linked. However, in the March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434) regarding a not prudent finding, the Court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

In order to be included in a critical habitat designation, the habitat or its physical or biological features must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known, using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we may not have sufficient information to identify all the areas essential for the conservation of the species or, alternatively, we may inadvertently include areas that later will be shown to be nonessential. Nevertheless, we are required to designate those areas we determine to be critical habitat, using the best information available to us.

Our regulations state that "The Secretary shall designate critical habitat outside the geographic areas presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from recovery plans, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

It is important to clearly understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the Act's 7(a)(2) jeopardy standard and section 9 prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of the Kauai cave wolf spider and the Kauai cave amphipod. This information included: peer-reviewed scientific publications, the final listing rule for the Kauai cave wolf spider and Kauai cave amphipod (65 FR 2348), the Hawaii Natural Heritage Program database, unpublished field data collected by Service biologists, and unpublished field notes and communications with other qualified biologists or experts, archeological surveys, drilling records, photographs, and published descriptions of the regional geology and soils (MacDonald *et. al.* 1960; Foote *et. al.* 1972), and the Recovery Outline for Two Cave Arthropods from Kauai, Hawaii (Service, 2000).

Section 3(5)(A)(ii) of the Act provides that areas outside the geographical area currently occupied by the species may meet the definition of critical habitat upon determination that they are essential for the conservation of these species. Although we do not know whether the entire area is currently occupied, to date all caves that have been surveyed within the Koloa basin that contain all of the primary constituent elements have contained the Kauai cave amphipod and/or cave wolf spider. Hence, where appropriate habitat occurs within the Koloa basin, we fully expect it will be occupied by one or both of these species. Surrounding areas of the known occupied caves that are comprised of cave-bearing rock also will likely contain occupied habitat.

The final rule listing the Kauai cave wolf spider and Kauai cave amphipod stressed that these animals were at increasing risk from "predation and competition for space, water, and nutrients by introduced, alien animals; biological and chemical pesticide control activities associated with residential and golf course development; and an increased likelihood of extinction from naturally occurring events due to the small number of remaining individuals and populations and their limited distribution" (65 FR 2348). Recovery may require augmentation or enhancement of suitable cave habitat and the surrounding mesocaverns.

The primary goal of this critical habitat designation effort is to identify and designate a sufficient amount of suitable habitat to provide for the conservation of these two species. The Service has been challenged in this effort by the lack of scientific information on the distribution of the species and their suitable cave habitat within the Koloa basin, and a lack of understanding of the physical and genetic relationship between populations located in the various cave systems that are scattered throughout the basin.

To address these questions, the Service requested and received information in response to the publication of the proposed critical habitat designation. This information, which is detailed in the Summary of Changes from the Proposed Rule, provided new data on the location of occupied cave systems and also indicated areas of relatively higher quality habitat that are more likely to be occupied by these species. This new information allowed us to refine an original proposal by more precisely identifying areas essential to the conservation of these species.

However, there are still significant gaps in our current understanding of these species and their habitat needs, especially concerning the degree to which individual cave systems are or are not connected to one another. We did not receive any additional information as to the extent of the importance of intercave dispersal corridors or any information that would allow us to identify where these corridors are specifically located. Absent this information, we are unable to designate as critical habitat any areas that may provide connectivity between cave systems. First of all, we do not have data to show that such connectivity is occurring and if it is, to what extent and what importance does it play in the continued existence of the

species. Second, we are not able to precisely identify, map, and designate the underground corridors that would provide this connectivity.

Therefore, this final critical habitat designation is based on what we are at this time able to identify as essential to the conservation of these two species: multiple cave systems (*i.e.*, eight caves occupied by one or both species, six unknown occupied caves, their associated mesocaverns, and three areas containing higher quality habitat likely to contain one or more occupied caves) known to be occupied or that have relatively higher quality habitat and most likely to be occupied, and that are located in a wide distributional pattern within the basin. As discussed below, this approach of multiple populations that are distributed throughout the basin provides the best protections against extinction of the species due to catastrophic events as well as the highest likelihood of long-term conservation of these species.

In determining critical habitat for these species, we started with lands within the region containing geologic and soil characters similar or identical to those of known, occupied, accessible caves. This area includes the Waikomo-Kalihi-Koloa soil association (Foote *et al.* 1972) where it overlays the Koloa Volcanic Series flows (MacDonald *et al.* 1960). In addition, karst outcrops of calcified marine deposits are part of the same geologic deposits that contain the cave at Mahulepu that is occupied by the Kauai cave amphipod. Solution pockets and voids are abundant in this rock type and, like the cave at Mahulepu, lay on top of old, lava-tube-bearing pahoehoe flows.

Within these areas, we designated sites where either the Kauai cave amphipod or the Kauai cave wolf spider have been verified as occurring. We set out the following buffers to capture the adjacent mesocaverns where the animals are likely to spend the majority of their time as previously discussed in this rule. In cases where development was not complete, whenever possible, a 61 meter (200 ft) buffer was included around caves. Information provided during the comment period showed that a previous archeological and biological cave survey was done (Hammatt *et.al.*, 1978) that recommended a 30 meter (100 ft) buffer be placed around known caves. We believe that these buffers are essential to the conservation of the species because they reduce the vulnerability of the species to diseases and other catastrophic events by providing habitat that is most likely occupied, area for local intracave dispersal, as well as refugia from effects from disturbance that may take place in and around identified caves. We did not feel that with the additional known activities that may be occurring in the Koloa Basin, a 100 ft. buffer would be adequate to protect against impacts from adjacent development. Dr. Howarth's information on what he believed was a necessary buffer to maintain the existence of the species in a given area assisted us in refining what we believe to be an adequate buffer. In cases where development around the cave has been completed, a 30 meter (100 ft) buffer around caves was included. A smaller buffer zone was used for these areas which include habitat most likely occupied and allow for local intracave dispersal. Because all development and ground disturbance has already occurred in these areas, less refugia is needed and therefore a smaller buffer area was needed.

For those areas where surveys showed they were highly likely to contain suitable habitat and the animals were likely to occur, we designated the entire area to be sure we would capture any caves and the surrounding mesocaverns. The addition of these areas is essential to the conservation of the species because they create a widely distributed pattern of protected areas across the best habitat throughout the Koloa basin. This wide distribution protects the species from a single catastrophic event and therefore is essential to the conservation of both species.

Because a recovery plan has not been completed for either of these species, in making this determination, we looked to areas where the Kauai cave wolf spider and the Kauai cave amphipod have been verified and also included those areas that are highly likely to contain these animals. We looked for a distribution across geologically suitable habitat and conferred with the recognized expert on the necessary distribution of caves within the Koloa area to maintain both species (Dr. F. Howarth, pers. comm., 2002). This approach is consistent with the recovery outline for the Kauai cave wolf spider and the Kauai cave amphipod. If, after critical habitat for the Kauai cave wolf spider and the Kauai cave amphipod is designated, a final approved recovery plan for these animals calls for a different approach to the conservation of the Kauai cave wolf spider and the Kauai cave amphipod, we will consider amending the critical habitat designation.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 in determining which areas to propose as critical habitat, we are required to consider those physical and biological features essential to the species' conservation that may require special management considerations and protection. Such features are termed primary constituent elements, and include but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, minerals and other nutritional or physiological requirements; cover or shelter; and habitats that are protected from disturbance and represent the historic geographical and ecological distributions of the species.

The habitat requirements of the Kauai cave wolf spider and Kauai cave amphipod may differ slightly, as the wolf spider can feed on other arthropods that become trapped in caves or reside in caves facultatively. However, as observed elsewhere in Hawaii, the presence of a healthy, intact cave ecosystem, which includes roots or other sources of naturally occurring detritus and an associated detritivore or herbivore fauna, contains larger numbers of healthy troglobitic predators (A. Asquith, pers. comm., 2001). While native, troglobitic predators, detritivores, and herbivores may be present in caves lacking naturally occurring plant biomass, this situation represents an unhealthy cave ecosystem. Native troglobitic assemblages occurring in "sterile" caves (those lacking roots or other sources of active nutrient input) probably represent declining populations that will be extirpated as the existing plant biomass is consumed unless efforts are made to enhance conditions.

As with most troglobites, both the Kauai cave wolf spider and Kauai cave amphipod require dark or stagnant air zone habitats in caves. These zones typically have atmospheres with humidity at saturation levels (greater or equal to 100 percent), which is necessary to prevent desiccation and death of the troglobites.

A sustainable food base, such as the roots of living perennial plants or other sources of detritus, is necessary to support a breeding population and for the long-term survival of the Kauai cave amphipod and other herbivorous or detritivorous troglobites. In turn, healthy populations of herbivores or detritivores will help ensure that co-evolved predators, such as the Kauai cave wolf spider, will also persist as viable populations.

There is little information on what, if any, species of food plants are preferred by the Kauai cave amphipod. Since the amphipod is regarded as a detritivore, there may be little or no food specialization by these animals. However, plant species containing naturally occurring toxic compounds, such as tannins or alkaloids, might be of low food value, inhibit feeding, or result in the direct mortality of cave organisms. For this reason, plant species and their potential toxicity must be considered as well. Likely candidates for suitable plants would be native species like ohia (*Metrosideros polymorpha*), maiapilo (*Capparis sandwichiana*), and aalii (*Dodonea viscosa*).

The primary constituent elements required by the Kauai cave wolf spider and the Kauai cave amphipod consist of the presence of subterranean spaces from 5 to 25 cm (0.2 in to 10 in) at the narrowest dimension (collectively termed "mesocaverns"), or caves or passages (spaces greater than 25 cm (10 in)), dark and/or stagnant air zones that maintain microclimates with humidity at saturation levels, and the presence of roots from living, non-toxic plants such as, but not limited to, ohia (*Metrosideros polymorpha*), maiapilo (*Capparis sandwichiana*), and aalii (*Dodonea viscosa*) in these types of mesocaverns or caves.

The areas designated as critical habitat for the Kauai cave wolf spider and the Kauai cave amphipod are designed to incorporate what is essential for their conservation. Habitat components that are essential for these two species include the primary biological needs of foraging, reproduction, intraspecific communication, intracave dispersal and intracave genetic exchange, or nonrestricted movement to appropriate microclimates in mesocaverns, and refugia from human-induced or other environmental threats. Caves and mesocaverns containing actively growing tree roots or other sources of detritus provide a food source for herbivorous or detritivorous troglobites, which in turn provide food for predators. Such caves will be necessary for the long-term persistence of viable populations of the endangered troglobites by providing areas for foraging and reproduction. Caves and or mesocaverns lacking food resources but containing appropriate microclimates may provide intracave corridors which facilitate movement and genetic exchange within populations. In addition, these areas may also provide refugia from areas impacted by human-induced or other environmental threats, such as when main cave passages become temporarily drier or otherwise less accomodating.

Criteria Used To Identify Critical Habitat

We used several criteria to identify and select lands for designation as critical habitat. First, we selected critical habitat areas based on the verified distributions of the Kauai cave wolf spider and the Kauai cave amphipod (known occupied habitat). Then we included additional areas containing mesocaverns surrounding the known occupied caves to capture habitat likely to be occupied and to allow for refugia.

The known occupied cave distribution is not sufficient to expect a reasonable probability of conservation of either species by protecting against threats including but not limited to, human intrusion, fluctuating humidity levels in caves, and loss through catastrophic events (*e.g.*, hurricanes, oil spills and nonnative species introductions). Therefore, we looked to those areas where suitable habitat had been identified through survey work. This included both biological surveys and archeological surveys. The suitable caves identified, and their surrounding appropriate mesocavern areas, were included in this final designation.

The inclusion of these identified caves, some of which were newly discovered, and their surrounding areas still did not provide for a wide enough distribution to protect against catastrophic events. Therefore, we looked to those areas within the Koloa basin where site visits indicated the presence of suitable habitat and therefore a high likelihood of the presence of the animals. We looked for areas with exposed barren basalt, proximity to the areas that were known to contain animals, soils less than a foot deep, native vegetation, and areas that had received the least known surface disturbance. These areas represent habitat likely to be occupied by one or both species and contain the greatest amount of intact mesocaverns with the required humidity levels necessary for the cave animals. These types of areas have been identified by Dr. Howarth as the ones most likely to be occupied by the Kauai cave amphipod and the Kauai cave wolf spider (Dr. F. Howarth, pers. comm., 2002).

To provide for the conservation of both species, a sufficient amount of limestone habitat needs to be present to provide refugia in case of a catastrophic event for those animals known to be existing in limestone habitat. We looked to areas closest to the known occupied limestone cave, with exposed limestone bench and native vegetation, with little or no prior surface disturbance, and with soils less than a foot deep. These places are where intact mesocaverns and caves with appropriate humidity levels necessary exist therefore, these areas are the places most likely to be occupied.

Areas within the appropriate geologic formations that have had long term or extensive surface disturbance, soil deposits greater than a foot deep, lack of native vegetation, or lack exposed barren basalt or limestone benches may still provide suitable habitat and animals may still occur there. However, it is more likely that the habitat will be relatively degraded, and thus the probability is lower that animals will be found there. However, if new information shows the discovery of additional caves and animals in the areas, and if warranted, we will consider this information in possible future revisions of this rule as time and available resources allow.

For the purpose of this determination, critical habitat units have been described using Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD83) coordinates using a scale of 1:85,000. Soil series was determined using information and maps from soil surveys (Foote *et al.* 1972). Geologic and soil features that appear to limit the distribution of cave and mesocavern habitats were determined using information and maps from MacDonald *et al.* (1960) and Foote *et al.* (1972).

We were unable to map the critical habitat unit boundaries in sufficient detail to exclude all existing developed lands that do not contain the primary constituent elements. However, as specified in the final rule language, existing features and structures within the boundaries of the mapped units that have resulted in below-surface modification or alteration are excluded from critical habitat designation. Existing human-constructed structures and features, such as large buildings, homes, major roads, and other activities or projects that involve trenching, filling, and/or excavation, which likely resulted in loss or degradation of the primary constituent elements, are therefore not included within this critical habitat designation. Such human-constructed structures and features would include homes and buildings for which the underlying bedrock has been altered for their construction through incorporation of or connection to buried structural foundations, septic tanks, city sewage and drainage systems, or water and underground electrical supply corridors and conduits. Additional areas that are also excluded from critical habitat

include existing paved roads, quarries, and sewage treatment facilities. Included in critical habitat are areas that have been modified on the surface, but for which below-surface modifications have not altered the underlying bedrock and subterranean habitat. These land uses include but are not limited to agriculture (*e.g.*, sugar cane, corn, coffee), range land, golf courses, county and city parks, unimproved roads, and undeveloped lands. These areas may lie adjacent to areas that have undergone extensive below-surface modification.

Critical Habitat Designation

Lands designated as critical habitat provide at least one of the primary constituent elements needed by the Kauai cave wolf spider and Kauai cave amphipod, including, but not limited to, the presence of subterranean spaces from 5 to 25 cm (0.2 in to 10 in) at the narrowest dimension (collectively termed "mesocaverns"), or caves or passages (spaces greater than 25 cm (10 in)), dark and/or stagnant air zones that maintain microclimates with humidity at saturation levels, and the presence of roots from living, non-toxic plants such as, but not limited to, ohia (*Metrosideros polymorpha*), maiapilo (*Capparis sandwichiana*), and aalii (*Dodonea viscosa*) in these types of mesocaverns or caves. As discussed previously in this rule under "Primary Constituent Elements," the presence of a healthy, intact cave ecosystem, includes roots or other sources of naturally occurring detritus. While native, troglobitic predators, detritivores, and herbivores may be present in caves lacking naturally occurring plant biomass, this situation represents an unhealthy cave ecosystem. Native troglobitic assemblages occurring in "sterile" caves (those lacking roots or other sources of active nutrient input) probably represent declining populations that will be extirpated as the existing plant biomass is consumed unless efforts are made to enhance conditions.

Lands designated as critical habitat for the Kauai cave wolf spider and Kauai cave amphipod occur in 14 separate units. The approximate area encompassing the designation of critical habitat by land ownership is shown in Table 1.

TABLE 1.—APPROXIMATE DESIGNATED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP.

[Area estimates reflect critical habitat unit boundaries, not the primary constituent elements within.]

Unit	State/local	Private	Total
New Unit 01	0 ha	<1 ha	<1 ha
	0 ac	1 ac	1 ac
New Unit 02	0 ha	7 ha	7 ha
	0 ac	16 ac	16 ac
New Unit 03	0 ha	6 ha	6 ha
	0 ac	16 ac	16 ac
New Unit 04	0 ha	2 ha	2 ha
	0 ac	6 ac	6 ac
New Unit 05	0 ha	<1 ha	<1 ha
	0 ac	2 ac	2 ac
New Unit 06	0 ha	2 ha	2 ha
	0 ac	4 ac	4 ac
New Unit 07	0 ha	3 ha	3 ha
	0 ac	9 ac	9 ac
New Unit 08	<1 ha	2 ha	2 ha
	1 ac	6 ac	7 ac
New Unit 09	1 ha	<1 ha	1 ha
	3 ac	<1 ac	4 ac
New Unit 10	0 ha	14 ha	14 ha
	0 ac	35 ac	35 ac
New Unit 11	0 ha	4 ha	4 ha
	0 ac	10 ac	10 ac
New Unit 12	0 ha	6 ha	6 ha
	0 ac	16 ac	16 ac
New Unit 13	0 ha	21 ha	21 ha
	0 ac	51 ac	51 ac
New Unit 14	0 ha	39 ha	39 ha
	0 ac	96 ac	96 ac
Total	1 ha	109 ha	110 ha
	4 ac	268 ac	272 ac

Designated critical habitat includes land under private, county, and State ownership. Designated lands include areas known to be occupied by the Kauai cave wolf spider and the Kauai cave amphipod and include habitat with similar distribution of geologic and soil characteristics of known occupied habitat and that contain the most probable distribution of appropriate caves and mesocaverns. A brief description of each unit and reasons for including it as critical habitat are presented below.

Unit 1: Unit 1 incorporates a newly found cave and associated mesocaverns with the verified occurrence of the Kauai cave wolf spider. It is one of only six caves with a verified occurrence of the spider. It is highly likely that given the spider's presence, the amphipod is likely to be found there when conditions are appropriate. This unit contains a minimum of two of the primary constituent elements essential to these species and which may require protection.

Unit 2: Unit 2 incorporates four caves and surrounding mesocaverns with two of the caves having verified occurrences of both the Kauai cave wolf spider and the Kauai cave amphipod. This unit contains three of the primary constituent elements essential to these species and which may require protection.

Unit 3: Unit 3 consists of a cave and surrounding mesocaverns with suitable habitat for both cave animals. It was identified by Dr. Frank Howarth, an expert in this field, as important to maintaining the presence of these animals in this area. This unit contains at minimum two of the primary constituent elements and is one of only three sites west of Waikomo Stream. This unit adds to a wide distribution across the Koloa Basin which will protect the species from extinction from a single catastrophic event and therefore is essential to the conservation of the species.

Unit 4: Unit 4 consists of a cave with verified occurrences of both the amphipod and the spider and the surrounding mesocaverns. It is one of only six caves with a verified occurrence of the spider, and one of only seven verified occurrence of the amphipod. It contains at minimum two of the primary constituent elements, essential to the these species and which may require protection.

Unit 5: Unit 5 consists of a cave with verified occurrences of both the amphipod and the spider mapped by the Service and the surrounding mesocaverns. It is one of only seven verified occurrences of the amphipod, and one of only six verified occurrences for the spider. This unit contains three of the primary constituent elements essential to these species and which may require protection.

Unit 6: Unit 6 consists of a cave and surrounding mesocaverns identified in an archaeological survey and is likely to be occupied by one or both of the species. At this time, its occupancy status is unknown. This unit adds to the wide distribution across the Koloa Basin that will protect the species from extinction from a single catastrophic event and therefore is essential to the conservation of the species.

Unit 7: Unit 7 consists of a cave with a verified occurrence of the amphipod and surrounding available mesocaverns. It is one of only seven verified occurrences of the amphipod. This unit contains at minimum two of the primary constituent elements essential to the conservation of the species.

Unit 8: Unit 8 contains a lava tube identified through an archaeological survey and the surrounding mesocaverns associated with the tube. It is an area that is most likely to harbor the animals and contains at least two of the primary constituent elements. This unit adds to the wide distribution across the Koloa Basin that will protect the species from extinction from a single catastrophic event and therefore is essential to the conservation of the species.

Unit 9: Unit 9 consists of a cave with the verified occurrence of the cave amphipod and surrounding available mesocaverns. It is only one of seven verified occurrences of the amphipod. It contains three of the primary constituent elements considered essential to the conservation of both species.

Unit 10: Unit 10 is located in the Koloa district, an area with cave-bearing rock containing an abundance of mesocaverns (small voids, cracks and passages). As previously discussed in the Background section of the rule, the Hawaiian basalt, found in this area, shrinks and cracks upon cooling creating the mesocaverns. In addition, this unit contains a cave that was used as a Civil Defense shelter. The entrance to the cave was sealed and has not been subsequently relocated. Therefore, the current occupancy status for these species is unknown. Although human use can detrimentally impact cave systems (see discussion under threats), they do not necessarily make the cave permanently unsuitable. For example, one of the cave systems included in critical habitat on Alexander and Baldwin (A&B) property (Unit 2) was also previously used as a civil defense shelter and is currently occupied by these species. Since the cave in Unit 10 was so large and long, it is unlikely that it has been completely filled in and the sealing of the entrance likely increased the humidity levels available in the cave. As discussed in the Cave Habitat section of the rule, cave systems for these species include one or more caves comprised of five zones (entrance, twilight, transition, dark and stagnant) and mesocaverns. While these mesocaverns can possess characteristics of each of the five zones, they frequently represent conditions of the stagnant zone. These mesocaverns are believed to provide refugia for these species when impacts make the caves uninhabitable for them. Unit 10 is believed to contain at least three PCEs (cave, mesocaverns, and appropriate microclimate [*i.e.*, high levels of humidity]). Information provided during the comment period (drilling records) show that the other areas surrounding Unit 10 have large deposits of clay or housing and other structures have been built in the area. The presence of clay and housing developments make it unlikely that additional areas adjacent to Unit 10 contain any remaining PCEs. Unit 10 is necessary to maintain continuity of the distribution of areas throughout the Koloa Basin making it essential to the conservation of the species.

Unit 11: Unit 11 consists of habitat that has been identified as an area most likely to be occupied by one or both of the species. The area within Unit 11 contains barren exposed rock, minimal prior surface disturbance, and minimal soil deposits, all of which provide higher quality caves and mesocaverns. This unit adds to the wide distribution across the Koloa Basin that will protect the species from extinction from a single catastrophic event and therefore is essential to the conservation of the species.

Unit 12: Unit 12 consists of habitat that has been identified as an area most likely to be occupied by one or both of the species. The area within Unit 12 contains barren exposed rock, minimal prior surface disturbance, and minimal soil deposits, all of which provide higher quality caves and mesocaverns. This unit adds to the wide distribution across the Koloa Basin that will protect the species from extinction from a single catastrophic event and therefore is essential to the conservation of the species.

Unit 13: Unit 13 consists of the only known occupied limestone cave and surrounding mesocaverns. The cave is occupied by both arthropods and is one of only seven verified locations of the amphipod, and one of six verified locations of the spider. This unit contains three of the primary constituent elements considered essential to the conservation of both species.

Unit 14: Unit 14 is composed of uplifted coral and algal reefs and consolidated calcareous deposits (MacDonald *et al.* 1960). Exposed basaltic flows are not believed to be present within this unit. This unit lies only a short distance (approximately 350 m (1,100 ft)) from Unit 13, which is occupied, and was likely once connected to that unit in the geologic past (Pleistocene Era) by deposits that have since eroded away or have been covered by unconsolidated sediments. It is not known if this unit is currently occupied by the Kauai cave wolf spider, Kauai cave amphipod, or other endemic troglobites.

Recent visits to this unit have found that the area is composed of exposed calcareous deposits containing cracks and solution pockets, which are indicative of the presence of underlying cave and mesocavern habitats. While accessible caves have not been located, air-passages, holes, and fissures visible above ground strongly suggest the presence of underlying caves or mesocaverns. Critical habitat is designated in this unit because of the cave-bearing nature of the geology, and

because of the occurrence of occupied habitat in adjacent areas with similar geologic features. Because the types of voids that occur in these calcareous formations continuously reform, thereby providing suitable habitat for very long time spans, this area is essential to provide for population expansion and refuge from human and catastrophic environmental threats. This unit currently has minimal human presence in the area, and there are no known current plans for development. Inclusion of this area with Units 1 through 13 provides a diverse geographic distribution that will increase the likelihood the species will survive stochastic or catastrophic impacts and is therefore considered essential to the conservation of both species.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Destruction or adverse modification occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of the critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat when their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a)(1) of the Act requires Federal agencies, including the Service, to use their authorities to carry out programs for the conservation of any species that is proposed or listed as endangered or threatened. Section 7(a)(4) of the Act requires Federal agencies (action agency) to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate formal consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Activities on Federal lands that may affect the Kauai cave wolf spider or Kauai cave amphipod or their critical habitat will require section 7 consultation. Activities on private or State lands that may affect the species or their critical habitat and that require a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (ACOE) under section 404 of the Clean Water Act, or some other Federal action, including funding (*e.g.*, from the Federal Highway Administration, Federal Aviation Administration, Federal Emergency Management Agency (FEMA), or Natural Resources Conservation Service (NRCS)) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the conservation of the Kauai cave wolf spider and Kauai cave amphipod is appreciably reduced. We note that such activities also may jeopardize the continued existence of the species. Activities that may directly or indirectly adversely affect critical habitat for these cave animals include, but are not limited to:

(1) Removing, thinning, or destroying perennial surface vegetation occurring directly above or adjacent to the cave or within the cave (roots) or mesocaverns (as defined in the primary constituent elements discussion), whether by burning, or by mechanical, chemical, or other means (*e.g.*, wood cutting, grading, overgrazing, construction, road building, mining, herbicide application, etc.);

(2) Activities within or outside of the cave or other mesocavern (*i.e.*, all cave-bearing rock) that promotes prolonged soil-disturbance, resulting in the filling of caves, voids, and mesocaverns, with sediments or other materials, or alters airflow, and/or light penetration such that habitat microclimates are exposed to conditions of desiccation. These activities include, but are not limited to: Utilizing caves for the disposal of wastes or unwanted soil or rock, elevated and prolonged soil disturbance above or adjacent to cave-bearing rock, closing existing cave openings, breeching existing caves (*i.e.*, creating new openings), modifying the natural geomorphology of a cave interior, passage, or opening;

(3) Appreciably decreasing habitat value or quality through indirect effects (*e.g.*, introduction or promotion of potential predators, parasitoids, diseases, or disease vectors (*e.g.*, nonnative arthropods), vertebrate or invertebrate food competitors, or invasive plant species), habitat fragmentation, overgrazing, water diversion or impoundment, groundwater pumping, inappropriately planned ground water disposal (*e.g.*, diversion into potential habitat or prevention of natural water recharge into soils and rock above and adjacent to caves), or other activities that could

potentially alter water quality or quantity to an extent that vegetation structure is affected, cave humidity levels are reduced, habitat is flooded, or toxic materials (*e.g.*, pesticides, fuel, solvents, or other household or industrial chemicals) are transported into habitat, and activities that increase the risk of fire within or outside habitats above the cave;

(4) Application of pesticides, herbicides, insecticides, fungicides, or other such chemicals within, above, or adjacent to known habitat, that may directly or indirectly affect troglobitic organisms; and

(5) Release of certain biological control organisms within or outside of the critical habitat area. Biological organisms include, but are not limited to: Predaceous or parasitoid vertebrates or invertebrates, fungi, bacteria, or other natural or bioengineered biocontrol organisms.

Federal agencies already consult with us on activities in areas where the species may be affected by their projects to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the ACOE under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Development on private or State lands requiring permits from other Federal agencies, such as the Department of Housing and Urban Development;

(4) Construction of communication sites licensed by the Federal Communications Commission;

(5) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities by Federal agencies;

(6) Hazard mitigation and post-disaster repairs funded by the FEMA; and.

(7) Activities not previously mentioned that are funded or authorized by the U.S. Department of Agriculture (Forest Service, NRCS), Department of Defense, Department of Transportation, Department of Energy, Department of the Interior (U.S. Fish and Wildlife Service, U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration), ACOE, FEMA, Environmental Protection Agency, or any other Federal agency.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Service's Field Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants, and inquiries about prohibitions and permits, should be directed to the Field Supervisor, Pacific Islands Ecological Service's Field Office.

Analysis of Impacts Under Section 4(b)(2)

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude an area from critical habitat when that exclusion will result in the extinction of the species concerned.

Economic Impacts

Following the publication of the proposed critical habitat designation on March 27, 2002, a draft economic analysis was prepared to estimate the potential economic impact of the designation, in accordance with recent decisions in the *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.*, 248 F.3d 1277 (10th Cir. 2001). The DEA was made available for review on November 15, 2002 (67 FR 69177). We accepted comments on the DEA until the comment period closed on December 16, 2002.

Following the close of the comment period on the draft economic analysis, a final addendum was completed, which incorporated public comments on the draft analysis and made other changes in the draft as necessary. In particular, the addendum focuses on the 272 acres and associated impacts that will be associated with the designation. The addendum to the draft economic analysis estimates that, over the next 18 years, the designation may result in potential direct economic effects ranging from approximately $260,000 to $429,000. The reduction ranging from approximately $56.2 million to $61.8 million from the costs estimated in the original draft economic analysis is primarily due to the significant reduction of acreage in proposed Units 1a and 2, and the removal of proposed Units 1b and 3 in the final critical habitat designation for the cave animals. These changes reduce the total critical habitat acreage from approximately 4,193 acres to 272 acres, a reduction of 3,921 acres or 94 percent. As described in the analysis, direct costs result from section 7 consultation, surveys, and project modifications associated with activities such as a county road (Koloa Bypass) widening project, and expansion of Kiahuna golf course.

Our final economic analysis includes an evaluation of potential indirect costs associated with designation of critical habitat for the Kauai cave wolf spider and Kauai cave amphipod. Based on the final economic analysis, the indirect costs are associated with actual or perceived loss of development potential and are expressed in terms of a loss in property value. These values reflect: Landowner's development plans (if any); existing entitlements; the probability of obtaining remaining development approvals (State redistricting, General Plan designation by the county, county zoning, *etc.*); and existing infrastructure improvements. In some cases, the loss in property value is estimated directly based on adjustments to the appraised or assessed value of comparable land. In other cases, the loss is based on the discounted present value of future profits based on specific development plans. Since the property value of undeveloped land reflects the discounted value of future profits, the two approaches are equivalent in concept. The analysis of lost property values focuses only on the land in or around the critical habitat units, and anticipates no islandwide impacts on economic and population growth. The analysis anticipates that while development will not occur within some areas designated as critical habitat, other developments in the Koloa/Poipu area will increase in density or area to largely offset this loss, thereby resulting in a negligible change in island wide development. For affected properties, however, the total potential loss in property values that could be indirectly associated with the designation ranges from $4.5 million to $6.1 million. This range represents the high estimate of the potential loss in property values indirectly associated with the critical habitat designation, and may be offset by adjusting the project (*e.g.*, density) to offset the loss of development within the critical habitat, or it may not be realized if the development within the critical habitat proceeds as proposed. Additional potential indirect costs are associated with the following: Contesting redistricting, State and county environmental review, and investigating the implications of the final designation. Other indirect costs identified in the draft economic analysis are no longer anticipated for the

designation of critical habitat because the affected areas have been excluded or reduced.

A more detailed discussion of our economic analysis is contained in the addendum. It is available for inspection at the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

No critical habitat units in the proposed rule were excluded or modified due to economic impacts because the expected cost of the designation (*i.e.* direct cost) is not significant. The indirect costs are speculative and represent a worst case scenario.

As described above, section 4(b)(2) of the Act also requires us to consider other relevant impacts, in addition to economic impacts, of designating critical habitat. No critical habitat units were excluded or modified due to non-economic impacts.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not reviewed this final critical habitat designation.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

Federal courts and Congress have indicated that an RFA/SBREFA analysis should be limited to all impacts to entities directly subject to the requirements of the regulation (Service 2002). Directly regulated entities may laso be indirectly impacted and these indirect impacts should be considered. Therefore, entities not directly regulated by the listing or critical habitat designation are not considered in this section of the analysis.

In today's rule, we are certifying that the designation of critical habitat for the Kauai cave amphipod and the Kauai cave wolf spider will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

Small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. The RFA/SBREFA defines "small governmental jurisdiction" as the government of a city, county; town, school district with a population of less than 50,000. By this definition, Federal government agencies are not small business under SBA guidelines and State agencies are not considered small governments under RFA. Kauai County is also not a small governmental jurisdiction because it has a population greater than 50,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, *etc.*). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Based on our final economic analysis, the primary projects and activities that could be affected by the critical habitat designation include Service conservation agreements, NRCS conservation programs, FHWA funding road projects, ACOE section 404 permits, Kauai County Department of Public Works (DPW) road project, and two private entities—Grove Farm partial funding of a survey for a conservation project and KG Kauai Development (KGKD)/Kobayashi Group LLC planned golf courses. For the purposes of the RFA/SBREFA, Federal agencies are not considered small governments. Accordingly, the Service, NRCS, FHWA, and ACOE are not considered small entities. As mentioned above, county agencies such as the DPW are not considered small entities. The primary business activity of Grove Farm is real estate asset management. The SBA defines a business in the real estate asset management industry as small if its annual sales are less than $1.5 million. According to this definition and 2000 sales information, Grove Farm is not a small business. KGKD is affiliated with Kobayashi Group, LLC (Kobayashi). Kobayashi's primary business activity is real estate asset management. The SBA defines a business in the real estate asset-management industry as small if its annual sales are less than $1.5 million. Kobayashi is a private business, and its annual sales figures are not listed in the Dun & Bradstreet database. However, the Kobayashi Group owns the following properties: two hotels in Waikiki, the Ocean Resort Hotel Waikiki (450 rooms), and the Queen Kapiolani Hotel (314 rooms); three golf courses; developable land in Koloa; and possibly other property. Rough estimates of the revenues generated from these properties suggest that annual revenues for the Kobayashi Group are at least $24 million [(764 rooms × 70 percent occupancy × $100 per room × 365 days) + (3 golf courses × 30,000 rounds of golf per year × $50 per round) = $24 million per year]. According to the RFA/SBREFA regulations, the SBA counts

the receipts of the business whose size is at issue and those of all its affiliates in determining the size of the business. Therefore, KGKD and Kobayashi are not small businesses.

The Kauai cave wolf spider and the Kauai cave amphipod have only been listed since January 2000 and no consultations have occurred involving these species. As a result, the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities on Kauai.

None of the designation is on Federal lands. On non-Federal lands, activities that lack Federal involvement would not be affected by the critical habitat designations. However, activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by these designations consist of housing or resort development that may require permits from the Department of Housing and Urban Development, small farms that may receive funding or require authorizations from the Department of Agriculture, or restoration projects sponsored by NRCS. In addition, consultation with the ACOE may occur if a permit is required for a project in Waikomo Stream that may negatively impact adjacent cave systems. Waikomo Stream runs between two known occupied cave systems and consultation may be required if the activities on the stream may affect the cave systems and the Kauai cave amphipod and Kauai cave wolf spider. However, we are not aware of a significant number of future activities that would require Federal funds, permits, or authorizations in the designated areas. Two to three small fruit and vegetable farmers may be impacted by the designation but these entities do not represent a substantial number of the total small entities in these industries. Therefore, we conclude that the rule would not affect a substantial number of small entities.

Even where the requirements of section 7 might apply due to critical habitat, based on our experience with section 7 consultations for all listed species, virtually all projects-including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations-can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation.

For these reasons, we are certifying that the designation of critical habitat for the Kauai cave wolf spider and the Kauai cave amphipod will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. Our detailed assessment of the economic effects of this designation are described in the final addendum to the economic analysis. Based on the effects identified in this document, we believe that this rule will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final addendum to the economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy production supply and distribution facilities because no significant energy production, supply, and distribution facilities are included within designated critical habitat. Further, for the reasons described in the economic analysis, we do not believe that designation of critical habitat for the Kauai cave amphipod and the Kauai cave wolf spider will affect future energy production. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000 *et seq.*):

(a) For the reasons described in the final economic analysis, this rule will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. Further, the designation of critical habitat imposes no direct obligations on State or local governments.

(b) This rule will not "significantly or uniquely" affect small governments, so a Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the Kauai cave wolf spider and the Kauai cave amphipod in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii.

The designations may have some benefit to these governments, in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for a case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Kauai cave wolf spider and Kauai cave amphipod.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of the Kauai cave wolf spider and Kauai cave amphipod. Therefore, designation of critical habitat for these species does not involve any Tribal lands.

References Cited

A complete list of all references cited in this final rule is available, upon request, from the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

This rule was primarily prepared by the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), revise the entries for "spider, Kauai cave wolf" under "ARACHNIDS" and "amphipod, Kauai cave" under "CRUSTACEANS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
ARACHNIDS							
Spider, Kauai cave wolf	*Adelocosa anops*	U.S.A. (HI)	NA	E	676	17.95(g)	NA
CRUSTACEANS							
Amphipod, Kauai cave	*Spelaeorchestia koloana.*	U.S.A. (HI)	NA	E	676	17.95(h)	NA

■ 3. Amend § 17.95 by adding, in the same alphabetical order as these species occur in § 17.11(h):

■ a. In paragraph (g), critical habitat for the Kauai cave wolf spider (*Adelocosa anops*); and

■ b. In paragraph (h), critical habitat for the Kauai cave amphipod (*Spelaeorchestia koloana*), as set forth below.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(g) *Arachnids.*

* * * * *

Kauai cave wolf spider (*Adelocosa anops*).

(1) Critical habitat units are depicted for the island of Kauai, Hawaii, on the maps below.

(2) The primary constituent elements for the Kauai cave wolf spider are:

(i) The presence of subterranean spaces from 5 mm to 25 cm (0.2 in to 10 in) at their narrowest point (collectively termed "mesocaverns") and/or cave passages greater than 25 cm (>10 in);

(ii) Dark and/or stagnant air zones that maintain relative humidity at saturation levels (≥100 percent); and

(iii) The presence in these types of mesocaverns or caves of roots from living, nontoxic plants such as, but not limited to, ohia (*Metrosideros polymorpha*), maiapilo (*Capparis sandwichiana*), and aalii (*Dodonea viscosa*).

(3) All critical habitat areas contain one or more of the primary constituent elements for the Kauai cave wolf spider.

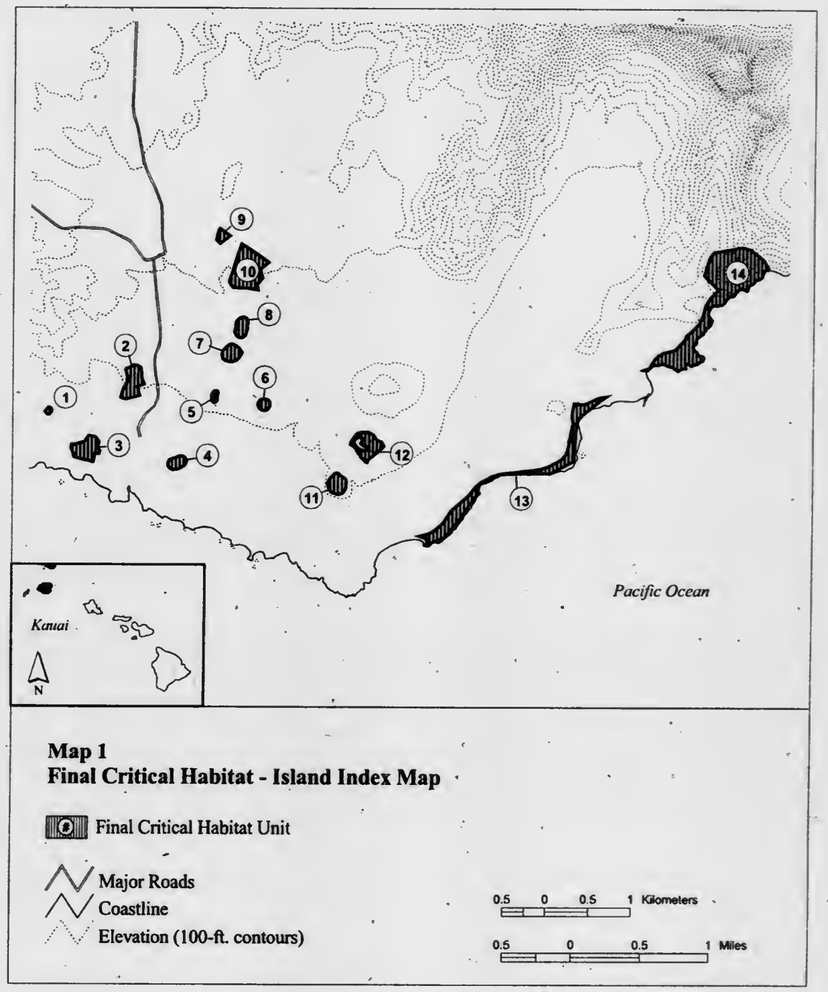
(4)(i) Existing human-constructed features and structures within the boundaries of mapped units that involved trenching, filling, or excavation resulting in below-surface modification or alteration would not contain either of the primary constituent elements and are excluded from critical habitat designation. Such features and structures include but are not limited to:

Homes and buildings for which the underlying bedrock has been altered for their construction or through incorporation of or connection to buried structural foundations, septic tanks, city sewage and drainage systems, or water or underground electrical supply corridors; paved roads; and areas previously or currently used as a quarry.

(ii) Areas that have been modified on the surface but without trenching, filling, or excavation resulting in below-surface modification or alteration are included in the critical habitat designation, even if they are adjacent to areas that have undergone below-surface modification.

(5) Critical habitat units are described below. Coordinates in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the 14 critical habitat units designated on the island of Kauai.

(i) **Note:** Map 1—Index map follows:



Map 1
Final Critical Habitat - Island Index Map

(6) Unit 1—(<1 ha (1 ac)):

(i) Unit 1 consists of the following 10 boundary points with the following coordinates in UTM Zone 4, with the units in meters, using North American Datum of 1983 (NAD83): Start at 450554, 2420457; 450546, 2420468; 450576, 2420510; 450586, 2420518; 450607, 2420516; 450624, 2420502; 450625, 2420480; 450618, 2420452; 450600, 2420437; 450574, 2420434; return to starting point.

(ii) **Note:** Unit 1 is depicted on Map 2—Units 1, 2, 3, and 4—below.

(7) Unit 2—(7 ha (16 ac)):

(i) Unit 2 consists of the following 16 boundary points with the following coordinates in UTM Zone 4, with the

units in meters, using North American Datum of 1983 (NAD83): Start at 451483, 2420974; 451539, 2420991; 451583, 2421015; 451622, 2421014; 451667, 2420984; 451677, 2420926; 451680, 2420869; 451705, 2420799; 451622, 2420769; 451650, 2420664; 451488, 2420620; 451468, 2420624; 451433, 2420642; 451470, 2420758; 451501, 2420801; 451510, 2420870; return to starting point.

(ii) **Note:** Unit 2 is depicted on Map 2—Units 1, 2, 3, and 4—below.

(8) Unit 3—(6 ha (16 ac)):

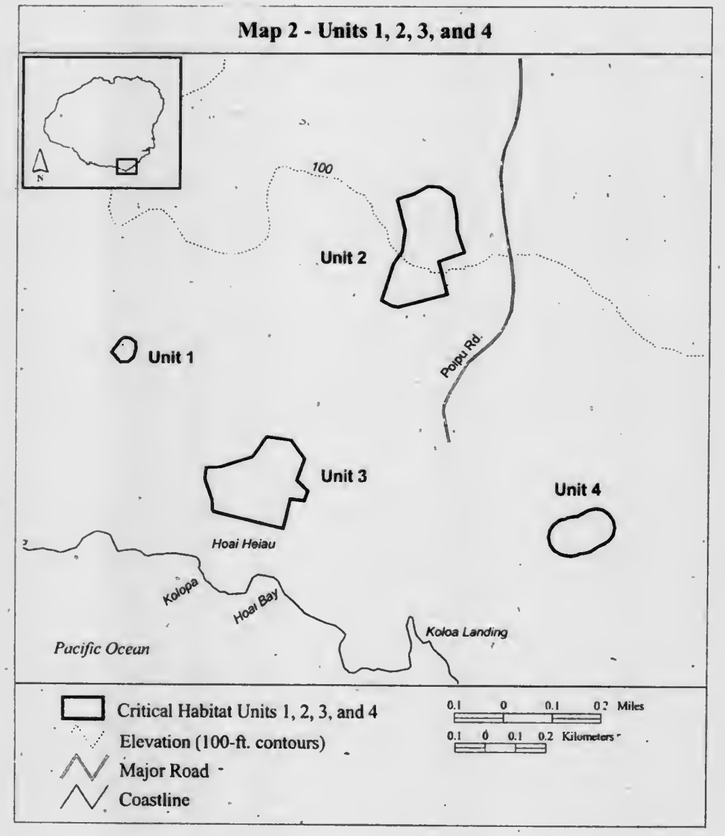
(i) Unit 3 consists of the following 14 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 450881, 2419947; 450879, 2419981; 450855, 2420053; 450859, 2420089; 450903, 2420089; 451012, 2420125; 451058, 2420191; 451138, 2420180; 451184, 2420119; 451159, 2420048; 451194, 2420014; 451183, 2419982; 451136, 2419987; 451114, 2419892; return to starting point.

(ii) **Note:** Unit 3 is depicted on Map 2—Units 1, 2, 3, and 4—below.

(9) Unit 4—(2 ha (6 ac)):

(i) Unit 4 consists of the following 33 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 452087, 2419809; 452063, 2419804; 452053, 2419805; 452040, 2419807; 452027, 2419811; 452007, 2419824; 451994, 2419844; 451989, 2419867; 451994, 2419890; 452007, 2419910; 452027, 2419923; 452045, 2419927; 452053, 2419932; 452076, 2419936; 452082, 2419936; 452084, 2419936; 452090, 2419939; 452095, 2419942; 452096, 2419943; 452118, 2419954; 452145, 2419960; 452168, 2419955; 452188, 2419942; 452201, 2419922; 452206, 2419899; 452201, 2419876; 452188, 2419856; 452172, 2419844; 452153, 2419835; 452132, 2419822; 452123, 2419817; 452099, 2419812; 452093, 2419812; return to starting point.

(ii) **Note:** Unit 4 is depicted on Map 2—Units 1, 2, 3, and 4—which follows:



(10) Unit 5—(1 ha (2 ac)):

(i) Unit 5 consists of the following 35 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 452493, 2420608; 452493, 2420613; 452493, 2420616; 452496, 2420639; 452492, 2420652; 452491, 2420660; 452492, 2420669; 452497, 2420683; 452498, 2420686; 452502, 2420694; 452516, 2420711; 452518, 2420713; 452528, 2420720; 452540, 2420722; 452552, 2420720; 452561, 2420713; 452568, 2420704; 452570, 2420692; 452568, 2420680; 452564, 2420673; 452553, 2420660; 452556, 2420649; 452557, 2420641; 452557, 2420637; 452554, 2420613; 452555, 2420611; 452555, 2420607; 452553, 2420595; 452546, 2420585; 452536, 2420579; 452525, 2420576; 452513, 2420579; 452503, 2420585; 452496, 2420595; 452494, 2420602; return to starting point.

(ii) Unit 5 is depicted on Map 3—Units 5, 6, 7, and 8—below.

(11) Unit 6—(2 ha (4 ac)):

(i) Unit 6 consists of the following 21 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 453052, 2420607; 453065, 2420616; 453078, 2420622; 453101, 2420626; 453126, 2420621; 453139, 2420616; 453154, 2420606; 453164, 2420591; 453167, 2420579; 453169, 2420551; 453165, 2420533; 453156, 2420517; 453141, 2420500; 453127, 2420490; 453109, 2420486; 453078, 2420490; 453053, 2420505; 453042, 2420522; 453034, 2420543; 453032, 2420559; 453036, 2420585; return to starting point.

(ii) Unit 6 is depicted on Map 3—Units 5, 6, 7, and 8—below.

(12) Unit 7—(3 ha (9 ac)):

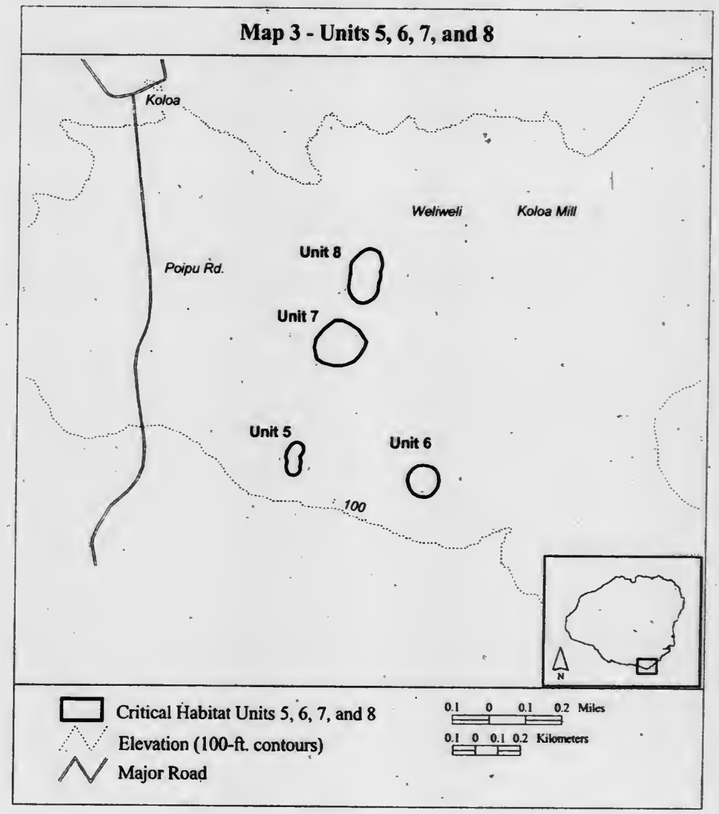
(i) Unit 7 consists of the following 7 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 452623, 2421100; 452812, 2421077; 452831, 2421041; 452816, 2421016; 452786, 2420896; 452590, 2420946; 452608, 2421015; return to starting point.

(ii) Unit 7 is depicted on Map 3—Units 5, 6, 7, and 8—below.

(13) Unit 8—(2 ha (7 ac)):

(i) Unit 8 consists of the following 33 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 452763, 2421383; 452759, 2421402; 452760, 2421421; 452767, 2421462; 452766, 2421477; 452768, 2421497; 452771, 2421510; 452780, 2421523; 452812, 2421556; 452824, 2421564; 452831, 2421567; 452848, 2421571; 452857, 2421571; 452875, 2421567; 452890, 2421557; 452899, 2421542; 452904, 2421531; 452907, 2421514; 452908, 2421497; 452904, 2421480; 452899, 2421471; 452902, 2421454; 452900, 2421439; 452894, 2421422; 452891, 2421412; 452891, 2421402; 452888, 2421385; 452880, 2421368; 452871, 2421355; 452844, 2421338; 452822, 2421335; 452799, 2421339; 452778, 2421357; return to starting point.

(ii) Unit 8 is depicted on Map 3—Units 5, 6, 7, and 8—which follows:



(14) Unit 9—(1 ha (4 ac)):

(i) Unit 9 consists of the following 5 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 452568, 2422604; 452577, 2422610; 452696, 2422521; 452580, 2422429; 452537, 2422471; return to starting point.

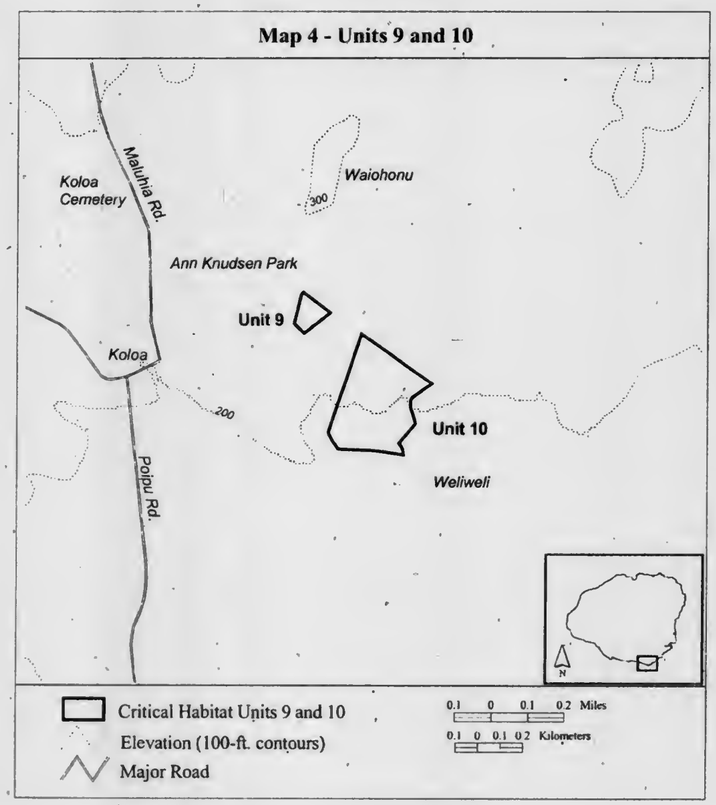
(ii) **Note:** Unit 9 is depicted on Map 4—Units 9 and 10—below.

(15) Unit 10—(14 ha (35 ac)):

(i) Unit 10 consists of the following 14 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 452688, 2421988; 452834, 2422427; 453145, 2422210; 453061, 2422147; 453053, 2422133; 453053, 2422102; 453061, 2422078; 453074, 2422029; 453002, 2421944; 453015, 2421922; 453022, 2421892; 452896, 2421910; 452733, 2421917; 452705, 2421959; return to starting point.

(ii) **Note:** Unit 10 is depicted on Map 4—Units 9 and 10—which follows:

Map 4 - Units 9 and 10



(16) Unit 11—(4 ha (10 ac)):

(i) Unit 11 consists of the following 17 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 453958, 2419773; 453976, 2419766; 453999, 2419741; 454054, 2419702; 454068, 2419667; 454060, 2419596; 454042, 2419553; 454005, 2419528; 453962, 2419521; 453894, 2419545; 453872, 2419573; 453862, 2419600; 453852, 2419642; 453862, 2419676; 453887, 2419718; 453912, 2419742; 453936, 2419768; return to starting point.

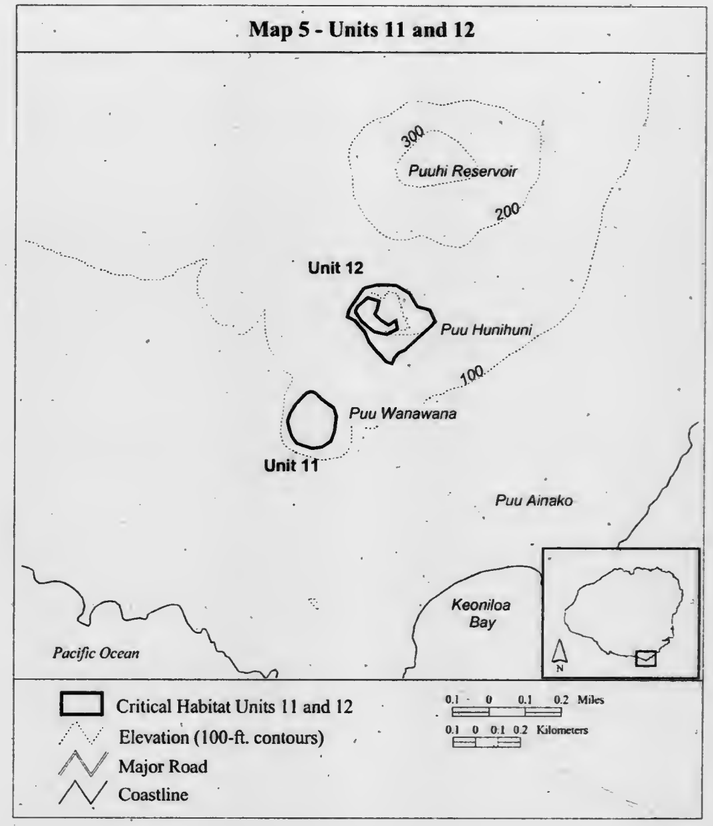
(ii) **Note:** Unit 11 is depicted on Map 5—Units 11 and 12—below.

(17) Unit 12 (6 ha (16 ac)):

(i) Unit 12 consists of the following 21 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 454185, 2420229; 454242, 2420243; 454326, 2420241; 454387, 2420207; 454420, 2420147; 454475, 2420133; 454502, 2420080; 454474, 2420055; 454366, 2419954; 454341, 2419944; 454321, 2419921; 454311, 2419895; 454286, 2419903; 454264, 2419927; 454229, 2419962; 454208, 2419993; 454186, 2420038; 454169, 2420058; 454145, 2420086; 454112, 2420103; 454120, 2420133; return to starting point.

(ii) **Note:** Unit 12 is depicted on Map 5—Units 11 and 12—which follows:

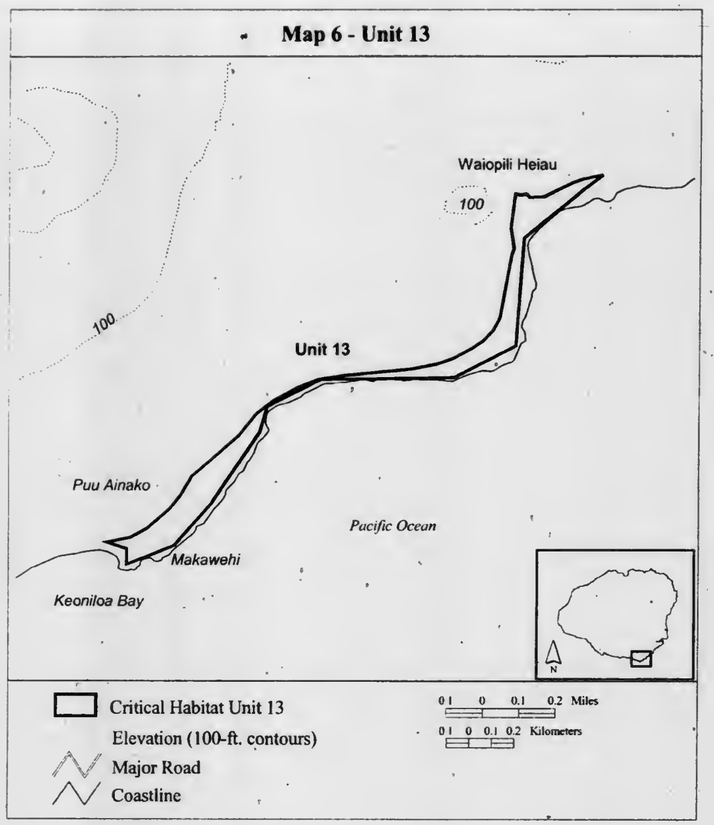
Map 5 - Units 11 and 12



(18) Unit 13—(21 ha (52 ac)):

(i) Unit 13 consists of the following 43 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 457108, 2420666; 457027, 2420606; 456763, 2420391; 456727, 2419912; 456456, 2419772; 455868, 2419764; 455633, 2419645; 455601, 2419531; 455389, 2419219; 455225, 2419029; 455014, 2418947; 455014, 2419015; 454926, 2419043; 455027, 2419064; 455102, 2419103; 455202, 2419192; 455255, 2419258; 455300, 2419334; 455508, 2419515; 455586, 2419614; 455664, 2419674; 455767, 2419730; 455859, 2419764; 455969, 2419780; 456212, 2419805; 456272, 2419811; 456376, 2419831; 456451, 2419859; 456531, 2419900; 456583, 2419935; 456627, 2419981; 456656, 2420036; 456682, 2420173; 456709, 2420316; 456718, 2420343; 456704, 2420433; 456723, 2420583; 456747, 2420580; 456771, 2420584; 456786, 2420569; 456848, 2420572; 456979, 2420634; 457022, 2420649; return to starting point.

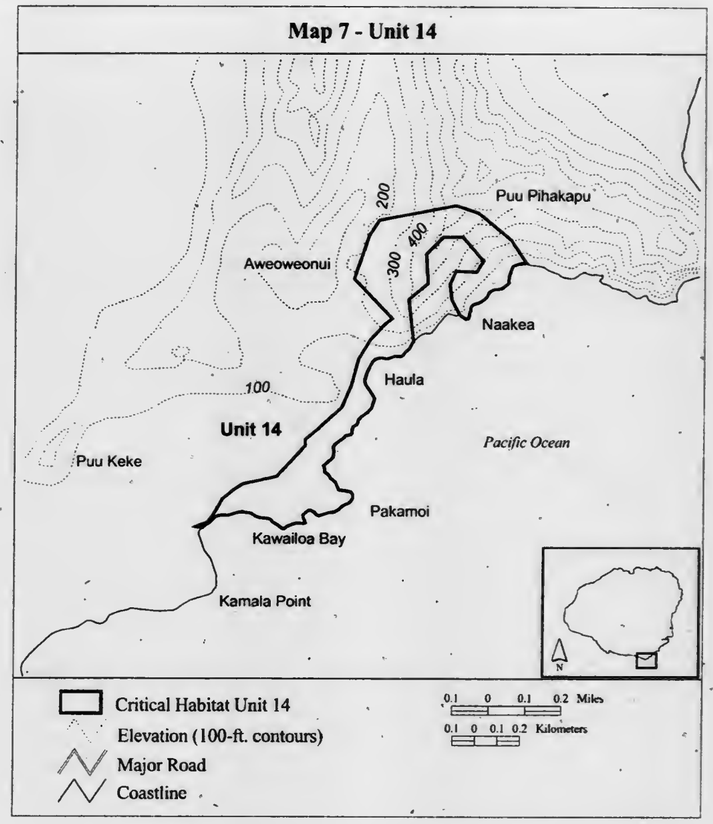
(ii) **Note:** Unit 13 is depicted on Map 6—Unit 13—which follows:



(19) Unit 14—(39 ha (96 ac)):

(i) Unit 14 consists of the following 47 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Coastline. 457575, 2420977; 457548, 2420981; 457598, 2421002; 457624, 2421039; 457624, 2421039; 457624, 2421039; 457664, 2421105; 457715, 2421146; 457755, 2421170; 457901, 2421204; 458025, 2421342; 458025, 2421367; 458078, 2421412; 458078, 2421413; 458078, 2421413; 458184, 2421510; 458226, 2421607; 458226, 2421607; 458226, 2421607; 458259, 2421727; 458308, 2421809; 458371, 2421876; 458405, 2421905; 458237, 2422080; 458301, 2422271; 458346, 2422339; 458686, 2422403; 458785, 2422371; 458932, 2422252; 458997, 2422153; Coastline. 458706, 2421920; 458670, 2421988; 458662, 2422059; 458688, 2422116; 458778, 2422112; 458809, 2422160; 458719, 2422266; 458630, 2422266; 458556, 2422191; 458563, 2422061; 458479, 2421989; 458500, 2421803.

(ii) **Note:** Unit 14 is depicted on Map 7—Unit 14—which follows:



* * * * *

(h) Crustaceans.

* * * * *

Kauai cave amphipod (*Spelaeorchestia koloana*)

(1) Critical habitat units are depicted for the island of Kauai, Hawaii, on the maps below.

(2) The primary constituent elements for the Kauai cave amphipod are:

(i) The presence of subterranean spaces from 5 mm to 25 cm (0.2 in to 10 in) at their narrowest point (collectively termed "mesocaverns") and/or cave passages greater than 25 cm (>10 in);

(ii) Dark and/or stagnant air zones that maintain relative humidity at saturation levels (≥100 percent); and

(iii) The presence in these types of mesocaverns or caves of roots from living, nontoxic plants such as, but not limited to, ohia (*Metrosideros polymorpha*), maiapilo (*Capparis sandwichiana*), and aalii (*Dodonea viscosa*).

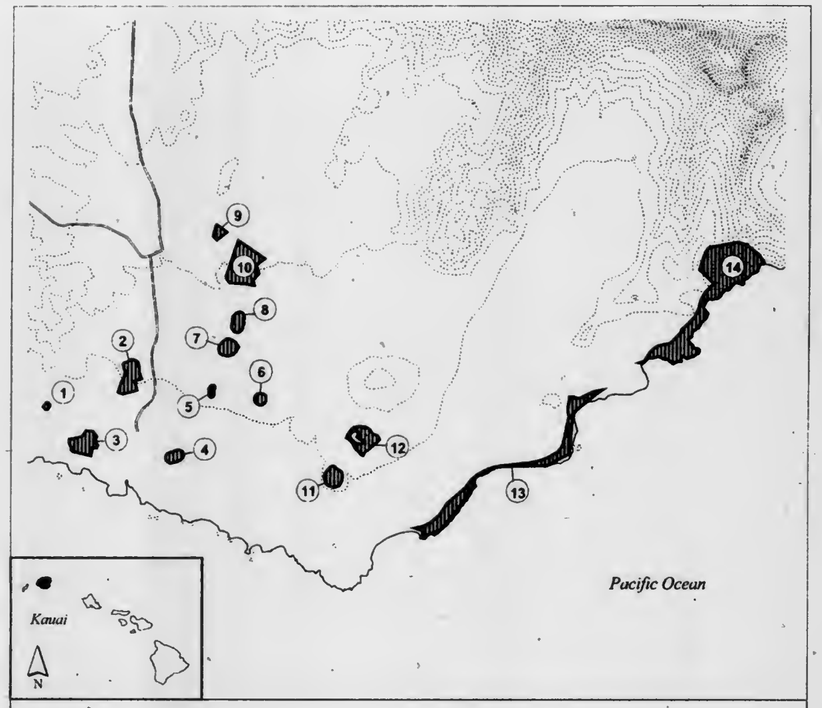
(3) All critical habitat areas contain one or more of the primary constituent elements for the Kauai cave amphipod.

(4)(i) Existing human-constructed features and structures within the boundaries of mapped units that involved trenching, filling, or excavation resulting in below-surface modification or alteration would not contain either of the primary constituent elements and are excluded from critical habitat designation. Such features and structures include but are not limited to: Homes and buildings for which the underlying bedrock has been altered for their construction or through incorporation of or connection to buried structural foundations, septic tanks, city sewage and drainage systems, or water or underground electrical supply corridors; paved roads; and areas previously or currently used as a quarry.

(ii) Areas that have been modified on the surface but without trenching, filling, or excavation resulting in below-surface modification or alteration are included in the critical habitat designation, even if they are adjacent to areas that have undergone below-surface modification.

(5) Critical habitat units are described below. Coordinates in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the 14 critical habitat units designated on the island of Kauai.

(i) **Note:** Map 1—Index map follows:



Map 1
Final Critical Habitat - Island Index Map

Final Critical Habitat Unit

Major Roads
Coastline
Elevation (100-ft. contours)

0.5 0 0.5 1 Kilometers
0.5 0 0.5 1 Miles

(6) Unit 1—(<1 ha (1 ac)):

(i) Unit 1 consists of the following 10 boundary points with the following coordinates in UTM Zone 4, with the units in meters, using North American Datum of 1983 (NAD83): Start at 450554, 2420457; 450546, 2420468; 450576, 2420510; 450586, 2420518; 450607, 2420516; 450624, 2420502; 450625, 2420480; 450618, 2420452; 450600, 2420437; 450574, 2420434; return to starting point.

(ii) **Note:** Unit 1 is depicted on Map 2—Units 1, 2, 3, and 4—below.

(7) Unit 2—(7 ha (16 ac)):

(i) Unit 2 consists of the following 16 boundary points with the following coordinates in UTM Zone 4, with the units in meters, using North American Datum of 1983 (NAD83): Start at 451483, 2420974; 451539, 2420991; 451583, 2421015; 451622, 2421014; 451667, 2420984; 451677, 2420926; 451680, 2420869; 451705, 2420799; 451622, 2420769; 451650, 2420664; 451488, 2420620; 451468, 2420624; 451433, 2420642; 451470, 2420758; 451501, 2420801; 451510, 2420870; return to starting point.

(ii) **Note:** Unit 2 is depicted on Map 2—Units 1, 2, 3, and 4—below.

(8) Unit 3—(6 ha (16 ac)):

(i) Unit 3 consists of the following 14 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 450881, 2419947; 450879, 2419981; 450855, 2420053; 450859, 2420089; 450903, 2420089; 451012, 2420125; 451058, 2420191; 451138, 2420180; 451184, 2420119; 451159, 2420048; 451194, 2420014; 451183, 2419982; 451136, 2419987; 451114, 2419892; return to starting point.

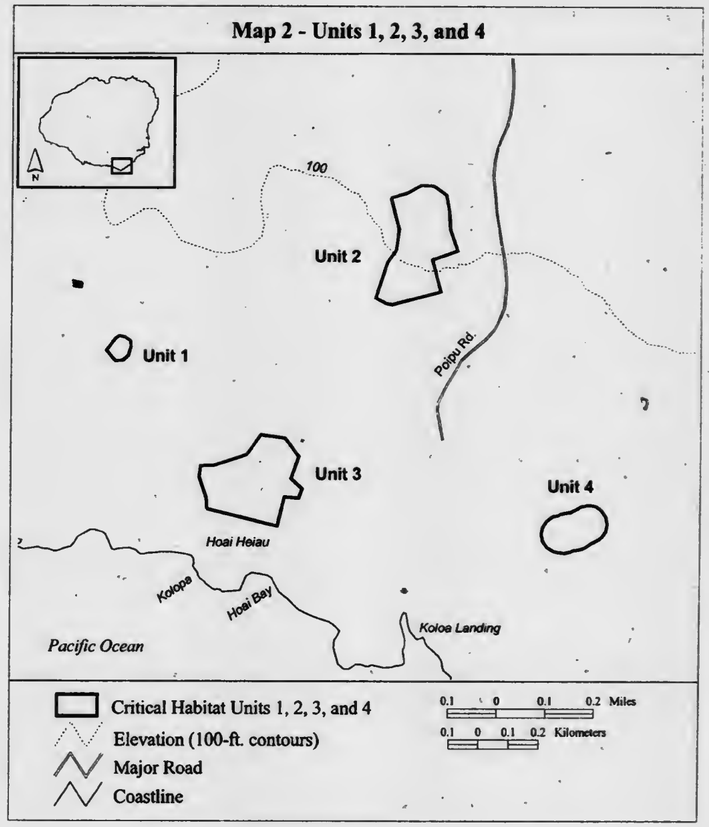
(ii) **Note:** Unit 3 is depicted on Map 2—Units 1, 2, 3, and 4—below.

(9) Unit 4—(2 ha (6 ac)):

(i) Unit 4 consists of the following 33 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 452087, 2419809; 452063, 2419804; 452053, 2419805; 452040, 2419807; 452027, 2419811; 452007, 2419824; 451994, 2419844; 451989, 2419867; 451994, 2419890; 452007, 2419910; 452027, 2419923; 452045, 2419927; 452053, 2419932; 452076, 2419936; 452082, 2419936; 452084, 2419936; 452090, 2419939; 452095, 2419942; 452096, 2419943; 452118, 2419954; 452145, 2419960; 452168, 2419955; 452188, 2419942; 452201, 2419922; 452206, 2419899; 452201, 2419876; 452188, 2419856; 452172, 2419844; 452153, 2419835; 452132, 2419822; 452123, 2419817; 452099, 2419812; 452093, 2419812; return to starting point.

(ii) **Note:** Unit 4 is depicted on Map 2—Units 1, 2, 3, and 4—which follows:

Map 2 - Units 1, 2, 3, and 4



(10) Unit 5—(1 ha (2 ac)):

(i) Unit 5 consists of the following 35 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 452493, 2420608; 452493, 2420613; 452493, 2420616; 452496, 2420639; 452492, 2420652; 452491, 2420660; 452492, 2420669; 452497, 2420683; 452498, 2420686; 452502, 2420694; 452516, 2420711; 452518, 2420713; 452528, 2420720; 452540, 2420722; 452552, 2420720; 452561, 2420713; 452568, 2420704; 452570, 2420692; 452568, 2420680; 452564, 2420673; 452553, 2420660; 452556, 2420649; 452557, 2420641; 452557, 2420637; 452554, 2420613; 452555, 2420611; 452555, 2420607; 452553, 2420595; 452546, 2420585; 452536, 2420579; 452525, 2420576; 452513, 2420579; 452503, 2420585; 452496, 2420595; 452494, 2420602; return to starting point.

(ii) Unit 5 is depicted on Map 3—Units 5, 6, 7, and 8—below.

(11) Unit 6—(2 ha (4 ac)):

(i) Unit 6 consists of the following 21 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 453052, 2420607; 453065, 2420616; 453078, 2420622; 453101, 2420626; 453126, 2420621; 453139, 2420616; 453154, 2420606; 453164, 2420591; 453167, 2420579; 453169, 2420551; 453165, 2420533; 453156, 2420517; 453141, 2420500; 453127, 2420490; 453109, 2420486; 453078, 2420490; 453053, 2420505; 453042, 2420522;

453034, 2420543; 453032, 2420559; 453036, 2420585; return to starting point.

(ii) Unit 6 is depicted on Map 3—Units 5, 6, 7, and 8—below.

(12) Unit 7—(3 ha (9 ac)):

(i) Unit 7 consists of the following 7 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 452623, 2421100; 452812, 2421077; 452831, 2421041; 452816, 2421016; 452786, 2420896; 452590, 2420946; 452608, 2421015; return to starting point.

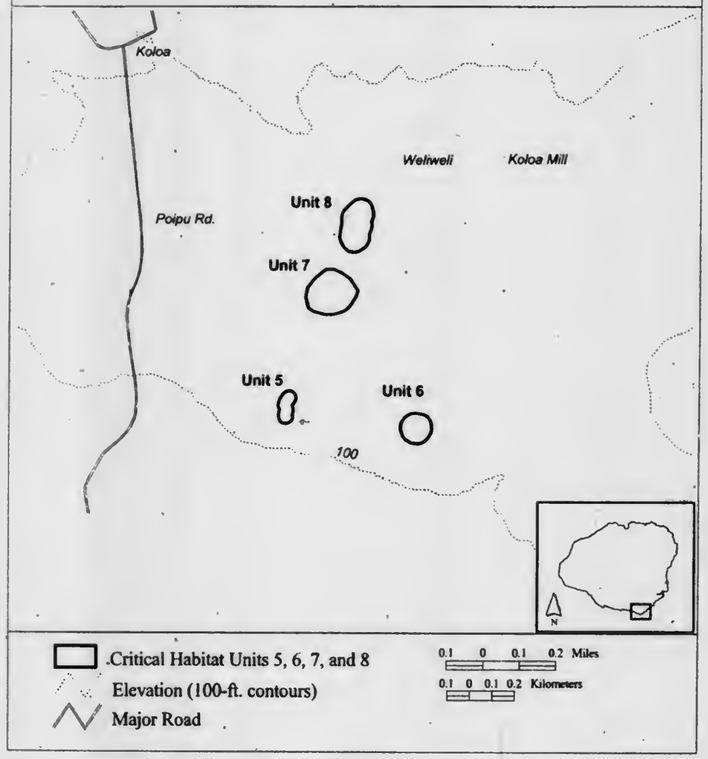
(ii) Unit 7 is depicted on Map 3—Units 5, 6, 7, and 8—below.

(13) Unit 8—(2 ha (7 ac)):

(i) Unit 8 consists of the following 33 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 452763, 2421383; 452759, 2421402; 452760, 2421421; 452767, 2421462; 452766, 2421477; 452768, 2421497; 452771, 2421510; 452780, 2421523; 452812, 2421556; 452824, 2421564; 452831, 2421567; 452848, 2421571; 452857, 2421571; 452875, 2421567; 452890, 2421557; 452899, 2421542; 452904, 2421531; 452907, 2421514; 452908, 2421497; 452904, 2421480; 452899, 2421471; 452902, 2421454; 452900, 2421439; 452894, 2421422; 452891, 2421412; 452891, 2421402; 452888, 2421385; 452880, 2421368; 452871, 2421355; 452844, 2421338; 452822, 2421335; 452799, 2421339; 452778, 2421357; return to starting point.

(ii) Unit 8 is depicted on Map 3—Units 5, 6, 7, and 8—which follows:

Map 3 - Units 5, 6, 7, and 8



(14) Unit 9—(1 ha (4 ac)):

(i) Unit 9 consists of the following 5 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 452568, 2422604; 452577, 2422610; 452696, 2422521; 452580, 2422429; 452537, 2422471; return to starting point.

(ii) **Note:** Unit 9 is depicted on Map 4—Units 9 and 10—below.

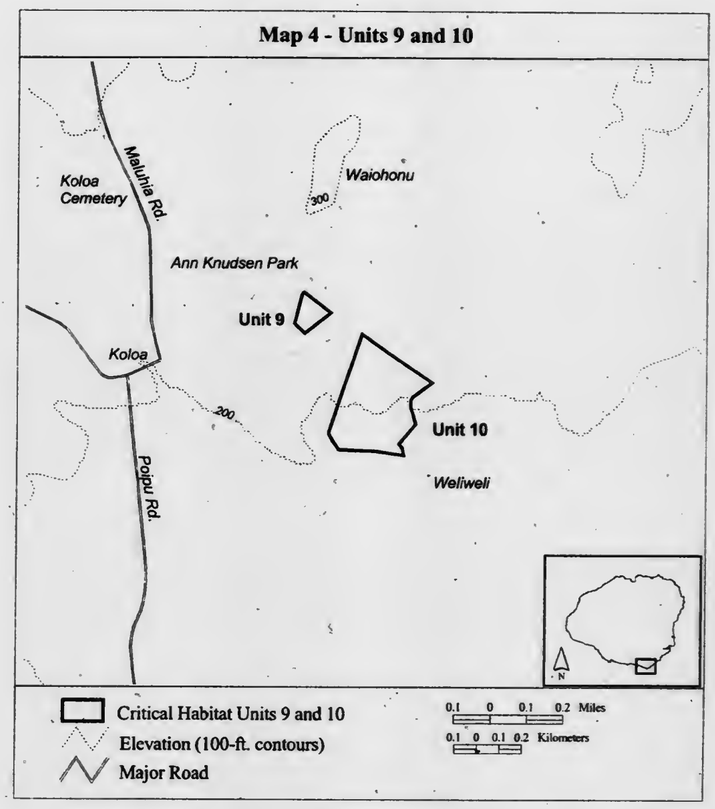
(15) Unit 10—(14 ha (35 ac)):

(i) Unit 10 consists of the following 14 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 452688, 2421988; 452834, 2422427; 453145, 2422210; 453061, 2422147; 453053, 2422133; 453053, 2422102; 453061, 2422078; 453074, 2422029; 453002, 2421944; 453015, 2421922; 453022, 2421892; 452896, 2421910;

452733, 2421917; 452705, 2421959; return to starting point.

(ii) **Note:** Unit 10 is depicted on Map 4—Units 9 and 10—which follows:

Map 4 - Units 9 and 10



(16) Unit 11—(4 ha (10 ac)):

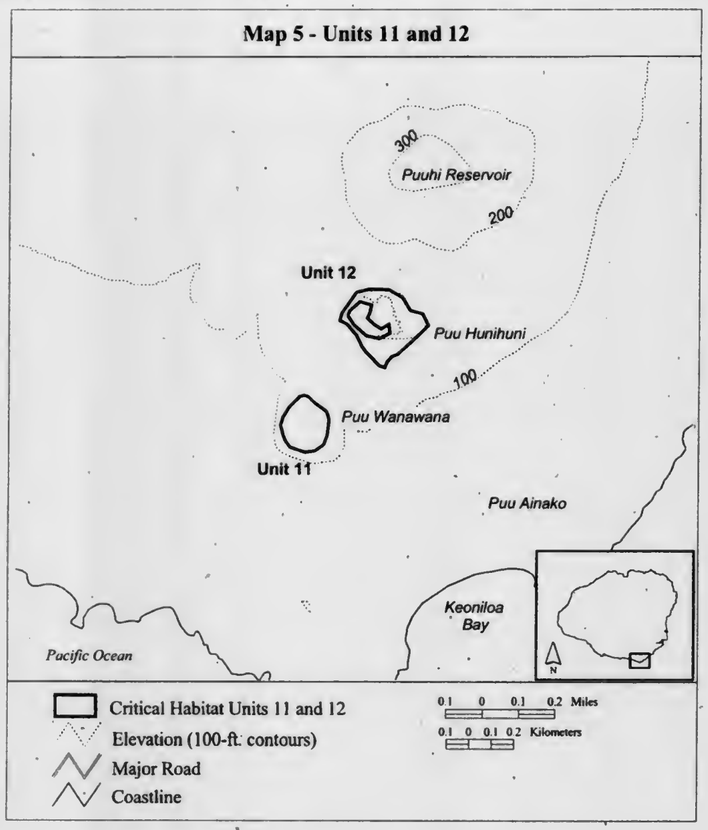
(i) Unit 11 consists of the following 17 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 453958, 2419773; 453976, 2419766; 453999, 2419741; 454054, 2419702; 454068, 2419667; 454060, 2419596; 454042, 2419553; 454005, 2419528; 453962, 2419521; 453894, 2419545; 453872, 2419573; 453862, 2419600; 453852, 2419642; 453862, 2419676; 453887, 2419718; 453912, 2419742; 453936, 2419768; return to starting point.

(ii) **Note:** Unit 11 is depicted on Map 5—Units 11 and 12—below.

(17) Unit 12 (6 ha (16 ac)):

(i) Unit 12 consists of the following 21 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 454185, 2420229; 454242, 2420243; 454326, 2420241; 454387, 2420207; 454420, 2420147; 454475, 2420133; 454502, 2420080; 454474, 2420055; 454366, 2419954; 454341, 2419944; 454321, 2419921; 454311, 2419895; 454286, 2419903; 454264, 2419927; 454229, 2419962; 454208, 2419993; 454186, 2420038; 454169, 2420058; 454145, 2420086; 454112, 2420103; 454120, 2420133; return to starting point.

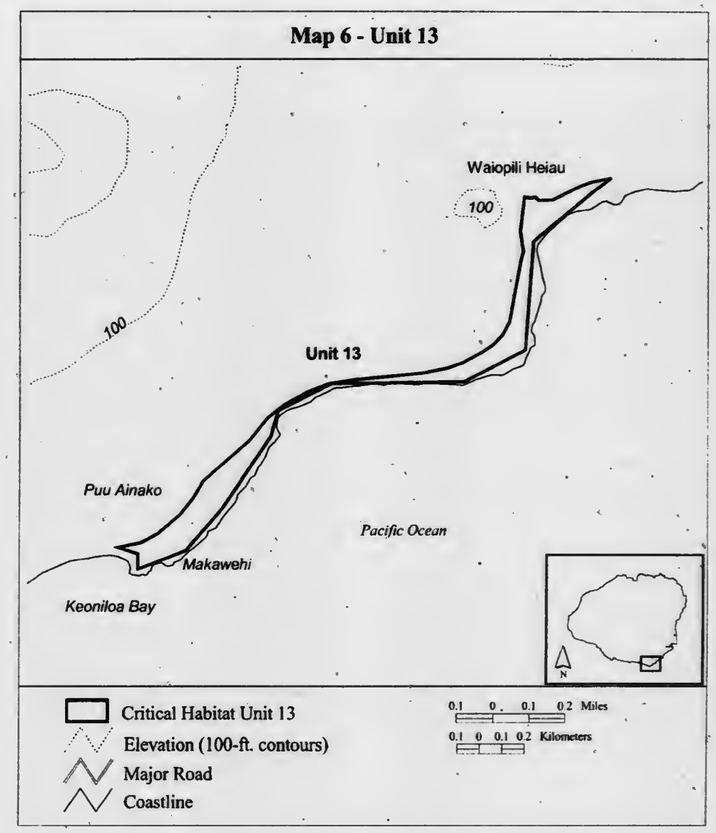
(ii) **Note:** Unit 12 is depicted on Map 5—Units 11 and 12—which follows:



(18) Unit 13—(21 ha (52 ac)):

(i) Unit 13 consists of the following 43 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Start at 457108, 2420666; 457027, 2420606; 456763, 2420391; 456727, 2419912; 456456, 2419772; 455868, 2419764; 455633, 2419645; 455601, 2419531; 455389, 2419219; 455225, 2419029; 455014, 2418947; 455014, 2419015; 454926, 2419043; 455027, 2419064; 455102, 2419103; 455202, 2419192; 455255, 2419258; 455300, 2419334; 455508, 2419515; 455586, 2419614; 455664, 2419674; 455767, 2419730; 455859, 2419764; 455969, 2419780; 456212, 2419805; 456272, 2419811; 456376, 2419831; 456451, 2419859; 456531, 2419900; 456583, 2419935; 456627, 2419981; 456656, 2420036; 456682, 2420173; 456709, 2420316; 456718, 2420343; 456704, 2420433; 456723, 2420583; 456747, 2420580; 456771, 2420584; 456786, 2420569; 456848, 2420572; 456979, 2420634; 457022, 2420649; return to starting point.

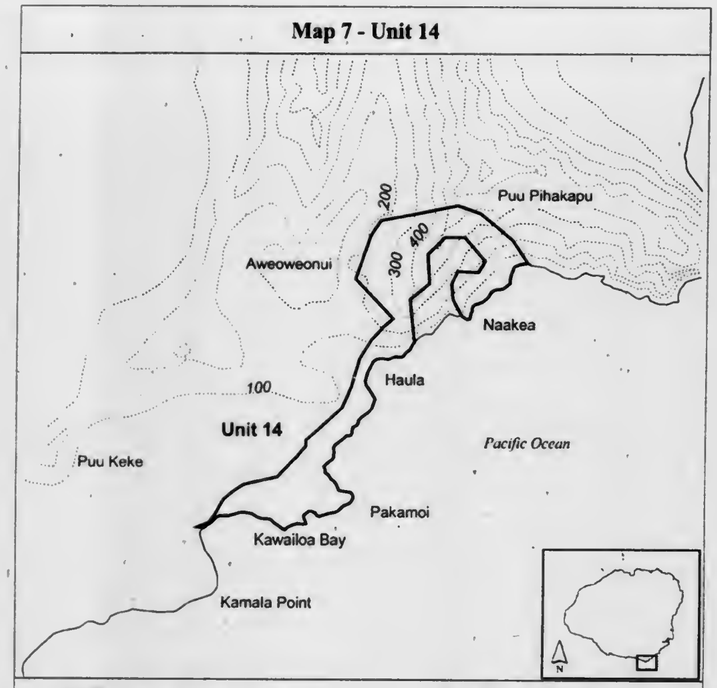
(ii) **Note:** Unit 13 is depicted on Map 6—Unit 13—which follows:



(19) Unit 14—(39 ha (96 ac)):

(i) Unit 14 consists of the following 47 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (NAD83): Coastline. 457575, 2420977; 457548, 2420981; 457598, 2421002; 457624, 2421039; 457624, 2421039; 457624, 2421039; 457664, 2421105; 457715, 2421146; 457755, 2421170; 457901, 2421204; 458025, 2421342; 458025, 2421367; 458078, 2421412; 458078, 2421413; 458078, 2421413; 458184, 2421510; 458226, 2421607; 458226, 2421607; 458226, 2421607; 458259, 2421727; 458308, 2421809; 458371, 2421876; 458405, 2421905; 458237, 2422080; 458301, 2422271; 458346, 2422339; 458686, 2422403; 458785, 2422371; 458932, 2422252; 458997, 2422153; Coastline. 458706, 2421920; 458670, 2421988; 458662, 2422059; 458688, 2422116; 458778, 2422112; 458809, 2422160; 458719, 2422266; 458630, 2422266; 458556, 2422191; 458563, 2422061; 458479, 2421989; 458500, 2421803.

(ii) **Note:** Unit 14 is depicted on Map 7—Unit 14—which follows:



Dated: March 27, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–8180 Filed 4–8–03; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Wednesday,
April 9, 2003

Part III

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2510 and 2570

Employee Retirement Income Security Act of 1974; Procedures for Administrative Hearings Regarding Plans Established or Maintained Under or Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA; Final Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2510

RIN 1210–AA48

Employee Retirement Income Security Act of 1974; Plans Established or Maintained Under or Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a regulation under the Employee Retirement Income Security Act of 1974, as amended, (ERISA or the Act) setting forth specific criteria that, if met and if certain other factors set forth in the regulation are not present, constitute a finding by the Secretary of Labor (the Secretary) that a plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40) of ERISA. Employee welfare benefit plans, such as health care plans, that meet the requirements of the regulation are excluded from the definition of "multiple employer welfare arrangements" under section 3(40) of ERISA and consequently are not subject to state regulation of multiple employer welfare arrangements as provided for by the Act. Regulations published elsewhere in this issue of the **Federal Register** set forth a procedure for obtaining a determination by the Secretary as to whether a particular employee welfare benefit plan is established or maintained under or pursuant to one or more agreements that are collective bargaining agreements for purposes of section 3(40) of ERISA. The procedure is available only in situations where the jurisdiction or law of a state has been asserted against an entity that contends it meets the exception for plans established or maintained under or pursuant to one or more collective bargaining agreements. This regulation is intended to assist labor organizations, plan sponsors and state insurance departments in determining whether a plan is a "multiple employer welfare arrangement" within the meaning of section 3(40) of ERISA.

EFFECTIVE DATE: June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Goodman, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5669, Washington, DC 20210, (202) 693–8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:.

A. Background

The Statute

Section 3(40) of ERISA defines the term multiple employer welfare arrangement (MEWA), in pertinent part, as an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing any benefit described in paragraph (1) of section 3 of the Act to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements.

This definition was added to ERISA by the Multiple Employer Welfare Arrangement Act of 1983, Sec. 302(b), Pub. L. 97–473, 96 Stat. 2611, 2612 (29 U.S.C. 1002(40)) (the MEWA amendments), which also amended section 514(b) of ERISA to narrow the scope of federal preemption of state laws applicable to MEWAs. The purpose of the MEWA amendments generally was to permit states to regulate employee welfare benefit plans that are MEWAs; the extent of the states' jurisdiction over such entities under the MEWA amendments depends on whether or not the MEWA is fully insured. Sec. 302(b), Pub.L. 97–473, 96 Stat. 2611, 2613 (29 U.S.C. 1144(b)(6)).

The Multiple Employer Welfare Arrangement Act of 1983, which was introduced to counter what the Congressional drafters termed abuse by the "operators of bogus 'insurance' trusts," *see* 128 Cong. Rec. E2407 (1982) (Statement of Congressman Erlenborn), significantly enhanced the states' ability to regulate MEWAs. Nevertheless, problems in this area persist. Among other things, the exception for collectively bargained plans contained in section 3(40) has been exploited by some MEWA operators who, through the use of sham unions and collective bargaining agreements, market fraudulent insurance schemes under the guise of collectively bargained welfare plans exempt from state insurance regulation. Another problem in this area involves the use of collectively bargained plans as vehicles for marketing health care coverage to individuals and employers with no relationship to the bargaining process or the underlying bargaining agreement. The definition of a MEWA in section 3(40) was drafted to exclude certain types of plans. As pertains to this rulemaking, section 3(40)(A)(i) of ERISA provides that employee welfare benefit plans that are found by the Secretary of Labor (the Secretary) to be established or maintained under or pursuant to one or more collective bargaining agreements are not MEWAs for purposes of ERISA. Such collectively bargained plans, as a result, were not made subject to the regulatory jurisdiction of the states pursuant to the MEWA amendments.

The Department of Labor (the Department) notes that also appearing in today's **Federal Register** are final regulations relating to filing the Form M–1 and Civil Monetary Penalties for failure or refusal to file the Form M–1. For information on the Form M–1 and related civil monetary penalties, contact Deborah S. Hobbs or Amy J. Turner, Employee Benefits Security Administration, U.S. Department of Labor, Room C–5331, 200 Constitution Ave., NW., Washington, DC 20210 (telephone (202) 693–8335) (this is not a toll-free number).

The Proposed Regulations

On October 27, 2000, the Department published a notice in the **Federal Register** (65 FR 64482) containing a proposed regulation (the criteria regulation) setting forth specific criteria that, if met in the case of a specific plan, and provided that certain other factors set forth in the proposed regulation are not present, would constitute a finding by the Secretary pursuant to section 3(40)(A)(i) of ERISA that a plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40) of ERISA. The Department also simultaneously published in the **Federal Register** (65 FR 64498) proposed regulations (the procedural regulations) that set forth an administrative procedure for obtaining, under certain limited circumstances, an individualized determination by the Secretary as to whether a particular employee welfare benefit plan is established or maintained under or pursuant to one or more agreements that are collective bargaining agreements for purposes of section 3(40) of ERISA.

The proposed regulations followed the recommendations of the ERISA section 3(40) Negotiated Rulemaking Advisory Committee (the Committee). The Committee was convened under the Negotiated Rulemaking Act (the NRA) and the Federal Advisory Committee Act (the FACA), 5 U.S.C. App. 2, to assist the Department in developing proposed regulations to implement section 3(40)(A)(i) of ERISA, 29 U.S.C. 1002(40)(A)(i).

The criteria regulation set forth standards that, if satisfied, would constitute a finding by the Secretary that a plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40).

The proposed regulation established four general criteria for a finding that a plan was established or maintained under or pursuant to collective bargaining for purposes of section 3(40)(A)(i). First, the entity in question had to be an employee welfare benefit plan within the meaning of ERISA section 3(1). Second, the preponderance of those participants covered by the plan (at least 80%) had to have a nexus to the bargaining relationships under or pursuant to which the plan was established or maintained (referred to as the "nexus" group or test). Third, the agreements under or pursuant to which the plan is established or maintained had to have certain characteristics that indicate that they were, for purposes of section 3(40) of ERISA only, collective bargaining agreements, including that the agreements were the product of a "*bona fide* collective bargaining relationship." Fourth, the proposed regulation listed eight specific "factors" deemed to indicate the existence, for purposes of section 3(40) only, of a *bona fide* collective bargaining relationship. If at least four of those specified factors were present, the regulation indicated that a *bona fide* collective bargaining relationship underlying the agreements under or pursuant to which the plan is established or maintained could be presumed to exist.

The proposed criteria regulation included a ninth non-specific "factor" in the list. The ninth factor indicated that the Secretary would consider, in making a finding, whether "other objective or subjective indicia of actual collective bargaining and representation" were present. The inclusion of this "catch-all" factor recognized that, in any particular case, other facts might need to be taken into account to determine whether a *bona fide* collective bargaining relationship existed, especially where the entity did not meet at least four of the eight specific factors, or where, despite meeting four of the eight factors, there were other facts indicating that a *bona fide* collective bargaining relationship did not exist.

The proposed criteria regulation also specified circumstances that, if present, would lead to a conclusion that an employee welfare benefit plan is not established or maintained under or pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements. The regulation stated that, for any plan year in which the specified circumstances were present, a plan that otherwise met the criteria of the regulation should not be deemed to be excluded from the MEWA definition by virtue of section 3(40)(A)(i).

The proposed regulation provided that, under certain limited circumstances, an entity would be permitted to petition the Secretary for an individual finding. The ability to petition, however, would arise under the proposed regulation only if a state's law or jurisdiction had been asserted against the entity in an administrative or judicial proceeding. The procedural regulations set forth specific processes for petitioning for an individual finding.

Public Comments

Subsequent to publication of the proposed regulations, the Department received seven public comments. The Department reconvened the Committee and held a public meeting on March 1, 2002, to obtain the Committee's views on the public comments. Minutes of this meeting, as well as other meetings, of the Committee are available for inspection by the public in the Department's Public Disclosure Room, 200 Constitution Avenue, NW., N1513, Washington, DC 20210.

The following discussion summarizes the issues raised by the public comments, the Committee's discussion of those issues at the public meeting, and the Department's decisions, which are reflected in the final regulations.

1. Whether the Factors Set Forth in the Proposed Criteria Regulation as Presumptive of Bona Fide Collective Bargaining Should Be Expanded or Modified

Two commenters suggested that the Department should expand the list of factors indicative of a *bona fide* collective bargaining relationship. One commenter argued that such an expansion is necessary to make sure that small employers and employers in manufacturing, warehousing, service and other non-construction related industries could easily meet this criterion. The commenter further suggested that government certification of a union, as a collective bargaining agent should be a stand-alone safe harbor factor. The other commenter noted that newly established unions, particularly those organizing in the health care field, might have difficulty meeting four of the eight factors. That commenter suggested that an additional factor—that the welfare plan was being administered along sound actuarial principles—be added to the list of factors. The commenter also suggested that the examples set out as part of the non-specific ninth factor be listed individually as separate factors that could be counted towards meeting the "safe harbor."

In discussing these comments, the Committee noted that these issues were not new and had been considered by the Committee in its initial deliberations. It was noted that the language of the proposed regulation went as far as possible to be inclusive of various types of collective bargaining relationships. The purpose of the ninth "catch-all" factor is to take into account that the eight specific factors may not encompass all *bona fide* collective bargaining relationships. Concerns were also expressed about lowering the threshold for what constitutes a *bona fide* collective bargaining relationship. *Bona fide* collectively bargained arrangements are not likely to be challenged under the regulation by the states. The consensus of the Committee was that the eight factors should not be expanded or modified.

After consideration of the comments and the Committee's discussion, the Department has decided not to expand or modify the factors presumptive of a *bona fide* collective bargaining relationship. The final regulation therefore retains, in section 2510.3–40(b)(4)(i)–(viii), the factors as originally proposed. In the view of the Department, the regulation carefully distinguishes between the specific factors that generally evidence a *bona fide* collective bargaining relationship and the types of activities and fact patterns that are common to sham MEWA operators. Expanding or modifying the factors to include less well-established or less common situations, or making any single factor a stand-alone safe-harbor, may make it easier for sham MEWA operators to mimic the regulation's factors presumptive of a *bona fide* collective bargaining relationship.

The Department also declines to add to the factors, as suggested by one commenter, the fact that the plan is maintained on sound actuarial principles. Although maintaining a plan on sound actuarial principles is important in other regards, that a plan is actuarially sound does not necessarily

evidence the existence of a *bona fide* collective bargaining relationship.

The Department notes, however, that the final regulations are structured to take into account the possibility that a *bona fide* collective bargaining relationship might, in some case, fail to meet the "safe harbor" factors. In addition to including the ninth catch-all factor, the regulations permit entities that assert they are in fact established or maintained under or pursuant to *bona fide* collective bargaining, and against which state law or jurisdiction is asserted, to petition for an individualized finding from the Department as to their status.

2. Whether the Definition of Collective Bargaining Agreement Should Be Modified

The Department received one comment suggesting that the definition of collective bargaining agreement in section 2510.3–(40)(b)(3) needed to be modified to correct a technical defect. As proposed, the regulation required that a plan be "incorporated or referenced in a written agreement between two or more employers and one or more employee organizations." The commenter argued that the requirement of a minimum of two employers, rather than one, was unnecessarily narrow, since there may be situations where a plan that originally was established or maintained under or pursuant to a collective bargaining agreement signed by two or more employers, is now maintained only by one due to a dwindling number of participating employers, although the plan still covers the employees of more than one employer.

The Committee, in discussing this issue, considered whether, in addition to the reasons articulated by the commenter, the language of paragraph 2510.3–40(b)(3) should be changed to make clear that the regulation applies to plans established or maintained under or pursuant to collective bargaining by a single employer but covering the employees of other employers who do not bind themselves to the collective bargaining agreement. It was noted that such entities are MEWAs. The Committee's discussion focused on the fact that it is important for the regulation to make clear that such entities are subject to evaluation under the regulation to see whether in fact they meet the exception under section 3(40) for plans established or maintained under or pursuant to collective bargaining.

On the basis of the public comment and the Committee's discussion, the Department has determined to amend 2510.3–40 to provide that the conditions of (b)(3) will be met if the written agreement referencing the plan is between one or more employers, rather than two or more employers, and one or more employee organizations.

3. Whether the Nexus Group Categories Should Be Expanded or Modified

As part of the process for determining whether a preponderance of the participants covered by the plan have a nexus to the bargaining relationships under or pursuant to which the plan is established or maintained, the proposed criteria regulation defined a "nexus group" of categories of participants who could be counted towards the 80% coverage level set in the proposed regulation as demonstrating such a preponderance. One commenter requested that the nexus group categories be expanded to include employees of an employer trade association that has negotiated any of the multiemployer agreements under or pursuant to which a plan is established or maintained. The commenter noted that the proposed regulation included, as part of the nexus group, employees of employee organizations that sponsor or jointly sponsor a plan, or are represented on the committee, joint board of trustees, or other similar group of representatives of the parties who sponsor the plan. The commenter noted that employees of employer associations might have a similar connection to the collective bargaining process. The commenter asserted that employer trade associations often are involved in negotiating collective bargaining agreements on behalf of many employers, and that such employers routinely become signatories to, or otherwise adopt, agreements that have been negotiated by their employer associations. The multiemployer plans that result from such bargaining often cover the employees of the employer association as well as the employees of the employers represented by the association.

The Committee concluded that, as a matter of parity, employees of an authorized representative of employers in collective bargaining should be included in the nexus group, just as are employees of the employee organization.

Based on its consideration of the comment and the Committee's discussion, the Department has determined to amend 2530.3–40(b)(2)(vi) to include, as a separate category, the employees of an authorized employer representative that actually engaged in the collective bargaining that led to the agreement that references the plan as described in 2510.3–40(b)(3)(i).

4. Whether the Regulation Should Be Expanded To Include Entities That Are Not Collectively Bargained, i.e., Long-Established MEWAs, Union-Only Sponsored Public Sector Benefit Plans

The Department received two comments suggesting that the regulation should be expanded to include certain types of entities that technically are not established or maintained under or pursuant to collective bargaining. The commenters were concerned that issuance of regulations providing clear guidance addressing what the Secretary finds to be collective bargaining for the purposes of the collective bargaining exception in 3(40) of ERISA might result in more state regulation of entities that are not established pursuant to collective bargaining than there had been in the absence of regulations.

The first commenter was a long-established MEWA that contended that it should be excluded from the scope of the MEWA definition pursuant to a "grandfather" provision in the regulation, allowing it to operate free of state regulation even though it is not a plan established or maintained under or pursuant to collective bargaining, because it had been operating on a financially sound basis for many years. A similar comment had been previously submitted to the Committee for consideration prior to the issuance of its Report to the Secretary. Another commenter requested that the preamble to the regulation discuss the nature of legal defense funds for peace officers, which are established by employee organizations for the employees of more than one employer, but are not actually the subject of collective bargaining.

The Committee reiterated its belief, as noted in the preamble to the proposed criteria regulation, that the regulation should serve only to define what constitutes a plan that is established or maintained under or pursuant to collective bargaining. The Department believes that the issues raised by these commenters go beyond the scope of the regulation and, therefore, has determined not to modify the final regulation in response to these comments.

5. Whether and How the Procedural Regulation Should Be Modified in Order To Obviate the Possibility That It May Hinder or Impede Timely State Enforcement Actions

One commenter expressed concern that the availability of administrative proceedings for an individualized section 3(40) finding in cases where the jurisdiction or law of a state has been asserted may result in delays in state enforcement that could substantially hinder a state's ability to take timely enforcement actions against sham MEWA operators. The commenter stated that time is often of the essence in such circumstances and that a delay of even a few days in a state's taking effective action against a MEWA may seriously increase the harm to the participants in the MEWA by permitting the amount of unpaid medical benefit claims to increase, allowing the plan to collect additional illegal premiums, and impinging or eliminating the states' ability to preserve assets by giving the plan operators and opportunity to transfer and hide funds. The commenter specifically identified the need to be able to obtain preliminary and permanent injunctive relief and cease and desist orders where sham union plans are continuing to collect premiums or failing to pay claims. The commenter asserted that, unless the Department made clear that the availability of administrative proceedings was not meant to provide a basis for a stay or delay of state enforcement actions, the regulations should not be implemented.

Recognizing the need to ensure that the regulations assist, rather than hinder, state enforcement efforts against sham MEWA operators and that there are situations where time is of the essence for effective enforcement by the states, the Committee recommended that the regulatory language be clarified to emphasize that the section 3(40) ALJ proceedings are not a basis in themselves for a stay-of-state administrative or judicial proceedings against a putative MEWA.

As proposed, paragraph 2510.3–40(g)(2) of the criteria regulation provided that "nothing in this section or in part 2570, subpart H of this chapter is intended to have any effect on applicable law relating to stay or delay of a state administrative or court proceeding or enforcement subpoena." In response to the commenter and the concerns of the Committee, the Department has amended that paragraph to state that "nothing in this section or in part 2570, subpart H of this chapter is intended to provide the basis for a stay or delay of a state administrative or court proceeding or enforcement of a subpoena."

Miscellaneous Changes

In its consideration of a final regulation, the Committee questioned whether consideration should be given to the effect of plan mergers on counting years of service for purposes of the determining the "nexus" group. In this regard, the Committee noted that the nexus group in section 2510.3–40(b)(2) includes retirees who either participated in the welfare benefit plan for at least five of the last 10 years preceding their retirement or are receiving benefits as participants under a multiemployer pension benefit plan that is maintained under the same agreement referred to in paragraph (b)(2)(i), and have at least five years of service or the equivalent under that pension plan. The Committee suggested that participation in the pre-merger multiemployer plans should also be considered in determining whether employees meet the requirements of these categories of the nexus group. The Committee also raised the issue of whether employment in the bargaining unit under the pre-merger plan should be considered for determining whether an individual is a bargaining unit alumnus under 2510.3–40(b)(2)(vii) where the merger was based on a merger of unions. The Committee noted that Example 2 of the proposed regulation addresses how a merger affects the evaluation of the factors in (b)(4)(iii) and (iv) and suggested that another example could be added to the final regulation to address the effect of merging unions and multiemployer plans on the nexus group analysis. After considering the issues raised by the Committee, the Department has determined that it is appropriate to clarify the examples at 2510.3–40(e) to make clear that, in the case of a merger of multiemployer plans, participation in a predecessor plan or employment with a predecessor union may be considered for purposes of determining the nexus group individuals in section 2510.3–40(b)(2)(ii) and (vii). In this regard, a new paragraph (3) was added to Example 2 to clarify that the merger of two unions and the related pension and health and welfare plans will not affect the determinations of who is a "retiree" or a "bargaining unit alumni" for purposes of determining the nexus group under the regulation.

In reviewing the 75% test in paragraph (b)(4)(vi) of 2510.3–40, the Department decided that the regulation should be modified to make clear that in determining the amount of premiums or contributions to which the 75% test applies does not include any amount that a participant or beneficiary might be required to pay as a co-pay or deductible under the provided coverage. Accordingly, the Department has modified paragraph 2510.3–40(b)(4)(iv) to make clear that, in addition to dental or vision care and coverage for excepted benefits under 29 CFR 2590.732(b), amounts payable by participants and beneficiaries as co-payments or deductibles are disregarded for purposes of the 75% test. In so clarifying this provision, however, the Department notes that if an entity were to establish a co-payment or deductible schedule designed solely to satisfy the criteria of paragraph 2510.3–40(b)(4)(vi), without actually requiring substantial employer contributions, evidence of such a design may be considered in evaluating whether for purposes of 2510.3–40(c)(3) there is fraud, forgery, or willful misrepresentation as to the factors relied on to demonstrate that the plan satisfies the criteria set forth in paragraph (b) of this section. The Department further notes that the collective bargaining history appropriately may be examined in a 3(40) proceeding, including a review of those factors in section 2510.3–40(b)(4).

Independent of the Committee's review of the regulations, the Department considered whether the proposed 80% minimum coverage requirement for the "nexus" test is too low. In the August 1, 1995, proposed regulation, the Department proposed that no less than 85% of the individuals covered by a plan must be within the "nexus" group. A number of commenters on that regulation expressed concern that the percentage was too high. In developing a new proposal, the Committee recommended, and the Department proposed, an 80% test. In this regard, the preamble to the proposal indicated that "[t]he Committee recommended a 20% margin for coverage of non-nexus people, even though it understood that the percentage of participants in collectively bargained plans who are not within one of the nexus categories is rarely likely to be that high." 65 FR 64485 (Oct. 27, 2000). While comments were specifically invited on the 80% test, no comments were received on that provision. Moreover, the Department received no comments suggesting that changing the 80% test to an 85% test would present a problem for affected plans. The Department further notes that H.R. 2563 of the 107th Congress, the "Bipartisan Patients Protection Act," as passed by the U.S. House of Representatives, among other things, amends ERISA section 3(40)(A)(i) to clarify the standards applicable to determining whether a plan is established or maintained pursuant to collective bargaining agreements. *See* section 423 of H.R. 2563. Although similar in many respects to the regulatory standards proposed by the Department, H.R. 2563

limits the percentage of non-nexus group individuals to 15 percent.

On the basis of the comments, as well as the discussions of the Committee, the Department does not believe that, in the absence of any data to the contrary, requiring 85% of the covered individuals to be within the "nexus" group, rather than 80%, will have any significant effect on the status of otherwise *bona fide* collectively bargained plans. Increasing the "nexus" group percentage to 85% should enhance the regulation's deterrent effect on sham MEWA operators who attempt to masquerade as collectively bargained plans in order to avoid state insurance regulation and oversight. In an environment where problems with sham MEWA operators are growing, the Department believes that any action it can take to reduce the likelihood of health insurance fraud against workers and their families is action that should be taken. Accordingly, the Department determined it appropriate to modify paragraph (b)(2) of 2510.3–40 to require that at least 85% of the participants in the plan be within the "nexus" group (described in subparagraphs (i) through (x) of 2510.3–40(b)(2)).

B. Economic Analysis Under Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action is "significant" within the meaning of 3(f)(4), and therefore subject to review by the Office of Management and Budget (OMB). Consistent with the Executive Order, the Department has undertaken an assessment of the costs and benefits of this regulatory action. This analysis is detailed below.

Summary

Although neither the benefits nor costs have been fully quantified, the Department believes that the benefits of this final regulation more than justify its costs. The final regulation yields positive benefits by reducing uncertainty over which welfare benefit plans are excepted from the definition of a multiple employer welfare arrangement under section 3(40) and are therefore not subject to state regulation. The Department sought comments from the public concerning its analysis of benefits and costs of the proposed regulation. Having received no comments, the Department has relied on its initial analysis in concluding that the benefits of the final regulation justify its costs.

The regulation's elements for distinguishing collectively bargained plans from MEWAs are verifiable through documentation that plans or their agents generally maintain as part of usual business practices. The regulation also incorporates elements of flexibility, allowing entities to demonstrate the existence of a *bona fide* collective bargaining agreement, one of the regulatory factors, by satisfying any four of eight specified factors. Finally, the regulation is both sufficiently broad to include all plans established or maintained under or pursuant to one or more collective bargaining agreements, yet is discriminating enough to ensure that state law will apply to entities not meeting the criteria. Only a very small number of entities are likely to be treated differently as a result of promulgation of this criteria regulation. In the case of the few entities that will be determined to be not collectively bargained plans, the additional cost attributable to state regulation is outweighed by the benefit that such state regulation will provide by way of additional protections for participants and beneficiaries.

Background

It is the view of the Department that the uncertainty created by the lack of clear criteria for distinguishing collectively bargained plans from MEWAs has encouraged unscrupulous operators of sham MEWAs in attempts to escape or delay state regulatory efforts by asserting that states lack jurisdiction to regulate such entities because they are excluded from the definition of MEWA by reason of the exception for collectively bargained plans. In order to establish their authority to regulate, states have had to take additional steps, such as initiating administrative or legal proceedings contesting the defendant's status as a collectively bargained plan, and have been the subject of actions initiated by sham MEWA operators, such as suits for federal declaratory judgment or removal actions.

Confusion about whether a plan was established or maintained under or pursuant to an agreement which the Secretary finds to be a collective bargaining agreement has made it difficult for the states to enforce appropriate laws. The criteria regulation will reduce or eliminate this uncertainty. It will provide greater clarity for entities and states and reduce the time and expense attributable to court actions or requests to the Department for guidance.

Benefits of the Regulation—Reducing Uncertainty

Plans and arrangements will benefit from greater assurance concerning their actual legal status. States, through an enhanced ability to regulate based on the greater certainty offered by the regulation, will be better able to protect employers, participants, and beneficiaries from unscrupulous MEWA operators. Further, the majority of plans established or maintained under or pursuant to collective bargaining agreements currently operate in a manner that is consistent with the regulation. Most entities will therefore not perceive any need to undertake a systematic reassessment of their status under the regulation. It is possible, however, that some will choose to undertake such an assessment by "comparison testing" the plan's operations against the "safe harbor" criteria established in the final regulation. The Department has estimated below the number of entities likely to undertake a status assessment and the costs likely to be associated with those activities.

Costs of the Regulation

Entities Potentially Affected. To estimate the number of entities potentially affected by the final rule, the Department examined available data on multiemployer welfare plans established or maintained under or pursuant to collective bargaining agreements, and the number of entities self-reporting as MEWAs. Under ERISA, multiemployer collectively bargained plans are required to file an annual financial report, the Form 5500. MEWAs are required to file the Form M–1 annually. The 1998 Form 5500 filings by multiemployer collectively bargained plans numbered about 2,000 (with about 6 million participants). The MEWAs that filed Form M–1 for the year 2000, pursuant to section 101 of ERISA and related interim final rules (65 FR 7152, February 11, 2000) numbered about 600 (with about 2 million participants).[1] The total number of MEWAs and collectively bargained plans, which represents the total universe of arrangements that might have questions about their legal status and "comparison test" under this regulation, is estimated at about 2,600 (8 million participants).

The Department was unable to identify any direct measure of the number of entities whose status is uncertain or whose status would remain uncertain under the regulation. Therefore, in order to assess the economic impact of reduced uncertainty under the regulation, the Department examined proxies for the number of entities that might be subject to such uncertainty. After estimating the total number of MEWAs and collectively bargained plans at 2,600, the Department then tallied the number of inquiries to the Department concerning MEWAs and the number of MEWA-related lawsuits to which the Department has been party, taking this to represent a reasonable indicator of the number of entities that have been subject to uncertainty in the past.

Department data indicate that in recent years, the Department has received an average of about nine MEWA-related requests for information each year from state and federal agencies and the private sector. The Department also considered the number of MEWA-related lawsuits that were filed by the Department in recent years. An average of about 45 actions have been brought each year. For purposes of this analysis, it has been assumed that each case involved a different MEWA. Accordingly, the Department has estimated for purposes of this economic analysis that approximately 54 entities (45 + 9) annually may have reason to be uncertain about their legal status with respect to section 3(40) of ERISA, or about two percent of the estimated total number of 2,600 MEWAs and collectively bargained plans.

The Department views this approximate number of 54 entities per year as a conservatively high estimate of the number of entities whose status could be made more certain by issuance of this regulation. On one hand, because some number of entities may confront uncertainty without becoming either the subject of an inquiry addressed to the Department or a lawsuit to which the Department is party, this estimate may represent only a subset of the entities that face uncertainty over their status. On the other hand, this estimate may overstate the number of entities that face uncertainty because it is known that not all requests to the Department or court actions actually raised issues related directly to the collective bargaining exception under section 3(40).

Assessment of Status. The Department estimates the cost to the 54 entities of conducting an assessment of their status under the regulation to be small. Such cost would be largely generated by reviewing records kept by third parties or by the entity in the ordinary course of business. The Department assumes that such a review requires 16 hours of an attorney's or comparable professional's time, plus 5 hours of clerical staff time. At $72 per hour and $21 per hour respectively, the total cost would be $1,173 per entity, or about $63,342 on aggregate per year for 54 entities. This cost would be incurred only once for a given entity unless its circumstances changed substantially relative to the standard. The Department believes that the cost is more than justified by savings to entities that, by conducting this assessment, avoid the need to engage in litigation or seek guidance from the Department in order to determine their status. These net savings represent a net benefit of this regulation.

Following a self-assessment of status, some fraction of these 54 entities might nonetheless find themselves in a situation leading them to seek an administrative determination from the Secretary under the procedural regulations, incurring attendant costs, perhaps because a state's jurisdiction or laws are asserted against the entity. The administrative process under the procedural regulations is, in the Department's view, an efficient and less costly process for resolving such disputes than would be available in the absence of the procedural regulations. The Department has elected to attribute the net benefit from these savings not to this regulation, but to the accompanying procedural regulations.

Reclassifying Incorrectly Classified Entities. Some number of entities, generally a subset of the 54 estimated annually to face uncertainty over status, will be reclassified as a result of comparison testing against the regulation's criteria. Entities that formerly considered themselves to be excluded from the MEWAs definition as collectively bargained plans may be required under the criteria regulation to classify themselves as MEWAs. These MEWAs will likely incur costs to comply with newly applicable state requirements. Such requirements vary from state to state, making it difficult to estimate the cost of compliance, but it is likely that costs might include those attributable to audits, funding and reserves, reporting, premium taxes and assessments, provision of state-mandated benefits, underwriting and rating rules, market conduct standards, and managed care patient protection rules, among other costs. These costs may be higher for those MEWAs that conduct business in more than one state.

Relevant literature suggests these costs can amount to ten percent of premium.[2] The cost may be substantially more if a state regulates premium rates and the entity otherwise would have benefited from insuring a population whose health costs are far lower than average. However, these added costs are transfers and not true economic costs because they serve as cross-subsidies that reduce costs for populations that are costlier than average.

As noted above, the universe of 2,600 entities that includes those potentially subject to uncertainty covers 8 million participants, or about 3,100 participants per entity on average. Industry surveys put the cost of health coverage at about $4,500 per employee and retiree per year. Applying these figures to 54 entities that might face uncertainty over status—an upper bound on the number likely to be reclassified—produces an

[1] This represents a smaller number of plans and fewer participants than the numbers projected at the time of the proposal. Because the Form M–1 requirement had not been fully implemented at the time of the proposal, actual information on its use was not available, and the Department relied on survey data regarded as the most comparable at the time.

[2] Data from the Health Insurance Association of America (Source Book of Health Insurance Data, 1999–2000) suggests that insurance companies' loss ratios for group health insurance policies historically ranged from about 85 percent to 90 percent. The inverse of the loss ratio, or about 10 percent to 15 percent, generally would include all of these costs except those associated with benefit mandates and some managed care protections, as well as insurance company profits, income taxes, and normal administrative overhead. Loss ratios tend to be higher (and these costs lower) for larger group policies, and MEWAs are likely to be large. The cost of benefit mandates and managed care protection will very across states depending on their extent and across MEWAs depending largely on the degree to which they otherwise are included voluntarily in the insurance products they provide. One study estimated that mandates raise premiums by between 4 percent and 13 percent (Gail A. Jensen and Michael A. Morrisey, Mandated Benefit Laws and Employer-Sponsored Health Insurance (Washington, DC: HIAA 1999)).

upper-bound estimated cost of about $75 million.[3]

The Department has concluded that actual costs will be far lower than this and will be outweighed by the benefit of the associated protections that will flow from clarifying the state's authority to regulate. As noted above, it is likely that the true number of entities that are reclassified as MEWAs will be a fraction of the estimated 54 that annually might face uncertainty over status. Among those that are reclassified, certain entities likely would already have elected voluntarily to comply with some of the state regulatory requirements and therefore would not incur any cost from the application of state law. For those that would not have complied with relevant state law, operation of the regulation may impose additional costs, such as meeting solvency requirements or providing mandated benefits. The additional costs are offset and justified by increased security for plans and improved coverage for participants. Thus, the added cost from state regulation would be offset by the benefits derived from the protections that state regulations provide. GAO, in 1992, identified $124 million in unpaid claims owed by sham MEWAs. Department enforcement actions involving MEWAs in recent years have identified monetary violations of approximately $121.6 million. With state licensing and solvency requirements in place, at least some incidences of the $124 million in unpaid claims cited in the GAO study or the $121.6 million in violations would most likely not have occurred.

It is also possible that some entities considered to be MEWAs because they are not collectively bargained will be reclassified under the criteria regulation as collectively bargained plans. However, this number seems likely to be very small because entities that can legitimately be treated as collectively bargained have an economic incentive to do so. Any entities that are so classified benefit from the savings of having no obligation to comply with state regulatory requirements. There is no meaningful loss of benefits from the absence of state protections in such cases because the combination of a legitimate collective bargaining agreement and the application of ERISA provides adequate protections.

[3] Recent data from actual Form M–1 filings results in a higher estimated number of participants per entity than was indicated in the proposal; therefore, the estimated cost for the final regulation exceeds the $58 million cost estimate for the proposal.

C. Paperwork Reduction Act

This Notice of Final Rulemaking is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain a "collection of information" as defined in 44 U.S.C. 3502(3).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires that the agency present a regulatory flexibility analysis at the time of the publication of the notice of final rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, the Employee Benefits Security Administration (EBSA) continues to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46, and 2520.104b–10, certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare benefit plans covering fewer than 100 participants and that satisfy certain other requirements.

Further, while some large employers may have small plans, generally, most small plans are maintained by small employers. Thus, EBSA believes that assessing the impact of this rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). At the time of the proposed rule, EBSA requested comments on the appropriateness of the size standard used in evaluating the impact of this rule on small entities; no comments were received that would cause the Department to reevaluate its size standard.

On this basis, however, EBSA has determined that this rule will not have a significant economic impact on a substantial number of small entities. In support of this determination, and in an effort to provide a sound basis for this conclusion, EBSA has prepared the following final regulatory flexibility analysis.

(1) *Reasons for Action.* EBSA is proposing this regulation because it believes that regulatory guidance concerning the definition of a "plan or arrangement which is established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements" (ERISA 3(40)(A)(1)) is necessary to ensure that state insurance regulators have ascertainable guidelines to help regulate MEWAs operating in their jurisdictions. The guidance will also allow sponsors of employee welfare benefit plans to determine independently whether their entities are excepted under section 3(40) of ERISA. A more detailed discussion of the agency's reasoning for issuing the regulation is found above.

(2) *Objective.* The objective of the regulation is to provide criteria for the application of an exception to the definition "multiple employer welfare arrangement" (MEWA) found in section 3(40) of ERISA for a "plan or other arrangement which is established or maintained—(i) under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements." An extensive list of authority may be found in the Statutory Authority section, below.

(3) *Estimate of Small Entities Affected.* Form 5500 filings and Form M–1 filings indicate that there are about 2,600 entities that could be classified as collectively bargained plans or MEWAs and that could be affected by the new criteria for defining collectively bargained plans. It is expected, however, that a very small number of these entities will have fewer than 100 participants. By their nature, the affected entities must involve at least two employers, which decreases the likelihood of their covering fewer than 100 participants. Also, the underlying goals behind the formation of these

entities, such as gaining purchasing and negotiating power through economies of scale, improving administrative efficiencies, and gaining access to additional benefit design features, are not readily accomplished if the group of covered lives remains small.

Available data indicate that about 200 or eight percent of the 2,600 entities have fewer than 100 participants. Based on the health coverage reported in the Employee Benefits Supplement to the 1993 Current Population Survey and a 1993 Small Business Administration survey of retirement and other benefit coverages in small firms, the Department estimates that there are more than 2.5 million private group health plans with fewer than 100 participants. Thus, the number of small plans and MEWAs potentially affected is very small in light of this large number of small plans. Even if every one of the 2,600 entities at issue had fewer than 100 participants, the number of entities affected would represent approximately one-tenth of one percent of all small group health plans. Accordingly, the Department has determined that this regulation will not have a significant economic impact on a substantial number of small entities.

Although relatively few small plans and other entities are expected to be affected by this proposal, it is known that the employers typically involved in these entities are often small (that is, they have fewer than 500 employees, which is generally consistent with the definition of small entity found in regulations issued by the Small Business Administration (13 CFR 121.201)). At the time of the proposed regulation, the Department sought comments and data with respect to the number of small employers potentially impacted by the establishment of a standard for determining whether a welfare benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements. No comments or data were received in response to this request; the Department therefore continues to believe that, because these plans and arrangements involve at least two employers, and assuming that each is small, it can be estimated that at least 5,200 small employers may be affected.

It is possible that a small employer participating in what it thinks is a legitimate MEWA may find that it has unknowingly participated in a sham MEWA and will need to change its method of providing welfare benefits to its employees. By enabling states to regulate fraudulent and financially unsound MEWAs, therefore, the regulation may limit the sources of welfare benefits available to some small businesses, requiring them to seek alternative coverage for their employees. The greater benefit for employers, however, is an increased certainty that the MEWAs that remain in business will meet state regulatory standards and will be more certain to provide promised health, life, disability or other welfare benefits to employees. Consequently, employers will receive a net benefit from the reduced incidence of fraud and insolvency among the pool of MEWAs in the marketplace.

(4) *Reporting and Recordkeeping.* In most cases, the records used to determine if a welfare benefit plan is established or maintained under or pursuant to a collective bargaining agreement are routinely prepared and held by a collectively bargained multiemployer plan in the ordinary course of business. For any entities that are newly determined to be MEWAs under the regulation, there will be an economic impact related to the start-up costs of compliance with state regulations. These costs arise from state requirements, however, and not the requirements of this regulation. Start-up costs under state regulations may include expenses of registration, licensing, financial reporting, auditing, and any other requirement of state insurance law. Reporting and filing this information with the state would require the professional skills of an attorney, accountant, or other health benefit plan professional; however, post start-up, the majority of the recordkeeping and reporting could be handled by clerical staff.

(5) *Duplication.* No federal rules have been identified that duplicate, overlap, or conflict with the final rule.

(6) *Alternatives.* The regulation adopts generally the views of the consensus report of the Committee that was established to provide an alternative to the Department's earlier Notice of Proposed Rulemaking on Plans Established or Maintained Under or Pursuant to Collective Bargaining Agreements, published in the **Federal Register** (60 FR 39209, Aug. 1, 1995). At that time, recognizing that guidance was needed to clarify the collective bargaining exception to the MEWA regulation, the Department had proposed certain criteria describing the collective bargaining agreement. Commenters on the first proposed regulation expressed concerns related to plan compliance and the issue of state regulation.

Based on the comments received, the Department subsequently turned to negotiated rulemaking, establishing the Committee to assist the Department in developing acceptable criteria. The Committee included representatives from labor unions, multiemployer plans, state governments, employer/management associations, Railway Labor Act plans, third-party administrators, independent agents and brokers of health care products, insurance carriers and the federal government. Because this rule takes into account the Committee's consensus views, and because the Committee represented a full cross-section of the parties affected by the rule, including state, federal, association, and private sector health care organizations, the Department believes that, as an alternative to the 1995 NPRM, this regulation accomplishes the stated objectives of the Secretary and will have a beneficial effect on small employer participation in MEWAs.

The Department has concluded that the implementation of the regulation will be less costly than alternative methods of determining compliance with section 3(40), such as through case-by-case analysis by EBSA of each employee welfare benefit plan or litigation. In addition, if the Department elected not to define specific guidelines for the application of section 3(40), thereby enabling sham MEWAs to continue to evade state regulation, costs for small businesses would rise in terms of loss of coverage and unpaid claims. No other significant alternatives that would minimize economic impact on small entities were identified.

Further, the Department has concluded that it would be inappropriate to create a specific exemption under the regulation for small MEWAs because small MEWAs are just as likely as large MEWAs to be underfunded or otherwise have inadequate reserves to meet the benefit claims submitted for payment.

E. Small Business Regulatory Enforcement Fairness Act

The rule being issued here is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or

on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

F. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million.

G. Executive Order 13132

When an agency promulgates a regulation that has federalism implications, Executive Order 13132 (64 FR 43255, August 10, 1999), requires the Agency to provide a federalism summary impact statement. Pursuant to section 6(c) of the Order, such a statement must include a description of the extent of the agency's consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State have been met.

This regulation has federalism implications because it sets forth standards and procedures for determining whether certain entities may be regulated under certain state laws or whether such state laws are preempted with respect to such entities. The state laws at issue are those that regulate the business of insurance.

From the inception of the Committee through final deliberations on comments received on the proposed regulation, a representative from the National Association of Insurance Commissioners (NAIC), representing the interests of state governments in the regulation of insurance, participated in the rulemaking. NAIC raised the following concerns at Committee meetings: (1) That the rule should allow MEWAs to be easily distinguishable from collectively bargained plans so that MEWAs properly may be subjected to state jurisdiction and regulation; (2) that the rule should prevent the unlicensed sale of health insurance; and (3) that losses to individuals in the form of unreimbursed and denied medical claims should be eliminated.

The Department's position is that there is a substantial need for this regulation. Unscrupulous individuals have been able to exploit the lack of clear guidance regarding the criteria for determining whether an entity is established or maintained pursuant to collective bargaining agreements to create entities that falsely promise benefits they are unable to provide. These operators, free of state solvency and reserve requirements, have marketed unlicensed health insurance to small employers, often offering health insurance at significantly lower rates than state-licensed insurance companies. Ultimately, these operations have often gone bankrupt, leaving individuals with significant unpaid health claims and without health insurance. The lack of clear guidance has hampered states in their efforts to regulate these entities, and appropriate state regulation would reduce or eliminate the risk of losses to employers, employees and their families.

This regulation provides objective criteria for distinguishing collectively bargained plans from arrangements subject to state insurance law. The regulation will facilitate state enforcement efforts against arrangements attempting to misuse the collectively bargained exception in section 3(40) of ERISA. In that regard, the regulation will reduce the incidence of sale of unlicensed insurance under the guise of collectively bargained plans and will limit the losses to individuals in the form of unreimbursed medical and other welfare benefit insurance claims.

The Department notes further, as discussed more fully above, that one commenter expressed concern that the availability of administrative proceedings for an individualized section 3(40) finding in cases where the jurisdiction or law of a state has been asserted may result in delays in state enforcement that could substantially hinder a state's ability to take timely enforcement actions against sham MEWA operators. Recognizing the need to ensure that the regulations assist, rather than hinder, state enforcement efforts against sham MEWA operators, and taking into account the input of the Committee, including the NAIC representative, the Department has amended the regulation to make clear that it is not intended to provide the basis for a stay or delay of any state actions, including administrative or court proceedings and enforcement subpoenas, where immediate state enforcement action is warranted.

List of Subjects in 29 CFR Part 2510

Collective bargaining, Employee benefit plans, Pensions.

■ For the reasons set forth in the preamble, 29 CFR part 2510 is amended as follows:

PART 2510—[AMENDED] DEFINITION OF TERMS USED IN SUBCHAPTERS C, D, E, F, AND G OF THIS CHAPTER

■ 1. The authority citation for part 2510 is revised to read as follows:

Authority: 29 U.S.C. 1002(2), 1002(21), 1002(37), 1002(40), 1031, and 1135; Secretary of Labor's Order 1–2003, 68 FR 5374; Sec. 2510.3–101 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332 and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275, and 29 U.S.C. 1135 note. Sec. 2510.3–102 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332 and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275.

■ 2. Add new section 2510.3–40 to read as follows:

§ 2510.3–40 Plans Established or Maintained Under or Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA.

(a) *Scope and purpose.* Section 3(40)(A) of the Employee Retirement Income Security Act of 1974 (ERISA) provides that the term "multiple employer welfare arrangement" (MEWA) does not include an employee welfare benefit plan that is established or maintained under or pursuant to one or more agreements that the Secretary of Labor (the Secretary) finds to be collective bargaining agreements. This section sets forth criteria that represent a finding by the Secretary whether an arrangement is an employee welfare benefit plan established or maintained under or pursuant to one or more collective bargaining agreements. A plan is established or maintained under or pursuant to collective bargaining if it meets the criteria in this section. However, even if an entity meets the criteria in this section, it will not be an employee welfare benefit plan established or maintained under or pursuant to a collective bargaining agreement if it comes within the exclusions in the section. Nothing in or pursuant to this section shall constitute a finding for any purpose other than the exception for plans established or maintained under or pursuant to one or more collective bargaining agreements under section 3(40) of ERISA. In a particular case where there is an attempt to assert state jurisdiction or the application of state law with respect to a plan or other arrangement that allegedly is covered under Title I of ERISA, the Secretary has set forth a procedure for obtaining individualized findings at 29 CFR part 2570, subpart H.

(b) *General criteria.* The Secretary finds, for purposes of section 3(40) of ERISA, that an employee welfare benefit plan is "established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements" for any plan year in which the plan meets the criteria set forth in paragraphs (b)(1), (2), (3), and (4) of this section, and is not excluded under paragraph (c) of this section.

(1) The entity is an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

(2) At least 85% of the participants in the plan are:

(i) Individuals employed under one or more agreements meeting the criteria of paragraph (b)(3) of this section, under which contributions are made to the plan, or pursuant to which coverage under the plan is provided;

(ii) Retirees who either participated in the plan at least five of the last 10 years preceding their retirement, or

(A) Are receiving benefits as participants under a multiemployer pension benefit plan that is maintained under the same agreements referred to in paragraph (b)(3) of this section, and

(B) Have at least five years of service or the equivalent under that multiemployer pension benefit plan;

(iii) Participants on extended coverage under the plan pursuant to the requirements of a statute or court or administrative agency decision, including but not limited to the continuation coverage requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985, sections 601–609, 29 U.S.C. 1169, the Family and Medical Leave Act, 29 U.S.C. 2601 *et seq.*, the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301 *et seq.*, or the National Labor Relations Act, 29 U.S.C. 158(a)(5);

(iv) Participants who were active participants and whose coverage is otherwise extended under the terms of the plan, including but not limited to extension by reason of self-payment, hour bank, long or short-term disability, furlough, or temporary unemployment, provided that the charge to the individual for such extended coverage is no more than the applicable premium under section 604 of the Act;

(v) Participants whose coverage under the plan is maintained pursuant to a reciprocal agreement with one or more other employee welfare benefit plans that are established or maintained under or pursuant to one or more collective bargaining agreements and that are multiemployer plans;

(vi) Individuals employed by:

(A) An employee organization that sponsors, jointly sponsors, or is represented on the association, committee, joint board of trustees, or other similar group of representatives of the parties who sponsor the plan;

(B) The plan or associated trust fund;

(C) Other employee benefit plans or trust funds to which contributions are made pursuant to the same agreement described in paragraph (b)(3) of this section; or

(D) An employer association that is the authorized employer representative that actually engaged in the collective bargaining that led to the agreement that references the plan as described in paragraph (b)(3) of this section;

(vii) Individuals who were employed under an agreement described in paragraph (b)(3) of this section, provided that they are employed by one or more employers that are parties to an agreement described in paragraph (b)(3) and are covered under the plan on terms that are generally no more favorable than those that apply to similarly situated individuals described in paragraph (b)(2)(i) of this section;

(viii) Individuals (other than individuals described in paragraph (b)(2)(i) of this section) who are employed by employers that are bound by the terms of an agreement described in paragraph (b)(3) of this section and that employ personnel covered by such agreement, and who are covered under the plan on terms that are generally no more favorable than those that apply to such covered personnel. For this purpose, such individuals in excess of 10% of the total population of participants in the plan are disregarded;

(ix) Individuals who are, or were for a period of at least three years, employed under one or more agreements between or among one or more "carriers" (including "carriers by air") and one or more "representatives" of employees for collective bargaining purposes and as defined by the Railway Labor Act, 45 U.S.C. 151 *et seq.*, providing for such individuals' current or subsequent participation in the plan, or providing for contributions to be made to the plan by such carriers; or

(x) Individuals who are licensed marine pilots operating in United States ports as a state-regulated enterprise and are covered under an employee welfare benefit plan that meets the definition of a qualified merchant marine plan, as defined in section 415(b)(2)(F) of the Internal Revenue Code (26 U.S.C.).

(3) The plan is incorporated or referenced in a written agreement between one or more employers and one or more employee organizations, which agreement, itself or together with other agreements among the same parties:

(i) Is the product of a *bona fide* collective bargaining relationship between the employers and the employee organization(s);

(ii) Identifies employers and employee organization(s) that are parties to and bound by the agreement;

(iii) Identifies the personnel, job classifications, and/or work jurisdiction covered by the agreement;

(iv) Provides for terms and conditions of employment in addition to coverage under, or contributions to, the plan; and

(v) Is not unilaterally terminable or automatically terminated solely for non-payment of benefits under, or contributions to, the plan.

(4) For purposes of paragraph (b)(3)(i) of this section, the following factors, among others, are to be considered in determining the existence of a bona fide collective bargaining relationship. In any proceeding initiated under 29 CFR part 2570 subpart H, the existence of a bona fide collective bargaining relationship under paragraph (b)(3)(i) shall be presumed where at least four of the factors set out in paragraphs (b)(4)(i) through (viii) of this section are established. In such a proceeding, the Secretary may also consider whether other objective or subjective indicia of actual collective bargaining and representation are present as set out in paragraph (b)(4)(ix) of this section.

(i) The agreement referred to in paragraph (b)(3) of this section provides for contributions to a labor-management trust fund structured according to section 302(c)(5), (6), (7), (8), or (9) of the Taft-Hartley Act, 29 U.S.C. 186(c)(5), (6), (7), (8) or (9), or to a plan lawfully negotiated under the Railway Labor Act;

(ii) The agreement referred to in paragraph (b)(3) of this section requires contributions by substantially all of the participating employers to a multiemployer pension plan that is structured in accordance with section 401 of the Internal Revenue Code (26 U.S.C.) and is either structured in accordance with section 302(c)(5) of the Taft-Hartley Act, 29 U.S.C. 186(c)(5), or is lawfully negotiated under the Railway Labor Act, and substantially all of the active participants covered by the employee welfare benefit plan are also eligible to become participants in that pension plan;

(iii) The predominant employee organization that is a party to the agreement referred to in paragraph (b)(3) of this section has maintained a series of agreements incorporating or referencing the plan since before January 1, 1983;

(iv) The predominant employee organization that is a party to the agreement referred to in paragraph (b)(3) of this section has been a national or international union, or a federation of

national and international unions, or has been affiliated with such a union or federation, since before January 1, 1983;

(v) A court, government agency, or other third-party adjudicatory tribunal has determined, in a contested or adversary proceeding, or in a government-supervised election, that the predominant employee organization that is a party to the agreement described in paragraph (b)(3) of this section is the lawfully recognized or designated collective bargaining representative with respect to one or more bargaining units of personnel covered by such agreement;

(vi) Employers who are parties to the agreement described in paragraph (b)(3) of this section pay at least 75% of the premiums or contributions required for the coverage of active participants under the plan or, in the case of a retiree-only plan, the employers pay at least 75% of the premiums or contributions required for the coverage of the retirees. For this purpose, coverage under the plan for dental or vision care, coverage for excepted benefits under 29 CFR 2590.732(b), and amounts paid by participants and beneficiaries as co-payments or deductibles in accordance with the terms of the plan are disregarded;

(vii) The predominant employee organization that is a party to the agreement described in paragraph (b)(3) of this section provides, sponsors, or jointly sponsors a hiring hall(s) and/or a state-certified apprenticeship program(s) that provides services that are available to substantially all active participants covered by the plan;

(viii) The agreement described in paragraph (b)(3) of this section has been determined to be a *bona fide* collective bargaining agreement for purposes of establishing the prevailing practices with respect to wages and supplements in a locality, pursuant to a prevailing wage statute of any state or the District of Columbia.

(ix) There are other objective or subjective indicia of actual collective bargaining and representation, such as that arm's-length negotiations occurred between the parties to the agreement described in paragraph (b)(3) of this section; that the predominant employee organization that is party to such agreement actively represents employees covered by such agreement with respect to grievances, disputes, or other matters involving employment terms and conditions other than coverage under, or contributions to, the employee welfare benefit plan; that there is a geographic, occupational, trade, organizing, or other rationale for the employers and bargaining units covered by such agreement; that there is a connection between such agreement and the participation, if any, of self-employed individuals in the employee welfare benefit plan established or maintained under or pursuant to such agreement.

(c) *Exclusions.* An employee welfare benefit plan shall not be deemed to be "established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements" for any plan year in which:

(1) The plan is self-funded or partially self-funded and is marketed to employers or sole proprietors

(i) By one or more insurance producers as defined in paragraph (d) of this section;

(ii) By an individual who is disqualified from, or ineligible for, or has failed to obtain, a license to serve as an insurance producer to the extent that the individual engages in an activity for which such license is required; or

(iii) By individuals (other than individuals described in paragraphs (c)(1)(i) and (ii) of this section) who are paid on a commission-type basis to market the plan.

(iv) For the purposes of this paragraph (c)(1):

(A) "Marketing" does not include administering the plan, consulting with plan sponsors, counseling on benefit design or coverage, or explaining the terms of coverage available under the plan to employees or union members;

(B) "Marketing" does include the marketing of union membership that carries with it plan participation by virtue of such membership, except for membership in unions representing insurance producers themselves;

(2) The agreement under which the plan is established or maintained is a scheme, plan, stratagem, or artifice of evasion, a principal intent of which is to evade compliance with state law and regulations applicable to insurance; or

(3) There is fraud, forgery, or willful misrepresentation as to the factors relied on to demonstrate that the plan satisfies the criteria set forth in paragraph (b) of this section.

(d) *Definitions.* (1) *Active participant* means a participant who is not retired and who is not on extended coverage under paragraphs (b)(2)(iii) or (b)(2)(iv) of this section.

(2) *Agreement* means the contract embodying the terms and conditions mutually agreed upon between or among the parties to such agreement. Where the singular is used in this section, the plural is automatically included.

(3) *Individual employed* means any natural person who furnishes services to another person or entity in the capacity of an employee under common law, without regard to any specialized definitions or interpretations of the terms "employee," "employer," or "employed" under federal or state statutes other than ERISA.

(4) *Insurance producer* means an agent, broker, consultant, or producer who is an individual, entity, or sole proprietor that is licensed under the laws of the state to sell, solicit, or negotiate insurance.

(5) *Predominant employee organization* means, where more than one employee organization is a party to an agreement, either the organization representing the plurality of individuals employed under such agreement, or organizations that in combination represent the majority of such individuals.

(e) *Examples.* The operation of the provisions of this section may be illustrated by the following examples.

Example 1. Plan A has 500 participants, in the following 4 categories of participants under paragraph (b)(2) of this section:

Categories of participants	Total number	Nexus group	Non-nexus
1. Individuals working under CBAs	335 (67%)	335 (67%)	0
2. Retirees	50 (10%)	50 (10%)	0
3. "Special Class"—Non-CBA, non-CBA-alumni	100 (20%)	50 (10%)	50 (10%)
4. Non-nexus participants	15 (3%)	0	15 (3%)
Total	500 (100%)	435 (87%)	65 (13%)

In determining whether at least 85% of Plan A's participant population is made up of individuals with the required nexus to the collective bargaining agreement as required by paragraph (b)(2) of this section, the Plan may count as part of the nexus group only 50 (10% of the total plan population) of the 100 individuals described in paragraph (b)(2)(viii) of this section. That is because the number of individuals meeting the category of individuals in paragraph (b)(2)(viii) exceeds 10% of the total participant population by 50 individuals. The paragraph specifies that of those individuals who would otherwise be deemed to be nexus individuals because they are the type of individuals described in paragraph (b)(2)(viii), the number in excess of 10% of the total plan population may not be counted in the nexus group. Here, 50 of the 100 individuals employed by signatory employers, but not covered by the collective bargaining agreement, are counted as nexus individuals and 50 are not counted as nexus individuals. Nonetheless, the Plan satisfies the 85% criterion under paragraph (b)(2) because a total of 435 (335 individuals covered by the collective bargaining agreement, plus 50 retirees, plus 50 individuals employed by signatory employers), or 87%, of the 500 participants in Plan A are individuals who may be counted as nexus participants under paragraph (b)(2). Beneficiaries (*e.g.*, spouses, dependent children, etc.) are not counted to determine whether the 85% test has been met.

Example 2. (i) International Union MG and its Local Unions have represented people working primarily in a particular industry for over 60 years. Since 1950, most of their collective bargaining agreements have called for those workers to be covered by the National MG Health and Welfare Plan. During that time, the number of union-represented workers in the industry, and the number of active participants in the National MG Health and Welfare Plan, first grew and then declined. New Locals were formed and later were shut down. Despite these fluctuations, the National MG Health and Welfare Plan meets the factors described in paragraphs (b)(4)(iii) and (iv) of this section, as the plan has been in existence pursuant to collective bargaining agreements to which the International Union and its affiliates have been parties since before January 1, 1983.

(ii) Assume the same facts, except that on January 1, 1999, International Union MG merged with International Union RE to form International Union MRGE. MRGE and its Locals now represent the active participants in the National MG Health and Welfare Plan and in the National RE Health and Welfare Plan, which, for 45 years, had been maintained under collective bargaining agreements negotiated by International Union RE and its Locals. Since International Union MRGE is the continuation of, and successor to, the MG and RE unions, the two plans continue to meet the factors in paragraphs (b)(4)(iii) and (iv) of this section. This also would be true if the two plans were merged.

(iii) Assume the same facts as in paragraphs (i) and (ii) of this Example. In addition to maintaining the health and welfare plans described in those paragraphs, International Union MG also maintained the National MG Pension Plan and International Union RE maintained the National RE Pension Plan. When the unions merged and the health and welfare plans were merged, National MG Pension Plan and National RE Pension Plan were merged to form National MRGE Pension Plan. When the unions merged, the employees and retirees covered under the pre-merger plans continued to be covered under the post-merger plans pursuant to the collective bargaining agreements and also were given credit in the post-merger plans for their years of service and coverage in the pre-merger plans. Retirees who originally were covered under the pre-merger plans and continue to be covered under the post-merger plans based on their past service and coverage would be considered to be "retirees" for purposes of 2550.3–40(b)(2)(ii). Likewise, bargaining unit alumni who were covered under the pre-merger plans and continued to be covered under the post-merger plans based on their past service and coverage and their continued employment with employers that are parties to an agreement described in paragraph (b)(3) of this section would be considered to be bargaining unit alumni for purposes of 2550.3–40(b)(2)(vii).

Example 3. Assume the same facts as in paragraph (ii) of Example 2 with respect to International Union MG. However, in 1997, one of its Locals and the employers with which it negotiates agree to set up a new multiemployer health and welfare plan that only covers the individuals represented by that Local Union. That plan would not meet the factor in paragraph (b)(4)(iii) of this section, as it has not been incorporated or referenced in collective bargaining agreements since before January 1, 1983.

Example 4. (i) Pursuant to a collective bargaining agreement between various employers and Local 2000, the employers contribute $2 per hour to the Fund for every hour that a covered employee works under the agreement. The covered employees are automatically entitled to health and disability coverage from the Fund for every calendar quarter the employees have 300 hours of additional covered service in the preceding quarter. The employees do not need to make any additional contributions for their own coverage, but must pay $250 per month if they want health coverage for their dependent spouse and children. Because the employer payments cover 100% of the required contributions for the employees' own coverage, the Local 2000 Employers Health and Welfare Fund meets the "75% employer payment" factor under paragraph (b)(4)(vi) of this section.

(ii) Assume, however, that the negotiated employer contribution rate was $1 per hour, and the employees could only obtain health coverage for themselves if they also elected to contribute $1 per hour, paid on a pre-tax basis through salary reduction. The Fund would not meet the 75% employer payment factor, even though the employees' contributions are treated as employer contributions for tax purposes. Under ERISA, and therefore under this section, elective salary reduction contributions are treated as employee contributions. The outcome would be the same if a uniform employee contribution rate applied to all employees, whether they had individual or family coverage, so that the $1 per hour employee contribution qualified an employee for his or her own coverage and, if he or she had dependents, dependent coverage as well.

Example 5. Arthur is a licensed insurance broker, one of whose clients is Multiemployer Fund M, a partially self-funded plan. Arthur takes bids from insurance companies on behalf of Fund M for the insured portion of its coverage, helps the trustees to evaluate the bids, and places the Fund's health insurance coverage with the carrier that is selected. Arthur also assists the trustees of Fund M in preparing material to explain the plan and its benefits to the participants, as well as in monitoring the insurance company's performance under the contract. At the Trustees' request, Arthur meets with a group of employers with which the union is negotiating for their employees' coverage under Fund M, and he explains the cost structure and benefits that Fund M provides. Arthur is not engaged in marketing within the meaning of paragraph (c)(1) of this section, so the fact that he provides these administrative services and sells insurance to the Fund itself does not affect the plan's status as a plan established or maintained under or pursuant to a collective bargaining agreement. This is the case whether or how he is compensated.

Example 6. Assume the same facts as Example 5, except that Arthur has a group of clients who are unrelated to the employers bound by the collective bargaining agreement, whose employees would not be "nexus group" members, and whose insurance carrier has withdrawn from the market in their locality. He persuades the client group to retain him to find them other coverage. The client group has no relationship with the labor union that represents the participants in Fund M. However, Arthur offers them coverage under Fund M and persuades the Fund's Trustees to allow the client group to join Fund M in order to broaden Fund M's contribution base. Arthur's activities in obtaining coverage for the unrelated group under Fund M constitutes marketing through an insurance producer; Fund M is a MEWA under paragraph (c)(1) of this section.

Example 7. Union A represents thousands of construction workers in a three-state geographic region. For many years, Union A has maintained a standard written collective bargaining agreement with several hundred large and small building contractors, covering wages, hours, and other terms and conditions of employment for all work performed in Union A's geographic territory. The terms of those agreements are negotiated every three years between Union A and a multiemployer Association, which signs on behalf of those employers who have delegated their bargaining authority to the Association. Hundreds of other employers—including both local and traveling contractors—have chosen to become bound to the terms of Union A's standard area agreement for various periods of time and in various ways, such as by signing short-form binders or "me too" agreements, executing a single job or project labor agreement, or entering into a subcontracting arrangement with a signatory employer. All of these employ individuals represented by Union A and contribute to Plan A, a self-insured multiemployer health and welfare plan established and maintained under Union A's

standard area agreement. During the past year, the trustees of Plan A have brought lawsuits against several signatory employers seeking contributions allegedly owed, but not paid to the trust. In defending that litigation, a number of employers have sworn that they never intended to operate as union contractors, that their employees want nothing to do with Union A, that Union A procured their assent to the collective bargaining agreement solely by threats and fraudulent misrepresentations, and that Union A has failed to file certain reports required by the Labor Management Reporting and Disclosure Act. In at least one instance, a petition for a decertification election has been filed with the National Labor Relations Board. In this example, Plan A meets the criteria for a regulatory finding under this section that it is a multiemployer plan established and maintained under or pursuant to one or more collective bargaining agreements, assuming that its participant population satisfies the 85% test of paragraph (b)(2) of this section and that none of the disqualifying factors in paragraph (c) of this section is present. Plan A's status for the purpose of this section is not affected by the fact that some of the employers who deal with Union A have challenged Union A's conduct, or have disputed under labor statutes and legal doctrines other than ERISA section 3(40) the validity and enforceability of their putative contract with Union A, regardless of the outcome of those disputes.

Example 8. Assume the same facts as Example 7. Plan A's benefits consultant recently entered into an arrangement with the Medical Consortium, a newly formed organization of health care providers, which allows the Plan to offer a broader range of health services to Plan A's participants while achieving cost savings to the Plan and to participants. Union A, Plan A, and Plan A's consultant each have added a page to their Web sites publicizing the new arrangement with the Medical Consortium. Concurrently, Medical Consortium's Web site prominently publicizes its recent affiliation with Plan A and the innovative services it makes available to the Plan's participants. Union A has mailed out informational packets to its members describing the benefit enhancements and encouraging election of family coverage. Union A has also begun distributing similar material to workers on hundreds of non-union construction job sites within its geographic territory. In this example, Plan A remains a plan established and maintained under or pursuant to one or more collective bargaining agreements under section 3(40) of ERISA. Neither Plan A's relationship with a new organization of health care providers, nor the use of various media to publicize Plan A's attractive benefits throughout the area served by Union A, alters Plan A's status for purpose of this section.

Example 9. Assume the same facts as in Example 7. Union A undertakes an area-wide organizing campaign among the employees of all the health care providers who belong to the Medical Consortium. When soliciting individual employees to sign up as union members, Union A distributes Plan A's information materials and promises to bargain for the same coverage. At the same time, when appealing to the employers in the Medical Consortium for voluntary recognition, Union A promises to publicize the Consortium's status as a group of unionized health care service providers. Union A eventually succeeds in obtaining recognition based on its majority status among the employees working for Medical Consortium employers. The Consortium, acting on behalf of its employer members, negotiates a collective bargaining agreement with Union A that provides terms and conditions of employment, including coverage under Plan A. In this example, Plan A still meets the criteria for a regulatory finding that it is collectively bargained under section 3(40) of ERISA. Union A's recruitment and representation of a new occupational category of workers unrelated to the construction trade, its promotion of attractive health benefits to achieve organizing success, and the Plan's resultant growth, do not take Plan A outside the regulatory finding.

Example 10. Assume the same facts as in Example 7. The Medical Consortium, a newly formed organization, approaches Plan A with a proposal to make money for Plan A and Union A by enrolling a large group of employers, their employees, and self-employed individuals affiliated with the Medical Consortium. The Medical Consortium obtains employers' signatures on a generic document bearing Union A's name, labeled "collective bargaining agreement," which provides for health coverage under Plan A and compliance with wage and hour statutes, as well as other employment laws. Employees of signatory employers sign enrollment documents for Plan A and are issued membership cards in Union A; their membership dues are regularly checked off along with their monthly payments for health coverage. Self-employed individuals similarly receive union membership cards and make monthly payments, which are divided between Plan A and the Union. Aside from health coverage matters, these new participants have little or no contact with Union A. The new participants enrolled through the Consortium amount to 18% of the population of Plan A during the current Plan Year. In this example, Plan A now fails to meet the criteria in paragraphs (b)(2) and (b)(3) of this section, because more than 15% of its participants are individuals who are not employed under agreements that are the product of a *bona fide* collective bargaining relationship and who do not fall within any of the other nexus categories set forth in paragraph (b)(2) of this section. Moreover, even if the number of additional participants enrolled through the Medical Consortium, together with any other participants who did not fall within any of the nexus categories, did not exceed 15% of the total participant population under the plan, the circumstances in this example would trigger the disqualification of paragraph (c)(2) of this section, because Plan A now is being maintained under a substantial number of agreements that are a "scheme, plan, stratagem or artifice of evasion" intended primarily to evade compliance with state laws and regulations pertaining to insurance. In either case, the consequence of adding the participants through the Medical Consortium is that Plan A is now a MEWA for purposes of section 3(40) of ERISA and is not exempt from state regulation by virtue of ERISA.

(f) *Cross-reference. See* 29 CFR part 2570, subpart H for procedural rules relating to proceedings seeking an Administrative Law Judge finding by the Secretary under section 3(40) of ERISA.

(g) Effect of proceeding seeking Administrative Law Judge Section 3(40) Finding.

(1) An Administrative Law Judge finding issued pursuant to the procedures in 29 CFR part 2570, subpart H will constitute a finding whether the entity in that proceeding is an employee welfare benefit plan established or maintained under or pursuant to an agreement that the Secretary finds to be a collective bargaining agreement for purposes of section 3(40) of ERISA.

(2) Nothing in this section or in 29 CFR part 2570, subpart H is intended to provide the basis for a stay or delay of a state administrative or court proceeding or enforcement of a subpoena.

Signed this 31st day of March 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–8113 Filed 4–7–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2570

RIN 1210–AA48

Procedures for Administrative Hearings Regarding Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains regulations under the Employee Retirement Income Security Act of 1974, as amended, (ERISA or the Act) describing procedures for administrative hearings to obtain a determination by the Secretary of Labor (Secretary) as to whether a particular employee welfare benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40) of ERISA. An administrative hearing is available only if the jurisdiction or law of a state has been asserted against a plan or other arrangement that contends it meets the exception for plans established or maintained under or pursuant to one or more collective bargaining agreements. A separate document published elsewhere in this issue of the **Federal Register** contains a rule setting forth the criteria for determining when an employee welfare benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40) of ERISA. These regulations are intended to assist labor organizations, plan sponsors and state insurance departments in determining whether a plan is a "multiple employer welfare arrangement" within the meaning of section 3(40) of ERISA.

EFFECTIVE DATE: June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Goodman, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5669, Washington, DC 20210, (202) 693–8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

These final rules set forth an administrative procedure for obtaining a determination by the Secretary of Labor (the Secretary) as to whether a particular employee benefit plan is established or maintained under or pursuant to one or more agreements that are collective bargaining agreements for purposes of section 3(40) of the Employee Retirement Income Security Act of 1974 (ERISA). These rules (the procedural regulations) are being published simultaneously with a final regulation (the criteria regulation) setting forth specific criteria that, if met and if certain other factors set forth in the final regulation are not present, constitute a finding by the Secretary that a plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40). Both of these final rulemakings take into account the views expressed by the ERISA section 3(40) Negotiated Rulemaking Advisory Committee (the Committee), which was convened by the Department under the Negotiated Rulemaking Act (NRA) and the Federal Advisory Committee Act (the FACA), 5 U.S.C. App. 2. Together, these final regulations will assist states, plan sponsors, and administrators of employee benefit plans, in determining the scope of state regulatory authority over plans or other arrangements as set forth in sections 3(40) and 514(b)(6) of ERISA.

The procedural rules provide for administrative hearings to obtain a determination by the Secretary as to whether a particular plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40) of ERISA. The rules are modeled on the procedures set forth in 29 CFR sections 2570.60 through 2570.71 regarding civil penalties under section 502(c)(2) of ERISA related to reports required to be filed under ERISA section 101(b)(1) and are designed to maintain the maximum degree of uniformity with those rules that is consonant with the need for an expedited procedure accommodating the specific characteristics necessary for proceedings under section 3(40). Accordingly, the rules adopt many, although not all, of the provisions of subpart A of 29 CFR part 18 for the 3(40) proceedings. In this regard, it should be noted that the rules apply only to adjudicatory proceedings before administrative law judges (ALJs) of the United States Department of Labor (the Department). An administrative hearing is available under these rules only to an entity that contends it meets the exception provided in section 3(40)(A)(i) for plans established or maintained under or pursuant to collective bargaining agreements and only if the jurisdiction or law of a state has been asserted against that entity.

These procedural rules were published in the **Federal Register** in proposed form on October 27, 2000, (65 FR 64498), simultaneously with the proposed criteria regulation. As discussed more fully in the preamble to the final criteria regulation, the Department received seven comments on the proposed criteria and procedural regulations, only one of which related to the procedural regulations. After considering the views of the Committee, which was reconvened by the Department for that purpose and met in public session on March 1, 2002, the Department has determined to issue the final procedural regulations in the same format and language as proposed.

The Department received only one comment relating to the proposed procedural rules. This comment also concerned the criteria regulation and is discussed in the preamble to that final rule. As described in the preamble to the final criteria regulation, the Department has clarified the language of paragraph (g)(2) of the criteria regulation to emphasize that the ALJ proceedings do not provide a basis for a stay-of-state administrative or judicial proceedings. The language of the procedural regulations remains unchanged.

B. Economic Analysis Under Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action is "significant" within the meaning of 3(f)(4), and therefore subject to review by the Office of Management and Budget (OMB). Consistent with the Executive Order, the Department has undertaken an assessment of the costs and benefits of this regulatory action. The analysis is detailed below.

Summary

Pursuant to the requirements of Executive Order 12866, at the time of the Notice of Proposed Rulemaking, the Department sought comments and information from the public on its analysis of the benefits and costs of the proposed regulation. Having received none, the Department believes, based on its original discussion, that the benefits of this final regulation justify its costs. The regulation will benefit plans, states, insurers, and organized labor by reducing the cost of resolving some disputes over a state's right to regulate certain multiple employer welfare benefit arrangements, facilitating the conduct of hearings, reducing disputes over a plan or arrangement's status, and improving the efficiency and ensuring the consistency in determinations of such jurisdiction.

Background

When state law or jurisdiction is asserted over an entity that claims to be excepted from state regulation under the collective bargaining exception, the entity has the option of using these procedures to resolve the dispute. In the absence of the procedure provided under these regulations for determining whether a given plan or arrangement is established or maintained pursuant to a collective bargaining agreement, such disputes have generally been resolved in courts. The Department believes that resolving disputes through the procedures established by these regulations will generally be more efficient and less costly than resolving the disputes in a court of law. Also, determinations made in the single, specialized venue of administrative hearings are likely to be more consistent than determinations made in multiple, non-specialized court venues.

Benefits of the Regulation

The procedure established by these regulations will complement the criteria established by the criteria regulation. Together, the regulations will assist in accurately identifying MEWAs and collectively bargained plans and ensure that disputes over such classifications are resolved efficiently. For purposes of its assessment of the economic impact of the regulations, the Department has attributed the net benefits of ensuring accurate determinations to the criteria regulation. It has attributed the net benefits of ensuring efficient resolution of disputes to these procedural regulations.

Determining Jurisdiction Accurately and Consistently

The criteria regulation will reduce existing confusion about whether an entity falls under the collective bargaining agreement exception. However, given the wide variety of agreements, plans and arrangements, as well as the potential for conflicting determinations where a MEWA is conducting business in more than one state, some uncertainties might remain. The Department has therefore established a procedure for obtaining an individualized hearing before a Department of Labor ALJ and for final appeals to the Secretary or the Secretary's delegate to determine an entity's legal status.

Employers and employees will benefit from an administrative decision that provides greater assurance that the entity will comply with applicable federal and state laws designed to protect welfare benefits. In addition, both the petitioner and the state whose authority is being asserted will benefit from the uniform application of criteria by the ALJ, avoiding any confusion that would result from inconsistent decisions. Finally, state insurance departments that receive a timely resolution about an entity's status as a MEWA will be able to swiftly deal with sham MEWAs and then re-direct saved resources to other areas. Because an ALJ decision will be based on the criteria regulation, the Department has attributed the net benefit from the reclassification of currently inaccurately classified plans or arrangements (and the consequent application of appropriate state or federal protections) to that regulation.

Resolving Disputes Efficiently

An administrative hearing under the final regulations will economically benefit the small number of plans or arrangements that dispute state assertion of law or jurisdiction. The Department foresees improved efficiencies through use of administrative hearings that are at the option of entities over which state jurisdiction has been asserted. An administrative hearing allows the various parties to obtain a decision in a timely, efficient, and less costly manner than is usual in federal or state court proceedings, thus benefiting employers and employees.

The Department's analysis of costs involved in adjudication in a federal or state court versus an administrative hearing assumes that parties seeking to establish regulatory authority incur a baseline cost to resolve the question of status in federal or state court proceeding. This baseline cost includes, but is not limited to, expenditures for document production, attorney fees, filing fees, depositions, etc. Because regulatory authority may be decided in motions or pleadings in cases where that issue is not primary, the direct cost of using only the courts as a decision-maker for such issues is too variable to specify; however, custom and practice indicate that the cost of an administrative hearing is similar to or represents a cost savings compared with the baseline cost of litigating in federal or state court.

Because the procedures and evidentiary rules of an administrative hearing generally track the Federal Rules of Civil Procedure and of Evidence, document production is similar for both an administrative hearing and for a federal or state court proceeding. Documents such as by-laws, administrative agreements, collective bargaining agreements, and other documents and instruments governing the entity are generally kept in the normal course of business, and it is likely that the cost for an administrative hearing will be no more than that which would be incurred in preparation for litigation in a federal or state court. Certain administrative hearing practices and other new procedures initiated by this regulation may, however, represent a cost savings over litigation. For example, neither party need employ an attorney; the prehearing exchange is short and general; either party may move to shorten the time for the scheduling of a proceeding, including the time for conducting discovery; the general formality of the hearing may vary, particularly depending on whether the petitioner is appearing *pro se;* an expedited hearing is possible; and, the ALJ generally has 30 days after receipt of the transcript of an oral hearing or after the filing of all documentary evidence if no oral hearing is conducted to reach a decision.

The Department cannot predict that any or all of these conditions will exist, nor can it predict that any of these factors represent a cost-savings. However, it is likely that the specialized knowledge of ERISA that the ALJ will bring to the process will facilitate a prompt decision, reduce costs, and introduce a consistent standard to what has been a confusion of decisions on regulatory authority. ALJ case histories will educate MEWAs and states by articulating the characteristics of a collectively bargained plan, which clarity will in turn promote compliance with appropriate federal and state regulations. Participants and beneficiaries of arrangements that are newly identified as MEWAs will especially benefit from appropriate state oversight that provides for secure contributions and paid-up claims. In its Notice of Proposed Rulemaking, the Department solicited comments on the comparative cost of a trial in federal or state court versus an administrative hearing on the issue of whether an entity is a plan is established or maintained under or pursuant to an agreement or agreements that the Secretary finds to be collective bargaining agreements for purposes of section 3(40) of ERISA. No comments concerning the comparative costs of a trial versus an administrative hearing were received.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires that the agency present a final regulatory flexibility analysis at the time of the publication of the notice of final rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, EBSA continues to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b-10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare benefit plans covering fewer than 100 participants and which satisfy certain other requirements.

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Thus, EBSA believes that assessing the impact of this final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). In its Notice of Proposed Rulemaking, EBSA requested comments on the appropriateness of the size standard used; no comments were received.

On this basis, EBSA has determined that this rule does not have a significant economic impact on a substantial number of small entities. In support of this determination, and in an effort to provide a sound basis for this conclusion, EBSA has prepared the following final regulatory flexibility analysis.

(1) *Reason for the Action.* The Department is establishing a procedure for an administrative hearing so that states and entities will be able to obtain a determination by the Secretary as to whether a particular employee welfare benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of an exception to section 3(40) of ERISA.

(2) *Objectives.* The objective of these regulations is to make available to plans an individualized procedure for obtaining a hearing before a Department of Labor ALJ, and for appeals of an ALJ decision to the Secretary or the Secretary's delegate. The procedure is appropriate for the resolution of a dispute regarding an entity's legal status in situations where the jurisdiction or law of a state has been asserted against a plan that contends it meets the exception for plans established or maintained under or pursuant to one or more collective bargaining agreements.

(3) *Estimate of Small Entities Affected.* For purposes of this discussion, the Department has deemed a small entity to be an employee benefit plan with fewer than 100 participants. No small governmental jurisdictions are affected.

Based on Form 5500 filings and Form M–1 filings by MEWAs pursuant to interim final rules published in the **Federal Register** on February 11, 2000 (65 FR 7152), it is estimated that there about 2,600 entities that can be classified as either collectively bargained plans or as MEWAs; however, EBSA believes that a very small number of these arrangements will have fewer than 100 participants. By their nature, the affected arrangements must involve at least two employers, which decreases the likelihood of coverage of fewer than 100 participants. Also, underlying goals of the formation of these arrangements, such as gaining purchasing and negotiating power through economies of scale, improving administrative efficiencies, and gaining access to additional benefit design features, are not readily accomplished if the group of covered lives remains small.

The number of small plans found within the group of 2,600 collectively bargained plans or MEWAs is about 200, or eight percent. The Employee Benefits Supplement to the 1993 Current Population Survey and a 1993 Small Business Administration survey of retirement and other benefit coverages in small firms indicate that there are more than 2.5 million private group health plans with fewer than 100 participants. Thus, the 200 small entities potentially affected represent a very small portion of all small group health plans. Even if all 2,600 potentially affected entities were to have fewer than 100 participants, they would represent approximately one-tenth of one percent of all small group health plans.

The Department is not aware of any source of information indicating the number of instances in which state law or jurisdiction has been asserted over these entities, or the portion of those instances that involved the collective bargaining agreement exception. However, in order to develop an estimate of the number of plans or arrangements that might seek to clarify their legal status by using an administrative hearing as proposed by these regulations, the Department examined the number of lawsuits to which the Department had previously been a party. While this number is not viewed as a measure of the incidence of the assertion of state jurisdiction, it is considered the only reasonable available proxy for an estimate of a maximum number of instances in which the applicability of state requirements might be at issue.

In recent years, the Department has been a party to an average of 45 legal actions annually. The proportion of these lawsuits that involved a dispute over state jurisdiction based on a plan's or an arrangement's legal status is unknown. On the whole, 45 is therefore considered a reasonable estimate of an upper bound number of plans that could have been a party to a lawsuit involving a determination of the plan's legal status. Because this procedural regulation and the related criteria regulation are expected to reduce the number of disputes, the Department assumes that 45 represents a conservatively high estimate of the number of plans or arrangements that would petition for an administrative hearing. Of all small plans and arrangements, then, the greatest number of plans or arrangements likely to petition for an administrative hearing represents a tiny fraction of the total number of small plans.

In addition, the Department has assumed that an entity's exercise of the opportunity to petition for a finding will generally be less costly than available alternatives. Accordingly, the Department has concluded that these regulations will not have a significant economic impact on a substantial number of small entities.

(4) *Reporting and Recordkeeping.* In most cases, the records that will be used to support a petition for a hearing pursuant to these procedures will be maintained by plans and MEWAs in the

ordinary course of their business. Certain documents, such as affidavits, would likely be required to be prepared specifically for purposes of the petition. It is assumed that documents will most often be assembled and drafted by attorneys, although this is not required by the express terms of the procedure.

(5) *Duplication.* No federal rules have been identified that duplicate, overlap, or conflict with the final rule.

(6) *Alternatives.* The regulations are based on the consensus report of the Committee. Recognizing that guidance was needed in clarifying collective bargaining exceptions to the MEWA regulation, in 1995, the Department had published a Notice of Proposed Rulemaking on Plans Established or Maintained Under or Pursuant to Collective Bargaining Agreements in the **Federal Register** (60 FR 39209). Under the terms of the 1995 NPRM, it would have been within the authority of state insurance regulators to identify and regulate MEWAs operating in their jurisdictions. The 1995 proposal did not establish a method for obtaining individual findings by the Department.

The Department received numerous comments on the NPRM expressing concerns about plans' abilities to meet the standards set forth in the NPRM. Commenters also objected to granting authority to state regulators for determining whether a particular agreement was a collective bargaining agreement. Commenters strongly preferred that determination of whether a plan was established under or pursuant to a collective bargaining agreement lie with a federal agency and not with individual states.

Based on the comments received, the Department turned to negotiated rulemaking as an appropriate method of developing a revised Notice of Proposed Rulemaking. In September 1998, the Secretary established the Committee under the NRA. The Committee membership was chosen from the organizations that submitted comments on the Department's August 1995 NPRM and from the petitions and nominations for membership received in response to a Department Notice of Intent. These regulations are based on the Committee's consensus on the need for an individualized administrative proceeding in limited circumstances for determining the legal status of an entity. Based on the fact that the Committee represented a cross section of the state, federal, association, and private sector insurance organizations concerned with these issues, the Department believes that, as an alternative to the 1995 NPRM, these regulations accomplish the stated objectives of the Secretary and will have a beneficial effect on MEWAs, state insurance regulators, small employers who offer group health coverage, and plan participants. No other significant alternatives that would minimize the economic impact on small entities have been identified.

Participating in an administrative hearing to determine legal status is a voluntary undertaking on the part of a plan or arrangement. It would be inappropriate to create an exemption for small entities under the regulation because small entities are as much in need of clarification of their legal status as are larger entities.

D. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3501 *et seq.*), the Department submitted the information collection request (ICR) included in the Procedures for Administrative Hearings Regarding Plans Established or Maintained Pursuant to Collective Bargaining Agreements under section 3(40)(A) of ERISA to the Office of Management and Budget (OMB) for review and clearance at the time the NPRM was published in the **Federal Register** (65 FR 64498). A request for comments on the ICR was included in the NPRM. No comments were received about the ICR, and no changes have been made to the ICR in connection with this Notice of Final Rulemaking. OMB subsequently approved the ICR under control number 1210–0119. The approval will expire on January 31, 2004.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Petition for Finding under section 3(40) of ERISA.

OMB Number: 1210–0119.

Affected Public: Business or other for-profit; not-for-profit institutions.

Respondents: 45.

Responses: 45.

Average Time Per Response: 32 hours.

Estimated Total Burden Hours: 1.

Estimated Total Burden Cost (Operating and Maintenance): $104,100.

E. Small Business Regulatory Enforcement Fairness Act

The rule being issued here is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

F. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*), as well as Executive Order 12875, this proposed rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million.

G. Executive Order 13132

When an agency promulgates a regulation that has federalism implications, Executive Order 13132 (64 FR 43255, Aug. 10, 1999) requires the Agency to provide a federalism summary impact statement. Pursuant to section 6(c) of the Order, such a statement must include a description of the extent of the agency's consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State have been met.

This regulation has Federalism implications because it sets forth standards and procedures for an ALJ hearing for determining whether certain entities may be regulated under certain state laws or whether such state laws are preempted with respect to such entities. The state laws at issue are those that regulate the business of insurance. A member of the National Association of Insurance Commissioners (NAIC), representing the interest of state governments in the regulation of insurance, participated in the negotiations throughout the negotiated rulemaking process that provided the basis for this regulation.

In response to comments from the public about the proposed rule, the NAIC raised a concern that the process by which the Department issues ALJ determinations regarding the collectively bargained status of entities should move forward as quickly as possible and not result in a stay of state enforcement proceedings against MEWAs. The final regulation specifically states that the proceedings shall be conducted as expeditiously as possible and that the parties shall make every effort to avoid delay at each stage of the proceeding. The companion regulation that establishes criteria for determining whether an employee benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40) of ERISA provides that ALJ proceedings under this regulation are not intended to provide the basis for a stay or delay of a state administrative or court proceeding or enforcement of a subpoena.

List of Subjects in 29 CFR Part 2570

Administrative practice and procedure, Claims, Employee benefit plans, Government employees, Law enforcement, Penalties, Pensions, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, Part 2570 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended to read as follows:

PART 2570—[AMENDED]

■ 1. The authority citation for part 2570 is revised to read as follows:

Authority: 5 U.S.C. 8477, 29 U.S.C. 1002(40), 1021, 1108, 1132, 1135; sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp. p. 332, and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275; Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

■ 2. Add new Subpart H to read as follows:

Subpart H—Procedures for Issuance of Findings Under ERISA Sec. 3(40)

Sec.

2570.150 Scope of rules.
2570.151 In general.
2570.152 Definitions.
2570.153 Parties.
2570.154 Filing and contents of petition.
2570.155 Service.
2570.156 Expedited proceedings.
2570.157 Allocation of burden of proof.
2570.158 Decision of the Administrative Law Judge.
2570.159 Review by the Secretary.

§ 2570.150 Scope of rules.

The rules of practice set forth in this subpart H apply to "section 3(40) Finding Proceedings" (as defined in § 2570.152(g)), under section 3(40) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). Refer to 29 CFR 2510.3–40 for the definition of relevant terms of section 3(40) of ERISA, 29 U.S.C. 1002(40). To the extent that the regulations in this subpart differ from the regulations in subpart A of 29 CFR part 18, the regulations in this subpart apply to matters arising under section 3(40) of ERISA rather than the rules of procedure for administrative hearings published by the Department's Office of Administrative Law Judges in subpart A of 29 CFR part 18. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

§ 2570.151 In general.

If there is an attempt to assert state jurisdiction or the application of state law, either by the issuance of a state administrative or court subpoena to, or the initiation of administrative or judicial proceedings against, a plan or other arrangement that alleges it is covered by title I of ERISA, 29 U.S.C. 1003, the plan or other arrangement may petition the Secretary to make a finding under section 3(40)(A)(i) of ERISA that it is a plan established or maintained under or pursuant to an agreement or agreements that the Secretary finds to be collective bargaining agreements for purposes of section 3(40) of ERISA.

§ 2570.152 Definitions.

For section 3(40) Finding Proceedings, this section shall apply instead of the definitions in 29 CFR 18.2.

(a) *ERISA* means the Employee Retirement Income Security Act of 1974, *et seq.*, 29 U.S.C. 1001, *et seq.*, as amended.

(b) *Order* means the whole or part of a final procedural or substantive disposition by the administrative law judge of a matter under section 3(40) of ERISA. No order will be appealable to the Secretary except as provided in this subpart.

(c) *Petition* means a written request under the procedures in this subpart for a finding by the Secretary under section 3(40) of ERISA that a plan is established or maintained under or pursuant to one or more collective bargaining agreements.

(d) *Petitioner* means the plan or arrangement filing a petition.

(e) *Respondent* means:

(1) A state government instrumentality charged with enforcing the law that is alleged to apply or which has been identified as asserting jurisdiction over a plan or other arrangement, including any agency, commission, board, or committee charged with investigating and enforcing state insurance laws, including parties joined under § 2570.153;

(2) The person or entity asserting that state law or state jurisdiction applies to the petitioner;

(3) The Secretary of Labor; and

(4) A state not named in the petition that has intervened under § 2570.153(b).

(f) *Secretary* means the Secretary of Labor, and includes, pursuant to any delegation or sub-delegation of authority, the Assistant Secretary for Employee Benefits Security or other employee of the Employee Benefits Security Administration.

(g) *Section 3(40) Finding Proceeding* means a proceeding before the Office of Administrative Law Judges (OALJ) relating to whether the Secretary finds an entity to be a plan to be established or maintained under or pursuant to one or more collective bargaining agreements within the meaning of section 3(40) of ERISA.

§ 2570.153 Parties.

For section 3(40) Finding Proceedings, this section shall apply instead of 29 CFR 18.10.

(a) The term "party" with respect to a Section 3(40) Finding Proceeding means the petitioner and the respondents.

(b) States not named in the petition may participate as parties in a Section 3(40) Finding Proceeding by notifying the OALJ and the other parties in writing prior to the date for filing a response to the petition. After the date for service of responses to the petition, a state not named in the petition may intervene as a party only with the consent of all parties or as otherwise ordered by the ALJ.

(c) The Secretary of Labor shall be named as a "respondent" to all actions.

(d) The failure of any party to comply with any order of the ALJ may, at the discretion of the ALJ, result in the denial of the opportunity to present evidence in the proceeding.

§ 2570.154 Filing and contents of petition.

(a) A person seeking a finding under section 3(40) of ERISA must file a written petition by delivering or mailing it to the Chief Docket Clerk, Office of Administrative Law Judges (OALJ), 800 K Street, NW., Suite 400, Washington, DC 20001–8002, or by making a filing by any electronic means permitted under procedures established by the OALJ.

(b) The petition shall—

(1) Provide the name and address of the entity for which the petition is filed;

(2) Provide the names and addresses of the plan administrator and plan sponsor(s) of the plan or other arrangement for which the finding is sought;

(3) Identify the state or states whose law or jurisdiction the petitioner claims has been asserted over the petitioner, and provide the addresses and names of responsible officials;

(4) Include affidavits or other written evidence showing that:

(i) State jurisdiction has been asserted over or legal process commenced against the petitioner pursuant to state law;

(ii) The petitioner is an employee welfare benefit plan as defined at section 3(1) of ERISA (29 U.S.C. 1002(1)) and 29 CFR 2510.3–1 and is covered by title I of ERISA (*see* 29 U.S.C. 1003);

(iii) The petitioner is established or maintained for the purpose of offering or providing benefits described in section 3(1) of ERISA (29 U.S.C. 1002(1)) to employees of two or more employers (including one or more self-employed individuals) or their beneficiaries;

(iv) The petitioner satisfies the criteria in 29 CFR 2510.3–40(b); and

(v) Service has been made as provided in § 2570.155.

(5) The affidavits shall set forth such facts as would be admissible in evidence in a proceeding under 29 CFR part 18 and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The affidavit or other written evidence must set forth specific facts showing the factors required under paragraph (b)(4) of this section.

§ 2570.155 Service.

For section 3(40) proceedings, this section shall apply instead of 29 CFR 18.3.

(a) *In general.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges (OALJ), 800 K Street, NW., Suite 400, Washington, DC 20001–8002, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs, or other documents shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing by first class, prepaid U.S. mail, a copy to the last known address. The Secretary shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA Section 3(40) Proceeding, PO Box 1914, Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions and all other documents shall be made to all parties of record by regular mail to their last known address.

(d) *Form of pleadings* (1) Every pleading shall contain information indicating the name of the Employee Benefits Security Administration (EBSA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the OALJ and a designation of the type of pleading or paper (*e.g.*, notice, motion to dismiss, *etc.*). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½ x 11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopies, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

§ 2570.156 Expedited proceedings.

For section 3(40) Finding Proceedings, this section shall apply instead of 29 CFR 18.42.

(a) At any time after commencement of a proceeding, any party may move to advance the scheduling of a proceeding, including the time for conducting discovery.

(b) Except when such proceedings are directed by the Chief Administrative Law Judge or the administrative law judge assigned, any party filing a motion under this section shall:

(1) Make the motion in writing;

(2) Describe the circumstances justifying advancement;

(3) Describe the irreparable harm that would result if the motion is not granted; and

(4) Incorporate in the motion affidavits to support any representations of fact.

(c) Service of a motion under this section shall be accomplished by personal delivery, or by facsimile, followed by first class, prepaid, U.S. mail. Service is complete upon personal delivery or mailing.

(d) Except when such proceedings are required, or unless otherwise directed by the Chief Administrative Law Judge or the administrative law judge assigned, all parties to the proceeding in which the motion is filed shall have ten (10) days from the date of service of the motion to file an opposition in response to the motion.

(e) Following the timely receipt by the administrative law judge of statements in response to the motion, the administrative law judge may advance pleading schedules, discovery schedules, prehearing conferences, and the hearing, as deemed appropriate; provided, however, that a hearing on the merits shall not be scheduled with less than five (5) working days notice to the parties, unless all parties consent to an earlier hearing.

(f) When an expedited hearing is held, the decision of the administrative law judge shall be issued within twenty (20) days after receipt of the transcript of any oral hearing or within twenty (20) days after the filing of all documentary evidence if no oral hearing is conducted.

§ 2570.157 Allocation of burden of proof.

For purposes of a final decision under § 2570.158 (Decision of the Administrative Law Judge) or § 2570.159 (Review by the Secretary), the petitioner shall have the burden of proof as to whether it meets 29 CFR 2510.3–40.

§ 2570.158 Decision of the Administrative Law Judge.

For section 3(40) finding proceedings, this section shall apply instead of 29 CFR 18.57.

(a) *Proposed findings of fact, conclusions of law, and order.* Within twenty (20) days of filing the transcript of the testimony, or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion under 29 CFR 18.55, proposed findings of fact, conclusions of law, and order together with the supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision based on oral argument in lieu of briefs.* In any case in which the administrative law judge believes that written briefs or proposed findings of fact and conclusions of law may not be necessary, the administrative law judge shall notify the parties at the opening of the hearing or as soon thereafter as is practicable that he or she may wish to hear oral argument in lieu of briefs. The administrative law judge shall issue his or her decision at the close of oral argument, or within 30 days thereafter.

(c) *Decision of the administrative law judge.* Within 30 days, or as soon as possible thereafter, after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law, with reasons therefore, upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. It shall be supported by reliable and probative evidence. Such decision shall be in accordance with the regulations found at 29 CFR 2510.3–40 and shall be limited to whether the petitioner, based on the facts presented at the time of the proceeding, is a plan established or maintained under or pursuant to collective bargaining for the purposes of section 3(40) of ERISA.

§ 2570.159 Review by the Secretary.

(a) A request for review by the Secretary of an appealable decision of the administrative law judge may be made by any party. Such a request must be filed within 20 days of the issuance of the final decision or the final decision of the administrative law judge will become the final agency order for purposes of 5 U.S.C. 701 *et seq.*

(b) A request for review by the Secretary shall state with specificity the issue(s) in the administrative law judge's final decision upon which review is sought. The request shall be served on all parties to the proceeding.

(c) The review by the Secretary shall not be a de novo proceeding but rather a review of the record established by the administrative law judge.

(d) The Secretary may, in his or her discretion, allow the submission of supplemental briefs by the parties to the proceeding.

(e) The Secretary shall issue a decision as promptly as possible, affirming, modifying, or setting aside, in whole or in part, the decision under review, and shall set forth a brief statement of reasons therefor. Such decision by the Secretary shall be the final agency action within the meaning of 5 U.S.C. 704.

Signed this 31st day of March, 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–8114 Filed 4–7–03; 8:45 am]

BILLING CODE 4510–29–P

VOL
68
ISS
68
AP
9
003
MI

Federal Register

Wednesday,
April 9, 2003

Part IV

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2520, 2560, and 2570

Reporting by Multiple Employer Welfare Arrangements and Certain Other Entities That Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers; Assessment of Civil Penalties under Section 502(c)(5) of ERISA; Procedures for Administrative Hearings Regarding the Assessment of Civil Penalties Under Section 502(c)(5) of ERISA; Final Rules

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2520

RIN 1210–AA64

Reporting by Multiple Employer Welfare Arrangements and Certain Other Entities that Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule governing certain reporting requirements under Title I of the Employee Retirement Income Security Act of 1974 (ERISA) for multiple employer welfare arrangements (MEWAs) and certain other entities that offer or provide coverage for medical care to the employees of two or more employers. The final rule generally requires the administrator of a MEWA, and certain other entities, to file a form with the Secretary of Labor for the purpose of determining whether the requirements of certain recent health care laws are being met.

DATES: *Effective Date:* This final rule is effective January 1, 2004.

Compliance Dates: If a filing is required for an entity, it is due on or before each March 1 following the period to be reported. A 90-day origination report is also required to be filed as described in paragraph (e)(2)(ii) of §2520.101–2. (Therefore, the first filing required under this final rule is the 2003 Form M–1, which is generally required to be filed by March 1, 2004. Prior to that date, filings are due in accordance with §2520.101–2 contained in the 29 CFR revised as of July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Amy J. Turner or Deborah S. Hobbs, Employee Benefits Security Administration, U.S. Department of Labor, Room C–5331, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 693–8335).

SUPPLEMENTARY INFORMATION:

Customer Service Information: The Department of Labor's Employee Benefits Security Administration (EBSA) is committed to working together with administrators to help them comply with this filing requirement. The Form M–1, as well as the publication MEWAs; Multiple Employer Welfare Arrangements Under the Employee Retirement Income Security Act: A Guide to Federal and State Regulation, are available by calling EBSA toll free at 1–866–444–3272 and on the Internet at: *http://www.dol.gov/ebsa.* In addition, the EBSA Help Desk (telephone (202) 693–8360) is available to answer questions (such as whether an entity is required to file a report) and to provide assistance in completing a report. If you have other questions about this reporting requirement, or about the requirements of the recent health care laws in Part 7 of ERISA, you may call the Office of Health Plan Standards and Compliance Assistance at 202–693–8335. If you have questions about the definition of a MEWA (including the exception for collectively bargained plans under 29 CFR 2510.3–40), or coverage questions concerning whether a plan is or is not subject to the provisions of Title I of ERISA, you may call the Office of Regulations and Interpretations, Division of Coverage, Reporting and Disclosure at 202–693–8500. Copies of Form M–1 filings are available over the Internet at: *askebsa.dol.gov/epds.*

A. Background

The Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) (HIPAA) amended ERISA to provide for, among other things, improved portability and continuity of health insurance coverage. The Mental Health Parity Act of 1996 (Pub. L. 104–204, as amended by Pub. L. 107–116 and Pub. L. 107–147) (MHPA) amended ERISA to provide parity in the application of annual and lifetime dollar limits for certain mental health benefits with such dollar limits on medical and surgical benefits. The Newborns' and Mothers' Health Protection Act of 1996 (Pub. L. 104–204) (Newborns' Act) amended ERISA to provide new protections for mothers and their newborn children with regard to the length of hospital stays in connection with childbirth. The Women's Health and Cancer Rights Act of 1998 (WHCRA) (Pub. L. 105–277) amended ERISA to provide individuals new rights for reconstructive surgery in connection with a mastectomy. All of the foregoing provisions are set forth in part 7 of subtitle B of title I of ERISA (Part 7).

HIPAA also added a new section 101(g) to ERISA providing the Secretary with the authority to require, by regulation, annual MEWA reporting. Specifically, this section provides that the Secretary of Labor may, by regulation, require multiple employer welfare arrangements providing benefits consisting of medical care (within the meaning of section 733(a)(2)) which are not group health plans to report, not more frequently than annually, in such form and such manner as the Secretary may require for the purpose of determining the extent to which the requirements of Part 7 are being carried out in connection with such benefits.

The term "multiple employer welfare arrangement" is defined in section 3(40) of ERISA to mean, in pertinent part an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing [welfare plan benefits] to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained under or pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements, by a rural electric cooperative, or by a rural telephone cooperative association.

For purposes of this definition, two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group, the term "control group" means a group of trades or businesses under common control, and the determination of whether a trade or business is under "common control" with another trade or business shall be determined under regulations of the Secretary applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under section 4001(b), except that, for purposes of this paragraph, common control shall not be based on an interest of less than 25 percent. [1]

An interim final rule implementing the MEWA reporting requirement was published in the **Federal Register** on February 11, 2000 at 65 FR 7152. The interim final rule generally required the administrator of a MEWA (or certain other entity that offers or provides coverage for medical care to the employees of two or more employers) to file the Form M–1 Annual Reporting Requirement for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception with the Secretary of Labor for the purpose of determining whether the requirements of part 7 are being met.

[1] This provision was added to ERISA by the Multiple Employer Welfare Arrangement Act of 1983, Sec. 302(b), Pub. L. 97–473, 96 Stat. 2611, 2612 (29 U.S.C. 1002(40)), which also amended section 514(b) of ERISA. Section 514(a) of ERISA provides that state laws that relate to employee benefit plans are generally preempted by ERISA. Section 514(b) sets forth several exceptions to the general rule of section 514(a) and subjects employee benefit plans that are MEWAs to various levels of state regulation depending on whether the MEWA is fully insured. Sec. 302(b), Pub. L. 97–473, 96 Stat. 2611, 2613 (29 U.S.C. 1144(b)(6)).

This reporting requirement also responds to a 1992 recommendation of the General Accounting Office (GAO). *See* "Employee Benefits: States Need Labor's Help Regulating Multiple Employer Welfare Arrangements," March 1992, GAO/HRD–92–40. In that report, the GAO detailed a history of fraud and abuse by some MEWAs and recommended that the Department develop a mechanism to help states identify MEWAs. The problems pointed out in that report continue to this date. By the end of Fiscal Year 2002, the Department had initiated approximately 522 civil and 90 criminal investigations (with 70 criminal convictions) affecting over 1.825 million participants and beneficiaries and involving monetary violations of over $121.6 million. During the last three years, the Department has had an average of over 100 MEWA cases under active investigation. Thus, the identification of problem MEWAs and correction of violations remains an important investigative priority and consumes substantial resources.

In the preamble to the February 2000 interim final regulation, the Department sought comments from those affected. After consideration of all the comments received on the MEWA reporting requirement, the Department is publishing this final rule. The final rule does not significantly modify the reporting requirement established in the interim rule. Instead, several clarifications were added to make clearer the application of the reporting requirement to different types of arrangements. Some of these clarifications were initially issued in the form of question-and-answer guidance during the period of interim effectiveness of this rule and were included in the instructions to the Form M–1 in Years 2000, 2001, and 2002.

B. Overview of the Final Rule

(1) Definitions

(a) *Entity Claiming Exception (ECE).* The final rule retains the term "entity claiming exception" or "ECE." An "ECE" is defined as an entity that claims it is not a MEWA due to the exception in section 3(40)(A)(i) of ERISA. In general, this exception is for entities that are established or maintained under or pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements. In connection with this exception, today the Department is also publishing a final regulation under ERISA section 3(40) setting forth specific criteria that, if met and if certain other factors set forth in the regulation are not present, constitute a finding by the Secretary of Labor that a plan is maintained pursuant to one or more collective bargaining agreements and, therefore, excluded from the definition of a MEWA. *See* 29 CFR 2510.3–40. In a separate regulation also published today, the Department adopts a process pursuant to which a plan or other arrangement may, if subject to an action under state law, seek an individualized finding from a Department of Labor Administrative Law Judge (ALJ). *See* 29 CFR 2570.150 through 2570.159.

However, because some entities may incorrectly claim the exemption under § 2510.3–40, this final rule retains the requirement that ECEs file a Form M–1 with the Department for three years following an "origination" (the three-year rule). Of course, if an entity does have a determination from an ALJ that it is a collectively-bargained plan, that entity does not have to file while the opinion remains in effect unless the circumstances underlying the determination change.

Moreover, because, some operators of insurance fraud schemes continue to market health coverage to small employers under the guise of collectively bargained plans using, among other things, sham unions and collective bargaining agreements, in an effort to avoid state insurance regulation, the retention of the three-year rule provides an important enforcement tool for the Department and state insurance departments, while imposing little burden on bona fide collectively bargained plans. Finally, bona fide collectively bargained plans and their sponsors also benefit from the early identification of sham MEWA operators.

Under the final rule, as under the interim final rule, the term origination continues to be defined as the occurrence of any of the following three events " (1) The MEWA or ECE first begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals); (2) The MEWA or ECE begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals) after a merger with another MEWA or ECE (unless all of the MEWAs or ECEs that participate in the merger previously were last originated at least three years prior to the merger); or (3) The number of employees receiving coverage for medical care under the MEWA or ECE is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless the increase is due to a merger with another MEWA or ECE under which all MEWAs and ECEs that participate in the merger were last originated at least three years prior to the merger).

(b) *Excepted Benefits.* The final rule adds a definition of "excepted benefits" and defines the term by reference to section 733(c) of ERISA and 29 CFR 2590.732(b). This definition was added because of a clarification that MEWAs or ECEs that provide coverage consisting solely of excepted benefits are not required to report under this section. This clarification is discussed in more detail below, under the heading Persons required to report.

(2) Persons Required To Report

Paragraph (c) of the final rule sets forth the persons required to report under the final rule. As under the interim final rule, the final rule requires filing by the administrator of a MEWA that provides benefits consisting of medical care, whether or not the MEWA is a group health plan. It also requires filing by the administrator of an ECE that offers or provides coverage consisting of medical care during the first three years after the ECE is originated.

The final rule also contains language to clarify the scope of the reporting requirement. The clarifications were initially included in question-and-answer guidance published by the Department in April and June of 2000, and are described in the Instructions to the Form M–1 for the Years 2000, 2001, and 2002.

(a) *Exception for coverage consisting solely of excepted benefits.* First, because coverage consisting solely of excepted benefits is not subject to the requirements of part 7 of ERISA (pursuant to ERISA sections 732 and 733 and § 2590.732), the final rule provides that a MEWA or ECE is not subject to this filing requirement if it provides coverage that consists solely of excepted benefits. However, if the MEWA or ECE provides coverage that consists of both excepted benefits and other benefits for medical care that are not excepted benefits (and is, therefore, subject to the requirements of part 7 of ERISA), the administrator of the MEWA or ECE is required to file the Form M–1.

(b) *Exceptions for coverage not subject to ERISA.* In addition, because governmental plans, church plans, and

plans maintained solely for the purpose of complying with workmen's compensation laws (as defined in sections 4(b)(1), 4(b)(2) and 4(b)(3) of ERISA, respectively) are not covered by Title I of ERISA, the final rule provides that a MEWA or ECE is not subject to the filing requirement if it is a governmental plan, church plan, or plan maintained solely for the purpose of complying with workmen's compensation laws. Similarly, the final rule also provides that a MEWA or ECE is not subject to the filing requirement under this section if it provides coverage only through governmental plans, church plans, or plans maintained solely for the purpose of complying with workmen's compensation laws (or other arrangements not covered by Title I of ERISA, such as health insurance coverage offered to individuals other than in connection with a group health plan, known as individual market coverage). However, if a MEWA provides coverage both to group health plans that meet the definition of a governmental plan, church plan, or plan maintained solely for the purpose of complying with workmen's compensation laws and to any group health plan that is subject to part 7 of ERISA, the MEWA is required to file the Form M–1.

(c) *Other exceptions.* Finally, the final rule also contains a clarification that reporting is not required if an entity would not constitute a MEWA or ECE but for any of the three circumstances described below.

(1) *Common control interest of at least 25 percent.* The first of these circumstances relates to the treatment of two or more trades or businesses as a single employer for purposes of the definition of MEWA if the trades or businesses are within the same control group. Section 3(40)(a)(1)(B) defines the term "control group" to mean a group of trades or businesses under common control, and provides that trades or businesses that are part of the same "control group" are deemed to be a single employer for purposes of the definition of MEWA. It then states that the determination of whether a trade or business is under "common control" with another trade or business is to be determined under regulations of the Secretary applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer, except that common control shall not be based on an interest of less than 25 percent. The Department has not issued any regulations under this provision.

Commenters argued that arrangements where businesses maintain significant ownership interests in other businesses and provide benefits under the same health plan are not the kinds of arrangements that historically have been found to lead to problems with fraud and failure to provide promised benefits. The Department agrees and has modified the final rule accordingly.

The final rule clarifies that a filing is not required on behalf of certain plans or other arrangements that provide coverage to the employees of two or more employers that share a common control interest. Specifically, if an entity would not constitute a MEWA or ECE but for the fact that it provides coverage to the employees of two or more trades or businesses that share a common control interest of at least 25 percent at any time during the plan year (applying the principles applied under section 414(b) or (c) of the Internal Revenue Code), a Form M–1 filing is not required. However, while use of a 25 percent test may result in a determination of common control for purposes of the Form M–1 filing requirement, common control generally means, under sections 414 (b) and (c) of the Internal Revenue Code, an 80 percent interest in the case of a parent-subsidiary group of trades or businesses and a more than 50 percent interest in the case of a brother-sister relationship among organizations controlled by five or fewer persons that are the same persons with respect to each organization.

(2) *Temporary MEWAs created by a change in control.* The second of these circumstances that will not, by itself, trigger a filing relates to temporary arrangements providing medical benefits to the employees of more than one employer that are created by a change in control of the business. This exception was suggested by a commenter who argued that entities that end up covering employees of another employer for a brief period of time by virtue of a change in business ownership should not be required to file a Form M–1. The commenter suggested that the Department define "temporary" to mean that the arrangement does not extend beyond the end of the plan year following the plan year in which the change in control occurs.

Commenters explained how change in control transactions may take place over a period of time, and the health plan for a control group may therefore be providing medical benefits to the employees of more than one employer for a temporary period. According to one source cited by a commenter, reasons that a transaction may occur over a period of time include the need to obtain financing, the need to obtain various regulatory approvals, and the need to "iron out the details" of the transaction.

The Department agrees with the comment and has modified the final rule to create an exception for arrangements that would not constitute MEWAs but for their creation in connection with a change in control of businesses (such as a merger or acquisition) and which are temporary in nature (*i.e.*, do not extend beyond the end of the plan year following the plan year in which the change in control occurs). The change in control must occur for a purpose other than avoiding Form M–1 filing.

(3) *Very small number of persons who are not employees or former employees.* The last of the circumstances that will not, by itself, trigger a filing is an exception for entities that would not be a MEWA or ECE but for the fact that they cover a very small number of persons (excluding spouses and dependents) who are not employees or former employees of the plan sponsor. For example, an arrangement may cover non-employee members of the board of directors of the plan sponsor or individuals classified as independent contractors. The final rule provides that any entity is not required to file the Form M–1 if it would not be a MEWA but for the fact that it provides coverage to persons who are not employees nor former employees (including those participants on COBRA continuation coverage)[2] of the sponsor (excluding spouses and dependents) and the number of such persons does not exceed one percent of the total number of employees or former employees covered by the arrangement, determined as of the last day of the year to be reported (or, in the case of a 90-day origination report, determined as of the 60th day following the origination date).

(d) *Persons not excepted.* Some commenters argued that MEWAs that are fully-insured should not be required to report. One commenter argued that coverage under insurance contracts that have been approved by state regulators complies with part 7 by virtue of this state approval. The final rule makes no change to the scope of the reporting requirement because the purpose of the Form M–1 filing requirement is largely to evaluate compliance with part 7 of ERISA. The evaluation of part 7 compliance requires a determination that the group health plan is in compliance both on the face of the plan documents (including the plan's insurance policy) and in operation. The Form M–1 requires the administrator of the MEWA to answer as to whether the coverage it provides is in compliance with part 7. The answer to this question should address compliance both on the face of the documents and in operation. This evaluation is as important for fully-insured arrangements as it is for self-insured arrangements.

Moreover, as noted earlier, the Form M–1 reporting requirement is an important enforcement tool for the Department and state insurance departments. While, in part, this reporting requirement serves as a vehicle for reviewing compliance with the requirements of part 7 of ERISA, the Form M–1 also serves as the only national registry of MEWAs operating throughout the United States. For this reason, it is important that fully-insured MEWAs continue to file the Form M–1.

One commenter asked what authority the Department has to ask about compliance with part 7 by insured group health plans, presumably because of the fact that section 502(b)(3) of ERISA provides that the Secretary is not authorized to enforce any requirement of part 7 against a health insurance issuer offering health insurance coverage in connection with a group health plan. The Secretary does, however, have authority to enforce the requirements of part 7 against all group health plans, whether insured or self-insured.

Several comments on the MEWA/ECE reporting requirement were also received from representatives of Professional Employer Organizations (PEOs). In general, PEO representatives have argued that, for a variety of reasons, they should be treated as "co-employers" and, accordingly, their group health plans should not be considered MEWAs. While PEOs have sought to distinguish themselves from employee leasing companies on the basis of a "co-employer" relationship with employees, the Department is unable to conclude that the group health plans maintained by PEOs, like the plans maintained by employee leasing companies, do not cover the employees of more than one employer.[3] For this reason the final regulation does not create an exception from the filing requirement.

The Department recognizes that other arguments were also made on behalf of PEOs to support either a complete or limited exception from the requirement to file a Form M–1. However, this registration regulation allows the Department to collect information to facilitate compliance with the requirements of part 7. As noted earlier, it is also an important enforcement tool for the Department and state insurance departments and serves as the only national registry of MEWAs operating throughout the United States. It also responds to the GAO's recommendation in its 1992 GAO report entitled "States Need Labor's Help Regulating Multiple Employer Welfare Arrangements," where the GAO detailed a history of fraud and abuse by MEWAs and recommended a federal MEWA registration requirement. GAO/HRD–92–40, March 1992.

(3) Extensions

An extension may be granted for filing reports if the administrator complies with the extension procedure prescribed in the Instructions to the Form M–1.

One commenter argued that the extension of time to file should be longer than the 60 days provided in the Instructions to the Form M–1 in certain special circumstances. Specifically, the commenter stated that the 60-day period is not adequate for a merger or acquisition context. This comment has been addressed in the final regulation by creating an exception from the filing requirement for a MEWA that is created by a change in control of businesses and is temporary in nature. (This exception to the reporting requirement is discussed above, under the discussion of Persons Required to Report).

(4) Civil Penalties and Procedures

Paragraph (g) of the final rule contains a cross-reference for civil penalties and procedures. The penalty and procedure regulations are being published separately in this issue of the **Federal Register.**[4] In this regard, ERISA section 502(c)(5), as amended by HIPAA, provides for the assessment of a penalty for the failure or refusal to file a report pursuant to section 101(g) of ERISA, as amended by HIPAA. The penalty and procedure regulations are designed to parallel the procedures set forth in 29 CFR 2560.502c–2 regarding civil penalties under section 502(c)(2) of ERISA relating to reports required to be filed under ERISA section 101(b)(4). In general these regulations provide that, in the event of no filing, an incomplete filing, or a late filing, a penalty may apply of up to $1,000 a day (or a higher amount if adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996) for each day that the administrator of a MEWA or ECE fails or refuses to file a complete report. For information relating to administrative hearings and appeals in connection with the assessment of civil penalties under section 502(c)(5) of ERISA, see 29 CFR 2570.90 through 2570.101 (published in this issue of the **Federal Register**).

C. Regulatory Impact Analysis

The total cost of the reporting requirement as implemented by this final rule is estimated to be $403,000, or about $200 for each of the 2,000 entities expected to be required to file the annual reporting form for MEWAs, the Form M–1. No additional cost is attributable to the clarifying changes made in this final rule. Although the benefits have not been quantified, EBSA believes that the cost of the filing requirement is more than justified by the benefits associated with ensuring uniform adherence to the requirements and protections added to ERISA by HIPAA, MHPA, the Newborns' Act, and WHCRA. HIPAA amended ERISA to add section 101(g), which authorizes the Secretary of Labor to require reporting by MEWAs that are not group health plans for the purpose of determining their compliance with part 7 of ERISA. The principal intent of Congress in enacting this provision was to ensure that all participants and beneficiaries of such arrangements receive these health care protections.

The reporting requirement implemented by this final rule provides the most cost effective means of facilitating compliance with part 7 of ERISA, as well as with the full range of other Federal and State requirements

[2] The term "employee" is defined in section 3(7) of ERISA as any individual employed by an employer, and includes all common law employees. *See also National Mutual Insurance Company* v. *Darden*, 503 U.S. 318 (1992) ("Darden does not cite, and we do not find, any provision [of ERISA] either giving specific guidance on the term's meaning or suggesting that construing it to incorporate traditional agency law principles would thwart the congressional design or lead to absurd results. Thus, we adopt a common-law test for determining who qualifies as an 'employee' under ERISA * * *.")

[3] The Department has issued a number of advisory opinions over the years under which an arrangement providing benefits for medical care and sponsored by an employee leasing company was found to be a MEWA. *See, e.g.*, Advisory Opinion 91–17A to L.J. Darter, III (April 5, 1991); Advisory Opinion 91–47A to Lee P. Jedziniak (December 20, 1991); Advisory Opinion 92–04A to Sandra Milburn (January 27, 1992); Advisory Opinion 92–05A to Chuck Huff (January 27, 1992); Advisory Opinion 92–07A to Lee P. Jedziniak (February 20, 1992); Advisory Opinion 93–29A to Alfred W. Gross (November 2, 1993); Advisory Opinion 95–22A to Dale Robison (August 25, 1995); and Advisory Opinion 95–29A to Kevin W. Ahern (December 7, 1995).

[4] Moreover, other relevant criminal penalties may apply. *See, e.g.*, ERISA § 501 and 18 U.S.C. 1021, 1027, and 1035.

that may apply to MEWAs under ERISA, the Internal Revenue Code, the Public Health Service Act, and State insurance laws. The data collected as a result of the filing requirement will ultimately serve as the only source of complete and uniform information identifying these arrangements, helping Federal and State regulators to evaluate their compliance with all applicable requirements. Evaluation of compliance based on the information reported is significantly more cost effective for both governmental entities and MEWAs than the alternative of active intervention by compliance examiners.

Ensuring compliance by these arrangements is beneficial to participants and beneficiaries who are able to fully realize their rights under these statutes. The greater assurance of compliance is also beneficial because compliance by these arrangements with various provisions that apply to them has been shown to be inconsistent. Although the provisions of Title I of ERISA generally supercede State laws that relate to employee benefit plans, the regulation of MEWAs is a joint Federal and State responsibility pursuant to ERISA.

Because State insurance statutes are not uniform, an arrangement doing business in more than one State may be required to comply with a range of States' varying requirements. Identification of these entities through this reporting requirement helps to ensure that administrators of these arrangements are aware of the requirements that apply, and that the protections intended to be provided are actually implemented for the benefit of employers and of participants who obtain their group health coverage through these arrangements.

Ancillary benefits arise from the public disclosure of this data. Participants with greater access to information about the arrangements through which they obtain their group health coverage may better exercise their rights in the event of a dispute with the arrangement. The data collected also enhance capability to conduct analysis of the market segment represented by MEWAs, which is useful to policy makers in evaluating the role of these entities in providing access to employment-based health care benefits.

When the Department developed its initial estimates of the number of filers and the costs potentially associated with these filings, it acknowledged a significant degree of uncertainty with respect to the number of entities that would be required to file. Although reasonable estimates were available from the Form 5500 Annual Return/Report of Employee Benefit Plan data for the potential number of Entities Claiming Exemption and multiple-employer group health plans that file the Form 5500, no information was available that specifically identified the universe of MEWAs that are not group health plans under ERISA.

To develop the estimates used in the analysis of the potential impact of the interim final rule, the Department considered information from several sources. The first of these was the GAO study from 1992,[5] which indicated there were about 1,000 MEWAs doing business in the states in 1991. These figures are not current, and the MEWA universe is known to be variable over time relative to health insurance market cost fluctuations. Surveys of association members[6] with respect to group health plan sponsorship were also reviewed. This information, adjusted conservatively for low response rates, suggested the existence of about 1,200 health plans sponsored by associations. The overlap between plan and non-plan MEWAs within this number is unclear, however.

A third source of information was a RAND Corporation analysis of the 1997 Robert Wood Johnson Foundation Employer Health Insurance Survey as it pertains to pooled purchasing arrangements.[7] This analysis suggested the existence of 4,000 to 4,800 multiple employer arrangements, including collectively bargained group health plans, association plans, and MEWAs. The data reviewed was establishment-based, and the imputation of the number of arrangements reported by establishments to employer sponsored group health plans was thought to introduce additional uncertainty into the estimate of the possible universe of filers.

As a result of data limitations and uncertainty within available data, the Department conservatively estimated that about 2,700 entities would file Form M–1. A substantial degree of uncertainty remained about this estimate, and we reported a possible range of 1,000 to 4,000. Actual filer counts have been significantly lower, totaling approximately 600 in each of the three years (*i.e.*, 1999–2001) for which complete data are available at this time. In the Department's view, actual experience to date may differ from the estimate for several reasons, the first of these being the limited level of confidence in the original estimate. Based on past history of non-compliance of MEWAs with a variety of regulatory requirements, the Department assumes that the actual number of filers continues to reflect incomplete compliance with this still relatively new filing requirement. Further, the Department is still in the process of implementing its civil penalty enforcement program to correct compliance failures, which faces the same significant challenges in identifying non-filers as are faced in developing reliable estimates of the number of MEWAs doing business at any given time. Finalization of this rule and the clarifications incorporated in the final rule may also help to ensure that potentially affected parties are aware of the filing requirement.

The Department still has no data to support a more accurate estimate of the filer universe than that represented by actual filers. However, it reviewed available information on its active enforcement cases involving MEWAs to determine the degree to which those MEWAs had complied with the M–1 filing requirement. This information showed that about 42% of the MEWAs undergoing investigation that were required to file the M–1 had complied with the requirement. If this rate of non-compliance applies to all MEWAs, about 1,400 MEWAs would be required to file the M–1 annually.

Because the rate of non-compliance may differ from that found in the sample of enforcement cases, and because the Department continues to believe that full compliance has not yet been achieved, it has selected 2,000 as a conservative estimate of the number of potential filers of the M–1. This is approximately the mid-point between the number projected at the time of publication of the interim final rule, and the 1,400 developed from the number of actual filers adjusted for what is known about non-compliance in the available sample of MEWAs.

To develop the current cost estimate of the cost of the filing requirement, the Department looked at the characteristics of the actual filers and applied the relevant factors to the projected number of filers. In its original estimates, the Department differentiated filing preparation time by whether a filer did business in more than one state, and whether or not the filer was fully insured. The existing filer data offers more information about the actual characteristics of filers. For purposes of these estimates, it is assumed that available data is representative of all filers.

Original estimates, as well as those shown here, were based on the assumption that 2 hours of start-up time for learning the law and becoming familiar with the form and instructions would be required for all filers, and that a range of 50 minutes for single state filers to 1 hour and 35 minutes for multiple state filers would be required for Part III of the form. Part IV was estimated to require 15 minutes for fully insured filers, and 30 minutes for non-fully insured filers. It was also assumed that 100% of filings would be made by providers of service to the MEWA administrators, and thus result in the payment of fees rather than in the expenditure of time.

Approximately 50% of actual filers report doing business in multiple states, and 50% in single states. Also, about 50% of all filers, without regard to the number doing business in single or multiple states, report being fully insured in most or all of the states in which they do business. Applying these ratios to the estimate of 2,000 filers results in estimates of 1,000 MEWAs doing business in multiple states, 1,000 in single states, 1,000 fully insured MEWAs, and 1,000 not-fully insured. The resulting cost estimate is about $403,000, or $200 per filer on average. This estimate incorporates updated assumptions for wage rates and increased postage rates. Of the projected filers, about 15%, or about 300 filers are expected to have fewer than 100 participants, based upon the number of actual filers with fewer than 100 participants. As noted earlier, this is the total estimated cost of the filing requirement; no incremental cost is considered to be associated with this final rule.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a "significant regulatory action" is an action that is likely to result in a rule (1) having an annual effect of the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This action is significant under section 3(f)(4) because it raises novel legal or policy issues arising from the President's priorities. Accordingly, OMB has reviewed this regulatory action.

Paperwork Reduction Act

The Department of Labor submitted the Form M–1 and instructions to OMB for emergency review and approval at the time of publication of the interim final rule on February 11, 2000. OMB subsequently approved the ICR on March 2, 2000 under control number 1210–0116. On November 22, 2000, OMB approved the Department's request for extension of the emergency approval for a three-year period ending November 30, 2003. This final rule does not implement any substantive or material change to the information collection, and as such, no change is made to the ICR, and no further review is requested of OMB at this time. The estimated burden hours and costs associated with the information collection have been adjusted to reflect an updated estimate of the likely number of respondents as well as updated wage and postal rates. Estimates of the number of filers and burden hours and costs are shown below.

You may address requests for copies of the ICR to Joseph S. Piacentini, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers

Agency: U.S. Department of Labor, Employee Benefits Security Administration.

Title: Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception.

Form: M–1.

Affected Public: Business or other for-profit; Individuals or households, Not-for-profit institutions.

OMB Control Number: 1210–0116.

Frequency of Response: Annually.

Respondents: 2,000.

Response time: Ranges from 2 hours to 3 hours and 50 minutes based on characteristics of filer.

Responses: 2,000.

Estimated Burden Hours: 1.

Estimated Annual Cost (Operating and Maintenance): $403,000.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5. U.S.C. 551 *et seq.*) and likely to have a significant economic impact on a substantial number of small entities. Unless the agency certifies that a rulemaking action subject to section 553(b) is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires the agency to present a final regulatory flexibility analysis at the time of publication of the notice of final rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

Because these rules were issued as interim final rules and not as a notice of proposed rulemaking, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant economic impact on a substantial number of small entities, or conduct a regulatory flexibility analysis. The Department did, however, take the potential impact on small entities into account in developing the interim final and final rules. The Department defines a small entity for purposes of its RFA analyses as an employee benefit plan with fewer than 100 participants. This definition is grounded in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for certain employee benefit plans which cover fewer than 100 participants. Based on actual filer data, about 15% of filers are expected to be small. This results in an estimate of 300 small MEWAs being required to file Form M–1. The average cost to all filers, including the highest average cost filers—those not-fully insured and those doing business in multiple states—is about $200 per year. The cost to small MEWA filers is expected to be lower than average due to the lower likelihood that they are not fully insured, and that they do business in many states. This cost is not expected to be considered substantial for any entity. The Department has developed a form for the collection of data, and has included voluntary worksheets with the form that are designed to assist with compliance and ease compliance burdens for all filers.

[5] "EMPLOYEE BENEFITS—States Need Labor's Help Regulating Multiple Employer Welfare Arrangements," GAO/HRD–92–40.

[6] "Survey of Association Member Health Plans," W.G. Morneau & Associates/American Society of Association Executives, 1993 and 1997.

[7] "Pooled Purchasing: Who Are the Players?" Stephen H. Long and M. Susan Marquis, "Health Affairs," July–August 1999.

Small Business Regulatory Enforcement Fairness Act

The final rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

Pursuant to provisions of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million or more.

Federalism Statement Under Executive Order 13132

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Agencies promulgating regulations that have these federalism implications must consult with state and local officials, and describe in the preamble to the regulation the extent of their consultation and the nature of the concerns of state and local officials, as well as the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of state and local officials have been met.

In the Department's view, these final regulations do not have federalism implications because they do not have substantial direct effects on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Not only do these regulations not reduce state discretion, the reports they require will facilitate state enforcement of their own laws as they apply to MEWAs since the reports will be available to the states and will identify MEWAs operating in each state.

Although the Department concludes that these final regulations do not have federalism implications, in keeping with the spirit of the Executive Order that agencies shall closely examine any policies that may have federalism implications or limit the policy making discretion of the states, the Department of Labor engages in extensive efforts to consult with and work cooperatively with affected state and local officials.

For example, the Department attends quarterly meetings of the National Association of Insurance Commissioners (NAIC) to listen to the concerns of state insurance departments. The NAIC is a non-profit corporation established by the insurance commissioners in the 50 states, the District of Columbia, and the four U.S. territories that, among other things, provides a forum for the development of uniform policy when uniformity is appropriate. Its members meet, discuss, and offer solutions to mutual problems. The NAIC sponsors quarterly meetings to provide a forum for the exchange of ideas, and in-depth consideration of insurance issues by regulators, industry representatives, and consumers. In addition to the general discussions, committee meetings, and task force meetings, the NAIC sponsors standing HIPAA meetings for members during the quarterly conferences, including a Centers for Medicare and Medicaid Services (CMS)/Department of Labor (DOL) meeting on HIPAA issues. (This meeting provides CMS and DOL the opportunity to provide updates on regulations, bulletins, enforcement actions, and outreach efforts regarding HIPAA.) In these quarterly meetings, issues relating to MEWAs and the implementation of the Form M–1 filing requirement are frequently discussed and, periodically, entire sessions are scheduled that are dedicated exclusively to MEWA/Form M–1 issues.

The Department also cooperates with the states in several ongoing outreach initiatives, through which information is shared among federal regulators, state regulators, and the regulated community. For example, the Department has established a Health Benefits Education Campaign with more than 70 partners, including CMS, the NAIC, and many business and consumer groups. In addition, the Department website offers links to important state websites and other resources, facilitating coordination between the state and federal regulators and the regulated community.

The Department also coordinates with state insurance departments to freeze assets when a MEWA operator is committing fraud or operating in a financially unsound manner. In these situations, typically, a state will obtain a cease and desist order to stave off further action by the MEWA in that state. In certain situations, the Department will then obtain a temporary restraining order (TRO) to freeze assets of the MEWA nationwide. In one case this year, the Department obtained a TRO to freeze assets of a MEWA whose operators were committing fraud and not paying benefits. This case affects more than 23,000 participants and beneficiaries in 50 states and the amount of unpaid claims could exceed $6 million. In a similar case last year, the Department obtained a TRO to freeze assets of a MEWA that was diverting plan assets for personal use of the MEWA's operators. That case affected at least 1,500 participants and $2.8 million in unpaid claims. A court order was also issued in that case appointing an independent fiduciary to manage the MEWA.

In conclusion, the Department has stayed in contact with state regulators and considered their concerns in developing these regulations. These regulations should help the states enforce their own laws as they apply to MEWAs since the reports they require will be available to them and will identify MEWAs operating in each state.

Statutory Authority

29 U.S.C. 1021, 1027, 1059, 1132, 1135, 1181–1183, 1181 note, 1185, 1185a–b, 1191, 1191a–c; Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

List of Subjects in 29 CFR Part 2520

Accounting, Employee benefit plans, Pensions, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2520—[AMENDED]

■ 1. The authority for part 2520 continues to read:

Authority: 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134 and 1135; Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003,1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788. Sec. 2520.101–3 is also issued under 29 U.S.C. 1021(i).

■ 2. Section 2520.101–2 is revised to read:

§ 2520.101–2 Annual Reporting by Multiple Employer Welfare Arrangements and Certain Other Entities Offering or Providing Coverage for Medical Care to the Employees of Two or More Employers.

(a) *Basis and scope.* Section 101(g) of the Employee Retirement Income Security Act (ERISA) permits the Secretary of Labor to require, by regulation, multiple employer welfare arrangements (MEWAs) providing benefits that consist of medical care (within the meaning of section 733(a)(2) of ERISA), and that are not group health plans, to report, not more frequently than annually, in such form and manner as the Secretary may require, for the purpose of determining the extent to which the requirements of part 7 of subtitle B of title I of ERISA (part 7) are being carried out in connection with such benefits. Section 734 of ERISA provides that the Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7. This section sets out requirements for annual reporting by MEWAs that provide benefits that consist of medical care and by certain entities that claim not to be a MEWA solely due to the exception in section 3(40)(A)(i) of ERISA (referred to in this section as Entities Claiming Exception or ECEs). These requirements apply regardless of whether the MEWA or ECE is a group health plan.

(b) *Definitions.* As used in this section, the following definitions apply:

Administrator means—

(1) The person specifically so designated by the terms of the instrument under which the MEWA or ECE is operated;

(2) If the MEWA or ECE is a group health plan and the administrator is not so designated, the plan sponsor (as defined in section 3(16)(B) of ERISA); or

(3) In the case of a MEWA or ECE for which an administrator is not designated and a plan sponsor cannot be identified, jointly and severally the person or persons actually responsible (whether or not so designated under the terms of the instrument under which the MEWA or ECE is operated) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised directly by such person or persons or indirectly through an agent, custodian, or trustee designated by such person or persons.

Entity Claiming Exception (ECE) means an entity that claims it is not a MEWA on the basis that the entity is established or maintained pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements within the meaning of section 3(40)(A)(i) of ERISA and 29 CFR 2510.3–40.

Excepted benefits means *excepted benefits* within the meaning of section 733(c) of ERISA and 29 CFR 2590.732(b).

Group health plan means a *group health plan* within the meaning of section 733(a) of ERISA and 29 CFR 2590.701–2.

Health insurance issuer means a *health insurance issuer* within the meaning of section 733(b)(2) of ERISA and 29 CFR 2590.701–2.

Medical care means *medical care* within the meaning of section 733(a)(2) of ERISA and 29 CFR 2590.701–2.

Multiple employer welfare arrangement (MEWA) means a multiple employer welfare arrangement within the meaning of section 3(40) of ERISA and 29 CFR 2510.3–40.

Origination means the occurrence of any of the following three events (and a MEWA or ECE is considered to have been *originated* when any of the following three events occurs)—

(1) The MEWA or ECE first begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals);

(2) The MEWA or ECE begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals) after a merger with another MEWA or ECE (unless all of the MEWAs or ECEs that participate in the merger previously were last originated at least three years prior to the merger); or

(3) The number of employees receiving coverage for medical care under the MEWA or ECE is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless the increase is due to a merger with another MEWA or ECE under which all MEWAs and ECEs that participate in the merger were last originated at least three years prior to the merger).

(c) *Persons required to report*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, the following persons are required to report under this section—

(i) The administrator of a MEWA that offers or provides benefits consisting of medical care, regardless of whether the entity is a group health plan; and

(ii) The administrator of an ECE that offers or provides benefits consisting of medical care during the first three years after the ECE is originated.

(2) *Exceptions*—(i) Nothing in this paragraph (c) shall be construed to require reporting under this section by the administrator of a MEWA or ECE if the MEWA or ECE—

(A) Is licensed or authorized to operate as a health insurance issuer in every state in which it offers or provides coverage for medical care to employees;

(B) Provides coverage that consists solely of excepted benefits, which are not subject to Part 7. If the MEWA or ECE provides coverage that consists of both excepted benefits and other benefits for medical care that are not excepted benefits, the administrator of the MEWA or ECE is required to report under this section;

(C) Is a group health plan that is not subject to ERISA, including a governmental plan, church plan, or a plan maintained solely for the purpose of complying with workmen's compensation laws, within the meaning of sections (4)(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively; or

(D) Provides coverage only through group health plans that are not covered by ERISA, including governmental plans, church plans, or plans maintained solely for the purpose of complying with workmen's compensation laws within the meaning of sections 4(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively (or other arrangements not covered by ERISA, such as health insurance coverage offered to individuals other than in connection with a group health plan, known as individual market coverage);

(ii) Nothing in this paragraph (c) shall be construed to require reporting under this section by the administrator of an entity that would not constitute a MEWA or ECE *but for* the following circumstances:

(A) The entity provides coverage to the employees of two or more trades or businesses that share a common control interest of at least 25 percent at any time during the plan year, applying the principles of section 414(b) or (c) of the Internal Revenue Code (26 U.S.C.);

(B) The entity provides coverage to the employees of two or more employers due to a change in control of businesses (such as a merger or acquisition) that occurs for a purpose other than avoiding Form M–1 filing and is temporary in nature. For purposes of this paragraph, "temporary" means the MEWA or ECE

does not extend beyond the end of the plan year following the plan year in which the change in control occurs; or

(C) The entity provides coverage to persons (excluding spouses and dependents) who are not employees or former employees of the plan sponsor, such as non-employee members of the board of directors or independent contractors, and the number of such persons who are not employees or former employees does not exceed one percent of the total number of employees or former employees covered under the arrangement, determined as of the last day of the year to be reported or, in the case of a 90-day origination report, determined as of the 60th day following the origination date.

(d) *Information to be reported*— (1) The annual report required by this section shall consist of a completed copy of the Form M–1 Annual Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs) and any additional statements required in the Instructions to the Form M–1.

(2) The Secretary may reject any filing under this section if the Secretary determines that the filing is incomplete, in accordance with 29 CFR 2560.502c–5.

(3) If the Secretary rejects a filing under paragraph (d)(2) of this section, and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the notice of rejection, the Secretary may bring a civil action for such relief as may be appropriate (including penalties under section 502(c)(5) of ERISA and 29 CFR 2560.502c-5).

(e) *Reporting requirement and timing*—(1) *Period for which report is required.* A completed copy of the Form M–1 is required to be filed for each calendar year during all or part of which the MEWA or ECE offers or provides coverage for medical care to the employees of two or more employers (including one or more self-employed individuals).

(2) *Filing deadline*—(i) *General March 1 filing due date for annual filings.* A completed copy of the Form M–1 is required to be filed on or before each March 1 that follows a period to be reported (as described in paragraph (e)(1) of this section). However, if March 1 is a Saturday, Sunday, or federal holiday, the form must be filed no later than the next business day.

(ii) *Special rule requiring a 90–Day Origination Report when a MEWA or ECE is originated*—(A) *In general.* Subject to paragraph (e)(2)(ii)(B) of this section, when a MEWA or ECE is originated, the administrator of the MEWA or ECE is also required to file a completed copy of the Form M–1 within 90 days of the origination date (unless 90 days after the origination date is a Saturday, Sunday, or federal holiday, in which case the form must be filed no later than the next business day).

(B) *Exception.* Paragraph (e)(2)(ii)(A) of this section does not apply if the origination occurred between October 1 and December 31. (Thus, no 90-day origination report is due when an entity is originated between October 1 and December 31. However, the March 1 filing deadline of paragraph (e)(2)(i) of this section continues to apply.)

(iii) *Extensions.* An extension may be granted for filing a report if the administrator complies with the extension procedure prescribed in the Instructions to the Form M–1.

(f) *Filing address.* A completed copy of the Form M–1 is filed with the Secretary by sending it to the address prescribed in the Instructions to the Form M–1.

(g) *Civil penalties and procedures.* For information on civil penalties under section 502(c)(5) of ERISA for persons who fail to file the information required under this section, *see* 29 CFR 2560.502c-5. For information relating to administrative hearings and appeals in connection with the assessment of civil penalties under section 502(c)(5) of ERISA, see 29 CFR 2570.90 through 2570.101.

(h) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. (i) *Facts.* MEWA *A* began offering coverage for medical care to the employees of two or more employers July 1, 1989 (and continues to offer such coverage). MEWA *A* does not claim the exception under section 3(40)(A)(i) of ERISA.

(ii) *Conclusion.* In this *Example 1*, the administrator of MEWA *A* must file a completed copy of the Form M–1 each year by March 1.

Example 2. (i) Facts. ECE *B* began offering coverage for medical care to the employees of two or more employers on January 1, 1992. ECE *B* has not been involved in any mergers and the number of employees to which ECE *B* provides coverage for medical care has not grown by more than 50 percent in any given year.

(ii) *Conclusion.* In this *Example 2*, ECE *B* was originated on January 1, 1992 and has not been originated since then. Therefore, the administrator of ECE *B* is not required to file a 2003 Form M–1 on March 1, 2004 because the last time the ECE *B* was originated was January 1, 1992 which is more than 3 years prior to March 1, 2004.

Example 3. (i) *Facts.* ECE *C* began offering coverage for medical care to the employees of two or more employers on July 1, 2004.

(ii) *Conclusion.* In this *Example 3*, the administrator of ECE *C* must file a completed copy of the 2004 Form M–1 on or before September 29, 2004 (which is 90 days after the origination date). In addition, the administrator of ECE *C* must file an updated copy of the 2004 Form M–1 by March 1, 2005 because the last date *C* was originated was July 1, 2004, which is less than 3 years prior to the March 1, 2005 due date. Furthermore, the administrator of ECE *C* must file a 2005 Form M–1 by March 1, 2006 and a 2006 Form M–1 by March 1, 2007 (because July 1, 2004 is less than three years prior to March 1, 2006 and March 1, 2007, respectively). However, if ECE *C* is not involved in any mergers that would result in a new origination date and if ECE *C* does not experience a growth of 50 percent or more in the number of employees to which ECE *C* provides coverage from the last day of the previous calendar year to any day in the current calendar year, then no Form M–1 report is required to be filed after March 1, 2007.

Example 4. (i) *Facts.* MEWA *D* begins offering coverage to the employees of two or more employers on January 1, 2000. MEWA *D* is licensed or authorized to operate as a health insurance issuer in every state in which it offers coverage for medical care to employees.

(ii) *Conclusion.* In this *Example 4*, the administrator of MEWA *D* is not required to file Form M–1 because it is licensed or authorized to operate as a health insurance issuer in every state in which it offers coverage for medical care to employees.

Example 5. (i) *Facts.* MEWA *E* is originated on September 1, 2004.

(ii) *Conclusion.* In this *Example 5*, because MEWA *E* was originated on September 1, 2004, the administrator of MEWA *E* must file a completed copy of the Form M–1 on or before November 30, 2004 (which is 90 days after the origination date). In addition, the administrator of MEWA *E* must file a completed copy of the Form M–1 annually by every March 1 thereafter.

Example 6. (i) *Facts.* Company *F* maintains a group health plan that provides benefits for medical care for its employees (and their dependents). Company *F* establishes a joint venture in which it has a 25 percent stock ownership interest, determined by applying the principles under section 414(b) of the Internal Revenue Code, and transfers some of its employees to the joint venture. Company *F* continues to cover these transferred employees under its group health plan.

(ii) *Conclusion.* In this *Example 6*, the administrator is not required to file the Form M–1 because Company *F's* group health plan meets the exception to the filing requirement in paragraph (c)(2)(ii)(A) of this section. This is because Company *F's* group health plan would not constitute a MEWA but for the fact that it provides coverage to two or more trades or businesses that share a common control interest of at least 25 percent.

Example 7. (i) *Facts.* Company *G* maintains a group health plan that provides benefits for medical care for its employees. The plan year of Company *G's* group health plan is the fiscal year for Company *G*, which is October 1st—September 30th. Therefore, October 1, 2004—September 30, 2005 is the 2005 plan year. Company *G* decides to sell a portion of its business, Division *X*, to Company *H*. Company *G* signs an agreement with Company *H* under which Division *X* will be transferred to Company *H*, effective September 30, 2005. The change in control of Division *X* therefore occurs on September 30, 2005. Under the terms of the agreement, Company *G* agrees to continue covering all of the employees that formerly worked for Division *X* under its group health plan until Company *H* has established a new group health plan to cover these employees. Under the terms of the agreement, it is anticipated that Company *G* will not be required to cover the employees of Division *X* under its group health plan beyond the end of the 2006 plan year, which is the plan year following the plan year in which the change in control of Division *X* occurs.

(ii) *Conclusion.* In this *Example 7*, the administrator of Company *G's* group health plan is not required to file the Form M–1 on March 1, 2006 for fiscal year 2005 because it is subject to the exception to the filing requirement in paragraph (c)(2)(ii)(B) of this section for an entity that would not constitute a MEWA but for the fact that it is created by a change in control of businesses that occurs for a purpose other than to avoid filing the Form M–1 and is temporary in nature. Under the exception, "temporary" means the MEWA does not extend beyond the end of the plan year following the plan year in which the change in control occurs. The administrator is not required to file the 2005 Form M–1 because it is anticipated that Company *G* will not be required to cover the employees of Division *X* under its group health plan beyond the end of the 2006 plan year, which is the plan year following the plan year in which the change in control of businesses occurred.

Example 8. (i) *Facts.* Company I maintains a group health plan that provides benefits for medical care for its employees (and their dependents) as well as certain independent contractors who are self-employed individuals. The plan is therefore a MEWA. The administrator of Company I's group health plan uses calendar year data to report for purposes of the Form M–1. The administrator of Company *I's* group health plan determines that the number of independent contractors covered under the group health plan as of the last day of calendar year 2004 is less than one percent of the total number of employees and former employees covered under the plan determined as of the last day of calendar year 2004.

(ii) *Conclusion.* In this *Example 8*, the administrator of Company *I's* group health plan is not required to file a Form M–1 for calendar year 2004 (which is otherwise due by March 1, 2005) because it is subject to the exception to the filing requirement provided in paragraph (c)(2)(ii)(C) of this section for entities that cover a very small number of persons who are not employees or former employees of the plan sponsor.

Signed at Washington, DC, this 31st day of March 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–8115 Filed 4–7–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2560

RIN 1210–AA64

Assessment of Civil Penalties Under Section 502(c)(5) of ERISA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule that describes procedures relating to the assessment of civil penalties under section 502(c)(5) of the Employee Retirement Income Security Act of 1974, (ERISA) as amended by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Section 502(c)(5) authorizes the Secretary of Labor (the Secretary) to assess a civil monetary penalty against any person from the date of the person's failure or refusal to file the information required to be filed under section 101(g) of ERISA. The final rule clarifies the manner in which the Secretary will assess penalties under ERISA section 502(c)(5) and the procedures for agency review. Separate documents containing a final rule on the reporting requirement under section 101(g) of ERISA and a final rule relating to procedures for administrative hearings and appeals on assessments of penalties under ERISA section 502(c)(5) appear separately in this issue of the **Federal Register**.

EFFECTIVE DATE: This final rule is effective January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Amy J. Turner or Deborah S. Hobbs, Employee Benefits Security Administration, U.S. Department of Labor, Room C–5331, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 693–8335).

SUPPLEMENTARY INFORMATION:

A. Background and Overview of Changes in the Final Rule

This document contains a final rule that provides guidance relating to the assessment of civil penalties under section 502(c)(5) of ERISA for the failure or refusal to file a report pursuant to section 101(g) of ERISA. This regulation is designed to parallel the procedures set forth in § 2560.502c—2 regarding civil penalties under section 502(c)(2) of ERISA.

An interim final rule relating to the assessment of civil penalties under section 502(c)(5) of ERISA was published in the **Federal Register** on February 11, 2000 at 65 FR 7181. In the February 11, 2000 interim rule, the Department sought comments from affected parties. No comments were received.

On October 21, 2002, the Department published interim final rules relating to notice of blackout periods to participants and beneficiaries (during which their right to direct or diversify investments, obtain a loan, or obtain a distribution under a pension plan may be suspended) and related civil penalties under ERISA section 502(c)(7). Those rules also made conforming changes to the penalty assessment regulations under this section. Specifically, this section was amended to provide an additional five days in which to file a statement of reasonable cause or a request for hearing and answer, as applicable, when the Department serves a notice of intent to assess a penalty or a notice of penalty determination by certified mail, and to provide that service of a notice by the Department by regular mail is complete upon receipt. In addition, conforming amendments were made to provide that statements of reasonable cause are treated as filed on mailing or on transmittal under certain circumstances. Finally, amendments were made to accommodate those changes in the filing and service rules. No comments were received with respect to these conforming amendments.

This regulation finalizes the interim final regulations published February 20, 2000, as amended by the interim final amendments published October 21, 2002. Only one modification was made, involving applicability dates. Specifically, the interim final rule contained a transition safe harbor period under which no civil penalty was assessed against an administrator that had made a good faith effort to comply with a § 2520.101–2 filing that was due in the Year 2000. This transition rule was created because, during the first year in which a report was required to be filed under section 101(g) in particular, the Department was focused on educating administrators about this filing requirement. Because the dates during which the transition rule was applicable have passed, this rule has been deleted from the final rule.

The Department remains committed to working with administrators to help them comply with the Form M–1 filing requirement. Filers who have questions or who need assistance in completing a filing may call the EBSA Help Desk, at 202–693–8360.

B. Regulatory Impact Analysis

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a "significant regulatory action" is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. On the basis of these criteria, it has been determined that this regulatory action is significant under section 3(f)(4) of the Executive Order. Accordingly, OMB has reviewed this regulation.

Paperwork Reduction Act

The rule being issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain a "collection of information" as defined in 44 U.S.C. 3502(3).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires each Federal agency to perform a regulatory flexibility analysis for all rules subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C 551 *et seq.*) unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

Because these rules were issued as interim final rules and not as a notice of proposed rulemaking, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant economic impact on a substantial number of small entities, or conduct a regulatory flexibility analysis. The Department does not anticipate that this final rule will impose a significant impact on a substantial number of small entities, however, regardless of whether one uses the definition of small entity found in regulations issued by the Small Business Administration (13 CFR § 121.201) or one defines small entity, on the basis of section 104(a)(2) of ERISA, as an employee benefit plan with fewer than 100 participants.

Small Business Regulatory Enforcement Fairness Act

The final rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

Federalism Stotement Under Executive Order 13132

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Agencies promulgating regulations that have these federalism implications must consult with state and local officials, and describe in the preamble to the regulation the extent of their consultation and the nature of the concerns of state and local officials, as well as the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of state and local officials have been met.

In the Department's view, these final regulations do not have federalism implications because they do not have substantial direct effects on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Not only do these regulations not reduce state discretion, the reports they require will facilitate state enforcement of their own laws as they apply to MEWAs since the reports will be available to the states and will identify MEWAs operating in each state.

Although the Department concludes that these final regulations do not have federalism implications, in keeping with the spirit of the Executive Order that agencies shall closely examine any policies that may have federalism implications or limit the policy making discretion of the states, the Department of Labor engages in extensive efforts to consult with and work cooperatively with affected state and local officials.

For example, the Department attends quarterly meetings of the National Association of Insurance Commissioners (NAIC) to listen to the concerns of state insurance departments. The NAIC is a non-profit corporation established by the insurance commissioners in the 50 states, the District of Columbia, and the four U.S. territories that, among other things, provides a forum for the development of uniform policy when uniformity is appropriate. Its members meet, discuss, and offer solutions to mutual problems. The NAIC sponsors quarterly meetings to provide a forum for the exchange of ideas, and in-depth consideration of insurance issues by regulators, industry representatives, and consumers. In addition to the general discussions, committee meetings, and task force meetings, the NAIC sponsors standing HIPAA meetings for members during the quarterly conferences, including a Centers for Medicare and Medicaid Services (CMS)/Department of Labor (DOL) meeting on HIPAA issues. (This meeting provides CMS and DOL the opportunity to provide updates on regulations, bulletins, enforcement actions, and outreach efforts regarding HIPAA.) In these quarterly meetings, issues relating to MEWAs and the implementation of the Form M–1 filing requirement are frequently discussed and, periodically, entire sessions are scheduled that are dedicated exclusively to MEWA/Form M–1 issues.

The Department also cooperates with the states in several ongoing outreach initiatives, through which information is shared among federal regulators, state regulators, and the regulated community. For example, the Department has established a Health Benefits Education Campaign with more than 70 partners, including CMS, the NAIC, and many business and consumer groups. In addition, the Department Web site offers links to important state Web sites and other resources, facilitating coordination between the state and federal regulators and the regulated community.

The Department also coordinates with state insurance departments to freeze assets when a MEWA operator is committing fraud or operating in a financially unsound manner. In these situations, typically, a state will obtain a cease and desist order to stave off further action by the MEWA in that state. In certain situations, the Department will then obtain a temporary restraining order (TRO) to freeze assets of the MEWA nationwide. In one case this year, the Department obtained a TRO to freeze assets of a MEWA whose operators were committing fraud and not paying benefits. This case affects more than 23,000 participants and beneficiaries in 50 states and the amount of unpaid claims could exceed $6 million. In a similar case last year, the Department obtained a TRO to freeze assets of a MEWA that was diverting plan assets for personal use of the MEWA's operators. That case affected at least 1,500 participants and $2.8 million in unpaid claims. A court order was also issued in that case appointing an independent fiduciary to manage the MEWA.

In conclusion, the Department has stayed in contact with state regulators and considered their concerns in developing these regulations. These regulations should help the states enforce their own laws as they apply to MEWAs since the reports they require will be available to them and will identify MEWAs operating in each state.

Statutory Authority

29 U.S.C. 1132(c)(5) and 1135 and Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

List of Subjects in 29 CFR Part 2560

Claims, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Penalties, Pensions, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, Part 2560 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2560—[AMENDED]

■ 1. The authority for part 2560 continues to read:

Authority: 29 U.S.C. 1132, 1135, and Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2560.503–1 also issued under 29 U.S.C. 1133.

■ 2. Part 2560 is amended by revising §2560.502c–5 to read:

§ 2560.502c–5—Civil penalties under section 502(c)(5).

(a) *In general*—(1) Pursuant to the authority granted the Secretary under section 502(c)(5) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator of a multiple employer welfare arrangement (MEWA) (within the meaning of section 3(40)(A) of the Act) that is not a group health plan, and that provides benefits consisting of medical care (within the meaning of section 733(a)(2)), for which a report is required to be filed under section 101(g) of the Act and 29 CFR 2520.101–2, shall be liable for civil penalties assessed by the Secretary under section 502(c)(5) of the Act for each failure or refusal to file a completed report required to be filed under section 101(g) and 29 CFR 2520.101–2. The term "administrator" is defined in 29 CFR 2520.101–2(b).

(2) For purposes of this section, a failure or refusal to file the report required to be filed under section 101(g) shall mean a failure or refusal to file, in whole or in part, that information described in section 101(g) and 29 CFR 2520.101–2, on behalf of the MEWA, at the time and in the manner prescribed therefor.

(b) *Amount assessed*—(1) The amount assessed under section 502(c)(5) shall be determined by the Department of Labor, taking into consideration the degree and/or willfulness of the failure to file the report. However, the amount assessed under section 502(c)(5) of the Act shall not exceed $1,000 a day, computed from the date of the administrator's failure or refusal to file the report and, except as provided in paragraph (b)(2) of this section, continuing up to the date on which a report meeting the requirements of section 101(g) and 29 CFR 2520.101–2, as determined by the Secretary, is filed.

(2) If, upon receipt of a notice of intent to assess a penalty (as described in paragraph (c) of this section), the administrator files a statement of reasonable cause for the failure to file, in accordance with paragraph (e) of this section, a penalty shall not be assessed for any day from the date the Department serves the administrator with a copy of such notice until the day after the Department serves notice on the administrator of its determination on reasonable cause and its intention to assess a penalty (as described in paragraph (g) of this section).

(3) For purposes of this paragraph, the date on which the administrator failed or refused to file the report shall be the date on which the report was due (determined without regard to any extension of time for filing). A report which is rejected under 29 CFR 2520.101–2 shall be treated as a failure to file a report when a revised report meeting the requirements of this section is not filed within 45 days of the date of the Department's notice of rejection. If a revised report meeting the requirements of this section, as determined by the Secretary, is not submitted within 45 days of the date of the notice of rejection by the Department, a penalty shall be assessed under section 502(c)(5) beginning on the day after the date of the administrator's failure or refusal to file the report.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(5), the Department shall provide to the administrator of the MEWA a written notice indicating the Department's intent to assess a penalty under section 502(c)(5), the amount of such penalty, the period to which the penalty applies, and a statement of the facts and the reason(s) for the penalty.

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the requirements of section 101(g) of the Act or on a showing by the administrator of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced, or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure of an administrator to file a statement of reasonable cause within the thirty (30) day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(5) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of 29 CFR 2570.91(g), forty-five (45) days from the date of service of the notice.

(g) *Notice of the determination on statement of reasonable cause*—(1) The Department, following a review of all the facts alleged in support of no assessment or a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its determination to waive the penalty, in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section, and a brief statement of the reasons for assessing the penalty. This notice is a "pleading" for purposes of 29 CFR 2570.91(m).

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's intention to assess a penalty, shall become a final order, within the meaning of 29 CFR 2570.91(g), forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of 29 CFR 2570.91(g), if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under 29 CFR 2570.90 through 2570.101, and files an answer to the notice. The request for hearing and answer must be filed in accordance with 29 CFR 2570.92 and 18.4. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements*—(1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five (5) days shall be added to the time allowed by these rules for the filing of a statement, or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or Express Mail;

(ii) Upon receipt by the delivery service, if accomplished using a "designated private delivery service" within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

(j) *Liability*—(1) If more than one person is responsible as administrator for the failure to file the report, all such persons shall be jointly and severally liable with respect to such failure.

(2) Any person against whom a civil penalty has been assessed under section 502(c)(5) pursuant to a final order, within the meaning of 29 CFR 2570.91(g), shall be personally liable for the payment of such penalty.

(k) *Cross-reference. See* 29 CFR 2570.90 through 2570.101 for procedural rules relating to administrative hearings under section 502(c)(5) of the Act.

Signed at Washington DC, this 31st day of March, 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–8116 Filed 4–7–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2570

RIN 1210–AA64

Procedures for Administrative Hearings Regarding the Assessment of Civil Penalties Under Section 502(c)(5) of ERISA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule that describes procedures relating to administrative hearings, in connection with the assessment of civil penalties under section 502(c)(5) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Section 502(c)(5) of ERISA authorizes the Secretary of Labor (the Secretary) to assess a civil penalty against any person of up to $1,000 a day from the date of the person's failure or refusal to file the information required to be filed by such person with the Secretary under regulations prescribed pursuant to section 101(g) of ERISA. Separate documents are also being published today in the **Federal Register** containing final rules implementing the reporting requirement under section 101(g) of ERISA and final rules describing the manner in which the Department will assess civil penalties under ERISA section 502(c)(5).

EFFECTIVE DATE: This final rule is effective January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Amy J. Turner or Deborah S. Hobbs, Employee Benefits Security Administration, U.S. Department of Labor, Room C–5331, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 693–8335).

SUPPLEMENTARY INFORMATION:

A. Background and Overview of Changes in the Final Rule

This document contains a final rule that provides guidance relating to the procedures for administrative hearings and appeals regarding the assessment of civil penalties under section 502(c)(5) of ERISA for the failure or refusal to file a completed report pursuant to section 101(g) of ERISA. This regulation is designed to parallel the procedures set forth in § 2570.502c–2 regarding civil penalties under section 502(c)(2) of ERISA.

An interim final rule relating to the procedures for administrative hearings and appeals relating to the assessment of civil penalties under section 502(c)(5) of ERISA was published in the **Federal Register** on February 11, 2000, 65 FR 7185. In the February 11, 2000 interim rule, the Department sought comments from those affected by this regulation. No comments were received.

On October 21, 2002, the Department published interim final rules relating to notice of blackout periods to participants and beneficiaries (during which their right to direct or diversify investments, obtain a loan, or obtain a distribution under a pension plan may be suspended) and related civil penalties under ERISA section 502(c)(7). Those rules also made conforming changes to the procedural regulations under this section. Specifically, § 2570.94, which describes "consequences of default" was modified to provide that, if a respondent fails to file an answer to the notice of determination, the notice of determination shall become a final order of the Secretary 45 days from the date of service of the notice. No comments were received with respect to this conforming amendment.

The interim rule is, therefore, being published as a final rule without change.

B. Regulatory Impact Analysis

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a "significant regulatory action" is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. On the basis of these criteria, it has been determined that this regulatory action is significant under section 3(f)(4) of the Executive Order. Accordingly, OMB has reviewed this regulation.

Paperwork Reduction Act

The rule being issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain a "collection of information" as defined in 44 U.S.C. 3502(3).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), (RFA) requires each Federal agency to perform a regulatory flexibility analysis for all rules subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C 551 *et seq.*) unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

Because these rules were issued as interim final rules and not as a notice of proposed rulemaking, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant economic impact on a substantial number of small entities, or conduct a regulatory flexibility analysis. The Department does not anticipate that this final rule will impose a significant impact on a substantial number of small entities, however, regardless of whether one uses the definition of small entity found in regulations issued by the Small Business Administration (13 CFR 121.201) or one defines small entity, on the basis of section 104(a)(2) of ERISA, as an employee benefit plan with fewer than 100 participants.

Small Business Regulatory Enforcement Fairness Act

The final rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

Federalism Statement Under Executive Order 13132

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Agencies promulgating regulations that have these federalism implications must consult with state and local officials, and describe in the preamble to the regulation the extent of their consultation and the nature of the concerns of state and local officials, as well as the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of state and local officials have been met.

In the Department's view, these final regulations do not have federalism implications because they do not have substantial direct effects on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Not only do these regulations not reduce state discretion, the reports they require will facilitate state enforcement of their own laws as they apply to MEWAs since the reports will be available to the states and will identify MEWAs operating in each state.

Although the Department concludes that these final regulations do not have federalism implications, in keeping with the spirit of the Executive Order that agencies shall closely examine any policies that may have federalism implications or limit the policy making discretion of the states, the Department of Labor engages in extensive efforts to consult with and work cooperatively with affected state and local officials.

For example, the Department attends quarterly meetings of the National Association of Insurance Commissioners (NAIC) to listen to the concerns of state insurance departments. The NAIC is a non-profit corporation established by the insurance commissioners in the 50 states, the District of Columbia, and the four U.S. territories that, among other things, provides a forum for the development of uniform policy when uniformity is appropriate. Its members meet, discuss, and offer solutions to mutual problems. The NAIC sponsors quarterly meetings to provide a forum for the exchange of ideas, and in-depth consideration of insurance issues by regulators, industry representatives, and consumers. In addition to the general discussions, committee meetings, and task force meetings, the NAIC sponsors standing HIPAA meetings for members during the quarterly conferences, including a Centers for Medicare and Medicaid Services (CMS)/Department of Labor (DOL) meeting on HIPAA issues. (This meeting provides CMS and DOL the opportunity to provide updates on regulations, bulletins, enforcement actions, and outreach efforts regarding HIPAA.) In these quarterly meetings, issues relating to MEWAs and the implementation of the Form M–1 filing requirement are frequently discussed and, periodically, entire sessions are scheduled that are dedicated exclusively to MEWA/Form M–1 issues.

The Department also cooperates with the states in several ongoing outreach initiatives, through which information is shared among federal regulators, state regulators, and the regulated community. For example, the Department has established a Health Benefits Education Campaign with more than 70 partners, including CMS, the NAIC, and many business and consumer groups. In addition, the Department Web site offers links to important state Web sites and other resources, facilitating coordination between the state and federal regulators and the regulated community.

The Department also coordinates with state insurance departments to freeze assets when a MEWA operator is committing fraud or operating in a financially unsound manner. In these situations, typically, a state will obtain a cease and desist order to stave off further action by the MEWA in that state. In certain situations, the Department will then obtain a temporary restraining order (TRO) to freeze assets of the MEWA nationwide. In one case this year, the Department obtained a TRO to freeze assets of a MEWA whose operators were committing fraud and not paying benefits. This case affects more than 23,000 participants and beneficiaries in 50 states and the amount of unpaid claims could exceed $6 million. In a similar case last year, the Department obtained a TRO to freeze assets of a MEWA that was diverting plan assets for personal use of the MEWA's operators. That case affected at least 1,500 participants and $2.8 million in unpaid claims. A court order was also issued in that case appointing an independent fiduciary to manage the MEWA.

In conclusion, the Department has stayed in contact with state regulators and considered their concerns in developing these regulations. These regulations should help the states enforce their own laws as they apply to MEWAs since the reports they require will be available to them and will identify MEWAs operating in each state.

Statutory Authority

29 U.S.C. 1132(c)(5) and 1135 and Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb.3, 2003).

List of Subjects in 29 CFR Part 2570

Administrative practice and procedure, Claims, Employee benefit plans, Law enforcement, Penalties, Pensions, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, Part 2570 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2570—[AMENDED]

■ 1. The authority for part 2570 continues to read:

Authority: 5 U.S.C. 8477, 29 U.S.C. 1002(40), 1021, 1108, 1132, 1135, sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332, and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275; Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb.3, 2003).

■ 2. Sec. 2570.3 is amended to revise paragraph (a) to read as follows:

§ 2570.3 Service: Copies of documents and pleadings.

* * * * *

(a) *General.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, 800 K Street, NW., Suite 400, Washington, DC 20001–8002, or to the OALJ regional Office to which the proceedings may have been transferred for hearing. Each document filed shall be clear and legible.

* * * * *

■ 3. Subpart E of part 2570 is amended to read as follows:

Subpart E—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(5)

Sec.

2570.90 Scope of Rules.
2570.91 Definitions.
2570.92 Service: Copies of documents and pleadings.
2570.93 Parties, how designated.
2570.94 Consequnces of default.
2570.95 Consent order or settlement.
2570.96 Scope of discovery.
2570.97 Summary decision.
2570.98 Decision of the administrative law judge.
2570.99 Review by the Secretary.
2570.100 Scope of review.
2570.101 Procedures for review by the Secretary.

§ 2570.90 Scope of rules.

The rules of practice set forth in this subpart are applicable to "502(c)(5) civil penalty proceedings" (as defined in 2570.91(n)) under section 502(c)(5) of the Employee Retirement Income Security Act of 1974. The rules of procedure for administrative hearings published by the Department's Office of Administrative Law Judges in subpart A of 29 CFR part 18 will apply to matters arising under ERISA section 502(c)(5) except as described by this section. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

§ 2570.91 Definitions.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title.

(a) *Adjudicatory proceeding* means a judicial-type proceeding before an administrative law judge leading to the formulation of a final order;

(b) *Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *Answer* means a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to 29 CFR 2560.502c–5(g);

(d) *Commencement of proceeding* is the filing of an answer by the respondent;

(e) *Consent agreement* means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) *ERISA* means the Employee Retirement Income Security Act of 1974, as amended;

(g) *Final order* means the final decision or action of the Department of Labor concerning the assessment of a civil penalty under ERISA section 502(c)(5) against a particular party. Such final order may result from a decision of an administrative law judge or the Secretary, the failure of a party to file a statement of reasonable cause described in 29 CFR 2560.502c–5(e) within the prescribed time limits, or the failure of a party to invoke the procedures for hearings or appeals under this title within the prescribed time limits. Such a final order shall constitute final agency action within the meaning of 5 U.S.C. 704;

(h) *Hearing* means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission, to the administrative law judge;

(i) *Order* means the whole or any part of a final procedural or substantive disposition of a matter under ERISA section 502(c)(5);

(j) *Party* includes a person or agency named or admitted as a party to a proceeding;

(k) *Person* includes an individual, partnership, corporation, employee benefit plan, association, exchange, or other entity or organization;

(l) *Petition* means a written request, made by a person or party, for some affirmative action;

(m) *Pleading* means the notice as defined in 29 CFR 2560.502c–5(g), the answer to the notice, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(n) *502(c)(5) civil penalty proceeding* means an adjudicatory proceeding relating to the assessment of a civil penalty provided for in section 502(c)(5) of ERISA;

(o) *Respondent* means the party against whom the Department is seeking to assess a civil sanction under ERISA section 502(c)(5);

(p) *Secretary* means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, any assistant secretary (including the Assistant Secretary for Employee Benefits Security), administrator, commissioner, appellate body, board, or other official of the Department of Labor; and

(q) *Solicitor* means the Solicitor of Labor or his or her delegate.

§ 2570.92 Service: Copies of documents and pleadings.

For 502(c)(5) penalty proceedings, this section shall apply in lieu of 29 CFR 18.3.

(a) *In general.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges (OALJ), 800 K Street, NW., Suite 400, Washington, DC 20001–8002, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs, or other documents shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Department shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA Section 502(c)(5) Proceeding, P.O. Box 1914, Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions and all other documents shall be made by regular mail to the last known address.

(d) *Form of pleadings*—(1) Every pleading shall contain information indicating the name of the Employee Benefits Security Administration (EBSA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (*e.g.*, notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½ × 11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopies, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

§ 2570.93 Parties, how designated.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of 29 CFR 18.10.

(a) The term *party* wherever used in this subpart shall include any natural person, corporation, employee benefit plan, association, firm, partnership, trustee, receiver, agency, public or private organization, or government agency. A party against whom a civil penalty is sought shall be designated as "respondent." The Department shall be designated as the "complainant."

(b) Other persons or organizations shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the proceedings and their interest is not adequately represented by existing parties, and that in the discretion of the administrative law judge the participation of such persons or organizations would be appropriate.

(c) A person or organization not named as a respondent wishing to participate as a party under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person or organization has knowledge of or should have known about the proceeding. The petition shall be filed with the administrative law judge and served on each person or organization who has been made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioners have the requisite interest to be a party in the proceedings, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may request all such petitioners to designate a single representative, or he or she may recognize one or more of such petitioners. The administrative law judge shall give each such petitioner as

well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide a brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae.

§ 2570.94 Consequences of default.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of 29 CFR 18.5(a) and (b). Failure of the respondent to file an answer to the notice of determination described in 29 CFR 2560.502c–5(g) within the 30 day period provided by 29 CFR 2560.502c–5(h) shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(5) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.91(g), forty-five (45) days from the date of the service of the notice.

§ 2570.95 Consent order or settlement.

For 502(c)(5) civil penalty proceedings, the following shall apply in lieu of 29 CFR 18.9.

(a) *In general.* At any time after the commencement of a proceeding, but at least five (5) days prior to the date set for hearing, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be in the discretion of the administrative law judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties and the probability of reaching an agreement which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge;

(4) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(5) That the order and decision of the administrative law judge shall be final agency action.

(c) *Submission.* On or before the expiration of the time granted for negotiations, but, in any case, at least five (5) days prior to the date set for hearing, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order to the administrative law judge;

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action subject to compliance with the terms of the settlement; or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* In the event that a settlement agreement containing consent findings and an order is submitted within the time allowed therefor, the administrative law judge shall issue a decision incorporating such findings and agreement within thirty (30) days of receipt of such document. The decision of the administrative law judge shall incorporate all of the findings, terms, and conditions of the settlement agreement and consent order of the parties. Such decision shall become a final agency action within the meaning of 5 U.S.C. 704.

(e) *Settlement without consent of all parties.* In cases in which some, but not all, of the parties to a proceeding submit a consent agreement to the administrative law judge, the following procedure shall apply:

(1) If all of the parties have not consented to the proposed settlement submitted to the administrative law judge, then such non-consenting parties must receive notice, and a copy, of the proposed settlement at the time it is submitted to the administrative law judge;

(2) Any non-consenting party shall have fifteen (15) days to file any objections to the proposed settlement with the administrative law judge and all other parties;

(3) If any party submits an objection to the proposed settlement, the administrative law judge shall decide within thirty (30) days after receipt of such objections whether to sign or reject the proposed settlement. Where the record lacks substantial evidence upon which to base a decision or there is a genuine issue of material fact, then the administrative law judge may establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issues may reasonably be based;

(4) If there are no objections to the proposed settlement, or if the administrative law judge decides to sign the proposed settlement after reviewing any such objections, the administrative law judge shall incorporate the consent agreement into a decision meeting the requirements of paragraph (d) of this section.

§ 2570.96 Scope of discovery.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of 29 CFR 18.14.

(a) A party may file a motion to conduct discovery with the administrative law judge. The motion for discovery shall be granted by the administrative law judge only upon a showing of good cause. In order to establish "good cause" for the purposes of this section, a party must show that the discovery requested relates to a genuine issue as to a material fact that is relevant to the proceeding. The order of the administrative law judge shall expressly limit the scope and terms of discovery to that for which "good cause" has been shown, as provided in this paragraph.

(b) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon showing that the party seeking discovery has substantial need of the materials or information in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials or information by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

§ 2570.97 Summary decision.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of 29 CFR 18.41.

(a) *No genuine issue of material fact.*

(1) Where no issue of material fact is found to have been raised, the administrative law judge may issue a decision which, in the absence of an appeal pursuant to §§ 2570.99 through 2570.101, shall become a final order.

(2) A decision made under this paragraph shall include a statement of:

(i) Findings of fact and conclusions of law, and the reasons therefore, on all issues presented; and

(ii) Any terms and conditions of the rule or order.

(3) A copy of any decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine question of material fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing.

§ 2570.98 Decision of the administrative law judge.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of 29 CFR 18.57.

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of the filing of the transcript of the testimony or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion, proposed findings of fact, conclusions of law, and an order together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administrative law judge.* Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law with reasons therefor upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. In a contested case in which the Department and the Respondent have presented their positions to the administrative law judge pursuant to the procedures for 502(c)(5) civil penalty proceedings as set forth in this subpart, the penalty (if any) which may be included in the decision of the administrative law judge shall be limited to the penalty expressly provided for in section 502(c)(5) of ERISA. It shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become a final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in §§ 2570.99 through 2570.101.

§ 2570.99 Review by the Secretary.

(a) The Secretary may review a decision of an administrative law judge. Such a review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to him or her a copy of the entire record before the administrative law judge.

§ 2570.100 Scope of review.

The review of the Secretary shall not be a *de novo* proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

§ 2570.101 Procedures for review by the Secretary.

(a) Upon receipt of the notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his or her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

Signed at Washington DC, this 31st day of March, 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–8117 Filed 4–7–03; 8:45 am]

BILLING CODE 4510–29–P

VOL
68
ISS
68
AP
9
003
MI



Federal Register

Wednesday,
April 9, 2003

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Flightcrew Compartment Access and Door Designs; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2001–10770; SFAR 92–5]

RIN 2120–AH97

Flightcrew Compartment Access and Door Designs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action supersedes Special Federal Aviation Regulation (SFAR) 92–4, which was published on March 19, 2002, to allow operators to quickly modify the flightcrew compartment door to delay or deter unauthorized entry to the flightcrew compartment. This action temporarily authorizes variances from existing design standards for the doors and certain operational rules associated with the modifications. It allows for approval for return to service of modified airplanes without prior approved data if the modification constitutes a major alteration. This action prohibits the possession of flightdeck compartment door keys by other than the flightcrew during flight, unless the flightdeck door has an internal flightdeck locking device installed, operative, and in use. This action extends regulatory relief for all-cargo transport category airplanes and a limited number of passenger airplanes beyond April 9, 2003.

DATES: This action is effective April 9, 2003 and shall remain in effect until rescinded.

FOR FURTHER INFORMATION CONTACT: Dave Rich, Certification Procedures Branch, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7141; e-mail address: *9-awa-avr-design@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of This Action

You can get an electronic copy of this document from the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page, type in the last five digits of the docket number shown at the beginning of this document. Click on "search."

(3) On the next page, which contains the docket summary information, click on the item you want to see.

You can also get an electronic copy using the Internet through the FAA's Web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or SFAR number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's Web page at *http://www.faa.gov/avr/arm/sbrefa.htm* and send electronic inquiries to the following Internet address: *9–AWA–SBREFA@faa.gov.*

Background

The September 11, 2001, hijacking events demonstrated that some persons are willing to hijack airplanes and use them as weapons against the citizens of the United States. This safety and security threat was not anticipated and, therefore, not considered in the design of transport airplanes. The hijackings made clear the critical need to improve the security of the flightcrew compartment.

On November 16, 2001, Congress enacted the Aviation and Transportation Security Act, Pub. L. 107–71. Section 104(a)(1)(B) of the Act requires the FAA to issue an order requiring the strengthening of the flightdeck door and locks on certain passenger carrying airplanes.

Flightcrew Compartment Door Designs

Flightcrew compartment doors on transport category airplanes have been designed principally to ensure privacy, so pilots could focus their entire attention on their normal and emergency flight duties. The doors have not been designed to provide an impenetrable barrier between the cabin and the flightcrew compartment. Doors have not been required to meet any significant security threat, such as small arms fire or shrapnel, or the exercise of brute force to enter the flightcrew compartment.

Besides affording an uninterrupted work environment for the flightcrew, flightcrew compartment doors often must meet other important safety standards. Should there be a sudden decompression of the airplane, separate compartments within the airplane. like the cabin and the crew compartments, must be designed so that the pressure differential that is created does not compromise the basic airplane structure. Certification standards require that airplane designs provide a method to compensate for decompression in a manner that avoids significant damage to the airplane. In many cases, flightcrew compartment doors provide the pressure compensation by being vented or swinging open to equalize the pressure between the cabin and the flightcrew compartment.

In addition, design standards require that the flightcrew have a path to exit the flightcrew compartment in an emergency, if the cockpit window exits are not usable. Flightcrew compartment doors have been designed to provide this escape path. But this escape feature may also enable easier unauthorized entry into the flightcrew compartment from the cabin.

Operating regulations, in particular § 121.379(b) in the case of a major alteration, require the work to be done in accordance with technical data approved by the Administrator. Operating regulations for airlines also require that each crewmember have a key readily available to open doors between passengers and an emergency exit. Some airlines issue flightcrew compartment door keys to all their crewmembers. This allows flight attendants to enter the flightcrew compartment and assist the flightcrew in an emergency, such as incapacitation of a flight crewmember. But it also offers an opportunity for an individual to overpower or coerce a flight attendant, take away the key, and enter the flightcrew compartment.

This SFAR authorized a temporary period during which non-compliance with design requirements were allowed when improvements to flightcrew compartment security were made. In addition, the FAA waived procedural requirements applicable to major alterations (§ 121.379(b)), the approval of service information and requirements for production of parts for door modifications.

Prior Versions of SFAR 92

Original SFAR 92 was published on October 9, 2001, and allowed all part 121 passenger carrying operators to install flightcrew compartment door improvements. It allowed airframe manufacturers and modifiers to produce service information without separate FAA approval to assist operators in developing modifications to improve intrusion resistance to the flightcrew compartment. The SFAR included a provision that overrode the requirement for parts production approval in support of door reinforcement activities. Should any of the changes to the door constitute a major alteration, the SFAR relieved the operator of having to obtain prior approval of the data. In addition to the above changes, the FAA also believed it was prudent to eliminate the ability of intruders to gain access by obtaining a flight attendant's key. For that reason, the SFAR temporarily changed the requirement in § 121.313(g) by stating that only flight crewmembers, and not cabin crewmembers, would have flightcrew compartment keys during flight.

SFAR 92–1, published on October 17, 2001, extended the SFAR to cargo airplane operators.

As mentioned above, SFAR 92 temporarily changed section 121.313(g) to prohibit the possession of flightdeck keys by non-flightdeck crewmembers. SFAR 92–2, published on November 21, 2001, modified the prohibition to allow possession of the key under certain limited circumstances.

When SFAR 92 was originally issued, and subsequently revised, the FAA expected that flightdeck modifications would be made as soon as possible. While this was the case for the substantial majority of operators, not all had accomplished the short-term modifications. Therefore, on January 15, 2002, SFAR 92–3 was published to mandate installation of the internal locking devices. This revision also expanded the modification authority to U.S. registered, transport category airplanes that are operated under part 129, foreign operations.

SFAR 92–4 was published on March 19, 2002, to extend the authority to return airplanes to service without previously approved data past the previously established April 22, 2002 date. This revision to the SFAR explicitly stated that operational requirements in sections 121.313(h) and 121.583(b)(1) and (2) are waived if a conflict exists when internal locks are installed and used. The introductory language of paragraph 2 was also revised to address airplanes that are registered in another country, but operated by a part 121 certificate holder.

Other Rulemaking

In parallel with SFAR 92, the FAA issued an immediately adopted rule (IAR) setting new design standards for flightdeck doors in 14 CFR part 25 (Amendment Nos. 25–106 and 121–288, 67 FR 2118, January 10, 2002). These new standards enhance resistance to blunt force and ballistic intrusion. In addition, the IAR requires all airplanes required to have a door under section 121.313(f), as well as all-cargo transport category airplanes that have flightdeck doors installed on or after January 15, 2002, to have a door meeting the new design standards. The stronger doors must be installed not later than April 9, 2003. Doors meeting the new design standards will replace the doors reinforced under this SFAR.

SFAR 92–5

This SFAR is being extended to address two circumstances. One is a response to recent legislation limiting the application and enforcement of requirements for reinforced doors on cargo airplanes. The other is the need for continued relief for a limited number of passenger operators.

Section 355 of the recently adopted Consolidated Appropriations Resolution (Pub. L. 108–7) limited the FAA's ability to apply and enforce the new reinforced door standards for cargo airplanes. As a result, cargo operators will not be subject to the April 9, 2003 deadline for installation of reinforced doors. However, cargo operators have installed internal locking devices under the requirements and authority of this SFAR. We expect that cargo operators who have such devices will want to continue to use them after April 9, 2003, even if they choose not to install a reinforced door. As described above, expiration of the SFAR on April 9, 2003, will limit or eliminate the authority for cargo operators to continue to use these devices. To avoid this decrease in security, the SFAR is extended to continue the authority for these devices on cargo airplanes. The new expiration date of September 30, 2003, was selected to correspond with the expiration date of the Resolution.

Passenger operators have made great strides in meeting the April 9, 2003, deadline for installation of reinforced doors. As a part of the installation process, and to adopt improved security expeditiously, some operators installed doors that meet the strength requirements prior to formal certification approval. These installations are possible because SFAR 92 waived otherwise applicable certification processes.

We expect that all passenger operators will have reinforced doors on their airplanes by April 9, 2003. But some doors may not have formal certification approval by that date. As presently written, SFAR 92–4 will expire on April 9, 2003. If it expires, operators will lose the ability to operate with reinforced doors that lack certification approval. If this were to happen, the operators would be penalized even though doors capable of deterring terrorists are in place.

To avoid this result, the SFAR is being extended to July 31, 2003, provided certain criteria are met. July 31, 2003, is selected because we believe that all projects that will qualify for approval will have approval by that date. To take advantage of this extension,

(1) Passenger operators must have installed reinforced doors before midnight April 9, 2003.

(2) The FAA must have determined before midnight April 9, 2003, that those doors meet the updated intrusion resistance standards of 14 CFR 25.795(a)(1) and (2).

(3) A formal application for certification approval of the door must have been submitted to the FAA before March 10, 2003.

These criteria should assure that operators and door producers have made a good faith effort to meet the reinforced door requirement. Once these criteria have been satisfied, operators can continue to operate until the final certification approval is issued.

Applicants and operators must recognize that compliance with all airworthiness standards is essential. For example, some applicants have been unable to demonstrate compliance with the decompression standards of § 25.365. Based on their progress to date, it is not clear that they will ultimately be able to do so. Unless these designs can be shown to comply with all airworthiness standards by the extended deadline provided by this SFAR, operators will be required to replace these doors with doors that have been shown to comply with all applicable standards. Operators who are aware that their doors are unlikely to be approved must procure doors from other approved sources in sufficient time to comply with § 121.313(j) by July 31, 2003, the extended deadline for this SFAR.

Justification for Immediate Adoption

The SFAR is scheduled to expire on April 9, 2003. There is insufficient time to solicit comment on this proposal.

Because the circumstances described herein warrant immediate action by the FAA, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C. 553(d) for making this final rule effective immediately upon publication. This action is necessary to prevent a possible imminent hazard to airplanes and to protect persons and property within the United States.

Additionally, with respect to the provisions requiring modifications to strengthen the flightdeck doors and locks, Pub. L. 107–71 authorized the Administrator to issue an order without regard to the provisions of chapter 5 of Title 5 of the United States Code. The modification to section 121.313 contained in this SFAR is within the scope of this authority and is adopted without public notice and a prior opportunity to comment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this SFAR.

Paperwork Reduction Act

This emergency final SFAR contains information collection activities subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). In accordance with section 3507(j)(1)(B) of that statute, the FAA requested the Office of Management and Budget to grant an immediate emergency clearance on the paperwork package. OMB granted an emergency clearance and assigned OMB control number 2120–0674. As protection provided by the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Following is a description of the information collection burden associated.

Title: Flightcrew Compartment Access and Door Designs

Summary/Need: The SFAR required operators to submit a report to the FAA by February 15, 2002, that details the specific modifications. This will allow the FAA to monitor what has been installed and take action if the installation creates an unwarranted safety risk. Further, to monitor progress toward the goal of full compliance, the SFAR requires a report by April 22, 2002, that describes how the operator will come into full regulatory compliance.

Respondents: The respondents are an estimated 135 airplane operators covered under 14 CFR parts 121 and 129.

Burden: The burden associated with this SFAR is 6480 hours.

Regulatory Evaluation

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11(g) of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies the final rule; however, both DOT and OMB have reviewed this rulemaking. At this time, the FAA is not able to assess whether this final rule will have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. However, we will be conducting a regulatory evaluation of the cost and benefits of this rulemaking, including any impact on small entities, at a later date.

Executive Order 13132, Federalism

The FAA has analyzed this SFAR under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Also, the Regulatory Flexibility Act does not require the preparation of a regulatory flexibility assessment on a rule not required to be issued as a Notice of Proposed Rulemaking (NPRM) under the Administrative Procedure Act.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." This SFAR does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Also, the Regulatory Flexibility Act does not require the preparation of a regulatory flexibility assessment on a rule not required to be issued as a Notice of Proposed Rulemaking (NPRM) under the Administrative Procedure Act.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this SFAR has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this SFAR is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

■ For the reasons set forth above, the Federal Aviation Administration amends 14 CFR part 121 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

SFAR No. 92–4 [Removed]

■ 2. Remove Special Federal Aviation Regulation No. 92–4.

■ 3. Add Special Federal Aviation Regulation (SFAR) 92–5 to read as follows:

Special Federal Aviation Regulations No. 92–5—Flightcrew Compartment Access and Door Designs

1. *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to all operators that hold an air carrier certificate or operating certificate issued under 14 CFR part 119 and that conduct operations under this part 121 and to operators of U.S. registered transport category airplanes operated under 14 CFR part 129, except paragraph 5 of this SFAR does not apply to cargo operations and 14 CFR part 129 operations. It applies to the operators specified in this SFAR that modify airplanes to improve the flightcrew compartment door installations to restrict the unwanted entry of persons into the flightcrew compartment. This SFAR also applies to production certificate holders and applicants for airworthiness certificates for airplanes to be operated by operators specified in this SFAR, and producers of parts to be used in modifications of such airplanes.

2. *Regulatory Relief.* Contrary provisions of this part 21, and §§ 121.313(h), 121.153(a)(2), 121.153(c), 121.379(b), 121.583(b)(1) and (2) and 14 CFR 129.13 notwithstanding:

(a) An operator may operate airplanes modified to improve the flightcrew compartment door installations to restrict the unauthorized entry of persons into the flightcrew compartment without regard to the applicable airworthiness requirements and may modify those airplanes for that purpose, using technical data not previously approved by the Administrator, subject to the following conditions:

(i) Not later than February 15, 2002, submit to the Director, Aircraft Certification Service, a detailed description of the changes to the airplane that have been accomplished before that date to enhance the intrusion resistance of the flightcrew compartment including identification of what major alterations have been done without previously approved data.

(ii) If, upon reviewing the data submitted in paragraph 2(a)(i) of this SFAR, the Administrator determines that a door modification presents an unacceptable safety risk, the FAA may issue an order requiring changes to such modifications.

(b) An applicant for an airworthiness certificate may obtain such a certificate for modified airplanes to be operated by operators described in this SFAR.

(c) A holder of a production certificate may submit for airworthiness certification or approval, modified airplanes to be operated by operators described in this SFAR.

(d) A person may produce parts for installation on airplanes in connection with modifications described in this SFAR, without FAA parts manufacturer approval (PMA).

3. *Report of Modifications.* Not later than April 22, 2002, all operators who are required to install flightdeck door modifications in accordance with 14 CFR 121.313(j) must submit a report to the Director, Aircraft Certification Service. The report must describe the modifications to be made and provide a schedule for the changes necessary to restore compliance with all applicable airworthiness requirements and to meet the requirements of 14 CFR 121.313(j). The schedule may not extend beyond the termination date of this SFAR.

4. *Return to Service Documentation.* Where operators have modified airplanes as authorized in this SFAR, the affected airplane must be returned to service with a note that it was done under the provisions of this SFAR.

5. *Provision for Flightdeck Door Compartment Key.* Contrary to provisions of § 121.313(g), the following provision applies: A key for each door that separates a passenger compartment from an emergency exit must be identified to passengers in the briefing required by § 121.571(a)(1)(ii). The key required for access to the emergency exit must be readily available for each crewmember. No key to the flightcrew compartment shall be available to any crewmember during flight, except for flight crewmembers, unless an internal flightdeck locking device such as a deadbolt or bar is installed, operative, and in use.

6. *Door Modification Requirement.* After March 1, 2002, for each airplane required under § 121.313(f) to have a door between the passenger and pilot compartments, and for transport category all-cargo airplanes that have a door installed between the pilot compartment and any other occupied compartment on or after January 15, 2002, such door must be equipped with an internal locking device installed, operative, and in use. Such internal locking device has to be designed so that it can only be unlocked from inside the flightdeck.

7. *Termination.* For all-cargo transport category airplanes, this SFAR terminates on October 1, 2003. For passenger airplanes, this SFAR expires on April 9, 2003, except for airplanes meeting the criteria specified in paragraphs 7.a, b, and c, below. For airplanes meeting these criteria, this SFAR expires on July 31, 2003.

a. Before midnight April 9, 2003, the operator must have installed a strengthened flightdeck door meeting the requirement of paragraph 7.b;

b. Before midnight April 9, 2003, the FAA must have found that the door complies with 14 CFR 25.795(a)(1) and (2) in effect on January 15, 2002; and

c. Before March 10, 2003, a formal application for certification approval of the door must have been submitted to the FAA.

Issued in Washington, DC, on April 4, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–8735 Filed 4–7–03; 9:17 am]

BILLING CODE 4910–13–P

VOL
68
ISS
68
AP
9
003
MI

Federal Register

Wednesday,
April 9, 2003

Part VI

Department of Commerce

Economic Development Administration

Economic Development Assistance Programs—Availability of Funds Under the Public Works and Economic Development Act of 1965, as Amended and the Trade Act of 1974, as Amended; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 991215339–3057–05]

RIN 0610–ZA14

Economic Development Assistance Programs—Availability of Funds Under the Public Works and Economic Development Act of 1965, as Amended and the Trade Act of 1974, as Amended

AGENCY: Economic Development Administration (EDA), Department of Commerce (DOC).

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: The role of government is to create conditions in which jobs are created, and in which people can find work. The Economic Development Administration (EDA) announces general policies and application procedures for investments that will help our partners across the nation (States, regions and communities) create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and higher-skill, higher-wage jobs through world-class capacity building, planning, infrastructure, research grants, business assistance, and strategic initiatives. EDA will fulfill this mission by promoting progressive domestic business policies and growth, and by assisting states, local governments, and community-based organizations in achieving their highest economic potential.

DATES: Unless otherwise noted below, proposals are accepted on a continuing basis and applications are invited and processed as received. Normally, two months are required for a final decision after the receipt of a completed application invited by EDA that meets all requirements.

ADDRESSES: Addresses for EDA's six regional offices and Washington, DC, office are provided in part XVI. Addresses for Economic Development Representatives (EDRs) are listed under each regional office.

FOR FURTHER INFORMATION CONTACT: For national technical assistance, research, and trade adjustment assistance investments, please contact the appropriate program office as shown in parts X, XII, and XIII, respectively. For community and regional economic development investments, contact EDA's regional office or the EDR for your area as shown in part XVI.

SUPPLEMENTARY INFORMATION:

I. Funding Availability

Funding appropriated under Pub. L. 108–07 is available for economic development assistance programs authorized by the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121, *et seq.* and as further amended by Pub. L. 105–393), and for trade adjustment assistance authorized under title II, chapters 3 and 5 of the Trade Act of 1974, as amended (19 U.S.C. 2341–2355; 2391) (Trade Act), and as further amended by Pub. L. 107–210. Funds in the amount of $288,115,000 have been appropriated for FY 2003 and shall remain available until expended.

EDA receives and processes requests for funding on an ongoing basis, and has begun processing requests under the FY 2003 appropriation. New requests submitted that require approval during this fiscal year will face substantial competition. EDA will focus on outcomes such as value-added employment and private sector investment.

II. Authority

The authority for programs listed below in parts VIII through XII is the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121, *et seq.*), and as further amended by Pub. L. 105–393. The authority for the program listed in part XIII is title II, chapters 3 and 5 of the Trade Act of 1974, as amended by Pub. L. 93–618, 98–120, 98–369, 99–272, 99–514, 100–418, 103–66, 105–277, and 107–210 (19 U.S.C. 2341–2391) (Trade Act).

III. Eligibility

Eligible recipients of EDA financial assistance are defined at 13 CFR 300.2 and eligible applicants are specified at 13 CFR 301.1. An "area" is an eligible recipient and is defined at 13 CFR 301.2. One category of the areas eligible for financial assistance are those areas meeting the "special needs" criteria. The special needs criteria are published each year by this notice and are provided at part XV.

IV. Proposal Format

Preapplication proposals must be submitted on EDA's Preapplication for Federal Assistance, Form ED–900P. This form contains both questions and a narrative statement. The narrative statement need not exceed four pages. The narrative statement must address the following topics in the order listed:

1. Project Area.
2. Project Description.
3. Proponent's Capability.
4. Problem.
5. Project Impact.
6. Project Beneficiaries.
7. Civil Rights Issues.
8. Funding.
9. Identity of Sources of Non-EDA Funding.
10. Title/Ownership/Operation and Maintenance (Construction Projects).
11. Environmental Issues.

Proposals for Public Works and Economic Development Facilities assistance and Economic Adjustment assistance must also include Form ED–900P, Exhibit A, Area Eligibility for Grants under 13 CFR parts 305 (Public Works) and 308 (Economic Adjustment) and the necessary documentation and narrative statement.

Proposals for University Center funding must also include the additional information set forth in part X.

Proposals for projects on which EDA is requested to fund more than 50 percent of project costs may be required to include Form ED–900P, Exhibit B, EDA Grant Rate Determination, and the necessary documentation and narrative statement.

An original and two copies must be submitted to the appropriate Economic Development Representative or regional office.

Unless otherwise provided herein, eligibility, program objectives, application procedures, selection process, evaluation criteria, and other requirements for all programs are set forth in EDA regulations at 13 CFR chapter III, and applicants must address those requirements. The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is incorporated by reference into this notice and is available on EDA's Web site (*www.eda.doc.gov*).

For Public Works (13 CFR part 305) and Economic Adjustment Investments (13 CFR part 308) (CFDA No. 11.300 and 11.307 respectively), EDA reviews area eligibility at the time an application is invited and again at the time an application is received. This review is based on the most recent Federal data available for the area where the project will be located or where the substantial direct benefits will be received. If no Federal data is available to determine eligibility, an applicant must submit to EDA the most recent data available for the area through the government of the State in which the area is located, *i.e.*, conducted by or at the direction of the State government. Other data may be

submitted, as appropriate, to substantiate eligibility based on "special need" (*see* part XV of this notice). Project areas must be eligible on the date of receipt of the application. In the case of any application received by EDA more than six months prior to the time of award, EDA will reevaluate the project to determine that the area remains eligible for EDA assistance before making the award. EDA will reject any documentation of eligibility that it determines is inaccurate and the application may be rejected.

V. General Policies

EDA encourages only those investment proposals that will significantly benefit areas experiencing or threatened with substantial economic distress. Distress may exist in a variety of forms, including, but not limited to: high levels of unemployment, low income levels, large concentrations of low-income families, significant declines in per capita income, substantial loss of population because of the lack of employment opportunities, large numbers (or high rates) of business failures, sudden major layoffs or plant closures, military base closures, natural or other major disasters, depletion of natural resources, or reduced tax bases.

Communities affected by the 1988, 1991, 1993, or 1995 Base Realignment and Closure (BRAC) actions, and which qualify for either regular Public Works or regular Economic Adjustment funding, may apply for investments under one or both of those programs. EDA anticipates that construction proposals will seek funding from the regular Public Works program while credit enhancement or other innovative financing proposals will compete under the regular Economic Adjustment authority.

Potential applicants are responsible for demonstrating to EDA, by providing statistics and other appropriate information, the nature and level of the distress their project efforts are intended to alleviate. EDA provides funding for eligible investment activities through direct grants and cooperative agreements. In funding cooperative agreements, a common example of substantial involvement is collaboration between EDA program staff and the recipient of a conference planning award to select a conference site, develop the agenda, and choose presenters, or to review a research project's methodology at critical stages and the draft written report.

EDA is not authorized to provide grants directly to individuals or to other for-profit entities seeking to start or expand a business. Such requests may be referred to state or local agencies, or to non-profit economic development organizations serving the project area.

VI. Evaluation and Selection Process

To apply for an award under this notice, an eligible recipient must submit a pre-application proposal to the appropriate Economic Development Representative for the area or regional office. Each pre-application proposal is circulated by a project officer to the appropriate regional office staff for review, comments, and recommendations. When the necessary input and information are obtained, the pre-application proposal is considered by the regional office Investment Review Committee (IRC) made up of regional office staff. The IRC discusses the proposal and all pertinent documentation and evaluates it using the general evaluation criteria set forth at 13 CFR 304.1 and 304.2 as further defined by the Supplemental Evaluation Criteria set forth in this notice below, and the program specific criteria provided under 13 CFR 305.2 for Public Works, 13 CFR 306.2 for Planning Assistance, 13 CFR 307.2 for Technical Assistance, 13 CFR 307.6 for University Centers, 13 CFR 307.10 for National Technical Assistance, Training, Research, and Evaluation, and 13 CFR 308.2 and 308.4 for Economic Adjustment. University Center funding proposals will be evaluated using the Special Evaluation Criteria set forth in part X in lieu of the Supplemental Evaluation Criteria set forth below. In addition, each proposal is evaluated for consistency with the Funding Priorities set forth below. After completing its evaluation, the IRC recommends whether or not an application should be invited, documenting its recommendation in the meeting minutes or in the Investment Proposal Summary and Evaluation Form. The IRC action is reviewed at headquarters for quality assurance. After receiving quality control clearance, the Selecting Official (depending on the program, either the Regional Director or the Assistant Secretary) selects the applications to be invited. In the case of a continuation grant, no pre-application proposal is required. Proposals received after the date of this notice will be processed in accordance with the requirements set forth herein until the next annual NOFA is published.

Supplemental Evaluation Criteria

EDA will invest in applicants who are entrepreneurial in spirit and in action. Potential investments will be analyzed using the following seven supplemental evaluation criteria of approximate equal weight, which further define the criteria provided at 13 CFR 304.2:

1. Extent that proposed investments are market-based.
2. Extent that proposed investments are pro-active in nature and scope.
3. Extent that proposed investments look beyond the immediate economic horizon, anticipate economic changes, and diversify the local and regional economy.
4. Likelihood that proposed investments maximize the attraction of private sector investment and would not otherwise come to fruition absent EDA's investment.
5. Likelihood that proposed investments have a high probability of success.
6. Likelihood that proposed investments result in an environment where higher-skill, higher-wage jobs are created.
7. Likelihood that proposed investments maximize Return on Taxpayer Investment.

Funding Priorities

The Selecting Official considers the evaluations provided by the IRC and the degree to which one or more of the following funding priorities are included (or packaged together) in making his/her decisions as to which preapplication proposals should be invited. Highly rated preapplication proposals may or may not be invited to submit full applications based on the following funding priorities. Generally, all proposals should enhance regional competitiveness and support long-term development of the regional economy. Further priority will be given to proposals that:

1. Encourage innovation and regional competitiveness:
   a. Reflect coordination of strong regional leadership committed to regional cluster development;
   b. Encourage a formal organization structure and process for working on cluster development and maintaining consensus;
   c. Encourage a common vision and collaboration among firms, universities, and training centers to implement a cluster strategy;
   d. Establish research and industrial parks that encourage innovation-based competition;
   e. Implement cluster-focused and innovation-focused business development efforts; and
   f. Develop or implement coordinated economic and workforce development strategies.
2. Upgrade core business infrastructure such as:
   a. Transportation infrastructure;

b. Communications infrastructure; and

c. Specialized training program infrastructure.

3. Help communities plan and implement economic adjustment strategies in response to sudden and severe economic dislocations (*e.g.*, major layoffs, plant closures, trade impacts, defense restructuring, or disasters).

4. Support technology-led economic development, for example, proposals that:

a. Reflect the important role of research and development capacity of universities in regional development; and

b. Create and support technology transfers.

5. Advance community and faith-based social entrepreneurship in redevelopment strategies for areas of chronic economic distress.

VII. Process for Invited Applications and Awards

If the Selecting Official declines to invite a full application, he/she provides written notice to the applicant. If an application has been invited by the Selecting Official, it is reviewed by EDA program officials to determine whether it contains any deficiencies under EDA regulations at 13 CFR chapter III and the requirements of this notice. If deficiencies are noted, the applicant is provided a written request to amend the application to resolve any deficiencies. If deficiencies are not resolved 30 days after receipt of the written notice, the application may be rejected. If the full application is accepted, the recipient and EDR are notified and it is forwarded for final reviews and processing in accordance with EDA and DOC procedures.

VIII. Program: Public Works and Economic Development Facilities Assistance—(Pub. L. 89–136, as amended by Pub. L. 105–393, 42 U.S.C. 3141)

(Catalog of Federal Domestic Assistance: 11.300 Grants for Public Works and Economic Development Facilities)

Funds in the amount of $203,667,500 have been appropriated for this program. The average funding level for an investment in FY 2002 was $1,240,000. This amount is not intended to restrict the size of future awards.

EDA will provide Public Works investments to support the construction or rehabilitation of essential public infrastructure and development facilities necessary to generate private sector jobs and investment, including investments that support technology-led development, redevelopment of brownfield sites, and eco-industrial development.

IX. Program: Planning—Planning Assistance for Economic Development Districts, Indian Tribes, States, and Other Planning Organizations—(Pub. L. 89–136, as Amended by Pub. L. 105–393, 42 U.S.C. 3143)

(Catalog of Federal Domestic Assistance: 11.302 Economic Development—Support for Planning Organizations)

Funds in the amount of $23,844,000 have been appropriated for the Planning Program. In FY 2002, the average Economic Development District planning investment was $59,000; the average Indian planning investment was $46,000; and the average state and other planning organization investment was $64,000. These amounts are not intended to restrict the size of future awards. EDA expects the majority of planning funds will be used for support to existing Economic Development District and Indian tribe grantees. Continuation grants are not competed. Any new planning grants shall be solicited and evaluated in compliance with this notice.

X. Program: Technical Assistance—Local Technical Assistance; National Technical Assistance; and University Centers—(Pub. L. 89–136, as amended by Pub. L. 105–393, 42 U.S.C. 3147)

(Catalog of Federal Domestic Assistance: 11.303 Economic Development—Technical Assistance)

Funds in the amount of $9,040,850 have been appropriated for the Technical Assistance programs of which approximately $1,490,250 is available for the Local Technical Assistance program; $1,093,843 for the National Technical Assistance program; and $6,456,757 for the University Center program. The average funding level in FY 2002 for Local Technical Assistance investments was $53,000; for National Technical Assistance investments, $134,000; and for University Center investments, the typical range was $75,000 to $110,000. These amounts are not intended to restrict the size of future awards.

Multi-year funding may be available for this program. Funding for each year's activities is contingent upon continued satisfactory performance during the preceding period, the availability of program funds, and will be at EDA's sole discretion.

A separate **Federal Register** notice(s) will set forth the specific funding priorities, application process, and time frames for certain National Technical Assistance projects.

Background Information on EDA's University Center Program

EDA's University Center program helps to make the wealth of resources—faculty, staff, students, computer facilities, laboratories, etc.—at institutions of higher education available for assisting in local and regional economic development activities. This announcement provides notice of several program and policy changes. EDA intends to make additional changes in subsequent years.

EDA will provide assistance under this program only to University Centers engaged in economic development. Activities such as community development or social service type activities are not consistent with EDA's mission and will not be considered for funding. Programs focused on activities other than economic development are encouraged to seek other sources of financial support. In addition, beginning in FY 2003, EDA will not fund any University Center that operates in isolation from other resources at its sponsoring institution and lacks the support of its sponsoring institution's leadership.

Funds to establish new University Centers will be available only if an existing University Center withdraws or is dropped from the program.

A. Additional Information Required

In addition to the information described in part IV, proposals in or after FY 2003 for University Center funding must include the additional information described in this section.

The Scope of Work for University Center proposals must be structured to address the University Center's contribution to the following elements: (a) Providing technical assistance, (b) conducting applied research, and (c) disseminating results of the activities of the University Center. Applicants are expected to submit a Scope of Work commensurate with the funding requested and consistent with EDA's mission.

B. Evaluation Criteria for University Centers

University Center funding proposals will be analyzed using the Evaluation Criteria set forth below. The "Supplemental Evaluation Criteria" set forth in part VI will not apply to University Center applications. EDA will invest in University Centers that are focused on economic development and are proactive and innovative in spirit and in action. Potential University Center proposals will be analyzed using the following six special evaluation criteria, each of approximate equal weight.

1. Extent that the proposed University Center investment addresses the economic development needs, issues and opportunities of the proposed service area.

2. Extent that the service and value of the proposed University Center investment is unique, or fills a void not offered by other organizations in the proposed service area that provide potentially complementary or duplicate services.

3. Extent that the proposed University Center investment will maximize coordination with those other entities in "2" and will minimize the duplication of the services provided by those entities.

4. Likelihood that the proposed University Center investment will benefit economically distressed areas as defined in part III.

5. Extent that the proposed University Center investment will access, take advantage of, and be supported by the other resources of the sponsoring institutions.

6. Degree of evidence demonstrating the support and commitment (both financial and nonfinancial) of the proposed University Center investment from the leadership of the sponsoring institution for the University Center and its activities.

C. Support for Existing University Center Network

Funds to establish new University Centers will be available only if an existing University Center withdraws or is dropped from the program.

XI. Program: Economic Adjustment Assistance—(Pub. L. 89–136, as Amended by Pub. L. 105–393, 42 U.S.C. 3149)

(Catalog of Federal Domestic Assistance: 11.307 Economic Adjustment Assistance)

Funds in the amount of $40,634,150 have been appropriated for funding under the Economic Adjustment Assistance program. Of this amount, $16,900,000 is available for economic adjustment projects located in regions impacted by coal industry downsizing, timber industry issues and Alaska fishing-dependent communities. The average funding level for an Economic Adjustment investment in FY 2002 was $508,600. This amount is not intended to restrict the size of future awards.

XII. Program: Research and Evaluation—(Pub. L. 89–136, as amended by Pub. L. 105–393, 42 U.S.C. 3147)

(Catalog of Federal Domestic Assistance: 11.312 Economic Development—Research and Evaluation Program)

Funds in the amount of $496,750 have been appropriated for this program. The average funding level for an investment in FY 2002 was $105,000. This amount is not intended to restrict the size of future awards.

Multi-year funding may be available for this program. Funding for each year's activities is contingent upon continued satisfactory performance during the preceding period, the availability of program funds, and will be at EDA's sole discretion.

A separate **Federal Register** notice(s) will set forth the application process, specific funding priorities, and time frames for certain research and evaluation investments. For further information, contact: John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 7019, U.S. Department of Commerce, Washington, DC 20230, Telephone: (202) 482–2309.

XIII. Program: Trade Adjustment Assistance—Title II Chapters 3 and 5 of the Trade Act of 1974, as Amended by Pub. L. 93–618, 98–120, 98–369, 99–272, 99–514, 100–418, 103–66, 105–277, 107–210; 19 U.S.C. 2341–2391

(Catalog of Federal Domestic Assistance: 11.313 Economic Development—Trade Adjustment Assistance)

Funds in the amount of $10,431,750 have been appropriated for this program. EDA expects these funds will be used to support the existing network of Trade Adjustment Assistance Centers (TAACs). The average funding level for a TAAC in FY 2002 was $875,000. This amount is not intended to restrict the size of future awards. Continuation grants will not be competed. No new TAACs are expected this fiscal year. For further information on this program contact: Anthony J. Meyer, Coordinator, Trade Adjustment and Technical Assistance, Planning and Development Assistance Division, Economic Development Administration, Room 7317, U.S. Department of Commerce, Washington, DC 20230, Telephone: (202) 482–2127.

XIV. Other Information and Requirements

EDA regulations at 13 CFR chapter III are available on the EDA Web site *http://www.doc.gov/eda*. The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation and can be found on EDA's Web site *http://www.doc.gov/eda*. Certain Departmental and other requirements are noted below:

A. Projects are expected to be completed in a timely manner consistent with the nature of the project. For Public Works and most Economic Adjustment implementation investments, the maximum period for which assistance will be made available is generally not more than five years from the date of award.

B. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This notice involves a collection of information requirement subject to the provisions of the PRA and has been approved by OMB under Control Number 0610–0094. The EDA preapplication (ED–900P) and application (ED–900A), which incorporates the SF–424, are the forms in the EDA application kit, approved under the aforementioned OMB control number.

C. The implementing regulations of the National Environmental Policy Act (NEPA) require EDA to provide public notice of the availability of project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision etc., to the affected public as specified in 40 CFR 1506.6(b).

Depending on the project location, environmental information concerning specific projects can be obtained from the Regional Environmental Officer (REO) in the appropriate EDA regional office listed in part XVI.

D. If an application is selected for funding, EDA has no obligation to provide any additional future funding in connection with an award. Renewal of an award to increase funding or extend the period of performance is at the sole discretion of EDA.

E. EDA will notify unsuccessful applicants in writing and unsuccessful applications will be maintained in the

regional office files for not more than three years from the date of receipt.

F. EDA is committed to a policy of non-discrimination in the administration of all its programs.

G. EDA applications proposed for funding are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as referenced in EDA's regulations at 13 CFR chapter III.

H. This notice has been determined to be "not significant" for purposes of Executive Order 12866.

I. It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

J. Because notice and comment are not required under 5 U.S.C. 553, or any other law, for this notice relating to public property, loans, grants benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

XV. Special Need Criteria

These criteria are published in accordance with 13 CFR 301.2(h) and define what constitutes a special need sufficient to make an area eligible for Public Works and Economic Development Facilities assistance and Economic Adjustment assistance as described in part III above. An area is eligible pursuant to "Special Need" (13 CFR 301.2(b)(3)), if the area meets one of the criteria described below:

A. Closure or restructuring of industrial firms essential to area economies. An area has experienced either: (1) An actual closure or restructuring of a firm(s), within the past twelve months, resulting in sudden job losses and meeting the following dislocation criteria; or (2) a threat that results from a public announcement of an impending closure or restructuring of a firm(s), expected to occur within two years of preapplication, and result in sudden job losses meeting the following dislocation criteria:

1. For areas over 100,000 population, the actual or threatened dislocation is 500 jobs, or 1 percent of the civilian labor force (CLF), whichever is less.

2. For areas up to 100,000 population, the actual or threatened dislocation is 200 jobs, or 1 percent of the CLF, whichever is less.

B. Substantial out-migration or population loss. Applicants seeking eligibility under this criterion will be asked to present appropriate and compelling economic or demographic data to demonstrate the special need.

C. Underemployment, that is, employment of workers at less than full time or at less skilled tasks than their training or abilities permit. Applicants seeking eligibility under this criterion will be asked to present appropriate and compelling economic and demographic data to demonstrate the special need.

D. Military base closures or realignments, defense contractor reductions-in-force, or Department of Energy defense-related funding reductions.

1. A military base closure refers to a military base that was closed or is scheduled for closure or realignment pursuant to a Base Realignment and Closure Act (BRAC) process or other Department of Defense (DoD) process. Unless further extended by the Assistant Secretary for Economic Development, the area is eligible from the date of Defense Department recommendation for closure until five years after the actual date of closing of the installation.

2. A defense contractor reduction-in-force refers to a defense contractor(s) experiencing defense contract cancellations or reductions resulting from official DoD announcements and having aggregate value of at least $10 million per year. Actual dislocations must have occurred within one year of application to EDA and threatened dislocations must be anticipated to occur within two years of application to EDA. Defense contracts that expire in the normal course of business will not be considered in meeting this criterion.

3. A Department of Energy defense-related funding reduction refers to a Department of Energy facility that has experienced or will experience a reduction of employment resulting from its defense mission change. The area is eligible from the date of the Department of Energy announcement of reductions until five years after the actual date of reduced operations at the installation.

E. Natural or other major disasters or emergencies, including terrorists attacks. Unless further extended by the Assistant Secretary, an area that has received one of the following disaster declarations is eligible to apply for EDA assistance for a period of 18 months after the date of declaration.

1. A Presidential Disaster Declaration pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Pub. L. 93–288), 42 U.S.C. 5121 *et seq*), or

2. A Federally-Declared Disaster pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, (Pub. L. 94–265) as amended by the Sustainable Fisheries Act (Pub. L. 104–297), or

3. A Federal Declaration pursuant to the Consolidated Farm and Rural Development Act, as amended (Pub. L. 92–419, 96–438, 97–35, 98–258, 99–198, 100–233, 100–387, and 101–624), or

4. A Federally-Declared Disaster pursuant to the Small Business Act, as amended (Pub. L. 85–536).

F. Extraordinary depletion of natural resources. EDA presently recognizes the following conditions of extraordinary natural resource depletion:

1. Fisheries.
2. Coal.
3. Timber.

Modifications to the above listing of conditions of extraordinary natural resource depletion, as they may occur, will be announced in subsequent public notices.

G. Communities undergoing transition of their economic base as a result of changing trade patterns. An area certified as eligible by the North American Development Bank (NADBank) Program or the Community Adjustment and Investment Program (CAIP).

H. Other special need. The area is experiencing other special and/or extraordinary economic adjustment needs as determined by the Assistant Secretary.

The applicant will be asked to present appropriate economic or demographic statistics to demonstrate a special need.

XVI. EDA Regional Offices and Economic Development Representatives

EDA regional offices and the Economic Development Representatives and the areas served are listed below:

William J. Day, Jr., Regional Director, Atlanta Regional Office, 401 West Peachtree Street, NW., Suite 1820, Atlanta, Georgia 30308–3510, Telephone: (404) 730–3002, Fax: (404) 730–3025, Internet Address: *wday1@eda.doc.gov*

Economic development representatives or regional office contacts	States covered
PATTERSON, Gilbert 401 West Peachtree Street, NW. Suite 1820 Atlanta, GA 30308–3510 Telephone: (404) 730–3000 Internet Address: *gpatterson@eda.doc.gov*	Mississippi.
SMITH, Lola B 401 West Peachtree Street, NW. Suite 1820 Atlanta, GA 30308–3510 Telephone: (404) 730–3013 Internet Address: *lsmith2@eda.doc.gov*	Georgia.
HUNTER, Bobby D 771 Corporate Drive, Suite 200 Lexington, KY 40503–5477 Telephone: (859) 224–7426 Internet Address: *bhunter@eda.doc.gov*	Kentucky. North Carolina (Western).
DIXON, Patricia M U.S. Department of Commerce—EDA P.O. Box 1707 Lugoff, SC 29078 Telephone: (803) 408–2513 Internet Address: *pdixon@eda.doc.gov*	South Carolina. North Carolina (Easter).
DENNIS, Bobby 401 West Peachtree Street, NW. Suite 1820 Atlanta, GA 30308–3510 Telephone: (404) 730–3020 Internet Address: *bdennis@eda.doc.gov*	Alabama.
TAYLOR, Willie C 401 West Peachtree Street, NW. Suite 1820 Atlanta, GA 30308–3510 Telephone: (404) 730–3032 Internet Address: *wtaylor5@eda.doc.gov*	Florida.
REED, Tonia 401 West Peachtree Street, NW. Suite 1820 Atlanta, Georgia 30308–3510 Telephone: (404) 730–3026 Internet Address: *treed@eda.doc.gov*	Tennessee.

Pedro R. Garza, Regional Director, Austin Regional Office, 327 Congress Avenue, Suite 200, Austin, Texas 78701–4037, Telephone: (512) 381–8144, Fax: (512) 381–8177, Internet Address: *pgarza@eda.doc.gov*

Area directors	States covered
CULBERTSON, David W Austin Regional Office 327 Congress Avenue, Suite 200 Austin, Texas 78701–4037 Telephone: (512) 381–8160 Internet Address: *dculbertson@eda.doc.gov*	Arkansas. New Mexico. Oklahoma. Texas (North).
FRERKING, Sharon T Austin Regional Office 327 Congress Avenue, Suite 200 Austin, Texas 78701–4037 Telephone: (512) 381–8176 Internet Address: *sfrerking@eda.doc.gov*	Louisiana. Texas (South).

Economic development representative	States covered
DAVIDSON-EHLERS, Pamela 501 Magazine Street, Room 1025 New Orleans, LA 70130 Telephone: (504) 589–4179 Internet Address: *pdavidson@eda.doc.gov*	Louisiana. Texas (South).

C. Robert Sawyer, Regional Director, Chicago Regional Office, 111 North Canal Street, Suite 855, Chicago, IL 60606, Telephone: (312) 353–7706, Fax: (312) 353–8575, Internet Address: *rsawyer@eda.doc.gov*

Economic development representatives	States covered
ARNOLD, John B. III 104 Federal Building 515 West First Street	Illinois. Minnesota.

Economic development representatives	States covered
Duluth, MN 55802 Telephone: (888) 865–5719 (Illinois), (218) 720–5326 (Minnesota) Internet Address: *jarnold1@eda.doc.gov*	
HICKEY, Robert F Federal Building, Room 740 200 North High Street Columbus, Ohio 43215 Telephone: (800) 686–2603 (Indiana), (614) 469–7314 (Ohio) Internet Address: *rhickey@eda.doc.gov*	Ohio. Indiana.
PECK, John E P.O. Box 517 Acme, Michigan 49610–0517 Telephone: (231) 938–1712 Internet Address: *jpeck@eda.doc.gov*	Michigan. Wisconsin.

Anthony J. Preite, Regional Director, Denver Regional Office, 1244 Speer Boulevard, Room 670, Denver, Colorado 80204, Telephone: (303) 844–4715, Fax: (303) 844–3968, Internet Address: *apreite@eda.doc.gov*

Economic development representatives	States covered
ZENDER, John P 1244 Speer Boulevard, Room 632 Denver, CO 80204 Telephone: (303) 844–4902 Internet Address: *jzender@eda.doc.gov*	Colorado. Utah.
CECIL, Robert Federal Building, Room 823 210 Walnut Street Des Moines, IA 50309 Telephone: (515) 284–4746 Internet Address: *bcecil@eda.doc.gov*	Iowa. Nebraska.
HILDEBRANDT, Paul Federal Building, Room B–2 608 East Cherry Street Columbia, MO 65201 Telephone: (573) 442–8084 Internet Address: *phildebrandt@eda.doc.gov*	Missouri. Kansas.
ROGERS, John C P.O. Box 578 Wyoming Helena, MT 59624 Telephone: (406) 449–5380 Internet Address: *jrogers6@eda.doc.gov*	Montana.
JUNGBERG, Cip Post Office/Courthouse 102 4th Avenue, SE., Room 216 P.O. Box 190 Aberdeen, South Dakota 57401 Telephone: (605) 226–7315 Internet Address: *cjungberg@eda.doc.gov*	South Dakota. North Dakota.

Paul M. Raetsch, Regional Director, Philadelphia Regional Office, Curtis Center, 601 Walnut Street, Suite 140 South, Philadelphia, PA 19106, Telephone: (215) 597–4603, Fax: (215) 597–1063, Internet Address: *PRaetsch@eda.doc.gov*

Economic development representatives or regional office contacts	States covered
BEACH, Tyrone Philadelphia Regional Office The Curtis Center-Suite 140 South 601 Walnut Street Philadelphia, PA 19106 Telephone: (215) 597–7883 Internet Address: *tbeachl@eda.doc.gov*	Maine. Rhode Island.
POTTER, Rita V 143 North Main Street, Suite 209 Concord, NH 03301–5089 Telephone: (603) 225–1624 Internet Address: *rpotter@eda.doc.gov*	New Hampshire. Massachusetts.
HUMMEL, Edward L Philadelphia Regional Office The Curtis Center-Suite 140 South 601 Walnut Street Philadelphia, PA 19106 Telephone: (215) 597–6767	New Jersey. New York City/Long Island.

Economic development representatives or regional office contacts	States covered
Internet Address: *ehummel@eda.doc.gov*	
MARSHALL, Harold J 620 Erie Boulevard West, Suite 104 Syracuse, NY 13204–2442 Telephone: (315) 448–0938 Internet Address: *hmarshal@eda.doc.gov*	New York. Vermont.
PECONE, Anthony M 523 North Broad Street West Hazleton, PA 18202–1107 Telephone: (570) 459–6861 Internet Address: *apecone@eda.doc.gov*	Pennsylvania. Connecticut.
MCGINLEY, Marguerite Philadelphia Regional Office The Curtis Center-Suite 140 South 601 Walnut Street Philadelphia, PA 19106 Telephone: (215) 597–8822 Internet Address: *mmcginle@eda.doc.gov*	Puerto Rico. Virgin Islands.
NOYES, Neal E Federal Building, Room 474 400 North 8th Street P.O. Box 10229 Richmond, VA 23240–1001 Telephone: (804) 771–2061 Internet Address: *nnoyes@eda.doc.gov*	Virginia. Delaware. District of Columbia. Maryland.
DAVIS, R. Byron 405 Capital Street, Room 411 Charleston, WV 25301–1727 Telephone: (304) 347–5252 Internet Address: *bdavis3@eda.doc.gov*	West Virginia.

A. Leonard Smith, Regional Director, Seattle Regional Office, Jackson Federal Building, Room 1890, 915 Second Avenue, Seattle, Washington 98174, Telephone: (206) 220–7660, Fax: (206) 220–7669, Internet Address: LSmith7@eda.doc.gov.

Economic development representatives or regional office contacts	States covered
RICHERT, Bernhard E. Jr 550 West 7th Avenue, Suite 1780 Anchorage, AK 99501–7594 Telephone: (907) 271–2272 Internet Address: *brichert@eda.doc.gov*	Alaska.
SOSSON, Deena R 801 I Street, Suite 411 Sacramento, CA 95814 Telephone: (916) 498–5285 Internet Address: *dsosson@eda.doc.gov*	California (Central).
CHURCH, Dianne V 280 South First Street, #135–B San Jose, CA 95113 Telephone: (408) 535–5550 Internet Address: *dchurch@eda.doc.gov*	California (Central Coastal).
FUJITA, Gail S Federal Building, Room 5180 300 Ala Moana Boulevard P.O. Box 50264 Honolulu, HI 96850 Telephone: (808) 541–3391 Internet Address: *gfugita@eda.doc.gov*	Hawaii, Guam, American Samoa, Marshall Islands, Micronesia, Northern Marianas Republic of Palau.
NAYLOR, Thomas (Acting) Seattle Regional Office Jackson Federal Building 915 Second Avenue, Room 1890 Seattle, WA 98174 Telephone: (206) 220–7688 (888) 693–1370 Internet Address: *tnaylor@eda.doc.gov*	Idaho.
BERBLINGER, Anne S One World Trade Center 121 S.W. Salmon Street, Suite 244 Portland, OR 97204 Telephone: (503) 326–3078 Internet Address: *aberblin@eda.doc.gov*	Oregon. California (Northern).
MARSHALL, Wilfred	California (Southern).

Economic development representatives or regional office contacts	States covered
5777 West Century Boulevard Suite 1675 Los Angeles, CA 90045 Telephone: (310) 348–5386 Internet Address: *wmarshall@eda.doc.gov*	
KIRRY, Lloyd P	Washington.
Seattle Regional Office Jackson Federal Building 915 Second Avenue, Room 1890 Seattle, WA 98174 Telephone: (206) 220–7682 Internet Address: *lkirry@eda.doc.gov*	
MACIAS, Jacob (Acting for Nevada)	Arizona. Nevada.
Seattle Regional Office Jackson Federal Building 915 Second Avenue, Room 1890 Seattle, WA 98174 Telephone: (206) 220–7666 Internet Address: *jmacias@eda.doc.gov*	

For general information on EDA contact the appropriate Regional Office listed above or EDA's Office of Congressional Liaison, Program Research and Evaluation: Economic Development Administration, Room 7814A, U.S. Department of Commerce, Washington, DC 20230, Telephone: (202) 482–2309, EDA Web site *http://www.doc.gov/eda.*

Dated: April 3, 2003.

David A. Sampson,

Assistant Secretary for Economic Development.

[FR Doc. 03–8612 Filed 4–8–03; 8:45 am]

BILLING CODE 3510–24–P

Reader Aids

Federal Register

Vol. 68, No. 68

Wednesday, April 9, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, APRIL

15653–15920	1
15921–16164	2
16165–16402	3
16403–16714	4
16715–16942	7
16943–17252	8
17253–17528	9

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7657 15921
7658 16403
7659 17253

Executive Orders:
10448 (Amended by 13293) 15917
11157 (Revoked by 13294) 15919
11800 (Revoked by 13294) 15919
12452 (Revoked by 13295) 17255
13293 15917
13294 15919
13295 17255

Administrative Orders:
Presidential Determinations:
No. 2003–18 of March 24, 2003 16165
No. 2003–19 of March 24, 2003 16167

5 CFR

5201 16398

Proposed Rules:
870 17315
1600 16449
1605 16449
1606 16449
1655 16449

7 CFR

25 16169
718 16170
723 16170
916 17257
917 17257
923 15923
989 15926
993 17267
1412 16170
1413 16170
1465 17272
1940 17153

Proposed Rules:
762 17316
772 17320
930 15971
956 17325
1901 17320
1941 17316
1943 17316
1951 ..... 17316, 17320

9 CFR

71 16922
92 16922
93 16922
94 ..... 15932, 16922
98 16922
130 16922

Proposed Rules:
77 16733
105 17327
115 17327

10 CFR

Proposed Rules:
170 16374
171 16374

11 CFR

110 16715

12 CFR

226 16185
1730 16715

Proposed Rules:
702 16450
704 16450
712 16450
723 16450

13 CFR

Proposed Rules:
121 15971

14 CFR

1 16943
121 17514
39 ..... 15653, 15937, 16190, 16192, 16195, 16198, 16200, 16203, 16205, 16948
71 ..... 16207, 16351, 16409, 16410, 16943, 16950, 16951, 16952, 17153
95 16943
93 15657
97 ..... 16411, 16412, 16943
121 15884
125 15884
129 15884

Proposed Rules:
1 16992
21 16217
25 16458
39 ..... 15682, 15684, 15687, 16220, 16222, 16225, 16458, 16735, 16736
71 ..... 16227, 16229, 16230, 16992
91 16992
95 16992
97 16992
121 16992
125 16992
129 16992
135 16992

15 CFR

740 ..... 16144, 16208

742.....16144, 16208
762.....16208
774.....16144, 16208
Proposed Rules:
911.....16993

16 CFR

Proposed Rules:
305.....16231
310.....16238, 16414

17 CFR

228.....15939
229.....15939
244.....15939
249.....15939
Proposed Rules:
240.....15688

20 CFR

404.....15658
408.....16415

21 CFR

172.....17277
1308.....16427
Proposed Rules:
1.....16998
10.....16461

24 CFR

Proposed Rules:
202.....15906
902.....16461
1000.....17000

26 CFR

1 .....15940, 16430, 17002, 17277
40.....15940
48.....15940
49.....15940
54.....17277
301.....16351
602 .....15940, 15942, 17277
Proposed Rules:
1.....15801, 16462
49.....15690

28 CFR

2.....16718
Proposed Rules:
2.....16743

29 CFR

70.....16398
71.....16398
96.....16162
99.....16162
2509.....16399
2510.....16399, 17472
2520.....16399, 17494
2550.....16399
2560.....16399, 17503
2570 .....16399, 17484, 17506
2575.....16399
2582.....16399
2584.....16399
2589.....16399
2590.....16399

30 CFR

Proposed Rules:
70.....15691
72.....15691
75.....15691
90.....15691

31 CFR

800.....16720

32 CFR

Proposed Rules:
199.....16247
312.....16249
806b.....16746

33 CFR

Ch. 1.....16953
117 .....15943, 16721, 16953
165.....16955, 17291
Proposed Rules:
110.....15691
165.....15694

36 CFR

7.....16432, 17292

37 CFR

201.....16958
Proposed Rules:
201.....15972

38 CFR

1.....15659

40 CFR

9.....16708
46.....16708
52 .....15661, 15664, 16721, 16724, 16726, 16959
61.....16726
82.....16728, 16729
180 .....15945, 15958, 15963, 16436, 17307
271.....17308
Proposed Rules:
Ch. 1.....16747
52 .....15696, 16644, 16748, 17002, 17331
82.....16749
261.....17234
271.....17332

41 CFR

Ch. 101.....16730

42 CFR

422.....16652
489.....16652
Proposed Rules:
440.....15973

43 CFR

10.....16354
423.....16214

44 CFR

Ch.1.....15666
61.....15666
64.....15967

45 CFR

164.....17153
2506.....16437

46 CFR

Ch. 1.....16953
Ch. 3.....16953
Proposed Rules:
401.....15697
530.....15978
540.....17003

47 CFR

2.....16962
21.....16962
25.....16446, 16962
54.....15669
73.....16730, 16968
74.....16962
76.....17312
78.....16962
101.....16962
Proposed Rules:
64.....16250
73.....16750, 16968

48 CFR

1847.....16969
1852.....16969
Proposed Rules:
2.....16366
4.....16366
13.....16366
32.....16366
52.....16366

49 CFR

1.....16215
Ch. 4.....16953
533.....16868
665.....15672
1109.....17312
1111.....17312
1114.....17312
Proposed Rules:
172.....16751
173.....16751
174.....16751
175.....16751
176.....16751
177.....16751
178.....16751
266.....16753

50 CFR

17 .....15804, 16970, 17156, 17428, 17430
224.....15674
230.....15680
635.....16216
648.....16731
679 .....15969, 16990, 17314
697.....16732
Proposed Rules:
17 .....15876, 15879, 16602
600 .....17004, 17005, 17333
660.....16754

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 9, 2003

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Clean Air Act; alternate permit program approvals—
Guam; published 1-9-03

FEDERAL COMMUNICATIONS COMMISSION
Television broadcasting:
Cable television systems-
Markets definition for purposes of broadcast signal carriage rules; published 4-9-03

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Tampa Bay et al., FL; security zones
Correction; published 4-9-03

INTERIOR DEPARTMENT
National Park Service
Special regulations:
Lake Mead National Recreation Area, NV and AZ; personal watercraft use; published 4-9-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Flightcrew compartment access and door designs; published 4-9-03

TREASURY DEPARTMENT
Internal Revenue Service
Excise taxes:
Pension excise taxes; future benefit accrual rate; significant reduction; published 4-9-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing, and standards:
Classification services to growers; 2003 user fees; comments due by 4-15-03; published 3-31-03 [FR 03-07631]
Cotton research and promotion order:
Cotton Board rules and regulations; amendments; comments due by 4-14-03; published 3-14-03 [FR 03-06164]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Exotic Newcastle disease; quarantine area designations—
Arizona; comments due by 4-15-03; published 2-14-03 [FR 03-03685]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Magnuson-Stevens Act provisions—
National standard guidelines; revision; comments due by 4-16-03; published 3-3-03 [FR 03-04886]

COMMODITY FUTURES TRADING COMMISSION
Commodity pool operators and commodity trading advisors:
Commodity trading advisors; performance data and disclosure; comments due by 4-14-03; published 3-13-03 [FR 03-06081]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Cost-reimbursement contracts; payment bonds; comments due by 4-15-03; published 2-14-03 [FR 03-03575]
Fish, shellfish, and seafood products; comments due by 4-15-03; published 2-14-03 [FR 03-03574]
Security-guard functions; contractor performance; comments due by 4-15-03; published 2-14-03 [FR 03-03577]
Vessel repair and alteration contracts; loss liability; comments due by 4-15-03; published 2-14-03 [FR 03-03576]

DEFENSE DEPARTMENT
Engineers Corps
Water pollution control:
Clean Water Act—
Waters of United States; definition; comments due by 4-16-03; published 2-28-03 [FR 03-04768]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New York; comments due by 4-14-03; published 3-13-03 [FR 03-05908]
Air quality implementation plans; approval and promulgation; various States:
Kentucky; comments due by 4-18-03; published 3-19-03 [FR 03-06584]
Missouri; comments due by 4-17-03; published 3-18-03 [FR 03-06311]
Hazardous waste program authorizations:
Virginia; comments due by 4-14-03; published 3-13-03 [FR 03-06110]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Methoprene, etc.; comments due by 4-14-03; published 2-12-03 [FR 03-03236]
Water pollution control:
Clean Water Act—
Waters of United States; definition; comments due by 4-16-03; published 2-28-03 [FR 03-04768]

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Federal-State Joint Board on Universal Service—
Universal services; definition; comments due by 4-14-03; published 3-13-03 [FR 03-06092]
Radio frequency devices:
Advanced wireless service; comments due by 4-14-03; published 3-13-03 [FR 03-06038]
Television broadcasting:
Digital television conversion; transition issues; comments due by 4-14-03; published 2-18-03 [FR 03-03812]

GENERAL SERVICES ADMINISTRATION
Acquisition regulations:
Industrial funding fee and sales reporting clauses; consolidation and fee reduction; comments due by 4-17-03; published 3-18-03 [FR 03-06458]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
Vaginal contraceptive products (OTC) containing nonoxynol 9; labeling requirements; comments due by 4-16-03; published 1-16-03 [FR 03-00902]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Virginia; comments due by 4-14-03; published 2-12-03 [FR 03-03458]
Ports and waterways safety:
Columbia River, Vancouver, WA; safety zone; comments due by 4-15-03; published 2-14-03 [FR 03-03605]
San Diego Bay, CA; security zones; comments due by 4-14-03; published 2-11-03 [FR 03-03263]
Tampa Bay Captain of Port Zone, FL; security zones; comments due by 4-14-03; published 2-12-03 [FR 03-03460]

HOMELAND SECURITY DEPARTMENT
Federal Emergency Management Agency
Disaster assistance:
Federal assistance to individuals and households; comments due by 4-15-03; published 9-30-02 [FR 02-24733]
National Flood Insurance Program:
Group flood insurance policy; comments due by 4-15-03; published 9-30-02 [FR 02-24734]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Canada lynx; contiguous U.S. distinct population segment; comments due by 4-16-03; published 3-17-03 [FR 03-06291]

INTERIOR DEPARTMENT
Minerals Management Service
Royalty management:
Federal geothermal resources; discussions for developing consensus on royalty valuation

approaches; comments due by 4-16-03; published 3-17-03 [FR 03-06254]
Oil value for royalties due on Indian leases; establishment; comments due by 4-14-03; published 2-12-03 [FR 03-03466]

PENSION BENEFIT GUARANTY CORPORATION
Government Paperwork Elimination Act; implementation:
Electronic transactions; removal of regulatory impediments to filings, issuances, computation of time, and electronic record retention; comments due by 4-15-03; published 2-14-03 [FR 03-03081]

SECURITIES AND EXCHANGE COMMISSION
Investment advisers and investment companies:
Compliance programs; comments due by 4-18-03; published 2-11-03 [FR 03-03315]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Transponder continuous operation; comments due by 4-18-03; published 3-18-03 [FR 03-06511]
Air traffic operating and flight rules, etc.:
Reduced vertical separation minimum in domestic U.S. airspace; comments due by 4-14-03; published 2-28-03 [FR 03-04765]
Airworthiness directives:
BAE Systems (Operations) Ltd.; comments due by 4-16-03; published 3-17-03 [FR 03-06260]
Boeing; comments due by 4-17-03; published 3-3-03 [FR 03-04842]
Dassault; comments due by 4-17-03; published 3-18-03 [FR 03-06261]
Empresa Basileira de Aeronautica S.A. (EMBRAER); comments due by 4-16-03; published 3-17-03 [FR 03-06259]
Eurocopter France; comments due by 4-15-03; published 2-14-03 [FR 03-03774]
McDonnell Douglas; comments due by 4-14-03; published 2-27-03 [FR 03-04587]
Turbomeca S.A.; comments due by 4-14-03; published 2-12-03 [FR 03-03473]
Class E airspace; comments due by 4-16-03; published 3-17-03 [FR 03-06334]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—
Adaptive frontal-lighting systems; comments due by 4-14-03; published 2-12-03 [FR 03-03505]

TRANSPORTATION DEPARTMENT
Saint Lawrence Seaway Development Corporation
Seaway regulations and rules:
Tariff of tolls; comments due by 4-16-03; published 3-17-03 [FR 03-06347]

TREASURY DEPARTMENT
Disclosure of records:
Legal proceedings; access to information and records; clarification; comments due by 4-16-03; published 3-17-03 [FR 03-06247]

VETERANS AFFAIRS DEPARTMENT
Disabilities rating schedule:
Musculoskeletal system; comments due by 4-14-03; published 2-11-03 [FR 03-02119]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html.* Some laws may not yet be available.

H.R. 395/P.L. 108–10

Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

Last List March 10, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.



Printed on recycled paper

END